TITLE: FEDERAL REGISTER.

REEL NO: 3 of 8

issues: 37 - 51
pages: 7551 - 11346

VOLUME: 56

DATE: FEBRUARY 25 - MARCH 15, 1991

PUBLICATION NO: 2575

NOTES:

THIS PERIODICAL MAY BE COPYRIGHTED, IN WHICH CASE THE CONTENTS REMAIN THE PROPERTY OF THE COPYRIGHT OWNER. THE MICROFORM EDITION IS REPRODUCED BY AGREEMENT WITH THE PUBLISHER. DUPLICATION OR RESALE WITHOUT PERMISSION IS PROHIBITED.

UNIVERSITY MICROFILMS INTERNATIONAL, ANN ARBOR, MICHIGAN

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.

2-25-91
Vol. 56 No. 37

federal register

Monday
February 25, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
37
FE
25
991
MI

2-25-91
Vol. 56 No. 37
Pages 7551-7782

federal register

Monday
February 25, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Los Angeles and San Diego, CA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building, 300 N. Los Angeles St. Conference Room 8544 Los Angeles, CA
RESERVATIONS: 1-800-726-4995

SAN DIEGO, CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building, 880 Front St. Conference Room 4S-13 San Diego, CA
RESERVATIONS: 1-800-726-4995

Contents

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

Agency for International Development
RULES
Acquisition regulations:
Miscellaneous amendments, 7568
Physical fitness and medical privileges, 7586

Agricultural Marketing Service
RULES
Potatoes; grade standards, 7553
PROPOSED RULES
Dairy products; grading, inspection, and standards:
Dry sweetcream buttermilk
Correction, 7747
Eggs and egg products and poultry and rabbit products inspection and grading:
Fees and charges increase, 7592
Soybean promotion, research, and consumer information, 7594, 7597
(2 documents)
NOTICES
Beef promotion and research orders:
Certification and nomination, 7657

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Forest Service

Animal and Plant Health Inspection Service
RULES
Swine health protection:
Treated garbage, feeding and licensing; State lists, 7554
NOTICES
Environmental statements; availability, etc.:
Genetically engineered plants; field test permits—
Potatoes, 7658

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Bonneville Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Yakima Basin fish passage project, WA, 7691

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Lyme disease; research, treatment, and education programs, 7714

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 7746

Commerce Department
See Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 7690

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Sri Lanka, 7688
Uruguay, 7689

Defense Department
See Navy Department

Defense Nuclear Facilities Safety Board
NOTICES
Conflicts of interest, resolution:
AMPARO, 7690
Paul C. Rizzo Associates, Inc., 7691

Energy Department
See also Bonneville Power Administration; Energy Information Administration; Federal Energy Regulatory Commission
NOTICES
Meetings:
Yucca Mountain engineered barrier system concepts workshop, 7693
Natural gas exportation and importation:
Transco Energy Marketing Co., 7693

Energy Information Administration
NOTICES
Meetings:
American Statistical Association Committee on Energy Statistics, 7691

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Strontium sulfide; technical correction, 7567
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region III, 7693
Meetings:
Air quality modeling; conference, 7694
Harnessing market forces and alternative financing mechanisms; reauthorization of Clean Water Act, 7695
Nonroad engines and vehicles; public workshop, 7696
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Trifluralin, etc., 7750
Superfund; response and remedial actions, proposed settlements, etc.:
Tindall Property Site, KY, et al., 7698
Toxic and hazardous substances control:
Premanufacture exemption approvals, 7697
Water pollution; discharge of pollutants (NPDES):
Louisiana et al., 7698

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Semiconductor Technical Advisory Committee, 7660

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Disclosure to shareholders—
Accounting and reporting requirements; correction, 7747

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 7559, 7560
(2 documents)
Boeing, 7555, 7556, 7561
(3 documents)
British Aerospace, 7557
General Electric Co., 7563
PROPOSED RULES
Airworthiness directives:
Boeing, 7611, 7616, 7618
(3 documents)
British Aerospace, 7612, 7619
(2 documents)
Cessna, 7624
General Electric Co., 7613
GROB Luft und Raumfahrt, 7621
McDonnell Douglas, 7622
Short Brothers, PLC, 7615
Control zones, 7626
VOR Federal Airways, 7625
NOTICES
Airport noise compatibility program:
Noise exposure map—
Orlando Executive Airport, FL, 7741
Exemption petitions; summary and disposition, 7742

Federal Communications Commission
PROPOSED RULES
Radio services, special:
Private land mobile services—
Specialized mobile radio license applicants; short spaced assignments adequacy, 7635
NOTICES
Applications, hearings, determinations, etc.:
Godwin, Annette B., et al., 7708

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Project cost limits under blanket certificates, 7565
NOTICES
Applications, hearings, determinations, etc.:
National Fuel Gas Supply Corp., 7692
Pelican Interstate Pipeline System, 7692
Sabine Pipe Line Co., 7692
Western Gas Interstate Co., 7692

Federal Maritime Commission
PROPOSED RULES
Maritime carriers in foreign commerce:
Shipper definition and mixed commodity rates availability; wi hdrawn, 7634
NOTICES
Agreements filed, etc., 7709

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Westchester Financial Corp. et al., 7710

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early termination, 7710
Prohibited trade practices:
Nobody Beats the Wiz, Inc., 7710
Torrington Co. et al., 7712

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
International Business & Mercantile REassurance Co., 7745

Fish and Wildlife Service
PROPOSED RULES
Marine mammals:
Walruses and polar bears; incidental take during oil and gas exploration activities in Chukchi Sea off Alaska, 7645

Food and Nutrition Service
PROPOSED RULES
Food stamp program:
Hunger Prevention Act of 1988; miscellaneous quality control provisions
Correction, 7747

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Koche Refining Co. refinery and pipeline, 7660

Forest Service
NOTICES
Environmental statements; availability, etc.:
Kaibab National Forest, AZ, 7659
Wasatch-Cache National Forest, UT; correction, 7660

Health and Human Services Department
See Centers for Disease Control; National Institutes of Health

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service

Internal Revenue Service
PROPOSED RULES
Excise taxes:
Manufacturers and retailers; gasohol, 10 percent alcohol requirement and later blending rule, 7627

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Fresh and chilled Atlantic salmon from Norway, 7661
Countervailing duties:
Fresh and chilled Atlantic salmon from Norway, 7678

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
CSX Transportation Inc., 7732

Justice Department
See Justice Statistics Bureau

Justice Statistics Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Discretionary programs (1991 FY), 7732

Land Management Bureau
NOTICES
Alaska Native claims selection:
Tyonek Native Corp., 7717
Meetings:
Lakeview District Grazing Advisory Board, 7717
Realty actions; sales, leases, etc.:
Wyoming, 7717

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Outer Continental Shelf natural gas and oil resource management program; (1992-1997), 7717

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Air brake systems—
Rubber brake hoses, 7589
PROPOSED RULES
Consumer information:
Uniform tire quality grading standards—
Vehicles in treadwear convoys, 7643
Motor vehicle safety standards:
Brake hoses; labeling requirements, 7640
Fuel system integrity; evaluation report availability, 7639

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
National Institute of General Medical Sciences, 7716

National Oceanic and Atmospheric Administration
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Oregon, 7687
Marine mammals:
Incidental taking; authorization letters, etc.—
BP Exploration Inc., 7688
Permits:
Endangered and threatened species, 7688

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Kentucky et al., 7565
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 7690

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Uranerz U.S.A., Inc., 7732
Meetings:
Reactor Safeguards Advisory Committee, 7733
Applications, hearings, determinations, etc.:
Certified Testing Laboratories, Inc., 7733
Commonwealth Edison Co., 7734
Toledo Edison Co. et al., 7734

Postal Service
NOTICES
Bypass mail hub points; changes, 7736

Presidential Documents
PROCLAMATIONS
Special observances:
Bicentennial of U.S.-Portugal Relations, Commemoration (Proc. 6252), 7779
Doctors Day, National (Proc. 6253), 7781
Parents and Teachers Association Week, National (Proc. 6251), 7551

Public Health Service
See Centers for Disease Control; National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
State grants; allocation formula, 7636

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 7746

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 7736
Applications, hearings, determinations, etc.:
Public utility holding company filings, 7737

Selective Service System
NOTICES
Agency information collection activities under OMB review, 7741

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See also Fiscal Service; Internal Revenue Service

NOTICES
Notes, Treasury:
L-1996 series, 7742
X-1993 series, 7743

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Subsistence allowance payment, 7566
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Institutionalized patients; pension reductions, 7630
Disabilities rating schedule:
Claims based on exposure to herbicides containing dioxin (soft-tissue sarcomas), 7632

Separate Parts In This Issue

Part II
Environmental Protection Agency, 7750

Part III
The President, 7779

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6251 7551
6252 7779
6253 7781

7 CFR
51 7553
Proposed Rules:
55 7592
56 7592
58 7747
59 7592
70 7592
275 7747
1220 (2 documents) 7594, 7597

9 CFR
166 7554

12 CFR
Proposed Rules:
611 7747
620 7747
621 7747

14 CFR
39 (7 documents) 7555–7563
Proposed Rules:
39 (10 documents) 7611–7624
71 (2 documents) 7625, 7626

18 CFR
157 7565

26 CFR
Proposed Rules:
48 7627

32 CFR
706 7565

38 CFR
21 7566
Proposed Rules:
3 (2 documents) 7630, 7632
4 7632

40 CFR
261 7567

46 CFR
Proposed Rules:
580 7634
581 7634

47 CFR
Proposed Rules:
90 7635

48 CFR
Ch. 7, App. C 7586
Ch. 7, App. D 7568, 7586
Ch. 7, App. G 7568
731 7568
752 7586

49 CFR
571 7589
Proposed Rules:
198 7636
571 (2 documents) 7639, 7640
575 7643

50 CFR
Proposed Rules:
18 7645

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

Presidential Documents

Title 3—

The President

Proclamation 6251 of February 21, 1991

National Parents and Teachers Association Week, 1991

By the President of the United States of America

A Proclamation

Parents play a singularly influential role in the educational development of their children. Indeed, parents' encouragement and example are far more important factors than a family's social and economic background. Research clearly shows that the interest parents demonstrate in their youngster's daily studies and other school activities can significantly enhance that child's academic performance.

By bringing parents together in an ongoing partnership with teachers and school administrators, the Parents and Teachers Association (PTA) provides an effective means for parents to participate in the education of their children. Because every child, every school, and every community is unique, local PTAs can be an ideal vehicle for meeting specific goals and needs.

The sustained involvement and cooperation of parents are vital if we are to reach our six National Education Goals and ensure that every American has the opportunity to acquire a high quality education. Local PTA groups enable parents to express their concerns and ideas regarding their children's education, and this week we proudly salute these valued organizations.

In recognition of the contributions of PTA organizations across America, the Congress, by Senate Joint Resolution 364 (Public Law 101–643), has designated the third week of February 1991 as "National Parents and Teachers Association Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning February 17, 1991, as National Parents and Teachers Association Week. I urge all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of Feb., in the year of our Lord nineteen hundred and 91, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91–4538
Filed 2–21–91; 4:11 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number (AMS-FV-89-201)]

Potatoes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary United States Standards for Grades of Potatoes by establishing diameter measurements as the basis for scoring hollow heart and certain other internal defects and by rephrasing sections of the standards for clarity. The Agricultural Marketing Service (AMS), has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The revision of the U.S. Standards for Grades of Potatoes will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary, so members of the potato industry need not have their product certified under these standards, thereby incurring no costs at all.

The United States Standards for Grades of Potatoes (7 CFR 51.1540-51.1566) were last revised in February 1972. The standards are authorized by the Agricultural Marketing Act of 1946 (7 U.S.C 1621 et. seq.). The Idaho Grower Shippers Association, a major producer organization, requested that the U.S. Department of Agriculture revise the standards to require that hollow heart and certain other internal defects be scored based on specific diameter measurement rather than the current method which scores a defect if it affects the appearance of the specimen. USDA, also has sought to promote uniform application of grades by clarifying the language in several sections. USDA developed a proposal incorporating the industry's and its own revisions which was published in the **Federal Register** on July 9, 1990 (55 FR 28032-28033). Interested parties were invited to submit written comments.

The 60-day comment period ended September 10, 1990, during which time 20 comments were received.

Fourteen comments were in favor of the proposal in its entirety as likely to provide for more accurate and consistent scoring of defects.

One comment was in favor of the revision pertaining to internal defect scoring but would not endorse the additional re-wording of the standards without an additional 12 months to further review the changes. Because the fresh potato industry has been aware of a proposal to revise the current standards since August 1989 when a market survey outlining the proposed standards was distributed, AMS has determined that further time for review is unnecessary.

Five comments were in favor of the sections re-worded by USDA but opposed to revising the internal defect scoring criteria sponsored by the proponents. These individuals, however, did not offer an explanation as to why they were against the new scoring criteria.

The AMS is responsible for developing and improving standards of quality, condition grade, and packaging in order to facilitate the marketing of agricultural commodities by encouraging uniform and consistent commercial practices. The Agency has determined this final rule will promote better scoring of internal defects, and greater and more consistent understanding of the standards by the Inspection Service, industry, and others by providing more concise and clear language for the inspection and commerce in agricultural commodities. Therefore, the rule as proposed is adopted.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In § 51.1545, paragraph (b) is revised to read as follows and the tables following paragraph (b) remain unchanged:

§ 51.1545 Size.

* * * * *

(b) When size is designated as shown in Table II, the corresponding weight ranges shall apply. These size designations may be applied to potatoes packed in any size container: Provided, that the weight ranges are within the limits specified.

* * * * *

3. In § 51.1546, the introductory text is revised to read as follows:

§ 51.1546 Tolerances.

To allow for variations incident to proper grading and handling in each of the foregoing grades, the following tolerances by weight or equivalent basis, are provided as specified.

* * * * *

4. Section 51.1565 Table IV is revised to read as follows:

§ 51.1565 Internal Defects

* * * * *

TABLE IV.—INTERNAL DEFECTS

Defects	Damage, maximum allowed	Serious damage, maximum allowed
Occurring outside of or not entirely confined to the vascular ring		
Ingrown Sprouts, Internal Black Spot, Internal Discoloration, Vascular Browning, Fusarium Wilt, Net Necrosis, Other Necrosis, Stem End Browning.	5% waste	10% waste.
Occurring entirely within the vascular ring		
Hollow Heart or Hollow Heart with Discoloration	Area affected not to exceed that of a circle ½ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weight.[1]	Area affected not to exceed that of a circle ¾ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weight.[1]
Light Brown Discoloration (Brown Center)	Area affected not to exceed that of a circle ½ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weight.[1]	Area affected not to exceed that of a circle ¾ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weight.[1]
Internal Brown Spot and Similar Discoloration (Heat Necrosis).	Not more than the equivalent of 3 scattered spots ½ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weigth.[1]	Not more than the equivalent of 6 scattered spots ½ inch in diameter in a potato 2½ inches in diameter or 6 ounces in weight.[1]

[1] Note: Correspondingly lesser or greater areas in smaller or larger potatoes.

Dated February 19, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-4361 Filed 2-22-91; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 90-120]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Swine Health Protection regulations by (1) removing Delaware, Maryland, and Texas from the list of States that have primary enforcement responsibility under the Swine Health Protection Act, and (2) adding Maryland and Texas to the list of States that do not have primary enforcement responsibility under the Swine Health Protection Act but, under cooperative agreements with the Animal and Plant Health Inspection Service, issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine. We are taking these actions at the request of Delaware, Maryland, and Texas, and pursuant to the Swine Health Protection Act. These actions will help ensure that requirements under the Swine Health Protection Act for the feeding of garbage to swine are enforced in Delaware, Maryland, and Texas, thereby helping to prevent the dissemination of certain swine diseases.

DATES: Interim rule effective February 25, 1991. Consideration will be given only to comments received on or before April 26, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket 90-120. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Veterinary Medical Officer, Swine Diseases Staff, VS, APHIS, USDA, room 736-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). To prevent the introduction into and dissemination within the United States of certain diseases of swine, the authorities cited above regulate both the treatment of garbage that is fed to swine and the feeding of that garbage. Except for certain emergency actions, the Act provides that its provisions and the regulations are to be enforced by the Secretary of Agriculture of the United States (the Secretary) only in States that do not have primary enforcement responsibility under the Act. The Secretary has delegated the authority for enforcing the Act to the Animal and Plant Health Inspection Service (APHIS).

The Act provides that a State has primary enforcement responsibility for violations of laws and regulations concerning treatment of garbage to be fed to swine, and the feeding of that garbage, whenever the Secretary determines that the State:

(1) Has adopted adequate laws and regulations concerning both the treatment of garbage to be fed to swine, and the feeding of that garbage, and that these laws and regulations meet both the minimum standards of the Act and any regulations promulgated under the Act;

(2) Has adopted and is implementing adequate procedures for the effective enforcement of these laws and regulations; and

(3) Keeps records and makes reports showing compliance with paragraphs (1) and (2) above as the Secretary may require.

Before the publication of the interim rule, Delaware, Maryland, and Texas were listed in § 166.15(c) of the regulations as States having primary enforcement responsibility under the Act. Pursuant to a request from Delaware, Maryland, and Texas, and pursuant to the requirements of section 10 of the Act, we are removing Delaware, Maryland, and Texas from the list of States that have primary enforcement responsibility under the Act. Therefore, the provisions of the Act and the Federal regulations are now being enforced by APHIS in Delaware, Maryland, and Texas.

Further, pursuant to the authority in section 9 of the Act, APHIS may enter into cooperative agreements with States that do not have primary enforcement responsibility under the Act but which have been determined to have adequate facilities, personnel, and procedures to assist in the administration and enforcement of the Act and regulations. We have determined that Maryland and Texas have adequate facilities, personnel, and procedures to assist in the administration and enforcement of the Act and regulations. Based on this determination, APHIS has entered into a cooperative agreement with Maryland and Texas under which Maryland and Texas issue licenses to persons desiring to operate a treatment facility for garbage that is to be treated and fed to swine.

Therefore, we are adding Maryland and Texas to the list of States that issue licenses under cooperative agreements with APHIS, but that do not have primary enforcement responsibility under the Act.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to help ensure that certain requirements for the feeding of garbage to swine under the Act are enforced in Delaware, Maryland, and Texas. Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who allow the feeding of garbage to swine are considered small entities.

Delaware has no licensed garbage feeders; therefore, removing Delaware from the list of States that have primary enforcement responsibility under the Act will have no impact on any small entities in that State.

Maryland has one licensed garbage feeder and Texas has approximately 440, but these entities should experience no economic impact as a result of this action. This is because Maryland and Texas law regarding the feeding of garbage to swine is essentially identical to Federal law; consequently, the switch from State to Federal primary enforcement responsibility in Maryland and Texas should have no effect on the business operations of licensed garbage feeders in those States.

Under these curcumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule containes no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Reporting and recordkeeping requirements, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR part 166 is amended as follows:

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (c) of § 166.15 is amended by removing "Delaware," "Maryland," and "Texas,".

3. Paragraph (d) of § 166.15 is revised to read as follows:

§ 166.15 State status.

* * * * *

(d) The following States issue licenses under cooperative agreements with the Animal and Plant Health Inspection Service, but do not have primary enforcement responsibility under the Act: Kentucky, Maryland, Puerto Rico, Texas, and Washington.

* * * * *

Done in Washington, DC, this 11th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4358 Filed 2-22-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-196-AD; Amdt. 39-6909]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes Equipped with CFM International CFM56-3 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737-300 series airplanes, which currently requires deletion of the paragraph from the FAA-approved Airplane Flight Manual (AFM) that permits operation over a route that contains a point farther than one hour flying time at normal one-engine inoperative cruise speed (in still air) from an adequate airport in deviation from § 121.161 of the Federal Aviation Regulations (FAR), referred to as Extended Range Operation with Twin Engine Airplanes or "ETOPS" operation. This amendment provides optional

airplane/engine modifications which, when accomplished, allow the reinstatement of certain Model 737–300 series airplanes for ETOPS operation.

EFFECTIVE DATE: March 26, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S; telephone (206) 227–2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89–13–06, Amendment 39–6247 (54 FR 26019, June 21, 1989), applicable to Boeing Model 737–300 series airplanes, to provide optional airplane/engine modifications which, when accomplished, allow the reinstatement of certain Model 737–300 series airplanes for ETOPS operation, was published in the Federal Register on November 21, 1990 (55 FR 48626).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The only commenter, the Air Transport Association (ATA) of America, expressed no objection to the proposed amendment.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 625 Model 737–300 series airplanes of the affected design in the worldwide fleet. It is estimated that 370 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by superseding Amendment 39–6247 (54 FR 26019, June 21, 1989), AD 89–13–06, with the following new airworthiness directive:

Boeing: Applies to Model 737–300 series airplanes, equipped with CFM56–3 series engines, certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the risk of total engine thrust loss due to unavoidable severe weather penetration during an ETOPS single engine diversion, accomplish the following:

A. Within the next 30 days after June 12, 1989 (the effective date of Amendment 39–6247), delete from the FAA-approved Airplane Flight Manual (AFM) any reference to approval or suitability of the Model 737–300 airplane for use in extended range operation. This may be accomplished by replacing the existing AFM page(s) containing the Extended Range Operations suitability statement with a page(s) which has that statement deleted. If the existing AFM does not contain such a statement, then no action is necessary.

B. A new AFM ETOPS suitability statement, outlined below, may be inserted into the FAA-approved AFM when the airplane has been configured in accordance with Boeing Document D6–38123, Revision A, dated September 14, 1990, "Configuration, Maintenance and Procedures for Extended Range Operation" (CMP):

Extended Range Operations

The type design reliability and performance of this airplane/engine combination has been evaluated in accordance with FAA Advisory Circular 120–42A and found suitable for extended range operations when configured in accordance with FAA-approved Boeing Document D6–38123, Revision A, dated September 14, 1990, "Configuration, Maintenance and Procedures for Extended Range (ER) Operation." This finding does not constitute approval to conduct extended range operations.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective March 26, 1991.

Issued in Renton, Washington, on February 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4327 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–243–AD; Amdt. 39–6910]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, which requires replacement of the outboard and inboard, right and left wing flight spoiler spigot fittings. This amendment is prompted by reports of recent incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal. This condition, if not corrected, could result in degradation of the roll control during flight maneuvers. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than by repetitive inspections.

EFFECTIVE DATE: March 29, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. John Maher, Airframe Branch, ANE–172; telephone (516) 791–6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain de Havilland Model DHC–7 series airplanes, which requires replacement of the outboard and inboard, right and left wing flight spoiler spigot fittings, was published in the Federal Register on November 26, 1990 (55 FR 49067).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $84,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., de Havilland Division: Applies to de Havilland Model DHC–7 series airplanes, Serial Numbers 3 through 36, inclusive, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent possible malfunction of the wing flight spoilers, accomplish the following:

A. Within 180 days after the effective date of this AD, replace the outboard (Modification Nos. 7/1927 and 7/1951) and inboard (Modification Nos. 7/1928 and 7/1952), right and left wing flight spoilers spigot fittings, in accordance with the Accomplishment Instructions in de Havilland Service Bulletins 7–27–25, Revision B, and 7–27–26, Revision B, both dated January 28, 1983.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York ACO, ANE–170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO, ANE–170.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1YK, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

This amendment becomes effective March 29, 1991.

Issued in Renton, Washington, on February 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4328 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–173–AD; Amdt. 39–6908]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which requires repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary, and requires the eventual replacement of the aft jet pipes with improved parts. This amendment is prompted by reports of cracks in the engine jet pipes on in-service airplanes. This condition, if not corrected, could result in loss of required engine power and/or overheating of structural components.

EFFECTIVE DATE: March 29, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model ATP series airplanes, which requires repetitive visual inspections to detect cracks in the engine jet-pipe assembly, and repair or replacement with a serviceable unit, if necessary; and requires the eventual replacement of the aft jet pipes with improved parts; was published in the **Federal Register** on November 26, 1990 (55 FR 49070).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter noted that paragraph E. of the proposed rule should cite the latest revision to the service bulletin pertaining to the replacement procedures. The FAA concurs. Since the issuance of the Notice, British Aerospace has issued Revision 1 to Service Bulletin ATP-78-2, dated November 12, 1990, which clarifies the procedures for the installation of improved aft jet pipes. Paragraph E. of the final rule has been revised to include the latest revision of this service bulletin as an appropriate service information source.

The commenter further stated that Service Bulletin ATP-78-1, Revision 3, recommends a detailed visual inspection of the jet pipes whenever an engine is removed from the airplane, irrespective of the airplane's time-in-service. The commenter suggested that the final rule be revised to include this procedure. The FAA concurs that such an inspection should be accomplished. However, the normal maintenance procedures followed at the time of an engine removal include this inspection procedure and, therefore, there is no need for it to be addressed in the final rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the change noted above. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

It is estimated that 15 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national goverment and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, Februrary 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the engine jet pipes, accomplish the following:

A. For airplanes in Pre-Modification 35140A configuration: Prior to the accumulation of 500 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 250 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulleting ATP-78-1, Revision 3, dated August 1, 1990.

B. For airplanes in Post-Modification 35140A configuration: Prior to the accumulation of 3,000 hours time-in-service since new, or within 50 hours time-in-service after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 hours time-in-service, perform a detailed visual inspection of the engine jet pipe on the right and left engine, in accordance with the Accomplishment Instructions in British Aerospace Service Bulletin ATP-78-1, Revision 3, dated August 1, 1990.

C. If cracks are found in the aft jet pipe assembly, prior to further flight:

1. Replace the assembly with a serviceable unit; or

2. If cracks measuring less than 1.75 inches are found at the ends of the spacer channels, repair in accordance with British Aerospace Service Bulleting ATP-78-1, Revision 3, dated August 1, 1990; or

3. If cracks are found at any other location, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

Following repair or replacement, the inspections specified in paragraphs A. and B. of this AD are still required.

D. If cracks are found in the forward jet pipe assembly, prior to further flight, replace the assembly with a serviceable unit, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Following repair, the inspections specified in paragraph A. and B. of this AD are still required.

E. Within 12 months after the effective date of this AD, replace the aft jet pipe, part Number JD 780J0009-000, with an improved aft jet pipe having part Number JD780J0009-002 or -004, in accordance with British Aerospace Service Bulletin ATP-78-2, dated April 10, 1990, or ATP-78-2, Revision 1, dated November 12, 1990.

1. Following replacement, perform repetitive detailed visual inspections at intervals not to exceed 1,500 hours time-in-service, in accordance with the service bulletin.

2. If cracks are found, prior to further flight replace the aft jet pipe with a serviceable part in accordance with the service bulletin, or repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

G. Special flight permits may be issed in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective March 29, 1991.

Issued in Renton, Washington, on February 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4329 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-158-AD; Amendment 39-6914]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, equipped with certain trimmable horizontal stabilizer (THS) attachment lugs, which requires repetitive visual and eddy current inspections to detect corrosion and cracks in the THS attachment lugs, and repair or replacement, if necessary. This amendment is prompted by reports of in-service airplanes found with cracks in the lower THS attachment lug at Frame 91. This condition, if not corrected, could result in reduced structural integrity of the horizontal stabilizer attachment.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, equippeed with certain trimmable horizontal stabilizer (THS) attachment lugs, which requires repetitive visual and eddy current inspections to detect corrosion and cracks in the THS attachment lugs, and repair or replacement, if necessary, was published in the **Federal Register** on September 10, 1990 (55 FR 37247).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America supported the rule.

Airbus Industrie supported the rule, but suggested that the description of the unsafe condition be changed to read, "reduced structural integrity of the horizontal stabilizer attachment." The FAA has reconsidered its description of the unsafe condition, and has determined that it is appropriate to add the word "attachment" to the unsafe condition.

Airbus Industrie also noted certain inconsistencies between the proposed rule and the referenced service bulletin. Specifically, the proposal would require any detected cracks or corrosion to be repaired prior to further flight, while the service bulletin recommends that airplanes be permitted to continue to fly in cases where corrosion is found or where only one-half of the two halves bonded together to one lug is found cracked. The FAA does not concur. The FAA has determined that airworthiness cannot be ensured if airplanes are permitted further flight with cracks or corrosion. The potential exists for the remaining trimmable horizontal stabilizer (THS) attachment lugs to sustain the load of THS lugs with cracks or corrosion, thus placing inordinate stress on the remaining lugs.

Airbus also noted that, since the issuance of the Notice, Revision 2 to Service Bulletin No. A300-53-270, dated August 27, 1990, has been issued. This revision clarifies the procedures to replace the bushings with a reduced interference fit to minimize the possibility of stress corrosion. The FAA has revised the final rule to reflect this latest revision to this service bulletin as an additional service information source.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $17,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300 series airplanes, equipped with one or more trimmable horizontal stabilizer (THS) attachment lugs made from 2014 material, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks and corrosion in the THS attachment lugs at Frame 91 and to prevent reduced structural integrity of the horizontal stabilizer attachment, accomplish the following:

A. Prior to the accumulation of 1,200 landings, or within 90 days after the effective date of this AD, whichever occurs later, unless previously accomplished within the last 1,200 landings, perform a visual and eddy current inspection of all attachment lugs made from 2014 material, in accordance with Airbus Industrie Service Bulletin A300–53–269, dated December 18, 1989. Repeat these inspections thereafter at intervals not to exceed 1,200 landings.

Note: Attachment lugs made from 7075 material are not affected by this AD.

B. If cracks or corrosion are detected, prior to further flight, repair or replace the affected lugs in accordance with Airbus Industrie Service Bulletin A300–53–269, dated December 18, 1989.

C. Installation of Modification No. 7715/D7222, in accordance with Airbus Industrie Service Bulletin A300–53–270, Revision 1, dated February 22, 1990, or Revision 2, dated August 27, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 1, 1991.

Issued in Renton, Washington, on February 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4341 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 90–NM–92–AD; Amendment 39–6912]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, which currently requires measurements to determine wear of certain flap ball screwjack no-back assemblies, and replacement, if necessary. This action would revise the initial compliance threshold and intervals for the repetitive measurements required by the existing AD. This amendment would also require modification of the screwjack no-back assemblies which would terminate the need for the repetitive measurements. This condition, if not corrected, could result in reduced controllability of the airplane.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 227–2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87–21–03, Amendment 39–5736 (52 FR 36752, October 1, 1987), applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes, to revise the requirement to perform repetitive measurements to determine wear of certain flap ball screwjack noback assemblies and to modify the screwjack no-back assemblies which will terminate the need for the repetitive measurements, was published in the **Federal Register** on October 2, 1990 (55 FR 40191).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters noted a typographical error in paragraph C.3. where a backlash measurement of .44 mm was specified instead of the correct value of .40 mm. The FAA concurs and has made the correction in the final rule.

One operator requested to change the compliance time to, "prior to the accumulation of 13,000 landings or within the next 1,000 landings after the effective date of the proposed rule, whichever occurs later," because 6 of its airplanes have exceeded the proposed threshold of 13,000 landings. Since the proposed alternative of, "within 1,000 landings," refers to the effective date of the existing AD (November 3, 1987), this operator stated that it would be in immediate noncompliance with the proposed rule. The FAA does not concur with this operator's request. The FAA has determined that since the requirements from which this operator is seeking relief do not differ from the requirements of the existing AD, this operator would already be in noncompliance with the existing AD. The intention was to give credit to those operators that had already accomplished the requirements in the existing AD, and not to relax the requirements of the existing AD.

One commenter noted that the FAA's estimate of 8.5 manhours per airplane to accomplish the measurements and 25 manhours per airplane to accomplish the modification do not correspond with the manufacturer's service bulletin, which estimates 55 manhours per airplane to accomplish the measurements and 153 manhours per airplane to accomplish the modification. The FAA concurs, and the economic analysis paragraph below has been revised to reflect this information.

One commenter stated that the friction discs specified in Lucas Service Bulletin 1058–27–1100 may no longer be available and have been replaced by new friction discs identified in Lucas Service Bulletins 1058–27–1084 and 1058–27–1143. The FAA does not concur. Lucas has advised the FAA that there are presently no supply problems with respect to parts availability. However, should an operator be unable to obtain the friction discs specified in Lucas Service bulletin 1058–27–1100, paragraph F. of this AD provides a means for operators to obtain an alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 66 airplanes of U.S. registry would be affected by this AD, that it will take approximately 55 manhours per airplane to accomplish the measurement, and approximately 153 manhours to accomplish the modifications, and that the average labor cost will be $40 per manhour. The estimated cost for the required parts is $3,048. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $750,288.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–5736 (52 FR 36752, October 1, 1987), AD 87–21–03, with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in any category, equipped with the flap ball screwjack no-back mechanisms, as listed in Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984, which have not been modified in accordance with Modification AI 5240, as described in Airbus Industrie Service Bulletin A300–27–173, dated May 2, 1984. Compliance is required as indicated, unless previously accomplished.

To prevent excessive wear of the carbon friction disc of the no-back assemblies, which could lead to an asymmetric flap condition in the event of flap transmission shaft failure, accomplish the following:

A. For airplanes on which flap jamming with one or more affected flap screwjacks has occurred, perform a jackhead axial backlash measurement on the affected flap ball screwjacks in accordance with Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984, at the earlier of the following:

1. Prior to 13,000 landings; or

2. Within 1,000 landings after November 3, 1987 (the effective date of Amendment 39–5736, AD 87–21–03).

B. For airplanes on which flap jamming with any of the affected flap screwjacks has not occurred, perform a jackhead axial backlash measurement on the affected flap ball screwjacks in accordance with Airbus Industrie Service Bulletin A300–27–172, dated April 10, 1984, at the earlier of the following:

1. Prior to 13,000 landings; or

2. Whichever is the later of the following:

a. Within 1,000 landings after the effective date of this AD; or

b. Within the next "N" number of landings after the effective date of this AD, as determined by the following formula:

$N = 3{,}600 - 0.2 \times$ (number of accumulated landings).

C. If backlash is found, repeat the measurement required by paragraph A. or B., of this AD, at the following intervals:

1. If the backlash is less than or equal to 0.33 mm, prior to the accumulation of 3,000 landings after the last measurement.

2. If the backlash is more than 0.33 mm but less than or equal to 0.40 mm, prior to the accumulation of 2,000 landings after the last measurement.

3. If the backlash is more than 0.40 mm, but less than or equal to 0.56 mm, prior to the accumulation of 1,000 landings after the last measurement.

D. Replace the flap ball screwjack within the next 250 landings when a measurement required by paragraph A. or B. of this AD indicates that the backlash is greater than 0.56 mm.

E. Within 18 months after the effective date of this AD, modify the flap ball screwjack assemblies by installing a new carbon friction disc, a modified drive shaft, and a collar to the no-back mechanism, in accordance with Airbus Industrie Service Bulletin A300–27–173, dated May 2, 1984. Installation of this modification constitutes terminating action for the repetitive measurements required by paragraph C. of this AD.

Note: This Airbus Service Bulletin references Lucas Aerospace Service Bulletin No. 1058–27–1100 for additional modification instructions.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM–113, and a copy sent to the cognizant Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM–113.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–5736, AD 87–21–03.

This amendment becomes effective April 1, 1991.

Issued in Renton, Washington, on February 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4342 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 90–NM–154–AD; Amdt. 39–6913]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model 737 series airplanes, which requires inspections of the main landing gear (MLG) actuator beam arm and actuator beam attach bolts for cracking, plating degradation, and corrosion, and rework or replacement, if necessary. This amendment is prompted by reports of failure of the actuator beam arm and

trunnion pin due to corrosion. This condition, if not corrected, could lead to structural damage and severing of control cables and hydraulic tubing in this area, and could reduce controllability of the airplane.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2775. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 737 series airplanes, which requires inspection of the main landing gear (MLG) actuator beam arm and actuator beam attach bolts for cracking, plating degradation, and corrosion, and rework or replacement, if necessary, was published in the **Federal Register** on September 20, 1990 (55 FR 38696).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The United Kingdom Civil Aviation Authority (UK-CAA) commented that the proposed rule only addresses part (A) of the service bulletin, concerning inspection of the actuator beam arm and the attaching bolts. The proposed rule does not require inspection of the trunnion pin, however. Operators in the United Kingdom have experienced failure of this trunnion pin, which has resulted in the inability to retract the gear. Boeing has indicated to the UK-CAA that the failures of the trunnion pin are benign, as demonstrated in service to date. The UK-CAA questioned if this was the case under all circumstances, and if this inspection could be justifiably omitted from any rulemaking. The FAA has reviewed the UK-CAA's comment and has determined that the inspection of the trunnion pin was justifiably omitted from this AD action. Failure of the trunnion pin could result in the inability to retract the gear, but the gear will then free-fall to the down position; the ability to lock the gear in the down position is not compromised. Thus, this condition does not warrant AD action.

The Air Transport Association (ATA) of America commented on behalf of its members. One member operator questioned the need for the initial and repetitive ultrasonic inspections proposed for the actuator beam arm clevis (paragraph A.1. of the proposed AD). This member discussed its maintenance program for prevention of corrosion of this part during the past 23 years. Because of the success it has had with this program, this member believes that the proposed initial and repetitive compliance periods for paragraph A. should be extended. The FAA does not concur. The initial and repetitive inspection intervals for this AD action were developed in consideration of the degree of urgency associated with addressing the unsafe condition, the availability of parts, and the practical aspect of performing the inspections during times of regularly scheduled maintenance. The FAA does not consider its appropriate to extend the initial or repetitive compliance period of the AD based solely on the service experience of a single operator.

This same commenter also requested that paragraph A.2. be revised to provide for magnetic particle inspection as a alternative to a visual and dye penetrant inspections of the actuator beam bolt. The FAA does not concur, since the magnetic particle inspection procedures are not available at this time. However, paragraph C. of the AD allows operators to submit a request for an alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety. The FAA will then evaluate any request on a case-by-case basis.

Several commenters stated that the proposed rule should be limited to inspection of the subject clevis lug area only. One commenter pointed out that a one-time inspection of the bolts (paragraph A.2.) will only give confidence in the integrity of the part for a finite period. Since this design has been successfully operated for the last 20 years, this commenter believed that paragraph A.2. lacks justification and requested that this paragraph be deleted from the proposed rule. The FAA does not concur. Operators of Boeing Model 737 airplanes have reported medium to heavy corrosion on the MLG actuator beam arm in the actuator beam attach lugs, the actuator beam attach bolt assemblies, and the trunnion pin. In light of this service history, the FAA has determined that the inspections, as proposed, are warranted.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,943 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 824 airplanes of U.S. registry will be affected by this AD, that it will take approximately 54 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,779,840.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with the Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, listed in Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the structural integrity of the main landing gear (MLG) actuator beam arm and actuator beam attached bolts, accomplish the following:

A. Prior to the accumulation of 10,000 landings or 4 years of service, after new or overhauled main landing gear installation, whichever occurs first, or within the next 600 landings after the effective date of this AD, whichever occurs later, accomplish the following:

1. Perform visual and ultrasonic inspections of the actuator beam arm clevis for evidence of cracking, in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990.

a. If cracks are found, prior to further flight, remove and rework, or replace the actuator beam arm in accordance with the service bulletin.

b. If no cracks are found, repeat the ultrasonic inspections in accordance with the service bulletin, at intervals not to exceed 600 landings.

2. Remove both of the actuator beam bolts and perform a one-time visual and dye penetrant inspection for evidence of plating degradation, corrosion, or cracking, in accordance with the service bulletin. If evidence of plating degradation, corrosion, or cracking is found, prior to further flight, rework or replace the bolts in accordance with the service bulletin.

B. Modification of the actuator beam arm, in accordance with Boeing Alert Service Bulletin 737-32A1224, Revision 1, dated April 12, 1990, constitutes terminating action for the inspections required by paragraph A.1. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1610 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 1, 1991.

Issued in Renton, Washington, on February 13, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4343 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-28, Amendment 39-6900]

Airworthiness Directives; General Electric Company (GE) CF6-80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain GE CF6-80C2 series turbofan engines, which establishes a borescope inspection program to detect high pressure turbine (HPT) stage one shroud and blade distress. Also, the AD requires the installation of improved HPT hardware which increases the cooling to the HPT stage one shroud. This amendment is prompted by one HPT failure which resulted in aircraft damage. This condition, if not corrected, could result in HPT failure and possible aircraft damage.

DATES: Effective March 27, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of March 27, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD), applicable to certain GE CF6-80C2 series turbofan engines, which would require repetitive borescope inspections to detect HPT stage one shroud distress and installation of improved HPT hardware, was published in the **Federal Register** on November 8, 1990 (55 FR 46956).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received. One of the commenters expressed no objection to the adoption of the proposed rule.

One commenter expressed concern that sufficient quantities of the improved HPT hardware would not be available to accomplish the replacement requirements of paragraph (b) of the proposal. The FAA concurs with the commenter. Since issuance of the proposal, the engine manufacturer has revised CF6-80C2 Service Bulletin (SB) 72-474 to provide an FAA-approved field rework procedure of existing HPT hardware to obtain the necessary HPT configuration. Since this revision alleviates a potential shortage of the improved HPT hardware, the AD will reference CF6-80C2 SB 72-474, Revision 1, dated December 11, 1990, for the installation of the improved HPT hardware.

One commenter stated that borescope inspection through the HPT stage one borescope port was sufficient to detect HPT stage one shroud distress and the commenter further stated that the borescope inspection through the HPT stage two borescope port to detect shroud distress should be removed as a requirement. The FAA concurs with the commenter. Operational experience has indicated that shroud distress is confined to the leading edge and center area of the shroud and that borescope inspecting through the HPT stage one borescope port affords the only reliable view to these areas on installed engines. Further, one operator has obtained significant and successful experience borescope inspection through only the HPT stage one borescope port. CF6-80C2 SB 72-473 has been revised by making the shroud borescope inspection through the HPT stage two borescope port an optional inspection. Consequently, the AD will reference CF6-80C2 SB 72-473, Revision 1, dated September 21, 1990, for the inspection requirements and the AD will also specify only those inspection requirements needed to categorize HPT stage one shroud and blade distress.

Also, upon further review of the proposal, it was discovered that certain engine serial numbers were inadvertently omitted from the compliance paragraph (a)(2) while being transcribed. However, these engine

BEST COPY AVAILABLE

serial numbers were included in the applicability paragraph of the proposal, and therefore, inclusion of these does not increase the scope of the AD. Further, the part numbers of affected HPT hardware are included in the AD for clarification.

After review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 99 GE CF6-80C2 series engines of the affected design installed on aircraft of U.S. registry which will be affected by this AD. It is estimated that it will take approximately 8 manhours per engine for each inspection, that approximately 824 borescope inspections will be accomplished, and that the average labor cost will be $40 per manhour. Also, it is estimated that the total cost for the borescope inspection equipment will be $249,000. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $456,360.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive, or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-80C2A5 and CF6-80C2B6 engines, Serial Numbers (S/N) 690-101 through 690-369, and S/N 695-101 through 695-423; and CF6-80C2B6F and CF6-80C2D1F engines, S/N 702-101 through 702-470, and S/N 703-101 through 703-136, which do not incorporate the increased shroud cooling design features of paragraph (b) of this AD, installed on, but not limited to, Airbus A300, Boeing 767, and McDonnell Douglas MD-11 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent HPT failure and possible aircraft damage, accomplish the following:

(a) Borescope inspect engines in accordance with sections 2.B., 2.C., and 2.D. of the Accomplishment Instructions in GE CF6-80C2 Service Bulletin (SB) 72-473, Revision 1, dated September 21, 1990, unless previously accomplished, according to the following schedule based upon cycles since new (CSN) on the effective date of this AD:

(1) Inspect within 10 cycles in service (CIS) after the effective date of this AD or prior to accumulating 520 CSN, whichever occurs later, for CF6-80C2A5 and CF6-80C2B6 engines, S/N 690-101 through 690-369, and S/N 695-101 through 695-350; and CF6-80B6F engines, S/N 702-101 through 702-315, and S/N 702-317 through 702-321.

(2) Inspect within 10 CIS after the effective date of this AD or prior to accumulating 1,250 CSN, whichever occurs later, for CF6-80C2A5 and CF6-80C2B6 engines, S/N 695-351 through 695-423; and CF6-80C2B6F and CF6-80C2D1F engines, S/N 702-316, 702-322 through 702-470, and S/N 703-101 through 703-136.

(3) Remove from service or reinspect in accordance with the following:

(i) Remove from service prior to further flight, engines with at least one Category 4 shroud.

(ii) Remove from service within 25 hours time-in-service (TIS) since last inspection (SLI), engines with no Category 4 shrouds, but at least one Category 3 shroud.

(iii) Borescope reinspect at intervals not to exceed 125 hours TSI SLI, engines with no Category 3 or 4 shrouds, but at least one Category 2 shroud.

(iv) Borescope reinspect at intervals not to exceed 300 hours TIS SLI, engines with no Category 2, 3, or 4 shrouds, but at least one Category 1 shroud.

(v) Borescope reinspect at intervals not to exceed 520 CIS SLI, engines with no Category 1, 2, 3, or 4 shrouds.

(b) Replace the HPT stator stage one shroud support assemblies, Part Numbers (P/N) 9361M61G06 and 9361M61G07; the HPT stator support hanger assemblies, P/N 9397M73G05 and 9397M73C06; and the HPT stage one shrouds, P/N 1333M75P05, 1333M75P06, 1333M75P07, 1333M75P08, 1333M75P09, and 1333M75P10, the Accomplishment Instruction in GE CF6-80C2 SB 72-474, Revision 1, dated December 11, 1990, at the next HPT module exposure after the effective date of this AD, but prior to December 31, 1994.

(c) For the purpose of this AD, HPT module exposure is defined as the separation of the HPT stator support case from the compressor rear frame.

(d) For the purpose of this AD, the shroud Categories are defined in GE CF6-80C2 SB 72-473, Revision 1, dated September 21, 1990.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The borescope inspections and installation of improved HPT hardware shall be done in accordance with the following documents:

Document	Page	Revision	Date
CF6-80C2 SB 72-473.	5, 6, 7, 10-23.	Original	7/3/90
	1, 2, 3, 4, 8, and 9.	Rev. 1	9/21/90
CF6-80C2 SB 72-474.	1-24	Rev. 1	12/11/90

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective March 27, 1991.

Issued in Burlington, Massachusetts, February 6, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4330 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM91-19]

AGENCY: Federal Energy Regulatory Commission, DOE.

Office of Pipeline and Producer Regulations: Order of the Director

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT:
Martin A. Burless, Jr., Chief, Pipeline Certificates and Projects Branch, Division of Pipeline Certificates, OPPR, (202) 208-0581.

Order of the Director, OPPR

Issued February 19, 1991.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specified the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1991, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Kevin P. Madden,

Director, Office of Pipeline and Producer Regulation.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), unless otherwise noted.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

* * * * *

TABLE I

Year	Limit	
	Auto. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

* * * * *

Table II

Year:	*Limit*
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000

* * * * *

[FR Doc. 91-4314 Filed 2-22-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect a determination by the Judge Advocate General of the Navy that USS KENTUCKY (SSBN 737) USS MARYLAND (SSBN 738) and USS NEBRASKA (SSBN 739) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval submarines. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT:
Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall St., Alexandria, VA 22332-2400, Telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS KENTUCKY (SSBN 737), USS MARYLAND (SSBN 738) and USS NEBRASKA (SSBN 739) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c) pertaining to the arc of visibility of the sternlight; Annex 1, section 2(a)(i), pertaining to the height of masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessels. The Judge Advocate General of the Navy has also certified that the above-mentioned lights are located in

closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS KENTUCKY (SSBN 737), USS MARYLAND (SSBN 738) and USS NEBRASKA (SSBN 739) are members of the SSBN 726 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS KENTUCKY (SSBN 737), USS MARYLAND (SSBN 738) and USS NEBRASKA (SSBN 739).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these vessels in a manner differently from that prescribed herein will adversely affect the vessels' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessels:

Vessels	Number	Distance in meters of forward masthead light below minimum required height, § 2(a) (i), (ii)
USS KENTUCKY	SSBN 737	3.70
USS MARYLAND	SSBN 738	3.70
USS NEBRASKA	SSBN 739	3.70

3. Table Three of § 706.2 is amended by adding the following vessels.

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2(k), Annex I
USS KENTUCKY	SSBN 737	.....	.....	209°	5.3	9.0	3.8	4.0 below.
USS MARYLAND	SSBN 738	.....	.....	209°	5.3	9.0	3.8	4.0 below.
USS NEBRASKA	SSBN 739	.....	.....	209°	5.3	9.0	3.8	4.0 below.

Dated: January 11, 1991.

Approved:

J.E. Gordon,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 91-4287 Filed 2-22-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE55

Vocational Rehabilitation Program; Payment of Subsistence Allowance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Veterans' Benefits Amendments of 1989 provide for an increase of 7.5 percent in the subsistence allowance rates for service-disabled veterans pursuing a rehabilitation program. The intended effect of these regulatory amendments is to implement the increase provided by law.

EFFECTIVE DATE: The effective date of these amendments is January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: Public Law 101-237, the Veterans' Benefits Amendments of 1989, provides for a 7.5 percent increase in the subsistence allowance paid under the vocational rehabilitation program, effective January 1, 1990. Proposed regulatory amendments implementing these changes were published in the **Federal Register** on September 24, 1990. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, these amendments are adopted as final.

VA has determined that these regulations do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulations. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

These regulatory amendments are retroactively effective to January 1, 1990. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the sections of law which they implement, retroactively effective to January 1, 1990. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of increased subsistence allowance to a veteran who is entitled by law to that benefit or payment of an allowance at the chapter 34 rate after the period during which such payment may be made.

The Secretary certifies that these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA) 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the amendments only affect the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 10, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

In § 21.260 paragraphs (a) and (b) are revised to read as follows:

§ 21.260 Subsistence allowance.

(a) *General.* A veteran in a rehabilitation program under chapter 31 will receive a monthly subsistence allowance at rates specified in paragraph (b) of this section, unless he or she has elected to receive payment at the rate of the monthly educational allowance paid under chapter 30 for similar training. See § 21.264 for election of payment at the chapter 30 rate and §§ 21.7136, 21.7137, and 21.7138 to determine the applicable rate.

(Authority: 38 U.S.C. 1508(a), 1508(f), 1662(e); Pub. L. 98-525)

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective January 1, 1990.

Type of program	Monthly rate of subsistence allowance			
	No dependent	1 dependent	2 dependents	Add'l amt. for each dep. over 2
Institutional [1]:				
Full-time	$333	$413	$486	$35
¾ time	250	310	364	27
½ time	167	207	244	18
Nonpay on-job training in a Federal agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: Full time only	333	413	486	35
Nonpay work experience in a Federal agency:				
Full-time	333	413	486	35
¾ time	250	310	364	27
½ time	167	207	244	18
Farm cooperative; apprenticeship, nonpay on-job training or work experience in a state and local agency, or other on-job training [2]: Full time only	291	352	405	26
Combination (institution and OJT) Full time only:				
Institutional greater than ½ time	333	413	486	35
OJT greater than ½ time	291	352	405	26
Non-farm cooperative (Full time only):				
Institutional	333	413	486	35
On-job	291	352	405	26
Improvement of rehabilitation potential: Full time only	333	413	486	35
Independent living; Extended evaluation:				
Full-time	333	413	486	35
¾ time	250	310	364	27
½ time	167	207	244	18
¼ time	84	103	121	10

[1] Measurement of rate of pursuit (21.4270-21.4275).

[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective.

(Authority: 38 U.S.C. 1508; Pub. L. 101-237)

* * * * *

[FR Doc. 91-4294 Filed 2-22-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-3907-6]

Hazardous Waste Management System; Removal of Strontium Sulfide From the List of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: The Environmental Protection Agency is today correcting an amendment to regulations under the Resource Conservation and Recovery Act (RCRA) to remove strontium sulfide (CAS No. 1314-96-1) from 40 CFR 261.33, the list of commercial chemical products which are hazardous wastes when discarded or intended to be discarded; and to remove strontium sulfide from Appendix VIII of Part 261, the list of RCRA hazardous constituents. EPA took regulatory action to remove this chemical on October 31, 1988 (53 FR 43881), but the amendatory instruction to the **Federal Register** was incorrect and, as a result, this chemical was not removed from § 261.33 or part 261 appendix VIII in the Code of Federal Regulations. The Agency seeks to correct this error in today's document.

EFFECTIVE DATE: The regulations became effective on October 31, 1988. This document does not affect the effective date of the waste code removal.

ADDRESSES: The Office of Solid Waste (OSW) RCRA docket is located in Room M2427 at Waterside Mall, 401 M Street SW., Washington, DC 20460, and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Refer to "Docket number F-83-SSPA-FFFFF" when making appointments to review any background documents to the October 31, 1988 rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $.020 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346. For technical information contact Ron Josephson, Environmental Engineer, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION: On October 31, 1988, the Environmental Protection Agency promulgated a final rule removing strontium sulfide (CAS No. 1314-96-1) from the list of commercial chemical products which are hazardous wastes when discarded or intended for discard (EPA Hazardous

Waste Code P107, 40 CFR 261.33(e)), the list of hazardous constituents of concern under 40 CFR part 261 appendix VIII, and the list of hazardous substances with reportable quantities (RQ) under 40 CFR 302.4. The background to this regulatory action is summarized in the preamble and rule (53 FR 43881–43884). Due to an error in the amendatory language in the regulation, this chemical has not been removed from the list summarizing § 261.33(e) and part 261 Appendix VIII in the most recent editions of the Code of Federal Regulations. (See part 261 appendix VIII, footnote 2.) Strontium sulfide has been removed from the list of hazardous substances in § 302.4.

In order to avoid confusion in the regulated community, the Agency is today correcting the Code of Federal Regulations by removing this substance from the two lists. Because this action is a technical correction of the regulatory lists, it needs no prior notice and opportunity for comment (see 5 U.S.C. 553(b)), and the Agency will not respond to any comments based on today's document.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: February 14, 1991.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, part 261 of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6938.

§ 261.33 [Amended]

2. Amend the table in § 261.33(e) by removing the listing

P107 . . . 1314–98–1 . . . Strontium sulfide SrS.

Appendix VIII [Amended]

3. Amend appendix VIII of part 261 by removing the listing

Strontium sulfide . . . Strontium sulfide SrS . . . 1314–98–1 . . . P107.

[FR Doc. 91–4365 Filed 2–22–91; 8:45 am]

BILLING CODE 6560–50–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Chapter 7 and Part 731 and Appendices D and G

[AIDAR Notice 91–2]

Miscellaneous Amendments to Acquisition Regulations

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended by revising and updating in its entirety, Appendix D, "Direct-AID Contracts With a U.S. Citizen or U.S. Resident Alien for Personal Services Abroad", and by removing requirements that copies of approvals of salaries in excess of FS–1 be reported to a central point, and subsequently reported by that control point semiannually to the Deputy Administrator.

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: MS/PPE, Mrs. Patricia L. Bullock, (703) 875–1534.

SUPPLEMENTARY INFORMATION: The AID Acquisition Regulation is being amended to specifically include the following in appendix D: (1) Clarification of language pertaining to the U.S. Government's payment of U.S. health insurance contributions for Personal Services Contracts (PSCs); (2) clarification and simplification of the salary setting information; (3) new coverage regarding PSCs' ineligibility for awards; (4) a new requirement for the Contracting Officer's written certification in each PSC file that competition requirements have been met; (5) a new Checklist requirement which indicates that each PSC understands he or she must pay Federal Income Tax; (6) a revised Cover Page with the same tax information discussed in item (5) above; (7) authorization of a 3% annual step increase based on satisfactory performance; and (8) the reformatting of all of the PSC General and Additional General Provisions into one set. This includes updating and revising AIDAR and FAR Clauses. Miscellaneous and editorial changes are also being made to the AIDAR and the appendices.

The remaining changes concern part 731 and appendix G of the AIDAR. As the result of a survey covering approvals of salaries in excess of FS–1, it was determined that prudent judgment was being used and contract files were being properly documented. Based on findings that a good level of compliance and a good oversight trail provided by documentation in the contract file exists, it was determined that the requirement for submission of copies of approvals of salaries in excess of FS–1 to a central point, and preparation of semiannual reports on this subject for the Deputy Administrator should be eliminated. This recommendation was approved by the Deputy Administrator on 1/19/90.

The changes being made by this Notice are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities or require any information collection, as contemplated by the Regulatory Flexibility Act or the Paper Reduction Act respectively. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at anytime. Comments or questions may be addressed as specified in the "**FOR FURTHER INFORMATION CONTACT**" section of the preamble.

List of Subjects in 48 CFR Part 731 and Chapter 7 Appendices

Government procurement.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for part 731, and appendices D and G to chapter 7 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

Subpart 731.2—Contracts With Commercial Organizations

731.205–6 [Amended]

1. Paragraph (b)(2) of section 731.205–6, Compensation for personal services, is amended by removing the last sentence of the paragraph, starting with the words "Copies of all * * *" and ending " * * * of Procurement."

Subpart 731.3—Contracts With Educational Institutions

731.371 [Amended]

2. Paragraph (a)(1) of § 731.371, Compensation for personal services, is amended by removing the last sentence of the paragraph, starting with the words "Copies of all * * *" and ending "* * * of Procurement."

Appendices to Chapter 7

3. Appendix D is revised as follows:

Appendix D—Direct AID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

1. General

(a) *Purpose.* This appendix sets forth the authority, policy, and procedures under which AID contracts with a U.S. citizen or U.S. resident alien for personal services abroad.

(b) *Definitions.* For the purpose of this appendix:

(1) *Personal Services Contract* (PSC) means a contract which establishes an employer-employee relationship for the performance of services personally by the Contractor. The services may include general continuing services as well as specifically identifiable tasks.

(2) *Employer-employee relationship* means an employment relationship in which the employer supervises or has the power to supervise the performance of the work including, for example, the manner in which it is to be performed or controlled, the days of the week and hours of the day in which it is to be performed, or furnish the facilities where the work is to be performed. Another indication of this relationship is the provision by the employer of workspace and basic tools and materials for use in accomplishing the work.

(3) *Non-personal Services Contract* means a contract which directly engages the time and effort of a Contractor whose primary purpose is to perform an identifiable task and which establishes an independent Contractor relationship between the Contractor and the activity contracting for the services.

(4) *Independent contractor relationship* means a contract relationship in which the Contractor is not subject to the supervision and control prevailing in relationships between the Government and its employees. Under this relationship, the Government does not normally supervise the performance of the work, control the days of the week or hours of the day in which it is to be performed, or the location of performance.

(5) *Resident Hire* means a U.S. citizen who, at the time of hire as a PSC, resides in the cooperating country (i) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (ii) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes persons who at the time of contracting are lawfully admitted permanent residents of the United States.

(6) *U.S. resident alien* means a non-U.S. citizen lawfully admitted for permanent residence in the United States.

(7) *Abroad* means outside the United States and its territories and possessions.

(8) *AID direct-hire employee* means civilian employees appointed under AID Handbook 25 procedures.

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (hereinafter referred to as the "FAA"), provides the Agency's basic contracting authority for nonpersonal services.

(b) Section 636(a)(3) of the FAA (22 U.S.C. 2396(a)(3)) authorizes the Agency to enter into personal services contracts with individuals for personal services abroad and provides further that such individuals "* * * shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission." [1]

3. Applicability

(a) This appendix applies to all personal services contracts with U.S. citizens or U.S. resident aliens to provide assistance abroad under section 636(a)(3) of the FAA.

(b) This appendix does not apply to:

(1) Nonpersonal services contracts with U.S. citizens or U.S. resident aliens; such contracts are covered by the basic text of the FAR and the AIDAR.

(2) Personal services contracts with individual Cooperating Country Nationals (CCNs) or Third-Country Nationals (TCNs); such contracts are covered by appendix J of this chapter.

(3) Other personal services arrangements covered by *AID Handbook 25—Employment and Promotion.*

(4) Interagency agreements (e.g., PASAs and RSSAs) covered by *AID Handbook 12—Use of Federal Agencies.*

4. Policy

(a) *General.* AID may finance, with either program or operating expense (OE) funds, the cost of personal services as part of the Agency's program of foreign assistance by entering into a direct contract with an individual U.S. citizen or U.S. resident alien for personal services abroad.

(1) *Program funds.* Under the authority of section 635(h) of the FAA, program funds may be obligated for periods up to five years where necessary and appropriate to the accomplishment of the tasks involved.

(2) *Operating expense funds.* Under the authority of section 636(b) of the FAA, operating funds may be obligated for periods not to exceed twenty-four months where necessary and appropriate to the accomplishment of the tasks involved.

(b) *Limitations on Personal Services Contracts.*

(1) Personal services contracts may only be used when adequate supervision is available.

(2) Personal services contracts may be used for commercial activities. Commercial activities provide a product or service which could be obtained from a commercial source. See Attachment A of OMB Circular A–76 for a representative list of such activities.

(3) Personal services contracts may be used for Governmental functions (defined by OMB Circular A–76 as functions so intimately related to the public interest as to mandate performance by Government employees) *except:*

(i) Negotiating on behalf of the United States with foreign governments and public international organizations. Note: Negotiating on behalf of the United States with private individuals and entities is permitted.

(ii) Entering into any agreement (e.g., loan, grant, contract) on behalf of the United States.

(iii) Making decisions involving governmental functions such as planning, budget, programming and personnel selection. Services will be limited to making recommendations with final decision-making authority reserved for authorized AID direct-hire employees.

(iv) Supervision of AID direct-hire U.S. citizen employees.

(c) *Withholdings and Fringe Benefits.*

(1) Personal services contractors (PSCs) are Government employees for purposes of title 26 of the United States Code and are therefore subject to social security (FICA) and Federal income tax (FIT) withholdings. As employees, they are ineligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911–3(c) (3)).

(2) Personal services contractors are treated on par with other Government employees, *except* for programs based on any law administered by the Federal Office of Personnel Management (e.g., incentive awards, life insurance, health insurance, and retirement programs covered by 5 CFR parts 530, 531, 831, 870, 871, and 890). While PSCs are ineligible to participate in any of these programs, the following fringe benefits are provided as a matter of policy:

(i) The employer's FICA contribution for retirement purposes;

(ii) A contribution against the actual costs of the PSC's annual health and life insurance costs. Proof of health and life insurance coverage shall be submitted to the Contracting Officer before any contribution is made.

(A) The contribution for health insurance shall not exceed 50% of the actual costs of the PSC's annual health insurance and shall not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(B) The contribution for life insurance shall be up to 50% of the actual costs of the PSC's annual life insurance costs, not to exceed $500.00 per year.

(iii) PSCs shall receive the same percentage pay comparability adjustment as U.S. Government employees subject to the availability of Mission funds.

(iv) PSCs shall receive a 3% annual step increase subject to satisfactory performance.

(v) PSCs shall receive the following allowances and differentials provided in the State Department's Standardized Regulations (Government Civilians Foreign Areas) on the same basis as U.S. Government employees (except for resident hires, see paragraph 4(d) and section 11, General Provisions, Definitions Clause 24, "Resident Hire Personal Services Contractors"):

(A) Temporary lodging allowance (Section 120).[2]

(B) Living quarters allowance (Section 130).[2]

[1] The Civil Service Commission is now the Federal Office of Personnel Management.

(C) Post allowance (Section 220),[a]
(D) Supplemental post allowance (Section 230),[a]
(E) Separate maintenance allowance (Section 260),[a]
(F) Education allowance (Section 270),[a]
(G) Educational travel (Section 280),[a]
(H) Post differential (Chapter 500),
(I) Payments during evacuation/authorized departure (Section 600), and
(J) Danger pay (Section 650).

Any allowance or differential that is not *expressly stated* in this paragraph is not authorized for any PSC unless a deviation is approved.

(vi) PSCs and their authorized dependents may be entitled to health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees. See General Provision entitled "Physical Fitness and Health Room Privileges."

(vii) PSCs are eligible to receive benefits for injury, disability, or death under the Federal Employees' Compensation Act since the law is administered by the Department of Labor, not the Office of Personnel Management.

(viii) PSCs are eligible to earn four hours of annual leave and four hours of sick leave for each two week period. However, PSCs with previous PSC service (not previous U.S. Government civilian or military service) earn *either* six hours of annual leave for each two week period if their previous PSC service exceeds 3 years, *or* eight hours of annual leave for each two week period if their previous PSC service exceeds 15 years.

(3) A PSC who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraph 4(c)(2)(ii) of this appendix.

(4) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contract (since the Government will normally have already paid its contribution for the retiree) unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If coverage overseas is excluded, then eligibility as cited above applies.

(5) Retired U.S. Government employees may be awarded Personal Services Contracts without any reduction in or offset against their Government annuity.

(d) *Resident Hire Personal Services Contractors.*

Resident hire PSCs are not eligible for any fringe benefits (except contributions for FICA, health insurance, and life insurance), including differentials and allowances, unless such individuals can demonstrate to the satisfaction of the Contracting Officer that they have received similar benefits and allowances from their immediately previous employer in the cooperating country or the Mission Director may determine that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

(e) *Salary Setting.*

(1) Salaries for Personal Services Contractors shall be established based on the market value of the position being recruited for. This requires the Contracting Officer in coordination with the Project Officer to determine the correct market value (a salary range) of the position to be filled. The market value of the position then becomes the basis, along with the applicant's certified salary history on the SF 171, "Personal Qualifications Statement," for salary negotiations to be conducted by the Contracting Officer. The 171 must be retained in the permanent contract file. Salaries should be consistent with the FS/GS grade level equivalent that the position would normally warrant.

(2) If approved by the Mission Director or the cognizant Assistant Administrator, based on written justification, salary may be negotiated based on the applicant's current earnings adjusted in accordance with the factors set out in paragraphs (e)(2) (i) through (iii) below. Current earnings must be certified by the Contractor on the SF 171, (see paragraph 6(b)(3) of this Appendix). This is guidance for establishing initial salaries not subsequent increases for the same Contractor performing the same function.

(i) As a rule, up to a 3 percent increase above current earnings may be given. However, a 3 percent increase is awarded only to a PSC whose earnings are based on a period of twelve months or more; 2 percent for established earnings of less than twelve months but not less than four months; or 1 percent for established earnings during the past four months.

(ii) Additional percentages may be given for the following factors. If a PSC has worked in a developing country for more than two years, an additional 1 percent may be awarded. Education related to the area of specialization and above the minimum qualification required may warrant an additional 1 percent, and those specialties for which there is keen competition in the employment market or a serious shortage category nationwide may be awarded an additional 2 percent. In addition, related technical experience over 5 years may increase the percentage by 1 and over ten years by 3.

(iii) All requests for an initial rate of pay above 10 percent over current earnings must be approved in writing by the appropriate Regional Assistant Administrator or Mission Director. Current earnings are actual earnings for work reasonably related to the position for which the applicant is being considered.

(3) When an applicant has no current earnings history (e.g., a person returning to the workforce after an absence of a number of years) or when an applicant's current earnings history doesn't accurately reflect the applicant's job market worth (e.g., a Peace Corps volunteer), every effort should be made to establish a market value for the position as a basis for negotiation, notwithstanding the lack of a current earnings history, provided that the applicant has the full qualifications for the job and could command a similar salary in the open job market.

(4) Salaries in excess of the FS–1 level must also be approved by the appropriate Regional Assistant Administrator or Mission Director, as provided for in Appendix G of this chapter.

(f) *Incentive Awards.*

U.S. PSCs are not eligible to participate in any special awards programs.

(g) *Annual Salary Increase.*

PSC's contracts written for more than one year should provide for a 3% annual increase based on satisfactory performance.

(h) *Pay Comparability Adjustment.*

PSCs shall receive the same percentage pay comparability adjustment as that received by U.S. Government employees subject to the availability of Mission funds.

5. Soliciting for Personal Services Contracts

(a) *Project Officer's Responsibilities.* The Project Officer will prepare a written detailed statement of duties and a statement of minimum qualifications to cover the position being recruited for. The statement shall be included in the procurement request (e.g., AID Form 1350–1, Project Implementation Order/Technical Services (PIO/T)); the request shall also include the following additional information as a minimum:

(1) The specific foreign location(s) where the work is to be performed, including any travel requirements (with an estimate of frequency);

(2) The length of the contract, with beginning and ending dates, plus any options for renewal or extension;

(3) The basic education, training, experience, and skills required for the position;

(4) An estimate of what a comparable GS/FS equivalent position should cost, including basic salary, allowances, and differentials, if appropriate;

(5) A list of Government or host country furnished items (e.g., housing); and

(6) If the PSC will be providing consulting services, include the justification required by AIDAR 737.270(b).

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer will prepare the solicitation for personal services which shall contain:

(i) Three sets of SF 171s and 171As. (Upon receipt, one copy of each 171 and 171A shall be forwarded to the Project Officer.)

(ii) A detailed statement of duties or a completed position description for the position being recruited for.

(iii) A copy of the prescribed contract Cover Page, Contract Schedule, General Provisions as appropriate, as well as the FAR Clauses to be incorporated by reference.

(iv) A copy of Attachment 2C to chapter 2 of AID Handbook 24, entitled Employee Responsibilities and Conduct.

(2) The Contracting Officer shall comply with the requirements of AIDAR 706.302–70(c) as detailed in paragraph 5(c) below.

(c) *Competition.*

(1) Under AIDAR 706.303–70(b)(1), Personal Services Contracts are exempt from the requirements for full and open competition with two limitations that must be observed by Contracting Officers:

(i) Offers are to be requested from as many potential offerors as is practicable under the circumstances, and

(ii) A justification supporting less than full and open competition must be prepared in accordance with FAR 6.303.

(2) A class justification was approved by the AID Procurement Executive on January 20, 1987 which will satisfy the requirements of AIDAR 706.302–70(c)(2) for a justification in accordance with FAR 6.303 subject to the following conditions for use for Personal Services Contracts with U.S. citizens or U.S. resident aliens:

(i) If recruited from the United States, the position was either publicized in a U.S. trade/professional/ technical publication, the Commerce Business Daily or a newspaper or similar publication, or the procedure in paragraph (iii) below was followed.

(ii) If recruited locally, the position was publicized in the same way that the Mission announces direct hire U.S. citizen positions, or the procedure in paragraph (iii) below was followed.

(iii) As an alternative to the procedures in paragraph (i) and (ii) above, at least 3 individuals were considered by consulting source lists (e.g., applications or resumes on hand) or conducting other informal solicitation.

Note: Coverage in paragraphs (2)(i) thru (2)(iii) applies to extensions or renewals of PSCs.

(iv) A copy of the class justification (which was distributed to all AID Contracting Officers via Contract Information Bulletin) must be included in the contract file, together with a written statement, signed by the Contracting Officer, that the contract is being awarded pursuant to AIDAR 706.302–70(b)(1); that the conditions for use of this class justification have been met; and that the cost of the contract is fair and reasonable.

(3) Since the award of a Personal Services Contract is based on technical qualifications, not price, and since the SF 171, "Personal Qualifications Statement", and SF 171A, "Continuation Sheet for Standard Form 171", are used to solicit for such contracts, FAR subparts 15.4 and 15.5 and FAR parts 52 and 53 are inappropriate and shall not be used. Instead, the solicitation and selection procedures outlined in this Appendix shall govern.

(4) If the appropriate competitive procedure in paragraph (2) above is not followed, the Contracting Officer must prepare a separate justification as required under AIDAR 706.302–70(c)(2).

6. Negotiating a Personal Services Contract

Negotiating a Personal Services Contract is significantly different from negotiating a nonpersonal services contract because it establishes an employer-employee relationship; therefore, the selection procedures are more akin to the personnel selection procedures.

(a) *Project Officer's Responsibilities.* The Project Officer shall be responsible for reviewing and evaluating the applications (i.e., SF 171s) received in response to the solicitation issued by the Contracting Officer. If deemed appropriate, interviews may be conducted with the applicants before the final selection is submitted to the Contracting Officer.

(b) *Contracting Officer's Responsibilities.*

(1) The Contracting Officer shall forward a copy of each SF 171 received under the solicitation to the Project Officer for evaluation.

(2) On receipt of the Project Officer's recommendation, the Contracting Officer shall conduct negotiations with the recommended applicant. Normally, the Contracting Officer shall negotiate only the salary (see the salary setting coverage in paragraph 4(e) of this Appendix). The terms and conditions of the contract, including differentials and allowances, are not negotiable or waivable without a properly approved deviation (see AIDAR 701.470). If the Contracting Officer can negotiate a salary that is fair and reasonable, then the award shall be made.

(3) The Contracting Officer shall use the certified salary history on the SF 171 as the basis for salary negotiations, along with the market value of the position being recruited for, and the Project Officer's cost estimate.

(4) The Contracting Officer will obtain two copies of IRS Form W–4, "Employee's Withholding Allowance Certificate" from the successful applicant. (Upon receipt, the Contracting Officer will forward one copy of the W–4 to the office of the Controller.)

(5) The Contracting Officer will obtain four sets of SF 86, "Security Investigation Data for Sensitive Position" from the successful applicant if a security clearance is required for the position.

7. Executing a Personal Services Contract

Contracting activities, whether AID/W or Mission, may execute Personal Services Contracts, provided that the amount of the contract does not exceed the contracting authority that has been redelegated to them under Delegation of Authority No. 1103 "To the Assistant to the Administrator for Management, Concerning Acquisition Functions" (50 FR 23842), as amended (see AIDAR 702.170–10).

In executing a Personal Service Contract, the Contracting Officer is responsible for insuring that:

(a) The proposed contract is within his/her delegated authority;

(b) A PIO/T covering the proposed contract has been received;

(c) The proposed scope of work is contractible, contains a statement of minimum qualifications from the technical office requesting the services, and is suitable to the use of a Personal Services Contract in that:

(1) Performance of the proposed work requires or is best suited for an employer-employee relationship, and is thus not suited to the use of a non-personal services contract;

(2) The scope of work does not require performance of any function normally reserved for Federal employees (see paragraph 4(b) of this appendix); and

(3) There is no apparent conflict of interest involved (if the Contracting Officer believes that a conflict of interest may exist, the question should be referred to the cognizant legal counsel).

(d) Selection of the Contractor is documented and justified. AIDAR 706.302–70(b)(1) provides an exception to the requirement for full and open competition for Personal Services Contracts abroad (see paragraph 5(c) of this Appendix);

(e) The standard contract format prescribed for Personal Services Contracts (Sections 10, 11 and 12 to AIDAR Appendix D) is used; or that any necessary deviations are processed as required by AIDAR 701.470. (Note: The prescribed contract format is designed for use with Contractors who are residing in the U.S. when hired. If the contract is with a U.S. citizen residing in the cooperating country when hired, contract provisions governing physical fitness and travel/transportation expenses, and home leave, allowances, and orientation should be suitably modified (see paragraph 4(d) of this Appendix). These modifications are not considered deviations subject to AIDAR 701.470. Justification and explanation of these modifications is to be included in the contract file);

(f) Orientation is arranged in accordance with General Provision 25;

(g) The Contractor has submitted the names, address, and telephone numbers of at least two persons who may be notified in the event of an emergency (this information is to be retained in the contract file);

(h) The contract is complete and correct and all information required on the contract Cover Page (AID Form 1420–36A) has been entered;

(i) The contract has been signed by the Contracting Office and the Contractor, and fully executed copies are properly distributed;

(j) The following clearances, approvals and forms have been obtained, properly completed, and placed in the contract file before the contract is signed by both parties:

(1) Security clearance, including the completed SF 86, to the extent required by AID Handbook 6, *Security;*

(2) Mission, host country, and project office clearance, as appropriate;

(3) Medical clearance(s) for the Contractor and for each dependent who is authorized to travel to the overseas post based on a full medical examination(s) and certification of same by a licensed physician. The physician's certification must be in the possession of the Contracting Officer prior to any travel undertaken by Contractor or his/her dependents;

(4) One original executed IRS Form W–4 entitled "Employee's Withholding Allowance Certificate" and one copy shall be obtained. The original shall be sent to the Controller of the paying office and one shall be placed in the contract file;

(5) The approval for any salary in excess of FS–1, in accordance with appendix G of this chapter;

(6) A copy of the class justification or other appropriate explanation and support required by AIDAR 706.302–70, if applicable;

(7) Any deviation to the policy or procedures of this appendix, processed and approved under AIDAR 701.470;

[a] Mission Directors may authorize per diem in lieu of these allowances.

[a] These allowances are not authorized for short tours (i.e., less than a year).

(8) A fully executed SF 171;

(9) The Memorandum of Negotiation; and

(10) The Contracting Officer's signed certification that competition requirements have been met or satisfied as described in paragraph 5(c) of the policy text of Appendix D. The certification shall be a part of the Memorandum of Negotiations.

(k) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 1341 (the Contracting Officer ensures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected Contractor);

(l) The Contractor receives and understands Attachment 2C of chapter 2, AID Handbook 24, *General Personnel Policy*, entitled "Employee Responsibilities and Conduct," and a copy is attached to each contract, as provided for in paragraph 2(c) of General Provision 2, Section 11;

(m) Agency conflict of interest requirements, as set out in Chapter 2D and 2E of AID Handbook 24, are met by the Contractor prior to his/her reporting for duty;

(n) A copy of a Checklist for Personal Services Contractors which may be in the form set out above or another form convenient for the Contracting officer, provided that a form containing all of the information described in this paragraph 7 shall be prepared for each PSC and placed in the contract file;

(o) The block entitled, "Project No." on the Cover Page of the contract format is completed by inserting the four-segment project number as prescribed in AID Handbook 18, *Information Services;* and

(p) The Contractor understands that he/she is an employee of the United States for purposes of the Foreign Assistance Act of 1961, as amended, and Title 26 United States Code. This subjects the employee to withholding for both FICA and Federal Income Tax and precludes the employee from receiving the Federal Earned Income Tax exclusion of 26 U.S.C. 911. See Special Note on the Cover Page.

8. Post Audit

The Inspector General, or his/her designee, audits the Personal Services Contracts of all contracting activities for the purpose of ensuring conformance to applicable policy and regulations.

9. Contracting Format

The prescribed Contract Cover Page, Contract Schedule, and General Provisions for Personal Services Contracts covered by this appendix are included as follows:

10. Form AID 1420-36, "Cover Page" and "Schedule"

11. "General Provisions"

12. FAR Clauses to be incorporated by reference in Personal Services Contracts.

BILLING CODE 6116-01-M

Section 10
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D. C. 20523

CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT ALIEN FOR PERSONAL SERVICES ABROAD

Negotiated Pursuant to Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223	Contract Number
Country of Performance	Amount Obligated $ / Total Estimated Contract Cost $
Contract For	Project Number
Contracting Office *(Name and Address)*	Contractor *(Name, Street, City, State, Postal Zone)*
Administered By *(If other than Contracting Office)*	Effective Date / Estimated Completion Date
Cognizant Scientific/Technical Office *(Name, Office Symbol, Address)*	Accounting and Appropriation Data PIO/T Number Appropriation Number Budget Plan Code Social Security Number
Supervising Officer	
This is a Consulting Services Contract *(AIDAR 737.272)* ☐ Yes ☐ No	Type of Advance *("X" Appropriate Box)* ☐ INITIAL ☐ NONE AUTHORIZED
Payment Will Be Made By	

The United States of America, hereinafter called the Government, represented by the Contracting Office executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

SPECIAL NOTE: As an employee for purposes of Section 636(a)(3) of the Foreign Assistance Act of 1961, as amended, (22 USC 2396(a)(3)), the Contractor is generally an employee of the United States for purposes of laws other than those administered by the Office of Personnel Management (i.e., Title 5, United States Code). This includes being an employee of the United States for purposes of Title 26, United States Code, which subjects the Contractor to withholding for both FICA and Federal income Tax, and precludes the Contractor from receiving the federal earned income tax exclusion of 26 USC Section 911.

(Fill In Appropriate Spaces)

This Contract consists of this Cover Page, the Schedule of _____ pages, including the Table of Contents, the General Provisions (Section 11 dated _____), and Section 13 FAR Clauses by reference.

	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By *(Signature of Contracting Officer)*
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36A (7-90)

PRIVACY ACT STATEMENT

This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974), December 31, 1974, for individuals who complete this form.

The Executive Office of the President, Office of Management and Budget has required that all departments and agencies comply with the reporting requirements of Section 6041 of the Internal Revenue Code. Section 6041 states that all departments and agencies making payments totaling $600.00 or more in one year to a recipient for services provided must be reported to the Internal Revenue Service (IRS). The SSN and all financial numbers will be disclosed to the Agency for International Development (A.I.D.) payroll office personnel and personnel in the Department of Treasury, Division of Disbursements. A.I.D. will use this SSN to complete Form W-2 of the Code on employee compensation. Disclosure by the personal services contractor of the SSN is necessary to obtain the services, benefits or processes provided by this contract. Disclosure of the SSN may be made outside A.I.D. (a) pursuant to any applicable routine use listed in A.I.D.'s Notice for implementing the Privacy Act as published in the Federal Register, or (b) when disclosure by virtue of a contract being a public document after signatures is authorized under the Freedom of Information Act.

BILLING CODE 6116-01-C

Table of Contents

Schedule

(The illustrated Schedule consists of this Table of Contents and Articles I–VI.)
Article I—Statement of Duties
Article II—Period of Service Overseas
Article III—Contractor's Compensation and Reimbursement in U.S. Dollars
Article IV—Costs Reimbursable and Logistic Support
Article V—Precontract Expenses
Article VI—Additional Clauses

General Provisions

The following provisions numbered as shown below omitting number(s) _____, are the General Provisions (GPs) of this Contract:
1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness and Health Room Privileges
4. Workweek and Compensation (Pay Comparability Adjustments)
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Preference for U.S.-Flag Air Carriers (FAR 52.247–63)
12. Payment
13. Conversion of U.S. Dollars to Local Currency
14. Post of Assignment Privileges
15. Security Requirements
16. Contractor-Mission Relationships
17. Termination
18. Release of Information
19. Officials Not to Benefit
20. Notices
21. Reports
22. Use of Pouch Facilities
23. Biographical Data
24. Resident Hire PSC
25. Orientation and Language Training

For each tour of duty, attach the applicable General Provisions.

Schedule

Note: Use of the following Schedule Articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract.

Article I—Statement of Duties

(The statement of duties shall include:
A. General statement of the purpose of the contract.
B. Statement of duties to be performed.
C. Any AID consultation or orientation.)

Article II—Period of Service Overseas

Within ____ days after written notice from the Contracting Officer that all clearances, including the doctor's certification required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the Contractor shall proceed to _____ where he/she shall promptly commence performance of the duties specified above. The Contractor's period of service overseas shall be approximately _____ in _____. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

Article III—Contractor's Compensation and Reimbursement in U.S. Dollars

A. Except to the extent reimbursement therefor is payable in the currency of the Cooperating Country pursuant to Article IV, AID shall pay the Contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the Contractor is calculated to cover a calendar period of approximately ____ (days) (weeks) (months) (years) which is to include (1) vacation, sick, and home leave which may be earned during the Contractor's tour of duty (GP Clause 5) (2) ____ days for authorized travel (GP Clause 10) and (3) ____ days for orientation and consultation in the United States (GP Clause 27).

C. Allowable Costs:

1. Compensation at the rate of $_____ per (year) (month) (week) (day). Adjustments in compensation (pay) for periods when the Contractor is not in compensable pay status shall be calculated as follows: Rate of $_____ per (day) (hour).

Contingency for Compensation (Pay Comparability) Adjustments. $_____.

Annual Salary increase (3%) _____

2. Overtime (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.) $_____.

*3. Overseas Differential (Ref. GP Clause No. 6.) Rate _____ and Contingency $_____ $_____.

**4. Allowances in Cooperating Country (Ref. GP Clause 6.)

**5. Travel and Transportation (Ref. GP Clause 10.) (Includes the value of GTRs furnished by the Government, not payable to Contractor). $_____.
a. United States $_____.
b. International $_____.
c. Cooperating and Third Country $_____.
Subtotal Item 5 $_____.

**6. Subsistence or Per Diem (Ref. GP Clause 10.)
a. United States $_____.
b. International $_____.
c. Cooperating and Third Country $_____.
Subtotal Item 6 $_____.

7. Other Direct Costs.
a. Health and Life Insurance (Ref. GP Clause 9.) $_____.
b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8.) $_____.
c. Physical Examination (Ref. GP Clause 3.) $_____.
d. Communications, Miscellaneous. $_____.
Subtotal Item 7 $_____.

8. F.I.C.A.—U.S.C. contribution (not payable to Contractor). $_____.
Total estimated costs (lines 1 thru 8). $_____.

D. Maximum U.S.-Dollar Obligation: In no event shall the maximum U.S.-dollar obligation under this contract, exceed $_____. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. General: The Contractor shall be provided with or reimbursed in local currency (_____) for the following:
[Complete]

B. Method of Payment of Local Currency Costs: Those contract costs which are specified as local currency costs in paragraph A above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the Contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provision Clause 12. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after

*If post differential is applicable to the assigned post, a contingency for the adjusted amount of differential resulting from compensation (pay comparability) adjustment should be included.

**Do not include the value of any costs to be paid or reimbursed in local currency.

receipt and acceptance of a precontract expense letter issued to the Contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

(Additional Schedule clauses may be added such as the implementation of General Provisions or Additional clauses.)

Section 11. General Provisions Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

The following clauses are to be used (when applicable), for both tours of duty of less than 1 year as well as 1 year or more.

Index of Clauses

1. Definitions (June 1990)
2. Laws and Regulations Applicable Abroad (Dec 1985)
3. Physical Fitness and Health Room Privileges (June 1990)
4. Workweek and Compensation (Pay Comparability Adjustments) (Dec 1985)
5. Leave and Holidays (June 1990)
6. Differential and Allowances (June 1990)
7. Social Security, Federal Income Tax, and Foreign Earned Income (June 1990)
8. Advance of Dollar Funds (Dec 1985)
9. Insurance (June 1990)
10. Travel and Transportation Expenses (June 1990)
11. Preference for U.S.-Flag Air Carriers (Apr 1984) (FAR 52.247–63)
12. Payment (June 1990)
13. Conversion of U.S. Dollars to Local Currency (Dec 1985)
14. Post of Assignment Privileges (June 1990)
15. Security Requirements (Dec 1985)
16. Contractor-Mission Relationships (Dec 1985)
17. Termination (Nov 1989)
18. Release of Information (Dec 1985)
19. Officials Not To Benefit [(Apr 1984) (FAR 52.203–5)]
20. Notices (Dec 1985)
21. Reports (June 1987)
22. Use of Pouch Facilities (Dec 1985)
23. Biographical Data (June 1990)
24. Resident Hire PSC (June 1990)
25. Orientation and Language Training (Dec 1985)

1. Definitions (June 1990)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of AID.

(c) "Contracting Officer" shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) "Contractor" shall mean the individual engaged to serve under this contract.

(e) "Cooperating Country" shall mean the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating Government" shall mean the government of the Cooperating Country.

(g) "Government" shall mean the United States Government.

(h) "Local currency"' shall mean the currency of the Cooperating Country.

(i) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(j) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his/her designated representative.

(k) "Project Officer" shall mean the AID official to whom the Contractor reports, and who is responsible for monitoring the Contractor's performance.

(l) "Tour of duty" shall mean the Contractor's period of service under this contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" shall mean (i) the Contractor in authorized travel status or (ii) dependents of the Contractor who are in authorized travel status.

(n) "Dependents" means: (1) Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) Parents (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the Contractor for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the Contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the Contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(o) "U.S. Resident Alien", as used in this contract, shall mean an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I–151 or I–551).

(p) "Resident Hire Personal Services Contractor (PSC)" means a U.S. citizen who, at the time of hiring as a PSC, resides in the Cooperating Country (1) as a spouse or dependent of a U.S. citizen employed by a U.S. Government Agency or under any U.S. Government-financed contract or agreement, or (2) for reasons other than for employment with a U.S. Government Agency or under any U.S. Government-financed contract or agreement. A U.S. citizen for purposes of this definition also includes a person who at the time of contracting, is a lawfully admitted permanent resident of the United States.

2. Laws and Regulations Applicable Abroad (Dec. 1985)

(a) Conformity to Laws and Regulations of the Cooperating Country. Contractor agrees that, while in the Cooperating Country, he/she as well as authorized dependents shall abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(b) Purchase or Sale of Personal Property or Automobiles. To the extent permitted by the Cooperating Country, the purchase, sale, import, or export of personal property or automobiles in the Cooperating Country by the Contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) Code of Conduct. The Contractor shall, during his/her tour of duty under this contract, be considered an "employee" (or if his/her tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of 22 CFR 10, "Employee Responsibilities and Conduct" (Attachment 2C to Chapter 2 of AID Handbook 24). The Contractor acknowledges receipt of a copy of said provisions by his/her acceptance of this contract.

3. Physical Fitness and Health Room Privileges (June 1990)

(a) Physical Fitness. (1) The Contractor shall be required to be examined by a licensed doctor of medicine, and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically qualified to engage in the type of activity for which he/she is to be employed under the contract and is physically qualified to reside in the Cooperating Country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the Cooperating Country, or if this contract is entered into in the Cooperating Country, the Contractor shall provide the certificate before he/she starts work under the contract. The Contractor shall be reimbursed not to exceed $100 for the cost of the physical examination, plus reimbursement of charges for immunizations if such costs are not covered by the Contractor's health insurance policy.

(2) For contract periods of thirteen (13) months or more (unless specifically authorized for less) the Contractor shall obtain a physical examination for himself/ herself plus any authorized dependents by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the Contractor's authorized dependents are physically qualified to reside in the Cooperating Country. A copy of the certificate shall be provided to the Contracting Officer prior to the dependent's departure for the Cooperating Country.

(3) End of tour—the Contractor and his/her authorized dependents are authorized physical examinations within 60 days after completion of the Contractor's tour of duty.

(4) Reimbursement—the Contractor shall be reimbursed for the physical examinations mentioned in paragraphs (b) and (c) above as follows: (1) Not to exceed $100 per examination for the Contractor and his/her dependents of 12 years of age and over and (2) $40 per examination for Contractor's dependents under 12 years of age. The Contractor shall also be reimbursed for the cost of immunizations.

(b) Health Room Privileges. Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees may be available only for U.S. citizen Contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

4. Workweek and Compensation (Pay Comparability Adjustments) (Dec. 1985)

(a) Workweek. The Contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Contract Schedule, and shall coincide with the workweek for those employees of the Mission or the Cooperating Country agency most closely associated with the work of this contract. If the contract is for less than full time (40 hours weekly), the annual and sick leave earned shall be prorated (see the General Provision of this contract entitled Leave and Holidays).

(b) Compensation (Pay Comparability) Adjustments. The Contractor's compensation shall be adjusted to reflect the pay comparability adjustments which are granted from time to time to U.S. direct-hire employees by Executive Order for the statutory pay systems. Any adjustments authorized are subject to the availability of Mission funds and shall not exceed that percentage stated in the Executive Order granting the adjustment. Further, the adjusted compensation may not exceed the maximum FS–1 annual compensation (or the equivalent daily rate).

5. Leave and Holidays (June 1990)

(a) Vacation Leave. (1) The Contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) Notwithstanding paragraph (a)(1) above, if the Contractor has had previous PSC service (i.e., has served under other personal services contracts (PSCs) covered by Sec. 636(a)(3) of the FAA), he/she shall earn vacation leave at the rate of either 6 hours every two weeks for cumulative PSC service exceeding 3 years, or 8 hours every two weeks for cumulative PSC service exceeding 15 years. Former Civil Service, Foreign Service, or a Military Service experience is not creditable towards PSC service for annual leave purposes.

(3) It is understood that vacation leave is provided under this contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the Cooperating Country. The Contractor in consultation with the AID Mission shall develop a vacation leave schedule early in his/her tour of duty taking into consideration project requirements, employee preference and other factors. All vacation leave earned by the Contractor must be used during his/her tour of duty. All vacation leave earned by the Contractor but not taken by the end of his/her tour of duty will be forfeited unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under (a)(3) of this clause, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(4) With the approval of the Mission Director, and if the circumstances warrant, a Contractor may be granted advance vacation leave in excess of that earned, but in no case shall a Contractor be granted advance vacation leave in excess of that which he/she will earn over the life of the contract. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the Contractor's assignment under the contract.

(b) Sick Leave. Sick leave is earned at a rate not to exceed 13 workdays per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this contract but the Contractor will not be compensated for unused sick leave at the completion of this contract.

(c) Home Leave. (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A Contractor who is a U.S. citizen or U.S. resident alien and has served at least 2 years overseas, as defined in paragraph (c)(4) below, under this contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas; provided, that the Contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) above, that the Contractor must have served 2 years overseas under this contract to be eligible for home leave, the Contractor may be granted advance home leave subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The Contractor shall have served a minimum of 18 months in the Cooperating Country on his/her current tour of duty under this contract; and

(iii) The Contractor shall have agreed to return to the Cooperating Country to serve out the remainder of his/her current tour of duty and an additional 2 year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the Contractor, except for reasons beyond his/her control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the Contracting Officer, a Contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(d) Holidays. The Contractor, while serving abroad, shall be entitled to all holidays granted by the Mission to U.S.citizen direct-hire employees.

(e) Military Leave. Military leave of not more than 15 calendar days in any calendar year may be granted to a Contractor who is a reservist of the Armed Forces, provided that military leave has been approved in advance by the Contracting Officer or the Mission Director. A copy of any such approval shall be provided to the Contracting Officer.

(f) Leave Without Pay. Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(g) Leave Records. The Contractor shall maintain current leave records for himself/herself and make them available, as requested by the Mission Director or the Contracting Officer.

6. Differential and Allowances (June 1990)

(a) The following differential and allowances will be granted to the Contractor and his/her authorized dependents to the same extent and on the same basis as they are granted to U.S. citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

	Applicable reference to standardized regulations
(1) Post Differential	Chapter 500 and Tables in Chapter 900.
(2) Living Quarters Allowance.	Section 130.
(3) Temporary Lodging Allowance.	Section 120.
(4) Post Allowance	Section 220.
(5) Supplemental Post Allowance.	Section 230.
(6) Payments During Evacuation.	Section 600.
(7) Educational Allowance.	Section 270.
(8) Separate Maintenance Allowance.	Section 260.
(9) Danger Pay Allowance.	Section 650.
(10) Educational Travel	Section 280.

(i) Post differential. Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive. In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas) chapter 500 (except the limitation contained in section 552, "Ceiling on Payment") Tables-chapter 900, as from time to time amended, will be reimbursable hereunder for employees in respect to amounts earned during the time such employees actually spend overseas on work under this contract. When such post differential is provided to the Contractor, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at or away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his/her post of assignment for purposes of home leave. Short-term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post.

(ii) Living quarters allowance. Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his/her cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him/her at his/her post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time. The Contractor will receive living quarters allowance for payment of rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(iii) Temporary lodging allowance. Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his/her family for a period not in excess of (i) three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters. The Contractor will receive temporary lodging allowance for himself/ herself and authorized dependents, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), chapter 120, as from time to time amended.

(iv) Post allowance. Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters cost, is substantially higher than in Washington DC. The Contractor will receive post allowance payments not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), chapter 220, as from time to time amended.

(v) Supplemental post allowance. Supplemental post allowance is a form of post allowance granted to an employee at his/her post when it is determined that assistance is necessary to defray extraordinary subsistence costs. The Contractor will receive supplemental post allowance payments not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), chapter 230, as from time to time amended.

(vi) Payments during evacuation. The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives. If evacuation has been authorized by the Mission Director, the Contractor will receive payments during evacuation for himself/herself and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), chapter 600, and the Federal Travel Regulations, as from time to time amended.

(vii) Educational allowance. Educational allowance is an allowance to assist the Contractor in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his/her service in a foreign area in providing adequate elementary and secondary education for his/her children. The Contractor will receive educational allowances payments for his/her dependent children in amounts not to exceed those set forth in (Standardized Regulations Government Civilians, Foreign Areas), chapter 270, as from time to time amended.

(viii) Separate maintenance allowance. Separate maintenance allowance is an allowance to assist an employee who is compelled by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his/her post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his/her dependents elsewhere than at such post. The Contractor will receive separate maintenance allowance payments not to exceed that made to AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(ix) Danger pay allowance. Danger pay allowance is an allowance to provide additional compensation above basic compensation to employees in foreign areas where civil insurrection, civil war, terrorism or wartime conditions threaten physical harm or imminent danger to the health or well-being of the employee. The danger pay allowance is in lieu of that part of the post differential which is attributable to political violence. Consequently, the post differential may be reduced while danger pay is in effect to avoid dual crediting for political violence. The contractor shall be allowed danger pay allowance not to exceed that paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), chapter 650, as from time to time amended.

(x) Educational travel. Educational travel is travel to and from a school in the United States for secondary education (in lieu of an educational allowance) and for college education. The Contractor will receive educational travel payments for his/her dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), chapter 280, as from time to time amended. Educational travel shall not be authorized for Contractors whose assignment is less than two years.

The allowances provided in paragraphs 1 through 10 of this provision shall be paid to the Contractor in dollars or in the currency of the Cooperating Country in accordance with practice prevailing at the Mission, or the Mission Director may direct that the Contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. Social Security, Federal Income Tax, and Foreign Earned Income (June 1990)

(a) Since the Contractor is an employee, F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

(b) As an employee, the Contractor is not eligible for the "foreign earned income" exclusion under the IRS regulations (see 26 CFR 1.911–3(c)(3)).

8. Advance of Dollar Funds (DEC 1985)

If requested by the Contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. Insurance (June 1990)

(a) Worker's Compensation Benefits. The Contractor shall be provided worker's compensation benefits in accordance with the Federal Employees' Compensation Act.

(b) Health and Life Insurance. (1) The Contractor shall be provided a maximum contribution of up to 50% against the actual costs of the Contractor's annual health insurance costs, provided that such costs may not exceed the maximum U.S. Government contribution for direct-hire personnel as announced annually by the Office of Personnel Management.

(2) The Contractor shall be provided a contribution of up to 50% against the actual costs of annual life insurance not to exceed $500.00 per year.

(3) Retired U.S. Government employees shall not be paid additional contributions for health or life insurance under their contracts. The Government will normally have already paid its contribution for the retiree unless the employee can prove to the satisfaction of the Contracting Officer that his/her health and life insurance does not provide or specifically excludes coverage overseas. If excluded coverage

overseas were the case, then eligibility as cited above would be applicable.

(4) Proof of health and life insurance coverage shall be submitted to the Contracting Officer before any contribution is paid.

On assignments of less than one year, costs for health and life insurance shall be prorated and paid accordingly.

(5) A Contractor who is a spouse of a current or retired Civil Service, Foreign Service, or Military Service member and who is covered by their spouse's Government health or life insurance policy is ineligible for the contribution under paragraphs (a)(1) or (a)(2) of this provision.

(c) Insurance on Private Automobiles.

If the Contractor or his/her dependents transport, or cause to be transported, privately owned automobile(s) to the Cooperating Country, or any of them purchase an automobile within the Cooperating Country, the Contractor agrees to ensure that all such automobile(s) during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the Cooperating Country: Injury to persons, $10,000/$20,000; property damage, $5,000. The Contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

10. Travel and Transportation Expenses (June 1990)

(a) General.

The Contractor will be reimbursed for reasonable, allocable and allowable travel and transportation expenses incurred under and for the performance of this contract. Determination of reasonableness, allocability and allowability will be made by the Contracting Officer in accordance with AID's established policies and procedures for AID direct-hire employees, and the particular needs of the project being implemented by this contract. The following paragraphs provide specific guidance and limitations on particular items of cost.

(b) U.S. Travel and Transportation.

The Contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Contract Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercially scheduled air travel by the most expeditious route except as otherwise provided in paragraph (g) of this provision unless economy air travel is not available and the Contractor certifies to this in his/her voucher or other documents submitted for reimbursement.

(c) International Travel.

For travel to and from post of assignment, the Contractor shall be reimbursed for travel costs and travel allowances from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of the travel from the Contractor's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the Contractor's residence) upon completion of services by the individual. Reimbursement for travel will be in accordance with AID's established policies and procedures for its direct-hire employees and the provisions of this contract, and will be limited to the cost of travel by the most direct and expeditious route. If the contract is for longer than one year and the Contractor does not complete one full year at post of duty (except for reasons beyond his/her control), the costs of going to and from the post of duty for the Contractor and his/her dependents are not reimbursable hereunder. If the Contractor serves more than one year but less than the required service in the Cooperating Country (except for reasons beyond his/her control) the costs of going to the post of duty are reimbursable hereunder but the costs of going from post of duty to the Contractor's permanent, legal place of residence at the time he or she was employed for work under this contract or other location as approved by the Contracting Officer are not reimbursable under this contract for the Contractor and his/her dependents. When travel is by economy class accommodations, the Contractor will be reimbursed for the cost of transporting up to 22 pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not exceed that regularly allowed for first class travelers. Travel allowances for travelers shall not be in excess of the rates authorized in the Standardized Regulations (Government Civilians, Foreign Areas) hereinafter referred to as the Standardized Regulations—as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Federal Travel Regulations as from time to time amended.

(d) Local Travel.

Reimbursement for local travel in connection with duties directly referable to the contract shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country. In the absence of such established rates the Contractor shall be reimbursed for actual travel costs in the Cooperating Government or the Mission, including travel allowances at rates not in excess of those prescribed by the Standardized Regulations.

(e) Indirect Travel for Personal Convenience.

When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of allowable air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by the United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) Limitation on Travel by Dependents.

Travel costs and allowances will be allowed for authorized dependents of the Contractor and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if the dependent remains in the Cooperating Country for at least 9 months or one-half of the required tour of duty of the Contractor, whichever is greater, except as otherwise authorized hereunder for education, medical or emergency visitation travel. If the dependent is eligible for educational travel pursuant to the "Differential and Allowances" clause of this contract, time spent away from post resulting from educational travel will be counted as time at post.

(g) Delays En Route.

The Contractor may be granted reasonable delays en route while in travel status when such delays are caused by events beyond the control of the Contractor and are not due to circuitous routing. It is understood that if delay is caused by physical incapacitation, he/she shall be eligible for such sick leave as provided under the "Leave and Holidays" clause of this contract.

(h) Travel by Privately Owned Automobile.

If travel by POV is authorized in the contract schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel performed in his/her privately owned automobile at a rate not to exceed that authorized in the Federal Travel Regulations plus authorized per diem for the employee and for each of the authorized dependents traveling in the automobile, if the automobile is being driven to or from the Cooperating Country as authorized under the contract, provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by surface common carrier or authorized air fare, whichever, is less.

(i) Emergency and Irregular Travel and Transportation.

Emergency transportation costs and travel allowances while enroute, as provided in this section, will be reimbursed not to exceed amounts authorized by the Foreign Service Travel Regulations for AID-direct hire employees in like circumstances under the following conditions:

(1) The costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor and authorized dependents and returning to post of duty, subject to the prior written approval of the Mission Director, when such travel is necessary for one of the following reasons:

(i) Need for medical care beyond that available within the area to which Contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of the Contractor's immediate family or a dependent, including preparation and return of the remains of a deceased Contractor or his/her dependents.

(2) Emergency evacuation when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director, shall be payable in accordance with established Government regulations.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations when in his/her opinion the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and household effects, etc.

(j) Home Leave Travel.

To the extent that home leave has been authorized as provided in the "Leave and Holidays" clause of this contract, the cost of travel for home leave is reimbursable for travel costs and travel allowances of travelers from the post of duty in the Cooperating Country to place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel to the Contractor's residence in the United States) and return to the post of duty in the Cooperating Country. Reimbursement for travel will be in accordance with the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended, and will be limited to the cost of travel by the most direct and expeditious route. Travel allowances for travelers shall be in accordance with the rates authorized in the Standardized Regulations as from time to time amended, for not more than the travel time required by scheduled commercial air carrier using the most expeditious route. One stopover en route for a period of not to exceed 24 hours is allowable when the traveler uses economy class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the Standardized Regulations.

(k) Rest and Recuperation Travel.

If approved in writing by the Mission Director, the Contractor and his/her dependents shall be allowed rest and recuperation travel on the same basis as authorized U.S.-citizen direct-hire Mission employees and their dependents.

(l) Transportation of Motor Vehicles, Personal Effects and Household Goods.

(1) Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Cpntracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer) of one privately-owned vehicle for the Contractor, personal effects of the Contractor and authorized dependents and household goods of each regular employee not to exceed the limitations in effect for such shipments for AID direct-hire employees in accordance with the Foreign Service Travel Regulations not to exceed the following limitations as from time to time amended:

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Contractor with dependents in Cooperating Country...	18,000	7,200
Contractor without dependents in Cooperating Country...	18,000	7,200

Note: For the purpose of this Clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of § 162.1 of the Uniform Foreign Affairs Regulations, (for State/AID/USIA Commerce, and Agriculture).

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a Contractor may be authorized as a replacement of the last such motor vehicle shipped under this contract for such Contractor when the Mission Director determines, in advance, and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the Contractor. The determination shall be made under the same rules and regulations that apply to authorized

Mission U.S.-citizen direct-hire employees.

(2) Unaccompanied Baggage.

The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weight (in pounds)
Employee	250
First dependent traveling	200
Second dependent traveling	150
Each additional dependent traveling	100

Unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination.

(m) Reduced Rates on U.S.-Flag Carriers.

Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID Contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the Contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The Contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(n) Storage of Household Effects.

(1) The cost of storage charges (including packing, crating, and drayage costs) in the United States of household goods of the Contractor will be reimbursed, in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (l) above, provided that (i) the total amount of household goods shipped to the Cooperating Country and stored in the United States shall not exceed 18,000 pounds net for each Contractor regardless of family status, and (ii) at least 200 pounds net of household effects will be stored; quantities of less than 200 pounds net stored will not be reimbursed.

(2) Storage of items of high value (items that exceed $1,000 in value, that are irreplaceable or one of a kind, and that have a definite monetary or insurable value), such as clothing, rugs, tapestries, paintings, other works of art and that have special storage requirements, is also reimbursable. If requested by the Contractor and approved by the Contracting Officer after receipt from the Contractor of an itemized inventory of the items to be stored, the request for reimbursement shall be processed on the same basis as for AID U.S. citizen direct-hire employees in accordance with Handbook 22, Appendix 9A.

11. Preference for U.S.-Flag Air Carriers (Apr. 1984) (FAR 52.247-63)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a certification on vouchers involving such transportation essentially as follows:

Certification of Unavailability of U.S. Flag Air Carriers

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]: .....

(End of certification)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

Note: Availability and unavailability of U.S.-flag air carrier service. (FAR 47.403-1)

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed or if the use of U.S.-flag air carrier service would not accomplish an agency's mission, foreign-flag air carrier service may be deemed necessary.

(b) U.S.-flag air carrier service is considered available even though:

(1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(2) Foreign-flag air carrier service is preferred by, or is more convenient for, the Agency or traveler; or

(3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

(c) Except as provided in paragraph (a) of this Note, U.S.-flag air carrier service shall be used for U.S. Government-financed commercial foreign air travel if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if:

(1) The gateway airport abroad is the traveler's origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs (a), (b), and (c) of this Note shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be reasonably available if:

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(3) The travel is not part of the trip to or from the United States and use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including the delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) of this Note, U.S. air carrier service shall not be considered available when the elapsed traveltime on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such traveltime.

12. Payment (June 1990)

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the Contractor may submit to such office form SF 1034 "Public Voucher for Purchases and Services Other Than Personal" (original) and SF 1034-A (three copies), each voucher identified by the AID contract number properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The Contractor's detailed invoice, in original and two copies, indicating for each amount claimed the paragraph of the contract under which payment is to be made, supported when applicable as follows:

(i) For compensation—a statement showing period covered, days worked, and days when Contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) For travel and transportation—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) For reimbursable expenses—an itemized statement supported by original receipts.

(2) The first voucher submitted shall account for, and liquidate the unexpended balance of, any funds advanced to the Contractor.

(b) A final voucher shall be submitted by the Contractor promptly following completion of the duties under this contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his/her discretion approve in writing) from the date of such completion. The Contractor's claim, which includes his/her final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this contract has been approved by AID. On receipt and approval of the voucher designated by the Contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034-A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the Contractor, the Government shall pay any amounts due and owing the Contractor.

(c) Interest on Overdue Payments.

(1) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85.31; U.S.C. 1801) is applicable to payments under this contract and requires the payment to the contractor of interest on overdue payments and improperly taken discounts.

(2) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125 except as provided in paragraph (3) below or as otherwise specifically provided under this contract.

(3) Notwithstanding the provisions of OMB Circular A-1 25, § 4.1, the Government will use its best efforts to make payments under this contract as soon as practicable following receipt of a proper invoice.

13. Conversion of U.S. Dollars to Local Currency (Dec. 1985)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Contractor shall consult with the Mission Director or his/her authorized representative who shall provide, in writing, the policy the Contractor shall follow in the conversion of U.S. dollars to local currency.

This may include, but not be limited to the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

14. Post of Assignment Privileges (June 1990)

Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad under agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

15. Security Requirements (June 1990)

(a) This entire provision shall apply to the extent that this contract involves access to classified information ("Confidential", "Secret", or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by

BEST COPY AVAILABLE

the AID Office of Security (IG/SEC), as referenced in paragraph (d) of this provision and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Foreign Affairs Manual, Chapter 5 (5 FAM 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(d) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(e) The Government agrees that, when necessary, it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the Contractor to the Government or by the Government to the Contractor, and the Government shall give written notice of such security classification or administratively controlled designation to the Contractor and of any subsequent changes thereof. The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(f) The Contractor agrees to certify after completion of his/her assignment under this contract that he/she has surrendered or disposed of all classified and/or administratively controlled information in his/her custody in accordance with applicable security instructions.

16. Contractor-Mission Relationships (Dec. 1985)

(a) The Contractor acknowledges that this contract is an important part of the U.S. Foreign Assistance Program and agrees that his/her duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the Cooperating Country, the Contractor is expected to show respect for the conventions, customs, and institutions of the Cooperating Country and not interfere in its political affairs.

(c) If the Contractor's conduct is not in accordance with paragraph (b) of this provision, the contract may be terminated under General Provision 17 of this contract. The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the Cooperating Country. In this capacity, he/she is responsible for the total AID Program in the Cooperating Country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing his/her duties in accordance with the statement of duties called for by the contract. However, he/she shall be under the general policy guidance of the Mission Director, and shall keep the Mission Director or his/her designated representative currently informed of the progress of the work under this contract.

17. Termination (Nov. 1989)

(This is an approved deviation to be used in place of the clause specified in FAR 52.249-12.)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part:

(1) For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the Contractor in the event (i) the Contractor commits a breach or violation of any obligations herein contained, (ii) a fraud was committed in obtaining this contract, or (iii) the Contractor is guilty (as determined by AID) of misconduct in the Cooperating Country. Upon such a termination, the contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the Contractor performs services hereunder, whichever is earlier. No costs of any kind incurred by the Contractor after the date such notice is delivered shall be reimbursed hereunder except the cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by AID the Contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(2) For the convenience of AID, by giving not less than 15 calendar days advance written notice to the Contractor. Upon such a termination, Contractor's right to compensation shall cease when the period specified in such notice expires except that the Contractor shall be entitled to return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the contract and subject to the limitations which apply to authorized travel status.

(3) For the convenience of AID, when the Contractor is unable to complete performance of his/her services under the contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the Contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the contract and subject to the limitations which apply to authorized travel status.

(b) The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

18. Release of Information (Dec. 1985)

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this contract.

19. Officials Not to Benefit FAR 52.203-1 (Apr. 1984)

No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

20. Notices (Dec. 1985)

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID: Administrator, Agency for International Development, Washington, DC 20523, Attention: Contracting Officer (name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor: At his/her post of duty while in the Cooperating Country and at the Contractor's address shown on the Cover Page of this contract or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

21. Reports (June 1987)

(a) The Contractor shall prepare and submit 2 copies of each technical report required by the schedule of this contract to the Bureau for Program and Policy Coordination, Center for Development Information and Evaluation, Development Information Division (PPC/CDIE/DI). All documents should be mailed to: PPC/CDIE/DI, Acquisitions, room 209, SA-18, Agency for International Development, Washington, DC 20523-1802.

The title page of all reports forwarded to PPC/CDIE/DI pursuant to this paragraph shall include a descriptive title, the author's name(s), contract number, project number and title, contractor's name, name of the AID project office, and the publication or issuance date of the report.

(b) When preparing reports, the Contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Contract Schedule. Wherever possible, pages should be printed on both sides using single spaced type.

22. Use of Pouch Facilities (June 1990)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID Contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(6) of this provision. However, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen Contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see (a)(3) below). Non-U.S. citizen Contractors are not permitted use of the pouch for personal mail except to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail under paragraphs (a) (1) and (2) of this provision, sent by pouch, should be addressed as follows:

Individual's Name (C) or (G), USAID/
City Name or Post/4 digit country zip code, Washington, DC 20090-6950.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID Contractors are not authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than AID/W) through U.S. postal channels is required.

(b) The Contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

23. Biographical Data (June 1990)

(a) The Contractor agrees to furnish biographical information to the contracting officer, on forms (SF 171 and 171As) provided for that purpose.

(b) Emergency locator information. The contractor agrees to provide the following information to the Mission Administrative Officer on arrival in the host country regarding himself/herself and dependents:

(1) Contractor's full name, home address, and telephone number including any after-hours emergency number(s).

(2) The name and number of the contract, and whether the individual is the contractor or the contractor's dependent.

(3) The name, address, and home and office telephone number(s) of each individual's next of kin.

(4) Any special instructions pertaining to emergency situations such as power of attorney designees or alternate contact persons.

24. Resident Hire Personal Services Contractor (June 1990)

A contractor meeting the definition of a Resident Hire PSC contained in section 11, General Provisions, Clause 1, Definitions, shall not be eligible for any fringe benefits (except contributions for FICA, health insurance and life insurance), allowances, or differentials, including but not limited to travel and transportation, medical, orientation, home leave, etc., unless such individual can demonstrate to the satisfaction of the Contracting Officer that he/she has received similar benefits/allowances from their immediately previous employer in the Cooperating Country, or the Mission Director determines that payment of such benefits would be consistent with the Mission's policy and practice and would be in the best interests of the U.S. Government.

25. Orientation and Language Training (Long Tour) (Dec. 1985)

(a) Except as set forth in paragraph (b)(4) below, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, Contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training.

(3) Orientation for Contractor's dependents at contract expense.

(4) Waiver of orientation for individual Contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 50 miles from the Contractor's residence. Allowable salary costs during the period of orientation are also reimbursable.

Section 12. FAR clauses

The following FAR clauses are to be used along with the General Provisions, and when appropriate, be incorporated in each personal service contract by reference.

1. Inspection 52.246–5.
2. Examination of Records by Comptroller General 52.215–1.
3. Audit—Negotiation 52.215–2.
4. Privacy Act Notification 52.224–1.
5. Privacy Act 52.224–2.
6. Taxes—Foreign Cost Reimbursement Contracts 52.229–8.
7. Interest 52.232–17.
8. Assignment of Claims 52.232–23.
9. Protection of Government Buildings, Equipment, and Vegetation 52.237–2.
10. Notice of Intent to Disallow Costs 52.242–1.
11. Limitation of Cost 52.232–20.
12. Limitation of Funds 52.232–22.
13. Limitation of Liability—Services 52.246–25.
14. Anti-Kickback Procedures 52.203–7.
15. Certification Regarding a Drug-Free Workplace 52.203–11
16. Disputes (APR 1989) [FAR 52.233–1 (Alternate I)]
17. Covenant Against Contingent Fees (APR 1984)

4. Appendix G is revised as follows:

Appendix G—Approval Procedures for Contractor Salaries

1. *Purpose.*

This Appendix provides guidelines for the use of prudent judgement when considering salaries, especially salaries exceeding the FS–1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 96–68) and establishes procedures for justification of salary approvals.

2. *Procedures.*

(a) *Salary Approvals.* In accordance with subsections 731.206–6, 731.371, and section 731.772, Contracting Officer approvals of salaries exceeding the FS–1 rate are to be based upon a Memorandum from the technical office approved by the Assistant Administrator or Mission Director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FS–1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even though approval of salary levels above the FS–1 rate are justified primarily by the Assistant Administrator or Mission Director having program responsibility, it is the Contracting Officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FS–1 statutory salary limitation are not, and shall not be by themselves, a basis for upward salary revision of institutional Contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FS–1 maximum level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to attract needed technical services in a competitive market. Rates should be determined by the market place where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS–1 level. Actual discussions with Contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts (see AIDAR Appendix A).

(b) *Justification of approvals.* There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FS–1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare the necessary salary justification. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale and a copy of the justification is included in the contract file.

Dated: October 29, 1991.

James D. Murphy,

Acting Procurement Executive.

[FR Doc. 91–3749 Filed 2–22–91; 8:45 am]

BILLING CODE 6116–01–M

---

48 CFR Parts 752 and Appendices C and D

[AIDAR Notice 91–3]

Physical Fitness and Medical Privileges

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to reflect current Department of State requirements regarding physical fitness of and medical services available to contractor employees, U.S. personal service contractors, and their dependents. The AIDAR will require full medical examination and completion of a comprehensive standardized form prior to departure for post.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: MS/PPE, Mr. James M. Kelly, Room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone: (703) 875–1535.

SUPPLEMENTARY INFORMATION: AID has required that all contractor employees, U.S. personal service contractors, and their authorized dependents who will be assigned overseas obtain a physician's certification that the employee or dependent is fit to work/live in the country in question prior to going overseas. Despite this, individuals have arrived at post with medical conditions for which treatment is inadequate or nonexistent. Harsh living conditions in many AID posts aggravate less severe medical problems which are easily treated in more developed countries. In some cases, medical crises occurred, arising from a pre-existing condition; the health units were unable to provide effective treatment and individuals had to be medically evacuated at considerable expense and effort by the Government. Arranging for replacements for employees may delay project implementation, possibly straining relations with host government officials.

In an effort to prevent medically at-risk individuals from arriving at post with the expectation of receiving routine medical care from the embassy health unit, several posts have instituted their own clearance procedures. However, the individual is already at post when the decision is made, and the Mission and the health unit face the problem of not being able to provide the level of routine medical services required or expected by individuals with pre-existing conditions. Some posts have tried to prevent this problem by requesting the State Department Office of Medical Services' (M/MED) cooperation in reviewing an individual's examination form before the individual arrives at post. Because of the volume of reviews for these few posts (approximately 750 examinations have been filed with M/MED over the past thirty months), and because of M/MED's expectation that many more posts will ask for the same help, M/MED has informed us that they can no longer provide this service without a consistent AID policy requiring contractors and dependents to obtain a medical examination and provide information on a comprehensive standardized form which would be submitted to M/MED for review.

A proposed rule which would establish procedures and requirements for contractors and their dependents to obtain medical exams using a prescribed form supplied by AID was published in the October 10, 1990 **Federal Register** (55 FR 41238). 47 calendar days were allowed for public review and comment. Only one comment was received in response to the Proposed Rule. The commenter requested clarification concerning access to medical care in case of emergency. The rule has been modified to clarify that access to the Embassy medical unit would be denied only for routine treatment. U.S. Embassies would, without question, extend the same assistance to AID contractor employees and dependents (whether or not they had routine access) as they would to any American citizen in an emergency medical situation in the country.

We do not believe this Notice will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act; nor do we consider this to be a major rule as defined in Executive Order 12291.

The medical examination form which will be used under the AIDAR constitutes an information collection. It has been submitted to and approved by OMB, and has been assigned Control Number 0412–0536, with an expiration date of May 31, 1991.

List of Subjects in 48 CFR Part 752 and Appendices C and D

Government procurement.

Accordingly, for the reasons set out in the Preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in part 752 and Appendices C and D continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.70—Texts of AID Contract Clauses

2. Section 752.7027 is revised as follows:

§ 752.7027 Personnel.

For use in all AID contracts involving performance overseas. Note that paragraphs (f) and (g) of this clause are for use only in cost reimbursement contracts.

Personnel (DEC 1990)

(a) *Clearance.*

(1) *Individuals Engaged or Assigned Within the United States.* The contractor will obtain written notification from the Contracting Officer of Cooperating Country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the Cooperating Country on a casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Physical fitness of employees and dependents.* See the clause of this contract entitled Physical Fitness.

(c) *Conformity to laws and regulations or Cooperating Country.* Contractor agrees to use its best efforts to assure that its employees and their dependents, while in the Cooperating Country, abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(d) *Importation or sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

(e) *Economic and Financial Activities.* Other than work to be performed under this contract for which an employee or consultant is assigned by the contractor, no such employee or consultant of the contractor shall engage, directly or indirectly, either in his/her own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he/she is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries in which he/she is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the Cooperating Country.

[The following paragraphs (f) and (g) are applicable only to cost reimbursement contracts.]

(f) *Duration of Appointments.* (1) Regular employees will normally be appointed for a minimum of 2 years which period includes orientation (less language training) in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run provided that if the contract is extended the appointment shall also be extended to the full 2 years: This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration.

(iv) When the contractor is unable to make appointments of regular employees for a full 2 years, the contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short-term appointments and the employee will be considered a short-term employee.

(g) *Employment of Dependents.* If any person who is employed for services in the Cooperating Country under this contract is either (1) a dependent of an employee of the U.S. Government working in the Cooperating Country, or (2) a dependent of a contractor employee working under a contract with the U.S. Government in the Cooperating Country, such person shall continue to hold the status of a dependent. He or she shall be entitled to salary for the time services are actually performed in the Cooperating Country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(End of Clause)

3. Section 752.7029, Post Privileges, is amended by removing the clause date "(APR 1984)" and replacing it with the date "(DEC 1990)", and by revising paragraph (a) of the clause as follows:

§ 752.7029 Post Privileges.

* * * * *

Post Privileges (DEC 1990)

(a) Routine health room services may be available, subject to post policy and review of medical examination results by the State Department Office of Medical Services in accordance with the clause of this contract entitled "Physical Fitness," to U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty.

These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen employees and dependents, whether or not they may have been granted access to routine health room services, on the same basis as it would be to any U.S. citizen in an emergency medical situation in the country.

* * * * *

4. A new § 752.7033 is added to read as follows:

§ 752.7033 Physical Fitness.

For use in all AID contracts involving performance overseas.

Physical Fitness (DEC 1990)

(The requirements of this provision do not apply to employees hired in the Cooperating Country or to authorized dependents who were already in the Cooperating Country when their sponsoring employee was hired.)

(a) *Assignments of less than 60 days in the Cooperating Country.* The contractor shall require employees being assigned to the Cooperating Country for less than 60 days to be examined by a licensed doctor of medicine. The contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he/she is employed and the employee is physically able to reside in the country to which he/she is assigned. Under a cost reimbursement contract, if the contractor has no such medical certificate on file prior to the departure for the Cooperating Country of any employee and such employee is unable to perform the type of activity for which he is employed or cannot complete his/her tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract), the contractor shall be responsible for returning the disabled employee to his/her point of hire and providing a replacement at no additional cost to the Government. In addition, in the case of a cost reimbursement contract, the contractor shall not be entitled to reimbursement for any additional costs attributable to delays or other circumstances caused by the employee's inability to complete his/her tour of duty.

(b) *Assignments of 60 days or more in the Cooperating Country.* (1) The Contracting Officer shall provide the contractor with a reproducible copy of the "AID Contractor Employee Physical Examination Form". This form is an information collection; it has been reviewed and approved by OMB, and assigned Control No. 0412–0536. The necessary Paperwork Reduction Act information regarding reporting burden estimate, contact points regarding burden estimate, and OMB approval expiration date is printed on the form. The contractor shall reproduce the form as required, and provide a copy to each employee and authorized dependent proposed for assignments of 60 days or more in the Cooperating Country. The contractor shall have the employee and all authorized dependents obtain a physical examination from a licensed physician, who will complete the form for each individual and mail it to the address on page three of the form. All envelopes must be marked "AID Contractor Employee Examination Form—Privileged Medical Information". After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the contractor as to whether or not the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(2) (The following information is provided for two purposes: To assist fixed price offerors to develop their price proposal, and to provide cost reimbursement contractors with guidance in determining reasonable and allowable costs.) As a contribution to the cost of medical examinations, AID shall reimburse the contractor for the physical examination authorized in paragraph (a) of this section in an amount not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations to the extent not covered by the contractor's health insurance policy. For physical examinations authorized in paragraph (b)(1) above, the AID contribution to the cost of the examination shall be as follows:

(i) For the employee and authorized dependents 12 years of age and over, one half of the cost of each examination up to a maximum AID share of $300 per individual, plus reimbursement of charges for immunizations to the extent not covered by the contractor's health insurance policy.

(ii) For authorized dependents under 12 years of age, one half of the cost of each examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations to the extent not covered by the contractor's health insurance policy.

(iii) The contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(End of Clause)

APPENDICES TO CHAPTER 7

Appendix C—Logistic Support Overseas to AID-Direct Contractors

5. Appendix C is amended by removing and not replacing Paragraph 4, Additional Instructions for Medical Support, and by revising Paragraph 2(c) introductory text as follows:

* * * * *

2. Policy

* * * * *

(c) *Medical facilities.* Medical facilities may be made available in accordance with post policy, subject to compliance with the clause of the contract entitled "Physical Fitness".

* * * * *

Appendix D—Direct AID Contracts With A U.S. Citizen or A U.S. Resident Alien For Personal Services Abroad

6. Paragraph 4(c)(2)(vi) of Appendix D is revised as follows:

4. Policy

* * * * *

(c) * * *

(2) * * *

(vi) Health room services may be provided in accordance with the clause of this contract entitled "Physical Fitness and Health Room Privileges."

* * * * *

7. Paragraph 7(j)(3) of Appendix D is revised as follows:

7. Executing a Personal Services Contract

* * * * *

(j) * * *

(3) Medical examinations and certifications as required by the contract general provision entitled "Physical Fitness and Health Room Privileges".

* * * * *

8. In Appendix D, section 11, General Provision Clause 3 is revised as follows:

* * * * *

3. Physical Fitness and Health Room Privileges (DEC 1990)

(a) *Physical Fitness.*

(1) For assignments of less than sixty (60) days in the Cooperating Country, the contractor shall be required to be examined by a licensed doctor of medicine, and the contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the contractor is physically able to engage in the type of activity for which he/she is to be employed under the contract and is physically able to reside in the Cooperating Country. A copy of the certificate shall be provided to the Contracting Officer prior to the contractor's departure for the Cooperating Country, or if this contract is entered into in the Cooperating Country, the contractor shall provide the certificate before he/she starts work under the contract.

(2) For contract periods of sixty (60) days or more, prior to departure for such assignment, the Contracting Officer shall provide to the contractor for himself/herself plus any authorized dependents the form entitled "AID Contractor Employee Physical Examination Form". This form is an information collection; it has been reviewed and approved by OMB, and assigned Control No. 0412–0536. The necessary Paperwork Reduction Act information regarding reporting burden estimate, contact points regarding burden estimate, and OMB approval expiration date is printed on the form. The contractor shall obtain a physical examination from a licensed physician, who will complete the form and mail it to the address on page three of the form. All envelopes must be marked "AID Contractor Employee Examination Form—Privileged Medical Information". After reviewing the form, the State Department Office of Medical Services (M/MED) will advise the contractor as to whether the embassy health unit is adequate to provide routine care to the individual, depending on his or her medical condition. The contractor is responsible for providing the M/MED decision to the health unit in question. No travel to post may be initiated until the health unit has received the M/MED decision and the Contracting Officer authorizes such travel in writing.

(b) *Reimbursement.*

(1) As a contribution to the cost of medical examinations required by paragraph (a)(1) of this clause, AID shall reimburse the contractor not to exceed $100 for the physical examination, plus reimbursement of charges for immunizations.

(2) As a contribution to the cost of medical examinations required by paragraph (a)(2) of this clause the contractor shall be reimbursed in an amount not to exceed half of the cost of the examination up to a maximum AID share of $300, plus reimbursement of charges for immunizations for himself/herself and each authorized dependent 12 years of age and over. For dependents under 12 years of age the AID contribution shall not exceed half of the cost of the examination up to a maximum AID share of $120 per individual, plus reimbursement of charges for immunizations. The contractor must obtain the prior written approval of the Contracting Officer to receive any AID contributions higher than these limits.

(c) *Health Room Privileges.* Routine health room services may be available, subject to post policy and in accordance with the requirements of paragraph (a) of this clause, to U.S. citizen contractors and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services normally include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, and home visits as medically indicated. Emergency medical treatment is provided to U.S. citizen contractor employees and dependents, whether or not they may have been granted access to routine health room services, on the same basis as it would be to any U.S. citizen in an emergency medical situation in the country.

(End of Clause)

Dated: December 28, 1990.

John F. Owens,

Procurement Executive.

[FR Doc. 91–4212 Filed 2–22–91; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–09; Notice 02]

RIN 2127–AC55

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends Standard 106, Brake Hoses, so that Table III of the standard expressly applies to rubber brake hoses only, and thus does not apply to hoses made from plastic tubing. Table III specifies dimensional requirements for air brake hoses intended for use with reusable end fittings. This rule, which is intended to facilitate the use of plastic tubing for brake hoses, responds to a petition for rulemaking from Volvo White Truck Corporation.

DATES: This rule is effective March 27, 1991. Petitions for reconsideration must be received by March 27, 1991.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, NRM–11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–5277.

SUPPLEMENTARY INFORMATION: On June 15, 1990 (55 FR 24278), the agency proposed to amend the language in Standard 106 that requires hoses manufactured for use with reusable end fittings to conform to the dimensional requirements of Table III. NHTSA proposed to amend the standard so that Table III would expressly apply to brake hoses made from synthetic or natural elastomeric rubber only, and thus would not apply to hoses made from thermoplastic materials, such as polyamide nylon. (The latter types of brake hose are usually referred to as plastic "tubing.") Tubing is manufactured under industry specifications that ensure that all tubing of a given outside diameter has the same inside diameter. Table III was adopted to distinguish between two types of rubber brake hose, one of which has a larger outside diameter than the other for a given inside diameter. Since these differences in sizing do not occur in tubing, there appeared to be no reason for Table III to apply to tubing. To the extent that Table III has operated to restrict the use of plastic tubing for brake hoses, the agency believed that this amendment would facilitate the use of such tubing.

Background

Standard 106 defines a "brake hose" as "a flexible conduit, other than a vacuum tubing connector, manufactured for use in a brake system to transmit or contain the fluid pressure or vacuum used to apply force to a vehicle's brakes." (S4) The definition does not distinguish between traditional rubber hose and plastic tubing. In practice, it appears that there is no misunderstanding on the part of manufacturers that brake tubing must comply with all applicable requirements of Standard 106. The agency's compliance test experience with plastic tubing shows a high rate of compliance with the performance requirements of the standard.

However, with regard to the dimensional requirements for brake hose that is intended to be used with reusable end fittings, the status of plastic tubing has been less certain.

On the one hand, paragraph S7.1 of the standard requires "[e]ach air brake hose" intended for use with a reusable end fitting to "conform to the dimensional requirements specified in Table III." Table III sets forth dimensions for the inside diameters (I.D.) and outside diameters (O.D.) for eight sizes of air brake hose. No other sizes are permitted for hoses intended for use with reusable end fittings. Hose with O.D.'s within a specified range are considered "Type I" hose and marked "AI" (S7.2.1(e)). Hose with generally slightly larger O.D.'s are considered "Type II" hose and marked "AII." The Type I and Type II hose dimensions describe two types of rubber hose that were prevalent in the marketplace during the development of Standard 106. NHTSA has stated that "Table III * * * is intended to be a first step toward standardization of reusable fittings and hose * * *" (39 FR 24012, 24014; June 28, 1974). Further, there is nothing in S7.1 itself that suggests that Table III does not apply to plastic tubing used with reusable fittings as well as to rubber hose.

On the other hand, other provisions in S7 refer to "plastic tubing" in a manner that has led some brake hose

manufacturers to ask whether tubing was intended to be covered by Table III. S7.2.1(d), for example, refers to "the nominal inside diameter of hose * * * or the nominal outside diameter of plastic tubing * * *," as if the terms "hose" and "tubing" refer to two entirely different entities for purposes of labeling.

The purpose of standardizing hose for use with reusable end fittings is to reduce the likelihood of mismatch problems between hoses and end fittings. In issuing Table III, NHTSA noted that reusable fittings and hose are typically assembled by repair businesses in the field, where the agency thought mismatch was more likely to occur than in high volume operations. (*Id.*) The AI and AII marking on the hose are intended to help in distinguishing between two types of hoses that may be labeled the same size, yet have slightly different dimensions. Identifying the hose is important for purposes of selecting the appropriate end fitting for them. Reusable end fittings are marked AI or AII indicating their suitability for use with Type I or Type II hose (S7.2.2(c)).

The Proposal

This action was commenced by the agency in response to a petition for rulemaking from the Volvo White Truck Corporation which had developed a reusable end fitting for use with plastic tubing. Since plastic tubing generally does not conform to the dimensional requirements of Table III, Volvo believed that S7.1 would preclude the manufacture of the plastic tubing for which the end fitting is designed, and would therefore impede the marketing of the new end fitting.

Volvo originally sought to remove possible impediments against the manufacture of the end fitting by requesting in its petition that NHTSA amend Standard 106's definition of a "permanently attached end fitting" to include Volvo's end fitting. The agency did not agree that the definition should be amended as Volvo requested, for the reasons discussed in the proposal preceding this rule. However, the agency believed that Volvo's petition indicated that Table III might be unnecessarily impeding the development of plastic tubing and end fittings.

In its proposal, NHTSA tentatively concluded that Table III need not apply to plastic tubing intended for use with reusable end fittings because the purpose of the dimensional restrictions is to reduce the likelihood of mismatch problems between hoses and fittings. These potential problems arise in cases in which hoses appear identical (and are labeled the same size) yet have different O.D.'s. NHTSA noted in the proposal that the only hoses exhibiting this variation are those made from rubber. NHTSA believed there did not seem to be a comparable risk of mismatch for plastic tubing since the tubing manufacturers have voluntarily standardized size designations. NHTSA stated, "An assembler would readily know the O.D. of brake tubing from the labeling on the tubing, and would also know which fitting would be appropriate for the tubing."

The agency stated in its proposal that the agency's compliance tests of assemblies using plastic tubing with permanently attached end fittings indicate that such tubing is capable of meeting the performance requirements of the standard. The agency also believed that brake tubing in sizes not specified in Table III was already being used with reusable end fittings in braking applications. NHTSA believed that dimensional variations have not negatively affected the safety of such tubing. The agency therefore proposed to amend S7.1 so that Table III would expressly apply to brake hose "constructed of synthetic or natural elastomeric rubber" only.

Comments on the Proposal

The agency received comments on the proposal from the following five commenters: Volvo GM Heavy Truck Corporation, Robert Crail (a private citizen with experience in trailer and hose assembly manufacturing), Freightliner Corporation, Bendix Heavy Vehicle Systems Group (BHVSG), and Parker Hannifin Corporation. All but Parker Hannifin supported the amendment. Freightliner believed that the proposed amendment would facilitate the production of plastic tubing that is manufactured to industry specifications, and would therefore "increase design flexibility" without affecting safety. Mr. Crail stated that plastic tubing in sizes other than those set forth in Table III is being used in the industry, and that such tubing conforms to industry standards established by the Society of Automotive Engineers (SAE).

Parker Hannifin believed that removing plastic tubing from coverage of Table III would degrade safety. The commenter appeared to believe that tubing I.D. and O.D. sizes should be standardized because if they are not, tubing of slightly different sizes could lead to mismatch problems between a reusable fitting and the wrong tubing.

The agency disagrees that plastic tubing should be included in Table III. Commenters have indicated that tubing in sizes other than those listed in Table III has been used with reusable fittings for many years. NHTSA is not aware of consumer complaints or any other information indicating that mismatch problems have been experienced for tubing.

Parker Hannifin also expressed a concern about Standard 106's requirement for labeling ⅜ inch and ½ inch special air brake hose. Parker Hannifin said that manufacturers do not know how to label the hose under S7.2.1(e) of Standard 106 because the hose meets the dimensional requirements in Table III for both Type I and Type II hose.

The agency has answered the question about labeling hose for which the Type I and Type II dimensions listed in the standard are identical, in interpretations of the standard dating back to 1974. (E.g., see November 22, 1974 letter to Gates Rubber Company, and September 22, 1975 letter to Bendix-Westinghouse.) The agency stated in the letters that such hose may be labeled with the designation "AI–AII" or "AI & AII." Copies of all of the agency's interpretation letters are available in NHTSA's docket. Manufacturers have not informed NHTSA of any problems with labeling hose that conform to both the Type I and Type II dimensions.

Volvo, GM, and Bendix suggested that minor conforming changes to the labeling requirements in S7.2.1(e) and S7.2.2(c) of Standard 106 would be appropriate if the proposed amendment concerning Table III is adopted. The agency agrees with the suggestions and has made the conforming changes.

Impact Analyses

NHTSA has concluded that this rule does not qualify as a "major rule" within the meaning of Executive Order 12291, and that the rule is not "significant" within the meaning of the Department of Transportation's regulatory procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is warranted. The amendment clarifies the requirements applicable to the manufacture and use of certain sizes of reusable air brake tubing and end fittings for such tubing. Manufacturers of plastic tubing, end fittings and assemblies may benefit by the amendment, since they might be encouraged to produce new products. However, the agency does not anticipate that they would be significantly affected. The need for assemblies in sizes other than those listed in Table III is already at least partially being met by assemblies using permanently attached brake hose end fittings.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The amendment will facilitate the manufacture and sale of new types of brake hose end fittings and assemblies. Any brake hose end fitting or assembly manufacturer that might qualify as a small entity under the Regulatory Flexibility Act may benefit slightly by the amendment due to the clarification of the applicability of the size restrictions of Table III and the possible effect of that amendment on sales of new products. However, the agency does not believe the amendment will result in significant cost impacts for manufacturers since reusable assemblies apparently already are being produced with different sizes of tubing. The agency believes there will not be a significant impact on the cost of vehicles, and that small organizations and governmental jurisdictions that purchase motor vehicles will not be significantly affected by the amendment.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. The introductory text of paragraph S7.1 of Standard No. 106 is revised to read as follows:

S7.1 *Construction.* Each air brake hose assembly shall be equipped with permanently attached brake hose end fittings or reusable brake hose end fittings. Each air brake hose constructed of synthetic or natural elastomeric rubber intended for use with reusable end fittings shall conform to the dimensional requirements specified in Table III.

* * * * * *

3. Section S7.2 of Standard 106 is amended by revising paragraphs S7.2.1(e) and S7.2.2(c) to read as follows:

S7.2 Labeling.

S7.2.1 * * *

* * * * * *

(e) The letter "A" shall indicate intended use in air brake systems. In the case of a hose constructed of synthetic or natural elastomeric rubber intended for use in a reusable assembly, "AI" or "AII" shall indicate Type I or Type II dimensional characteristics of the hose as described in Table III.

S7.2.2 * * *

* * * * * *

(c) The letter "A" shall indicate intended use in air brake systems. In the case of an end fitting intended for use in a reusable assembly with brake hose subject to Table III, "AI" or "AII" shall indicate use with Type I or Type II hose, respectively.

* * * * * *

Issued on February 19, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–4315 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

[Docket No. PY-91-001]

RIN 0581-AA19

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg products inspection and egg, poultry, and rabbit grading; as well as Federal mandatory egg products inspection holiday and appeal services. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before March 27, 1991.

ADDRESSES: Send written comments, in duplicate, to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. State that your comments refer to Docket No. PY-91-001.

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202-447-3271.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512-1 and has been classified a "non-major" rule under the criteria contained therein. It (i) will have an annual effect on the economy of less than $100 million; (ii) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local Government agencies, or geographic regions; or (iii) will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The AMS Administrator has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and changes merely reflect, on a cost-per-unit-graded/ inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

The information collection requirements that appear in §§ 56.52(a)(4) and 70.77(a)(4) to be amended by the proposed rule have been previously approved by the Office of Management and Budget and assigned OMB Control No. 0581-0128 and No. 0581-0127, respectively, under the Paperwork Reduction Act of 1980.

Background and Proposed Changes

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing voluntary egg products inspection and voluntary egg, poultry, and rabbit grading services. Likewise, the Egg Products Inspection Act requires the collection of fees to cover costs of holiday and appeal inspection services. Each fiscal year, these fees undergo a cost analysis to determine if they are adequate to recover the cost of providing the services. They were last increased effective May 1, 1990.

Projected operating costs are expected to increase in 1991. Federal employees' salaries increased by 4.1 percent in January 1991. Also, the cost of life insurance, health benefits, and Medicare increased by about 8 percent, Federal employee retirement fringe costs increased 12 percent, and salaries and fringe of federally licensed State employees increased by about 9 percent.

Resident fees and administrative service charges would be increased about 6.5 percent. Resident fees cover Federal and State salaries, fringe benefits, relief, and other service-related costs. Administrative service charges apply to the costs of supervision and other overhead and administrative costs and are assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1990, these rates were established at $0.029 per case of shell eggs and $0.00029 per pound of poultry. These rates would be changed to $0.031 per case of shell eggs and $0.00031 per pound of poultry. Also, these charges were set at a minimum of $145 and maximum of $1,450 per billing period for each official plant. It is proposed to change these amounts to $155 and $1,550, respectively.

The hourly rate for nonresident voluntary grading and inspection service would be increased from $27.28 to $28.64. The hourly rate for such services performed on Saturdays, Sundays, or holidays would be increased from $27.36 to $29.68. The hourly rate for voluntary appeal gradings or inspections would be increased from $23.20 to $24.48. The hourly rates for mandatory egg products inspection services would be increased from $14.72 to $16.04 for holiday inspection and from $23.20 to $24.48 for certain appeal inspections.

Administrative charges for resident voluntary rabbit grading, resident voluntary egg products inspection, and nonresident voluntary continuous poultry and egg grading will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs would be increased from $145 to $155 per official plant.

Timing of Any Fee Increase

It is contemplated that any fees that might be implemented as a result of this action would be implemented on an expedited basis in order to minimize that period of time between the effective date of the Federal pay increase and the effective date of any fee increase.

Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the **Federal Register** and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be May 1, 1991.

List of Subjects

7 CFR Parts 55 and 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 59

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that title 7, code of Federal Regulations, parts 55, 56, 59, and 70 be amended as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 55.510 Fees and charges for services other than on a continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perfrom the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

(d) The cost of an appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision shall be borne by the appellant at an hourly rate of $24.48 for time spent performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, inspection, laboratory analysis, or review of a grader's or inspector's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

3. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

4. The authority citation for part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

5. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $28.64 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

6. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $0.031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $ 1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

9. The authority citation for part 59 continues to read as follows:

Authority: Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

10. Section 59.128 is amended by revising paragraph (a) to read as follows:

§ 59.128 Holiday inspection service.

(a) When an official plant requires inspection service on a holiday or a day designated in lieu of a holiday, such service is considered holiday work. The official plant shall, in advance of such holiday work, request the inspector in charge to furnish inspection service during such period and shall pay the Service therefor at an hourly rate of $16.04 to cover the cost thereof.

* * * * *

11. Section 59.370 is amended by revising paragraph (b) to read as follows:

§ 59.370 Cost of appeals.

* * * * *

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of $24.48, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these regulations have not been complied with.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

12. The authority citation for part 70 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

13. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $28.64 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $29.68 per hour. Information on legal holidays is available from the Supervisor.

14. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, laboratory analysis, or examination or review of a grader's decision.

The costs of an appeal grading, laboratory analysis, or examination or review of a grader's decision will be borne by the appellant at an hourly rate of $24.48 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any additional expenses. If the appeal grading, laboratory analysis, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

15. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

16. Section 70.77 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00031, except that the minimum charge per billing period shall be $155 and the maximum charge shall be $1,550. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $155 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC, on February 19, 1991.

Daniel D. Haley,

Administrator of the Agricultural Marketing Service.

[FR Doc. 91–4382 Filed 2–22–91; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 1220

[LS–90–106]

Soybean Promotion, Research, and Consumer Information: Procedures for Nominations of Soybean Producers of Appointment to the Initial United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the procedures and criteria for nominating soybean producers to the initial United Soybean Board (herein referred to as Board), as provided for in the Soybean Promotion, Research, and Consumer Information Act, enacted November 28, 1990. The Act authorizes a national industry-funded program for soybeans and soybean products promotion and research to be administered by a Board comprised of industry members appointed by the Secretary.

DATES: Written comments on the proposed rule must be received by March 12, 1991, to receive consideration.

ADDRESSES: Send two copies of comments to the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456, where they will be available for public inspection during regular business hours. In addition, comments concerning the information collection requirements should be sent to: Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503; Attention: Desk Officer for Agricultural Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. (Telephone: 202/382–1115).

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified a "non-major" rule because it does not meet the criteria for a major rule as stated in the Order.

This action has also been reviewed under the Regulatory Flexibility Act. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small business entities. The rules proposed herein pertain only to (1) The procedures for establishing the eligibility of organizations to nominate, (2) the procedures for submitting nominations.

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action will be submitted to the Office of Management and Budget (OMB) for approval. This action sets forth the procedures for establishing the eligibility of organizations to nominate soybean producers to the initial Board, and the procedures for submitting such nominations. Information collection requirements as required by this action and necessary for implementation of these procedures include submission by State promotion organizations of a written statement ("Verification of Compliance With Definition of Qualified State Soybean Board") attesting to their eligibility as a Qualified State Soybean Board to nominate producer members to the initial United Soybean Board and submission of nominations on official nomination forms. The estimated number of responding organizations is 29, with 1 response(s) estimated per organization of establishing eligibility and 12 response(s) per nomination, with an estimated average burden of .5 hours and .5 hours, respectively.

In addition, each producer nominee for membership on the initial Board would be required to submit a membership background information sheet. This information sheet has been previously approved by the Office of Management and Budget and has been assigned OMB No. 0505–011. The estimated number of respondents is 130, with 1 response(s) per nominee and with an estimated average burden of .5 hours. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

The Soybean Promotion, Research, and Consumer Information Act of 1990, enacted November 28, 1990 (Act), authorizes the establishment of a national soybean promotion, research, and consumer information program. This program will be funded by assessments paid by domestic soybean producers. The program will be governed by a soybean promotion, research, and consumer information order issued by the Secretary. An invitation for proposals for such an order was published at 55 FR 53000 (December 26, 1990). A final order will be issued after a published notice and opportunity for public comment. The order would provide for the establishment of a Board to administer the program. To enable the Secretary to implement any order that may be adopted, it is necessary to establish procedures for the nomination and appointment of Board members. All comments received in response to this proposal will be considered in the development of a final rule.

The Board will be composed of approximately 60 soybean producers appointed by the Secretary from nominations submitted by the Qualified State Soybean Boards.

Under this proposed rule, to ensure that nominees represent the interests of soybean producers, State soybean organizations, which meet criteria specified in section 1969(b)(3) of the Act and in § 1220.520 of this proposed rule may nominate candidates for appointment to the Board. To be eligible to nominate candidates, organizations would either (1) Be organized and operating under the laws of the State or (2) be organized and operating within a State, receive voluntary contributions, conduct soybean promotion, research, consumer information, or industry information programs, and represent the soybean producers of the State.

The proposed rule would require an organization to furnish the Secretary with a written statement signed by an official of that organization attesting to the specific eligibility requirements and any other information deemed relevant by the Secretary. If such organizations do not exist in a State or combined unit which is eligible for representation on the Board, the proposed rule would allow the Secretary to solicit nominations in a manner the Secretary deems appropriate.

The proposed rule would allow the required written statements or information necessary for an eligibility determination to be submitted in connection with requests for the official nomination forms. Nomination forms would be obtained by contacting the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456; (Telephone: 202/382–1115).

This proposed rule also would give the Secretary the right to examine books, papers, records, files, and facilities to verify any information submitted to determine an individual organization's eligibility to nominate members to the Board.

Information obtained from organizations would be kept confidential. However, nothing in the rule would prohibit release of general statements based upon data obtained from a number of organizations which do not identify the information obtained from any specific organization.

Written comments are requested from interested persons on the proposed rule. A 15-day comment period is considered appropriate and is necessary so that organizations and others who may select nominees for the United Soybean Board may begin planning for a nomination process as soon as possible. Nomination procedures take considerable time to complete. Early establishment of any such procedures, that may be adopted as a result of this rulemaking, should prevent unnecessary delay in selecting nominees and appointing a Board to implement any Order, that might be adopted, and thereby assisting in timely implementation of the Act.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7 of the Code of Federal Regulations be amended as follows:

Chapter XI of title 7 of the Code of Federal Regulations is amended by adding a new part 1220 to read as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A–C—[Reserved].

Subpart D—Procedures for Nomination of Soybean Producers for Appointment to the Initial United Soybean Board.

Sec.

1220.500 General.
1220.510 Definitions.
1220.515 Administration.
1220.520 Eligibility to nominate for appointment to the initial Board.
1220.525 Nominations of members for appointment to the Board.
1220.530 Initial Board membership.
1220.535 Length of appointment to the initial Board.
1220.540 Acceptance of appointment.
1220.545 Verification.
1220.550 Confidential treatment of information.
1220.555 Paperwork Reduction Act assigned number. [Reserved].
1220.560 [Reserved].

Authority: Title XIX, Subtitle E, Public Law No. 101–624, 104 Stat. 3359.

Subparts A–C—[Reserved]

Subpart D—Procedures for Nomination of Soybean Producers for Appointment to the Initial United Soybean Board.

§ 1220.500 General.

The Secretary shall determine which organizations are qualified to nominate soybean producers for appointment to

the initial Board. The making and receiving of the nominations shall be conducted in accordance with this subpart.

§ 1220.510 Definitions.

As used in this subpart:

Act means the Soybean Promotion, Research, and Consumer Information Act of 1990, title XIX, subtitle E, of Public Law 101–624, enacted November 28, 1990.

Board means the United Soybean Board.

Department means the United States Department of Agriculture.

Livestock and Seed Division means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

Producers means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

Qualified State Soybean Board means a State soybean promotion entity that is authorized by State law. If no such entity exists in a State, then the term "Qualified State Soybean Board" means a soybean producer governed entity.

(1) That is organized and operating within a State, and

(2) that receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead.

Soybean products means a product produced in whole or in part from soybeans or soybean by-products.

Soybeans means all varieties of Glycine max or Glycine soja.

State or United States means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.515 Administration.

The Livestock and Seed Division shall administer the provisions of this subpart.

§ 1220.520 Eligibility to nominate for appointment to the initial Board.

(a) *States with existing State soybean promotion organizations.* Existing State soybean promotion organizations are eligible to submit names of producers as nominees for appointment by the Secretary to the Board. However, such State soybean promotion organizations must provide the Department with written verification that they comply with the definition of a qualified State soybean Board in section 1220.510.

(b) *States with no existing State soybean promotion organizations.* If no State soybean promotion organization exists in a State unit, the Secretary shall solicit nominations for appointments to the initial Board in such manner as the Secretary determines appropriate.

(c) *Combined units.* The Secretary shall solicit nominations for each seat on the initial Board to which a combined unit is entitled in such manner as the Secretary determines appropriate, taking into consideration the recommendations of any State soybean board operating in the unit that provides the Department with written verification that they comply with the definition of a qualified State soybean Board in § 1220.510.

(d) When the Secretary determines that a State soybean promotion organization or other entity is eligible to nominate producer candidates for appointment to the Board, the Secretary shall thereafter notify such organization or entity of the determination.

§ 1220.525 Nomination of members for appointment to the Board.

(a) All nominations to the initial Board shall be made in the following manner:

(1) Concurrent with notification of eligibility to nominate, the Secretary shall advise eligible organizations of the number of positions on the Board allotted to each State or combined unit and request the names of at least two nominees for each allotted position.

(2) *Official nomination forms.* Official nomination forms, "Nomination of Soybean Producers for Appointment to the United Soybean Board" must be used to nominate producers for appointment to the Board. A membership background information sheet for each nominee listed on the "Nomination of Soybean Producers for Appointment to the United Soybean Board" must be attached to that form. Official nomination forms, background information sheets, and additional information on nominations can be obtained by contacting the Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456 (telephone: 202/382–1115).

(b) The Secretary may reject any nomination submitted under paragraph (a) of this section. If there are insufficient nominations from which to appoint members to the initial Board as the result of the Secretary rejecting the nominations submitted by a State or combined unit, the State or combined unit shall submit additional nominations, as provided in paragraph (a) of this section.

§ 1220.530 Initial Board membership.

(a) *Base membership.* The number of producer members appointed to the Board from each State or combined unit shall be allocated as follows:

(1) A State in which the average (of the five previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest) soybean production is less than 3 million bushels shall be grouped with other States into a combined unit. To the extent practicable, each State with average annual soybean production of less than 3 million bushels shall be grouped with other States with average annual soybean production of less than 3 million bushels into a combined unit. To the extent practicable, each combined unit shall consist of geographically contiguous States and shall have an average annual production of soybeans of at least 3 million bushels.

(2) Subject to the provisions of paragraph (a)(1) of this section, if the average annual soybean production is:

(i) Less than 15 million bushels, the unit shall receive a total of one seat on the Board;

(ii) 15 million bushels or more, but less than 70 million bushels, the unit shall receive two seats on the Board;

(iii) 70 million bushels or more, but less than 200 million bushels, the unit shall receive three seats on the Board;

(iv) More than 200 million bushels, the unit shall receive four seats on the Board.

(3) The Secretary shall use statistics published by the U.S. Department of Agriculture's National Agricultural Statistics Service, Agricultural Statistics Board in the "Crop Production" Annual summary. (Copies may be obtained by calling the National Agricultural Statistics Service at 202/447–2127.)

(4) Based on the criteria contained in this section, the number of members on the Board allotted to each unit shall be: Alabama 1; Arkansas 3; Delaware 1; Flordia 1; Georgia 2; Illinois 4; Indiana 3; Iowa 4; Kansas 2; Kentucky 2; Louisiana 2; Maryland 1; Michigan 2; Minnesota 3; Mississippi 2; Missouri 3; Nebraska 3; New Jersey 1; North Carolina 2; North Dakota 1; Ohio 3; Oklahoma 1; Pennsylvania 1; South Carolina 2; South Dakota 2; Tennessee 2; Texas 1; Virginia 2; Wisconsin 1; Eastern Region (Consisting of New York, Massachusetts, Connecticut, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, the District of Columbia, and Puerto Rico) 1; and Western Region (Consisting of Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) 1.

(b) *Temporary membership.* The Secretary may appoint to the initial Board up to 3 temporary members in addition to the members appointed as otherwise provided in this subpart, as the Secretary determines appropriate. Each such temporary member shall be appointed for a single term not to exceed 3 years. Such appointments would ensure representation on the Board, to the extent practicable, to each State with a State soybean board that was contributing State soybean assessment funds to national soybean promotion and research efforts that reflects the relative contribution of such State to the national soybean promotion and research effort.

§ 1220.535 Length of appointment to initial board.

When the Secretary appoints the members of the initial Board, the Secretary shall also specify the term of office for each member. To the extent practicable, one-third of the members shall serve for one year, one-third shall serve for two years and one-third shall serve for three years.

§ 1220.540 Acceptance of appointment.

Producers nominated to the Board must signify in writing their intent to serve if appointed and to disclose any relationship with any soybean promotion entity or any organization that has a contractual relationship with the Board.

§ 1220.545 Verification.

The Secretary shall have the right to examine at any time the books, documents, papers, records, files, and facilities of nominating units as the Secretary deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the unit is eligible to nominate soybeans producers for appointment to the initial Board.

§ 1220.550 Confidential treatment of information.

All documents submitted in accordance with this subpart shall be kept confidentially by all employees of the Department. Nothing in this section shall be deemed to prohibit the disclosure of such information so furnished or acquired as the Secretary deems relevant and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1220.555 Paperwork Reduction Act assigned number. [Reserved].

§ 1220.560 [Reserved].

Done at Washington, DC: February 19, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–4271 Filed 2–22–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1220

[No. LS–91–004]

Soybean Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to issue an order establishing a national industry-funded soybean promotion and research program, and will hold a public meeting to discuss the proposal during the comment period. A soybean industry organization requested the issuance of such an order and submitted a proposed order in response to an invitation to submit proposals. The proposed order would require soybean producers to pay an assessment based on the market value of their soybeans, which would be used in a national program of soybean promotion, research, and consumer information.

DATES: Comments must be received by April 11, 1991. The meeting will convene at 9 a.m., eastern daylight savings time, on March 6, 1991.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division; AMS-USDA, Room 2624–S, PO Box 96456, Washington, DC 20090–6456. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

LOCATION OF MEETING: Jefferson Auditorium, USDA South Building, 14th and Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch—202/382–1115.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Invitation to submit proposals—55 FR 53000 (December 26, 1990).

Proposed Rule—Procedures for Nominations of Soybean Producers for Appointment to the initial United Soybean Board—

Regulatory Impact Analysis

The proposed rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation No. 1512–1 and has been classified a "non-major" rule because it does not meet the criteria for a major rule as stated in the order. This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The most recent available census of agricultural producers indicates that there are 439,093 soybean producers in the United States, an estimated 431,720 of whom would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.2). The proposed order would require each soybean producer to pay an assessment of one half of one percent of the market value of the soybeans sold. In addition, an estimated 10,000 first purchasers of soybeans would be required to collect and remit the assessments. Although the assessments are expected to total between $50 and $60 million dollars annually, the economic impact of a one half of one percent of market value assessment on each individual producer, including small producers, will not be significant. The proposed order also imposes a reporting and recordkeeping burden on first purchasers of soybeans and on producers marketing soybeans and soybean products of their own production. This burden should average less than 5 hours per year, so its economic impact will not be significant. In addition, the promotion and research program funded by the assessments is expected to benefit the producers and first purchasers by expanding and maintaining new and existing domestic and foreign markets and uses for soybeans and soybean products. Therefore, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Comments and Public Meetings

Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Livestock and Seed Division's Marketing Programs Branch and must make reference to the date and page number of this issue of the **Federal Register**. Comments on this proposal submitted to the Department will be available for public inspection during regular business hours. Comments must be received by April 11, 1991.

Additionally, notice is given that a public meeting will be held beginning a 9 a.m. Eastern Daylight Savings Time, on March 6, 1991, at the United States Department of Agriculture, Jefferson Auditorium, 14th and Independence Avenue, SW., South Building, Washington, DC.

The meeting will be conducted by a presiding officer chosen by the Department. The proceedings of such meeting will be transcribed and considered in the development of a final rule. The purpose of the meeting is to provide an opportunity for a full discussion on the proposal to facilitate a better understanding of the intent and application of the proposed rule.

Anyone wishing to present data, views, or arguments concerning the proposed rule should do so through exhibits, written statements, or oral presentations. All those making oral presentations are encouraged to submit their presentations in writing. One original and three copies of written statements must be provided for the record. Persons attending the meeting will be allowed to ask questions directed at participants giving oral presentations. It is anticipated that the proponents of this proposal will attend the meeting to explain its various provisions and to answer questions.

Any interested person shall be given an opportunity to appear and be heard with respect to matters relevant and material to the proposed Soybean Promotion and Research Order. However, the presiding officer may limit the number of times and the amount of time that any one person may be heard and, insofar as practicable, exclude views and data which are immaterial, irrelevant, or unduly repetitious. Such action will be intended to limit the amount of corroborative or cumulative material presented and prevent undue prolongation of the meeting.

Copies of the transcript of the meeting will not be available for distribution through the hearing clerk's office. However, the transcript will be available for public inspection during business hours. Anyone wishing to purchase a copy of the transcript should make arrangements with the reporter at the meeting.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this action will be submitted to the Office of Management and Budget (OMB) for approval. This action sets forth the provisions of an order establishing a nationwide, producer-funded program for soybean promotion and research. Information collection requirements as required by this action and necessary for the implementation of this order include:

(1) A report by each person marketing soybeans, or products made from soybeans, of that person's own production, or responsible for collecting assessments from soybean producers. The estimated number of respondents for this report is 10,000 each submitting four responses per year, with an estimated average reporting burden of one hour per response;

(2) A refund application form for persons who desire a refund from their assessments. The estimated number of respondents for this form is 30,000, each submitting four responses, per year, with an estimated average reporting burden of .08 hours per response;

(3) A referendum ballot to be submitted once every five years to indicate whether producers favor continuance of the order. The estimated number of respondents for this form is 100,000, each submitting one response every five years, with an estimated average reporting burden of .10 hours per response;

(4) A certification of non-producer status by which a small producer would be exempt from recordkeeping requirements. The estimated number of respondents for this form is 2,000, each submitting one response per year, with an estimated average reporting burden of .03 hours per response;

(5) A verification of compliance with the definition of Qualified State Soybean Board by which a State Soybean Board would attest to its eligibility to nominate producer members to the United Soybean Board. The estimated number of respondents for this form is 29 in the first year, and one in each year following. Each respondent will submit one response per year, with an estimated average reporting burden of 0.5 hours per response;

(6) A nomination form by which Qualified State Soybean Boards would nominate producers for membership on the United Soybean Board. The estimated number of respondents for this form is 29, each submitting one response per year, with an estimated average reporting burden of 0.5 hours per response;

(7) A membership background information sheet for Board members. The estimated number of respondents for this form is 130 during the first year of the order, and 45 annually after that. Each respondent will submit one response per year, with an estimated average reporting burden of 0.5 hours per response;

(8) A letter requesting certification as a Qualified State Soybean Board which would allow the State Board to receive credits for assessments collected and conduct promotion and research activities. The estimated number of respondents for this form is 29, each submitting one response per year, with an estimated average reporting burden of 0.5 hours per response; and

(9) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated number of recordkeepers necessary to comply with this requirement is 10,000, each of whom will have an estimated annual burden of .11 hours.

Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget; Washington, DC. 20503. Attention: Desk Officer for Agricultural Marketing Service, USDA.

Background

The Soybean Promotion, Research, and Consumer Information Act (Subtitle E of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 Pub. L. 101–624) approved November 28, 1990, authorizes the Secretary of Agriculture to establish a national soybean promotion and research program. The program will be funded by an assessment of one-half of one percent of the net market price of soybeans bought or otherwise acquired by the first purchaser from the producer.

The Act provides for submission of proposals for a soybean promotion and research order by industry organizations or any interested persons. The Act requires that such order provide for the establishment of a United Soybean Board. The Board would be composed of soybean producers nominated by State soybean boards for appointment by the Secretary to the Board.

The Department issued an invitation to submit proposals for an initial order in the December 26, 1990, issue for the **Federal Register**.

In response to the invitation to submit proposals, one proposed order was received from the American Soybean Association. The Department is publishing this proposed order for comment. The proposed order as published herein reflect a change in the order provisions from that submitted by the American Soybean Association. The Act provides that the number of seats allocated to each State or combined unit be based on the average annual soybean production for the State or unit. Average annual soybean production applicable to a crop year is to be determined by using the average of the five previous crops of soybeans, excluding the crop in which production was the highest and the crop in which production was the lowest. The Association's proposal was based on the years 1984–1988. To reflect the Act's provisions, the Department has utilized the most recent final statistics published by its National Agricultural Statistics Service for five previous crops of soybeans. The years 1985 through 1989 have been used. Consequently, the membership distribution contained in this proposed rule is based on average production for the years 1985–1989. The Department will consider all comments received before issuing a final rule.

Sections 1220.101–1220.130 of the proposal define certain words which are used in the order. Section 1220.201–1220.212 concern the establishment, membership, procedure, compensation, powers, and duties of the United Soybean Board, which be the body organized to administer the order subject to the oversight of the Secretary of Agriculture. Sections 1220.213–1220.220 concern the establishment, membership, procedure, compensation, and duties of the Soybean Program Coordinating Committee, which would assist the Board in the administration of the order. The Committee would consist of 10 Board members and 5 producers elected by the American Soybean Association. Section 1220.222 of the proposal would authorize the Board to incur expenses necessary for the performance of its duties. Administrative expenses could not exceed 5 percent of assessments, and the Board would reimburse the Secretary for administrative costs incurred by the Department.

Sections 1220.223–1220.227 would authorize the collection of assessments, at the rate of one half of one percent of the net market price of the soybeans purchased, from producers by first purchasers of soybeans and from producers marketing soybeans from his or her own production to consumers. Credits would be provided to producers who contribute to Qualified State Soybean Boards. The assessment sections also outline the produre to be followed by collecting persons for the remittance of the assessments; establish a 2 percent per month late payment charge; and provide for refunds of assessments paid both prior to and subsequent to a continuance referendum.

Section 1220.228 of the proposal concerns the powers and duties of Qualified State Soybean Boards, who may collect and refund assessments and engage in promotion and research activities after meeting specified qualifications for certification by the United Soybean Board. Section 1220.229 would prohibit funds received under this program from influencing governmental action, with specified exceptions. Section 1220.230 would authorize the Board to receive, develop, and evaluate plans or projects for promotion, research, and consumer and industry information with respect to soybeans and soybean products. The Secretary would approve such plans or projects prior to their implementation.

Sections 1220.241–1220.243 concern reporting and bookkeeping requirements for persons subject to the order, and provide that all information obtained by the Board or the Department from books and reports required by the order would be kept confidential. Sections 1220.251–1220.256 concern termination of the order; personal liability of Board members, employees and agents; handling of intellectual property arising from funds collected by the Board; amendments to the order; and separability of order provisions.

List of subjects in 7 CFR part 1220

Administrative practice and procedure, Advertising, Agriculture research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

The proposal, set forth below, has not received the approval of the Secretary of Agriculture.

1. It is hereby proposed by the American Soybean Association that title 7 of the Code of Federal Regulations be amended by adding part 1220 to read as follows:

PART 1220—SOYBEAN PROMOTION AND RESEARCH

Subpart A—Soybean Promotion and Research Order

Sec.

Definition

1220.101 Act.
1220.102 Board.
1220.103 Commerce.
1220.104 Committee.
1220.105 Consumer information.
1220.106 Continuance referendum.
1220.107 Cooperator organization.
1220.108 Department.
1220.109 Eligible organization.
1220.110 National nonprofit producer-governed organization.
1220.111 First purchaser.
1220.112 Fiscal period.
1220.113 Industry information.
1220.114 Marketing.
1220.115 Net market price.
1220.116 Part and subpart.
1220.117 Plans and projects.
1220.118 Person.
1220.119 Producer.
1220.120 Producer poll.
1220.121 Promotion.
1220.122 Qualified State Soybean Board.
1220.123 Referendum.
1220.124 Refund referendum.
1220.125 Research.
1220.126 Secretary.
1220.127 Soybean products.
1220.128 Soybeans.
1220.129 State and United States.
1220.130 Unit.

United Soybean Board

1220.201 Establishment and membership.
1220.202 Term of office.
1220.203 Nominations.
1220.204 Appointment.
1220.205 Nominee's agreement to serve.
1220.206 Vacancies.
1220.207 Alternate Directors.
1220.208 Petition for removal of member.
1220.209 Procedure.
1220.210 Compensation and reimbursement.
1220.211 Powers of the Board.
1220.212 Duties.

Soybean Program Coordinating Committee

1220.213 Establishment and membership.
1220.214 Term of office.
1220.215 Vacancies.
1220.216 Procedure.
1220.217 Compensation and reimbursement.
1220.218 Officers of the Committee.
1220.219 Powers of the Committee.
1220.220 Duties of the Committee.

Expenses and Assessment

1220.222 Expenses.
1220.223 Assessments.
1220.224 Refund of assessments paid prior to continuance referendum.
1220.225 Procedure for obtaining a refund of assessments paid prior to continuance referendum.
1220.226 Refund of assessments paid after the conduct of the continuance referendum.

1220.227 Procedure for obtaining a refund of assessments paid after the conduct of the continuance referendum.
1220.228 Qualified State Soybean Boards.
1220.229 Influencing governmental action.
1220.230 Promotion, research, consumer information, and industry information.

Reports, Books, and Records

1220.241 Reports.
1220.242 Books and records.
1220.243 Confidential treatment.

Miscellaneous

1220.251 Proceedings after termination.
1220.252 Effect of termination or amendment.
1220.253 Personal liability.
1220.254 Patents, copyrights, inventions, and publications.
1220.255 Amendments.
1220.256 Separability.

Authority: Title XIX, Subtitle E, Pub. L. No 101–624, 104 Stat. 3359 (7 U.S.C. 6301–6311).

Subpart A—Soybean Promotion and Research Order

Definitions

§ 1220.101 Act.

The term *Act* means the Soybean Promotion, Research, and Consumer Information Act of 1990, subtitle E of title XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1220.102 Board.

The term *Board* means the United Soybean Board established under § 1220.201 of this subpart.

§ 1220.103 Commerce.

The term *commerce* means interstate, foreign, or intrastate commerce.

§ 1220.104 Committee.

The term *Committee* means the Soybean Program Coordinating Committee established under § 1220.213 of this subpart.

§ 1220.105 Consumer information.

The term *consumer information* means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

§ 1220.106 Continuance referendum.

The term *continuance referendum* shall mean that initial referendum required to be conducted pursuant to section 1970(a) of the Act to determine if a majority of producers support the continued operation of this subpart.

§ 1220.107 Cooperator organization.

The term *Cooperator organization* means the American Soybean Association, or any successor organization to the American Soybean Association, which conducts foreign market development activities on behalf of soybean producers.

§ 1220.108 Department.

Department means the United States Department of Agriculture.

§ 1220.109 Eligible organization.

The term *eligible organization* means any organization which has been certified by the Secretary pursuant to § 1220.203 of this subpart as being eligible to submit nominations for initial membership on the Board.

§ 1220.110 National nonprofit producer-governed organization.

The term *national nonprofit producer-governed organization* means an organization that—

(a) Is a nonprofit organization pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Is governed by a board of directors of soybean producers representing the soybean producers on a national basis;

§ 1220.111 First purchaser.

The term *first purchaser* means—

(a) Except as provided in paragraph (b) of this section, any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Federal price support loan program, the Commodity Credit Corporation.

§ 1220.112 Fiscal period.

The term *fiscal period* means the calendar year or such other annual period as the Board may determine.

§ 1220.113 Industry information.

The term *industry information* means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

§ 1220.114 Marketing.

The term *marketing* means the sale or other disposition of soybeans or soybean products in any channel of commerce.

§ 1220.115 Net market price.

The term *net market price* means—

(a) Except as provided in paragraph (b) of this section, the sales price, or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the secretary; or

(b) For soybeans pledged as collateral for a loan issued under any price support loan program, administered by the Commodity Credit Corporation, the principal amount of the loan.

§ 1220.116 Part and subpart.

The terms *Part* and *Subpart* mean this Soybean Promotion and Research Order and all rules and regualtions issued pursuant to the Act.

§ 1220.117 Plans and projects.

Plans and projects means promotion, research, consumer information, and industry information plans, studies, or projects pursuant to § 1220.230

1220.118 Person.

The term *person* means any individual, group of indviduals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.119 Producer.

The term *producer* means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

§ 1220.120 Producer poll.

The term *producer poll* shall mean polls of producers conducted pursuant to section 1969(1)(2)(F)(iii) of the Act to determine if producers support the conduct of a referendum on the continuance of authority to pay producers refunds.

§ 1220.121 Promotion.

The term *promotion* means any action, including paid advertising, techical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets, and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers government officials, or other information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

§ 1220.122 Qualified State Soybean Board.

The term *Qualified State Soybean Board* means a State soybean promotion entity that is authorized by State law and elects to be the Qualified State Soybean Board for the State in which it operates pursuant to § 1220.228(a)(1). If no such entity exists in a State, the term "Qualified State Soybean Board" means a soybean producer-governed entity—

(a) That is organized and operating within a State;

(b) That receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information program; and

(c) That meets criteria established by the Board relating to the qualifications of such entity to perform duties under the order, as determined by the Board, and is certified by the Board under § 1220.228(a)(2).

§ 1220.123 Referendum.

The term *Referendum* means a referendum, other than referenda conducted pursuant to § 1220.106 and 1220.124, to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers voting.

1220.124 Refund referendum.

The term *refund referendum* shall mean referenda conducted pursuant to section 1969(1)(2)(F)(iv) of the Act relating to continuance of authority for producers to receive refunds of assessments.

§ 1220.125 Research.

The term *research* means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to domestic and export sales of soybeans and soybean products.

§ 1220.126 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 1220.127 Soybean products.

The term *soybean products* means products produced in whole or in part from soybeans or soybean byproducts.

§ 1220.128 Soybeans.

The term *soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.129 State and United States.

The terms *State* and *United States* include the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.130 Unit.

The term *unit* shall mean each State, or group of States, which is represented on the Board.

United Soybean Board

§ 1220.201 Establishment and membership.

(a) There is hereby established a United Soybean Board of 63 members. For purposes of nominating and appointing producers to the Board, the United States shall be divided into 31 geographic units and the number of Board members from each unit, subject to paragraphs (d), (e), and (f) of this section, shall be as follows:

Unit	No. of directors
Illinois	4
Iowa	4
Minnesota	3
Indiana	3
Missouri	3
Ohio	3
Arkansas	3
Nebraska	3
Mississippi	2
Kansas	2
Louisiana	2
South Dakota	2
Tennessee	2
North Carolina	2
Kentucky	2
Michigan	2
Georgia	2
South Carolina	2
Virginia	2
Alabama	1
North Dakota	1
Wisconsin	1
Maryland	1
Delaware	1
Texas	1
Pennsylvania	1
Oklahoma	1
Florida	1
New Jersey	1
Eastern Region	1
New York	
Massachusetts	
Connecticut	
Rhode Island	
Vermont	
New Hampshire	
Maine	
West Virginia	
District of Columbia	
Puerto Rico	
Western Region	1
Montana	
Wyoming	
Colorado	
New Mexico	
Idaho	
Utah	
Arizona	
Washington	
Oregon	
Nevada	
California	
Hawaii	
Alaska	

(b) The Board shall be composed of soybean producers appointed by the Secretary from nominations submitted pursuant to § 1220.208. A soybean producer may only be nominated to represent the unit in which that soybean producer is a resident or producer.

(c) At the end of each three (3) year period, the Board shall review the geographic distribution of soybean production volume throughout the United States and may recommend to the Secretary a modification of paragraph (e) of this section, to best reflect the geographic distribution of soybean production volume in the United States. The Secretary may amend this subpart to make the changes recommended by the Board in levels of production used to determine per unit representation. Any such amendment to this subpart shall not be subject to a referendum of producers. A unit may not, as a result of any modifications under this subsection, lose Board seats to which it is entitled at the time this subpart is initially issued unless its average annual production, as determined under paragraph (e)(7) of this section, declines below the levels required for representation, as specified in paragraph (e)(1)–(5) of this section.

(d) At the end of each three (3) year period, the Secretary shall review the volume of production (minus the volume of production for which refunds have been paid) of each unit provided representation under paragraph (a) of this section, and shall adjust the boundaries of any unit and the number of Board members from each such unit to conform with the criteria set out in paragraph (e)(1)–(5) of this section.

(e) The following formula will be used to determine the number of directors for each unit who shall serve on the Board:

(1)(i) Except as provided in paragraph (e)(1)(ii) of this section, each State will be considered as a separate unit.

(ii) States which do not have annual average soybean production equal to or greater than three million (3,000,000) bushels shall be grouped, to the extent practicable, into geographically contiguous units each of which, to the extent practicable, have a combined annual soybean production level which is equal to or greater than three million (3,000,000) bushels and each such unit shall be entitled to at least one representative on the Board.

(2) Each unit that has an annual average soybean production of less than fifteen million (15,000,000) bushels shall be entitled to one representative on the Board.

(3) Each unit which has an annual average soybean production of fifteen million (15,000,000) or more bushels but less than seventy million (70,000,000)

bushels shall be entitled to two (2) representatives on the Board.

(4) Each unit which has an annual average soybean production of seventy million (70,000,000) or more bushels but less than two hundred million (200,000,000) bushels shall be entitled to three (3) representatives on the Board.

(5) Each unit which has an annual average soybean production of two hundred million (200,000,000) bushels or more shall be entitled to four (4) representatives on the Board.

(6) No unit shall be represented on the Board by more than four representatives during any term of the Board.

(7) For the purposes of this section, average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the year in which production was the highest and the year in which production was the lowest.

(f) The Secretary shall appoint three additional producers to serve as members of the initial Board for a single term of three years. Such producers shall be appointed from the following States to ensure that such States have representation based on the relative contribution made by such States to the national soybean promotion and research effort:

Kansas
Mississippi
Wisconsin

(g) In determining the volume of soybeans produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 1220.241 and data published by the Department.

§ 1220.202 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve, proportionately, for terms of one, two, and three years.

(b) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(c) No member shall serve more than three consecutive three year terms in such capacity.

§ 1220.203 Nominations.

All nominations for appointments to the Board under § 1220.204 shall be made in the following manner:

(a) After the issuance of this subpart by the Secretary, nominations shall be obtained by the Secretary as specified in paragraphs (a), (b), and (c) of this section from Qualified State Soybean Boards or for initial Board nominations, eligible organizations deemed qualified to nominate pursuant to paragraph (f) of this section. A Qualified State Soybean Board, or for initial Board nominations, an eligible organization, shall only submit nominations for positions on the Board representing the unit, as established under § 1220.201, in which such Qualified State Soybean Board operates.

(b) If the Secretary determines that a unit is not represented by a Qualified State Soybean Board, or for initial board nominations, an eligible organization, then the Secretary may solicit nominations from organizations which represent producers in that unit, and producers residing in that unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary.

(c) Where there is more than one State comprising a unit, the Secretary shall take into consideration the nominations submitted by Qualified State Soybean Boards, or for initial Board nominations, eligible organizations, within the unit. A caucus may be held in such units for the purposes of collectively submitting nominations to the Secretary. The Secretary shall consider the proportional levels of production in each State comprising the unit when appointing members to the Board representing that unit.

(d) At least two nominations shall be submitted for each position to be filled.

(e) Nominations may be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. Should the Secretary reject any nomination submitted and there is insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a) or (b) of this section, whichever provision is applicable for such unit.

(f) Any organization authorized pursuant to State law to collect assessments from producers may notify the Secretary of the organization's intent to nominate members to the initial Board for the State or unit, as established under § 1220.201, in which such organization operates and is authorized by State law. Such eligibility shall be based only upon the criteria established pursuant to § 1220.228(a)(1). There shall only be one organization authorized per State pursuant to this section to submit nominations to the initial Board. If no such entity exists in a State, any organization meeting those requirements of § 1220.228(a)(2) may request eligibility to submit nominations.

§ 1220.204 Appointment.

From the nominations made pursuant to § 1220.203, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1220.201.

§ 1220.205 Nominee's appointment to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any soybean promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1220.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request nominations for a successor pursuant to § 1220.203, and such successor shall be appointed pursuant to § 1220.204.

§ 1220.207 Alternate Directors.

(a) Following the annual meeting of the Board during which new members are seated on the Board, the Secretary may solicit, pursuant to the procedures of § 1220.203, nominations for alternate members of the Board.

(b) The Secretary shall appoint a minimum of one and a maximum of two alternate members of the Board, for each unit pursuant to §§ 1220.204 and 1220.205.

(c) Alternate members of the Board may attend meetings of the Board as a voting member upon the following circumstances:

(1) A member of the Board for the unit which the alternate represents is absent; and

(2) Such member, or in the case of incapacitation or death of the member, a relative, has contacted the appropriate officer of the Board to inform such officer of such absence;

(d) An alternate member of the Board, when attending Board meetings in an official capacity, shall have the rights, duties and obligations of a Board member.

§ 1220.208 Petition for removal of member.

(a) If any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to the Secretary that the person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this Part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

(b) A Qualified State Soybean Board may request the Secretary, by written petition, to remove the member representing the unit in which the Qualified State Soybean Board operates. Such petition shall state the reasons for which removal is requested, and shall be approved by the governing body of the Qualified State Soybean Board.

§ 1220.209 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b)(1) Except for roll call votes, each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a simple majority of those voting.

(2)(i) If a member requests a roll call vote, except as provided in paragraph (b)(2)(ii)(A) of this section, each unit, as established under § 1220.201, shall cast votes based only on the unit's percentage of the annual assessments remitted to the Board (minus refunds) under § 1220.223.

(ii)(A) During the first fiscal year of the Board, the percentage used to determine the votes given to a unit will be based on annual average soybean production of the three previous years. If a unit is represented by more than one member, each member representing the unit shall receive an equal percentage of the votes allocated to the unit.

(B) During the second and third year this subpart is in effect, the percentage used to determine the votes given to a unit will be based upon averaging the unit's percentage of annual assessment remitted to the Board (minus refunds).

(iii) Should a member representing a unit not be present, then the other members representing such unit shall vote, on an equal basis if there is more than one member representing the unit present, the number of votes which the absent member would have been entitled to vote.

(iv) A motion will carry on a roll call vote if approved by both a simple majority of all votes cast and a simple majority of all units voting.

(3) A member may not cast votes by proxy.

(c) In lieu of a properly convened meeting and, when in the opinion of the chairman of the Board such action is considered necessary, the Board may take action upon the concurring votes of a majority of its members, or if a roll call vote is requested, a simple majority of all votes cast and a simple majority of all units voting by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a regular or special meeting of the Board.

(d) On or after the end of the three-year period beginning on the effective date of this subpart, the Board may recommend to the Secretary changes in the voting procedures of the Board described in paragraph (b) of this section. The Secretary may amend this subpart to make the changes recommended by the Board. Such changes in this subpart shall not be the subject of a referendum of producers.

§ 1220.210 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.211 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart

(e) To disseminate information to producers or producer organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To delegate responsibilities relating to budget and program development to the Committee as provided in § 1220.219.

(g) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To contract with Qualified State Soybean Boards to implement plans or projects;

(i) To recommend to the Secretary amendments to this subpart; and

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1220.223 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1220.212 Duties.

The Board shall have the following duties:

(a) To meet not less than four times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

(b) To organize and select from among its members a chairperson, vice chairperson, a treasurer and such other officers as may be necessary.

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board.

(d) To employ or contract for such persons to perform administrative functions as it may deem necessary and define the duties and determine the compensation of each.

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information, and industry information plans or projects.

(f) To prepare, and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein.

(g) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to

BEST COPY AVAILABLE

the receipt and disbursement of all funds entrusted to it.

(h) With the approval of the Secretary, to enter into contracts or agreements with appropriate parties, including national nonprofit producer-governed organizations, for the development and conduct of activities authorized under § 1220.230 of this subpart and for the payment of the cost thereof with funds collected through assessment pursuant to § 1220.223. *Provided,* that the Board shall contract with a national nonprofit producer-governed organization to administer all projects within the program areas which are subject to the contract or agreement. Any such contract or agreement shall provide that:

(1) The contractor shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Board and Secretary may audit the records of the contracting party periodically.

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended.

(j) To establish escrow accounts for the payment of refunds requested pursuant to § 1220.226 and 1220.227 for the periods established below, and to deposit into such escrow accounts ten percent (10%) of the total amount of assessments collected from units in which a Qualified State Soybean Board does not operate for the applicable period if required by the Secretary:

Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producer poll are released;

Period 2—Beginning on the day after the results of the producer poll are released and ending on the date the results of the refund referendum are released.

Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid: *Provided,* That a separate escrow account shall be established for each fiscal year elapsing during Period 3.

(k) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary.

(l) To give the Secretary the same notice of meeting of the Board and committees as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings.

(m) To submit to the Secretary such information pursuant to this subpart as may be requested.

(n) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybean and soybean products produced in the United States.

Soybean Program Coordinating Committee

§ 1220.213 Establishment and membership.

(a) The Board may establish a Soybean Program Coordinating Committee to assist in the administration of this subpart. The Committee shall consist of 15 members. The Committee shall be composed of 10 Board members elected by the Board and 5 producers elected by the Cooperator Organization.

(b) Board representation on the Committee shall consist of the chairperson, and treasurer of the Board, and eight representatives of the Board who will be duly elected by the Board to serve on the Committee. The eight representatives to the Committee elected by the Board shall, to the extent practicable, reflect the geographic and unit distribution of soybean production.

(c) Cooperative Organization representation on the Committee shall consist of five members elected by the Cooperator Organization Board of Directors. The Cooperator Organization shall submit to the Secretary the names of the representatives elected by the Cooperator Organization to serve on the Committee and the manner in which such election was held and that such representatives are producers. The prospective Cooperator Organization representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any soybean entity or with any organization that has or is being considered for a contractual relationship with the Board. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1220.214 Term of Office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1220.215 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Cooperator Organization, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to appoint representatives pursuant to § 1220.213 above.

§ 1220.216 Procedure.

(a) Attendance of at least 12 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds (2/3) of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than twelve of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action has been taken at a properly convened meeting of the Committee.

(c) A member may not cast votes by proxy.

§ 1220.217 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed by the Board for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.218 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1220.219 Powers of the Committee.

If approved by the Board, the Committee may have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Board regarding such proposals; and

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable.

§ 1220.220 Duties of the Committee.

If approved by the Board, the Committee may have the following duties:

(a) To meet and to organize;

(b) To prepare and submit to the Board for approval budgets on a fiscal period basis of proposed costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein;

(c) To give the Secretary the same notice of meetings of the Committee and its subcommittees in order that the Secretary, or the Secretary's representative, may attend such meetings;

(d) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(e) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

Expenses and Assessments

§ 1220.222 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, during any fiscal year, expenses incurred by the Board for administrative staff costs and their benefits shall not exceed 1% of the projected level of assessments, net of projected refunds, of the Board for that fiscal year. Such expenses shall be paid from assessments received pursuant to § 1220.223. The administrative expenses of the Board, including cost of administrative staff, shall not exceed 5% of the projected level of assessments, net of projected refunds, of the Board for current fiscal year.

(b) The Board shall reimburse the Secretary, from assessments received pursuant to § 1220.223, for administrative costs incurred after an order has been submitted to the Department pursuant to sections 1968(b) of the Act; *Provided,* That the Board shall only be required to reimburse the Secretary for one-half (50%) of the costs incurred by the Secretary to conduct the refund referendum relating to continuation of authority to pay refunds.

(c) The Board shall authorize a credit to Qualified State Soybean Boards of up to 5 percent of the amount remitted to the Board pursuant to §§ 1220.223 and 1220.228 to offset collection and compliance costs relating to such assessments and any fees or expenses paid by such Qualified State Soybean Board to first purchasers or State agencies pursuant to State law.

§ 1220.223 Assessments.

(a)(1) Except as prescribed by regulations approved by the Secretary, each person purchasing from, and making payment to, a producer for soybeans produced by such producer and marketed for commercial use shall be a first purchaser and shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the rate of one half of one percent (0.5%) of the net market price of the soybeans purchased. Each first purchaser shall remit such assessment to the Board or to a Qualified State Soybean Board, as provided in paragraph (a)(5) of this section. For the purpose of this section, purchases from a producer of soybeans or contracts with a producer for production of soybeans for livestock feed or any other application shall constitute marketing for commercial use.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a Qualified State Soybean Board or the Board, as provided in paragraph (a)(5) of this section, an assessment on such soybeans or soybean products at a rate of one half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof.

(3) In determining the assessment due from each producer under paragraph (a)(1) or (a)(2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one quarter of one percent of the net market price of the soybeans assessed.

(4) In order for a producer to receive the credit provided for in paragraph (a)(3) of this section, the Qualified State Soybean Board or the first purchaser must establish to the satisfaction of the Board that the producer has contributed to a Qualified States Soybean Board.

(5)(i) If the soybeans, for which an assessment is paid, were grown in a State other than the State which is the situs of the first purchaser, the first purchaser that collects the assessment shall remit the assessment to the Qualified State Soybean Board operating in the State in which the soybeans were grown. Should no such Qualified State Soybean Board exist in such State, then the assessments shall be remitted to the Board. However, the Board, with the approval of the Secretary, may authorize Qualified State Soybean Boards to propose modifications to the foregoing "State of Origin" rule to ensure effective coordination of assessment collections between qualified State soybean boards.

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation, the Commodity Credit Corporation shall deduct the assessment due pursuant to paragraph (a)(1) of this section, based upon the established loan rate, prior to the loan proceeds being disbursed to the producer. The Commodity Credit Corporation shall remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were produced. Should no Qualified State Soybean Board exist in such State, then such assessment shall be paid to the Board.

(B) Should a producer repay a loan upon which soybeans were pledged, and for which as assessment has been remitted by the Commodity Credit Corporation, the Commodity Credit Corporation shall notify the Qualified State Soybean Board which had received the assessment, or the Board if no Qualified State Soybean Board exists in such State, that the producer has repaid all or a portion of the loan on which the soybeans were previously assessed. The Qualified State Soybean Board, or the Board if no Qualified State Soybean Board exists in such State, shall reimburse to the producer an amount equal to the level of assessment collected and remitted by the Commodity Credit Corporation at loan origination.

(C) Should a producer market soybeans which have been subject to reimbursement pursuant to paragraph (a)(5)(ii)(B) of this section, the first purchaser shall collect and remit the assessment due pursuant to paragraph (a)(1) of this section, or the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

(iii) Qualified State Soybean Boards and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing soybeans in interstate commerce are required to pay only one assessment per bushel of soybeans and collections are adjusted among States on a mutually agreeable basis.

(b) The collection of assessments pursuant to paragraph (a) of this section, shall commence on all soybeans or soybean products marketed for commercial sale on and after the date assessments are required to be paid pursuant to the Secretary and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board, and to hold such assessments until the Board is constituted, then remit such assessments to the Board.

(c)(1) Each person responsible for the collection of assessments under paragraph (a) of this section, shall collect and remit the amounts collected from the assessments to the Board or a Qualified State Soybean Board on a monthly basis or as required by the State law, but no less than quarterly.

(2) Any unpaid assessments due the Board or a Qualified State Soybean board from a person responsible for remitting assessments to the Board or a Qualified State Soybean Board pursuant to paragraph (a) of this section, shall be increased two percent (2%) each month beginning with the day following the date such assessments were due under this subpart. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(3) The amounts payable pursuant to this section shall be computed monthly on unpaid assessments and shall include any unpaid late charges previously applied pursuant to this section.

(4) For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board or Qualified State Soybean Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(d)(1) Prior to the conduct of the initial referendum relating to continuance of the operation of this subpart, pursuant to procedures approved by the Secretary, the Board shall establish the average amount of assessments collected by each Qualified State Soybean Board during the period 1984 through 1988, excluding the year in which such assessments were the highest and lowest.

(2) The Board shall ensure, by the issuance of appropriate credits, that each Qualified State Soybean Board retains annually, prior to the continuance referendum, an amount equal to or greater than such Qualified State Soybean Boards average annual level of assessments as determined pursuant to paragraph (d)(1) of this section.

(3) Notwithstanding the provisions of paragraph (d)(2) of this section, credits issued pursuant to this subsection shall not exceed the level of assessments remitted to the Board pursuant to paragraph (a) of this section, from such State.

(e) Following the continuance referendum, the Board pursuant to procedures approved by the Secretary, shall ensure that each Qualified State Soybean Board retains an amount equal to 1 cent multiplied by the average volume of bushels produced in the State in the prior five years (excluding the highest and lowest years).

§ 1220.224 Refund of assessments paid prior to continuance referendum.

(a) Any producer who, prior to the date of the continuance referendum, pays an assessment to the Board, or who contributes an assessment prior to the continuance referendum to a Qualified State Soybean Board, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this part, shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board, or the Qualified State Soybean Board to which the producer paid the assessment for which a refund is sought, that such producer paid the assessment.

(b) Contributions by a producer to a Qualified State Soybean Board for which the producer has received credit pursuant to § 1220.223(a)(3) shall not be refunded pursuant to this subpart unless:

(1) The Qualified State Soybean Board is authorized or required to pay refunds; and

(2) The producer has requested a refund from the Qualified State Soybean Board in compliance with that State's procedure for refund or, in the absence of State procedures for refunds, in compliance with the procedures for refunds described in § 1220.225.

§ 1220.225 Procedure for obtaining a refund of assessments paid prior to continuance referendum.

(a) Any producer requesting a refund of an assessment paid prior to the continuance referendum shall mail a request for a refund to the Qualified State Soybean Board in the State in which the producer is located or if there is no Qualified State Soybean Board in the State in which the producer is located to the Board.

(b)(1) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum who resides in a State in which a Qualified State Soybean Board operates shall submit such request in accordance with the State law or regulations authorizing the payment of refunds in that State.

(2) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum who resides in a State which has a Qualified State Soybean Board which is not authorized by State law, or a State which does have a Qualified State Soybean Board operating in such State, shall submit such request in accordance with the procedure provided in paragraph (c) of this section.

(c) Each producer who pays an assessment pursuant to this subpart during the period prior to the continuance referendum may obtain a refund of such assessments only by following the procedures prescribed by State law or regulations in the State in which the producer resides. If a Qualified State Soybean Board does not exist in such State, or the Qualified State Soybean Board in such State is not established by State law, then such producer must follow the procedures prescribed in this subsection and any regulations prescribed by the Board and approved by the Secretary.

(1) Any producer requesting a refund of an assessment paid prior to the date of the continuance referendum shall mail a request for a refund to a Qualified State Soybean Board or the Board within 90 days from the date the assessments were due from such producer or that time period provided by State law. The request shall show—

(i) The producers name and address;

(ii) First purchaser's name and address;

(iii) Number of bushels of soybeans, or its equivalent on which a refund is requested;

(iv) Net market value of each bushel of soybeans upon which a refund is requested;

(v) Total amount of refund requested;

(vi) Date or inclusive dates on which assessments were paid;

(vii) Certification that the producer did not collect the assessment from another producer, and

(viii) The producer's signature or properly witnessed mark.

(2) The invoice or accounting given to the producer by the first purchaser or a copy thereof, or such other evidence deemed satisfactory by the Board or Qualified State Soybean Board shall accompany the producer's refund request.

(3) The Board shall pay refund requests within 60 days of the date of receipt of a proper request for refund.

§ 1220.226 Refund of assessments paid after the conduct of the continuance referendum.

(a) Any producer who pays an assessment to the Board after the date the results of the continuance referendum are released, or who contributes an assessment to a Qualified State Soybean Board after the date the results of the continuance referendum are released, under authority of the Act and this subpart, and who is not in favor of supporting the promotion and research program as provided for in this part shall have the right to demand and receive from the Board or the Qualified State Soybean Board subject to paragraph (b) of this section, a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board, or the Qualified State Soybean Board to which the producer paid the assessment for which a refund is sought, that such producer paid the assessment.

(b) Contributions by a producer to a Qualified State Soybean Board for which the producer has received credit pursuant to § 1220.223(a)(3) of this subpart shall not be refunded pursuant to this subpart unless—

(1) The Qualified State Soybean Board is authorized or required to pay refunds; and

(2) The producer has requested a refund from the Qualified State Soybean Board in compliance with the State's procedure for refund or, in the absence of State procedures for refunds, in compliance with the procedures for refunds described in § 1220.227.

§ 1220.227 Procedure for obtaining a refund of assessments paid after the conduct of the continuance referendum.

(a) Any producer requesting a refund of an assessment paid after the date the results of the continuance referendum are released shall mail a request for a refund to the Qualified State Soybean Board in the State in which the producer is located or, if there is no Qualified State Soybean Board in State in which the producer is located, to the Board.

(b)(1) Any producer requesting a refund by a producer who resides in a State in which a Qualified State Soybean Board operates shall submit such request in accordance with the State law or regulations authorizing the payment of refunds in that State.

(2) Any producer requesting a refund from a producer who resides in a State which has a Qualified State Soybean Board which is not authorized by State law, or a State which does not have a Qualified State Soybean Board operating in such State shall submit such request in accordance with the procedure provided in paragraph (c) of this section.

(c) Each producer who pays an assessment pursuant to the Act and this subpart after the date the results of the continuance referendum are released may obtain a refund of such assessment only by following the procedures prescribed by State law or resolution in the State in which the producer resides. If no Qualified State Soybean Board exists in that State, or the Qualified State Soybean Board in such State is not established by State law, then such producer must follow the procedures prescribed in this section and any regulations prescribed by the Board and approved by the Secretary.

(1) Any producer requesting a refund of an assessment paid after the date of the results of the continuance referendum are released shall mail a request for a refund of a Qualified State Soybean Board or the Board within 90 days from the date the assessments were due from such producer or that time period required by State law or regulation. The refund request shall show—

(i) The producers name and address;

(ii) First purchaser's name and address;

(iii) Number of bushels of soybeans, or its equivalent on which a refund is requested;

(iv) Net market value of each bushel of soybeans upon which a refund is requested;

(v) Total amount of refund requested;

(vi) Date or inclusive dates on which assessments were paid;

(vii) Certification that the producer did not collect the assessment from another producer, and

(viii) The producer's signature or properly witnessed mark.

(2) The invoice or accounting given to the producer by the first purchaser or a copy thereof, or such other evidence deemed satisfactory by the Board or the Qualified State Soybean Board shall accompany the producer's refund request.

(d) Payment of refunds of assessments paid after the results of the continuance referendum are released. The Board shall pay requests for refunds of assessments paid after the date the results of the continuance referendum are released pursuant to the following provisions:

(1) At the end of fiscal year of the Board in which the results of the producers poll are released, the Board, or the Qualified State Soybean Boards, shall pay refunds to producers of assessments paid during the period beginning on the date the results of the continuance referendum are released and ending on the date the results of the producer poll are released from the escrow accounts established pursuant to § 1220.212 or § 1220.228.

(2) If the Secretary determines that a refund referendum shall be conducted, at the end of the fiscal year in which the results of the refund referendum are released, the Board, or the Qualified State Soybean Board, shall pay requested refunds to producers of assessments paid following the date the results of the producer poll are released through the period ending on the date the results of the refund referendum are released from escrow accounts established pursuant to § 1220.212 or § 1220.228.

(3) If the Secretary determines that, as a result of the refund referendum, authority exists to continue to pay refunds to producers of assessments paid following the refund referendum, at the end of the fiscal year in which the results of the refund referendum are released, and each succeeding fiscal year during which authority to pay refunds exists, the Board, or the Qualified State Soybean Council shall pay refunds requested of assessments paid following the date the results of the refund referendum are released during that fiscal year.

(4) Should requests for refunds of assessments during the period established in paragraph (d) (1), (2), or (3) of this section, exceed the level of funds available for the payment of such requests, the Board, or the Qualified State Soybean Board, shall pro rate the amount of such funds from the escrow account of the Board for such unit, or by the Qualified State Soybean Board.

(8) Such refunds shall be paid within 120 days of the end of the applicable fiscal year.

§ 1220.228 Qualified State Soybean Boards.

(a) (1) Any soybean promotion entity that is authorized by State statute to collect assessments required by State law from soybean producers may notify the Board of its election to be the Qualified State Soybean Board for the State in which it operates so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organization. Only one such entity may make such election or be qualified pursuant to paragraph (a)(2) of this section. Such entity, upon making such election, agrees to the following:

(i) To conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(ii) Provide a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(iii) Collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(iv) Remit to the Board each assessment paid and remitted to it, minus authorized credits issued pursuant to § 1220.222(c) and credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(v)(A) If the entity is authorized or required to pay refunds to producers, any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

(B) If required by the Secretary, to pay refunds of assessments paid following the date of the continuance referendum pursuant to §§ 1220.226 and 1220.227.

(vi) Establish escrow accounts for the payment of refunds requested pursuant to §§ 1220.226 and 1220.227 for the periods established below and to deposit into such escrow accounts ten percent (10%) of the total amount of assessments collected for the applicable period if required by the Secretary:

Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producer poll are released;

Period 2—Beginning on the day after the results of the producer poll are released and ending on the date the results of the refund referendum are released;

Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid, *provided* that a separate escrow account shall be established for each fiscal year elapsing during Period 3.

Interest from the escrow accounts shall accrue to the Qualified State Soybean Board to be used for authorized activities.

(vii) Furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(viii) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(ix)(A) Except as otherwise provided in paragraph (a)(1)(ix)(B) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(B) The prohibition in paragraph (a)(1)(ix)(A) of this section, shall not apply to—

(1) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research consumer information, and industry information under the order; or

(2) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

(3) The development and recommendation of amendments to this subpart.

(2) If no entity elects to serve as a Qualified State Soybean Board within a State pursuant to paragraph (a)(1) of this section, any State soybean promotion entity that is organized and operating within a State, and receives assessments or contributions from producers and conducts soybean or soybean product promotion, research, consumer information, or industry information programs, may apply for certification as the qualified State soybean Board for such State so that producers may receive credit pursuant to § 1220.223 (a)(3) for contributions to such organizations. All provisions applicable of this subpart applicable to qualified State soybean Boards will be applicable to such entity. The Board shall review such applications for certification and shall make a determination as to the certification of each applicant.

(b) In order for the State soybean entity to be certified by the Board pursuant to paragraph (a)(2) of this section, as a Qualified State Soybean Board, the entity must:

(1) Conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such State entity will collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization will remit to the Board each assessment paid and remitted to it, minus credits issued pursuant to § 1220.222(c) and authorized credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines different date for remittance of assessments;

(5)(i) If the entity is authorized or required to pay refunds to producers, certify to the Board that any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

(ii) If required by the Secretary to pay refunds of assessments paid following the date of the continuance referendum pursuant to §§ 1220.226 and 1220.227.

(6) Certify to the Board that the entity will establish escrow accounts for the payment of refunds requested pursuant to §§ 1220.226 and 1220.227 for the periods established below and to deposit into such escrow accounts ten (10%) of the total amount of assessments collected for the applicable period if required by the Secretary:

Period 1—Beginning with the date the results of the continuance referendum are released and ending on the date the results of the producer poll are released;

Period 2—Beginning on the day after the results of the producer poll are released and ending on the date the results of the refund referendum are released;

Period 3—Beginning on the day after the results of the refund referendum are released and ending on the last day refunds of assessments are authorized to be paid, *provided* that a separate escrow account shall be established for each fiscal year elapsing during Period 3.

Interest from the escrow accounts shall accrue to the Qualified State Soybean Board to be used for authorized activities.

(7) Certify to the Board that it will furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(8) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(9)(i) Except as otherwise provided in paragraph (b)(9)(ii) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(ii) The prohibition in paragraph (b)(9)(i) of this section, shall not apply to—

(A) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research consumer information, and industry information under this subpart; or

(B) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(C) The development and recommendation of amendments to this subpart.

(c) Notwithstanding any provisions of this subpart, provided that activities are authorized pursuant to the Act and this subpart, the Board shall not have the authority to:

(1) Establish guidelines, regulations, or rules which would restrict or infringe upon a Qualified State Soybean Board's authority to determine administrative or program expenditure allocations or administrative or program implementation; and

(2) Direct Qualified State Soybean Boards to participate or not participate in program activities or implementation.

(d) The Board shall establish procedures, following public comment, which provide Qualified State Soybean Boards with a right to present information to the Board prior to any determinations relating to nonparticipation as a Qualified State Soybean Board following initial election or determination as a Qualified State Soybean Board.

§ 1220.229 Influencing governmental action.

(a) Except as otherwise provided in paragraph (b) of this section, funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply to—

(1) The development and recommendation of amendments to this subpart;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research consumer information, and industry information under this subpart; or

(3) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

§ 1220.230 Promotion, research, consumer information, and industry information.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans or projects authorized in this subpart. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate promotion, research, consumer information, and industry information activities with respect to soybean and soybean products; and

(2) The establishment and conduct of research, and studies with respect to the sale, distribution, marketing and utilization of soybean and soybean products and the creation of new products thereof, to the end that marketing and utilization of soybean and soybean products may be encouraged, expanded, improved or made more acceptable.

(b) Each plan or project described in paragraph (a) of this section, shall be periodically reviewed or evaluated by the Board to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information, and industry information. If it is found by the Board that any such plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project.

(c) No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product. In carrying out any plan or project funded by the Board described in paragraph (a) of this section, no preference shall be given to a brand or trade name of any soybean product without the approval of the Board.

Reports, Books, and Records

§ 1220.241 Reports.

Each person marketing soybeans, of that person's own production or soybean products produced from such soybeans, directly to consumers and each person making payment to producers and responsible for the collection of assessments under § 1220.223 shall be required to report to the Board periodically such information as may be required by the regulations recommended by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment.

(b) The amount of assessments remitted.

(c) The basis, if necessary, to show why the remittance is less than one-half percent (0.5%) of the net market price per bushel of soybeans purchased multiplied by the number of bushels purchased.

(d) The date any assessment was paid.

§ 1220.242 Books and records.

(a) Except as provided in paragraph (b) of this section, each person who is subject to this subpart, and other persons subject to § 1220.241, shall maintain and make available for inspection by the Board or Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued under this part, including such records

as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Any producer who plants less than 25 acres of soybeans annually and does not market such soybeans shall not be required to maintain books or records pursuant to this subpart.

§ 1220.243 Confidential treatment.

All information obtained from such books, records, or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this part shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and,

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

Miscellaneous

§ 1220.251 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including claims for any claims unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1220.212(h);

(3) From time to time account for all receipts and disbursements; and

(4) Deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct, and upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information plans or projects authorized pursuant to this subpart.

§ 1220.252 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or the Secretary, or of any person, with respect to any such violation.

§ 1220.253 Personal liability.

No member, employee or agent of the Board, including employees, agents or board members of Qualified State Soybean Boards, acting pursuant to authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgement, mistakes, or other acts of either commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1220.254 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1220.251 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds remitted to the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1220.255 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Board, or by any Qualified State Soybean Board recognized, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1220.256 Seperability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Done at Washington, D.C., February 19, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-4272 Filed 2-22-91; 8:45 am]

BILLING CODE 3410-02

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-50-AD]

Airworthiness Directives; Boeing Model 747-100, 747-200, 747-SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to revise an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747-100, 747-200, and 747-SP series airplanes, which would have required installation of a placard prohibiting operation under Category (CAT) III weather conditions. Operators would than have had the option of either modifying the flight computers, so as to restore the airplane to its full Category III capability or revising the Airplane Flight Manual (AFM) to indicate the highest level of autoland capability. That proposal was prompted by reports of degraded localizer tracking performance following an adverse localizer capture maneuver during automatic landings. This condition, if not corrected, could lead to a landing approach that is offset from the runway centerline. This action revises the proposed rule by revising the limitation to prohibit autoland operation under CAT II and CAT III weather minima.

DATES: Comments must be received no later than April 1, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Frank vanLeynseele, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2671. Mailing address: FAA, Transport Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-50-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires installation of a placard prohibiting operation under Category III weather conditions, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 30, 1989 (54 FR 22908). That action was prompted by reports of degraded localizer tracking performance during automatic landings.

Since publication of the NPRM, the FAA has determined that the limited visibility which is available when operating in Category II weather minima is not adequate to ensure safe recovery from the runway centerline offsets caused by the degraded localizer tracking of the autopilot.

A survey of airline operators of Boeing Model 747-100, 747-200, and 747-SP series airplanes, who routinely fly autoland approaches, has revealed several incidents of degraded localizer tracking each month. Research shows that this tracking problem can be brought about by any of the following: (1) Interception of the localizer beam at an angle greater than 45°; (2) capture at a distance less than 8 miles from runway threshold; (3) capture at speeds greater than Vref+40; (4) capture at an altitude less than 1,500 feet AGL; or (5) passing the outer marker when the airplane is not stabilized on localizer and glideslope. The volume of air traffic in Instrument Meteorological Conditions (IMC) has intensified and will continue to intensify; this will create conditions conducive to localizer tracking problems. Failure to properly capture and track the localizer, when in IMC weather conditions, could result in the airplane landing off of the runway surface.

Boeing has designed, and the FAA has certified, a new autoland computer, known as the Advanced Autoland Improvement Program (AAIP) Phase II, which has proven to work satisfactorily.

Since this condition may exist or develop on other airplanes of this same type design, an AD is proposed which would require operators to install a placard and incorporate AFM limitations advising the crew that autoland under CAT III and CAT II operations is prohibited. This proposal would provide operators with the option of modifying the flight computers to meet the AAIP Phase II standards, and thereby restoring the airplane to its full autoland capability/authority.

There are approximately 180 Model 747-100, 747-200, and 747-SP series airplanes of the affected design in the worldwide fleet. It is estimated that 33 airplanes of U.S. registry (including 4 U.S. Air Force airplanes) would be affected by this AD, that it would take approximately 1 manhour per airplane to install the (initial) required placard, and that the average labor cost will be $40 per manhour. The placard may be manufactured locally and the cost would be expected to be negligible. Based on these figures, the totaf initial cost impact of the AD on U.S. operators is estimated to be $1,320.

Should an operator choose to restore the Category II or III landing capability, it would require from 96 to 446 manhours per airplane, depending upon the autoland computer configuration, at an average labor charge of $40 per manhour. Based on these figures, the cost to U.S. operators would be between $3,840 and $17,840 per airplane.

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Models 747-100, 747-200, and 747-SP series airplanes; equipped with analog Landing Control and Logic Unit (LCLU) Boeing Part Number 60B00013-476 through -489, or Landing and Rollout Control Unit (LRCU), Boeing Part Number 60B00013-752 through -758; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent runway off-set errors and possible landing off the runway surface when flying in instrument meteorological conditions, accomplish the following:

A. Within 30 days after the effective date of this AD, accomplish the following:

1. Install a placard on the autopilot controller, stating: "Category II and III Operations Prohibited".

2. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by adding the statement: "Category II and III Operations Prohibited." This may be accomplished by inserting a copy of this AD in the AFM.

B. Restoration of the airplane to CAT II and/or III capability may be accomplished by modifying the autopilot to AAIP Phase II. Once the modification has been accomplished, the placard and AFM limitations required by paragraph A. of this AD may be removed.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

Issued in Renton, Washington, on February 6, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-3928 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-09-AD]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 125-800A series airplanes, which would require torquing the retaining nuts on the location plate on certain nose wheel assemblies. This proposal is prompted by reports of insufficiently torque-tightened retaining nuts on the location plate on certain nose wheel assemblies. This condition, if not corrected, could result in a loose wheel and possible loss of a wheel from the axle.

DATES: Comments must be received no later than April 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-09-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-09-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all BAe 125-800A series airplanes. There have been recent reports of insufficiently torque-tightened retaining nuts on the location plate on certain nose wheel assemblies. It was determined that the looseness of these nuts in the nose wheel assemblies on in-service airplanes was due to improper torquing procedures performed by the vendor during production. Additional coordination has now been accomplished between British Aerospace and the vendor to clarify the work functions that are to be accomplished by the vendor which will prevent future occurrences of this type. This condition, if not corrected, could result in a loose wheel and possible loss of a wheel from the axle.

British Aerospace has verified that this problem would have been corrected on any affected wheels on which the wheel halves have been disassembled and reassembled since delivery from the factory, since the location plate retaining nuts must be removed and replaced to accomplish that operation.

British Aerospace has issued Alert Service Bulletin 32-A228, dated August 15, 1990, which describes procedures for a one-time visual inspection to determine nose wheel serial numbers, and adjustment of the torque on the nose wheel location plate retaining nuts, if necessary. The British Aerospace Service Bulletin references Dunlop Alert Service Bulletin AH52339-A32-1046, dated July 27, 1990, for additional adjustment procedures. The United Kingdom CAA has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require a one-time visual inspection to determine the nose wheel serial numbers, and adjustment of the torque on the nose wheel location plate retaining nuts, if necessary, in accordance with the service bulletins previously described.

It is estimated that 106 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,840.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 125-800A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a wheel loosening from the axle and the possible loss of a wheel, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect all nose wheels for nose wheel serial numbers, listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339-A32-1046, dated July 27, 1990.

B. If the serial number on the nose wheel coincides with any of the serial numbers listed in paragraph 2.A.(2) of Dunlop Service Bulletin AH52339-A32-1046, dated July 27, 1990, retorque the location plate retaining nuts to 8 foot-pounds in accordance with the service bulletin. **Note:** If the airplane maintenance records indicate that the nose wheel assembly has had the wheel halves disassembled and reassembled since the airplane was new, the required retorquing will have been accomplished at that time, and no further action is required.

Warning: Do Not Adjust the Torque Tightened Main Hub Tie Bolts With the Tire Inflated.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4332 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-ANE-01]

Airworthiness Directives; General Electric Co. (GE) CF6-45/-50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain GE CF6-45/-50 series turbofan engines, which would require repetitive eddy current inspections to detect high pressure turbine (HPT) thermal shield cracking. The proposed AD also would require the removal of cracked HPT thermal shields and certain HPT disks. This proposal is prompted by four HPT stage one disks found cracked during inspection. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Comments must be received no later than April 4, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-01, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or may be delivered in duplicate to room 311 at the above address. Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification

Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ANE-01." The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been four HPT stage one disks found with dovetail slot bottom cracks. Certain HPT configurations are susceptible to thermal shield axial cracking. When the thermal shield crack propagates through either the forward or rear flange, and additional load is imparted to the HPT disks reducing their low cycle fatigue capability. This condition, if not corrected, could result in uncontained engine failure.

The FAA has reviewed and approved GE CF6-45/-50 Service Bulletin (SB) 72-879, Revision 6, dated October 30, 1990, which describe an eddy current inspection procedure to detect HPT thermal shield cracking.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would require repetitive eddy current inspections to detect HPT thermal shield cracking, in accordance with the service bulletin previously described. The proposed AD also would require the removal of cracked HPT thermal shields and certain HPT disks.

There are approximately 517 GE CF6-45, and -50 series engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 1 manhour per engine for each inspection, that each engine would require 10 inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $206,800.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Co.: Applies to General Electric Company (GE) CF6-45 and -50 series turbofan engines installed on, but not limited to, Airbus A300, Boeing 747, and McDonnell Douglas DC-10-15 and DC-10-30 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent uncontained engine failure, accomplish the following:

(a) Eddy current inspect affected high pressure turbine (HPT) thermal shields, Part Numbers (P/N) 9045M31P04, 9045M31P05, 9045M31P07, 9045M31P08, 9045M31P09, 9045M31P10, 9045M31P12, 9045M31P13, 9143M71P01, 9143M71P02, 9155M16P01, 9155M16P02, 9155M16P03, 9155M16P04, 9181M64P01, 9181M64P02, 9181M64P07, 9181M64P08, 9181M64P10, 9186M96P02, and 9186M96P03, in accordance with the Accomplishment Instructions contained in GE CF6-45/-50 Service Bulletin (SB) 72-879, Revision 6, dated October 30, 1990, as follows:

(1) Inspect prior to accumulating 800 cycles since last high pressure turbine (HPT) overhaul or 400 cycles in service after the effective date of this AD, whichever occurs later.

(2) Thereafter, reinspect at intervals not to exceed 400 cycles since last inspection.

(3) Remove cracked HPT thermal shields from service prior to further flight and replace with a serviceable part.

(b) For the purpose of this AD, an HPT overhaul is defined as the induction of the engine into a shop where the subsequent maintenance entails HPT disassembly.

(c) The eddy current inspection requirements of paragraph (a) of this AD are not applicable to engines incorporating an affected P/N thermal shield that has operated exclusively with an interstage seal, P/N 9315M16G14, 9315M16G15, or 9315M16G17, provided the owner or operator submits to their Airworthiness Inspector the configuration documentation substantiating that the affected thermal shield has never been operated with a P/N 9045M23G07, 9045M23G08, 9045M23G09, 9045M23G10, 9045M23G11, or 9045M23G12 interstage seal.

(d) Prior to further flight, remove from service HPT stage one disks which have operated in engines containing an HPT thermal shield cracked through its forward flange. These removed HPT stage one disks may not be returned to service.

(e) Prior to further flight, remove from service HPT stage two disks which have operated in engines containing an HPT thermal shield cracked through its rear flange. HPT stage two disks may be returned to service if no cracks are detected when inspected in accordance with Appendix I.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Appendix I

1. *Reference:* CF6-45/-50 Shop Manual Document No. GEK-50481.

2. *Accomplishment Instructions:* A. Clean, etch and fluorescent penetrant inspect (FPI) the high pressure turbine rotor (HPTR) stage two disk according to Chapter 72-53-04, *High Pressure Turbine Rotor Stage 2 Disk—Inspection*, paragraph 2, *Fluorescent—Penetrant Inspect Disk*, of the reference shop manual.

Note: The immersion ultrasonic inspection (Subtask 72-53-04-270-051) may be used in lieu of an FPI for the stage 2 disk dovetail serrations only.

B. Clean, etch and eddy current inspect (ECI) the HPTR stage two disk dovetail slot bottoms according to Chapter 72-53-04, *High Pressure Turbine Rotor Stage 2 Disk—Inspection*, paragraph 5, *Special Inspection of Dovetail Slot Bottoms*, of the reference shop manual.

Note: If ECI capability is not available, the disk must be recleaned in accordance with paragraph 2.A (starting with Subtask 72-53-04-140-051). The slot bottoms must then be fluorescent penetrant inspected in accordance with paragraph 2.D (Subtask 72-53-04-230-001-057) paying special attention to slot bottom corners.

Issued in Burlington, Massachusetts, on February 14, 1991.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4331 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-11-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which would requires shortening the existing ground/air lever spool spindle in the engine power controls to allow the ground/air lever to reset at a lower power lever setting. This proposal is prompted by reports which indicated that, in certain conditions, it is possible to achieve take-off power prior to the ground/air lever resetting. This condition, if not corrected, could result in the pilot inadvertently selecting propeller pitch settings below the flight idle setting while in flight, thereby adversely affecting airplane controllability.

DATES: Comments must be received no later than April 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-11-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-11-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Short Brothers Model SD3-60 series airplanes. There have been recent reports that, in certain conditions, it is possible to achieve take-off power prior to ground/air lever resetting. This condition, if no corrected, could result in the pilot inadvertently selecting propeller pitch settings below the flight idle setting while in flight, thereby adversely affecting airplane controllability.

Short Brothers has issued Service Bulletin SD360-76-11, dated October 1990, which describes procedures to modify the engine power controls, which includes shortening the existing ground/air lever spool spindle to allow the ground/air lever to reset at a lower power lever setting. The United Kingdom CAA has classified this service bulletin as mandatory. This service bulletin references Pratt and Whitney Service Bulletin No. 14017, Revision 1, dated August 16, 1989, for additional instructions.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the engine power controls, which includes shortening the existing ground/air lever spool spindle, in accordance with the service bulletin previously described.

It is estimated that 86 airplanes of U.S. registry would be affected by this AD, that it would take approximately 13 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $44,720.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers: Applies to Model SD3-60 series airplanes, equipped with PT6A-67R engines with Fuel Control Unit (FCU), Part Number (P/N) 3037319, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the pilot from inadvertently selecting propeller pitch settings below the flight idle setting while in flight, thereby adversely affecting airplane controllability, accomplish the following:

A. Shorten the existing ground/air lever spool spindle P/N SD3-47-1130xA, in accordance with Shorts Service Bulletin SD360-76-11, dated October 1990.

Note: This service bulletin references Pratt and Whitney Service Bulletin No. 14017, Revision 1, dated August 16, 1988, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4335 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-236-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes Equipped With Auxiliary Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes equipped with an aft auxiliary fuel tank, which would require the deactivation of the auxiliary fuel system or accomplishment of certain inspections and modifications. This proposal is prompted by reports of uncontrollable fuel leakage into the aft cargo bay on Model 727 airplanes, due to delamination and/or cracks in the auxiliary fuel tank outer panel, which is similar in design to the Model 737. This condition, if not corrected, could result in a fire in the Model 737 aft cargo compartment due to fuel leaking from the auxiliary fuel tank.

DATES: Comments must be received no later than April 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-236-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2681. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-236-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A recent incident involving cracking of honeycomb panels used to support the aft auxiliary fuel cell on a Boeing Model 727 series airplane permitted cabin air to pressurize the fuel tank box and damaged the bladder cell. The damage to the fuel cell resulted in an uncontrollable fuel leak from the fuel manifold in the center wing tank into the damaged auxiliary fuel tank, causing a fuel spill in the aft cargo compartment. Although no such honeycomb cracking problems have been reported on Model 737 airplanes, similar fuel cell support panels are installed and subjected to cabin air pressurization. Also, the Model 737 pressure fueling and fuel feed systems are similar to those of the Model 727 airplane and, therefore, the Model 737 airplane is susceptible to this same fuel leakage problem. This condition, if not corrected, could result in a fire in the aft cargo compartment, due to a fuel leak from the auxiliary fuel tank.

The FAA has reviewed and approved Boeing Service Bulletin 737-28-1088, dated September 6, 1990, which describes procedures to inspect the auxiliary fuel tank structure for delamination and/or cracks; and procedures for the deactivation of the auxiliary fuel system, which include the installation of a flight compartment placard. In addition, the FAA has reviewed and approved Boeing Alert Service Bulletin 737-28A1034, Revision 2, dated December 2, 1990, which describes procedures for the installation of a check valve and a pressure actuated shutoff valve on the auxiliary fuel line.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require deactivation of the auxiliary fuel system and the installation of a flight compartment placard in accordance with Boeing Service Bulletin 737-28-1088, dated September 6, 1990. In lieu of the fuel tank deactivation, operators would be given the option to inspect the auxiliary fuel tank in accordance with Boeing Service Bulletin 737-28-1088, dated September 6, 1990, and install a check valve and a pressure activated shutoff valve in accordance with Boeing Service Bulletin 737-28A1034, Revision 2, dated December 2, 1990. In addition, this AD would require operators to install a modification, approved by the Manager, Seattle Aircraft Certification Office, which would prevent hazardous fuel spillage in the event of an auxiliary fuel tank failure. This modification, once installed, would constitute terminating action for the other requirements of the AD. The manufacturer is currently working on a modification which will be addressed in a future service bulletin and will provide further information as to the procedures involved in accomplishing the modification.

There are approximately 50 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 4 airplanes of U.S. registry would be affected by this AD; that it would take approximately 200 manhours per airplane to accomplish the modification, 16 manhours to accomplish the deactivation action, and 12 manhours per tank to accomplish the inspection action; and that the average labor cost would be $40 per manhour. The cost of parts for the fuel system modification is estimated to be $10,504 per airplane. The estimated cost of terminating action modification parts is currently not available, however, if this estimate is available prior to the issuance of the final rule, the FAA will include it in the final rule's economic impact paragraph. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,560 to deactivate the auxiliary fuel system, or $75,936 to inspect and modify the auxiliary fuel tank system. (There are also 19 U.S. Air Force airplanes that would be affected by this AD.)

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 3913. [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes equipped with an aft auxiliary fuel tank, listed in Boeing Service Bulletin 737-28-1088, dated September 6, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To reduce the potential for a fire in the aft cargo compartment due to fuel leaking from the auxiliary fuel tank, accomplish the following:

A. Within 90 days after the effective date of this AD, accomplish one of the following:

1. Deactivate the auxiliary fuel system and attach a placard in the flight compartment to indicate that the auxiliary fuel tank is inoperative, in accordance with Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

2. Install a check value and a pressure activated shutoff valve in the auxiliary fuel system near the center wing tank in accordance with Boeing Alert Service Bulletin 737-28A1034, Revision 2, dated December 2, 1990; and perform the following inspections of the auxiliary fuel tank support structure in accordance with the inspection procedures below:

a. Within 500 flight cycles after the effective date of this AD, to detect a disbonded or cracked side panel in the auxiliary fuel tank, accomplish one of the following:

(1) Conduct an inspection of the lower sidewall (curved) panels of the auxiliary fuel tanks for disbonding, in accordance with Part I of the Accomplishment Instructions in Boeing Service Bulletin 737-28-1088, dated September 6, 1990.

(2) Perform a leak check of the auxiliary fuel tanks in accordance with Part III of Boeing Service Bulletin 737-28-1088, dated September 6, 1990. If any fuel leakage is detected, repair prior to further flight in accordance with Part III of the service bulletin. Repeat leak check prior to each flight.

b. Within 12,000 flight cycles after the effective date of this AD, conduct an inspection of the auxiliary fuel tank and support structure in accordance with Part II of Boeing Service Bulletin 737-28-1088, dated September 6, 1990. Repeat this inspection at intervals not to exceed 12,000 flight cycles. Accomplishment of this inspection constitutes terminating action for the inspection requirements of paragraph A.2.a. of this AD.

c. If a disbonded or cracked panel is detected during the inspections required by paragraphs A.2.a. or A.2.b. of this AD, accomplish one of the following prior to further flight:

(1) Replace the panel in accordance with Part V of Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

(2) Deactivate the auxiliary fuel tank in accordance with Part V of Boeing Service Bulletin 737-28-1088, dated September 6, 1990; or

(3) Remove the auxiliary fuel tank in accordance with the Boeing 737 Maintenance Manual Subject 28-14-0.

Note: A deactivated auxiliary fuel tank will require inspections per paragraph A.2. of this AD when reactivated. Auxiliary fuel tanks that are deactivated but remain in an airplane accumulate the same number of flight cycles as the airplane.

B. Auxiliary fuel tanks currently not installed in a airplane must be inspected in accordance with Boeing Service Bulletin 737-28-1088, dated September 6, 1990, prior to installation in an airplane if they have accumulated more than 4,000 flight cycles. If any cracking or delamination is detected, repair prior to installation in an airplane.

C. Within 36 months after the effective date of this AD, modify the auxiliary fuel tank installation in a manner that will prevent fuel leakage into the cargo compartment or any other area posing a hazard to the airplane, when the tank structure fails. The modification must be accomplished in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. This modification constitutes terminating action for the requirements of paragraph A. of this AD.

Note: This modification is not required if the tank is deactivated in accordance with Paragraph A.1. of this AD and is not being reactivated.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4345 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-07-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With BFGoodrich Single-Piece Ramp/Slide Door 3 Evacuation System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require installation of a modified evacuation ramp/slide regulator assembly. This proposal is prompted by reports of delayed regulator function during ramp/slide deployment. This condition, if not corrected, could result in loss of use of the Door 3 evacuation system by passengers and crew during an emergency evacuation.

DATES: Comments must be received no later than April 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-07-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-07-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The FAA has received reports that the BFGoodrich single-piece ramp/slide, part number (P/N) 7A1418-1 through -16, used in the Boeing Model 747 Door 3 evacuation system has malfunctioned under certain conditions and has prevented proper inflation of the ramp/slide. The cause has been attributed to high internal friction in the regulatory assembly, P/N 4A3474-1, a subassembly of reservoir assembly, P/N 4A3416-1. It has been determined that (1) substituting Parker "Super-O-Lube" for the present lubricant, (2) incorporating a different surface finish on the piston, and (3) using a lobed cocking arm (with a return spring) in the actuator will promote consistent operation of the regulator. This condition, if not corrected, could result in loss of the use of the Door 3 evacuation system by passengers and crew during an emergency evacuation.

The FAA has reviewed and approved BFGoodrich Service Bulletin No. 4A3416-25-233, dated December 14, 1990, which describes procedures to (1) modify the regulatory assembly, P/N 4A3474-1, to P/N 4A3474-2 configuration, which incorporates the use of Parker "Super-O-Lube," (2) incorporate a different surface finish on the piston, and (3) install a lobed cocking arm (with return spring) in the actuator.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of the evacuation ramp/slide regulator assembly in accordance with the service bulletin previously described.

There are approximately 491 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 117 airplanes of U.S. registry would be affected by this AD, that it would take approximately 34 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification is expected to be nominal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes; equipped with BFGoodrich single-piece ramp/slide, part numbers (P/N) 7A1418-1 through -16, for Door 3 evacuation system; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the Door 3 evacuation system, accomplish the following:

A. Within 12 months after the effective date of this AD:

1. Modify the regulator assembly, P/N 4A3474-1 (a subassembly of reservoir asembly P/N 4A3416-1) to the P/N 4A3474-2 configuration, by installing improved internal components in accordance with paragraph 2., Accomplishment Instructions, of BFGoodrich Service Bulletin No. 4A3416-25-233, dated December 14, 1990.

2. Reidentify the Door 3 ramp/slide in accordance with paragraph 3.B., Identification, of BFGoodrich Service Bulletin No. 4A3416-25-233, dated December 14, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Aircraft Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments of concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on February 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4346 Filed 2-23-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-12-AD]

Airworthiness Directives; British Aerospace Model BAe 146 100A, 200A, and 300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require repetitive visual inspections to detect chafing under the wind-to-fuselage fairings, and repair, if necessary. This proposal is prompted by reports of chafing of the fuselage skin and reinforcing plates under the wing-to-fuselage rear fairings. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

DATES: Comments must be received no later than April 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-12-AD, 1601 Lind Avenue SW., Renton, Washington, 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-12-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There have been recent reports of chafing of the fuselage skin and reinforcing plates between Frames 25 and 33 under the wing-to-fuselage rear fairing. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

British Aerospace has issued Service Bulletin 53-67, Revision 1, dated February 16, 1990, which describes procedures for repetitive visual inspections to detect chafing under the fuselage fairing, and repair, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

British Aerospace has also issued Service Bulletin 53-67-01037A, dated October 17, 1989, which describes procedures to install a new silicone rubber seal with a metal insert in the wing-to-fuselage fairing panels. This modification (No. HCM01037A) moves the rivet attachments to below the surface of the seal; the new seal then has an increased impingement, which would improve contact and durability. The United Kingdom CAA has not classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect chafing under the wing to fuselage fairings, and repair, if necessary, in accordance with British Aerospace Service Bulletin 53-67, previously described.

Additionally, this proposed rule would provide for the optional installation of Modification No. HCM01037A, as described in British Aerospace Service Bulletin 53-67-01037A. Once this modification is installed, the required repetitive inspections may be terminated.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes, which are post-modification HCM00301A or B and pre-modification HCM01037A, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 1,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a visual inspection of the fuselage skin between Frames 25 and 33 (100A series), Frames 25 and 33B (200A and 300A series) in the area of the fairing panel rubbing strips, including the reinforcing plates at Frames 26 and 29, in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 53-67, Revision 1, dated February 16, 1990.

1. Chafing damage found up to a maximum depth of 0.010 inch and no more than 6 inches in length, must be repaired prior to further flight, in accordance with paragraph 2.A.(2)(a) of the service bulletin.

2. Chafing damage found in excess of 0.010 inch in depth and more than 6 inches in length, must be repaired prior to further flight, in accordance with Structural Repair Manual (SRM) 53-00-12, or in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

B. Repeat the inspection required paragraph A. of this AD at the following intervals:

1. For airplanes without a rubbing strip installed: At intervals not to exceed 3,000 landings.

2. For airplanes with rubbing strips installed: At intervals not to exceed 9,000 landings.

C. Accomplishment of Modification No. HCM01037A, the installation of a new silicone rubber seal with a metal insert, in accordance with British Aerospace Service Bulletin 53-67-01037A, dated October 17, 1989, constitutes terminating action for the repetitive inspections required by paragraph B. of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permit may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA,

Northwest Mountain Region, Transport Airplane Directorate, 12801 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 12, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4347 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-05-AD]

Airworthiness Directives; GROB Luft und Raumfahrt Model G 109B Motor Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to GROB Luft und Raumfahrt Model G 109B motor gliders. This proposed action would require a one-time mechanical torque test of the root rib stud plate, which supports the aileron and airbrake bellcranks. Reports have been received of separations of the studs in this stud plate that resulted in interference between the aileron and airbrake control systems. The actions specified in this proposed AD are intended to ensure the structural integrity of this attachment and prevent the loss of these critical flight control systems.

DATES: Comments must be received on or before April 19, 1991.

ADDRESSES: GROB Service Bulletin (SB) No. TM 817-29, dated August 6, 1990, that is discussed in this AD may be obtained from GROB Luft und Raumfahrt, D-8939 Mattsies, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-05-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. H. Hellebrand, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.38.30; Facsimile (322) 230.68.99; or Mr. Herman Belderok, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-05-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on GROB Model G 109B motor gliders. The LBA advises that the studs in the root rib stud plate have separated on two of the affected motor gliders that resulted in interference between the aileron and airbrake control systems. The stud plate is laminated into the root rib and is used to support the bellcranks for these two critical flight control systems. GROB has issued SB No. TM-817-29, dated August 6, 1990, which specifies a one-time mechanical torque test of the stud bolts for security. The LBA classified this SB as mandatory and issued LBA AD 90-315 to assure the continued airworthiness of these motor gliders. Under a bilateral airworthiness agreement, the LBA has shared this information with the FAA.

The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. The FAA is proposing an AD that would require a one-time inspection of the security of the stud bolts in the root rib stud plate on GROB Model G 109B motor gliders.

The FAA has determined calendar time is the most desirable method of compliance for the proposed AD because yearly operational times vary greatly throughout the fleet. For example, one motor glider operator might utilize the glider 10 hours in one month, while another may not utilize the glider 10 hours in one year. Therefore, to maintain continuity and avoid inadvertent grounding of the affected motor gliders, compliance based upon calendar time is proposed.

It is estimated that 32 motor gliders of U.S. registry would be affected by the proposed AD, that it would take approximately 1.5 hours per motor glider to accomplish the required actions, and that the average labor charge would be $40 per hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

GROB Docket No. 91–CE–05–AD.

Applicability: Model G 109B motor gliders (serial numbers 6200 through 6362), certificated in any category.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent separation of the studs in the root rib stud plate that could result in loss of the aileron and airbrake control systems, accomplish the following:

(a) Inspect the security of the studs in the root rib stud plate (part number 109B–4108) in accordance with the instructions in GROB Service Bulletin No. TM–817–29, dated August 6, 1990. If any loose studs are found, prior to further flight, repair the stud plate in accordance with the instructions in the referenced SB.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the motor glider to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(d) All persons affected by this directive may obtain copies of the document discussed in this AD upon request to GROB Luft und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 8, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4348 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–03–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 and Model DC–9–80 Series Airplanes, Model MD–88 Airplanes, and C–9 (Military) Airplanes, Equipped With Westinghouse Bus Control Unit, Part Number 947F946–2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) airplanes, which currently requires the affected airplanes to be operated with an interim electrical operating procedure and restricted operation of the automatic landing system. This action would require the installation of an improved Westinghouse Bus Control Unit. This proposal is prompted by reports of loss of generator electrical power and/or electrical power interruption during flight. This condition, if not corrected, could result in partial or total loss of generator electrical power.

DATES: Comments must be received no later than April 16, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 91–NM–03–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1–HCW (54–60). This information may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mrs. Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–133L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, telephone (213)988–5343.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–03–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On January 19, 1990, the FAA issued AD 90–03–17, Amendment 39–6496 (55 FR 3047, January 30, 1990), to require McDonnell Douglas Model DC–9 series airplanes and Model MD–88 airplanes to be operated with limitations on the electrical operating procedures and restricted operation of the automatic landing system. That action was prompted by reports of loss of generator electrical power and/or electrical power interruption during flight. This condition, if not corrected, could result in partial or total loss of generator electrical power.

Since issuance of AD 90–03–17, Westinghouse has developed modifications to improve the bus control unit (BCU). The FAA has determined that electrical system operational safety will be enhanced by incorporation of these modifications in the BCU rather than by continued use of operating limitations. Incorporation of these modifications in the BCU will remove the limitations added to the Airplane Flight Manual (AFM) by AD 90–03–17. Furthermore, the FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by special operating procedures. Long term special operating procedures may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factor associated with numerous continual special procedures, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 24–119, dated January 24, 1990, which describes procedures for modification of the Westinghouse bus control unit, Part Number 947F946–2. This modification consists of replacing transitors and insulating spacer pads that are susceptible to contamination. Contamination may cause transistors to fail, and under certain circumstances may cause the AC cross-tie power relay to buzz/chatter and interrupt AC electrical power.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 90–03–17 with a new AD that would require installation of a modified generator bus control unit in McDonnell Douglas Model DC–9 and DC–9–80 series airplanes, and Model MD–88 airplanes, in accordance with the service bulletin previously described.

There are approximately 1,500 Model DC–9 and DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. It is estimated that 741 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification will be paid by Westinghouse. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $59,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6496 (55 FR 3047; January 30, 1990), AD 90–03–17, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (Military) airplanes, equipped with Westinghouse bus control unit (BCU) Part Number 947F946–2, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of generator electrical power, accomplish the following:

A. Within 30 days after February 15, 1990 (the effective date of AD 90–03–17, Amendment 39–6496), add the following to the LIMITATIONS section of the approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

1. On takeoff with both engine generators and APU generator operating and APU bus switches selected to the ON position, the AC BUS X–TIE switch must be placed in the OPEN position. At or above 10,000 feet MSL with both engine generators operating, the APU may be shut down and the AC BUS X–TIE switch placed in the AUTO position.

Note: In the event of an in-flight failure of an engine generator that results in the APU generator powering an AC bus, de-activate all galley power and place the other APU BUS switch in the ON position.

2. On takeoff with the APU generator inoperative, or an engine generator inoperative, dispatch is permitted in accordance with the present MMEL conditions except that the AC BUS X–TIE switch must be in the OPEN position. Verify that all transformer rectifiers (TR's) are operating and place the DC BUS X–TIE switch in the CLOSE position. Takeoff minimums are restricted to ceiling 1,000 foot and visibility 3 miles. The Captain must make the takeoff with his instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights. At or above 10,000 feet MSL, place the DC BUS X–TIE switch in the OPEN position and the AC BUS X–TIE switch in the AUTO position.

Note: In the event of an in-flight failure of an engine generator following dispatching with the APU generator powering an AC bus, deactivate all galley power and place the other APU BUS switch in the ON position.

3. When operating with the AC BUS X-TIE switch in the AUTO position, if rapid cycling of the AC cross-tie relay occurs, manifested by a buzzing/chattering sound from the electrical power center and any combination of random circuit breaker trips, inappropriate aural warning messages, loss of some flight instruments, and/or flashing cockpit annunciators, place the AC BUS X-TIE switch to the OPEN position. If a generator trips off-line, it may be reset only once. If the engine generator fault cannot be cleared, the APU should be utilized, if available.

4. Prior to the approach with both engine generators operating, start the APU and place both APU BUS switches to the ON position. Place the AC BUS X-TIE switch to the OPEN position after APU electrical power becomes available.

5. Prior to the approach with only two generators operating, place the AC BUS X-TIE switch in the OPEN position. Landing minimums are restricted to Category I and the Captain must make the approach with his instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights.

6. In the event of an in-flight failure that results in an AC bus not powered, place the DC BUS X-TIE switch in the CLOSE position.

7. In the event of an in-flight failure that results in both AC BUSES being powered by only one generator, the landing minimums are restricted to ceiling 1,000 feet and 3 miles visibility. The Captain must make the approach and landing.

8. Autoland is permitted with two engine generators operating and APU generator operating with both APU BUS switches in the ON position and the AC BUS X-TIE switch in the OPEN position. Reconfirm APU generator availability after "AUT LND/AUT LND" is indicated on the Flight Mode Annunciator (FMA). An autoland approach must be discontinued following a failure of an engine generator.

B. Within 2 years after the effective date of this AD, replace the Westinghouse Bus Control Unit, Part Number 947F946–2 with the Westinghouse Bus Control Unit, Part Number 947F946–3, in accordance with McDonnell Douglas DC–9 Service Bulletin 24–119 dated January 24, 1990. The limitations on the electrical operating procedures and restricted operation of the automatic landing system required by paragraph A. of this AD may be removed from the AFM when the modified Westinghouse BCU is installed

BEST COPY AVAILABLE

C. An alternate means of compliance and adjustment of the compliance time which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAA 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirement of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on February 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4344 Filed 2-23-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-CE-66-AD]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Cessna Model T303 airplanes and would supersede AD 88-22-01. The proposed action would require inspections and replacement of the nose actuator attachment fitting with an improved fitting of increased lug thickness. Reports of cracking of the nose gear actuator attachment fitting have been reported on Cessna Model T303 airplanes that have complied with AD 88-22-01. The actions specified in the proposed AD are intended to prevent the collapse of the nose landing gear and loss of control of the airplane during takeoff or landing operations.

DATES: Comments must be received on or before April 22, 1991.

ADDRESSES: Cessna Service Bulletin (SB) MEB88-4, dated August 5, 1988, and Cessna SB MEB88-4, Revision 2, dated October 26, 1990, that are discussed in this AD may be obtained from the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277; Telephone (316) 946-7550. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-66-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-66-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness directive (AD) 88-22-01, Amendment 39-6041 (53 FR 40051, October 13, 1988), that is applicable to Cessna Model T303 airplanes currently requires inspections for cracks and the eventual replacement of the nose gear actuator attachment fitting, part number (P/N) 2543004-1, with P/N 2543004-3 in accordance with Cessna Service Bulletin (SB) MEB88-4, dated August 5, 1988. Reports have recently been received of cracks on the nose gear actuator attachment fitting on the affected airplanes with P/N 2543004-3 installed.

Cessna has issued SB MEB88-4, Revision 2, dated October 26, 1990, which specifies the replacement of the nose gear actuator attachment fitting with a new fitting (P/N 2543004-5). Nose gear actuator attachment fitting P/N 2543004-5 has a lug thickness of .86 inches and P/N 2543004-3 has a lug thickness of .56 inches. The FAA has determined that the installation of a nose gear actuator attachment fitting with a lug thickness of .86 inches instead of .56 inches will help prevent failure of the nose gear actuator attachment fitting that could lead to the collapse of the nose landing gear and loss of control of the airplane during takeoff and landing operations.

Since the condition described is likely to exist or develop in other Cessna Model T303 airplanes of the same type design, the proposed AD would require inspections of the nose gear actuator attachment fitting for cracks in accordance with Cessna SB MEB88-4, dated August 5, 1988, and replacement of these fittings with a new fitting of increased lug thickness in accordance with Cessna SB MEB88-4, Revision 2, dated October 26, 1990. It would supersede AD 88-22-01, Amendment 39-6041.

Paragraph (b) of the proposed AD would require the mandatory replacement of the nose gear actuator attachment fitting with a new fitting of increased lug thickness within 12 calendar months. Calendar months was chosen as the compliance time in this paragraph over hours time-in-service because the yearly operational times of the affected airplanes vary greatly throughout the fleet. This will assure the airworthiness of an avoid inadvertent grounding of the affected airplanes.

It is estimated that 315 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 2.5 hours per airplane to accomplish the proposed actions at $40 an hour, and that the cost of parts to accomplish the proposed modification is $250 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $110,250.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, Federal 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.69.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 88-22-01, Amendment 6041 (53 FR 40051, October 13, 1988), and adding the following new AD:

Cessna: Docket No. 90-CE-66-AD.

Applicability: Model T303 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the nose gear actuator attachment fitting, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD or upon the accumulation of 550 hours TIS, whichever occurs later, and thereafter at intervals of 50 hours TIS, inspect the nose gear actuator attachment fitting for cracks in accordance with Cessna Service Bulletin (SB) MEB88-4, dated August 5, 1988.

(1) If any of the legs of the fitting are cracked, prior to further flight, replace the cracked fitting with an improved fitting, part number P/N 2543004-5, in accordance with Cessna SB MEB88-4, Revision 2, dated October 26, 1990.

(2) If no cracks are found, return the airplane to service and continue the repetitive inspections specified in paragraph (a) of this AD.

(b) Within the next 12 calendar months after the effective date of this AD, unless already accomplished in accordance with paragraph (a)(1) of this AD, replace the nose gear actuator attachent fitting, P/N 2543004-1 or 2543004-3, with an improved fitting, P/N 2543004-5, in accordance with Cessna SB MMB88-4, Revision 2, dated October 26, 1990.

(c) The inspections required by paragraph (a) of this AD are no longer required when the nose gear actuator attachment fitting has been replaced with P/N 2543004-5 in accordance with paragraphs (a)(1) and (b) of this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 212.199 to operate airplanes to a location where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 11, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4350 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AEA-17]

Proposed Alteration of VOR Federal Airway V-43; Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-43 located in the State of Pennsylvania. This proposal would realign a segment of V-43 in the vicinity of Erie, PA, to coincide with the preferred arrival routings to the Toronto International Airport, Toronto, Canada.

DATES: Comments must be received on or before April 5, 1991.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, AEA-500, Docket No. 90-AEA-17, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for

comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-43. This action would realign a segment of V-43 located in the vicinity of Erie, PA. The changes to the airway are necessary to coincide with the preferred arrival routings to the Toronto International Airport. The proposed changes will simplify routings issued by air traffic control and make better use of the airspace. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulation evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-43 [Amended]

By removing the words "INT Erie 043° and Buffalo, NY, 259° radials" and substituting the words "INT Erie 042° T(048° M) and Buffalo, NY, 259° T (167° M) radials."

Issued in Washington, DC, on February 12, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-4336 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 91-ASO-51]

Proposed Revision of Control Zone, Brunswick Malcolm-McKinnon Airport, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Brunswick Malcolm-McKinnon Airport Control Zone. The existing description references the Burnswick Municipal Airport and excludes from the control zone that portion within a 1.5-mile radius of the airport. The Burnswick Municipal Airport has long been closed. This proposed action would eliminate this reference and also, would make a minor correction in the latitude/longitude coordinate position of the Malcolm-McKinnon Airport.

DATES: Comments must be received on or before: April 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 91-ASO-5, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are inivited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Avilability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the appliation procedure.

The Propsal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Brunswick Malcolm-McKinnon, GA Control Zone. The existing description of the control zone excludes that portion within a 1.5-mile radius of the Brunswick Municipal Airport which has long been closed. This proposed action would eliminate this reference. Also, a minor correction would be made in the latitude/longitude coordinate position of the Malcolm-McKinnon Airport. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therfore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regultory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Brunswick Malcolm-McKinnon Airport, GA [Revised]

Within a 5-mile radius of Malcolm-McKinnon Airport (lat. 31°09'05"N., long 81°23'30"W.); with in 1.5 miles each side of the Brunswick VORTAC 022° radial, extending from the 5-mile radius zone to the VORTAC.

Issued in East Point, Georgia, on February 12, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-4351, Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS-093-88]

RIN 1545-AO59

Proposed Regulations Amending the Gasohol Regulations to Modify the Tolerance Allowed to the 10 Percent Alcohol Requirement and the Later Blending Rule

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed amendments to the regulations under section 4081(c) of the Internal Revenue Code of 1986 ("Code") that modify the tolerance rule for determining the percentage of alcohol required for gasohol to qualify for a reduced rate of tax. This document also proposes amendments that eliminate the later blending rule applicable to gasohol pursuant to regulations under section 4081 of the Code, except where later blending is for the purpose of producing a mixture consisting of less than 10 percent alcohol. These proposed regulations are in response to comments on the existing rules and affect gasohol blenders and retailers.

DATES: Written comments and requests for a public hearing must be received by April 26, 1991.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 4429, Attn: CC:CORP:T:R (PS-093-88), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:CORP:T:R (PS-093-88), Internal Revenue Service, room 4429, 1111 Constitution Avenue, NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward B. Madden, 202-535-9758 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48) relating to the excise tax on qualified gasohol (a mixture of gasoline and at least 10 percent alcohol) under section 4081 of the Code.

Explanation of Provisions

The Current Rules

Under section 4081 of the Code, Federal excise tax is generally imposed on the sale or removal of gasoline at a rate of 14.1 cents per gallon. However, tax is imposed at a reduced rate equivalent to 8.1 cents per gallon of mixture for gasohol not containing ethanol and 8.7 cents per gallon of mixture for gasohol containing ethanol.

Section 4081(c) provides that gasohol must contain at least 10 percent alcohol to qualify for the reduced rate of tax. Section 48.4081-2(a)(5) of the Manufacturers and Retailers Excise Tax Regulations provides a tolerance rule under which gasohol that contains less than 10 percent alcohol may qualify for a reduced rate of tax if the blender demonstrates to the satisfaction of the district director the existence of facts and circumstances establishing that, but for the commercial and operational realities of the blending process, the 10-percent-alcohol requirement would have been met. In any event, under the regulations, the percentage of alcohol in gasohol may not be less than 9.802 percent. Further, the necessary facts and circumstances will not be found to exist if over a period of time the mixtures blended by a blender show a consistent pattern of failing to contain 10 percent alcohol (the "consistent pattern test").

Under § 48.4081-2(a)(5), the 10-percent-alcohol requirement is applied immediately after the gasohol is blended. However, § 48.4081-2(e)(3) provides that, if qualifying gasohol is later blended with additional motor fuel to produce a blend with less than 10 percent alcohol, the sale or use of such blend is subject to tax under section 4041 or 4081 (the "later blending rule").

The Proposed Regulations

The reduced rate of tax applicable to gasohol is intended to encourage the development of fuels that reduce the use of petroleum products in automobile transportation. S. Rep. No. 529, 95th Cong., 1st Sess. 45 (1977). Experience with the current gasohol tolerance and later blending rules suggests that the effectiveness of the reduced rate in achieving that purpose is diminished because the current rules do not

adequately take into account the practical problems faced by blenders and retailers of gasohol. Accordingly, these proposed regulations would modify the gasohol tolerance rule and would, in general, eliminate the later blending rule.

The Gasohol Tolerance Rule

Taxpayers have argued that the current gasohol tolerance rule does not adequately address the practical problems in blending a mixture that contains 10 percent alcohol. For example, blenders may fail to attain the required 10-percent-alcohol level because the device used to meter the amount of gasoline or alcohol added to the tank truck is imprecise or because the high-speed gasoline or alcohol pump used does not shut off at the proper moment. Thus, it is inevitable that a significant number of mixtures will not contain exactly 10 percent alcohol, even though the blender intends for all of its mixtures to contain exactly 10 percent alcohol. Commentators have pointed out that blenders cannot compensate for these errors by consistently aiming for an alcohol content in excess of 10 percent because Environmental Protection Agency rules regulating the sale of gasohol to consumers explicitly authorize only the sale of gasohol containing not more than 10 percent alcohol. See Clean Air Act section 211(f)(1), 42 U.S.C. 7545(f)(1); EPA interpretive rule, 46 FR 38582 (July 28, 1981); Gas Plus, Inc., EPA notice 44 FR 20777 (April 6, 1979); Synco 76 Fuel Corp., EPA notice, 47 FR 22404 (May 24, 1982). Because these commercial and operational realities may cause a blender's gasohol mixtures to fail to attain the required 10-percent-alcohol level on more than an occasional basis, commentators have expressed concern that the consistent pattern test has created considerable uncertainty among blenders as to whether any of their mixtures that fail to do so (even if only by a small margin) qualify for a reduced rate of tax. This uncertainty reduces the effectiveness of the reduced rate in achieving its purpose of encouraging gasohol use.

The proposed regulations would eliminate the consistent pattern test so that whether gasohol qualifies for a reduced rate of tax would be determined on a batch-by-batch basis. Any batch containing at least 9.8 percent alcohol (without rounding) immediately after blending will qualify. For this purpose, a batch of gasohol is a discrete mixture of gasoline and alcohol and typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. Ordinarily, whether a batch contains at least 9.8 percent alcohol will be determined based on the meter delivery tickets corresponding to each batch. However, where a blender adds metered gallons of gasoline and alcohol into a tank already containing more than a de minimis amount of liquid (other than gasohol), the determination of whether a batch satisfies the 10-percent-alcohol requirement will be made by taking into account the amount of such liquid already in the tank. The Internal Revenue Service requests comments concerning the quantity of liquid (other than gasohol) that should be considered de minimis for these purposes given the commercial and operating realities associated with the blending process.

The Service believes that the proposed modification furthers the legislative objective underlying section 4081(c) of the Code because it should allow blenders who in good faith attempt to reach a 10-percent-alcohol level to qualify for the reduced rate of tax with respect to all or almost all of their mixtures. (In this regard, it should be noted that, to the extent a blender's mixtures fail to reach 9.8 percent alcohol, the blender may be entitled to an income tax credit under section 40 of the code.)

The Gasohol Later Blending Rule

Taxpayers have argued that the later blending rule does not reflect certain commercial and operational realities associated with the distribution and sale of gasohol, especially at the retail level. A retailer may have to add gasohol to a storage tank already containing gasoline or gasoline to a storage tank already containing gasohol. This may occur, for example, because of the technological difficulty or expense involved in assuring that a retail storage tank is completely empty before pumping in gasohol. Later blending also may result where a retailer is effectively forced to pump gasoline into a tank containing gasohol because of a shortage in the supply of gasohol.

The proposed regulations would modify the later blending rule so that inadvertent or unavoidable later blending caused by these practical problems would not cause additional tax to be imposed. As modified, the later blending rule would impose tax under section 4081(b) on the sale or removal of a mixture containing gasoline and alcohol by the blender thereof only if gasohol (with respect to which tax was imposed at the reduced rate) and other motor fuel are blended together for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent alcohol. For example, tax would be imposed if a retailer advertises fuel containing 5 percent alcohol and, in order to produce that mixture, blends gasohol (with respect to which tax was imposed at the reduced rate) and gasoline.

Modification of the current later blending rule is appropriate because, in light of the commercial and operational realities associated with the distribution and sale of gasohol, it appears that later blending ordinarily is inadvertent or unavoidable. Consequently, the current later blending rule may discourage the production, sale, and use of gasohol because it exposes retailers to additional tax even though they intend to sell only gasohol that meets the 10-percent-alcohol requirement. In addition, the proposed modification of the later blending rule would not affect the aggregate tax subsidy per gallon of alcohol used to produce gasohol. That is, regardless of whether later blending occurs, one gallon of alcohol will still support a reduction in tax only for nine gallons of gasoline. In order to protect the Congressional intent that gasohol qualifying for the reduced excise tax rate (as opposed to the section 40 credit) contain 10 percent alcohol, however, the proposed regulations would continue to apply the later blending rule where a taxpayer blends gasohol with another fuel for the purpose of producing a mixture that contains a specific percentage of alcohol that is less than 10 percent.

Effective Date

The modifications to the gasohol tolerance rule and the gasohol later blending rule are proposed to be effective for gasoline sold or removed on or after January 1, 1991. The Service believes that application of the proposed regulations from the beginning of the current calendar quarter is appropriate because this allows blenders to apply a single rule during this quarter and because retroactive liberalization of these provisions (to periods before the beginning of the current calendar quarter) would not increase the supply of gasohol, but effectively would benefit taxpayers who violated regulations that were in force at the time that they blended gasohol.

Effect on Other Alcohol/Fuel Mixtures

The proposed regulations apply only to gasohol. The Service invites comments on whether rules similar to the rules provided in the proposed regulations should be applied to blends of alcohol and other fuels taxable under sections 4081 or 4091 of the Code (*i.e.*, mixtures of alcohol and diesel fuel or special motor fuel, qualified methanol and ethanol mixtures, and partially exempt methanol and ethanol mixtures) in light of the commercial and operational realities involved in the blending, distribution, and sale of such blends.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward B. Madden, Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. Other personnel from the Service and Treasury Department, however, participated in their development.

List of Subjects in 26 CFR Part 48

Agriculture, Aircraft, Arms and ammunition, Boats, Coal, Excise taxes, Furs, Gasohol, Gasoline, Jewelry, Motor vehicles, Petroleum, Sporting goods, Tires.

Adoption of Amendments to the Regulations

Accordingly, title 26, part 48, of the Code of Federal Regulations is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS

Paragraph 1. The authority for part 48 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 48.4081–2 also issued under 26 U.S.C. 4061(c)(1).

Par. 2. Section 48.4081–2 is amended as follows:

1. By revising paragraph (a)(5), and
2. By revising paragraph (e)(3).
3. The revised provisions read as follows:

§ 48.4081–2 Gasoline mixed with alcohol.

(a) * * *

(5) *Qualifying gasohol*—(i) *Qualifying gasohol defined.* Qualifying gasohol (hereinafter referred to as gasohol) is a blend of gasoline and alcohol in a mixture at least 10 percent of which is alcohol immediately after the mixture is blended. The determination of whether a particular mixture satisfies this percentage requirement will be made on a batch-by-batch basis. For purposes of determining if the 10 percent requirement has been met, a batch is considered to contain 10 percent alcohol if it contains at least 9.8 percent alcohol by volume, without rounding. A batch of gasohol is a discrete mixture of gasoline and alcohol and typically corresponds to a gasoline meter delivery ticket and an alcohol meter delivery ticket, each of which shows the number of gallons of liquid delivered into the mixture. The volume of each component in a batch (without adjustment for temperature) ordinarily is determined by the number of metered gallons shown on the delivery tickets for the gasoline and alcohol delivered. However, where a blender adds metered gallons of gasoline and alcohol to a tank already containing more than a de minimis amount of liquid (other than qualifying gasohol), the determination of whether a batch satisfies the 10-percent-alcohol requirement will be made by taking into account the amount of such liquid already in the tank.

(ii) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example 1. A gasohol blender blends a batch of gasohol in a tank holding approximately 8000 gallons of mixture. The applicable delivery tickets show that the mixture is blended by first pumping 7200 metered gallons of gasoline into the empty tank, and then pumping 800 metered gallons of alcohol into the tank. Accordingly, the mixture contains 10 percent alcohol (as determined based on the delivery tickets provided to the blender) and qualifies as gasohol.

Example 2. The facts are the same as in *Example 1* except that the applicable delivery tickets show that another mixture is blended by first pumping 7220 metered gallons of gasoline into the empty tank, and then pumping 780 metered gallons of alcohol into the tank. Because the mixture contains only 9.75 percent alcohol (as determined based on the delivery tickets provided to the blender), the mixture does not qualify as gasohol.

(iii) *Effective date.* The provisions of this paragraph (a)(5) apply to sales or removals of gasoline or gasohol made on or after January 1, 1991.

* * * * *

(e) * * *

(3) *Later blending*—(i) *In general.* Section 4081(b) applies to the sale or removal of a mixture containing gasoline and alcohol by the blender thereof if—

(A) Gasoline and alcohol are blended in a batch that, immediately after blending, is qualifying gasohol under paragraph (a)(5) of this section,

(B) Tax is imposed with respect to the batch at the reduced rate prescribed in section 4081(c) (or tax is imposed with respect to the batch at the rate prescribed in section 4081(a) and a refund or credit is claimed pursuant to section 6427(f)),

(C) For the purpose of producing fuel that contains a specific percentage of alcohol that is less than 10 percent, the blender subsequently produces the mixture by blending additional motor fuel (other than qualifying gasohol) with such batch; and

(D) Immediately after blending, the mixture contains less than 9.8 percent alcohol.

(ii) *Examples.* The provisions of this paragraph are illustrated by the following examples.

Example 1. A retailer advertises fuel containing 5 percent alcohol. To produce the mixture, the retailer purchases 5,000 gallons of gasohol containing 10 percent alcohol on which tax has been imposed at the reduced rate prescribed in section 4061(c) and blends the gasohol with 5,000 gallons of gasoline. Because the retailer blends the gasoline and gasohol for the purpose of producing a mixture that contains only 5 percent alcohol, this paragraph (e)(3) applies and tax is imposed on the sale or removal of the mixture under section 4081(b). The retailer may be entitled to claim a credit under section 40(b) for the amount of alcohol contained in the mixture.

Example 2. A retailer who has been selling gasoline decides to begin selling gasohol. The retailer purchases 5,000 gallons of gasohol containing 10 percent alcohol on which tax has been imposed at the reduced rate prescribed in section 4061(c). The retailer pumps the gasohol into a storage tank with gasoline that had not been emptied prior to the conversion to gasohol sales. Because the retailer did not blend the gasohol purchased and the gasoline already in the storage tank for the purpose of producing a mixture containing a specific percentage of alcohol that is less than 10 percent, this paragraph (e)(3) does not apply and tax is not imposed under section 4061(b) even if the resulting mixture contains less than 9.8 percent alcohol. Similarly, this paragraph (e)(3) would not apply and tax would not be imposed under section 4061(b) if, several months later, the retailer decides to switch back to gasoline sales because of a shortage in the supply of gasohol and pumps gasoline into the storage tank, which still contains some gasohol.

(iii) *Effective date.* This paragraph (e)(3) applies to sales or removals of

gasoline made on or after January 1, 1991.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91-4286 Filed 2-22-91; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE82

Reduction Because of Hospitalization

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations on reductions of pensions of certain veterans receiving institutional care. These proposed changes are based on recently enacted legislation and further consideration of previous legislation. The intended effect of these changes is to minimize pension reductions when VA provides institutional care.

DATES: Comments must be received on or before March 27, 1991. The changes that pertain to improved pension rates for certain veterans receiving institutional care are proposed to be effective February 1, 1990, the date provided by legislation. The change pertaining to veterans receiving pension under section 306 who are institutionalized is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until April 8, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Phyllis Barber, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Provisions of the recently enacted Veterans' Benefits Amendments of 1989, Public Law 101-237, 103 Stat. 2062 (1989), ease the statutory requirements limiting pension payments to certain veterans receiving institutional care. The provisions of 38 U.S.C. 3203(a)(1), as amended by section 111 of the Veterans Benefits Amendments of 1989, require reduction of improved pension for veterans without dependents only if they are admitted to a domiciliary or nursing home by VA or at VA expense. Under these conditions a veteran's monthly pension payment may not exceed $90 effective the end of the third full calendar month following the month of admission. Since paragraph (C) of 38 U.S.C. 3203(a)(1) has not been amended, monthly payments may not exceed $60 effective the first of the month following the month of readmission if the veteran again receives such care at VA expense within six months of a period during which there was a required reduction.

In passing this legislation, Congress clearly intended to eliminate pension reductions due to hospitalization and to increase the maximum monthly pension payable to pensioners who are receiving long-term domiciliary or nursing home care at VA expense without creating a large estate. In order to achieve those goals, we are proposing that, when a veteran with no dependents who is receiving nursing home or domiciliary care is transferred to a hospital and then returns to the nursing home or domiciliary, the entire period be treated as continuous nursing home or domiciliary care if the period of hospitalization is for less than six months. By doing so we will be able to maintain payments at the $90 rate rather than reducing them to $60 if the veteran is subsequently readmitted for domiciliary or nursing home care. Likewise, if the veteran dies after transfer from a nursing home or domiciliary to a hospital, the period of hospitalization will be considered as continuous nursing home or domiciliary care. If hospitalization of less than six months results in the discharge of the veteran from care at VA expense, then his or her full rate of pension will be restored effective the date of transfer to the hospital.

In an opinion dated June 15, 1990, (O.G.C. Prec. 19-90), the VA General Counsel advised us that the previous amendments to 38 U.S.C. 320(a)(1) had been erroneously applied to veterans receiving pension under section 306 of that law. Therefore, we are proposing that the rate payable for veterans without dependents receiving section 306 pension who are institutionalized at VA expense for the requisite period may not exceed $50 per month. In addition, the effective date for reduction for such admissions will be the end of the second full calendar month following the month of admission and, for readmissions within six months following termination of a period of treatment or care of not less than two full calendar months, reduction will be from date or readmission.

The reference in 38 CFR 3.551 to service pensions is being deleted as there are no longer any veterans receiving this benefit. VA is proposing to implement these changes by appropriately amending 38 CFR 3.454 and 3.551.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reasons for this certificate is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance program number is 64.104)

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 6, 1990.
Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.551 the heading of paragraph (b) is revised, the existing text in paragraph (b) is designated as paragraph (b)(1), and new paragraphs (b)(2) and (b)(3) are added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(b) Old-law pension.

* * * * *

(2) *Readmission following regular discharge.* Where a veteran has been given an approved discharge or release, readmission the next day to the same or any other VA institution begins a new period of hospitalization, unless the veteran was released for purpose of admission to another VA institution.

(3) *Readmission following irregular discharge.* When a veteran whose award is subject to reduction under this paragraph has been discharged or released from a VA institution against medical advice or as a result of disciplinary action, reentry within 6 months from the date of previous admission constitutes a continuation of that period of hospitalization and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Reentry 6 months or more after such discharge or release will be considered as a new admission.

(Authority: Pub. L. 86-362).

2. In § 3.551 paragraphs (d), (f), and (g) are redesignated as (f), (g), and (h), respectively, a new paragraph (d) is added, paragraph (e) is revised, and the introductory text of redesignated paragraph (h)(1) is revised to read as follows:

* * * * *

§ 3.551 Reduction because of hospitalization.

* * * * *

(d) *Improved pension prior to February 1, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admissions for such care. (38 U.S.C. 3203(a)).

(2) Where any veteran having spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished hospital or nursing home care by VA, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 3203(a)).

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care for which pension was reduced under paragraph (d) (1) or (2) of this section. (38 U.S.C. 3203(a)).

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a)).

(5) The provisions of paragraphs (d) (1), (2), and (3) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(6) For the purposes of paragraphs (d) (1), (2) and (3) of this section, if a veteran is furnished hospital or nursing home care by VA and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by the VA and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(e) *Improved pension after January 31, 1990.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is furnished domiciliary or nursing home care by VA, no pension in excess of $90 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care.

(Authority: 38 U.S.C. 3203(a))

(2) No pension in excess of $60 monthly shall be paid to a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within six months of a period of domiciliary or nursing home care for which pension was reduced under paragraph (e)(1) of this section.

(3) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in 3.454(b).

(Authority: 38 U.S.C. 3203(a))

(4) For the purposes of paragraph (e)(1) of this section, if a veteran is furnished hospital care by VA and then is transferred to VA-furnished nursing home or domiciliary care, the period of hospital care shall not be considered as nursing home or domiciliary care. Transfers from VA-furnished nursing home or domiciliary care to VA-furnished hospital care then back to nursing home or domiciliary care shall be considered as continuous nursing home or domiciliary care provided the period of hospitalization does not exceed six months. Similarly, if a veteran is transferred from domiciliary or nursing home care to a VA hospital and dies while so hospitalized, the entire period of VA care shall be considered as domiciliary or nursing home care. Nursing home or domiciliary care shall be considered as terminated effective the date of transfer to a VA hospital if the veteran is completely discharged from VA care following the period of hospitalization or if the period of hospitalization exceeds six months.

(5) Effective February 1, 1990, reductions of improved pension based on admissions or readmissions to VA hospitals or any hospital at VA expense shall no longer be made except when required under the provisions of 38 CFR 3.552.

(6) The provisions of paragraphs (e) (1) and (2) of this section are not applicable to any veteran who has a child, but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

* * * * *

(h) *Hospitalization.* (1) *General.* The reduction required by paragraphs (d) and (e), except as they refer to domiciliary care, shall not be made for up to three additional calendar months after the last day of the third month referred to in paragraphs (d)(2) or (e)(1) of this section, or after the last day of the month referred to in paragraphs (d)(3) or (e)(2) of this section, under the following conditions:

* * * * *

§ 3.551 [Amended]

3. In § 3.551(a) in the first sentence after the word "reduction" and before the word "when" add the words "as specified below".

4. In redesignated § 3.551(b)(1) remove the phrase ", and service pension based on entitlement prior to July 1, 1960,".

5. In § 3.551(c)(1) after the word "furnished" and before the word "domiciliary" add the words "hospital, nursing home or" remove the dollar amount "60" and add, in its place the dollar amount "50".

6. In § 3.551 remove paragraphs (c) (2), and (4), (6) and (7) and redesignate paragraphs (c)(3) and (c)(5) as (c)(2) and (c)(3), respectively.

7. In redesignated § 3.551 (c)(2) and (c)(3) remove the dollar amount "$60" wherever it appears, and add in its place the dollar amount "$50".

8. In redesignated § 3.551(h)(2) remove the paragraph designations "(c)(2)", "(c)(3)", and "(g)(1)" wherever they appear, and add, in their place, the paragraph designations "(d)", "(e)", and "(h)(1)", respectively.

9. In redesignated § 3.551(h)(3) after the word "monthly" and before the word "payable" add the phrase "or $90, if reduction is under paragraph (e)(1),".

§ 3.454 [Amended]

10. In redesignated § 3.454(b)(1) and (c) remove the dollar amount "$60", wherever it appears, and add in its place, the dollar amount "$50".

11. In § 3.454 (b)(2) and (d) remove "$3.551(c)" and add, in its place, "§ 3.551(d) or (e)(2)".

12. In § 3.454(d) after the word "monthly" add the words "if reduction is under § 3.551(D) or (e), or $90 monthly if reduction is under § 3.551(e)(1)."

13. In § 3.454 add paragraph (b)(3) to read as follows:

§ 3.454 Veterans disability pension.

* * * * *

(b) * * *

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $90 monthly under § 3.551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled.

(Authority: 38 U.S.C. 3203(a))

[FR Doc. 91-4292 Filed 2-22-91; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Parts 3 and 4

RIN 2900-AE09

Claims Based on Exposure to Herbicides Containing Dioxin (Soft-Tissue Sarcomas)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish service connection for soft-tissue sarcomas based on exposure to herbicides containing dioxin. VA is also proposing to amend the Schedule for Rating Disabilities to add specific diagnostic codes for soft-tissue sarcoma as well as evaluation criteria. These changes are necessary to implement our determination that it is at least as likely as not that there is a significant statistical association between exposure to herbicides containing dioxin and soft-tissue sarcoma. The intended effect will be to establish a rule for making determinations regarding service connection for soft-tissue sarcomas for all veterans who were exposed to herbicides containing dioxin during service.

DATES: Comments must be received on or before March 27, 1991. Comments will be available for public inspection until April 8, 1991. The change to part 3 is proposed to be effective September 25, 1985. The changes to part 4 are proposed to be effective the date of publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 1.17(c), when VA determines that a significant statistical association exists between exposure to a herbicide containing dioxin and any disease, 38 CFR 3.311a shall be amended to provide guidelines for the establishment of service connection for the disease(s). These determinations are to be made after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards (Advisory Committee) based on its evaluation of scientific or medical studies. In making these determinations, VA must apply the reasonable doubt doctrine found in 38 CFR 1.17(d)(1).

In a public meeting on May 16–17, 1990, the Advisory Committee met in Washington, DC. At that meeting, the committee considered more than 80 scientific and medical documents relating to the connection, if any, between exposure to a herbicide containing dioxin and soft-tissue sarcoma. The committee found that the relative weights of valid positive and valid negative studies (as defined in 38 CFR 1.17(d)(2)–(4)) permitted the conclusion that it is at least as likely as not that there is a significant statistical association between exposure to a herbicide containing dioxin and soft-tissue sarcoma.

In making our determination, we recognized conflicting results among scientific and medical studies. Some studies in Scandinavia reported an association of soft-tissue sarcomas with exposure to herbicides. Other studies there, as well as in the United States and New Zealand, found no such association. Valid Vietnam experience studies were both positive and negative. While the negative studies were of some significance, we have determined that the relative weights of the valid positive and valid negative studies permit the conclusion that it is at least as likely as not that there is a significant statistical association between exposure to herbicides containing dioxin and soft-tissue sarcoma.

Accordingly, we propose to amend 38 CFR 3.311a to provide standards for the establishment of service connection for soft-tissue sarcomas based on exposure to herbicides containing dioxin. In addition, to insure equitable treatment of veterans who may have been exposed to herbicides containing dioxin during service other than in Vietnam during the Vietnam Era, e.g., in activities related to testing, storage or shipping of herbicides, we propose to remove the restriction limiting the regulation to herbicides, we propose to remove the restriction limiting the regulation to veterans who served in Vietnam during the Vietnam Era. Exposure to herbicides containing dioxin during service other than in Vietnam during the Vietnam Era would have to be established by appropriate evidence.

There is disagreement even among pathologists as to what tumors the term "soft-tissue sarcoma" encompasses.

With the assistance of the Chief Medical Director and the Advisory Committee, we compiled a list of those tumors which we will consider to be soft-tissue sarcomas and included it in the proposed regulation. For compensation purposes, such tumors must be malignant and arise from tissue of mesenchymal origin, including muscle, fat, blood or lymph vessels, or connective tissue (but not cartilage or bone). Tumors of infancy or childhood, and those having a strong, known causal association with a specific etiology (such as HIV infection or asbestos exposure) have been excluded because it is unlikely that there is a reasonable probability of a significant statistical association between such tumors and exposure to a herbicide containing dioxin.

Soft-tissue sarcomas are currently rated by analogy because there are no specific diagnostic codes in the rating schedule. We, therefore, also propose to amend 38 CFR part 4 to add specific diagnostic codes for soft-tissue sarcoma as well as evaluation criteria. In addition, we propose to amend diagnostic code 5327 to exclude soft-tissue sarcoma and to revise the point at which evaluations will be based on residual disability from 1 year to 6 months following cessation of treatment. The revision is made because medical advances have reduced the recovery time needed following surgery, chemotherapy, etc.

In *Nehmer* v. *United States Veterans Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989), the court invalidated VA's requirement of proof of a causal relationship in determining service connection for diseases associated with dioxin exposure. Accordingly, § 3.311a(d) is currently of no force and effect. The Secretary will be making determinations for other diseases, including porphyria cutanea tarda, pursuant to the court's remand order after receiving the advice of the Advisory Committee. We propose to remove and reserve § 3.311a(d) until such determinations are made.

Further, because the *Nehmer* decision invalidated VA's original service connection determinations in 38 CFR 3.311a *ab initio*, and because those determinations were the original regulatory response to the mandate in section 5(a)(1) of Public Law 98-542, we propose to make the amendment to § 3.311a(c) effective retroactively to September 25, 1985, the original effective date of the section. We believe that, in light of the remedial nature of these regulations, and because they serve as a substitute for void regulations issued under an impermissibly demanding standard in 1985, this effective date is appropriate.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

Approved: January 11, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended as follows:

1. In § 3.311a, paragraph (d) is removed and reserved, and paragraph (c), and the authority at the end of the section are revised to read as follows:

§ 3.311a Claims based on exposure to herbicides containing dioxin.

* * * * *

(c) *Service connection based on exposure to herbicides containing dioxin.* Except as provided in paragraph (e) of this section, exposure to herbicides containing dioxin together with the development of the following diseases within the periods specified is sufficient to establish service connection for resulting disability:

(1) Chloracne manifested not later than three months from the date of exposure.

(2) A soft-tissue sarcoma manifested at any time after service.

Note: The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma.
Dermatofibrosarcoma protuberans.
Malignant fibrous histiocytoma.
Liposarcoma.
Leiomyosarcoma.
Epithelioid leiomyosarcoma (malignant leiomyoblastoma).
Rhabdomyosarcoma.
Ectomesenchymoma.
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma).
Proliferating (systemic) angioendotheliomatosis.
Malignant glomus tumor.
Malignant hemangiopericytoma.
Synovial sarcoma (malignant synovioma).
Malignant giant cell tumor of tendon sheath.
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas.
Malignant mesenchymoma.
Malignant granular cell tumor.
Alveolar soft part sarcoma.
Epithelioid sarcoma.
Clear cell sarcoma of tendons and aponeuroses.

(See paragraph (g) of this section with regard to service connection on other grounds and § 3.307(c) in cases where chloracne is initially misdiagnosed.)

* * * * *

(Authority: Pub. L. 98-542; 38 U.S.C. 210(c)).

PART 4—[AMENDED]

38 CFR part 4, Schedule for Rating Disabilities, is proposed to be amended as follows:

1. In § 4.73, diagnostic code 5327 is revised and diagnostic code 5329 is added following diagnostic code 5328 to read as follows:

§ 4.73 Schedule of ratings-muscle injuries.

* * * * *

	Rating
5327 Muscle, new growth of, malignant (excluding soft-tissue sarcoma)	100
Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
* * * * *	
5329 Soft-tissue sarcoma (of muscle, fat, or fibrous connective tissue)	100

Rating
Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

2. In § 4.104, diagnostic code 7123 is added following diagnostic code 7122 to read as follows:

§ 4.104 Schedule of ratings-cardiovascular system.

* * * * *

Rating
7123 Soft-tissue sarcoma (of vascular origin) ..... 100 Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

3. In § 4.124a, diagnostic code 8540 is added following diagnostic code 8730 and an authority citation is added at the end of the section to read as follows:

§ 4.124a Schedule of ratings-neurological conditions and convulsive disorders.

* * * * *

Rating
8540 Soft-tissue sarcoma (of neurogenic origin) ..... 100 Note: The 100 percent rating will be continued for 6 months following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.

* * * * *

(Authority: 38 U.S.C. 355).

[FR Doc. 91-4293 Filed 2-22-91; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89-20]

Definition of Shipper and Availability of Mixed Commodity Rates

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is discontinuing this rulemaking proceeding, which would have amended the definition of "shipper" and required that mixed commodity rates be made available only to shippers and shippers' associations, as defined. The Proposed Rule would also have imposed certain requirements on those shippers, particularly non-vessel-operating common carriers ("NVOCCs"), which utilized mixed commodity rates. The Proposed Rule has proved, on the basis of the record before the Commission, to be irreparably flawed in its attempt to define who is and is not a shipper. Moreover, one of the objectives of the Proposed Rule—to preclude untariffed NVOCC operations and to ensure that persons acting as shippers pursuant to the Shipping Act of 1984 ("1984 Act") qualify to do so—is similar to that of recent legislation, *i.e.*, the Non-Vessel-Operating Common Carrier Amendments of 1990.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by publishing in the **Federal Register** (54 FR 40691) a proposed rule ("Proposed Rule") to amend its tariff and service contract rules in 46 CFR parts 580 and 581. The stated objective of the proposal was

> To limit the scope of those that can act as "shippers" vis-à-vis the ocean common carrier, preclude untariffed NVOCC operations and otherwise ensure that the statutory scheme contemplated by the Shipping Act of 1984 is preserved.

The Proposed Rule was intended to accomplish this objective first by amending the definition of shipper to mean "the person who is legally responsible to pay the ocean common carrier for the transportation." Under the Proposed Rule, the term could include the owner of the cargo, a consignor, a consignee, or a tariffed NVOCC, but not a shipper's agent, an ocean freight forwarder, a broker, or an untariffed NVOCC. The revised definition was essentially a device to effectuate certain substantive restrictions; the Proposed Rule would require that mixed commodity rates be made available only to a "shipper" as newly defined, or a shippers' association as presently defined in the Commission's rules. It would also impose various requirements on shippers seeking mixed commodity rates: they would have to indicate their claimed status as a shipper on the bill of lading, state their NVOCC tariff number, if applicable, and provide other specified information.

Over fifty comments on the Proposed Rule were received. Only a few submissions, primarily from vessel operating common carriers and conferences thereof, expressed support or partial support for the proposal. Most of these emphasized their concurrence with the objective of the Proposed Rule rather than the rule itself, and nearly all offered suggested amendments to the proposal.

The majority of the comments urged either abandonment or major modifications to the Proposed Rule. Many shippers and/or NVOCCs took the position that the narrowed definition is unnecessary, and will cause serious problems and major uncertainties about presently accepted relationships. The remainder of the submissions raised a multitude of difficulties with the proposed shipper definition and the concomitant proposed restriction on access to mixed commodity rates.

The "legally responsible to pay" standard of the Proposed Rule drew most of the commenters' criticism. Many contended that this standard was itself ambiguous and noted that a carrier may not have the means of determining whether a particular entity is the one legally responsible to pay transportation charges. It was also argued that often more than one party may be responsible to pay, and that an entity's interest in a shipment, such as ownership, rather than responsibility to pay is the more appropriate criterion for defining a shipper.

Many commenters challenged the proposed categorical exclusion of certain entities from the definition, arguing that this too fundamentally alters the legislative definition. They variously argued that forwarders, brokers, agents, and shippers' associations (to the extent they act as "agents" for shippers) would be barred from shipper designation, improperly so under certain circumstances. Shippers' associations contended that they should be expressly included in the proposed shipper definition, apparently interpreting the Proposed Rule's failure to do so as an attempt to restrict shippers' associations' rights under the 1984 Act. Some parties objected to the Commission's linking NVOCC tariff filing requirements to a shipper definition, stating that these requirements should be enforced as part of a regimen not affecting entities other than the NVOCCs themselves.

The basic criticism of the "mixed commodity rates" part of the Proposed Rule was that it is just as common for NVOCCs to ship single commodity loads as mixed loads. The proposed provision requiring a shipper to provide a carrier with certain information as proof of its shipper status engendered not so much a consensus of criticism as widespread confusion. Many found the Proposed Rule ambiguous as to the discretion permitted an NVOCC in producing the documentation of its choice. Several parties challenged the reasonableness of requiring an NVOCC to furnish a carrier with such information, arguing that there is a competitive relationship between the two such that disclosing names and client information would be "commercial suicide." Carrier interests took opposing positions on whether such documentation requirements should be restricted to NVOCCs versus other shippers, although most contended that cargo misdescription was committed more frequently by NVOCCs and that the requirements could appropriately be limited to NVOCCs.

Finally, carrier and carrier conference commenters objected strongly to the perceived law enforcement duty created by the Proposed Rule on ocean common carriers regarding NVOCC tariff filing. These parties also expressed confusion over the scope of the carrier's duty under the Proposed Rule to verify the existence and accuracy of an NVOCC's FMC tariff number and confirm the shipper's status. Some of these commenters suggested that the Commission was in effect attempting to delegate to the carriers some of its own law enforcement responsibility.

Upon consideration of the comments and intervening events, the Commission has determined to discontinue this proceeding without offering further proposals or requests for comment at this time. It is evident from the comments received that the Proposed Rule as written is faulty for many of the reasons discussed, and cannot be corrected within the present framework of the proposal. It appears that the suggested definition of shipper unrealistically attempted to simplify the complex relationships and activities in the shipping industry. The proposed definition proved, we believe, to be excessively rigid and consequently unintentionally exclusionary in its application to the myriad of entities with interests of various kinds in oceanborne cargo. We also conclude that the proposed mechanisms for employing the definition were premised on unfounded generalizations and presumptions, and would be unworkable in practice. In short, the Commission is persuaded that the Proposed Rule was likely to create more problems than it would resolve.[1]

Moreover, since the initiation of this proceeding, Congress has enacted the Non-Vessel-Operating Common Carrier Amendments of 1990 ("NVOCC Act"). The NVOCC Act requires NVOCCs to furnish to the Commission a bond of $50,000, or higher if required by the Commission, to be issued by a surety company and made available to meet claims for damages. It also requires NVOCCs not domiciled in the United States to designate a resident agent in the U.S. for receipt of service of process. The Act authorizes the Commission to suspend or cancel the tariff of an NVOCC which fails to comply with the bonding or agent designation requirements. Under the NVOCC Act, vessel operating common carriers are prohibited from accepting or transporting cargo from, or entering a service contract with, an NVOCC unless that NVOCC has a tariff and a bond on file.

The objectives of the NVOCC Act coincide with some of the Commission's objectives in initiating this rulemaking: to protect the shipping public against irresponsible, unlawful or insolvent NVOCCs. While the statute is a different approach from the Proposed Rule, it addresses some of the same concerns.

The Commission has determined, therefore, in addition to its conclusion that the Proposed Rule was flawed and impractical, that it would be purposeless and precipitate on its part to proceed with this rulemaking when it remains to be seen what the impact of the NVOCC Act will be on the NVOCC industry in general and on the problems targeted in the Proposed Rule in particular. The proceeding will therefore be discontinued without prejudice to any future determination by the Commission that further action is warranted.

By the Commission.[2]

Joseph C. Polking,

Secretary.

Statement of Commissioner Quartel Concurring in Part With Commission Decision

While I agree with the Commission's decision to discontinue the proceeding in Docket No. 89-20, I disagree in part with the rationale offered for the decision as set forth in the Order of Discontinuance.

I agree with the reasoning set forth in the Order as regards several of the problems created by the proceeding, including: the overwhelmingly negative response from the industry that the Rule was unnecessary and created substantial uncertainies; that the "legally responsible to pay" standard in ambiguous; and that the proposed categorical exclusion of certain entities from the definition would too fundamentally alter the current legislative definition. However, I disagree with the unfounded conclusion in the Order that the "NVOCC Act", recently passed by Congress and currently being implemented by this Commission, addresses the same issues as this proceeding and ameliorates the underlying circumstances which led to the present proposed rulemaking.

The purported linkage between the purposes or effects of the "NVOCC Act" and the target of this proceeding is entirely specious. The fact is, as indicated in part in the Order, the Commission concluded that its knowledge both of the "shipper" issue and of the actual practices of "middlemen" in this industry is limited at best; and to have proceeded with this proposed rulemaking under that disadvantage would have been irresponsible. The "NVOCC Act" is simply not the "white Knight" of this issue; in fact it is really a noncompetitive wolf in sheep's clothing.

[FR Doc. 91-4303 Filed 2-22-91; 8:45 am]

BILLING CODE 6730-01-M

[1] The Commission is not suggesting that it has adopted all of the arguments—some of which were mutually contradictory—contained in the comments to the Proposed Rule. The arguments of several of the shippers' association interests in particular seemed to be based on misreadings and misinterpretations of the Proposed Rule. Generally, however, the Commission is impressed with and appreciative of the considered and detailed comments it received in writing and at oral argument.

[2] Concurring opinion of Commissioner Quartel is attached.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 90-34, FCC 91-40]

Private Land Mobile Radio Services; Short Spaced Assignments for Specialized Mobile Radio Licenses

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Further Notice of Proposed Rule Making that proposes to allow applicants for Specialized Mobile Radio (SMR) licenses submit technical showings that demonstrate the adequacy of short spaced assignments. Normally, SMR stations operating on the same frequencies must be separated by

at least 70 miles. The Commission has proposed to allow applicants to submit technical showings that demonstrate that in specific instances, spacings at less than this distance may be acceptable. The purpose of the proposal is to foster more intensive use of the spectrum.

DATES: Comments are due March 19, 1991. Reply Comments are due April 3, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: F. Ronald Netro, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, PR Docket No. 90–34, adopted February 5, 1991, and released February 20, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 Twenty First Street, NW. 20037 (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. The FCC's Rules provide that Specialized Mobile Radio (SMR) systems are afforded interference protection based on fixed mileage separations from co-channel systems. 47 CFR 90.621(b). The FCC permits "short-spacing" of SMRs on a waiver basis where there is mutual agreement among co-channel licensees. In the absence of mutual agreement, an applicant can also request waiver of the mileage separation if it can demonstrate through an appropriate technical showing that existing licensees are afforded adequate interference protection. The Notice of Proposed Rule Making in this proceeding, 5 FCC Rcd 1135 (1990) 55 FR 8966, March 9, 1990, proposed to permit SMRs to short-space without requiring a waiver if all affected co-channel licensees concur. This Further Notice of Proposed Rule Making solicits further comment on amending the rules to permit short-spacing requests based on technical showings without requiring a waiver.

2. The Further Notice of Proposed Rule Making emphasized that it is not proposed to reduce the level of scrutiny that short-spaced applications currently receive as waiver applications. Comments are requested, however, on whether safeguards should be implemented to ensure that the rights of existing licenses are adequately protected. The Further Notice of Proposed Rule Making also seeks comments on the contents of the technical showings and proposes that such showings should at least includes the following information: (1) The identity of all co-channel stations considered within the mileage separation; (2) diagrams showing the 30 dBu contour of the proposed station and the 40 dBu contours of the existing stations; (3) specification of the interference criteria and system parameters used in the interference study; and (4) a description of the propagation models, any engineering assumptions made, and any special terrain features considered in computing the interference impact. Comments are sought on these and any other relevant issues.

Regulatory Flexibility Act Initial Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, an initial regulatory flexibility analysis has been prepared. It is available for public reviewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction Act Statement

4. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Lists of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common Carriers, Communications equipment, Emergency medical services, Handicapped, Radio, Reporting and recordkeeping requirements.

Amendatory Text

Accordingly, 47 CFR Part 90 is proposed to be amended as follows:

1. The authority citation for part 90 would continue to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. 47 CFR 90.621 is proposed to be amended by adding new paragraphs (b)(4) and (b)(5) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) * * *

(4) The separation between co-channel systems may be less than the separations defined above if the applicant submits with its application letters of concurrence indicating that the applicant and each co-channel licensee within the specified mileage separation agree to accept any interference resulting from the reduced separation between their systems. Each letter from co-channel licensee must certify that the system of the concurring licensee is constructed and fully operational.

(5) The separation between co-channel systems may be less than the separations defined above if the applicant submits a frequency engineering analysis showing interference protection to co-channel stations equivalent to that provided by the mileage separation. At a minimum, such showings must contain the identity of all co-channel stations considered within the mileage separation; diagrams showing the 30 dBu contour of the proposed station and the 40 dBu contours of the existing stations; specification of the interference criteria and system parameters used in the interference study; and a description of the propagation models, any engineering assumptions made, and any special terrain features considered in computing the interference impact.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–4389 Filed 2–25–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 198

[Docket PS–119]

Allocation Formula for State Grants

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM solicits ideas on revising the allocation formula for distributing federal pipeline safety grants to states beginning in Calendar Year (CY) 1992. The purpose of the grant funds is to encourage the states to adopt and enforce minimum federal pipeline safety regulations. The Department of Transportation is revising the allocation formula to encourage states to further enhance pipeline safety and improve the efficiency of their programs.

DATES: Interested parties are invited to submit comments by April 1, 1991. Responses to this ANPRM will be used in developing a Notice of Proposed Rulemaking, scheduled for issuance by June 30, 1991. The planned timing for publishing a Final Rule is October 1, 1991, to meet the objective of a revised allocation formula for use in distributing pipeline safety grants in CY 1992.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: G. Tom Fortner, (202) 366–4564, or Karen Sagett, (202) 366–4577, regarding the subject matter of this ANPRM, or the Dockets Unit, (202) 366–5048, for copies of this document or other materials in the docket.

SUPPLEMENTARY INFORMATION:

Background

The Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) authorize the Department of Transportation to develop, issue, and enforce minimum pipeline safety regulations. The NGPSA and HLPSA also provide for state government assumption of all or part of the *intrastate* regulatory and enforcement responsibility under an annual certification or agreement with the Department. As a condition for certification, a state must adopt, as a minimum, the federal pipeline safety regulations and may adopt additional or more stringent regulations as long as they are compatible with the federal regulations. A state must also provide for injunctive and civil penalty sanctions substantially the same as those found in the federal regulations. Federal development of minimum pipeline safety regulations assures uniformity nationwide, while state enforcement of the regulations places responsibility for ensuring pipeline safety closer to the public. The resulting federal/state partnership maximizes available resources and allows for effective nationwide implementation of the pipeline safety program.

A state which does not satisfy the criteria for *certification* may enter into an *agreement* to undertake certain aspects of the pipeline safety program for intrastate facilities on behalf of the Department. In addition, a state may enter into an agreement to inspect interstate pipeline operators as an agent for the Department. As an agent, the state forwards any potential violations to the Department for enforcement.

Federal grant funds are intended to be an incentive to states to improve program performance and to assume full and active jurisdiction over *all* intrastate pipeline facilities (natural gas transmission and hazardous liquid pipelines; gas distribution systems, including municipally-owned systems; liquefied natural gas plants; master meter systems; and liquefied petroleum gas systems). A listing of participating states including a tabulation of their pipeline jurisdiction is available through the Dockets Unit.

The Department is authorized to provide up to 50 percent of the cost of personnel, equipment, and activities reasonably required by the state to carry out a pipeline safety program. States must submit an application for grant funds by September 30 to qualify for allocation of funds in the subsequent calendar year. The application includes a description of the state's pipeline safety program proposed for the following year together with an estimated budget. (It should be noted that the level of federal funding is based on the actual cost of operating the program, not the initial estimate submitted in a state's application.)

CY 1981–1984 Allocation Formulas

For calendar years 1971 through 1980, grant appropriations were sufficient to fund 50 percent of each state's gas program request. In 1981, and in each succeeding year, requests exceeded appropriations, and methods of allocation were developed to support state programs with the funds available. In the initial allocation formula developed to distribute funds in 1981, each state requesting less than $75,000 for reasonable program costs was allocated its full request. The states with larger program expenses were allocated $75,000 plus amounts based on a proportionate sharing of the remaining funds. In 1982, the formula was changed to provide each state asking for $70,000 or less with 70 percent of its request, up to a maximum of $49,000. Those states requesting more than $70,000 were allocated $49,000 plus a proportionate share of the remaining funds.

In allocating grant funds in 1983, a modification of the formula recommended by the National Association of Regulatory Utility Commissioners (NARUC) Staff Subcommittee on Gas Pipeline Safety was used following consultation with the state partners. The percentage factor of 45 percent was applied for requests greater than $250,000, then increased in 1 percent increments to a maximum of 99 percent for each decrease of $5,000 in the amount requested. This formula was also utilized in 1984 with one minor change in the percentage factor. This concept assured that states with small programs received 50 percent of the cost of the state program, and states with larger programs received more money, but a smaller percentage of the cost of running their programs.

CY 1985–1989 Allocation Formulas

In 1985, the Department determined that, as a matter of policy, the grant program should be used as an incentive to improve state program performance and to encourage states to take on more responsibility for pipeline safety within their states. Therefore, the allocation method used in 1985 added a factor for program performance. The criteria used included status of state participation, jurisdiction of operators, inspector qualifications, number of inspectors, and level of inspection activity. A state's rating was derived from information provided in state certification documents. Twenty percent of the gas grant funds was allocated based on the performance factor (with a highest criteria score receiving the maximum allotment and each descending score receiving a lower proportion). The remaining 80 percent of the funds was allocated under the percentage factor discussed previously. Again, the state partners were informally consulted and supported the formula.

In 1986, the Department merged the natural gas and hazardous liquid grants. In the remaining allocation process, 95 percent of the grant appropriation was dedicated to gas grants and 5 percent to hazardous liquid grants. The Department also increased the performance factor from 20 to 25 percent. Basically the same formula was used to distribute funds in 1987 through 1989.

CY 1990 Allocation Formula

In 1990, as in 1986–1989, 95 percent of the appropriation was allocated to natural gas and 5 percent to hazardous liquid. The 95 percent earmarked for natural gas was split into three subdivisions. The first subdivision was

reserved to fund a portion of travel expenses to the 1990 federal/state regional and national meetings, as requested by the National Association of Pipeline Safety Representatives (NAPSR). The second and third subdivisions essentially followed the formula used since 1985. Seventy-five percent of the remaining amount (second subdivision) was allocated by multiplying the state request by a percentage factor inversely related to the level of the request. The resulting amount became the state's *primary allocation.*

The remaining 25 percent (third subdivision) was allocated according to state performance, reflecting the degree to which a state had met certain goals established by the Department. Numeric points were assigned for achieving specific levels of performance based on information in the 1990 certifications. The resulting amount became the *secondary allocation.* The sum of the primary and secondary allocations then became the state's *final allocation.* An example follows of the 1990 allocation process using three actual state requests for federal funds:

EXAMPLE OF STATE ALLOCATION (CY 1990/GAS)

	State A	State B	State C
State request for Fed funds (50% of total State program)	$15,394	$127,585	$259,727
Primary allocation	10,199	63,155	79,118
Secondary allocation	5,002	26,939	25,903
Final allocation	$15,201	$90,094	$105,021
Percent of Total State budget received under Fed funds	49%	35%	20%

The 5 percent of the 1990 appropriation earmarked for hazardous liquid grants was distributed along the same lines as the natural gas grants with three subdivisions: an amount reserved for travel expenses; 75 percent of the remaining amount based on the level of the state request; and 25 percent based on state performance. A detailed description of the CY 1990 allocation formula is available through the Dockets Unit.

Revisions to the Formula

When NGPSA was originally passed in 1968, one of the main objectives was to further a national approach to pipeline safety. The grant program was set up to encourage the states to adopt and enforce the federal regulations. As such, the Department initially allocated grant funds to the states based on whether or not they had adopted the federal regulations. As more and more states adopted the federal regulations over the years, the Department revised the grant allocation formula to begin encouraging states to go beyond basic adoption and improve the efficiency of their programs. In 1985, a 20 percent performance factor was introduced into the formula; in 1988, the performance factor was increased to 25 percent. A number of states believe the weight given to performance in the formula should be increased even more to assure equity and fairness.

To address state concerns about formula inequities and related grant funding issues, the Research and Special Programs Administration (RSPA) staff has met with representatives of NARUC and NAPSR over the last 6 months. These discussions have covered state suggestions on revising the allocation formula as well as state recommendations for a "minimum level" staffing formula which will define a reasonable number of inspectors necessary for an adequate state pipeline safety program. Additionally, states have voiced strong concern about the lack of federal funding at the full 50 percent level intended by Congress, particularly in light of the increasing state workload and costs associated with new federal mandates (e.g., reporting safety-related conditions, drug testing). NARUC, in its 1990 annual meeting, passed a resolution requesting Congress and the Department to increase funding of the natural gas program to provide full 50 percent funding of state personnel, equipment, and activity costs.

Request for Comments

To assist RSPA in revising the allocation formula so it is reasonable for all states, while assuring the level of commitment Congress intended, interested parties are invited to submit their ideas for determining the best mix of formula factors and appropriate weights to be assigned to each. One aim in revising the formula is to build in flexibility for refinement over the years as the pipeline safety program continues to evolve. Factors to consider include, but are not limited to:

1. The extent to which a state inspects *all* pipeline operators (e.g., master meter systems, municipally-owned systems) and enforces minimum federal pipeline safety standards.
2. The frequency, quality, and type of state inspections and incident investigations conducted.
3. The number of state inspectors and support staff available.
4. The percent of staff time spent on inspections.
5. State inspector qualifications, including compliance with training requirements.
6. State adoption of applicable federal regulations.
7. State adoption of damage prevention program.
8. State enforcement of regulations, including assessment of penalties.
9. State attendance at federal/state pipeline safety meetings.
10. Adequacy of state recordkeeping procedures and ability to retrieve data.

Additionally, RSPA is seeking reactions to the following issues:

1. Should the formula address funding of state pipeline safety programs at only a base (or "minimum") level of performance? What is a base-level program—i.e., what is the range of "reasonable performance" that should be expected of all states? Should the formula provide incentives to states which go beyond the base level? If so, how could these incentives be factored into the formula?
2. How can relatively smaller state programs and marginal programs be protected from an abrupt drop in funding level if the formula is revised? Should some type of "grandfather" provision be adopted that would maintain funding at the existing level for a predetermined period to allow a state to meet revised performance standards? If such a provision is adopted, how many years should it be in effect?
3. Should the revised formula be phased in over a several year period or should it be introduced immediately without any transition? If phased in, how would this be done?
4. What incentives might be used to convince states currently not in the program to participate? What can be done to keep states from dropping out of the program?
5. Should the formula take into account annual aberrations a state may experience but over which it has little control that could adversely affect its funding level? (One way to resolve this problem might be to base computations for certain factors on a period of time greater than 1 year.)
6. Should be results of the state monitoring visit by the RSPA Office of Pipeline Safety staff be factored into the formula? How would this be done?
7. Should a portion of grant funds be set aside for special projects and initiatives that may come up from year to year (e.g., to expand jurisdictional responsibility; to develop and implement a one-call notification system)?

Interested parties are not limited to submitting comments only on the questions presented above and may submit any facts and views consistent with the intent of this notice.

Issued in Washington, DC, on February 20, 1991.

George W. Tenley, Jr.,
Associate Administrator for Pipeline Safety.

[FR Doc. 91-4376 Filed 2-22-91; 8:45 am]
BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

[Docket No. 82-21; Notice 03]

49 CFR Part 571

Evaluation Report on Fuel System Integrity; Federal Motor Vehicle Safety Standards; Motor Vehicle Fuel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an evaluation report concerning Federal Motor Vehicle Safety Standard No. 301, "Fuel System Integrity." This staff report evaluates the safety effectiveness, benefits, and costs of vehicle modifications made to improve the structural integrity of fuel systems of passenger cars, light trucks, and school buses. The report was developed in accordance with Executive Order 12291, which requires Federal agencies to conduct periodic reviews of major regulations they have promulgated. NHTSA seeks public review and comment on this evaluation study. Comments received will be used to complete the review as required by the Executive Order.

DATES: Comments must be received no later than May 28, 1991.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4949). (Docket hours, 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Standard No. 301 (49 CFR 571.301), "Fuel System Integrity," specifies certain requirements for the integrity and security of fuel systems of passenger cars, light trucks, multipurpose passenger vehicles, and some types of buses (including school buses). Vehicles must withstand barrier crash tests, from various directions and of specified severities, while maintaining the basic integrity of the fuel system, including all related components. The purpose of the Standard is to reduce the likelihood of death and injury due to fires in vehicle crashes which result from fuel system rupture and fuel leakage. The Fuel System Integrity Standard was first issued in 1967 and, at that time, established performance requirements only for frontal impact crashes involving passenger cars. During the period from 1975 through 1977, the Standard was revised to also include performance requirements for rear impact, side impact, and rollover type crashes, and also to extend coverage to light trucks, multipurpose passenger vehicles, and certain classes of buses.

In accordance with Executive Order 12291, NHTSA is conducting an evaluation study of the fuel system integrity standard to assess the effectiveness, benefits, and costs of vehicle modifications made by automotive manufacturers in reducing vehicle crash fires and associated fatalities and injuries. This report is the agency's second analysis of the effectiveness of the standard. The analysis is based on actual on-the-road crash experience of vehicles built both before, and after, Standard 301 became effective, and utilizes multiple years of accident data from 5 States plus 14 years of data from the agency's Fatal Accident Report System. Cost estimates are derived from information furnished by the automotive manufacturers on the vehicle modifications made by their companies in response to the requirements set forth by the Standard.

The principal findings and conclusions of this study are the following:

- FMVSS 301 has been effective in reducing the incidence of fire in passenger car crashes. No reduction in fire-related fatalities was found; the force levels encountered in fatal fire crashes may generally exceed the levels set by the standard. Burn injuries may have been reduced, but the evidence is insufficient for definitive conclusions.
- For light trucks built after FMVSS 301 took effect, no reduction in fires was found, either for all police reported crashes, or for fatal crashes, alone. It is possible that the pre-existing design and location of fuel system components afforded greater impact protection for light trucks than for passenger cars.
- Data on fires in school bus crashes were too sparse to permit an assessment of the effect of FMVSS 301.
- Older vehicles are more likely to experience fire crashes than new vehicles. One reason for this is believed to be the general degradation and weakening of vehicle structures and components over time.
- The fire rate in fatal passenger car crashes has increased significantly during 1975-1988. An increased proportion of older cars in the population is believed to be a principal reason behind this increase. Vehicle downsizing does not appear to be an important factor since fire rates did not vary with vehicle weight.
- In police accident data, burn injuries cannot be distinguished from injuries caused by impact forces. Since both fire risk and injury severity increase with increasing impact forces, the role of fire in injury causation cannot be determined.
- FMVSS 301 has added § 9.70 (in 1988 dollars) to the lifetime cost of owning and operating a passenger car. Corresponding costs for light trucks, small (Type II) school buses, and conventional (Type I) school buses are $30, $25.60, and $234, respectively.

NHTSA seeks public review of the evaluation study and invites reviewers to submit comments. It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-

addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.)

Issued on: February 19, 1991.

Donald Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 91-4289 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 91-09; Notice 01]

RIN 2127-AD 04

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to remove paragraphs S12 and 13 which exclude certain brake hose, fittings and assemblies from the standard's labeling requirements in S5.2, S7.2 and S9.1. NHTSA is proposing to delete S12 and 13 because they are generally redundant. Most of their provisions exist also in the labeling requirements located elsewhere in the standard. Also, since S12 and 13 are inconsistent in some respects with the standard's labeling requirements, NHTSA seeks to eliminate these inconsistencies by removing S12 and 13.

This notice also proposes other amendments to the labeling requirements.

DATES: *Comment closing date:* April 11, 1991.

Proposed effective date: On or before August 26, 1991.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Vernon Bloom, NRM-11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366-5277.

SUPPLEMENTARY INFORMATION: This notice proposes to remove paragraphs S12 and 13 from Standard 106 to improve the clarity of the labeling requirements of the standard, and proposes other labeling amendments. S5.2, S7.2 and S9.1 of the standard specify that certain information (e.g., size, manufacturer identification) must be labeled on new hose, end fittings and assemblies for hydraulic, air, and vacuum systems, respectively. Exclusions of certain hose, fittings and assemblies from the labeling requirements are found in S5.2, 7.2 and 9.1. Exclusions are also found in S12 and 13.

The exclusions of S12 and 13 generally reflect the exclusions of S5.2, 7.2 and 9.1, and are therefore redundant to a degree. Further, to the extent S12 and 13 are also in some respects inconsistent with the standard's labeling requirements, NHTSA seeks to eliminate these inconsistencies by removing S12 and 13.

Background

To provide a context for discussion of S12 and 13, it is necessary to discuss how those paragraphs have changed from when they first appeared in the standard.

Paragraph S12 of Standard 106 currently states: Notwithstanding any other provision of this standard, a brake hose assembly shall meet each requirement of this standard, except that the assembly may be constructed of brake hose which meets every requirement of the standard for hose other than the hose labeling requirements of S5.2, S7.2, and S9.1, and the assembly may be constructed of end fittings which meet every requirement of the standard for end fittings other than the end fitting labeling requirements of S5.2, S7.2, and S9.1.

Paragraph S12 was added to Standard 106 in 1974, shortly after the agency first established comprehensive labeling requirements for brake hose, end fittings, and assemblies. The labeling requirements became effective on September 1, 1974 for brake hoses and reusable end fittings; on March 1, 1975 for assemblies; and on September 1, 1975 for motor vehicles. Under the labeling scheme, hoses and end fittings had to bear the requisite labeling to be made into an assembly. All assemblies had to be labeled by means of a band, except assemblies "assembled and installed by a vehicle manufacturer in vehicles manufactured by him," which were excluded from labeling requirements.

Shortly after issuance of the labeling requirements, the agency became aware that some assembly manufacturers misunderstood what actions were permitted after the effective date of the standard. As a result of the misunderstanding, these manufacturers did not take timely steps to deplete their inventory of unlabeled hose and end fittings before the effective date. Because the only nonconformance with Standard 106 was a minor one about labeling, the agency believed relief was appropriate to enable these manufacturers to deplete their inventories of unlabeled parts. The agency therefore added S12 to the standard, to permit, for a limited time, the manufacturing of brake hose assemblies with hose and end fittings that did not meet the labeling requirements. (39 FR 39725; November 11, 1974.) As originally issued, S12 had a heading that applied S12 to assemblies manufactured from March 1, 1975 to August 31, 1975.

In 1975, the agency extended the effective date of S12 until August 31, 1976, and added paragraph S13 to the standard.

Paragraph S13 of Standard 106 currently states: Notwithstanding any other provision of this standard, a vehicle to which this standard applies shall be equipped with brake hose, brake hose end fittings, and brake hose assemblies that meet each requirement of this standard, with the following exceptions:

(a) The vehicle may be equipped with brake hose that meets every requirement of the standard for hose other than the hose labeling requirements of S5.2, S7.2, and S9.1;

(b) The vehicle may be equipped with end fittings that meet every requirement of the standard for end fittings other than the end fitting labeling requirements of S5.2, S7.2, and S9.1; and

(c) The vehicle may be equipped with brake hose assemblies that meet every requirement of the standard for assemblies other than the assembly labeling requirements of S5.2, S7.2, and S9.1.

The purpose of S13 was to permit vehicle manufacturers to exhaust stocks of unlabeled hose, end fittings, and unbanded assemblies that complied with Standard 106 in all aspects except for the labeling requirements. (S13 provides similar relief to vehicle manufacturers as that provided to assemblers by S12.) When S13 was originally issued, it had a heading that applied the paragraph to vehicles manufactured from September 1, 1975 to August 31, 1976. (40 FR 36159; August 27, 1975.)

In 1976, Standard 106's labeling requirements underwent extensive revisions. NHTSA added a provision that general hose labeling about size and the identity of the manufacturer need not be present on hose after the hose becomes part of an assembly or installed in a motor vehicle. (41 FR 28505; July 12, 1976.) In November 1976, NHTSA responded to petitions for a further extension of S12 and 13. NHTSA amended S12 and 13 by deleting the language that limited the effect of those paragraphs to only hose, fittings and assemblies manufactured within a certain period. The agency believed remaining unlabeled components should be permitted to be used. Moreover, NHTSA stated, "Because the agency has granted petitions to commence rulemaking to delete the assembly-labeling requirements that are mainly at issue here, it is concluded that the relaxation of the labeling requirements for assemblies and vehicles should be indefinite." (41 FR 52055; November 26, 1976.)

The quoted language indicates that the November 1976 notice itself did not delete the requirements. The notice relaxed the requirements pending a separate action to delete them.

The further action commenced one month later, December 1976, when NHTSA proposed new assembly labeling requirements (41 FR 56835; December 30, 1976.) The proposals were adopted in 1978 (43 FR 22360; May 25, 1978). In the rule, NHTSA deleted the labeling requirements for assemblies made with renewable or reusable end fittings, and permitted assemblies that used permanently attached end fittings to be labeled by marking a fitting, an easier method than banding. In the notice for the final rule, NHTSA viewed narrowly S12 and 13. The agency stated: "[T]he [1976] revision of paragraphs S12 and S13 permits the indefinite use in new vehicles of hose assemblies manufactured prior to the effective date of the labeling requirements for assemblies. This does not mean that new hose, end fittings and assemblies produced after specific effective dates do not have to meet the labeling requirements of the standard," 43 FR at 22362.

Current Labeling Requirements

The agency has regarded S5.2, 7.2 and 9.1 as the pertinent requirements when interpreting or amending the labeling requirements of Standard 106. Although labeling requirements for some assemblies, fittings, and hoses were deleted in 1976, other components are still subject to 5.2, 7.2 and 9.1. The following discussion summarizes the current labeling requirements.

Assemblies. Standard 106 (S5.2.4, 7.2.3, 9.1.3) requires assemblies using crimped or swaged end fittings, "except those assembled and installed by a vehicle manufacturer in vehicles manufactured by him," to be labeled by means of a band or by marking at least one end fitting of the assembly. ("Crimped or swaged end fittings" is used here to include fittings on vacuum tubing assemblies attached by heat shrinking or dimensional interference fit.) Standard 106 does not have labeling requirements for assemblies made with reusable or renewable end fittings. (Renewable end fittings are attached by a sacrificial sleeve or ferrule.)

End fittings. Standard 106 requires reusable and renewable end fittings to be labeled. The standard excludes from the labeling requirements fittings that are attached by deformation of the fitting about the hose by crimping or swaging. (S7.2.2, 9.1.2)

Hose. Standard 106 requires hydraulic brake hose to be marked with stripes, unless the hose is manufactured for use only in an assembly whose end fittings prevent its installation in a twisted orientation in the vehicle. (S5.2.1) The striping requirement is intended to prevent twisted installation of the hose in the vehicle. Twisting can lead to fatigue and early failure of the assembly in operation. 43 FR at 22362

The standard also has general labeling requirements that apply to hydraulic, air and vacuum hoses (S5.2.2, 7.2.1, 9.1.1).

Deletion of S12 and S13

NHTSA is proposing to delete S12 and 13 because they are generally redundant. Most of their provisions appear also in the labeling requirements of S5.2, 7.2 and 9.1.

Moreover, S12 and 13 are not entirely consistent with S5.2, 7.2 and 9.1 in three respects, described below. Because of this inconsistency, there could be some confusion about the effect of S12 and 13 on the labeling requirements.

First, S5.2, 7.2 and 9.1 provide assembly manufacturers using permanently attached fittings the option of marking a fitting to meet assembly labeling requirements. S12 permits the use of unlabeled fittings in assemblies. There may be a question whether, under S12, an assembly manufacturer who chooses not to band its assembly need not label the assembly (i.e., the fitting).

The agency believes the assembly (i.e., the fitting) should be labeled. Standard 106 requires assemblies to be labeled with the manufacturer's identification because the information facilitates the agency's enforcement efforts, and labeling would not be impractical (as with assemblies using reusable or renewable fittings, where the assembler's label can be subsequently lost or misapplied). NHTSA believes any doubt about the effect of S12 on S5.2, 7.2 and 9.1 can and should be removed by deleting S12.

Second, S7.2 and 9.1 require reusable and renewable end fittings to be labeled, but not assemblies made with such fittings. If an assembler produces a reusable end fitting and manufactures it into an assembly, there may be a question whether, under S12, the fitting is required to be labeled.

NHTSA's view is that the labeling is required. The labeling information (about the size of the fitting and the identity of the manufacturer) reduces the likelihood of mismatch problems between hoses and the fitting if the fitting is reused, and assists NHTSA's enforcement efforts. Any ambiguity about the requirement to label fittings can and should be removed by deleting S12 and 13.

Third, S5.2.2 requires hydraulic hose to be striped. There may be a question whether S12 relaxes the striping requirement if the hose is part of an assembly.

The agency's view is that the stripes are required. NHTSA's longstanding position is that stripes are appropriate for all assembled hoses except hoses with certain fittings that make twisted installation unlikely. 43 FR at 22362. Stripes are needed to ensure that the assembly is installed correctly (untwisted) in a vehicle. Removing S12 should remove any uncertainty that S12 may have caused.

Additional Changes

In addition to removing S12 and 13, the agency also proposes several labeling changes to the standard.

First, NHTSA proposes that S5.2.1 be amended to apply the striping requirement only to bulk hose and hose installed in an assembly. Thus, the requirement would not apply to hose that has been installed in a vehicle. NHTSA believes that once the hose is installed, the purpose for the stripes is fulfilled.

Second, the agency proposes to amend S5.2.4, 7.2.3 and 9.1.3 to remove the requirement that an assembly must be assembled by the vehicle manufacturer to be excluded from the assembly labeling requirements. Assemblies installed in new vehicles need not bear a label because the vehicle certification and identification information serves to certify and identify the hose assembly. NHTSA believes it would make no difference whether the vehicle manufacturer itself produced the assembly.

Third, the agency proposes to slightly modify the last sentence of the introductory paragraph of S5.2.2, 7.2.1, and 9.1.1 to make clear that the information need not be present on hose that is sold as part of a brake hose assembly for a motor vehicle.

Impact Analyses

NHTSA has concluded that this proposal does not qualify as a "major rule" within the meaning of Executive Order 12291, and that this proposal is not "significant" within the meaning of the Department of Transportation's regulatory procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. If adopted, the amendments that would clarify the labeling requirements for hoses, fitting and assemblies would not significantly affect manufacturers because NHTSA believes the components are currently being produced with the correct labeling. The amendments that would modify the striping requirements for hose and labeling assemblies would only slightly modify present requirements by relieving present restrictions. The agency does not anticipate that manufacturers would be significantly affected.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Any manufacturer of brake hoses, end fittings or assemblies that might qualify as a small entity under the Regulatory Flexibility Act could benefit slightly by the proposed amendment due to the clarification of the labeling requirements. However, the agency does not believe the amendment would result in significant cost impacts for manufacturers since it appears hoses, end fittings and assemblies are currently being produced with the correct labeling. The agency believes there would not be a significant impact on the cost of vehicles, and that small organizations and governmental jurisdictions that purchase motor vehicles would not be significantly affected by the proposed amendment

Environmental effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that commenters provide 10 copies of written comments and two copies of films, tapes, and other materials.

All comments must not exceed 15-pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. Paragraph S5.2.1 would be revised to read as follows:

* * * * *

5.2.1 Each hydraulic brake hose, except hose sold as part of a motor vehicle, shall have at least two clearly identifiable stripes of at least one sixteenth of an inch in width, placed on opposite sides of the brake hose parallel to its longitudinal axis. One stripe may be interrupted by the information required by S5.2.2, and the other stripe may be interrupted by additional information at the manufacturer's option. However, hydraulic brake hose manufactured for use only in an assembly whose end fittings prevent its installation in a twisted orientation in either side of the vehicle, need not meet the requirements of S5.2.1.

* * * * *

3. The introductory text of paragraph S5.2.2 would be revised to read as follows:

S5.2.2 Each hydraulic brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

4. The introductory text of paragraph S5.2.4 would be revised to read as follows:

S5.2.4 Each hydraulic brake hose assembly, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S5.2.4.1 The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

5. The introductory text of paragraph S7.2.1 would be revised to read as follows:

S7.2.1 *Hose.* Each air brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

6. The introductory text of paragraph S7.2.3 would be revised to read as follows:

S7.2.3 *Assemblies.* Each air brake hose assembly made with end fittings that are attached by crimping or swaging, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S7.2.3.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

7. The introductory text of paragraph S9.1.1 would be revised to read as follows:

S9.1.1 *Hose:* Each vacuum brake hose shall be labeled, or cut from bulk hose that is labeled, at intervals of not more than 6 inches, measured from the end of one legend to the beginning of the next, in block capital letters and numerals at least one-eighth of an inch high, with the information listed in paragraphs (a) through (e) of this section. The information need not be present on hose that is sold as part of a brake hose assembly or a motor vehicle.

* * * * *

8. The introductory text of paragraph S9.1.3 would be revised to read as follows:

S9.1.3 *Assemblies.* Each vacuum brake hose assembly made with end fittings that are attached by crimping or swaging and each plastic tube assembly made with end fittings that are attached by heat shrinking or dimensional interference fit, except those sold as part of a motor vehicle, shall be labeled by means of a band around the brake hose assembly as specified in this paragraph or, at the option of the manufacturer, by means of labeling as specified in S9.1.3.1. The band may at the manufacturer's option be attached so as to move freely along the length of the assembly, as long as it is retained by the end fittings. The band shall be etched, embossed, or stamped in block capital letters, numerals or symbols at least one-eighth of an inch high, with the following information:

* * * * *

9. Paragraphs S12 and S13 would be removed.

Issued on February 19, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-4316 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 575

[Docket No. 25; Notice 63]

RIN 2127-AD68

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Vehicles in Treadwear Convoys

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Uniform Tire Quality Grading Standards (UTQGS) specify detailed testing procedures for generating consumer information about the treadwear, traction, and temperature resistance of passenger car tires. The treadwear grading procedures now only permit testing of passenger car tires on rear-wheel drive passenger cars. This notice proposes amending the treadwear testing procedures to permit the use of front-wheel drive passenger cars and the use of light trucks, vans, and multipurpose passenger vehicles. The agency concludes that this proposal would result in the use of test vehicles that more accurately reflect the types of vehicles currently produced. This proposal would also provide treadwear evaluators with greater flexibility in obtaining vehicles.

DATES: Comments on this notice must be received on or before April 11, 1991.

Effective date: The amendments would become effective on or before March 27, 1991.

ADDRESSES: All comments on this notice should refer to Docket No. 25; Notice 63 and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4797.

SUPPLEMENTARY INFORMATION: The Uniform Tire Quality Grading Standards (UTQGS) require manufacturers or brand name owners of passenger car tires to provide consumers with information about their tires' performance relative to other tires in terms of treadwear, traction, and temperature resistance. (49 CFR 575.104). The purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale. This allows the tire purchaser to compare passenger car tires based on tread life. Although these treadwear grades are not intended to be used to predict the actual mileage that a particular tire will achieve, they must be reasonably accurate to help consumers choose among tires based on their relative tread life.

Extensive procedures for treadwear testing are set forth in 49 CFR 575.104(e). Under a recent amendment to these regulations to reduce variability, each tire in a treadwear convoy must be driven at each wheel position for an equal distance. (55 FR 47765, November 15, 1990). The regulations further specify that only rear-wheel drive passenger cars can be used in the testing to determine treadwear grades. (575.104(e)(1)(iv)).

The UTQGS requires the use of rear-wheel drive passenger cars because most vehicles were of this type when the regulations were initially issued. This contrasts with the types of vehicles now being manufactured. Based on NHTSA's data base for vehicle fuel economy regulations, approximately 80 percent of all model year 1989 passenger cars have front-wheel drive. In addition, the overall light duty vehicle fleet includes a steadily increasing percentage of light trucks, vans, and other multipurpose passenger vehicles (MPVs).

Given these facts and the substantial percentage of light trucks equipped with passenger car tires, the agency has tentatively decided to amend the

BEST COPY AVAILABL

treadwear grading procedures to permit treadwear convoys to consist of vehicles other than rear-wheel drive passenger cars. The agency is proposing to amend § 575.104(e)(1)(iv) to permit the use of front-wheel drive passenger cars and light trucks, vans and other mpvs. The agency believes that these amendments would result in the use of test vehicles that more accurately reflect the types of vehicles being manufactured and would permit greater flexibility for treadwear evaluators in obtaining vehicles. This notice first discusses the proposal to allow the use of front-wheel drive passenger cars and then the proposal to allow the use of light trucks, vans, and other mpvs.

Front-Wheel Drive Passenger Cars

As mentioned above, the treadwear grading procedures currently permit the use of only rear-wheel drive passenger cars for treadwear convoys. However, passenger cars now being manufactured are predominantly front-wheel drive. For model year 1989, approximately 80 percent of passenger cars were front-wheel drive. As a result, test evaluators have had difficulties in obtaining affordable vehicles for treadwear testing, especially rear-wheel drive passenger cars equipped with 13-inch diameter tires. The only rear-wheel drive cars with 13-inch diameters now being produced are expensive high performance sports cars. Thus, to test 13-inch tires, the treadwear testing companies have to purchase expensive cars or maintain out-of-production, high mileage vehicles such as Chevettes and Pintos. Additional problems with permitting only rear-wheel drive cars may result as the out-of-production cars become more economically impracticable to maintain. In contrast, many new relatively inexpensive front-wheel drive passenger cars can be equipped with 13-inch diameter tires. The agency thus has tentatively decided that this proposal would provide greater flexibility to treadwear evaluators which may result in cost savings. In addition, the agency tentatively concludes that permitting testing on the more common front-wheel drive cars might facilitate the distribution of more useful treadwear information, since the information would be based on test results obtained from currently produced vehicles rather than out-of-production ones. Based on the above considerations, the agency is proposing to amend the treadwear testing procedures to permit testing on front-wheel drive passenger cars.

Before proposing this amendment, the agency studied the feasibility of using front-wheel drive vehicles for treadwear testing. The agency's analysis of data indicates that treadwear rates of tires tested on rear-wheel drive cars do not significantly differ from those for tires tested on front-wheel drive cars. While initial tests indicated some variability of tire treadwear between tires tested on front-wheel drive as opposed to rear-wheel drive vehicles, the most recent tests which included controls to limit variability indicate that treadwear was not significantly different for tires tested on front-wheel drive as opposed to rear-wheel drive passenger cars. Statistical analysis of data from the later tests confirmed this thesis. ("Assessment of Front-Wheel Drive Vehicles for UTQGS Treadwear Testing," Long and Associates, December 1989, Report No. DTNH22–89–B–02031; Memorandum, Parker to Felrice, March 8, 1990, "Assessment of Front-Wheel Drive Vehicles for UTQGS Treadwear Testing," Docket No. 00–25–GR–272.) Because these later tests followed the recently adopted amendments requiring tire rotation to all wheel positions in a treadwear convoy, the agency believes that these tests more accurately reflect treadwear rates in treadwear convoys than the earlier tests. Therefore, based on these later tests, NHTSA tentatively concludes that there is no significant difference between the wear rates for tires on the front-wheel drive vehicles and those for tires on rear-wheel drive vehicles.

Testing on Light Trucks, Vans, and Other Multipurpose Passenger Vehicles

As mentioned above, the current treadwear grading procedures permit the use of only rear-wheel drive passenger cars for treadwear convoys. However, light trucks, vans, and other mpvs (i.e., sport utility vehicles) comprise an increasingly significant percentage of the light duty vehicle fleet. For instance, light trucks comprised 31 percent of the light duty vehicle production for model year 1989. Further, approximately 67 percent of light trucks are equipped with passenger car tires. Accordingly, the agency tentatively concludes that the regulations should permit the use of these vehicles in treadwear convoys.

Another reason to permit treadwear testing on light trucks stems from the recent amendments to the treadwear grading procedures that require each tire in a treadwear convoy to be rotated to each wheel position. Commenters on that proposal were concerned about difficulties with rotating tires to other vehicles in the convoy, especially with adjusting the tire's loading for each wheel position. Permitting light trucks in treadwear convoys would appear to reduce such problems because these vehicles accept a wider range of loadings and accommodate a wider range of tire sizes. ("An Evaluation of the Effect of Load and Pressure on Tire Treadwear," Southwest Research Institute, June 1983, DOT HS–806–456.) For instance, the Chevrolet S–10 pickup truck may accommodate wheel diameters of 13 to 17 inches, although the 13-inch wheel would have to be specially made at minimal cost.

As with the proposal to permit treadwear testing with front-wheel drive passenger cars, the agency studied whether treadwear of tires on light trucks were comparable to the treadwear on passenger cars. ("The Use of Front Wheel Drive and Multipurpose Vehicles in UTQGS Treadwear Testing," D. Domeck, Smithers Scientific Services, Inc., Docket 00–25–GR–284). An analysis of the data from this test led to the conclusion that grades obtained from different vehicles are not statistically different when the Course Monitoring Tire (CMT) and candidate tires are on vehicles of the same type. The report continued that cars, light trucks, and vans (all rear-wheel drive) can be used in the grading of tires so long as CMTs and candidate tires are on vehicles of the same type. (Memorandum: "Statistical Analysis of UTQGS Data," July 7, 1986, Docket 00–25–GR–266). While the agency considered requiring each treadwear convoy to consist of vehicles of the same make and model, such a restriction would not be necessary given that the new amendments requiring the rotation of tires throughout the test convoy should control for differences in treadwear caused by different vehicles.

Regulatory Impacts

NHTSA has determined that this rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have minimal economic impacts. The proposal would not impose any significant burdens. Instead, it would provide greater flexibility to treadwear evaluators. This flexibility might result in a cost savings if the adoption of the proposal resulted in evaluators' replacing older out-of-production cars with newer, less expensive front-wheel drive ones or more versatile light trucks.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Tire manufacturers typically would not qualify as small entities. While some UTQGS testing organizations may be small entities, the agency does not believe that a substantial number of them would be small entities. This amendment would also affect small businesses, small organizations, and small governmental units to the extent that these entities purchase tires. The preceding section reflects the agency's assessment that this amendment would not have any significant cost effect on the industry, and therefore it would not result in a significant change in consumer prices.

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule would not have any significant impact on the quality of the human environment.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that it would have no Federalism implication that warrants preparation of a Federalism report.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR 575.104, Uniform Tire Quality Grading Standards would be amended as follows:

1. The authority citation for part 575 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended]

2. Section 575.104(e)(1)(iv) would be revised to read as follows:

* * * * *

(e) *Treadwear grading conditions and procedures*—(1) *Conditions.*

* * * * *

(iv) A test convoy shall consist of two or four passenger cars, light trucks, or MPVs, each with a GVWR of 10,000 pounds or less.

* * * * *

Issued on: February 19, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–4317 Filed 2–22–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AB46

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public meetings.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next five years the incidental, but not intentional, take of small numbers of walruses and polar bears during open water exploration for oil and gas in the Chukchi Sea adjacent to the coast of Alaska.

Under provisions of the Marine Mammal Protection Act of 1972, as amended (Act), the taking of these marine mammals may be allowed only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth:

(1) Permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

On March 30, 1990, Shell Western E & P Inc. (SWEPI) petitioned the Service for specific regulations to allow the incidental, but not intentional, take of small numbers of walruses and polar bears during oil and gas exploration in Alaska State waters and on the Outer Continental Shelf (OCS) during the open water season in the Chukchi Sea over the next 5 years.

Through the preparation of a draft Environmental Assessment, the Service has proposed a finding that the total expected takings of walruses and polar bears during open water oil and gas exploration would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives.

DATES: Comments on the proposed rule must be received by April 11, 1991.

Public meetings on the proposed rule are scheduled as follows:

1. March 4, 1991, 7 p.m., Anchorage, Alaska.
2. March 12, 1991, 7 p.m., Barrow, Alaska.
3. March 13, 1991, 7 p.m., Wainwright, Alaska.
4. March 14, 1991, 7 p.m., Point Lay, Alaska.
5. March 18, 1991, 7 p.m., Point Hope, Alaska.

ADDRESSES: Written comments should be submitted by mail to Jon Nickles, Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the Office of Marine Mammals Management, Fish and Wildlife Service, 1011 East Tudor Road, room 142, Anchorage, Alaska; comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

The public meetings will be held at the following locations:

1. Anchorage—Large Conference Room, First Floor, Regional Office, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.
2. Barrow—North Slope Borough Assembly Room, Barrow, Alaska 99723.
3. Wainwright—Robert James Community Center, Wainwright, Alaska 99782.
4. Point Lay—Point Lay Community Center, Point Lay, Alaska 99759.
5. Point Hope—Kaglai Center, Point Hope, Alaska 99766.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan, Marine Mammals Management, Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, 907–786–3599.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Act gives the Secretary of the Interior (Secretary) authority to allow, on request by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. Permission may be granted for a period of 5 years or less.

The taking of marine mammals may be allowed only if the Service finds, based on the best scientific evidence available, that the taking will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. After final regulations are established, Letters of Authorization (LOA) may be issued to individual entities to conduct activities pursuantto the regulations.

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338–40350) amending 50 CFR 18.27 (i.e., Regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." 50 CFR 18.27(c). Unmitigable adverse impact means "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." *Id.*

Summary of Request

On March 30, 1990, the Service received a request from SWEPI seeking promulgation of regulations to allow the incidental take of small numbers of Pacific walrus *(Odobenus rosmarus divergens)* and polar bear *(Ursus maritimus)* during oil and gas exploratory activities in Alaska State waters and on the OCS during the open water season in the Chukchi Sea adjacent to the coast of Alaska over the next 5 years. The open water season is defined as that period when sea ice does not cover the Chukchi Sea. Sea ice begins forming over the northern portion of the Chukchi Sea by late September or early October. By early November, the southern extent of the sea ice has usually covered the Chukchi Sea and entered the Bering Sea (Webster 1981, 1982 in LaBelle et al. 1983). The open water season, which is assumed for analysis purpose to be represented by a 90-day drilling or operating period (USDI 1990), usually occurs between June 15 and October 15. Although it is referred to as an open water season, broken pack ice exists within the open water zone. This ice is moving, floating ice which is dynamic due to wind and currents. The presence of floating ice requires ice management activities during the open water season.

SWEPI's request includes taking by incidental and unintentional harassment of marine mammals during pre-lease and post-lease exploration for oil and gas resources in Alaska State waters and on the OCS. They are requesting takes by harassment, and do not anticipate any lethal takes. The Act defines "take" as harass, hunt, capture or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The petition does not request promulgation of regulations for incidental taking from development or production activities. Activities likely to be conducted include geological and geophysical surveys, drilling of Continental Offshore Stratigraphic Test Wells, and exploratory drilling for oil and gas together with associated support activities. Although SWEPI believes that oil and gas exploratory activities will not result in any incidental taking, potential sources for incidental taking would include noise, unpermitted discharge (oil spill), and physical obstruction. Excluded from the geographic and seasonal scope of the application is the area within the Chukchi Sea spring lead system when it is identifiably intact as a marine mammal migratory corridor (SWEPI Petition 1990). The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. Leads (linear open water areas) and polynyas (nonlinear open water areas) are formed when wind and currents direct the pack ice offshore. The Chukchi Polynya is a recurring polynya and associated lead system that appears in March and April, originating south of Point Hope. This polynya often provides the only open water habitat available in early spring before any major deterioration of the pack ice occurs. The petition states that SWEPI, at this time, does not intend to conduct any exploratory drilling or seismic operations within the spring lead system during the excluded period.

On August 10, 1990, the Service published in the **Federal Register** a notice of receipt of request for rulemaking and request for information (55 FR 32851). Comments were to be received no later than September 24, 1990. Comments were received from the Minerals Management Service, the Alaska Department of Fish and Game, the North Slope Borough, two oil and gas industry groups, four environmental groups, and four other interested parties.

Summary of Proposed Rule

The Service proposes to allow an incidental take of polar bears and walruses in the Chukchi Sea from 1991–1996 by individuals who are conducting pre-lease and post-lease oil and gas exploratory activities. Incidental take regulations will be in effect during the open water season which will be defined as that period from June 15 to October 15. Activities will not be allowed when walrus are concentrated in the spring lead system. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system and will notify the exploration companies and the Native communities when it has made this determination. Depending on the variability of ice conditions, the start-up date may be after June 15 and in some rare years could occur before June 15. For those years when ice conditions warrant continuing exploration activities past October 15, the operator may apply in writing to the Service's Alaska Regional Director for an extension of the incidental take authorization.

The proposed regulations include requirements for monitoring and reporting and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. The regulations are proposed based on a finding that exploration in the Chukchi Sea may involve the taking (by harassment) of the two aforementioned species of marine mammal. However, the Service believes that the total impact of the taking will have a negligible impact on the species and on the availability of the species for subsistence uses. All activities must be conducted in a manner that minimizes adverse effects on the species and their habitat. The proposed regulations require those who request a LOA to submit a plan to monitor the effects on walruses and polar bears that are present during exploratory activities. The plan and the person or persons designated to observe and record the effects of exploration activities must be approved by the Service. Also, the applicants must identify what measures have been taken to minimize any adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request will be evaluated on the specific activity and the specific location, and each LOA will identify allowable methods or conditions that are specific to that activity and location. A report on all exploration and monitoring activities must be submitted to the Service within 90 days after the completed activity. A notice of issuance of LOAs will be published in the **Federal Register**. As prescribed in 50 CFR 18.27(f), any LOAs proposed by the Service to be withdrawn or suspended, either on an individual or class basis, will be subject to public review unless the Service determines that an emergency exists which requires immediate action.

A LOA must be requested by each group or individual conducting an exploratory activity where there is the likelihood of taking by harassment of either of the two species of marine mammals considered in this rule. The granting of each LOA would be based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level used to make a finding of negligible impact and a finding of no unmitigable adverse impacts. If the level of activity is more than anticipated, such as more support vessels or aircraft, more drilling units, or more miles of geophysical surveys, the Service would reevaluate its findings to determine if they continue to be appropriate. The individual LOAs would include monitoring and reporting requirements that are specific to each activity.

Description of Activity

SWEPI has supplied information on the kinds and the level of activities they expect to occur over the next five years. The Service has used this estimated level of activity as a basis for its findings. If requests for LOAs exceed the highest estimated level of activity, the Service would reevaluate its findings to determine if they continue to be appropriate before further LOAs are issued.

Activities that are covered in the request are geophysical surveys, exploratory drilling, and support activities. Geophysical surveys are divided into two classes: deep seismic and shallow hazard. Both kinds of surveys use a "reflective" method to acquire data. Both include an energy source that generates a seismic signal, hydrophones that receive the signal, and electronic equipment on board a seismic vessel that amplifies and records the signal. Energy sources used in deep seismic surveys release bursts of compressed air or water. Sound sources in shallow hazard surveys operate at lower energy levels and generate less acoustic pressure than deep seismic surveys.

The four principal forms of exploratory drilling structures currently in use or under development for Arctic exploration are artificial islands, bottom-founded structures, drillships, and semi-submersible vessels.

The exploratory activities discussed in the petition are currently being conducted in Arctic waters. Seismic surveys have been conducted in the Chukchi Sea since the mid-1960s. Exploratory drilling has been conducted in the Chukchi Sea since 1989.

Marine seismic surveys operate only during the open-water season which is variable. In the southern Chukchi Sea, open water may occur between July and mid-November and in the northern Chukchi Sea, open water may occur between August and October. Seldom does the open-water period exceed 90 days. The scope of the petition is limited to "open-water" seismic surveys and does not include any on-ice survey activity near spring lead systems. Seismic surveys and exploratory drilling will continue for at least the next seven to ten years. They will occur on tracts already leased and those offered in future lease sales.

Over the next five years, pre-lease survey activity (deep seismic) will occur in unleased portions of the Chukchi Sea. Pre-lease surveys will likely be concentrated in the proposed sale areas during the open-water season. No estimates were provided by SWEPI for the number of trackline miles of pre-lease seismic surveys anticipated in the Chukchi Sea; however, another source (Amoco Production Company et al. 1989) has estimated that 4,000 trackline miles (6,436 kilometers) of surveys would be conducted for OCS Lease Sale 126. SWEPI estimates that the possible post-lease seismic survey activity for Lease Sale 109 may be somewhat greater than that estimated by the Minerals Management Service (USDI 1987), 7,979 trackline kilometers over a period of 301 days. The estimate for Sale 126 post-lease seismic surveys under the high case is about 9,600 trackline kilometers with about 7,100 trackline kilometers estimated under the base case (USDI 1990b).

Before drilling can begin, lessees must file an Outer Continental Shelf Plan of Exploration and Environmental Report with the Minerals Management Service as well as an Application for Permit to Drill. The Plan of Exploration is reviewed by the State of Alaska for consistency with the Alaska Coastal Management Program under the provisions of the Coastal Zone Management Act.

In the Chukchi Sea, 350 blocks were leased as a result of OCS Lease Sale 109. To date, three exploratory wells have been completed and another one

started. The Final Environmental Impact Statement for Lease Sale 109 estimates that 29 exploratory and 40 delineation wells will be drilled under the high-case assumption from 1992 through 1996, the period the incidental take regulations would be in effect. The mean case assumes 16 exploratory and 23 delineation wells over the same period. As few as two or as many as seven drilling units could be working in any given year in the Chukchi Sea. These estimates include both floating and bottom-founded drilling units. Sale 126, the next oil and gas lease sale for the Chukchi Sea OCS planning area, is scheduled for August 1991. The Draft Environmental Impact Statement for this lease sale estimates that under the high case 25 exploratory and 12 delineation wells will be drilled from 1992 through 1996 (USDI 1990b). The mean case assumes 23 exploratory and 11 delineation wells during the same period. The cumulative case for the arctic region, including lease sales from the Beaufort Sea, Chukchi Sea, and Hope Basin Planning Areas, assumes a total of 68 exploratory and delineation wells will be drilled in State and Federal waters in the Beaufort and Chukchi Seas.

An appropriate drilling unit will be selected by the lessees when an application for Permit to Drill is filed with the Minerals Management Service or the State of Alaska. Although the level of support activities is speculative, supplies during the drilling season will be transported to the drill ships by helicopters and supply vessels. Bottom-founded units will be resupplied from barges. During 1991 through 1996, an estimated 24 drilling support barge trips will be made to Chukchi Sea drilling units associated with Sale 109. A proportionately similar number of barge trips would be expected during 1992 through 1996 for units drilling on tracts leased in Sale 126. It is estimated that one helicopter trip per drilling unit per day will be flown in support of exploratory drilling. One icebreaker and two ice-strengthened support/supply boats are estimated as needed to support each drilling unit, and supply boat trips are estimated at one per drilling unit per week. Depending on ice conditions, two or more icebreaking vessels may be required to perform ice management tasks for the floating units.

Biological Information

The geographic area covered by the request is the continental shelf of the Arctic Ocean adjacent to western Alaska. This area includes the waters and seabed of the Chukchi Sea, which encompasses all waters north of the Bering Strait that are east of the U.S.—Russia Convention Line of 1867, west of a north-south line at Point Barrow, and within 200 miles to the north of Point Barrow. This delineation of the Chukchi Sea includes the eastern blocks of the Beaufort Sea Planning Area.

Walrus

The Pacific walrus subspecies winters in the Bering Sea and includes about 80 percent of the world walrus population. In the summer, walruses segregate by sex and age as females with calves and juveniles of both sexes migrate into the Chukchi Sea. Many of the adult males remain in the Bering Sea where they form large groups on terrestrial haulouts in Bristol Bay and the Gulf of Anadyr (Fay 1961).

Population estimates derived from joint U.S.-Soviet aerial surveys conducted in 1975, 1980, and 1985, indicated that the population had increased to near or above historic levels and may now be decreasing (Sease and Chapman 1988). Gilbert (1989) estimated the Bering and Chukchi seas walrus population to be 232,510 in 1985. Joint aerial surveys were conducted most recently in the fall of 1990, but the data have not been analyzed. Due to an unusually extensive pack ice retreat that altered the normal distribution of walruses, the data may not be comparable to previous surveys (D. Seagars, pers. commun.). Population estimates must be regarded with caution because of the time interval between censuses, the large variance around the estimates, and an unknown relationship between the number of animals counted on the ice and the number of animals uncounted in the water (Chapman et al. 1977, Gilbert 1989). Because of these factors, substantial changes in the Pacific walrus population could occur without detection.

A decrease in fecundity and calf survival and an increase in the age of sexual maturity for females was detected around 1980, indicating that the population had reached carrying capacity. Concurrently, the combined Soviet-U.S. catches doubled between 1970 and 1980. This combination has the potential to produce a dramatic population decline (Fay et al. 1989).

Available data indicates mating occurs in the Bering Sea during the winter and young are born, usually on the ice (Burns 1970), between mid-April and mid-June during the northward migration from the Bering Sea to the Chukchi Sea (Fay 1982). Their migration usually begins in late March or early April and can either occur by swimming or by riding on the ice as it retreats northward. Calving areas in the Chukchi sea extend from the Bering Strait to 70° N latitude (Fay et al. 1984b). Newborn calves are tended closely. Cows brood neonates to aid in their thermoregulation (Fay and Ray 1968), and carry them on their back or under their arm while in the water (Gehnrich 1984). Females with newborn young join together to form large "nursery herds" (Burns 1970). Summer distribution of females and young walruses is closely tied to movements of the pack ice relative to feeding areas. Walruses spend one-third of their time hauled out, usually on ice (Fay and Ray 1968).

Walruses feed mostly on benthic invertebrates and are thought to be limited to depths of about 100 m (Fay and Burns 1988). Stomach samples from animals summering in the Chukchi Sea found polychaetes, moon snails, crustaceans, tunicates, and anthozoans to make up greater proportions of the contents than did bivalves, which are normally most important. Most of the stomachs contained large amounts of sediments, and a high proportion of the sample contained seal flesh. Ingestion of seal flesh is thought to be unusual in the Bering Sea (Lowry and Fay 1984) but may be more common in the Chukchi Sea, where benthic invertebrate prey species appear to be smaller and less abundant (Fay et al. 1984a).

The juxtaposition of ice over appropriate depths for feeding is especially important for females and young walruses that may not be capable of deep diving or of long-term exposure in the water. Walruses resting on the ice will be transported to other feeding areas, which helps to prevent overexploitation of their prey resource. On the Chukchi summering grounds most walruses are found within 20 km from the southern ice edge unless the edge retreats off the continental shelf. In those years, the terrestrial haulouts at Wrangel Island and Cape Lisburne and the surrounding waters become important resting and feeding areas (Fay et al. 1984b).

Terrestrial haulouts used traditionally in the eastern Chukchi Sea occurred at Cape Thompson, Cape Lisburne, and Icy Cape (Fay 1957). Currently, only the Cape Lisburne site is used (Frost et al. 1983). Numerous haulouts are still in use in the western Chukchi Sea including Wrangel and Herald islands, which are important hauling grounds in September, especially in years when the pack ice retreats far to the north (Fay 1982).

Polar bears occasionally prey on walrus calves, and killer whales (*Orcinus orca*) take all age classes; however, the most important source of mortality is man (Fay 1982). Walrus hunting by Native peoples has occurred for thousands of years. Exploitation of walrus by Europeans has occurred in varying degrees since first contact. Currently, walrus are harvested by Alaskan Natives in coastal villages and by Soviet subsistence (shore-based) and commercial (ship-based) hunters (Sease and Chapman 1990). The Service monitors the Alaska Native harvest (Seagars et al. 1989) and the Soviets record their harvest. The Soviets are currently harvesting under a 4,000 animal per year quota (F. Fay, pers. commun.). There is no quota for the Alaskan Native harvest, but the catch has declined since 1985 from about 4,000 to about 2,000 in 1988 (Seagars et al. 1989). The number of walruses killed but not retrieved has been difficult to estimate by both groups, but it is estimated to be about 40 percent of the total catch (Sease and Chapman 1988).

Polar bear

Polar bears occur only in the Northern Hemisphere, where the distribution is circumpolar, and they live in close association with polar ice. Their Alaskan distribution extends from Bering Strait to the U.S.-Canada border, usually within 300 km of the coast (Frame 1989, Amstrup, unpubl.). The world population estimate of polar bears ranges from 10,000–20,000 individuals (Larsen 1972), with possibly as many as 5,000 bears in Alaskan territory (Amstrup et al. 1986). The polar bear population of the Chukchi Sea is thought to be somewhat discrete from that of the Beaufort Sea (Lentfer 1974). However, recent telemetry information has revealed some exchange may be occurring between the two regions (Amstrup, FWS, unpubl., Garner, FWS, unpubl.). Polar bears of the Chukchi Sea are subject to the movements and coverage of the pack ice, which covers an average distance of 1400 km between the winter maximum and summer minimum (LaBelle et al. 1983) every year. The most extensive north-south movements of polar bears occur with the ice in spring and fall. Summer movements tend to be less dramatic due to the reduction of ice habitat. Summer distribution is somewhat dependent upon the location of the ice front, however, polar bears are accomplished swimmers and are often seen on floes separated from the main pack ice. Therefore, bears can appear at any time in what can be called "open water." In some years, the ice front does not retreat north of Point Barrow. The summer ice pack can be quite disjunct and segments can be blown great distances carrying polar bears with them.

Females without dependent young (young-of-the-year or yearlings) breed in the spring and enter maternity dens, that they dig in the snow, by late November (Harington 1964). An average of two cubs are born in December, and the family group emerges in late March or early April. Only pregnant females den for an extended period in the winter, and it is now known that they den both on land and on the pack ice (Lentfer and Hensel 1980, Amstrup 1986). Females probably do not reproduce before their fourth year, and in Alaska the average age was reported to be 6.4 years, with a range of 4–8 years. The average reproductive interval is 3–4 years (Lentfer and Hensel 1980) and reproductive senescence probably occurs before age 20 (Ramsay and Stirling 1988). Following these conditions a female can produce a maximum of 10 cubs in her lifetime.

Greater than 90 percent of a polar bear's diet is ringed seals (*Phoca hispida*) (Stirling and Smith 1975). Bearded seals (*Erignathus barbatus*) and walrus calves are hunted occasionally. Polar bears opportunistically scavenge marine mammal carcasses and there are reports of polar bears killing beluga whales (*Delphinapterus leucas*) trapped in the ice. Polar bears are also known to eat nonfood items including styrofoam, plastic, pieces of car batteries (Lunn and Stirling 1985), anti-freeze, hydraulic, and lubricating fluids (Russell 1975, Amstrup et al. 1989, Derocher and Stirling 1990).

Polar bears hunt seals along leads and other areas of open water, or by waiting at a breathing hole, or breaking through the roof of a seal's lair. Lairs are excavated in snow drifts on top of the ice. Bears also stalk seals in the spring when they haul out on the ice in warm weather. The relationship between ice type and bear distribution is as yet unknown, but it is suspected to be related to seal availability.

Both fur and blubber are important to polar bears for insulation in air and water (Oritsland 1989). Cubs-of-the-year must accumulate a sufficient layer of blubber in order to maintain their body temperature when immersed in water. It is unknown to what extent young cubs can withstand exposure in water before they are threatened by hypothermia (Blix and Lentfer 1979). Polar bears groom their fur to maintain its insulative value.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. Cannibalism by adult males on cubs and occasionally on females (presumably that were too agressive in defending cubs) is known to occur (Amstrup, pers. comm.). The most significant source of mortality is man. Before the Marine Mammal Protection Act was passed in 1972, polar bears were taken by sport hunters and residents. Between 1925 and 1972 the mean reported kill was 186 bears per year. Seventy-five percent of these were males, as cubs and females with cubs were protected. Since 1972, only Alaska Natives have been allowed to hunt polar bears for their subsistence uses or for handicraft and clothing items for sale. The Native hunt occurs without restrictions on sex, age, or number. Although the average annual harvest has declined since 1972, the percentage of females and cubs appears to have increased (Amstrup et al 1986). From 1980–1985, the total annual harvest averaged 135 bears; 72 percent from the Chukchi Sea and 28 percent from the Beaufort Sea (Schliebe 1986).

Effects of Exploration on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas exploration activities in the Chukchi Sea may affect walruses in a number of ways. Air and vessel traffic can cause herds to stampede resulting in injuries and cow-calf separations, both of which may be fatal. Noise from air traffic, seismic surveys, ice breakers, supply ships, and drilling may displace walrus herds. The quantity and quality of walrus prey may be affected by contamination of the benthos from disposal of drilling muds and cuttings, from operational petroleum spills, and possibly from a blowout. Drilling discharges would be very localized and the projected frequency and volumes of oil spills precludes more than a very low overall effect (USDI 1990). The low probability of a blowout is discussed elsewhere.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Quantitative research on the sensitivity of walruses to noise has been limited because no audiograms (a test to determine the range of frequencies and minimum hearing threshold) have been done on walruses, as they have for some other pinnipeds (Malme et al. 1989). Studies have assumed that a walrus' hearing was within the 13 Hz and 1200 Hz range produced by their own vocalizations (Ray and Watkins 1975, Miller 1985).

Fay et al. (1984) observed that walruses fled an approaching ship at distances ten-fold greater from upwind approaches than from downwind approaches, indicating that odor

appeared to be the primary stimulus for a flight response. They found also that males tended to be more tolerant of disturbances than females and individuals were more tolerant than groups. Females with calves tended to be least tolerant. Walruses in the water were more tolerant than those hauled out, however, those hauled out on ice were more tolerant than those hauled out on land. Other factors, such as weather and length of time hauled out appeared to contribute to the response.

Response to aircraft disturbance varies with aircraft type, altitude, distance, flight pattern, and age-sex class of the animals (Burns and Harbo 1977, Fay et al. 1984, Johnson et al. 1989). In general, walruses responded when aircraft were flying below 400 meters altitude within 1–1.3 kilometers from them (Brooks 1954, Salter 1979, Fay et al. 1984).

Walruses using the Chukchi Sea in the spring and summer are predominantly adult females with dependent young and young animals of both sexes. These walruses migrate through the Bering Strait into the Chukchi Sea using the Chukchi Polynya (a recurring, nonlinear open water area) and lead system. In the early spring, females and calves may become concentrated in the limited amount of open water between the Bering Straits and Point Hope (Fay 1982) making them especially vulnerable to disturbances caused by air and vessel traffic. In the spring lead system, vessels may cause physical obstructions preventing the free movement of walruses. Females with calves are most sensitive to foreign sights, smells, and sounds and they exhibit avoidance responses at much greater distances than do other walruses. Calves are born during the northward migration and although calves can swim at birth they may be limited in the amount of time they can spend in the water. While on the ice, calves need to be brooded by their mothers to stay warm. If walruses must spend more time in the water to avoid vessel-related disturbances, they may become physiologically stressed by the increase in energy required to stay warm. Stampedes caused by air or vessel traffic are more likely to cause calf mortality by trampling when the calves are very young, but less likely to cause separation because females keep close track of calves until they are 2–3 months old (Fay et al. 1984b).

On the summering grounds, in typical ice years, the walruses remain near the pack ice edge using the ice as a resting platform and the sea floor beneath the ice for feeding. Specific feeding areas are not known, but walrus distribution indicates that the entire eastern Chukchi Sea may be important. Air and vessel traffic during this later period can also cause walrus herds to stampede off the ice, which may result in injuries to calves from trampling, although the calves are older and less vulnerable to being crushed. Cow-calf separations become more likely as the calf becomes older because it becomes the calf's responsibility to maintain the bond (Fay et al. 1984b). Although some impacts to individuals may occur, we do not believe proposed air and vessel traffic will reduce numbers enough to affect the population. This conclusion is based on the assumption that air and vessel traffic will be limited within the spring lead system during the walrus migration.

A stationary drilling rig probably does not act as a physical obstruction to walruses in an open water situation. However, young walruses may be attracted to a drillship. One incident occurred in the 1989 drilling season where a lone walrus calf surfaced in the center hole of the drillship's hull (the moon pool) and came in contact with hydraulic fluid that had been released by a broken line. The walrus calf was removed from the moon pool with a cargo net, released into the Chukchi Sea, and was not seen again.

Limited data from monitoring studies of the 1989 drilling season indicated walruses may become accustomed to drilling noise from a stationary location. Noise produced by icebreaking activity near the drill site appeared to be more disturbing, and walruses responded by moving away from the ships into the pack ice (Brueggeman et al. 1990). Underwater noise produced by ship's propellers (cavitation) is second in intensity only to noise generated for seismic exploration. Ice management requires that ships accelerate, reverse direction, and turn rapidly—activities which maximize propeller cavitation and the resulting noise levels. The reason walruses moved away from the noise source into the pack ice is unknown.

Seismic surveys create more noise than general vessel and icebreaker traffic but since these surveys are conducted only in open water, they are likely to disturb fewer walruses than icebreaking activities.

Contaminants

Walruses root along the sea floor for bivalve mollusks and other benthic invertebrates. Drilling muds and cuttings contain varying amounts of contaminants depending upon the muds used and the geology of the drilling location. Muds and cutting disposal may influence the local benthic community by contaminating invertebrates, changing the species composition, or eliminating the community altogether. The limited volume and dispersal of drilling discharges would have a very low effect on lower-trophic-level organism populations because of the very localized nature of the impact; only those organisms in proximity to the discharge point would be affected (EPA in USDI 1990).

Walruses ingest sediments while feeding and are known to bioaccumulate heavy metals. The highest levels of cadmium found in any wild mammal was found in Bering Sea walruses (Taylor et al. 1989). How these contaminants might affect the health of individual walruses is unknown. Walruses can pass contaminants along the food chain to humans.

Even though the calculated probability of a blowout, resulting in an oil spill is very low for exploration, a blowout has the potential to affect walruses. Sublethal effects of oil on benthic invertebrates include lowered feeding, growth and reproductive rates (Percy and Mullin 1975), which would affect some walruses as well as localized die offs or bioaccumulation of hydrocarbons and heavy metals by invertebrates.

There is evidence that the Pacific walrus population has reached carrying capacity and may currently be food-limited (Fay et al. 1989). Reductions in food availability or quality could result in a decrease in the number of walruses that can be supported.

No specific research has been conducted on the direct effects of oil on walruses, but effects can be anticipated from studies done on other pinnipeds. Crude oil caused eye irritation, kidney lesions, and liver damage to six ringed seals, while it caused death within 71 minutes for three others (Smith and Geraci 1975, Geraci and Smith 1977). The variation in effects of crude oil is thought to be related to the condition of the animal. Animals nutritionally or otherwise stressed would be more vulnerable (Smith and Geraci 1975). The disturbance related to a large cleanup effort may have more of an impact on walruses than the oil. Wrangel and Herald Islands and the Soviet coast contain traditional walrus haulouts that are at risk according to oil-spill-trajectory simulations (USDI 1987). It is unclear whether walruses would become oiled by continued use of the terrestrial sites or if walruses would avoid the oiled beaches and abandon those haulouts. There is evidence from Soviet reports that chronic disturbance, such as cleanup activity on the terrestrial haulouts, may result in their permanent abandonment (Fay et al. 1984b).

Subsistence

The possibility that oil exploration activity may disrupt distribution patterns, or reduce the availability of walruses from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, Barrow) and inland villages (Atqusuk, Kiana, Noatak).

The "open water" season for oil exploration activities coincides with the walrus hunting season for the villages of Barrow, Wainwright, Point Lay and Point Hope. In 1988, hunters from Wainwright harvested 54 of 58 walruses in July and August (USDI 1989b). Point Hope, the southernmost of these four villages, typically hunts among the ice floes in June and early July (USDI 1984). After the ice is gone, Point Hope hunters take walruses at terrestrial haulouts around Cape Lisburne.

Except for a 50 mile stretch northwest of Cape Lisburné, the entire coast of the Chukchi Sea from Cape Thompson to Barrow is used for walrus hunting. Barrow hunters hunt in the area extending 25 miles to the north, 50 miles to south, and 30 miles offshore. Wainwright hunts along 125 miles of the coast, as far offshore as 40 miles, overlapping with the area used by Barrow. Point Lay hunts from Icy Cape to within 60 miles of Cape Lisburne, and up to 30 miles offshore (USDI 1989). Point Hope hunts a smaller area centered around the village, and they hunt within 10 miles of shore (USDI 1988, 1989).

Three lease prospects (Bagel, Eclair, and Kolache) are located within or adjacent to Point Lay's walrus hunting area. Two others (Bearclaw and Napoleon) are less than 10 miles away. Residents of Point Lay regard oil exploration to be of greater risk than benefit to their village (USDI 1989).

The effects on subsistence-harvest patterns that may occur as a result of oil and gas exploratory activities carried on in the Chukchi Sea would be minor. Hunting success for walrus varies considerably from year to year depending upon the ice and weather conditions. Walrus could be affected by noise and traffic disturbance from aircraft and support activities that results in only short-term, localized effects. Since most walrus hunting activities occur within a wide area of open water, boat and air traffic interruptions typically may cause boat crews to hunt longer or take extra trips but may not reduce the overall harvests of walrus. It is thought that exploration activities will not limit the availability of walruses for subsistence uses and that any impacts from exploration activities can be sufficiently mitigated by other measures to increase the availability to allow subsistence needs to be met.

Polar Bear

Oil and gas exploration activities in the Chukchi Sea may affect polar bears in a number of ways. Drillships and icebreakers may be physical obstructions to polar bear movements. Noise, sights, and smells produced by exploration activities may repel or attract bears, either disrupting their natural behavior or endangering them by threatening the safety of oil workers. Although the probability of operational oil spills or a blowout is low, they might result in bear deaths either as a direct result of oiling or as an indirect result of impacts to their prey.

Physical Obstruction, Sight, Smell, and Noise Disturbances

Little research has been conducted on the effects of noise on polar bears. It is known that denning females are sensitive to noise disturbance and may abandon dens, risking the lives of their premature cubs (Amstrup 1985). Polar bears are curious and tend to investigate novel sights, smells, and possibly noises (Stirling 1988). This behavior brings them into the vicinity of industrial sites in the arctic. Underwater noises produced by exploration are probably not an important disturbance because bears spend most of their time on the ice or at the surface of the water. Polar bears are known to run from the noise and sight of icebreakers and aircraft, especially helicopters. The effects of fleeing from aircraft may be minimal if the event is short and the animal is otherwise unstressed. On a warm spring or summer day, a short run may be enough to overheat a well insulated polar bear. Likewise, fleeing from a working icebreaker may have minimal effects for a healthy animal on a cool day. A female with cubs-of-the-year may be quite stressed if disturbed for very long.

If a drillship is surrounded by ice it is more likely that curious bears will approach. Any on-ice activities required by exploration create the opportunity for bear-man interactions. In relatively ice free waters polar bears are less likely to approach drill sites. However, at the Belcher site, in the Beaufort Sea, during a period of little ice, a large floe threatened the drill rig. After the floe was hit by an icebreaker, workers noticed a female with a cub-of-the-year and a lone adult swimming nearby. The cub was clutching the female, a typical behavior of young cubs in the water (Amstrup 1989). The fate of this trio is unknown. It is likely that the adults survived by hauling out on another floe. Cubs are vulnerable to exposure in water until they develop a substantial blubber layer.

Drillships and ice breakers may act as physical obstructions in the spring during the start-up period for exploration if they pass through a restricted lead system, such as the Chukchi Polynya. Polynyas are important habitat for marine mammals, which makes them important hunting areas for polar bears (Stirling and Cleator 1981). Ship traffic in these ice conditions may intercept or alter movements of bears. A similar situation may occur in the fall when the pack ice begins to expand.

Contaminants

Polar bears are known to eat many toxic nonfood items including styrofoam, plastic, parts of car batteries (Lunn and Stirling 1985), anti-freeze (Amstrup et al. 1989), hydraulic, and lubricating fluids (Russell 1975, Derocher and Stirling 1990). In most instances the effects of foraging on such items is unknown, but in one case a bear died from eating ethylene glycol (main ingredient of anti-freeze) colored with rhodamine B. This combination is used for marking runway center lines on snow and ice, however, ethylene glycol is widely used for anti-freeze in vehicles. Why bears eat toxic items is unknown, however, an increase in the availability of these items due to exploration activity could translate into an increase in bear mortality.

The discharge of drilling muds and cuttings probably does not affect the feeding of pelagic ringed seals and therefore probably does not have any direct or indirect effects on polar bears.

The direct effects of oil on polar bears will occur as a result of ingesting oil while grooming or while feeding on oiled prey and beach cast carcasses. Bears will ingest petroleum products in amounts that can be fatal (Oritsland et al. 1981, Engelhardt 1981, and Hurst and Oritsland 1982 in Griffiths et al. 1987). The fur of oiled bears loses its insulative properties and may result in death by hypothermia (Scholander et al. 1950, Oritsland 1970 in Griffiths et al. 1987).

Polar bears may also be affected by indirect effects of spilled oil on ringed seals. Effects of oil on invertebrates may reduce the productivity of the area for

ringed seals and consequently alter polar bear distribution.

Polar bears are not likely to avoid oil spills intentionally, although they may learn to avoid oil if they experience discomfort from contact with it (Hansen 1985). A blowout or other major spill may impact polar bears at the population level. Although the overall density in the Chukchi Sea may be low, wide ranging movements of polar bears over the duration of a spill have the potential to result in more than small numbers of bears encountering the spill (Marine Mammal Commission 1990). The effects of an oil spill may be greater than negligible depending on a number of variables, such as time of year, volume of oil discharged, duration of the spill, and the number of bears contacting the oil. The Service acknowledges that there is a low probability of oil spills occurring and contacting polar bears or their habitats, but the effects if a spill occurred could be significant. The probability of an oil spill must be balanced with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill may be significant, if the probability of occurrence is low, a finding of negligible impact may be appropriate.

The legislative history of the 1986 Amendments to the Act endorsed the use of a balancing approach to weigh the likelihood of occurrence against the severity of the potential impact: "The degree of certainty of occurrence required in these judgments should be inversely proportional to the resultant harm to the overall population." (132 Cong. Rec. S16305 (Oct. 15, 1986)). In this case the Service has determined that a finding of negligible impact is appropriate.

Subsistence

The possibilities that oil exploration activity may reduce the availability of polar bears, or disrupt distribution patterns from traditional hunting areas are the primary concerns of Native residents (USDI 1983) of the affected coastal villages (Wales, Shishmaref, Kivalina, Point Hope, Point Lay, Wainwright, and Barrow) and inland villages (Atqusuk, Kiana, and Noatak).

Depending upon ice conditions, the subsistence harvest of polar bears can occur year round in the northern Chukchi Sea villages, with peaks in spring and fall (Schliebe 1988). Direct conflicts are less likely to occur between polar bear hunters and exploration activities than between walrus hunters and exploration activities. Polar bear hunting areas are typically much smaller than those for walruses, with hunters remaining within a few miles of shore (USDI 1989a, USDI 1964).

Little information is available for predicting the effects of offshore exploration on subsistence hunting in the Chukchi Sea. Hunting success varies considerably from year to year because of variable ice and weather conditions. Because the polar bear is hunted almost entirely during that part of the year in which ice is prevalent, it is unlikely that exploration-only activities would have a big effect on the harvest of that species because drilling activities associated with exploration would occur entirely within the open-water season. Therefore, it is assumed that the effect on the polar bear would be very low. It is believed that exploration activities will not limit the availability of polar bears for subsistence uses and that any impacts can be mitigated by other measures to increase the availability of polar bears to allow subsistence needs to be met.

Conclusions

Based on the previous discussion, the Service makes the following preliminary findings regarding the proposed action.

Impact on Species

The Service proposes to find that, based on the best scientific information available, the effects of currently planned exploration in the Chukchi Sea will not adversely affect polar bears and walruses through effects on their annual rates of recruitment or survival if certain conditions are met. To date, there has been no oil spilled as a result of a blowout during exploratory drilling on the U.S. OCS. The probability of a blowout during exploratory drilling on the U.S. OCS is extremely remote and the probability of a major oil spill occurring from such a blowout is even more remote. The National Marine Fisheries Service (NMFS) recently published final regulations authorizing incidental takes of small numbers of various species of whales and seals. In the preamble of the proposed rules associated with those final regulations, the NMFS addressed the probability of the occurrence of an oil spill from exploratory operations. Upon review, they concluded that the possibility of a spill was so small that there was "no need to consider the possible impacts of a spill, not that the impacts would be negligible if in fact a spill did occur." (54 FR 40703 (October 3, 1989)). The Service concurs that since the probability of an oil spill is low during the exploration phase, an overall conclusion that the proposed exploration activity will have a negligible impact on the species can be reached.

Liability for illegal discharges of toxic materials into the environment is described in the Clean Water Act. In the event of a catastrophic spill the Service would reassess the impact to the population and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

The finding of "negligible impact" would apply only to exploration in the Chukchi Sea, and would not apply to the development and production phases of oil and gas activity. The following conditions are proposed to eliminate interference with normal breeding, feeding, and migration patterns to ensure that the effects remain negligible.

First, no taking of walruses or polar bears would be allowed in the Chukchi Sea until after June 15. Each year the Service would determine when the spring migration of walrus is no longer confined to the spring lead system. This would limit interference from exploration activities while marine mammals are concentrated in the spring lead system. Although the petitioners have stated that they do not seek authorization for a take during this time, or in this location, we feel it is important to consider transit to and from exploration sites as part of exploration activity, especially when icebreaking, support, and drill rig vessels are capable of entering the Chukchi Sea for the purpose of exploration before the shipping lanes are open to general traffic.

Second, each activity would require a site-specific monitoring plan approved by the Service. The purpose of the plan would be to monitor the effects of the activity on polar bears and walruses in the exploration area. The monitoring plan is due to the Service when the applicant applies for a LOA, at least 90 days before the activity is scheduled to begin.

Third, the proposed findings for this exemption were based on the total level of activity estimated by the industry and Minerals Management Service in its environmental impact statements. If the level of activity, including the number of miles for seismic surveys, the number of drilling units, and the number of support vessels and aircraft flights associated with exploration, is more than the level estimated by industry and Minerals Management Service, the Service would have to reevaluate its findings to determine if they continue to be appropriate based on the higher level of activity.

Impact on Subsistence

Exploratory activities may occasionally place physical barriers between marine mammals and subsistence hunters (i.e., survey vessels and barges traveling to and from exploration sites or even the drillship itself). In addition, there are increased noise levels from aircraft, vessels, and seismic surveys. Marine mammals may avoid certain noise sources and certain structures such as drillships. If two conditions are met, however, the Service proposes to find that these activities over the next five years are not likely to reduce the availability of the walruses and polar bears to a level insufficient to meet subsistence needs.

Since offshore exploration near subsistence hunting areas is just beginning in the Chukchi Sea, evidence is insufficient to show that such activity has directly displaced walruses and polar bears from traditional hunting areas.

The proposed finding that the activities would not have an "unmitigable adverse impact" applies only to exploration, and does not apply to the development and production phases of oil and gas activity in the Chukchi Sea. The results of the monitoring during the exploration stage would affect regulations for subsequent stages.

The first condition concerns deferment of exploration activity during the spring migration through opening leads. This ban on the incidental taking of walruses and polar bears is intended to ensure that the leads have deteriorated and that there is ample open water to allow walruses free movement to avoid support traffic. Exploration activities will be confined to the open water season which will not exceed the period June 15 to October 15. Each year, the Service would determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea. In some years this date may be later than June 15. This should allow the villages to participate in subsistence hunts for polar bears without interference and for some of the villages to hunt walruses without interference. Three lease prospects (Bagel, Eclair, and Kolache) are located within, or adjacent to, Point Lay's walrus hunting area. When SWEPI plans to explore in those prospects near Point Lay further stipulations may be necessary to ensure that exploration activities do not reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs.

To avert or lessen any potential impacts on subsistence, the Service believes it necessary for the exploration companies to continue cooperative efforts with villages that conduct subsistence hunts for walruses and polar bears in areas that might be influenced by the industry's activities. This would include, but is not limited to, the villages of Point Hope, Wainwright, Barrow, and Point Lay, with special attention to Point Lay where offshore hunting areas overlap with two prospect areas.

Therefore, the second condition would require applicants requesting a LOA to contact the subsistence communities and the Eskimo Walrus Commission to discuss potential conflicts and resolutions. Each applicant would submit a plan of cooperation to the Service that states how the operator would work with affected Native communities and what would be done to avoid interference with subsistence hunting of walruses and polar bears. This plan is due to the Service when an applicant applies for a LOA, at least 90 days before the activity is scheduled to begin. The Service would review this plan to ensure any potential adverse effects on the availability of the animals are minimized.

If there were evidence in the future that exploration activities are reducing the availability of marine mammals for subsistence, the Service would reevaluate its findings regarding permissible limits of harassment and the measures required to ensure continued subsistence hunting opportunities.

Monitoring

A plan for monitoring the effects of exploration on polar bears and walruses, that has been reviewed and approved by the Service, would be required of all applicants requesting a LOA. A monitoring plan must be submitted each year when an applicant applies for a LOA. As the requirements for monitoring are likely to vary depending on the activity and the location, applicants are strongly urged to develop plans in cooperation with the Service. In addition, the Service recognizes that other opportunities will occur outside of the LOA process for applicants and the Service to cooperatively conduct research that may resolve other deficiencies in knowledge of walrus and polar bear population status and habitat requirements.

The purpose of monitoring programs is to determine short-term and long-term direct, indirect, and cumulative effects of authorized oil and gas exploration on polar bears and walruses in the Chukchi Sea. Plans must identify the methods that will be used to determine and assess the effect on the movements, behavior, and habitat use of polar bears and walruses in response to exploration activity, including travel to and from drill sites. Monitoring programs may be required to answer some basic biological questions as a necessary step toward understanding the relationships between the proposed activity and the species' survival, productivity and habitat requirements. It will be essential that biologists and other scientific personnel conducting these monitoring programs have expertise in the biology of polar marine mammals or in the appropriate field of study (e.g., acoustics, oceanography, animal behavior, telemetry).

There are numerous objectives that should be addressed through monitoring programs. Programs would need to take into account and address seasonal and regional differences and consider the consequences of any effects to walruses and polar bears at individual, regional and population levels. Results of monitoring programs would be summarized and reviewed each year. Objectives for each year would be reassessed based on the results.

Monitoring methods used to address these questions may include, but not be limited to, aerial surveys, shipboard observations, acoustic studies, and monitoring for walruses and polar bears radio-tagged by the Service, which may approach drill sites. Monitoring programs would be reviewed annually and monitoring plans may be modified from year to year. At its discretion, the Service may place an observer on board drillships, icebreakers, support ships, and aircraft to monitor the impact of exploration activities on walruses and polar bears and to observe other activities authorized by a scientific research permit.

The Service would coordinate monitoring plans for walruses and polar bears so that the information obtained during monitoring is gathered in a consistent manner. The Service also would coordinate with other agencies that require monitoring programs (National Marine Fisheries Service, State of Alaska) to avoid duplication of data, additional disturbance to wildlife, and congestion at the exploration sites.

Development and participation in a cooperative research program is not a requirement for obtaining a LOA. However, the Service encourages research of polar bears and walruses such as that funded by the National Fish and Wildlife Foundation. Lessees and the Service could meet annually to discuss research goals and results. This type of program could create opportunities to collect valuable

information that would provide additional insight into the relationship between oil and gas activities and the basic biological requirements of the two species of concern.

Discussion of Comments

Comments received covered a wide range of topics from simple support or opposition to promulgation of regulations to specific recommendations regarding conditions to be included in LOAs.

Those who favored the Service granting SWEPI an exemption stated that they did not believe exploratory operations would have more than a negligible impact on marine mammals and they would not have an adverse impact on the availability of the species for subsistence.

Those who questioned granting an exemption expressed concern regarding the conclusions of the petitioner about the effects of exploration on marine mammals. The major concern mentioned by most commenters is the lack of information concerning the walrus and polar bear populations upon which to determine that the specific activities will have a negligible impact or no unmitigable adverse impacts on the availability of animals for subsistence.

Several commenters were concerned about the timing of SWEPI's operations for which incidental take authority is being sought. These commenters wanted clarification of the term "open water season" and a description of the ice conditions in which operations are expected to take place.

Many of the comments were related to the probability and impacts of oil spills. At least one commenter thought that even if the likelihood of an oil spill were low, the potential effects would be significant, therefore, the Service should not make a determination of negligible impact. Another commenter stated that he did not believe that the definition of "permissible takings" should include any takings from oil spills, but, if allowed, the regulations should at least clearly state that neither the regulations nor LOAs absolve the holder from liability in the event of an oil spill. Some commenters were concerned with secondary impacts of oil spills such as the impact on benthic invertebrates, the primary food source for walrus, and the impacts of oil trapped in ice and released by break-up the following season. One commenter questioned whether the industry has reliable or effective oil spill contingency plans and another asked for a plan which would detail how oiled animals would be handled. Several commenters were concerned that quick response to spills could be difficult in the arctic.

Several commenters expressed concern with the monitoring program and felt that there was a need for further research and monitoring. Advice ranged from site-specific monitoring combined for polar bear and walrus to long term radio-tagging, contaminants measurements and monitoring the effects of exploration on benthic habitat.

One commenter recommended that impacts to subsistence should consider more than just the villages adjacent to the area of exploration and that mechanisms for obtaining input from the local people who may be affected should be described in the proposed regulations.

The Service appreciates the thoughtful comments in response to the request for comments and information, and took these comments into account when preparing the draft Environmental Assessment and the proposed regulations. Several comments regarding information needs were incorporated into the draft Environmental Assessment and influenced the development of requirements for monitoring and reporting. Questions regarding timing and location have been clarified in the proposed regulations. Concerns regarding liability under other State and Federal laws have been addressed in both documents. The timeframe for incidental take that is found in the "Effective dates" section (i.e., § 18.112) of the proposed regulation took into account concerns for the spring migration period and ice conditions in the fall.

The petitioner provided responses to comments submitted on notice of receipt for rulemaking. These responses provided more information on the level and scope of exploratory activities and allowed a better assessment of the effects on the species and on the availability of the species for subsistence.

Required Determinations

The Service has prepared a draft Environmental Assessment in conjunction with this proposed rulemaking. At the time a final decision is made, the Service will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. A copy of the draft Environmental Assessment may be obtained from the individual identified above in the section entitled, "FOR FURTHER INFORMATION CONTACT."

Through preparation of a Determination of Effects of Rule, the Department of the Interior has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effect on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors, conducting exploration activities in Alaska, have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The determination of effects on this rule is available from the individual identified above in the section entitled, "FOR FURTHER INFORMATION CONTACT."

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize take of walruses and polar bears by oil and gas exploration companies and thereby exempt them from civil and criminal liability. The proposed rule also does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The collections of information contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the proposed activity and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

For the first year of the five year period covered by this proposed rule, the public burden associated with this requirement is estimated at 574 hours including 334 hours to complete the application for specific regulations, 40 hours to complete five applications for Letters of Authorization, 160 hours to comply with recordkeeping requirements associated with five Letters of Authorization, and 40 hours to complete required annual reports. From the second through the fifth year, the public burden is annually reduced to 240 hours because an application for specific regulations is not required. Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

A complete list of the references cited in the preamble of this proposed rule is available from the individual identified above in the section entitled, "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR Part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart I consisting of §§ 18.111 through 18.119 is proposed to be added as follows:

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska.

Sec.

18.111 Specified activity and specified geographical region.
18.112 Effective dates.
18.113 Permissible methods.
18.114 Prohibitions.
18.115 Level of activity.
18.116 Measures to ensure availability of species for subsistence.
18.117 Requirements for monitoring and reporting.
18.118 Letters of Authorization.
18.119 Information collection requirements. [Reserved].

Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska

§ 18.111 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental, but not intentional, taking of walruses and polar bears by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration in the Chukchi Sea off the coast of Alaska. For purposes of this rule the Chukchi Sea is defined by a north-south line at Barrow and includes all marine waters west of Barrow, east of the US/USSR date line and north of the Bering Strait. The geographical region includes Alaska state waters and outer continental shelf waters that have been leased for exploration or that are being considered for leasing. The activities include geophysical surveys and exploratory drilling and support operations, such as icebreakers, supply vessels and aircraft.

§ 18.112 Effective dates.

Regulations in this subpart are effective for a 5-year period, beginning 1991, for exploration activities during the open-water season which will be defined as that period from June 15 to October 15. These regulations do not authorize the taking of walruses or polar bears during the period in which the spring lead system is identifiably intact as a marine mammal migratory corridor. Each year the Service will determine when the spring migration of walrus is no longer dependent on the spring lead system in the Chukchi Sea, and will notify the exploration companies and the Native communities when it has made this determination. In some years this date may be after June 15 and in some rare years could occur before June 15. For those years when ice conditions warrant continuing exploration activities past October 15, the operator may apply in writing to the Service's Alaska Regional Director for an extension of the incidental take authorization. Letters of Authorization must be renewed annually.

§ 18.113 Permissible methods.

(a) The incidental, but not intentional, taking of walruses and polar bears by U.S. citizens holding a Letter of Authorization is permitted using the following methods for exploration:

(1) Geophysical surveys including shallow hazard and acoustic surveys; and

(2) Exploratory drilling including icebreakers, support vessels and aircraft.

(b) The methods and activities identified in § 18.113(a) must be conducted in a manner that minimizes to the greatest extent possible any adverse impacts on walruses and polar bears, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to that activity and location.

§ 18.114 Prohibitions.

(a) The incidental take of walruses and polar bears is not authorized during the period in which walrus are migrating through the spring lead at a given location. The lead system in the Chukchi Sea is located in the shear zone between the shorefast ice and offshore pack ice. (See § 18.112.)

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of the Letters of Authorization is prohibited.

§ 18.115 Level of activity.

When Letters of Authorization are requested each year, the Service will determine whether the level of activity identified in the requests exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is higher, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the results of the evaluation, the Service could add further conditions to the authorization or withdraw it.

§ 18.116 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been, and will be, taken to minimize any adverse effects on the availability of walruses and polar bears for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant must contact affected subsistence communities to discuss potential conflicts with the siting, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with any subsistence hunt or that any adverse effects on the availability of walruses and polar bears are properly mitigated.

§ 18.117 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration on walruses and polar bears.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of exploration activities on walruses and polar bears. The observer must be approved by the Service's Alaska Regional Director.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects on populations of walrus or polar bear that are present during exploratory activities. This plan, which must be approved by the Service's Alaska Regional Director, should identify what survey techniques will be used to determine the movement and activity of walruses and polar bears near the exploratory sites including migration and other habitat uses, such as feeding. A biologist approved by the Service's Alaska Regional Director should observe the behavior of these marine mammals to determine if they are being affected. The monitoring program should document the acoustical effects on these marine mammals and document or estimate the actual level of take. The requirements for monitoring plans will vary depending on the activity, the location, and the time.

(d) If the applicant plans any on-ice activities, the operator must develop a polar bear awareness and interaction plan.

(e) At its discretion, the Service may place an observer on board drillships, aircraft, icebreakers or other support vessels to monitor the impact of exploration activities on walruses and polar bears.

(f) The Holder of a Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days of the completion of any exploratory activities. This report must include the following information:

(1) Dates and types of activity;

(2) Dates and locations of any activities related to monitoring the effects of exploration on walruses and polar bears;

(3) Results of the monitoring activities including an estimate of the actual level of take; and

(4) Results of behavioral, feeding, or population studies.

§ 18.118 Letters of Authorization.

(a) Each person or entity conducting an exploratory activity in the geographical area described in § 18.111 must apply for a Letter of Authorization for each geophysical survey and each drilling operation. The application must be submitted to the Service's Alaska Regional Director at least 90 days before the activity is scheduled to begin.

(b) When an application for a Letter of Authorization is submitted, it must include the following:

(1) A plan to monitor the behavior and the effects of the activity on walruses and polar bears;

(2) A description of the measures taken to mitigate any potential conflicts between the proposed activity and subsistence hunting; and

(3) A description of the activity including the method to be used, the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity.

(c) In addition to the provisions of § 18.27(f), any withdrawals or suspensions, either on an individual or class basis, of the Letters of Authorization will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public review in § 18.118(c) will not apply if the Service determines that an emergency exists which poses a significant risk to the wellbeing of the species or stocks of walruses or polar bears.

§ 18.119 Information collection requirements. [Reserved]

Dated: February 8, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-4334 Filed 2-20-91; 12:12 pm]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 56, No. 37

Monday, February 25, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS-91-002]

Beef Promotion and Research; Certification and Nomination Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Department of Agriculture's Agricultural Marketing Service (AMS) is accepting applications from State cattle producers organizations and beef importers who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for Certification must be received by close of business on March 27, 1991.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; room 2624-S; P.O. Box 96456; Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp at 202/382-1115 (FTS 382-1115).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 et seq.), approved December 23, 1985, authorizes the implementation of a National Beef Promotion and Research Order. The Order, which appears in 7 CFR part 1260, provides for the establishment of a Board. The current Board consists of 105 cattle producers and 6 importers appointed by the Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to 1260.143(b)(2) of the Order (17 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures appear in subpart D of part 1260. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of three (3) years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in 1991:

State or unit	No. of vacancies
Arizona	1
California	2
Colorado	1
Iowa	2
Kansas	2
Louisiana	1
Michigan	1
Minnesota	1
Mississippi	1
Missouri	1
Nebraska	2
Nevada	1
New Mexico	1
North Carolina	1
Oklahoma	1
South Carolina	1
South Dakota	2
Tennessee	1
Texas	4
Utah	1
West Virginia	1
Wisconsin	2
Wyoming	1
Mid-Atlantic Unit	1
Northeast Unit	1
Importers	2

Since there are no anticipated vacancies on the board for the remaining States' positions, or for the positions of the Northwest unit, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by close of business on March 27, 1991. Uncertified, eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR 1260.530 as published in 51 FR 11557, 11559 (April 4, 1986) are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB No. 0581–0152.

Authority: 7 U.S.C. 2901 et seq.

Done at Washington, DC on February 19, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91–4360 Filed 2–23–91; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

[Docket 91–003]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Potato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company to allow the field testing in Homestead, Florida, of potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered potato plants will not present a risk of introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–282–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The Monsanto Agricultural Company of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus. The field trial will take place in Homestead, Florida.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the potato plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting the finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the potato leaf roll virus coat protein has been inserted into a potato chromosome. In nature, chromosomal genetic material can only be transferred to another sexually compatible plant by cross-pollination. In this field trial, the inserted gene can not spread to another sexually compatible plant because the field test plot is located at a sufficient distance from any sexually compatible potato plant with which it might cross-pollinate.

2. Neither the recombinant genes themselves nor their gene products, confer on potato any plant pest characteristic. Traits, such as weediness, are polygenic and cannot be conferred by adding a single gene.

3. The gene for the potato leaf roll virus coat protein does not provide the transformed potato plants with any measurable selective advantage over nontransformed potato plants in the ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been incorporated into the plant DNA but do not confer on potato any plant pest characteristic.

5. The vector used to transfer the genes to the potato plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence of a known plant pest, has been disarmed; that is, pathogenicity genes have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the genes into the plant cell, has been shown to be eliminated and no longer associated with any transformed potato plant.

7. Horizontal movement of the introduced genes is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in or on any plant.

8. The field test plot is small and physically isolated by a surrounding area of cultivated land in a rural area.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–4359 Filed 2–22–91; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Timber Resource Reanalysis—Kaibab National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to document the reanalysis of the timber program and visual quality objectives as presently outlined in the Land and Resource Management Plan for the Kaibab National Forest, Williams, Arizona. A Record of Decision will be filed that provides the rationale for selecting a forest allowable sale quantity, a timber sale offer program (1993 to 2003), and visual quality objectives for the study area. The Land and Resource Management Plan will be amended to reflect the decisions outlined above.

DATES: Comments concerning the scope of the analysis will be accepted from now until March 15, 1991. A formal public involvement plan is currently being developed. Future news releases will further detail how and when to get involved in the analysis process.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to William (Mike) Lannan, Forest Supervisor, Kaibab National Forest, 800 South 6th Street, Williams, Arizona, 86046.

FOR FURTHER INFORMATION CONTACT: Questions about the analysis, documentation, and public involvement process should be directed to Cathie Schmidlin, Forest Public Affairs Specialist, or Renee Thakali, Assistant Forest Planner, Kaibab National Forest, 800 South 6th Street, Williams, Arizona, phone 602–635–8200. A specific project leader has not been selected as yet.

SUPPLEMENTARY INFORMATION: The Kaibab National Forest Land and Resource Management Plan was completed in April 1988. Implementation of the Plan began in May 1988. Monitoring of the Plan indicates that the allowable sale quantity, the visual quality objectives, and the timber sale offer schedule need to be reanalyzed for their accuracy. The reanalysis may indicate needed changes to the forest plan and a plan amendment may be necessary. The study area for the analysis includes only Forest Plan Management Areas 2, 5, 10, 13, 14, 15, 17, and 18. These Management Areas represent the suitable timber lands on the Kaibab National Forest.

A range of alternative allowable sale quantities, visual quality objectives, and timber sale offer schedules will be evaluated. The public will be informed of and allowed comment on the range of alternatives analyzed prior to issuance of the draft environmental impact statement.

David F. Jolly, Regional Forester, Southwestern Region, Albuquerque, New Mexico, is the responsible official.

Public participation will be especially important at several points during the analysis. A Citizens Participation Plan is currently being developed to detail how and when the public can get involved. News releases, information pamphlets, community outreach or contact, open houses or public meetings, may be used to inform the public of the progress of the analysis.

The Fish and Wildlife Service, Department of the Interior, will be consulted to evaluate potential impacts on threatened and endangered species habitat, if any such species are found to exist in the study area.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that the reviewers participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of DEIS's must structure their participation so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Additionally, environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS), *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by April 1992. The responsible official will document the decision and rationale in a Record of Decision. This decision will

be subject to administrative appeal under 36 CFR Part 217.

Dated: February 15, 1991.

Arvin L. White,

Director for Fiscal and Public Safety.

[FR Doc. 91-4319 Filed 2-22-91; 8:45 am]

BILLING CODE 3410-11-M

Kamas Valley Cattle Allotment; Kamas Ranger District of the Wasatch-Cache National Forest, Summit County, Utah; Notice of Intent to Prepare an Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: In notice document 90-29729 beginning on page 52204 in the issue of Thursday, December 20, 1990, make the following correction:

On page 52204 in the second column, the responsible official was previously listed as Forest Supervisor Susan Giannettino. This should be changed to read Melissa Blackwell, District Ranger.

The date previously published in the Federal Register for scheduled availability of the draft Environmental Impact Statement was March 1991. On page 52204, in the second column in the last paragraph the availability date of the draft should read December 1991. On the same page in the third column, the last sentence should read the final Environmental Impact Statement is scheduled to be completed February 1992.

Dated: February 13, 1991.

Susan Giannettino,

Forest Supervisor.

[FR Doc. 91-4284 Filed 2-22-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held March 27, 1991, 9 a.m., Herbert C. Hoover Building, room 1629, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Status of Core List.

Category I—Electronics.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: February 19, 1991.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 91-4324 Filed 2-22-91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 8-91]

Foreign-Trade Zone 122—Corpus Christi, TX, Application for Subzone, Koch Refining Company Refinery and Pipeline, Corpus Christi/Fort Worth, TX, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the oil refinery of Koch Refining Company (Koch) located in Nueces and San Patricio Counties, TX (Corpus Christi port of entry area), and certain Koch pipelines and terminals in Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 11, 1991.

Subzone status is being proposed for the following Corpus Christi area facilities and pipeline terminals: Site 1 (1,162 acres)—Koch refinery complex, Suntide Road (on Tule Lake Channel), Nueces County; Site 2 (40 acres)—Koch terminal facility, Tribble Road, Nueces County; Site 3 (19 acres)—Koch coke storage facility, 4906 Upriver Road, Nueces County; and, Site 4 (200 acres)—Koch's Ingleside ("Gathering Systems") terminal facility, Highway 1069, Ingleside, San Patricio County. The application also requests subzone status for Koch's Corpus Christi/Fort Worth pipeline (450 miles) with terminals in San Antonio (20 acres), Austin (23 acres), Waco (20 acres), and Euless (Fort Worth area, 31 acres).

The refinery (175,000 BPD) employs 825 persons and is used to produce gasoline, fuel oil, jet fuels, middle distillates, and a variety of petrochemicals such as paraxylene, benzene, toluene, and cumene. Approximately 35 percent of the refinery inputs are sourced abroad, including crude oil, intermediate feedstocks and components. Some of the finished products are exported. The Corpus Christi area terminals and coke facility operate as an integral part of the refinery.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to defer duties until products leave the refinery. The application requests authority to choose the zero duty rate that applies to certain end products, such as paraxylene, benzene, cumene and toluene. (The duty on crude oil ranges form 5.25 to 10.5 cents/barrel.) Foreign merchandise would also be exempt from state and local ad valorem taxes. The application indicates that the savings would help improve the refinery's international competitiveness.

Inclusion of the Corpus Christi/Fort Worth pipeline would allow Koch to defer entries until products leave the designated terminals, unless they are destined for export (including bonded sales).

In accordance with the Board's regulations, an examiners committee has been approved to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Regional Director, Inspection and Control, U.S. Customs Service, Southwest Region, suite 500, San Felipe Street, Houston, TX 77057-3012; and Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 11, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, Government Plaza, 400 Mann St., suite 305, P.O. Box 1027, Corpus Christi, TX 78403

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: February 19, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-4391 Filed 2-22-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-403-801]

Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that imports of fresh and chilled Atlantic salmon (salmon) from Norway are being, or are likely to be, sold in the United States at less than fair value. The Department has notified the International Trade Commission (ITC) of its determination and has directed the Customs Service to continue to suspend liquidation of all entries of Atlantic salmon from Norway. The ITC will determine, within 45 days of publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Tracey E. Oakes, David C. Smith or Edward Easton, Office of antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769, 377-3174, 377-3798, or 377-1777, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that imports of Atlantic salmon from Norway are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination on October 3, 1990 (55 FR 40418), the following events have occurred. On October 5, 1990, counsel for respondents requested that we postpone our final determination until not later than 135 days after the date of publication of the preliminary determination in accordance with section 735(a)(2) of the Act.

We verified questionnaire responses in Norway from October 29 to November 20, 1990. Petitioner and respondents submitted comments for the record in case briefs dated January 14, 1991 and in rebuttal briefs dated January 22, 1991. We held a public hearing on January 23, 1991 in which petitioner and respondents participated.

At the hearing, the Department requested additional submissions on the issue of "perishability", which all parties submitted on January 29, 1991.

Scope of Investigation

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the investigation excludes all other species of salmon: Danube salmon; Chinook (also called "king" or "quinnat"); Coho ("silver"); Sockeye ("redfish" or "blueback"); Humpback ("pink"); and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under the harmonized tariff schedule (HTS) subheading: 0302.12.00.02.9. Prior to January 1, 1990, Atlantic salmon was provided for under HTS subheadings 0302.12.00.60.8 and 0302.12.00.85.3. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Period of Investigation

The period of investigation (POI) is September 1, 1989 through February 28, 1990.

Such or Similar Comparisons

For the purpose of this investigation, we have determined that all Atlantic salmon comprises a single category of such or similar mechandise. Product comparisons were made on the basis of grade of salmon (superior, ordinary) and weight bands. We compared U.S. sales of gutted Atlantic salmon to sales of gutted Atlantic salmon sold in third countries because only gutted merchandise is sold in the United States. In addition, U.S. sales were compared only to sales of identical weights and grades of merchandise sold in the third country markets.

Best Information Available

For some companies, as specified elsewhere in this notice, the Department used best information available (BIA)

for portions of the response. For one company, Hallvard Leroy, we relied only on BIA. At verification, we had found that Hallvard Leroy had weight averaged reported prices of U.S. sales. Because this is not in accordance with the instructions provided to the company and because it could have a significant impact on the fair value calculations (potentially shielding margins), we have used only BIA for this company. As BIA, we have assigned Hallvard Leroy the highest rate found for any of the seven exporters for which a margin was calculated.

Fair Value Comparisons

To determine whether sales of Atlantic salmon from Norway to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based the USP on purchase price, in accordance with section 772(b) of the Act, because all sales by all exporters were made directly to unrelated parties prior to importation into the United States. We calculated USP for the exporters as follows. Salmonor. We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate for airfreight, inland insurance, rebates, and Norwegian export duties in accordance with section 772(d)(2) of the Act.

Se Star International

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, handling, inland insurance, discounts, and Norwegian export duties, in accordance with section 772(d)(2) of the Act. For Sea Star International, we lowered each United States gross price by $.05 because at verification we found that Sea Star applied a systematic, improper rounding-up technique for reporting the U.S. gross unit prices. The maximum amount of that rounding is $.05. For Sea Star sales which we were able to verify as accurate, we used the reported prices.

Skoarfish Mowi

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland insurance, foreign inland freight, and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Fremstad Group

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland insurance, export taxes, and discounts in accordance with section 772(d)(2) of the Act.

Domstein

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland insurance, discounts, handling, custom fees, and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Saga

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland insurance, discounts, foreign inland freight and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Chr. Bjelland

We calculated purchase price based on airpacked, c.i.f. prices to unrelated customers in the United States. We made deductions, where appropriate, for airfreight, inland insurance, and Norwegian export duties, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

Market Viability

In order to determine whether there were sufficient sales of Atlantic salmon in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1) of the Act. We did not consider home market sales to other exporters in the viability calculation because the ultimate destination of the merchandise is not known. For six respondents, the volume of home market sales was less than five percent of the aggregate volume of third country sales. In the case of Sea Star, all of its home market sales were to other exporters or to related customers. Because we had no home market sales from which to determine whether Sea Star's sales to related customers were at arms length, we selected third country sales to determine FMV.

Therefore, for these seven respondents, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with 19 CFR 353.48. In selecting third country markets for computing FMV, we considered the criteria set forth in 19 CFR 353.49(b). Because similarity of merchandise was not an issue for six of the respondents, we selected third countries having the largest sales volumes. For one respondent, similarity was an issue in selecting the third country market for computing FMV (see Exporter-Specific Comment 1 for Chr. Bjelland). The volume of sales to the third country we selected was "adequate" within the meaning of 19 CFR 353.49(b)(1).

Cost of Production

Petitioner alleged that respondents' third country sales of Atlantic salmon were made at prices below the cost of production (COP). Based on petitioner's allegation, we gathered and verified data on production costs. Because the growth cycle of the subject merchandise is approximately 18 to 24 months, we requested production costs for the previous two to three years, as applicable, which were incurred on the salmon delivered to and accepted by an exporter during the POI.

We calculated the COP of salmon sold by each exporter based on the sum of the following: (1) The simple average of responding farmers' COPs (which included the cost of materials, fabrication, processing and packing, wellboat services, general expenses of the farmer, freight costs, Fiskeoppdretternes Salsag (FOS) and Norske Fiskeoppdretternes Forening (NFF) fees); and (2) the exporter's selling, general and administrative expenses. The total cost of production was calculated on a Norwegian kroner per kilogram (NOK/kg) basis. To calculate the amount of direct selling expenses incurred by the exporter, we applied a cost-based percentage of total direct selling expenses, adjusted for verification changes, to the farmers' COP. In all cases, for salmon sold on or after January 1, 1990, a five NOK/kg cost was added to the COPs (see Farm-Wide Comment 3).

We compared third country weighted average monthly prices of gutted merchandise to the COP because only gutted merchandise is sold in the U.S. market. If over 90 percent of a respondent's sales were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales were at prices below the COP, we disregarded only the below-cost sales. In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time. If less than ten percent of respondent's sales were at prices above the COP, we disregarded all sales and calculated FMV based on constructed value (see the company specific sections below).

The COP data submitted by the farmers and exporters were relied upon, except in the following instances where the costs were not appropriately quantified or valued.

Safish

(1) Smolt costs were increased to include a prepayment made in 1987 for the 1988 year class, because smolt costs were specifically identified to each year class;

(2) Feed, direct labor and overhead cost were revised due to an adjustment to salmon inventory quantities used to calculate the per unit production cost;

(3) General and administrative (G&A) and interest expenses were adjusted to reflect cost per kilogram by dividing total 1989 G&A and interest expenses by the total kilograms of salmon sold in 1989 for all year classes (see Farm-Wide Comment 7); and

(4) Packing and processing and freight costs for gutted salmon were adjusted to reflect a cost per gutted kilogram rather than a cost per round kilogram.

Hofa

(1) Feed, direct labor and overhead were adjusted for the following: (a) Adjustments submitted by the company at the beginning of verification to the ending inventory quantity of salmon; (b) an insurance indemnity received by Hofa for large losses of the 1988 year class due to disease;

(2) Depreciation expense was adjusted to reflect the amount of ordinary depreciation recorded on the company's audited financial statements (see Farm-Wide Comment 5);

(3) G&A and interest expenses were adjusted to reflect the cost per kilogram by dividing total 1989 G&A and interest expenses by the total kilograms of 1988 year class salmon sold (see Farm-Wide Comment 7); and

(4) Wellboat costs for gutted salmon were adjusted to reflect a cost per gutted kilogram rather than a cost per round kilogram.

Bremanger Fiskeindustri

(1) Feed costs for 1988 were reduced for discounts that had been recorded as interest income;

(2) Overhead was adjusted for insurance expenses that were not included in the farming costs for 1988, depreciation expense that was not included in the farming costs for 1989 (as BIA, an amount was calculated based on the useful life of the assets as reported on the financial statement) and depreciation expense submitted for 1988 farming costs by the respondent was not used because it was not based on actual costs incurred (as BIA, the Department recalculated depreciation expense based on the useful life of the assets as reported on the financial statement);

(3) G&A expenses were revised using the highest G&A of the other farmers as BIA, because these expenses did not include services provided by a related party (R. Domstein & Co.);

(4) Interest expense was adjusted to include all of Bremanger's interest expense allocated to the salmon farm in 1989 including certain mortgage expenses excluded by the respondent divided over total kilograms of salmon sold in 1989 (see Farm-Wide Comment 7);

(5) Costs for packing and processing, performed by a related company, were not used because they could not be verified (as BIA, the POS price list was used as the basis for the cost of packing and processing gutted salmon); and

(6) Wellboat costs for gutted salmon were adjusted to reflect a cost per gutted kilogram rather than a cost per round kilogram.

Midnor

(1) Labor for 1988 was adjusted to include all labor costs including labor costs excluded by the respondent incurred during 1988 which had not been capitalized as part of the construction costs for an on-shore facility;

(2) G&A and interest expenses were adjusted to reflect the cost per kilogram by dividing total 1989 G&A and interest expenses including certain mortgage expenses excluded by the respondent by the total kilograms of 1988 year class salmon sold (see Farm-Wide Comment 7);

(3) Certain categories of cost for 1988 were reclassified from factory overhead to SG&A expense; and

(4) A clerical error in 1989 submitted G&A expenses was corrected.

Bremnes

(1) Material costs were adjusted to reflect a purchase of feed recorded in the 1989 financial statements but excluded from the submission, and a fee which was included in material costs on the 1989 financial statements but excluded from the submission; and

(2) G&A and interest expenses were adjusted to reflect cost per kilogram by dividing total 1989 G&A and interest expenses by the total kilograms of salmon sold in 1989 for all year classes (see Farm-Wide Comment 7).

Austevoll

(1) The cost of cultivation of the 1988 year class was reduced by the amount of an insurance indemnity received due to losses from disease; and

(2) G&A and interest expenses were adjusted to reflect cost per kilogram by dividing total 1989 G&A and interest expenses by the total kilograms of salmon sold in 1989 for all year classes (see Farm-Wide Comment 7). In calculating the exporters' selling, general and administrative expenses we did not include movement charges such as inland freight, insurance, and export duties. We recalculated the remaining direct selling expenses as a percentage of cost of goods sold attributable to sales of salmon to the third country or home market during the POI.

Foreign Market Value

In accordance with section 773(e) of the Act we calculated foreign market value based on constructed value (CV) when there were insufficient sales above the COP in the third country and when there were no identical third country comparisions. In this case, the COP data submitted by the respondents were used in the CV calculations. The CV for salmon sold by each exporter included the sum of the following: (1) The simple average of the responding farmers' COPs (the cost of materials, fabrication, processing and packing, wellboat services, general expenses of the farmer, freight costs, and FOS and NFF fees); and (2) the exporters' selling, general and administrative expenses, profit, and packing. The exporter's direct selling expenses were calculated as a percentage of cost of goods sold and applied to the farmers cost of production. In all cases: (1) Actual general expenses were used, because the total of the farmer's and exporter's general expenses exceeded the statutory minimum requirement of ten percent of the sum of materials and fabrication, and (2) imputed credit expenses were included in selling expenses. Interest expenses were reduced for the portion related to credit activities in order to avoid overstating credit expenses.

For all exporters, profit equal to the statutory minimum eight percent of the cost of production was applied (see Farm-Wide Comment 4). In all cases, for salmon sold on or after January 1, 1990, a five NOK/kg cost was added to the

BEST COPY AVAILABLE

CV before profit. (see Farm-Wide Comment 3).

We calculated FMV for the exporters as follows.

Salmonor

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for Norske Ferskfiskomsetnings Landsforening (NFOL) dues, Fresh Fish Export Committee (FFEC) fees, credit, warranty, and export credit insurance expenses.

Sea Star

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and export credit insurance expenses. Where commissions were paid in the third country and not in the U.S. market, we allowed an adjustment of the lesser of U.S. indirect selling expenses or total average third country commissions in accordance with the Department's regulations.

Skaarfish Mowi

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and warranty expenses. Where commissions were paid in the U.S. and not in the third country market, we allowed an adjustment of the lesser of indirect selling expenses or U.S. commissions in accordance with the Department's regulations.

Fremstad

Seventy-five percent of sales were below the cost of production. We based FMV on constructed value for comparison categories where there were below cost sales and for comparison categories for which there were no matching third country sales. For all other comparison categories we used third country sales prices for our comparisons. When we used third country prices, we made deductions, where appropriate, for inland freight, inland insurance, Norwegian export duties, rebates, credit expenses, FFEC fees, and NFOL dues. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and warranty expenses.

Domstein

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and warranty expenses. If commissions were paid in both markets, we deducted weighted average third country commissions and added the U.S. commission. If commissions were paid on U.S. sales only, we allowed an adjustment for the lesser of U.S. commissions or indirect selling expenses. If commissions were paid on the third country sales only, we allowed an adjustment for the lesser of third country commissions or indirect selling expenses. Finally, certain direct selling expenses classified as indirect selling expenses were removed from the calculation of indirect selling expenses.

Saga

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase prices sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and warranty expenses. Where commissions were paid in the third country and not in the U.S. market, we allowed an adjustment of the lesser of indirect selling expenses or average third country commissions in accordance with the Department's regulations.

Chr. Bjelland

Over 90 percent of this exporter's sales were below the cost of production, and we based FMV on constructed value. Because all comparisons involved purchase price sales, we made circumstance of sale adjustments, where appropriate, for NFOL dues, FFEC fees, credit, and export credit insurance expenses. Where commissions were paid in the U.S. and not in the home market, we allowed an adjustment for the lesser of home market indirect selling expenses or U.S. commissions, in accordance with the Department's regulations.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60, using the exchange rates certified by the Federal Reserve Bank of New York.

Verification

As provided in 19 CFR 353.36(a)(1), we verified all information used in reaching our final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

I. Farm-Wide Comments

Comment 1

Petitioner argues that the respondents did not disclose until verification significant information regarding methodology and certain costs which should have been disclosed in the responses. For example, respondents did not disclose the use of a surrogate period for calculating smolt costs and failed to identify all related parties. Petitioner argues that the new information submitted at verification constituted a basic change in methodology which should have been disclosed prior to verification. Therefore, the Department should reject all of the responses and use, as BIA, the highest reported cost of the farmers, adjusted for additional costs discovered at verification.

Respondents state that the farmers had no cost accounting system in place and had very minimal resources available for conducting the verifications. Respondents argue that the petitioner has ignored the fact that the farmers answered every question "which had any substantive bearing on the case."

DOC Position

The Department discovered deficiencies in the respondents' submissions during verification. However, the Department concluded that these deficiencies were not of such significance as to be considered a substantially revised or new response. Therefore, with the exception of one farmer (see Nordsvalaks Comment 1), the responses have been used, as adjusted, in the final determination.

Comment 2

Petitioner alleges that the omission of January and February 1990 costs for six of the seven farmers significantly understates the costs for sales made during the POI. Petitioner argues that, if the Department uses the verified cost data, it should adjust these costs by using the highest 1989 COP calculated for any farmer, and average this figure with each individual farmer's verified cost for the first four months of the POI.

Respondents argue that it was not possible to accurately determine costs for January and February 1990, because the accounting records of certain farmers had not been closed. Therefore, the farmers calculated costs and production quantities over the two-year period, 1988 and 1989, and so matched costs with production accurately. Respondents also argue that any increased costs and quantities during those two months are in direct proportion to the increased growth of the fish, resulting in no change to the per kilogram cost of salmon.

DOC Position

For those respondents which were unable to provide costs for January and February 1990, *i.e.*, all farmers except Hofa, we used BIA. As BIA, we calculated a cost per kilogram based on respondent's methodology which captured costs over the two-year period, 1988 and 1989, and allocated these costs over the gross production for these two years. The petitioner's claim that costs would have been higher in the months of January and February 1990, except for the five NOK/kg freezing fee, was not supported by the information on the record for Hofa.

Comment 3

Petitioner argues that the five Norwegian kroner/kilogram (five NOK/kg) fee paid by the farmers to FOS, the Norwegian fish farmers' sales organization, should be included in the cost of production for those sales made on or after January 1, 1990. Petitioner asserts that the charge is equivalent to a tax collected on sales, which is normally included as a cost of production, and the fact that this tax was imposed to finance FOS's freezing intervention program should not be a consideration in determining the cost of the product under investigation.

Respondents claim that the freezing charge assessed by FOS is a cost for a production that is not under investigation, *i.e.*, frozen salmon. Respondents argue that this cost would probably be included as a cost of producing frozen salmon if this were an investigation of frozen salmon; therefore, it cannot logically be included as a cost of producing fresh salmon. While respondents agree that the freezing charge is assessed on all sales of fresh salmon beginning January 1, 1990, they argue that the method in which a charge is calculated is irrelevant, and the fact that the fee is a tax assessed on sales of fresh fish is also irrelevant. Therefore, respondents argue that this charge should not be included in the cost of production.

DOC Position

The Department agrees with petitioner. This fee is a five NOK/kg charge assessed on all sales of fresh salmon. Therefore, the amount of the fee incurred by each salmon farmer is completely a function of the amount of fresh salmon it sells. The fact that FOS uses this money to finance a freezing plan is not the deciding factor. The Department considers this fee to be a general expense and included it as a cost of producing the fresh salmon.

Comment 4

Petitioner argues that the respondents' refusal to submit CV information, on the basis of a claim that CV is not relevant in this case, is justification for rejecting the responses of all farmers. Petitioner states that the respondent does not determine what is and what is not relevant in an investigation, because that is the role of the Department itself. Furthermore, the Department does not have all of the necessary information, such as related party transfer prices and profit, to calculate CVs.

Respondents argue that the farmers did not submit CV information because there was no need for it. Respondent states that the Department's memorandum of August 20, 1990 set forth the proposed methodology and that memorandum did not stipulate that CV would be used. Respondent states that the statute requires that only one amount for general expenses (which is not less than 10 percent of the cost of manufacturing) and one amount for profit (which is not less than 8 percent of the sum of the cost of manufacturing and general expenses) be included in CV. The statute does not allow for the addition of statutory minimums at two different levels in the calculation of total constructed value, therefore, all CV information is irrelevant for the farmers.

DOC Position

The Department used information submitted for the calculation of cost of production when constructed values were required. In those cases where sales were found to be below cost and constructed value was used as FMV, BIA was used when the respondent did not use the proper costs for related party transactions. We combined the SG&A of the farmer and the exporter for the statutory ten percent test. As we found the total SG&A amount to be above ten percent in all instances, we used actual SG&A for our CV calculations. For profit, we used the statutory eight percent minimum. This was reasonable given that almost all third country sales were made at prices below the cost of production.

Comment 5

Petitioner argues that respondents' submissions included an amount for depreciation expense that was less than that reported in the financial statements prepared according to Norwegian generally accepted accounting principles (GAAP). Petitioner states that several farmers did not provide any information about the useful life of the assets, and those that did submit such information provided no independent support for the claimed periods. As such, depreciation expense should be taken from the financial statements.

Respondents claim that a certain portion of depreciation on the financial statement is tax-related accelerated depreciation and is reported in the financial statements as a separate non-operating item. Respondents argue that only the portion of depreciation expense shown in the financial statements as "ordinary depreciation" should be included in the cost of production and that inclusion of tax-related depreciation would be distortive.

DOC Position

The Department used the "ordinary depreciation" reported on the respondents' financial statements. This "ordinary depreciation" was based on the assets' historical cost and useful life in accordance with Norwegian GAAP. While the accelerated depreciation taken for tax purposes also appears on the financial statement, it is not based on the useful life of the assets. The tax-related accelerated depreciation does not appear to be a current cost but an appropriation to an account that reflects the difference between the "ordinary depreciation" and that used by the company for tax purposes. Because the historical value of the assets and the ordinary depreciation calculated on this historical value were not affected by the tax-related depreciation in this case, we did not include the tax-related depreciation in COP.

Comment 6

Petitioner states that wellboat fees should be calculated on a gutted weight basis, not on a round weight basis. Furthermore, several farms did not report freight costs.

Respondents state that most of the farmers have properly reported processing fees and wellboat fees on a gutted weight basis by converting round

weight to gutted weight at a rate of 90 percent.

DOC Position

The Department made adjustments where necessary to calculate processing and wellboat costs on a gutted weight basis and to reflect the inclusion of freight where appropriate.

Comment 7

Petitioner argues that the inclusion of general expenses as a manufacturing cost and, thus, part of the classification inventory value, is inconsistent with the Department's standard practice and with generally accepted accounting principles. Petitioner claims that none of the farmers demonstrated that their G&A costs were clearly related to production. Generally accepted accounting principles stipulate that G&A expenses shall be period charges except for the portion of such expenses that is clearly related to production. Therefore, 1989 G&A expenses should be allocated over 1989 production.

Respondents argue that the general expenses of the fishfarmers include very few selling expenses as most of the selling function is handled by the exporter, and that the remaining general and administrative expenses relate solely to production operations, *i.e.*, cultivating fish. Respondent asserts that an allocation of 1989 G&A expenses based on 1989 production would be distortive because more than one year class is under production during each year because the cultivation process requires 18 to 24 months. Because materials, labor and overhead for 1988 and 1989 were used to calculate costs, G&A expenses allocated over 1988 and 1989 production should also be included in the cost of production.

DOC Position

We agree with petitioner and have calculated both G&A and interest expenses as period expenses for the year 1989. This methodology attributes G&A and interest expenses to salmon sold during 1989 from both 1988 and 1989 year classes. G&A and interest expenses were calculated as a per-kilogram cost by dividing the relevant costs incurred in 1989 by the number of kilograms of salmon sold in 1989.

Two farms, Midnor and Hofa, began operations in 1988 and had no sales in the first half of 1989. Thus, a G&A and interest expense cost per kilogram of fish sold in 1989 was not representative of such expenses that would occur in the production of salmon in the ordinary course of business. The Department used the sales of the 1988 year class in the first half of 1990 as best information available for sales in the first half of 1989, in order to normalize these expenses for Midnor and Hofa.

Comment 8

Petitioner proposes that the Department calculate for each farm average cost figures for both gutted and round fish. Because a five NOK/kg fee was imposed on all sales of fresh salmon made on or after January 1, 1990, petitioner also proposes that the Department calculate separate COPs for the first four months of the POI and the final two months, after imposition of the fee. The Department should next recalculate the sales prices reported by each farmer to the exporters. (Hereafter, the farmer to exporter prices will be referred to as the exporter's "acquisition prices" or "AP".) These prices should then be weight-averaged for both gutted and round fish for each of the two sub-periods of the POI. Petitioner argues that it is necessary to weight-average the acquisition prices since large salmon has a higher per-unit price than smaller salmon. Comparing average costs with APs would result in below-cost sales for the smaller salmon and above-cost sales for the larger salmon. Therefore, the four separate average costs should be compared to four separate average APs and the higher of the two figures should be deemed the exporter's COM. The Department should then add the verified SG&A of each exporter to the gutted and round average costs for both sub-periods of the POI.

DOC Position

The Department calculated one simple average cost of production for gutted fish based on the adjusted costs of production of all seven farmers included in the investigation. We did not compare the farmers' cost of production to the APs because we determined that APs were not relevant to the COP analysis (see Exporter-Wide Comment 1). Therefore, no APs have been used for purposes of the final determination. Instead, we calculated the simple average of the seven farmers' individual costs of production for gutted fish (we did not calculate a simple average cost of production for round fish because no sales of round fish were used in our comparisons) and added the exporter-specific SG&A expenses to determine COP of fish sold by each exporter for the first sub-period of the POI (September 1 through December 31, 1989). We did the same for the second sub-period of the POI (January 1 through February 28, 1990), but also added the FOS fee of five NOK/kg. to COP (see Farm-Wide Comment 3). The COPs were then compared to the exporter's monthly weighted average third country prices.

II. Farm-Specific Comments

Safish

Comment 1

Petitioner argues that Safish submitted a materially revised cost of production submission at verification. Petitioner asserts that it is the Department's well-established practice not to accept material changes to responses at verification and, thus, the Department should have rejected the submission at verification to the extent the resubmitted costs are lower.

Respondent maintains that, at the beginning of verification, Safish informed the Department of an inventory error it had discovered and provided the Department with a corrected calculation of the quantity produced.

DOC Position

The Department agrees with the respondent. At the beginning of verification, the respondent submitted revised inventory information. The revisions were supported by detailed farm inventory records. This revision was not so significant as to constitute a new response. Therefore, the Department used this information as the basis for calculating the cost of production.

Comment 2

Petitioner argues that Safish's audited financial statement casts serious doubt on the reliability of its production costs as submitted to the Department. Specifically, petitioner claims that the results on Safish's income statement do not reflect the costs and selling prices submitted to the Department. Additionally, petitioner argues that Safish's 1989 Management Report lists a "calculated cost of production" at odds with the cost of producing round salmon as reported to the Department. Petitioner also argues that Safish failed to disclose a method of calculating costs of producing salmon for inventory purposes, even though specifically requested to do so by the Department. Petitioner concludes that these factors warrant rejection of Safish's cost response in its entirety.

Respondent claims that the Department verified Safish's cost of production based on a complete review of its operations and accounting records.

DOC Response

The Department agrees with the respondent. The response to the Department's questionnaire was prepared by utilizing the company's accounting records, general ledgers and financial statements which were audited according to Norway's generally accepted accounting principles. Additionally, the management study does not support the petitioner's claim regarding the reported cost of production, because after minor adjustments, both amounts were comparable.

Bremnes

Comment 1

Petitioner argues that Bremnes' entire response be rejected and BIA used in the final determination because of the substantial adjustments which were made to actual costs for the submission and not disclosed to the Department until verification. Furthermore, Bremnes did not disclose to the Department until verification the use of surrogate costs for the 1987 smolt class. Petitioner argues that this data constitutes new information which should not have been accepted by the Department at verification.

Respondent argues that it answered exactly what the Department asked for in the questionnaire: An explanation of the differences between the response and the cost accounting system, not the difference between the response and the financial statements. Because Bremnes had no cost accounting system in place, it was required to perform an entry-by-entry analysis of the financial records in order to prepare the submission. Respondent claims that the Department verified each adjustment and petitioner has no basis on which to make its assertion that Bremnes' response is not credible.

DOC Position

The Department did discover deficiencies in Bremnes' submission. However, based on information provided at verification, we were able to make necessary adjustments. These adjustments were not so significant as to warrant the use of BIA for the entire response.

Comment 2

Petitioner argues that the Department should reject Bremnes' material costs in their entirety and use as BIA the average feed cost of NOK 10.92/kg from the 1988 Norwegian Directorate of Fisheries Study because of inconsistent year-end adjustments which lowered the feed costs. Petitioner asserts that it is impossible to determine how many one-sided adjustments could have been made. If the Department does add back this cost to materials, it should allocate the full amount to salmon farming.

Respondent argues that this one expenditure was excluded from the COP because it was a prepayment. Respondent claims that this purchase represented costs for a period subsequent to the period for which costs were calculated. Respondent states that at verification it showed that the purchase was from a supplier other than its normal supplier, that it was in addition to the regular purchases made in December, and that delivery did not begin until Feburary 1990. Therefore, respondent contends that it has properly been excluded from the COP.

DOC Position

We agree with petitioner in part. The Department increased 1989 material costs for this purchase of feed. The respondent documented at verification that the invoice for this purchase of feed was recorded in 1989, the period for which costs were calculated. Respondent's cost methodology calculated a per-kilogram production cost over a two-year period based on costs for 1988 and 1989 and production quantity for 1988 and 1989. The methodology did not include adding material expenses incurred in 1987 for feed used during 1988 at the beginning of the period for which costs were calculated, *i.e.*, January 1, 1988. Therefore, the respondent's adjustments to year-end purchases have understated the total quantity of feed used and was not in accordance with the methodology used to calculate production costs.

Comment 3

Petitioner argues that the respondent's exclusion of an expense classified as materials on the financial statements should be rejected. Petitioner states that the information on the record does not support the respondent's claim that this expense was, in fact, not a materials cost. Petitioner contends that since the amount is treated as a materials expense in the company's books, it should be included in the cost of production.

Respondent argues that it properly excluded a payment in 1989 because it was misclassified as a material costs in the company's books. Respondent states that it provided documentation at verification which detailed the nature of the fee and the propriety of its exclusion.

DOC Position

We agree with the petitioner. The documentation submitted at verification did not substantiate respondent's claim. The Department calculated material costs according to the company's accounting records and financial statements.

Comment 4

Petitioner argues that respondent disclosed at verification substantially new information regarding the methodology it used to calculate smolt costs. Because this new information was disclosed at verification, the Department did not have sufficient time to analyze the methodology. Furthermore, respondent's smolt costs are unreasonable when compared to the averages reported in the Norwegian Directorate of Fisheries. Petitioner contends that the surrogate costs should be rejected and BIA used instead.

Respondent contends that it did not have full cost data for 1987 nor an established smolt cost accounting system. However, the use of 1988 smolt costs did not understate Bremnes' cost of production. Respondent states that it supplied the Department with information that the smolt feed remained constant from 1987 to 1988 and the quantities of smolt delivered in 1988 were higher than that delivered in 1989. Therefore, its methodology did not understate costs.

DOC Position

The Department used the data submitted by respondent to calculate smolt costs. At verification, we analyzed respondent's methodology and through testing concluded that there was no basis to determine that smolt costs were understated.

Comment 5

Petitioner contends that the selling expenses of the Leroy Aqua Group (LAG), a cooperative comprised of many fish farmers, should have been included in Bremnes' COP. Because Bremnes did not provide this information, the Department should reject the response as unreliable. Alternatively, petitioner contends that the fees paid to LAG are selling expenses which should be added to COP or deducted from the sales prices.

Respondent argues that payments to LAG were properly excluded from Bremnes' COP.

DOC Position

Bremnes submitted documentation at verification to support its claim that fees paid to LAG should not be included in its COP, and we have not included them.

Nordsvalaks

Comment 1

Petitioner asserts that Nordsvalak's failure to report crucial related-party information rendered its response unverifiable, and that the Department should use as BIA the highest verified cost of production for any farmer.

Respondent claims that the failure to report the existence of Furberg & Yttersian (F&Y) resulted because the Department's questionnaire requested information only on related input suppliers, and not on "sister companies." Respondent claims further that the information submitted was verifiable and that the 50/50 split of costs between Nordsvalaks and F&Y is the same as an allocation of costs within a company. Lastly, respondent asserts that the Department *did* verify Nordsvalaks' response. To support this argument, respondent compares the time spent at the verification of Nordsvalaks to time spent for verification of other respondents in this proceeding.

DOC Position

We agree with the petitioner. The Department's questionnaire *does* specifically request information on relationships such as that between Nordsvalaks and F&Y. These parties, owned one by a husband and the other by the husband and his wife, maintained that although they kept separate books and records, costs and expenses were shared.

Section 773(e)(4) of the Act, a copy of which was included at Attachment A to the questionnaire, indicates that "members of a family, including brothers, sisters, spouse" are considered related

The Department did not verify the major elements of the Nordsvalaks response. The existence of this second, related company presented the question of whether all costs and expenses were appropriately allocated between these two entities. In effect, only part of a whole farm was reported in the respondent's submission. Since these companies essentially operated as one company, the verification of Nordsvalaks' submission could not be completed without accepting an entirely new response, including F&Y's data, and so we terminated the verification.

Midnor

Comment 1

Petitioner argues that the Department should adjust net production quantity for Midnor to December 1989 year-end quantities.

Respondent states that at verification Midnor provided revised ending inventory figures for the 1988 year class of salmon and that this information should be taken into account in the calculation of production quantities and per-kilogram cost of production.

DOC Position

The Department agrees with both parties and has adjusted the cost of production to reflect the actual verified ending inventory quantity.

Comment 2

Petitioner claims that Midnor's failure to identify a related supplier undermines the credibility of Midnor's response and that the Department should use BIA in the final determination.

Respondent argues that Midnor's relationship with the supplier is insignificant. Respondent further asserts that transactions were recorded at fair market value.

DOC Position

The Department agrees with the respondent in part. The relationship is not a significant related supplier relationship for cost of production considerations as defined in our cost of production questionnaire. For CV, we tested the prices and found them to fairly reflect the amount usually reflected in the market under consideration in accordance with section 773(e)(4) of the Act. With the exception of processing costs (discussed below), the Department used the verified costs for transactions between the parties.

Comment 3

Petitioner claims that Midnor has not followed a consistent methodology in allocating costs for the year class of 1988 over the production period. Petitioner also asserts that the Department should not exclude those costs incurred for 1988.

Respondent claims that the inconsistency in treatment of costs for 1988 and 1989 should be remedied by correcting the 1989 allocation to resemble 1988 allocations rather than by including those costs incurred in 1988 which had been excluded for the response.

DOC Position

We have modified the calculation of cultivation costs to treat all classifications of 1988 costs in the same manner as they are treated for 1989 costs.

Comment 4

Petitioner claims respondent's failure to provide evidence of actual payment of processing fees should be viewed by the Department as additional evidence of the overall unreliability of the submission and that respondent's submission should be disregarded.

Respondent claims that its submitted processing cost is supported by the FOS price list which was included as a verification exhibit.

DOC Position

For the final determination, the Department has used, as best information available, the processing fees as supported by the FOS price list.

Comment 5

Petitioner claims that the respondent failed to report interest expense for Midnor in the manner requested by the Department and that the Department should ignore respondent's calculations and resort to BIA.

Respondent claims that its calculation of interest expense is justified because of its unusual (start up) situation.

DOC Position

The Department has calculated interest expense based only on 1989 costs incurred divided by the total kilograms of 1988 year class salmon sold. (See Farm-Wide Comment 7).

Bremanger Fiskeindustrie

Comment 1

Petitioner argues that the web of interrelationships between Bremanger Fiskeindustrie A/S (Bremanger) and the exporter R. Domstein & Co. (Domstein) makes it nearly impossible to determine actual production costs for the group. Petitioner further states that these interrelationships create major problems in verifying the accuracy of transfer prices, because transfer prices for certain goods and services can be adjusted by over- or under-pricing other goods and services. Because of the extent of the interrelationships, complete cost of production data should have been supplied for all related parties. Given this lack of information, the petitioner claims that the Department has no choice but to use best information available in determining the cost of production of the group.

Petitioner further argues that Bremanger failed to include in general expenses an amount for services rendered by Domstein for which remuneration was not made by Bremanger. At the very least, Bremanger's general expense should be increased to reflect this omission. The failure to include these expenses should also be weighed by the Department in determining whether Bremanger's

submission should be rejected as unverified.

Petitioner asserts that, despite the fact that Domstein in essence owns Bremanger, the calculation of Bremanger's own interest expense was not based on a Domstein business group basis. Petitioner holds that it is the Department's standard policy to allocate total group interest expenses by total group cost of sales. In its final determination, should the Department accept Bremanger's response, it must adjust interest expenses to the highest amount reported by a responding company.

Respondent argues that Bremanger's salmon farm operates independently of Domstein, with day-to-day decisions and operational record keeping performed by Bremanger's employees. Respondent maintains that general expenses reported in Bremanger's response properly were based upon Bremanger's accounting records. Although Domstein provides limited bookkeeping support, Bremanger provides electronic data processing (EDP) services for the entire Domstein business group without remuneration. In the response, EDP services were allocated to Bremanger operations, *i.e.*, fish farming and fish processing. Therefore, imputing general expenses to Bremanger from Domstein's operations would overstate Bremanger's COP for salmon.

Moreover, respondent argues that Bremanger is a company within the non-consolidated Domstein business group and operates as a separate and distinct enterprise. No consolidated financial statements are prepared. Bremanger incurs its own interest expense and records this expense in its statements in accordance with Norwegian generally accepted accounting principles. Therefore, in accordance with past Department practice on this issue, the Department should calculate cost on the basis of interest expense as reported on Bremanger's financial statements.

DOC Position

The Department agrees with petitioner in regards to exclusion of G&A expenses and with the respondent in regards to which company's interest expense should be used in the calculation. Because Bremanger did not compensate Domstein for administrative services, the Department did not use Bremanger's submitted G&A expenses and used, as BIA, the highest G&A expense of any other farmer. The Department disagrees with the respondent that including an amount for Domstein's services would overstate Bremanger's general expenses. The assertion that Bremanger provides EDP services for the entire Domstein business group was neither reported in the questionnaire responses nor supported by evidence on the record.

Domstein does not own Bremanger, although common control does exist. The Department used Bremanger's interest expenses rather than interest expense incurred by Domstein for computing the COP. However, the Department adjusted this interest expense to include all of Bremanger's interest expense allocated to salmon operations in 1989 (see Farm-Wide Comment 7). The Department did not accept respondent's exclusion of certain mortgage expenses because the Department recognizes the fungible nature of interest expense.

Comment 2

Petitioner argues that Bremanger did not provide accurate data concerning its production quantities and, thus, the Department has no choice but to use the best information available.

Respondent argues that the per-kilogram cost of salmon should be calculated on the basis of the kilograms delivered to and accepted by the exporter.

DOC Position

The Department agrees with respondent and has used the quantity of salmon delivered to and accepted by the exporter to determine COP. In order to determine this amount, the Department relied on the quantities reported by processors, which agreed with the quantities accepted by the exporter.

Comment 3

Petitioner argues that in the absence of compelling reasons and supporting information to justify departure from Norwegian GAAP, Bremanger's recalculation of depreciation expenses must be denied.

Respondent asserts Bremanger prepared its finacial statement for tax purposes. Depreciation of farming equipment was based upon the shortest period allowed under Norwegian tax law rather than on the basis of the economic useful life of those assets. Respondent maintains that a tax life of three years contrasts sharply with the real useful life of the assets in question. For example, in the United States, single purpose agricultural or horticultural structures are assigned a useful life of 15 years by the Internal Revenue Service (IRS). The respondent claims that the Department itself uses the IRS Class Life Asset depreciation system for determining the useful life of assets in numerous countervailing duty cases. For this reason, Bremanger conservatively depreciated its equipment over the ten year period established for agricultural equipment and machinery generally, and did not separate out single purpose assets, including cages and fish feeding equipment, which under U.S. Law are depreciated over 15 Years.

DOC Position

The Department agrees with the petitioner and has not accepted the respondent's recalculation of depreciation expense only for the purposes of the submission in a manner contrary to what is recorded for "ordinary depreciation" on the financial statements. For the final determination, the Department used the "ordinary depreciation" based on the useful life of the assets as reported on the company's financial statement (see Farm-Wide Comment 5).

Comment 4

Petitioner argues that 1988 insurance fees and 1989 depreciation expenses that had been omitted from the response should be included in Bremanger's overhead amounts for the final determination.

Respondent maintains that it provided at the start of verification the inadvertently omitted costs for the 1988 insurance and 1989 depreciation expenses.

DOC Position

The Department has included such costs in the cost of production.

Comment 5

Petitioner argues that the processing of Bremanger's fish was performed by companies related to Domstein, and, thus, to Bremanger. Accordingly actual costs of processing should have been submitted so that the Department could have determined whether they were at or above the proces paid by Bremanger for these services. The Department should consider this omission in determining whether to reject as unverified the responses of both Bremanger and Domstein.

Respondent maintains that although the processing costs of Bremanger's processors and the prices its processors charged to unrelated customers where not available to Bremanger during verification, Bremanger documented that it was charged the reference price established by FOS for packing and processing.

DOC Position

For COP, actual costs were submitted but could not be verified. Therefore, the

Department has used, as BIA, the FOS price list to determine processing costs.

Comment 6

Petitioner argues that the Department determined at verification that the cost for wellboat transportation has not been calculated on a gutted basis. Moreover, petitioner holds that there is nothing on the record which indicates that Domstein paid for freight costs incurred by Bremanger. Accordingly, the Department should make the adjustment for gutting, and should at least use the highest freight rate incurred by Domstein as BIA in the final determination.

Respondent claims that in Bremanger's case, all freight costs are paid by the exporter. Since these amounts are reported in the exporter's response, the inclusion of this amount in Bremanger's response would result in double counting of freight expense.

DOC Position

The Department agrees with the petitioner in regards to wellboat transportation fees. Wellboat fees were adjusted by the Department to reflect a per-gutted kilogram charge (see Farm-Wide Comment 6). According to Domstein's verified questionnaire response, Domstein pays for all trucking, brokerage, and handling from the processing plant to any delivery point in the third country, as stipulated by the terms of sale. Thus, freight costs were not included in Bremanger's costs.

Hofa

Comment 1

Respondent argues that the proper calculation of the per kilogram costs of salmon requires that the costs be calculated on the basis of the kilograms delivered and accepted by the exporter.

DOC Position

The Department has calculated the cost of production based on the quantity of salmon delivered to and accepted by the unrelated exporter. The quantity of salmon accepted by the exporter was supported by documents provided by that exporter.

Comment 2

Petitioner argues that the Department should adjust net production quantity by the amount of the overstatement internally reported by the respondent for the ending inventory.

Respondent states that at verification Hofa provided revised ending inventory figures for the 1988 year class which were verified and that this information should be taken into account in the calculation of production quantities and the cost of production.

DOC Position

The Department has adjusted the cost of production to reflect the actual verified ending inventory quantity.

Comment 3

Petitioner argues that Hofa under reported its "ordinary depreciation" for 1988 by not including depreciation incurred during the first half of 1988 for equipment that was rented to another producer. Petitioner maintains that the respondent did not provide evidence at verification that it was reimbursed for the use of its capital equipment, and argues that this situation is analogous to "idle" equipment which, under standard Department practice, must be fully depreciated during the relevant period.

Respondent maintains that Hofa properly reported depreciation for the last six months in 1988. The 1988 year class entered the sea in the fall of 1988. Prior to that period, Hofa did not use its equipment for farming. Rather, during the first half of 1988, it rented its equipment to another farm, a fact that the Department verified.

DOC Position

The Department agrees with the respondent. The Department verified that respondent received rental income for the equipment and such income and associated depreciation were not included in the cost of production.

Comment 4

Petitioner argues that, in calculating its cost of smolts, Hofa used transfer prices rather than actual production costs incurred by its related supplier. Petitioner maintains that the price paid to Hofa's relafed supplier for smolts is below the company's production costs, which is the appropriate benchmark to use unless Hofa can demonstrate that the prices paid are above the supplier's costs. Given Hofa's failure to supply the actual costs for the smolt purchased from its related supplier, the Department should use, as best information available, the higher of (1) the appropriate FOS minimum price in effect pre-August 15, 1988, (2) the highest calculated smolt costs submitted in this investigation, or (3) the transaction prices reported by Hofa.

Respondent indicates that Hofa provided invoices for smolt sales to unrelated purchasers and FOS price lists to demonstrate that the prices it paid to a related smolt supplier in the fall of 1988 were at or above market prices. Respondent further claims that, given the high price for these smolt, there is nothing to suggest these sales by the related company to Hofa were distress sales made below its cost of production and, thus, there exists no reason to reject these verified costs.

DOC Position

The Department accepted Hofa's purchase price as the appropriate cost of smolt for the final determination for both the calculation of cost of production and constructed value. Because the supplier does not own more than fifty percent of Hofa, the purchase price is the appropriate determinate of the cost of smolt for the cost of production. For constructed value, we used the transfer prices reported by Hofa because they were comparable to the prices in Norway for similar qualities and sizes of smolt.

Comment 5

Petitioner argues that the Department should not allow the cost of production to be offset by the proceeds of an insurance indemnity that is allegedly related to losses due to disease for the following reasons: (1) This information was submitted well after the Department's standard deadline for accepting new information, and (2) the verification exhibits indicate that the amount of the insurance settlement was based partly on the market value of the lost production and not on the cost associated with the losses.

Respondent maintains that Hofa properly offset its cost for salmon by insurance proceeds received to avoid the economic distortion that otherwise would result. Additionally, respondent disagrees with petitioner's argument that this offset should be rejected because it was partly based upon the market value and not upon the costs associated with the loss. Respondent argues that the record shows that, even if some profit element were included in the insurance valuation of the fish, the insurance settlement was well below the insurance valuation for loss and the portion of the settlement directly related to the lost fish was well below the cost of production as set forth in Hofa's response.

DOC Position

The Department agrees with the respondent. Although the amount of the indemnity was submitted at the beginning of verification, the company's responses to the Department's questionnaire reported that the 1988 year class had suffered great losses due to disease and also that the company incurred insurance expenses. After examination of the documents supporting the receipt of the insurance indemnity, the Department included the proceeds as an offset to production costs for the 1988 year class. The Department notes that the proceeds were lower than the actual cost of production for the losses incurred.

Austevoll

Comment 1

Petitioner argues that they have reason to believe that Austevoll misreported certain data to FOS. Petitioner calls for the use of BIA (the highest verified COP of any other farm) if it is determined that Austevoll misreported its sales to FOS.

Respondent argues that the petitioner offers no support or evidence that its claim is true other than a general statement from an exporter that it may have under reported its sales to FOS.

DOC Position

We tested quantities reported by Austevoll to the Department against those reported to FOS and noted no discrepancies.

Comment 2

Petitioner argues that the Department should reject Austevoll's claim for an offset to the cost of cultivation for the estimated losses resulting from the infectious anemia syndrome (ILA) disease which infected the 1988 class. Petitioner states the respondent did not establish that the disease affecting the 1988 year class was "extraordinary." Petitioner states that Austevoll supplied neither industry nor government reports regarding the costs incurred in dealing with the ILA disease, nor any information as to the costs incurred by a Norwegian farmer affected by an "ordinary" level of ILA disease. Furthermore, Austevoll's 1989 financial statement did not list any extraordinary expenses from ILA disease. Since Austevoll did not treat these expenses as extraordinary according to Norwegian GAAP, the Department should also not consider them to be extraordinary for this investigation.

Respondent argues that, because a large portion of the stock died prior to harvesting and the remainder had to be slaughtered prematurely, Austevoll's sales and costs should be excluded from the investigation. The ILA disease also affected the quality of the stock which was sold in two ways: (1) The output of superior quality fish decreased substantially; and (2) the fish continued to experience a degradation of the flesh even after being sold, which required Austevoll to pay refunds to customers. Thus, Austevoll contends the ILA disease-related expenses are extraordinary. Respondent argues that it is the Department's normal practice to disregard sales of damaged merchandise and sales made outside of the ordinary course of trade; therefore, Austevoll should be excluded from the investigation.

DOC Position

We agree with the petitioner in part. Austevoll's claim that the extent to which the ILA disease affected its 1988 year class of salmon was extraordinary was not supported by the evidence on the record. In order for a particular item to be classified as extraordinary, it must be unusual in nature and infrequent in occurrence. In the fish farming industry, disease is an expected occurrence. Respondent submitted no independent data regarding ILA disease in general or the extent to which other farmers in Norway suffered from this disease, and no data was submitted regarding ordinary or abnormal levels of disease. Therefore, respondent was unable to support its claim that the extent to which the ILA disease affected its 1988 year class was extraordinary.

The Department disagrees with the respondent's claim that Austevoll's sales and costs should be excluded from the investigation. Austevoll's 1988 year class was sold in the ordinary course of trade. The fact that the disease resulted in the production of a larger proportion of "ordinary" quality salmon than would have been produced absent the disease does not lead to the conclusion that the sale of the "ordinary" quality salmon is outside the ordinary course of trade. The portion of the salmon stock which lived did enter the market.

Comment 3

Petitioner argues that, if an offset is allowed for the ILA disease, the method in which Austevoll calculated the offset is not acceptable. The major portion of the offset represents the "declared value" of the fish on the insurance policy, which is based upon the market value of the fish which includes lost revenues. Petitioner claims that the market value of fish as recognized by insurance companies is much higher than the average selling prices for 1989 which Austevoll reported. Also, the market value of fish does not represent the actual costs incurred by a farmer that has been affected by ILA disease. Petitioner states that only the actual costs incurred by the farmer should be considered in an adjustment for the affects of ILA disease, not unrealized profits. Respondent argues that, if Austevoll's sales are not excluded from the investigation, it should be allowed an offset for the effects of the ILA disease as submitted because it meets the criteria set forth for extraordinary items: The impact of the disease was unusual in nature, infrequent in occurrence, and the effect that it had on the 1988 year class was material. Respondent argues that it should be allowed an offset as calculated by its claim filed with its insurance company.

DOC Position

We agree with petitioner in part. The Department agrees that the method by which respondent calculated the offset did not reflect the actual loss incurred from the disease. The respondent based its offset on the total amount of the claim filed with its insurance company. Included in this calculation are amounts for the lost revenue from fish mortalities and from fish downgraded in quality because of the disease. Certain actual expenses which were paid by Austevoll, such as an additional sanitary fee paid to the exporter, were also included in this calculation. The basis of the respondent's offset bore little relationship to the actual costs incurred by Austevoll, whether in treating this disease, in cultivating the salmon which died, or in protecting the remainder of the stock from contracting the disease. We allowed a reduction to total costs for the amount of the actual reimbursement received from the insurance company.

Comment 4

Petitioner argues that the respondent withheld significant information concerning its methodology for smolt costs. The respondent's use of cost data of the calendar year 1988 as a surrogate for the actual costs incurred in 1987 and 1988 to raise the 1987 smolt year class was not disclosed in any of its submissions. The Department first learned of this information at verification. Petitioner argues that the Department clearly asks for detailed explanations of methodology in its questionnaire in order to analyze the information prior to verification and the Department should not be surprised with new information at verification. Petitioner suggests that Austevoll's smolt costs be rejected and the highest smolt cost of the other farms be used as BIA.

Respondent argues that Austevoll used the smolt production costs for the calendar year 1988 as a surrogate for the actual production costs of the 1987 smolt year class because of the difficulties in allocating costs among different year classes and the lack of complete data for 1987 smolt production costs.

Austevoll claims its methodology does not understate costs and, in fact, overstated costs. Austevoll stated that it showed at verification that the per-unit costs for feed and roe was lower in 1987 than 1988. Therefore, Austevoll's methodology should be accepted for the final determination.

DOC Position

We agree with respondent. The Department used 1988 smolt production costs as best information available. In testing the 1987 smolt cost elements during verification, there was no indication that the total smolt cost was understated.

Comment 5

Petitioner argues that Austevoll did not provide any support that the processing fees charged by its related party were at arm's length or were above the related party's cost of production. Therefore, the Department should use BIA for the final determination and base processing costs on the higher of (1) the highest verified processing costs, (2) Austevoll's submitted prices for processing, or (3) the FOS minimum processing prices.

Respondent argues that its processing fees were set forth in the FOS invoices and were properly reported.

DOC Position

We agree with respondent. We used Austevoll's reported processing charges since they agreed to those reported on FOS invoices.

Comment 6

Petitioner argues that the Department should base its calculation of wellboat expenses on the higher of Austevoll's reported transfer price or the highest wellboat expense of any other farmer. Austevoll based its wellboat costs on an internal transfer price used for cost accounting purposes rather than on actual costs of its wellboat operations.

Respondent contends that the market price for wellboat costs that it used as the basis for its internal cost for wellboat operations reflected the actual costs of Austevoll's use of its wellboat and was properly included in COP.

DOC Position

We agree with respondent. After testing the actual costs to the submitted costs, the Department determined that the submitted costs reflected the actual costs of the wellboat operation. Therefore, no adjustment was made.

III. Exporter-Wide Comments

Comment 1

Petitioner argues that the Department should base COP on the higher of: (1) The costs of production of the farm to which the exporter has been linked, or (2) the weighted-average acquisition price the exporter paid the farmer. Petitioner also argues that an average COP would not be representative since the sample selection process was not adjusted to take account of size differences between farms.

Respondents argue that the cost of production of the farms should be based on an average of all the farmers' costs weighted by production volume. Linking an exporter to a farmer would not be representative of the exporter's costs since each exporter bought salmon from a large number of farms during the POI. They also argue that acquisition prices are not relevant to the COP analysis.

DOC Position

First, the Department agrees with respondents' position that acquisition prices are not relevant to the cost of production analysis. In determining whether exporters' sales were made at less than cost, we looked at the "cost of producing the merchandise," in accordance with section 773(b) of the Act. As described in the Foreign Market Value section of this notice, the "cost of producing" the merchandise included the sum of the farmers' COP plus the exporters' general, selling and administrative expenses, profit and packing.

Second, a discussion of the background of the investigation is required to comment on the issue of an average COP as opposed to exporter-farmer specific COPs. The Department intended to construct a sample of farms which supplied each of the individual exporters during the POI. This methodology was designed to arrive at representative costs for each of the eight exporters based on their own experiences. In order to construct this sample, the Department asked the respondents to provide a separate list of farms which supplied each of the eight exporters during the POI. The Department randomly selected eleven farms from the lists and sent cost questionnaires to those farms. However, approximately two weeks after the questionnaires were sent, the respondents informed the Department that the lists used to select the sample were flawed because they contained farms that had not sold to the exporters during the POI. In fact, four of the eleven farms selected by the Department did not sell to the exporters during the POI. The Department decided not to select four additional farms from what was then known to be a flawed list. Moreover, given the time constraints, the Department decided to proceed with the information submitted from the seven remaining farms to avoid difficulties in meeting the statutory deadline for our final determination.

Given the constraints of the sample, the Department used an average of the seven farms' costs to arrive at an average farm COP in Norway. We disagree with the petitioner that averaging does not result in a representative COP. (The Department notes that the sample contains small, medium and large producers as well as farms from both the northern and southern regions of Norway.) To the contrary, this is the most reasonable methodology to determine the cost of producing salmon in Norway in circumstances where a great number of producers (more than 700 in this case) must be investigated in a relatively short period of time. Since four of the eleven farms were eliminated from the sample, we can not arrive at exporter-specific costs by linking exporters to specific farmers. The eleven were chosen to achieve geographic balance between northern and southern farms for exporters who purchased from farms in both these areas. The absence of costs from the four missing farms would skew individual exporter results. We also note that each exporter bought salmon from a large number of farmers during the POI. Therefore, we have concluded that an average of the COP from the seven farms is the most representative of the costs of Atlantic salmon from Norway.

We agree with the petitioner that weight averaging the costs of the farmers would skew the results. Bremnes, one of the seven sampled farms, is one of the largest farms in Norway. Based on public information on the record of this case (response of the Government of Norway to the countervailing duty questionnaire (C–403–802)), the largest farms in Norway produce a very small proportion of total salmon production. However, Bremnes' production constitutes a large proportion of the combined production of the seven farms. Therefore, weight averaging would result in a COP which disproportionately reflects the costs of the largest farms in Norway. In view of this, a simple average of costs is more representative of industry-wide costs then a weighted average.

Comment 2

Respondents contend that farmed salmon is a highly perishable product that is sold into a market that the seller cannot control. Specifically, respondents allege that when salmon approaches maturity, the color of the flesh changes and it loses value. Consequently, farmers must sell or suffer the loss of their crops.

Respondents assert that Atlantic salmon is also a perishable commodity for the exporters. Respondents further argue that the Department should conclude that sales of Atlantic salmon were not sold below the cost of production over an extended period of time and in substantial quantities, and were at prices which would permit recovery of all costs within a reasonable period of time. Respondents argue that if the Department continues to apply a COP test to determine whether substantial quantities of sales were made below the cost of production, the Department should apply a 50/90/10 test, rather than the 10/90/10 test. (Under the 10/90/10 test, the Department would not disregard sales if less than 10 percent were below cost, disregard only the below cost sales if between 10 and 90 percent were below cost, and disregard all sales if more than 90 percent were below cost).

In past cases the Department has applied the 50/90/10 test in cases involving highly perishable agricultural products. Under a 50/90/10 test, the Department would not disregard any less than cost sales unless more than 50 percent of sales were below cost. Respondents contend that the Department will not find more than 50 percent of sales below the cost of production.

Respondents claim that sales below cost did not occur over an extended period of time, based on an examination of average cost, average fair market value, and average profit on a monthly basis for each exporter. They argue that the information demonstrates that each exporter made a profit in at least two of the six months during the period of investigation with every company showing a profit in the last month of the investigation. The existence of profits in some months for all companies precludes a finding of sales below cost over an extended period of time.

Furthermore, respondents argue that any sales below cost by the exporters were at prices that would permit recovery of all costs within a reasonable period of time. As evidence of their assertion, respondents rely upon monthly data which indicate a return on sales above cost, by weight band, for a majority of exporters. In addition, virtually all below cost sales occurred on sales of smaller fish which do not command high market prices but which bear the same cost per kilogram as the larger fish.

Petitioner challenges respondents' assertions that they lack the ability to control the time of sale of the farmed salmon. Rather, petitioner contends that the Norwegian salmon farmer has the option of delaying harvest of the salmon. Petitioner noted that farmed salmon can be kept in the water for eight to ten months after the onset of maturity and that such "held over" salmon would at least retain value since they regain their color and could weigh more than at the onset of maturity. Petitioner cited a January 1990 study by the National Oceanic and Atmospheric Administration reporting that Norwegian farmers carried over 30,000 metric tons in inventories of fresh harvestable salmon from 1988 to 1990. Accordingly, petitioner supports the 10/90/10 test for cost analysis.

Petitioner further states that respondents failed to produce documentation to support data indicating profitable months during the POI. In addition, exporters' audited financial statements for the year ending 1989 reflect net losses. Each of these facts, petitioner argues, undermines the credibility of respondents' assertion that below cost sales did not exist over an extended period of time. Finally, petitioner disputes respondents' claims that sales in later months are above costs, indicating the recovery of costs.

DOC Position

We agree with petitioner that fresh salmon is not a perishable commodity for purposes of the cost analysis. Norwegian Atlantic salmon farmers have the ability to control the time of sale of their output by "holding over" inventory and, since January 1990, by freezing fresh salmon. Regarding respondents' assertion that salmon is perishable in the hands of the exporters, the Department found at verification that the opposite is true. Exporters coordinate their salmon requirements in weekly telephone conferences with their customers, with farmers, and with other exporters. By doing so, exporters can communicate their salmon requirements two weeks into the future to the farmers so that farmers can begin to "starve" (prepare for harvest) the salmon two weeks prior to harvest. Accordingly, there appears to be no perishability problem at the exporter level. Therefore, the Department applied the 10/90/10 test applicable to non-perishable products for purposes of determining whether below-cost sales were in substantial quantities.

Regarding the extended period of time during which below cost sales occurred, respondents' reliance on average prices and costs is misplaced. Section 773(b)(1) of the Act allows us to disregard sales at less than cost if they are made over an extended period of time. Thus, the focus is on the individual sales below costs, not whether the average price of all sales is above or below cost. An examination of below cost sales reveals that they took place throughout the POI, as opposed to being concentrated in only a short period of time. Therefore, the Department concludes individual sales at prices below cost occurred over an extended period of time. Similarly, to be disregarded, the price of below-cost sales also must be insufficient to recover all costs in a reasonable period of time. An average price, which includes both above and below cost prices is not relevant to this determination. In order for prices below cost in the POI to recover all costs, there would need to be evidence that costs in a reasonable time would decline sufficiently for prices below POI costs to exceed future costs to a degree that would permit not only recovery of future costs but recovery of current losses. We have examined costs of producing salmon over a two year period and have found no evidence of either costs expensed in the POI which should be reallocated to a future time, thus lowering POI costs, nor of any other evidence that current costs are aberrational and expected to decline. In the absence of evidence that current below-cost prices will recover future and current costs, the Department concludes that below-cost prices will not recover all costs in a reasonable period of time.

Comment 3

Respondents suggest that the Department's usual practice of comparing U.S. prices to a weighted average FMV covering the entire period of investigation would result in an inherently unfair comparison of "apples to oranges" or "fish to fowl." Respondents note that the International Trade Commission, in its preliminary determination in this case, stated that fresh salmon prices fluctuated "widely" from 1987 through mid-1988 and that thereafter salmon prices declined 50 percent through the end of 1989 before recovering somewhat in the first quarter of 1990. They point out that the Department has previously based FMV on both daily and monthly averages, respectively, in Certain Fresh Winter Vegetables from Mexico; Final Determination of Sales at Less Than Fair Value, 45 FR 20512, 20515 and Fall Harvested Round White Potatoes; Final Determination of Sales at Less Than

Fair Value, 48 FR 51669. With respect to the appropriate time frame on which to base the fair value comparisons, respondents suggest that daily or weekly average FMVs be used because it would provide the Department with the most "contemporaneous" foreign sales. Respondents argue in the alternative that monthly averages should be used.

Citing Certain Fresh Cut Flowers from Mexico Final Results of Antidumping Administrative Review, 55 FR 12696, 12697, respondents suggest that fairness requires that the Department calculate United States Price "on an average basis comparable to that utilized for FMV." Respondents note that in that case, the Department was obliged to "take into account" price distortions resulting from the perishable nature of the product.

Petitioner suggests that where FMV is based on home market or third country net prices, the Department should follow its standard price-to-price methodology. With respect to U.S. price, petitioner contends that, at least when FMV is based on constructed value, the Department should use weighted-average U.S. prices by invoice across all weight bands. Petitioner feels that weighted-average U.S. invoice prices are comparable to "single average costs" and that weighted-average prices reflect commercial reality, since a single invoice to a customer covers many weight bands.

DOC Position

To examine the question, we collected gross price information for each exporter for each month of the POI. We aggregated all weights of gutted salmon for purposes of comparing monthly price fluctuations in the same market. The Department used gross prices to minimize exchange rate effects (several exporters had mixed currencies in their databases).

We noted two discernible trends. First, there was a significant increase from month to month in FMVs from September through December, with another notable increase in January, 1990, continuing into February. Second, there was a steady *decrease* in U.S. price from September to December, with a large, pronounced increase in U.S. price in January, 1990 and continuing in February. For these reasons, *i.e.*, because the time of sale is closely connected to the prices charged, the Department agrees with respondent that a "narrower" window should be used for fair value comparisons, and, accordingly, weight-average FMV by month. The Department did not average U.S. price, following its normal practice of comparing individual U.S. prices to weight-average home market or third country prices. Also, vegetables and flowers were highly perishable products, dominated by sales at auction, and having significant price fluctuations each day. Salmon shares none of these characteristics and, therefore, averaging to eliminate the distortions is unnecessary.

Comment 4

Petitioner contends that the Department should base the foreign market value on constructed value instead of third country prices in Europe because substantial evidence exists from a European Community (EC) preliminary antidumping investigation of salmon from Norway that third country prices are below the fair market value. The failure of the EC to arrive at a final determination in its separate investigation of salmon from Norway should not diminish the significance of the preliminary finding of dumping in the EC. The Department should recognize the practical contradiction of using the price of products sold below fair market value as the average fair market price and should use constructed value as the fair market value.

Respondents contend that any evidence of dumping in the comparison market should have no bearing on the U.S. investigation conducted by the U.S. Department of Commerce. Respondents argue that U.S. law does not contemplate consideration of whether third country prices are below fair market value as determined by a different antidumping authority. Respondents also point out that during this investigation, petitioner has consistently maintained that because EC and U.S. investigations significantly differ, information obtained in the EC investigation cannot be used for the purpose of the U.S. investigation. Therefore, any E.C. preliminary finding of dumping is irrelevant for the purpose of the U.S. antidumping analysis.

DOC Position

The statute does not preclude the Department from using third country sales solely because an authority other than the Department has found or may find that they are at dumped prices.

Comment 5

Respondent argues that fees paid to the NFOL, ECFF and the Norwegian Government for health inspections may either be classified as direct selling expenses or taxes. If the Department classifies the fees as direct selling expenses, it should deduct the expenses from third country prices. If, however, the Department classifies the fees as taxes, no adjustment should be made to the gross unit price and no amount should be added to the COP.

Petitoner contends that the fees discovered at verification, such as the NFOL fee, the ECFF fee, and the NOG health certificate fee should not be deducted from FMV because respondents failed to report the expenses incurred. Petitoner states that the cumulative effect of the individual fees will have a significant effect on the overall margins. In addition, petitioner argues that the fee for NOG health inspections must be added to the exporters' cost of production.

DOC Position

At verification, the Department discovered that the exporters pay certain fees to two organizations that were not reported, or only partially reported, in the responses. Payments to the NFOL represent mandatory payments to the exporters' organization by all exporters who are members of the NFOL. The amount of the fee payable varies with the quantity of the merchandise purchased by the exporter. Similarly, the ECFF fee, which varies with the volume of the merchandise exported, is paid by all exporters on export sales to all markets. Therefore, both of the fees represent variable costs attributable to the subject merchandise.

The Department has characterized the fees as direct selling expenses because the fees represent variable costs and are paid by the exporters on sales of the subject merchandise. Consequently, the Department has made a circumstance of sale adjustment to foreign market value to reflect the payment of fees on shipments to the U.S. and third country markets and has included the total expenses attributable to salmon sales in the COP.

Certain exporters incurred expenses related to inspection and certification of merchandise destined for the European Community. The Department has determined that this adjustment to foreign market value constitutes an insignificant adjustment under 19 CFR 353.59. Therfore, we have disregarded the adjustment relating to health certification fees incurred on goods sold to those third countries.

Comment 6

Petitioner objects to all respondents' overall methodology of averaging certain expenses in the foreign market such as movement, insurance, duties and fees to the extent that the costs are to be deducted from individual sales prices. Petitoner argues that the averaging techniques employed results in margin distortions by causing a higher FMV in sales in the less frequent but higher weight bands and a lower FMV in sales of more frequent, lower weight bands.

Respondents contend that the averaging methods employed constitute reasonable methodologies for allocating expenses that are, by their nature, averages.

DOC Position

We have accepted all movement, insurance, duty and fee averages since verification substantiated that the average amounts reported were reasonable in relation to the sale specific charges we observed. In some instances, our verification findings changed the reported charges.

Comment 7

Petitoner argues that the Department should use actual processing costs, where available, in lieu of the standard fee listed on the FOS schedule.

Respondents assert that the Department should use actual costs for Chr. Bjelland and Skaarfish, two exporters which demonstrated lower processing costs for merchandise processed in-house than charged for unrelated packers, which charge the FOS fee.

DOC Position

Although the Department verified lower in-house processing costs for some exporters, the Department was unable to verify either whether the charge was always passed to the farmer or whether the exporter at times bore the cost. One exporter, Chr. Bjelland, reported in its May 16, 1990 response that it "buys fish from the farmers at an ex-cage" price. On July 27, Chr. Bjelland reported that "[a]ll charges applicable to transporting the merchandise to Chr. Bjelland's distribution warehouse, including standard packing (which includes processing) are included in the exporter's cost of purchasing the merchandise." Because of the conflicting accounts, the Department applied, as BIA, the FOS fee in its build-up of the farmer's COP and CV.

Comment 8

Petitioner contends that some respondents have improperly claimed warranty expenses relating to rebate payments or total write offs on specific sales. Petitioner recommends that where information does not exist to deduct only the proper amount for each sale, the Department should reduce the U.S. price by the amount claimed and should disallow an adjustment for warranty expenses to the FMV.

Respondents challenge petitioner's assertions that warranty expenses are improperly reported. Respondents claim that the nature of the business practice in the salmon industry prevents maintenance of warranty expense records as typically maintained in other industries. Respondents state that the claimed expenses represent complaints based on quality, incorrect shipments, or unilateral refusals to pay. All exporters derived warranty adjustments by totalling the expenses of the types described above and allocating the expenses over market specific sales.

DOC Position

Regarding the treatment of warranty expenses, the Department's practice is to allow only expenses related to quality based complaints. In this case, for those exporters that claimed only warranty expenses as defined by the Department, we have allowed the circumstance of sale adjustment. For those exporters who claimed warranty expenses which included unilateral price deductions, we disallowed the claim in the third country market and applied the full amount claimed in the U.S. market in making circumstance of sale adjustments. We did this because we were unable to segregate the warranty only portion of the claimed expense.

IV. Exporter-Specific Comments

Domstein

Comment 1

Petitioner recommends that the Department either disallow completely or allow only the lowest charges incurred for miscellaneous freight charges incurred on third country sales. Petitioner's position is based on verification findings that the charges were not fixed charges as originally reported but related to terminal costs that varied in amount.

Respondent states that the fixed rate submitted represents the average expense incurred. Respondent claims that Domstein's accounting department derived the average amount and documented the calculations in an accounting study.

DOC Position

The Department agrees with the petitioner. At verification the Department requested documentation to support the amount claimed in the submissions. Domstein offered only documentation that indicated miscellaneous charges at varying amounts. Domstein did not offer any further documentation, despite our inquiries. Therefore, because neither the expense nor a reasonable estimation of the average amount claimed was documented, the Department has disallowed Domstein's claimed miscellaneous freight expenses.

Comment 2

Petitioner states that on U.S. sales with unreported payment dates, the Department should treat the unpaid amount as a discount unless Domstein can demonstrate that the outstanding balance is collectible. Respondent argues that no evidence exists which indicates that the outstanding payments represent discounts. Respondent recommends that the Department either exclude the sales with open paydates or apply the average paydate as in the preliminary determination.

DOC Position

The Department agrees with the respondent. At verification, the Department reviewed sales and payment records for those sales with unreported paydates. The review included examination of computer sales data files and payment records. No evidence exists which suggests that Domstein extended a discount to the purchaser. In addition, the Department thoroughly investigated the discounts claimed and found no discrepancies. Therefore, because substantial payment was received and no evidence of a lack of good faith by the exporter to accurately report discounts exists, as BIA the Department has not treated the unpaid amount as a discount and has assigned the average credit period of all sales to the ten transactions with missing paydates to calculate a credit expense.

Comment 3

Domstein urges the Department to use the verified selling expenses. In the preliminary determination, the Department applied BIA to calculate the commission offset for sales in which a commission was paid in only one market because Domstein did not report indirect selling expenses.

DOC Position

At verification, Domstein provided information total indirect selling, general and administrative expenses incurred for the year ending 1989. We have used that information in our final determination to calculate the commission offset.

Saga

Comment 1

Petitioner contends that the Department should reject the Saga's third country sales listing and base

Saga's FMV on the higher of the FMV calculated for another exporter or the FMV in the petition. Petitioner's contention is based on findings at verification of one invoice of frozen salmon and two to three credit notes erroneously included in the third country database as third country sales. Petitioner characterizes the database as unusable because of the potentionally pervasive inclusion of other credit notes and sales of frozen salmon which it describes as typcially lower in price.

Respondents disputes petitioner's assertion that the mistakes in quantity arising from the inclusion of frozen salmon sales and credit notes warrant a rejection of the response. Respondent notes that the original invoice erroneously recorded the sale of fresh salmon as frozen salmon. The mistake was detected upon review of shipping documents. Furthermore, the Department's random sampling techniques did not detect any other sales of frozen salmon reported in the database. With respect to the credit notes, respondent submitted two out of three of the credit notes erroneously reported as sales to the Department at the beginning of verification. Credit notes were easily detectable upon review of the database because the quantity of goods reported was a single unit, an unlikely amount for a sale.

DOC Position

The Department agrees with respondent. We concluded at verification that the errors in the sales data did not jeopardize the credibility of the third country sales data submitted. The respondent reported the missing credit notes to the Department at the beginning of verification. We verified the amount of the credit notes and the deduction from the corresponding sale. Random sampling did not identify additional unreported credit notes. With respect to the erroneously reported sale of frozen fish, the mischaracterization of the sale as frozen instead of fresh merchandise was an error on the actual invoice. All documentation indicated that the inclusion of the sale was an isolated error.

Comment 2

Petitioner contends that Saga's fees paid to the ECFF were actually .09 percent rather than .1 percent of CIF value. Petitioner requests that the Department adjust the amount deducted to reflect the actual fees paid.

Respondent states that the fee is based on FOB, not CIF, value and argues that petitioner's calculation of the fee is erroneous.

DOC Position

The Department agrees with the respondent. The verification exhibits clearly show that the fees paid to the ECFF were .1 percent of the FOB value on exports to all markets. The Department has adjusted the foreign market value and U.S. price to reflect the payment of these fees.

Comment 3

Petitioner states that Saga's claim for NFOL fees is overstated by .25 percent because the actual NFOL fee fell by .25 percent in January and February 1990.

Saga contends that it did not originally report the NFOL fee and asserts that these fees are paid upon the acquisition of the fish, and not as a charge on the export sale.

DOC Position

In the final determination, the Department calculated NFOL fees as .1 percent of the CIF value for the months of September through December 1989 and .075 percent of the CIF value for the months of January and February 1990 (see Eporter-Wide Comment 6).

Skaarfish

Comment 1

Petitioner suggests that Skaarfish intentionally included sales to customers outside of France to ensure that France was the selected third country. Petitioner hypothesizes that the misreported sales could have been sold to Germany. Petitioner states that sales to Germany were approximately 10 percent higher than sales to France. Petitioner argues that the Department's inability during verification to authenticate the total amounts reportedly sold in each market (United States and France) lends credibility to his assertion. Petitioner requests that the Department apply BIA as the highest calculated FMV for another exporter, or information alleged in the petition.

Respondents argue that the German sales were ultimately destined for Austria and Switzerland and the misreported French sales were actually shipped to Belgium. Respondents point out that they were prepared to prove the destination of the shipments in question at verifcation.

DOC Position

During verification, the Department verified the total quantity and value of merchandise sold during the POI. We attempted to verify the quantity and value sold to each market through the accounting ledgers. Skaarfish officials, however, explained that the accounting system precluded tabulation of sales information for a specific market for a specified period of time. Faced with this situation, we selected invoices from the invoice ledger. We found no improperly reported or unreported sales. Therefore, no reasonable basis exists for the Department to apply the BIA. Accordingly, we have accepted the sales reported by Skaarfish as the appropriate third country market sales.

Fremstad

Comment 1

Petitioner asserts that Fremstad averaged charges per kilogram for each U.S. destination, that such averaging is distortive, and that Fremstad could have submitted air freight charges on a per sale basis. Petitioner urges the Department to use the highest per kilogram charge as best information available.

Fremstad asserts that it does not know in advance what its air freight expense will be when it sells salmon to the United States. It estimates the amount on the basis of experience. Accordingly, Fremstad asserts that average air freight charges per destination are closer to its selling practices that sale-by-sale amounts would be.

DOC Position

Fremstad's reported charges, as corrected by information received verification, were used in recalculating airfreight charges. The average charges per destination, as corrected, were a reasonable method for reporting the charges as the variation in actual charges by destination was not signficant.

Chr. Bjelland

Comment 1

Respondent argues that the Department should use Spain, and not Germany, as the relevant third country market for fair value comparisons. Respondents notes that 19 CFR 353.49(b) requires; *inter alia*, that we choose a third country to which merchandise is exported which is "more similar" to the United States. Failing that, the Department is to select the third country with the largest volume of sales of "any country" other than the United States.

DOC Position

19 CFR 353.49(b) does not specify a hierarchy for the selection of a third country market. The Department considers all of the listed criteria in deciding which is the appropriate third country market for comparison purposes. In this instance, the Department determined that German sales represented the most appropriate combination of similar merchandise (over 95 percent of U.S. sales would have identical matches; Spain has considerably fewer), quantity, and similarity of market conditions (there are no pronounced differences on the record between the German and U.S. markets). Accordingly, we selected Germany as the third country market to be used for comparison purposes.

Comment 2

Respondent has repeatedly argued that if the Department uses Germany for fair value comparisons, it must make a level of trade adjustments because sales to Germany include sales to "a distributor" as well as to wholesalers. (Sales in the U.S. market are to wholesalers.) Chr. Bjelland argues that the claim is "documented and verified" by reference to two invoices, Exhibit G–2 and Exhibit G–4, that the Department verified. Chr. Bjelland argues that those verification exhibits show that the same size and quality salmon was sold to two different German purchasers on roughly the same date for different prices. They argue that Exhibit G–4 represents a sale to a "wholesaler" who paid less than did the "distributor" reflected in Exhibit G–2.

DOC Position

We disagree with respondent's assertation that a level of trade adjustment has been "documented and verified" and decline to make an adjustment. Respondent fails to note that the "distributor", just two weeks later, paid less for the same size quality salmon than did the "wholesaler". Respondent has made no attempt to show any pattern of higher-priced sales to the claimed distributor, other than a single unlabelled sheet of paper quoting prices, without reference to either the size or condition of the salmon. Nor has respondent shown that the price difference offered as quantification of the claim is not simply an example of the price fluctuations occurring in the period of investigation.

Salmonor

Comment 1

Petitioner objects to Salmonor's having reported different interest rates for U.S. and third country credit expense adjustments while using average days over all sales for all markets. Petitioner asserts that if uniform credit days are relied upon, a single interest rate should be used for both markets as well. Salmonor asserts that the short-term credit rates for different currencies were verified and that the credit days did not vary between markets.

DOC Position

We verified the actual interest rates, which varied during the POI, in the third country and U.S. markets. Reported interest rates in the response were slightly different than the verified rates. The fact that average credit days is the same for both markets has no bearing on the interest rates we used. We recalculated credit charges using the verified interest rates in effect during the POI.

Comment 2

Petitioner asserts that the total rebates reported exceeded the amount verified and urged the Department not to deduct certain rebates.

Salmonor asserts that the Department verified all rebates.

DOC Position

We recalculated the rebate amount in accordance with the information that we verified.

Sea Star (SSI)

Comment 1

Petitioner asserts that the Department should use the lowest interest rate in effect during the POI as the best information available to determine credit costs. In addition, Petitioner urges the Department to use a 30-day payback term as best information available.

SSI asserts that the lowest interest rate was in effect for only 42 days during the POI and that its application for the entire period would be distortive. SSI also objects to a 30-day payment term inasmuch as we verified average credit days by examining monthly accounts receivable balances and average daily accounts receivable and average daily receipts per customers.

DOC Position

We recalculated SSI's credit expenses using the verified interest rates in effect during the period of investigation. We used the average payment periods per customer in the recalculation.

Comment 2

Petitioner asserts that SSI misreported inland freight charges to France and that the lower freight rates claimed for a large purchaser were incorrect.

SSI asserts that the difference betweeg the reported inland freight charges to France and the corrected figure is inconsequential. With respect to the different rates charged to the large purchaser, SSI asserts that the Department should use the rate reported as the most accurate approximation.

DOC Position

We recalculated SSI's inland freight using an average of the verified rates for its largest French customer for the POI. This amount was used as BIA as it closely approximates the interest rates for all purchasers.

Comment 3

Petitioner objects to SSI's use of average airfreight charges. SSI asserts that the average charges on a per destination basis bear a much closer resemblance to how SSI does business than a sale-by-sale reporting of airfreight.

DOC Position

We received corrected average airfreight charges per destination at verification. We were able to verify the accuracy of these charges. The average rates were a reasonable method for reporting the charges as the variation in actual charges was not significant.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 353.15(a)(3)(i), we are directing the United States Customs Service to continue to suspend liquidation of all entries of Atlantic salmon from Norway, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or October 3, 1990, the date of publication of the preliminary determination notice in the **Federal Register**. For Sea Star, the United States Customs Service will suspend liquidation of all entries of salmon from Norway, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this final determination in the **Federal Register**. The United States Customs Service shall continue to require a cash deposit or posting of a band equal to the estimated amounts by which the FMV of the Atlantic salmon from Norway exceed the U.S. prices, as shown below.

Manufacturer/producer/exporter	Margin percentage
Salmonor A/S	18.39
Sea Star International	24.51
Skaarfish Mowi A/S	15.65
Fremstad Group A/S	21.51
Domstein and Co.	31.81
Saga A/S	26.55
Chr. Bjelland	19.96
Hallvard Leroy A/S	31.81
All others	23.80

If the Department publishes an antidumping duty order covering Atlantic salmon from Norway, the Department will instruct the U.S. Customs Service to reduce the dumping deposit by the amount of the countervailing duty deposit attributable to the export subsidies found in the concurrent countervailing duty investigation covering the subject merchandise. This supsension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine, within 45 days from the date of this final determination, whether there is material injury, or threat of material injury, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury or threat of material injury, does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on salmon from Norway entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds U.S. price.

This determination is published pursuant to section 735(d) of the act (19 U.S.C. 1673d(d)).

Dated: February 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4392 Filed 2-22-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-403-802]

Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Norway of fresh and chilled Atlantic salmon, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 0.71 Norwegian Kroner (NOK) per kilogram for all producers or exporters in Norway of fresh and chilled Atlantic salmon.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Beth Graham or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4105 or 377-3530.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers and exporters in Norway of fresh and chilled Atlantic salmon. For purposes of this investigation, the following programs are found to confer subsidies:

- Regional Development Fund Loans and Grants
- National Fishery Bank of Norway Loans
- Regional Capital Tax Incentive
- Reduced Payroll Taxes
- Advance Depreciation of Business Assets
- Government Bank of Agriculture Grants

We determine the estimated net subsidy to be NOK 0.71 per kilogram (2.27 percent *ad valorem*) for all producers or exporters in Norway of fresh and chilled Atlantic salmon. The *ad valorem* rates cited throughout this notice have been calculated based on the total sales value of fresh and chilled Atlantic salmon. The *ad valorem* rates listed throughout this notice are provided only for reference. The cash deposit rate is based only on the calculated per kilogram rate.

Case History

Since the publication of the Preliminary Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon from Norway, (55 FR 26727 June 29, 1990) (Preliminary Determination) in the **Federal Register**, the following events have occurred. We conducted verfication of the questionnaire responses of the Government of Norway from September 3 to September 17, 1990. On October 28, 1990, we terminated suspension of liquidation in accordance with article 5, paragraph 3 of the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code).

Both counsel for respondent and the Norwegian Embassy requested a public hearing in this investigation. Case briefs were filed by petitioner and respondents on December 10 and rebuttal briefs were filed on December 14, 1990. The hearing was held on December 17, 1990.

Scope of Investigation

The product covered by this investigation is the species Atlantic salmon (Salmo salar) marketed as specified herein; the investigation excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink"), and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks, and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under HTS sub-heading 0302.12.0002.9. Prior to January 1, 1990, Atlantic salmon was provided for under the following HTS sub-headings 0302.12.0060.8 and 0302.12.0065.3. The HTS sub-headings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Programs

Due to the large number of producers and exporters of salmon in Norway, we solicited information from the Norwegian Government on an aggregate or industry-wide basis, rather than from the individual companies involved in the production or exportation of salmon from Norway. Consequently, our subsidy calculations are based on the total amount of benefits provided to the salmon industry and the total volume of salmon sales as reported by the Government of Norway.

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1989. This review period corresponds to the Government of Norway's fiscal year.

It was not possible, given the number of producers in Norway, to obtain the total amount of tax benefits provided to all Norwegian salmon producers. Therefore, to develop information on the usage of the tax programs alleged to benefit producers of Atlantic salmon in Norway, the Government of Norway surveyed producers located in the counties of Rogaland and Nord-Trondelag. To increase the number of surveyed producers, we requested that the Government of Norway also include producers in the county of Troms. Tax data from salmon producers in all three counties were used as the basis for calculating the countervailable benefits conferred upon the Norwegian salmon industry.

Based on our analysis of the petition, responses to our questionnaires, verification and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Norway of fresh and chilled Atlantic salmon under the following programs during the review period.

1. Regional Development Fund Loans and Grants

The Regional Development Fund (RDF) was established in 1961 to maintain and strengthen the economic base and to increase employment in regions with low levels of economic activity. The program covers 93 percent of the country, but only 36 percent of the population. Eligibility for RDF assistance is contingent upon geographic location. Only producers or manufacturers located in underdeveloped regions of Norway are eligible for assistance.

The RDF provides loan guarantees, long-term loans and grants. Loan guarantees under the RDF are discussed in section II.1. of this notice. RDF loans are provided for capital investment and are made in Norwegian kroner. We verified that the average effective interest rate on outstanding RDF loans during the review period was 11.98 percent.

Loans to salmon producers were written-off by the RDF during the review period. Exclusive of those written-off loans, there were outstanding loans to salmon producers for which no interest was paid during the review period. The written-off loans and the non-payment of interest are discussed in section II.2. of this notice.

To determine whether loans under this program were provided on terms inconsistent with commercial considerations, we selected as our benchmark the national average long-term interest rate charged by commercial banks for corporate lending. We selected a national average rate because our analysis is on an industry-wide level, rather than on a company-specific basis. We also used an average corporate borrowing rate because, according to the Government of Norway, there are no statistics available on the average cost of borrowing for the salmon industry. During 1989, the effective interest rate on long-term corporate borrowing from commercial banks was 14.9 percent. During verification, we found that fish farmers were required to pay the normal commercial interest rate plus 0.75 percent on their loans. Therefore, we have added 0.75 percent to the average corporate borrowing rate of 14.9 percent to more accurately reflect the commercial lending rate available to the fish farming industry during the review period. Comparing the benchmark of 15.65 percent to the rate charged under the RDF program, we determine that RDF loans were provided on terms inconsistent with commercial considerations.

Because loans provided under this program are limited to producers and exporters located only in specified regions of Norway and are provided on terms inconsistent with commercial considerations, we determine them to be countervailable.

Since the interest charged on RDF loans is variable, we could not employ our normal long-term methodology since we cannot calculate a future benefit stream over the term of the loan. Therefore, we used our short-term loan methodology and subtracted interest paid on RDF loans in 1989 from the interest that would have been paid at the benchmark rate of 15.65 percent.

We divided the interest payment differential calculated on outstanding loans by the total volume of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.08 per kilogram (0.25 percent *ad valorem*).

The RDF also provides both investment and business development grants. Investment grants can be made for the acquisition of new buildings and equipment. These grants are provided on minimum investments of NOK 70,000. Business development grants are provided for surveys and planning, product development, market surveys, marketing, initiation of new business undertakings, training, and financial assistance for new enterprises. These grants can cover a maximum of 50 percent of the external costs of the project. Both investment and business development grants were provided to salmon producers during the review period.

Because grants under the RDF are limited to producers and exporters located only in specified regions of Norway, we determine them to be countervailable.

Our policy with respect to grants is to (1) Expense recurring benefits to the year of receipt, and (2) allocate nonrecurring benefits over the useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy). We expensed RDF business development grants in the year of receipt because we consider these grants to be recurring since a firm can apply, and expect to receive these grants year-after-year. We determine that RDF investment grants are nonrecurring because a firm cannot qualify to apply for, and receive these grants year-after-year.

We calculated the benefit for the review period from the investment grants using the interest rate on long-term commercial bonds in Norway as a discount rate and our declining balance methodology as described in the Subsidies Appendix attached to the notice of Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006, April 26, 1984), and used in prior investigations (see, *e.g.*, Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Canada, 51 FR 15037, April 22, 1986). The average useful life of assets in the fish farming industry is ten years. Thus, we aggregated the investment grants received by salmon producers for each year for the last ten years and divided the grants received in each of these years by the total value of salmon sales in that year. For each year, the result was greater than 0.5 percent, therefore, we allocated the grants over the ten year period using our declining balance methology. We added the result

of this calculation to the amount of business development grants disbursed during the review period and divided by the total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.47 per kilogram (1.50 percent *ad valorem*). The total estimated net subsidy for RDF loans and grants is NOK 0.55 per kilogram (1.75 percent *ad valorem*).

2. National Fishery Bank of Norway Loans

The National Fishery Bank of Norway (NFB) granted loans for the financing of fish farms from 1974 through 1987. On January 1, 1988, the Norwegian Bank for Industry took over the administration of new loans to the fish farming industry. (For information on loans from the Norwegian Bank for Industry, see section II.3. of this notice.) Loans which had been granted to fish farmers through 1987 are still administered by the NFB. The NFB provided long-term loans for investment in production equipment and buildings. The interest rates charged on outstanding loans are set by the Norwegian legislature and can vary over time. In 1989, the interest rate charged on outstanding loans under this program was set at 11.5 percent.

Loans to salmon producers were written off during the review period. Exclusive of those written-off loans, there were outstanding loans to salmon producers for which no interest was paid during the review period. The written-off loans and the non-payment of interest are discussed in section II.2. of this notice.

To determine whether loans under this program are provided on terms inconsistent with commercial considerations, we used the same benchmark referred to under the Regional Development Fund program (see section I.1 of this notice). Comparing this benchmark to the interest rate on outstanding loans under this program, we find that loans under this program are provided on terms inconsistent with commercial considerations.

Because the NFB's lending was limited to the fishing industry and its loans were provided on terms inconsistent with commercial considerations, we determine the program to be countervailable.

Since the interest rates for NFB's loans are variable, we calculated the benefits conferred under this program in the same manner as previously described under the Regional Development Fund program (see, section I.1. of this notice). We divided the interest payment differential calculated on outstanding loans by the total volume of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.01 per kilogram (0.03 percent *ad valorem*).

3. Regional Capital Tax Incentive

The aim of this program is to encourage investment in regions in northern Norway with a weak industrial base and considerable unemployment. Funds set aside by the taxpayer under this program are deducted from taxable income. These funds must then be invested in capital assets. The maximum amount allowed to be deducted is 15 percent of taxable income. The minimum amount is NOK 15,000.

Within five years of setting aside funds under this program, 100 percent of the fund must be invested. The investment must be in assets for use in the taxpayer's own business. When setting up the fund, an amount corresponding to 40 percent of the fund must be placed in a special interest-bearing account in a local bank. This account is used to secure taxes that would have to be paid on the fund in the event that the taxpayer does not meet the obligations for investment under the program. In the year when the fund is wholly or partly invested, a fixed percentage of the invested amount must be deducted from the depreciable value of the purchased asset. Income tax is never paid on the remaining percentage of the invested amount provided the purchased asset is kept in the taxpayer's business for a specified number of years.

Because this program is limited to assets maintained in the region of northern Norway, we determine the program to be countervailable. To calculate the benefit, we took the total amount of funds deducted from taxable income by salmon producers and exporters and multiplied that amount by the tax rate of 50.8 percent to determine the amount of tax savings provided in 1989 under this program. We divided the tax savings by total volume of fresh and chilled Atlantic salmon sold during the review period to calculate an estimated net subsidy of NOK 0.02 per kilogram (0.06 percent *ad valorem*).

As is our established policy, we did not take into account the reduction of the depreciable value of purchased assets in this calculation because we consider this to be a secondary tax effect. (See, *e.g., Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish From Canada (Groundfish)* 51 FR 10041, March 24, 1986.)

4. Reduced Payroll Taxes

Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. The employer pays this tax six times a year. Since 1975, the amount of contributions have been geographically differentiated depending upon the municipality in which the employee resides. The program is aimed at encouraging employment of persons living in underdeveloped regions of Norway. In 1989, Norway was divided into four zones. The tax rate in each of the zones is 16.7 percent, 13.2 percent, 10 percent and 2.2 percent in Zones one, two, three, and four, respectively. We verified that the weighted-average payroll tax rate for Norway in 1989 was 15.6 percent.

Because this program provides a benefit to specific regions in Norway, we determine it to be countervailable. To calculate the benefit, we multiplied the amount of wages paid by salmon producers and exporters in Zones two, three, and four by their respective payroll tax rates. We then multiplied the wages paid in each of these zones by 15.6 percent, the weighted-average payroll taxes paid in Zones two, three, and four and the amount of payroll taxes that would have been paid at the weighted-average rate. We divided the result by total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of NOK 0.13 per kilogram (0.42 per *ad valorem*).

5. Advance Depreciation of Business Assets

The purpose of this program is to encouarge investment in less-developed areas or Norway by allowing companies located in selected districts of the country to claim a higher rate of depreciation in the year in which capital assets are acquired. Eligible companies, depending on their location, are allowed to take a first-year deduction of either 25 or 40 percent. After this initial deduction, the producer is then allowed to take the standard deduction on the remainder of the depreciable value of the asset.

Because only companies located in specific regions of Norway are eligible for this program, we determine the program to be countervailable. To calculate the benefit from this program, we divided the tax savings provided under the program to salmon producers and exporters by the total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of less than NOK 0.01 per kilogram (0.01 percent *ad valorem*).

6. Government Bank of Agriculture

The Government Bank of Agriculture administers the Norwegian Fund of Development in Agriculture which was established to create supplemental income and employment for farmers. The Bank provides both long-term loans and grants to agricultural producers.

We verified that the Bank provides interest-bearing and interest-free loans to all agricultural producers throughout Norway. We also verified that the Bank provides grants to all agricultural producers throughout Norway. However, the Bank has maximum levels of assistance which differ by region. Grants may be provided for up to 30 percent of the approved project cost, with a maximum of NOK 150,000 in southern Norway and NOK 180,000 in northern Norway. Applicants located in northern Norway are eligible for a maximum of NOK 460,000 in loans, while applicants in southern Norway are eligible for a maximum amount of NOK 450,000 in loans.

We determine that this program provides a countervailable benefit to the extent that fish farmers in northern Norway receive a greater level of benefits than they would have received had they been located in southern Norway.

To determine whether any countervailable benefits were provided under this program, we measured the amount of loans and grants provided to salmon producers in northern Norway against the limits imposed in southern Norway. (We used these limits because any recipient in Norway could receive assistance up to those limits.) Using this methodology, we found that none of the loans provided to salmon producers in northern Norway were above the maximum set for southern Norway. Therefore, we determine that none of the loans under this program provided a countervailable benefit. With respect to grants under this program, we did find that one grant to a fish farmer in northern Norway exceeded the maximum grant amount permitted in southern Norway. Therefore, we determine the difference to constitute a countervailable benefit. Because the difference between the grant amount received and the maximum amount permitted in southern Norway was less than 0.5 percent of total sales, we expensed the grant in the year of receipt. Therefore, we divided the difference by the total volume of fresh and chilled Atlantic salmon sold during the review period to obtain an estimated net subsidy of less than NOK 0.01 per kilogram (less than 0.01 percent *ad valorem*).

II. Programs Determined To Be Not Countervailable

1. Regional Development Fund Loan Guarantees

In addition to the RDF loans and grants discussed above, the RDF also provides loan guarantees. Guarantees are provided on loans from commercial banks. RDF will guarantee up to a maximum of 50 percent of a loan, thus sharing the risk of the loan with the commercial bank. The RDF charges a guarantee fee of two percent per annum. We verified that the granting of loan guarantees is a standard commercial practice in Norway. The fees charged by commercial banks for loan guarantees vary but are generally in the range of 1.5 to 2 percent for the fish farming industry.

Because the fees charged on RDF loan guarantees correspond to the fees charged by commercial banks in Norway, we determine that loan guarantees provided by the RDF are not made on terms inconsistent with commercial considerations, and thus are not countervailable.

2. Write-Off of Loans and Deferred Loan Payments Under the Regional Development Fund and the National Fishery Bank

In our preliminary determination, we calculated a benefit under both of these programs for loans to salmon producers which were written-off during the review period and for non-payment of interest on outstanding loans. During verification, we found that when payment is late the RDF and NFB send the company a warning letter. If payment is not received after a month, another letter is issued warning of legal action. If at this point no payment is received, the agencies initiate legal proceedings to declare the company bankrupt and to seize the company's assets. These assets are then sold at a public auction. The losses which cannot be recovered are then written off. We verified that this practice is identical to that of commercial banks and consistent with the procedures as set out in the Debt Negotiation and Bankruptcy Act.

We also found during verification, that both RDF and NFB officials only defer interest and principal payments when clients are experiencing financial setbacks but foresee recovery in the near future. RDF officials explained that during this time, interest continues to accrue. NFB officials explained that they add one percent interest to delinquent loans. We verified that commercial banks in Norway will also defer interest and principal payments when their clients face similar financial situations. We also verified that RDF and NFB officials only write-off loans when a firm has declared bankruptcy and there is no chance for the bank to recover its losses.

In order for the loan write-offs and payment deferrals to be countervailable, the actions of the RDF and the NFB must be inconsistent with commercial considerations. We verified that in writing-off loans and in deferring loan payments, the RDF and the NFB follow the same procedures and practices as commercial banks in Norway. Therefore, we determine that RDF and NFB write-offs and the treatment of non-payment of interest and principal by the RDF and NFB are consistent with commercial considerations and thus, not countervailable.

3. Norwegian Bank for Industry Loans

The Norwegian Bank for Industry (NBI) was established in 1939. Presently, 51 percent of the shares are owned by the government. The remainder of the shares are owned by commercial and savings banks and insurance companies. In 1978, the NBI merged with the Institute for Structural Financing. The NBI provides medium- and long-term financing for the development, modernization and restructuring of Norwegian industry in accordance with the government's industrial policy. The NBI provides loans to new enterprises and for the expansion and improvement of existing enterprises. The Bank's interest rates are based on its borrowing costs.

We verified that the NBI provides loans throughout Norway to companies in such industries as mining, food processing, textiles, chemicals, metals, shipbuilding, and paper and wood. Because loans under this program are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine this program to be not countervailable.

4. Government-Funded Aquaculture Research and Development

Government-funded aquaculture research primarily consists of basic research and development aimed at long-term economic development of aquaculture in Norway. Most of the companies which receive government funding manufacture goods and equipment for fish farms both in Norway and abroad. Only a small minority of the fund recipients are salmon producers.

There is no central government agency which handles all aquaculture research and development in Norway. Government funded research is planned, financed and performed through various organizations. For aquaculture, the Norwegian Fisheries Research Council (NFFR) is the main distributor of research funds. The NFFR is a research council which funds university and high school research projects, government research councils, and institutions of commissioned research. The RDF also provides research funding.

When the results of government-funded research and development are made publically available, we find that the assistance is not countervailable (see, for example, Final Affirmative Countervailing Duty Determination: Fresh, Chilled and Frozen Pork Products from Canada (Pork), 54 FR 30774, July 24, 1989). At verification, we found that results of government aquaculture research are normally made publically available. There are, however, certain exceptions. Firms seeking patent rights to their reserach are allowed to "buy off" NFFR by refunding the NFFR's portion of the project funding. However, to date, no firm has exercised that option.

During the review period, a grant was disbursed for the funding of a project involving a salmon producer in which the results of the research are not scheduled to be published until 1991. We verified that the results of this project will be published in 1991. Because the results of this research project will be made publically available, we determine the funding of the project to be not countervailable.

III. Programs Determined To Be Not Used

We determine that the following programs were not used by producers or exporters in Norway of fresh and chilled Atlantic salmon during the review period. For a full description of these programs, see our preliminary determination.

1. Norwegian Industrial Fund
2. Norwegian Central Bank Loans to Salmon Farmers
3. Sales Promotion Assistance
4. Special Tax-Free Reserves for Export Development
5. Regional Transport Subsidies

During verification, we found that this program was created by the Ministry of Municipal and Local Affairs and was administered by the RDF until 1988. Prior to 1988, the RDF provided grants for the domestic transport of finished and semi-finished products of a certain processing value in accordance with a specified list of commodities. After 1988, the program was administered by the counties. We verified that fish farming is not eligible for these grants.

IV. Programs Determined To Not Exist

We determine that the following programs do not exist or were terminated prior to the review period. For a full description of these programs, see our preliminary determination.

1. District Development Bank Loans, Loan Guarantees and Investment Grants
2. Norwegian Export Council Export Financing
3. Institute for the Financing of Structural Readaptation
4. Fund for Industrial Enterprises
5. State Industry Bank
6. Transportation Subsidy for Salmon Exporters
7. Exchange Rate Guarantees
8. Discounting for Export Bills
9. Ministry of Industry Retraining Funds

Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1

Petitioner claims that the present investigation is the first in which the Department has neither sent questionnaires to nor reviewed the records of a single private recipient of government subsidies. Petitioner argues that the Department should solicit information from individual fish farmers. Petitioner further claims that where the number of recipients have been too numerous, the Department has investigated those companies which account for at least 60 percent of the exports to the United States (see, Final Negative Countervailing Duty Determination: Certain Granite Products from Italy (Granite), 53 FR 27197, July 18, 1988). In cases where 60 percent of the producers is not a manageable number, the Department has verified a select number of firms for important issues (see, Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 51 FR 37453, October 22, 1986).

DOC Position

Petitioner's statements are incorrect. This is not the first investigation in which the Department did not investigate individual firms. The Department has conducted numerous aggregate cases (see, for example, Groundfish, Pork, Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada (Live Swine), 50 FR 25097 (June 16, 1985), and Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand (Lamb Meat), 50 FR 37708, September 17, 1985). In each of these cases, the Department investigated the receipt of benefits almost exclusively at the government level. With the exception of company-specific equity infusion allegations (see, Groundfish), in none of these investigations did we solicit program utilization data from private companies for use in determining the amount of benefits conferred upon the investigated industry. While it is true that in some previous aggregate investigations the Department has requested information directly from some companies, the purpose of such requests related to issues, such as exclusion requests, which are not present in the current investigation. Furthermore, in most of these investigations, we did not verify receipt of benefits at the company level. In investigations where we did verify receipt of benefits at the company level, it was merely to corroborate information already received from the government. We have conducted this investigation in the same general manner as we have conducted our prior aggregate investigations.

Petitioner's cite to Granite is inopposite. Granite was not an aggregate case. In Granite, we were able to cover at least 60 percent of the imports by investigating less than 15 companies. In order to reach a similar level of coverage of U.S. imports of the subject merchandise in this investigation, the Department would have had to investigate hundreds of individual firms. Obviously, this was not possible. While it is true that in some previous aggregate investigations the Department has requested information from some companies, we did so to address specific issues incapable of analysis on an aggregate basis (such as exclusion requests). No such issues are present in this investigation.

As mentioned above, we soliticted information from the Norwegian Government on an aggregate basis due to the large number of producers and exporters of salmon in Norway. We were able to structure the investigation in this manner due to the nature of the subsidy programs investigated and the records maintained by the Norwegian Government. Based on the questionnaire response, verification, and the excellent cooperation demonstrated by the Norwegian Government, we are confident that the analysis of the total estimated net subsidy found in this case accurately reflects the degree of subsidization of the Norwegian salmon industry.

As a further note, petitioner has known since April 3, 1990, when our questionnaire went out, that the Department was conducting an aggregate case and not requesting information from individual respondents in this investigation. Yet, petitioner waited until after our investigatory functions (including verification) were completed to raise this fundamental issue in its December 10, 1990 case brief.

Comment 2

Petitioner contends that the Department erred in using the national average long-term corporate interest rate for 1989 published by the Norges Bank. Instead, the Department should use a higher rate which reflects the high degree of risk associated with lending to members of the salmon industry located in remote areas of Norway.

Respondents contend that the Department erred in using 14.9 percent as the long-term interest rate benchmark. Instead, they suggest the Department should use the rate provided by Den Norske Bank, 14.3 percent.

DOC Position

During verification, we met with officials from two commercial banks in Norway. Representatives from one of the commercial banks stated that they are no longer making loans to new clients in the fish farming industry. Officials from the other bank stated that they charge an additional 0.75 percent on all fish farm loans. Based on the information provided by these commercial bank officials, we have added an additional 0.75 percent onto the national average long-term corporate interest rate of 14.9 percent. We believe that this most closely reflects the average borrowing rate of the fish farm industry in Norway.

The rate of 14.9 percent was the effective national average long-term corporate interest rate in Norway in 1989. This interest rate was verified at Norges Bank, the central bank of Norway. We believe it to be more accurate to use the interest rate provided to us by the Norges Bank since this rate reflects the national average interest rate in the country. The rate provided to us by Den Norske Bank only reflects the experience of one bank.

Comment 3

Petitioner argues that the Norwegian salmon industry as a whole is uncreditworthy. Petitioner cites the following facts as evidence of the uncreditworthiness of the Norwegian industry: (a) The 1987 crop was destroyed by Hitra disease, (b) in 1988 production doubled without an increase in demand, (c) the 1989 increase in production caused a collapse in prices and an increase in bankruptcies, and (d) a June 1989 press report stated that one-half of all salmon farms in northern Norway were in "economic difficulties." Petitioner also claims that there is no information on the record that any of the 786 recipients of RDF loans ever received private financing without government backing. Petitioner maintains that this information justified a creditworthiness investigation. Petitioner further states that since the Department focused exclusively on the government, and not on individual firms, there is not sufficient information on the record to make a creditworthy determination. However, absent company-specific information, petitioner believes the record proves that the industry is uncreditworthy.

Respondents argue that petitioner's allegation of uncreditworthiness should be disregarded. Petitioner never made a firm-specific allegation as required by the Department. Nor did petitioner provide any evidence, as required by the Department, of any specific firm's finances in the three years prior to the year the firm and government agreed upon the terms of a government loan. Respondents further argue that the Department should not initiate an uncreditworthy investigation because petitioner had eight months in which it could have objected to the lack of an uncreditworthy investigation, but failed to do so until its December 10, 1990 case brief.

DOC Postion

We have consistently applied a higher threshold showing to support uncreditworthy and unequityworthy allegations than for other subsidy allegations. In particular, the established policy of the Department is that an uncreditworthy allegation must be made on a company-specific basis. The allegation of uncreditworthiness must also be supported by documentation demonstrative of the allegation (see, *e.g.*, Final Affirmative Countervailing Duty Determination: Fuel Ethanol from Brazil, 51 FR 3361, January 27, 1986; see, also Groundfish, an aggregate case where we conducted an equityworthiness investigation on two specific companies only after petitioner provided documentation to support their allegations that those two companies were unequityworthy). In the current investigation, petitioner has neither made company-specific allegations nor provided documentary evidence that any specific salmon producer is uncreditworthy.

Furthermore, we generally consider a company to be creditworthy if it receives comparable long-term loans from a commerical bank. We verified that one of the criteria for receiving RDF loans is that at least one-half of the recipient's total financing of the capital investment be made by commerical banks. This requirement provides nearly conclusive evidence, under established Department policy, that at the time of the receipt of RDF loans, the recipient fish farmers were creditworthy.

The Department recognizes that providing company-specific uncreditworthy allegations and company-specific documentary evidence with respect to a large number of firms may be difficult. However, as noted above, the petitioner did not provide any company-specific documentary evidence concerning its uncreditworthy allegation. Moreover, the Department found that the evidence the petitioner did provide was totally inadequate for purposes of supporting its allegation that the entire Norwegian salmon industry, consisting of hundreds of companies, was uncreditworthy. Pointing to an increase in production of salmon without an increase in demand, for example, is hardly sufficient evidence for the Department to initiate a creditworthiness investigation with respect to the Norwegian salmon industry as a whole. Nor is a press report stating that one-half of all salmon farms in northern Norway are in "economic difficulties."

Although the Department recognizes that some salmon farms faced financial problems in 1989, the evidence on the record has never provided a basis upon which the Department could reasonably initiate a creditworthiness investigation against the entire Norwegian salmon industry. The evidence on the record shows that in 1989, by far the worst year for the salmon industry in the last five years, only 40 producers out of a total of 1108 (less than four percent) went bankrupt. In previous years, the number was markedly lower. Moreover, the evidence on the record shows that the average rate of return on equity for the aquaculture industry was 12.9 percent in 1986, 28.9 percent in 1987, and 38.8 percent in 1988. Furthermore, the rate of return on total capital was 11.0 percent in 1986, 15.7 percent in 1987, and 15.7 percent in 1988. (Information for 1989 was not available at the time the questionnaire response was filed by the

BEST COPY AVAILABLE

Government of Norway.) Thus, information on the record indicates that the Norwegian salmon industry is not uncreditworthy. Therefore, the Department has concluded that neither the information submitted by the petitioner nor other information on the record ever justified a creditworthiness investigation.

Comment 4

Petitioner argues that when calculating the benefit of preferential loans from the RDF and NFB, the Department should calculate total interest payments on the basis of the outstanding loan balance at the end of the year, and not on the preferential interest payments received.

Respondents contest petitioner's suggestion that the Department focus on interest accruing during the period of investigation, rather than the interest paid during the review period.

DOC Position

It is the Department's established practice, when measuring the benefit conferred on long-term loans with a variable interest rate, that the benefit is provided at the time interest payments are made (see *e.g.*, Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cooking Ware from the Republic of Korea, 51 FR 42867, November 26, 1986). This is based on the Department's policy of measuring a subsidy benefit in terms of a difference in cash flows. In this case, the difference between cash flows on the loans under examination and cash flows for comparable commercial loans (see Subsidies Appendix). Therefore, to calculate the benefit of loans provided by the RDF and NFB, we took the difference in the actual amount of interest paid during the review period and the amount that should have been paid using the commercial benchmark interest rate.

Comment 5

Petitioner argues that the Department should not assume that private banks in Norway charge all salmon farmers the same guarantee fees regardless of their location or financial situation. Petitioner also claims that there is no evidence on the record concerning the loan guarantee rates RDF recipients would have received from private banks in the absence of RDF support. Petitioner further asserts that the Department should use its export credit insurance methodology to calculate any benefit conveyed by RDF guarantees. Petitioner argues that essentially there is no difference between loan guarantee and export insurance programs.

Respondents contend that the RDF loan guarantees are consistent with commercial considerations. Since the premiums paid for RDF and commercial bank guarantees are equivalent, there is no benefit. Furthermore, the Department should not use its export credit insurance methodology to calculate the benefit from loan guarantees. Applying this methodology would cause additional work for the Department and is unneccessary. The RDF guarantee program was profitable for two of the three years prior to 1989. Therefore, even if the Department used its export credit methodology, no benefit would be found.

DOC Position

Section 771(5)(A)(ii)(I) of the Act, in defining one type of domestic subsidy, lists "the provision of * * * loan guarantees on terms inconsistent with commercial considerations." Therefore, in determining whether a government loan guarantee program confers a subsidy, the Department must compare the terms of the government loan guarantee to the terms offered by commercial financial institutions (see, *e.g.*, Live Swine at 25105). For this determination, we compared the premiums charged by RDF on its loan guarantees to the premiums charged by commercial banks in Norway. On this basis, we determined that the loan guarantees provided by the RDF were not countervailable.

Contrary to petitioner's assertion, the Department did not assume that private banks in Norway charge all salmon farmers the same guarantee fees regardless of their location or financial situation. Commercial bank officials told us that since 1986, premiums have been set on a customer-by-customer basis to reflect the risk of the applicant. They stated that the prime guarantee fee would be about 0.3 percent. They also reported that the premiums charged to the fish farming industry range from 1.5 to two percent. The RDF charges premiums of two percent on all their loan guarantees. Because the premiums charged by the RDF were equal to, or greater than, the premiums charged by commercial banks, we determined that the loan guarantees were not countervailable.

Comment 6

Respondents contend that because 93 percent of Norway is covered by the RDF, it is not a region-specific program.

Petitioner argues that the Department should find the RDF countervailable. The Department has long held that government subsidy programs whose receipt are contingent on the geographic location of the applicant meet the specificity requirements of the countervailing duty law, regardless of the size of the targeted region. Petitioner adds that while 93 percent of Norway is covered by the RDF, only 36 percent of the population lives in these eligible areas.

DOC Position

In determining whether a program is region-specific, the Department considers if benefits are limited to enterprises or industries located in a specific region or regions of a country. At verification, RDF officials stated that the RDF covers 93 percent of the country, but only 36 percent of the population. The program excludes the largest metropolitan areas of Norway, thereby denying benefits from this program to the bulk of the country's population. The Department has consistently held that benefits provided on a regional basis are, by their very nature, provided to a specific enterprise or industry or group of enterprises or industries (see, *e.g.*, Groundfish at 10045, 10066.)

Comment 7

Respondents argue that the RDF serves to compensate salmon producers for a portion of the additional costs they incur because of the various salmon regulatory programs of the Government of Norway. These programs include the prohibition of farm establishment in southern regions of Norway and the allocation of fish farm licenses to northern regions. Respondents claim these restrictions lower salmon production and increase production costs.

Petitioner states the Department may not offset the total RDF subsidy amount by the increased cost of producing in remote areas, since such offsets were prohibited by the 1979 amendments to the countervailing duty law. By compensating producers for locating in remote regions, the RDF creates production in places it would not otherwise have been and grants a competitive advantage over other countries.

DOC Position

We verified that the purpose of the RDF is to maintain the pattern of settlement within the country by equalizing the income, employment and living conditions between the northern and southern regions of Norway. The Government of Norway's restrictions on fish farm establishment in southern regions coincide with the RDF's policy of promoting certain regions in the country.

We find no merit in respondents' argument that the RDF serves to compensate salmon producers for a portion of the additional costs they incur as a result of the various salmon regulatory programs of the Government of Norway since the RDF was created before the establishment of the fish farming regulations. Even if one were to accept respondents' argument, the RDF would still be countervailable. The Department has previously determined that the fact that a program is designed to offset the economic effects of another government program or policy does not exempt it from being considered a countervailable subsidy (see, Pork at 30785). In order to be considered an offset which may be subtracted from the gross subsidy, the provisions of section 771(6) of the Act must be met. Clearly, these provisions were not met here.

Comment 8

Respondents argue that the Department should not countervail the National Fishery Bank loans because the fishing industry, like agriculture, is not a specific enterprise or industry, or group of enterprises or industries. Respondents cite Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico, 48 FR 21618, May 13, 1983 and Certain Fresh Cut Flowers from Mexico, 49 FR 15007, April 16, 1984 in which the Department regarded the agricultural sector of the Mexican economy to "constitute more than a single group of industries."

Petitioner rebuts respondent's claim that the fishing industry does not constitute a specific enterprise or industry or group of enterprises or industries. Petitioner cites Groundfish, in which the Department stated that the fisheries "sector" encompasses a single industry under the countervailing duty law.

DOC Position

In Groundfish at 10041, 10067, the Department determined that the fishing industry does constitute a specific enterprise or industry or group of enterprises or industries. The Department held that the fishing industry does not include the same varied and diverse range of productive activities as does the agricultural sector. Respondents have not provided us with a sufficient basis to cause us to reexamine this determination with respect to the Norwegian fishing industry.

Comment 9

Respondents argue that the Department has consistently determined that loans to enterprises which consequently go bankrupt or have entered bankruptcy proceedings cannot constitute a countervailable benefit. (See Final Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Columbia, 52 FR 13273, April 27, 1987 and Final Affirmative Countervailing Duty Determinations; Certain Stainless Steel Products from Spain, 47 FR 51453, November 15, 1982.) In the present investigation, several recipients of RDF benefits are in the middle of bankruptcy proceedings or have gone bankrupt. Consistent with its past practice, the Department should subtract RDF benefits to bankrupt farms from its subsidy calculations.

DOC Position

In the cases cited by respondents, the Department determined that the suspension of loan payments for firms in receivership was a normal commercial banking practice in the respective country. Similiarily, we found that the deferral of loan payments for companies facing financial difficulties and the write off of loans to bankrupt companies by the RDF and NFB to be a normal commercial banking practice in Norway. Therefore, we found the deferral of loan payments and the write off of loans by the RDF and NFB not to be countervailable.

Respondents also provided the Department with the amount of grants provided to bankrupt salmon producers. However, there is no sales information on the record for the same bankrupt companies. Since the bankrupt companies' sales are included in the denominator, and cannot be adjusted for, we cannot deduct the grants those companies received from the calculations without distorting the calculated subsidy rate. We excluded the benefit of the loan deferrals and written-off loans from our calculations even though we do not have the sales value of the bankrupt companies since we have determined that these actions are consistent with commercial considerations. Grants, if specific, are always countervailable. Normally, we would not countervail grants which had been provided to bankrupt companies. Here, however, we have maintained in our calculations the grants provided to bankrupt companies because, as explained above, we cannot adjust for the sales value of these companies.

Comment 10

Respondents argue that written-off loans should not be treated as grants in the final determination. They state that when the RDF and NFB write off loans to bankrupt firms, they follow the same practice as commercial banks.

Petitioner argues that the "commercial" nature of the write-offs is actually irrelevant because the Department should be looking at the benefit bestowed on the buyer of the bankrupt company's assets. By selling these assets, the Government of Norway is providing a grant to the asset buyer in the amount of the written-off loan. Petitioner cites section 771(5)(A)(ii)(3) of the Act which describes "the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry" as a countervailable subsidy. Petitioner maintains that by allowing farmers to purchase the assets of bankrupt farms at "distress prices", the Government of Norway is providing subsidies as defined by the Act. The RDF's provision of cheap loans to salmon farmers has resulted in the creation of production capacity that would not otherwise exist. Moreover, farmers are able to further increase their capacity, according to petitioner, by purchasing the assets of bankrupt farmers.

DOC Position

To determine whether the actions of a government bank or government agency with lending authority provides countervailable benefits, we are directed by the statute to determine whether that government entity acts in a manner inconsistent with commercial considerations. During our period of investigation, the RDF and the NFB had outstanding loans to companies which subsequently went bankrupt. We verified that the RDF and the NFB attempted to recover their losses by selling the assets of bankrupt companies. Those losses which could not be recovered in this procedure were written off. We found that the RDF and the NFB followed the same procedures as commercial banks in writting off loans to bankrupt companies which are specified in the Debt Negotiation and Bankruptcy Act. Since the RDF and NFB acted in a manner consistent with commercial considerations in this matter, we found that their write off of loans did not confer a countervailable benefit.

Comment 11

Respondents argue that the Department erred in using the tax rate of 50.8 percent in its calculations of

benefits from the Regional Capital Tax Incentive and Advance Depreciation of Business Assets Programs. The Department should have used the national income tax rate for joint stock companies, 27.8 percent. The 50.8 percent rate includes municipal and county income taxes. Exemptions from these taxes are not region-specific, and therefore, not countervailable.

Petitioner contends that the Department was correct in using the corporate income tax rate of 50.8 percent in calculating the Regional Capital Tax Incentive and the Advance Depreciation of Business Assets Programs.

DOC Position

The Department believes that it is proper to include the municipal and county income tax rates in the tax rate used to calculate the tax benefit under the two programs at issue. These taxes are levied and collected by the Government of Norway. The effect of both the Regional Capital Tax Incentive and Advance Depreciation of Business Assets Programs is to lower the taxable income used for purposes of calculating municipal and county income taxes. Therefore, these programs lower the amount of municipal and county income taxes actually paid, and thus provide a countervailable benefit. Additionally, nowhere on the record does it state that only national income taxes are reduced under the Regional Capital Tax Incentive and Advance Depreciation of Business Asset Programs.

Comment 12

Respondents claim that because payroll taxes are deductible, the reduction of payroll taxes leads to an increase in future taxable income and profit taxes. Therefore, the Department should take account of this tax effect in its subsidy calculations.

DOC Position

We are not adjusting for any tax liability caused by the reduction of payroll taxes because of the speculative nature of any such adjustment. We have taken the same approach in other cases involving secondary tax effects (see, *e.g., Groundfish* at 10066).

Comment 13

Respondents contend the Department should use the value of salmon produced in 1989, NOK 3, 598,077,000, rather than the amount of NOK 3,440,793,000 reported in the annual report of the Fishfarmers' Sales Organization (FOS).

Petitioner argues that the Department should use the value of salmon produced in 1989 it verified at FOS.

DOC Position

At verification, FOS explained that NOK 3,440,793,000, the amount listed in the FOS 1989 Annual Report, is the "first hand" value of salmon sales in 1989 (the first hand value is the sales value between the producer and the exporter). They stated that this amount does not include the value of the fish when the farmer is also the buyer/exporter. In checking the FOS database of sales in 1989, we found the value of sales of NOK 3,598,077,000. Officials explained that the difference between these figures is due to the manner in which data is organized. It is the Department's practice to tie information in the response to published financial statements. Since we were unable to tie the amount of NOK 3,598,000,000 from the data base to any source documents, we are using NOK 3,440,793,000 as the first hand value of salmon sales in 1989.

Since we calculated the subsidy rate and the duty deposit rate on a per kilogram basis, the only relevancy of the sales value is in determining whether we must allocate RDF grants provided to the salmon industry in 1989 or expense them in the year of receipt. Since the sum of RDF grants provided during the review period is greater than 0.5 percent using either sales values, using one number as opposed to the other has no effect on our calculations.

Comment 14

Respondents contend that since the smolt and salmon farmers are "upstream" from salmon processors and exporters, the subsidies provided to smolt and salmon farmers should be treated as upstream subsidies within the meaning of section 771A of the Act. They argue that most of the assistance provided to the salmon industry is provided to the smolt producing sector which has little incentive to pass any benefits forward. Likewise, assistance provided to salmon farmers would not be passed forward to exporters. Therefore, under an upstream subsidy analysis, there would be two stages of "pass-through" required before any competitive benefit could be conferred on exports.

Petitioner disagrees with respondents' upstream subsidy claim. Petitioner argues that throughout the investigation respondents have argued that smolt and salmon farmers and exporters all constitute the salmon industry. Furthermore, a smolt is defined as a young salmon, and cannot be construed an "input" in terms of section 771A of the Act.

DOC Position

Section 771A of the Act does not apply to this investigation. The upstream subsidy provision only refers to input products. A smolt which is a young salmon is not an input into an adult salmon. It is the same salmon only at an earlier stage of development. With respect to the sale of salmon by Norwegian salmon farmers to Norwegian salmon exporters, we consider the sale of salmon to a third party for export to the United States analogous to the sale of merchandise through a trading company. In such instances, we have determined that the subsidies conferred upon the production of the product remain with that product when sold through a trading company (see, e.g., Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Korea, 49 FR 46776, November 28, 1984). Furthermore, our treatment of subsidies conferred upon the salmon industry is consistent with our treatment of the subsidies conferred upon the Canadian groundfish industry (see, Groundfish).

Comment 15

The Government of Norway states that the administration of the RDF is in conformity with international obligations under the General Agreement on Tariffs and Trade (GATT), including the Subsidies Code. It states that action to countervail such programs should therefore not have been initiated. The Government of Norway also states that the imposition of both a countervailing duty and a antidumping duty concerning the same product is highly questionable under the GATT.

DOC Position

Our determination that the RDF is countervailable because it provides benefits only to companies located in specific regions of Norway is entirely consistent with U.S. obligations under the GATT and the GATT Subsidies Code. GATT Article VI:3 clearly states that "[t]he term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting *any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.*" Article 2:1 of the Subsidies Code indicates that "[a]n investigation to determine the existence, degree and effect of *any alleged subsidy* shall normally be initiated upon a written request by or on behalf of the industry affected," and that the request shall include "sufficient evidence of the existence of * * * a subsidy * * *".

Article 4:2 of the Code further stipulates that "[n]o countervailing duty shall be levied on any imported product in excess of the amount of *the subsidy found to exist,* * * *" (emphases added). As these citations illustrate, neither article VI nor the Subsidies Code qualifies that only certain kinds of subsidies may be countervailed. If anything, the comprehensive wording of article VI:3 affirms the notion that any subsidy is potentially countervailable, and there is nothing in the Code to suggest that another interpretation is appropriate.

We also disagree with the Government of Norway's contention that the imposition of both a countervailing duty and an antidumping duty on the same product is questionable under the GATT. Antidumping duties and countervailing duties offset different kinds of unfair trade practices. The reference in GATT article VI:5 that "no product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization" is merely recognition that one form of unfair trade practice (government subsidization of exports) can in and of itself permit another unfair trade practice (injurious price discrimination) to occur.

U.S. practice takes full account of this phenomenon, in accordance with our obligations under the General Agreement. When the Department conducts concurrent antidumping and countervailing duty investigations of the same product, any antidumping cash deposit is adjusted to reflect the amount of export subsidies found in the companion countervailing duty investigation.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public version of the verification report, which is on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on June 20, 1990, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require a cash deposit or bond be posted equal to the duty deposit rate. This final countervailing duty determination was extended to coincide with the final antidumping duty determination on the same product from Norway, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act).

Under article 5, paragraph 3 of the Subsidies Code, provisional measures cannot be imposed for more than 120 days without final affirmative determinations of subsidization and injury. Therefore, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandize entered on or after October 28, 1990, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered between June 29, 1990, and October 27, 1990. We will reinstate suspension of liquidation under section 703(d) of the Act, if the International Trade Commission (ITC) issues a final affirmative injury determination, and will require a cash deposit on all entries of the subject merchandise equal to NOK 0.71 per kilogram.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of fresh and chilled Atlantic salmon from Norway entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: February 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4393 Filed 2-22-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Final Approval of Amendment No. 1 to the Oregon Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Approval of amendment to the Oregon Coastal Management Program.

LOCATION: Oregon.

SUMMARY: The Office of the Ocean and Coastal Resource Management (OCRM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) received a request from the State of Oregon to incorporate Oregon House Bill 3396 (HB 3396) into the federally-approved Oregon Coastal Management Program (OCMP). The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and the regulations implementing the CZMA at 15 CFR 923.81.

HB 3396 amends portions of several state statutes: Land Use Planning (ORS 197); Forest Practices (ORS 527); and Forest Fire Protection (ORS 477), and aims to simplify forest management by making one agency—the Board of Forestry (BOF)—responsible for the regulation of forest practices on all forest lands in Oregon. Briefly, HB 3396: (1) Establishes a policy "encouraging economically efficient forestry practices that assure the continuous growing and harvesting of trees and the maintenance of forest land;" (2) establishes a new seven-member Board of Forestry appointed by the Governor and confirmed by the Senate; (3) establishes a three-member Forest Trust Land Advisory Committee to advise the BOF and State Forester on matters involving country forest land management responsibility; (4) exempts forest practices from compliance with the Statewide Planning Goals and compatibility with Local Comprehensive Plans; (5) exempts the forest practices statutes and rules administered by the Department of Forestry from State Agency Certification by the Land

Conservation and Development Commission (LCDC); (6) requires written plans for operations within 100 feet of Class I streams unless waived by the Board of Forestry or written 300 feet of resource sites in specified inventories; (7) requires the BOF to adopt rules to assure continuous growing and harvesting of forest trees and generally provide for specified natural resource protection; and, (8) prescribes civil penalties and an appeals process.

Notice is hereby given that the Director of OCRM has reviewed the amendment request and has made a determination that the OCMP as amended by HB 3396 will still constitute an approvable program and that the procedural requirements of section 306(g) of the CZMA have been met.

Notice of intent to approve the amendment was published in the **Federal Register** on Wednesday, December 26, 1990, and interested parties had until January 28, 1991 to comment on the proposed changes. The proposed amendments along with the Preliminary Findings of Approvability were distributed to Federal agencies and other interested parties. No comments were received on the proposed action. The Final Findings of Approvability have been approved bvy the Director of OCRM. The Federal consistency provisions of section 307 of the CZMA, 16 U.S.C. 1456, shall apply to HB 3396 on the date that the State publishes notice of this approval.

FOR FURTHER INFORMATION CONTACT: James Burgess, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 673–5158.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: February 14, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91–4338 Filed 2–22–91; 8:45 am]

BILLING CODE 3510–08–M

Taking of Ringed Seals Incidental to On-Ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice.

Notice is being given that on February 6, 1991, NMFS issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act and 50 CFR part 228, subpart B—Taking of Ringed Seals Incidental to On-Ice Seismic Activities to BP Exploration Inc., 900 East Benson Boulevard, Anchorage, Alaska, 99519–6612.

The Letter of Authorization is valid for 1991 and is subject to the provisions of the MMPA and the regulations governing small takes of marine mammals incidental to specified activities (50 CFR part 228, subparts A and B).

Issuance of the letter is based on a finding by NMFS that the total taking will have a negligible impact on the ringed seal species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence use by Alaska natives.

The Letter of Authorization is available for review in the following offices: Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 and Western Alaska Field Office, NMFS, 701 C Street, Anchorage, Alaska, 99513.

Dated: February 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–4299 Filed 2–22–91; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Endangered Species; Issuance of Permit; Steve W. Ross and Mary L. Moser (P423A)

On September 27, 1990, Notice was published in the **Federal Register** (55 FR 39499) that an application had been filed with the National Marine Fisheries Service by Steve W. Ross and Mary L. Moser, BSEP Biology Laboratory, Box 10429, Southport, North Carolina 28461 for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for scientific purposes.

Notice is hereby given that on February 15, 1991, and as authorized by the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act.

The Permit is available for review by appointment in the following offices: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

Dated: February 15, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–4300 Filed 2–22–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

February 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25461, published on June 25, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 19, 1991

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber apparel products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on February 26, 1991 the directive of June 19, 1990 is amended to adjust the limits for the following categories, under the terms of the current bilateral agreement between the Governments of the United States and Sri Lanka:

Category	Adjusted 12-month limit [1]
331/631	1,881,805 dozen pairs.
334	239,727 dozen.
336/339	893,262 dozen of which not more than 744,385 dozen shall be in Categories 336-S/339-S.[2]
340	676,755 dozen of which not more than 230,086 dozen shall be in Category 340-Y.[3]
341	612,323 dozen of which not more than 259,445 dozen shall be in Category 341-Y.[4]
342/642/842	384,548 dozen.
347/348/847	931,968 dozen of which not more than 588,947 dozen shall be in Categories 347-T/348-T.[5]
351/651	196,580 dozen.
352/652	1,051,690 dozen.
359-C/659-C [6]	431,784 kilograms.
363	8,634,865 numbers.
369-D [7]	558,006 kilograms.
369-S [8]	596,297 kilograms.
634	197,191 dozen.
635	289,215 dozen.
636/836	187,867 dozen.
638/639/838	832,794 dozen.
640	164,327 dozen.
641	739,588 dozen.
647/648	804,437 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.

[2] Category 336–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2020 and 6205.20.2060.

[4] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[5] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050;

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[8] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–4325 Filed 2–22–91; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

February 19, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 410 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25356, published on June 21, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: February 19, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 19, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 18, 1990. That directive concerns imports into the United States of certain cotton and wool textile products, produced or manufactured in Uruguay and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on February 26, 1991, the directive of June 18, 1990 is being amended to increase the current limit for Category 410, as provided under the terms of the current bilateral agreement between the Governments of the United States and Uruguay.

Category	Adjusted 12=month limit [1]
410	2,952,754 square meters of which not more than 1,520,080 square meters shall be in Category 410–A[2] and not more than 2,449,017 square meters shall be in Category 410–B.[3]

[1] The limit has not been adjusted to account for any imports exported after June 30, 1990.

[2] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510,

5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510, and 6201.20.0020.

Category	410-S: only	HTS numbers	
5007.10.5030,	5007.90.5030,	5112.11.2030,	
5112.11.2060,	5112.19.9010,	5112.19.9020,	
5112.19.9030,	5112.19.9040,	5112.19.9050,	
5112.19.9060,	5112.30.3000,	5112.30.3000,	
5112.90.3000,	5112.90.9010,	5112.90.9060,	
5212.11.1020,	5212.12.1020,	5212.13.1020,	
5212.14.1020,	5212.15.1020,	5212.21.1020,	
5212.22.1020,	5212.23.1020,	5212.24.1020,	
5212.25.1020,	5309.21.2000,	5309.29.2000,	
5407.91.0520,	5407.92.0520,	5407.93.0520,	
5407.94.0520,	5408.31.0520,	5408.32.0520,	
5408.33.0520,	5408.34.0520,	5515.13.0520,	
5515.22.0520,	5515.92.0520,	5516.31.0520,	
5516.32.0520,	5516.33.0520, and	5516.34.0520.	

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-4328 Filed 2-22-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED.

Procurement List Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: .Proposed addition to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 27, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to the Procurement List:

Janitorial/Custodial, Pentagon, Washington, DC, for the following areas:

Public Restrooms
Stairways
Freight Elevators
Escalators
Parking Lots
Ramps
Driveways
Moats
Arcades
Courts
Entrances including landings, steps and sidewalks adjacent to entrances

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-4461 Filed 2-22-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Navy

CNO Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Technology Surprise Task Force will meet March 14, 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss the possibility of unexpected technological breakthroughs that vastly change warfighting capabilities. The entire agenda of the meeting will consist of discussions of key issues regarding the potential for unexpected technology breakthroughs that could have an acute impact on naval and other military forces. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

Dated: February 13, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-4286 Filed 2-22-91; 8:45 am]

BILLING CODE 3810-AE-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Resolution of Potential Conflict of Interest

The Defense Nuclear Facilities Safety Board (Board) has recognized a potential conflict of interest situation with its contractor, AMPARO Corporation (AMPARO).

The Board recently awarded a contract to AMPARO for the provision of technical assistance in the review of safety of plutonium handling operations at the Department of Energy's (DOE) Rocky Flats facility. Prin ipal emphasis will be placed on the analysis of design basis accidents and their results, evaluated in terms of the possibility of accidents at the plant. The Board recognized that one of the individuals proposed by AMPARO, Dr. William R. Stratton, has a current relationship with a DOE contractor. However, based on a comprehensive review of this relationship, the Board determined that no actual or potential conflict of interest would arise for the following reason.

Dr. Stratton is a member of the Westinghouse Government Operations Nuclear Safety and Environmental Oversight Committee. As Westinghouse is a major DOE contractor for its nuclear weapons program, the potential for conflict was considered by the Board. However, it was determined that no conflict existed since Westinghouse has no direct or indirect relationship with the Rocky Flats facility or the work Dr. Stratton will be engaged in for the Board.

Therefore, while Dr. Stratton's relationship with DOE may appear to conflict with his performance under a Board contract, the Board has concluded that no conflict of interest exists because there is no nexus between Dr. Stratton's work for the Board at Rocky Flats and his other professional activities discussed above. Additionally, the Board determined that Dr. Stratton's participation on this project is essential due to his unique competence and expertise in this field and his former experience with DOE and the Atomic Energy Commission's Advisory Committee on Reactor Safeguards.

Dated: February 19, 1991.

Robert M. Andersen,

General Counsel.

[FR Doc. 91-4311 Filed 2-22-91; 8:45 am]

BILLING CODE 6820-KD-M

Resolution of Potential Conflicts of Interest

The Defense Nuclear Facilities Safety Board (Board) has identified and resolved potential conflicts of interest situations with its contractor, Paul C. Rizzo Associates, Inc. (Rizzo).

Rizzo is presently under contract to the Board for the provision of technical support services in areas of seismic, structural and systems engineering. Through the issuance of individual task orders, Rizzo performs reviews and analyses for various Department of Energy (DOE) defense nuclear facilities. In November, 1990, Rizzo informed the Board that it had been offered a contract from DOE (Argonne National Laboratory) to conduct a research effort related to high resolution shear wave seismic reflection surveying. The work involves generic geophysical research unrelated to any specific DOE problem or to any facility or problem Rizzo is currently involved in for the Board. However, as Rizzo will be working for both the Board and a DOE contractor concurrently, and the Board has oversight responsibility over DOE's defense nuclear facilities, there is concern of an appearance of a conflict of interest.

The Board has also learned that Rizzo is currently under contract to Argonne National Laboratory for an effort entitled, New Production Reactor (NPR) Seismic Isolation Design study. This work involved a preliminary design study on various types of isolation systems for the Heavy Water Reactor at Savannah River and the Modular High-Temperature Gas-Cooled Reactor at Idaho National Engineering Laboratory to achieve continuity of tritium production at high earthquake levels. As the Board has begun review work on the plans for the NPR, this also presented a potential conflict of interest situation.

Following a comprehensive review of both of these issues, the Board and Rizzo agreed that specific measures would be initiated to avoid conflicts of interest. First, regarding the shear wave seismic reflection research, Rizzo will place a complete partition between its employees working on the Board's contract and those associated with the DOE effort. The employees will not participate together in the work, nor will they participate in any meetings involving either the technical or business aspects of the work. The sole responsibility for the technical and business aspects of the DOE and Board work will be assigned to two individuals within the organization that will act independently. Second, while the Board has initiated effort on the NPR project, no work has been assigned to Rizzo. Consequently, no conflict of interest exists.

Based on these facts, the Board believes that no actual conflicts of interest exist between Rizzo's DOE and Board projects. Further, the Board is satisfied that the measures initiated by Rizzo regarding its internal operations will assure that conflicts of interest will be successfully avoided.

Dated: February 19, 1991.

Robert M. Andersen,

General Counsel.

[FR Doc. 91-4310 Filed 2-22-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Yakima Basin Fish Passage Project—Phase II; Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposal to construct, upgrade, and retrofit fish screens within floodplains of the Yakima River Basin.

SUMMARY: BPA proposes to construct, upgrade, or retrofit juvenile fish protection facilities at up to 66 irrigation diversions within the Yakima River Basin. The diversions are located along the mainstem and several tributaries of the Yakima River. All but 3 of the 66 diversions under consideration have existing screens and juvenile fish bypass facilities. In many instances the screens, fish bypass systems, and water control structures are rundown or are not operating properly. They also do not meet today's biological criteria for protecting fish passage. Due to the nature of the proposal, some activities may be located within the 100-year floodplain.

FOR FURTHER INFORMATION CONTACT: Roy B. Fox, Coordination and Review Manager, Bonneville Power Administration, P.O. Box 3621-PG, Portland, Oregon 97208; (503) 230-4281. Maps and additional information are available from the Yakima Project Manager, Tom Clune, P.O. Box 2685, Yakima, Washington 98907; (509) 575-5805.

SUPPLEMENTARY INFORMATION: The Yakima River system has excellent potential for enhancing anadromous fish runs. The Northwest Power Planning Council (Council) adopted the Columbia River Basin Fish and Wildlife Program on November 15, 1982. The purpose of the Program is to work toward rebuilding fish and wildlife populations harmed by the development and operation of the Federal Columbia River Power System.

One of the 66 sites considered for inclusion in the Phase II fish screening program, 40 are located in Yakima County, 25 in Kittitas County, and 1 in Benton County. Three screen sites are on Snoqualmie National Forest lands, five are on the Yakima Indian Reservation, and one is located in Eschback Park, which is operated by Yakima County. The other 57 sites are on privately owned properties or lands withdrawn by Reclamation for irrigation project purposes. Some of the bypass structures which consist of underground pipes that return juvenile fish back to the river from the irrigation canals will be located within the floodplain. Construction, retrofitting, and upgrading of these facilities will begin in 1991.

DOCUMENTS AVAILABLE: An Environmental Assessment (EA) on the project is being finalized. A draft of the EA was distributed for public review in October and November 1990. The EA will include a floodplain assessment, an evaluation of the proposed facilities, and other information on potential environmental effects. You may obtain copies of the EA (50 pages plus appendices) by calling BPA's toll-free numbers: 800-841-5867 for Oregon; or 800-624-9495 for other States. You will reach a recorded message where you may leave a request for the *Yakima Basin Fish Project—Phase II EA.*

Issued at Portland, Oregon, on February 13, 1991.

James J. Jura,

Administrator.

[FR Doc. 91-4387 Filed 2-22-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and time: Thursday, March 14, 1991, 1:30 p.m.-5:30 p.m.; Friday, March 15, 1991, 9:00 a.m.-1:00 p.m.

Place: Washington Plaza Hotel, Washington, DC.

Contact: Ms. Renee Miller, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI-72.

Washington, DC 20585, Telephone: (202) 586-2088.

Purpose of committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, March 14, 1991

A. Opening Remarks
B. Major Topics:
1. Clean Air Act: Estimating SO_2 Emissions
2. Responding to Emergencies: Heating Oil Crisis of last winter and situation in the Gulf.
a. Combining data from various sources
b. New data needs for Petroleum Marketing
c. New data needs for Petroleum Supply
(Public Comments)

Friday, March 15, 1991

3. Estimation of Uranium Reserves
4. Update on Confidence Intervals for the Transportation Model
5. In-house Training
(Public Comments)
C. Topics for Future Meetings

Public Participation: The meeting is open to the public. The chairperson of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Ms. Renee Miller, EIA Committee Liaison, at the address or telephone number listed above or Ms. April Young at (202) 586-2315.

Transcripts: Available for public review and copying at the Public Reading Room, (room 1E-290), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6025, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC on February 20, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-4388 Filed 2-22-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. MT91-2-002]

National Fuel Gas Supply Corp.; Compliance Filing Pursuant to Order No. 497-A

February 15, 1991.

Take notice that on February 5, 1991, National Fuel Gas Supply Corporation (National Fuel) tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1, to become effective February 16 1991:

Substitute Original Sheet No. 146.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4306 Filed 2-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-72-006]

Pelican Interstate Pipeline System; Report of Refunds

February 15, 1991.

Take notice that Pelican Interstate Gas System (Pelican), on August 31, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Distribution of Refunds for the period April 1, 1989 through May 31, 1990, in compliance with the terms of the Stipulation and Agreement approved and modified by Commission order issued May 24, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before February 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4307 Filed 2-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-7-003]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

February 14, 1991.

Take notice that Sabine Pipe Line Company (Sabine) on February 7, 1991, tendered for filing the following proposed change to its FERC Gas Tariff, First Revised Volume No. 1, to be effective March 9, 1991.

Second Revised Sheet No. 205C
Third Revised Sheet No. 229
First Revised Sheet No. 230
Second Revised Sheet No. 232
First Revised Sheet No. 305
First Revised Sheet No. 345

These proposed tariff sheets reflect a change in operating personnel shared by Sabine and its affiliated marketer and a change of address and phone numbers.

Copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 315.214 and § 385.111 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4309 Filed 2-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-179-007]

Western Gas Interstate Co.; Compliance Filing

February 15, 1991.

Take notice that Western Gas Interstate Company ("Western") on February 13, 1991, pursuant to the Commission's Order issued on December 14, 1990, in this proceeding at 53 FERC Para. 61,378 (Order), tendered for filing certain tariff sheets to Second Revised Volume No. 1. Those tariff sheets reflect changes specifically required by the Order or which were

necessary in order for the terms of Western's tariff to conform with the Order.

In addition, Western moved to place the foregoing tariff sheets and those previously filed in this proceeding into effect on March 1, 1991.

Finally, Western requested waiver of the 30 day notice period, thereby allowing the tariff sheets to be effective on March 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before February 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4308 Filed 2-22-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Civilian Radioactive Waste Management

Announcement of Yucca Mountain Engineered Barrier System Concepts Workshop

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy announces the Yucca Mountain Engineered Barrier System Concept Workshop. The Department is seeking participants who may be interested in presenting Engineered Barrier System (EBS) concepts at this Workshop.

EFFECTIVE DATE: The Workshop will be held June 18-20, 1991, in Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Diane J. Harrison-Giesler, U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, M/S 523, P.O. Box 98608, Las Vegas, NV 89193-8608.

SUPPLEMENTARY INFORMATION: The focus of the Workshop will be EBS concepts for extended-life performance in a potentia. high-level radioactive waste repository at Yucca Mountain. The EBS is defined in NUREG 10 CFR 60.2 as the waste packages and the underground facility including openings and backfill materials, but excluding shafts, boreholes, and their seals. Extended-life refers to exceeding the regulatory performance standards imposed on the engineered barrier system and its components in NUREG 10 CFR 60.113. The objectives of the workshop are: (a) To provide a forum for the discussion of engineered barrier system concepts and their applicability to extended-life performance, and (b) to solicit the opinions of experts regarding extended-life engineered barrier system concepts.

Participants for the Workshop will be selected based on their personal qualifications and their technical submittal of the proposed concept. The qualifications submission should include a one page discussion on why the individuals believe they are qualified to address this subject. The technical submittal should include a description of the concept, physical and/or chemical processes relied on for containment and isolation, predicted performances, degree of insensitivity to variations in service environment, fabrication and emplacement aspects, and rough cost estimates. DOE will request the technical submittal from interested qualified participants and an information package will be sent with this request. This invitation for participation in the Workshop should not be construed as a request for proposal for future work in this area or as a commitment to compensate participants in any manner.

Individuals interested in participating in the Workshop should submit their qualifications by March 15, 1991 for consideration by DOE. Requested technical submittals will be due to DOE by April 19, 1991.

Franklin Peters,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 91-4394 Filed 2-22-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-112-NG]

Transco Energy Marketing Company; Order Granting Blanket Authorization to Import Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Transco Energy Marketing Company blanket authorization to import up to 730 Bcf of Canadian natural gas over a two-year period beginning on the date of issuance of this order.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 7, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4386 Filed 2-22-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3907-8]

Prevention of Significant Deterioration of Air Quality (PSD); Final Determination

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this Notice is to announce that the Administrator of the United States Environmental Protection Agency issued a final decision pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 and the Procedures for Decisionmaking codified at 40 CFR part 124 regarding Mecklenburg Cogeneration Limited Partnership, Inc. in Mecklenburg County, Virginia.

DATES: The effective date of the Administrator's decision is December 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Lohman, Chief, New Source Review Section, Air Enforcement Branch, Air, Radiation and Toxics Division, U. S. Environmental Protection Agency, Region III, Mail Code 3AT22, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, (215) 597-3024.

SUPPLEMENTARY INFORMATION: In a petition dated June 15, 1990, the Southside Concerned Citizens, Inc. of Halifax, Virginia requested review of a Prevention of Significant Deterioration

(PSD) permit issued to Mecklenburg Cogeneration Limited Partnership, Inc. for the construction of a 240 megawatt cogeneration plant in Mecklenburg County, Virginia. The facility will be comprised of four pulverized coal-fired boilers capable of generating electricity for Virginia Power, an electric utility company, and steam for Burlington Industries, a textile manufacturer. The permit was issued by the Virginia Department of Air Pollution Control (DAPC) on May 18, 1990, pursuant to a delegation of authority from the U.S. Environmental Protection Agency, Region III, Philadelphia, Pennsylvania. Because of the Delegation, any permit issued by the DAPC is an EPA-issued permit for purposes of federal law. 40 CFR 124.41; 45 FR 33413 (May 19, 1980). PSD permits issued by the DAPC are subject to the review provisions of the applicable EPA regulations, 40 CFR 124.19 (1989).

The Administrator issued an Order Denying Review in the above case on December 21, 1990 concluding that review of DAPC's permit determination was not warranted and that it met all necessary requirements of federal law.

Anyone wishing to review the final permit, petition, final order, or related materials should contact the following offices:

U.S. EPA, Region III, Air Enforcement Branch, New Source Review Section (3AT22), 841 Chestnut Building, Philadelphia, Pennsylvania 19107
Virginia Dept. of Air Pollution Control, Room 801, Ninth Street Office Building, Richmond, Virginia 23219.

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, notice is today being published in the **Federal Register** of this final Agency action. If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit with 60 days from the date on which this determination is published in the **Federal Register**. Under section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: February 8, 1991.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 91-4386 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-3908-3 Docket No. A-88-04]

Conference on Air Quality Modeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: EPA announces the Fifth Conference on Air Quality Modeling. Such a conference is required by section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the fifth conference is to provide a forum for public review and comment on proposed revisions to the "Guideline on Air Quality Models (Revised)", EPA-450/2-78-027R (1986), and Supplement A (1987) (hereinafter, the "Guideline"). Such revisions are based on analyses of comments received at the Fourth Conference on Air Quality Modeling, held October 1988, and are proposed as Supplement B to te Guideline.

DATES: The fifth conference will be held on March 19, 1991 from 9 a.m. to 5 p.m. As needed to allow for presentation of all verbal comments, the conference may extend to noon of the next day. Requests to speak at the conference should be submitted to the individuals listed below by March 12, 1991. All written comments must be submitted by May 6, 1991.

ADDRESSES: Conference: The conference will be held in the GSA Auditorium, GSA National Capitol Region Building, 7th and D Streets, SW., Washington, DC.

Comments: Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: Air Docket (LE-131), Room M-1500, Waterside Mall, Attention: Docket A-88-04, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Copies of Supplement B (draft) to the Guideline may be obtained by writing or calling Joseph A. Tikvart, Source Receptor Analysis Branch, MD-14, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, phone (919) 541-5561. Supplement B (draft) is also available to registered users of the Support Center for Regulatory Air Models Bulletin Board System by downloading the appropriate file. To register or access this electronic bulletin board, users with a personal computer should dial (919) 541-5742.

Docket: Items referenced in this notice as well as comments received are maintained at Docket A-88-04. The docket is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch (MD-14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-5562 or C. Thomas Coulter, telephone (919) 541-0832.

SUPPLEMENTARY INFORMATION:

Background

The Guideline is used by EPA, States, and private industry in the review and preparation of new source permits and SIP revisions. The Guideline serves as a means by which consistency is maintained in air quality analyses. It was first incorporated in the Code of Federal Regulations in 1978 and was subsequently revised in 1986 to include knowledge concerning modeling analyses that developed since the original guidance was issued. In 1988 four techniques were added as Supplement A to the Guideline as a result of public comments on the 1986 revisions.

To support the process of developing and revising the Guideline during the period 1977-1988, the First, Second and Third Conferences on Air Quality Modeling were held as required by section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided EPA with comments on the Guideline and associated revisions, thereby facilitating introduction of improved modeling techniques into the regulatory process.

In October 1988, the Fourth Conference on Air Quality Modeling was held. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide EPA's consideration of any rulemaking needed to further revise the Guideline. The new models provide techniques for situations where specific procedures had not previously been available, and also improve several previously adopted techniques. These new techniques and the guidance discussed at the modeling conference are:

Complex Terrain Dispersion Model,
Ozone precursor point source modeling,
Mobile source modeling at signalized intersections,
Emissions and dispersion modeling system for airports,
Long-range transport models,
Models for estimating visibility impact of specific sources,
Model for shoreline dispersion,
Valley stagnation,
On-site meteorological program guidance,
Method for evaluating models,
General screening techniques,
Regional scale models,
Modeling techniques for air pathway analyses.

In general, EPA solicited comments on (1) whether the techniques are sound, (2) whether they should be adopted for regulatory application, and (3) whether limitations on use, including data base requirements, should be specified.

All comments presented at the fourth modeling conference and/or submitted to Docket A-88-04 are encompassed in Docket Items II-D, II-E, and II-G. Also, a verbatim transcript of the conference proceedings is available as Docket Item II-G-3a and b. EPA has summarized these comments, developed responses, and drawn conclusions on appropriate actions in the document "Summary of Public Comments and EPA Responses on the Fourth Conference on Air Quality Modeling—October 1988" (Docket Item II-O-1).

The following are being proposed as models or analysis procedures recommended for inclusion in the Guideline: Complex Terrain Dispersion Model (refined model, accompanied by CTSCREEN and modifications in the use of other screening models); CAL3QHC (carbon monoxide estimates at signalized intersections); modeling for air pathway analysis of toxic/hazardous pollutants (consistent multimedia use of ISC and other models); EDMS (modeling system for airports); on-site meteorological program guidance (expansion of current guidance); general screening techniques and VISCREEN (updates and computerization of current screening techniques); method for evaluating models (enhancement of current guidance). For the most part, these models and analysis procedures are designed for operation on or to be compatible with a personal computer.

The following are being proposed for addition to Appendix B of the Guideline with an indication that they are available for application in the unique circumstances to which they apply on a case-by-case basis: Shoreline Dispersion Model (sea/lake breeze fumigation) and WYND valley (valley stagnation). Two models falling in a similar category that are already in Appendix B are: MESOPUFF-II (long-range transport) and PLUVUE-II (visibility).

Besides adding new techniques, EPA is also proposing to clarify and update portions of the Guideline to make it consistent with current regulatory programs that have been established through other Agency activities.

These models and other changes will be adopted in Supplement B (Draft) to the Guideline (Docket Item III-B-1); see the "**ADDRESSES**" section of this Notice for general availability. Of the techniques considered at the fourth modeling conference, only two are not being proposed for further action at this time; they are point source modeling for ozone precursors and regional scale models.

This conference is serving jointly as a public hearing on proposed amendments to EPA regulations which appear at 40 CFR 51.166 and 52.21. The amendments relate to using air quality models and adding by reference Supplement B to the revised modeling guideline. EPA has previously issued a notice (see 56 FR 5900-5907, February 13, 1991), on a Public hearing concerning these amendments.

Public Participation

The Fifth Conference on Air Quality Modeling will be open to the public; no admission fee is charged. The Conference will begin in the morning with briefings by EPA officials on Supplement B concerning proposed changes and additions to the Guideline. Emphasis will be on complex terrain dispersion models, mobile source modeling at signalized intersections, and stability classification schemes used in on-site meteorological data programs. The conference will continue with statements from representatives of the Air and Waste Management Association. In the afternoon, invited statements will be provided by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies including the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology (formerly, the National Bureau of Standards), and others. The conference will then be opened to statements and comments from the general public.

EPA solicits advice and comments especially on: (1) Proposed changes to 40 CFR 51.166 and 52.21; (2) the technical content of Supplement B and its adoption for regulatory application; (3) limitations on use, including data base requirements, that should be specified for the techniques proposed in Supplement B; and (4) proposed changes to other sections of 40 CFR 51 to give status to long standing EPA policy regarding the use of air quality models in several regulatory programs (e.g., 51.46, 51.112, 51.117, 51.150, 51.160).

Persons wishing to speak at the conference should contact EPA at the address given in the "**FURTHER INFORMATION**" section no later than March 12. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. If a presentation is projected to be longer than 15 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be made and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket, for the convenience of the reporter and the Agency panel. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the Central Docket Section (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket A-88-04 which will remain open until May 6, 1991 for the purpose of receiving additional comments.

Dated: February 19, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-4389 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3908-1]

Clean Water Act Reauthorization; Harnessing Market Forces and Alternative Financing Mechanisms

AGENCY: Environmental Protection Agency.

ACTION: Notice of a meeting to gather information on the use of market forces and alternative financing to support programs mandated by the Clean Water Act (CWA).

SUMMARY: As part of an on-going effort to gather information that could be used in the reauthorization of CWA, EPA is conducting a series of symposia on major cross-cutting issues. The first meeting of the series is scheduled for February 23-24 to discuss the issue of risk and to identify and rank the remaining areas of significant risks to water resources.

The subject meeting, which is the second in the series, will address the feasibility of using market forces and

alternative funding mechanisms, such as fees, to help fund CWA mandated programs. The information gathered will be used by the Agency and the Administration to identify potential changes to CWA that would stimulate additional revenues to support water programs.

The meeting will cover two days and is open to the public. The Agency encourages all interested parties to attend including Federal, State, Indian Tribal and local water managers as well as the public at-large. Edwin Clark, the Secretary of the Delaware Department of Natural Resources and Environmental Control, will chair the symposium. A panel of experts will participate, bringing with them a wide array of expertise in economics and water quality management.

Interested parties are invited to submit written comments. If possible, the comments should be submitted to the contact person listed below at least one week prior to the meeting date so they may be made available to meeting attendees.

TIME AND DATE: March 14, 10 to 5:30 p.m.—March 15, 8:30 to 4, 1991.

LOCATION: Woodrow Wilson School, Robertson Hall at Princeton University, Princeton, New Jersey.

OTHER INFORMATION: Background materials provided to the panelists are available upon request.

FOR FURTHER INFORMATION CONTACT: Caren J. Rothstein, United States Environmental Protection Agency, Office of Water, Telephone: 202–382–5687, FAX: 202–382–5711.

Robert H. Wayland III,

Acting Assistant Administrator for Water.

[FR Doc. 91–4363 Filed 2–22–91; 8:45 am]

BILLING CODE 6560–50–M

[AMS–FRL–3907–7]

Nonroad Engines and Vehicles; Public Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of public workshop.

SUMMARY: On April 3 and 4, 1991, the Environmental Protection Agency (EPA) will hold a public workshop to discuss nonroad engines and vehicles, their technical characteristics, their emissions, potential strategies for emission control and difficulties therewith, and general regulatory issues.

DATES: The workshop will be convened at 9 a.m. on April 3 and 4, 1991. If necessary to accommodate all participants, the workshop will be continued on April 5.

Persons interested in making presentations at the workshop are requested to notify the Agency contact listed below at least two weeks prior to the workshop so that a final agenda can be prepared. Written comment may be submitted to the same Agency contact until April 26, 1991.

ADDRESSES: The workshop will be held at the U.S. EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin A. H. Green, Certification Policy and Support Branch, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4510, FTS 374–8510.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA), as amended by the Clean Air Act Amendments of 1990, requires EPA to study emissions from nonroad engines and vehicles to determine the contributions of such sources to air pollution in areas of the country which fail to attain the National Ambient Air Quality Standards (NAAQS) for either ozone or carbon monoxide. In doing so, EPA must study emissions of carbon monoxide (CO), volatile organic compounds (VOC), and oxides of nitrogen (NOx). EPA may also study any other emissions from nonroad engines and vehicles that may contribute to air pollution which may be reasonably anticipated to endanger public health or welfare. EPA is to complete the study by November 15, 1991, and after opportunity for public comment, determine the significance of emissions from nonroad engines and vehicles. Based on the results of this study, EPA is to determine whether regulation is needed and promulgate by November 15, 1992 any regulations applicable to nonroad engines and vehicles.

While on-road vehicles account for most of the nation's mobile source emissions, substantial reductions have been made in per-vehicle automotive emissions over the past two decades of regulation. Further reductions in emissions from on-road vehicles are thus limited and may be achievable only with significant and expensive modifications. In contrast, emissions from most nonroad engines and vehicles have never been controlled. The proposed study will assess the contribution to air quality problems of emissions from nonroad engines and vehicles. If need be, EPA must then issue regulations pertaining to these sources.

Before entering the regulatory process, it is crucial that EPA obtain the best available information about nonroad engines and vehicles. EPA therefore needs to gather information concerning types and characteristics of sources, industry features, source populations and usage characteristics, common emission test procedures, current emission levels, potential emission control technologies, and potential problems therewith (e.g., safety, noise, energy, or other concerns). This list contains some information that is particularly relevant to emission regulation. EPA is soliciting such information in advance of its determination of which categories to regulate because of the relatively short time allotted by the CAA for regulation development after publication of the air quality impact study.

EPA is conducting this public workshop to solicit input from the industry and other knowledgeable parties regarding the technologies present in nonroad engines and vehicles, the emissions from such sources, the potential to reduce those emissions, and possible difficulties in doing so. The range of nonroad engines and vehicles is large, and it is expected that manufacturers, marketers, and users of the following products, among others, will be represented: agricultural equipment, construction equipment, recreational equipment, utility equipment, industrial equipment, mining equipment, logging and forestry equipment, lawn and garden equipment, all marine craft, and unregulated aircraft.

The following list of issues constitutes a preliminary agenda for the workshop. Comments on additional items to be added to the agenda are solicited.

Issues to be Addressed

A. Workshop Organization

Because of the wide range of different nonroad engines and vehicles, EPA will allow two days for the workshop. To benefit those parties who have had little previous interaction with EPA, EPA will begin each day of the workshop with a brief presentation which will serve as an introduction to EPA and the regulatory process. So that workshop participants may choose to attend only sessions of interest to them, the workshop will be organized as follows:

1. On April 3, nonroad engines and vehicles employing two-cycle and four-cycle gasoline technology will be discussed. Examples of sources that should be discussed on April 3 include, among others, the following types of equipment: utility, lawn and garden, light forestry, small agricultural and construction, industrial, small marine vessels, snowmobiles, unregulated motorcycles and recreational off-highway vehicles, and piston aircraft.

2. On April 4, all nonroad engines and vehicles employing diesel technology will be discussed, as will any other nonroad engines and vehicles not discussed in April 3. Examples of sources that should be discussed on April 4 include, among others, the following types of equipment: agricultural, construction, industrial, forestry, mining, and marine vessels.

EPA's decision to organize the workshop in this manner is not meant to imply how nonroad engines and vehicles will eventually be categorized. Nor are these divisions meant to be exclusive. If potential participants cannot decide on which day to attend, they should attend on the day whose listed topics best approximate their particular interests.

It is expected that workshop participants will discuss the issues enumerated in sections B, C, D, and E below.

B. Current Nonroad Engine and Vehicle Technology

First and foremost, EPA requests any information that could contribute to the emission impact study discussed above. Participants in the workshop are requested to provide information on the different types of nonroad engines and vehicles and on the current technical features of those sources. EPA also requests information on source populations (including sales and scrappage rates), usage rates (e.g., hours per year), and any information that would allow EPA to determine how these vary by nonattainment area and over time. Documentation of any emission data is also requested, as such data will be needed to accurately estimate nonroad engine and vehicle contributions to air pollution in nonattainment areas.

C. General Regulatory Issues, Recent Actions

EPA seeks information concerning which issues will arise as any eventual regulations are developed for nonroad engines and vehicles. Recent state-level regulatory efforts, notably those made by California, may have brought some of these issues to the surface. EPA requests comment on the following general regulatory issues: Source categorization, emission standards, impacts on industry and consumer, manufacturer lead time, warranty provisions, enforcement, and any other general regulatory issues. Because California's efforts are the furthest along, EPA requests comment on the appropriateness of the way with which these issues have been addressed by the California Air Resources Board (CARB). EPA also requests comment on how these issues may differ for regulation at state and federal levels and on how standardization and compatibility will be important as regulations are developed by other nations.

D. Potential Emission Control Strategies

EPA's study of emissions from nonroad engines and vehicles may indicate that there are types of nonroad sources for which regulations would be beneficial to air quality. Consequently, participants are requested to provide information on potential emission control strategies and the probable cost and effectiveness of those strategies.

E. Potential Consequences of Emission Control

In considering regulations for nonroad engines and vehicles, EPA must also consider the possible impact of emission controls on noise, energy, and safety features. Therefore, EPA requests information on the potential for such impacts and on any noise, energy, or safety regulations that apply to nonroad engines and vehicles.

Dated: February 19, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–4368 Filed 2–22–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59292A; FRL 3879–9]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–91–7. The test marketing conditions are described below.

EFFECTIVE DATE: Feburary 14, 1991.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 382–2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–91–7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–91–7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–91–7

Date of Receipt: January 8, 1991.

Notice of Receipt: January 25, 1991 (56 FR 2925).

Applicant: Confidential.

Chemical: (G) Polyether alcohol.

Use: Gasoline additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant health or environmental

concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: February 14, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-4370 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3907-9]

Tindall Property Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Tindall Property Site, Lawrenceburg, Kentucky with Baker Iron and Metal Company, GTE South, Inc., Kentucky Association of Electric Cooperatives, Inc., and Kentucky Utilities Company. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404-347-5059.

Written comment may be submitted to the person above by 30 days from the date of publication.

Dated: February 6, 1991.

Donald J. Guinyard,

Acting Director, Waste Management Division.

[FR Doc. 91-4364 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3908-2]

Final NPDES General Permits for the Oil and Gas Extraction Point Source Category, Onshore Subcategory—States of Louisiana (LAG320000), New Mexico (NMG320000), Oklahoma (OKG320000), and Texas (TXG320000)

AGENCY: United States Environmental Protection Agency.

ACTION: Issuance of four final NPDES General Permits.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today issues final NPDES General Permits for oil and gas facilities in the Onshore Subcategory of the Oil and Gas Extraction Point Source Category in the States of Louisiana, New Mexico, Oklahoma and Texas. These general permits prohibit all discharges of pollutants to waters of the United States from those facilities, consistent with EPA guidelines codified at 40 CFR part 435, subpart C.

DATES: These permits are effective at 12:01 a.m. Eastern Daylight Savings Time, thirty days after the publication of this notice.

ADDRESSES: Notifications required by these permits should be sent to the Director, Water Management Division (6W), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7190.

SUPPLEMENTARY INFORMATION: EPA issues these general permits pursuant to its authority under section 402 of the Clean Water Act, 33 U.S.C. 1342. Except as noted herein, these permits apply to all Region 6 facilities in the Onshore Oil and Gas Point Source Extraction Point Source Category (40 CFR part 435, subpart C). They do not apply to facilities (1) in the Coastal Subcategory (40 CFR part 435, subpart D), including facilities which would be classified Onshore but for the decision in *American Petroleum Institute* v. *EPA*, 661 F. 2d 340 (5th Cir. 1981); (2) in the Agricultural and Wildlife Water Use Subcategory (40 CFR part 435 subpart E); (3) in the Stripper Subcategory (40 CFR part 435, subpart F); and (4) for which Conoco Inc submitted timely request for variance on the basis of fundamentally different factors, i.e., two facilities in the Muldoon Field in Fayette County, Texas.

EPA Region 6 proposed to issue these permits at 54 FR 35930 (August 30, 1989) and provided additional notice of that proposal in the Baton Rouge State Times, the Albuquerque Journal, the Daily Oklahoman and the Houston Post on September 16, 1989. The comment period was originally scheduled to end on November 17, 1989, but was extended to January 15, 1990.

As indicated in the Agency's proposal, the "no discharge" effluent limitations of the permits are based on earlier determinations that they are achievable through the "best practicable control technology currently available" (BPT), now codified as the Oil and Gas Point Source Extraction Guidelines at 40 CFR 435. EPA Region 6 has not independently considered "best conventional treatment" (BCT) or "best available treatment" (BAT) technologies for the waste streams regulated by these permits. Inasmuch as consideration of those treatment technology levels could not result in effluent limitations more stringent than the BPT "no discharge" limitations, it is the best professional judgement of EPA Region 6 that the "no discharge" limitations of the permits also constitute BCT and BAT levels of control.

The public comment period on the proposed permits ended on November 17, 1989 and susequently extended to January 15, 1990. EPA Region 6 has considered all comments it received. The United States Fish and Wildlife Service; the State of New Mexico Health and Environment Department; the State of New Mexico Energy, Minerals and Natural Resources Department, Oil Conservation Division; the Railroad Commission of the State of Texas; the Texas Water Commission; the American Petroleum Institute; Mesa Limited Partnership; Conoco, Inc.; Exxon Corporation, U.S.A.; and Phillips Petroleum Company submitted comments on EPA's proposal to issue these permits. EPA Region 6 has considered all comments it received. In some instances, the final permits differ from the proposed permits as a result of comments.

In the following comments summary, EPA has departed from the literal words of the commenters for clarity and to accommodate consolidated response to multiple comments on the same issue.

Response to Public Comments

Comment 1—EPA should clarify whether the location of the well head or discharge location is the controlling factor for determining applicability of the permits, particularly with regard to those facilities whose onshore categorization has been suspended in connection with the remand in *American Petroleum Institute* v. *EPA*, 661 F.2d 340 (5th Cir. 1981). See 47 FR 31554 (July 21, 1982).

Response to Comment 1—Because the "no discharge" effluent limitations of these permits are based on technological capability, not water quality needs, applicability of the permits is controlled by the nature and location of the facility, not location of a discharge. Because remote locations of facility components (e.g., storage tanks, separators, etc.) might otherwise subject some facilities to limitations under more than one subcategory, Region 6 has chosen to "locate" facilities by well head. See also Response to Comments 6 and 7, below. The Texas and Louisiana facilities at issue in *American Petroleum Institute* v. *EPA*, supra, with well heads in the area for which EPA suspended the Onshore Subcategory Guidelines at 47 FR 31554 (July 21, 1982), are not subject to LAG320000 or TXG320000.

Comment 2—In relevant part, 40 CFR 435.41 defines "coastal" as "any body of water landward of the territorial seas as defined in 40 CFR 125.1(gg)," but there is no 40 CFR 125.1(gg). How does EPA define "territorial seas?"

Response to Comment 2—Since promulgating 40 CFR part 435, EPA has revised its NPDES regulations and they no longer define "territorial seas." The former regulatory definition ws a verbatim recitation of CWA section 502(8), which defines the term as "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." See 38 FR 13528, 13530 (May 22, 1973). EPA continues to rely on that statutory definition.

Comment 3—The permits are silent on whether an onshore operator need take any action to obtain coverage under the proposed permits, e.g., submission of a notice of intent to be covered. Because the permits impose no discharge limits, applying for coverage should be unnecessary.

Response to Comment 3—EPA agrees with this comment. These general permits do not require submission of a notice of intent to be covered.

Comment 4—Do the permits' no discharge requirements apply to discharges to wetlands which are not adjacent to a body of water, i.e., isolated wetlands resulting from poor drainage? Who will determine whether or not a particular well site is a wetland? Facilities on islands should be subject to permits for the Coastal Subcategory.

Response to Comment 4—The onshore subcategory guidelines, to which these permits apply, includes those facilities "engaged in the (*sic*) production, field exploration, drilling, well completion and well treatment in the oil and gas industry which are located landward of the inner boundary of the territorial seas . . . and which are not included within subpart D (Coastal subcategory) * * *." 40 CFR 435.30. Coastal is defined at 40 CFR 435.41(e) as "(1) any body of water located landward of the territorial seas * * * or (2) any wetlands adjacent to such waters." In the preamble to the **Federal Register** notice promulgating the oil and gas extraction guidelines, EPA stated that the "coastal" definition was intended to encompass "all facilities located over waters landward of the territorial seas, including wetlands adjacent to such waters." (Emphasis added). 44 FR 22071 (April 13, 1979).

The Agency also explained in the same preamble that one basis for the regulatory distinction between coastal wells (which are allowed to discharge wastewater, subject to certain limitations that are set forth at 40 CFR 435.42) and onshore wells (which are subject to zero discharge requirement) was that "space constraints or reinjection difficulties may operate with respect to coastal and offshore platforms," *i.e.*, platforms located over water, but that "no such conditions apply to these wells operating on land." (Emphasis added.) *Id.*[1] The coastal subcategory definition specifically included wetlands adjacent to bodies of water landward of the territorial sea within the coastal category, but does not address facilities located over isolated wetlands. Based on the distinction between facilities on land and those over water that was drawn in the preamble to the guidelines, Region 6 does not consider facilities over water in isolated wetlands onshore facilities.

Regarding discharges to isolated wetlands, the guidelines prohibit the discharge of "waste water pollutants into navigable waters from any source" in the onshore subcategory. (Emphasis added.) 40 CFR 435.32(a). When EPA promulgated 40 CFR part 435, its definition of "navigable waters" (now known as "waters of the United States") encompassed certain waters actually used in interstate commerce and their tributaries. EPA later revised its definition of waters of the United States to specifically include, among other things, wetlands adjacent to waters of the United States and intrastate waters "such as * * * wetlands, the use degradation or destruction of which would affect or could affect interstate or foreign commerce * * *" and "(W)hich are or could be used for industrial purposes by industries in interstate commerce * * *." This definition includes many relatively small isolated wetlands not associated with or "adjacent to" other water bodies supporting interstate commerce. See 44 FR 32854 (June 7, 1979). When it promulgated 40 CFR part 435, EPA clearly intended to prohibit all onshore subcategory discharges to waters within its regulatory jurisdiction. In the preamble to the proposed permits, Region 6 made it clear that the permits were intended to prohibit the discharge of pollutants from onshore facilities to waters of the United States. Accordingly, the final permits prohibit discharges from onshore facilities to isolated wetlands which are waters of the United States.

In part I, section A, the final permits now reference 40 CFR 122.2 as the applicable regulatory definition for "waters of the United States." Likewise, EPA has amended the permits definition of "Coastal" to include all wetlands. As a result of these changes to the proposed permit language, it is now clear that no Onshore Subcategory facility may discharge to isolated wetlands which are waters of the United States and that facilities with wellheads in any waters inland of the territorial seas, including isolated wetlands, will not be subject to these Onshore Category permits, but the Coastal Subcategory permits EPA intends to issue in the future. See, e.g., 55 FR 23348 (June 7, 1990).

In planning their drilling operations, operators should already be considering whether their facilities will be located in wetlands, including isolated wetlands which are waters of the United States, to assure compliance with permitting requirements for the discharge of dredge and fill material under CWA section 404 and the Corps of Engineers' implementing regulations at 33 CFR parts 323 and 328.

Region 6 sees no reason for arbitrarily classifying all facilities on islands "coastal." Some of the islands located south and east of the Chapman Line (as geographically defined at 47 FR 31554) are wetlands, e.g., the coastal wetlands complex in the Mississippi river delta area, and facilities thereon would generally be considered "coastal." Conversely, facilities located on islands consisting of dry emergent lands, e.g.,

[1] On this basis, the guidelines removed 1,700 wells "which operated on land but which discharged into coastal waters" from the coastal subcategory and reclassified them as onshore or stripper, depending upon their rate of production. Id. In response to the Court's decision in *API* v. *EPA*, 661 F.2d 340 (5th Cir. 1981), EPA later suspended the applicability of the onshore guidelines to wells located on land in a clearly delineated geographic area in Texas and Louisiana, and in the Santa Maria Basin of California. See Response to Comment 1. No other wells were affected by this suspension.

barrier islands, would generally be considered "onshore." It should be noted, however, that these and other types of islands may support multiple ecosystems and the nature of the specific area in which the wellhead is located controls the subcategory into which a specific facility falls.

Comment 5—The permits prohibit "seepage" from receiving pits to waters of the United States. It would be very difficult or impossible to have zero seepage over geologic time. EPA should clarify the meaning of the term.

Response to Comment 5—In response to this comment, the Agency has defined "seepage" in the permits as the movement of wastewater through a porous material (e.g., reserve pit dike), in sufficient quantity to produce visible surface flow from the containment area to a water of the United States during the life of the facility.

Comment 6—Please clarify the terms "ultimate disposal" and "direct discharges" as used in connection with the permits. The Texas Railroad Commission has issued State discharge permits to produced water treatment and disposal facilities on the Texas coast. These facilities receive produced waters from others, remove free hydrocarbons and suspended solids, then discharge the treated waters into tidally influenced coastal waters. They generally receive produced water from Coastal Subcategory wells, but could accommodate produced waters from wells in the Onshore Subcategory. Simply stated, would it violate these permits to discharge produced water originating at an Onshore Subcategory facility from one of the permitted produced water treatment facilities?

Response to Comment 6—Oil and gas drilling and production wastes are frequently cycled and/or managed through a series of temporary storage units (e.g., reserve pits, separator units, holding tanks). Until activity ceases at the facility, these storage units confine the wastes, preventing their discharge, flow or visible seepage to waters of the United States. In the preamble to the proposed permits EPA used the term "ultimate disposal" in reference to the final disposal of wastes from such units, indicating that such ultimate disposal, unlike "direct discharges", was not subject to these permits, but might be authorized by individual NPDES permits. See 54 FR 35931.

In considering this and several other comments, however, Region 6 reevaluated its position on ultimate disposal. EPA identified a number of "no discharge" technologies which may be used in connection with ultimate disposal of produced water (e.g., land disposal, subsurface reinjection, subsurface disposal to a salt water aquifer, evaporation) at 41 FR 44942 (October 13, 1976). 40 CFR 435.32(a) thus prohibits all discharges of produced water associated with Onshore Subcategory operations. In view of this unequivocal regulatory prohibition, the permits prohibit the discharge of any wastewater emanating from an Onshore Subcategory facility to waters of the United States, regardless of whether those discharges might be classified as "direct discharges" or "ultimate disposal."

The coastal produced water treatment and disposal facilities to which the comment refers discharge to waters of the United States and are therefore not a permissible method of disposal for wastes generated by oil and gas facilities in the Onshore Subcategory. Oil and gas operators discharging Onshore Subcategory waste from remote locations or facilities will be subject to enforcement actions for violations of the permits. The operators of such treatment and disposal facilities may also be liable for such violations.

Comment 7—Most states, including Texas, prohibit the discharge of muds and cuttings, but allow the discharge of water which has come into contact with them from the various working pits. At a typical facility, such water, stormwater and wash water, is channeled to pits to prevent the accidental release of pollutants. At the completion of drilling operations, the water in pits is treated to remove solids and hydrocarbons, then tested to determine whether the composition complies with state water quality criteria. After obtaining a permit or other approval from the responsible state agency, the operator may discharge the remaining water in the pit. Are such discharges subject to the permits?

Response to Comment 7—As required by 40 CFR 435.32(a), the permits prohibit the discharge of waste water that has come into contact with muds or cuttings or other pollutants from any Onshore Subcategory source associated with production, field exploration, drilling, well completion, or well treatment. This prohibition is a technology-based effluent limitation grounded in application of BPT, not water quality. It thus applies whether or not the water is clarified and whether or not its discharge would comply with state water quality standards.

The permits prohibit only discharges to waters of the United States. Wastewater that has come into contact with muds and cuttings may thus be removed from reserve pits and disposed of by any method which does not involve discharge to waters of the United States and which complies with applicable state regulatory requirements. See also Responses to Comments 1 and 6.

Comment 8—In some production operations, fresh water (typically well water) is allowed to cascade over a series of flowlines which contain natural gas, cooling the gas and allowing more efficient removal of entrained water vapor prior to sale. The cooling water never contacts produced fluids and is thus uncontaminated. The only change noticeable in its composition is a slight increase in temperature which quickly dissipates after discharge. This uncontaminated water discharge, as well as the discharge of pipeline test water, should be allowed under the general permits.

Response to comment 8—EPA has historically associated noncontact cooling water and pipeline test water with pipeline operations beyond the ambit of the Oil and Gas Extraction Point Source Category and thus the development document on which the Agency based the part 435 guidelines includes no information on treatment technologies which might be applied to such wastewaters. Certainly, EPA Region 6 did not consider these wastestreams when it proposed these general permits. Accordingly, the discharges are not regulated by these general permits.

Comment 9—How will EPA identify facilities subject to the Agricultural and Wildlife Use Subcategory?

Response to Comment 9—40 CFR 435.50 and 435.51 requires that the Agricultural and Wildlife Use Subcategory facilities be located west of the 98th meridian and the produced waters must actually be used for such purposes during discharge periods.

Comment 10—New technologies, which can economically remove solids from produced water, reportedly can treat waters which are suited for discharge. Are such treatment procedures and subsequent discharges not direct discharges and thus excluded from coverage under the general permits?

Response to Comment 10—As required by 40 CFR 435.32(a), these permit prohibit the discharge of produced water derived from onshore wells whether the water has been treated or not (also see response to Comments 6 and 7).

Comment 11—The proposed permits indicate Onshore Subcategory wells in which production falls below 10 barrels a day after the effective date of the permits will not become stripper wells. There is no sound legal or policy basis for subjecting such wells to the zero discharge limitations of the Offshore Subcategory permits. Approximately 70% of the wells in Texas currently produce less than ten barrels of oil per day. If these wells are forced to comply with a no discharge limit, many will have to be shut down.

Response to Comment 11—EPA's regulations at 40 CFR 435.60 state that the provisions of the stripper Subcategory "are applicable to those onshore facilities which produce 10 barrels per well per calendar day or less of crude oil and which are operating at the maximum feasible rate of production." "The average production per oil well at a field * * * serves as the basis for categorization" in the Stripper Subcategory. 44 FR 20073 (April 13, 1979). Part 435 does not specifically address the issue of whether facilities or wells producing more than ten barrels a day whose production later falls below that level are to be considered strippers. EPA interprets its guidelines, however, as excluding such facilities from the Stripper Subcategory.

The basis for exempting stripper facilities from the zero discharge requirement of the Onshore Subcategory was the unacceptable economic impact of installing evaluated treatment technologies to marginally profitable wells which could produce no more than ten barrels of oil per day. 41 FR 44942 (October 12, 1976). Limitations for discharges from stripper facilities were thus "reserved pending study of other, less *capital-intensive*, control technologies." (Emphasis added.) Id. Conversely, zero discharge was found attainable by Onshore Subcategory facilities capable of producing more than ten barrels of crude oil per day. Once Onshore operators make the capital investment to meet the zero discharge requirement, no additional capital costs must be incurred to continue meeting that requirement if maximum feasible production falls below 10 barrels a day.

Because operation and maintenance (O&M) costs were not a basis for exempting stripper facilities from the zero discharge requirements of the guidelines, such costs are not determinative in interpreting stripper exemption. Nevertheless, EPA Region 6 believes O&M costs on installed control systems are minimal. EPA has determined that the average cost (after taxes) of disposing of produced brine in a class II injection well, for instance, is no more than 20 cents a barrel (based on a worst case scenario and generally varying with the distance to the injection well and means of transport thereto) and the O&M costs of some other disposal technologies, e.g., evaporation, may even be lower.

Contrary to the implication of the comment, no well or field which is properly subject to the Stripper Subcategory on the effective date of the permits will be forced to shut down. They will remain subject to the Stripper Subcategory. Likewise, future wells which are never capable of producing more than ten barrels of crude oil will generally be regulated as strippers. The permits only prohibit Onshore Subcategory wells capable of production in excess of ten barrels of crude oil per day from lapsing into the Stripper Subcategory if and when producing capacity declines.

Comment 12—The Agricultural and Wildlife Water Use Subcategory is currently limited to facilities West of the 98th meridian, yet some wells East thereof produce water of sufficient quality to support wildlife and agriculture. EPA should address these "special case" facilities in connection with its issuance of these permits.

Response to Comment 12—EPA Region 6 has not proposed to deviate from the geographical boundaries of the Agricultural and Wildlife Use Subcategory as codified at 40 CFR 435.50 nor will it in responding to public comment on its issuance of these permits. There is nevertheless one "special case" which the Agency will address in separate proceedings. On April 24, 1979, Conoco Inc. applied for "fundamentally different factors" variances to allow discharges of produced water from two facilities a short distance East of the 98th meridian in the Muldon Field in Fayette County, Texas. Although Conoco's variance request met the deadline established in CWA Section 301(n)(2), EPA has not yet acted on it, either individually or in connection with these permits. To process Conoco's pending request, EPA will propose issuance of an individual permit for the discharges at issue, thus ensuring adequate opportunity for public review and comment.

Comment 13—Under the Water Quality Act of 1987, EPA may not require permits for point source discharges of uncontaminated storm water until at least February 4, 1992. Some discharges subject to the proposed general permits could become part of a stormwater discharge, however, and EPA should clarify that stormwater discharges are not regulated by the permits.

Response to Comment 13—As required by 40 CFR 435.32(a), the permits prohibit the discharge of all wastewater pollutants from Onshore Subcategory facilities, including but not limited to drilling fluids, drill cuttings, produced water, produced sand, deck or floor drainage, well treatment fluids, and workover fluids. Discharges regulated under the permits are prohibited, whether or not they are commingled with stormwater and no discharge regulated under these permits is likely to consist of uncontaminated stormwater. Rig and deck drainage, for example, generally contains waste from deck spills of trilling fluids and cuttings, regardless of whether it is generated by storm events or maintenance washdowns.

Comment 14—Oil and gas separation facilities are normally diked as a precautionary measure to prevent accidental release of oil and produced water. These diked areas periodically fill with rainwater which must be removed, typically by discharge to the surrounding environment. These discharges are currently regulated under the Spill Prevention Control and Countermeasure (SPCC) regulations at 40 CFR part 112, which prohibit the discharge of stormwater from diked areas if a sheen is present and require development of specific plans to prevent discharge of pollutants. Such discharges should be excluded from coverage under these general permits.

Response to Comment 14—The discharges to which this comment refers consist of uncontaminated stormwater which EPA may not now regulate. See Response to Comment 13. Accordingly, the permits impose no limits on such discharges unless they are commingled with wastes regulated under this permit.

Comment 15—Blow-out preventer fluid and produced sand should be excluded from coverage by the permits since the former is not used onshore and the latter is not covered by guidelines.

Response to Comment 15—Because it occurs in shallow horizons or in geologic settings where expected down-hole pressures are low, much onshore drilling is accomplished without blow-out preventers. Since these conditions are not applicable to all facilities. The permits accordingly prohibit the discharge of blowout preventer fluids.

Contrary to the allegation of the comment, 40 CFR 435.32(a) expressly prohibits the discharge of produced sand from Onshore Subcategory facilities. It should be noted that the permits' prohibition on discharges of produced sand apply to all facility sources of produced sand, including oil/water separators, production test pits, and temporary storage tanks.

Comment 16—The proposed permits require that operators comply with best management practices (BMP's) codified in state regulations. EPA lacks authority to impose this requirement on the oil and gas industry through the issuance of NPDES permits.

Response to Comment 16—EPA possesses ample authority to impose this BMP requirement in NPDES permits. CWA section 402(a)(2) requires that EPA "prescribe conditions in issuing such permits to assure compliance with "effluent limitations imposed in accordance with CWA § 402(a)(1). See generally, *Montgomery Environmental Coalition* v. *Costle*, 646, F.2d 568 (DC Cir. 1980); *NRDC* v. *U.S.* EPA, 822 F.2d 104 (DC Cir. 1987); 40 CFR 122.44(k). The state requirements at issue are BMP's assuring compliance with the "no discharge" limits of the permits. Because they go beyond the prohibition of discharges, imposing specific implementation requirements, these state BMP requirements are moreover "more stringent limitation(s)

* * * necessary to meet
* * * treatment standards
* * * established pursuant to
* * * State law or regulations. Hence CWA Sections 402(a)(1) and 301(b)(1)(C) also authorize their imposition in NPDES permits.

Comment 17—The proposed permits include effluent limitations, BMP's and reporting requirements which duplicate state regulatory requirements. There is no need for these requirements, but they may subject operators to duplicate enforcement proceedings and liabilities. Enforcement of such measures is best left to the states.

Response to Comment 17—EPA generally lacks authority to exempt point source discharges from the Clean Water Act permitting requirements. *NRDC* v. *Costle* 568 F.2d 1369 (DC Cir. 1977). It thus cannot disclaim responsibility for regulating any point source because it is already regulated by states without an approved NPDES program. By incorporating some state requirements by reference in the permits, however, EPA is avoiding inconsistent State and Federal requirements. The comment's observation that operators may be subjected to parallel state and federal enforcement proceedings for violating the same substantive requirement is accurate. Whether such parallel proceedings are appropriate is a decision best made in connection with individual violations.

Comment 18—EPA should resolve issues underlying these permits in the context of rulemaking proceedings, and more specifically, in the pending rulemaking on the effluent guidelines, not in the issuance of these general permits.

Response to Comment 18—The proceedings under which EPA is issuing these general permits are rulemaking. Although the part 435 guidelines on which the effluent limitations of these permits are based are under consideration, Region 6 need not wait until amended guidelines are promulgated to issue these permits.

Comment 19—How will EPA set discharge limitations for toxics indicated in part III.D.4 of the permits? Do discharges of toxic substances not specifically listed in the permits violate the permits?

Response to Comment 19—The reports on potential toxics discharges required by part III.D.4 of the permits are primarily for information purposes. The permits prohibit all discharges regardless of the presence of toxic pollutants. Thus a discharge of effluent containing toxics not specifically listed in the permit would be a violation.

Comment 20—The permits will allow degradaton of the environment to the extent caused by choronic spills, leaks and discharges degrading the environment.

Response to Comment 20—To the full extent it has authority to regulate them under section 402 of the Act, EPA, Region 6 has prohibited spills, leaks and discharges in these permits.

Comment 21—The permits do not adequately address the issue of onsite disposal of potentially toxic waste in upland areas. State limitations on closure of temporary storage pits are inadequate and unacceptable post closure residues of oil and heavy metals have been found to be at unsuitable levels in some environmentally sensitive trust areas managed by the U.S. Fish and Wildlife Service. The Service thus favors individual, not general permits.

Response to Comment 21—EPA's NPDES permitting authority is limited to regulation of discharges to waters of the United States. To the extent that state requirements avoid such discharges, EPA has incorporated them by reference in the permits. The Agency cannot, however, regulate all onsite land disposal practices under the Clean Water Act. Because most states independently regulate facility closure on a case-by-case basis, EPA suggests that the Service may wish to provide similar comments in connection with such state proceedings.

Comment 22—The requirement that permittees report "any noncompliance with these permits, bypass or upset" in part III.D.2 of the permits should only apply to discharges which may endanger health or the environment.

Response to Comment 22—In these "zero discharge" permits, Region 6 has forgone some reporting requirements routinely imposed in other NPDES permits, e.g., submission of quarterly discharge monitoring reports, and the 24 hour reporting requirement is thus of increased significance. Section III.D.2 of each permit requires that all discharges (including discharges which may be subject to the affirmative defenses of bypass and upset under the terms of the permits) be reported within 24 hours, regardless of whether they endanger health or the environment. The qualifying phrase suggested by the comment would allow permittees to unilaterally determine whether they should report their discharges, unacceptably interfering with EPA's ability to enforce the permits. EPA may, of course, consider the effects of a discharge in determining whether to institute enforcement proceedings and the nature of such proceedings.

Comment 23—The proposed permits contain specific typographical and notational errors.

Response to Comment 23—The typographical and notational errors identified by the commentators have been corrected in the final permits.

State Certification: Section 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. 1311(b)(1)(C) requires that NPDES permits include conditions insuring compliance with State water quality standards. Under section 401(a)(1) of the Act, 33 U.S.C. 1241(a)(1), EPA may not issue a permit until an affected state grants or waives certification of compliance with appropriate requirements of the Act and State law. The States of New Mexico and Oklahoma have certified these permits. The States of Louisiana and Texas have waived their certification rights.

Endangered Species Act: In relevant part, section 7 of the Endangered Species Act (ESA) and its implementing regulations (50 CFR part 402) requires that all federal agencies ensure that their actions, such as permit issuance, do not jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of their critical habitats. In connection with its proposal to issue these general permits, EPA found that issuance of the permits was unlikely to adversely affect any listed species or critical habitat and indicated it would seek concurrence from the U.S. Fish and Wildlife Service in that finding. See 54 FR 35939, 35932 (August 30, 1989). The U.S. Fish and Wildlife Service has concurred with this finding.

Coastal Zone Management Act

In accordance with section 307(c)(3) of the Coastal Zone Management Act, the Louisiana Coastal Management Division of the State of Louisiana Department of Natural Resources has reviewed NPDES permit LAG320000 and found its issuance consistent with the Louisiana Coastal Resources Program.

Economic Impact (E.O. 12291)

The Office of Management and Budget was exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. The economic and inflationary effects of the regulations (40 CFR 435) on which these permits are based were evaluated in accordance with Executive Orders 11821 and 12044.

Paper Work Reduction Act

EPA has reviewed the requirements imposed on regulated facilities by these general permits under the Paper Work Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The information collection requirements of these permits have been approved by the Office of Management and Budget in prior submissions.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), I certify that these general permits will not have a significant impact on a substantial number of small entities. Final NPDES Permits LAG320000, NMG320000, OKG320000, and TXG320000, printed below, are hereby issued.

Dated: February 11, 1991.

Robert E. Layton Jr., P.E.,

Regional Administrator, EPA, Region 6.

General NPDES Permit for the Oil and Gas Extraction Point Source Category, Onshore Subcategory

Permit No. LAG320000—State of Louisiana

Permit No. NMG320000—State of New Mexico

Permit No. OKG320000—State of Oklahoma

Permit No. TXG320000—State of Texas

This permit, issued under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the "Act"), prohibits the discharge of pollutants from any onshore oil and gas wells and facilities as defined in 40 CFR part 435, subpart C (Onshore Subcategory) and modified at 47 FR, 31554, July 21, 1982. It does not apply to wells or facilities in the Agricultural and Wildlife Use Subcategory (as defined at 40 CFR 435, subpart E). Likewise, it does not apply to existing wells which, at the time of permit issuance, fall within the Stripper Subcategory as defined at 40 CFR 435, subpart F, but onshore wells in which production later falls below 10 barrels per day shall remain subject to this permit. This permit also does not apply to two locations in Conoco's Muldoon Field, Fayette County, Texas nor to those wells or appurtenant facilities whose well heads are located in any water of the United States (as defined at 40 CFR 122.2).

To the extent that applicability of this permit is based on the geographical location of wells or facilities, the location of the wellhead shall be determinative, i.e., pollutant discharges which are prohibited at the location of the well head may not be discharged at other locations.

This permit prohibits the discharge of any pollutant from wells or facilities subject to its terms. Said pollutants include (but are not limited to):

Drilling Fluids
Drill Cuttings
Produced water
Produced sand
Deck and Rig Floor Drainage
Blowout Preventer fluid
Well Treatment Fluids

Further description of said pollutants, as well as monitoring, reporting, and other requirements are set forth in parts I, II, and III of this permit. This permit shall become effective when issued, and expire at midnight on February 25, 1996.

Signed this 11th day of February, 1991.

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region 6.

Part I

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. General Permit Coverage

General Permit Limits

(Applicable to LAG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are limited by the Department of Natural Resources, Office of Conservation of the State of Louisiana according to Amendment to Statewide Order No. 29–B and the water quality standards of the Louisiana Department of Environmental Quality (Louisiana Revised Statute, L.R.S. 30:1091–1096).

(Applicable to NMG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. This disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the New Mexico Oil Conservation Division (NMOCD) Rules 01 through 1304 and regulations of the State Oil and Gas Act (sections 70–2–1- through 70–2–38 NMSA, 1978) and as may be amended, and the water quality standards of the New Mexico Water Quality Control Commission, sections 1–100 to 3101 and as explained in Water Quality and Water Pollution Control in New Mexico (1988), and as may be amended.

(Applicable to OKG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Oklahoma Corporation Commission according to Rules of Practice 1 through 26 (1988) and the water quality standards of the Oklahoma Water Resources Board, Water Quality Division, sections 1 through 8 and as appended (1985) and as may be amended.

(Applicable to TXG320000)

This permit prohibits discharges into waters of the United States as defined at 40 CFR part 122.2. The disposal of waters and waste resulting from oil and gas exploration and producing activities in manners other than by discharges into waters of the United States are otherwise limited by the Railroad Commission of the State of Texas according to Rules for Oil, Gas and Geothermal Operations, 79 through 85 (1987) and the water quality standards of the Texas Water Commission (12 TexReg 3642, 13 TexReg 1776).

Section B. NPDES Individual versus General Permit Applicability

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

1. The discharge(s) is a significant contributor of pollution;

2. The discharger is not in compliance with the conditions of this permit;

3. A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to point sources;

BEST COPY AVAILABLE

4. A Water Management Plan containing requirements applicable to such a point source is approved;

5. The point source(s) covered by this permit no longer

(a) Involves the same or substantially similar types of operations,

(b) Is no longer limited to the same types of wastes,

(c) Requires the same effluent limitations or operating conditions, or

(d) In the opinion of the Regional Administrator, is more appropriately controlled under an individual permit than under a general permit.

Operators required to apply for an individual permit shall be notified in writing by the Regional Administrator.

A permit holder for a source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked. Upon revocation of the individual permit, this general permit shall apply to the source.

Part II

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. Effluent limitations and Monitoring Requirements, Onshore Subcategory

(Applicable to LAG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Louisiana as defined in part I.

(Applicable to NMG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of New Mexico as defined in part I.

(Applicable to OKG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Oklahoma as defined in part I.

(Applicable to TXG320000)

The oil and gas exploration and production activities covered by this permit apply to the onshore area of the State of Texas as defined in part I.

1. Drilling Fluids

(a) Applicability

Permit conditions apply to all drilling fluids (muds), whether oil, mineral oil or water based, and include fluids adhering to drill cuttings, used as the result of activities associated with the exploration and the production of oil and gas.

(b) Prohibitions

The discharge of drilling fluids into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the rules and regulations of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the general rules and regulations of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow discharge or seepage of drilling fluids into waters of the United States.

2. Drill Cuttings

Special note: the permit prohibitions and limitations that apply to drilling fluids also apply to cuttings as well as to the fluids that adhere to them. Any permit condition that applies to the drilling fluid system therefore also applies to cuttings.

3. Produced Water

(a) Applicability

This permit applies to all formation waters recovered during activities associated with the exploration and production of oil and gas, including those recovered during production tests.

(b) Prohibitions

The discharge of produced water or produced water associated with oil is prohibited.

(Applicable to LAG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Louisiana Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to NMG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to OKG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

(Applicable to TXG320000)

Produced water, whether from well drilling, production or workover operations, as well as waste waters from storage tanks, separators, saltwater or brine pits are prohibited from being discharged into waters of the United States. Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that receiving pits will not allow the discharge or seepage of produced water into waters of the United States.

4. Produced Sand

Special note: The prohibitions and limitation that apply to drill cuttings, drilling fluids, well completion fluids and fluids that adhere to cuttings also apply to produced sand.

5. Deck or Rig Floor Drainage

(a) Applicability

This permit applies to material or fluid spillage, including drilling muds (oil, mineral oil or water based), wash-down water, grease, waste oil, lubricants, or hydraulic fluids resulting from activities associated with the exploration and production of oil and gas.

(b) Prohibitions

The discharge of rig floor or deck drainage into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that rig floor or deck drainage will not discharge or otherwise be released into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that rig floor or deck drainage will not discharge, seep or otherwise be released into waters of the United States.

6. Blowout Preventer Fluid

(a) Applicability

This permit applies to all oil or hydraulic fluids used in blowout preventer mechanisms used in activities associated with the exploration and production of oil and gas.

(b) Prohibition

The discharge of blowout preventer fluids are prohibited.

7. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) Applicability

This permit applies to well treatment fluids, including well completion fluids, workover fluids, well stimulation fluids, or fluids resulting from well tests used in activities related to the exploration and production of oil and gas.

(b) Prohibition

The discharge of well treatment, completion, well testing and workover fluids, as well as discharges from production test, flare, completion or otherwise designated temporary storage pits, into waters of the United States is prohibited.

(Applicable to LAG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the State of Louisiana, Department of Natural Resources, Office of Conservation (Statewide Order 29–B) to ensure that there will be no discharges into waters of the United States.

(Applicable to NMG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the New Mexico Oil Conservation Division (Rules and Regulations) to ensure that there will be no discharges into waters of the United States.

(Applicable to OKG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the Oklahoma Corporation Commission, Oil and Gas Conservation Division (General Rules and Regulations, 1988) to ensure that there will be no discharges into waters of the United States.

(Applicable to TXG320000)

Best management practices (BMP) shall be used in the disposal of these wastes in accordance with the treatment and disposal criteria of the Railroad Commission of Texas (Statewide Rules for Oil, Gas and Geothermal Operations, RRCT, 1987) to ensure that there will be no discharges into waters of the United States.

Part III

(Applicable to LAG320000, NMG320000, OKG320000, TXG320000)

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR part 122.41 et seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action and/or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause, in accordance with 40 CFR 122.62–64. The filing for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

4. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privileges nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

5. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish the Regional Administrator, upon request, copies of records required to be kept by this permit.

6. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the

permit, the Act or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the Permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

7. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action to relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee may be subject under section 311 of the Clean Water Act.

8. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

9. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need to Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed and used by the permittee to achieve compliance with the conditions of this permit. This provision requires the operation of backup or auxiliary facilities of similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Facilities

(a) Definitions

(1) *Bypass* means the intentional diversion of waste streams from any portion of a facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities that causes them to be inoperable, or substantial and permanent loss of natural resources than can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in part III.D.2.

(c) Prohibition of Bypass

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required by part III.B.4.(b).

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet three conditions listed at part III.B.4.(c)(1).

5. Upset Conditions

(a) Definition

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed facilities, inadequate facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effects of an Upset. An upset constitutes an affirmative defense of an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of part III.B.5.b. are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for a demonstration of upset. The permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by part III.D.2; and

(4) The permittee complied with part III.B.2.

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollution from such materials from entering waters of the United States.

Section C. Monitoring and Records

The permittee shall allow the Regional Administrator, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, those records that are kept to assure compliance with the permit (i.e., zero discharge). These records shall be kept for a period of at least three years.

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

2. Twenty-Four Hour Reporting

The permittee shall report any noncompliance with this permit, bypass or upset. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or plans to reduce, eliminate, and prevent reoccurrence of the noncompliance.

3. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Regional Adminstrator, it shall promptly submit such facts or information.

4. Changes in Discharges of Toxic Substances

The permittee shall notify the Regional Administrator as soon as it knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, or any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(1).

(b) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the "notification levels" described in 40 CFR 122.42(a)(2).

5. Signatory Requirements

All reports, or information submitted to the Regional Administrator shall be signed and certified as follows:

(1) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or decision making functions for the corporation, or

(b) The manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(c) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively.

(d) For a municipality, State, Federal or other public agency. Either a principle executive office or ranking elected official. For purposes of this section, a principle executive officer of a Federal agency includes:

(2) The chief executive officer of the agency, or

(3) A senior executive officer having responsibility for the overall operations of a principle geographic unit of the agency.

(4) Alternatively, all reports required by the permit and other information requested by the Regional Administrator may be signed by a person described above or by a duly authorized representative only if:

(a) The authorization is made in writing by a person described above;

(b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or oil field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a individual or an individual occupying a named position; and

(c) The written authorization is submitted to the Regional Administrator.

(d) Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for the gathering of the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6. Availability of Reports

Except for applications, effluent data, other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Villations of Permit Conditions

1. Criminal

(a) Negligent Violations

The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) Knowing Violations

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, or 308 of the Act is subject to a fine of not less than $5,000 per day of violation nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) Knowing Endangerment

The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act and who knows at the time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(d) False Statements

The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 per day, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such a person under this paragraph, punishment shall be by a fine

of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both (See section 309.c.4. of the Clean Water Act).

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

(a) Class I Penalty

Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(b) Class II Penalty

Not to exceed $10,000 per day for each day during which the violations continues nor shall the maximum amount exceed $125,000.

Section F. Definitions

All definitions in section 502 of the Act shall apply to this permit and are incorporated herein by reference. Unless otherwise specified in this permit, additional definitions words or phrases used in this permit are as follows:

1. *Act* means the Clean Water Act (33 U.S.C. 1251 et. seq.) as amended.

2. *Applicable effluent standards and limitations* means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

3. *Applicable water quality standards* means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him/her, pursuant to section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to section 303(b) or 303(c) of the Act.

4. *Blowout preventer fluid* means a fluid used to actuate the hydraulic blow out preventer at the well site.

5. *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

6. *Coastal* means any water, including any wetland, landward of the inner boundry of the territorial seas.

7. *Deck drainage* means all waste resulting from platform washings, deck washings, runoff from curbs, gutters, and drains including spillage of drilling muds, waste from drip pans and rig floor wash down and fluids derived from wash areas.

8. *Drill cuttings* means particles generated by drilling into subsurface geologic formations and which are carried to the surface with the drilling fluids.

9. *Drilling fluid* means any fluid sent down-hole, including muds and any specialty products, from the time the well is begun until the final cessation of drilling.

10. *Environmental Protection Agency* means the U.S. Environmental Protection Agency.

11. *Formation test fluids* means fluids brought up from wells as the result of testing the productivity of potentially economic oil or gas from geologic formations encountered during drilling.

12. *National Pollutant Discharge Elimination* means the national program for issuing, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 318, 402 and 405 of the Act.

13. *Produced sand* means particulate matter, sands, produced along with oil, gas and water during the production of oil and gas.

14. *Regional Administrator* means the Administrator of the U.S. Environmental Protection Agency, Region 6.

15. *Seepage* as used in the permits means the physical, slow movement of wastewater through a porous material in sufficient quantity to produce visible unbroken surface flow from a seepage area to waters of the United States.

16. *Severe property damage* means substantial physical damage to property, damage to treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of bypass. Severe property damage does not mean economic loss caused by delays in production.

17. *Territorial Seas* means the seas falling seaward of a line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of the inland waters, extending seaward a distance of 3 miles (CWA section 502).

18. *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

19. *Wetlands* means those areas which are inundated or saturated by surface or ground water at a frequency to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, fens, bogs and similar areas as indicated at 40 CFR 435.41(f).

[FR Doc. 91-4367 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Annette B. Godwin, et al.

1. The Commission has before it the following groups of mutually exclusive applications for six new FM stations:

Applicant, city and state	File No.	MM docket No.
I		
A. Annette B. Godwin; Fernandina Beach, Fl.	BPH-891129MF	91-17
B. Fernandina Beach FM Limited Partnership; Fernandina Beach, Fl.	BPH-891129MH	
C. Marin A. Secrest; Fernandina Beach, Fl.	BPH-891130MH	
D. (James C. Zink and James C. Knight d/b/a/ J & J Communications of North Florida; Fernandina Beach, Fl.	BPH-891130MI	
E. Sage Broadcasting Corporation of Jupiter, Florida; Fernandina Beach, Fl.	BPH-891130MK	
F. First Coast Broadcasting, Inc.; Fernandina Beach, Fl.	BPH-891130ML	
G. Galaxy Broadcasting, Limited Partnership; Fernandina Beach, Fl.	BPH-891130MM	
H. Fernandina Beach Radio Partners; Fernandina Beach, Fl.	BPH-891130MN	
I. Emily Metcalf; Fernandina Beach, Fl.	BPH-891130MO	
J. Mardirossian Broadcasting, Inc.; Fernandina Beach, Fl.	BPH-891130MP	
K. Broomeco Broadcasting, Inc.; Fernandina Beach, Fl.	BPH-891130MR	
L. Northeast Florida Radio, Inc.; Fernandina Beach, Fl.	BPH-891129MG (dismissed herein)	
M. (Robert G. Kerrigan and George W. Estess d/b/a) KerrEss Broadcasting; Fernandina Beach, Fl.	BPH-891130MJ (dismissed herein)	
Issue Heading and Applicants		
1. Environmental, F		
2. Air Hazard, A, B, C, D, E, F, G, H, I, J		
3. Comparative, A-K		
4. Ultimate, A-K		
II		
A. Christian R. Caggiano; South Webster, OH.	BPH-890929MI	91-18
B. South Webster Broadcasting, Inc.; South Webster, OH.	BPH-890929MJ	
C. Hayes MediaCom; South Webster, OH.	BPH-891004MA	
Issue Heading and Applicant(s)		
1. Air Hazard, A, C		
2. Comparative, A, B, C		
3. Ultimate, A, B, C		
III		
A. Robert A. Benns; Ringgold, GA.	BPH-891108MF	91-19
B. James Edward Price; Ringgold, GA.	BPH-891109MD	
C. Teresa G. Bennett; Ringgold, GA.	BPH-891109ME	
D. Myra Devona Poe; Ringgold, GA.	BPH-891109MF	
E. SML Communications, Inc.; Ringgold, GA.	BPH-891109MG	
F. Rainmaker Broadcasting Group, Inc.; Ringgold, GA.	BPH-891109MI	
Issue Heading and Applicant(s)		
1. Comparative, A, B, C, D, E, F		
2. Ultimate, A, B, C, D, E, F		
IV		
A. Student Media Center of the University of Mississippi; University, MS.	BPH-851017MB	91-20
B. David T. Murray; University, MS.	BPH-851016MZ	

Applicant, city and state	File No.	MM docket No.
Issue Heading and Applicant(s)		
1. Air Hazard, B		
2. Comparative, A, B		
3. Ultimate, A, B		
V		
A. Joyce H. Henderson; Glencoe, Alabama.	BPH-891025MG	91-21
B. Houston L. Pearce; Glencoe, Alabama.	BPH-891025MH	
C. Appalachian Broadcasting Company; Glencoe, Alabama.	BPH-891025MI	
D. Glencoe Broadcasting, Inc.; Glencoe, Alabama.	BPH-891026MB	
E. James Eugene Hodges; Glencoe, Alabama.	BPH-891026MM	
F. Bussey-Hayes Communications of Glencoe, Alabama; Glencoe, Alabama.	BPH-891026MN	
G. Allen & Hill Broadcasting Co., Inc.; Glencoe, Alabama.	BPH-891026MS	
Issue Heading and Applicant(s)		
1. Comparative, A, B, C, D, E, F, G		
2. Ultimate, A, B, C, D, E, F, G		
VI		
A. Sandra H. Pearlman; Battle Ground, IN.	BPH-891005MD	91-16
B. McLean County Broadcasters, Inc.; Battle Ground, IN.	BPH-891006MW	
Issue Heading and Applicant(s)		
1. Air Hazard, A		
2. Comparative, A, B		
3. Ultimate, A, B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

[FR Doc. 91-4390 Filed 2-22-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 100 L Street, NW, room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200476.

Title: Virginia International Terminals, Inc./Senator Linie GmbH & Co. and Deutsche Seereederei Rostock GmbH (DSR) and Cho Yang Shipping Co. Terminal Agreement.

Parties: Virginia International Terminals, Inc. (VIT) Senator Linie GmbH & Co. (Senator) Deutsche Seereederei Rostock GmbH (DSR) Cho Yang Shipping Co. (Cho Yang).

Synopsis: The Agreement provides for a 60-day interim rate agreement between VIT and a joint service operating under the name Tricontinental Services with Senator, DSR and Cho Yang as parties.

By Order of the Federal Maritime Commission.

Dated: February 19, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4305 Filed 2-2-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Westchester Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 15, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Westchester Financial Corporation, Naperville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First State Bancorp, Inc., Caruthersville, Missouri; to acquire 100 percent of the voting shares of Farmers Bank of Portageville, Portageville, Missouri.

Board of Governors of the Federal Reserve System, February 19, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4322 Filed 2-22-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020491 AND 021591

Name of acquiring person, name of acquired person, and name of acquired entity	PMN number	Date terminated
PSL Healthcare System, American Medical Holdings, Inc., Amieub (PSL), Inc., and New H PSL, Inc., et al	91-0520	02/04/91
Trustor Automotive Holdings B.V., NEWCO, NEWCO	91-0512	02/05/91
The Washington Water Power Company, ALLTEL Corporation, CP National Corporation	91-0539	02/05/91
Teijin Seiki Co., Ltd., Quincy Technologies, Inc., Quincy Technologies, Inc	91-0492	02/06/91
Swift Energy Company, First Mississippi Corporation, First Energy Corporation	91-0527	02/06/91
Sir Run Run Shaw, R.H. Macy & Co., Inc., R.H. Macy & Co., Inc	91-0532	02/06/91
Petroleos de Venezuela S.A., Seaview Petroleum Co. L.P., Seaview Oil Company	91-0546	02/06/91
Petroleos de Venezuela, S.A., Petroleos de Venezuela, S.A., Seaview Oil Company	91-0551	02/06/91
Meridian Bancrop, Inc., Old Stone Corporation, Old Stone Mortgage Corporation	91-0547	02/08/91
Winton M. Blount, Simon Engineering plc, Gear Products, Inc	91-0548	02/08/91
Summit Ventures II L.P., Aluminum Company of America, LBJ Opco, Inc./LBJ Holdings, Inc	91-0561	02/08/91

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 020491 AND 021591—Continued

Name of acquiring person, name of acquired person, and name of acquired entity	PMN number	Date terminated
Northeast Utilities, Public Service Company of New Hampshire, Public Service Company of New Hampshire	91-0572	02/06/91
Boston Ventures Limited Partnership III, George A. Silverman, and Sunnie G. Silverman	91-0571	02/11/91
Ciments Francais, San Juan Cement Company, Inc., San Juan Cement Company, Inc	91-0523	02/13/91
The Kyowa Bank, Ltd., The Saitama Bank, Ltd., The Saitama Bank, Ltd	91-0544	02/13/91
Research Health Services, Medical Center of Independence Inc., Medical Center of Independence, Inc	91-0521	02/14/91
New York Life Oil & Gas Operating Production Pts. III-D, Pacific Enterprises, Pacific Enterprises	91-0564	02/15/91
ITT Corporation, The Equitable Life Assurance Society of the U.S., Park Central Joint Venture	91-0588	02/15/91
Thorn EMI plc, Thames Television plc, Thames Television plc	91-0594	02/15/91
Continental Airlines Holdings, Inc., Martin R. Shugrue, Jr., Trustee of the Estate of EAL, certain assets of Eastern Air Lines, Inc	91-0604	2/15/91

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-4355 Filed 2-22-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902-3147]

Nobody Beats the Wiz, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey retailer of consumer electronic goods from violating the Pre-Sale Availability Rule, promulgated under the Magnuson-Moss Warranty Act, requiring warranty disclosures. Respondent also would be required to instruct all current and future Wiz retail-store managers engaged in the sale of consumer products as to their obligations and duties under the Act.

DATES: Comments must be received on or before April 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, Federal Trade Commission, New York Regional Office, 150 William St., suite 1300, New York, N.Y. 10038. (212) 264-1207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

[File No. 902-3147]

In the Matter of Nobody Beats the Wiz, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nobody Beats the Wiz, Inc., a corporation, and it now appearing that Nobody Beats the Wiz, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Nobody Beats the Wiz, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nobody Beats the Wiz, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1300 Federal Boulevard, Carteret, New Jersey 07008.

2. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint as attached.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. A courtesy copy of the decision containing the agree-to-order shall also be mailed to proposed respondent's counsel, Schekter Rishty & Goldstein P.C. Attention: Robin Cass, Esq. at 10 Columbus Circle, New York, New York 10019. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

The definitions of terms contained in section 101 of the Magnuson-Moss Warranty Act, Public Law 93-637, 15 U.S.C. 2301, and in rule 702, 16 CFR 702.1, promulgated thereunder, shall apply to the terms of this Order.

I

It is ordered that respondent Nobody Beats the Wiz, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device in connection with the sale or offering for sale of any consumer product in or affecting commerce, do forthwith cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15.00 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended.

II

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, deliver to each current retail store manager and assistant manager engaged in the sale of consumer products on behalf of respondent, a copy of this Order to cease and desist.

III

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, instruct all current retail store managers and assistant managers engaged in the sale of consumer products on behalf of respondent as to their specific

obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

IV

It is further ordered that respondent shall instruct all future retail store managers and assistant managers who will be engaged in the sale of consumer products on behalf of respondent, before they assume said responsibilities for respondent, as to their specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order.

V

It is further ordered that respondent shall, within thirty (30) days of the date of service of this Order, develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

VI

It is further ordered that respondent shall, for a period of not less than two (2) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) Copies of all written instructions provided by respondent to its retail store managers and assistant managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301) and this Order; (ii) copies of signs posted by respondent in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by respondent's retail store outlets for examination by prospective buyers on request.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that respondent shall, within sixty (60) days after service of this Order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nobody Beats the Wiz, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

An investigation of Nobody Beats The Wiz, Inc. ("Wiz"), which operates a chain of consumer electronic retail stores, revealed that the Wiz failed to make consumer product warranties available to consumers prior to sale pursuant to the Pre-Sale Availability Rule, promulgated under the Magnuson-Moss Warranty Act.

Specifically, the complaint charges that the Wiz violated the Pre-Sale Availability Rule by failing to make the texts of written warranties readily available for examination by prospective buyers prior to sale through utilization of one or both of the following methods required by 16 CFR 702.3(a), as amended:

1. Displaying the text of the warranty in close proximity to the warranted product;

2. Furnishing the text of the warranty upon request prior to sale and placing signs reasonably calculated to elicit the prospective buyer's attention in prominent locations in the store or department advising such prospective buyers of the availability of warranties upon request.

The complaint further states that the failure to comply with the provisions of 16 CFR part 702, as amended, constitutes a violation of the Magnuson-Moss Warranty Act and, pursuant to section 110(b) thereof, an unfair or deceptive practice under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

The consent order contains provisions designed to seek compliance with the Pre-Sale Availability Rule. Part I of the Order requires that the Wiz cease and desist from failing to make a text of any written warranty on a consumer product actually costing more than $15.00 readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in 16 CFR 702.3(a), as amended. Each Wiz manager and assistant manager will receive a copy of this Order to cease and desist and instruction on their specific obligations and duties under the Magnuson-Moss Warranty Act and this Order. Moreover, the Order further provides that the Wiz instruct all future Wiz retail store managers and assistant managers as to their specific obligations and duties under the Magnuson-Moss Warranty Act and this Order before they assume responsibilities on behalf of the Wiz.

Part V of the Order requires the Wiz, within thirty (30) days of the date of service of this Order, to develop and implement a program to instruct its sales personnel about the availability and location of warranty information.

Part VI of the Order provides that the Wiz shall, for a period of not less than two (2) years from the date of service of the Order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) Copies of all written instructions provided by the Wiz to its retail store managers and assistant managers and sales personnel regarding their obligations and duties under the Magnuson-Moss Warranty Act and this Order; (ii) copies of signs posted by the Wiz in its retail store outlets designed to elicit prospective buyers' attention to the availability of the text of written warranties for review upon request; and (iii) copies of the text of written warranties made readily available by the Wiz's retail store outlets for examination by prospective buyers on request.

Part VIII requires the Wiz to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-4354 Filed 2-22-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 901-0104]

Torrington Co., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, two producers of needle rollers, The Torrington Company, of Connecticut, and Universal Bearings, Inc., of Indiana, from implementing or otherwise providing for any consolidation of the business or assets of the entity to be acquired and the acquiring entity prior to the consummation of the proposed acquisition.

DATES: Comments must be received on or before April 26, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580, (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

[File No. 901-0104]

In the Matter of The Torrington Co., a corporation, and Universal Bearings, Inc., a corporation.

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of The Torrington Company ("Torrington"), a corporation, and Universal Bearings, Inc. ("Universal"), a corporation, hereinafter sometimes collectively referred to as "respondents", and it now appearing that each respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between each respondent by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Torrington is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 59 Field Street, Torrington, Connecticut 06790.

2. Proposed respondent Universal is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 431 N. Birkey Drive, Bremen, Indiana 46506.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this Order, the following definitions shall apply:

A. *Torrington* means The Torrington Company and its successors and assigns, as well as its officers, employees, agents, divisions, subsidiaries, including their successors and assigns.

B. *Universal* means Universal Bearings, Inc. and its successors and assigns, as well as its officers, employees, agents, divisions, subsidiaries, and their successors and assigns.

C. *The relevant product* means rollers, pins, and axle shafts, each an assembly or component part of an assembly used to reduce the resistance to relative motion between two objects in contact.

I

It is ordered that respondents Torrington and Universal, in connection with any proposed acquisition of stock, share of capital, or production assets of any person manufacturing or selling the relevant product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall each cease and desist from directing, implementing or otherwise providing for any consolidation of the business or assets of the person to be acquired and the acquiring person prior to the consummation of the proposed acquisition.

II

It is further ordered that respondents Torrington and Universal shall each:

A. Within thirty (30) days following the date this Order becomes final, provide a copy of this Order to each officer of the respondent, each director of the respondent, each director of the respondent, and each relevant product salesman of the respondent;

B. File a verified written report with the Federal Trade Commission within sixty (60) days following the date this Order becomes final and at such other times as the Federal Trade Commission or its staff may, by written notice to the respondent, require, setting forth in detail the manner and form in which it has complied and is complying with this Order; and

C. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

III

It is further ordered that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request by the Commission or its staff and on reasonable notice to any respondent made to its principal office, such respondent shall permit duly authorized representatives of the Commission:

A. Reasonable access during respondent's office hours, in the presence of counsel, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order, for inspection and copying; and

B. An opportunity, subject to respondent's reasonable convenience, to interview, in the presence of counsel, officers or employees of respondent regarding such matters.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted an agreement to a proposed consent order from The Torrington Company ("Torrington") and Universal Bearings, Inc. ("Universal").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

On April 11, 1990, the Commission issued Requests for Additional Information to Torrington's parent, Ingersoll-Rand Company ("IRC"), and Universal in connection with IRC's proposed acquisition of Universal. The proposed complaint alleges that during the Hart-Scott-Rodino waiting period, Torrington and Universal prematurely began to consolidate their businesses in violation of section 5 of the Federal Trade Commission Act in the market for rollers, pins, and axle shafts.

The proposed consent order provides that, in connection with any proposed acquisition in the relevant market, Torrington and Universal shall each cease and desist from any consolidation of the business or assets of the person to be acquired and the acquiring person prior to the consummation of the proposed acquisition. However, the terms of the proposed consent order are not intended to prohibit or restrict the parties from, prior to consummation of the proposed acquisition: (1) Performing customary due diligence in order to determine the value of the business or assets, or whether to purchase the business or assets; or (2) planning, independently or jointly, for consolidation of the business or assets after the acquisition is consummated. Torrington and Universal are also required to provide to the Commission a report of their compliance with the provisions of the order within sixty (60) days following the date the order becomes final.

The Commission anticipates that the effect of the proposed order will be to maintain the opportunity for competition during the Hart-Scott-Rodino waiting period in the market for rollers, pins, and axle shafts.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 91-4353 Filed 2-22-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Announcement Number 116

Availability of Funds for Fiscal Year 1991 for Cooperative Agreements to Conduct Research, Treatment, and Education Programs on Lyme Disease in the United States

Introduction

The Centers for Disease Control announces a program for competitive cooperative agreements to conduct ecological and epidemiological research studies of Lyme disease. These include: Disease surveillance and ecological and epidemiological studies, development and evaluation of prevention/control strategies, and development of improved diagnostic tests. In addition, funds are available for public information and education programs. This program addresses the twentieth priority area, "Immunization and Infectious Diseases," of the Healthy People 2000 objectives. Its overall objective is to lower the incidence of Lyme disease in hyperendemic states to 5 per 100,000 population or less by the year 2000.

Authority

This program is authorized by section 301 (42 U.S.C. 241) and section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants include public and nonprofit organizations able to provide services in geographical areas where no fewer than 250 cases of Lyme disease have been reported to the public health office of the State(s) involved or to the CDC in fiscal year 1990 (October 1989 to September 1990). Thus, universities, colleges, research institutions, State and local health departments, and private nonprofit organizations are eligible for these cooperative agreement funds. Applications containing feasible proposals for public health education are of particular interest.

Participation in proposed activities by physicians and scientists with expertise and experience in Lyme disease and its associated environmental entomological aspects is desirable. In addition, when appropriate, program activities should involve adjacent political jurisdictions. Collaborative efforts between State and local health departments, universities, colleges, and private nonprofit organizations are both appropriate and encouraged.

Availability of Funds

Approximately $2,700,000 will be available in fiscal year 1991 to fund multiple awards; at least $675,000 of these funds will be available for development, production,and dissemination of public education materials. Varying amounts of funds will be available to develop disease surveillance, conduct ecological and epidemiological studies, develop prevention and control activities, develop better diagnostic tests, and develop and disseminate educational materials and programs. About 10–12 awards, ranging from $50,000 to $250,000, are expected. Applications may be submitted for any or all of the activities described above.

The cooperative agreements are expected to begin on or about May 1, 1991, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. There are no matching or cost participation requirements; however, the applicant's anticipated contribution to the overall program costs, if any, should be provided on the application. These funds should not supplant existing expenditures in this disease area.

Purpose

The purpose of these cooperative agreements is to: (1) Provide assistance in assessing the incidence and prevalence of Lyme disease in various geographic regions of the United States, and to critically evaluate the national surveillance case definition in this process, (2) assess risk factors associated with the transmission of the disease in the same locations, including the population density of vector tick species and ecological factors which result in high infection rates in tick and vertebrate host populations, (3) characterize better the etiological agent, (4) develop more sensitive and specific diagnostic tests, (5) develop and evaluate more effective prevention and control strategies for Lyme disease, and (6) educate the public concerning the need for early diagnosis, treatment, control, and prevention.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting selected activities under A. below and CDC shall be responsible for conducting activities under B. below. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

Recipients will be expected to participate fully or selectively in the following activities, depending upon support requested for differing portions of the announcement. Applications for ecological and epidemiological studies should demonstrate access to information contained in the statewide surveillance system.

1. Disease Surveillance and Ecological and Epidemiological Studies

a. Implement, maintain, and evaluate an active Lyme disease surveillance system based on the 1990 CDC/Council of State and Territorial Epidemiologists (CSTE) Lyme disease surveillance definition.

b. Initiate epidemiological studies, utilizing descriptive, correlative, case-control and seroepidemiological methods to elucidate risk factors for infection and disease in specific geographical foci representing differing risk circumstances.

c. Initiate appropriate ecological studies to define the transmission pattern in nature by identifying tick vectors and vertebrate hosts, describing their population dynamics, and determining infection rates with *Borrelia burgdorferi*. Correlate these data with human infection using epidemiological methods.

2. Develop and evaluate prevention/control strategies

a. Devise, implement, and evaluate strategies of prevention and control based upon the results of epidemiological studies of risk factors for Lyme disease.

b. Design, implement, and evaluate an integrated pest management and community-based approach for the prevention and control of Lyme disease. The proposed method could include area or host-targeted acaracide treatment, environmental modification, and host management.

c. Initiate studies to identify and describe the emergence of Lyme disease into previously nonendemic areas.

3. Develop improved diagnostic tests

a. Develop and test new, more sensitive methods of isolating *B. burgdorferi* from clinical specimens.

b. Develop new and improved diagnostic methods for Lyme disease diagnosis, including serology, antigen detection, and polymerase change reaction (PCR) assays.

4. Develop and disseminate disease information

a. Develop, publish, and disseminate information on the distribution of Lyme disease in the geographical area being served by the applicant; update these data annually showing trends of incidence and other descriptive epidemiological characteristics of the disease.

b. Develop new educational materials specifically for health care providers on all aspects of clinical diagnosis and treatment of Lyme disease.

c. Develop new educational materials for the general public in specific geographical areas on the ecology, prevention and control of Lyme disease.

d. Submit all materials to panel (established in cooperation with CDC) for review and approval.

e. Develop and publish information on ecological management of tick habitats to reduce tick densities, based on research results in areas of peridomestic Lyme disease transmission. Provide educational materials regarding recognition and prompt removal of infected ticks.

f. Devise new and innovative methods/approaches to educate both medical and lay communities, such as the use of peer education.

B. CDC Activities

1. Provide technical assistance in the design and conduct of research.

2. Provide assistance to recipients regarding development of study protocols, data collection methods, and training as necessary.

3. Assist in the development of data management processes.

4. Perform selected laboratory tests.

5. Coordinate research activities among different sites, including laboratories and consultants.

6. Participate in the analysis of research information and presentation of research findings.

7. Form a panel of physicians and/or scientists to review educational materials.

All educational materials developed as a result of these agreements must be reviewed by a panel of physicians and/or scientists before production and dissemination of the materials. The panel will be composed of individuals known to have expertise on various aspects of Lyme disease in the United States, and agreed upon by both CDC and the cooperative agreement recipients.

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals

will be subject to review under the Paperwork Reduction Act.

Evaluation Criteria

Each application will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the purpose of the proposed activity and the feasibility of accomplishing the outcomes described.

2. The extent to which background information and other data demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target populations or study objects.

3. The degree to which the proposed objectives are consistent with the defined purpose as defined in the "Purpose" section of this application and are specific, measurable, and time-phased.

4. The degree to which research plans will be able to achieve the objectives and the quality of the methods and instruments to be used.

5. The quality of the plan of operation for conducting the proposed activities and the degree to which the plan covers proposed activities outlined under "Recipient Activities" and specifies the who, what, where, how, and timing for the start and completion of each. Considerable emphasis will be placed on the selection of the geographical area where studies will be conducted and to the ability of the plan to encompass portions of endemic or nonendemic areas which are in political subdivisions adjoining that of the applicant.

6. The educational materials are based on accurate medical and scientific facts and the methods that will be used to evaluate and effectiveness of the developed materials, including their adequate pretesting on a representative sample of the intended target population.

7. The appropriateness and thoroughness of the methods used to evaluate the project.

8. The qualifications, including training and experience, of project personnel, and the projected level of effort by each toward accomplishment of the proposed activities.

9. The extent to which the applicant addresses desirable attributes described in "Eligible Applicants."

10. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application submission and deadline

A signed original and two copies of the application form PHS 5161-1 must be submitted to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta Georgia 30305, on or before March 29, 1991.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late applications: Applications which do not meet the criteria in 1.a. or b. above are considered late appplications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and telephone number, and will need to refer to Announcement Number 116.

Dated: February 19, 1991.
Signed by:

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-4321 Filed 2-22-91; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Institute of General Medical Sciences; notice of meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1991.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in §§ 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Diefenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone are listed below each committee.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee
Executive Secretary: Dr. Carole Latker, Room 9A10, Westwood Bldg., Telephone: 301-496-7125
Dates of Meeting: March 4-5
Place of Meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.
Open: March 4, 8:30 a.m.-9:30 a.m.
Closed: March 4, 9:30 a.m.-5 p.m. March 5, 8:30-adjournment
Name of Committee: Minority Programs Review Committee
Name of Subcommittee: Minority Access to Research Careers Review Subcommittee
Executive Secretary: Dr. Norka Ruiz Bravo, Room 9A16, Westwood Building, Telephone: 301-496-7585
Dates of Meeting: March 7-8
Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892
Open: March 7, 8:30 a.m.-9:30 a.m.
Closed: March 7, 9:30 a.m.-5 p.m. March 8, 8:30 a.m.-adjournment
Name of Committee: Minority Programs Review Committee
Name of Subcommittee: Minority Biomedical Research Support Subcommittee
Executive Secretary: Dr. Mary Stephens, room 9A13, Westwood Bldg., Telephone: 301-402-0635
Dates of Meeting: March 14-15
Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892
Open: March 14, 8:30 a.m.-9:30 a.m.
Closed: March 14, 9:30 a.m.-5 p.m. March 15, 8:30 a.m.-adjournment

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: February 13, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-4395 Filed 2-22-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-963-4230-15 AA-6707-D]

Alaska Native Claims Selection: Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands to The Tyonek Native Corporation, notice of which was published in the **Federal Register** on February 1, 1991, in Vol. 56, No. 22, p. 4074, is modified by correcting the allowable uses and the easements on page 4.

Notice of the modified decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until March 27, 1991, to file an appeal. However, parties receiving service by certified mail shall have thirty days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Christy Mitchell,

Acting Chief, Branch of Cook Inlet and Ahtna Adjudication.

[FR Doc. 91-4339 Filed 2-22-91; 8:45 am]

BILLING CODE 4310-JA-M

[OR-010-01-4320-01; GP1-112]

Lakeview District Grazing Advisory Board, Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lakeview District Grazing Advisory Board will hold a meeting on Monday, March 18, 1991. The meeting will begin at 10 a.m. at the Lakeview District Office, 1000 South 9th Street, Lakeview, Oregon. The public is invited to attend. The meeting is being held in order to discuss drought conditions, "Range of Our Vision", and the Klamath Falls Resource Management Plan.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, 1000 South Ninth Street, Lakeview, OR 97630, (503) 947-6110.

Judy Ellen Nelson,

District Manager, Lakeview.

[FR Doc. 91-4340 Filed 2-22-91; 8:45 am]

BILLING CODE 4310-33-M

[WY-040-01-4212-14; WYW-102141]

Realty Action; Direct Sale of Public Lands in Uinta County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Direct sale of public lands in Uinta County, WY.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian

T. 13 N., R. 115 W.,
Section 28: E½NE¼

The above lands aggregate 80 acres.

FOR FURTHER INFORMATION CONTACT: Darrel Short, Area Manager, Bureau of Land Management, Kemmerer Resource Area, P.O. Box 651, Kemmerer, Wyoming 83101, 307-877-3933.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to Mr. Daniel E. Rinker. Mr. Rinker currently operates two evaporation ponds on the subject lands for disposal of produced waters from the Hickey/Table Mountain areas. The proposed direct sale to Mr. Rinker would be made at fair market value.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan. The planning document and environmental assessment/land report covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Resource Area Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to reservations to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945; all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719; those rights for a telephone line as have been granted to Union Telephone Company; and those rights for a county road as have been granted to Uinta County. There will be no cancellation of existing federal grazing rights. Those AUMs associated with the above referenced parcel will be absorbed by the operators in the balance of the Bench Allotment.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of forty-five (45) days from the issuance of this notice, interested parties may submit comments to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82901. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: February 8, 1991.

Darrel J. Short,

Area Manager.

[FR Doc. 91-4375 Filed 2-22-91; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Request for Comments on the Draft Proposed Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program for 1992-1997

AGENCY: Minerals Management Service (MMS), Department of the Interior.

SUMMARY: Comments are requested on the initial proposal for a new program for the period mid-1992 through mid-

1997. The new program will succeed the current one, which covers the period July 1987 through June 1992.

Statutorily required steps in the program development process following this notice include the development of a proposed program, a proposed final program, and a final program. Draft and final Environmental Impact Statements (EIS's) will also be prepared. Comments submitted in response to this notice will be considered in preparing the proposed program and the draft EIS.

DATES: Comments and information must be received within 60 days of the publication of this notice.

ADDRESSES: Comments and information should be mailed to: Director, Minerals Management Service (MS-4230), 1849 C Street, NW., Washington, DC 20240. Hand deliveries to the Department of the Interior may be made at 1849 C Street, NW., room 2525, Washington, DC. Envelopes or packages should be marked "Comments on the Comprehensive OCS Program." If any privileged or proprietary information which the respondent wishes to be treated as confidential is submitted, the envelope should be marked "Contains Confidential Information." Under section 18(c)(1) of the OCS Lands Act, any suggestions from the executive of any affected local government in an affected State should also be submitted to the Governor of such State.

FOR FURTHER INFORMATION CONTACT: For information on the development of the new comprehensive program, telephone Bob Samuels or Tim Redding, Branch of Program Development and Planning, at (202) 208-3072. For copies of block-specific maps and documents describing the draft proposed comprehensive program (and for documents describing the 1987 program), telephone orders can be placed by calling Jan Arbegast at the above number.

SUPPLEMENTARY INFORMATION: Comments are requested from States, local governments, other interested individuals and groups, the oil and gas industry, and Federal agencies to assist in preparing a Comprehensive OCS Natural Gas and Oil Resource Management Program to cover the period mid-1992 to mid-1997.

Development of the comprehensive program enables the Federal Government, affected States and localities, other interested parties, and industry to plan for coordination concerning OCS oil and gas activities.

The program preparation process will follow all the analytic and procedural steps set out in section 18 of the OCS Lands Act. As part of this process, consideration will continue to be given to new approaches to the OCS program, with the aim of reaching consensus as well as obtaining a proper balance between the potential benefits and risks.

The preparation of the EIS associated with the new program will be in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA). As part of the scoping process initiated in July 1989, comments received in response to this notice will be considered in the preparation of the EIS.

The Draft Proposed Comprehensive Program

The draft proposed comprehensive program contains a number of initiatives for redirecting the OCS program.

I. Comprehensive Program Approach

A key initiative is the comprehensive, longer term approach to the OCS program, encompassing geologic and enviromental studies and assuring continued safe and clean operations.

The new comprehensive approach divides the 26 OCS planning areas into the following 3 categories of activities:

(1) Consideration of leasing *and* of studies;

(2) Consideration of studies, but no leasing; and

(3) No leasing and no leasing-related studies.

Provisions concerning operations will be effective in those planning areas where operations are permitted under the OCS Lands Act. Tentative plans concerning operations, as well as geologic and environmental studies, included as part of this draft proposed comprehensive program appear in the "Summary and Decision" document available by calling the above telephone number.

Under this approach, some planning areas are designated for consideration of further study rather than consideration of leasing in the period 1992-1997. Such studies would provide an improved basis for decisionmaking concerning that area in the period beyond 1997.

For the draft proposed comprehensive program, the OCS planning areas are categorized as follows:

Category 1. Plan for geologic and environmental studies and consider for leasing in 1992-1997:

Mid-Atlantic, South Atlantic, Eastern Gulf of Mexico (north of 26° N. Latitude and west of 86° W. Longitude), Central Gulf of Mexico, Western Gulf of Mexico, Southern California, Gulf of Alaska (Yakutat area), Cook Inlet, St. George Basin, Navarin Basin, St. Matthew-Hall, Norton Basin, Hope Basin, Chukchi Sea, and Beaufort Sea.

The term *consider for leasing* means that consultations and analyses under the National Environmental Policy Act and the OCS Lands Act are planned and not necessarily that all or even part of the area analyzed will be offered for lease.

While leasing would be considered in 15 areas, the draft proposal provides for up to 23 sales in 12 of those areas. (This contrasts with 39 sales in 21 areas in the current program.) The number of areas under consideration for leasing in the draft proposal will be narrowed down from 15 to 12 in the following way: Based on responses to Requests for Interest and Comments, one sale will be considered for either Hope Basin or St. George Basin, and one sale will be considered for Navarin Basin, or Norton Basin, or St. Matthew-Hall. (See the regional Area Evaluation and Decision Process charts at the end of this notice.)

Category 2. Consider for MMS geologic and environmental studies, but no leasing. This category includes those areas which President Bush's announcement of June 26, 1990, stated would not have leasing before the year 2000:

North Atlantic, Eastern Gulf of Mexico (south of 26° N. Latitude and east of 86° W. Longitude), Central California, Northern California, Washington-Oregon, Gulf of Alaska (Middleton Island area), Kodiak, Shumagin, and North Aleutian Basin.

Category 3. No leasing and no MMS studies related to program decisions:

Straits of Florida, Aleutian Arc, Bowers Basin, and Aleutian Basin.

A table summarizing these proposals appears below in this notice.

TABLE 1.—PROPOSED ACTIVITY BY OCS REGION AND PLANNING AREA 1992-1997

Region and planning area	Planned studies	Consider leasing*
Alaska Region:		
Gulf of Alaska		
• Yakutat	Yes	1995.
• Middleton	Yes	
Kodiak	Yes	
Cook Inlet	Yes	1994.
Shumagin	Yes	
Aleutian Arc		
North Aleutian Basin	Yes	
Bowers BAsin		
Aleutian Basin		
Norton Basin *or* Navarin Basin *or* St. Matthew Hall	Yes	1996.
Hope Basin *or* St. George Basin	Yes	1995.
Chukchi Sea	Yes	1994, 1997.
Beaufort Sea	Yes	1993, 1996o.
Atlantic Region:		
North Atlantic	Yes	
Mid-Atlantic *and* South Atlantic	Yes	1994, 1997.
Straits of Florida		
Gulf of Mexico Region:		
Easter Gulf		
• North of 26°	Yes	1994, 1997.
• South of 26°	Yes	
Central Gulf	Yes	Annually.
Western Gulf	Yes	Annually.
Pacific Region:		
Southern California	Yes	After 1/1/96.
Central California	Yes	
Northern California	Yes	
Washington-Oregon	Yes	

TABLE 1.—PROPOSED ACTIVITY BY OCS REGION AND PLANNING AREA 1992-1997—Continued

Region and planning area	Planned studies	Consider leasing*
Kodiak	Yes	
Cook Inlet	Yes	1994.
Shumagin	Yes	
Aleutian Arc		
North Aleutian Basin	Yes	
Bowers BAsin		
Aleutian Basin		
Norton Basin *or* Navarin Basin *or* St. Matthew Hall	Yes	1996.
Hope Basin *or* St. George Basin	Yes	1995.
Chukchi Sea	Yes	1994, 1997.
Beaufort Sea	Yes	1993, 19960.
Atlantic Region:		
North Atlantic	Yes	
Mid-Atlantic *and* South Atlantic	Yes	1994, 1997.
Straits of Florida		
Gulf of Mexico Region:		
Easter Gulf		
• North of 26°	Yes	1994, 1997.
• South of 26°	Yes	
Central Gulf	Yes	Annually.
Western Gulf	Yes	Annually.
Pacific Region:		
Southern California	Yes	After 1/1/96.
Central California	Yes	
Northern California	Yes	
Washington-Oregon	Yes	

* Actual dates depend upon the outcome of the Area Evaluation and Decision Process described in text.

II. New Approach to the Consideration of Areas for Leasing

The draft proposed comprehensive program provides for a new approach to the consideration of oil and gas leasing on the OCS:

—Tailoring the program for the different characteristics of each region and planning area;

—Being more selective, giving priority to the areas with oil and gas potential and avoiding areas where the risks of development are too great;

—Limiting the size of the Area Identification in some areas, where appropriate to the geology and environmental concerns (Mid- and South Atlantic [250 blocks]; Eastern Gulf of Mexico [200 blocks]; and Southern California [87 blocks]);

—Using a new Area Evaluation and Decision Process for the consideration of leasing, heightening attention to the adequacy of information and the resolution of conflicts; and

—Responding with sensitivity to the concerns of residents of areas affected by offshore development.

Maps depicting all 26 OCS planning areas and the portions of planning areas included for the consideration of leasing appear below in this notice.

The new Area Evaluation and Decision Process for the consideration of leasing in each OCS region is described just below and depicted in charts which appear at the end of this notice.

The Area Evaluation and Decision Process

The Area Evaluation and Decision Process is designed to provide a framework to order and focus the activities that must be accomplished to effectively manage OCS natural gas and oil resources—environmental studies, resource evaluation, consultations, and review of decision options under the Act and the National Environmental Policy Act. Particular emphasis will be placed on the following three objectives:

- Improving the acquisition and integration of environmental, mineral resource, and socioeconomic information to improve the quality of decisions;
- Defining leasing proposals more selectively; and
- Enhancing the opportunities for States, coastal communities, and other concerned parties to provide input into the development of plans for the management of offshore natural gas and oil resources.

The Area Evaluation and Decision Process has three interactive elements:

(1) Information Acquisition and Evaluation—the gathering and analysis of environmental, oil and gas resource, economic, and industry interest information to be used in the subsequent oil and gas management planning and decisionmaking efforts in a planning area;

(2) Planning and Consultation—the involvement of potentially affected parties in the development of decision options for the management of oil and gas resources that would subsequently undergo review and analysis pursuant to the OCS Lands Act and the National Environmental Policy Act; and

(3) Analysis of Decision Options—the analysis and further consultation associated with the statutory and regulatory review of specific leasing proposals.

(1) Information Acquisition and Evaluation

This process focuses on the acquisition of environmental, oil and gas resource, economic, and industry interest information to be used in the subsequent oil and gas management planning and decisionmaking efforts in a planning area. Existing information from all sources (including MMS's environmental studies program and geologic studies and resource evaluation studies) will be evaluated, needs for additional or better information will be identified, studies priorities will be established, and studies plans will be developed. Consultation and cooperation with a wide range of interested parties are integral parts of this process.

Establish Coordinating Mechanisms

An extensive program of contacts with State and local governments, universities, oil and gas industry groups, and other Federal agencies is essential to ensuring the acquisition and use of environmental and geologic information

in offshore oil and gas decision processes. Appropriate coordinating mechanisms (options include existing mechanisms such as task forces and Regional Technical Working Groups, as well as any new coordinating groups) will be employed to ensure broad and active participation in the acquisition, synthesis, and evaluation of environmental and oil and gas resource information. Information Transfer Meetings and environmental workshops to facilitate the development and monitoring of environmental studies are examples of the mechanisms that are employed in this process. In some planning areas, suitable coordinating mechanisms are already established; while in others, efforts will be made to expand the participation of interested parties in the coordination of information acquisition efforts. The discussion of MMS's environmental and geologic studies programs in the draft proposed comprehensive program decision documents explains these efforts in futher detail.

Information Base Review

The MMS will evaluate the status of information acquisition efforts and the quality of that information in making a determination as to whether to proceed with planning efforts for the development of leasing proposals. Options available would be to continue studies efforts until studies essential to further planning efforts are completed, to proceed with the planning process, or to abandon future studies and planning efforts. If a decision were made to proceed with planning, studies and other information gathering efforts would aslo proceed as needed.

(2) Planning and Consultation

This process is designed to involve potentially affected parties in the development of decision options for the management of oil and gas resources that would subsequently undergo review and analysis pursuant to the OCS Lands Act and the National Environmental Policy Act. The time and techniques necessary to effectively accomplish this goal may vary among planning areas. Steps in this process include a Call for Information and Nominations, scoping meetings, and other coordination meetings. In some areas, a Request for Interest and Comments will precede the decision on issuance of the Call. Existing coordinating mechanisms (Regional Technical Working Groups and task forces, for example) would be employed—as well as other consensus-building techniques, as needed—to ensure the active and effective participation of States and local governments, other Federal agencies, industry, and the public.

Request For Interest and Comments

In some areas, a Request for Interest and Comments will be issued before the Call to determine the level of interest in proceeding with planning activities. Responses to this request will help MMS judge whether the rest of the process is worth pursuing in those areas. While this step formerly solicited comments only from industry, its scope is being expanded to request comments from potentially affected parties as well.

Call for Information and Nominations/ Notice of Intent To Prepare an EIS

The Call for Information and Nominations requests all affected parties to submit written comments and to participate in the process of developing proposals to undergo analysis under the National Environmental Policy Act and section 19 of the OCS Lands Act. At this stage, all aspects of the proposals would be open for discussion—timing, configuration of the lease sale proposal and alternatives, measures to mitigate potential impacts, and issues of concern that may require special analysis. Coordination with affected parties at this stage provides the opportunity to consider the compatibility of oil and gas activities with other resource management policies and to more clearly establish a context for analysis of specific leasing, exploration, and development proposals. Consideration would also be given at this time to the appropriate level of State participation in EIS analyses (if any) and to whether other agencies with jurisdiction and expertise should be invited to participate in the preparation of the EIS.

The Call, published in the **Federal Register**, invites potential bidders to nominate areas and indicate levels of interest in leasing. The Call also solicits comments from States, localities, and all other interested parties on any environmental effects and use conflicts as well as coastal zone consistency concerns. States, localities, and others have the opportunity to comment on areas or topics of concern that should be considered in planning the lease sale. The Call also identifies the area of hydrocarbon potential. Comments are normally due 45 days after the Call is published. At the time the Call is published, consultation is begun concerning possible multiple-use conflicts with the Department of Defense and other activities in the area under consideration for leasing. Also, information is provided to affected States under section 8(g) of the OCS Lands Act.

One product of these planning and coordination activities would be the identification of a proposal and alternatives to be analyzed in an EIS and a determination of the scope of that analysis. On the other hand, these efforts may result in a determination that analysis of a leasing proposal under the National Environmental Policy Act and section 19 of the OCS Lands Act should be delayed or reconsidered in the next 5-year program. It is also possible that a finding may be made that lack of industry interest, potential environmental risks, unresolved State or local concerns that outweigh national benefits, or a combination thereof suggest that further planning efforts in a particular planning area are not worthwhile. The decision regarding abandonment or continuation of planning efforts could then be addressed, either independently by planning area, or as an issue in the next 5-year program.

(3) Analysis of Decision Options

This process provides the framework for those activities associated with the statutory and regulatory review of specific leasing proposals. As such, the sequence and scope of these activities are constrained to some degree by law or regulation. However, even within these constraints, there are opportunities to make decision documents, and consequently OCS oil and gas management decisions, more responsive to State and local concerns.

Proposed Action and Alternative Memorandum/Area Identification

The Proposed Action and Alternative Memorandum (PAAM) summarizes and analyzes responses to the Call and Notice of Intent, along with other relevant information (for example, the issues and information discussed in coordination meetings with affected parties). In analyzing responses to the Call, this memorandum would discuss data indicating industry interest, recommendations for deletions of areas, recommendations for alternate proposal configurations, and suggestions for mitigating measures.

The PAAM provides the vehicle for identification of the proposed action to be addressed in the draft EIS. This proposed action will consist of an Area Identification (the area within the planning area to be considered for leasing), and the identification of special mitigating measures proposed to be adopted for the lease sale. The area identification sets the scope of the EIS by indicating, as items to be analyzed, the major issues in the proposal area, reasonable alternatives to the Federal proposal, and possible alternative mitigating measures.

After an Area Identification decision is made, the MMS will provide the affected States earlier with detailed information concerning any blocks covered by section 8(g) of the OCS Lands Act. Consultation with a State over potential boundary issues covered by section 7 of the OCS Lands Act may be initiated, if appropriate.

Also, following the announcement of Area Identification, the Regional Director writes to the Governors of affected States and, as appropriate, members of the public who responded to the Call. He provides an explanation of how the comments were employed in the development of the proposal and alternatives to be analyzed in the EIS.

Draft Environmental Impact Statement/ Proposed Notice of Sale

The proposed action (Alternative I) in the draft EIS will be the sale configuration and terms and conditions (including proposed mitigation measures) which will be included in the proposed Notice of Sale. The analysis of potential environmental effects of oil and gas activities will focus on the area proposed for consideration for leasing as described in the proposal action. The EIS will also analyze alternatives to the proposed action, alternative mitigating measures (if reasonable alternatives are identified in the scoping process), and issues related to approved coastal zone management plans.

The proposed Notice of Sale will be issued at approximately the same time as the draft EIS. A determination of the proposed sale configuration and terms and conditions to be included in the proposed Notice will be made, prior to completion of the draft EIS, through the preparation and review of an update memorandum. Those aspects of the proposed Notice relevant to the EIS will be summarized in chapter II of the EIS. The draft EIS will be filed with the Environmental Protection Agency and a notice announcing the availability of the EIS and the proposed Notice will be published in the **Federal Register**.

90-Day Public Comment Period

The draft EIS and proposed Notice will be made available for a 90-day comment period, during which time public hearings are held in the affected region. This 90-day period extends by 30 days the 60-day period required by section 19 of the OCS Lands Act for the Governors of affected States to comment on the size, timing, or location of the sale. It is also 30 days longer than the 60-day comment period for draft EIS's recommended by the Department of the Interior's Departmental Manual. Meetings may be scheduled with commenters to enhance the public review process. Significant comments from State or local governments or individuals or organizations may result in meetings or workshops to assist in fully analyzing the comments, and if necessary, making additions or changes to the issues, alternatives, or mitigating measures being analyzed in the EIS, or to assist in making decisions on the Notice of Sale.

Public hearings on the draft EIS will be announced by means of a **Federal Register** Notice, a letter from the MMS Regional Director to the Governor or each affected State, and announcements in local newspapers. Copies of the letter to the Governor and the draft EIS are also sent to the appropriate Policy Committee members, Regional Technical Working Group members, and local government entities which participated in the planning process. Letters may also be sent to individuals or organizations which have participated heavily in the development of the proposal or alternatives.

As required by section 19 of the OCS Lands Act, the proposed Notice is sent to Governors of affected States with a letter requesting comments on size, timing, or location of the sale. This letter also explains how State coastal zone management program policies have been considered in decisionmaking and invites any further comment the State wishes to make. A copy of this letter is sent to the States' official contact in the coastal zone management agency and to the appropriate Policy Committee members.

If there is a litigated Federal/State jurisdictional dispute involving blocks under consideration for leasing, an agreement offer is made to the State at this time under section 7 of the OCS Lands Act.

Final EIS

After receipt of comments pursuant to the NEPA and section 19 of the OCS Lands Act, a final EIS will be prepared and published. The EIS will analyze options concerning the configuration of leasing proposals, mitigation measures, and timing of the leasing action (including whether and for what reasons a leasing action should be delayed or canceled). Consideration of comments received on the draft EIS and the proposed Notice will enable MMS to tailor the analysis in the final EIS to the particular concerns of commenters. Requests by commenters or other participating agencies for analysis of alternatives and/or issues will be considered in developing the EIS. Concurrently, consideration of comments submitted under section 19 of the OCS Lands Act will ensure that the final EIS and subsequent decision documents cover an appropriate range of options for a decision on the final Notice of Sale.

Final Notice of Sale

No sooner than 30 days following publication of the final EIS (a period during which comments may be received from any interested parties), a decision on whether and how to proceed with a leasing action can be made. A wide range of options is likely to be available at this stage, including options to: proceed with leasing as proposed in one or more of the EIS alternatives; adopt special mitigating measures; cancel the proposed leasing action; or delay the leasing action pending completion of studies, additional planning or consultation efforts, or the preparation of a new 5-year program. These options, and others regarding nonenvironmental matters, will be addressed in a decision memorandum. Any substantive comments received about the proposal since the filing of the final EIS will also be addressed.

Section 19 of the OCS Lands Act provides that the Secretary of the Interior is to accept recommendations of a Governor if the Secretary determines that they provide for a reasonable balance between the national interest and the well-being of the affected State. These recommendations, provided during the review period of the draft EIS and the proposed Notice of Sale, will, if necessary, receive analysis in the final EIS. The rationale for the Secretary's determination will be communicated to the Governor in writing.

If the Secretary decides to proceed, the date, timing, location, blocks to be offered, and the terms and conditions of the sale are published in the **Federal Register** not less than 30 days before the sale is conducted.

Sale

Not less than 30 days after the final Notice is published, a sale is conducted by the appropriate MMS regional office. A public opening and reading of sealed bids submitted by qualified bidders occurs.

Bid Adequacy Review

High bids for each block are evaluated after the sale to assure receipt of fair market value. The Justice Department and the Federal Trade

Commission also review the results to ensure that awarding leases does not create a situation inconsistent with antitrust laws.

Lease Issuance Decision

The Secretary has up to 90 days after receipt of bids to either accept or reject a bid. Bid acceptance decisions have been delegated to the MMS Regional Director. Normally, if a bid is accepted, the lease is issued shortly thereafter.

Other Steps in the Process

In addition to the steps described above, supplemental notices highlighting specific questions on a proposed sale may also be published for public response at various points in the process. Provisions for compliance with the requirements of the Coastal Zone Management Act Reauthorization Amendments of 1990 will be incorporated in future descriptions of this process.

III. Assurance of Fair Market Value

The current two-phased bid adequacy review process will be retained, with the basic minimum bid level proposed at $25 per acre, subject to sale-by-sale reconsideration.

Information Requested

All Parties

The MMS requests the comments of all parties on the draft proposed comprehensive program as described above. Information and criteria which support comments are also requested to assist MMS in its deliberations.

Comments are solicited on all elements of the draft proposed comprehensive program: the configuration of planning area boundaries; areas included for consideration for leasing; the frequency of sales proposed for consideration in a planning area; the Area Evaluation and Decision Process; provisions to assure the receipt of fair market value; designation of geologic and environmental study areas; and provisions to assure continued safe operations.

Parties requesting the inclusion of one or more portions of the OCS for the consideration of leasing in the new 5-year program should also indicate where leasing consideration should not or need not be pursued.

Parties requesting the exclusion of one or more portions of the OCS from consideration for leasing in the new 5-year program should also indicate where consideration for leasing should be pursued.

Respondents are urged to illustrate their written comments by marking up block-specific maps of areas to be considered for leasing. These maps have been prepared for the 15 planning areas in which leasing consideration is indicated as part of the draft proposed program. Copies of these maps can be obtained by calling the telephone number indicated above under "For Further Information Contact".

Responses to the following questions are also sought:

(1) What are additional ways to help resolve controversy concerning OCS issues—in particular, what consultation mechanism is best for each region?

(2) What are your views on the proposed new Area Evaluation and Decision Process—especially on the following elements:

(a) The new process envisions an Information Base Review step (indicated by "I" on the process charts, below) prior to the commencement of planning efforts for developing leasing proposals in each planning area. How could this step be designed so as to be most useful?

(b) The development and approval of a Proposed Action and Alternative Memorandum and the Area Identification are intended to focus the attention of decisionmakers and the public on the early definition of a realistic leasing consideration proposal and a comprehensive set of alternatives. This is intended to improve the focus and scope of the subsequent reviews under the National Environmental Policy Act and the OCS Lands Act. What consultation techniques or procedures would be most useful in this effort?

(c) In the process for the analysis of decision options outlined above, a proposed Notice of Sale would be issued at approximately the same time as the draft EIS. Thus, the review of the proposed Notice of Sale under section 19 of the OCS Lands Act would occur concurrent with the review of the draft EIS. The final EIS would then be issued prior to the final Notice of Sale. What are the advantages and disadvantages of this procedure?

(d) At what point in the process would the consistency determination required by the Coastal Zone Act Reauthorization Amendments of 1990 be most effectively made? In particular, should the consistency determination be made approximately 90 days before the decision on the final Notice of Sale?

Additional Information Requested from the Oil and Gas Industry

In addition to the information requested above, oil and gas industry respondents are requested to provide information which could be used to identify the areas most likely to contain natural gas and oil accumulations of sufficient size and number to warrant leasing, exploration, and commercial development activities under current and foreseeable technological and economic conditions.

It should be emphasized that information from industry will be considered along with comments on possible environmental effects and the results of various environmental and other cost and economic analyses to determine the size, timing, and location of areas which may be considered for leasing in the 5-year program.

All information requested should be based on estimates of resources expected to be unleased as of mid-1992.

(1) Rank each whole planning area from 1 to 26. The ranking should reflect a combination of resource assessment and interest in leasing, exploration, and development.

(2) For the 15 planning areas where the draft proposed comprehensive program provides for the consideration of leasing, provide a ranking from 1 to 14 (rank Mid- and South Atlantic as a unit). The ranking should reflect interest in the development of oil and gas resources. This ranking should take into account only those portions of the planning areas included for the consideration of leasing.

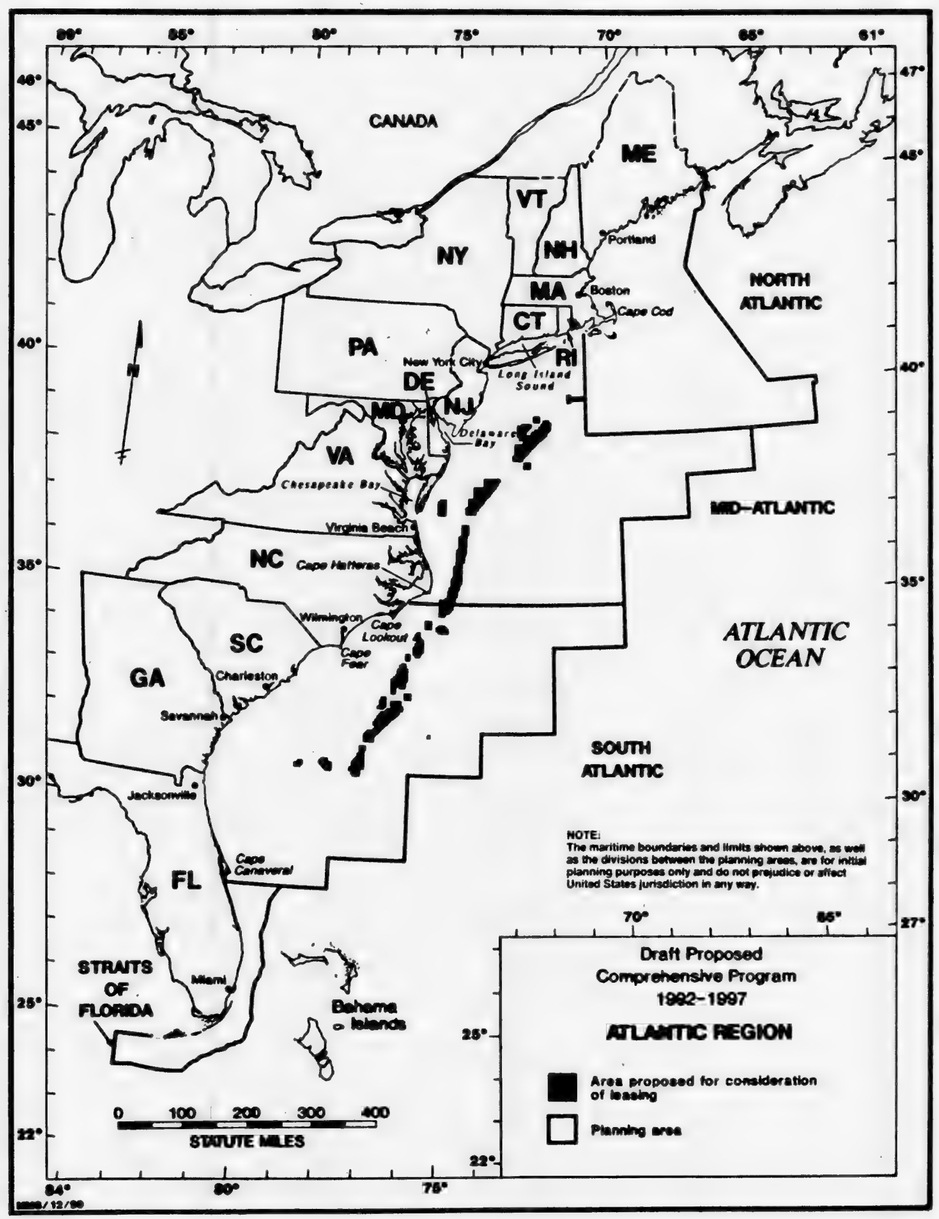
Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only privileged or proprietary information be treated as confidential, it should be submitted separately and marked as confidential. Privileged or proprietary information that is labeled confidential will be treated as confidential from the time of receipt by MMS until 5 years after final approval of the new OCS program. However, summaries of such information submitted to MMS, the names of respondents submitting it, and comments not containing such information will not be treated as confidential information. As noted above, if any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked "Contains Confidential Information."

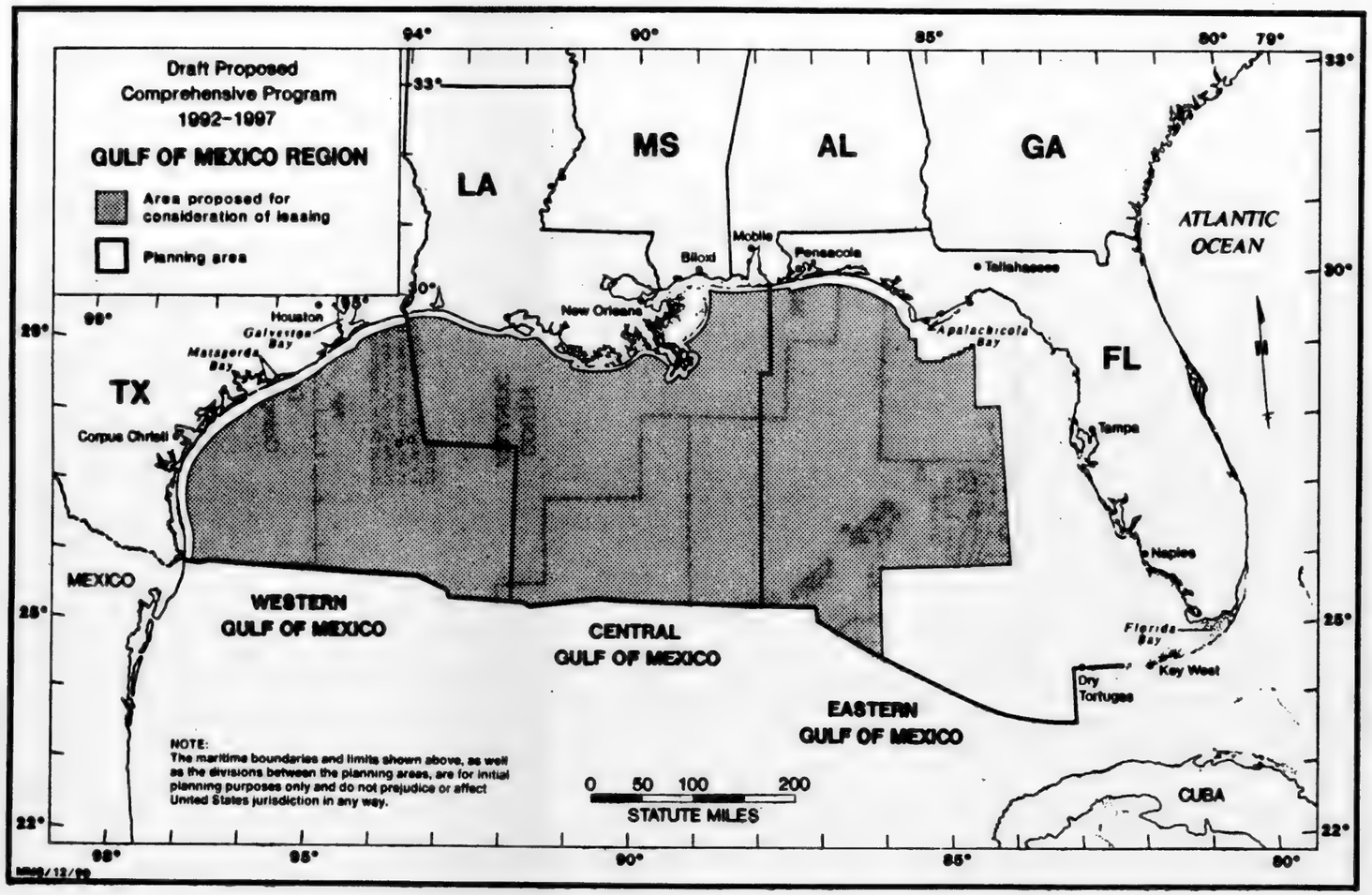
Dated: February 20, 1991.

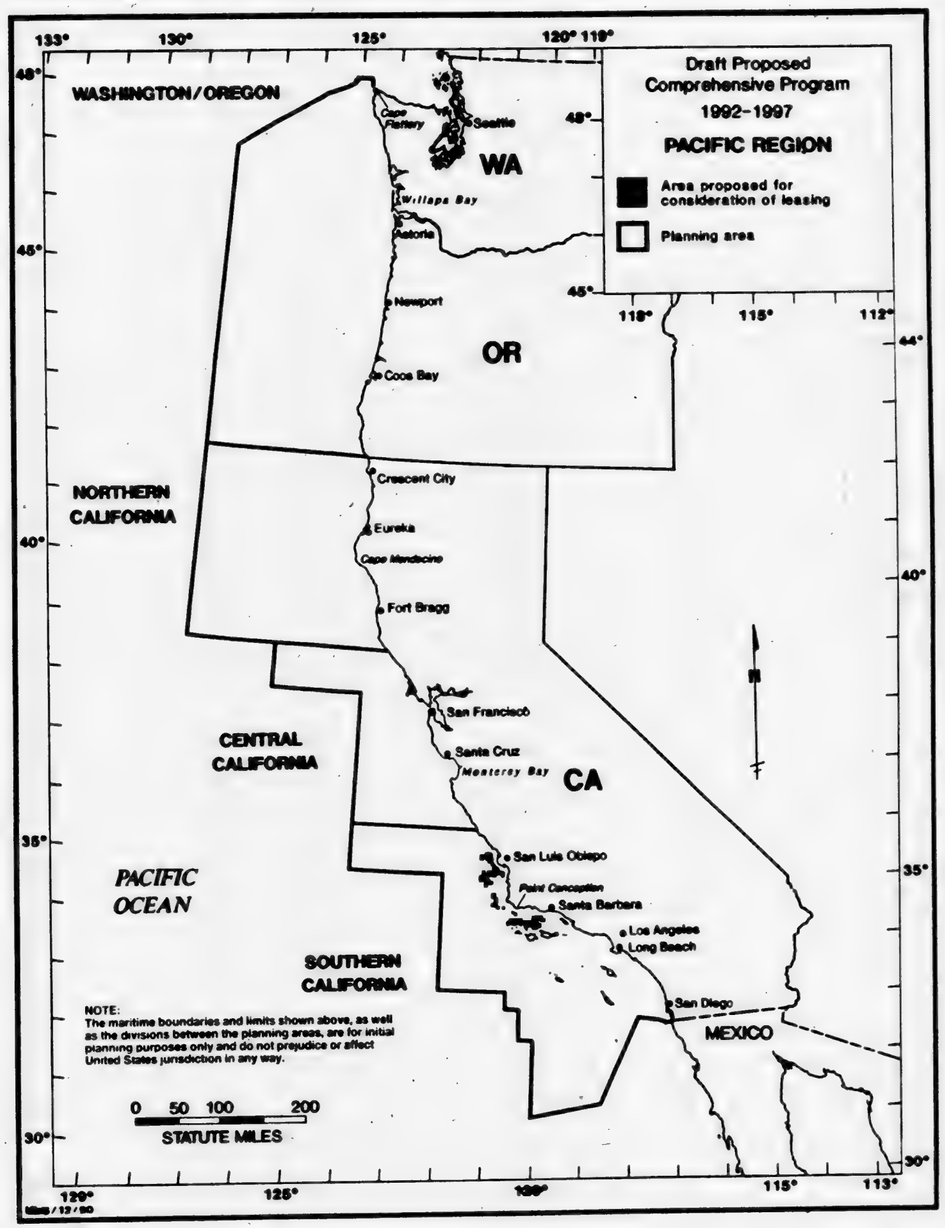
Barry A. Williamson,

Director, Minerals Management Service.

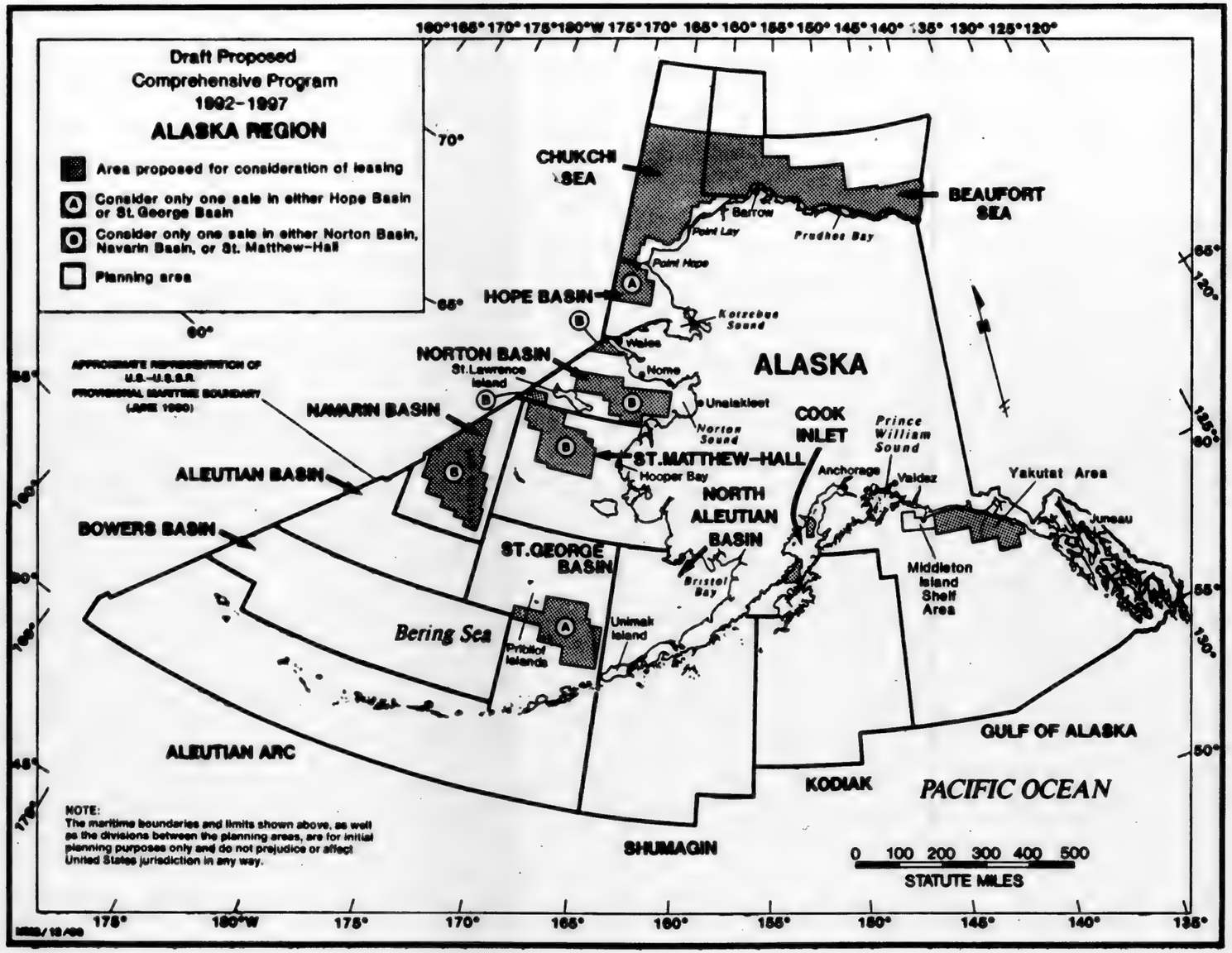
BILLING CODE 4310-MR-M




Draft Proposed
Comprehensive Program
1992–1997
GULF OF MEXICO REGION
Area proposed for consideration of leasing
Planning area
LA
MS
AL
GA
FL
TX
MEXICO
ATLANTIC OCEAN
Houston
Galveston Bay
Matagorda Bay
Corpus Christi
New Orleans
Biloxi
Mobile
Pensacola
Tallahassee
Apalachicola Bay
Tampa
Naples
Florida Bay
Key West
Dry Tortugas
CUBA
WESTERN GULF OF MEXICO
CENTRAL GULF OF MEXICO
EASTERN GULF OF MEXICO
NOTE:
The maritime boundaries and limits shown above, as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
0 50 100 200
STATUTE MILES
94°
90°
85°
80°
79°
33°
30°
28°
25°
22°
98°
95°



BEST COPY AVAILABLE


Draft Proposed
Comprehensive Program
1992-1997
ALASKA REGION
Area proposed for consideration of leasing
Consider only one sale in either Hope Basin or St. George Basin
Consider only one sale in either Norton Basin, Navarin Basin, or St. Matthew-Hall
Planning area
APPROXIMATE REPRESENTATION OF U.S.-U.S.S.R. PROVISIONAL MARITIME BOUNDARY (JUNE 1990)
CHUKCHI SEA
BEAUFORT SEA
HOPE BASIN
NORTON BASIN
NAVARIN BASIN
ALEUTIAN BASIN
BOWERS BASIN
ST.GEORGE BASIN
ST.MATTHEW-HALL
NORTH ALEUTIAN BASIN
COOK INLET
Bering Sea
ALEUTIAN ARC
SHUMAGIN
KODIAK
GULF OF ALASKA
PACIFIC OCEAN
ALASKA
Barrow
Point Lay
Prudhoe Bay
Point Hope
Kotzebue Sound
Wales
Nome
St.Lawrence Island
Unalakleet
Norton Sound
Hooper Bay
Anchorage
Valdez
Prince William Sound
Yakutat Area
Juneau
Middleton Island Shelf Area
Bristol Bay
Unimak Island
Pribilof Islands
NOTE:
The maritime boundaries and limits shown above, as well as the divisions between the planning areas, are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.
0 100 200 300 400 500
STATUTE MILES

OL

56

SS

37

FE

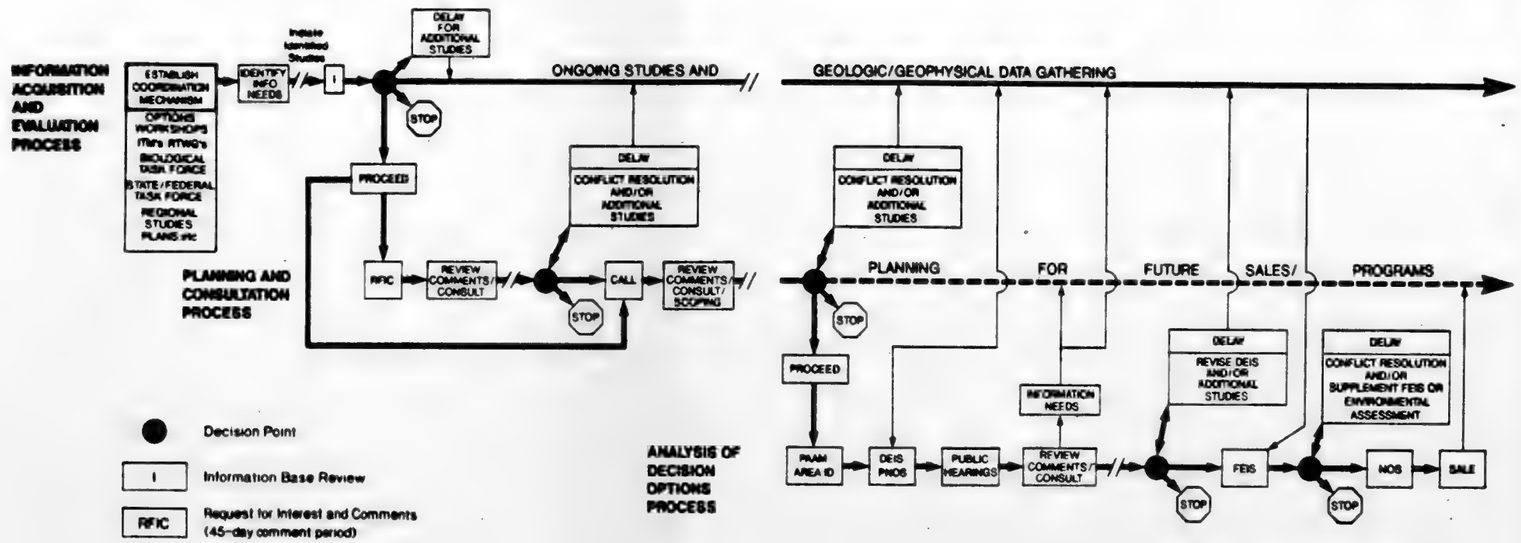
25

991

MI

ATLANTIC REGION
AREA EVALUATION AND DECISION PROCESS

DRAFT PROPOSAL



- Decision Point
- I — Information Base Review
- RFIC — Request for Interest and Comments (45-day comment period)
- CALL — Call for Information and Nominations (60-day comment period)
- PAAM AREA ID — Proposed Action and Alternative Memorandum Area Identification
- DEIS PNOS — Draft Environmental Impact Statement Proposed Notice of Sale (90-day comment period)
- FEIS — Final Environmental Impact Statement (30-day comment period)
- NOS — Notice of Sale
- Action line
- Future planning
- Information transfer

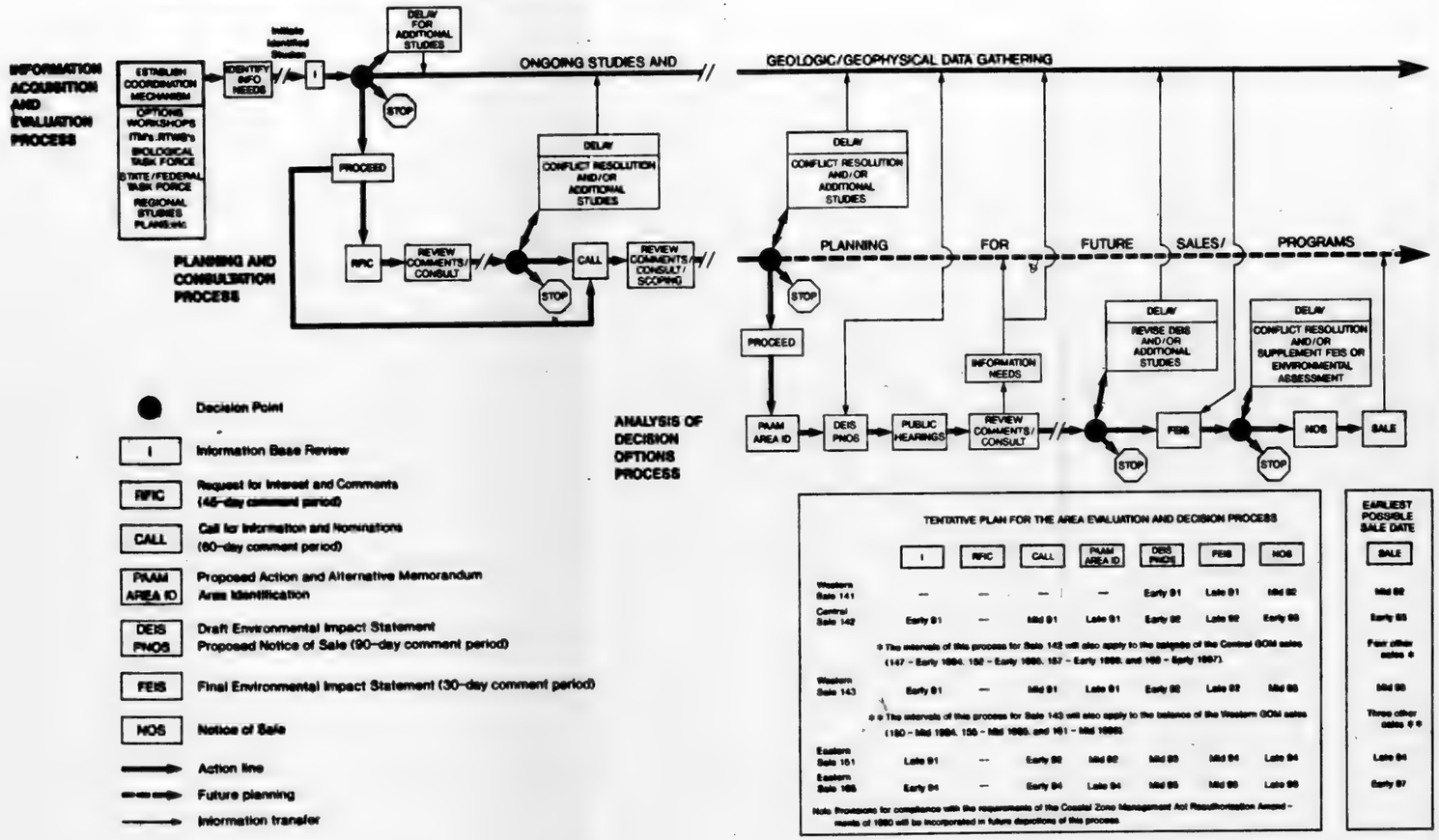
TENTATIVE PLAN FOR THE AREA EVALUATION AND DECISION PROCESS

	I	RFIC	CALL	PAAM AREA ID	DEIS PNOS	FEIS	NOS	EARLIEST POSSIBLE SALE DATE: SALE
Mid and South Sale 145	Mid 91	Mid 91	Late 91	Mid 92	Early 93	Early 94	Mid 94	Late 94
Mid and South Sale 164	Early 94	Early 94	Mid 94	Early 95	Early 96	Early 97	Early 97	Mid 97

Note: Provisions for compliance with the requirements of the Coastal Zone Management Act Reauthorization Amendments of 1990 will be incorporated in future depictions of this process.

GULF OF MEXICO
AREA EVALUATION AND DECISION PROCESS

DRAFT PROPOSAL



- Decision Point
- I — Information Base Review
- RFIC — Request for Interest and Comments (45-day comment period)
- CALL — Call for Information and Nominations (60-day comment period)
- PAAM AREA ID — Proposed Action and Alternative Memorandum Area Identification
- DEIS PNOS — Draft Environmental Impact Statement Proposed Notice of Sale (90-day comment period)
- FEIS — Final Environmental Impact Statement (30-day comment period)
- NOS — Notice of Sale
- Action line
- Future planning
- Information transfer

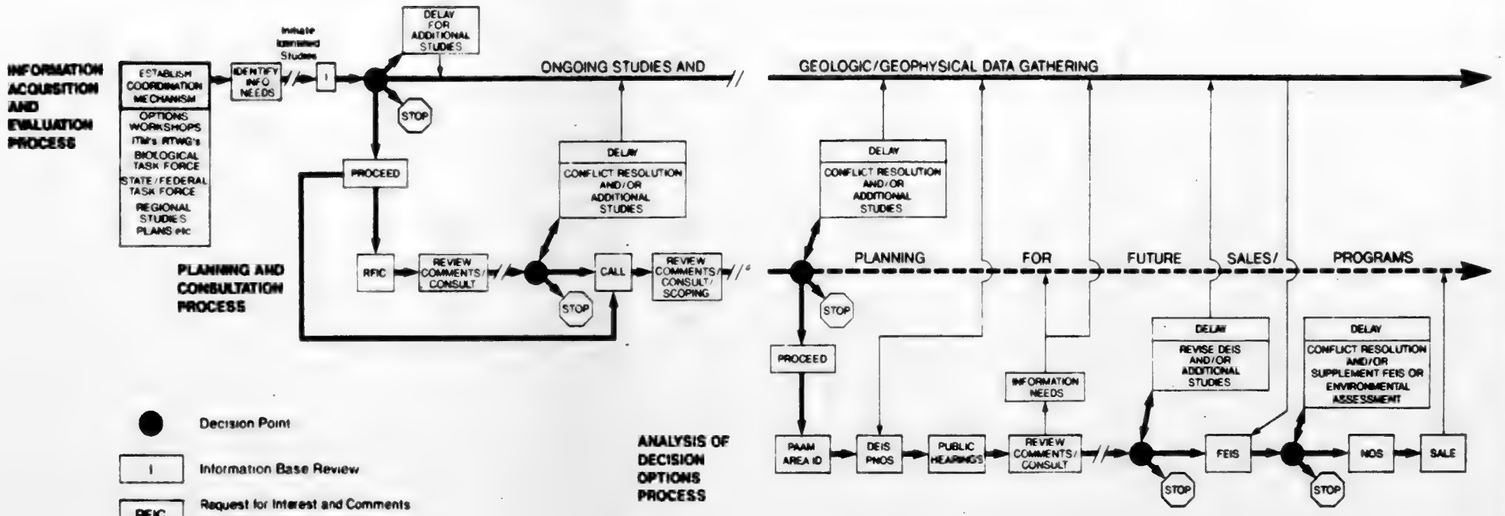
TENTATIVE PLAN FOR THE AREA EVALUATION AND DECISION PROCESS

	I	RFIC	CALL	PAAM AREA ID	DEIS PNOS	FEIS	NOS	EARLIEST POSSIBLE SALE DATE: SALE
Western Sale 141	—	—	—	—	Early 91	Late 91	Mid 92	Mid 92
Central Sale 142	Early 91	—	Mid 91	Late 91	Early 92	Late 92	Early 93	Early 93
	◊ The intervals of this process for Sale 142 will also apply to the subjects of the Central GOM sales (147 – Early 1994, 152 – Early 1995, 157 – Early 1996, and 169 – Early 1997).							Four other sales ◊
Western Sale 143	Early 91	—	Mid 91	Late 91	Early 92	Late 92	Mid 93	Mid 93
	◊ ◊ The intervals of this process for Sale 143 will also apply to the balance of the Western GOM sales (150 – Mid 1994, 155 – Mid 1995, and 161 – Mid 1996).							Three other sales ◊ ◊
Eastern Sale 151	Late 91	—	Early 92	Mid 92	Mid 93	Mid 94	Late 94	Late 94
Eastern Sale 165	Early 94	—	Early 94	Late 94	Mid 95	Mid 96	Late 96	Early 97

Note: Provisions for compliance with the requirements of the Coastal Zone Management Act Reauthorization Amendments of 1990 will be incorporated in future depictions of this process.

PACIFIC REGION
AREA EVALUATION AND DECISION PROCESS

DRAFT PROPOSAL



- Decision Point
- I — Information Base Review
- RFIC — Request for Interest and Comments (45-day comment period)
- CALL — Call for Information and Nominations (60-day comment period)
- PAAM AREA ID — Proposed Action and Alternative Memorandum Area Identification
- DEIS PNOS — Draft Environmental Impact Statement Proposed Notice of Sale (90-day comment period)
- FEIS — Final Environmental Impact Statement (30-day comment period)
- NOS — Notice of Sale
- Action line
- Future planning
- Information transfer

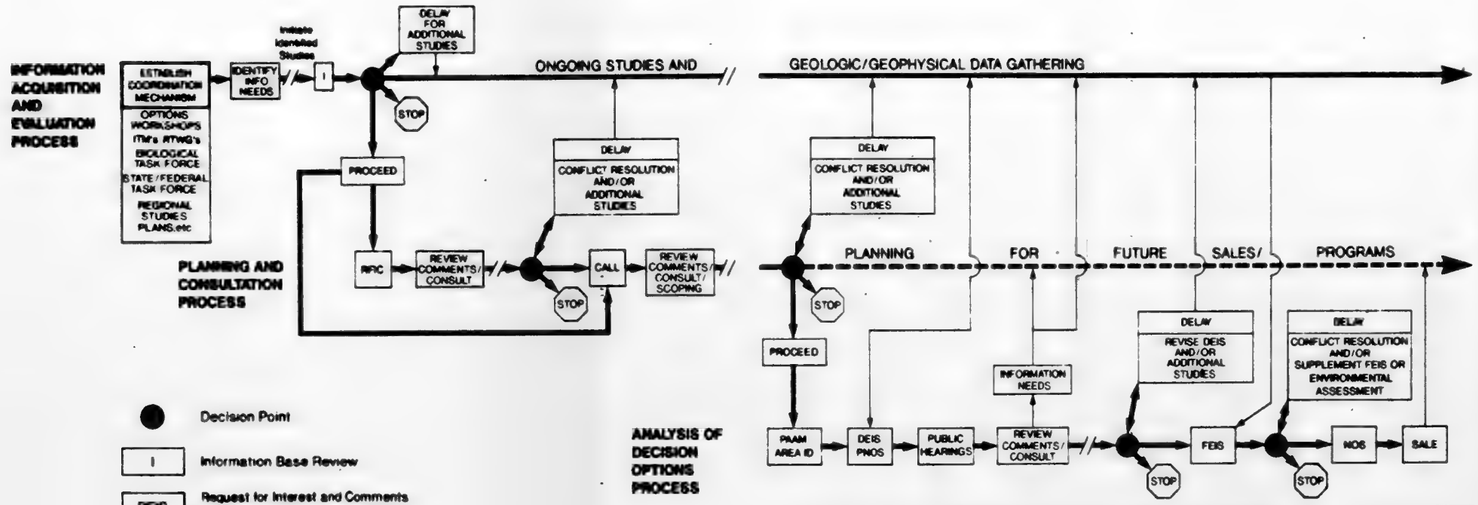
TENTATIVE PLAN FOR THE AREA EVALUATION AND DECISION PROCESS

	I	RFIC	CALL	PAAM AREA ID	DEIS PNOS	FEIS	NOS	EARLIEST POSSIBLE SALE DATE
S California Sale 163	Mid 93	--	Late 93	Mid 94	Mid 95	Early 96	Mid 96	SALE Mid 96

Note: Provisions for compliance with the requirements of the Coastal Zone Management Act Reauthorization Amendments of 1990 will be incorporated in future depictions of this process.

ALASKA REGION
AREA EVALUATION AND DECISION PROCESS

DRAFT PROPOSAL



TENTATIVE PLAN FOR THE AREA EVALUATION AND DECISION PROCESS

	I	RFIC	CALL	PAAM AREA ID	DEIS PNOS	FEIS	NOS	EARLIEST POSSIBLE SALE DATE: SALE
Beaufort Sea Sale 144	Early 91	--	Early 91	Late 91	Late 92	Mid 93	Late 93	Late 93
Chukchi Sea Sale 148	Mid 91	--	Late 91	Early 92	Early 93	Early 94	Early 94	Mid 94
Cook Inlet Sale 149	Early 91	Mid 91	Late 91	Mid 92	Mid 93	Early 94	Mid 94	Mid 94
St George Basin or Hope Basin Sale 153	Mid 92	Mid 92	Late 92	Mid 93	Mid 94	Early 96	Mid 95	Mid 95
Gulf Of Alaska--Yakutat Sale 158	Mid 92	Late 92	Early 93	Late 93	Late 94	Mid 95	Late 95	Late 95
Norton Basin or Navarin Basin or St Matthew Hall Sale 158	Late 93	Early 94	Late 94	Early 95	Early 95	Early 96	Early 96	Mid 96
Beaufort Sea Sale 170	Early 94	--	Early 94	Late 94	Late 95	Mid 96	Late 96	Late 96
Chukchi Sea Sale 167	Mid 94	--	Late 94	Early 95	Early 96	Early 97	Early 97	Mid 97

Note: Provisions for compliance with the requirements of the Coastal Zone Management Act Reauthorization Amendments of 1990 will be incorporated in future depictions of this process.

[FR Doc. 91-4374 Filed 2-22-91; 8:45 am]
BILLING CODE 4310-MR-C

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31831]

CSX Transportation, Inc.—Trackage Rights Exemption—Wheeling & Lake Erie Railway Co.; Exemption

Wheeling & Lake Erie Railway Company (W&LE) has agreed to grant overhead trackage rights to CSX Transportation, Inc., between milepost C1.6, at Connellsville, PA, and milepost 108.3, at Creston, OH, a distance of approximately 185 miles. The trackage rights were to become effective on February 15, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 19, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-4372 Filed 2-22-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics

FY 1991 Discretionary Grant Application Kit

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, DOJ.

ACTION: Public announcement of the availability of the Application Kit for Fiscal Year 1991 Discretionary Grants to be awarded by the Bureau of Justice Statistics.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this Notice of the FY 1991 Discretionary Grant Application Kit availability for all eligible state agencies, and applicants for an integrated federal justice statistics program.

DATES: All proposals responding to the programs included in the Application Kit must be postmarked by the specific due dates indicated for each program in the Application Kit.

ADDRESSES: Bureau of Justice Statistics, room 1142, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Steven D. Dillingham, Ph.D., Director, Bureau of Justice Statistics, at the above address. Telephone (202) 514-6278. To obtain Application Kits, call the Justice Statistics Clearinghouse 1-800-732-3277 at the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided.

Background

The Bureau of Justice Statistics is announcing the following five programs for which applications may be made:

(1) State-level Criminal Justice Statistical Analysis Center (SAC-1) Program;
(2) Analytic Projects for State-level Criminal Justice Statistical Analysis Centers (SAC-2);
(3) National Incident-Based Reporting System (NIBRS) Program;
(4) Criminal History Record Improvement (CHRI) Program; and
(5) Continuation of the Federal Justice Statistics Program.

It should be noted that the cooperative agreement for the Federal Justice Statistics Program is the only BJS program not designated for state agencies that will be awarded under competitive conditions in this fiscal year. This program involves linking the data bases of several Federal agencies into an integrated data base for purposes of tracking criminal cases through the Federal justice system, analyzing case flow, and conducting special studies. The other four BJS programs are continuation activities designated for award only to eligible State agencies.

It is anticipated that the program announcement for the Federal Justice Statistics Program will be published in the **Federal Register** during the week of February 18, 1991. It is also anticipated that the Criminal History Record Improvement (CHRI) program, a continuing program first announced in the **Federal Register** on May 23, 1990, will be announced again within 45 days.

The SAC-1, SAC-2, and NIBRS programs, also continuing programs, have single eligible applicant agencies within each State. For the SAC programs, the State Statistical Analysis Centers (SACs) are the eligible award recipients. Those state agencies responsbile for the State Uniform Crime Reporting (UCR) Program are the eligible award recipients for the NIBRS program. For these three programs, announcements are sent by the BJS Director to the relevant State agencies.

Dated: February 15, 1991.

Steven D. Dillingham,

Director, BJS.

[FR Doc. 91-4316 Filed 2-22-91; 8:45 am]

BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 40-8958 and 40-8783]

Uranerz U.S.A., Inc.; Final Finding of no Significant Impact Regarding the Termination of Source Material License SUA-1401 Authorizing the Research and Development Operation of the Ruth In-situ Leach Project Located in Johnson County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of final finding of no significant impact.

1. Proposed Action

The proposed administrative action is to terminate Source Material License SUA-1401.

2. Reasons for Final Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC), Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation of the commercial Ruth in-situ leach project. Based on the review of the operational data and the Uranerz U.S.A., Inc. application materials, the Commission has determined that no significant impact will result from operation of the commercial site. The proposed action is to incorporate remaining liabilities associated with the Ruth R&D site dealing with bonding and residual contaminated materials into the Ruth commercial license. This licensing action has taken place and therefore, the Ruth R&D license may be terminated without any impacts.

In consideration of this situation, the Director of the Uranium Recovery Field Office, in accordance with 10 CFR 51.35 is issuing a final finding of no significant impact. Concurrent with the publication of this finding, the Commission's Uranium Recovery Field Office will terminate Source Material License SUA-1401.

Dated at Denver, Colorado, this 7th day of February, 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Region IV.

[FR Doc. 91-4377 Filed 2-22-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 7-9, 1991, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on January 24, 1991.

Thursday, March 7, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Chairman's Remarks (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-11 a.m.: Training and Qualification of Civilian Nuclear Power Plant Personnel (Open)—The Committee will review and report on the proposed NRC rule regarding training and qualification of civilian nuclear power plant personnel. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

11 a.m.-12 noon: Reactor Operating Experience and Events (Open)—A briefing and discussion will be held regarding recent nuclear power plant operating experience and events including an instance of erosion/corrosion damage at the Millstone Nuclear Station, Unit 3.

1 p.m.-3 p.m.: Oyster Creek Nuclear Generating Station (Open)—The Committee will review and report on the proposed full-term operating license for this station. Representatives of the NRC staff and the licensee will participate, as appropriate.

3 p.m.-4:30 p.m.: Containment Design Criteria for Future Nuclear Plants (Open)—The Committee will discuss a proposed ACRS report to NRC regarding containment design criteria for future light-water reactor plants.

4:30 p.m.-5:15 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

Friday, March 8, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-9:15 a.m: Performance of Solenoid Valves in Nuclear Power Plants (Open)—The Committee will be briefed by representatives of the NRC staff (AEOD) regarding performance of solenoid valves in U.S. nuclear power plants.

9:15 a.m.-10 a.m.: ACRS Subcommittee Activities (Open)—The Committee will hear and discuss reports regarding the status of assigned subcommittee activities.

10:15 a.m.-12:15 p.m.: Browns Ferry Nuclear Power Station, Unit 2 (Open)—The Committee will review and report on proposed restart of the Browns Ferry Nuclear Power Station, Unit 2. Representatives of the NRC staff and the licensee will participate, as appropriate.

1:15 p.m.-4:45 p.m.: Preparation of ACRS Reports to NRC (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

4:45 p.m.-5:30 p.m.: Appointment of ACRS Members (Closed)—The Committee will discuss the qualifications of candidates nominated for appointment to the Committee.

This session will be closed to discuss information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Saturday, March 9, 1991

8:30 a.m.-12:30 p.m.: Preparation of ACRS Reports (Open)—The members will discuss reports to the NRC regarding items considered during this meeting and items which were not completed during previous meetings as time and availability of information permit.

1:30 p.m.-2:30 p.m.: Miscellaneous (Open)—The members will discuss administrative matters, as appropriate, related to the conduct of ACRS activities.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8 a.m. and 4:30 p.m.

Dated: February 19, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-4378 Filed 2-22-91; 8:45 am]

BILLING CODE 7590-01-M

Atomic Safety and Licensing Board—Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Cadet H. Hand, Jr., Elizabeth B. Johnson

[Docket No. 030-12145-CivP; E.A. 89-079; ASLBP No. 91-622-01-CivP]

February 19, 1991.

Prehearing Conference and Evidentiary Hearing

In the Matter of Certified Testing Laboratories, Inc. (Materials License No. 29-14150-01)

Notice is hereby given that the evidentiary hearing in this matter will commence on Tuesday, April 16, 1991 and will continue, to the extent necessary, on April 17-19, 1991. The hearing on April 16, 18, and 19, 1991, will be held at the Township of Bordentown Courtroom, Municipal Drive, Bordentown, New Jersey 08505. On April 17, 1991, the hearing will be held at Best

Western Inn, Route 206, Bordentown, New Jersey 08505 (adjacent to New Jersey Turnpike, Exit 7).

Notice is further given that, prior to the evidentiary hearing on April 16, 1991, and at the same location, there will be a prehearing conference for purposes such as simplifying before trial the issues in controversy, obtaining stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof, establishing an order for the presentation of witnesses, and other matters that may aid in the orderly disposition of the proceeding. See 10 CFR 2.752.

The prehearing conference will commence at 9:30 a.m. on April 16, 1991. The hearing will commence immediately following the conclusion of the prehearing conference and will continue, as necessary, commencing at 9 a.m. on April 17–19, 1991. Hearing sessions will be expected to adjourn no later than 5 p.m. each day.

In accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either orally or in writing, setting forth his or her position on the issues. The Board will hear oral statements at the outset of the prehearing conference on April 16, 1991. These statements do not constitute testimony or evidence in this proceeding, and the persons making such statements may not participate in any other way. The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. Written statements may be presented at any time. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such a statement or request should also be served on the Chairman, Atomic Safety and Licensing Board.

Documents relating to this proceeding are on file at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, as well as at the Commission's Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Bethesda, Maryland, February 19, 1991.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 91–4379 Filed 2–22–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 128 to Facility Operating License No. DPR–29 and Amendment No. 123 to Facility Operating License No. DPR–30 issued to the Commonwealth Edison Company (CECo, or licensee), which revised Facility Operating Licenses for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. The amendments are effective as of the date of their issuance.

The amendments change the expiration date for the Quad Cities Nuclear Power Station, Units 1 and 2, Facility Operating Licenses from February 15, 2007 to December 14, 2012. This extends the operating life of the plants to 40 full years from the date of issuance of the operating licenses.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulation in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 27, 1990 (55 FR 26307). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributable to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated September 1972.

For further details with respect to the action see (1) the application for amendment dated November 30, 1989, as supplemented on October 2, 1990, (2) Amendment No. 128 to License No. DPR–29, (3) Amendment No. 123 to License No. DPR–30, and (4) Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. A copy of items (2), and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, and V.

Dated at Rockville, Maryland this 13th day of February, 1991.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4380 Filed 2–22–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

Toledo Edison Company, Centerior Energy Company, Cleveland Electric Illuminating Company; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3, issued to Toledo Edison Company, Centerior Energy Company, and Cleveland Electric Illuminating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The amendment would change the technical specifications to allow a moderator temperature coefficient (MTC) to be more negative than the current limit of -3.0×10^{-4} delta k/k/°F. The future limits of the negative MTCs will be fuel cycle-specific and are permitted to appear in the Core Operating Limits Report as per the NRC Generic Letter 88–16. Specifically TS 3.1.1.3.c will be modified to read as follows: "The moderator temperature coefficient shall be equal to or less negative than the limit provided in the Core Operating Limits Report at rated thermal power." TS 6.9.17 will also be modified to reflect the revised content of the Core Operating Limits Report.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a) the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with the changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because there are no accidents whose probabilities of occurrence are related to the value of the MTC.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because it has been demonstrated that all of the USAR accidents sensitive to a negative MTC still meet their USAR Safety Evaluation Criteria under the proposed new limits.

2a. Not create the possibility of a new kind of accident from any accident previously analyzed because a more negative MTC is only a concern during RCS overcooling transients that have already been addressed in the USAR and the value of the MTC cannot create a new accident.

2b. Not create the possibility of a different kind of accident from any accident previously analyzed because of more negative MTC is only a concern during RCS overcooling transients that have already been addressed in the USAR and the value of the MTC cannot create a different accident.

3a. Not involve a significant reduction in a margin of safety because all events sensitive to a negative moderator temperature coefficient have been evaluated with respect to the proposed new limits in a very conservative fashion and have shown no significant change in transient response, and because the proposed change in the negative MTC limit is relatively small compared to the conservatisms in the evaluation. Further, all events sensitive to a negative MTC will continue to meet their appropriate USAR Safety Evaluation Criteria under the proposed new limits.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 27, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to interevene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitled the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 6, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 19th day of February 1991.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4381 Filed 2–22–91; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Public Law No. 100–238; Changes in Bypass Mail Hub Points

AGENCY: Postal Service.

ACTION: Notice of proposed changes.

SUMMARY: The purpose of this notice is to provide information for public comment regarding the proposal of the Postal Service to change its determination of bypass hub points for the air transportation of mail in the State of Alaska. This notice is intended to help satisfy the public notice requirements of 39 U.S.C. 5402(g)(3)(B)(ii), as enacted by section 137(2) of Public Law No. 100–238, 101 Stat. 1767 (January 8, 1988).

DATES: Any changes in the determination of bypass mail hub points will be put into effect on or after March 1, 1992, after consultation with the State of Alaska and the affected local communities and air carriers.

ADDRESSES: Comments may be mailed to the Networks Analysis and Requirements Division, U.S. Postal Service Headquarters, room 7676, 475 L'Enfant Plaza West, SW., Washington, DC 20260–7133, or delivered to the above address between 8:15 a.m. and 4:45 p.m. Upon request, arrangements may be made during the above hours to inspect the comments received.

FOR FURTHER INFORMATION CONTACT: Patrick N. Dempsey, General Manager, Networks Analysis and requirements Division, (202) 268–4380.

SUPPLEMENTARY INFORMATION: In accordance with 39 U.S.C. 5402(g)(3)(B)(ii), as enacted by section 137(2) of Pub. L. No. 100–238, 101 Stat. 1767 (January 8, 1988), the United States Postal Service hereby provides notice that it is considering changes in its determination of bypass mail hub points for the air transportation of mail within the State of Alaska. The changes under consideration will consist of the addition of hub points at Anatuvak Pass (AKP), Eagle (EAA), Emmonak (EMK), Holy Cross (HCR), Hooper Bay (HPB), Kiana (IAN), Pilot Point (PIP), Point Hope (PHO), Red Devil (RDV), Sand Point (SDP), Savoonga (SVA), Shismaref (SHH), Tanana (TAL), Togiak (TOG), and Wainwright (AIN). If these changes are implemented, they will be put into effect on or after March 1, 1992.

The Postal Service welcomes written comments on these proposed changes. As required by 39 U.S.C. 5402(g)(3)(B)(i), any changes will be put into effect only after consultation with the State of Alaska and the affected local communities and air carriers. As part of this consultative process, the Postal Service plans to hold informal hearings on these matters at various locations in Alaska during the summer of 1991. Information regarding the times and locations of these hearings will be published in a subsequent notice, and provided to local communities, newspapers, and post offices at a later date.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–4302 Filed 2–22–91; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28897; File No. SR–NYSE–90–17]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Responsibility of Specialists to Make Ten-Up Markets

On April 10, 1990 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require Exchange Options specialists to make ten-up markets in the options series for which they are responsible. The proposed rule change was published for comment in Securities Exchange Act Release No. 28218 (July 18, 1990), 55 FR 30058 (July 24, 1990).[3] One comment letter was received on the proposed rule change.[4]

The NYSE proposes to add new Exchange Rule 758A that requires a specialist to fill public customer orders to a minimum depth of ten contracts at the best bid or offer displayed on the specialist's screen when the order reaches the specialist's post ("ten-up requirement"). Under the proposal, the responsibility to make ten-up markets will apply to all options series in the two nearest term months. The ten-up requirement, however, would not apply during a rotation and a floor official may determine that an exception to the rule is warranted for, among other things, an obvious error in the posting of the displayed market quote or during extraordinary market conditions.[5] Moreover, specialists are not required to display as a market quotation bids or offers of a Competitive Options Trader for less than ten contracts.

The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes the NYSE proposal will provide public customers with the benefits of ten-up markets.[6] Specifically, public customers will be assured order execution to a minimum depth of ten contracts at the best bid or offer in those options series subject to the ten-up requirement. This, in turn, could result in better executions of small customer orders by ensuring greater depth to the NYSE options markets. In addition, the proposal should encourage specialists to become more competitive in making larger sized markets, thereby facilitating transactions in securities and contributing to a more free and open market. Moreover, as the Commission has not received any negative comments from specialists potentially affected by the proposal, the Commission has no reason to believe that the ten-up requirement will be particularly burdensome on them.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular sections 6, 11(b) and 11A.[7] Specifically, the Commission finds that the proposal is consistent with sections 6(b)(5) and 11(b) of the Act because it will promote just and equitable principles of trade, protect investors, and promote the public interest by assuring a minimum ten contract execution of public customers' orders. Also, the Commission finds that the proposal is consistent with Sections 11A(a)(1)(C) (ii) and (iv) because it will promote "fair competition among brokers and dealers" and "the practicability of brokers executing investors' orders in the best market."

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–90–17) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: February 19, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4357 Filed 2–22–91; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1)(1984).

[2] 17 CFR 240.19b–4 (1988).

[3] In addition to the proposed ten-up requirement, the proposal also contained modifications to the Exchange's minimum bid-ask differential requirements. The Commission granted accelerated approval to this portion of the proposal in Release No. 28218.

[4] *See* letter from Michael Schwartz, Chairman, Committee on Options Proposals ("C.O.O.P."), to Jonathan G. Katz, Secretary, Commission, dated June 12, 1990. The C.O.O.P. letter expressed support for the ten-up market proposal and did not address the proposed modifications to the minimum bid-ask differential requirements.

[5] The proposal, as originally filed, stated that an exemption was warranted for, among other things, a "change in market conditions." The Exchange subsequently filed an amendment to the proposal to change the wording to "extraordinary market conditions." *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Thomas R. Cira, Branch Chief, Division of Market Regulation, Commission, dated February 13, 1991.

[6] All of the other options exchanges have extended the benefits of ten-up markets to public customer orders. *See* Securities Exchange Act Release Nos. 24589 (June 11, 1987), 52 FR 23120 (order approving file No. SR–PHLX–87–09); 27235 (September 11, 1989), 54 FR 38580 (order approving File No. SR–Amex–88–10); 28826 (June 13, 1990), 54 FR 26384 (order approving File No. SR–CBOE–89–4); and 28021 (May 18, 1990), 55 FR 21131 (order approving File No. SR–PSE–89–36).

[7] 15 U.S.C. 78f, 78k(b) and 78k–1 (1984).

[8] 15 U.S.C. 78s(b)(2) (1984).

[9] 17 CFR 200.30–3(a)(12) (1988).

[Rel. No. 35–25259]

Filings Public Utility Holding Companies

February 15, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declartion(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 11, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Louisiana Power & Light Co. (70–7822)

Louisiana Power & Light Company, 317 Baronne Street, New Orleans, Louisiana 70122 ("LP&L"), an electric public-utility subsidiary company of Entergy Corporation, aggegistered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and rules 42, 44, 50 and 50(a)(5) thereunder.

LP&L proposes to issue and sell, through December 31, 1992: (1) Up to $200 million aggregate principal amount of its first mortgage bonds ("Bonds") with fixed or variable interest and in one or more new series from time-to-time; and (2) up to $200 million aggregate part value of its perferred stock, cumulative, either $25 par value ("25 Preferred") or $100 par value ("100 Preferred") (collectively, "Preferred"), each with fixed or variable dividend and in one or more new series. LP&L proposes to issue and sell the Bonds and

Preferred under the alternative bidding procedures of rule 50 (HCAR No. 22623, September 2, 1982, and HCAR No. 23122, November 17, 1983), or, alternatively, under an exception from the competitive bidding procedures of rule 50 under subsection (a)(5) thereunder. LP&L requests authorization to begin negotiations for a negotiated public offering or private placement of the Bonds and Preferred. It may do so.

With regard to the Bonds, each series will be sold at such price, will bear interest at such rate and will mature not earlier than five years nor later than thirty years from the first day of the month of issuance, as will be determined at the time of sale; however, no series of Bonds will be sold if the interest rate thereon would exceed 13%. The price, exclusive of accrued interest, to be paid for each series of Bonds to be sold at competitive bidding will be within a range of not more than five percentage points, but shall not exceed five percentage points above or below 100% of the principal amount of such series of Bonds. One or more series of Bonds may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years. LP&L may convenant that, with regard to a series of Bonds, so long as any Bonds of such series remain outstanding, it will not pay any cash dividend on common stock subsequent to the date of such series of Bonds (other than certain dividends declared prior to the original issuance of such series) except from credits to retained earnings after such date, plus $345 million, plus such amounts as the Commission shall approve. To the extent that this convenant deviates from the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956, as modified by HCAR No. 16369, May 8, 1969) ("SOP"), LP&L requests the authorization to deviate from the SOP. LP&L may determine to provide an insurance policy for the payment of the principal of, or interest or premium on, one or more series of Bonds.

With regard to the Preferred, the price (exclusive of accumulated dividends) and the dividend rate for each series will be determined at the time of sale, and will not be less than par value on a per share basis. The price to be paid for any series of Preferred to be sold at competitive bidding will not be less than $25 nor more than $25.70 per share in case of the $25 Preferred, and not less than $100 nor more than $102.75 per share in the case of the $100 Preferred, in each case plus accrued dividends, if any. The dividend rate of each such series of Preferred will be a multiple of 4/25ths of 1% for any series of $25 Preferred and 1/25th of 1% for any series of $100 Preferred. No series of Preferred would be sold if the dividend rate thereon would exceed 13%. The terms of one or more series of the Preferred may include provisions for redemption, including restrictions on optional redemption, or a sinking fund designed to redeem all outstanding shares of such series not later than thirty years after the date of original issuance.

LP&L proposes to use the net proceeds derived from the issuance and sale of Bonds and Preferred, in addition to other available funds, for general corporate purposes, which may include the acquisition of certain of the following outstanding securities at any time or from time-to-time prior to December 31, 1992, in whole or in part, through tender offer, negotiated, open market or other forms of purchase or otherwise by means other than redemption, prior to their respective maturities: (1) One or more series of outstanding first mortgage bonds, including, but not limited to, 10½% Series due 1993, 10⅜% Series due 2016, 10.36% Series due 1995 and 9⅜% Series due 2000, in an aggregate principal amount up to $250 million; (2) one or more series of outstanding preferred stock, including, but not limited to, the series of 15.20%, 13.12%, 14.72% and 12.64% preferred stock, each series being cumulative and $25 par value per share, having aggregate par values up to $75 million; and (3) one or more series of outstanding Pollution Control Revenue Bonds and/or Industrial Development Revenue Bonds issued for the benefit of LP&L, including, but not limited to, the Parish's Series 1984 Bonds, 8.25% due 2014 and Second Series 1984 Bonds, 8.0% due 2014, in an aggregate principal amount up to $75 million.

LP&L states that it shall not use the proceeds from the sale of Bonds and/or Preferred to enter into refinancing transactions unless: (1) The estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all repurchasing, redemption, tendering and issuing costs, assuming an appropriate discount rate, determined on the basis of the then estimated after-tax cost of capital of Entergy Corporation and its subsidiaries, consolidated; or (2) LP&L shall have notified the Commission of the proposed refinancing transaction (including the terms thereof) and obtained appropriate authorization to consummate the transaction.

LP&L also proposes to enter into arrangements to finance, on a tax-exempt basis, certain solid waste, sewage disposal or pollution control facilities ("Facilities") at Unit No. 3 of its Waterford Steam Electric Generating Station in the Parish of St. Charles, Louisiana ("Parish"). LP&L proposes, from time-to-time through December 31, 1992, to enter into one or more installment sale agreements and supplements ("Agreement"), under which the Parish may issue and sell one or more series of tax-exempt revenue bonds ("Tax-Exempt Bonds") in an aggregate principal amount not to exceed $200 million. The net proceeds from the sale of Tax-Exempt Bonds will be deposited by the Parish with a trustee ("Trustee") under one or more indentures ("Indenture") and will be applied by the Trustee to reimburse LP&L for, or to permanently finance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of that portion of the Facilities not previously financed by pollution control revenue bonds, and additional costs of construction of the Facilities.

Under the Agreement, LP&L will sell the Facilities to the Parish for cash and simultaneously repurchase the Facilities from the Parish for a purchase price, payable on an installment basis over a period of years, sufficient (together with any other monies held by the Trustee under the Indenture and available for the purpose for the particular series of Tax-Exempt Bonds involved) to pay the principal or purchase price of, the premium, if any, and the interest on Tax-Exempt Bonds as the same become due and payable. Under the Agreement, LP&L will also be obligated to pay certain fees incurred in the transactions.

The price to be paid to the Parish for each series of Tax-Exempt Bonds and the interest rate applicable thereto will be determined at the time of sale. The Agreement and the Indenture will provide for either a fixed interest rate or an adjustable interest rate for each series of the Tax-Exempt Bonds. No series of Tax-Exempt Bonds would be sold if the fixed interest rate or initial adjustable interest rate thereon would exceed 11%, or if subsequent interest rates for adjustable interest rate Tax-Exempt Bonds would exceed 15%. The Tax-Exempt Bonds will mature not earlier than five years nor later than forty years from the date of issuance. Each series may be subject to redemption or sinking fund provisions.

In order to secure its obligations under the Agreement and, in the event LP&L enters into a reimbursement agreement, discussed below, under the reimbursement agreement, LP&L may grant to the Parish, the Trustee and/or a bank a lien, subordinate to the lien of LP&L's Mortgage, on the Facilities.

LP&L also proposes to arrange for an irrevocable letter of credit for an amount up to $244,000,000, and for a term not to exceed 10 years, from a bank in favor of the Trustee. Payments for principal, premium, if any, interest and purchase obligations in connection with the Tax-Exempt Bonds would be secured by, and payable from funds drawn under, the letter of credit. LP&L also proposes to enter into a Letter of Credit and Reimbursement Agreement ("Reimbursement Agreement") with the bank pursuant to which LP&L would agree to reimburse the bank for amounts drawn under the letter of credit and to pay commitment or letter of credit fees. Such letter of credit fees would include an upfront fee not to exceed 0.25% of the face amount of the letter of credit and annual fees not to exceed 1⅜% of the face amount of the letter of credit per annum.

In addition or as an alternative to the security provided by a letter of credit, LP&L may: (1) Provide an insurance policy for the payment of the principal of, or interest or premium on, one or more series of Tax-Exempt Bonds, and/or (2) obtain authentication of one or more new series of first mortgage bonds ("Collateral Bonds") to be issued under LP&L's mortgage on the basis of unfunded net property additions or previously retired first mortgage bonds and delivered to the Trustee or the bank to evidence and secure LP&L's obligations under the Agreement or the Reimbursement Agreement, respectively. Such Collateral Bonds could be issued: (1) In a principal amount equal to the principal amount of Tax-Exempt Bonds and bearing interest at a rate equal to the rate of interest on such Tax-Exempt Bonds; (2) in a principal amount equivalent to the principal amount of Tax-Exempt Bonds plus an amount equal to interest on those Tax-Exempt Bonds for a specified period; (3) in a principal amount equivalent to the principl amount of Tax-Exempt Bonds or in such amount plus an amount equal to interest on those Tax-Exempt Bonds for a specified period, but carrying a fixed interest rate that would be lower than the fixed interest rate of the Tax-Exempt Bonds; or (4) in a principal amount of Tax-Exempt Bonds at an adjustable rate of interest, varying with such Tax-Exempt Bonds but having a ceiling rate of 15%. Each series of the Collateral Bonds that would bear interest would do so at a fixed interest rate or initial adjustable interest rate not to exceed 11%, and at a subsequent adjustable interest rate not to exceed 15%. The maximum aggregate principal amount of Collateral Bonds would be $244 million, and such amount would be separate and apart from, and in addition to, the Bonds. The terms of the Collateral Bonds will correspond to the terms of the related Tax-Exempt Bonds.

Energy Initiatives, Inc. (70-7828)

Energy Initiatives, Inc. ("EII"), One Gatehall Drive, Gatehall Center I, Parsippany, New Jersey 07054, a wholly-owned nonutility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application with the Commission under sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

EII proposes to acquire, either directly or indirectly through a wholly-owned subsidiary to be formed ("EII-Sub"), the interests of two Delaware limited partnerships and their affiliates (collectively, "Seller") in a 79.9 MW cogeneration facility being developed in the Village of Selkirk, Bethlehem, New York ("Phase I"), and in 270 MW of additional generating capacity being developed at that project site ("Phase II") (collectively, "Project"). Phase I has been certified as a Qualifying Cogeneration Facility as defined in the Public Utility Regulatory Policies Act of 1978 and regulations thereunder. The Project will be located at a site adjacent to General Electric Company's ("General Electric") plastic manufacturing operations in Bethlehem, New York.

The Seller in Phase I currently holds a 20% limited partnership interest in a Delaware limited partnership ("Cogen Partnership I"), which has been formed to construct, own and operate Phase I, and the Seller in Phase II is expected to hold a 20% limited partnership interest in a Delaware limited partnership to be formed to construct, own and operate Phase II; alternatively, the interests in Phase I and Phase II may be consolidated into a single partnership in which the Seller will hold a 20% limited partnership interest (collectively, "Partnerships").

Cogen Partnership I has entered into a long-term contract to sell thermal energy from Phase I to General Electric. It is contemplated that the Contract will be amended and restated at Phase II construction. Cogen Partnership I has also entered into long-term power purchase agreements with Niagara Mohawk Power Corporation and with Consolidated Edison Company for the sale of Phase I and Phase II energy and capacity, respectively.

EII proposes to enter into an option agreement ("Option Agreement") with the Seller which would grant to EII an exclusive option until January 2, 1995 to acquire Seller's interests in the Partnerships. Under the Option Agreement, EII would pay to Seller $3.65 million ("Purchase Price"), reimburse Seller for certain historical Phase II development costs and pay Seller other specified amounts. In addition, EII would assume Seller's share of future development costs for Phase II and any equity contribution Seller is required to make in Phase II.

The exercise price of the option would be $5.5 million ("Exercise Price"), subject to increase or reduction in certain events. The Exercise Price, as adjusted, would be increased by 15% per annum, compounded annually, and would be subject to further increase or decrease by up to a maximum of $1 million. In the event the option is not exercised, under certain circumstances EII will be reimbursed, with interest, for the Purchase Price of the option and Phase II development costs incurred by it from future distributions received by Seller from the Partnerships.

It is presently contemplated that EII would have the right to assign its rights and obligations under the Option Agreement to EII-Sub. In that event, EII proposes to acquire, and EII-Sub proposes to issue and sell, for $1,000 all of the capital stock of EII-Sub, to which it would assign such rights and obligations, and would contribute to EII Sub the funds necessary to perform the obligations so assigned.

EII expects that the rate of return of its equity investment in the Partnerships will not be lower than 12.29%, the latest generic rate of return on common equity for public utilities allowed by the Federal Energy Regulatory Commission under the Federal Power Act.

Entergy Corp. (70-7831)

Notice of Proposal To Issue and Sell Common Stock in Connection with the Adoption of an Equity Ownership Plan and Stock Plan for Outside Directors; Order Authorizing Proxy Solicitation

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed an application-declaration under sections 6(a), 7 and 12(e) of the Act and rules 50(a)(5), 62 and 65 thereunder.

Entergy is proposing to adopt, subject to stockholder approval at the 1991

Annual Meeting of Stockholders, an Equity Ownership Plan for Entergy Corporation and Subsidiaries ("Executive Plan") and a Stock Plan for Outside Directors ("Director Plan"). In accordance with the requirements of rule 16b-3 under the Securities Exchange Act of 1934 ("Exchange Act"), the Executive Plan and the Director Plan will be submitted to the stockholders of Entergy for approval at the Annual Meeting of Stockholders to be held May 17, 1991.

Under the Executive Plan, awards may be granted to certain designated officers and executive personnel ("Key Employees") of Entergy and its subsidiary companies ("Subsidiaries"). The purpose of the Executive Plan is to give Key Employees an opportunity to acquire shares of Entergy common stock, $5 per value per share ("Common Stock"), to more closely tie the interests of Key Employees to those of Entergy shareholders and to reward effective leadership through the use of equity incentives.

Awards may be in the form of (1) Stock options ("Options"), which may be nonstatutory stock options or incentive stock options as provided in Section 422 of the Internal Revenue Code of 1986, as amended; (2) shares of Common Stock, which may be made subject to the attainment of specified performance goals, restrictions on transfer and forfeitability provisions, all as an administrating committee ("Committee") may determine ("Restricted Shares"); and (3) equity awards in the form of phantom stock units ("Equity Awards"). The Executive Plan provides that the Committee may grant additional Options if an Option is exercised through the surrender of shares of Common Stock held by the participant ("Additional Equity Maintenance Rights"). Under the Executive Plan, the Committee also may grant dividend equivalents relating to Options and Equity Awards. Such dividend equivalents and any dividends declared with respect to Restricted Shares may be reinvested under the Executive Plan.

The maximum number of shares of Common Stock as to which awards of Options, Restricted Shares and Equity Awards may be made and dividends and dividend equivalents reinvested pursuant to the Executive Plan, through December 31, 2001, is 3 million shares. Shares of Common Stock awarded under the Executive Plan may be either authorized but unissued shares or previously issued shares acquired by an independent agent ("Independent Agent") on the open market.

Shares of Common Stock covered by awards which are not earned, or which are forfeited, and relating to Options which expire unexercised shall again be available for subsequent awards under the Executive Plan. To the extent that shares of Common Stock previously held in the participant's name are surrendered upon the exercise of an Option or shares relating to an award are used to pay withholding taxes, such shares shall become available for subsequent awards under the Executive Plan.

The Committee will consist of not less than three members of the board, all of whom shall, to the extent required, qualify to administer the Executive Plan as contemplated by rule 16b-3, or other applicable rules under section 16(b), of the Exchange Act. The Committee will have the full power under the Executive Plan, among other things, (1) To determine the Key Employees to whom, and the time or times when, awards shall be granted; (2) to grant Options, and to determine the purchase price of Common Stock covered by each Option, which shall be no less than the fair market value, as defined, of Common Stock on the date that the option is granted, the term of each Option and the number of shares covered by each Option; (3) to designate Options as nonstatutory stock options or incentive stock options and to determine which Options, if any, shall be accompanied by Additional Equity Maintenance Rights; (4) to grant Restricted Shares and to determine the term of the restricted period, restrictions, forfeiture provisions and other conditions applicable to such Restricted Shares; and (5) to grant Equity Awards and establish accounts relating thereto and to determine restrictions related to such Equity Awards and any allocations to or distributions from such accounts, and the number of Equity Awards to be allocated to such accounts.

The Director Plan is proposed to be established for members of Entergy's Board and of the Boards of the Subsidiaries who are not employees of the Subsidiaries ("Outside Directors"). Under the Director Plan, each Outside Director shall receive a fixed number of shares of Common Stock each quarter as compensation for services as a board member, with the precise number of shares awarded to an Outside Director depending upon the boards on which such Outside Director serves. Shares of Common Stock that are awarded to Outside Directors under the Director Plan may be either authorized but unissued shares or previously issued shares acquired by an Independent Agent on the open market. The maximum number of shares of Common Stock to be issued and sold under the Director Plan through December 31, 2001, is 500,000 shares.

It is currently intended that shares for awards granted under the Executive Plan and Director Plan, respectively, will be acquired by an independent agent ("Independent Agent") on the open market and, therefore, Entergy is not seeking authority at this time to issue or sell its authorized but unissued shares of Common Stock under the Executive Plan or Director Plan.

Entergy thus requests authority from time-to-time during the period through December 31, 2001: (1) Under the Executive Plan, to grant Options, Restricted Shares and Equity Awards and, in connection therewith, to issue or sell up to 3 million shares of Common Stock under the Executive Plan acquired by the Independent Agent; and (2) under the Director Plan, to issue or sell up to 500,000 shares of Common Stock under the Director Plan acquired by the Independent Agent. Entergy has requested an exemption from the competitive bidding requirements of rule 50 under the Act under subsection (a)(5) thereunder in connection with any issuance or sale of Common Stock under the Executive Plan and Director Plan.

Entergy requests authority to solicit proxies from its stockholders for use at the 1991 Annual Meeting with respect to the approval of the Executive Plan and the Director Plan. Entergy has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation of proxies for voting by its stockholders on the proposal to adopt the two plans, be permitted to become effective as provided in rule 62(d) of the Act.

It appearing to the Commission that Entergy's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4284 Filed 2-22-91; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

[SSS Form 222]

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35):

Title: Claim Documentation Form—Conscientious Objector.

Purpose: Is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who are conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Henry N. Williams,

Certifying Officer.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, room 3235, Washington, DC 20503.

Dated: February 14, 1991.

Samuel K. Lessey Jr.,

Director.

[FR Doc. 91-4285 Filed 2-22-91; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Orlando Executive Airport, Orlando, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Orlando Airport Authority for the Orlando Executive Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 13, 1991.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Environmental and Noise Specialist, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, FL, 32827-5397, telephone (407) 648-6582.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Orlando Executive Airport are in compliance with applicable requirements of Part 150, effective February 13, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA completed its review of the noise exposure maps and related descriptions submitted by the Greater Orlando Airport Authority. The specific maps under consideration are 1989 "Existing Conditions" Noise Exposure Map and 1994 "Future Conditions" Noise Exposure Map (UNABATED) in the submission. The FAA has determined that these maps for the Orlando Executive Airport are in compliance with applicable requirements. This determination is effective on February 13, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local reponsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of the FAR part 150, that the statutorily required consultation has been accomplished. Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations.

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591, Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, FL 32827-5397

Greater Orlando Airport Authority, Orlando International Airport, One Airport Boulevard, Orlando, FL 32827-4399.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, February 13, 1991.

John W. Reynolds,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 91-4352 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-6]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 7, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. 28419, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations [14 CFR part 11].

Issued in Washington, DC, on February 19, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 28419

Petitioner: DHL Airways, Inc.

Sections of the FAR Affected: 14 CFR 121.938

Description of Relief Sought: To allow petitioner to permit pilots to complete their duty time schedules before being provided with at least 16 hours of rest.

[FR Doc. 91-4337 Filed 2-22-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 5-91]

Treasury Notes of February 29, 1996, Series L-1996

February 14, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of February 29, 1996, Series L-1996 (CUSIP No. 912827 zz 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be be dated February 28, 1991, and will accrue interest from that date, payable on a semiannual basis on August 31, 1991, and each subsequent 6 months on the last calendar day of February and August through February 29, 1996. They will mature February 29, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3 The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series. No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, February 21, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 20, 1991, and received no later than Thursday, February 28, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more that $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, February 28, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, February 26, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be complete to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-4426 Filed 2-20-91; 4:29 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 7-91]

Treasury Notes of February 28, 1993, Series X-1993

February 14, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,000,000,000 of United States securities, designated Treasury Notes of February 28, 1993, Series X-1993 (CUSIP No. 912827 ZY 1), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be

issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 28, 1991, and will accrue interest from that date, payable on a semiannual basis on August 31, 1991, February 29, 1992, August 31, 1992, and February 28, 1993. They wil mature February 28, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, Wednesday, February 20, 1991, prior to 12 noon, Eastern Standard time, for noncompetitive tenders and prior to 1 p.m., Eastern Standard time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 19, 1991, and received no later than Thursday, February 28, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purcahse or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, and interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Sercretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering , competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised on the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less then the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action unter this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, February 28, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not over-due as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Tuesday, February 26, 1991. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to recieve tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–4425 Filed 2–20–91; 4:29 pm]

BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds; International Business & Mercantile Reassurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under title 31, sections 9304 to 9308, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27353 to reflect this addition:

Company Name: *International Business & Mercantile Reassurance Company.* Business Address: 307 North Michigan Avenue, Chicago, IL 60601. Underwriting Limitation [b]: $4,398,000. Surety Licenses [c]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. Incorporated in: Illinois.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 287–3921.

Dated: February 15, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91–4288 Filed 2–22–91; 8:45 am]

BILLING CODE 4810–35–M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

February 20, 1991.

DATE AND TIME: Friday, March 1, 1991, 9:00 a.m.–5:00 p.m.

PLACE: U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Room 512, Washington, DC 20425.

STATUS: Open to the Public.

Friday, March 1, 1991

I. Approval of Agenda
II. Approval of Minutes of January Telephonic Meeting
III. Approval of Minutes of January Commission Retreat
IV. Announcements
V. Revised Draft Reauthorization Statute
VI. Draft Report on *Community Perspectives on the Massachusetts Civil Rights Act*
VII. SAC Appointments for Florida, Massachusetts, and New Jersey (interim)
VIII. Staff Director's Report
IX. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Emma Monroig,
Solicitor.

[FR Doc. 91–4455 Filed 2–21–91; 9:27 am]
BILLING CODE 6335–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:34 p.m. on Tuesday, February 19, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, DC.

Dated: February 20, 1991.

Resolution Trust Corporation.
John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 91–4454 Filed 2–21–91; 9:17 am]
BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-90-013]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Revision of the United States Standards for Grades of Dry Sweetcream Buttermilk and Proposed Amendments to the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

Correction

In proposed rule document 91-2975 beginning on page 4951 in the issue of Thursday, February 7, 1991, make the following correction:

1. On page 4951, in the third column, in the ninth line from the top, "utilize" was misspelled.

§ 58.2654 [Corrected]

2. On page 4953, in the first column, in § 58.2564(a)(10), in the second line, remove the word "Not".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 275

[Amdt. No. 328]
RIN 0584-AA76

Food Stamp Program: Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988

Correction

In proposed rule document 91-2237 beginning on page 3788 in the issue of Thursday, January 31, 1991, make the following corrections:

1. On page 3788, in the second column, under **Addresses**, in the fourth line "Part" should read "Park".

2. On the same page, in the third column, in the first full pargraph, in the first line "provision" should read "provisions".

3. On page 3789, in the 2d column, in the 1st full paragraph, in the 12th line insert "underissued to recipient households to the total value of allotments" after "allotments".

4. On the same page, in the 3d column, in the 1st full paragraph, in the 11th line "2765.11(b)(4)" should read "275.11(b)(4)".

5. On page 3790, in the first column:

a. In the seventh line insert "to" after "revert".

b. In the first full paragraph, in the fourth line "actions" was misspelled.

c. In the same paragraph, in the 11th line "requires" should read "require".

6. On page 3791, in the second column, in the third full paragraph, in the ninth line "error" was misspelled.

§ 275.23 [Corrected]

7. On page 3794, in the third column, in § 275.23(D)(iii)(B), in the first line "$2(1–C)S_1$" should read "$2(1–C)S_2$".

BILLING CODE 1505-01-D

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 620, and 621

[RIN 3052-AB20]

Organization; Disclosure to Shareholders; Accounting and Reporting Requirements

Correction

In proposed rule document 91-1422 beginning on page 2715, in the issue of Thursday, January 24, 1991, make the following corrections:

1.On page 2716, in the second column, in the paragraph numbered 2, in the second line "of" should read "on".

2. On the same page, in the third column, in the second paragraph, in the seventh line, "§ 6.26" should read "section 6.26".

3. On page 2717, in the first column, in the fourth line from the top, "§ 8.7" should read "section 8.7".

4. On the same page, in the same column, in the first complete paragraph, "260.5(a)(9)" should read "620.5(a)(9)".

5. On the same page, in the third column, the second paragraph beginning with "Therefore," should be the last sentence of the first paragraph.

6. On page 2718, in the first column, in the first full paragraph, in the seventh line remove the word "the".

§ 620.1 [Corrected]

7. On page 2720, in the first column, in § 620.1(g), in the second line "interested" should read "interests".

§ 620.1 [Corrected]

8. On the same page, in the same column, in § 620.1(l), in the third line, "615.5260(h)" should read "615.5260".

§ 620.3 [Corrected]

9. On the same page, in the third column, in § 620.3, in the first line "employees" should read "employee", and in the ninth line "judgement" should read "judgment".

§ 620.4 [Corrected]

10. On the same page, in the same column, in § 620.4, in the paragraph numbered 17, in the ninth line from the bottom of the page, "pargraph" should read "paragraph", and in the next to last line, "remaining" should read, "removing".

§ 620.5 [Corrected]

11. On page 2721, in the first column, in § 620.5(a)(3), in the fifth line, "resale" was misspelled and in the sixth line, "briefly" was misspelled.

§ 620.5 [Corrected]

12. On the same page, in the same column, in § 620.5(c)(2), in the last line, "money" was misspelled.

§ 620.5 [Corrected]

113. On the same page, in the second column, in § 620.5(d)(3), in the first line, "institution" was misspelled; and in paragraph (e)(1), in the second line from the bottom of the paragraph, "regualtory restricitons" should read "regulatory restrictions".

BILLING CODE 1505-01-D

OL
56
SS
37
FE
25
991
MI

federal register

Monday
February 25, 1991

Part II

Environmental Protection Agency

Section 409 Food Additive Regulations; Order Responding to Objections to EPA's Response to Petition Requesting Revocation; Notice

ENVIRONMENTAL PROTECTION AGENCY

[PF-542, FRL 3877-2]

Section 409 Food Additive Regulations; Order Responding to Objections to EPA's Response to Petition Requesting Revocation of Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final order.

SUMMARY: In this Order, EPA is acting upon objections to its response to a petition requesting the revocation of 14 food additive regulations. These food additive regulations involve the following pesticides and commodities: trifluralin (spearmint and peppermint oil), benomyl (raisins and tomato products), phosmet (cottonseed oil), mancozeb (raisins and bran of barley, oats, rye, and wheat), dicofol (dried tea), DDVP (packaged and bagged nonperishable processed foods and dried figs), and chlordimeform (dried prunes). The petition asserted that these food additive regulations violated the Delaney anti-cancer clause in section 409 of the Federal Food, Drug, and Cosmetic Act. In its response to the petition, EPA refused to revoke many of the food additive regulations on the ground that the Delaney clause contains an exception for pesticide uses posing trivial risks. Petitioners objected to EPA's ruling arguing that EPA had adopted an erroneous interpretation of the Delaney clause. After evaluating this objection, EPA reaffirms its interpretation of the Delaney clause. As to the specific food additive regulations, EPA denies the petition as to trifluralin on spearmint and peppermint oil, benomyl on raisins and tomato products, phosmet on cottonseed oil, mancozeb on raisins and bran of wheat. EPA has already revoked the food additive regulation for chlordimeform on dried prunes and has proposed the revocation of the DDVP food additive regulation on dried figs and the mancozeb food additive regulations on bran of barley, oats, and rye. In this order, EPA announces that it will propose the revocation of food additive regulations for dicofol on dried tea and DDVP on packaged and bagged nonperishable processed foods.

DATES: This order will be effective May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sepehr Haddad, Special Review Branch (H7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460; Office location and telephone number: 3rd Floor, Westfield Building, 2800 Jefferson Davis Highway, Arlington, VA 22202, Telephone (703) 308-8027

SUPPLEMENTARY INFORMATION: In this document EPA is issuing the response to the objections to EPA's response to the petition requesting the revocation of food additive regulations.

Table of Contents

I. Background.
II. The Statutory Framework.
A. The Federal Insecticide, Fungicide, and Rodenticide Act.
B. Sections 402, 408, and 409 of the Federal Food, Drug, and Cosmetic Act.
C. The Delaney Paradox.
III. EPA's Prior Response and Current Information.
IV. Petitioners' Objections.
V. De Minimis Exception Generally.
VI. The Delaney Clause and De Minimis Risk.
A. Trivial Risk.
1. What is Trivial Risk?
2. Are EPA Risk Assessments Conservative?
B. Extraordinary Rigidity/Legislative Design.
1. Legislative History of the Food Additives Amendment.
2. Legislative History of the Color Additives Amendment.
3. FIFRA.
C. *De minimis Exception Conclusions.*
1. Congressional Rigidity.
2. Legislative Design.
3. The Delaney Clause and Modern Science.
4. Conclusion.
VII. FIFRA/FFDCA Coordination.
VIII. Final Decision.
IX. Public Comments.

This petition requires EPA to address that anomaly in the law of pesticide regulation known as the "Delaney paradox." One aspect of the Delaney paradox is that under current Federal law the standard for evaluating whether pesticide residues on food endanger the public health varies depending on factors unrelated to public health. A second aspect is that in some circumstances a pesticide may meet the legal standard for use on food crops even though no "tolerance level" may be established which allows residues of that pesticide to remain in food following harvest and processing.

This irrational approach to health and safety regulation is a product of the interplay between three inconsistent, yet overlapping, statutory provisions which address pesticides: (1) The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which is the licensing statute governing the sale, distribution, and use of pesticides; (2) section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) under which EPA sets maximum legal limits (tolerances) for pesticide residues on raw foods; and (3) section 409 of the FFDCA under which EPA sets maximum legal limits (food additive regulations) for certain pesticide residues on processed foods. The most striking inconsistency - and the one which produces the Delaney paradox - is that only section 409 of the FFDCA contains a provision, the "Delaney clause," which when strictly read bars the establishment of food additive regulations for carcinogenic pesticides no matter how infinitesimal the risk or how great the benefit. Unlike the risk only, zero-risk standard of the Delaney clause, both FIFRA and FFDCA section 408 require EPA to consider the degree of risk posed by a pesticide and the benefits that pesticide affords.

The petition before EPA accentuates the irrationality of the statutory framework by requesting that certain section 409 food additive regulations for seven pesticides (benomyl, trifluralin, mancozeb, phosmet, dicofol, DDVP, and chlordimeform) be revoked as violative of the Delaney clause without similarly requesting the cancellation of the underlying registration of the pesticides under FIFRA or the revocation of any corresponding section 408 tolerances. Petitioners thus are asking EPA to declare that residues of these pesticides render processed foods adulterated and subject to seizure even though those same residues are perfectly legal in raw commodities and the residues result from a legal application by growers to crops in the field.

For the reasons stated below, EPA believes that there is sufficient flexibility in the statutory framework to apply a standard to the evaluation of pesticides under section 409 which both ameliorates the most extreme effects of the Delaney paradox and protects the public health. Accordingly, EPA denies, for the most part, the petition. In brief, EPA's decision is as follows:

(1) EPA denies the petition as to the benomyl and trifluralin food additive regulations on the ground that those food additive regulations result in residues which pose a *de minimis* risk.

(2) EPA denies the petition as to the mancozeb food additive regulations for raisins and bran of wheat because there is an ongoing proceeding under FIFRA which will address these food additive regulations (EPA has already proposed the revocation of the mancozeb food additive regulations for bran of barley, oats, and rye).

(3) EPA denies the petition as to phosmet because EPA has yet to make a definite ruling on whether phosmet is a carcinogen.

(4) EPA grants the petition as to dicofol and DDVP and will propose revocation of those dicofol and DDVP food additive regulations listed in the petition which have not already been proposed for revocation.

EPA has previously revoked chlordimeform's food additive regulations.

I. Background

This proceeding was initiated on May 25, 1989, by a petition filed by the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals requesting that EPA revoke the 14 food additive regulations for the pesticides trifluralin (spearmint and peppermint oil), benomyl (raisins and tomato products), phosmet (cottonseed oil), mancozeb (raisins and bran of barley, oats, rye, and wheat), dicofol (dried tea), DDVP (packaged and bagged nonperishable processed foods and dried figs), and chlordimeform (dried prunes). Petitioners argued that these food additive regulations should be revoked because the seven pesticides to which the regulations applied were animal carcinogens and thus the regulations violated the Delaney anti-cancer clause in section 409 of the FFDCA (54 FR 27700, June 30, 1989). EPA responded to the petition ("Petition Response") on April 18, 1990 (55 FR 17560, April 25, 1990). EPA agreed to revoke several food additive regulations for which registered pesticide uses were no longer extant. EPA refused, however, to revoke the remaining food additive regulations based on the determination either that: (1) The food additive regulation posed a *de minimis* risk; (2) there was insufficient information to determine whether the food additive regulation posed a *de minimis* risk and EPA believed that data to be submitted in the future would show that the risk from the food additive regulation is *de minimis*; or (3) action under FFDCA was appropriately withheld pending completion of an ongoing FIFRA proceeding. A more detailed explanation of EPA's ruling in regard to each food additive regulation is provided below.

On May 22, 1990, petitioners filed objections with EPA to the Petition Response. Petitioners' central objection was that EPA had incorrectly interpreted section 409 by reading a *de minimis* exception into the Delaney clause. Petitioners also contended that ongoing review of a pesticide under the FIFRA did not provide grounds for refusing to rule on their petition. Under the FFDCA, although petitioners could have requested an administrative hearing on the petition denial, petitioners specifically asserted that no hearing was necessary since their objections involved strictly legal issues. EPA requested public comment on petitioners' objections (55 FR 28498, June 28, 1990).

II. The Statutory Framework

A. The Federal Insecticide, Fungicide, and Rodenticide Act

Under FIFRA, pesticides must be registered with EPA before they can be sold, distributed, or used in the United States. To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects on the environment." (7 U.S.C. 136a(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide." (7 U.S.C. 136(bb)).

A pesticide's registration under FIFRA may be cancelled by EPA when the pesticide no longer meets the standard that it not cause "unreasonable adverse effects on the environment." (7 U.S.C. 136d(b)). The decision to cancel a pesticide can result from a Special Review, an intensive review of the risks and benefits of a pesticide which meets or exceeds risk criteria set forth in 40 CFR 154.7. EPA also can take action to cancel (and, if necessary, to suspend during the cancellation proceedings) the registration of a pesticide without first going through the Special Review process.

B. Sections 402, 408 and 409 of the Federal Food, Drug, and Cosmetic Act

Under FFDCA section 402(a)(2)(B), a food which is a raw agricultural commodity is adulterated if it contains a pesticide chemical residue that is not authorized by either a FFDCA section 408 tolerance (maximum permissible level) or an exemption from the requirement of a tolerance (21 U.S.C. 342(a)(2)(B)). An adulterated commodity sold or distributed in interstate commerce is subject to Federal seizure and condemnation under FFDCA section 304 (21 U.S.C. 334).

To establish a tolerance or exemption regulation under section 408, EPA must find that the regulation would "protect the public health." (21 U.S.C. 346a(b)). In reaching this determination EPA is directed to consider, among other things, the "necessity for the production of an adequate, wholesome, and economical food supply." Id.

Under FFDCA section 402(a)(2)(C), a processed food is adulterated (and hence subject to seizure) if it contains any food additive (including any pesticide residue) not authorized by a section 409 food additive regulation. (21 U.S.C. 342(a)(2)(C)). An important exception to this provision is that a processed food containing pesticide residues resulting from the carryover from treatment at the raw agricultural commodity stage is not regarded as adulterated if the residue level in such a food is no greater than that allowed by the section 408 tolerance established for the raw agricultural commodity. Id. Thus section 409 food additive regulations are required for two types of pesticide residues, pesticide residues which concentrate above the section 408 tolerance level during processing, and pesticide residues which result from use of a pesticide during or after processing.

The establishment of a food additive regulation under section 409 requires a finding under the "general safety clause" in section 409(c)(3) that the use of a pesticide "will be safe." (21 U.S.C. 348(c)(3)). The general safety clause is modified by the Delaney clause which provides in full, that a food additive shall not be deemed safe "if it is found to induce cancer when ingested by man or animal or, if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." Id.

C. The Delaney Paradox

The Delaney paradox is a result of the inconsistent standards in FIFRA, FFDCA section 408, and FFDCA section 409 and is compounded by the overlap between these provisions. In evaluating applications for registration and petitions for raw food tolerances for pesticides, EPA is required by FIFRA and FFDCA section 408 to consider the degree of risk posed by the pesticide and the benefits it provides. These requirements do not change if the pesticide poses a carcinogenic risk. On the other hand, the Delaney clause in FFDCA section 409 mandates a zero risk standard for carcinogenic pesticides in processed foods in those instances where the pesticide concentrates during processing or is applied during or after processing.

One paradoxical result produced by the Delaney clause is that the same pesticide residues which may be legal on a raw food could render a processed food adulterated. Carcinogenic pesticides for which the benefits outweigh the risks and which

concentrate during processing would be registrable under FIFRA and raw food tolerances could be set under section 408 but no food additive regulation could be established under section 409. Under these circumstances, a grower could legally treat his apples with such a pesticide and sell those apples as fresh produce, but if the apples were processed into applesauce, the applesauce would violate the FFDCA.

A second paradoxical result of the statutory scheme is that only a discrete class of carcinogenic pesticides is caught by the Delaney bar against establishing food additive regulations for carcinogenic pesticides in processed food. Carcinogenic pesticides which do not concentrate during processing may legally be present in processed foods if a tolerance has been set for the raw form of the processed food, the pesticide is applied to the raw food, and the amount of residue is within the tolerance for the raw food.

The final paradoxical twist to this confused regulatory scheme is that distinguishing between pesticides based on their propensity to concentrate "make[s] no discernible sense in terms of public health protection." National Research Council, National Academy of Sciences, Regulating Pesticides in Food 41 (1987). In fact, using an arbitrary factor like concentration during processing to determine the applicability of the Delaney clause may actually increase carcinogenic risk to the public. Id. at 41–42. For example, assume growers presently use a non-concentrating carcinogenic pesticide on a raw food which has processed forms. These growers would be unlikely to switch to an alternative pesticide which posed lower carcinogenic risks if the alternative concentrated during processing since their crop would then be limited to the fresh market. In practice, EPA, as a matter of policy, has refused to register pesticides where the needed section 409 food additive regulations are barred by the Delaney clause. Thus, the effect of the Delaney clause has been to retard the introduction of pesticides posing the least risk by injecting a factor in the calculus, concentration during processing, which is unrelated to risk.

III. EPA's Prior Response and Current Information

1. *Trifluralin.* The Petition Response found the food additive regulations for trifluralin on peppermint and spearmint oils (40 CFR 185.5900) to pose a *de minimis* risk. The upper bound lifetime cancer risks presented by these food additive regulations were estimated as 7×10^{-9} (spearmint oil) and 4×10^{-9} (peppermint oil). The Petition Response also stated that EPA had required the submission of storage stability data concerning trifluralin. Those data have been reviewed and indicate no reason to alter those estimates.

2. *Benomyl.* The Petition Response stated that a decision on the benomyl food additive regulations on raisins and tomato products (40 CFR 185.350) was premature prior to review of the required residue studies. EPA has now reviewed those residue studies. As anticipated, the studies show residues far below food additive regulation levels and thus EPA's risk estimates for the food additive regulations involved in the petition (raisins and tomato products) have been substantially reduced. The current upper bound estimate of lifetime cancer risk from dietary exposure to benomyl on raisins and tomato products are 1×10^{-7} and 5×10^{-8}, respectively. The cumulative risk estimate from all uses of benomyl has also declined substantially. The cumulative upper bound estimate of lifetime risk for benomyl and thiophanate methyl which share a common metabolite is 2.2×10^{-6}. EPA will be evaluating through the FIFRA Special Review process whether any regulatory action is required concerning the other food uses of benomyl and thiophanate methyl.

In their objections, petitioners implied that EPA by denying their petition was allowing the public to be exposed to levels of benomyl which posed a risk as high as 1 in 5,000. This conclusion is incorrect. First, petitioners have relied on a risk estimate which was not current at the time of the Petition Response. In the Petition Response, EPA described how in 1987 it had first estimated the overall benomyl risk at 2×10^{-4} (1 in 5,000) and then later revised that figure to 4×10^{-6} when more realistic exposure information was incorporated in the risk assessment (55 FR 17566, April 25, 1990). Petitioners ignored the more current estimate. EPA also stated it believed the risk assessment would be further reduced by one to two orders of magnitude once actual residue information was received. Petitioners ignored this conclusion as well.

Second, and particularly pertinent to the thrust of the petition, petitioners cite the risk from *all uses* of benomyl even though their petition only addresses benomyl residues on raisins and tomato products. Benomyl residues on these two commodities account for only a small portion of total benomyl risk. Although the cumulative benomyl risk would be relevant if EPA was engaged in a comprehensive evaluation of benomyl's FIFRA registration and the corresponding tolerances and food additive regulations, where a petition involves solely section 409 food additive regulations the focus must be on the risk posed by the food additive regulations alone.

3. *Phosmet.* In EPA's Petition Response, EPA stated it would revoke the section 409 food additive regulation for phosmet on cottonseed oil (40 CFR 185.3950) due to a request for cancellation by the registrant of that use. Subsequent to publication of the proposed cancellation of the cotton use, however, the phosmet registrant sold the registration for food uses of phosmet and the purchaser has indicated that it intends to support the registration of the cotton use. Accordingly, the use of phosmet on cotton was not cancelled. Phosmet is presently tentatively classified as an unquantified C carcinogen on the basis of a study in B6C3F1 mice showing a significant number of benign tumors at the highest dose tested in males. A cancer study in rats has been required of the registrants and is due in July 1991. (The due date on this study was extended from January 1991 to July 1991.) The weight of evidence of carcinogenic potential will be reevaluated following review of these new data. As discussed below, EPA is at present denying the requested revocation of the phosmet food additive regulation.

4. *Mancozeb.* The Petition Response stated that EPA would propose to revoke food additive regulations for mancozeb on bran of barley, oats, and rye (40 CFR 185.3950) in connection with the proposed cancellation of the registered use of mancozeb on these crops under FIFRA. The upper bound lifetime dietary risks connected with the use of mancozeb on the grain itself are estimated at: barley (3×10^{-7}), oats (6×10^{-8}), and rye (4×10^{-8}). No separate risk assessment has been performed for the bran of each of these crops but EPA believes that the risk from bran would pose only a small portion of the overall risk from a grain. In an analogous case, the risk from mancozeb correlated with the bran of wheat was found to be three to four orders of magnitude less than the risk from the overall commodity wheat. EPA believes that the estimated risks for the bran of barley, oats, and rye would bear a similar relationship to the estimated risks for the commodities barley, oats, and rye. The proposed revocation for these food additive regulations has been issued, (55 FR 20416, May 16, 1990); however, EPA does not intend to finalize it until EPA issues its final cancellation decision on the corresponding mancozeb registrations which is planned for completion in the fall of 1991. The actual revocation will not occur until a reasonable period following cancellation has expired to allow commodities treated prior to cancellation to clear the market. The Petition Response stated it was premature to make a decision on mancozeb food additive regulations on raisins and bran of wheat until further residue data were received and the ongoing FIFRA review of mancozeb was completed. The upper bound lifetime risks for these food additive regulations were estimated at: raisins (1×10^{-8}) and bran of wheat (9×10^{-11}).

Residue data have been received on the small grains and although review of these data is not yet complete, preliminary information indicates that these data will significantly lower risk estimates.

5. *Dicofol.* The Petition Response refused to rule on the food additive regulation for dicofol on tea citing the fact that new residue studies were due to be submitted which EPA believed would substantially reduce the estimated risk of 10^{-4}. Following release of the Petition Response, field trial and processing studies on dicofol residues in tea were submitted. These studies were deemed unacceptable by EPA since they did not meet current standards. As discussed below, EPA now intends to propose to revoke the dicofol food additive regulation.

6. *DDVP.* The Petition Response refused to rule on the food additive regulation for DDVP on packaged and bagged nonperishable processed foods, citing the fact that new residue studies were due to be submitted. At that time, EPA estimated the upper bound lifetime cancer risk from this food additive regulation at 5×10^{-6}. Subsequently, EPA discovered that this risk estimate included the risks from section 408 tolerances as well as the section 409 food additive regulation for packaged and bagged nonperishable processed foods. The correct risk estimate for DDVP on packaged and bagged nonperishable processed foods is 8×10^{-6}. The required studies were not submitted. A modified requirement to conduct these studies will be issued, and given the apparent status of these studies they probably could not be submitted for at least another 2 years. As discussed below, EPA now intends to propose to revoke the DDVP food additive regulation for packaged and bagged nonperishable processed foods.

Petitioners also requested that the DDVP food additive regulation on figs be revoked. The Petition Response stated that EPA would revoke the food additive regulation for DDVP on dried figs due to the fact the FIFRA use had been cancelled. A revocation proposal for dried figs was published in the Federal Register on February 13, 1991 (56 FR 5788).

7. *Chlordimeform.* As noted in the Petition Response, the food additive regulation for chlordimeform on dried prunes was revoked on October 25, 1989 (54 FR 43424).

IV. Petitioners' Objections

Petitioners have objected to the EPA's Petition Response claiming that, as a matter of law, there is no *de minimis* exception to the Delaney clause and that EPA is attempting to "amend the statute by administrative fiat." (Objections of Petitioners to EPA Response, 3 [hereinafter cited as Objections]). In support of this conclusion, petitioners primarily relied on the decision of the D.C. Circuit in *Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988). Petitioners also contended that EPA's consideration of the consequences of not allowing a *de minimis* exception and the standard for regulating pesticides under FIFRA are irrelevant to the issue of whether there is a *de minimis* exception to the Delaney clause. (Objections, 4–5). Finally, Petitioners argued that it was unlawful for EPA to postpone any decision under the FFDCA while awaiting completion of an ongoing FIFRA proceeding.

V. De Minimis Exception Generally

The principle that Federal regulatory agencies have the inherent authority to avoid applying the terms of a statute literally to circumstances that are trivial or *de minimis* in nature is well-established. *Public Citizen v. Young*, 831 F.2d 1108, 1112 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988); see *Public Citizen v. FTC*, 869 F.2d 1541, 1557 (D.C. Cir. 1989); *California v. U.S. EPA*, 774 F.2d 1437, 1442–43 (9th Cir. 1985); *Connecticut Fund For the Environment v. EPA*, 696 F.2d 179, 183 (2d Cir. 1982). This *de minimis* principle is designed to conserve agency resources for important matters and to avoid "absurd or futile results." *Public Citizen v. Young*, 831 F.2d at 1112 (quoting *United States v. American Trucking Association*, 310 U.S. 534, 543 (1939).

Perhaps the fullest discussion of the *de minimis* principle or exception is included in the D.C. Circuit's decision in *Alabama Power Co. v. Costle*, 636 F.2d 323, 360–61 (D.C. Cir. 1979). The *Alabama Power* court explained that whether a *de minimis* exception is available to a statutory provision will depend on the "particular circumstances." Id. at 360. One important consideration, according to the court, is whether exercise of regulatory authority would truly "yield a gain of trivial or no value." Id. at 361. A *de minimis* exception would not be permitted where regulation would result in benefits (e.g., risk reduction) but the agency concludes that these benefits would be outweighed by the costs. Id. A second factor is congressional intent regarding agency use of a *de minimis* exception. "Unless Congress has been extraordinarily rigid," the D.C. Circuit opined, "there is likely a basis for an implication of *de minimis* authority * * * ." Id. at 360. Finally, the court indicated that consideration should be given to the purpose of the statute because *de minimis* authority is "a tool to be used in implementing the legislative design." Id. at 360, n. 68; accord, *Public Citizen*, 831 F.2d at 1113.

A *de minimis* exception has frequently been used by the courts to ameliorate the broad prohibitory and regulatory commands of the FFDCA where *de minimis* risks are involved. For example, section 402(a)(3) condemns as adulterated a food "if it consists in whole or in part of *any* filthy, putrid, or decomposed substances." (emphasis added). Although this provision literally covers any food containing any detectable amount of filth, FDA through the use of "defect action levels" has, in effect, legalized minor amounts of filth in products. (See 21 CFR 110.110). Such action levels have been held to fall well within FDA's authority to administer the FFDCA. *United States v. Goodman*, 486 F.2d 847, 855 (7th Cir.1973); *United States v. 484 Bags, More or Less*, 423 F.2d 839, 841 (5th Cir. 1970). In fact, under the *de minimis* doctrine, courts have refused to find food containing trivial amounts of filth to be adulterated even in the absence of an FDA action level. *United States v. 1,500 Cases More or Less, Tomato Paste*, 236 F.2d 208 (7th Cir. 1956); *United States v. General Foods Corp.*, 446 F. Supp. 740 (N.D.N.Y. 1978), aff'd., 591 F.2d 1332 (2d Cir. 1978).

Similarly, it has been held that FDA does not have to apply the definition of "food additive" literally. *Monsanto Co. v. Kennedy*, 613 F.2d 947 (D.C. Cir. 1979). Under the FFDCA, a "food additive" is defined as "any substance the intended use of which may result or may reasonably be expected to result, directly or indirectly, in its becoming a component * * * of any food." (21 U.S.C. 321(s)). The *Monsanto* case involved a challenge to FDA's strict adherence to that definition concerning substances in food packaging materials. FDA, it appeared, took the position that since the laws of physics state that diffusion

will occur between any two substances in contact, it was compelled to find that substances in food packaging materials were food additives. Id. at 947. The D.C. Circuit disagreed with this strict reading of the food additives definition, holding that FDA had inherent statutory discretion not to declare substances which migrate from food packaging materials food additives in *de minimis* situations. Id.; (see *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984) (holding *de minimis* principle supported listing of color additive containing carcinogenic constituent posing a negligible risk under FFDCA's general safety clause)).

In contrast, the Delaney anti-cancer clause contained in section 706(b)(5)(B) of the FFDCA dealing with color additives was held in *Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988), not to contain a *de minimis* exception. That case involved a challenge to FDA's approval of the listing of two color additives, Orange No. 17 and Red No. 19, which FDA concluded posed trivial cancer risks. Using quantitative risk assessment, FDA estimated the worst case upper bound cancer risks for Orange No. 17 and Red No. 19 at 1 in 19 billion (5×10^{-11}) and 1 in 9 million (1.1×10^{-7}), respectively. Id. at 1111. FDA argued that these risks were *de minimis* and thus its listing of the color additives was not unlawful despite the Delaney clause.

The court's analysis of FDA's argument focused on the factors set forth in *Alabama Power*, whether the risks were trivial; whether Congress had been extraordinarily rigid; and whether a *de minimis* exception was consistent with the legislative design. Although the court agreed with FDA that the cancer risks posed by the dyes were trivial or *de minimis*, Id. at 1112, the court concluded that the other two factors precluded use of a *de minimis* exception in applying the color additive Delaney clause.

As to congressional rigidity, the court thought the statutory language supported the view that the color additives Delaney clause should be literally applied. Id. at 1113. According to the court, the "natural - almost inescapable reading of [the clause]" mandated a strict application. 831 F. 2d at 1112. This conclusion, the Court believed, was reinforced by the Delaney clause's direct proximity to general safety clause's specification of factors to be considered in making a safety determination. The court viewed the "contrast in approach" between the two adjacent provisions to be supportive of a strict reading of the Delaney clause because Congress had so clearly articulated a more flexible approach for additives which were not carcinogens. Id. at 1112–1113.

The court further found that the legislative history of the Color Additives Amendment "strengthen[ed] the inference" that Congress intended a strict application of the color additives Delaney clause. Id. at 1113, 1117. Of central importance to the court's determination regarding the legislative history was that Congress had explicitly embraced the Delaney clause and rejected all alternatives, even though Congress had been made aware of the rigidity in the color additives Delaney clause and of alternatives to such a doctrinaire approach. As evidence of Congress' consideration and rejection of alternatives to the Delaney clause, the court first noted that the Secretary of the then Department of Health, Education, and Welfare (HEW), the parent agency of FDA, had testified in favor of the color additives Delaney clause arguing:

> We have no basis for asking Congress to give us discretion to establish a safe tolerance for a substance which definitely has been shown to produce cancer when added to the diet of test animals. We simply have no basis on which such discretion could be exercised because no one can tell us with any assurance at all how to establish a safe dose of any cancer-producing substances.

Id. at 1114 (citing 1960 U.S. Code Cong. and Admin. News 2894). The court then catalogued the long list of witnesses who testified that safe tolerances could be set for carcinogens. 831 F.2d at 1114 and n. 7. Some of these witnesses, the court found, took a position "strikingly similar" to the trivial or *de minimis* risk approach advocated by FDA as supporting its approval of Orange No. 17 and Red No. 19. Id. at 1115. The court also summarized the proposals made to Congress for modifying the color additives Delaney clause to make it more flexible. Id. 1115 n. 9. Finally, the court cited the language in the House Committee Report acknowledging that the debate over the Delaney clause had occurred, that attempts to weaken the clause had been made, and that the Committee had rejected such attempts. Id. at 1114–15.

The court also found relevant to the issue of extraordinary rigidity the House Report's adoption of the Secretary of HEW's position that if a scientific basis for setting tolerances for carcinogens was discovered, Congress should, at that time, consider whether it wished to give FDA the authority to set such tolerances. Id. at 1115. Congress, according to the court, had reserved to itself, the prerogative to "find a solution" should the scientific premise of the Delaney clause become outmoded. Id.

Turning to the legislative design of the Color Additives Amendment, the court found two explanations justifying the extraordinary rigidity of the color additives Delaney clause. First, the court cited Congress' preoccupation with the disease of cancer as reflected in the legislative history. Id. at 1117. Second, the court concluded that Congress did not believe that color additives had any weighty public benefit. Id. Combining the fear of cancer and the perceived lack of value in color additives with Congress' awareness that it could later amend the law, the court reasoned that a strict reading of the color additives Delaney clause was consistent with the legislative design. Id. at 1118.

Given its findings on congressional rigidity and consistency with legislative purpose, the court held FDA's *de minimis* approach to be contrary to law. In so doing, the court rejected arguments by industry intervenors that a decision regarding the color additives Delaney clause could not be made without considering how that decision affected the food additives Delaney clause. Id. at 1119. The court believed that its ruling had not foreclosed *de minimis* arguments regarding the food additives Delaney clause. It noted that "[a]lthough the clauses have almost identical wording, the context is clearly different." Id. at 1120. One specific contextual difference noted by the court was that the social cost of banning some food additives arguably covered by the Delaney clause as opposed to color additives was not "trivial." Id.

VI. The Delaney Clause and De Minimis Risk

Following the factors set out in *Public Citizen v. Young*, EPA considered what level of cancer risk should be judged trivial, whether Congress was extraordinarily rigid in enacting the food additives Delaney clause, and if a *de minimis* exception is consistent with the legislative design of the FFDCA. As explained below, EPA relied principally on past regulatory actions as the reference point for assessing the trivial risk question. EPA found that although cancer risks greater than 1 in 1 million frequently have been the object of regulatory scrutiny, regulatory actions have been taken which allowed risks to remain that fell within a range of 1 in 10,000 to 1 in 1 million. EPA concludes that the trivial risk determination requires consideration of the weight of evidence regarding carcinogenicity, the size of the population exposed to the risk, and the level of the risk.

On the questions involving congressional rigidity and legislative design, EPA undertook an exhaustive review of the FFDCA and pertinent legislative histories. EPA discovered fewer signs of congressional rigidity in the FFDCA and its legislative history concerning the food additives Delaney clause than were noted by the *Public Citizen* court regarding the color additives Delaney clause. In fact, the legislative history of section 409 and other provisions involving pesticides actually suggest that a rigid interpretation of the food additives Delaney clause would be inconsistent with congressional intent. This determination is confirmed by Congress' legislative design for regulating pesticides. Hence, EPA concludes that the food additives Delaney clause is subject to an exception for pesticide uses which pose trivial risks.

A. Trivial Risk

1. *What is trivial risk?* What constitutes a trivial or *de minimis* risk cannot be defined in the abstract. Invariably, this definitional question is addressed by examining society's willingness to accept various levels of natural and manmade risks. The ability to define trivial cancer risk is aided through the use of quantitative risk assessment since this allows different risk estimates to be more easily compared. Below EPA first explains the quantitative risk assessment procedure it uses and then evaluates a number of different risks and regulatory judgments concerning risk.

a. *Quantitative risk assessment.* EPA performs quantitative risk assessments to estimate possible human cancer risks from a pesticide through the use of two factors, the pesticides's carcinogenic potency and the level of human exposure to the pesticide. Carcinogenic potency is typically estimated using a mathematical model to extrapolate the results from high-dose chronic (lifetime) animal studies to the lower levels of human exposure. The mathematical model generally employed by EPA yields a plausible, statistically-derived upper bound for carcinogenic potency. What this means is that the potency factor estimated by EPA is an upper limit even though the actual potency may be considerably lower or even zero.

Carcinogenic potency is multiplied by human exposure to produce a risk estimate. Human exposure is calculated based on an estimate of the level of the pesticide in food and data regarding average human consumption patterns. Unless data are available on more realistic levels of residues in particular food commodities, a worst case risk will be calculated based on the assumption that all food on which the pesticide may be used bears residues at the maximum legal level and that 100 percent of the crop is treated with the pesticide. If available, EPA will use average values from field trial residue studies in estimating human exposure. Even use of this data and percent of crop treated data, however, is likely to yield a high end estimate of exposure (and therefore, risk) because field trials are conducted under circumstances designed to produce maximum residues and pesticide residues generally degrade between the time of harvest and consumption.

Risk estimates are commonly expressed as probabilities: for example, 1 in 100,000 (1×10^{-5}) or 1 in 1 million (1×10^{-6}). Such an estimate does not represent the actual risk. Actual risk may, in fact, be lower, even as low as zero. Further, unless otherwise stated, EPA's risk estimates are lifetime cancer risks. For example, a 1 in 1 million risk is a risk that there may be 1 additional cancer case for every 1 million persons every 70 years.

It is helpful to keep the risk estimates provided by quantitative risk assessments in perspective. For example, assume that a community with a population of 1 million persons is exposed to a pesticide which poses a lifetime cancer risk of 1 in 1 million. Mortality statistics show that over a lifetime approximately one in four persons will die of cancer. That means, excluding any cancer risk from the pesticide, the hypothetical community will experience 250,000 cancer deaths over a 70 year timeframe. The additional cancer risk from exposure to the pesticide may increase the cancer deaths over that timeframe to 250,001. However, there may be no increase at all.

b. *Risk comparisons.* In weighing the trivial risk issue in Public Citizen, the D.C. Circuit examined a number of different risks faced by individuals. The court first evaluated the 1 in 1 million *de minimis* standard of FDA by providing examples of activities which created a 1 in 1 million risk—eating one peanut with the FDA-permitted level of aflatoxin every 250 days or spending 17 hours a year in Denver with its relatively high levels of radiation. 831 F.2d at 1111. The court noted that these activities were "taken without a second thought by persons whose economic position allows them a broad range of choice." Id. Second, the court contrasted the serious risk of cigarette smoking with a 1 in 1 million risk. According to the court:

> [e]ach one-in-a-million risk amounts to less than one *200,000th* the lifetime risk incurred by the average male smoker. Thus, a person would have to be exposed to more than 2,000 chemicals bearing the one-in-a-million lifetime risk, at the rates assumed in the risk assessment, in order to reach 100th the risk involved in smoking.

Id. (emphasis in original) (citation omitted). On the basis of these comparisons, the court concluded that the risks posed by the dyes, Orange No. 17 (1 in 19 billion [5×10^{-11}]) and Red No. 19 (1 in 9 million [1.1×10^{-7}]), were trivial. Id. at 1111–12. FDA in adopting its 1 in 1 million *de minimis* standard examined what cancer risks it and other health regulatory agencies had deemed acceptable in the past (51 FR 28361, August 7, 1986). FDA noted that it had employed a 1 in 1 million standard in decisions involving the sensitivity of method for the detection of cancer-causing food additives and the general safety clause in section 409 of the FFDCA. Id. OSHA, according to FDA, has followed a much less conservative approach allowing workers to be exposed to chemicals at levels which posed a risk as high as 8 in 1,000. Id. Finally, FDA cited a number of EPA decisions where a 1 in 1 million risk was used as the indicator of cancer risks of concern. Id. FDA noted that these safety decisions were made under several different statutes but concluded that nevertheless "the decisions do support the consensus proposition that a lifetime level of 1 in 1 million presents an extremely small risk." Id. Subsequent to FDA's adoption of its *de minimis* standard, OSHA appeared to concur in FDA's conclusion regarding the acceptability of a 1 in 1 million standard when it wrote in its decision on the formaldehyde standard that "figures of 0.6/100,000 (i.e. 6 in a million) * * * may be approaching a level that can be viewed as safe in the context of the workplace environment" (52 FR 46234, December 4, 1987).

EPA used a risk comparison analysis similar to the D.C. Circuit and FDA in proposing different policy approaches that could be used in setting national emission standards for hazardous air pollutants (NESHAP) under the Clean Air Act (53 FR 28511, July 28, 1988). EPA surveyed both a range of health risks found in the United States and regulatory decisions regarding acceptable risks. Health risks drawn from mortality tables showed that Americans faced a wide range of risks from accidents and diseases. If nothing else, surveying health risks from mortality tables illustrated that seemingly innocuous occurrences, such

as a slip and fall, may pose a fairly significant lifetime risk of death (1 x 10^{-4}).

EPA also examined estimated health risks attributable to natural environmental factors:

> Natural background radiation at sea level creates individual lifetime cancer risks in the range of 3 in 1,000 (3 x 10^{-3}) and an estimated 10,000 cancer cases per year. Naturally occurring radon in homes poses an additional source of radiation risk, and these risks can be as high as 1 in 100 to 1 in 10 (10^{-2} to 10^{-1}) and cause an estimated 15,000 to 20,000 cancer cases/yr.

While these environmental risks are more relevant to the present issue in that they involve estimated risks as opposed to actual risks, a more telling indicator of *de minimis* risk in the present context is not simply what estimated risks exist but what has been the historical judgment of regulatory agencies as to which estimated risks are not worthy of attention. In the NESHAP policy statement, EPA catalogued the following regulatory decisions:

> Judgments on risks have also spanned a broad range of risk levels. The National Council on Radiation Protection and Measurement (NCRP), following recommendations of the International Commission on Radiological Protection, has recommended that maximum individual exposures be limited to an amount corresponding to risks of 3 in 1,000 (3 x 10^{-3}).
>
> The Food and Drug Administration (FDA) establishes tolerances for poisonous or deleterious substances, such as polychlorinated biphenyls (PCB's), at a level found necessary to protect the public health, taking into account the extent to which the substance is required or unavoidable in the food supply and the other ways the consumer may be affected by the same substance. For example, FDA has established a tolerance level for PCB's in fish at an individual risk of 7 x 10^{-4}, which would result in 34 cancer cases each year among heavy fish consumers alone (44 FR 38333, June 29, 1979).
>
> The EPA regulates pesticide uses under the FIFRA based on whether the pesticide creates unreasonable adverse effects, a statutory term defined as requiring balancing risks and benefits. The EPA has authorized some uses of the pesticide chlorobenzilate that would create individual risk of 1 x 10^{-4} to 7 x 10^{-4}, and would result in 2 to 9 additional cancer cases per year (EPA banned other uses of this pesticide).
>
> Regulatory judgments have also been made to require lower risks. For example, under the provisions of the Food, Drug, and Cosmetic Act (FDCA), which provides that 'no residue' from carcinogenic additives to animal feed may remain in any edible portion of the animal, FDA has established a policy of not allowing the use of additives that create a risk to the animal higher than 1 in 1,000,000 (1 x 10^{-6}).

Id. at 28513.

Although EPA in its final NESHAP policy statement ultimately concluded that it would be inappropriate to make the sole regulatory consideration a numerical risk number, EPA did adopt presumptive numerical levels for administering the two step process for making safety determinations under section 112 of the Clean Air Act (54 FR 38044, September 14, 1989). For the first step (the "safe" or "acceptable" level of risk determination), EPA adopted 1 in 10,000 (1 x 10^{-4}) as a presumptive level of acceptable risk for the maximally-exposed individual. Id. at 38045. For the second step (the "ample margin of safety" determination), EPA decided to "strive *** to protect the greatest number of persons possible to an individual lifetime risk level no higher than approximately 1 in 1 million." Id. at 38046. Other factors EPA cited as important to these safety determinations included the distribution of risks in the population and the weight of evidence supporting the cancer determination. Id.

Since the promulgation of the NESHAP policy, EPA has made a number of additional judgments on the acceptability of cancer risks. Three pesticide decisions are of note. First, EPA issued a notice of cancellation for many of the uses of the pesticide captan (54 FR 6116, February 24, 1989). EPA estimated the overall lifetime dietary cancer risk from captan as in the 10^{-6} to 10^{-5} range. Judging that risk unacceptable in light of the benefits which captan provided, EPA cancelled all uses with little or no benefits. The uses judged acceptable by EPA after consideration of benefits posed a cumulative lifetime cancer risk in the range of 10^{-6}. Id. at 8144–45. EPA did not require risk reduction measures for field workers exposed to captan concluding that a risk to field workers in the range of 10^{-4} to 10^{-6} was not unreasonable. Id. at 8146. Second, EPA proposed to cancel the food uses of daminozide based on a cumulative lifetime risk from those uses of 5 x 10^{-6} (54 FR 22558–22573, May 24, 1989). Those same risks also prompted EPA to revoke the food use tolerances and food additive regulations for daminozide (55 FR 10218, March 19, 1990). Finally, EPA proposed to cancel a majority of the food uses of the ethylene bisdithocarbamates while at the same time proposing to retain uses which cumulatively posed a risk of 3 x 10^{-6} (54 FR 52158-52185, December 20, 1989).

Under the Toxic Substances Control Act, EPA issued a final rule prohibiting the future manufacture, importation, processing, and distribution in commerce for almost all products containing asbestos (54 FR 29460, July 12, 1989). EPA estimated upper bound lifetime cancer risks from asbestos to workers to be in the range of 7 in 10,000 (7 x 10^{-4}) to 7 in 1,000 (7 x 10^{-3}) and to the general population as greater than 1 in 1 million. Id. at 29472. EPA also cited additional unquantifiable yet significant risks from asbestos to the general public.

Under the Comprehensive Environmental Response, Compensation, and Liability Act, EPA issued a final rule promulgating revisions to the National Oil and Hazardous Substances Contingency Plan (NCP), (55 FR 8666, March 8, 1990). The NCP establishes standards for the cleanup of hazardous waste sites. For known or suspected carcinogens, the NCP sets the acceptable risk range as between 10^{-4} to 10^{-6} excess upper bound lifetime risk. EPA had proposed a risk range between 10^{-4} to 10^{-7}. Comments on this proposal had varied widely. Those who believed that 10^{-7} was too stringent argued that:

> allowing a lower risk on the order of 10^{-7} would be 'unprecedented' and 'indefensible,' far less than many commonly accepted risks or the accepted *de minimis* level. Some also noted that no Superfund action has ever cleaned up to this stringent level.

Id. at 8716. On the other hand, other commenters argued that the cleanup level should be set no higher than 10^{-6} "because risk assessment is fraught with uncertainty." Id. In the final rule, EPA amended the proposal citing the need for consistency with other EPA programs and the inability of analytical techniques to measure exposure levels representing risks below 10^{-6}. EPA stated the 10^{-6} cleanup level could be modified based on exposure and uncertainty factors.

Under the Safe Drinking Water Act, EPA adopted final rules setting maximum contaminant level goals (MCLGs) and maximum contaminant levels (MCLs) for organic and inorganic chemicals (56 FR 3526, January 30, 1991). Although the MCLGs follow a zero risk approach for known and probable human carcinogens, that unique regulatory approach is directly a function of the fact that MCLGs are goals and not enforceable. Id. at 3533–35. The enforceable standards, the MCLs, are set for known and probable human carcinogens using an acceptable risk range of 10^{-4} to 10^{-6}. Id. at 3547.

The determination that risks below 1 in 1 million have generally not been the subject of regulation was born out in an analysis of 132 Federal regulatory decisions involving carcinogenic substances. Travis, Richter, Crouch, Wilson, and Klema, *Cancer Risk Management*, 21 Environmental Science Technology. 415 (1987). Noting the consistency among the Federal

regulatory agencies, the authors' of this study found that every chemical posing an individual risk greater than 4 in 1,000 was regulated and that, with one exception, "no action was taken to reduce individual lifetime risk levels that were below 1 x 10^{-6}." Id. at 418. The authors concluded that FDA's proposal of a 1 in 1 million level as *de minimis* was "consistent with historical practice." Id.

Recently, Congress has also spoken on the appropriate risk level to be followed in regulating carcinogens. In the Clean Air Act Amendments of 1990, Pub.L. No. 101–549, (November 15, 1990), Congress provided that a second round of source standards is not required where the lifetime excess cancer risk to an individual most exposed to emissions from a source is less than 1 in 1million. (Section 112(f)(2)(A)). Congress also gave EPA the authority to delete a source category from the list of major or area sources where it could be shown that no source in that category posed a risk of greater than one in a million lifetime cancer risk to the most exposed individual to emissions from the source. (Section 112(c)(9)(B)(i)). Finally, Congress directed thata number of studies of risk assessment be conducted. First, Congress required EPA to arrange for a National Academy of Sciences study of EPA cancer risk assessment methodology. (Section 112(o)(1)). Second, Congress established a commission to investigate "the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under variousFederal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances." (Section 303(a)).

Certainly any of the individual risk comparisons described above are open to criticism. It could be argued that citation of the level of background radiation risk is irrelevant to risks posed by pesticides in that people are more accepting of, so-called 'natural' risks. Moreover, that relatively large natural risks exist does not make those levels of risk acceptable. In the same vein, it could be argued that the risks of smoking are inappropriate for comparison to the risks of pesticides because smoking is primarily a voluntary activity, while, for the most part, individuals have less control over their dietary exposure to pesticides. The risks from accidents could be discounted because of the fact that society generally fears the disease of cancer more than death caused by an accident. Finally, reliance on previous regulatory decisions, particularly decisions by EPA, could be criticized as an attempt to bootstrap a *de minimis* level. In other words, risks below a certain level are *de minimis* because EPA has said they are.

Unfortunately, there are no definitive criteria for establishing the definition of trivial risk. If trivial risk is to be defined, it must be on the basis of risk comparisons such as those cited above. EPA believes the risk comparisons most relevant to such an exercise are the prior decisions of the regulatory agencies. Although recognizing that relying on its own and its sister agencies' decisions as a measure of trivial risk has an element of self-validation, EPA thinks there are a number of factors which lend credence to this approach both generally and in this specific instance. As a general matter, agency decisions are not made in a vacuum. Usually they occur only following a process of notice and public comment, and they ultimately are most always subject to judicial review. Thus, there generally is substantial public participation in agency determinations, and that has been the case with regard to the agency decisions cited above on the acceptability of risk. For example, all of the public comment on FDA's sensitivity of method rulemaking proceeding agreed that a level of less than 1 in 1 million is insignificant (51 FR at 28362). Further, in this instance, EPA is not relying on a single decision from a single agency which was announced only recently. Rather, EPA believes the decisions it has cited show that a consensus on the acceptability of cancer risks is held among the major agencies addressing human health questions. Moreover, that position is not of recent origin but has been a matter of public record at least since FDA's proposal on sensitivity of method in 1979. Id.

The consensus stresses examination of three factors in determining acceptable risk: (1) The weight of evidence regarding the cancer determination; (2) the population exposed to the cancer risk; and (3) the quantitative level of the cancer risk. Where the entire U.S. population is exposed to a chemical classified as a probable human carcinogen, the agency consensus appears to be that risks less than 1 in 1 million generally can be found acceptable without consideration of other factors while risks greater than that level require further analysis as to their acceptability. Congress' most recent pronouncement on the acceptability of cancer risks establishes 1 in 1 million as a level below which regulationis not required. This consensus on the acceptability of cancer risks should be given great weight in determining whether a particular risk is *de minimis* or trivial.

2. *Are EPA risk assessments conservative*? Although Petitioners do not directly argue that the risks posed by the trifluralin food additive regulations are not trivial, they do in a footnote question the accuracy of EPA's quantitative risk assessment in general. (Objections, 3, 4 n.1). Petitioners assert that quantitative risk assessment is "notoriously replete with vagaries and uncertainties" and that some scientists "believe that current risk assessment procedures may substantially underestimate actual cancer risk to the American public or fail entirely." Id. EPA believes these criticisms of quantitative risk assessment are overstated.

Quantitative risk assessment has been extensively used by Federal agencies for over a decade. At the same time, EPA acknowledges that there are inherent uncertainties in quantitative risk assessment because, among other things, of the necessity of relying on data from animal studies to predict human risk. National Academy of Sciences, Risk Assessment in the Federal Government: Managing the Process 28 (1983). In addressing uncertainties, however, EPA generally uses conservative assumptions to ensure that risks are not underestimated. EPA believes that use of conservative assumptions yields a plausible upper bound estimate of risk, with actual risks being probably lower and even as low as zero.

To support their criticisms of quantitative risk assessment, Petitioners cite two articles, Roberts, *Is Risk Assessment Conservative?*, 243 Science 1553 (March 24, 1989), and Perera and Boffeta, *Perspectives on Comparing Risk of Environmental Carcinogens*, 80 Journal of the National Cancer Institute 1282 (October 19, 1988). These citations are unconvincing. As detailed below, EPA believes that the underlying study on which the first article is based has major flaws. The second article criticizes risk assessment procedures not followed by EPA.

The Roberts article is actually a short summary of an article by John C. Bailar III, Edmund A.C. Crouch, Rashid Shaikh, and Donna Spiegelman entitled "One-Hit Models of Carcinogenesis: Conservative or Not?" 8 Risk Analysis 485 (1988). In that article, Bailar et al. argue that "linear" mathematical models for extrapolating results from high dose animal cancer studies to low dose human exposure levels, including the type of model commonly used by EPA,

are not particularly conservative and, in fact, for some chemicals may underestimate risk at lower doses. Bailar et al. evaluated 1212 cancer studies (308 chemicals) from the U.S. National Toxicology Program (NTP) involving 3 doses (high, low, and zero (control)) for the purpose of determining whether a dose-response curve computed using linearization from the high dose under- or over-estimated the tumor response at the low dose. Id. at 486–87. Bailar et al. concluded that "there is an excess of experimental results in which a linear formula will underestimate risks at intermediate doses in the observable range of excess risk." Id. at 492.

The Bailar et al. study was essentially repeated by David G. Hoel and Christopher J. Portier of the National Institute of Environmental Health Sciences. Hoel and Portier, *Nonlinearity of Dose-Response Functions for Carcinogenicity* (submitted for publication). After analyzing 344 cancer studies (315 chemicals) from the NTP, Hoel et al. concluded that only a small percentage of experiments exhibited a supralinear curve and that, in general, a linear approach overestimates risks at low doses. Id. at 15. Hoel et al. ascribed the differences between the two studies to (1) Bailar et al.'s reliance on studies that may not have been published or peer-reviewed; (2) Bailar et al.'s use of tumor sites that were not significant under the modified trend test; and (3) the failure of Bailar et al. to examine adequacy of the models' (supralinear, linear, sublinear) fits to the experimental data. Id. at 14–15. In addition, EPA would note that Bailar et al. failed to take into account that EPA uses the 95 percent upper bound value from the linearized multistage procedure. Use of the 95% upper bound introduces significant conservatism into the risk assessment and may capture much, if not all, of the supra-linear response found by Bailar et al. Finally, in evaluating Bailar et al.'s indictment of the conservatism of risk assessment, it should be emphasized that use of a linear assumption regarding the dose-response curve is only one of several conservative scientific assumptions or default positions that may be used by EPA in assessing cancer risks. (See Guidelines for Carcinogen Risk Assessment, (51 FR 33992, September 24, 1986)).

The second article cited by Petitioners, Perera et al., is a critique of a proposed system, the human exposure rodent potency (HERP) index, for evaluating the risk to humans from chemicals found to be animal carcinogens. Perera et al., determined that the HERP index has significant limitations mainly due to use of unrealistic exposure assumptions. EPA does not use the HERP index. Moreover, the article does not criticize EPA risk assessments. In fact, if anything, the article is generally supportive of the use of quantitative risk assessment in the regulatory context.

EPA acknowledges that many of the assumptions involved in such risk assessments are the subject of scientific debate. For the most part, however, contrary to the impression given by Petitioner's objections, this debate has centered almost exclusively on whether EPA's risk assessments overstate human risk due to use of overly conservative assumptions such as, for example, use of a linearizing procedure for extrapolating from high to low doses. These criticisms have come from academics and research scientists, see, e.g., Ames and Gold, *Too Many Rodent Carcinogens: Mitogenesis Increases Mutagenesis*, 249 Science 970 (August 31, 1990); Cohen and Ellwein, *Cell Proliferation in Carcinogenesis*, 249 Science 1007 (August 31, 1990), and industry scientists, Paustenbach, *Health Risk Assessments: Opportunities and Pitfalls* 14 Col. J. Envt'l Law 379 (1989); Anderson, *Scientific Developments in Risk Assessment: Legal Implications*, 14 Col. J. Envt'l Law 411 (1989). (See also Finkel, *Is Risk Assessment Really Too Conservative?; Revising the Revisionists*, 14 Col. J. Envt'l Law 427 (1989) (collecting citations to criticisms of use of conservative assumptions in risk assessment and defending current EPA risk assessment assumptions)).

EPA believes that its Cancer Risk Assessment Guidelines, 51 FR 33992 (September 24, 1986), which were developed following extensive peer review from scientists outside of EPA and public comment, represent a scientifically defensible basis for conducting quantitative risk assessments. These Guidelines provide the best guidance currently available for regulating carcinogens. At the same time, EPA continues to reevaluate these Guidelines based on new information.

B. Extraordinarily Rigid/Consistent With Legislative Design

In addressing the issues of congressional rigidity and consistency with legislative design, EPA believes there are a number of relevant sources of information in addition to the statutory language of the Delaney clause. Of greatest importance is the legislative history of the Food Additives Amendment. Other sources of information are other regulatory provisions on pesticides and the legislative history of those provisions and the legislative history of the Delaney clause in the Color Additives Amendment.

1. *The legislative history of the Food Additives Amendment.* The issue of foreign substances in foods was a subject of particular congressional interest throughout the decade of the 1950's. Of most importance to the present matter are the legislative proceedings which immediately preceded the enactment of the Food Additives Amendment of 1958. That amendment added section 409 and its anti-cancer (Delaney) clause to the FFDCA. A detailed discussion of the legislative history of that amendment forms the bulk of this section. Necessary context for this legislative history is provided by the committee report and hearings resulting from an inquiry conducted by the House Select Committee to Investigate the Use of Chemicals in Foods and Cosmetics (Delaney Committee) and the legislative history of the 1954 Pesticide Residues Amendment to the FFDCA addressing pesticides in raw agricultural commodities. The work of the Delaney Committee and Congress' passage of the Pesticide Residues Amendment set the stage for consideration of an amendment to the FFDCA addressing food additives.

a. *The Delaney Committee hearings and report.* In July, 1950, the House of Representatives created a select committee to investigate the use of chemicals in food products. Congressman James J. Delaney of New York was appointed to chair the committee. The Delaney Committee was charged with investigating the use of chemicals in food processing and cosmetics and pesticides and fertilizers in food production. Over a 2-year period, the Committee had 50 days of hearings in several cities across the country and heard from 217 witnesses. The Committee's final report concluded that increasing use of chemicals in food production and processing posed a "serious public health threat" that could not be adequately addressed by existing Federal laws. (H. Rept. 2356, 82d Cong., 2d sess. 25 (1952), reprinted in, XII A Legislative History of the Federal Food, Drug, and Cosmetic Act and its Amendments 523 (hereinafter cited as Legislative History)).

Although the report included a description of the risks posed by several specific food additives and pesticides, the greatest threat cited in the report was the lack of knowledge about chemicals in the food supply. The Committee found that out of approximately 704 chemicals used in the production or processing of food only 428 were known to be safe. Id. at 502. There were inadequate data on the remaining 276 chemicals to make a safety determination. Id. In regard to the cancer risks posed by chemicals in food, the Committee reached a similar conclusion. According to the Committee, "[t]he testimony proffered was not that certain chemicals presently in use as additives and insecticides do cause cancer, but rather that there is a definite lack of knowledge on the subject." Id. at 503.

The ultimate recommendation of the Delaney Committee was that the FFDCA be amended to require safety testing of all chemicals used in or on foods before foods containing those chemicals were allowed on the market. Id. at 525. The Committee Report noted that some witnesses had advocated that in any amendments to the FFDCA, pesticides be treated differently from chemicals used in food processing because pesticides were incidental as opposed to intentional additions to food. Id. at 524. This distinction between pesticides and food processing chemicals was rejected by the Committee on the ground that the intention of the food producer had little to do with the health consequences of the chemical residues remaining on the food. Id. At the same time, the Committee appeared to acknowledge that there were grounds for according pesticides a unique status:

> While the committee is in agreement with the opinions expressed by many of the eminent witnesses who testified, that no chemical should be permitted in or on the Nation's food products until its safety for the use for which it is employed has been demonstrated beyond a reasonable doubt, *it also recognizes the necessity for the continued use of chemicals in sprays and other insecticides if the Nation is to be supplied with food.*

Id. at 524 (emphasis added). In the end, however, the Committee advocated no special treatment for pesticides on the basis that the Committee's inspections had shown "that with proper care, and by taking reasonable precautions, it is possible to utilize the poisonous properties of such chemicals in destroying insects and controlling diseases which attack many crops, without endangering the health of the people who consume these products." Id. at 524–25.

The Minority Report from the Delaney Committee explicitly adopted the notion that pesticides are different. (H. Rept. 2356, pt. 2, 82d Cong. 2d sess. 4 (1952) reprinted in XII Legislative History at 542). The minority based this distinction between pesticides and other chemicals used in food on two factors: (1) That pesticides are used "from necessity and not by choice;" and (2) there is an existing "legislative pattern" for the regulation of pesticides consisting of FIFRA and state laws. Id. The minority also concluded that better use of FIFRA and state laws might make amendments to the FFDCA unnecessary. Id. at 544.

b. *The Pesticide Residues Amendment of 1954.* In 1954, Congress chose to amend the FFDCA by adding a separate and distinct provision addressing pesticide residues in raw foods. Although FDA since 1938 had had the authority as provided in section 406 to establish tolerances for pesticides, in 15 years FDA had not promulgated a single tolerance. Pesticide residues in food continued to be governed, as they had since early in the century, by a system of "unofficial and informal tolerances." (H. Rept. 1365, 83d Cong., 2d sess. 2 (1954) [hereinafter cited as House Committee Pesticides Report] reprinted in XII Legislative History at 834). Section 406 failed because it created a cumbersome process for the setting of tolerances and gave industry little incentive to see that tolerances were established. Under section 406, a tolerance could only be set through formal rulemaking, and prior to the completion of that process there was no legal bar to the presence of a pesticide on food under the FFDCA short of FDA taking an enforcement action based on proof that the food containing the pesticide is injurious to health. Id. at 833; 100 Congressional Record 153 (January 11, 1954) (statement of Rep. Miller) reprinted in XII Legislative History at 747–48; see Delaney Report, XII Legislative History at 520 (discussion of inadequacy of section 406). The Pesticide Residues Amendment of 1954 responded to the flaws in section 406 by adding a new provision to the law, section 408, which established an informal rulemaking-type procedure for setting pesticide tolerances and barred the presence of pesticide residues on food in the absence of a tolerance. House Committee Pesticides Report, XII Legislative History at 837.

Under section 408, tolerances are to be established by HEW if they protect the public health. HEW is directed to give consideration to, among other factors, "the necessity for the production of an adequate, wholesome, and economical food supply." (21 U.S.C. 346a(b)). Both the House and Senate Reports cited the necessity of pesticides to the production of food as one of the primary reasons for amending the FFDCA to provide a separate section concerning pesticides:

> A specific method for controlling the residue of pesticide chemicals which may remain in or on raw agricultural commodities is set up which is distinct from that controlling other poisonous or deleterious substances which are used in, or remain in, processed, fabricated, and manufactured food. In this way, recognition is given to the peculiar economic, agricultural, and public health problems which are important in the regulation of pesticide chemicals and to the statutory controls which now apply to these chemicals. Unlike many other chemicals, pesticide chemicals are necessary instruments of agriculture in producing and expanding our food supply and are comprehensively regulated by the Department of Agriculture under the Federal Insecticide, Fungicide, and Rodenticide Act.

(House Committee Pesticides Report, XII Legislative History at 837; S. Rept. 1637, 83d Cong., 2d sess. 4 (1954) reprinted in XII Legislative History at 1012). The legislative history from the House and Senate also confirms that the perception of the use of pesticides as a necessity was determinative in the design of the risk/benefit standard for the promulgation of tolerances:

> [Section 408(b)] also sets forth the principal factors which should guide the administrative judgement in taking such action. The factors are designed to assure a proper balance between the need for protecting the consumer and the need for assuring an adequate, wholesome, and economical food supply.

Id. at 1015; House Committee Pesticides Report, XII Legislative History at 840.

c. *The Food Additives Amendment.* Following passage of the Pesticide Residues Amendment, Congress turned its attention to food additives. At that time, "poisonous or deleterious" food additives were absolutely barred from use in food processing unless necessary to the production of food. (21 U.S.C. 346). Viewing this approach as scientifically outdated, Congress believed it could protect the public health and still allow greater use of what had previously been labeled "poisonous and deleterious" food additives. (H. Rept. No. 2284, 85th Cong., 2d sess. 1 (1958) [hereinafter cited as House Food Additives Report] reprinted in XIV Legislative History at 822). To implement these goals numerous bills were introduced which followed the same general framework: require pretesting for most food additives while abandoning the rigid bar on unnecessary food additives which although "poisonous or deleterious" at some level might be safe at levels used in food.

Bills were introduced in 1955 and 1956 in the 84th Congress and hearings were held on these bills before a subcommittee of the House Committee on Interstate and Foreign Commerce.

House Food Additives Report, XIV Legislative History at 823. Although one of the bills was introduced by Congressman Delaney, none of the bills contained an anti-cancer clause. No further action was taken on these bills in the 84th Congress.

In 1957, several food additive bills were introduced in the 85th Congress, including a proposal from HEW sponsored by Congressman Harris, (H.R. 6747, 85th Cong., 1st sess. (1957) reprinted in XIV Legislative History at 40; Food Additives: Hearings on Bills to Amend the Federal Food, Drug, and Cosmetic Act With Respect to Chemical Additives in Food Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 85th Cong., 1st sess., 2d sess., 43 (1958) (statement of Rep. Williams) [hereinafter cited as Food Additives Hearings] reprinted in XIV Legislative History 40). Eleven days of hearings on these bills were held before a Subcommittee on Health and Science of the House Committee on Interstate and Foreign Commerce in July and August of 1957 and April of 1958. House Food Additives Report, XIV Legislative History at 824. These hearings covered many of the same matters and featured several repeat witnesses from the earlier food additives hearings. However, due to their extended length, the 1957 hearings involved a more detailed examination of food safety issues.

Two bills introduced in 1957, H.R. 7798 and H.R. 7938, introduced by Congressman Delaney and Congresswoman Sullivan, respectively, contained anti-cancer clauses. (H.R. 7798, 85th Cong., 1st sess. (1957), H.R. 7938, 85th Cong., 1st. sess. (1957), reprinted in XIV Legislative History at 91, 102). Most of the limited testimony concerning H.R. 7798 and H.R. 7938 and their anti-cancer clauses was favorable. Of the criticisms of the bills, most relevant here was FDA testimony describing the anti-cancer clauses as redundant and unnecessary. Ultimately, the subcommittee and full committee reported the HEW bill, H.R. 6747, in the form of a clean bill, H.R. 13254, which was sponsored by the subcommittee chairman, Congressman John Bell Williams. (House Food Additives Report, XIV Legislative History at 824). No explanation was given for the rejection of the Delaney and Sullivan bills or the anti-cancer clause they contained. Before floor debate began, however, the Committee had a change of heart regarding the anti-cancer clause and such a clause was inserted. 104 Congressional Record 17,414 (August 13, 1958) (statement of Rep. Harris) [hereinafter cited as Food Additives Debate] reprinted in XIV Legislative History at 868. HEW also reversed itself and dropped its opposition to an anticancer clause. A letter from HEW to this effect from Assistant Secretary Elliot Richardson was included in the record. Id. at 868–69. Following limited debate, the Committee's bill was adopted by the full House and shortly thereafter by the Senate.

In reviewing this legislative history in detail to determine whether Congress precluded EPA's adoption of a *de minimis* exception to the application of the Delaney Clause to pesticides, three separate issues are worthy of attention: (1) Congressional intent regarding the Food Additives Amendment's safety standard; (2) congressional understanding of the disease of cancer; and (3) congressional consideration of the application of the Food Additives Amendment to pesticides. These issues are discussed below.

i. *The safety standard.* Section 409 of the FFDCA provides that the standard for issuing a food additive regulation is whether the data establish that the proposed use of the food additive is "safe * * * under the conditions of use to be specified in the regulation * * *." (21 U.S.C. 348(c)(3)). The definition of safe use is amplified by the Delaney Clause which specifies that "no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal * * *." Id.

The general safety standard, as proposed by HEW, encompassed the concept of reasonable certainty of safety under the conditions of use. (See H.R. 6747, sec. 5, XIV Legislative History at 47). The House Committee report is clear on this point:

> Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not - and cannot - require proof beyond any possible doubt that no harm will result under any conceivable circumstances.

XIV Legislative History at 825. The concept of reasonable certainty of safety was emphasized by FDA:

> We, certainly, do not intend to sanction a chemical additive in the food supply unless the evidence rules out any reasonable ground for believing that the proposed use will constitute a hazard to the public health in any respect.

Food Additives Hearings, XIV Legislative History at 616 (statement of George P. Larrick, Commissioner, FDA), by scientists:

> It should be said, probably, at this point, that although the tests and procedures and the methods which are available to us at this time can establish with a reasonable degree of certainty that no harm to the public will result from a given use of a food additive, it is not possible in the present state of our knowledge to establish with complete certainty the absolute harmlessness of any chemical whatsoever.
>
> * * * * *
>
> It would be helpful at this point, I think, to state that there is no substance of which the witness is aware, including water, vitamin C, and common table salt, which will not produce serious illness when ingested to an unreasonable extent.
>
> * * * * *
>
> So it is not a matter of dealing in black and white, of saying whether a thing is poisonous or it is nonpoisonous. It is a matter of determining, as best we can, with the tools we have at hand, whether a given use is apt to be safe.

Id. at 254–55 (statement of Dr. R. Blackwell Smith, Medical College of Virginia); see also id. at 497 (same), 499 (statement of Dr. William B. Deichmann, University of Miami School of Medicine), 502 (statement of Dr. Maurice H. Seevers, University of Michigan), 509 (statement of Dr. Howard C. Spencer, Biochemical Research Dept., Dow Chemical Co.), and industry:

> Well, the whole point of this bill is to determine what is safe and what is not safe within reasonable and workable limits.

Id. at 391 (statement of H.T. Austern, National Canners Ass'n),

> We must, in our thinking, adopt the view that the true test to insure protection of the public health is safety under the conditions of use and that the principal condition of use is the quantity used and that, therefore, the statutory word 'poison' is a relative concept.

Id. at 280 (statement of Lawrence A. Coleman, Manufacturing Chemists' Ass'n).

Congressman Delaney's bill included a much more rigorous standard for approval of food additive regulations. First, the Delaney bill did not include the concept of safe under the conditions of use but merely specified that the additive be "safe." (H.R. 7798, sec. 5; XIV Legislative History at 95). One industry representative objected to the H.R. 7798 precisely because it appeared to adhere to the notion that whether an additive was safe was a black or white question. Food Additives Hearings, XIV Legislative History at 295, 311 (statement of Lawrence A. Coleman, Manufacturing Chemists' Ass'n). Second, in addition to the safety standard, Congressman Delaney's bill contained a separate provision stating: "[t]he Secretary shall not approve for use in food any chemical additive found to induce cancer in man, or, after tests, found to induce cancer in animals." (H.R. 7798, sec. 5; XIV Legislative

History at 85). Thus, separate and apart from the safety determination, H.R. 7798 barred the approval of additives found to induce cancer in man or animals.

Congressman Delaney indicated he had added an anti-cancer clause to his bill at the urging of "a number of cancer researchers * * *." Food Additives Hearings, XIV Legislative History at 333. Dr. William E. Smith, one of those researchers, provided the fullest explanation of H.R. 7798's anti-cancer clause. Dr. William Smith endorsed H.R. 7798 because the "other bills will tacitly permit use of cancer-inciting chemicals, carcinogens in food." Id. at 335. He noted with dismay that FDA had recently approved in the "Aramite decision" the use of a pesticide found to induce cancer in an animal feeding study because the level of the pesticide in food was found to be safe. Only explicit anti-cancer language would bar the extension of the safe quantity principle to carcinogenic food additives he concluded. Id. at 330. Congressman Delaney made the same point more emphatically in later testimony before the Committee:

> The precedent established by the Aramite decision has opened the door, even if only a little, to the use of carcinogens in our foods. That door should be slammed shut and locked. That is the purpose of my anticarcinogen provision.

Id. at 660.

Dr. William Smith also explained the reference to animal testing in H.R. 7798's anti-cancer clause. He stated that, even though it was well established that some chemicals now in use were human carcinogens, for new chemicals human testing would require observation for a lifetime due to the long latency period for cancer. Id. at 335. Thus, testing animals with shorter lifespans was the only feasible means of making a determination on the cancer-causing properties of a chemical. Dr. Smith acknowledged that a substance which is carcinogenic in one species is not necessarily carcinogenic in other species but thought that the Congress should adopt the conservative position that any substance which induced cancer in any animal should be excluded from human foods. Id.[1] A second cancer researcher upon whom Congressman Delaney relied, Dr. Francis Ray, from the University of Florida, echoed Dr. William Smith's reasoning that the anti-cancer clause was appropriate because of uncertainty regarding the effects of animal carcinogens in humans at low doses.

> Because we know there is no safe minimum dose for certain cancer-producing chemicals, I think we ought to adopt the rule, at least tentatively, that there is no safe minimum dose, though I readily admit that there may be a safe minimum dose for some cancer producing chemicals.

Id. at 366.

There was little opposition raised to H.R. 7798's anticancer clause in the Committee hearings. One of the few witnesses to recommend against inclusion of an anti-cancer clause was the Commissioner of FDA. In brief remarks on the issue, the FDA Commissioner stated that the anti-cancer clause was redundant because H.R. 6747, the HEW proposal, "would prohibit the addition of any chemical additive to the food supply until adequate evidence, acceptable to competent scientists, shows that it will not produce cancer in man under the conditions of use proposed." Id. at 615–16. The Commissioner also thought the anti-cancer clause inappropriately singled out one of many serious health disorders. Id. at 616.

As noted earlier, the House Committee initially produced a bill which contained no anti-cancer clause. Although the Committee report did not explain the reason for this omission, the Committee's lack of attention to this issue is not surprising. The subcommittee hearings had been dominated by acrimonious debate between industry and FDA, and among the subcommittee members themselves, over the type of and standard for judicial review and the question of whether a manufacturer must show a "functional value" for its food additive. House Food Additives Report, XIV Legislative History at 823, 827; see, e.g., Food Additives Hearings, XIV Legislative History at 236–239, 246 (statement of Charles Wesley Dunn, Grocery Manufacturers' Ass'n), 385–389 (statement of T.H. Austern, National Canners' Ass'n), 585–590, 596–601 (statement of Elliot L. Richardson, Assistant Secretary, HEW).

A bill was passed by the Committee only following a careful compromise on these issues. In contrast, the science issues generally and the anti-cancer clause specifically were not sharply controversial. Illustrative of the lack of attention paid to the anti-cancer clause is a chart prepared by the Committee summarizing the different provisions in the bills. In the chart the presence or absence of an anti-cancer clause was not listed as an issue for distinguishing between the bills. The closest the chart came to the cancer issue was that each bill was evaluated for whether "information [must] be supplied about an additive's ability to produce cancer." Id. at 215. According to the chart, the HEW bill required information to be submitted on cancer. Id.

In the final analysis, the Committee appeared to adopt FDA's position that an anti-cancer clause was unnecessary. In its only reference to cancer, the Committee wrote:

> Since the scientific investigation and the other relevant data to be taken into consideration by the Secretary include information with respect to possible cancer causing characteristics of a proposed additive, the public will be protected from possible harm on this count.

House Food Additives Report, XIV Legislative History at 826.

The safety standard in section 409 took its final shape in negotiations between Congressman Delaney, the House Committee, and FDA following the Committee's passage of the bill but prior to floor debate in the House. At Congressman Delaney's urging and with the concurrence of FDA, the Committee unanimously amended H.R. 6747 (which had become H.R. 13254) to include an anti-cancer clause.

Although Congressman Harris, the sponsor of H.R. 6747, and the HEW/FDA acquiesced in the anti-cancer amendment, it is clear that they continued to think the amendment redundant. Congressman Harris explained the Committee's change of heart on an anti-cancer clause as follows:

> While the committee felt that the bill as reported by the committee includes the matter covered by the Delaney amendment in the general language contained in the bill, there was no objection to the addition of the amendment suggested by Mr. Delaney.

Food Additives Debate, XIV Legislative History at 868. In fact, Congressman Harris perceived the Delaney amendment as having so little effect on the Committee bill that he repeated on the floor the Committee report's discussion of the bill's safety standard, with its emphasis on reasonableness, unchanged. Id. at 670. Congressman Williams, the sponsor of H.R. 13254, spoke following Congressman Harris and he reiterated that "the bill requires proof of the *practical* certainty that no harm will result from the proposed use of the substance." Id. at 672 (emphasis added). As to the Delaney amendment, Congressman Williams simply appended one sentence restating the

---

[1] It should be noted that the credibility of Dr. William Smith's testimony might have been weakened before the Committee due to a dispute over the truth of certain allegations Dr. Smith made in regard to him/human by government, universities, and industry in cancer research. See XIV Legislative History at 348–362.

Delaney clause's express command to the language from the House Report which described how the bill's safety standard absent an anti-cancer clause protected the public from cancer-causing substances. Id.

HEW, in a letter read into the Congressional Record, repeated its view that an anti-cancer clause was redundant but announced it was dropping any objection to Delaney's amendment.

> The widespread interest in cancer led to suggestions that the food additives legislation should mention the disease by name and forbid the approval of any substance that is found upon test to cause cancer in test animals. This Department is in complete accord with the intent of these suggestions that no substance should be sanctioned for uses in food that might produce cancer in man * * *. Any indication that the additive may thus be carcinogenic would, under the terms of the bill [H.R. 13254 prior to inclusion of the Delaney amendment], restrain the Secretary from approving the proposed use of the additive unless and until further testing shows to the point of reasonable certainty that the additive would not produce cancer and thus would be safe under the proposed conditions of use.
>
> * * * * *
>
> At the same time, if it would serve to allay any lingering apprehension on the part of those who desire an explicit statutory mandate on this point, the Department would interpose no objection to appropriate mention of cancer in food additives legislation.

Id. at 869.

On the floor, Congressman Delaney defended his anti-cancer clause as necessary citing again FDA's decision to allow the use of a carcinogenic pesticide on food. Congressman Delaney stated that he "felt strongly that the public should be assured that no similar incident would occur with regard to food additives." Id. at 874. He also made clear that the presence of anti-cancer language in the bill was essential to his support. Id.

The only objection raised to the Delaney amendment on the floor was from Congressman Miller of Nebraska, the sponsor of the Pesticide Residues Amendment. He contended that such an amendment would be "impossible to enforce; that is, to determine what foods, if any, would produce any carcinogenic tendencies in human beings." Id. at 875. Congressman Harris responded that he was sure that if FDA had problems with the anti-cancer clause it would request clarification from Congress. Id. A further reply was offered by Congressman Dingell from Michigan who stated that science could determine "that there are substances that will produce cancer within the bodies of test animals and of human beings." Id. at 876.

The legislative record in the Senate on the safety standard in the Food Additives Amendment is much less extensive. The report from the Senate Labor and Public Welfare Committee on H.R. 13254 (the bill which passed the House) basically tracks the House Committee report. The Senate report repeats verbatim the pre-Delaney amendment language in the House report stressing that the bill's safety standard did not require that a substance be absolutely harmless, just that there be reasonable certainty of safety. (S. Rept. 2422, 85th Cong., 2d sess. 6 (1958) reprinted in XIV Legislative History at 918.) In commenting on the Delaney anti-cancer clause, the Senate Report took the view of the FDA:

> We have no objections to [the Delaney] amendment whatsoever, but we would point out that in our opinion it is the intent and purpose of this bill, even without that amendment, to assure our people that nothing shall be added to the foods they eat which can *reasonably* be expected to produce any type of illness in humans or animals. * * * In short, we believe the bill reads and means the same with or without the inclusion of the clause referred to.

Id. at 922–23 (emphasis added).

ii. *Cancer.* Critical to an interpretation of the Food Additives Amendment legislative history is an understanding of Congress' knowledge regarding the disease of cancer. The House Committee heard testimony from two panels of scientists on the scientific issues raised by the Food Additives Amendment. The first panel consisted of cancer specialists and appears to have been invited to testify by Congressman Delaney concerning the need for an anti-cancer clause. The second panel was assembled by the National Academy of Science at the request of the subcommittee for the purpose of discussing "the scientific problems involved in testing and evaluating the safety of food additives." Food Additives Hearings, XIV Legislative History at 477 (statement of Dr. William S. Darby, Vanderbilt University School of Medicine). While the first panel contained scientists from academic or research institutes, the second panel had a more diverse mix including several scientists who worked in the food processing industry. Id. at 477–78. Dr. W. C. Hueper of the National Cancer Institute appeared on both panels. Despite the number of scientists and the diversity of backgrounds, the testimony they gave was fairly uniform.

Three topics which were discussed by the scientists that have relevance to the *de minimis* issue: (1) Whether there is a "safe" dose for carcinogenic substances; (2) whether any food additives presently in use were carcinogenic; and (3) whether strict regulation of carcinogenic food additives would have an effect on the food processing industry.

With one exception, the scientists who testified were in agreement that at that time science was unable to determine a safe dose for a carcinogen. Probably the strongest statement came from Dr. W.C. Hueper of the National Cancer Institute:

> I do not think that we have the method or evidence available by which we can reliably determine a safe dose. In fact, we have no safe dose of any environmental carcinogen, including radioactive substances. You probably know or you remember that the so called maximum permissible dose of radioactive exposure has been lowered in recent years several times. So we are still in the twilight area in which we do not know exactly when and where a safe dose for an environmental carcinogen may be placed.

Id. at 534; see id. at 550. A slightly less cautious view was voiced by Dr. Herbert Carter, a biochemist at the University of Illinois:

> I would not go so far as Dr. Hueper and say unconditionally that there is no such thing as a harmless level for a carcinogen; with our present knowledge it simply is not possible to answer this question one way or the other.

Id. at 538. Similar views of those of Dr. Hueper and Dr. Carter concerning the lack of a safe dose for carcinogens were offered by Dr. William E. Smith of the Sloan-Kettering Institute for Cancer Research, Id. at 335–36, Dr. Francis E. Ray, Director of the Cancer Research Laboratory at the University of Florida, Id. at 386, and Dr. William B. Deichmann, University of Miami, Id. at 561.

The lone dissenter on this point was a professor of pharmacology from the University of Michigan, Dr. Maurice A. Seevers. Dr. Seevers testified that:

> One of the cardinal principles of toxicology is that every substance has a 'no effect' dose * * * there is a tolerance level for every compound including the so-called carcinogenic agents.

Id. at 501. Dr. Seevers did not call attention to his differences with the other scientists regarding a safe dose for carcinogens. Further, he was not questioned on this statement, and no Congressman or other witness commented on it. When the scientists were questioned as to the appropriateness of an anticancer clause, they replied cautiously emphasizing that proper animal studies should be used before drawing conclusions about carcinogenicity. Id. at 544–46 (statements of Dr. Darby and Dr. Deichmann). Which animal tests were appropriate as an indicator of a potential human carcinogen was one subject on which the scientists did disagree. (See id. at 536 (statement of Dr. Emerson Day, Sloan-Kettering Institute for Cancer Research), 561 (statement of Dr. Deichmann)). However, none of the panel directly objected to the Delaney clause, not even Dr. Seevers or the industry scientists. The only criticism of a Delaney clause approach was an oblique statement by Dr. Paul R. Cannon of the University of Chicago that it is "very difficult to know whether [an anti-cancer clause] is a wise [law]." Id. at 546.

A second topic that was frequently discussed by the science panels was whether any existing food additives were carcinogens. One of the conclusions of the Delaney Committee Report was that there was a large number of food additives for which adequate testing had not been conducted. This conclusion was repeatedly emphasized by witnesses before the Committee. (See, e.g., id. at 332 (statement of Rep. Sullivan), 444 (statement of Dr. W.C. Martin, President, American Academy of Nutrition), 449 (statement of George D. Riley, AFL-CIO)). Not surprisingly, therefore, the Congressmen repeatedly asked the scientists whether they knew of any food additives which caused cancer.

In one exchange, Dr. John Foulger from Dupont, after conferring with other members of the panel, replied that one food additive which was an animal carcinogen had been previously used in Germany. Id. at 525, 528; see id. at 528–29 (statement of Dr. W.C. Hueper, National Cancer Institute) (asserting that food additive was still being used by government agencies). Several other scientists named one or two dyes or pesticides. Id. at 339 (statement of Dr. William E. Smith, Sloan-Kettering Institute for Cancer Research), 364 (Dr. Francis Ray, University of Florida). The most complete statement on this issue was provided by Dr. Hueper who listed as animal carcinogens the following food additives or contaminants: (1) Three groups of dyes (triphenylmethane, alpha-napthylamine, and beta-naphthylamine); (2) estrogenic chemicals used for fattening of poultry and livestock; (3) "[c]ertain chlorinated hydrocarbon pesticides residues, particularly Aramite," and arsenical pesticides; and (4) radioactive materials. Id. at 533. There was also testimony that no food additive had ever been suspected to be the cause of human cancer. Id. at 536 (statement of Dr. Emerson Day, Sloan-Kettering Institute for Cancer Research).

On a related topic, the scientists were asked what the effect would be on the food processing industry if an anti-cancer clause were adopted. Dr. William Smith thought it would cause no "serious inconvenience" due to the large number of alternative chemicals available to serve the needs of the food processing industry. Id. at 340. Better evidence on this point was provided when the issue was posed to the panel which included industry scientists. When asked, these scientists insisted that industry had already voluntarily removed products when cancer risks were discovered. At that point the following colloquy occurred:

> Congressman Rhodes: I wondered though if it [voluntary withdrawal] would be true where a whole industry may be destroyed, where many people would be affected economically, if it were found that the product being used produced cancer, or was found unsafe for public consumption.
>
> Dr. Murer [General Food Corp.]: It has happened in three or four cases. This does not destroy industry, and it does not destroy companies. It destroys businesses within them and rather large and substantial ones. This is part of the game.
>
> This has happened on four or five occasions. This is part of the game.

Id. at 544.

iii. *Pesticides as food additives.* A final issue important to an understanding of the Food Additives Amendment legislative history is the degree to which Congress realized the effect the Food Additives Amendment would have on the regulation of pesticides. It is taken for granted today that section 409 is a part of the overall Federal regulatory scheme for pesticides. The case of *United States v. Ewig Bros Co.*, 502 F.2d 715 (7th Cir. 1974), cert. denied, 420 U.S. 945 (1975), held that a pesticide chemical in a processed food was a "food additive" regulated by section 409 and this decision is well-supported by the language of the statute and the legislative history on the issue. Food Additives Hearings, XIV Legislative History at 675. Nonetheless, the relationship between section 409 and section 408 and FIFRA was only dimly perceived at the time of the enactment of the Food Additives Amendment. Congress paid little, if any, attention to the fact that section 409 and its anti-cancer clause would govern a particular class of food production pesticides, those that concentrate in processed foods. This anomaly may be due to a failure of the lawmakers to grasp the intricacies of the relationship between sections 408 and 409 or because it was thought that pesticides rarely if ever concentrated in processed food. In any event, as will be shown, Congress in 1958 viewed the regulation of pesticides as "separate and apart" from the regulation of food additives. Id. at 318 (statement of Rep. Miller).

The difference in treatment of pesticides and food additives goes back at least as far as the 1938 amendments to the FFDCA. Those amendments added section 406 to the statute. Section 406 permitted FDA to set tolerances for use on food of poisonous or deleterious substances which were necessary in the production of food and could not be removed by good manufacturing processes. In applying section 406, pesticides were the only poisonous or deleterious substances found to be necessary to the production of food. As FDA's general counsel explained section 406:

> The answer to any proposed use of a poisonous or deleterious substance was an emphatic 'NO,' unless it could be shown that the chemical was required or unavoidable.
>
> And over the years, only the insecticidal, fungicidal, and other agricultural chemicals met this strict test.
>
> * * * * *
>
> As to all other added poisonous or deleterious substances in food, the per se rule of exclusion still prevails. Over the years no chemicals met this test.

Id. at 613–14 (statement of William W. Goodrich, General Counsel, FDA); accord Federal Food, Drug, and Cosmetic Act (Chemical Additives in Food): Hearings on H.R. 4475, 7605, 7606, 8748, 7764, 8271, and 8275 Before a Subcomm. of the Comm. on Interstate and Foreign Commerce, 84th Cong., 2d sess. 194 (1956) (statement of George P. Larrick, Commissioner, FDA) [hereinafter cited as 1956 Food Additives Hearings] reprinted in XIII Legislative History at 707.

This perceived distinction between pesticides and food additives was a major reason why Congress in addressing the concerns raised by the Delaney Committee Report chose in 1954 to deal with pesticides separately. This decision found support in hearings held on the Pesticides Residue Amendment:

> Many chemicals find their way into foods in one way or another. Some substances are deliberately added to specific foods to impart to them certain desirable qualities, such as flavor, color, and texture, or to aid in their preservation or processing. Others may find their way into foods in small amounts more or less incidentally in the production or processing of these foods. There are those who would lump these all together under the term chemical additives. The food-protection

committee of the National Research Council, how ver, has from its very inception recognized a distinction between these two classes of additives and has consistently referred to them as 'intentional chemical additives' and 'incidental chemical additives,' respectively. This bill, H.R. 7125, recognizes pesticides as a specific class of chemical additives which, because of their particular attributes, must be considered, and dealt with as a problem separate from the intentional additives. The Congress has previously wisely recognized this necessary distinction in writing Section 408(a) of the present Food and Drug Act. I believe that the preservation of this distinction in science and in law is vital to agriculture and the maintenance of an adequate food supply.

Uncontrolled insects and plant diseases would largely eliminate the commercial production of such crops as apples, peaches, citrus fruits, tomatoes, and potatoes, to mention only a few, and would drastically curtail the production of many other major crops so necessary to the maintenance of an adequate and balanced diet. Therefore, any legislation that would unnecessarily hinder scientific progress and thus deny agriculture access to badly needed new chemical tools would jeopardize the future of our agricultural economy and the maintenance of an adequate, well-balanced food supply for the American public.

Residues of Pesticide Chemicals: Hearing on S. 2868 and H.R. 7125 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, (83d Cong., 2d sess.) 51–52 (1954) (statement of Dr. George C. Decker, Head of the Economic Entomology Section, Illinois Natural History Survey and Illinois Agricultural Experiment Station) reprinted in XII Legislative History at 93637. In fact, the legislative hearings on the Pesticides Residue Amendments are replete with references to the necessity of pesticides, see, e.g., id. at 925 (statement of L.S. Hitchner, National Agricultural Chemicals Ass'n) 930–32 (statement of Delos L. James, The National Grange), 934 (statement of John C. Lynn, American Farm Bureau Federation); Federal Food, Drug, and Cosmetic Act (Pesticides): Hearing on H.R. 4277 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce, (83d Cong., 1st sess.) 5, 9, 11 (1953) (statements of Rep. Horan, C. W. Kitchen, United Fresh Fruit Vegetable Association, and Frank L. Holland, Florida Agricultural Research Institute) reprinted in XII Legislative History at 585, 589, and 591, and that judgement is reflected in the House Committee Report on the bill:

> These chemicals have become vital tools in the production of an adequate, wholesome, and economical food supply, and it is accepted that without them the health and living standards of this Nation and of other countries dependent upon our food exports would be dangerously impaired.

XII Legislative History at 836.

In considering the Food Additives Amendment, Congress' actions indicate that Congress believed the regulation of pesticides in foods to be a closed issue. This congressional intent is manifested by the House Committee's amendment to the definition of a food additive at the request of the National Agricultural Chemical Association (NACA) and its addition of a "flow-through" provision between sections 408 (pesticides) and 409 (food additives).

NACA's representatives appeared early and often at the Food Additives Amendment hearings. 1956 Food Additives Hearings, XIII Legislative History at 660–62; Food Additives Hearings, XIV Legislative History at 277–78, 672–78. NACA's message was clear: "[section 408] eliminates the need for any further regulation of [pesticide] products." Id. at 277. To this end, NACA submitted proposed amendments to each of the bills before the House Committee relating to the definition of the term "food additive." Id. at 672. NACA argued that although each of the bills contained provisions to exempt pesticides covered by section 408 from the Food Additives Amendment, the wording of these exemptions could be subject to misinterpretation. Id. The language proposed by NACA was adopted by the House Committee. Compare Id. at 673 (proposed amendments by NACA) with H.R. 6747, XIV Legislative History at 713 (working draft reported to full committee).

The adoption of the "flow-through" provision further evidences congressional intent not to reopen the pesticide issue. Although the definition of food additive excluded pesticides on raw foods (the subject of section 408), it did not address the application of the Food Additives Amendment to pesticides in processed foods. Under the bills introduced in 1956 a pesticide used on raw foods which are processed would have needed tolerances under both section 406 and the Food Additives Amendment. To avoid such repetitious requirements, most of the bills introduced in the next Congress, including H.R. 6747, included a "flow-through" provision which legalized pesticides residues in processed foods, if those residues resulted from use on raw foods, good manufacturing practices were followed during processing, and the residue was below the tolerance for the raw food. (See, e.g., H.R. 6747 sec. 4, XIV Legislative History at 42). This left one group of food production pesticides, those that concentrate during processing, as subject to the Food Additives Amendment.

The legislative history, however, in no way indicates that Congress perceived the inclusion of such pesticides in the Food Additives Amendment would have any impact on the regulation of pesticides. (See *Continental Chemiste Corp. v. Ruckelshaus*, 461 F.2d 331, 339–340 (7th Cir. 1972)). Pesticides were rarely mentioned in the 11 days of hearings before the House Committee. More often than not when pesticides were discussed it was to provide a historical context for the proposed legislation ("necessary" pesticides dealt with first) or to ensure that there was not overlap between section 408 and the Food Additives Amendment. (See, e.g., Food Additives Hearings, XIV Legislative History at 277 (statement of L.S. Hitchner, NACA), 297 (statement of Lawrence A. Coleman, Manufacturing Chemists' Association), 318 (statement of Rep. Miller), 430–31 (statement of Roy Battles, National Grange)). Representative is the statement of Elliot L. Richardson, Assistant Secretary of HEW:

> The recommendations of the [Delaney] select committee have been accomplished in part by the enactment of the pesticide chemicals amendment in 1954, Public Law 518, 83d Congress.
>
> This law provides the same type of control over pesticide chemicals as is now proposed for *other* food additives.

Id. at 584 (emphasis added). In fact, some of the witnesses appear to have been instructed that pesticides were not at issue. For example, the lead scientific witness on the NAS panel qualified his statement as follows:

> I might say in connection with the brief statement I am to make it is my understanding that pesticides are not to be considered at this time, particularly as applied to the growing or handling of crops.

Id. at 478 (statement of Dr. William J. Darby, Vanderbilt University School of Medicine); accord Id. at 508 (statement of Dr. Howard C. Spencer, Biochemical Research Dept., Dow Chemical Co.), 521 (statement of Dr. John H. Foulger, Director of Medical Research, E.I. Dupont de Nemours Co.).

Given today's knowledge regarding the potential for concentration of pesticides during processing, the jurisdictional stretch of the Food Additives Amendment into pesticide regulation seems quite predictable, and the omission from the hearings of a discussion of this issue rather glaring. But the fact remains that the issue was not considered. One explanation is that all parties to the debate did not believe

residues would concentrate if good manufacturing processes were followed and the raw foods to be processed contained residues at or below tolerance. This explanation finds support in Congressman Harris' summary of the coverage of H.R. 13254 on the House floor:

> Other additives not covered by the new amendment are * * * residues of pesticide chemicals in processed foods which result from the proper use of raw materials that have legal pesticide residues.

Food Additives Debate, XIV Legislative History at 868. Thus, the Food Additives Amendment's jurisdiction over pesticides in processed foods was thought to be for the purpose of deterring misuse of pesticides and improper manufacturing processes and not regulating standard industry practice.

2. *Color Additives Amendment—legislative history.* In 1960, Congress amended the FFDCA to require pretesting of color additives used in foods, drugs, and cosmetics. Pub. L. No. 86–618, 86th Cong., 2d sess., 74 Stat. 397 (1960). Like the Food Additives Amendment, the Color Additives Amendment contained a Delaney anti-cancer clause. As discussed above, the D.C. Circuit in *Public Citizen v. Young*, held that because of the extraordinary rigidity exhibited by Congress in regard to the color additives Delaney clause that clause is not subject to a *de minimis* exception. In reaching this conclusion on congressional rigidity, the court placed heavy reliance on the legislative history of the Color Additives Amendment. That legislative history, therefore, provides an important reference point for gauging the degree of rigidity demonstrated by legislative history of the Food Additives Amendment.

The Color Additives Amendment was based on legislative proposals drafted by HEW which included a Delaney clause. Color Additives: Hearings on H.R. 7624 and S. 2197 Before the House Comm. Interstate and Foreign Commerce, 86th Cong., 2d sess. 19, 38–39 (1960) (HEW draft bill; statement of Arthur S. Flemming, Secretary of HEW) [hereinafter cited as Color Additives Hearings] reprinted in XVI Legislative History at 24, 43–44. The HEW proposals were incorporated into closely similar bills that were introduced in both the House and Senate. The one major difference in the bills was that the Senate deleted the Delaney clause. Following little deliberation, the Senate passed its bill on August 24, 1959. The House held extensive hearings on both bills beginning on January 26, 1960.

The first witness at the hearings was the Secretary of HEW, Arthur S. Flemming. The Secretary immediately made HEW's position clear on the Delaney clause when he informed the Committee that HEW could not support the Senate Bill unless an anti-cancer clause was included. Id. at 44. Throughout an entire day of testimony, the Secretary's support for the Delaney clause never wavered. Repeatedly, he insisted that a Delaney clause was necessary because there was no sound scientific basis for establishing a safe dose for a carcinogen. Id. at 49, 66, 67, 79, 92, 99, 101. A second theme which sounded throughout his testimony was that the decision on whether to allow carcinogens in the diet was of such importance that it should be made explicitly by Congress. Id. at 66, 100. The Secretary pledged to return to Congress to ask for that authority if the scientific evidence supporting safe doses for carcinogens was developed. Id.

Secretary Flemming was followed by Congressman Delaney. Clearly pleased by the Secretary's testimony, Congressman Delaney discarded his written statement and, in brief remarks, simply urged speedy passage of the House bill. Id. at 112. Congresswoman Sullivan was next but she was not as easily satisfied as Congressman Delaney by HEW's about face on the Delaney clause. Citing among other things the recent cranberry scare involving a carcinogenic pesticide, she advocated a comprehensive examination of "the basic law and its patchwork amendments [for the purpose of] undertak[ing] a tightening of many of their provisions." Id. at 116–17. Congresswoman Sullivan ultimately opposed the bill on the House floor because just such an overhaul of the FFDCA - including the "Pesticides Act" - was not proposed. 106 Congressional Record 14,369 (June 25, 1960) reprinted in XVI Legislative History at 787.

There followed a parade of witnesses, including many scientists, who testified on both sides of the Delaney Clause debate. One industry representative explained that because of the unusual manner in which the Delaney clause was added to the Food Additives Amendment, the color additives hearings presented industry with "its first opportunity" to provide Congress with its opinion on the matter. Color Additives Hearings, XVI Legislative History at 314. The industry view was uniformly negative. (See, e.g., *Public Citizen*, 831 F.2d at 1114 n. 7 and 1115 n.9 (collecting citations)). Industry criticized the Delaney clause for inflexibly removing science decisions about safe doses of carcinogens from FDA. Color Additives Hearings, XVI Legislative History at 208–09 (statement of Paul Gerden, General Counsel and Secretary, Abbott Laboratories), 241–42 (statement of Kenneth E. Mulford, Chairman, Food Additives Committee, Manufacturing Chemists Ass'n). Although industry representatives agreed that potent carcinogens should be prohibited, they thought the Delaney clause went too far.

> I feel very strongly that because of, I would not say because of disagreement among scientists, but because of lack of knowledge as to whether you can set tolerances for some very severe carcinogens, that this thing creeps over and becomes a reason for writing a flat prohibition against a lot of things that you can set tolerances for.

Id. at 245.

As had occurred in 1958, a panel of scientists selected by the NAS was asked to testify at the color additive amendments hearings. The topic the panel was requested to discuss was "the scientific aspects of color additive legislation, particularly the Delaney clause." Id. at 405 (statement of Rep. Harris). At the hearing, the scientists were specifically asked whether FDA should be allowed to set safe tolerances for animal carcinogens and whether the Delaney clause should be modified to allow for greater scientific judgment. Id. at 488 (question by Rep. Younger), 490 (question by Rep. Rogers). The answers given by the panel to both questions ranged widely. (See id. at 494 (statement of Rep. Harris)). Some of the scientists thought the Delaney clause should be dropped or FDA given greater latitude, (see, e.g., id. at 469, 493 (statement of Dr. William J. Darby, Vanderbilt University School of Medicine), 492 (Dr. M.R. Zavon, Kettering Laboratory of Industrial Health)); others, however, concluded the Delaney clause was warranted and should be approved as written, (see, e.g., id. at 411 (statement of Dr. Harold L. Stewart, National Cancer Institute), 490 (statement of Dr. Harold F. Blum, National Cancer Institute)).

At the end of the hearings, Secretary Flemming returned to give HEW's response to the testimony of the NAS science panel and industry representatives. As to the science panel, the Secretary stated that although HEW scientists basically agreed with the science panel, HEW did take issue with calls from some of the scientists for allowing HEW to set tolerance levels for some carcinogens.

> A number of the panel members have suggested that despite the difficulties, in extraordinary cases, our Department should have the authority to decide that a minute amount of a cancer-producing chemical may

BEST COPY AVAILABLE

be added to man's food after a group of scientists sit down and consider all the facts and conclude that the quantity to be tolerated is probably without hazard.

The Department's position is that the proposed color additives legislation should include an anticancer clause that makes illegal the use of any color that will induce cancer when tested by appropriate methods.

We believe this position to be only sound public policy in view of the fact that our experts tell us present scientific techniques do not permit them to state unequivocally how much or how little of a substance that induces cancer when administered to animals will induce cancer when administer to man.

Id. at 501. The Secretary directly rejected the industry position:

One industry witness objected to any anticancer clause. Another witness argued that it is possible to establish safe tolerance levels for substances that produce cancer when fed to test animals.

Some suggested that the cancer clause be modified to apply only to substances that 'proximately' induce cancer. Some would have the ban on cancer producers apply only to colors that induce cancer when ingested in an amount and under conditions reasonably related to their intended use. And another witness proposed that the cancer clause be taken out of its present position in the bill and added with material language changes to section 706(b)(5) so that it would become simply one of the factors for the Secretary to consider in evaluating the safety of color additives.

It is evident that these changes are intended to give the Secretary the right to establish tolerances for presumed safe levels of colors that produce cancer when tested under appropriate laboratory conditions. Thus, any of the proposals, if adopted, would weaken the present cancer clause in H.R. 7624. For this reason all of the proposed changes should be rejected.

Id. at 505. The House committee so liked this analysis that it adopted this language in its report without attribution. (H. Rept. 1761, 86th Cong., 2d sess. 13 (1960) reprinted in XVI Legislative History at 662).

3. *FIFRA.* The sale, distribution, and use of pesticides is regulated under FIFRA. Because FIFRA, like the FFDCA, involves regulation of pesticides for the protection of the public health, FIFRA is a relevant source in interpreting section 409. (See *Chevron U.S.A., Inc. v. Hammond,* 726 F.2d 483, 491 n.10 (9th Cir. 1984) ("Particularly where two Federal statutes have overlapping areas of regulation, *** it is permissible and helpful to examine the history and context under which they were enacted.")). This is especially the case given Congress' failure to consider the implications of section 409 for the regulation of pesticides. (See *De Avilia v. Civiletti,* 643 F.2d 471 (7th Cir. 1981), cert denied, 454 U.S. 860 (1981) ("Where the problem of interpretation concerns a situation apparently not foreseen by the legislators, it is appropriate to consult those areas covering the same subject where the expression of legislative intent is clear, and to extrapolate therefrom.")).

As enacted in 1947, FIFRA barred the registration of a pesticide if use of that pesticide would be "injurious to living man." Pub. L. No. 80–104, 61 Stat. 163 sec. 2(u) (1947). That standard was interpreted by the courts as requiring a consideration of the risks and benefits of pesticides. *Continental Chemiste Corp. v. Ruckelshaus,* 461 F.2d 331, 336 (7th Cir. 1972); *Stearns Electric Paste Co. v. EPA,* 461 F.2d 293, 30708 (7th Cir. 1972); *Environmental Defense Fund, Inc. v. Ruckelshaus,* 439 F.2d 584, 594 (D.C. Cir. 1971). In the 1972 amendments to FIFRA, Congress explicitly adopted a risk/benefit balancing approval to the registration and cancellation of pesticides. Pub. L. No. 92–516, 86 Stat. 973 sec. 3(c)(5) and sec. 6(b) (1972). Both registration and cancellation decisions were to be made, according to the 1972 amendments in light of whether the pesticide caused "unreasonable adverse effects on the environment." (7 U.S.C. 136a(c)(5)(C) and (D); 7 U.S.C. 136d(b)). In turn, the term "unreasonable adverse effects on the environment" was defined by the statute as meaning:

> any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(7 U.S.C. 136(bb)). To further ensure that the benefits of pesticides were taken into account in cancellation decisions, the cancellation provision was amended in 1975 to require EPA to consider the following factors in determining whether to issue a cancellation notice:

> the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy.

(7 U.S.C. 136d(b)).

FIFRA does not contain an anti-cancer clause. In fact, the legislative history of FIFRA shows that, despite allegations concerning carcinogenic pesticides, Congress has either left unaltered the risk/benefit standard of FIFRA or reaffirmed and made more explicit that decisions regarding pesticides must take into account the benefits of pesticide usage. The hearings which preceded the 1964 amendments to FIFRA were prompted, in no small part, by the release of Rachel Carson's controversial book Silent Spring which chronicles the "disasters" that might befall the country from the widespread use of pesticides. (R. Carson, Silent Spring 3 (1962)). Although, as the book's title implies, the book's main focus was on the threat to wildlife, the dangers posed by pesticides to humans received prominent attention. The chapter entitled "One in Every Four" describes the cancer risk posed by various pesticides, including DDT. Two scientists relied on by Congressman Delaney, Dr. W.C. Hueper and Dr. Francis Ray, are cited extensively. Silent Spring at 221–22. Silent Spring received significant attention in the hearings, Registration of Economic Poisons: Hearings on H.R. 6828, 6913, and 7336 Before the Subcomm. on Departmental Oversight and Consumer Relations of the House Comm. on Agriculture, 88th Cong., 1st sess. 7, 10 (1963) (statements of Sen. Ribicoff; Rep. Rosenthal) [hereinafter cited as 1963 House Hearings], and was mentioned in the floor debate, 110 Congressional Record 2949, 7169 (1964). (See also Remarks of the President at the Signing of S. 1605 - Pesticides Bill (May 12, 1964)). Yet, the 1964 amendments to FIFRA did not address the standard for registration but merely revoked the concept of "protest registrations." (See H. Rept. 1125, 88th Cong., 2d sess. 1 (1964).) Moreover, the legislative history reaffirms the view prevalent at the time of the passage of the Pesticide Residues Amendment that use of pesticides is vital to the production of food. See, e.g., 109 Congressional Record 20,081 (1963) (statement of Sen. Javits); Labeling and Registration of Economic Poisons: Hearings on S. 1605 Before the Subcomm. on Agricultural Research and General Legislation of the Senate Committee on Agriculture and Forestry, 88th Cong., 1st sess. 13 (1963) (statement of Sen. Pearson) ("the health and comfort of our people have also benefited almost beyond belief * * * by the use of these chemicals"), 32 (statement of Sen. Jordan) [hereinafter cited as 1963 Senate Hearings]; 1963 House Hearings at 19 (statement of Rep. Rosenthal), 33 (statement of Rep. Dingell), 43 (statement of Rep. Sullivan). Even those who raised the cancer issue did not request an anti-cancer clause. Congressman Dingell, one of the defenders of the Delaney clause in the food and color additives hearings, was not so bold as to suggest a Delaney clause for pesticides:

> Dr. Hueper, of the National Cancer Institute, found that in large numbers of instances [pesticide] substances are highly carcinogenic or cancer producing.
>
> We do not advocate that they not be used. We simply advocate that they be used, under circumstances which will guarantee to the maximum degree possible, consistent with the use of the substance — that they be safely, wisely, and intelligently used.

1963 Senate Hearings at 39–40.

In the wake of Silent Spring, extensive hearings were held in the Senate on the broader topic of the hazards posed by pesticides. Interagency Coordination on Environmental Hazards (Pesticides): Hearings Before the Subcomm. on Reorganization and International Organizations of the Senate Committee on Government Operations, 88th Cong., 1st sess., pt. 1, 3, 4 (1964) (statement of Sen. Ribicoff; memorendum from Senator Humphrey)). Although the subcommittee heard mixed testimony on the question of whether pesticides were carcinogenic, Id. at pt. 2, 496 (statement of Dr. Malcolm Hargraves (Mayo Clinic), 559 (statement of Dr. Charles H. Hine, School of Medicine, University of California), there was evidence presented that a great many pesticides were carcinogens. Dr. W.C. Hueper of the National Cancer Institute returned to testify once more and presented an extensive list of carcinogenic pesticides:

> Arsenicals, selenium compounds, carbon tetrachloride, DDT, Aramite, Dieldrin, aminotriazole, isopropyl phenyl carbamate, urethane, 8-hydroxyquinoline, thiourea, thiouracil and derivatives, thioecetamide, acetamide, beta-propiolactone, penicillin G sodium, actinomycins, A, S, and L and diphenyl, when contaminated with polycyclic aromatic hydrocarbons and Anto or alpha naphthyl-alpha-thiourea, which is a derivative of the carcinogenic aromatic amine, alpha-naphthylamine and used as a rodenticide — rat poison.

Id. at 667. Nonetheless, the only amendments to FIFRA or the FFDCA that resulted directly or indirectly from these hearings were the 1964 FIFRA amendments addressing protest registration.

When Congress "completely rewrote" FIFRA to create a "comprehensive regulatory statute," (H. Rept. 511, 92d Cong., 1st sess. 1 (1971)), Congress explicitly sought "to articulate the concept that the benefits of using pesticides should be balanced against the risk of using them." Id. at 14. Relative to the risks and benefits of pesticides, Congress made these findings:

> that pesticides are valuable to our Nation's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated closely to prevent adverse effects on life and the environment, including pollution of interstate and navigable waters; that pesticides are used throughout the Nation and the major portion thereof moves in interstate or foreign commerce; that it is essential in the public interest to protect the public health and welfare from adverse effects of pesticide residues on food which is consumed through the Nation and which moves in interstate or foreign commerce;

Id. Congress heard extensive testimony regarding the benefits of pesticides. (See, e.g., Federal Environmental Pesticide Control Act of 1971: Hearings on H.R. 26, 1077, 1722, 4152, 4596, 5182, 6575, and 6761 Before the House Comm. on Agriculture, 92d Cong., 1st sess. 54, 148 (1971) (statements of J. Phil Campbell, Under Secretary, Department of Agriculture, and D. Lyle Goleman, Chairman of Entomology, Ohio State University) [hereinafter cited as House FEPCA Hearings]) In fact, consideration of benefits in decisions on registration and cancellation was supported by several environmental/public interest groups. (See, e.g., Federal Environmental Pesticide Control Act of 1971: Hearings on H.R. 10729 Before the Subcomm. on the Environment of the Senate Comm. on Commerce, 92d Cong., 2d sess. 122, 128 (1972) (statements of Anita Johnson, Ralph Nader's Health Research Group, Cynthia Wilson, National Audubon Society); see also id. at 114 (statement of William Butler, Environmental Defense Fund) (urging clarification of risk/benefit standard)).

Congress also heard extensive testimony regarding cancer risks from pesticides. Russell Train, the chairman of the President's Council on Environmental Quality, testified before both Senate and House Committees that 13 pesticides had been found "capable of causing cancer in laboratory animals." House FEPCA Hearings at 708; Federal Environmental Pesticide Control Act: Hearings on S. 232, 272, 660, and 745 Before the Subcomm. on Agricultural Research and General Legislation of the Senate Comm. on Agriculture and Forestry, 92d Cong., 1st sess. 161 (1971) [hereinafter cited as Senate Subcomm. FEPCA Hearings]. A FDA representative explained that chronic exposures to some pesticides, including DDT, could contribute to human cancer. House FEPCA Hearings, 94, 111 (statement of Dr. Albert C. Kolbye, FDA). Finally, Dr. Umberto Saffiotti from the National Cancer Institute presented and summarized two reports on the hazards posed by pesticides in the Senate hearings. Both of these reports recommended use of zero tolerances for carcinogenic pesticides except in extraordinary circumstances. Senate Subcomm. FEPCA Hearings, 679, 696. One report quoted with approval Secretary Flemming's statement in the color additive hearings that an anti-cancer clause was necessary because no safe dose for carcinogens could be determined. Id. at 681–82.

In 1975, Congress revisited the risk/benefit standard in FIFRA in response to the manner in which EPA, which had in 1970 assumed administration of FIFRA from USDA, had implemented the Act. In hearings held in the House, EPA was subjected to sharp criticism from both members and witnesses. (H. Rept. 497, 94th Cong., 1st sess. 6 (1975); see, e.g., Federal Insecticide, Fungicide, and Rodenticide Act Extension: Hearings Before the House Committee on Agriculture, 94th Cong., 1st sess. 17–18, 2224, 39, 118–120, 149, 248 (1975) (statements of Rep. Poage, Rep. Mathis, Rep. Symms, J. Phil Campbell, Under Secretary, Department of Agriculture, John M. Stackhouse, Director, Ohio State Department of Agriculture, Robert W. Holloway, Superintendent, Agriculture Industry Regulations, Illinois Department of Agriculture) [hereinafter cited as 1975 House FIFRA Hearings]; Extension of Federal Insecticide, Fungicide, and Rodenticide Act: Hearings on H.R. 8841 Before the Subcomm. on Agricultural Research and General Legislation of the Senate Committee on Agriculture and Forestry, 94th Cong., 1st sess. 94 (1975) (statement of Russell Train, Administrator, EPA) (acknowledging "intense debate in Congress over our administration of the Act")). One recurrent comment was that EPA in its decisions had not given sufficient consideration to the impact of its actions on the agricultural economy. (H. Rept. 497, 94th Cong., 1st sess. 6 (1975)). More specifically, the Congressman and witnesses questioned whether economic effects were adequately considered in the cancellation or suspension actions against DDT, aldrin, dieldrin, heptachlor, and chlordane. 1975 House FIFRA Hearings at 39 (statement of Rep. Symms), 42 (statement of Rep. Moore), 118–120 (statement of J. Phil Campbell, Under Secretary, Department of Agriculture), 239–41 (statement of Ralph Sherman, Entomologist), 281–82 (statement of William Hazeltine). These actions were based, in large part, on positive cancer studies in animals. Thus, one step taken by Congress was to add the specific language in the cancellation provision alluded to earlier which explicitly required weighing agricultural factors in cancellation decisions. (H. Rept. 497, 94th Cong., 1st sess. 1 (1975)).

This did not satisfy EPA's critics on the House Agriculture Committee, however. They proposed to give the USDA veto authority over all EPA cancellation decisions. Id. at 7. (121 Congressional Record 31588 (October 3,

1975) (statement of Rep. Wampler)). This proposal was rejected by the committee in favor of requiring EPA to "consult" with USDA prior to initiating a cancellation proceeding. Id. The fight had just began, however. Twice Congressmen proposed amendments on the House floor which would have changed the requirement for USDA consultation to USDA concurrence. (121 Congressional Record 31598 (October 3, 1975); 121 Congressional Record 32515 (October 9, 1975)). On one occasion, they nearly succeeded, failing to gain a majority by only eight votes. (121 Congressional Record at 31603). The amendments' supporters contended that it would "try to bring some balance for the benefit of the American public, between the production of food and the protection of the environment." Id. at 31599 (statement of Rep. Kelly). They derided the "lunacy that we have seen coming out the Environmental Protection Agency for the past two years," Id. at 31591 (statement of Rep. Symms), citing specifically EPA actions to "outlaw *** Aldrin, dieldrin, and DDT, which have done more to protect human health than any other pesticides." Id. at 31598 (statement of Rep. Symms). In response, the bill's proponents noted that EPA had promised to be more responsive to agricultural concerns, Id. at 31603 (statement of Rep. Ottinger), that an interagency veto would produce stalemate, Id. at 32516 (statement of Rep. Foley), that USDA had said it did not want such authority, Id. at 31599 (statement of Rep. Foley), Id. at 32516, and that USDA had mishandled FIFRA when it had administered the law, Id. at 31600 (statement of Rep. Peyser); 31601 (statement of Rep. Burton); 32517 (statement of Rep. Ottinger). One Congressman rose to defend EPA's decisions as "balanced." Id. at 32517 (statement of Rep. Moorhead).

The legislative history of the 1978 amendments reveals continued congressional concern over EPA's risk/benefit balancing. The House Committee Report noted that 1978 amendments were "designed to reinforce the thrust of [the 1975 amendments] that EPA recognize and take cognizance of the effect of its regulatory decisions on the agricultural community." (H. Rept. 663, 95th Cong., 2d sess. 51 (1977) reprinted in 1978 U.S. Cong. Code Admin. News 1988, 2024). The House Report also reflected dissatisfaction with EPA cancer determinations:

> The committee believes there is an evident need to establish a uniform procedure by which cancer risks to humans who may be exposed to low levels of chemicals, including pesticides, for long periods of time may be estimated based on toxicological data obtained from animal tests.
>
> This will provide a reasonable basis agreed to by scientists on which to base the extrapolation of results in experimental animal systems to a determination of potential carcinogenesis in humans.

Id. at 50; 1978 U.S. Cong. Code Admin. News at 2023.

C. De Minimis Conclusions

As the case law makes clear, statutory provisions should be construed to contain a *de minimis* exception unless Congress has been extraordinarily rigid. In determining the extent of congressional rigidity, it is necessary to consider the statutory language and the legislative history. Further, a *de minimis* exception should not be permitted if it is inconsistent with the legislative design.

1. *Congressional rigidity* — a. *Statutory language.* The precise language of the food additives Delaney clause suggests congressional rigidity. The *Public Citizen* court found the language of the color additives Delaney clause and the placement of the clause relative to the general safety clause indicated Congress intended a strict application of the Delaney clause. There are no significant differences in the wording of the food additives and color additives Delaney clauses. Further, although the contrast between the general safety clause and the Delaney clause is not as sharp in section 409 as in the color additives provision, the immediate setting of the food additives Delaney clause does not suggest a grant of administrative discretion.

Unlike the color additives Delaney clause, however, the food additives Delaney clause addresses, in part, a food contaminant, pesticides, which is already the subject of regulation under another provision of the statute. Thus, in evaluating the rigidity of Congress it is appropriate to look beyond section 409 itself.

Section 408 of the FFDCA prescribes the establishment of tolerances for pesticide residues in foods under a "public health" standard which requires a weighing of the risks from the pesticide and "the necessity for the production of an adequate, wholesome, and economical food supply." (21 U.S.C. 346a(b)). This explicit adoption of a broad risk/benefit balancing approach in the context of the specific food contaminant pesticides is in conflict with the manner in which Congress addressed the regulation of food contaminants generally.

This inconsistency raises questions concerning Congress' understanding of the interrelationship between section 408 and the Food Additives Amendment. In fact, when examined closely, it strongly suggests that Congress was not extraordinarily rigid in regard to the application of the Delaney clause to pesticides. There are three possible congressional understandings of the Delaney clause in relation to the regulation of pesticides:

(1) Congress thought that the Delaney clause meant the same thing as the Food Additives Amendment's general safety clause and thus was roughly equivalent to section 406's requirement that EPA "protect the public health."

(2) Congress understood that the Delaney clause was a stricter standard than was contained in the general safety clause or section 408 but did not realize that enacting a stricter standard in the Food Additives Amendment had an effect on the regulation of pesticides.

(3) Congress understood that the Delaney clause was a stricter standard than was contained in the general safety clause or section 408 and did realize that enacting a stricter standard in the Food Additives Amendment would cause pesticides to be regulated under two inconsistent standards.

Both of the first two understandings of the Delaney clause do not support a finding of extraordinary rigidity. As to the first, if the Delaney clause is equated with the general safety clause, it must incorporate the safety clause's focus on "reasonable certainty" of safety. Once a standard adopts the concept of reasonableness it is by definition not extraordinarily rigid. As to the second, if Congress did not even realize that the Delaney clause governed certain pesticides it is difficult to conclude Congress was extraordinarily rigid as to the application of the clause to such pesticides.

Only the third understanding (Congress realized it was establishing differing standards for pesticides) is consistent with a finding of extraordinary rigidity. Yet, this third interpretation requires acceptance of the conclusion that Congress knowingly enacted a paradox into the law regarding the regulation of pesticides. Such a conclusion would be difficult to countenance under any circumstances, (see *Morton v. Mancari*, 417 U.S. 535, 548 (1974)), but it is completely untenable given that the legislative history of the Food Additives Amendment shows no conscious congressional intent to write inconsistent standards for the regulation of pesticides. Accordingly, the language of the FFDCA, itself, suggests that Congress was not extraordinarily rigid.

In comments on EPA's Delaney clause policy statement, the NRDC has contended that the Delaney paradox is a myth and that the standards under sections 408 and 409 are perfectly consistent. To support this argument NRDC cites *Environmental Defense Fund v. HEW*, 428 F.2d 1083 (D.C. Cir. 1970). NRDC explains:

> There, the United States Court of Appeals recognized that the threshold requirement for a section 408 tolerance was establishing a 'safe' level of a pesticide in food. And, said the Court, for a known carcinogen 'it would obviously be impossible to meet the congressionally imposed burden of establishing the safety of a residue of such a pesticide.' 428 F.2d at 1092.

NRDC, however, makes too much of this case. First, that section 408 is predicated on a "safety" standard certainly does not make the standards in sections 408 and 409 equivalent. After all, the uniqueness of the Delaney clause comes from its sharp contrast to the general "safety" standard in section 409. (See *Public Citizen*, 831 F.2d at 1112). Moreover, EPA does not read the *Environmental Defense Fund v. HEW* court's description of section 408 as containing a safety standard to mean that the statutorily-mandated consideration of benefits is not part of the safety determination. Second, the court most certainly did not hold that a carcinogenic pesticide could not pass a safety standard. NRDC badly misquotes the court on this point. What the court did state was that under Secretary Flemming's understanding of cancer as presented in the color additives hearings, (see pages supra), one could not find a carcinogen to be safe. In full, the court stated:

> At that time [late 1950's], Secretary Flemming indicated that there was no scientific basis for determining a 'safe' residue level for a chemical known to produce cancer in experimental animals. *Under such conditions*, it would obviously be impossible to meet the congressionally imposed burden of establishing the safety of a residue of such a pesticide.

428 F.2d at 1092 (emphasis added) (footnote omitted). Of course, conditions have now changed, and EPA believes there is a scientific basis for determining residue levels which pose such low risks as to be "safe." Thus, there is no support for NRDC's argument that the legal standards under sections 408 and 409 are equivalent.

b. *Legislative history* — i. *Food Additives Amendment legislative history.* The legislative history of the food additives Delaney clause is a complex web. Unlike the Color Additives Amendment where the debate over an anti-cancer clause was clearly framed and explicit choices were made, the food additives Delaney clause remained at the periphery of the legislative process leading to the enactment of the Food Additives Amendment. The difficulty of divining congressional intent on the food additives Delaney clause makes it all too easy to seize on isolated fragments as conclusive evidence of a particular intent. For example, Congressman Delaney's statements on the floor regarding the pesticide Aramite and the anti-cancer clause could be cited as demonstrating congressional rigidity toward carcinogens whether they are pesticides or other food additives. On the other hand, the Senate Report statement that the safety standard means the same with or without the Delaney clause, could be relied on as definitive support of the opposite view. The better approach, however, is to weigh each such fragment in reaching a conclusion.

In considering the entire legislative history, EPA believes that the following factors need to be evaluated in determining the extent of congressional rigidity:

(1) The general safety standard of which the Delaney clause is a component was based on the concept of "reasonable certainty" of safety, not absolute safety. This understanding is reflected throughout the hearings, the reports, and the legislative debate. It was even repeated on the House floor after the Delaney clause was added to the bill.

(2) With one minor exception, there was general agreement among the scientists who appeared at the hearings that there was no discernible safe dose for a carcinogen and that any substance found to be a carcinogen by appropriate tests should be excluded from the food supply.

(3) FDA testified that carcinogenic food additives would not be found safe under the general safety standard.

(4) Congressman Delaney, the drafter of the anti-cancer clause, testified that an anti-cancer clause was necessary to cabin FDA's discretion given its action involving a carcinogenic pesticide.

(5) The House subcommittee heard no testimony that there were large numbers of carcinogenic food additives or pesticides. One or two pesticides were mentioned as carcinogenic. The major concern raised at the hearings was that there were a large number of nonpesticidal food additives which were in use despite the lack of adequate testing.

(6) At no point did Congress consider the Food Additives Amendment as a means for regulating pesticides. Although the legislative history reveals an awareness on the part of those familiar with the technical provisions of the bill that in certain instances (level of residue in processed food greater than raw food tolerance) section 409 and not section 408 would govern pesticide residues, the unswerving focus of the legislators was on food additives other than pesticides. The changes made at the request of NACA to the definition of food additive evidence a desire not to reopen the issue of pesticide residues on food.

(7) Testimony indicated that the Delaney clause would not have large economic impacts on the food processing industry.

(8) Legislative debate in the House includes inconsistent statements by two important supporters of the Food Additives Amendment: Congressman Harris, the sponsor of the HEW bill, announcing that an anti-cancer clause had been acquiesced in by HEW because it would be meaningless and Congressman Delaney repeating the necessity for an anti-cancer clause based on FDA's Aramite decision.

(9) The one comment indicating that the Delaney clause might be overly rigid was Congressman Miller's statement on the House floor that the Delaney clause would be "impossible to enforce." Exactly what Congressman Miller's objection to the clause was, however, is difficult to fathom from the record. Congressman Dingell appeared to think that the objection went to the ability of science to identify carcinogens.

(10) The Senate Report stated that the Delaney clause had no independent meaning.

This record indicates that Congress wanted to ban carcinogenic food additives and that intent crystallized in, or at least made acceptable, the Delaney clause. It would be surprising, however, given the explicit statutory language, if such a general intent was not apparent from the legislative history. What is difficult to find is much evidence of extraordinary congressional rigidity. Extraordinary rigidity would be demonstrated by showing that Congress persisted in its support for the Delaney clause despite vigorous and highly specific opposition to the clause. That is exactly what occurred in the legislative debate over the color additives Delaney clause. It did not occur in this case.

It cannot be credibly argued that Congress heard a vigorous debate over whether there was a safe dose for carcinogens. Only one witness contended there was a safe dose for carcinogens, and his assertion on this point drew the attention of neither the

committee members nor other witnesses. On the other hand, there was remarkable agreement among the other science witnesses and FDA regarding the lack of the ability of science to determine a safe dose for carcinogens. Nor was Congress presented with any allegations that the Delaney clause would drastically affect the food processing industry or the availability of food. The little testimony there was on these topics would have led Congress to believe it was enacting the status quo.

The absence of considered opposition becomes even more dramatic when the focus is narrowed to pesticides. Congress heard orally from only one party representing pesticides interests, NACA, and the sole purpose of NACA's appearance was to urge clarification of the exclusion of pesticides from the Food Additives Amendment. Congress followed NACA's suggestion. When pesticides were mentioned it was usually in the context of clarifying that pesticides were not involved in the food additives legislation.

Viewed in this light, even Congressman Delaney's remarks may not qualify as extraordinarily rigid. Congressman Delaney was most categorical concerning his anti-cancer clause:

> The part that chemical additives play in the cancer picture may not yet be completely understood, but enough is known to put us on our guard. The safety of the public health demands that chemical additives should be specifically pretested for carcinogenicity, and this should be spelled out in the law. The precedent established by the Aramite decision has opened the door, even if only a little, to the use of carcinogens in our foods. That door should be slammed shut and locked. That is the purpose of my anticarcinogen provision.

Food Additives Hearings, XIV Legislative History at 660. While uncompromising in his language, Congressman Delaney cannot be described as having maintained his position despite concerted opposition and in the face well-reasoned arguments against inclusion of an anti-cancer clause. He was critical of FDA's Aramite decision but even he acknowledged that FDA had backed down. Food Additives Debate, XIV Legislative History at 874. Further, despite Congressman Delaney's protests to the contrary, Food Additives Hearings, XIV Legislative History at 660, no scientist, testifying at the hearings, directly criticized the Delaney clause and no industry spokesman claimed it would penalize industry or endanger the food supply.

In the final analysis, however, it must be stressed that Congressman Delaney's view of the anti-cancer clause was only one part of the complex amalgam of views which is the legislative intent of the Food Additives Amendment. Congressman Delaney only obtained the inclusion of the anti-cancer clause following HEW acquiescence. The reasons for HEW's reversal on an anti-cancer clause are unclear. What remains clear, however, is that HEW and its congressional backers were a major, if not dominant force, in the enactment of this legislation and their views on the Delaney clause evidenced a decided lack of rigidity.

EPA concludes that the legislative history does not show that Congress took the extraordinarily rigid position that carcinogenic pesticide residues should be banned no matter how trivial the risk. Central to this determination is the absence of a congressional consideration and rejection of alternatives to the Delaney clause, the complete absence of contemplation by Congress of the effect the anti-cancer clause would have on pesticides, and the decided ambivalence of certain of the major sponsors of the bill toward the Delaney clause. In other words, Congress did not hear scientific criticism of the Delaney clause, it did not realize that it was issuing a major law for the regulation of pesticides (moreover, a law which introduced paradoxical and irrational differences into the regulation of pesticides), and it did not speak with one voice when it approved the Delaney clause. These factors overwhelm whatever weight should be accorded the pronouncements by the Delaney amendment's drafter.

ii. *Subsequent legislation.* Given the ambiguity in the legislative history of the Food Additives Amendment concerning congressional rigidity regarding the Delaney clause, it is logical to inquire whether the color additives legislative history provides a guide to resolving that ambiguity. Certainly, following the D.C. Circuit's holding in Public Citizen, it would appear that the color additives legislative history is important evidence of congressional rigidity on other anti-cancer clauses. For the reasons below, however, EPA believes that the substance of the color additives legislative history is largely irrelevant to the present question.

Subsequent legislative history might be helpful where it clarifies a legislative debate that occurred on a prior bill. The legislative history of the Color Additives Amendments, however, does not clarify the legislative debate on the Food Additives Amendment so much as it illustrates the absence of debate in 1958 on the critical issues involving the Delaney clause. The debate over the Delaney clause in the Food Additives Amendment consisted for the most part of Congressman Delaney asserting the clause was necessary and HEW and its congressional supporters claiming that the clause added nothing to the law. In contrast, color additives debate involved a detailed statement in support of the clause by HEW, a scientific critique of the clause, an industry assault upon the clause, and a HEW rebuttal on the criticisms of the clause. Thus, the subsequent legislative debate serves to confirm that Congress was not extraordinarily rigid in its passage of the food additives' Delaney clause.

Second, the substance of the color additives legislative history is largely irrelevant because it involves congressional attitudes toward the regulation of color additives, chemicals which rank low on virtually anyone's scale of essentiality. It is one thing to be rigid or extreme in the regulation of chemicals viewed as having little public benefit; it is quite another to be so rigid in the regulation of chemicals perceived to be "vital tools in the production of an adequate, wholesome, and economical food supply." House Pesticides Report, XII Legislative History at 836.

The subsequent legislative history which appears more relevant are the legislative debates in 1963 and 1964 on FIFRA amendments and the hazards of pesticides generally. Here, the subject was pesticides and issue of cancer was featured prominently in the hearings. Moreover, the national cancer scare alluded to in the color additive hearings 4 years earlier had not abated. If nothing else, the publication of Silent Spring had kept the topic in the public eye. Yet, no Delaney clause was added to FIFRA or FFDCA section 408. Although FIFRA was amended, regulation of pesticide licensing was continued under a risk/benefit standard not the risk only/zero risk of the Delaney clause.

Even more recent congressional action confirms that Congress has decreed a balanced approach be taken to the regulation of pesticides. In 1972, when Congress comprehensively redrafted FIFRA, the risk/benefit standard was codified. In 1975, Congress strengthened the benefit side of the equation and added explicit USDA consultation on EPA cancellations after narrowly rejecting USDA veto authority. These amendments expressed Congress' displeasure at, among other things, EPA's actions to ban several widely-used pesticides which had been found to cause cancer in laboratory animals.

In sum, in every instance, where Congress has directly considered the

regulation of pesticides it has emphasized the necessity of considering both risks and benefits. Thus, this subsequent legislative history in no way suggests that Congress intended that the Food Additives Amendment's Delaney clause be applied with extraordinary rigidity.

2. *Legislative design — a. Section 409 of the FFDCA.* The *Alabama Power* and *Public Citizen* courts emphasized that a *de minimis* exception does not frustrate, but rather implements the legislative design. In *Public Citizen*, the court reasoned that a strict interpretation of the color additives Delaney clause was consistent with the legislative design in light of congressional alarm concerning cancer and the perception that color additives lacked any great value. 831 F.2d at 1117.

It is more difficult to understand how a strict application of the food additives Delaney clause is consistent with the legislative design of section 409 of the FFDCA. While the legislative history of the Food Additives Amendment raises the cancer issue, cancer did not dominate the debate in the manner it did during the legislative debate on the Color Additives Amendments. The major topics in the House hearings on the Food Additives Amendment concerned the scope of judicial review and whether functional value should be a criterion for a food additive regulation. The hearings on the color additives, on the other hand, rarely strayed from the topic of cancer.

Second, even the Delaney Committee Report recognized that many food additives had public health value. XII Legislative History at 501. In fact, the *Public Citizen* court concluded that Congress thought color additives valueless by citing a comparison between color additives and food additives:

> Some food additives serve a useful purpose * * *. However, color additives, provide no nutrient value.

831 F.2d at 1117 (quoting Congressman Delaney). More importantly, Congress has traditionally regarded pesticides, the food contaminant at issue here, in a class distinct from other food additives. As was noted at the food additives hearings, only pesticides had met section 406's necessity standard.

In EPA's initial response to this petition, EPA made several findings relating to the value of pesticides to a safe and abundant food supply. Specifically, EPA determined that a strict application of the Delaney clause may:

(1) Create increased health risks due to increased production of natural toxins in plants.

(2) Lead to increased health risks due to use of pesticides which pose relatively higher non-cancer risk.

(3) Substantially increase the price and decrease the availability of certain foods, especially fruits and vegetables.

Petitioners waived their right to challenge these factual determinations in an administrative hearing.

Several of the pesticides involved in this petition illustrate the impact a strict application of the Delaney clause may have. Trifluralin, mancozeb, and benomyl are widely-used pesticides in the United States. Trifluralin is a herbicide registered for use on over 25 food crops including most grain crops. Mancozeb is a fungicide registered for use on 28 food crops with the major ones being apples, grapes, potatoes, sweet corn, tomatoes, and onions. Benomyl, like mancozeb, is a fungicide and is registered on many of the same food crops as mancozeb as well as over 30 additional food crops.

In a 1982 review of the benomyl registration, EPA made the following determination regarding the benefits of benomyl:

> [B]enomyl is one of the more important fungicides for use on fruit crops. The Agency's brief review of benomyl's benefits for selected crops indicates that economic impacts from the unavailability of benomyl on all crops would range from more than $26 million to more than $52 million in a typical year for treatment cost alone. Additional impacts for lost production and higher consumer prices would also be expected; however, the Agency is not able to estimate the magnitude of these additional losses.

(47 FR 46747, 46749, October 20, 1982). EPA found that benomyl was more efficient against a larger group of pathogens than any of the available fungicides. Benomyl was credited with significantly reducing losses due to scab and powdery mildew on grapes.

In its Special Review process, EPA recently undertook a benefit assessment of the ethylene bisdithocarbamates, a family of four pesticides of which mancozeb is a member. EPA concluded that the estimated annual benefit from all dietary uses is $46 million to $75 million in producer (grower) impact and $90 million to $305 million in efficiency (consumer) impact. EPA did not judge the benefits of the use of EBDCs on grapes to be high because of the existence of effective alternative pesticides, captan and benomyl. Captan and benomyl, however, like mancozeb, are classified as carcinogens. Benefits on small grains were estimated as ranging between $2 million and $12 million.

Given the enacting Congress' view on the value of pesticides and EPA's reaffirmation of that value, it would not be consistent with the legislative goal intended to be advanced by section 409 of protecting the public health to apply the Delaney clause to pesticides without a *de minimis* exception.

b. *Pesticides regulation generally.* In examining whether a *de minimis* exception is consistent with the legislative design of the FFDCA, the larger statutory framework involving the regulation of pesticides must be considered. As has been noted, the various legal provisions addressing pesticides give conflicting signals to EPA. The principles of statutory construction favor an interpretation which reconciles, to the greatest extent possible, each of these provisions. (See *Watt v. Alaska*, 451 U.S. 259, 267 (1981)). It is well established that in circumstances involving "two acts that affect one particular subject matter or area, the court must attempt to reconcile the acts, if possible, so as to produce a symmetrical whole." *Columbia Gas Development Corp. v. FERC*, 651 F.2d 1146 (5th Cir. 1981). Moreover, the Supreme Court has made clear that:

> The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.

Morton v. Mancari, 417 U.S. 535, 551 (1974). Where complete reconciliation among conflicting provisions cannot be achieved "it is the task of an agency with the requisite authority to pursue a middle course that vitiates neither provision but implements to the fullest extent possible the directives of each * * *." *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 871 (D.C. Cir. 1979). By this approach "congressional intent can be given its fullest expression." *Chevron U.S.A., Inc. v. Hammond*, 726 F.2d 483, 490 n.8 (9th Cir. 1984), cert. denied, 471 U.S. 1140 (1985) quoting *Get Oil Out Inc. v. Exxon Corp.*, 586 F.2d 726 (9th Cir. 1978).

The primary FFDCA provision addressing pesticides on raw food requires a risk/benefit approach, not the risk only/zero risk standard of the Delaney clause. Similarly, the general licensing statute for pesticides, FIFRA contains an explicit risk/benefit standard. That risk/benefit standard has been reaffirmed several times by Congress. There is no rational basis for subjecting pesticides used in food production to different standards

according to whether they appear on raw or processed food. Regulating Pesticides in Food 41 (1987). Nor is there a rational basis for licensing pesticides under a different standard than for approving that pesticide's residue on food. Thus, it is the Delaney clause, itself, and not a *de minimis* exception to the Delaney clause, which is inconsistent with Congress' overall design for the regulation of pesticides.

Further, the Delaney Clause does not simply introduce an incongruity into the regulation of pesticides, it actively interferes with the primary framework for pesticide regulation as established by FIFRA and FFDCA section 408. As described in EPA's Petition Response, enforcement concerns have driven EPA to refuse FIFRA registration and section 408 tolerances for those food uses of a pesticide that require a section 409 food additive regulation but run afoul of a strict reading of the Delaney Clause. Thus, the Delaney Clause directly subverts the risk/benefit balancing that Congress so often has stated is crucial to the regulation of pesticides.

Interpreting the Delaney Clause as containing a *de minimis* exception helps to reduce the conflict in the FFDCA and between the FFDCA and FIFRA. At least as to pesticides which pose a trivial cancer risk, use of a *de minimis* exception will result in consistent treatment of these pesticides under FFDCA, section 408, and section 409. Thus, a *de minimis* exception harmonizes to a degree Congress' overall legislative design for the regulation of pesticides.

If the Delaney clause is applied without a *de minimis* exception, EPA would have "to impute to Congress a purpose to paralyze with one hand what it sought to promote with the other." *Clark v. Uebersee Financing Korp.*, 332 U.S. 480, 489 (1947). This is an especially incongruous result in that Congress' most well-thought out provisions on pesticides (FFDCA section 408, FIFRA) would be paralyzed by the provision (FFDCA section 409) which was enacted with little, if any, consideration of pesticides. In fact, if a court in deciding a pesticide matter were forced to choose between the FIFRA section 408 risk/benefit balancing or the zero risk of section 409's Delaney clause, the canons of statutory construction would dictate that the specific provisions on the subject matter of pesticides (FIFRA and section 408) control over the more general provision addressing all food additives (section 409). *Simpson v. United States*, 435 U.S. 6, 15 (1978); *Lodge 1858, American Federation of Government Employees v. Webb*, 580 F.2d 486, 510 (D.C. Cir. 1978), cert. denied, 439 U.S. 927 (1978).

3. *The Delaney clause and modern science.* An additional reason justifying the application of a *de minimis* exception to the Delaney clause is that any rigidity ascribed to the 85th Congress must be evaluated in terms of the changed scientific circumstances of today. Just as a court may look beyond the plain language of a statute when there has been a significant change in circumstances since enactment, *Consumers Union v. Heimann*, 589 F.2d 531, 534 (D.C. Cir. 1978), a court is not required to subscribe to outdated scientific notions in construing congressional intent. Further, when viewed in terms of modern science, the term "induces cancer" in the Delaney clause becomes sufficiently indefinite to weigh in favor of a *de minimis* exception.

The Delaney clause is based on the congressional scientific assumption that there is no way to determine whether or not a substance which causes cancer in animals poses a serious risk to humans. In 1958 the scientific community was very limited in its ability to make judgments about human cancer risks. Means were not available for estimating quantitatively the risk from exposure to carcinogens. Because distinctions could not be made between carcinogens, it was not unreasonable to ban all substances showing some evidence of carcinogenicity, given the state of science as Congress understood it.

Things have changed markedly since 1958 as to the scientific aspects of risk assessment. Advances have occurred in determining human cancer hazard, evaluating cancer potency of chemical substances, detecting chemical exposures in foods, using assumptions and science policies to bridge gaps (uncertainties) in chemical-specific assessments, and understanding biological and chemical processes relating to human and animal cancer formation. Most important to the present matter is knowledge concerning cancer potency and chemical detection methodologies.

Unlike the congressional understanding in 1958, scientists now recognize that the degree of human risk posed by substances found to be carcinogens can vary immensely. As detailed in EPA's Petition Response, an early step in evaluating the cancer risk posed by a substance is to determine the weight of the evidence concerning carcinogenicity (55 FR 17562–63, April 25, 1990). Based on this weight of evidence determination, substances are placed into one of five classifications: Group A - Human Carcinogen; Group B - Probable Human Carcinogen; Group C Possible Human Carcinogen; Group D - Not Classifiable as to Human Carcinogenicity; and Group E - Evidence of Non-carcinogenicity for Humans. Using mathematical modeling, EPA scientists quantitatively estimate the carcinogenic potential (potency) of substances falling in Groups A and B. For Group C substances, the quantification decision is made on a case-by-case basis depending on the weight of the qualitative evidence.

The quantitative potency of carcinogens varies widely. Illustrative of this fact is the Carcinogenic Potency Database (CPDB) assembled by Gold et al. using a cancer potency value labeled the TD50. Gold, Sawyer, Magaw, Backman, de Veciana, Levinson, Hooper, Havender, Bernstein, Peto, Pike, and Ames, A Carcinogenic Potency Database of the Standardized Results of Animal Bioassays, 58 Envt'l Health Perspectives 9 (1984). That database shows a range of cancer potencies that is greater than 10 millionfold. Id. at 14. EPA believes that Gold et al.'s CPDB is generally reflective of the variation in quantified cancer potencies although EPA does not use the TD50 values as a measure of potency, preferring, in most cases, use of the Q_1^* value from the linearized multistage procedure. TD50 values are based on a model which is essentially linear at moderate doses. In one sense, however, EPA believes the situation is even more complex than indicated by the CPDB in that the CPDB does not take into account qualitative weight-of-the-evidence factors.

In estimating cancer risk, EPA must not only consider cancer potency but the level of human exposure to the carcinogen. The second scientific advance relevant to the *de minimis* exception is ability of science to measure ever lower levels of human exposure through enhanced analytical capability to detect the presence of chemical residues in foods. As FDA has noted, since 1958 this capability has increased by several orders of magnitudes such that chemicals can now be detected in the parts per trillion range (51 FR 28361, August 7, 1986).

Accordingly, given the ability both to identify low potency carcinogens and to detect these substances in minute amounts, scientists now routinely identify substances in foods in amounts which are estimated to pose carcinogenic risks which are so small as to be unworthy of serious attention. With this dramatic change in scientific circumstances, legislative history concerning the food additives Delaney clause which reflects reliance on outdated scientific concepts should be regarded as having little, if any, probative value. The more general legislative intent which survives once the outdated science is discarded is Congress' desire to allow use of food additives under a "reasonable certainty" of safety standard. This standard would clearly permit approval of substances posing *de minimis* cancer risks. Additionally, the very term "induces cancer" is rendered ambiguous by the changes in scientific circumstances. Thus, even the language of the Delaney clause itself is equivocal regarding congressional rigidity.

4. *Conclusion.* Of all of the factors considered, only the language of section 409 lends any support to a strict application of the Delaney clause. On the other hand, a *de minimis* exception is consistent with, even mandated by, the other provisions of the FFDCA, the legislative history of section 409, other statutory provisions regulating pesticides and their legislative history, and modern science. The apparent rigidity of the Delaney clause, itself, is overwhelmed by these other factors. In fact, to reject a *de minimis* exception to the Delaney clause would require EPA to find that:

(1) Congress consciously adopted paradoxical provisions for the regulation of pesticides.

(2) Congress acted with extraordinary rigidity even though little or no debate occurred on the need for the Delaney clause or potential alternatives to such a clause.

(3) Despite a cacophony of legislative voices on the meaning of the Delaney clause, a single congressman expressed Congress' intent to act with extraordinary rigidity.

(4) It is inconsistent with the legislative design for pesticide regulation to follow an interpretation which harmonizes to the greatest extent possible the various statutory provisions addressing pesticides.

VII. FFDCA/FIFRA Coordination

In the Petition Response, EPA refused to revoke the mancozeb food additive regulations listed in the petition citing the ongoing FIFRA cancellation proceeding against mancozeb and the other pesticides in the EBDC family. Petitioners have asserted this is unlawful because FIFRA is a separate statute from FFDCA involving a different legal standard and more and different data for decision making. (Objections, 6). Petitioners cite *Environmental Defense Fund v. HEW*, 428 F.2d 1083 (D.C. Cir. 1970) in support of their argument.

Although *Environmental Defense Fund v. HEW*, on its face, appears to buttress petitioners' position, on closer examination it becomes apparent that the circumstances on which the *Environmental Defense Fund v. HEW* decision was based are so different from the present situation as to make that case inapplicable. *Environmental Defense Fund v. HEW* involved a petition by the Environmental Defense Fund to HEW requesting the revocation of all existing DDT tolerances for raw foods and the establishment instead of "zero tolerances." Id. at 1085–86. HEW rejected the petition arguing, among other things, that revocation of the DDT tolerances was inappropriate prior to cancellation of the FIFRA registration for the food uses of DDT by USDA. Id. The court disagreed holding that HEW had an independent responsibility to implement the FFDCA. Central to the court's decision was the fact that Congress had divided authority over pesticides between two separate cabinet departments and given each department a separate responsibility. The Court wrote:

> While it is obvious that the responsibilities of the two Secretaries are interrelated and ought to be coordinated, we think their individual responsibilities are quite clear and quite separate.

Id. at 1087. Although acknowledging some safety component to FIFRA, the Court found that "Congress intended to lodge primary responsibility for public health considerations with the Secretary of HEW." Id. The Court was concerned that by deferring action under the FFDCA on the DDT tolerance, HEW was relegating to USDA the responsibility to assess the public health issues involving DDT, a function within the expertise of HEW not USDA. Id.

Another factor which may have influenced the decision in *Environmental Defense Fund v. HEW* was that the Environmental Defense Fund had also been unsuccessful in attempts to prompt the Department of Agriculture through the use of a petition to take action under FIFRA against DDT. In a decision handed down the same day as *Environmental Defense Fund v. HEW, Environmental Defense Fund v. Hardin*, 428 F.2d 1093 (D.C. Cir. 1970), the D.C. Circuit directed the Department to suspend and cancel the DDT registrations as requested in the Environmental Defense Fund's petition or issue an explanation why no action was being taken. Id. at 1100.

Several important changes relative to the implementation of FIFRA and FFDCA have occurred since the decision in *Environmental Defense Fund v. HEW*. First, the 1972 amendments to FIFRA clarified that FIFRA was a public health statute. (See Unit VI.B.3. of this notice). Second, the pesticide regulatory authority in FIFRA and the FFDCA were consolidated in EPA. (Reorg. Plan No. 3 of 1970, 5 U.S.C. App. 1132–34 (1982)). Thus, the two explicit underpinnings of *Environmental Defense Fund v. HEW* - that only FFDCA was a public health statute and that the authority under FIFRA and FFDCA was split between two departments - have been completely eroded. (Similarly, the other two cases cited by petitioners, *Oregon Environmental Council v. Kunzman*, 714 F.2d 901 (9th Cir. 1983), and *Southern Oregon Citizen v. Clark*, 720 F.2d 1475 (9th Cir. 1983), cert. denied, 469 U.S. 1028 (1984) are not on point since they simply hold an agency other than EPA cannot rely on EPA's FIFRA determination to meet its NEPA obligations.)

With the authority for implementing these two public health statutes now lodged in a single agency, the calculus has changed. Just as a court may not pick and choose which statutory enactments to follow, (see *Morton v. Mancari*, 417 U.S. at 551), an agency charged with implementing two overlapping statutes may not blindly adhere to one statute in derogation of the other. EPA may neither ignore FFDCA in implementing FIFRA nor ignore FIFRA in implementing FFDCA. Rather, EPA must attempt to harmonize the statutes to the greatest extent possible.

In coordinating implementation of the two statutes, EPA believes it has acted within its discretion to use FIFRA, the more global of the two statutes, as the primary tool for regulating pesticides, especially for reexamining the older pesticides which have raised public health concerns. EPA has established by regulation its Special Review process for determining whether pesticides which meet certain risk criteria should have their registrations modified or cancelled (40 CFR part 154). FIFRA, with its broader authorities, particularly in regard to requiring the production of data, can be used more easily to conduct reviews of the older pesticides. The reassessment of tolerances and food additive regulations for these older pesticides is folded into the FIFRA process rather than being conducted in a separate and duplicative fashion.

EPA is presently engaged in reevaluating tolerances and food additive regulations in a systematic manner in conjunction with the reregistration of pesticides mandated by the amendments to FIFRA enacted in 1988. Congress, in those amendments,

imposed deadlines on EPA for the reregistration of pesticides under FIFRA and provided the authority to collect fees from registrants to ensure that EPA would have the resources to meet those deadlines. (See 7 U.S.C. 136b). It is EPA's policy to propose the revocation of tolerances and food additive regulations related to uses that are believed to pose an unacceptable risk after their evaluation through EPA's reregistration or Special Review process. The Special Review and reregistration processes provide an efficient means for resolving regulatory decisions. If piece-meal decisions are made, EPA will be required to continually reexamine each of these decisions as new data are submitted. The end result will be less timely protection of the public health because each separate decision will require not only a re-analysis of earlier data, but also will have to proceed independently through the administrative process.

Petitioners assert the right to force just such a piecemeal and duplicative exercise whenever they choose. EPA believes, however, that where the FIFRA reevaluation process on a registered pesticide is sufficiently far advanced, it is within EPA's discretion to decline to establish a parallel review process to examine the exact same public health issues being addressed under FIFRA. In those circumstances, EPA would not, like HEW did with the DDT petitioners, be abdicating its responsibilities by sending petitioners to an administrative agency not specifically qualified to evaluate public health issues and which had been reluctant to act in any event. To the contrary, EPA would only be deferring the FFDCA determination while a similar public health evaluation was being completed under FIFRA.

VIII. Final Decision

For two of the pesticides involved in this petition, benomyl and trifluralin, EPA has sufficient information at this time to make determinations as to whether the risks posed by the food additive regulations for these pesticides are trivial. As indicated above, the factors to be considered in making that determination are: (1) The level of risk; (2) the population exposed; and (3) the weight of evidence relating to carcinogenicity. The table below lays out how these factors apply to the food additive regulations for benomyl and trifluralin:

TABLE 1.—DE MINIMIS FACTORS FOR BENOMYL AND TRIFLURALIN FOOD ADDITIVE REGULATIONS

	Risk	Population	Cancer classification
Benomyl Raisins	1×10^{-7}	U.S.	C
Tomato products.	5×10^{-8}	U.S.	C
Trifluralin Peppermint.	4×10^{-9}	U.S.	C
Spearmint.	7×10^{-9}	U.S.	C

Among these food additive regulations, the benomyl food additive regulation for raisins poses the greatest risk in that the numerical risk number is the highest of the four food additive regulations, while the cancer classification and population considered to be exposed for each of these food additive regulations is equal. Even so, the benomyl estimated upper bound lifetime cancer risk for the U.S. population of 1×10^{-7} is significantly less than 1 in 1 million. As discussed above, 1 in 1 million is commonly used as the lowest level of risk which would be deemed unacceptable even with large population exposures. EPA also examined whether different consumption patterns in population subgroups indicated the risk from benomyl on raisins was disproportionately distributed across the U.S. population. The analysis showed no significantly increased risks (a highest subgroup risk of 2×10^{-7}) for regional (northeast, north central, southern , or western) or ethnic (hispanic, non-hispanic white, non-hispanic black, or non-hispanic other) subgroups. Differences in consumption by age subgroups are taken into account in estimating lifetime risk. Moreover, EPA believes that the 1×10^{-7} estimate for raisins probably overstates the risk because this estimate uses conservative assumptions concerning human exposure. Residue levels in raisins were estimated based on field trial data on grapes under conditions which will produce maximum crop residues (maximum application rate, maximum application frequency, and minimum pre-harvest interval). EPA also assumed human exposure at levels found at the completion of the processing of the raisins. In all likelihood, these residue levels will decline between the processing plant and the time of consumption. Further, under EPA's weight of evidence method of ranking carcinogens, benomyl is classified as only a possible human carcinogen. EPA therefore concludes that the risk from the benomyl raisin food additive regulation is *de minimis*.

Since each of the other three food additive regulations in the above table pose lesser risks than the benomyl raisin food additive regulation, EPA finds that they also qualify under the *de minimis* exception. As to the trifluralin food additive regulations, EPA would additionally note that the risk estimates are based on exposure at the level of the food additive regulation. Since the level in the food additive regulation is set so as to make lawful any residue amount which may occur from maximum legal use of the pesticide, as measured in field trials, actual human exposure levels are probably significantly lower.

For two other pesticides involved in this petition, dicofol and DDVP, EPA stated in its Petition Response that although current risk estimates are greater than a *de minimis* level, EPA expected data required for DDVP and requested for dicofol would show *de minimis* levels. EPA believes that it is within its discretion in implementing the *de minimis* exception to section 409's Delaney clause to refuse to revoke food additive regulations where the EPA determines that current estimates most likely overestimate risk, data could be obtained that will in all probability show that the risk is *de minimis*, and that data are being produced expeditiously. After further review of dicofol and DDVP, EPA has determined that neither meets these criteria.

Dicofol can be dealt with summarily. EPA noted in its Petition Response that it needed field residue and processing studies concerning the dicofol food additive regulation for dried tea. Subsequent to publication of the Petition Response, Rohm and Haas submitted data on field residues and processing. Upon examination, EPA determined that that data were simply a reworking of previously submitted data which had been rejected as unacceptable. The reworked data remain unacceptable and Rohm and Haas was so informed. Rohm and Haas has made no commitment to provide the necessary data. Under these circumstances, EPA will not exercise its discretion to wait for data bearing on the level of risk. EPA will take immediate steps to revoke the dicofol food additive regulation for dried tea. If, in the future, Rohm and Haas or any other party decides to produce the requested data, EPA will determine once the data are completed, submitted, and reviewed whether a food additive regulation for dicofol on dried tea should be re-established.

EPA will also not exercise its discretion to deny the petition as to the DDVP food additive regulation on packaged or bagged nonperishable processed food. EPA believes that the current risk estimate may overstate the level of risk but EPA lacks sufficient information or any other basis to make a reasoned judgement that the required data are likely to show the risk from DDVP on packaged or bagged nonperishable processed food to be *de minimis*. EPA has estimated the risk from the food additive regulation for DDVP on packaged or bagged nonperishable processed food to be 8×10^{-6} on the assumption that treated commodities contained DDVP at the food additive regulation level adjusted for percent of commodities treated. This estimate is based on the existing food additive regulation level since EPA has inadequate data on packaged or bagged nonperishable processed food following treatment. EPA has required that those data be submitted. Residue data often show average residues to be below the level of the food additive regulation; however, EPA would note that these data were required for DDVP because EPA concluded in developing the DDVP registration standard that the data on DDVP indicated DDVP residues may exceed the level of the food additive regulation by a substantial amount. Thus, the current risk estimate for DDVP may be understated. EPA will require degradation studies based on the fact that chemicals with DDVP's structure degrade at moderate rates. However, even if DDVP is assumed to degrade quickly, because EPA cannot accurately estimate initial residues, EPA cannot reasonably conclude that such degradation data would be likely to show the risk from the DDVP food additive regulation would be *de minimis*. Accordingly, since the best information EPA has indicates a risk which is greater than a *de minimis* level, EPA intends to immediately take steps to revoke the DDVP food additive regulation for packaged or bagged nonperishable processed food.

As to the mancozeb food additive regulations, EPA in its Petition Response either refused to revoke the regulations (raisins, bran of wheat) or indicated that it would propose to revoke the regulations (bran of barley, oats, and rye) with the time for revocation occurring contingent on the completion of the proposed cancellation action under FIFRA for those uses. Petitioners indicated that they considered both of these responses to be denials of their petition. Existing information shows the risks from the mancozeb food additive regulations for raisins (1×10^{-6}) and bran of wheat (9×10^{-11}) to be minimal. The estimated risk from use of mancozeb on the grains of barley, oats, and rye (3×10^{-7}, 6×10^{-8}, and 4×10^{-9}, respectively) is also small and EPA estimates that the risk from the food additive regulations on the bran of these grains to be three or four orders of magnitude lower. Further, EPA expects that data which have been submitted or will shortly be submitted will show significant reductions in these risks. Nonetheless, EPA is denying the petition as to the mancozeb food additive regulations because it believes it is within its discretion to postpone action under the FFDCA where EPA is undertaking a coordinated FIFRA/FFDCA response to addressing the dietary risks posed by a pesticide. In the case of mancozeb, EPA has substantially completed its Special Review procedures for assessing the risks and benefits of mancozeb. A proposed cancellation of FIFRA registration and a proposed revocation of FFDCA tolerances and food additive regulations have been issued. 54 FR 52158 (December 20, 1989); 55 FR 20416 (May 16, 1990). A final cancellation notice and FFDCA action will be issued as soon as the residue data which have been required, and in large part, received, are analyzed and a final FIFRA determination is made. For EPA to stop its coordinated FIFRA/FFDCA approach addressing what appears to be the significant risk posed by all 66 food uses of mancozeb and the other EBDCs to deal with the five uses in the petition which pose trivial risks would be nonsensical. EPA declines to divert resources from accomplishment of the primary goal of FFDCA and FIFRA, the protection of the public health.

EPA denies Petitioner's request as to the phosmet food additive regulation on cottonseed oil. EPA analysis of the phosmet carcinogenicity data has only allowed it to make a "tentative" classification as to the carcinogenicity of phosmet. EPA is awaiting a rat cancer study on phosmet which is due in July 1991. When that study is submitted and reviewed EPA will examine whether revocation of this food additive regulation is appropriate.

IX. Public Comments

EPA received two public comments on petitioners' objections to EPA's response to their petition. Both comments supported the EPA decision. The National Agricultural Chemicals Association (NACA) contended in its comments that a "literal" application of the Delaney clause could result in the loss of substances essential to the human diet, the increase of natural toxins in the food supply, and the use of potentially more toxic pesticides. NACA also argued that a *de minimis* exception to the Delaney clause is supported by the overall regulatory scheme for pesticides which includes FFDCA section 408 and FIFRA as well as FFDCA section 409. The Western Agricultural Chemicals Association commented that EPA's decision on the petition was based on "sound science."

EPA generally agrees with these comments. As made clear in this order, EPA believes that in the absence of a *de minimis* exception to the Delaney clause EPA will be forced to take actions which may raise overall risk to the public and which are inconsistent with Congress' regulatory framework for pesticides.

Dated: February 15, 1991.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-4371 Filed 2-22-91; 8:45 am]

BILLING CODE 6560-50-F

OL
56
SS
37
FE
25
991
MI

federal register

Monday
February 25, 1991

Part III

The President

Proclamation 6252—Commemoration of the Bicentennial of U.S.-Portugal Relations

Proclamation 6253—National Doctors Day, 1991

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

Presidential Documents

Title 3—

The President

Proclamation 6252 of February 21, 1991

Commemoration of the Bicentennial of U.S.-Portugal Relations

By the President of the United States of America

A Proclamation

On February 21, 1791, the United States Senate approved President Washington's nomination of Colonel David Humphreys as the first U.S. Minister to Portugal, thereby establishing diplomatic relations between our two countries. Since that time, the governmental, commercial, and cultural ties between the United States and Portugal have grown and prospered.

Mutually beneficial ties between the United States and Portugal began to take shape long before President Washington agreed to formal recognition of our friendship. Indeed, Portugal was among the nations that led the way to the European discovery and exploration of America: during the 15th and early 16th centuries, Portugal was the center for bold navigational advances that permitted transoceanic travel; there, men such as Christopher Columbus and Juan Rodríguez Cabrillo developed the knowledge and skills that made possible their historic journeys along these shores. The history of America would not be the same were it not for the contributions of the intrepid Portuguese people.

Since the early years of our Republic, Portugal has been a welcome friend. Even before the establishment of formal diplomatic ties, Portugal extended to American shipping the protection of its navy against the Barbary pirates, who were a major threat to U.S. commerce. Soon after diplomatic ties were established, our two countries developed active trade and commercial relations. With seafaring traditions strong in both countries, the Azores played a key role in facilitating trade and commerce, allowing for the provisioning of whaling vessels and other ships. Today our Consulate in the Azores is the oldest active U.S. consular post in the world.

Beginning in the 19th century, over the oceanic bridge provided by the Azores, thousands of Portuguese men and women emigrated to the United States, enriching our history and culture. The deep cultural and familial ties that were subsequently established between the United States and Portugal are reinforced today by our mutual devotion to democratic ideals and the rule of law. Joining with the United States as a founding member of the North Atlantic Treaty Organization in 1949, Portugal has remained a steadfast ally and a valued partner in efforts to promote global security.

On this occasion, as we celebrate the 200th anniversary of U.S.-Portugal relations, let us rededicate ourselves to strengthening cooperation between our two countries in promoting the ideals of peace and freedom.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 21, 1991, as a day of commemoration of the 200th anniversary of U.S.-Portugal relations. I encourage all Americans to observe this day with appropriate programs, ceremonies, and activities in recognition of the enduring friendship between the United States and Portugal.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of February, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-4681
Filed 2-23-91; 9:37 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6253 of February 21, 1991

National Doctors Day, 1991

By the President of the United States of America

A Proclamation

More than the application of science and technology, medicine is a special calling, and those who have chosen this vocation in order to serve their fellowman understand the tremendous responsibility it entails. Referring to the work of physicians, Dr. Elmer Hess, a former president of the American Medical Association, once wrote: "There is no greater reward in our profession than the knowledge that God has entrusted us with the physical care of His people. The Almighty has reserved for Himself the power to create life, but He has assigned to a few of us the responsibility of keeping in good repair the bodies in which this life is sustained." Accordingly, reverence for human life and individual dignity is both the hallmark of a good physician and the key to truly beneficial advances in medicine.

The day-to-day work of healing conducted by physicians throughout the United States has been shaped, in large part, by great pioneers in medical research. Many of those pioneers have been Americans. Indeed, today we gratefully remember physicians such as Dr. Daniel Hale Williams and Dr. Charles Drew, who not only advanced their respective fields but also brought great honor and pride to their fellow Black Americans. We pay tribute to doctors such as Albert Sabin and Jonas Salk, whose vaccines for poliomyelitis helped to overcome one of the world's most dread childhood diseases. We also recall the far-reaching humanitarian efforts of Americans such as Dr. Thomas Dooley, as well as the forward-looking labors of pioneers such as members of the National Institutes of Health, who are helping to lead the Nation's fight against AIDS, cancer, and other life-threatening diseases. These and other celebrated American physicians have enabled mankind to make significant strides in the ongoing struggle against disease.

However, in addition to the doctors whose names we easily recognize, there are countless others who carry on the quiet work of healing each day in communities throughout the United States—indeed, throughout the world. Common to the experience of each of them, from the specialist in research to the general practitioner, are hard work, stress, and sacrifice. All those Americans who serve as licensed physicians have engaged in years of study and training, often at great financial cost. Most endure long and unpredictable hours, and many must cope with the conflicting demands of work and family life.

As we recognize our Nation's physicians for their leadership in the prevention and treatment of illness and injury, it is fitting that we pay special tribute to those who serve as members of the Armed Forces and Reserves and are now deployed in support of Operation Desert Storm. Whether they carry the tools of healing into the heat of battle or stand duty at medical facilities in the Persian Gulf and elsewhere, these dedicated physicians—along with thousands of nurses and other medical personnel—are vital to the success of our mission. We salute them for their courage and sacrifice, and we pray for their safety. We also pray for all those who come in need of their care.

In honor of America's physicians, the Congress, by Senate Joint Resolution 366 (Public Law 101-473), has designated March 30, 1991, as "National Doctors Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 30, 1991, as National Doctors Day. I encourage all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of February, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-4552
Filed 2-23-91; 9:36 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 56, No. 37
Monday, February 25, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3961-4172	1
4173-4522	4
4523-4706	5
4707-4926	6
4927-5150	7
5151-5304	8
5305-5646	11
5647-5738	12
5739-5922	13
5923-6260	14
6261-6548	15
6549-6788	19
6789-6938	20
6939-7298	21
7299-7550	22
7551-7782	25

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5617 (Superseded by 6245)	4921
5955 (Superseded by 6245)	4921
6123 (See 6245)	4921
6152 (See 6245)	4921
6243	4701
6244	4707
6245	4921
6246	4927
6247	5305
6248	5645
6249	5739
6250	6789
6251	7551
6252	7779
6253	7781

Executive Orders:

10982 (Amended by EO 12748)	4521
11721 (Revoked by EO 12748)	4521
12154 (Amended by EO 12749)	4921
12748	4521
12749	4711
12750	6785
12751	6787

Administrative Orders:

Presidential Determinations:

No. 91-15 of January 15, 1991	4713
No. 91-16 of January 16, 1991	4715
No. 91-17 of January 16, 1991	4717
No. 91-18 of January 22, 1991	4169
No. 91-19 of January 23, 1991	4171

Memorandums:

Feb. 11, 1991	6789

5 CFR

531	5204
550	5205
553	5205
572	5204
591	5206
831	4929, 6548, 6552
842	4929, 6549, 6552
890	5647
930	5208
2502	5741
2637	3961
2641	3961

Proposed Rules:

531	4562
532	5859
536	4562
772	4562
831	4562
842	4562
846	4562
870	4562
890	4562

7 CFR

17	3966
47	5151
51	7553
301	4931-4933, 5647
800	4675
932	4223
981	5307
982	5151
998	4524
1001	5308
1002	5308
1004	5308
1106	5923
1216	5924
1403	6422
1421	5741
1430	4525
1806	6939
1807	6939
1900	6939
1940	6791, 6961
1941	3971, 6795
1943	3971
1944	6939
1945	3971
1951	6939
1955	6939
1956	6939
1965	6939

Proposed Rules:

55	7592
56	7592
58	4951, 6564, 7747
59	7592
70	7592
210	6297
215	6297
220	6297
235	6297
245	6297
275	7747
319	4180, 6297
425	4736
777	6994
911	5367
915	4953, 5367
966	3983
968	5161
981	6996
1001	4955
1002	4955
1007	4567
1093	4567
1094	4567

1096.....4567
1108.....4567
1220.....7594, 7597
1464.....6998
1496.....5161
1710.....6912
1941.....6315
1943.....6315
1945.....6315
1980.....4567

9 CFR

3.....6426
78.....4936, 4937
92.....5925
166.....7554
391.....7291

10 CFR

11.....5926
25.....5926

Proposed Rules:

Ch. I.....5665
715.....6319

12 CFR

201.....6555
203.....5746
265.....6261
614.....5927
1613.....5648

Proposed Rules:

229.....4743
271.....5778
611.....7747
614.....6422
619.....6422
620.....7747
621.....7747
701.....5061, 5959

13 CFR

121.....5747

Proposed Rules:

120.....5781
121.....5734
125.....5734

14 CFR

1.....5455
23.....5455
39.....3972, 3974, 4532, 4540, 5337–5343, 5749–5752, 6556, 6796–6806, 7555–7563
71.....5153, 5154, 5345, 6962
73.....5154, 5345, 5928
75.....5928
93.....4676
97.....5346

Proposed Rules:

Ch. I.....5164, 5781
21.....4581, 4758
23.....4581, 4758
39.....3983, 4581, 5368–5375, 5781, 6812, 6820, 7611–7624
71.....483, 4584, 4760, 4956, 5164, 5376, 5377, 6584–6593, 7625, 7626
75.....5165, 5378
91.....5576, 5580, 6594
108.....4322
121.....6542
129.....4328
135.....6542
158.....4678
161.....5576
243.....5665

15 CFR

799.....5649

Proposed Rules:

940.....5282

16 CFR

Proposed Rules:

Ch. II.....5965
436.....5783
1500.....6321

17 CFR

30.....6262
211.....4938
229.....7242
240.....7242
249.....7242
270.....7242
274.....7242

18 CFR

2.....5929
157.....7565
271.....4173
284.....6962
385.....4719

19 CFR

4.....4174
161.....5347

Proposed Rules:

162.....5665

20 CFR

302.....6966
348.....6966
404.....4542
416.....5534

Proposed Rules:

330.....4585
Ch. V.....6999
626.....5124
655.....5670
658.....5124
Ch. IX.....5124

21 CFR

5.....6263
102.....6263
161.....6263
172.....6968
1308.....5753

Proposed Rules:

60.....5784
101.....4675
104.....4675
105.....4675
135.....5731
211.....5671
808.....5731
820.....5965
1000.....7316
1002.....7316
1301.....3987, 4181, 4182, 6423
1304.....4181, 6423

22 CFR

171.....6968

Proposed Rules:

120.....6332
123.....6332
126.....6332
521.....4761

23 CFR

230.....4720

24 CFR

Subtitle A.....4412, 4436, 4458, 4494
91.....4480
200.....5349, 7518
203.....4476
215.....7518
221.....7518
234.....4476
235.....6264, 7518
236.....7518
247.....7518
290.....7518
590.....6807
760.....7518
813.....7518
880.....7518
881.....7518
882.....7518
883.....7518
884.....7518
885.....7518
886.....7518
887.....7518
888.....6558
900.....7518
904.....7518
905.....7518
913.....7518
960.....7518

Proposed Rules:

200.....6216
203.....6216
234.....6216
888.....6714
966.....6248

25 CFR

Proposed Rules:

23.....5568

26 CFR

1.....3976, 4542, 5062, 5455
301.....4676, 6969
602.....4676

Proposed Rules:

1.....5456, 5732
31.....3988, 4023, 4183–4243, 4588, 4770, 4958
42.....4589
43.....4590
48.....7627
301.....7001

27 CFR

Proposed Rules:

4.....4770

28 CFR

14.....4943
511.....4158
540.....4158
541.....4158

Proposed Rules:

36.....7452, 7494
524.....5302
540.....5303

29 CFR

697.....5944
1613.....6983
1926.....5061
2619.....6265
2676.....6266

30 CFR

243.....5946
710.....6224
901.....4542
916.....6559
917.....4721
935.....6983
936.....6266

Proposed Rules:

701.....4956
816.....4956
817.....4956
917.....4590, 6594
920.....6333
935.....6336, 6596, 6597, 7002
943.....4243
948.....6337

31 CFR

500.....5350
535.....6546
570.....5351
575.....5636

32 CFR

406.....6565
199.....6268, 7300
221.....6711
247.....6273
381.....6273
619.....5651
701.....6985
706.....7565

33 CFR

117.....4175, 6277, 7302
165.....4559, 4943, 5155, 5156, 5754, 6277, 7303
334.....5300

Proposed Rules:

110.....5379
117.....4023, 4024, 5166
151.....4676, 6423
165.....7316
1222.....3978

34 CFR

74.....4675
80.....4675

36 CFR

217.....4721
1254.....5731
1258.....5651

Proposed Rules:

219.....6508

38 CFR

3.....4729, 5755, 5756
17.....5756
21.....7566
36.....5950

Proposed Rules:

3.....7630–7632
4.....7632
17.....4025

40 CFR

30.....7304

51.....5486, 6276
52.....4944, 5458, 5488, 5652, 5653, 5757, 6567
60.....4176, 5488, 5525, 5758
80.....5352
81.....5653
180.....4946, 6986
185.....6987, 6989
228.....6569
260.....7134
261.....3978, 5910, 7134, 7567
264.....7134
265.....7134
266.....7134
270.....7134
271.....5656, 7134, 7305
300.....5596, 5634

Proposed Rules:

Ch. I.....4957, 5167, 5674, 5675
51.....5900
52.....5173, 5900
61.....6339
136.....5090
144.....4772
145.....4772
146.....4772
147.....4772
148.....4772
180.....4772, 4959, 5788, 6821, 7003
185.....5788
228.....4777

41 CFR

Ch. 101.....5356
201–4.....4947
201–9.....4947
201–18.....4947
201–20.....4947
201–23.....4947
201–24.....4947
201–39.....4947

Proposed Rules:

101–8.....5380

42 CFR

410.....4675

Proposed Rules:

Ch. I.....4961

43 CFR

4.....5061
20.....6991

Public Land Orders:

6403 (Corrected by PLO 6826).....5731
6826.....5731

44 CFR

64.....5951
65.....7306, 7307
67.....6279

Proposed Rules:

67.....5966, 6341

45 CFR

1235.....4730

Proposed Rules:

689.....5769

46 CFR

380.....3979
580.....6809
581.....6809
583.....6809

Proposed Rules:

15.....6598
16.....6778
580.....7634
581.....7634

47 CFR

0.....6582
2.....5991
15.....5658, 6288
61.....5952
73.....4176–4178, 4733, 4948, 4950, 5157, 5158, 7309–7311
80.....4734, 6582
90.....4178, 6991

Proposed Rules:

2.....7004
15.....7004
64.....4782
69.....5190
73.....4783–4785, 5191, 7317, 7318
76.....4027
90.....7635

48 CFR

Ch. 7, App. C.....7566
Ch. 7, App. D.....7566, 7566
Ch. 7, App. G.....7566
570.....4734
731.....7566
752.....7566
915.....5064
950.....5064
970.....5064
1501.....6288
1516.....6288
1537.....5957

Proposed Rules:

Ch. 2, Appendix C.....6054
Ch. 2, Appendix D.....6054
Ch. 2, Appendix T.....6054
201.....6054
204.....6054
215.....6054
217.....6054
223.....6054
225.....6054
237.....6054
239.....6054
241.....6054
242.....6054
244.....6054
245.....6054
252.....6054
253.....6054
522.....6600
552.....6600
901.....6826
904.....6826
908.....6826
909.....6826
914.....6826
915.....6826
922.....6826
933.....6826
935.....6826
942.....6826
943.....6826
952.....6826
970.....6826
971.....6826

49 CFR

1.....4560, 4736, 5957, 6809, 6810
27.....6811
172.....7312
173.....7312
385.....5363
541.....4798
571.....6288, 7589

Proposed Rules:

Ch. I.....6934
173.....7318
178.....7318
198.....7636
355.....7319
571.....5061, 5792, 6602, 6603, 7639, 7640
575.....7643
588.....6603
1033.....4028
1051.....7323
1220.....7323

50 CFR

611.....6290
652.....3980
661.....7312
672.....5158, 5775, 6992
675.....5659, 5775, 6290, 6993, 7314
683.....5159
685.....5159

Proposed Rules:

17.....4028, 5192, 6341–6353
18.....7645
23.....4965
91.....4591
216.....4029
301.....4029
611.....4029
658.....5792
611.....6614
672.....4029
675.....4029
683.....5675

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991

BEST COPY AVAILABLE

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $820.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
4	16.00	Jan. 1, 1990
5 Parts:		
1–699	15.00	Jan. 1, 1990
700–1199	13.00	Jan. 1, 1990
1200–End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0–26	15.00	Jan. 1, 1990
27–45	12.00	Jan. 1, 1990
46–51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53–209	19.00	Jan. 1, 1990
210–299	25.00	Jan. 1, 1990
300–399	12.00	Jan. 1, 1990
400–699	20.00	Jan. 1, 1990
700–899	22.00	Jan. 1, 1990
900–999	29.00	Jan. 1, 1990
1000–1059	16.00	Jan. 1, 1990
1060–1119	13.00	Jan. 1, 1990
1120–1199	10.00	Jan. 1, 1990
1200–1499	18.00	Jan. 1, 1990
1500–1899	11.00	Jan. 1, 1990
1900–1939	11.00	Jan. 1, 1990
1940–1949	21.00	Jan. 1, 1990
1950–1999	24.00	Jan. 1, 1990
2000–End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1–199	20.00	Jan. 1, 1990
200–End	18.00	Jan. 1, 1990
10 Parts:		
0–50	21.00	Jan. 1, 1990
51–199	17.00	Jan. 1, 1990
200–399	13.00	[2] Jan. 1, 1987
400–499	21.00	Jan. 1, 1990
500–End	26.00	Jan. 1, 1990
11	11.00	Jan. 1, 1990
12 Parts:		
1–199	12.00	Jan. 1, 1990
200–219	12.00	Jan. 1, 1990
220–299	21.00	Jan. 1, 1990
300–499	19.00	Jan. 1, 1990
500–599	17.00	Jan. 1, 1990
600–End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1–59	25.00	Jan. 1, 1990
60–139	24.00	Jan. 1, 1990
140–199	10.00	Jan. 1, 1990
200–1199	21.00	Jan. 1, 1990
1200–End	13.00	Jan. 1, 1990
15 Parts:		
0–299	11.00	Jan. 1, 1990
300–799	22.00	Jan. 1, 1990
800–End	15.00	Jan. 1, 1990
16 Parts:		
0–149	6.00	Jan. 1, 1990
150–999	14.00	Jan. 1, 1990
1000–End	20.00	Jan. 1, 1990
17 Parts:		
1–199	15.00	Apr. 1, 1990
200–239	16.00	Apr. 1, 1990
240–End	23.00	Apr. 1, 1990
18 Parts:		
1–149	16.00	Apr. 1, 1990
150–279	16.00	Apr. 1, 1990
280–399	14.00	Apr. 1, 1990
400–End	9.50	Apr. 1, 1990
19 Parts:		
1–199	28.00	Apr. 1, 1990
200–End	9.50	Apr. 1, 1990
20 Parts:		
1–399	14.00	Apr. 1, 1990
400–499	25.00	Apr. 1, 1990
500–End	28.00	Apr. 1, 1990
21 Parts:		
1–99	13.00	Apr. 1, 1990
100–169	15.00	Apr. 1, 1990
170–199	17.00	Apr. 1, 1990
200–299	5.50	Apr. 1, 1990
300–499	29.00	Apr. 1, 1990
500–599	21.00	Apr. 1, 1990
600–799	8.00	Apr. 1, 1990
800–1299	18.00	Apr. 1, 1990
1300–End	9.00	Apr. 1, 1990
22 Parts:		
1–299	24.00	Apr. 1, 1990
300–End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0–199	20.00	Apr. 1, 1990
200–499	30.00	Apr. 1, 1990
500–699	13.00	Apr. 1, 1990
700–1699	24.00	Apr. 1, 1990
1700–End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0-1–1.60	15.00	Apr. 1, 1990
§§ 1.61–1.169	28.00	Apr. 1, 1990
§§ 1.170–1.300	18.00	Apr. 1, 1990
§§ 1.301–1.400	17.00	Apr. 1, 1990
§§ 1.401–1.500	29.00	Apr. 1, 1990
§§ 1.501–1.640	16.00	[3] Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1990
§§ 1.851–1.907	20.00	Apr. 1, 1990
§§ 1.908–1.1000	22.00	Apr. 1, 1990
§§ 1.1001–1.1400	18.00	Apr. 1,1990
§§ 1.1401–End	24.00	Apr. 1, 1990
2–29	21.00	Apr. 1, 1990
30–39	15.00	Apr. 1, 1990
40–49	13.00	[3] Apr. 1, 1989
50–299	16.00	[3] Apr. 1, 1989
300–499	17.00	Apr. 1, 1990
500–599	6.00	Apr. 1, 1990
600–End	6.50	Apr. 1, 1990
27 Parts:		
1–199	24.00	Apr. 1, 1990
200–End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
500–899	26.00	July 1, 1990
900–1899	12.00	July 1, 1990
1900–1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
1911–1925	9.00	[4] July 1, 1989
1926	12.00	July 1, 1990
1927–End	25.00	July 1, 1990
30 Parts:		
0–199	22.00	July 1, 1990
200–699	14.00	July 1, 1990
700–End	21.00	July 1, 1990
31 Parts:		
0–199	15.00	July 1, 1990
200–End	19.00	July 1, 1990
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	24.00	July 1, 1990
190–399	28.00	July 1, 1990
400–629	24.00	July 1, 1990
630–699	13.00	[4] July 1, 1989
700–799	17.00	July 1, 1990
800–End	19.00	July 1, 1990
33 Parts:		
1–124	16.00	July 1, 1990
125–199	18.00	July 1, 1990
200–End	20.00	July 1, 1990
34 Parts:		
1–299	23.00	July 1, 1990
300–399	14.00	July 1, 1990
400–End	27.00	July 1, 1990
35	10.00	July 1, 1990
36 Parts:		
1–199	12.00	July 1, 1990
200–End	25.00	July 1, 1990
37	15.00	July 1, 1990
38 Parts:		
0–17	24.00	July 1, 1990
18–End	21.00	July 1, 1990
39	14.00	July 1, 1990
40 Parts:		
1–51	27.00	July 1, 1990
52	28.00	July 1, 1990
53–60	31.00	July 1, 1990
61–80	13.00	July 1, 1990
81–85	11.00	July 1, 1990
86–99	26.00	July 1, 1990
100–149	27.00	July 1, 1990
150–189	23.00	July 1, 1990
190–259	13.00	July 1, 1990
260–299	22.00	July 1, 1990
300–399	11.00	July 1, 1990
400–424	23.00	July 1, 1990
425–699	23.00	[4] July 1, 1989
700–789	17.00	July 1, 1990
790–End	21.00	July 1, 1990
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	8.50	July 1, 1990
101	24.00	July 1, 1990
102–200	11.00	July 1, 1990
201–End	13.00	July 1, 1990
42 Parts:		
1–60	16.00	Oct. 1, 1990
61–399	5.50	Oct. 1, 1990
400–429	21.00	Oct. 1, 1990
*430–End	25.00	Oct. 1, 1990
43 Parts:		
*1–999	19.00	Oct. 1, 1990
1000–3999	26.00	Oct. 1, 1990
4000–End	12.00	Oct. 1, 1990
44	23.00	Oct. 1, 1990
45 Parts:		
1–199	17.00	Oct. 1, 1990
200–499	12.00	Oct. 1, 1990
500–1199	26.00	Oct. 1, 1990
1200–End	18.00	Oct. 1, 1990
46 Parts:		
1–40	14.00	Oct. 1, 1990
41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
90–139	12.00	Oct. 1, 1990
140–155	13.00	Oct. 1, 1990
156–165	14.00	Oct. 1, 1990
166–199	14.00	Oct. 1, 1990
200–499	20.00	Oct. 1, 1990
500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
20–39	18.00	Oct. 1, 1990
40–69	9.50	Oct. 1, 1990
70–79	18.00	Oct. 1, 1990
80–End	20.00	Oct. 1, 1990
48 Chapters:		
1 (Parts 1–51)	30.00	Oct. 1, 1990
1 (Parts 52–99)	19.00	Oct. 1, 1990
2 (Parts 201–251)	19.00	Oct. 1, 1990
2 (Parts 252–299)	15.00	Oct. 1, 1990
*3–6	19.00	Oct. 1, 1990
7–14	26.00	Oct. 1, 1990
15–End	29.00	Oct. 1, 1990
49 Parts:		
1–99	14.00	Oct. 1, 1990
100–177	27.00	Oct. 1, 1990
*178–199	22.00	Oct. 1, 1990
200–399	21.00	Oct. 1, 1990
400–999	26.00	Oct. 1, 1990
1000–1199	17.00	Oct. 1, 1990
1200–End	19.00	Oct. 1, 1990
50 Parts:		
1–199	20.00	Oct. 1, 1990
200–599	16.00	Oct. 1, 1990
600–End	15.00	Oct. 1, 1990
CFR Index and Findings Aids	30.00	Jan. 1, 1990
Complete 1991 CFR set	620.00	1991
Microfiche CFR Edition:		
Complete set (one-time mailing)	185.00	1988
Complete set (one-time mailing)	185.00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188.00	1991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

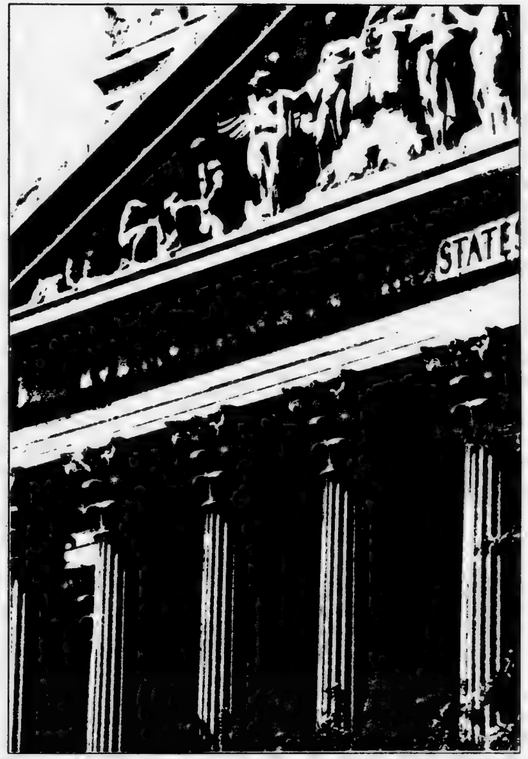
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register

Note to FR Subscribers
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers



Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6483

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $ _____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

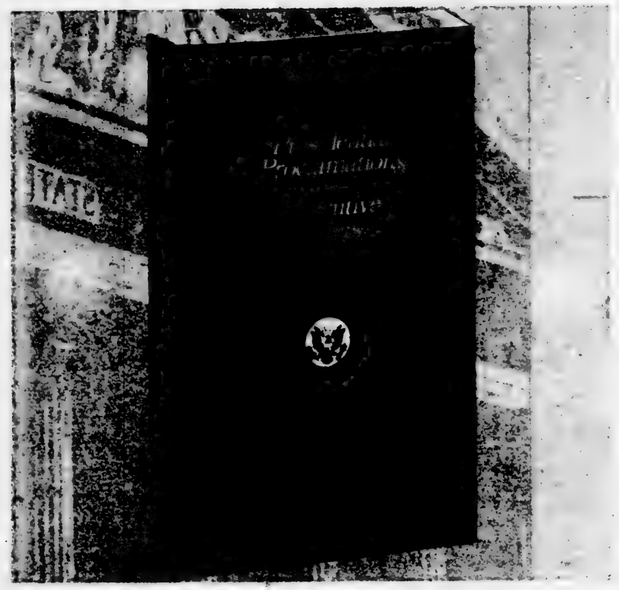
Thank you for your order!

_____
(Signature)

(REV. 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code: *6661

Superintendent of Documents **Publications** Order Form

P3

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ -☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

7/88

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

OL
56

SS
37

FE
25

991

MI

OL
56
SS
38
FE
26
991
MI

2-26-91
Vol. 56 No. 38

federal register

Tuesday
February 26, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
88
FE
26
991
MI

2-26-91
Vol. 56 No. 38
Pages 7783-8100

federal register

Tuesday
February 26, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Los Angeles and San Diego, CA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building, 300 N. Los Angeles St. Conference Room 8544 Los Angeles, CA
RESERVATIONS: 1–800–726–4995

SAN DIEGO, CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building, 880 Front St. Conference Room 4S–13 San Diego, CA
RESERVATIONS: 1–800–726–4995

Contents

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

Administrative Conference of the United States
NOTICES
Meetings:
Judicial Review Committee et al., 7833

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
March, 7868

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Food, Agriculture, Conservation, and Trade Act; implementation, 8044

Agriculture Department
See Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service; Soil Conservation Service

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products quarantine:
Tuberculosis in cattle and bison—
State and area designations, 7785
Plant-related quarantine, domestic:
Black stem rust, 7784
Mexican fruit fly, 7783
Viruses, serums, toxins, etc.:
Autogenous biologics, 7785

Antitrust Division
NOTICES
National cooperative research notifications:
National Forest Products Association, 7879

Army Department
NOTICES
Meetings:
Science Board, 7837, 7838
(6 documents)

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Meetings:
Diabetes Translation and Community Control Programs Technical Advisory Committee, 7869

Child Support Enforcement Office
RULES
Program operations standards:
Child support enforcement program—
Services extension to Medicaid recipients and former AFDC recipients, 7988

Coast Guard
PROPOSED RULES
Regattas and marine parades:
Opening Day Marine Parade, 7824
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 7892

Commerce Department
See International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Indonesia, 7836
Pakistan, 7837

Commodity Credit Corporation
PROPOSED RULES
Food, Agriculture, Conservation, and Trade Act; implementation, 8044

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 7895
(2 documents)

Copyright Office, Library of Congress
RULES
Claims registration:
Berne Convention Implementation Act; technical amendments, 7814
Refund of excess fees, etc., 7812
Computer software lending by libraries; copyright warning, 7811
Mask works protection:
Claims registration protection, 7816

Customs Service
RULES
Vessels in foreign and domestic trades:
Reciprocal privileges—
Pakistan, 7804
NOTICES
Commercial laboratory accreditations:
SGS Control Services, Inc., 7893

Defense Department
See Army Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Killough, Larry R., M.D., 7879

Education Department
NOTICES
Agency information collection activities under OMB review, 7838

Employment and Training Administration
NOTICES
Alien temporary employment labor certification process:
Agricultural and logging; adverse effect wage rates and meal charges, 7880
Nonimmigrant aliens temporarily employed as registered nurses; attestations by facilities; list, 7882

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Underground Injection Practices Council, 7839
Meetings:
International Energy Agency Industry Advisory Board, 7840
Natural gas exportation and importation:
Canadian Hydrocarbons Marketing (U.S.) Inc., 7840
Canadianoxy Marketing Inc., 7840
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
Seneca Power Partners, L.P., 7840

Environmental Protection Agency
PROPOSED RULES
Toxic substances:
Lead acid battery recycling, negotiated rulemaking advisory committee, 7825
NOTICES
Pollution prevention strategy; availability, 7849

Executive Office of the President
See Presidential Documents

Family Support Administration
See Child Support Enforcement Office

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 7895

Federal Aviation Administration
RULES
Airworthiness directives:
Pratt & Whitney, 7802
PROPOSED RULES
Airworthiness directives:
General Electric Co., 7820
NOTICES
Environmental statements; availability, etc.:
Expanded East Coast Plan over New Jersey, 8042

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 7895

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Florida Power Corp. et al., 7841
Meetings; Sunshine Act, 7895
Natural gas certificate filings:
Florida Gas Transmission Co. et al., 7842
Applications, hearings, determinations, etc.:
Public Service Co. of New Hampshire, 7849

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Montgomery and Bucks Counties, PA, 7892

Federal Maritime Commission
NOTICES
Agreements filed, etc., 7886
Complaints filed:
West Indian Co. Ltd. et al., 7864
Tariffs, inactive; cancellation, 7864

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 7897

Federal Reserve System
RULES
Availability of funds and collection of checks (Regulation CC):
Expedited Funds Availability Act; implementation—Nonproprietary automated teller machines (ATMs); deposit availability schedules, 7789
NOTICES
Meetings; Sunshine Act, 7898
Applications, hearings, determinations, etc.:
AMCORE Financial, Inc., 7867
Norwest Corp., 7867
Old Second Bancorp, Inc., 7867
Stichting Prioriteit ABN AMRO HOLDING et al., 7868

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal Bonds:
Folksamerica Reinsurance Co., 7894

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Tetracycline soluble powder, 7805
NOTICES
Meetings:
Nutrition labeling; serving sizes, 8094
Organization, functions, and authority delegations:
Seafood Office, 7869

Forest Service
NOTICES
Environmental statements; availability, etc.:
Salmon National Forest, ID, 7833

Health and Human Services Department
See Agency for Health Care Policy and Research; Centers for Disease Control; Child Support Enforcement Office; Food and Drug Administration; National Institutes of Health; Public Health Service; Social Security Administration

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 7870

Organization, functions, and authority delegations:
Acting Assistant Secretary for Community Planning and Development; order of succession, 7873

Indian Affairs Bureau
NOTICES
Environmental statements; availability, etc.:
Fort Mojave Indian Reservation, CA and NV, 8097

Interior Department
See Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Short supply determinations:
Stainless steel wire rod, 7834

International Trade Commission
NOTICES
Meetings; Sunshine Act, 7898

Interstate Commerce Commission
NOTICES
Rail carriers:
State intrastate rail rate authority—Minnesota, 7878
Waybill data; release for use, 7878

Justice Department
See also Antitrust Division; Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
EDO Corp. et al., 7878
Plastics Manufacturing, Inc., 7878
Voting Rights Act certification:
Yuma County, AZ, 7878

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Meetings:
Rock Springs District Advisory Council, 7874
Survey plat filings:
Idaho, 7874

Library of Congress
See Copyright Office, Library of Congress

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 7884

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities under OMB review, 7883
Meetings:
Humanities Panel, 7883

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Buses; interior materials; flammability, 7826
Small trucks and sport-utility vehicles; bumper height requirements; petition denied, 7826

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Meetings:
Advanced Technology Visiting Committee, 7835
Electromagnetic Compatibility Workshop; improving acceptance of U.S. products in international markets, 7835

National Institutes of Health
NOTICES
Meetings:
National Center for Nursing Research, 7870
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 7861
National Institute on Aging, 7861

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Western Pacific Fishery Management Council, 7836
Permits:
Marine mammals, 7835

National Park Service
NOTICES
Abandoned Shipwreck Act guidelines; correction, 7875
Meetings:
Protecting Our National Parks Symposium Steering Committee, 7887
National Register of Historic Places:
Pending nominations, 7875, 7877 (4 documents)

Nuclear Regulatory Commission
RULES
Practice rules:
Domestic licensing proceedings—Geologic repository for receipt of high-level radioactive waste; licenses issuance, 7787
NOTICES
Environmental statements; availability, etc.:
GPU Nuclear Corp. et al., 7883
Meetings; Sunshine Act, 7898
Regulatory guides; issuance, availability, and withdrawal, 7884
Applications, hearings, determinations, etc.:
Alabama Power Co., 7886
Illinois Power Co. et al., 7885

Personnel Management Office
PROPOSED RULES
Allowances and differentials:
Cost-of-living allowances and post differentials (nonforeign areas), 7902
Privacy Act; implementation, 7819
NOTICES
Privacy Act:
Systems of records, 7887

Presidential Documents
ADMINISTRATIVE ORDERS
Government employees:
Institute of American Indian and Alaska Native Culture and Arts, Chairman of Board of Trustees; authority delegation (Memorandum of February 22, 1991), 8097

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; National Institutes of Health
NOTICES
Meetings:
National Vaccine Advisory Committee, 7870

Railroad Retirement Board
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 7889

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 7898
(2 documents)
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 7890
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 7891
Cincinnati Stock Exchange, Inc., 7891

Small Business Administration
NOTICES
Privacy Act:
Systems of records, 8008

Social Security Administration
PROPOSED RULES
Supplemental security income:
Retroactive cash payments to ineligible individuals, 7821

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Hudson River Watershed, GA, 7883

State Department
NOTICES
Identity and registration cards; issuance, 7882

State Justice Institute
NOTICES
Meetings; Sunshine Act, 7899

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
New Mexico, 7806
Ohio, 7810
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 7822

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See also Customs Service; Fiscal Service
NOTICES
Bonds, Treasury:
February 2021 series, 7893
Notes, Treasury:
A-2001 series, 7893
R-1991 series, 7893

Separate Parts In This Issue

Part II
Office of Personnel Management, 7902

Part III
Department of Health and Human Services, Office of Child Support Enforcement, 7988

Part IV
Small Business Administration, 8008

Part V
Department of Transportation, Federal Aviation Administration, 8042

Part VI
Department of Agriculture, Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, 8044

Part VII
Department of Health and Human Services, Food and Drug Administration, 8084

Part VIII
Department of the Interior, Bureau of Indian Affairs, 8094

Part IX
The President, 8097

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Memorandums:
June 22, 1988 (See Memorandum of Feb. 22, 1991)
Feb. 22, 1991 8099

5 CFR
Proposed Rules:
297 7819
591 7902

7 CFR
301 (2 documents) 7783, 7784
Proposed Rules:
718 8044
719 8044
1413 8044
1414 8044

9 CFR
77 7785
114 7785

10 CFR
2 7787

12 CFR
229 7799

14 CFR
39 7802
Proposed Rules:
39 7820

19 CFR
4 7804

20 CFR
Proposed Rules:
416 7821

21 CFR
510 7805
546 7805

30 CFR
931 7806
935 7810
Proposed Rules:
901 7822

33 CFR
Proposed Rules:
100 7824

37 CFR
201 (3 documents) 7811-7814
202 (2 documents) 7812-7814
211 7816

40 CFR
Proposed Rules:
Ch. I 7825

45 CFR
301 7988
302 7988
303 7988
304 7988

49 CFR
Proposed Rules:
571 (2 documents) 7826

Rules and Regulations

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-009]

Mexican Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules.

SUMMARY: We are affirming without change interim rules that amended the Mexican fruit fly regulations by removing portions of San Diego and Los Angeles Counties in California from the list of areas regulated because of the Mexican fruit fly, and by removing California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California, and that restrictions are no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

EFFECTIVE DATE: March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective October 18, 1990, and published in the Federal Register on October 23, 1990 (55 FR 42698-42699, Docket Number 90-207), we amended the Mexican fruit fly regulations (7 CFR 301.64 *et seq.*, referred to below as the regulations) by removing a portion of San Diego County, near El Cajon, California, from the list of areas regulated because of the Mexican fruit fly, *Anastrepha ludens* (Loew). In an interim rule effective November 9, 1990, and published in the Federal Register on November 15, 1990 (55 FR 47737-47738, Docket Number 90-212), we again amended the regulations by removing a portion of Los Angeles County near Compton, California, from the list of areas regulated because of the Mexican fruit fly, and by removing California from the list of States quarantined because of the Mexican fruit fly. We have determined that the Mexican fruit fly has been eradicated from California, and that the quarantining of California is no longer needed to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. Comments on the interim rules were required to be received on or before December 24, 1990, and January 14, 1991, respectively. We did not receive any comments. The facts presented in the interim rules still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The regulations removed restrictions on the interstate movement of regulated articles from a portion of San Diego County near El Cajon, and from a portion of Los Angeles County near Compton, in California. Within the previously regulated portion of San Diego County there are approximately 121 entities that could be affected, including 70 fruit/produce markets, 30 nurseries, 5 wholesale distributors, and 16 commercial growers of mainly avocados and citrus on approximately 350 acres. Within the previously regulated portion of Los Angeles County there are approximately 135 entities that could be affected, including 30 fruit/produce markets, 100 nurseries, and 5 community gardens. All of the above entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement. The distribution of these articles was not affected by the regulatory provisions we have removed.

Many of these entities also handle other items in addition to the previously regulated articles so that the effect, if any, of this regulation on these entities is minimal. Further, the conditions in the Mexican fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allowed interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as final rules, without change, the interim rules amending 7 CFR 301.64 *et seq.* that were published at 55 FR 42696–42699 on October 23, 1990, and at 55 FR 47737–47738 on November 15, 1990.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 20th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–4434 Filed 2–25–91; 8:45 am]

BILLING CODE 3410–34–M

---

7 CFR Part 301

[Docket No. 91–018]

Black Stem Rust; Addition of Rust-Resistant Variety of Berberis Thunbergii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to add *Berberis thunbergii* "Bonanza Gold" to the list of rust-resistant *Berberis* species. This change allows this newly developed variety to be moved without unnecessary restrictions.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Background

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia.* The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia, and govern the interstate movement of certain plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of spreading black stem rust; rust-susceptible plants do pose such a risk.

Section 301.38–2 of the regulations includes a listing of regulated articles, and indicates which species of the genera *Berberis, Mahoberberis,* and *Mahonia* are rust-resistant. Although rust-resistant species are included as regulated articles, they may be moved into or through otherwise protected areas if accompanied by a certificate.

In a document published in the **Federal Register** on January 11, 1991 (56 FR 1121–1122, Docket Number 90–234), we proposed adding *Berberis thunbergii* "Bonanza Gold" to the list of rust-resistant *Berberis* species in § 301.38–2(b) of the regulations. Based on testing, USDA has determined that *Berberis thunbergii* "Bonanza Gold" is rust-resistant.

Comments on the proposed rule were required to be received on or before January 28, 1991. We received one comment, from a nursery in Ohio, which simply favored the rule as proposed. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register.** Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Immediate implementation of this rule will allow interested nurseries to ship *Berberis thunbergii* "Bonanza Gold" to protected areas during the next shipping season, and will provide consumers in protected areas with the opportunity to acquire *Berberis thunbergii* "Bonanza Gold."

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule allows the interstate movement of *Berberis thunbergii* "Bonanza Gold" into and through States or parts of States designated as protected areas. Based on the information available to us, only one commercial nursery is currently producing *Berberis thunbergii* "Bonanza Gold." It is impossible to determine how many nurseries will propagate this new variety. However, with this change, *Berberis thunbergii* "Bonanza Gold" becomes just one of 65 varieties listed in § 301.38–2 as being rust-resistant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Black stem rust, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.38–2 [Amended]

2. In § 301.38–2(b), "*B. thunbergii* "Bonanza Gold"" is added to the list of rust-resistant *Berberis* species immediately after "*B. thunbergii* "Bagatelle" ".

Done in Washington, DC, this 20th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–4435 Filed 2–25–91; 8:45 am]

BILLING CODE 3410–34–M

---

9 CFR Part 77

[Docket No. 91–011]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations concerning the interstate movement of cattle and bison because of tuberculosis by lowering the designation of Kansas and Oklahoma from accredited-free States to modified accredited States.

EFFECTIVE DATE: March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective November 13, 1990 (55 FR 47303–47304, Docket Number 90–183), we amended the tuberculosis regulations contained in 9 CFR part 77 by lowering the designation of Kansas and Oklahoma from accredited-free States to modified accredited States.

Comments on the interim rule were required to be received on or before January 14, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Kansas and Oklahoma may affect the marketability of cattle and bison from those States, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in Kansas and Oklahoma, and will therefore not have a significant economic impact on those persons affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 77.1 that was published at 55 FR 47303–47304 on November 13, 1990.

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 20th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–4436 Filed 2–25–91; 8:45 am]

BILLING CODE 3410–34–M

---

9 CFR Part 114

[Docket No. 90–236]

Viruses, Serums, Toxins, and Analogous Products; Shipment of Products Produced Under an Extended Exemption

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the rule pertaining to the preparation of veterinary biological products for intrastate distribution or export, under an extension of the exemption from the requirement that such products be prepared under a USDA license. The interim rule established procedures for manufacturers to obtain authorization for the shipment of finished products until June 30, 1991.

EFFECTIVE DATE: March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone number (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule that was effective on the date of publication, November 2, 1990 (55 FR 46188–46190, Docket No. 90–171), we amended the regulations in 9 CFR part 114 regarding authorization to ship, after December 31, 1990, certain veterinary biological products that were produced under an extended exemption. The interim rule established procedures for manufacturers to obtain authorization for the shipment, intrastate or for export, of finished products until June 30, 1991.

Comments on the interim rule were required to be received on or before December 3, 1990. We received seven comments prior to this closing date. The commenters included a biologics consultant, a professional association, and five producers of veterinary biological products.

provisions that are included in this rule were submitted for approval to the Office of Management and Budget (OMB) and were approved by OMB and assigned control number 0579–0013.

Executive Order 12372

This program/activity is listed in the Catalog of Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires governmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR Part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 114.2, paragraphs (d)(6) (i) and (ii) are revised to read as follows:

§ 114.2 Products not prepared under license.

* * * * * * *

(d) * * *

(6) * * *

(i) Either completed product in final container or finished product, prepared under an exemption granted pursuant to § 114.2 (d)(3) of this subchapter and meeting the requirements of § 101.3 (c) and (d), may be shipped intrastate or exported after December 31, 1990, and until June 30, 1991, if authorized by the Administrator. Applications must be made, on or before December 1, 1990, to the Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, 6505 Belcrest Road, Hyattsville, MD 20782, and must address all of the following criteria:

(A) The progress which has been made in completing the work defined in the protocol of research filed in support of the request for extension of the exemption including dates efficacy studies were initiated (test animals vaccinated);

(B) What remains to be done to complete licensure; and

(C) Any other information requested by the Administrator that is determined to be relevant to the consideration of an authorization for shipment.

(ii) Approval will be granted based upon a determination that there is a reasonable expectation that licensure will be completed by June 30, 1991.

Done in Washington, DC, this 20th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–4337 Filed 2–25–91; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AD27

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations concerning the Rules of Practice for the licensing of high-level radioactive waste at a geologic repository (HLW proceeding). The revised rules enhance the Commission's ability to comply with the schedule for the Commission's decision on the construction authorization for the repository contained in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, (NWPA), while providing for the thorough technical review of the license application and the equitable treatment of the parties to the hearing. The revised rules for the HLW proceeding establish a new standard for the admission of initial contentions, define "late contentions" as any contention proposed after the initial contentions are submitted, establish a compulsory hearing schedule, and specify that there will be no *sua sponte* review by the Commission's adjudicatory boards. The revised rules also clarify that the LSS Administrator's written report and periodic evaluations of the Department of Energy's (DOE) compliance with the LSS requirements will be circulated to potential parties who must timely file any objections they may have to the Administrator's evaluations or report or risk waiving their objections. In addition, the rules clarify the Commission's authority to designate a Pre-License Application Presiding Officer to resolve disputes during the period prior to the receipt of the formal application for the construction of the high-level waste repository. The revised rules indicate that the Commission will specify the jurisdiction of the pre-License Application Presiding Officer in designating the officer pursuant to these amendments.

EFFECTIVE DATE: March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, Senior Attorney, or Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1636.

SUPPLEMENTARY INFORMATION:

Background

In adopting the final rule on the Licensing Support System (LSS) promulgated on April 14, 1989 (54 FR 14925), the Commission added a new subpart J to 10 CFR part 2 which established the basic procedures for the HLW licensing proceeding including the use of the LSS in the proceeding. The new subpart was primarily the result of a negotiated rulemaking proceeding conducted with the participation of DOE and other parties potentially affected by the HLW licensing proceeding. However, when the Commission promulgated these rules, the Commission stated that it might be necessary to make further changes to these rules in order to streamline the licensing process. As the Commission noted in the Supplementary Information section of the April 18, 1989, final rule—

> * * * the Commission is committed to do everything it can to streamline its licensing process and at the same time conduct a thorough safety review of the Department of Energy's application to construct a high-level waste repository. The negotiators to this rulemaking have made a number of improvements to our existing procedures. However, more improvements may be necessary if the Commission is to meet the tight licensing deadline established by the Nuclear Waste Policy Act of 1982, as amended. By publishing this rule, the Commission is not ruling out further changes to the rules contained in the negotiated rulemaking. 54 FR 14925, 14930.

After further study, the Commission published a notice of proposed rulemaking presenting amendments to its Rules of Practice for the HLW licensing proceeding and inviting public comment (September 26, 1989; 54 FR 39387). The specific revisions proposed involved a new standard for initial contentions, a new definition of "late contentions", a requirement of direct testimony on contentions, a compulsory hearing schedule, elimination of *sua sponte* review by adjudicatory boards, the potential parties' rights to receive and file timely comment upon the LSS Administrator's evaluations and written report on DOE's compliance with the

Two of the comments supported the rule as written, four comments supported the rule but requested minor changes to it, another requested that the exemption period be extended, and a final comment requested that authorization to ship be extended as long as necessary to achieve licensure. The comments that requested changes to the rule are discussed below.

Two comments were in favor of extending the period to ship authorized products produced during the extended exemption for one year rather than six months. These commenters further requested that products not authorized for shipment be allowed to be distributed through routine distribution channels for either six months or until such products had cleared distribution channels. In this way, products that were not authorized for shipment would be spared destruction and invested capital would not be lost. Another comment requested that the exemption period for certain biological products deemed by APHIS to be in the advanced stages of licensing be extended for up to 12 months.

No change in the rule has been made based on these comments. The statutorily-authorized exemption for the preparation of unlicensed veterinary biological products ended December 31, 1990. APHIS has no statutory authority to extend this exemption beyond that date. Consistent with the intent of the 1985 amendments, the interim rule provided that manufacturers on the verge of completing licensure could submit data demonstrating significant progress toward licensure in support of a request to allow shipment of finished product until June 30, 1991. APHIS believes that a six month period for the shipment of finished product is reasonable, given the fact that producers have known for some time that production of unlicensed product would have to cease on December 31, 1990.

With respect to those products not authorized for shipment that have been produced in accordance with the regulations and for which an outline of production has been filed, such products may be retained at the licensed establishment after December 31, 1990, and be presented for release once full licensure is attained at a later date. Products not authorized for shipment cannot be shipped from either a manufacturer's or distributor's facility. Another commenter requested that the authorization for shipment be made applicable to unlabeled completed product in final containers. The commenter's rationale was that producers have specialized markets and that it may not be possible to anticipate labeling in advance. APHIS agrees with this request. APHIS recognizes that certain firms have specialized markets and that it may not be possible to anticipate final labeling in advance. In order to reduce financial hardship on these firms, APHIS is amending the interim rule so that authorization to ship until June 30, 1991, applies to completed product in final container as well as finished product (see 9 CFR 101.3 (c) and (d)).

AAnother comment requested that the exemption to produce unlicensed biological products be continued as long as necessary to achieve licensure provided that a good faith effort be made to meet requirements and delays are determined not to be the fault of the applicant. No change in the regulations has been made in response to this request. This request is contrary to the statutory requirement that the exemption period end on December 31, 1990. APHIS believes that authorization to ship finished product for an additional six months would enable a manufacturer to sell products for which licensure will occur in the next six months.

One comment requested that additional time be allowed for preparation of authorized products after December 31, 1990. The commenter cited the fact that products not granted an extension of the exemption could be shipped until December 31, 1990. APHIS believes that adequate notice of its policy was given and no change has been made to the regulations in response to this request. APHIS has previously granted a one-year extension for the production of products based on the rationale that the producer, through good faith effort; would complete licensure by December 31, 1990. To allow additional time to prepare unlicensed product after December 31, 1990, would run counter to the rationale that products granted an extension complete licensure by that date. Furthermore, there is no authority in the Virus-Serum-Toxin Act to allow production beyond December 31, 1990. The comment further suggested that adequate notice had not been provided that authorization to ship would be allowed products that had been produced during the extended exemption and that had initiated efficacy studies. APHIS believes that adequate notice of its policy was given and no change has been made to the regulations in response to this request. APHIS held a public meeting on August 22, 1990, which addressed this policy (see 55 FR 29077, July 17, 1990).

Moreover, an interim rule was published on November 2, 1990 (see 55 FR 46188), allowing firms to submit data to support authorization to ship finished product after December 31, 1990.

Based on the rationale set forth in the interim rule and in this document, we are issuing this final rule.

The interim rule that was published on November 2, 1990, incorrectly gave the last date for shipment of authorized products as June 30, 1990 (see 55 FR 46190, col. 2). This typographical error has been changed to June 30, 1991, in the final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The 1985 amendments to the Virus-Serum-Toxin Act provided for the 4-year period of exemption during which time manufacturers of exempted, unlicensed veterinary biological products could continue to produce such products solely for intrastate distribution or export while attaining USDA licensure for the extended products. The statutorily-authorized extension period ended December 31, 1990. Based on applications received on December 1, 1990, APHIS has granted nine firms authorization to ship a total of forty-eight products.

It is anticipated that granting a six-month authorization to nine firms to ship some forty-eight products will have minimal impact on the remainder of the industry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 *et seq.*) the information collection

LSS requirements, and the Commission's ability to appoint and specify the jurisdiction of the Pre-License Application Presiding Officer. The Commission also proposed some issues for inclusion in the Notice of Hearing. The comment period for the proposed rule expired November 27, 1989. The Commission received six comments including comments from Florida Power & Light Company (FPL), the National Congress of American Indians (NCAI), Malachy Murphy for the State of Nevada (Nevada), the Department of Energy (DOE), the Edison Electric Institute/Utility Nuclear Waste and Transportation Program (EEI/UWASTE), and jointly from the Environmental Defense Fund, Friends of the Earth, and the National Audubon Society (environmental groups).

Summary of Comments

A. General

Although the proposed revisions were generally supported by DOE, EEI/UWASTE, and FPL, the three other commenters raised strong general objections to the Commission's consideration of revisions to subpart J which require some discussion. Nevada, NCAI, and the environmental groups protest the initiation of this rulemaking proceeding to adopt revisions to the procedural rules agreed to by the LSS Negotiating Committee less than six months after their adoption. These commenters assert that their participation in the give and take of the negotiations was based upon a good faith effort to achieve consensus and that the Commission's attempted revision of the recently adopted rules reflects bad faith in the negotiating process. The commenters state that the future integrity of the negotiated rulemaking process and their own trust and future willingness to participate are threatened by the Commission's actions.

In announcing the possible formation of an advisory committee for negotiated rulemaking (51 FR 45338; December 18, 1986), and at every subsequent stage of the negotiated rulemaking process,[1] the Commission has clearly stated that it retains the responsibility for formulating the final rules for the HLW licensing proceeding. The Commission has the ultimate responsibility to draft regulations to implement statutory provisions in its purview. Because of the novelty and technical complexity of the issues involved in the HLW licensing proceeding, as well as the strict time deadlines imposed in section 114(d) of the NWPA, the Commission sought to formulate new, efficient, and streamlined procedures with the assistance of those parties which would probably be affected by the HLW licensing proceeding.

In the notice of establishment of the Negotiating Committee, the Commission announced that any consensus of the Negotiating Committee would only be the basis for the agency's issuance of a proposed rule for notice and comment. "The consensus is not the basis per se for the final rule which the agency will develop after traditional notice and comment procedures" (52 FR 29624; August 5, 1987).

According to the committee's protocol, "consensus" was defined as no dissenting vote by any committee member on a matter before the committee for approval. The Negotiating Committee did not ultimately reach consensus due to the dissenting vote of the industry coalition member. Although the industry coalition dissented in the final vote, it participated fully in the drafting of the substantive parts of the agreement and dissented in the end over the broader question of whether the LSS was a cost-effective method to achieve the goal of streamlining the licensing process. Therefore, in spite of the lack of consensus, the Commission published a notice of proposed rulemaking inviting public comment, based on the product of the Negotiating Committee's efforts (53 FR 44411; November 3, 1988). The Commission received comments and duly adopted a final rule (54 FR 14925; April 14, 1989).

Thus the intensive work of the Negotiating Committee resulted in the enactment of part 2 subpart J regulations to facilitate the creation of the LSS. These regulations reflect significant new efficiency in the procedures applicable to the HLW licensing proceeding. However, the Commission is obligated to fulfill its ultimate responsibility to insure that its procedural rules will facilitate compliance with its statutory responsibilities under the NWPA.

In the time subsequent to the adoption of the final rules for subpart J, two events intervened. First, revisions to the Rules of Practice for domestic licensing proceedings, part 2, subpart G, were adopted on August 11, 1989 (54 FR 33168, *aff'd, Union of Concerned Scientists* v. *NRC*, No. 89–1617 (D.C. Cir., November 30, 1990)). Second, an internal review was conducted to consider possible improvements to the procedural rules in subpart J. In the Statement of Considerations to the subpart J rules, the Commission had explicitly stated the intention to evaluate further the subpart J rules in general (54 FR 14925; April 14, 1989), and specifically to revisit the issue of the threshold for initial contentions in light of the later resolution of the then pending consideration of changes to subpart G regulations (*Id.* at 14931). The amendments that are the subject of this rulemaking proceeding were either proposed to bring the subpart J regulations into conformity with subpart G regulations, which apply in other licensing proceedings, or were proposed to enhance further the Commission's ability to meet deadlines and conduct a fair and effective HLW licensing proceeding.

The mechanism of public rulemaking with notice and comment pursuant to the Administrative Procedure Act, is a necessary element of the Commission's powers. In addition to the negotiated rulemaking which allowed advisory input by potentially affected parties, this rulemaking procedure is contributing substantially to the Commission's ability to fulfill effectively and efficiently its responsibilities in the contemplated novel and technically complex HLW licensing proceeding.

B. Comments on Specific Proposals with Responses

The sections which follow contain a description of the amendments, a summary of the comments received and an NRC response.

1. Standards for Initial Contentions (§ 2.1014)

The amendments to § 2.1014 incorporate a similar standard for admission of initial contentions to that now incorporated in subpart G, § 2.714, adopted in the final rule on regulatory reform (54 FR 33168; August 11, 1989). These amendments raise the threshold for the admission of contentions to require the proponent of the contention to supply information showing the existence of a genuine dispute with the applicant on an issue of law or fact. The contention must be supported by a concise statement of the alleged facts or expert opinion, together with specific sources and documents of which the petitioner is aware, which will be relied upon to establish the facts or expert opinion. Absent a showing that there is a genuine dispute on a material issue of fact or law, the contention will not be admitted. Admission of a contention may also be refused if it appears that the contention, even if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief. Finally, the amendments would provide that a contention raising only an issue of law will not be admitted for resolution in an evidentiary hearing but must be decided on the basis of briefs and any oral argument that may be held.

While EEI/UWASTE (FPL also supports the specific comments of EEI/UWASTE) supports the Commission's discretion to conform the requirements for initial contentions to the requirements in subpart G, the commenter states that the availability of the information in the LSS data base and of certain types of discovery during the pre-license application phase warrant a more substantial threshold for contentions. EEI/UWASTE suggests that, at a minimum, the Commission should require a proffer in affidavit or other evidentiary form to demonstrate that a genuine dispute exists concerning a material fact or law issue.

The Commission disagrees that a higher threshold is warranted for the admission of initial contentions. An intervenor should not be required to prove its case at the stage of the initial submission of contentions. This rule's requirement that sufficient information be presented to establish the existence of a genuine dispute with the applicant on a material issue of fact or law allows the scope of the proceeding to be defined and advanced without prematurely eliminating legitimate contentions.

EEI/UWASTE suggests that the language in § 2.1014(a)(2)(iii)(D) should be improved. As proposed, the section states that in determining whether a genuine dispute exists, the Commission or the Presiding Officer "shall consider" whether the contention, if proven, would be of no consequence because it would not entitle the petitioner to relief. The commenter believes the language should mandate rejection of the contention.

The Commission considers that the clear implication of the language stating that the Commission or the Presiding Officer "shall" consider the factor of whether a petitioner would be entitled to relief is that this factor will be dispositive in deciding whether a genuine dispute exists. Therefore, the Commission does not believe that a revision is necessary. However, to clarify that this is a factor which the Presiding Officer shall consider, a new § 2.1014(c)(5) has been added. Slightly revised language in § 2.1014(a)(2)(iii)(D) remains to advise the parties that this is a dispositive factor.

EEI/UWASTE also suggests minor change in § 2.1014(a)(3) where the currently effective language refers to a failure of a petitioner to comply with "paragraphs (a)(2) (ii), (iii) and (iv) of this section". The amended version of this paragraph refers only to paragraph (a)(2)(iii) of this section, although no changes are proposed to § 2.1014(a)(2)(ii) and (iv). The commenter suggests that there does not appear to be any reason to delete the reference to these two paragraphs and that the reference should be reinstated.

The Commission agrees and is adopting a minor revision to the amended rule to restore the reference to paragraph (a)(2)(ii). However, in connection with the amendments, several minor editorial changes are also necessary for clarity and parallel construction which slightly modify paragraph (a)(2)(ii) and redesignate paragraph (a)(2)(iv). The proposed rule (no changes were proposed for paragraphs (a)(2)(i), (ii), and (iv)) reads as follows:

[§ 2.1014(a)] (2) The petition shall set forth with particularity—

(i) The interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (c) of this section;

(ii) A list of the contentions that petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity;

(iii) With respect to each contention:

(A) A specific statement of the issue of law or fact, to be raised or controverted.

(B) A brief explanation of the bases of the contention.

(C) A concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(D) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to specific documentary material that provides a basis for the contention, or if the petitioner believes that any documentary material fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. In determining whether a genuine dispute exists on a material issue of law or fact, the Commission or the presiding officer shall consider whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief.

(iv) As to each contention, the specific regulatory or statutory requirement to which the contention is relevant.

In the final rule, the words "and the bases for each contention set forth with reasonable specificity" have been eliminated from paragraph (a)(2)(ii), as this subject is now covered in paragraph (a)(2)(iii)(B). The words "As to each contention" have been eliminated from paragraph (a)(2)(iv) and the remainder of this provision has been redesignated paragraph 2.1014(a)(2)(iii)(E) to maintain parallel construction in this section.

NCAI objects that the amended standard for initial contentions (and the subpart G revisions with which it is consistent) is unwarranted and violative of the Atomic Energy Act, section 189(a) hearing right and due process. The commenter states that only a well financed intervenor will be able to get any contentions admitted because the high initial standard for admission of contentions assumes extensive access to the LSS which may not be possible for many parties on a limited budget. Therefore it may be impossible for a small tribe or organization to participate at all.

Nevada also comments that the requirements for initial contentions of intervenors are more rigorous than the requirements imposed upon the applicant, and that this criteria is too burdensome for members of the public or groups of citizens who may wish to intervene.

The Commission disagrees with the assertions that the proposed amendments are unduly burdensome and that it will be virtually impossible for persons who wish to participate to have any contentions admitted. Under these rules, an intervenor is not required to make its full case at this stage of the proceeding, however, the intervenor is required to read the license application and indicate that a specific genuine dispute exists as to a material issue of law or fact.

In addition, sections 116 and 118 of the NWPA provide for financial assistance to affected Indian tribes, to the State of Nevada, and to any affected unit of local government for participation in the HLW repository licensing process. The availability of these grants should mitigate the financial burden of participation for affected parties.

The Commission has addressed, rebutted, and prevailed on judicial challenge (*Union of Concerned Scientists* v. *NRC*, No. 89–1617 (D.C. Cir., November 30, 1990)) against the arguments that this higher threshold for contentions is inconsistent with the hearing right in section 189a of the Atomic Energy Act of 1954, as amended. See The Commission's more detailed discussion regarding the adoption of the same higher threshold for contentions in

[1] See Notice of Proposed Rulemaking, November 3, 1988 (53 FR 44433), regarding the opportunity for other participants to comment and respond to any criticism or potential revision of the text after the Commission considered comments in the preceding.

other domestic licensing proceedings in subpart G, § 2.714 adopted at 54 FR 33168; August 11, 1989, and the Court's affirmance referenced above.

2. Late-filed Contentions (§ 2.1014)

The rule revises § 2.1014 to require that any contentions proposed after the initial contentions have been filed must satisfy the higher standards for admission that is now set forth in § 2.1014(a)(4) of subpart J. In addition to the criteria for initial contentions set forth at § 2.1014(a)(1), a proponent of a late-filed contention has to demonstrate that the contention raises a material issue related to the performance evaluation required by 10 CFR 60.112 and 60.113. The standard for late contentions remains the same as the existing rule; however, the amended rule applies that standard to any contention filed after the initial contentions are submitted.

In evaluating whether the contention raises "significant" or "material" issues, factors such as whether a materially different result in the proceeding might be likely if the contention were to be admitted, or whether a modification in facility design or construction that substantially enhances the protection of public health and safety would result if the contention were to be admitted, should be considered.

EEI/UWASTE supports this change which applies the late-filed contentions standard to all contentions that are filed after initial contentions, including contentions based on information contained in the Staff Safety Evaluation Report (SER). The commenter maintains that the adequacy of the application is the issue, to the adequacy of the SER, therefore the issuance of the SER should not automatically constitute good cause for late contentions. The commenter suggests further modification to require that a late-filed contention must address a "new" and "significant" issue. The commenter asserts the admission late in the process of contentions that raise insignificant issues or those that are not new will imperil the schedule set by the Commission.

The Commission responds that the criterion of significance is already included in this section in the requirement that a "significant safety or environmental issue is involved." The other criterion involved is a "material issue related to the performance evaluation anticipated by §§ 60.112 and 60.113." The Commission believes that the adjectives "significant" and "material" adequately restrict the admissibility of late-filed contentions and encourage the early identification of issues in controversy.

EE/UWASTE also suggests that § 2.1014(a)(4) does not appear to incorporate the requirements of § 2.1014(a)(2)(ii)–(iv), although the commenter postulates that this must have been the intention of the Commission.

The commenter is correct that those sections are intended to be referenced but the amended § 2.1014(a)(4) does in fact incorporate the cited sections by reference to the "balancing of the factors specified in paragraph (a)(1) of this section." Paragraph (a)(1) requires "satisfying those [factors] set out in paragraphs (a)(2) and (c) of this section."

Nevada strongly objects that this amendment removes an element that was specifically agreed to by the Negotiating Committee, i.e., the forty day period immediately following the publication of the SER when contentions might still be filed without being subjected to the higher standard for late-filed contentions. The commenter points out that this amendment will deprive the parties and the intervenors of the right to incorporate new issues raised by the SER.

The Commission responds that the extensive interaction in the pre-license application phase between NRC, DOE, and affected parties such as the State of Nevada, as well as the early availability of relevant documents through the LSS, should aid in the formulation of initial contentions. The need for late-filed contentions should be substantially reduced, yet, as described in the rule, significant and/or material issues will be admitted as late-filed contentions. The later in the processing that a contention is raised, the greater the burden will be to demonstrate its significance or materiality. The Commission is confident that the revision will contribute to an efficient hearing process.

3. Participation in the LSS (§ 2.1014)

New § 2.1014(c)(4) adds the failure of the petitioner to participate in the LSS as a factor to be considered by the Commission or the Presiding Officer in ruling on petitions to intervene. This amendment restores a form of a provision which the Negotiating Committee had proposed as a factor to be considered governing admission to the high level waste proceeding. The Commission removed the provision in the subpart J rulemaking so that participation would not be given weight as a factor in favor of intervention. However, the commission does not wish to remove entirely the provision's beneficial effect of encouraging participation in the LSS. The Commission has, therefore, added the failure to participate in the LSS as a factor to be considered.

Nevada supports this amendment and affirms that this reflects the original intent of the Negotiating committee.

4. Direct Testimony on Contentions (§ 2.1024); Summary Disposition (§ 2.1025)

The proposed rule added a new § 2.1024 requiring that a party who sponsors a contention must present direct expert testimony to support that contention. The party's evidence may not consist solely of cross-examination of the license applicant's or the NRC staff's witnesses.

The requirement for a direct case also would be applied to replies in opposition to motions for summary disposition under a new § 2.1025. Summary disposition motions that are supported by evidentiary material in the form of affidavits would require an opposition to the summary disposition motion likewise to be supported by affidavits.

Motions for summary disposition may be filed at any time, however the Commission anticipates that motions for summary disposition will be filed early. The Presiding Officer will have liberal discretion to summarily dismiss or hold in abeyance motions filed shortly before the hearing commences or during the hearing if considering the motion would divert substantial resources from the hearing.

Minor deletions of wording referring to discovery methods (patterned after § 2.749) contained in § 2.1025 (b) and (c) of the proposed rule have been made in the final rule to tailor this section to the HLW licensing proceeding. The availability of the LSS allows a different framework of discovery for this proceeding.

NCAI objects to the changes in §§ 2.1024 and 2.1025 on the ground that these provisions drastically raise the minimum costs of intervention by requiring intervenors to hire experts for both testimony and affidavits. NCAI asserts that intervenors who cannot afford to do more should continue to have the opportunity to make their case by cross-examination or...y. Nevada also objects that these provisions impose on intervenors additional expenses which might not be necessary if their presentation were based on cross-examination of applicant's or the NRC staff's witnesses, or argument from documents already in the record. Both NCAI and Nevada note that there appears to be no purpose for these requirements.

With regard to § 2.1024, which would require intervenors to present a direct case on contentions, the Commission has reconsidered the proposed rule with the benefit of public comments received and summarized above. The Commission agrees with commenters to the effect that those parties whose contentions have been admitted and who believe a full disclosure of the facts regarding those contentions could be established by cross-examination of the other parties or by reference to materials already in the record might be forced to go to the extra expense and unnecessary expansion of the record to present a direct case. On balance, the Commission does not find a pressing need for imposing this requirement at this time. Proposed § 2.1024 will not be adopted.

The Commission has already reconsidered the requirement in proposed new § 2.1025 that an affidavit be submitted in opposition to a motion for summary disposition when the motion for summary disposition is supported by an affidavit. The proponent of the motion for summary disposition has the option whether or not to submit an affidavit in support of its motion. It seems reasonable that the opponent of the motion should have the same option whether to support its answer with an affidavit, based on its evaluation of how best to prevail against the motion. In particular, the opponent should have the option of attacking the legal sufficiency of the proponent's motion and affidavits without submitting affidavits. This is consistent with the parallel provision in subpart G of part 2 which applies to other domestic licensing proceedings, § 2.749. The sentence requiring supporting affidavits has been removed and the clause, "with or without affidavits," has been restored to the preceding sentence to read: "Any party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion."

EEI/UWASTE supports the new § 2.1025 and further suggests additional changes to this section to require that answers supporting a motion for summary disposition also be accompanied by supporting affidavits.

Although it might be desirable for a party to submit an affidavit with an answer supporting a motion for summary disposition, the Commission does not view this as necessary.

5. Compulsory Hearing Schedule (§ 2.1026)

The amendment adds a new § 2.1026 and a new appendix D to subpart J which would incorporate a model hearing schedule substantially the same as that originally set forth in the Supplementary Information of the LSS rule (54 FR 14925; April 14, 1989) and make the schedule mandatory with some flexibility for the Presiding Officer to handle special circumstances.

The Presiding Officer may grant extensions of up to 15 days of any individual milestone for the parties' filings. Except for "exceptional and unforeseen" circumstances, requests for extensions in excess of 15 days must be filed 5 days in advance of the deadline for which an extension is sought, and must be referred by the Presiding Officer to the Commission. If the Commission does not act to disapprove the extension within 10 days, the extension is effective. The final rule contains the additional clarification that if the Commission disapproves the requested extension, the date which was the subject of the extension request will be set for 5 days after the date of the Commission's disapproval action.

For Presiding Officer issuances, the Presiding Officer may delay up to 30 days beyond the date of the milestone set in the hearing schedule. If the Presiding Officer anticipates that a milestone will be exceeded by more than 30 days, the Presiding Officer shall notify the Commission at least 10 days before the scheduled date of the milestone and provide a justification for the delay.

DOE suggests that the Commission should provide a few examples of the "exceptional and unforeseen circumstances" which would be permissible bases for an exception from the rule in § 2.1026(b)(1) requiring requests for extensions of more than 15 days to be submitted at least 5 days in advance of the required filing deadline.

The Commission believes that it would not be particularly useful to provide examples of situations that would meet these criteria. By definition, "exceptional" and "unforeseen" circumstances are difficult to predict in advance. It should be sufficient to note that the Commission expects that such exceptions would not be routine.

NCAI asserts that the adoption of a mandatory schedule at this point in time defies reality and belies the Commission's inability to anticipate what might occur during the licensing proceeding. Nevada finds it unreasonable for the Commission to commit to the three year time frame which the NRC's proposed Waste Confidence Decision "now finds to be unnecessary." Nevada asserts that this timetable may compromise the NRC's statutory obligation to protect the public health and safety against undue radiological risk and may also preclude effective public participation.

The Commission rejects the assertions that the schedule is unrealistic or inconsistent with its statutory obligations. This schedule was discussed by the Negotiating Committee with the participation of a full range of the parties that are likely to be affected by the HLW licensing proceeding. The schedule illustrates how the statutory deadline can be met. The Commission has reviewed the schedule and finds that it balances the need to comply with the statutory deadline with the need to insure effective public participation and a thorough technical review of the application. The Commission has determined that this schedule should be adhered to unless special circumstances dictate otherwise.

The Commission also rejects the assertion that the findings in the Commission's Waste Confidence Decision have any bearing on the NRC's existing statutory duty, imposed in section 114(d) of the NWPA, to make a decision on the issuance of a construction authorization for the repository within 3 years after the submission of the DOE license application. The original Waste Confidence Proceeding resulted in a decision issued August 31, 1984. The purpose of the proceeding was "to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or offsite storage will be available and to determine whether radioactive waste can be safely stored onsite past the expiration of existing facilities licenses until offsite disposal or storage is available" (49 FR 34658; August 31, 1984). The Commission reviewed the Waste Confidence Decision and proposed revisions to two of its five findings. (54 FR 39767; September 28, 1989). After considering the public comments, the Commission approved the revision of the Waste Confidence Decision (55 FR 38474; September 18, 1990). The revised Waste Confidence Decision takes into consideration the development since the time of the original decision in 1984. Due to these events, there have been significant delays in the anticipated timetable for the construction of a geologic repository. See Reassessment of the Civilian Radioactive Waste Management Program, Report to Congress by the Secretary of Energy, November 29, 1989. Therefore, there have been necessary changes in the Commission's estimate of the timing of

the availability of the repository. None of these developments effectively mitigates the Commission's existing statutory obligation to comply with the deadlines set in the NWPA, once the application is filed.

EEI/UWASTE supports the hearing schedule provisions and finds that they represent an appropriate combination of firmness with flexibility. However, the commenter suggests that appendix D and/or § 2.1026 should be modified to reflect the possibility that some of the actions in the hearing schedule may be taken earlier than indicated on the schedule. This might be accomplished, for instance, if the Hearing Licensing Board conducted portions of the proceeding in parallel, rather than in the linear fashion.

The Commission believes that the suggested modification to the rule or to appendix D is not necessary because schedule provisions do not prevent some actions from being taken earlier. As indicated in the section concerning the Notice of Hearing, it is contemplated that subsidiary Boards may be appointed. Past licensing experience indicates that conducting parallel hearings before several Boards is an efficient way to meet a statutory deadline. This procedure may be used in the repository licensing proceeding.

The schedule is designed for realistic compliance with the 3 year deadline set for the NRC in section 114 of the NWPA. However, if at a later time in the HLW licensing proceeding it appears desirable or necessary to amend the schedule to accommodate a particular plan for the proceeding, the Commission could then consider amending the schedule.

Several small editorial changes to the schedule and related rules have been made to the proposed versions. The amendment to § 2.1022 has been limited to changing the timing of the second pre-hearing conference to not later than thirty days after the Safety Evaluation Report. Paragraph (a)(1) of § 2.1022, which was deleted in the proposed rule, has been restored. Although subject to the stricter standards in § 2.1014(a)(4), amended contentions, if any are submitted, are an appropriate topic for consideration at the second prehearing conference.

Also, in appendix D, the description of several milestones concerning "final motions for summary disposition" have been amended because they were based upon a prior version of § 2.1025. Section 2.1025 has been amended to allow motions for summary disposition to be filed at any time, therefore, the milestones formerly set at days 660, 680, 700, 710, and 750 have been amended to reflect that these are the "last practicable" dates for motions for summary disposition. This wording has been chosen to emphasize that although motions for summary disposition may be filed at any time, after these dates the Presiding Officer will have liberal discretion under § 2.1025 to summarily dismiss or hold in abeyance any motion for summary disposition if considering the motion would divert substantial resources from the hearing.

6. *Sua sponte* (§ 2.1027)

The new rule specifically prohibits the Presiding Officer [8] from raising issues that have not been placed in controversy by the parties to the proceeding.

EEI/UWASTE asserts that the Commission is justified in withdrawing the use of *sua sponte* authority in this particular proceeding. The commenter observes that four governmental entities will be scrutinizing the application (DOE, the State of Nevada, the NRC staff, and the Advisory Committee on Nuclear Waste) and that a fifth level of review is unnecessary.

Nevada objects that the new rule takes away a basic and essential attribute of judicial activity, the ability to recognize issues in a proceeding affecting public health and safety which are not raised by the litigating parties. NCAI and Nevada both assert that this amendment suggests that the Commission is elevating considerations of an efficient schedule over health and safety issues or scientific validity in the proceeding.

The Commission does not agree that the new rule takes away anything. The current regulations in 10 CFR part 2, subpart J, do not provide for *sua sponte* review by the Presiding Officer. The new provision merely clarifies that it is the Commission's specific intention not to grant this authority to the Presiding Officer in this proceeding.

The only existing provision which explicitly allows *sua sponte* review for specified matters, § 2.760a, applies only to initial decisions in contested proceedings for an operating license for a production or utilization facility. This provision was never incorporated by reference in subpart J and does not, by its terms, apply to the repository licensing proceeding. Therefore, new § 2.1027 simply removes any remaining uncertainty that *sua sponte* authority is not granted to the Presiding Officer.

The Commission also rejects the notion that the rule will have any effect upon the thorough consideration of health and safety issues in this proceeding. The parties to this proceeding will include entities which should be well prepared after the extended pre-license application period and the availability of licensing information in the LSS. The Commission believes that there is little likelihood that a significant issue will be overlooked. All parties will be focused upon a thorough identification of the issues for litigation.

7. Subpoenas (§ 2.1019)

Under proposed amended § 2.720(a), a party seeking to subpoena a hostile witness, other than NRC staff, would be required to demonstrate the general relevance of the testimony to the contention. Under proposed § 2.720(h)(2)(v), the Presiding Officer is directed not to issue a subpoena requiring the testimony of named NRC personnel unless a showing is made that the particular named NRC employee has direct knowledge relevant to the contention, and the testimony sought is not reasonably obtainable from another source.

The Commission has decided to reorganize the proposed provisions relating to subpoenas. The proposed change to § 2.720(a) will not be adopted because the current language already contains a requirement of general relevance. The proposed addition of § 2.720(h)(2)(v) will not be adopted and instead, the same purpose will be accomplished by the adoption of a revision to § 2.1019(j) adding the language "and that the testimony sought is not reasonably obtainable from another source by any party" to the last sentence.

8. Conforming Amendments

The amended rule requires several conforming amendments. Section 2.1000 has been revised to delete references to §§ 2.749 and 2.785. The amended rule adds a new § 2.1025 on summary disposition for the HLW proceeding. Therefore, the reference to the summary disposition provision in subpart G, § 2.749 no longer needs to be cross referenced in § 2.1000. Also, as discussed in footnote 2, the Commission has decided to abolish the Atomic Safety and Licensing Appeal Panel. The Commission itself will not review initial decisions. Therefore, the cross-reference in § 2.1000 to § 2.785, (entitled Functions of the Atomic Safety and Licensing Appeal Board) has been deleted. All references to the Appeal Board elsewhere in this subpart have been revised to refer to the Commission.

Revised § 2.4 clarifies that for purposes of § 2.1018, "NRC Personnel" includes NRC consultants.

Paragraph (b)(1) of § 2.1006 has been revised to include reference to two new paragraphs that have been added as criteria for considering petitions to intervene, §§ 2.1014(c) (4) and (5).

9. Clarifications to LSS Regulations

The amended rule contains a modification to § 2.1003(h) to clarify that both the periodic evaluations of, and the written report on, DOE's compliance with the LSS requirements pursuant to §§ 2.1003(h)(2) (i) and (ii) will be circulated to the potential parties for comments due within 30 days of the issuance of the evaluation or report.

DOE does not agree the interpretation of the Commission that the evaluation required by § 2.1003(h)(2)(i) and the written report of the evaluation required by § 2.1003(h)(2)(ii) are two separate written documents. As a participant in the Negotiating Committee, DOE understood that the first section requires that an evaluation be performed and the second section specifies the method of recording the evaluation, a written report. DOE does agree that potential parties should be required to submit comments or objections to the evaluation report within 30 days of the issuance of the report or the comments or objections are waived.

The Commission disagrees with DOE's interpretation. The evaluations required by § 2.1003(h)(2)(i) are scheduled every six months, beginning 6 months after the appointment of the LSS Administrator. There is only one written report required in § 2.1003(h)(2)(ii). Pursuant to § 2.1003(h)(1), this report must show DOE's substantial compliance with the § 2.1003 requirements and is due at least 6 months prior to the submission of the license application. In practice, one of the evaluations prepared pursuant to § 2.1003(h)(2)(i) could serve as the written report required by § 2.1003(h)(ii) if all the required information were included. However, the revision clarifies that both the periodic evaluations and the written report will be written documents and will be circulated to potential parties. These potential parties may submit comments or objections to either the periodic evaluations or the report within 30 days of issuance or else waive the right to comment or object. The schedule for initiating the compliance evaluation process will be set in the LSS Administrator's Compliance Evaluation Strategy to be submitted to the Commission in 1991.

Modifications to § 2.1010 clarify that the Commission may designate one or more members of the Commission or an atomic safety and licensing board or a named officer to serve as the Pre-License Application Presiding Officer. A new § 2.1010(f) clarifies that the Commission will specify the jurisdiction of the Pre-License Application Presiding Officer in designating the Officer.

Both FPL and EEI/UWASTE oppose the amendment allowing the appointment of a Pre-License Application Presiding Officer and favor retaining the use of a three member licensing board during the pre-license application phase. EEI/UWASTE favors this approach in the hope that members of the Pre-License Application Licensing Board might have the benefit of early exposure to the HLW licensing issues and that at least some of these members might eventually serve on the adjudicatory board (Presiding Officer).

The Commission did not intend to limit its options when it adopted § 2.1010. Although the Commission may actually decide to use a three member licensing board during the pre-license application phase of the HLW licensing proceeding, the Commission wishes to maintain the same options it would have in other NRC proceedings. The range of options that the Commission is specifying in this pre-license application phase of the proceeding is similar to that in § 2.704, which is applicable in other NRC proceedings and to this licensing proceeding as well, by specific reference in subpart J, § 2.1000.

FPL suggests adding a new § 2.1010(f) which would specify that the jurisdiction of the Pre-License Application Board would not extend to any substantive issue in the application to build all or part of a repository.

The Commission responds that § 2.1010(f) has been added to clarify that the Commission will specify the jurisdiction of the Pre-License Application Presiding Officer at the same time that it designates the Officer.

In the notice of proposed rulemaking, two clauses were inadvertently omitted from the text of amended § 2.1010(a)(1) which are in this paragraph as it currently reads. These clauses relating to the authority of the Pre-License Application Presiding Officer to resolve "disputes relating to relevance and privilege;" and "disputes relating to access to the Licensing Support System;" have been restored.

In addition, for clarity and consistency, definitions of "Pre-License Application Presiding Officer" and "Presiding Officer" have been added to § 2.1001. Minor conforming amendments have been added to correct old references to the "Pre-License Application Board" to refer to the "Pre-License Application Presiding Officer" and to substitute "Presiding Officer" for "Board" or "Hearing Licensing Board." These terms have been inserted throughout subpart J for consistency only and do not constitute any substantive change.

10. Notice of Hearing

In addition to the procedures set forth for the HLW licensing proceeding in subpart J, the Commission also proposed several issues related to the management of the hearing that would be set forth in the Commission's Notice of Hearing for the HLW proceeding. The Commission has proposed the following issues that it plans to include in the Notice of Hearing:

(1) The Commission itself will designate the Presiding Officer. If the Presiding Officer is a Hearing Licensing Board, the Commission will designate the members. This Hearing Licensing Board will have plenary authority and management responsibility for the HLW hearing, including the authority to discipline parties, to rule on procedural motions on issues before it, and to rule on party status and contentions. The Hearing Licensing Board may establish such other subsidiary boards as are necessary to hear and decide discrete issues identified by the Hearing Licensing Board for separate disposition.

(2) The Commission will select the technical members of the Hearing Licensing Board from a wide pool of external and internal candidates, including members of the Commission's Licensing Board Panel. This will ensure the greatest potential for identifying candidates with the requisite expertise. The Commission anticipates a three member Hearing Licensing Board consisting of a lawyer-chairman who is experienced with NRC procedures, and two technical members, one with engineering expertise, and one with geoscience expertise, and both with a background in performance assessment.

(3) The Commission will encourage the Presiding Officer to set time limits on cross-examination if necessary to meet the hearing schedule.

(4) The Commission will direct the Presiding Officer to institute the "lead intervener" concept for the proceeding.

(5) The Commission will direct the Presiding Officer to limit the scope of re-direct the re-cross examination to the issues raised on cross-examination and re-direct examination, respectively.

[8] The proposed version of this rule also applied to the Appeal Board, however, the Commission has subsequently decided to abolish the Atomic Safety and Licensing Appeal Board Panel. Appeals to initial decisions will now be heard by the Commission. See Proposed Rulemaking Notice, Options and Procedures for Direct Commission Review of Licensing Board Decisions (55 FR 42947; October 24, 1990).

(6) The Commission will encourage the Presiding Officer and parties to reach agreement on the order of hearing issues so that related issues can be addressed at the same time, and to the extent practicable, in a logical sequence.

(7) The Commission will instruct the NRC staff to refrain from becoming involved in procedural disputes between other parties in which the staff does not have an interest, unless the Presiding Officer specifically requests the staff's views on the matter.

(8) The Commission will clearly define the precise scope of the hearing, outline the appropriate general issue areas to be considered in the proceeding and define the boundaries of the Presiding Officer's jurisdiction in the Notice of Hearing.

With reference to the selection of the technical members of the Hearing Licensing Board, DOE suggests that at least one of the technical members ought to have some experience in the NRC licensing process, and also that it might unnecessarily limit the pool of available candidates to require that both technical members have a background in performance assessment.

Nevada opposes the setting of time limits on cross examination. The commenter believes that sufficient authority currently exists in the licensing boards to control cross examination when necessary.

Nevada strongly opposes the "lead intervenor" concept and urges the Commission not to include this procedure in the Notice of Hearing. The commenter believes that Nevada's right to participate is clearly recognized and should not be subordinated in any way to a "lead intervenor."

EEI/UWASTE does not agree that the staff should be instructed to refrain from involvement in procedural disputes between the parties. The commenter asserts that procedural disputes might affect the timing, scope, or outcome of the hearing, or establish precedent with broad impact. Although in a narrow sense, the staff is not directly affected, the commenter feels that the views of the staff should be brought to the Hearing Licensing Board's attention without the requirement of a specific request.

The Commission will consider the comments that have been submitted in the future in formulating the Notice of Hearing.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0136.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. No comments were received on the draft regulatory analysis. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-1637.

Regulatory Flexibility Certification

This final rule will not have a significant economic impact upon a substantial number of small entities. The amendments modify the Commission's rules of practice and procedures. The license applicant for the HLW repository will be the Department of Energy, which would not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121, or in the NRC's size standards published December 9, 1985 (50 FR 50241). Although a few of the intervenors in the HLW proceeding are likely to fall within the pertinent Small Business Act definition, the impact on intervenors or potential intervenors will not be significant. While intervenors or potential intervenors will have to meet a higher threshold to gain admission to NRC proceedings and thereby incur some additional costs in preparing for, and participating in, the proceeding, these costs will be minimized by the early availability of information through the LSS and the pre-license application consultation process. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this final rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154).

Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.4 is amended by revising the definition of "NRC personnel" to read as follows:

§ 2.4 Definitions.

* * * * *

NRC personnel means:

(1) NRC employees;

(2) For the purpose of §§ 2.720, 2.740, and 2.1018 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission; and

(3) Members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

* * * * *

3. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.709, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.762, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.787, 2.788, and 2.790.

4. In § 2.1001 the definitions for "Party" and "Potential party" are revised and new definitions of "Pre-License Application Presiding Officer" and "Presiding Officer" are added to read as follows:

§ 2.1001 Definitions.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State and any affected Indian Tribe in accordance with § 60.63(a) of this chapter, and a person admitted under § 2.1014 of this subpart to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; provided that a host State or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii) of this subpart.

* * * * *

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d) of this subpart, is granted access to the Licensing Support System and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart.

* * * * *

Pre-License Application Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.

* * * * *

Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, designated in the notice of hearing to preside.

* * * * *

5. In § 2.1003 paragraph (h)(2)(iii) is revised to read as follows:

§ 2.1003 Submission of material to the LSS.

* * * * *

(h) * * *

(2) * * *

(iii) The LSS administrator shall circulate each evaluation prepared pursuant to paragraph (h)(2)(i) of this section, and the written report prepared pursuant to paragraph (h)(2)(ii) of this section, to potential parties to the high level waste proceeding. Potential parties may submit comments on or objections to the evaluations prepared pursuant to paragraph (h)(2)(i) of this section or the report prepared pursuant to paragraph (h)(2)(ii) of this section, to the LSS Administrator within 30 days of issuance of the evaluation or report. Comments or objections not filed within this time period are waived.

* * * * *

6. Section 2.1004 is amended by revising paragraph (d) to read as follows:

§ 2.1004 Amendments and additions.

* * * * *

(d) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the LSS Administrator by the potential party, interested governmental participant, or party responsible for the submission of the document within two days after its exclusion has been identified unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding; provided, however, that the time for submittal under this paragraph will be stayed pending Officer action on a motion to extend the time for submittal.

7. Section 2.1006 is amended by revising paragraph (b) to read as follows:

§ 2.1006 Privilege.

* * * * *

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be submitted by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The LSS Administrator for entry into the Licensing Support System into an open access file; or

(2) To the LSS Administrator or to the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under § 2.1010(b) or § 2.1018(c) of this subpart.

* * * * *

8. Section 2.1008 is amended by revising paragraphs (a), (b)(1), (c), and (d) to read as follows:

§ 2.1008 Potential parties.

(a) A person may petition the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart for access to the Licensing Support System.

(b) * * *

(1) The factors set out in § 2.1014(c)(1), (2), and (3) of this subpart as determined in reference to the topical guidelines in the applicable NRC Regulatory Guide; or

* * * * *

(c) The Pre-License Application Presiding Officer shall, in ruling on a petition for access, consider the factors set forth in paragraph (b) of this section.

(d) Any person whose petition for access is approved pursuant to paragraph (c) of this section shall comply with the regulations set forth in

BEST COPY AVAILABLE

this subpart, including § 2.1006 and agree to comply with the orders of the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart.

9. Section 2.1010 is amended by revising the heading, paragraph (a), the introductory text of paragraph (b), paragraphs (b)(6), and (c), and by adding a new paragraph (f) to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on all petitions for access to the Licensing Support System submitted under § 2.1006; disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; disputes relating to the LSS Administrator's decision on substantial compliance pursuant to § 2.1003(h); discovery disputes; disputes relating to access to the Licensing Support System; disputes relating to the design and development of the Licensing Support System by DOE or the operation of the Licensing Support System by the LSS Administrator under § 2.1011, including disputes relating to the implementation of the recommendations of the LSS Advisory Review Panel established under § 2.1011(e).

(2) The Pre-License Application Presiding Officer shall be designated six months before access to the Licensing Support System is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

* * * * *

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the A mic Energy Act, as amended, is rec ved and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed an order issued under section 161b of the Atomic Energy Act.

* * * * *

(c) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(d) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

10. Section 2.1012 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2.1012 Compliance.

* * * * *

(c) The Presiding Officer shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

(d) Access to the Licensing Support System may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

§ 2.1013 [Amended]

11. In § 2.1013, paragraph (c)(1) is amended by replacing the word "board(s)" with "Presiding Officer"; paragraph (c)(6) is amended by replacing the word "Board" with "Presiding Officer"; and paragraph (d) is amended by replacing the word "Board" with "Presiding Officer" and the word "board(s)" with "Presiding Officer".

12. In § 2.1014, paragraph (a)(1) is amended by replacing "Hearing Licensing Board" with "Presiding Officer"; and paragraph (c) is amended by replacing the word "Hearing Licensing Board" with "Presiding Officer" and replacing "Board" with "Presiding Officer"; the introductory text of paragraph (d) is amended by replacing "Hearing Licensing Board" with "Presiding Officer"; paragraph (e) is amended by replacing "Hearing Licensing Board" with "Presiding Officer". Paragraph (a)(2)(iv) is removed and paragraphs (a)(2) (ii), (iii), (a)(3), and (a)(4) are revised and paragraphs (c)(4), (c)(5), and (h) are added to read as follows:

§ 2.1014 Intervention.

(a) * * *

(2) * * *

(ii) A list of the contentions that petitioner seeks to have litigated in the matter;

(iii) With respect to each contention:

(A) A specific statement of the issue of law or fact to be raised or controverted.

(B) A brief explanation of the basis of the contention.

(C) A concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(D) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include reference to the specific documentary material that provides a basis for the contention, or if the petitioner believes that any documentary material fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. In determining whether a genuine dispute exists on a material issue of law or fact, a dispositive factor shall be whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief.

(E) The specific regulatory or statutory requirement to which the contention is relevant.

(3) Any petitioner who fails to satisfy paragraphs (a)(2) (ii) and (iii) of this section with respect to at least one contention shall not be permitted to participate as a party.

(4) Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The Presiding Officer shall rule on any petition to amend such contentions based on the balancing of the factors specified in paragraph (a)(1) of this section, and a showing that a significant safety or environmental issue is involved or that the amended contention raises a material issue related to the performance evaluation anticipated by §§ 60.112 and 60.113 of this chapter.

* * * * *

(c) * * *

(4) The failure of the petitioner to participate as a potential party in the Licensing Support System.

(5) In determining whether a genuine dispute exists on a material issue of law or fact, whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

* * * * *

(h) If the Commission or the Presiding Officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or the Presiding Officer.

13. Section 2.1015 is revised to read as follows:

§ 2.1015 Appeals.

(a) No appeals from any Pre-License Application Presiding Officer or Presiding Officer order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), and (d) of this section.

(b) A notice of appeal from (1) a Pre-License Application Presiding Officer order issued pursuant to § 2.1010, (2) a Presiding Officer First or Second Prehearing Conference Order issued pursuant to § 2.1021 or § 2.1022, (3) a Presiding Officer order granting or denying a motion for summary disposition issued in accordance with § 2.1025 of this part, or (4) a Presiding Officer order granting or denying a petition to amend one or more contentions pursuant to § 2.1014(a)(4), must be filed with the Commission no later than (10) days after service of the order. A supporting brief must accompany the notice of appeal. Any other party, interested governmental participant, or potential party may file a brief in opposition to the appeal no later than ten days after service of the appeal.

(c) Appeals from a Presiding Officer initial decision or partial initial decision must be filed and briefed before the Commission in accordance with the requirements of § 2.762 of this part.

(d) When, in the judgment of a Pre-License Application Presiding Officer or Presiding Officer, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the Pre-License Application Presiding Officer or Presiding Officer may refer the ruling promptly to the Commission, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Pre-License Application Presiding Officer or Presiding Officer certify, pursuant to § 2.718(i) of this part, rulings not immediately appealable under paragraph (b) of this section.

(e) Unless otherwise ordered, the filing of an appeal, petition for review, referral, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

§ 2.1016 [Amended]

14. In § 2.1016, paragraphs (a), (c), (d), and (e), remove the word "Board," and add in its place "Presiding Officer."

15. In § 2.1018, paragraphs (a)(2), (b)(2), introductory language in paragraph (c), paragraphs (c)(5), (c)(7), (d), (f)(1), (f)(2) and (g), remove the words "Hearing Licensing Board," and add in their place "Presiding Officer ," and revise paragraph (e)(3) to read as follows:

§ 2.1018 Discovery.

* * * * *

(e) * * *

(3) A duty to supplement responses may be imposed by order of the Presiding Officer or agreement of the parties, potential parties, and interested governmental participants.

* * * * *

16. In § 2.1019, paragraph (a) is amended by replacing "Hearing Licensing Board" with "Presiding Officer" both times it appears and paragraph (j) is revised to read as follows:

§ 2.1019 Depositions.

* * * * *

(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the Presiding Officer, by subpoena or otherwise: *Provided*, That the Presiding Officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations and the testimony sought is not reasonably obtainable from another source by any party, require the attendance and testimony of named NRC personnel.

§ 2.1020 [Amended]

17. In § 2.1020, paragraph (b) is amended by replacing "Board" with "Presiding Officer".

§ 2.1021 [Amended]

18. In § 2.1021, the introductory text of paragraph (a) is amended by replacing "Hearing Licensing Board" with "Presiding Officer" both times it appears; paragraph (a)(3) is amended by replacing "Hearing Licensing Board" with "Presiding Officer"; paragraph (b) is amended by replacing "Board" with "Presiding Officer"; and paragraph (d) is amended by replacing "Board" with "Presiding Officer".

19. In § 2.1022, paragraph (c) is amended by replacing "Board" with "Presiding Officers" and paragraph (a) is revised to read as follows:

§ 2.1022 Second prehearing conference.

(a) The Commission or the Presiding Officer in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than thirty days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

* * * * *

§ 2.1023 [Amended]

20. In § 2.1023, paragraph (a) is amended by replacing "Hearing Licensing Board" with "Presiding Officer"; the introductory language in paragraph (b) is amended by replacing "Hearing Licensing Board" with "Presiding Officer"; paragraph (c)(1), is amended by replacing "Hearing Licensing Board" with "Presiding Officer" both times it appears; paragraph (c)(2) is amended by

replacing "Hearing Licensing Board" with "Presiding Officer"; and paragraph (c)(3) is amended by replacing "Hearing Licensing Board" with "Presiding Officer" once in the first sentence and twice in the third sentence.

21. Section 2.1025 is added to subpart J to read as follows:

§ 2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.

(a) Any party may move, with or without supporting affidavits, for a decision by the Presiding Officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise, statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement to be filed by the moving party will be deemed to be admitted unless controverted by the statement required to be filed by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The Presiding Officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the Presiding Officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

(b) Affidavits must set forth those facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein. The Presiding Officer may permit affidavits to be supplemented or opposed by further affidavits. When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of its answer; its answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, must be rendered.

(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

22. Section 2.1026 is added to subpart J to read as follows:

§ 2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.

(b)(1) Pursuant to § 2.711, the Presiding Officer may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

(2) Extensions beyond 15 days must be referred to the Commission. If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.

(c)(1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time set forth for the issuance in appendix D.

(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date for the milestone and provide a justification for the delay.

23. Section 2.1027 is added to subpart J to read as follows:

§ 2.1027 Sua Sponte.

In any initial decision in a proceeding on an application to receive and possess waste at a geologic repository operations area, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

24. Appendix D is added to 10 CFR part 2 to read as follows:

Appendix D to Part 2—Schedule for the Proceeding on Application for a License To Receive and Possess High-Level Radioactive Waste at a Geologic Repository Operations Area

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5)	Federal Register Notice of Hearing.
30	2.1014(a)(1)	Petition to intervene/request for hearing, w/contentions.
	2.715(c)	Petition for status as interested government participant & interested government participant petitions.
50	2.1014(b)	Answers to intervention & interested government participant petitions.
70	2.1021	1st Prehearing Conference.
100		1st Prehearing Conference Order; identifies participants in proceeding, admits contentions, and sets discovery and other schedules.
	2.1018(b)(1), 2.1019	Deposition discovery begins.
110	2.1015(b)	Appeals from 1st Prehearing Conference Order, w/briefs.
120	2.1015(b)	Briefs in opposition to appeals.
150		Commission order ruling on appeals from 1st Prehearing Conference Order.
548		NRC staff issues SER.
578	2.1022	2nd Prehearing Conference.
608		2nd Prehearing Conference Order; finalizes issues for hearing and sets schedule for pre-filed testimony and hearing.
618	2.1015(b)	Appeal from 2nd Prehearing Conference Order, w/briefs.
628	2.1015(b)	Briefs in opposition to appeals.
658		Commission order ruling on appeals from 2nd Prehearing Conference Order.
660		Last practicable date for motions for summary disposition.
680		Replies to last practicable motions for summary disposition.
690	Supp. info.	Discovery complete.
700		Presiding Officer order on last practicable motions for summary disposition.
710	2.1015(b)	Appeals from last practicable summary disposition order w/briefs.
720		Evidentiary hearing begins.
	2.1015(b)	Briefs in opposition to appeals from last practicable summary disposition orders.
810		Evidentiary hearing ends.
840	2.754(a)(1)	Applicant's proposed findings.
850	2.754(a)(2)	Other parties' (except NRC staff's) proposed findings.
860	2.754(a)(2)	NRC staff's proposed findings.
865	2.754(a)(3)	Applicant's reply to proposed findings.
955	2.760	Initial Decision.
965	2.788(a), 2.762(a), 2.1015(c)	Stay motions to Commission Notices of Appeals.
975	2.788(d)	Replies to stay motions.
995		Commission ruling on stay motion.
	2.762(b)	Appellant's briefs.
1005	2.788(a)	Stay motions to Commission.
1015	2.788(d)	Replies to stay motions.
1025	2.762(c)	Appellee's brief.
1035	2.762(c)	NRC staff brief.
1055	2.1023 Supp. Info	Completion of NMSS and Commission supervisory review; Commission ruling on any stay motions; issuance of construction authorization; NWPA 3-year period tolled.
1065	2.763	Oral argument on appeals.
1125		Commission decision.

Dated at Rockville, Maryland, this 20th day of February 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-4483 Filed 2-25-91; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R-0717]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form, with minor technical changes, its interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act (see the Cranston-Gonzales National Affordable Housing Act, Public Law 101-625, section 1001). The amendments extend the availability schedules for deposits at nonproprietary automated teller machines for a period of two years. The amendments to the Expedited Funds Availability Act were signed into law on November 28, 1990, with a retroactive effective date of September 1, 1990.

EFFECTIVE DATE: September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Reserve Bank Operations and Payment Systems; Oliver Ireland, Associate General Counsel (202/452-3625), or Stephanie Martin, Attorney (202/452-3198), Legal Division. For information regarding modifications to disclosures or appendix C, contact Thomas J. Noto, Staff Attorney (202/452-3667), or Jane E. Ahrens, Staff Attorney (202/452-3667), Division of Consumer and Community Affairs. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act ("Act") specifies the time periods within which funds deposited at ATMs must be made available for withdrawal. Under the temporary schedule (which was effective from September 1, 1988, to August 31, 1990), the rules that applied to deposits at nonproprietary ATMs [1] were different from those that applied to deposits at proprietary ATMs because of operational differences in the way these deposits are processed. During consideration of the Act, banks reported to Congress on the processing limitations associated with accepting deposits at nonproprietary ATMs. They indicated that the account-holding bank does not have the information necessary to place holds on nonproprietary ATM deposits because the deposits are removed and processed by the ATM operator rather than the account-holding bank. Given these limitations, the Act allowed the account-holding bank to treat such deposits as though they were composed of nonlocal checks under the temporary schedule. At that time, Congress anticipated that the processing limitations that necessitated the special availability rule for nonproprietary ATM deposits under the temporary schedule would be addressed by the time the permanent schedule became effective in September 1990. Therefore, under the permanent schedule, deposits at nonproprietary ATMs generally had to be made available for withdrawal within the same time periods as deposits made at staffed teller facilities.

During the past two years, ATM networks, banks, and the Board have investigated a number of potential alternatives both to address the processing limitations and to facilitate compliance with the permanent schedule. A viable operational solution to address the processing limitations has not been identified. All of the identified solutions are costly and would likely result in increased fees for customers who make deposits at nonproprietary ATMs. The possible operational solutions would degrade the efficiency of shared ATM networks and may slow the collection of checks, which would be contrary to the intent of the Act.

In addition, banks and ATM operators have expressed concern that the potential for fraud will increase if banks must comply with the permanent availability schedule for nonproprietary ATMs. Under the permanent availability schedule, second-business-day availability is required for local checks. Thus, an account-holding bank that could not ascertain the composition of deposits at nonproprietary ATMs would

[1] A *nonproprietary ATM* is defined in the Act as one that is not proprietary. In the Act, *proprietary ATM* means an automated teller machine that is (1) located at or adjacent to a branch of the receiving institution or in close proximity, as defined by the Board, or (2) owned by, operated exclusively for, or operated by the receiving institution

have to provide second-business-day availability for all deposits made at nonproprietary ATMs in order to ensure compliance with the availability schedules, even though longer holds could apply with respect to similar deposits, i.e., nonlocal checks, made at a staffed teller facility. Thus, deposits of nonlocal checks at nonproprietary ATMs would be available for withdrawal several days before the checks could be returned if not paid, and therefore such deposits would be an attractive vehicle for check fraud. Substantial increases in operating costs or fraud losses could lead some institutions to cease accepting deposits at nonproprietary ATMs, thereby limiting a convenient consumer banking service.

Based on this research and analysis, the Board submitted two reports [8] to Congress that recommended that the Congress amend the Act to treat nonproprietary ATM deposits under the permanent schedule in the same manner as such deposits were treated under the temporary schedule; i.e., permit banks to make deposits at nonproprietary ATMs available for withdrawal as if they were nonlocal checks (not later than the fifth business day following the banking day of deposit). ATM networks and participating institutions also have made this recommendation to the Congress.

On November 28, 1990, the President signed into law the Cranston-Gonzales National Affordable Housing Act (Pub. L. 101–625; section 1001), which amended the Expedited Funds Availability Act to extend the schedules applicable to deposits at nonproprietary ATMs for a two-year period. The Board implemented and requested comment on interim rules to conform Regulation CC to this recent amendment of the Act (55 FR 50616, December 11, 1990).

The Board received letters on the interim rule from 24 commenters (six commercial banks, five trade associations, four savings institutions, three Federal Reserve Banks, two credit unions, two bank holding companies, and two corporations). Twenty-three commenters supported the amendments and one commenter opposed them as overly complicating Regulation CC. Most of the commenters restated the concerns discussed above that were raised previously by banks and by the Board to Congress. Sixteen commenters expressed concern that viable cost-effective technology that would eliminate the processing limitations associated with nonproprietary ATM deposits would not be available by November 1992, when the special treatment for these deposits would expire. Thirteen commenters expressed concern about the increased potential for fraud, and twelve noted that banks would probably cease accepting deposits at nonproprietary ATMs if a solution is not found within two years. One commenter noted that, if banks generally cease to accept nonproprietary ATM deposits after November 1992, the rule could have anti-competitive effects for small banks because larger banks with strong branch networks could continue to do business in a large area, whereas small banks without such extensive branching networks could not do so without nonproprietary ATM deposits. Eight commenters encouraged the Board to renew its request to Congress for a permanent statutory extension of the nonproprietary ATM availability schedules. The Board has reviewed the comments and adopted the interim rule with minor technical changes.

Section 229.12 of Regulation CC sets forth the permanent availability schedule under which funds deposited in an account by local and nonlocal checks must be made available for withdrawal. A new § 229.12(f) has been added to provide a special rule for deposits made at nonproprietary ATMs. This rule does not apply to deposits made at proprietary ATMs. Section 229.12(f) provides that during the period from September 1, 1990, through November 27, 1992, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM as though the deposits were nonlocal checks under the permanent schedule, i.e., make them available by the fifth business day after the banking day of deposit. Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit, and nonlocal checks deposited at a nonproprietary ATM must continue to be made available by the fifth business day following the banking day of deposit.

The Board received two comments that addressed the regulatory language of § 229.12(f)(2)(i)(B). That section in the interim rule provided that after November 28, 1992, checks described in § 229.10(c)(1) that normally receive next-day availability would receive second-day availability when deposited in nonproprietary ATMs. Section 229.10(c)(1) describes certain "on us" checks, the first $100 of the aggregate amount deposited on any one banking day, as well as government checks, cashier's checks, and other types of checks that may pose a lower risk of return. One commenter noted that "on-us" checks should be excluded from § 229.12(f)(2)(i)(B) because, by definition, a check deposited into a nonproprietary ATM would never meet the conditions specified in § 229.10(c)(1)(vi) for next-day availability of on-us checks.[9] Another commenter noted that the second-day availability rule of § 229.12(f)(2)(i)(B) should also apply to the first $100 of a day's deposit, as provided in § 229.10(c)(1)(vii). Accordingly, the Board has amended § 229.12(f) to exclude on-us checks from coverage and to include the first $100 of a day's deposit. In addition, the Board has amended § 229.12(f) to clarify that "next-day" checks, such as government checks and cashier's checks, will receive second-day availability even though they are not deposited to a staffed teller station and therefore are technically not "described" in § 229.10(c)(1). The Board has also made revisions to the Commentary to explain the applicability of the "$100 rule."

The Board also has adopted amendments to other paragraphs of § 229.12 to conform that section to the statutory requirements of the Act. Paragraphs (a), (b), (c), and (d) of § 229.12 were amended to add cross-references to the new paragraph (f) and, for clarification purposes, cross-references to other paragraphs as well. In addition, in paragraph (b), which lists the types of deposits that must be accorded second-day availability under the permanent schedule, the Board has removed the language, "a check drawn on the Treasury of the United States that is deposited at a nonproprietary ATM." Deposits of these checks are now governed by the provisions of new paragraph (f) and are subject to a five-day availability schedule until November 27, 1992, and a second-day availability schedule after that date.

Section 229.16(b)(5) requires banks wishing to take advantage of the extended hold for deposits at nonproprietary ATMs to disclose this to their customers in their initial disclosures. Model Clause C–10, which can be used to make this disclosure, has been revised to reflect the new rules for nonproprietary ATM deposits. Conforming changes have also been made to the Commentary to appendix C and the Commentary to § 229.16. In addition, the list of model forms, clauses, and notices in appendix C has been updated to reflect the new title to Model Clause C–10.

Section 229.18(e) requires banks to disclose changes in their availability policies to their consumer account holders. Changes other than those that result in faster availability must be disclosed 30 calendar days before they are implemented. Accordingly, banks wishing to take advantage of the extended hold for nonproprietary ATM deposits must provide 30-day advance notice to their consumer account holders. This requirement may be fulfilled by mailing Model C–10 prefaced with language indicating the effective date of the change.

The Board received two comments regarding the specifics of the disclosure requirements of the interim rule. One commenter requested that the Board provide the full text of a change-in-terms letter that banks may send to customers, rather than merely providing the model clause language. Another commenter requested that the Board allow a standard disclosure at any ATM used as a non-proprietary ATM stating the maximum hold for nonproprietary deposits, rather than requiring a change-in-terms disclosure to each individual customer. The commenter argued that this option should be permissible under the Act because the shortened nonproprietary ATM schedules are a statutory change, not merely a bank policy change.

The Board has not implemented the changes suggested by these commenters. The Board believes that most banks that want to place five-day holds on deposits at nonproprietary ATMs have already made the necessary disclosures based on the interim rule and that it is not necessary to provide a full model disclosure letter at this time. In addition, the Board has not provided that a standard disclosure at ATMs may replace individual disclosures. Section 605(c)(2) of the Act requires that a bank send written notice 30 days before implementing any changes that would lengthen the availability schedule for consumer accounts. That section of the Act applies to policy changes stemming from changes in the statute as well as those made for other reasons.

Section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) requires publication of a rule 30 days before its effective date unless the agency finds that there is good cause to do otherwise. The Board believes it is necessary for the final rule to be effective as of September 1, 1990, as was the interim rule, rather than 30 days after publication. This effective date is necessary so that the regulation conforms to the statutory requirements, which were effective September 1, 1990, and so that banks that permit their customers to make deposits at nonproprietary ATMs can rely on the Board's regulation in providing availability in accordance with the amended requirement. There was no opportunity for the Board to publish the rule prior to the effective date of the amendment to the Act. The Board finds that, for the reasons stated above, there is good cause under 5 U.S.C. 553(d)(3) to make the final rule effective on September 1, 1990, without regard for the 30-day period provided for in 5 U.S.C 553(d).

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected. The rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a significant negative economic impact on small institutions, but rather will decrease the risk to all depositary banks by enabling them to impose longer holds on deposits made to nonproprietary ATMs. There are no significant alternatives to the rule, within the Board's regulatory authority under the Act, that would further reduce the risk to small entities resulting from deposits accepted at nonproprietary ATMs.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

2. In § 229.12, paragraph (a) and the introductory text to paragraph (b) are revised, paragraph (b)(3) is removed, paragraphs (b)(4) and (b)(5) are designated as (b)(3) and (b)(4), newly redesignated paragraph (b)(4) is revised, paragraph (c)(1) introductory text and the first and third sentences of paragraph (d) are revised, and a new paragraph (f) is added to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* Except as provided in paragraph (f)(2) of this section, the permanent availability schedule contained in this section is effective September 1, 1990.

(b) *Local checks and certain other checks.* Except as provided in paragraphs (d), (e), and (f) of this section, a depository bank shall make funds deposited in an account by a check available for withdrawal not later than the second business day following the banking day on which funds are deposited, in the case of—

* * * * *

(4) A check drawn on a Federal Reserve Bank or Federal Home Loan Bank; a check drawn by a state or unit of general local government; or a cashier's, certified, or teller's check; if any check referred to in this paragraph (b)(4) is a local check that is not governed by the availability requirements of § 229.10(c).

(c) *Nonlocal checks*—(1) *In general.* Except as provided in paragraphs (d), (e), and (f) of this section, a depositary bank shall make funds deposited in an account by a check available for withdrawal not later than the fifth business day following the banking day on which funds are deposited, in the case of—

* * * * *

(d) *Time period adjustment for withdrawal by cash or similar means.* A depositary bank may extend by one business day the time that funds deposited in an account by one or more checks subject to paragraphs (b), (c), or (f) of this section are available for withdrawal by cash or similar means. * * * A depositary bank shall, however, make $400 of these funds available for withdrawal by cash or similar means not later than 5:00 p.m. on the business day on which the funds are available

[8] The reports on nonproprietary ATMs were transmitted to Congress in October 1989 and July 1990. An earlier report submitted in October 1988 provided background information on the processing of deposits at nonproprietary ATMs but did not include a legislative recommendation because there was limited research available at that time.

[9] Section 229.10(c)(1)(vi) provides next-day availability for certain "on-us" checks, i.e., checks deposited in a branch of the depositary bank drawn on the same or another branch of the same bank. Deposits of checks at an off-premise ATM, whether or not proprietary to the depositary bank, are not considered deposits made to a branch of the depositary bank, and thus could never be classified as "on-us" checks.

under paragraphs (b), (c), or (f) of this section. * * *

* * * * *

(f) *Deposits at nonproprietary ATMs.* (1)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM by cash or check available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(ii) Paragraph (f)(1) of this section is effective September 1, 1990, through November 27, 1992.

(2)(i) A depositary bank shall make funds deposited in an account at a nonproprietary ATM available for withdrawal not later than the second business day following the banking day on which the funds are deposited, in the case of—

(A) Cash;

(B) A check or checks described in § 229.10(c)(1) (i) through (v) and (vii), even though the check or checks are not deposited in person to an employee of the depositary bank; and

(C) A check described in paragraph (b) of this section.

(ii) A depositary bank shall make funds deposited in an account by a check described in paragraph (c) of this section at a nonproprietary ATM available for withdrawal not later than the fifth business day following the banking day on which the funds are deposited.

(iii) Paragraph (f)(2) of this section is effective November 28, 1992.

Appendix C to Part 229—[Amended]

3. Appendix C is amended as set forth below:

a. In the listing following the first paragraph of Appendix C, the entry for Model Clause C–10 is revised to read as follows:

* * * * *

C–10 Automated teller machine deposits (permanent schedule, extended hold)

* * * * *

b. In model clause C–10, the heading and the first sentence under the subheading "Deposits at Automated Teller Machines" are revised to read as follows: C–10—Automated Teller Machine Deposits (Permanent Schedule, Extended Hold)

Deposits at Automated Teller Machines

Funds from any deposits (cash or checks) made at automated teller machines (ATMs) we do not own or operate will not be available until the fifth business day after the day of your deposit. * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary to § 229.12, a new sentence is added to the end of paragraph (a), the second paragraph of paragraph (b) is revised, and a new paragraph (f) is added to read as follows:

Section 229.12 Permanent Availability Schedule

(a) *Effective date.* * * * Paragraph (f) provides special effective dates for deposits made at nonproprietary ATMs.

(b) *Local checks and certain other checks.*

* * * * *

In addition, the proceeds of Treasury checks and U.S. Postal Service money orders not subject to next-day (or second-day) availability under § 229.10(c); checks drawn on Federal Reserve Banks and Federal Home Loan Banks; checks drawn by a state or unit of general local government; and cashier's, certified, and teller's checks not subject to next-day (or second-day) availability under § 229.10(c) and payable in the same check processing region as the depository bank, must be made available for withdrawal by the second business day following deposit.

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. During the period from September 1, 1990 through November 27, 1992, all deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit (i.e., such deposits may be treated in the same manner as deposits of nonlocal checks under the permanent schedule). For example, during that time period, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week.

Effective November 28, 1992, deposits of cash, "next-day" checks, and local checks at a nonproprietary ATM must be made available by the second business day following the banking day of deposit. In addition, the first $100 of the aggregate deposit at a nonproprietary ATM on any one banking day must be made available for withdrawal on the second business day after the banking day of deposit (rather than on the next day, as required by § 229.10(c)(1)(vii) for deposits at staffed teller stations and proprietary ATMs). If a customer makes a deposit at a nonproprietary ATM and one or more deposits to the same account on the same day at another location, such as a staffed teller station, the $100 rule is applied to the aggregate of all deposits made on that day. In this situation, the $100 rule is applied first to funds for which the $100 must be available for withdrawal on the next day (e.g., funds deposited at a staffed teller station) and then to funds deposited at nonproprietary ATMs for which the $100 must be made available for withdrawal on the second day. For example, if a customer deposits a $75 nonlocal check at a staffed teller station and a $100 nonlocal check at a nonproprietary ATM on the same banking day, $75 must be available for withdrawal on the next business day (as required by § 229.10(c)(1)(vii)) and an additional $25 must be available for withdrawal on the second business day after the banking day of deposit (as required by this paragraph). Nonlocal checks deposited at a nonproprietary ATM after November 28, 1992, must continue to be made available for withdrawal by the fifth business day following the banking day of deposit.

b. In the Commentary to § 229.16, the first sentence of the seventh paragraph of paragraph (b) is revised to read as follows:

Section 229.16 Specific Availability Policy Disclosure

* * * * *

(b) * * *

* * * * *

A bank taking advantage of the extended time period for making deposits at nonproprietary ATMs available for withdrawal under § 229.12(f)(1) must explain this in the initial disclosure. * * *

* * * * *

c. In the Commentary to Appendix C, under the subheading "Model C–10," the first sentence is revised to read as follows:

Appendix C.—Model Forms, Clauses, and Notices

* * * * *

Model C–10. This clause must be incorporated in the specific availability-policy disclosure by banks that reserve the right to delay availability of deposits at nonproprietary ATMs until the fifth business day following the date of deposit, as permitted by § 229.12(f)(1). * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–4460 Filed 2–25–91; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–ANE–36; Amdt. 39–6911]

Airworthiness Directives; Pratt & Whitney Canada (PWC) JT15D–4B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes an AD, applicable to certain PWC JT15D–4B turbofan engines, which currently requires initial and repetitive borescope inspections of the high pressure turbine (HPT) assembly until the initial hot section inspection (HSI) has been completed. This amendment requires initial and repetitive borescope inspections on all PWC JT15D–4B turbofan engines regardless of engine serial numbers and regardless of completed HSI. Removal of the HPT assembly is also required if forward blade movement exists. This amendment is prompted by four recent contained HPT blade failures that occurred on engines after compliance with the current AD. This condition, if not corrected, could result in an HPT assembly failure and an inflight shutdown or loss of engine power.

EFFECTIVE DATE: March 13, 1991.

ADDRESSES: The applicable service information may be obtained from Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane M. Cook, Engine Certification Branch, ANE–142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: On July 25, 1989, the FAA issued AD 88–22–03, Amendment 39–6274 (54 FR 30885, July 25, 1989), to require initial HPT assembly borescope inspections and repetitive borescope inspections at 300 hour intervals for certain serial number PWC JT15D–4B engines. Following HSI, no additional borescope inspections were required. If evidence of forward blade movement was found, the HPT assembly was to be removed and the HPT blades re-riveted. That action was prompted by five contained events of JT15D–4B HPT assembly failures resulting from HPT blade shifting. All five engines were produced prior to S/N PC–E102280. There were also several instances of excessive blade platform axial movement found during HSI on engines produced prior to S/N PC–E102280. The investigation revealed that engine S/N PC–E102280 and subsequent engines incorporated HPT disk assemblies in which a modified rivet procedure and improved rivet tooling were used as compared to the procedures/tooling used on engines produced prior to engine S/N PC–E102280. At the time of the issuance of the AD, no blade shift or blade release incidents had occurred on any engine incorporating the modified rivet procedure. Therefore, the AD was written to address those engines produced with HPT disks which did not use the modified rivet procedures.

Since issuance of that AD, four contained HPT blade failures have occurred after the HPT blade re-riveting using the new procedures/tooling. These events have been attributed to blade shifting. The rivet design and the rivet assembly procedures are currently being reviewed. After the completion of this review, this AD may be modified. This AD requires initial and repetitive borescope inspections of the HPT assembly on all JT15D–4B engines regardless of the serial number. This condition, if not corrected, could result in excessive axial movement of the HPT blade platform, which could result in HPT assembly failure, and an inflight shutdown or loss of engine.

The FAA has reviewed and approved PWC Service Information Letter (SIL) 7034, dated April 25, 1990, which describes procedures for the borescope inspection of the HPT assembly on all JT15D–4B turbofan engines.

Since this condition is likely to exist or develop on other engines of this same type design, this AD supersedes AD 88–22–03 to require initial and repetitive borescope inspections of the HPT assembly on all JT15D–4B engines.

Since this condition will result in an inflight shutdown or loss of engine power should an HPT blade failure occur due to blade shifting, there is a need to minimize the exposure of revenue service engines to operation with potential HPT blade shifting. Therefore, safety in air transportation requires adoption of the regulation without prior notice and public comment. In addition, based on the above and the urgent need to inspect certain HPT assemblies, a situation exists that requires immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39–6274 (89 FR 17245, July 24, 1989), AD 88–22–03, and adding the following new AD:

Pratt & Whitney Canada (PWC): Applies to all JT15D–4B turbofan engines regardless of the serial number, installed on, but not limited to, Aerospatiale Corvette, Cessna Citation II, and Mitsubishi Diamond I aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of high pressure turbine (HPT) assembly and an inflight shutdown or loss of engine power, accomplish the following:

(a) Borescope inspect the HPT assembly for HPT blade shift in accordance with appendix I as follows, except as required in paragraph (b) of this AD.

(1) Within 25 hours in service or 30 days after the effective date of this AD, whichever occurs first, for those engines which have accumulated greater than 275 hours time since new (TSN).

(2) Prior to accumulating 300 hours TSN, for those engines which have accumulated 275 hours or less TSN on the effective date of this AD.

(b) For those engines which have completed the HPT borescope inspection or hot section inspection in accordance with AD 88-22-03 prior to the effective date of this AD, borescope inspect the HPT assembly in accordance with appendix I as follows:

(1) Within 25 hours in service or 30 days after the effective date of this AD, whichever occurs first, for those engines which have accumulated greater than 275 hours since last inspection.

(2) Prior to 300 hours time in service since last inspection for those engines which have accumulated 275 hours time in service or less since last inspection.

(c) Reinspect thereafter at intervals not to exceed 300 hours time in service since last inspection in accordance with appendix 1.

(d) Remove from service, prior to further flight, and replace with a serviceable assembly, those HPT assemblies with evidence of forward blade movement in excess of the 0.020 inch limit as provided in appendix I.

(e) HSI is considered an equivalent means of compliance to the borescope inspection in accordance with appendix I of this AD.

Notes: 1. Serviceable assemblies include HPT assemblies removed from engines which have completed an HSI, or that portion of the HSI requiring deblading and re-riveting the turbine assembly in accordance with the JT15D Overhaul Manual.

2. Pratt & Whitney Canada Service Information Letter (SIL) 7034 contains information in reference to paragraphs (a) through (d).

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01830-5299.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Box 10, Longueuil, Quebec, Canada J4K 4X9. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Room 311, Burlington, Massachusetts.

Appendix I

Subject: High Pressure Turbine Blade Shift
Applicability: All JT15D-4B Engines

Borescope Procedure

Borescope inspect the HPT assembly for blade shift utilizing the procedures and techniques found in the JT15D-4B Maintenance Manual.

Previous experience has shown that, with care, a 5 or 6mm flexible borescope can be passed between the blades of the low pressure turbine assembly, and in so doing allow access to the rear of the high pressure turbine blades. With the borescope in position, the high pressure rotor can be rotated via the accessory gearbox starter/generator drive shaft. The limit of .020" can be estimated by comparing blade shift with the pitch of the blade fixing serrations—the serration to serration pitch being .090".

Disposition

If there is evidence that the blade has moved forward more than the .020" limit described in the Maintenance Manual, the High Pressure Turbine Assembly shall be removed from the engine and returned to an authorized repair facility for rectification.

This amendment supersedes Amendment 39-6274, AD 88-22-03.

This amendment becomes effective March 13, 1991.

Issued in Burlington, Massachusetts, on February 11, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4482 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 91-17]

Customs Regulations Amendment Extending Reciprocal Privileges to Vessels of Pakistan

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Pakistan to the list of nations whose vessels may transport empty cargo vans, empty lift vans, and empty shipping tanks between points embraced within the coastwise laws of the United States. The Department of State has supplied Customs with evidence that Pakistan places no restrictions on the carriage of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in Pakistan. This amendment recognizes the United States granting reciprocal privileges for vessels registered in Pakistan.

DATES: This amendment is effective February 26, 1991. The reciprocal privileges for vessels registered in Pakistan became effective on September 18, 1990.

FOR FURTHER INFORMATION CONTACT: Kristina Ver Steeg, Carrier Rulings Branch (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, states that, upon a finding by the Secretary of the Treasury (pursuant to information obtained and furnished by the Secretary of State) that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the United States will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the United States for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks.

On September 18, 1990, the Department of State advised the Chief, Carrier Rulings Branch, Customs Service Headquarters, that Pakistan places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in that country.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State, it has been found that Pakistan places no restrictions on the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in Pakistan as of September 18, 1990.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12291

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "major rule" as defined in E.O. 12291, and accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Maritime carriers, Vessels.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in Pakistan, part 4, Customs Regulations (19 CFR part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * * *

§ 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * * *

§ 4.93 [Amended]

2. Section 4.93(b)(1) is amended by adding "Pakistan" in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Dated: February 21, 1991.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law branch.

[FR Doc. 91-4471 Filed 2-25-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 546

Tetracycline Antibiotic Drugs for Animal Use; Tetracycline Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Vetri-Tech, Inc. The NADA provides for use of tetracycline hydrochloride in chickens for the control of chronic respiratory disease, air sac infections, and infectious synovitis, caused by susceptible microorganisms.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Vetri-Tech, Inc., P.O. Box 324, Montvale, NJ 07645, has filed NADA 140-578 which provides for use of tetracycline hydrochloride as a water soluble powder to be administered to chickens in drinking water at a dose of 25 milligrams per pound of body weight per day in divided doses for 7 to 14 days. This treatment is indicated for the control of chronic respiratory disease and air sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli*, and infectious synovitis caused by *M. synoviae* suseptible to tetracycline. The NADA was approved by a letter dated February 20, 1991 and the regulations are amended in 21 CFR 546.180d to reflect the approval. In addition, 21 CFR 510.600 is amended to add an entry for Vertri-Tech, Inc. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for an exclusivity period. The reports supporting the approval do not qualify as "new clinical or field investigations" under that section due to earlier approvals for the product based upon similar investigations.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 546

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 546 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Vetri-Tech, Inc.," and in paragraph (c)(2) by adding a new entry numerically for "058752" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Vetri-Tech, Inc., P.O. Box 324, Montvale, NJ 07645	058752

(2) * * *

Drug labeler code	Firm name and address
058752	Vest-Tech, Inc., P.O. Box 324, Montvale, NJ 07645.

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR part 546 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 546.180d is amended by adding new paragraph (c)(6)(iv)(*d*) to read as follows:

§ 546.180d Tetracycline soluble powder.

(c) * * *
(6) * * *
(iv) * * *

(*d*) *Amount.* 2,957 milligrams per gallon.

(*1*) *Indications for use.* Chickens: For control of chronic respiratory disease and air sac infection caused by *M. gallisepticum* and *E. coli*; infectious synovitis caused by *M. synoviae* susceptible to tetracycline.

(*2*) *Limitations.* Administer medicated drinking water to chickens in two divided doses to provide 25 milligrams per pound of body weight daily; administer for 7 to 14 days; do not slaughter birds for food within 4 days of treatment; not for use in chickens producing eggs for human consumption; prepare a fresh solution daily; use as sole source of tetracycline.

(*3*) *Sponsor.* See No. 058752 in § 510.600(c) of this chapter.

Dated: February 20, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-4466 Filed 2-25-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions, a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to other treatment facilities, hydrologic balance, sedimentation ponds, and permanent and temporary impoundments. The amendment revises the New Mexico program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 776-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980 **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated July 12, 1989 (Administrative Record No. NM-521), New Mexico submitted a proposed amendment to its permanent regulatory program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to an August 14, 1986, letter that OSM sent to New Mexico in accordance with 30 CFR 732.17(c) (Administrative Record No. NM-331).

OSM published a notice in the August 4, 1989, **Federal Register** (54 FR 32098) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. NM-531). The public comment period closed September 5, 1989.

During its review of the amendment, OSM identified concerns relating to the definition of "water treatment facilities" at Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, sedimentation ponds at CSMC Rules 80-1-20-46 (a) and (h), and permanent and temporary impoundments at CSMC Rule 80-1-20-49(f). OSM notified New Mexico of the concerns by letter dated October 13, 1989 (Administrative Record No. NM-547). New Mexico responded on February 19, 1990, by submitting a revised amendment (Administrative Record No. NM-560).

OSM published a notice in the **Federal Register** on March 6, 1990 (55 FR 7920; Administrative Record No. NM-565) reopening the comment period on the proposed amendment. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed amendment. The reopened comment period closed March 21, 1990.

In this amendment, New Mexico proposed to revise the definition of "other treatment facilities" at CSMC Rule 80-1-1-5; general requirements for hydrologic balance at CSMC Rule 80-1-20-41(f); sedimentation ponds as they relate to hydrologic balance at CSMC Rule 80-1-20-46; and permanent and temporary impoundments as they relate to hydrologic balance at CSMC Rule 80-1-20-49.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with one exception, that the proposed amendment as submitted by New Mexico on July 12, 1989, and as subsequently revised on February 19, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's oversight of the New Mexico program.

1. Substantive Revisions to New Mexico's Program That Are Substantially Similar to the Corresponding Federal Regulations

New Mexico proposed revisions to the following rules that are substantive in nature and contain language that is substantially similar to the corresponding Federal regulations:

CSMC Rule 80-1-1-5, (corresponding Federal regulations 30 CFR 816.46(a)(3) and 817.46(a)(3)), definition of "other treatment facilities;"

CSMC Rule 80-1-20-41(f), (30 CFR 816.46(d) and 817.46(d)), general requirements for hydrologic balance;

CSMC Rules 80-1-20-46 (a) through (a)(5); (b); (c), (d), (e), (f), (g) through (g)(2); (h), (i), (j); and (k) (30 CFR 816.46 (c)(1), (b)(3), (b)(4); (c)(1); (c)(2); (c)(1); (b)(6); and 817.46 (c)(1), (b)(3), (b)(4); (c)(1); (c)(2); (c)(1); (b)(8)), sedimentation ponds as they relate to the hydrologic balance;

CSMC Rules 80-1-20-49 (a); (b); (c); (d); (e); (f) through (f)(2)(ii); (g) through (g)(5) and (g)(7); (30 CFR 816.49 (b); (a)(2); (a)(1); (a)(10); (a)(3) through (a)(7) and (a)(9); (a)(8); (a)(10), (a)(11), and (a)(12); and 817.49 (b); (a)(2); (a)(1); (a)(10); (a)(3) through (a)(7) and (a)(9); (a)(8); (a)(10), (a)(11), and (a)(12)), permanent and temporary impoundments as they relate to the hydrologic balance.

Because the proposed revisions to these New Mexico rules are substantially identical to the corresponding Federal regulations, the Director finds that these New Mexico rules are no less effective than the corresponding Federal regulations. Therefore, the Director is approving these rules.

2. CSMC Rules 80-1-20-46(a)(6), Removal of Sedimentation Ponds

At CSMC Rule 80-1-20-46(a)(6), New Mexico proposes (1) That sedimentation ponds be maintained until removal is authorized by the Director of the Mining and Minerals Division (MMD) and the disturbed area has been stabilized and revegetated, and (2) to allow the Director of MMD to approve, under CSMC 80-1-20-41(e), removal of a sedimentation pond in less than 2 years after the last augmented seeding of the disturbed area draining into the sedimentation pond. CSMC Rule 80-1-20-41(e) allows the Director of MMD to waive the sediment control requirements of CSMC Rule 80-1-20-41 if the operator can demonstrate that (1) the runoff from a regraded area is as good as or better quality than the waters entering the permit area and (2) erosion from the regraded area has been controlled to the satisfaction of the Director of MMD.

The corresponding Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5) require that siltation structures (sedimentation ponds and other treatment facilities) be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated, which in no case shall be sooner than 2 years following the last augmented seeding. In addition, the Federal regulations at 30 CFR 816.42 and 817.42 require that water discharges from the mining operations, including areas where sediment control measures have been removed, be in compliance with all applicable State and Federal water quality laws and regulations. The Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5) differ from the proposed New Mexico rule in that they provide no exception to the requirement that siltation structures remain in place for at least 2 years after the last augmented seeding.

In its July 12, 1989, proposed amendment, New Mexico stated that like the Federal regulations, the purpose of CSMC Rule 80-1-20-41(e) is to ensure that, prior to removing a sedimentation structure, vegetation will be sufficiently established to prevent additional contributions of sediment to streamflow (Administrative Record No. NM-521). New Mexico reasoned that, since CSMC Rule 80-1-20-41(e) allows an operator under certain conditions not to use sedimentation ponds, adopting a rule at CSMC Rule 80-1-20-46(a)(6) which would not allow removal of a sedimentation pond in less than 2 years after the last augmented seeding, would put the proposed rule in conflict with CSMC Rule 80-1-20-41(e).

OSM disagrees. In the preamble to the Federal regulation which established the minimum siltation structure removal time, OSM explained that the 2-year removal standard is based on studies of water quality following reclamation and revegetation (48 FR 44050, 44036, September 26, 1983). Although there are instances where it may take longer than 2 years to establish vegetation, particularly under such arid conditions as are found in New Mexico, OSM is unaware of any studies justifying expedited siltation structure removal based on a determination that adequate vegetation was established sooner than 2 years after the last augmented seeding.

Further, in suspending its regulations at 30 CFR 816.46(b)(2) and 817.46(b)(2), which required all surface drainage from the disturbed area to be passed through a siltation structure before leaving the permit area, OSM stated that "in those instances where sedimentation ponds or other siltation structures are determined to be BTCA [best technology currently available], the performance standards in 30 CFR 816.46 (b), (c), and (d), and 817.46 (b), (c), and (d) will continue to apply" (51 FR 41960, 41957, November 20, 1986). Therefore, the Director finds that once New Mexico determines that BTCA for sediment control on a specific site is a sedimentation pond or other treatment facility, then the pond or other treatment facility must be designed, constructed, operated, and removed in accordance with the State requirements that correspond with the Federal regulations at 30 CFR 816.46 (b), (c), and (d), and 817.46 (b), (c), and (d). The Federal regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5) do not provide any exceptions to the requirement that siltation structures be removed no sooner than 2 years after the last augmented seeding.

Because New Mexico's proposed rule would provide an exception to the requirement that siltation structures be removed no sooner than 2 years after the last augmented seeding, the Director finds that New Mexico's proposed rule at CSMC Rule 80-1-20-46(a)(6) is less effective than the corresponding Federal Regulations at 30 CFR 816.46(b)(5) and 817.46(b)(5). Therefore, the Director is not approving it. Specifically, the Director is not approving the phrase "unless the Director approves the removal under Section 20-41(e)" as it appears in New Mexico's proposed CSMC Rule 80-1-20-46(a)(6).

3. CSMC Rules 80-1-20-46(g)(3) and 80-1-20-49(f)(3), Approval of Sedimentation Ponds and Temporary Impoundments That Rely Primarily on Storage to Control Runoff

New Mexico's proposed rules at CSMC Rules 80-1-20-46(g)(3) and 80-1-20-49(f)(3) would allow the Director of MMD to approve a sedimentation pond or temporary impoundment that relies primarily on storage to control runoff from the design precipitation event. Such approval would not occur unless (1) the permit applicant demonstrated that the sedimentation pond or temporary impoundment would safely control the design event and that the impounded water could be safely removed and (2) the sedimentation pond or temporary impoundment was located where failure would not be expected to cause loss of life or serious property damage (low-hazard locations).

With one exception, New Mexico's proposed rules at CSMS Rules 80-1-20-46(g)(3) and 80-1-20-49(f)(3) are substantively identical to the corresponding Federal regulations at 30 CFR 816.46(c)(2)(iii), 817.46(c)(2)(iii), 816.49(c)(2), and 817.49(c)(2). The exception is that New Mexico allows these sedimentation ponds and temporary impoundments only in low-hazard locations, whereas the Federal regulations allow these structures in low-hazard locations as well as in locations where failure would be expected to cause loss of life or serious property damage (high-hazard locations).

Because New Mexico's proposed rules are substantively identical to the Federal regulations with the exception that they would provide additional safeguards for human life and property, the Director finds that New Mexico's proposed rules at CSMS Rules 80-1-20-46(g)(3) and 80-1-20-49(f)(3) are no less effective than the Federal regulations at

30 CFR 816.46(c)(2)(iii), 817.46(c)(2)(iii), 816.49(c)(2), and 817.49(c)(2). The Director is approving these rules.

4. CSMC Rule 80-1-20-49(f)(2) (ii) and (iii), Storm Event Design Criteria for Impoundments

New Mexico's proposed rule at CSMC Rule 80-1-20-49(f)(2) specifies storm event design criteria for impoundments. The proposed rule stipulates two different design precipitation events for small impoundments (those not meeting the size or other criteria of 30 CFR 77.216(a)) depending on whether the impoundment is temporary or permanent. New Mexico's proposed rule at CSMC Rule 80-1-20-49(f)(2)(ii) would require that small, temporary impoundments be able to pass a 25-year, 6-hour event. New Mexico's proposed rule at CSMC Rule 80-1-20-49(f)(2)(iii) would require that small, permanent impoundments be able to pass a 50-year, 6-hour storm event, or greater event as specified by the Director of MMD. The corresponding Federal regulations at 30 CFR 816.49(a)(8)(ii)(B) and 817.49(a)(8)(ii)(B) do not specify different design criteria for temporary and permanent impoundments. Rather, the Federal regulations require that all small impoundments, both permanent and temporary, be able to pass at least a 25-year, 6-hour precipitation event.

Because the 25-year, 6-hour storm event criterion proposed by New Mexico for small, temporary impoundments is the same storm event criterion as required by the Federal regulations for all small impoundments (both temporary and permanent), the Director finds that New Mexico's proposed CSMC Rule 80-1-20-49(f)(2)(ii) is no less effective than the Federal regulations at 30 CFR 816.49(a)(8)(ii)(B) and 817.49(a)(8)(ii)(B).

Because the peak discharges and volumes of water resulting from a 50-year, 6-hour storm event, as proposed by New Mexico for permanent impoundments, are larger than those from a 25-year, 6-hour event, as required by the Federal regulations for all small impoundments (both permanent and temporary), the Director finds that New Mexico's proposed rule at CSMC Rule 80-1-20-49(f)(2)(iii) is no less effective than the Federal regulations at 30 CFR 816.49(a)(8)(ii)(B) and 817.49(a)(8)(ii)(B). For the above reasons, the Director is approving these rules.

5. CSMC Rule 80-1-20-49(g)(6), Quarterly Inspections of Impoundments

New Mexico's proposed rule at CSMC Rule 80-1-20-49(g)(6) would provide the Director of MMD with the option to waive the quarterly examination requirement for impoundments constructed without embankments (excavated ponds, haulroad sumps, or any other impoundment constructed without an embankment). Under such waiver, the operator would still be required to maintain the impoundments in accordance with the approved plan and other applicable rules of CSMC Rule 80-1-20-49.

The corresponding Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11) do not specifically provide for waiver of the quarterly examination of impoundments constructed without embankments. However, since there is no embankment to examine for structural weakness on such impoundments, and since the proposed New Mexico rule requires the operator to provide the required maintenance for these impoundments, the Director finds that New Mexico's proposed rule at CSMC Rule 80-1-20-49(g)(6) is no less effective than the Federal regulations at 30 CFR 816.49(a)(11) and 817.49(a)(11). The Director is approving this rule.

IV. Public and Agency Comments

Public Comments

The Director solicted public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director soliciated comments from various Federal agencies with an actual or potential interest in the New Mexico program.

The Bureau of Land Management responded that it had no questions on or recommended revisions to the proposed amendment (Administrative Record Nos. NM-533 and NM-567). The Environmental Protection Agency (EPA), Region 6, responded that it had no objections to the proposed amendment (Administrative Record Nos. NM-573). The Forest Service, Soil Conservation Service, and National Park Service responded that they had no comments on the proposed amendment (Administrative Record Nos. NM-564; NM-528 and NM-571; and NM-577).

The Mine Safety and Health Administration (MSHA) responded (Administrative Record Nos. NM-540 and NM-583) that New Mexico's proposed rules were acceptable and do not appear to conflict with current MSHA regulations, but that the proposed rules contain construction details for design and procedures which differ from MSHA and/or State guidelines. MSHA cited three specific examples of such differences.

First, MSHA states that some of the proposed New Mexico rules allow qualified registered professional land surveyors to provide engineering certification. MSHA noted that most States require a registered professional engineer to perform all engineering certification.

Second, MSHA stated that New Mexico's proposed rules at CSMC Rules 80-1-20-46(g)(3)(i) and 80-1-20-49(f)(3)(i) require that all sedimentation ponds and temporary impoundments be designed to safely pass the runoff from the probable maximum precipitation event of 6-hour duration. MSHA stated that its guidelines allow the use of smaller design precipitation events when the sedimentation ponds or impoundments are located where failure would not be expected to cause loss of life or serious property damage, provided that the sedimentation ponds or impoundments are capable of discharging 90 percent of the accumulated water within 10 days of the runoff event.

Third, MSHA stated that publications of the Federal Emergency Management Agency indicate that safety factor analyses of embankment dams should employ methods that assume dynamic conditions. New Mexico's proposed rule at CSMC Rule 80-1-20-49(e) specifies a seismic safety factor of at least 1.2 for impoundments meeting the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage. This seismic safety factor is based on analyses that assume pseudostatic conditions rather than dynamic conditions.

On October 27, 1987, the Director published a final rule Federal Register notice promulgating Federal regulations at 30 CFR Parts 780, 784, 816, and 817 pertaining to design standards for siltation structures (sedimentation ponds or other treatment facilities) and impoundments (53 FR 43604). These regulations incorporate certain of MSHA's design requirements at 30 CFR part 77 and allow qualified registered professional land surveyors to certify maps, plans, designs, and inspection reports in any State which authorizes land surveyors to prepare and certify such documents. In this proposed amendment, New Mexico has incorporated requirements for its rules that are no less effective than the requirements of these corresponding Federal regulations concerning engineering certification, design precipitation events, and safety factor analysis. Therefore, the Director is not requiring New Mexico to revise its rules in response to MSHA's comments.

The Army Corps of Engineers (COE) responded (Administrative Record No. NM-536) that it found the proposed amendment to be satisfactory except that "the certification of the structural integrity of structures would be better served by a professional engineer than a land surveyor." This comment pertains to New Mexico's proposed rules at CSMC Rules 80-1-20-46(g) and 80-1-20-49(f)(3) which require a qualified registered professional engineer or qualified registered professional land surveyor to certify that a sediment pond or impoundment that relies primarily on storage to control runoff will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practice. The comment suggests that only a qualified registered professional engineer should be allowed to certify such sediment ponds or impoundments.

As explained above in response to MSHA's comments, the Federal regulations at 30 CFR parts 780, 784, 816, and 817 allow qualified registered professional land surveyors to certify maps, plans, designs, and inspection reports in any State which authorizes land surveyors to prepare and certify such documents. New Mexico has incorporated requirements for its rules that are no less effective than the requirements of these corresponding Federal regulations. Therefore, the Director is not requiring New Mexico to revise its rules in response to COE's comments.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) EPA gave an initial written concurrence on September 11, 1989 (Administrative Record No. NM-543). Subsequent to the initial concurrence, EPA on June 22, 1990, qualified its concurrence (Administrative Record No. NM-595) by stating that New Mexico's rules must be implemented consistent with the requirements of the Clean Water Act and cannot allow instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. The impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 or 404 of the Clean Water Act.

With specific reference to New Mexico, EPA noted that proposed CSMC Rule 80-1-20-46(a)(2) would allow placement of sediment ponds in perennial streams if approved by the Director of MMD, and that CSMC Rules 80-1-20-49 could allow the creation of impoundments in the waters of the United States.

The Director acknowledges EPA's concerns and New Mexico has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended. State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. EPA itself noted that New Mexico's general hydrologic balance rule at CSMC Rules 80-1-20-41(c) is consistent with the corresponding Federal regulations at 30 CFR 816.45(a) in that it requires operators to comply with Federal and State water statutes, regulations standards and effluent limitations. Therefore, New Mexico permit applicants and mine operators are aware of their responsibilities under the Clean Water Act and the Director is not requiring any further action on the part of New Mexico at this time.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by New Mexico on July 12, 1989, and as revised by it on February 19, 1990, with the exception of the phrase "unless the Director approves the removal under section 20-41(e)" at CSMC Rule 80-1-20-46(a)(6). The Director's approval of the proposed amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted to and approved by OSM.

To implement this decision, the Director is amending the Federal regulations at 30 CFR part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Accordingly, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 14, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended by adding a new paragraph (m) to read as follows:

§ 931.15 Approval of amendments to State regulatory program.

* * * * *

(m) With the exception of the phrase "unless the Director approves the removal under section 20–41(e)" at CSMC Rule 80–1–20–46(a)(6), the revisions to the following sections of New Mexico's permanent regulatory program rules, submitted on July 12, 1989 and as revised on February 19, 1990, are approved effective February 26, 1991: Revisions to the New Mexico Coal Surface Mining Commission (CSMC) rules pertaining to the definition of "other treatment facilities" at CSMC Rule 80–1–1–5, general requirements for hydrologic balance at CSMC Rule 80–1–20–41(f), sedimentation ponds as they relate to the hydrologic balance at CSMC Rules 80–1–20–46, and permanent and temporary impoundments as they relate to the hydrologic balance at CSMC Rules 80–1–20–49.

[FR Doc. 91–4401 Filed 2–25–91; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 47 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise one Ohio administrative rule to be consistent with other State regulations. The revised rule concerns the certification by surveyors of the design and construction of primary roads.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 (FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated December 7, 1990 (Administrative Record No. OH–1415), Ohio submitted proposed Program Amendment Number 47 to modify the following rule of Chapter 1501 of the Ohio Administrative Code (OAC): OAC 1501:13–10–01(G)(1).

OSM announced receipt of the proposed amendment in the December 20, 1990, **Federal Register** (55 FR 52184), and, in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period ended on January 22, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment.

The amendment proposes changes to Ohio Administrative Code (OAC) Section 1501:13–10–01(G)(1) to allow land surveyors to certify or to assist an engineer in the certification of primary road designs and construction or reconstruction. Ohio is revising the first sentence of this paragraph to read as follows: "The design and construction or reconstruction of primary roads shall be certified by an engineer or a surveyor or jointly by an engineer and a surveyor to the extent such joint certification is required by State law * * *." The amendment is intended to provide consistency in the Ohio program among OAC Sections 1501:13–10–01(G)(1), 1501:13–4–04 (J) and (K)(2), and 1501:13–9–04(B)(5)(b). These regulations allow surveyors to perform or to participate, to the extent required by State law, in the certification of permit application maps, supplementary maps, cross sections, and the construction of sediment control structures. Ohio noted in its submittal of the proposed rules that the approved Ohio definitions of "engineer" and "surveyor" at OAC 1501:13–1–02 reference the Ohio statutory requirements for registered professionals in those disciplines.

The Director finds that the proposed amendment to allow land surveyors to certify or to assist an engineer in the certification of primary road designs and construction or reconstruction is no less effective than the Federal regulations at 30 CFR 816/817.151(a) which authorize such certifications. The Director notes that OAC 1501:13–10–01(G)(1) is also the subject of a State program amendment (Program Amendment Number 43R) which was submitted to OSM by letter dated January 16, 1990 (Administrative Record Number OH–1285). When the Director's findings concerning Program Amendment 43R are completed, they will be published in a subsequent **Federal Register** notice.

V. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the December 20, 1990, **Federal Register** ended on January 22, 1991. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing requirements at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. No substantive comments were received.

VI. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 47, as submitted by Ohio on December 7, 1990.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VII. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary had determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 13, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (uu) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(uu) The following amendment to the Ohio regulatory program, as submitted by letter dated December 7, 1990, is approved effective February 26, 1991. Amendment No. 47 which consists of revision to the Ohio Administrative Code (OAC) at 1501:13–10–01(G)(1) concerning the certification by surveyors or primary road designs and construction or reconstruction.

[FR Doc. 91–4400 Filed 2–25–91; 8:45 am]

BILLING CODE 4310–05–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Computer Software Lending by Libraries; Copyright Warning

[Docket No. RM 91–2]

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulation.

SUMMARY: The Copyright Office issues this regulation to implement one provision of the Computer Software Rental Amendments Act of 1990. Section 802 of the Act allows the lending of computer programs by nonprofit libraries for nonprofit purposes without the permission of the copyright owner, but the library shall affix a warning of copyright to the package containing the computer program. This regulation specifies the form and content of the copyright warning and the requirements concerning affixation of the warning by nonprofit libraries.

EFFECTIVE DATE: March 28, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Computer Software Rental Amendments Act of 1990, title VIII of the Judicial Improvements Act of 1990, Public Law 101–650, December 1, 1990, 104 Stat. 5089, 5134, amended section 109 of the Copyright Act, title 17 of the United States Code. The Computer Software Rental Amendments Act generally grants owners of copyright in computer programs an exclusive right to control public distribution of the program in the nature of rental, lease, or lending, subject to several limitations and exclusions.

One limitation on the software rental right allows lending by nonprofit libraries for nonprofit purposes, without the permission of the copyright owner, but the library shall affix to the packaging containing the program a warning of copyright, in accordance with regulations issued by the Register of Copyrights.

The Copyright Act specifies a similar warning of copyright in connection with library reproduction of copyrighted works. The Copyright Office decided to adapt the warning of copyright regulation of 37 CFR 201.14 in prescribing the warning of copyright for lending of computer programs. The regulation is issued in final form without public comment since the Computer Software Rental Amendments Act is already in effect and the Office based its decision on the experience under the 37 CFR 201.14 warning.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Act.[1]

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is not subject to it only in areas specified by section 701(d) of the Copyright Act [i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits]. [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency subject to the Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 201

Copyright warning.

Final Regulation

In consideration of the foregoing, part 201 of 37 CFR chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 is amended by adding the following citation:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 201.24 is also issued under Public Law 101-650, 104 Stat. 5088, 5134.

2. New § 201.24 is added to read as follows:

§ 201.24 Warning of copyright for software lending by nonprofit libraries.

(a) *Definition.* A Warning of Copyright for Software Rental is a notice under paragraph (b)(2)(A) of section 109 of the Copyright Act, title 17 of the United States Code, as amended by the Computer Software Rental Amendments Act of 1990, Public Law 101-650. As required by that paragraph, the "Warning of Copyright for Software Rental" shall be affixed to the packaging that contains the computer program which is lent by a nonprofit library for nonprofit purposes.

(b) *Contents.* A Warning of Copyright for Software Rental shall consist of a verbatim reproduction of the following notice, printed in such size and form and affixed in such manner as to comply with paragraph (c) of this section.

Notice: Warning of Copyright Restrictions

The copyright law of the United States (Title 17, United States Code) governs the reproduction, distribution, adaptation, public performance, and public display of copyrighted material.

Under certain conditions specified in law, nonprofit libraries are authorized to lend, lease, or rent copies of computer programs to patrons on a nonprofit basis and for nonprofit purposes. Any person who makes an unauthorized copy or adaptation of the computer program, or redistributes the loan copy, or publicly performs or displays the computer program, except as permitted by title 17 of the United States Code, may be liable for copyright infringement.

This institution reserves the right to refuse to fulfill a loan request if, in its judgement, fulfillment of the request would lead to violation of the copyright law.

(c) *Form and manner of use.* A Warning of Copyright for Software Rental shall be affixed to the packaging that contains the copy of the computer program, which is the subject of a library loan to patrons, by means of a label cemented, gummed, or otherwise durably attached to the copies or to a box, reel, cartridge, cassette, or other container used as a permanent receptacle for the copy of the computer program. The notice shall be printed in such manner as to be clearly legible, comprehensible, and readily apparent to a casual user of the computer program.

Dated: February 14, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-4410 Filed 2-25-91; 8:45 am]

BILLING CODE 1410-07-M

37 CFR Parts 201 and 202

[Docket No. RM 90-2]

Housekeeping Amendments: Refund of Excess Fees; Compulsory License for Cable Systems; Compulsory License for Making and Distributing Phonorecords; Registration of Claims to Copyright

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: The Copyright Office is making housekeeping amendments to several regulations. The regulations regarding refund of excess fees are amended in two respects: To increase from $5.00 to $10.00 the amount that will not be refunded absent a specific request, and to provide that the regulations apply to non-registration services. The regulations regarding the compulsory license for making and distributing phonorecords are amended to include the rates currently in effect. The regulations regarding the compulsory license for cable systems are amended to eliminate reference to a reporting form no longer in use and to correct a typographical error. The cable regulations are also amended to eliminate an interim section that required cable systems to declare whether, in figuring its gross receipts, the system allocated its fees between broadcast and nonbroadcast programming where both services were offered on a single tier for a single price. Lastly, the Copyright Office is amending its registration regulations to include Class SE as an additional class. Class SE is used for registration of claims in periodicals and serials.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Refund Policy

Section 708 of the Copyright Act of 1976, title 17 of the United States Code, establishes a schedule of fees for copyright services provided by the Copyright Office to the public. Fees remitted for specific registration services are nonrefundable under the statute since they are filing fees. The regulations currently provide that payments made by mistake or in excess of the statutory fee will be refunded except that amounts of $5.00 or less will not be refunded unless specifically requested.

Since the issuance of the existing refund regulation, inflation has essentially cut the stated dollar value in half. Congress recognized this fact in passing the Copyright Fees and Technical Amendments Act of 1989, which doubles the statutory fees for copyright services effective January 3, 1991. The Copyright Office is, consequently, making a similar adjustment of the refund regulation. Section 201.6 of 37 CFR is amended to increase the existing $5.00 limitation to $10.00. The Copyright Office will not refund amounts of $10.00 or less which are paid by mistake or in excess of the statutory fees unless specifically requested by the remitter.

In addition, the Copyright Office is amending 37 CFR 201.6 to provide that in making any refund for fees remitted in payment of nonregistration services (for example, certification of records; searches of the records), an administrative processing fee shall be deducted from the amount remitted equivalent to one hour of service, or the minimum fee set by statute for the service. The Register of Copyrights has determined that this administrative processing fee shall be charged pursuant to section 708(a) of the Copyright Act to reflect the minimum administrative cost of responding to the request, even if the service cannot be provided.

2. Cable Compulsory License

Section 111(d)(1) of the Copyright Act of 1976, title 17 of the United States Code mandates that the Register of Copyrights prescribe by regulation statements of account to be filed in the Copyright Office by cable systems whose secondary transmissions are

subject to compulsory licensing under section 111(c) of the Act. The Copyright Office now uses only two reporting forms, but the present Copyright Office regulation, 37 CFR 201.17(d)(2), prescribes three forms to be used for filing statements of account based on the gross receipts limitations. "Form CS/SA-3—'Long Form' " is obsolete. Consequently, subsection (iii) of paragraph (d)(2) of § 201.17 is deleted.

Also in § 201.17, a typographical error appearing in paragraph (j)(1)(ii) is being corrected. The reference in that paragraph is corrected to read "paragraph (j)(1)(iii)" instead of "paragraph (j)(1)(ii)".

A third amendment to § 201.17 eliminates paragraph (k) ("Additional declaration of gross receipts") in its entirety. Paragraph (k) was added to § 201.17 on an interim basis while an appeal was pending in *Cablevision Systems Development Corp* v. *Motion Picture Association of America*, 836 F.2d 599 (D.C. Cir. 1988), *cert. denied*, 108 S.Ct. 2901 (1988). The Court of Appeals reinstated a Copyright Office regulation governing reporting of gross receipts, which the district court had held invalid.

Paragraph (k) required a cable system to declare whether in figuring the gross receipts upon which its compulsory license fees were based, it allocated its fees between broadcast and nonbroadcast programming where both services were offered on a single tier for a single price, and to explain its method of allocation, if any allocation was made. With the resolution of the Cablevision case, paragraph (k) is no longer relevant and is being removed.

3. Mechanical Reproduction of Recorded Music

Section 201.19 concerning royalties and statements of account under the compulsory license for making and distributing phonorecords of nondramatic musical works is being amended to reflect royalty rates established by the Copyright Royalty Tribunal, effective on January 1, 1990.

4. New Forms SE and SE/Group

Lastly, the Copyright Office is amending § 202.3 of its regulations to include Class SE, which is used to register claims to copyright in issues of periodicals and serials. Paragraph (b)(1)(i) of § 202.3 is being amended to remove "periodicals and serials" as examples of works registrable on Form TX and a new paragraph (b)(1)(v) of that section is being added to designate Class SE as a class to be used for registration of claims in periodicals and serials. In paragraph (b)(2) of that section the number of basic forms available for registration is being changed from "four" to "six" and Form SE and Form SE/Group are being added to the list of designated forms to be used for registration in each class.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Parts 201 and 202

Cable systems, Copyright registration.

In consideration of the foregoing, parts 201 and 202 of CFR 37 chapter II are amended in the manner set forth below.

PART 201—[AMENDED]

1. The authority citation for part 201 is amended by adding the following citations:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 201.6 is also issued under 17 U.S.C. 708; § 201.17 is also issued under 17 U.S.C. 111; § 210.19 is also issued under 17 U.S.C. 115.

2. Section 201.6(c) is revised to read as follows:

§ 201.6 Payment and refund of Copyright Office fees.

* * * * *

(c) *Refunds.* Money remitted to the Copyright Office for original, basic, supplementary or renewal registration will not be refunded if the claim is rejected because the material deposited does not constitute copyrightable subject matter or because the claim is invalid for any other reason. Payments made by mistake or in excess of the statutory fee will be refunded, but amounts of $10 or less will not be refunded unless specifically requested, and refunds of less than $2 may be made in postage stamps. Before making any refund for fees remitted in relation to nonregistration copyright services, the Copyright Office shall deduct an administrative processing fee in an amount equivalent to one hour of the requested service, or the minimum fee set by statute for the service.

* * * * *

§ 201.17 [Amended]

3. Section 201.17 is amended by removing paragraphs (d)(2)(iii) and (k) in their entirety and by changing the reference to "(j)(1)(ii)" in paragraph (j)(1)(ii) to "(j)(1)(iii)".

§ 201.19 [Amended]

4. Section 201.19(e)(4)(ii) Step 5 is amended by removing the phrase "royalty rate of 2¾ cents or ½ cent per minute" and inserting in its place the phrase "royalty rate of 5.7 cents or 1.1 cents per minute".

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

5. The authority citation for part 202 is amended by adding the following citation:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 202.3 also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

6. The introductory text of § 202.3(b)(1) is amended by revising the phrase "four classes of works" to read "the classes of works".

7. Section 202.3(b)(1)(i) is amended by removing the phrase "periodicals and serials;".

8. Section 202.3 is amended by adding a new paragraph (b)(1)(v) to read as follows:

(v) Class SE: Serials. A serial is a work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. This class includes periodicals; newspapers; annuals; and the journals, proceedings, transactions, etc. of societies.

9. The introductory text § 202.3(b)(2) is amended by revising the phrase "four basic forms" to read "the basic forms" and by replacing the phrase "("Form

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 708(b)). The copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

TX"; "Form PA"; "Form VA"; and "Form SR";)" with the phrase "("Form TX"; "Form PA"; "Form VA"; "Form SR"; "Form SE"; and "Form SE/Group")."

Dated: February 13, 1991.

Ralph Oman,

Register of Copyrights.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-4411 Filed 2-25-91; 8:45 am]

BILLING CODE 1410-07-M

37 CFR Parts 201 and 202

[Docket No. RM 90-1]

Berne Convention Implementation Act; Technical Amendments

AGENCY: Library of Congress, Copyright Office.

ACTION: Final rule.

SUMMARY: The Berne Convention Implementation Act of 1988 (Pub. L. 100-568, 102 Stat. 2853) which became effective March 1, 1989, amended the Copyright Act to conform United States law to the requirements of the Berne Convention. The Implementation Act eliminated the mandatory notice of copyright for works first published on or after March 1, 1989. The Copyright Office is amending any regulations affected by the Berne Implementation Act.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: On March 1, 1989 the United States became a member of the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971. The Berne Convention Implementation Act of 1988 (Pub. L. 100-568, 102 Stat. 2853; October 31, 1988), enacted to amend the Copyright Act to conform it to the requirements of the Berne Convention in order to permit the United States to adhere to Berne, also became effective on March 1, 1989. The Copyright Office reviewed its existing regulations to determine which, if any, are affected by the Implementation Act. The Office has concluded that the Implementation Act requires only minimal, non-substantive changes in the Copyright Office regulations. The adjustments are described below.

1. Notice of Copyright for Contributions to Periodicals

Section 401 of the Copyright Act formerly provided that whenever a work protected under title 17 U.S.C. is published by authority of the copyright owner, a notice of copyright shall be placed on all publicly distributed copies from which the work can be visually perceived with or without the aid of a machine or device. The Berne Implementation Act made the use of a copyright notice voluntary for works first published on or after March 1, 1989. This statutory amendment impacts § 202.3(b)(5)(i)(D) of the regulations concerning group registration of contributions to periodicals. The existing regulation requires, as a condition to group registration, that each of the contributions must bear a separate copyright notice. The regulation also requires that the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) must be the same in each notice. In view of its inconsistency with the amended statute, § 202.3(b)(5)(i)(D) is amended to provide that the notice requirement applies only to works first published before March 1, 1989.

2. Notice and Mandatory Deposit

Section 407(e) of the Copyright Act authorizes the Library of Congress to copy unpublished transmission programs off the air under limited conditions. Before March 1, 1989, if the transmission program was declared to be published in the United States and contained a notice of copyright, the Library of Congress was authorized to retain the copy in satisfaction of section 407 (a) and (b). In eliminating the notice requirement, the Berne Implementation Act makes all works published in the United States on or after March 1, 1989, in which copyright is claimed, subject to deposit in the Library of Congress, whether or not they bear a copyright notice. Subsections 202.22(c)(7) and 202.22(c)(8)(ii) of the regulations concerning retention of published transmission programs and conversion of a notice by the Library that a program is being copied off the air to a demand under subsections 407(a) and 407(b) when it is learned that the transmission program is published, were predicated on publication of the copies with notice of copyright. These subsections are being amended to remove all reference to notice of copyright.

3. Affixation of Notice

Section 201.20 of the regulations governs the methods of affixation of the notice and acceptable positions for placing the notice. This regulation was issued pursuant to section 401(c) of the Copyright Act of 1976, title 17 of the U.S. Code, which is unchanged by the Berne Implementation Act of 1988. That is, although the Berne Implementation Act transforms notice from a mandatory provision to an optional provision, if the copyright owner uses notice of copyright, the owner must affix the notice in the statutory form and position to obtain an evidentiary benefit. As provided in the statute, the regulations issued by the Copyright Office governing affixation and position of the notice provide examples of acceptable notice, but the specifications of the regulation are not exhaustive.

The Office has determined therefore that no change need be made in § 201.20 of the regulations.

4. Jukebox Compulsory License

Section 201.16 of the regulations prescribes the procedures to be followed by operators of coin-operated phonorecord players ("jukeboxes") who seek to obtain a compulsory license, as applicable, under section 116 of the Copyright Act, title 17 of the U.S. Code. In the Berne Implementation Act of 1988, Congress adopted new section 116A that encourages the representatives of authors and jukebox operators to negotiate licenses or submit to arbitration, in lieu of resort to a compulsory license. If negotiations fail, the statute provides that the compulsory license provisions of section 116 would come into operation, based upon a finding by the Copyright Royalty Tribunal.

On March 28, 1990, the Copyright Royalty Tribunal announced the suspension of the jukebox compulsory license through December 31, 1999, based on a finding that a negotiated license is in effect covering a quantity of music not substantially smaller than the quantity of music performed on jukeboxes from March 1, 1988 to March 1, 1989, the last year of the compulsory license before the Berne Implementation Act took effect. The Copyright Office had earlier determined that it would not process any 1999 applications for a compulsory license, pending the decision of the Copyright Royalty Tribunal. Therefore, no compulsory licenses were issued in calendar 1990, and the suspension is in effect for 10 years. Jukebox operators must obtain a license from the copyright owner or the performing rights societies. Under the agreement between the Amusement and Music Operators of America (AMOA) and the three performing rights societies, the 1990 license fee was $275 for the first jukebox, $55 each for jukeboxes 2-10, and $48 each for eleven or more jukeboxes. The license fee will be adjusted for 1991 and subsequent years under a formula that takes account of the number of jukeboxes licensed in relation to the "benchmark" royalty pool agreed to by the parties.

The Copyright Office is amending section 201.16 of the regulations to make clear that the compulsory license is suspended through December 31, 1999. The regulations continue to govern procedures for jukebox operators belatedly seeking to comply with the compulsory license for calendar year 1989 and earlier, and the regulations may apply in the year 2000, depending on the finding of the Copyright Royalty Tribunal regarding the existence of voluntary licenses in sufficient quantities.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act. [1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in CFR Parts 201 and 202:

Copyright registration.

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits) (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Final Regulations

In consideration of the foregoing, parts 201 and 202 of 37 CFR chapter II are amended as follows:

PART 201—[AMENDED]

1. The authority citation for part 201 continues to read in part as follows:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * § 201.16 is also issued under 17 U.S.C. 116.

2. Section 201.16(a) is revised to read as follows:

§ 201.16 [Amended]

(a) *General.* This section prescribes the procedures to be followed by operators of coin-operated phonorecord players who wish to obtain a compulsory license for the public performance of nondramatic musical works, and by the Copyright Office in issuing certificates, under section 116 of title 17 of the United States Code as amended by Public Law 94-553. The terms "operator" and "coin-operated phonorecord player" have the meanings given to them by paragraph (e) of that section. In calendar 1990 and thereafter through December 31, 1999, this compulsory license is suspended by decision of the Copyright Royalty Tribunal pursuant to section 116A of title 17 of the United States Code, as amended by the Berne Implementation Act of 1988, Public Law 100-568. During this period, operators of coin-operated phonorecord players who publicly perform nondramatic musical works must obtain a negotiated license from the copyright owner or duly authorized agent such as a performing rights society.

* * * * *

PART 202—[AMENDED]

3. The authority citation for part 202 is amended by adding the following citation:

Authority: Section 702, 90 Stat. 2541; 17 U.S.C. 702; * * * §§ 202.3 and 202.22 are also issued under 17 U.S.C. 407 and 408.

4. Section 202.3(b)(5)(i)(D) is revised to read as follows:

§ 202.3 [Amended]

* * * * *

(b) * * *

(5) * * *

(i) * * *

(D) Each of the works, if first published before March 1, 1989, bore a separate copyright notice, and the name of the owner of copyright in each work (or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner) was the same in each notice; and

* * * * *

5. Section 202.22(c) (7) and (8) are revised to read as follows:

§ 202.22 [Amended]

* * * * *

(c) * * *

(7) If it is declared that the program was published at the time of transmission, the Library of Congress is entitled under this section to retain the copy to satisfy the deposit requirement of section 407(a) of title 17 of the United States Code.

(8) The Library of Congress in making fixations of unpublished transmission programs transmitted by commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of network stations, the notification will be sent to the particular network. In the case of any other commercial broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

(i) The identification, by title and time of broadcast, of the transmission program in question;

(ii) A brief statement asserting the Library of Congress' belief that the transmission program has been, or will be by the date of transmission, fixed and is unpublished, together with language converting the notice to a demand for deposit under section 407 (a) and (b) of title 17 of the United States Code, if the transmission program has been published in the United States.

* * * * *

Dated: February 14, 1991.

Ralph Oman,

Register of Copyright.

Approved:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-4409 Filed 2-25-91; 8:45 am]

BILLING CODE 1410-07-M

BEST COPY AVAILABLE

37 CFR Part 211

[Docket No. 86-7B]

Registration of Claims of Protection in Mask Works; Gate Arrays

AGENCY: Library of Congress, Copyright Office.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is amending its regulations on mask work registration to provide an exception to the most complete form requirement. Paragraphs (c) and (e) of § 211.4 require one registration per work and that the registration cover the most complete form of the semiconductor chip product in existence. The final regulation permits separate registration of unpersonalized gate arrays and the customized metallization layers despite the existence of a completed final form.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559, Telephone: (202) 707-8380.

SUPPLEMENTARY INFORMATION: On February 7, 1989, the Copyright Office published a notice of proposed rulemaking regarding modifications in its mask work regulations. The Office proposed creating an exception to its most complete form requirement which generally limits applicants to one regulation per mask work. The proposed modification authorized separate registration of unpersonalized gate arrays and customized metallization layers.

The Copyright Office received four comments on the proposed regulation. All of the comments expressed support for the general policies advanced by the proposal. Two of the comments, however, suggested that certain clarifications be adopted.

The Copyright Office has studied carefully the comments that were submitted. For reasons detailed in this announcement, the Copyright Office has adopted as final the proposed regulation with a few technical changes.

1. Background

On November 8, 1984, the President signed into law the Semiconductor Chip Protection Act of 1984, Public law 98-620. The Act created a new form of intellectual property law separate and apart from any earlier law. The legislation consisted of an amalgam of patent and copyright principles, but also contained new features. The law was codified as chapter 9 of title 17 of the U.S. Code, and is primarily administered by the Copyright Office.

On June 28, 1985, the Copyright Office issued final regulations implementing the Semiconductor Chip Protection Act. A public hearing (49 FR 39171) and interim regulations (50 FR 263) preceded the formulation of final regulations.

One of the most controversial issues during the rulemaking proceeding was the registrability of "intermediate forms" of semiconductor chip products. Section 901 of the Act defines "semiconductor chip product" as including the final or intermediate form of any product. A mask work cannot be protected under the Act until it has been fixed in such a product.

The policy adopted by the 1985 regulations allowed only one registration for the same version of a mask work. The regulations further required applicants to register mask work contributions in their most complete form. The purpose of these policies was to discourage applicants from fractionalizing their mask work contributions into smaller portions, thereby creating an ambiguous public record.

The general policies adopted in the final regulations worked well. While some may continue to dispute the necessity of the most complete form requirement, applicants experienced few problems in complying with the policy.

Despite the general appropriateness of the most complete form regulation, it came to the attention of the Copyright Office that there was one instance where an exceptional hardship was created. That hardship concerned the different registration possibilities depending upon whether the owner was a merchant manufacturer or a captive manufacturer.

So-called merchant manufacturers are companies that license unpersonalized gate arrays to other who customize the chips into finished products by adding the customized metallization layers. In the typical circumstance, the merchant manufacturer owns the mask work contribution in the unpersonalized gate array, and the company creating the final product owns the rights in the customized metallization layers. As a result, two separate registrations may be made, one to cover each owner's mask work contribution.

The so-called captive manufacturer owns both the gate arrays and the metallization layers. Typically, captive manufacturers are large manufacturers of computer products. Once a captive manufacturer has produced any final product by adding the metallization layers the company loses the right to register separately the unpersonalized gate arrays under the existing regulations.

Captive manufacturers whose mask work registrations now cover both gate arrays and the metallization layers, complained to the Copyright Office that the most complete form regulation puts them at a competitive disadvantage in protecting their unpersonalized gate arrays. They theorized that it would be more difficult for them to prove substantial similarity against an alleged infringer of only the gate arrays. They argued that merchant manufacturers, whose registrations typically cover only the gate arrays, would have substantially less difficulty in presenting an infringement case.

In order to put captive manufacturers on an equal footing with merchant manufacturers, the Copyright Office proposed a narrow exception to the "most complete form" regulation in order to extend to the captive manufacturers of gate arrays the same registration possibilities as merchant manufacturers.

2. Summary of Public Comments

The Copyright Office received four comments on the proposed amendment of the mask work regulation. The commentators were the Computer and Business Equipment Manufacturers Association (CBEMA), an attorney in private practice, Compaq, and IBM. All of the comments supported the proposal in principle. However, both compaq and IBM asked that the proposed regulation be modified in order to provide further clarifications.

Compaq stated that under the proposed regulation, it was unclear whether the finished product could be submitted as the deposit, or whether the applicant was limited to submitting the intermediate forms. Conpaq argued that requiring the intermediate forms to be deposited would be a hardship on proprietors. Compaq further asserted that the proposed exception should be expanded to include similar treatment for standard cells.

IBM contended that the phrase "unpersonalized gate array" is ambiguous. They asserted it is unclear whether the so-called "book metal layer" would be considered part of the base layers or the personality layers. In addition, IBM asserted that the regulation governing deposit of the most complete form should be modified to allow coverage of functional elements besides gates. In order to solve these problems, IBM proposed either defining the phrase "unpersonalized gate array" or substituting the phrase "semi-custom chip base".

3. Final Regulation on Registration of Claims of Protection in Mask Works

Mask work regulations are intended to provide only broad, general guidance to applicants in seeking registration. The regulations are supported by detailed registration practices.

From the outset of mask work registration, issues with respect to gate arrays have arisen. The explanation accompanying the final regulations in 1985 specifically discussed gate arrays and cell libraries. (50 FR 26716). The proposed regulation is the result of a long dialogue with the industry. As a result of this experience, the Copyright Office and the industry have a common understanding as to the general meaning of the terms utilized in the proposed regulation.

The Copyright Office has studied carefully the comments of Compaq and IBM. These two companies are leaders in the industry, and the Office appreciates the time and thought they have given this rulemaking proceeding. Nevertheless, the Copyright Office believes some of their suggestions are best left to registration practice.

a. Deposit and Scope of the Claim

Compaq raises the issue of whether the finished product will be accepted as a deposit of the "unpersonalized gate array" and "custom metallization layers". This issue is actually a deposit issue rather than a registration issue. As long as the finished product includes the entire mask work contribution underlying the unpersonalized gate array or the custom metallization layers, the finished product should be submitted as the deposit, along with the identifying material for the layers being registered, as specified in 37 CFR 211.5.

IBM appears to interpret proposed § 211.4(e) as limiting claims in base layers to the layout of gates. IBM argues that base layers may include other functional elements, such as memory cells.

The regulations do not establish the scope of mask work claims. Only the applicant can do that through designating the nature of the mask work contribution at line 8 of the application for registration. In claiming in the base layers, the layout of other functional elements besides gates may be asserted. For example, a typical statement might read: "New layout of base layers for a semi-custom chip, including memory cells."

With respect to the "book metal layer," the Copyright Office believes this is a matter best left to registration practice. From the explanation given in IBM's comment letter, it would appear preferable to include the book metal layer as part of the custom metallization layers. However, the Copyright Office declines to establish a firm policy on the issue in the regulations.

b. Definition of "Unpersonalized Gate Array"

From the outset of establishing mask work registration practices, industry spokesmen have addressed problems associated with gate arrays, and the Examining Division has considerable experience in registering claims in semiconductor chip products created by adding customized metallization layers to gate arrays. The Copyright Office believes there is a common understanding concerning the material covered by the exception to the most complete form requirement. In the interest of clarification, however, we have adopted a special definition of "unpersonalized gate array." IBM's primary concern appears to be a belief that the Copyright Office might interpret the term "unpersonalized gate array" in a narrow, technical way whereby base layers containing other functional elements besides gates could be excluded from the exception. The Copyright Office plans no such restrictive interpretation.

c. Standard Cells

The Copyright Office believes expansion of the exception from the "most complete form" standard to include "standard cells" would be unwarranted. Cell libraries are collections of parts of semiconductor chip products stored in computer memory tape which are used by chip designers to create new semiconductor chip products. Mask works protectible under the Semiconductor Chip Protection Act must be fixed in a semiconductor chip product. Semiconductor materials include silicon, germanium, and gallium arsenide. According to House Report 98-781, 98th Congress, 2d Session (1984) at 16-17, fixation solely in computer tapes does not meet the fixation requirement for eligibility under the Act.

Under the existing regulations, all intermediate forms of mask works are eligible for registration once they are fixed. Individual cells are included when fixed.

Only one comment suggested expansion of the exception from the "most complete form" requirement to cover standard cells. Since cells can be registered as part of the owner's entire contribution if they are fixed, the Office is not willing to depart further from the "most complete form" requirement without a compelling justification. That justification has not been presented. The Office continues to believe that the best representation of an original mask work is its most advanced form in the manufacturing process, and we conclude that exceptions from this requirement must be carefully circumscribed and allowed only in compelling cases. Accordingly we decline to make an exception for standard cells at this time.

d. Regulatory Flexibility Act Statement

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter 5 of the U.S. Code, subchapter 11 and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 211

Mask works, Semiconductor chip products.

Final Regulations

In consideration of the foregoing, part 211 of 37 CFR chapter 11, is amended in the manner set forth below.

PART 211—[AMENDED]

1. The authority citation for part 211 is revised to read as follows:

Authority: 17 U.S.C. 702 and 906.

2. Section 211.4(c), (d), and (e) are revised to read as follows:

[1] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act [i.e. "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits]. [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

§ 211.4 Registration of claims of protection in mask works.

* * * * *

(c) *One registration per mask work.* (1) Subject to the exception specified in paragraph (c)(2) of this section, only one registration can generally be made for the same version of a mask work fixed in an intermediate or final form of any semiconductor chip product. However, where an applicant for registration alleges that an earlier registration for the same version of the work is unauthorized and legally invalid and submits for recordation a signed affidavit, a registration may be made in the applicant's name.

(2) Notwithstanding the general rule permitting only one registration per work, owners of mask works in final forms of semiconductor chip products that are produced by adding metal-connection layers to unpersonalized gate arrays may separately register the entire unpersonalized gate array and the custom metallization layers. Applicants seeking to register separately entire unpersonalized gate arrays or custom metallization layers should make the nature of their claim clear at Space 8 of application Form MW. For these purposes, an "unpersonalized gate array" is an intermediate form chip product that includes a plurality of circuit elements that are adaptable to be personalized into a plurality of different final form chip products, in which some of the circuit elements are, or will be, connected as gates.

(d) *Registration as a single work.* Subject to the exception specified in paragraph (c)(2) of this section, for purposes of registration on a single application and upon payment of a single fee, the following shall be considered a single work.

(1) In the case of a mask work that has not been commercially exploited: All original mask work elements fixed in a particular form of a semiconductor chip product at the time an application for registration is filed and in which the owner or owners of the mask work is or are the same; and

(2) In the case of a mask work that has been commercially exploited. All original mask work elements fixed in a semiconductor chip product at the time that product was first commercially exploited and in which the owner or owners of the mask is or are the same.

(e) *Registration in most complete form.* Owners seeking registration of a mask work contribution must submit the entire original mask work contribution in its most complete form as fixed in a semiconductor chip product. The most complete form means the stage of the manufacturing process which is closest to completion. In cases where the owner is unable to register on the basis of the most complete form because he or she lacks control over the most complete form, an averment of this fact must be made at Space 2 of Form MW. Where such an averment is made, the owner may register on the basis of the most complete form in his or her possession. For applicants seeking to register an unpersonalized gate array or custom metallization layers under paragraph (c)(2), the most complete form is the entire chip on which the unpersonalized gate array or custom metallization layers reside(s), and registration covers those elements of the chip in which work protection is asserted.

* * * * *

Dated: February 13, 1991.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-4412 Filed 2-25-91; 8:45 am]

BILLING CODE 1410-07-M

Proposed Rules

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 297

Privacy Act of 1974; Exempt Record System

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: OPM's Office of Personnel Research and Development (OPRD) is proposing to alter portions of the system of records currently constituted and described in the **Federal Register** (OPM/GOVT–6, Personnel Research and Test Validation Records) at 55 FR 3850, February 5, 1990. The purpose of this alteration is to permit OPRD to maintain research ratings within that system for use in conducting research on the effectiveness of human resource management initiatives.

The altered system will contain those research ratings that, if made available to the employee, would compromise the objectivity of the evaluating supervisory official. The releasing of information that has been supplied by individual evaluators would impede the forthrightness of the evaluation and otherwise impair the ability of the OPRD to conduct a proper assessment of workforce quality.

DATES: Comments must be received by April 29, 1991.

ADDRESSES: Comments should be addressed to Marilyn Gowing, Assistant Director for Personnel Research and Development, Career Entry Group, Room 6462, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jay Gandy (202) 606–1366.

SUPPLEMENTARY INFORMATION: The Assistant Director, Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management (OPM), by separate **Federal Register** notice appearing this day is proposing alteration in the system of records identified as OPM/GOVT–6, Personnel Research and Test Validation Records. The Office intends to exempt additional portions of this system from certain provisions of the Privacy Act, 5 U.S.C. 552a. The proposed exemption is authorized by subsection (k)(4) of the Privacy Act, which applies to records required by statute to be maintained and used solely as statistical records. The Office of Personnel Research and Development (OPRD), as part of OPM, is authorized to gather information for personnel research purposes as required by 5 U.S.C. 4702. In order to maintain the integrity of this OPRD process and to allow bona fide study of human resource management methods and initiatives, current information on the characteristics, qualities, and performance of all levels of the Federal workforce is needed. The results of these studies will help improve policies concerning personnel management. The success of this research depends upon frank appraisals of performance by supervisors; without the rating being protected from access by the employee, the confidentiality of the rating is lost and its value as reflecting judgments made free of biasing influences is destroyed. The data collected is used solely for research purposes; only designated OPM research staff members have access to individual responses. These ratings are never used for any personnel actions affecting the employee.

This need for confidentiality of the ratings is clear: Supervisors rate differently under research (confidential) conditions—this has substantial implications for the usefulness of the research studies conducted. To ensure the needed confidentiality, the Office proposes to exempt research performance appraisals from the notification, access, correction, and amendment provisions of the Privacy Act. The employee's annual performance appraisal will still be subject to the Privacy Act and this proposal will not affect the availability of that record to the data subject.

Research performance appraisals meet the statutory definition of "statistical record" as defined in subsection (a)(6) of the Privacy Act: They are records in a system of records maintained for statistical, research, or reporting purposes only, and are not used to make any determination about the individuals who are rated. This rating procedure does not lead to an agency making any decisions on the rights, benefits, or entitlements of the individuals. Therefore, the Office believes the exemption is appropriately applied in this situation.

E.O. 12291, Federal Regulation

The proposed exemption does not meet the standards set forth in Executive Order 12291 for classification as a major rule, and no regulatory analysis statement is required.

Regulatory Flexibility Act

I certify that the proposed exemption will not have a significant impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 because it applies only to Federal employment records.

List of Subjects in 5 CFR Part 297

Administrative practice and procedure, Privacy.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 297 as follows:

PART 297—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

1. The authority citation for part 297 continues to read as follows:

Authority: Sec. 3, Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 297.501, paragraph (b)(8) is revised to read as follows:

§ 297.501 Exemptions.

* * * * *

(b) * * *

(8) *Personnel Research Test Validation Records (OPM/GOVT–6).* All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(4) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to or amendment of the records by the data subject. This exemption is claimed because portions of this system relate to records required by statute to be maintained and used solely for statistical purposes. Access to or amendment of this information by the

data subject would compromise the objectivity and fairness of these records.

* * * * *

[FR Doc. 91-4512 Filed 2-25-91; 8:45 am]

BILLING CODE 6565-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-02]

Airworthiness Directives; General Electric Company (GE) CF6-45/-50 and CF6-80A Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain GE CF6-45/-50 and CF6-80A series turbofan engines, which would require ultrasonic and eddy current inspections of the high pressure compressor rotor (HPCR) stages 3-9 spools for cracks. This proposal is prompted by cracks found in two HPCR stages 3-9 spools. This condition, if not corrected, could result in an uncontained engine failure.

DATES: Comments must be received no later than April 4, 1991.

ADDRESSES: Comments on the proposal may be mailed in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-02, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or may be delivered in duplicate to Room 311 at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Part, Burlington, Massachusetts 01803-5299.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine Certification Branch, ANE-142, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for coments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the subetance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ANE-02." The postcard will be date/time stamped and returned to the commenter.

Discussion

There have been two HPCR stages 3-9 spools found cracked in service. Although the specific cause of the cracks has not been determined, sufficient evidence exists to indicate the condition is limited to a specific forgoing population. This condition, if not corrected, could result in an uncontained engine failure.

The two cracked spools were discovered using the inspection techniques specified in GE CF6-50 Service Bulletin (SB) 72-868 and GE CF6-80A SB 72-500. Although these inspection techniques are adequate for detecting the condition, the engine manufacturer has subsequently issued GE CF6-50 SB 72-1000 and GE CF6-80A SB 72-583 which provides optimized inspection techniques.

The FAA has reviewed and approved GE CF6-50 SB 72-868, Revision 2, dated September 26, 1990, and SB 72-1000, dated December 14, 1990; and CF6-80A SB 72-500, Revision 1, dated April 5, 1990, and SB 72-583, dated December 20, 1990, which describe ultrasonic and eddy current inspection procedures for detecting cracks in the HPCR stages 3-9 spool.

Since this condition is likely to exist or develop on other engines of the same type design, and AD is proposed which would require ultrasonic and eddy current inspections in accordance with GE CFR-50 SB 72-1000 and GE CF6-80A SB 72-583 to detect cracking of the HPCR stages 3-9 spool. Also, the requirements in this proposal may change after additional information on the specific cause of the cracking is obtained.

There are approximately 203 GE CF6-45/-50 and CF6-80A series engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 85 manhours per engine to accomplish the required actions and that the average labor cost would be $40 per manhour. Also, it is estimated that a material cost of $400 per engine would be incurred at each inspection. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $771,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-45/-50 and CF6-80A series turbofan engines installed on, but not limited to, Airbus A300 and A310, Boeing 747 and 767, and McDonnell Douglas DC-10-15 and DC-10-30 aircraft.

Compliance is required as indicated, unless previously accomplished.

To prevent uncontained engine failure, accomplish the following:

(a) Ultrasonic and eddy current inspect affected high pressure compressor rotor (HPCR) stages 3-9 spools at the next engine shop visit after the effective date of this AD but no later than 3,500 cycles in service after the effective date of this AD, according to the following:

(1) Inspect CF6-45/-50 HPCR stages 3-9 spools, Part Numbers (P/N) 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G08, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, having a part serial number (S/N) listed in Table 1 of GE CF6-50 Service Bulletin (SB) 72-1000, dated December 14, 1990, in accordance with the Accomplishment Instructions in GE CF6-50 SB 72-1000, dated December 14, 1990.

(2) Inspect CF6-80A HPCR stages 3-9 spools, P/N 9136M89G10, having a part S/N listed in Table 1 of GE CF6-80A SB 72-583, dated December 20, 1990, in accordance with the Accomplishment Instructions in GE CF6-80A SB 72-583, dated December 20, 1990.

(3) Remove from service prior to further flight HPCR stages 3-9 spools which exceed the reject criteria established in Sections 2.C and 2.D of CF6-50 SB 72-1000, dated December 14, 1990, and CF6-80A SB 72-583, dated December 20, 1990.

(4) For the purpose of this AD, an engine shop visit is defined as the induction of the engine into a shop for maintenance involving the separation of any major module.

(b) Inspections of CF6-45/-50 HPCR stages 3-9 spools referenced in paragraph (a)(1) of this AD, performed in accordance with any revision level of GE CF6-50 SB 72-888 or CF6-50 SB 72-1000 prior to the effective date of this AD, constitute an alternative method of compliance with the inspection requirements of paragraph (a)(1) of this AD.

(c) Inspections of CF6-80A HPCR stages 3-9 spools referenced in paragraph (a)(2) of this AD, performed in accordance with any revision level of CF6-80A SB 72-500 or CF6-80A SB 72-583 prior to the effective date of this AD constitute an alternate method of compliance with the inspection requirements of paragraph (a)(2) of this AD.

(d) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on February 5, 1991.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4481 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AC66

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Resources and Exclusions

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule excludes from the definition of resources in the Supplemental Security Income (SSI) Program, for 1 calendar month following their receipt, certain retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This proposed rule also clarifies the policy regarding the commingling of funds paid to an eligible person for approved medical or social services or paid to an ineligible spouse or parent for the provision of such services for purposes of defining resources.

DATES: To be sure that your comments are considered, we must receive them no later than April 29, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irv Darrow, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966-0512.

SUPPLEMENTARY INFORMATION: Certain cash payments intended specifically to enable people to pay for medical or social services as defined in § 416.1103 (a) and (b) are not income for SSI purposes because they are assumed not to be available for support and maintenance. Recognizing that the recipient is not always able to use the cash for payment of medical or social services in the month of receipt, we published a final rule in the Federal Register on June 21, 1988 (53 FR 23230). That rule, § 416.1201(a)(3), provides that for 1 full calendar month following the month of receipt, cash, which is not income under § 416.1103 (a) or (b) because it is paid to an individual to enable the individual to pay for medical or social services, is not a resource. The rule does not encompass cash received as reimbursement for medical or social service bills the individual had already paid.

The June 1988 rule recognized that it was not reasonable to expect an individual to use certain funds for support and maintenance when the funds are clearly needed to pay for approved services which themselves are neither income nor resources. To use such funds for support and maintenance tends to thwart the purpose of the payer program and could result in an individual's having to do without needed services. The rule change simply provided a grace period to individuals for the disbursement of funds as intended by the payer program without the cash having an adverse effect on their SSI eligibility.

In describing medical or social services payments that would not be considered resources for 1 month following receipt, the June 1988 regulation omitted one category: Retroactive cash payments (other than reimbursements) made to an ineligible spouse or parent for providing medical or social services to the eligible individual to whom their esources

could be deemed. Such payments are income when received by the ineligible spouse or parent care provider, but are excluded from the income deeming process under § 416.1161(a)(18). However, under the current regulation, if these funds are retained into the month following the month of receipt, they become resources which are subject to deeming and could, therefore, cause ineligibility.

In limited circumstances, governmental programs will pay a parent or spouse to provide a disabled child or spouse with certain services under a medical or social services program. Such care providers are able to give care and services with an exceptionally high and supportive level of personal dedication but their provision is so time-consuming that the spouse or parent has to give up (or severely curtail) work outside the home which might otherwise provide needed household income. Since the medical or social services payments are targeted to compensate for services given and lost household income, they are not deemed as income so that the intended benefit of having the services provided by caregivers in the home can be realized. For this reason, and to avoid SSI ineligibility due to excess deemed resources, we will provide a period of 1 full calendar month for the expenditure of retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual. This type of retroactive payment will not be a resource until an opportunity has been given for its expenditure, that is, for 1 full calendar month after receipt. When such retroactive payments are made, we will assume that the care provider's first priority of expenditure is the personal and household bills which could not be paid without these payments. Therefore, we will not consider the care provider's retroactive payments to be resources until the second calendar month following their receipt in order to give the ineligible spouse or parent the same length of time for expenditure that we would give the care recipient. This new exclusion applies only to retroactive cash payments made to an ineligible spouse or parent for providing medical or social services to the eligible individual.

In addition to the foregoing, we also are amending § 416.1201(a)(3) to clarify our policy that this exclusion from the definition of resources applies only to the unspent portion of the cash payments described therein and that the unspent portion must be identifiable from other resources for the exclusion to apply. This policy does not preclude the commingling of funds, but separate identification must be possible through the use of personal records in order for the amount to be excluded from the definition of resources for the calendar month following the month of receipt.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative costs of this proposed regulation will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed regulation will impose no additional reporting and recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: August 16, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: September 17, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Subpart L of part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

Subpart L—[Amended]

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Public Law 96-66, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (a)(3) to read as follows:

§ 416.1201 Resources; general.

(a) * * *

(3) Except for cash reimbursement of medical or social services expenses already paid for by the individual, cash received for medical or social services that is not income under § 416.1103 (a) or (b), or a retroactive cash payment which is income that is excluded from deeming under § 416.1161(a)(18), is not a resource for the calendar month following the month of its receipt. However, cash retained until the first moment of the second calendar month following its receipt is a resource at that time.

(i) For purposes of this exclusion, a retroactive cash payment is one that is paid after the month in which it was due.

(ii) This exclusion applies only to the unspent portion of those cash payments identified in paragraph (a)(3) of this section. Once the cash from such payments is spent, this exclusion does not apply to items purchased with the money, even if the exclusion period described above has not expired.

(iii) Unspent money from those cash payments identified in paragraph (a)(3) of this section must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that an amount from such payments can no longer be separately identified, that amount will count toward the resource limit described in § 416.1205.

* * * * *

[FR Doc. 91-4416 Filed 2-25-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Extension of Study on Alabama's Program Provisions Concerning Disposal of Excess Spoil

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period on a proposed extension of the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites. These provisions are contained in Alabama's approved permanent program for the regulation of surface coal mining and reclamation operations and the surface effects of underground mining under the provisions of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The Alabama program was conditionally approved by the Secretary of the Interior on May 20, 1982 (47 FR 22030). By that notice, the Secretary announced that a one year trial period would be held in order to evaluate the adequacy of Alabama's plan for disposal of excess spoil on abandoned mine sites. The one year period expired May 10, 1983, and was extended to August 20, 1984 on July 27, 1983 (48 FR 34026). The extension was granted because few permit applications requesting approval to use the excess spoil provisions had been received, and the data was therefore insufficient to allow OSM to make a meaningful evaluation of the plan at that time.

On May 23, 1985 (50 FR 21254), the Secretary again extended the trial period, to August 20, 1988, due to insufficient data. This extension specifies six completed sites as the minimum number upon which a final decision should be based.

On July 2, 1990 (55 FR 27224), the trial period was extended to January 1, 1991, again due to insufficient data.

On January 7, 1991, the State submitted to OSM, a status report to fulfill the provisions of terms of approval of the Alabama Program and subsequent extensions of the trial period concerning excess spoil disposal. At present, there are still only five completed sites and the sixth site (as required by the extension of May 23, 1985) is not due for completion in the immediate future. Consequently, OSM has decided that a further extension of time is necessary to build sufficient data upon which to base an evaluation of the excess spoil disposal program. Therefore, OSM is proposing to extend the trial study period until January 1, 1993, for the reasons set forth in this notice. The Federal rules at 30 CFR 901.15 would be amended to implement this action.

This notice sets forth the times and locations that the Alabama program, a copy of the State's January 7, 1991, status report, and OSM's review of the report are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed extension.

DATES: Written comments, data or other relevant information relating to the proposed extension not received on or before 4 p.m. on March 28, 1991, will not necessarily be considered.

A public hearing on the proposed extension has been scheduled for March 25, 1991, at the address listed below under **"ADDRESSES"**.

Any person interested in making an oral or written presentation at the hearing should contact Mr. Jesse Jackson, Jr. at the address or phone number listed below by the close of business March 13, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, 3rd. Floor, Homewood, Alabama 35209. Telephone: (205) 731-0890. Copies of the Alabama program, the January 7, 1991, status report, OSM's review of the report, and all written comments received in response to this notice, will be available for public review at the addresses listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the material by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 280 West Valley Avenue, 3rd. Floor, Homewood, Alabama 35209.

Alabama Surface Mining Commission, Central Bank Building, 2nd. Floor, 811 Second Avenue, Jasper, Alabama 35501.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, room 302, Homewood, Alabama 35209; Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020-22058 (May 20, 1982), 48 FR 34026 (July 27, 1983), 50 FR 21254, and 55 FR 27224. In the May 20, 1982, notice under Findings 18.1 (47 FR 22038-39), the Secretary approved, with certain restrictions, Alabama's plan to allow the disposal of excess spoil generated by current operations on areas which have been previously disturbed but not adequately reclaimed. The provisions of Alabama's plan were set forth at State rule § 805.11 (now recoded as 880-X-8B-.11 under a State generic recodification scheme). No comparable provision is contained under the Federal rules.

The Secretary's findings on Alabama's provision noted that under the State's plan, the previously disturbed area must be included within the currently permitted bond area, but an additional bond amount would not be required. In an attempt to ensure the reclamation of the entire area in the event an operator defaults on his obligations and abandons the job, the State regulations provide that the condition of the entire area will be considered before full bond release is granted. The Federal regulations at 30 CFR 800.11(b)(1) require that all operations to be conducted within the permit area during the life of the mine be covered by a performance bond. By that definition, those areas to be used for excess spoil disposal must be included in the performance bond. In his decision findings, the Secretary expressed concern that the State's plan might spread bond amounts too thin, resulting in less, rather than more, reclamation. However, since the plan has possibilities for increased reclamation activities, the Secretary proposed to allow its implementation on a controlled basis for an appropriate trial period.

A one year trial period was established during which the State was allowed to put its plan into effect under the following conditions:

(1) Prior to approval of any application involving this spoil disposal plan, the State Regulatory Authority must notify the OSM Field Office and submit to that Office a report stating the relevant particulars concerning the request indicating that the State approved;

(2) The OSM Field Office will then review the matter and notify the State within 30 days of its approval or objection;

(3) At the end of one year, the State shall submit to the OSM Field Office a report on the project;

(4) The OSM Field Office will then review the State report, add data or material as needed and transmit the material to OSM Headquarters;

(5) A decision will then be made concerning the success or failure of the trial.

The Secretary's findings also stated

that it was recognized that a one year trial period may not be sufficient to adequately evaluate the initial results and that OSM may extend the trial period as needed until sufficient data for appropriate evaluation is obtained. Alabama agreed to the above restrictions.

II. Reasons for Trial Period Extensions

On July 27, 1983 (48 FR 34026), the trial period was extended to August 20, 1984, and on May 23, 1985 (50 FR 21254), the trial period was further extended to August 20, 1989. On July 2, 1990 (55 FR 27224), the trial period was extended to January 1, 1991. All extensions were due to insufficient data, and the May 23, 1985, extension specifies the completion of six sites as the minimum basis for a decision as to the practicability of the State's excess spoil provisions.

On January 7, 1991, the Alabama Surface Mining Commission (ASMC) submitted a report to OSM on the excess spoil project. The OSM has reviewed this report and performed additional investigations on the sites covered. While additional sites have been approved or are in progress, a total of only five sites have been completed, and there are no other sites scheduled for completion in the immediate future. Consequently, there is still insufficient data to allow OSM to make a meaningful evaluation of the plan.

Therefore, the Director is proposing to extend the trial period until January 1, 1993. This period would be extended with the following stipulations:

(1) The Director, at his discretion, may terminate the trial study period at any time during the extended period, if sufficient data becomes available. Upon termination of the trial study period and OSM's analysis of the data, the Director may then approve or disapprove the subject excess spoil provisions.

(2) At any time during the trial period the Director may, at his discretion, place a moratorium on new permit applications which include consideration of the excess spoil provisions.

(3) The State is required to continue to report to the OSM Birmingham Field Office annually on August 20, on the status of all permits and permit applications which include consideration under the excess spoil provisions.

III. Public Comment Procedures

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Birmingham, Alabama, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the date listed under **"DATES"**. If no one requests an opportunity to comment at the public hearing, the hearing will not be held.

If only one person requests an opportunity to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested, and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed extension may request a meeting at the OSM office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**.

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 13, 1991.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 91-4399 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11-90-09]

Regatta; Opening Day Marine Parade, San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: Special local regulations are being revised for the annual Opening Day Marine Parade, San Francisco Bay. This event is held each year on the last Sunday in April as published in the Local Notices to Mariners. The regulations are needed to provide for the safety of life on navigable waters during the event. The revision to existing regulations is being made to change the boundaries of the designated regulated areas during the event.

DATE: Comments must be received on or before April 12, 1991.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group, Yerba Buena Island, San Francisco, CA 94130-9309. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Group Operations Office, Yerba Buena Island, San Francisco, CA. Normal office hours are between 8 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Paul L. Newman, (415) 399-3445.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11-90-09) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Paul L. Newman, project officer, Coast Guard Group San Francisco, and Lieutenant Commander Allen Lotz, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Current regulations contained in 33 CFR 100.1103 provide designated "regulated area" for the duration of the marine parade on the last Sunday of April each year. The parade sponsor, Pacific Inter-Club Yacht Association, has requested that the southern regulated area be extended approximately 2,000 yards further south along the San Francisco waterfront, thereby giving the participants greater community exposure particularly in the Fishermen's Wharf and Pier 39 areas.

Regulatory Evaluation: This proposed regulation is considered to be non-major under Executive Orde 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours one day each year, and the impacts on routine navigation are expected to be minimal. The Coast Guard certifies that, if adopted, this proposal will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act: This proposed rule contains no information collection or recordkeeping requirements.

Federalism Assessment: This action has been analyzed in accordance with the principles contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment: The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.1103 is revised to read as follows:

§ 100.1103 Opening Day Marine Parade, San Francisco Bay.

(a) This section is effective from 0900 to 1500 local time, 28 April 1991, and thereafter annually on the last Sunday in April as published in the Local Notices to Mariners.

(b) The following areas are designated "regulated areas" during the marine parade.

(1) Northern Area in Raccoon Strait. The area between a line drawn from Bluff Point on the southeastern side of Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point on the southern edge of Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

(2) Southern Area. The area defined by a line drawn from Fort Point (37-48.66N 122-28.64W) 079 Degrees True approximately 5,000 yards to a point located at 37-49.15N 122-25.61W, thence 091 Degrees True to the Blossom Rock Bell Buoy (37-49.10N 122-24.20W), thence 200 Degrees True to the Northeast corner of Pier 35.

(c) Regulations. (1) All vessels entering the regulated area shall follow the parade route and maintain an approximate speed of six knots.

(2) All vessels in the Northern Area shall proceed in a generally southwesterly direction except in that area immediately adjacent to the shore of Angel Island where vessels may transit in a northeasterly direction.

(3) Vessels departing the San Francisco Yacht Harbor may transit the area only with the permission of and subject to the direction of Coast Guard patrol personnel.

(4) The parade will be interrupted, as necessary, to permit the passage of commercial vessel traffic.

(5) No vessel shall anchor or drift in the regulated areas.

(6) All vessels in the vicinity of the parade shall comply with the instructions of the U.S. Coast Guard patrol personnel.

Dated: February 6, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 91-4475 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL 3908-5]

Open Meeting of the Negotiated Rulemaking Advisory Committee—Lead Acid Battery Recycling Rule

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meetings—Negotiated Rulemaking Committee on the Lead Acid Battery Recycling Rule.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the remaining meetings of the Advisory Committee to negotiate a rule to recycle lead acid batteries. The meetings are open to the public without advance registration.

The purpose of the February and March meetings is to consider information on the status of lead acid battery recycling, and to generate and discuss issues and options for attaining high levels of lead acid battery recycling. The purpose of the April meeting is to reach consensus on a regulatory option for recycling of lead acid batteries.

DATES: The meetings will be held on the following dates: February 27, March 13, March 27 and April 17-18, 1991. All meetings will start at 10 am.

ADDRESSES: The meetings will be held at the following locations:

February 27: Hyatt Regency Hotel, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

March 13: American Society of Association Executives, 1575 I St. NW., Washington, DC.

March 27: Hyatt Regency Hotel, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

April 17-18: Key Bridge Marriott Hotel, Rosslyn, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the lead acid battery recycling rule should call Nancy Laurson, Office of Toxic Substances, U.S. EPA, (202) 382-7383. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Regulatory Negotiation Project, (202) 382-5495 or the Committee's facilitator, John McGlennon, (617) 742-8228.

Dated: February 20, 1991.

Paul Lepsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 91-4498 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking requesting that NHTSA establish bumper height requirements for small trucks and sport-utility vehicles. The petitioner, Dr. F. Wayne Stromeyer, stated that the bumper heights of these vehicles should be identical to those of passenger cars or that they should be equipped with underride guards. The establishment of requirements along the lines suggested by the petitioner would significantly reduce the utility of the vehicles in question. Therefore, the agency believes that such a requirement would not be reasonable, practicable or appropriate for these vehicle types. Moreover, while the agency recognizes that many of these other vehicles are manufactured with bumpers mounted somewhat higher than passenger car bumpers, it does not have evidence of any significant safety problem resulting from those differences.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-4921).

SUPPLEMENTARY INFORMATION: F. Wayne Stromeyer, M.D., petitioned this agency for rulemaking regarding bumper heights for small trucks and sport-utility vehicles. The petitioner stated that he is concerned about the lack of bumper height safety standards for these vehicles, noting that he is aware of crashes in which a sport-utility vehicle overrode the hood of a passenger car, killing or seriously injuring the occupants of the car. Dr. Stromeyer compared this to situations in which portions of cars go under the rear bumpers of large trucks, a subject which NHTSA is currently addressing in rulemaking. The petitioner stated that he believes the bumper heights of small trucks and sport-utility vehicles should be identical to those of passenger cars or that they should be equipped with underride guards.

NHTSA has issued a bumper standard for passenger automobiles pursuant to the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act) and the National Traffic and Motor Vehicle Safety Act (the Safety Act). See 49 CFR part 581. The standard establishes requirements for the impact resistance of passenger automobiles in low-speed front and rear collisions and includes a bumper height requirement.

NHTSA's bumper standard does not apply to trucks or multipurpose passenger vehicles (the category which generally includes "sport-utility vehicles"). Title I of the Cost Savings Act specifically excludes trucks from any bumper standards and allows the agency to exempt multipurpose passenger vehicles from bumper standards. While the Safety Act could be used to issue bumper standards for both of those categories of vehicles, NHTSA believes it would be inappropriate to require bumpers of these vehicles to be at the same height as those of passenger cars. These types of vehicles require greater ground clearance than passenger cars, to enable them to clear obstacles and hazards characteristic of commercial and occasional off-road operation. For the same reason, requiring underride guards on trucks and multipurpose passenger vehicles would be inappropriate. The requirement recommended by the petitioner would thus significantly reduce the utility of the vehicle types in question. Therefore, the agency believes that such a requirement would not be reasonable, practicable or appropriate for these vehicle types.

While some vehicle types clearly require greater ground clearance than passenger cars, NHTSA is aware of potential safety problems associated with vehicles whose bodies are significantly raised above their usual design height. These potential safety concerns include more intrusion to struck passenger vehicles and reduced vehicle stability and braking performance. NHTSA's safety standards, however, apply only to new vehicle manufacturers. The agency does not have the legal authority to regulate subsequent vehicle modifications by individual owners. By contrast, the states can regulate subsequent modifications much more effectively through their motor vehicle registration and inspection programs. Several states have established requirements governing the bumper heights on all vehicles, including trucks and multipurpose passenger vehicles, which help to ensure that individual owners do not "jack up" or otherwise modify their vehicles in an unsafe manner.

Finally, while the agency recognizes that many of these other vehicles are manufactured with bumpers mounted somewhat higher than passenger car bumpers, it does not have evidence of any significant safety problem resulting from those differences. The agency analyzed data from the Fatal Accident Reporting System (FARS), which is a census of all fatal motor vehicle crashes on U.S. roads. Data from the 1989 FARS file (the latest available) indicate there were 3,842 car occupant fatalities in collisions with a light truck, van or sport utility vehicle. In none of these was underride or override reported as a cause of the car occupant fatality. Thus, the agency is not aware of any data indicating a safety problem to be addressed by the rulemaking requested by Dr. Stromeyer.

For the reasons set forth above, NHTSA denies Dr. Stromeyer's petition for rulemaking.

Issued on February 20, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-4451 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-22; Notice 03]

RIN 2127-AA44

Flammability of Interior Materials in Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: This notice requests comments on a number of issues related to flammability of buses. Additionally, the notice provides the public with information on the activities of the National Highway Traffic Safety Administration to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 302, Flammability of Interior Materials, as it applies to large buses. More specifically, this notice provides a discussion of the comments received in response to the Advance Notice of Proposed Rulemaking (53 FR 44627) published on November 4, 1988, and a summary of the research results on school bus seating materials. Finally, the notice announces the agency's decision to limit any potential regulatory changes to the fire resistance requirements of school buses only.

This notice comprises one part of the agency's comprehensive effort to assess the safety need to amend several Federal motor vehicle safety standards as they apply to the cash avoidance capabilities, crashworthiness, and post-crash performance of school buses. It is essential that upgrades to standards be evaluated in terms of their effect, both positive and negative, on other standards. For example, possible changes in the emergency exit requirements for school buses could have an effect on the need levels of fire resistance.

Despite the outstanding safety record of buses in general, and school buses in particular, tragedies can and do occur. As a result, NHTSA believes it should consider whether there are improvements that could be made in its safety standards that may provide even higher levels of safety.

DATES: Comments on this notice must be received by the agency no later than April 29, 1991.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, (NRM-10) 400 Seventh Street SW., Washington, DC, 20590. Telephone: (202) 366-4799.

SUPPLEMENTARY INFORMATION:

Background

Even though school buses have a proven outstanding safety record, NHTSA has undertaken a comprehensive effort to assess the need to amend several of its Federal Vehicle Safety Standards on the crash avoidance capabilities, crashworthiness, and post-crash performance of school buses. School bus safety has received substantial public and Congressional attention, especially in the aftermath of two recent catastrophic crashes. On May 14, 1988, in Carrollton, Kentucky, a pickup truck being driven the wrong way on an Interstate highway by a drunk driver collided head-on with a former school bus which had been purchased by a local church for use as an activity bus. This was an extremely severe crash, with an impact speed in excess of 100 miles per hour. Twenty-seven bus occupants died in the fire that ensued. On September 21, 1989, in Alton, Texas, a school bus plunged into a water-filled pit after colliding with a tractor-semitrailer and became submerged. Twenty-one students drown when they could not escape from the bus.

In their investigations of these crashes, the National Transportation Safety Board (NTSB) concluded that "contributing to the severity of the accident was the lack of a sufficient number of emergency exits" to accommodate the rapid egress of all passengers. In their investigation of the Carrollton crash, the NTSB concluded that although the number of fatalities was affected by the lack of sufficient emergency escape routes, the actual fatalities were caused by smoke inhalation resulting from the post-crash fire rather than by crash-related trauma or injuries.

The bus involved in the Carrollton crash, which was first used as a school bus and then by a church, was manufactured shortly before several school bus safety standards took effect on April 1, 1977. As a result, the bus was not required to, and apparently did not, comply with the current school bus emergency exit requirements of FMVSS No. 217, Bus window retention and release, nor the more stringent fuel system integrity requirements of FMVSS No. 301, Fuel system integrity.

The bus presumably met the performance requirements of FMVSS No. 302, for the flammability of interior materials, which took effect on September 1, 1972. The purpose of that standard is to "reduce the deaths and injuries to motor vehicle occupants caused by vehicle fires, especially those originating in the interior of the vehicle from sources such as matches and cigarettes." The standard seeks to allow the driver time to stop the vehicle, and if necessary to evacuate it, before untenable conditions develop which could result in injuries or fatalities. The standard specifies a horizontal burn rate of not more than four inches per minute for materials used for certain specified components in the occupant compartment, such as seat cushions, seat backs, seat belts, trim panels, compartment shelves, curtains, floor coverings and all interior materials that are designed to absorb energy on contact by occupants in the event of a crash. All portions of material from a specified component that are within one-half inch of the occupant compartment air space are subject to Standards No. 302's burn rate requirements. The test procedure involves a laboratory test in which test specimens of 4 inches by 14 inches are placed horizontally in a metal cabinet and exposed to a flame for 15 seconds. These test procedures and requirements were based on the technical information available when the standard was promulgated in 1971.

Advance Notice of Proposed Rulemaking

General

On November 4, 1988, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing that the agency was considering a proposal to upgraede FMVSS No. 302 for buses, including school buses. (53 FR 44627.) To assist the agency in deciding whether to issue a proposal, that notice requested comments on the safety need for a rulemaking, types of buses that should be covered, types of seating materials available, toxicity of fumes off by burning or smoldering seating materials, upgraded test procedures, and the costs and benefits of a rulemaking.

On the same day, the agency issued an ANPRM about the adequacy of the requirements for school bus emergency exits under FMVSS No. 217 (53 FR 44623). A few months later, the agency issued an ANPRM about the adequacy of the requirements for fuel system integrity for school buses under FMVSS No. 301. (54 FR 13082, March 30, 1989). As these rulemakings indicate, factors related to fire risk are often interrelated. These factors include a fire's source and mangnitude, an occupant's ability to escape from a burning vehicle, the time needed to escape, the location and type of emergency exists, and the flammability resistance of the vehicle's interior materials.

In response to the ANPRM on FMVSS No. 302, the agency received fifty-four comments from bus manufacturers, seating and material manufacturers, State and local governments, trade associations, and individuals. The commenters generally agreed that measures could be taken to increase the flammability resistance of materials used in school buses. Commenters also addressed other issues raised in the ANPRM, including the rulemaking's scope, the availability of new materials for increased fire protection, possible performance requirements to reduce injuries and enhance flammability resistance, and the costs and benefits of the rulemaking.

Scope of Rulemaking

The ANPRM first asked about what vehicles should be covered if the standard were upgraded. The notice asked whether small and large school buses (i.e., those with gross vehicle weight ratings below and above 10,000 pounds) should be covered and whether buses other than school buses should be covered. As for bus size, twenty commenters stated that regardless of size, buses should be treated the same for any new fire resistance requirements. Only Ford commented that the rulemaking should be limited to buses over 10,000 pounds, claiming that small buses are easier to evacuate because they carry fewer occupants. Two commenters explained that handicapped passengers need more time to evacuate regardless of bus size.

As for applicability to non-school buses, four commenters believed school buses should be treated differently while twelve stated that all buses should be treated the same. Two of the four commenters stated that because FMVSS No. 222, School bus passenger seating and crash protection specifies unique energy-absorbing requirements for school bus materials, non-school buses should be treated differently than school buses. Another commenter stated that school buses should be evaluated differently based on current technology and past safety records. One commenter stated that even though non-school buses use different types and amounts of material, they should not be treated differently.

Fire Resistant Materials

The ANPRM posed several questions about the availability of new materials to improve a school bus interior's fire resistance in terms of ignitability, flame spread, smoke emissions, and toxicity. Seventeen commenters, including seating manufacturers and school bus operators, all believed that such materials are available. Commenters generally stated that improved flame-retardant or flame-resistant foams and cushion materials and fire-blocking or fire-barrier covers are available. Flame-retardant or flame-resistant foams and cushions slow down the flame's spread, while fire-blocking or fire-barrier covers prevent the fire from reaching the cushion, typically the most flammable material. Commenters mentioned a variety of seat foams, e.g., urethane, neoprene, and polyurethane, and seat covers, e.g., vinyl, Kevlar, Nomex, and Athol. One commenter explained its patented process in which fabric can be treated to allegedly become fire proof.

The ANPRM requested information about the testing of, and field experiences with, these products. While no commenter described their field test experiences in detail, ten commenters, who in most cases were manufacturers of foams or fire-blocking seat covers, generally responded to this question. They commented that their products would improve fire resistance of school bus interiors because their products meet Federal Aviation Administration (FAA) standards or Urban Mass Transit Administration (UMTA) guidelines. One commenter stated that school buses in its State are required to have fire-blocking materials when carrying children with disabilities.

Only one commenter responded to the question about adverse experiences with the products. That commenter stated that although fire-blocking materials are available, "the market rejects them due to vandalism concerns." Other commenters had similar concerns about how vandalism reduces the effectiveness of fire-blocking materials. Specifically, if a school bus seat with a fire-blocking cover is vandalized, then the highly flammable seat foam is exposed. Based on the comments to the docket, it appears that vandalism of school bus seats is a legitimate concern.

Seven commenters responded to the ANPRM's request for information about materials used for seat padding and seat covers and their performance in terms of fire resistance and injury reduction. Three commenters stated that materials are available that perform well in both fire resistance and injury reduction based on the performance of fire-blocking covers. Two commenters believed that a particular brand of foam could meet FMVSS No. 222's requirements and could increase flammability protection. Two other commenters said materials are available but did not provide data.

Eight commenters responded to the ANPRM's question about whether a standard should focus on seat covers or cushion materials. Five commenters said that both seat covers and cushions should be considered. Two commenters reasoned that although fire-blocking seat covers have cost advantages, vandalism would eliminate any performance advantage. Another commenter stated that if only fire-blocking covers are used, the seat would still burn if there is wear or vandalism. In contrast, two commenters prefer fire-blocking covers because of their cost-effectiveness. Two other commenters stated that fire, smoke, or toxicity problems might still develop if only the seat cover or cushion are required to comply with upgraded fire resistance requirements.

Performance Requirements

After explaining current performance requirements in FMVSS No. 302, the notice asked whether it was desirable or feasible to develop new performance requirements and test procedures for greater fire resistance. While 16 commenters believed that this was desirable or feasible, six disagreed. Four of the six commenters stated that there was no safety need to justify upgrading the bus standard, and one commenter suggested that efforts should be directed at eliminating fuel fires. Of the affirmative responses, two suggested that the burn rate requirements be upgraded. Two others commented that new requirements should be developed which are representative of real-world crashes, including catastrophic fuel fires. Six other commenters suggested NHTSA adopt different kinds of test methods in various existing standards including the Boston Bag Test, the California Technical Bulletin 133 test, the McDonnell Douglas Combined Hazard Analysis System/Single Animal Test system, the E 162 Radiant Panel and D 3675 Smoke Density test methods developed by the American Society for Testing and Materials (ASTM), and procedures similar to the Federal Aviation Administration (FAA) requirements. The principal FAA test for aircraft seats exposes complete seat assemblies to an oil burner set at 1,900 degrees F (1,038 degrees C) for two minutes. The FAA compliance criteria involve both the burn length of the seat cover and the weight loss of the seat assembly.

Thirteen commenters responded to whether FMVSS No. 302 should incorporate a systems approach in compliance testing in which the entire bus, and entire seating system, or a group of seats would be tested instead of testing specimens or seat sub-components. Two favored small-scale tests, three favored a systems approach, five favored seat assembly tests, two favored testing an entire bus, and one favored an initial test of complete seats and for compliance testing, an entire bus.

Eleven commenters responded to questions about testing for the burn rate. One commenter favored the horizontal burn rate test, six favored a vertical test, one favored combining the two tests, and three said none of the tests should be applied. In response to whether new tests should be developed to simulate catastrophic fuel-fires, two commenters said "yes" and three said "no." As for whether math modeling could be used to predict the burning behavior of materials under simulated crash conditions, the two commenters who responded stated that math modeling has not developed enough to predict fire behavior.

After explaining the FAA's fire-blocking and self-extinguishing requirements, the agency requested comments about their applicability to school and other buses. Six commenters said that the FAA's requirements would be effective for school buses, and three commenters believed that these requirements would be too costly. Four commenters believed that bus seats would need to be redesigned to incorporate the fire-blocking concept. Fourteen commenters believed that vandalism would compromise the effectiveness of fire-blocking materials.

The ANPRM also requested comments about the effectiveness of the Urban Mass Transportation Administration's (UMTA) guidelines and recommended practices for testing flammability and smoke emission characteristics of rapid rail transit and light rail transit vehicles. Four commenters believed that UMTA's guidelines could be effective, with two of these commenters suggesting that NHTSA adopt these guidelines. Of the four other commenters that opposed adopting the UMTA guidelines for buses, one believed that they would not be stringent enough for school buses, one said they were too restrictive, a third said they were not current, and a fourth said they only provided information on test results and not actual performance.

Ten commenters responded to questions about specifying requirements for toxicity. Three commenters generally supported requirements on toxicity. Three commenters suggested NHTSA propose adopting currently existing requirements such as the UMTA guidelines, the University of Pittsburgh test, the Boeing test, or the National Institute of Building Science's requirements. Four commenters opposed any requirements about toxicity, stating that there is insufficient information on which such requirements could be based.

Nine commenters responded to questions about the optical density of smoke and fumes from fires, four of which made inconclusive general statements. A fifth commenter recommended NHTSA not adopt any requirements on smoke density since laboratory tests cannot simulate actual smoke conditions in a full-scale fire. A sixth commenter suggested that the agency require a "safe egress" time which would be shorter than the time that would be needed for hazardous conditions to arise. A seventh commenter implied that NHTSA should specify a fire resistance level equal to that of low-fire, low-smoke neoprene. An eight commenter suggested that the California 133 test or UMTA guideline (ASTM E 662) be adopted. The ninth commenter stated that smoke obscuration could only be measured in full-scale fires and recommended the use of a cone calorimeter. Two other commenters stated that smoke density had no relationship to toxicity.

Of the thirteen commenters that responded to whether NHTSA should propose new fire resistance requirements for specific areas or components in the vehicle, nine said "yes" and four said "no." As for which component should have the highest fire resistance: five commenters stated the seat; one said the seat and flooring materials; one said the seat, flooring, and sidewalls; and another said the seats and areas which contain materials producing toxic fumes.

Cost Concerns

The ANPRM asked several questions about the estimated costs of increasing fire resistance requirements. Six commenters responded to the question about the costs of flame resistant materials. One stated that fire-retardant and fire-blocking materials are "very expensive." Another stated that fire-blocking covers are three times more expensive than standard vinyl. A third commenter stated that fire-blocking materials "have been produced at a wholesale cost of $5.00 per square meter, but have substantial markups." The fourth commenter stated that the additional cost per seat cushion and back is approximately $35 for buses transporting students with disabilities. The fifth commenter estimated that the additional cost for fire-resistant materials for 22 sets of seats would be $484. The sixth commenter stated that the additional cost of a fire-retardant foam in a 22-seat bus, i.e., a 66-passenger bus, would be $200, although this estimate does not appear to include a fire-resistant cover for the seat.

In response to a question about how the increased cost would affect the purchasing on new buses, seven commenters stated that the rulemaking would have no effect on school bus purchasing. Several commenters explained that their jurisdictions have predetermined school bus replacement cycles. Two commenters stated that the increased costs would affect the number of buses purchased.

Three commenters responded to a question about what cost increase would be significant enough to cause old school buses to be retained. One commenter estimated it as $16.75 per seat, another specified between $15 to $16 per seat, and a third commenter said it would cost $35 per seat for buses carrying disabled students. This translates into $330 to $770 for large school buses (average of 22 seats) and $120 to $280 for small school buses (average of 8 seats).

Developments Since the ANPRM

NIST Study

In January 1989, the agency commissioned the Center for Fire Research of the National Institute of Standards and Technology (NIST) to investigate the state-of-the-art in seating materials that could be used in school bus seats and to develop the data necessary for the agency's use in possible rulemaking actions to upgrade FMVSS No. 302. It was anticipated that the results would provide the agency with the data necessary to propose upgrades to the existing FMVSS No. 302 requirements or to propose new test procedures and test criteria.

The NIST research program was designed to provide data on the fire performance characteristics of seat assemblies in school buses, because seat assemblies represent the single largest source of combustible fuel in school buses. NIST evaluated the fire performance characteristics of seat assemblies in small-scale tests in which samples of materials were burned, large-scale tests in which complete seat assemblies were burned, and full-scale tests in which several complete seat assemblies were placed in simulated bus enclosures. The small-scale tests were used to evaluate six different seat assemblies for ignitability, flame spread, rate of heat release, yields and toxicity of certain gaseous products, and smoke generation. The large-scale tests were used to evaluate the rate of heat release, mass loss rate, and yields of certain gaseous products. The full-scale tests were used to evaluate the rate of heat release, mass loss rate, concentrations and yields of certain gases, and temperatures in the upper and lower layers of the simulated school bus compartment.

In July 1990, NIST published its findings in their final report, "Assessment of the Fire Performance of School Bus Interior Components". A copy of this report appears as item 003 in Docket number 88–22–GR. In their report, NIST noted that, "Seat

assemblies used in school buses represent complex structures that are composed of multiple materials in varying orientations. This complexity is a result of the need to meet comfort, flammability, and impact protection requirements. This complexity, however, also increases the difficulty in assessing the impact of changes in seating design on fire safety."

The major conclusions of the NIST report are as follows:

1. "No one simple small-scale test should be used to measure fire performance of a material."

2. A material's fire performance incudes the examination of a combination of factors, such as "ease of ignition, flame spread, rate of heat release, generation of gaseous species, smoke development, and toxicity of the combusion products." Additionally, the heat exposure conditions and geometry of the school bus play a critical role.

3. A full-scale test procedure (testing a complete seat assembly) will provide the best basis for testing school bus seats.

4. While toxicity is a concern, it appears that heat and/or smoke generated by all likely school bus seating materials would cause incapacitation before toxicity became an issue.

Two approaches for assessing fire resistance were considered by NIST. The first was a full-scale test of complete seat assemblies in a burn room designed to measure weight loss of the seats, temperatures at various positions in the room, and gaseous products of combustion. These results would be used to establish test criteria based on tenability (survivability) conditions. It was noted that several standards have either been established or proposed using burn rooms and have gained acceptance by the fire assessment community, most notably the California 133 test for qualifying upholstered furniture for buildings with high risks, e.g., hotels and office buildings. Because the size and ventilation characteristics of the burn room have a critical impact on the test measurements, it is important that these parameters be appropriately defined. NIST suggested that the results from a standard burn room could be extrapolated to various compartment sizes, since school buses are produced in various sizes. However, this may not be a critical issue, since there are a variety of other factors which could offset the compartment size variation in real-world fire situations, e.g., location and intensity of the fire source, ventilation and wind conditions, and the flammability characteristics of other personal items on the school bus.

The NIST report suggested that the tenability criteria for a full-scale test in a burn room could include only the temperature as measured at the height approximately 40 inches (1 meter) above the floor, which is typically just above the back seat. NIST suggested that a test criteria that included keeping the temperature, as measured just above the seat back, below 149 degrees F (65 degrees C) would ensure that untenable conbitions would not develop. Additionally, NIST believed that toxicity, and other factors such as smoke, would not become a factor of concern at or below that temperature.

The second approach discussed by NIST was the concept of using samples of the materials in small-scale tests to assess flammability. They concluded that while individual small-scale tests could provide valuable information on specific aspects of fire performance, e.g., rate of heat release, no single small-scale test appeared to assess the seat assemblies adequately with respect to their ultimate ability to avoid untenable conditions. While NIST did not rule out the possibility that a combination of small-scale tests could provide a suitable means of testing the fire restistance of school bus seats, they did conclude that, "(I)t appears that full-scale testing of multiple seat assemblies may provide the only means for accurately assessing the fire performance of a seat assembly design."

Agency Decision

Most commenters believed that fire resistance requirements should be the same for both school and non-school buses. However, the agency has tentatively concluded that upgrading FMVSS No. 302 for buses, other than school buses, is not justified from a regulatory perspective. The basis for that decision is the limited potential effectiveness for reducing or eliminating casualties in non-school buses as a result of changes to FMVSS No. 302, coupled with potentially substantial cost increases associated with changes to the standard. The agency does not believe it is appropriate to place regulatory burdens on vehicle manufacturers absent substantive data to accurately quantify potential safety benefits. This same rationale was used by the agency to deny a recent petition to upgrade FMVSS No. 302 for all motor vehicles. Additionally, since seats in non-school buses do not have to meet the energy absorption requirements of FMVSS No. 222 that are designed to provide occupant crash protection in school buses, significantly different materials are often used in non-school bus interiors, e.g., plastic seats and seat backs. The kinds of flammability tests that could be applied to school bus interiors may not be appropriate for assessing the fire resistance of the interiors of non-school buses. And, the different types of emergency exits found on non-school buses and their generally more adult ridership obviates the need for changes in interior material flammability.

The outstanding safety performance of school buses means that there are limited potential benefits to upgrading FMVSS No. 302 for these vehicles. However, the agency believes that the safety of the Nation's school children requires careful scrutiny of the potential benefits of possible safety improvements—more than is usually done in traditional safety benefit versus regulatory burden assessments. Support for this belief is derived from the Congressional interest in school bus safety which has been demonstrated over the years through various legislative actions, e.g., the School Bus Safety Amendments of 1974 and the madate for the National Academy of Sciences (NAS) to study means of improving school bus safety. The NAS study specifically mentioned that the agency should consider upgrading the requirements of FMVS No. 302 for school buses.

In the legislative history of the 1974 School Bus Safety Amendments, the intent of Congress to treat school bus safety with higher levels of importance is noteworthy. In his support of the mandate that NHTSA establish unique safety standards for school buses, Senator Hartke noted that:

> The Department of Transportation has had authority since 1966 to set these standards. However, based on the argument that school bus travel achieves one of the lowest fatality and injury rates per mile of any mode of transportation, the Department has given it low priority. This legislation sets those priorities straight. School buses carry very special cargo—our children. Through this legislation, Congress has stated that their lives and their futures can not be and should not be determined solely on a statistical ranking based on level of highway carnage.

In his support of the 1974 amendments, Senator Magnuson stated that:

> It is high time that we made those big yellow boxes which transport 20 million of our children each day as safe as we possibly can.

From these comments, it appears that Congress believes school buses should always be held to a higher level of safety, not just with respect to the 1974 amendments.

Congress has also held hearings on school bus safety issues as the result of major crashes, e.g., the August 1988 hearings on flamability following the Carrollton, Kentucky crash and the November 1989 hearings on school bus mirrors. Additionally, there is a broad range of support for school bus safety standards among the public and various safety-oriented organizations, e.g., the National Transportation Safety Board. This is not to say that every conceivable safety improvement for school buses should be mandated. The agency's position is that because school bus safety demands close attention, the traditional weighing of regulatory costs and benefits should not be the only basis for a decision.

Agency Position on School Bus Occupant Crash Protection

The highly-padded, strong, well-anchored, evenly-spaced seats required by FMVSS No. 222 since April 1, 1977 have provided exceptional levels of occupant protection to passengers of school buses in low-speed and high-speed crashes, as well as in sudden driving maneuvers. The benefits of FMVSS No. 222 have been recognized and documented in studies by independent organizations such as the National Academy of Sciences and the National Transportation Safety Board. The agency is committed to maintaining the occupant crash protection capabilities of school bus interiors and, given the much higher frequency of these events compared to fires, will not compromise those capabilities in the interest of improvements in fire resistance. If new school bus fire resistance requirements are proposed, any materials used in the seats will have to continue to meet the requirements of FMVSS No. 222.

Issues and Questions

At this stage in the regulatory process, the agency needs more information to decide whether to proceed further. Public comment on the NIST report would be very beneficial to the agency in deciding if sound regulatory proposals for improving the fire resistance of school bus interiors can be developed. Accordingly, the agency requests comments on the entire NIST report and conclusions as well as the following issues and questions.

As more information becomes available, the agency will be able to determine what appropriate measures, if any, are needed to address fire resistance of school bus interiors. NHTSA emphasizes that the issuance of this request for comments does not necessarily mean that a notice of proposed rulemaking (NPRM) will follow. In accordance with statutory criteria, NHTSA will determine whether to issue an NPRM after it evaluates the comments it receives.

It is requested that commenters refer to the following issue/question numbers in their comments.

1. Are the data and conclusions presented in the NIST report reasonable? Specifically, are the conclusions with respect to the need to conduct full-scale tests correct? Can fire resistance be adequately measured and improved by only controlling the allowable temperature above the seat back in a full-scale test in a burn room?

2. Can the agency develop test protocol(s) for improving the fire resistance of school bus interiors based on those data and conclusions? What protocol(s) and test criteria should be adopted? What would be the initial costs for constructing and equipping a test facility? What would be the costs of conducting the test protocol(s)?

3. How can the agency best define objective measures of tenability, e.g., exposure to temperature, material ignitability, flame spread, rate of heat release, smoke generation, toxicity, etc.?

4. Does a small-scale (samples of seating materials) test(s) exist which would result in the use of seating materials that improve the fire resistance of school bus interiors? Which small-scale tests are recommended? Are these tests accepted by a wide variety of organizations? What data exist to indicate that small-scale tests adequately test critical aspects of flammability in real-world fires?

5. Does a full-scale (complete seat assemblies) test exist which would result in the use of seating materials that improved the fire resistance of school bus interiors? Which full-scale tests are recommended? How much experience have organizations had with full-scale tests such as the California Technical Bulletin 133 test and the Boston Bag test? Would it be necessary to use more than one complete seat assembly in a full-scale test?

6. The UMTA Recommended Fire Safety Practices for Transit Material Selection incorporate a number of small-scale tests for flame spread and smoke emission. UMTA believes that subjecting individual material components to various tests is less complex and less costly than full-scale (complete buses) tests, even though full-scale tests may be ultimately desirable. Further, UMTA believes that this approach allows component suppliers to verify the adequacy of their own products without having to be concerned or involved with other products or suppliers of vehicle components. While this approach may be reasonable for initial screening of all the combustible materials used in the interior of a vehicle, NHTSA is concerned that such tests may not be sufficient to test the complex materials used in school bus seats. For example, it appears that there could be a potential interaction in the fire performance of seat cushion materials, seat cover materials, and seat frame materials that would only become evident in a large-scale (full seat) test. What data (correlations) exist to indicate that small-scale tests can be used to successfully predict the outcome of a large-scale test or the performance of complex seats or vehicles in real-world situations?

7. Would there be differences in the performance and costs of materials (cushions and covers) used to meet the criteria of different test protocols? For example, would the costs of materials needed to meet the performance criteria of a small-scale test be different from the costs of materials needed to meet the performance criteria of a full-scale test?

Note: Costs should be discussed in terms of a complete seat assembly, and should be identified as retail or wholesale.

8. Vandalism to school bus seats was described by some commenters to the November 1988 ANPRM as widespread and frequent. What kinds of vandalism are committed on school bus seats? Are the seat covers cut? What is the size of the typical seat cut? What part(s) of the seat are most frequently vandalized? What is the frequency of vandalism? Would the types of vandalism significantly affect flammability? How quickly are vandalized seats repaired or replaced? Are the materials used to repair or replace seat cushions and/or seat covers certified to FMVSS No. 302 requirements?

9. Are there new technologies available, such as monolithic seats with integrated padding, which would reduce the potential for vandalism, while retaining energy absorption and fire resistance capabilities? What are the advantages, disadvantages, and costs of such seating systems?

10. Responses to the November 1988 ANPRM indicate that there is no consensus within the scientific community on toxicity guidelines, including the current study on toxicity by the National Academy of Sciences. Accordingly, is it necessary to include toxicity in any test protocols designed to

improve the fire resistance of school bus interiors? Is it reasonable and practicable to establish toxicity test requirements? Are there alternative technical requirements that could be established that would result in negligible toxicity risks, such as establishing a temperature limit as suggested in the NIST report? Should improvements in fire resistance await a determination of toxicity?

11. Are there any guidelines that could be adopted that would ensure that potentially carcinogenic materials are not utilized in the manufacture of fire retardant or fire resistant materials?

12. Are there other changes or modifications that could be made to school buses, such as changes in the number, location, and size of emergency exits, that would affect the fire resistance requirements of school buses? Should there be a correlation between the fire resistance of materials and the amount of available emergency egress area?

13. The agency is concerned that the cost of upgrading the fire resistance of school bus interiors may be of a magnitude that could affect the ability of school districts to replace older, less safe school buses or to order school buses with other safety features which could have potentially higher benefits. The agency is interested to hear opinions on this topic, especially from state and local school districts.

14. The agency has tentatively concluded that upgrading FMVSS No. 302 for non-school buses is not justified from a regulatory perspective. What data is available that would help support or refute that conclusion?

15. The agency has tentatively concluded that the current flammability characteristics of school bus seats are the most significant source of potential fire danger. Accordingly, the agency has tentatively determined that it will only propose upgrading the fire resistance of seats and cushioning materials in school buses, while maintaining the existing FMVSS No. 302 performance requirements for all other materials in the interiors of school buses.

Comments

NHTSA solicits public comments on this notice. It is requested, but not required, that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

(15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50)

Issued: February 20, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-4444 Filed 2-25-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review and Committee on Adjudication; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Judicial Review and the Committee on Adjudication of the Administrative Conference of the United States.

Committee on Judicial Review

Date: Friday, March 8, 1991.
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The committee will meet to discuss draft reports on specialized courts and coordination of judicial review in administrative law prepared by Professor Harold Bruff, University of Texas School of Law.
Contact: Mary Candace Fowler, 202-254-7020.

Committee on Adjudication

Date: Thursday, March 21, 1991.
Time: 2:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The committee will meet to discuss a study of the Social Security Administration's representative payee program, prepared by Professor Margaret Farrell, Cardozo School of Law, Yeshiva University.
Contact: Nancy G. Miller, 202-254-7020.

Date: Thursday, April 18, 1991.
Time: 2:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The committee will meet to continue discussion of the project described above.
Contact: Nancy G. Miller, 202-254-7020.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Dated: Feburary 22, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-4589 Filed 2-25-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Anderson-Three Mile Timber Sale, Salmon National Forest, Lemhi County, ID; Cancellation of Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service, USDA, has withdrawn its intent to prepare an environmental impact Statement (EIS) for the Anderson-Three Mile Timber Sale on the North Fork Ranger District of the Salmon National Forest. The Salmon National Forest has removed the Anderson-Three Mile Timber Sale from its 5 Year Timber Sale Action Plan. This sale may be added to the 5 Year Timber Sale Action Plan again at some future time. If that occurs a new Notice of Intent to Prepare an Environmental Impact Statement will be issued.

The Notice of Intent, published in the Federal Register of April 5, 1989 (54 FR 13712), is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Gene Jensen, Environmental Coordinator, Salmon National Forest, P.O. Box 729, Salmon, ID 83467; telephone 208-756-2215.

Dated: February 14, 1991.

John E. Burns,

Forest Supervisor.

[FR Doc. 91-4419 Filed 2-25-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Hudson River Watershed, GA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hudson River Watershed, Banks, Madison, and Franklin Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Hershel R. Read, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404-546-2271.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Hershel R. Read, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are reduced soil productivity and offsite erosion sediment damage from 40 acres of severely eroded land. The planned improvements include cost sharing and technical assistance in the application of land treatment measures such as grassed waterways, sediment control basins and land shaping and contouring.

A rural water supply reservoir with some 550 acre-feet of water will provide an adequate source of dependable,

clean water to farmers and rural inhabitants in the northern section of Banks County. This action will dramatically reduce pressures on the overtaxed and limited ground water in the area.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

Dated: February 14, 1991.

Hershel R. Read,

State Conservationist.

[FR Doc. 91–4418 Filed 2–25–91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Review; Certain Stainless Steel Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments on Certain Type 430 Stainless Steel Wire Rod.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 3,300 metric tons of certain Type 430 stainless steel wire rod for March-December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

SHORT-SUPPLY REVIEW NUMBER: 42

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.–104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR .357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain Type 430 stainless steel rod. On February 19, 1991, the Secretary received an adequate petition from the American Wire Producers Association (AWPA), on behalf of five domestic wire redrawers, for 3,300 metric tons of this product for March-December 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA is requesting short supply because there are no reliable domestic suppliers of this product and because of quota limitations for stainless wire rod by potential foreign suppliers. The requested material meets the specifications for Type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (mm)	Quantity (metric tons)
5.5 (including 6.0)	3,050
7.0	90
9.5	80
20.0	80

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals of exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary granted short-supply allowances for this product during each of the two immediately preceding years. Therfore, in accordance with Section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than March 6, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than March 5, 1991, to the Secretary of Commerce, Attention: Inport Administration, Room 7866, U.S. Department of Commerece, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless discloure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Richard O. Weible, Office of Agreements Compliance, Import Administration. U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0408 or (202) 377–0159.

Dated: February 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–4619 Filed 2–25–91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Improving Acceptance of U.S. Products in International Markets; Opportunity for Interested Parties To Attend and Observe

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of workshop.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) is cosponsoring an Electromagnetic Compatibility Workshop with the American Council of Independent Laboratories and the American Electronics Association. This is the second in a series of workshops designed to gather information, insights, and comments to determine conformity assessment related activities (testing, certification, accreditation, quality assessment, etc.) in which the U.S. Government can assist U.S. industry in gaining product acceptance within other markets such as the European Community (EC). Suggestions for future workshops are invited.

DATES: The workshop will be held at 9:30 a.m. on Thursday, April 4, 1991. The request to attend should be received by March 22, 1991.

ADDRESSES: The workshop will be held in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Bert G. Simson, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A–603, Gaithersburg, MD 20899; (301–975–4006).

SUPPLEMENTARY INFORMATION: Consistent with the growing importance of international standardization to the United States, NIST is cosponsoring an Electromagnetic Compatibility Workshop with the American Council of Independent Laboratories and the American Electronics Association to solicit views and recommendations on how the U.S. Government can assist this sector of U.S. industry in gaining product acceptance within international markets such as the EC.

Tentative topics for discussion at the workshop are listed below. Sponsors of individual workshops may identify specific issues focused on their sectors.

1. Which EC requirements for conformity assessment are applicable to your sector?

2. Do the European regional standards (CEN/CENELEC/ETSI) or international standards (ISO, IEC, CCITT) that apply to your sector differ from U.S. standards?

3. To what extent do you feel that U.S. conformity assessment systems relating to your sector are adequate for acceptance of test data or other attestations of conformity by the EC member states?

4. Would your sector benefit from developing mutual recognition agreements between U.S. laboratories or product certifiers and their EC counterparts?

5. How can the U.S. Government better utilize private sector input when developing official positions with regard to possible negotiations with the EC for your sector for regulated products?

6. Should "CE" marks of conformity be made acceptable in the U.S. marketplace? What are the liability implications of such acceptance?

7. Does your sector need a recognizable mark of conformity? Is a U.S. mark needed?

The workshop will be held at 9:30 a.m. on April 4, 1991, in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. To guarantee space, persons who wish to attend and observe the workshop should submit a notice in writing to Mr. Bert G. Simson, Office of Standard Services, National Institute of Standards and Technology, Administration Building, room A–603, Gaithersburg, MD 20899. Requests should contain the person's name, address, telephone and facsimile numbers, and affiliations. Requests should be received by March 22, 1991.

Dated: February 19, 1991.

John W. Lyons,

Director.

[FR Doc. 91–4402 Filed 2–25–91; 8:45 am]

BILLING CODE 3510-13-M

Visiting Committee on Advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will met on Tuesday, March 12, 1991, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 3:40 p.m. and ending at 5 p.m. will be closed.

DATES: The meeting will convene March 12, 1991, at 8:30 a.m. and will adjourn at 5 p.m., on March 12, 1991.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 24, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: February 19, 1991.

John W. Lyons,

Director.

[FR Doc. 91–4403 Filed 2–25–91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for public display permit, Chicago Zoological Society—Brookfield Zoo (P111C)

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain Atlantic bottlenose dolphins from captive populations as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

BEST COPY AVAILABLE

1. *Applicant:* Chicago Zoological Society (CZS), Chicago Zoological Park (Brookfield Zoo), 3300 Golf Rd, Brookfield, IL 60513, (708) 485–0263.

2. *Type of Permit:* Public Display.

3. *Name and Number of Animals:* Twenty two (22) Atlantic bottlenose dolphins (*Tursiops Truncatus*).

Type of Take: The applicant requests authorization to obtain Atlantic bottlenose dolphins, from captive populations, for public display purposes including captive breeding.

Location and Duration of Activity: Until otherwise authorized the animals are to be maintained at the Hawk's Cay Resort in Marathon, Florida, with the applicant having full responsibility for the care and maintenance of the animals.

Three (3) adult male Atlantic bottlenose dolphins, one (1) subadult male (National Aquarium in Baltimore), and seven (7) females, three (3) of which are juveniles ranging in age from 6 months to 3½ years, are currently being held at Hawk's Cay facility. CZS would like to add two (2) males and four (4) females within a year. The remainder of the 22 animals requested by CZS would be filled from potential breeding of animals currently at the Hawk's Cay facility or from other animals from existing captive stock at other facilities.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930.

Dated: February 19, 1991.

Richard Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–4420 Filed 2–25–91; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Advisory Panel (AP) and its Scientific and Statistical Committee (SSC) each will hold public meetings on February 25–26, 1991, at the Dole Cannery, 735 Iwilei Road, Honolulu, HI. The AP meeting will begin at 7 p.m., on February 25 and at 9 a.m., on February 26. The SSC meeting will begin at 9 a.m., on February 25 and 26.

The AP will make its recommendations to the Council on the following agenda items:

Pelagics: (1) Northwestern Hawaiian Islands (NWHI) longline/monk seal interactions, including recommendations by an interagency task force for a possible emergency closure to longlining of certain areas around the NWHI; (2) a three-year moratorium amendment regarding new entry into the Hawaii longline fishery; and (3) gear conflict and allocation issues, including recommendations by a task force for a possible emergency closure to longlining of certain areas around the NWHI.

Bottomfish: (1) alternative measures for Main Hawaiian Islands bottomfish; and (2) transferability of permits and increase in the number of Ho'omalu Zone permits.

Crustaceans: limiting entry and reducing effort for the NWHI lobster fishery.

At its 49th meeting, the SSC will make recommendations to the Council on the following agenda items:

Crustaceans: (1) Plan Team and industry recommendations for limiting entry into and reducing effort for the NWHI lobster fishery; and (2) transferability of permits.

Bottomfish: (1) Regulatory schemes for Main Hawaiian Islands bottomfish (such as minimum size for sale, season closures based upon spawning seasons, area closures and bag limits); and (2) transferability of permits and increase in the number of Ho'omalu Zone permits.

Precious Corals: Black coral management in Hawaii.

Pelagics: (1) Amendment #3 establishing a three-year moratorium on new entry into the longline fishery; (2) task force recommendations on gear conflict and allocation issues, including a possible emergency closure to longlining of certain areas around the Hawaiian Islands; and (3) task force recommendations on longline/monk seal interactions, including a possible emergency closure to longlining of certain areas around the NWHI.

Long-range planning: Five-year program elements and budgets for the penagica fisheries of the Central and Western Pacific. Other business also will be discussed. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 21, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–4492 Filed 2–25–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

February 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota reopenings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 645/646 is being increased for swing, reducing the limits for Categories 445/446 and 604–A to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25860, published on June 25, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

February 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of June 19, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on February 27, 1991, you are directed to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjusted 12-month limit [1]
445/446	39,413 dozen.
604–A [2]	313,473 kilograms.
645/646	501,166 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.

[2] Category 604–A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–4464 Filed 2–25–91; 8:45 am]

BILLING CODE 3510–DR–M

Amendment to a Previous Directive, Establishment of an Import Limit and Amendment to Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

February 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a previous directive, establishing a limit and amending visa requirements.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Pakistan agreed to convert Category 634 to a specific limit, establish a level for newly merged Categories 334/634 in Group I and amend the visa requirements, accordingly.

In addition, the notice published in the **Federal Register** on December 28, 1990 (55 FR 53322) should be corrected to indicate that Category 369–S is in Group I.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 48 FR 25257, published on June 6, 1983; 52 FR 21611, published on June 8, 1987; and 55 FR 53322, published on December 28, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

February 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 24, 1990 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on February 27, 1991, you are directed to merge Categories 334 and 634 to become Categories 334/634 at a new level of 103,804 dozen [1] in Group I. Charges already made to Categories 334 and 634 shall be retained.

Also, you are directed to correct the directive dated December 24, 1990 to move Category 369–S [2] from Group II to Group I. Category 369–S shall no longer be subject to a group limit. Charges already made to Category 369–S shall be retained.

For visa purposes, effective on February 27, 1991, you are directed to amend further the directive of May 27, 1983, as amended, to permit entry of textile products, produced or manufactured in Pakistan which are visaed as merged Categories 334/634 and exported from Pakistan on and after January 1, 1991. Merchandise in merged Categories 334/634 may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (i.e., either 334/634 or 334 or 634).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–4465 Filed 2–25–91; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 13–14 March 1991.

Time: 0600–1630.

Place: Pentagon, Wash., DC.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a two-day meeting. The meetings will include technical/programmatic briefings in the area of modeling and simulation. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB

[1] The limit has not been adjusted to account for any imports exported after December 31, 1990.

[2] Category 369–S: only HTS number 6307.10.2005.

Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4501 Filed 2–25–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 20–21 March 1991.

Time: 0800–1530 both days.

Place: 20 March: U.S. Army Strategic Defense Command, Huntsville, AL. 21 March: U.S. Army Missile Command, Huntsville, AL.

Agenda: The Army Science Board Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with the Directors of the RD&E Centers and Staff members to discuss their efforts to capture indicators of quality of R&D work and personnel. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4502 Filed 2–25–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates/time of meeting: 26–28 March 1991.

Time: 0800–1800 Hours.

Place: HQ LABCOM and Harry Diamond Lab Adelphi, Maryland.

Agenda: The Army Science Board 1991 Summer Study on the Soldier as a System will attend the U.S. Army Materiel Command sponsored Technology Area Assessment (TAA) for the Soldier on 26–27 March 1991, and on 28 March 1991 conduct meetings/discussions about the technologies presented during the TAA, vis a vis the requirements presented to the Board by the user community at Fort Benning. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4503 Filed 2–25–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 9–10 April 1991.

Time: 0800–1700 Hours.

Place: Pentagon, Washington, DC.

Agenda: Members of the C3I Issue Group of the Army Science Board will meet at the Pentagon to continue work on the Follow-On Radio to SINCGARS. These meetings will include discussions on the classified operational characteristics of the SINCGARS Radio. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4504 Filed 2–25–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/time of meeting: 1–2 May 1991.

Time: 0800–1700 Hours.

Place: Natick Research Development and Engineering Center, Natick, MA.

Agenda: The Army Science Board 1991 Summer Study on the Soldier as a System will conduct in-depth meetings and discussions with representatives from the Army materiel development community on technology solutions for future soldier equipment juxtaposed with user requirements. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4505 Filed 2–25–91; 8:45am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/time of meeting: 12–13 June 1991.

Time: 0800–1700 Hours.

Place: Communications-Electronics Command, Fort Monmouth, New Jersey.

Agenda: The Army Science Board 1991 Summer Study on the Soldier as a System will conduct in-depth meetings and discussions with representatives from the Army materiel development community on technology solutions for future soldier equipment juxtaposed with user requirements. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–4506 Filed 2–25–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 28, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: February 20, 1991.

Mary P. Liggett,

Acting Director for Office of Information Resources Management.

Office of Planning, Budget, and Evaluation

Type of Review: New.
Title: Evaluation of Mentoring and Tutoring Projects funded under the Secondary School Basic Skill Demonstration Program.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 31.
Burden Hours: 62.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to provide data on peer tutoring services in secondary schools. The Department will use this information to identify effective strategies and for program management.

Type of Review: New.
Title: Study of special strategies for educating Disadvantaged Children.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 565.
Burden Hours: 397.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to provide the Department with a longitudinal assessment of special strategies for educating disadvantaged children. The Department will use this information to establish policy and for program management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Drug-Free Schools and Communities Counselor Training Grants Program.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions.
Reporting Burden:
Responses: 400.
Burden Hours: 23000.
Recordkeeping Burden:
Recordkeepers: 45.
Burden Hours: 450.
Abstract: This application will be used by State and local educational agencies to apply for funding under the Drug-Free Schools and Communities Counselor Training Grants Program. The Department uses the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Institutional Payment Summary (IPS) and Pre-Award IPS.
Frequency: Quarterly.
Affected Public: Businesses or other for-profits, non-profit institutions, small businesses or organizations.
Reporting Burden:
Responses: 70000.
Burden Hours: 70000.
Recordkeeping Burden:
Recordkeepers: 7000.
Burden Hours: 3500.
Abstract: The Higher Education community uses this form to report cumulative payment data for students eligible to receive a Pell Grant. The Department uses this information to determine adjustments to an institution's Pell Grant funding level and to monitor the disbursement of Federal dollars to eligible student applicants.

[FR Doc. 91–4473 Filed 2–25–91; 8:45 am]

BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

Public Notice of Intent to Award a Grant to the Underground Injection Practices Council

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Acceptance of an Application for a Grant Award.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to award a Grant based on an application submitted by the Underground Injection Practices Council for "Assistance to the States with Risk-Based Data Management."

SCOPE: The objectives of this grant are to: (1) Conduct investigations and apply the risk based model developed to assess risk of injection water contaminating underground sources of drinking water to the data base systems of ten states, (2) conduct an inventory and needs assessment of data base management systems of oil and gas producing states to assess the potential for application of the model, and (3) conduct related technology transfer activities to the states and the oil and gas industry.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), Underground Injection Practices Council has been selected as the grant recipient. DOE support of the activity would enhance the public benefits to be derived by providing a basis for more informed decisions concerning environmental regulation formulation of oil and gas injection practices. This activity is an extension of previous grants funded by the Department of Energy. The Department of Energy has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a twelve (12) month period, with an estimated value to DOE of $499,000. For further information contact:

U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940, Attn: Larry D. Gillham, Telephone: AC (412) 892–5024.

Dated: January 30, 1991.

Carroll A. Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-4507 Filed 2-25-91; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, March 5, 1991, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 10 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which had been scheduled for February 21, 1991, and has been rescheduled for March 5, at the OECD offices. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the agenda
2. Summary Record of the 70th SEQ meeting on January 25, 1991
3. The current emergency response potential and operations of IEA Countries—
   - Follow-up to the decisions of the Governing Board meeting of 11th January including review of implementation of contributions to the Contingency Plan
   - Emergency response profiles and oil supply/demand/stock situation of IEA countries
   - Contribution of IEA Countries to clean-up of oil spills in the Gulf
   - Preparations for meeting of the Governing Board on Wednesday 6th March, 1991
4. Operation of the Emergency Data System
   (i) Base Period Final Consumption 4th Quarter 1989/3rd Quarter 1990
   (ii) Monthly Oil Statistics of IEA Countries to November 1990
   (iii) Monthly Oil Statistics of IEA Countries to December 1990
   (iv) Emergency Reserves of IEA Countries on 1st October 1990
5. Any other business
6. Date of the next meeting

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of members of the SEQ, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, February 20, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-4506 Filed 2-25-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 90-101-NG]

Canadian Hydrocarbons Marketing (U.S.) Inc.; Order Granting Blanket Authorization to Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canadian Hydrocarbons Marketing (U.S.) Inc. (Canadian Hydrocarbons) blanket authorization to import up to 72 Bcf of Canadian natural gas for a two year period, from April 1, 1991, through March 31, 1993.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4510 Filed 2-25-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-98-NG]

CanadianOxy Marketing Inc.; Order Granting Blanket Authorization to Import Canadian Natural Gas

AGENCY: Department of Energy; Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing CanadianOxy Marketing Inc. to import up to 100 Bcf of Canadian natural gas for a two-year term beginning on the date of first delivery after their existing import authority expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4509 Filed 2-25-91; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 91-08; Certification Notice—76]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternative fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
Seneca Power Partners, L.P., Batavia, NY	02-04-91	Combine Cycle.	54	Batavia, NY.

Amendments to the FUA on May 21, 1987 (Pub. L. 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on February 20, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-4511 Filed 2-25-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-252-000, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 14, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER91-252-000]

Take notice that on February 4, 1991, Florida Power Corporation tendered for filing new All Requirements Electric Service Agreements between Florida Power and the City of Williston, the City of Alachua, the City of Chattahoochee and the City of Mount Dora, all located in Florida. The filing converts the four customers from a full requirements tariff to individual service agreements but does not change the rates the customers have been charged in any way.

Florida Power has requested waiver of notice and an effective date of January 1, 1989 for its agreement with the City of Williston, the City of Alachua and the City of Chattahoochee. Waiver of notice and an effective date of April 1, 1991 is requested for the agreement with the City of Mount Dora.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER91-251-000]

Take notice that Duke Power Company (Duke Power) tendered for filing on February 1, 1991, a supplement to the Company's Electric Power Contract with the City of Concord, North Carolina. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from customer, provides for the following additional delivery: Delivery Point No. 1 with a contracted demand of 58,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 24, 1990.

According to Duke Power, copies of this filing were mailed to the North Carolina Utilities Commission.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER90-247-002]

Take notice that on January 31, 1991, Montaup Electric Company filed in compliance with Article 3.3 of the Settlement Agreement approved on January 23, 1991 a revised sheet of the formula rate providing for a 12% return on equity, to be effective from January 23, 1991.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. John A. Urquhart

[Docket No. ID-2522-000]

Take notice that on February 11, 1991 John A. Urquhart (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Hubbell Incorporated
Director, Tampa Electric Company

Comment date: March 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER91-249-000]

Take notice Duke Power Company (Duke Power) tendered for filing on February 1, 1991 a supplement to the Company's Electric Power Contract with the Commissioners of Public Works of the city of Greenwood. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 1 with a contracted demand of 18,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 24, 1990.

According to Duke Power copies of this filing were mailed to Public Works of the City of Greenwood, South Carolina and South Carolina Public Service Commission.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company

[Docket No. ER90-527-003]

Take notice that on February 8, 1991, Northern States Power Company tendered for filing its refund compliance report pursuant to the Commission's letter order dated January 16, 1991.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER91-247-000]

Take notice that Duke Power Company (Duke Power) tendered for filing on February 1, 1991 a supplement to the Company's Electric Power Contract with the Lockhart Power Company of Union, South Carolina. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 1 with a contract demand of 14,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of March 23, 1990.

According to Duke Power, copies of this filing were mailed to Lockhart Power Company and the South Carolina Public Service Commission.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER91-248-000]

Take notice Duke Power Company (Duke Power) tendered for filing on February 1, 1991 a supplement to the Company's Electric Power Contract with the Commissioners of Public Works of the City of Greenwood. Duke Power states that this contract is on file with the Commission and has been designated Duke Power Company Rate Schedule FERC No. 10.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following additional delivery: Delivery Point No. 5 with a contracted demand of 58,000 Kw.

Duke Power indicates that this supplement also includes an estimate of sales and revenue for twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 24, 1990.

According to Duke Power, copies of this filing were mailed to the Commissioners of Public Works of the City of Greenwood and the South Carolina Public Service Commission.

Comment date: February 27, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4440 Filed 2-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1206-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP91-1206-000]

February 14, 1991.

Take notice that on February 11, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1206-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization add a delivery point for service to Peoples Gas System, Inc. (Peoples), a local distribution company, and to upgrade the existing facilities at the delivery point, under FGT's blanket certificate issued in Docket No. CP82-553-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

FGT states that Peoples is an existing customer, purchasing natural gas from FGT for resale to consumers in Peoples' service area in Florida. It is explained that the instant request includes the addition of a delivery point, the Bartow Meter Station (Bartow), where FGT makes sales for resale to Peoples for use by Florida Power Corp. (FPC), and the upgrading of Bartow to increase the range of flow to permit more accurate measurement of natural gas. It is stated that the deliveries would be within Peoples' existing entitlements from FGT and would have no impact on FGT's peak day and annual deliveries. It is further stated that the gas would be used by FPC as boiler fuel. It is indicated that no additional facilities would be required to effect the changes requested.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gulf Transmission Company, ANR Pipeline Company

[Docket Nos. CP91-1202-000, CP91-1203-000]

February 14, 1991.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-239-000 and Docket No. CP88-532-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice request are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-1202-000 (2-8-91)	Exxon Corporation (producer).	175,000 60,000 63,875,000	LA, OLA	LA	10-8-90, ITS-2, Interruptible.	ST91-6481-000, 1-15-91.
CP91-1203-000 (2-8-91)	Louis Dreyfus Energy Corp. (marketer).	100,000 Dth 100,000 Dth 36,500,000 Dth	LA, OK, KS, TX, MI, OTX, OLA.	MI	11-12-90, ITS, Interruptible.	ST91-5779-000, 11-20-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

3. ANR Pipeline Company and Williams Natural Gas Company

[Docket Nos. CP91-1239-000, CP91-1241-000, CP91-1242-000, CP91-1243-000, CP91-1240-000]

February 14, 1991.

Take notice that on February 12, 1991, ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, and Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of five shippers under the blanket certificates issued in Docket No. CP88-532-000 and Docket No. CP86-631-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of the notice.

[2] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1239-000 (2-12-91)	PSI Gas Marketing, Inc. (marketer).	100,000 100,000 36,500,000	OK, KS, TX	OK	12-13-90, ITS, Interruptible.	ST91-6426-000, 12-19-90.
CP91-1240-000 (2-12-91)	GasTrak Corporation (marketer).	1,000 1,000 365,000	CO, KS, MO, OK, TX, WY.	KS, MO	1-1-91, FTS-1&2, Firm.	ST91-6735-000, 1-1-91.
CP91-1241-000 (2-12-91)	U.S. Gas Marketing, Inc. (marketer).	5,000 5,000 1,825,000	OK, KS, TX, LA, OLA, OTX.	WI	10-17-90, ITS, Interruptible.	ST91-6424-000, 12-19-90.
CP91-1242-000 (2-12-91)	Direct Gas Supply Corporation (marketer).	x25,000 25,000 9,125,000	LA, OK, KS, TX, OTX, OLA.	IA	10-12-90, ITS, Interruptible.	ST91-6425-000, 12-18-90.
CP91-1243-000 (2-12-91)	Hadson Gas Systems, Inc. (marketer).	100,000 100,000 36,500,000	Various	IL	7-16-90, ITS, Interruptible.	ST91-6334-000, 12-15-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. OXY USA Inc and MidCon Marketing Corp.

[Docket Nos. CI87-223-005, CI87-307-005]

February 14, 1991.[3]

Take notice that on February 11, 1991, OXY USA Inc. of 110 West 7th Street, Tulsa, Oklahoma 74119 and MidCon Marketing Corp. of 701 E. 22nd Street, Lombard, Illinois 60148 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI87-223-004 and CI87-307-003 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket No. CI87-223-005 requests extension for an unlimited term, except for sales made to affiliated companies, for which it requests extension through March 31, 1993. Applicant in Docket No. CI87-307-005 requests extension for an unlimited term, and authorization to resell any gas it lawfully purchases, including gas from (a) Mexican sources, (b) imported LNG sources, or (c) "non-first-sellers," including intrastate pipelines and LDC's, as well as authorization to sell any ISS gas it purchases from its affiliated interstate pipeline at a profit.

Comment date: March 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

[3] This notice does not provide for consolidation for hearing of the several matters covered herein.

5. Ringwood Gas Marketing Company Equitable Resources Marketing Company and Western Gas Processors, Ltd.

[Docket Nos. CI88-328-003,[4] CI88-361-002, CI88-479-002]

February 14, 1991.

Take notice that on February 6, 1991, Ringwood Gas Marketing Company of 4828 Loop Central Drive, Suite 850, Houston, Texas 77081, Equitable Resources Marketing Company of 330 Grant Street, Suite 2900, Pittsburgh, Pennsylvania 15219, and Western Gas Processors, Ltd. of 12200 N. Pecos Street, Suite 230, Denver, Colorado 80234 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI88-328-002, CI88-361-001 and CI88-479-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicants in Docket Nos. CI88-328-003, CI88-361-002 and CI88-479-002 request extension for an unlimited term. Applicant in Docket No. CI88-361-002 also requests authorization to resell ISS gas without price restriction on resales of affiliated ISS gas.

Comment date: March 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

6. El Paso Natural Gas Company

[Docket No. CP91-1229-000]

February 14, 1991.

Take notice that on February 12, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-1229-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Amoco Energy Trading Corporation under the blanket certificate issued in Docket No. CP88-433-000, and authorization to continue to operate a meter station and appurtenances as a delivery point under § 157.212 of the Commission's Regulations pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that, pursuant to an agreement dated October 30, 1990, under its Rate Schedule T-1, it proposes to transport up to 10,300 MMBtu per day equivalent of natural gas. El Paso indicates that the gas would be transported from various receipt points and would be redelivered in Colorado. El Paso further indicates that it would transport 10,300 MMBtu on an average day and 3,759,500 MMBtu annually.

El Paso requests authorization to operate the existing nonjurisdictional Florida River Fuel Gas Delivery Meter Station as a delivery point. El Paso states that facility consists of a 4-inch orifice meter station and appurtenances and is located on the Colorado Dry Gas Gathering System in La Plata County, Colorado.

El Paso states that it would not commence transportation of natural gas until authority to operate the Florida River Meter station is obtained.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket Nos. CP91-1214-000, CP91-1215-000, CP91-1216-000, CP91-1217-000, CP91-1218-000, CP91-1219-000, CP91-1220-000]

February 14, 1991.

Take notice that on February 11, 1991, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of the notice.

[4] This notice does not provide for consolidation for hearing of the several matters covered herein.

[5] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak Day [1] average day annual	Receipt points [2]	Delivery points	Start up date rate schedule service type	Related [3] docket, contract date
CP91-1214-000 (2-11-91)	Essex Hydrocarbons	50,000 39,899 18,250,099	IL, LA, TN, TX, OLA, OTX.	LA	12-20-90, PT, Interruptible.	ST91-6524-000, 3-20-89.
CP91-1215-000 (2-11-91)	Amoco Production Company.	59,009 50,000 18,250,000	OLA, IL, LA, TN, TX, OTX.	TX	12-21-90, PT, Interruptible.	ST91-6525-000, 7-18-89.
CP91-1216-000 (2-11-91)	Catamount Natural Gas, Inc..	59,099 50,000 18,250,009	LA, IL, TN, TX, OLA, OTX.	MS	12-19-90, PT, Interruptible.	ST91-6526-000, 8-07-90.
CP91-1217-000 (2-11-91)	Panhandle Trading Company.	100,000 100,000 36,500,000	LA, IL, TN, TX, OLA, OTX.	TX	12-01-90, PT, Interruptible.	ST91-6752-000, 10-26-90.
CP91-1218-000 (2-11-91)	Enron Gas Marketing, Inc..	50,000 50,000	OLA, OTX	OTX	12-01-90, PT, Interruptible.	ST91-6777-000, 07-20-89.

Docket number (date filed)	Shipper name	Peak Day [1] average day annual	Receipt points [2]	Delivery points	Start up date rate schedule service type	Related [3] docket, contract date
CP91-1219-000 (2-11-91)	Panhandle Trading Company.	75,000 75,000 27,375,000	LA, IL, TN, TX, OLA, OTX.	MS	12-19-90, PT, Interruptible.	ST91-6482-000, 12-22-88.
CP91-1220-000 (2-11-91)	American Central Gas Marketing Company.	25,000 25,000 9,125,000	TX, OLA, LA, IL, TN, OTX.	LA	12-18-90, PT, Interruptible.	ST91-6483-000, 10-06-88.

[1] Quantities are shown in Mcf.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

8. Southern Natural Gas Company

[Docket Nos. CP91-1234-000,[6] CP91-1235-000, CP91-1236-000, CP91-1237-000]

February 14, 1991.

Take notice that on February 12, 1991, Southern Natural Gas Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day tranactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day [1] avg. annual [1]	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP91-1234-000 2-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Thomasville, GA.	1,508 1,508 550,420	LA, Off LA, TX, MS, AL, GA, Off TX.	AL	1-1-91, FT	CP88-316-000, join rules ST91-6364-000.
CP91-1235-000 2-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Wrens, GA.	676 676 246,740	LA, Off LA, TX, MS, AL, GA, Off TX.	GA	1-1-91, FT	CP88-316-000, ST91-6298-000.
CP91-1236-000 2-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Quitman, GA.	609 609 222,285	LA, Off LA, TX, MS, AL, GA, Off TX.	AL	1-1-91, FT	CP88-316-000, ST91-6350-000.
CP91-1237-000 2-12-91	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	City of Vienna, GA.	306 306 111,690	LA, Off LA, TX, MS, AL, GA, Off TX.	AL	1-1-91, FT	CP88-316-000, ST91-6368-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Meridian Oil Trading Inc. and CanStates Petroleum Marketing

[Docket Nos. CI87-883-004, CI91-15-001] [7]

February 15, 1991.

Take notice that on February 13, 1991, Meridian Oil Trading Inc., c/o Meridian Oil Inc., 2919 Allen Parkway, P.O. Box 4239, Houston, Texas 77210, and CanStates Petroleum Marketing of 1220 SunLife Plaza, 144 Fourth Avenue, SW., Calgary Alberta, Canada T2P 3N4 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI87-883-003 and CI91-15-000 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicants in Docket Nos. CI87-883-004 and CI91-15-001 request extension for an unlimited term. Applicant in Docket No. CI87-883-004 also requests that its blanket certificate be amended to include authorization to make sales for resale of imported natural gas and natural gas purchased under any existing or subsequently approved pipeline blanket certificates authorizing interruptible sales of surplus system supply gas.

[7] This notice does not provide for consolidation for hearing of the several matters covered herein.

Comment date: March 7, 1991, in accordance with Standard Paragraph J at the end of this notice.

10. Unocal Exploration Corporation (Successor-in-interest to Union Exploration Partners, Ltd.)

[Docket No. G-10537-000, *et al.*]

February 15, 1991.

Take notice that on September 21, 1990, Unocal Exploration Corporation (Unocal), c/o Union Oil Company of California, Unocal Center, Room 901, P.O. Box 7600, Los Angeles, California 90051, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder as successor-in-interest to Union Exploration Partners, Ltd. (UXP) for authorization to continue the service previously authorized by the Commission under the certificates listed in the Appendix and requesting that the related rate schedules listed in the Appendix be redesignated as those of Unocal, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Merger dated August 1, 1990, effective August 2, 1990, Union Exploration Partners, Ltd. merged into Union Exploration Partners (Delaware), Limited Partnership. By a second Certificate of Merger dated August 1, 1990, effective August 2, 1990, Union Exploration Partners (Delaware), Limited Partnership merged into Unocal Exploration Corporation.

Comment date: March 6, 1991, in accordance with Standard Paragraph J at the end of this notice.

APPENDIX

Union Exploration Partners, Ltd. FERC Gas rate schedule No.	Certificate docket No.	Purchaser
12	G-10537	Columbia Gas Transmission Corporation.
13	G-8611	Texas Gas Transmission Corporation.
31	G-17263	Trunkline Gas Company.
35	G-17019	Texas Gas Transmission Corporation.
38	G-17457	Texas Gas Transmission Corporation.
59	CI61-165	Texas Gas Transmission Corporation.
60	CI61-166	Texas Gas Transmission Corporation.
99	G-7193	Texas Gas Transmission Corporation.
104	G-7193	Mobil Oil Corporation.
133	CI61-245	Texas Gas Transmission Corporation.
134	CI61-295	Texas Gas Transmission Corporation.
136	CI61-1070	Arkla Energy Resources, a division of Arkla, Inc.
139	CI61-1791	Texas Eastern Transmission Corporation.
142	CI62-634	Natural Gas Pipeline Company of America.
166	CI66-1016	Texas Gas Transmission Corporation.
167	CI65-1351	Texas Gas Transmission Corporation.
168	CI67-92	Columbia Gas Transmission Corporation.
204	CI70-174	Texas Gas Transmission Corporation.
207	CI71-896	United Gas Pipe Line Company.
208	CI72-180	Texas Gas Transmission Corporation.
212	CI72-325	Florida Gas Transmission Company.
218	CI75-468	Texas Eastern Transmission Corporation.
219	CI75-469	Texas Eastern Transmission Corporation.
220	CI75-474	Texas Eastern Transmission Corporation.
221	CI75-477	Texas Eastern Transmission Corporation.
223	CI76-726	Natural Gas Pipeline Company of America.
234	CI77-490	Columbia Gas Transmission Corporation.
235	CI77-492	Texas Eastern Transmission Corporation.
237	CI77-628	Texas Gas Transmission Corporation.
245	CI78-859	Texas Gas Transmission Corporation.
250	CI79-66	Texas Gas Transmission Corporation.
252	CI77-828	Texas Eastern Transmission Corporation.
258	CI80-297	Columbia Gas Transmission Corporation.
262	CI81-12-000	United Gas Pipe Line Company.
263	CI81-16-000	United Gas Pipe Line Company.
264	CI81-25-000	ANR Pipeline Company.
265	CI81-93-000	Texas Eastern Transmission Corporation.
268	CI81-291-000	Texas Eastern Transmission Corporation.
273	CI82-355-000	United Gas Pipe Line Company.
277	CI85-224-000	Texas Gas Transmission Corporation.
278	CI85-182-000	ANR Pipeline Company.
853	CI79-540-001	Texas Gas Transmission Corporation.
854	CI80-203-001	Southern Natural Gas Company.
855	CI83-19-000	Texas Gas Transmission Corporation.
859	CI83-294-000	Texas Gas Transmission Corporation.
903	CI88-641-001	Texas Eastern Transmission Corporation.
904	CI88-446-001	Texas Eastern Transmission Corporation.
905	CI88-795-001	Texas Gas Transmission Corporation.
906	CI88-734-000	ANR Pipeline Company.
908	CI88-163-000	Texas Gas Transmission Corporation.
909	CI88-487-000	Columbia Gas Transmission Corporation.
910	CI89-100-000	Natural Gas Pipeline Company of America.

11. Questar Pipeline Company

[Docket Nos. CP91-1130-000, CP91-1175-000, CP91-1176-000, CP91-1177-000, CP91-1178-000, CP91-1179-000]

February 15, 1991.

Take notice that Questar Pipeline Company, 79 South State Street, Salt Lake City, Utah 84111, (Questar) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of the various shippers under its blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak-day, average-day, and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Questar and is summarized in the attached appendix.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed), shipper's name (type of shipper)	Peak-day, average-day, annual Mcf	Receipt, delivery points	Contract date rate schedule service type	Related docket and start-up date
CP91-1130-000 (2-04-91), Grand Valley Gas Company.	75,000 20,000 7,300,000	*R* UT *D*, UT, WY	01-24-91, T-2, Interruptible	ST91-6315-000, 01-02-91.
CP91-1175-000 (2-07-91), Timberline Energy, Inc.	1,500 700 255,500	*R* CO *D* UT, WY	01-18-91, T-2, Interruptible	ST91-6678-000, 01-20-91.
CP91-1176-000 (2-07-91), Barrett Energy Company.	14,000 7,500 2,737,500	*R* CO, UT, WY *D* CO, UT, WY	01-11-91, T-2, Interruptible	ST91-6677-000, 01-12-91.
CP91-1177-000 (2-07-91), Union Pacific Fuels, Inc.	75,000 20,000 7,300,000	*R* WY *D* UT, WY	08-30-90, T-2, Interruptible	ST91-6679-000, 01-01-91.
CP91-1178-000 (2-07-91), Amoco Production Company.	80,000 50,000 18,250,000	*R* UT, WY *D* UT, WY	12-13-90, T-2, Interruptible	ST91-6675-000, 01-15-91.
CP91-1179-000 (2-07-91), Chevron U.S.A., Inc.	86,400 50,000 18,250,000	*R* UT,WY *D* CO, WY	01-15-91, Interruptible	ST91-6674-000, 01-17-91.

12. Northern Natural Gas Company, Division of Enron Corp.

[Docket Nos. CP91-1244-000, CP91-1245-000]

February 15, 1991.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1244-000 (2-13-91)	Coastal Gas Marketing Company (marketer).	50,000 37,500 18,250,000	Various	Various	1-10-91, IT-1, Interruptible.	ST91-6790, 1-10-91.
CP91-1245-000 (2-13-91)	Oxy USA, Inc. (producer).	50,00 37,500 18,250,000	Various	KS1-9-91, IT-1, Interruptible.	ST91-6757, 1-9-91.	

13. United Gas Pipe Line Company

[Docket No. CP91-1200-000]

February 15, 1991.

Take notice that on February 8, 1991, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-1200-000 a request pursuant to §§ 157.205, 157.211 and 157.216 of the Commission's Regulations for authorization to abandon the sales service to the City of Foley, Alabama (Foley), under United's blanket certificate issued in Docket Nos. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with

the Commission and open to public inspection.

United indicates that the subject sales service to Foley was authorized by the Commission in Docket No. G-9638. It is stated that United has received a letter from Foley consenting to the proposed abandonment. United is not proposing to abandon any facilities explaining that the tap providing the subject service to Foley was not constructed by United but that United did operate the tap for Foley. United states that the facilities would be left in place to provide transportation service or sales service if new contractual agreements are reached.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

14. Algonquin Gas Transmission Company

[Docket Nos. CP91-1207-000, CP91-1208-000, CP91-1209-000, CP91-1210-000, CP91-1211-000, CP91-1212-000, CP91-1213-000]

February 15, 1991.

Take notice that Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, Massachusetts 02135, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-948-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[10]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, startup date
CP91-1207-000 (2-11-91)	PSI, Inc	30,000 30,000 10,950,000	NJ, NY, CN, MA	NY	11-30-90, AIT-1, Interruptible.	ST91-6113, 10-21-90.
CP91-1208-000 (2-11-91)	Providence Gas Company.	26,129 26,129 9,537,085	NJ	RI	9-21-90, AIT-1, Interruptible.	ST91-6107, 11-1-90.
CP91-1209-000 (2-11-91)	Intercontinental Energy Corporation (marketer).	600,000 600,000 219,000,000	MA, NY, CN, NJ	MA	10-2-90, AIT-1, Interruptible.	ST91-6119, 10-30-90.
CP91-1210-000 (2-11-91)	Coastal Gas Marketing	500,000-1,400,000 182,500,000 182,500,000	MA, NJ	CN	9-21-90, AIT-1, Interruptible.	ST91-6112, ST91-6796, 10-16-90, 01-01-91.
CP91-1211-000 (2-11-91)	Texas-Ohio Gas, Inc	60,000-90,000 21,900,000 32,850,000	NJ, NY, CN	CN, RI	1-16-90, AIT-1, Interruptible.	ST91-6118, ST91-6106, 12-01-90, 12-02-90.
CP91-1212-000 (2-11-91)	Catamount Natural Gas, Inc. (marketer).	50,000 50,000 18,250,000	NJ, MA	NY	10-27-90, AIT-1, Interruptible.	ST91-6110, 11-6-90.
CP91-1213-000 (2-11-91)	Orange and Rockland Utilities, Inc. (marketer).	125,000 125,000 45,625,000	NJ	NY	10-25-90, AIT-1, Interruptible.	ST91-6114, 11-15-90.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4441 Filed 2-25-91; 8:45 am]

BILLING CODE 6717-01-M

[10] These prior notice requests are not consolidated.

[Docket Nos. ER91-143-000 and ER91-15-000]

Public Service Company of New Hampshire; Initiation of Proceeding and Refund Effective Date

February 20, 1991.

Take notice that on February 5, 1991, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date for proposed rates: 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4442 Filed 2-25-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3908-4]

Pollution Prevention Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) was asked by Congress to develop and submit by October 1, 1990 a strategy outlining the Agency's plans for incorporating pollution prevention into its existing programs. The document which follows responds to Congress' request and presents EPA's blueprint for a comprehensive national pollution prevention strategy. It is designed to serve two purposes: To provide guidance and direction for Headquarters' and regional efforts to incorporate polution prevention into EPA's existing regulatory and non-regulatory programs; and to set forth a voluntary program for industrial toxics that will achieve specific objectives in pollution prevention within a reasonable time frame.

The strategy responds to the comments the Agency received on its draft policy statement on pollution prevention which was published in the **Federal Register** in January 1989. The strategy also takes the first steps toward meeting the requirements of the Pollution Prevention Act of 1990. As a non-regulatory action, the strategy takes effect immediately; however, EPA is interested in public input on an ongoing basis.

FOR FURTHER INFORMATION CONTACT: Julie Shannon, Office of Policy, Planning and Evaluation (OPPE), Office of Pollution Prevention (OPP), Mail Code PM-219, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20406. Phone: (202) 382-2736.

Dated: February 6, 1991.

F. Henry Habicht II,

Deputy Administrator.

ENVIRONMENTAL PROTECTION AGENCY POLLUTION PREVENTION STRATEGY

Environmental programs that focus on the end of the pipe or the top of the stack, on cleaning up after the damage is done, are no longer adequate. We need new policies, technologies, and processes that prevent or minimize pollution—that stop it from being created in the first place.

President George Bush

October, 1990

January 1991

Table of Contents

Executive Summary

Part I Introduction
- A. Objectives of EPA's Prevention Strategy
- B. Background
- C. Prevention: First Choice in Every Sector
- D. Toward a Prevention Strategy

Part II Guidance for EPA's Program and Regional Efforts
- A. General Principles
- B. From Principles to Action
- 1. Identifying and Overcoming Obstacles
- 2. Expanding Public Participation and Choice
- 3. Partnership with Federal Agencies
- 4. Investing in the States
- 5. Outreach and Training
- 6. Regulation and Permits
- 7. Enforcement
- 8. A Research Strategy for Prevention
- 9. Looking Ahead: Emerging Products, Technologies
- C. Promoting Institutional Change at EPA

Part III Industrial Toxics Project
- A. Targeting
- B. Outreach
- C. Organizing for Action
- D. Measuring Progress

Part IV Next Steps

Executive Summary

a. Introduction

In the twenty years since the Environmental Protection Agency was founded, America has made real progress in reducing the threats of pollution to human health and our natural environment. EPA enters its third decade, however, facing a new generation of complex environmental challenges requiring a new response.

The new challenges include persistent, mobile and bioaccumulative toxics released from both industrial facilities and a wide variety of dispersed sources; agricultural practices that jeopardize the quality of our rivers, lakes, and ground water; and pollution from our ever-growing need for energy and transportation. These problems must and can be addressed in a cost-effective manner that does not impede economic growth and maintains U.S. competitiveness in the global economy.

EPA joins those spokespersons for industry, states, and environmental groups who advocate resonding to these challenges by preventing pollution at its source, whether through changes in production or by reducing reliance on environmentally harmful materials. Studies have shown that pollution prevention can be the most effective way to reduce risks by reducing or eliminating pollution at its source; it also is often the most cost-effective option because it reduces raw material losses, the need for expensive "end-of-pipe" technologies, and long-term liability. In short, pollution prevention offers the unique advantage of harmonizing environmental protection with economic efficiency.

B. Strategy Objectives

This document presents EPA's blueprint for a comprehensive national pollution prevention strategy. It is designed to serve two purposes:

- To provide guidance and direction for efforts to incorporate pollution prevention within EPA's existing regulatory and non-regulatory programs; and
- To set forth a program that will achieve specific objectives in pollution prevention within a reasonable time frame.

The first objective reflects EPA's belief that for pollution prevention to succeed, it must be a central part of the Agency's primary mission of protecting human health and the environment; the goal is to incorporate prevention into every aspect of the Agency's operations in program and regional offices (see section C of this executive summary).

Naturally, the strategies reflected in this document do no more than identify the specific initiatives that EPA will undertake on an Agencywide basis that provide a model for cross-program cooperation. EPA encourages its programs and regions to continue to identify and exploit pollution prevention opportunities. Many such initiatives are already underway or being planned by program and regional offices; a description of them is available upon request to the Office of Pollution Prevention.

To address the second objective, the strategy includes a plan for targeting 15 to 20 high risk chemicals that offer opportunities for prevention, and sets a voluntary goal of reducing total environmental releases of these chemicals by 33 percent by the end of 1992, and at least 50 percent by the end of 1995. The specific toxics reduction effort (summarized in part D) is only the first step. EPA recognizes that there are substantial opportunities to promote prevention in other sectors, such as agriculture, energy, transportation, municipal water and wastewater, and will work with other federal agencies to develop specific strategies for these sectors in the near future. Agencies that will help contribute to the development of prevention policies in these areas include the Council on Environmental Quality, and the Departments of Agriculture, Commerce, Defense, Energy, Interior, and Transportation. These efforts will help bring needed focus to the Agency's pollution prevention program, and will allow EPA to apply some of the concepts discussed in the general strategy.

The strategy seeks neither to expand EPA's existing authority, nor proposes new regulatory requirements. Rather, the Agency's goal is to:

- Investigate and, where possible, eliminate barriers to cost-effective investments in prevention in existing and new regulatory programs, and
- Encourage voluntary actions by industry that reduce the need for EPA to take action under statutes like the Toxic Substances Control Act.

C. Guidance to EPA Program and Regional Offices

While some of EPA's activities in past decades have employed an essentially preventive approach, the last two years have seen a concerted effort by EPA's program and regional offices to incorporate pollution prevention into their activities. The general principles stated below will help to guide the Agency's specific pollution prevention activities outlined further on.

General Principles

Because EPA believes that pollution prevention can benefit both the environment and the economy, the Agency's policy will be designed to maximize private sector initiative by working with industry to achieve reasonable prevention goals. This approach should encourage more businesses to identify and profit from opportunities for prevention, which in turn will yield significant public dividends in the form of increased environmental protection.

At the same time, EPA believes that there is a continuing need for a strong regulatory and enforcement program under existing statutory authorities and that these provide further incentives to prevent pollution. EPA will be working to coordinate its regulatory program to help industry indentify the potential for multi-media prevention strategies that reduce end-of-pipe compliance costs. EPA will investigate flexible, cost-effective regulatory approaches that avoid prescriptive approaches and that rely on market-based incentives where practical and authorized by law. EPA will also ensure that its enforcement program seeks pollution prevention opportunities as part of ensuring compliance. Finally, the Agency will implement mechanisms to streamline regulatory and administrative processes involved in testing and applying innovative pollution prevention technologies.

From Principles to Action

Based on these general principles, EPA will be working on the following activities:

- *Identifying and overcoming obstacles to prevention*—EPA is undertaking several projects to identify specific regulatory and nonregulatory barriers and determine how they can be modified. In addition, EPA will promote prevention among small and medium-sized businesses through technical assistance, financial assistance, and information sharing. EPA will also work with other federal agencies to modify non-regulatory programs to improve opportunities for prevention.
- *Expanding public participation and choice*—In the wake of the public's growing environmental consciousness, EPA will be responding to the need for more and better information on the environmental performance of both consumer products and industrial facilities, establishing voluntary guidelines for use of environmental claims in labeling, and expanding public databases.
- *Partnership with federal agencies*—EPA will work with other federal agencies to develop prevention strategies for agriculture, and energy, and other sectors, to incorporate prevention into management of federal facilities, to encourage the development of pollution prevention technologies, and to increase the consideration of environmental impacts in federal procurement decisions.
- *Investing in the states*—Through its Pollution Prevention Incentives for States grant program, EPA is promoting the establishment and expansion of state multi-media pollution prevention programs and is testing innovative pollution prevention technologies and applications at the regional and state level.
- *Outreach and training*—EPA will seek to lay the groundwork for a pollution prevention orientation within government, industry, academic institutions, the public, and internationally through a variety of outreach and educational initiatives.
- *Regulations and permits*—EPA will seek to strengthen the ability of the existing regulatory framework to provide further incentives for prevention:

—*Regulatory clusters:* The Agency will categorize the rules it intends to propose over the next several years for certain chemicals and their sources (taking into account regulatory schedules imposed by Congress and by court order). These "clusters" will foster improved cross-media evaluation of the cumulative impact of standards, encouraging early investment in prevention technologies and approaches.

—*Flexible use of TSCA:* The Toxic Substance Control Act will provide a cost-effective and flexible means to create direct or indirect incentives for multi-media prevention strategies. Other regulatory programs will continue to play a role in encouraging incentives for prevention.

—*Permits:* EPA will work to provide industry with the flexibility to use prevention approaches, as opposed to treatment and disposal to meet permitting requirements. EPA is also investigating more flexible approaches to permitting that encourage multi-media prevention alternatives.

- *Enforcement*—EPA will encourage the inclusion of pollution prevention conditions in Agency enforcement settlements.
- *Research*—EPA's *Pollution Prevention Research Strategic Plan* establishes a blueprint for future research efforts. Short-term efforts will focus on targeted contaminants; longer-term efforts will address social and economic obstacles to prevention, as well as opportunities for prevention in the non-manufacturing sector.
- *Emerging products and technologies*—EPA will try to identify and avoid environmental problems before they arise by encouraging development of safer substitutes for hazardous raw materials or products, as well as cleaner technologies.

Institutionalizing Pollution Prevention at EPA

EPA's strategy must confront institutional barriers within the Agency's own organization that limit its ability to develop effective prevention strategies. While addressing these institutional barriers will be a long-term task, EPA will begin with a number of measures, including: designating special assistants for pollution prevention in each Assistant Administrator's office, developing incentives and awards to encourage Agency staff to engage in pollution prevention efforts, incorporating prevention into the comprehensive 4-year strategic plans developed by each program office, providing pollution prevention training to Agency staff, supporting technology innovation, and including prevention-related activities in the Agency's operating guidance, accountability measures, and regulatory review and development process.

D. Industrial Toxics Project

EPA's industrial toxics project will target specific chemicals from the manufacturing sector and develop focused prevention strategies for them. EPA's goal will be to reduce aggregate environmental releases of these targeted chemicals, as measured by the Toxics Release Inventory (TRI) in 1988, by 33 percent by the end of 1992 and at least 50 percent by the end of 1995. EPA has chosen to propose national goals, rather than specific ones for each chemical, industry sector, or company. This provides companies that choose to participate in the program with the flexibility to propose their own goals and to allocate reductions among affected sources, and within the list of target chemicals, according to what appears most cost-effective.

The project will offer industry the opportunity to participate on a voluntary basis, while not interfering with the Agency's statutory responsibilities under the new Clean Air Act or other laws. EPA will work with companies to ensure that any initiative taken to reduce emissions ahead of statutory schedules receive appropriate credit toward complying with any subsequent regulatory requirements.

The Agency is hopeful that this voluntary effort will inspire proactive, innovative responses from the private sector, which would help to build trust in industry's readiness to provide the public with the environmental protection it expects. This, in turn, would make it easier to investigate those barriers in existing law, regulations, and permitting practices that inhibit flexible, cost-effective solutions to environmental problems.

The four principal elements of the project are reviewed below.

Targeting

EPA will identify 15 to 20 pollutants from TRI that present both significant risks to human health and the environment, and potential opportunities to reduce such risks through prevention. The list will be drawn from recommendations submitted by program offices, taking into account such criteria as health and ecological risk, potential for multiple exposures or cross-media contamination, technical or economic opportunities for prevention, and limitations of treatment technology.

The target chemicals are based on a rational evaluation of both risk and opportunity for prevention, and EPA expects virtually all will be subject to technology-based standards under the new Clean Air Act. This will ensure that industries participating in the voluntary program will also be eligible to apply for credit under the "early reduction" provisions of that law.

EPA expects the target list will serve to determine whether this experiment in voluntary reductions can get measurable results.

Outreach

As a first step, EPA will use TRI data to identify major industrial sources of toxic chemical releases to the environment. By December 15, 1990, EPA intends to produce a detailed plan for contacting these facilities or their parent companies. EPA will ask the facilities or companies that choose to participate to make voluntary, measurable commitments to reduce releases of targeted contaminants to the environment and to identify how they will carry out these commitments. In light of the substantial public commitments already undertaken by many companies to reduce the release of TRI chemicals, EPA expects a positive response from this outreach effort.

EPA will make every effort to coordinate contacts with industry to eliminate redundancy and paperwork Although the outreach program is designed to be voluntary, it will not be allowed to interfere with fulfillment of the Agency's statutory responsibilities (including timetables for action) and enforcement obligations.

Organizing for Action

EPA will form cross-media workgroups comprised of representatives from different Agency offices to provide analytical and technical support to the outreach program, to evaluate industry voluntary plans, and to define regulatory clusters.

Measuring Progress

To assist in assessing risk reduction from pollution prevention efforts, EPA will rely on data from TRI to track reductions in releases of targeted contaminants from industrial facilities. Although TRI has some significant limitations, at this time it is the only available database that permits the tracking of chemical releases at specific facilities on a Multi-media basis. EPA has three years of experience collecting TRI data, which is already being used widely by industry, the states, and environmental groups as a scorecard for prevention efforts. EPA is taking a number of steps to address TRI's shortcomings, and will also develop indicators for sources not covered by the program.

E. Next Steps

EPA will be undertaking a number of efforts to further expand the scope of this strategy, including working with other federal agencies to develop strategies for other sectors, and obtaining broad input through a series of public hearings regarding implementation of the strategy and refining a national pollution prevention agenda for the 1990s.

This Pollution Prevention Strategy is not an attempt to either expand or supercede existing authorities and programs. EPA will continue to proceed with regulation development, permitting, and enforcement, and its other responsibilities as required by law. The Pollution Prevention Strategy will help the Agency to reorient its use of authorities to give preference to cost-effective and environmentally protective prevention approaches, in addition to recycling, traditional treatment, and disposal.

Part I—Introduction

End-of-pipe controls and waste disposal should be the last line of environmental defense, not the front line. Preventing pollution at the source is usually a far cheaper, more effective way to reduce environmental risk, especially over the long term.

—Science Advisory Board, "Reducing Risk," September 1990.

Over the last two years, EPA Administrator William Reilly has made pollution prevention one of the Agency's top priorities. This strategy indicates how EPA intends to incorporate pollution prevention as a fundamental principle of the Agency's mission to protect human health and the environment.

This introduction to EPA's pollution prevention strategy:

- Outlines the two principal objectives of EPA's pollution prevention strategy;
- Provides background on why there is a need for pollution prevention despite two decades of progress in environmental protection efforts;
- Describes how pollution prevention can help meet the environmental challenges ahead in major sectors of society; and
- Explains the assumptions underlying EPA's pollution prevention strategy.

A. Objectives of EPA's Prevention Strategy

EPA's pollution prevention strategy is designed to serve two purposes:

- To provide guidance and direction for efforts to incorporate pollution prevention into EPA's existing regulatory and non-regulatory programs; and
- To set forth an initiative that will achieve specific objectives in pollution prevention within a reasonable time frame.

The first objective recognizes that EPA makes hundreds of decisions each year at every level of the Agency—from drafting regulations to making grants to enforcing permits. Each of these activities presents opportunities for prevention. This strategy aims to provide policy guidelines to help decision-making by EPA's headquarters and regional staff, to outline some actions EPA will undertake to put these principles into practice, and to strengthen EPA's institutional capacity to undertake and complete prevention initiatives. Part II of this strategy details how EPA will meet this first objective.

The second objective is discussed in Part III of this strategy, which outlines a prevention initiative for industrial toxics. This represents the first of several specific projects that will comprise EPA's overall pollution prevention strategy. EPA has chosen to begin with the manufacturing sector, since it is the current focus of most of the Agency's activities, and because the Science Advisory Board has identified toxic pollutants as presenting serious threats to human health and the environment. By setting measurable goals and laying out a relatively detailed plan for achieving them, this project will promote accountability for results at EPA. At the same time, this effort will help EPA further the first objective of promoting a cultural change at the Agency by practically applying the general policy guidelines.

Opportunities for pollution prevention abound in other sectors as well. EPA plans to develop similar focused, Agency-wide prevention projects for agriculture, energy and transportation, municipal water and wastewater, and federal facilities. A strategy for municipal solid waste has already been published.[1]

It is important to note that EPA does not view pollution prevention as an exotic activity standing apart from the Agency's primary mission of protecting human health and the environment; rather, the goal is to incorporate prevention into every aspect of the Agency's operations in program and regional offices. The national strategies reflected in this document and subsequent installments do no more than identify the specific initiatives that EPA will undertake on an Agency-wide basis, and are designed to provide a model for cross-program cooperation.

EPA programs and regions will to continue to take the initiative in identifying and exploiting other pollution prevention opportunities. Because of the nature of this document, a delineation of the respective roles of the program and regional offices is not included here, but will be addressed in internal EPA guidance. Examples of the many program and regional initiatives already underway or being planned are available upon request to the Office of Pollution Prevention.

B. Background

Two Decades of Progress

The conventional regulatory approach to environmental protection and the billions of dollars Americans have spent over the past two decades for cleaner air, water, and land have produced some remarkable success stories. For examples:

- Comprehensive hazardous waste management regulations are in place; among other things, EPA's Office of Solid Waste estimates that these regulations have kept roughly 1.6 billion gallons of hazardous waste per year from landfilled without prior treatment;
- Between 1979 and 1988, lead, sulfur dioxide, and particulate levels in ambient air decreased by 89 percent, 30 percent, and 20 percent, respectively,[2] and
- Municipal sewage treatment has improved dramatically; over 176 million Americans were served by sewage treatment system in 1988 compared to 85 million in 1972.[3]

Some of EPA's activities in past decades that have banned or reduced the use of pesticides and other chemicals have employed an essentially preventive approach. Other regulatory and enforcement policies have also helped to foster prevention. For example, banning the land disposal of certain wastes under RCRA, while sharply increasing the cost of treatment, has led to reduce waste generation. Similarly, in the Agency's water program, certain permitted facilities are required to conduct toxicity testing of their effluents and, if toxicity is found, to eliminate it at its source. Best management practices required in water discharge permits also prevent process materials from being discharged as pollutants to the environment through leaks and spills.

In spite of the impressive gains achieved by environmental regulation, new and more subtle sources of pollution and better methods of detection have made us aware of the broad scope of our pollution problems. Emerging environmental problems include international concerns such as climate change and ozone depletion; increasing human and environmental exposure to toxic chemicals; cross-media problems such as acid rain, nonpoint source pollution, and ground-water contamination; and decreasing waste disposal capacity and massive waste cleanup costs.

Need for Pollution Prevention

Pollution prevention is critical to overcoming some of the limitations in our traditional approaches to pollution control. These constraints are summarized below:

- Cross-media transfers. It is increasingly clear that some treatment technologies, while solving one pollution problem, have created others. Air pollution control devices or industrial wastewater treatment plants prevent wastes from going into the air or water, but the toxic ash and sludge that these systems produce can become hazardous waste problems themselves. Wastes disposed of on the land or in deep wells may contaminate ground water, and evaporation from ponds and lagoons can convert solid or liquid wastes into air pollution problems.

The Great Lakes (see box on page 6) offer an excellent example of how our understanding of environmental problems has expanded, revealing the need for a multi-media focus to adequately protect human health and a fragile, interdependent ecosystem. While cross-media connections are complex and difficult to manage, part of the solution should be to reduce or even eliminate pollution at the source. Prevention reduces emissions, discharges or wastes released to all parts of the ecosystem, thereby eliminating a potential cross-media "shell-game."

- *Pollution from dispersed sources.* In addition to controlling and reducing discharges from large "point sources," EPA must more effectively address diffuse sources of pollution, usually referred to as "nonpoint sources" or area sources, as well as the many small point sources. For example, only a fraction of chlorinated organics released to the environment come from large industry. The rest come from a wide variety of largely unregulated activities such as dry cleaning, paint stripping, and degreasing operations. These and other small sources are so numerous that it is often not practical or economical to control their pollution by mandating treatment technologies. Alternative prevention policies may be more effective in encouraging development and use of safer substitutes, such as water-based solvents.
- *Search for cost-effective alternatives.* Finally, industries and public agencies at all levels of government already spend as much as $120 billion annually to treat or contain wastes once they are generated.[4] Hazardous waste treatment and disposal costs have risen as much as 300 percent over the past decade due to the ban on land disposal of hazardous waste, minimum technology requirements for hazardous waste units, and limited treatment and disposal capacity.[5]

The Great Lakes Ecosystem

Two decades ago, a study by the International Joint Commission (IJC) identified nutrients and toxics problems in the five Great Lakes, and found that Lake Ontario and Lake Erie, in particular, were afflicted by eutrophication problems.

Since then, the United States and Canada have undertaken cooperative efforts which have successfully reduced nutrient loadings, particularly phosphorous, and helped to reverse eutrophication in the most severely affected areas. Since 1972, the U.S. Government has spent over $7.6 billion on pollution problems in the Great Lakes, mostly for over 1,000 municipal sewage treatment plants.

With point source contributions of phosphorous increasingly under control, the importance of controlling toxic contamination is becoming more evident. Although some progress has been made, concentrations of persistent toxic substances such as mercury, PCBs, and lead, remain unacceptably high in some part of the Great Lakes, both in water and sediments.

The IJC has found atmospheric deposition to be a major pathway to contamination, and has observed airborne sources for 10 of 11 "critical" toxic pollutants. Studies have registered deformities in fish and wildlife exposed to contaminated sediments and other sources of toxic chemicals in the Great Lakes. While the decline in conventional pollutants has encouraged an increase in fish populations in some areas, all Great Lakes states advise residents to limit or in some cases eliminate their consumption of popular sportfishing species, such as perch, walleye, brown trout, and chinook salmon, due to their contamination by toxics.

Sources: Council on Environmental Quality, *Environmental Trends*, Washington, D.C. 1989. International Joint Commission, *Third Biennial Report . . ., Windsor, Ont. 1988. Great Lakes National Program Office, U.S. Progress in Implementing the Great Lakes Water Quality Agreement, Annual Report to Congress 1988*, Chicago, IL, July 1989. Great Lakes Water Quality Board, *1989 Report on Water Quality*, International Joint Commission, Windsor, Ont., October 1989.

Implementation of the Clean Air Act and other statutes will add to these costs in the years ahead, suggesting that it is appropriate to begin looking for ways to eliminate or reduce waste streams that will otherwise have to be managed at great expense. The public accountability fostered by the Toxic Release Inventory has also created a strong incentive to minimize waste.

Given these factors, some companies (but by no means all) have already begun to demonstrate that preventing pollution at the source offers a low cost alternative to investment in traditional treatment technologies. Benefits to firms undertaking waste reduction can include reduced on-site waste treatement costs; reduced transportation and disposal costs for wastes shipped off-site; savings in purchases of chemicals, energy, water, and other input materials; and reduced production costs through better management.

To cite a few of the hundreds of examples available:

—*Chevron's Save Money and Reduce Toxics (SMART) Program.* In 1987, the first year of SMART, hazardous waste disposal dropped 44 percent, from 135,000 to 76,000 tons, saving the company $3.8 million. In part, this was achieved by substituting non-hazardous drilling mud additives for compounds that were considered hazardous. Chevron has set a goal of a 65 percent across-the-board reduction by 1992.

—*Clairol plant in Camarillo, California,* which produces hair care products, previously flushed their pipes with large quantities of water, watering the material inside the pipe. By installing a $50,000 system using a foam ball propelled through the pipe by air to collect the product, waste was reduced by 395 gallons per day and $240,000 was saved each year.

—*Major paint company.* By replacing a caustic cleaning solution with a longer-lived substitute, this small California company achieved a 50 percent reduction in dirty solvent disposal. Switching to a high-pressure spray system to wash tanks reduced wastewater volume by 25 percent. The firm estimates that it has saved more than $2 million in disposal fees over the past eight years.

C. Prevention: First Choice in Every Sector

How does pollution prevention apply to the major environmental challenges in each sector of our society? The cornerstones of a comprehensive pollution prevention strategy will be its responses to the challenges in manufacturing, agriculture, energy and transportation, municipal solid waste and municipal water and wastewater.

1. Manufacturing and Chemical Use

In spite of the progress that has been made in controlling industrial pollution, the release of toxic pollutants into the environment continues. The Toxic Release Inventory data for 1988 show

---

[1] *U.S. EPA, Office of Solid Waste, The Solid Waste Dilemma: An Agenda for Action*, February 1989 (EPA/530-SW-89-019).

[2] *U.S. EPA, Office of Air Quality Planning and Standards (OAQPS), National Air Quality and Emissions Trends Report, 1988*, March 1990 (EPA-450/4-90-002).

[3] *U.S. EPA, Needs Survey Report to Congress: Assessment of Needed Publicly Owned Wastewater Treatment Facilities in the United States*, February 1990 (EPA 430/09-89-001).

[4] *U.S. EPA, Office of the Administrator, Environmental Investments: The Cost of a Clean Environment, Report to Congress*, unpublished draft.

[5] U.S. EPA, Office of Solid Waste estimate.

that reporting facilities released a total of 4.57 billion pounds directly into the environment. Of this total, 360 million pounds of toxic chemicals were released into rivers, lakes, streams, and other bodies of water; 2.4 billion pounds were emitted into the air; 560 million pounds were disposed of in landfills; and 1.2 billion pounds were injected into underground wells. In addition, 570 million pounds were transferred to municipal wastewater treatment plants and 1.1 billion pounds were transferred to commercial treatment and disposal facilities.

The impacts of these discharges on human health and the environment depends upon the toxicities of the chemicals and on the various characteristics of the media into which they are released. Exposure to some toxic chemicals may increase the risk of cancer, neurological disorders, birth defects, and other health effects. Once released to the environment, some toxic chemicals may persist for long period of time, be easily transferred from one part of the ecosystem to another, or bioaccumulate in the food chain.

2. Agriculture

Agriculture in the United States consists of over 2 million farms covering more than 800 million acres generating such diverse pollutants as sediment, pesticides, and nitrogen and phosphorous from livestock and fertilizers. Agricultural pollution, like other types of nonpoint source pollution, is characterized by the widespread nature of its sources; it stems from literally millions of everyday activities and management decisions made by individual farmers and agricultural concerns. Individually these activities may not cause discernible environmental harm, but the aggregation of hundreds of thousands of activities over many weeks, months, or years can combine to adversely affect ground water and surface water quality, species habitats, and the quality and productivity of the soil.

Agricultural runoff is a major reason that so many lakes, rivers, and estuaries have failed to attain water quality standards. Because water pollution does not respect property lines, the resulting water quality problems typically appear downstream and off the farm, rather than at their source. Of the waters assessed to date, pollution from agricultural sources contributes to 58 percent of the lake acres, 55 percent of the stream miles, and approximately 18 percent of the square miles of estuaries that do not meet water quality standards.[6] Threats to ground water quality are also present; 40 states and territories report that agricultural activity is a concern to ground water and, in virtually all states, nitrates in ground water exceed drinking water health standards.[7]

Irrigation return flows can discharge high concentrations of pesticides and nutrients, and excessive consumption of irrigation waters can reduce downstream flows necessary to support aquatic species. Surface water supplies of drinking water can also be affected by, for example, spring runoff in intensively farmed areas. Agriculture also affects other parts of the ecosystem; for example, fish, wildlife, and waterfowl may be harmed through exposure to the aerial drift of pesticides and the leaching of minerals from topsoil. Pesticide residues on foods can also pose a health risk. Finally, agricultural activities can also displace wetlands and other ecological habitats.

3. Energy and Transportation

The environmental impacts of energy consumption are far-reaching, affecting air and water quality and public health. Combustion of coal, oil, and natural gas is responsible for air pollution in urban areas, acid rain that is damaging lakes and forests, some of the nitrogen pollution that is harming estuaries, and it may contribute to global warming. Although data show that, for the period 1977 to 1989, annual average ambient levels of all criteria air pollutants were down nationwide, 96 major metropolitan areas still exceed the national health-based standard for ozone and 41 metropolitan areas exceed the standard for carbon monoxide.[8]

Reauthorization of the Clean Air Act is expected to impose additional standards for control of pollution from energy combustion; historical data show that increasing energy efficiency could substantially lower the costs of complying with these new requirements. Between 1973 and 1988, the U.S. reduced by 27 percent the amount of energy required to produce each unit of gross national product. Without this reduction, U.S. energy consumption would have been 36 percent higher in 1988, annual carbon emissions would have reached 1.8 billion tons rather than 1.4 billion tons, and the economy's annual energy bills would have increased by over $100 billion.[9]

D. Toward a Prevention Strategy

Establishing a Definition

Pollution prevention can best be understood by considering what it means to the sectors discussed above.

Manufacturing and chemical use. Pollution may be generated during manufacturing, or when certain products are used commercially or by consumers. This may be prevented in three ways:

- *Changing inputs/reducing reliance on toxic or hazardous raw materials:* A manufacturer may substitute non-toxic for toxic feedstocks in making a product;
- *Process changes/increasing efficiency/improved maintenance practices:* The production process may be altered to reduce the volume of materials released to the environment as toxic or hazardous waste; in addition to avoiding waste management costs, these changes often improve efficiency by reducing raw material losses and conserving water. Process changes may include equipment modifications or less expensive housekeeping measures, as well as in-process, closed loop recycling that returns waste materials directly to production as raw materials;
- *Changing outputs/reducing reliance on toxic or hazardous products:* The manufacturers or users of commercial products may switch to non-toxic or less toxic substitutes.

This definition is consistent with that established under the Pollution Prevention Act of 1990.

Agriculture. Agricultural pollution may be prevented by:

- Development and adoption of low input sustainable agriculture practices that eliminate the wasteful use of inputs, such as fertilizers, pesticides, and water;
- Soil conservation and land management practices that prevent erosion of sediment and the runoff of pesticides and fertilizers.

Energy. Pollution from energy consumption can be prevented by:

- Increasing energy efficiency to reduce the generation of pollutants associated with the extraction, refining, and use of fuels;
- Increasing reliance on clean renewable energy sources or alternative, less polluting fuels.

Most of the preventive approaches outlined above will yield environmentally preferable and more

[6] *U.S. EPA, Office of Water, National Water Quality Inventory, 1988 Report to Congress,* Washington, DC, April 1990.

[7] *U.S. EPA, Office of Water, National Water Quality Inventory, 1988 Report to Congress,* Washington, DC, April 1990, and *Water Quality 2000, Draft Phase II Workgroup Reports,* January 1990.

[8] *U.S. EPA, Press Release,* August 16, 1990.

[9] *Armory B. Lovins and Robert Sardinski, et al., The State of the Art: Lighting,* Rocky Mountain Institute, Old Snowmass, CO, March 1988. Amory B. Lovins et al., *The State of the Art: Drivepower,* Rocky Mountain Institute, April 1989.

sustainable production options along with greatly improved efficiency within the manufacturing, agricultural, and energy sectors. More efficient equipment and processes, and more judicious use of natural resources and other inputs—whether energy, chemicals, water, or pesticides—can help us to meet environmental protection goals while saving raw material and other production costs. As the Science Advisory Board noted in a September 1990 report to EPA,

> • • • Some pollution prevention techniques, like using energy more efficiently and recycling process materials, can pay for themselves quite apart from environmental considerations. One reason that Japan and Western Europe are formidable economic competitors is that they use energy and raw materials so efficiently. To compete in the global marketplace, American businesses also must use them more efficiently.[10]

Pollution prevention is grounded in two additional principles:

- First, a multi-media focus, one that looks at all environmental media as a unified whole and avoids the potential transfer of risks from one medium to another; and
- Second, a comprehensive evaluation of the total environmental impacts of products over their entire life-cycle, from the development of raw materials through manufacturing (including energy use) to use and ultimate disposal.

First Step in the Risk Reduction Hierarchy

Pollution prevention does not mean that we will be able to eliminate all wastes from all production processes. Rather, it offers a more cost-effective means of minimizing the generation of waste. Another way to look at Prevention (or "source reduction") is as the first step in a hierarchy of options for reducing the risks to human health and the environment from pollution. The next step in such a hierarchy would be the responsible recycling of any wastes that cannot be reduced at the source. When recycling is conducted in an environmentally sound manner, it shares many of the same advantages as prevention, such as conserving energy and other resources, and reducing reliance on raw materials and the need for end-of-pipe treatment or containment of wastes. Wastes that cannot feasibly be recycled should be treated in accordance with environmental standards that are designed to reduce both the hazard and volume of waste streams. Finally, any residues remaining from the treatment of waste should be disposed of safely, to minimize their potential for release into the environment.

The hierarchy establishes a set of presumptions, rather than an ironclad rule. Other practices, such as treatment and proper disposal, can also be protective of the environment. Industries can be expected to balance costs and benefits when evaluating prevention opportunities, considering such factors as savings in raw material and operating expenditures, avoided pollution control costs, reduced liability, and improved relations with local communities. EPA has the discretion to require prevention under the Toxic Substances Control Act by restricting the use of a chemical in manufacturing or commerce, but only after balancing the full range of costs and benefits.

Why a Federal Strategy Is Needed

EPA recognizes that many states, industries, and environmental organizations have advanced the cause of pollution prevention for a number of years. While EPA has undertaken a number of successful prevention actions over this period, it has not been the principal focus of EPA's efforts. Not surprisingly, therefore, there is a wide disparity in the level of commitment to pollution prevention among firms that face EPA's regulatory and enforcement actions. Among the impediments to pollution prevention contributed in part by EPA's orientation are the following:

- *Separation of production and environmental decisions.* At many companies, environmental issues are divorced from the immediacy of the production process. Environmental compliance staff, for example, may have little influence in production decision-making. On another level, environmental expenses may not be fully accounted for in cost assessments and price setting. Some corporations account for waste management expenses and pollution control costs as overhead, rather than as costs incurred by distinct production processes. In part, these failures reflect the limitations of a regulatory tradition that focuses on controlling wastes after their generation, a tradition that EPA must help to change.
- *Absence of a long-term perspective.* Prevention opportunities should be evaluated taking into account changes in the environmental climate that might reasonably be expected to occur that could increase the cost of compliance. EPA has not always provided industry with the kind of advanced notice of potential regulatory action likely to affect specific contaminants or their sources that would encourage industry to make long-term investments in prevention.
- *EPA's single-media organization.* Finally, EPA's own single-media offices, often created sequentially as individual environmental problems were identified and responded to in legislation, have played a role in impeding development of cost-effective multi-media prevention strategies. In the past, the use of flexible authorities such as TSCA, innovative cross-media settlements involving or promoting pollution prevention, and voluntary agreements for overall reductions in releases have not been encouraged.

Thus, a clear and coordinated federal strategy for pollution prevention is needed both to remove the obstacles of the past and to foster preventive initiatives in the future.

Part II—Guidance for EPA's Program and Regional Efforts

> EPA should emphasize pollution prevention as the preferred option for reducing risk.
> —Science Advisory Board, "Reducing Risk", September 1990.

EPA's formal commitment to prevention was signaled with the creation of a Pollution Prevention Office in the summer of 1988. The directive creating the new office also called for the development of an Agency Pollution Prevention Strategy, coordinated by a Subcommittee of the Pollution Prevention Advisory Committee, with input from all EPA program and regional offices. The last two years have seen a vigorous response from EPA's program and regional offices in incorporating pollution prevention into EPA's efforts. Successes include:

- Holding an Agency-wide competition for innovative pollution prevention projects, with awards made to 25 projects;
- Setting up the Pollution Prevention Information Clearinghouse, comprised of a hotline, document repository, and electronic bulletin board;
- Coordinating development of rule-makings aimed at the pulp and paper industry to focus on process changes that eliminate the formation of dioxins from bleaching operations;
- Developing an active and innovative grants program to support state efforts in pollution prevention;
- Establishment of the American Institute for Pollution Prevention;
- Developing a pollution prevention audit guide for use by industrial facilities; and
- Building a database on prevention opportunities through use of statutory authorities to gather information.

[10] *U.S. EPA, Science Advisory Board, Reducing Risk: Setting Priorities and Strategies for Environmental Protection,* September 1990 (SAB-EC-90-021), p. 22.

BEST COPY AVAILABLE

These efforts help to illustrate the range of opportunities for building prevention into existing programs and activities. This section outlines:

A. General principles that will guide the Agency's efforts to build upon these successes.

B. Specific activities that EPA will undertake to apply these principles to its programs.

C. EPA's plan for coordinating and improving the Agency's own institutional capacity to incorporate a pollution prevention ethic in its basic mission of protecting human health and the environment.

A. General Principles

The Pollution Prevention Act of 1990 requires EPA to "develop and implement a strategy to promote pollution prevention." It includes provisions directing EPA to set measurable goals, to consider the impact of regulation on source reduction, and to evaluate regualtory and non-regulatory barriers. The Act also amends the public reporting requirement of section 313 of SARA to require industries to quantify the effect of source reduction, as well as recycling and treatment, in reducing environmental releases of toxic chemicals. EPA must report on national progress in reducing these releases.

EPA's new responsibilities under the Pollution Prevention Act must be integrated with its obigations under existing law, particularly under recently enacted Clear Air legislation. For example, the Clean Air Act requires EPA to establish technology-based standards for the control of air toxics, and to take further action to reduce any "residual risks" that remain after these standards take effect.

The Agency is also obligated under the Toxic Substances Control Act to protect the public from "unreasonable risks" posed by the manufacture, processing, or use of toxic chemicals. Finally, EPA must issue permits that embody pollution control requirements, and take enforcement actions against those who violate environmental law.

Rather than propose expansion of its authority under existing law, EPA's strategy is designed to encourage industries to take voluntary action to identify and exploit cost-effective prevention opportunities. These voluntary efforts can serve two important purposes:

- Reducing the cost of complying with mandatory requirments under the new Clean Air Act and other laws;
- Reducing the need for additional regulation under TSCA or the "residual risk" provisions of the Clean Air Act.

Voluntary actions offer industry the advantage of maximum flexibility, and sufficient time to make economically sound changes in production or use of raw materials.

Cooperative Strategies: Making the Most of Voluntary Efforts

EPA believes that voluntary efforts have a great potential to yield change, based on the following observations:

- Pollution prevention is often in the self-interest of manufacturing enterprises, since it has the potential to save raw material (including energy), reduce present and future waste management costs, minimize liability, and earn public goodwill. Failure to realize this potential often results from lack of an adequate understanding of these benefits and costs. EPA believes that where these factors are clearly understood, most businesses will have a strong incentive to maximize the return from prevention, which in turn will yield significant public dividends in the form of increased environmental protection.
- EPA has also taken note of the substantial public commitments to prevention that have been undertaken by some of the nation's leading manufacturers. One aim of this strategy is to create a climate that encourages such efforts, and persuades others to move forward without delay in instituting preventive approaches.

EPA's support for non-regulatory approaches does not mean the Agency will be a passive bystander; rather, it will pursue a series of cooperative efforts with industry designed to improve understanding of the costs of pollution and the benefits of prevention, and to encourage businesses to act on this knowledge. The targeting of specific contaminants and the benchmarks for measuring progress discussed in Part III of this strategy will help to set clear expectations for industry and to focus private sector initiatives in areas of significant environmental concern.

Continuing Need for Strong Regulatory and Enforcement Programs

Of course, EPA will continue to promulgate and enforce regulations required under its various statutory authorities and these will provide a further incentive to prevent pollution by increasing its cost. EPA will coordinate development of these regulations in a manner designed to help industry identify the potential for multi-media prevention strategies and technologies that reduce end-of-pipe compliance costs.

When EPA determines that specific regulatory actions are needed, the Agency will investigate flexible, cost-effective strategies that avoid prescriptive approaches, including market-based incentives that can be practically applied and are authorized by law. In particular, EPA will make effective use of new authority under the Clean Air Act to provide credit for early reduction in air toxics emissions. As an example of a flexible approach, EPA recently exercised its statutory discretion to work with several states to adopt regulations extending the compliance deadline for companies that were attempting to eliminate, rather than control, solvent emissions from coating lines.

A strong enforcement program continues to create incentives for pollution prevention, both as a means for a regulated entity to come into compliance and as an additional set of measures beyond compliance which may result in EPA's mitigating (but not eliminating) the penalty for noncompliance. EPA will use its prosecutorial discretion to negotiate enforceable prevention plans with facilities that have violated environmental law. EPA believes most businesses have a strong incentive to push prevention strategies far enough to reduce the need for enforcement action. The strategy allows industry a greater measure of control in avoiding the costs associated with these coercive measures through voluntary actions.

B. From Principles to Action

The specific pollution prevention actions discussed below illustrate how EPA intends to apply these principles in practice, rather than representing an exhaustive list of activities. The discussion is organized around the following categories: identifying and overcoming barriers to pollution prevention, expanding public participation and choice, working with other federal agencies, investing in states, outreach and training, regulation and permits, enforcement, and research and analysis of substitute technologies and products.

1. Identifying and Overcoming Barriers

- *Investigating the obstacles.* As noted in the introduction, among the obstacles to pollution prevention are some that may be imposed by our current regulatory framework. EPA is conducting a joint project with Amoco Corporation (described in the box below) that will identify whether such regulatory barriers exist and, if so, determine how they can be modified to encourage implementation of more cost-effective strategies that promote prevention and result in greater net reduction of risk.

Other barriers to the development, commercialization, and use of innovative prevention technologies will need to be overcome if effective prevention technologies are to become readily available. EPA, through the Office of Research and Development, the National Advisory Council for Environmental Policy and Technology, and other programs, will continue to identify and explore these and other barriers and develop appropriate strategies to eliminate them.

- *Breaking down barriers with technical assistance.* Lack of information and captial are barriers to pollution prevention, particularly among small businesses. Small polluters such as garages and dry cleaning operations are often unaware of their polluting pratices, or of prevention opportunities. They are also often likely to lack the capital to invest in environmentally sound alternatives. (This can be true as well of medium-sized firms that are experiencing rapid growth.)

Amoco-EPA Joint Pollution Prevention Project. Amoco Corporation and EPA are jointly carrying out a project to identify existing or potential incentives and barriers to implementing pollution prevention at Amoco's Yorktown, Virginia oil refinery. Begun in 1989, the project is an opportunity for government and industry to work cooperatively to identify emissions and their sources at an operating facility, and to evaluate various methods for reducing emissions to the environment. The project's specific objectives are to:

- Improve identification of releases to air, water, and land;
- Simulate alternative methods for reducing the releases and select the most effective method;
- Assess the potential benefits, costs, technical feasibility, and legislative/regulatory impact associated with each alternative method of reducing release;
- Identify existing or potential barriers and incentives to implementing these alternatives.

The project team expects to have a mid-term peer review in the first quarter of 1991 and a final draft report in the third quarter of 1991.

Since many small businesses are unregulated, there is little incentive for them to adopt environmentally sound management or disposal practices. Many small quantity generators of hazardous waste rely heavily upon recommendations from vendors and suppliers of treatment technologies in addressing pollution problems. Such tools as technical assistance, financial assistance, and information sharing may be the most appropriate drivers of small business self-interest.

EPA will work through state and local governments, trade associations and directly to promote prevention among small and medium-sized businesses. EPA will aslo help to develop networks between large and small businesses to increase technology transfer.

In addition to the state grants, the Agency already has in place several tools to assist states and industry:

- *Two percent projects.* At the federal level, an important infusion of demonstration projects is expected to result from the "2 percent prevention competition." In 1989, EPA's Administrator made a major commitment of Agency resources to prevention by earmarking two percent of FY 1991 contract dollars for innovative prevention projects. During the summer of 1990, each EPA office competed for these funds with proposals for projects. Approximately $12 million was available in the pool ($65 million worth of proposals were submitted) and a total of 25 projects were selected that are being implemented in FY 1991.
- *Pollution Prevention Information Clearinghouse.* EPA's Pollution Prevention Information Clearinghouse is a multi-media clearinghouse of technical, policy, programmatic, legislative, and financial information dedicated to promoting pollution prevention through efficient information transfer. The Clearinghouse is comprised of four elements: (1) A hotline; (2) a repository containing texts, manuals, fact sheets, case studies, and legislation; (3) the Prevention Information Exchange System (PIES), a computerized conduit to databases, information exchange, and document ordering, accessible through modem and personal computer; and (4) networking and outreach with users and a variety of national and international organizations.

2. Expanding Public Participation and Choice

The growing ecological consciousness of the American public has sparked increased sensitivity on the part of consumers, corporations, and governments to the environmental consequences of their products and behavior, as well as an urgent need for more and better information on environmental performance of both consumer products and industrial facilities. The Science Advisory Board, as well as a recent survey by *The Economist*, found that public information played a vital role in promoting pollution prevention and reducing risk, and the SAB concluded:

EPA should expand its efforts to provide information and to facilitate information sharing that helps individuals, businesses, and communities to reduce risk.

Consumer product comparative risk. EPA is undertaking a project to design a methodology that will assess the environmental and health consequences of consumer products, test that methodology on sample product groups, and develop and carry out a communication plan to transmit the information to the public, engineering and design schools, industry, the environmental community, and other interested groups. The aim is to have a workable approach for evaluating a wide range of consumer products in the future. The project team plans to have a manual of the methodology completed by December 1991 and a communications strategy by September 1992.

- *Harnessing consumer buying power.* Recognizing the buying power of environmentally conscious consumers, many companies have begun to incorporate ecological considerations in the design and marketing of products. EPA wholeheartedly supports this trend, which demonstrates how a dynamic market economy can serve social objectives through the powerful mechanism of consumer choice. However, the proliferation of advertising claims has created understandable confusion among the public about the specific meaning of such claims as "ozone-friendly," "biodegradable," and "less toxic," while businesses have expressed concern about the cost of having to comply with many different state standards for environmental labeling.

Accordingly, EPA plans to work with the Federal Trade Commission, the Office of Consumer Affairs, and other federal agencies to explore the possibility of establishing uniform national guidelines or standards for the use of environmental terms in advertising.

In addition, EPA is testing methodologies for evaluating the environmental consequences of consumer products (see box above).

- *Improving data and developing indicators to measure progress.* Establishing clear and measurable indicators of progress in pollution prevention serves a number of purposes: it promotes accountability at EPA, helps to focus the efforts of each sector of society, and makes it easier for the public and Congress to understand and track progress in reducing pollution.

Ideally, EPA could track prevention by estimating reductions in risk, e.g., by observing concentrations of targeted contaminants in air, ground water, surface water, and soil samples as they relate to exposures to humans and ecosystems, and determining to what extent prevention efforts reduced these concentrations. Unfortunately, because some contaminants may persist in the

environment for long periods after their initial release, reductions in discharges or emissions may produce no quantifiable effect on pollution levels in the short term. In addition, EPA lacks data on ambient concentrations of many pollutants and on the extent of human and environmental exposures to such pollutants, in part because regulations under some environmental statutes are based on technology, rather than ambient measurements.

EPA is attempting to fill these information gaps by developing "ecological indicators" designed to track the rise and fall of pollutant concentrations in the environment. In the meantime, practical limitations will require EPA to identify alternate means for measuring progress in preventing pollution in the manufacturing, agriculture, and energy sectors.

The Toxic Release Inventory (TRI) established under section 313 of the Emergency Planning and Community Right-to-Know Act is the most powerful tool available to EPA at the present time for tracking pollution prevention efforts from industrial sources. Section 313 requires certain manufacturers to report the amount of each of the more than 300 toxic chemicals listed in the Act that are released to the air, land, or water prior to their treatment or off-site transfer. The reporting requirements, which will expand to cover more than 28,000 facilities nationwide for 1989 data, apply to plants that (1) employ at least ten persons; (2) fall within the manufacturing Standard Industrial Classification (SIC) Codes 20–39; and (3) use at least 10,000 pounds or manufacture at least 25,000 pounds of any TRI chemical.

Unlike any other database, TRI permits the tracking of chemical releases at specific facilities on a multi-media basis. Because the database is chemical specific, it may be easier to distinguish prevention efforts from treatment methods that do not reduce releases of pollutants. (For example, dewatering a particular waste stream may reduce volume, but would not necessarily reduce the amount of the toxic chemical released to the environment.)

The Resource Conservation and Recovery Act (RCRA) also requires EPA to conduct a biennial census of hazardous waste generators. These results provide information that can be useful in evaluating prevention efforts. There are limitations to applying the census data to multi-media prevention strategies, since RCRA only applies to transportable hazardous wastes (not including air and water discharges) and includes large volume waste streams with multiple contaminants that are difficult to track. However, the biennial reports could eventually provide EPA with more detailed information on processes responsible for generating particular wastes, information which is not available through TRI. In addition, the Biennial Report will play an increasingly important role in measuring changes in quantities of secondary hazardous wastes (i.e., hazardous residuals from the treatment of either hazardous or nonhazardous wastes).

The Agency will seek continually to improve the quality of the data gathered under both RCRA and TRI, to improve the effectiveness of both programs in tracking progress in preventing pollution at industrial facilities. An interagency workgroup will lead an effort to better coordinate and, where possible, integrate TRI and RCRA data. In addition, the Office of Research and Development is working on developing a more comprehensive database, designed to measure pollution prevention in sectors other than manufacturing (such as minerals, forestry, etc.); identify the most useful indicators and units for measuring pollution prevention at the source; determine whether the same indicators and units can be used across different sectors; and identify relationships between plant-level measurements of pollution prevention and the combined effects of prevention by multiple sectors at regional and national scales.

3. Partnership With Federal Agencies

Other federal agencies can play an important role in promoting prevention through their policies, as well as by setting an example. EPA is committed to building a strong working relationship with the Departments of Agriculture, Energy, Transportation, Defense, Interior, and with other federal agencies that have important jurisdiction over activities that affect the environment. In addition, EPA will work with agencies to help incorporate prevention into the management of federal facilities, so that these may provide a model for the nation. Finally, recognizing the power of the federal purse to change behavior, EPA will seek to make the environmental characteristics of products an important consideration in government procurement programs.

4. Investing in the States: Building and Strengthening Programs

Many states have been at the forefront of the population prevention movement, providing a direct link to industry, agriculture, and local governments and playing a key role in technical assistance and technology transfer. Through its Pollution Prevention Incentives for States grant program, EPA is promoting the establishment and expansion of state multi-media pollution prevention programs, and is testing innovative pollution prevention technologies and applications at the regional and state level.

In FY 89 and FY 90, EPA awarded a total of $11 million to 40 state and interstate organizations to conduct demonstration projects, provide direct technical assistance to industry, businesses, and local governments, and institutionalize multi-media pollution prevention as an environmental management priority.

In FY 91, EPA will target grant funds to specific sectors or areas with a high potential for risk reduction and for significant gains in pollution prevention. EPA will evaluate state programs to determine what has and has not been successful at the state level and why, and will begin to integrate this analysis into a long-term strategy that defines the appropriate relationship between federal and state roles in implementing multi-media pollution prevention. In addition, EPA will begin to identify areas in its media-specific grant programs where pollution prevention concepts and methodologies can be integrated.

5. Outreach and Training: Achieving a Cultural Change

On a still broader basis, EPA will be seeking to lay the groundwork for a pollution prevention orientation within government, industry, academic institutions, the public, and internationally through a variety of outreach and educational initiatives. These include EPA's Pollution Prevention Information Clearinghouse, various technical and non-technical resources, including "Pollution Prevention News", booklets on industrial prevention techniques, and video presentations on pollution prevention, and the development of curriculum materials on pollution prevention for kindergarten through university levels.

Training is needed to help institutionalize prevention as the strategy of choice in all environmental decision-making and protection activities. In addition to developing a training resource guide, a 30-minute video documentary, and cosponsorship of conferences and workshops, the Office of Pollution Prevention is developing specialized courses designed for government employees and industry. The courses will be available through the EPA regional offices starting in 1991.

6. Regulation and Permits

As discussed previously, EPA will seek to strengthen the ability of the existing regulatory framework to provide further incentives for prevention.

- *Toxic Substances Control Act: evaluating costs and benefits.* EPA has authority under the Toxic Substances Control Act to limit the use of a chemical substance in commerce or manufacturing, when these substances pose an unreasonable risk to human health. In determining whether action is warranted against particular risks under that law, EPA balances the full range of costs and benefits.
- *Regulatory clusters: applying more cost-effective approaches.* EPA believes that pollution prevention can provide a cost-effective alternative to traditional treatment technologies, particularly when the long-term cost of complying with a series of regulatory requirements is taken into account. The Agency is categorizing the rules it intends to propose over the next two to three years according to the manufacturing and non-manufacturing sources that will be affected.

These regulatory clusters will permit accurate evaluation of the cumulative impact of standards affecting specific industries over time, which in turn should encourage early investment in prevention alternatives that avoid the expense of installing and operating treatment facilities. Providing industry with advance notice of regulatory actions establishes a suitable framework for negotiating prevention alternatives that might not be considered on a short-term basis. Needless to say, the clustering project will not be allowed to impede statutory or court-ordered deadlines.

- *Early reductions under the Clean Air Act.* The Clean Air Act provides a significant opportunity for pollution prevention by offering credit for "early reductions" of toxic air emissions. More specifically, industrial sources can obtain a six-year extension from compliance with Maximum Achievable Control Technology standards if they:

—Achieve reductions of 90 to 95 percent below a baseline year (no earlier than 1987) before such standards are proposed, or

—Enter into enforcable commitments to achieve such reductions by January 1, 1994.

- *Permits: EPA will promote cost-effective alternatives to conventional treatment alternatives.* There are substantial opportunities to explore source or use reduction alternatives during the negotiation or reissuance of environmental permits. Prevention approaches may be more cost-effective for meeting the regulatory requirements of existing statutes than traditional treatment or disposal methods. EPA will work with industries to identify such opportunities when developing or renewing permits. Where authorized by law, EPA will give preference to performances standards that maximize the range of choices for permittees.

In many circumstances, prevention may require application of new processes or technologies. Development of these innovative solutions may in turn require a specialized permitting process designed to expedite testing and operation. The National Advisory Council for Environmental Policy and Technology, a panel of experts from government, academia, states, and public interest groups, in its advisory capacity to the Administrator, has pointed out this need and suggested several ways to foster technology innovation through permitting (and compliance). These include (1) Designing effective processes to issue permits for testing innovative prevention technologies; (2) coordinating reviews of permit applications in the context of cross-media impacts and prevention potential; and (3) expeditiously and consistently reviewing permit applications for early commercial uses of innovative prevention technologies. All of these steps will need to be augmented by technical support to permit writers, permit applicants, and the public, if they are to be successful.

7. Enforcement: Incorporating Prevention Into Settlements

Vigorous enforcement remains a primary tool for creating an incentive to reduce industrial pollution. Pollution prevention can help private industries avoid some of the costs of complying with federal and state requirements for the treatment and management of pollutants and the liability costs that result from noncompliance. Enforcement generally creates an environment in which permanent solutions, such as eliminating some pollutants entirely, may be preferred to less reliable approaches to compliance.

EPA's Office of Enforcement is currently developing an interim policy on the inclusion of pollution prevention conditions in Agency enforcement settlements. The policy, expected to take effect in FY 1991, will be applicable to both administrative actions and civil judicial settlements negotiated in conjunction with the Department of Justice. It encourages the inclusion of single-media or cross-media pollution prevention conditions, as either the means of correcting the violation or as additional conditions incidental to injunctive relief, especially when they offer the best chance of avoiding recurring or future violations, have no negative cross-media impacts and technologically and economically feasible options exist. Consistent with EPA policy, civil penalties, which reflect the gravity of the violation and the economic benefit of noncompliance, will continue to be a mandatory component of the settlement.

EPA has concluded several successful pollution prevention settlements in FY 1990 (see box on next page) and expects the number of such settlements to increase in FY 1991 and beyond.

8. A Research Strategy for Prevention

Research is the primary vehicle for enhancing our pollution prevention knowledge base. EPA has committed substantial resources toward pollution prevention research and, through its *"Pollution Prevention Research Strategic Plan,"* has established a "blueprint" for future Agency research efforts. The research strategy is the culmination of efforts of the Office of Research and Development to identify, set priorities, and coordinate its research designed to increase pollution prevention and implement a cooperative program to conduct this research. It is designed to provide the scientific and technical knowledge necessary to implement pollution prevention initiatives on a cross-media, cross-program basis.

In the short term, research will be directed toward development of specific prevention strategies for individuals contaminants, clusters of contaminants or sources targeted in the industrial toxics project (see Part III below). Longer term efforts will focus on approaches to address problems outside of the manufacturing sector and on research designed to understand and overcome social and institutional obstacles to pollution prevention. This research is intended to promote cultural change by which prevention will become an integral part of public programs and private activities.

Pollution Prevention Settlements

Sherex Polymers, Inc. On January 4, 1990, EPA simultaneously filed a TSCA civil administrative complaint and proposed consent agreement and consent order. Sherex was charged with manufacturing a chemical substance in violation of section 5 of TSCA (which requires premanufacture notification of EPA at least 90 days prior to manufacturing a new chemical substance).

For purposes of settlement, consistent with other TSCA section 5 settlements, EPA reduced the adjusted proposed penalty by 15% for the respondent's taking steps reasonably expected by EPA to mitigate the violations. In addition, EPA further reduced the civil penalty by an additional 5% ($42,000) in consideration of Sherex agreeing to implement a pollution prevention project at its Lakeland, Florida facility, at a cost of $528,000. The pollution prevention project generally consisted of replacing an existing filter system on a dimmer fatty acid production unit at that facility. The project was expected to result in an annual waste reduction of at least 500,000 pounds of filter cake and to increase the recovery of reusable fatty acid material by over 250,000 pounds annually.

The 3–V Chemical Corportation. On August 7, 1990, the Chief Judicial Officer approved a consent agreement and consent order in this TSCA administrative enforcement action. The consent agreement requires the repondent to pay a $30,000 civil penalty and implement an environmentally beneficial program. Although the enforcement action against 3–V was for violations of TSCA sections 4, 5, and 13, 3–V agreed to purchase and install a solvent recycling system at its South Carolina manufacturing facility that is intended to reduce by more than 50% its emissions of an unregulated ozone depleting substance (1,1,1-trichloroethane) and a probable carcinogen (dichloromethane). Further, 3–V agreed to implement a leak detection program for fugitive emissions of these two solvents, and will report annually on their pollution prevention efforts.

9. Looking Ahead: Emerging Products and Technologies

EPA's strategy will also try to identify and avoid environmental problems before they arise, by encouraging development of safer substitutes for hazardous raw materials or products, as well as cleaner technologies. The Office of Toxic Substances (OTS) currently has authority under TSCA to require the testing of chemicals to identify potential hazards. OTS is beginning to focus these testing rules on clusters of chemicals that share similar characteristics, or that are used for similar purposes. This will allow comparison of the relative risk of all chemicals in the cluster, to ensure that EPA policies do not result in industries reducing their use of specific toxic chemicals by switching to equally hazardous substitutes.

EPA also is sponsoring an innovative "anticipatory research" program through the Office of Research and Development that concentrates on emerging technologies that could prevent or address future problems. The Agency's objective is to identify and explore emerging technologies and patterns in resource use and disposal that have long-term implications for the nation's programs in pollution prevention.

C. Promoting Institutional Change at EPA

EPA's strategy must confront institutional barriers within the Agency's own organization that limit its ability to develop effective prevention strategies. Most fundamental is the Agency's compartmentalized organization, a reflection of the single-media orientation of most of the environmental statutes under which EPA operates. The Agency's regulatory development and review process has historically tracked each regulation individually, with little effort to link rules related to the same contaminant or industry. In addition, EPA's performance measurement and incentive structures do not explicitly reward or encourage multi-media or cross-program efforts.

EPA has identified four distinct requirements for promoting institutional change within the Agency:

- Clear commitment from management to establish prevention as a priority and to establish common definitions to guide programs.
- Promoting cooperation among program and regional offices by improving communication and motivation.
- Providing resources and training to support regional and program initiatives in pollution prevention.
- Integrating pollution prevention into the Agency's strategic planning process.

Clear Commitment From Management

The EPA Administrator's commitment to prevention as a priority was made clear with the establishment of an independent Pollution Prevention Office in 1988 and the accompanying directive. After broad consultation with public interest groups, private industry, members of Congress, and others, EPA is preparing to publish a final policy statement defining pollution prevention and placing it at the top of the hierarchy of preferred environmental practices (as discussed on page 12). The policy statement as well as this strategy help to signal a preminent role for prevention in the context of EPA's mission to protect human health and the environment.

Working Together: Improving Communication and Motivation

EPA has taken the first step in improving cross-program cooperation by establishing an Agency-wide Pollution Prevention Advisory Committee, comprised of representatives from program and regional offices. EPA will take the following steps to encourage programs to work together in developing multi-media prevention strategies:

- Designate special assistants for pollution prevention in each Assistant Administrator's office to coordinate activities within that program;
- Establish cross-media workgroups to identify clusters of rules that affect a particular contaminant or industry, and to explore opportunities to promote pollution prevention through coordinated rulemaking;
- Develop incentives to encourage Agency staff and managers to engage in pollution prevention efforts and to think creatively about prevention opportunities (e.g., individual and program performance measures, awards for cross-media/cross-program prevention approaches);
- Incorporate prevention as a primary tool for achieving program goals within the comprehensive 4-year strategic plans now being prepared by each program and regional office (see below);
- Include prevention-related activities in the Agency's operating, guidance, accountability measures, and regulatory review and development process;
- Identify the steps needed to foster technology innovation through the Agency's regulatory and administrative processes, including permitting, compliance, and procurement.

Provide Resources for Prevention and Training

Through the Office of Pollution Prevention, EPA will continue to provide resources and expertise to help program and regional offices identify and exploit opportunities for prevention. As noted earlier, this will include training for Agency staff to ensure integration of prevention concepts into permits, inspection, and enforcement settlements.

Pollution Prevention and Strategic Planning

In 1989, EPA began requiring each program and regional office to develop a strategic plan to set clear, forward-looking priorities for the Agency. Headquarters and regional offices are increasingly using strategic planning to target resources to problems posing the greatest risks to human health and the environment, and on approaches with the greatest potential for reducing those risks. Pollution prevention is meant to be the central feature of these strategic planning efforts—the strategy of first choice.

The priorities set forth in program's long-term strategic plans should drive annual operating planning, budget formulation, program implementation, and management tracking systems. Because pollution-prevention is to be a fundamental component of each program's strategic planning efforts,

Agency managers will, over time, devote increasing resources and attention to the prevention aspects of the programs they manage.

Part III—Industrial Toxics Project

Precisely because the pressure within companies for end-of-pipe solutions is so strong, it is essential that government counteracts it . . .

In America, nothing has galvanized senior management as much as Title III of the Superfund Amendments and Reauthorization Act.

A Survey of Industry and the Environment, The Economist, September 8, 1990.

This section reviews EPA's plan for targeting certain toxic chemicals for which focused prevention strategies will be developed. EPA's goal will be to reduce aggregate environmental releases to all media from industrial facilities of these targeted chemicals, as measured by the Toxics Release Inventory (TRI) in 1988, by 33 percent by the end of 1992 and at least 50 percent by the end of 1995. EPA will measure success according to whether its goals have been achieved on an aggregate, multimedia basis, rather than for each chemical, industry sector, or company. The Agency is principally targeting contaminants that will be regulated under the provisions of the Clean Air Act to ensure that companies participating in this voluntary program are also eligible to apply for credit under the "early reduction" provisions of that law. The Agency's 33 percent and 50 percent multi-media reduction goals are reasonable, given that the Clean Air Act is expected to eventually result in reductions of up to 90 percent in the air emissions of most contaminants.

EPA will also seek to identify significant exposures of these targeted chemicals that may arise from commercial or consumer uses of such products, and develop appropriate strategies for their prevention. While the project outlined in this section is limited to toxic chemical releases generated from industrial activities, EPA intends to work with other federal agencies to develop similarly focused prevention strategies for energy, agriculture, municipal water and wastewater, and other economic sectors which may target both toxic and other pollutants for reduction.

The value of the specific project outlined here, as well as the ones that EPA will subsequently develop, lie in:

- Bringing focus and visibility to EPA's prevention program, which in turn promotes accountability for results;
- Helping to set clear expectations for industry and other affected parties regarding the need to reduce releases of certain high-risk contaminants;
- Committing individual program offices to work together to develop comprehensive, multi-media approaches to specific environmental problems; and
- Providing a model that, if successful, could guide efforts throughout the Agency.

The industrial toxics strategy marks a new approach by EPA to encourage voluntary action by industry that minimizes the need for intrusive federal regulation. The program depends for its success on the willingness of companies to participate, and this section sets forth principles for implementation that are designed to elicit that cooperation:

(1) As the program is voluntary, non-participation by a company will not be the basis for delaying benefits, such as discharge permits, to which the company is entitled by law. At the same time, of course, the voluntary effort will not be allowed to interfere with fulfillment of the Agency's responsibilities, timetables for action, and enforcement obligations, including those under the new Clean Air Act.

(2) EPA will not turn voluntary commitments into enforceable permit conditions without that company's consent, to the extent that those commitments go beyond that company's obligations under the law.

(3) EPA will measure success according to whether its goals have been achieved on a nationwide, aggregate basis, rather than for each chemical, industry sector, or company. Companies that participate in the program will have the flexibility to propose their own goals, and to determine who best to achieve them.

(4) EPA will work with industries to ensure that any initiative taken to reduce emissions ahead of statutory schedules receives appropriate credit toward complying with any subsequent regulatory requirements. For example, while 1988 provides the base year for measuring overall progress toward meeting the goals, EPA will explicitly recognize any results that companies have achieved since 1987, the first year for which TRI data are available. This will ensure that efforts made under the voluntary program are eligible for credit under the Clean Air Act's "early reduction" program, which provides a six year extension from compliance with new technology-based standards for those companies that reduce emissions 90–95 percent from a base year no earlier than 1987.

(5) EPA will work with companies to identify and (to the extent authorized by law) eliminate barriers in existing permitting systems to cost-effective prevention.

EPA is hopeful that this voluntary effort will inspire proactive, innovative responses from the private sector, which would help to build trust in industry's willingness to respond to the public demand for environmental protection. This, in turn, would make it easier to investigate those barriers in existing law, regulations, and permitting practices that inhibit cost-effective solutions to environmental problems.

EPA's prevention project for industrial toxics will have, four basic components:

A. *Targeting.* EPA will identify 15 to 20 pollutants from the Toxics Release Inventory that present both significant risks to human health and the environment, and opportunities to reduce such risks through prevention. As discussed previously, EPA will principally target those contaminants also subject to new Clean Air Act requirements to ensure that participating companies can apply for credit under the provisions of that law for any voluntary reduction in toxic air emissions.

B. *Outreach.* The Agency will seek voluntary, measurable commitments from industrial sources of these contaminants to reduce environmental releases through prevention.

C. *Organizing for Action.* EPA will form cross-media workgroups to provide analytical and technical support for the outreach program, and to refine prevention strategies for targeted contaminants.

D. *Measuring progress.* The Agency will use TRI to measure progress in achieving the 33 and 50 percent reduction goals.

A. Targeting

As the Agency is responsible under many federal laws for protecting public health and the environment from toxic pollutants, it is appropriate that EPA's prevention strategy begin with a plan to reduce releases of these contaminants. The Science Advisory Board's recently completed report concluded that toxic chemical exposure among plant workers and the general public represented two of the four most serious threats to human health from environmental causes, while also contributing significantly to the degradation of the ecosystem.

EPA has not estimated the benefits of this strategy, given that it is voluntary, and given the uncertainties regarding participation of companies in the project and the specific reductions that such companies will choose to undertake. Although costs are similarly uncertain,

the purely voluntary nature of this demonstration project ensures against adverse cost outcomes, as companies can be expected to balance costs and benefits on their own in determining their level of participation. Had EPA chosen to embark on a regulatory program, however, a more thorough analysis of the full range of costs and benefits would have been used to select program objectives.

While a formal cost-benefit evaluation is inappropriate to a voluntary program, EPA's selection of target chemicals will reflect a rational evaluation of both risk and cost-effectiveness of prevention. The list of 15–20 chemicals will be drawn from recommendations submitted by program offices, to ensure it has practical relevance to day-to-day operations. Program office recommendations will, in turn, be guided by the criteria outlined below, which are designed to reflect both risk and opportunity for prevention.

• *Risk to human health and the environment,* taking into account the risk of cancer, chronic non-cancer health effects, reproductive, developmental, and neurotoxic risks, and the potential for toxic or non-toxic ecological damage. In addition to laboratory data, risks will be evaluated by considering (1) the extent to which particular contaminants threaten the attainment of ambient air and water quality standards at specific locations, and (2) whether the volume of releases of a particular contaminant to the environment are significant enough to warrant concern.

• *Multiple exposure problems.* Some chemicals pose environmental problems in both their manufacture and their use. For example, the production of certain chlorinated solvents may result in the release of toxic, ozone-depleting contaminants during the manufacturing process. But chlorinated solvents tend to vaporize at room temperatures, so their use in degreasing operations at small industrial facilities or in other dispersed applications may lead to a second round of releases of the same contaminants.

• *Cross-media contamination.* Some contaminants, particularly toxics, present problems in more than one medium. Since nature does not recognize neat jurisdictional compartments, these same contaminants are often transferred across media. For example, an estimated 50 percent of the heavy metals in the Great Lakes results not from water discharges but from airborne deposits.

• *Geographic location.* The Agency will also use geographic information systems, in conjunction with Toxic Release Inventory data, to identify specific ecosystems where contamination from toxic chemicals is particularly acute as well as areas of high risk to public health or the environment, such as wellhead protection areas. The Agency will assess the extent to which contaminants are responsible for causing toxic "hotspots" in particularly productive and sensitive ecosystems.

• *Limitations of treatment technology or disposal capacity.* Some contaminants stubbornly resist traditional end-of-pipe fixes. Heavy metals, for example, cannot be thermally or biologically destroyed, and must be separated from emission gases with electrostatic precipitators or scrubbers, or from industrial wastewater through chemical precipitation. Since metals do not biodegrade, the incinerator ash or sludges that result must be contained in landfills over long periods of time at considerable expense.

• *Pollution prevention opportunity.* As an initial screening exercise, EPA's Office of Toxic Substances will compare TRI releases to production volumes of each of the top 100 produced chemicals in the United States. Where a high percentage of a specific chemical is released to the environment relative to its production, there may be significant opportunities to prevent releases through more efficient manufacture or use. Other information may also be used to establish the technical or economic feasibility of prevention for specific chemicals, such as case studies from the pollution prevention clearinghouse, or data from the voluntary waste minimization forms submitted by some companies under TRI.

• As discussed previously, EPA will principally target those contaminants also subject to new Clean Air Act requirements, to ensure that participating companies can apply for credit under the provisions of that law for any voluntary reductions of air toxics emissions.

The Agency is sensitive to the fact that there may be opportunities to achieve reductions in large numbers of toxic contaminants not on the target list, through changes in specific industrial processes. For that reason, EPA will evaluate options for identifying particular industries and facilities responsible for releasing high volumes of TRI chemicals that pose a significant risk, and crafting appropriate prevention strategies. The targeted chemicals may also be released in significant quantities by nonindustrial activities not subject to TRI reporting. The cross-media workgroups discussed below will evaluate the extent to which these releases are derived from the commercial or consumer uses of chemical products, and recommend appropriate strategies. It should be noted that TRI covers many small plants and extends well beyond traditional "point source" measurement on which EPA has relied in the past by recording chemical releases from production activities, such as solvent degreasing operations.

The Agency also recognizes that there are limitations to the TRI database; its plans for overcoming these are discussed below under Measuring Progress.

B. Outreach

As noted above, EPA's goals are to reduce TRI releases of targeted contaminants by 33% by 1992, and by at least 50% by 1995. This section briefly reviews EPA's plans for outreach which will challenge the responsible industries to help meet these goals.

As a first step, EPA will use TRI to identify major industrial sources of toxic chemical releases to the environment. EPA intends to produce a detailed plan for contacting these facilities or their parent companies to ask them for voluntary, measurable commitments to reduce releases of targeted contaminants to the environment and to identify how it will carry out these commitments. The plan, which will be developed by a Task Force comprised of representatives of EPA programs and regions, will be guided by the following considerations:

• Companies will be encouraged to identify and exploit technically and economically feasible prevention alternatives. Awards will be provided to facilities with the best plans, and those with the best performance in preventing pollution.

• Individual companies are free to propose their own goals. In order to make the most effective use of resources, EPA will initialiy direct its outreach program toward companies that emit significant emounts of the targeted chemicals.

• EPA will work with companies to address regulatory or permit barriers and, where appropriate, to provide credit for voluntary actions that meet regulatory requirements.

• EPA will make every effort to coordinate contact with industry to eliminate redundancy and paperwork.

• EPA headquarters will be contacting the companies and will coordinate among regions and with states to eliminate duplication or confusion. EPA headquarters and regions will both be represented on the Task Force drawing up the implementation plan.

• The Agency will target technical assistance using case studies from the Pollution Prevention Information Clearinghouse, and information from other sources. The cross-media workgroups discussed below will provide the basis for expanding the Agency's technical knowledge regarding pollution prevention opportunities for primary industrial sources.

• The outreach program will not be allowed to interfere with fulfillment of the Agency's statutory responsibilities (including timetables for action) and enforcement obligations.

EPA Expects Good Response

There are several reasons why EPA believes that industries will respond by volunteering pledges to substantially reduce releases of toxic wastes to the environment through pollution prevention:

• Earlier this year, EPA's Office of Air and Radiation asked nine companies representing 40 individual facilities to submit plans to reduce air emissions for several toxic pollutants including butadiene, a chemical thought to cause cancer. The response was uniformly positive. The nine companies contacted have submitted plans pledging reductions of more than 80 percent overall of specified toxic emissions within one to three years.

• When EPA's Office of Solid Waste asked azo-dye manufacturers to develop a waste minimization program for their industry, the response was immediate and proactive. EPA's Office of toxic substance has had similar success in persuading industries to improve management practices to reduce the use or environmental release of toxic chemicals.

• Many companies have already undertaken substantial public commitments to reduce the release of TRI chemicals. The Chemical Manufacturers Association has adopted a Code of Responsibility asking member firms to reduce emissions of both TRI chemicals and RCRA wastes. According to "The Economist":

> Complying with Title III was an eye-opener for many chief executives * * * quite apart from opening eyes, the information that American companies are compelled by law to collect has become a formidable management tool. It allows chief executives to set goals for subsidiaries.

• As discussed previously, EPA will remove a contaminant from the target list if sufficient progress is made in reducing its release to the environment. This should provide added incentive to voluntarily reduce its release to the environment.

• EPA's clustering project, discussed further below, will be designed to focus attention on the long-term costs of failure to reduce environmental exposures of targeted toxic pollutants.

C. Organizing for Action

Once the target contaminants have been identified, EPA will form cross-media workgroups, comprised of representatives from different program offices. Depending on what seems most appropriate, these workgroups may be organized around a single contaminant (e.g., lead), a related group of contaminants (e.g., heavy metals), or a category of sources (e.g., primary and secondary smelters).

The workgroups will be charged with providing technical support and analysis for EPA's outreach (described above), and with coordinating the Agency's goal of reducing releases of targeted toxic contaminants. The Office of Pollution Prevention will provide staff support although program offices will also be expected to provide resources as needed. Workgroup activities will include the following:

• *Analyzing prevention opportunities.* The targeted contaminants will be selected based in part on an initial screening of opportunities for prevention. The workgroup will be charged with developing more detailed technical information about these opportunities, and with building expertise regarding the characteristics of industries identified as primary sources of the listed toxic chemicals. This responsibility will include the very important task of evaluating industry voluntary efforts, and determining whether proposed reductions would replace target chemicals with equally hazardous substitutes.

• *Characterizing non-industrial sources.* As discussed above, TRI data can be used to quickly pinpoint industrial sources of the targeted contaminants. The workgroup will be responsible for identifying releases to the environment from non-industrial activities not covered by TRI, which may include small commercial establishments such as garages and dry cleaners, and the use of household products by consumers. This analysis will help the Agency to develop appropriate strategies to reduce the release of targeted toxic chemicals from non-industrial activities.

The Agency believes that prevention strategies are most likely to succeed where they have the support of the affected parties. Accordingly, EPA's workgroups will be expected to meet with representatives of industry and affected sources to review data regarding the economic and technical disability of prevention options. Environmental and citizen groups will also be consulted.

• *Defining regulatory clusters.* The Agency has already begun to identify clusters of related rule-makings in and effort to coordinate control strategies where a contaminant or industry can expect to be regulated under multiple statutes over a two to three year time period, or where there are cross-cutting policy issues. For example, regulatory clusters have been identified for heavy metals, for issues relating to the exploration and production of oil and gas, and for source separation of solid wastes. Workgroups will be expected to identify regulatory clusters for targeted contaminants, to the extent these have not already been developed and to the extent allowed by schedules imposed by Congress and the courts.

These clusters will serve a number of useful purposes. First, they will help ensure that cross-media transfers of pollutants are not encouraged under any of the regulations. In addition, by focusing the attention of EPA and affected parties on upcoming regulations, they will provide an incentive to negotiate cost-effective prevention opportunities. For their part, EPA's offices will need to confront how prevention can most coherently and effectively be integrated into the variety of rule-makings affecting a specific contaminant or its sources.

D. Measuring Progress

EPA will rely on data from the Toxic Release Inventory (TRI) to track reductions in releases of targeted contaminants from industrial facilities. The Agency will develop more appropriate indicators from sources not covered by TRI.

At this time, TRI is the only available database that permits the tracking of chemical releases at specific facilities on a multi-media basis. EPA has three years of experience collecting TRI data, which can be sorted and analyzed according to chemical, industry, facility, geographic location, and other criteria. Furthermore, TRI is already being used widely by industry, the states, and environmental groups as a scorecard for prevention efforts. For example:

• Major corporations such as Union Carbide, Monsanto, Dow, and AT&T are already using TRI to measure the success of their existing prevention efforts and to set future goals.

• Several states have used TRI as the basis for a number of legislative efforts. Louisiana has a law mandating a 50 percent reduction in toxic air emissions

by 1994; Massachusetts and Oregon have enacted similar laws. New Jersey now requires firms to submit with their TRI data additional information about pollution prevention practices. Other states have instituted a fee system based on TRI emissions to provide an economic incentive to reduce emissions.

• TRI data has been extensively analyzed by interest groups such as the Natural Resources Defense Council and the National Wildlife Federation, to evaluate prevention programs at specific facilities. The non-profit National Institute for Chemical Studies has created a scorecard out of TRI data for the chemical industry in Kanawha Valley, West Virginia.

EPA recognizes that the TRI database suffers from significant limitations. For example, it does not cover all pollutants or all sources. While TRI includes many small industrial plants, it does not cover small commercial enterprises, such as dry cleaners or garages, that make a significant contribution to environmental problems.

In another limitation, companies that are subject to TRI are required only to estimate their releases of specific chemicals to the environment after recycling, treatment or disposal, making it difficult to determine which reductions are derived from changes to the production process or reduced use of toxic raw materials. Furthermore, in the first few years of TRI data collection, some of the changes in reported releases undoubtedly reflect changes in reporting or record-keeping practices (although this is expected to improve in the near future).

The Agency is taking steps to address these shortcomings by:

• Improving other databases, such as the waste minimization surveys required under RCRA, so that these may provide a better measure of pollution prevention opportunities and activities.

• Exercising authority under Section 313 of SARA to add chemicals to the TRI list. While the current statutory list includes all of the high volume toxic releases, it does not include every chemical of concern. This fall, EPA will propose adding 13 new substances to TRI. EPA will also consider exercising its authority to add additional SIC codes subject to TRI reporting requirements.

• Amending the TRI reporting form to require all facilities to provide data quantifying the effectiveness of preventive measures in reducing wastes prior to recycling, treatment, or disposal. About 20 percent of the firms subject to TRI currently provide this information on a voluntary basis.

• Building a comprehensive database to measure and evaluate pollution prevention across a broad spectrum of industrial and nonindustrial activities.

EPA will work with the National Oceanic and Atmospheric Administration and other federal agencies to make effective use of existing sources of environmental data. These efforts will help move the Agency toward the kind of broad information base important to the development of comprehensive pollution prevention strategies. In the meantime, TRI provides the best available tool for tracking progress at individual facilities.

The Industrial Toxics Project is not an attempt to either expand or supercede existing authorities and programs. EPA will continue to proceed with regulation development, permitting, and enforcement for these substances and facilities as required by law, but will use these authorities as discussed previously to promote cost-effective prevention alternatives.

Part IV—Next Steps

While implementation of this pollution prevention strategy proceeds, EPA will be undertaking a number of efforts to expand its scope:

• As noted, EPA will be working with the Departments of Agriculture, Energy, and Transportation to develop specific pollution prevention programs for these areas.

• EPA is continuing to work with other federal agencies to define an appropriate federal role in pollution prevention and pollution prevention strategies for federal facilities.

• Through a series of public hearings, EPA will solicit advice on the implementation of this strategy and further refine the National Pollution Prevention Agenda for the 1990s, with broad input from the public, the private sector, the environmental community, local, state, and federal government agencies, and the international community.

Pollution prevention is an evolutionary concept. As research continues, technology changes, and progress is achieved, our ideas about what is possible, feasible, and desirable will doubtless change as well. This document will need to be periodically updated as well as expanded as we move forward. The strategy will be announced in the **Federal Register**, and EPA will continue to solicit ideas from public and private interest groups. The Agency welcomes a continuing dialogue on the strategic vision, as well as the practical tactics, for achieving environmental gains through pollution prevention.

[FR Doc. 91-4499 Filed 2-25-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 91-09]

The West Indian Company Limited; Filing of Complaint and Assignment

Notice is given that a complaint filed by The West Indian Company Limited ("Complainant") against The Virgin Islands Port Authority ("Respondent") was served February 20, 1991. Complainant alleges that Respondent has violated sections 10 (b)(11), (b)(12) and (d)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1709 (b)(11), (b)(12), and (d)(3), by bestowing undue and unreasonable preference or advantage to Respondent and to users of Respondent's pasenger terminal and cargo facility and subjecting Complainant and users of Complainant's marine terminal facility and others to undue and unreasonable prejudice or disadvantage through charging, and proposing to increase, Ships Dues that are not reasonably related to the harbor services provided by Respondent and charging non-compensatory wharfage fees at Respondent's terminal facilities.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 20, 1992, and the final decisions of the Commission shall be issued by June 19, 1992.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-4422 Filed 2-25-91; 8:45 am]

BILLING CODE 6730-01-M

Intention to Cancel Inactive Domestic Offshore Tariffs

The Federal Maritime Commission has on file numerous tariffs of firms which appear to be inactive or no longer operating as common carriers in the domestic offshore trades. For the purpose of this Notice, a carrier is deemed to be inactive or no longer operating if it has: (1) No active phone listing at the carrier's last known address or failed to respond to telephone inquiries regarding the status of its tariffs, and (2) failed to amend its tariffs during the past twelve months.

Inactive tariffs reflect inaccurate information and they not only fail to serve the purpose for which tariffs are intended, but also operate to mislead the shipping public. Accordingly, in the absence of the showing of good cause why such action should not be taken, the Commission proposes to cancel all domestic offshore tariffs of the carriers listed in the appendix (Attachment A).

Now, therefore it is ordered, That the carriers included in the appendix advise the Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, in writing, within 30 days after the publication of this Notice in the **Federal Register**, of any reason why the Commission should not cancel their respective domestic offshore tariffs;

It is further ordered, That a copy of this notice be sent by certified mail to the last known address of the carriers listed in the appendix;

It is further ordered, That the tariffs of all carriers named in the appendix who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status be cancelled;

It is further ordered, That this notice be published in the **Federal Register**.

This notice is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Attachment A

Federal Maritime Commission, Bureau of Domestic Regulation, Office of Carrier Tariff and Service Contract Operations

Inactive Tariffs Listed by Acronym and Name Number

Acronym: Allied Van Lines International Corporation
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4403
City: Chicago
State: IL 60680
Name No.: 003365

Acronym: Allports Container Service, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 17981 Englewood Drive, Suite A
City: Middleburg Heights
State: OH 44130
Name No.: 007287

Acronym: Aurora International Forwarding, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 5080 Shawline Dr.
City: San Diego
State: CA 92111
Name No.: 000317

Acronym: Bekins International Lines, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 802 So. Fries Avenue
City: Wilmington
State: CA 90748
Name No.: 000358

Acronym: Boat Transit Inc.,
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 1343 Logan Avenue
City: Costa Mesa
State: CA 92626
Name No.: 006824

Acronym: Bulldog Container Lines Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 5701-1 Bellaire Blvd.
City: Houston
State: TX 77081
Name No.: 008148

Acronym: Burlington Northern Worldwide, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 1420 E. Rochelle Blvd., Suite 200
City: Irving
State: TX 75039
Name No.: 008213

Acronym: CADDO International
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 3682 Katella Ave. #209, POB 739
City: Los Alamitos
State: CA 90720
Name No.: 000859

Acronym: Caribbean Pacific Lines
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 16807 So, Central Avenue
City: Carson
State: CA 90746
Name No.: 002853

Acronym: Centennial Forwarding Corporation
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3474
City: Carolina
State: PR 00628
Name No.: 006520

Acronym: Diamond M. International Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: Calle 151 CM No. 37
City: Carolina
State: PR
Name No.: 000933

Acronym: Emerald Distribution, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 4949 Rusk Street
City: Houston
State: TX 77023
Name No.: 007941

Acronym: Frost Truck Lines, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1128
City: Burbank
State: CA 91507
Name No.: 006830

Acronym: G.F.C. Enterprises, Inc.
DBA Name: G.F.C. Intermodal Container Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 304 Barr Avenue
City: Woodmere
State: NY 11598
Name No.: 008204

Acronym: Global Shipping Corp
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 2800 Penhorn Avenue
City: North Bergen
State: NJ 07047
Name No.: 000471

Acronym: Gulf Puerto Rican Transport, Inc.
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: c/o Anderson Steamship Agency, Inc. P.O. Box 2703
City: Mobile
State: AL 36652
Name No.: 006837

Acronym: Hawaii Freight Forwarders, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 505 S. Anaheim Blvd.
City: Anaheim
State: CA 92805
Name No.: 008070

Acronym: Hemisphere Navigation & Trading Corp.
DBA Name: Caribbean Project Lines
Person Type: Non-Vessel-Operating Common Carrier
Street: 43 Park Street—2nd Floor
City: New York
State: NY 10007
Name No.: 007509

Acronym: Imperial Lines Corporation
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 7000 S.W. 62 Avenue, Suite 555-A
City: Miami
State: FL 33143
Name No.: 007649

Acronym: Josua Freight & Sales
DBA Name:

Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 293
City: San Juan
State: PR 00936
Name No.: 006211

Acronym: Karavan, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 3555 Torrance Blvd, Suite 204
City: Torrance
State: CA 90503
Name No.: 007428

Acronym: Knappton Maritime Corporation
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: P.O. Box 03018
City: Portland
State: OR 97203
Name No.: 005844

Acronym: Kyowa Shipping Co., Ltd.
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 2-3 Hamamatsucho 2-Chome Minato-Ku
City: Tokyo, 105
State:
Name No.: 001491

Acronym: L.P. Shipping Co.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: Box 925, Avenue E. Pol #497 La Cumbre
City: Rio Piedras
State: PR 00926
Name No.: 007857

Acronym: Marden Freight Systems, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 7489 N.W. 7th Street
City: Miami
State: FL 33126
Name No.: 006847

Acronym: Mega Hawaiian Terminals, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 24204
City: Seattle
State: WA 98124
Name No.: 006071

Acronym: New Orleans Ocean Freight, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 2423 Bainbridge Street, Suite 101
City: Kenner
State: LA 70062
Name No.: 007796

Acronym: Olympo Transport Co. of Puerto Rico, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 5512
City: Puerto De Tierra
State: PR 00906
Name No.: 001715

Acronym: P.R. Caribbean Consolidators, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13401
City: Santurce
State: PR 00908
Name No.: 006851

Acronym: Pacific Cargo Consolidators
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 19827 S. Santa Fe Avenue
City: Rancho Dominquez
State: CA 90221
Name No.: 006890

Acronym: Peter Del Valle and Associates
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: Torrimar Palza 9-C
City: Guaynabo
State: PR 00657
Name No.: 006614

Acronym: Puerto Rico Marine Distribution
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 9990 I-10 East
City: Houston
State: TX 77029
Name No.: 006477

Acronym: Quality Transportation Company
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: Darlington Building, Suite 403, 1007 Munoz Rivera Avenue
City: Rio Piedras
State: PR 00925
Name No.: 006343

Acronym: San Juan Ocean Services, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 9129
City: Plaza Carolina Station
State: PR 00628
Name No.: 006048

Acronym: San Lorenzo Express Corporation
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 2556 W. Fullerton Avenue
City: Chicago
State: IL 60647
Name No.: 001069

Acronym: Sea Link Corporation
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 5100 S.W. 104th Avenue
City: Ft. Lauderdale
State: FL 33328
Name No.: 006638

Acronym: Tadotsu Saipan Co., Ltd.
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Nokalimi Plaza, Garagpan
City: Saipan
State: 96950
Name No.: 006672

Acronym: Texas Caribbean Consolidators, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 5177 Richmond Avenue, #125
City: Houston
State: TX 77056
Name No.: 000517

Acronym: Trans-Ocean Lines, Inc.
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 7550 S.W. 57th Aven., Suite 211
City: South Miami
State: FL 33143
Name No.: 007112

Acronym: Transport Express Lines, Inc.
DBA Name:
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 13900 South Broadway
City: Los Angeles
State: CA 90061
Name No.: 006623

Acronym: Tucor Services, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4067
City: Burlingame
State: CA 94011
Name No.: 007437

Acronym: World Wide Air and Marine Service, Inc.
DBA Name:
Person Type: Non-Vessel-Operating Common Carrier
Street: 300 East Locust Street
City: Scranton
State: PA 18505
Name No.: 006129

[FR Doc. 91-4463 Filed 2-25-91; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007680-060.
Title: American West African Freight Conference.
Parties:
Barber West Africa Line
Farrell Lines, Inc.
Maersk Line
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line
Synopsis: The proposed amendment would modify the rules governing the term of a Conference Chairman, and would appoint an Executive Administrator of the Conference, as well as make other nonsubstantive changes.

Agreement No.: 212-011319.
Title: Neptuno/CSAV Service Agreement.
Parties:
Compania Sud Americana De Vapores
Naviera Neptuno, S.A.
Synopsis: The proposed Agreement would permit the parties to establish a pooling arrangement in the trade between ports of the West Coast of South America, Panama, the Gulf of Mexico and the United States Atlantic Coast. The parties would be authorized to operate up to eight vessels of up to 25,000 DWT each in the trade for a period of one year. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 20, 1991.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 91-4421 Filed 2-25-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

AMCORE Financial, Inc.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. AMCORE Financial, Inc., Rockford, Illinois; to engage *de novo* through its subsidiary, AMCORE Interim Federal Savings Bank, Rockford, Illinois, in the acquisition of River Valley Savings Bank, Rock Falls, Illinois, and, thereby, the operation of a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-4456 Filed 2-25-91; 8:45 am]
BILLING CODE 6210-01-F

Norwest Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Simons and Gregoire Agency, Inc., Marshall, Minnesota, and thereby engage in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-4457 Filed 2-25-91; 8:45 am]
BILLING CODE 6210-01-F

Old Second Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 18, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Second Bancorp, Inc., Aurora, Illinois; to acquire 100 percent of the voting shares of Affiliated Bank, Burlington, Illinois.

Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-4458 Filed 2-25-91; 8:45 am]

BILLING CODE 6210-01-F

Stichting Prioriteit ABN AMRO HOLDING; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 18, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Stichting Prioriteit ABN AMRO HOLDING, Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO HOLDING, Amsterdam, The Netherlands; ABN AMRO HOLDING N.V., Amsterdam, The Netherlands; and Amsterdam Rotterdam Bank N.V., Amsterdam, The Netherlands; to increase their interest in the voting shares of DBI Holdings, Inc., New York, New York, from 42 percent to 100 percent and thereby continue to engage in securities brokerage services pursuant to § 225.25(b)(15); investment or financial advice pursuant to § 225.25(b)(4)(ii), (iii), (iv) and (v) of the Board's Regulation Y; buying and selling securities on the order of investors as riskless principal *See Stichting Amro*, 76 Federal Reserve Bulletin 29 (1990); and providing investment advisory and securities brokerage services on a combined basis *See Stichting Amro*, 76 Federal Reserve Bulletin 29 (1990). These activities will be conducted worldwide. Comments on this application must be received by March 12, 1991.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lewis Bancshares, Inc., Armour, South Dakota; to acquire First State Insurance Agency, Armour, South Dakota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Armour, Tripp, Delmont, and Geddes, South Dakota and the surrounding areas.

Board of Governors of the Federal Reserve System, February 20, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-4459 Filed 2-25-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meeting of the Health Services Research Training Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the announcement is made of the following advisory committee scheduled to meet during the month of March 1991:

Name: Health Services Research Training Advisory Committee.

Date and Time: March 8, 1991, 8:30 a.m.

Place: Parklawn Building, Conference Center—Conference Room K, 5600 Fishers Lane, Rockville, Maryland.

Open March 8, 8:30 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with conducting the initial review of health services research grant applications addressing predoctoral and postdoctoral academic training in systematic analyses and evaluation of health services.

Agenda: The open session on March 8 from 8:30 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to a review of health services research training grant applications. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that this session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, room 18A20, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301-443-3091.

Dated: February 20, 1991.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-4468 Filed 2-25-91; 8:45 am]

BILLING CODE 4160-90-M

Centers for Disease Control

Technical Advisory Committee for Diabetes Translation and Community Control Programs; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

NAME: Technical Advisory Committee for Diabetes Translation and Community Control Programs.

TIME AND DATE: 6 p.m.-9 p.m., Monday, March 25, 1991. 8 a.m.-4:30 p.m., Tuesday, March 26, 1991.

PLACE: CDC, Lobby Conference Room, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

STATUS: Open to the public, limited only by the space available.

PURPOSE: This committee is charged with advising the Director, CDC, regarding priorities and feasible goals for translation activities and community control programs designed to reduce morbidity and mortality from diabetes and its complications. The Committee advises regarding policies, strategies, goals and objectives, and priorities; identifies research advances and technologies ready for translation into widespread community practice; recommends public health strategies to be implemented through community interventions; advises on operational research and outcome evaluation methodologies; identifies research issues for further clinical investigation; and advises regarding the coordination of programs with Federal, voluntary, and private resources involved in the provision of services to people with diabetes.

MATTERS TO BE DISCUSSED: The Committee will identify and discuss diabetes related scientific findings currently ready for translation into practice, and discuss other issues directly related to diabetes morbidity and mortality. Division of Diabetes Translation (DDT) staff will provide updates on major projects and program initiatives currently underway within the Division.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Frederick G. Murphy, Program Analyst, DDT, Center for Chronic Disease Prevention and Health Promotion, CDC, 1600 Clifton Road, NE., Mailstop K-10, Atlanta, Georgia 30333, telephone 404/488-5005 or FTS 236-5005.

Dated February 20, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-4452 Filed 2-25-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority; Establishment of Seafood

Part H, chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 51 FR 35433, October 3, 1986) is amended to reflect the establishment of a new Office of Seafood in the Center for Food Safety and Applied Nutrition (CFSAN). This office will combine the functions and staff for seafood research, technical, and policy activities in CFSAN. These functions and staff will be transferred from CFSAN's Office of Compliance and Office of Physical Sciences and staff from the Office of Nutrition and Food Sciences. No functional statement changes are necessary for either of these offices. The establishment of the Office of Seafood will enable FDA to strengthen and provide greater focus on domestic and imported seafood safety programs.

Section HF-B, Organization and Functions is amended as follows:

1. Insert a new subparagraph (k-6) for the Center for Food Safety and Applied Nutrition reading as follows:

(k-6) Office of Seafood (HFFZ). Develops, implements and manages, in cooperation with other Agency and Federal organizational components, voluntary and mandatory seafood safety programs.

Originates, plans, and conducts research on seafood, aquaculture, and seafood harvesting and processing, as they may be affected by chemical, biotoxic, or microbial contamination.

Develops analytical methods to detect economic problems (overbreading, watering, species substitution, etc.).

Administers the National Shellfish Sanitation Program.

Designs and coordinates evaluations of the effectiveness of Agency seafood programs.

Serves as the Agency principal liaison with Federal, State, and foreign organizations on seafood programs and policies.

Provides direction and support to the Center Director and other top Agency officials on the conduct of international seafood activities, including the development and implementation of bilateral agreements.

Dated: February 19, 1991.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 91-4469 Filed 2-25-91; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on April 7, 1991. The meeting will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The subcommittee will meet April 7, 8:30 a.m. to approximately 12 noon and the full board will meet April 7, 1 p.m. to approximately 5 p.m. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: February 14, 1991.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 91-4396 Filed 2-25-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the

National Commission on Sleep Disorders Research, National Institute on Aging, Commission Workshop Hearing on March 13, 1991, from 8:30 a.m. to 12 p.m. at the South Shore Harbor Resort and Conference Center, 2500 South Shore Boulevard, League City, Texas, in the Crystal Ballroom. For additional information please call William C. Dement, M.D., Ph.D., Chairman, National Commission on Sleep Disorders Research, at the Stanford University Sleep Disorders Center, 701 Welch Road, suite 2226, Palo Alto, CA, 415–725–6484. The meeting will be open to the public from 8:30 a.m. to 12 p.m. The Commission Workshop Hearing will meet to receive testimony and comments from scientists and researchers in sleep and respiration. Attendance by the public will be limited to space available.

Interested persons should contact Andrew Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, DHHS/NIH/NIA, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892, 301–496–9350, for further details and substantive information on the meeting.

Dated: February 14, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–4397 Filed 2–25–91; 8:45 am]

BILLING CODE 4140–01–M

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, March 13–15, 1991, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on March 13 from 9 a.m. to 10:30 a.m. Agenda items to be discussed will include an overview of NCNR new initiatives.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 13 from 10:30 a.m. to adjournment on March 15 for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John Cheh, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31, room 5B13, Bethesda, Maryland 20892, (301) 496–0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: February 13, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–4398 Filed 2–25–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee (NVAC), Subcommittee on the National Vaccine Plan.

DATES: Date, Time, and Place: March 25, 1991, at 9 a.m.; Parklawn Building, Chesapeake Room, Third floor, 5600 Fishers Lane, Rockville, MD, 20857. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, room 13A–53, Rockville, Maryland, 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Subcommittee or on any of the duties and responsibilities of the Subcommittee as described below.

Because of limited seating capacity, those desiring to make presentations should notify the contact person before March 18, 1991, and submit a brief statement of the information they wish to present to the Subcommittee. Requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will assist the NVAC, and the Director of the National Vaccine Program Office in developing a National Vaccine Plan which establishes priorities in the research, development, testing, licensing, production, procurement, distribution and effective use of vaccines. The agenda will be announced at the beginning of the meeting.

Persons interested in specific items may ascertain from the contact person the approximate time of discussion. A list of Subcommittee members will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: February 14, 1991.

Yuth Nimit,

Executive Secretary, NVAC.

[FR Doc. 91–4413 Filed 2–25–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–91–3218]

Submission of Proposed Information Collection to OMB; Public Housing Drug Elimination Technical Assistance NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comment due date is March 18, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Joan Campion, Rules Docket Clerk, Department of HUD, 451 Seventh Street, room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4142, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a Notice of Fund Availability (NOFA) for the Public Housing Drug Elimination Technical Assistance program. It is also requested that OMB complete its review within seven days.

The funds for this technical assistance program were appropriated by the Department of Veterans Affairs and Housing and Urban Development Act of 1991 (Pub. L. 101–507, approved November 5, 1990).

HUD intends to provide $575, 500 under this NOFA for short-term technical assistance to public housing agencies, Indian Housing Authorities, resident management corporations, and incorporated resident councils to aid these entities in assessing their drug problems in the public housing community; in implementing appropriate anti-durg-related practices and programs; and in improving overall agency management, operations and programming so that these entities can more effectively respond to drug problems in their targeted public housing developments.

The NOFA describes: (1) The nature and scope of eligible short-term technical assistance activities; (2) the requirements and procedures for participation by housing authorities and resident organizations; and (3) the requirements and procedures applicable to consultants who provide short-term technical assistance services under the NOFA.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) *Title of the information collection proposal:* Public Housing Drug Elimination Technical Assistance Notice of Fund Availability.

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing.

(3) *Description of the need for the information and its proposed use:* Application information needed for funding technical assistance under this NOFA to determine the best method of meeting the needs of the applicant and its public housing residents.

(4) *Agency form number:* Not applicable at this time.

(5) *Members of the public who will be affected by the proposal:* State governments; nonprofit and for-profit organizations; and individuals.

(6) *How frequently information submissions will be required:* One time.

(7) *An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response:* See the chart under the heading "Findings and Certifications" in the exhibit below.

(8) *Type of request:* New.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* David Caprara, Office of Public and Indian Housing, 708–0950.

Excerpts from the draft NOFA that deal with information collections are set forth following my signature in this notice as an exhibit only. Asterisks (* * * * *) are used to indicate where material has been omitted from the draft NORA. The paperwork burden is stated on a chart under the heading "findings and certifications" of that document.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 12, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Proposal: Notice of Funding Availability for 1991—Public Housing Drug Elimination Program—Technical Assistance.

Office: Office of Drug-Free Neighborhoods.

Description of the Need for the Information and Its Proposed Use: This new information collection is required in connection with the issuance of a Notice of Fund Availability which announces the availability of $575,500 for the Public Housing Drug Elimination Technical Assistance Program. The information is the application for affected public to compete for funding under this Program.

Form Number: None.

Respondents: Individuals or households, state or local governments, non-profit organizations.

Frequency of Submission: One time.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application requirements	1,550		1		24		37,200
Consultant questionnaire	1,500		1		16		24,000
Written statement for consultant selection	1,550		1		1		1,550
Technical assistance report	300		1		18		5,400
Total Burden							68,150

Total Estimated Burden Hours: 68,150.

Status: New.

Contact: Julie Fagan, HUD, (202) 708–1197; Wendy Sherwin, OMB, (202) 395–6880.

Date: February 12, 1991.

Supporting Statement for Information Collection—Notice of Fund Availability—FY 1991—Public Drug Elimination Assistance Program

A. Justification

1. This information collection is required in connection with the publication in the **Federal Register** of a Notice of Fund Availability (NOFA) which announces the availability of $575,500 for short-term technical assistance to Public Housing Agencies, Indian Housing Authorities, Resident Management Corporations (RMCs) and Resident Councils (RCs) for the Public Housing Drug Elimination Technical Assistance Program. The NOFA is authorized by the Department of Veterans Affairs and Housing and

Urban Development Act of 1991 (Pub. L. 101–507, approved November 5, 1990).

HUD intends that the short-term technical assistance will aid these entities in assessing their drug problems in the public housing community; in implementing appropriate anti-drug-related practices and programs; and in improving overall agency management, operations and programming so that these entities can more effectively respond to drug problems in their targeted public housing developments.

A copy of the proposed NOFA is attached.

The information collection requirements imposed by the NOFA are as follows:

Section 3–1 (entirety)—Application requirements: Written discussion of nature and scope of drug problems; amount and nature of technical assistance requested; drug elimination strategy, current activities; relationship to request for short-term assistance; if applicable, recommendation for particular consultant to provide short-term assistance, explanation why assistance is required at the Federal level, letter of support from PHAs/IHAs for RMCs or RCs to receive assistance.

Section 4.1(b)—Submission of consultant application; completion of Resources Inventory Questionnaire (copy attached).

Section 4.2—Applicant submits written statement for dates three proposed consultants were contacted; preference; basis for decision.

Section 5.3—Technical Assistance Report; preparation and submission to HUD, Public Housing Agency/Indian Housing Authority, RMC.

2. The information is necessary so that the applicants can apply and compete for funding opportunities under this NOFA. The information provided by the appplicants will be reviewed by HUD and evaluated against rating criteria for possible funding. The applicants will be notified of their selection/rejection.

3. We have not considered the use of improved technology since there is no other way to obtain the information except directly from the entities.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. We attempted to minimize the burden on the applicants by limiting the number of pages (not to exceed five) for the narrative discussion and requiring a brief description of strategy/activities. Consultants who went to apply under this NOFA will request a Consultant Packet from HUD which will include all necessary documents for application purposes and contain detailed instructions for completing the information.

7. The information will be collected on a one-time basis.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection.

10. No assurances of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applications will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the Public Housing Agencies, Indian Housing Authorities, RMCs, and RCs.

13. We estimate that the information requirements of the proposed NOFA will have the following reporting burden:

Section of NOFA affected	No. of respondents	No. respdts. per response	Total annual resps.	Hours per resp.	Total hours
3.1	1,550	1	1,550	24	37,200
4.1(b)	1,500	1	1,500	16	24,000
4.2	1,550	1	1,550	1	1,550
5.3	300	1	300	16	5,400
Total Annual Burden					68,150

14. Not applicable.

15. The collection of this information will not be published for statistical use.

TABULATION OF REPORTING BURDEN—NOTICE OF FUND AVAILABILITY—FY 1991—PUBLIC HOUSING DRUG ELIMINATION TECHNICAL ASSISTANCE PROGRAM

Description of information collection	Section of NOFA affected	No. of respondents	No. of responses per respondents	Total annual responses	Hours per response	Total hours
Application requirements: Written discussion of nature and scope of drug problems; amount and nature of technical assistance requested; drug elimination strategy, current activities, relationship to request for short-term assistance; if applicable, recommendation for particular consultant to provide short-term assistance, explanation why assistance is required at the Federal level, letter of support from PHAs/IHAs for RMCs or RCs to receive assistance	3.1	1,550	1	1,550	24	37,200
Submission of consultant application; completion of Resources Inventory Questionnaire	4.1(b)	1,500	1	1,500	16	24,000
Applicant submits written statement for dates 3 proposed consultants were contacted; preference; basis for decision	4.2	1,550	1	1,550	1	1,550
Technical Assistance Report; preparation and submission to HUD, PHA, RMC	5.3	300	1	300	16	5,400
Total reporting burden						68,150

The following is an excerpt from an as-yet unpublished notice of fund availability (NOFA) for the 1991 Drug Elimination Technical Assistance Program. The purpose of this publication is to inform the public of the information collections that will be contained in the NOFA.

Department of Housing and Urban Development

Office of Public and Indian Housing

(Docket No. ____; FR–2917)

Public Housing Drug Elimination Technical Assistance Program

Notice of Fund Availability—FY 1991

* * * * *

Consultant Packages: Consultants who want to provide short-term technical assistance services under this NOFA must request a consultant packet from the Drug Information Strategy Clearinghouse at 1–800–245–2691. (This is not a toll-free number.)

* * * * *

III. NOFA Provisions

Subpart A: Requests for Short Term Technical Assistance

* * * * *

Section 3. *Application and selection.*

3.1 *Application requirements.* To receive short-term technical assistance under this NOFA, an applicant must submit:

(a) A request letter, on official stationery, which responds to each of the points identified below, and which is signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC. The areas which must be addressed (and which may not exceed a five-page narrative discussion) are:

(1) A discussion of the nature and scope of the problem(s) that triggered the request for short-term technical assistance under this NOFA, and the public housing development(s) that would be targeted to receive such assistance;

(2) A discussion of the amount and nature of the technical assistance requested under this NOFA, and the benefits that the applicant expects to receive from the assistance;

(3) A brief description of the applicant's drug elimination strategy; the activities that it currently is undertaking to implement that strategy; and how the applicant's request for short-term technical assistance under this NOFA relates to that strategy;

(4) The applicant's estimate of the length of time that assistance under this NOFA would be required;

(5) If applicable, the applicant's own recommendation for a particular consultant to provide short-term technical assistance under this NOFA, and the basis for its recommendation; and

(6) An explanation of why assistance is required at the Federal level.

(b) Incorporated resident councils (except for resident management corporations that are responsible for the management of the development proposed for assistance) must include a letter of support from the housing authority that owns or operates the project that is to receive assistance under this NOFA certifying that assistance is consistent with the housing authority's overall drug elimination strategy.

(c) PHAs and IHAs must include a letter of support from any RMC or RC for a project that is to receive short-term technical assistance under this NOFA (or, if neither of these entities exist, then from any organized resident group) certifying that resident concerns have been taken into account in the preparation and proposed implementation of the request for technical assistance.

* * * * *

Subpart B: Consultant Pool for Short-Term Technical Assistance

* * * * *

4.1 *Consultant selection.* The applicant must discuss with at least three of the consultants forwarded by HUD its concerns and the consultant's proposed approach. The applicant must then submit to the ODFN Technical Assistance Manager a written statement indicating the dates that at least three of the proposed consultants were contacted by the applicant; stating the applicant's preference from among the consultants; and the basis for its decision.

* * * * *

5.3 *Report requirements.* Each consultant who provides short-term technical assistance under this NOFA must prepare and submit to the ODFN Technical Assistance Manager, and to the requesting housing authority or resident organization, a technical assistance report. This requirement applies in every instance except where multiple consultants jointly provide services on a technical assistance effort, in which case only one report needs to be prepared and submitted describing the overall effort. HUD must approve the technical assistance report before the consultant fee under section 5.2 of this NOFA can be paid.

* * * * *

The report must contain, at a minimum, the following information:

(a) A brief overview of the circumstances leading to the request for technical assistance;

(b) A description of the problems and services requested by the housing authority or resident organization;

(c) The actual services provided by the consultant. (If the service was a training event, the consultant should provide the agenda, curriculum, and a participant list);

(d) Summary of media contacts, if any;

(e) Findings and recommendations;

(f) An action plan, to be used by the requesting housing authority or resident organization to continue the technical assistance efforts recommended by the consultant following his or her departure. This plan should identify responsibilities, tasks, timetables, and needed resources; and

(g) An appendix listing the names of persons contacted during the assignment (unless these persons have requested confidentiality), and any documentation to support the consultant's findings and recommendations.

[FR Doc. 91–4450 Filed 2–25–91; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–91–943; FR–3001–D–01]

Order of Succession, Acting Assistant Secretary for Community Planning and Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Order of succession.

SUMMARY: The Assistant Secretary for Community Planning and Development is revising the designation of officials authorized to serve as Acting Assistant Secretary for Community Planning and Development when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the power or perform the duties of the Office.

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Barnett, Organization and Management Services Division, Office of Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410 (202) 708–2087. A telecommunications device for deaf persons (TDD) is available at (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This revision of the order of succession for Community Planning and Development is necessary to reflect a recent reorganization of the Office of Community Planning and Development. This order of succession supersedes the Order of Succession of designees to act as Acting Assistant Secretary for Community Planning and Development published on June 1, 1982 at 47 FR 23811. The authorization to act under this Order is subject to the 30-day limitation of the Vacancies Act, 5 U.S.C. 3348, whereby a vacancy caused by death or resignation of an appointee, whose appointment is vested in the President by and with the advice and consent of the Senate, may be filled temporarily for not more than 30 days.

Accordingly, the Assistant Secretary for Community Planning and Devlopment designates as follows:

(a) During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for

Community Planning and Development is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Community Planning and Development, the following (and those designated to act in their absence, disability, or vacancy) are hereby designated to serve as Acting Assistant Secretary for Community Planning and Development with all the powers, functions, and duties delegated or assigned to the Assistant Secretary for Community Planning and Development, provided that:

(1) No official is authorized to serve as Acting Assistant Secretary for Community Planning and Development unless all other officials (or those designated to act for them) whose position titles preceding his/hers in this designation are unable to act by reason of absence, disability, or vacancy in office, and

(2) Such authorization to serve as Acting Assistant Secretary of Community Planning and Development does not exceed 30 days pursuant to the Vacancies Act, 5 U.S.C. 3348:

1. Deputy Assistant Secretary for Operations.
2. Deputy Assistant Secretary for Grant Programs.
3. Deputy Assistant Secretary for Economic Development.

(b) Each head of an organizational unit of the Office of Community Planning and Development is authorized to designate an employee under his/her supervision to act for him/her by reason of absence, disability, or vacancy in the position of head of the unit.

(c) Supersedure. This order of succession supersedes the Order published on June 1, 1982 at 47 FR 23811. (Section 7 (d) of the Department of HUD Act, 42 U.S.C. 3535 (d); Delegation of Authority published on March 16, 1971, at 36 FR 5004).

Dated: February 14, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-4491 Filed 2-25-91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-01-4111-16]

Rock Springs District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the schedule and agenda of a meeting of the Rock Springs District Advisory Council.

DATES: March 20, 1991, 9 a.m. until 3:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Election of Chairman and Vice Chairman
3. Review of minutes from last meeting
4. Wild Horse 1991 gathering plan and summary of public hearing
5. Update of LaBarge-Big Piney CAP public hearing
6. Triton public hearing update and coalbed methane briefing
7. Green River RMP status briefing, including Wild and Scenic Rivers update
8. FY 91 Budget and District personnel status briefing
9. Update of Cumberland Grazing Allotment Management Plan
10. Farson-Fontenelle Fence Proposal status briefing
11. District automation/computer update
12. Public Comment Period

The meeting is open to the public. Interested persons may make oral statements to the Council between 2 and 3 p.m. on March 20, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the preceding address by March 19.

Depending on the number of persons wishing to make oral statements, a time limit per person may be established by the District Manager.

Dated: January 29, 1991.

Donald H. Sweep,

District Manager.

[FR Doc. 91-4424 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-22-M

[ID-942-01-4730-12]

Idaho; Filing of Plat of Survey

The plat, in three sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 15, 1991.

The plat, representing the Dependent Resurvey of portions of the south, east, west, and north boundaries, subdivisional lines, the subdivision of certain sections, the survey of certain lots and Tracts 37 and 38, T. 44 N., R. 5 W., Boise Meridian, Idaho, Group No. 714, was accepted on February 7, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: February 15, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-4427 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board—Policy Committee/ Scientific Committee; Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee and the Scientific Committee of the OCS Advisory Board will meet from Tuesday, March 26, 1991, through Thursday, March 28, 1991, at the Intercontinental Hotel, 444 St. Charles Avenue, New Orleans, Louisiana (504-525-5566). Below is a schedule of meetings that will occur.

A Fisheries Workshop will be held from 8 a.m. to 5 p.m. on Tuesday, March 26, 1991. The agenda for the Workshop will cover the following subjects:

—Conflict resolution in offshore oil and gas/fisheries management
—Offshore platforms as attractors/enhancers and related impacts on fish stocks
—Oil and gas activities and related potential impacts on fish eggs and larvae, recruitment problems related to estimation of fish stocks
—Discussion of multidisciplinary studies, specifically addressing potential physical oceanography and biological joint efforts

The Policy Committee and the Scientific Committee will meet in joint session from 8:30 a.m. to 5 p.m. on Wednesday, March 27, 1991. The agenda will cover the following subjects:

—Draft Proposed Comprehensive OCS Natural Gas and Oil Resource Management Program, 1992-1997
—National Energy Strategy: Analysis of Access to OCS Resources and Analysis of Cumulative Impacts of Environmental Regulations
—Air Quality Legislation: The Effect on the OCS Program

The Policy Committee will meet on Thursday, March 28, 1991, 8 a.m. to 5 p.m. The agenda will cover the following subjects:

—Report of the Oil Spill Recommendations Implementation Subcommittee and Oil Spill Research
—Risk Communications
—Efforts to Improve Safety of OCS Operations
—Committee Roundtable

The Scientific Committee will meet separately in plenary session on Thursday, March 28, 1991, from 8 a.m. to 5 p.m. The agenda will include the following subjects:

—Committee Business and Resolutions
—Environmental Studies Program Status Review
—A Report on the MMS Hard Minerals Program
—The Marine Industry Research Group Oil Spill Impact Assessment Model
—An Overview of the "University Research Initiative" Being Conducted by the Louisiana Universities Marine Consortium (LUMCON)
—Operating Procedures of the Scientific Committee

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the Scientific Committee plenary session.

All inquiries concerning the Fisheries Workshop should be addressed to Ms. Lee Benner, Environmental Studies Branch. All inquiries concerning the Scientific Committee meeting should be addressed to Dr. Don Aurand, Chief, Environmental Studies Branch. Their address is the Minerals Management Service, Environmental Policy and Program Division, Mail Stop 4310, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787-1717.

Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than March 15, 1991, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 1849 C Street, NW., Mail Stop 4230, Washington, DC 20240, Attention: Terry Holman. Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact Terry Holman at 202-208-3421.

Minutes of the joint Policy/Scientific Committee meeting and the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 1849 C Street, NW., room 2070. Washington, DC 20240.

Dated: February 20, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-4448 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Abandoned Shipwreck Act Guidelines; Correction

AGENCY: National Park Service, Department of the Interior.

ACTION: Final guidelines; correction.

SUMMARY: This notice corrects an error in a footnote in the final Abandoned Shipwreck Act Guidelines published in the **Federal Register** (55 FR 50116) on December 4, 1990.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry at 202-343-1879 or FTS 343-1879.

SUPPLEMENTARY INFORMATION: The National Park Service published the final Abandoned Shipwreck Act Guidelines in the **Federal Register** (55 FR 50116) on December 4, 1990. After publication, a number of typesetting errors were discovered in the **Federal Register** document. To correct these errors, the Office of the Federal Register, National Archives and Records Administration, prepared and published a correction document in the **Federal Register** (55 FR 51528) on December 14, 1990. The National Park Service is issuing this notice to correct an error contained in footnote 2 in the final Abandoned Shipwreck Act Guidelines (55 FR 50116; Dec. 4, 1990). This correction will make footnote 2 consistent with section 6 of the Abandoned Shipwreck Act (43 U.S.C. 2105).

James M. Ridenour,

Director, National Park Service.

Dated: January 18, 1991.

The following correction is made in the final Abandoned Shipwreck Act Guidelines published in the **Federal Register** (55 FR 50116) on December 4, 1990.

1. Footnote 2 in the first column on page 50121 which reads: "Under the Abandoned Shipwreck Act, in order for the United States to assert title to any abandoned shipwreck, the shipwreck must be listed in or determined eligible by the Secretary of the Interior for listing in the National Register" is revised to read as follows:

Under the Abandoned Shipwreck Act, in order for the United States to assert title to any abandoned shipwreck located on (i.e., not embedded in) a State's submerged lands, the shipwreck must be listed in or determined eligible by the Secretary of the Interior for listing in the National Register of Historic Places. Any abandoned shipwreck embedded either in a State's submerged lands or in coralline formations protected by a State on its submerged land does not have to be listed in or determined eligible by the Secretary of the Interior for listing in the National Register in order for the United States to assert title to it under the Abandoned Shipwreck Act.

[FR Doc. 91-4423 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 13, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7227. Written comments should be submitted by March 13, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Fresno County

Santa Fe Hotel, 935 Santa Fe Ave., Fresno, 91000287

Los Angeles County

Exposition Park Rose Garden, Exposition Park, jct. of Exposition Blvd. and Vermont Ave., Los Angeles, 91000285

Sacramento County

Isleton Chinese and Japanese Commercial Districts, Bounded by River Rd. and Union, E and H Sts., Isleton, 91000297

Witter, Edwin, Ranch, 3480 Witter Way, Sacramento, 91000284

Santa Cruz County

Rispin Mansion, 2200 Wharf Rd., Capitola, 91000286

COLORADO

Denver County

Bowman, William Norman, House—Yamicila, 325 King St., Denver, 91000285

BEST COPY AVAILABLE

Jefferson County

First Presbyterian Church of Golden—Unger House, 809 15th St., Golden, 91000294

Weld County

SLW Ranch (Historic Farms and Ranches in Weld County MPS), 27401 Weld Co. Rd. 58 ½, Greeley vicinity, 91000288

FLORIDA

Charlotte County

First National Bank of Punta Gorda, Old (Punta Gorda MPS), 133 W. Marion Ave., Punta Gorda, 91000280

Clay County

Green Cove Springs Historic District, Roughly bounded by Bay St., CSX RR tracks, Center St., Orange Ave., St. Elmo St. and the St. Johns R., Green Cove Springs, 91000281

Sarasota County

Keith, Edson, Estate, 5500 S. Tamiami Trail, Sarasota vicinity, 91000282

Seminole County

Bradlee—McIntyre House, 130 W. Warren Ave., Longwood, 91000283

MONTANA

Fergus County

Kendall Townsite, Kendall Rd., Hilger vicinity, 91000296

Garfield County

Hornaday Camp, 10 mi. S. of MT 200, Sand Springs, 91000298

NEBRASKA

Fillmore County

Eberhardt, Philip and Addie Ellis, Farmstead, 3 mi. N of US 6, Exeter vicinity, 91000299

Platte County

Evans, Dr. Carroll D. and Lorena R. North, House, 2204 14th St., Columbus, 91000301

Washington County

Blair High School, Jct. of Sixteenth and Colfax Sts., Blair, 91000300

NORTH CAROLINA

McDowell County

Depot Historic District (Downtown Marion MPS), SE end Depot St., bounded on S by Southern RR tracks, and 111 Railroad St. S of tracks, Marion, 91000293

First Presbyterian Church (Downtown Marion MPS), 12 W. Fort St., Marion, 91000291

Main Street Historic District (Downtown Marion MPS), Roughly bounded by US 70 and Garden, State and Logan Sts., Marion, 91000292

St. John's Episcopal Church (Downtown Marion MPS), 315 S. Main St., Marion, 91000290

St. Matthew's Lutheran Church (Downtown Marion MPS), 307 W. Court St., Marion, 91000289

WASHINGTON

Pierce County

White River Mess Hall and Dormitory (Mt. Rainier National Park MPS), Mt. Rainier National Park, White River Entrance, 91000328

[FR Doc. 91-4404 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 2, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 13, 1991.

Carol D. Shull,

Chief of Registration, National Register.

KENTUCKY

Nelson County

Bloomfield Historic District, Central Bloomfield, including parts of Hill, Main, Perry and Depots Sts. and Fairfield, Springfield and Taylorsville Rds., Bloomfield, 91000234

MASSACHUSETTS

Bristol County

Apponegansett Meeting House, Russells Mills Rd. E of Fresh River Valley Rd., Dartmouth, 91000241

Middlesex County

Houghton Memorial Building, 4 Rogers St., Littleton, 91000242

MINNESOTA

Wabasha County

Lake Zumbro Hydroelectric Generating Plant (Minnesota Hydroelectric Generating Facilities MPS), Off Co. Hwy. 21 at N end of Lake Zumbro, Mazeppa Township, Hammond vicinity, 91000243

NEW YORK

Nassau County

Mackay Estate Dairyman's Cottage, 40 Elm Dr., East Hills, 91000238

Mackay Estate Gate Lodge, Jct. of Harbor Hill and Roslyn Rds., East Hills, 91000240

Mackay Estate Water Tower, Redwood Dr. between Lincoln Dr. and Lufberry Dr., East Hills, 91000239

Steuben County

Erie Freighthouse Historic District (Bath Village MRA), Jct. of Cohocton St. and Railroad Ave., Bath, 91000235

Ward, M. J., Feed Mill Complex, 1-9 Cameron St., Bath, 91000236

Westchester County

Philipse Manor Railroad Station, Jct. of Riverside Dr. and Millard, North Tarrytown, 91000237

[FR Doc. 91-4407 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-91-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 9, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 13, 1991.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Allen County

Masonic Temple, 208 E. Washington Blvd., Fort Wayne, 91000273

St. Peter's Square, Roughly bounded by St. Martin, Hanna, E. Dewald and Warsaw Sts., including 518 E. Dewald St., Fort Wayne, 91000259

Williams—Woodland Park Historic District, Roughly bounded by Hoagland and Creighton Aves. and Harrison and Pontiac Sts., Fort Wayne, 91000258

Elkhart County

Young Women's Christian Association, 120 W. Lexington Ave., Elkhart, 91000257

Marion County

Bethel A.M.E. Church, 414 W. Vermont St., Indianapolis, 91000269

Monroe County

North Washington Street Historic District, Roughly bounded by E. 10th, E. 6th, N. Walnut and N. Lincoln Sts., Bloomington, 91000271

Prospect Hill Historic District, Roughly bounded by 3rd, Rogers, Smith and Jackson Sts., Bloomington, 91000272

Morgan County

Martinsville Vandalia Depot, 210 N. Marion St., Martinsville, 91000268

Putnam County

Hirt, Alfred, House, W. Walnut Street Rd., Greencastle, 91000274

Warrick County

Ellerbusch Archeological Site (12W58), Address Restricted, Newburgh vicinity, 91000270

LOUISIANA

Avoyelles Parish

Bordelonville Floodgate, Camber Rd. and LA 451, on the Bayou des Glaises levee, Bordelonville vicinity, 91000277

MISSOURI

Shannon County

Reed Log House, Current R. S of MO 106, Ozark National Scenic Riverways, Eminence vicinity, 91000266

NEW JERSEY

Atlantic County

Neutral Water Health Resort Sanitarium, Jct. of Claudius St. and London Ave., Egg Harbor City, 91000267

NORTH CAROLINA

Guilford County

Hardee Apartments, 1102 N. Main St., High Point, 91000260

Kimrey—Haworth House, 5307 W. Friendly Ave., Greensboro, 91000265

Sherrod Park, 200-300 blocks Woodrow Ave., High Point, 91000278

Siceloff, J.C., House, 1104 N. Main St., High Point, 91000264

Haywood County

Citizens Bank and Trust Company Building, Former, 161 N. Main St., Waynesville, 91000261

U.S. Post Office Building, Former, 106 S. Main St., Waynesville, 91000262

Watauga County

Randall Memorial Building, Former, Greenway Ct., Blowing Rock, 91000263

OKLAHOMA

Lincoln County

Chandler Armory, Jct. of Mickey Clarkson Ave. and First St., Chandler, 91000276

Oklahoma County

Edmond Armory, 431 S. Blvd., Edmond, 91000275

[FR Doc. 91-4406 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 5, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 13, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Southeast Fairbanks Borough-Census Area

Big Delta Historic District, Richardson Hwy., Mile 274.5 at jct. of Tanana and Delta Rivers, Delta Junction vicinity, 91000252

FLORIDA

Collier County

Parker House, 680 Eighth Ave. S., Naples, 91000245

Volusia County

Southern Cassadaga Spiritualists Camp Historic District, Roughly bounded by Cassadaga Rd. and Marion, Stevens, Lake and Chauncey Sts. Cassadaga, 91000249

Stetson University Campus Historic District, Roughly bounded by Michigan Ave., N. Florida Ave., W. University Ave. and a line S from N. Nayden Ave., DeLand, 91000244

LOUISIANA

Orleans Parish

Lee, Robert E., Monument, Lee Cir. (900-1000 blocks St. Charles Ave.), New Orleans, 91000254

St. Mary Parish

Atkinson Memorial Presbyterian Church, 214 Fourth St., Morgan City, 91000248

St. Tammany Parish

Rankin House, 61467 Jacques Lemieux Blvd., Mandeville vicinity, 91000253

MARYLAND

Somerset County

Cedar Hill, E. side of Sign Post Rd. at Back Cr., Westover vicinity, 91000255

NEW JERSEY

Somerset County

River Road Historic Rural District, Millstone River Rd. from Hillsborough Rd. to Van Horne Rd., Hillsborough and Montgomery Townships, Griggstown vicinity, 91000256

OHIO

Columbiana County

Schmick, Charles Nelson, House, 110 Walnut St., Leetonia, 91000250

Ottawa County

Wolcott, Benajah, House, 9999 E. Bay Shore Rd., Lakeside—Marblehead vicinity, 91000251

TENNESSEE

Fayette County

Crawford's Experiment Farm, Jct. of Hotel St. and Old Somerville—Williston Rd., Williston, 91000247

Grundy County

Coalmont Bank Building, Jct. of TN 56 and Heidenburg St., Coalmont, 91000246

[FR Doc. 91-4408 Filed 2-25-91; 8:45 am]

BILLING CODE 4310-70-M

Steering Committee for the "Protecting Our National Parks" Symposium; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) that a meeting of the Steering Committee for the "Protecting Our National Parks" Symposium will be held on Wednesday, March 13, 1991. Establishment of the Committee was announced in the **Federal Register** of January 3, 1991. The Symposium (scheduled for October, 1991 in Vail, Colorado) is a central element in the National Park Service's plans to commemorate and celebrate its 75th Anniversary. It will engage prominent thinkers, specialists and other interested persons in an exploration of park management issues and opportunities.

The Steering Committee's role is limited to development of the Symposium and preparation of a written report to the Director of the National Park Service following the Symposium. The Committee will convene working groups to assemble information on specific issues and to preside over discussion of the issues at the Symposium.

The purpose of this meeting is to begin formal Symposium planning, including identification of the range of issues and opportunities that will be addressed and initiation of an open, public process of gathering information related to specific areas of interest. The Steering Committee's effectiveness will be strengthened by assuring that a broad diversity of viewpoints from the private and public sectors are considered.

The meeting will convene in Conference Room A2 of the Fort Mason Center, Lower Fort Mason at Marina Boulevard and Buchanan Street, San Francisco, California, at 9 a.m., Wednesday, March 13, 1991. The agenda will include:

(1) Introduction of Steering Committee members;

(2) Description of the "Protecting Our National Parks" Symposium and the process which will support it; and

(3) Opportunity for discussion and public comment.

The meeting is open to the public. It is expected that 200 people will attend the session in addition to the Steering Committee members.

Interested persons may make oral presentations to the Committee or file written statements. Oral presentations at the meeting will be subject to time limits if numerous persons wish to speak. Requests to speak should be made to the Steering Committee Chairman, Mr. William Briggle, in

advance of the meeting if possible. Further information concerning the meeting may be obtained from Mr. William J. Briggle, Deputy Regional Director, Pacific Northwest Region, National Park Service, suite 211, 83 South King Street, Seattle, Washington 98104 (telephone 206–553–4653).

Dated: February 15, 1991.

Herbert B. Cahlas,

Deputy Director, National Park Service.

[FR Doc. 91–4408 Filed 2–25–91; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 15)]

Intrastate Rail Rate Authority; Minnesota

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Minnesota has filed its application for recertification with the Commission. Pursuant to State Intrastate Rail Rate Authority, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Minnesota to regulate intrastate rail rates, classifications, rules and practices. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on February 22, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

Decided: February 20, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–4489 Filed 2–25–91; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use by A.T. Kearney, Inc.

The Commission has received a request from A.T. Kearney, Inc. for permission to use certain data from the Commission's 1987, 1988, and 1989 ICC Waybill Samples.

A copy of the requests may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–4418 Filed 2–25–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General, Yuma County, AZ

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments of the Constitution of the United States in Yuma County, Arizona. This county is included within the scope of the determinations of the Attorney General and the Director of the Census made under section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on January 25, 1966 (31 FR 982), and under sections 4(b) and 4(f)(3) of the Voting Rights Act on September 23, 1975 (40 FR 43736).

Dated: February 21, 1991.

Dick Thornburgh,

Attorney General of the United States.

[FR Doc. 91–4562 Filed 2–22–91; 11:35 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; EDO Corp; et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 12, 1991, a proposed Consent Decree in *United States* v. *EDO Corporation, et al.*, Civil No. 591 CV 0078, was lodged with the United States District Court for the District of Connecticut resolving the matter. The proposed Consent Decree concerns the response to the existence of hazardous substances at the Kellogg Deering Well Field Site located in Norwalk, Connecticut pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

Under the terms of the Consent Decree, the defendant will implement the remedy selected for the second operable unit at the Site, reimburse the United States for its future oversight costs related to the second operable unit at the Site up to $1 million and reimburse the United States for a portion of its past costs related to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. EDO Corporation, D.J. Ref. 90–11–2–582.

The proposed Consent Decree may be examined at the Region 1 Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20044, (202) 347–7829. A copy of the proposed Consent Decree (excluding Appendices) may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $20.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–4428 Filed 2–25–91; 8:45am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Cercla; Plastics Manufacturing, Inc.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on Jan. 30, 1991, a proposed Consent Decree in *United States* v. *Plastics Manufacturing, Incorporated,* 4:90CV00638, was submitted for lodging with the Federal District Court for the Middle District of North Carolina. The United States filed this action pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged violations of the New Source Performance Standards (NSPS) for Industrial Surface Coating for Plastic Parts for Business Machines, 40 CFR, part 60 subpart TTT, and the general provisons contained in 40 CFR part 60, subpart A. The complaint alleges that on or about January 1987, Plastics Manufacturing, Inc. ("PMI") constructed seven (7) paint spray booths for plastic business machines, which was a "modification" under 40 CFR part 60, subpart A, § 60.14. PMI failed to notify EPA or NCDEM of the construction of the booths, in violation of 40 CFR 60.7(a)(4) and section 111(e) of the Act, 42 U.S.C. 7411(e) and failed to test the booths for compliance with the standards for volatile organic compounds (VOC) in 40 CFR 60.723 within 180 days of startup.

Under the proposed Consent Decree, PMI will pay $34,500 in settlement of claims alleged in the complaint seeking penalties for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Plastics Manufacturing, Incorporated,* Case No. 4:90CV00638, DJ # 90–5–2–1–1501.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of North Carolina, 342 West Market Street, Greensboro, North Carolina; (2) the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, Atlanta, Georgia; and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW. Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Environment and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044–7611, or in person at the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $1.75 ($0.25 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91–4429 Filed 2–25–91; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

National Cooperative Research Act of 1984; National Forest Products Association

Notice is hereby given that, on January 14, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, ("the Act"), the National Forest Products Association filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of the following parties to its research joint venture regarding "Development of Reliability-Based Wood Design Specification":

National Timber Piling Council
Western Wood Preservers Institute

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On July 7, 1988, the Association filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 4, 1988 (53 FR 29396). The Association has filed one additional notification on August 29, 1988, notice of which the Department published in the **Federal Register** on October 13, 1988 (53 FR 40140).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–4430 Filed 2–25–91; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Larry R. Killough, M.D.; Denial of Application

On November 21, 1990, the Deputy Assistant Administrator, Office of the Diversion Control, Drug Enforcement Administration (DEA) issued to Larry R. Killough, M.D. (Respondent), of 408 West Vine Street, Searcy, Arkansas, 72143, an Order to Show Cause proposing to deny his application for a DEA Certificate of Registration, executed on March 28, 1989, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that granting such a registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). In correspondence dated December 19, 1990, Respondent, through counsel, specifically waived his opportunity for a hearing and instead, filed a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire record in this matter, including Respondent's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth. 21 CFR 1301.57.

The Administrator finds that an investigation conducted by the Arkansas State Police/Diversion Investigation Unit revealed the unlawful distribution of Schedule II controlled substances by Dr. Killough. During the investigation, Respondent traded controlled substance prescriptions to an undercover state officer for synthetic diamonds Respondent thought were genuine. Following the investigation, Respondent was indicted and tried before a jury in the United States District Court for the Eastern District of Arkansas. Respondent was convicted on eight counts of distribution of a controlled substance for other than a legitimate medical purpose, in violation of 21 U.S.C. 841(a)(1). He was sentenced on June 18, 1985, to 20 months incarceration and fined $40,000.00.

On September 13, 1985, the Arkansas Medical Board suspended Respondent's medical license in the state. On April 18, 1986, Respondent's license was reinstated and Respondent was authorized to handle Schedule III through V controlled substances.

An Order to Show Cause was issued on March 24, 1988. This order sought to revoke Dr. Killough's previous DEA Certificate of Registration based on his felony convictions. 21 U.S.C. 824(a)(2). Respondent requested a hearing that was held on September 30, 1988. Effective November 12, 1987, the Administrator of DEA revoked Respondent's registration. From that date to the present, Dr. Killough has been without authority to prescribe, administer, dispense, purchase, store or otherwise handle controlled substances. On March 28, 1989, Dr. Killough submitted the application for DEA registration that is the subject of this final order.

Investigators, from DEA and the State of Arkansas, received information that Respondent was prescribing controlled substances in spite of his lack of registration. It was revealed that Respondent was using Dr. John E. Bell's DEA registration number to prescribe controlled substances. Dr. Bell is also a physician from Searcy, Arkansas. A full investigation was then conducted. Investigators interrogated pharmacists from Searcy, Arkansas, concerning the prescription writing practices of

Respondent and Dr. Bell. Respondent contacted approximately twelve pharmacies in Searcy. Respondent telephoned the pharmacists and requested that Dr. Bell's DEA registration number be placed on controlled substance prescriptions that Respondent would call in for his own patients. Respondent stated that he had Dr. Bell's permission for this arrangement. Respondent also told the pharmacists that he had contacted a DEA attorney who had authorized the practice.

On May 9, 1989, Investigator Chris Anderson interviewed John E. Bell, M.D. at his office. Dr. Bell explained to Investigator Anderson that Respondent told him that he [Respondent] had obtained permission to use Dr. Bell's DEA registration on controlled substance prescriptions. Respondent told him that [DEA Associate Chief Counsel] Stephen Stone had authorized the arangement. Dr. Bell believed the DEA had approved of his DEA number being used by Respondent and assumed his (Bell's) name would be on the prescription bottle. Dr. Bell stated the arrangement was originally intended for two pharmacies but that it soon became apparent that patients would choose their own pharmacies. Dr. Bell further stated he had drafted a letter to the DEA of what Respondent said that Mr. Stone told Respondent. Dr. Bell does not have a copy of the letter nor a response from Mr. Stone.

Respondent, when interviewed by the Investigator, said that he had contacted Mr. Stone to ask him if he could use someone else's DEA number and that Mr. Stone allegedly suggested that Respondent could use his son's DEA number. Respondent then suggested Dr. Bell's, and according to Respondent, Mr. Stone only requested a letter from him explaining the arrangement. On May 8, 1989, Investigator Anderson interviewed Mr. Stone who stated that neither he, nor anyone in the DEA, could authorize this arrangement. Further, Mr. Stone stated that there was no letter of agreement between the DEA, Respondent, and Dr. Bell authorizing Respondent to utilize Bell's DEA registration.

In his written statement Respondent did not deny using another physician's DEA number to prescribe controlled substances. Respondent stated that he was indicted on thirty-three counts of knowing and intentional use of another's DEA number to distribute controlled substances and that he was found not guilty. No further evidence was provided to overcome the overwhelming volume of evidence against him. The written statement provides nothing more than Respondent's unsupported statement to the effect that his registration would not be inconsistent with the public interest.

After a careful review of the record, the Administrator concludes that the issuance of a registration, even for Schedule IV and V controlled substances, would be inconsistent with the public interest. Respondent not only has been convicted of felony offenses relating to controlled substances but he also prescribed controlled substances after his Certificate of Registration was revoked. He used another physician's number to prescribe controlled substances. While Respondent correctly states that he was acquitted of charges that he intentionally distributed controlled substances by use of another physician's registration, the Administrator notes that in order to convict a defendant, a jury must find, beyond a reasonable doubt, that the defendant committed all elements of the charged crimes. The Administrator is not constrained by that heavy burden of proof. Furthermore, the Administrator need not treat the jury's verdict as conclusive.

Thus, having reviewed the entire record, the Administrator credits the sworn statement of an experienced DEA official who is responsible for the legal aspects of DEA registration matters and rejects Respondent's contention that he was authorized to use the registration number of another physician. Accordingly, the Administrator concludes that Respondent intentionally manufactured the story he conveyed to Dr. Bell and the various Searcy, Arkansas, pharmacists in order to circumvent the normal registration process and re-establish his practice.

Having concluded that there are lawful bases for the denial of Respondent's application, and having concluded that his pending application for registration must be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 21 CFR 0.100(b), hereby orders that the application for registration executed by Larry R. Killough, M.D., on March 28, 1989, be, and it hereby is, denied.

Dated: February 19, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91-4462 Filed 2-25-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States: 1991 Agricultural Adverse Effect Wage Rates; and Allowable Charges for Agricultural and Logging Workers' Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1991.

SUMMARY: The Director, U.S. Employment Service, announces 1991 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H–2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeking nonimmigrant alien workers for temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three means per day.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0157 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

On June 1, 1987, DOL published an interim final rule at 20 CFR part 655, subpart B, for the H–2A program. 52 FR 20496. The regulations require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9) (1989); see also 20 CFR 655.107, 54 FR 28037 (July 5, 1989). Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the new AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1991

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR part 655, subpart B, the region wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a) (1989), 54 FR 28037 (July 5, 1989).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a Federal Register notice. Accordingly, the 1991 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE.—1991 ADVERSE EFFECT WAGE RATES (AEWRs)

State	1991 AEWR
Alabama	$4.46
Arizona	4.87
Arkansas	4.40
California	5.81
Colorado	5.00
Connecticut	5.21
Delaware	4.93
Florida	5.38
Georgia	4.46
Hawaii	7.85
Idaho	4.79
Illinois	5.05
Indiana	5.05
Iowa	4.85
Kansas	5.20
Kentucky	4.56
Louisiana	4.40
Maine	5.21
Maryland	4.93
Massachusetts	5.21
Michigan	4.90
Minnesota	4.90
Mississippi	4.40
Missouri	4.85
Montana	4.79
Nebraska	5.20
Nevada	5.00
New Hampshire	5.21
New Jersey	4.93
New Mexico	4.87
New York	5.21
North Carolina	4.50
North Dakota	5.20
Ohio	5.05
Oklahoma	4.61
Oregon	5.69
Pennsylvania	4.93
Rhode Island	5.21
South Carolina	4.46
South Dakota	5.20
Tennessee	4.56
Texas	4.61
Utah	5.00
Vermont	5.21
Virginia	4.50
Washington	5.69
West Virginia	4.56
Wisconsin	4.90
Wyoming	4.79

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the Federal Register each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1990 rates were published in a notice on February 6, 1990 at 54 FR 4031.

DOL has determined the percentage change between December of 1989 and December of 1990 for the CPI–U for Food was 5.8 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1991 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $6.39 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); (2) for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $8.00 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 6th day of February 1991.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 91-4494 Filed 2-25-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Field by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: *Regarding the attestation process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-535-0163 (this is not a toll-free number). *Regarding the complaint process:* Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202-523-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 28 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquires. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 15th day of February, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[02/04/91 to 02/08/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. A. Jack Reynolds	501-660-3000	St. Vincent Infirmary, Inc., Two St. Vincent Circle, Little Rock, AR 72205.	AR	02/07/91
Mr. Charles L. Baker	714-993-2000	Placentia Linda Hosp., 1301 Rose Drive, Placentia, CA 92870	CA	02/08/91
Mr. Joseph A. Zaccag	203-785-2414	Yale New Haven Hospital, 20 York Street, New Haven, CO 06504	CO	02/07/91
Sister Marianna Baud	303-837-7111	Saint Joseph Hosp, 1835 Franklin Street, Denver, CO 80218	CO	02/08/91
Mr. Patrick Garrett	305-868-2780	St. Francis Hospital, 250 W. 63 Street, Miami Beach, FL 33141	FL	02/08/91
Mr. Steve Brown	912-764-6671	Bulloch Memorial Hosp., 500 East Grady St., Statesboro, GA 30458	GA	02/08/91
Mr. Yale Wolk	312-525-6780	Thorek Hospital & Med. Ctr., 850 W. Irving Park Road, Chicago, IL 60613.	IL	02/07/91
Mr. Lawrence Beck	301-323-2200	The Good Samaritan Hosp. of Md., 5601 Loch Raven Boulevard, Baltimore, MD 21239.	MD	02/08/91
Ms. A. Jeson Geising	816-942-1676	First Health Care Corp., d.b., Wornall Health Care Center, Kansas City, MO 64145.	MO	02/07/91
Mr. Lloyd V. Smith	701-234-6000	St. Luke's Hospitals Meritcar, 720 4 St N, Fargo, ND 58122	ND	02/07/91
Mr. Jeffrey S. Moll	201-365-5000	Beth Israel Hospital of Passa, 70 Parker Avenue, Passaic, NJ 07055	NJ	02/07 91
Mr. Paul Cooper	609-451-6600	South Jersey Hospital System, Irving & Manheim Avenues, Bridgeton, NJ 08332.	NJ	02/07/91
Mr. William Frohlich	212-920-6021	Beth Abraham Hospital, 612 Allerton Avenue, Bronx, NY 10467	NY	02/07/91
Mr. Harry J. Bolwell	212-305-2500	The Presbyterian Hospital, Columbia Presbyterian Med. Ctr., New York, NY 10032.	NY	02/08/91
Mr. Donald S. Broas	212-606-1000	The Hospital for Special Surg., 535 East 70th Street, New York, NY 10021.	NY	02/08/91
Mr. Louis F. Parker	914-964-4444	St. John's Riverside Hosp, 967 North Broadway, Yonkers, NY 10701	NY	02/08/91
Mr. David B. Dildy	903-531-6016	East Texas Med. Ctr-Tyler, 1000 S. Beckham, Tyler, TX 75701	TX	02/05/91
Mr. Robert Schaper	713-351-1623	DBA Tomball Reg'l Hosp., 605 Holdemieth, Tomball, TX 77375	TX	02/07/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[02/04/91 to 02/08/91]

CEO-Name	Phone	Facility name	State	Approval date
Ms. Lois Jean Moore Number of Attestations: 19	713-793-3480	Harris County Hosp. Dist., 1504 Taub Loop, Houston, Texas 77030	TX	02/08/91

[FR Doc. 91-4495 Filed 2-25-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.SC. chapter 35).

DATES: Comments on this information collection must be submitted by March 28, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment request the review of a new collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Assistance to Developing Local Arts Agencies in Rural, Inner City, and Underserved Areas.

Frequency of Collection: Annually.

Respondents: State or local governments. *Use:* Guideline instructions and application elicit relevant information from State Arts Agencies and Regional Organizations that apply for funding under the new Locals Program category entitled Assistance to Developing Local Arts Agencies in Rural, Inner City, and Underserved Areas. This information is necessary for the accurate, fair, and thorough consideration of proposals in the panel review process.

Estimated Number of Respondents: 43.

Average Burden Hours Per Response: 20.

Total Estimated Burden: 860.

Anne C. Doyle,

Management Analyst Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91-4449 Filed 2-25-91; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities; NFAH.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* March 11, 1991.

Time: 9:30 a.m. to 4 p.m.

Room: 315.

Program: This meeting will review Centers for Advanced Study applications, submitted to the Division of Research Programs, for projects beginning after July 1, 1991.

Catherine Wolhowe,

Advisory Committee, Management Officer.

[FR Doc. 91-4490 Filed 2-25-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSON

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of amendment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et. al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Indentification of Proposed Action

The proposed amendment would revise the Technical Specifications to permit the removal of seven main steam

safety values with the two highest setpoints.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated December 18, 1989, as supplemented April 30, October 16, and November 16, 1990.

Need for the Proposed Action

The proposed change to the Provisional Operating License is needed because the removal of seven main steam safety values will significantly reduce radiation exposure, probability of failures, leakage and maintenance costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications to permit the removal of seven main steam safety values with the two highest setpoints.

Based on its review, the Commission concludes that the proposed change is acceptable. The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the Technical Specifications involves components in the plant which are located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 18, 1989, as supplemented April 30, October 16, and November 16, 1990, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland this 20th day of February 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-4486 Filed 2-25-91; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is "Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance." It is temporarily identified by its task number, DG-5002, and is intended for Division 5, "Materials and Plant Protection," of the Regulatory Guide Series. This guide is being developed to provide guidance on a material control and accounting program that would be acceptable to the NRC staff for a uranium enrichment facility. This guidance is being developed in conjunction with a proposed amendment, Section 74.33, "Material Control and Accounting for Uranium Enrichment Facilities Authorized to Produce Special Nuclear Material of Low Strategic Significance," to 10 CFR part 74, "Material Control and Accounting for Special Nuclear Material."

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by April 19, 1991.

Although a time limit is given for comments on this draft, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 13th day of February 1991.

For the Nuclear Regulatory Commission.

Frank A. Costanzi,

Deputy Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 91-4484 Filed 2-25-91; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Company and Soyland Power Cooperative, Inc. (Clinton Nuclear Power Station); Exemption

I.

The Illinois Power Company, *(IP), and Soyland Power Cooperative, Inc. (the licensees), are the holders of Facility Operation License No. NPF-62 (the license) which authorizes operation of the Clinton Power Station, Unit No. 1 (CPS). The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a boiling water reactor and other supporting facilities located at the licensee's site in Harp Township, DeWitt County, Illinois.

II

By letter dated January 18, 1991, IP (the licensee) requested an exemption from the Commission's regulations and applied for an amendment to Operating License No. NPF-62 to change certain provisions of the Technical Specifications (TSs) for the CPS. The requested exemption is from a requirement in Appendix J to 10 CFR part 50 which limits the combined leakage rate for all containment penetrations and valves subject to Type B and C tests to 0.60 La. La is defined as the maximum allowable leakage rate at the calculated peak containment internal pressure related to the design basis accident (Pa) as specified for preoperational tests in the technical specifications or associated bases, and for periodic tests in the operating license.

The specific requirement contained in section III.C.2, "Test pressure," of Appendix J, states that "valves, unless pressurized with fluid (e.g., water nitrogen) from a seal system, shall be pressurized with air or nitrogen at a pressure of Pa." Additionally, section III.C.3, "Acceptance Criterion," states in part, that "the combined leakage rate for all penetrations and valves subject to Type B and C tests shall be less than 0.6 La."

The typical CPS feedwater system containment penetration isolation scheme has three containment boundaries in series. Each boundary consists of a check value in the drywell (1B21-F010A(B)), an air assisted check valve outside containment (1B21-F032A(B)), and two motor operated isolation valves in parallel (1E12-F053A(B) and 1B21-F065A(B)). The 1E12-F053A(B) motor-operated containment isolation valves receive an automatic containment isolation signal and have satisfactorily passed air tests; therefore, these particular valves will be excluded from the following discussion.

The 1B21-F032A(B) feedwater containment isolation check valve (32A(B) check valve) design differs from the 10A(b) check valve design. The 32A(B) check valves utilize a tilting type disc and hardened seat and the 10A(B) check valves utilize a soft seat arrangement. The soft seat design of the 10A(B) check valves makes this particular design easier to successfully pass air testing. The 32A(B) check valves were subject to extensive rework and satisfactorily passed a 1000 psig water test in accordance with section XI of the ASME Code during refueling outage number 2 (currently in progress). Rework of these valves has included valve disassembly, relapping the discs and seats, acceptable blue checking of the disk and seat surfaces, verification that bushing clearances are within design tolerances, and replacing the air operator solenoids. However, IP was unable to achieve acceptable air leakage rates for the 32A(B) check valves pursuant to the Appendix J requirement as described above. All the other containment isolation valves in the feedwater penetrations successfully achieved acceptable air leakage rates. The staff has reviewed the licensee's actions to address the 32A(B) check valve problems and concurs with the licensee's decision to develop a more permanent and effective solution.

Solutions to the 32A(B) check valve design problem may include modification of the current design of these check valves to address suitability for air leak tightness. The licensee has requested this one-time exemption to allow sufficient time to evaluate the various design alternatives and adopt the best corrective action.

On this basis, we find that the licensee has made good faith efforts to comply with the regulation and that, based on the licensee's commitment to develop a permanent solution to the identified problem with the 32A(B) check valves by the end of the next refueling outage, it is appropriate to issue an exemption that would provide only temporary relief from the applicable regulation pursuant to 10 CFR 50.12(a)(2)(v).

Three transient/design basis accident analyses as described in the CPS Updated Safety Analysis Report (USAR) are potentially impacted by the licensee's appendix J exemption request for the 32A(B) check valves. The three postulated scenarios are, (1) Feedwater Line Break Outside Containment, (2) Recirculation Line Break, and (3) Feedwater Line Break Inside Containment. The licensee addressed the three postulated scenarios in its exemption request dated January 18, 1991. In accordance with 10 CFR 50.12(a)(1), the following evaluation demonstrates that this exemption would not present an undue risk to the public health and safety, and is consistent with the common defense and security.

(1) Feedwater Line Break Outside Containment (FLBOC)

In its request, the licensee contends that the air leakage of the 32A(B) check valves would have no impact on the plant response or postulated offsite dose consequences associated with this event. Based on the successful completion of a 1000 psig water test as described above, and the fact that throughout most of this postulated FLBOC scenario, water is maintained on the 32A(B) check valves, the staff agrees with the licensee's contention that the 32A(B) check valves would satisfactorily perform their intended containment isolation function. Therefore, the staff concludes that containment integrity would be adequately maintained for the feedwater penetrations 1MC-009 and 010 during the postulated FLBOC scenario.

(2) Recirculation Line Break (RLB)

As described in the CPS USAR, the postulated instantaneous guillotine rupture of a reactor recirculation line produces the highest peak containment pressure and offsite dose consequences.

Prior to the postulated RLB accident scenario, the feedwater system would be in service providng the normal water supply to the reactor vessel. While feedwater flow is maintained through the feedwater containment penetrations, penetration integrity is maintained primarily due to the presence of feedwater flow. The CPS feedwater system consists of two steam turbine-

* Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

driven pumps and one motor-driven feedwater pump. Following the polstulated RLB, the steam supply to the steam driven feedwater pumps continues until the Main Steam Isolation Valves (MSIVs) receive an isolation signal from lowering reactor water level (group 1 isolation). Once the MSIVs are shut, the steam driven feedwater pumps begin to coast down. Flow through the feedwater penetrations would subsequently begin to decrease to zero unless, of course, feed flow was being provided by the motor-driven pump. If the motor driven feedwater pump was in service at the time of the RLB, operators are trained to keep the feedwater system operating to assist the Emergency Core Cooling System (ECCS) in restoring reactor vessel wate level. Additionally, once the feedwater system pressure drops below the discharge pressure of the condensate pumps, operators are trained to utilize the condensate pumps, if available, for additional reactor makeup from the feedwater system. Opearators are trained to secure the feedwater system and remotely close valves 1B21–F065A(B) once the feedwater system is no longer available or not wanted.

Once the 1B21–F065A(B) motor-operated valves are closed, the 1MC–009 and 010 feedwater penetrations have three valve boundaries, two of which have satisfactorily passed the air leakage test described above. Therefore, based on the discussion above, the staff has determined that assurance of public health and safety would be adequately maintained for the postulated RLB scenario.

(3) Feedwater Line Break Inside Containment (FLBIC)

The CPS USAR analysis of the postulated FLBIC accident scenario shows that the pressurization effects of this accident are much less pronounced than the effects of the RLB accident scenario discussed in 2 above. A comparison of the postulated FLBIC accident scenario to the RLB scenario above shows that the RLB evaluation in item (2) above bounds the FLBIC scenario. Therefore, based on the discussion of the RLB scenario above, the staff has determiend that assurance of public health and safety would be adequately maintained for the postulated FLBIC scenario.

Based on (1) the discussion above, (2) the licensee's commitment to implement special night orders and training to increase operator awareness regarding closure of the 1B21–F065A(B) valves, (3) the extremely low probability the feedwater penetrations could be in a condition which would rely on the 32A(B) check valves for containment isolation, and (4) the licensee's commitment to develop a long term design solution to the 32A(B) check valve problem, the staff has determined that satisfactory containment integrity is assured for the next operating cycle.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption in authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and that special circumstances are present pursuant to 10 CFR 50.12 (a)(2)(v) which states, "the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation." The Commission hereby grants an Exemption with respect to one of the requirements of 10 CFR part 50, appendix J, section III.C.3:

The Clinton Power Station, Unit No. 1 Technical Spefications may be revised to allow the exclusion of leakage rates as described in appendix J to 10 CFR part 50, section III.C.3 associated with two feedwater system containment isolation check valves, 1B21–F032A(B), for the operating cycle following the current refueling outage. This Exemption does not alter the existing requirements for any other containment isolation valves.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** on February 19, 1991 (56 FR 6689). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this amendment will not have a significant effect on the quality of the human environment.

This one-time exemption is effective upon issuance.

Dated at Rockville, Maryland this 20th day of February 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4485 Filed 2–25–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–348 and 50–364]

Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2); Exemption Amendment

I

The Alabama Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–2 and NPF–8 which authorize full power operation of the Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2. The licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission).

Farley, Units 1 and 2, consist of two pressurized water reactors at the licensee's site located near the City of Dothan, Alabama.

II

10 CFR part 20, appendix A, "Protection Factors for Respirators," establishes protection factors of air-purifying respirators for protection against particulates only. Furthermore, footnote d–2(c) states, "No allowance is to be made for the use of sorbents against radioactive gases or vapors." On October 23, 1984, the Commission granted an exemption to the facility from the restriction of 10 CFR part 20, appendix A, footnote d–2(c), and authorized the use of the Mine Safety Appliances (MSA) GMR–I canister with restrictions as shown in the staff's Safety Evaluation issued in support of that exemption.

By letter dated February 19, 1990, as supplemented June 11 and December 5, 1990, the licensee requested an amendment to the exemption to allow the MSA GMR–I canisters to be stored in a Class C storage environment as defined in ANSI N45.2.2, versus a Class A or better environment which is a restriction contained in the Safety Evaluation for the exemption granted October 23, 1984. The licensee provided a summary of test results from MSA justifying Class C storage requirements for the MSA GMR–I canisters.

In response to concerns identified by the staff, the licensee also included in the amendment request a commitment to a revised respirator fit factor for use of the MSA GMR–I canisters.

The staff has evaluated the information provided by the licensee to support the exemption amendment. The Safety Evaluation relating to the licensee's request concerning use of the MSA GMR–I canisters at Farley, Units 1 and 2, is being issued concurrently with this exemption amendment. The Safety Evaluation concludes that Class C storage and the revised fit factor are acceptable for use of radioiodine MSA GMR–I canisters.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption amendment as requested by the licensee's letter of February 19, 1990, as supplemented June 11 and December 5, 1990, is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an amendment to the exemption granted October 23, 1984, and authorizes Class C storage for the MSA GMR–I canisters, subject to the restrictions shown in Attachment 1 to this exemption amendment. Attachment 1 contains the restrictions imposed by the exemption issued October 23, 1984, as modified by the exemption amendment. The exemption amendment is subject to modification by rule, regulation or Order of the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption amendment will have no significant impact on the environment (56 FR 5427).

This exemption amendment is effective upon issuance.

Dated at Rockville, Maryland this 19th day of February 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

Attachment I

Limitations, Usage Restrictions, and Controls Applicable to the Use of MSA GMR–1 Canister at the Joseph M. Farley Nuclear Plant, Units 1 and 2

1. Protection factor equal to 50 as a maximum value.
2. The maximum permissible continous use time is eight hours after which the canister will be discarded.
3. Canisters are not to be used in the presence of organic solvent vapors.
4. Canisters are to be stored in a Class C or better environment, as defined in ANSI N45.2.2.
5. Canister allowable service life is to be calculated from the time of unsealing the canister, including periods of non-exposure.
6. Canister is to be used with a full facepiece capable of providing a fit factor equal to or greater than 500.
7. Canisters are not to be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1 ppm, including nonradioactive compounds.
8. Canisters are not to be used in environments where temperatures are greater than 110°F.

In addition to the limitations and usage restrictions noted above, the following additional controls will be utilized by the licensee:

1. Temperatures will be measured each shift and/or coincidently with operations which heat the work areas to assure that temperatures do not exceed 100°F during GMR–I canister use.
2. In initially implementing GMR–I canister use, the following program verification measures will be used:

a. Weekly whole body counts for individuals using the GMR–I canister for radioiodine protection;

b. For individuals who exceed 20 MPC hours, a whole body count will be required prior to their next entry into a radioiodine atmosphere (i.e., effectively a 20 MPC hour stay time);

c. If an individual measures 70 nCi or greater iodine uptake to the thyroid during a whole body count, the individual's entry into radioiodine atmospheres will be restricted pending health physics evaluation;

d. A whole body count/survey data base will be compiled to evaluate the results of the program.

3. Technical Specification controls currently existing which restrict painting and chemical releases in areas served by safety-related ventilation filtration systems will provide sufficient restrictions for GMR–I use in these areas also. For other areas, painting or the use of organic substance will be prohibited while the GMR–I canister is in use.

4. Specific plant procedures will incorporate the limitations and usage restrictions listed as 1 through 8 above prior to GMR–I use. Additionally, a specific APCo procedure, FNP–O–RCP–117, "Issue and Use of GMR–I Iodine Canisters," has been prepared for field use of the GMR–I canister.

5. Existing respiratory protection program requirements and restrictions (e.g., physicals, fit tests, part 20 requirements, Appendices A and B) still apply.

[FR Doc. 91–4487 Filed 2–25–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Proposed Changes to a System of Records

AGENCY: Office of Personnel Management.

ACTION: Notice; proposed change to a system notice.

SUMMARY: The purpose of this notice is to propose a change to an Office of Personnel Management (Office) Privacy Act System Notice identified as OPM/GOVT–6, Personnel Research and Test Validation Records. The change is in the form of adding an exemption regarding access to and amendment of certain material located in that system.

DATES: The change will become effective April 29, 1991.

ADDRESSES: Written comments may be sent or delivered to: Marilyn Gowing, Assistant Director for Personnel Research and Development, Career Entry Group, room 6432, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jay Gandy (202) 606–1366.

SUPPLEMENTARY INFORMATION: The Office of Personnel Research and Development (OPRD) of the Office of Personnel Management proposes to exempt additional portions of OPM/GOVT–6, Personnel Research and Test Validation Records, from certain provisions of the Privacy Act, 5 U.S.C. 552a. The proposed exemption is authorized by subsection (k)(4) of the Privacy Act, which applies to records, required by statute to be maintained and used solely as statistical records. OPRD, as part of OPM, is authorized to gather information required by 5 U.S.C. 4702. Records gathered under this authority include special performance appraisals by supervisors that are used by OPRD in the conduct of studies of the usefulness of human resource management methods and initiatives. The results of these studies will help improve policies concerning personnel management and employee motivation. The success of these research projects depends upon frank appraisals of the workforce. The data generated is used solely for research purposes; only designated OPM research staff members have access to individual responses. It is emphasized that these ratings are never used for any personnel actions affecting the employee. Without the rating being protected from access by the employee, however, the confidentiality of the rating is lost and its value as reflecting judgments made free of biasing influences is destroyed.

This need for confidentiality of the rating is clear: supervisors rate differently under research (confidential) conditions; this has substantial implications for the usefulness of the research studies conducted. To ensure the needed confidentiality, the Office proposes to exempt research performance appraisals from the notification, access, correction, and amendment provisions of the Privacy Act. The employee's annual performance appraisals will still be subject to the Privacy Act and this proposal will not affect the availability of that record to the data subject. This action in exempting certain portions of the OPM/GOVT–6 system should ensure a better research vehicle for OPRD use, thereby helping it carry out its legitimate responsibilities.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

According, the Office proposes the following change to the OPM/GOVT–6, Personnel Research and Test Validation Records, system as indicated by portions italicized in this notice reprinted here in its entirety.

OPM/GOVT-6

SYSTEM NAME:

Personnel Research and Test Validation Records.

SYSTEM LOCATION:

Assistant Director, Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; the Office's regional offices and agency personnel offices (or other designated offices) conducting personnel research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal employees, applicants for Federal employment, current and former State and local government employees, and applicants for State and local government employment, selected private sector employees and applicants for sample comparison groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include information on education and employment history, test scores, responses to test items and questionnaires, interview data, and ratings of supervisors regarding the individuals to whom the records pertain. Additional information (race, national origin, disability status, and background) is collected from applicants for certain examinations.

AUTHORITY FOR MAINTENANCE OF THE SYETEM:

5 U.S.C. 1303, 3301, and 4702.

PURPOSES:

These records are collected, maintained, and used by the Office or other Federal agencies for the construction, analysis, and validation of written tests, and for research on and evaluation of personnel/organizational management and staffing methods, including workforce effectiveness studies. Agencies and the Office may provide each other with data collected in support of these functions. Such research includes studies extending over a period of time (longitudinal studies). Private sector data are used in research only, to evaluate Federal study results against non-Federal comparison groups. Race and national origin data are used by the Office or other agencies to evaluate the role and effects of selection procedures in the total employee staffing process. Use of these race and national origin data is limited to such evaluation, oversight and research projects conducted by the employing agencies or the Office. The records may also be used by the Office or other Federal agencies to locate individuals for personnel research. Data are collected on a project-by-project basis under conditions assuring the confidentiality of the information. No personnel action or selection is made using these research records.

ROUTING USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Under normal circumstances, no individually identifiable records will be provided. However, under those unusual circumstances when an individually identifiable record is required, proper safeguards will be maintained to protect the information collected from unwarranted invasion of personal privacy. Such protection must be specified in writing by the requester and, to the satisfaction of the agency official responsible for maintaining the data, indicate that the proposed use of the data is in compliance with the letter and spirit of the Privacy Act. Under these circumstances, the routine uses are as follows:

a. By the OPM or employing agency maintaining the records to locate individuals for personnel research or survey responses and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

b. To furnish personnel records and information to the Equal Employment Opportunity Commission for use in determining the existence of adverse impact in the total selection program, reviewing allegations of discrimination, or assessing the status of compliance with Federal law.

c. To furnish information to the Merit Systems Protection Board, including its Office of the Special Counsel, in connection with actions by offices relating to allegations of discriminatory practices on the part of an agency or one of its employees.

d. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or to comply with the issuance of a subpoena.

f. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or here official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

g. To provide information to a congressional office from the record of an individual in response to a request from that congressional office made at the request of that individual.

h. To provide aggregate data to non-Federal organizations participating in workforce studies. These data will be limited to individuals associated with the organization requesting the data or to data aggregated for all organizations in a study.

POLICES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETENTION AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on punched cards disks, magnetic tape, and magnetic disks.

RETRIEVABILITY:

Records are generally maintained by project. Personal information can be retrieved by name or personal identifier only for certain research projects such as those involving longitudinal studies.

SAFEGUARDS:

Records are kept in locked files in a locked room with access limited to authorized staff. Access to tape, disk, and other files used in data processing will be only by authorized staff.

RETENTION AND DISPOSAL:

Records are retained for 2 years after completion of the project unless needed in the course of litigation or other administrative actions involving a research or test validation survey. Records collected for longitudinal studies will be maintained indefinitely. Manual records are destroyed by shredding or burning and magnetic tapes and disks are erased.

SYSTEM MANAGER AND ADDRESS:

Assistant Director, Office of Personnel Research and Development, Career Entry Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the system manager, the OPM regional office servicing the state where they are employed, or their employing agency's personnel office. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social security number.

e. Signature.

Individuals requesting access must also comply with the Office's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d) regarding amendment of records. The section of this notice titled "Systems Exempted from Certain Provisions of the Act" indicates the kinds of materials exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment of any non-exempt records should contact the appropriate office listed in the Notification Procedure section. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. If known, the title, time, and/or place of the research study in which the individual participated.

d. Social Security number.

e. Signature.

Individuals requesting amendment must also comply with the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Individual applicants and employees; supervisors; assessment center assessors; and agency or Office personnel files and records (e.g., race, sex, national origin, and disability status data from OPM/GOVT-1 and OPM/GOVT-7 systems of records).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing and examination material and information from certain provisions of the Act, when the disclosure of the material would compromise the objectivity or fairness of the testing or examination process. The Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relates to access to and amendment of records.

This system contains performance appraisals that are categorized as research performance appraisals and are not used to make any decisions regarding the rights, benefits, or entitlements of the individuals. This statistical information is utilized solely for personnel research purposes. The Privacy Act, at 5 U.S.C. 552a(k)(4), permits an agency to exempt such statistical material and information from certain provisions of the Act, when information is required by statute to be maintained and used solely as statistical records. Since this information meets these two requirements, the Office has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific materials exempted include, but are not limited to, the following:

a. Answer keys.

b. Assessment center exercises.

c. Assessment center exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and reports.

h. Item analyses and similar data that contain test keys.

i. Ratings schedules, including crediting plans and scoring formulas for other selection procedures.

k. Ratings sheets.

l. Test booklets, including the written instructions for their preparation.

m. Test item files.

n. Test answer sheets.

o. Those portions of research and development files that could specifically reveal the contents of the above exempt documents.

p. *Performance appraisals given for research purposes.*

[FR Doc. 91-4513 Filed 2-25-91; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1991, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1991, 33.9 percent of the tax collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement

Account and 66.1 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 14, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-4431 Filed 2-25-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 25896; International Series Release No. 232; File No. SR-DTC-91-03]

Self-Regulatory Organizations; The Depository Trust Company; Proposed Rule Change Relating to the Tax Exempt Dividend Service for Certain Canadian Issues

February 19, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on February 11, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-91-03) as described in items I, II, and III below, which items have been prepared by DTC.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies DTC's rules covering certain securities currently eligible for deposit at DTC. It would eliminate the requirement that participants refrain from depositing at DTC and when necessary withdrawing from DTC physical certificates evidencing Canadian securities beneficially owned by certain customers, who are primarily foreign persons. This will be achieved by a change in the interpretation of DTC's existing rule concerning the Tax Certificate as to Beneficial Ownership ("Tax Certificate") and will be supported by a modification to DTC's Tax Exempt Dividend Service ("TEDS") for securities subject to Canadian nonresident withholding tax on dividends, interest, and other distributions ("taxable Canadian issues").

Under the proposed rule change, each participant will be permitted to immobilize at DTC taxable Canadian issues held for persons who are neither tax exempt nor entitled to the treaty rate. Generally, charities and pension funds are tax exempt, and other U.S. holders by virtue of their U.S. citizenship are entitled to the treaty rate withholding. Shortly after record date, using TEDS through DTC's Participant Terminal Service ("PTS") instead of the current hard copy method, the participant will identify the quantities of taxable Canadian issues beneficially owned by tax exempt customers or by customers entitled to the treaty rate or by both. The participant will make no certification as to the remainder of its record date position. On payable date, DTC will pay participants the distributions at the following three rates: 100% where complete exemption applies; the treaty rate (currently 85%) where applicable; and the taxed rate (currently 75%) where the owners are neither exempt nor entitled to the treaty rate.

All other aspects of TEDS, including the use of The Canadian Depository for Securities Limited as DTC's agent for receiving cash distributions on taxable Canadian issues, will remain the same.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to respond to requests from DTC participants and from the government of Canada, specifically Revenue Canada Taxation, that participants be permitted to maintain in their DTC accounts taxable Canadian issues beneficially owned by persons who are neither exempt from Canadian nonresident withholding tax nor entitled to the same reduced rate of Canadian nonresident withholding tax as are certain citizen/residents of the United States and other countries outside Canada.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act and the rules and regulations thereunder because it allows securities previously ineligible for deposit at DTC to be immobilized. It also enhances DTC's ability to safeguard securities and funds in its custody or control or for which it is responsible by rendering certain physical activity unnecessary and by automating a formerly manual procedure.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Several DTC participants requested the change so they could make DTC's book-entry services available for customers who are neither exempt from Canadian nonresident withholding tax nor entitled to the treaty rate. Revenue Canada also requested the change because it believes the availability at DTC of an automated procedure to account for securities subject to the nontreaty rate assists tax compliance and because Revenue Canada does not wish Canadian law within its purview to disqualify any Canadian securities from DTC eligibility. Excerpts from letters to DTC on this subject may be examined at the places specified in item IV below.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-91-03 and should be submitted by [insert date 21 days after the date of publication in **Federal Register**].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-4439 Filed 2-25-91; 8:45 am]

BILLING CODE 8010-01-M

[1] DTC initially submitted the proposal as file number SR-DTC-91-01 under Section 19(b)(3)(A) of the Act. Subsequently, DTC withdrew file number SR-DTC-91-01 and submitted the current proposal, file number SR-DTC-91-03, for Commission review under section 19(b)(2) of the Act. The current proposal contains essentially the same substantive terms as did the previous proposal.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

February 20, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

American Real Estate Partners
American Depositary Receipts (File No. 7-6586)
Flexible Bond Trust, Inc.
Common Stock, $.001 Par Value (File No. 7-6587)
Ionics, Inc.
Common Stock, $1.00 Par Value (File No. 7-6588)
Laidlaw, Inc.
Class A Common Stock, No Par Value (File No. 7-6589)
Laidlaw, Inc.
Class B Non-Voting, No Par Value (File No. 7-6590)
MBNA Corp.
Common Stock, No Par Value (File No. 7-6591)
Bio Rad Labs, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-6592)
Church & Dwight, Inc.
Common Stock, $.10 Par Value (File No. 7-6593)
City National Corp.
Common Stock, $1.00 Par Value (File No. 7-6594)
Central Newspapers
Class A Common Stock, No Par Value (File No. 7-6595)
First Financial Management Corp.
Common Stock, $.10 Par Value (File No. 7-6596)
Nicholas Institute, Inc.
Common Stock, $.10 Par Value (File No. 7-6597)
Omnicom Group, Inc.
Common Stock, $.50 Par Value (File No. 7-6598)
Seitel, Inc.
Common Stock, $.01 Par Value (File No. 7-6599)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-4440 Filed 2-25-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

February 20, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for American Express Co.
Score Component No Par Value (File No. 7-6566)
Americus Trust for American Home Products Corp.
Score Component No Par Value (File No. 7-6567)
Americus Trust Series 2 for American Telephone & Telegraph Co.
Score Component No Par Value (File No. 7-6568)
Americus Trust for Amoco Corp.
Score Component No Par Value (File No. 7-6569)
Americus Trust for Bristol Myers Co.
Score Component No Par Value (File No. 7-6570)
Americus Trust for Chevron Corp.
Score Component No Par Value (File No. 7-6571)
Americus Trust for Coca-Cola Co.
Score Component No Par Value (File No. 7-6572)
Americus Trust for Dupont (E.I.) deNours & Co.
Score Component No Par Value (File No. 7-6573)
Americus Trust for Ford Motor Co.
Score Component No Par Value (File No. 7-6574)
Americus Trust for General Motors Corp.
Score Component No Par Value (File No. 7-6575)
Americus Trust for GTE Corp.
Score Component No Par Value (File No. 7-6576)
Americus Trust for Hewlett Packard Company
Score Component No Par Value (File No. 7-6577)
Americus Trust for Int'l Business Machines Corp.
Score Component No Par Value (File No. 7-6578)
Americus Trust for Merck & Co.
Score Component No Par Value (File No. 7-6579)
Americus Trust for Mobil Corp.
Score Component No Par Value (File No. 7-6580)
Americus Trust for Philip Morris, Inc.

Score Component No Par Value (File No. 7–6581)
Americus Trust for Procter & Gamble
Score Component No Par Value (File No. 7–6582)
Americus Trust for Sears, Roebuck & Co.
Score Component No Par Value (File No. 7–6583)
Americus Trust for Union Pacific Corp.
Score Component No Par Value (File No. 7–6584)
Americus Trust for Xerox Corp.
Score Component No Par Value (File No. 7–6585)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 91–4479 Filed 2–25–91; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1349]

Card of Identity and Registration

AGENCY: Bureau of Consular Affairs (DOS), State.

ACTION: Notice.

SUMMARY: The Bureau of Consular Affairs, Department of State plans to eliminate as of February 1, 1991 the issuance of Cards of Identity and Registration except to victims of common disasters, deportees, or nationals returning to the U.S. who have been denied passports or had them withdrawn under specific circumstances. The practice of issuing Cards of Identity and Registration in lieu of passports can no longer be justified from a fiscal or fraud prevention standpoint.

DATES: Comments on this notice must be received on or before March 28, 1991.

ADDRESSES: Written comments should be addressed to: Director, Office of Citizens Consular Services, Bureau of Consular Affairs, room 4817, Department of State, Washington, DC 20520–4818.

FOR FURTHER INFORMATION CONTACT: Carmen A. DiPlacido, Director, Office of Citizens Consular Services, Telephone: (202) 647–3666.

SUPPLEMENTARY INFORMATION: Cards of Identity and Registration historically were issued in lieu of passports before the current pocket sized passports were developed. Today, the passport can be conveniently carried in a pocket or purse. The Card of Identity and Registration requires the same adjudication process necesary for one seeking a passport since the document can only be issued to United States nationals. The cost, however, is substantially less than the cost of a passport and not reflective of the true cost to the United States Government.

Finally, the Card of Identity and Registration is a document with few security features. Therefore, to combat the proliferation of fraudulent documents which facilitate illegal entry to the United States, and to implement sound fiscal practices, the issuance of Cards of Identity and Registration will be eliminated except as specified in 22 CFR 50.9.

U.S. Department of State, Bureau of Consular Affairs.

Dated: January 22, 1991.

Elizabeth M. Tamposi,
Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 91–4432 Filed 2–25–91; 8:45 am]
BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91–013]

Meeting of the Subcommittee on Tank Filling Limits, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Tank Filling Limits of the Chemical Transportation Advisory Committee (CTAC) will hold its second meeting on Tuesday, March 19, 1991, at the Coast Guard Marine Safety Office Houston, located at 9640 Clinton Drive, Galena Park, Texas. The Subcommittee was formed to develop recommendations for safe filling limits for liquefied gas ships. The meeting, which is scheduled to begin at 9 a.m. and end at 4 p.m., will be devoted to reviewing the IACS/SIGTTO filling limits proposal and the list of issues and questions submitted by the Coast Guard to the Subcommittee for their action.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the persons indicated under "FOR FURTHER INFORMATION CONTACT" no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Parnarouskis or Commander Gordon Marsh, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1217.

Dated: February 19, 1991.

J.D. Sipes,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–4476 Filed 2–25–91; 8:45 am]
BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Montgomery and Bucks Counties, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed highway improvements to US 202, Section 700, in Montgomery and Bucks Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Philibert A. Ouellet, District Engineer, Federal Highway Administration; 228 Walnut Street; P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086 Telephone: (717) 782–4422.

or

Randy Wanger, Project Manager, Pennsylvania Department of Transportation, District 6–0, 200 Radnor-Chester Road, St. Davids, Pennsylvania 19087, Telephone: (215) 964–6548

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to improve the section of US 202 between PA 63 in Montgomery Township, Montgomery County and PA 611 in Doylestown Township, Bucks County to address future traffic and transportation needs. Alternatives under consideration include: widening of existing roadways (US 202, Upper State Road, Stump Road); relocation of US 202 onto new alignment; and a No Build alternative.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and individuals who have previously expressed, or are known to have, an interest in the proposal.

An initial public meeting will be scheduled for February 1991. Additional public meetings will be held throughout the EIS development. A Public Hearing will be held concurrent with the agency and public opportunity to review the Draft EIS, when this document is completed. Public notices will be provided for the dates, times, and locations of these meetings and of the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Pennsylvania Department of Transportation at the addresses provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 15, 1991.

George L. Hannon,
Assistant Division Administrator, Federal Highway Administration, Harrisburg, Pennsylvania.

[FR Doc. 91–4433 Filed 2–25–91; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 6–91]

Treasury Bonds of February 2021; Interest Rate

Washington, February 8, 1991.

The Secretary announced on February 7, 1991, that the interest rate on the bonds designated Bonds of February 2021, described in Department Circular—Public Debt Series—No. 6–91 dated January 31, 1991, will be 7⅞ percent. Interest on the bonds will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 91–4445 Filed 2–25–91; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 5–91]

Treasury Notes, Series A–2001; Interest Rate

Washington, February 7, 1991.

The Secretary announced on February 6, 1991, that the interest rate on the notes designated Series A–2001, described in Department Circular—Public Debt Series—No. 5–91 dated January 31, 1991, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 91–4446 Filed 2–25–91; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 4–91]

Treasury Notes, Series R–1994; Interest Rate

Washington, February 6, 1991.

The Secretary announced on February 5, 1991, that the interest rate on the notes designated Series R–1994, described in Department Circular—Public Debt Series—No. 4–91 dated January 31, 1991, will be 6⅞ percent. Interest on the notes will be payable at the rate of 6⅞ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 91–4447 Filed 2–25–91; 8:45 am]
BILLING CODE 4810–40–M

Customs Service

[T.D. 91–16]

Extension of Analyses for Which SGS Control Services, Inc., a Customs Accredited Commercial Laboratory, Has Been Accredited to Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of additional analyses for which SGS Control Services, Inc., a Customs accredited commercial laboratory, has been accredited to perform.

SUMMARY: SGS Control Services, Inc., of Carteret, New Jersey, a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of their commercial laboratory accreditation in certain laboratories to include the following analyses: Reid Vapor Pressure, Saybolt Universal Viscosity, percent by weight sulfur of petroleum products and percent by weight lead in gasoline.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses for certain products from Customs accredited commercial laboratories. SGS Control Services, Inc., which holds Customs accreditation in certain laboratory analyses, has applied to Customs to extend its accreditation to the performance of additional analyses in some of its laboratories. Review of SGS Control Services, Inc. qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229 (202–566–2446).

Dated: February 20, 1991.

Jimmy E. Harrell,
Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–4472 Filed 2–25–91; 8:45 am]
BILLING CODE 4820–02–M

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; Folksamerica Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under title 31, sections 9304 to 9308, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27347 to reflect this addition:

Folksamerica Reinsurance Company.
Business Address: 90 William Street, New York, NY 10038.
Underwriting Limitation b: $5,192,000. Surety Licenses c: AL, GA, KS, MA, NE, NJ, NM, NY, PR, SD, UT. Incorporated In: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 287–3921.

Dated: February 21, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91–4477 Filed 2–25–91; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, February 27, 1991, 2:00 p.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 5851.

The Commission will consider matters relating to Office of General Counsel enforcement matter OS# 5851.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: February 21, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–4609 Filed 2–22–91; 2:17 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, February 28, 1991, See times below.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

MATTERS TO BE CONSIDERED:

10:00 a.m.

Closed to the Public

Compliance Status Report

The staff will brief the Commission on various compliance matters.

2:00 p.m.

Open to the Public

Art Materials Labeling

The Commission will consider proposed guidelines and criteria for assessing chronic hazards under the Federal Hazardous Substances Act as required by the Labeling of Hazardous Art Materials Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: February 21, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–4610 Filed 2–22–91; 2:17 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on Feburary 28, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

OPEN SESSION

1. *Regulations*
   —Assessments and Apportionment of Administrative Expenses—Proposed
   —Government in the Sunshine Act—Final
2. *Other*
   —Board Delegation of Authority Concerning Certain Matters Relating to the FICB of Jackson or First South PCA

*** CLOSED SESSION**

3. Competition Study; and
4. Enforcement Actions.

Dated: February 22, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–4641 Filed 2–22–91; 3:06 pm]

BILLING CODE 6705–01–M

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3:00 p.m. on Thursday, February 28, 1991, to consider the following matters:

Memorandum and resolution re: Final amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which establish the criteria and standards the Corporation will use in calculating the minimum leverage capital requirement and in determining capital adequacy.

Memorandum and resolution re: Proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would increase the assessment rate for the second semiannual period of 1991 and thereafter.

Memorandum re: Legal Division Management Information System Proposal.

Memorandum re: Excess and Supplemental 1991–92 Funding.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 21, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–4548 Filed 2–21–91; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL ENERGY REGULATORY COMMISSION

February 20, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 27, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

BEST COPY AVAILABLE

MATTERS TO BE CONSIDERED: Agenda

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examine in the Reference and Information Center.

Consent Agenda—Hydro, 932nd Meeting—February 27, 1991, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 4444–006, Trans Mountain Hydro Corporation
CAH–2.
Omitted
CAH–3.
Omitted
CAH–4.
Project No. 4669–008, Rancho Riata Hydro Partners, Inc.
CAH–5.
Project No. 4669–019, Rancho Riata Hydro Partners, Inc.
CAH–6.
Docket No. UL89–33–001, Madison Electric Works
CAH–7.
Docket No. UL89–8–002, Sheldon Jackson College
CAH–8.
Project Nos. 7115–013 and 017, Municipal Electric Authority of Georgia
CAH–9.
Omitted.
CAH–10.
Project No. 6939–016, City of Jackson, Ohio
CAH–11.
Project Nos. 4639–008 and 010, Christine Falls Corp.
Project Nos. 4900–011, 030, 5000–014, 018, 9085–004, 008, 9709–005, 014, 9621–010 and 023, Trafalgar Power, Inc.

Consent Agenda—Electric

CAE–1.
Docket No. ER91–172–000, Oklahoma Gas and Electric Company
CAE–2.
Docket Nos. ER91–196–000 and EF91–17–000, Washington Water Power Company
CAE–3.
Docket Nos. ER90–471–001 and ER90–539–001, Central Maine Power Company
CAE–4.
Docket No. ER91–63–001, Cambridge Electric Light Company
CAE–5.
Docket No. ER91–21–001, ER90–349–005 and ER90–406–002, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–6.
Docket Nos. EF87–2011–002, 006, 008 and EF87–2021–001, Bonneville Power Administration
CAE–7
Docket No. EL90–12–000, Cajun Electric Power Cooperative, Inc. v. Louisiana Power & Light Company
Docket No. EL90–15–000, Louisiana Energy and Power Authority v. Louisiana Power & Light Company
CAE–8.
Docket Nos. EL91–3–000 and ER90–39–000, Louisiana Energy and Power Authority v. Central Louisiana Electric Company
CAE–9.
Docket No. EL90–46–000, Cincinnati Gas & Electric Company v. Buckeye Power, Inc.
CAE–10.
Docket No. EL89–22–000 and 002, Wisconsin Public Service Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP91–82–000, Columbia Gas Transmission Corporation
CAG–2.
Docket No. RP91–84–000, Arkla Energy Resources
CAG–3.
Docket Nos. CP86–435–002, RP89–37–000 and RP89–38–000, *et al.*, Northern Natural Gas Company, a Division of Enron Corp.
CAG–4.
Docket No. RP91–76–000, Florida Gas Transmission Company
CAG–5.
Docket No. RP91–77–000, Boundary Gas, Inc.
CAG–6.
Docket Nos. RP91–62–000 and FA89–57–000, Superior Offshore Pipeline Company
CAG–7.
Docket No. RP90–192–002, Texas Gas Transmission Corporation
CAG–8.
Docket No. GT91–16–000, K N Energy, Inc.
CAG–9.
Docket No. RP91–78–000, Midwestern Gas Transmission Company
CAG–10.
Docket No. RP91–79–000, East Tennessee Natural Gas Company
CAG–11.
Docket Nos. RP91–80–000, RP91–86–000 and RP91–87–000, Algonquin Gas Transmission Company
CAG–12.
Docket No. RP91–81–000, Northwest Pipeline Corporation
CAG–13.
Docket No. TQ91–3–22–000, CNG Transmission Corporation
CAG–14.
Docket Nos. TA91–1–28–000 and TM91–9–28–000, Panhandle Eastern Pipeline Company
CAG–15.
Docket Nos. TA91–1–27–000 and 001, North Penn Gas Company
CAG–16.
Docket Nos. TQ91–4–61–000 and RP91–65–000, Bayou Interstate Pipeline System
CAG–17.
Docket Nos. TQ91–3–11–000 and 001, United Gas Pipeline Company
CAG–18.
Docket No. TM91–3–46–001, ANR Pipeline Company
CAG–19.
Docket No. TA90–1–20–000, Algonquin Gas Transmission Company
CAG–20.
Omitted
CAG–21.
Docket Nos. RP91–22–000 and RP91–31–000, Natural Gas Pipeline Company of America
Docket No. RP91–26–000, El Paso Natural Gas Company
Docket Nos. RP91–29–000, 001 and 002, Tennessee Gas Pipeline Company
Docket No. RP91–46–000, Mississippi River Transmission Corporation
Docket No. RP91–47–000, National Fuel Gas Supply Corporation
Docket Nos. RP91–52–000 and RP91–53–000, Panhandle Eastern Pipe Line Company
Docket No. RP91–54–000, Trunkline Gas Company
Docket No. RP91–56–000, Williston Basin Interstate Pipeline Company
Docket No. RP91–51–000, CNG Transmission Corporation
Docket No. RP91–67–000, Granite State Gas Transmission, Inc.
CAG–22.
Docket Nos. RP91–43–003, TM91–3–43–003 and RP89–183–027, Williams Natural Gas Company
CAG–23.
Docket No. RP91–41–001, Columbia Gas Transmission Corporation
CAG–24.
Docket Nos. RP79–59–008 and RP90–69–004, Colorado Interstate Gas Company
CAG–25.
Docket Nos. TA91–1–9–001, TM91–1–9–002 and RP91–16–001, Tennessee Gas Pipeline Company
CAG–26.
Docket Nos. IS87–14–002 and OR88–3–001, Buckeye Pipe Line Company, L.P.
CAG–27.
Docket Nos. TA84–2–37–011 and FA84–9–002, Northwest Pipeline Corporation
CAG–28.
Omitted
CAG–29.
Docket Nos. TA85–3–033, TA86–1–29–011, TA85–1–29–018, TA86–5–29–012, RP83–137–031 and CP85–190–026, Transcontinental Gas Pipe Line Company
CAG–30.
Docket Nos. RP87–62–010 and RP86–146–007, Pacific Gas Transmission Company
CAG–31.
Omitted
CAG–32.
Docket No. RP90–72–002, Carnegie Natural Gas Company
CAG–33.
Docket No. RM91–2–004, Mechanisms for Passthrough of Pipeline Take-or-pay Buyout and Buydown Costs
CAG–34.
Docket No. RP88–228–032, Tennessee Gas Pipeline Company
CAG–35.
Docket Nos. TQ89–1–46–033, RP86–165–013, RP86–166–017 and CP90–1984–000, Kentucky West Virginia Gas Company
Docket No. CP90–1985–000, Columbia Gas Transmission Corporation
CAG–36.

Docket No. PR91–1–000, Exxon Gas System, Inc.
CAG–37.
Omitted
CAG–38.
Docket No. RP89–226–000, Velero Interstate Transmission Company
CAG–39.
Omitted
CAG–40.
Docket No. FA87–8–000, Columbia LNG Corporation
CAG–41.
Omitted
CAG–42.
Docket Nos. RI74–188–119 and RI75–21–114, Independent Oil & Gas Association of West Virginia
CAG–43.
Docket No. GP90–7–000, Barbara T. Fasken
CAG–44.
Docket No. GP90–15–000, El Paso Natural Gas Company v. Kaneb Energy Company and Kaneb Operating Company, Ltd.
CAG–45.
Docket No. CP87–75–003, Tennessee Gas Pipeline Company
CAG–46.
Docket No. CP90–174–002, Midwestern Gas Transmission Company
CAG–47.
Docket No. CP89–2165–001, Algonquin Gas Transmission Company
CAG–48.
Docket Nos. CP88–860–001 and CP89–248–001, Williams Natural Gas Company
CAG–49.
Docket No. CP88–106–002, Transcontinental Gas Pipe Line Corporation
CAG–50.
Docket Nos. CP88–487–000, 001, CP88–492–000, CP88–493–000, CP88–494–000, CP88–495–000, CP88–496–000, CP88–497–000, CP88–498–000, CP88–499–000, CP88–500–000, CP88–501–000, CP88–502–000, CP88–503–000, CP88–504–000, CP88–505–000, CP88–506–000, CP89–852–000, CP89–853–000, CP89–854–000, CP89–855–000, CP89–856–000, CP89–857–000, CP89–858–000, CP89–859–000, CP89–860–000, CP89–861–000, CP89–862–000, CP89–863–000, CP89–1097–000, CP89–1098–000, CP89–1099–000, CP89–1100–000, CP89–1101–000, CP89–1102–000, CP89–1103–000, CP89–1104–000, CP89–1107–000, CP89–000, CP89–1110–000, CP89–1154–000, CP89–1646–000, CP89–1933–000, CP89–1934–000, CP89–1935–000, CP89–1936–000, CP89–1937–000, CP89–1938–000, and CP89–1939–000, Transcontinental Gas Pipe Line Corporation
CAG–51.
Docket No. CP87–253–001, Williston Basin Interstate Pipeline Company
Docket No. CP88–868–002, K N Energy, Inc.
CAG–52.
Docket Nos. CP89–1525–000 and 001, Northwest Pipeline Corporation
Docket No. CP88–833–000, Washington Natural Gas Company
CAG–53.
Docket No. CP90–1886–000, Natural Gas Pipeline Company of America
CAG–54.
Docket No. CP90–1317–000, Tennessee Gas Pipeline Company
CAG–55.
Docket No. CP82–205–001, Washington Gas Light Company
CAG–56.
Docket No. CP91–1204–000, Natural Gas Pipeline Company of America
CAG–57.
Docket No. CP91–983–000, Tennessee Gas Pipeline Company
CAG–58.
Docket No. CP91–568–000, Southern Natural Gas Company
CAG–59.
Docket Nos. CP91–1094–000 and CP91–1246–000, Colorado Interstate Gas Company
CAG–60.
Docket Nos. CP91–1162–000 and CP91–1163–000, Colorado Interstate Gas Company
CAG–61.
Docket Nos. CP91–1207–000, CP91–1208–000, CP91–1209–000, CP91–1210–000, CP91–1211–000, CP91–1212–000, CP91–1221–000 and CP91–1222–000, Algonquin Gas Transmission Company
CAG–62.
Docket No. CP91–902–001, Del Webb Communities, Inc. v. Kern River Gas Transmission Company
CAG–63.
Docket No. CI91–16–000, Shell Gas Pipeline Company
CAG–64.
Docket Nos. RP91–33–000 and RP91–35–000, ANR Pipeline Company
CAG–65.
Docket Nos. RP88–211–000, RP85–168–000, RP88–215–000, RP88–10–000, RP90–27–000, RP90–65–000, TA89–1–22–000, TA88–2–22–000, TA90–1–22–000, TQ88–1–22–000, RP89–204–000, RP88–125–000, RP90–143–000, RP91–3–000, TA90–1–22–005, CP86–311–000, 004, CP90–831–000, CP88–574–000, CP91–554–000, CP88–574–004 and CP88–779–003, CNG Transmission Corporation
CAG–66.
Docket Nos. RP89–179–006, CP89–1488–001 and CP89–1489–001, Western Gas Interstate Company
CAG–67.
Docket No. GT91–17–000, Eastern Shore Natural Gas Company

Hydro Agenda

H–1.
Project No. 8662–014, Nockamixon Hydro Associates. Order on stay request.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket No. RP88–44–000, RP85–58–017, RP88–202–000, RP89–57–000, CP88–700–000, RP88–184–000, RP89–132–000, RP90–51–000, TM90–3–33–000, CP88–434–000, RP88–185–000, CP88–203–000, CP88–270–000, TA85–1–33–000, TA86–1–33–000, TA86–3–33–000, TQ89–1–33–000, TM89–1–33–000, CP88–244–000, CP89–483–000, CP89–1722–000, CP90–1034–000, CP90–1054–000, CP–1289–000, CP88–1281–000, CP90–1600–000, CP89–396–000, CP89–1540–000 and CP88–433–000, El Paso Natural Gas Company
Docket Nos. CI87–290–000 and CP87–533–000, El Paso Production Company and El Paso Natural Gas Company
Docket No. CI88–805–000, People of the State of California, *et al.* v. El Paso Natural Gas Company and Odessa Natural Gasoline Company
Docket No. CP87–44–000, El Paso Natural Gas Company v. Pacific Gas and Electric Company and Southern California Gas Company. Order on settlement.
(B) Docket No. CP89–1540–001, El Paso Natural Gas Company. Order on requests for rehearing and clarification.
(C) Docket No. CP88–433–001, El Paso Natural Gas Company. Order on application for amendment of certificate to permit assignment of firm transportation capacity.
PR–2.
Docket No. ST90–359–000, Transok, Inc. Order on settlement.

II. Producer Matters

PF–1.
Reserved.

III. Pipeline Certificate Matters

PC–1.
Docket No. CP89–634–004, Iroquois Gas Transmission System, L.P. Order on application to amend certificate.

Lois D. Cashell,
Secretary.
[FR Doc. 91–4544 Filed 2–21–91; 4:27 pm]
BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 21, 1991.

TIME AND DATE: 10:00 a.m., Thursday, February 28, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *BethEnergy Mines, Inc.*, Docket Nos. PENN 89–277–R, etc.
2. *Mettiki Coal Corporation*, Docket Nos. YORK 89–10–R, etc.
3. *Rochester & Pittsburgh Coal Co.*, Docket Nos. PENN 88–308–R, etc.
4. *Southern Ohio Coal Company*, Docket Nos. WEVA 88–144–R, etc.

Oral argument was heard in the above four proceedings on February 21, 1991. These cases involve similar issues pertaining to the issuance of safeguards under section 314(b) of the Mine Act, 30 U.S.C. § 874(b).

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 708–9300 for TDD Relay 800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91–4608 Filed 2–22–91; 2:16 pm]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 4, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–4639 Filed 2–22–91; 2:19 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

USITC SE–91–07

TIME AND DATE: Thursday, March 7, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW. Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
   Tungsten Ore Concentrates from the People's Republic of China (Preliminary)—briefing and vote
5. Commission vote to amend the Commission's FY 1991 budget approved December 20, 1989, totalling, $42,430,000, to conform to the present allocation of funds directed November 6, 1990, totalling, $39,533,000.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: February 20, 1991.

Kenneth Mason,

Secretary.

[FR Doc. 91–4593 Filed 2–22–91; 2:15 pm]

BILLING CODE 7020–02–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 25, March 4, 11, and 18, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 25

Wednesday, February 27

10:00 a.m.
Briefing by NARUC on Economic Performance Incentives (Public Meeting)

Thursday, February 28

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Appeal from a Licensing Board Order of November 19, 1990 in the Shoreham Proceeding (Tentative)

Week of March 4—Tentative

Thursday, March 7

10:00 a.m.
Briefing on Status of Fitness for Duty Programs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 11—Tentative

Thursday, March 14

9:30 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) and Activities of the NRC in the HLW Program (Public meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 15

10:00 a.m.
Briefing on Agreement State Compatibility Issues (Public meeting)

Week of March 18—Tentative

Friday, March 22

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this da' .

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: February 21, 1991.

William M. Hill, Jr.,

Office of the Secretary

[FR Doc. 91–4640 Filed 2–22–91; 3:05 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 6421 Februrary 15, 1991].

STATUS: Closed.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, February 12, 1991.

CHANGE IN THE MEETING:

Additional Items

The following items were considered at a closed meeting on Tuesday, February 19, 1991 at 2:30 p.m.

Settlement of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

Commissioner Fleischman, as duty officer, determined that Commission business required the above changes.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272–2000.

Dated: February 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–4572 Filed 2–22–91; 2:14 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 25, 1991.

Closed meetings will be held on Tuesday, February 26, 1991, at 2:30 p.m. and on Thursday, February 28, 1991, at 10:00 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 26, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Order compelling testimony.
Formal orders of investigation.
Settlement of injunctive action.
Opinions.

The subject matter of the closed meeting scheduled for Thursday, February 28, 1991, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: February 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–4573 Filed 2–22–91; 2:14 pm]

BILLING CODE 8010–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9:00 a.m. to 5:00 p.m., March 8, 1991
9:00 a.m. to 5:00 p.m., March 9, 1991
9:00 a.m. to 12 noon, March 10, 1991

PLACE: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public:

Discussion of information dissemination plans; options to provide assistance to help State courts cope with their drug caseloads; and consideration of concept papers and applications.

Portion Closed to the Public:

Discussion of internal personnel issues.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Steet, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 91–4620 Filed 2–22–91; 2:18 pm]

BILLING CODE 6820–SC–M

OL
56

SS
88

FE
26

991

MI

federal register

Tuesday
February 26, 1991

Part II

Office of Personnel Management

5 CFR Part 591
Cost-of-Living Allowances and Post Differentials (Nonforeign Areas); Advance Notice of Proposed Rulemaking; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On January 16, 1990, OPM published in the **Federal Register** final rules outlining a new methodology for conducting surveys to set cost-of-living allowances for civilian Federal employees in selected nonforeign areas. These rules incorporated changes agreed to in the settlement of *Arana* v. *United States* and other improvements identified by OPM.

OPM contracted with Runzheimer International, a consulting firm in the field of living cost research, to develop a model and collect living cost data. Runzheimer has conducted the survey and reported to OPM. The complete report is reproduced below. It explains in detail the survey methodology, calculations, and findings.

The Runzheimer report provides living cost comparisons using two different methodologies. The methodology labeled 'Part 1' follows in principle, but not precisely, the January 16, 1990, regulations. It reflects the simplifications and refinements recommended by Runzheimer. The methodology labeled 'Part 2' conforms precisely with the January 16, 1990, regulations. The two methodologies produce very similar results.

Under both methodologies, Runzheimer found that most COLA rates should remain the same or decline by varying amounts. Because this survey was conducted under a new methodology and implementation of the results of the survey would have substantial impact on many Federal civilian employees and employers in the allowance areas, OPM is inviting comments on the survey before proposing any action. Following review and analysis of the comments, OPM will propose rules, taking into consideration the comments received. These proposed rules will be published in the **Federal Register** for another 90-day comment period.

This notice does not affect the level of current COLA rates in any area.

DATES: Comments must be received on or before May 28, 1991.

ADDRESSES: Send or deliver written comments to the Office of Personnel Management, Personnel Systems and Oversight Group, Wage Systems Division, 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, (202) 606–2848.

List of Subjects in 5 CFR Part 591

Government employees, travel and transportation expenses, wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Runzheimer International Report to the Office of Personnel Management on Living Cost Differences in Alaska, Hawaii, and Other Selected Nonforeign Overseas Areas, 1990

Table of Contents

1. Executive Summary
2. Introduction
 2.1 Report Objectives
 2.2 Project Time Schedule
 2.3 Pricing Period
 2.4 Living Cost Components
 2.5 Organization of this report
3. Overall Model
 3.1 Measurement of Living Cost Differences—Basic Concept
  3.1.1 Target Population: Federal Employees
  3.1.2 Determination of Expenditure Patterns
 3.2 General Formulae
 3.3 Data collection process
  3.3.1 In-house Research Staff
  3.3.2 Field Researchers—"Research Associates"
  3.3.3 On-site Visits By Runzheimer Research Personnel
 3.4 Editing and Quality Control Procedures
 3.5 Pricing Surveys in Puerto Rico
 3.6 Surveying The Washington, D.C. Area
4. Consumption Goods and Services
 4.1 Component Overview
 4.2 Marketbasket Research
  4.2.1 Expenditure Research—Category Weightings
  4.2.2 Expenditure Research—Subcategory and Item Weightings
  4.2.3 Marketbasket Item Specifications
  4.2.4 Exchange and Commissary Expenditure Research
 4.3 Outlet Selection
 4.4 Goods and Services Data Collection Procedures
  4.4.1 Data Collection Materials
  4.4.2 Inclusion of Sales Taxes
 4.5 Goods and Services Survey Results
5. Housing
 5.1 Component Overview
 5.2 Housing Model
  5.2.1 Expenditure Research
  5.2.2 Development of Housing Profiles
  5.2.3 Living community selection
  5.2.4 Identification and Quantification of Housing-Related Expenses
 5.3 Housing Data Collection Procedures
  5.3.1 Homeowner Data Collection
  5.3.2 Previously-Purchased Homeowner Data Collection
  5.3.3 Renter Data Collection
  5.3.4 Housing-Related Data Collection
 5.4 Housing Analysis
  5.4.1 Homeowner Data Analysis
  5.4.2 Rental Data Analysis
  5.4.3 Analysis of Housing-Related Expenses
 5.5 Housing Survey Results
6. Transportation
 6.1 Component Overview
 6.2 Transportation Model
  6.2.1 Expenditure Research
  6.2.2 Public Transportation Methodology
  6.2.3 Private Transportation Methodology
 6.3 Transportation Data Collection Procedures
  6.3.1 Public Transportation Data
  6.3.2 Private Transportation Data
 6.4 Transportation Survey Results
7. Miscellaneous Expenses
 7.1 Component Overview
 7.2 Miscellaneous Expense Model
  7.2.1 Expenditure Research
  7.2.2 Miscellaneous Expense Methodology
 7.3 Miscellaneous Expense Data Collection Procedures
 7.4 Miscellaneous Expense Survey Results
8. Final Results
 8.1 Component and Total Comparative Cost Indexes and Amounts
 8.2 Runzheimer Observations
 8.3 General Comments
  8.3.1 Goods and Services Improvements
  8.3.2 Housing—A Comment
  8.3.3 Seasonality
  8.3.4 Part 1 and Part 2 Methodologies

1. Executive Summary

After several hundred hours of statistical design, thousands of research and survey calls, and analyzing over ten thousand price quotes, the entire effort can be summarized into 32 indexes.

These 32, 16 indexes for each of the two computational methodologies used, represent the total cost comparisons between the 11 allowance areas and the Washington, DC area. Cost comparisons based on local price levels have been completed for all 11 allowance areas. In five of these allowance areas, a second cost comparison has been completed to reflect purchases made in military exchanges and commissaries.

The final cost comparison indexes are shown below:

PART 1 METHODOLOGY.—FINAL COST COMPARISON INDEXES

	Local pricing	Exchange & Commissary
1. Anchorage, AK	99.09	96.49
2. Fairbanks, AK	103.42	100.04
3. Juneau, AK	107.45	
4. Guam	107.07	101.07
5. City and County of Honolulu, HI	120.39	115.00
6. Hawaii County, HI	104.86	
7. Kauai County, HI	116.08	
8. Maui County, HI	119.58	
9. Puerto Rico	102.02	100.82
10. St. Croix, VI	107.33	
11. St. Thomas, VI	114.91	

PART 2 METHODOLOGY.—FINAL COST COMPARISON INDEXES

	Local pricing	Exchange & Commissary
1. Anchorage, AK	99.09	96.69
2. Fairbanks, AK	103.00	99.80
3. Juneau, AK	106.15	
4. Guam	107.56	101.79
5. City and County of Honolulu, HI	119.45	114.34
6. Hawaii County, HI	104.36	
7. Kauai County, HI	114.90	
8. Maui County, HI	118.31	
9. Puerto Rico	101.24	100.34
10. St. Croix, VI	107.28	
11. St. Thomas, VI	113.49	

In appropriate sections throughout he report, we have included indexes and weighting patterns for both the component and category levels, as well as noting the minor differences between the part 1 and part 2 methodologies. These interim results enable the reader to understand how we derive the final indexes.

The only places in the study where we had some concerns about its adequacy are the housing analyses in Puerto Rico and the Virgin Islands. See sections 5.3.1, 5.3.3, and 5.4.1 for more detailed explanations of these situations.

For confidentiality purposes, this does not contain basic price data, outlet identification or specific data sources.

2. Introduction

2.1 Report Objectives

This report represents the culmination of Tasks 1 and 2 of the contract OPM–90–0705 between the Office of Personnel Management and Runzheimer International.

Task 1 of the contract is the design of a model to estimate comparative living costs between the following areas and the Washington, DC area:

1. Anchorage, AK
2. Fairbanks, AK
3. Juneau, AK
4. Guam
5. City and County of Honolulu, HI
6. Hawaii County, HI
7. Kauai County, HI
8. Maui County, Hi
9. Puerto Rico
10. St. Croix, VI
11. St. Thomas, VI

This report is divided into two parts. Part 1 conforms in principle to the final rules published by OPM on January 16, 1990 in the Federal Register (55 FR 1370), but includes technical refinements and improvements that Runzheimer has identified and recommended to OPM for future pricings. Part 2 of this report attempts to present living cost comparisons as specified in the above regulations. As seen in the final results, both methodologies produce similar results. Throughout the report, we note wherever differences occur due to part 1 and part 2 methodologies.

Task 2 of the contract is the collection and analysis of the cost data as specified in the economic model developed in Task 1. The analysis shows comparative cost differences for each of the allowance areas, with the final comparison being one composite index relationship to the Washington, DC area.

Included in this contract is the development of living cost comparisons between the following areas and the Washington, DC area for federal employees who have access to military commissaries and post exchanges:

1. Anchorage, AK
2. Fairbanks, AK
3. Guam
4. City and County of Honolulu, HI
5. Puerto Rico

Not all allowance areas have military commissaries and post exchanges. For this portion of the project, OPM identified the areas listed above as historically having significant military facilities, and federal employee usage of those facilities.

2.2 Project Time Schedule

The Office of Personnel Management awarded this contract to Runzheimer International on June 6, 1990. Documentation of the economic model and all living cost comparisons were to be completed on or before October 15, 1990. Contract modifications moved the completion to December 14, 1990. We are very pleased to have completed this project prior to the December 14 deadline.

2.3 Pricing Period

All price data used in this economic model were collected between 8/1/90 and 9/30/90. For items that might fluctuate in price within the pricing period and measurably impact the overall comparisons, we scheduled concurrent pricing efforts for all locations. For example, all gasoline prices were gathered during a three-day period.

2.4 Living Cost Components

In accordance with the above-mentioned federal regulations and our contract, the expense components we costed were:

(1) Consumption goods and services
(2) Transportation
(3) Housing
(4) Miscellaneous expenses

The impact of federal, state and local income taxes was excluded from this analysis. In addition, expenses directly related to education (e.g., tuition books, rental expenses) were excluded from the analysis for several reasons. Educational opportunities vary significantly among locations in terms of availability, quality and other factors. Runzheimer analysts and OPM officials agreed that attempts to measure cost differences between areas would be highly subjective and accuracy or would not add to the integrity of the model.

2.5 Organization of this Report

This report is organized into eight sections. Section 1 is an executive summary which focuses on the final comparative cost indexes. Section 2 is introductory and contains general information about Tasks 1 and 2. Sections 3 through 7 contain a detailed explanation of Task 1, the design of the economic model and Task 2 data collection and analysis activities. Section 8 contains the final results, as well as observations and comments that Runzheimer International believes may be beneficial to future pricing and/or analytical activities of this contract.

3. Overall Model

3.1 Measurement of Living Cost Differences—Basic Concept

The most common and most widely accepted method of measuring the living cost differences between locations is to select representative items that people purchase in these locations and calculate their cost differences, combining them according to their importance to one another (as measured by percentage of expense). We use this basic concept to compare the living costs in each of the allowance areas to living costs in the Washington, DC area.

To move from this basic concept to computing comparative living costs between each allowance area and the Washington, DC area, we identify the five main processes or steps that we take:

Step 1 Identify the segment of the population for which this analysis is being targeted (i.e., the target population).

Step 2 Determine how these people spend their money.

Step 3 Select items to represent the expense categories for which these people spend their money.

Step 4 Conduct pricing surveys of the selected items in each area.

Step 5 Analyze cost ratios for the selected items and aggregate them according to each item's relative importance.

We address Steps 1 and 2 in sections 3.1.1 and 3.1.2 respectively. The methods we use to complete Steps 3, 4 and 5 vary depending on the nature of the expenditures. Therefore, we address these steps in sections 4, 5, 6 and 7, for the expense groupings of goods and services, housing, transportation and miscellaneous items respectively.

3.1.1 Target Population: Federal Employees

Our living cost model measured living cost differences for non-military federal employees with annual base salaries between $10,000 and $80,000, the appropriate salary range of the 1990 General Schedule of the Federal Government. Since living cost differences may vary depending on the income level of the employee, our model measured living costs at three income levels.

To select the income levels that most accurately represent the population of federal employees, we used the salary distribution of all General Schedule employees as of March 31, 1990 which was supplied by OPM officials. We then selected the midpoints of the lower, middle and upper thirds of this distribution as our three income levels ($18,000, $28,400 and $45,200 respectively).

Although a federal employee's salary may represent only a portion of a family's total income, Runzheimer and OPM officials believed that any recognition of outside income sources may unfairly bias the results. Therefore, whenever specific income levels were required, the model used the three income levels stated above.

3.1.2 Determination of Expenditure Patterns

3.1.2.1 Source of Expenditure Data

To determine how families with incomes of $18,000, $28,400 and $45,200 typically spend their monies, we used the most recent Consumer Expenditure Surveys (CES) produced by the U.S. Department of Labor, Bureau of Labor Statistics. Specifically, we used the "prepub" statistical reports from the 1988 CES dated February 13, 1990 (see appendix 1) to form the basis for the expenditure pattern weightings throughout the study.

3.1.2.2 Income Level Adjustments

Because the most recent CES was based on 1988 expenditure levels, we adjusted our three 1990 incomes to 1988 levels before beginning our expenditure analysis. To calculate estimated 1988 income levels, we used the average percentage salary increases of federal employees for the two-year period in question as supplied by OPM officials (4.1% increase 1988–89 and 3.6% increase 1989–90, which result in a 7.85% two-year increase). This adjustment reduced the 1990 income levels to estimated 1988 levels of $16,700, $26,300, and $41,900.

3.1.2.3 Family Size Considerations

We did not assign a specific family size to each of our three income profiles. Instead, the number of members in each family (or "consumer unit" as the CES referred to them) was implicit in our expenditure weighting scheme (the average family size of the entire CES was 2.6).

We have addressed family size in this manner to enable the model to be easily and accurately updated whenever new expenditure survey data might be incorporated into it.

3.1.2.4 Analysis of 1988 Consumer Expenditure Survey

From the 1988 CES we used the statistical report entitled, "Table 2. INCOME BEFORE TAXES," which listed expenses for families earning similar incomes into one of eight income ranges. As shown below, we analyzed these data to develop typical patterns of expenditure for our three income profiles.

For our purposes, we selected seven income ranges that most closely matched our three income profiles:

$10,000 to $14,999
$15,000 to $19,999
$20,000 to $29,999
$30,000 to $39,999
$40,000 to $49,999
$50,000 and over
All respondents combined.

The 1988 CES grouped expenses into small logical clusters of items. For example, money spent by families on beef was divided into four groups: Ground beef, roast, steak and other beef. The roast and steak groupings were further separated into smaller groups of items (e.g., sirloin and round steak, chuck and round roast).

Using this survey of expenditure data, we separated these item groupings into the four main cost components as specified in the original RFP: goods and services, transportation, housing and miscellaneous expenses. We observed that families in the lower income ranges spent more of their money as a percentage of total expenses on goods and services and housing than families in higher income ranges. Also, families spent approximately the same percentage of their total expenses on transportation, regardless of income. Consequently, the miscellaneous components, which included such things as legal and accounting fees (part 1 only), medical care expenses (part 2 only), contributions, gifts to non-family members, pension funds, long-term savings and investments, and life insurance premiums increased as a percentage of total expenses as income increased.

To develop accurate and defensible weighting patterns for our three income levels, we used linear regression analysis on the selected 1988 CES data. Listed below are the results of our analysis:

PART 1 METHODOLOGY.—COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

Income level		Goods & services	Housing	Transportation	Misc.	Total
1990	Est 1988					
$18,000	$16,700	43.94	24.35	20.76	10.95	100.00
$28,400	$26,300	42.24	23.48	20.33	13.95	100.00
$45,200	$41,900	40.63	22.66	19.94	16.77	100.00

PART 2 METHODOLOGY.—COMPONENT EXPENSES EXPRESSED AS A PERCENTAGE OF TOTAL EXPENSES

Income level		Goods & services	Housing	Transportation	Misc.	Total
1990	Est 1988					
$18,000	$16,700	39.59	24.35	20.76	15.30	100.00
$28,400	$26,300	39.15	23.48	20.33	17.04	100.00
$45,200	$41,900	38.74	22.66	19.94	18.56	100.00

We used the same linear regression technique to further separate transportation into public and private expense categories, goods and services into ten categories, and to provide accurate ratios of renters to homeowners at each income level.

Statistics on these component groupings are found in later sections of this report.

3.2 General Formulae

Throughout our economic model, we use the Laspeyres indexing methodology (a fixed set of marketbasket items and base location weights) to develop indexes. We deviate slightly from the strict interpretation of the Laspeyres index formula in several instances to provide more appropriate comparative cost indexes for each allowance area. For example, as discussed in section 3.1.2.4, we used nationwide consumer expenditure data to determine survey items and their weights. Also, as required by OPM regulations, we used General Schedule employment and salary distributions in each allowance area to combine price data for each income group. We made other minor deviations as well. We highlight these methodology nuances wherever they occur.

Sections 4 through 7 explain the processes by which we develop the four main components: goods and services, housing, transportation and miscellaneous expense. The aggregation of these four components is explained below.

The goods and services, housing and transportation components are income-sensitive for both part 1 and part 2 methodologies (i.e., we generate a separate computation for each income level). The miscellaneous expenses component is income-sensitive for the part 2 methodology only.

At each income level, these component indexes (part 1) or total-cost amounts (part 2) are aggregated, based on the weighting patterns listed in section 3.1.2.4. These aggregations are combined into one comparative cost index for each allowance area in the same proportion as the distribution of General Schedule employee salaries in each area. Using area-specific weighting patterns is inconsistent with a strict interpretation of a Laspeyres index methodology (which calls for the base location weighting pattern to be used for all areas). However, we feel that region-specific index weightings result in comparative cost indexes that more closely represent the living cost differences for the distribution of federal employees in each allowance location.

To account for commissary and exchange purchases in selected allowance areas (identified in section 2.1), we created a second set of three goods and services indexes and calculated separate comparative cost indexes. These indexes reflected prices surveyed in military facilities and private sector outlets in the allowance areas. (See section 4.2.4 for further discussion.)

A discussion of the Laspeyres indexing formula and the specific formulas used in this model are found in appendix 2.

3.3 Data collection process

We used many different information-gathering approaches to accomplish the activities in Tasks 1 and 2 in the most efficient and effective manner possible. In this section, we describe the various approaches.

3.3.1 In-house Research Staff

Runzheimer research personnel at our corporate headquarters in Rochester, Wisconsin, played a major role in all data collection activities. These professionals:

- Contacted manufacturers, trade associations, governmental agencies, retail establishments, etc. to identify suitable items to price.
- Contacted professionals in the real estate business in each of the costed locations to obtain general information as well as specific rental rates and home market values.
- Conducted pricing surveys on many items.
- Served as a vital liaison for field researchers.
- Performed hundreds of quality control checks once the data had been collected; these checks often involved verification of the survey data through telephone calls.
- Analyzed and computed the category, component and total comparative cost indexes.

3.3.2 Field Researchers—"Research Associates"

Collection of most price data was best accomplished through personal visits to retail outlets (e.g., grocery, clothing, furniture). For these activities, Runzheimer hired residents of each allowance area as independent contractors (our "research associates"). For years, Runzheimer has used this approach to data collection in over 80 countries worldwide in the measurement of living costs for its clients.

For this project, we supplemented our existing research associate network to cover each of the allowance areas and the Washington, DC area adequately. To avoid any perceived conflicts of interest, we did not hire persons as research associates who were either employees of the federal government, or who had immediate family who were employees of the federal government.

3.3.3 On-site Visits By Runzheimer Research Personnel

Full-time Runzheimer professionals travelled to each allowance area and the Washington, DC area to supervise the data collection activities and perform various quality control checks on the data. These visits took place during the two month pricing period.

These researchers travelled to living communities to observe housing accommodations personally and to talk to real estate professionals in each area. They also visited numerous retail outlets (including commissaries and exchanges) to verify item quality, selection and price levels in general.

In addition, these researchers met with the Runzheimer research associate(s) in each location to answer any data collection questions and to provide any additional training and instruction as necessary.

3.4 Editing and Quality Control Procedures

Runzheimer's extensive experience in measuring living cost differences enabled us to set up editing and quality

control procedures at all stages of data collection and the analysis process.

The federal regulations stated in section 591.205(b)(1)(i) that, "Whenever possible, exact brands and models are priced in each location." Every effort was made to satisfy this objective. (See section 4.2 for a discussion of brand and model selection.) Nevertheless, in a number of the allowance areas the exact brands and models were either not readily available or not available at all. In these instances, experienced editing decisions were needed.

We defined "editing" as the removal and/or replacement of a surveyed price quote based on consistent and logical criteria. In all areas, we were very concerned that items of lesser (or greater) quality than the specified item may inadvertently be included in our analysis and bias the results. Therefore, any price quote that appeared significantly higher or lower than the price levels of other price quotes for the item was flagged, checked, and if necessary, eliminated from the analysis.

It was undesirable to remove a missing item from a location analysis. Removing an item caused its item weighting to be distributed to the other items in the item's subcategory (or category when no subcategory exists). If the other items in the subcategory or category did not adequately represent the missing item, our research analysts assigned a price to the item based on all other available information. This type of editing was used on rare occasions. Generally, when an item price was missing, we resurveyed the item.

3.5 Pricing Surveys in Puerto Rico

Through salary distribution data provided by the OPM, we determined that 70% of the non-military federal personnel employed in Puerto Rico work at facilities within 10 miles of the city of San Juan. The remaining 30% was distributed throughout Puerto Rico without a particular concentration. It appeared, however, that most of these remaining employees were generally closer to Mayaguez, than any other larger Puerto Rican city. Therefore, we surveyed Mayaguez in addition to San Juan. To combine the prices from both cities, we used a 70% San Juan, 30% Mayaguez weighting.

3.6 Surveying The Washington, DC Area

OPM defined the Washington, DC area in the federal regulations as the Washington DC–MD–VA Metropolitan Statistical Area. Since federal employees who work in this area reside in Virginia, in Maryland, and in the District of Columbia, we selected retail outlets and living communities from all three areas. Our model gave equal weight to the average prices in each geographic area.

Because the Washington, DC area formed the basis of comparison for all allowance areas, we conducted substantially more pricing surveys in this area than in others. For the goods and services component, we surveyed approximately six times as many price quotes in the Washington, DC area as in the typical allowance area. For the housing, transportation and miscellaneous expense components, data collection was approximately triple that of the typical allowance area.

4. Consumption Goods and Services

4.1 Component Overview

The goods and services component consisted of family expenses related to the following ten categories of expense:

Food At Home
Food Away From Home
Tobacco
Alcohol
Furnishings & Household Operations
Recreation
Clothing
Domestic Service
Medical Care (Part 1 only)
Professional Services (Part 2 only)
Personal Care

To aid in quality control and in analyzing future pricings, we further subdivided four of the largest categories into subcategories. The four subdivided categories were food at home, furnishings and household operations, clothing, and recreation. The specific subcategories were noted in appendix 3.

From these ten categories of expense, we selected a marketbasket of items (products and services) to form the basis of our goods and services analysis. Each marketbasket item represented a specific group of related expense items. The relative importance (or weighting) of each item was determined from CES data. The average price of each marketbasket item in each allowance area was compared with the average price in the Washington, DC area. The price differences (expressed as percentages) were aggregated based on the item, subcategory and category weightings, resulting in a total goods and services component index at each income level.

Section 3.2 describes how these three component indexes are combined with the housing, transportation and miscellaneous expense indexes first (by income level) to arrive at the comparative cost index for each allowance area.

In each allowance area (except Puerto Rico), we gathered three price quotes for each item (and sometimes more than three) from the local economy, one from each of three different outlets. In Puerto Rico, we doubled the sample size by obtaining three price quotes for each item in both the San Juan and Mayaguez areas.

4.2 Marketbasket Research

4.2.1 Expenditure Research—Category Weightings

We tabulated the expense data from the 1986 Consumer Expenditure Survey according to the ten categories of goods and services. As in the component analysis (described in section 3.1.2.4), we used the expense data from the seven most appropriate income ranges as input into a linear regression analysis. From that analysis, we calculated the category weightings for each income level as listed below:

PART 1 METHODOLOGY.—CATEGORY WEIGHTINGS

[In percent]

	Income levels		
	Lower	Middle	Upper
Food At Home	22.99	20.73	18.45
Food Away From Home	14.37	14.92	15.47
Tobacco	2.62	2.35	1.87
Alcohol	2.63	2.59	2.54
Furnishings & Household Operations	12.93	14.76	16.66
Clothing	12.83	13.84	14.87
Domestic Service	1.60	1.68	1.73
Medical Care	15.11	12.73	10.29

PART 1 METHODOLOGY.—CATEGORY WEIGHTINGS—Continued

[In percent]

	Income levels		
	Lower	Middle	Upper
Personal Care	3.21	3.22	3.22
Recreation	11.51	13.18	14.86
Totals	100.00	100.00	100.00

PART 2 METHODOLOGY.—CATEGORY WEIGHTINGS

[In percent]

	Income levels		
	Lower	Middle	Upper
Food At Home	25.52	22.38	19.35
Food Away From Home	15.95	16.09	16.23
Tobacco	3.13	2.54	1.96
Alcohol	2.92	2.79	2.67
Furnishings & Household Operations	14.35	15.95	17.49
Clothing	14.24	14.93	15.59
Domestic Service	1.78	1.79	1.81
Professional Services	5.77	5.84	5.91
Personal Care	3.57	3.47	3.38
Recreation	12.77	14.22	15.61
Totals	100.00	100.00	100.00

4.2.2 Expenditure Research—Subcategory and Item Weightings

The expense data from the 1988 CES was also used to determine proper subcategory and item weightings and to identify marketbasket items. These subcategory and item weightings were derived from logical groupings of family expenditures. Unlike category weightings which vary by income level, subcategory and item weightings were computed from national aggregate expenditures only (i.e., all three income levels used the same set of subcategory and item weightings) as this approach is the most common in other similar public and private sector cost-of-living analyses.

Our expenditure research process included procedures to ensure that no marketbasket item had an overwhelmingly large or insignificantly small item weighting.

4.2.3 Marketbasket Item Specifications

From each logical expense grouping, we selected one or more marketbasket items to represent all items in the grouping. When selecting specific items for the marketbasket, we worked to satisfy these three criteria:

- Items should be readily available in all locations if at all possible.
- Item price levels should logically represent the price levels of unselected items in the "logical grouping."
- Items should have the same or nearly the same application in all locations.

Appendix 3 is a list of our marketbasket items. Once an item was selected, our research analysts identified the specific brand and/or model/size of each item that was available in most (if not all) locations. This research involved contacting manufacturers, trade associations, retail establishments, etc. For some items, creating item specifications was quite straightforward because of the nature of the item (e.g., bread, sirloin steak, aspirin).

Section 4.4.2 contains pricing forms that list item specifications.

4.2.4 Exchange and Commissary Expenditure Research

We used the same marketbasket items for our pricing of commissaries and exchanges that we used for the local pricings. We obtained one price quote for marketbasket items found in these facilities. We did not however, gather data from other military facilities (e.g., barber shop, movie theater, golf course, doctor, dentist).

We did not assume that people with access to military facilities made all purchases in these facilities. Instead, we used OPM's 1980 Living Pattern Surveys of federal employees to determine the percentage of purchases that families typically spent in military facilities versus local outlets. These percentages were used to appropriately aggregate the local and commissary/exchange prices into one set of composite prices. (The composite prices were compared to the local prices in the Washington, DC area just as each allowance area's local prices were.)

See appendix 4 for the local economy versus military facility spending patterns.

4.3 Outlet Selection

Proper outlet selection was crucial to measuring living cost differences accurately because misjudgments can seriously affect survey results. We focused on three key guidelines to ensure proper outlet selection. First, for areas that had an abundance of outlets from which to choose, we identified outlets from several different geographic areas. In the Washington, DC area, for example, we selected outlets in and around six different geographic areas: that is, two areas in Virginia, two in Maryland and two in the District of Columbia.

Our second guideline was that for any one marketbasket item, all outlets were similar in type. For example, we surveyed food items in large grocery stores in all locations. It would have been inappropriate to gather prices from convenience stores in one location and from large grocery stores in another because this approach would have distorted price comparisons.

The last guideline involved the diversity of outlets in our sample.

Although we did not wish to use dissimilar outlets in pricing any one item, we believed that pricing in different types of outlets more accurately portrayed living cost differences. For example, for efficiency we could have priced all clothing items in department stores in each location. However, to incorporate price levels at other types of outlets that sell clothing items, we surveyed some items in men's and women's clothing stores, department stores, shoe stores and discount department stores.

Our research analysts selected outlets by combining their own expertise with these resources:

- Personal experience of Runzheimer research associates and on-site travelling researchers.
- Informal telephone interviews with knowledgeable residents in each area.
- Yellow pages sections of area telephone books.
- Area chambers of commerce and information bureaus.

With new businesses constantly appearing (and old ones disappearing), outlet selection will be a never-ending process. Updating our outlet sample is a necessary and important part of each subsequent pricing.

4.4 Goods and Services Data Collection Procedures

4.4.1 Data Collection Materials

Our years of experience in designing effective data collection instruments enabled us to develop high quality instructional materials and data collection forms. Our instruction packet included topics such as:

- How to obtain permission to gather price data.
- How to maintain survey confidentiality while pricing.
- How to select suitable substitute items when necessary.
- How to select suitable substitute outlets when necessary.
- Retail industry terminology and nomenclature (e.g., store brand).
- Sketches of clothing items (e.g., infant sleeper, clutch purse, pumps).

All data collection forms included places for researchers to comment on each price quote and to "check" if the item was a substitute. This qualitative information was invaluable during the editing phase of the project. It enabled our research analysts to make informed decisions as to whether the substitute item should be included in the analysis or whether more research was needed. Appendix 5 contains all of our goods and services data collection worksheets.

4.4.2 Inclusion of Sales Taxes

For all items subject to sales tax, the appropriate amount of tax was added prior to analysis. We also included all applicable sales taxes to items that were part of the other living cost components.

4.5 Goods and Services Survey Results

In section 3 of this report, we presented a detailed explanation of the economic model that we used to analyze the goods and services price data. To summarize this model, average prices of marketbasket items in each allowance area were compared to average prices in the Washington, DC area. The resulting price ratios were aggregated into subcategory and then category indexes using the expenditure weightings as derived from the 1988 CES.

For each allowance area, appendix 6 contains tables showing the ten category indexes, the three weighting patterns, and the three total goods and services indexes. No table is needed for the Washington, DC area since it is by definition "the base location" where all category and component indexes are equal to an index of 100.

5. Housing

5.1 Component Overview

The housing component consisted of expenses related to owning or renting an accommodation. These expenses included mortgage or rent payments, utilities, real estate taxes, homeowners or renters insurance, home maintenance and telephone. At each of the three income levels, we measured annual housing costs under the two main housing conditions: home ownership and rental.

For the part 1 methodology, we compared the annual costs of these six housing profiles (three incomes times two housing conditions) in each allowance area with costs in the Washington, DC area. We then combined the homeowner and renter cost ratios at each income level based on national expenditure weightings, resulting in three housing component indexes.

For the part 2 methodology, the six annual housing costs are combined with annual costs of the other three components in each allowance area prior to making the comparison with cost levels in the Washington, DC area.

Section 3.2 describes how these housing results are combined with the goods and services, transportation and miscellaneous expense results to arrive at the comparative cost index for each allowance area.

5.2 Housing Model

5.2.1 Expenditure Research

In section 3.1.2.4, we explained how the 1988 CES was used to identify the portion of expenses attributable to each of the four components. We also used this survey to determine the national average ratio of families who own as opposed to rent their residence. Using the expense data from the seven most appropriate income ranges as input into a linear regression analysis, we calculated own/rent weightings as listed below:

OWN/RENT WEIGHTINGS

(In percent)

	Income levels		
	Lower	Middle	Upper
Homeowner with mortgage	37.10	46.91	62.86
Renter	62.90	53.09	37.14
Totals	100.00	100.00	100.00

We excluded expenditure data for those families who were homeowners without a mortgage because these families were not typical of homeowners in the base area or in the allowance areas with the largest concentrations of federal employees.

The 1988 CES was also used to identify home maintenance items to price and the relative importance of each item.

5.2.2 Development of Housing Profiles

To accurately compare housing costs in all locations, we constructed a model that measured housing costs under six different circumstances. We identified six typical housing profiles. We matched these profiles to our three income levels in a reasonable and logical manner as listed below:

	Renter profile	Owner profile
Lower income level	3-1-1* 600 sq ft Apartment	4-2-1 900 sq ft Condo or detached house.
Middle income level	4-2-1 900 sq ft Apartment	5-3-1.5 1300 sq ft Detached house.
Upper income level	4-2-2 or 5-3-2 1100 sq ft, townhouse or detached house.	7-3-2 1700 sq ft Detached house.

* Defined as "Total rooms—Bedrooms—Baths." Total rooms excludes bathrooms, hallways, entrance areas and closets, but includes bedrooms, living room, family room, kitchen, formal dining room and den/study.

We used these standard profiles to measure equal housing units in all areas, thereby striving for apples-to-apples comparisons. Then, when we analyzed the housing data, we measured living cost comparisons as objectively as possible.

5.2.3 Living community selection

We contacted real estate brokers, residential appraisers and other knowledgeable real estate professionals in each area to provide us with information regarding the predominant age(s), size(s) and type(s) of housing in various communities/housing subdivisions. When available and "appropriate" (as discussed below), we identified at least six communities (two at each income level) in each allowance area. For the Washington, DC area, we selected at least nine communities (three at each income level) from which to gather renter and homeowner data.

We used the information we received from our real estate sources to designate communities as being "appropriate" for our lower, middle and/or upper income profiles, or not appropriate at all. Typical reasons why a community might be deemed "inappropriate" were if the typical housing accommodations were either too poor in quality or too luxurious, or if there were not enough homes being bought and sold, or rented to establish accurate average price levels. Although our real estate contacts generally did not know average salary levels of typical residents, they quite often were able to compare communities, and judge whether one community was more "upscale" than another based on the residents' various occupations and other more qualitative factors.

Appendix 7 shows our list of selected communities.

5.2.4 Identification and Qualification of Housing-Related Expenses

From the 1988 CES, we identified and categorized housing-related expense items into one of five groups: Utilities, real estate taxes, owners/renters insurance, maintenance and telephone.

5.2.4.1 Utilities

For this study, we classified electric, heat (oil or gas), water and sewer as utilities. Although most utility companies had ready access to current charges per unit of consumption and average consumption patterns for all households, very few (if any) separated consumption patterns by number of family members in a household or by size/type of accommodation.

We focused on average consumption patterns per household. We gathered this information from utility companies serving each allowance area and the Washington, DC area. Combining this consumption data with current utility rates, we computed average annual utility costs for each of electric, gas or oil (whichever we found to be more widely used, if used at all), water and sewer. We then subjectively assigned this average consumption pattern to the homeowner profile at the middle income level.

Because some utility costs vary by size of the house and yard (e.g., heating, cooling, watering, possibly electricity), we calculated a multiplier consistent with the standard house sizes to arrive at the utility rates for the other five profiles. This methodology was a logical and plausible approach to a complex entity. The formula to calculate each multiplier was:

Multiplier = 1 + (.5* (Standard square feet − 1300)/1300)

The resulting utility multipliers are listed below:

	Renter profile		Owner profile	
	Sq ft	Multiplier	Sq ft	Multiplier
Lower income level	600	.73	900	.85
Middle income level	900	.85	1300	1.00
Upper income level	1100	.92	1700	1.15

5.2.4.2 Real Estate taxes

Real estate tax formulas do not always translate directly into actual taxes paid by typical property owners. And in some cases, the formulas are applied in such a way as to make it nearly impossible to recreate accurate tax rates.

For this study, we contacted the city assessor in each area to obtain the real estate tax information for the homeowner living communities. We encountered some very confusing real estate tax information. For example, taxes in San Juan were assessed based on the value of the home as of 1957. Homes built after 1957 were either "adjusted" back to the 1957 timeframe, or assessed in some other fashion.

In any event, we attempted to verify the calculated real estate tax amounts by checking actual taxes paid by property owners. Whenever we were not able to reconcile the formulas with actual taxes paid, we gathered sufficient data on actual taxes paid to develop an average ratio of taxes paid to current home values. This ratio was then applied to the average home value in that community to obtain an average real estate tax amount for the desired homeowner profile.

5.2.4.3 Owners/Renters Insurance

For the homeowner profiles, we gathered insurance rates covering structure and contents. For the renter profiles, we gathered rates covering

contents only. Because land values and the extent of the coverage varied dramatically from location to location, in each area we worked with local insurance agents to identify and cost the most typical and appropriate coverage for each housing type.

5.2.4.4 Maintenance

Many factors were involved in measuring the cost of maintaining a home. Some of these factors are climate conditions, architecture and building materials, and the cost of maintenance materials and labor.

To find detailed maintenance "consumption patterns" (i.e., how much maintenance expense a home in various locations experienced), we contacted numerous federal and state agencies as well as universities, research institutes and other quasi-governmental groups. No reliable data source was found. Further, we found no indication that the maintenance requirements in one location was significantly higher due to climate or architectural characteristics alone.

Therefore, we developed maintenance costs based on the cost of maintenance materials and labor rates in each area. Our approach to maintenance was the same as our approach to goods and services, as explained below.

We used expenditure data from the 1988 CES to identify the national average maintenance expense, the maintenance items to survey, and the appropriate item weighting. For renters (since most if not all maintenance items were handled by the landlord and therefore included in the rent), we did not include any maintenance costs for the three renter profiles.

To compute cost differences between each allowance area and the Washington, DC area for the homeowner profiles, we surveyed several building materials and maintenance labor rates to measure this small but noteworthy element of home ownership. Next, to establish our base location maintenance expense, we assigned the national average expense per household to the middle income homeowner profile.

Logically, maintenance costs for larger homes would be greater than costs for middle-size homes, while costs for smaller homes would be less. Therefore, in this study, we used the same homeowner multipliers as used in the utilities model (section 5.2.4.1) for the lower and upper income profiles (.85 and 1.15 respectively) to recognize differences in maintenance costs due to house size.

5.2.4.5 Telephone

Telephone expenses consisted of local service charges, possible additional charges for local calls, and charges for any long distance calls. To measure estimated expenses for local service and local calls, where available, we surveyed the cost of touch-tone service with unlimited calling. (In Mayaguez, we used 120 local calls per month because unlimited calling was not available.)

To estimate long distance charges in all areas, we surveyed the cost of three ten-minute direct dial calls per month to large U.S. mainland cities (Los Angeles, Chicago and New York City) at the "evening" rate.

5.3 Housing Data Collection Procedures

5.3.1 Homeowner Data Collection

In the homeowner data gathering phase, we obtained sale prices of homes (called "comparable sales") that sold in 1990 in each area that matched our housing profiles. For every community and income level combination, we tried to obtain 10–15 recent comparable sales.

Appendix 8 is a copy of the data collection form.

To get this housing information, we recontacted the most knowledgeable and helpful real estate professionals in each location. In some cases, we obtained listings of all recent comparable sales in the area. In other cases, we obtained data over the telephone from one or more realtors and/or appraisers.

As mentioned in section 3.3.3, Runzheimer research personnel conducted on-site visits to view housing units in the profiled communities. This firsthand input was very beneficial in determining whether the communities and the individual housing units were appropriate for inclusion in this study, and whether communities in one location were comparable to communities in other locations.

We had some concerns about the adequacy of housing data from the Virgin Islands of St. Thomas and St. Croix. A number of factors were present in these areas that made it difficult to precisely measure current home prices. Below are four factors that we encountered during the pricing:

1. Two housing markets. The large number of affluent retirees coming to the Virgin Islands coupled with a large tourism industry created the appearance that two housing markets existed: one for retirees and tourist rentals, another for working class residents. Most realtors did not monitor the small, less profitable local real estate market. The few home sales attributed to the local market were usually sold by word of mouth or through newspaper advertisements. (We gathered data from both "housing markets" to get a true picture of housing costs in the Virgin Islands.)

2. Basement apartments. Many of the homes in St. Thomas and St. Croix had basement apartments in them. Even the more luxurious homes were built with this arrangement. Although the rental unit (when it existed) would generate rental income to offset relatively-high mortgage payments, we did not attempt to impute an income stream from it.

3. Hurricane Hugo. Hugo's destruction on these islands was still evident. Through our on-site visit and our housing sources, we found a portion of the housing stock damaged or destroyed by the hurricane had yet to be rebuilt. It was the opinion of local realtors and appraisers that the shortage of adequate housing on the Virgin Islands would continue to be a factor in determining appropriate housing types and prices for several years to come.

4. Lack of housing data. Especially on St. Thomas, our attempts to obtain recent home sales were largely unsuccessful. We had little or no success in our data collection efforts through realtors and appraisers. Our next best source of data on recent home sales was the assessor's office. Through this channel, we received a small amount of data, as assessors in the Virgin Islands were at that time very busy with a reassessment.

As a result of these circumstances in St. Croix, and especially St. Thomas, we obtained less housing data than we considered to be definitive. Additional data gathered in future pricings will increase our confidence in the final results.

5.3.2 Previously-Purchased Homeowner Data Collection

Although the study's results were based only on recent comparable sales, OPM also requested that we obtain information on the appreciation/depreciation of homes in each area since 1984. This information was often based on appraisers' opinions/historical reflections. We occasionally acquired comparable sales data from previous years.

Appendix 9 is a copy of the form for gathering historical data.

5.3.3 Renter Data Collection

In some areas, the same realtors and brokers who assisted us in our profiling phase were very active in the rental markets as well. When this occurred, we obtained current rental rates and fees for our profiled apartments, townhouses and houses from these sources.

We also contacted rental management firms that operated apartment complexes matching our profiling specifications. In large metropolitan areas such as the Washington, DC area where rental complexes abound, our housing analysts conducted telephone surveys to obtain current rental information.

In Puerto Rico, a considerable number of rental developments were accessible to residents who qualified for rental subsidies. Because not all residents of Puerto Rico qualified for these subsidies, we excluded subsidized developments from our housing database. However, the large presence of subsidized rentals—and the ability of many residents to rent these units—added a level of complexity to the true cost of housing in Puerto Rico.

Appendix 10 is a copy of the form for gathering rental data.

5.3.4 Housing-Related Data Collection

The housing-related expense categories were identified and quantified in section 5.2.4.

Appendix 11 contains the various housing-related data collection forms.

5.4. Housing Analysis

5.4.1 Homeowner Data Analysis

We used two techniques to analyze homeowner data. Linear regression analysis was used when the data on each comparable sale lists its interior living space in square footage (in addition to listing its number of total rooms, bedrooms and baths).

In communities where square footage information was not available from our data sources, we relied on our expertise to select groups of comparable sales that best matched the three housing profiles. We then computed the average (arithmetic mean) of each grouping as our average current home sale price in each community.

We computed annual mortgage costs (principle and interest payments) using typical financing terms: 30 year mortgage, 80% financed, and current mortgage interest rates.

For St. Thomas, to develop home sale prices, we relied upon a small amount of housing data, opinions from realtors and appraisers, and our expertise in measuring housing markets. See section 5.3.1 for detailed data collection information.

5.4.2 Rental Data Analysis

In almost all cases, we used the arithmetic average of rental units that matched our rental housing profiles to determine average rates. In rare instances when actual rental data were scarce, we also incorporated opinions from local real estate professionals regarding typical rental rates.

5.4.3 Analysis of Housing-Related Expenses

Because section 5.2.4 covers the identification and quantification of housing-related expenses, these topics are not duplicated here.

However, it should be noted that we incorporated the home sale prices from this study into the calculations of real estate taxes and homeowners insurance.

5.5 Housing Survey Results

In section 3, we presented a detailed explanation of the economic model that we used to analyze the housing and housing-related price data.

Appendix 12 contains tables showing the results. Appendix 13 shows the detailed calculations of housing cost elements in each area. Note that for Puerto Rico, San Juan and Mayaguez data are combined using a 70%/30% ratio, as explained in section 3.5.

6. Transportation

6.1 Component Overview

The transportation component consisted of expenses related to public and private transportation. The public transportation category focused on the use of vans, buses or trains by the local population. The private transportation category contained expenses related to owning and operating a vehicle in each area.

Using national average expenditure weightings, we combined the public and private transportation relative cost differences between each allowance area and the Washington, DC area to arrive at a total transportation component index.

Section 3.2 describes how the transportation component index for each location is combined with the goods and services, housing and miscellaneous expense indexes to arrive at the comparative cost index for each allowance area.

6.2 Transportation Model

6.2.1 Expenditure Research

We used the 1988 CES to establish the relative importance of public versus private transportation expenses. National average expense data from the seven most appropriate income ranges were input into the linear regression analysis. The regression results for the three income levels of this study are listed below:

PUBLIC/PRIVATE TRANSPORTATION

[In percent]

	Income levels		
	Lower	Middle	Upper
Public Transportation	5.20	5.68	6.45
Private Transportation	94.80	94.32	93.55
Totals	100.00	100.00	100.00

6.2.2 Public Transportation Methodology

Our purpose for measuring public transportation costs was to identify and recognize any relatively low cost mass transportation alternative to private transportation in each area.

We conducted research into the availability of public transportation in each location. We found no viable public transportation in two locations: Guam and Maui County, Hawaii. In all other locations, we identified the most common type of public transportation (if more than one type was available) and calculated the cost for one typical one-way trip. The following is a listing of the type of public transportation that we costed:

PUBLIC TRANSPORTATION

Anchorage, AK	Bus.
Fairbanks, AK	Bus.
Juneau, AK	Bus.
Guam	None available.
City and County of Honolulu, HI	Bus.
Hawaii County, HI	Bus.
Kauai County, HI	Bus.
Maui County, HI	None available.
San Juan, Puerto Rico	Bus.
Mayaguez, Puerto Rico	None available.
St. Croix, VI	Van.
St. Thomas, VI	Bus.
Washington, DC (Maryland area)	Subway.
Washington, DC (Virginia area)	Subway.
Washington, DC (DC proper)	Subway.

For all allowance areas except Guam and Maui, the cost of public transportation was compared with the average cost of a comparable one-way trip in the Washington, DC area. The result of this calculation became the public transportation category index. For Guam and Maui, the public transportation category index was assigned the same index as the private transportation index.

6.2.3 Private Transportation Methodology

Although the total transportation component is income sensitive, the private transportation category within this component was not designed to be income sensitive. We determined that an accurate and reasonable approach to

measure private transportation costs was to select and analyze three commonly-driven vehicles (a domestic auto, an import auto and a truck) in all areas. Then, the cost ratios between each allowance area and the Washington, DC area were averaged to become the private transportation component index.

Private transportation cost calculations were developed using new vehicles as a basis. Although we could have developed costs from the premise that "identical" used vehicles would be purchased from auto dealers in each location, we believed that costing new vehicles reduced the potential for inconsistencies due to value judgments concerning used vehicles.

6.2.3.1 Vehicle Selections

As mentioned above, we selected a domestic auto, an import auto and a truck as the three basic vehicle types to be costed in all locations. Our selection of these vehicle types was made based on the popularity of these types of vehicles in the United States as reflected in owner registration data.

To identify a specific make and model within each vehicle type, we researched the top selling models in each car class. From the top selling models, we selected the three vehicles below:

Domestic Vehicle—1990 Ford Taurus L 4 door sedan 2.5L 4 cyl
Truck—1990 Chevrolet S10 Blazer 4X4 2 door 4.3L 6 cyl
Import Vehicle—1990 Honda Civic DX 4 door sedan 1.5L 4 cyl

The 1990 Honda Civic was not available in Guam (because Honda's in Guam were shipped from Japan, and the Civic was not manufactured in Japan in 1990). However, we estimated annual costs for the Civic in Guam based on prices of other Honda models that were available.

All vehicles were equipped with standard options such as automatic transmission, AM/FM stereo radio and air conditioning. In addition, based on our research findings, we included engine block heaters and heavy duty batteries in Fairbanks.

Vehicle rustproofing was not recommended by car dealers in the Washington, DC area. However, it was suggested or recommended in allowance areas. Therefore, rustproofing was included as an add-on "option" in allowance areas, but not in the Washington, DC area.

6.2.3.2 Vehicle Trade Cycle

When calculating the cost to own and operate a vehicle, two important factors must be determined: miles driven and time period of ownership. In the automobile industry, these two factors are known collectively as a vehicle's "trade cycle." The trade cycle is stated as a length of time either in months or years, and the total number of miles driven in that time period (e.g., four-year 60,000 mile trade cycle). This information is required to compute annual costs related to fuel, oil, tires, maintenance and depreciation.

In our study, we used a four-year 60,000 mile trade cycle in all areas after our research uncovered the following information:

- The Internal Revenue Service has for many years used this trade cycle to compute the allowable cents per mile reimbursement rate for persons who use their personal vehicle for business use.
- The four-year time period coincides with the typical length of a vehicle loan.
- From 1988 U.S. Department of Energy statistics, the U.S. average number of vehicle miles driven was: 18,595 miles per household, and 10,246 miles per vehicle.

Our biggest concern as we researched trade cycles was the possibility that one or more allowance areas averaged more miles driven per year than other locations (which would incrementally increase their cost of private transportation over other locations).

We found no conclusive statistics regarding average annual miles driven per vehicle in any allowance area. To obtain some type of information, we contacted car dealers to get their opinions regarding average odometer mileage on trade-in vehicles. We also informally asked other residents of each area for their opinion.

From the opinions we gathered, in most cases the average miles driven in allowance locations appeared to be less than or equal to 15,000 miles per year. In the Washington, DC area, opinions were generally at or above the 15,000 miles per year figure. Therefore, without definitive statistics to prove otherwise, we selected an annual miles driven of 15,000 miles in all locations, a four-year 60,000 mile trade cycle).

6.2.3.3 Fuel Performance and Type

To establish average fuel performance ratings, we used the "city driving" figures as published by the Environmental Protection Agency (EPA). We used the "city" instead of "highway" figures because all locations contained considerable stop-and-go driving patterns.

With regard to variations in fuel performance due to climate, terrain or other factors, we found no current and applicable studies or other published documents. Therefore, we used the same fuel performance rating in all areas except Fairbanks. There, the opinions (although generally very qualitative) consistently pointed to reduced fuel performance due to extremely cold and long winters. To recognize Fairbanks' rather unique circumstances, we subjectively decreased the "city driving" EPA miles per gallon ratings for each vehicle by 10%.

All vehicles included in this study used regular unleaded fuel. We obtained self service cash prices, and substituted full service when self service was not available.

6.2.3.4 Vehicle Maintenance

We selected the five most common maintenance service/repair jobs performed on vehicles as the basis for our vehicle maintenance analysis. The five maintenance jobs were: tune-up, oil change, automatic transmission fluid change, flush/fill coolant, and muffler installation. The recommended frequency of performing each of these jobs was combined with the prices charged by local dealers and service stations to compute an estimated annual maintenance expense.

Based on manufacturers' recommendations, opinions by service managers and mechanics at car dealers and service stations, and our own expertise in this area, only Fairbanks qualified as a location that required significantly more frequent servicing than the other locations. Our analysis recognized Fairbanks' additional maintenance requirements through more frequent servicing of certain maintenance jobs.

6.2.3.5 Tires

We researched the possible reasons why tires might wear out sooner in one area over another. We contacted tire manufacturers, transportation agencies (road conditions and composition varied in different areas), and retail tire dealers. Our research showed that treadlife—the average number of miles that a tire is expected to last—was greatly less in allowance areas than in the Washington, DC area due to a number of different reasons (e.g., road quality/state of repair, road composition). Based on these findings (some of which were quantitative), tire expenses were based on a 40,000 mile treadlife in allowance areas, and a 55,000 mile treadlife in the Washington, DC area.

6.2.3.6 License and Registration Fees, and Miscellaneous Tax

We obtained information regarding appropriate license and registration fees, and miscellaneous taxes (e.g., personal property tax, excise tax) from each area. One-time fees and miscellaneous taxes (not including sales tax) were divided equally over the vehicle's four year trade cycle. Ongoing fees and taxes were included as part of the annual costs.

6.2.3.7 Depreciation

From our experience, the single largest annual expense related to owning and operating newer vehicles is vehicle depreciation, the lost value of the vehicle as it ages and is driven. To calculate a vehicle's annual depreciation, we determine the price of the vehicle, the vehicle's trade cycle, and the residual value of the used vehicle when it is traded or sold. Then, we divide the difference between the purchase price and the residual value by the number of years the vehicle is owned to compute the average annual depreciation.

In the depreciation equation for this study, we first determined that suggested retail prices, plus any additional charges such as shipping, excise tax, dealer prep, and additional dealer markup would be used for the purchase prices. We did not feel that negotiated prices could have been collected on an equitable basis. Next, from section 6.2.3.2, the trade cycle was determined to be four years, 60,000 miles. And finally, our research indicated that residual values were the same in all areas except Fairbanks. This research effort is explained below.

We were aware that several firms and associations tracked and published used car and truck wholesale auction prices on a weekly or monthly basis. Some firms even published projections as to the future value of today's new vehicles. Most publications provided several residual values for each vehicle depending on its condition at the time of trade-in (e.g., clean, average, rough). Several common publications of this type were Black Book, Kelley Blue Book, Automotive Market Report, and NADA (National Automobile Dealers Association). Unfortunately, these sources only tracked auction prices for vehicles sold in the contiguous 48 states, and then published broad-based average residual values for each vehicle.

To get specific information from sources knowledgeable about the used vehicle markets in allowance areas, we contacted auto dealers and financial institutions in these areas. Most of the people we spoke with said that they used the above-mentioned publications as guides, just as dealers and financial institutions across the United States used them.

The only location in which we found evidence of lower used car and truck residual values was in Fairbanks. There, we were told, the severe climate and rough road conditions depreciated vehicles faster than in other areas. We agreed.

Except for Fairbanks, we found no conclusive evidence that used vehicles in allowance areas were (on average) worth more or less than used vehicles in the Washington, DC area. Therefore, we reported the same used vehicle prices in all areas (except Fairbanks). An appropriate and logical source for these values was the Black Book Official Finance/Lease Guide for 1990 vehicles. For Fairbanks, we used 90% of the Black Book projected residual values to reflect its rougher conditions.

It should be noted for clarification and information that identical residual values did not translate into identical depreciation amounts in all locations. Depreciation amounts were higher in allowance areas than in the Washington, DC area because new vehicle prices in all allowance areas were higher. For example, Anchorage new vehicle prices were the closest to Washington, DC prices, averaging 6% more, while Puerto Rico prices were the highest, averaging 39% more than Washington, DC prices.

6.2.3.8 Finance Expense

We included the average annual cost of financing a vehicle in the total cost of private transportation. We surveyed financial institutions in each area for their auto loan interest rates. We used a 48 month loan length with 80% financing in all locations.

6.2.3.9 Vehicle Insurance

We measured the cost of auto insurance in each location. For compatibility, we selected a typical set of insurance coverage limits to be used in all locations. The limits obtained for Hawaii, Alaska and the Washington, DC area are listed below:

Bodily Injury	$50,000/$100,000.
Property Damage	$25,000.
Medical	$5,000.
Uninsured Motorist	$50,000/$100,000.
Comprehensive	$100 Deductible.
Collision	$250 Deductible.

In all other locations, actual coverage limits varied slightly from the ones listed above.

Through insurance industry statistics, we identified the most popular insurance companies in each area from which we obtained insurance premium rates.

6.3 Transportation Data Collection Procedures

6.3.1 Public Transportation Data

We obtained prices for the public transportation services identified in section 6.2.2 by calling each company or agency that provided the service.

Appendix 14 is a copy of the public transportation data collection form.

6.3.2 Private Transportation Data

Most data for private transportation elements were collected by in-house researchers.

Our research associates in the field collected new vehicle prices. At each auto dealership in our sample, we recorded the suggested retail prices of our three vehicles plus any additional charges such as shipping, excise tax, dealer prep, and additional dealer markup. We used these suggested retail prices (and not negotiated prices) in our analysis.

Appendix 15 contains all of our private transportation data collection forms.

6.4 Transportation Survey Results

In Section 3 of this report we presented a detailed explanation of the economic model that we used to analyze the public and private transportation price data.

Appendix 16 contains tables that show: (1) The calculation of the private transportation index (based on the average of the cost ratios of the three annual vehicles), and (2) the three total transportation indexes which are a combination of the one public and three private transportation category indexes.

Appendix 17 shows the annual cost amounts for the elements that make up the private transportation category. Note that for Puerto Rico, San Juan and Mayaguez data are combined using a 70%/30% ratio, as explained in section 3.5.

7. Miscellaneous Expenses

7.1 Component Overview

The miscellaneous expense component was made up primarily of four unrelated groups of expenses: professional services (e.g., legal, accounting, financial, funeral)—part 1 methodology only, or medical care—part 2 methodology only, contributions (including gifts to non-family members), personal insurance, savings and

investments, and pensions (including social security).

We believed that certain expense items in this component should not be measured in such a way as to cause living cost differences between locations. For example, we considered contributions to be personal choice, and should be included in all locations as a constant amount. Through research into all of the expenses of this component, we learned that expenses related to personal insurance, savings and investments, and pensions should be held constant as well, as explained in greater detail in section 7.2.2.

To measure the miscellaneous component expenses, we constructed a pricing methodology similar to the one used in the goods and services component. We selected representative items for professional services (part 1) or medical care (part 2), priced them in all areas, and then computed a miscellaneous component index based on the relative importance of costed items and items/categories held constant.

7.2 Miscellaneous Expense Model

7.2.1 Expenditure Research

From the 1986 CES, we tabulated the miscellaneous expense data into logical expense groupings and then determined appropriate item weighting. The following is a list of the professional services that we selected to price and the weightings of all items:

PART 1 METHODOLOGY

[Percent]

Miscellaneous expense items	Weighting
Legal Fees	11.2
Accounting Fees	4.3
Contributions (including gifts)	* 16.8
Personal Insurance & Pensions	* 65.8
Total	100.0

* Held constant.

PART 2 METHODOLOGY

[Percent]

Miscellaneous expense categories	Lower	Middle	Upper
Medical Care	43.41	31.56	22.40
Contributions (including gifts)	12.36	14.90	* 16.85
Personal Insurance & Pensions	44.21	53.54	* 60.75
Totals	100.0	100.0	100.0

* Held constant.

7.2.2 Miscellaneous Expense Methodology

As we stated above, we used the Laspeyres indexing methodology to compute the miscellaneous expense component index. For groups of items held constant, the model assumed a price ratio between the allowance area and the Washington, DC area equal to 100.00%.

We defined "savings and investments" as the portion of a family's budget that was targeted for long-term financial security. Money stored in a savings or investment vehicle for future expenditures (of goods and services, housing, or transportation) was accounted for in the other component weightings. Based on this reasoning, within the miscellaneous expense component, we equated long-term savings and investments with money spent on pensions and other retirement vehicles.

In section 7.1, we noted that expenses related to personal insurance were held constant for all locations. We came to this conclusion after contacting life insurance companies and OPM officials. The life insurance companies that we contacted, indicated that policies written (and premiums charged) to persons within the United States and its territories did not vary due to location. Our research and discussions with OPM officials also indicated that in general, federal employees in all areas received similar or identical benefits packages—any variations were due mainly to personal preference. Therefore, we believed that it was most appropriate to hold these types of expenses constant.

7.3 Miscellaneous Expense Data Collection Procedures

For legal and accounting fees (part 1), we selected eight or more outlets to price (if available) to ensure that consistent price levels were established. Health care items (part 2), were surveyed consistent with the approach used in the goods & services component. For quality control purposes, we used our in-house research staff to conduct this survey.

Appendix 18 is a copy of our pricing form for legal accounting fees. Health care item prices were gathered as part of goods & services (see appendix 5 for pricing forms).

7.4 Miscellaneous Expense Survey Results

Appendix 19 contains the results of our data collection and index calculations. You will note that under both part 1 and part 2 methodologies, the large weighting for expense items held constant significantly dampens the effect of the cost differences in the costed items.

8. Final Results

8.1 Component and Total Comparative Cost Indexes and Amounts

The component weightings and indexes, and the total comparative cost indexes are shown on the next six pages. The first two (2) pages present the part 1 aggregations based on local pricing only (the first of these pages), and then the adjusted calculations to include military exchanges and commissary prices. The next two pages show similar aggregations using the part 2 methodology. The last two of these six pages present intermediate computations of the part 2 component expenditure amounts. (The part 1 methodology includes all intermediate computations on the two aforementioned pages.)

TOTAL COMPARATIVE COST INDEXES

[Part 1]

Location	Incomes (Component weights)	Income weights	CG&S	HSG	TRN	Misc.	Total
	Lower		43.94	24.35	20.78	10.95	100.00
	Middle		42.24	23.48	20.33	13.95	100.00
	Upper		40.63	22.66	19.84	16.77	100.00
Anchorage, AK	Lower	29.0	111.82	72.28	103.77	99.48	99.16
	Middle	35.2	111.16	73.36	103.50	99.48	99.10
	Upper	35.8	110.52	74.68	103.05	99.48	99.06
		100.0					[1] 99.10

TOTAL COMPARATIVE COST INDEXES—Continued

[Part 1]

Location	Incomes (Component weights)	Income weights	CG&S	HSG	TRN	Misc.	Total
Fairbanks AK	Lower	35.1	113.13	82.16	114.29	97.21	104.09
	Middle	39.8	112.82	80.51	114.12	97.21	103.24
	Upper	25.1	112.08	77.83	113.87	97.21	102.18
		100.0					[1] 103.27
Juneau, AK	Lower	22.3	117.01	106.98	108.15	97.16	110.55
	Middle	32.3	116.61	104.04	107.88	97.16	108.17
	Upper	45.5	116.21	83.80	107.45	97.16	103.92
		100.0					[1] 107.09
Guam	Lower	50.6	109.92	93.24	111.53	99.26	105.03
	Middle	31.6	109.95	106.67	111.53	99.26	108.01
	Upper	17.8	110.01	116.32	111.53	99.26	109.94
		100.0					[1] 106.85
Honolulu, HI (city and county)	Lower	36.6	112.25	138.20	121.77	99.06	119.10
	Middle	32.7	111.32	158.30	121.33	99.06	122.66
	Upper	28.7	110.38	140.42	120.81	99.06	117.33
		100.0					[1] 119.76
Hawaii County, HI	Lower	35.3	110.66	85.00	121.42	98.18	105.26
	Middle	39.4	109.50	88.77	121.12	98.18	105.46
	Upper	25.3	108.52	80.19	120.63	98.18	102.78
		100.0					[1] 104.72
Kauai County, HI	Lower	23.4	113.85	130.41	117.34	99.13	117.00
	Middle	44.5	112.75	134.23	117.02	99.13	116.76
	Upper	32.1	111.62	121.28	116.51	99.13	112.69
		100.0					[1] 115.51
Maui County, HI	Lower	21.0	117.80	126.33	127.32	100.48	120.44
	Middle	41.9	116.84	132.41	127.32	100.48	120.34
	Upper	37.1	115.84	119.62	127.32	100.48	116.41
		100.0					[1] 118.90
Puerto Rico	Lower	42.1	95.96	100.90	129.47	94.15	103.93
	Middle	38.0	95.68	91.14	128.89	94.15	101.15
	Upper	19.9	95.38	84.55	127.95	94.15	99.21
		100.0					[1] 101.93
St. Croix, VI	Lower	55.0	108.74	97.39	120.10	99.63	106.46
	Middle	35.9	106.28	108.53	119.96	99.63	108.66
	Upper	9.1	105.81	98.39	119.73	99.63	105.87
		100.0					[1] 107.20
St. Thomas, VI	Lower	44.8	113.03	126.87	119.62	99.46	116.26
	Middle	35.3	112.31	129.06	119.15	99.46	115.85
	Upper	19.9	111.58	99.26	118.40	99.46	108.12
		100.0					[1] 114.50

TOTAL COMPARATIVE COST INDEXES

[Part 1—Incorporating Military Prices]

Location	Incomes (Component weights)	Income weights	CG&S	HSG	TRN	Misc.	Total
	Lower		43.94	24.35	20.78	10.95	100.00
	Middle		42.24	23.48	20.33	13.95	100.00
	Upper		40.63	22.66	19.84	16.77	100.00
Anchorage, AK (MIL)	Lower	29.0	105.32	72.28	103.77	99.48	98.31
	Middle	35.2	105.22	73.36	103.50	99.48	98.59
	Upper	35.8	105.10	74.68	103.05	99.48	98.86
		100.0					[1] 98.61
Fairbanks, AK (MIL)	Lower	35.1	105.19	82.16	114.29	97.21	100.60
	Middle	39.8	104.95	80.51	114.12	97.21	100.00
	Upper	25.1	104.70	77.83	113.87	97.21	99.16
		100.0					[1] 100.00
Guam (MIL)	Lower	50.6	96.15	93.24	111.53	99.26	98.96
	Middle	31.6	96.33	106.67	111.53	99.26	102.26
	Upper	17.8	96.53	116.32	111.53	99.26	104.47
		100.0					[1] 100.99
Honolulu, HI (city and county) (MIL)	Lower	36.6	99.72	138.20	121.77	99.06	113.80

BEST COPY AVAILABLE

TOTAL COMPARATIVE COST INDEXES—Continued

[Part 1—Incorporating Military Prices]

Location	Incomes (Component weights)	Income weights	CG&S	HSG	TRN	Misc.	Total
	Middle	32.7	99.07	156.30	121.33	99.06	117.50
	Upper	28.7	96.42	140.42	120.61	99.06	112.47
		100.0					[1] 114.55
Puerto Rico (MIL)	Lower	42.1	93.01	100.90	129.47	94.15	102.63
	Middle	38.0	93.00	91.14	126.89	94.15	100.02
	Upper	19.9	92.99	84.55	127.95	94.15	99.24
		100.0					[1] 100.76

TOTAL COMPARATIVE COST INDEXES

[Part 2]

Location	Incomes	Income weights	Own	Rent	Total	WDC	Index
	Lower	18,000	37.10	62.90			
	Middle	28,400	46.91	53.09			
	Upper	45,200	62.86	37.14			
Anchorage, AK	Lower	29.0	17,701	17,930	17,845	18,000	
	Middle	35.2	28,133	28,153	28,144	28,400	
	Upper	35.8	44,314	45,552	44,774	45,200	
		100.0			31,111	31,398	99.09
Fairbanks, AK	Lower	35.1	18,635	18,767	18,718	18,000	
	Middle	39.8	29,212	29,402	29,313	28,400	
	Upper	25.1	45,330	47,700	46,210	45,200	
		100.00			29,835	28,966	103.00
Juneau, AK	Lower	22.3	19,447	20,135	19,880	18,000	
	Middle	32.2	30,024	31,862	31,000	28,400	
	Upper	45.5	46,365	48,058	46,994	45,200	
		100.0			35,798	33,725	106.15
Guam	Lower	50.6	19,567	18,498	18,902	18,000	
	Middle	31.6	30,153	31,139	30,676	28,400	
	Upper	17.8	50,322	48,642	49,698	45,200	
		100.0			26,104	26,128	107.56
Honolulu, HI (city and county)	Lower	38.6	23,490	20,220	21,433	18,000	
	Middle	32.7	36,086	31,973	34,841	28,400	
	Upper	28.7	55,456	48,958	53,043	45,200	
		100.0			34,889	29,207	119.45
Hawai County, HI	Lower 35.3	16,236	19,351	18,937	18,000		
	Middle	39.4	29,142	30,658	29,947	28,400	
	Upper	25.3	46,205	46,933	46,475	45,200	
		100.0			30,242	28,979	104.36
Kauai County, HI	Lower	23.4	22,063	20,456	21,052	18,000	
	Middle	44.5	34,062	32,359	33,158	28,400	
	Upper	32.1	51,757	49,558	50,940	45,200	
		100.0			36,033	31,359	114.90
Maui County, HI	Lower	21.0	22,731	21,065	21,683	18,000	
	Middle	41.9	35,198	33,274	34,177	28,400	
	Upper	37.1	53,851	50,846	52,609	45,200	
		100.0			36,392	32,449	116.31
Puerto Rico	Lower	42.1	17,766	19,196	18,667	18,000	
	Middle	38.0	27,455	29,525	28,713	28,400	
	Upper	19.9	43,777	46,793	44,897	45,200	
		100.0			27,704	27,365	011.24
St. Croix, VI	Lower	55.0	18,929	19,295	19,159	18,000	
	Middle	35.9	29,386	32,162	30,861	28,400	
	Upper	9.1	47,851	48,211	47,859	45,200	
		100.0			25,972	24,209	017.26
St. Thomas, VI	Lower	44.8	20,854	20,966	20,926	18,000	
	Middle	35.3	32,016	33,679	32,899	28,400	
	Upper	19.9	48,519	49,460	48,866	45,200	
		100.0			30,713	27,064	113.40

TOTAL COMPARATIVE COST INDEXES

[Part 2—Incorporating Military Prices]

Location	Incomes	Income weights	Own	Rent	Total	WDC	Index
	Lower	18,000	37.10	62.90			
	Middle	28,400	46.91	53.09			
	Upper	45,200	62.86	37.14			
Anchorage, AK (MIL)	Lower	29.0	17,188	17,417	17,332	18,000	
	Middle	35.2	27,419	27,439	27,430	28,400	
	Upper	35.8	43,322	44,560	43,782	45,200	
		100.0			30,356	31,398	96.68
Fairbanks, AK (MIL)	Lower	35.1	18,005	18,137	18,088	18,000	
	Middle	39.8	28,291	28,481	28,392	28,400	
	Upper	25.1	43,978	46,348	44,856	45,200	
		100.0			26,908	26,966	99.80
Guam (MIL)	Lower	50.6	18,496	17,407	17,811	18,000	
	Middle	31.6	28,517	29,503	29,040	28,400	
	Upper	17.8	47,846	46,166	47,222	45,200	
		100.0			26,595	26,128	101.79
Honolulu, HI (city and county) (MIL)	Lower	38.6	22,499	19,229	20,442	18,000	
	Middle	32.7	36,616	30,503	33,371	28,400	
	Upper	28.7	53,256	46,760	50,845	45,200	
		100.0			33,395	29,207	114.34
Puerto Rico (MIL)	Lower	42.1	17,557	18,987	18,456	18,000	
	Middle	38.0	27,169	29,539	28,427	28,400	
	Upper	19.9	43,395	46,411	44,515	45,200	
		100.0			27,431	27,365	100.24

COMPONENT EXPENDITURE AMOUNTS

[Part 2]

Location	Incomes (Reference wts/amts.)	Indexes					Amounts				
		CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
	18000	38.59	24.35	24.35	20.76	15.30	7,126	4,383	4,383	3,737	2,754
	28400	39.15	23.48	23.48	20.33	17.04	11,119	6,668	6,668	5,774	4,839
	45200	38.74	22.66	22.66	19.94	18.66	17,510	10,242	10,242	9,013	8,434
Anchorage, AK	Lower	108.86	68.97	74.20	103.77	110.48	7,757	3,023	3,252	3,878	3,043
	Middle	106.53	73.22	73.51	103.50	107.82	12,067	4,882	4,902	5,976	5,208
	Upper	108.21	70.18	82.27	103.05	105.41	18,948	7,188	8,425	9,288	8,890
Fairbanks, AK	Lower	109.64	80.26	83.28	114.29	110.14	7,813	3,518	3,650	4,271	3,033
	Middle	109.35	79.01	81.85	114.12	107.37	12,159	5,268	5,458	6,589	5,196
	Upper	109.08	69.24	92.38	113.87	105.23	19,100	7,092	9,462	10,263	8,875
Juneau, AK	Lower	112.85	97.10	112.79	108.15	112.82	8,042	4,256	4,944	4,042	3,107
	Middle	112.81	89.41	116.97	107.88	109.32	12,543	5,962	7,800	6,229	5,290
	Upper	112.71	77.66	94.19	107.45	106.61	19,736	7,954	9,647	9,684	8,991
Guam	Lower	110.15	108.87	84.02	111.53	101.59	7,849	4,772	3,683	4,168	2,798
	Middle	109.98	96.82	113.60	111.53	101.16	12,229	8,589	7,575	6,440	4,895
	Upper	109.82	122.42	106.01	111.53	100.82	19,229	12,538	10,856	10,052	8,503
Honolulu, HI (city and county).	Lower	112.46	185.12	110.52	121.77	102.07	8,014	8,114	4,844	4,551	2,811
	Middle	111.22	206.98	115.29	121.33	101.50	12,367	13,801	7,688	7,006	4,912
	Upper	110.02	163.99	100.55	120.61	101.07	19,265	16,796	10,296	10,871	8,524
Hawaii County, HI	Lower	109.73	69.00	94.44	121.42	103.70	7,819	3,024	4,139	4,537	2,856
	Middle	108.51	76.71	99.44	121.12	102.59	12,065	5,115	6,631	6,993	4,969
	Upper	107.34	77.55	84.66	120.63	101.91	18,795	7,943	8,671	10,872	8,595
Kauai County, HI	Lower	113.92	153.47	116.81	117.34	102.86	8,118	6,727	5,120	4,385	2,833
	Middle	112.51	147.79	122.25	117.02	102.06	12,510	9,855	8,152	8,757	4,940
	Upper	111.13	129.25	107.78	116.51	101.48	19,459	13,238	11,039	10,501	8,559
Maui County, HI	Lower	117.99	152.25	114.23	127.32	105.01	8,406	6,673	5,007	4,758	2,892
	Middle	116.75	147.72	118.87	127.32	103.85	12,981	9,850	7,926	7,351	5,016
	Upper	115.54	129.79	102.40	127.32	102.59	20,231	13,293	10,488	11,475	8,652
Puerto Rico	Lower	96.82	80.37	113.00	129.47	91.06	6,899	3,523	4,953	4,838	2,508
	Middle	95.96	72.27	107.81	128.89	93.50	10,670	4,819	7,189	7,442	4,524
	Upper	95.15	73.61	103.06	127.95	95.39	16,661	7,539	10,555	11,532	8,045
St. Croix, VI	Lower	108.66	92.13	100.49	120.10	96.53	7,745	4,038	4,404	4,488	2,858
	Middle	107.75	86.44	126.06	119.96	97.48	11,961	5,764	8,536	8,928	4,717
	Upper	106.84	96.36	101.83	119.73	98.21	18,708	9,869	10,429	10,791	8,263
St. Thomas, VI	Lower	113.17	125.23	127.84	119.62	102.80	8,064	5,469	5,903	4,470	2,831
	Middle	112.19	115.84	140.78	119.15	102.04	12,474	7,724	9,387	8,880	4,938
	Upper	111.23	95.85	105.04	118.40	101.44	19,476	9,817	10,758	10,671	8,555

COMPONENT EXPENDITURE AMOUNTS

[Part 2—Incorporating Military Prices]

Location	Incomes (Reference weights/ amounts	Indexes					Amounts				
		CG&S	Own	Rent	TRN	Misc.	CG&S	Own	Rent	TRN	Misc.
	18000	39.59	24.35	24.35	20.76	15.30	7,128	4,383	4,383	3,737	2,754
	26400	39.15	23.48	23.48	20.33	17.04	11,119	6,666	6,666	5,774	4,839
	46200	38.74	22.66	22.66	19.94	18.66	17,510	10,242	10,242	9,013	8,434
Anchorage, AK (MIL)	Lower	101.94	66.97	74.20	103.77	109.75	7,264	3,023	3,252	3,876	3,023
	Middle	102.34	73.22	73.51	103.50	107.09	11,379	4,862	4,902	5,976	5,182
	Upper	102.73	70.16	82.27	103.05	105.03	17,966	7,186	8,426	9,266	8,858
Fairbanks, AK (MIL)	Lower	100.90	80.26	83.28	114.29	109.86	7,190	3,518	3,650	4,271	3,026
	Middle	101.16	79.01	81.85	114.12	107.18	11,248	5,268	5,456	6,589	5,186
	Upper	101.42	89.24	92.38	113.87	105.10	17,759	7,092	9,462	10,263	8,864
Guam (MIL)	Lower	94.82	106.87	84.02	111.53	101.85	6,757	4,772	3,683	4,166	2,799
	Middle	95.25	96.82	113.60	111.53	101.20	10,591	6,589	7,575	8,440	4,897
	Upper	95.66	122.42	106.01	111.53	100.85	16,750	12,538	10,856	10,052	8,506
Honolulu, HI (city and county) (MIL)	Lower	98.81	185.12	110.52	121.77	101.41	7,041	9,114	4,844	4,551	2,793
	Middle	98.21	206.98	115.29	121.33	101.03	10,920	13,801	7,888	7,006	4,889
	Upper	97.63	163.99	100.55	120.61	100.73	17,095	16,796	10,296	10,871	8,496
(Puerto Rico (MIL)	Lower	94.23	80.37	113.00	129.47	90.09	6,715	3,523	4,953	4,836	2,481
	Middle	93.69	72.27	107.81	128.89	92.80	10,417	4,819	7,189	7,442	4,491
	Upper	93.21	73.61	103.06	127.95	94.89	16,321	7,539	10,555	11,532	8,003

8.2 Runzheimer Observations

The results of this study are not as surprising to us as they might be to parties not involved in the measurement of living costs on a day-to-day basis. Many of the allowance areas are very expensive as compared to "middle America." However, from our private sector studies we know that the Washington, DC area is also very expensive as compared to "middle America."

We have attempted to be as accurate and equitable as possible throughout this study. This penchant for accuracy and equitability can be seen in the editing procedures that are described in section 3.4.

The knowledge that we have gained through this first pricing can only improve the quality and accuracy of future pricing updates. However, we do not believe that item or outlet improvements, or minor modifications to the basic methodology and data collection procedures will alone significantly alter the final comparative cost indexes.

8.3 General Comments

8.3.1 Goods and Services Improvements

We have observed that in three expense groups within goods and services, an expanded research effort could increase the precision of these subtotals. These groups are: (1) furniture and appliances (as part of the furnishings and household operations category), (2) the clothing category in general, and (3) several groups within the recreation category. Although expanding research in these areas would create the appearance of more accurate results, the improvements are not likely to measurably change the final results.

8.3.2 Housing—A Comment

The single most important component within this study appears to be housing. In accordance with the federal regulations, we have incorporated costs based on both rental and homeowner profiles. Although there are problems inherent with developing costs based on homeownership in areas as dissimilar in housing construction as the allowance areas and the Washington, DC area, we believe that the current approach presents a reasonable comparison of living costs in each area.

8.3.3 Seasonality

We have also considered the impact of seasonal prices. In remote areas such as Fairbanks, for example, it is logical that price levels during winter months are higher than at other times of the year. We have not measured the effect of seasonality during this first study (nor did our contract include a specific study of seasonality).

8.3.4 Part 1 and Part 2 Methodologies

As stated earlier in section 2.1, the part 1 methodology conforms in principle to the final rules published by OPM on January 16, 1990 in the **Federal Register** (55 FR 1370). However, it contains technical refinements and improvements not found in these regulations. Runzheimer recommends that the part 1 methodology be incorporated into future analyses.

Appendices

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1986, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Number of consumer units (in thousands)	81,354	9,433	8,219	14,586	10,901	7,198	12,209
Number of sample interviews	30,900	3,500	3,107	5,496	4,119	2,849	4,983
Consumer unit characteristics:							
Income before taxes [1]	$28,540	$12,320	$17,373	$24,591	$34,375	$44,331	$74,234
Income after taxes [1]	$26,148	$11,892	$16,345	$22,963	$31,660	$40,100	$66,345
Average number of persons in consumer unit	2.6	2.2	2.5	2.7	2.9	3.2	3.1
Age of reference person	46.9	50.1	46.5	44.7	43.2	42.3	45.3

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1986, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Average number in consumer unit:							
Earners	1.4	0.9	1.2	1.5	1.8	2.0	2.1
Vehicles	2.0	1.4	1.9	2.2	2.6	2.7	3.1
Children under 18	0.7	0.6	0.7	0.7	0.9	1.0	0.8
Persons 65 and over	0.3	0.5	0.4	0.3	0.2	0.1	0.1
Percent distribution:							
Male	66	57	64	71	78	82	87
Female	34	43	36	29	22	18	13
Homeowner with mortgage	38	15	26	36	52	64	76
Homeowner without mortgage	24	32	28	25	18	14	14
Renter	39	53	47	39	30	21	11
Black	11	12	10	10	5	6	4
White and other	89	88	90	90	95	94	96
Elementary (1–8)	11	17	12	8	5	2	3
High school (9–12)	44	51	54	48	42	40	24
College	44	31	34	44	53	58	73
Never attended and other	1	1	1	0	0	0	0
At least one vehicle owned	86	84	91	95	96	97	97
Average annual expenditures	$26,389.07	$16,788.64	$19,558.35	$24,896.36	$31,659.60	$37,562.00	$52,320.19
Food	$3,804.39	$2,777.33	$3,194.53	$3,785.02	$4,587.49	$5,281.61	$6,296.11
Food at home	$2,178.94	$1,809.23	$1,954.49	$2,174.01	$2,556.74	$2,906.55	$3,109.86
*Cereals and bakery products	$317.03	$266.20	$274.62	$320.55	$375.38	$417.06	$450.19
*Cereals and cereal products	$111.15	$101.45	$100.46	$111.31	$134.59	$145.71	$138.66
*Flour	$4.83	$6.43	$4.59	$4.99	$5.06	$4.15	$4.17
*Prepared flour mixes	$9.88	$9.30	$9.21	$10.32	$11.92	$14.72	$12.18
*Ready-to-eat and cooked cereals	$73.49	$65.38	$65.31	$72.80	$89.56	$98.06	$92.85
*Rice	$7.98	$8.00	$6.06	$7.95	$9.66	$9.48	$10.14
*Pasta, cornmeal and other cereals	$14.97	$12.33	$15.29	$15.24	$18.39	$19.30	$19.34
*Bakery products	$205.88	$164.75	$174.16	$209.23	$240.80	$271.35	$311.53
*Bread	$65.72	$58.48	$61.24	$66.58	$72.19	$78.50	$86.03
*White bread	$35.48	$32.79	$33.61	$38.12	$39.98	$39.46	$42.54
*Bread, other than white	$30.24	$25.69	$27.63	$30.46	$32.21	$39.05	$43.49
*Crackers and cookies	$51.76	$41.43	$42.92	$53.89	$60.40	$75.75	$77.18
*Cookies	$32.19	$24.30	$27.98	$33.01	$35.99	$47.99	$49.96
*Crackers	$19.57	$17.13	$14.94	$20.38	$24.46	$27.76	$27.21
*Frozen and refrigerated bakery products	$13.55	$10.10	$10.54	$13.12	$15.29	$17.64	$24.89
*Other bakery products	$74.84	$54.74	$59.46	$74.14	$92.92	$99.46	$123.44
*Biscuits and rolls	$26.82	$18.31	$20.95	$27.06	$30.87	$38.89	$45.14
*Cakes and cupcakes	$20.31	$13.30	$15.37	$21.50	$26.94	$26.92	$31.29
*Bread and cracker products	$2.82	$2.70	$2.40	$2.36	$3.73	$4.07	$4.89
*Sweetrolls, coffee cakes, doughnuts	$19.60	$15.04	$15.68	$18.44	$23.22	$23.31	$33.90
*Pies, tarts, turnovers	$5.48	$5.38	$5.07	$4.76	$8.16	$6.48	$8.22
*Meats, poultry, fish and eggs	$560.01	$477.38	$555.07	$541.91	$635.94	$699.55	$812.35
*Beef	$183.66	$152.35	$204.56	$185.96	$215.42	$225.57	$263.75
*Ground beef	$79.09	$71.32	$84.22	$79.31	$96.47	$91.12	$101.79
*Roast	$33.40	$28.09	$34.54	$34.19	$35.85	$40.13	$50.81
*Chuck roast	$13.23	$11.36	$14.43	$13.12	$16.66	$14.71	$17.87
*Round roast	$9.13	$7.79	$10.19	$8.42	$8.80	$15.67	$13.71
*Other roast	$11.04	$8.93	$9.92	$12.65	$10.38	$9.75	$19.23
*Steak	$59.01	$41.47	$71.43	$61.32	$70.25	$77.08	$93.67
*Round steak	$11.62	$11.60	$16.74	$13.83	$12.33	$11.66	$13.85
*Sirloin steak	$12.96	$8.51	$11.79	$12.72	$14.53	$20.46	$24.43
*Other steak	$34.42	$21.36	$42.90	$34.77	$43.40	$44.94	$55.39
*Other beef	$12.17	$11.47	$14.37	$11.14	$12.84	$17.24	$17.48
*Pork	$114.19	$104.51	$108.18	$108.24	$132.60	$131.31	$157.61
*Bacon	$20.23	$24.20	$17.46	$18.44	$23.15	$18.48	$25.09
*Pork chops	$27.10	$19.23	$26.84	$25.14	$36.30	$28.37	$34.33
*Ham	$27.43	$25.79	$27.94	$28.11	$31.54	$35.35	$39.08
*Ham, not canned	$24.47	$21.66	$25.11	$26.25	$28.62	$29.58	$36.43
*Canned ham	$2.96	$4.10	$2.83	$1.86	$2.92	$5.77	$2.65
*Sausage	$18.60	$14.09	$17.07	$13.98	$17.67	$22.46	$23.28
*Other pork	$22.83	$21.21	$16.84	$22.58	$23.95	$26.65	$35.83
*Other meats	$83.61	$71.60	$75.58	$79.96	$98.98	$113.62	$118.21
*Frankfurters	$17.37	$15.97	$17.17	$17.77	$19.56	$21.76	$22.58
*Lunch meats (cold cuts)	$58.88	$49.13	$49.48	$56.28	$71.83	$80.88	$86.21
*Bologna, liverwurst, salami	$19.11	$17.97	$16.54	$19.36	$22.06	$23.99	$25.51
*Other lunchmeats	$39.76	$31.16	$32.94	$36.92	$49.77	$56.89	$60.70
*Lamb, organ meats and others	$7.36	$6.51	$8.93	$5.91	$7.58	$10.96	$9.42
*Lamb and organ meats	$6.17	$5.97	$5.33	$4.82	$7.57	$8.63	$8.50
*Mutton, goat and game	$1.19	$0.54	$3.60	$1.10	$0.01	$2.36	$0.92
*Poultry	$85.49	$69.40	$81.53	$82.16	$85.67	$111.40	$133.20
*Fresh and frozen chickens	$66.41	$55.25	$66.61	$65.26	$66.71	$81.86	$96.35
*Fresh whole chicken	$17.24	$17.03	$17.44	$20.11	$14.32	$16.24	$23.38
*Fresh and frozen chicken parts	$49.17	$38.22	$49.18	$45.15	$52.39	$65.64	$72.97
*Other poultry, including whole frzn chickens	$19.08	$14.15	$14.91	$16.91	$18.98	$29.52	$36.85
*Fish and seafood	$65.24	$50.44	$57.57	$56.89	$74.24	$86.03	$109.89

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Canned fish and seafood	$17.95	$14.01	$16.77	$16.67	$23.21	$21.86	$26.89
*Fresh and frozen shellfish	$14.89	$6.89	$17.36	$14.08	$15.61	$18.33	$32.78
*Fresh and frozen finfish	$32.31	$30.59	$24.45	$26.13	$35.23	$45.74	$60.59
*Eggs	$27.85	$29.06	$27.68	$28.69	$29.02	$31.61	$29.66
*Dairy products	$277.91	$237.49	$246.39	$287.05	$337.97	$365.06	$365.11
*Fresh milk and cream	$134.41	$132.06	$125.44	$136.91	$160.12	$158.15	$166.53
*Whole milk	$52.12	$56.46	$57.48	$57.54	$55.58	$44.53	$56.97
*Other milk and cream	$82.29	$73.61	$67.97	$78.37	$104.54	$113.61	$113.17
*Other dairy products	$143.50	$105.41	$120.95	$151.15	$177.85	$206.92	$214.57
*Butter	$6.89	$6.29	$6.17	$8.63	$9.20	$12.22	$13.04
*Cheese	$79.01	$54.41	$69.16	$83.03	$98.98	$111.72	$118.09
*Ice cream and related products	$41.66	$31.02	$33.95	$46.55	$53.10	$60.05	$61.85
*Miscellaneous dairy products	$13.93	$11.70	$9.67	$12.93	$16.57	$22.93	$20.60
*Fruit and vegetables	$376.36	$327.70	$335.02	$396.35	$441.76	$487.04	$596.17
*Fresh fruits	$120.88	$102.84	$104.99	$116.33	$148.47	$166.62	$172.21
*Apples	$21.67	$16.83	$17.80	$21.56	$26.58	$29.77	$29.44
*Bananas	$20.65	$19.42	$19.04	$21.84	$24.06	$22.88	$27.22
*Oranges	$10.98	$9.36	$9.43	$9.37	$15.38	$16.47	$14.72
*Other fresh fruits	$67.76	$57.02	$58.71	$63.75	$82.45	$88.72	$100.85
*Fresh vegetables	$110.67	$101.90	$100.87	$106.30	$124.19	$123.40	$158.76
*Potatoes	$16.61	$13.93	$17.56	$15.59	$19.18	$20.55	$22.84
*Lettuce	$13.73	$11.36	$11.61	$12.80	$16.85	$18.95	$20.85
*Tomatoes	$14.87	$13.49	$14.08	$14.64	$17.94	$16.43	$19.74
*Other fresh vegetables	$65.47	$63.12	$57.63	$63.28	$70.21	$69.47	$95.93
*Processed fruits	$86.81	$75.04	$80.64	$82.22	$98.04	$128.19	$121.27
*Frozen fruits and fruit juices	$19.89	$17.95	$16.61	$18.42	$22.98	$32.00	$26.71
*Frozen orange juice	$14.43	$13.60	$13.91	$14.55	$14.89	$21.97	$20.88
*Other frozen fruits and juices	$5.16	$4.35	$4.70	$3.87	$8.10	$10.03	$7.83
*Canned and dried fruits	$21.22	$16.05	$16.46	$20.85	$24.80	$32.50	$26.30
*Fresh, canned or bottled fruit juices	$46.00	$39.04	$43.58	$42.95	$50.26	$61.88	$66.26
*Processed vegetables	$57.92	$46.13	$46.52	$61.49	$71.05	$80.82	$73.92
*Frozen vegetables	$21.30	$13.83	$16.57	$23.19	$27.40	$32.66	$31.07
*Canned and dried vegetables and juices	$36.62	$34.50	$31.95	$38.30	$43.65	$48.21	$42.85
*Canned beans	$6.64	$5.41	$6.00	$6.96	$7.85	$9.98	$7.27
*Canned corn	$4.21	$2.91	$3.66	$4.70	$4.31	$5.10	$4.37
*Other canned and dried veg., & juices	$25.77	$26.17	$22.09	$26.62	$31.49	$32.12	$31.21
*Other food at home	$645.61	$500.46	$543.39	$658.15	$765.69	$937.83	$998.05
*Sugar and other sweets	$80.86	$65.44	$64.53	$82.49	$97.73	$122.29	$111.61
*Candy and chewing gum	$45.41	$32.09	$31.13	$46.37	$55.74	$76.32	$71.53
*Sugar	$17.07	$16.57	$17.60	$17.81	$18.27	$17.57	$16.01
*Artificial sweeteners	$2.36	$1.56	$2.44	$2.90	$1.76	$3.70	$2.66
*Jams, preserves, other sweets	$15.82	$13.22	$13.36	$15.82	$21.94	$25.84	$21.39
*Fats and oils	$56.85	$48.51	$45.63	$59.62	$69.18	$78.24	$70.54
*Margarine	$11.96	$10.85	$9.89	$12.19	$14.51	$15.78	$15.49
*Other fats, oils, and salad dressing	$31.88	$26.57	$26.33	$32.32	$37.90	$45.04	$36.58
*Nondairy cream and imitation milk	$4.48	$4.53	$3.64	$4.91	$4.72	$5.00	$4.89
*Peanut butter	$8.54	$6.75	$5.77	$10.20	$12.05	$10.42	$11.57
*Miscellaneous foods	$272.86	$209.21	$230.18	$278.73	$325.17	$410.76	$398.36
*Frozen prepared foods	$46.13	$34.21	$44.35	$47.46	$54.87	$69.97	$66.80
*Frozen meals	$18.75	$14.44	$19.43	$16.05	$23.09	$21.11	$23.97
Other frozen prepared foods*	$29.39	$19.87	$24.92	$31.41	$31.78	$48.86	$42.82
*Canned and packaged soups	$21.41	$17.85	$16.98	$21.06	$24.10	$35.82	$26.50
*Potato chips, nuts, and other snacks	$59.76	$41.00	$37.67	$64.36	$71.49	$95.82	$100.20
*Potato chips and other snacks	$46.79	$30.06	$31.54	$53.75	$55.16	$74.06	$77.26
*Nuts	$12.99	$10.94	$6.13	$10.61	$16.31	$21.76	$22.94
*Condiments and seasonings	$61.52	$49.20	$56.11	$56.41	$77.90	$82.89	$92.16
*Salt, spices, other seasonings	$12.31	$10.17	$11.24	$11.99	$14.15	$14.15	$20.09
*Olives, pickles, relishes	$7.82	$5.36	$8.73	$7.01	$9.46	$10.54	$10.59
*Sauces and gravies	$31.82	$25.10	$26.76	$29.73	$42.90	$43.36	$46.87
*Baking needs and miscellaneous products	$9.57	$8.56	$9.36	$9.67	$11.67	$14.85	$14.61
*Other canned/packaged prepared foods	$84.14	$67.05	$75.08	$87.44	$96.52	$126.46	$105.73
*Salads and desserts	$13.23	$11.82	$12.59	$11.96	$17.20	$18.07	$16.97
*Baby food	$10.25	$10.36	$15.03	$16.91	$19.52	$26.99	$12.83
*Miscellaneous prepared foods	$54.66	$44.85	$47.47	$58.57	$60.10	$81.41	$74.43
*Nonalcoholic beverages	$204.37	$164.51	$186.49	$210.29	$233.06	$288.11	$287.11
*Cola	$92.19	$66.57	$68.15	$99.91	$101.86	$140.51	$128.90
*Other carbonated drinks	$32.82	$23.55	$29.15	$28.70	$40.86	$43.90	$53.99
*Coffee	$40.93	$38.84	$38.46	$38.15	$43.16	$47.73	$54.95
*Roasted coffee	$25.27	$22.96	$23.27	$24.63	$26.36	$31.15	$34.96
*Instant and freeze dried coffee	$15.66	$15.87	$15.21	$13.52	$16.81	$16.58	$19.98
*Non-carbonated fruit flavored drinks	$18.30	$12.30	$11.92	$21.26	$20.62	$24.85	$21.32
*Tea	$11.19	$10.67	$8.26	$11.36	$13.49	$15.28	$13.42
*Other non-alcoholic beverages	$11.15	$12.58	$10.54	$10.90	$13.06	$10.98	$18.52
*Food prepared by su on out of town trips	$30.94	$12.60	$16.56	$27.01	$40.55	$46.49	$75.42
Food away from home	$1,627.46	$966.18	$1,240.03	$1,561.02	$2,030.76	$2,375.06	$3,186.24
*Meals at restaurants, carry-outs & other	$1,275.77	$798.82	$1,038.21	$1,294.34	$1,591.66	$1,870.30	$2,361.22

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Lunch	$499.86	$277.04	$407.25	$514.76	$618.15	$708.45	$958.78
*Dinner	$549.30	$339.39	$440.26	$550.06	$662.77	$822.65	$1,057.00
*Snacks and non alcoholic beverage	$142.56	$105.40	$121.94	$145.63	$180.00	$225.33	$207.78
*Breakfast and brunch	$84.04	$77.46	$89.75	$83.59	$119.74	$112.67	$129.86
Board (including at school)	$43.82	$6.74	$7.89	$27.65	$36.46	$39.33	$153.00
Catered affairs	$41.27	$7.39	$5.78	$34.97	$50.78	$47.01	$142.76
Food on out of town trips	$195.31	$93.30	$115.14	$185.61	$254.20	$300.02	$451.05
School lunches	$42.24	$20.43	$26.30	$41.51	$67.39	$84.77	$70.55
Meals as pay	$29.24	$40.92	$45.71	$27.04	$30.27	$33.84	$17.65
Alcoholic beverages	$261.70	$182.67	$235.22	$290.56	$343.77	$352.96	$506.47
*At home	$148.36	$107.27	$126.66	$152.37	$189.69	$178.29	$246.36
*Beer and ale	$89.05	$72.34	$77.77	$95.86	$108.21	$102.60	$126.68
*Whiskey	$12.73	$12.89	$5.93	$13.17	$16.76	$13.43	$21.68
*Wine	$32.15	$13.69	$28.16	$31.70	$40.94	$46.86	$70.20
*Other alcoholic beverages	$14.43	$8.35	$16.82	$11.65	$23.78	$15.36	$27.80
Away from home	$133.34	$75.61	$108.54	$138.19	$154.08	$174.67	$260.11
*Beer and ale	$37.50	$20.21	$32.77	$39.59	$40.20	$53.06	$62.61
*Wine	$18.54	$12.05	$15.72	$19.17	$18.68	$24.52	$38.32
*Other alcoholic beverages	$58.12	$36.45	$50.91	$60.89	$71.66	$87.59	$113.53
Alcoholic beverages purchased on trips	$19.17	$6.90	$9.24	$18.54	$23.54	$29.50	$45.66
Housing	$8,089.13	$5,495.09	$5,946.80	$7,511.85	$9,260.40	$10,606.79	$15,719.12
Shelter	$4,470.25	$3,043.10	$3,139.50	$4,124.86	$5,049.86	$5,901.40	$8,909.44
Owned dwellings	$2,554.04	$961.15	$1,151.03	$1,976.74	$2,970.57	$4,060.42	$6,925.93
Mortgage interest	$1,580.48	$318.45	$520.13	$1,051.78	$1,925.39	$2,783.87	$4,724.67
Mortgage interest and charges	$1,580.38	$318.45	$520.13	$1,051.78	$1,925.39	$2,783.87	$4,724.01
Prepayment penalty charges (own home)	$0.10	$.66	$.66	$.66	$.66	$.66	$.66
Property taxes	$496.06	$316.48	$301.71	$417.03	$599.30	$643.81	$1,125.91
Maintenance, repairs, insurance, other expenses	$497.48	$326.23	$329.20	$507.92	$445.87	$632.74	$1,075.35
Homeowners and related insurance	$151.74	$102.72	$105.11	$139.48	$183.01	$200.84	$313.16
Fire and extended coverage	$4.98	$3.14	$4.17	$8.42	$3.90	$7.26	$4.94
Homeowners insurance	$146.76	$99.58	$100.94	$131.06	$159.11	$193.56	$308.22
Ground rent	$26.88	$28.40	$38.12	$35.13	$23.98	$14.38	$12.57
Maintenance and repair service	$252.66	$166.84	$159.60	$260.79	$187.82	$293.13	$607.16
Painting and papering	$52.01	$34.57	$12.75	$55.29	$21.09	$49.82	$144.99
Plumbing and water heating	$23.06	$12.17	$16.84	$22.72	$17.23	$32.94	$55.39
Heat, a/c, electrical work	$42.03	$40.31	$20.65	$28.44	$44.68	$61.59	$90.02
Roofing and gutters	$48.96	$21.78	$51.88	$49.75	$40.70	$55.18	$111.23
Other repair/maintenance service	$78.78	$53.15	$53.69	$101.29	$54.90	$85.14	$164.91
Repair & replace hard surface flooring	$8.14	$4.68	$2.92	$2.46	$7.96	$5.77	$33.94
Repair of built-in appliances	$1.88	$0.16	$0.86	$0.85	$1.24	$1.09	$6.68
Maintenance/repair commod	$65.41	$26.29	$25.78	$71.76	$70.93	$122.37	$141.50
Paints, wallpaper and supplies	$17.47	$6.93	$5.78	$14.64	$18.25	$33.17	$45.07
Tools and equipment for painting and wallpapering	$1.88	$0.74	$0.62	$1.57	$1.96	$3.56	$4.84
Plumbing supplies and equipment	$5.85	$2.25	$3.48	$6.92	$6.24	$11.04	$11.40
Electrical supplies, heating/cooling equipment	$3.76	$0.82	$4.14	$3.32	$4.94	$2.21	$10.24
Materials for hard surface floor, repair and replace	$1.85	$0.82	$0.03	$1.32	$0.66	$5.63	$5.85
Material and equipment for roof/gutters	$5.18	$3.80	$3.34	$8.46	$4.25	$3.31	$5.16
Materials for plaster, panel, siding, windows, doors, screens, awnings	$11.06	$9.36	$4.91	$12.62	$12.57	$15.49	$23.43
Materials for patio, walk, fence, drive, masonry, brick, and stucco work	$2.12	$0.26	$0.61	$6.99	$0.71	$2.30	$3.03
Materials for landscaping maintenance	$2.52	$0.09	0	$7.40	$2.38	$2.17	$4.45
Miscellaneous supplies/equipment	$13.89	$3.80	$2.89	$8.52	$18.98	$43.49	$28.02
Materials for insulation, other maintenance/repair	$7.87	$3.80	$2.36	$6.16	$10.04	$14.86	$18.16
Materials to finish basement, remodel rms or build patios, walks, etc (maintenance, repair, replace) (own property)	$8.02	0	$0.53	$2.38	$8.95	$26.61	$9.86
Property management and security	$0.74	$1.88	$0.53	$0.72	$0.13	$1.95	$0.79
Proper management	$0.64	$1.88	$0.24	$0.60	$0.12	$1.95	$0.62
Management and upkeep service for security	$0.10	$0.10	$0.28	$0.13	0.01	0	$0.16
Parking	$0.04	0	$0.06	$0.03	0	$0.07	$0.17
Rented dwellings	$1,469.41	$1,753.31	$1,777.24	$1,804.99	$1,583.71	$1,248.94	$825.42
Rent	$1,428.30	$1,708.38	$1,718.30	$1,782.19	$1,521.88	$1,216.05	$785.55
Rent as pay	$17.34	$25.29	$32.67	$15.87	$14.30	$0.70	$9.59
Maintenance, insurance and other expenses	$23.76	$19.83	$26.27	$26.92	$27.53	$32.19	$30.29
Tenant's insurance	$8.86	$4.34	$9.22	$9.27	$12.89	$10.61	$10.03
Maintenance and repair services	$9.01	$10.32	$13.18	$11.46	$9.64	$6.78	$12.67
Repair or maintenance service	$8.62	$10.32	$13.18	$11.46	$9.50	$5.20	$11.94
Materials for dwelling under construction and additions	0	0	0	0	0	0	0
Repair & replace hard surface flooring	$0.36	0	0	0	0	$1.58	$0.69
Repair of built-in appliances	$0.03	0	0	0	$0.14	0	$0.05
Maintenance and repair comm	$5.07	$4.97	$3.87	$6.19	$5.00	$14.80	$7.59
Paint, wallpaper, and supplies	$1.19	$0.85	$1.39	$1.12	$2.22	$1.63	$1.10
Tools and equipment for painting and wallpapering	$0.13	$0.09	$0.15	$0.12	$0.24	$0.18	$0.12
Materials for plast., panels, roofing, gutters, etc	$0.86	$1.43	$0.34	$0.94	$0.89	$0.61	$0.56
Materials for patio, walk, fence, driveway, masonry, brick & stucco work	$0.02	$0.06	0	$0.01	0	$0.06	$0.02

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Plumbing supplies and equipment	$0.38	$0.23	$0.53	$0.75	$0.25	$0.20	$0.17
Electrical supplies, heating/cooling, equipment	$0.92	$0.10	$0.16	$0.03	$0.11	$0.91	$0.01
Miscellaneous supplies/equipment	$1.84	$2.07	$0.79	$2.69	$1.06	$1.80	$3.41
Materials for insulation, other maintenance and repair	$0.58	$0.51	$0.73	$0.49	$0.56	$0.67	$0.72
Termite/pest control (capital improvement) (renter)	0	0	0	0	0	0	0
Materials for additions, finish basements, remodeling rooms	$1.08	$1.44	$0.07	$1.89	$0.26	$0.24	$2.69
Construction mtls. jobs not started	$0.18	$0.12	0	$0.31	$0.26	$0.89	0
Materials for hard surface flooring	$0.14	0	$0.46	$0.26	0	$0.52	0
Materials for landscape maintenance	$0.76	$0.14	$0.03	$0.27	$0.42	$0.68	$2.21
Other lodging	$446.79	$328.64	$211.23	$343.13	$515.57	$592.04	$1,158.09
Owned vacation homes	$78.26	$147.93	$26.59	$48.70	$89.46	$52.59	$199.82
Prepayment penalty charges (own vac)	0	0	0	0	0	0	0
Mortgage interest	$46.85	$124.50	$5.47	$31.06	$51.05	$23.57	$117.74
Property taxes	$16.90	$12.09	$14.93	$9.58	$21.13	$16.99	$45.43
Maintenance, insurance other expenses	$12.71	$11.34	$6.19	$8.06	$17.28	$12.03	$36.65
Homeowners and related insurance	$3.07	$1.77	$1.42	$2.32	$2.69	$1.79	$10.56
Homeowners insurance	$3.04	$1.54	$1.42	$2.32	$2.69	$1.79	$10.51
Fire/extended coverage	$0.03	$0.22	0	0	0	0	$0.05
Ground rent	$3.33	$0.90	$3.95	$1.64	$6.86	$1.26	$9.64
Maintenance/repair services	$5.52	$8.06	$0.71	$3.83	$6.37	$8.30	$14.44
Repair/remodeling (service)	$5.52	$8.06	$0.71	$3.83	$6.37	$8.30	$14.44
Repair and replace hard surface floor	0	0	0	0	0	0	0
Maintenance/repair services	$0.39	$0.61	$0.11	$0.26	$0.11	$0.23	$0.70
Paints, wallpaper, supplies	$0.08	$0.19	$0.06	0	$0.03	$0.06	$0.29
Tools/equipment for painting and wallpapering	$0.01	$0.02	$0.01	0	0	$0.01	$0.03
Materials for plastering, panels, roofing, gutters, dnspouts., siding, wdows., drs., screens, and awnings	$0.05	0	0	$0.02	0	$0.03	0.32
Materials for patio, walk, fence, drive, masonry, brick, stucco	0	0	0	0	0	0	0
Plumbing supplies/equipment	$0.02	$0.04	0	0	$0.03	$0.07	$0.05
Electrical supplies, heating/cool equipment	$0.01	0	0	$0.01	$0.04	0	0
Miscellaneous supplies/equipment	$0.01	0	$0.05	$0.02	0	$0.04	0
Materials for insulation/other maint./repair	$0.01	0	$0.06	0	0	$0.04	0
Materials for finishing basements remodeling rooms	0	0	0	$0.02	0	0	0
Materials for hard surface floor	$0.20	$0.35	0	$0.23	0	0	0
Materials for landscaping maintenance	0	0	0	0	0	0	0
Property management and security	$0.40	0	0	0	$1.23	$0.44	$1.30
Property management	$0.40	0	0	0	$1.23	$0.44	$1.30
Management and upkeep serv for securit	0	0	0	0	0	0	0
Parking	0	0	0	0	0	0	0
Expenses for other properties	$154.47	$101.84	$74.84	$137.26	$169.04	$223.95	$390.55
Housing while attending school	$35.48	$3.69	$3.44	$17.58	$30.76	$35.15	$118.12
Dodging while out of town	$178.58	$75.19	$106.36	$139.57	$226.31	$280.35	$449.60
Utilities, fuels and public services	$1,726.29	$1,412.79	$1,542.51	$1,711.07	$1,924.66	$2,089.22	$2,593.19
Natural gas	$232.22	$212.96	$214.65	$215.34	$246.68	$276.67	$354.61
Utilities—Natural gas (renter)	$50.85	$73.43	$66.38	$52.66	$45.66	$34.00	$19.84
Utilities—Natural gas (own home)	$180.07	$139.37	$147.88	$161.55	$200.38	$242.17	$329.43
Utilities—Natural gas (own vacuum)	$1.22	$0.16	$0.30	$0.97	$049	$0.50	$5.32
Utilities—Natural gas (renter vacuum)	$0.06	0	$0.09	$0.05	$0.15	0	$0.02
Electricity	$700.06	$578.32	$608.01	$695.11	$801.49	$859.67	$1,048.84
Electricity (renter)	$169.94	$222.94	$196.59	$197.41	$178.66	$122.29	$74.66
Electricity (own home)	$524.87	$350.24	$408.24	$493.70	$618.75	$733.65	$957.87
Electricity (own vacuum)	$5.08	$4.75	$2.86	$3.92	$3.40	$3.70	$15.87
Electricity (rented vacuum)	$0.25	$0.39	$0.32	$0.09	$0.45	$0.02	$0.26
Fuel oil and other fuels	$94.02	$76.70	$81.76	$99.42	$92.78	$114.59	$126.02
Fuel oil	$55.60	$38.66	$47.89	$54.62	$53.00	$62.53	$89.36
Fuel oil (renter)	$5.21	$5.93	$6.49	$5.91	$6.38	$3.26	$4.76
Fuel oil (own home)	$49.96	$32.34	$41.40	$48.50	$46.57	$79.27	$82.89
Fuel oil (own vacuum)	$0.36	$0.59	$0	$0.21	$0.05	0	$1.69
Fuel oil (rented vacuum)	$0.06	0	0	0	0	0	0
Coal	$3.50	$6.85	$0.57	$6.20	$3.64	$5.23	$0.33
Coal (renter)	$0.55	$1.20	$0.20	$0.94	$0.98	0	0
Coal (own home)	$2.95	$5.66	$0.37	$5.26	$2.66	$5.23	$0.33
Coal (own vacuum)	0	0	0	0	0	0	0
Coal (rented vacuum)	0	0	0	0	0	0	0
Bottled gas	$24.48	$22.49	$23.52	$28.34	$23.75	$17.90	$23.47
Gas, bottled/tank (renter)	$3.78	$5.78	$4.73	$2.54	$3.06	$0.69	$2.10
Gas, bottled/tank (own home)	$18.56	$15.77	$17.30	$24.49	$19.10	$12.84	$15.42
Gas, bottled/tank (own vacuum)	$2.12	$0.93	$1.49	$1.31	$1.59	$4.26	$5.94
Gas, bottled/tank (rented vacuum)	0	0	0	0	0	0	0
Wood and other fuels	$10.43	$8.49	$9.77	$10.26	$12.38	$8.93	$14.67
Wood/other fuels (renter)	$1.31	$2.07	$1.19	$1.35	$0.64	$0.21	$1.33
Wood/other fuels (own home)	$9.05	$6.42	$8.57	$8.71	$11.74	$8.64	$13.42
Wood/other fuels (own vacuum)	$0.08	0	0	$0.20	0	$0.08	$0.13
Wood/other fuels (rented vacuum)	0	0	0	0	0	0	0
Telephone	$526.79	$425.98	$507.41	$539.06	$590.21	$601.80	$769.36

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Water and other public services	$171.19	$118.83	$130.66	$162.14	$193.53	$236.49	$292.34
Water/sewerage maintenance	$131.02	$91.41	$99.79	$124.06	$150.67	$178.26	$222.63
Water/sewer maintenance (renter)	$16.53	$20.04	$17.05	$22.99	$18.20	$15.51	$8.91
Water/sewer maintenance (own home)	$111.57	$69.24	$82.52	$100.46	$131.51	$161.47	$212.17
Water/sewer maintenance (own vacuum)	$0.83	$1.83	$0.22	$0.52	$0.96	$1.29	$1.43
Water/sewer maintenance (rented vacuum)	$0.09	$0.30	0	$0.06	0	0	$0.13
Trash/garbage collection	$38.67	$26.89	$29.90	$37.16	$40.93	$55.27	$65.76
Trash/garb. collection (renter)	$5.28	$5.02	$4.95	$7.21	$4.98	$5.00	$2.97
Trash/garb. collection (own home)	$33.31	$21.88	$24.79	$29.91	$35.69	$50.26	$62.64
Trash/garb. collection (own vacuum)	$0.06	0	$0.16	$0.04	$0.25	0	$0.15
Trash/garb. collection (rented vacuum)	0	0	0	0	0	0	0
Septic tank cleaning	$1.50	$0.52	$0.98	$0.92	$1.94	$2.96	$3.95
Septic tank cleaning (renter)	$0.01	0	0	0	$0.10	0	0
Septic tank cleaning (own home)	$1.48	$0.52	$0.98	$0.91	$1.84	$2.96	$3.95
Septic tank cleaning (own vacuum)	0	0	0	$0.01	0	0	0
Septic tank cleaning (rented vacuum)	0	0	0	0	0	0	0
Household operations	$387.45	$200.78	$222.83	$310.21	$448.86	$530.72	$955.30
Personal services	$176.53	$82.78	$119.28	$166.06	$275.06	$311.41	$321.27
Babysitting	$74.62	$42.11	$58.03	$85.19	$133.19	$114.65	$115.47
Care for elderly, invalids, handicapped, etc	$11.66	$3.93	$0.55	$4.58	$1.46	$0.47	$24.86
Day care centers, nursery/preschool	$90.25	$36.75	$60.69	$76.28	$140.43	$196.28	$181.13
Other household expenses	$210.92	$118.00	$103.56	$144.16	$173.78	$219.31	$634.03
Housekeeping services	$67.76	$36.72	$22.44	$28.84	$41.53	$50.94	$269.17
Gardening, lawn care service	$49.60	$27.27	$22.86	$30.40	$31.13	$53.69	$159.01
Water softening service	$2.81	$2.73	$0.76	$2.19	$2.95	$4.10	$7.63
Household laundry/dry cleaning, sent out (non-clothing) not coin-operated	$1.63	$1.04	$0.41	$1.86	$2.63	$2.53	$3.39
Coin-operated household laundry/dry cleaning (non-cloth)	$4.78	$5.92	$5.63	$5.41	$4.47	$6.09	$2.27
Other home services	$17.86	$4.29	$9.02	$12.39	$13.96	$13.98	$60.11
Termite/pest control products	$0.20	$0.05	$0.09	$0.09	$0.25	$0.12	$0.21
Moving, storage, freight, express	$26.48	$10.87	$10.32	$23.78	$32.08	$48.84	$56.17
Appliance repair, including service center	$16.44	$9.82	$17.88	$18.93	$20.85	$17.46	$25.57
Reupholstering/furniture repair	$13.85	$10.37	$5.31	$13.68	$15.55	$11.69	$32.30
Repairs/rentals of lawn/garden equipment, hand/power tools,/other household equipment	$5.92	$4.16	$4.59	$4.90	$6.20	$9.06	$13.38
Appliance rental	$2.08	$4.33	$2.47	$1.01	$1.16	$0.52	$0.54
Rental of office equipment for non-business use	$0.17	$0.02	$0.27	$0.04	$0.01	$0.57	$0.48
*Repair of miscellaneous household equipment and furnishings	$0.48	0	$1.32	$0.19	$0.02	$0.94	$0.59
Rental and installation of dishwashers, range hoods, and garbage disposals	0	0	0	0	0	0	0
Housekeeping supplies	$382.82	$286.29	$321.58	$383.43	$451.24	$475.45	$570.22
Laundry and cleaning supplies	$106.44	$80.46	$104.37	$109.27	$131.66	$129.47	$162.63
*Soaps and detergents	$62.10	$47.30	$60.50	$63.11	$78.35	$77.19	$89.28
*Other laundry cleaning products	$44.33	$33.16	$43.87	$46.16	$53.30	$52.28	$73.35
*Other household products	$157.48	$125.55	$115.86	$149.94	$183.61	$201.65	$316.09
*Cleansing and toilet tissue, paper towels and napkins	$52.12	$42.88	$45.37	$51.88	$64.86	$67.41	$80.71
*Miscellaneous household products	$67.89	$47.17	$44.38	$58.26	$85.63	$108.96	$139.90
*Lawn and garden supplies	$37.47	$35.50	$26.12	$39.79	$33.12	$25.27	$95.48
*Postage and stationery	$118.89	$80.28	$101.35	$124.23	$135.97	$144.33	$191.50
*Stationery, stationery supplies, giftwrap	$54.40	$30.49	$36.05	$45.35	$55.09	$74.49	$105.20
*Postage	$64.49	$49.79	$65.30	$78.88	$80.87	$69.84	$86.30
Housefurnishings and equipment	$1,102.32	$552.14	$720.38	$962.26	$1,385.76	$1,612.00	$2,590.97
Household textiles	$97.11	$50.30	$81.09	$96.26	$104.56	$122.28	$220.32
*Bathroom linens	$13.69	$5.45	$19.92	$9.71	$18.83	$13.05	$30.80
*Bedroom linens	$38.11	$26.26	$35.77	$36.81	$33.56	$50.47	$77.56
*Kitchen and dining room linens	$5.74	$4.52	$2.63	$4.03	$6.56	$7.12	$15.73
Curtains and draperies	$26.56	$5.34	$12.12	$26.90	$26.44	$39.44	$71.25
Slipcovers, decorative pillows	$1.64	$0.68	$2.26	$1.33	$2.64	$1.26	$3.18
*Sewing materials for slipcovers, curtains other sewing materials for home use	$10.32	$4.80	$7.95	$14.65	$15.39	$9.43	$19.15
Other linens	$1.05	$1.25	$0.43	$0.84	$1.13	$1.50	$2.65
Furniture	$319.44	$139.36	$204.72	$261.90	$378.37	$433.38	$861.57
Mattress and springs	$41.86	$18.62	$32.81	$39.28	$57.01	$62.91	$93.05
Other bedroom furniture	$39.75	$13.71	$29.56	$22.88	$52.21	$62.05	$107.77
Sofas	$65.44	$37.30	$40.96	$58.54	$83.34	$106.08	$144.37
Living room chairs	$35.91	$24.89	$27.22	$40.43	$31.79	$44.77	$80.20
Living room tables	$20.16	$6.73	$15.46	$15.21	$26.54	$27.03	$50.94
Kitchen/dining room furniture	$58.64	$14.86	$34.82	$22.79	$61.09	$56.39	$226.46
Infants' furniture	$7.01	$2.15	$5.04	$4.57	$8.94	$14.79	$16.63
Outdoor furniture	$12.57	$1.62	$3.51	$12.51	$10.65	$19.59	$41.43
Occasional furniture	$36.12	$18.46	$15.32	$45.67	$46.80	$37.77	$100.73
Floor coverings	$70.23	$18.41	$29.79	$74.77	$110.80	$113.46	$164.89
Wall-to-wall carpet (renter)	$2.41	$5.97	$2.25	$2.15	$3.86	$2.30	$0.40
Wall-to-wall carpet, installed, (renter)	$1.73	$5.73	$1.18	$0.70	$3.14	$1.74	$0.11
Wall-to-wall carpet, not installed carpet squares (renter)	$0.68	$0.24	$1.07	$1.45	$0.72	$0.56	$0.28

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Wall-to-wall carpet (replacement) (own home)	$42.57	$7.86	$22.82	$47.02	$42.12	$67.79	$119.96
Wall-to-wall carpet, not installed (replacement), carpet squares (own home)	$3.04	0	$1.67	$2.54	$5.12	$1.77	$10.38
Wall-to-wall carpet, installed (replacement) (own home)	$39.53	$7.86	$21.16	$44.48	$37.00	$66.02	$109.58
*Room size rugs and other floor covering, non-permanent	$25.25	$4.66	$4.71	$25.60	$64.82	$43.36	$44.54
Major appliances	$172.90	$107.05	$136.91	$169.54	$213.08	$240.59	$328.70
Dishwashers (built-in), garbage disposals, range hoods, (renter)	$0.24	$0.14	0	$0.13	0	$1.76	$0.26
Dishwashers (built-in), garbage disposals, range hoods, (own home)	$10.05	$2.93	$5.48	$9.60	$10.34	$17.42	$24.58
Refrigerators/freezers (renter)	$11.18	$9.98	$16.09	$15.96	$17.11	$7.86	$6.21
Refrigerators/freezers (own home)	$39.29	$12.75	$24.85	$37.05	$50.93	$48.84	$96.50
Washing machines (renter)	$6.56	$8.33	$5.97	$6.26	$7.85	$5.99	$7.42
Washing machines (own home)	$17.96	$8.84	$12.50	$16.47	$23.46	$26.73	$32.83
*Clothes dryers (renter)	$4.16	$5.20	$4.27	$2.33	$5.33	$9.24	$4.43
Clothes dryers (own home)	$10.35	$3.96	$8.24	$9.93	$13.04	$22.44	$17.97
Cooking stoves/ovens (renter)	$2.87	$3.80	$0.69	$4.26	$8.30	$2.05	$0.50
Cooking stoves/ovens (own home)	$19.55	$8.87	$11.48	$14.47	$26.94	$30.02	$47.04
Microwave ovens (renter)	$4.47	$6.49	$6.79	$5.39	$5.42	$6.13	$1.75
Microwave ovens (own home)	$9.81	$3.73	$7.84	$9.58	$13.37	$11.76	$23.72
Portable dishwasher (renter)	$0.31	0	$2.28	$0.26	$0.23	0	0
Portable dishwasher (own home)	$1.33	$1.60	0	$0.96	0	$3.87	$4.10
Window air conditioners (renter)	$2.43	$2.03	$1.99	$4.99	$0.60	$0.52	$0.54
Window air conditioners (own home)	$8.23	$8.15	$6.37	$5.72	$8.06	$3.73	$17.42
Electric floor cleaning equipment	$14.62	$9.85	$9.39	$19.58	$17.20	$17.77	$25.74
Sewing machines	$6.06	$4.29	$9.26	$6.21	$2.84	$8.29	$13.83
*Miscellaneous household appliances	$3.39	$6.12	$2.43	$0.39	$2.08	$16.15	$3.82
Small appliances, misc. housewares	$60.51	$39.82	$37.60	$46.50	$71.00	$77.96	$148.46
Housewares	$39.14	$25.14	$21.57	$26.52	$45.46	$47.51	$105.70
Plastic dinnerware	$1.63	$1.88	$0.75	$1.96	$1.66	$3.77	$3.11
China and other dinnerware	$10.31	$5.50	$4.06	$7.51	$16.10	$15.23	$23.76
Flatware	$3.44	$1.31	$1.62	$3.30	$2.32	$3.40	$11.15
*Glassware	$9.79	$2.40	$3.19	$4.54	$11.70	$9.13	$36.70
*Silver serving pieces	$0.27	$1.17	$0.01	$0.03	$0.05	$1.04	$0.11
Other serving pieces	$1.36	$0.72	$1.22	$1.19	$1.11	$1.49	$3.23
*Nonelectric cookware	$12.14	$12.16	$10.73	$7.96	$12.53	$13.45	$27.64
Small appliances	$21.37	$14.69	$16.03	$19.96	$25.54	$30.44	$42.76
Small electric kitchen appliances	$14.17	$9.18	$8.45	$13.81	$17.74	$21.71	$29.49
Portable heating/cooling equipment	$7.20	$5.50	$7.58	$6.17	$7.80	$8.73	$13.26
Miscellaneous household equipment	$382.11	$197.19	$228.27	$333.29	$507.95	$624.34	$867.02
Window coverings	$13.72	$6.79	$5.05	$11.17	$14.42	$17.90	$42.34
*Infants' equipment	$3.77	$2.50	$0.65	$4.72	$3.47	$2.86	$11.27
*Laundry and cleaning equip	$8.52	$3.29	$10.67	$6.53	$12.57	$7.17	$20.96
Outdoor equipment	$4.73	$0.95	$2.82	$5.19	$5.02	$9.89	$10.42
Clocks	$5.46	$1.68	$10.69	$4.27	$3.57	$7.24	$10.26
*Lamps and lighting fixtures	$26.40	$48.71	$9.81	$21.24	$50.72	$42.07	$46.16
*Other household decorative items	$80.30	$34.55	$27.19	$64.72	$147.93	$129.25	$186.25
*Telephones and accessories	$7.25	$2.85	$1.81	$8.51	$6.18	$4.09	$23.72
Lawn and garden equipment	$49.12	$12.59	$51.04	$40.12	$60.06	$100.17	$92.96
Power tools	$14.39	$4.43	$4.76	$19.44	$15.74	$26.15	$31.17
*Small misc. furnishings	$3.39	$0.04	0	$1.23	$19.77	$2.50	$3.06
*Hand tools	$13.67	$3.23	$6.51	$12.61	$23.57	$42.42	$18.17
*Indoor plants, fresh flowers	$41.42	$25.97	$31.91	$24.78	$34.12	$74.01	$110.87
*Closet and storage items	$4.62	$0.89	$0.73	$1.25	$4.26	$4.50	$18.01
Furniture rental	$3.02	$2.83	$3.13	$2.49	$1.73	$2.14	$3.24
Luggage	$8.72	$1.79	$6.85	$6.02	$9.30	$14.24	$23.99
Computers for home use	0	0	0	0	0	0	0
Telephone answering devices	$4.23	$1.77	$3.22	$3.95	$3.81	$6.37	$8.57
Calculators	$1.99	$1.30	$1.24	$1.72	$2.23	$3.74	$3.12
Business equipment for home use	$6.20	$1.88	$3.84	$5.13	$9.35	$7.42	$15.40
*Other hardware	$6.95	$3.22	$6.91	$8.51	$5.72	$7.15	$18.71
Smoke alarms (own home)	$0.54	$0.04	$1.50	$0.53	$0.90	$0.64	$0.55
Smoke alarms (renter)	$0.15	0	$0.05	$0.23	$0.06	$0.02	$0.61
Smoke alarms (own vac.)	0	0	0	0	0	0	0
Other house appliances (own home)	$4.25	$3.99	$1.52	$4.45	$2.27	$7.43	$9.60
Other household appliances (renter)	$1.35	$2.61	$4.35	$2.07	$0.54	$0.66	$0.12
*Miscellaneous household equipment and part	$18.73	$14.19	$7.56	$20.24	$27.91	$25.99	$37.99
Apparel and services	$1,537.27	$886.12	$1,065.66	$1,406.15	$1,847.24	$2,396.00	$3,154.03
Men and boys	$400.67	$196.95	$260.75	$349.56	$429.04	$666.47	$843.93
Men, 16 and over	$316.80	$142.16	$202.12	$271.44	$340.48	$533.15	$772.68
Men's suits	$41.20	$15.86	$13.23	$20.69	$36.93	$63.99	$133.12
Men's sportcoats	$15.57	$3.80	$5.33	$7.90	$17.97	$25.65	$53.04
*Men's coats and jackets	$29.30	$8.90	$10.79	$22.27	$26.54	$54.07	$86.61
*Men's underwear	$9.72	$9.49	$9.05	$7.71	$13.05	$10.40	$17.16
*Men's hosiery	$10.34	$8.58	$9.06	$9.30	$11.24	$20.53	$17.50
*Men's nightwear	$2.89	$1.31	$0.68	$4.49	$4.01	$1.80	$6.37

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
*Men's accessories	$22.88	$10.30	$14.64	$15.23	$20.45	$47.19	$56.32
Men's sweaters and vests	$17.65	$7.09	$7.08	$13.16	$18.88	$25.26	$50.07
Men's active sportswear	$12.10	$4.80	$5.65	$11.75	$13.46	$18.24	$29.17
*Men's shirts	$74.17	$45.37	$55.80	$68.02	$88.29	$133.41	$139.09
*Men's pants	$7.76	$22.61	$60.87	$65.68	$75.41	$105.22	$183.06
Men's shorts/short sets	$8.29	$2.05	$6.73	$12.56	$9.31	$20.61	$12.89
Men's uniforms	$3.16	$1.22	$2.88	$2.05	$4.00	$6.58	$6.16
*Men's other clothing	$0.77	$0.80	$0.31	$0.82	$0.95	$0.16	$2.09
Boy, 2 to 15	$61.86	$54.79	$58.63	$78.09	$88.56	$133.33	$171.25
*Boys' coats and jackets	$9.48	$1.51	$13.68	$10.54	$5.87	$10.64	$23.83
*Boys' sweaters	$3.73	$2.44	$2.14	$2.37	$5.37	$3.86	$8.97
*Boys' shirts	$20.55	$11.99	$14.46	$15.76	$26.30	$45.42	$39.42
*Boys' underwear	$1.55	$0.53	$0.89	$1.61	$4.81	$1.15	$2.25
*Boys' nightwear	$2.79	$2.28	$1.04	$4.28	$3.30	$6.20	$2.71
*Boys' hosiery	$3.99	$4.43	$3.84	$4.63	$3.97	$2.81	$7.29
*Boys' accessories	$2.77	$0.27	$1.74	$1.61	$1.39	$6.89	$7.66
*Boys' suits, sportcoats, vests	$3.00	$1.85	$0.38	$2.93	$1.45	$11.49	$8.29
*Boys' pants	$24.70	$25.03	$16.95	$26.51	$23.64	$25.99	$53.32
*Boys' shorts, short sets	$3.91	$1.70	$0.58	$3.69	$5.66	$8.06	$6.96
Boys' uniforms/active sportwear	$5.10	$2.59	$2.69	$3.84	$6.38	$10.48	$11.92
Boys' other clothing	$0.29	$0.17	$0.22	$0.31	$0.43	$0.32	$0.63
Women and girls	$608.90	$353.66	$425.05	$550.45	$771.19	$950.02	$1,190.33
Women, 16 and over	$509.83	$281.24	$376.82	$458.04	$648.56	$773.35	$992.62
*Women's coats and jackets	$33.49	$9.89	$12.77	$21.91	$41.71	$80.18	$66.72
*Women's dresses	$83.27	$47.32	$56.32	$65.67	$81.62	$111.38	$185.83
*Women's sportcoats, tailkts	$0.84	$0.19	$0.68	$0.04	$0.11	$2.69	$1.44
*Women's vests and sweaters	$36.74	$23.54	$35.67	$42.26	$35.17	$62.71	$63.75
*Women's shirts, tops, blouses	$85.55	$43.28	$80.86	$72.57	$113.40	$126.51	$156.36
*Women's skirts	$29.28	$17.84	$18.33	$25.37	$22.72	$59.17	$65.45
*Women's pants	$66.85	$33.21	$51.28	$64.99	$106.85	$94.87	$107.29
*Women's shorts, shorts sets	$14.23	$10.23	$11.73	$11.30	$21.45	$27.91	$22.87
*Women's active sportswear	$23.13	$13.05	$13.34	$24.37	$46.07	$37.59	$33.33
*Women's sleepwear	$22.57	$14.68	$22.62	$23.09	$28.70	$16.87	$49.94
*Women's undergarments	$24.38	$16.17	$21.05	$21.01	$35.71	$28.83	$45.66
Women's hosiery	$25.85	$17.40	$22.30	$25.51	$32.18	$34.56	$46.47
Women's suits	$28.04	$14.06	$9.24	$24.03	$36.52	$32.30	$75.08
*Women's accessories	$34.46	$20.38	$20.58	$32.04	$43.27	$54.45	$72.36
*Women's uniforms	$1.15	$0.01	$0.06	$3.88	$1.06	$3.32	$0.05
*Women's other clothing	0	0	0	0	0	0	0
Girls, 2 to 15	$99.08	$72.42	$48.23	$92.41	$122.63	$176.67	$197.71
Girls' coats and jackets	$7.95	$4.80	$3.66	$10.81	$8.51	$12.90	$13.03
Girls' dresses, suits	$12.02	$7.84	$8.53	$10.60	$14.15	$20.78	$24.03
*Girls' shirts/blouses/sweater	$30.19	$20.94	$4.47	$28.93	$36.40	$55.73	$67.22
Girls' skirts, pants	$16.37	$11.46	$12.37	$15.81	$23.92	$24.70	$27.91
Girls' shorts, shorts sets	$6.41	$4.52	$5.81	$7.25	$7.10	$12.03	$9.62
*Girls' active sportswear	$9.32	$9.89	$3.04	$6.23	$9.77	$22.73	$19.94
Girls' underwear and sleepwear	$5.92	$4.52	$4.77	$5.32	$8.10	$8.51	$11.05
*Girls' hosiery	$4.86	$3.66	$3.11	$3.94	$7.41	$11.90	$6.67
*Girls' accessories	$4.08	$4.34	$2.19	$2.18	$3.59	$5.04	$12.81
Girls' uniforms	$1.46	$0.39	$0.23	$0.81	$2.79	$1.17	$4.59
Girls' other clothing	$0.48	$0.25	$0.05	$0.53	$0.87	$1.19	$0.84
Children under 2	$63.60	$41.35	$40.49	$68.75	$98.77	$104.17	$95.15
Infant coat/jacket/snowsuit 9b	$3.02	$1.59	$2.64	$2.53	$5.41	$3.43	$4.94
Infant coat/jacket/snowsuit 9a	$0.15	0	$0.04	$0.17	$0.25	$0.35	$0.24
Infant dresses/outerwear 9b	$14.57	$9.48	$10.69	$16.01	$19.55	$21.14	$25.84
Infant dresses/outerwear 9a	$0.41	$0.43	$0.21	$0.34	$0.66	$0.50	$0.79
*Infants' underwear	$36.68	$25.00	$21.97	$40.50	$58.19	$65.47	$47.23
Infant nightwear/loungewear 9b	$3.13	$2.02	$1.45	$3.83	$4.73	$4.36	$5.20
Infant nightwear/loungewear 9a	$0.06	$0.01	0	$0.10	$0.07	$0.12	$0.12
Infant other clothing	$2.10	$1.42	$1.31	$1.57	$2.80	$3.21	$4.66
Infant accessories 9b	$3.06	$1.25	$1.81	$3.46	$4.31	$4.82	$5.33
Infant accessories 9a	0	0	0	$0.01	$0.02	$0.01	0
Infant hosiery	$0.41	$0.17	$0.37	$0.22	$0.76	$0.76	$0.80
*Footwear	$204.13	$141.42	$205.46	$203.00	$253.61	$332.12	$299.98
*Men's, footwear	$82.95	$41.07	$76.93	$78.61	$78.10	$109.06	$72.77
*Boys', footwear	$18.19	$16.18	$9.56	$16.18	$30.82	$14.64	$32.55
*Women's footwear	$104.54	$84.84	$110.99	$97.66	$124.35	$158.11	$182.71
*Girls' footwear	$18.46	$19.33	$7.97	$10.56	$20.33	$52.31	$31.94
Other apparel products and services	$259.97	$152.73	$153.92	$234.41	$296.64	$343.22	$524.63
Material for making clothes	$8.12	$6.03	$5.93	$9.10	$6.26	$10.67	$15.93
Sewing patterns and notions	$2.15	$1.44	$1.04	$2.22	$2.75	$2.87	$3.65
Watches	$21.65	$13.67	$15.33	$17.82	$29.45	$32.67	$45.59
Jewelry	$110.35	$54.93	$47.33	$94.40	$127.09	$153.93	$318.74
Shoe repair, other shoe service	$3.46	$1.31	$2.01	$3.19	$4.34	$4.75	$8.11
Coin-operated apparel laundry/dry clean	$34.25	$43.52	$46.86	$41.09	$28.11	$27.33	$12.67
Apparel alteration and repair	$6.05	$3.29	$2.54	$4.69	$6.48	$6.95	$16.69

Appendix 1.—Consumer Expenditure Survey (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Clothing rental	$4.77	$2.58	$2.20	$7.80	$5.77	$4.83	$8.96
Watch and jewelry repair	$5.72	$2.66	$3.10	$5.51	$8.94	$10.91	$10.88
Apparel laundry/dry clean not coin operated	$62.72	$25.14	$27.47	$47.83	$74.66	$96.84	$181.00
Clothing storage	$0.76	$0.19	$0.10	$0.77	$0.78	$1.38	$2.42
Transportation	$5,140.21	$3,127.01	$3,840.91	$5,302.92	$6,704.50	$7,778.21	$9,714.71
Vehicle purchases (net outlay)	$2,398.18	$1,413.38	$1,745.63	$2,485.58	$3,248.39	$3,839.91	$4,873.46
Cars and trucks, new	$1,391.73	$565.06	$864.79	$1,223.06	$1,894.51	$2,885.18	$3,607.36
New cars	$991.80	$472.12	$675.40	$782.66	$1,565.37	$1,777.93	$2,163.34
New trucks	$400.13	$92.94	$209.39	$440.42	$329.13	$907.25	$944.04
Cars and trucks, used	$871.12	$831.68	$750.44	$1,221.87	$1,330.29	$1,132.30	$1,504.66
Used cars	$754.27	$641.07	$616.47	$963.43	$974.26	$926.36	$1,267.37
Used trucks	$216.85	$190.61	$133.97	$358.44	$356.03	$205.94	$217.49
Other vehicles	$25.34	$16.65	$10.40	$40.63	$23.59	$22.43	$61.22
New motorcycles	$5.21	0	0	$15.11	0	$9.56	$15.23
New aircraft	0	0	0	0	0	0	0
Used motorcycles	$15.86	$16.65	$10.40	$25.53	$23.59	$21.86	$17.57
Used aircraft	$4.27	0	0	0	0	0	$28.42
Gasoline and motor oil	$932.90	$839.11	$801.58	$974.84	$1,169.53	$1,328.41	$1,459.86
Gasoline	$612.09	$563.62	$700.74	$960.76	$1,037.67	$1,152.21	$1,237.62
Diesel fuel	$12.01	$5.55	$5.31	$7.50	$16.98	$13.83	$35.10
Gasoline on out of town trips	$96.47	$58.26	$62.01	$92.50	$118.25	$145.52	$171.41
*Gasahol	0	0	0	0	0	0	0
Motor oil	$12.56	$10.76	$12.86	$13.24	$15.80	$16.23	$14.25
Motor oil on out of town trips	$0.85	$0.91	$0.66	$0.83	$0.82	$1.13	$1.49
Other vehicle expenses	$1,552.58	$922.69	$1,137.30	$1,603.36	$1,972.84	$2,290.12	$3,046.42
Vehicle finance charges	$264.70	$107.09	$172.61	$293.49	$397.09	$465.61	$611.95
Automobile finance charges	$198.25	$83.07	$140.63	$200.40	$275.38	$308.48	$412.11
Truck finance charges	$71.94	$21.29	$29.70	$77.35	$107.00	$155.35	$144.14
Motorcycle and plane finance charges	$1.67	$0.12	$0.39	$1.51	$3.20	$4.92	$2.34
Other vehicle finance charges	$14.85	$2.61	$1.89	$14.24	$12.13	$18.06	$53.37
Maintenance and repairs	$568.88	$405.19	$449.94	$610.06	$696.51	$783.55	$1,055.81
Coolant/additives/brakes, transmission fluids	$7.15	$5.91	$7.62	$7.65	$8.94	$9.47	$8.01
Tires	$66.22	$55.96	$70.42	$84.47	$115.02	$124.29	$144.92
*Parts/equip/accessories	$66.80	$99.08	$46.21	$92.07	$110.66	$66.54	$169.51
*Vehicle products	$3.92	$2.26	$2.52	$4.57	$6.07	$5.55	$7.35
*Misc. auto repair/servicing	$17.18	$9.56	$10.82	$27.74	$18.43	$28.85	$24.87
Body work	$34.71	$22.67	$29.96	$36.37	$32.79	$33.62	$84.44
Clutch, transmission repair	$24.54	$18.04	$32.54	$41.79	$43.59	$42.85	$61.22
Drive train repair	$7.58	$1.64	$4.70	$12.07	$6.41	$10.31	$16.45
Brake work	$33.06	$19.72	$23.74	$32.66	$38.01	$48.21	$61.30
Steering repair	$11.64	$7.16	$10.27	$12.11	$10.17	$23.19	$18.63
Cooling system repair	$22.87	$17.79	$23.71	$21.85	$24.66	$31.99	$42.26
Motor tune-up	$40.07	$26.28	$29.50	$35.56	$42.71	$54.54	$91.62
Lubrication, oil change	$24.67	$17.90	$21.17	$24.21	$30.66	$32.99	$45.55
Front end alignment, wheel balance	$9.30	$4.12	$6.02	$9.91	$12.59	$11.86	$18.51
Shock absorber replacement	$6.01	$2.55	$3.04	$7.11	$5.80	$7.10	$15.43
Brake adjustment	$4.75	$1.22	$3.57	$4.86	$5.29	$6.43	$11.02
*Gas tank repair, replacement	$0.09	0	$0.01	$0.01	$0.01	$0.02	$0.52
Minor repair/service out-of-town trip	$1.92	$0.42	$0.77	$2.76	$1.01	$5.41	$2.84
Repair tires and other repair work	$29.23	$18.18	$24.27	$31.48	$33.88	$43.76	$48.81
Exhaust system repair	$14.55	$8.71	$18.06	$16.15	$16.86	$22.09	$19.92
Electrical system repair	$20.35	$12.22	$15.61	$22.14	$19.66	$34.90	$34.66
Motor repair/replacement	$63.53	$51.77	$55.00	$71.06	$62.61	$62.11	$112.89
Auto repair service policy	$8.54	$8.01	$6.36	$9.44	$10.51	$16.46	$14.61
Vehicle insurance	$515.08	$314.92	$409.50	$544.70	$666.71	$728.25	$868.57
Vehicle rental licenses and other charges	$184.14	$96.11	$105.26	$155.11	$252.64	$282.51	$420.06
Leased and rented vehicles	$66.54	$25.20	$27.47	$42.79	$96.33	$134.51	$195.33
Auto rental	$44.26	$19.82	$22.04	$28.67	$65.00	$90.57	$110.70
Auto rental, out-of-town trips	$6.78	$4.07	$3.64	$4.97	$5.28	$15.25	$15.62
Truck rental	$12.51	$0.54	$1.21	$6.70	$22.25	$13.41	$45.18
Truck rental, out-of-town trip	$3.99	$0.77	$0.23	$1.77	$2.33	$4.78	$17.45
Motorcycle rental	0	0	0	0	0	0	0
Aircraft rental	$0.47	0	0	$0.09	$1.45	$0.28	$1.54
Motorcycle rental out-of-town	$0.04	0	0	0	0	0	$0.26
Aircraft rental/out-of-town trips	$0.40	0	$0.35	$0.59	$0.01	$0.22	$1.56
State/local registration	$67.04	$45.21	$49.91	$70.39	$96.23	$99.31	$112.03
Drivers license	$6.59	$5.47	$5.43	$6.62	$9.23	$7.71	$9.58
Vehicle inspection	$6.33	$5.13	$4.52	$6.17	$8.61	$9.76	$9.56
Parking fees	$20.50	$8.41	$7.36	$14.30	$23.35	$30.90	$68.74
*Tolls	$5.96	$0.82	$2.04	$6.67	$6.82	$7.92	$18.48
Tolls on out-of-town trips	$4.12	$1.80	$2.31	$3.79	$5.36	$6.29	$9.05
Towing charges	$5.05	$3.97	$5.21	$4.38	$6.67	$5.18	$6.32
Pubs. transportation	$265.56	$151.82	$156.40	$239.14	$293.73	$320.76	$634.96
Airline fares	$176.01	$79.22	$89.55	$158.79	$193.56	$232.90	$471.55
Intracity bus fares	$14.30	$11.67	$7.13	$12.41	$27.86	$10.82	$14.74
Intracity mass transit fares	$41.97	$44.70	$42.94	$36.53	$32.99	$34.12	$64.33

Appendix 1.—Consumer Expenditure Survey (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Local transportation out of town trips	$0.54	$0.20	$0.15	$0.50	$0.65	$1.04	$1.21
Taxi fares on trips	$4.86	$1.76	$1.32	$4.47	$5.96	$9.39	$10.86
Taxi fares	$5.89	$5.76	$5.59	$6.42	$8.41	$3.74	$7.36
Intercity train fares	$9.04	$3.31	$6.07	$8.16	$4.87	$14.49	$22.76
Ship fares	$13.00	$4.30	$3.37	$9.46	$19.08	$12.55	$39.62
School bus	$0.86	$0.91	$0.29	$0.36	$0.46	$1.70	$2.48
Health care	$1,282.43	$1,386.50	$1,299.71	$1,328.49	$1,367.25	$1,531.77	$1,566.44
Health insurance	$473.36	$460.42	$474.00	$537.14	$475.46	$543.90	$516.80
Commercial health insurance	$165.26	$118.03	$170.96	$206.24	$195.72	$255.42	$207.76
Blue Cross/Blue Shield	$116.52	$120.47	$102.66	$127.18	$114.09	$111.37	$146.61
Health maintenance plans (HMO's)	$48.46	$27.40	$44.11	$57.95	$67.51	$84.53	$66.81
Medicare payments	$78.80	$130.87	$101.55	$71.71	$41.13	$31.51	$32.52
Commercial medicare supplements and other health insurance	$64.46	$83.66	$54.53	$72.07	$57.02	$61.07	$65.10
Medical services	$512.73	$587.65	$540.82	$487.31	$551.59	$676.06	$701.33
Physician's services	$149.19	$147.96	$158.15	$160.54	$202.90	$205.76	$154.17
Dental services	$150.89	$111.17	$98.11	$150.62	$192.81	$211.77	$291.66
Eye care services	$22.70	$25.67	$11.56	$24.89	$24.45	$24.55	$37.32
Service by other than physicians	$22.82	$11.11	$10.85	$32.64	$33.87	$26.23	$37.72
Lab test, xrays	$25.76	$23.57	$29.34	$26.96	$25.75	$28.61	$43.93
Nurse, therapy/misc medical service	$4.21	$1.24	$—3.70	$1.59	$1.80	$1.01	$20.02
Hospital room	$54.96	$72.02	$71.99	$60.58	$26.43	$95.50	$62.57
Hospital services other than room	$26.61	$57.38	$52.02	$26.85	$22.89	$39.94	$0.89
Care in convalescent or nursing home	$40.86	$129.58	$105.34	$4.48	$2.80	$18.57	$14.65
*Repair of medical equipment	$0.06	0	0	0	0	0	0
Other medical care services	$13.86	$7.94	$9.35	$6.19	$16.09	$22.77	$20.00
Drugs	$225.26	$255.13	$228.07	$243.50	$250.24	$216.93	$231.03
*Non-prescription drugs	$65.79	$71.19	$57.80	$74.26	$86.34	$75.99	$72.99
Prescription drugs	$159.49	$183.94	$170.27	$169.24	$163.91	$140.94	$158.04
Medical supplies	$71.06	$62.30	$56.83	$60.54	$69.93	$94.24	$117.26
Eyeglasses	$45.18	$36.08	$36.80	$44.92	$56.67	$64.90	$75.60
*Topicals and dressing	$14.40	$11.82	$10.29	$11.36	$19.22	$24.24	$25.72
Medical equipment for general use	$5.29	$4.76	$4.32	$1.83	$4.67	$4.14	$5.12
Supportive/convalescent medical equipment	$5.70	$7.46	$4.81	$2.02	$8.91	$0.85	$9.30
Rental of medical equipment	$0.50	$0.16	$0.81	$0.36	$0.47	$0.31	$0.55
*Hearing aids	0	0	0	0	0	0	0
Entertainment	$1,348.90	$802.34	$856.00	$1,191.36	$1,510.43	$1,994.64	$3,148.34
Fees and admissions	$351.99	$139.16	$185.75	$309.51	$419.64	$525.52	$979.59
Recreation expenses, out of town trips	$17.85	$6.66	$9.72	$19.86	$20.46	$26.40	$36.78
Club membership dues and fees	$76.68	$31.73	$44.57	$57.91	$79.31	$90.82	$230.17
Fees for participant sports	$46.90	$22.19	$29.18	$46.82	$63.52	$68.77	$102.29
Participant sports out-of-town trips	$18.96	$5.84	$9.50	$15.44	$23.16	$34.10	$44.73
Movie, theater, opera, ballet	$61.06	$29.29	$33.53	$50.31	$70.94	$82.33	$149.40
Movie, others admissions out of town	$25.91	$9.78	$14.04	$28.74	$35.89	$37.17	$52.04
Admission to sporting events	$19.63	$7.36	$9.75	$17.81	$18.39	$41.10	$46.63
Admission to sports events out-of-town	$25.91	$9.78	$14.04	$28.74	$35.89	$37.17	$52.04
Fees for recreational lessons	$41.23	$9.71	$11.70	$24.00	$51.63	$77.27	$124.72
Oth ent serv, out-of-town trip	$17.85	$6.66	$9.72	$19.86	$20.46	$26.40	$36.78
Television, radios and sound equipment	$422.50	$296.54	$322.06	$416.12	$493.76	$576.29	$766.05
Televisions	$295.95	$266.52	$244.26	$299.91	$344.82	$396.06	$509.85
Community antenna or cable tv	$137.94	$110.11	$118.89	$142.38	$161.32	$184.06	$261.51
*Black and white tv	$2.84	$0.85	0	$1.95	0	0	$16.41
Color tv—console	$23.80	$16.77	$20.77	$26.58	$27.00	$24.27	$31.30
Color tv—portable/table model	$43.50	$36.42	$37.50	$48.29	$39.51	$54.93	$71.36
Vcr's/video disc players	$47.70	$36.06	$36.49	$41.57	$69.42	$66.10	$95.51
Video cassettes/tapes/discs	$13.44	$8.31	$8.72	$11.97	$18.39	$21.56	$28.99
Video games hardware/software	$14.86	$5.40	$7.91	$16.27	$17.25	$31.40	$29.94
Repair of tv/radio/sound equipment	$10.43	$8.54	$11.52	$8.32	$10.43	$15.74	$17.75
Rental of televisions	$1.81	$4.24	$2.48	$0.57	$1.49	0	$0.04
Radios, sound equipment	$126.55	$68.03	$77.80	$116.21	$148.96	$178.21	$276.21
*Radios	$4.84	$1.81	$1.57	$3.99	$7.25	$8.26	$11.80
*Phonographs	$0.53	0	0	)	0	$0.40	$3.35
*Tape recorders and players	$10.50	$7.02	$7.43	$0.51	$0.96	$9.12	$27.49
Sound components/component systems	$28.64	$22.79	$17.34	$35.08	$23.87	$45.24	$62.93
*Misc sound equipment	$0.16	$0.55	$0.09	0	$0.24	0	$0.25
*Sound equip accessories	$4.29	$1.46	$1.12	$12.72	$4.33	$1.66	$6.77
Record/tape club	$4.17	$2.16	$4.62	$3.63	$7.45	$6.14	$5.91
Records, tapes, needles, styling	$25.86	$14.32	$15.10	$20.10	$29.81	$39.90	$57.19
Rental of vcr/radio/sound equip	$1.58	$0.70	$1.56	$1.96	$1.54	$0.39	$1.40
Musical instruments/accessories	$20.58	$3.32	$12.63	$13.86	$37.81	$24.77	$53.28
Rent/repair music instruments	$2.12	$0.30	$1.16	$1.62	$1.95	$4.09	$5.25
Rental of video cassett/tapes/discs/films	$23.27	$13.65	$15.18	$22.74	$33.76	$36.22	$42.49
Pets, toys and playground equip	$242.26	$134.73	$182.82	$234.32	$336.90	$364.45	$457.26
Pets	$136.31	$77.25	$119.89	$125.56	$183.79	$180.80	$256.06
*Pet food	$66.61	$53.56	$46.56	$63.13	$93.51	$83.41	$108.50
*Pet-purch/supplies/medicine	$25.23	$5.71	$43.99	$24.37	$29.83	$28.53	$48.96

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Pet services	$10.64	$4.26	$4.40	$9.06	$14.74	$19.11	$26.24
Vet services	$33.84	$13.73	$24.94	$26.99	$45.71	$49.75	$74.36
Toys, games, hobbies, and tricycles	$102.96	$57.26	$62.55	$107.09	$149.80	$167.96	$187.24
Playground equipment	$2.96	$0.22	$0.36	$1.66	$3.31	$5.69	$10.94
Other entertainment supplies, equip., serv	$332.16	$231.90	$166.36	$231.29	$260.12	$536.39	$1023.44
Unmotorized boats and trailers	$24.02	$2.29	0	$22.31	$7.09	$46.24	$98.99
Boats w/o motor/boat trailers	$18.32	$1.63	0	$18.35	$4.78	$33.83	$73.57
Trailer/other attachable campers	$5.70	$0.46	0	$3.96	$2.34	$12.41	$23.42
Powered sports vehicles	$137.44	$168.02	$56.37	$51.83	$40.89	$217.35	$510.44
Motorized camper coach/other vehicles	$38.79	$83.50	$11.55	$1.85	$28.53	$22.53	$134.36
Purchase of boat with motor	$86.65	$84.52	$44.82	$50.19	$12.36	$194.81	$378.06
Rental of sports vehicles	$2.33	0	$1.06	$1.43	$1.14	$3.90	$8.13
Rental non-camper trailer	$0.06	0	0	$0.23	$0.02	0	$0.09
Boat/trailer rent out of town	$0.94	0	$0.50	$0.02	$0.69	$3.17	$1.94
Rental camper/oth vehicles on trips	$0.58	0	$0.52	$0.30	$0.24	$0.57	$2.51
Rental of boat	$0.23	0	$0.04	0	0	$0.16	$1.42
Rental of campers other t.v	$0.52	0	0	$0.87	$0.19	0	$2.17
Outboard motors	$1.26	$1.43	$1.35	$0.11	$0.51	$0.22	$5.79
Docking/landing fees	$5.33	$0.17	$2.51	$3.30	$3.12	$5.73	$20.20
Sports equipment	$96.67	$27.99	$52.35	$82.59	$113.75	$136.51	$211.99
Athletic gear/game tables/excluding equipment	$34.85	$9.06	$26.36	$33.84	$36.39	$61.59	$85.92
Bicycles	$12.26	$5.80	$6.80	$12.50	$17.62	$20.21	$23.55
Camping equipment	$3.26	$1.35	$1.33	$1.45	$4.94	$4.43	$9.21
Hunting and fishing equipment	$15.91	$5.09	$11.57	$15.40	$22.84	$24.90	$36.25
Winter sport equipment	$4.86	$0.94	$2.24	$3.99	$5.69	$3.92	$16.95
Water sport and miscellaneous sport equipment	$13.20	$3.66	$4.03	$12.31	$22.46	$17.71	$34.87
Rental/repair of miscellaneous equipment	$2.31	$2.09	$0.22	$3.09	$1.80	$3.76	$5.25
Photographic equipment and supplies	$69.61	$26.16	$48.35	$67.08	$83.07	$119.31	$157.10
Film	$19.96	$9.29	$13.73	$20.05	$22.90	$32.26	$43.61
*Other photographic supplies	$0.64	$2.38	$1.01	$0.26	$0.15	$0.24	$1.17
Film processing	$25.21	$10.72	$15.21	$23.97	$26.28	$41.48	$59.82
Rent/repair photo equipment	$0.24	$0.05	$0.42	$0.30	$0.27	$0.34	$0.47
Photographic equipment	$15.43	$5.16	$7.26	$13.04	$20.47	$25.46	$40.91
*Photographer fees	$8.12	$0.56	$10.71	$9.45	$11.00	$19.51	$11.12
*Fireworks	$0.51	$0.99	$0.26	0	0	0	$2.37
*Souvenirs	$0.44	0	0	0	$0.49	$0.38	$2.15
*Visual goods	$0.78	0	0	$0.42	$0.67	0	$3.83
*Pinball, electronic video games	$3.78	$2.87	$3.11	$2.34	$9.38	$8.74	$4.45
Personal care products and services	$345.68	$249.04	$282.21	$324.70	$420.30	$478.79	$651.43
Personal care products	$179.05	$136.69	$166.87	$169.79	$198.77	$245.49	$335.33
*Hair care products	$40.57	$34.79	$36.67	$37.36	$41.43	$56.30	$77.75
*Non-electric articles for the hair	$4.26	$3.55	$2.64	$5.57	$4.31	$6.79	$8.37
Wigs and hairpieces	$1.07	$0.47	$0.91	$0.59	$1.50	$0.34	$2.71
*Oral hygiene products, articles	$18.18	$13.60	$18.18	$16.89	$22.18	$22.44	$29.63
*Shaving needs	$8.49	$8.31	$12.14	$8.22	$9.09	$11.31	$13.16
Cosmetic, perfume, bath prep	$77.63	$55.67	$73.82	$72.41	$90.11	$102.03	$148.23
Deodorant, feminine hygiene, miscellaneous personal care	$23.52	$17.79	$19.75	$23.84	$22.08	$38.47	$43.65
Electric personal care appliances	$5.35	$2.51	$2.95	$4.92	$8.07	$7.80	$11.83
Personal care services	$166.63	$112.35	$115.34	$154.91	$221.54	$233.30	$316.10
*Personal care services/females	$89.35	$61.33	$58.80	$83.46	$127.40	$112.04	$174.06
Personal care services/males	$77.12	$50.83	$56.42	$71.27	$93.93	$120.95	$141.78
Repair of personal care appliances	$0.16	$0.19	$0.11	$0.18	$0.21	$0.31	$0.24
Reading	$152.49	$93.38	$113.87	$142.11	$185.46	$229.92	$287.41
Newspapers	$63.99	$47.96	$53.05	$63.85	$72.82	$84.18	$105.97
Magazines	$38.92	$21.42	$31.03	$38.54	$45.36	$65.91	$71.63
*Newsletters	$0.04	0	0	0	0	$0.42	0
Books thru book clubs	$10.63	$6.87	$8.72	$8.86	$15.44	$16.33	$21.60
Books not thru book clubs	$35.24	$16.73	$20.13	$26.28	$48.03	$54.12	$79.39
Encyclopedia and other sets of reference books	$3.87	$0.40	$0.95	$2.57	$3.81	$8.97	$6.81
Education	$324.43	$187.02	$118.84	$190.35	$322.81	$349.24	$835.73
Schoolbooks, supplies for day care, nursery, other	$2.52	$1.44	$1.56	$1.30	$6.04	$2.25	$4.76
College tuition	$176.75	$91.59	$47.50	$99.69	$186.76	$125.89	$458.90
Elementary/high school tuition	$53.20	$6.10	$10.62	$25.10	$34.39	$97.91	$204.76
Other school tuition	$15.29	$8.32	$17.55	$9.00	$13.94	$21.56	$31.48
Other school expenses including rentals	$15.78	$14.42	$10.07	$10.77	$13.45	$22.84	$33.02
Schoolbooks/supplies for college	$26.56	$25.25	$17.75	$16.83	$24.53	$16.65	$41.06
Schoolbooks for elementary/high school	$8.23	$5.70	$3.25	$5.64	$7.82	$9.58	$11.28
*School supplies, etc.—unspecified	$26.10	$34.20	$10.53	$22.22	$35.87	$52.73	$50.44
Tobacco products and smoking supplies	$242.33	$221.48	$250.05	$262.82	$292.87	$248.43	$270.28
Cigarettes	$224.61	$197.67	$235.29	$244.22	$273.20	$230.82	$251.80
Other tobacco products	$15.28	$15.85	$13.94	$16.00	$17.99	$17.73	$17.12
*Smoking accessories	$2.44	$7.96	$0.82	$2.60	$1.69	$0.88	$1.37
*Marijuana	0	0	0	0	0	0	0
Miscellaneous	$597.56	$345.77	$474.63	$553.17	$759.62	$811.02	$1,182.12
*Miscellaneous fees, parimutuel losses	$36.61	$20.23	$56.87	$26.40	$62.29	$47.89	$76.50

APPENDIX 1.—CONSUMER EXPENDITURE SURVEY (CES)—Continued

[By income before taxes: Average annual expenditures and characteristics of all consumer units, Consumer Expenditure Survey 1988, February 13, 1990–June 7, 1990]

Item	Total complete reporting	$10,000 to $14,999	$15,000 to $19,999	$20,000 to $29,999	$30,000 to $39,999	$40,000 to $49,999	$50,000 and over
Legal fees	$104.50	$81.84	$49.27	$109.06	$133.34	$62.67	$255.98
Funeral expenses	$49.32	$44.70	$62.96	$57.05	$13.57	$49.05	$18.62
Safety deposit box rental	$5.69	$4.05	$3.61	$5.05	$5.86	$6.20	$12.59
Checking accounts, other bank services	$25.19	$16.23	$26.64	$28.95	$33.62	$38.14	$31.89
Cemetery lots or vaults	$17.66	$14.30	$25.91	$12.86	$13.74	$12.52	$18.29
Accounting fees	$39.87	$18.96	$20.72	$33.62	$52.32	$47.89	$93.19
*Miscellaneous personal services	$23.02	$14.53	$16.61	$12.43	$39.32	$40.69	$47.66
Finance charges excluding mortgage vehicle	$203.45	$89.63	$149.53	$217.35	$284.11	$321.25	$408.61
Occupational expenses	$90.26	$41.30	$42.48	$50.40	$131.66	$184.94	$216.49
Cash contributions	$730.19	$352.83	$486.72	$529.26	$781.16	$956.30	$2,102.92
Cash contributions non-CU members including alimony and students at college (Sec. 22)	$179.06	$64.23	$106.64	$127.13	$209.98	$235.99	$549.04
Gifts non-CU members	$149.99	$70.48	$52.77	$109.45	$161.57	$162.57	$485.66
Contributions to charities	$89.16	$13.23	$38.96	$32.84	$85.78	$99.80	$244.53
Contributions to church	$295.54	$197.57	$276.14	$242.30	$322.49	$423.81	$661.17
Contributions to educational organizations	$17.97	$1.07	$2.76	$2.95	$12.56	$12.48	$89.44
Political contributions	$7.29	$0.89	$1.75	$2.38	$6.73	$10.74	$30.82
Other contributions	$11.18	$5.37	$5.50	$12.23	$2.05	$10.90	$42.27
Personal insurance and pensions	$2,532.36	$682.85	$1,373.19	$2,097.59	$3,266.30	$4,542.32	$6,883.06
Life and other personal insurance	$324.17	$137.92	$260.62	$301.69	$354.87	$494.30	$729.64
Life/endowment/annuity/other persons insurance	$312.04	$132.62	$275.54	$290.33	$342.68	$488.16	$704.02
Other non-health insurance	$12.13	$5.30	$5.08	$11.36	$12.19	$26.13	$25.62
Retirement, pensions, social security	$2,208.19	$544.93	$1,092.57	$1,795.89	$2,911.44	$4,048.02	$6,153.42
Deduction for government retirement	$65.36	$4.38	$25.17	$48.33	$62.39	$119.99	$211.42
Deductions for railroad retirement	$6.23	0	$1.33	$0.24	$19.12	$16.29	$13.24
Deductions for private pensions	$156.10	$11.73	$39.55	$84.26	$160.96	$328.55	$564.77
Deductions for self-employment IRA's and Keogh plans	$297.28	$36.24	$78.45	$181.88	$333.32	$494.25	$1,049.52
Deductions for social security	$1,683.21	$492.58	$948.07	$1,481.16	$2,315.63	$3,068.94	$4,314.46

[1] Components of income and taxes are derived from "Complete income reporters" only; see glossary.

Appendix 2

The basic Laspeyres index formula as applied to geographic cost-of-living comparisons can be expressed as:

$$I = \sum \frac{P_a}{B_a} \times Q_a$$

where

I = Index relationship for a certain subcategory, category or component of living costs

P_a = Price of the a'th item of a group of items in the given location

B_a = Price of the a'th item of that same group of items in the base location

Q_a = Relative importance or weighting of the a'th item as compared to the relative importance of all other items in the grouping such that the sum of the weightings equals 100%.

The remainder of this appendix presents the mathematical formulas used to develop cost comparison indexes from the price quotes gathered. Explanations of item, subcategory, category and component weighting patterns are included in other sections of the report. Formulas used in only certain allowance areas are noted.

Terms Used Throughout Appendix

AVE (variable name or expression)—Arithmetic mean of all relevant values of the variable name or expression listed.

SUM (variable name or expression)—The sum of all relevant values of the variable name or expression listed.

LINREG (variable name)—Linear regression analysis of all relevant values of the dependent variable name listed. Independent variable housing size in square feet.

MD—Data gathered in Maryland

VA—Data gathered in Virginia

DC—Data gathered in the District of Columbia

WDC—The Washington DC Area (composite of MD, VA and DC)

AA—An allowance area

L—Designates lower income level

M—Designates middle income level

U—Designates upper income level

O—Designates housing owner

R—Designates housing renter

Consumption Goods and Services (G&S)

Given: IP = Price quotes for each G&S item

AVE (IP_{WDC}) = AVE (AVE(IP_{MD}), AVE(IP_{VA}), AVE(IP_{DC}))

For G&S categories with subcategories (i.e., food at home, furnishings and household operations, clothing and recreation):

Given IWT = Item weighting within a subcategory such that SUM (IWT) = 100%.

SUBWT = Subcategory weighting within a category such that SUM (SUBWT) = 100%.

The category index CATIDX for each of these 4 categories is:

$CATIDX_{AA}$ = SUM (SUM(AVE(IP_{AA}) × IWT / AVE(IP_{WDC}))[1] SUBWT)

For G&S categories without subcategories (i.e., food away, tobacco, alcohol, domestic service, health care (Part 1 only), professional services (Part 2 only), personal care):

Given IWT = Item weighting within a category such that SUM(IWT) = 100%

The category index CATIDX for each of these 6 categories is:

$CATIDX_{AA}$ = SUM (AVE(IP_{AA}) × IWT / AVE(IP_{WDC}))

G&S index (GSIDX) at each income level in each allowance area:

Given CATWT = Category weighting such that SUM(CATWT) = 100%

$GSIDX_{AA}$ = SUM (CATIDX × CATWT)

Note: For Puerto Rico, a GSIDX is calculated for each of San Juan and Mayaguez.

Given: $WT_{San\ Juan}$ = Weighting given to San Juan data (see Section 3.5)

$WT_{Mayaguez}$ = Weighting given to Mayaguez data (see Section 3.5)

$GSIDX_{Puerto\ Rico} = (GSIDX_{San\ Juan} \times WT_{San\ Juan}) + (GSIDX_{Mayaguez} \times WT_{Mayaguez})$

Housing

Maintenance element for owners only (MNT)

Given MIP = Price quotes for each maintenance item

MWT = Maintenance item weighting such that SUM (MWT) = 100%

SM = Housing size multiplier for L, M, and U

MEA = Maintenance expenditure amount from CES

AVE (MIP_{WDC}) = AVE(AVE(MIP_{MD}) + AVE (MIP_{VA}) + AVE (MIP_{DC}))

For each income level for owners only:

$MNT_{AA} = MEA \times SM \times SUM(AVE(MIP_{AA}) \times MWT / AVE(MIP_{WDC}))$

Owners/Renters Insurance (INS)

Given: INSP—Price quotes for designated insurance coverage

For each income level and owner/renter:

$INS_{AA} = AVE(INSP_{AA})$

Utilities—Electric, water, oil, natural gas, and telephone

Electric, water, oil and natural gas are all calculated in a similar fashion. In general:

Given: QT—Average quantity of usage per month

RATE—Cost per unit

SC—Monthly service charge

In general, for each of electric, water, oil, and gas, the annual cost (EACHUTIL) is:

$EACHUTIL_{AA} = ((QT_{AA} \times RATE_{AA}) + SC_{AA}) \times 12$

In several cases, the RATE charge varied by quantity used. In these cases, we applied the appropriate RATE at each quantity level.

Annual telephone charges (TEL):

Given: BMT—Basic monthly telephone charge

LD—Sum of three long distance calls

$TEL_{AA} = (BMT_{AA} + LD_{AA}) \times 12$

To compute the average annual utility cost (AVEUTIL) for each location, we sum up all utility types that are typically used:

Electric, water and telephone—all locations

Oil—Juneau and Fairbanks only

Natural gas—Anchorage and WDC

To compute AVEUTIL for each of the six housing considerations, we apply a housing size multiplier to average electric, water, oil, and natural gas utilities.

Given: SM—Housing size multiplier

$AVEUTIL_{AA} = SUM(EACHUTIL_{AA} \times SM) + TEL_{AA}$

Real estate tax for owners only (RETX)

$RETX_{AA}$ is calculated based on the tax formula in each area as it applies to the calculated home market values. See Section 5.2.4.2 for more information.

Annual housing costs for owners (HSGPI)

Given: HMV = Home market values

I = Annual mortgage interest rate

DP = Down payment percentage

N = Loan length in years

i = Monthly interest (AVE(I_{AA}) / 12)

n = Loan length in months (N × 12)

For each income level,

$$HSGPI_{AA} = \frac{12 \times LINREG(HMV_{AA}) \times (1 - DP) \times I}{1 - (1 + I)^{-n}}$$

Note: In Guam, St. Thomas and Mayaguez, LINREG(HMV) was replaced with a simpler averaging technique because of data limitations.

Annual housing costs for renters (RTL)

Given: RENT = Rental rates

For each income level

$RTL_{AA} = AVE(RENT_{RA})$

Total housing costs for owners (THO)

For each income level,

$THO_{AA} = MNT_{AA} + INS_{AA} + AVEUTIL_{AA} + RETX_{AA} + HSGPI_{AA}$

Total housing costs for renters (THR)

For each income level,

$THR_{AA} = INS_{AA} + AVEUTIL_{AA} + RTL_{AA}$

Note: For Puerto Rico, a San Juan/Mayaguez composite is calculated:

$THO_{Puerto\ Rico} = (THO_{San\ Juan} \times WT_{San\ Juan}) + (THO_{Mayaguez} \times WT_{Mayaguez})$

$THR_{Puerto\ Rico} = (THR_{San\ Juan} \times WT_{San\ Juan}) + (THR_{Mayaguez} \times WT_{Mayaguez})$

For WDC, the composite is calculated:

$THO_{WDC} = AVE(THO_{MD}, THO_{VA}, THO_{DC})$

$THR_{WDC} = AVE(THR_{MD}, THR_{VA}, THR_{DC})$

Transportation (TRANS)

Public Transportation

Given: PPT = Price of public transportation

$AVE(PPT_{WDC}) = AVE(PPT_{MD}, PPT_{VA}, PPT_{DC})$

For each allowance area, public transportation index (PUBTI) is:

$PUBTI_{AA} = AVE(PPT_{AA} / AVE(PPT_{WDC}))$

Note: In Guam and Maui County, no viable public transportation was available; therefore no PUBTI values were calculated.

Private Transportation

Given: F = Fuel prices

AMD = Annual miles driven

MPG = Vehicle performance in miles per gallon

VMI = Vehicle maintenance/oil item prices

AFMI = Annual frequency of each maintenance/oil items

TC = Trade cycle in years

TL = Tire treadlife in miles

TP = Tire price

LIC = Annual license and registration fees

MTX = Annual miscellaneous tax

NVP = New vehicle price (which includes all specified accessories, dealer markup, destination charges, sales tax and other applicable taxes.

UVP = Used vehicle price

IV = Annual vehicle interest rate

DPV = Down payment percentage for vehicles

nv = Loan length for vehicle loan in months

iv = Monthly interest (AVE(IV_{AA}) / 12)

VINS = Annual vehicle insurance

For each vehicle:

Annual fuel costs (AFC):

$AFC_{AA} = AMD_{AA} \times AVE(F_{AA}) / MPG_{AA}$

Annual maintenance cost (AMC):

$AMC_{AA} = SUM(AVE(VMI_{AA}) \times AFMI_{AA})$

Annual tires cost (ATC):

$ATC_{AA} = AMD_{AA} \times AVE(TP_{AA}) \times (4\ tires) / TL_{AA}$

Annual vehicle depreciation (AVD):

$AVD_{AA} = (NVP_{AA} - UVP_{AA}) / TC$

Annual financial expense (AFE):

$$AFE_{AA} = \frac{12 \times NVP_{AA} \times (1 - DPV) \times iv}{1 - (1 + iv)^{-nv}}$$

Total annual vehicle costs (AVC):

$AVC_{AA} = AFC_{AA} + AMC_{AA} + ATC_{AA} + LIC + MTX_{AA} + AVD_{AA} + AFE_{AA}$

Note: For Puerto Rico, a San Juan/Mayaguez composite is calculated:

$AVC_{Puerto\ Rico} = (AVC_{San\ Juan} \times WT_{San\ Juan}) + (AVC_{Mayaguez} \times WT_{Mayaguez})$

For WDC, the composite is calculated:

$AVC_{WDC} = AVE(AVC_{MD}, AVC_{VA}, AVC_{DC})$

For each income level,

Given: PUBWT = Weighting of public transportation

PVWT = Weighting of private transportation such that PUBWT + PVWT = 100%

Total transportation index (TTI):

$TTI_{AA} = PUBTI_{AA} \times PUBWT) + (AVE(AVC_{AA}) \times PVWT / AVE(AVC_{WDC}))$

Note: For Guam and Maui County, PUBLOT = 0 and PVWT = 100%.

Miscellaneous Expenses

Given: MCIP = Price quotes for each miscellaneous item. Items held constant are assigned a price of 1 in all locations. $AVE(MCIP_{WDC}) = AVE(AVE(MCIP_{MD}), AVE(MCIP_{VA}), AVE(MCIP_{DC}))$

Part 1

Given: MIWT = Item weighting within the component such that SUM(MIWT) = 100%

The miscellaneous index MCIDX is:

$MCIDX_{AA} = SUM(AVE(MCIP_{AA}) \times MIWT / AVE(MCIP_{WDC}))$

Part 2

Given: MIWT = Items weighting with a category such that SUM(MIWT) = 100%

MCATWT = Category weighting within the component such that SUM(MCATWT) = 100%

$MCIDX_{AA} = SUM(SUM(AVE(MCIP_{AA}) \times MIWT(AVE(MCIP_{WDC})) \times MCATWT)$

Note: For Puerto Rico, a MCIDX is calculated for each of San Juan and Mayaguez, and a composite is computed:

$MCIDX_{Puerto\ Rico} = (MCIDX_{San\ Juan} \times WT_{San\ Juan}) + (MCIDX_{Mayaguez} \times WT_{Mayaguez})$

Total Cost Comparison Indexes (TCCI)

Given: For each income level, component weighting GSWT, HSGWT, TRWT, MSCWT such that GSWT + HSGWT + TRWT + MCWT = 100%

For each allowance area, income weights (INCWT) such that $INCWT_L + INCWT_M + INCWT_U = 100\%$

For each income level, the weighting for renters (RTLWT) and owners (OWNWT) such that RTLWT + OWNWT = 100%

Part 1 FORMULAE

To calculate a total housing index (HSGIDX) at each income level:

$HSGIDX_{AA} = (THO_{AA} \times OWNWT / THO_{WDC}) + (THR_{AA} \times RTLWT / THR_{WDC})$

The cost comparison index at each income level (CCI) is:

$CCI_{AA} = (GSIDX_{AA} \times GSWT) + (HSGIDX_{AA} \times HSGWT) + (TTI_{AA} \times TRWT) + (MCIDX_{AA} \times MCWT)$

Combining the cost comparison indexes:

$TCCI_{AA} = SUM(CCI_{AA} \times INCWT_{AA})$

Part 2 FORMULAE

For each income level (INC), the WDC reference component expenditure amounts (RCEA) are:

$RCEA_{GAS} = INC \times GSWT$

$RCEA_{HOUSING} = INC \times HSGWT$

$RCEA_{TRANS} = INC \times TRWT$

$RCEA_{MISC} = INC \times MCWT$

Therefore, the total RCEA at each income level for WDC is:

$RCEA_{TOT} = RCEA_{GAS} + RCEA_{HOUSING} + RCEA_{TRANS} + RCEA_{MISC}$

For each allowance area at each income level, to calculate the allowance area component expenditure amounts (AACEA):

$AACEA_{GAS} = RCEA_{GAS} \times GSIDX_{AA}$

$AACEA_{OWN} = RCEA_{HOUSING} \times THO_{AA} / THO_{WDC}$

$AACEA_{RENT} = RCEA_{HOUSING} \times THR_{AA} / THR_{WDC}$

$AACEA_{TRANS} = RCEA_{TRANS} \times TTI_{AA}$

$AACEA_{MISC} = RCEA_{MISC} \times MCIDX_{AA}$

Therefore, the total owner and renter AACEA at each income level is:

$AACEA_{TOT\text{-}OWN} = AACEA_{GAS} + AACEA_{OWN} + AACEA_{TRANS} + AACEA_{MISC}$

$AACEA_{TOT\text{-}RENT} = AACEA_{GAS} + AACEA_{RENT} + AACEA_{TRANS} + AACEA_{MISC}$

Combining the owner and renter AACEA at the three income levels into one total AACEA for each allowance area:

$AACEA_{AA} = SUM(((AACEA_{TOT\text{-}OWN} \times OWNWT) + (AACEA_{TOT\text{-}RENT} \times RTLWT)) \times INCWT_{AA})$

For WDC, we combine the $RCEA_{TOT}$ at the three income levels using each allowance area's income level weighting pattern. Therefore, for each allowance area:

$RCEA_{WDC} = (RCEA_{TOT\text{-}L} \times INCWT_L) + (RCEA_{TOT\text{-}M} \times INCWT_M) + (RCEA_{TOT\text{-}U} \times INCWT_U)$

To calculate the total cost comparison indexes:

$TCCI_{AA} = AACEA_{AA} / RCEA_{WDC\ AA}$

Appendix 3—Part 1

Universal Items

01 00 00	Food at Home		
01 01 00	Meats		
01 01 01	Ground beef	1	lb.
01 01 02	Sirloin steak	1	lb.
01 01 03	Round steak	1	lb.
01 01 04	Chuck roast	1	lb.
01 01 05	Round roast	1	lb.
01 01 06	Pork chops	1	lb.
01 01 07	Bacon	1	lb.
01 01 08	Whole chicken	1	lb.
01 01 09	Frozen fish	1	lb.
01 01 10	Canned tuna	6.5	oz.
01 01 11	Bologna	8	oz.
01 01 12	Ham	1	lb.
01 01 13	Frankfurters	1	lb.
01 01 14	Eggs	1	dz.
01 02 00	Dairy		
01 02 01	Milk	128	fl.
01 02 02	Cheddar cheese	1	lb.
01 02 03	Ice cream	2	qt.
01 03 00	Cereals & bakery		
01 03 01	White bread	24	oz.
01 03 02	Dry spaghetti	16	oz.
01 03 03	Corn flakes	12	oz.
01 03 04	Cookies	16	oz.
01 03 05	Refrigerated biscuit	7.5	oz.
01 03 06	Hamburger buns	12	oz.
01 03 07	Sheet cake	1	un.
01 04 00	Fruits & vegetables		
01 04 01	Apples	1	lb.
01 04 02	Bananas	1	lb.
01 04 03	Tomatoes	1	lb.
01 04 04	Potatoes	10	lb.
01 04 05	Frozen orange juice	48	fl.
01 04 06	Tomato juice	46	fl.
01 04 07	Canned peaches	29	oz.
01 04 08	Frozen peas	10	oz.
01 04 09	Canned beans	16	oz.
01 05 00	Groceries		
01 05 01	Fruit drink	46	fl.
01 05 02	Cola	2	l.
01 05 03	Roasted coffee	13	oz.
01 05 04	Canned soup	1	un.
01 05 05	Potato chips	8	oz.
01 05 06	Salt	26	oz.
01 05 07	Ketchup	14	oz.
01 05 08	Vegetable oil	48	fl.
01 05 09	Margarine	1	lb.
01 05 10	Frozen dinner	11.5	oz.
01 05 11	Jello	3	oz.
01 05 12	Baby food	4.5	oz.
01 05 13	Candy bar	1	un.
01 05 14	Sugar	5	lb.
01 05 15	Bottled water	128	fl.
02 00 00	Food away		
02 01 01	Breakfast	1	un.
02 02 01	Lunch	1	un.
02 03 01	Dinner	1	un.
02 04 01	Fast food lunch/dinner	1	un.
02 05 01	Ice cream cone	1	un.
03 00 00	Tobacco		
03 01 01	Cigarettes	200	un.
04 00 00	Alcohol		
04 01 01	Beer at home	72	fl.
04 02 01	Wine at home	740	ml.
04 03 01	Beer away	1	un.
04 04 01	Wine away	1	un.
05 00 00	Furnishing, household operations		
05 01 00	Services		
05 01 01	Appliance repair	1	un.
05 01 02	Housekeeping service	1	un.
05 01 03	Moving	1	hr.
05 02 00	Supplies		
05 02 01	Toilet paper	4	un.
05 02 02	Pen	1	un.
05 02 03	Postage	1	un.
05 02 04	Laundry soap	64	fl.
05 02 05	Lawn fertilizer	1	un.
05 03 00	Household textiles		
05 03 01	Bed sheet set	1	un.
05 03 02	Bath towel	1	un.
05 04 00	Furniture		
05 04 01	Living room group	1	un.
05 04 02	Bedroom group	1	un.
05 04 03	Kitchen group	1	un.
05 06 00	Major appliances		
05 06 01	Washing machine	1	un.
05 06 02	Kitchen range	1	un.
05 06 03	Refrigerator	1	un.
05 06 04	Vacuum cleaner	1	un.
05 07 00	Housewares & small appliances		
05 07 01	Two slice toaster	1	un.
05 07 02	Two quart casserole	1	un.
05 07 03	4 place setting Chins	1	un.
05 08 00	Misc. household equipment		
05 08 01	Electric drill	1	un.
05 08 02	Weed eater	1	un.
05 08 03	Fresh cut red roses	12	un.
05 08 04	Hammer	1	un.
05 08 05	Window shade	1	un.
05 08 06	Bath rug	1	un.
06 00 00	Clothing		
06 01 00	Men's & boys		
06 01 01	Man's suit	1	un.
06 01 02	Man's pants	1	un.
06 01 03	Man's shirt	1	un.
06 01 04	Man's jacket	1	un.
06 01 05	Boy's pants	1	un.
06 01 06	Boy's shirt	1	un.
06 02 00	Women's & girls		
06 02 01	Woman's dress	1	un.
06 02 02	Woman's blouse	1	un.
06 02 03	Woman's pants	1	un.
06 02 04	Woman's sweater	1	un.
06 02 05	Woman's jacket	1	un.
06 02 06	Woman wallet	1	un.
06 02 07	Girl's dress	1	un.
06 02 08	Girl's pants	1	un.
06 02 09	Girl's blouse	1	un.
06 03 00	Infant's		
06 03 01	Infant's dress	1	un.
06 03 02	Disposable diapers	80	un.
06 04 00	Footwear		
06 04 01	Man's shoes	1	un.
06 04 02	Woman's shoes	1	un.
06 05 00	Apparel products & services		
06 05 01	Jewelry	1	un.
06 05 02	Coin laundry	1	un.
06 05 03	Dry cleaning	1	un.
07 00 00	Domestic service		
07 01 01	Day care	1	mo.
07 02 01	Babysitting	1	hr.
08 00 00	Medical care		
08 01 01	Aspirin	100	un.
08 02 01	Tetracycline	24	un.
08 03 01	Vision check	1	un.
08 04 01	Dental service	1	un.
08 05 01	Doctor visit	1	un.
08 06 01	Hospital room	1	un.
08 07 01	Health insurance		
09 00 00	Personal care		
09 01 01	Woman's haircut	1	un.
09 02 01	Man's haircut	1	un.
09 03 01	Lipstick	1	un.
09 04 01	Shampoo	15	fl.
10 00 00	Recreation		
10 01 00	Fees & admissions		
10 01 01	Bowling	1	un.
10 01 02	Golf	1	un.
10 01 03	Movie	1	un.
10 01 04	Health club	1	un.
10 01 05	Piano lesson	.5	hr.
10 02 00	TV, radio & equipment		
10 02 01	Rent video tape	1	un.
10 02 02	Video recorder	1	un.
10 02 03	Audio cassette tape	1	un.
10 02 04	Compact disc player	1	un.
10 02 05	Portable color TV	1	un.
10 02 06	Basic cable service	1	un.
10 03 00	Pets		
10 03 01	Vet services	1	un.
10 03 02	Pet food	6	oz.

10 04 00	Entertainment supplies	
10 04 01	Film processing	24 un.
10 04 02	Roll of film	24 un.
10 04 03	Tennis balls	3 un.
10 04 04	Game	1 un.
10 05 00	Reading	
10 05 01	Book	1 un.
10 05 02	Magazine	1 un.
10 05 03	Newspaper	1 un.

Appendix 3—Part 3

Universal Items

01 00 00	Food at Home	
01 01 00	Meats	
01 01 01	Ground beef	1 lb.
01 01 02	Sirloin steak	1 lb.
01 01 03	Round steak	1 lb.
01 01 04	Chuck roast	1 lb.
01 01 05	Round roast	1 lb.
01 01 06	Pork chops	1 lb.
01 01 07	Bacon	1 lb.
01 01 08	Whole chicken	1 lb.
01 01 09	Frozen fish	1 lb.
01 01 10	Canned tuna	6.5 oz.
01 01 11	Bologna	8 oz.
01 01 12	Ham	1 lb.
01 01 13	Frankfurters	1 lb.
01 01 14	Eggs	1 dz.
01 02 00	Dairy	
01 02 01	Milk	128 fl.
01 02 02	Cheddar cheese	1 lb.
01 02 03	Ice cream	2 qt.
01 03 00	Cereals & bakery	
01 03 01	White bread	24 oz.
01 03 02	Dry spaghetti	16 oz.
01 03 03	Corn flakes	12 oz.
01 03 04	Cookies	16 oz.
01 03 05	Refrigerated biscuit	7.5 oz.
01 03 06	Hamburger buns	12 oz.
01 03 07	Sheet cake	1 un.
01 04 00	Fruits & vegetables	
01 04 01	Apples	1 lb.
01 04 02	Bananas	1 lb.
01 04 03	Tomatoes	1 lb.
01 04 04	Potatoes	10 lb.
01 04 05	Frozen orange juice	48 fl.
01 04 06	Tomato juice	46 fl.
01 04 07	Canned peaches	29 oz.
01 04 08	Frozen peas	10 oz.
01 04 09	Canned beans	16 oz.
01 05 00	Groceries	
01 05 01	Fruit drink	46 fl.
01 05 02	Cola	2 L.
01 05 03	Roasted coffee	13 oz.
01 05 04	Canned soup	1 un.
01 05 05	Potato chips	8 oz.
01 05 06	Salt	26 oz.
01 05 07	Ketchup	14 oz.
01 05 08	Vegetable oil	48 fl.
01 05 09	Margarine	1 lb.
01 05 10	Frozen dinner	11.5 oz.
01 05 11	Jello	3 oz.
01 05 12	Baby food	4.5 oz.
01 05 13	Candy bar	1 un.
01 05 14	Sugar	5 lb.
01 05 15	Bottled water	128 fl.
02 00 00	Food away	
02 01 01	Breakfast	1 un.
02 02 01	Lunch	1 un.
02 03 01	Dinner	1 un.
02 04 01	Fast food lunch/dinner	1 un.
02 05 01	Ice cream cone	1 un.
03 00 00	Tobacco	
03 01 01	Cigarettes	200 un.
04 00 00	Alcohol	
04 01 01	Beer at home	72 fl.
04 02 01	Wine at home	740 ml.
04 03 01	Beer away	1 un.
04 04 01	Wine away	1 un.
05 00 00	Furnishing, household operations	
05 01 00	Services	
05 01 01	Appliance repair	1 un.
05 01 02	Housekeeping service	1 un.
05 01 03	Moving	1 hr.
05 02 00	Supplies	
05 02 01	Toilet paper	4 un.
05 02 02	Pen	1 un.
05 02 03	Postage	1 un.
05 02 04	Laundry soap	64 fl.
05 02 05	Lawn fertilizer	1 un.
05 03 00	Household textiles	
05 03 01	Bed sheet set	1 un.
05 03 02	Bath towel	1 un.
05 04 00	Furniture	
05 04 01	Living room group	1 un.
05 04 02	Bedroom group	1 un.
05 04 03	Kitchen group	1 un.
05 06 00	Major appliances	
05 06 01	Washing machine	1 un.
05 06 02	Kitchen range	1 un.
05 06 03	Refrigerator	1 un.
05 06 04	Vacuum cleaner	1 un.
05 07 00	Housewares & small appliances	
05 07 01	Two slice toaster	1 un.
05 07 02	Two quart casserole	1 un.
05 07 03	4 place setting China	1 un.
05 08 00	Misc. household equipment	
05 08 01	Electric drill	1 un.
05 08 02	Weed eater	1 un.
05 08 03	Fresh cut red roses	12 un.
05 08 04	Hammer	1 un.
05 08 05	Window shade	1 un.
05 08 06	Bath rug	1 un.
06 00 00	Clothing	
06 01 00	Men's & boy's	1 un.
06 01 01	Man's suit	1 un.
06 01 02	Man's pants	1 un.
06 01 03	Man's shirt	1 un.
06 01 04	Man's jacket	1 un.
06 01 05	Boy's pants	1 un.
06 01 06	Boy's shirt	1 un.
06 02 00	Women's & girl's	
06 02 01	Woman's dress	1 un.
06 02 02	Woman's blouse	1 un.
06 02 03	Woman's pants	1 un.
06 02 04	Woman's sweater	1 un.
06 02 05	Woman's jacket	1 un.
06 02 06	Woman wallet	1 un.
06 02 07	Girl's dress	1 un.
06 02 08	Girl's pants	1 un.
06 02 09	Girl's blouse	1 un.
06 03 00	Infant's	
06 03 01	Infant's dress	1 un.
06 03 02	Disposable diapers	60 un.
06 04 00	Footwear	1 un.
06 04 01	Man's shoes	
06 04 02	Woman's shoes	1 un.
06 05 00	Apparel products & services	
06 05 01	Jewelry	1 un.
06 05 02	Coin laundry	1 un.
06 05 03	Dry cleaning	1 un.
07 00 00	Domestic service	
07 01 01	Day care	1 mo.
07 02 01	Babysitting	1 hr.
08 00 00	Professional services	
08 01 01	Legal Services	1 un.
08 02 01	Accounting Services	1 un.
09 00 00	Personal care	
09 01 01	Woman's haircut	1 un.
09 02 01	Man's haircut	1 un.
09 03 01	Lipstick	1 un.
09 04 01	Shampoo	15 fl.
10 00 00	Recreation	
10 01 00	Fees & admissions	
10 01 01	Bowling	1 un.
10 01 02	Golf	1 un.
10 01 03	Movie	1 un.
10 01 04	Health club	1 yr.
10 01 05	Piano lesson	.5 hr.
10 02 00	TV, radio & equipment	
10 02 01	Rent video tape	1 un.
10 02 02	Video recorder	1 un.
10 02 03	Audio cassette tape	1 un.
10 02 04	Compact disc player	1 un.
10 02 05	Portable color TV	1 un.
10 02 06	Basic cable service	1 un.
10 03 00	Pets	
10 03 01	Vet services	1 un.
10 03 02	Pet food	6 oz.
10 04 00	Entertainment supplies	
10 04 01	Film processing	24 un.
10 04 02	Roll of film	24 un.
10 04 03	Tennis balls	3 un.
10 04 04	Game	1 un.
10 05 00	Reading	
10 05 01	Book	1 un.
10 05 02	Magazine	1 un.
10 05 03	Newspaper	1 un.

Appendix 4—Part 1

PX/Commissary Spending Patterns (Percentage)

Category	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Goods & Services					
1. Food At Home	61.3	66.2	70.0	52.7	29.1
2. Food Away	0.0	0.0	0.0	0.0	0.0
3. Tobacco	81.0	71.0	64.0	84.0	65.0
4. Alcohol	53.0	47.0	76.0	73.0	64.0
5. Furnishing & Household Operation	46.2	44.3	64.5	44.2	32.7
6. Clothing	17.3	18.3	43.7	34.0	10.7
7. Domestic Service	0.0	0.0	0.0	0.0	0.0
8. Professional Services	0.0	0.0	0.0	0.0	0.0
9. Personal Care	59.5	36.0	49.3	33.3	7.3
10. Recreation	49.7	33.7	49.7	32.7	15.7
Miscellaneous Expense					
1. Medical Care	72.3	66.3	59.0	46.3	9.3
2. Cash Contribution	0.0	0.0	0.0	0.0	0.0
3. Personal Insurance/Pension	0.0	0.0	0.0	0.0	0.0

BILLING CODE 6325-01-M

PX/Commissary Spending Patterns (Percentage)—Continued

Category	Fairbanks	Anchorage	Guam	Honolulu	San Juan
5. Furnishing & Household Operation	46.2	44.3	64.5	44.2	32.7
6. Clothing	17.3	18.3	43.7	34.0	10.7
7. Domestic Service	0.0	0.0	0.0	0.0	0.0
8. Medical Care	72.3	66.3	59.0	46.3	9.3
9. Personal Care	59.5	36.0	49.3	33.3	7.3
10. Recreation	49.7	33.7	49.7	32.7	15.7

Appendix 4—Part 2

PX/Commissary Spending Patterns (Percentage)

Category	Fairbanks	Anchorage	Guam	Honolulu	San Juan
Goods & Services					
1. Food At Home	61.3	66.2	70.0	52.7	29.1
2. Food Away	0.0	0.0	0.0	0.0	0.0
3. Tobacco	81.0	71.0	64.0	84.0	65.0
4. Alcohol	53.0	47.0	76.0	73.0	64.0
5. Furnishing and Household Operation	46.2	44.3	64.5	44.2	32.7
6. Clothing	17.3	18.3	43.7	34.0	10.7
7. Domestic Service	0.0	0.0	0.0	0.0	0.0
8. Professional Services	0.0	0.0	0.0	0.0	0.0
9. Personal Care	59.5	36.0	49.3	33.3	7.3
10. Recreation	49.7	33.7	49.7	32.7	15.7
Miscellaneous Expense					
1. Medical Care	72.3	66.3	59.0	46.3	9.3
2. Cash Contribution	0.0	0.0	0.0	0.0	0.0
3. Personal Insurance/Pension	0.0	0.0	0.0	0.0	0.0

BILLING CODE 6325-01-M

Appendix 5

August 1990 Pricing
Prepared by _____
Date ___/___/___

Sample Price Sheet, Instructions, and Item Descriptions

GOODS & SERVICES COMPONENT
GROCERY STORES
PRICE SHEETS

VEGETABLES

1. Please try to find potatoes by the bag since potatoes priced by the pound are almost always more expensive and not comparable to bagged potatoes.

Item	Office Use Only	Price	Qty.	Outlet	Comments	Check Subst.
01 04 04 POTATOES		.	10 LB	1		
Price for 10 LB bag of lowest priced potatoes. If 10 LB bag is not available, substitute nearest size sack.		.	10 LB	2		
		.	10 LB	3		
01 04 03 TOMATOES, fresh		.	1 LB	1		
Price per LB. Price medium-size tomatoes if possible.		.	1 LB	2		
		.	1 LB	3		

FRESH PRODUCE

01 04 01 APPLES, fresh			1 LB	1		
Price per LB. If apples are priced by the bag, report the price and weight of the bag-use the store's scale if necessary. Price medium-size apples if possible.			1 LB	2		
			1 LB	3		
01 04 02 BANANAS, fresh		.	1 LB	1		
Price per LB. If bananas are priced by the bunch, report the price and weight of the bunch-use the store's scale if necessary.		.	1 LB	2		
		.	1 LB	3		

MEATS

1. Report USDA "choice" grade for beef prices.
2. If price per pound is not available, report price and weight of package.
3. Do not price family or bonus package.

01 01 01 GROUND CHUCK		.	1 LB	1		
Price per LB of regular ground chuck. Average size package. Loose, pre-packaged.		.	1 LB	2		
		.	1 LB	3		

SAMPLE

BILLING CODE 6325-01-C

Goods and Services Component Grocery Stores Item Descriptions

Vegetables

1. Please try to find potatoes by the bag since potatoes priced by the pound are almost always more expensive and not comparable to bagged potatoes.

01 04 04 Potatoes. Price for 10 LB bag of lowest priced potatoes. If 10 LB bag is not available, substitute nearest size sack.

01 04 03 Tomatoes, fresh. Price per LB. Price medium-size tomatoes if possible.

Fresh Produce

01 04 01 Apples, fresh. Price per LB. If apples are priced by the bag, report the price and weight of the bag-use the store's scale if necessary. Price medium-size apples if possible.

01 04 02 Bananas, fresh. Price per LB. If bananas are priced by the bunch, report the price and weight of the bunch-use the store's scale if necessary.

Meats

1. Report USDA "choice" grade for beef prices.
2. If price per pound is not available, report price and weight of package.
3. Do not price family or bonus package.

01 01 01 Ground chuck. Price per LB of regular ground chuck. Average size package. Loose, pre-packaged.

01 01 02 Sirloin steak. Price per LB. Average size package. 1st choice: Flat bone. 2nd choice: Round bone.

01 01 03 Round steak, bone in. Price per LB. Average size package. 1st choice: Top round steak. 2nd choice: Eye round steak.

01 01 04 Chuck roast, bone in. Price per LB. Average size package. 1st choice: Arm pot roast. 2nd choice: Eye roast.

01 01 05 Round roast, boneless. Price per LB. Average size package. 1st choice: Top round roast. 2nd choice: Tip roast.

01 01 06 Pork chops, bone in. Price per LB. Average size package. 1st choice: Center cut, loin rib chops. 2nd choice: Loin chops.

01 01 07 Bacon, sliced. Price for 16 OZ (1 LB) package *Oscar Mayer* regular sliced bacon.

01 01 08 Chicken, whole. Price per LB of 1 whole chicken. If whole not available, price a whole chicken, cut-up.

01 01 11 Lunch meat. Price for 8 OZ pkg., *Oscar Mayer*. 1st choice: bologna. 2nd choice: cotto salami or all-beef bologna.

01 01 12 Ham. Price per LB of pre-cooked boneless butt half, water-added ham. Possible brand: *Cooke*. DO NOT PRICE CANNED HAM.

01 01 13 Frankfurters.
Price for 16 OZ (1 LB) package, *Oscar Mayer* all beef frankfurters.

Canned and Bottled Goods

01 01 10 Tuna, canned. Price for 6.5 OZ can, packed in water. (Not fancy style.) 1st choice: *Star Kist*, chunk light. 2nd choice: *Chicken of the Sea*, chunk light.

01 04 07 Peaches, canned. Price for 29 OZ can of *Del Monte* yellow cling peaches.

01 04 09 Green beans, canned. Price for 16 OZ can of cut *Del Monte* green beans.

01 04 06 Tomato juice. Price for 46 FL OZ can of tomato juice. 1st choice: *Libby's*. 2nd choice: *Campbell's*.

01 05 01 Fruit drink. Price for 46 FL OZ can. 1st choice: *HI-C*, regular. 2nd choice: *Hawaiian Punch*.

01 05 03 Coffee, ground. Price for 13 OZ can of *Folgers Drip Grind*.

01 05 04 Canned soup. Price for one can *Campbell's* soup. 1st choice: Vegetable 10½ OZ. 2nd choice: Chicken Noodle 10¾ OZ.

01 05 07 Ketchup. Price for 14 OZ bottle of *Heinz* Ketchup.

Cereal and Bakery Products

01 03 01 Bread, white. Price for 24 OZ (1.5LB) loaf of sliced, white bread. 1st choice: Store brand bread. 2nd choice: Lowest priced name brand, white bread.

01 03 06 Hamburger Buns. Price for 12 OZ (340 G) package of 8 sliced enriched white hamburger buns. 1st choice: Store brand, buns. 2nd choice: Lowest priced name brand, buns.

01 03 02 Spaghetti, dry. Price for 16 OZ box of *Creamette* spaghetti.

01 03 04 Cookies. Price for 16 OZ package of *Nabisco Oreo Cookies*.

01 03 03 Cereal. Price for 12 OZ box of *Kellogg's Corn Flakes*.

Health and Beauty

08 01 01 Aspirin. Price for 100 tables of regular strength *Anacin*.

09 04 01 Shampoo. Price for 15 FL OZ bottle of *Revlon Flex* shampoo for normal hair.

Groceries

01 05 06 Salt. Price for 26 OZ box of iodized salt. 1st choice: *Morton*. 2nd choice: *Ivory*. 3rd choice: Private Label.

01 05 08 Cooking oil. Price for 48 FL OZ bottle. 1st choice: *Crisco*. 2nd choice: *Wesson*.

01 05 11 Jello gelatin. Price for 3 OZ box of *Jello Gelatin* dessert.

01 05 14 Sugar, granulated. Price for 5 LB bag of granulated cane or beet sugar, lowest price available. Do not price generic sugar.

Paper Products

05 02 01 Toilet tissue. Price for a 4 roll pack. 1st choice: *Cottonelle*. 2nd choice: *Northern*.

Soap

05 02 04 Laundry soap. Price for 64 FL OZ of liquid household laundry detergent. 1st choice: *Tide*. 2nd choice: *Wisk*.

Pet Needs

10 03 02 Pet food. Price of 8 OZ can of cat food. 1st choice: *9 Lives*. 2nd choice: *Wiskas*.

Baby Needs

01 05 12 Baby food. Price for one 4.5 OZ jar of *Gerber* strained vegetable or fruit.

06 03 02 Disposable diaper. Price for 80 count package *Ultra Pampers*, small (6–14 LBS).

Beverages and Snacks

01 05 02 Soft drink. Price of 2 L (liter) plastic bottle. 1st choice: *Coca-Cola*. 2nd choice: *Pepsi*.

01 05 15 Bottled water. Price for one gallon (128 FL OZ) bottled drinking water. Do Not Price Sparkling or Distilled Water.

01 05 05 Snack food. Price for 8-10 OZ (227–284 G) bag or box of *store brand* potato chips.

01 05 13 Candy bar. Price for one 2.07 OZ *Snickers* candy bar. If not available, price most popular brand of same size.

Refrigerated Section

01 01 14 Eggs, large. Price for one dozen.

01 05 09 Margarine. Price for 1 LB, four sticks. 1st choice. *Blue Bonnet*. 2nd choice: *Parkay*.

01 02 01 Milk, 2%. Price for one gallon (128 FL OZ), 2%. Lowest priced store brand.

01 02 02 Cheddar cheese. Price per LB of mild cheddar, store brand.

01 03 05 Refrigerated biscuits. Price for 7.5 OZ (212 G) tube *Pillsbury* Biscuits. 1st choice: 10 Buttermilk biscuits. 2nd choice: 10 Country biscuits.

Frozen Foods

01 01 09 Fish filet, fresh frozen. Price per LB of fresh frozen fish filet. 1st choice: Cod. 2nd choice: Pollock.

01 04 08 Peas, frozen. Price for 10 OZ pkg. of frozen peas. Possible brand: *Bird's Eye*. DO NOT PRICE PEAS WITH SAUCE.

01 05 10 Frozen dinner. Price for 11.5 OZ (326 G) *Swanson*—Turkey, whipped potatoes, peas, and fruit compote, frozen dinner.

01 04 05 Frozen orange juice. Price for 12 FL OZ (makes 48 FL OZ) can of frozen orange juice concentrate-store brand.

01 02 03 Ice Cream. Price for ½ gallon vanilla flavored ice cream. DO NOT PRICE ICE MILK. 1st choice: Store Brand. 2nd choice: Lowest Price Name Brand.

Tobacco

03 01 01 Cigarettes, king size. Price for 1 carton (200 cigarettes) of king-sized. Any national brand. DO NOT INCLUDE SALES TAX.

Newspapers

10 05 03 Local Newspaper. Price for single copy of the most common DAILY newspaper distributed in the area. Report the name of the newspaper in the 'comment' section.

10 05 02 TV Guide. Price for a single copy of *TV Guide*.

Goods and Services Component Retail Stores Item Descriptions

Electronics

10 02 05 Color television. Price for *Zenith* model #SG2019 s/w/w/ Sentry 2 color TV. 20" table model with Chroma Color Contrast picture tube, 178 channel capability, electronic tuning, auto channel switch, HRC/ICC search, Keyboard Channel Selection, TV/VCR remote control, phase lock loop/AFC, on-screen channel/time and menus, flashback, sleep timer, 13.5" oval speaker and video filter.

10 02 02 Video recorder. Price for *Zenith* model #VRG75 VHS video recorder. Two video heads, quartz tuner, 155 channel cable ready with remote control. One 8 event timer programming, auto timer activation, auto channel search, instant record/standby, 3 second power backup and picture search lock.

10 02 04 Compact disc player. Price for basic CD player for one disc with oversampling digital filter and basic infrared

BEST COPY AVAILABLE

washer remote. 1st choice: *Sony* Model #CDP670. 2nd choice: *Technics* Model #SL670.

Appliances

05 06 01 Washing machine. Price for *General Electric* model #WWA8800C. Large capacity, one speed selection, 3 water temperatures, 3 water levels, 3 wash cycles (regular, permanent press & soak) porcelain enamel top, lid & basket, filter flo system, repairable timer and self-leveling legs.

05 02 Kitchen range. Price for *General Electric* model #JBS02N. 30 inch electric range with porcelain enameled color-matched lift off oven door, four tilt-lock burners (one 8", three 6" with removable trim rings and aluminum pans, rotary heat controls, standard cleaning oven with one oven rack and one broiler pan.

05 06 03 Refrigerator. Price for *General Electric* model #TBX18EL no-frost 18.2 cubic ft. refrigerator with textured steel doors and energy saver switch, 3 glass shelves (2 split, 1 full width), 2 vegetable/fruit pans (1 with adjustable humidity), sealed meat pan, utility bin. Door contains 3 shelves and 2 dairy compartments. Freezer has wire EverWhite shelves (1 split, 1 full width), 2 door shelves, 4 ice trays and 1 ice storage bin.

05 03 04 Vacuum. Price for *Eureka* upright Model #3684 "The Boss" 6.5 amps, 120 volts, with extra suction power, height adjustment, edge cleaner, regular bag and 20 foot cord.

Furniture

Components should be hardwood (no particle board, cardboard, plastic, formica, etc.). The wood construction and finish should match, for example, oak wood construction with oak veneer finish. If items are sold separately, calculate a total cost by summing the costs of individual components. PLEASE PRICE FURNITURE WITH CLEAN LINES EXCLUDE FURNITURE WITH CARVING AND ELABORATE ACCENTS.

05 04 01 Living room chair. Price for a recliner chair, swivel rocker or wall saver. Button backed with base construction of 15 zig zag springs. 1st choice: *Lane*. 2nd choice: *Lazy Boy*. DO NOT PRICE SPECIAL ORDER FABRIC.

05 04 02 Bedroom group. Price for a man's dresser, woman's dresser with mirror and headboard. Solid wood top, front, mirror frame, headboard. Veneer sides. Drawer construction should be Fr dove tail or finger/joint corners with dust plate.

05 04 03 Kitchen table. Price for table with center pedestal and four standard double rung chairs. Table should have veneer top and double runners for leaves with both portions of the table moveable.

Housewares

05 07 01 Two-slice toaster. Price for *Toastmaster* Model #B705 two-slice pastry toaster.

05 07 02 Two quart casserole. Price for *Corning-ware* 2 QT casserole dish with cover, simple pattern.

05 07 03 China. Price for *Corelle*, simple-edged pattern tableware set. Set consists of 16 pieces, 4 dinner plates, 4 desert plates, 4 salad bowls and 4 mugs. 1st choice: *Design Images*. 2nd choice: *Natural Images*.

05 08 05 Window shade. Price 37¼ inch wide cut-to-fit window shade, BETTER quality. 1st choice: *Kirsch*. 2nd choice: *Clopay*.

Household Equipment

05 08 01 Electric drill. Price for *Black & Decker* ½ horsepower ⅜ inch variable speed, reversible electric drill with cord. 1st choice: Model #7141. 2nd choice: Model #7120. 3rd choice: Model #7128.

05 08 04 Hammer. Price for *Stanley* Model #51616. 16 head claw hammer, wood handle, high carbon steel head, black finish. Overall length 13¾".

Lawn and Garden

05 08 02 Lawn trimmer. Price for Model #XE20, gas powered *Weed Eater* brand lawn trimmer.

05 02 05 Lawn fertilizer. Price for one bag of *Scotts* Turf Builder fertilizer to cover 5,000 Sq. Ft.

Recreation

10 02 08 Audio cassette. Regular price for a current best-selling audio cassette. NOT SALE PRICE. DO NOT PRICE DOUBLE TAPE. Please put title in comment section.

10 04 03 Tennis balls. Price for can of three heavy-duty felt, yellow, *Wilson* tennis balls.

10 04 04 Board game. Price for Monopoly board game by *Parker Brothers*. DO NOT PRICE DELUXE EDITION.

Linens

For Bed Sheet Set, Bath Towel and Bath Rug:

1. In each outlet we would like you to price a *middle-range item* for that particular outlet, meeting the specifications.

05 03 01 Bed sheet set. Price for one set queen-size no-iron cotton & polyester percale sheets (180 thread count). One set consists of one fitted sheet, one flat sheet and two pillowcases.

05 03 02 Bath towel. Price for a 27x50 inch *Fieldcrest* Royal Classic bath towel.

05 05 01 Bath rug. Price for a 24x36 inch solid color, oblong bathmat.

Clothing

1. We are supplying you with broad specifications (e.g. Man's ready-made two-piece suit—the type generally worn to the office, etc.). In each outlet we would like you to price a *middle-range item for that particular outlet*, meeting the broad specification. In large department stores where there may be more than one section containing items meeting the specification, select the middle-range *section*, then select a middle-range item in that section.

2. Please follow the specifications on the Price Sheets for each clothing item. If more information is needed pictures and definitions are included in the instruction manual.

3. Do not base your selections on personal preference.

05 01 01 Man's 2-piece business suit. Price for two-piece single-breasted business suit of the type generally worn to the office. Conservatively colored and styled with a fabric blend of 45% wool and 55% polyester. Possible brands: *Palm Beach* or *South Hampton*.

05 01 02 Man's jeans. Price of *Levi's* #501 jeans. DO NOT PRICE STONEWASHED.

05 01 03 Man's dress shirt. Price for white or solid color, long sleeve, button cuff, plain collar dress shirt, approximately 35% cotton, 65% polyester. A dress shirt will have exact collar and sleeve sizes. Example: 15½ collar, 34 sleeve.

05 01 04 Man's jacket. Price for unlined jean jacket. Cotton denim with button front, two chest pockets and two side pockets. DO NOT PRICE DESIGNER-LABEL.

05 01 05 Boy's jeans. Price for jeans commonly worn by boys ages 8 through 20 years (size 7–14). DO NOT PRICE DESIGNER-LABEL JEANS.

05 01 06 Boy's shirt. Price for screen-printed T-shirt commonly worn by boys ages 8 through 10 years (size 7–14). Pullover with crew neck, short sleeves and polyester/cotton blend.

05 02 01 Woman's dress. Price for a long sleeve shirt waist dress appropriate for office attire. Exclude any unusual ornamentation. The dress should be Rayon or Rayon blend.

05 02 02 Woman's blouse. Price of 100% polyester, white, long sleeve, button front blouse with minimum trim.

05 02 03 Woman's slacks. Price for the type (materials and styles) most commonly used for office wear.

05 02 04 Women's sweater. Price for 100% cotton, crew neck sweater with rib knit cuffs and bottom. Exclude an unusual ornamentation or patterns.

05 02 05 Women's jacket. Price for unlined windbreaker.

05 02 06 Women's accessories. Price for split-grain, cowhide leather. *Amity* checkbook clutch wallet.

05 02 07 Girl's dress. Price of cotton blend long-sleeve dress appropriate for school. Exclude extra ornamentation. For girls ages 6 through 10 years (size 7–14).

05 02 08 Girl's jeans. Price of *Levi's* #902 basic relaxed taper jean, two back pockets and two front pockets. For girls ages 8 through 10 years (size 7–14).

05 02 09 Girl's blouse. Price of cotton blend, white or solid color, long sleeve, button front blouse. For girls ages 8 through 10 years (size 7–14).

05 03 01 Infant's sleeper. Price for one piece sleeping garment with legs, covering the body including the feet.

05 04 02 Woman's shoes. Price for woman's pump style shoes with enclosed heel and toe, leather uppers and the rest of manmade materials. Heel height should be approximately two inches.

05 04 01 Man's shoes. Price of 100% leather wing tips. Possible brand: *Florsheim*.

Goods and Services Component Telephone Item Descriptions

Domestic Service

07 01 01 Day care. Price for one *month* of day care for a 3 year old child. (5 days a week, about 8 hours per day)

07 02 01 Babysitter, per hour. Average hourly rate for one child, age four years, evening, before midnight. (Teenager in your home.) DO NOT PRICE BABYSITTING SERVICE. Special instructions: If typical for your area, you may wish to obtain quotes from friends/acquaintances in your area who use teenage babysitters.

Jewelry

06 05 01 Jewelry. Price for one pair 14 K gold pierced ear studs.

Beauty

9 03 01 Lipstick. Price for one tube of *Revlon* (Moondrops) lipstick.

10 04 02 Camera film. Price for 35 millimeter, 24 exposure, 100 ASA *Kodak* camera film.

10 04 01 Film developing. Price to process and print 35 millimeter, 24 exposure, 100 ASA color. SINGLE PRINTS ONLY PLEASE.

Stationary

05 02 02 Pen. Price for a *Parker* pen without refills, Model: Jotter.

Medical Care

06 02 01 Tetracycline, prescription. Price of 24 capsules of tetracycline (HCL) of 250 milligram strength. Report price for most common national brand sold.

06 06 01 Hospital room. Daily charge for a semi-private room. Include food and routine care. *Exclude* cost of operating room, surgery, medicine and lab fees. If semi-private rooms are not available, report charge for a private room.

06 03 01 Optometrist, office visit. Typical fee for visual analysis including tonometry, refraction and glaucoma screening.

06 05 01 Doctor, office visit. Typical fee, after the initial visit, for an office visit when medical advice or simple treatment is needed. Do *not* include the charge for a regular physical examination, injections, medication or lab tests.

06 04 01 Dentist, clean and check teeth. Charge for exam and prophylaxis (light scaling and polishing) or "cleaning of teeth" without special treatment of gums or teeth. DO NOT INCLUDE COST OF X-RAYS.

Personal Care

06 06 02 Coin laundry. Price for one load of laundry using a regular size, top loading commercial washing machine. DO NOT INCLUDE COST OF DRYING.

06 05 03 Dry clean man's suit. Price to dry clean a man's 2-piece business suit of typical fabric.

09 01 01 Woman's cut and styled blow dry. "Regular service" price for a woman's cut and styled blow dry. Include wash.

09 02 01 Man's haircut. Price of a man's typical haircut. Do *not* include wash.

Recreation

10 01 03 Movie theater. Typical adult price for regular length evening film. Report weekend evening price if different from weekday.

10 01 01 Bowling. Price for 1 game of open (or non-league) bowling on Saturday night. Exclude cost of shoe rental.

10 01 02 Golf. Price for 18 holes of golf on a weekend. If only 9 hole rate is available, report twice the price. If only daily rate is available (unlimited number of holes). Report the Saturday or Sunday rate.

10 01 04 Health club. Price for regular individual membership for 1 year for existing member. Do not include any initial fees assessed only to new members.

10 01 05 Piano lessons. Price for private lesson for a beginner one-half hour in length.

10 02 01 Video rental. Price to rent one video tape of recently released movie, Saturday night (1 day) rate. Non-member fee.

10 02 06 Basic cable service. Price for one month of basic cable channel TV. DO NOT INCLUDE HOOKUP CHARGES OR PREMIUM CHANNELS.

Alcohol

04 01 01 Beer. Price for a six-pack of 12 OZ cans of *Budweiser*. DO NOT PRICE REFRIGERATED BEER.

04 02 01 Wine. Price for 750 ML of *Gallo* chablis blanc.

Floral

05 08 03 Red roses, fresh cut. Price for one dozen long stemmed, fresh cut red roses.

Bakery

01 03 07 Cake. Price for one frosted undecorated, chocolate sheet cake. (Approximate size 17½" × 25½")

10 03 01 Veterinary services. Typical fee for general office visit for a rabies inoculation for a small dog. Include the cost of the office visit.

Snacks

02 05 01 Ice cream cone. Price for regular (one scoop) vanilla ice cream cone.

Reading

10 05 01 Book. Price top ten best sellers at two outlets. Please list titles in comment section.

Goods and Services Component In-House Telephone Item Descriptions

Services

05 01 03 Moving. Price per hour for a within-city move, two men with enclosed van. Include any van rental fees.

05 01 02 Housekeeping services. Price per hour for bi-weekly cleaning. Services include the following: Bathroom(s)—Sanitize walls, floor, counter tops, bathtub, stool. Kitchen—Sanitize walls, floor, counter tops, cabinets, appliances. Living Room & Dining Room—Dust, polish furniture and vacuum. Bedrooms—Dust, polish furniture and vacuum. If other services are included please note.

05 01 01 Appliance repair. Price to replace oven thermostat control for *General Electric* Model #JB502. Include hourly rate, trip charge and parts cost.

Goods and Services Component Meals Item Descriptions

02 01 01 Breakfast. Price for typical breakfast, such as, bacon and 2 eggs or waffles, coffee, juice. Report percentages added for tax, tip, and service charge.

02 02 01 Lunch. Price for typical lunch, such as, Chef's Salad or Cheeseburger Platter, and small soft drink. Report percentages added for tax, tip, and service charge.

02 03 01 Dinner. Price for typical dinner, such as, New York Strip or Seafood Platter, and coffee. Report percentages added for tax, tip, and service charge.

Goods and Services Component Fast Food Item Descriptions

02 04 01 Meal. Average price of a meal at a fast food establishment. Price for typical meal, such as, Big Mac or Whopper, medium french fries, and medium coke.

04 04 01 Wine. Price of house white wine. List percent for tax.

04 03 01 Beer. Price for glass of Budweiser or Miller Light beer. List percent for tax.

Appendix 6—Part 1

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: Anchorage, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	117.66	22.99	27.05	20.73	24.39	18.45	21.71
2. Food Away From Home	102.07	14.37	14.67	14.92	15.23	15.47	15.79
3. Tobacco	125.95	2.82	3.55	2.35	2.96	1.87	2.36
4. Alcohol	115.19	2.63	3.03	2.59	2.98	2.54	2.93
5. Furnishings & Hsld Op	104.01	12.93	13.45	14.78	15.37	16.68	17.35
6. Clothing	100.08	12.83	12.84	13.84	13.85	14.87	14.88
7. Domestic Service	90.81	1.60	1.45	1.66	1.51	1.73	1.57
8. Medical Care	124.14	15.11	18.76	12.73	15.80	10.29	12.77
9. Personal Care	90.57	3.21	2.91	3.22	2.92	3.22	2.92
10. Recreation	122.55	11.51	14.11	13.18	16.15	14.88	18.24
Total weights		100.00		100.00		100.00	
Total Indexes			111.62		111.18		110.52

Consumption Goods & Services Analysis

[Location: Fairbanks, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	121.97	22.99	28.04	20.73	25.28	18.45	22.50
2. Food Away From Home	101.78	14.37	14.61	14.92	15.17	15.47	15.73
3. Tobacco	117.86	2.82	3.32	2.35	2.77	1.87	2.20
4. Alcohol	117.96	2.63	3.10	2.59	3.06	2.54	3.00
5. Furnishings & Hsld Op	112.75	12.93	14.58	14.78	16.66	16.68	18.81
6. Clothing	91.16	12.83	11.69	13.84	12.62	14.87	13.56
7. Domestic Service	76.99	1.66	1.27	1.66	1.32	1.73	1.38
8. Medical Care	123.35	15.11	18.64	12.73	15.70	10.29	12.69
9. Personal Care	96.66	3.21	3.11	3.22	3.12	3.22	3.12
10. Recreation	138.34	11.51	14.77	13.18	16.92	14.88	19.10
Total weights		100.00		100.00		100.00	
Total indexes			113.13		112.62		112.06

Consumption Goods & Services Analysis

[Location: Juneau, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	119.80	22.99	27.54	20.73	24.83	18.45	22.10
2. Food Away From Home	108.77	14.37	15.63	14.92	16.23	15.47	16.83
3. Tobacco	123.44	2.82	3.48	2.35	2.90	1.87	2.31
4. Alcohol	116.86	2.63	3.13	2.59	3.08	2.54	3.02
5. Furnishings & Hsld Op	115.21	12.93	14.90	14.78	17.03	16.68	19.22
6. Clothing	95.83	12.83	12.19	13.84	13.15	14.87	14.13
7. Domestic Service	84.23	1.66	1.35	1.66	1.40	1.73	1.46
8. Medical Care	129.53	15.11	19.57	12.73	16.49	10.29	13.33
9. Personal Care	111.52	3.21	3.58	3.22	3.59	3.22	3.59
10. Recreation	135.86	11.51	15.64	13.18	17.91	14.88	20.22
Total weights		100.00		100.00		100.00	
Total indexes			117.01		116.61		116.21

Consumption Goods & Services Analysis

[Location: Guam]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	129.41	22.99	29.75	20.73	26.83	18.45	23.88
2. Food Away From Home	93.55	14.37	13.44	14.92	13.96	15.47	14.47
3. Tobacco	85.24	2.82	2.40	2.35	2.00	1.87	1.59
4. Alcohol	88.75	2.63	2.36	2.59	2.32	2.54	2.26
5. Furnishings & Hsld Op	122.38	12.93	15.81	14.78	18.07	16.68	20.40
6. Clothing	92.30	12.83	11.84	13.84	12.77	14.87	13.73
7. Domestic Service	89.98	1.60	1.44	1.66	1.49	1.73	1.56
8. Medical Care	103.66	15.11	15.66	12.73	13.20	10.29	10.67
9. Personal Care	90.18	3.21	2.89	3.22	2.90	3.22	2.90
10. Recreation	124.52	11.51	14.33	13.18	16.41	14.88	18.53
Total weights		100.00		100.00		100.00	
Total indexes			109.92		109.95		110.01

Consumption Goods & Services Analysis

[Location: San Juan, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	114.88	22.99	26.36	20.73	23.78	18.45	21.14
2. Food Away From Home	99.81	14.37	14.29	14.92	14.74	15.47	15.29
3. Tobacco	117.76	2.82	3.32	2.35	2.77	1.87	2.20
4. Alcohol	105.48	2.63	2.77	2.59	2.73	2.54	2.68
5. Furnishings & Hsld Op	93.42	12.93	12.08	14.78	13.81	16.68	15.58
6. Clothing	90.97	12.83	11.67	13.84	12.59	14.87	13.53
7. Domestic Service	69.48	1.60	1.11	1.66	1.15	1.73	1.20

Consumption Goods & Services Analysis—Continued

[Location: San Juan, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
8. Medical Care	79.18	15.11	11.96	12.73	10.08	10.29	8.15
9. Personal Care	82.05	3.21	2.63	3.22	2.64	3.22	2.64
10. Recreation	92.59	11.51	10.66	13.18	12.20	14.88	13.78
Total weights		100.00		100.00		100.00	
Total indexes			96.75		96.47		96.19

Consumption Goods & Services Cost Analysis Puerto Rico Composite

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	96.75	96.47	96.19
Mayaguez, PR	30.00	94.18	93.84	93.48
Total Weight	100.00			
Composite Indexes		95.96	95.68	95.38

Consumption Goods & Services Analysis

[Location: Mayaguez, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	112.47	22.99	25.86	20.73	23.32	18.45	20.75
2. Food Away From Home	96.11	14.37	13.81	14.92	14.34	15.47	14.87
3. Tobacco	108.76	2.82	3.07	2.35	2.56	1.87	2.03
4. Alcohol	96.40	2.63	2.54	2.59	2.50	2.54	2.45
5. Furnishings & Hsld Op	89.12	12.93	11.52	14.78	13.17	16.68	14.87
6. Clothing	85.89	12.83	11.02	13.84	11.89	14.87	12.77
7. Domestic Service	81.81	1.60	1.31	1.66	1.36	1.73	1.42
8. Medical Care	80.03	15.11	12.09	12.73	10.19	10.29	8.24
9. Personal Care	72.99	3.21	2.34	3.22	2.35	3.22	2.35
10. Recreation	92.29	11.51	10.62	13.18	12.16	14.88	13.73
Total weights		100.00		100.00		100.00	
Total indexes			94.18		93.84		93.48

Consumption Goods & Services Analysis

[Location: Honolulu, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	141.95	22.99	32.63	20.73	29.43	18.45	26.19
2. Food Away From Home	108.20	14.37	15.55	14.92	16.14	15.47	16.74
3. Tobacco	118.39	2.82	3.34	2.35	2.78	1.87	2.21
4. Alcohol	100.59	2.63	2.65	2.59	2.61	2.54	2.55
5. Furnishings & Hsld Op	105.31	12.93	13.62	14.78	15.56	16.68	17.57
6. Clothing	90.57	12.83	11.62	13.84	12.53	14.87	13.47
7. Domestic Service	73.97	1.60	1.18	1.66	1.23	1.73	1.28
8. Medical Care	104.76	15.11	15.83	12.73	13.34	10.29	10.78
9. Personal Care	94.48	3.21	3.03	3.22	3.04	3.22	3.04
10. Recreation	111.90	11.51	12.80	13.18	14.66	14.88	16.55
Total weights		100.00		100.00		100.00	
Total indexes			112.25		111.32		110.38

Consumption Goods & Services Analysis

[Location: Hawaii County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	138.56	22.99	31.85	20.73	28.72	18.45	25.56
2. Food Away From Home	103.83	14.37	14.93	14.92	15.51	15.47	16.06
3. Tobacco	117.88	2.82	3.32	2.35	2.77	1.87	2.20
4. Alcohol	94.25	2.63	2.48	2.59	2.44	2.54	2.39
5. Furnishings & Hsld Op	102.46	12.93	13.25	14.78	15.14	16.68	17.09
6. Clothing	96.55	12.83	12.39	13.84	13.36	14.87	14.36
7. Domestic Service	58.89	1.60	0.94	1.66	0.98	1.73	1.02
8. Medical Care	108.53	15.11	16.40	12.73	13.82	10.29	11.17
9. Personal Care	93.66	3.21	3.01	3.22	3.02	3.22	3.02
10. Recreation	105.04	11.51	12.09	13.18	13.84	14.86	15.63
Total weights		100.0		100.0		100.0	
Total indexes			110.66		109.60		108.62

Consumption Goods & Services Analysis

[Location: Kauai County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	145.81	22.99	33.52	20.73	30.23	18.45	26.90
2. Food Away From Home	111.04	14.37	15.96	14.92	16.57	15.47	17.18
3. Tobacco	121.91	2.82	3.44	2.35	2.86	1.87	2.28
4. Alcohol	106.19	2.63	2.79	2.59	2.75	2.54	2.70
5. Furnishings & Hsld Op	107.55	12.93	13.91	14.78	15.90	16.68	17.94
6. Clothing	90.83	12.83	11.66	13.84	12.57	14.87	13.51
7. Domestic Service	60.79	1.60	0.97	1.66	1.01	1.73	1.05
8. Medical Care	106.59	15.11	16.11	12.73	13.57	10.29	10.97
9. Personal Care	102.09	3.21	3.28	3.22	3.29	3.22	3.29
10. Recreation	106.20	11.51	12.22	13.18	14.00	14.86	15.80
Total weights		100.0		100.0		100.0	
Total indexes			113.85		112.75		111.62

Consumption Goods & Services Analysis

[Location: Maui County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	147.50	22.99	33.91	20.73	30.58	18.45	27.21
2. Food Away From Home	114.25	14.37	16.42	14.92	17.05	15.47	17.67
3. Tobacco	117.39	2.82	3.31	2.35	2.76	1.87	2.20
4. Alcohol	104.58	2.63	2.75	2.59	2.71	2.54	2.66
5. Furnishings & Hsld Op	106.05	12.93	13.97	14.78	15.97	16.68	18.02
6. Clothing	96.89	12.83	12.43	13.84	13.41	14.87	14.41
7. Domestic Service	75.20	1.60	1.20	1.66	1.25	1.73	1.30
8. Medical Care	111.55	15.11	16.86	12.73	14.20	10.29	11.48
9. Personal Care	109.87	3.21	3.53	3.22	3.54	3.22	3.54
10. Recreation	116.59	11.51	13.42	13.18	15.37	14.88	17.35
Total weights		100.00		100.00		100.00	
Total indexes			117.80		116.84		115.84

Consumption Goods & Services Analysis

[Location: St Croix, VI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	137.89	22.99	31.70	20.73	28.59	18.45	25.44
2. Food Away From Home	102.28	14.37	14.70	14.92	15.26	15.47	15.82
3. Tobacco	84.10	2.82	2.37	2.35	1.98	1.87	1.57
4. Alcohol	87.20	2.63	2.29	2.59	2.26	2.54	2.21
5. Furnishings & Hsld Op	99.61	12.93	12.88	14.78	14.72	16.68	6.61
6. Clothing	82.53	12.83	10.59	13.84	11.42	14.87	12.27
7. Domestic Service	92.77	1.60	1.48	1.66	1.54	1.73	1.60

Consumption Goods & Services Analysis—Continued

[Location: St Croix, VI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
8. Medical Care	92.01	15.11	13.90	12.73	11.71	10.29	9.47
9. Personal Care	100.59	3.21	3.23	3.22	3.24	3.22	3.24
10. Recreation	118.17	11.51	13.60	13.18	15.57	14.88	17.58
Total weights		100.0		100.0		100.0	
Total indexes			106.74		106.26		105.81

Consumption Goods & Services Analysis

[Location: St. Thomas, VI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	141.47	22.99	32.52	20.73	29.33	18.45	26.10
2. Food Away From Home	112.25	14.37	16.13	14.92	16.75	15.47	17.37
3. Tobacco	85.43	2.82	2.41	2.35	2.01	1.87	1.60
4. Alcohol	105.95	2.63	2.79	2.59	2.74	2.54	2.69
5. Furnishings & Hsld Op	102.66	12.93	13.27	14.78	15.17	16.68	17.12
6. Clothing	85.13	12.83	10.92	13.84	11.78	14.87	12.66
7. Domestic Service	96.67	1.60	1.55	1.66	1.60	1.73	1.67
8. Medical Care	106.45	15.11	16.09	12.73	13.55	10.29	10.95
9. Personal Care	111.35	3.21	3.57	3.22	3.59	3.22	3.59
10. Recreation	119.80	11.51	13.79	13.18	15.79	14.88	17.83
Total weights		100.00		100.00		100.00	
Total indexes			113.03		112.31		111.56

Consumption Goods & Services Analysis

[Location: Anchorage Blend]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	99.88	22.99	22.96	20.73	20.71	18.45	18.43
2. Food Away From Home	102.07	14.37	14.67	14.92	15.23	15.47	15.79
3. Tobacco	84.89	2.82	2.39	2.35	1.99	1.87	1.58
4. Alcohol	115.19	2.63	3.03	2.59	2.98	2.54	2.93
5. Furnishings & Hsld Op	100.89	12.93	13.05	14.78	14.91	16.68	16.83
6. Clothing	96.65	12.83	12.40	13.84	13.38	14.87	14.37
7. Domestic Service	90.81	1.60	1.45	1.66	1.51	1.73	1.57
8. Medical Care	122.46	15.11	18.50	12.73	15.59	10.29	12.60
9. Personal Care	87.67	3.21	2.81	3.22	2.82	3.22	2.82
10. Recreation	122.19	11.51	14.06	13.18	16.10	14.88	18.18
Total weights		100.00		100.00		100.00	
Total indexes			105.32		105.22		105.10

Consumption Goods & Services Analysis

[Location: Fairbanks Blend, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	103.87	22.99	23.88	20.73	21.53	18.45	19.16
2. Food Away From Home	101.70	14.37	14.61	14.92	15.17	15.47	15.73
3. Tobacco	77.34	2.82	2.18	2.35	1.82	1.87	1.45
4. Alcohol	117.96	2.63	3.10	2.59	3.06	2.54	3.00
5. Furnishings & Hsld Op	105.99	12.93	13.70	14.78	15.67	16.68	17.68
6. Clothing	89.91	12.83	11.54	13.84	12.44	14.87	13.37
7. Domestic Service	79.59	1.60	1.27	1.66	1.32	1.73	1.38
8. Medical Care	122.75	15.11	18.55	12.73	15.83	10.29	12.63
9. Personal Care	89.89	3.21	2.89	3.22	2.89	3.22	2.89
10. Recreation	117.00	11.51	13.47	13.18	15.42	14.88	17.41
Total weights		100.00		100.00		100.00	
Total indexes			105.19		104.95		104.70

Consumption Goods & Services Analysis

[Location: Guam Blend]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	99.76	22.99	22.93	20.73	20.66	18.45	18.41
2. Food Away From Home	93.55	14.37	13.44	14.92	13.96	15.47	14.47
3. Tobacco	58.43	2.82	1.65	2.35	1.37	1.87	1.09
4. Alcohol	80.95	2.63	2.13	2.59	2.10	2.54	2.06
5. Furnishings & Hsld Op	107.58	12.93	13.91	14.78	15.90	16.68	17.94
6. Clothing	74.49	12.83	9.56	13.84	10.31	14.87	11.08
7. Domestic Service	89.96	1.60	1.44	1.66	1.49	1.73	1.56
8. Medical Care	103.60	15.11	15.66	12.73	13.21	10.29	10.66
9. Personal Care	73.48	3.21	2.36	3.22	2.37	3.22	2.37
10. Recreation	113.36	11.51	13.05	13.18	14.94	14.88	16.87
Total weights		100.00		100.00		100.00	
Total indexes			96.15		96.33		96.53

Consumption Goods & Services Analysis

[Location: Honolulu Blend, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	112.54	22.99	25.87	20.73	23.33	18.45	20.76
2. Food Away From Home	108.20	14.37	15.55	14.92	16.14	15.47	16.74
3. Tobacco	92.91	2.82	2.62	2.35	2.18	1.87	1.74
4. Alcohol	95.66	2.63	2.52	2.59	2.48	2.54	2.44
5. Furnishings & Hsld Op	90.68	12.93	11.72	14.78	13.40	16.68	15.13
6. Clothing	80.97	12.83	10.39	13.84	11.21	14.87	12.04
7. Domestic Service	73.97	1.60	1.18	1.66	1.23	1.73	1.28
8. Medical Care	103.25	15.11	15.60	12.73	13.14	10.29	10.62
9. Personal Care	83.11	3.21	2.67	3.22	2.66	3.22	2.66
10. Recreation	100.75	11.51	11.60	13.18	13.28	14.88	14.99
Total weights		100.00		100.00		100.00	
Total indexes			99.72		99.07		98.42

Consumption Goods & Services Analysis

[Location: San Juan Blend, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	105.36	22.99	24.22	20.73	21.84	18.45	18.44
2. Food Away From Home	98.81	14.37	14.20	14.92	14.74	15.47	15.29
3. Tobacco	97.67	2.82	2.75	2.35	2.30	1.87	1.83
4. Alcohol	105.49	2.63	2.77	2.59	2.73	2.54	2.68
5. Furnishings & Hsld Op	91.99	12.93	11.89	14.78	13.60	16.68	15.34
6. Clothing	86.75	12.83	11.39	13.84	12.26	14.87	13.20
7. Domestic Service	69.48	1.60	1.11	1.66	1.15	1.73	1.20
8. Medical Care	77.18	15.11	11.66	12.73	9.83	10.29	7.94
9. Personal Care	80.86	3.21	2.60	3.22	2.60	3.22	2.60
10. Recreation	90.54	11.51	10.42	13.18	11.93	14.88	13.47
Total weights		100.00		100.00		100.00	
Total indexes			93.01		93.00		92.99

Appendix C—Part 2

Consumption Goods & Services Analysis

[Location: Anchorage, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	117.66	25.52	30.03	22.38	26.33	19.35	22.77
2. Food Away From Home	102.07	15.95	16.28	16.09	16.42	16.23	16.57
3. Tobacco	125.95	3.13	3.94	2.54	3.20	1.96	2.47
4. Alcohol	115.19	2.92	3.36	2.79	3.21	2.67	3.08
5. Furnishings & Hsld Op	104.01	14.35	14.93	15.95	16.59	17.49	18.19
6. Clothing	100.08	14.24	14.25	14.93	14.94	15.59	15.60
7. Domestic Service	90.81	1.78	1.62	1.79	1.63	1.81	1.64
8. Medical Service	96.52	5.77	5.57	5.84	5.64	5.91	5.70
9. Personal Care	90.57	3.57	3.23	3.47	3.14	3.38	3.06
10. Recreation	122.55	12.77	15.65	14.22	17.43	15.61	19.13
Total weights		100.00		100.00		100.00	
Total indexes			108.86		108.53		106.21

Consumption Goods & Services Analysis

[Location: Fairbanks, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	121.97	25.52	31.13	22.38	27.30	19.35	23.60
2. Food Away From Home	101.70	15.95	16.22	16.09	16.36	16.23	16.51
3. Tobacco	117.86	3.13	3.69	2.54	2.99	1.96	2.31
4. Alcohol	117.96	2.92	3.44	2.79	3.29	2.67	3.15
5. Furnishings & Hsld Op	112.75	14.35	16.18	15.95	17.98	17.49	19.72
6. Clothing	91.15	14.24	12.98	14.93	13.61	15.59	14.21
7. Domestic Service	79.59	1.78	1.42	1.79	1.42	1.81	1.44
8. Professional Services	81.95	5.77	4.73	5.84	4.79	5.91	4.84
9. Personal Care	96.88	3.57	3.46	3.47	3.36	3.38	3.27
10. Recreation	128.34	12.77	16.39	14.22	18.25	15.61	20.03
Total weights		100.00		100.00		100.00	
Total indexes			109.64		109.35		109.06

Consumption Goods & Services Analysis

[Location: Juneau, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	119.80	25.52	30.57	22.38	26.81	19.35	23.18
2. Food Away From Home	108.77	15.95	17.35	16.09	17.50	16.23	17.65
3. Tobacco	123.44	3.13	3.86	2.54	3.14	1.96	2.42
4. Alcohol	118.86	2.92	3.47	2.79	3.32	2.67	3.17
5. Furnishings & Hsld Op	115.21	14.35	16.53	15.95	18.38	17.49	20.15
6. Clothing	95.03	14.24	13.53	14.93	14.19	15.59	14.82
7. Domestic Service	84.23	1.78	1.50	1.79	1.51	1.81	1.52
8. Professional Services	81.60	5.77	4.71	5.84	4.77	5.91	4.82
9. Personal Care	111.52	3.57	3.98	3.47	3.87	3.38	3.77
10. Recreation	135.88	12.77	17.35	14.22	19.32	15.61	21.21
Total weights		100.00		100.00		100.00	
Total indexes			112.85		112.81		112.71

Consumption Goods & Services Analysis

[Location: Guam]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	129.41	25.52	33.03	22.38	28.96	19.35	25.04
2. Food Away From Home	93.55	15.95	14.92	16.09	15.05	16.23	15.18
3. Tobacco	85.24	3.13	2.67	2.54	2.17	1.96	1.67
4. Alcohol	89.75	2.92	2.62	2.79	2.50	2.67	2.40
5. Furnishings & Hsld Op	122.28	14.35	17.55	15.95	19.50	17.49	21.39
6. Clothing	92.30	14.24	13.14	14.93	13.78	15.59	14.39

Consumption Goods & Services Analysis—Continued

[Location: Guam]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
7. Domestic Service	89.96	1.78	1.60	1.79	1.61	1.81	1.63
8. Professional Services	95.33	5.77	5.50	5.84	5.57	5.91	5.63
9. Personal Care	90.16	3.57	3.22	3.47	3.13	3.38	3.05
10. Recreation	124.52	12.77	15.90	14.22	17.71	15.61	19.44
Total weights		100.00		100.00		100.00	
Total indexes			110.15		109.96		109.82

Consumption Goods & Services Analysis

[Location: Honolulu, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	141.95	25.52	36.23	22.38	31.77	19.35	27.47
2. Food Away From Home	108.20	15.95	17.26	16.09	17.41	16.23	17.56
3. Tobacco	118.39	3.13	3.71	2.54	3.01	1.96	2.32
4. Alcohol	100.59	2.92	2.94	2.79	2.81	2.67	2.69
5. Furnishings & Hsld Op	105.31	14.35	15.11	15.95	16.80	17.49	18.42
6. Clothing	80.57	14.24	12.90	14.93	13.52	15.59	14.12
7. Domestic Service	73.97	1.78	1.32	1.79	1.32	1.81	1.34
8. Professional Services	93.99	5.77	5.42	5.84	5.49	5.91	5.55
9. Personal Care	94.48	3.57	3.37	3.47	3.28	3.38	3.19
10. Recreation	111.20	12.77	14.20	14.22	15.81	15.61	17.36
Total weights		100.00		100.00		100.00	
Total indexes			112.46		111.22		110.02

Consumption Goods & Services Analysis

[Location: Hawaii County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	138.56	25.52	35.38	22.38	31.01	19.35	26.81
2. Food Away From Home	103.93	15.95	16.58	16.09	16.72	16.23	16.87
3. Tobacco	117.86	3.13	3.69	2.54	2.99	1.96	2.31
4. Alcohol	94.25	2.92	2.75	2.79	2.63	2.67	2.52
5. Furnishings & Hsld Op	102.46	14.35	14.70	15.95	16.34	17.49	17.92
6. Clothing	96.55	14.24	13.75	14.93	14.41	15.59	15.05
7. Domestic Service	58.89	1.78	1.05	1.79	1.05	1.81	1.07
8. Professional Services	86.28	5.77	5.09	5.84	5.16	5.91	5.22
9. Personal Care	93.86	3.57	3.35	3.47	3.26	3.38	3.17
10. Recreation	105.04	12.77	13.41	14.22	14.94	15.61	16.40
Total weights		100.00		100.00		100.00	
Total indexes			109.73		108.51		107.34

Consumption Goods & Services Analysis

[Location: Kauai County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	145.61	25.52	37.21	22.38	32.63	19.35	28.21
2. Food Away From Home	111.04	15.95	17.71	16.09	17.87	16.23	18.02
3. Tobacco	121.91	3.13	3.82	2.54	3.10	1.96	2.39
4. Alcohol	106.19	2.92	3.10	2.79	2.96	2.67	2.84
5. Furnishings & Hsld Op	107.55	14.35	15.43	15.95	17.15	17.49	18.81
6. Clothing	80.83	14.24	12.93	14.93	13.86	15.59	14.16
7. Domestic Service	60.79	1.78	1.08	1.79	1.09	1.81	1.10
8. Professional Services	94.29	5.77	5.44	5.84	5.51	5.91	5.57
9. Personal Care	102.09	3.57	3.64	3.47	3.54	3.38	3.45
10. Recreation	106.30	12.77	13.56	14.22	15.10	15.61	16.58
Total weights		100.00		100.00		100.00	

Consumption Goods & Services Analysis—Continued

[Location: Kauai County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total indexes			113.92		112.51		111.13

Consumption Goods & Services Analysis

[Location: Maui County, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	147.50	25.52	37.64	22.38	33.01	19.35	28.54
2. Food Away From Home	114.25	15.95	18.22	16.09	18.38	16.23	18.54
3. Tobacco	117.39	3.13	3.67	2.54	2.98	1.96	2.30
4. Alcohol	104.58	2.92	3.05	2.79	2.92	2.67	2.79
5. Furnishings & Hsld Op	108.05	14.35	15.51	15.95	17.23	17.49	18.90
6. Clothing	96.89	14.24	13.80	14.93	14.47	15.59	15.11
7. Domestic Service	75.20	1.78	1.34	1.79	1.35	1.81	1.36
8. Professional Services	103.08	5.77	5.96	5.84	6.02	5.91	6.09
9. Personal Care	109.87	3.57	3.92	3.47	3.81	3.38	3.71
10. Recreation	116.59	12.77	14.89	14.22	16.58	15.61	18.20
Total weights		100.00		100.00		100.00	
Total indexes			117.99		116.75		115.54

Consumption Goods & Services Analysis

[Location: San Juan, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	114.60	25.52	29.25	22.38	25.65	19.35	22.18
2. Food Away From Home	98.81	15.95	15.76	16.09	15.90	16.23	16.04
3. Tobacco	117.70	3.13	3.68	2.54	2.99	1.96	2.31
4. Alcohol	105.49	2.92	3.06	2.79	2.94	2.67	2.82
5. Furnishings & Hsld Op	93.42	14.35	13.41	15.95	14.90	17.49	16.34
6. Clothing	90.97	14.24	12.95	14.93	13.58	15.59	14.18
7. Domestic Service	69.48	1.78	1.24	1.79	1.24	1.81	1.26
8. Professional Services	67.72	5.77	3.91	5.84	3.95	5.91	4.00
9. Personal Care	82.05	3.57	2.93	3.47	2.85	3.38	2.77
10. Recreation	92.59	12.77	11.82	14.22	13.17	15.61	14.45
Total weights		100.00		100.00		100.00	
Total indexes			96.03		97.17		96.35

Consumption Goods & Services Analysis

[Location: Mayaguez, PR]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	112.47	25.52	28.70	22.38	25.17	19.35	21.76
2. Food Away From Home	96.11	15.95	15.33	16.09	15.46	16.23	15.60
3. Tobacco	108.78	3.13	3.40	2.54	2.76	1.96	2.13
4. Alcohol	96.40	2.92	2.81	2.79	2.69	2.67	2.57
5. Furnishings & Hsld Op	89.12	14.35	12.79	15.95	14.21	17.49	15.59
6. Clothing	85.89	14.24	12.23	14.93	12.82	15.59	13.39
7. Domestic Service	81.81	1.78	1.46	1.79	1.46	1.81	1.48
8. Professional Services	49.90	5.77	2.88	5.84	2.91	5.91	2.95
9. Personal Care	72.98	3.57	2.61	3.47	2.53	3.38	2.47
10. Recreation	92.29	12.77	11.79	14.22	13.12	15.61	14.41
Total weights		100.00		100.00		100.00	
Total indexes			94.00		93.13		92.35

Consumption Goods & Services Cost Analysis Puerto Rico Composite

Location	Weights	Total indexes		
		Lower income	Middle income	Upper income
San Juan, PR	70.00	96.03	97.17	96.36
Mayaguez, PR	30.00	94.00	93.13	92.36
Total Weight	100.00			
Composite Indexes		96.62	95.96	95.15

Consumption Goods & Services Analysis

[Location: St. Croix, VI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	137.89	25.52	35.19	22.38	30.86	19.35	26.68
2. Food Away From Home	102.28	15.95	16.31	16.09	16.46	16.23	16.60
3. Tobacco	84.10	3.13	2.63	2.54	2.14	1.96	1.65
4. Alcohol	87.20	2.92	2.55	2.79	2.43	2.67	2.33
5. Furnishings & Held Op	99.61	14.35	14.29	15.95	15.89	17.49	17.42
6. Clothing	82.53	14.24	11.75	14.93	12.32	15.59	12.87
7. Domestic Service	92.77	1.78	1.65	1.79	1.66	1.81	1.68
8. Professional Services	97.53	5.77	5.63	5.84	5.70	5.91	5.76
9. Personal Care	100.59	3.57	3.59	3.47	3.49	3.38	3.40
10. Recreation	118.17	12.77	15.09	14.22	16.80	15.61	18.45
Total weights		100.00		100.00		100.00	
Total indexes			106.66		107.75		106.84

Consumption Goods & Services Analysis

[Location: St. Thomas, VI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	141.47	25.52	36.10	22.38	31.66	19.35	27.37
2. Food Away From Home	112.25	15.95	17.90	16.09	18.06	16.23	18.22
3. Tobacco	85.43	3.13	2.67	2.54	2.17	1.96	1.67
4. Alcohol	105.95	2.92	3.09	2.79	2.96	2.67	2.83
5. Furnishings & Held Op	102.86	14.35	14.73	15.95	16.37	17.49	17.96
6. Clothing	85.13	14.24	12.12	14.93	12.71	15.59	13.27
7. Domestic Service	96.67	1.78	1.72	1.79	1.73	1.81	1.75
8. Professional Services	96.38	5.77	5.56	5.84	5.63	5.91	5.70
9. Personal Care	111.35	3.57	3.98	3.47	3.86	3.38	3.76
10. Recreation	119.80	12.77	15.30	14.22	17.04	15.61	18.70
Total weights		100.00		100.00		100.00	
Total indexes			113.17		112.19		111.23

Consumption Goods & Services Analysis

[Location: Anchorage Blend, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	99.86	25.52	25.49	22.38	22.35	19.35	19.33
2. Food Away From Home	102.07	15.95	16.28	16.09	16.42	16.23	16.57
3. Tobacco	84.69	3.13	2.65	2.54	2.15	1.96	1.66
4. Alcohol	115.19	2.92	3.36	2.79	3.21	2.67	3.08
5. Furnishings & Held Op	100.89	14.35	14.48	15.95	16.09	17.49	17.65
6. Clothing	96.65	14.24	13.76	14.93	14.43	15.59	15.07
7. Domestic Service	90.81	1.78	1.62	1.79	1.63	1.81	1.64
8. Professional Services	96.52	5.77	5.57	5.84	5.64	5.91	5.70
9. Personal Care	87.87	3.57	3.13	3.47	3.04	3.38	2.96
10. Recreation	122.19	12.77	15.60	14.22	17.38	15.61	19.07
Total weights		100.00		100.00		100.00	
Total indexes			101.94		102.34		102.73

Consumption Goods & Services Analysis

[Location: Fairbanks Blend, AK]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	103.87	25.52	26.51	22.38	23.25	19.35	20.10
2. Food Away From Home	101.70	15.95	16.22	16.09	16.36	16.23	16.51
3. Tobacco	77.34	3.13	2.42	2.54	1.96	1.96	1.52
4. Alcohol	117.96	2.92	3.44	2.79	3.29	2.67	3.15
5. Furnishings & Held Op	105.99	14.35	15.21	15.95	16.91	17.49	18.54
6. Clothing	89.91	14.24	12.80	14.93	13.42	15.59	14.02
7. Domestic Service	79.59	1.78	1.42	1.79	1.42	1.81	1.44
8. Professional Services	81.95	5.77	4.73	5.84	4.79	5.91	4.84
9. Personal Care	88.89	3.57	3.21	3.47	3.12	3.38	3.04
10. Recreation	117.00	12.77	14.94	14.22	16.64	15.61	18.26
Total weights		100.00		100.00		100.00	
Total indexes			100.90		101.16		101.42

Consumption Goods & Services Analysis

[Location: Guam Blend]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	99.76	25.52	25.46	22.38	22.33	19.35	19.30
2. Food Away From Home	93.55	15.95	14.92	16.09	15.06	16.23	15.18
3. Tobacco	58.43	3.13	1.83	2.54	1.48	1.96	1.15
4. Alcohol	80.95	2.92	2.36	2.79	2.26	2.67	2.16
5. Furnishings & Held Op	107.58	14.35	15.44	15.95	17.16	17.49	18.82
6. Clothing	74.49	14.24	10.61	14.93	11.12	15.59	11.61
7. Domestic Service	89.96	1.78	1.60	1.79	1.61	1.81	1.63
8. Professional Services	95.33	5.77	5.50	5.84	5.57	5.91	5.63
9. Personal Care	73.48	3.57	2.62	3.47	2.55	3.38	2.48
10. Recreation	113.36	12.77	14.48	14.22	16.12	15.61	17.70
Total weights		100.00		100.00		100.00	
Total indexes			94.82		95.25		95.66

Consumption Goods & Services Analysis

[Location: Honolulu Blend, HI]

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	112.54	25.52	28.72	22.38	25.19	19.35	21.76
2. Food Away From Home	106.20	15.95	17.26	16.09	17.41	16.23	17.56
3. Tobacco	92.91	3.13	2.91	2.54	2.36	1.96	1.82
4. Alcohol	95.88	2.92	2.80	2.79	2.68	2.67	2.56
5. Furnishings & Held Op	90.88	14.35	13.01	15.95	14.46	17.49	15.88
6. Clothing	80.97	14.24	11.53	14.93	12.09	15.59	12.62
7. Domestic Service	73.97	1.78	1.32	1.79	1.32	1.81	1.34
8. Professional Services	93.99	5.77	5.42	5.84	5.49	5.91	5.55
9. Personal Care	83.11	3.57	2.97	3.47	2.88	3.38	2.81
10. Recreation	100.75	12.77	12.87	14.22	14.33	15.61	15.73
Total weights		100.00		100.00		100.00	
Total indexes			98.81		98.21		97.63

Date Prepared: October 29, 1990.

CONSUMPTION GOODS & SERVICES ANALYSIS

[Location: San Juan Blend]

Categories	Category Indexes	Lower Income		Middle Income		Upper Income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
1. Food At Home	105.36	25.52	26.89	22.38	23.58	19.35	20.39
2. Food Away From Home	96.81	15.95	15.76	16.09	15.90	16.23	16.04
3. Tobacco	97.67	3.13	3.06	2.54	2.48	1.96	1.91
4. Alcohol	105.49	2.92	3.08	2.79	2.94	2.67	2.82
5. Furnishings & Hsld Op	91.99	14.35	13.20	15.96	14.67	17.49	16.09
6. Clothing	86.75	14.84	12.84	14.93	13.25	15.59	13.84
7. Domestic Service	69.48	1.76	1.24	1.79	1.24	1.81	1.26
8. Professional Services	67.72	5.77	3.91	5.84	3.95	5.91	4.00
9 Personal Care	80.86	3.57	2.89	3.47	2.81	3.38	2.73
10. Recreation	90.54	12.77	11.56	14.22	12.87	15.61	14.13
Total weights		100.00		100.00		100.00	
Total Indexes			94.23		93.89		93.21

BILLING CODE 6330-01-M

Appendix 7

OPM LIVING COMMUNITY SELECTION

KEY: B - Community used for Both rental and homeowner data
R - Community used for Rental data
H - Community used for Homeowner data

City	HOUSING PROFILES BY INCOME LEVEL		
	Low	Middle	High
Honolulu, city and county	Waianae (B) Makiki (R) Wahiawa (H)	Wahiawa (R) Kaneohe (B) Pearl City (H)	Mililani Town (B) Aiea (R) Kaneohe (H)
Hawaii Co. HI	<---------- Hilo (B) ----------> <---------- Paradise Park (H) -------->		
Maui Co. HI	Wailuka (B) Kahului (B)	Wailuka (R) <-------- Lahaina (B) ---------> Kahului (R) Kihei (H)	Kihei (R)
Kauai Co. HI	<---------- Lihue (B) ----------> Princeville (B) <---------- Kapaa (H) ----------> Kalaheo (H) Hanamaulu (R) Kapaa (R) Poipu (R) Hanapepe (R) Wailua (R)		
Guam	<---------- Agana (R) ----------> Jonestown (R) Agat/Santo Rita (R) Yigo(B) Pago Bay (R) <---------- Dededo (H) ----------> Barrigada Hts. (H)		
Anchorage AK	<---------- North Anchorage (B) -------> South Anchorage (B)		
Fairbanks AK	<---------- Fairbanks (R) ----------> South Fairbanks (H) Fairbanks (H) Foothills (B)		
Juneau AK	<---------- West Juneau (R) ----------> Mendenhall Val. (H) <-------- Mendenhall Valley (B) -------->		
San Juan Puerto Rico	Carolina (B) <-------- Old San Juan (R) --------> <---------- Isla Verde (R) ----------> Condado (R) Bayamon (H) Carolina (H) Guaynabo (H) Toa Baja (H) Hato Rey (H)		
Mayaguez Puerto Rico	Mayaguez Terr. (R) Sultana (B) Miradero (B) Aturas (H) Aturas (B) Sultana (H)		

OPM LI''NG COMMUNITY SELECTION, continued

HOUSING PROFILES BY INCOME LEVEL

City	Low	Middle	High
St. Thomas VI	<----------	Charlotte Amalie (B) ----------	>
St. Croix VI	<-- West end (Frederiksted area) (B) -->		Frederiksted (B) Christiansted (B)
Washington D.C.	<----------	Northeast D.C. (B) -------->	Northwest D.C. (B)*
	* - Excluding Georgetown, but including Dupont Circle, Cleveland Park and Adams Morgan		
WDC-Maryland	Capital Hts (R) Suitland (H)	Germantown (R) Gaithersburg (H)	Rockville (B)
WDC-Virginia	Woodbridge (B)	Falls Church (R) Fairfax (R) Dale City (H)	Alexandria (R) Springfield (H)

BILLING CODE 6325-01-C

Appendix 8

HOUSING COMPONENT—DATA COLLECTION FOR COMPARABLE SALES

Location: _____ Community: _____ Date: _____ Initials: _____

No.	Address	Selling price	Sale date	Age	Room Count			Square footage	Price per sq foot	Taxes
					Total	Bedrooms	Baths			
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										

Current Market Conditions: _____ Appreciation Rate: _____ Source / _____
Runzheimer International

Appendix 9

Data Collection

Aged Mortgages

It will be necessary to gather information on aged mortgages for all locations back to 1984.

Location: _____

Community: _____

Please ask the following questions of each contact you speak with:

(1) Do you have comparable sales data from 1984?

(2) Can Runzheimer obtain access to this information?

(3) Can you give me the trend in appreciation/depreciation over the past six years? Ask this question for the 3 points of reference as they may vary by profile.

900 Sq. Ft. ____ 1300 Sq. Ft. ____ 1700 Sq. Ft. ____

Comments: _____

Source #_____

Appendix 10

HOUSING COMPONENT—RENTAL DATA COLLECTION

Location_____ Community_____ Date_____ Initials_____

No.	Complex, address, phone	Rental type	Bedroom count	Monthly rent	Total room count	Square footage	Security deposit	Utilities included	Monthly heat cost?	Amenities	Restrictions	Total units
1			1									
			2									
			3									
			1									

HOUSING COMPONENT—RENTAL DATA COLLECTION—Continued

Location_____ Community_____ Date_____ Initials_____

No.	Complex, address, phone	Rental type	Bedroom count	Monthly rent	Total room count	Square footage	Security deposit	Utilities included	Monthly heat cost?	Amenities	Restrictions	Total units
2			2									
			3									
3			1									
			2									
			3									
4			1									
			2									
			3									
5			1									
			2									
			3									
6			1									
			2									
			3									
7			1									
			2									
			3									
8			1									
			2									
			3									
9			1									
			2									
			3									
10			1									
			2									
			3									

Appendix II

Refer to appendix 5 for sample of data collection format.

Item Descriptions Housing Maintenance

Electrical Outlet. Price a 2 plug grounded electrical outlet. Medium priced.

Latex Interior Paint. Price one gallon white, interior flat latex paint. Price a national brand with one coat coverage. Possible brands: Dutch Boy, Glidden. Price two different national brands of paint in each store.

Painting. Price to paint 12' X 14' living room with 8' ceilings. Walls are plaster or drywall in good repair. Two standard sized sash windows, one picture window, one standard wood door. Rooms have simple wood baseboards and trim. Existing paint is latex, flat white, smooth finish, about three years old. Trim paint is latex, white, gloss enamel, about three years old. Walls and trim require no surface preparation. Exclude Cost of Materials. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.

Unclog Drain. Price to unclog kitchen sink drain by mechanical means (snake, auger, etc.) Exclude Disassembly of Pipes. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.

Electric Work. Price per hour to add circuit breaker for dishwasher. Cut 3/4 inch hole in wooden floor for cable. Connect dishwasher directly to power box (power box is easy to reach). Exclude Cost of Materials. Obtain labor rate per hour, flat charge if any, and estimated time to complete job.

Utilities

Electric Bill, Residential Customer. Obtain per cent of customers using as primary heating source, average consumption, customer service charge (single phase service), cost(s) per KWH, and other items included on bill.

Gas Bill, Residential Customer. Obtain per cent of customers using as primary heating source, average consumption, average cost per sq. ft., customer service charge, cost(s) per cu. ft., and other items included on bill.

Water Bill, Residential Customer. Obtain average consumption, customer service charge, cost(s) per gallon, and other items included on bill.

Household Insurance

Homeowner Insurance. For each living community surveyed based on income level, provide owner housing profile and insurance cost (semi-annual or other). Assume HO–3 coverage.

Renter Insurance. For each living community surveyed based on income level, provide renter housing profile and insurance cost (semi-annual or other). Assume HO–4 coverage.

Housing Related Items

Telephone Service. Obtain monthly cost for unmeasured service, for touch tone service, and for tax.

Long Distance Telephone. Price the cost of a 10 Minute call, evening rate (5 pm to 11 pm weekdays), direct dial from the location being surveyed to each of the following cities: New York, Chicago, and Los Angeles. Include any federal, state, local or excise tax that is applicable.

HOUSING RELATED COMPONENT MORTGAGE INTEREST RATES

City_____ State_____ Country_____

Effective date	Avg. Int. Rate		Avg. Pts.		Bank #1 Rate + (points)		Bank #2 Rate + (points)		Bank #3 Rate + (points)		Int.
	Fixed	Variable	Fixed	Variable	Fixed	Variable	Fixed	Variable	Fixed	Variable	
					( )	( )	( )	( )	( )	( )	
					( )	( )	( )	( )	( )	( )	
					( )	( )	( )	( )	( )	( )	
					( )	( )	( )	( )	( )	( )	
					( )	( )	( )	( )	( )	( )	
					( )	( )	( )	( )	( )	( )	

**Ask for: 20% Down, 30 Year, Conventional Rates

BILLING CODE 4210-01-M

OPM REAL ESTATE TAX WORKSHEET

STATE	LIVING COMMUNITY SELECTION	HOUSING VALUE	HOUSING ADJUSTMENT	FORMULA	CURRENT REAL ESTATE TAXES	AVERAGE TAXES
ALASKA						
ANCHORAGE						
low	North Anchorage					
middle	North Anchorage					
high	South Anchorage					
FAIRBANKS						
low	South Fairbanks					
middle	Fairbanks					
high	Foothills					
JUNEAU						
low	West Juneau					
	Mendenhall Valley					
middle	West Juneau					
	Mendenhall Valley					
high	West Juneau					
	Mendenhall Valley					

SAMPLE

See Appendix 7 for complete listing of communities surveyed.

BILLING CODE 6325-01-C

Appendix 12

HOUSING ANALYSIS

[Location: Anchorage, AK]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	7,794	11,300	68.97	37.10	25.59	
Renter	6,391	8,613	74.20	62.90	46.67	72.26
				100.00		
Middle Income:						
Owner	11,193	15,287	73.22	46.91	34.35	
Renter	7,696	10,472	73.51	53.09	39.03	73.38
				100.00		
Upper Income:						
Owner	15,389	21,929	70.18	62.86	44.12	
Renter	13,379	16,263	82.27	37.14	30.56	4.68
				100.00		

HOUSING ANALYSIS

[Location: Fairbanks, AK]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	9,069	11,300	80.26	37.10	29.78	
Renter	7,173	8,613	83.28	62.90	52.38	82.16
				100.00		
Middle Income:						
Owner	12,078	15,287	79.01	46.91	37.06	
Renter	8,571	10,472	81.85	53.09	43.45	80.51
				100.00		
Upper Income:						
Owner	15,183	21,929	69.24	62.86	43.52	
Renter	15,024	16,263	92.38	37.14	34.31	77.83
				100.00		

HOUSING ANALYSIS

[Location: Juneau, AK]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	10,972	11,300	97.10	37.10	36.02	
Renter	9,715	8,613	112.79	62.90	70.94	106.96
				100.00		
Middle Income:						
Owner	13,668	15,287	89.41	46.91	41.94	
Renter	12,249	10,472	116.97	53.09	62.10	104.04
				100.00		
Upper Income:						
Owner	17,029	21,929	77.66	62.86	48.82	
Renter	15,318	16,263	94.19	37.14	34.98	83.80
				100.00		

HOUSING ANALYSIS

[Location: Guam]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	12,302	11,300	108.87	37.10	40.39	
Renter	7,237	8,613	84.02	62.90	52.85	93.24
				100.00		
Middle Income:						
Owner	15,106	15,287	98.82	46.91	46.36	
Renter	11,896	10,472	113.60	53.09	60.31	106.67
				100.00		
Upper Income:						
Owner	26,845	21,929	122.42	62.86	76.95	
Renter	17,240	16,263	106.01	37.14	39.37	116.32
				100.00		

BEST COPY AVAILABLE

HOUSING ANALYSIS

[Location: Honolulu County, HI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	20,919	11,300	185.12	37.10	68.68	
Renter	9,519	8,613	110.52	62.90	69.52	138.20
				100.00		
Middle Income:						
Owner	31,841	15,287	208.36	46.91	97.09	
Renter	12,073	10,472	115.29	53.09	61.21	158.30
				100.00		
Upper Income:						
Owner	35,962	21,929	163.99	62.86	103.06	
Renter	16,352	16,263	100.55	37.14	37.34	140.42
				100.00		

HOUSING ANALYSIS

[Location: Hawaii County, HI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	7,797	11,300	69.00	37.10	25.60	
Renter	8,134	8,613	94.44	62.90	59.40	85.00
				100.00		
Middle Income:						
Owner	11,727	15,287	76.71	46.91	35.98	
Renter	10,413	10,472	99.44	53.09	52.79	88.77
				100		
Upper Income:						
Owner	17,006	21,929	77.55	62.86	48.75	
Renter	13,788	16,263	84.66	37.14	31.44	80.19
				100.00		

HOUSING ANALYSIS

[Location: Kauai County, HI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	17,342	11,300	153.47	37.10	56.94	
Renter	10,061	8,613	116.81	62.90	73.47	130.41
				100.00		
Middle Income:						
Owner	22,592	15,287	147.79	46.91	69.33	
Renter	12,802	10,472	122.25	53.09	64.90	134.23
				100.00		
Upper Income:						
Owner	26,344	21,929	129.25	62.86	81.25	
Renter	17,526	16,263	107.78	37.14	40.03	121.28
				100.00		

HOUSING ANALYSIS

[Location: Maui County, HI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	17,204	11,300	152.25	37.10	56.48	
Renter	9,839	8,613	114.23	62.90	71.85	128.33
				100.00		
Middle Income:						
Owner	22,582	15,287	147.72	46.91	69.30	
Renter	12,448	10,472	118.87	53.09	63.11	132.41
				100.00		
Upper Income:						
Owner	26,461	21,929	129.79	62.86	81.59	
Renter	16,654	16,263	102.40	37.14	38.03	119.62
				100.00		

HOUSING ANALYSIS

[Location: Puerto Rico]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	9,062	11,300	80.37	37.10	29.82	
Renter	9,733	8,613	113.00	62.90	71.08	100.90
				100.00		
Middle Income:						
Owner	11,048	15,287	72.27	46.91	33.90	
Renter	11,290	10,472	107.81	53.09	57.24	91.14
				100.00		
Upper Income:						
Owner	16,143	21,929	73.61	62.86	46.27	
Renter	16,760	16,263	103.06	37.14	38.28	84.55
				100.00		

HOUSING ANALYSIS

[Location: St. Croix, VI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	10,411	11,300	92.13	37.10	34.18	
Renter	8,655	8,613	100.49	62.90	63.21	97.39
				100.00		
Middle Income:						
Owner	13,214	15,287	86.44	46.91	40.55	
Renter	13,409	10,472	128.05	53.09	67.98	108.53
				100.00		
Upper Income:						
Owner	21,130	21,929	96.36	62.86	60.57	
Renter	16,561	16,263	101.83	37.14	37.82	98.39
				100.00		

HOUSING ANALYSIS

[Location: St. Thomas, VI]

	Total annual cost	Total cost DC area	Index	Weight	Subtotal	Total indexes
Lower Income:						
Owner	14,151	11,300	125.23	37.10	46.46	
Renter	11,011	8,613	127.84	62.90	80.41	126.87
				100.00		
Middle Income:						
Owner	17,709	15,287	115.84	46.91	54.34	
Renter	14,743	10,472	140.78	53.09	74.74	129.06
				100.00		
Upper Income:						
Owner	21,020	21,929	95.85	62.86	60.25	
Renter	17,083	16,263	105.04	37.14	39.01	99.26
				100.00		

Appendix 13

HOUSING COST ANALYSIS

[City: Anchorage, AK]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	56,725	45,380	10.125	4,829	100
	Aged	70,031	56,025	10.250	6,024	0
Middle	Current	87,408	69,926	10.125	7,441	100
	Aged	112,061	89,649	10.250	9,640	0
Upper	Current	126,438	101,151	10.125	10,764	100
	Aged	175,609	140,487	10.250	15,107	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	246		289		333	
Insurance	283	156	365	156	427	247
Utilities	1,707	1,494	1,974	1,707	2,240	1,832
Real Estate Tax	729		1,124		1,825	
Housing	4,829	4,739	7,441	5,833	10,764	11,300
Total Annual cost	7,794	6,391	11,193	7,696	15,389	13,379

Housing Cost Analysis

[City: Fairbanks, AK]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	55,137	44,109	10.125	4,694	100
	Aged	71,606	57,285	10.250	6,160	0
Middle	Current	78,906	63,127	10.125	6,718	100
	Aged	106,633	85,306	10.250	9,173	0
Upper	Current	106,585	85,269	10.125	9,074	100
	Aged	148,036	118,429	10.250	12,735	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	239		281		324	
Insurance	281	146	321	146	378	200
Utilities	3,106	2,899	3,615	3,106	4,124	3,344
Real Estate Tax	749		1,143		1,263	
Housing	4,894	4,328	6,718	5,319	9,074	11,480
Total Annual cost	9,069	7,173	12,078	8,571	15,163	15,024

Housing Cost Analysis

[City: Juneau, AK]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	81,559	65,247	10.125	6,943	100
	Aged	66,537	54,829	10.250	5,896	0
Middle	Current	104,265	83,412	10.125	8,877	100
	Aged	85,463	68,370	10.250	7,352	0
Upper	Current	133,356	106,685	10.125	11,353	100
	Aged	105,004	84,004	10.250	9,033	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	251		296		340	
Insurance	220	144	237	144	273	172
Utilities	2,482	2,148	2,857	2,482	3,252	2,646
Real Estate Tax	1,096		1,401		1,811	
Housing	6,943	7,425	8,877	9,643	11,343	12,500
Total annual cost	10,972	9,715	13,668	12,249	17,029	15,318

Housing Cost Analysis

[City: Guam, GU]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	103,174	82,539	10.500	9,060	100
	Aged	85,268	68,214	10.250	7,335	0
Middle	Current	128,151	102,521	10.500	11,254	100
	Aged	105,042	84,034	10.250	9,035	0
Upper	Current	244,245	195,396	10.500	21,448	100
	Aged	195,396	156,317	10.250	16,809	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	268		315		362	
Insurance	834	58	1,036	116	1,974	232
Utilities	1,868	1,629	2,168	1,868	2,468	2,008
Real Estate Tax	272		333		623	
Housing	9,080	5,550	11,254	9,912	21,448	15,000
Total Annual cost	12,302	7,237	15,106	11,896	26,875	17,240

Housing Cost Analysis

[City: Honolulu County, HI]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	216,113	172,891	10.250	18,591	100
	Aged	84,091	67,273	10.250	7,234	0
Middle	Current	335,197	268,157	10.250	28,836	100
	Aged	135,707	108,566	10.250	11,674	0
Upper	Current	379,263	303,426	10.250	32,628	100
	Aged	160,713	128,570	10.250	13,825	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	294		346		397	
Insurance	290	233	404	233	454	253
Utilities	1,205	1,078	1,363	1,205	1,521	1,279
Real Estate Tax	539		692		962	
Housing	18,591	8,208	28,836	10,635	32,628	14,820
Total annual cost	20,919	9,519	31,641	12,073	35,962	16,352

Housing Cost Analysis

[City: Hawaii County, HI]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	67,714	54,171	10.250	5,825	100
	Aged	59,398	47,519	10.250	5,110	0
Middle	Current	106,821	87,057	10.250	9,361	100
	Aged	84,554	67,643	10.250	7,274	0
Upper	Current	164,283	131,426	10.250	14,133	100
	Aged	110,554	88,443	10.250	9,510	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	259		304		350	
Insurance	225	151	253	151	313	221
Utilities	1,062	970	1,221	1,062	1,361	1,147
Real Estate Tax	406		568		849	
Housing	5,825	7,013	9,361	9,180	14,133	12,400
Total annual cost	7,797	8,134	11,727	10,413	17,006	13,768

HOUSING COST ANALYSIS

[City: Kauai County, HI]

Income	Mortage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	177,361	141,881	10.250	15,257	100
	Aged	86,344	69,076	10.250	7,428	0
Middle	Current	233,846	187,077	10.250	20,117	100
	Aged	121,101	96,881	10.250	10,418	0
Upper	Current	295,854	236,684	10.250	25,451	100
	Aged	149,724	119,779	10.250	12,880	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	240		282		324	
Insurance	215	184	232	184	254	196
Utilities	1,098	984	1,241	1,098	1,383	1,185
Real Estate Tax	532		720		932	
Housing	15,257	8,893	20,117	11,520	25,451	16,167
Total annual cost	17,342	10,061	22,592	12,802	28,344	17,528

HOUSING COST ANALYSIS

[City: Maui County, HI]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	174,092	139,274	10.250	14,976	100
	Aged	87,046	69,637	10.250	7,486	0
Middle	Current	230,996	184,797	10.250	19,872	100
	Aged	118,459	94,766	10.250	10,191	0
Upper	Current	290,491	232,393	10.250	24,990	100
	Aged	130,265	104,212	10.250	11,206	0

Category	Annual Costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	277		326		375	
Insurance	333	186	502	191	676	214
Utilities	1,307	1,163	1,486	1,307	1,666	1,390
Real Estate Tax	311		396		754	
Housing	14,976	8,490	19,872	10,950	24,990	15,050
Total annual cost	17,204	9,839	22,582	12,448	28,461	16,654

HOUSING COST ANALYSIS—PUERTO RICO COMPOSITE

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
San Juan, PR	70.00	8,623	11,108	10,437	12,632	14,361	19,498
Mayaguez, PR	30.00	10,152	6,524	12,473	8,159	20,301	10,370
Total weight	100.00						
Composite cost		9,062	9,733	11,048	11,290	16,143	16,760

HOUSING COST ANALYSIS

[City: San Juan, PR]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	76,027	62,422	10.375	6,782	100
	Aged	58,229	46,583	10.250	5,009	0
Middle	Current	95,572	76,458	10.375	8,307	100
	Aged	63,715	50,972	10.250	5,481	0
Upper	Current	134,562	107,650	10.375	11,696	100
	Aged	84,630	67,704	10.250	7,280	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	202		237		279	
Insurance	472	82	562	116	763	196
Utilities	756	676	856	756	956	802
Real Estate Tax	411		475		673	
Housing	6,782	10,350	8,307	11,760	11,696	18,500
Total annual cost	8,623	11,108	10,437	12,632	14,361	19,498

HOUSING COST ANALYSIS

[City: Mayaguez, PR]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	93,898	75,118	10.375	8,162	100
	Aged	84,509	67,674	10.250	7,277	0
Middle	Current	116,409	93,127	10.375	10,118	100
	Aged	103,017	82,413	10.250	8,862	0
Upper	Current	196,866	157,357	10.375	17,097	100
	Aged	171,040	136,832	10.250	14,714	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	182		214		246	
Insurance	532	160	655	199	1,093	350
Utilities	844	764	944	844	1,044	891
Real estate tax	432		542		821	
Housing	8,162	5,600	10,118	7,125	17 087	8,129
Total annual cost	10,152	6,524	12,473	8,159	20,301	10,370

HOUSING COST ANALYSIS

[City: St. Croix, VI]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	80,912	64,730	11.250	7,544	100
	Aged	49,839	39,712	10.250	4,270	0
Middle	Current	104,850	83,880	11.250	9,776	100
	Aged	60,607	48,485	10.250	5,214	0
Upper	Current	177,908	142,327	11.250	16,588	100
	Aged	91,705	73,364	10.250	7,869	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	333		392		450	
Insurance	556	529	660	529	1,099	529
Utilities	1,741	1,538	1,993	1,741	2,246	1,859
Real estate tax	237		363		747	
Housing	7,544	6,588	9,776	11,139	16,588	14,173
Total annual cost	10,411	8,655	13,214	13,409	21,130	16,561

HOUSING COST ANALYSIS

[City: St. Thomas, VI]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	122,500	98,000	11.250	11,422	100
	Aged	56,977	45,581	10.250	4,901	0
Middle	Current	155,000	124,000	11.250	14,452	100
	Aged	73,810	59,048	10.250	6,350	0
Upper	Current	186,000	148,000	11.250	17,250	100
	Aged	94,872	75,897	10.250	8,161	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	300		353		406	
Insurance	232	303	285	510	334	722
Utilities	1,741	1,538	1,993	1,741	2,246	1,859
Real Estate Tax	456		626		784	
Housing	11,422	9,170	14,452	12,492	17,250	14,502
Total amount cost	14,151	11,011	17,709	14,743	21,020	17,083

HOUSING COST ANALYSIS—WASHINGTON DC COMPOSITE

Location	Weights	Annual costs					
		Lower income		Middle income		Upper income	
		Owner	Renter	Owner	Renter	Owner	Renter
Washington, DC, DC	33.34	10,562	8,179	15,938	9,410	25,503	19,039
Washington, DC, MD	33.33	11,212	8,731	16,137	10,702	19,313	14,807
Washington, DC, VA	33.33	12,105	8,930	13,765	11,303	20,969	14,942
Total weight	100.00						
Composite cost		11,300	8,613	15,287	10,472	21,929	16,263

HOUSING COST ANALYSIS

[City: Washington, DC]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	67,877	70,301	9.875	7,326	100
	Aged	70,868	56,695	10.250	6,096	0
Middle	Current	140,974	112,779	9.875	11,752	100
	Aged	100,696	80,556	10.250	8,662	0
Upper	Current	235,975	188,780	9.875	19,671	100
	Aged	154,232	123,386	10.250	13,268	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	264		310		357	
Insurance	380	116	446	126	824	159
Utilities	2,056	1,809	2,365	2,056	2,674	2,200
Real estate tax	556		1,065		1,977	
Housing	7,326	6,254	11,752	7,228	19,671	16,680
Total annual cost	10,582	8,178	15,938	9,410	25,503	19,039

HOUSING COST ANALYSIS

[City: Washington DC, MD]

Income	Mortgage type	Mortgage calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	89,493	71,594	9.875	7,460	100
	Aged	73,355	58,684	10.250	6,310	0
Middle	Current	138,561	110,864	9.875	11,552	100
	Aged	101,154	80,923	10.250	8,702	0
Upper	Current	164,888	131,910	9.875	13,745	100
	Aged	110,663	88,530	10.250	9,520	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	300		353		406	
Insurance	216	110	238	121	274	141
Utilities	2,036	1,793	2,340	2,036	2,644	2,178
Real Estate Tax	1,200		1,654		2,244	
Housing	7,460	6,828	11,552	8,545	13,745	12,488
Total annual cost	11,212	8,731	16,137	10,702	19,313	14,807

HOUSING COST ANALYSIS

[City: Washington DC, VA]

Income	Mortgage type	Mortgate Calculations				
		Market value	Amount financed	Interest rate	Annual cost	Weights
Lower	Current	97,293	77,834	10.000	8,197	100
	Aged	71,017	56,813	10.250	6,109	0
Middle	Current	109,784	87,827	10.000	9,249	100
	Aged	77,861	62,289	10.250	6,698	0
Upper	Current	182,028	145,622	10.000	15,335	100
	Aged	124,677	99,741	10.250	10,725	0

Category	Annual costs					
	Lower income		Middle income		Upper income	
	Owner	Renter	Owner	Renter	Owner	Renter
Maintenance	301		354		407	
Insurance	236	126	232	113	244	124
Utilities	2,074	1,627	2,383	2,074	2,692	2,218
Real Estate Tax	1,297		1,587		2,291	
Housing	8,197	6,977	9,249	9,116	15,335	12,600
Total annual cost	12,105	8,930	13,785	11,303	20,969	14,942

Appendix 14

PUBLIC TRANSPORTATION

Location: _____

Date: _____

Prepared By: _____

Outlet Number: 1

Form of public transportation surveyed	Cost
Metro/Bus/Taxi	____

BILLING CODE 6325-01-M

Appendix 15

PRIVATE TRANSPORTATION COMPONENT
VEHICLE COSTS 1 of 3

Revised 8/2/90

Location: _____ Date: ___/___/___ Prepared By: _____

Costed Vehicle: 1990 Honda Civic DX 4 Dr Sedan 1.5L 4 Cyl

Item	Price	Notes/Comments
Base Price (MSRP)		
OPTIONS		
Air conditioning		
AM/FM stereo radio		
Power steering		
Tinted glass		
Power disc brakes		
Engine block heater		* ALASKA ONLY
Heavy duty battery		* ALASKA ONLY
Rustproof/undercoating		
Other options:		* List name & nbr if option pkg
FEES		
Destination charge		
Shipping charge		
Dealer markup		* Also called ADM or prep charge
Other one-time fees:		
TAXES		
Excise tax		*Describe basis for each tax
Import/customs tax		
Use tax		
Sales tax		
Other one-time taxes:		

SAMPLE

RUNIHEIMER INTERNATIONAL KEC1-WP51\MYFILES\TRN_COST

BILLING CODE 6325-01-C

Private Transportation Item Descriptions

Vehicles. Honda Civic DX. 1990, 4 door sedan, 1.5 liter 4 cylinder engine. Ford Taurus L. 1990, 4 door sedan, 2.5 liter 4 cylinder engine. Chevrolet Blazer S10. 1990, 2 door, 4-wheel drive, 4.3 liter 6 cylinder engine.

Base Price. Obtain the base price (Manufacturer's Suggested Retail Price) for each vehicle.

Options. For each vehicle, price the following options: Air conditioning, AM/FM stereo radio, Power steering, Tinted glass, Power disc brakes, Engine block heater (ALASKA ONLY), Heavy duty battery (ALASKA ONLY), Rustproof/undercoating, and other options.

Fees. For each vehicle, price the following options: Destination charge, Shipping charge, Dealer markup, and other one-time fees.

Taxes. For each vehicle, price the following taxes: Excise tax, Import/customs tax, Use tax, Sales tax, and other one-time taxes.

Specifications. For each vehicle, obtain the following information: length, wheelbase, tires, curb weight, horsepower, fuel type, and fuel performance (mpg).

Depreciation. For each vehicle, compute the residual value after 12, 24, 36, and 48 months respectively.

Gasoline. For each station name/brand, price regular unleaded self service and regular unleaded full service.

Vehicle Maintenance. For each vehicle, price a tune up, an oil change, an auto. trans. fluid-change, a coolant—flush/fill, and a muffler/tailpipe.

Tires. Price a P175/70R13, Eagle GT+4, #111–895–234 for the Honda Civic. Price a P205/70R14, Eagle GT+4, #111–885–234 for the Ford Taurus L. Price a P205/R15, Eagle GT+4, #111–707–5486 for the Chevrolet S10 Blazer.

License and Registration. For each vehicle, price title fee, passenger vehicle registration fees, plate fees, inspection fees, administration/clerical/other fees, and local added fees. Specify if one-time or annual. List any exceptions if the Blazer is not registered as a passenger vehicle.

Miscellaneous Tax. For each vehicle, price miscellaneous tax. Tell how rate is determined, give formula for new vehicle purchase, give formula for subsequent year (2 to 5), and explain billing.

Automobile Finance. Obtain the rate for a 4 year loan.

Auto Insurance. For each vehicle, price insurance coverage identified below. Assume that vehicles are used in commuting 15 miles/day, 12,000 miles/year and that the driver is a 35 year old married male with no accidents or violations in the last 3 years. Get rates for two different living communities. Include related expense fees and taxes.

COVERAGE

BI	10/20	15/30	50/100	100/200
PD	10	10	25	100
MED	5	5	5	5
UM	10/20	15/30	50/100	100/200
COMP. (ded.)	250	100	100	250
COLL. (ded.)	500	200	250	250

BILLING CODE 6325-01-M

KEC1-LOTUS\MYFILES\OPMTXCND

07/23/90

PRIVATE TRANSPORTATION COMPONENT SALES TAX AND VEHICLE CONDITION

Location	<—— SALES TAX ——> State Rate	Local Rate	<— DEPRECIATION —> Vehicle Condition	Condition Factor	<- FUEL PERFORMANCE -> Driving Condition	Condition Factor
WASHINGTON DC, DC			Average	1.00	Regular	1.00
WASHINGTON DC, MD			Average	1.00	Regular	1.00
WASHINGTON DC, VA			Average	1.00	Regular	1.00
ANCHORAGE, AK			Average	1.00	Regular	1.00
FAIRBANKS, AK			Rough	0.90	Severe	0.90
JUNEAU, AK			Average	1.00	Regular	1.00
GUAM			Average	1.00	Regular	1.00
HONOLULU, HI			Average	1.00	Regular	1.00
HAWAII COUNTY, HI			Average	1.00	Regular	1.00
KAUAI COUNTY, HI			Average	1.00	Regular	1.00
MAUI COUNTY, HI			Average	1.00	Regular	1.00
SAN JUAN, PR			Average	1.00	Regular	1.00
MAYAGUEZ, PR			Average	1.00	Regular	1.00
ST CROIX, VI			Average	1.00	Regular	1.00
ST THOMAS, VI			Average	1.00	Regular	1.00

Notes:

RUNZHEIMER INTERNATIONAL

KEC1-LOTUS\MYFILES\OPMTXCND

BILLING CODE 6325-01-C

Appendix 1B

TRANSPORTATION ANALYSIS

[Location: Anchorage, AK]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5244	4751	110.38
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6003	5720	104.95
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	6325	6029	104.91
Average index			106.75

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	106.75	94.80	101.20	94.32	100.69	93.55	99.86
Public transportation	49.45	5.20	2.57	5.68	2.81	6.45	3.19
Total weights		100.00		100.00		100.00	
Total indexes			103.77		103.50		103.05

TRANSPORTATION ANALYSIS

[Location: Fairbanks, AK]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5,694	4,751	119.85
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6,427	5,720	112.36
3 Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	6,986	6,029	115.87
Average index			116.03

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	116.03	94.80	110.00	94.32	109.44	93.55	108.55
Public transportation	82.42	5.20	4.29	5.68	4.68	6.45	5.32
Total weights		100.00		100.00		100.00	
Total indexes			114.29		114.12		113.87

TRANSPORTATION ANALYSIS

[Location: Juneau, AK]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5414	4751	113.95
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6254	5720	109.34
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	6627	6029	109.92
Average index			111.07

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	111.07	94.80	105.29	94.32	104.76	93.55	103.91
Public transportation	54.95	5.20	2.86	5.68	3.12	6.45	3.54
Total weights		100.00		100.00		100.00	
Total indexes			108.15		107.88		107.45

TRANSPORTATION ANALYSIS

[Location: Guam]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5334	4751	112.27
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6374	5720	111.43
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	6685	6029	110.88
Average index			111.53

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	111.53	94.80	105.73	94.32	105.20	93.55	104.34
Public transportation	111.53	5.20	5.80	5.68	6.39	6.45	7.19
Total weights		100.00		100.00		100.00	
Total indexes			111.53		111.53		111.53

TRANSPORTATION ANALYSIS

[Location: Honolulu, HI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	6,208	4,751	130.67
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	7,039	5,720	123.06
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7,610	6,029	126.22
Average index			126.65

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	128.85	94.80	120.06	94.32	119.46	93.55	118.48
Public transportation	32.97	5.20	1.71	5.68	1.87	6.45	2.13
Total weights		100.00		100.00		100.00	
Total indexes			121.77		121.33		120.61

TRANSPORTATION ANALYSIS

[Location: Hawaii County, HI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	6,129	4,751	129.00
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6,953	5,720	121.56
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7,449	6,029	123.55
Average index			124.70

TRANSPORTATION SUMMARY

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	124.70	94.80	118.22	94.32	117.62	93.55	116.86
Public transportation	61.54	5.20	3.20	5.68	3.50	6.45	3.97
Total weights		100.00		100.00		100.00	
Total indexes			121.42		121.12		120.63

Transportation Analysis

[Location: Kauai County, HI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5,911	4,751	124.42
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6,724	5,720	117.55
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7,254	6,029	120.32
Average index			120.76

Transportation Summary

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	120.76	94.80	114.48	94.32	113.90	93.55	112.97
Public transportation	94.95	5.20	2.86	5.68	3.12	6.45	3.54
Total weights		100.00		100.00		100.00	
Total indexes			117.34		117.02		116.51

Transportation Analysis

[Location: Maui County, HI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	6,288	4,751	132.35
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	7,059	5,720	123.41
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7,606	6,029	126.19
Average index			127.32

Transportation Summary

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	127.32	94.80	120.70	94.32	120.09	93.55	119.11
Public transportation	127.32	5.20	6.62	5.68	7.23	6.45	8.21
Total weights		100.00		100.00		100.00	
Total indexes			127.32		127.32		127.32

Transportation Analysis

[Location: Puerto Rico]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	6,147	4,751	129.38
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	7,622	5,720	133.25
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	8,731	6,029	144.82
Average index			135.82

Transportation Summary

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	135.82	94.80	126.76	94.32	126.11	93.55	127.06
Public transportation	13.74	5.20	0.71	5.68	0.78	6.45	0.89
Total weights		100.00		100.00		100.00	
Total indexes			129.47		128.89		127.95

Transportation Analysis

[Location: St. Croix, VI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5913	4751	124.46
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6755	5720	118.09
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7382	6029	122.44
Average index			121.66

Transportation Summary

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	121.66	94.80	115.33	94.32	114.75	93.55	113.81
Public transportation	91.76	5.20	4.77	5.68	5.21	6.45	5.92
Total weights		100.00		100.00		100.00	
Total indexes			120.10		119.96		119.73

Transportation Analysis

[Location: St. Thomas, VI]

Vehicle	Total annual cost	Total cost DC area	Index
1. Honda Civic DX 4 Dr Sedan 1.5L 4 cylinder	5979	4751	125.85
2. Ford Taurus L 4 Dr Sedan 2.5L 4 cylinder	6952	5720	121.54
3. Chevy S10 Blazer 4x4 2 Dr 4.3L 6 cylinder	7634	6029	126.62
Average index			124.67

Transportation Summary

Category	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Private transportation	124.87	94.80	118.19	94.32	117.59	93.55	116.63
Public transportation	27.47	5.20	1.43	5.68	1.56	6.45	1.77
Total weights		100.00		100.00		100.00	
Total indexes			119.62		119.15		118.40

Appendix 17

Private Transportation Cost Analysis

[Location: Anchorage, AK]

Category	Annual costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr. Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	708	992	1,166
Maintenance/oil	208	239	222
Tires	162	199	199
License & registration	68	68	68
Miscellaneous tax	45	45	45
Depreciation	2,559	2,893	2,783
Finance expense	737	775	878
Insurance	759	792	964
Total annual cost	5,244	6,003	6,325

Private Transportation Cost Analysis

[Location: Fairbanks, AK]

Category	Annual costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr. Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	987	1,214	1,429
Maintenance/oil	376	386	476
Tires	162	199	199
License & registration	68	68	68
Miscellaneous tax	0	0	0
Depreciation	2,604	2,964	2,969
Finance expense	761	795	908
Insurance	766	781	927
Total annual cost	5,664	6,427	6,995

Private Transportation Cost Analysis

[Location: Juneau, AK]

Category	Annual costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr. Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	808	1,257	1,479
Maintenance/oil	268	295	297
Tires	168	207	206
License & registration	38	38	38
Miscellaneous tax	0	0	0
Depreciation	2,609	2,943	2,933
Finance expense	776	815	922
Insurance	636	699	852
Total annual cost	5,414	6,254	6,627

Private Transportation Cost Analysis

[Location: Guam, GU]

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr.
Fuel	725	1,015	1,194
Maintenance/oil	168	178	176
Tires	132	166	179
License & registration	28	30	38
Miscellaneous tax	0	0	0
Depreciation	2,586	3,096	3,005
Finance expense	867	962	1,087
Insurance	860	923	1,020
Total annual cost	5,334	6,374	6,685

Private Transportation Cost Analysis

[Location: Honolulu, HI]

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr.
Fuel	763	1,069	1,257
Maintenance/oil	227	250	278
Tires	168	207	206
License & registration	64	74	78
Miscellaneous tax	0	0	0
Depreciation	2,939	3,313	3,314
Finance expense	960	1,014	1,162
Insurance	1,087	1,112	1,315
Total annual cost	6,206	7,039	7,610

Private Transportation Cost Analysis

[Location: Hawaii County, HI]

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	797	1,116	1,313
Maintenance/oil	235	249	240
Tires	168	207	206
License & registration	46	52	54
Miscellaneous tax	0	0	0
Depreciation	2,939	3,313	3,314
Finance expense	928	980	1,123
Insurance	1,016	1,036	1,199
Total annual cost	6,129	6,953	7,449

Private Transportation Cost Analysis

[Location: Kauai County, HI]

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	808	1,131	1,331
Maintenance/oil	211	212	250
Tires	168	207	206
License & registration	51	59	62
Miscellaneous tax	0	0	0
Depreciation	2,939	3,313	3,314
Finance expense	903	953	1,093
Insurance	831	849	998
Total annual cost	5,911	6,724	7,254

Private Transportation Cost Analysis

[Location: Maui County, HI]

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	803	1,124	1,323
Maintenance/oil	300	251	272
Tires	168	207	206
License & registration	52	60	62
Miscellaneous tax	0	0	0
Depreciation	2,939	3,313	3,314
Finance expense	1,011	1,068	1,224
Insurance	1,015	1,036	1,207
Total annual cost	6,288	7,059	7,808

Private Transportation Cost Analysis, Puerto Rico Composite

Location	Weights	Annual costs		
		Honda Civic, 1.5L 4 Cyl, 4 Dr Sedan	Ford Taurus, 2.5L 4 Cyl, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 Cyl, 2 Dr
San Juan, PR	70.00	6,186	7,842	8,770
Mayaguez, PR	30.00	6,104	7,575	8,641
Total weight	100.00			
Composite cost		6,147	7,822	8,731

Private Transportation Cost Analysis

(Location: San Juan, PR)

Category	Annual costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	786	1,101	1,255
Maintenance/oil	159	146	137
Tires	95	116	120
License & registration	79	79	80
Miscellaneous tax	0	0	0
Depreciation	3,241	4,134	4,695
Finance expense	998	1,172	1,439
Insurance	808	894	1,021
Total annual cost	6,166	7,642	8,770

Private Transportation Cost Analysis

(Location: Mayaguez, PR)

Category	Annual costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	799	1,105	1,300
Maintenance/oil	135	117	107
Tires	95	116	120
License & registration	79	79	80
Miscellaneous tax	0	0	0
Depreciation	3,241	4,134	4,695
Finance expense	1,007	1,252	1,535
Insurance	688	772	816
Total annual cost	6,104	7,575	8,641

Private Transportation Cost Analysis

(Location: St. Croix, VI)

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	606	849	999
Maintenance/oil	254	252	191
Tires	95	116	120
License & registration	34	43	43
Miscellaneous tax	0	0	0
Depreciation	2,741	3,231	3,161
Finance expense	906	997	1,117
Insurance	1,277	1,277	1,751
Total annual cost	5,913	6,755	7,382

Private Transportation Cost Analysis

(Location: St. Thomas, VI)

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	884	1,252	1,473
Maintenance/oil	282	299	306
Tires	95	116	120
License & registration	34	43	43
Miscellaneous tax	0	0	0
Depreciation	2,741	3,231	3,131
Finance expense	867	945	1,070
Insurance	1,086	1,086	1,461
Total annual cost	5,979	6,952	7,834

Private Transportation Cost Analysis, Washington DC Composite

Location	Weights	Annual costs		
		Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Washington DC, DC	33.34	4,866	5,805	6,103
Washington DC, MD	33.33	4,687	5,734	6,006
Washington DC, VA	33.33	4,701	5,622	5,979
Total weight	100.00			
Composite cost		4,751	5,720	6,029

Private Transportation Cost Analysis

(Location: Washington, DC)

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	653	914	1,076
Maintenance/oil	239	260	247
Tires	108	130	130
License & registration	53	53	53
Miscellaneous tax	0	0	0
Depreciation	2,254	2,803	2,763
Finance expense	669	751	867
Insurance	892	894	967
Total annual cost	4,866	5,805	6,103

Private Transportation Cost Analysis

(Location: Washington, DC, MD)

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	662	927	1,091
Maintenance/oil	233	237	271
Tires	105	129	129
License & registration	34	34	34
Miscellaneous tax	0	0	0
Depreciation	2,223	2,768	2,683
Finance expense	634	711	814
Insurance	796	926	984
Total annual cost	4,687	5,734	6,006

Private Transportation Cost Analysis

(Location: Washington DC, VA)

Category	Annual Costs		
	Honda Civic, 1.5L 4 CYL, 4 Dr Sedan	Ford Taurus, 2.5L 4 CYL, 4 Dr Sedan	Chevrolet S10 Blazer, 4.3L 6 CYL, 2 Dr
Fuel	673	943	1,109
Maintenance/oil	245	239	262
Tires	104	128	128
License & registration	66	66	75
Miscellaneous tax	240	222	304
Depreciation	2,161	2,699	2,604
Finance expense	650	729	835
Insurance	562	596	661
Total annual cost	4,701	5,622	5,979

Appendix 18

OPM: MISCELLANEOUS EXPENSE COMPONENT, PRICING SHEET—LEGAL AND ACCOUNTING FEES

City: _____ State: _____ Cntry: _____

Researcher's Initials: _____ Date: ____/____/____ Area Code _____

Legal Fees—Description: Hourly Rate for General Counsel

Firm Name	Telephone	Hourly Rate	Comments

Accounting Fees—Description: Ave. Rate to Complete Tax Form 1040 and Schedule A (Incl. State)

Firm Name	Telephone	Rate	Comments

Runzheimer International CR1: OPM/PRICE 07/18/90

Appendix 19—Part 1

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Anchorage, AK]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	145.00	138.00	1.0507	11.20	11.77
2. Accounting services	162.50	218.00	0.7454	4.30	3.21
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.48

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Fairbanks, AK]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	123.33	138.00	0.8937	11.20	10.01
2. Accounting services	137.00	218.00	0.6284	4.30	2.70
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					97.21

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Juneau, AK]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	125.00	138.00	0.9058	11.20	10.14
2. Accounting services	127.50	218.00	0.5849	4.30	2.52
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					97.16

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Guam]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	136.67	138.00	0.9904	11.20	11.09
2. Accounting services	187.00	218.00	0.8578	4.30	3.69
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.28

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Honolulu, HI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	141.67	138.00	1.0266	11.20	11.50
2. Accounting services	156.25	218.00	0.7167	4.30	3.08
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.08

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Hawaii, HI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	118.00	138.00	0.8551	11.20	9.58
2. Accounting services	206.00	218.00	0.9541	4.30	4.10
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					98.18

MISCELLANEOUS EXPENSE ANALYSIS

[Location: Kauai, HI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	146.25	138.00	1.0598	11.20	11.87
2. Accounting services	140.00	218.00	0.6422	4.30	2.76
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.13

BEST COPY AVAILABLE

Miscellaneous Expense Analysis

[Location: Maui, HI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	148.33	138.00	1.0749	11.20	12.04
2. Accounting services	200.00	218.00	0.9174	4.30	3.94
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					100.48

Miscellaneous Expense Analysis

[Location: Puerto Rico]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	86.00	138.00	0.6377	11.20	7.14
2. Accounting services	127.00	218.00	0.5826	4.30	2.51
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					94.15

Miscellaneous Expense Analysis, Puerto Rico Composite

Location	Weights	Annual Costs	
		Legal Services	Accounting services
San Juan, PR	70.00	93.50	147.50
Mayeguez, PR	30.00	75.83	80.50
Total Weight	100.00		
Composite cost		86.00	127.00

Miscellaneous Expense Analysis

[Location: St. Croix, VI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	150.00	138.00	1.0870	11.20	12.17
2. Accounting services	150.00	218.00	0.6881	4.30	2.96
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.63

Miscellaneous Expense Analysis

[Location: St. Thomas, VI]

Item	Price	Price DC area	Ratio	Weights	Subtotal
1. Legal services	151.25	138.00	1.0960	11.20	12.28
2. Accounting services	136.00	218.00	0.6239	4.30	2.68
3. Constant	1.00	1.00	1.0000	84.50	84.50
Total weight				100.00	
Total index					99.46

Miscellaneous Expense Analysis, Washington DC Composite

Location	Weights	Annual Costs	
		Legal services	Accounting services
Washington DC, DC	33.34	142.92	122.50
Washington DC, MD	33.33	139.17	346.43
Washington DC, VA	33.33	132.50	185.92
Total weight	100.00		
Composite cost		136.00	218.00

Appendix 19—Part 2

Miscellaneous Expense Analysis

[Location: Anchorage, AK]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						124.14
Aspirin	7.1567	6.0900	1.1752	5.0	5.88	
Tetracycline	4.5750	4.0583	1.1273	12.0	13.53	
Vision check	67.6667	42.3222	1.5988	6.0	9.59	
Dental service	94.5000	52.0833	1.8144	17.0	30.84	
Doctor visit	50.0000	44.1556	1.1324	17.0	19.25	
Hospital room	425.0000	316.6314	1.3423	6.0	8.05	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	124.14	43.41	53.89	31.56	39.18	22.40	27.81
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			110.48		107.62		105.41

Miscellaneous Expense Analysis

[Location: Fairbanks, AK]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						123.35
Aspirin	5.9567	6.0900	0.9781	5.0	4.89	
Tetracycline	3.9500	4.0583	0.9733	12.0	11.68	
Vision check	70.0000	42.3222	1.6540	6.0	9.92	
Dental service	109.3333	52.0833	2.0992	17.0	35.69	
Doctor visit	45.6667	44.1556	1.0342	17.0	17.58	
Hospital room	348.0000	316.6314	1.0991	5.0	6.59	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	123.35	43.41	53.55	31.56	38.93	22.40	27.63
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			110.14		107.37		105.23

Miscellaneous Expense Analysis

[Location: Juneau, AK]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						128.53
Aspirin	8.0300	6.0900	1.3186	5.0	6.59	
Tetracycline	5.7800	4.0583	1.4242	12.0	17.09	
Vision check	80.0000	42.3222	1.8903	6.0	11.34	
Dental service	105.0000	52.0833	2.0160	17.0	34.27	
Doctor visit	41.6667	44.1556	0.9436	17.0	16.04	
Hospital room	360.0000	316.6314	1.2001	6.0	7.20	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical Care	129.53	43.41	56.23	31.56	40.86	22.40	29.01
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			112.82		109.32		106.61

Miscellaneous Expenses Analysis

[Location: Guam]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						103.66
Aspirin	3.9400	6.0900	0.6470	5.0	3.24	
Tetracycline	4.6400	4.0583	0.8955	12.0	11.95	
Vision check	25.8833	42.3222	0.6139	6.0	3.68	
Dental service	73.3333	52.0833	1.4080	17.0	23.94	
Doctor visit	50.8667	44.1556	1.1475	17.0	19.51	
Hospital room	229.1000	316.6314	0.7236	6.0	4.34	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	103.66	43.41	45.00	31.56	32.72	22.40	23.22
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			101.59		101.16		100.82

Miscellaneous Expenses Analysis

[Location: Honolulu, HI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care					104.76	
Aspirin	8.4133	6.0900	1.3815	5.0	6.91	
Tetracycline	4.0833	4.0583	1.0012	12.0	12.01	
Vision check	55.9733	42.3222	1.3226	6.0	7.94	
Dental service	66.0400	52.0833	1.2680	17.0	21.56	
Doctor visit	33.0133	44.1556	0.7477	17.0	12.71	
Hospital room	350.0000	316.6314	1.1054	6.0	6.63	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	104.76	43.41	45.48	31.56	33.06	22.40	23.47
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			102.07		101.50		101.07

Miscellaneous Expense Analysis

[Location: Hawaii County, HI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						108.53
Aspirin	8.3800	6.0900	1.3760	5.0	6.88	
Tetracycline	5.0933	4.0583	1.2550	12.0	15.06	
Vision check	57.2000	42.3222	1.3515	6.0	8.11	
Dental service	57.2000	52.0833	1.0982	17.0	18.67	
Doctor visit	41.8800	44.1556	0.9480	17.0	16.12	
Hospital room	353.0000	316.6314	1.1149	6.0	6.69	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	108.53	43.41	47.11	31.56	34.25	22.40	24.31
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			103.70		102.69		101.91

Miscellaneous Expense Analysis

[Location: Kauai, HI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						106.59
Aspirin	8.5500	6.0900	1.4039	5.0	7.02	
Tetracycline	5.0467	4.0583	1.2436	12.0	14.92	
Vision check	56.2125	42.3222	1.3282	6.0	7.97	
Dental service	49.9200	52.0833	0.9585	17.0	16.29	
Doctor visit	47.5500	44.1556	1.0769	17.0	18.31	
Hospital room	268.0000	316.6314	0.8464	6.0	5.08	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	106.59	43.41	46.27	31.56	33.64	22.40	23.86
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			102.86		102.08		101.48

Miscellaneous Expense Analysis

[Location: Maui, HI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						111.55

Miscellaneous Expense Analysis—Continued

[Location: Maui, HI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Aspirin	8.3639	6.0900	1.3733	5.0	6.87	
Tetracycline	4.5833	4.0583	1.1244	12.0	13.49	
Vision check	53.7067	42.3222	1.2690	6.0	7.61	
Dental service	74.9800	52.0833	1.4392	17.0	24.47	
Doctor visit	45.6000	44.1556	1.0327	17.0	17.56	
Hospital room	240.0000	316.6314	0.7580	6.0	4.55	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	111.56	43.41	48.42	31.56	35.21	22.40	24.99
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			105.01		103.65		102.59

Miscellaneous Expense Analysis, Puerto Rico Composite

Location	Weights	Lower income	Middle income	Upper income
San Juan, PR	70.00	90.96	93.42	95.33
Mayaguez, PR	30.00	91.33	93.70	95.83
Total weight	100.00			
Composite indexes		91.06	93.50	95.39

Miscellaneous Expense Analysis

[Location: San Juan, PR]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						79.16
Aspirin	13.3000	6.0900	2.1839	5.0	10.92	
Tetracycline	1.9967	4.0583	0.4920	12.0	5.90	
Vision check	30.0000	42.3222	0.7088	6.0	4.25	
Dental service	35.0000	52.0833	0.6720	17.0	11.42	
Doctor visit	18.3333	44.1556	0.4152	17.0	7.06	
Hospital room	137.5000	$16.6314	0.4343	6.0	2.61	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	79.16	43.41	34.36	31.56	24.96	22.40	17.73
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			90.96		93.42		95.33

Miscellaneous Expense Analysis

[Location: Mayaguez, PR]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						80.0
Aspirin	6.8600	6.0900	1.1246	5.0	5.62	
Tetracycline	4.3200	4.0583	1.0645	12.0	12.77	

Miscellaneous Expense Analysis—Continued

[Location: Mayaguez, PR]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Vision check	25.0000	42.3222	0.5907	6.0	3.54	
Dental service	30.0000	52.0833	0.5760	17.0	9.79	
Doctor visit	22.5000	44.1556	0.5096	17.0	8.66	
Hospital room	140.0000	316.6314	0.4422	6.0	2.65	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	80.03	43.41	34.74	31.56	25.26	22.40	17.93
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			91.33		93.70		95.53

Miscellaneous Expense Analysis

[Location: St. Croix, VI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						92.01
Aspirin	9.7800	6.0900	1.6059	5.0	8.03	
Tetracycline	3.5833	4.0583	0.8830	12.0	10.60	
Vision check	38.3333	42.3222	0.9057	6.0	5.43	
Dental service	46.6667	52.0833	0.8960	17.0	15.23	
Doctor visit	30.0000	44.1556	0.6794	17.0	11.55	
Hospital room	220.0000	316.6314	0.6948	6.0	4.17	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	92.01	43.41	39.94	31.56	29.04	22.40	20.61
2. Cash contributions	100.60	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.60	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.60		100.00		100.00	
Total indexes			96.53		97.48		98.21

Miscellaneous Expense Analysis

[Location: St. Thomas, VI]

Category/Item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						106.45
Aspirin	7.9600	6.0900	1.3120	5.0	6.56	
Tetracycline	6.2250	4.0583	2.0267	12.0	24.32	
Vision check	43.3333	42.3222	1.0239	6.0	6.14	
Dental service	43.3333	52.0833	0.8320	17.0	14.14	
Doctor visit	36.6660	44.1556	0.8304	17.0	14.12	
Hospital room	220.0000	316.6314	0.6948	6.0	4.17	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	106.45	43.41	46.21	31.56	33.60	22.40	23.84
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			102.80		102.04		101.44

Miscellaneous Expense Analysis

[Location: Anchorage Blend, AK]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						122.46
Aspirin	5.1172	6.0900	0.8403	5.0	4.20	
Tetracycline	4.5750	4.0583	1.1273	12.0	13.53	
Vision check	67.6667	42.3222	1.5986	6.0	9.59	
Dental service	94.5000	52.0833	1.8144	17.0	30.84	
Doctor visit	50.0000	44.1556	1.1324	17.0	19.25	
Hospital room	425.0000	316.6314	1.3423	6.0	8.05	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	122.46	43.41	53.16	31.56	38.65	22.40	27.43
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			109.75		107.09		105.03

Miscellaneous Expense Analysis

[Location: Fairbanks Blend, AK]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical care						122.75
Aspirin	5.2216	6.0900	0.8574	5.0	4.29	
Tetracycline	3.9500	4.0583	0.9733	12.0	11.68	
Vision check	70.0000	42.3222	1.6540	6.0	9.92	
Dental service	109.3333	52.0833	2.0992	17.0	35.69	
Doctor visit	45.6667	44.1556	1.0342	17.0	17.58	
Hospital room	348.0000	316.6314	1.0991	6.0	6.59	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income	Middle income	Upper income			
				Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	122.75	43.41	53.29	31.56	38.74	22.40	27.50
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			109.86		107.18		105.10

Miscellaneous Expense Analysis

[Location: Guam Blend]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						103.8
Aspirin	4.1150	6.0900	0.6757	5.0	3.38	
Tetracycline	4.0408	4.0583	0.9955	12.0	11.95	
Vision check	25.9633	42.3222	0.6138	6.0	3.68	
Dental service	73.3333	52.0833	1.4080	17.0	23.94	
Doctor visit	50.6667	44.1556	1.1475	17.0	19.51	
Hospital room	229.1000	316.6314	0.7236	6.0	4.34	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	103.80	43.41	45.06	31.56	32.76	22.40	23.25
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			101.65		101.20		100.85

Miscellaneous Expense Analysis

[Location: Honolulu Blend, HI]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						103.25
Aspirin	6.5829	6.0900	1.0809	5.40	5.0	
Tetracycline	4.0633	4.0583	1.0012	12.0	12.01	
Vision check	55.9733	42.3222	1.3226	6.0	7.94	
Dental service	66.0400	52.0833	1.2680	17.0	21.56	
Doctor visit	33.0133	44.1556	0.7477	17.0	12.71	
Hospital room	350.0000	316.6314	1.1054	6.0	6.63	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle Income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	103.25	43.41	44.82	31.56	32.59	22.40	23.13
2. Cash contributions	100.00	12.38	12.38	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			101.41		101.03		100.73

Miscellaneous Expense Analysis

[Location: San Juan Blend, PR]

Category/item	Price	Price DC area	Ratio	Weights	Subtotal	Index
Category Index Development						
Medical Care						77.18
Aspirin	10.8841	6.0900	1.7872	5.0	8.94	
Tetracycline	1.9967	4.0583	0.4920	12.0	5.90	
Vision check	30.0000	42.3222	0.7088	6.0	4.25	
Dental service	35.0000	52.0833	0.6720	17.0	11.42	
Doctor visit	18.3333	44.1556	0.4152	17.0	7.06	
Hospital room	137.5000	316.6314	0.4343	6.0	2.61	
Health insurance	1.0000	1.0000	1.0000	37.0	37.00	

Categories	Category indexes	Lower income		Middle income		Upper income	
		Weights	Subtotal	Weights	Subtotal	Weights	Subtotal
Total Index Development							
1. Medical care	77.18	43.41	33.50	31.56	24.36	22.40	17.29
2. Cash contributions	100.00	12.36	12.36	14.90	14.90	16.85	16.85
3. Personal insurance/pension	100.00	44.21	44.21	53.54	53.54	60.75	60.75
Total weights		100.00		100.00		100.00	
Total indexes			90.09		92.80		94.89

[FR Doc. 91-4094 Filed 2-25-91; 8:45 am]
BILLING CODE 6325-01-M

federal register

Tuesday
February 26, 1991

Part III

Department of Health and Human Services

Office of Child Support Enforcement, Family Support Administration

45 CFR Parts 301, 302, 303, and 304
Child Support Enforcement Program; Extension of Services to Medicaid Recipients and to Former AFDC Recipients; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement, Family Support Administration

45 CFR Parts 301, 302, 303, and 304

RIN 0970-AA81

Child Support Enforcement Program; Extension of Services to Medicaid Recipients and to Former AFDC Recipients

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule.

SUMMARY: These final rules implement sections 9141 and 9142 of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987, which amended title IV–D of the Social Security Act (the Act). Section 9141, effective December 22, 1987, amended section 457(c) of the Act to require State child support enforcement (IV–D) agencies to provide appropriate notice and to continue to provide IV–D services to persons no longer eligible for Aid to Families with Dependent Children (AFDC) under title IV–A of the Act. The IV–D agency must continue to provide services and pay any amount of support collected to the family on the same basis and under the same conditions as pertain to other non-AFDC families, except that no application, other request to continue services or any application fee for services may be required.

Section 9142, effective July 1, 1988, amended section 454 of the Act to require State IV–D agencies to provide IV–D services to families who receive Medicaid and have assigned to the State, under section 1912 of the Act, their rights to medical support and to payment of medical care from any third party, and to provide for distribution by the State of medical support collections under section 1912 of the Act.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hagan, Policy and Planning Division, OCSE, (202) 252–5375.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information requirements at 45 CFR 302.31(a)(4), 302.33 (a)(1), (a)(4), (d)(1)(ii), (d)(5), and (e)(2), 302.51(e), 303.30(a), and combined 303.30(b) and 303.31(c) is estimated to average 0.5, 43, 0.5, 1.0, 0.5, 0.5, 0.5, 5.0, and 0.1 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We have combined the reporting burdens at 45 CFR 303.30(b) and 303.31(c) since they have the same information requirement of informing the individual of the availability of medical support enforcement services. These information collection requirements were approved under OMB control No. 0970–0107.

Background

Continuation of Services to Former AFDC Recipients. When section 457(c) of the Act was amended by the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) to require (rather than allow) provision of IV–D services to families after AFDC eligibility ends, the intent of Congress was that all IV–D services continue to be provided, as in non-AFDC IV–D cases, to families whose AFDC eligibility was terminated, without payment of a fee or filing of an application for services. However, the Act, as amended by Public Law 98–378, provided a transition period of up to five months during which former AFDC cases were treated differently from non-AFDC cases. During the five-month period, States were not given the option to recover costs of providing services as in other non-AFDC cases and distribution of amounts collected was inconsistent with distribution in other non-AFDC cases.

The statute also required authorization for continuation of IV–D services after the five-month period, while prohibiting the necessity of filing an application or paying an application fee. The enactment of section 9141 of Public Law 100–203, effective December 22, 1987, eliminated this temporary category of cases. Without an application or application fee, these cases become non-AFDC cases once AFDC eligibility ends.

Services to non-AFDC Medicaid recipients. Recipients of Medicaid are required under section 1912(a)(1) of the Act to assign to the State their rights to support for medical care and payment for medical care from any third party and to cooperate with the State in establishing paternity and securing support. However, when assignment of rights to medical support was made a condition of eligibility for Medicaid by the Deficit Reduction Act of 1984 (section 2367 of Public Law 98–369), there was no corresponding amendment added to title IV–D of the Act requiring IV–D agencies to provide services to Medicaid recipients who assigned their rights under section 1912 of the Act. Therefore, prior to enactment of Public Law 100–203, IV–D agencies were required to provide services only to Medicaid families who were referred to the IV–D agency because they were AFDC recipients. IV–D services were also available to non-AFDC Medicaid families (those families receiving Medicaid but not AFDC), but only by application (and payment of an application fee), making these cases indistinguishable from non-AFDC IV–D cases.

Effective July 1, 1988, section 9142 of Public Law 100–203 requires that the IV–D agency provide IV–D services to families who have assigned their rights under section 1912 of the Act as a condition of receipt of Medicaid. Under section 1912 of the Act, an individual must assign all rights to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party. The IV–D agency must provide all appropriate IV–D services to Medicaid recipients referred to the IV–D agency by the Medicaid agency, whether or not they are also eligible for AFDC, without an application or application fee, including IV–D services unrelated to securing medical support, unless the non-AFDC Medicaid recipient notifies the IV–D agency that child support enforcement services unrelated to the securing of medical support are not wanted.

The IV–D agency will provide all appropriate IV–D services including the establishment and enforcement of medical support in accordance with the requirements of §§ 303.30 and 303.31. However, the IV–D agency is not required to seek payment for medical care from third parties such as health insurance companies, even though the individual has assigned rights to such payments under section 1912 of the Act. The IV–D agency may pursue payment from health insurance companies if there is a cooperative agreement, made pursuant to part 308, between the IV–D agency and the Medicaid agency to enforce these rights to third party payments.

Statutory Authority

This regulation is published under the authority of section 1102 of the Act which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Section 9141 of Public Law 100–203, effective December 22, 1987, amended section 457(c) of the Act to require State IV–D agencies to provide appropriate

notice and to continue to provide IV–D services to persons no longer eligible for AFDC under title IV–A of the Act. The IV–D agency must continue to provide services and pay any amount of support collected to the family on the same basis as in the case of other non-AFDC families, except that no application, other request to continue services or application fee may be required.

Section 9142 of Public Law 100–203, effective July 1, 1988, amended section 454(4) of the Act to require State IV–D agencies to provide IV–D services to families who have assigned to the State, under section 1912 of the Act, their rights to medical support and payment for medical care from any third party, and have agreed to cooperate with the State in establishing paternity and securing support, unless the Medicaid agency determines that it is against the best interests of the child to do so. Section 9142 also amended section 454(5) of the Act to require that, in any case in which support payments assigned by an individual under section 1912 of the Act are collected, the payments shall be made to the State for distribution under section 1912, except that this requirement shall not apply to payments for any month after the month in which the individual ceases to be eligible for Medicaid.

Changes to Existing Regulations

45 CFR Part 301

Section 301.1 General Definitions

Section 301.1 contains definitions of terms used in the IV–D regulations. We are revising § 301.1 to include definitions of the terms "assigned support obligation," "assignment," and "non-AFDC Medicaid recipient."

"Assigned support obligation" is defined as, unless otherwise specified, any support obligation which has been assigned to the State under 45 CFR 232.11 (AFDC cases) or section 471(a)(17) of the Act (title IV–E foster care cases), or any medical support obligation or payment for medical care from any third party which has been assigned to the State under 42 CFR 433.146 (which implements assignment of medical support rights under section 1912 of the Act.) "Assignment" is defined as, unless otherwise specified, any assignment of rights to support under 45 CFR 232.11 or section 471(a)(17) of the Act, or any assignment of rights to medical support and to payment for medical care from any third party under 42 CFR 433.146.

By including the definitions of "assigned support obligation" and "assignment" in § 301.1, we are able to simplify IV–D regulations which refer to assigned support obligations or assignments under the AFDC, title IV–E foster care and Medicaid programs by deleting reference to each type of assignment under the various programs. For example, in § 302.31, instead of adding reference to an assignment under 42 CFR 433.146 to require IV–D agencies to establish paternity and secure support for children with respect to whom an assignment under § 232.11, section 471(a)(17) or 42 CFR 433.146 is effective, we merely revised § 302.31 to refer to providing services to children for whom an assignment as defined in § 301.1 is effective. Thus, unless a regulation specifically defines an assigned support obligation as other than that included in the definition in § 301.1, any reference to an assigned support obligation encompasses assignments under the AFDC, title IV–E foster care and Medicaid programs. We address each of these conforming changes later in this preamble.

"Non-AFDC Medicaid recipient" is defined as any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Act but who is not receiving, nor deemed to be receiving, AFDC under title IV–A of the Act. We are including this term to differentiate between individuals receiving both AFDC and Medicaid and individuals receiving only Medicaid. As discussed in more detail under changes to § 302.33, Services to individuals not otherwise eligible for paternity and support services, it is necessary to differentiate between these two types of cases because non-AFDC Medicaid recipients will be treated for the most part as non-AFDC cases. Recipients of Supplemental Security Income (SSI) under title XVI of the Act, as well as other members of SSI-related groups who are eligible for Medicaid under title XIX of the Act, but not AFDC under title IV–A of the Act, are considered non-AFDC Medicaid recipients.

45 CFR Part 302

We are revising certain sections in part 302 to clarify treatment of non-AFDC Medicaid and former assistance cases. Section 9141 of Public Law 100–203, effective December 22, 1987, amended section 457(c) of the Act to require State IV–D agencies to provide appropriate notice and to continue to provide IV–D services to persons no longer eligible for AFDC under title IV–A of the Act. We are using our regulatory authority, under section 1102 of the Act, to extend this same continuation of services to former non-AFDC Medicaid recipients and former IV–E foster care recipients. For simplicity, we use the term "former assistance" recipient or case, rather than delineating "former AFDC, former non-AFDC Medicaid, and former IV–E foster care" recipient or case, except where we wish to specify an individual category, as appropriate.

1. Section 302.31 Establishing Paternity and Securing Support

Former § 302.31, which implements section 454(4) of the Act, required IV–D agencies to undertake to establish paternity and secure support for any individual for whom an assignment is effective under the AFDC or title IV–E foster care program. Section 9142 of Public Law 100–203 amended section 454(4) to require IV–D agencies to establish paternity and secure support for individuals who have assigned their rights under section 1912 of the Act, unless the Medicaid agency determines that it is against the best interests of the child to do so. We are implementing these new requirements in three ways

First, rather than add reference to assignments under the Medicaid program to § 302.31(a) (1) and (2), we deleted, for simplicity, reference to assignment "under § 232.11 of this title or section 471(a)(17) of the Act" from § 302.31(a) (1) and (2). As previously discussed, the term "assignment" is defined broadly to include, except where otherwise specified, assignment of rights to support under the AFDC, title IV–E foster care, and Medicaid programs.

Second, we included reference in § 302.31 (b) and (c) to the Medicaid agency as a source of notice of claims or determinations of good cause for failing to cooperate in establishing paternity and securing support. Section 302.31 (b) and (c) addressed suspension of efforts to establish paternity or secure support if the IV–D agency is notified by the IV–A or IV–E agency that there has been a claim or determination of good cause for failing to cooperate. As revised, § 302.31(b) requires the IV–D agency, upon receiving notice from the IV–A, IV–E, or Medicaid agency that there has been a claim of good cause for failure to cooperate, to suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency (i.e., either the IV–A, IV–E or Medicaid agency.)

Section 302.31(c) prohibits the IV–D agency from undertaking to establish paternity or secure support in any case for which it has received notice from the IV–A, IV–E or Medicaid agency that there has been a finding of good cause unless there has been a determination by the appropriate agency that support enforcement may proceed without the

participation of the caretaker or other relative.

Third, we added a new § 302.31(a)(4) to require the IV–D agency to notify the Medicaid agency whenever the IV–D agency discovers that a non-AFDC Medicaid recipient has received and retained medical support payments assigned to the State.

2. Section 302.32 Support Payments to the IV–D Agency

Former § 302.32(b) required the IV–D agency to notify a family which ceases to receive AFDC that it will continue to provide services pursuant to § 302.51(e)(1). Former § 302.51(e) addressed required IV–D activities once eligibility for AFDC ends. As discussed in more detail below, we addressed the changes made by Public Law 100–203 to requirements for continuation of services to former AFDC cases by deleting § 302.51(e) and revising § 302.33, Services to individuals not otherwise eligible for paternity and support services. To correspond with those changes, we changed the reference in § 302.32(b) from § 302.51(e)(1) to § 302.33.

3. Section 302.33 Individuals Not Otherwise Eligible for Paternity and Support Services

Former § 302.33 set forth requirements for providing IV–D services to any individual not receiving AFDC who files an application for services. We are revising § 302.33 to implement changes made by Public Law 100–203 with respect to providing services to individuals who are receiving Medicaid but not AFDC (non-AFDC Medicaid recipients, as defined in this regulation at § 301.1) and services to individuals once AFDC eligibility ends.

We are treating non-AFDC Medicaid cases and former assistance cases basically as non-AFDC cases because they closely resemble non-AFDC cases, except in the following ways. First, the IV–D agency may not require an application or application fee in either type of case. Second, because non-AFDC Medicaid recipients are required to assign medical support rights and payments from any third party to the State and cooperate in establishing paternity and obtaining medical support as a condition of eligibility for Medicaid, non-AFDC Medicaid recipients may not refuse to cooperate in establishing paternity and securing medical support, unless the Medicaid agency determines that cooperation is not in the best interests of the individuals involved. Third, because the non-AFDC determines that cooperation is not in the best interests of the individuals involved. Third, because the non-AFDC Medicaid recipient may not refuse medical support-related IV–D services, the State may not charge fees or recover the costs of providing services from the custodial parent in these cases, even if it recovers costs from custodial parents in other non-AFDC cases in accordance with § 302.33(d). Finally, in non-AFDC Medicaid cases, collections of support assigned to the State under 42 CFR 433.146 must be distributed in accordance with 42 CFR 433.154, which governs distribution of medical support collections under section 1912 of the Act, as opposed to paying those collections to the family.

a. *Changes to § 302.33 to include non-AFDC Medicaid recipients and former assistance recipients.* We revised the title of § 302.33 to more accurately reflect to whom services are available under this section. The section would be entitled services to individuals not receiving AFDC or title IV–E foster care assistance.

We revised § 302.33(a) to require, in paragraph (a)(1), that IV–D services be made available to any individual who: (1) Files an application for services with the IV–D agency; (2) is a non-AFDC Medicaid recipient; or (3) is no longer eligible for assistance under the AFDC, IV–E foster care, and Medicaid programs. As has always been the case, in an interstate case only the initiating State may require an application for IV–D services.

Section 302.33(a)(2) prohibits the State from requiring an application for services, other request for services or an application fee from any current non-AFDC Medicaid recipient or former assistance recipient. If an individual receiving services under § 302.33(a)(1)(iii) refuses services in response to a notice of continuation of services under § 302.33(a)(4) and subsequently requests services, that individual must file an application and pay the application fee.

Section 302.33(a)(3) prohibits the State from charging fees or recovering costs from any non-AFDC Medicaid recipient. As explained earlier, non-AFDC Medicaid recipients must cooperate in establishing paternity and securing support, unless the Medicaid agency has determined that it is in the best interests of those involved not to proceed. Since the non-AFDC Medicaid recipient may not refuse medical support-related IV–D services, the State may not charge fees or recover costs of providing services from the custodial parent in these cases, even if it recovers costs from custodial parents in other non-AFDC cases in accordance with § 303.33(d).

Section 302.33(a)(4) specifies that, whenever a family is no longer eligible for assistance under the AFDC, IV–E foster care, and Medicaid programs, the IV–D agency must notify the family, within five working days of the notification of ineligibility, that services will be continued unless the IV–D agency is notified by the family that IV D services are no longer desired. The notice must inform the family of the consequences of continuing to receive IV–D services, including the available services and the State's fees, cost recovery and distribution policies.

Section 302.33(a)(5) specifies that the State must provide individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section with all appropriate IV–D services, in addition to establishing paternity and securing medical support, unless the individual notifies the State that services not related to medical support are not wanted.

We revised former § 302.33(d), which sets forth conditions under which States may elect to recover any costs incurred in providing services in non-AFDC cases, to clarify that costs may be recovered from either parent in former assistance cases. We substituted the phrase "is receiving IV–D services under paragraph (a)(1) (i) or (iii) of this section" for the phrase "has filed an application for IV–D services" in § 302.33(d)(1)(ii). For the same reason, in § 302.33(d)(5), we replaced the phrase "has filed an application for IV–D services" with the phrase "is receiving IV–D services under paragraphs (a)(1) (i) and (iii) of this section" and the word "applicant" with the phrase "individual receiving services under this section."

b. *Changes to § 302.33(e) to reflect changes in the Bankruptcy Code.* Section 302.33(e) allows IV–D agencies to take assignments of support rights in non-AFDC cases because some States' laws require the State to be a party to any legal action to pursue support. Former § 302.33(e)(2) prohibited States from making such assignments a condition of eligibility for services and required States to notify families of that fact as well as to inform them that assignments in such cases may have the effect of making the support debt dischargeable in bankruptcy. There was a possibility that debts assigned to the States in non-AFDC cases could be discharged in bankruptcy actions filed prior to October 8, 1984 (ninety days after the July 10, 1984 enactment of Public Law 98–353) because section 553(a)(5)(A) of the Bankruptcy Code only prohibited the discharge of support debts which were assigned to the State as a condition of receiving AFDC. On July 10, 1984, Public Law 98–353 amended section 523(a)(5)(A) to prohibit discharge in bankruptcy of any support assigned to the State (effective as to cases filed ninety days after the July 10, 1984 enactment). Therefore, we deleted the requirement in § 302.33(e)(2) that States which take assignment of support rights in non-AFDC cases must notify the individual that an assignment may have the effect of making the support debt dischargeable in bankruptcy.

We also replaced the reference in paragraph (e)(1) to taking assignments from an individual who "applies for services" with a reference to an individual who is "receiving services" under § 302.33 and the reference in paragraph (e)(2) to the "applicant" with a reference to the "recipient" for consistency with other changes made in this final rule.

As a result of these changes, we revised § 302.33(e) to indicate in paragraph (e)(1) that the IV–D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under § 302.33. However, an assignment by an individual under § 302.33 would not constitute an assignment as defined in § 301.1 and may not be a condition of eligibility for services under § 302.33. Paragraph (e)(2) requires the IV–D agency, before the recipient of IV–D services makes an assignment of support rights, to inform the individual that the assignment is not a condition of eligibility for services.

4. Section 302.50 Support Obligations

We made a conforming change to § 302.50, which addresses support obligations assigned to the State, by substituting the phrase "An assignment of support rights, as defined in § 301.1 of this chapter, constitutes" for the phrase "The support rights assigned to the IV–D agency pursuant to § 232.11 of this title or section 471(a)(17) of the Act constitute" in § 302.50(a) to clarify that all support obligations assigned to the State, as defined in § 301.1, and not just assignments under AFDC and title IV–E foster care cases, are included in this provision. In addition, we have revised § 302.50(a) to clarify that medical support obligations assigned under 42 CFR 433.146 may only be established by order of a court or an administrative hearing process, while child support obligations assigned under 45 CFR 232.11 or section 471(a)(17) of the Act may also be established by any other legal process as established by State law.

The former § 302.50(a)(3) exempted support obligations established prior to July 1, 1975, from the requirements of paragraphs (a) (1) and (2). Since all such obligations were required to be superseded with orders that meet the requirements of paragraphs (a) (1) and (2) no later than January 1, 1977, we deleted this paragraph. In concert with the deletion of § 302.50(a)(3), we deleted the word "or" at the end of paragraph (a)(2) and added the word "or" at the end of paragraph (a)(1).

In § 302.50(e), we substituted the phrase "an assigned support obligation as defined under § 301.1 of this chapter" for the phrase "a support obligation assigned under § 232.11 of this title" to clarify that no portion of child support collected which represents an assigned support obligation defined under § 301.1 may be used to satisfy a medical support obligation unless the support order designates a specific dollar amount for medical purposes.

5. Section 302.51 Distribution of Support Collections

Section 302.51 sets forth requirements for distribution of support collections in AFDC cases. Prior paragraph (e) of that section contained requirements with respect to the transitional five-month period beginning after AFDC eligibility ended and ending when former AFDC cases became non-AFDC cases. To implement section 9141 of Public Law 100–203, which revised section 457(c) of the Act to delete this transitional period, we incorporated certain aspects of the present § 302.51(e) (for example, notice of the consequences of continuing to receive IV–D services) into § 302.33 and deleted the remainder of § 302.51(e), as discussed earlier under changes to § 302.33.

A new § 302.51(e) implements the new section 454(5)(B) of the Act, added by section 9142 of Public Law 100–203, under which amounts collected pursuant to an assignment under section 1912 of the Act shall be made to the State for distribution pursuant to section 1912. Section 454(5)(B) of the Act also specifies that this requirement shall not apply to payments for any month after the month in which the individual ceases to be eligible for medical assistance.

Section 302.51(e)(1) specifies that amounts collected by the IV–D agency, which represent specific dollar amounts designated for medical purposes in the order that have been assigned to the State under 42 CFR 433.146, as a condition of eligibility for Medicaid, shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154. The Medicaid agency is responsible for determining the status and extent of medical assistance provided to the family under the Medicaid program and for distributing the assigned collections in accordance with 42 CFR 433.154, which governs distribution of assigned medical support collections under section 1912 of the Act, as opposed to the IV–D agency distributing those medical support collections to the family.

Distribution under § 302.51(e) is limited to collections which represent a specific dollar amount designated in the support order for medical purposes for the following reasons. Medical support enforcement regulations under § 303.31 require IV–D agencies to petition to include health insurance that is available to the absent parent at reasonable cost in child support orders, unless satisfactory health insurance other than Medicaid is otherwise available to the custodial parent and child(ren). The IV–D agency also must take steps to enforce the health insurance coverage required by the support order if health insurance is available to the absent parent and has not been obtained at the time the order is entered. However, IV–D agencies are required to collect only specific dollar amounts designated in the support order for medical purposes. IV–D agencies are not required to collect medical support in the form of health insurance claims payments but may do so if collections are made pursuant to a cooperative agreement with the Medicaid agency under part 306.

All support collections in interstate cases are forwarded by the responding State IV–D agency to the initiating State IV–D agency. If a dollar amount which is designated in a support order for medical purposes is collected in an interstate non-AFDC Medicaid case, the initiating State is responsible for distribution in accordance with 42 CFR 433.154. The non-medical portion of child support collections in interstate non-AFDC Medicaid cases would be distributed by the initiating State IV–D agency to the family in accordance with the State's distribution policy in other non-AFDC cases.

We added § 302.51(e)(2) to clarify that when the family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV–D agency shall attempt to collect any unpaid specific dollar amount designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV–D agency

under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

We made a conforming amendment in § 302.51(f)(4), which required that priority be given to collection of current support for former assistance recipients, to change the citation from § 302.51(e) to § 302.33(a)(1)(iii).

6. Section 302.70 Required State Laws

We revised § 302.70(a)(3), which requires States to enforce overdue support due in IV–D cases by offsetting State income tax refunds, by deleting the references to support due individuals who are receiving aid under the AFDC and title IV–E foster care programs or who apply for services under § 302.33. Section 302.70(a)(3) now requires States to have in effect and use procedures for obtaining overdue support from State income tax refunds on behalf of individuals receiving IV–D services, in accordance with the requirements of § 303.102. These revisions clarify that IV–D agencies must use State income tax refund offset procedures in any appropriate IV–D case, including non-AFDC Medicaid cases and former assistance cases.

7. Section 302.75 Procedures for the Imposition of Late Payment Fees on Absent Parents Who Owe Overdue Support

We revised § 302.75(b)(4), which specifies that States opting to impose late payment fees on absent parents who owe overdue support must impose the late payment fee in all cases, to clarify that the State must also impose the late payment fees on absent parents in non-AFDC Medicaid and former assistance cases if the State opts to impose late payment fees.

45 CFR Part 303

We revised several sections in part 303 to clarify that non-AFDC Medicaid cases and former assistance cases are all included as non-AFDC cases.

1. Section 303.10 Procedures for Case Assessment and Prioritization

Section 303.10, which specifies requirements any system implemented by a State for case assessment and prioritization must meet, had required in paragraph (b)(2) that the IV–D agency include all of its cases in the system, including AFDC, non-AFDC, and interstate cases. Rather than expand the types of cases listed to include non-AFDC Medicaid and former assistance cases, we deleted reference to any type of case and simply indicated that all IV–D cases must be included in any case prioritization system in place in a State.

2. Section 303.11 Case Closure Criteria

The final regulations for Standards for Program Operations, published in the Federal Register on August 4, 1989 (54 FR 32284), were effective October 1, 1990. Those final regulations include criteria, at § 303.11, for case closure. We revised four provisions in § 303.11 which allow closure of non-AFDC cases to exclude non-AFDC Medicaid cases.

We revised § 303.11(b)(9) to include that a case may be closed upon the request of a non-AFDC custodial parent if there is no assignment of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order. If there is an assignment of rights under 42 CFR 433.146, the IV–D case must be kept open and IV–D services provided. If there is an assignment of arrearages, the IV–D agency must keep the case open and attempt to collect the assigned arrearages, in accordance with § 302.51 (e) and (f).

We also revised § 303.11(b)(10) to include that a case may be closed if there has been a finding of good cause by the Medicaid agency under 42 CFR 433.147 and a determination by the Medicaid agency that support enforcement may not proceed without risk of harm to the child or caretaker relative.

Additionally, we revised § 303.11(b)(11) to include that a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii) may be closed if the IV–D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one certified letter. The August 4, 1989, final regulations required States to send a registered, as opposed to a certified, under this paragraph. However, sending a registered letter is more burdensome and costly than sending a certified letter. We changed the requirement to require a certified letter to avoid these burdens while retaining our purpose of ensuring notice to the custodial parent prior to case closure.

Lastly, we revised § 303.11(b)(12) to include that a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii) may be closed if the IV–D agency documents the circumstances of the custodial parent's non-cooperation and an action by the custodial parent is essential for the next step in providing IV–D services.

3. Sections 303.30 Securing Medical Support Information and 303.31 Securing and Enforcing Medical Support Obligations

We revised §§ 303.30 and 303.31 to clarify that IV–D agencies must provide medical support enforcement services in non-AFDC Medicaid and former assistance cases in accordance with the requirements of §§ 303.30 and 303.31.

OCSE revised § 303.30, which requires IV–D agencies to secure medical support information, and § 303.31, which sets forth requirements regarding securing and enforcement of medical support obligations, by substituting the phrase "an assignment as defined in § 301.1 of this chapter is in effect" for "an assignment is in effect under § 232.11 of this title or section 471(a)(17) of the Act" in both § 303.30(a) and § 303.31(b). OCSE also revised § 303.30(b) by replacing the words "applies for" with the words "is eligible for" immediately before the words "services under § 302.33".

We revised § 303.31(c) to clarify when notice and services under § 303.31 must be provided in non-AFDC cases. Section 303.31(c) now provides that the IV–D agency shall inform an individual who is eligible for services under § 302.33 that medical support enforcement services are available and shall provide the services specified in § 303.31(b): (1) If an individual eligible for services under § 302.33 is a Medicaid recipient; or (2) with the consent of the individual who is eligible for services under § 302.33 and is not a Medicaid recipient, except that health insurance information shall not be transmitted to the Medicaid agency.

The IV–D agency may provide required medical support enforcement services, in addition to other services which are not mandatory, as part of a cooperative agreement with the Medicaid agency under part 306, as long as all program requirements governing medical support enforcement are met. For example, the IV–D agency may collect support designated in a support order as a specific dollar amount for medical purposes (a mandatory service), as well as seek health insurance payments (which is not a required IV–D activity) under a cooperative agreement with the Medicaid agency under part 306. Therefore, a IV–D agency is not precluded from meeting program requirements through cooperative agreement with the Medicaid agency. However, in accordance with § 304.23(g), Federal funding under the IV–D program is not available for medical support enforcement activities performed under a cooperative agreement with a Medicaid agency under part 306.

4. Section 303.71 Requests for Full Collection Services by the Secretary of the Treasury

We revised § 303.71, which sets forth requirements for requesting full collection services by the Secretary of the Treasury, by clarifying in paragraph (b) that States may request the Secretary to certify the amount of child support owed in any IV–D case for full collection services under section 6305 of the Internal Revenue Code of 1954. Paragraph (c)(5) specifies that only the State that has taken an assignment as defined in § 301.1 or an application or referral under § 302.33 may request full collection services. These revisions clarify that non-AFDC Medicaid cases and former assistance cases are eligible for requests for full collection services by the Secretary of the Treasury if they meet the other requirements delineated in § 303.71.

5. Section 303.72 Requests for Collection of Past-Due Support by Federal Tax Refund Offset

We revised § 303.72, which specifies requirements governing requests for collection of past-due support by Federal tax refund offset, to clarify that past-due support owed in non-AFDC Medicaid and former assistance cases is eligible for Federal tax refund offset, if the requirements in § 303.72 for submitting past-due support owed in non-AFDC cases are met. Although the Congress, as part of Public Law 100–203, did not amend section 464 of the Act governing the Federal income tax refund offset process to include assignment of support rights under section 1912 of the Act, we used our general rulemaking authority, under section 1102 of the Act, to allow States to submit any past-due support which the State has agreed to collect in a IV–D case which meets conditions for submittal in Federal statute and regulations. We believe that these cases should have access to the same establishment and enforcement services as other IV–D cases and are extending access to this particularly effective enforcement technique to ensure equal access for all those in need of IV–D services.

Therefore, we revised § 303.72(a)(1) to specify that past-due support qualifies for offset if there has been an assignment of support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or the IV–D agency is providing services under § 302.33 of this chapter. We amended the introductory language in paragraph (a)(3), which sets forth the conditions for submittal of past-due support in non-AFDC cases, to refer to support owed in cases where the IV–D agency is providing IV–D services under § 302.33. All other requirements governing the submittal of past-due amounts in non-AFDC cases for Federal tax offset would apply in these cases, e.g., notice of offset and procedures for contesting.

We amended § 303.72(h)(1), which specifies requirements for distribution of amounts received by the IV–D agency as a result of Federal tax refund offset, to include reference to the new § 302.51(e) which provides for distribution by the State of specific dollar amounts which are designated in the order for medical purposes. Past-due support which is designated for medical purposes in a support order and submitted for Federal tax refund offset must be distributed in accordance with the new § 302.51(e). All other past-due support due in non-AFDC Medicaid cases and former assistance cases is to be distributed in accordance with § 302.51(b) (4) and (5).

We made conforming amendments to paragraphs (h) (3) and (4) and (i)(2) as follows. Section 303.72(h)(3) is amended to specify that the IV–D agency must inform individuals receiving (as opposed to just those applying for) services under § 302.33, in advance, that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State in AFDC, non-AFDC Medicaid or title IV–E foster care cases. Section 303.72(h)(4) is amended to require that, if amounts collected are in excess of the amounts required to be distributed under §§ 302.51(b) (4) and (5), 302.51(e) or 302.52(b) (3) and (4), the IV–D agency must repay the excess to the absent parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law. Finally, § 303.72(i)(2) is revised to clarify that the IV–D agency may charge an individual, who is receiving non-AFDC IV–D services under § 302.33(a)(1)(i) (those who apply) or (iii) (former assistance cases), a fee for submitting past-due support for Federal tax refund offset, but must notify the individual in advance of the amount of any fee charged.

6. Section 303.102 Collection of Overdue Support by State Income Tax Refund Offset

We revised § 303.102, which sets forth requirements for collection of overdue support by State income tax refund offset, to clarify that non-AFDC Medicaid cases and former assistance cases are eligible for the State income tax refund offset, if they meet the other requirements in § 303.102. We deleted the references to AFDC and title IV–E foster care assignments, as well as reference to an application for IV–D services, and revised paragraph (a)(1) to specify that overdue support qualifies for State income tax refund offset if there has been an assignment as defined in § 301.1 or the IV–D agency is providing services under § 302.33.

We also revised § 303.102(c), which requires notice to the custodial parent in non-AFDC cases of how amounts offset will be distributed, to clarify that, in cases receiving services under § 302.33, the IV–D agency must notify the custodial parent in advance: (1) That, for cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, amounts offset will be distributed under § 302.51(e) of this chapter; and (2) if amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act.

We revised § 303.102(f) to clarify that the fee for State tax refund offset which States may charge in non-AFDC cases may be charged only to those who are receiving non-AFDC IV–D services under § 302.33(a)(1) (i) (those who apply) or (iii) (former assistance cases). The State must inform the individual in advance of the amount of any fee charged.

Lastly, we revised § 303.102(g)(1), which specifies the requirements for distribution of amounts received by the IV–D agency as a result of State income tax refund offset, to include in revised § 303.102(g)(1)(i) and new § 303.102(g)(1)(iv) reference to the new § 302.51(e) which provides for distribution by the State of specific dollar amounts which are designated in the order for medical purposes. Past-due support which is designated for medical purposes in a support order and submitted for State tax refund offset must be distributed in accordance with the new § 302.51(e). Reference to the new § 302.51(e) is being added to the distribution requirements for an AFDC case in § 303.102(g)(1)(i). We also are revising § 303.102(g)(1)(iii), which allows States to determine the order of distribution in non-AFDC cases, to exclude medical support collections which have been assigned under 42 CFR 433.146. Distribution of those collections are addressed in § 303.102(g)(1)(iv) under which, for cases in which medical support rights have been assigned under 42 CFR 433.146, amounts collected which represent specific dollar amounts

designated in the support order for medical purposes must be distributed in accordance with proposed § 302.51(e).

45 CFR Part 304

We made several revisions to portions of part 304 to clarify that Federal funding is available for necessary expenditures under a State's IV–D plan for non-AFDC Medicaid and former assistance cases.

1. Section 304.12 Incentive Payments

Section 304.12(a) contains definitions of terms used in § 304.12, which sets forth requirements governing incentive payments under the IV–D program. We deleted the words "and collections made under § 302.51(e) of this chapter" from the end of the definition of non-AFDC collections because the prior § 302.51(e), governing treatment of former AFDC cases during the five-month transitional period, is deleted in these regulations.

2. Section 304.20 Availability and Rate of Federal Financial Participation

We revised § 304.20, governing the availability and rate of Federal funding of IV–D expenditures, by deleting the references to assignment of rights under the AFDC and title IV–E foster care programs in paragraph (a)(1) and referring to assignments as defined under § 301.1. We also deleted paragraphs (a)(2) and (b)(4)(ii) which refer to the availability of Federal funding for collection services pursuant to § 302.51(e)(1) since we deleted prior § 302.51(e) and included services to former assistance recipients under § 302.33, referred to under prior § 304.20(a)(4). We redesignated prior paragraphs (a) (3) and (4) as paragraphs (2) and (3); and prior paragraphs (b)(4)(iii) through (vi) as (b)(4) (ii) through (v). These changes clarify that Federal funding is available for necessary expenditures of providing IV–D services in non-AFDC Medicaid and former assistance cases.

We revised § 304.20(b)(1), which specifies which administrative functions are reimbursable under the State IV–D plan, by adding a new § 304.20(b)(1)(ix) to address the establishment of agreements with Medicaid agencies necessary to carry out required IV–D activities. Paragraph (b)(1)(ix) specifies that Federal funding is available for expenditures incurred in the establishment of agreements with Medicaid agencies necessary to carry out required IV–D activities. Such agreements could establish criteria for: (1) Referring cases to the IV–D agency; (2) reporting on a timely basis information necessary to the determination and redetermination of eligibility for Medicaid; (3) determining if individuals are cooperating adequately; and (4) transferring support collections from the IV–D agency to the Medicaid agency in accordance with the new § 302.51(e). This does not cover the Medicaid agency's costs of carrying out its part of that agreement, such as referring cases.

These agreements are not to be confused with cooperative agreements with Medicaid agencies under part 306. The agreements addressed in paragraph (b)(1)(ix) should cover only those activities necessary for the IV–D agency to carry out its required functions for non-AFDC Medicaid cases under the IV–D plan.

Finally, we added a new § 304.20(b)(4)(vi) to clarify that Federal funding under the IV–D program is available for costs incurred in making the Medicaid agency aware of amounts collected and distributed to the family for the purpose of determining eligibility for Medicaid.

45 CFR Part 305

We did not revise part 305, which governs the audit of State IV–D programs, in this regulation since we are in the process of a major revision to part 305 under separate proposed regulations to incorporate changes as a result of the Family Support Act of 1988 (Pub. L. 100–485) and to eliminate redundancy in part 305 as it relates to other title IV–D regulations. We will audit State IV–D program performance in providing services in non-AFDC Medicaid and former assistance cases by measuring compliance with applicable Federal requirements in the title IV–D regulations.

45 CFR Part 306

As mentioned in the discussion regarding §§ 303.30 and 303.31, the IV–D agency may provide required medical support enforcement services, in addition to other services which are not mandatory, as part of a cooperative agreement with the Medicaid agency under part 306, as long as all program requirements governing medical support enforcement are met. For example, the IV–D agency may collect support designated in a support order as a specific dollar amount for medical purposes (a mandatory service), as well as seek health insurance payments (which is not a required IV–D activity) under a cooperative agreement with the Medicaid agency under part 306. Therefore, a IV–D agency is not precluded from meeting program requirements through cooperative agreement with the Medicaid agency. However, in accordance with § 304.23(g), Federal funding under the IV–D program is not available for medical support enforcement activities performed under a cooperative agreement with a Medicaid agency under part 306.

Response to Comments

We received 26 comments on the notice of proposed rulemaking publishing in the **Federal Register** May 23, 1989 (54 FR 22325), including comments from State and local IV–D agencies and child advocacy groups. Comments and our responses are as follows.

Comments Regarding the Desirability and Utility of Information Collection and the Efforts Required To Develop It

In the proposed regulation, we asked for comments on the types of information collection that would be useful in monitoring medical support enforcement in general and implementation of section 9142 of Public Law 100–203 in particular, since there is presently no dependable data on medical support. We presented one option, to add medical support information and non-AFDC Medicaid caseload data to existing program reports, and asked for comments on the desirability and utility of such data and the effort required to develop it, either through our presented option or any other option that could yield annual, statistically valid data on medical support.

Comment: One commenter suggested that the information should be based on the number of IV–D cases with orders for medical support that have insurance coverage for the dependent children, and include the number of children who become enrolled in health insurance policies due to IV–D agencies activities. Another commenter recommended "only requiring the collection and reporting of data absolutely necessary to monitor the progress of medical enforcement in the different States. This data could include, for example, caseload numbers and amount of medical support ordered that was collected. More sophisticated or detailed (or nice to have) information could be delayed until States have had the opportunity to enhance their automated capabilities."

Still another commenter suggested that the Medicaid agency is the "appropriate source of information" and that "existing third party liability enforcement and reporting requirements should be expanded to track cost avoidance on cases of medical support established or enforced by IV–D." The same commenter pointed out that the IV–A/IV–D referral data elements listed in the May 18, 1989, list of revised minimum data elements required for certifiable FAMIS and CSE systems interface did not include necessary information, such as the date AFDC terminated or the Medicaid eligibility period, and should be updated.

Several of the commenters requested that any statistical reporting requirements be phased in, with waivers for any States developing automated systems under an approved Automation Planning Document (APD), since it would not be cost-effective to modify existing systems while also developing enhanced systems.

Response: Taking the above comments into consideration, we will continue to work with the States, as well as the Office of Family Assistance and the Health Care Financing Administration, HHS, to develop a reasonable reporting mechanism, which can be used, in addition to program audits, to monitor medical support enforcement activities.

Comments Beyond the Scope of These Regulations

Comment: Three commenters suggested that Medicaid regulations (42 CFR 433.147) be amended to require Medicaid applicants/recipients to cooperate in pursuing regular support in addition to medical support as a condition of Medicaid eligibility. One commenter suggested that IV–D services only be provided for cases actually referred to the IV–D agency and that Medicaid regulations (42 CFR 433.146–433.148) be amended to require referrals.

Response: The Medicaid law requires that individuals assign rights to support for medical care and to payment for medical care from any third party as a condition of Medicaid eligibility, and cooperate with the State in pursuing these rights. The Health Care Financing Administration sees no support in section 1912 of the Act for mandating cooperation in pursuing non-medical support, in addition to medical support, as a condition of Medicaid eligibility. Therefore we have not mandated extending the cooperation requirement in this document.

We concur with the comment that IV–D services only be provided for cases actually referred to the IV–D agency. The Health Care Financing Administration is considering proposals to develop a Notice of Proposed Rulemaking to require referral to CSE agencies of all families with an absent parent who receive Medicaid and have assigned to the State their rights to support for medical care and to payment for medical care from any third party, unless the Medicaid agency determined that referral to the IV–D agency would not be appropriate in a particular case because: (1) The Medicaid agency has a cooperative agreement for the enforcement of rights to and collection of third party benefits, including medical support, with an entity other than the IV–D agency; or (2) the child has satisfactory health insurance other than Medicaid; or (3) the child is receiving adequate medical support from the absent parent.

Section 301.1 General Definitions

1. *Comment:* Commenters expressed concern that the term "Medicaid-only applicant or recipient" would require the IV–D agency to provide IV–D services to non-AFDC Medicaid applicants whether or not they are determined to be eligible for Medicaid. Other commenters questioned whether our definition of "Medicaid-only applicant or recipient" would also include former AFDC recipients with extended Medicaid eligibility. Another commenter suggested we revise the definition of "Medicaid-only applicant or recipient" to include only those with an absent parent.

Response: We revised the term to "non-AFDC Medicaid recipient" to clarify that the IV–D agency is not required to provide IV–D services to a non-AFDC Medicaid applicant who is not determined to be eligible for Medicaid. However, the term "non-AFDC Medicaid recipient" does include those who have been determined eligible for Medicaid, whether or not they actually are receiving or have received services under the Medicaid program.

Former AFDC recipients, both those who are receiving Medicaid after termination from AFDC because of increased earnings, as provided for under 42 CFR 435.112, and those who are eligible for Medicaid under other eligibility groups, are eligible for IV–D services as non-AFDC Medicaid recipients for as long as they continue to receive assistance under the Medicaid program.

In response to the commenter's suggestion that we revise the definition to include only those with an absent parent, the IV–D agency is responsible for providing services to any non-AFDC Medicaid recipient referred by the Medicaid agency. The Medicaid agency would determine which Medicaid recipients need IV–D services and the IV–D agency must provide the appropriate IV–D services to those referred, whether or not there is an "absent parent," for example, cases where a claim could be made against a deceased parent's estate, or where paternity has not been established in a non-marital household where the putative father is present.

2. *Comment:* One commenter requested that we require non-AFDC Medicaid recipients to assign all child support rights to the State in order to provide legal authority for the State IV–D agency to act in their behalf.

Response: Previously, § 302.33(e) specified that the IV–D agency could take an assignment of support rights from an individual who applied for IV–D services, but that this assignment did not constitute an assignment under § 232.11 and could not be a condition of eligibility for IV–D services. This practice is allowed because some States' laws require the State to be a party to any legal action to pursue support. As a result of Public Law 100–203, we have revised § 302.33(e) to allow the IV–D agency to take an assignment of support rights not already assigned from an individual receiving IV–D services under § 302.33, which would include non-AFDC Medicaid recipients. Also, we revised § 302.33(e) to clarify that this assignment does not constitute an assignment as defined in § 301.1 and may not be a condition of eligibility for IV–D services. Therefore, IV–D agencies may not require non-AFDC Medicaid recipients to assign all child support rights to the State as a condition of eligibility for IV–D services, but may request an assignment, if an assignment is necessary for the State to take legal action in the case.

3. *Comment:* One commenter asked whether medical support included health insurance, old judgments, unsettled claims for personal injury, and orders for ongoing expenses for therapy.

Response: For the purpose of the IV–D program, medical support is health insurance coverage required by the support order and specific dollar amounts specified in the order for medical purposes. This could include judgments for medical support, but not unsettled claims for personal injury. Orders for ongoing expenses for therapy can be considered medical support only if there is a specific dollar amount in the order specified for medical-related therapy.

We encourage States to develop procedures to determine when judgments for medical expenses for which the absent parent is responsible under the order should be pursued and to pursue such judgments when appropriate. Federal matching funds are available for these activities.

Section 302.31 Establishing Paternity and Securing Support

Comment: One commenter suggested we address the possible problem of non-AFDC Medicaid recipients receiving and retaining assigned medical support.

Response: We are revising § 302.31(a) by adding a new (a)(4) to require the IV-D agency to notify the Medicaid agency whenever it discovers that the non-AFDC Medicaid recipient has directly received and retained medical support assigned to the State under 42 CFR 433.146.

Section 302.33 Services to Individuals Not Receiving AFDC or Title IV-E Foster Care Assistance.

Applications and application fees—1. *Comment:* Several commenters objected to charging former non-AFDC Medicaid recipients an application fee if they wish to continue to receive IV-D services. They claim it would be administratively burdensome and fiscally unsound to require the closing and re-opening of the non-AFDC Medicaid case. One commenter stated that the application fee is "not required by the law and is an unnecessary burden on the client and the agency for no identifiable public benefit."

Response: OCSE has revised § 302.33(a)(1)(iii) to include former non-AFDC Medicaid recipients as eligible for IV-D services without filing an application or paying an application fee. Paragraph (a)(2) clearly states that the State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1)(ii) and (iii).

2. *Comment:* One commenter recommended we revise § 302.33(a)(1)(iii) to include provision of IV-D services to former title IV-E foster care maintenance cases without any application or other request for continuation of services and without any application fee.

Response: When IV-E foster care services cease to be provided, generally the child is returned to an AFDC family (and is eligible to receive IV-D services as part of that family) or has attained majority or been adopted (and is no longer in need of IV-D services). However, for consistency with treatment of former AFDC and non-AFDC Medicaid cases, we have revised § 302.33(a)(1)(iii) to include former IV-E foster care recipients as eligible for IV-D services without filing an application or paying an application fee. Also, we have revised § 302.33(a)(4) to require the IV-D agency to notify the family when the family is no longer eligible to receive AFDC, IV-E foster care and Medicaid that IV-D services will be continued unless the IV-D agency is notified by the family that IV-D services are no longer desired. The notice must tell the family the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies.

3. *Comment:* One commenter requested clarification about whether the law exempts non-AFDC Medicaid recipients from all fees, including the fees for Federal and State income tax refund offset under §§ 303.72 and 303.102, and cost recovery, or just from the application fee. The commenter claimed it would be an administrative burden on the IV-D agency to distinguish non-AFDC Medicaid recipients from other non-AFDC cases for the imposition of fees.

Response: Section 454 of the Act, as amended by section 9142 of P.L. 100-203, requires the IV-D agency to provide IV-D services to non-AFDC Medicaid recipients without requiring any application fee. The legislation did not address whether any other fees may be charged or whether costs of providing IV-D services may be recovered. As explained in the proposed regulations, a State may not charge fees or recover the costs of providing services from the custodial parent in these non-AFDC Medicaid cases, even if it recovers costs from custodial parents in other non-AFDC cases in accordance with § 302.33(d), because the non-AFDC Medicaid recipient may not refuse medical support-related IV-D services. The State may, however, opt to recover costs from the absent parent in these cases, in accordance with § 302.33(d).

4. *Comment:* One commenter expressed concern that the requirement in § 302.33(a)(1) that "in an interstate case, only the initiating State may require an application under this section" would preclude the State from charging an application fee when a private attorney in another State submits an URESA action to the IV-D Agency in the commenter's State.

Response: In the situation described by the commenter, the State may require an application and charge an application fee when the private attorney from another State submits a URESA action in the State and requests IV-D services. There is no IV-D case in the private attorney's State in the situation described. The requirement that only the initiating State may require an application protects IV-D applicants from paying multiple application fees in interstate cases.

5. *Comment:* If a former AFDC recipient refuses IV-D services when AFDC eligibility ends, must that person apply and pay an application fee if that person wants IV-D services subsequently?

Response: Yes, if a former recipient of assistance refuses IV-D services when eligibility ends, that person must apply and pay an application fee if that person subsequently wants IV-D services. To clarify this, we have added the following language to § 302.33(a)(2): "If an individual receiving services under paragraph (a)(1)(iii) refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee."

6. *Comment:* One commenter suggested we revise § 302.33(c)(2), which requires, effective October 1, 1985, that application fees be charged for each individual who applies for services under § 302.33, to clarify that former AFDC families and non-AFDC Medicaid recipients are not included in that requirement.

Response: We believe the requested revision is unnecessary because § 302.33(a)(2) already clearly states that "The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under (a)(1) (ii) and (iii) of this section."

Availability of Services.—1. *Comment:* One commenter requested clarification about whether the term "specific cash amounts for medical purposes" could mean either money from the absent parent for payment of past and future medical care or reimbursement by the absent parent to the custodial parent for providing the health insurance. Another commenter asked if, in a non-AFDC case, the support order requires the absent parent to pay medical support but does not contain a specific dollar amount for medical support, must the IV-D agency enforce the medical support provision?

Response: The term "specific cash amounts for medical purposes" includes both money from the absent parent for payment of past and future medical care and reimbursement by the absent parent to the custodial parent for providing the health insurance, but only when a specific dollar amount is included in the order for medical care purposes. For example, if the support order requires the absent parent to pay the custodial parent $50 per month to reimburse the custodial parent for health insurance premiums paid by the custodial parent, the enforcement of such a provision in the support order would be a required IV-D function. However, if the support order required the absent parent to reimburse the custodial parent for health insurance premiums or medical expenses paid by the custodial parent, but did not specify a specific cash amount, the enforcement of such a provision in the support order would not be a required IV-D function. While not a mandatory service, we encourage IV-D agencies to pursue judgments for medical expenses for which the absent parent is responsible under the order.

2. *Comment:* One commenter requested clarification about whether the collection of "health insurance payments" under optional cooperative agreement with the Medicaid agency means collection from the absent parent of premium payments to the health insurance provider, or collection of claims paid by the health insurance provider.

Response: The collection of "health insurance payments" under an optional cooperative agreement with the Medicaid agency refers to collecting claims from the health insurance provider for the costs of providing medical care to the Medicaid recipient, not to collecting health insurance premiums from the absent parent.

3. *Comment:* One commenter suggested that, since we used the word "family" in § 302.33(a)(4) to describe who is eligible for services, we substitute the word "family" for the word "individual" in § 302.33(a) (1) through (3) and elsewhere, and define "family" to mean "a dependent child(ren) and the parent or relative with whom the child(ren) reside, where one parent is absent from the home."

Response: The term "family" in § 302.33(a)(4) means former assistance recipients whom the State must notify that IV-D services will continue to be provided. Availability of IV-D services in non-AFDC cases is not limited to children and their custodial parents. Section 454(8)(A) of the Act, and § 302.33(a)(1)(i), require IV-D agencies to provide IV-D services to any individual who files an application with the IV-D agency. For example, the IV-D agency must provide services to an alleged father who applies for IV-D services to establish paternity, establish an order and assure payment of child support.

Notice to the Recipient.—1. *Comment:* The proposed regulations at § 302.33(a)(3) require the State to notify the family leaving AFDC that IV-D services will continue to be provided without the need for an application, other request for continued services, or payment of an application fee, unless the family requests a termination of services. The commenter recommended that States should send the notice only to those families who leave AFDC and are not eligible for extended Medicaid coverage, since those families who are eligible for extended Medicaid coverage are to receive a notice when the extended Medicaid coverage terminates. The commenter also suggests that the AFDC agency or the Medicaid agency should be responsible for the dissemination of the notice.

Response: Section 457(c) of the Act, as amended by section 9141 of Public Law 100-203, requires the State to provide notice to the family leaving the AFDC rolls and to continue to provide IV-D services under the same conditions and on the same basis as provided to other non-AFDC cases. Families who leave the AFDC rolls without receiving extended Medicaid eligibility (estimated to be about 80% of those leaving the AFDC rolls) must be sent the notice within five working days of the notification of ineligibility to the IV-D agency by the AFDC agency. However, we agree that it would be less confusing to the families receiving extended Medicaid after leaving the AFDC rolls to receive a notice only when the family ceases to receive all assistance (both AFDC and extended Medicaid). Therefore, we believe it is within the statutory mandate to delay notice to families leaving the AFDC rolls who continue to receive Medicaid until such time as Medicaid eligibility ends since the family may not refuse medical support-related IV-D services until that time. In this way, only one notice would be necessary in former AFDC cases with extended Medicaid eligibility and notices would be more straightforward and issued at the time the family may choose to terminate services. Similarly, the IV-D agency does need to send the notice regarding the continuation of services for former assistance recipients to IV-E foster care recipients who become AFDC recipients upon termination of IV-E foster care services. Accordingly, we have revised proposed § 302.33(a)(3) (redesignated as § 302.33(a)(4)) to specify that "Whenever a family is no longer eligible for assistance under the State's. AFDC, IV-E foster care, *and* [emphasis added] Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family."

2. *Comment:* One commenter recommended the regulations specify in proposed § 302.33(a)(3) that the notice to the former AFDC family must be sent within three working days of the termination of AFDC.

Response: Although we are not adopting the suggested three working day timeframe, we have revised proposed § 302.33(a)(3) (now § 302.33(a)(4)) to specify that the notice to the former assistance family must be sent within five working days from the date the IV-D agency is notified of the termination of eligibility. The five working days requirement is similar to the requirement in § 303.2(a)(2) that information describing available services, the individual's rights and responsibilities and the State's fees, cost recovery and distribution policies must be provided to applicants for IV-D services at the time of application, and to all cases referred to the IV-D agency within five working days of referral to the IV-D agency.

3. *Comment:* One commenter requested that we revise the notice requirements in proposed § 302.33(a)(3) and (e)(2) to require written notice to the family of the State's assignment policies, including informing the family that an assignment of support rights cannot be a condition of eligibility when an individual applies for IV-D services.

Response: Section 302.33(e)(1) specifies that the IV-D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under § 302.33, but that such an assignment does not constitute a required assignment, as defined in § 301.1, and may not be a condition of eligibility for IV-D services. Section 302.33(e)(2) requires that before the recipient of IV-D services under this section makes an assignment of support rights, the IV-D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section. States may combine this information with other written notices to be given to the recipient of IV-D services.

4. *Comment:* One commenter suggested we revise § 302.33(d)(5) to require that the notice of the State's intention to recover costs should only be sent to those applying for IV-D services under paragraph (a)(1)(i) of this section, since those receiving services under (a)(1)(iii) of this section (i.e., former assistance recipients) would have already received notice under § 302.33(a)(4) of the State's recovery policy. The commenter also suggested we revise § 302.33(d)(2) in the same manner.

Response: Section 302.33(d)(5) requires the IV-D agency, if it opts to recover costs, to notify the individual from whom the cost is to be recovered. Although § 302.33(a)(4) requires the IV-D agency to notify the custodial parent

BEST COPY AVAILABLE

in the former assistance family of the State's cost recovery policy, the absent parent would still need to be notified of the State's intent to recover costs from the absent parent, if the State chooses that option, as required under § 302.33(d)(5). If the State opts to recover costs from the custodial parent, the notices required in §§ 302.33(a)(4) and (d)(5) may be combined.

Section 302.33(d)(2) requires a State that opts to recover costs under § 302.33(d)(1) to develop a written methodology to determine standardized costs which are as close to actual costs as possible and to make this methodology available to any individual upon request. We are not revising § 302.33(d)(2) to allow States to make the methodology available only to those who apply for IV–D services under § 302.33(a)(1)(i). We believe that the methodology must be available to any individual upon request because States may recover costs in former assistance cases which continue to receive IV–D services, not just in cases in which an application for IV–D services is filed.

Recipient cooperation.—1. *Comment:* One commenter requested the regulations address what action the IV–D agency must take if the non-AFDC Medicaid recipient does not cooperate in the establishment of support orders. Commenters were concerned about non-AFDC Medicaid recipients refusing to cooperate in non-medical support enforcement efforts and what IV–D agencies' responsibilities would be in such situations absent a mandatory cooperation requirement.

Response: Medicaid recipients as a condition of eligibility are required to cooperate in the establishment of paternity and in obtaining medical support assigned to the State, unless the Medicaid agency determines that it is not in the best interest of the child to do so. If the non-AFDC Medicaid recipient refuses to cooperate in the establishment of paternity and in obtaining medical support (including modifications to existing awards as appropriate under State guidelines), the IV–D agency should notify the Medicaid agency of the failure to cooperate. The Medicaid agency is responsible, under 42 CFR 433.147 and 433.148, for determining whether a waiver of cooperation for good cause is appropriate or whether eligibility should be terminated.

We believe that most non-AFDC Medicaid recipients will cooperate in pursuing non-medical support, as well as medical support. However, if the non-AFDC Medicaid recipient notifies the IV–D agency that services unrelated to securing medical support are not wanted, the IV–D agency should document the recipient's notification and provide only those services related to securing medical support.

2. *Comment:* Several commenters objected to the requirement that child support collections, as well as medical support collections, in a non-AFDC Medicaid case, must be made through the IV–D agency. One commenter objected to the delay that would occur in a non-AFDC Medicaid case when the child support previously received directly from the absent parent would instead be processed through the IV–D agency.

Response: Unless the non-AFDC Medicaid recipient notifies the State that child support enforcement services unrelated to medical support are not wanted, the IV–D agency is responsible for collecting both non-medical child support and medical support in a non-AFDC Medicaid case. If non-medical support collections are made, the IV–D agency must promptly distribute the amounts collected as non-medical child support in accordance with § 302.51. The amounts collected as medical support must be forwarded to the State Medicaid agency for distribution in accordance with 42 CFR 433.154. It should be noted that, if the IV–D agency does not collect child support obligations in non-AFDC Medicaid cases, the IV–D agency will not be able to monitor the payment of child support (e.g., determine arrearages or track timeliness of payments) which is important for effective enforcement of the support obligation.

Section 302.50 Support Obligations

1. *Comment:* One commenter requested clarification of whether the restriction in § 302.50(e), that no child support collected may be used to satisfy a medical support obligation unless the support order designates a specific dollar amount for medical purposes, includes one-time lump sum amounts (i.e., medical support judgments) or only monthly payments ordered in lieu of paying health insurance premiums.

Response: If the support order designates a specific dollar amount for medical purposes, whether it is expressed in monthly increments (e.g., $50.00 per month) or as a lump sum amount (e.g., $1,500.00 to pay for birth expenses), the IV–D agency must collect the medical support. If the support order does not designate a specific dollar amount for medical purposes (e.g., absent parent is ordered to pay for child's orthodontia), enforcement of that aspect of the order is not a required IV–D function. We encourage States to develop procedures to determine when judgments for medical expenses for which the absent parent is responsible under the order should be pursued and to pursue such judgments when appropriate. Federal matching funds are available for these activities.

2. *Comment:* One commenter requested information as to how specific amounts for medical support designated in the order are to be collected, reported, distributed, and credited for incentive purposes.

Response: The IV–D agency must use all appropriate enforcement techniques to collect specific amounts for medical support designated in the order. Medical support collected in AFDC (and title IV–E) cases must be reported as an AFDC collection and will be credited for incentive purposes as an AFDC collection, while medical support collected in all other cases must be reported as a non-AFDC collection and will be credited for incentive purposes as a non-AFDC collection. Medical support collected in cases in which there is an assignment of rights to medical support under 45 CFR 433.146 must be forwarded to the Medicaid agency for distribution under 42 CFR 433.154. Medical support collected in cases in which there is no assignment of rights to medical support must be distributed to the family in same manner as other non-assigned support collections.

When less than the total amount of the obligation is collected, the IV–D agency should allocate the amount collected between the child support and the medical support specified in the order in proportionate shares. Current support must be given priority over past-due support, except with respect to collections made through the Federal income tax refund offset process.

3. *Comment:* One commenter requested that § 302.50(e) be revised so that "any amounts collected in excess of child support obligations should be used to satisfy any outstanding medical support obligations even in cases with orders lacking specified dollar amounts."

Response: We are not revising § 302.50(e) to require application of amounts collected in excess of child support obligations to satisfy unspecified medical support obligations because distribution requirements under title IV–D of the Act and Federal regulations at § 302.51 do not provide authority to distribute excess collections to satisfy unspecified obligations.

4. *Comment:* One commenter expressed concern that OCSE policy does not provide for funding of the IV–D agency for the recovery of cash medical support.

Response: This is incorrect. Federal funding at the applicable matching rate is available for the costs of collecting specific dollar amounts for medical support designated in the order. Additionally, cash medical support collections are included in the calculation of a State's incentive payments.

Section 302.51 Distribution of Support Collections

1. *Comment:* One commenter suggested we revise the new § 302.51(e) to "allow distribution to the Medicaid agency of any amount assigned to the State and collected by the IV–D agency, even after the Medicaid recipient ceases to receive Medicaid, as is the current IV–A policy."

Response: We agree with the commenter and, for consistency with current policy in former IV–A and IV–E foster care cases, are adding a new § 302.51(e)(2) to clarify that, when a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV–D agency must attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes and forward to the Medicaid agency for distribution under 42 CFR 433.154 any medical support collected.

2. *Comment:* One commenter expressed concern that because the proposed regulations incorporate only portions of the former § 302.51(e) into § 302.33 and delete the remainder of § 302.51(e), no specific language would require the distribution of current child support collections to the former AFDC recipients. Another commenter specifically requested that we restore the deleted requirement in § 302.51(e)(3) so that current support collected on behalf of former AFDC families would be distributed to the family before any other distribution.

Response: We believe our regulations address both these concerns. Section 302.51(a) specifies that amounts collected shall be treated first as payment on the required support obligation for the month in which the support was collected. This requirement applies to all IV–D cases, whether they have been referred to the IV–D agency for services because they are AFDC cases, non-AFDC Medicaid cases, former assistance cases, or have applied for IV–D services. Additionally, § 302.51(f)(4) requires that priority be given to collection of current support in former assistance cases.

3. *Comment:* One commenter requested that we revise the distribution procedures for former AFDC recipients, claiming that statutory revisions require that for purposes of services and distribution of support, IV–D agencies must treat former AFDC recipients exactly like families that never received AFDC and therefore should receive all of the support collected on their behalf by the IV–D agency.

Response: We do not believe that Public Law 100–203 requires a revision of OCSE's distributions regulations at 45 CFR 302.51(f). While the assignment of rights to support under § 232.11 ends when AFDC eligibility ends, this does not include amounts accrued under the assignment. The IV–D agency must attempt to collect these accrued assigned arrearages. However, the first priority of IV–D agencies is collection and distribution of current support, which goes to the former AFDC family.

4. *Comment:* One commenter asked whether the absent parent can specify that a collection be applied to medical support ordered in the support order, even if the full amount of the current support obligation is not paid. The commenter also asked whether the absent parent can specify that a $50 payment is for medical support in an AFDC case and preclude the $50 pass-through to the custodial parent. Another commenter questioned whether the distribution requirements would apply only when medical support payments are collected by the IV–D agency on behalf of the Medicaid agency under the optional cooperative agreement provision contained in part 306 of the regulations.

Response: Requirements in sections 457 and 1912 of the Act and 45 CFR 302.51 and 42 CFR 433.154 specify how collections are to be distributed. Absent parents do not determine distribution of collections under the IV–D program. Distributions requirements apply regardless of whether or not the IV–D agency has entered into an optional cooperative agreement with the Medicaid agency as provided in the regulations in part 306.

5. *Comment:* One commenter objected to the requirement in § 302.51(e), as explained in the preamble, that medical support collected by a responding State in an interstate case must be sent to the initiating State IV–D agency, and the initiating State is responsible for distributing the medical support collection. The commenter said that the responding State must send the amount collected to the jurisdiction identified in the order, until the support order itself is revised.

Response: The responding State in an interstate case must forward the medical support amounts collected to the initiating State IV–D agency, which may be the jurisdiction identified in the order.

6. *Comment:* One commenter asked what the IV–D agency should do if it receives medical support, in the form of claims reimbursement paid by a third party (e.g., insurance company), from the custodial or absent parent?

Response: If there is an assignment of rights to medical support under 42 CFR 433.146, the IV–D agency must forward medical support, in the form of claims reimbursement paid by a third party, to the Medicaid agency for distribution under 42 CFR 433.154. If there is not an assignment of medical support, the IV–D agency must forward such medical support to the individual entitled to the payment from the insurance company.

7. *Comment:* One commenter requested clarification of the referenced portions of the Medicaid regulations cited in the new § 302.51(e).

Response: The referenced 42 CFR 433.146 and 433.154 are Medicaid regulations implementing section 1912 of the Act. Sections 454 (4)(A) and (B) of the Act, as revised by section 9142 of Public Law 100–203, require States to establish the paternity and secure support for those for whom an assignment under section 1912 of the Act is effective. The Medicaid regulations at 42 CFR 433.146—Rights assigned; assignment method, which implement the portion of section 1912 of the Act dealing with assignment of medical support rights, require the individual to assign to the State the rights of the individual or of any other individual eligible under the plan for whom the assignor can legally make an assignment, to medical support and to payment for medical care from any third party.

Sections 454(4) (A) and (B) of the Act, as revised by section 9142 of Public Law 100–203, require States to distribute medical support collections pursuant to section 1912 of the Act. The Medicaid regulations at 42 CFR 433.154—Distribution of collections, which implement the portion of section 1912 of the Act dealing with distribution of medical support collections, require the State to reimburse itself and the Federal government for any Medicaid expenditures made for the Medicaid recipient and to give to that individual any remaining amount.

Sections 303.30 and 303.31 Medical Support Enforcement

1. *Comment:* One commenter requested clarification of whether required IV–D activities, delineated in §§ 303.30 and 303.31 if performed under an optional cooperative agreement with the Medicaid agency, as allowed under part 306 of the regulation, would not be eligible for Federal financial participation under the IV–D program, according to § 304.23(g).

Response: In the early years of the IV–D program, medical support enforcement activities were generally performed by the IV–D agency only under an optional cooperative agreement with the Medicaid agency. The Medicaid agency is required to provide full reimbursement to the IV–D agency for all medical support enforcement activities performed under the agreement. As a result of several legislative mandates and regulatory initiatives, the extent of medical support enforcement activities required under the IV–D program has been expanded to include securing of medical support information, as delineated in § 303.30, and securing and enforcing of medical support obligations, as delineated in § 303.31.

The State IV–D agency has the choice either to perform the required IV–D medical support enforcement activities delineated in §§ 303.30 and 303.31 without an optional cooperative agreement with the Medicaid agency, and seek Federal financial reimbursement under the IV–D program, or to perform the required IV–D medical support enforcement activities, as well as other medical support enforcement activities which are not required under §§ 303.30 and 303.31, under a cooperative agreement with the Medicaid agency and receive full reimbursement from the Medicaid agency for the medical support enforcement activities performed under the agreement. In the latter case, Federal financial participation under the IV–D program is not available, in accordance with § 304.23(g).

2. *Comment:* One commenter suggested that when the support order requires the absent parent to secure health insurance for the child(ren), the IV–D agency should only be responsible for ensuring that the absent parent does secure the ordered health insurance. Collecting medical care costs should be done only if under a cooperative agreement with the Medicaid agency. The commenter also requested that the regulations define when a cooperative agreement is necessary and how medical support collections should be distributed under the cooperative agreement.

Response: The IV–D agency is responsible for enforcing a requirement in the support order to secure health insurance and for the collection of medical support obligations when the support order designates a specific amount for medical purposes. The IV–D agency is not responsible for collecting medical care costs which are not included as specific dollar amounts for medical support in the order or for seeking health insurance claims payments. The IV–D agency is not required to enter into a cooperative agreement under § 306.2 with the Medicaid agency; this is an optional provision. Finally, if there is a cooperative agreement under § 306.2, § 302.51(e) requires that "amounts collected by the IV–D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154." Collection of specific amounts of medical support is a required IV–D activity, whether or not there is an optional cooperative agreement with the Medicaid agency.

Sections 303.72 and 303.102 Federal and State Income Tax Refund Offset

1. *Comment:* Several commenters suggested that the notice given to those receiving services under § 302.33, informing them that amounts offset through the Federal or State income tax refund offset process will be applied first to satisfy any past-due support which has been assigned to the State, should be sent only to those whose cases are submitted for the Federal or State tax refund offset process. The commenters indicated that many of the cases submitted for the offset would not result in a collection and that notice should only be provided at the time that the amounts are offset.

Response: Both § 303.72(h)(3) and § 303.102(c) require that the IV–D agency notify the recipient of IV–D services in advance that the amounts offset will be applied first to satisfy any past-due support which has been assigned to the State. The notices must be sent in advance, not after the refund(s) have been offset. States may meet the notice requirements in §§ 303.72(h)(3) and 303.102(c) by informing those receiving IV–D services under § 302.33 of the required order of distribution of amounts offset as part of the information on the IV–D program provided at the time of application or referral to the IV–D agency. Alternatively, States may inform those whose cases are submitted for offset prior to submittal. We have revised the introductory language in § 303.102(c) by deleting the phrase "When overdue support is submitted for State tax refund offset" to eliminate confusion regarding when the advance notice must be provided to the IV–D recipient and to parallel language in § 303.72(h)(3).

2. *Comment:* One commenter suggested that non-AFDC Medicaid cases should be referred to the IRS for Federal income tax refund offset using the AFDC criterion that the past-due support is not less than $150 instead of the higher criterion used for non-AFDC IV–D recipients that the past-due support is not less than $500.

Response: Congress, as a part of Public Law 100–203, did not amend section 464 of the Act governing the Federal income tax refund offset process specifically to address past-due medical support assigned under section 1912 of the Act. Therefore, we used our general rulemaking authority, under section 1102 of the Act, to allow States to submit any past-due cash medical support which the State has agreed to collect in a IV–D case and which meets conditions for submittal in Federal statute and regulations. We believe that these cases should have access to the same establishment and enforcement services as other IV–D cases and are extending access to this particularly effective enforcement technique to ensure equal access for all those in need of IV–D services.

Since we are treating non-AFDC Medicaid cases as non-AFDC cases, the applicable criteria are those specified in section 464(b)(2), which delineates certain requirements for submittal of non-AFDC cases to the IRS for Federal income tax refund offset, and the implementing regulations at § 303.72(a)(3). Therefore, the support must be owed on behalf of a minor child and the amount of the support must be at least $500.

3. *Comment:* One commenter pointed out that § 303.72(k) specifies a January 1, 1991 sunset provision for the offset of Federal income refunds in non-AFDC cases, and questioned the feasibility of making revisions to the offset process when it would soon not be available.

Response: Congress deleted the sunset provision for submitting non-AFDC cases to the IRS for Federal income tax refund offset.

4. *Comment:* One commenter requested we expand the availability of the Federal income tax refund offset process to all past-due medical support, regardless of whether a cash amount is specified for medical support in a court order, since this restriction limits the opportunity to recover from the largest portion of the child support caseload.

Response: It is the responsibility of the IV–D agency to take steps to enforce health insurance coverage as required by court or administrative order. Also, if a support order requires that specified amounts be paid for medical support, the IV–D agency must take steps to enforce the order. The IV–D agency is not responsible for enforcing medical support of an unspecified nature, unless this is done under the optional cooperative agreement with the State Medicaid agency. There is no authority under the IV–D program for the collection of medical support, through the Federal income tax refund offset process or other enforcement techniques, unless there is a specific dollar amount in the support order designated for the purpose of medical support. If the medical debt is reduced to a judgment for medical support through action under a cooperative agreement with the Medicaid agency, or otherwise outside the IV–D agency, the judgment would then be enforceable in a IV–D case if the judgment designates a specific dollar amount for medical purposes.

Section 304.12 Incentive Payments

1. *Comment:* Several commenters asked whether incentives are available for medical support collections in non-AFDC Medicaid cases and former AFDC cases.

Response: Incentives are available for the collection of medical support amounts when the support order includes a specific amount for medical care purposes. Medical support collections in AFDC (and title IV–E foster care) cases are considered AFDC collections for purposes of incentive calculation. Medical support collections in cases receiving services under § 302.33 are considered non-AFDC collections for purposes of incentive calculation.

2. *Comment:* One commenter requested that collections on behalf of non-AFDC Medicaid cases be considered AFDC collections for purposes of calculating incentive payments.

Response: Section 458(b)(1) of the Act defines AFDC collections for purposes of computing incentives under the IV–D program to include collections in cases in which support is assigned to the State pursuant to section 402(a)(26) or section 471(a)(17) of the Act, and defines non-AFDC collections to be collections in all other cases. Therefore, we lack authority to define collections on behalf of non-AFDC Medicaid recipients as AFDC collections.

Section 304.20 Availability and Rate of Federal Financial Participation

1. *Comment:* One commenter requested clarification of whether certain activities, that the commenter considered related to the establishment of an agreement with the Medicaid agency to carry out required IV–D activities, would be eligible for Federal financial participation. Would there be "restrictions on administrative agreements (for required functions) between the programs?" Would Federal financial participation be available for "actively acquiring referrals from Medicaid rather than passively awaiting a non-mandatory referral by the Medicaid agency?" Would Federal financial participation be available for "planning, developing, and implementing automated systems or changes to Medicaid systems?" Finally, would "costs of litigating or otherwise enforcing cooperation of non-AFDC Medicaid recipients" be eligible for Federal financial participation?

Response: Section 304.20(a)(1) was amended to indicate that Federal financial participation is available for IV–D services and activities on behalf of non-AFDC Medicaid recipients, made pursuant to the approved title IV–D State plan, that are determined by the OCSE to be necessary expenditures properly attributable to the IV–D program.

Section 304.20(b)(1)(ix), which addresses the establishment of agreements with Medicaid agencies necessary to carry out required IV–D activities was modeled upon § 304.20(b)(1)(xiii), which addresses the establishment of agreements with the AFDC and the IV–E foster care agencies.

In response to the question of whether there would be "restrictions on administrative agreements (for required functions) between the programs," agreements must be limited to those functions necessary to carry out required IV–D activities such as those delineated in § 304.20(b)(1)(ix) (A) through (D).

Federal financial participation under the IV–D program would not be available for those activities which are not considered necessary expenditures properly attributable to the IV–D program, including "planning, developing, and implementing automated systems or changes to Medicaid systems," and "costs of litigating or otherwise enforcing cooperation of non-AFDC Medicaid recipients."

2. *Comment:* One commenter requested clarification whether Federal financial participation is available for the delineated activities in § 304.20(b)(1)(ix) only if they are done under an agreement with the Medicaid agency. The commenter objected to the activities being considered IV–D activities, with IV–D funding, since these expenditures will reduce the State's cost-effectiveness with no resulting increase in incentives.

Response: Section 304.20(a)(1) specifies that Federal financial participation at the applicable matching rate is available for necessary expenditures under the State IV–D plan for the support enforcement services and activities in §§ 304.20 and 304.21 provided to individuals from whom an assignment of support rights as defined in § 301.1 has been obtained. This includes the required IV–D activities delineated under § 304.20(b)(1)(ix) to the extent they are functions of the IV–D agency. Some, such as referring cases and conducting determinations of cooperation are not functions of the IV–D agency. Federal matching is not contingent upon these activities being done under an agreement with the Medicaid agency.

In response to the second comment, we remind the commenter that the provision of IV–D services to non-AFDC Medicaid recipients is a legislative mandate. Medical support enforcement is an integral part of child support enforcement and as such is a legitimate function of the IV–D program. Incentives are available for collection of support made on behalf of non-AFDC Medicaid recipients at the same rate as for other non-AFDC recipients of IV–D services.

Regulatory Flexibility Analysis

Comment: Several commenters did not agree that the State IV–D caseload would be minimally increased due to the automatic eligibility for IV–D services for non-AFDC Medicaid individuals referred by the Medicaid agency and former AFDC families referred by the AFDC agency. One commenter estimated its IV–D caseload will increase by 268 new IV–D cases each month due to referrals of new non-AFDC Medicaid individuals, with no resulting increase in incentives because collections are counted as non-AFDC collections for incentive purposes and the amount of non-AFDC incentives is capped in the State.

Response: Section 9141 of Public Law 100–203 did not impose the requirement that former AFDC recipients be provided IV–D services at the time AFDC eligibility ends; this requirement

was part of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378). Section 9141 of Public Law 100–203 deleted the transition period of up to five months between AFDC ineligibility and mandatory continuation of services. Therefore, the State IV–D caseload would not be affected by section 9141 because States have been required to continue to provide services in these cases since October 1, 1984.

Section 9142 mandates the provision of IV–D services to non-AFDC Medicaid recipients, many of whom should already have been receiving IV–D services after having applied for services upon the referral of the Medicaid agency. We continue to believe that the impact of the requirements will be minor since most of the affected individuals were already receiving IV–D services, either under the prior provisions for former AFDC recipients or by the Medicaid agency requiring them to apply for IV–D services. The commenter did not indicate how many of the 268 new non-AFDC Medicaid cases would have become IV–D cases under prior practice by application for IV–D service absent the new law. With respect to the comment that the incentives will not increase because collections are counted as non-AFDC collections and the amount of non-AFDC incentives is capped in that State, incentives for collections in these cases will increase as AFDC collections increase. Additionally, under the provisions of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378), the cap on the incentive for non-AFDC collections has been raised to 115% of the AFDC collections, effective October 1, 1989. Finally, we would point out that the State share of any Medicaid savings should far outweigh any benefits of increased incentives in these cases.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and political subdivisions and we believe that this impact will be nominal because, as discussed in the last comment, the regulation merely requires the provision of IV–D services to current non-AFDC Medicaid recipients and former Medicaid and IV–E foster care cases, many of whom have applied for and are receiving services from the IV–D agency, and eliminates the requirement that these recipients file an application and pay an application fee. This regulation also eliminates the transitional five-month period between the end of AFDC eligibility and transfer of a former AFDC case to non-AFDC status. States have been required since October 1, 1984 to continue to provide services to individuals once AFDC eligibility ends.

This automatic provision of IV–D services to certain families will not increase the IV–D caseloads in the States because most of the affected individuals are already, or would have become, non-AFDC IV–D recipients anyway by applying for services and paying the application fee, or by being automatically converted to non-AFDC status after the transitional five-month period ended.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The regulation is expected to have an insignificant impact on State and Federal expenditures because the regulation merely requires the provision of IV–D services to non-AFDC Medicaid recipients without filing an application or paying an application fee and eliminates the five-month transitional period between AFDC and non-AFDC status. This clarification will not significantly increase the IV–D caseloads in the States because most of the affected individuals are already receiving IV–D services or would have become IV–D cases under former procedures. These requirements merely eliminate the need to apply for services and pay the application fee in current non-AFDC Medicaid cases and former Medicaid and IV–E foster care cases and eliminate a transitional five-month period during which services were provided in former AFDC cases before those were automatically transferred to non-AFDC status.

List of Subjects

45 CFR Parts 301, 303, 304

Child support, Grant programs/Social programs, Reporting and recordkeeping requirements.

45 CFR Part 302

Child support, Grant programs/Social programs, Reporting and recordkeeping requirements, Unemployment compensation.

[Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program]

Dated: August 21, 1990.

Jo Anne B. Barnhart,

Director, Office of Child Support Enforcement.

Approved: October 18, 1990.

Louis W. Sullivan,

Secretary.

For the reasons set out in the preamble, 45 CFR parts 301 through 304 are amended as follows:

PART 301—[AMENDED]

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 301.1 is amended by adding the definitions of the terms "Assigned support obligation", "Assignment", and "Non-AFDC Medicaid recipient" to read as follows:

§ 301.1 General definitions.

* * * * *

Assigned support obligation means, unless otherwise specified, any support obligation which has been assigned to the State under § 232.11 of this chapter or section 471(a)(17) of the Act, or any medical support obligation or payment for medical care from any third party which has been assigned to the State under 42 CFR 433.146.

Assignment means, unless otherwise specified, any assignment of rights to support under § 232.11 of this chapter or section 471(a)(17) of the Act, or any assignment of rights to medical support and to payment for medical care from any third party under 42 CFR 433.146.

* * * * *

Non-AFDC Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Act but is not receiving, nor deemed to be receiving, AFDC under title IV–A of the Act.

* * * * *

PART 302—[AMENDED]

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.31 is amended by revising paragraph (a)(1), the first sentence of (a)(2), (b), the first sentence of (c), and the OMB approval statement at the end of the section, and by adding a new (a)(4), to read as follows:

§ 302.31 Establishing paternity and securing support.

* * * * *

(a) * * *

(1) In the case of a child born out of wedlock with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws and reciprocal arrangements adopted with other States when appropriate. * * *

* * * * *

(4) When assigned medical support payments are received and retained by a non-AFDC Medicaid recipient, the IV–D agency shall notify the Medicaid agency whenever it discovers that directly received medical support payments are being, or have been, retained.

(b) Upon receiving notice from the IV–A, IV–E or Medicaid agency that there has been a claim of good cause for failure to cooperate, the IV–D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency.

(c) The IV–D agency will not undertake to establish paternity or secure support in any case for which it has received notice from the IV–A, IV–E or Medicaid agency that there has been a finding of good cause unless there has been a determination by the IV–A, IV–E or Medicaid agency, as appropriate, that support enforcement may proceed without the participation of the caretaker or other relative. * * *

(Approved by the Office of Management and Budget under control numbers 0960–0385 and 0970–0107)

, 302.32 [Amended]

3. Section 302.32 is amended by replacing the reference to "§ 302.51(e)(1)" in the last sentence of paragraph (b) with "§ 302.33".

4. Section 302.33 is amended by revising the title and paragraphs (a), (d)(1)(ii), (d)(5), (e), and the OMB approval statement at the end of the section to read as follows:

§ 302.33 Services to individuals not receiving AFDC or title IV–E foster care assistance.

(a) *Availability of Services.* (1) The State plan must provide that the services established under the plan shall be made available to any individual who:

(i) Files an application for the services with the IV–D agency. In an interstate case, only the initiating State may require an application under this section; or

(ii) Is a non-AFDC Medicaid recipient; or

(iii) Has been receiving IV–D services and is no longer eligible for assistance under the AFDC, IV–E foster care, and Medicaid program.

(2) The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1) (ii) and (iii) of this section. If an individual receiving services under paragraph (a)(1)(iii) of this section refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee.

(3) The State may not charge fees or recover costs from any individual who is eligible to receive services under paragraph (a)(1)(ii) of this section.

(4) Whenever a family is no longer eligible for assistance under the State's AFDC, IV–E foster care, and Medicaid programs, the IV–D agency must notify the family, within five working days of the notification of ineligibility, that IV–D services will be continued unless the IV–D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV–D services, including the available services and the State's fees, cost recovery and distribution policies.

(5) The State must provide all appropriate IV–D services, in addition to IV–D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the State that only IV–D services related to securing medical support are wanted.

* * * * *

(d) * * *

(1) * * *

(ii) From the individual who is receiving IV–D services under paragraph (a)(1) (i) or (iii) of this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV–D services under paragraphs (a)(1) (i) and (iii) of this section.

* * * * *

(5) If a State elects to recover costs under this section, the IV–D agency must notify, consistent with the option selected, either the individual who is receiving IV–D services under paragraphs (a)(1) (i) or (iii) of this section, or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV–D agency where the case originated must notify the individual receiving IV–D services of the States that recover costs.

* * * * *

(e) *Assignment* (1) The IV–D agency may take an assignment of support rights not already assigned to the State from an individual receiving services under this section. However, an assignment by an individual under this section does not constitute an assignment as defined in § 301.1 of this chapter and may not be a condition of eligibility for services under this section.

(2) Before the recipient of IV–D services under this section makes an assignment of support rights, the IV–D agency shall inform the individual that the assignment is not a condition of eligibility for services under this section.

(Approved by the Office of Management and Budget under control numbers 0960–0253, 0960–0385, 0960–0402, and 0970–0107)

5. Section 302.50 is amended by revising paragraphs (a) and (e) to read as follows:

§ 302.50 Support obligations.

* * * * *

(a) An assignment of support rights, as defined in § 301.1 of this chapter, constitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative hearing process; or

(2) Except for obligations assigned under 42 CFR 433.146, other legal process as established by State laws, such as a legally enforceable and binding agreement.

* * * * *

(e) No portion of any amounts collected which represent an assigned support obligation defined under § 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

* * * * *

6. Section 302.51 is amended by revising paragraphs (e), (f)(4) and the OMB approval statement at the end of the section to read as follows:

§ 302.51 Distribution of support collections.

* * * * *

(e)(1) The amounts collected by the IV–D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV–D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV–D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(f) * * *

(4) For those cases in which collections are authorized under § 302.33(a)(1)(iii), priority shall be given to collection of current support.

(Approved by the Office of Management and Budget under control numbers 0960–0385 and 0970–0107)

7. Section 302.70(a)(3) is revised to read as follows:

§ 302.70 Required State laws.

(a) * * *

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of individuals receiving IV–D services, in accordance with the requirements set forth in § 303.102 of this chapter;

* * * * *

8. Section 302.75 is amended by revising paragraph (b)(4) to read as follows:

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

* * * * *

(b) * * *

(4) The late payment fee must be imposed in cases where there has been an assignment under § 232.11 of this title or section 471(a)(17) of the Act or the IV–D agency is providing services under § 302.33 of this chapter.

* * * * *

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Section 303.10(b)(2) is revised to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

* * * * *

(b) * * *

(2) Include all of its cases in the system.

* * * * *

3. Sections 303.11(b) (9) through (12) are revised to read as follows:

§ 303.11 Case closure criteria.

* * * * *

(b) * * *

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at § 302.31 (c) and either §§ 232.40 through 232.49 of this chapter or 42 CFR 433.147 and the State or local IV–A, IV–E, or Medicaid agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

(11) In a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii), the IV–D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one certified letter; or

(12) In a non-AFDC case receiving services under § 302.33(a)(1) (i) or (iii), the IV–D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV–D services.

* * * * *

4. Section 303.30 is amended by revising the introductory language in paragraphs (a) and (b) and the OMB approval statement at the end of the section to read as follows:

§ 303.30 Securing medical support information.

(a) If the IV–A or IV–E agency does not provide the information specified in this paragraph to the Medicaid agency and if the information is available or can be obtained in a IV–D case for which an assignment as defined under § 301.1 of this chapter is in effect, the IV–D agency shall obtain the following information on the case:

* * * * *

(b) When an individual is eligible for services under § 302.33 of this chapter, the IV–D agency shall inform the individual that medical support enforcement services are available and shall secure the information specified in paragraph (a) of this section:

* * * * *

(Approved by the Office of Management and Budget under control numbers 0960–0420 and 0970–0107)

5. Section 303.31 is amended by revising the introductory language in paragraph (b) and revising paragraph (c) and the OMB approval statement at the end of the section to read as follows:

§ 303.31 Securing and enforcing medical support obligations.

* * * * *

(b) With respect to cases for which there is an assignment as defined in § 301.1 of this chapter in effect, the IV–D agency shall:

* * * * *

(c) The IV–D agency shall inform an individual who is eligible for services under § 302.33 of this chapter that medical support enforcement services are available and shall provide the services specified in paragraph (b) of this section:

(1) If an individual eligible for services under § 302.33 is a Medicaid recipient; or

(2) With the consent of the individual who is eligible for services under § 302.33 and is not a Medicaid recipient, except that health insurance information shall not be transmitted to the Medicaid agency.

(Approved by the Office of Management and Budget under control numbers 0960–0420 and 0970–0107)

6. Section 303.71 is amended by revising the last sentence in paragraph (b) and revising paragraph (c)(5) to read as follows:

§ 303.71 Requests for full collection services by the Secretary of the Treasury.

* * * * *

(b) * * * Requests may be made on behalf of families who make assignments as defined in § 301.1 of this chapter and on behalf of families receiving services under § 302.33.

(c) * * *

(5) Only the State that has taken an assignment as defined in § 301.1 of this chapter or an application or referral under § 302.33 of this chapter may request IRS collection services on behalf of a given case.

* * * * *

7. Section 303.72 is amended by revising paragraphs (a) (1) and (3) introductory text, (h) (1), (3) and (4), and (i)(2) to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) * * *

(1) There has been an assignment of the support rights under § 232.11 of this title or section 471(a)(17) of the Act to the State making the request for offset or the IV–D agency is providing services under § 302.33 of this chapter.

* * * * *

(3) For support owed in cases where the IV–D agency is providing IV–D services under § 302.33 of this chapter:

* * * * *

(h) *Distribution of collections.* (1) Collections received by the IV–D agency as a result of refund offset to satisfy AFDC or non-AFDC past-due support shall be distributed as past-due support as required under § 302.51(b) (4) and (5) and (e) of this chapter.

* * * * *

(3) The IV–D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title, 42 CFR 433.146, or section 471(a)(17) of the Act and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under § 302.51 (b) (4) and (5) and (e) or § 302.52(b) (3) and (4) of this chapter, the IV–D agency must repay the excess to the absent parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

* * * * *

(i) * * *

(2) The State IV–D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed $25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

* * * * *

8. Section 303.102 is amended by revising paragraphs (a)(1), (c), (f) and (g)(1) (i) through (iii) and adding (g)(1)(iv) to read as follows:

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) * * *

(1) There has been an assignment of the support obligation under § 232.11 of this title or section 471(a)(17) of the Act or the IV–D agency is providing services under § 302.33 of this chapter, and

* * * * *

(c) *Notice to custodial parent.* The IV–D agency must inform individuals receiving services under § 302.33 of this chapter, in advance:

(1) That, for cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, amounts offset will be distributed under § 302.51(e) of this chapter; and

(2) If amounts offset will be applied first to satisfy any past-due support which has been assigned to the State under § 232.11 of this title or section 471(a)(17) of the Act.

* * * * *

(f) *Fee for certain cases.* The State IV–D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a reasonable fee to cover the cost of collecting past-due support using State tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(g) * * *

(1) * * *

(i) For an AFDC case, under § 302.51 (b) (4) and (5) and (e) of this chapter;

(ii) For a foster care maintenance case, under § 302.52(b) (3) and (4) of this chapter; and

(iii) For a non-AFDC case, except as specified in paragraph (g)(1)(iv) of this section, by paying offset amounts to the family first or using them first to reimburse the State, depending on the State's method for distributing arrearage collections in non-AFDC cases.

(iv) For cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, under § 302.51(e) of this chapter.

* * * * *

PART 304—[AMENDED]

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 304.12 [Amended]

2. Section 304.12 is amended by removing the words "and collections made under § 302.51(e) of this chapter" at the end of the definition of "non-AFDC collections" in paragraph (a).

3. Section 304.20 is amended by revising paragraph (a)(1); removing paragraph (a)(2) and redesignating paragraphs (a) (3) and (4) as paragraphs (a) (2) and (3); adding paragraph (b)(1)(ix); removing paragraph (b)(4)(ii); redesignating paragraphs (b)(4) (iii) through (vi) as paragraphs (b)(4) (ii) through (v); and adding a new (b)(4)(vi) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

(a) * * *

(1) Necessary expenditures under the State title IV–D plan for the support enforcement services and activities specified in this section and § 304.21 provided to individuals from whom an assignment of support rights as defined in § 301.1 of this chapter has been obtained;

* * * * *

(b) * * *

(1) * * *

(ix) The establishment of agreements with Medicaid agencies necessary to carry out required IV–D activities and to establish criteria for:

(A) Referring cases to the IV–D agency;

(B) Reporting on a timely basis information necessary for the determination and redetermination of eligibility for Medicaid;

(C) Determining if individuals receiving Medicaid are cooperating adequately;

(D) Transferring collections from the IV–D agency to the Medicaid agency in accordance with § 302.51(e) of this chapter.

* * * * *

(4) * * *

* * * * *

(vi) Making the Medicaid agency aware of amounts collected and distributed to the family for the purposes of determining eligibility for assistance under the State XIX plan.

* * * * *

[FR Doc. 91–3638 Filed 2–25–91; 8:45 am]

BILLING CODE 4150–04–M

OL
56
SS
88
FE
26
991
MI

federal register

Tuesday,
February 26, 1991

Part IV

Small Business Administration

Privacy Act of 1974; Revision of Systems of Records; Notice

SMALL BUSINESS ADMINISTRATION

Revision of Privacy Act Systems of Records

AGENCY: Small Business Administration.

ACTION: Notice of Revision of Agency's Systems of Records pursuant to the provisions of the Privacy Act and to open comment period.

SUMMARY: This notice provides for review and comment on a major revision of the Agency's Privacy Act Systems of Records. Several of the former Systems have been eliminated, some were consolidated and three new Systems were developed. This revision is in compliance with the Federal Information Resources Management Review Program.

DATES: Written comments on the system of records must be received on or before March 28, 1991. The notice shall be effective as proposed without further publication at the end of the comment period, unless comments are received which would require a contrary determination.

ADDRESSES: Written comments on the Systems of Records should be directed to Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office, U. S. Small Business Administration, 409 3rd Street, SW. Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Beverly K. Linden, Chief, Freedom of Information/Privacy Acts Office, (202) 653-6460.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act stipulation that Agencies publish their Systems in the **Federal Register** when there is a revision, change or addition.

Dated: January 16, 1991.

Susan Engeleiter,

Administrator.

Appendix A

Central Office, 409 Third Street, SW., Washington, DC 20416
Boston Regional Office, 60 Batterymarch Street, Boston, MA 02910
New York Regional Office, 26 Federal Plaza, Rm. 29-118, New York, NY 10278
Philadelphia Regional Office, Allendale Square, Suite 201, 475 Allendale Rd., King of Prussia, PA 19406
Atlanta Regional Office, 1375 Peachtree Street, NE., 5th Floor, Atlanta, GA 30309
Chicago Regional Office, Federal Building, 230 South Dearborn Street, Rm. 510, Chicago, IL 60604-1593
Dallas Regional Office, 8625 King George Dr., Bldg. C, Dallas, TX 75235
Kansas City Regional Office, 911 Walnut Street, 13th Floor, Kansas City, MO 64106
Denver Regional Office, 999 18th Street, Suite 701, Denver, CO 80202
San Francisco Regional Office, 450 Golden Gate Ave., San Francisco, CA 94102
Seattle Regional Office, 2615 Fourth Ave., Seattle, WA 98121

SBA District Offices

Boston District Office, 10 Causeway Street, Boston, MA 02114
Springfield Branch Office, 1550 Main Street, Rm. 212, Springfield, MA 01103
Augusta District Office, 40 Western Ave., Rm. 512, Federal Building, Augusta, ME 04330
Concord District Office, 55 Pleasant Street, Rm. 213, Concord, NH 03301
Hartford District Office, One Financial Plaza, Hartford, CT 06103
Providence District Office, 380 Westminster Mall, Providence RI 02903
New York District Office, 26 Federal Plaza, Rm. 3100, New York, NY 10007
Buffalo Branch Office, 111 West Huron Street, Rm. 1311, Federal Bldg., Buffalo, NY 14202
Elmira Branch Office, 333 E. Water St., 4th Floor, Elmira, NY 14901
Hato Ray District Office, Chardon and Bolivia Streets, P.O. Box 1915, Hato Ray, Puerto Rico 00919
Newark District Office, 970 Board Street, Rm. 1635, Newark, NJ 07102
Syracuse District Office, Federal Building, Rm. 1073, 100 South Clinton Street, Syracuse, NY 13202
Philadelphia District Office, 231 St. Asaphs Rd., 1 Bala Cynwyd Plaza, Suite 400—East Lobby, Bala Cynwyd, PA 19004
Pittsburgh District Office, Federal Building, 1000 Liberty Ave., Rm. 1401, Pittsburgh, Pennsylvania 15222
Harrisburg Branch Office, 100 Chestnut St., Suite 309, Harrisburg, PA 17101
Wilkes-Barre Branch Office, 20 N. Pennsylvania Ave., Rm. 2327, Wilkes-Barre, PA 18701
Wilmington Branch Office, 844 King Street, Rm. 5207, Wilmington, DE 19801
Baltimore District Office, The Equitable Bldg., Third Floor, 10 North Calvert Street, Baltimore, MD 21202
Richmond District Office, Federal Bldg., Rm. 3015, P.O. Box 10126, 400 North Eighth Street, Richmond, VA 23240
Clarksburg District Office, 109 North 3rd Street, Rm. 301, Londes Bldg., Clarksburg, WV 26301
Charleston Branch Office, 550 Eagan Street, Suite 309, Charleston, WV 25301
Washington District Office, 1111 18th Street, NW., 6th Floor, Washington, DC 20036
Atlanta District Office, 1375 Peachtree St., NE, 5th Floor, Atlanta, GA 30367-8102
Birmingham District Office, 2121 8th Ave., N., Birmingham, AL 35203-2398
Charlotte District Office, 222 S. Church Street, Charlotte, NC 28202
Columbia District Office, 1835 Assembly Street, Rm. 358, Columbia, SC 29201
Jackson District Office, 100 W. Capitol Street, Suite 322, Jackson, MS 39269-0396
Gulfport Branch Office, One Hancock Plaza, Suite 1001, Gulfport, MS 39501-7758
Jacksonville, District Office, 400 W. Bay Street., Rm. 261, Jacksonville, FL 32202
Louisville District Office, 600 Federal Place, Rm. 188, Louisville, KY 40202
Miami District Office, 1320 S. Dixie Highway, Suite 501, Coral Gables, FL 33146
Nashville District Office, 404 James Robertson Pkwy, Suite 1012, Nashville, TN 37219
Chicago District Office, 219 S. Dearborn Street, Rm. 437, Chicago, IL 60604-1779
Cleveland District Office, 1240 E. 9th Street Rm. 317, Cleveland, OH 44199
Columbus District Office, Federal Bldg., U.S. Courthouse, 85 Marconi Boulevard, Rm. 512, Columbus, OH 43215-2887
Detroit District Office, 477 Michigan Ave., McNamara Bldg., Detroit, MI 48226
Indianapolis District Office, Minton-Capehart Federal Bldg. Rm. 578, 575 N. Pennsylvania St., Rm. 578, Indianapolis, IN 46204
Madison District Office, 212 E. Washington Ave., Rm. 213, Madison, WI 53703
Minneapolis District Office, 610-C Butler Square, 100 North 6th Street, Minneapolis MN 55403
Springfield Branch Office, Illinois Financial Center South, 511 W. Capitol Avenue, 3rd Floor, Springfield, IL 62704-1906
Cincinnati Branch Office, Federal Building, 550 Main Street, Rm. 5028, Cincinnati, OH 45202
Marquette Branch Office, Hallhart Building, 300 S. Front Street, Marquette, MI 49855
Milwaukee Branch Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Ave., Suite 400, Milwaukee, Wisconsin 53203
Dallas District Office, 1100 Commerce St., Room 3C-36, Dallas, TX 75242
Houston District Office, 2525 Murworth, Suite 112, Houston, TX 77054
Lubbock District Office, 1611 Tenth Street, Suite 200, Lubbock, TX 79401
Lower Rio Grande Valley District Office, 222 E. Van Buren St., Rm. 500, Harlingen, TX 78550
San Antonio District Office, 7400 Blanco Rd., Suite 200, San Antonio, TX 78216
Corpus Christi Branch Office, 400 Mann Street, Suite 403, Corpus Christi, TX 78401
Ft. Worth Branch Office, 819 Taylor Street, Rm. 10A27, Ft. Worth, TX 76102
El Paso District Office, 10737 Gateway W., Suite 320, El Paso, TX 79935
Little Rock District Office, 320 W. Capitol Ave., Rm. 601, Little Rock, AR 72201-3518
Albuquerque District Office, 5000 Marble Ave., NE., Room 320, Albuquerque, NM 87100
Oklahoma City District Office, 200 NW. 5th Street, Suite 670, Federal Building, Oklahoma City, OK 73102
New Orleans District Office, 1661 Canal Street, Suite 2000, New Orleans, LA 70112
Cedar Rapids District Office, 373 Collins Road NE, Rm. 100, Cedar Rapids, IA 52402-3116
Des Moines District Office, New Federal Building, 210 Walnut Street, Rm. 749, Des Moines, IA 50309
Kansas City District Office, 1103 Grand Ave., 6th Floor, Kansas City, MO 64106
Omaha District Office, 11145 Mill Valley Rd., Omaha, NB 68154
St. Louis District Office, 815 Olive Street, Rm. 242, St. Louis, MO 63101
Wichita District Office, 110 E. Waterman St., 1st Floor, Wichita, KS 67202
Springfield Branch Office, 309 N. Jefferson St., Rm. 150, Springfield, MO 65806

Denver District Office, 721 19th St., Rm. 407, Denver, CO 80202-2599
Casper District Office, Federal Bldg., Room 4001, 100 East B Street, Casper, WY 82602
Fargo District Office, 657 2nd Ave. N, Rm. 218, Fargo, ND 58108-3086
Helena District Office, Federal Bldg., Rm. 528, 301 South Park Ave., Drawer 528, Helena, MT 59626
Salt Lake City District Office, Federal Bldg., Rm. 2237, 125 S. State St., Salt Lake City, UT 84138
Sioux Falls District Office, Security Bldg., 101 S. Main St., Suite 101, Sioux Falls, SD 57102-6577
Fresno District Office, 2202 Monterey St., Suite 108, Fresno, CA 93721
Los Angeles District Office, 350 S. Figueroa St., 6th Floor, Los Angeles, CA 90071
San Diego District Office, 880 Front Street, Rm. 4-S-29, San Diego, CA 92188
San Francisco District Office, 211 Main Street, 4th Floor, San Francisco, CA 94104
Santa Ana Branch Office, 901 West Civic Center Drive, Suite 160, Santa Ana, CA 92707
Sacramento Branch Office, 660 J St., Rm. 215, Sacramento, CA 95814
Honolulu District Office, 300 Ala Moana Blvd., Rm. 2213, Honolulu, HI 96850
Las Vegas District Office, 301 E. Stewart St., Rm. 301, Las Vegas, NV 89125
Phoenix District Office, 2005 N. Central Ave., 5th Floor, Phoenix, AZ 85004
Agana Branch Office, Pacific Daily News Bldg., Room 508, Agana, GM 96910
Anchorage District Office, 701 C Street, Box 67, Anchorage, AK 99513 Boise, ID 83702
Portland District Office, 1220 S.W. Third Ave., Rm. 676, Portland, OR 97204
Seattle District Office, 915 Second Ave., Rm. 1792, Seattle, WA 98174
Spokane District Office, Court House Bldg., W. 920 Riverside Ave., Rm. 651, Spokane, WA 99201

SBA Area Disaster Offices,

Niagara Falls Area 1 Disaster Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14302
Atlanta Area 2 Disaster Office, 120 Ralph McGill St., 14th Floor, Atlanta, GA 30308
Fort Worth Area 3 Disaster Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155
Saramento Area 4 Disaster Office, 77 Cadillac Dr., Suite 158, Sacramento, CA 95853

APPENDIX B

Federal Archives and Records Center, GSA, 380 Trapelo Road, Waltham, MA 02154
Federal Archives and Records Center, GSA, Military Ocean Terminal, Bldg. 22, Bayonne, NJ 07002
Federal Archives and Records Center, GSA, 5000 Wissahickon Ave., Philadelphia, PA 19144
Federal Records Center, GSA, Naval Supply Depot, Bldg. 306, Mechanicsburg, PA 17055
Washington National Records Center, Washington, DC 20409
Federal Archives and Records Center, GSA, 1557 St. Joseph Ave., East Point, GA 30344
Federal Archives and Records Center, GSA, 7358 South Pulaski Road, Chicago, IL 60629
Federal Records Center, GSA, 3150 Bertwynn Drive, Dayton, OH 45439
Federal Archives and Records Center, GSA, 3150 Springboro Road, Dayton, OH 45439
Federal Archives and Records Center, GSA, 2306 East Bannister Road, Kansas City, MO 64131
National Personnel Records Center, GSA, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118
Federal Archives and Records Center, GSA, 4900 Hemphill Street, P.O. Box 6216, Fort Worth, TX 76115
Federal Archives and Records Center, GSA, Bldg. 48, Denver Federal Center, Denver, CO 80225
Federal Archives and Records Center, GSA, 1000 Commodore Drive, San Bruno, CA 94096
Federal Archives and Records Center, GSA, P.O. Box 6719, Laguna Niguel, CA 92677-6719
Federal Archives and Records Center, GSA, 6125 Sandy Point Way, Seattle, WA 98115

Table of Contents

SBA 005—Administrator's Executive Secretariat Files (SBA Controlled Documents System).
SBA 010—Advisory Council Files
SBA 015—Audit Reports
SBA 020—Automated Personnel History
SBA 025—Boards of Survey
SBA 030—Business Development Resource Files
SBA 035—Combined Federal Campaign
SBA 040—Congressional Inquiries and Correspondence
SBA 045—EEO Pre-Complaint Counseling
SBA 050—EEO Complaint Cases
SBA 055—Employee Identification Card Files
SBA 060—Grievances and Appeals
SBA 065—Legal Work Files on Personnel Problems
SBA 070—Litigation and Claims Files
SBA 075—Loan Case Files
SBA 080—Occupational Injuries
SBA 085—Official Travel Files
SBA 090—Outside Employment Files
SBA 095—Payroll Files
SBA 100—Personnel Security Files
SBA 105—Portfolio Reviews
SBA 110—SCORE/ACE Master Files
SBA 115—Power of Attorney Files
SBA 120—Security and Investigations Files
SBA 125—Office of Inspector General Referrals
SBA 130—Investigations Division Management Information System
SBA 135—Small Business Person and Advocate Awards
SBA 140—Standards of Conduct Files
SBA 145—Temporary Disaster Employees
SBA 150—Tort Claims
SBA 155—Unofficial Personnel Files
SBA 160—Freedom of Information Act and Privacy Act Case Files

SBA 005

SYSTEM NAME:

Administrator's Executive Secretariat Files (SBA Controlled Documents System)—SBA 005

SYSTEM LOCATION:

SBA Central Office. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have corresponded with or inquired of the SBA Administrator, including:
Congressional Representatives
White House Officials
Other Executive Branch Officials
Individual citizens and members of the public at large
SBA management officials and employees

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains correspondence and memoranda which are entered in the SBA Controlled Documents System; these are filed by discrete document number. This system became operational in November, 1987 and contains applicable document records beginning October 1, 1987.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To organize any correspondence which the Agency may have with Government officials (including Members of Congress) and the general public.

To organize internal and external memoranda or other documents detailing policy and operational decisions made by the SBA Administrator.

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The Agency, or any component thereof; or

(b) Any employee of the Agency in his or her official capacity; or

(c) Any employee of the Agency in his or her individual capacity where the Department of Justice has agreed to to represent the employee; or

(d) The United States, where the Agency determines that litigation is likely to affect the Agency or any of its components

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant

and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and in a distinct computer data base on magnetic tape.

RETRIEVABILITY:

These records are indexed by discrete document number but can be retrieved by computerized cross reference and search within the data base. Any of the several common fields can be used to identify and retrieve documents, including: last name, subject, keyword or phrase, document date, constituent, organization name, etc. Only documents which have been entered in the computerized system can be retrieved.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosures. Computer security safeguards (identification codes, user initials and operator instructions) are employed to restrict access to the data base.

RETENTION AND DISPOSAL:

These records are retained indefinitely, though older records are not stored in the Central Office.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to: Privacy Act Officer for Central Office Records.

RECORD ACCESS PROCEDURE:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record source categories include correspondence (by name or organization), memoranda authors, and other sources which could engender written replies or other actions by the SBA Administrator.

SBA 010.

SYSTEM NAME:

Advisory Council Files—SBA 010

SYSTEM LOCATION:

Central, Regional, District and Branch Offices of the SBA and Federal Record Centers. See Appendix A for SBA addresses and Appendix B for FRC addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members, past and present of SBA Advisory Councils. Records are also maintained on those individuals being processed for appointment to the SBA Advisory Councils.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to members of SBA Advisory Councils and includes recommendations, appointment notices, address lists and occasionally, biographical data and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To disclose information about an Advisory Council member to the general public.

To respond to requests from the National Archives.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other

adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, and index cards.

RETRIEVABILITY:

These records are indexed by the Council member or prospective Council member's name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

These records are retained for three years and then forwarded to a Federal Records Center. The FRC retains these records for five years and then offers the records for transfer to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional and District Directors and Branch Managers. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Office for Central Office Records
Regional Director for Regional Office Records
District Director for District Office Records
Branch Manager for Branch Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, Regional or District Director or Branch Manager will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains, Congressional offices, Agency employees, news media, other Advisory Council members, Federal Register.

SBA 015

SYSTEM NAME:

Audit Reports—SBA 015.

SYSTEM LOCATION:

Office of the Inspector General (OIG) Investigations Division, Audit Division, Central Office duty stations, and Federal Records Centers. See Appendicies A and B for the addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for, recipients of, and other parties in interest (e.g., guarantors) to SBA disaster home loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains material gathered or created during the preparation for, conduct of and follow-up on audits conducted by OIG, as well as other material submitted to or gathered by OIG in furtherance of its audit function. These records include Federal Bureau of Investigation and other Federal, State, local and foreign regulatory or law enforcement investigative reports and include personal history statements, background character checks, full field investigations, arrest and conviction records, parole and probation data, recommendations and related correspondence containing the information supplied; on SBA employees against whom allegations have been made and investigations conducted; and on members of Advisory Councils, the Service Corps of Retired Executives and Active Corps of Executives volunteers.

This system of records contains material gathered or created during the preparation for, conduct of and follow-up on audits conducted by OIG, as well as other material submitted to or gathered by OIG in the furtherance of its auditing function.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or administrative in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for or otherwise involved in investigation or prosecution of such violations or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceeding or in settlement negotiations.

A record from this system of records, which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, State, local or foreign agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

These records may be disclosed, as a routine use, to any source or person, either private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit or to afford a person, in the course of an investigation, the opportunity or facility to violate any Federal, State, local or foreign law, rule, regulation or order or to solicit information relevant to an investigation or audit or to provide the opportunity for the commission of an offense.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to any Federal, State, local, foreign, international, private agency or organization in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation

of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

These records may be disclosed, as a routine use, to a domestic, foreign, or international governmental agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order to obtain information relevant to an agency decision concerning the assignment hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

These records may be disclosed to Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries preparatory thereto.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the Member has no greater right to the record than does the individual.

These records may be used to provide data to the General Accounting Office for periodic reviews of this Agency.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that Office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to the United States General Accounting Office and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

These records may be disclosed, as a routine use, to any Federal agency which has the authority to subpoena other Federal agencies records and which has issued a facially valid subpoena for the record.

These records may be disclosed, as a routine use, to the Department of Treasury and the Department of Justice when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

These records may be disclosed, as a routine use, to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 661 a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purposes of obtaining information in the course of an investigation or audit.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Fraud Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

These records may be disclosed to members of the public under the Freedom of Information Act, 5 U.S.C. 552.

These records may be disclosed, as routine use, to the U.S. Department of Justice in order to obtain that department's advice regarding an agency's disclosure obligations under the Freedom of Information Act.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding an agency's obligations under the Privacy Act.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The SBA or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the SBA to be relevant and necessary to the litigation, provided, however, that in each case, the SBA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court, grand jury or adjudicative body before which the SBA is authorized to appear or in the course of settlement negotiations with opposing counsel, when:

(a) The SBA or any component thereof, or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the SBA has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the SBA determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the SBA determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

STORAGE:

These records are maintained in rotary filing cabinets, file folders and word processing equipment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETRIEVABILITY:

These records are indexed by name and crossreferenced to the number of the Inspector General Audit files containing related material.

SAFEGUARDS:

Information is released only to authorized persons. All filing cabinets are locked.

RETENTION AND DISPOSAL:

Following final agency action as the result of an audit, audit records are maintained in the respective field offices for five years and then transferred to the Federal Records Center, which destroys them after 20 years. An alphabetical indices is maintained on all investigations for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Auditing and the Deputy Assistant Inspector General for Auditing. See Appendix A for Central Office address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the Inspector General. The address of this Office is contained in Appendix A.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Inspector General will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain, Agency personnel, third party informants and the FBI and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1) Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a(k) (2)and (k)(5), except as otherwise provided therein, all investigatory material compiled for law enforcement purposes for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3(c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Privacy Act. 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 020

SYSTEM NAME:

Automated Personnel History—SBA 020.

SYSTEM LOCATION:

SBA Central Office. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current status of all SBA employees including all data pertinent to that status. This system includes name, Social Security Number, grade and salary, title, organization, education, veterans preference, competitive level, date of birth, handicap code, health benefits, etc. This system includes all personnel actions affecting active SBA employees since May 1972, and also those of separated employees since that date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF CORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A number of records in this system are sent as a required report to the Office of Personnel Management. The General Accounting Office is also given information from this system for audit purposes.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This system of records is maintained in computer data files.

RETRIEVABILITY:

Records in this system can be retrieved by the employee's name or Social Security Number.

SAFEGUARDS:

Physical Security—authorized personnel only.

RETENTION AND DISPOSAL:

These records form a permanent data bank for the Office of Personnel and are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to the Privacy Act Officer. The address is contained in Appendix A.

RECORD ACCESS PROCEDURE:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

SF 171 and any other forms an employee completes when coming on-board; Personnel actions as recorded on SBA Form 52; Requests for personnel actions; Mass Change Formats; and Award Keypunch Formats.

SBA 025

SYSTEM NAME:

Boards of Survey—SBA 025.

SYSTEM LOCATION:

Central Office and Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees and other individuals who have been involved in accidents with government vehicles, or other incidents of loss or damage to government property.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the report and supporting material compiled by the Board of Survey in reviewing cases involving loss or damage to government property. These may be claims by or against the government. Cases involving up to $5000 can be handled in the Regional Offices. Cases involving more than $5000 must be referred to the Central Office Board of Survey.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 29 U.S.C. 651–78.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a suit is initiated in a court, these records would be referred to the Justice Department and General Services Administration for handling. The records would also be given to the parties in litigation with the Agency and to the court, if necessary in the case.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Files are indexed by the name of SBA employees or other individuals involved in the case.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individuals involved in the case, witnesses, Agency investigation.

SBA 030

SYSTEM NAME:

Business Development Resource Files—SBA 030.

SYSTEM LOCATION:

Central Office, Regional, District, and Branch Offices of the SBA. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SCORE/ACE volunteers, borrowers of Business Development training materials, Small Business Institute coordinators, and other individuals who are potential speakers, counselors or authors and reviewers for Business Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to individuals listed in the above paragraph. These records include biographical sketches of volunteers, correspondence, copies of travel vouchers, files of accomplishments, copies of counseling reports, publications authorized, news releases and clippings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 634(b)(6); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To provide SCORE/ACE volunteers with information about an individual SCORE/ACE volunteer.

To provide university coordinators with information about potential speakers at management training sessions.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards and computer data files.

RETRIEVABILITY:

These records are indexed by name.

SAFEGUARDS:

Access to and use of the records are limited to those Agency personnel and volunteers whose duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained, in the case of SCORE volunteers, for three years either after a volunteer withdraws or has his or her name removed from active participation, and are then destroyed. For all others, files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional Directors, District Directors and Branch Managers. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records
District Director for District Office Records
Branch Manager for Branch Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, Regional Director, District Director or Branch Manager will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, Agency employees, members of SCORE/ACE, news media, educators, universities, professional and civic organizations.

SBA 035

SYSTEM NAME:

Combined Federal Campaign—SBA 035.

SYSTEM LOCATION:

Central Office and Regional Offices. See Appendix A for these addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Names and addresses of those employees who are connected with the planning and accomplishments of the fund-raising drive may be released to the media.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency

determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders or binders, which are usually stored in file cabinets.

RETRIEVABILITY:

Records are indexed by name and/or Social Security Number.

SAFEGUARDS:

Records are used by authorized persons only, on a need to know basis.

RETENTION AND DISPOSAL:

These records are destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer and Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records

Regional Director for Regional and District Office Records.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Privacy Act Officer or the Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee on whom the record is maintained.

SBA 040

SYSTEM NAME:

Congressional Inquiries and Correspondence—SBA 040.

SYSTEM LOCATION:

Central Office. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Congressional Representatives who have inquired of, or corresponded with the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains correspondence which is filed by a Congressional Representative's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To organize any correspondence which the Agency may have with a Congressional Representative.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, magnetic tape, index cards and may be in computer data files.

RETRIEVABILITY:

These records are indexed by the Congressional Representative's name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

These records are retained for no more than three years and then disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to the Privacy Act Officer. See Appendix A for address.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains, Agency personnel, case files, Congressional correspondence.

SBA 045

SYSTEM NAME:

EEO Pre-Complaint Counseling—SBA 045.

SYSTEM LOCATION:

Central Office and Regional Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees who have requested counseling regarding discrimination in employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

File on each counseling case, compiled by Equal Employment Opportunity Counselor in each office. File may include statements made by the employee being counseled and other persons interviewed, record of attempts to resolve the problem, and EEO Counselor's Report becomes part of the EEO Complaint case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 713, 13 CFR 105.735–5–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used to report counseling activity to the Office of Personnel Management, but such reports do not name the individuals who received counseling.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are kept in file folders.

RETRIEVABILITY:

Records are indexed by the name of the person requesting counseling.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is utilized to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Some offices dispose of records after the problem is resolved. Others retain the records for a period of years or indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer and Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records

Regional Director for Regional Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Person requesting counseling, other employees, EEO Counselor, and Personnel and employment records.

SBA 050

SYSTEM NAME:

EEO Complaint Cases—SBA 050.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees who have filed a complaint regarding discrimination in employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on each complaint case, compiled by the Office of Equal Employment Opportunity. File may

BEST COPY AVAILABLE

include statements made by the complainant and other persons interviewed, EEO Counselor's Report, other information developed in the investigation of a complaint, notes of attempts to resolve the complaint, report of a hearing, Hearing Examiner's Recommendations, and Agency action on the case. Files also include closed cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 713, 13 CFR 105.735–5–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used to report to the Office of Personnel Management.

In the event that a complaint results in a hearing, records in this system will be used in preparing and presenting the case before a Complaints Examiner designated by the Office of Personnel Management.

In the event that a complaint is appealed to the Office of Personnel Management, these records will be used by the Appeals Review Board in making a decision on the case.

In the event that a complaint results in a suit in a Federal court, these records will be referred to the Department of Justice and used by that Department to prepare and present the case in court.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or, adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or .

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained in file folders.

RETRIEVABILITY:

Records are indexed by the name of the person filing a complaint.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to the Privacy Act Officer, at the address listed in Appendix A.

RECORDS ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be informed.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Complainant, witnesses, hearing transcript, complaints examiner's recommendations, agency investigation, personnel and employment records.

SBA 055

SYSTEM NAME:

Employee Identification Card Files—SBA 055.

SYSTEM LOCATION:

Central Office, Regional Offices, District Offices and Branch Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These files contain names of employees and the identification card numbers issued to them.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal Agency use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body

before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders, card files or computer data files.

RETRIEVABILITY:

Records are indexed by employee name or identification card number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is utilized to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained indefinitely or until employee terminates service with SBA.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional and District Directors and Branch Managers. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records

Regional Director for Regional Office Records

District Director for District Office Records

Branch Manager for Branch Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, Regional Director, District Director or Branch Manager will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained, agency personnel records.

SBA 060

SYSTEM NAME:

Grievances and Appeals—SBA 060.

SYSTEM LOCATION:

Central Office, Office of Hearings and Appeals, Regional Offices where grievances or personnel practices appeals have been filed. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees who have filed grievances under Union grievances procedures or Personnel Practices Appeals Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records includes correspondence, supporting documents, transcripts of hearings, information developed in investigating a grievance or appeal, and other information related to the processing of the grievance or appeal. These cases may be processed under a Union grievance procedure, or procedures established by the Agency in SOP 37 71–1 and 13 CFR part 134, to ensure that merit principles and personnel laws and regulations are carried out, where other procedures are not applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, Collective Bargaining Agreements with Unions which represent SBA employees, SOP 37 71–1 and 13 CFR 101.2–8.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

Information in these records may be communicated to the Union pursuant to the grievance procedure.

These records may be reviewed by the Office of Personnel Management or used in reporting to the Office of Personnel Management on labor-management relations activity.

Records may be disclosed to a Hearing Examiner from the record of an individual in response to an inquiry from outside the Agency, pursuant to established procedures.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name of the employee filing the grievance or appeal.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, AA/OHA and Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to:

Privacy Act Officer and AA/OHA for Central Office Records Regional Director for Field Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Privacy Act Officer, AA/OHA or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for the contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual who files grievance or appeal, other employees, Union, Personnel and employment records.

SBA 065

SYSTEM NAME:

Legal Work Files on Personnel Problems—SBA 065.

SYSTEM LOCATION:

SBA Central Office. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These work files include opinions, advice, transcripts, witness statements, etc. maintained by the General Counsel's Office on personnel cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6); 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For internal agency use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records kept in file folders which are stored in file cabinets and computer data files.

RETRIEVABILITY:

Records are indexed by employee's name.

SAFEGUARDS:

Access limited to those employees in General Counsel's Office involved in these cases.

RETENTION AND DISPOSAL:

These work files are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to: Privacy Act Officer for Central Office Records.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Office of Personnel, Third party witnesses.

SBA 070

SYSTEM NAME:

Litigation and Claims Files—SBA 070.

SYSTEM LOCATION:

Central Office, District and Branch Office, and Federal Records Centers. See Appendix A for SBA addresses and Appendix B for FRC addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Disaster Home Loan recipients and other individuals who are parties to lawsuits or claims involving the SBA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to recipients who have been classified as "in litigation" and all individuals involved in claims asserted by or against the Agency. These records include wherever applicable: Affidavits, briefs, pleadings, depositions and interrogatories, summaries of loan status with entries of progress of litigation, opinions, copies of Department of Justice papers concerning loan cases in litigation, summary foreclosures, chattel lien searches, requests and answers under disclosure of information, modifications of loan terms and conditions, recipients' attorneys' names, amount of liability, narrative report of actual and contingent liabilities and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecution or such violation, or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

In the course of presenting evidence to a court, magistrate, administrative tribunal, or grand jury including disclosures to opposing counsel in the course or settlement negotiations.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The SBA, or any component thereof, or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her official capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the SBA has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards and computer data files.

RETRIEVABILITY:

These records are indexed by the name of recipient and claimant.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. All filing cabinets are locked.

RETENTION AND DISPOSAL:

Following final agency action, records are maintained in the respective offices until they are transferred to the Federal Records Center, which destroys them after 20 years. An alphabetical indices is maintained on all investigations for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer, District Director and Branch Manager. See Appendix A for addresses.

NOTIFICATION PROCEDURE(S):

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records District Director for District Office Records
Branch Manager for Branch Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, District Director or Branch Manager will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, Agency personnel, Department of Justice, interviews and correspondence with individuals outside of the Agency, bankruptcy notices, court records, title companies, and Loan Case Files.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement

purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order for the Agency legal staff to properly perform its functions.

SBA 075

SYSTEM NAME:

Loan Case File—SBA 075.

SYSTEM LOCATION:

Area Disaster Offices, District and Branch Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and recipients of disaster home loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to an individual who has applied for, or is receiving a disaster home loan from the time of the individual's application until the date of payment in full or charge-off is approved; or until the date of an official denial if declined. These records include:

Loan applications and supporting documents
Personal history and financial statements
Credit information
Investigative reports
Appraisers' reports
Waivers
Loan Record Transfers
Correspondence and recommendations of responsible SBA official including approval authorizations
Disbursement amount, term and rate
History of repayments
Collateral and UCC filings and refilings
Collection and liquidation activities
Related correspondence
Financial Statements
Settlements and compromises
Participating bank information
Field visit reports
Borrowers insurance information
Loan accounting information

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To provide information to the public on an approved loan. Such information is limited to the name and address of the recipient, term and rate of the loan, and the apportioned amount of the loan for real or personal property loss.

To provide information to the general public on losses incurred by the government due to non-payment of obligations by individuals. In these cases, the name and address of the obligator and amount incurred (amount written-off from Agency assets) is released for public information purposes.

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

To request information from a Federal, State or local agency or a private credit agency maintaining civil, criminal or other information relevant to determining an applicant's suitability for a loan.

To provide data to the General Accounting Office for periodic reviews of this Agency.

To provide information or disclose to State and Federal agencies, in response to their requests, in connection with the issuance of a grant, loan, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To provide the Internal Revenue Service, in response to its request, with access to an individual's records for an official audit to the extent that the information is relevant and necessary to the IRS' function.

A record from this system of records may be disclosed as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To provide information to another Federal agency, including the Defense Manpower Data Center of the Department of Defense, to conduct computer matching programs for the purpose of identifying and locating delinquent SBA borrowers who are receiving federal salaries or federal benefit payments. Such disclosure will be made if the system of records indicates that the loan is in default or at least 30 days past due or to update a previous disclosure. SBA will make the disclosures to obtain repayments of debts under the provisions of the Debt Collection Act of 1982 by voluntary repayment, or by administrative or salary offset procedures.

To provide information to a court or other adjudicative body, or a local, state or Federal agency, when SBA determines that such referral is appropriate for servicing or collecting the borrower's loan. Such disclosure will only be made if the system of records indicates that the loan is in default or is at least 30 days past due or to update a previous disclosure. Disclosure will only be made if such court or other adjudicative body, or a local, state or Federal agency, has authority by contract, statute or regulation to determine liability of the borrower, collect the loan, or offset the debt against money which would otherwise be paid to the borrower.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, binders, index cards and computer data files.

RETRIEVABILITY:

These records are indexed by applicant and recipient name as well as a cross-referenced loan number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records on approved loans are retained for one year after the loan is paid or charged-off and then forwarded to a Federal Records Center where they are destroyed four years later. Records on withdrawn, declined or cancelled applications are retained for two years after notification of final action and are then destroyed. Computer records may be permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Area Disaster Office Manager, Regional Directors, District Directors and Branch Managers. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Area Disaster Manager for Field Records
Regional Director for Regional Office Records
District Director for District Office Records
Branch Manager for Branch Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Area Disaster Manager, Regional Director, District Director or Branch Manager will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, Agency employees, financial institution reports, law enforcement agencies, and Federal Disaster Assistance Administration.

SBA 060

SYSTEM NAME:

Occupational Injuries—SBA 060.

SYSTEM LOCATION:

Central and Regional Offices. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees who have been involved in an accident or injured on the job.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include report forms on accidents and injuries, medical reports, medical bills and other information pertinent to the accident or injury.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 29 U.S.C. 651–78.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system are used to report accidents and injuries to the Department of Labor.

Records in the system may be used in processing claims for compensation for on-the-job injuries, by the appropriate Agency or a court.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Records are indexed by employee's name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer and Regional Director. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employees involved in accidents, witnesses, other Agency personnel.

SBA 085

SYSTEM NAME:

Official Travel Files—SBA 085.

SYSTEM LOCATION:

Central Office at address listed in Appendix A. Federal Records Centers, at addresses listed in Appendix B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include Travel Vouchers submitted by each employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are reviewed by the General Accounting Office in the course of an audit of the Agency.

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulatory rule or order issued pursuant thereto, the relevant records in the system or records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecution of such violation, or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders and computer data files.

RETRIEVABILITY:

Records are indexed by employee name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is utilized to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are maintained for two years after the end of a fiscal year, or until a GAO audit. Records are then transferred to a Federal Records Center, where they will be disposed of 6 years and 3 months after the end of the fiscal year in which the records were compiled.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request to: Privacy Act Officer for Central Office Records.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Travel Vouchers submitted by employees.

SBA 090

SYSTEM NAME:

Outside Employment Files—SBA 090.

SYSTEM LOCATION:

Central Office and Regional Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees who have requested permission for outside employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include requests for outside employment, correspondence concerning such requests, for notification of Agency approval or disapproval of outside employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official, capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders and computer data files.

RETRIEVABILITY:

Records are indexed by name of employee.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer and Regional Director. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Employee requesting approval of outside employment and other Agency personnel.

SBA 095

SYSTEM NAME:

Payroll Files—SBA 095.

SYSTEM LOCATION:

Central Office. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees, active and inactive.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, employee number, grade, step, and salary; organization, retirement or FICA date as applicable; Federal, State and local tax deductions; savings bonds and charity deductions; co-owner and/or beneficiary of bonds, insurance deduction and plan or code; cash award data; union dues deductions; allotments, by type and amount; financial institution code and employee account number; leave status and leave data of all types; time and attendance records, including number of regular, overtime, holiday, Sunday, and other hours worked; mailing address; marital status and number of dependents; notification of Personnel Actions; unemployment records; register of separations; annual leave restoration; over-payment indebtedness; correspondence from employees concerning payroll problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 6 GAO Policy and Procedures Manual, pursuant to 31 U.S.C. 66(a), and sections 112(a) and 113 of the Budget and Accounting Procedures Act of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be used:

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigation or prosecution of such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

To transmit data to U.S. Treasury to effect issuance of paychecks to

employees and distribution of pay according to employee directions for savings bonds, allotments, financial institutions, and other authorized purposes.

By the General Accounting Office for audit purposes.

In reporting tax withholding to Internal Revenue Service and appropriate State and local taxing authorities; FICA deductions to the Social Security Administration; dues deductions to labor unions; withholdings for health insurance to insurance carriers and the Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W–2 statements to taxing authorities and the individual.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, machine-readable and computer data files.

RETRIEVABILITY:

By name and/or employee or Social Security Number.

SAFEGUARDS:

Physical, technical and administrative security is maintained with admission to records storage areas limited to authorized personnel.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of, or transferred to Federal Records Centers in accordance, with the fiscal records program approved by GAO, as appropriate, or General Record Schedules of GSA.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to: Privacy Act Officer for Central Office Records.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Subject, individuals, supervisors, timekeepers, official personnel records, and IRS.

SBA 100

SYSTEM NAME:

Personnel Security Files—SBA 100.

SYSTEM LOCATION:

Operational Support and Security Division. See Appendix A for address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and inactive SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the active and inactive personnel security files, which include the employee's or former employee's name, background information, personnel actions and Office of Personnel Management (OPM) full field investigations. Also included in this system are the OPM's National Agency checks and the names of those employees in sensitive positions requiring full field investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101, Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by the SBA to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute or regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the investigation or prosecution or such violations or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Full field investigations and National Agency checks are returned to the OPM when employee becomes inactive.

Records in the active and inactive personnel security files are forwarded to other Federal agencies conducting background checks.

A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, grand jury or administrative tribunal, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual.

Records may be disclosed to OPM in accordance with that agency's authority to evaluate Federal personnel management.

Records may be disclosed to the Merit Systems Protection Board in connection with its consideration of appeals of personnel actions.

Records may be disclosed to physicians conducting fitness for duty examinations.

These records may be disclosed, as a routine use, to any federal, state, local, foreign or international agency, in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The SBA or any component thereof; or

(b) Any employee of the SBA in his or her official capacity or

(c) Any employee of the SBA in his or her official capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components,

is a party to litigation or has an interest in such litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

It shall be a routine use of records maintained by the agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The SBA, or any component thereof, or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the SBA has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components

is a party to litigation or has an interest in such litigation, and the SBA determines that use of such records is relevant and necessary to the litigation provided, however, that in each case, the SBA determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active and inactive personnel security files are maintained in rotary diebold power files, computer data files. OPM National Agency checks are maintained in locked safes.

RETRIEVABILITY:

Records are retrieved by employee's name.

SAFEGUARDS:

Personnel screening. Information released only to authorized persons. All file cabinets are locked.

RETENTION AND DISPOSAL:

OPM National Agency checks are kept until the employee leaves government service and then returned to OPM. On the separation of an employee from SBA, Operational Support and Security Division strips the file and forwards the full field portion of an investigation to OPM. Remaining information of a nonderogatory nature is destroyed, while derogatory information is kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Inspector General/ Operational Support and Security. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to The Inspector General.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Inspector General will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment.

RECORD SOURCE CATEGORIES:

SBA employees, SBA Personnel Office, third party witnesses, Office of Personnel Management.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. § 552a(k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 105

SYSTEM NAME:

Portfolio Reviews—SBA 105.

SYSTEM LOCATION:

Central Office and Area Disaster Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of SBA Disaster Home Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of reports compiled by the Office of Portfolio Review in the course of reviewing field office handling of all loans. Disaster Home Loans are included in these reviews only occasionally.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 5 U.S.C. 301, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be examined by the General Accounting Office in the course of a review of the Agency.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Records are indexed by office. Some information within the records is retrievable by loan name and numbers.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is used to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Reports are retained indefinitely. Line cards in Central Office are retained until the next report, then disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer and Area Disaster Office Managers. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records

Area Disaster Office Manager for Field Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Office of Portfolio Review, Loan Case Files, SBA personnel and field visits to borrowers.

SBA 110

SYSTEM NAME:

SCORE/ACE Master Files—SBA 110.

SYSTEM LOCATION:

Central Office and Washington District Office. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service Corps of Retired Executives and Active Corps of Executives.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records is a master list of all retired and active executives who volunteer their services to give business counseling to SBA recipients and applications for membership (Form 610). These records contain information as to personal qualifications and expertise and cases which they have counseled.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal Agency use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is

likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tape and in a binder and in computer data files.

RETRIEVABILITY:

These records are indexed by SCORE and ACE volunteer's name as well as serial number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The master tape is updated periodically and maintained indefinitely. When a SCORE and ACE volunteer's name is withdrawn from active duty, the record is maintained for three years and is then destroyed.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer, District Director and Assistant District Director for Business Development in the Washington District Office.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records

Washington District Director for Field Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or District Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains, SCORE/ACE registration forms.

SBA 115.

SYSTEM NAME:

Power of Attorney Files—SBA 115

SYSTEM LOCATION:

SBA Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insurance agents who have the authority to execute a surety bond.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system of records identifies those individuals who are authorized to execute bonds for surety companies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6) and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For internal use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by agent's and broker's names.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained until the SBA is notified that the authority to execute bonds has been rescinded, at which time the records are destroyed.

SYSTEM MANAGER(S) AND ADDRESSES:

Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to: Regional Directors for Regional Office Records.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Regional Director will set forth the procedures for gaining access to

these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Surety company for which the agency broker is authorized to execute bonds.

SBA 120

SYSTEM NAME:

Security and Investigations Files—SBA 120.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Investigations Division, Central Office duty stations in the field, and Federal Records Centers. See Appendices B and C for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for, recipients of and other parties in interest (e.g., guarantors) to SBA disaster loans. Principals and representatives of applicant and recipient businesses and other parties in interest to, as well as governmental entities participating in, the various SBA programs, including but not limited to all types of direct and guaranteed loans and other guarantee programs, the Small Business Investment Company (SBIC) program, the State and Local Development Company program, the section 7(j) assistance program and section 8(a) subcontracting program, as well as other contractors, grantees, and participants in cooperative agreements with SBA. Records are also maintained on the principal SBIC directors and stockholders. In addition, records are maintained on persons who supply information and the information supplied; on SBA employees against whom allegations have been made and investigations conducted; and on members of Advisory Councils and Service Corps of Retired Executives and Active Corps of Executives volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains material gathered or created during the preparation for, conduct of and follow-up on investigations conducted by OIG, Federal Bureau of Investigations (FBI) and other Federal, State, local or foreign regulatory or law enforcement agencies as well as other material submitted to or gathered by OIG in furtherance of its investigative function. These records include FBI and other Federal, State, local and foreign regulatory or law enforcement investigative reports and include personal history statements, background character checks, field investigations, arrest and conviction records, parole and probation data, recommendations and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. I, 15 U.S.C. Chapters 14A and 14B; 44 U.S.C. Sec. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or administrative in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, foreign, international, private agency or organization involved in investigation or prosecution of such violations or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceeding or in settlement negotiations.

A record from a system of records, which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, state, local, foreign, international, private agency or organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

These records may be disclosed, as a routine use, to any source or person, either private or governmental, to the extent necessary to secure from such source information relevant to and sought in furtherance of a legitimate investigation or audit or to afford a person, in the course of an investigation, the opportunity or facility to violate any Federal, state, local or foreign law, rule, regulation or order or to solicit information relevant to an investigation or audit or to provide the opportunity for the commission of an offense.

These records may routinely be disclosed to other Federal agencies, in response to their requests in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to any Federal, state, local, foreign, international, private agency or organization in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

These records may be disclosed, as a routine use, to a domestic, foreign, or international governmental agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order to obtain information relevant to an agency decision concerning the assignment hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

These records may be disclosed to Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries preparatory thereto.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual. These records may be used to provide data to the General Accounting Office for periodic reviews of this Agency.

These records may be disclosed, as a routine use, to the office of Government Ethics for any purpose consistent with

that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to the United States General Accounting Office and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

These records may be disclosed, as a routine use, to any Federal agency which has the authority to subpoena other Federal agencies records and which has issued a facially valid subpoena for the record.

These records may be disclosed, as a routine use, to the Department of Treasury and the Department of Justice when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

These records may be disclosed, as a routine use, to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purposes of obtaining information in the course of an investigation or audit.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

These records may be disclosed to members of the public under the Freedom of Information Act, 5 U.S.C. 552.

These records may be disclosed, as a routine use, to the U.S. Department of Justice in order to obtain that department's advice regarding an agency's disclosure obligations under the Freedom of Information Act.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding an agency's obligations under the Privacy Act.

It shall be a routine use of the records in this system or records to disclose them to the Department of Justice when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any or its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the SBA to be relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may be disclosed, as a routine use, to an agency's legal representative, to include the Department of Justice and other outside counsel, where the agency is a party in litigation or has an interest in litigation when:

(a) The SBA, or any component thereof;

(b) Any employee of the SBA in his or her official capacity;

(c) Any employee of the SBA in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee;

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components,is a party to litigation or has an interest in such litigation, and the SBA determines that the use of such records by the Department of Justice is relevant and necessary to the litigation; provided however, that in each case, the SBA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

It shall be a routine use of records maintained by the SBA to disclose them in a proceeding before a court, grand jury or adjudicative body before which the SBA is authorized to appear, when:

(a) The SBA or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the SBA has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components, is a party to litigation or has an interest in such litigation, and the SBA determines that the use of such record is relevant and necessary to the litigation; provided, however, that in each case the SBA determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in rotary diebold power files, filing cabinets, file folders and word processing equipment.

RETRIEVABILITY:

These records are indexed by name and cross-referenced to the number of Inspector General files containing related material.

SAFEGUARDS:

Information is released only to authorized persons. All filing cabinets are locked.

RETENTION AND DISPOSAL:

Following final agency action as the result of an investigation, field investigation records are transferred to the Central Office. Records are maintained in the Investigation Division's file room for five years and then transferred to the Federal Records Center, which destroys them after twenty years. An alphabetical indices is maintained on all investigations for an indefinite period of time.

SYSTEM MANAGER(S) AND ADDRESSES:

Assistant Inspector General for Investigations, Deputy Assistant Inspector General/Operational Support and Security. See Appendix A for Central Office address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in writing to the Inspector General. The address of this Office is contained in Appendix A.

RECORD ACCESS PROCEDURE:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Inspector General will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment.

RECORD SOURCE CATEGORIES:

Individuals to whom the records pertain, Agency personnel, third party informants and the FBI and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

(1)Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from the application of all provisions of section 552a except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11), and (i), to the extent that it consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision. This system is exempted in order to maintain the efficacy and integrity of the Office of Inspector General's criminal law enforcement function.

(2) Pursuant to 5 U.S.C. 552a (k)(2) and (k)(5), except as otherwise provided therein, all investigatory material compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information contained in this system of records is exempt from sections 3 (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Privacy Act. 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) through (I) and (f). This exemption is necessary in order to protect the confidentiality of sources of information and to maintain access to sources necessary in making determinations of suitability for employment.

SBA 125

SYSTEM NAME:

Office of Inspector General Referrals—SBA 125.

SYSTEM LOCATION:

Regional, District and Branch Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees and applicants and recipients of SBA assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains referrals to the Office of Inspector General (OIG) for investigations and reports of the above individuals in order to determine whether fraudulent activities or misconduct has taken place. This system sometimes includes copies of the completed report by the OIG as well as other material submitted to or gathered by OIG in the furtherance of its investigative function. These records include: Personal statements of any arrests, indictments and convictions, SBA Form 912, allegations of irregularities, informants statements from outside investigative sources, recommendations from the field offices and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 634(b)(6), 15 U.S.C. 645(a), 18 U.S.C. 1001.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigation or prosecution of such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a grand jury, court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

A record from a system of records, which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, foreign, state or local agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

These records may routinely be disclosed to other Federal agencies, in response to their requests, in connection with the conduct of background checks. Disclosure will be made only to the extent that the information is relevant and necessary to the requesting agencies' function.

These records may be disclosed, as a routine use, to any Federal, State, local, foreign or international agency, in connection with such entity's assignment, hiring or retention of an individual, issuance of a security clearance, reporting of an investigation of an individual, letting of a contract or issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to such agency's decision on the matter.

These records may be disclosed, as a routine use, to a domestic, foreign, or international governmental agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, in order to obtain information relevant to an agency decision concerning the assignment hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

These records may be disclosed to Federal, State or local bar associations and other professional regulatory or disciplinary bodies for use in disciplinary proceedings and inquiries preparatory thereto.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual.

These records may be used to provide data to the General Accounting Office for periodic reviews of this Agency.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

These records may be disclosed, as a routine use, to the United States General Accounting Office, and to the General Services Administration's Board of Contract Appeals in bid protest cases involving an agency procurement.

These records may be disclosed, as a routine use, to any Federal agency which has the authority to subpoena other Federal agencies records and which has issued a facially valid subpoena for the record.

These records may be disclosed, as a routine use, to the Department of Treasury and the Department of Justice when an agency is seeking an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

These records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

These records may be disclosed, as a routine use, to a "consumer reporting agency" as that term is defined in the Fair Credit Reporting Act (15 U.S.C. 1681 (a)(f) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)), for the purposes of obtaining information in the course of an investigation or audit.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

It shall be a routine use of the records in this system of records to disclosed them to the Department of Justice when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the use of such records by the Department of Justice is deemed by the SBA to be relevant and necessary to the litigation, provided, however, that in each case, the SBA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court, grand jury or adjudicative body before which the SBA is authorized to appear, when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the SBA has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components, is a party to litigation or has an interest in such litigation, and the SBA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the SBA determines that disclosure of the records to a court, grand jury or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

These records may be disclosed, as a routine use, to an agency's legal representative, to include the Department of Justice and other outside counsel, where the agency is a party in litigation or has an interest in litigation when:

(a) The SBA, or any component thereof;

(b) Any employee of the SBA in his or her official capacity;

(c) Any employee of the SBA in his or her individual capacity, where the Department of Justice has agreed or is considering a request to represent the employee;

(d) The United States, where the SBA determines that litigation is likely to affect the SBA or any of its components, is a party to litigation or has an interest in such litigation, and the SBA determines that the use of such records by the Department of Justice is relevant and necessary to the litigation; provided however, that in each case, the SBA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and index cards.

RETRIEVABILITY:

These records are indexed by the name of the individual to be investigated.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. All filing cabinets are locked.

RETENTION AND DISPOSAL:

These records are retained for five years in the Investigations Division and are then transferred to the Federal Records Center for twenty years after which they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, Deputy Assistant Inspector General/Operational Support and Security. See Appendix for Addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to: Office of Inspector General, Washington, DC.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Inspector General will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains. Agency personnel, third party informants and the FBI and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552(a) (k)(2) and (k)(5), all investigatory material in the

record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

SBA 130.

SYSTEM NAME:

Investigations Division Management Information System—SBA 130

SYSTEM LOCATION:

Office of Inspector General (OIG), Investigations Division.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Principals and representatives of applicants, participants, contractors, grantees, participants in cooperative agreements and other parties in interest to, as well as governmental entities participating in SBA programs. Records are also maintained on SBA employees against whom allegations have been made and investigations conducted; members of Advisory Councils; the Service Corp. of Retired Executives; and Active Corp. of Executives volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains material gathered or created during preparation for, conduct of and follow-up on investigations conducted by OIG, the Federal Bureau of Investigation (FBI) and other Federal, State, local, or foreign regulatory or law enforcement agency. This system of records contains alphabetical indices of names and case numbers. These records include FBI and other Federal, State, local and foreign regulatory or law enforcement investigative reports and referrals and include arrest, indictment, and conviction records, parole and probation data and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. I, 15 U.S.C. Chapters 14A and 14B; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or administrative in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with responsibility for or otherwise involved in investigation or prosecution of such violations or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence in or to a court, magistrate, administrative tribunal or grand jury including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

A record from a system of records, which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate federal, foreign, state or local agency or professional organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

These records may be used to provide data to the General Accounting Office for periodic reviews of this Agency.

These records may be disclosed, as a routine use, to the Office of Government Ethics for any purpose consistent with that office's mission, including the compilation of statistical data.

It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and SBA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the SBA determines that disclosure of the records to a court, grand jury or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court, grand jury or adjudicative body before which the SBA is authorized to appear; when:

(a) The SBA, or any component thereof; or

(b) Any employee of the SBA in his or her official capacity; or

(c) Any employee of the SBA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the SBA determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and SBA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the SBA determines that disclosure of the records to a court, grand jury or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in a self-contained system and on computer disks.

RETRIEVABILITY:

These records are indexed by the subjects name, company name, case number, agent's name, Social Security Number or agent's identification number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

These records are retained on computer disks for an indefinite period of time. Hard copies are made of these records once a month and are retained for five years before they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General/Investigations or Deputy Assistant Inspector General/Operational Support and Security. See Appendix A for address.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to: The Inspector General, Washington, DC.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the Inspector General will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains. Agency personnel, third party informants and the FBI and other investigative Government agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552(a) (k)(2) and (k)(5), all investigatory material in the record compiled for law enforcement purposes or for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified requirements under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill commitments made to protect the confidentiality of sources and to protect subjects of investigations from frustrating the investigatory process.

SBA 135

SYSTEM NAME:

Small Business Person and Advocate Awards—SBA 135.

SYSTEM LOCATION:

Central, Regional and District Offices of the SBA. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Candidates and winners of the Small Business Person of the Year Awards and Advocate Awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information relating to the candidacy and selection of Small Business Person of the Year and Advocate of the Year in SBA District and Regional Offices. These records include applications, biographical summaries, correspondence, recommendations and narratives of business and civic successes. The record of Community Development Awards in the Central Office includes biographical and qualifying information as well as recommendations from SBA field offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used:

To provide information to the news media for public disclosure of the name, address, and biographical statement of the recipients of the awards.

To communicate with officials in State and local government as to the status of a particular candidate.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and computer data files.

RETRIEVABILITY:

These records are retrievable by individual name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records may be retained from one to ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional Directors and District Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records
District Director for District Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, Regional Director, District Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORY:

Individual to whom record pertains, recommendations from various individual sponsors. Advisory Council members, Agency personnel, research publications, directories, news media.

SBA 140

SYSTEM NAME:

Standards of Conduct Files—SBA 140.

SYSTEM LOCATION:

Central Office and Regional Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Confidential statement of employment and financial interests made by employees. Grade 13 and above, and by Grade 12 Branch Managers.

Ad Hoc Committee decisions and memoranda concerning standards of conduct questions used as precedent for later decisions. (Central Office only)

Correspondence concerning conflicts of interest.

Listing of all SBA employees who have been indicted or convicted in matters involving SBA business.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

13 CFR 105.735 enacted pursuant to the Small Business Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this Agency to carry out its function indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State local or foreign, charged with the responsibility of investigation or prosecution of such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant.

A record from this system or records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosure to opposing counsel in the course of such proceeding or in settlement negotiations.

Records contained in this system may be forwarded to the Office of Personnel Management when requested.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

To disclose them to the Department of Justice when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in file cabinets or safes.

RETRIEVABILITY:

Records are retrieved by the name of the employee.

SAFEGUARDS:

Access is strictly limited to those employees with a need to use these records in performing their duties.

RETENTION AND DISPOSAL:

Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer, Regional and District Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for Regional Office Records
District Director for District Office Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer, Regional Director or District Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information in the confidential statement of employment and financial interests is collected from the employee himself. Any adverse information could come from other employees or from a member of the general public with specific knowledge of the matter reported.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), all investigatory material in the record compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information is exempt from the notification, access, and contest requirements (under 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of the Agency regulations. This exemption is necessary in order to fulfill communications made to protect the confidentiality of sources and maintain access to sources necessary in making determinations of suitability.

SBA 145

SYSTEM NAME:

Temporary Disaster Employees—SBA 145

SYSTEM LOCATION:

Office of Disaster Assistance, Central Office. See Appendix A for location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have been temporarily employed by the Office of Disaster Assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary employees of the Office of Disaster Assistance. These records contain name, address, telephone number where person can be reached, SSN, Disaster Area where employed, series and grade, job title, dates of employment and reason for termination, name and job title of supervisor, and summary of supervisor's evaluation. Also included is information, if any, concerning violations of the Agency's Standards of Conduct (13 CFR part 105) and information, if any, concerning official investigations and disciplinary actions taken with regard to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 15 U.S.C. 634(b)(6), 44 U.S.C. 101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records will be used by Disaster Area Directors and personnel officers assigned to each Disaster Area to verify previous SBA disaster assistance employment history when a former employee is considered for reemployment.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records will be maintained in card files and in a computer database.

RETRIEVABILITY:

These records will be filed alphabetically by the individual's last name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosures.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer and Assistant Administrator for Disaster Assistance, Central Office. See Appendix A for address.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to him or her by addressing a request in person or in writing to the manager(s) listed above.

RECORD ACCESS PROCEDURE:

In response to a request by an individual to determine whether the system contains a record pertaining to him or her, the system manager will set forth the procedures for gaining access to these records. If there is no record of the individual, he or she will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the official listed in the above paragraph, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Disaster Area Directors.

SBA 150

SYSTEM NAME:

Tort Claims—SBA 150.

SYSTEM LOCATION:

Central Office, Regional Office and Federal Records Centers. See Appendix A for SBA addresses and Appendix B for FRCs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government employees and other individuals involved in accidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains reports on accidents which result in tort claims involving the Government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 42 U.S.C. 3211.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a tort claim results in a court suit, these records will be referred to the Department of Justice for handling of the suit and used in the preparation and presentation of the case.

These records are used in reporting on accidents and tort claims to the General Services Administration.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

BEST COPY AVAILABLE

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Records are indexed by the names of persons involved in the accident.

SAFEGUARDS:

Records are kept in locked cabinets. Access to and use of these records is limited to persons whose official duties require such access. Personnel screening is utilized to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

Records are retained for one year, then sent to a Federal Records Center, where they are retained for five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Privacy Act Officer or Regional Director. See Appendix A for addresses.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Directors for Regional Office Records

ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons or contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individuals involved in accident, witnesses, investigation of the accident.

SBA 155

SYSTEM NAME: UNOFFICIAL PERSONNEL FILES—SBA 155

SYSTEM LOCATION:

Central Office and Regional Offices. See Appendix A for addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SBA employees, both active and separated.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a number of records pertaining to an individual's employment at SBA. These records include Time and Attendance cards, authorizations for overtime, records of leave, training requested and attended, travel itineraries and vouchers, copies of Personnel Actions, requests for Personnel Actions, Position Descriptions, copies of official performance evaluations, copies of letters of commendation and retirement, personal information for use in emergencies, informal incident reports, information on job activities, Combined Federal Campaign information, Procurement Integrity Certification forms outside employment information and personnel benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 15 U.S.C. 634(b)(6); 44 U.S.C. 3101; Title 6, "GAO Policy and Procedures Manual," pursuant to 31 U.S.C. 66(a) and sections 112(a) and 113 of the Budget an Accounting Procedures Act of 1950, 5 U.S.C. 5701-09.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For internal use only.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in either electronic and computer data files, file folders, binders or card indexes which are located in file cabinets or on the desk of the responsible employee.

RETRIEVABILITY:

Records are indexed by the employee's name, Social Security Number or other personal identifier.

SAFEGUARDS:

Personnel screening—information released to authorized persons on a need to know basis only.

RETENTION AND DISPOSAL:

There is no official Agency policy on retention of these records. Most of the records are maintained for up to three years.

SYSTEM MANAGER(S) AND ADDRESSES:

Privacy Act Officer and Regional Directors. See Appendix A for addresses.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to:

Privacy Act Officer for Central Office Records
Regional Director for all Field Records

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer or Regional Director will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains, SBA Office of Personnel, Supervisor of the respective branch or division, Payroll section of SBA.

SBA 160

SYSTEM NAME:

Freedom of Information Act and Privacy Act Case Files—SBA 160.

SYSTEM LOCATION:

Central Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested information or filed appeals under either of the Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files compiled by the Freedom of Information/Privacy Acts Appellate Office during the course of responding to FOI/PA appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 15 U.S.C. 634(b)(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide a system for maintaining records of initial requests and appeals under the Freedom of Information Act, and of initial requests, requests for amendments to record, and appeals under the Privacy Act. The records are used by the staff of the Freedom of Information/Privacy Acts Appellate Office to review individual cases, and to keep a chronological log so as to comply with statutory time limitations.

In the event that a system of records maintained by this Agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or administrative in nature, and whether arising by general statute of particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, foreign, international, private agency or organization involved in investigation or prosecution of such violations rule, regulation or order issued pursuant thereto.

A record from this system of records, which indicates either by itself or in combination with other information within the agency's possession, a violation or potential violation of law, whether civil, criminal or regulatory and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, may be disclosed, as a routine use, to the appropriate Federal, State, local, foreign, international, private agency or organization charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing or investigating or prosecuting such violation or charged with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

These records may be disclosed, as a routine use, to a Member of Congress who submits an inquiry on behalf of an individual when the Member of Congress informs the appropriate agency official that the individual to whom the record pertains has authorized the Member of Congress to have access. In such cases, the member has no greater right to the record than does the individual.

These records may be disclosed, as a routine use, to agency personnel responsible for bringing Program Civil Remedies Act litigation, to the persons constituting the tribunal hearing such litigation or any appeals therefrom and to counsel for the defendant party in any such litigation.

These records may be disclosed, as a routine use, to a grand jury agent pursuant either to a Federal or state grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

These records may be disclosed, as a routine use, to any Federal agency which has the authority to subpoena other Federal agencies' records and which has issued a facially valid subpoena for the record.

These records may be disclosed to members of the public pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

These records may be disclosed, as a routine use, to the U.S. Department of Justice in order to obtain that department's advice regarding an agency's disclosure obligations under the Freedom of Information Act.

These records may be disclosed, as a routine use, to the Office of Management and Budget in order to obtain that office's advice regarding an agency's obligations under the Privacy Act.

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them to other agency employees and offices when

(a) There is the need for consultation; or

(b) When another component of the agency requires a FOI/PA case file in order to serve the interests of the agency and its constituents and to properly implement its rules and regulations; or

(c) When the Office of the Inspector General and the Office of the General Counsel in the course of official proceedings, requests the case file(s) from the FOI/PA Office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is maintained in folders in locked steel cabinets and computer data files.

RETRIEVABILITY:

Files are alphabetical by name.

SAFEGUARDS:

Information released to authorized personnel only.

RETENTION AND DISPOSAL:

Records are retained in accordance with the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Freedom of Information/Privacy Acts Office, Small Business Administration, 409 D Street, SW., Washington, DC 20416.

NOTIFICATION PROCEDURES:

An individual may inquire as to whether the system contains a record pertaining to them by addressing a request in person or in writing to the manager listed above.

RECORD ACCESS PROCEDURES:

In response to a request by an individual to determine whether the system contains a record pertaining to them, the Privacy Act Officer will set forth the procedures for gaining access to these records. If there is no record of the individual, they will be so advised.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the official listed in the paragraph above, stating the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Most files consist of correspondence submitted directly to and replies from the Small Business Administration.

[FR Doc. 91-4080 Filed 2-25-91; 8:45 am]
BILLING CODE 8025-01-M

federal register

Tuesday
February 26, 1991

Part V

Department of Transportation

Federal Aviation Administration

Public Meeting: Environmental Impact Statement To Determine the Impact of the Expanded East Coast Plan Over the State of New Jersey; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26480]

Public Meeting: Environmental Impact Statement (EIS) to Determine the Impact of the Expanded East Coast Plan over the State of New Jersey

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA intends to prepare an EIS on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the Expanded East Coast Plan (EECP). This intention was made known and published in the Federal Register.

As part of the EIS scoping process, three public meetings will be held in New Jersey to gather input on the factors that should be considered in the EIS. All comments and input received at the three meetings, and those received in writing prior to April 5, 1991, will be considered.

All interested agencies, organizations and persons are encouraged to present statements or evidence relating to pertinent EECP environmental issues including:

1. The number and type of environmental factors to be considered in preparing the EIS. Two factors that have already been identified are noise and air quality.

2. The alternative actions to be considered in preparing the EIS. Two actions that have already been identified are "no action" and rollback to pre-EECP conditions.

3. Methodologies to be considered in assessing the environmental impact of EECP.

4. The types and sources of data to be considered in preparing the EIS. Two types of data that have already been identified are quantitative definitions of pre and post EECP air routes and operations. Possible data sources include the Port Authority of New York and New Jersey, the FAA, and other state and local organizations.

5. Mitigation measures to reduce environmental impact.

DATE, TIME AND PLACE:

March 11, 1991 7–11 pm
March 12, 1991 10 am–1 pm, 1:30–4:30 pm, 6–10 pm
Tinton Falls Hotel, Tinton Falls, NJ.
March 20, 1991 7–11 pm
March 21, 1991 10 am–1 pm, 1:30–4:30 pm, 6–10 pm
Holiday Inn, Runnemede, NJ.
March 26, 1991 7–11 pm
March 27, 1991 10 am–1 pm, 1:30–4:30 pm, 6–10 pm
Coachman Inn, Cranford, NJ.

ADDRESS: Written comments are encouraged from persons or interested parties unable to attend a public meeting or who do not wish to make public statements. Written comments should be received in triplicate at the following address by April 5, 1991: Headquarters FAA, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket Number 26480, 800 Independence Avenue SW., Washington, DC 20591. Written comments, in triplicate, may be delivered to Headquarters FAA, Room 915G, 800 Independence Avenue SW., Washington, DC before April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Reavis, Program Manager ATM-400, Headquarters FAA, 800 Independence Avenue SW., Washington, DC 20591. Telephone Number 202–267–9367.

SUPPLEMENTARY INFORMATION:

Background

The EECP is a comprehensive revision of the air route structure and air traffic control procedures in the eastern United States, particularly in the New York Metropolitan area. Its purpose is to better organize and optimize the use of airspace, improve the arrival and departure procedures at the major northeast terminals and enhance the en route flows of traffic between major city pairs.

The plan was initiated in 1983 and was implemented in phases between February 1987 and March 1988. It was implemented in accordance with all existing rules, practices, and laws. Since the implementation of Phase One in February 1987, concerns with aircraft noise have been expresed by citizens living primarily in an area west and southwest of the Newark, NJ airport. As a result of public concerns, noise studies have been performed and some air traffic procedures and operations have been modified.

In response to the Aviation Safety and Capacity Expansion Act of 1990, Public Law 101–508, TITLE IX TRANSPORTATION, Subtitle B–Aviation Safety and Capacity Expansion, Sec. 9119, the Administrator of the Federal Aviation Administration intends to prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 on the effects of changes in aircraft flight patterns over the State of New Jersey caused by implementation of the EECP.

Meeting Procedures

(a) Each meeting, composed of four sessions, will follow the same format. At the first session (on the first night, 7–11 pm), a presentation will be made on the EECP, its history and current status. A briefing will also be presented on the EIS process, with an explanation of the time lines required and the public's participation in the process. The briefings will be followed by comments by local, state or national officials who wish to do so. Individuals and interested parties will then be given an opportunity to present their comments during the remainder of the first session and during the three sessions on the second day.

(b) Proceedings of the meetings will be documented and recorded. Any person who wishes to submit a position paper for the record may do so. Persons wishing to make an oral presentation will be requested to identify themselves for the record.

(c) Presenters are encouraged to express their views on pertinent environmental issues and concerns giving sufficient detail to establish a clear understanding of their reasons for support or opposition to the EECP.

(d) The meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(e) In the interest of allowing maximum public participation, a uniform time limit may be imposed on each speaker.

(f) As noted, the meetings will consist of two short briefings, remarks by scheduled speakers, and public comment. These meetings are designed for listening carefully to public positions. As such, there will be no debate or rebuttal from persons facilitating the meeting.

(g) Being mindful of international tensions at this time, and taking the public's interest into account, certain security precautions, i.e., examining parcels, may be taken prior to entering the meeting places.

Issued in Washington, DC on February 20, 1991.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 91–4417 Filed 2–20–91 4:16 pm]

BILLING CODE 4910-13-M

federal register

Tuesday
February 26, 1991

Part VI

Department of Agriculture

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 718, 719, 1413 and 1414

Food, Agriculture, Conservation, and Trade Act; Implementation; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 718 and 719

Commodity Credit Corporation

7 CFR Parts 1413 and 1414

Food, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 ("the 1990 Act"), which was enacted on November 28, 1990, amended the Agricultural Act of 1949 (the "1949 Act") to authorize price support, payment, and production adjustment programs for the 1991 through 1995 crops of rice, upland and extra long staple cotton, feed grains, and wheat. The regulations set forth at 7 CFR parts 718, 719, 1413 and 1414, which relate to compliance, reconstitutions, payment limitation, feed grain, rice, upland and extra long staple cotton, wheat, integrated farm management, and related programs, also are amended to conform to the provisions of the Act, to delete references to obsolete provisions, and to improve the operations of these programs for the 1991 and subsequent crop years.

DATES: Comments must be received on or before March 13, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Thomas Von Garlem, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–6761.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Impact Analyses are being prepared with respect to the programs for the 1991 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, Room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this proposed rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Program—10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither the Agricultural Stablization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget for approval under the provisions of 44 U.S.C. Chapter 35.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Statutory Background—Food, Agriculture, Conservation and Trade Act of 1990

In the absence of new farm legislation, authority for the upland cotton program reverts to the permanent statutory provisions of the Agricultural Adjustment Act of 1938. The 1938 Act requires that a national marketing quota be announced by October 15 whenever it is determined that the total supply of upland cotton for the marketing year will exceed the normal supply. Normal supply is defined as estimated domestic consumption plus estimated exports plus an allowance of an additional 30 percent for carryover. Based on the latest supply-use estimates at the time, it was determined that total supply of upland cotton would not exceed normal supply. Therefore, on October 15, 1990, a press release was issued announcing that neither a marketing quota nor acreage allotments would be in effect for 1991-crop upland cotton. This program announcement was superseded with passage of the Food, Agriculture, Conservation and Trade Act of 1990.

The Act added sections 101B, 103B, 105B, and 107B to the 1949 Act, effective for the 1991 through 1995 crops of rice, upland cotton, feed grains, and wheat, respectively, and amended section 103(h) of the 1949 Act for the 1991 through 1996 crops of Extra Long Staple Cotton. The Act also provides for the establishment of the Integrated Farm Management Program Option, designed to assist producers of agricultural commodities in adopting integrated, multiyear, site specific farm management plans by reducing farm program barriers to resource stewardship practices and systems. The Act also amended sections 105C, 110, 113, 201, 401, 402, 403, 406, and 408, redesignated sections 107C and 107E as section 114 and 115. The Act amended section 406(b) of the Agricultural Act of 1949 to provide producers of 1996 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, or oilseeds, and to dairy producers for the 1996 calendar year the option to participate in commodity price support, production adjustment, and payment programs.

Section 1102 of the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") amended Sections

107B(c)(1)(B), and 101B(c)(1)(B) of the 1949 Act, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 to provide for making deficiency payments for the 1994 and 1995 crops of wheat, feed grains, and rice using a weighted average of market prices received by producers during the entire 12 months of the marketing year. In order to avoid a major change in the timing of deficiency payments, the Act amends section 114 of the 1949 Act to provide for making available 75 percent of the projected final deficiency payment as soon as practicable after the end of the first 5 months of the marketing year.

Subsection 105B(p) of the 1949 Act has been added to provide for an assessment on malting barley producers to help offset costs associated with the change in the calculation of the deficiency rate for barley. The subsection provides for levying an assessment for each of the 1991 through 1995 crop years on producers of malting barley who are participating in the annual production adjustment program. The assessment shall be no more than 5 percent of the value of the malting barley producer on the farm during each of the 1991 through 1995 crop years.

With respect to Title XI of the Act, "General Commodity Provisions", the Manager's report specifies that "it is the intent of the Managers that the Secretary exercise his discretionary authority to prohibit the establishment of farm program payment yields based on yields on irrigated acres, as opposed to yields on non-irrigated acres, for any acres not irrigated prior to the 1991 crop year". Section 1147 provides that 1992 program participants complete a survey regarding the redistribution of any crop acreage bases on the producer's farm.

This proposed rule amends 7 CFR parts 718, 719, and 1413, and adds part 1414, to set forth a number of terms and conditions with which producers must comply in order to be eligible for benefits with respect to various commodity programs for the 1991 and subsequent crops of feed grains, rice, upland and extra long staple cotton, and wheat. A summary of the significant provisions authorized for these crops is set forth in section I, Statutory Basis. Section II, changed provisions, sets forth an explanation of the changes made by this proposed rule in each part as compared to the regulations in effect with respect to the 1986 through 1990 crops.

This proposed rule amends the regulations at 7 CFR part 719 governing the reconstitution of farms, allotments, quotas, base and acreages under the production adjustment and marketing quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC). These amendments are necessary to comply with the Food, Agriculture, Conservation, and Trade Act of 1990 and the Farm Poundage Quota Revisions Act of 1990. Specific amendments required because of the Act include: (1) The definition of cropland in § 719.2(f) as it relates to land converted to water storage uses. See subsection 107B(e)(4)(D), subsection 105B(e)(4)(D), subsection 103B(e)(4)(D), and subsection 101B(e)(4)(D) of the 1949 Act. (2) The definition of producer in § 719.2(t) as it relates to a person growing hybrid seed under contract. See subsection 1131(b); and (3) the division of farms as it relates to burley tobacco. (b) These amendments are also necessary to improve the administration of programs authorized by the Agricultural Adjustment Act of 1938, as amended, The "1939 Act" and the 1949 Act.

The provisions set forth in 7 CFR part 718 apply to producer adherence with certain crop acreage, land use, and other requirements, which are used to establish and maintain program eligibility for the 1991 and subsequent crop years. Programs for which producer compliance determinations must be made are those programs authorized by the 1938 Act, and the 1949 Act, with respect to ASCS and CCC programs administered by the ASCS through State and county Agricultural Stabilization and Conservation committees.

This proposed rule revises 7 CFR part 718 to recognize changes in terminology, land use, requirements, and eligibility conditions for progarms modified or changed by the 1985 Food Security Act, as amended, ("the 1985 Act") and the 1990 Act.

I. Statutory Basis

A. The Food, Agriculture, Conservation and Trade Act of 1990

(1) *Deficiency ("target price") payments*—The 1990 Act amended the 1949 Act to provide that deficiency payments shall be made available to producers of rice, upland cotton, wheat, corn, grain sorghum, oats and barley. Payments for any of these crops are computed by multiplying: (i) the payment rate; by (ii) the payment acres for the crop; by (iii) the farm program payment established for the crop for the farm. The payment rate for these commodities is the amount by which the established price for the crop exceeds the higher of—(I) the national weighted average market price received by producers during—(aa) in the case of the 1991 through 1995 crops of upland cotton, during the calendar year that includes the first 5 months of the marketing year, as determined by the Secretary; (bb) in the case of the 1991 through 1993 crops of rice, wheat, corn, grain sorghum, oats and barley, during the first 5 months of the marketing year for the crop, as determined by the Secretary; (cc) in the case of the 1994 and 1995 crops for wheat corn, grain sorghum, oats, and barley, the lesser of the average market price received by producers during the marketing year for the crop, as determined by the Secretary; or, the average market price received by producers during the first 5 months of the marketing year, plus $.10 per bushel for wheat and $.07 per bushel for corn, grain sorghum, oats, and barley; (dd) in the case of the 1994 and 1995 crops for rice, the lesser of the average market price received by producers during the calendar year that contains the first 5 months of the marketing year for the crop, or the average market price recevied by producers during the first 5 months on the marketing year as determined by the Secretary, plus an appropriate amount that is fair and equitable in relation to wheat and feed grains; (II) in the case of the 1991 through 1995 crops for (aa) upland cotton and rice, and (bb) wheat, corn, grain sorghum, oats, and barley, the loan level determined for the crop, prior to any adjustment made for the marketing year. In the case of the 1992 through 1995 crops of extra long stable (ELS) cotton the deficiency payments will be calculated as 120 percent of the established loan rate for ELS cotton.

If advance deficiency payments are announced by the Secretary, they shall be made to the producer under the following terms and conditions: Such payments may be made available in the form of—(i) cash; (ii) commodities owned by the Commodity Credit Corporation, and certificates redeemable in a commodity owned by the Commodity Credit Corporation, except that not more than 50 percent of the payments may be made in commodities or the certificates in the case of any producer; or (iii) any combination of clauses (i) and (ii).

With respect to wheat and feed grains, if the Secretary adjusts the level of loans and purchases for these crops in order to maintain a competitive market position for the commodity, the Secretary shall provide emergency compensation by increasing the deficiency payments for wheat and feed grains by such an amount as the Secretary deems necessary to provide

the same total return to producers as if the adjustment in the level of loans and purchases had not been made. Such amount is computed by increasing the deficiency payment rate for the commodity by the following formula: the basic loan rate minus the higher of (1) the national weighted average market price received by producers during the marketing year for the crop and (2) the loan level determined for the crop after adjustments are made under sections 107B(a)(3) and 105B(a)(3) under the Agricultural Act of 1949.

The Act provides for a minimum established "target" price for wheat, corn, grain sorghum, oats, barley, rice, and upland cotton for the 1991 through 1995 crop years. The minimum established price for wheat shall not be less than $4.00 per bushel; for corn, not less than $2.75 per bushel; for grain sorghum, not less than $2.61 per bushel; for rice, not less than $10.71 per hundredweight; for upland cotton, not less than $0.729 per pound. The minimum established prices for oats and barley are to be established at such rate as is determined to be fair and reasonable in relation to the established price for corn, but for oats shall not be less than $1.45 per bushel, and for barley, shall not be less than 85.8 percent of the established price for corn. The established "target" price for each crop will be announced by the Secretary annually.

(2) *Disaster Payments*—The 1990 Act amended the 1949 Act to provide that the Secretary shall make prevented planted payments to producers of rice, upland cotton, feed grains, and wheat, unless prevented planted crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage. The 1949 Act also generally provides that the Secretary shall make reduced yield payments to producers of rice, upland cotton, feed grains, and wheat, unless reduced yield crop insurance is available to them under the Federal Crop Insurance Act with respect to their acreage.

(3) *Acreage limitation (reduction) program*—The Act authorizes the Secretary to establish an acreage limitation program for any of the crops of rice, upland and ELS cotton, feed grains, and wheat, if the Secretary determines that the total supply of any such commodity will be excessive in the absence of such a program. The limitation shall be achieved by applying a uniform percentage reduction to the acreage base for the crop for the farm. In making such a determination the Secretary shall take into consideration the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985. Producers who knowingly produce in excess of the permitted acreage of the crop plus any acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on that farm.

(4) *Land diversion program*—The Act authorizes the Secretary to make land diversion payments to producers of rice, upland and ELS cotton, feed grains, and wheat, if a land diversion program is determined to be necessary in order to adjust the total national acreage of a crop of a commodity to desirable goals. The acreage diverted must be devoted to approved conservation uses. The extent of the diversion and the manner in which diversion contracts are made are to be determined by the secretary. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to adversely affect the economy of the county or local community.

(5) *Cotton Paid Land Diversion*—If, at the time of final announcement of the acreage limitation program for upland cotton, the projected carryover of upland cotton for the crop year is equal to or greater than 8 million bales, the Secretary shall offer a paid land diversion program to producers of upland cotton. Payments are to be determined by multiplying: (i) the payment rate, of not less than 35 cents per pound, established by the Secretary; by, (ii) the program payment yield established for the crop, by (iii) the number of permitted upland cotton acres diverted on the farm. The Secretary shall limit the total acreage of upland cotton to be diverted under this provision to not more than 15 percent of the upland cotton crop acreage base. The Secretary may permit upland cotton producers to participate in a land diversion program at a level lower than the maximum level announced by the Secretary, at the option of the producer, if the Secretary determines that it will increase participation in the program.

(6) *Acreage conservation reserve*—The 1990 Act amended the 1949 Act to generally provide that the Secretary shall issue regulations with respect to the conservation uses to which reduced acreage, and diverted acreage must be devoted. Such acreage shall be determined by multiplying the respective crop acreage bases by the percentage reduction required by the Secretary. The number of acres so determined shall be referred to as "ACR". The 1949 Act requires the ACR to be protected from weeds as well as wind and water erosion. The Secretary may permit the acreage to be devoted to certain crops and uses if the production is needed to provide an adequate supply of the commodity, is not likely to increase the cost of the price support program, and will not affect farm income adversely. Producers who participate in the acreage reduction program shall be required to plant an annual or perennial cover on 50 percent (or more at the producer's option) of the ACR, but not to exceed 5 percent (or more at the producer's option) of the crop acreage base established for the crop. This requirement shall not apply in arid areas, (including summer fallow areas), as determined by the Secretary. The ACR may be devoted to wildlife food plots or wildlife habitat. The Secretary may pay a share of the cost of these practices or make additional payments if the producer agrees to permit public access to the land for hunting, fishing, trapping, and hiking. Haying and grazing of ACR shall be permitted, except during any consecutive 5-month nongrazing and nonhaying period established by the state committee, which will be established during the period beginning April 1, and ending October 31, of a year.

(7) *Multiyeor Program*—If a producer elects to establish a perennial cover capable of improving water quality or wildlife habitat on the ACR, CCC shall make available cost-share assistance for 25 percent of the approved cost of the cover on not more than 50 percent of the acreage that is required to be diverted from production. If the producer elects to establish a perennial cover on the acreage, and receives cost-share assistance, the producer shall agree to maintain the cover for a minimum of 3 years.

(8) *Offsetting and Cross-compliance*—The 1990 Act amended the 1949 Act to provide that compliance on a farm with the terms and conditions of any other commodity program, or compliance with crop acreage base requirements for any other commodity, or any other farm, may not be required as a condition for loans, purchases, or payments.

(9) *Payment Limitation*—The 1990 Act amended the 1949 Act to provide that the total amount of disaster payments that a person shall be eligible to receive under one or more of the rice, upland and ELS cotton, feed grains, and wheat programs shall be limited to $100,000. The total amount of deficiency and land diversion payments that a person shall be entitled to receive under one or more of the rice, upland and Extra Long Staple cotton, feed grains, oilseed, and wheat programs shall be limited to $50,000, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation payments.

(10) *Advance deficiency and diversion payments*—The 1990 Act amended the 1949 Act to require the Secretary to make available deficiency payments for the 1991 through 1995 crops of rice, upland cotton, feed grains, or wheat for which an acreage limitation program is announced in each of these years, and for which deficiency payments are projected. Such payments shall be made in the form of cash, commodities, or commodity certificates. Such payments are limited to producers who enter into a contract to comply with the terms and conditions of the program for the commodity for the crop year. The 1949 Act requires the Secretary to estimate no later than December 1 the national weighted average market price received by producers of wheat during the marketing year. The Secretary shall make available to producers who requested such payments during the enrollment period an advance of at least 75 percent of the emergency compensation computed using such estimated market price. The 1949 Act provides for making deficiency payments in the case of the 1994 and 1995 crops of wheat, feed grains, and rice, and 1991 winter wheat producers who choose this special option. These payments are computed using the basis of the national weighted average market price (or in the case of rice, the national average market price) for the marketing year for the crop. Seventy-five percent of the projected final deficiency payment shall be made to producers as soon as possible after the first 5 months of the applicable marketing year. The payment made available shall be reduced by the amount of any advance deficiency payment already received. The remainder of the deficiency payments shall be made available at the end of the marketing year. Conditions for refunding unearned payments are also provided.

(11) *Acreage credited for payment*—The 1990 Act amended the 1949 Act to provide for including acreages devoted to crops planted for planted and considered planted credit purposes and conservation uses in excess of 8 percent of the permitted acreage of upland cotton and rice in the farm payment acreage for a crop for which an acreage limitation program is in effect. However, such acreages of crops planted for planted and considered planted credit and conservation uses may be included only if the acreage of upland cotton and rice planted for harvest is at least 50 percent of the permitted acreage for the crop. Producers who plant or who have approved prevented planting acreage of upland cotton or rice on at least 50 percent of the maximum payment acres on the farm will not have the minimum planting requirements apply, and will be eligible for "0/92" provisions. If an acreage reduction program is in effect for wheat and feed grains, and producers devote a portion of the maximum payment acres equal to more than 8 percent to conservation uses, such portion of the maximum payment acres in excess of 8 percent of such acreage devoted to conservation uses shall be considered to be planted to wheat, oats, barley, grain, sorghum, and corn for the purpose of determining the acreage on a farm required to be devoted to conservation uses, and producers shall be eligible for payments on such acreage.

(12) *Crop acreage bases*—The 1990 Act amended the 1949 Act to provide for the establishment and maintenance of crop acreage bases for the wheat, feed grains, upland cotton, and rice programs in a system that is efficient, equitable, flexible, and predictable. The bases for wheat and feed grains would be established based upon the average of the acreages planted and considered planted to the program crop for harvest on the farm in each of the 5 crop years preceding the crop year. For cotton and rice, the crop acreage base shall be equal to the average of the acreage planted and considered planted for harvest in each of the 3 crop years preceding such crop year. For 1991 crops of cotton and rice, if producers did not participate in acreage reduction programs in 1989 and 1990, the crop acreage base shall be established based on the acreage planted and considered planted for harvest in each of the 5 crop years preceding the 1991 crop year, excluding all crop years in which planted and considered planted acreage was not established for the farm. For 1992 crops of upland cotton and rice, the same exception would apply. The crop acreage bases established for such commodity shall not exceed the average of the acreages planted and considered planted for harvest in the previous 2 years preceding either the 1991 or 1992 crop years. The 1949 Act provides for the determination of acreages to be included as "considered planted" acreage, including cases of prevented planting or failed acreage due to natural disaster or other condition beyond the producer's control, for adjustments of bases if the crop acreage base for the crop would be adversely affected by a condition or occurrence beyond the control of the producer, and also for rotations and other factors. Crop acreage bases for the 1991 through 1995 crop of ELS cotton will continue to be determined by averaging the acreage planted and considered planted to such crop for harvest in each of the 3 crop years preceding the current crop year.

(13) *Planting Flexibility*—The 1990 Act amended the 1949 Act to provide that producers on a farm may plant for harvest on the crop acreage base established for a program crop a commodity, other than the specific program crop, without suffering a reduction in the crop acreage base. Permitted crops include any program crop, any oilseed, industrial or experimental crops, and other crops, except any fruit or vegetable not designated by the Secretary as industrial or experimental, or for which no production or market exists. The Secretary, may at the discretion of the Secretary, prohibit the planting on a crop acreage base of any of the crops specified in this paragraph. The quantity of the acreage base that may be planted to such commodity may not exceed 25 percent of the crop acreage base. If the Secretary determines on January 1 of any calendar year that the national average price of soybeans during the following marketing year would be less than 105 percent of the nonrecourse loan level established for soybeans, if soybeans were allowed to be planted on up to 25 percent of the crop acreage base, the quantity of soybeans that may be planted may not exceed 15 percent of the acreage base. The Secretary has determined that the estimated national average market price for soybeans during the 1991/92 marketing year is estimated to exceed 105 percent of the soybean loan rate. Therefore, for the 1991 crops, soybeans may be planted on up to 25 percent of the crop acreage base without loss in considered planted credit. Producers may be allowed to plant in excess of the permitted acreage of the crop without losing loan, purchase, or payment eligibility if the acreage planted to the program crop on the farm in excess of permitted acreages does not exceed 25 percent of the crop acreage bases for other program crops, and the producer agrees to a reduction in the permitted acreage for other program crops by a quantity equal to the overplanting.

(14) *Farm program payment yields*—The 1990 Act amended the 1949 Act to provide for the establishment of a farm program payment yield for each farm for each program crop for each crop year.

The farm program payment yield for each of the 1991 through 1995 crop years shall be the farm program payment yield for the 1990 crop year of the farm. If farm program payment yields are reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers established price payments for the commodity in such amount as the Secretary determines is necessary to provide the same return if the yield had not been reduced more than 10 percent below the farm program yield for the 1985 crop year. If a yield has not been established for the farm for any of the 1981 through 1985 crop years, or as appropriate, the 1986 through 1990 crop years, the farm program payment yield shall be established based on the program payment yields on similar farms. The Secretary may establish a farm program yield for any program crop on a farm on the basis of the yield per harvested acre for the crop for each of the 5 crop years immediately preceding the crop year, excluding the crop year with the highest yield, the crop year with the lowest yield, and any crop year in which the crop was not planted on the farm. For purposes of the preceding sentence, the farm program payment yield for the 1986 crop year and the actual yield per harvested acre with respect to the 1987 and subsequent crop years shall be used in determining farm program payment yields. The county committee, in accordance with regulations established by the Secretary, may adjust any program payment yield for any program crop if the program payment yield for the crop does not reflect the productive potential of the farm. If an actual program payment yield per harvested acre is not available, the county committee may assign the crop a yield for the crop year on the basis of actual yields for the crop on similar farms. If separate irrigated and nonirrigated yields were established for the 1990 crop, the farm program payment yield for the 1991 through 1995 crops shall be determined by determining an irrigated acreage maximum (IAM) for the farm and crop. This acreage represents the maximum acreage for which deficiency payments using the irrigated payment yield will be computed, and shall not be changed for the 1991 through 1995 crop years. The irrigated acreage maximum shall be the largest of the sum of: (1) The 1990 irrigated acreage planted for harvest and credited as conserving use for payment; (2) the average of the sum of the 1988 through 1990 irrigated acreage planted for harvest and credited as conserving use for payment; (3) the result of dividing the 1990 irrigated acreage in (1) by the total acreage for both irrigated and nonirrigated practices and multiplying times the current year crop acreage base; (4) the result of dividing the 1988 through 1990 average irrigated acreage in (2) by the average total acreage for both irrigated and nonirrigated practices and multiplying times the current year copy acreage base; (5) multiplying the result of (1), (2), (3), and (4) times the 1990 irrigated farm program payment yield, and (6) subtracting the determined irrigated acreage maximum from the current year crop acreage base and multiplying the result, not less than zero, times the 1990 nonirrigated farm program payment yield. The Secretary shall, under such terms and conditions as the Secretary may prescribe, allow producers to provide to county committees data on the actual yield for each farm for each program crop. This data shall be maintained for at least 5 crop years after receipt in a manner that will permit the data to be used, if necessary, in the administration of the commodity program.

(15) *Planting and production history of farms*—The 1990 Act amended the 1949 Act to authorize the Secretary to require any producer who seeks to establish a crop acreage base or program payment yield for a farm for a crop year to provide planting and production history of the farm for each of the 5 crop years preceding the crop year.

(16) *Payments in CCC-owned commodities*—The 1990 Act amended the 1949 act to authorize the making of a portion of disaster, deficiency, and land diversion payments in the form of CCC-owned commodities or certificates redeemable in a commodity owned by Commodity Credit Corporation.

(17) *Announcement of program*—If the Secretary elects to implement an acreage limitation program for any crop year, the secretary shall announce the terms and conditions of the acreage reduction programs no later than June 1 for wheat, September 30 for feed grains, January 31 of the calendar year the crop is harvested for rice, a preliminary announcement of November 1, and a final announcement of January 1 for cotton. In the case of the 1991 program for all crops, the Secretary shall make an announcement of the programs as soon as practicable after the enactment of the 1990 Act.

(18) *Emergency Compensations*—If the Secretary adjusts the level of loans and purchases for wheat and feed grains, the Secretary shall provide emergency compensation by increasing the deficiency payments for wheat by such amount as the Secretary determines is necessary to provide the same total return to producers as if the adjustment in the level of loans and purchases had not been made. In determining the payment rate, per bushel, for emergency compensation payments for a crop of wheat under this paragraph, the Secretary shall use the national weighted average market price, per bushel of wheat or feed grains, received by producers during the marketing year for the crop, as determined by the Secretary. The Secretary shall by December 1 of the marketing year for the crop of wheat, estimate the national weighted average market price, per bushel of wheat, received by producers during the marketing year. By December 15 of the marketing year, use the estimate to make available to wheat producers who have elected the payment option authorized by this clause not less than 75 percent of the increase in payments estimated to be payable and adjust the amount of each final payment for wheat to reflect any difference between the amount of any estimated payment made and the amount of actual payment. Wheat producers shall elect the advance payment option at the time of entering into a contract to participate in the program for the crop.

(19) *Conservation Reserve Program*—The 1990 Act amended the 1949 Act to provide that the Secretary shall establish an Conservation Reserve Program for the 1991 through 1995 calendar years, and implement such program through contracts and the acquisition of easements to assist owners and operators of highly erodible lands, other fragile lands, and wetlands in conserving and improving the soil and water resources of the farms or ranches of such owners and operators. Producers will enter into contracts with CCC to take highly erodible land out of crop production for a period of 10 years. The terms and conditions of this program as set forth at 7 CFR part 704. The Act provides that the acreage bases established on a farm shall be temporarily reduced when the farm participates in the Conservation Reserve Program and shall be restored upon the expiration of the Conservation Reserve contract.

(20) *7 CFR Part 12 Highly Erodible Land and Wetland Conservation*—The 1990 Act amended the 1985 Act's provisions which are commonly known as the Sodbuster and Swampbuster provisions. Under these provisions, producers will be ineligible for any benefit under the programs set forth at 7 CFR part 1413, if they bring into crop production highly erodible lands or wetlands except under certain limited conditions.

(21) *Cost reduction options*—The 1985 Act authorizes the Secretary to take certain actions if the actions would reduce the total of the direct and indirect costs to the Federal Government of a commodity program without adversely affecting income to small and medium sized producers participating in such program. The actions include permitting participating producers to submit bids to convert the acreage of a crop planted for harvest to diverted acreage in return for payments in the form of CCC-owned commodities. The Secretary must determine that world supply or demand conditions have substantially changed after the announcement of the program for the crop and that further action to prevent a surplus is necessary. Commodity payments under this program are exempt from the $50,000 limitation which is applicable to deficiency and land diversion payments but such payments are limited to a total of $20,000 per producer for each commodity for each crop year.

(22) *Options Pilot Program*—The 1990 Act amended the 1949 Act to require the Secretary, subject to advance appropriations, to determine whether regulated agricultural commodity options trading can be used by producers to obtain protection from fluctuations in the market prices of the commodities they produce, and the impact of such trading on the prices of the commodities. The Secretary is required, subject to an advance appropriation, to conduct a pilot program for each of the 1991 through 1995 crops of corn, and the 1993 through 1995 crops of wheat and soybeans. This pilot program is to be conducted in various counties that produce significant quantities of the 1991 through 1995 crops of corn, and the 1993 through 1995 crops of wheat and soybeans. For the 1991 crop year, the Secretary is to select not less than 3 counties in each of the 3 major corn producing states to conduct the pilot program for the 1991 crop year for corn. Additional states and counties may be added to the program in the succeeding crop years. The Secretary is to contract with producers who are located in the selected counties and wish to participate in the pilot program. The Act also states the terms and conditions by which a producer may participate in the program.

(23) *Program option for 1996 crops*—The 1990 Act amended the 1949 Act to provide that the Secretary may offer an option to producers of the 1996 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice or oilseeds for the 1996 calendar year to participate in commodity price support, production adjustment, and payment programs. The Secretary may offer each of the programs offered by the Act if the Secretary has not made final announcement of the terms of the commodity price support, production adjustment, or payment programs for the 1996 crops of wheat, feed grains, cotton, rice, or oilseeds, on or before the later of: wheat, June 1, 1995; feed grains, September 30, 1995; upland cotton, November 1, 1995, ELS cotton, December 1, 1995; rice, January 31, 1996; oilseeds, July 15, 1995.

II. Changed Provisions

A. Part 1413, Feed Grain, Cotton, Rice, and Wheat

(1) *General*—The following is a discussion of a number of the significant provisions of the 1991 through 1995 rice, upland cotton, feed grains, and wheat programs which differ from the provisions which were applicable to these programs for the 1986 through 1990 crops of these commodities. The provisions of the 1991 through 1995 Extra Long Staple cotton program are generally not changed from the provisions which were applicable for the 1986 through 1990 crops.

(2) *Farm program payment yields*—The Secretary may establish a program payment yield for any program crop on any farm on the basis of the average of the yield per harvested acre for the crop for the farm for each of the 5 crop years immediately preceding the crop year, excluding the crop year with the highest yield, the crop year with the lowest yield, and any crop year in which such crop was not planted on the farm. When establishing yields in this way, the farm program payment yield for the 1986 crop year and the actual yield for the 1987 and subsequent crop years shall be used in determining program payment yields. The Secretary may also establish the 1991 through 1995 farm program payment yields based on the farm program payment yields established for the 1990 crop year for the farm. It is proposed that actual yields not be implemented for the 1991 through 1995 crop years but that the 1990 farm program payment yield be used. In the case of each of the 1991 through 1995 crop years for a commodity, if the program payment yield for a farm is reduced more than 10 percent below the farm program payment yield for the 1985 crop year, the Secretary shall make available to producers deficiency payments for the commodity in such amount as the Secretary determines is necessary to provide the same total return as if the payment yield had not been reduced more than 10 percent. The payments shall be made available no later than the time final deficiency payments are made. If no crop of a commodity was produced on the farm or no farm program payment yield was established for the farm for any of the 1981 through 1985 crop years, (or, as appropriate, the 1986 through 1990 crop years), the farm program payment yield shall be established based on similar farms. The county committee may assign a yield to a program crop for any farm for which the actual yield for any crop year is not available based on similar farms. The Secretary shall allow producers to provide to county committees data with respect to the actual yield for each farm for each program crop. The data shall be maintained for at least 5 crop years after receipt in a manner that will permit the data to be used, if necessary, in the administration of the commodity program. The Secretary shall provide timely notification to producers of the provisions of this rule. County committees may establish yields in accordance with regulations prescribed by the Secretary, with respect to any farm administratively located within the county if the program payment yield cannot otherwise be established under this rule. Under past legislation, separate farm program payment yields have been established for irrigated and nonirrigated practices in those areas where annual irrigation results in significant increases in productivity. The Food Security Act of 1985 effectively froze yields at the 1985 crop year levels, but producers were still able to increase the proportion of their acreage that they irrigated and thereby increase program payments. The Managers of the 1990 Act stated their intent that the Secretary prohibit the establishment of irrigated farm program payment yields on any acreage which was not irrigated prior to 1991. In order to implement this provision, it is proposed to establish one historical weighted yield (HWYY) to be used for payment purposes. The HWY will be computed by: (i) determining an irrigated acreage maximum (IAM) and multiplying it by the irrigated yield; (ii) subtracting the IAM from the current year CAB and multiplying the result by the nonirrigated yield; (iii) adding the results of (i) and (ii) and (iv) dividing by the current year CAB. The yields shall be established in a fair and equitable manner, but no yields shall be established if the producer on the farm

is subject to sanctions under any provision of Federal law for cultivating highly erodible land or converted wetland.

(3) *Prevented planting and reduced yield payments*—This proposed rule provides that prevented planting and reduced yield payments shall only be made to producers of rice, upland cotton, feed grains, and wheat who are otherwise eligible for program benefits if prevented planting or reduced yield crop insurance, respectively, is not available under the Federal Crop Insurance Act with respect to the producer's acreage of the commodity. Federal Crop Insurance benefits will be available for all program crops in all areas for the 1991 crop year.

(4) *Planted and Considered Planted Credit for Determining Crop Acreage Bases*—The 1949 Act provides for the establishment and maintenance of crop acreage bases for each program crop, including any program crop produced under an established practice of double cropping. The sum of the acreage bases may not exceed the cropland on the farm, unless there is a double cropping practice established. The crop acreage base for each program crop for a farm for a crop year shall be the number of acres that is equal to the average of the planted and considered planted acreage to the program crop for harvest in each of the 5 crop years preceding the crop year. For upland cotton and rice the crop acreage base for such crops shall be equal to the average of the acreage planted and considered planted to the crop for harvest in the 3 crop years preceding such crop year, except that for the 1991 and 1992 crops, if the producers on a farm planted upland cotton or rice for the first time in 1989 or 1990 and did not participate in the production adjustment programs established for the 1990 crops, the base for the 1991 crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest in the 2 preceding crop years. If the producer on a farm plants upland cotton and rice for the first time in 1990 and does not participate in 1991, the base for the 1992 crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest in the 2 preceding crop years.

(5) *Haying and Grazing*—Haying and grazing of reduced acreage, acreage devoted to a conservation use for payment, and acreage diverted from production under a land diversion program shall be permitted, except during any consecutive 5-month period that is established by the state ASC committee. The 5-month period shall be established during the period beginning April 1, and ending October 31, of a year. In the case of a natural disaster, the Secretary may permit unlimited haying and grazing on the acreage. It is proposed that irrigated alfalfa not be permitted to be hayed or grazed during a natural disaster.

(6) *Failed Acreage and Prevented Planting Credit*—It is proposed that whenever a natural disaster or similar condition prevents the planting of a program crop or causes a program crop to fail, the producer may plant another crop. The acreage of the crop initially planted or intended to bc planted will be credited for the purpose of determining farm and crop acreage bases. The acreage initially planted will also be considered planted for the purpose of determining deficiency payments and program compliance. Except in the case of crops subject to marketing or poundage quotas and in the case of established doublecropping patterns, the acreage of the crop subsequently planted will not be considered as planted for any program purpose, including determining deficiency payments, determining compliance with program requirements, and establishing farm and crop acreage bases in future years.

(7) *Definition of Conserving Uses*—This proposed rule provides that conservation use acreage that can be credited as farm payment acreage for payment and history purposes when an acreage reduction program is in effect shall be referred to as "conserving uses". It is proposed that acreages devoted to conserving uses shall include all cropland except: (1) Acreage devoted to crops for which price support loans and purchases are available, (2) acreage devoted to nonprogram crops, (3) acreage designated as ACR, (4) acreage devoted to conservation uses under the Conservation Reserve Program, Water Bank program, or similar programs, and (5) other acreage not available as cropland in the current year as determined by the Deputy administrator, State and County Operations ASCS. The farm operator will have the opportunity to designate the crop program to which the acreage of nonprogram crops and conserving uses shall be credited.

(8) *Crop Acreage Bases*—The 1949 Act provides for the establishment and maintenance of crop acreage bases for each program crop, including any program crop produced under an established practice of double cropping. The sum of the crop acreage bases for program crops cannot exceed the cropland on a farm, except to the extent there is an established practice of double cropping on the farm. The crop acreage base for each crop of wheat, oats, barley, corn, and upland cotton for a crop year shall be the number of acres that is equal to the average of the acreage planted and considered planted to the program crop for harvest on the farm in each of the 5 years preceding the crop year. In the case of cotton and rice, the crop acreage base for such crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest on the farm in each of the 3 crop years preceding such crop year, except that for the 1991 crops, if the producers on a farm planted upland cotton and rice for the first time in 1989 or 1990, and did not participate in the production adjustment program established for the 1990 crop, the base for the 1991 crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest in the 2 preceding crop years. If the producers on a farm plant upland cotton and rice for the first time in 1990 and does not participate in 1991, the base for the 1992 crop shall be equal to the average of the acreage planted or considered planted to such crop for harvest in the 2 preceding years.

(10) *Ineligible land*—For clarity, and for the purpose of implementing the provisions of the 1990 Act which pertain to the Farmers Home Administration authority to obtain easements on certain lands, § 1413.62 of this proposed rule sets forth the terms and conditions under which land is ineligible for any consideration for program payments or ACR purposes.

(11) *Conservation Reserve Program*—This proposed rule includes provisions for reducing the crop acreage bases established for a farm when a contract to withdraw cropland from production is entered into in accordance with 7 CFR part 704, The Conservation Reserve Program ("CRP"). It is proposed that an existing contract to participate in the annual commodity programs, or at the owner or operator's option, may be canceled or revised in accordance with 7 CFR part 704. There are also provisions for restoring any acreage bases which have been reduced under the CRP after the expiration of the conservation reserve contract. The 1990 Act amended the 1985 Act to provide that subject to the statutory authority in effect at the time the Conservation Reserve Program contract expires, any reductions which have been made under the provisions of 7 CFR part 704 shall be restored. Producers will retain the crop acreage base by receiving considered planted credit equal to the amount of the reduction of the acreage base. When the conservation reserve program contract expires, the crop acreage base for the next year will be computed using the rules in effect at that time.

(12) *Integrated Farm Management*—The 1990 Act amended 1949 Act to provide producers with incentives to participate in a multiyear program where resource conserving crops rotations could be adopted. Producers planting base acres to resource conserving crops will maintain base acreage, yield history, and receive payments as if the program crop was planted. This program will also assist producers of agricultural commodities in adapting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resource stewardship practice and systems.

(13) *Acreage devoted to conservation uses*—Producers enrolling in the acreage reduction program shall devote a number of acres on the farm enrolled to conservation uses, in accordance with regulations issued by the Secretary. For wheat, feed grains, upland cotton, and rice, such number of acres shall be determined by multiplying the respective crop acreage base by the percentage reduction required by the Secretary. The number of acres so determined is hereafter referred to as "Acreage conservation reserve'("ACR"). Previously, to be eligible to be designated as ACR, cropland generally must have been devoted or considered devoted to small grains, row crops, or other crops planted annually in 2 of the 3 immediately preceding years and must be of a minimum size. However, exceptions to these rules have proliferated over the years resulting in a long list of complicated and conflicting requirements. Producers have, therefore, critized USDA for the unneeded complexity and paper work. Accordingly, CCC proposes to simplify the ACR requirements to only two requirements: (a) Minimum size (5 acres) and width (66 feet), and (b) devoted to a small grain, row crop, other crops planted annually, or perennial crop planted in a rotation, or ACR or CU for payment in 1 of the previous 5 years. There are no proposed exceptions to these requirements. Also, while not being proposed, consideration will be given to public comments relating to requiring that after an acreage has been used as ACR for 5 years, the same area will no longer be considered eligible for designation as ACR for 5 years. Commentors should consider the benefits of shifting ACR locations on soil fertility and farm management. Section 1001 of the Food Security Act of 1985 provides that the Secretary shall reduce the acreage which is required to be devoted to ACR with respect to producers who, if not for payment limitations, would receive payments in excess of the maximum statutory amount. This authority is premised on the fact that these producers have, in fact, reduced their planting of the program crop to announced levels but, since their program payments are limited, their farm income is thus reduced proportionately more when compared to producers who do not have payments in excess of the statutory limits. Accordingly, under this provision, these producers may plant crops on the acreage removed from production, so long as it is not planted to another program crop. CCC proposes to continue this practice for the 1991 through 1995 crops and requests comments on a method to be used in calculating such reduction.

(14) *Pilot Voluntary Production Limitation Program*—The 1990 Act amended the 1949 Act to provide that effective for the 1992 or 1993 crops of wheat and feed grains (and, if the Secretary so determines, for the 1994 and 1995 crops), if an acreage limitation program or a land diversion is announced for such crops, the Secretary shall carry out a pilot program in at least 15 counties in at least 2 states where producers express an interest in participating in the pilot program under which the producers on a farm shall be considered to have met the requirements of such acreage limitation or land diversion program if the producers meet the requirements of the voluntary production limitation program. Producers must agree not to market, barter, donate, or use on the farm in a marketing year a quantity of feed grains in excess of the feed grain and wheat production limitation quantity for the farm for the marketing year. The production limitation quantity for a farm for a marketing year for a crop shall equal the product obtained by multiplying the acreage permitted to be planted to wheat or feed grains under the acreage reduction program or land diversion program in effect for the crop by the higher of the farm program payment yield, or the average of the yield for the wheat or feed grains for each of the 5 preceding crop years, excluding the crop years with the highest and lowest yield, and any year in which the commodity was not planted on the farm. Producers who elect to participate shall enter into an agreement to comply with the program, not plant program commodities for harvest in excess of the crop acreage bases for the farm, and be considered to have complied with the acreage reduction programs for wheat and feed grains, even though the acreage planted to such crops exceeds the permitted acreage for the crops. Any quantity of wheat and feed grains produced on a farm in a crop year in excess of the limitation quantity for the farm may be stored by the producers for a period not to exceed 5 marketing years. Producers participating in the program may market, barter, or use a quantity of the excess wheat or feed grains equal to the difference between the limitation quantity for the farm subsequent to the crop year in which the excess wheat or feed grains are produced less the quantity of such crops produced on the farm during the crop year. Producers participating in an acreage reduction program for wheat or feed grains may market, barter, or use a quantity of the excess crops in an amount that reflects the quantity of such crops that would be expected to be produced on acreage that the producers agree to devote to approved conservation uses during a crop year. It is proposed that the pilot voluntary production limitation program not be implemented until 1993.

(15) *Planting Flexibility*—The 1990 Act amended the 1949 Act to provide that producers on a farm may plant for harvest on the crop acreage base established for a program crop, a commodity, such as any other program crop, any oilseed, and industrial or experimental crop designated by the Secretary, and any other crop, except any fruit or vegetable crop not designated by the Secretary, other than the specific program crop, without suffering a reduction in the crop acreage base as a result of the production. The Secretary may, at the discretion of the Secretary, prohibit the planting on a crop acreage base of any crop previously mentioned, and shall make available in the County offices a list of the prohibited crops. The quantity of crop acreage base that may be planted to a commodity, other than the specific program crop, may not exceed 25 percent of the crop acreage base. An exception is if on January 1 of any calendar year the Secretary estimates that the national average price of soybeans during the following soybean marketing year would be less than 105 percent of the nonrecourse loan level for soybeans, if soybeans were allowed to be planted on up to 25 percent of the crop acreage base, then the total crop acreage base that may be planted to soybeans may not exceed 15 percent of the acreage base. Producers participating in the production adjustment program for that program

crop under this Act shall be allowed to plant the program crop in excess of the permitted acreage for that crop without losing eligibility if the excess acreage planted to the program crop does not exceed 25 percent of the total acreage bases for other program crops, and the producer agrees to a reduction in the permitted acreage for the other program crops by an amount equal to the overplanting. Flex acres can be double cropped. Idle or eligible flex acres must be present on the farm from the time the program crop is planted until the program crop is harvested. The determination of the crops which may be planted under these provisions is the subject of a separate regulatory activity.

(16) *Program option for 1996 crops*—The 1990 Act amended the 1949 Act to provide that the Secretary may offer to producers of the 1996 crops of wheat, feed grains, upland cotton, ELS cotton, rice or oilseeds for the 1996 calendar year the opportunity to participate in commodity price support, production adjustment, and payment programs. The Secretary may offer each of the programs provided by the Act if the Secretary has not made final announcement of the terms of the commodity price support, production adjustment, or payment programs for the 1996 crops of wheat, feed grains, cotton, rice, or oilseeds, on or before the later of: wheat—June 1, 1995; feed grains—September 30, 1996; upland cotton—November 1, 1995; ELS cotton—December 1, 1995; rice—January 31, 1996; oilseeds—July 15, 1995. Producers may not participate in such programs unless a law has been enacted subsequent to the provisions of this option that provides for loans and purchases for the 1996 crop year of wheat, feed grains, cotton, rice, or oilseeds.

(17) *Oilseeds*—The 1990 Act amended Title VII of the 1949 Act by adding a definition of oilseeds, which means soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and such other oilseeds as the Secretary may determine.

(18) *Advance Deficiency Payments*—The 1990 Act amended the 1949 Act to generally provide that if the Secretary establishes an acreage limitation program for any of the 1991 through 1995 crops of wheat, feed grains, upland cotton, or rice, and deficiency payments will likely be made for the commodity for the crop, advance deficiency payments shall be made available to producers for each of the crops. Payments may not exceed an amount determined by multiplying the estimated payment acreage for the crop, by the payment yield, by not less than 40 percent, or more than 50 percent of the projected payment rate for wheat and feed grains, and not less than 30 percent or more than 50 percent, of the projected payment rate for rice and upland cotton. If the deficiency amount payable to a producer for a crop is less than the advance amount paid, the difference between the advanced amount and the final amount will be repaid. If the Secretary determines that deficiency payments will not be made available, for a crop, and advance deficiency payments have already been made, the advanced amount shall be repaid by the producer. It has been determined that for 1991 crops 40 percent of the deficiency payments will be advanced for participating program crops.

(19) *Acreage Reduction Program*—The 1990 Act amended the 1949 Act to generally provide that the Secretary may establish provisions for an acreage reduction program for wheat, corn, barley, grain sorghum, oats, rice, and cotton. In determining the level of acreage limitation appropriate for a crop year, the Secretary shall consider the number of acres that have been placed the Environmental Conservation Reserve Program. Determination of an acreage reduction program for wheat and feed grains will be based on the ratio of ending stocks to total use. In the case of the 1991 crops of wheat and corn, the Secretary shall provide for an acreage limitation program under which the acreage planted to wheat or corn for harvest on a farm would be limited to the wheat or corn crop acreage base for the farm for the crop reduced by not less than 15 percent for wheat or 7.5 percent for corn.

In the case of each of the 1992 through 1995 crops of wheat, if the Secretary estimates for a marketing year for the crop that the ratio of ending stocks of wheat to total disappearance of wheat for the preceding marketing year will be: (i) More than 40 percent, the Secretary shall provide for an acreage limitation program under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 10 percent nor more than 20 percent; or (ii) equal to or less than 40 percent, the Secretary may provide for such an acreage limitation program under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more than 0 to 15 percent.

In the case of each of the 1992 through 1995 crops of corn, if the Secretary estimates for a marketing year for the crop that the ratio of ending stocks of corn to total disappearance of corn for the preceding market year will be: (i) More than 25 percent, the Secretary shall provide for an acreage limitation program under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 10 percent nor more than 20 percent; or (ii) equal to or less than 25 percent, the Secretary may provide for such an acreage limitation program under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not more than 0 to 12.5 percent.

In the case of each of the 1991 through 1995 crops of oats, the Secretary shall provide for an acreage limitation program under which the acreage planted to oats for harvest on a farm would be limited to the oat crop acreage base for the farm for the crop reduced by not more than 0 percent.

In the case of each of the 1991 through 1995 crops of sorghum and barley, the Secretary shall provide for an acreage limitation program under which the acreage planted to sorghum or barley for harvest on a farm would be limited to the oat crop acreage base for the farm for the crop reduced by not more than 20 percent.

In the case of the 1991 through 1995 crops of rice, the Secretary shall carry out an acreage limitation program for a crop of rice in a manner that will result in carry-over stocks equal to 16.5 to 20 percent of the simple average of the total disappearance of rice for each of the 3 marketing year preceding the year for which the announcement is made. If a rice acreage limitation program is announced such limitation shall be achieved by applying a uniform percentage reduction (from 0 to 35 percent) to the rice crop acreage base for the crop for each rice producing farm.

In the case of the 1991 through 1995 crops of upland cotton, the Secretary shall carry out an acreage limitation program for a crop of upland cotton in a manner that will result in a ratio of carry-over to total disappearance of 30 percent, based on the Secretary's most recent projection of carry-over and total disappearance at the time of announcement of the acreage limitation program. If an upland cotton acreage limitation program is announced, the limitation shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton producing farm.

Notwithstanding any other provision of law, except as provided below, the Secretary shall announce an acreage limitation program for each of the 1992 through 1995 crops of (1) wheat under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by: (A) in the case of the 1992 crop of wheat, not less than 6 percent, (B) in the case of the 1993 crop of wheat, not less than 5 percent; (C) in the case of the 1994 crop of wheat, not less than 7 percent; and (D) in the case of the 1995 crop of wheat, not less than 5 percent; and (2) corn grain sorghum, and barley under which the acreage planted to the respective feed grain for harvest on a farm would be limited to the respective feed grain crop acreage base for the farm for the crop reduced by not less than 7.5 percent.

The above paragraph shall not apply to a crop if the Secretary estimates for such crop that the stocks-to-use ratio will be less than; (1) in the case of wheat, 34 percent; and (2) in the case of corn, grain sorghum, and barley, 20 percent. If the Secretary determines that the quantity of soybeans on hand in the United States on the first day of the marketing year for the 1991 crop of soybeans (not including any quantity of soybeans of the 1991 crop) will be less than 325,000 bushels, the above paragraph shall not apply to any of the 1992 through 1995 crops of wheat and feed grains.

Producers who knowingly produce wheat, feed grains, rice and upland cotton in excess of the permitted acreage, plus any acreage permitted under flexibility provisions for such crops for the farm shall be ineligible for loans, purchases, and payments with respect to that farm.

(20) *Deficiency payment rates*—The Reconciliation Act amended the 1949 Act to provide that the deficiency payment for 1994 and 1995 crops of wheat, feed grains, and rice shall be computed using the weighted average of prices received by producers during the entire marketing year. As soon as practicable after the end of the first 5 months of the marketing year, payments equal to 75 percent of the projected deficiency payment shall be made available to participating producers. Section 1413.103(c) would be amended to provide that the payment calculation is a chain calculation and to clarify the handling of partnerships and joint ventures.

(21) *Malting barley assessment*—The 1990 Act amended the 1949 Act to require the Secretary to levy an assessment on participating producers of malting barley that is no more than 5 percent of the value of malting barley produced on the farm. It is proposed that the final deficiency payments for barley be reduced by the amount of the assessment in all cases, except as follows: (i) If the producer is able to provide acceptable evidence of production and disposition that shows production that failed or was fed or was marketed as feed barley; or (ii) the county ASC committee, with the concurrence of the State ASC committee, determines that malting barley is not produced in the county. It is also proposed that the assessment be determined as 5 percent of the 5-month national average price of malting barley, except that in the States of Michigan, Idaho, Minnesota, Montana, North Dakota, Oregon, South Dakota, and Washington, the assessment shall be 5 percent of the 5 month average price of malting barley for the respective state.

(22) *Compliance with other restrictions*—Producers who participate in the annual commodity programs described in 7 CFR part 1413 must also comply with the provisions of 7 CFR part 12, Highly Erodible Land and Wetland Conservation. In addition, in accordance with 7 CFR part 796, a person is not eligible to receive certain benefits if the person has been convicted of violation of Federal or State controlled substance laws. Persons participating in the annual commodity production adjustment programs are also subject to the payment eligibility provisions contained in parts 1497 and 1498.

(23) *Triple Base Requirement*—The Reconciliation Act amended the 1949 Act to provide for a mandatory reduction of payment acres of 15 percent of the crop acreage base (triple base). The payments for a crop shall be the lesser of the number of acres planted to the crop for harvest within the permitted acres, or 85 percent of the crop acreage base for the crop for the farm less the quantity of required ACR.

F. 7 CFR Part 718. Determination of Acreage and Compliance

The provisions set forth in 7 CFR part 718 apply to producer adherence with certain crop acreage, land use, and other requirements, to establish and maintain program eligibility for the 1991 and subsequent crop years. Programs for which producer compliance determination must be made are those programs authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Adjustment Act of 1949, as amended, with respect to programs administered by ASCS through State and county committees.

This proposed rule would revise 7 CFR part 718 to recognize changes in terminology, land use requirements, and eligibility conditions for programs modified or changed by the 1985 Food Security Act ("the 1985 Act"), as amended, and the 1990 Food, Agriculture, Conservation, and Trade Act ("the 1990 Act").

Language used throughout 7 CFR part 718 has been revised to reflect changes in terminology, and in other instances program requirements. Since the regulations at 7 CFR part 718 have not been amended since enactment of the 1985 and 1990 Acts, most of the proposed changes involve terminology only. No substantive changes in producer compliance requirements are contained in this proposed rule.

G. 7 CFR Part 719. Reconstitution of farms

The regulations in 7 CFR Part 719 generally set forth the manner in which a "farm" is established for ASCS and CCC program purposes. The following technical amendments are necessary due to: (1) The enactment of the 1990 Act, or (2) to improve the overall effectiveness of these programs:

(1) Section 719.2(f) of the current regulations defines the term "cropland". This proposed rule clarifies and expands the definition to provide that land converted to water storage uses and that meets the criteria for acreage conservation reserve according to 7 CFR part 1413 shall be considered cropland. In addition, § 719.2(f)(5) has been deleted to remove redundancy.

(2) Section 719.2(t) of the current regulations defines the term "producer". This proposed rule clarifies and expands the definition to provide that a person who grows hybrid seed under contract shall be considered a producer.

(3) Section 719.3(b)(1)(ii) has been amended to correct a typographical error.

(4) Section 719.3(b)(3)(i) of the current regulations provides an exception for combining land across county lines. This proposed rule clarifies the provision.

(5) Section 719.3(b)(7)(iv) has been amended to correct a typographical error.

(6) Section 719.3(d)(7) of the current regulations makes reference to the Conservation Reserve Program. This proposed rule expands the provision to include other conservation programs.

(7) Section 719.3(d)(9) has been amended to correct a reference.

(8) Section 719.4(g) of the current regulations provides that combinations

of land under different ownership shall not be permitted if one or more crops planted on one tract are primarily irrigated and the same crop on the other tract is primarily nonirrigated. This proposed rule makes the provision less restrictive by making the determination on a cropland basis rather than a crop by crop basis.

(9) Section 719.7(b)(1)(i) has been amended to correct a typographical error.

(10) Section 719.7(b)(1)(iv)(C) has been amended to correct a typographical error.

(11) Section 719.7(d) has been removed because the provision is obsolete.

(12) Sections 719.8(d) (1) and (2) of the current regulations provide that the State Committee must provide concurrence. This proposed rule provides that a representative of the State Committee may provide concurrence.

(13) Section 719.8(f) of the current regulations provides that when using the cropland method of division the county committee shall determine the cropland on the tracts of the parent farm before the division. This proposed rule provides that the county committee shall redetermine the cropland, if necessary, before approving the division.

(14) Section 719.8(i) has been added to include provisions for handling resulting farms of divisions that are apportioned less than 1,000 pounds of burley tobacco.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements.

7 CFR Part 719

Acreage allotments, Cotton, Feed grains, Marketing quotas, Reporting and recordkeeping requirements, Wheat, Rice.

7 CFR Parts 1413 and 1414

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, the regulations set forth in chapters VII and XIV of Title 7 are proposed to be amended as follows:

Chapter VII—[Amended]

1. Part 718 is revised to read as follows:

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Subpart A—General Provisions

718.1 Paperwork Reduction Act assigned number.
718.2 Applicability.
718.3 Definitions.

Subpart B—Responsibilities and Authority

718.10 State Committee Responsibilities.
718.11 County Committee Responsibilities.
718.12 Authority for farm entry and securing information.
718.13 Denial of program benefits.

Subpart C—Measurements, Reporting and Inspections

718.20 Rule of fractions.
718.21 Measurement Services.
718.22 Acreage Reports.
718.23 Late filed reports.
718.24 Revised reports.
718.25 Reporting out of compliance.
718.26 Farm inspections.

Subpart D—Tolerances, Variances, and Adjustments

718.40 Variance rules applicability.
718.41 Acreages.
718.42 Skip rows.
718.43 Deductions.
718.44 Adjustments.
718.45 Notice of measured acreage.
718.46 Producer reliance on previous determinations.
718.47 Redeterminations.
718.48 Unusual cases.

Authority: U.S.C. 1153, 1314, 1373, 1374, and 1375; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 718.1 Paperwork Reduction Act assigned number.

Information collection requirements contained in this part 718 have been submitted to the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35.

§ 718.2 Applicability.

The provisions of this part apply to compliance determinations for the 1991 and subsequent crop years as authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended, with respect to the programs administered by the Agricultural Stabilization and Conservation Service, ("ASCS"), through State and county Agricultural Stabilization and Conservation ("State and county committees") committees.

§ 718.3 Definitions.

(a) *General.* As used in this part, and in all instructions, forms, and documents issued in connection therewith, the words and phrases defined in parts 719, 1413, and 1414 of this title shall have the meanings so assigned and the terms defined in paragraph (b) of this section shall have the meanings so assigned, unless the text or subject matter otherwise requires.

(b) *Other terms—Acreage maintenance inspection.* An inspection of conservation reserve program (CRP) acreage as defined in part 714 of this chapter, or acreage conservation reserve (ACR) made to determine whether producers are continuing to maintain designated program acreages in accordance with program regulations.

Administrative variance (AV). The amount by which the determined acreage may exceed the effective allotment and be considered in compliance with program regulations. AV applies only to marketing quota crops.

Aerial compliance. A technique for determining acreage and updating aerial photography using 35mm slides and approved equipment.

Allotment crop. Any crop for which acreage allotments are established pursuant to regulations of the Department implementing Federal law.

Crop reporting and disposition dates. Dates established by Deputy Administrator, State and County Operations, (Deputy Administrator) ASCS, representing:

(i) The final date to report crop acreages and,

(ii) The final disposition date to dispose of excess crop acreages. Crop disposition dates shall be no later than established crop reporting dates.

Determined acreage. That acreage established by a representative of the Department of Agriculture by use of official acreage, digitizing or planimetering areas on the photograph, or other photographic image or computations from scaled dimensions or ground measurements.

Director. The Director, or Acting Director, Cotton, Grain, and Rice Price Support Division, ASCS, Department of Agriculture.

Farm inspection (spot-check). An inspection by an authorized ASCS representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Field. A part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Field assistant. Person employed by ASCS to secure data necessary to ascertain producer adherence to requirements for receiving program benefits as set forth in this chapter and chapter XIV of this title.

Ground compliance. A method for determining acreage and updating aerial photography using field visits.

Ground measurement. The distance between 2 points on the ground, obtained by actual use of a chain tape, or other measuring device, that is expressed in chains and links.

Intended acreage. A crop that has not yet been planted on the field or subdivision of a field but will be planted later.

Measurement after planting. Determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop or land use.

Normal planting period. That period, established by the State committee and approved by the Deputy Administrator, during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width. The normal distance between rows of the crop in the field, but not less than 30 inches (approximately 3.8 links) for all crops.

Official acreage. That established acreage for fields and subdivisions that is entered and maintained on aerial photography.

Photocopy. A reproduction of a portion of an aerial photographic enlargement, showing a farm or farms.

Random inspection. An examination of a farm by an authorized representative of ASCS selected as a part of an impartial sample to determine the adherence to program requirements or to verify the farm operator's crop acreage or land use report.

Reported acreage. The acreage furnished by the farm operator, farm owner or a properly authorized agent on a form prescribed by the Deputy Administrator.

Reporting date. The date established by the Deputy Administrator by which the farm operator, farm owner, or properly authorized agent must report applicable crop acreage.

Required inspection. An examination by an authorized representative of ASCS of a farm specifically selected by application of prescribed rules to determine the producer's adherence to program requirements or to verify the farm operator's, farm owner's, or properly authorized agent's report.

Skip-row or strip-crop planting. A cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing. Determining an acreage before planting, designating, or adjusting by:

(i) Measuring a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision of a field.

(ii) Staking and referencing the area on the ground.

Standard deduction. An acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

Subdivision. A part of a field that is separated from the balance of the field by temporary boundary such as a cropline which could be easily moved or will likely disappear.

Tolerance. For program crops, marketing quota crops, and peanuts, a prescribed amount within which the reported acreage may differ from the determined acreage and still be considered as correctly reported. Also, for conserving uses (CU) acreage and acreage conservation (ACR) acreage, as defined in part 1413 of this title, the prescribed amount within which the determined acreage may be less than the program requirement and still be considered as having met the program requirement.

Turn-area. The area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

Variance. Administrative variance as it applies to marketing quota crops and tolerance as it applies to program crops, marketing quota crops, poundage quota crop, conserving use and ACR.

Verification of acreage. The use of whatever means necessary to verify that the planted acreage of a crop or land use is accurately reported and meets program requirements.

Zero acreage. When no acreage of a crop is planted on the farm for the current year, but a crop acreage base, marketing quota crop, or poundage quota crop exists on the farm.

Subpart B—Responsibilities and Authority

§ 718.10 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee which the county committee fails to take in accordance with this part.

(2) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part.

(3) Require the county committee to withhold taking any action which is not in accordance with this part.

(4) In accordance with instructions issued by the Deputy Administrator, establish:

(i) Disposition dates for crops that are no later than the applicable final reporting dates established by the Deputy Administrator,

(ii) Normal planting periods for crops,

(iii) A prescribed method for publication of all such applicable dates and periods.

(5) Review county office rates for producer services to determine equity between counties.

(6) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods.

(b) The State committee shall submit to the Director requests to deviate from National Standards prescribed in this part by establishing a minimum:

(1) Row width of less than 30 inches (approximately 3.8 links),

(2) Area larger than 0.03 acre for tobacco or 0.1 acre for other crops and land uses for deduction or adjustment credit;

(3) Width greater than 30 inches (approximately 3.8 links) for deduction of adjustment credit;

(4) Error amount or percentage different from those prescribed in § 718.47(b) of this part for redetermination cost refunds.

(c) The following deviations from prescribed standards pursuant to paragraph (b) of this section have been recommended by the State committee and approved by the Deputy Administrator:

California

Deduction credit.

(1) Minimum area. Five-tenths acre for all crops.

(2) Minimum width.

(i) Perimeter of field. Ten links for all crops.

(ii) Within the planted area.

(A) Row crops. Four normal rows except when planted in a skip-row pattern.

(B) Close-sown crops. Twenty links.

Delaware

Deduction credit. Minimum width six links.

Georgia

Redetermination refund. One-tenth acre.

Indiana

(1) Deduction credit. Minimum width of five links except 15 links for terraces, permanent irrigation, drainage ditches, and sod waterways.

(2) Adjustment credit.

(i) Minimum area. Five-tenths acre for all crops and land uses except tobacco.
(ii)Minimum width. Five links.
(*) Redetermination refund. One-tenth acre for tobacco.

Iowa

Deduction credit.
(1) Minimum width. Seven links.
(2) Minimum area. Five-tenths acre.

Louisiana

Deduction credit. Unplanted contour levees within rice fields are not eligible for deduction.

Mississippi

(1) Deduction credit. Minimum width of 10 links.
(2) Adjustment credit.
(i) Minimum area. Total excess or deficiency or 0.3 acre, whichever is smaller, except that if the excess of deficiency is more than 0.3 acre, one plot may be less than 0.3 acre.
(ii) Minimum width. Twenty links.

Missouri

Deduction credit. Minimum width of ten links.

Nebraska

(1) Deduction Credit.
(i) Minimum area for all crops is 0.2 acre.
(ii) Minimum row width for all crops is 20 links (13.2 feet). Exception: Disregard minimum width requirements for irrigation tow-line areas.

Ohio

(1) Deduction credit.
(i) Minimum width of twenty links.
(ii) Minimum area of 0.3 acre except 0.03 acre for tobacco.
(2) Adjustment credit. Minimum width of eight links for all crops except tobacco.
(3) Redetermination refund. One-tenth acre for tobacco acreage.

Oklahoma

Redetermination refund. Three-tenths acre for all acreage.

Oregon

Deduction credit. Minimum width of six feet within the planted area for close-sown crops.

South Dakota

(1) Deduction credit. Minimum area of 0.5 acre.
(2) Adjustment credit. Minimum area of 0.5 acre.

Tennessee

(1) Adjustment credit. Minimum width.
(i) Row crops other than tobacco. Four rows.
(ii) Tobacco.
(A) Along field boundary. One row.
(B) Within planted area. Two rows.
(2) Redetermination refund. One-tenth acre for tobacco acreage.

Texas

(1) Deduction credit. Minimum width of nine links

(2) Adjustment credit. Minimum width of nine links.

Virginia

Redetermination refund. For all acreage, the larger of 0.1 acre or 10 percent of the acreage for areas of less than five acres.

Wisconsin

(1) Deduction credit. Minimum width of 16 links for all crops except tobacco.
(2) Redetermination refund. One-tenth acre for tobacco acreage.

§ 718.11 County committee responsibilities.

The county committee shall provide for making program determinations and securing information in accordance with this part.

§ 718.12 Authority for farm entry and securing information.

(a) Any authorized representative of ASCS shall have authority upon presentation of written authorization, if such authorization is requested by any producer interested in the farm, to:
(1) Enter any farm for the purpose of ascertaining acreage, production, or adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program administered by ASCS.
(2) Secure from producers, on forms prescribed by the Deputy Administrator, data which are necessary to keep current the farm records located in the county ASCS office or which are a requirement to obtain program benefits under any mandatory or voluntary program administered by ASCS.
(b) If a farm operator refuses to permit entry for the purpose of ascertaining acreage or production or determining adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program for which such determinations are required, the county executive director shall notify the farm operator in writing as soon as possible that, unless the farm operator advises the county office within 14 day after the date of such notice that such operator will permit entry and inspection on the farm and pay the cost thereof, the following consequences, as applicable, will apply until such time as the operator permits such entry and inspection:
(1) Program benefits will be denied;
(2) The entire crop production will be considered in excess of the farm marketing quota then applicable. In addition, for tobacco, the farm operator will be required to furnish proof of disposition of:
(i) Burley and flue-cured tobacco production on the farm which is in addition to the production shown on the marketing card;
(ii) Other kinds of tobacco produced on the farm and no credit will be given for disposing of any excess tobacco other than that properly identified by a marketing card unless such excess tobacco is disposed of in the presence of a representative of the county committee in accordance with § 718.44 of this part.

§ 718.13 Denial of program benefits.

If a farm operator refuses to furnish reports or data which are necessary to keep current the farm records located in the county office or which are a requirement to obtain program benefits, such operator will be denied program benefits.

Subpart C—Measurements, Reporting and Inspections

§ 718.20 Rule of fractions.

(a) The acreage of each field or subdivision computed for tobacco shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre.

(b) The acreage of each field or subdivision computed for land uses or crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.21 Measurement services.

(a) Services include, but are not limited to, measuring land and crop areas, ACR acreage, conserving uses (CU) acreage, as defined in part 1413 of this title, for which a program crop benefit is received under an annual acreage reduction program that is not devoted to such program crop, measuring quantities of farm-stored commodities, and appraising the yields of crops when required for program administration purposes. The county committee shall provide measurement services if the producer requests such service and pays the cost, except that requests for service shall not be accepted for determining total acreage of a crop or land use when the request is made:

(1) After the established final reporting date for the applicable crop except as provided in § 718.45 of this part.

(2) After the farm operator has furnished the county office production evidence when required for program administration purposes except as provided in § 718.24 of this part.

(3) In connection with a late-filed farm operator report of acreage, unless there

is evidence of at least one of the following:
(i) The existence of the crop,
(ii) The use made of the crop,
(iii) The lack of crop,
(iv) A disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or maximum permitted acreage for program crops for the program year. The farm shall be considered to be in compliance with the allotment or program requirement for the farm if the entire allotment or program requirement for the program year was measured and the crop is planted or the proper land use is within the area measured by staking and referencing. Only the acreage measured shall be guaranteed for the current program year.

(c) Producers may request determination of acreages that have been planted by use of current year slides when available or ground compliance methods.

(d) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed for all program purposes for the current year even though an error in the measurement service is discovered in the measurement, placement of field or subdivision lines, planimetry, or computation thereof, if the producer has taken action based on the service and the entire crop or land use acreage required for the farm was measured. If the producer has not taken action based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

§ 718.22 Acreage reports.

(a) To be eligible for any program benefits a report of acreage shall be required on farms that produce an agricultural commodity that includes:
(1) Number of acres,
(2) Land use,
(3) Production,
(4) Prevented or failed acreage and,
(5) Other program requirements.
(b) The reports required under paragraph (a) of this section shall be filed with the county committee by the:
(1) Farm operator, farm owner, or duly authorized representative,
(2) Applicable final reporting date established by the Deputy Administrator which is publicized by and available at the applicable State and county ASCS office.
(c) Acreage and land use reports shall be:
(1) Used to determine program eligibility and benefits.
(2) On forms prescribed and in accordance with instructions issued by the Deputy Administrator.

§ 718.23 Late filed reports.

(a) A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to:
(1) The existence of the crop,
(2) The use made of the crop,
(3) The lack of crop, or
(4) A disaster condition affecting the crop.
(b) The farm operator shall pay the cost of a farm visit by an authorized ASCS employee unless COC has determined that failure to report in a timely manner was beyond the producers control.

§ 718.24 Revised reports.

The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by the Deputy Administrator and shall be accepted:
(a) At any time for all crops and land uses if evidence exists for inspection and determination of:
(1) The existence of the crop,
(2) The use made of the crop,
(3) The lack of crop, or
(4) A disaster condition affecting the crop; and
(b) Until the time that production evidence is furnished to the county office for extra long staple cotton yield purposes, to reflect the fact that the harvested acreage is less than the planted acreage.
(c) Unless the farm has been selected for inspection and acreage has been determined.

§ 718.25 Reporting out of compliance.

The farm operator, farm owner or other duly authorized agent who files an acreage report, shall be ineligible for all program benefits for that crop on that farm when:
(a) A program crop exceeds the maximum acreage permitted,
(b) A marketing quota crop exceeds the acreage allotment, or
(c) Or ACR is less than the required acreage amount.

§ 718.26 Farm inspections.

(a) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of ASCS to ascertain the acreage or production, or to determine adherence to any requirement specified as a prerequisite for obtaining program benefits.
(b) The following farms are required to be inspected:
(1) Any farm in which a member or employee of the State or county committee, or such individuals spouse, has an interest in the farm.
(2) Any farm in which the operator of the farm has controlling interest in a firm [such as a gin, warehouse, buying point, or elevator,] and the records of such firm are used to substantiate production.
(3) A tobacco warehouse operator, dealer, or manager which has an interest in tobacco on the farm.
(4) When the county committee determines an estimate of production is needed to properly administer the program for any marketing quota crop.
(5) A farm which an acreage report shows nonquota tobacco produced in a State where marketing quotas are in effect for any kind of tobacco.
(6) Such farm has an effective flue-cured, dark air-cured, or fire-cured, sun-cured, or cigar tobacco allotment.
(7) A farm for which a review of the production evidence submitted by the operator indicates that:
(i) Data is not valid,
(ii) Reported production is not reasonable when compared to other farms in the area.
(8) Farms for which an ASCS–574 is filed for prevented or failed acreage credit.
(c) County office will conduct random inspections. Farms will be selected to determine producer compliance with program requirements.

Subpart D—Tolerances, Variances, and Adjustments

§ 718.40 Variance Rules Applicability.

(a) Tolerance and variance rules apply:
(1) For those acreages for which measurement service was not furnished
(2) To those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements.
(b) Tolerance and variance do not apply:
(1) For official fields when the entire field is devoted to one crop or land use.
(2) For those fields for which staking and referencing was performed and such acreage was planted according to those measurements.

BEST COPY AVAILABLE

(3) When measurement after planting is furnished.

(4) To the adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment, permitted maximum program crop acreage, or an acreage less than the required ACR.

(c) Administrative variance is applicable to all marketing quota crop acreages. Marketing quota crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when determined acreage does not exceed the effective farm allotment for by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire cured the larger of 0.1 acre or 2 percent of the allotment.

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Applicable average
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(d) Tolerance is:

(1) For individual crop acreages or program requirements, except for tobacco, the larger of 1.0 acres or 5 per cent of the reported acreage, but not to exceed 10 acres.

(2) For tobacco, other than flue-cured or burly, the larger of .10 acres or 5 per cent of the effective allotment.

(e) With respect to:

(1) Individual crop acreages or program requirements, except for tobacco, the applicable requirements shall be considered to have been met if the determined acreage for each crop does not differ from the reported acreage by more than the tolerance.

(2) Tobacco other than flue-cured or burley, if the determined acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance, such excess acreage of tobacco may be adjusted to the effective farm acreage allotment in order to:

(i) Avoid marketing quota penalties and

(ii) Receive price support if otherwise eligible.

(3) Program crops which are subject to reduced planting requirements are considered to have met planting requirements when the determined acreage of the crop is less than 50 per cent of the maximum permitted acreage but is within tolerance.

§ 718.41 Acreages.

(a) If an acreage has been established by a representative of ASCS for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of ASCS.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of fifteen inches (approximately 1.9 links) or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop or land use shall be considered as devoted to the crop or land use subject to any allowable deduction or adjustment credit under this paragraph except as otherwise provided in this part.

§ 718.42 Skip rows.

(a) To be considered under the skip row provisions of this section the field must be planted in a uniform planting pattern. If more than one pattern is used within a field, the area planted to each pattern will be considered a subdivision.

(b) The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than 60 inches (approximately 7.6 links).

(c) If the strips of idle land are at least 60 inches (approximately 7.6 links) in width, only the acreage of the strips planted to the crop, including the larger of one-half the distance between the rows of the crop or 15 inches (approximately 1.9 links) beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(d) When one crop is alternating with another crop, the entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than 60 inches (approximately 7.6 links).

(e) If strips of the alternating crop are at least 60 inches (approximately 7.6 links) in width and if the alternating crop:

(1) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller of one-half the distance between the strips of the crop being measured or 30 inches (approximately 3.8 links), shall be considered as being devoted to the crop being measured.

(2) Does not have substantially the same growing season as the crop being measured, determine the acreage of the crop being measured in accordance with paragraph (b) or (c) of this section.

(f) When crops are planted in single wide rows, the entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than 60 inches (approximately 7.6 links). If the distance between the rows of the crop is at least 60 inches (approximately 7.6 links), only the width for each row shall be considered as being devoted to the crop.

§ 718.43 Deductions.

(a) Any contiguous area which is not devoted to the crop or land use being measured and which is not part of a skip-row pattern under § 718.42 of this part shall be deducted from the acreage of the crop or land use if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches (approximately 3.8 links).

(2) For tobacco, three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least 30 inches (approximately 3.8 links) in width may be combined to meet the 0.03-acre minimum requirement.

(3) For all other crops and land uses, one-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways, each of which is at least 30 inches (approximately 3.8 links) in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with § 718.10 (b) of this part.

(b) A standard deduction of three percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas. The county committee may use, upon approval by the State committee, a different percentage when the three percent or zero percent deduction does not adequately reflect the normal cultural practice in the county.

§ 718.44 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm visit to determine the adjusted acreage by no later than the date such farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of ASCS and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

(c) No acreage adjustments shall be allowed for ACR when the acreage determined from a farm inspection is less than the program requirement.

§ 718.45 Notice of measured acreage.

Written notice of measured acreage shall be on a form prescribed by the Deputy Administrator and shall constitute notice to all interested producers on the farm. The county committee shall furnish such notice to each farm operator when a farm is measured, remeasured, or checked for adjustment credit.

§ 718.46 Producer reliance on previous determinations.

If in determining an acreage, a producer relies in good faith on an acreage previously determined during the crop year by an employee of ASCS (except acreage determined from data furnished by the producer) and the acreage is subsequently determined by the county committee to be incorrect, the county committee shall consider the acreage on which the producer relied to be correct for that program year upon obtaining satisfactory proof from the producer that such producer relied in good faith upon the incorrect determination. However, the county committee may use the correct data if the producer would be adversely affected by an error in producer service provided under § 718.21 of this part.

§ 718.47 Redeterminations.

(a) A redetermination of crop and land use, acreage, appraised yield, or farm stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 days after the date of the notice furnished the farm operator in accordance with § 718.44 of this part or within five days after the initial appraisal of the yield of a crop or before any of the farm stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination. The redetermination is final and is not appealable under part 780 of this chapter.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or five pounds for cotton;

(ii) Five percent or one bushel for wheat, barley, and rice;

(iii) Five percent or two bushels for corn and grain sorghum;

(2) The farm stored production is changed by at least the smaller of three percent or 600 bushels; or

(3) The acreage of the crop or land use is:

(i) Changed by at least the larger of three percent or 0.5 acre, or

(ii) Considered to be within program requirements.

(c) The county committee shall notify, in writing, the farm operator of its redetermination. Such notice shall constitute notice to all interested producers on the farm.

(d) The first determination by the county committee is appealable to the State committee. The second and subsequent remeasurements are not appealable under the provisions of Part 780 of this chapter.

§ 718.48 Unusual cases.

To assure uniform and equitable treatment when unusual cases cannot be handled under this part, the Deputy Administrator shall provide, as necessary, methods for determining the proper acreage in the following cases:

(a) The farm operator has acted in good faith in reliance upon erroneous advice given by a representative of the State or county committee who is authorized to furnish information concerning the determination of acreage.

(b) Any method of planting the crop or any method of adjusting the crop or land use acreage which tends to defeat the program purposes.

(c) Other situations or planting patterns which are not otherwise provided for in this part.

PART 719—[AMENDED]

1. The authority citation for Part 719 is revised to read as follows:

Authority: 7 U.S.C. 1375, 1378, 1379, 1461–1469, and 1801 note.

2. Sections 719.2 through 719.8 are revised to read as follows:

§ 719.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

Acreage means the acreage of a commodity planted, considered planted, or both, if applicable, in one or more preceding years as required by applicable commodity regulations.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended, and applicable commodity regulations.

Applicable commodity regulations means the regulations for a crop of a particular commodity which are set forth in 7 CFR parts 723, 724, 725, 726, and 729 for wheat, feed grains, upland and extra long staple cotton, rice, tobacco, and peanuts.

Base means the acreage base for a crop on a farm which is determined in accordance with 7 CFR part 713.

Combination. Consolidation of two or more farms or parts of farms into one farm.

Committees—(1) *Community committee.* Persons elected within a community as the community committee under the regulations governing the selection and functions of Agricultural

Stabilization and Conservation county and community committees set forth in part 7 of this title.

(2) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees set forth in part 7 of this title, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

(3) *State committee.* Persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

County. County or parish of a State except that for Alaska, Puerto Rico and the Virgin Islands, county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

County Executive Director. Person employed by the county committee to execute the policies of the county committee and be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

Cropland. Land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest.

(2) Is not currently tilled, but it can be established that such land:

(i) has been tilled in a prior year; and

(ii) is suitable for crop production.

(3) Is currently devoted to one- or two-row shelterbelt planting.

(4) Is converted to water storage uses and that meets the criteria for acreage conservation reserve in accordance with 7 CFR part 1413.

(5) Is preserved as cropland in accordance with § 719.10 of this chapter. Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(i) Removed from agricultural production;

(ii) No longer suitable for production of crops;

(iii) Devoted to trees (other than those set forth in accordance with § 719.10 of this chapter or one- or two-row shelterbelt plantings) which were planted in the preceding year except that land planted to trees:

(A) From September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year.

(B) In the current year shall retain its cropland classification for the current year; or

(iv) No longer preserved as cropland in accordance with the provisions of § 719.10 of this chapter and does not meet the conditions in paragraphs (f) (1) through (5) of this definition.

Current year means the program year for which applicable allotments, quotas, bases, and acreages or other program determinations are established or considered.

Department. U.S Department of Agriculture.

Deputy Administrator. Deputy Administrator, or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Division. Dividing a farm into two or more farms or parts of farms.

Farm number. Serial number assigned to a farm by the county committee for the purpose of identification.

Federally owned land. Land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Landlord. A person who rents or leases farmland to another person.

OGC representative. Appropriate Regional Attorney or Attorney-in-Charge, Office of the General Counsel, U.S. Department of Agriculture, or other authorized representative of the Office of the General Counsel.

Operator. Person who is in general control of the farming operations on the farm during the program year.

Owner. A person who has legal ownership of farmland, including a person who is buying farmland under a purchase agreement.

Person. Individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Preceding year. Calendar year immediately preceding the current year.

Producer. Person who, as owner, landlord, tenant or sharecropper:

(1) Is entitled to share in the crops available for marketing from the farm or in the proceeds thereof, or

(2) Grows hybrid seed under contract.

Quota means the pounds allocated to a farm for a commodity as prescribed in the applicable commodity regulations.

Reconstruction. Change in the land constituting a farm as a result of combination or division.

Representative of the county committee. A member of the county committee or any employee of the county committee.

Representative of the State committee. Member of the State committee or any employee of the State committee.

Secretary. Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in his stead.

Sharecropper. A producer who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for his labor.

State Executive Director. Person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the State ASCS office, or the person acting in such capacity.

Substantive change means a significant modification in cropping practice, equipment, labor, accounting system or management with respect to a farming operation.

Tenant. (1) A person usually called a *cash tenant, fixed-rent tenant, or standing-rent tenant* who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or

(2) A person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator if he does not have control of the farm operation.

Tract means a unit of contiguous land under one ownership which is operated as a farm or part of a farm.

§ 719.3 Farm constitution.

(a) *Farms constituted under prior regulations.* Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (d) of this section.

(b) *Farms constituted for the first time or reconstituted hereafter.* With respect to the constitution and identification of land as a farm for the first time or the reconstitution of farms made hereafter, a farm shall include all land operated by one person as a single farming unit except that it shall not include land under any of the following conditions:

(1) Land under separate ownership unless:

(i) The county committee determines that all such land is nearly equal in productive capacity, and

(ii) The owners agree in writing, except that when an ownership tract is added to an existing farm consisting of tracts having different ownership interests, the owners of the tracts to which the tract is added need not file another written agreement.

(2) Land under a lease agreement of less than 2 crop years duration.

(3) Land across county lines when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, owner, or operator. However, this paragraph shall not apply if:

(i) All of the land is owned by one person and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same state and are owned by the same person if:

(A) A burley tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 719.4(e); or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally owned land except land acquired by an agency having the right of eminent domain and leased back to the former owner with uninterrupted possession.

(5) Federal-and State-owned wildlife land unless the former owner has possession of the land under a leasing agreement.

(6) Land constituting a farm which is declared ineligible to participate in a program under the regulations governing the program.

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties touch at a corner;

(ii) Counties are divided by a river;

(iii) Counties do not touch because of a correction line adjustment; or

(iv) The land is within 20 miles, by road, of other land that will be a part of the farming unit.

(8) For peanut quotas, land across:

(i) County lines when the peanut quotas established for the land involved cannot be transferred; or

(ii) State lines.

(c) *Location of farm for administrative purposes.* (1) If all land in the farm is located in one county, the farm shall be administratively located in such county.

(2) If the land in the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(3) Notwithstanding the provisions of paragraphs (c)(1) and (2) of this section, if the land in the farm is part of an Indian reservation and is operated by a grazing association, the farm may be administratively located in the county where such grazing association has its headquarters if the county committee involved and the farm operator agree to such location, provided the persons using the land do not reside thereon and the geographic features are such that administrative access would be more practical.

(d) *Required reconstitutions.* A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A substantive change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership.

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator; or

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit.

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quota or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located.

(7) One or more owners of the farm refuse to sign a contract to participate in the Conservation Reserve Program or other authorized conservation program administered by the Agricultural Stabilization and Conservation Service, while one or more owners on the same farm want to enter into such contract;

(8) In accordance with guidelines issued by the Deputy Administrator, land is sold for or devoted to nonagricultural uses;

(9) Notwithstanding the provisions of paragraphs (d)(1) through (d)(8) of this section, a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(i) Increase the amount of program benefits received;

(ii) Meet the acreage reduction requirements of production adjustment programs;

(iii) Avoid liquidated damages or penalties which are assessed under a production adjustment program;

(iv) Correct an erroneous acreage report; or

(v) Circumvent any other program provision.

§ 719.4 Guides for determining the land constituting a farm.

(a) *General.* In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. A brief explanation of these provisions is outlined in this section to assist committees in properly determining what land is to be included in a farm.

(b) *Ownership.* The county committee shall require specific proof where there is doubt as to ownership.

(c) *Family members.* Land owned by different members of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(d) *Parent corporations and subsidiaries.* All land which is operated as a single farming unit and which is owned and operated by a parent corporation and subsidiary corporations

of which the parent corporation owns more than 50 percent of the value of the outstanding stock (or which is owned and operated by such subsidiary corporations) shall be constituted as one farm.

(e) *Single farming unit.* Land which the committee determines is being operated by one person with cropping practices, equipment, labor, accounting system, and management substantially separate from that of any other unit shall be considered to constitute a single farming unit.

(f) *Operation.* In determining the constitution of a farm, the county committee shall satisfy itself that the operator will be in general control of the farming operations on the farm for the program year.

(g) *Productivity.* Combinations of land under different ownership shall not be permitted when the county committee determines that:

(1) The cropland on one tract is primarily irrigated and the cropland on the other tract is primarily nonirrigated; or

(2) The productivity of the land for producing wheat, feed grains, cotton, and rice is not substantially the same.

§ 719.5 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator of the farm. Any request for a farm reconstitution shall be filed with the county committee. The farm operator of each farm before reconstitution and the farm operator of each farm after reconstitution shall be notified of the action taken by the county committee. The owners of the farm before reconstitution and the owners of such farm after reconstitution shall also be notified. If the proposed reconstitution is approved, each notice shall show the program year for which the reconstitution will become effective for each allotment, quota, and base.

§ 719.6 Substantive change in farming operations, and changes in related legal entities.

(a) *General rule.* Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Meet the ACR requirements of production adjustment programs;

(iii) Avoid damages or penalties under an acreage reduction contract or statute;

(iv) Correct an erroneous acreage report; or

(v) Circumvent any other program provisions. In addition, no farm shall remain as constituted when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) *Determining substantive change.* In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) *Corporations and trusts.* Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 719.7 Reconstitution of allotments, quotas, bases, and acreages.

(a) *When to reconstitute.* Farms shall be reconstituted in accordance with this section as soon as it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred. For each farm reconstituted, the allotments, quotas, bases, and acreages shall also be reconstituted in accordance with the provisions of this part. County office records shall be corrected as necessary to reflect properly the basic data for each farm as reconstituted.

(b) *Effective dates of reconstitutions*—(1) *Allotment crops, quota crops, acreage base crops.* The county committee in accordance with instructions issued by the Deputy Administrator, shall determine the effective date of all farm reconstitutions.

(i) Reconstitutions of farms on which is grown a crop with respect to which producers must enter contracts with the Commodity Credit Corporation in order to participate in the annual commodity program for such crop will be effective for the current program year if initiated on or before the last day of the period during which producers may enter into such contracts, unless:

(A) The reconstitution would affect a producer adversely, as determined by the State committee,

(B) Crop acreages were reported before requesting the reconstitution and the producer will not be in compliance with the program unless the reconstitution is effective; or

(C) The county committee determines that a producer has filed an erroneous acreage report for the relevant program year and the reconstitution would have the effect of eliminating the erroneous acreage report.

(ii) For farms other than those specified in paragraph (b)(1)(i) of this section, a reconstitution will be effective for the current program year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(iii) No reconstitution shall be effective for the current program year with respect to reconstitutions that result from the combination of two or more farms that are initiated:

(A) After the last date on which producers may enter into contracts with respect to farms described in paragraph (b)(1)(i) of this section; or

(B) After the planting of crops on the farm began or would have begun with respect to farms described in paragraph (b)(1)(ii) of this section.

(iv) Notwithstanding the provisions of paragraph (b)(1)(i) and (ii) of this section, a division may be effective for the current program year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is:

(A) To avoid the statutes and regulations governing commodity programs;

(B) To obtain additional program benefits for the relevant crop year;

(C) To avoid the assessment of liquidated damages under a production adjustment contract;

(D) To eliminate a marketing quota penalty;

(E) To correct an erroneous acreage report;

(F) To gain allotment, quota, or base history protection;

(G) To plant excess acreage of a program crop in an acreage reduction program; or

(H) To avoid cross compliance requirements.

(2) *Agricultural Conservation Program.* The reconstitution shall not be effective for purposes of the Agricultural Conservation Program (ACP) for the current program year if the county committee has approved cost-sharing for a producer on the farm for the current program year unless:

(i) The parent farm on which cost-sharing was approved was not properly constituted at the time of approval, or

(ii) the county committee determines that some producer on the farm would not be eligible to participate in the ACP if the reconstitution is not made effective.

(3) *Misrepresentation.* Notwithstanding any other provision of this section, if the county committee determines that the farm was or was not reconstituted because of a misrepresentation by a producer, the farm shall be properly reconstituted, and the effective date of such reconstitution for all purposes shall be retroactive to the date the farm was improperly constituted.

(4) Reconstitutions of farms on which there is no cropland may be effective for the current crop year.

(c) *Adjustments and release and reapportionments.* Allotments, quotas, bases, and acreages for reconstituted farms resulting from the divisions or combinations of parent farms in accordance with this part are subject to the requirements governing:

(1) Adjustments from allotment and quota reserves fo the commodity;

(2) Released and reapportioned farm allotments and quotas; and

(3) Base adjustments. The application of these provisions shall be in accordance with the regulations governing the determination of allotments, quotas, and bases for the commodity involved.

§ 719.8 Rules for determining farms, allotments, quotas, bases, and acreages when reconstitution is made by division.

(a) *General.* The methods for dividing farms, allotments, quotas, bases, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution (including contribution-cropland and contribution-history), cropland, and history.

(b) *Estate method.* The estate method is the proration of allotments, quotas, bases, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, bases, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(1) Allotments, quotas, bases, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(2) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, bases, and acreages, such allotments, quotas, bases, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, bases, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(3) If allotments, quotas, bases, and acreages are not apportioned in accordance with the provisions of paragraph (b)(1) or (2) of this section, the allotments, quotas, bases, and acreages shall be divided pursuant to paragraphs (d) through (g) of this section, as applicable.

(c) *Designation by landowner method.* (1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, bases, and acreages between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section.

(2) If the county committee determines that allotments, quotas, bases, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, bases, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, bases, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landower may designate, as provided in this paragraph, the manner in which allotments, quotas, bases and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The heirs of an estate that acquire an interest in real property may use this method to designate the allotments, quotas, bases, and acreages for allocation to a tract of land which is sold before dividing the parent farm among the heirs in settling an estate. The designation by the administrator or executor of the estate shall not be accepted in lieu of a designation by the heirs.

(ii) Where the land of the parent farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the division of allotments, quotas, bases, and acreages.

(iii) Both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain allotments, quotas, and bases that are consistent with allotments, quotas and bases for similar farms in the same area having allotments, quotas, and bases with respect to the commodity or commodities involved, considering the cropland available for and adapted to producing the commodity. With respect to upland cotton and rice, in addition to the above provisions, both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain at least one-tenth acre of these crop acreage bases.

(iv) Where the part of the farm from which the ownership is being transferred was owned for a period of less than three years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than three years that part of the farm which has been owned for less than three years shall be considered as a separate farm and the allotments, quotas, and bases shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part which has been owned for three years or more.

(5) If ownership of the land is being transferred to a Federal or State government or agency thereof in accordance with the exercise of a right of eminent domain, the designation by landowner method shall not be used. If the land is acquired by eminent domain, the provisions of § 719.11 shall apply.

(6) The designation by landowner method is not applicable to:

(i) Burley tobacco quotas, or

(ii) Crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(7) The designation by landowner method may be applied at the owner's request to land owend by an Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, the Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4) of this section.

(d) *Contribution method.* The contribution method is the proration of a parent farm's allotments, quotas, and bases to each tract as the tract contributed to the allotments, quotas, and bases at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(1) *Allotments and quotas.* Unless the provisions of paragraph (b) or (c) of this section apply, the contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if ASCS records are available to show the contribution, unless the county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(2) *Bases.* (i) Unless the provisions of paragraph (b) or (c) of this section apply, the contribution method shall be used to divide crop acreage bases when:

(A) The farm being divided is the result of reconstitution by a combination which became effective with respect to the 1982 or subsequent crop year;

(B) A crop acreage base was established for one or more tracts at the time of combination; and

(C) Acreage did not exceed the crop acreage base in any year the farm was in combination.

(ii) The contribution method shall not be used to divide crop acreage bases when the county committee determines, with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of crop acreage bases considering available land, cultural operations, and changes in type of farming.

(e) *Contribution-cropland or contribution-history method.* In cases where the allotments, quotas, and bases are divided by the contribution method in accordance with paragraph (d) of this section and a division of a tract is required, the allotments, quotas, and bases shall first be apportioned among the parts of the tracts by the cropland or history method in accordance with paragraph (f) or (g) of this section and then apportioned to the tracts by the contribution method.

(f) *Cropland method.* The cropland method is the proration of allotments, quotas, bases, and acreages to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. For rice, the acreage of cropland that is available for the production of rice shall be considered the cropland of the parent farm and the separated tracts. The county committee shall verify or redetermine, if considered necessary, the cropland on the tracts of the parent farm before making the proration. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments, quotas, bases, and acreages which is more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract during the respective base period for the commodities produced on the farm. Notwithstanding any other provision of this paragraph, the allotments, quotas, bases, and acreages for a farm shall be apportioned on the basis of the cropland available for, and adapted to, the production of the commodity for which an allotment, quota, and base has been established for each tract if the owners of such farm file with the county office a written agreement as to the amount of available and adapted cropland and the county committee approves such agreement.

(g) *History method.* The history method is the proration of allotments, quotas, bases, and acreages to the tracts being separated from the farm on the basis of the acreage determined to be representative of the operations normally carried out on each tract during the respective base period for the commodities. The base period for each commodity shall be determined according to the applicable commodity regulations. The county committee may use the history method of dividing allotments, quotas, bases, and acreages when it:

(1) Determines that this method would result in the combination of allotments, quotas, bases, and acreages more representative than the cropland method of division of the operation normally carried out on each tract during the respective base period for the commodity, and

(2) Obtains written consent of all interested owners to use the history method. Notwithstanding any other provision of this paragraph, the county committee may waive the requirement for written consent of the owners for dividing allotments, quotas, bases, and acreages if the county committee determines that:

(i) The use of the cropland method would result in an inequitable division of the parent farm's allotments, quotas, bases, and acreages and the use of the history method would provide more favorable results for all owners; and

(ii) With respect to bases, the use of the history method will not result in a divided tract receiving a disproportionate share of the parent farm's base because of the rotation cycle or abnormal weather during the base period.

(h) *Variation in reconstituted allotments, quotas, and bases.* Allotments, quotas, and bases apportioned among the divided tracts pursuant to paragraphs (d) through (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or base determined under such subsections for the parent farm if:

(1) The owners agree in writing, and

(2) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(i) *Resulting farms of divisions with less than 1,000 pounds of burley tobacco.* If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in Part 723 of this title to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among immediate family members who are related to each other as father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, and the spouse of such individuals;

(2) By the estate method; and

(3) By contribution when tracts with the same owner are divided from a multiple ownership farm.

(j) *Divided acreages.* The acreages for divided farms shall be determined by using the same percentage figure as was used to apportion the allotments, quotas, and bases for the respective commodity.

(k) *Commodity yields.* For commodity yields, applicable commodity regulations shall apply.

(l) *Reconstitutions of farms under Conservation Reserve Program contract.* When a farm which is subject to a contract under the Conservation Reserve Program is reconstituted, the allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (b) through (g) of this section may be increased or decreased in accordance with instructions issued by the Deputy Administrator as necessary to ensure the effective operation of the Conservation Reserve Program.

Chapter XIV—[Amended]

1. Part 1413 is revised to read as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STABLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.

1413.1 Applicability.
1413.2 Administration.
1413.3 Definitions.
1413.4 Determining crop acreages.
1413.5 [Reserved]
1413.6 Farm program payment yields.
1413.7 Crop acreage bases.
1413.8 Notice of crop acreage bases and yields.
1413.9 Reconstitution of farms.
1413.10 Adjusting crop acreage bases.
1413.11 Planting flexibility.
1413.12–1413.48 [Reserved]
1413.49 Nature of contract.
1413.50 Contracting procedures.
1413.51 Required acreage reduction.
1413.52 Land diversion.
1413.53 Reduction in ACR.
1413.54–1413.59 [Reserved]
1413.60 Basic rules for ACR acreage.
1413.61 Eligible land.
1413.62 Ineligible land.
1413.63 Approved cover crops and practices.
1413.64 Use of ACR acreage.
1413.65 Control of erosion, insects, weeds, and rodents on ACR acreage.
1413.66 Orchards.
1413.67 Land going out of agricultural production.
1413.68 Wildlife food plots or habitat.
1413.69 Insufficient ACR acreage.
1413.70 Destroyed crop acreage.
1413.71 Late harvesting.
1413.72 Skip rows.
1413.73–1413.78 [Reserved]
1413.79 Eligible CU for payment land.
1413.80 Ineligible CU for payment land.
1413.81–1413.96 [Reserved]
1413.97 Participation in Conservation Reserve Program.
1413.98 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.
1413.99 [Reserved]
1413.100 Determination of farm payment acreage.
1413.101 General payment provisions.
1413.102 Advance payments.
1413.103 Disaster credit.
1413.104 Established (target) prices.
1413.105–1413.107 [Reserved]
1413.108 Deficiency payments.
1413.109 Timing and calculation of deficiency payments.
1413.110 Malting barley.
1413.111 Division of payments.
1413.112–1413.129 [Reserved]
1413.130 Eligibility for regular prevented planting and reduced yield payments.
1413.131 Regular disaster payment computations.
1413.132–1413.149 [Reserved]
1413.150 Provisions relating to tenants and sharecroppers.
1413.151 Successors-in-interest.
1413.152 Misrepresentation and scheme or device.
1413.153 Offsets and assignments.
1413.154 Payments by commodities and commodity certificates and refunds.
1413.155 Appeals.
1413.156 Performance based upon advice or action of county or State Committee.
1413.157 Paperwork Reduction Act assigned numbers.

Authority: 7 U.S.C. 1308; 7 U.S.C. 1309; 7 U.S.C. 1308a.

§ 1413.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple ("ELS") cotton, and wheat programs for the 1991 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) *Payment limitations.* In accordance with section 1001 of the Food Security Act of 1985, as amended, the total amount of certain payments which a "person" may receive in accordance with the programs set forth in this part may not exceed limitation of $50,000 for deficiency and diversion payments, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation payments (increased deficiency payments). The manner in which a "person" is determined for these purposes is set forth at parts 1497 and 1498 of this chapter.

(c) In accordance with the regulations in part 796 of this title, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 1413.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization

and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) A representative of CCC may execute a contract to participate in the wheat, barley, oats, corn, grain sorghum, upland and ELS cotton, and rice programs only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be a contract between CCC and the operator and any other producer on the farm.

§ 1413.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title governing the reconstitution of farms shall also be applicable except where those definitions conflict with the definitions set forth in this section.

Acreage conservation reserve (ACR) means the acreage which is required to be taken out of production and devoted to conservation uses.

Conserving uses shall mean all uses during a year of cropland as defined in part 719 of this title except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of oilseeds;

(iii) Any nonprogram crop;

(iv) Industrial and other crops;

(v) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title; and

(vi) Any acreage which is harvested for green chop, hay, silage or haylage in a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage designated to a program crop for payment purposes under § 1413.108 shall not be permitted.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with part 752 of this title;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program in accordance with part 704 of this title; or

(iv) The acreage is designated as acreage conservation reserve (ACR) acreage for the current year.

(v) Acreage which is subject to a restrictive easement which prohibits its use for program crops.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases;

(4) Any acreage which is determined to be ineligible in accordance with § 1413.62; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

Considered planted acreage for a crop means the following:

(1) With respect to the 1986 through 1990 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1991 and subsequent crop years, the sum of the following except that for farms participating in an acreage reduction, or land diversion program for the crop, the planted and considered planted shall be limited to the CAB for each crop for the crop year:

(i) Any acreage devoted to ACR for the crop under an acreage reduction, or land diversion program as set forth in this part or any other part;

(ii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 1413.103;

(iii) For farms on which producers are participating in an acreage reduction program for the crop, the acreage of crops designated for planted and considered planted purposes and conserving uses credited to the crop in accordance with § 1413.100;

(iv) For farms on which the ACR acreage has been reduced in accordance with § 1413.53, the smaller of the following, as determined in accordance with instructions issued by the Deputy Administrator:

(A) The amount of the reduction in ACR acreage; or

(B) The acreage of cropland on the farm which is not considered as being planted to a program crop under any other provision of this part;

(v) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 1413.97 due to participation in the Conservation Reserve Program in accordance with part 704 of this title.

(vi) For farms for which the acreage report filed in accordance with part 718 of this title reflects zero acreage of the program crop and which are not participating in an acreage reduction, or land diversion program for the crop, the planted and considered planted crop acreage shall equal the CAB of the crop. Specific crop acreage will not be used to protect planted and considered planted acres. Producers growing fruits and vegetables (including potatoes, dry edible beans, peas, and lentils), must not have planted in excess of normal plantings of such crops for the farm. The cropping history for fruits and vegetables (including potatoes, dry edible beans, peas, and lentils), shall be based on the higher of the farm's history of planting such crops in the last year or 3 years preceding the current year. Zero report provisions will be permitted only if the current year acreage of fruits and vegetables (including potatoes, dry edible beans, peas, and lentils), is equal or less than the farm's history for the last year or the 3 years preceding the current year.

(3) Acreage that is an amount equal to the difference between program crop permitted acres and planted acres, if the considered planted acreage is devoted to conservation uses, or the production of commodities permitted under the 0/92 or 50/92 programs for the 1991 through 1995 crops of wheat, feed grains, upland cotton, and rice;

(4) Acreage that is an amount equal to the difference between program crop permitted acres and planted acres, if the considered planted acreage is devoted to the production of commodities as permitted by § 1413.11;

(5) Both acreages of double-cropped program crops, oilseeds, and industrial or other crops used on flex acres will be used for planted and considered planted acreage.

(6) With respect to farms owned by the Farmers Home Administration for 1991 and subsequent crop years, an acreage equal to the crop acreage base established for the farm in accordance with instructions issued by the Deputy Administrator.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are excluded.

Cotton means upland cotton and ELS cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS)" cotton in this section, respectively, and excludes cotton not meeting such definitions.

Current year means the calendar year in which the crop with respect to which payment may be made under this part would normally be harvested.

Disposal deadline means the date or time by which an acreage of barley, wheat, oilseeds, or oats must be disposed of in order that such acreage will not be considered as barley, wheat or oats for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 1413.63 or as a conserving or conservation use.

Doublecropping means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Extra Long Staple (ELS) cotton. (1) Extra long staple cotton means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified in CCC: American-Pima; Sea Island; Sealand; all other varities of the Barbadense species of cotton and any hybrid thereof; and any other variety of cotton in which one or more of these varieties predominate.

(2) An annual review of counties designated as suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropriate. For 1991–1995 such counties are: Alabama; Bulter, Monroe, Arizona: Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, Yuma; California: Fresno, Imperial, Kern, Kings, Riverside, Tulare; Florida: Alachua, Escambia, Hamilton, Jefferson, Madison, Marion, Santa Rosa, Suwannee, Union; Georgia: Berrien, Brooks, Cook, Early, Thomas; Mississippi: Bolivar, Carroll, Coahoma, DeSoto, Hinds, Holmes, Humphreys, Issaquena, Lafayette, Leflore, Madison, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tunica, Warren, Washington, Yazoo; New Mexico: Chaves, Dona Ana, Eddy, Hildalgo, Luna, Otero, Sierra; Texas: Andrews, Bee, Bexar, Borden, Brewster, Cochran, Culberson, Dawson, Dimmit, El Paso, Frio, Gaines, Hockley, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Lynn, Medina, Pecos, Presidio, Reeves, Refugio, Terry, Uvalde, Ward, Yoakum, Zavala. Additional counties may be designated by CCC during the year as deemed appropriate, and a list of these counties will be available in State and county ASCS offices.

Farm payment acreage means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 1413.108(b).

Farm program payment yield means the yield for the farm which is determined by the county committee in accordance with § 1413.6 adjusted to reflect any determinations made with respect to such yield in accordance with part 780 of this title. 1985 farm program yield means:

(1) The yield for the farm which was determined by the county committee in accordance with regulations in this part which were applicable for the 1985 crop year; or

(2) The yield for the farm which is determined in accordance with instructions issued by the Deputy Administrator if no yield was determined for the farm for the 1985 crop year.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

Marketing year means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat, June 1–May 31.

(2) Cotton and rice. August 1–July 31.

(3) Corn and grain sorghum. September 1–August 31.

Maximum payment acres means 85 percent of the crop acreage base for the crop for the farm less the required ACR.

Minor oilseeds means acreages of sunflowers, safflowers, mustard seed, flaxeed, rapeseed and canola, that are planted or volunteered from which the seed is harvested.

Nonprogram crop means any crop other than a program crop, ELS cotton, oilseed, industrial or other crop as determined in accordance with instructions issued by the Deputy Administrator.

Oilseed means a crop of soybeans, sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by the CCC, other oilseeds.

Permitted acres means the crop acreage base minus the required ACR, plus the flex acres permitted according to the provisions of § 1413.11.

Person means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at part 1497 of this chapter for the purpose of administering maximum payment limitation provisions of the Food Security Act of 1985;

(2) The regulations found at part 796 of this title for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions) of the Food Security Act of 1985.

Planted Acreage for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 1413.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

Producer means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, or would have shared had the crops been produced.

Program Crop means a crop of wheat, corn, grain sorghum, oats, barely, upland cotton, and rice.

Rice means rice excluding sweat, glutinous, or candy rice such as Mochi Gomi.

Small grains means barley, oats, wheat, and rye.

Soybeans means any variety of soybeans which is planted regardless of the intended use.

Upland cotton means planted and stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

§ 1413.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreage planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator.

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield payment in accordance with the provisions of §§ 1413.130 and 1413.131 or failed acreage credit in accordance with the provisions of § 1413.105.

(4) Volunteer acreage of a crop that is harvested;

(5) Minor oilseed acres that are planted or volunteered from which the seed is harvested.

(6) Acreage planted to oilseeds which is not disposed of before the disposal date established for such a crop.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 1413.60 through 1413.71;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in part 718 of this chapter;

(4) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(5) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(6) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator.

(7) The acreage of barley, oats, wheat or rice which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer:

(i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date;

(ii) Destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain;

(iii) Does not obtain feed benefit from the crop;

(iv) Pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop; and

(8) Any acreage designated under the Conservation Reserve Program in accordance with part 704 of this title.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 1413.5 [Reserved]

§ 1413.6 Farm program payment yields.

(a) Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.

(1) The bushel or pound per acre farm program payment yield for the 1991 through 1995 crop years shall be the 1990 farm program payment yield established for the farm.

(2) If the 1990 farm program payment yield for a farm was less than 90 percent of the 1985 farm program payment yield for the farm, the deficiency payments for the crop shall be increased by the amount necessary to provide the same total return to producers as if the payment yield had not been reduced more than 10 percent below the 1985 program payment yield.

(3) If no farm program payment yield for a crop was established for the 1990 crop year, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program payment yields for similar farms in the county or other surrounding area.

(4) If separate irrigated and nonirrigated farm program payment yields were established for the 1990 crop, the farm program payment yield for the 1991 through 1995 crops shall be determined by:

(i) determining an irrigated acreage maximum (IAM) for the farm crop. This acreage represents the maximum acreage for which deficiency payments using the irrigated payment yield will be computed. The IAM shall not be changed for the 1991 through 1995 crop years. The IAM shall be the largest of the:

(A) The sum of the 1990 irrigated acreage planted for harvest and credited as conserving use for payment.

(B) The average of the sum of the 1988–90 irrigated acreage planted for harvest and credited as conserving use for payment.

(C) The result of dividing the 1990 irrigated acreage in paragraph (a)(4)(i)(A) of this section by the total acreage for both irrigated and nonirrigated practices and multiplying times the current year crop acreage base.

(D) The result of dividing the 1988 through 1990 average irrigated acreage in paragraph (a)(4)(i)(B) of this section by the average total acreage for both irrigated and nonirrigated practices and multiplying times the current year crop acreage base.

(ii) Multiplying the IAM determined according to paragraph (a)(4)(i) of this section times the 1990 irrigated farm program payment yield.

(iii) Subtracting the IAM from the current year crop acreage base and multiplying the result, not less than zero, times the 1990 nonirrigated farm program payment yield.

(iv) Totaling the results of paragraphs (a)(4) (ii) and (iii) of this section and dividing by the current year crop acreage base.

(5) When a farm program payment yield is determined in accordance with paragraph (a)(4) of this section, the yield shall be recomputed each year, based on the 1990 irrigated and nonirrigated farm program payment yields and the current year crop acreage base. If the current year crop acreage base is adjusted in accordance with § 1413.7, the farm program payment yield shall also be recomputed using the crop acreage base as adjusted.

§ 1413.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1991 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (d) and (e) of this section, the crop acreage base for each program crop of wheat, barley, corn, grain sorghum, and oats, for the 1991 and subsequent crop years, shall be the number of acres that is equal to the average of the acreage planted and considered planted to the program crop for harvest on the farm in each of the 5 crop years preceding the crop year.

(c) For upland cotton and rice, except as provided in paragraphs (c)(1) and (c)(2), (d) and (e) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted to such crop for harvest on the farm in each of the 3 crop years preceding such crop year.

(1) With respect to the 1991 crops of upland cotton and rice, if producers on a farm planted upland cotton or rice for the first time in 1989, and did not participate in the acreage reduction program established for the 1990 crop, the acreage base for the 1991 crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest in the 2 preceding crop years.

(2) With respect to the 1992 crops of upland cotton and rice, if producers on a farm planted upland cotton or rice for the first time in 1990, and do not participate in the acreage reduction program in 1991, the base for the 1992 crop shall be equal to the average of the acreage planted and considered planted in the 2 preceding years.

(d) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(e) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(f) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

§ 1413.8 Notice of crop acreage bases and yields.

The operator of a farm shall be notified in writing of the crop acreage bases and yields, which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 1413.9 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with part 719 of this title.

(b) The actual yield established for ELS cotton and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established for ELS cotton and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

§ 1413.10 Adjusting crop acreage bases.

(a)(1) A one-time forfeiture of all or a portion of a farm's crop acreage base shall be allowed in 1991 only, at the request of the owner and operator if:

(i) The farm is enrolled in an acreage reduction program established for a program crop for the 1991 crop year; and

(ii) The request for the permanent base reduction is filed no later than the end of the 1991 acreage reduction program signup period.

(2) With respect to farms on which a base forfeiture is requested and approved, the planted and considered planted history for each of the previous years which were used to establish the crop acreage base shall be reduced by the same percentage that the 1991 base was reduced.

(b) For the 1991 crop year only, producers shall be allowed to designate corn and grain sorghum CAB's as follows:

(1) The farm must be enrolled in both the 1991 corn and grain sorghum acreage reduction programs;

(2) Only the amount of CAB necessary to cover the planted acreage may be designated, and, the original crop acreage base will not be reinstated by crediting planted and considered planted acreage to the contributing CAB; and

(3) Producers requesting a CAB redesignation during the ARP sign-up may revise the number of acres transferred at any time until the final reporting date established for the farm for corn and grain sorghum.

(c) The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 1413.7(d) or § 1413.7 (b) through (d). Such a request shall not increase the acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) Crop acreage bases established in accordance with § 1413.7 may be adjusted in accordance with instructions issued by the Deputy Administrator to reflect the amount of high residue crops which must be planted by producers on the farm in order to comply with the approved conservation plan for the farm.

§ 1413.11 Planting flexibility.

(a) With respect to the 1991 through 1995 crop years, producers may plant for harvest on the established crop acreage base, a commodity, other than the specific program crop, without receiving a reduction in the crop acres planted and considered planted for the year as a result of planting the crop.

(b) Crops that may be planted for harvest on an established program crop acreage base include the following:

(1) Any program crop, except winter wheat producers selecting the special provisions for 1991 wheat specified in § 1413.50;

(2) Any minor oilseed;

(3) Any industrial or other crop as may be designated by CCC, and;

(4) Any other crop, except any fruit or vegetable crop (including potatoes and dry edible beans, peas, and lentils) that has not been designated as an industrial or other crop, or a crop for which no substantial production or market exists. A list of fruits and vegetables shall be available in the county ASCS offices.

(c) With regard to paragraphs (b)(1) through (4) of this section, the commodities that may not be planted on the program crop base acreages shall be available in the county ASCS offices.

(d) With regard to the crop base acreage, except as provided in paragraph (c) of this section, the quantity of crop acreage base that may be planted to a commodity, other than the specific program crop, may not exceed 25 percent of the crop acreage base.

(e) If on January 1 of any calendar year it is estimated by CCC that the national average price of soybeans during the subsequent soybean marketing year would be less than 105 percent of the nonrecourse soybean loan level, if soybeans were permitted to be planted on up to 25 percent of the program crop acreage base, then the maximum program crop acreage base that may be planted to soybeans may not exceed 15 percent of such acreage base.

(f) Producers of a program crop who are participating in the acreage reduction program for that program crop shall be allowed to plant such program crop in excess of the permitted acreage of the crop without losing loan, purchase, and payment eligibility for the crop if:

(1) The acreage planted to the program crop on the farm in excess of the permitted acreage does not exceed 25 percent of the crop acreage bases on the farm for other participating program crops; and

(2) The producer agrees to a reduction in the permitted acreage for the other program crops produced on the farm by the quantity equal to the overplanting.

(g) Producers of an original program crop, who plant for harvest on the established acreage base of such original program crop, another program crop, and who are not participating in an acreage reduction program for such other program crop, shall be eligible for loans, purchases, or loan deficiency payments for such other program crop on the same terms and conditions as provided in a production adjustment program established for such other program crop.

(h) Producers shall be eligible to receive loans, purchases, or loan deficiency payments in the case of other crops for which CCC has announced the availability of such benefits, if the producers:

(1) Plant such other program crop in an amount that does not exceed 25 percent of the crop acreage base established for the original program crop; and

(2) Agree to a reduction in the permitted acreage for the original program crop for the crop year.

(i) Flex acres can be double cropped, however an acreage of idled land or land devoted to approved conservation uses equal to the amount of acreage which is flexed must be present on the farm from the time the program crop is planted until the program crop is harvested.

§§ 1413.12–1413.48 [Reserved]

§ 1413.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the areage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR and the acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with parts 1421 and 1427 of this chapter. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the agreement to pay liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, or land diversion program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

(e) Producers who elect to rescind a contract to participate in an annual program, or producers who violate a contract, and the COC makes no determination of good faith, must pay liquidated damages to CCC as provided in CCC–477. Such producers shall be considered as nonparticipating in the acreage reduction program established for such crop.

(f) If a producer violates the provisions of this part or the COC–477, and the COC determines a good faith effort was made to comply, standard payment reductions will apply. The reduction will be calculated as the difference between the reported and determined acreage of the crop, multiplied by the program payment yield, multiplied by 50 percent of the established price for the crop.

§ 1413.50 Contracting procedures.

(a) *Signup.* (1) Acreage reduction and paid land diversion programs. Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the sign-up period for the acreage reduction and paid land diversion program.

(2) "0/92" provisions. If an acreage reduction program is in effect for wheat and feed grains and such producers devote a portion of the maximum payment acres for wheat and feed grains equal to more than 8 percent of such acreage to conservation uses, including the planting of oilseeds, such as canola, flaxseed, mustard seed, rapeseed, safflower, and sunflowers, and industrial or other crops as designated by CCC:

(i) Such portion of the maximum payment acres in excess of 8 percent of such acreage devoted to conservation uses shall be considered to be planted to wheat, barley, oats, grain sorghum, or corn, as designated by the producer.

(ii) Producers devoting a portion of the maximum payment acres to conservation uses, including the planting of oilseeds as designated by the Secretary, shall receive deficiency payments on the considered planted acreage at a per bushel rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency payment rate.

(iii) This provision shall be implemented in such manner that any adverse effect on agribusiness and other agriculturally related economic interests shall be minimized within any county, state or region. The total acreage that may be taken out of production may be restricted, considering the total quantity of acreage that has been removed or will be removed from production under other price support, production adjustment, or conservation program activities.

(3) "50/92" provisions. If an acreage reduction program is in effect for upland cotton and rice and producers devote a portion of the maximum payment acres for upland cotton and rice equal to more than 8 percent of such acreage to conservation uses, including experimental or industrial crops as designated by the CCC.

(i) Such portion of the maximum payment acres in excess of 8 percent of such acreage devoted to conservation uses shall be considered to be planted to upland cotton or rice for the purpose of determining the acreage on the farm required to be devoted to conservation uses; and,

(ii) Producers shall be eligible for payments with respect to such acreage, provided that the acreage producers plant to upland cotton and rice for harvest, or the sum of the acreage planted for harvest plus the acreage credited as prevented planted under § 1413.103 equals at least 50 percent of the maximum payment acres for the farm.

(iii) Producers devoting a portion of the maximum payment acres to conservation uses shall receive deficiency payments on the considered planted acreage at a per bushel or pound rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency rate.

(4) Producers may plant, subject to terms and conditions prescribed by CCC, all or any part of an acreage otherwise required to be devoted to conserving uses as a condition for receiving payments under the "0/92 or 50/92" provisions of paragraphs (a) (2) and (3) of this section, to any crop as may be authorized by CCC. Such list of authorized crops, if any, will be available in the county ASCS offices.

(5) *1991 Winter wheat provision.* With respect to the 1991 winter wheat crop that was planted in 1990, a producer may, when participating in the production adjustment program for the 1991 crop, participate in the program with the following modifications:

(i) The deficiency payment shall be the amount that the established target price of wheat exceed the higher of:

(A) The lesser of the national average market price received during the marketing year for the crop, or the national average market price received during the first 5 months of the marketing year for the crop, plus 10 cents per bushel, or

(B) The loan level determined for the crop, prior to any adjustments made by the Secretary with regard to the stocks to use ratio of the commodity for the marketing year of the crop.

(ii) The payment acres shall be the lesser of:

(A) The number of acres of the crop planted to the crop for harvest within the permitted acres, or

(B) 100 percent of the crop acreage base for the crop for the farm less the quantity of reduced acreage.

(6) *Producer eligibility.* (i) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with parts 1497 and 1498 of this chapter and instructions issued by the Deputy Administrator.

(ii) A minor will be eligible to participate in the program only if one of the following conditions exists:

(A) The right of majority has been conferred upon the minor by court proceedings;

(B) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(C) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(b) *Extension of signup.* The signup period determined and announced in accordance with paragraph (a) of this section may be extended for a producer or for all producers within a designated area under the terms and conditions announced by CCC in the event of the occurrence of a condition which is beyond the control of producers if CCC determines that such an extension will not affect adversely the administration of the respective program.

§ 1413.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(4) For wheat, feed grains, upland cotton and rice, the operator and each producer agree to devote to approved conservation uses an acreage of eligible land equal to the product of the acreage reduction factor announced by the Secretary, times the crop acreage base.

(5) For ELS cotton, the acreage of eligible land devoted to conservation uses shall be determined by dividing the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton, times the number of acres planted to such commodity, by the number of acres authorized to be planted to ELS cotton under the limitation established by the Secretary.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and any acreage which is required to be devoted to ACR in accordance with a land diversion program, plus any acreage planted in accordance with program provisions specified in § 1413.11;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.71 an acreage equal to the acreage reduction program percentage times the crop acreage base; and

(3) Otherwise comply with all program requirements.

§ 1413.52 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The amounts payable to producers, which may be determined by the submission of bids by the producers for the contracts, in such manner as may be prescribed or deemed appropriate. In accepting contract offers, the extent of the diversion to be undertaken by the producers and the productivity of the diverted acreage shall be considered.

(3) Whether advance program payments will be available;

(4) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(5) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.71 an acreage which is equal to the required diverted acreage.

(c) The total acreage to be diverted under such agreements in any county or local community shall be limited so as to not adversely affect the economy of the area.

§ 1413.53 Reduction in ACR.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with § 1413.1 of this chapter may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by:

(1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, excluding crops which are enrolled in a program, but with respect to which deficiency payments are not paid,

(2) Determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and

(3) multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction programs are in affect, the acreage required to be devoted to ACR in accordance with the acreage reduction programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction program on two or more farms, the producer may elect to have the reduction in ACR acreages under this program, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

§§ 1413.54–1413.59 [Reserved]

§ 1413.60 Basic rules for ACR acreage.

Except as set forth in §§ 1413.65 through 1413.71, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of §§ 1413.51 through 1413.52 must:

(a) Be eligible land in accordance with § 1413.61;

(b) Be devoted to approved cover or practices in accordance with the provisions of § 1413.63;

(c) Not be grazed or harvested, except as provided in § 1413.64; and

(d) Be cared for in accordance with the provisions of § 1413.65.

§ 1413.61 Eligible land.

(a) For 1991 and subsequent crop years, land designated as ACR acreage must:

(1) Meet the provisions of paragraph (b)(1) of this section, and

(2) either of the provisions of paragraphs (b)(2) or (b)(3) of this section.

(b) ACR Acreage must be cropland that:

(1) Meets the minimum size and width requirements of 5.0 acres and 1.0 chain (66 feet), respectively.

(i) one area per farm may be designated that is smaller than the requirements to complete the balance of required ACR, and:

(ii) entire permanent fields may be designated for ACR that are less then 5.0 acres.

(2) Was devoted to a small grain, row crop, or other crop planted annually, or perennial, or biennial crop planted in a rotation with another crop planted annually, in 1 of the last 5 years; or,

(3) Was cropland designated as ACR or CU for payment in any or all of the previous 5 years. Such cropland is eligible for ACR designation in the current crop year.

§ 1413.62 Ineligible land.

(a) Land designated as ACR acreage may not be land:

(1) That is designated:

(i) Under the Water Bank Program in accordance with part 752 of this title;

(ii) Under the Great Plains Conservation Program in accordance with part 631 of this title;

(iii) Under the Conservation Reserve Program set forth in accordance with part 704 of this title;

(iv) As land devoted to orchards, vineyards, nursery stock, or Christmas trees that were not planted in the current year or the fall of the preceding year.

(v) As ACR acreage for another program crop;

(2) For which a deficiency payment is or could be made for the program crop;

(3) That is acreage credited to the crop in accordance with § 1413.100;

(4) Used as turn areas, end rows, or headlands, except that these areas may be designated if both of the following apply:

(i) Minimum size requirements as specified in § 1413.61 are met; and

(ii) The county committee determines that the area was planted to a crop in 1 of the previous 5 years.

(5) That the producer does not have the authority to use, such as highway, railway, or other right-of-ways, airport buffer strips, or easements prohibiting production of crops.

(6) That is a converted wetland, as defined in part 12, land planted in violation of highly erodible land or wetland provisions, or highly erodible land, as defined in part 12, that does not have an approved Conservation Plan being actively applied.

(7) That the producer does not own, lease, or sharecrop.

(8) That is subject to a restrictive easement which prohibits its use for program crops.

§ 1413.63 Approved cover crops and practices.

(a) *Annual or Perennial Cover.* (1) Producers participating in an acreage reduction program for a program crop shall be required to plant 50 percent, but not exceeding 5 percent of the crop acreage base established for the crop, of the ACR acreage (or more at the producer's option) to an annual or perennial cover.

(2) This requirement shall not apply to arid areas, including summer fallow areas, as determined by CCC.

(3) If a producer elects to establish a perennial cover, and;

(i) The cover is capable of improving water quality and wildlife habitat, CCC shall make available cost-share assistance of not more than 25 percent of the approved cost of establishing the cover, and;

(ii) If the producer receives cost-share assistance with respect to the cover, the producer shall agree to maintain the perennial cover for a minimum of 3 years.

(iii) If cost-share is received in a year, cost-share is not available on any other acreage on the farm during the maintenance lifespan of the practice, unless the cover failed, or the required perennial cover requirements increase in subsequent years.

(4) CCC may permit all or part of the acreage to be planted to any crop as may be authorized by CCC. Such list of authorized crops, if any, will be available in the county ASCS office.

(5) State committees shall establish a final seeding date of not later than June 1 of the year, unless a later date is authorized by the Deputy Administrator.

(6) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(7) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section; and

(b) *Nationally approved cover crops and practices.* The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, fruits and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) *Locally approved cover crops.* Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, cotton, and fruits and vegetables.

(ii) The growing of corn, popcorn, and grain sorghum unless close sown and the producer agrees not to hay or graze such crops.

(iii) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(iv) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended as locally approved cover, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 1413.63(b).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to whether the practices will sufficiently protect the land from wind and water erosion.

§ 1413.64 Use of ACR acreage.

(a) *Haying and grazing.* Haying and/or grazing of acreage devoted to conservation uses and designated as ACR shall be allowed except:

(1) For a consecutive 5-month period between April 1 and October 31 as established by the State committee and,

(2) Locally approved cover crops.

(b) *Harvesting.* Except as provided in paragraphs (a) and (d) of this section, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) *Water Storage Uses.* (1) Land that has been converted to water storage uses shall be considered to be devoted to conservation uses if the land had been planted to wheat, feed grains, cotton, rice, or oilseeds in at least 3 of the last 5 years. The land shall be considered to be devoted to conservation uses for the period the land remains in water storage uses, but not to exceed 5 years.

(2) Land converted to water storage uses may not be devoted to any commercial use, including commercial fish production; and,

(i) The water stored on the land may not be ground water; and,

(ii) The farm on which the land is located must have been irrigated with ground water in at least 1 of the last 5 crop years.

(3) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens. Fees may be charged for hunting and fishing.

(d) *Emergency uses.* Notwithstanding the provisions of § 1413.64 (a) and (b), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county. Acreage that is irrigated or could be irrigated, that is not planted to alfalfa may not be excluded from emergency uses.

§ 1413.65 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 1413.66 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the eligibility requirements specified in § 1413.61 is eligible to be designated as ACR, if the trees were planted in the current year or fall of the previous year, but not in any succeeding year.

§ 1413.67 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must

establish that the land, in the absence of the program, would have been planted to a program crop.

§ 1413.68 Wildlife food plots or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 1413.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 1413.69 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in part 718 of this title, producers may destroy crops on an acreage to designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 1413.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 1413.63 as soon as practicable after destruction of the crop.

§ 1413.70 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS—578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 1413.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 1413.63 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of the failure to comply fully provisions of part 791 of this title.

§ 1413.71 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committee determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 1413.72 Skip rows.

The acreage between rows of the crop planted in an established skip row pattern as defined in Part 718 of this title is eligible for designation as either ACR or acreage with respect to which deficiency payments may be earned if:

(a) The skip is at least the larger of 4 normal rows or 150 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in §§ 1413.61 and 1413.79, except for the minimum size and width requirements.

(c) The area to be skipped between planted rows when classifying row crop acreage planted and the skipped area shall not be less than 30 inches.

§§ 1413.74–1413.78 [Reserved]

§ 1413.79 Eligible CU for Payment land.

(a) For 1991 and subsequent years, land designated as CU for payment acreage must:

(1) Meet the requirements of paragraph (b)(1) of this section; and,

(2) Either of the provisions of paragraphs (b)(2) or (b)(3) of this section.

(b) CU for payment must be cropland that:

(1) Meets the minimum size and width requirements of 5.0 acres and 1.0 chain (66 feet), respectively.

(i) One area per farm may be designated that is smaller than the requirements, to complete the balance of required CU, and

(ii) Entire permanent fields may be designated for CU that are less than 5.0 acres.

(2) Was devoted to a small grain, row crop, perennial, biennial, or other crop planted annually, in 1 of the last 5 years.

(3) Was cropland designated as CU for Payment or ACR acreage in any or all of the previous 5 years. Such land may be designated as CU for Payment in the current crop year.

(c) Erosion, insects, weeds, and rodents will be required to be controlled in a timely manner on CU for payment acreage as is required for ACR acreage in accordance with § 1413.65.

§ 1413.80 Ineligible CU for payment land.

Cropland designated as CU for payment may not be land that:

(a) is devoted in the current year to program or nonprogram crops.

(b) is devoted to CU crops that are harvested for seed in the current year.

(c) is credited for prevented planted acreage in the current year.

(d) is devoted to orchards, vineyards, nursery stock, or Christmas trees that were not installed in the current year or the fall of the preceding year.

(e) that the producer does not have the authority to use, such as right-of-ways, buffer strips, or easements prohibiting production of crops.

(f) that is hayed or grazed in violation of the contract.

(g) that is a converted wetland, as defined in part 12 of this title, or highly erodible land, as defined in part 12 of this title, that does not have an approved Conservation Plan being actively applied.

§§ 1413.81–1413.96 [Reserved]

§ 1413.97 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program formulated in accordance with sections 1231–1245 of the Food Security Act of 1985;

(1) The total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 1413.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a)(1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the crop acreage bases for the next crop year shall be computed in accordance with § 1413.7.

§ 1413.98 Compliance with part 12 of this title, highly erodible land and wetland conservation of this title.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 1413.101(e).

§ 1413.99 [Reserved]

§ 1413.100 Determination of farm program acreage.

(a) *Reporting.* As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with part 718 of this title that lists all crops and land uses which are subject to the acreage reduction program contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with part 718 of this title.

(b) *Designation to a program crop.* The operator shall designate on the report of acreage filed in accordance with part 718 of this title whether the acreage of crops designated for P&CP credit and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of crops designated for P&CP credit and conserving uses in accordance with instructions issued by the Deputy Administrator.

(c) *Repeat cropping.* With respect to farms with repeat cropping, which is the subsequent planting of the same crop on the same acreage after harvesting the original crop in the same crop year, the total plantings of the crop shall be considered as the crop acreage. Temporary yield reductions may be made by the county committee with respect to the acreage of the second planting if the yield originally established for the farm was based on a history of a single planting.

(d) *Planted and considered planted credit.* Producers planting a nonparticipating crop to an acreage that is less than the crop acreage base shall not be allowed to use Conserving Use acreage to receive planted and considered planted credit for the crop.

(e) Oilseeds planted or volunteered from which seed is harvested may be considered for P&CP credit.

(f) *Limitation.* On a farm, the sum of the acreage of crops designed for planted and considered planted credit and conserving uses credited to the crop shall not exceed the difference between the acreage base for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 1413.103, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(4) The total of all crops designated for planted and considered planted credit cannot exceed the CABs.

§ 1413.101 General payment provisions.

(a) *Issuance.* The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) *Failure to comply fully.* Except as otherwise provided herein and in part 791 of this title, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) *Payment due producer.* Subject to the provisions of the maximum payment limitation in accordance with § 1413.1 and the payment limitation regulations found at parts 1497 and 1498 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the payment acreage times the payment yield times the payment rate times the producer's share. If the producer is a partnership or joint venture, the payment calculation shall include the member's share of the partnership or joint venture to determine the amount charged against the member's payment limitation.

(d) *Payment declined or producer ineligibility.* If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section,

(1) Such payment or portions thereof shall not become available for any other producer on the farm.

(2) The producer who declined payment, or the producer's successor-in-interest, may request payment no later than December 31 of the year payment is earned.

(e) *Unearned payments and overpayments.* A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of part 1403 of this chapter.

(f) *Combined entities.* Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at parts 1497 and 1498 of this chapter, the controlled substance regulations found at part 796 of this title, or affiliated persons in accordance with the highly erodible land and wetland conservation regulations found at part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for paying any liquidated damages applicable under the contract.

(g) *Making payments.* When diversion or deficiency payments computed for two or more crops on a farm result in a determination that a payment is due to a producer for one crop but a refund of an unearned payment is due from the producer under the program for another crop, CCC shall, without regard to the regulations on setoffs and withholdings found at part 1403 of this chapter:

(1) Deduct the amount of the refund from the amount of the payment due;

(2) Pay the producer the remaining amount of the payment due, if any; and

(3) Provide the producer with an explanation of the payment computations and the basis for the reductions.

§ 1413.102 Advance payments.

(a) *General.* In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage reduction and land diversion program, if applicable;

(ii) Request the advance payment during the program enrollment period, and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) *Advance deficiency payments.* Advance deficiency payments will be made for crops as announced by the Secretary and shall be computed using the intended acreages of the crop furnished by the operator during the enrollment period. The announcement will specify the rates, manner, and time of payment.

(c) *Advance diversion payments.* Advance diversion payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d) *Refunds.* (1) The provisions of § 1413.101(e) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 1413.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 1413.101(e), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage reduction or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the earlier of the date such payment is refunded or the date of the first demand letter. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 1413.103 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of prevented planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the producer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for such crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and parts 1421 and 1427 of this chapter regardless of the permitted acreage for such crop.

§ 1413.104 Established (target) prices.

The established prices for the 1991 through 1995 crops shall be as follows:

(a) Barley; $2.36/bu.
(b) Corn; $2.75/bu.
(c) Upland cotton; $0.729/lb.
(d) Grain sorghum; $2.61/bu.
(e) Oats; $1.45/bu.
(f) Wheat; $4.00/bu.
(g) ELS cotton-1991; $0.996/lb.

1992–1995—will be established on 120 percent of the loan rate for ELS cotton.

§§ 1413.105–1413.107 [Reserved]

§ 1413.108 Deficiency payments.

(a) Upland and ELS cotton payment rate. The deficiency payment rate for the 1991 through 1995 crops shall be the amount by which the established (target) price exceeds the higher of:

(1) The national average loan rate established for the crop; or

(2) The national weighted average market price received by producers for the crop during:

(i) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(ii) The first 8 months of the marketing year for ELS cotton.

(b) Wheat, feed grains, and rice payment rate. (1) The deficiency payment rate for the 1991, 1992, and 1993 crops of wheat, feed grains, (except as provided for malting barley producers in accordance with § 1413.110), and rice, shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average price support level established for the crop; or

(ii) The national weighted average market price received by producers for the crop during the first 5 months of the marketing year. For barley, the national weighted average market price shall include only prices received by producers of barley sold primarily for feed purposes.

(2) The deficiency payment for the 1994 and 1995 crops of wheat, feed grains, and rice shall be the amount by which the established (target) price exceeds the higher of the:

(i) Lesser of:

(A) The national weighted average market price received by producers during the marketing year for the crop.

(B) The national weighted average market price received by producers during the first 5 months of the marketing year for the crop plus:

(1) 10 cents per bushel for wheat,

(2) 7 cents per bushel for corn, grain sorghum, barley, and oats,

(3) For rice an appropriate amount that is fair and equitable in relation to wheat and feed grains, as determined by CCC.

(ii) *The price support level determined for the crop.* For wheat and feed grains, such level shall be that determined before any adjustments.

(c) For wheat and feed grains, whenever the Secretary announces a reduction in the price support level for a crop because of stocks to use condition or to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (b) of this section. In such case, the amount of the deficiency payment rate, also known as emergency compensation payments, shall be the smaller of:

(1) The difference between the national average price support level for the crop before any adjustment by the Secretary and the national weighted average market price received by producers during the entire marketing year. For barley, prices received by producers of barley sold primarily for feed, or

(2) The difference between the national average price support level before any adjustment and the national

average loan rate after reduction by the Secretary.

(d) *Farm Program Payment Acreage.* The individual farm program payment acreage for wheat, feed grains, upland cotton, and rice shall be the smaller of the maximum payment acres or the acreage planted to the crop on the farm for harvest within the permitted acreage of the crop for the farm. However, if the acreage of the crop planted for harvest is less than 92 percent of the maximum payment acres for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the maximum payment acreage of the crop, minus the optional flex acres planted to other crops, as follows:

(1) For upland cotton or rice, the sum of:

(i) The acreage of the crop planted for harvest on the farm, and

(ii) The acreage credited to the crop in accordance with § 1413.50(a)(3), and

(iii) If a State or local agency has imposed in an area of the State or county a quarantine on the planting of cotton or rice for harvest, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments in accordance with § 1413.50(a)(3).

(2) For wheat and feed grains the sum of the acreage of the crop planted for harvest and conserving uses credited to the crop in accordance with § 1413.50(a)(2).

§ 1413.109 Timing and calculation of deficiency payment.

(a) Deficiency payments will be made to producers as follows:

(1) *Barley, oats, and wheat.*

(i) For 1991, 1992, and 1993 crops, the full amount shall be made as soon as practicable after December 1 of the current year.

(ii) For 1994 and 1995 crops, 75 percent of the estimated deficiency payment computed according to § 1413.108 and using the estimated 12-month average price shall be made after December 1 of the current year. The remainder of the deficiency payment computed using the actual 12-month average price shall be made as soon as practicable after July 1 following the current year.

(2) *Upland cotton and rice.* February 1 following the current year.

(3) *Corn and grain sorghum.*

(i) For 1991, 1992, and 1993 crops, March 1 following the current year.

(ii) For 1994 and 1995 crops, 75 percent of the deficiency payment computed in accordance with § 1413.108 and using the estimated 12-month average price shall be made as soon as practicable after March 1 following the current year. The remainder of the deficiency payment computed using the actual 12-month average price shall be made as soon as practicable after October 1 following the current year.

(4) *ELS cotton.* May 15 following the current year.

(b) *Emergency Compensation Payments.* If applicable, the increased deficiency payments for feed grains and wheat prescribed in § 1413.108(c) shall be made as soon as practicable after the following dates:

(1) Wheat.—(i) December 1, but not later than December 15, with respect to 75 percent of such estimated payment if the producer requested at the time of program enrollment that such an advance be made.

(ii) July 1, with respect to any remaining payment if such an advance payment has been made or if the producer has not requested such an advance payment.

(2) Barley and oats, July 1.

(3) Corn and grain sorghum, October 1.

(c) Deficiency payments shall be calculated in accordance with subsection 1413.101(c). However, no deficiency payment shall be made for any quantity of a crop with respect to which a reduced payment is made.

(d) Additional yield payments. If, with respect to each of the 1991 through 1995 crops of wheat, feed grains, upland cotton, or rice, 90 percent of the 1985 farm program payment yield exceeds the farm program payment yield for the farm established in accordance with § 1413.6, deficiency payments for such crops for each year shall be determined by multiplying the farm program acreage by 90 percent of the 1985 farm program payment yield by the deficiency payment rate. Such payments shall be made at the same time as deficiency payments are made to the producer.

§ 1413.110 Malting barley.

(a) Except in counties where the State committee determines, with the concurrence of the Deputy Administrator, that malting barley is not produced, an assessment for each of the 1991 through 1995 crop years will be levied on producers of malting barley who are participating in the price support and production adjustment program established for a crop of barley. The final deficiency payment for barley will be reduced by the amount of the assessment.

(b) The assessment per bushel will be the smaller of:

(1) 5 percent of the:

(i) State weighted average market price of malting barley produced on the farm, in those States where average market prices are available from the National Agricultural Statistics Service, or

(ii) The National average market price in all other States,

(2) The final deficiency payment rate.

(c) The assessment will be calculated on the toal production with respect to which deficiency payments are to be made unless: In the counties described in paragraph (a) of this section, all participating barley producers with planted acreage will be presumed to be producers of malting barley and subject to the assessment when final deficiency payments are computed. A producer who certifies on a form specified by the Deputy Administrator, and furnishes acceptable proof according to § 1413.6 (d) that:

(1) All production failed or was used for feed purposes, will receive the full deficiency payment with no assessment.

(2) Part of the production failed or was used for feed purposes, and part of the production was sold for malting purposes, the assessment will be calculated on the production sold for malting purposes.

(d) If the producer does not certify to the use of the barley before receiving the final deficiency payment made based on the 5-month average market price and the assessment is deducted, a certification of the use of barley made in accordance with paragraph (c)(1) of this section may be accepted by CCC by the later of:

(1) September 1 of the year following the year of production, or

(2) 30 days after redemption or forfeiture of barley under CCC loan.

(e) If the producer certifies and furnishes acceptable proof in accordance with paragraph (d) of this section, the payment shall be recalculated and a supplemental payment issued when applicable.

§ 1413.111 Division of payments.

(a) *General.* Each producer on a farm shall be given the opportunity to participate in the program for a crop in proportion to such producer's interest in the program crop on the farm or the interest such producer would have had if the crop had been produced. The name of all such producers shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of

BEST COPY AVAILABLE

the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.* Each producer's share of the farm program payment for a crop shall be based on the following:

(1) Cash lease. A lease will be considered a cash lease if it provides for a fixed commodity payment. A cash lease could be considered a share lease even though the tenant pays a cash advance as "good faith or earnest money", if the county committee determines that the amount paid in advance does not exceed one-half of the estimated value of the landlord's share of the crop. The rental agreement must be customary and reasonable for the area, as determined by the county committee.

(2) Share lease. If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced, or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(3) Adjustment by County Committee. A different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing and such division of payment would not circumvent the limitations provided in § 1413.1. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 1413.151.

(4) Hybrid seed corn growers with a contract with a seed corn company will receive payments based on the grower's percent of contribution. Payments will not be made with respect to the company's percent of contribution determined in accordance with Part 1497 of this title, unless the seed company wants to be classified as a producer.

§§ 1413.112–1413.129 [Reserved]

§ 1413.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield payments are authorized to be made to producers of wheat, feed grains, upland cotton and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 1413.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Prevented planting and failed acreage payments shall be computed in accordance with § 1413.131.

§ 1413.131 Regular disaster payment computation.

(a) *Prevented planting*—(1) *Payment rate.* The payment rate is one-third of the established (target) price as provided for in § 1413.104.

(2) *Acreage eligible for payment.* The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction requirement is in effect or on farms participating in a land diversion, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as provided in § 1413.6 times the prevented planting payment rate.

(b) *Reduced yield*—(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 1413.104.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6, and subtracting the determined production for the eligible acreage therefrom.

(3) *Determining production.* The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield prevented planted and failed acreage payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6 or the actual average yield from the harvested acreage of the crop.

§§ 1413.132–1413.149 [Reserved]

§ 1413.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless:

(A) Such tenant was living on the farm in the year immediately preceding the current year, or

(B) At least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 1413.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at part 707 of this title.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the country committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. The successor shall assume responsibility for refunding any unearned payments issued to the predecessor, if such refunds are required under the contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

(d) The total amount of payments that a successor may be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949, as amended, for wheat, feed grains, upland and ELS cotton, rice and oilseeds may not exceed $50,000 for deficiency and land diversion payments, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation (increased deficiency) payments.

(e) CCC will not execute a contract with a successor when the successor would earn more payments than the predecessor would have earned under the original contract.

§ 1413.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which tends to defeat the perpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with that contract. Such producer shall be ineligible to receive program payments for the year in which the scheme or device was adopted, and also in the succeeding year.

§ 1413.153 Offsets and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at part 709 of this title.

§ 1413.154 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with part 770 of this title.

(b) Whenever it is determined in accordance with § 1413.101 that a producer was overpaid or received payments that were not earned, and such payments were in the form of

commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 1413.155 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a community certificate issued in accordance with § 1413.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985 are not appealable.

§ 1413.156 Performance based upon advice or action of county or State Committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1413.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1413) will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of 44 U.S.C. Chapter 35.

2. A part 1414 is added to read as follows:

PART 1414—INTEGRATED FARM MANAGEMENT PROGRAM OPTION

Sec.

1414.1 General description of the program.
1414.2 Applicability.
1414.3 Administration.
1414.4 Definitions.
1414.5 Eligibility.
1414.6 Acreage enrollment.
1414.7 Contracts.
1414.8 Integrated farm management plan.
1414.9 Displacement of tenants or lessees.
1414.10 Bases and yields.
1414.11 Payments.
1414.12 Resource-conserving crops on ACR.
1414.13 Resource-conserving crops on payment acres.
1414.14 Payment acreage limitation.
1414.15 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.
1414.16 Successors-in-interest.
1414.17 Reconstitution of farms.
1414.18 Misrepresentation and scheme of device.
1414.19 Offsets and assignments.
1414.20 Appeals.
1414.21 Performance bases upon advice or action of county or State Committee.
1414.22 Paperwork Reduction Act assigned numbers.

Authority: 7 U.S.C. 5822.

§ 1414.1 General description of the program.

(a) The regulations in this part set forth the terms and conditions for the Integrated Farm Management Program Option (IFM), authorized by Title XIV of the Food, Agriculture, Conservation and Trade Act of 1990. The Secretary of Agriculture is authorized, in conjunction with the annual acreage reduction program, to establish a voluntary program under which producers may enroll all crop acreage bases on a farm in IFM to assist them in improving and conserving the soil and water of their farms by converting such land to resource-conserving crop rotations in accordance with an approved integrated farm management plan.

(b) The objective of IFM is to assist producers of agricultural commodities in adopting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resources stewardship practices and systems.

§ 1414.2 Applicability.

The provisions of § 1414.1 of this chapter shall be applicable to this part.

§ 1414.3 Administration.

(a) The provisions of § 1413.2 of this chapter shall be applicable to this part except as otherwise provided in this section.

(b) The Soil Conservation Service shall provide technical assistance to the producer for planning and implementing the resource-conserving crop rotation, erosion control, water management, and water quality components of the plan, and shall provide such other technical assistance in the implementation of the IFM as determined necessary.

(c) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the IFM.

§ 1414.4 Definitions.

The terms defined in part 1413 of this chapter and part 719 of this title shall be applicable to this part except as otherwise provided in this section.

Alternative crops means experimental and industrial crops grown in arid and semiarid regions that conserve soil and water, as determined by ASCS and made available in county ASCS offices.

Conservation plan means the document containing the decisions of producers with respect to the location, land use, tillage systems and conservation treatment measures and schedule of implementation. The conservation plan also includes plans which have been established on highly erodible cropland in order to control erosion on such land.

ES means the Extension Service, an agency of the United States Department of Agriculture which is generally responsible for coordinating the information and educational programs of the Department.

Farming operations and practices includes the integration of crops and crop-plant variety selection, rotation practices, tillage systems, soil conserving and soil building practices, nutrient management strategies, biological control and integrated pest management strategies, livestock production and management systems, animal waste management systems, water and energy conservation measures, and health and safety considerations.

Grass means perennial grasses commonly used for haying or grazing.

Highly erodible land means land that has an erodibility index of 8 or more.

Integrated farm management plan (plan), means a comprehensive, multiyear, site-specific plan that meets the requirements of § 1414.7.

Legume means forage legumes (such as alfalfa or clover) or any legume grown for us as forage or green manure, but not including any bean crop from which the seeds are harvested.

Resource conserving crop means legumes, legume-grass mixtures, legume-small grain mixtures, legume-grass-small grain mixtures, and alternative crops.

Resource-conserving crop rotation means a crop rotation that includes at least one resource-conserving crop and that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves water.

SCS means the Soil Conservation Service, an agency within the United States Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department.

Small grain shall not include malting barley or wheat, except for wheat interplanted with other small grain crops for nonhuman consumption.

Traditionally underplanted acreage means the difference between the producer's crop acreage base and the total of the acreage planted to the program crop, approved as prevented planted, and the part of the crop acreage base subject to an acreage limitation program or Acreage Conservation Reserve, except:

(1) In no case shall such acreage be less than zero, or

(2) In the case of a producer utilizing the 0/92 or 50/92 provisions set forth in § 1413.50 of this chapter, the term "*traditionally underplanted acreage*" means 8 percent of the producer's permitted acreage for such year.

§ 1414.5 Eligibility.

To be eligible to participate in the IFM, a producer must:

(a) Prepare for approval, a plan;

(b) Actively apply the terms and conditions of the plan;

(c) Devote to a resource-conserving crop, on the average through the life of the contract, not less than 30 percent of all crop acreage bases on a farm enrolled under such program;

(d) Comply with the terms and conditions of any annual acreage limitation program in effect for all crop acreage bases on a farm contracted in the integrated farm management program option;

(e) Keep such records as ASCS may require; and

(f) Submit a report of acreage in accordance with Part 718 of this title that list all crops and land uses which are subject to the contract for all cropland on the farm for the crop year.

§ 1414.6 Acreage enrollment.

(a) To the extent practicable, the total acreage enrolled in the program shall be no more than 3,000,000 acres of cropland during the years 1991 through 1995.

(b) Because of the limitation in paragraph (a) of this section, States will be given an allocation of acreage and National criteria will be used to rank applicants for enrollment in the program. Criteria will include the following:

(1) Acreage of highly erodible land in the proposed contract;

(2) Acreage of proposed resource-conserving crops in the proposed contract;

(3) Acreage of cropland in the proposed plan:

(4) Years in the proposed contract;

(5) Educational and demonstration value of the proposed contract; and

(6) Date of contract application.

§ 1414.7 Contracts.

(a) A producer shall enter into a contract with CCC for a period of not less than 3 years nor more than 5 years, which may be renewed upon mutual agreement between CCC and the producer.

(b) Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the annual acreage reduction program.

(c) The contract shall provide that producers on the farm must agree to devote to a resource-conserving crop, on the average through the life of the contract, not less than 30 percent of all crop acreage bases on a farm enrolled under such program.

(d) The contract shall provide that producers on the farm shall comply with the terms and conditions of any annual acreage reduction program in effect for all crop acreage bases on a farm contracted in IFM.

(e) The contract shall contain such other provisions as CCC determines appropriate to carry out the program established by this part.

(f) The contract shall provide for payment of liquidated damages and termination in the event that the operator or any other producers on the farm fail to comply with their obligations under the contract.

§ 1414.8 Integrated farm management plan.

(a) In implementing the provisions of this part, ASCS shall:

(1) Provide the producer and SCS:

(i) Crop acreage base information; and

(ii) The minimum required resource-conserving crop acreage.

(2) Provide the producer:

(i) The annual acreage reduction program options relative to program planning decisions; and

(ii) Assistance in evaluating acreage reduction program options in conjunction with plan.

(3) Provide SCS a copy of the producer's report of acreage.

(4) Provide SCS a copy of the farm's acreage reduction program contract and IFM contract approved by CCC.

(b) In implementing the provisions of this part, ES shall:

(1) Provide assistance to the producer, as requested, in developing integrated pest management guidelines if they are part of the plan.

(2) Provide assistance to the producer, as requested, in collecting and analyzing soil tests and in developing nutrient management guidelines if they are part of the plan.

(3) Provide assistance to the producer, as requested, with farm management record keeping.

(4) Provide advice, for maximizing the utilization of IFM to their farm operation.

(c) In implementing the provisions of this part, SCS shall:

(1) Develop the plan with the assistance of the producer.

(2) Assemble the various components of the plan.

(3) Provide technical assistance to the producer for planning and implementing the conservation plan, erosion control, water management, and water quality components of the plan.

(4) Spot check the plans to assure that the elements contained in the plan have been implemented and meet technical standards.

(5) Assist the producer in revising the plan to address changes in farm operations.

(d) The plan will contain elements that address:

(1) The specific acreage and crop acreage bases enrolled.

(2) Acreage and location of the resource-conserving crop for each year of the contract.

(3) Scheduling practices for the implementation, improvement, and maintenance of the resource-conserving crop rotation.

(4) A description of the farming operations and practices to be implemented and the impact of those practices on:

(i) Maintenance or enhancement of the overall productivity and profitability of the farm.

(ii) Erosion, soil fertility, and soil physical properties.

(iii) Water supplies.

(iv) Federal, state, and local requirements designed to protect soil, wetlands, wildlife habitat, groundwater, and surface water.

(5) The coordination of all soil and water resource plans applicable to the enrolled acreage.

(6) Other provisions as determined by the Deputy Administrator.

§ 1414.9 Displacement of tenants or lessees.

(a) Contracts and plans that will result in the involuntary displacement of farm tenants or lessees by landowners through the removal of substantial portions of the farm from production of a commodity shall not be approved.

(b) In the case of any tenant or lessee who has rented or leased the farm (with or without a written option for annual renewal or periodic renewals) for a period of two or more of the immediately preceding years, the refusal by a landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew such rental or lease shall be considered as an involuntary displacement in the absence of a written consent to such nonrenewal by the tenant or lessee.

§ 1414.10 Bases and yields.

Crop acreage bases or farm program payment yields shall not be reduced as

a result of the planting of a resource-conserving crop as part of a resource-conserving crop rotation implemented under the IFM.

§ 1414.11 Payments.

Farm program payments of participants in this program shall not be reduced as a result of the planting a resource-conserving crop as part of a resource-conserving crop rotation on payment acres.

§ 1414.12 Resouce-conserving crops on ACR.

(a) Acreage devoted to resources-conserving crops as a part of a resource-conserving crop rotation under this program may also be designated as ACR for the purpose of fulfilling any provisons under any acreage limitation program.

(b) ACR acreage devoted to perennial cover on which cost-share assistance for the establishment of the perennial cover has been provided, shall not be credited towards the producer's resource-conserving crop requirement under a contract.

(c) Acreage designated as ACR may be hayed and grazed, except during the 5-month period in each State during which haying and grazing of ACR is not allowed under § 1413.64 of this chapter.

(d) Barley, oats, or wheat as part of a resource-conserving crop, or any other resource-conserving crop on ACR may be harvested in kernel form.

§ 1414.13 Resource-conserving crops on payment acres.

Program pa[illegible]ents with respect to acreage enro[illegible] in the program shall not be paid t[illegible]roducer if such producer ha[illegible] grazes such acreage (excluding a[illegible]e designated as ACR):

(a) During the 5-month period in which haying and grazing of conserving use acres is not allowed under the provisons of § 1413.64 of this chapter; or,

(b) If the crop planted on such acreage includes a small grain, before the producer harvests the small grain crop in kernel form.

§ 1414.14 Payment acreage limitation.

(a) Producers enrolled in a resource-conserving crop rotation shall not be eligible to receive payment under such program on acreage equal to the average number of traditionally underplanted acres for the three years prior to enrolling in this program.

(b) For purposes of determining three years prior to enrolling in the program for "all in, all out rotation bases," the three previous crop years with crop acreage bases greater than zero shall be used.

§ 1414.15 Compliance with part 12, of the title, highly erodible land and wetland conservation provisions.

The regulations set forth in part 12 of this title are applicable to this part.

§ 1414.16 Successors-in-interest.

(a) The established successor-in-interest provisions of § 1413.151 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Successors not wanting to continue participation in IFM may terminate the IFM contract, without liquidated damages, after the current year.

§ 1414.17 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

§ 1414.18 Misrepresentation and scheme of device.

The misrepresentation and scheme and device regulations set forth in § 1413.152 of this chapter are applicable to this part.

§ 1414.19 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this chapter are applicable to this part.

§ 1414.20 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

§ 1414.21 Performance based upon advice or action of county or State Committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this aprt.

§ 1414.22 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and an OMB control number will be assigned.

Signed at Washington, DC on February 19, 1991.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service and Acting Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 91-4323 Filed 2-21-91; 9:31 am]

BILLING CODE 3410-05-M

federal register

Tuesday
February 26, 1991

Part VII

Department of Health and Human Services

Food and Drug Administration

Public Meeting; Food Labeling; Serving Sizes for Use in Nutrition Labeling; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0166]

Public Meeting; Food Labeling; Serving Sizes for Use in Nutrition Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss issues related to how serving and portion size should be determined and presented as part of nutrition labeling. This document outlines the issues to be discussed at the meeting and provides background information on those issues.

DATES: The meeting will be held on Thursday, April 4, 1991, 10 a.m. to 8 p.m. Should more time be needed, Friday, April 5, 1991, has been set aside for this purpose. Interested persons, whether or not they are able to attend, may submit written comments on the issues described in this notice by March 28, 1991, referencing the docket number found in the heading of this document. For information regarding written requests to make a presentation at the meeting see section V. Participation in the Meeting in the "Supplementary Information" below.

ADDRESSES: The meeting will be held at the first floor auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC. Submit written requests to make a presentation at the meeting to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Persons needing additional information about technical serving size issues to be addressed at the meeting should contact: Youngmee Park, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0089.

Questions about the public meeting should be directed to: Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 19, 1990 (55 FR 29517), FDA published a proposed rule entitled "Food Labeling; Serving Sizes" which proposed: (1) To define serving and portion size on the basis of the amount of food commonly consumed per eating occasion by persons 4 years of age or older, by infants, or by children under 4 years of age (toddlers); (2) to require the use of both U.S. and metric measures to declare serving size; (3) to permit the declaration of serving (portion) size in familiar household measures; (4) to permit the optional declaration of nutrient content per 100 grams (g) (or 100 milliliters (mL)); (5) to define a "single serving container" as that which contains 150 percent or less of the standard serving size for the food product; and (6) to establish standard serving sizes for 159 food product categories. The agency took this action to assure that the serving sizes used in nutrition labeling would be reasonable and uniform. The agency felt that such action was necessary to ensure that the nutrition labeling: (a) Would accurately reflect the nutrition content of the amount of food that is commonly consumed per eating occasion, and (b) would permit consumers to make nutritional comparisons among food products.

Interested persons were given until November 16, 1990, to submit comments to the agency on these proposed rules. Over 300 comments on this proposal were received by the agency.

The comments on the serving size proposal were primarily from consumers, health professionals and their organizations, and the food industry. Both consumers and health professionals overwhelmingly expressed the need for regulation of serving sizes and generally supported the provisions in the proposal. Industry comments generally expressed reservations about some parts of the proposal and discussed technical issues infrequently discussed by the other sectors. A primary concern that many consumer, health professional, and industry comments expressed was that serving sizes should be required in familiar household units to assure the usefulness of nutrition information to consumers. Comments from international sources raised issues related to food label harmonization.

Comments received by the agency concerning the July 19, 1990 serving sizes proposal may be seen at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday, 301-443-1751.

In addition to the comments received on the proposal, the agency must consider two other recent developments in deciding what action to take on serving sizes. On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 Amendments) (Pub. L. 101-535) which amended the Federal Food, Drug, and Cosmetic Act (the act) to require nutrition labeling of most foods regulated by FDA. As a result of the 1990 amendments, the act now states that serving size is: "An amount customarily consumed and which is expressed in a common household measure that is appropriate to the food, or, if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food." (21 U.S.C. 343(q)(1)(A)(i))

On September 26, 1990, the National Academy of Sciences' Institute of Medicine (IOM) issued a report entitled "Nutrition Labeling, Issues and Directions for the 1990s" (Ref. 1). The report, written under contract to the Public Health Service, U.S. Department of Health and Human Services (DHHS), and the Food Safety and Inspection Service, U.S. Department of Agriculture (USDA), makes several recommendations related to serving sizes.

FDA has concluded that several issues arising from the comments and the other recent developments require further public comment. Therefore, the agency is announcing an open public meeting on serving sizes and an opportunity to submit additional written comments in conjunction with that meeting. The meeting will only focus on five of the six major issues discussed in this announcement. Presentations that include supporting data for the viewpoint expressed on an issue will contribute most effectively to the meeting and will be most useful to the agency in developing a reproposal of the serving size rule.

II. Major Issues Related to Serving Size

Based on its review of the comments, the 1990 amendments, and the IOM report, FDA finds that six major issues related to serving size have emerged. In the discussion that follows, FDA is providing background on each of these major issues. For each issue, the agency will: (1) Identify the matters on which the agency requests additional information and data; (2) outline the applicable provisions in FDA's serving sizes proposal of July 19, 1990, the 1990 amendments, and the related recommendations in the IOM report; (3) briefly summarize the various viewpoints on the issue that were expressed in comments to the agency; and (4) identify those aspects of the issue on which discussion would be most helpful.

1. Standard Serving Sizes vs. Criteria for Determining Serving Sizes

The issue is whether FDA should establish standard serving sizes for specific categories of foods or develop criteria for food manufacturers to use in determining their own serving sizes.

a. *FDA proposal.* FDA proposed to establish standard serving sizes that would be required for use for food labeling for 159 food categories in § 101.12(b) (21 CFR 101.12(b)).

b. *Nutrition Labeling and Education Act of 1990 requirements.* As stated above, section 403(q)(1)(A)(i) of the act states that the serving size is the amount of food customarily consumed. In addition, the 1990 amendments, in section 2(b)(B), direct the Secretary of DHHS (and, by delegation, FDA), to adopt "regulations which establish standards, in accordance with [section 403(q)(1)(A)(i) of the act], to define serving size or other unit of measure of food."

c. *IOM report recommendations.* The IOM report was written before the passage of the 1990 amendments. However, the report did recommend that serving sizes should be standardized.

d. *Comments on the FDA proposal.* Consumers and health professionals generally supported FDA establishing serving sizes. Several food manufacturers and trade organizations have commented that the intent of the 1990 amendments is to require FDA to establish standards and criteria, not actual serving sizes, and that FDA should develop criteria that would result in useful nondeceptive serving sizes. Comments from a trade association stated that Government-imposed serving sizes would raise flexibility problems for industry without real benefit to consumers.

Some industry comments suggested very general principles, including the following: (1) nutrition information should be presented in the most useful manner to consumers; (2) serving size should bear a reasonable relationship to "customary" consumption; and (3) customary consumption should be determined on an individual package basis and should depend on how the product is packaged, positioned in the marketplace, and used by consumers.

e. *Matters for discussion.* Because this issue is essentially a legal issue that involves questions of statutory construction, FDA has concluded that it is not appropriate for the type of discussion that the agency expects at the public meeting. Therefore, no presentations on this issue will be allowed at the public meeting. FDA will, however, consider written comments on this issue.

The agency has carefully reviewed the 1990 amendments, their legislative history, and the relevant comments. Based on this review, the agency has reached a tentative conclusion about what the act requires. It is true that the act requires that the agency establish standards to define serving size. FDA tentatively interprets this requirement to mean that the agency must establish general principles so that the serving size means essentially the same thing from food to food. The other issues considered in this document will help the agency arrive at those principles.

Section 403(q)(1)(A)(i) of the act, however, as stated above, defines serving size as the amount of food customarily consumed. FDA interprets this provision to mean a specific amount for a particular type of food. While the agency recognizes that what "customarily consumed" means is open to debate, whatever that amount is will not vary from one manufacturer's product to another's. Thus, FDA tentatively concludes that it is appropriate for the agency to establish standard serving sizes.

FDA solicits written comments on its tentative position.

2. Basis for Determining Serving Sizes

The issue is whether, in determining serving (portion) sizes based on the amount of food customarily consumed, the agency should limit itself to national food consumption data or whether there is other information that should be considered.

a. *FDA proposal.* FDA proposed a set of standardized serving (portion) sizes for 159 food product categories for manufacturers to use in declaring nutrient content on their packages. The sizes were primarily based on USDA's 1977-1978 Nationwide Food Consumption Survey and represent commonly consumed amounts of foods. This amount of food was determined using the mean, or, where appropriate, median, consumed amount per eating occasion derived from the USDA survey.

b. *Nutrition Labeling and Education Act of 1990 requirements.* The 1990 amendments state that serving size "is an amount customarily consumed" without further specification for how the amount is to be determined (21 U.S.C. 343(q)(1)(A)(i)). The House Report on the 1990 amendments commented that the current information on serving size on many foods is extremely misleading. H. Rept. 101-538, 101st Cong., 2d sess. 18 (1990).

c. *IOM report recommendations.* The IOM report recommends that the quantities specified by dietary guidance recommendations should serve as the main criteria for selecting the amount of food that will serve as a standardized serving. It also recommends that manufacturers should be allowed to petition to allow a deviation or to create a new subclass of foods with its own serving size.

d. *Comments on the FDA proposal.* Consumers said little with regard to the methodology used to determine the proposed serving sizes. A consumer organization supported FDA methodology in determining serving sizes but recommended identification of any recent changes in food consumption based on data from the USDA 1987-1988 Nationwide Food Consumption Survey.

Health professionals generally supported the use of consumed amounts, but a few commented that it was unrealistic to calculate average amounts from food consumption data that includes all persons 4 years of age and older because of the large differences in the amount of food eaten. Some health professionals suggested basing serving sizes on food exchange lists such as those developed by The American Dietetic Association and the American Diabetes Association which are used in diabetic and other therapeutic diets (Ref. 2).

Industry comments contended that many serving sizes that now appear on food labels have been used for many years and are familiar to consumers. The comments also stated that some of the serving sizes in use were established cooperatively with FDA, that the vast majority of serving sizes used are consistent with the language and intent of the proposal, and that the proposal was developed with no input from industry and without research on consumers' understanding and use of serving sizes.

Some industry comments objected to the use solely of food consumption data to determine serving sizes on the basis that: (1) Food consumption data have known inaccuracies; (2) they are not the recommended amounts in terms of diet and health; (3) the amount per eating occasion does not reflect the multiple servings or "helpings" that may be consumed at a single eating occasion; and (4) the data used are more than a decade old and eating habits may have changed.

Industry comments also stated that the amount of food customarily or typically consumed is based on how a food is packaged and positioned in the marketplace (e.g., as a snack or entree), and that the average consumed amount is difficult to define for many food

products because of their many uses and varying consumption at different times of day. The baking industry and others pointed out that consumption of many products is based on a piece or unit (e.g., a slice of bread or a doughnut) rather than a specific weight of the food, and that many foods are packaged by consumable units that are not uniform in weight or volume.

One trade association supported the use of a more generalized approach based on the amount customarily consumed as reported in food consumption data, longstanding industry practice, and general industry consensus about what should be used.

e. *Canadian and other international regulations.* Official Canadian guidelines to industry on serving sizes are based primarily on food consumption data, serving sizes in Canada's Food Guide, current market units; and consumption practices (Ref. 3). Nutrition labeling guidelines from the Codex Alimentarius and proposed for the European community require nutrient information on the basis of 100 g, with optional listing of serving size (Refs. 4 and 5).

f. *Matters for discussion:* Discussion on this issue should focus on these topics:

(1) What does "customarily consumed" mean;

(2) Possible bases other than national food consumption survey data that could be used to determine the amount of a food that is customarily consumed;

(3) General principles or generalized approaches that could be used in conjunction with food consumption data;

(4) Data that demonstrate that changes in the use of longstanding industry serving sizes would be confusing to consumers;

(5) How "longstanding" industry serving sizes should be defined and data supporting the suggested definition;

(6) Data that demonstrate that the use of serving sizes used in USDA dietary guidance materials or in exchange lists would be more useful to consumers than the proposed serving sizes; and

(7) Data on research that has been conducted to determine how consumers understand and interpret serving sizes on food labels, including what kind of nutritional comparisons consumers make between products.

3. Units of Measure to Be Used in Serving Sizes

The issue is whether (a) weight units in addition to household measures should be required, and (b) how to standardize the definition of "household measures."

a. *FDA proposal.* FDA proposed in § 101.9(b)(3) to require that declaration of serving size (portion) in U.S. units (ounce (oz) or fluid oz) be followed by the equivalent metric quantity in parentheses (with weight expressed in g and volume in mL). In addition, the agency proposed that manufacturers could voluntarily declare, in parentheses, household measures such as cups, tablespoons, slices, and pieces.

b. *Nutrition Labeling and Education Act of 1990 requirements.* The 1990 amendments require the expression of 13 serving sizes in "a common household measure that is appropriate to the food," (21 U.S.C. 343(q)(1)(A)(i)), or, if the use of the food is not typically expressed in a serving size, "the common household unit of measure that expresses the serving size of the food" (21 U.S.C. 343(q)(1)(A)(ii)).

c. *IOM report recommendations.* The IOM report recommended that serving sizes be expressed in common household measures, followed in parentheses by the weight in g.

d. *Comments on the FDA proposal.* Consumers and health professionals strongly supported the use of household measures but said little about the use of additional measurements, although a few favored the use of only household measures. Many industry comments also supported the use of common household measures. However, continued use of oz or fluid oz was suggested by some industry comments for some categories (e.g., beverages, snacks, candies). The Canadian Government referenced their own serving sizes guidelines to industry, which are expressed in both metric measure and in household measure or unit of food (Ref. 3).

e. *Matters for discussion.* In light of the variability that is likely in household measures (e.g., pieces, slices), FDA continues to believe that a parenthetical listing of the weight equivalent to the household measure is required for compliance reasons. As explained in the proposal, because of variability in the size and weight of foods, FDA can check the declaration of nutrient content most accurately on the basis of weight or volume. Declaration of metric quantity would facilitate international trade, and consumers would not have to deal with 14 these measures when household and other familiar units are the required serving sizes.

Discussion on this issue should focus on the following topics:

(1) Whether the required weight should be in U.S. or metric measures. If metric measures are required, should U.S. measures be allowed to be declared voluntarily by manufacturers? Would there be benefit in requiring both U.S. and metric measures?

(2) There are no standardized definitions for "common household measure" or "common household unit of measure." Discussion is needed on what these terms should encompass (e.g., oz or fluid oz for use on some food categories such as beverages and snacks). On what basis can measurements such as cup, tablespoon, teaspoon, and their fractions be standardized?

4. Deviation Allowed From Standard Serving Size

The issue is (a) whether deviation should be allowed if standard serving sizes are required by regulations, and (b) if allowed, how much deviation.

a. *FDA proposal.* FDA proposed in § 101.12(b) to establish standard serving sizes that have specific weight or volume measures for 159 food product categories. No allowance was proposed for deviation from these specific measures. FDA proposed in § 101.9(b)(5) to require the rounding of the number of servings declared per package or container to the nearest 0.5 serving and allowed the indication of rounding by use of the term "about" (e.g., about 7 servings).

b. *Nutrition Labeling and Education Act of 1990 requirements and IOM report recommendations.* Neither the 1990 amendments nor the IOM report address an allowance for deviation in serving size.

c. *Comments on the FDA proposal.* The only comments that addressed this issue were from industry and the Health Protection Branch of Health and Welfare, Canada. Industry comments expressed the need for greater flexibility because of differences, for example, in package sizes and differences in size between pieces within packages. The Canadian guidelines to industry on serving sizes, which are voluntary, allow an established range for serving sizes (Ref. 2).

d. *Matters for discussion.* Because the 1990 amendments require serving sizes to be declared in common household measures that are less exact than weight measures, FDA believes that there may be a need to specify appropriate ranges for serving sizes. The agency may want to consider an approach that would allow manufacturers to list a serving size in household measure for a product with a weight that is allowed to vary within an established range of the serving size for that product category. The weight of a slice of pie, for example, would vary with the composition of the filling and the diameter of a pie.

Therefore, an established weight range for that product category might be appropriate. FDA is examining various ranges that could be proposed, but public comment would be useful in formulating such a proposal.

Discussion on this issue should focus on whether, and if so, how much, deviation from the standard serving size should be allowed. Comments that support an allowance for deviation from the standard serving size should address what might be a feasible range for various food categories, with supporting documentation.

5. Dual Nutrition Labeling With a Second Column on a Uniform Weight (or Volume) Basis

The issue is whether, in addition to nutrient content per serving, the nutrition label should allow (or require) a column that lists nutrient content on a uniform weight (or volume) basis, such as per 100 g and 100 mL or per oz and fluid oz.

a. *FDA proposal.* In addition to nutrient declaration on a per serving basis, FDA proposed in § 101.9(b)(6) to permit the voluntary declaration of nutrient and food component quantities on the basis of 100 g or 100 mL of the product in a separate, additional column to standard serving size.

b. *Nutrition Labeling and Education Act of 1990 requirements.* The 1990 amendments do not address this issue.

c. *IOM report recommendations.* The IOM report recommended that, given the alternatives (including a 100-g portion), serving should continue to be the reference unit for presenting nutrition information on foods. The report did not make any recommendation about the use of an additional column for a uniform measure.

d. *Comments on the FDA proposal.* Most comments from consumers and health professionals on the proposal did not directly address this issue, but a few comments from both groups expressed opposition to the additional column of nutrition information, primarily because they felt that the additional information would not be useful to consumers. Several industry comments suggested using a uniform unit of weight/volume (i.e., 1 oz or 100 g or mL) for all products, either with or in lieu of serving sizes. The international comments and a few other comments favored the use of metric units and cited the use of 100 g or 100 mL rather than servings in most international nutrition labeling. Several comments at public hearings that FDA held on food labeling in 1989 supported the use of 100 g or 100 mL, citing the contribution to international harmonization in food labeling.

e. *Matters for discussion.* In addition to contributing to international harmonization, the use of an additional column on a uniform weight or volume basis would allow consumers to make nutritional comparisons not only across different brands of the same food but also across all classes of food products. Thus, the additional column could serve as an educational tool for consumers who wish to make healthful food substitutions in their diets.

In addition, a column based on uniform measure may have special value to consumers when serving sizes are expressed in household measures, as is required by the 1990 Amendments. The use of household measures (e.g., per piece) instead of a standard weight (e.g., 6 oz) reduces the uniformity in serving sizes, making product comparisons more difficult. Furthermore, if a deviation or range in weight is allowed (as discussed under section II. 4. Deviation allowed from standard serving size.), uniformity in serving size will be further reduced. As seen in the examples provided in Table 1, it is difficult to compare the nutritional value of the three brands of pizza when serving size is based on pieces that vary in size. Table 2 shows clearly that a second column based on a uniform weight (e.g., 100 g) allows nutritional comparison across the three brands and shows that although they appear nutritionally different on a per piece basis, the three brands of pizza actually have the same nutritional composition.

BILLING CODE 4160-01-M

TABLE 1

Nutrition Labeling of Three Different Brands of Pizza per Serving in Household Measures

CHEESE PIZZA (BRAND A)	
(multi-serving package containing five individual pizzas, each weighing 4 oz)	
Serving size: 1 pizza (112 g)	
Servings per container: 5	
Calories	250
Calories from fat	50
Total fat	6 g
Saturated fat	3 g
Cholesterol	15 mg
Carbohydrate	35 g
Complex carbohydrate	28 g
Sugars	7 g
Dietary fiber	2 g
Protein	13 g
Sodium	600 mg
Percent of Daily Value:	
Vitamin A	15
Vitamin C	4
Calcium	25
Iron	8

CHEESE PIZZA (BRAND B)	
(multi-serving package containing one large pizza, net wt=23 oz)	
Serving size: 6 oz (168 g)	
Servings per container: about 4	
Calories	370
Calories from fat	70
Total fat	8 g
Saturated fat	4 g
Cholesterol	25 mg
Carbohydrate	52 g
Complex carbohydrate	42 g
Sugars	11 g
Dietary fiber	3 g
Protein	22 g
Sodium	900 mg
Percent of Daily Value:	
Vitamin A	25
Vitamin C	6
Calcium	35
Iron	15

CHEESE PIZZA (BRAND C)	
(single-serving package, net wt=9 oz)	
Serving size: 1 package (252 g)	
Servings per container: 1	
Calories	560
Calories from fat	120
Total fat	13 g
Saturated fat	6 g
Cholesterol	40 mg
Carbohydrate	78 g
Complex carbohydrate	63 g
Sugars	17 g
Dietary fiber	5 g
Protein	30 g
Sodium	1340 mg
Percent of Daily Value:	
Vitamin A	35
Vitamin C	8
Calcium	50
Iron	20

TABLE 2

Dual Nutrition Labeling of Three Different Brands of Pizza on a Household Measure Serving Basis and Per 100 g

CHEESE PIZZA (BRAND A)

(Multi-serving package containing five individual pizzas, each weighing 4 oz)

Serving size: 1 pizza (112 g)
Servings per container: 5

	Per serving	Per 100 g
Calories	290	260
Calories from total fat	50	45
Total fat	6 g	5 g
Saturated fat	3 g	3 g
Cholesterol	15 mg	15 mg
Total carbohydrate	35 g	31 g
Complex carbohydrate	28 g	25 g
Sugars	7 g	7 g
Dietary fiber	3 g	3 g
Protein	13 g	12 g
Sodium	600 mg	530 mg
Percent of Daily Value:		
Vitamin A	15	15
Vitamin C	4	4
Calcium	25	20
Iron	8	8

CHEESE PIZZA (BRAND B)

(multi-serving package containing one large pizza, net wt=23 oz)

Serving size: 6 oz (168 g)
Servings per container: about 4

	Per serving	Per 100 g
Calories	370	220
Calories from total fat	70	45
Total fat	8 g	5 g
Saturated fat	4 g	3 g
Cholesterol	25 mg	15 mg
Total carbohydrate	52 g	31 g
Complex carbohydrate	42 g	25 g
Sugars	11 g	7 g
Dietary fiber	3 g	2 g
Protein	22 g	12 g
Sodium	980 mg	530 mg
Percent of Daily Value:		
Vitamin A	25	15
Vitamin C	6	4
Calcium	35	20
Iron	15	8

CHEESE PIZZA (BRAND C)

(Single-serving package, net wt=9 oz)

Serving size: 1 pizza (252 g)
Servings per container: 1

	Per serving	Per 100 g
Calories	560	220
Calories from total fat	120	45
Total fat	13 g	5 g
Saturated fat	6 g	3 g
Cholesterol	40 mg	15 mg
Total carbohydrate	78 g	31 g
Complex carbohydrate	63 g	25 g
Sugars	17 g	7 g
Dietary fiber	5 g	2 g
Protein	30 g	12 g
Sodium	1340 mg	530 mg
Percent of Daily Value:		
Vitamin A	35	15
Vitamin C	8	4
Calcium	50	20
Iron	20	8

BILLING CODE 4160-01-C

Discussion on this issue should focus on the following topics:

(1) The agency seeks public discussion on whether an additional column for the declaration of nutritional content on a uniform basis has merit, and, if considered advantageous, whether such information should be voluntary or mandatory in nutrition labeling.

(2) Assuming a second column would be beneficial to consumers for making nutritional comparisons, what should be its basis, per 100 g (100 mL) or per oz (fluid oz)? Use of metric measure would contribute to international harmonization of food labeling. However, oz are more familiar to U.S. consumers, and many comments have stated that metric units are not useful to consumers.

6. Definition of Single-Serving Containers

The issue is (a) how single-serving-size containers should be defined, and (b) whether compliance with definitions for adjectival descriptors such as "low sodium" on single-serving containers should be based on the standard serving size or the entire content of a single-serving container.

a. *FDA proposal.* FDA proposed in § 101.9(b)(2) that a package containing 150 percent or less of the serving size in § 101.12(b) would be considered to be a single-serving container.

For compliance evaluation of adjectival descriptors, FDA proposed in § 101.12(f) that single-serving containers or packages containing 100 percent or less of the established serving would be evaluated on the basis of the standard serving established in § 101.12(b). However, for single-serving containers that contain an amount of food that is more than 100 percent, but less than or equal to 150 percent, of the established serving size, the agency proposed that the entire contents of the container would be the basis for determining whether the food meets the criteria for a descriptor.

b. *Nutrition Labeling and Education Act of 1990 requirements.* The 1990 amendments do not address this issue.

c. *IOM report recommendations.* The IOM report suggests that 50 to 150 percent of the commonly consumed unit would be an acceptable definition for a single-serving container.

d. *Comments on the FDA proposal.* When consumer comments addressed single-serving sizes, they usually supported the proposed definition, although some seemed confused by the discussion. A few favored the use of only one serving size for all package sizes. Health professionals' comments generally supported both the definition limit of 150 percent and relating the use of descriptors to the entire content of a single-serving container.

One consumer organization expressed concern about whether up to 150 percent as a single serving would allow manipulation of descriptors. Another consumer organization recommended that the definition be changed to 75 to 125 percent of the standard serving size and stated that for single-serving containers that do not contain the standard serving, consumers would be best off if the product were labeled with both single and standard serving size information.

One industry comment stated that a single serving should be 75 to 150 percent of the standard serving size, and that containers with 50 to 74 percent should be one-half serving. Some industry comments opposed the 150-percent rule on the basis that the same product would appear to be nutritionally different because of differing serving sizes.

Industry comments also pointed out that the same food product either could or could not be labeled with a descriptor depending only on size differences in containers; that the rule would present problems, for example, in shelf labeling where several sizes of containers appear together; and that this definition could be confusing to consumers. Industry comments, therefore, generally preferred that compliance for adjectival descriptors be based on the standard serving size for all sizes of containers. However, one comment pointed out that the label should inform the consumer of the basis on which a food qualifies for a descriptor.

e. *Matters for discussion.* FDA proposed to define a package containing 150 percent or less of the proposed standard serving sizes as a single-serving container based on FDA surveys that found that 150 percent would cover almost all packages whose contents are likely to be consumed at a single eating occasion. In addition, FDA also considered the 150-percent level to be reasonable because this cutoff is well within one standard deviation of the mean consumed serving size for most product categories. FDA did not set a lower limit for single-serving containers because the agency believed that manufacturers would not have an incentive to reduce single-serving containers to unreasonably small sizes when, as proposed, compliance for adjectival descriptors would be based on the standard serving sizes.

Discussion of this issue should focus on the following topics:

(1) The IOM committee and some comments recommended adding a lower limit to the definition for a single-serving container. Is a lower limit needed in this definition? If so, what should be the lower limit? What is the basis for the suggested limit?

(2) A few comments suggested lowering the upper limit for the definition of a single-serving container. Should the upper limit be changed to a lower value, e.g., 125 percent of the standard serving size? If so, what should be the revised upper limit? What is the basis for the suggested limit?

(3) As indicated in table 2, the nutritional content that is listed for a food would differ depending on whether the product is labeled on the basis of a standard serving size (brand B pizza labeled with the proposed 6-oz serving size), on the basis of a single-serving package that contains other than the standard serving size (brand C pizza in a 9-oz single-serving package), or on any other size not labeled with the standard serving size (brand A in a multiserving container that contains 5 individual pizzas, each weighing 4 oz). Are such differences in the listing of the nutrition content of the same food likely to be confusing to consumers, or might they be helpful to consumers? Any data that support the views presented on this question should be submitted to the agency.

(4) Under the proposed rule, the same food product that could be labeled as "low sodium" (or a similar adjectival descriptor) on the basis of a standard serving size might not qualify for "low sodium" labeling when packaged in a single-serving container containing between 100 percent and 150 percent of the standard serving size. For example, a 6-oz container of vegetable juice containing 130 mg sodium would meet the definition for "low sodium," but a 8.45-oz single-serving container of the same juice that contains 180 mg of sodium could not. Would such differences in application of descriptors be confusing to consumers, or could such differences in application be helpful to consumers? Any data that support the views presented on this question should be submitted to the agency.

(5) One possible solution to the issues raised in items (3) and (4) above would be to label single-serving containers that do not contain the standard serving size amount with the nutrition content in both the total container and in the standard serving size and to permit descriptor use based on the standard serving size. Would such an approach be useful to consumers? Any data that support the views presented on this question should be submitted to the agency.

(6) An alternative approach might be to provide a weighing factor on the label that consumers could use to determine the nutrition values based on a standard serving size (e.g., multiplying by a factor of 2/3 (or .667) for a single serving container that contains 150 percent of the standard serving size). Would the provision of a weighing factor to convert nutrition information on a single-serving container to the amounts in a standard serving size be useful to consumers?

III. USDA Issues

The Food Safety and Inspection Service of USDA is seeking advice, counsel, and recommendations on each serving size issue discussed in this notice, especially as each relates to meat and poultry products.

An issue on which the Food Safety and Inspection Service particularly seeks assistance is how to define serving sizes for meal-type items, such as dinners and entrees. Food consumption studies show that 80 to 90 percent of all meal-type products consumed are meat and poultry products that are produced under USDA inspection. The current Food Safety and Inspection Service definition for dinners specifies a minimum serving size of 10 oz and at least three components. The size requirement, although not the only criterion necessary to define meal-type items, is an important part of establishing a practical and meaningful definition of serving size for these items. In order to help in establishing a definition that is meaningful, the Food Safety and Inspection Service is particularly interested in information and suggestions that help answer the following questions:

Should nutrition information be based on a minimum serving size (eg. 10 oz)?

Should the nutrition information be based on the entire contents of a package?

How should standards for descriptors, such as "low fat" and "low cholesterol," be applied to meal-type products?

IV. The Public Meeting

FDA has scheduled the meeting for 1 day, on April 4, 1991, 10 a.m. to 8 p.m., at the first floor auditorium of the Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC. Should more time be needed, April 5, 1991, has been set aside for this purpose. The meeting will focus on the topics identified above and will be conducted in accordance with 21 CFR 10.65 (open public meeting).

V. Participation in the Meeting

Two copies of written requests to participate in the meeting should be submitted to the Dockets Management Branch (address above), by March 28, 1991, identified with the docket number found in brackets in the heading of this document.

The notice of participation should include the following:

(1) Typed or written name, affiliation (if applicable), address, and home and work telephone numbers (and FAX number, if available) of participant;

(2) Designation of issue for presentation (see section I. "B. Serving Size Issues," paragraphs 2 through 6);

(3) "Notice of Participation" printed or typed on the outside of the envelope.

FDA requests that those who wish to make a presentation at the meeting provide early notification to allow ample time for scheduling of presentations.

Presentations will be scheduled in the order of the issues as discussed above.

Each presentation will be limited to discussion of one of the five issues. Organizations, corporations, and other groups will be limited to a single presentation. Presenters will be allotted up to 5 minutes, which will be followed by a discussion period with the FDA panel and the audience. Individuals and organizations that do not submit a notice of participation but would like to testify will have the opportunity if time permits.

VI. Written Comments

In addition, interested persons may submit written comments on the issues discussed in this notice. Two copies of these comments must be submitted by March 28, 1991 to the Dockets Management Branch (address above). Submissions received may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday. While oral presentations from specific individuals and organizations will be limited to one issue, the written comments may contain information and discussion concerning any of the major issues. All relevant data and documentation should be submitted with the written comments.

Persons unable to attend the public meeting may submit two copies of written comments on the major issues to Dockets Management Branch (address above). The submission should be identified with the docket number found in brackets in the heading of this document. Written comments must be received by March 28, 1991.

The meeting will be open to all interested parties. Those individuals and organizations that submit a notice of participation will be given a specific time to make their presentation. The Commissioner of Food and Drugs or his designee will preside over the meeting. Lester Crawford, Food Safety and Inspection Service, USDA, will also participate in the meeting.

FDA will use the information that it receives at the meeting and written comments received in response to this notice, along with comments received in response to the July 19, 1990 proposal, in deciding what changes, if any, are necessary in the current serving size proposal. Therefore, it is not necessary for interested persons to resubmit comments that have been previously submitted. The agency intends to publish a reproposal on serving size before the statutory deadline of November 8, 1991. The agency hopes that a broad spectrum of the private and public sectors will participate in the meeting.

Any handicapped persons requiring special accommodations in order to attend the meeting should direct those needs to Naomi Kulakow at the address indicated above.

VII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Nutrition Labeling: Issues and Directions for the 1990s," 1990.

2. American Diabetes Association/The American Dietetic Association, exchange lists for meal planning, 1986.

3. Department of National Health and Welfare, Canada, Annex F., suggested serving sizes for the declaration of nutrient content, departmental consolidation of the Food and Drugs Act and of the food and drug regulations with amendments to May 3, 1990.

4. Codex Alimentarius Commission, Codex Alimentarius, vol. VI, Codex Standards and Guidelines for the Labeling of Foods and Food Additives, 2d ed., reference No. CAC/CL-1985, Food and Agriculture Organization of the United Nations/World Health Organization, 1986.

5. Council directive of September 24, 1990 on nutrition labeling for foodstuffs, "Official Journal of the European Communities," No. L 276/40, October 16, 1990.

Dated: February 20, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4497 Filed 2-21-91; 11:03 am]

BILLING CODE 4160-01-M

federal register

Tuesday
February 26, 1991

Part VIII

Department of the Interior

Bureau of Indian Affairs

Availability of a Final Environmental Impact Statement for Lease Sites on the Fort Mojave Indian Reservation, Clark County, Nevada and San Bernardino County, California; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of a Final Environmental Impact Statement for Lease Sites on the Fort Mojave Indian Reservation, Clark County, Nevada and San Bernardino County, California

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement (FEIS) for two proposed leases totalling approximately 2,200 acres on the Fort Mojave Indian Reservation for mixed residential, commercial and recreational development projects in Clark County (FES 91–4), Nevada and San Bernardino County, California, is available for final public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR part 1503 and 1506.10) to obtain comments from government agencies and the public on the FEIS.

DATES: Written comments should be received on or before March 22, 1991. Comments are solicited and should be directed to the BIA at the address provided below or to Carter Associates, Inc., Attention: Ms. Karen E. Watkins, 5080 North 40th Street, Suite 308, Phoenix, Arizona 85018. Telephone (602) 95[illegible]00.

ADDRESSES: Comments should be addressed to the Area Director, Mr. Wilson Barber, Jr., Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Area Environmental Quality Services, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001. Telephone number (602) 376–6781 or FTS 261–6781.

Individuals wishing copies of this FEIS for review should immediately contact the above individual or Carter Associates, Inc., at the telephone listed above. Copies of the FEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs, Department of the Interior, in cooperation with the Fort Mojave Indian Tribe and the Department of the Army Corps of Engineers has prepared a Final Environmental Impact Statement on the proposal to lease approximately 2,200 acres of the Fort Mojave Indian Reservation in Clark County, Nevada and San Bernardino County, California. The Fort Mojave Indian Tribe has developed a master land use plan for a planned community on their reservation lands in Nevada and a portion in California. The FEIS describes the proposed actions, alternatives, affected environment and evaluates the anticipated impacts of two proposed lease sites with each area to be leased to separate developers.

The Movada Group proposes to lease approximately 1,000 acres of Indian trust land for a period of 75 years under the terms and conditions of a lease agreement. The proposed action is development of a portion of the planned community to include three hotel/casinos, 2,007 residential units, 30 acres of RV spaces, two golf courses, a 75-acre lake, mixed office/retail uses, public facilities, a school, neighborhood park and other open spaces.

The American Land Development Corporation proposes to lease approximately 1,200 acres of Indian Trust land for a period of 90 years under the terms and conditions of a lease agreement. The proposed action for this lease site is the construction of a residential development adjacent to the Movada Group's proposal. The development would include 10,286 residential units, an 18-hole golf course, a community park with open-air amphitheater, neighborhood parks, mixed office/retail use and a school.

Both actions are designed to provide additional lease income for the Fort Mojave Indian Tribe and to provide employment opportunities for Tribal members. The current goals of the Fort Mojave Tribal Council include enhancement of economic development on the reservation, an increase in Tribal revenues, employment and training opportunities.

The principal alternatives for each proposed lease site under consideration have been analyzed and evaluated in the final document. The alternatives for the Movada Group 1,000 acre lease site are based on the following: (1) A traditional or standard hotel/motel strip design. This alternative would include the addition of one more hotel/casino and increasing the RV resort concept and would eliminate the golf courses, reduce the acreage of the lake and open space. (2) Another alternative proposed for the Movada Group site would be for the community acreage to be oriented towards seasonal visitors. There would be no hotels/casinos, golf courses or lake. The alternative is a proposed 1,000 acre planned RV resort and residential community with commercial/office support development.

The alternatives for the American Land Development Corporation 1,200 acreage lease site include the following: (1) Reducing the overall total residential dwelling units by 3,150 units. This alternative would be more dispersed and would reduce the population; (2) the second alternative would involve decreasing the overall total residential dwelling units by 5,252 (over 50% reduction). The total acreage would be reduced while increasing the open space. This alternative would create a less dense community and population.

Other government agencies and members of the public have contributed to the planning and evaluation of the proposals and to the preparation of this FEIS. The scoping process for the Spirit Mountain EIS consisted of two separate scoping phases. The first phase involved the publication of Notice of Intent (NOI) in the December 29, 1988, Federal Register for the Movada Group's 1,000 acre lease site proposal. An agency scoping meeting was held on January 10, 1989, in Las Vegas, Nevada to obtain input from interested Federal and State Agencies, while two open public scoping meetings were held on January 10, and 11, 1989, in Bullhead City, Arizona and Needles, California, respectively. In September 1989, a decision was made by the BIA to combine the Movada Group lease proposal and the American Land Development Corporation's 1,200 acre lease proposal into the same EIS document. A second NOI was published in the October 10, 1989, Federal Register referring to the additional lease site proposal. Another scoping meeting was held in Bullhead City, Arizona, on October 23, 1989, to solicit comments. A Notice of Availability (NOA) for a Draft EIS was published in the Federal Register on August 13, 1990. Public Hearings were held on September 11, 12, and 13, 1990, in Needles, California, Bullhead City, Arizona, and Phoenix, Arizona, respectively. The Draft EIS was available for public review and comment from August 13 to October 31, 1990.

Agencies and individuals are urged to provide comments on this Final EIS within 30 days. All comments received by March 22, 1991, will be considered in preparation of the Record of Decision (ROD) for these proposed actions.

This notice is published pursuant to § 1503.1 of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 et seq.), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: February 8, 1991.

Patrick A. Hayes,

Director, Office of Trust and Economic Development.

[FR Doc. 91–4470 Filed 2–25–91; 8:45 am]

BILLING CODE 4310–02–M

OL
56

SS
88

FE
26

991

MI

federal register

Tuesday
February 26, 1991

Part IX

The President

Memorandum of February 22, 1991—Memorandum for the Chairman of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development

BEST COPY AVAILABLE

Federal Register
Vol. 56, No. 38
Tuesday, February 26, 1991

Presidential Documents

Title 3—

The President

Memorandum of February 22, 1991

Memorandum for the Chairman of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development

By the authority vested in me as President of the United States by section 301 of Title 3 of the United States Code, I hereby delegate to the Chairman of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development the responsibility under section 1505(a)(2)(B) of P.L. 99–498 (20 U.S.C. 4412(a)(2)(B)) to publish in the **Federal Register** an announcement of the expiration of the terms of the presidentially appointed members of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development no less than 4 months prior to their expiration. The authority delegated by this memorandum may be further redelegated within the Institute.

The delegation of authority to the Secretary of the Interior by memorandum of June 22, 1988, is hereby rescinded.

This memorandum shall be published in the **Federal Register**.

George Bush

THE WHITE HOUSE,
February 22, 1991.

[FR Doc. 91–4709
Filed 2–25–91; 10:23 am]
Billing code 3195–01–M

Reader Aids

Federal Register

Vol. 56, No. 38

Tuesday, February 26, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3961-4172	1
4173-4522	4
4523-4706	5
4707-4926	6
4927-5150	7
5151-5304	8
5305-5646	11
5647-5738	12
5739-5922	13
5923-6260	14
6261-6548	15
6549-6788	19
6789-6938	20
6939-7298	21
7299-7550	22
7551-7782	25
7783-8100	26

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5617 (Superseded by 6245) ... 4921
5955 (Superseded by 6245) ... 4921
6123 (See 6245) ... 4921
6152 (See 6245) ... 4921
6243 ... 4701
6244 ... 4707
6245 ... 4921
6246 ... 4927
6247 ... 5305
6248 ... 5645
6249 ... 5739
6250 ... 6783
6251 ... 7551
6252 ... 7779
6253 ... 7781

Executive Orders:

10982 (Amended by EO 12748) ... 4521
11721 (Revoked by EO 12748) ... 4521
12154 (Amended by EO 12749) ... 4921
12748 ... 4521
12749 ... 4711
12750 ... 6785
12751 ... 6787

Administrative Orders:

Presidential Determinations:

No. 91-15 of January 15, 1991 ... 4713
No. 91-16 of January 16, 1991 ... 4715
No. 91-17 of January 16, 1991 ... 4717
No. 91-18 of January 22, 1991 ... 4169
No. 91-19 of January 23, 1991 ... 4171

Memorandums:

June 22, 1988 (see Memorandum of Feb. 22, 1991) ... 8099
Feb. 11, 1991 ... 6789
Feb. 22, 1991 ... 8099

5 CFR

531 ... 6204
550 ... 6205
553 ... 6205
572 ... 6204
591 ... 6208
831 ... 4929, 6549, 6552
842 ... 4929, 6549, 6552
890 ... 5647
930 ... 6208
2502 ... 5741
2637 ... 3961
2641 ... 3961

Proposed Rules:

297 ... 7819
531 ... 4562
532 ... 5959
536 ... 4562
591 ... 7902
772 ... 4562
831 ... 4562
842 ... 4562
846 ... 4562
870 ... 4562
890 ... 4562

7 CFR

17 ... 3966
47 ... 5151
51 ... 7553
301 ... 4931-4933, 5647, 7783, 7784
800 ... 4675
932 ... 4223
981 ... 5307
982 ... 5151
998 ... 4524
1001 ... 5306
1002 ... 5306
1004 ... 5306
1106 ... 5923
1210 ... 5924
1403 ... 6422
1421 ... 5741
1430 ... 4525
1806 ... 6939
1807 ... 6939
1900 ... 6939
1940 ... 6791, 6961
1941 ... 3971, 6795
1943 ... 3971
1944 ... 6939
1945 ... 3971
1951 ... 6939
1955 ... 6939
1956 ... 6939
1965 ... 6939

Proposed Rules:

55 ... 7592
56 ... 7592
58 ... 4951, 6584, 7747
59 ... 7592
70 ... 7592
210 ... 6297
215 ... 6297
220 ... 6297
235 ... 6297
245 ... 6297
275 ... 7747
319 ... 4180, 6297
425 ... 4738
718 ... 8044
719 ... 8044
777 ... 6994
911 ... 5367
915 ... 4953, 5367

966.....3963
968.....5161
981.....6996
1001.....4955
1002.....4955
1007.....4567
1093.....4567
1094.....4567
1096.....4567
1106.....4567
1220.....7594, 7597
1413.....6044
1414.....6044
1464.....6998
1496.....5161
1710.....6912
1941.....6315
1943.....6315
1945.....6315
1980.....4567

9 CFR

3.....6426
77.....7785
78.....4936, 4937
92.....5925
114.....7785
166.....7554
391.....7291

10 CFR

2.....7787
11.....5926
25.....5926

Proposed Rules:

Ch. I.....5665
715.....6319

12 CFR

201.....6555
203.....5746
229.....7799
265.....6261
614.....5927
1613.....5648

Proposed Rules:

229.....4743
271.....5778
611.....7747
614.....6422
619.....6422
620.....7747
621.....7747
701.....5061, 5859

13 CFR

121.....5747

Proposed Rules:

120.....5781
121.....5734
125.....5734

14 CFR

1.....5455
23.....5455
39.....3972, 3974, 4532, 4540, 5337–5343, 5749–5752, 6556, 6796–6806, 7555–7563, 7802
71.....5153, 5154, 5345, 6962
73.....5154, 5345, 5926
75.....5926
93.....4676
97.....5346

Proposed Rules:

Ch. I.....5164, 5781
21.....4581, 4758
23.....4581, 4758
39.....3963, 4581, 5368–5375, 5781, 6812, 6820, 7611–7624, 7820
71.....483, 4584, 4760, 4956, 5164, 5376, 5377, 6584–6593, 7625, 7626
75.....5165, 5378
91.....5576, 5580, 6594
108.....4322
121.....6542
129.....4328
135.....6542
158.....4878
161.....5576
243.....5665

15 CFR

799.....5649

Proposed Rules:

940.....5262

16 CFR

Proposed Rules:

Ch. II.....5965
436.....5783
1500.....6321

17 CFR

30.....6262
211.....4938
229.....7242
240.....7242
249.....7242
270.....7242
274.....7242

18 CFR

2.....5929
157.....7565
271.....4173
284.....6962
385.....4719

19 CFR

4.....4174, 7804
161.....5347

Proposed Rules:

162.....5665

20 CFR

302.....6966
348.....6966
404.....4542
416.....5534

Proposed Rules:

330.....4585
416.....7821
Ch. V.....6999
626.....5124
655.....5670
658.....5124
Ch. IX.....5124

21 CFR

5.....6263
102.....6263
161.....6263
172.....6968
510.....7805
546.....7805
1308.....5753

Proposed Rules:

60.....5784
101.....4675
104.....4675
105.....4675
135.....5731
211.....5671
808.....5731
820.....5965
1000.....7316
1002.....7316
1301.....3967, 4181, 4182, 6423
1304.....4181, 6423

22 CFR

171.....6968

Proposed Rules:

120.....6332
123.....6332
126.....6332
521.....4761

23 CFR

230.....4720

24 CFR

Subtitle A.....4412, 4436, 4458, 4494
91.....4480
200.....5349, 7518
203.....4476
215.....7518
221.....7518
234.....4476
235.....6264, 7518
236.....7518
247.....7518
290.....7518
590.....6807
760.....7518
813.....7518
880.....7518
881.....7518
882.....7518
883.....7518
884.....7518
885.....7518
886.....7518
887.....7518
888.....6558
900.....7518
904.....7518
905.....7518
913.....7518
960.....7518

Proposed Rules:

200.....6216
203.....6216
234.....6216
888.....6714
966.....6248

25 CFR

Proposed Rules:

23.....5568

26 CFR

1.....3976, 4542, 5062, 5455
301.....4676, 6969
602.....4676

Proposed Rules:

1.....5456, 5732
31.....3988, 4023, 4183–4243, 4588, 4770, 4956
42.....4589
43.....4590
48.....7827
301.....7001

27 CFR

Proposed Rules:

4.....4770

28 CFR

14.....4943
511.....4158
540.....4158
541.....4158

Proposed Rules:

36.....7452, 7494
524.....5302
540.....5303

29 CFR

697.....5944
1613.....6983
1926.....5061
2619.....6265
2676.....6266

30 CFR

243.....5946
710.....6224
901.....4542
916.....6559
917.....4721
931.....7806
935.....6983, 7810
936.....6266

Proposed Rules:

701.....4956
816.....4956
817.....4956
901.....7822
917.....4590, 6594
920.....6333
935.....6336, 6596, 6597, 7002
943.....4243
948.....6337

31 CFR

500.....5350
535.....6546
570.....5351
575.....5636

32 CFR

40b.....6565
199.....6268, 7300
221.....6711
247.....6273
381.....6273
619.....5651
701.....6985
706.....7565

33 CFR

117.....4175, 6277, 7302
165.....4559, 4943, 5155, 5156, 5754, 6277, 7303
334.....5300

Proposed Rules:

100.....7824
110.....5379
117.....4023, 4024, 5166
151.....4676, 6423
165.....7316
1222.....3978

34 CFR

74.....4675
80.....4675

36 CFR

217.....4721

1254.....5731
1256.....5651

Proposed Rules:

219.....6508

37 CFR

201.....7811–7814
202.....7812–7814
211.....7816

38 CFR

3.....4729, 5755, 5756
17.....5756
21.....7566
36.....5950

Proposed Rules:

3.....7830–7832
4.....7632
17.....4025

40 CFR

30.....7304
51.....5466, 6276
52.....4944, 5456, 5458, 5852, 5853, 5757, 6567
60.....4176, 5498, 5525, 5758
80.....5352
81.....5653
180.....4946, 6966
185a.....6967, 6969
228.....6569
260.....7134
261.....3978, 5910, 7134, 7567
264.....7134
265.....7134
266.....7134
270.....7134
271.....5656, 7134, 7305
300.....5699, 5834

Proposed Rules:

Ch. I.....4957, 5167, 5674, 5675, 7825
51.....5900
52.....5173, 5900
61.....6339
136.....5060
144.....4772
145.....4772
146.....4772
147.....4772
148.....4772
180.....4772, 4959, 5788, 6821, 7003
185.....5788
228.....4777

41 CFR

Ch. 101.....5356
201–4.....4947
201–9.....4947
201–18.....4947
201–20.....4947
201–23.....4947
201–24.....4947
201–39.....4947

Proposed Rules:

101–8.....5390

42 CFR

410.....4675

Proposed Rules:

Ch. I.....4961

43 CFR

4.....5061
20.....6991

Public Land Orders:

6403 (Corrected by PLO 6826).....5731
6826.....5731

44 CFR

64.....5951
65.....7306, 7307
67.....6279

Proposed Rules:

67.....5066, 6341

45 CFR

301.....7966
302.....7966
303.....7966
304.....7966
1235.....4730

Proposed Rules:

690.....5789

46 CFR

380.....3979
580.....6809
581.....6809
583.....6809

Proposed Rules:

15.....6568
16.....6778
580.....7634
581.....7634

47 CFR

0.....6582
2.....6991
15.....5658, 6288
61.....5952
73.....4176–4178, 4733, 4949, 4950, 5157, 5158, 7309–7311
80.....4734, 6582
90.....4178, 6991

Proposed Rules:

2.....7004
15.....7004
64.....4782
69.....5190
73.....4783–4785, 5191, 7317, 7318
76.....4027
90.....7635

48 CFR

570.....4734
Ch. 7, App. C.....7586
Ch. 7, App. D.....7568, 7586
Ch. 7, App. G.....7566
731.....7566
752.....7586
915.....5064
950.....5064
970.....5064
1501.....6288
1516.....6288
1537.....5957

Proposed Rules:

Ch. 2, App. C.....6054
Ch. 2, App. D.....6054
Ch. 2, App. T.....6054
201.....6054
204.....6054
215.....6054
217.....6054
223.....6054
225.....6054
237.....6054
239.....6054
241.....6054
242.....6054
244.....6054
245.....6054
252.....6054
253.....6054
522.....6600
552.....6600
901.....6826
904.....6826
906.....6826
909.....6826
914.....6826
915.....6826
922.....6826
933.....6826
936.....6826
942.....6826
943.....6826
952.....6826
970.....6826
971.....6826

49 CFR

1.....4560, 4736, 5957, 6809, 6810
27.....5811
172.....7312
173.....7312
385.....5362
541.....4736
571.....6288, 7569

Proposed Rules:

Ch. I.....6934
173.....7318
178.....7318
198.....7636
355.....7319
571.....5061, 5792, 6602, 6803, 7639, 7640, 7826
575.....7643
588.....6603
1033.....4028
1051.....7323
1220.....7323

50 CFR

611.....6290
652.....3960
661.....7312
672.....5158, 5775, 6992
675.....5859, 5775, 6290, 6993, 7314
683.....5159
685.....5159

Proposed Rules:

17.....4028, 5192, 6341–6353
18.....7645
23.....4965
91.....4591
216.....4029
301.....4029
611.....4029, 6614
658.....5792
672.....4029
675.....4029
683.....5675

In today's List of Public Laws.

Last List February 21, 1991

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion

Order Now!

The United States Government Manual 1990/91



As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy

Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

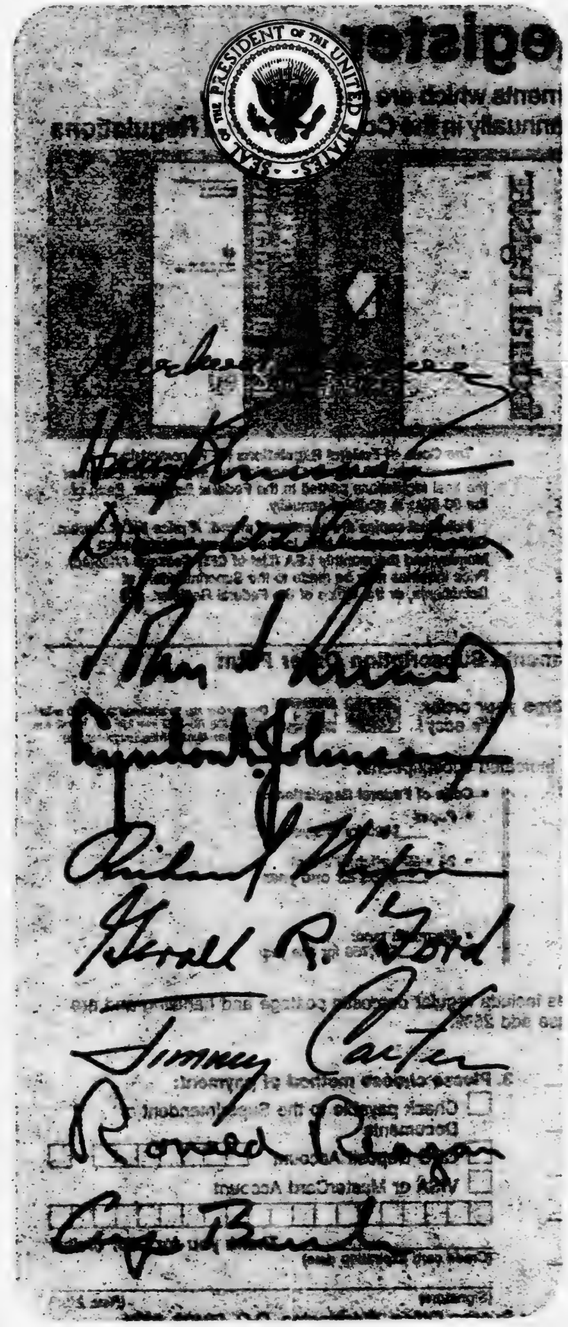
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 10-90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Jimmy Carter

1978 (Book I) $24.00
1979 (Book I) $24.00
1979 (Book II) $24.00
1980-81 (Book I) $21.00
1980-81 (Book II) $22.00
1980-81 (Book III) $24.00

Ronald Reagan

1981 ..... $25.00
1982 (Book II) $25.00
1982 (Book I) $31.00
1983 (Book II) $32.00
1984 (Book I) $36.00
1984 (Book II) $36.00
1985 (Book I) $34.00
1985 (Book II) $30.00
1986 (Book I) $37.00
1986 (Book II) $35.00
1987 (Book I) $33.00
1987 (Book II) $35.00
1988 (Book I) $38.00

George Bush

1989 (Book I) $38.00
1989 (Book II) $40.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.

(Rev. 2-91)

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index**.

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly LSA (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
***6463**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

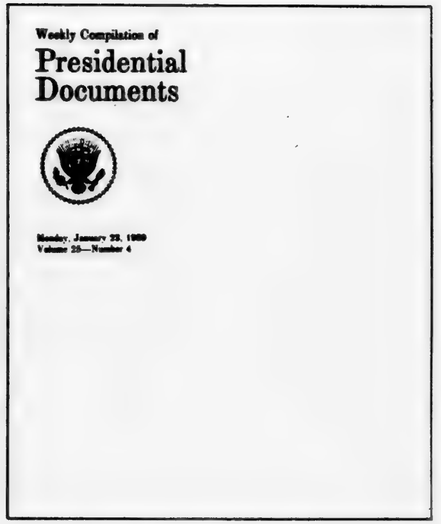
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6466**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6216

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me ____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

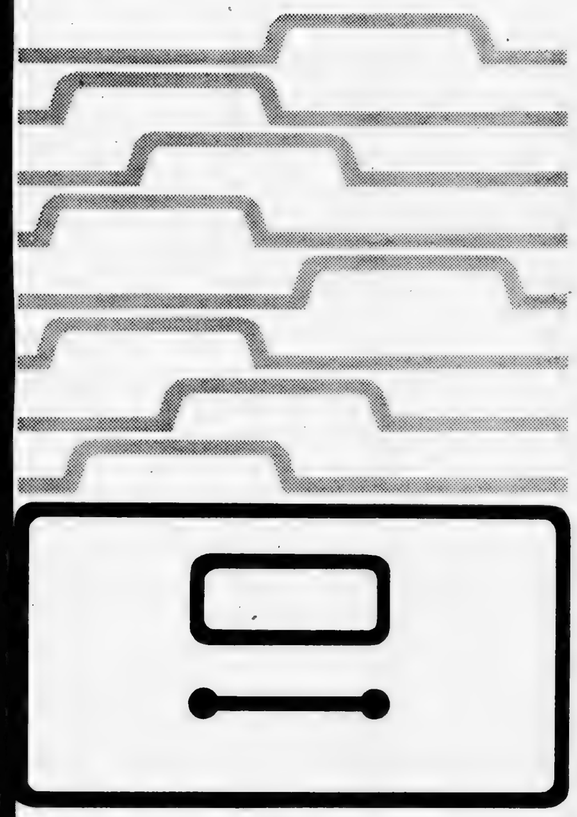
(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date) *Thank you for your order!*

_____
(Signature) 1/91

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: *6788

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-0019

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1990 SUPPLEMENT TO THE GUIDE, S/N 069-000-00025-8 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 8/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date) *Thank you for your order!*

_____
(Signature) 2-90

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code
* 6462

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:
____ Federal Register: ____ One year: $195 ____ Six months: $97.50
____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)

VOL
56

SS
38

FE
26

991

UMI

OL
56
SS
89
FE
27
991
MI

2-27-91
Vol. 56 No. 39

federal register

Wednesday
February 27, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
39
FE
27
991
MI

2-27-91
Vol. 56 No. 39
Pages 8101-8256

federal register

Wednesday
February 27, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Los Angeles and San Diego, CA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

LOS ANGELES, CA

WHEN: March 4, at 9:00 a.m.
WHERE: Federal Building, 300 N. Los Angeles St. Conference Room 8544 Los Angeles, CA
RESERVATIONS: 1–800–726–4995

SAN DIEGO, CA

WHEN: March 5, at 9:00 a.m.
WHERE: Federal Building, 880 Front St. Conference Room 4S–13 San Diego, CA
RESERVATIONS: 1–800–726–4995

Contents

Federal Register
Vol. 56, No. 39
Wednesday, February 27, 1991

Administration Office, Executive Office of the President
RULES
National security information; mandatory review for declassification, 8101

Administrative Conference of the United States
NOTICES
Meetings:
Administration Committee, 8161

Agricultural Marketing Service
RULES
Wool and mohair advertising and promotion, 8103

Agricultural Research Service
NOTICES
Patent licenses, exclusive:
ICI Americas, Inc., 8161

Agricultural Stabilization and Conservation Service
RULES
Wool and mohair advertising and promotion, 8103

Agriculture Department
See Agricultural Marketing Service; Agricultural Research Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Cooperative State Research Service; Farmers Home Administration; Rural Electrification Administration; Soil Conservation Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Citrus canker, 8101
PROPOSED RULES
Agricultural quarantine and inspection services; user fees, 8148

Antitrust Division
NOTICES
National cooperative research notifications:
United States Advanced Battery Consortium, 8218

Army Department
See Engineers Corps

Centers for Disease Control
NOTICES
Retrofits for farm tractors; adjustable rollover protective structures; acceptability; NIOSH meeting, 8204

Commerce Department
See Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; Travel and Tourism Administration

Commodity Futures Trading Commission
RULES
Commodity pool operators and commodity trading advisors:
Adjustment for additions and withdrawals to computation of rate of return in performance records, 8109
Foreign options transactions:
London, 8112
PROPOSED RULES
Commodity pool operators and commodity trading advisors; disclosure of past performance, 8161
NOTICES
Meetings; Sunshine Act, 8232
(5 documents)

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Amerex Corp., 8186

Cooperative State Research Service
PROPOSED RULES
National Environmental Policy Act; implementation, 8156

Defense Department
See Engineers Corps

Education Department
NOTICES
Meetings:
Education Intergovernmental Advisory Council, 8189

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Energy Information Administration; Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Contracting activities; unique simplified offeror representations and certifications procedures, 8145
NOTICES
Grant and cooperative agreement awards:
Confederated Tribes of Umatilla Indian Reservation, 8189
Natural gas exportation and importation:
Allied Producers Gas Service Inc., 8191

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 8189

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Manteo Bay project, Dare County, NC, 8188
Meetings:
Coastal Engineering Research Board, 8189

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 8130
Water pollution control:
Ocean dumping; site designations—
Gulf of Mexico, 8133
PROPOSED RULES
Toxic substances:
Significant new uses—
8-Acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triazaspiro[4.5]decane-2,4-dione, 8171
Alkane polyol phosphate ester, 8172
Polymer of maleic anhydride, benzenedicarboxylic acid and disubatituted alkylamine, 8173
NOTICES
Pesticide registration, cancellation, etc.:
Sodium 4,6-dinitro-o-cresylate, 8191
Public Information Reference Unit (PIRU) docket; temporary shutdown, 8193
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 8194

Executive Office of the President
See Administration Office, Executive Office of the President; Presidential Documents

Export Administration Bureau
RULES
Defense priorities and allocations system:
Authorized programs and delegate agencies, 8108

Farmers Home Administration
RULES
Program regulations:
Single family residential property, 8106

Federal Aviation Administration
RULES
Airworthiness directives:
Pratt & Whitney, 8107
PROPOSED RULES
Airworthiness directives:
Hoffmann Aircraft, Ltd., 8160

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona et al., 8142
Flood insurance; communities eligible for sale:
Connecticut et al., 8136
Georgia et al., 8137
Missouri et al., 8139
PROPOSED RULES
Flood elevation determinations:
Arkansas et al., 8174
NOTICES
Meetings:
Emergency Management Institute Board of Visitors, 8194

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Relicensing units of development; references, 8164
NOTICES
Applications, hearings, determinations, etc.:
American Electric Power Co. et al., 8190
Granite States Gas Transmission Inc., 8190
Northern States Power Co. et al., 8191
Owyhee Irrigation District, 8191
Public Service Co. of Oklahoma, 8191

Federal Maritime Commission
NOTICES
Agreements filed, etc., 8194
Complaints filed:
Orient Overseas Container Line, Inc. et al., 8194
Sea-Land Service, Inc. et al., 8195

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
American Community Bank Group, Inc., 8195
Bankers Trust New York-Corp. et al., 8195
Hardy, George William, et al., 8196

Federal Trade Commission
NOTICES
Cigarettes, domestic; tar, nicotine, and carbon monoxide content; report availability, 8196
Prohibited trade practices:
Budget Rent A Car Corp., 8203
Haverhills et al., 8203
Kraft, Inc., 8203
Miles Inc., 8204

Fish and Wildlife Service
NOTICES
Agency information collection activities under OMB review, 8213

Food and Drug Administration
NOTICES
High temperature migration study; availability, 8205
Human drugs:
Orphan drug and biological products—
Designations; cumulative listing, 8205

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Louisiana—
Avondale Industries, Inc.; shipbuilding facilities, 8182

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration

Health Care Financing Administration
NOTICES
Medicare:
Extracranial-intracranial arterial bypass surgery for stroke treatment or prevention; coverage withdrawal, 8206
Monthly actuarial rates and supplementary medical insurance premium rates (1991), 8208

Housing and Urban Development Department
NOTICES
Stewart B. McKinney Homeless Assistance Act; Title V implementation, 8212

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service

Internal Revenue Service
RULES
Income taxes:
Net capital and foreign currency losses attributable to periods after October 31 of taxable years of regulated investment companies; correction, 8130

International Trade Administration
NOTICES
Antidumping:
Racing plates (aluminum horseshoes) from Canada, 8183
Applications, hearings, determinations, etc.:
National Institute of Standards and Technology et al., 8184

International Trade Commission
NOTICES
Import investigations:
Scanning multiple-beam equalization systems for chest radiography and components, 8215
Silicon metal from China, 8216
Steel wire rope from India, 8217

Justice Department
See also Antitrust Division
NOTICES
Pollution control; consent judgments:
Marisol et al., 8218

Labor Department
See Mine Safety and Health Administration; Wage and Hour Division

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 8213

Mine Safety and Health Administration
PROPOSED RULES
Coal mine safety and health:
Underground coal mining—
Air quality, chemical substances, and respiratory protection standards, 8168
Federal Mine Safety and Health Act of 1977:
Civil penalties; criteria and procedures for proposed assessment, 8171

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Navarin Basin OCS—
Lease sale, 8213

National Aeronautics and Space Administration
NOTICES
Environmental statements; availability, etc.:
Outer solar system exploration program, 8219

National Credit Union Administration
NOTICES
Credit unions:
Community development revolving loan program, 8219

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 8146
PROPOSED RULES
Pacific Halibut Commission, International:
Pacific halibut fisheries, 8178
NOTICES
Permits:
Foreign fishing, 8185
Marine mammals, 8186

National Park Service
NOTICES
Environmental statements; availability, etc.:
Grand Canyon National Park, AZ, 8214
Meetings:
Chesapeake and Ohio Canal National Historical Park Commission, 8214
Delaware Water Gap National Recreation Area Citizens Advisory Commission, 8214
Jimmy Carter National Park Historic Site Advisory Committee, 8215

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Biotechnology Opportunities at NSF Advisory Panel, 8220

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 8232

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Consumers Power Co., 8220
Entergy Operations, Inc., 8221
University of—
Texas, 8223

Personnel Management Office
NOTICES
Retirement:
Federal Employee Retirement Systems—
Annuity factors; alternative forms, 8223

Postal Rate Commission
NOTICES
Post office closings; petitions for appeal:
Rock Point, MD, 8224

Presidential Documents
EXECUTIVE ORDERS
Agricultural Trade Development and Assistance Act of 1954 and Food for Progress Act of 1985; implementation (EO 12752), 8253

Public Health Service
See Centers for Disease Control; Food and Drug Administration

Research and Special Programs Administration
NOTICES
Meetings:
International standards on transport of dangerous goods, 8230

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 8232

Rural Electrification Administration
PROPOSED RULES
Electric loans, insured and guaranteed; general and pre-loan policies and procedures, 8234

Securities and Exchange Commission
RULES
Securities and investment companies:
Money market funds, 8113
NOTICES
Applications, hearings, determinations, etc.:
Colonial Advanced Strategies Gold Trust et al., 8224
Equus Investments II, L.P., 8225
Frederick's of Hollywood, Inc., 8226
Institutional Income Fund, 8227
Unified Income Fund, Inc., 8227
Western Digital Corp., 8228

Small Business Administration
NOTICES
Agency information collection activities under OMB review, 8228

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Blackwater River Watershed, VA, 8181

State Department
PROPOSED RULES
Longshore work by U.S. nationals; foreign prohibitions, 8167
NOTICES
Meetings:
Historical Diplomatic Documentation Advisory Committee, 8228

Transportation Department
See also Federal Aviation Administration; Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 8229
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 8229
Meetings:
Commercial Space Transportation Advisory Committee, 8229

Travel and Tourism Administration
NOTICES
Meetings:
Travel and Tourism Advisory Board, 8186

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 8230, 8231
(2 documents)
Meetings:
Environmental Hazards Advisory Committee, 8231

Wage and Hour Division
RULES
Fair Labor Standards Act:
Computer related occupations; exemption from minimum wage and overtime compensation requirements, 8250

Separate Parts In This Issue

Part II
Department of Agriculture, Rural Electrification Administration, 8234

Part III
Department of Labor, Wage and Hour Division, 8250

Part IV
The President, 8253

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
2500.....8101

7 CFR
301.....8101
1270.....8103
1922.....8106
Proposed Rules:
318.....8148
320.....8148
330.....8148
352.....8148
354.....8148
1710.....8234
3407.....8156

14 CFR
39.....8107
Proposed Rules:
39.....8160

15 CFR
700.....8106

17 CFR
4.....8109
30.....8112
230.....8113
239.....8113
270.....8113
274.....8113
Proposed Rules:
4.....8161
140.....8161

18 CFR
Proposed Rules:
Ch. I.....8164

22 CFR
Proposed Rules:
138.....8167

26 CFR
1.....8130
602.....8130

29 CFR
541.....8250

30 CFR
Proposed Rules:
56.....8168
57.....8168
58.....8168
70.....8168
71.....8168
72.....8168
75.....8168
100.....8171

40 CFR
52.....8130
228.....8133
Proposed Rules:
721 (3 documents).....8171–8173

44 CFR
64 (3 documents).....8135–8139
67.....8142
Proposed Rules:
67.....8174

48 CFR
914.....8145
915.....8145
952.....8145

50 CFR
672.....8146
Proposed Rules:
301.....8178

Rules and Regulations

Federal Register
Vol. 56, No. 39
Wednesday, February 27, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF ADMINISTRATION

5 CFR Part 2500

Information Security Regulations

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Final rule.

SUMMARY: The Office of Administration (OA) is amending the existing regulations in 5 CFR part 2500—Information Security Regulation to comply with the procedural requirements of Executive Order 12356, "National Security Information."

The amendments are necessary in order to identify Executive Order 12356 and the Information Security Oversight Office's (ISOO) Directive No. 1 as the basis for these regulations, and to amend part 2500 relating to mandatory review for declassification procedures. Section 2500.7 informs members of the public of the procedures to be followed in submitting requests for mandatory review for declassification and establishes internal processing procedures for such requests.

EFFECTIVE DATE: March 29, 1991.

FOR FURTHER INFORMATION CONTACT: Charles Easley, Security Officer, Office of Administration, 725 17th Street, NW., Washington, DC 20503 (202) 395-6206.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12356, "National Security Information," effective on April 2, 1982, requires that agencies which handle classified information promulgate regulations identifying the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures, and establish a monitoring system to ensure compliance. The Executive Order further requires that those portions of the regulations which affect members of the public to be published in the Federal Register.

The Office of Administration's Role With Classified Information

OA does not have original classification authority; however, it receives information classified by other agencies. These regulations establish procedures for handling such information. The Security Officer is required to develop and direct an agency-wide monitoring system to ensure effective implementation of Executive Order 12356. This includes, but is not limited to:

(1) Designating certain agency officials as custodians of all classified information;

(2) Developing an effective security education program that familiarizes employees with the requirements of the Order; and

(3) Establishes procedures for mandatory declassification review requests.

Waiver of Proposed Rulemaking

Publication of this document as a proposed rule for public comment is not required under 5 U.S.C. 553(b)(A) since the regulations relate only to agency procedures.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria established in the Order for major regulations.

List of Subjects in 5 CFR Part 2500

Classified information.

Bruce L. Overton,
General Counsel.

Title 5 of the Code of Federal Regulations is amended as follows:

PART 2500—INFORMATION SECURITY REGULATION

1. The authority citation for part 2500 is revised to read as follows:

Authority: Executive Order 12356, 3 CFR, 1982 COMP., p. 166.

2. Section 2500.7(b) is revised to read as follows:

§ 1500.7 Declassification and Downgrading.

* * * * *

(b) *Mandatory review for declassification.* (1) Requests for mandatory review of national security information contained in the records of any Executive Office of the President (EOP) agency for which OA provides services must be in writing and addressed to the Security Officer, OA, 725 17th Street, NW., Washington, DC 20503. Those agencies for which OA provides services include the Council of Economic Advisors, the Council on Environmental Quality, the Office of Administration, and the Office of the United States Trade Representative.

(2) The OA Security Officer will receive and monitor all requests for mandatory review for declassification of information as received by the EOP agencies named above.

(3) Requests for mandatory review for declassification of classified information contained in the records of any other Executive Office of the President agency for which OA provides services should be addressed directly to the agency which is the owner of the record, in accordance with that agency's published Information Security Regulation.

§ 2500.11 [Amended]

3. In § 2500.11 "Executive Order 12065" is removed and "Executive Order 12356" is added in its place.

[FR Doc. 91-4628 Filed 2-26-91; 8:45 am]
BILLING CODE 3110-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-008]

Citrus Canker Regulations; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are affirming, with one change, an interim rule that amended the citrus canker regulations by adding an area in Highlands County, Florida, to the list of areas quarantined because of citrus canker, and by designating an

area surrounding the quarantined area as a survey area. This action imposes certain restrictions on the interstate movement of regulated articles from this area.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective November 21, 1990, and published in the **Federal Register** on November 29, 1990 (55 FR 49501-49502, Docket Number 90-221), we amended the citrus canker regulations (7 CFR 301.75 *et seq.*, "Subpart—Citrus Canker" (referred to below as the regulations) by adding an area in Highlands County, Florida, to the list of areas quarantined because of citrus canker, and by designating an area surrounding the quarantined area as a survey area. Comments on the interim rule were required to be received on or before January 28, 1991.

We received one comment, from the Florida Department of Agriculture and Consumer Services, advising us of modifications needed to accurately describe the new survey area. We agree, and have corrected the error in this document. The facts presented in the interim rule still provide a basis for this rule. Therefore, we are affirming the provisions of the interim rule with the change noted above.

Effective Date

The provisions of the interim rule have been in effect since November 21, 1990. This document simply affirms them and corrects the description of the survey area. Pursuant to the provisions of 5 U.S.C. 553, we are making this final rule effective upon publication to allow immediate correction of the survey area description. We believe this is necessary to prevent confusion in the enforcement of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

As a result of the interim rule, an additional area of Florida, in Highlands County, was designated as a quarantined area, and restrictions are being imposed on the interstate movement of regulated articles from the quarantined area. The entities in the quarantined area affected by this action are three citrus grove owners, only one of whom would be considered a small entity. This small entity owns one fruit-producing grove, and a grove consisting of citrus plantings. Of the other two entities, one owns a grove of citrus plantings and a fruit-producing grove, and the other owns a grove of citrus plantings where the citrus canker was found. In the grove where citrus canker was found, all infected trees—as well as suspect trees in the vicinity of the infected trees—have been destroyed. The trees represent a loss of approximately $14,000 to the owner.

We estimate that the regulations will require all three grove owners to spend approximately $25 per acre, per year—until the quarantine is lifted—for sanitizing vehicles, equipment, and personnel leaving their groves. These costs represent a very small percentage of their overall production expenses.

The owners of the two fruit-producing groves should be able to continue marketing fruit from these two groves at or near the same level of profit they realized prior to the introduction of the regulations. The regulations allow regulated fruit to be shipped interstate, under certain conditions, from a quarantined area into any area of the United States except commercial citrus-producing areas. Also, the regulations do not prohibit the owners from moving their fruit intrastate, provided the fruit is not intended for the fresh fruit market, and provided certain other conditions are met.

The effect of the regulations on the owners of the two fruit-producing groves is further muted by the fact that they also own groves outside the quarantined area. Their quarantined groves represent only a portion of the total acreage they own.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plants (Agriculture), Plant diseases, Plant pests, Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, with one change, the interim rule that amended 7 CFR 301.75-4, and that was published at 55 FR 49501-49502 on November 29, 1990.

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Paragraph (d)(1) of § 301.75-4 is amended by revising the description of the survey area that begins, "T. 37 S.," to read as follows:

§ 301.75-4 Quarantined areas.

* * * * *

(d) * * *

(1) * * *

Florida

* * * * *

T. 37 S., R. 28 E., secs. 22, 23, 24, 25, 26, and 27, and secs. 34, 35, and 36; R. 29 E., secs. 19, 20, 21, 22, 23, and 24, and secs. 30 and 31; R. 30 E., those portions of secs. 17, 20, and 28 situated west of U.S. Highway 27, and all of secs. 18, 19, and 29, 30, 31, 32, and 33; T. 38S., R. 28 E., secs. 1, 2, and 3, secs. 10, 11, 12, 13, 14, and 15, secs. 22, 23, 24, 25, 26, and 27, and secs. 34, 35, and 36; R. 29 E., secs. 6, 7, 18, and 19, and secs. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; R. 30 E., secs. 3, 4, 5, 6, 7, 8, 9, and 10, secs. 15, 16, 17, 18, 19, 20, 21, and 22, and secs. 27, 28, 29, 30, 31, 32, 33, and 34; T. 39 S., R. 28 E., secs. 1, 2, and 3; R. 29 E., secs. 1, 2, 3, 4, 5, and 6; R. 30 E., secs. 3, 4, 5, and 6.

* * * * *

Done in Washington, DC, this 21st day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4588 Filed 2-26-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

Agricultural Marketing Service

7 CFR Part 1270

Wool and Mohair Advertising and Promotion; Procedure for the Conduct of Referendums

AGENCIES: Agricultural Marketing Service and Agricultural Stabilization and Conservation Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the procedure for conducting referendums under the Wool Act of 1954 (Wool Act) to conform with amendments made to the Wool Act by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) and to delete obsolete regulatory provisions. Under section 708 of the Wool Act, wool and mohair producers approve or disapprove, through referendums, any proposed agreements entered into between the Secretary of Agriculture (the Secretary) and any marketing cooperative, trade association, or other group, whose members are engaged in the handling of wool, sheep, mohair, goats, or the products thereof. The proposed agreements generally authorize the Secretary to make deductions from incentive payments made to producers by the Commodity Credit Corporation (CCC) for the purpose of funding advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for wool, sheep, mohair, goats, or the products thereof. This final rule provides the procedures for the conduct of fair and accurate referendums.

EFFECTIVE DATE: This regulation shall become effective February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; Telephone (202) 475-3605.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation shall be submitted to the Office of Management and Budget (OMB) for the purposes of the Paperwork Reduction Act and it is anticipated that an OMB number will be assigned.

This rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title—National Wool Act Payments: Number-10.059 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Marketing Service (AMS) and the Agricultural Stabilization and Conservation Service (ASCS) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Section 708 of the Wool Act authorizes the Secretary to enter into agreements with, or to approve agreements entered into between, marketing cooperatives, trade associations, or others engaged or whose members are engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvements for wool, mohair, sheep, or goats or their products. These activities are administered for the Secretary by AMS. In order to defray the expenses for carrying out these activities, the agreements may provide for deductions to be made from price support payments which are paid to producers under the Wool Act. However, as required by section 708 of the Wool Act, no agreement providing for any such deduction shall become effective unless the agreement is approved in a referendum by at least a majority of the producers voting or by producers with at least a majority of the volume or production represented in the referendum. The approval requirement was changed by the 1990 Act from a two-thirds requirement to a requirement for majority approval. The 1990 Act made no other substantive changes to the procedure for the conduct of referendums.

Since the only purpose of this final rule is to make the regulations conform to the statute and delete obsolete provisions, it has been determined that no further public rulemaking is required. Therefore, these regulations shall become effective upon date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1270

Administrative practice and procedure, Advertising, Agricultural research, Mohair, Wool.

PART 1270—[AMENDED]

Final Rule

Accordingly, chapter XI of title 7 of the Code of Federal Regulations is amended by revising part 1270 to read as follows:

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION

Subpart—Procedure for the Conduct of Referendums

Sec.

1270.1 Referendums.
1270.2 Definitions.
1270.3 Supervision of referendums.
1270.4 Requirements of referendums.
1270.5 Computation of time.
1270.6 Public notice.
1270.7 Eligibility.
1270.8 Voting.
1270.9 Challenged ballots.
1270.10 Receiving ballots.
1270.11 Canvassing ballots.
1270.12 County ASCS office Report.
1270.13 State ASCS office Report.
1270.14 Results of referendums.
1270.15 Disposition of ballots and records.

1270.16 Suspension and termination of agreements.
1270.17 Instructions and forms.
1270.18 Paperwork Reduction Act assigned numbers. [Reserved].

Authority: Sec. 708, 68 Stat. 912, as amended (7 U.S.C. 1787).

Subpart—Procedure for the Conduct of Referendums

§ 1270.1 Referendums.

Referendums for the purpose of determining producer approval of any proposed agreement between the Secretary and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats or the products thereof, shall be conducted in accordance with this subpart.

§ 1270.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons and things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

Act means the National Wool Act of 1954 (7 U.S.C. 1781 et seq.) and any amendments thereto.

Agreement means any agreement between the Secretary of Agriculture and any marketing cooperative, trade association, or other producer group whose members are engaged in the handling of wool, sheep, mohair, goats, or the products thereof, for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement for the commodities handled by its members. The agreement may authorize the Secretary to make deductions from the incentive payments made to producers by the Commodity Credit Corporation for the purpose of funding the programs for advertising and sales promotion and dissemination of information carried out under such agreement.

ASCS means the Agricultural Stabilization and Conservation Service.

County Executive Director or CED means the person employed by the county ASC committee to execute the policies of the county ASC committee and be responsible for the day-to-day operation of the county ASCS office, or the person acting in such capacity.

Deputy Administrator or DASCO means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

Representative period means a consecutive 12-month period immediately preceding the referendum designated by the Secretary.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

State Committee, State Executive Director, State Office, County Committee, or County Office, means the respective ASC Committee or ASCS Office or ASCS representative.

Voting period means a 12-day period to be announced for voting in the referendum.

§ 1270.3 Supervision of referendums.

DASCO, shall be in charge of and responsible for conducting each referendum in accordance with this subpart. Each State committee shall be in charge of and responsible for supervising and directing the conduct of the referendum in its State. Each county committee shall be responsible for conducting the referendum in its county.

§ 1270.4 Requirements of referendums.

An agreement shall become effective if the Secretary determines that it is approved or favored by:

(a) A majority of the eligible producers voting in the referendum, or

(b) Eligible producers who produced a majority of the volume of sheep or goats, as the case may be, represented in the referendum.

§ 1270.5 Computation of time.

Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any documents or taking any action, provided, that when such time expires on a Sunday or a Federal holiday, such period shall be extended to include the next following business day.

§ 1270.6 Public notice.

Advance public notice of the referendum shall be provided without commercial advertising expense by the State and county offices by means of newspapers, television, county newsletter, county extension agents, etc. Such notice shall announce the voting requirements and other pertinent information.

§ 1270.7 Eligibility.

(a) *Eligible producer.* Each producer who during a single period of a least 30 days during the representative period owned in the United States any sheep or goats 6 months of age or older is entitled to vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy voting.* Proxy voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any producer entity (other than an individual producer), such as a corporation or partnership, may cast a ballot on behalf of such entity. Any individual voting in the referendum on behalf of any producer entity shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation, engaged in the production of sheep or goats as a producer entity shall be entitled to only one vote; provided, however, that any member of a group may vote as a producer if he or she is an eligible producer separate from the group, except as provided in paragraph (d) of this section and § 1270.8(c)(2).

(d) *Cooperative association.* A cooperative association may qualify to vote by filing with the Director of the Emergency Operations and Livestock Programs Division (EOLPD), ASCS, USDA, Washington, DC 20250, not later than the date announced by USDA, the following documents:

(1) A certified copy of the articles of incorporation and bylaws of the association, and

(2) A certified copy of the resolution adopted by the association's board of directors authorizing the association to vote in the referendum.

EOLPD, ASCS, will send a ballot to each cooperative association which establishes its eligibility to vote. A cooperative association which qualifies to vote shall cast one ballot for all the eligible producers who, on the date the ballot is cast, are members of, stockholders in, or are under contract to sell their wool, sheep, mohair or goats through the association in the marketing year (January 1 through December 31) in which the referendum is held. The number of votes to be counted for the ballot cast by the cooperative association shall be equal to the number of eligible producer-members in the cooperative association. If a ballot is cast by a cooperative association, the eligible producer-members of such cooperative association shall not otherwise cast ballots in the referendum.

§ 1270.8 Voting.

(a) *Mailing of ballots.* Each county office will mail ballots to all producers of whom the office has knowledge having ranch or farm headquarters located in its county. A producer who believes that he or she is eligible to vote but has not received a ballot, can obtain a ballot from the State or county office upon request. EOLPD, ASCS, USDA, will mail ballots to all cooperative associations which qualify to vote on behalf of their members and others in accordance with § 1270.7(d) of this subpart.

(b) *Facilities and ballot box.* Each county office shall provide:

(1) Adequate facilities and space to permit producers to mark their ballots in secret, and

(2) A sealed ballot box which shall be kept under observation during office hours and secured at all times until the ballots are counted.

(c) *Voting*—(1) *All producers except cooperative associations.* Voting may be in person or by mail. Each producer shall cast a ballot on form CCC–1160 with the county office where the producer's farm or ranch headquarters is located. The producer shall provide the following information on the ballot:

(i) The date,

(ii) A "yes" or "no" vote by marking the appropriate box,

(iii) The number of sheep or goats 6 months of age or older, located in the United States which the producer owned continuously during a single period of at least 30 days during the representative period,

(iv) The address of the producer, and

(v) The signature of the producer.

If the ballot is being cast on behalf of a partnership, corporation, or other entity, except a cooperative association, the person casting the ballot must provide the name and address of the producer entity he or she represents, and certify that he or she is authorized to vote on behalf of the producer entity.

(2) *Cooperative associations.* A cooperative association shall return its marked ballot to the Director, EOLPD, ASCS, USDA, Washington, DC 20250, so that it will reach that office not later than the date designated by USDA. Each ballot cast by a cooperative association shall be accompanied by the original and two copies of a listing showing the names and addresses of all producers, otherwise eligible to vote, who on the date the vote is cast are members of, stockholders in, or under contract to sell their wool, sheep, mohair or goats through the association in the marketing year in which the referendum is held. The producers' names shall be arranged alphabetically, on a separate sheet for each county. The listing for each county shall be headed by the name and address of the cooperative association and show whether the cooperative association was voting "yes" or "no" in the referendum. In preparing the listings, the cooperative association shall show for each producer the number of sheep or goats 6 months of age or older which he owned continuously in the United States during a single period of at least 30 days during the representative period. After checking the ballots and lists from the cooperative associations for completeness, the lists of producers for whom the cooperative associations have voted will be forwarded to the State offices concerned for distribution to the respective county offices. If a producer casts a ballot as an individual and a cooperative association's ballot lists the producer as a member, the producer's vote by the cooperative association shall count and not the individual ballot cast by the producer. If two or more cooperative associations cast ballots for the same producer, and the ballots take the same position with reference to the agreement which is the subject of the referendum, the producer's vote will be counted only once. If they take different positions, the producer's vote will not be counted.

§ 1270.9 Challenged ballots.

A person's eligibility to vote may be challenged by any person. The CED shall review all ballots and promptly challenge any ballot of a producer who appears to be ineligible or to have inaccurately indicated the number of sheep or goats on the ballot.

(a) *Determination of challenges.* Any person whose ballot has been challenged or whose declaration of the number of sheep or goats on the ballot has been challenged, must prove to the satisfaction of the CED that he or she was an eligible producer or that he or she did own the declared number of sheep or goats during the representative period. Records such as tax returns, sales documents, purchase documents, or other similar documents may be submitted to prove that a person is an eligible producer or that he or she owned the declared number of sheep or goats. The CED shall make a determination concerning a challenged ballot and notify the producer of such determination as soon as practicable, but not later than two days after the opening of the ballot box.

(b) *Appeal.* Appeal from a decision by the CED on the eligibility of a person or as to the number of sheep or goats owned by the producer, must be made to the county committee within 2 business days after notification of such decision. Any appeal shall be determined by the county committee as soon as practicable, but in all cases not later than 7 days after the opening of the ballot box.

§ 1270.10 Receiving ballots.

A ballot shall be considered to have been received during the voting period:

(a) If it was cast in the county office prior to the close of business on the final day of the voting period, or

(b) If mailed, the ballot was postmarked not later than midnight on the final day of the voting period and received in the county office prior to the close of business on the fourth day after the close of the voting period.

§ 1270.11 Canvassing ballots.

(a) *Counting the ballots.* As soon as possible after opening of the county office on the fifth day after the close of the voting period, employees of the county office shall open the ballot box and count the ballots. The ballots shall be tabulated as follows:

(1) Number of eligible producers casting valid ballots, and the number of sheep or goats indicated on their ballots,

(2) Number of eligible producers favoring the agreement and the number of sheep or goats indicated on their ballots,

(3) Number of eligible producers not favoring the agreement and the number of sheep or goats indicated on their ballots,

(4) The number of challenged ballots deemed invalid, and

(5) The number of spoiled ballots.

(b) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are unsigned, mutilated, or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the agreement or as a ballot cast in the referendum.

(c) *Confidentiality.* All ballots shall be treated as confidential and the contents of the ballots shall not be divulged except as provided for in this subpart or as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the ballots, but shall remain a reasonable distance from the tabulation so as not to interfere with the tabulation or see how any person voted in the referendum.

§ 1270.12 County ASCS office report.

(a) *Preliminary report.* The county office shall notify the State office as to the preliminary results of the referendum as soon as possible. Each county office may release the unofficial results of the referendum in its county after the report has been given to the State office.

(b) *Final report.* Within 7 days after the opening of the ballot box, each county office shall transmit a written summary certified by the CED of the final results of the referendum in its county to the State office. Any appeal concerning a challenged ballot shall be resolved by the county committee prior to the date of the final report. A copy of the summary shall be posted for 30 days in the county office in a conspicuous place accessible to the public and a copy shall be kept on file in the county office for a period of at least 12 months.

§ 1270.13 State ASCS office report.

(a) *Preliminary report.* Each State office shall send to DASCO as soon as possible a summary of the preliminary results of the referendum received from the county offices within its State. Each State office may release the unofficial results of the referendum in its State after its report has been sent to DASCO.

(b) *Final report.* Within 10 days after the opening of the ballot boxes in the county offices each State office shall send to DASCO a written summary of the final results of the referendum received from the county offices within the State. Such summary shall be prepared in triplicate and certified by the State Executive Director. The original and one copy of the summary shall be sent to DASCO. One copy of the summary shall be maintained in the State office where it shall be available for public inspection for a period of not less than 12 months.

§ 1270.14 Results of referendums.

(a) DASCO shall prepare and submit to the Secretary, or a designee, a report of the results of the referendum. The official results of the referendum shall be published in the Federal Register. State summaries and related papers shall be available for public inspection in the office of the Director, EOLPD, ASCS, USDA, Room 4085 South Building, Washington, DC.

(b) If DASCO or the Secretary deems it necessary, the report of any State or county shall be re-examined by such persons that may be designated by DASCO or the Secretary.

§ 1270.15 Disposition of ballots and records.

The CED shall place the voted ballots, challenged ballots found to be ineligible, spoiled ballots, and county summaries in sealed containers marked with the identification of the referendum. Such records shall be placed under lock in a safe place under the custody of the CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from DASCO by the end of such time, the records shall be destroyed.

§ 1270.16 Suspension and termination of agreements.

The Secretary may conduct a referendum at any time, and shall hold a referendum on request of:

(a) Producers representing 10 percent or more of the number of producers voting in, or

(b) Producers owning 10 percent of the sheep or goats represented in the referendum approving the agreement, to determine whether such producers favor the termination or suspension of the agreement.

The Secretary shall suspend or terminate such agreement 6 months after the Secretary determines that suspension or termination of the agreement is approved or favored by a majority of the eligible producers voting in such referendum or who produced more than 50 percent of the volume of the sheep or goats produced by the producers voting in the referendum.

§ 1270.17 Instructions and forms.

DASCO shall prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

§ 1270.18 Paperwork Reduction Act assigned numbers. [Reserved]

Signed at Washington, DC on February 18, 1991.

Dated: January 30, 1991.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

Daniel Haley,

Administrator, Agricultural Marketing Service.

[FR Doc. 91-4682 Filed 2-26-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1922

Appraisal of Single Family Residential Property

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration revises its regulations regarding residential appraisals in order to remove from the Code of Federal Regulations (CFR) Sections of Residential Appraisal Regulations that only pertain to internal Agency management. The intended effect of this action is to remove unnecessary regulations from the CFR.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Neal A. Hayes, Jr., Senior Loan Officer, HomeOwnership Branch, Single Family Housing Processing Division, FmHA USDA, room 5346, South Agriculture Building, Washington, DC 20250, telphone: (202) 382-1466.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it involves only internal Agency management, making publication for comment unnecessary.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Programs Affected

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans (Section 502 Rural Housing Loans).

Intergovernmental Consultation

For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1922

Loan programs—Housing and community development, Low and moderate income housing, Rural housing.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1922—GENERAL

1. The authority citation for part 1922 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 2.70.

2. Subpart C of part 1922 is amended by revising § 1922.101 and by removing and reserving §§ 1922.102 through 1922.111 to read as follows:

Subpart C—Appraisal of Single Family Residential Property

§ 1922.101 General.

This subpart prescribes the policies and procedure for appraisals in connection with making and servicing Single Family Rural Housing (RH) loans on fee simple owned nonfarm and small farm real properties, and on leaseholds on nonfarm and small farm real properties. Property will be appraised for market value. In no case will an appraisal be made without inspecting the property and, when applicable, reviewing all plans and specifications for proposed improvements to the site.

§§ 1922.102-1922.111 [Reserved]

Dated: February 5, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-4530 Filed 2-26-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-31; Amendment 39-6888]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain PWC PW100 series turboprop engines, which requires installation of a new design fuel filter cover assembly. This amendment is prompted by two events of significant fuel leakage from the fuel filter cover due to improper installation. This condition, if not corrected, could result in a fire hazard in the engine nacelle.

DATES: Effective March 29, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1991.

ADDRESSES: The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G-1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Rules Docket, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Branch, ANE-142, Engine & Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299 (617) 273-7085.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain PW100 series turboprop engines, which requires the installation of a new design fuel filter cover assembly, and for one model requires a newer design fuel pump be installed, was published in the Federal Register on November 16, 1990 (55 FR 47889).

Interested persons have been afforded an opportunity to participate in the making of the amendment. Due consideration has been given to the one comment received. The commenter stated that the new filter cover assembly represents a significant improvement in function and maintainability, and supports the intent of the proposed rule.

After review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for incorporating an updated revision of PWC Service Bulletin 20897.

The FAA has reviewed and approved PWC Service Bulletin (SB) 20897, Revision 1, dated October 15, 1990, and SB 20907, dated August 20, 1990, which concern installation of a new fuel filter cover assembly; and SB 20355, Revision 1, dated August 1, 1990, which concerns installation of a new fuel pump.

There are approximately 558 PW100 series turboprop engines of the affected design in the U.S. fleet. It is estimated that it would take approximately 1 manhour per engine to install the new fuel filter cover, and approximately 6 manhours to install the new fuel pump, and that the average labor cost would be $40 per workhour. The required fuel filter cover hardware is being supplied by the manufacturer at no cost, however, the required fuel pump hardware cost is estimated to be $11,500 per engine. Approximately 20% of affected engines will require installation of the new fuel pump. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be approximately $1,337,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PW115, PW118, PW118A, PW120, PW120A, PW121, PW123,

PW124, PW124A, PW124B, PW125B, and PW126A turboprop engines installed on, but not limited to, Aerospatiale ATR-42 and ATR-72, British Aerospace ATP, DeHavilland of Canada DHC-8, Embraer EMB-120; Fokker F-50; and Canadair CL-215T aircraft.

Compliance is required within the next 1,200 hours time in service after the effective date of this AD, unless previously accomplished.

To prevent fuel leakage from the fuel filter cover assembly which could result in a fire hazard in the engine nacelle, accomplish the following:

(a) For PWC PW115, PW116, PW116A, PW120, PW120A, PW123, PW124, PW124A, PW124B, PW125B, and PW126A engines, incorporate a new fuel pump filter cover assembly in accordance with either PWC Service Bulletin (SB) No. 20897, Revision 1, dated October 15, 1990, or PWC SB No. 20907, dated August 20, 1990, as applicable.

(b) For PWC PW123 engines, incorporate a new fuel pump in accordance with PWC SB No. 20886, Revision 2, dated August 1, 1990.

(c) For PWC PW125 engines, incorporate a new fuel pump filter cover assembly in accordance with PWC SB No. 20907, dated August 20, 1990.

(d) Aircraft may be ferried in accordance with the provisions of FARs 21.197 and 21.198 to a base where the AD can be accomplished.

(e) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD, or adjustments to the compliance schedule specified in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The initial and repetitive inspection program shall be done in accordance with the following PWC documents:

Document	Page	Revision	Date
PWC SB 20897	All	Revision 1	Oct. 15, 1990.
PWC SB 20907	All	Original	Aug. 20, 1990.
PWC SB 20355	All	Rev. 1	Aug. 1, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Room 311, Burlington, Massachusetts 01803-5299, or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20401.

This amendment becomes effective March 29, 1991.

Issued in Burlington, Massachusetts, on January 28, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4575 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 700

[Docket No. 910233-1033]

Defense Priorities and Allocations System

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On January 8, 1991, the President signed Executive Order 12742, "National Security Industrial Responsiveness", to achieve prompt delivery of articles, products, and materials to meet national security requirements. The Executive Order continues in effect the Defense Priorities and Allocations System regulation (15 CFR part 700). This rule amends part 700 to incorporate Executive Order 12742 and underlying statutory authority in the amended citation. This rule also adds to Schedule I of part 700 the new program identification symbol "C1", approved February 1, 1991, by the Federal Emergency Management Agency, for food resources.

EFFECTIVE DATE: January 8, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Meyers, Office of Industrial Resource Administration, 202/377-3634.

SUPPLEMENTARY INFORMATION:

Executive Order 12742 continues, under other laws, the Secretary of Commerce's authority to require priority performance of defense contracts for industrial articles and materials, including construction materials. Commerce's Bureau of Export Administration administers the Defense Priorities and Allocations System (DPAS) regulation. This rule amends the DPAS regulation to reflect the delegation of the President's authority under Executive Order 12742.

Consistent with appendix II to part 700, the Departments of Agriculture and Commerce have agreed that, notwithstanding § 700.18(b)(1)(ii), the Department of Defense may place rated contracts and orders for food resources under DPAS Del. # 1. This rule also adds to Schedule I of part 700 the new program identification symbol "C1", approved February 1, 1991, by the Federal Emergency Management Agency, for food resources.

Rulemaking Requirements

1. Because this rule pertains to a military or foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order.

2. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because this rule pertains to a military or foreign affairs function, the provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring a notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date are not applicable. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the APA, or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final regulatory flexibility analysis had to be or was prepared.

5. The public record concerning this regulation is maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., room H4886, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration Freedom of Information Officer, at the above address, or by calling 202/377-2593.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

Accordingly, part 700 of the National Security Industrial Base Regulations (15 CFR part 700) is amended as follows:

PART 700 [AMENDED]

1. The authority citation for part 700 is revised to read as follows:

Authority: Secs. 101-103, 701-707, 709, and 713, Defense Production Act of 1950 (Pub. L. 81-774, 64 Stat. 798,) as amended (50 U.S.C. app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 3 CFR 1949-53 Comp. p. 962, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412, as amended; Defense Mobilization Order (DMO) 3, 44 CFR part 322; DMO-12, 44 CFR part 329; DMO-13, 44 CFR part 330, 50 U.S.C. 486, 10 U.S.C. 4501 and 9501, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991, 56 FR 1079.

2. Schedule I to part 700 is amended by adding a new entry to read as follows:

Schedule I to Part 700—Authorized Programs and Delegate Agencies

Program identification symbol	Authorized program	Delegate agency
C1	Food resources	Department of Defense

Dated: February 19, 1991.

John A. Richards,

Deputy Assistant Secretary for Industrial Resource Administration.

[FR Doc. 91-4274 Filed 2-26-91; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Adjustment for Additions and Withdrawals to Computation of Rate of Return in Performance Records of Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: A performance record contains information required to be presented by commodity pool operators ("CPOs" or "registrants") and commodity trading advisors ("CTAs" or "registrants") pursuant to Commodity Futures Trading Commission ("Commission") rules 4.21(a)(4), 4.21(a)(5) and 4.31(a)(3) [1] and is intended to present the historical periodic performance of accounts operated or directed by such registrants in a prescribed format for purposes of disclosure to customers or prospective customers. The prescribed format includes periodic rate of return ("ROR") information. By this Advisory the Commission is providing guidance as to the acceptable methods of computation of ROR. This Advisory also provides guidance as to the use of Value Added Monthly Index ("VAMI") columns in performance table presentations.

The Commission is aware that many registrants have already adopted the alternative methods of computation discussed herein, which Commission staff have reviewed and determined to be acceptable in specific cases. As a result, the Commission believes that the accuracy of ROR information appearing in performance disclosure generally has been improved. This Advisory is intended to provide guidance concerning those circumstances in which the ROR computed in accordance with the method currently specified in Commission rules could be misleading and to make generally available alternative methods of ROR computation that have been previously reviewed and accepted for many registrants on a case-by-case basis. The guidance provided by this Advisory also should assist registrants in more efficiently preparing their performance tables, reduce the necessity for inquiries concerning specific ROR computations, and afford registrants more latitude in the presentation of ROR.

DATES: The Advisory is to be effective March 29, 1991.

[1] Commission rules referred to herein are found at 17 CFR Ch. I (1990).

ADDRESSES: Comments should be sent to Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Attn: Secretariat.

FOR FURTHER INFORMATION CONTACT: Paul Bjernason, Chief Accountant, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The account information required by Commission rules to be provided in CPO and CTA performance records includes: Beginning net asset value ("BNAV"); [2] additions of funds; withdrawals of funds; net performance; ending net asset value; ROR; and, for pools, the number of units outstanding at the end of the period. [3] ROR is currently defined in Commission rules as net performance for a period divided by the BNAV for that period. [4] It has come to the Commission's attention that distortions in computed ROR under the method currently specified can result under some circumstances. For example, distortions can result where additions and/or withdrawals are large and are made early in the reporting period, because such additions/withdrawals cause the actual amount of funds available for trading during a period to be materially different from BNAV.

Accordingly, to assure that performance records reflect accurate RORs notwithstanding unusual circumstances, this Advisory provides guidance as to the circumstances in which ROR computations under the method currently specified in Commission rules can result in distortions, and thus an alternate method of computation is required, and as to acceptable alternate methods for such computations. In addition, concurrently with the publication of this Advisory, the Commission is publishing

[2] With respect to the calculation of BNAV, Commission staff has stated that funds contained in a commodity account over which the CTA has been given discretionary trading authority must be included in the BNAV calculation and specifies conditions under which funds in other types of accounts of the customer at the futures commission merchant that are committed to the registrant's trading program are required to be included in the computation of BNAV. Division of Trading and Markets Advisory No. 87-2 [1986-87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,804 (June 2, 1987).

[3] In some cases, pools are not denominated in units and, therefore, the number of units outstanding at the end of the period would not be required. This fact should be indicated in a note to the performance record.

[4] Rule 4.21(a)(4)(ii)(F). 17 CFR 4.21(a)(4)(ii)(F).

proposed rule amendments which, among other things, will clarify that presentation of ROR may be made by the method currently specified in Rule 4.21 as well as by such other methods as the Commission may approve.[5] The proposed revision to Rule 4.21(a)(4) would provide that the rate of return for the performance period being shown "shall be calculated by dividing the net performance by the beginning net asset value *or by a method otherwise approved by the Commission*" (emphasis added).[6] The Commission also has proposed to amend Rule 140.93(a) to add new paragraph (a)(7), a delegation of authority to the Director of the Division of Trading and Markets to perform "[a]ll functions reserved to the Commission in [Rules] 4.21 and 4.31."

This Advisory specifies five methods of computation of ROR. Each of the methods is acceptable to the Commission provided resultant RORs are not misleading. This Advisory provides guidance as to what circumstances might lead to inaccurate RORs and emphasizes that in circumstances in which material distortions occur, an accurate alternative calculation must be made. For example, in those cases where additions and withdrawals occur only at the end of the reporting period, or are so distributed as to result in no distortion, the previously specified method of calculating ROR, net performance for a period divided by BNAV for that period, would be acceptable. When additions or withdrawals could distort performance results, the methods for computing ROR as provided herein, including "time-weighting", average daily equity ("ADE") and only accounts traded ("OAT"), will be accepted by the Commission for purposes of compliance with ROR requirements under Rules 4.21(a)(4), 4.21(a)(5), and 4.31(a)(5). The Commission will also accept a compounded ROR method, provided compounding is done at least as frequently as additions and withdrawals occur, because such a method accurately matches trading performance for a period against the actual equity which was available for trading during that period. These types of computations were suggested in comments responding to a Commission interpretive statement and request for comments issued in 1989, which raised the issue of distortions to performance reporting caused by additions or withdrawals.[7]

II. Proposed Adjustments to Computation of Rate of Return

A. General Requirements

Whichever method of computing ROR is selected, registrants are required to indicate the method in notes to the performance records and are required to maintain complete and clear records to support the computation. Accounting data which underlie the computation must be prepared in accordance with generally accepted accounting principles ("GAAP") as required by Commission regulations. All additions and withdrawals should be set forth in separate columns. GAAP and other Commission rules require accounting on an accrual basis for all items of income and expense; preclude pro forma adjustments unless specifically disclosed; require inclusion of all accounts, including short-term loss accounts, except as provided in the OAT method discussed herein; and require inclusion of all fees and expenses pertaining to the account and its trading, even those paid with funds from outside of the trading account.

The registrant is responsible for the accuracy of any method chosen to address the impact of additions and withdrawals upon ROR; is required to apply the chosen method consistently from period to period; and may not depart from the chosen method, unless performance would otherwise not be properly represented. In such cases, corrective adjustments may be made and explanation must be included in the notes.

B. Standard of Materiality

As previously stated, registrants may use the prior Commission method for calculating ROR unless it results in material distortion of performance results. However, all the methods described herein are potentially subject to distortion and where such distortion would occur the registrant must choose one of the alternative methods for that reporting period. For purposes of this Advisory the following summarizes the materiality threshold below which a registrant would not need to consider whether additions or withdrawals could distort the performance record: [8]

(1) The change in ROR, between the adjusted and the unadjusted ROR, is less than 10 percent of adjusted ROR;

(2) Additions and withdrawals are each less than 10 percent of BNAV;

(3) Unadjusted ROR is greater than 5 but no greater than 10 percent and the absolute difference between the unadjusted and the adjusted ROR is less than 1.5[9] percentage points; or

(4) Unadjusted ROR is 5 percent or less and the absolute difference between the unadjusted and the adjusted ROR is less than 1 percentage point.

C. Alternative Computations Under Rule 4.21(a)(4)(F)

In addition to the currently specified method of calculating rate of return by dividing net performance by the beginning net asset value, the following four alternative methods are acceptable for computing ROR: (1) The average daily equity ("ADE") method; (2) the time-weighting method; (3) the only accounts traded ("OAT") method; and compounded ROR method, which are described below.

Average Daily Equity ("ADE")

The ADE method for computing ROR involves the division of periodic net performance by ADE, which is an arithmetic average of the daily net liquidating equity available for trading for each day of the reporting period, *i.e.*, the total of the net liquidating equities for each day of the period divided by the number of days in the period. For Saturdays, Sundays, and other days when no commodity trading occurs, the preceding business day's net liquidating equity should be used. ADE as indicated on the account statement must be adjusted daily to accrue for material expenses and fees not already charged against the account in computing daily net liquidating equity, if any.

Although the ADE method is generally very accurate, it is subject to distortion during periods when because of severe losses, account equity is being drawn down rapidly.

[5] CPOs and CTAs are required to disclose all material information to existing or prospective pool participants or existing or prospective clients, respectively, even if such information is not otherwise specifically required by the Commission's disclosure rules. See 54 FR 5507, 5509 (1989), Commission Rules 4.21(h) and 4.31(g) and section 4o of the Commodity Exchange Act, 7 U.S.C. 6o (1988).

[6] Rules 4.21(a)(5) and 4.31(a)(3) incorporate by reference the rate of return calculation of Rule 4.21(a)(4).

[7] See "Statement of the Commodity Futures Trading Commission Regarding Disclosure by Commodity Pool Operators of Past Performance Records and Pool Expenses and Request for Comments", 54 FR 5597 (February 6, 1989).

[8] These standards apply equally to positive and negative RORs.

[9] For example, if the unadjusted (originally computed) ROR were 6 percent and the adjusted ROR were 8 percent, the absolute difference would be 2 percentage points and the relative difference would be 33⅓ percent. If the unadjusted ROR exceeds 10 percent, then only the first threshold set forth above would apply.

Time-Weighting of Additions and Withdrawals ("time-weighting")

Under the time-weighting method BNAV is adjusted by the time-weighted value of additions and withdrawals, *i.e.*, adjusting BNAV upwards by time-weighted additions and downwards by time-weighted withdrawals, occurring during the period. The time-weighting method is easily computed by taking the number of days funds were available for trading divided by the total number of days in the period. For example, if actual BNAV were $100,000 and an additional $150,000 was deposited on the 10th of the month, and $90,000 was withdrawn on the 20th of the month, the $100,000 BNAV would have to be adjusted: (1) Upward by two-thirds of the $150,000, or $100,000, because these funds were available for 20 days of the month; and (2) downward by one-third of the $90,000, or $30,000, because these funds were not available for one-third of the month. Therefore, the adjusted BNAV which should be used in computing ROR would be $170,000 or a 70 percent increase over actual BNAV.[10]

Although the time-weighting method is generally very accurate, it is subject to distortion during periods of very large changes in account equity due to severe losses or large profits.

Only Accounts Traded ("OAT")

The OAT method for computing ROR uses the formula contained in Commission regulations, *i.e.*, dividing periodic net performance by BNAV, except that it differs from the Commission's method in that certain accounts could be excluded from the computation. The exclusions are permitted in order to reduce the complexity and burden of the computation and are predicated on the assumption that the accounts excluded would distort ROR if they had been included. The conditions set forth below for the use of OAT are intended to assure that the exclusion of certain of the accounts will not result in the computation of periodic ROR that is materially different from the other methods.

The conditions which must be met for use of the OAT method are:

(1) Accounts included in any performance table using the OAT method must be similar in all material respects, *i.e.* type and relative number of contracts traded, margin/equity ratio, and fees and commissions charged.[11] To avoid distortion of ROR, accounts excluded from the computation must, as a group, have the same profile in this connection as those included in the computation, for the period used in the calculation.

(2) Accounts excluded from the ROR computation must not be charged with material non-recurring costs, *e.g.*, closeout costs charged against customer accounts in the period that they are closed. As with all the method, OAT may not be used if it would result in a systematic exclusion of any costs which would be material in amount.

(3) Each account excluded from the computation must meet at least one of the following criteria:[12]

(a) The account was open for only part of the period, *i.e.*, it was opened or permanently closed during that reporting period;

(b) The account had no open positions for any part of the period and it was the client's intention to close the account as evidenced by the actual permanent closure of the account shortly after the period-end. Accounts for which there was merely a trading pause may not be excluded from the computation solely because of such pause; or

(c) The account had material additions or withdrawals, *i.e.*, additions or withdrawals which exceeded 10 percent of BNAV attributable to the particular account.

(4) The registrant must disclose whenever unusual circumstances unique to the OAT method have affected ROR for any period, making resultant ROR diverge materially from what might be expected using one of the other acceptable methods.[13]

Registrants should be particularly concerned as to possible ROR distortion should a significant number of the accounts otherwise included in the table be excluded from the ROR computation.

Compounded ROR Method

The "compounded ROR method" is computed by dividing the accounting period, *i.e.*, the month or quarter, into several smaller periods and computing the ROR for such sub-period. Compounding may be done on as frequent a basis as daily, but, at a minimum, compounding must be done at least as frequently as additions and withdrawals are made. An example of the compounded ROR method in which an ROR for a sub-period has been computed each time there is an addition or withdrawal of capital to/from the account is provided below. Once an ROR has been computed for each sub-period, such RORs are combined into an overall ROR by multiplying them by one another in sequence, *i.e.*, compounding them.

An example of an ROR computation is as follows:

	account value	Change in value
Start of month	$10,000	+10% ($1,000 profit)
End of 1st acct. period.	11,000	$4,000 (addition)
Start of 2nd acct. period.	15,000	−20% ($3,000 loss)
End of 2nd acct. period.	12,000	$2,000 (withdrawal)
Start of 3rd acct. period.	10,000	+25% ($2,500 profit)
End of month	12,500	

ROR = [(1 + .1)(1 − .2)(1 + .25)] = 10% gain for the period.

III. Value Added Monthly Index ("VAMI")

Although not required by Commission regulations, the performance tables of many registrants present in an additional column an index referred to as "VAMI". VAMI is an index purporting to reflect how a fixed amount of initial investment, generally $1,000, would have changed over the periods presented in the table. The Division of Trading and Markets has found cases where disclosure documents, as filed initially, have not accomplished this objective and the resulting VAMI could be misleading. In order to accurately accomplish its objective, the VAMI must change proportionately with the changes in the value of the underlying portfolio. For example, if on the fifteenth of January $100,000 were deposited in a new account and during January due to profits the account equity grew to $110,000, the ROR computed by time-

[10] Detailed computation: April 01–10 = 10 days × 100,000 = 1,000,000; April 11–20 = 10 days × 250,000 = 2,500,000; April 21–30 = 10 days × 100,000 = 1,000,000; Total of above 3,100,000. 5,100,000 divided by 30 days = 170,000 average.

[11] This requirement is generally applicable in determining when separate composite performance records must be prepared for accounts which are materially different, regardless of the method used to calculate ROR. See, *e.g.*, Rules 4.21(a)(4), 4.21(a)(5), and 4.31(a)(3).

[12] It should be noted that it is only the computation of ROR which may exclude certain accounts under the OAT method. The other columns of the performance table, *e.g.*, BNAV, additions, withdrawals, net performance, etc., would be comprised of all accounts, including those excluded under the OAT method in the computation of ROR.

[13] For example, if a particular account or accounts are left out of an ROR computation for more than one period in a performance table, the registrant should consider presenting such accounts in a separate composite performance table or otherwise provide specific disclosure of the performance results of such accounts.

weighting would be 20% [14], but the VAMI, provided it were correctly stated, would increase 10 percent [15] from the initial $1,000 to $1,100, thereby tracking the change in the underlying portfolio.[16] Therefore, in order to compute a VAMI which tracks the underlying portfolio, in some cases the month's ROR may not be used and, in such cases, a separate computation must be made.

Distortions in VAMI may be aggravated by compounding. For example, if there were an overstatement of $100 in the VAMI of December 1989 and the compounded annual ROR for 1990 were 80 percent, such $100 distortion from 1989 would increase to $180 by December 1990.

VAMI is the most meaningful when presented on an annual basis. The Commission believes that most readers of performance tables review past performance in incremental periods, *e.g.*, the past year, the year before last, *etc.* For this reason the most meaningful VAMI would be one which facilitates such annual performance review, *i.e.*, where the VAMI is reset to the initial amount annually. Therefore, for this reason and for the additional advantage of the mitigation of distortions, the Commission strongly encourages the annual resetting of VAMI to the initial amount.

In view of the foregoing, the Commission's policies respecting the presentation and restatement of prior period VAMIs are as follows:

(1) Periodic ROR may be used to compute VAMI, provided no material distortion results. However, if the resulting VAMI would be misleading, an alternative computation to achieve an accurate VAMI, which is parallel to the actual change in the portfolio due to profits and losses, must be made.

(2) Where there are material distortions in the VAMI of the most recent three years presented, such VAMI must be recomputed and restated for each year.

(3) Where VAMI for periods earlier than the most recent three years presented contains material distortions, such distortions need not be corrected, provided the VAMI is reset to the initial amount annually for all periods presented.

(4) VAMI is a disclosure not required by Commission regulations and, therefore, need not be included in a performance record.

IV. Application of the Advisory to Historical Performance Records

Where prior period RORs otherwise would be materially distorted, registrants should amend the performance tables and/or the footnotes to the extent necessary to ensure that the historical performance record used in a current disclosure document is not misleading.[17] In order to reduce the burdens of full retroactive application of this Advisory registrants should consider the adequacy of: Limiting restatements of prior periods to those periods where distortions are likely to be the most serious; making changes to the VAMI presentation, such as resetting to the initial amount annually, as discussed above; providing additional explanatory disclosures in the notes; and whether any possible distortions may be in reporting periods which are of lesser concern, *e.g.* prior to the past three years of performance which is required by Commission rules. Registrants who are concerned that their performance tables as originally presented may be considered misleading may request the views and guidance of the Division of Trading and Markets staff on a case-by-case basis.

Issued in Washington, DC on February 21, 1991, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 91-4519 Filed 2-26-91; 8:45 am]

BILLING CODE 6351-01-M

[14] Time-weighting computation of ROR: 15 days divided by 30 days = 50 percent; 50 percent times $100,000 = $50,000; $10,000 divided by $50,000 = 20 percent ROR for the month.

[15] Computed by dividing the $10,000 by $100,000.

[16] Example of incorrect VAMI Computation:

	ROR	VAMI	Computation
Jan	20%	1,100	(1,000 times 1.20 = 1,220).
Feb	20%	1,440	(1,200 times 1.20 = 1,440).
March	15%	1,656	(1,440 times 1.15 = 1,656).

[17] The Commission is aware that on a case-by-case basis many registrants have already presented performance using one of the alternative methods discussed herein, such that for those registrants restatement has already been effected.

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of certain material changes in terms and conditions of option contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is publishing notice of certain material changes in the terms and conditions of option contracts on the Robusta Coffee Futures Contract traded on the London Futures and Options Exchange ("London Fox"). The initial Order permitting option contracts on the Robusta Coffee futures contract to be offered or sold to persons in the United States was issued on November 30, 1989 (54 FR 50348 (December 6, 1989)) pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1990), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on November 30, 1989, 54 FR 50348 (December 6, 1989), authorizing certain option products traded on London Fox to be offered or sold in the United States.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Notice:

United States of America Before the Commodity Futures Trading Commission

Notice of Certain Material Changes in Terms and Conditions of Option Contract Previously Approved Under Commission Rule 30.3(a) Permitting Option Contracts on the Robusta Coffee Futures Contract Traded on the London Futures and Options Exchange To Be Offered or Sold in the United States Thirty Days After Publication of This Notice in the Federal Register

By Order issued on November 30, 1989 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the London Futures and Options Exchange ("London Fox") to be offered or sold in the United States. 54 FR 50348 (December 6, 1989). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any London Fox option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

[1] Commission rule 30.3(a), 17 CFR 30.3(a)(1990), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

The option contracts on the Robusta Coffee futures contract authorized for offer and sale in the United States by Order issued on November 30, 1989 was denominated in sterling. By letter dated January 30, 1991, and subsequent telephone conversations with Commission staff, London Fox advised the Commission that on or after March 1, 1991, the denomination for the option contract on the Robusta Coffee futures contract would be changed to United States dollars and that other terms and conditions of the contract would be changed as well. In addition, London Fox indicated that as of the changeover date, no new positions would be opened in sterling and that all new trading would be in dollars. Since the conversion to a dollar denomination is considered a material change in the option contract, the Commission is publishing the new terms and conditions of the option contract on the Robusta Coffee futures contract for notice purposes only.

Contract Specifications

Options on the Robusta Coffee Futures Contract

Contract Units: 5 tonnes.

Minimum Price Fluctuation: $1 per tonne.

Exercise/Strike Price Increments: $50 per tonne.

Trading Months: January, March, May, July, September, November.

Quoted Trading Months: Identical to the first seven quoted months on the underlying future.

Trading Hours: 09.45 to 12.32 hours; 14.30 to 17.00 hours. (As for the underlying Futures Contract—trading in Traded Options will continue until trading in the underlying Futures Contracts has ceased) Shall be the close of business on the third Wednesday in the preceding month. Declaration (or non-declaration) instruction shall be given to the Clearing House not later than one hour after close of business.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by revising the existing entry for "London Futures and Options Exchange" option contract on Robusta Coffee futures contract to read as follows:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to Section 30.3(a)

Exchange	Type of contract	FR date and citation
• •	• •	• •
London Futures and Options Exchange.	Option Contract on Robusta Coffee Futures Contract.	Dec. 6, 1989; 54 FR 50356. Feb. 27, 1991; 56 FR____
• •	• •	• •

Issued in Washington, DC on February 21, 1991.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 91-4520 Filed 2-26-91; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Rel. Nos. 33-6882; IC-18005; S7-13-90]
RIN 3235-AD91

Revisions to Rules Regulating Money Market Funds

AGENCY: Securities and Exchange Commission.

ACTION: Final amendments to rules and forms.

SUMMARY: The Commission is adopting amendments to rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 affecting money market funds. The amendments tighten the risk-limiting conditions of rule 2a-7, the rule that permits money market funds to use the amortized cost method of valuing portfolio securities and the penny-rounding method of computing price per share, and require that all mutual funds that hold themselves out as money market funds meet these conditions. The amendments require a money market fund to disclose prominently on the cover page of its prospectus and in its sales literature and advertisements that an investment in the fund is not guaranteed or insured by the U.S. Government and that there is no assurance that the fund will be able to maintain a stable net asset value. The amendments are designed both to reduce the likelihood that a money market fund will not be able to maintain a stable net asset value, and to increase investor awareness that investing in a money market fund is not without risk.

EFFECTIVE DATES: The amendments to rules 2a-7, 2a41-1, 12d3-1 and 34b-1 (17 CFR 270.2a-7, 270.2a41-1, 270.12d3-1 and 270.34b-1) and Form N-SAR (17 CFR 274.101) under the Investment Company Act of 1940 and rule 482 (17 CFR 230.482) under the Securities Act of 1933, and to Item 22 of Form N-1A (17 CFR 239.15A and 274.11A), Item 25 of Form N-3 (17 CFR 239.17a and 274.11b) and Item 21 of Form N-4 (17 CFR 239.17b and 274.11c) will be effective June 1, 1991. The amendments to Item 1 of Form N-1A and Item 1 of Form N-3 will be effective: (1) For investment companies whose registration statements become effective on or after May 1, 1991, and investment companies with fiscal years ending on December 31, as to prospectuses used on or after May 1, 1991; and (2) for all other investment companies, upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Special Counsel, or Eli A. Nathans, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting several amendments to rules and forms affecting money market funds, including rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act"). (Unless otherwise noted, all references to rule 2a-7, as amended, or any paragraph thereof, will be to 17 CFR 270.2a-7.) Rule 2a-7 is used by most money market funds to maintain a stable net asset value of $1.00 per share.

The Commission is adopting amendments to rule 2a-7 to require a money market fund to: (1) Limit its investment in the securities of any one issuer to no more than five percent of fund assets, measured at the time of purchase (the "five percent diversification test"), except for certain investments held for not more than three business days; (2) limit its investment in securities which are "Second Tier Securities" to no more than five percent of fund assets, with investment in the Second Tier Securities of any one issuer being limited to the greater of one percent of fund assets or one million dollars; and (3) limit investments to securities that are determined to have "minimal credit risks" and are "Eligible

BEST COPY AVAILABLE

Securities." "Eligible Securities" are defined as securities rated by the Requisite NRSROs in one of the two highest short-term rating categories and comparable unrated securities. "Second Tier Securities" are Eligible Securities that are not "First Tier Securities." "First Tier Securities" are defined as securities which are rated by at least two nationally recognized statistical rating organizations ("NRSROs") [1] or by the only NRSRO that has rated the security (the "Requisite NRSROs") in the highest short-term rating category, or comparable unrated securities.

The amendments also (1) Limit fund investments to securities with a remaining maturity of not more than thirteen months (except that money market funds that do not use the amortized cost method of valuation may invest in U.S. Government securities that have a remaining maturity of not more than twenty-five months); (2) require a fund to maintain a dollar-weighted average portfolio maturity of not more than ninety days; (3) require a fund, in the event that a portfolio security goes into default or the rating of a portfolio security is downgraded so that it is no longer an Eligible Security, and in certain other circumstances, to reassess promptly whether the security presents minimal credit risks, determine whether continuing to hold the security is in the best interest of the fund, and record such actions in fund records; and (4) require a fund to notify the Commission if it holds defaulted securities which amount to one-half of one percent or more of fund assets. Finally, the amendments to rule 2a–7 make it unlawful for any registered investment company to use the term "money market" in its name or hold itself out as a "money market fund" unless it meets the risk limiting conditions of the rule. Funds that hold themselves out as distributing income that is exempt from regular federal income tax ("tax exempt funds") are exempted from the five percent diversification test for First Tier Securities, the five percent limit on investments in Second Tier Securities and the one percent limit on investments in the Second Tier Securities of any one issuer.

The Commission is also adopting amendments to rule 482 (17 CFR 230.482) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("1933 Act"), rule 34b–1 under the 1940 Act (17 CFR 270.34b–1), and Forms N–1A (17 CFR 274.11A and 239.15A), N–3 (17 CFR 274.11b and 239.17a), and N–4 (17 CFR 274.11c and 239.17b) under the 1933 and 1940 Acts to: (1) Require the cover page of money market fund prospectuses, and fund advertisements and sales literature, to disclose prominently that an investment in a money market fund is neither insured nor guaranteed by the U.S. Government and that there is no assurance that the fund will be able to maintain a stable per share net asset value; and (2) revise the definition of a "money market fund" for purposes of those funds eligible to quote a seven-day yield in advertisements and sales literature to include only those funds that meet the risk-limiting conditions.

Finally, the Commission is adopting amendments to rules 2a41–1 and 12d3–1 under the 1940 Act (17 CFR 270.2a41–1 and 270.12d3–1) and to instructions to Form N–SAR (17 CFR 274.101) to conform certain cross-references to specified paragraphs of rule 2a–7.

Table of Contents

I. Background
II. Discussion
A. Preliminary Matters
B. Portfolio Quality and Diversification
1. Five Percent Diversification Test
a. Three Day Safe Harbor
b. Diversification as to Put Agreements
c. Diversification as to Bank Instruments
d. Repurchase Agreements
2. Diversification and Quality Test for Second Tier Securities
3. Treatment of Split Rated Securities
C. Maturity of Portfolio Securities
1. Ninety-Day Dollar Weighted Average Maturity
2. Extension of Maximum Maturity Period for Any Security
3. Variable Rate Demand Instruments
D. Unrated Securities, Long-Term Securities and Demand Instruments
E. Changes in Credit Risk and Quality
1. Disposition of Portfolio Securities
2. Commission Notification
3. Reporting Requirements
F. Portfolio Management Responsibilities
G. Investment Companies Holding Themselves Out as Money Market Funds
H. Money Market Fund Prospectus Disclosure
I. Funds Eligible to Quote Seven-Day Yields
III. Transition Period
IV. Regulatory Flexibility Analysis
V. Statutory Authority
VI. Text of Rule and Form Amendments
Appendix: Conversion Table

I. Background

On July 17, 1990, the Commission proposed amendments to rules and forms under the 1933 Act and the 1940 Act affecting money market funds, including rule 2a–7 under the 1940 Act.[2] Rule 2a–7 permits money market funds to maintain a stable price per share,[3] through the use of the amortized cost method of valuation [4] and the penny-rounding method of pricing.[5] But for rule 2a–7, section 2(a)(41) of the 1940 Act (15 U.S.C. 80a–2(a)(41)), together with rules 2a–4 and 22c–1 under the 1940 Act (17 CFR 270.2a–4 and 270.22c–1), would require a money market fund to calculate its current net asset value per share by valuing portfolio securities for which market quotations are readily available at market value, and other securities and assets at fair value as determined in good faith by the board of directors ("mark-to-market").[6]

[1] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule (17 CFR 240.15c3–1(c)(2)(vi)(E), (F) and (H). The Commission's Division of Market Regulation responds to requests for NRSRO designation through no-action letters. Currently, the Division of Market Regulation has designated five NRSROs: Duff and Phelps, Inc. ("D&P"), Fitch Investors Services, Inc. ("Fitch"), Moody's Investors Service Inc. (Moody's"), Standard & Poor's Corp. ("S&P"), and, with respect to debt issued by banks, bank holding companies, United Kingdom building societies, broker-dealers and broker dealers' parent companies, and bank-supported debt, IBCA Limited and its affiliate, IBCA Inc. ("IBCA").

[2] Investment Company Act Rel. No. 17589 (July 17, 1990) (55 FR 30239 (July 25, 1990)) (the "Proposing Release"). Money market funds are open-end management investment companies investing in short-term debt instruments. There are currently 710 money market funds with over $536 billion in assets in approximately 21.3 million shareholder accounts. IBC/Donoghue's Money Fund Report, (Feb. 8, 1991) (the "Money Fund Report"). Data derived from the Money Fund Report is as of February 5, 1991. The information with respect to shareholder accounts is derived from the Investment Company Institute Mutual Fund Factbook 102 (30th ed. 1990). See the Proposing Release at nn. 3 through 7 and 15 through 18, and accompanying text, for a summary of the development of money market funds.

[3] Most money market funds maintain a stable price of $1.00 per share. The stable $1.00 price has encouraged investors to view money market funds as an alternative to bank deposit and checking accounts, even though money market funds lack federal deposit insurance.

[4] Under the amortized cost method, portfolio securities are valued by reference to their acquisition cost as adjusted for amortization of premium or accretion of discount. The definition of the term "amortized cost method" has been amended to substitute the term "accretion" for "accumulation" in order to reflect current finance and accounting terminology. Paragraph (a)(1) of rule 2a–7, as amended.

[5] Share price is determined under the penny rounding method by valuing securities at market value, fair value, or amortized cost (as described in note 6 and accompanying text, *infra*) and rounding the per share net asset value to the nearest cent on a share value of a dollar, as opposed to the nearest one tenth of one cent. Paragraph (a)(11) of rule 2a–7, as amended. See also Investment Company Act Rel. No. 13380 (July 11, 1983) (48 FR 32555 (July 18, 1983)) (hereinafter, "Release 13380") at n. 6, and Investment Company Act Rel. No. 12206 (Feb. 1, 1982) (47 FR 5428 (Feb. 5, 1982)) (hereinafter, "Release 12206") at n. 5.

[6] The Commission has adopted an interpretive position permitting open-end investment companies that hold a significant amount of debt securities to use the cost amortization method of valuation with respect to debt securities that mature in sixty days or less unless the particular circumstances dictate otherwise (*i.e.*, due to the impairment of the creditworthiness of an issuer). Investment Company Act Rel. No. 8760 (May 31, 1977) (42 FR 28999 (June 7, 1977)) (hereinafter, "Release 8760").

Rule 2a–7 was adopted in 1983.[7] It contains a number of conditions designed to reduce the likelihood that the net asset value of a money market fund as determined by the amortized cost method will deviate materially from its net asset value as determined by the mark-to-market method.[8] The rule also requires a fund's board of directors to take promptly such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable any deviation between a fund's amortized cost and its mark-to-market value if the deviation could result in material dilution or unfair results to investors.[9] Currently, money market funds that rely on rule 2a–7 can invest only in "high quality" debt securities, *i.e.*, securities rated in one of the top two quality categories by any NRSRO.[10] Funds using the rule are prohibited from investing in instruments with a maturity of greater than one year and from maintaining a dollar-weighted average portfolio maturity that exceeds 120 days.[11] The rule's conditions have had the effect of maintaining the quality of securities held by money market funds, thus reducing the likelihood that a fund will hold securities that will substantially decline in value and that a fund will break a dollar.

As discussed in the Proposing Release, the Commission decided to reexamine the conditions contained in rule 2a–7 in light of developments in the commercial paper market since the rule was adopted.[12] In June 1989 and March 1990, several money market funds held commercial paper of issuers that defaulted. The shareholders of these money market funds were not adversely affected only because each fund's investment adviser (or an affiliate) purchased the defaulted paper from the fund at its amortized cost or principal amount.

The Commission proposed amendments to rule 2a–7 that would have required a money market fund to limit fund investments in securities that had received less than the highest rating from any NRSRO to five percent of fund assets (the "five percent quality test"). Investment in any single lower-rated issuer would have been limited to one percent of fund assets (the "one percent diversification test").[13] The amendments would have reduced the maximum permitted dollar-weighted average portfolio maturity to ninety days. The amendments would also have required money market funds to disclose to investors that investment in the fund is not federally insured or guaranteed. The proposal had two principal purposes: to provide additional safeguards to reduce the likelihood that a money market fund would have to break a dollar, and to increase investor awareness that investments in a money market fund are not "risk free."

The Commission received comments on the proposed amendments from 289 commenters, including sixty-nine issuers of commercial paper, eight commerical paper dealers and related trade groups, thirty-five investment companies (including the Investment Company Institute), three NRSROs, and 169 individual investors.[14] The comment letters reflect a wide variety of views on almost every topic discussed in the Proposing Release. Commenters representing the mutual fund industry generally supported most aspects of the Commission proposal, and in some cases would go further than the proposed amendments in restricting the types of securities in which money market funds may invest. Individual investors almost unanimously supported placing restrictions on money market fund investment in lowerated commercial paper. Issuers and commerical paper dealers almost uniformly opposed the proposed restrictions on purchases of securities that had not received the highest rating from a NRSRO.

Upon consideration of the comments and further analysis, the Commission is adopting the amendments with several changes, many of which were suggested by the commenters. The five percent diversification tests in being adopted substantially as proposed, with the proviso that a fund may invest more than five percent of its assets in the First Tier Securities of a single issuer for up to three business days after purchase in order to allow a fund more flexibility temporarily to invest large inflows of cash in a single high quality issuer. The one percent diversification and five percent quality tests for Second Tier Securities (collectively, the "Second Tier Security tests") have also been adopted substantially as proposed. However, the standards for determining which securities are subject to the Second Tier Security tests have been modified. Under the proposal, a security would have been a First Tier Security only if all NRSROs rating the security had given it the highest rating. Under the rule as amended, a security qualifies as a First Tier Security if two NRSROs (or one, if only one NRSRO has rated the security) (the "Requisite NRSROs") have given it the highest rating, or if it is an unrated security of comparable quality.[15] Where the Security is rated by only one NRSRO, or is unrated, the acquisition by the fund of the security must expressly be approved or ratified by the fund's board of directors. Tax exempt funds are exempted from the five percent diversification and the Second Tier Security tests.[16] The amendments also limit fund investments to securities with a remaining maturity of not more than thirteen months (except that a fund that does not use the amortized cost method may invest in U.S. Government securities with a remaining maturity of not more than twenty-five months), and require a fund to maintain a dollar-weighted average portfolio maturity of not more than ninety days. Finally, the amendments also make it unlawful for any registered investment company to use the term

[7] Rule 2a–7 was proposed in Release 12206, *supra* note 5, and adopted in Release 13380, *supra* note 5. Since its adoption, rule 2a–7 has been amended only once, in 1986, to permit money market funds to acquire put options and standby commitments. See Investment Company Act Rel. No. 14983 (Mar. 12, 1986) (51 FR 9773 (Mar. 21, 1986)) (hereinafter, "Release 14983").

[8] If the net asset value of a fund, as determined by the mark-to-market method of pricing, were to drop significantly below the net asset value as determined by the amortized cost method, investors who redeemed their investments would receive more than their *pro rata* share of the fund's assets, the interests of other shareholders would be diluted, and purchasing investors would pay too much for their shares.

[9] The board is required to consider promptly what action should be initiated where the deviation between the amortized cost and the mark-to-market value exceeds one half of one percent, including whether to reduce the share price to less than $1.00 ("breaking a dollar").

[10] The rule limits money market fund investment to these securities because they are subject to less credit risk than lower quality securities, and are therefore less likely to decrease in value while they are held by the fund.

[11] These conditions limit fund exposure to the risk that the quality of a security might decline over time or that market interest rates would rise, resulting in a decline in the value of the portfolio securities.

[12] See the Proposing Release, *supra* note 2, at nn. 15 through 20, and accompanying text.

[13] These securities were referred to in the Proposing Release as "Securities Not Having the Highest Rating." Rule 2a–7, as amended, refers to securities that are subject to the adopted investment limitations as "Second Tier Securities." While the basis for identifiying a Second Tier Security is somewhat different from the proposed test for Securities Not Having the Highest Rating, for ease of reference the term Second Tier Securities is also used in this Release to refer to securities that under the amendments as proposed would have been Securities Not Having the Highest Rating.

[14] The comment letters and a summary of the comments prepared by the Commission staff are included in File No. S7–13–90

[15] Corresponding changes have been made to the definition of "Eligible Securities" (which in the proposal, were referred to as "Eligible Quality" securities). See section II.B.3. of this Release, *infra*, and paragraph (a)(5) of rule 2a–7, as amended.

[16] However, a tax exempt fund may invest only in Eligible Securities. Paragraph (c)(3) of rule 2a–7, as amended.

"money market" in its name (or in the name of any of its redeemable securities) or hold itself out as a "money market fund" unless it meets the risk limiting conditions of the rule.

II. Discussion

A. Preliminary Matters

Rule 2a–7 limits a money market fund to investing in securities that its board of directors determines present "minimal credit risks" and that are "high quality" as defined in the rule.[17] While the amendments revise the definition of high quality, they do not revise the requirement that a money market funds' board of directors (or its delegate) evaluate the creditworthiness of the issuer of any portfolio security and any entity providing a credit enhancement for a portfolio security. Possession of a certain rating by a NRSRO is not a "safe harbor." Where the security is rated, having the requisite NRSRO rating is a necessary but not sufficient condition for investing in the security and cannot be the sole factor considered in determining whether a security has minimal credit risks. To underscore this point, a parenthetical has been added to the rule stating that the determination of whether an instrument presents minimal credit risks "must be based on factors pertaining to credit quality in addition to the rating assigned * * * by a NRSRO."[18]

The extensiveness of the evaluation will vary with the type and maturity of the security involved and the board's (or its delegate's) familiarity with the issuer of the security. For example, little credit analysis of a Government security would be expected. A different analysis may be appropriate for a security with a remaining maturity of seven days than for one of the same issuer with a remaining maturity of one year. In a letter dated May 8, 1990, the Division of Investment Management provided guidance on elements of a minimal credit risk analysis.[19] As stated in the May 8 Letter and reiterated in the Proposing Release, these elements are only examples. The focus of any minimal credit risk analysis must be on those elements that indicate the capacity of the issuer to meet its short-term debt obligations.

The amendments adopted in this Release place additional restrictions on money market funds in selecting portfolio securities, including commercial paper. The Commission believes these amendments are necessary to ensure that money market funds meet investors' expectations for safety, soundness and convenience by maximizing the likelihood that these funds will be able to maintain a stable net asset value under the pricing procedures they are permitted to use. Rule 2a–7 and the amendments adopted today were developed in response to the characteristics of a specific type of registered investment company with a specific type of share pricing standard. The Commission wishes to emphasize that the amendments are not intended to limit the ability of investment companies not holding themselves out as money market funds to invest in lower-rated securities, including lower-rated commercial paper. Nor are the amendments intended to suggest that these investment limitations are necessarily appropriate for any other types of investment vehicles.

B. Portfolio Quality and Diversification

1. Five Percent Diversification Test

Most money market funds taking advantage of the exemptions provided by rule 2a–7 are "diversified" investment companies within the meaning of section 5(b)(1) of the 1940 Act.[20] Section 5(b)(1) provides that a diversified investment company, with respect to seventy-five percent of its assets, may not invest more than five percent of its assets in securities of any issuer, other than cash, cash items, Government securities,[21] and securities of other investment companies.[22] The remaining twenty-five percent of the fund's assets (the "twenty-five percent basket") may be invested in any manner. The Commission proposed to amend rule 2a–7 to limit any money market fund (except a tax exempt fund) to investing no more than five percent of its total assets [23] in the securities—except Government securities—of any one issuer. The effect of this proposal would be to eliminate the twenty-five percent basket.

Most commenters, including most mutual fund commenters, supported the proposed five percent diversification test as appropriate for a money market fund and indicated that, despite the flexibility provided by section 5(b)(1) with respect to the twenty-five percent basket, in practice, most taxable money market funds limit their investment in non-U.S. Government issuers to approximately five percent or less of total assets. The Commission has decided to adopt the five percent diversification test as proposed, with a provision designed to permit funds to make certain temporary investments in excess of the five percent limit, and with the clarifications noted below.[24]

a. *Three Day Safe Harbor.* The five percent diversification test, as adopted, permits a fund to invest more than five percent of its total assets in the First Tier Securities of a single issuer for a period of up to three business days after the purchase thereof.[25] This change from the proposal has been made in response to commenters who asserted that the twenty-five percent basket often is useful in managing portfolio liquidity and large cash inflows; they urged that the ability to invest a large percentage of fund assets in a single high quality issuer on a temporary basis is an efficient way to assure liquidity in the event of unexpected redemptions by shareholders or to invest unanticipated cash inflows. The Commission believes that a three day limit will permit a fund to realize these efficiencies without being exposed to the risks associated with investing more than five percent of fund assets in a single issuer for an indefinite period of time. For example, a fund that holds First Tier Securities that will mature in three business days may avail itself of an opportunity to purchase additional securities of the same issuer rather than disposing of the securities it holds or waiting for them to mature. Funds which are diversified investment companies would still be subject to the diversification requirements of section 5(b)(1) of the 1940 Act, however, and the three day safe harbor could therefore be used only with respect to twenty-five percent of the net assets of the fund.

b. *Diversification as to Put Agreements.* Rule 2a–7 has been clarified to reflect the applicability of the five percent diversification test to puts. Except in the case of tax exempt funds, no more than five percent of a fund's assets may be invested in securities issued by or subject to puts from any single issuer.[26] However, an unconditional put is not subject to this test if no more than ten percent of the fund's total assets is invested in securities issued or guaranteed by the issuer of the unconditional put.[27]

c. *Diversification as to Bank Instruments.* The amended rule requires that a money market fund (except a tax exempt fund) not invest more than five percent of its assets in the securities of any one issuer. This limitation applies to investments in bank instruments that are "securities" under section 2(a)(36) of the 1940 Act (15 U.S.C. 80a–2(a)(36)). Bank instruments that are securities include time deposits (such as certificates of deposit), bankers' acceptances, letters of credit and similar instruments,[28] but do not include customary demand deposits.[29]

d. *Repurchase Agreements.* The proposed amendments provide that for purposes of the five percent diversification test, a repurchase agreement collateralized by Government securities would be deemed to be an acquisition of the underlying securities if it was "collateralized fully."[30] One commenter requested that the status of repurchase agreements collateralized by non-Government securities be clarified.

The rule, as adopted, extends the approach taken with respect to repurchase agreements collateralized by Government securities to other repurchase agreements.[31] After giving effect to the securities collateralizing the repurchase agreement, a fund may not invest more than five percent of its assets in any one issuer, including the issuer of securities collateralizing the repurchase agreement. Where the underlying securities are not Government securities, they also must be of the highest quality at the time the repurchase agreement is entered into, *i.e.*, rated in the highest grade by the "Requisite NRSROs."[32] This is to assure that in the event that the fund has to realize on the collateral, it will be holding only the highest quality securities. Fund directors should be aware of the risks of investing in repurchase agreements that are collateralized by instruments with remaining maturities of greater than one year. If the fund were required to realize on the collateral underlying the repurchase agreement, these instruments would have to be taken into account in calculating the fund's dollar-weighted average portfolio maturity. The fund would have to dispose of the collateral as soon as possible if the instruments constituting the collateral caused the fund's average portfolio maturity to exceed ninety days or did not satisfy the remaining maturity condition of the rule.[33]

2. Diversification and Quality Test for Second Tier Securities

The Commission proposed to prohibit a taxable money market fund from investing more than five percent of its total assets in Second Tier Securities,

---

[17] The rule as originally adopted used the term "high quality." The Proposing Release used the term "Eligible Quality." Rule 2a–7, as amended, uses the term "Eligible Security." See note 15, *supra*.

The board generally can delegate to the fund's investment adviser the responsibility for determining that individual portfolio securities present minimal credit risks, but only under guidelines established by the board. In certain instances, these determinations must be expressly approved or ratified by the board (and not its delegate). See section II.F. of this Release, *infra*.

[18] Paragraph (c)(3) of rule 2a–7, as amended.

[19] Letter to Registrants (pub. avail. May 8, 1990) (hereinafter, the "May 8 Letter").

[20] 15 U.S.C. 80a–5(b)(1). Several tax exempt funds which concentrate in the obligations of state and local governments are not diversified within the meaning of section 5(b)(1). As discussed *infra*, the new diversification requirements of the rule are not being applied to tax exempt funds at this time. See paragraph (c)(4)(i) of rule 2a–7, as amended.

[21] The term "Government security" is defined in section 2(a)(16) of the 1940 Act (15 U.S.C. 80a–2(a)(16)). Paragraph (a)(8) of rule 2a–7, as amended, incorporates this definition.

[22] Section 5(b)(1) also prohibits diversified funds, with respect to seventy-five percent of their assets, from investing in securities that comprise more than 10% of the outstanding voting securities of an issuer.

[23] "Total Assets" is defined in paragraph (a)(15) of rule 2a–7, as amended, to mean, with respect to a fund using the amortized cost method, the total amortized cost of its assets, and with respect to any other money market fund, the total market-based value of its assets.

[24] Paragraph (c)(4)(i)(A) of rule 2a–7, as amended. For purposes of the diversification and quality tests, subsidiaries and parent companies are treated as separate issuers. In the case of banks having more than one branch, all branches are treated as the same issuer.

[25] *Id.* The term "business day" is defined in paragraph (a)(2) of rule 2a–7, as amended, as any day other than a Saturday, Sunday or a customary national business holiday. Paragraph (c)(4)(ii)(A) specifies that a fund may not make more than one investment within this safe harbor at any time.

[26] Paragraph (c)(4)(ii) of rule 2a–7, as amended. Tax exempt funds would continue to be subject to the diversification requirement with respect to puts in the current rule, *i.e.*, the five percent diversification test for puts must be met with respect to seventy-five percent of the fund's assets. *Id.* However, the rule, as amended, makes clear that in determining compliance with this condition, the tax exempt fund must aggregate securities issued by and subject to puts from the same institution.

[27] Paragraph (c)(4)(iii)(C) of rule 2a–7, as amended. For purposes of rule 2a–7, unconditional puts are considered to be guarantees. Thus, rule 2a–7, as amended, treats unconditional puts and guarantees in the same manner as rule 5b–3 under the 1940 Act (17 CFR 270.5b–3). See the Proposing Release, *supra* note 2, at n. 31. An unconditional put includes a bank letter of credit or other unconditional credit enhancement under which the holder of the instrument subject to the put could recover amounts due on the instrument. Paragraph (a)(19) of rule 2(a)(7), as amended.

[28] See International Venture Finance, Ltd. (pub. avail. June 2, 1988) (certificates of deposit subject to federal deposit insurance are securities within the meaning of section 2(a)(36) of the 1940 Act). *Cf.* Investment Company Act Rel. No. 11421 (Oct. 31, 1980) [45 FR 72915 (Nov. 7, 1980)] (bank certificates of deposit and bankers' acceptances are among the types of securities excluded from the provisions of rule 17j–1 under the 1940 Act [17 CFR 270.17j–1]). See also note 24, *supra*.

[29] *Cf.* Section 9–04 of Regulation S–X [17 CFR 210.9–04] (demand deposits included as a "cash item" on investment company balance sheets).

[30] See the Proposing Release, *supra* note 2, at n. 30. A repurchase agreement may be regarded as a security issued by the entity promising to repurchase the underlying security at a later date. See Release 13380, *supra* note 5, at n. 28. The conditions that the Commission proposed for repurchase agreements collateralized by Government securities reflected prior pronouncements by the Commission and the Division of Investment Management. *Id.* See also Investment Company Act. Rel. No. 13005 (Feb. 2, 1983) [48 FR 5394 (Feb. 9, 1983)] (hereinafter, "Release 13005") in which the Division of Investment Management stated that a repurchase agreement entered into with a broker-dealer would not violate section 12(d)(3) of the 1940 Act (15 U.S.C. 80a–12(d)(3)) if it was "fully collateralized" and a fund board of directors had evaluated the creditworthiness of the broker-dealer with which it proposed to engage in a repurchase agreement transaction to determine that the broker-dealer did not present a serious risk of becoming involved in bankruptcy proceedings. As noted in Release 13005, a money market fund's board of directors (or its delegate) has a similar duty to evaluate creditworthiness of the broker-dealer or other institution that is party to the repurchase agreement under rule 2a–7 to assure that all securities purchased present minimal credit risks. See paragraph (c)(3) of rule 2a–7, as amended.

[31] Paragraph (c)(4)(i) of rule 2a–7, as amended, provides that for purposes of the five percent diversification test, the repurchase agreement is deemed an acquisition of the underlying securities provided that the agreement is "collateralized fully." Only that portion of the repurchase agreement which is collateralized fully would be subject to the special treatment discussed in this section. Any agreement or portion of an agreement which is not collateralized fully would be treated as an unsecured loan. As such, the loan itself would have to meet the quality requirements set out in the rule, the five percent diversification test, and, if applicable, the limitations placed on investment in Second Tier Securities. See Release 13380, *supra* note 5, at n. 31.

Paragraph (a)(3) of rule 2a–7, as amended, defines "collateralized fully." This definition has been adopted substantially as proposed. Certain duplicative language in the clause describing the requirements in connection with securities registered on a book entry system has been deleted from paragraph (a)(3)(ii). In order for a fund to retain the unqualified right to possess and sell the collateral, as required by paragraph (a)(3)(iii), its rights would have to be evidenced in an appropriate fashion. For example, in the case of U.S. Treasury bills, entry of the name of the fund or its custodian as owner on the book entry system maintained by a Federal Reserve Bank would evidence these rights. See 31 CFR 350.4.

[32] Paragraph (a)(3)(iv) of rule 2a–7, as amended. The "Requisite NRSRO" concept is discussed in section II.B.3. of this Release, *infra*. Repurchase agreements typically relate to long-term debt securities; the securities would have to be rated "AAA" or its equivalent. The rule does not require that the underlying securities comply with the provisions of the rule relating to remaining maturity; the maturity of the repurchase agreement is determined by reference to the date on which the underlying securities are required to be repurchased. See paragraph (d)(5) of rule 2a–7, as amended. Since any non-Government securities would have to be rated in the top grade, the question of the applicability of the Second Tier Security tests to the collateral does not arise.

[33] See Release 13380, *supra* note 5, at n. 29. Long-term instruments, including Government securities, expose a fund to greater interest rate risk than short-term instruments. See section II.C. of this Release, *infra*.

with investment in the Second Tier Securities of any one issuer being limited to no more than one percent of total assets.[34] In proposing these limitations the Commission stated that, in light of recent experiences of money market funds, a substantial investment in these securities may create an inappropriate risk for funds seeking to maintain a stable price per share. While most commenters representing the mutual fund industry supported or did not oppose these limitations on Second Tier Securities (or suggested additional limitations), all of the commercial paper dealers and issuers of Second Tier Securities that commented on the proposals strongly opposed them.[35]

Commenters opposing the proposal argued that these diversification and quality tests would raise the borrowing costs of second tier issuers by reducing the amount of their short-term paper bought by money market funds, and expressed concern that many funds, especially smaller funds, would not invest in any Second Tier Securities. Several of these commenters also argued that the Commission's concerns over the creditworthiness of second tier issuers were misplaced. These commenters urged the Commission to rely instead on increased prospectus disclosure concerning the risks posed when a money market fund invests in a substantial amount of Second Tier Securities. Many commenters also argued that the proposed limitations would discourage funds from performing independent credit research, since the benefits of research are often realized by investment in lower-rated securities that fund managers conclude have minimal credit risks. Commenters asserted also that the one percent diversification test would not permit a fund to make a sufficient investment in any one issuer of Second Tier Securities to justify the level of credit analysis that would be required to determine that the investment presented minimal credit risks. Commenters also noted that, because commercial paper is usually sold in minimum denominations of one million dollars, the one percent diversification test would preclude smaller money market funds from investing in Second Tier Securities.

In contrast, the Investment Company Institute ("ICI") and substantially all of the individual investor commenters urged the Commission to prohibit money market funds from investing in any Second Tier Securities.[36] The ICI argued that "past experience indicates that [Second Tier Securities] may undergo rapid deterioration and therefore may involve risks inappropriate for funds seeking to maintain a stable net asset value." Commenters favoring the Second Tier Security tests noted that a few funds with riskier investment policies breaking a dollar might lead to a loss of investor confidence in the entire money market industry. The ICI asserted that "in determining the quality standards for money market fund portfolio securities the exclusive focus must be on the protection of money market fund shareholders, who seek safety by investing in funds whose objective is the maintenance of a stable net asset value."

The Commission continues to believe that the recent history of defaults in the commercial paper market and the extent to which these defaults have affected funds warrant taking measures to assure that investors' expectations of the relative safety of investment companies holding themselves out as money market funds continue to be met. Almost all money market funds attempt to maintain a stable net asset value, and this policy is understood by investors to imply a high level of investor safety. Investors have come to equate investments in these funds to "money." Because holding money does not entail any credit risks, the credit risks to which holders of money market shares are exposed should be minimized to the lowest level practicable.[37]

After considering the comments received and after weighing the increased risks and benefits of allowing money market funds to invest a greater percentage of their assets in Second Tier Securities, the Commission has decided to adopt the Second Tier Security tests substantially as proposed, with one change to the one percent diversification test. As amended, rule 2a–7 limits money market fund investment in Second Tier Securities to no more than five percent of fund assets.[38] Paragraph (c)(4)(i)(B) of rule 2a–7, as amended, limits the amount a money market fund may invest in the Second Tier Securities of a single issuer to the greater of one percent of the fund's total assets or one million dollars. The alternative one million dollar test is intended to allow smaller money market funds to invest in Second Tier Securities.[39] The three day safe harbor discussed above applies only to First Tier Securities and thus it would not permit a fund to exceed the diversification limits for Second Tier Securities.

As explained in the Proposing Release, compliance with the five percent diversification and Second Tier Security tests is measured at the time the fund purchases the security. Thus a fund would not be required subsequently to dispose of a security because of a change in the percentage of fund assets the security represents or in the fund's overall investment in Second Tier Securities.[40] In addition, to facilitate determining compliance with the Second Tier Security tests, rule 2a–7, as amended, specifies that in calculating the percentage of fund assets invested in Second Tier Securities, a fund should only include securities that were Second Tier Securities at the time they were acquired (at original purchase or at any subsequent roll-over) and need not take into account rating changes subsequent to the acquisition of the security.[41]

3. Treatment of Split Rated Securities

This section (insofar as it discusses the term "Eligible Security") and all subsequent sections of the Release describe changes that are applicable to both taxable and tax exempt funds.[42]

Currently, rule 2a–7 permits a money market fund to purchase a security as long as at least one NRSRO rates it within the top two categories of its rating system. Some securities have different ratings from different NRSROs (*i.e.*, "split ratings"). Split ratings may result from the failure of one NRSRO to perceive quality problems or improvements perceived by another NRSRO, or may reflect differences among NRSROs as to the emphasis placed on different criteria. Under the proposed amendments, the relative quality of a security would have been determined by reference to the rating received from each NRSRO rating the security and a split rated security would be treated as having the lower rating. The lower rating would have determined whether a fund could purchase the securities and whether they would be subject to the Second Tier Security tests.

Many commenters, including those supporting the principal elements of the proposals, argued that this approach would give too much influence to a single NRSRO, which effectively could veto the ratings of all other NRSROs. Many mutual fund commenters also complained about the expense and burden of keeping current as to ratings of all of the NRSROs.

Commenters suggested a number of alternatives. In response to the comments, the Commission has decided to adopt an approach suggested by the ICI and several other commenters. Under this approach, a security would be an Eligible Security, and either a First Tier or Second Tier Security, if the "Requisite NRSROs" have agreed on the relevant rating.[43] In the case of a security that has been rated by only one NRSRO, that rating determines the status of the security during the time it is held by a money market fund.[44] However, the acquisition of a security rated by only one NRSRO must be approved or ratified by the fund's board of directors.[45] If a security has been rated by more than one NRSRO, it must have received the requisite rating from at least two NRSROs.[46] Thus, if a security has received the highest rating from two NRSROs, it is a First Tier Security even if other NRSROs have given it a lower rating.

The adopted approach to split rated securities relies on the agreement of at least two NRSROs rather than unanimity of all the NRSROs that have rated the security. It will preclude a security from being a First Tier Security based on the opinion of only one NRSRO when other NRSROs have given it less than the highest rating. Conversely, it will preclude a single NRSRO from preventing a security from being an Eligible Security or a First Tier Security in the face of a consensus of at least two other NRSROs. Finally, where a security has received the applicable ratings from the Requisite NRSROs, a fund will not be required to monitor the actions of all the NRSROs unless the security has been rated by only one NRSRO.[47] A money market fund could limit the number of NRSROs it must follow by adopting a policy of only investing in securities rated by at least two NRSROs.[48]

C. Maturity of Portfolio Securities

1. Ninety-Day Dollar Weighted Average Maturity

The Commission is adopting proposed rule amendments to require a money market fund to maintain a dollar weighted average portfolio maturity of not more than ninety days, as opposed to the 120 days now permitted.[49] The change will decrease the exposure of money market fund investors to interest rate risk.

Most commenters supported the change. These commenters stated that almost all funds already limit their maturities to an even greater extent than the amendments would require.[50] As explained in the Proposing Release, the ninety-day limit is a maximum.[51] A

---

[34] In each case compliance with the limitations would be determined at the time of acquisition.

[35] The proposed exemption of tax exempt funds from the five percent diversification and Second Tier Security tests was generally supported by commenters, who stated that these funds often would have difficulties meeting the tests due to the limited number of tax exempt issuers in certain markets. Paragraph (c)(4)(i) of rule 2a–7, as amended, adopts the exemption. The definition of tax exempt fund has been amended to clarify that it includes a fund that distributes income exempt from "regular" federal income tax. See paragraph (a)(17) of rule 2a–7, as amended. A fund that distributes income that is subject to the alternative minimum tax would therefore be considered a tax exempt fund for this purpose.

The Commission requested comment on the possibility of excluding money market funds aimed at institutional investors from the risk-limiting conditions of rule 2a–7. Comment was divided, and the Commission has decided not to create such an exemption at this time. The Commission is concerned that, if an institutional fund were to break a dollar, there might be a loss of confidence in the money market fund industry. An institutional investor exception is being considered in the Division of Investment Management's current study of the Investment Company Act. See Investment Company Act Rel. No. 17534 (June 15, 1990) (55 FR 25322 [June 21, 1990]).

[36] The ICI, however, urged the Commission to permit money market funds to invest up to ten percent of their assets in split rated paper (*i.e.*, paper that had received the highest rating from at least one NRSRO, but not from other NRSROs rating the paper), with investment in any split rated issuer being limited to three percent of fund assets. See discussion of the treatment of split rated paper in section II.B.3 of this Release, *infra*.

[37] In addition, these limitations are necessary in order to assure that shareholders of funds using the amortized cost of penny rounding method will not suffer any dilution of the value of their investment. See note 8, *supra*.

[38] Paragraph (c)(4)(i)(B)(*2*) of rule 2a–7, amended. Paragraph (a)(14) of rule 2a–7, as amended, defines a Second Tier Security as any Eligible Security that is not a "First Tier Security." Paragraph (a)(8) of rule 2a–7, as amended, defines a First Tier Security as a security that is rated by the "Requisite NRSROs" in the highest rating category, or if unrated, which is of comparable quality. See, section II.B.3 of this Release, *infra*, discussing the definition of the term "Requisite NRSROs," and its effect on split rated securities.

[39] The five percent diversification and five percent quality tests would still apply, and thus a fund could not purchase one million dollars of Second Tier Securities if it would result, immediately after the purchase of the securities, in the fund having more than five percent of its total assets invested either in securities of that issuer or in Second Tier Securities.

[40] Paragraph (c)(4)(i) of rule 2a–7, as amended.

[41] Thus, a fund would not be required to "drop" a First Tier Security into the five percent Second Tier Security "basket" due to a downgrade. Paragraph (c)(4)(i)(B) of rule 2a–7, as amended. However, a fund board of directors (or its delegate) will be required to assess promptly whether a security which has ceased to be a First Tier Security presents minimal credit risks and cause the fund to take such action as is determined to be in the best interest of the fund. See note 70 and accompanying text, *infra*, and paragraph (c)(5)(i) of rule 2a–7, as amended. If the security is no longer a Second Tier Security because of a rating downgrade, it must be disposed of unless the board of directors determines that holding it is in the fund's best interest. *See* section II.E.1 of this Release, *infra*, and paragraph (c)(5)(ii) of rule 2a–7, as amended.

[42] While tax exempt funds are not subject to the Five Percent Diversification and Second Tier Security tests, they are, like taxable funds, only permitted to invest in Eligible Securities. See paragraph (c)(3) of rule 2a–7, as amended, and notes 15 and 16 and accompanying text, *supra*.

[43] Paragraphs (a)(5)(i), (a)(8), (a)(13) and (a)(14) of rule 2a–7, as amended. Rule 2a–7, as amended, reflects the fact that some NRSROs rate specific security issues while others provide a rating of the issuer that is applicable to all of the issuer's debt within a specific class (*e.g.*, short-term or long-term). This approach is also reflected in the definition of "Unrated Securities." See section II.D. of this Release and paragraph (a)(20) of rule 2a–7, as amended.

[44] Paragraph (a)(13) of rule 2a–7, as amended, defines the term "Requisite NRSROs." Where a security is rated by only one NRSRO, neither a money market fund nor the issuer is required to solicit ratings from other NRSROs to make the security eligible for investment by the fund. In addition, where only one NRSRO has issued a rating with respect to the security at the time it is purchased or rolled over, under paragraph (a)(13) that NRSRO determines the status of the security regardless of any subsequent ratings by other NRSROs. If a security is rated by only one NRSRO when purchased, a change in the security's status (*i.e.*, from First Tier to Second Tier) will trigger the reassessment requirement only when the NRSRO that rated the security when it was originally acquired lowers its rating. However, where the security is a Second Tier Security, a reassessment of its credit risk by the fund's board of directors would be required if the fund's investment adviser becomes aware that any other NRSRO subsequently rated the security below its second highest rating. See section II.E. of this Release, *infra*.

[45] Paragraphs (c)(3) and (e) of rule 2a–7, as amended.

[46] *Id.* Paragraph (a)(6) of rule 2a–7, as amended. Similarly if at least two NRSROs have rated the security in one of their two highest rating categories for short-term debt obligations, the security is an Eligible Security. Paragraph (a)(5) of rule 2a–7, as amended.

[47] A money market fund will have to determine whether any other NRSRO has rated a security that, when purchased, was rated by only one NRSRO, in two situations: (1) when it proposes to buy that security, to confirm that it is not rated by other NRSROs; and (2) when it proposes to "roll over" that security to determine whether another NRSRO has given it a lower rating. See note 44, *supra*, and paragraph (a)(13) of rule 2a–7, as amended. However, a reassessment of the security's credit risk would be required if the investment adviser becomes aware that a NRSRO has given the security less than its second highest rating. See section II.E. of the Release, *infra*.

[48] Currently the Commission's Division of Market Regulation has designated five NRSROs. See note 1, *supra*.

[49] Paragraph (c)(2)(iii) of rule 2a–7, as amended.

[50] As of February 5, 1991 the average portfolio maturity of taxable money market funds was 53 days and the average maturity of tax exempt funds was 30 days. See the Money Fund Report, *supra*, note 2. One commenter noted that the danger that a long portfolio maturity might cause a fund to break a dollar has been demonstrated. In 1987, municipal money market instruments fluctuated by 340 basis points over a sixty day period, a fluctuation large enough to cause a fund with a ninety-day average dollar weighted average maturity to break a dollar. The commenter suggested that the maximum portfolio maturity be reduced to sixty days. However, the Commission believes that a ninety day period should provide money market fund investors with additional safeguards without unduly limiting the flexibility of money market funds to adjust fund maturities to levels that are appropriate in view of market conditions.

[51] See the Proposing Release, *supra* note 2, at n. 61.

money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value or price per share.[53] Thus, in delegating portfolio management responsibilities to the fund's investment adviser, the board should adopt guidelines with respect to portfolio maturity designed to assure that this objective is met.

2. Extension of Maximum Maturity Period for Any Security

The proposed amendments would have extended the current limit on the maximum remaining maturity of any portfolio security from one year [53] to two years. Most commenters addressing this issue criticized this proposal as inconsistent with other changes proposed by the Commission. Commenters stated that a two-year maximum would increase the exposure of funds to both credit risk and interest rate risk. One commenter supported the proposed extension, arguing that, in the context of the ninety-day average limit, increasing maximum allowed maturities would have little effect on the overall risk exposure of a fund while allowing it to enhance yield. Several commenters stated that if the Commission was concerned by the degree of risk involved in increasing the permitted maturity period of securities, it could limit purchases of longer maturity instruments to Government securities. In view of the increased credit risks of securities with longer maturities, the Commission has decided to limit investment in securities with longer maturities to Government securities.[54] However, since the value of Government securities with a remaining maturity in excess of thirteen months may be subject to price fluctuations due to changes in interest rates (which could result in significant deviations between amortized cost and market values), rule 2a–7, as amended, permits their purchase only by a money market fund that uses market-based values in calculating its net asset value (including funds that rely on Release 9786 to value portfolio securities.[55]

With respect to securities other than Government securities, as suggested by several commenters, the rule extends the maximum permitted maturity of individual securities to thirteen months. This change has been made in order to accommodate funds purchasing annual tender bonds, and securities on a when-issued or delayed delivery basis. These securities often are not delivered for a period of up to one month after the purchaser has made a commitment to purchase them. Since the purchaser must "book" the security on the day it agrees to purchase it, the maturity period begins on that day.[56] The revised rule allows funds to invest in securities with a remaining maturity of no more than thirteen months (397 days).[57]

3. Variable Rate Demand Instruments

Many commenters objected to the provision of the current rule that the remaining maturity of a variable rate instrument with a demand feature be deemed equal to the longer of (i) the period remaining until the next interest readjustment or (ii) the period remaining until the principal amount can be recovered through demand. Several commenters urged the Commission to revise the standard to provide that the maturity period is the shorter of the two periods. One commenter recommended that the maturity period simply be made equal to the period remaining until the next interest readjustment, ignoring any demand feature.

The current treatment of variable rate instruments derives from a concern that measuring maturity only from interest rate readjustments does not reflect the risk that the quality of a variable rate instrument might decline.[58] Therefore, retaining the current approach continues to be appropriate generally.[59]

D. Unrated Securities, Long-term Securities and Demand Instruments

Rule 2a–7 permits a fund to invest in unrated securities that the board of directors deems to be of comparable quality to instruments that are "Eligible Securities" by virtue of the ratings assigned them.[60] The Commission has modified the rule to clarify that a security that is not itself rated is not an Unrated Security if its issuer has received ratings for outstanding securities that are comparable in priority and security with the security.[61] In response to commenter suggestions that the lack of a rating often indicates that a security would not have received the first or second highest rating from any NRSRO, paragraph (c) of rule 2a–7, as amended, requires that the fund's board of directors approve or ratify the acquisition of each unrated security.[62]

Currently, securities with one of the two highest long-term ratings are considered "high quality" securities.[63] Thus, where long-term ratings are used to determine whether securities are "high quality," money market funds may only invest in securities rated "AA" (or its equivalent) and above.[64]

---

[53] See paragraph (c)(2) of rule 2a–7, as amended.

[54] The current rule defines one year as 365 days, but provides that in the case of an instrument that was issued as a one year instrument, but has up to 375 days until maturity, one year means 375 days. This provision was designed to accommodate certain government agency securities that have this characteristic. See Release 13380, *supra* note 5, at n. 13.

[55] Paragraph (c)(2) of rule 2a–7, as amended. In order to accommodate Government securities purchased on a delayed delivery or when issued basis as discussed *infra*, paragraph (c)(2)(ii) provides that a fund not using the amortized cost method may invest in a Government security with a remaining maturity of 762 calendar days (25 months). In addition, funds may invest in Government securities that have final maturities in excess of twenty-five months provided that the interest rate is adjusted at least every twenty-five months. See paragraph (d)(1) of rule 2a–7, as amended

[56] See note 6, *supra*.

[57] The remaining maturity of an instrument is measured from the trade date or such other date upon which the fund's interest in the security is subject to market action. See Release 13380, *supra* note 5, at n. 11. At the suggestion of one commenter, this language has been incorporated into the rule at paragraph (d). Thus, for securities purchased under normal settlement procedures, the length of maturity would be calculated starting on the trade date. For instruments such as "when issued" or "delayed delivery" securities, if the commitment to purchase is based upon either a set price or yield, then the maturity will be calculated based upon the commitment date. *Id.*

[58] Paragraph (c)(2)(i) of rule 2a–7, as amended.

[59] See Release 13380, *supra* note 5, at n. 27. The Commission also believed that variable rate demand notes might not be readily marketable. The term "Variable Rate Instrument" is defined in paragraph (a)(21) or rule 2a–7, as amended.

[60] Paragraph (d)(2) of rule 2a–7, as amended.

[61] Paragraph (c)(3) of rule 2a–7, as amended. The definition of Eligible Security includes certain unrated securities. See paragraph (a)(5)(iii) of rule 2a–7, as amended.

[62] Paragraph (a)(20) of rule 2a–7, as amended, excludes from the definition of "Unrated Security" those securities issued by an issuer that has a rating with respect to a comparable class of short-term debt obligations (or a security within that class). Therefore, such a security would, under paragraphs (a)(5) (i) and (ii) and (a)(6) of the rule, be a rated security and would be an Eligible Security or First Tier Security only if the comparable class of securities (or the issuer with respect to a comparable class) received from the Requisite NRSROs a Short-term rating in one of the two highest categories (or, in the case of a First Tier Security, the highest category).

[63] Paragraphs (c)(3) (second sentence) and (e) of rule 2a–7, as amended. See note 78 and accompanying text, *infra*, for a discussion of approval and ratification procedures. Government securities, which are generally unrated, are excluded from this provision.

[64] "Short-term" is defined to mean a remaining maturity of 366 days or less and "Long-term" is defined to mean a remaining maturity greater than 366 days. Paragraphs (a)(15) and (a)(9), respectively, of rule 2a–7, as amended. This corresponds to the categorization of debt instruments used by the NRSROs. Thus, an "intermediate-term" note with a remaining maturity of two years is treated as long-term debt.

[65] Under the current rule, funds must determine that an instrument with a conditional demand feature (or its issuer) has a "high quality" long-term rating. See paragraphs (a)(2)(iv) and (a)(3)(iii) of rule 2a–7, as currently in effect (17 CFR 270.2a–7(a)(2)(iv) and 270.2a–7(a)(3)(iii)). In addition, if a security with

Continued

Commenters recommended that the Commission permit funds to purchase long-term securities with one of the three highest ratings, *i.e.*, those rated "A" or above. Several commenters stated that most issuers with long-term ratings in the three highest categories are rated in the highest short-term category, and the remainder are rated in the second highest category.

The Commission agrees that the correct yardstick of quality is the rating given to the issuer's short-term debt, since at the time a money market fund invests in a long-term security, its remaining maturity will be less than thirteen months.[65] Where the issuer has rated short-term debt outstanding that is now comparable in terms of priority and security to the long-term security, the fund must base its determination of whether the long-term security is an Eligible Security or a First Tier Security on the short-term rating, regardless of the long-term rating.[66] The Commission is not convinced that issuers with a single "A" long-term rating, but no short-term rating, will in all cases be appropriate investments for money market funds. Where the issuer does not have rated short-term debt outstanding, the long-term security is treated as unrated,[67] but may not be purchased if it has a long-term rating from any NRSRO that is below the second highest category.[68]

The amendments, as adopted, also clarify the categorization of demand instruments as Eligible Securities and First Tier Securities.[69] As under the current rule, a demand instrument that has an Unconditional Demand Feature may be determined to be an Eligible Security or a First Tier Security based solely on whether the Unconditional Demand Feature is an Eligible Security or a First Tier Security, as the case may be. Where the demand instrument does not have an Unconditional Demand Feature, in addition to having the requisite short-term ratings, the long-term debt securities of the issuer of the demand instrument (or the demand instrument itself) must be rated by the Requisite NRSROs in one of the two highest rating categories for long-term debt obligations, or, if unrated, determined to be of comparable quality by the money market fund's board of directors.

E. Changes in Credit Risk and Quality

1. Disposition of Portfolio Securities

The Commission proposed to require that where a money market fund holds a security that is in default, is no longer "Eligible Quality," or no longer presents "minimal credit risks," the fund must dispose of the security "as soon as practicable" absent a specific finding by the board that this would not be in the best interests of the fund. In the event securities were downgraded by a NRSRO but remained "Eligible Quality" securities, a prompt reassessment would have to be made as to whether the security presents minimal credit risks. The Commission is adopting these requirements, modified as discussed below.

As amended, the rule requires a prompt reassessment in two circumstances. First, a reassessment is required by the board of directors (or its delegate) where a security ceases to be a First Tier Security, either because it no longer has the highest rating from the Requisite NRSROs or, if unrated, is not deemed to be of comparable quality to a First Tier Security.[70] Second, a reassessment is required where the fund's investment adviser becomes aware that any NRSRO has rated a Second Tier Security or an Unrated Security below its second highest rating.[71] This reassessment must be undertaken promptly by the board and not its delegate.[72] This requirement to reassess a security that receives less than the second highest rating from any NRSRO has been added to assure that a money market fund will remain sensitive to, and take appropriate action in response to, perceived changes in the credit quality of Second Tier and Unrated Securities after they have been acquired by the fund. However, the rule provides that a reassessment by the board of directors is not required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five business days of the adviser becoming aware of the new rating, provided the board is subsequently notified of the adviser's actions.

The amendment requiring that defaulted securities or securities that are no longer Eligible Securities be disposed of, absent certain determinations, has been adopted substantially as proposed. Several commenters suggested that the proposed amendment could be interpreted as requiring the fund to dispose of a defaulted securities or a security that is no longer an Eligible Security in a "fire sale" environment that would not be in the best interest of the fund. The Commission would expect the board to take market conditions into account in determining whether to continue to hold a defaulted security or a security that is no longer Eligible Quality in its portfolio.[73] To clarify this, paragraph (c)(5)(ii) of rule 2a–7, as amended, specifies that in determining that disposing of a security would not be in the best interest of the fund, the board may take into account "among other

---

a remaining maturity of one year or less has a long-term rating, it must be "high quality" for the security to be eligible for fund investment. See Release 13380, *supra* note 5, at n. 34.

[66] As discussed *infra*, rule 2a–7, as amended, contains specific provisions for categorizing an instrument whose remaining maturity is determined by reference to a demand feature.

[67] Similarly, where the issuer has a short-term rating, the fund must rely on that rating. See paragraphs (a)(5)(ii) and (a)(6) of rule 2a–7, as amended.

[68] Paragraph (a)(20)(ii) of rule 2a–7, as amended, defining the term "Unrated Security."

[69] Paragraph (a)(5) of rule 2a–7, as amended. This provision is designed to provide an independent check on a fund's quality determination. See Release 13380, *supra*, note 5, at n. 34.

[70] As proposed, these provisions appeared in the definition of "Eligible Quality." They now appear in paragraphs (c)(3) (i) and (ii) of rule 2a–7, as amended.

[71] One commenter requested clarification that, if a security were downgraded from a First Tier Security to a Second Tier Security, but the fund's holding of the security did not exceed the quality and diversification limits for Second Tier Securities, prompt reassessment on the part of the fund would not be required. The rule is being clarified, but not in the direction urged by the commenter. The rule, as amended, requires that if a security ceases to be a First Tier Security, a reassessment is required. Similarly, if one of the Requisite NRSROs indicates that it is reconsidering an issuer's rating, a fund may wish to consider reassessing the security's credit risks, although the fact that a security's rating is being reconsidered would not constitute a rating downgrade for purposes of the rule.

Where a First Tier Security is rated by only one NRSRO when acquired, but is subsequently given lower ratings by other NRSROs, it would continue to be a First Tier Security, and no reassessment would be required by the rule. See note 44, *supra*, and accompanying text. However, for purposes of acquiring an additional position in the security or, upon maturity, rolling it over, the security would not be a First Tier Security. If the NRSRO that had rated the security at the time it was required reduces its rating, a reassessment is required and, if it is no longer an Eligible Security, it must be disposed of as soon as practicable. See paragraphs (c)(5)(i) and (c)(5)(ii) of rule 2a–7, as amended.

Clarification was also requested as to whether the downgrading of other securities of an issuer would prompt the reexamination requirement. The rule does not require reexamination of the security held by the fund in this circumstance, except where the categorization of a portfolio security as an Eligible Security or a First Tier Security was based on the rating of the down-graded security. Paragraph (c)(5) of rule 2a–7, as amended.

[72] The rule does not require, and the Commission does not expect, investment advisers to subscribe to every rating service publication in order to comply with this requirement. The Commission would expect an investment adviser to become aware of a subsequent rating if it is reported in the national financial press or in publications to which the adviser subscribes.

[73] Paragraph (e) of rule 2a–7, as amended. A telephonic board of directors meeting could be promptly convened to discuss the security.

[73] The decision to hold the security would have to actually be made by the board, and not its delegate. See section II.F. of this Release, *infra*.

factors, market conditions that could affect the orderly disposition of the security." In addition, the rule now specifies that, where the board has not determined that holding the security is in the best interest of the fund, it must be sold "as soon as practicable consistent with achieving an orderly disposition of the security." [74]

2. Commission Notification

The Commission is adopting the proposed requirement that a money market fund holding one or more defaulted portfolio securities that, immediately before the default, accounted for one half of one percent or more of fund assets, promptly notify the Commission of this fact and of the action the fund intends to take. At the request of several commenters, the paragraph, as adopted, does not require that the Commission be notified in the event of an "immaterial default unrelated to the financial condition of the issuer." This is intended to avoid Commission notification where the default is technical in nature, such as where the obligor has failed to provide a required notice or information on a timely basis.[75]

3. Reporting Requirements

The Commission also proposed to require funds to report on Form N–SAR actions taken in connection with defaults of portfolio securities, changes in credit quality or a deviation of the net asset value of the portfolio from market value. In response to comments that such reporting would be of little value and might inhibit board deliberations, the Commission has limited this requirement to reporting actions that were taken with respect to defaulted securities held during the period covered by the report and identifying securities held on the last day of the period covered by the report that are no longer Eligible Securities.[76] Information concerning the determination by a fund board that a portfolio security no longer represents a minimal credit risk would not have to be reported on Form N–SAR.

[74] *Id.*

[75] Similar changes have been made in paragraph (c)(3)(ii)(A) of rule 2a–7, as amended, which requires that certain actions be taken in the event of a default. The Commission is not adopting the suggestion of several commenters that the notice requirement be limited to payment defaults. Certain non-payment defaults, such as a breach of a net worth covenant, could cause the value of a security to deviate materially from its amortized cost.

[76] Paragraph (c)(8) of rule 2a–7, as amended. Conforming changes have been made to the instructions to Item 77N of Form N–SAR.

F. Portfolio Management Responsibilities

On several occasions the Commission has stated that the portfolio management requirements imposed by rule 2a–7 may be delegated by the board of directors to the fund's investment adviser, provided that the board retains sufficient oversight.[77] In response to commenter concern over the scope of the board's responsibility, new paragraph (e) of rule 2a–7 clarifies the responsibilities of the board to guide and monitor the investment adviser when the board delegates responsibilities for portfolio determinations. The paragraph states that the board may delegate to the investment adviser or an officer of the fund all of the responsibilities it has under the rule other than the determination that the fund should maintain a stable net asset value (paragraph (c)(1)), the establishment of amortized cost method procedures to achieve this objective (paragraphs (c)(6)(i) and (c)(8)(ii)), certain determinations with respect to Second Tier Securities, Unrated Securities, and certain securities that have been downgraded by NRSROs (paragraphs (c)(5)(i)(B) and (c)(5)(ii)), and in connection with the pennyrounding method of pricing, and duty to supervise the delegate (paragraph (c)(7)). In addition, credit risk determinations with respect to Unrated Securities and securities that have been rated by only one NRSRO must be approved or ratified by the fund's board of directors.[78] The requirements of paragraph (e) are substantially consistent with previously stated Commission positions concerning the circumstances under which the board may delegate its responsibilities.[79]

G. Investment Companies Holding Themselves Out as Money Market Funds

The Commission is adopting, substantially as proposed, a new paragraph (b) to rule 2a–7 to make it unlawful for a registered investment company to (1) adopt "money market" or similar terms as part of its name or title, or the name or title of any redeemable security of which it is the issuer, or (2) hold itself out to investors as a money market fund, or the equivalent of a money market fund, unless the company meets the risk-limiting conditions of paragraphs (c)(2) (maturity), (c)(3) (quality) and (c)(4) (diversification) of rule 2a–7, as amended.[80]

A fund that determines not to comply with the risk-limiting conditions of rule 2a–7, as amended, will be required to change its name to the extent it includes the term "money market" or similar terms.[81] Pursuant to paragraph (b) of the rule, as amended, a fund which invests in short-term instruments but which does not wish to hold itself out as a money market fund may call itself any name that would accurately convey its character without being misleading.[82]

One commenter argued that the Commission lacked rulemaking authority under section 38(a) of the Act (15 U.S.C. 80a–37(a)) to adopt paragraph (b). The Commission disagrees. Section 34(b) of the Act makes it unlawful for any person to make any untrue statement of a material fact in any document filed with the Commission or transmitted pursuant to the Act, or the keeping of which is required by section 31(a) of the Act (15 U.S.C. 80a–30(a)), or to omit to state any fact necessary in order to prevent the statements made therein, in light of the circumstances under which they were made, from being materially misleading. Through sections 9(b) and 42 (15 U.S.C. 80a–9(b) and 41) of the Act, the Commission has the authority to enforce these prohibitions. Section 38(a) provides that the Commission has the authority to adopt rules and regulations "as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this title." [83] The Commission believes that this is ample authority to adopt a rule interpreting the application of section 34(b) to specific circumstances.[84] In addition, to the extent that paragraph (b) affects the registration statements of money market funds, section 8(b) of the Act (15 U.S.C. 80a–8(b)) provides the Commission authority to prescribe the form of registration statements by adopting such rules as are necessary or appropriate in the public interest or for the protection of investors.[85]

As discussed in the Proposing Release, fund marketing and disclosure documents have encouraged investor expectations that money market funds are secure investments.[86] These expectations are reflected in the risk-limiting conditions of rule 2a–7 that are today being amended. The Commission believes that there is a significant danger of misleading investors if an investment company holds itself out as a money market fund when it engages in investment strategies not consistent with the risk-limiting conditions of rule 2a–7. It is therefore necessary and appropriate in the public interest and for the protection of investors for the Commission to adopt a new paragraph (b) of rule 2a–7 prohibiting an investment company from holding itself out as a "money market fund" unless it meets the risk-limiting conditions of rule 2a–7.

H. Money Market Fund Prospectus Disclosure

The proposed amendments to Forms N–1A and N–3 require that cover page of a money market fund prospectus to disclose prominently (i) that the shares of the money market fund are neither insured nor guaranteed by the U.S. Government and (ii) that there is no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share. The proposal was widely supported by commenters and is being adopted substantially as proposed.[87]

Several commenters urged that the prescribed legend appear in money market fund sales literature and advertisements. In view of the important role that advertising and sales literature play in marketing money market funds, the Commission has adopted this suggestion.[88]

I. Funds Eligible to Quote Seven-Day Yields

The Commission is adopting the proposed amendment to rule 482 under the 1933 Act to prohibit funds that do not meet the risk-limiting conditions stated in rule 2a–7 from quoting a seven-day yield figure.[89] These funds, which under rule 2a–7, as amended, may not hold themselves out as money market funds, are treated as other types of mutual funds that quote thirty-day yield figures accompanied by total return figures. While money market funds that follow the risk-limiting provisions of rule 2a–7 are unlikely to incur capital losses or gains, the same may not hold true for funds not following the risk-limiting provisions. These funds, therefore, must also provide total return figures to investors which reflect the effect of capital losses or gains.[90]

III. Transition Period

The amendments to rules 2a–7, 2a41–1, 12d3–1 and 34b–1 and Form N–SAR under the 1940 Act [91] and rule 482 under the 1933 Act will become effective on June 1, 1991. If a money market fund has policies changeable only if authorized by a shareholder vote that are less restrictive than the rule as amended, but compliance with the amended rule will not violate these policies, the Commission believes that compliance with rule 2a–7, as amended, would not require a shareholder vote under sections 8(b) (1) and (2) of the Act. To avoid confusing shareholders, however, funds should consider submitting to shareholders at the next shareholder meeting proposals that will conform the fund's stated policies to the fund's actual policies in light of the revisions to rule 2a–7. The rule does not require funds to dispose of securities owned at the time of the adoption of the rule to comply with the quality and diversification requirements of the rule as amended. Moreover, the Commission will not object if a fund does not dispose of securities owned at the time of the adoption of the rule to comply with the amended rule's maximum maturity provisions.

The amendments to rules 482 under the 1933 Act and 34b–1 under the 1940 Act regarding advertisements and sales literature also become effective on June 1, 1991.[92] All advertisements and sales

[77] See, *e.g.*, Release 13380, *supra* note 5, and the Proposing Release, *supra* note 2.

[78] Paragraph (c)(3) of rule 2a–7, as amended. It would not be necessary to convene the board of directors every time the fund acquires such a security. The board of directors could establish an approved list of securities, provided that it periodically makes the requisite credit risk determinations with respect to the securities on the list. In addition, the adviser could acquire a security in accordance with guidelines established by the board, but the board would have to ratify the acquisition at its next meeting.

[79] *Id.* Written copies of the guidelines established by the board in delegating portfolio management responsibilities must be maintained by the fund. Paragraph (c)(8) of rule 2a–7, as amended.

[80] An investment company holding itself out as a money market fund would not be required to use the amortized cost method of valuation or the penny-rounding method of pricing. Nor would the rule require a fund that does not meet the risk-limiting conditions of the rule to change its investment policies. The rule would only require such a fund to meet the risk-limiting conditions of the rule if it continues to hold itself out as a money market fund.

The prohibition on using the term "money market" in the name of a security has been limited to redeemable securities. Paragraph (b) of rule 2a–7, as amended. The term "redeemable security" is defined in section 2(a)(32) of the 1940 Act (15 U.S.C. 80a–2(a)(32)).

[81] See paragraph (b) of rule 2a–7, as amended, and the Proposing Release, *supra* note 2, at n. 65.

[82] The rule amendments adopt a significantly more restrictive view of the term money market fund than currently permitted by Guide 1 to Form N–1A, which states that if a registrant has a name indicating that it is a money market fund, it should have investment policies requiring investment of at least 80% of its assets in debt securities maturing in thirteen months or less. The Commission does not believe that funds previously relying on the staff guideline have misled investors. However, the Division of Investment Management is withdrawing this portion of Guide 1 effective on the date the amendments to rule 2a–7 become effective.

[83] Section 38(a) of the Act provides that: The Commission shall have the authority from time to time to make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this title, including rules and regulations defining accounting, technical, and trade terms used in this title, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

[84] See, *e.g.*, rule 34b–1 under the Act. Contrary to the commenter's assertion, the plain language of section 38(a) does not differ in substance from provisions of the other securities acts that grant the Commission authority to adopt rules necessary and appropriate to implement provisions of those acts. See, *e.g.*, section 19(a) of the 1933 Act (15 U.S.C. 77s(a)); section 23(a)(1) of the 1934 Act (15 U.S.C. 78w(a)(1)).

[85] If, as the commenter argued, section 38(a) only "elaborates on" authority specifically granted by sections of the Act such as sections 6(c), 17(d) or 17(e) (5 U.S.C. 80a–6c, 17(d) and 17(e)), the portion of section 38(a) that grants the Commission authority to adopt "such rules and regulations and orders as are necessary or appropriate to the exercise of powers conveyed elsewhere in this title * * *" would be superfluous because the authority specifically granted by the cited sections requires no "elaboration." See Sutherland Stat. Const. § 46.06 (4th Ed.) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." (citations omitted)).

[86] See, *e.g.*, Money Market Funds: A Part of Every Financial Plan (publication of the Investment Company Institute), a pamphlet prepared by the major investment company trade association for distribution to the general public.

[87] Several technical revisions have been made. As proposed, the statement must disclose that the "securities of the fund are neither insured nor guaranteed by the U.S. Government." This has been changed to "an investment in the fund is neither insured nor guaranteed * * *" to reduce the likelihood that a reader would be confused between the securities issued by the fund and its portfolio securities. Second, a parenthetical has been added to the second part of the legend to make into account funds that stabilize their net asset value at a price other than $1.00. Third, an instruction has been added to permit a money market fund not stabilizing its net asset value to omit the second part of the legend. Finally, as proposed, the amendments require that the legend be "prominent" but do not require certain type size.

[88] Paragraph (a)(7) of rule 482, and the first paragraph of rule 34b–1, as amended.

[89] Paragraph (d) of rule 482, as amended.

[90] The Commission is also adopting conforming amendments to Item 22(a) of Form N–1A, Item 25(a) of Form N–3, and Item 21(a) of Form N–4, which set forth the yield formulas used by money market funds and money market-funded separate accounts issuing variable annuity contracts. The Commission is also making conforming amendments to rule 34b–1 under the 1940 Act, the rule governing mutual fund sales literature.

[91] The amendments to rules 2a41–1 and 12d3–1 conform certain references to paragraphs of rule 2a–7 to the amended rule.

[92] The amendments to Item 22 of Form N–1A, Item 25 of Form N–3 and Item 21 of Form N–4 do not require a fund that continues to hold itself out as a money market fund to amend its registration statement. However, as noted below, a fund that

Continued

literature used after that date must include the new legend.

The Commission is staggering the effective dates of the amendments to Item 1 of Forms N–1A and N–3 so that a fund will not be required to revise its registration statement to add the new cover page legend until its next post-effective amendment.[88] The amendments to Item 1 of Form N–1A and Item 1 of Form N–3 will be effective: (1) For investment companies whose registration statements become effective on or after May 1, 1991, and investment companies with fiscal years ending on December 31, as to prospectuses used on or after May 1, 1991; and (2) for all other investment companies, upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1991. If the registration statement of a fund discloses investment policies that are less restrictive than those required by the rule amendments, the Commission will not object if the fund does not, upon the effective date of the amendments to rule 2a–7, revise its disclosure provided the current disclosure is not misleading. For example, if a fund's registration statement states that the fund may invest in an unlimited amount of Second Tier Securities, a revision would not be necessary. However, if the registration statement states that a fund will invest twenty percent of its assets in Second Tier Securities, revision would be necessary.

It is possible that, upon the adoption of the amendments to rule 2a–7, some funds may choose no longer to hold themselves out as money market funds rather than comply with the rule's limitations. These funds would no longer be eligible to quote a seven-day yield under rule 482(d) and would be required to revise their registration statements and sales material. These funds also may have to revise their fundamental organizational documents. If the extent of the changes that any such fund would be required to make, or other circumstances, made it impossible for the fund to comply with the amended rules by their effective date, the Commission staff would entertain requests for "no action" relief.

[88] elects not to hold itself out as a money market fund will have to amend its response to the applicable item of its registration statement if it plans to continue to advertise its performance.

[88] The Commission would not object if the post-effective amendment filed to add the cover page legend is filed pursuant to rules 485(b) or 486(b) (17 CFR 230.485(b) and 230.486(b)) if any other conditions for filing under paragraph (b) are met.

IV. Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis regarding the proposed rule and form amendments was published in the proposing release. One comment was received. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603, a copy of which may be obtained by contacting Eli A. Nathans, Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

V. Statutory Authority

The Commission is amending rule 2a–7 under the exemptive and rulemaking authority set forth in sections 6(c) (15 U.S.C. 80a–6(c)), 6(b) (15 U.S.C. 80a–6(b)), 22(c) (15 U.S.C. 80a–22(c)), 34(b) (15 U.S.C. 80a–33(b)), and 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940. The authority citations for the amendments to the rules and forms precede the text of the amendments.

VI. Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 230, 239, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending chapter II, title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 79t, and 80a–37, as amended, unless otherwise noted.

2. Section 230.482 is amended by removing the period at the end of the paragraph (a)(8) and by replacing it with a semicolon, by adding a new paragraph (a)(7) and revising paragraph (d) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) * * *

(7) In the case of an investment company that holds itself out to be a "money market" fund, it includes a prominent statement that (i) an investment in the fund is neither insured nor guaranteed by the U.S. Government and (ii) there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 per share (or, if other than $1.00, the applicable net asset value); *provided, however,* that a money market fund not holding itself out as maintaining a stable net asset value may omit the portion of the statement required by paragraph (a)(7)(ii) of this section.

* * * * *

(d) In the case of a "money market" fund, any quotation of the money market fund's yield contained in an advertisement shall be:

(1) A quotation of current yield based on the method of computation prescribed in Form N–1A (set forth in §§ 239.15A and 274.11A of this chapter), Form N–3 (set forth in §§ 239.17a and 274.11b of this chapter), or Form N–4 (set forth in §§ 239.17b and 274.11c of this chapter) and identifying the length of and the date of the last day in the base period used in computing that quotation; or

(2) A quotation of current yield described in paragraph (d)(1) of this section and a corresponding quotation of effective yield based on the method of computation prescribed in Forms N–1A, N–3, or N–4; *Provided,* That when both a quotation of current yield and effective yield are used in the same advertisement, each quotation shall relate to an identical base period and shall be given equal prominence.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. In the authority citation to part 270, the general authority continues to read as set forth below, the specific authority for §§ 270.2a–7, 270.2a41–1 and 270.12d3–1 is revised as follows:

Sections 38, 40, 54 Stat. 841, 842; 15 U.S.C. 80a–37, 80c–99; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*; unless otherwise noted;

* * * * *

Sections 270.2a–7, 270.2a41–1 and 270.12d3–1 also issued under secs. 6(c) (15 U.S.C. 80a–6(c)), 22 (15 U.S.C. 80a–22), 34 (15 U.S.C. 80a–33), 38 (15 U.S.C. 80a–37), and 40 (15 U.S.C. 80a–39);

* * * * *

4. By revising section 270.2a–7 to read as follows:

§ 270.2a–7 Money market funds.

(a) Definitions—(1) Amortized Cost Method of valuation shall mean the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(2) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(3) *Collateralized fully* in the case of a repurchase agreement shall mean that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the resale price provided in the agreement; and

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian; and

(iii) The money market fund retains an unqualified right to possess and sell the collateral in the event of a default by the seller; and

(iv) The collateral consists entirely of Government securities or securities that, at the time the repurchase agreement is entered into, are rated in the highest rating category by the Requisite NRSROs.

(4) *Demand Feature* shall mean a Put that entitles the holder to receive the principal amount of the underlying security or securities and that may be exercised either:

(i) At any time on no more than 30 days' notice; or

(ii) At specified intervals not exceeding 397 calendar days and upon no more than 30 days' notice.

(5) *Eligible Security* shall mean:

(i) A security with a remaining maturity of 397 days or less that is rated (or that has been issued by an issuer that is rated with respect to a class of Short-term debt obligations, or any security within that class, that is comparable in priority and security with the security by the Requisite NRSROs in one of the two highest rating categories for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) A security:

(A) That at the time of issuance was a Long-term security but that has a remaining maturity of 397 calendar days or less, and

(B) Whose issuer has received from the Requisite NRSROs a rating, with respect to a class of Short-term debt obligations (or any security within that class) that is now comparable in priority and security with the security, in one of the two highest rating categories for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(iii) An Unrated Security that is of comparable quality to a security meeting the requirements of paragraph (a)(5)(i) or (ii) of this section, as determined by the money market fund's board of directors: *Provided, however,* That:

(A) The board of directors may base its determination that a Standby Commitment is an Eligible Security upon a finding that the issuer of the commitment presents a minimal risk of default; and

(B) A security that at the time of issuance was a Long-term security but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has a Long-term rating from any NRSRO that is not within the NRSRO's two highest categories (within which there may be sub-categories or gradations indicating relative standing).

(6) *First Tier Security* shall mean any Eligible Security that:

(i) Is rated (or that has been issued by an issuer that is rated with respect to a class of Short-term debt obligations, or any security within that class, that is comparable in priority and security with the security) by the Requisite NRSROs in the highest rating category for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is a security described in paragraph (a)(5)(ii) of this section whose issuer has received from the Requisite NRSROs a rating, with respect to a class of Short-term debt obligations (or any security within that class) that now is comparable in priority and security with the security, in the highest rating category for Short-term debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(iii) Is an Unrated Security that is of comparable quality to a security meeting the requirements of clauses (i) and (ii) of paragraph (a)(6) of this section, as determined by the fund's board of directors.

(7) *Floating Rate Instrument* shall mean a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate (such as a bank's designated prime lending rate) changes and which, at any time, can reasonably be expected to have a market value that approximates its par value.

(8) *Government security* shall mean any Government security as defined in section 2(a)(16) of the Act.

(9) *Long-term* shall mean having a remaining maturity greater than 366 days.

(10) *NRSRO* shall mean any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi) (E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3–1(c)(2)(vi) (E), (F) and (H)), that is not an affiliated person, as defined in section 2(a)(3)(c) of the Act (15 U.S.C. 80a–2(a)(3)(c)), of the issuer of, or any insurer, guarantor or provider of credit support for, the instrument.

(11) *Penny-Rounding Method* of pricing shall mean that method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(12) A *Put* shall mean a right to sell a specified underlying security or securities within a specified period of time and at a specified exercise price, that may be sold, transferred or assigned only with the underlying security or securities.

(13) *Requisite NRSROs* shall mean

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer, or

(ii) If only one NRSRO has issued a rating with respect to such security or issuer at the time the fund purchases or rolls over the security, that NRSRO.

(14) *Second Tier Security* shall mean any Eligible Security that is not a First Tier Security.

(15) *Short-term* shall mean having a remaining maturity of 366 days or less.

(16) *Standby Commitment* shall mean a Put that entitles the holder to achieve same day settlement and to receive an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise.

(17) *Tax exempt fund* shall mean any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(18) *Total Assets* shall mean, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund, the total market-based value of its assets.

(19) An *Unconditional Put* or an *Unconditional Demand Feature* shall mean a Put or a Demand Feature (including any guarantee, letter of credit or similar unconditional credit enhancement) that by its terms would be readily exercisable in the event of a

default in payment of principal or interest on the underlying security or securities.

(20) Any *Unrated Security* shall mean:

(i) A security with a remaining maturity of 397 days or less issued by an issuer that does not have a current Short-term rating assigned by any NRSRO:

(A) To the security, or

(B) To the issuer with respect to a class of Short-term debt obligations (or any security within that class) that is comparable in priority and security with the security; and

(ii) A security:

(A) That at the time of issuance with a Long-term security but that has a remaining maturity of 397 calendar days or less, and

(B) Whose issuer has not received from any NRSRO a rating with respect to a class of Short-term debt obligations (or any security within that class) that now is comparable in priority and security with the security; and

(iii) A security that is a rated security and is the subject of an external credit support agreement that was not in effect when the security (or the issuer) was assigned its rating.

A security is not an Unrated Security if any Short-term debt obligation ("reference security") that is issued by the same issuer and is comparable in priority and security with that security is rated by a NRSRO. The status of such security as an Eligible Security or First Tier Security shall be the same as that of the reference security.

(21)(a) A *Variable Rate Instrument* shall mean a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and which, upon such adjustment, can reasonably be expected to have a market value that approximates its par value.

(b) *Holding Out.* It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)) to:

(1) Adopt the term "money market" as part of its name or title or the name or title of any redeemable security of which it is the issuer, or

(2) Hold itself out to investors as, or adopt a name which suggests that it is, a money market fund or the equivalent of a money market fund,

unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section. For purposes of this paragraph, a name which suggests that a registered investment company is a money market fund or the equivalent thereof shall include one which uses such terms as "cash," "liquid," "money," "ready assets" or similar terms.

(c) *Share Price Calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company ("money market fund"), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of rule 2a–4 (17 CFR 270.2a–4) and rule 22c–1 (17 CFR 270.22c–1) thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method: *Provided, however,* That:

(1) *Board Findings.* The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity.* The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share: *Provided, however,* That the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, purchase any instrument with a remaining maturity of greater than 397 calendar days, or

(ii) In the case of a money market fund not using the Amortized Cost Method, purchase a Government security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality.* The money market fund will limit its portfolio investments, including Puts and repurchase agreements, to those United States dollar-denominated instruments that its board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to the rating assigned to such instruments by a NRSRO and which are at the time of acquisition Eligible Securities. In the case of an Unrated Security (including a demand instrument) other than a Government Security, or a security that is an Eligible Security based on the rating of one NRSRO, the acquisition of each such security by the money market fund must be approved or ratified by the money market fund's board of directors. For purposes of this section:

(i) A demand instrument that has an Unconditional Demand Feature may be determined to be an Eligible Security or a First Tier Security based solely on whether the Unconditional Demand Feature is an Eligible Security or First Tier Security, as the case may be; and

(ii) A demand instrument that does not have an Unconditional Demand Feature is not an Eligible Security or a First Tier Security unless it meets the requirements for being an Eligible Security or First Tier Security, as the case may be, and, in addition, the demand instrument or the Long-term debt securities of the issuer of the demand instrument have been rated by the Requisite NRSROs in one of the two highest rating categories for Long-term debt obligations (within which there may be sub-categories or gradations indicating relative standing), or, if unrated, are determined to be of comparable quality by the money market fund's board of directors.

(4)(i) *Portfolio Diversification: General.* Except for a Tax exempt fund, immediately after the acquisition of any security (other than a Government security):

(A) The money market fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security: *Provided, however,* That a fund may invest more than five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business days after the purchase thereof (subject to section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) if the money market fund is a diversified investment company): *Provided, further,* That the fund may not make more than one investment in accordance with the foregoing proviso at any time; and

(B) In the event that such security is a Second Tier Security, the money market fund shall not have invested more than

(*1*) The greater of one percent of its Total Assets or one million dollars in securities issued by that issuer which, when acquired by the fund (either initially or upon any subsequent roll over) were Second Tier Securities, and

(*2*) Five percent of its Total Assets in securities which, when acquired by the fund (either initially or upon any subsequent roll over) were Second Tier Securities.

For purposes of making calculations under paragraph (c)(4)(i)(A) of this section, a repurchase agreement shall be deemed to be an acquisition of the underlying securities, provided that the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully.

(ii) *Portfolio Diversification: Puts.* Immediately after the acquisition of any Put, no more than five percent of the money market fund's Total Assets may be invested in securities issued by or subject to Puts from the same institution, *Provided, however,* That if the money market fund is a Tax exempt fund, the foregoing condition shall only be applicable with respect to 75 percent of its Total Assets.

(iii) *General.* For purposes of paragraph (c)(4) of this section:

(A) A Put will be considered to be from the party to whom the money market fund will look for payment of the exercise price;

(B) An Unconditional Put will be considered to be a guarantee of the underlying security or securities; and

(C) A guarantee of, or Unconditional Put with respect to, a security will not be deemed to be issued by the institution providing the guarantee or the Put, provided that the value of all securities held by the money market fund and issued or guaranteed by the issuer providing the guarantee or Put shall not exceed ten percent of the money market fund's Total Assets.

(5)(i) *Security Downgrades.* In the event that (A) a portfolio security of a money market fund ceases to be a First Tier Security (either because it no longer has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security), or (B) the money market fund's investment adviser (or any person to whom the money market fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest rating category, the board of directors of the money market fund shall reassess promptly whether such security presents minimal credit risks and shall cause the money market fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders; *Provided, however,* That the reassessment required by paragraph (c)(5)(i)(B) of this section is not required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five Business days of the adviser becoming aware of the new rating and the board is subsequently notified of the adviser's actions.

(ii) *Defaults and Other Events.* In the event:

(A) Of a default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer); or

(B) A portfolio security of a money market fund ceases to be an Eligible Security; or

(C) It has been determined that a security no longer presents minimal credit risks;

absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the security), the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise.

(iii) *Notice to the Commission.* In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) which immediately before default accounted for ½ of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically or by means of a facsimile transmission, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(6) *Required Procedures: Amortized Cost Method.* In the case of a money market fund using the Amortized Cost Method:

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) Included within the procedures adopted by the board of directors shall be the following:

(A) Written procedures providing that the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute which reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions; periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and maintenance of records of the determination of deviation and the board's review thereof; and

(B) In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors shall promptly consider what action, if any, should be initiated by the board of directors; and

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors of existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(7) *Required Procedures: Penny-Rounding Method.* In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will

not deviate from the single price established by the board of directors.

(8) *Record Keeping and Reporting.* The money market fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(5), (c)(6), (c)(7) and (e) of this section, and the money market fund will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken pursuant to paragraphs (c)(5)(ii) (with respect to defaulted securities) or (c)(6)(ii)(B) of this section, the money market fund will attach an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of Portfolio Instruments.* For the purposes of this rule, the maturity of a portfolio instrument shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the instrument is subject to market action) until the date noted on the face of the instrument as the date on which the principal amount must be paid, or in the case of an instrument called for redemption, the date on which the redemption payment must be made, except that:

(1) An instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than every 762 days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(2) A Variable Rate Instrument, the principal amount of which is scheduled on the face of the instrument to be paid in 397 calendar days or less shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate.

(3) A Variable Rate Instrument that is subject to a Demand Feature shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) A Floating Rate Instrument that is subject to a Demand Feature shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where no date is specified, but the agreement is subject to a demand, the notice period applicable to a demand for the repurchase of the securities.

(6) A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where no date is specified, but the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(e) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by the second sentence of paragraph (c)(3) (which may be delegated subject to ratification by the money market fund's board of directors) and paragraphs (c)(1), (c)(5)(i)(B), (c)(5)(ii), (c)(6)(i), (c)(6)(ii), and (c)(7) of this section) provided that the board:

(1) Establishes and periodically reviews written guidelines (including guidelines for determining whether instruments present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations; and

(2) Exercises adequate oversight (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security that requires notification of the Commission under paragraph (c)(5)(iii) of this section) to assure that the guidelines and procedures are being followed.

5. By revising the introductory text of paragraph (a) of § 270.2a41–1 as follows:

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment as defined in rule 2a–7(a)(16) under the Act (17 CFR 270.2a–7(a)(16)) may be assigned a fair value of zero, Provided, That:

* * * * *

6. By revising paragraph (d)(8)(v) of § 270.12d3–1 as follows:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(d) * * *

(8) * * *

(v) Acquisition of puts, as defined in rule 2a–7(a)(12) under the Act (17 CFR 270.2a–7(a)(12)), provided that, immediately after the acquisition of any put, the company will not, with respect to 75 percent of the total value of its assets, have invested more than five percent of the total value of its assets in securities underlying puts from the same institution. An unconditional put shall not be considered a put from that institution, provided, that, the value of all securities issued or guaranteed by the same institution and held by the investment company does not exceed ten percent of the total value of the company's assets. For the purposes of this section, a put will be considered to be from the party to whom the company will look for payment of the exercise price and an unconditional put, as defined in rule 2a–7(a)(19) under the Act (17 CFR 270.2a–7(a)(19)), will be considered to be a guarantee of the underlying security or securities.

* * * * *

7. By revising the introductory text of § 270.34b–1 to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)) and that contains any investment company performance data (other than a report to shareholders under section 30(d) of the Act (15 U.S.C. 80a–29(d)) containing only performance data for the period of the report ("sales literature") shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature also contains performance data specified in paragraphs (a), (b), and (c) of this section, and the disclosure required by paragraph (a)(6) of this section and, in the case of an investment company that holds itself out as a "money market fund," paragraph (a)(7) of rule 482 under the Securities Act of 1933 (17 CFR 230.482(a) (6) and (7)).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

8. The authority citation for part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

9. The authority citation for part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

10. Amending Form N–1A (17 CFR 239.15A and 274.11A), Part A, Item 1, paragraph (a), by deleting the word "and" at the end of paragraph (v), redesignating paragraph (vi) as paragraph (vii) and adding new paragraph (vi) and a new Instruction, to read as follows:

§ 239.15A Form N–1A, registration statement of open-end management investment companies.

§ 274.11A Form N–1A, registration statement of open-end management investment companies.

Note: Form N–1A is not codified in the Code of Federal Regulations.

* * * * *

Part A Information Required in a Prospectus

Item 1. Cover Page

(a) * * *

(vi) in the case of a Registrant holding itself out as a money market fund, a prominent statement that (A) an investment in the fund is neither insured nor guaranteed by the U.S. Government and (B) there can be no assurance that the fund will be able to maintain a stable net asset value of $1.00 share (or, if other than $1.00, the applicable net asset value); and

* * * * *

Instruction: Registrants not holding themselves out as maintaining a stable net asset value may omit the disclosure required by paragraph (B) of Item 1(a)(vi).

* * * * *

1. Revising Form N–1A (17 CFR 239.15A and 274.11A), part B, paragraph (a) of Item 22 to read as follows:

* * * * *

Part B Information Required in a Statement of Additional Information

* * * * *

Item 22. Calculation of Performance Data

(a) *Money Market Funds.* If the Registrant holds itself out as a "money market" fund and if it advertises a yield quotation or an effective yield quotation, furnish:

* * * * *

12. Amending Form N–3 (17 CFR 239.17a and 274.11b), part A, Item 1, paragraph (a), by deleting the word "and" at the end of paragraph (a)(viii), redesignating paragraph (a)(ix) as paragraph (a)(x) and adding new paragraph (a)(ix) to read as follows:

§ 239.17a Form N–3, registration statement for separate accounts organized as management investment companies.

§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.

Note: Form N–3 is not codified in the Code of Federal Regulations.

* * * * *

Part A Information Required in a Prospectus

Item 1. Cover Page

(a) * * *

(ix) in the case of a Registrant holding itself out as a money market fund, a prominent statement that an investment in the fund is neither insured nor guaranteed by the U.S. Government; and

* * * * *

13. Amending Form N–3 (17 CFR 239.17a and 274.11b), part B, by revising paragraph (a) of Item 25 to read as follows:

* * * * *

Part B Information Required in a Statement of Additional Information

* * * * *

Item 25. Calculation of Performance Data

(a) *Money Market Accounts.* For each account or sub-account that holds itself out as a "money market" account or sub-account, and that advertises a yield quotation or an effective yield quotation, furnish:

* * * * *

14. Amending Form N–4 (17 CFR 239.17b and 274.11c), part B, by revising paragraph (a) of Item 21 to read as follows:

§ 239.17b Form N–4, registration statement for separate accounts organized as unit investment trusts.

§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.

Note: Form N–4 is not codified in the Code of Federal Regulations.

* * * * *

Part B Information Required in a Statement of Additional Information

* * * * *

Item 21. Calculation of Performance Data

(a) *Money Market Funded Sub-Accounts.* For each sub-account that is funded by a "money market" fund, and for which the Registrant advertises a yield quotation or an effective yield quotation, furnish:

* * * * *

15. Amending Form N–SAR (17 CFR 274.101) by revising Instruction to Sub-item 77N, to read as follows:

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

Note: Form N–SAR is not codified in the Code of Federal Regulations.

* * * * *

General Instructions

* * * * *

Instructions to Specific Items

* * * * *

Item 77: Attachments

* * * * *

Sub-item 77N: Actions required to be reported pursuant to Rule 2a–7

A Registrant relying on rule 2a–7 (17 CFR 270.2a–7) to use the amortized cost method of valuation is required by paragraph (c)(8) of that rule: (1) To report actions that were taken with respect to defaulted securities held during the period covered by the report; (2) to report actions taken with respect to deviations from the money market fund's amortized cost price per share that may result in material dilution or other unfair results to investors or existing shareholders; and (3) to identify securities held on the final day of the reporting period that are no longer Eligible Securities, as defined by paragraph (a)(5) of that rule. If any such action was taken during the reporting period, or if such securities are held on the last day of the reporting period, this item should be checked and an exhibit attached, listing the securities and

specifically describing the nature and circumstances of the action.

* * * * *

16. Amending Guide 1 (Name of Registrant) to Form N–1A by deleting the second paragraph and Guide 1 (Name of Registrant) to Form N–3, by deleting the last sentence of the first paragraph.

Note: The Guides to Forms N–1A and N–3 are not codified in the Code of Federal Regulations.

By the Commission.

Dated: February 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

Appendix: Conversion Table

Note: The conversion table is not codified in the Code of Federal Regulations.

	Prior Rule
Amended Rule is Found in:	
(a)	(c)
(a)(1)	(c)(1)
(a)(2) new	* * *
(a)(3) new	* * *
(a)(4)	(c)(5)
(a)(5) new	* * *
(a)(6) new	* * *
(a)(7)	(c)(8)
(a)(8) new	* * *
(a)(9) new	* * *
(a)(10)	(c)(9)
(a)(11)	(c)(2)
(a)(12)	(c)(3)
(a)(13) new	* * *
(a)(14) new	* * *
(a)(15) new	* * *
(a)(16)	(c)(4)
(a)(17) new	* * *
(a)(18) new	* * *
(a)(19) new	* * *
(a)(20) new	* * *
(a)(21)	* * *
(b) new	* * *
(c)	(a)
(c)(1)	(a)(1)
(c)(2)	(a)(2)(iii), (a)(3)(i)
(c)(2)(i)	(a)(2)(iii)(A), (a)(3)(i)(A)
(c)(2)(ii) new	* * *
(c)(2)(iii)	(a)(2)(iii)(B), (a)(3)(i)(B)
(c)(3)	(a)(2)(iv), (a)(3)(ii)
(c)(3)(i) new	* * *
(c)(3)(ii) new	* * *
(c)(3)(iii) new	* * *
(c)(4) new	* * *
(c)(5) new	* * *
(c)(6)	(a)(2)
(c)(6)(i)	(a)(2)(i)
(c)(6)(ii)	(a)(2)(ii)
(c)(5)(i)(A)	(a)(2)(v)(A)
(c)(5)(i)(B)	(a)(2)(v)(B)
(c)(5)(ii)(C)	(a)(2)(v)(C)
(c)(7)	(a)(3)
(c)(8)	(a)(2)(vi), (a)(2)(vii)
(d)	(b)
(d)(1)	(b)(1)
(d)(2)	(b)(2)
(d)(3)	(b)(3)
(d)(4)	(b)(4)
(d)(5)	(b)(5)
(d)(6)	(b)(6)
(e) new	* * *

[FR Doc. 91–4626 Filed 2–26–91; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8320]

RIN 1545–AM55

Treatment of Certain Losses Attributable to Periods After October 31 of a Taxable Year of a Regulated Investment Company; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations (T.D. 8320), which were published Wednesday, December 5, 1990 (55 FR 50174). The regulations concern the treatment by a regulated investment company (RIC) of a net capital loss, a net long-term capital loss, or a net foreign currency loss attributable to periods after October 31 of its taxable year (a "post-October loss").

FOR FURTHER INFORMATION CONTACT: Lauren G. Shaw (202) 566–3828 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction, provide guidance relating to the treatment of a post-October loss in determining a RIC's taxable income, the amount that a RIC may designate as capital gain dividends, and the RIC's earnings and profits. The applicable tax law was amended by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8320), which were the subject of FR Doc. 90–28432, is corrected as follows:

§ 1.852–11 [Corrected]

Par. 1. On page 50177, column three, in § 1.852–11, paragraph (c)(3)(i), line sixteen, the phrase "company must treat items must be" is corrected to read "company must treat items that must be".

§ 602.101 [Corrected]

Par. 2. On page 50179, column one, instructional Par. 5 is corrected to read as follows:

"Par. 5. The table of OMB control numbers in § 602.101(c) is amended by removing the entry for § 1.852–11T and adding an entry reading "1.852–11 . . . 1545–1094"."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–4514 Filed 2–26–91; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3963–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Non-CTG RACT Determination for Acushnet Company, Titleist Golf Division, Plant A, in New Bedford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from certain processes at Acushnet Company, Titleist Golf Division, Plant A, in New Bedford, Massachusetts. The intended effect of this action is to approve a source-specific RACT determination. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on March 29, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, Tenth Floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 6th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr. (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On August 14, 1989 (54 FR 33245), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Massachusetts. Using parallel processing rulemaking procedures, EPA proposed approval of a conditional plan approval issued by the Department of Environmental Protection (DEP) which imposed VOC control methods as RACT for Acushnet, provided DEP made several changes to the plan approval. This final rulemaking action approves the formal SIP revision submitted by the DEP on June 13, 1990 in response to the NPR.

This notice is divided into three parts: I. Background Information; II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval; and III. Public Comments.

I. Background Information

On November 9, 1983 (48 FR 51488), EPA approved Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology," as part of the Commonwealth of Massachusetts' 1982 Ozone Attainment Plan. This regulation requires the Massachusetts DEP to determine and impose RACT on all facilities with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to Massachusetts' VOC regulations developed pursuant to EPA's Control Techniques Guideline (CTG) documents.

On February 4, 1988 and February 16, 1989, the Massachusetts DEP submitted a SIP revision for parallel processing. This SIP revision consisted of a Plan Approval for Acushnet which defined VOC control requirements as RACT. On August 14, 1989, EPA proposed approval of the Plan Approval with the understanding that the DEP would amend it as outlined in the NPR prior to final rulemaking. On June 13, 1990, the DEP formally submitted an Amended Plan Approval dated June 1, 1990, incorporating all the provisions required by the EPA's NPR.

II. Summary of SIP Revision Including the Changes Made to Secure Final EPA Approval

Acushnet manufactures golf balls. The processes at Acushnet are not covered by any CTG; therefore, these procedures are subject to 310 CMR 7.18(17). The SIP revision for this source includes an Amended Plan Approval dated June 1, 1990 requiring RACT at Acushnet. VOC emissions have declined at Acushnet from 296 TPY in 1982 to 154 TPY in 1989. Acushnet has achieved a 48% reduction in VOC emissions plantwide during the time period in which RACT has been imposed. The emission reductions achieved from each process are discussed in the Technical Support Document prepared for this action.

RACT is being imposed on the production processes, which are divided into eight categories: (1a) Washing of golf ball centers; (1b) patching of golf ball centers; (2a) annealing of golf ball covers; (2b) paint stripping of Balata golf balls; (3) acetone rinsing of golf ball covers; (4) painting of golf ball covers; (5) painting of Surlyn golf balls; and (6) miscellaneous and clean-up operations.

The details of each RACT requirement were outlined in the NPR and will not be restated here. EPA's NPR required that 5 issues be addressed in the Amended Plan Approval prior to final rulemaking. The DEP's June 1, 1990 Amended Plan Approval satisfied the NPR requirements as summarized below.

(1) The Amended Plan Approval places explicit limits on the VOC content of the coatings and paints. Table III of the Amended Plan Approval lists the coatings in units of "pounds of VOC per gallon of coating as applied" and "pounds" of VOC per gallon of solids as applied." Attachment II lists the only VOC-containing raw materials that Acushnet can use in a particular coating.

(2) Proviso 7 of the June 1, 1990 Amended Plan Approval states that Acushnet can only use those "as-applied" balata and surlyn coatings specified in Table III and only those VOC-containing raw materials identified in Attachment II. If Acushnet reformulates any of its coatings, the VOC content of the new coating must not exceed the maximum VOC content specified in Table III of the Amended Plan Approval of the coating it is replacing. The DEP has further required that the use of the new coating must not contribute to an exceedance of any emission limitation contained in Table II for tons of VOC per million golf balls processed.

(3) The NPR required that the plan approval must not include any compliance dates after December 31, 1987. The June 1, 1990 Amended Plan Approval states that the revised effective dates for complying with the emission factors for each of six processes is June 1, 1986 with the exception of category (1a), "Washing of (Balata) golf ball centers," for which the revised compliance date is August 1, 1986, and with the exception of subcategories (2a) and (2b), for which the compliance date is January 1, 1987.

(4) Acushnet is required to keep records of the usage of, and emissions from, each material containing VOC and to report monthly to the DEP. Records shall be kept at the facility for a minimum of 3 years. For each coating, Acushnet shall record, on a daily basis: (i) The coating identification; (ii) the gallons of coating issued; (iii) the weight and volume of VOC, non-VOC liquids, water, and solids; (iv) the densities of the coatings, VOC and non-VOC liquids; and (v) the pounds per gallon of solids "as applied." Copies of the recordkeeping forms are included in Attachment IV of the June 1, 1990 Amended Plan Approval. Acushnet is required to keep the records at the facility for at least 3 years and Acushnet will report to the DEP its monthly emissions.

(5) The Amended Plan Approval states that testing shall be in accordance with the applicable test method contained in 40 CFR Part 60 to determine compliance with this plan approval. Testing for compliance with the coatings in Table III shall be conducted by a modified reference method 24. The modified reference method 24 was developed for testing of the multicomponent coatings that Acushnet uses, and is specified in Attachment VI of the Amended Plan Approval.

In response to EPA's requirement in the NPR, DEP submitted background information about the percent reduction Acushnet achieved in its coating formulations. Table I–B of Attachment III in the June 1, 1990 Amended Plan Approval compares the coatings used in 1982 with the coatings in 1989. The DEP has calculated the percent reduction (or increase) for each coating used in 1982 compared to those coatings now in use. Table II–A of Attachment III lists the actual gallons of solvent used in 1982 with the actual gallons of solvent used in 1989. Acushnet has achieved a 48% reduction in VOC emissions plantwide during the time period in which RACT has been imposed.

III. Public Comments

EPA received two letters of comments on its proposed approval of the DEP's SIP submittal. Both comment letters were submitted by Acushnet. A summary of the significant comments and of EPA's response can be found below.

Comment: Acushnet stated that the proposed VOC emission limits are incongruous because EPA is requiring a short term averaging time whereas the scientific basis for the limits have been a long term averaging period. Furthermore, Acushnet states that reference method 24 is not an acceptable test method for "multi-packaged" coatings. Acushnet would like the plan approval to list emission

limits that reflect the variability of the VOC content in their coatings, and a specific method which accounts for this to determine compliance.

Response: EPA agrees that the emission limits specified in the Amended Plan Approval should reflect the actual VOC content of the coatings in use at Acushnet. The emission limits specified in the plan approval, however, must also be federally enforceable. Enforcing long-term compliance periods is cumbersome under the Clean Air Act, and EPA, therefore, prefers to approve short-term compliance periods. DEP has revised the emission limits in the Amended Plan Approval to reflect the actual VOC content of Acushnet's coatings. To ensure that the emission limits are federally enforceable, the DEP has required Acushnet to comply with these limits continuously and to determine compliance with the coatings through a modified version of reference method 24. The modified method allows for the testing of the multi-component (or "multi-packaged") coatings used at Acushnet.

Final Action

EPA is approving the Massachusetts Amended Plan Approval dated and effective June 1, 1990, which imposes RACT on Acushnet Company, Titleist Golf Division, Plant A, as a revision to the Massachusetts SIP.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 5, 1991.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(88) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 13, 1990.

(i) *Incorporation by reference.* (A) Letter from the Massachusetts Department of Environmental Protection dated June 13, 1990 submitting a revision to the Massachusetts State Implementation Plan.

(B) An Amended Plan Approval dated and effective June 1, 1990 imposing reasonably available control technology on Acushnet Company, Titleist Golf Division, Plant A in New Bedford, Massachusetts.

(ii) *Additional materials.* (A) Nonregulatory portions of the State submittal.

3. Section 52.1167 is amended by adding in Table 52.1167 the following entry at the end of the listing for "310 CMR 7.18(17)."

§ 52.1167 EPA-approved Massachusetts state regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
•	•	•	•	•	•	•
310 CMR 7.18(17).	Reasonably Available Control Technology (RACT).	June 13, 1990.	Feb. 27, 1991.	[FR citation from published date].	(88)	RACT for Acushnet Company, Titleist Golf Division, Plant A in New Bedford. Amended Plan Approval dated June 1, 1990.
•	•	•	•	•	•	•

[FR Doc. 91–4443 Filed 2–26–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–3823–2]

RIN 2040–AB61

Ocean Dumping Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today revises the list of designated ocean dumping sites as set forth in 40 CFR part 228. This revision is necessary to eliminate two unused and un-needed sites. The revision de-designates the Gulf Ocean Incineration Site located in the Gulf of Mexico and the Acid Waste Site in EPA's Region II.

EFFECTIVE DATE: This rule becomes effective on March 29, 1991.

ADDRESSES: Supporting information for this final rule is available for inspection and copying at the Environmental Protection Agency Public Information Reference Unit, 401 M Street SW., room 2402, Washington, DC 20460. The Environmental Protection Agency's public information regulations (40 CFR part 2) provide that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: John Lishman at (202) 475–8443, Marine Operations Division, Office of Marine and Estuarine Protection (WH–556F), 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

1. Description of Final Rule

Today's final rule de-designates two ocean disposal sites designated in 40 CFR 228.12(b). The sites being de-designated are no longer being used. The de-designated sites are the Gulf of Mexico ocean incineration site (40 CFR 228.12(b)(1)), and the Region II acid waste ocean dumping site (40 CFR 228.12(b)(2).[1]

De-designation of these sites was previously proposed at 55 FR 3693 (February 2, 1990). As explained in the preamble to that proposal, these sites are being de-designated because they are no longer needed and the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended by the Ocean Dumping Ban Act (Pub. L. 100–688), establishes prohibitions on ocean disposal of industrial waste which have effectively acted to bar the use of these sites. The preamble to the proposed rule de-designating these sites sets forth the rationale for the de-designation of these two sites, and readers should refer to the proposed rule's preamble for further details.

2. Public Comments on Proposal

The public comment period for the proposed rule closed on March 19, 1990. The Agency received a total of 134 letters in response to the proposed rule from congressional members, State and local governments, the general public, and environmental groups. No comments were received from prior or potential users of these two sites.

As will be discussed further below, only two letters raised questions regarding the proposal. All of the other comment letters received expressed support for the proposed rule or general opposition to the ocean disposal of industrial wastes. Copies of all the comments have been included in the administrative record for today's final rule, and may be inspected at the address set forth above.

One of the comment letters that raised a question about the proposal expressed support for de-designation of the two sites addressed in the proposed rule, but went on to recommend expanding the proposal to include de-designation of the Cellar Dirt Site located in Region II off the coast of New York/New Jersey. By the terms of its designation, the Cellar Dirt Site may be used only for excavation dirt and rock, broken concrete, rubble, tile, and other nonfloatable debris. 40 CFR 228.12(b)(8). The Cellar Dirt Site has not been used since 1988, and there are no outstanding permits or pending permit applications for its use. Therefore, the Agency is considering undertaking a rulemaking to de-designate this site if it determines that there is no demonstrable need for this site.

The second letter opposed the de-designation of the Gulf Ocean Incineration Site. The writer indicated that he had seen no data indicating there had been contamination of onshore air from incineration activities at the site and that burning of cane fields and operation of buses in some local cities causes more air contamination than incineration activities at the site. In addition, the writer stated that the Federal government already has the power to control ocean incineration through the requirement for a permit. The writer indicated that incineration is the best way to dispose of some toxic chemicals and that instead of finally de-designating the Gulf Ocean Incineration Site, the most prudent action would be to use designated areas with permits issued on an as-needed and as-studied basis.

The Agency's action in de-designating this particular site is not based upon an assessment of its potential on-shore air impacts, nor is it based on a judgment as to the overall merits of incineration-at-sea. Rather, this action is based upon changed circumstances surrounding this particular site. As described more fully below, the Agency continues to believe that de-designation of the Gulf Ocean Incineration Site is appropriate.

As pointed out in the proposed rule's preamble, the MPRSA was amended in November 1988 by the Ocean Dumping Ban Act (ODBA) to categorically prohibit the ocean dumping of sewage sludge and industrial waste. Specifically, ODBA establishes three key prohibitions on dumping as follows. First, ODBA amends the MPRSA to provide that no person shall ocean dump, or transport for purposes of ocean dumping, sewage sludge or industrial waste unless, within 270 days of enactment (i.e., August 14, 1989), such person has entered into an agreement to terminate such dumping and obtained a permit under the MPRSA. MPRSA, section 104B(a)(1)(A). Second, ODBA amends the MPRSA to provide that it shall be unlawful for any person to ocean dump, or transport for purposes of ocean dumping, sewage sludge or industrial waste after December 31, 1991, and provides penalties for dumping beyond that date. MPRSA, section 104B(a)(B). Third, ODBA amends the MPRSA to prohibit new entrants by forbidding the issuance of permits for the ocean dumping or transportation for the purpose of dumping of sewage sludge or industrial waste unless the permittee was previously authorized to dump such materials as of September 1, 1988, by an MPRSA permit or court order. MPRSA section 104B(a)(2). Because there are no existing ocean dumpers of industrial waste and ODBA has amended the MPRSA to prohibit new entrants, the ODBA prohibitions effectively act to bar any ocean dumping of industrial waste.

The MPRSA, as amended by ODBA, broadly defines "industrial waste" as any solid, semisolid, or liquid waste generated by a manufacturing or processing plant, other than (1) dredged material dumped by the Corps of Engineers or dumped pursuant to a Corps of Engineers permit and (2) waste

[1] Today's final rule reflects earlier rulemaking which extensively renumbered the list of ocean dumping sites (55 FR 3692 (February 2, 1990)). Thus, while the proposal referred to the Acid Waste Site—Region II as appearing at 40 CFR 228.12(b)(7), today's final rule reflects the fact that this site subsequently was renumbered to appear at 40 CFR 228.12(b)(2).

BEST COPY AVAILABLE

from a tuna cannery operation in American Samoa or Puerto Rico dumped pursuant to an EPA issued permit. MPRSA, sections 104B(k) (3) and (4). The designation for the Gulf Ocean Incineration Site (40 CFR 228.12(b)(1)) states the site's primary use is for "[a]t sea incineration primarily for organochlorine compounds." These particular types of wastes would typically be generated by manufacturing or processing plants. Moreover, as noted in the proposed rule's preamble, the bulk of potentially ocean incinerable hazardous wastes are generated by the petroleum and chemical industries. Thus, potential use of the Gulf Ocean Incineration Site would primarily be for the incineration-at-sea of wastes that would fall within the category of industrial waste as defined in ODBA.

As discussed in the proposed rule's preamble, the ODBA amendments prohibiting the dumping at sea of industrial waste, also extend to the incineration-at-sea of industrial waste. *Seaburn, Inc.* v. *EPA*, 712 F. Supp. 218 (D.D.C. 1989) (upholding EPA's interpretation that the ODBA amendments bar the issuance of permits for the incineration-at-sea of industrial wastes). Because the MPRSA, as amended by ODBA, operates to bar the incineration-at-sea of industrial waste, and the type of waste for which the site was primarily designated fits the definition of industrial waste, the statute acts to severely restrict, if not wholly eliminate, the ability to use this site for its primary purpose.

As also noted in the proposed rule's preamble, the site designation for the Gulf Ocean Incineration Site further provides that "[i]ncineration of other [i.e., non-organochlorine] wastes will require research studies or equivalent technical documentation to determine acceptability for ocean incineration." 40 CFR 228.12(b)(1). Thus, the suitability of this site for incineration of non-industrial wastes is unclear, and any such potential use of this site would require research evaluations. In addition, the site has not been used for incineration at sea since 1982, there are no pending applications for its use, nor were any comments on the proposed de-designation received from past or potential users expressing possible future interest in use of the site.

In conclusion, the statutory prohibitions on the ocean disposal of industrial waste have drastically limited, if not wholly barred, the ability to use the site for the primary purpose for which it was designated. The environmental acceptability of this site for incinerating non-organochlorine wastes is unclear and would require research studies. The Agency is unaware of potential future users for this site. In short, the fundamental circumstances giving rise to the designation of this site have changed, and the Agency believes that maintaining the designation of this particular site in light of such changed circumstances is inappropriate. Accordingly, the Agency is taking final action to de-designate the site.

In reviewing the comments received, the Agency also noted that a number of commenters expressing support for the proposed action mistakenly believed that there were two ocean incineration sites located in the Gulf of Mexico. In fact, there is only one such site, which is identified at 40 CFR 228.12(b)(1), and today's final rule completes the de-designation of that site.

3. Related Rulemaking

The Agency plans to take additional actions related to ocean dumping sites in the near future. The Agency is aware of typographical and technical errors in the listing of several ocean dumping sites as set forth in the Code of Federal Regulations. The Agency also believes that the format and arrangement of sites listed in the Code of Federal Regulations should be modified in order to identify approved ocean dumping sites more clearly and legibly. Finally, the Agency is aware that there are expired or terminated dredged material sites included in the existing list of sites. The Agency intends to take future action to correct identified errors in site designations, reformat the display of sites in the **Federal Register**, and remove expired or terminated dredged material sites from the list of sites published in the Code of Federal Regulations.

4. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation is "major," and therefore subject to the requirement for a Regulatory Impact Analysis. Under the Executive Order, a major rule is defined as a regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies, or geographic areas; or

(3) Significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As discussed in the preamble for the proposed rule, none of the sites being de-designated is being used by any ocean dumpers. In addition, use of these sites is severely restricted if not precluded by virtue of the Ocean Dumping Ban Act's prohibitions on the disposal of industrial waste at sea. Pub. L. 100-688, section 1002. Accordingly, today's final rule does not have any significant economic impacts, and thus does not meet the criteria established by Executive Order 12291 for classification as a major rule.

Executive Order 12291 further requires, regardless of whether a rule is "major," that it be submitted to the Office of Management and Budget for review. Today's final rule was submitted to the Office of Management and Budget for review as required by that Executive Order.

5. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and recordkeeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Because today's final rule does not establish or modify any information and recordkeeping requirements it is not subject to the requirements of the Paperwork Reduction Act.

6. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for regulations having a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

(1) Small governmental jurisdictions—any government of a district with a population of less than 50,000.

(2) Small business—any business that is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.

(3) Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field.

None of the sites being de-designated is used by any ocean dumpers. In addition, use of these sites is severely restricted if not precluded by virtue of the Ocean Dumping Ban Act's prohibitions on disposal of industrial waste at sea. Accordingly, EPA has determined that today's final rule does not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis therefore is unnecessary.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 19, 1991.

William K. Reilly,

Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, part 228 of title 40 of the Code of Federal Regulations is amended as follows:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

§ 228.12 [Amended]

2. Section 228.12 is amended by removing and reserving paragraphs (b)(1) and (b)(2).

[FR Doc. 91-4621 Filed 2-26-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7506]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the third column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001-et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I—Regular Program Conversions				
Connecticut: Monroe, Town of. Fairfield County	090009	April 24, 1975, Emerg.; April 17, 1985, Reg.; March 4, 1991, Susp.	March 4, 1991	March 4, 1991.
Rhode Island: Smithfield, Town of. Providence County.	440025	December 17, 1971, Emerg.; March 1, 1977, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Region II				
New Jersey: Liberty, Township of. Warren County	340489	January 21, 1976, Emerg.; March 18, 1983, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Region III				
Pennsylvania: Utica, Borough of. Venango County	420841	February 10, 1977, Emerg.; March 4, 1991, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Region V				
Michigan: Iron River, City of. Iron County	260103	February 6, 1975, Emerg.; March 4, 1991, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Wisconsin: Peshtigo, City of. Marinette County	550263	June 10, 1975, Emerg.; March 4, 1991, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Region VI				
Arkansas: Logan County. Unincorporated Areas	050447	March 18, 1981, Emerg.; October 18, 1988, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Oklahoma: Del City, City of. Oklahoma County	400233	November 23, 1973, Emerg.; March 18, 1980, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Texas: Odessa, City of. Ector County	480206	March 27, 1980, Emerg.; March 4, 1991, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Ector County. Unincorporated Areas	480796	September 11, 1981, Emerg.; March 4, 1991, Reg.; March 4, 1991, Susp.	March 4, 1991	Do.
Region I—Regular Program Conversions				
Connecticut: Canton, Town of. Hartford County	090135	March 2, 1974, Emerg.; August 2, 1979, Reg.; March 18, 1991, Susp.	March 18, 1991	March 18, 1991.
Hebron, Town of. Tolland County	090162	October 17, 1975, Emerg.; October 15, 1981, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Oxford, Town of. New Haven County	090150	July 1, 1975, Emerg.; December 4, 1979, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Woodbridge, Town of. New Haven County	090153	June 18, 1975, Emerg.; March 16, 1981, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Region III				
Pennsylvania: Brokenstraw, Township of. Warren County	422115	February 4, 1976, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Cromwell, Township of. Huntingdon County	421688	April 20, 1976, Emerg.; December 4, 1985, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Dunbar, Borough of. Fayette County	420461	June 20, 1974, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Franklin, Township of. Fayette County	421625	July 24, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Orbisonia, Borough of. Huntingdon County	421682	October 15, 1975, Emerg.; December 31, 1982, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Saltlick, Township of. Fayette County	421636	December 3, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Sandy Lake, Borough of. Mercer County	420677	August 1, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
South Pymatuning, Township of. Mercer County.	421676	July 28, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Springhill, Township of. Fayette County	421639	June 15, 1976, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Stoneboro, Borough of. Mercer County	420679	June 18, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
West Virginia: Gassaway, Town of. Braxton County	540237	March 21, 1975, Emerg.; September 10, 1984, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Grantsville, Town of. Calhoun County	540021	April 29, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Braxton County. Unincorporated Areas	540009	December 29, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Burnsville, Town of. Braxton County	540010	March 19, 1975, Emerg.; September 10, 1984, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Calhoun County. Unincorporated Areas	540020	July 8, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Clay County. Unincorporated Areas	540022	July 24, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Clay, Town of. Clay County	540023	March 25, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Doddridge County. Unincorporated Areas	540024	July 30, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Ravenswood, City of. Jackson County	540241	May 2, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Sutton, Town of. Braxton County	540236	June 5, 1975, Emerg.; September 10, 1984, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
West Union, Town of. Doddridge County	540025	March 7, 1975, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Region IV				
South Carolina: Charleston County. Unincorporated Areas	455413	June 30, 1970, Emerg.; April 23, 1971, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Folly Beach, Township of. Charleston County	455415	September 11, 1970, Emerg.; April 2, 1971, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Isle of Palms, Township of. Charleston County	455416	September 4, 1970, Emerg.; April 2, 1971, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Sullivans Island, City of. Charleston County	455418	September 18, 1970, Emerg.; April 2, 1971, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Union County. Unincorporated Areas	450185	April 8, 1987, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Tennessee: Greene County. Unincorporated Areas	470345	March 8, 1979, Emerg.; August 1, 1986, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Hawkins County. Unincorporated Areas	470065	December 11, 1987, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Region V				
Michigan: Frankfort, City of. Benzie County	260029	October 30, 1974, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Wisconsin: Fredonia, Village of. Ozaukee County	550313	February 7, 1975, Emerg.; January 2, 1981, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Cedarburg, City of. Ozaukee County	550312	September 18, 1974, Emerg.; May 15, 1980, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Grafton, Village of. Ozaukee County	550314	April 30, 1975, Emerg.; May 15, 1980, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Marinette County. Unincorporated Areas	550259	July 21, 1975, Emerg.; July 21, 1975, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Mequon, City of. Ozaukee County	555564	July 2, 1971, Emerg.; November 3, 1972, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Ozaukee County. Unincorporated Areas	550310	May 14, 1971, Emerg.; May 16, 1977, Reg.; March 18, 1991, Susp.	March 18, 1991, Susp	Do.
Saukville, Village of. Ozaukee County	550317	April 18, 1974, Emerg.; December 16, 1980, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Thiensville, Village of. Ozaukee County	550318	March 26, 1974, Emerg.; August 1, 1978, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Port Washington, City of. Ozaukee County	550316	June 30, 1975, Emerg.; October 15, 1981, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Region VI				
Oklahoma: Cherokee County. Unincorporated Areas.	400488	January 9, 1986, Emerg.; March 18, 1991, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Texas: Cameron County. Unincorporated Areas	480101	August 14, 1970, Emerg.; June 15, 1979, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.
Region IX				
California: Merced County. Unincorporated Areas	060188	August 23, 1974, Emerg.; January 3, 1979, Reg.; March 18, 1991, Susp.	March 18, 1991	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.
[FR Doc. 91-4579 Filed 2-26-91; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7505]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of

property located in the communities listed.

EFFECTIVE DATE: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and Floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community number	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Georgia: Leesburg, City of, Jefferson County	130441	January 8, 1991	8-15-75
Kentucky: [1] Taylor County, Unincorporated Areas	210212	January 7, 1991	10-16-74
Alabama: Winston County, Unincorporated Areas	010304	January 14, 1991	2-17-78
Michigan:			
Ionia, Township of, Ionia County	260632	January 22, 1991	
Portland, Township of, Ionia County	260631	January 22, 1991	
Arkansas: Washington County, Unincorporated Areas	050212	January 24, 1991	5-10-77
Michigan: Irving, Township of, Barry County	260354	January 31, 1991	4-15-77
New Eligibles—Regular Program			
Alabama: Franklin County, Unincorporated Areas	010322	January 16, 1991	1-20-82
California:			
[2] Yucaipa, City of, San Bernardino County	060736	January 28, 1991	
Lathrop, City of, San Joaquin County	060738	....do	NSFHA
Reinstatements—Regular Program			
Delaware: Frankford, Town of, Sussex County	100037	July 7, 1975, Emerg.; September 16, 1981, Reg., December 5, 1990, Susp.; January 10, 1991, Rein.	9-16-81
New Hampshire: Newbury, Town of, Merrimack County	330226	August 17, 1976, Emerg.; April 2, 1986, Reg.; May 3, 1990, Susp.; January 10, 1991, Rein.	4-2-86
South Carolina: Newberry County, Unincorporated Areas	450224	July 2, 1975, Emerg.; December 15, 1980, Reg.; December 15, 1990, Susp.; January 10, 1991, Rein.	12-15-80
Ohio: Hocking County, Unincorporated Areas	390272	April 18, 1977, Emerg.; November 16, 1990, Reg.; November 16, 1990, Susp.; January 10, 1991, Rein.	11-16-90
Indiana: Franklin County, Unincorporated Areas	180066	May 15, 1975, Emerg.; September 1, 1986, Reg.; September 1, 1986, Susp.; January 11, 1991, Rein.	9-1-86
Pennsylvania: Vernon, Township of, Crawford County	421575	July 24, 1975, Emerg.; July 16, 1990, Reg.; July 16, 1990, Susp.; January 21, 1991, Rein.	7-16-90
West Virginia: Meadow Bridge, Town of, Fayette County	540026	October 1, 1975, Emerg.; January 2, 1991, Reg.; January 2, 1991, Susp.; January 21, 1991, Rein.	1-2-91
Texas: Young County, Unincorporated Areas	480664	December 21, 1978, Emerg.; January 2, 1991, Reg.; January 2, 1991, Susp.; January 22, 1991, Rein.	1-2-91
California: Tracy, City of, San Joaquin County	060383	June 28, 1973, Emerg.; December 22, 1980, Reg.; June 18, 1987, Susp.; January 24, 1991, Rein.	6-18-87
Pennsylvania: Cambridge, Township of, Crawford County	421564	December 10, 1975, Emerg.; September 10, 1984, Reg.; June 4, 1990, Susp.; January 28, 1991, Rein.	6-4-90
North Dakota: Drayton, Township of, Pembina County	380276	October 6, 1982, Emerg.; May 1, 1986, Reg.; July 4, 1989, Susp.; January 28, 1991, Rein.	5-1-86
Utah: Morgan County, Unincorporated Areas	490092	June 25, 1975, Emerg.; September 28, 1990, Reg.; September 28, 1990, Susp.; January 28, 1991, Rein.	9-28-90

State and location	Community number	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Maine: Vienna, Town of, Kennebec County	230249	May 3, 1976, Emerg.; August 19, 1985, Reg.; May 17, 1990, Susp.; January 29, 1991, Rein.	8-19-85
Delaware: Leipsic, Town of, Kent County	100014	April 21, 1978, Emerg.; September 29, 1978, Reg.; December 5, 1990, Susp.; January 31, 1991, Rein.	9-29-78
Withdrawal—Regular Program			
Illinois: Wheeler, Village of, Jasper County	170304	August 18, 1975, Emerg.; July 18, 1985, Reg.; January 2, 1991, With.	7-18-85
Region I—Minimum Conversions			
Maine: Hartland, Town of, Somerset County	230361	January 1, 1991, Suspension Withdrawn	1-1-91
Region III			
Pennsylvania: Jackson, Town of, Lycoming County	422601	....do	1-1-91
West Virginia: Ritchie County, Unincorporated Areas	540224	....do	1-1-91
Regular Conversions			
Region II			
New Jersey:			
Andover, Borough of, Sussex County	340542	January 2, 1991, Suspension Withdrawn	1-2-91
Green, Township of, Sussex County	340529	....do	1-2-91
New York:			
North Castle, Town of, Westchester County	360923	....do	
Newport, Town of, Herkimer County	361111	January 17, 1991	1-17-91
Region III			
West Virginia: Elizabeth, Town of, Wirt County	540212	....do	1-17-91
Region IV			
Mississippi:			
Burnsville, City of, Tishomingo County	280264	....do	1-17-91
Marshall County, Unincorporated Areas	280274	....do	1-17-91
Region V			
Ohio: Roseville, Village of, Muskingum County	390646	....do	1-17-91
Wisconsin:			
Amherst, Village of, Portage County	550338	....do	1-17-91
Westfield, Village of, Marquette County	550269	....do	1-17-91
Region VI			
Texas: Montague County, Unincorporated Areas	480939	....do	1-17-91

[1] Taylor County is being converted to the Regular Program on *2-6-91* which is the effective FIRM date.
[2] The City of Yucaipa has adopted San Bernardino County's FIRM & FIS dated *6-23-81* for floodplain management and flood insurance purposes.
Note: The Borough of Washington #420565 (Lancaster County) has been annexed by the Township of Manor (Lancaster County, Pennsylvania (# 420557). The Borough no longer exists as a separate entity.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.; Rein.—Reinstatement.

Issued: February 20, 1991.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-4580 Filed 2-26-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7507]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies the unincorporated areas of sixty-one Missouri counties, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date listed within this rule because of deficiencies in Missouri State statutes which prevent counties from enforcing floodplain management regulations in accordance with NFIP requirements on land used for agricultural purposes in flood hazard areas. If FEMA receives documentation that the State has passed and the Governor has signed adequate remedial legislation that is in effect, prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59, *et seq.*).

This action resulted from a 1989 Missouri court case (*St. Charles County* v. *Dardenne Realty Company, et al.*, 771 S.W.2d 828 (Mo. Banc 1989)), in which the Missouri statutes were interpreted as not providing certain counties with the enabling authority necessary to regulate development on land used for agricultural purposes. In addition, the Missouri Attorney General's Opinion Number 117-89 states that levees

controlled by levee districts also are not subject to regulation by community floodplain management ordinances. Exemption of any land within a special flood hazard area from the minimum NFIP requirements is not in compliance with the legislation establishing the NFIP (42 U.S.C. 1315 and 1305(c) and 44 CFR 60.2).

Accordingly, the 61 counties will be suspended on March 4, 1991. As of that date, flood insurance will no longer be sold in the unincorporated areas of these counties. However, if FEMA receives documentation that the State has passed and the Governor has signed adequate remedial legislation that is in effect prior to the effective suspension date, and that the Missouri counties have the enabling legislation required to enforce local floodplain management regulations that meet the minimum requirements of § 60.3 of the NFIP regulations, the counties will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the counties will be published in the Federal Register. In the interim, if you wish to determine if the 61 Missouri counties were suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing Flood Insurance Rate Maps. The date of these flood maps are indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because the communities listed in this final rule have been adequately notified.

The 61 Missouri counties received a 180-day suspension letter in August, 1990, a 90-day suspension notice in November 1990, and the 30-day suspension notice was sent in January 1991. These notifications were addressed to the County Official of each of the 61 counties, indicating that their respective counties will be suspended unless the Missouri State Legislature takes the legislative actions necessary to enable Missouri counties to regulate land used for agricultural purposes in flood hazard areas prior to March 4, 1991. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VII—Regular Program				
Missouri:				
Andrew County, Unincorporated Areas.	290604	June 30, 1983, Emerg.; July 4, 1986, Reg.; March 4, 1991, Susp.	7-04-86	Mar. 4, 1991.
Atchison County, Unincorporated Areas.	290009	February 22, 1984, Emerg.; March 1, 1990, Reg.; March 4, 1991, Susp.	3-01-90	Do.
Barton County, Unincorporated Areas.	290785	September 10, 1984, Emerg.; July 1, 1987, Reg.; March 4, 1991, Susp.	7-01-87	Do.
Benton County, Unincorporated Areas.	290027	September 24, 1986, Emerg.; March 1, 1987, Reg.; March 4, 1991, Susp.	3-01-87	Do.
Bollinger County, Unincorporated Areas.	290787	June 1, 1984, Emerg.; June 1, 1984, Reg.; March 4, 1991, Susp.	3-01-84	Do.
Boone County, Unincorporated Areas.	290034	June 4, 1979, Emerg.; June 15, 1983, Reg.; March 4, 1991, Susp.	6-15-83	Do.
Buchanan County, Unincorporated Areas.	290040	December 17, 1973, Emerg.; August 1, 1978, Reg.; March 4, 1991, Susp.	8-01-78	Do.
Butler County, Unincorporated Areas.	290044	April 26, 1984, Emerg.; April 3, 1985, Reg.; March 4, 1991, Susp.	4-03-85	Do.
Calloway County, Unincorporated Areas.	290049	September 30, 1983, Emerg.; January 3, 1985, Reg.; March 4, 1991, Susp.	1-03-85	Do.
Cape Girardeau County, Unincorporated Areas.	290789	August 17, 1978, Emerg.; April 15, 1988, Reg.; March 4, 1991, Susp.	5-15-89	Do.
Carroll County, Unincorporated Areas.	290057	June 15, 1983, Emerg.; October 17, 1986, Reg.; March 4, 1991, Susp.	10-17-86	Do.
Carter County, Unincorporated Areas.	290059	July 16, 1986, Emerg.; July 10, 1989, Reg.; March 4, 1991, Susp.	2-04-87	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Cass County, Unincorporated Areas.	290783	April 21, 1975, Emerg.; April 15, 1982, Reg.; March 4, 1991, Susp.	4-15-82	Do.
Charlton County, Unincorporated Areas.	290073	January 12, 1984, Emerg.; December 3, 1987, Reg.; March 4, 1991, Susp.	12-03-87	Do.
Clark County, Unincorporated Areas.	290792	April 6, 1982, Emerg.; April 6, 1982, Reg.; March 4, 1991, Susp.	9-15-81	Do.
Clay County, Unincorporated Areas.	290086	September 6, 1974, Emerg.; March 18, 1988, Reg.; March 4, 1991, Susp.	2-17-88	Do.
Clinton County, Unincorporated Areas.	290799	March 12, 1986, Emerg.; June 18, 1987, Reg.; March 4, 1991, Susp.	6-18-87	Do.
Cole County, Unincorporated Areas.	290107	January 21, 1982, Emerg.; January 21, 1982, Reg.; March 4, 1991, Susp.	12-15-81	Do.
Cooper County, Unincorporated Areas.	290794	April 26, 1984, Emerg.; September 1, 1988, Reg.; March 4, 1991, Susp.	9-02-88	Do.
Crawford County, Unincorporated Areas.	290795	October 23, 1984, Emerg.; May 1, 1987, Reg.; March 4, 1991, Susp.	5-01-87	Do.
Dunklin County, Unincorporated Areas.	290122	May 15, 1985, Emerg.; April 3, 1989, Reg.; March 4, 1991, Susp.	4-03-89	Do.
Franklin County, Unincorporated Areas.	290490	June 21, 1974, Emerg.; October 16, 1984, Reg.; March 4, 1991, Susp.	10-16-84	Do.
Gasconade County, Unincorporated Areas.	290801	October 20, 1983, Emerg.; September 4, 1987, Reg.; March 4, 1991, Susp.	9-04-87	Do.
Greene County, Unincorporated Areas.	290782	April 15, 1975, Emerg.; June 15, 1983, Reg.; March 4, 1991, Susp.	6-15-83	Do.
Grundy County, Unincorporated Areas.	290150	May 15, 1985, Emerg.; February 1, 1987, Reg.; March 4, 1991, Susp.	2-01-87	Do.
Holt County, Unincorporated Areas.	290157	March 1, 1984, Emerg.; January 6, 1986, Reg.; March 4, 1991, Susp.	1-06-86	Do.
Howard County, Unincorporated Areas.	290162	July 25, 1984, Emerg.; January 5, 1989, Reg.; March 4, 1991, Susp.	1-05-89	Do.
Jackson County, Unincorporated Areas.	290493	June 19, 1974, Emerg.; September 29, 1978, Reg.; March 4, 1991, Susp.	11-03-89	Do.
Jasper County, Unincorporated Areas.	290807	May 15, 1987, Emerg.; May 15, 1987, Reg.; March 4, 1991, Susp.	4-17-85	Do.
Jefferson County, Unincorporated Areas.	290808	June 10, 1975, Emerg.; May 16, 1983, Reg.; March 4, 1991, Susp.	9-16-88	Do.
Johnson County, Unincorporated Areas.	290809	October 26, 1990, Reg.; March 4, 1991, Susp.	4-02-90	Do.
Lafayette County, Unincorporated Areas.	290812	June 20, 1983, Emerg.; September 4, 1986, Reg.; March 4, 1991, Susp.	9-04-86	Do.
Lewis County, Unincorporated Areas.	290844	June 18, 1982, Emerg.; September 1, 1989, Reg.; March 4, 1991, Susp.	9-01-89	Do.
Lincoln County, Unincorporated Areas.	290869	June 8, 1988, Emerg.; March 15, 1984, Reg.; March 4, 1991, Susp.	11-15-89	Do.
Livingston County, Unincorporated Areas.	290814	May 15, 1985, Emerg.; May 1, 1987, Reg.; March 4, 1991, Susp.	5-01-87	Do.
Maries County, Unincorporated Areas.	290816	September 10, 1984, Emerg.; July 1, 1987, Reg.; March 4, 1991, Susp.	7-01-87	Do.
Marion County, Unincorporated Areas.	290222	June 26, 1973, Emerg.; May 16, 1977, Reg.; March 4, 1991, Susp.	4-26-79	Do.
Mississippi County, Unincorporated Areas.	290781	April 14, 1975, Emerg.; January 18, 1989, Reg.; March 4, 1991, Susp.	1-18-89	Do.
Moniteau County, Unincorporated Areas.	290237	June 20, 1983, Emerg.; October 17, 1986, Reg.; March 4, 1991, Susp.	10-17-86	Do.
Montgomery County, Unincorporated Areas.	290242	October 28, 1986, Emerg.; March 1, 1987, Reg.; March 4, 1991, Susp.	4-01-87	Do.
New Madrid County, Unincorporated Areas.	290849	June 24, 1975, Emerg.; June 24, 1975, Reg.; March 4, 1991, Susp.	11-27-79	Do.
Osage County, Unincorporated Areas.	290258	June 20, 1983, Emerg.; February 2, 1990, Reg.; March 4, 1991, Susp.	2-02-90	Do.
Pemiscot County, Unincorporated Areas.	290779	April 8, 1975, Emerg.; May 17, 1982, Reg.; March 4, 1991, Susp.	5-17-82	Do.
Perry County, Unincorporated Areas.	290260	April 6, 1982, Emerg.; January 6, 1988, Reg.; March 4, 1991, Susp.	1-06-88	Do.
Phelps County, Unincorporated Areas.	290824	May 1, 1984, Emerg.; February 1, 1987, Reg.; March 4, 1991, Susp.	2-01-87	Do.
Pike County, Unincorporated Areas.	290266	April 29, 1981, Emerg.; May 1, 1990, Reg.; March 4, 1991, Susp.	5-01-90	Do.
Platte County, Unincorporated Areas.	290475	March 25, 1974, Emerg.; December 18, 1979, Reg.; March 4, 1991, Susp.	6-04-87	Do.
Pulaski County, Unincorporated Areas.	290826	December 21, 1983, Emerg.; April 17, 1985, Reg.; March 4, 1991, Susp.	4-17-85	Do.
Ralls County, Unincorporated Areas.	290362	March 16, 1979, Emerg.; May 1, 1988, Reg.; March 4, 1991, Susp.	5-01-88	Do.
Ray County, Unincorporated Areas.	290776	March 26, 1975, Emerg.; January 19, 1983, Reg.; March 4, 1991, Susp.	1-19-83	Do.
Ripley County, Unincorporated Areas.	290830	September 29, 1988, Emerg.; September 29, 1988, Reg.; March 4, 1991, Susp.	1-17-86	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
St. Charles County. Unincorporated Areas.	290315	August 6, 1971, Emerg.; September 15, 1978, Reg.; March 4, 1991, Susp.	9-15-78	Do.
St. Francois County. Unincorporated Areas.	290832	September 12, 1984, Emerg.; February 1, 1987, Reg.; March 4, 1991, Susp.	2-01-87	Do.
Ste. Genevieve County. Unincorporated Areas.	290325	March 23, 1982, Emerg.; September 30, 1977, Reg.; March 4, 1991, Susp.	9-30-77	Do.
St. Louis County. Unincorporated Areas.	290327	September 3, 1971, Emerg.; September 15, 1978, Reg.; March 4, 1991, Susp.	11-18-88	Do.
Saline County. Unincorporated Areas.	290834	May 1, 1984, Emerg.; April 1, 1989, Reg.; March 4, 1991, Susp.	4-01-89	Do.
Scott County. Unincorporated Areas.	290837	April 24, 1979, Emerg.; April 3, 1987, Reg.; March 4, 1991, Susp.	9-06-89	Do.
Stoddard County. Unincorporated Areas.	290845	December 12, 1984, Emerg.; July 1, 1987, Reg.; March 4, 1991, Susp.	7-01-87	Do.
Vernon County. Unincorporated Areas.	290841	December 12, 1984, Emerg.; July 1, 1987, Reg.; March 4, 1991, Susp.	7-01-87	Do.
Warren County. Unincorporated Areas.	290443	June 1, 1984, Emerg.; April 3, 1985, Reg.; March 4, 1991, Susp.	4-03-85	Do.
Wayne County, Unincorporated Areas.	290449	September 10, 1984, Emerg.; February 1, 1987, Reg., March 4, 1991, Susp.	2-01-87	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: February 20, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-4578 Filed 2-26-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The date of issuance of the revised Flood Insurance Rate Map (FIRM) showing modified base flood elevations for the community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and an opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided. The proposed modified elevations were also published in the **Federal Register**. The Administrator has resolved any appeals resulting from these notifications.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67.

Pursuant to the provisions of 5 U.S.C. 605 (b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies, for reasons set out in the proposed rule, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited for each community.

State City/Town/County Source of Flooding and Location	# Depth in feet above ground Elevation in feet (NGVD) Modified
Arizona	
Avondale (city), Maricopa County (FEMA Docket No. 7004)	
Agua Fria River:	
Approximately 350 feet downstream of Litchfield Road	*924
At Broadway Road	*935
At Lower Buckeye Road	*950
Approximately 150 feet downstream of Buckeye Road	*962
At Van Buren Street	*971
Approximately 875 feet upstream of Interstate 10 westbound	*981
At McDowell Road	*985
At Thomas Road	*999
Approximately 530 feet upstream of Indian School Road	*1,010
Shallow flooding at approximately 200 feet upstream of Buckeye Road along east bank of Agua Fria River	*964
Shallow flooding at approximately 250 feet upstream of Buckeye Road along west bank of Agua Fria River	*963
Maps are available for review at the Planning Department, 1211 South Fourth Street, Avondale, Arizona.	
El Mirage (city), Maricopa County (FEMA Docket No. 7004)	
Agua Fria River:	
Approximately 1,280 feet downstream of Glendale Avenue	
At Northern Avenue	*1,050
At Olive Avenue	*1,062
Approximately 1,700 feet upstream of Olive Avenue	*1,062
At Peoria Avenue	*1,085
Approximately 1,500 feet downstream of Grand Avenue	*1,094
Approximately 1,200 feet upstream of Grand Avenue	*1,119
At 115th Avenue	*1,131
Approximately 2,100 feet upstream of Bell Road	*1,137
Agua Fria River West Spill Flow:	
Approximately 0.9 mile downstream of Grand Avenue	*1,105
Approximately 0.5 mile downstream of Grand Avenue	*1,111
Approximately 0.3 mile upstream of Grand Avenue	*1,118
Maps are available for review at the Engineering Department, City Hall, 14405 North Palm Street, El Mirage, Arizona.	*1,131
Mesa (city) Maricopa County (FEMA Docket No. 7004)	
Salt River:	
At State Highway 87	*1,217
Approximately 2 miles upstream of State Highway 87	*1,233
At North Gilbert Road	*1,254
Approximately 2 miles upstream of North Gilbert Road	*1,272
Approximately 4 miles upstream of North Gilbert Road	*1,296
Maps are available for review at the Engineering Department, 20 East Main Street, Mesa, Arizona.	
Peoria (city), Maricopa County (FEMA Docket No. 7004)	
Agua Fria River:	
At Northern Avenue	*1,082
Approximately 1,700 feet upstream of Olive Road	*1,095
Approximately 6.5 miles upstream of West Rose Garden Avenue	*1,313
Approximately 1.5 miles downstream of Beardsley Canal	*1,315
Approximately 2 miles upstream of Granite Reef Aqueduct	*1,378
Approximately 0.8 mile upstream of Morristown-New River Highway	*1,425
Maps are available for review at the Engineering Department, 8320 West Madison Street, Peoria, Arizona.	
Surprise (town), Maricopa County (FEMA Docket No. 7004)	
Agua Fria River:	
Approximately 2,100 feet upstream of Bell Road	*1,165
Approximately 1 mile downstream of West Rose Garden Avenue	*1,186
Maps are available for review at the Office of the Town Clerk, 12694 Santa Fe Drive, Surprise, Arizona.	
Tempe (city), Maricopa County (FEMA Docket No. 7004)	
Salt River:	
At Scottsdale Road	*1,163
Approximately 740 feet upstream of Hayden Road	*1,174
Approximately 1,700 feet upstream of Hayden Road	*1,174
Maps are available for review at the Public Works Department, 31 East Fifth Street, Tempe, Arizona.	
ARKANSAS	
Conway (city), Faulkner County (FEMA Docket No. 7008)	
Stone Dam Creek:	
Upstream side of State Route 365	*275
Approximately 2,530 feet upstream of State Route 286	*299
Railroad Creek:	
At confluence with Stone Dam Creek	*276
Downstream side of American Transportation Building	*290
Stone Dam Tributary:	
At confluence with Stone Dam Creek	*281
Approximately 180 feet upstream of Hardy Street	*399
Gold Creek (East):	
Approximately 500 feet downstream of Wiggle Worm Road	*276
Approximately 1,890 feet downstream of U.S. Route 64	*285
Tucker Creek:	
Upstream side of State Route 286	*285
Approximately 1,580 feet downstream of Salem Road	*289
Tucker Creek Tributary:	
At the confluence with Tucker Creek	*285
Approximately 110 feet upstream of West Tyler Street	*314
Unnamed Tributary to Tucker Creek Tributary:	
At confluence with Tucker Creek Tributary	*285
Approximately 770 feet upstream of State Route 60	*285
Tributary 1 to Tucker Creek Tributary:	
At confluence with Tucker Creek	*296
Approximately 130 feet upstream of W. Tyler Street	*306
Tributary 2 to Tucker Creek Tributary:	
At confluence with Tucker Creek Tributary	*299
Approximately 135 feet upstream of W. Tyler Street	*306
Arkansas River: Approximately 100 feet downstream of Lake Carol Dam	*267
Lake Conway: At the Amity Road	*272
Little Creek: At the confluence with Lake Conway	*272
Maps available for inspection at the City Hall, 1201 Oak, Conway, Arkansas.	
Mountainburg (city), Crawford County (FEMA Docket No. 7004)	
Mariboe Creek:	
At the U.S. Route 71 and State Route 282	*752
Approximately 220 feet upstream of U.S. Route 71 and State Route 282	*752
Maps available for inspection at the City Hall, Highway 71 North, Mountainburg, Arkansas.	
Mulberry (city), Crawford County (FEMA Docket No. 7004)	
Miller Branch:	
Approximately 0.29 mile downstream of State Route 215	*405
Approximately 0.48 mile upstream of State Route 215	*441
Vine Prairie Creek Tributary: Approximately 0.3 mile upstream of U.S. Route 64	*419
Maps available for inspection at the City Hall, 2nd and Main Street, Mulberry, Arkansas.	
Van Buren (city), Crawford County (FEMA Docket No. 7004)	
Arkansas River:	
At downstream corporate limits	*409
Approximately 1,000 feet downstream of the upstream corporate limits	*415
Lee Creek:	
At the confluence with the Arkansas River	*413
Approximately 0.07 river mile downstream of Interstate Route 40 (eastbound)	*413
Maps available for inspection at the City Hall, 1000 E. Main, Van Buren, Arkansas.	
CALIFORNIA	
Alameda (city), Alameda County (FEMA Docket No. 7001)	
San Francisco Bay:	
About 3,000 feet north of intersection of Atlantic Avenue and Main Street	*7
Intersection of Mariner Square Drive and Marina Village Parkway	*7
Approximately 2,000 feet east of intersection of Maitland Drive and Clubhouse Memorial Drive	#1
Maps are available for review at the City Hall, 2263 Santa Clara Avenue, room 204, Alameda, California.	
DELAWARE	
Wilmington (city), New Castle County (FEMA Docket No. 7006)	
Christina River:	
At confluence with the Delaware River	*10
At upstream corporate limits	*10
Brandywine Creek:	
At confluence with Christina River	*10
Downstream side of Amtrak Railroad	*10
Little Mill Creek: Approximately 100 feet east of intersection of 5th Avenue and Duncan Street	*16
Maps available for inspection at the City/County Building, 800 French Street, Wilmington, Delaware.	
GEORGIA	
Toccoa (city), Stephens County (FEMA Docket No. 7001)	
Eastanollee Creek:	

State City/Town/County Source of Flooding and Location	# Depth in feet above ground ^Elevation in feet (NGVD) Modified
About 600 feet downstream of Collins Road	*925
Just downstream of Collins Road	*927
Just upstream of Collins Road	*934
About 275 feet downstream of Davis Avenue	*943
Just upstream of Davis Avenue	*946
Eastaboliva Creek Tributary A:	
At mouth	*927
Just downstream of Collins Road	*927
Just upstream of Collins Road	*934
Just downstream of Morgan Street	*936
Maps available for inspection at the City of Toccoa, Community Development Building, Toccoa, Georgia.	
INDIANA	
Vanderburgh County (unincorporated areas) (FEMA Docket No. 7008)	
Pond Flat Ditch:	
At mouth	*424
About 0.5 mile upstream of U.S. Route 41	*438
Pond Flat Ditch Lateral "A":	
At mouth	*432
Just downstream of Boyle Lane	*440
Pond Flat Ditch Lateral "B":	
At mouth	*432
About 0.54 mile upstream of mouth	*438
Pond Flat Ditch Lateral "C":	
At mouth	*430
At confluence of Pond Flat Ditch Lateral "E"	*435
Pond Flat Ditch Lateral "D":	
At mouth	*431
About 0.33 mile upstream of Volkman Road	*439
Pond Flat Ditch Lateral "E":	
At mouth	*435
About 0.332 mile upstream of mouth	*435
Rusher Creek:	
At mouth	*435
About 0.7 mile upstream of CSX railroad	*446
Locust Creek:	
About 0.74 mile downstream of U.S. Route 66	*378
At Wimberg Road	*388
Little Pigeon Creek:	
At Petersburg Road	*360
About 0.18 mile upstream of Hillsdale Road	*404
Maps available for inspection at the Building Commissioner's Office, Civic Center Complex, room 310, 1 NW. Seventh Street, Evansville, Indiana.	
LOUISIANA	
Florien (village), Sabine Parish (FEMA Docket No. 7004)	
Midliff Creek:	
At downstream corporate limits	*243
Approximately 600 feet upstream of U.S. Route 171	*252
Maps available for inspection at the Village Hall, Florien, Louisiana.	
Many (town), Sabine Parish (FEMA Docket No. 7004)	
Harpoon Bayou:	
Approximately 1,300 feet downstream of U.S. Route 171	*214
Approximately 1,800 feet upstream of U.S. Route 171	*219
Phillips Creek:	
Approximately .5 mile downstream of State Route 1217	*226
Approximately 2,000 feet downstream of State Route 1217	*227
San Jose Creek:	
Approximately .6 mile downstream of Fairground Street	*219
At downstream side of U.S. Route 171	*236
Maps available for inspection at the Town Hall, San Antonio Avenue, Many, Louisiana.	
Maryland	
Montgomery County (unincorporated areas) (FEMA Docket No. 6998)	
Sligo Creek:	
At County boundary	*135
Approximately 100 feet upstream of Park Valley Road	*178
Maps available for inspection at the County Department of Environmental Protection, Stormwater Management, 250 Hungerford Drive, Rockville, Maryland.	
Massachusetts	
Framingham (town), Middlesex County (FEMA Docket No. 6982)	
Belling Brook:	
Approximately 1,720 feet upstream of confluence with Sudbury River	*166
Approximately .5 mile upstream of Constance M. Fiske Dam	*227
Birch Meadow Brook:	
At confluence with East Outlet	*186
Approximately 90 feet upstream of Weston Aqueduct	*196
East Outlet:	
At confluence with East Sudbury River	155
Approximately 330 feet upstream of Knight Road	*187
Maps available for inspection at the Framingham Memorial Building, Concord Square, Framingham, Massachusetts.	
Wenham (town), Essex County (FEMA Docket No. 7008)	
Ipswich River:	
Approximately 0.5 mile downstream of corporate limits	*37
At confluence of Salem Beverly Waterway Canal	*37
Maps available for inspection at the Town Hall, 138 Main Street, Wenham, Massachusetts.	
Missouri	
Crestwood (city), St. Louis County (FEMA Docket No. 7008)	
Gravois Creek:	
Just upstream of Pardee Road	*506
Just downstream of Union Pacific Railroad	*533
Just downstream of Big Bend Road	*564
Kirkwood Creek:	
At mouth	*530
Just downstream of Holmes Road	*566
Just downstream of Big Bend Road	*568
Maps available for inspection at the City of Crestwood, Public Works Department, #1 Detjen Drive, Crestwood, Missouri.	
Nevada	
Wells (city), Elko County (FEMA Docket No. 7001)	
Woodhills Drain:	
At Tenth Street Extension	*5,626
Approximately 200 feet upstream of Southern Pacific Railroad	*5,631
Just upstream of U.S. Highway 40	*5,640
Just upstream of U.S. Highway 93	*5,646
Maps are available for review at the City Clerk's Office, 279 Clover Avenue, Wells, Nevada.	
New Jersey	
Riverton (borough), Burlington County (FEMA Docket No. 7004)	
Pompeston Creek:	
Approximately .3 mile upstream of Broad Street & CONRAIL	*11
At upstream corporate limits	*11
Delaware River (backwater flooding): Between Elm and Linden Streets north of Fourth Street	*10
Maps available for inspection at the Riverton Municipal Building, 505 A Howard Street, Riverton, New Jersey.	
Texas	
Athens (city), Henderson County (FEMA Docket No. 7012)	
One Mile Creek:	
Approximately .5 mile downstream of North Pinkerton Road	*400
Approximately .3 mile downstream of North Pinkerton Road	*406
Maps available for inspection at the City Hall, 501 N. Pinkerton, Athens, Texas.	
El Paso (city), El Paso County (FEMA Docket No. 7004)	
Western Freeway Channel:	
Approximately 1.6 miles downstream of Marcus Uribe Drive	*4,009
Approximately 3,000 feet downstream of Marcus Uribe Drive	*4,097
War Road Channel:	
Approximately 3,000 feet downstream of Marcus Uribe Drive	*4,097
Approximately 1,400 feet upstream of Marcus Uribe Drive	*4,132
Detention Basin 1: At confluence of Flow Path No. 49B	*4,224
Detention Basin 2: At confluence of Flow Path No. 13A	*4,214
Arroyo 2:	
Approximately 875 feet downstream of Lakehurst Road	*3,866
Approximately 1.8 miles upstream of Reesler Drive	*4,278

State City/Town/County Source of Flooding and Location	# Depth in feet above ground ^Elevation in feet (NGVD) Modified
Maps available for inspection at the Engineering Department, Two Civic Center Plaza, El Paso, Texas.	
West Virginia	
Lincoln County (unincorporated areas) (FEMA Docket No. 7001)	
Little Coal River:	
At a point approximately 850 feet upstream of the confluence of Ivy Creek	*660
At the upstream County boundary	*670
Maps available for inspection at the County Courthouse, 8000 Court Street, Hamlin, West Virginia	

Issued: February 12, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-4577 Filed 2-26-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF ENERGY

48 CFR Parts 914, 915, and 952

Acquisition Regulations Concerning Simplified Offeror Representations and Certifications Procedures

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today adopts a final rule which amends the Department of Energy Acquisition Regulation (DEAR) by revising current policies concerning the use and format of DOE's unique, simplified offeror representations and certifications procedures, thereby relying substantially on the current Federal Acquisition Regulation (FAR) coverage in this area. Specific DEAR coverage on this subject is necessary, however, to implement the FAR for DOE's purposes.

EFFECTIVE DATE: This rule will be effective March 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Edward Simpson, Procurement Policy Division (PR-121), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, Washington, DC 20585, (202) 586-8246

Paul Gervas, Office of the Assistant General Counsel for Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-6918.

SUPPLEMENTARY INFORMATION:

I. Procedural Requirements

A. Review Under Executive Order 12291

B. Review Under the Regulatory Flexibility Act

C. Review Under the Paperwork Reduction Act

D. Review Under the National Environmental Policy Act

E. Review Under Executive Order 12612

II. Public Comments

III. Other Changes

I. Procedural Requirements

This rule is issued subsequent to a Notice of Proposed Rulemaking (NOPR) published by DOE in the **Federal Register** (54 FR 30569) on July 21, 1989.

The amendments set forth in this final rule revise existing coverage of the simplified representation and certification submission procedures by eliminating the requirements for mandatory use of the simplified approach, for use of the three-part form, and for the maintenance of a central repository. In lieu thereof, DOE will use a one-part comprehensive format to be completed and submitted by offerors as part of their proposal at the time of bid or proposal submission. The use of an annual representations and certifications submission procedure will remain as an option to DOE contracting activities, using the appropriate coverage in the FAR, as supplemented by the DEAR.

This final rule is implemented in the DEAR as amended sections 914.201-5; 915.406-5; 952.215-71; and, 952.215-72. DEAR section 914.201-5, "Part IV—Representations and instructions," which provides instructions concerning the use of the simplified three-part representations and certifications in sealed bidding, and DEAR section 915.406-5, "Part IV Representations and instructions," governing negotiated acquisitions, are amended to implement the revised policies regarding the submission of representations and certifications by offerors. In addition, the solicitation provisions at DEAR section 952.215.71, "Simplified representations and certifications negotiated acquisition" and DEAR sections 952.215-72, "simplified representations and certifications—sealed bid," are removed as they are no longer necessary.

A. Review Under Executive Order 12291

This executive order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85-7 exempts all but certain types of procurement regulations from such review. This final rule does not involve any of the topics requiring review under the Bulletin and, accordingly, is exempt from such review.

B. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), or the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and the DOE Guidelines (40 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among the various levels of government. If there are sufficient substantial direct effects, then the executive order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will implement certain policies and procedures set forth in the FAR relating to the methods used by Federal agencies to collect the representations and certifications of

offerors that are awarded as part of the contract award process. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

II. Public Comments

Interested persons were invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in a NOPR published in the Federal Register (54 FR 30588) on July 21, 1989. Based upon the July 21, 1989, publication date for the proposed rule, the public comment period closed on August 21, 1989, a period of thirty-one (31) days. During this period, DOE received one comment from a university concerning the NOPR.

The commenter did not object to, or otherwise take exception to, the proposed rule, and did not comment on any particular issue concerning the purpose or substance of the proposed amendments to the DEAR. Rather, the commenter commended DOE's past efforts in implementing a simplified representations and certifications submission procedure, and, based upon the rationale expounded by DOE in the background information contained in the NOPR, expressed understanding at DOE's decision to abolish its current procedures in favor of the FAR approach. The commenter did express a desire that DOE and other Federal agencies remain receptive to and continue to pursue approaches which could result in paperwork burden reductions on entities in the area of representations and certifications.

DOE appreciates the concerns expressed by the commenter. However, due to the nature of the comments, no action or changes to the proposed rule by DOE are needed relating thereto.

III. Other Changes

This final rule contains minor editorial corrections to the text of the proposed rule due to errors discovered by DOE after publication of the proposed rule in the Federal Register. These nonsubstantive corrections do not change the intent or meaning of the rule.

List of Subjects in 48 CFR Parts 914, 915, and 952

Government contracts.

For the reasons set out in the preamble, parts 914, 915, and 952 of title 48 of the Code of Federal Regulations are to be amended as set forth below:

Issued in Washington, DC on February 21, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

The regulations in 48 CFR chapter 9 are amended as set forth below:

1. The authority citation for parts 914, 915, and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 914—SEALED BIDDING

2. Section 914.201–5 is amended by revising paragraph (a) to read as follows:

914.201–5 Part IV—Representations and instructions.

(a) *Section K, representations, certifications, and other statements of bidders.* (1) The Office of Policy, Office of Procurement, Assistance and Program Management, will maintain a preprinted comprehensive one-part representations, certifications, and other statements package for use by contracting activities in solicitations.

(2) DOE contracting activities may elect to use an annual representations and certifications submission procedure for sealed bidding, as authorized by FAR 14.213, subject to the requirements therein and to the requirements of 915.406–5(a)(2).

* * * * *

PART 915—CONTRACTING BY NEGOTIATION

3. Section 915.406–5 is amended by revising paragraph (a) to read as follows:

915.406–5 Part IV—Representations and instructions.

(a) *Section K, representations, certifications, and other statements of offerors or quoters.* (1) The Office of Policy, Office of Procurement, Assistance and Program Management, will maintain a preprinted comprehensive one-part representations, certifications, and other statements package for use by contracting activities in solicitations.

(2) DOE contracting activities may elect to use an annual representations and certifications submission procedure for negotiated acquisitions, as authorized by FAR 15.407(i).

(i) The decision to implement and use an annual representations and certifications submission procedure shall be made by the Head of the Contracting Activity for all contracting offices under the cognizance of the Head of the Contracting Activity.

(ii) The use of an annual representations and certifications submission procedure should be considered in instances where a contracting activity issues numerous solicitations for like or similar supplies or services, thereby creating a situation where offerors would benefit from not having to complete and submit an individual comprehensive representation and certification package as part of each proposal submitted in response to the solicitations.

(iii) If the contracting activity decides to use an annual representations and certifications submission procedure, it shall establish written procedures and responsibilities for requesting, receiving, storing, verifying, and updating offerors' annual submissions.

(iv) The Head of the Contracting Activity may authorize the use of an effective period for offeror's annual representations and certifications of greater than 1 year from the date of signature by the offeror; however, under no circumstances shall the effective period for the offeror's annual representations and certifications exceed 3 years from the date of signature by the offeror.

* * * * *

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.215–71 [Removed]

4. Section 952.215–71 is hereby removed.

952.215–72 [Removed]

5. Section 952.215.72 is hereby removed.

[FR Doc. 91–4634 Filed 2–26–91; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901495–1021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Bering Sea.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting directed fishing for pollock in the Bering Sea subarea. This action is necessary to prevent exceeding the seasonal allocation of total allowable catch (TAC) for pollock in the Bering Sea subarea. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

DATES: 12 noon, February 22, 1991, Alaska local time (A.l.t.), until 12 noon, June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Bering Sea and Aleutian Islands Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Bering Sea and Aleutian Islands Area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.93 and part 675.

The amount of a species or species group apportioned to a fishery is TAC, as defined at § 675.20(a)(2). Under 50 CFR 675.20(a)(2)(ii), the TAC of pollock will be divided, after subtraction of reserves, into two allowances. The first allowance of 441,500 metric tons (mt) will be available for directed fishing from January 1 until noon, A.l.t., April 15 (56 FR 6290, February 15, 1991). Within any fishing year, unharvested amounts of the first allowance will be added to the second allowance, and harvests in excess of the first allowance will be deducted from the second allowance, which will become available at 12 noon, A.l.t., June 1.

The Regional Director has determined that the catch of pollock in the Bering Sea subarea will reach 441,500 mt by February 22, 1991. With this action the Regional Director is prohibiting directed fishing for pollock in the Bering Sea subarea, effective 12 noon, A.l.t., February 22, 1991, to 12 noon, A.l.t., June 1, 1991.

After the closure, in accordance with § 675.20(h)(1), amounts of pollock retained on board a vessel in the Bering Sea subarea must be less than 20 percent of the aggregated catch of the other fish or fish products retained at any particular time on the vessel during the same trip.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–4568 Filed 2–22–91; 12:16 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 39
Wednesday, February 27, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 318, 320, 330, 352, and 354

[Docket 90-247]

RIN: 0579-AB43

User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend 7 CFR parts 320, 330, 352 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the arrival at ports in the customs territory of the United States of commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft. This action would implement section 2509 of the Food, Agriculture, Conservation and Trade Act of 1990 (21 U.S.C. 136a) and section 1203 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508).

We are also proposing to amend 7 CFR parts 318 and 354, to establish user fees for agricultural quarantine and inspection services we provide in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic airline flights.

The effect of these proposed regulations would be to require certain persons to pay fees for agricultural quarantine and inspection services.

DATES: Consideration will be given only to comments received on or before March 14, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies of Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-247. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles A. Havens, Chief Operations Officer, Port Operations, PPQ, APHIS, USDA, Federal Building, Room 635, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Background

User Fees For International Inspection Services

The Food, Agriculture, Conservation and Trade Act of 1990, as amended by the Omnibus Budget Reconciliation Act of 1990 (Budget Reconciliation Act), hereinafter referred to as the Farm Bill, authorizes the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. The services are "agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States,[1] or the preclearance or preinspection at a site outside the customs territory of the United States, of an international passenger, commercial vessel, commercial aircraft, commercial truck, or railroad car" (section 2509 of the Farm Bill). In this document we will refer to these services as AQI services.

It should be noted the Farm Bill does not authorize the Secretary of Agriculture to charge a user fee for pedestrians or private vehicles entering the customs territory of the United States.

The Farm Bill establishes a fund in the Treasury of the United States, known as the "Agricultural Quarantine Inspection User Fee Account" (the Account) for the Secretary of Agriculture to use for fees collected for AQI services. All fees collected for AQI services are to be deposited in the Account. Fees collected within a calendar quarter are to be deposited no later than 31 days after the close of that quarter. The Farm Bill further requires the Secretary of the Treasury to reimburse, from the Account, any appropriations accounts that incur costs associated with AQI services for which the Secretary of Agriculture is authorized to collect user fees, if the amounts are provided in advance in appropriation acts. (See section 2509(a)(3)(B)(ii) of the Farm Bill)

User Fees for Domestic Inspection Services

In addition to specific authority we have under the Farm Bill, we also have general authority to collect user fees under 31 U.S.C. 9701 (the User Fee Statute). This statute states, in part, that:

(a) It is the sense of the Congress that each service or thing of value provided by an agency * * * to a person (except a person on official business of the United States government) is to be self-sustaining to the extent possible.

(b) The head of each agency * * * may prescribe regulations establishing the charge for a service or thing of value provided by the agency.

Each agency must deposit fees collected pursuant to 31 U.S.C. 9701 into the Treasury of the United States.

Under the User Fee Statute, we may charge for quarantine and inspection services we provide in connection with traffic departing certain domestic quarantine areas for other locations within the United States. Domestic quarantine areas are areas within the United States—Hawaii and Puerto Rico—which are quarantined because of the presence of various plant diseases or pests. Individuals and means of conveyance departing these areas for any other part of the United States are subject to inspection (see 7 CFR 318.13 and 318.58).

Under the Farm Bill we have authority to charge for AQI services "in connection with * * * preclearance" at a site outside the customs territory of the United States" for various persons and means of conveyance. Because the United States Virgin Islands (U.S. Virgin Islands) are outside the customs territory of the United States, we have authority under the Farm Bill to charge a user fee for AQI services provided certain persons and means of conveyance departing the U.S. Virgin Islands for other parts of the United States. Because Hawaii and Puerto Rico are within the customs area of the United States we do not have authority under the Farm Bill to charge a user fee for persons and means of conveyance departing Hawaii and Puerto Rico, our other domestic quarantine areas, for other parts of the United States.

Therefore, we are proposing to charge user fees in connection with Puerto Rico and Hawaii under authority of the User Fee Statute and user fees in connection with the U.S. Virgin Islands under authority of the Farm Bill.

Fee Collection System

In order to meet the deficit reduction goals embodied in the Budget Reconciliation Act, we need to offset AQI costs by approximately $20 million in fees during fiscal year 1991. To do this, we must institute user fees beginning April 1, 1991. The fees we propose to start collecting on that date include fees for inspection of certain international passengers and means of conveyance and certain domestic passengers.

The Budget Reconciliation Act presumes that we can recover almost all AQI costs through user fees. As explained above, we have authority under the Farm Bill to impose certain user fees. Under the User Fee Statute we have authority to impose certain other user fees. However, a portion of our AQI costs is attributable to pedestrian and private vehicular traffic entering the customs territory of the United States. Under the Farm Bill the Secretary of Agriculture has no authority to charge a user fee for pedestrians, though there is authority to charge passengers in private vehicles. For practical reasons we are not proposing to charge private vehicle passengers a user fee. The cost of collecting user fees would be greater than the cost of the AQI services they receive. Therefore, to cover AQI costs we intend to seek an appropriation to cover our AQI costs which are attributable to pedestrians and private vehicular traffic.

With regard to the user fees we are proposing, we have determined that we can begin collecting fees most efficiently if we utilize the United States Customs Service (Customs) and various commercial ticketing agents, such as commercial airlines and other transportation companies, to collect our fees for us. Customs currently collects their own user fees, and commercial ticketing agents and other transportation companies currently collect user fees for both Customs and the Immigration and Naturalization Service (INS).[2] They have existing collection and disbursement systems, and they are experienced in the necessary procedures.

In order to take full advantage of this situation, to make our proposed regulations effective more quickly, and to minimize the impact on affected parties by using existing fee collection systems, we are modeling our proposed regulations concerning user fees for international inspections on existing Customs regulations and practices.[3]

Customs provides various services to persons and means of conveyance entering the customs territory of the United States. Customs, and airlines and other ticketing agents and transportation companies currently collect certain federal user fees. The persons and means of conveyance for which they collect fees include the persons and means of conveyance for which we are authorized to collect an agricultural quarantine and inspection user fee. In order to take advantage of these existing fee collection mechanisms, we are proposing to collect fees only for persons and means of conveyance entering the customs territory of the United States: (1) If they are subject to AHIS inspection and (2) Customs or INS user fees are currently collected for them.

Similarly, we are proposing at this time to collect user fees for domestic inspection services we provide only if we are proposing to collect user fees for equivalent international inspection services. For example, we are not proposing at this time, as explained elsewhere in this document, to charge a user fee for commercial aircraft inspection. Therefore, we are not proposing at this time to charge a user fee for this service when performed domestically.

We are also proposing to collect domestic user fees only in situations in which airlines and other ticketing agents or transport companies are already collecting or prepared to collect fees. We are doing this to take advantage of existing collection systems, and to make our user fees effective more quickly. We propose to amend 7 CFR part 354, which concerns overtime charges for various APHIS services, to require user fees. With some exceptions, the following means of conveyance or persons would be required to pay a fee when they enter the customs territory of the United States:

- Commercial vessels of 100 net tons or more (see proposed 7 CFR 354.3(b))
- Commercial trucks (see proposed 7 CFR 354.3(c))
- Loaded commercial railroad cars (see proposed 7 CFR 354.3(d))
- Passengers aboard commercial aircraft (see proposed 7 CFR 354.3(e))
- Commercial aircraft passengers departing from Hawaii or Puerto Rico enroute to any portion of the United States would also be required to pay a user fee [4] (see proposed 7 CFR 354.4(b)).

We are not proposing to collect user fees for services in connection with commercial vessels of less than 100 net tons, and passengers aboard private aircraft, because the cost of collection would be greater than the amount collected, and very few such passengers and vessels are actually inspected. We are not proposing to collect user fees for services in connection with empty commercial railroad cars because Customs charges only for loaded railroad cars. Customs developed this system at the request of the railroad industry. The fee charged for loaded railroad cars would be sufficient to cover the cost of inspecting empty railroad cars.

As explained above, we are not proposing at this time to collect user fees from any persons or means of conveyance for whom there is no existing fee collection system. For that reason, though we have statutory authority under the Farmn Bill to do so, we are not proposing to collect fees at this time for services in connection with the arrival of commercial aircraft or for phytosanitary certification of agricultural products intended for export from the United States. For the same reason, though we have statutory authority under the User Fee Statute to do so, we are not proposing to collect fees at this time for inspection of commercial aircraft or vessels moving from Hawaii or Puerto Rico to other portions of the United States. We do intend to propose user fees for these services and other services for which we have the authority to charge a user fee but which are not included in this proposal. We anticipate that, if adopted, user fees for these additional services

---

[1] The Farm Bill defines "customs territory of the United States" as "[t]he 50 States, the District of Columbia, and Puerto Rico." (§ 2509(f)(2))

[2] INS regulations concerning user fees are in Title 8, Code of Federal Regulations, Part 286.

[3] Customs regulations concerning user fees are in Title 19, Code of Federal Regulations, Part 24. Pertinent Customs' statutory authority is in Title 19, United States Code § 58c. For additional information concerning both Customs and INS user fees, see Travel Industry Tips * * * the collection process for Federal inspection fees, Department of the Treasury, U.S. Customs Service, Publication Number 583, November 1988.

[4] Although Guam, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands are considered to be part of the United States for most purposes, they are not part of the "customs territory of the United States." Therefore, passengers on commercial aircraft departing from Guam, American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands for other portions of the United States, would be considered international passengers for the purposes of these regulations.

would be effective no later than October 1, 1991.

With regard to user fees for international services, we are proposing to exempt some means of conveyance or persons from our proposed user fees. With the exceptions explained below, these exemptions all conform to exemptions already established by Customs to their user fees. We are proposing to adopt the same exemptions in part because Customs, or various ticketing agents or transportation companies, would, if our proposed user fees are adopted, collect fees for international agricultural quarantine and inspection services for us. Neither Customs nor the various ticketing agents or other transportation companies are prepared to collect fees other than from means of conveyance and persons from which they now collect fees. By adopting parallel exemptions, no additional recordkeeping systems need be implemented or developed. In the case of user fees for inspection services connected with travel from Hawaii or Puerto Rico, there are no existing fee collection systems other than those of commercial airlines and other agents issuing airline tickets. Therefore, with respect to traffic from these areas, we are only proposing to charge user fees for commercial aircraft passengers at this time.

Exemptions, Prepayments, and Maximum Fees

We are proposing to exempt passengers, commercial vessels, commercial trucks, commercial aircraft, and commercial railroad cars moving solely between the United States and Canada from paying user fees. These means of conveyance pose little animal or plant disease or pest risk to United States agriculture, and we do not provide AQI services for them. Therefore we do not believe a user fee is justified.

We are also proposing to exempt foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same United States port without having touched any foreign port or place other than in Canada, or having taken on any stores other than in Canada. Similarly, any commercial railroad car would be exempt from the APHIS user fee if it is part of a train whose journey originates and terminates in the United States, and if the commercial railroad car was part of the train when the train departed the United States and no passengers boarded or disembarked, and no cargo was loaded or unloaded, from the railroad car while the train was within a country other than the United States. These means of conveyance pose little animal or plant disease or pest risk to United States agriculture, and we do not provide AQI services for them. Therefore, we do not believe a user fee is justified.

Commercial aircraft passengers who are transiting the United States and not subject to inspection, and passengers on commercial aircraft who are returning to the United States without having touched a foreign port or place, other than Canada, would also be exempt. These passengers receive no AQI services from APHIS because they pose little animal or plant disease or pest risk to United States agriculture. We do not believe requiring them to pay a user fee is justified.

We are also proposing to exempt tugboats, ferries, locomotives and cabooses. By themselves these means of conveyance pose little animal or plant disease or pest risk to United States agriculture. It is the commercial barges and commercial vessles they tow, and the commercial railroad cars they accompany, that may pose a risk to United States agriculture. Commercial barges, commercial vessels and commercial railroad cars are subject to inspection under our regulations, and we are proposing that they be required to pay a user fee.

Vessels and aircraft used exclusively in the governmental service of the United States or a foreign government would be exempt from paying a user fee under our proposed regulations, as would foreign diplomats and passengers on commercial aircraft used exclusively in the governmental service of the United States government or a foreign government. Governments traditionally accord certain privileges to the property and representatives of other governments. One of these privileges is exemption from fees. With regard to means of conveyance, to qualify for the exemption, the means of conveyance could not be carrying any persons or merchandise for commercial purposes.

We are also proposing to exempt vessels arriving in distress and passengers on aircraft making forced landings. In these situations, the means of conveyance and the passengers normally continue their journeys as soon as possible. Nothing may be removed or brought on board a vessel in distress except passengers in need of medical attention or equipment and parts for repair. Passengers on aircraft making forced landings move to another departing aircraft or remain in the airport until their aircraft departs. In these circumstances, we believe there is little animal or plant disease or pest risk to United States agriculture and we do not conduct AQI inspections.

With regard to user fees for commercial aircraft passengers from Hawaii and Puerto Rico, we are proposing to exempt persons transiting Hawaii or Puerto Rico and subject to inspection under 7 CFR part 330. We are proposing to exempt these passengers because they would be charged a user fee under proposed § 354.3.

We are also proposing to exempt diplomats and passengers departing on any aircraft used exclusively in the governmental service of the United States or a foreign government, for the same reasons explained above.

Finally, we are proposing to exempt crew members on duty on commercial aircraft. These persons are not fare-paying passengers, but necessary for operation of the aircraft. Costs of providing service for inspection of crew members will be included in the fee that will be proposed at a later date for the inspection of commercial aircraft.

With regard to user fee for international services, we are proposing a maximum fee for commercial vessels. We are also proposing to allow commercial trucks to purchase a decal covering an entire calendar year by paying an annual fee. No credit toward the annual fee would be given for payments made in connection with previous arrivals at a port in the customs territory of the United States. In addition, we are proposing that the user fee for commercial railroad cars could be paid for in advance on a yearly basis. As with commercial trucks, no credit would be given toward the yearly fee for payments made in connection with previous arrivals at a port in the customs territory of the United States.

Customs has extensive experience collecting user fees from commercial trucks, commercial vessels, and for commercial railroad cars. Their experience shows that it is less expensive and more efficient to impose a cap on fees for commercial vessels and to allow prepayment of fees for commercial trucks and commercial railroad cars, than to attempt to collect and process a fee for each arrival. It is possible that individual means of conveyance might pay more in user fees if there were no maximum fee or prepayment provisions. However, Customs' experience is that the possible loss is more than offset by the savings of a more efficient collection system.

Calculation of User Fees

We are proposing to prescribe user fees which would cover the cost of AQI services. For each category of service, we have estimated the annual number of passengers or means of conveyance that would be subject to inspection, including services relating to persons and means of conveyance which are exempt from paying the fee. Our estimates are based on Department of Transportation and Customs reports and on our own Work Accomplishment Data.

For each category of service, we have determined the total cost of providing AQI inspection service to that category. Included in the total cost are delivery costs, program support costs, and agency-level support costs. Delivery costs include, but are not limited to, employee salary and benefits, travel, purchase of specialized equipment, and all costs associated with maintaining field office. Program support costs include these same items at the regional and headquarters level, and include reimbursable agreements with Customs. Agency-level support costs include, but are not limited to, training, legislative and public affairs, regulatory enforcement, communications, postage, budget and accounting services, and payroll, purchasing, billing and collection services. We have also included administrative expenses we would incur by adopting these proposed regulations.

We have also included in the proposed fee an amount which would provide for a reasonable balance in the Account. The proposed fee is designed so that the balance would be one quarter of APHIS's Agricultural Quarantine Inspection appropriation. Since the majority of the fees would be remitted in arrears, a sufficient balance must be maintained to meet current expenses. In addition, we believe that a balance of this size would be necessary to ensure that sufficient funds are available to carry out agricultural quarantine and inspection activities in cases in which the volume of fee-paying passengers and means of conveyance may deivate from the anticipated volume upon which our fees are based. The anticipated volume of activity could fluctuate greatly due to changes in travel and trade. The balance would also be used to offset any uncollectible debts that result when clients are unwilling or unable to pay for our services. We would monitor the balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance.

Our final step in calculating our proposed fees was to divide the sum of the cost of providing service and the amount necessary to maintain a reasonable balance in each service category by the anticipated number of passengers or means of conveyance subject to inspection, thereby arriving at a "raw" fee. To determine the fees we are proposing to charge, we raised the "raw" fees up to the next whole dollar. We did this to simplify collection and accounting. We realize that rounding to the next whole dollar adds to the balance in the Account. The magnitude of this additional amount varies by category of service in the fees we are proposing at this time, and would very similarly in fees we intend to propose in the future, if the same technique were used. We would monitor the effects of rounding to the next whole dollar on balances in the Account and propose adjustments in the fees as necessary. Such adjustments could include setting the fee at levels other than whole dollars. We invite comments specifically addressing the advantages and disadvantages of the rounding technique.

Below is a table showing the categories of service, the cost of providing service plus a reasonable balance in each category, the number of means of conveyance or persons subject to inspection in each category (labeled "volume"), the "raw" fee, and the proposed fee. Additional supporting data and computations are available for inspection at the Animal and Plant Health Inspection Service, Room 245, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland, between 8 a.m. and 4:30 p.m., Monday through Friday.

CALCULATION OF USER FEES

Activity/category	Total cost plus balance (thousands)	Volume	"Raw" fee	Proposed fee
Airport Operations:				
International passengers	$43,401	25,067,291	$1.73	$2.00
Domestic passengers	13,999	9,130,919	1.53	2.00
Maritime Operations:				
Vessels [1]	22,994	42,273	543.93	544.00
Land Border Operations:				
Trucks [2]	1,865	1,362,000	1.37	2.00
Railroad cars [3]	884	134,654	6.56	7.00

[1] As explained in this document, the user fee for commercial vessels is "capped" at 15 times the fee for each arrival.
[2] As explained in this document, the user fee for commercial trucks may be prepaid on a calendar year basis.
[3] As explained in the document, the user fee for commercial railroad cars may be prepaid on a calendar year basis.

Whatever fees may be adopted would be periodically reexamined and any further adjustments necessary to reflect costs of providing AQI services would be included in a future rulemaking proceeding.

The user fees for means of conveyance would cover inspection of cargo and related services if: (1) such services occur during regular hours of service (0600–1630, Monday through Friday); or (2) inspection of the cargo is concurrent with inspection of the means of conveyance. Owners of cargo may request inspection outside of regular hours of service and pay reimbursable overtime under 7 CFR 354.1.

Remittance and Statement Procedures

The remittance and statement procedures were developed by Customs through consultation with commercial railroads and their representatives, with commercial airline companies and their representatives, and with other affected parties. The procedures and the information required are needed to ensure that the correct user fees are collected and remitted in full in a timely manner. The requirements, including the taxpayer identification number, are also needed to ensure that the fees are properly credited. The system has worked well for Customs. Therefore, we are proposing the same system.

Compliance

Under these proposed regulations, we must rely on others to collect and remit fees for us. However, we are responsible for ensuring that the fees collected are correct and that they are remitted in full and in a timely manner. To ensure this,

we are proposing that the party (Customs, ticketing agents, or transportation companies) responsible for collecting and remitting fees must allow APHIS personnel to verify the accuracy of the fees collected and remitted, and otherwise determine compliance with the statute and regulations. We are also proposing to require that whoever is responsible for making fee payments must advise us of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances. In addition, we are also proposing to require that we be promptly notified of any change in that information.

Miscellaneous Provisions

The regulations contain several sections where addresses are to be inserted. They are: § 354.3 (d)(5), (d)(6) and (d)(7); § 354.3 (e)(6) (ii) through (iv), (e)(7), and (e)(8), § 354.4 (b)(6) (i) through (iv), and (b)(8).

We do not have the addresses at this time. However, if these proposed regulations are adopted, we will insert the correct addresses in the final rule.

Miscellaneous Amendments

Title 7 contains many provisions which state that services of an inspector will be provided without charge. However, if this proposed rule is adopted as a final rule, that would no longer be true in all cases. Therefore, we are proposing to amend the following sections to clarify that a user fee is payable under certain circumstances: §§ 318.13–15, 318.58–15, 318.82–3, 320.7, 330.107, and 352.14.

Many of the regulations in Title 7, Code of Federal Regulations, deal with inspection services. Most of these regulations have virtually identical provisions referring to inspection services provided during regularly scheduled hours of duty and at the regular place of duty. Regardless of their wording, these provisions are all interpreted and enforced in a uniform manner. However, § 320.7 does not include this reference. We believe all the provisions should be as uniform as possible. Therefore, we propose to amend § 320.7 to add a reference to regularly scheduled hours of duty at the regular place of duty.

We also propose to delete § 320.9 from Title 7, Code of Federal Regulations. This section provides that railroad cars and other vehicles from Mexico may be disinfected in government-owned facilities in the United States. However, no such facilities exist, and we do not anticipate that any will be established in the foreseeable future. Therefore, this section of the regulations is unnecessary and misleading.

Public Comment Date

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by allowing a 15-day comment period on this proposal. In order to meet the deficit reduction goals embodied in the Budget Reconciliation Act, we need to collect approximately $20 million in fees during fiscal year 1991. To do this, we must institute user fees beginning April 1, 1991. A shortened comment period is necessary to allow for timely consideration of comments, and publication and implementation of a final rule.

Executive Order 12291 and Regulatory Flexibility Act Analysis

We are proposing this rule in conformance with Executive Order 12291, and we have determined that it may be a "major rule" within the broad intent of the Executive Order. Based on preliminary information compiled by the Department, it appears that the proposed action may have an effect on the economy of more than $100 million.

This effect is mainly due to the direct increase in costs to various persons created by imposition of the proposed user fees. Various persons are currently subsidized by the taxpayers in general, in that those who benefit from AQI services do not directly pay for the services. Requiring persons to pay a fee for AQI services would eliminate the subsidy, general appropriations from taxes would no longer be needed, and costs to taxpayers in general would be reduced.

Our preliminary regulatory impact analysis indicates that the implementation of user fees for AQI services would result in total savings to domestic taxpayers of about $95 million per year, a discounted value of about $396 million over five years. Total public administrative costs to Customs and the Department associated with fee collection are estimated to be about $3 million per year, a discounted value of about $12 million over five years.

The implementation of user fees on travel into the customs territory of the United States is expected to save domestic taxpayers about $50 million a year, or a total discounted savings of $209 million over five years. For domestic travel, taxpayer savings per year are estimated to be about $18 million, a discounted value of $76 million over five years. Deadweight losses (losses associated with decreases in air travel resulting from the fees) are estimated to be $16,532 ($68,936 discounted over five years) for travel into the customs territory of the United States and $34,927 (discounted cost of $145,641) for domestic travel. Administrative costs to Customs and the Department for implementing these user fees are estimated to be about $2 million per year ($9 million discounted over five years).

User fees on commercial trucks, railroad cars, and vessels are expected to result in total savings to taxpayers of about $27 million a year (about $3 million from trucks, $1 million for railroad cars, and $23 million for vessels). The discounted savings over five years are $11 million, $4 million and $96 million, respectively. Administrative costs for these fees are estimated to be less than $1 million per year, a discounted value of about $3 million over five years.

The proposed action may also have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities, and we invite comments on these impacts. In particular, we are interested in determining the number of small entities which may incur costs associated with reporting requirements for user fees. We are particularly interested in the following entities: (1) air or sea travel agents or tour wholesalers; (2) truck owners or operators who haul agricultural and non-agricultural commodities from Mexico; and (3) importers of agricultural and non-agricultural commodities from Mexico.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or by telephoning (202) 382–1368.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Lists of Subjects

7 CFR Part 318

Agricultural commodities, Guam, Plant diseases, Plant pests, Plants (Agriculture), Puerto Rico, Quarantine, Transportation, Virgin Islands, Hawaii.

7 CFR Part 320

Agricultural commodities, Imports, International boundaries, Mexico, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation.

7 CFR Part 330

Customs duties and inspection, Garbage, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Soil, stone and quarry products, Transportation.

7 CFR Part 352

Agricultural commodities, Customs duties and inspection, Imports, Plant diseases, Plant pests, Plants (agriculture), Postal Service, Quarantine, Transportation.

7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (agriculture), Quarantine, Transportation.

Accordingly, we are proposing to amend 7 CFR parts 318, 320, 330, 352 and 354 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would be revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, 167; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

§ 318.13–15 [Amended]

2. In part 318, Subpart—Hawaiian Fruits and Vegetables, at the end of the first sentence of § 318.15–15 the period would be removed and ", unless a user fee is payable under § 354.4 of this chapter." added in its place.

§ 318.58–15 [Amended]

3. In part 318, Subpart—Fruits and Vegetables from Puerto Rico or Virgin Islands, at the end of the first sentence of § 318.58–15 the period would be removed and ", unless a user fee is payable under §§ 354.3 or 354.4 of this chapter." added in its place.

PART 320—MEXICAN BORDER REGULATIONS

4. The authority citation for part 320 would be revised to read as follows:

Authority: 7 U.S.C. 149 and 150ee; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; Sec. 1203, Pub. L. 101–508; 7 CFR 2.17, 2.51, and 371.2(c).

§ 320.7 [Amended]

5. In § 320.7, at the end of the last sentence the period would be removed and the following would be added in its place: "all costs incident to entry, opening, and cleaning shall be paid by the owner or agent in charge. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter."

§ 320.9 [Removed]

§ 320.10 [Redesignated as § 320.9]

6. In part 320, § 320.9 would be removed and § 320.10 would be redesignated § 320.9.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

7. The authority citation for part 330 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd–150ff, 161, 162, 164a, 450, 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a; 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; § 1203, Pub. L. 101–508; 7 CFR 2.17, 2.51, and 371.2(c).

8. Section 330.107 would be revised to read as follows:

§ 330.107 Costs.

All costs (including those incurred under § 330.106 of this part by the government or the owner) incident to the inspection, handling, cleaning, safeguarding, treating, or other disposal of means of conveyance or products, articles, or plant pests under this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

Cross Reference: See note following § 330.105.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

9. The authority citation for part 352 would be revised to read as follows:

Authority: 7 U.S.C. 149, 150bb, 150dd, 150ff, 154, 159, 160, 162, and 2260; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; § 1203, Pub. L. 101–508; 7 CFR 2.17, 2.51, and 371.2(c).

10 Section 352. 14 would be revised to read as follows:

§ 352.14 Costs.

All costs incident to the inspection, handling, safeguarding, or other disposal of prohibited or restricted products or articles under the provisions in this part shall be borne by the owner. Services of the inspector during regularly assigned hours of duty at the usual places of duty shall be furnished without cost to the person requesting the services, unless a user fee is payable under § 354.3 of this chapter.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES FOR CERTAIN INSPECTION SERVICES

11. The authority citation for part 354 would be revised to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 31 U.S.C. 9701, 49 U.S.C. 1741; 1203, Pub. L. 101–508; 7 CFR 2.17, 2.51, and 371.2(c).

12. The heading of part 354 would be revised to read as set forth above.

13. Part 354 would be amended by adding new §§ 354.3 and 354.4 to read as follows:

§ 354.3 User fees for certain international services.

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Arrival. Arrival at a port of entry in the customs territory of the United States, or at any place served by a port of entry as specified in 19 CFR 101.3.

Calendar year. The period from January 1 to December 31, inclusive, of any particular year.

Commercial railroad car. A railroad car used or capable of being used for transporting property for compensation or hire.

Commercial truck. A self-propelled vehicle, designed and used for transporting property for compensation or hire. Empty trucks and truck cabs without trailers fitting this description are included.

BEST COPY AVAILABLE

Commercial vessel. Any watercraft or other contrivance used or capable of being used as a means of transportation on water to transport property for compensation or hire, with the exception of any aircraft or ferry.

Customs. The United States Customs Service, United States Department of the Treasury.

Customs territory of the United States. The 50 States, the District of Columbia, and Puerto Rico.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(b) *Fee for inspection of commercial vessels of 100 net tons or more.* (1) Except as provided in paragraph (b)(2) of this section, the master, licensed deck officer, or purser of any commercial vessel which is subject to inspection under part 330 of this chapter or 9 CFR chapter I, subchaper D, and which is either required to make entry at the customs house under 19 CFR 4.3 or is a United States-flag vessel proceeding coastwises under 19 CFR 4.85, shall, upon arrival, proceed to Customs and pay an APHIS user fee. The APHIS user fee is $544 for each arrival, not to exceed 15 times that amount in a calendar year. The APHIS user fee shall be collected at each port or arrival.

(2) The following categories of commercial vessels are exempt from paying an APHIS user fee:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas (including "cruises to nowhere") and returning to the same port in the United States, not having touched any foreign port or place other than in Canada, or taken on any stores other than in Canada;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Vessels used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the vessel is not carrying persons or merchandise for commercial purposes;

(iv) Vessels arriving in distress or to take on bunkers, sea stores, or ship's stores;

(v) Tugboats towing vessels on the Great Lakes; and

(vi) Any vessel which sails only between United States and Canadian ports.

(c) *Fee for inspection of commercial trucks.* (1) Except as provided in paragraph (c)(2) of this section, the driver or other person in charge of a commercial truck which is entering the customs territory of the United States and which is subject to inspection under part 330 of this chapter or under 9 CFR, chapter I, subchapter D, must, upon arrival, proceed to Customs and pay an APHIS user fee. The APHIS user fee is $2 for each arrival.

(2) The following categories of commercial trucks are exempt from paying an APHIS user fee:

(i) Trucks entering the customs territory of the United States from Canada.

(ii) [Reserved]

(3) Prepayment.

(i) The owner or operator of a commercial truck, *if* entering the customs territory of the United States from Mexico *and* applying for a prepaid customs permit for a calendar year, must apply for a prepaid APHIS permit for the same calendar year. Applicants must apply to Customs for prepaid permits.[1] The following information, together with payment of an amount 20 times the APHIS user fee for each arrival, must be provided:

(A) Vehicle make, model, and model year.

(B) Vehicle Identification Number (VIN).

(C) License numbers issued by state, province, or country.

(D) Owner's name and address.

(ii) No credit toweard the prepaid APHIS permit will be given for user fees paid for individual arrivals.

(d) *Fee for inspection of commercial railroad cars.* (1) Except as provided in paragraph (d)(2) of this section, an APHIS user fee will be charged for each loaded commercial railroad car which is subject to inspection under part 330 of this chapter or under 9 CFR chapter I, Subchapter D, upon each arrival in the customs territory of the United States. The railroad company receiving a commercial railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States, is responsible for paying the APHIS user fee. The APHIS user fee is $7 for each arrival of a loaded commercial railroad car, or, if the APHIS user fee is prepaid for all arrivals of a commercial railroad car during a calendar year, an amount 20 times the APHIS user fee for each arrival.

(2) The following categories of commercial railroad cars are exempt from paying an APHIS user fee:

(i) Commercial railroad cars entering the customs territory of the United States from Canada;

(ii) Any commercial railroad car that is part of a train whose journey originates and terminates in the United States, if—

(A) The commercial railroad car is part of the train when the train departs the United States; and

(B) No passengers board or disembark from the commercial railroad car, and no cargo is loaded or unloaded from the commercial railroad car, while the train is within any country other than the United States; and

(iii) Locomotives and cabooses.

(3) Prepayment.

(i) Railroad companies may, at their option, prepay the APHIS user fee for each commercial railroad car for a calendar year. This payment must be remitted in accordance with the provisions of paragraph (d)(5) of this section.

(ii) No credit toward the calendar year APHIS user fee will be given for APHIS user fees paid for individual arrivals.

(4) Remittance and statement procedures. The Association of American Railroads (AAR), and the National Railroad Passenger Corporation (AMTRAK), shall file monthly statements with _____ within 60 days after the end of each calendar month. Each statement shall indicate:

(i) The number of loaded commercial railroad cars entering the customs territory of the United States from Mexico during the relevant period;

(ii) The number of those commercial railroad cars pulled by each railroad company; and

(iii) The total monthly APHIS user fee due from each railroad company.

(5) Individual railroad companies shall remit the fees calculated by AAR, and AMTRAK shall remit the fees it has calculated, within 60 days after the end of each calendar month in which commercial railroad cars entered the customs territory of the United Stats. Monthly statements must be sent to _____, and fees must be remitted to _____.

(6) Compliance. AAR, AMTRAK, and each railroad company responsible for making fee payments must allow APHIS personnel to verify the accuracy of fees collected and remitted and otherwise determine compliance with 21 U.S.C. 136a and this paragraph. The AAR, AMTRAK, and each railroad company responsible for making fee payments must advise the _____ of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances. _____ must be promptly notified of any changes in the identifying information submitted.

(e) *Fee for inspection of international passengers.* (1) Except as specified in paragraph (e)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under Part 330 of this chapter or 9 CFR, chapter I, subchapter D, on arrival within the customs territory of the United States from a place outside of the customs territory of the United States must pay an APHIS user fee. The APHIS user fee is $2 for each arrival.

(2) The following categories of passengers are exempt from paying an APHIS user fee:

(i) Passengers arriving from Canada whose journey originates in Canada;

(ii) Crew members who are on duty on a commercial aircraft;

(iii) Diplomats, except for United States diplomats, who can show that their names appear on the accreditation listing maintained by the United States Department of State. In lieu of such listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government;

(iv) Passengers departing and returning to the United States without having touched a foreign port or place other than Canada;

(v) Passengers arriving on any commercial aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the United States Department of Defense (DOD) are exempted if they have been precleared abroad under the joint DOD/APHIS Military Inspection Program;

(vi) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign port; and

(vii) Persons transiting the United States and not subject to inspection.

(3) APHIS user fees shall be collected under the following circumstances:

(i) When through tickets or travel documents are issued indicating travel to the customs territory of the United States which originates in any location other than Canada;

(ii) When through tickets or travel documents are issued in Canada indicating an arrival in the customs territory of the United States following a stopover (layover) in a location other than Canada; and

(iii) When passengers arrive in the customs territory of the United States in transit from a location other than Canada and are inspected by APHIS.

(4) Collection of fees.

(i) Any person who issues tickets or documents for transportation on or after April 1, 1991, is responsible for collecting the APHIS user fee from all passengers transported into the customs territory of the United States to whom the APHIS user fee applies.

(A) Tickets or travel documents must be marked by the person who collects the APHIS user fee to indicate that the required APHIS user fee has been collected from the passenger. Markings must be in accordance with the procedures set forth in the ARC Industry Agents Handbook, the SATO Ticketing Handbook, or compatible procedures set forth in the operations manual of the person who collects the APHIS user fee.

(B) If the APHIS user fee applies to a passenger departing from the United States and if the passenger's tickets or transportation document do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger from the United States must collect the APHIS user fee upon departure.

(5) Remittance and statement procedures.

(i) The carrier whose ticket stock or document for transportation reflects collection of the APHIS user fee must remit the fee to APHIS. The travel agent, tour wholesaler, or other entity, which issues its own non-carrier related ticket or document for transportation to a passenger who is subject to an APHIS user fee under this part, must remit the fee to APHIS, unless by contract the carrier will remit the fee.

(ii) APHIS user fees must be remitted to _____, for receipt no later than 31 days after the close of the calendar quarter in which the APHIS user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of APHIS user fees collected in conjunction with unused tickets or documents for transportation should be netted against the next subsequent remittance.

(iii) At the same time a remittance is submitted, the remitter must mail a written statement to _____. The statement must include the following information:

(A) Name and address of the party remitting payment;

(B) Taxpayer identification number of the party remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to "The Animal and Plan Health Inspection Service."

(6) Carriers contracting with the United States-based wholesalers are responsible for notifying _____ of all flights contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the tour wholesaler, all within 31 days after the close of the calendar quarter in which such a flight occurred.

(7) *Compliance.* Each carrier, travel agent, tour wholesaler, or other entity subject to this section, must allow APHIS personnel to verify the accuracy of the APHIS user fees collected and remitted and to otherwise determine compliance with the 21 U.S.C. 136a and this paragraph. Each carrier, travel agent, tour wholesaler, or other entity must advise _____ of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances. _____ must be promptly notified of any changes in the identifying information submitted.

§ 354.4 User fees for certain domestic services.

(a) *Definitions.* Whenever in this section the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Calendar year. The period from January 1 to December 31, inclusive, of any particular year.

Departure. Departure from Hawaii or Puerto Rico for any other location within the United States.

Person. An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

(b) *Fee for inspection of commercial aircraft passengers from Hawaii and Puerto Rico.* (1) Except as set forth in paragraph (b)(2) of this section, each passenger aboard a commercial aircraft who is subject to inspection under § 318.13–8 or § 318.59–6 of this chapter must pay an APHIS user fee. The APHIS user fee is $2 for each departure for passengers departing Hawaii or Puerto Rico.

[1] Applicants should refer to Customs Service regulations (19 CFR Part 24) for specific instructions.

(2) The following categories of passengers are exempt from paying a user fee:

(i) Crew members who are on duty on a commercial aircraft.

(ii) Diplomats, except for United States diplomats, who can show that their names appear on the accreditation listing maintained by the United States Department of State. In lieu of such listing an individual diplomat may present appropriate proof of diplomatic status to include possession of a diplomatic passport or visa, or diplomatic identification card issued by a foreign government.

(iii) Persons departing as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or a foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes.

(iv) Persons transiting Hawaii or Puerto Rico and subject to inspection under part 330 of this chapter.

(3) Fees shall be collected when tickets or travel documents are issued indicating travel from Hawaii or Puerto Rico, to or through any other State, Commonwealth or Territory of the United States other than Guam.

(4) Collection of fees. Any person who issues tickets or documents for transportation on or after April 1, 1991, is responsible for collecting the APHIS user fee from all passengers to whom the APHIS user fee applies.

(i) Tickets or travel documents must be marked by the collector to indicate that the required APHIS user fee has been collected from the passenger. Markings must be in accordance with the procedures set forth in the ARC Industry Agents Handbook, the SATO Ticketing Handbook, or compatible procedures set forth in the operations manual of the person who collects the user fee.

(ii) If the APHIS user fee applies to a passenger departing from Hawaii or Puerto Rico, and if the passenger's tickets or transportation document do not reflect collection of the APHIS user fee at the time of issuance, then the carrier transporting the passenger must collect the fee upon departure.

(5) Remittance and statement procedures.

(i) The carrier whose ticket stock or document for transportation reflects collection of the APHIS user fee must remit the fee to _____. The travel agent, tour wholesaler, or other entity, which issues its own non-carrier related ticket or document for transportation to a passenger who is subject to an APHIS user fee under this part, must remit the fee to _____, unless by contract the carrier will remit the fee.

(ii) APHIS user fees must be remitted to _____, for receipt no later than 31 days after the close of the calendar quarter in which the fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982 (31 U.S.C. 3717). Refunds by a remitter of APHIS user fees collected in conjunction with unused tickets or documents for transportation should be netted against the next subsequent remittance.

(iii) At the same time a remittance is transmitted, the remitter must mail a written statement to _____. The statement must include the following information:

(A) Name and address of the party remitting payment;

(B) Taxpayer identification number of the party remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to _____.

(6) Carriers contracting with U.S.-based wholesalers are responsible for notifying APHIS of all flights contracted, the number of spaces contracted for, and the name, address, and taxpayer identification number of the tour wholesaler, all within 31 days after the close of the calendar quarter in which such a flight occurred.

(7) Compliance. Each carrier, travel agent tour wholesaler, or other entity which is subject to this section must allow APHIS personnel to verify the accuracy of APHIS user fees collected and remitted and to otherwise determine compliance with 31 U.S.C. 9701 and this paragraph. Each carrier, travel agent, tour wholesaler, or other entity must advise _____, of the name, address, and telephone number of a responsible officer who is authorized to verify fee calculations, collections, and remittances. _____ must be promptly notified of any changes in the identifying information submitted.

Done in Washington, DC, this 25th day of February 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4702 Filed 2-26-91; 8:45 am]

BILLING CODE 3410-34-M

Cooperative State Research Service

7 CFR Part 3407

Agency Procedures to Implement the National Environmental Policy Act

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research Service (CSRS), U.S. Department of Agriculture (USDA), proposes regulations to ensure compliance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and with implementing regulations promulgated by the Council on Environmental Quality (40 CFR parts 1500–1508), as adopted and supplemented by USDA at 7 CFR part 1b. This document sets forth policies and procedures to be used by CSRS in carrying out its responsibilities under these implementing regulations.

DATES: Written comments concerning this proposed rule are invited from interested organizations and individuals. To be considered in the formulation of a Final Rule, all relevant material must be received on or before April 29, 1991.

ADDRESSES: Comments should be addressed to Dr. Clare I. Harris, Associate Administrator, Cooperative State Research Service, U.S. Department of Agriculture, room 305A Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250–2200. All written comments received in response to this Notice will be made available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dr. Clare I. Harris at (202) 447–7441.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection of information requirements contained in this proposed rule have been submitted to OMB for approval.

Executive Order No. 12291

This proposed rule has been reviewed under Executive Order No. 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in costs or prices for consumers, agencies, or geographical regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a regulatory impact analysis is not required for this proposed rulemaking.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act, Public Law No. 96–534 (5 U.S.C. 601). The agency has certified that this proposed rule, under the criteria of the Act, will not have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in covered programs or in individual awards. Rather, it sets forth policies and procedures to be used by CSRS to ensure compliance with NEPA and its implementing regulations.

Executive Order No. 12612

The Agency has evaluated this proposed rule under Executive Order No. 12612 pertaining to Federalism. While this proposed rule will affect institutions of higher education and other nonprofit organizations, it will do so only to the extend of requiring the collection and submission of limited environmental data under a small number of nonexempt projects so that CSRS can carry out the provisions of the National Environmental Policy Act and implementing regulations. Cost associated with collecting this information are chargeable to the project being supported. For this reason, CSRS has determined that this proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact Statement

The proposed regulation does not authorize any activities or result in a change in the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Background and Purpose

Title I of the National Environmental Policy Act of 1969 (NEPA) directs Federal agencies to develop strategies and procedures for complying with the terms of NEPA in their planning and decisionmaking activities. The Council on Environmental Quality (CEQ), established under title II of NEPA, published implementing regulations directing all Federal agencies to develop supplementary procedures tailored to their own needs. USDA issued regulations adopting the CEQ regulations, supplemented them with USDA-specific policies and procedures, and directed its agencies to prepare implementing procedural regulations to accommodate their individual needs. Proposed NEPA regulations were published on February 20, 1980 (45 FR 1147), by the Science and Education Administration (SEA). At that time, CSRS was a part of SEA. The subsequent abolishment of SEA returned CSRS to full agency status, with its reporting directly to the Assistant Secretary for Science and Education. This document modifies the regulations previously proposed by SEA to reflect the establishment of CSRS as an agency. The policies and procedures proposed herein have been developed to assure that activities undertaken by CSRS comply with the intent of NEPA and with its implementing regulations. This rule therefore proposes to incorporate and supplement, rather than to supplant, CEQ and USDA regulations found at 40 CFR parts 1500–1508 and 7 CFR part 1b, respectively.

CSRS is the focal point for the Federal-State agricultural research partnership. As such, activities potentially significantly affecting the quality of the human environment largely center around extramural programs, rather than internal operations. CSRS administers USDA research and teaching funds appropriated by Congress for eligible recipients under special and competitive project grant programs and formula-based programs; focuses the broad programs of agricultural research in the States; participates in a nationwide system of planning and coordination related to the food and agricultural sciences; and has a primary responsibility for providing linkages between the Federal and state components of the U.S. agricultural and forestry research and education systems. These regulations therefore focus primarily on activities performed by or for CSRS grantees and other cooperators.

List of Subjects in 7 CFR Part 3407

National Evnironmental Policy Act; Environmental assessment; Environmental impact statement; Categorical exclusion.

For the reasons set out in the preamble, it is proposed to amend title 7, chapter XXXIV of the Code of Federal Regulations, by adding part 3407 to read as follows:

Chapter XXXIV—Cooperative State Research Service, Department of Agriculture

PART 3407—IMPLEMENTATION OF NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

3407.1 Background and purpose.
3407.2 Definitions.
3407.3 Policy.
3407.4 Responsibilities.
3407.5 Classes of action.
3407.6 Categorical exclusions.
3407.7 Actions normally requiring an environmental assessment.
3407.8 Actions normally requiring an environmental impact statement.
3407.9 Use of environmental documents in decisionmaking.
3407.10 Preparation of environmental assessments.
3407.11 Preparation of environmental impact statements.

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514, 3 CFR, 1966–1970 Comp. p. 902; E.O. 11991, 3 CFR, 1977 Comp., p. 123; E.O. 12144, 3 CFR, 1979 Comp., p. 404; 5 U.S.C. 301; 40 CFR 1500–1508; and 7 CFR part 1b.

§ 3407.1 Background and purpose.

(a) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the human environment. Section 102(2) of NEPA directs all Federal agencies to give appropriate consideration to the environmental consequences of proposed actions in their decisionmaking and to prepare of detailed environmental statements on major Federal actions significantly affecting the quality of the human environment.

(b) The purpose of this regulation is to supplement the regulations for implementation of NEPA established by the Council on Environmental Quality (CEQ) and codified at 40 CFR parts 1500–1508, as adopted by USDA in 7 CFR part 1b.

(c) Unless otherwise noted, parenthetical citations throughout this part refer to the CEQ regulations.

§ 3407.2 Definitions.

(a) The following definitions have the meanings set forth below:

(1) *Authorized Departmental Officer* means the CSRS official, acting within the scope of delegated authority, who is responsible for awarding and administering grants on behalf of USDA.

(2) *Control agents* means microorganisms or chemicals that are intended to enhance the production efficiency of an agricultural crop or animal through elimination of a pest.

(b) Other terms used in this regulation have the same meaning as they have in the CEQ regulations.

§ 3407.3 Policy.

(a) It is CSRS policy to comply with the provisions of NEPA and related laws and policies and with the implementing regulations cited in § 3407.1(b) of this part.

(b) Environmental documents should be concise, written in plain language, and address the issues pertinent to the decision being made.

(c) Environmental documents may be substituted for or combined with other reports which serve to facilitate decisionmaking (40 CFR 1506.4).

(d) CSRS personnel will cooperate with other Federal and State agencies or units thereof, as well as with grantees, contractors, and other cooperating individuals or entities undertaking activities funded or recommended for funding by CSRS to assure that NEPA considerations are addressed early in the planning process to avoid delays and conflicts (40 CFR 1501.2).

(e) CSRS reserves the right to require project participants outside of CSRS to furnish environmental data or documentation to assist CSRS in carrying out its responsibilities under NEPA. When an applicant, grantee, or other cooperating individual or organization submits environmental data or prepares an environmental assessment (EA) or a contractor hired by a grantee or other cooperating party prepares an environmental impact statement (EIS), CSRS shall provide instructions to the applicant, grantee, or other cooperator on the preparation and submission of the required information. All information supplied by external project participants shall be subject to verification by CSRS (40 CFR 1506.5).

(f) When possible, costs of analyses and development of required environmental documents shall be planned for during the budgetary process relating to the plan or program. Where the nature of particular program agreements (e.g., grants, cooperative agreements, formula projects) are determined by CSRS to require environmental documentation, the cost of preparing an EA or an EIS and of reasonable mitigation efforts shall be considered allowable costs and may be charged to the project as a portion of the Federal or the non-Federal share of project costs. However, CSRS funds above those authorized for the program award will not be made available to recipients to cover such costs.

(g) Final environmental documents, decision notices, and records of decision shall be available to the public for review. There shall be an early and open process for determining the scope of issues to be addressed during environmental analysis (40 CFR 1501.7).

(h) The concept of tiering to eliminate repetitive discussions applicable to EISs (40 CFR part 1502) is applicable to EAs also.

(i) CSRS officials may adopt an existing EA or EIS when a proposed action is substantially the same as the action for which an existing EA or EIS was prepared (40 CFR 1506.3), provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(j) Existing environmental documents may be incorporated by reference to reduce the bulk of an EA or EIS (40 CFR 1502.21).

(k) After prior consultation with the Council on Environmental Quality, CSRS personnel may, in emergency situations, implement alternative arrangements for compliance with these Procedures.

§ 3407.4 Responsibilities.

The CSRS officials identified below are responsible for carrying out the provisions of NEPA as indicated:

(a) *Administrator.* The Administrator is responsible for providing leadership, formulating agency policies and procedures to implement NEPA, and making available necessary resources to ensure that NEPA goals are met.

(b) *Associate Administrators and Deputy Administrators.* Associate Administrators and Deputy Administrators are responsible for:

(1) Assuring that adequate consideration is given to environmental effects of proposed actions during programmatic planning and decisionmaking processes;

(2) Ensuring that environmental information is reviewed and that required documentation is developed in a timely and satisfactory manner;

(3) Selecting or recommending courses of action within the range of alternatives presented including, as appropriate, approval or recommendation of EAs and EISs;

(4) Implementing approved courses of action; and

(5) Monitoring results.

(c) *Authorized Departmental Officer.* The Authorized Departmental Officer is responsible for:

(1) Ensuring the eligible applicants under CSRS' project grant programs are notified of agency environmental requirements in advance of proposal preparation;

(2) Providing terms and conditions of grant award for adequate environmental documentation; and

(3) Authorizing the commencement of approved project activities.

Note: Where agency environmental requirements are set forth in program regulations, solicitations of applications, program guidelines, or related documents, the requirement for advance notification to potential applicants shall be satisfied.

§ 3407.5 Classes of action.

The following describes typical classes of action associated with CSRS programs and related activities:

(a) Actions which normally do not require the preparation of an EA or an EIS are those actions which ordinarily do not have a significant individual or cumulative effect on the quality of the human environment. These include those activities described in § 3407.6 (a)(1) and (a)(2) of this part.

(b) Actions normally requiring an EA, but not necessarily an EIS, are those projects in which at least some level of uncertainty exists regarding individual or cumulative effects on the quality of the human environment. Such actions generally include those indentified in §§ 3470.6(b) and 3407.7 of this part.

(c) Actions normally requiring an EIS are projects which are determined to have a significant impact on the quality of the human environment or which will be performed under extraordinary circumstances. These types of actions are identified in §§ 3407.6(b) and 3407.8 of this part.

§ 3407.6 Categorical exclusions.

(a) All major CSRS actions will be analyzed by the appropriate CSRS officials specified in § 3407.4(b) to determine whether the project under consideration will have a significant environmental effect prior to recommending that the action be undertaken. Unless otherwise determined to be necessary under the provisions of paragraph (b) of this section, however, the preparation of an EA or EIS is not required for the following categories of actions:

(1) *Department of Agriculture Categorical Exclusions (7 CFR 1b.3).* (i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, and transfer or reprogramming of funds;

(iii) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) *CSRS categorical exclusions.* Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) Research programs or projects of limited size and magnitude or with only short-term effects on the environment, including but not limited to:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts such as the release of hazardous materials into the environment;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment;

(C) Testing outside of the laboratory, such as in small isolated field plots, which does not involve the use of chemical or biological materials requiring review, license or a permit for field use from a Federal regulatory agency.

(ii) Renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity and will not impact environmentally sensitive areas, e.g., critical habitats, historical and cultural sites, or wetlands.

(b) *Exceptions to Categorical Exclusions.* Notwithstanding paragraph (a) of this section, an EA or EIS shall be prepared for an activity which is normally within the purview of categorical exclusion where it is determined by CSRS that extraordinary conditions or circumstances exist which may cause such activity to have a significant environmental effect. Extraordinary circumstances may include, but are not limited to, the presence of threatened and endangered species or their critical habitat; flood plains; wetlands; municipal watersheds; and Congressionally designated areas such as wilderness or wild and scenic rivers.

§ 3407.7 Actions normally requiring an environmental assessment.

The following actions normally will require an EA: (a) Programs supported in whole or in part by CSRS which may result in a new technology's moving from the field evaluation stage to large-scale demonstration or simulated commercial phase.

(b) Field work that is expected to have an effect on the human environment such as excavation or the use of explosives.

(c) Projects for the construction or renovation of physical facilities, unless categorically excluded under § 3407.6(a)(2)(ii).

(e) Activities specified in § 3407.6(b).

§ 3407.8 Actions normally requiring an environmental impact statement.

An EIS normally will be required for major actions where it is determined by CSRS that such activity will significantly affect the quality of the human environment, including those specified in § 3407.6(b).

§ 3407.9 Use of environmental documents in decisionmaking.

In carrying out agency responsibilities under NEPA, CSRS officials shall:

(a) Consider all relevant environmental documents in evaluating programs, proposals, or projects for final agency action;

(b) Make all relevant final environmental documents, comments, and responses part of the record in formal rulemaking and adjudicatory proceedings;

(c) Ensure that all relevant final environmental documents, comments, and responses are submitted to CSRS in a timely fashion, are subjected to normal agency review processes, and are made a part of the official record; and

(d) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating plans, programs, or proposals for agency action.

§ 3407.10 Preparation of environmental assessments.

(a) *Actions Involving More than One Agency.* If more than one Federal agency participates in a program activity, the lead agency shall prepare the EA or shall cause the EA to be prepared as provided in 40 CFR 1501.5. The lead agency shall be responsible for involving the public as required in 40 CFR 1501.4(b).

(b) *Format and Content.* An EA may be prepared in any format provided that it covers, in a logical and succinct fashion, the information necessary for determining whether a proposed CSRS action may have a significant environmental impact and thus warrant preparation of an EIS. The information must include brief discussions on the need for the project, alternatives to the proposed action, environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted (40 CFR 1508.9). Where possible, EAs should be limited to 10–15 pages.

Note: It is the scope and complexity of the environmental issues, rather than the size of the project, that should be used to determine the length of the EA.

(c) *Supplements to Environmental Assessments.* Where substantial changes occur in a project or activity for which an EA has been prepared and it is determined by a responsible CSRS official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EA may be required. Supplements to EAs shall be evaluated and processed as stated in paragraph (d) of this section.

(d) *Decision Notice.* Upon completion of an EA and any supplement thereto, the responsible CSRS official will evaluate the information it contains, determine whether an EIS is required or whether no significant environmental impact is likely to occur, and will document the decision and the reasons upon which it is based (40 CFR 1508.13). The EA shall be available to the public.

§ 3407.11 Preparation of environmental impact statements.

(a) *Notice of Intent.* If a responsible CSRS official designated in § 3407.4(b) of this part recommends the preparation of an EIS, the public shall be apprised of the decision. This notice shall be prepared according to 40 CFR 1508.22.

(b) *Draft and final EIS.* The process of preparing the draft and final EIS, as well as the format of the document, shall comply with the provisions of 40 CFR parts 1502–1506.

(c) *Supplemental statements.* Where substantial changes occur or new information becomes available under a project or activity for which an EIS or draft EIS has been prepared and it is determined by a responsible CSRS official specified in § 3407.4(b) that the changes are pertinent to environmental concerns, a supplement to the EIS or draft EIS may be required. The supplement shall be evaluated and processed in accordance with 40 CFR 1502.9(c).

(d) *Decisionmaking and implementation.* A responsible CSRS official designated in § 3407.4(b) may make a decision no sooner than thirty

days after the notice of availability of the final EIS has been published in the **Federal Register** by the Environmental Protection Agency (40 CFR 1506.10). The decision will be documented in a record of decision as required by 40 CFR 1505.2, and monitoring and mitigation activities will be implemented as required by 40 CFR 1505.3.

Done this 19th day of February, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-4313 Filed 2-26-91; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-51-AD]

Airworthiness Directives; Hoffmann Aircraft, Ltd., Model H-36 (Dimona) Motor Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Hoffmann Aircraft, Ltd, Model H-36 Dimona motor gliders equipped with a nonmetallic fuel tank. The proposed action would require replacement of any nonmetallic fuel tank with an aluminum tank. Service experience has shown that a nonmetallic fuel tank will develop a softened interior gelcoat. This condition, if not corrected, leads to solid or rubber-like gelcoat fuel deposits, which obstruct the fuel from flowing to the engine on these motor gliders. The actions specified in this proposed AD are intended to prevent these fuel deposits that could result in engine shutdown.

DATES: Comments must be received on or before May 3, 1991.

ADDRESSES: Hoffmann Aircraft Ltd., Service Bulletin 13/1, dated October 23, 1989, applicable to this AD, may be obtained from Hoffmann Aircraft Ltd, N.A. Otto Str., 5, A-2700, Wr. Neustadt, Austria; Telephone 2622-26700. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Brussels Aircraft Certification Office, 15, Rue de la Loi, B-1040 Brussels, Belgium, c/o American Embassy APO, New York, New York 09667. Telephone (322) 513.38.30; Facsimile (322) 230.68.99; or Mr. Herman Belderok, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistance Chief Counsel, Attention: Rules Docket No. 90-CE-51-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Bundesamt for Zivilufahrt (BAZ), which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on Hoffmann Aircraft, Ltd., Model H-36 Dimona motor gliders. The BAZ advises that the glass fiber reinforced plastic (GFRP) and fiber reinforced plastic (FRP) fuel tank on the affected motor gliders have developed softened interior gelcoats. This condition, if not corrected, leads to solid or rubber-like gelcoat fuel deposits, which obstruct the fuel from flowing to the engine on these motor gliders.

Hoffmann Aircraft, Ltd., has issued Service Bulletin (SB) 13/1, dated October 23, 1989, which specifies initial and repetitive inspections of the fuel tank for deposits and subsequent replacement of the fuel tank if deposits are found. The BAZ has classified this SB as mandatory. Under a bilateral airworthiness agreement, the above airworthiness authority has shared this information with the FAA. The FAA has examined the findings of the BAZ, reviewed all available information, and determined that AD action is necessary to correct this unsafe condition on products of this type design that are certificated for operation in the United States.

The proposed AD would require replacement of any GFRP or FRP fuel tank with an aluminum fuel tank on all Hoffmann Aircraft, Ltd., Model H-36 Dimona motor gliders so equipped. The proposal contains interim provisions for operation of the glider until replacement parts are available. The FAA has determined that the best method of eliminating the cause of the described unsafe condition is to require the replacement of any nonmetallic GFRP and FRP tank rather than to rely upon repetitive inspections to detect indications that the unsafe condition exists.

The compliance time for the proposed AD has been established in both hours time-in-service (TIS) and calendar months. The FAA has determined that the unsafe condition should be corrected within the next 50 hours TIS; however, FAA records indicate that the yearly operational rates of the affected gliders vary immensely within the fleet. One operator may operate the glider 50 hours in six months, while another might not operate the glider 50 hours in one year. The condition of a nonmetallic fuel tank is not necessarily affected by actual operation of the motor glider since fuel deposits or soft spots could form in a fuel tank of any glider containing fuel. To avoid inadvertent grounding of the affected motor gliders and to assure that the unsafe condition is corrected on the affected motor gliders, compliance time is proposed in both hours TIS and calendar months.

It is estimated that 9 motor gliders will be affected by the proposed AD, that it will take approximately 8.5 hours per glider to accomplish the required actions at $40 an hour, and that the cost of parts to accomplish the required modification is estimated to be $1,650 per glider. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,910.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Hoffmann Aircraft, Ltd.: Docket No. 90-CE-51-AD.

Applicability: Model H-36 Dimona motor gliders (serial numbers 3501 through 36143) that were supplied or equipped with a fuel tank made of glass fiber reinforced plastic (GFRP) or fiber reinforced plastic (FRP), certificated in any category. Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To avoid engine shutdown caused by solid or rubber-like gelcoat fuel deposits, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) or within the next 6 calendar months, whichever occurs first, replace the GFRP or FRP fuel tank with an aluminum tank, Part Number 820.5.12 S3a, in accordance with the instructions of Hoffmann Aircraft, Ltd., Service Bulletin (SB) 13/1, dated October 23, 1989.

(b) If the aluminum tank required by paragraph (a) of this AD has been ordered, but is not available, within 50 hours TIS or 6 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 12 calendar months, whichever occurs first, inspect the fuel system in accordance with the instructions of Hoffmann Aircraft, Ltd., SB 13/1, dated October 23, 1989.

(1) If no deposits or soft spots are found in the fuel tank as a result of any of these inspections, the glider may be operated until the fuel tank specified in paragraph (a) becomes available.

(2) If any deposits or soft spots are found in the tank as a result of any of these inspections, prior to further flight, replace the fuel tank in accordance with the instructions of paragraph (a) of this AD.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, 15, Rue de la Loi, B-1040 Brussels Belgium, c/o American Embassy APO, New York, New York 09667. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document discussed in this AD upon request to Hoffmann Aircraft, Ltd., N.A. Otto Str., 54, A-2700 Wr. Neustadt, Austria, Telephone 2622-26700. This document may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Issued in Kansas City, Missouri, on February 12, 1991.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4574 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 4 and 140

Disclosure of Past Performance by Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) is proposing to amend its rules relating to disclosure of past performance by commodity pool operators (CPOs) and commodity trading advisors (CTAs) to permit presentation of past performance, including the rate of return, by means other than that currently set forth in such rules where the Commission has approved such alternatives means. The Commission is also proposing to delegate to its Division of Trading and Markets (Division) the authority to approve such alternative means of presentation of past performance. These proposed rule amendments are intended to enable the Division to assist CPOs and CTAs in presenting their past performance in a way that is not misleading and lessen the necessity for individual inquiries concerning specific methods of presenting past performance.

DATES: Comments must be received by March 29, 1991.

ADDRESSES: Comments should be sent to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Reference should be made to "CPO and CTA Disclosure."

FOR FURTHER INFORMATION CONTACT: Susan C. Ervin, Chief Counsel, or Paul Bjarnason, Chief Accountant, Division of Trading and Markets, at the above address, telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Notice

While the Commission has determined that these proposed rule amendments will not affect the existing paperwork burden previously approved by the Office of Management and Budget, the public reporting burden for the collection of information which includes Commission Rules 4.21 and 4.31 and all other rules pertaining to the operations and activities of CPOs and CTAs and to monthly reporting by futures commission merchants (3038-0005) is estimated to average 30.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581; and to Office of Management and Budget, Paperwork Reduction Project (3038-0005), Washington, DC 20503.

II. Proposed Rule Amendments

Commission Rules 4.21 and 4.31 (17 CFR 4.21 and 4.31 (1990)) set forth the requirements for disclosure by CPOs to prospective pool participants and by CTAs to prospective clients, respectively. Among other things, a CPO must disclose in a Disclosure Document

furnished to prospective pool participants the actual performance record of the CPO and of each of its principals [1] with respect to the particular pool described in the Document as well as any other pool operated by the CPO and by each of its principals within the preceding three years, and the actual performance record for the preceding three years of all accounts other than the pool described in the Document directed [2] by the pool's CTA and by each of the CTA's principals. Rule 4.21(a) (4) and (5). Similarly, a CTA must disclose to its prospective clients in a Disclosure Document the actual performance record for the preceding three years of all accounts directed by the CTA and by each of its principals. Commission Rule 4.31(a)(3).

The Commission requires that actual past performance be displayed in the Disclosure Document in a table showing at least quarterly for the prescribed time period [3] certain information, current as of a date not than three months preceding the date of the Document. One of the required disclosures is the rate of return (ROR) for the period, calculated by dividing the net performance [4] by the beginning net asset value.[5] The formula for ROR is set forth in Rule 4.21(a)(4)(ii)(F) with respect to past performance disclosure by a CPO for the pool described in the Document and other pools operated by the CPO and its principals in the preceding three years. That formula is incorporated by reference in Rule 4.21(a)(5)(ii) with respect to disclosure by the CPO of the past performance of the pool's CTA and the CTA's principals and in Rule 4.31(a)(3)(ii) with respect to disclosure by a CTA concerning its past performance and that of its principals.

Disclosure of ROR has been a topic of some debate in recent years. A requirement for such disclosure was adopted by the Commission as part of the original rules governing the operations and activities of CPOs and CTAs. 44 FR 1918, 1920–21, 1925–26 (January 8, 1979) (originally contained in Rule 4.21(a)(4)(C)). The Commission issued an interpretation with respect to ROR disclosure, among other things, soon thereafter. 44 FR 25658 (May 2, 1979). Subsequently, the Commission recognized that the original format was not completedly fulfilling its purposes of providing a presentation of past performance that would be understandable and would enable members of the public to compare the performance of different commodity interest accounts and to compare those accounts with other financial investments. The Commission therefore determined to propose a less complex approach to the presentation of past performance and ROR which would be easier for CPOs and CTAs to compute and more readily understood by the public, even if some comparability of data would be sacrificed. 45 FR 51600, 51602, 51606 (August 4, 1980). Those proposed changes were eventually adopted as the current Rule 4.21(a)(4)(ii). 46 FR 26007, 26008–09, 26016 (May 8, 1981).

The Commission believes that the current standard for past performance disclosure by CPOs and CTAs has generally served its intended purposes. The Commission also recognizes, however, that due to the increasing numbers and varied operations of CPOs and CTAs,[6] there may be instances where calculation of ROR under the current rules could be misleading and an alternative method of ROR calculation would not be misleading and would provide meaningful disclosure to prospective pool participants and clients. Distortions in ROD computed under the Commission's current rules could result, for example, where additions and/or withdrawals are substantial and occur early in the reporting period, because such additions and/or withdrawals cause the actual amount of funds available for trading during a particular period to be materially different from BNAV. The Commission raised these and other past performance disclosure issues in an interpretive statement and request for comments issued simultaneously with a companion release of the Securities and Exchange Commission regarding CPO disclosure requirements. 54 FR 5597, at 5599–5600 (February 6, 1989). Certain of the comments received in response to that release suggested alternative ROR computation methods.

Upon review of such comments and its own reconsideration of the matter, the Commission has determined to propose an amendment to Rule 4.21(a)(4)(ii)(F) that would permit computing ROR pursuant to alternate methods "otherwise approved by the Commission" rather than pursuant to the current method (*i.e.*, dividing the net performance by the BNAV). This amendment will also affect the ROR disclosure under rules 4.21(a)(5)(ii) and 4.21(a)(3)(ii), which incorporate by reference the provisons of Rule 4.21(a)(4)(ii)(F). In a companion release published elsewhere in this edition of the **Federal Register**, the Commission is also issuing for comment and advisory setting forth several methods of calculating ROR in addition to the method specified in Rule 4.21(a)(4)(ii)(F). Any alternative method approved by the Commission could be used, provided it does not result in the presentation of past performance in a misleading manner, even if the current method specified in the rules would also be acceptable. Use of any of the acceptable methods is subject to the overriding requirement that all material information be disclosed to existing or prospective pool participants, or existing or prospective clients, even if such information is not otherwise specifically required by the Commission's disclosure rules; thus presentation that are misleading, even if otherwise presented in accordance with Commission rules, are prohibited.[7]

The Commission has also determined to propose amendments to the introductory test to Rules 4.21(a)(4), 4.21(a)(5) and 4.31(a)(3) that would permit an alternative presentation as approved by the Commission with respect to other aspects of past performance disclosure as set forth in subsections (A) through (E) of Rule 4.21(a)(4)(ii).[8] The Commission is also proposing to amend its delegation of authority with respect to the rules governing CPOs and CTAs to permit the Division Director or the Division Director's designee to perform all functions reserved to the Commission under rules 4.21 and 4.31. Although the Divison has previously provided relief in appropriate cases with respect to alternative methods of computation of ROR and other elements of past performance disclosure by CPOs and CTAs, such relief has necessarily been provided on a case-by-case basis. The delegation of authority to the Division with respect to CPO and CTA disclosure requirements would permit the Divison to issue advisories and interpretations of general application from time to time as appropriate, thereby enhancing flexibility and obviating the need to apply for case-by-case relief.

[1] For purposes of the part 4 rules, the term "principal" is defined in Commission Rule 4.10(e), 17 CFR 4.10(e) (1990).

[2] For purposes of the part 4 rules, the term "directed" is defined in Commission Rule 4.10(f), 17 CFR 4.10(f) (1990).

[3] Such time period may be as long as three years depending upon the trading history of the pool, the CPO, the CTA and the principals involved.

[4] Net performance for the period represents the change in the net asset value net of additions, withdrawals and redemptions. Commission Rule 4.21(a)(ii)(D).

[5] Beginning net asset value (BNAV) for the period represents the previous period's ending net asset value. Ending net asset value for a period represents BNAV plus or minus additions, withdrawals and redemptions, and net performance. Commission Rule 4.21(a)(4)(ii) (A) and (E). Division of Trading and Markets Advisory 87–2, [1986–87 Transfer Binder] Comm. Put. L. Rep. ¶ 23,624 (June 2, 1987) states that funds contained in a commodity interest account over which a CTA has been given discretionary trading authority must be included in the BNAV calculation and specifies conditions under which funds in other types of accounts of the customer at the futures commission merchant that are committed to the registrant's trading program are required to be included in the computation of BNAV.

[6] As of September 30, 1990, there were 1, 283 registered CPOs and 2,513 registered CTAs (some entities may be registered in boty capacities).

[7] See 54 FR 5597, 5599 (1989); Commission Rules 4.21(b) and 4.31(g); and section 4o of the Commodity Exchange Act, 7 U.S.C. 6o (1988).

[8] As noted above, these specific requirements are incorporated by reference in rules 4.21(a)(5)(ii) and 4.31(a)(3)(ii).

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small businesses. In this connection, the Commission previously has determined that registered commodity pool operators should not be considered small entities for purposes of the RFA.[9] With respect to commodity trading advisors, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some should be considered to be small entities and, if so, that it would analyze the economic impact on them of any rule.[10] Because the rule amendments proposed herein would amend the Commission's rules that currently are applicable to the above-mentioned registrants such that no additonal burdens are imposed, the Commission believes that the proposals, if adopted, would not have a significant economic impact on the above-noted entities. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission certifies that the proposed rules will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comments on the impact, if any, the proposed rule amendments may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted Rules 4.21 and 4.31 and their associated information collection requirements to the Office of Management and Budget as part of information collection number 3038–0005. While these proposed rule amendments have no burden, the group of rules of which they are a part has the following burden:

Average Burden House per Response	30.6
Number of Respondents	3,060
Frequency of Response	40

Persons wishing to comment on the estimated paperwork burden associated with these proposed rule amendments should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503 (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

[9] 47 FR 18618, 18619–20 (April 30, 1982).

[10] 47 FR 18618, 18620 (April 30, 1982).

List of Subjects

17 CFR Part 4

Consumer protection, Disclosure.

17 CFR Part 140

Authority delegations (government agencies).

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4b, 4c, 4l, 4m, 4n, 4o, 8a and 19 thereof (7 U.S.C. 2, 4a(j), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23), hereby proposes to amend parts 4 and 140 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23; 5 U.S.C. 552 and 552b.

2. Section 4.21 is proposed to be amended by revising paragraphs (a)(4) introductory text, (a)(4)(ii)(F) and (a)(5) introductory text to read as follows:

§ 4.21 Disclosure to prospective pool participants.

(a) * * *

(4) The actual performance record of the commodity pool operator and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(4) shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(4), and such additional information is not misleading.

* * * * *

(ii) * * *

(F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

* * * * *

(5) The actual performance record of the pool's commodity trading advisor and of each of its principals as specified below or by a method otherwise approved by the Commission; *Provided, however,* That nothing in paragraph (a)(5) of this section shall be construed to prohibit a commodity pool operator from disclosing additional information on such performance record so long as the pool operator complies with each of the specified requirements of this paragraph (a)(5) and such additional information is not misleading.

* * * * *

3. Section 4.31 is proposed to be amended by revising paragraph (a)(3) introductory text to read as follows:

§ 4.31 Disclosure to prospective clients.

(a) * * *

(3) The actual performance record of the commodity trading advisor and of each of its principals as specified below or which is calculated pursuant to a method otherwise approved by the Commission; *Provided, however,* That nothing in this paragraph (a)(3) shall be construed to prohibit a commodity trading advisor from disclosing additional information on such performance record so long as the trading advisor complies with each of the specified requirements of this paragraph (a)(3) and such additional information is not misleading.

* * * * *

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

4. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 4a(j) and 12a.

5. Section 140.93 is proposed to be amended by adding a new paragraph (a)(7) to read as follows:

§ 140.93 Delegation of Authority to the Director of the Division of Trading and Markets.

(a) * * *

(7) All functions reserved to the Commission in §§ 4.21 and 4.31 of this chapter.

* * * * *

Issued in Washington, DC on February 21, 1991, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 91-4518 Filed 2-26-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM91-5-000]

Preferences at Relicensing of Units of Development; Inquiry

February 20, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompass the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA), intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing licensed unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent licensee's marginal preference)?

The Commission is not proposing new regulations at this time, but invites comment on whether new regulations may be appropriate and, if so, what such regulations ought to provide.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the commission by April 29, 1991. All reply comments must be filed with the Commission by May 28, 1991.

ADDRESSES: All filings should refer to Docket No. RM91-5-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208-2067.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this docket in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS in available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access, CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of inquiry will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is inviting comment on a series of related questions that involve the licensing of incremental hydroelectric capacity contemporaneous with the relicensing of the unit of development in which the capacity is located. These questions encompass the matters of whether Congress, in enacting the Electric Consumers Protection Act of 1986 (ECPA),[1] intended to preserve either a municipal preference or a preliminary permittee's preference with respect to the development of previously undeveloped hydroelectric capacity at an existing licensed unit of development when the incumbent licensee also seeks to develop that incremental capacity as a part of its relicensing application. Conversely, did Congress intend that the unit of development (including both developed and undeveloped capacity therein) be considered at relicensing as an indivisible unit with respect to preferences (including the incumbent licensee's marginal preference)?

The Commission is not proposing new regulations at this time, but invites comment on whether new regulations may be appropriate and, if so, what such regulations ought to provide.

II. Background

ECPA established a new relicense application process whereby an existing licensee must, at least five years before the expiration of the license, notify the Commission of whether it intends to file an application for a "new" license. All applications for a new license, whether filed by the existing licensee or by third parties, must be filed no later than two years before the expiration of the parties licenses. ECPA thus provides a three-year window for the filing of new license applications.

In section 2 of ECPA, Congress amended section 7(a) of the Federal Power Act (FPA)[2] in such manner as to make the preference for states and municipalities (the "municipal preference") inapplicable to the issuance of new licenses in the relicensing of existing projects. Section 2 of ECPA left the preference intact with respect to applications for preliminary permits and for "original" licenses (*i.e.*, in both instances, applications with respect to previously unlicensed projects).

In section 4 of ECPA, Congress amended section 15 of the FPA[3] to ensure that, in the relicensing process, "insignificant differences" between competing applications "are not determinative and shall not result in the transfer of a project." This provision has been judicially characterized as establishing a "marginal preference" for the incumbent licensee seeking relincense of an existing project.[4] The Commission is also required to consider the incumbent's compliance record and actions it has taken in operating the project which affect the public interest.

Also relevant to our inquiry is section 3 of ECPA, which amended sections 4(e) and 10(a) of the FPA.[5] These

[1] Public Law No. 99-495, 100 Stat. 1243 (1986).

[2] 16 U.S.C. 800(a) (1988).

[3] 16 U.S.C. 808 (1988).

[4] *Kamargo Corp. v. FERC*, 852 F.2d 1382, 1394 (D.C. Cir. 1988), discussed at greater length below.

[5] 16 U.S.C. 797(e) and 803(a) (1988).

amendments emphasize comprehensive Commission consideration of a broad range of factors relevant to the licensing of hydroelectric projects, including protection, mitigation of damage to, and enhancement of, fish and wildlife resources; energy conservation; protection of recreational opportunities; and irrigation, flood control and water supply; as well as development of water power. A project is licensed based on the Commission's finding that it will be best adapted to a comprehensive plan for improving or developing a waterway for beneficial public purposes.[6] The amendments to FPA sections 10(a) and 15 also stress broad consultation with state and federal resources agencies as part of the licensing process.

Section 3(11) of the FPA[7] defines a "project" as a complete unit of development or improvement," consisting of a powerhouse and all dams, conduits, impoundments, water rights, and lands which are used in connection with such unit.[8] While the complete unit of development must be licensed, the Commission is not required to place all parts of the unit of development under a single license. For ownership or other reasons, the Commission can license different parts of a complete unit of development in different licenses.[9]

In some instances, such as by rewinding an existing generator, a licensee can increase the electric generating capacity of a project without obtaining additional license authority. On the other hand, additional license authority would be required in order to construct and operate an additional powerhouse at the unit of development. The point at which development of increased capacity requires additional license authority is not always clear.

Section 5 of the FPA authorizes the Commission to issue preliminary permtis for the limited purpose of "maintaining priority of application for a license * * * as * * * may be necessary for making examinations and surveys, for preparing maps, plans, specifications, and estimates, and for making financial arrangements."[10] This provision was not amended by ECPA.

Competition for an original license is governed by the terms of section 7(a) of the FPA, which, as amended by ECPA, provides:

> In issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and deterrmines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans.

In § 4.37 of its regulations,[11] the Commission sets forth its rules of preference among competing applications for an original license. Some are mandated by the first clause of section 7(a) while others were promulgated by the Commission pursuant to the discretion given it by the second clause of section 7(a). The regulations provide that the proposal best adapted to conserve and utilize the water resources in the public interest will be preferred. However, where neither proposal is superior, then:

(1) If one of the applicants for permit or license is a municipality or a state and the other is not, tie-breaker preference goes to the municipality's application.[12] Furthermore, if the nonmunicipality's proposal is better adapted, the municipality is given a reasonable period of time to render its proposal at least as well adapted.

(2) If both or neither of two applicants for a permit or a license is a municipality or a state, tie-breaker preference goes to the first-filed application.[13]

(3) If one of the applicants for a license has a preliminary permit and the other does not (even if it is a municipality), tie-breaker preference goes to the permittee's applications.[14] Furthermore, if the non-permittee's proposal is better adapted, the permittee is given a reasonable period of time to render its proposal at least as well adapted.[15]

With respect to relicensing, as noted above ECPA amended section 15(c) of the FPA to accord a marginal preference to the incumbent licensee. These decisional factors are incorporated in § 16.13 of the Commission's regulations.[16] Thus, unless the existing licensee's operation of the project has been significantly negative, ECPA provides in effect a tie-breaker preference for the existing licensee.

In 1986, the Commission denied eleven preliminary permit applications filed by Kamargo Corporation and ten other related corporations.[17] The Commission's denial was based primarily on its reading of ECPA, which the Commission thought indicated it should not grant a preliminary permit for the development of excess capacity at or near a site where the relicensing of a licensed project is imminent.

In *Kamargo Corp.* v. *Federal Energy Regulatory Commission*, 852 F.2d 1392 (D.C. Cir. 1988), the court granted Kamargo's petition for review and remanded the case to the Commission for reconsideration. The court rejected the Commission's conclusion that the grant of such permit applications would be inconsistent with the terms of section 4 of ECPA.

The Commission based its denial of the eleven permit applications in part on the fact that the addition of capacity can be authorized at relicensing, and in part on its finding that issuing permits with terms that would overlap with the

[6] Section 10(a)(1) of the FPA. If necessary in order to secure such plan the Commission is authorized to require the modification of any project before licensing it. *Id.*, However, for purposes of comparing competing applications, the Commission first assesses the relative merits of the applicant's proposals.

[7] 16 U.S.C. 796(11) (1988).

[8] Section 3(11) states: "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of function with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

Section 3(12) states: "project works" means the physical structures of a project.

A unit of development can thus entail a dam and associated impoundment that are not themselves the site of a powerhouse, but that store water on behalf of a downstream facility that generates hydropower. See, *e.g.*, Essex Company, 56 F.P.C. 977 (176); Central Maine Power Co., 7 FERC ¶61.045 (1978); Georgia Pacific Corp., 12 FERC ¶62.157 (1980).

[9] Orange and Rockland Utilities, Inc. 44 FERC ¶ 61,235 n. 30 (1988). See *e.g.*, Susquehanna Power Co., 32 F.P.C. 826 (1964); Finch, Pruyn & Co., Inc., 33 F.P.C. 321 (1965); Niagara Mohawk Power Corp., 40 F.P.C. 185 (1968); and Pacific Gas and Electric Co., 52 F.P.C. 1899 (1974). Conversely, the Commission sometimes has issued one license for more than one complete unit of development. See, *e.g.*, Duke Power Co., 20 F.P.C. 360 (1958).

[10] 16 U.S.C. 797(f) (1988).

[11] 18 C.F.R. 4.37 (1990).

[12] 18 C.F.R. 4.37(b)(3) (1990).

[13] 18 CFR 4.37(b)(2) (1990). The regulation refers to the "earliest application acceptance date." When an application is accepted for filing, the acceptance is made effective as of the application's filing date.

[14] 18 CFR 4.37(c)(2) (1990). To obtain the preference, the permittee's license application must be filed within the term of the permit.

[15] 18 CFR 4.37(c)(2) (1990).

[16] 18 CFR 16.13 (1990).

[17] Kamargo Corp., 37 FERC ¶ 61,281 (1986), *reh'g denied*, 39 FERC ¶ 61,228 (1987). Each of the eleven applications proposed to study the feasibility of developing additional unused water resources at existing projects licensed to Niagara Mohawk Power Corporation under the FPA.

statutory three-year filing window would truncate that window, and that issuing permits with the usual tie-breaker preference and right of last amendment would be inconsistent with ECPA's intent to eliminate competitive advantages at relicensing. The Commission therefore added that if the permits were issued, they would have to be issued without the tie-breaker preference and right of last amendment.

The court rejected the Commission's reasoning, noting that, prior to ECPA, there appeared to be no barrier to the grant of the permit applications in question, and stating that ECPA neither mandated denial of the permit applications nor lent support to the Commission's departure from its past treatment of applications to license additional capacity at licensed projects.[18] The court also noted that the Commission had not adequately considered other alternatives to resolving the conflicts it identified, such as modifying its regulations that give a permittee the right of last amendment at relicensing.[19]

The court concluded that, while there may be policy reasons that support the Commission's decision to deny the permit applications in question, the Commission had not articulated any such rationale.[20] The court added that, assuming it articulated an adequate rationale, the Commission could engage in line-drawing as to how close to the expiration of a license term it would entertain applications to develop additional capacity at a licensed project.[21]

The Commission recently issued an order on remand [22] and four companion orders in the *Kamargo* proceeding in which it issued four preliminary permits while denying the applications for the other seven. The denials were premised on the fact that the proposed projects to develop incremental capacity would require substantial alteration of the existing licenses for the projects at issue, in violation of section 6 of the FPA.[23] The Commission's order did not reach many of the issues raised by the *Kamargo* court opinion. The Commission stated that "[t]he issue of whether additional capacity based on unused water power is the subject of an original or a new license will become relevant in these proceedings only if and when the permittees file acceptable license applications." [24] The Commission went on to indicate that "[i]ssuance of permits in these proceedings does not prejudge the Commission's resolution of this question, which the Commission is actively reviewing and will address on a generic basis in the near future." [25]

It is with this background in mind that the Commission invites comment on various issues that arise from the enactment of ECPA and the court's decision in *Kamargo*.

III. Invitation for Comments

The Commission invites comment on the following general questions. Assume that there is a single licensed project at an existing complete unit of development; that the licensed project utilizes part, but not all, of the hydroelectric capacity at that unit of development; and that the license is approaching expiration and the incumbent licensee is seeking a new license for that project in a relicensing proceeding. Assume also that, contemporaneously, a third party is seeking an original license to construct and operate a project that utilizes the undeveloped capacity of that unit of development (without interfering with the existing project), and that the incumbent licensee, as part of its application for a new license, proposes to construct and operate new facilities to utilize that same undeveloped capacity.

1. Municipal Preference

Assume further that the incumbent licensee is not a municipality, and that the third party is a municipality. Did Congress, in enacting sections 2 and 4 of ECPA, intend that there would be no municipal preference at relicensing with respect to the complete unit of development, or did it intend that the municipal preference would not apply only with respect to the relicensing of that portion of the unit of development that had previously been developed, but would apply with respect to the portion of the unit of development that had not previously been developed?

2. Relicensing Preference

Did Congress, in enacting section 4 of ECPA, intend to confer on the incumbent licensee a marginal preference at relicensing with respect to the complete unit of development, or did it intend that the relicensing preference would apply only with respect to the portion of the capacity at the unit of development that had previously been developed pursuant to the expiring license?

3. Preliminary Permit Preference

Assume that the third party had sought and obtained a preliminary permit to prepare an application for a project to develop the incremental capacity. Did Congress, in enacting section 4 of ECPA, intend to preserve a preliminary permittee preference with respect to the undeveloped capacity of the unit of development even if the application pursuant to the permit is filed contemporaneously with the incumbent licensee's application for a new license?

4. Competing Preferences

With respect to the undeveloped capacity at the unit of development, if Congress intended to preserve either a municipal preference or a preliminary permittee's preference, and also intended to establish an incumbent licensee's preference, did it intend for one such preference to prevail over the other or did it intend that the two preferences would neutralize each other?

5. Encouraging Comprehensive Development

Assume that the Commission wishes to encourage increased generation (to the extent consistent with its balancing of developmental and non-developmental values) at existing project sites. How should the existing licensee's marginal preference be protected while simultaneously encouraging development of any undeveloped incremental capacity?

6. Operational and Economic Considerations

Are there any operational problems or economic efficiencies associated with developing incremental capacity within a unit of development, and, if so, what are they?

7. Definition of "Incremental Capacity"

How should "incremental capacity" at a unit of development be defined so as to identify which methods or types of development of unused capacity require additional license authority and which do not?

8. Deadline for Declaring Intent

When there is unused incremental capacity at a unit of development whose license is approaching expiration, should there be a deadline by which the existing licensee would be required to notify the Commission of its intent either to seek license authority to develop that capacity or not to seek such authority? If so, at what point in the relicensing process should the deadline be set, and how would it work?

9. Moratorium Period

Can and should the Commission decline to consider applications for preliminary permits and original licenses to develop only the incremental capacity of a unit of development if such applications are filed within a specified period prior to the expiration of the license for the existing project in that unit of development? If so, what would be an appropriate period to specify?

10. Allocation of Environmental Responsibility

If Congress intended that the Commission consider, at relicensing, proposals to construct and operate facilities that utilize only the incremental portion of the hydroelectric capacity of the unit of development, such that at the conclusion of the relicensing process licenses could be issued to more than one licensee for a single unit of development—*i.e.*, a new license to the incumbent for the existing developed capacity plus an original license to a third party for the incremental capacity—how should the Commission allocate management responsibilities (and costs) between those two licensees with respect to environmental mitigation measures, such as modification and operation of dams, minimum flow releases, and installation and operation of measuring devices, fishways, and ancillary recreation facilities, etc., that are common to the unit of development as a whole, and some of which may be existing facilities that are owned and operated by the incumbent licensee?

11. Incumbent Licensee Does Not Propose to Utilize Undeveloped Capacity

For purposes of comparison, assume (contrary to the preceding discussion) that the incumbent does not intend and therefore does not propose to construct and operate new facilities to utilize that same undeveloped capacity. To what extent would any of the comments on the preceding general questions be modified to reflect that fact? Under that situation, is there any legal or policy impediment to processing a preliminary permit or an original license for the undeveloped capacity independent of the relicensing process for the existing capacity, apart from section 6 of the FPA, and if not, when would be the appropriate time to do so?

12. New Regulations

Would it be appropriate for the Commission to propose new regulations that address any of the above matters? If so, what new regulations should the Commission consider?

IV. Comment Procedure

The Commission invites interested persons to submit written comments and reply comments on the matters discussed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than April 29, 1991 for initial comments, and no later than May 28, 1991 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM91–5–000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St., NE., Washington, DC 20426, during regular business hours. By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4547 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

---

[18] 862 F.2d at 1397–98.

[19] *Id.* at 1398, 1398.

[20] *Id.* at 1397.

[21] *Id.* at 1398 n. 7.

[22] 53 FERC ¶ 61,411 (December 19, 1990).

[23] 16 U.S.C. 779 (1988). Section 6 provides in pertinent part that licenses may be altered only on mutual agreement between the licensee and the Commission.

[24] Slip. op. at 4. Niagara Mohawk Power Corporation has filed a timely request for rehearing of the December 19, 1990 order that raises this and other issues. The Commission has granted rehearing for the purpose of further consideration.

[25] *Id.*

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

22 CFR Part 138

[Public Notice 1353]

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic and Business Affairs proposes to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country concerned. The proposed list will be used by the Attorney General in determining whether to permit an alien crewman to perform an activity constituting longshore work in the United States or the coastal waters thereof, as provided in, and subject to the conditions of, section 258 of the Immigration and Nationality Act of 1952 (hereinafter: the Act), 8 U.S.C. 1288, as added by section 203 of the Immigration Act of 1990, Public Law 10–649 of November 29, 1990.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before Friday, March 29, 1991.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport Affairs, Bureau of Economic and Business Affairs (EB/TRA/MA), room 5826, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport Affairs, Department of State, Washington, DC 20520. (202) 647–5840.

SUPPLEMENTARY INFORMATION: Section 258 of the Act establishes certain limitations upon the performance by alien crewman of longshore work in the United States or in the coastal waters thereof. Subsection b of section 258 defines "longshore work" so as to include "any relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go"; "longshore work" for these purposes does not include the loading or unloading of any cargo for which special regulations have been prescribed by the Secretary of Transportation under chapter 37 of title 46 of the United States Code (relating to carriage of liquid bulk dangerous cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), or section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805).

Section 258(d)(1) of the Act nevertheless provides that the Attorney General shall permit an alien crewman to perform an activity that constitutes longshore work if (a) the vessel in question is registered in a country that by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels; and (2) a majority of the ownership interest in such vessel is held by nationals of a country (or countries) which by law, regulation, or in practice does not prohibit such activity by crewmembers aboard United States vessels. The term "in practice" is defined by section 258(d)(3) to refer to "an activity normally performed in such

country during the one-year period preceding the arrival of such vessel into the United States or the coastal waters thereof."

Section 258(d)(2) of the Act directs the Secretary of State to compile and annually maintain a list of longshore work by particular activity, of countries where performance of such a particular activity is prohibited by law, regulation, or in practice in the country. For these purposes, the Department of proposes to establish such a list from reports received from United States diplomatic and consular posts abroad concerning relevant laws, regulations, and practices of the host country, and from such relevant information concerning such laws, regulations and practices as may be furnished in the form of comments on this notice. The Department of State further proposes to publish such a list in the form of a proposed rule not later than 45 days from the date of publication of this notice, and a final rule not later than 45 days thereafter.

Geoffrey Ogden,

Director, Office of Maritime Affairs, Bureau of Economic and Business Affairs, U.S. Department of State.

[FR Doc. 91-4559 Filed 2-26-91; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, and 75

RIN 1219-AA48

Air Quality, Chemical Substances, Respiratory Protection Standards; Public Hearings; Close of Record

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearings; close of record.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold the third of a series of public hearings on its August 29, 1989, proposed rule addressing air quality, chemical substances and respiratory protection in mining. The hearings will be held in Denver, Colorado, and Washington, DC. Each hearing will cover permissible exposure limits (PELs) other than nitrogen dioxide, nitric oxide, carbon monoxide and sulfur dioxide. This notice also announces the closing of the record for the entire proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making later requests. The public hearings will be held Tuesday, March 19, and Tuesday and Wednesday, March 26-27. All hearings will begin at 9 a.m.

The record for this rulemaking will close on June 7, 1991.

ADDRESSES: The hearings will be held at the following locations:

March 19, 1991. Radisson Hotel—Denver Downtown, 1550 Court Place, Vail Room, Denver, Colorado 80202.

March 26-27, 1991. Frances Perkins Department of Labor Building, Main Auditorium, Third and Constitution Avenue, NW., Washington, DC 20210

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulvard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION: On August 29, 1989, MSHA published a proposed rule to revise its standards for air quality, chemical substances, and respiratory protection for coal, metal, and nonmetal mines (54 FR 35760). The Agency initially scheduled the written comment period for the proposed rule to close on November 27, 1989. On October 19, 1989, MSHA extended the comment period to March 2, 1990. (54 FR 43026) in response to requests from the mining community. On January 25, 1990, (55 FR 2535) the Agency set three separate comment periods for different provisions in the proposal and announced its intent to hold a series of three sets of public hearings. The comment period for the first group of provisions closed on March 2, 1990, and hearings were held on June 4 and 6, 1990. The comment period for the second group of provisions closed on June 29, 1990, and hearings were held on October 12 and 19, 1990. The comment period for the PEL portion of this rulemaking closed on December 14, 1990. MSHA's proposed PELs for nitrogen dioxide, nitric oxide, carbon nonoxide, and sulfure dioxide were addressed in the June 1990 public hearings and will not be discussed in these hearings.

The purpose of the public hearings is to receive relevant comments and respond to questions about the proposed PELs. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA, following by an opportunity for members of the public to make oral presentations. The hearing panel will be available to answer relevant questions. At the discretion of the presiding official , speakers, may be limited to a maximum of 20 minutes for their presentations. In the interest of conducting a productive hearing, MSHA will schedule speakers, in a manner that allows all points of view to e hearsd as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

To allow for the submission of any post-hearing comments and final remarks, the record will remain open until Friday, June 7, 1991.

Issues

MSHA's current requirements for permissible exposure limits for metal and nonmetal mines incorporate by reference the 1973 edition of the American Conference of Governmental Industrial Hygienist (ACGIH) Threshold Limit Values (TLVs). Current requirements for PELs for surface coal mines and surface areas of underground coal mines incorporate by reference the 1972 edition of the ACGIH TLVs. Underground coal mines must meet the current ACGIH TLVs for noxious and poisonous gases other than carbon dioxide.

The proposed rule continues to set permissible exposure limits in terms of time-weighted averages (TWAs), short-term exporsure limits (STELs), ceiling limits, and mixed exposure limits (MELs). These PELs are based primarily upon ACGIH's 1989-90 TLVs. However, some PELs reflect those set by the Occupational Safety and Health Administration (OSHA) and Recommended Exposure Limits (RELs) set by the National Institute for Occupational Safety and Health.

Some of the substances on the PEL list are inherent in the ore being mined, while others are additives used during milling or processing, cleaning, maintenance of equipment, or laboratory testing. The health effects of these substances may range from allergic reactions to systemic toxicity. Some may cause cancers, central and peripheral neuropathies, lung disease, liver and kidney damage, birth defects, or other systemic effects. In some instances, exposure to more than one substance may result in greater damage from a combined effect than from exposure to the individual substances. MSHA intends that the final rule will establish appropriate exposure limits for those substances that, without such regulation, could cause a material impairment of health or functional capacity to miners.

MSHA has received numerous comments on the proposed PELs. This notice sumarizes most of the main issues raised in those comments.

At an earlier public hearing on this proposal, the Agency received public input on definitions of material impairment of health or functional capacity. However, commenters are encouraged to give testimony regarding this issue as it relates to a specific substance or PEL in the proposal.

Commenters generally criticized the Agency for limiting its discussion of specific substances on the PEL table to less than two dozen of the several hundred substances listed. They requested that MSHA give a rationale for each substance in the proposed rule, evidence that all are present in the mining environment, and how these chemicals are used. For those substances for which the Agency proposed to lower the PEL, commenters generally wanted MSHA to: Prove that the present PEL presents a significant risk to miners; quantify the extent of the risk; prove that risk represents a "material impairment of health;" and prove that any change in the standard is economically and technologically capable of being achieved.

These commenters also requested that MSHA discuss epidemiological data establishing that these substances are present in concentrations that cause a material impairment of health or functional capacity to miners. They also requested MSHA to provide evidence on the feasibility of controlling these substances with either engineering or administrative controls.

Other commenters argued that MSHA had not based its proposed PELs on the best available evidence that would attain the highest degree of health and safety protection for the miner. These commenters argued that although MSHA may cosnider feasibility when setting PELs, such considerations may not be to the detriment of miners' health. These commenters opposed PELs based upon the ACGIH TLVs, stating that the ACGIH documentation is based upon an incomplete survey of the available scientific literature. These commenters believe that the documentation for the National Institute for Safety and Health's (NIOSH) recommended exposure limits (RELs) is much better than the documentation for ACGIH TLVs. They requested that, where applicable, MSHA should promulgate the NIOSH REL as the Agency's PEL where the REL is the lowest exposure limit.

Specific comments were received on the following substances:

Ammonia. Several commenters opposed lowering the PEL for ammonia at surface coal mines from the current 50 ppm TWA to 25 ppm which is the current limit for metal and nonmetal mines. Commenters also opposed lowering the current 30-minute 100 ppm STEL for all mines to the proposed 35 ppm STEL. These commenters believe that ammonia is an irritant at relatively low concentrations with no long term health affects.

Asbestos. The current asbestos PEL for all mines is 2 fiber/cc TWA and a 10 f/cc 15-minute STEL. MSHA proposed a 0.2 f/cc TWA and a 1 f/cc STEL, using MSHA's current method of identifying asbestos. However, in the footnote to Table B-1 the Agency inadvertently omitted a portion of the current method for identifying asbestos fibers. The footnote to Table B-1 should state:

> Fibers greater than 5 microns in length, as determined by the membrane filter method at 40-450 magnification (4 millimeter objective) phase contrast illumination. Asbestos is a generic term for several hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Asbestos is defined as chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos and any of these minerals that have been chemically treated or altered.

On July 20, 1990, (55 FR 29712) OSHA proposed lowering its current asbestos PEL for general industry and construction from a 0.2 f/cc TWA to 0.1 f/cc. OSHA stated that reduction of the PEL to a 0.1 f/cc TWA would reduce the significant risk it believes to exist at the current OSHA PEL of 0.2 f/cc. Commenters are requested to submit information and analytical data for an appropriate limit for the mining industry.

Some commenters recommended that MSHA promulgate the NIOSH REL of 0.1 f/cc. Other commenters suggested that the risks from exposure to asbestos differ between general industry and mining. Some commenters believe that the health risks resulting from chrysotile asbestos mining and milling activities are less harmful than risks associated with other asbestiform varieties and other activities such as asbestos construction work. These commenters recommend that MSHA retain its current limit for asbestos mining and milling of 2.0 f/cc.

One commenter suggested that MSHA promulgate a separate standard for chrysotile asbestos mining and milling. Meanwhile, this commenter recommends that MSHA continue to regulate chrysotile asbestos with a 2.0 f/cc TWA.

Non-asbestiform minerals—actinolite, tremolite, and anthophylite. Most commenters supported the Agency's position on regulating these substances as respirable mine dust rather than as asbestos. However, several commenters suggested that MSHA alter its current 3 to 1 aspect ratio fiber quantification method for mining environments because of the commonness of amphibole cleavage fragments in many mining environments which satisfy the fiber criteria. These commenters suggest a 10 to 1 aspect ratio with a maximum width of 1 um should be adopted as the criteria for asbestos quantification.

Borates, tetra, sodium salts (all forms). MSHA proposed a PEL of 5 mg/m^3 total dust, regardless of the state of hydration. One commenter recommended that MSHA promulgate a 10 mg/m^3 TWA, stating that all borates are mild irritants, at most. The commenter submitted a study to MSHA entitled "Acute and Chronic Respiratory Effects of Sodium Borate Particulate Exposures" to document this assertion. This study concludes that exposure to sodium borate particulates does not cause any chronic abnormality in pulmonary function or serious respiratory health effects. Because the eye, nose or upper respiratory tract are the primary sites of irritation, the commenter recommended that total, rather than respirable, mass sampling be the sampling method of choice.

Cadmium and compounds. MSHA proposed two alternative TWAs of 0.010 mg/m^3 (10 µg/m^3) or 0.005 mg/m^3 (5 µg/m^3), and deletion of the STEL. The current PEL for cadmium (metal dust and soluble salts) is a 0.2 mg/m^3 TWA, and for cadmium oxide fume as cadmium the PEL is a 0.1 mg/m^3 TWA. The current STEL for cadmium oxide fume at all mines is 0.3 mg/m^3. A few commenters recommended that the Agency promulgate the lowest feasible limit; other commenters did not believe that there is sufficient chronic effect evidence to justify any reduction in the PEL. Some commenters recommended a PEL of 0.020 mg/m^3 (20 µg/m^3) based upon evidence suggesting possible adverse renal effects from long term exposure to cadmium and compounds. These commenters also oppose treating cadmium and compounds as carcinogens.

MSHA continues to seek information and supporting data concerning the feasibility of medical surveillance and medical transfer for cadmium as well as lead, mercury, and arsenic. Comments should include a discussion of the health benefits that would be obtained.

Calcium hydroxide and calcium oxide. The existing PELs for calcium oxide for all mines are a 5 mg/m³ TWA and a 10 mg/m³ 30-minute STEL. MSHA proposed a 5 mg/m³ (total dust) TWA for any combination of calcium oxide and calcium hydroxide with no STEL. As stated in the proposed rule, the Agency is unaware of any sampling method that will selectively collect either calcium oxide or calcium hydroxide. Also, MSHA stated that it knows of no sampling method that will maintain the calcium oxide/calcium hydroxide ratio of a collected sample.

Several commenters opposed MSHA's proposal, but agree with the Agency that no sampling method exists for lime that can distinguish between different compounds of calcium. These commenters believe that a total dust limit for calcium compounds should not be established until MSHA has reviewed a health effects study on lime under preparation by the National Lime Association.

Several other commenters opposed the proposal, stating that the recommended limit is not low enough to address the hazard. These commenters recommend a 2 mg/m³ TWA.

Coal tar pitch volatiles (as benzene solubles). MSHA's existing standard for coal tar pitch volatiles is 0.2 mg/m³, which is the same in the proposed rule. Although some commenters did not oppose MSHA's proposed PEL, one commenter did request that the Agency not use the coal tar pitch volatile PEL for determination of exposure to diesel particulate. Issues on a diesel particulate standard would be the subject of separate rulemaking. Other commenters recommended the NIOSH REL of 0.1 mg/m³, (as carcinogen) (cyclohexane extractable).

Copper. MSHA propsed a 0.2 mg/m³ TWA for copper fume, a 1 mg/m³ TWA for copper dusts and mists (as Cu), and deletion of the STEL. MSHA's existing PELs for copper fume are a 0.1 mg/m³ TWA and a 0.1 mg/m³ STEL. For copper dust and mist, the existing PEL is a 1 mg/m³ TWA. Several commenters supported the proposed change to raise the TWA. Another commenter recommended that MSHA promulgate the NIOSH REL of 0.1 mg/m³ for copper fume, and 0.2 mg/m³ for copper dust.

Ethylene glycol dinitrate and nitroglycerin. MSHA proposed the OSHA PELs for ethylene glycol dinitrate of 0.1 ppm STEL and for nitroglycerin, a 0.1 ppm STEL. Some commenters objected to MSHA's proposal to lower the existing STEL for nitroglycerin from 0.2 ppm to 0.1 mg/m³ because they believe that the existing standard does not pose a significant health risk, and the proposed limits would be infeasible.

Glycol ethers. MSHA has received a criteria document from NIOSH entitled "Occupational Exposure to Ethylene Glycol Monobutyl Ether and Ethylene Glycol Monobutyl Ether Acetate" (September 1990). This document excamines the occupational health risks associated with exposure to ethylene glycol monobutyl ether (EGBF) and its acetate, ethylene glycol monobutyl ether acetate (EGBEA). NIOSH recommends exposures to EGBE and EGBEA in the workplace be limited to a 5 ppm TWA. MSHA had proposed no change to the current PEL for EGBE (listed as 2-butoxyethanol) which is a 25 ppm TWA. The Agency currently does not regulate EGBEA.

NIOSH states that in humans and animals, the principal health effects of exposure to EGBE and EGBEA involve the blood and hematopoietic system, the central nervous system (CNS), the kidneys, and the liver. No evidence indicates that EGBE or EGBEA causes reproductive or developmental toxicity.

In animals, CNS, liver, and kidney effects occur at higher EGBE exposures than hematotoxic effects. NIOSH thus reasons that limiting exposures to prevent hematotoxic effects will also prevent CNS, kidney, and liver effects. Because only limited data are available from human studies, NIOSH based its recommended exposure limits for EGBE on data from animal studies. NIOSH adjusted the data to allow for uncertainties in the extrapolation from animals to humans. Because any effects of EGBEA are likley to occur after this compound is metabolized to EGBE, NIOSH recommended the same limit for EGBEA.

EGBE is widely used as a solvent in surface coatings such as spray lacquers, quick-dry lacquers, enamels, varnishes, varnish removers, and latex paint. EGBEA is primarily used as a retarder solvent for nitrocellulose lacquer and epoxy and acrylic enamels; it is also a film coalescing aid for polyvinyl acetate latex. NIOSH estimates that over 8,000 mining machine operators are potentially exposed to EGBEA.

MSHA requests comments on establishing the NIOSH RELs for these substances as permissible exposure limits. NIOSH recommends that exposure to EGE and EGBEA in the workplace be limited to 5 parts per million parts of air (5 ppm). NIOSH also recommends prohibiting dermal contact because EGBE and EGBEA are readily absored through the skin.

Kaolin. MSHA currently regulates kaolin as a nuisance dust with a TWA of 10 mg/m³ total dust. The Agency proposed to regulate kaolin as a respirable mine dust with a TWA of 5 mg/m³. Commenters supported this treatment of this substance.

Iron oxide fume. MSHA proposed a 5 mg/m³ TWA for iron oxide fume; the existing limit is 10 mg/m³. The reduction of the PEL is based upon the ACGIH TLV. Some commenters opposed this reduction and requested that MSHA review the OSHA PEL standard for iron oxide fume which retains the 10 mg/m³ TWA. These commenters do not believe that evidence exists to substantiate a need to reduce the limit.

Perchloroethylene. The current PELs for perchloroethylene are a 100 ppm (670 mg/m³) TWA and a 30-minute 200 ppm STEL. MSHA proposed to regulate this substance as a carcinogen with a TWA of 25 ppm (170 mg/m³) based on OSHA's current PEL. Some commenters suggested that MSHA promulgate the lowest feasible limit for percholorethylene. Other commenters recommend that the Agency use the current ACGIH TLV of 50 ppm. These commenters stated that several studies have been conducted on the acute and chronic health effects from exposure to perchloroethylene, and 50 ppm would adequately address the hazards found. These commenters also believe that the evidence on the carcinogenicity of perchloroethylene is inconclusive.

Respirable Mine Dust. MSHA proposed a new concept for controlling exposure to respirable mine dust at metal and nonmetal mines. The Agency proposed a TWA of 5 mg/m³ for respirable mine dust to include all ambient, airborne particulates capable of being inhaled into the lower respiratory tract. MSHA would sample for respirable mine dust by using a sampling device with the size-selection characteristics of a 10-mm nylon cyclone operated at a flow rate of 1.7 liters per minute. A number of commenters opposed changing the Agency's current nuisance dust limit of 10 mg/m³ total dust. These commenters believe that there is insufficient documentation that mixed dust fibrosis (MDF) poses a significant risk to miners.

Many commenters stated that if an airborne contaminant were to be regulated, it should be the insoluble portion of the mine dust, if present. MSHA stated in the proposal that the proposed 5 mg/m³ respirable mine dust limit would prevent the development of pulmonary alveolar proteinosis (PAP) and mixed dust fibrosis (MDF). These commenters disagreed about including soluble dusts.

Commenters stated that when sodium chloride particles are inhaled and enter the throat and lungs, the particles dissolve in saliva and other already saline body fluids into a harmless, still weak saline solution. These commenters also stated that a PEL for salt dust is unnecessary and unduly burdensome, and would not benefit miners. They also questioned the economic feasibility of complying with the standard. Commenters stated that the costs to install dust collector systems to achieve the last increment of respirable dust reductions would be excessive.

One commenter recommended that MSHA promulgate a PEL for salt between a 30 to 50 mg/m³ range. Another commenter suggested that MSHA modify the proposed respirable dust PEL to allow MSHA to eventually adopt internationally accepted workplace dust sampling standards, which would include definitions of inhalable, thoracic, and respirable dust, along with internationally accepted sampler performance standards. Since there is no current international consensus on respirable dust sampling, this commenter did not believe that MSHA should adopt any such change now.

Silica (crystalline quartz). A number of commenters strongly supported MSHA's proposed 0.1 mg/m³ respirable dust TWA for silica, which is based upon the ACGIH TLV. These commenters opposed the NIOSH REL of 0.05 mg/m³ and any regulation of silica as a carcinogen. Other commenters recommended the NIOSH REL.

Silver. MSHA proposed the current PEL of 0.01 mg/m³ for silver, metal, dust and fume, and soluble silver compounds. Several commenters stated that the current PEL should be revised to include only soluble silver salts rather than metallic silver, because they believe that metallic silver does not cause or contribute to a systemic health or generalized argyria via inhalation.

Uranium. MSHA's current limit for uranium (soluble and insoluble compounds) is a 0.2 mg/m³ TWA. MSHA proposed changing this TWA to 0.05 mg/m³ for soluble compounds, and retain the current TWA of 0.2 mg/m³ for insoluble compounds, and a STEL of 0.06 mg/m³ would be added for insoluble compounds. Several commenters noted that MSHA does not currently regulate soluble compounds. Other commenters opposed the MSHA proposal as not being based upon the best evidence, and recommended the NIOSH REL of 0.05 mg/m³ for soluble compounds of uranium, and 0.2 mg/m³ for insoluble compounds.

Vanadium. MSHA's current standard for vanadium (V_2O_5) as V is a 0.5 mg/m³ TWA for dust and a 0.05 mg/m³ TWA for fume. MSHA proposed the NIOSH RELs of a 1 mg/m³ TWA for vanadium and a ceiling limit of 0.05 mg/m³ for vanadium compounds. MSHA stated its belief that the NIOSH limits address the various forms of vanadium found in mining such a vanadium trioxide better than the ACGIH limits for vanadium (V_2O_5) as V. MSHA also proposed to delete the existing 0.5 mg/m³ 30-minute STEL for vanadium compounds. Several commenters stated that lowering the current PEL for vanadium compounds is unwarranted. These commenters recommend a PEL for vanadium (V_2O_5) as V. MSHA also proposed to delete the existing 0.5 mg/m³ 30-minute STEL for vanadium compounds. Several commenters stated that lowering the current PEL for vanadium compounds is unwarranted. These commenters recommend a PEL for vanadium (V_2O_5) of 0.05 mg/m³ respirable dust based on the current ACGIH recommendations.

Welding Fumes. The current PEL for welding fumes for surface coal mines and surface areas of underground coal mines is a 10 mg/m³ TWA. MSHA proposed a 5 mg/m³ TWA for welding fumes, not otherwise classified. Many commenters requested the Agency to retain the current limit, because they believe that medical studies do not substantiate a reduction in the PEL. They stated most the articles dson health effects of welding fumes indicate that fume concentrations of less than 10 mg/m³ of ferric oxide of zinc oxide will cause no respiratory hazard to the average unprotected person, provided that excessive metal fume and gas inhalation is avoided.

MSHA particularly seeks further comment on these issues in the proposed rule as well as the other PELs in the proposed rule.

Dated: February 21, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-4522 Filed 2-26-91; 8:45 am]

BILLING CODE 4510-43-M

---

30 CFR Part 100

RIN 1219-AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: In response to requests from the mining community, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule concerning criteria and procedures for its proposed assessment of civil penalties.

DATES: Written comments must be received on or before March 18, 1991.

ADDRESSES: Send written comments to the Office of Standards, Regulations, and Variances, MSHA, room 631 Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA. (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 28, 1990, MSHA published a proposed rule (55 FR 53482) to revise the MSHA regulations governing the criteria and procedures used for assessing civil penalties. The proposal, which would update part 100, is responsive to the Omnibus Budget Reconciliation Bill that became effective on November 5, 1990. It also reflects inflation by including across-the-board increases for all categories of penalties. In addition, it includes penalty increases for a mine with an excessive history of violations. The comment period for the proposed rule was scheduled to close on March 1, 1991 but in response to requests from the mining community for more time in which to prepare their comments, MSHA is extending the comment period to March 18, 1991. All interested parties are encouraged to submit comments prior to this date.

Dated: February 20, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-4497 Filed 2-26-91; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50509A; FRL-3841-5]

8-Acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triazaspiro[4.5]decane-2,4-dione; Withdrawal of Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Proposal.

SUMMARY: EPA is withdrawing a proposed significant new use rule (SNUR) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of the toxic substances control act (TSCA) is not warranted at this time.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 13, 1984 (49 FR 1753), EPA proposed a SNUR to be codified at 40 CFR 721.260 establishing significant new uses for 8-acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triazaspiro[4.5]decane-2,4-dione. EPA is withdrawing this proposal in light of additional toxicity data received for this substance.

1. Rulemaking Record

The record for the proposed rule which is being withdrawn by today's rule was established at OPTS 50509 (P–83–370). That record includes information considered by the Agency in developing the proposed rule and includes the test data to which the Agency has responded with this notice of withdrawal.

II. Background

EPA is withdrawing the proposed significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P–83–370

Chemical name: 8-Acetyl-3-dodecyl-7,7,9,9-tetramethyl-1,3,8-triazaspiro[4.5]decane-2,4-dione.
CAS Number: Not available.
Effective date of revocation of section 5(e) consent order: August 30, 1985.
Basis for revocation of section 5(e) consent order: The Order was revoked based on test data submitted under the terms of the Consent Order. Based on the Agency's analysis of the submitted data, EPA finds, for purposes of TSCA section 5, that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: Data on developmental toxicity studies conducted in mice and rats. The no-effect level for the mice in the developmental study is 200 mg/kg/day.
CFR citation: 40 CFR 721.260.

III. Objectives and Rationale of Withdrawing the Proposed Rule

During review of the PMN submitted for the chemical substance that is the subject of this withdrawal of a proposed SNUR, EPA concluded that for the substance, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was proposed pending certain toxicity testing. EPA reviewed the toxicity testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health and environmental effects of the substance. EPA concluded that for the purposes of TSCA section 5 the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The withdrawal of proposed SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is withdrawing the proposed SNUR provisions for the chemical substance. This means that EPA will not require notice of any company's intent to manufacture, import, or process the substance.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: February 19, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–4623 Filed 2–26–91; 8:45 am]
BILLING CODE 6560–50–F

---

40 CFR Part 721

[OPTS–50575A; FRL–3841–4]

Alkane Polyol Phosphate Ester; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by March 29, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPTS–50575A, followed by the last four digits of the number of the CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for alkane polyol phosphate ester. Because of additional toxicity data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPTS–50575 (P–89–448). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation deleted in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit II.

PMN Number P–89–448

Chemical name: (generic) Alkane polyol phosphate ester.
CAS Number: Not available.
Effective date of revocation of section 5(e) consent order: August 23, 1990.
Basis for revocation of section 5(e) consent order: The Order was revoked based on test data submitted under the terms of the Consent Order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An *in vivo* mouse micronucleus study by intraperitoneal (IP) route showed that the chemical substance is not a chromosome mutagen. A 28–day repeated dose oral study in rats showed a no adverse observed effect level (NAOEL) of 2,500 mg/kg/day. There were no clinical signs of toxicity or compound-related effects reported at any dose level.
CFR citation: 40 CFR 721.288.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed the toxicity testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other such appropriate designation. Comments not claimed as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated:February 19, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

§ 721.288 [Removed]

2. By removing § 721.288.

[FR Doc. 91–4624 Filed 2–26–91; 8:45 am]
BILLING CODE 6560–50–F

---

40 CFR Part 721

[OPTS–50582A; FRL–3846–9]

Polymer of Maleic Anhydride, Benzenedicarboxylic Acid and Disubstituted Alkylamine; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk of injury to human health and further regulation under section 5 of TSCA is not warranted at this time.

DATES: Written comments must be submitted to EPA by March 29, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPTS–50582A, followed by the last four digits of the number of the CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for polymer of maleic anhydride, benzenedicarboxylic acid, and disubstituted alkylamine. Because of additional toxicity data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPTS–50582 (P–88–1540). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance.

BEST COPY AVAILABLE

including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation deleted in the regulatory text section of this rule. Further background information for the substance is contained in the rulemaking record referenced above in Unit II.

PMN Number P-88-1540

Chemical name: (generic) Polymer of maleic anhydride, benzenedicarboxylic acid, and disubstituted alkylamine.
CAS Number: Not available.
Effective date of revocation of section 5(e) consent order: July 20, 1990.
Basis for revocation of section 5(e) consent order: The Order was revoked based on test data submitted under the terms of the Consent Order. Based on the Agency's analysis of the submitted data, EPA finds for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: The substance does not induce gene mutation when tested in the *Salmonella*/mammalian microsomal assay and is not a chromosome mutagen *in vivo* in the mouse micronucleus assay by the intraperitoneal route. The acute oral LD50 for this substance <5 g/kg. The 28-day assay for the substance showed reductions in mean corpuscular volumes in males, increases in alanine aminotransferase values for both sexes, and inflammatory cell infiltration or congestion in female intestines at the 900 mg/kg dose level. No adverse effects were shown at the next lower level of 60 mg/kg.
CFR citation: 40 CFR 721.1645.

III. Objectives and Rationale of Proposing Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation of a SNUR, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make reasoned evaluations of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed the toxicity testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes effective EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: February 19, 1991

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

§ 721.1645 [Removed]

2. By removing § 721.1645.

[FR Doc. 91-4625 Filed 2-26-91; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7015]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Locke, Acting Chief, Risk Studies Division Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, state of regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance coverage on existing buildings and their contents.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local commuity voluntarily adopts floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adpopted in compliance with minimum Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Flooding source	Location	#Depth in feet above ground ° Elevation in feet (NGVD)	
				Existing	Modified
Arkansas	Baxter County Unincorporated Areas.	White River	Approximately 371 miles above confluence with Black River.	None	*386
			Approximately 381 miles above confluence with Black River.	None	*406
Maps available for inspection at the Mountain Home City Hall, Mountain Home, Arkansas.					
Send comments to The Honorable Joe Dillard, Baxter County Judge, Baxter County Courthouse, Mountain Home, Arkansas 72653.					
Arkansas	Jonesboro, City, Craighead County.	Whiteman's Creek	At County Route 674	None	*231
			Approximately 100 feet downstream of Union Pacific Railroad.	None	*249
			Approximately 317 feet upstream of Union Pacific Railroad.	None	*251
			Approximately 739 feet downstream of Careway Road.	None	*268
		Moore's Ditch Lateral	At the confluence with Moore's Ditch	None	*237
			Approximately 53 feet upstream of Union Pacific Railroad.	None	*250
		Butlers Ditch	At confluence with Little Bay Ditch	None	*232
			Approximately .25 mile upstream of State Route 18.	None	*235
		Maple Slough Ditch	At the confluence with Gum Slough Ditch	None	*232
			At the State Route 18	None	*235
		Christian Creek	At the confluence with Lost Creek	None	*267
			At Oakhurst Street	None	*295
			Approximately 422 feet downstream of Wood Springs Road.	None	*314
			Approximately 211 feet downstream of Covey Road.	None	*339
		Christian Creek Lateral	At the confluence with Christian Creek	None	*288
			Approximately 750 feet upstream of the confluence with Christian Creek.	None	*290
			At West Johnson Avenue	None	*293
			Approximately 300 feet downstream of Clubhouse Street.	None	*294
		Turtle Creek	At the confluence with Whiteman's Creek	*247	*246
			At St. Louis Southwestern Railway	None	*267
			At the downstream side of U.S. Route 49 and State Route 1.	None	*297
		Gum Slough Ditch	At a point approximately 150 feet downstream of County Route 51.	None	*232
			At a point approximately 450 feet upstream of County Route 51.	None	*232
		Viney Slough Ditch	Approximately .25 mile upstream of County Route 151.	None	*232
			At the confluence of Higginbottom Creek (County Route 143).	None	*247
		Lateral No. 3	At the confluence with Little Bay Ditch	None	*232
			At Commerce Drive	None	*236
		Little Bay Ditch	Approximately .5 mile downstream of the confluence of Lateral No. 3.	None	*232
			Approximately .3 mile upstream of State Route 18.	None	*236
		Higginbottom Creek	At the confluence with Viney Slough Ditch	None	*247
			Approximately 250 feet downstream of State Route 1 Bypass.	None	*256
			At Caraway Road Downstream of Parker Road	None	*264
		Lost Creek	Approximately .2 mile downstream of U.S. Route 63.	None	*283

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	#Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
			Approximately .3 mile upstream of Clubhouse Road.	None	*294
			Approximately 800 feet upstream of Church Street.	None	*299
			County Road	None	*323
		Turtle Creek Lateral	At the confluence with Turtle Creek	None	*269
			Approximately 260 feet upstream of the confluence with Turtle Creek.	None	*269

Maps available for inspection at the City Hall, 314 W. Washington, Jonesboro, Arkansas.
Send comments to The Honorable Hubert Bordell, Mayor of the City of Jonesboro, Craighead County, P.O. Box 1845, Jonesboro, Arkansas 72403.

Arkansas	Norfolk, City, Baxter County.	White River	Approximately 374 miles above confluence with Black River.	None	*392
			Approximately 377 miles above confluence with Black River.	None	*399

Maps available for inspection at the City Hall, Norfolk, Arkansas.
Send comments to The Honorable W.R. "Bob" Nease, Mayor of the City of Norfolk, Baxter County, P.O. Box 32, Norfolk, Arkansas 72658.

California	City of Corning, Tehama County.	Jewett Creek	At Woodson Avenue	*271	*273
			Approximately 300 feet downstream of Toomes Avenue.	*277	*278
			Approximately 200 feet downstream of Interstate Highway 5 northbound lane.	*281	*283

Maps are available for review at Department of Public Works, City Hall, 794 Third Street, Corning, California.
Send comments to The Honorable Floyd Whitnack, Mayor, City of Corning, City Hall, 794 Third Street, Corning, California 96021.

California	Mendota, City, Fresno County.	Panoche Creek	At the intersection of Sorensen and Holmes Avenues.	None	*168

Maps are available for inspection at City Hall, 643 Quincy Street, Mendota, California.
Send comments to The Honorable Dan Ayala, Mayor, City of Mendota, City Hall, 643 Quincy Street, Mendota, California 93640.

Connecticut	Litchfield, Town, Litchfield County.	Bantam River (Right Bank)	Approximately 160 feet downstream of State Route 63.	None	*911
			Approximately 1,000 feet upstream of U.S. Route 202.	None	*962

Maps available for inspection at the Planning and Zoning Office, 74 West Street, Litchfield, Connecticut.
Send comments to Ms. Linda Bongiolatti, First Selectmen of the Town of Litchfield, Litchfield County, 74 West Street, Litchfield, Connecticut 06759.

Connecticut	West Hartford, Town, Hartford County.	Tumbledown Brook Tributary	At downstream corporate limits	*142	*137
			At upstream corporate limits	*152	*147

Maps available for inspection at the Town Planner's Office, 50 South Main Street, West Hartford, Connecticut.
Send comments to Mr. Barry Feldman, West Hartford Town Manager, Hartford County, 50 South Main Street, West Hartford, Connecticut 06107.

Georgia	City of Warner Robins, Houston County.	Sandy Run Creek	Just upstream of State Route 247	*273	*270
			About 3,600 feet upstream of the confluence of Howard Branch.	*313	*313
		Howard Branch	At mouth	*301	*305
			About 470 feet upstream of mouth	*305	*305

Maps available for inspection at the City of Warner Robins, Engineering Department, Warner Robins, Georgia.
Send comments to The Honorable Edward Martin, Mayor, City of Warner Robins, 700 Watson Boulevard, Warner Robins, Georgia 31099.

Maine	Sanford, Town, York County.	Mousam River	At confluence with Estes Lake	None	*216
			Approximately 1,100 feet upstream of State Route 109.	None	*432
		Estes Lake	At the Estes Lake Dam	None	*216
			Approximately 7,300 feet upstream of Pool's Crossing.	None	*217

Maps available for inspection at the Town Hall, 267 Main Street, Sanford, Maine.
Send comments to Mr. John E. Webb, Sanford Town Administrator, York County, Town Hall, 267 Main Street, Sanford, Maine 04073.

Maryland	Frederick, City, Frederick County.	Rock Creek	Approximately 1,400 feet upstream of confluence with Carroll Creek.	*309	*306
			Approximately 1,750 feet upstream of confluence with Carroll Creek.	*310	*309

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	#Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the Office of Planning and Engineering, City Hall, 101 North Court Street, Frederick, Maryland.
Send comments to The Honorable Paul P. Gordon, Mayor of the City of Frederick, Frederick County, 101 North Court Street, Frederick, Maryland 21707.

Maryland	Frederick County Unincorporated Areas.	Unnamed Tributary to Hollow Creek.	Approximately 450 feet downstream of Beech Tree Lane.	None	*578
		At downstream side of Beech Tree Drive	None	*607	

Maps available for inspection at the Winchester Hall, 12 East Church Street, Frederick Maryland.
Send comments to Ron Sundergill, President of the Frederick County Commission, Winchester Hall, 12 East Church Street, Frederick County, Frederick, Maryland 21701.

Massachusetts	Harwich, Town, Barnstable County.	Pleasant Bay	At the northern corporate limits	*12	*17
		Muddy Creek	At the intersection of Sugar Hill Drive and Nickerson Road.	*8	*12

Maps available for inspection at the Engineering Department, Town Hall, 732 Main Street, Harwich, Massachusetts.
Send comments to Mr. Wayne Melville, Harwich Town Administrator, Barnstable County, P.O. Box 993, Harwich, Massachusetts 02645.

Massachusetts	Orleans, Town, Barnstable County.	Atlantic Ocean	Sarah's Pond	None	*12
			East of Little Pochet Island	*25	*15
		Little Pleasant Bay	Pilgrim Lake	None	*13
			Meeting House Pond	*8	*13
			Namequoit River	*8	*13
			Paw Wah Pond	*8	*14
			Portanimicut Road extended	*10	*17
		Pleasant Bay	Northwest of intersection of Tar Kiln Road and State Route 28 (South Orleans Road).	*8	*12
			Eastern shoreline of Sipson Island	*10	*17

Maps available for inspection at the Town Office, 19 School Road, R.R. #1, Orleans, Massachusetts.
Send comments to Ms. Nancymarie Schwinn, OrleansTown Executive, Barnstable County, 19 School Road, R.R. #1, Orleans, Massachusetts 02653.

Massachusetts	Weymouth, Town, Norfolk County.	Old Swamp River	Approximately 975 feet downstream of Elm Street.	*97	*96
			Approximately 125 feet upstream of Ralph Talbot Street.	*112	*111

Maps available for inspection at the Town Engineer's Office, 120 Winter Street, Weymouth, Massachusetts.
Send comments to Mr. John S. Carey, Chairman of the Town of Weymouth Board of Selectmen, Norfolk County, 120 Winter Street, Weymouth, Massachusetts 02188.

New Jersey	Ridgefield Park, Village, Bergen County.	Overpeck Creek	At Tidegate at New Jersey Turnpike (I-95)	*9	*7
			Approximately 1.2 miles upstream of U.S. Route 46.	*9	*7

Maps available for inspection at the Village Administrative Offices, 234 Main Street, Ridgefield Park, New Jersey.
Send comments to The Honorable Fred Chriscuolo, Mayor of the Village of Ridgefield Park, Bergen County, 234 Main Street, Ridgefield Park, New Jersey 07660.

New York	Easton, Town, Washington County.	Batten Kill	Approximately 1,300 feet downstream of Batten Kill Railroad.	None	*157
			Approximately 150 feet upstream of Ray Road	None	*376

Maps available for inspection at the Town Hall, Route 40, North Easton, New York.
Send comments to Mr. R. Harry Booth, Easton Town Supervisor, Washington County, R.D. 1, Box 369, Greenwich, New York 12834.

New York	Northumberland, Town, Saratoga County.	Hudson River	At corporate limits	*95	*101
			At downstream side of Thomson Dam	*100	*103
		Champlain Canal	At corporate limits	*109	*102
			Approximately 500 feet downstream of Divergence with Hudson River.	*109	*108

Maps available for inspection at the Town Hall, Catherine Street, Gansesboort, New York.
Send comments to Mr. Carl Seymour, Northumberland Town Supervisor, Saratoga County, P.O. Box 126, Gansesboort, New York 12831.

Oklahoma	Henryetta, City, Okmulgee County.	Coal Creek	Approximately 450 feet upstream of confluence of Unnamed Creek.	None	*654
			Approximately .28 mile downstream of U.S. Highway 62 & 75.	None	*656
		Unnamed Creek	Approximately .03 mile downstream of U.S. Highway 62 & 75.	None	*653
			Approximately .075 mile downstream of U.S. Highway 62 & 75.	None	*653
		Dutch Creek	Approximately 230 feet downstream of Corporation Street.	None	*691
			Approximately 140 feet upstream of Corporation Street.	None	*691

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Flooding source	Location	#Depth in feet above ground * Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 4th & Broadway, Henryetta, Oklahoma. Send comments to The Honorable Thomas G. Henry, Mayor of the City of Henryetta, Okmulgee County, P.O. Box 606, Henryetta, Oklahoma 74437.					
Oklahoma	Okmulgee, City, Okmulgee County.	North Okmulgee Creek	At downstream corporate limits	None	*674
			Approximately .89 mile upstream of corporate limits.	None	*680
		Cussetah Creek Tributary	At downstream corporate limits	*642	*645
			Approximately .7 mile upstream of Mission Road.	None	*667
		South Okmulgee Creek	Approximately .78 mile downstream of corporate limits.	None	*645
			Approximately 1,900 feet upstream of corporate limits.	None	*645
Maps available for inspection at the City Engineer's Office, 111 E. 4th, Okmulgee, Oklahoma. Send comments to Mr. Dave M. Harris, Okmulgee City Manager, Okmulgee County, P.O. Box 250, Okmulgee, Oklahoma 74447.					
Pennsylvania	Bensalem, Township, Bucks County.	Poquessing Creek	Approximately 100 feet upstream of State Road.	*12	*11
			Approximately 0.6 mile upstream of CONRAIL	*132	*135
Maps available for inspection at the Municipal Building, 3800 Hulmeville Road, Bensalem, Pennsylvania. Send comments to The Honorable Edward Burns, Mayor of the Township of Bensalem, Bucks County, 3800 Hulmeville Road, Bensalem, Pennsylvania 19020.					
Pennsylvania	Philadelphia, City, Philadelphia County.	Poquessing Creek	Approximately 300 feet upstream of State Road.	*13	*14
			Approximately 0.6 mile upstream of CONRAIL	*132	*135
Maps available for inspection at the Philadelphia City Planning Commission, 1515 Market Street, 17th Floor, Philadelphia, Pennsylvania. Send comments to The Honorable W. Wilson Goode, Mayor of the City of Philadelphia, Philadelphia County, City Hall, room 215, Philadelphia, Pennsylvania 19107.					
Texas	Conroe, City, Montgomery County.	North Fork of Stewarts Creek	Approximately 800 feet upstream of confluence with Stewarts Creek.	*180	*185
			Approximately 340 feet upstream of Hilbig Road.	None	*219
Maps available at the Community Development Office, 505 West Davis, Conroe, Texas. Send comments to The Honorable Carl Barton, Jr., Mayor of the City of Conroe, Montgomery County, P.O. Box 3066, Conroe, Texas 77305.					
Texas	Jefferson County, Unincorporated Areas.	Walker Branch Tributary	Approximately 150 feet upstream of Tram Road.	*22	*23
			Approximately .8 mile upstream of Tram Road	None	*24
Maps available for inspection at the County Courthouse, 1149 Pearl Street, Beaumont, Texas. Send comments to The Honorable Richard LeBlanc, Jefferson County Judge, 1149 Pearl Street, Beaumont, Texas 77701.					
Texas	Mission, City, Hidalgo County.	Shallow Flooding Area	At intersection of Melba Carter Street and State Route 1016.	None	*108
			West of Mission Main Canal and south of 1 Mile Road.	None	*118
Maps available for inspection at the City Hall, 900 Doherty, Mission, Texas. Send comments to The Honorable Pat Townsend, Mayor of the City of Mission, Hidalgo County, 900 Doherty, Mission, Texas 78572.					

Issued: February 12, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-4578 Filed 2-26-91; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 910116-1016]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA issues a proposed rule to implement certain allocative regulations governing fishing for halibut in Regulatory Area 4E in the eastern Bering Sea and Bristol Bay, as recommended by the North Pacific Fishery Management Council (Council). The primary purpose and intended effect of this action is to assure the Nelson Island and Nunivak Island halibut fisheries a specific share of the 4E catch limit while allowing a test fishery in Bristol Bay.

DATES: Comments on the proposed rule and supporting documents, especially the environmental assessment, regulatory impact review, and initial regulatory flexibility analysis (EA/RIR/IRFA), are invited until March 25, 1991.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668. Copies of the EA/RIR/IRFA may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907-271-2809).

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: The fishery for Pacific halibut (*Hippoglossus stenolepis*) off the coasts of Alaska, British Columbia, Washington, Oregon, and California is governed by the Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention) signed by the United States and Canada in 1953. The Convention is carried out by the International Pacific Halibut Commission (IPHC). In 1977, the Secretary of State, in cooperation with the Secretary of Commerce (Secretary), determined that the Convention was inconsistent with the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Consequently, the United States and Canada amended the Convention in 1979 by the Protocol Amending the Convention (1979 Protocol). The Northern Pacific Halibut Act of 1982 (Halibut Act, Pub. L. No. 97-176) was subsequently enacted to give effect to the 1979 Protocol.

Until 1987, all regulations governing the Pacific halibut fishery were developed by the IPHC and, for United States fishermen, recommended to the Secretary of State for approval and subsequent publication by the Secretary in title 50 of the U.S. Code of Federal Regulations, part 301. However, section 5(c) of the Halibut Act provides for the appropriate Regional Fishery Management Council under the Magnuson Act to develop regulations, including limited access regulations, to govern the United States portion of Convention waters and apply to nationals or vessels of the United States, so long as those regulations are in addition to, and not in conflict with, regulations adopted by the IPHC.

In 1987, this provision was interpreted by NOAA to mean that regulations having domestic allocation of the Pacific halibut resource as a primary purpose will be developed by the Council with respect to Alaska and by the Pacific Fishery Management Council with respect to Washington, Oregon, and California. Regulations having biological conservation as a primary purpose will continue to be developed by the IPHC. This policy does not necessarily prevent both Regional Councils from developing biological conservation regulations that are in addition to and not in conflict with IPHC regulations. The policy also does not necessarily prevent the IPHC from developing regulations that have secondary domestic allocation effects.

To determine the need for domestic allocation of Pacific halibut, the Council solicited regulatory proposals from the general public, other agencies, and staff between August 15 and September 15, 1990. The Council received 18 such proposals that were reviewed and evaluated by the Council's Halibut Management Team (MT) and the Halibut Regulatory Amendment Advisory Group (RAAG). At its meeting of September 24-29, 1990, the Council reviewed recommendations of the MT and RAAG and decided to take no action on the proposals. Instead, the Council decided to request the IPHC to establish separate regulatory areas along the same geographical boundaries of Area 4E that existed in 1990 (55 FR 21876 and 21877, May 30, 1990), and to prescribe catch limits and seasons for these areas. The IPHC staff indicated in October that it was likely the IPHC would decline taking the requested action. Therefore, the Council, at its meeting of December 3-7, 1990, decided to recommend a regulatory amendment for Area 4E.

The MT prepared a draft EA/RIR/IRFA that assesses the potential environmental and economic effects of reasonable regulatory alternatives to the proposed measure including the status quo (or no change) alternative as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. Copies of this draft EA/RIR may be requested from the Council at the address previously listed. Comments on how any of the alternatives may affect the human environment are especially requested.

At its December 1990 meeting, the Council considered public testimony and the recommendations of its Advisory Panel and Scientific and Statistical Committee. The Council then voted to adopt the proposed measure as its preferred alternative and recommend its implementation to the Secretary.

The proposed regulatory change would (1) divide Area 4E into north and south subareas at the line established for the 1990 fishery by interim rule (55 FR 21877, May 30, 1990), (2) apportion 70 percent of the catch limit for Area 4E to the north subarea and 30 percent to the south subarea, and (3) reallocate 50 percent of any unharvested catch share in the north subarea on August 1 to the south subarea.

The principal reason for this proposed action, and the objective of the Council, is to assure the Nelson Island and Nunivak Island halibut fisheries a specific share of the catch limit for Area 4E while allowing a test fishery in Bristol Bay. The Nelson/Nunivak halibut fishery is conducted from small boats that are limited in catching capacity, range, fuel availability, and by weather conditions. In the 6-year period of 1984 through 1989, the halibut harvest in Area 4E has averaged about 38,000 pounds (17,100 kilograms (kg)), but landings have varied over this period from 90,000 pounds (40,500 kg) (in 1987) to 9,000 pounds (4,500 kg) (in 1988). Much of this harvest has been made by non-local or "outside" boats that are larger and more efficient than local boats. Outside boats are those that do not land their entire halibut catch in Area 4E. Current halibut fishing regulations provide some competitive advantage to the local boats.

For the 1990 fishing year, the IPHC expanded Area 4E to the south and east into Bristol Bay to allow a test fishery in an area that previously had been closed to halibut fishing (55 FR 21876, May 30, 1990). To prevent a potentially large number of boats in the new Bristol Bay portion of Area 4E from harvesting a disproportionate share of the 4E catch limit, the Secretary published an interim rule (55 FR 21877, May 30, 1990) that divided the area and established a separate catch limit for the Bristol Bay or south subarea. The IPHC is not expected to change the boundary of Area 4E back to its pre-1990 configuration. Therefore, the Council decided to continue the same catch share protection for the Nelson/Nunivak or north subarea fishery as existed in 1990 under the interim rule.

The only difference between the proposed action recommended by the Council and the 1990 interim rule is the provision for dividing the north subarea catch share that is unharvested on August 1 between the two subareas. This provision is intended to prevent a significantly large unharvested catch share in the north subarea due to the various limitations faced by the Nelson/Nunivak fishery. No reciprocating transfer of harvest opportunity from the south subarea to the north subarea is proposed because the south subarea catch share could constrain the Bristol Bay fishery while the north subarea catch share is unlikely to constrain the Nelson/Nunivak fishery.

The Secretary intends to make a final decision on this action after reviewing the EA/RIR and all public comments on it and this proposed rule. If approved by the Secretary, the resulting final rule would be in effect before the beginning of the 1991 halibut fishing season.

Classification

This proposed rule is published under section 5(c) of the Halibut Act and may be implemented only with the approval of the Secretary. At this time the Secretary has not determined whether this proposed rule is consistent with the Halibut Act and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA in combination with a RIR and IRFA for this regulatory amendment and considered the potential environmental impacts of this proposed rule. A copy of the EA/RIR/IRFA may be obtained from the Council at the address above and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/IRFA. This proposed rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, state or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An IRFA was prepared by the Council as required under section 603 of the Regulatory Flexibility Act. A summary of this analysis follows:

The action would divide Regulatory Area 4E into two components with separate shares of Pacific halibut to allocate the catch limit for Area 4E among U.S. fishermen who are economically dependent on the halibut fishery. The proposed allocation would affect about 126 fishing vessels that are operated predominantly by residents of local communities. While the total value of halibut that will be taken from Area 4E is small relative to the overall halibut fisheries, the value of halibut to the affected fishermen is significant because there are few other opportunities for income.

This proposed rule does not contain any collection-of-information requirement subject to the Paperwork Reduction Act, nor contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12812.

The Council determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: February 21, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 301 is proposed to be amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

2. In § 301.9, paragraph (g) is redesignated as paragraph (h) and revised, and a new paragraph (g) is added to read as follows:

§ 301.9 Catch limits.

* * * * *

(g) Notwithstanding paragraph (a) of this section, the portion of Area 4E that is south and east of a line from 58°21'2" N. latitude, 163°00'00" W. longitude to Cape Newenham (at 58°30'00" N. latitude, 162°10'25" W. longitude) shall be closed to fishing for halibut when the Commission determines that 30 percent of the catch limit for Area 4E has been taken from this portion of Area 4E, except that 50 percent of the unharvested catch limit remaining on August 1 in the portion of Area 4E that is north and west of this line will be available for harvest in the portion of Area 4E that is south and east of this line, subject to the other provisions of this part.

(h) When under paragraphs (c), (d), (e), (f), or (g) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

[FR Doc. 91-4403 Filed 2-21-91; 3:24 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 56, No. 39

Wednesday, February 27, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: The Administrative Conference's Committee on Administration is considering a draft recommendation and consultant report dealing with "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Airworthiness Experience." The draft report, prepared by Professor George Bermann of Columbia University—Columbia School of Law, may provide the basis for Conference recommendations. Professor Bermann's study looks at how U.S. agency officials deal with, and implement standards developed in cooperation with, other countries' regulatory agencies and international bodies. This case study examines the Federal Aviation Administration's participation in the Europeans' efforts to set standards of airworthiness certification for civil aircraft. It is at present in preliminary form, and is being reviewed by the FAA. In addition, the author hopes to fill out the report's analytical framework with added examples of specific interactions. The proposal will be discussed at the Committee's March 8 meeting, described below.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss the draft report and possible recommendation on implementation of OSHRC's settlement judge and simplified proceedings. The draft recommendation and consultant report are available on request from the Conference.

DATES: March 8, 1991, 1 p.m.

LOCATION: Administrative Conference Library, 2120 L Street, NW., suite 500.

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500 (202) 254-7020.

PUBLIC PARTICIPATION: Same as above.

Dated: February 5, 1991.

Jeffrey S. Lubbers,

Research Director

[FR Doc. 91-4611 Filed 2-26-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Intent To Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant a partially exclusive license of ICI Americas, Incorporated, Wilmington, Delaware, on U.S. Patent Application Serial No. 07/542,566, "Starch Encapsulation of Biologically Active Agents by a Continuous Process," filed June 25, 1990, and U.S. Patent Application Serial No. 07/072,201, "Encapsulation by Entrapment Within Matrix of Unmodified Starch," filed July 10, 1987, and issued as Patent No. 4,911,952.

DATES: Comments must be received by April 29, 1991.

ADDRESSES: Send comments to: USDA-ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401-A, BARC-W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344-2786, (FTS) 344-2786.

SUPPLEMENTARY INFORMATION: The USDA-ARS intends to grant to ICI Americas, Incorporated, Wilmington, Delaware, a partially exclusive license to practice the aforementioned inventions with the fields of use limited to certain of the applicant's proprietary products. Notices of Availability were given in the **Federal Register** in August 1990 and July 1990, respectively. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the applicant has submitted a complete and sufficient application for a license with the intent of bringing the inventions to practical application.

The prospective exclusive license will be royalty-bearing, will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirement of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 91-4583 Filed 2-26-91; 8:45 am]

BILLING CODE 3410-03-M

Soil Conservation Service

Finding of No Significant Impact for USDA Water Quality Hydrologic Unit Area, Blackwater River Watershed, in Franklin and Pittsylvania Counties, VA

The USDA Water Quality Hydrologic Unit Area, Blackwater River Watershed,

in Franklin and Pittsylvania Counties, Virginia was recently approved for funding by Clayton Yeutter, Secretary of Agriculture. This Plan was approved to complement the goals stated in the "USDA Water Quality Plan to support the President's Water Quality Initiative" dated July 1989. The Plan will be carried out by the USDA-Soil Conservation Service, USDA-Agricultural Stabilization and Conservation Service and the USDA-Cooperative Extension Service in cooperation with the Blue Ridge Soil and Water Conservation District, Virginia Division of Soil and Water Conservation and the U.S. Environmental Protection Agency. The protection measures to be installed in the Blackwater River Watershed will be funded on a cost-share basis using the authority of the "USDA Water Quality Plan to support the President's Water Quality Initiative". An interdisciplinarian evaluation of the environment was made by the Soil Conservation Service (SCS) in consultation with local, state and federal agencies and interested persons during the planning of this measure.

The objective of the Hydrologic Unit Plan is to improve the water quality in the Blackwater River and Smith Mountain Lake through the reduction of sediment and nutrients from non point sources of pollution.

Planned Action

Treatment includes the installation and protection of enduring and management-type conservation practices on cropland, pastureland, forestland and other land in order to achieve a 50% reduction of sediment and sediment borne nutrients delivered to Smith Mountain Lake. Project goals include a reduction of nutrient loadings from livestock waste through nutrient management activities that attain a nutrient balance of 50% of the farm tracts in the watershed.

Environmental Impact

The proposed Plan will reduce sediment damages and improve water quality.

Two federally listed candidate species and one state listed rare snake may occur in the watershed. The conservation practices planned for this watershed should not adversely affect these species.

An inventory of all known archaeological and cultural resources has been made and the sites are located on U.S.G.S. Quadrangle Maps for reference by SCS personnel. This is to prevent any soil disturbing activity at any known sites.

Adverse Environmental Impacts Which Cannot Be Avoided

Installation of the proposed works of improvement will have short-term adverse impacts on noise, dust and exhaust levels. These levels will increase only during construction.

Alternatives

1. No action. With no action, there would continue to be a "nutrient enriched" designation by the Virginia State Water Control Board for Blackwater River and Smith Mountain Lake.

2. The Hydrologic Unit Plan would improve water quality and protect cropland, pastureland, forestland and other land from excessive erosion and improper animal waste utilization. Sediment delivered to the Blackwater River and Smith Mountain would be reduced by 666,600 tons per year.

Short-term Uses vs. Long-term Productivity

The reduction in erosion and sediment damages, proper utilization of animal waste and the installation of conservation practices will improve the quality of life in this area.

Commitment of Resources

Labor, capital resources and energy used by these planned actions will be irretrievably and irreversibly committed.

Conclusion

This Hydrologic Unit Plan has been planned and environmentally evaluated to ensure that effects are commensurate with the impacts described in this Finding of No Significant Impact. The Environmental Assessment and Environmental Evaluation file are available for public inspection through the office of Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Federal Building, room 9201, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

I have reviewed the Environmental Assessment and have determined this Hydrologic Unit Plan will not result in significant impact on the human environment. I conclude that an Environmental Impact Statement is not necessary.

Dated: February 12, 1991.

George C. Norris,

State Conservationist.

[FR Doc. 91–4612 Filed 2–26–91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 512]

Resolution and Order Approving the Application of the Board of Commissioners of the Port of New Orleans, for Four Special-Purpose Subzones for Avondale Industries, Inc. in Jefferson and Orleans Parishes, LA; Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, filed with the Foreign-Trade Zones Board (the Board) on June 25, 1990, requesting special-purpose subzone status for the four shipbuilding facilities (four sites) of Avondale Industries, Inc. in Jefferson and Orleans Parishes, Louisiana, within the New Orleans Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel mill products, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, and not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Avondale shall advise the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish Special-Purpose Subzones at the Four Shipbuilding Facilities of Avondale Industries, Inc. in Jefferson and Orleans Parishes, LA

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintennce of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Board of Commissioners of the Port of New Orleans, grantee of Foreign-Trade Zone 2, has made application (filed June 25, 1990, FTZ Docket 28–90, 55 FR 27290, 07–02–90), in due and proper form to the Board for authority to establish special-purpose subzones at the shipbuilding facilities of Avondale Industries, Inc., in Jefferson and Orleans Parishes, Louisiana;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restriction in the resolution accompanying this action;

Now, therefore, in accordance with the application filed June 25, 1990, the Board hereby authorizes special-purpose subzone status at the four shipbuilding facilities of Avondale Industries, Inc. in Jefferson and Orleans Parishes, Louisiana, designated on the records of the Board as Foreign-Trade Subzones: 2C (Main Shipyard); 2D (Westwego); 2E (Harvey); 2F (Algiers), and as described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations issued thereunder, and to the condition in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone sites shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone facilities in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 15th day of February, 1991, pursuant to Order of the Board.

Marjorie A. Chorlins,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

[FR Doc. 91–4516 Filed 2–26–91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–122–050]

Racing Plates (Aluminum Horseshoes) From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 23, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on racing plates (aluminum horseshoes) from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Equine Forgings Limited, and the period February 1, 1989 through January 31, 1990.

We give interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4195/5255.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 23779) the preliminary results of its administrative review of the antidumping duty order on racing plates (aluminum horseshoes) from Canada (39 FR 7579, February 27, 1974). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of racing plates (aluminum horseshoes) that are used on race horses, polo, jumping, hunting and performing horses as differentiated from work horses, are made of aluminum, may have cleats or caulks, and come in a variety of sizes. During the review period, such merchandise was classifiable under item 652.4200 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under HTS item 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one firm, Equine Forgings Limited ("Equine"), and the period February 1, 1989 through January 31, 1990.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. No hearing was requested, however, we did receive comments from the respondent, Equine.

Comment 1

Equine contends that the Department should exclude sales with 30-day payment terms from its calculations of foreign market value (FMV). Equine notes that sales with 30-day payment terms were made at considerably higher prices than were the sales upon which Equine received immediate payment. Equine further notes that extended payment terms were taken far more frequently on Canadian sales than on sales to the United States, and argues that use of such sales in the calculation of FMV artificially creates dumping margins.

Department's Position

We disagree. There is no provision in either the statute or in our regulations that permits the exclusion of home-market sales because such sales were made at higher prices than in the United States, or because different credit terms

were offered on these sales than were offered on the preponderance of U.S. sales. Equine has provided no evidence indicating that its sales with 30-day payment terms were outside the ordinary course of trade, or were for any other reason unsuitable for comparison to Equine's U.S. sales. Finally, we note that we made a circumstance-of-sale adjustment for differences in credit expenses between U.S. and Canadian sales.

Comment 2

Equine requests that the Department grant it a 2-week extension to provide additional comments concerning our preliminary analyses. Equine requests the extension so that it can find legal help should it decide to appeal the results of this review, and argues that the extension is necessitated by virtue of the Christmas and New Year holidays occurring within the preliminary results comment period.

Department's Position

As is our standard practice, we allowed all interested parties 30 days to comment on our preliminary results of review. We consider 30 days to be an adequate period of time to comment on our preliminary results. Moreover, we made all of the information used in our preliminary calculations available to Equine. Equine did file some timely comments and where we have determined their comments to have merit, we have adjusted our results accordingly. (See our response to Comment 3.)

Comment 3

Equine notes that in its preliminary results, the Department used an inflated starting price on one Canadian sale.

Department's Position

We agree, and have adjusted our final results accordingly.

Final Results of the Review

As a result of the comments received, we have determined that the following margin exists:

Manufacturer/ exporter	Period of review	Margin (percent)
Equine Forgings Limited	2/1/89–1/31/90	2.93

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required on entries of this merchandise from Equine. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred at January 31, 1990, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 2.93 percent shall be required. For any shipments from the remaining known manufacturers/exporters not covered in this review, a cash deposit shall be required at the rates published in the last administrative review for those firms. These cash deposit requirements are effective for all shipments of Canadian racing plates (aluminum horseshoes) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1990).

Dated: February 18, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4517 Filed 2-26-91; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-009. *Applicant:* National Institute of Standards and Technology, Intersection of Clopper and Quince Orchard Roads, Building 301, Gaithersburg, MD 20899. *Instrument:* Neutron Area Detector for Small Angle Neutron Scattering. *Manufacturer:* CERCA, France. *Intended Use:* The instrument will be used for the detection of neutrons at high count rates over a finite solid angle during investigations conducted to relate the microstructure features of new materials to their bulk materials properties. *Application Received by Commissioner of Customs:* January 22, 1991.

Docket Number: 91-010. *Applicant:* University of California, Lawrence Berkeley Laboratory, 1 Cyclotron Road, Building 9, Berkeley, CA 94720. *Instrument:* Stopped-flow Spectrofluorimeter, Model SF.17. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for the study of rapidly occurring reactions: (i) Steady state enzyme catalyzed reactions, (ii) single turnover reactions of enzymes and substrates and (iii) enzymes refolding upon dilution from denaturants. *Application received by Commissioner of Customs:* January 22, 1991.

Docket Number: 91-011. *Applicant:* University of California, Davis, Geology Department, Davis, CA 95616. *Instrument:* Beam Splitters for FTIR Spectrometer. *Manufacturer:* Bomen, Inc., Canada. *Intended Use:* The instrument will be used for studies of common rock-forming minerals, candidates for minerals occurring in the mantle, high pressure phases, structural analogues of the previous categories and glasses with compositions mimicking those of magmas. Two types of experiments will be performed: Measurement of the single-crystal infrared spectra of a mineral and measurement of the infrared spectra of minerals as a function of pressure. In addition, the instrument will be used in the course Advanced Mineralogy to acquaint students with forefront research in minerals and to provide them with background to pursue thesis in mineral physics. *Application Received by Commissioner of Customs:* January 22, 1991.

Docket Number: 91-012. *Applicant:* University of California, Riverside, Materials Management Department, Riverside, CA 92521. *Instrument:* Liquid Chromotograph/Mass Spectrometer/ Mass Spectrometer, Model API III.

Manufacturer: Sciex Instruments, Canada. *Intended Use:* The instrument will be used for two research applications: (1) Identification and quantification of the gas-phase products formed from the atmospherically important gas-phase reactions of organic compounds at room temperature and atmospheric pressure and (2) analysis, identification and quantification of samples of semi-volatile and particle-associated organic compounds which have been collected from all-Teflon environmental chamber reaction mixtures and ambient air. *Application Received by Commissioner of Customs:* January 22, 1991.

Docket Number: 91-013. *Applicant:* The University of Texas Medical Branch, 301 University Boulevard, Galveston, TX 77550. *Instrument:* Parts and Components to Upgrade PlasmaQuad MS. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instruments are accessories to upgrade an existing mass spectrometer which is being used for analyses of biological fluids and tissues and environmental substances. In addition, this instrument is being used to provide education in the principles and practice of ICP/MS. *Application Received by Commissioner of Customs:* January 23, 1991.

Docket Number: 91-014. *Applicant:* Tulane University, Coordinated Instrumentation Facility, 604 Lindy Boggs Center, New Orleans, LA 70118. *Instrument:* Mass Spectrometer, Model Profile HV-3. *Manufacturer:* Kratos Analytical, Inc., United Kingdom. *Intended Use:* The instrument will be used for structural determinations of organic, inorganic and biological compounds. Very precise mass measurements will be used to obtain the elemental composition of newly synthesized, unknown molecules, natural products and peptides for researchers. *Application Received by Commissioner of Customs:* January 23, 1991.

Docket Number: 91-015. *Applicant:* The University of North Carolina at Chapel Hill, Campus Box 3315, Chapel Hill, NC 27599. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for high precision analysis of the isotopic composition of geological and environmental specimens. The materials to be studied include whole-rock specimens of silicates, carbonates, phosphates, sulfides, halides and oxides; and individual minerals such as adularia, baddeleyite, calcite, diamond, enargite, fayalite etc. In addition, the instrument will be used for educational purposes in geology courses. *Application Received by Commissioner of Customs:* January 24, 1991.

Docket Number: 91-016. *Applicant:* University of Massachusetts at Amherst, Office of Procurement, Goodell Building, Amherst, MA 01003. *Instrument:* Modular Stereoscope, Model SB 190. *Manufacturer:* Cartographic Engineering Ltd., United Kingdom. The instrument will be used to interpret aerial photographs, both in print and positive transparency form. Research will be conducted to produce as high a quality mapping of wetlands and deepwater habitats for the project areas as humanly possible. The instrument will also be used as a teaching aid in undergraduate and graduate aerial photogrammetery courses offered. It will also be used for special training sessions of groups of students visiting from other departments, colleges, and countries. *Application Received by Commissioner of Customs:* January 29, 1991.

Docket Number: 91-017. *Applicant:* Mt. Sinai School of Medicine of the City University of New York, 1 Gustave L. Levy Place, New York, NY 10029. *Instrument:* Fluorescence Lifetime Spectrometer, Model 5000. *Manufacturer:* IBH Consultants Ltd., United Kingdom. *Intended Use:* The instrument will be used in measurements of the nanosecond time-scale fluorescence decay kinetics of fluorescent molecules inserted in model lipid membranes (prepared with purified phospholipids) and membranes of various cells (i.e. human red cells from normal and sickle-cell anemia patients, lymphocytes and others). *Application Received by Commissioner of Customs:* January 30, 1991.

Docket Number: 91-018. *Applicant:* Colgate University, 13 Oak Drive, Hamilton, NY 13346. *Instrument:* Rapid Kinetics Accessory Sample Handling Unit. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument is an accessory to an existing spectrophotometer which will be used for the Advanced Chemistry Laboratory (Chemistry 482) course and other independent research projects by undergraduate students. *Application Received by Commissioner of Customs:* January 31, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-4515 Filed 2-26-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign Fishing

In accordance with a memorandum of understanding with the Secretary of State, the National Marine Fisheries Service, on behalf of the Secretary of State, publishes for public review and comment a summary of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the Exclusive Economic Zone (EEZ) under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*). This notice concerns (1) Additional vessels of the Union of Soviet Socialist Republics which are applying to operate in the Northwest Atlantic Ocean (NWA) in directed and/or joint venture (JV) operations for Atlantic mackerel previously described at 56 FR 514 and 56 FR 997, and (2) one new Soviet JV submission for the NWA which proposes the purchase of 5,000 metric tons of Atlantic mackerel. Send comments on these applications to: NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, 1335 East West Highway, Silver Spring, Maryland 20910 and/or, to one or both of the Regional Fishery Management Councils listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugas, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2337).

Dated: January 21, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

The following Soviet factory ships (type "10"), cargo transports (type "11"), tankers (type "12") and large stern trawlers (type "15") have applied to conduct activities in the NWA as indicated below ("1" denotes directed fishing, "2" denotes directed processing, "3" denotes directed fishing transfers and support, "4" denotes processing of JV fish, "5" denotes JV transfers and support, "6" denotes transfers of U.S. processed product, "7" denotes processing of fish harvested shoreward

or seaward of the EEZ, "S" denotes transfers of fish harvested shoreward or seaward of the EEZ, and "B" denotes bunkering):

Permit No.	Vessel	Type	Activity								
LR-91-0585	Nuflagorsk	12									9
LR-91-0595	Sergey Vasilkin.	10				4		7	8	9	
LR-91-0596	Sereg Yurasd.	11			3		5		8		
LR-91-0597	Prilv	15				4					
LR-91-0598	Grigriy Lysenko.	10				4					9
LR-91-0599	Ladus	10		2		4		6			
LR-91-0600	Tantal	15	1			4		6			

[FR Doc. 91-4633 Filed 2-26-91; 8:45 am]
BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 520]

Marine Mammals: Modification of Permit: Northeast Fisheries Center, NMFS (P77#4)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 520 issued to the Northeast Fisheries Center, Woods Hole, Massachusetts 02543, on August 28, 1985 (50 FR 36133), as modified on January 13, 1989 (54 FR 1405), is further modified as follows:

Section B.4 is replaced by: "4. This Permit is valid with respect to the taking authorized here until June 30, 1991."

This modification became effective on January 1, 1991.

This modification is necessary in order to allow scientific research to continue on marine mammals taken incidentally in foreign and joint-venture fishing operations within the Exclusive Economic Zone of the United States.

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930-2298.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-4632 Filed 2-26-91; 8:45 am]
BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on March 13, 1991, at 9 a.m. at the U.S. Department of Commerce, Room 5851/5430, Main Commerce Building, Washington, DC 20230.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order
II. Approval of Minutes
III. USTTA Marketing Initiatives
IV. Review of USTTA Marketing Submission to the Congress
V. USTTA Fee Proposal
VI. Entry Formalities
VII. SIC Codes
VIII. Airline Issues
IX. Tourism Coalition Report
X. Miscellaneous
XI. Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements as allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Rockwell A. Schnabel,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 91-4554 Filed 2-26-91; 8:45 am]
BILLING CODE 3510-11-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 91-C0005]

Amerex Corp., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR part 1118.30(e). Published below is a provisionally-accepted Settlement Agreement with Amerex Corporation, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 14, 1991.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment No. 91-C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC, 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC, 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: February 21, 1991.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement

This Settlement Agreement entered into between Amerex Corporation, a corporation (hereinafter, "Amerex") and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

1. Amerex is a corporation organized and existing under the laws of the State of Alabama, with its principal corporate offices located at 7595 Gadsden Highway, Trussville, Alabama 35173-0081. Amerex manufactures and distributes fire extinguishers.

2. The staff is the staff of the Consumer Product Safety Commission, a federal independent regulatory agency (hereinafter, "Commission") created by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2053.

II. Jurisdiction

3. Amerex manufactured and distributed a model 456 fire extinguisher that is intended for use in the home, office, vehicle, farm, or factory. It is marketed chiefly through distributorships that, in turn, sell the unit to commercial accounts which place it in office buildings, schools, apartments, motels, and other premises. It is generally available for use by anyone in the vicinity who has a need to use it. The model 456 fire extinguisher is, therefore, a "consumer product" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

4. Between June 1984 and June 1985, Amerex sold and distributed approximately 124,425 model 456 fire extinguishers nationwide. Amerex is, therefore, a "manufacturer" of a "consumer product" which has been "distributed in commerce," as those terms are defined in sections 3(a) (1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a) (1), (4), and (11).

III. Product

5. The Amerex model 456 is a 10 lbs. capacity, multipurpose, dry chemical fire extinguisher. It is of a stored pressure design, and is operated with a squeeze grip handle. It is 20" high and is 4¼" in diameter. It stands upright and may be wall mounted. The fire extinguisher consists of a cylinder that holds the dry chemicals that extinguish the fire, (2) a value assembly that controls the flow of the chemical extinguisher, and (3) a squeeze grip handle that is connected to the valve that controls the flow of the chemical extinguisher.

IV. Staff's Allegations of Defect and Violation of the Reporting Requirements of 15 U.S.C. 2064(b)

6. A limited number (412-550 units of a suspect population of 15,000 units) of the model 456 fire extinguisher contained carry handles that were not properly shaped by the casting die. These misformed handles did not make proper contact with the valve that activates the outflow of the fire extinguishing chemicals. Thus, a consumer attempting to use the fire extinguisher to put out a fire would not be able to activate the fire extinguisher in accordance with the operating instructions. In such a situation, the user and any other occupant of the premises of the fire may be at risk of being burned from the fire. Consequently, the fire extinguisher contains a "defect" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), as interpreted by section 1115.4 of the Commission's regulation entitled "Substantial Product Hazard Reports", 16 CFR 1115.4.

7. The fire extinguisher is a safety device designed to limit or put out small fires. The defect is neither readily observable, nor likely to be discovered prior to the fire extinguisher's use. Although no personal injuries or deaths have been reported, the possibility exists that such a fire could result in serious personal injury or death to the occupants of premises who rely on its use. Therefore, the fire extinguisher contains a defect which could create a "substantial product hazard" within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

8. In the fall of 1986, Amerex had knowledge of four incidents of the model 456 fire extinguisher failing to activate. At the time Amerex received these reports, it believed that there could be as many as 15,000 suspect units. The firm inspected and replaced all suspect units at the four locations from which complaints were received, but did not notify the Commission of the problem with the fire extinguisher. It was not until the third complaint was received, in the fall of 1986, that the staff learned of the problem from the Fire Marshal for the City of Richardson, Texas.

9. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of a consumer product who obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard to inform the Commission immediately of the defect. In the fall of 1986, Amerex knew, or should have known, that the model 456 fire extinguisher contained a defect which could create a substantial product hazard within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2). Amerex failed to report the defect to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). The knowing failure of Amerex to report the defective fire extinguisher to the Commission is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), for which a civil penalty may be assessed and recovered pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

V. Response of Amerex

10. Amerex denies the staff's allegations that model 456 fire extinguisher is a consumer product, denies that it knew or should have known that this fire extinguisher could create a substantial product hazard, and denies that it has any obligation to report any information regarding the model 456 fire extinguisher to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

VI. Agreement of the Parties

11. Amerex and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order pursuant to sections 15(b), 19(a)(4), and 20 of the CPSA, 15 U.S.C. 2064(b), 2068(a)(4), and 2069.

12. Amerex agrees to pay to the Commission a civil penalty in the amount of Thirty Thousand Dollars ($30,000) within twenty (20) days after receipt of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in full settlement of the staff's allegations that Amerex violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), by failing to notify the Commission of the defective model 456 fire extinguisher.

13. The Commission makes no determination that the model 456 fire extingusher contains a defect which could create a substantial product hazard or that a violation of the CPSA has occurred.

14. Upon final acceptance of this Settlement Agreement by the Commission and Issuance of the Final Order, Amerex knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law.

15. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

16. Upon provisonal acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the

Federal Register in accordance with the procedure set forth in 16 CFR 1118.20(3). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

17. The parties further agree that the Order attached hereto as "Exhibit A" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2061 *et seq.*; and that a violation of the Order shall subject Amerex to appropriate legal action.

18. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

19. The provisions of the Settlement Agreement and Order shall apply to Amerex and to each of its successors and assigns.

Respondents

Dated: November 20, 1990

By:

Edgar K. Paine,

Chief Executive Officer, Amerex Corporation.

Commission Staff

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Director, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Dated: December 3, 1990.

By:

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Counsel for the Commission staff, Directorate for Compliance and Administrative Litigation.

Order

Upon consideration of the Settlement Agreement entered into between respondent Amerex Corporation, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and the Respondent; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, that upon final acceptance of the Settlement Agreement, Amerex Corporation shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of Thirty Thousand and 00/100 dollars ($30,000), within twenty (20) days after receipt of the Final Order in this matter.

Provisionally accepted and Provisional Order issued on the 21th day of February, 1991.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-4600 Filed 2-26-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement III to the Final Environmental Impact Statement (FEIS), Manteo (Shallowbag) Bay Project, Dare County, North Carolina

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The navigation improvements being proposed are necessary to provide safe navigation through Oregon Inlet and are essentially the same as those previously coordinated, consisting of twin jetties at Oregon Inlet (with sand bypassing facilitated by a Sloping Float Breakwater system) and improvements to navigation channels to Wanchese, North Carolina. Supplement III will discuss recent changes in the design of the project and present refined impact analyses, which have been conducted since the circulation of Supplement II in 1985.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Supplement III can be answered by: William F. Adams; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402-1890; commercial phone (919) 251-4746 or FTS 232-4746.

SUPPLEMENTARY INFORMATION: The Manteo (Shallowbag) Bay project was authorized in Public Law 91-611 (HD 303/91/2), December 31, 1970. The FEIS on the project was filed with EPA on April 20, 1979. The first Supplement to the FEIS was filed on November 7, 1980, and Supplement II to the FEIS was filed on July 5, 1985.

1. The proposed project includes a dual jetty system at Oregon Inlet with sand bypassing facilitated by a sloping float breakwater system. The jetties will be parallel, 3,500 feet apart, with the north jetty being approximately 11,450 feet long (4,000 feet comprising a shore anchorage section) and the south jetty being approximately 7,575 feet long (3,125 feet which consists of the terminal groin being constructed by the North Carolina Department of Transportation). Navigation channels will also be improved. The ocean bar channel will be deepened from its current depth of 14 feet to 20 feet at the existing width of 400 feet. The channels from Oregon Inlet to Wanchese, North Carolina, will be deepened and widened from their current dimensions of 12 feet deep and 100 feet wide to 14 feet deep and 120 feet wide.

2. Alternatives to the project are dredging the improved channel dimensions without the jetties and no action (maintain at current dimensions). Due to the difficulty in maintaining the existing navigation channel through the inlet, improving the channels without the jetties is considered to be impractical.

3. Scoping for this project is ongoing. Two scoping letters (one dated December 4, 1990, the other dated January 25, 1991) have been mailed to all known interested parties. Other parties wishing to comment on this project are invited to do so at this time.

a. Significant issues to be discussed in the upcoming supplement are information on potential impacts of the project on navigation, larval fish and shellfish migration through Oregon Inlet, cultural resources, endangered species, littoral sand transport, submerged aquatic vegetation, aesthetics, recreation, and future economic development of the region.

b. The Department of the Interior is working with the Corps on the final design of the project.

c. Additional coordination on endangered species and cultural resources is being undertaken during the final design of the project. The U.S. Fish and Wildlife Service is preparing a Fish and Wildlife Coordination Act report. Results of these coordination efforts will be included in Supplement III.

4. No formal scoping meetings are planned at this time. Responses to scoping letters or this notice may result in coordination with individuals or agencies on an as needed basis to discuss certain issues.

5. The Draft Supplement III to the FEIS is currently scheduled to be available in May 1991.

Dated: February 15, 1991.

Thomas C. Suermann,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-4613 Filed 2-26-91; 8:45 am]

BILLING CODE 3710-GN-M

Open Meeting: Coastal Engineering Research Board

Date of meeting: March 25–27, 1991.

Place: Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.

Time: 8:30 a.m. to 5 p.m. on March 25; 8:30 a.m. to 5 p.m. on March 26; 8:30 a.m. to 5 p.m. on March 27.

Proposed agenda: The 1992 Coastal Engineering Program Review is to be held March 25–27, 1991. On Monday, March 25, the Coastal Research and Development Programs will be broken down into four breakout sessions. The four sessions will simultaneously review and discuss Coastal Channels: Shore Protection and Restoration; and Coastal Structures Evaluation and Design. On Tuesday morning, March 26, a plenary session will discuss the Coastal Research and Development Programs and make recommendations. The Tuesday afternoon session will be devoted to the review of the Coastal Geology and Geotechnology Program. The Coastal Field Data Collection Program and Monitoring Completed Coastal Projects Program will be reviewed Wednesday, March 27. There will be discussions of completed, current, and proposed activities.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Inquiries and notice of intent to attend the meeting may be addressed to Dr. James R. Houston, Chief, Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180-6199.

Larry B. Fulton,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 91-4614 Filed 2-26-91; 8:45 am]

BILLING CODE 3710-GG-M

DEPARTMENT OF EDUCATION

Intergovernmental Advisory Council on Education; Meetings

AGENCY: Intergovernmental Advisory Council on Education, Education.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Intergovernmental Advisory Council on Education and its Executive Committee. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIMES: March 19–20, 1991, 9 a.m. to approximately 4:30 p.m. each day.

ADDRESSES: Room 3000, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Gwen A. Anderson, Executive Director, Intergovernmental Advisory Council on Education, room 3036, 400 Maryland Avenue, SW., Washington, DC 20202-7576, (202) 401-3844.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

On March 19, the Intergovernmental Advisory Council on Education will meet from 9 a.m. to approximately 4:30 p.m. The meeting is open to the public.

The proposed agenda of the meeting includes discussion of (1) ways to improve the flow and coordination of information between Congress and State legislative bodies with respect to education legislation and (2) budget review and administrative issues that are related to the termination of the Council.

On March 20, the Executive Committee will meet from 9 a.m. to approximately 4:30 p.m. The meeting is open to the public. The proposed agenda of the meeting includes a review of the final recommendations to the President and the Secretary and other matters pertaining to the Executive Committee's responsibilities.

Records are kept of all Council proceedings, and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 400 Maryland Avenue, SW., room 3036, Washington, DC 20202-7576, from the hours of 9 a.m. to 5 p.m.

Dated: February 21, 1991.

Michelle Easton,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 91-4555 Filed 2-26-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award to the Confederated Tribes of Umatilla Indian Reservation

AGENCY: Department of Energy, Richland Operations Office (DOE-RL).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE-RL, Environmental Restoration Division, in accordance with 10 CFR 600.7(b)(2)(i)(C), gives notice of its plan to award a noncompetitive grant to the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Under the terms of the award, the CTUIR will conduct activities related to the protection of CTUIR treaty rights which may be impacted by activities associated with DOE's environmental restoration activities at the Hanford Site. This award implements elements of the DOE Five-Year Plan recognizing DOE's commitment to the participation of affected Indian tribes in the planning and implementation of the Five-Year Plan.

DOE has determined that award on a noncompetitive basis is appropriate because the recipient is a unit of government and the activities to be supported are related to the performance of governmental functions within the jurisdiction of that unit of government, thereby precluding DOE provision of support to another entity. Since the award relates to agreements and treaties already made between the United States Government and the CTUIR, it would clearly be inappropriate for DOE to consider funding any other entity to be responsible for carrying out these activities. The final amount of the grant will not exceed $328,074.

FOR FURTHER INFORMATION CONTACT: Marcia N. Roske, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376-7265.

Dated: February 6, 1991.

Robert D. Larson,

Director, Procurement Division, Richland Operations.

[FR Doc. 91-4635 Filed 2-26-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before March 29, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–539.
3. 1902–0062
4. Gas Pipeline Certificate: Import/Export.
5. Extension.
6. On occasion.
7. Mandatory.
8. Business or other for-profit.
9. 44 respondents.
10. 1 response.
11. 1,920 hours per response.
12. 84,480 hours.
13. Data collected under FERC–539 is required by the Commission to approve or disapprove the construction, operation, and siting of facilities and the point of entry to the US/other country.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, February 21, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–4637 Filed 2–26–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EL91–18–000]

American Electric Power Company et al.; Filing

February 20, 1991.

Take notice that on February 20, 1991, six public utility holding companies filed a petition for a declaratory order. The six companies are the American Electric Power Company, Central and Southwest Corporation, General Public Utilities Corporation, New England Electric System, Northeast Utilities, and The Southern Company. In their petition the filing companies propose that the Commission adopt promptly a declaratory order that provides that an officer or director of a public utility who, on the effective date of the declaratory order, was permitted to hold interlocking positions within the scope of section 17(c) of the Public Utility Holding Company Act of 1935 by reason of rule 70 of the Securities and Exchange Commission and who has filed or thereafter files with the Commission (within a reasonable time to be fixed by the Commission) an application pursuant to part 45 of the Commission's Regulations for authority to hold interlocking positions within the scope of section 305(b) of the Power Act shall be authorized by such declaratory order to hold such interlocking positions until the Commission enters an order in response to such application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4541 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–12–000]

Granite State Gas Transmission, Inc.; Informal Settlement Conference

February 20, 1991.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on Friday, March 8, 1991, following the prehearing conference scheduled for 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

Participants, as defined by 18 CFR 385.102(b), are invited to attend; attendance is limited to those parties which have been granted intervenor status.

Please refer to the Hearings Schedule posted daily at the Second floor at 825 N. Capitol, to determine the location of the assigned hearing room. For additional information please contact Michael D. Cotleur, (202) 208–1076, or Joan Dreskin, (202) 208–0738.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4546 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–21–002]

Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin); Filing

February 20, 1991

Take notice that on January 28, 1991, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter "NSP Companies") filed the following tariff sheets:

Northern States Power Companies
FERC Electric Tariff
Original Volume No. 1
Title Page
Table of Contents
Original Sheet No. 1 through No. 33

Such revised tariff sheets are required in compliance with the Commission's Order dated December 28, 1990. NSP has also submitted such tariff sheets in the form of a tariff as defined in rule 35.2(b).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4542 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 4354–003]

Owyhee Irrigation District; Petition for Declaratory Order

February 20, 1991.

Public notice is given that on October 15, 1990, Owyhee Irrigation District (petitioner), co-licensee for Project No. 4354, filed a petition for declaratory order with the Federal Energy Regulatory Commission. The petition seeks a determination that a proposed contract between petitioner and Owyhee Ditch Company (attached to the October 15, 1990 petition) does not violate any law, rule or regulation, or in any way impair the rights of petitioner or its co-licensees, Gem Irrigation District and Ridgeview Irrigation District, under the license for Project No. 4354. Under the proposed contract, the petitioner promises to share a percentage of petitioner's net revenues from the Project No. 4354.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214 (1990). All such comments, protests, and motions should be filed by March 29, 1991. In determining the approriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection. Copies of the petition for declaratory order may also be obtained from Gene Stunz, Secretary, Owyhee Irrigation District, P.O. Box 1565, Nyssa, Oregon 97913.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4545 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL90–43–000]

Public Service Company of Oklahoma; Filing

February 21, 1991.

Take notice that on 3, 1991, Public Service Company of Oklahoma (PSO) tendered for filing a supplement to the rate schedule changes filed by PSO with the Commission on December 5, 1990, in connection with the settlement of the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4543 Filed 2–26–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 90–106–NG]

Allied Producers Gas Service Inc.; Order Granting Authorization To Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Allied Producers Gas Service Inc. authorization to import up to 300 Bcf and to export up to 200 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–4636 Filed 2–26–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34010; FRL 3844–5]

Notice of Intent to Remove Sodium 4,6-Dinitro-o-Cresylate from Reregistration List B and to Cancel Pesticides Containing this Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent.

SUMMARY: Under the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), registrants of pesticide products containing specified active ingredients must comply with a number of new

responsibilities to ensure that their products become reregistered. Among these responsibilities is submission of specific information and a commitment to support active ingredients contained in their products through reregistration during "Phase Two" of the five phases of reregistration. The sole registrant who committed to support sodium 4,6-dinitro-o-cresylate through reregistration has withdrawn that commitment and requested cancellation of its registration. EPA is providing notice of intent to remove sodium 4,6-dinitro-o-cresylate as an unsupported active ingredient from List B and to cancel all registrations containing it, unless within 60 days of publication of this notice someone assumes the responsibility of supporting sodium 4,6-dinitro-o-cresylate through reregistration.

DATE: Reports of commitments to support reregistration of sodium 4,6-dinitro-o-cresylate and/or to support active ingredients must be received by April 29, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Sue Rathman, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF34N5, Crystal Station # 1, 2800 Jefferson Davis Highway South, Arlington, VA 22202, (703) 308–8069.

SUPPLEMENTARY INFORMATION: This notice announces EPA's intent to remove sodium 4,6-dinitro-o-cresylate from Reregistration List B and to cancel all registrations of products containing this chemical unless someone other than the current registrant assumes the responsibility of supporting it.

I. Introduction

Section 4(d) of FIFRA requires that registrants of pesticides containing active ingredients on Reregistration Lists B, C, or D comply with certain responsibilities during Phase Two of reregistration. These include informing EPA of their intent to seek or not to seek reregistration, identifying the data requirements that apply to their pesticide registrations, identifying the data requirements for which they have already submitted adequate data, and committing to replace missing or inadequate data concerning the active ingredient contained in their products. These actions were required of registrants of products containing ingredients on List B by August, 24, 1989.

Registrants that committed to reregister products during Phase Two of reregistration are also required to comply with FIFRA section 4(e), by submitting additional information in Phase Three. EPA did not receive a Phase Three submission from FMC, the sole registrant, to support the reregistration of sodium 4,6-dinitro-o-cresylate found in their products. Rather, FMC submitted a request for voluntary cancellation of their sodium 4,6-dinitro-o-cresylate registrations. By requesting voluntary cancellation, FMC has withdrawn its commitments made in Phase Two to support the reregistration of sodium 4,6-dinitro-o-cresylate. Section 4(d) provides a formal opportunity of 60 days for interested parties, other than the party originally responsible for submitting a Phase Two response, to acquire the rights to a registration containing sodium 4,6-dinitro-o-cresylate and commit to support the reregistration of products containing this active ingredient. Therefore, under authority of section 4(d) of FIFRA, EPA is providing notice of its intent to delist this unsupported active ingredient from List B and to cancel all products containing it. Once sodium 4,6-dinitro-o-cresylate is removed from List B, any application for registration of a pesticide containing sodium 4,6-dinitro-o-cresylate would be considered to be an application for registration of a "new chemical", and the full range of applicable data requirements would have to be met before a registration could be granted.

II. Background

Sodium 4,6-dinitro-o-cresylate has been registered since 1961 and FMC is the sole registrant, and holds 2 registrations. The registered uses are as a blossom thinner for certain varieties of apples, as an insecticide for dormant application on apples, and to control certain diseases in mushroom houses between crops (not for use on filled or producing beds). Sodium 4,6-dinitro-o-cresylate is used primarily as a blossom thinner in the Pacific Northwest United States. EPA considers this a minor use pesticide. There is little or no use of the products as an insecticide or in mushroom houses. Alternatives for this pesticide for an apple blossom thinner are carbaryl, napthaleneacetamide (NAD), and ethephon. Users of the alternative pesticides will likely use them sequentially, both before and after the optimum timing. Hand thinning, a nonpesticide alternative, can also be used. Sodium 4,6-dinitro-o-cresylate is structurally similar to dinoseb (2-sec-butyl-4,6-dinitrophenol) and dinocap (a mixture of 2,4-dinitro-6-octylphenol crotonate and 2,6-dinitro-4-octylphenyl crotonate) which suggests that there may also be a relationship in potential toxicological effects of these chemicals. Toxicological studies suggest that dinoseb may cause birth defects, male sterility, and acute toxicity to agricultural workers; and that dinocap may cause birth defects through dermal contact and inhalation. Because of this, EPA issued an emergency suspension for dinoseb [OPP–88013; FRL-3094–6, (51 FR 36634, October 14, 1986)] and imposed a great many label restrictions and warnings for dinocap [OPP–30000/45B (54 FR 5908, February 6, 1989)].

In 1989, EPA issued a Comprehensive Data Call-In Notice (DCI) to FMC requiring the submission of data on sodium 4,6-dinitro-o-cresylate because of its structural similarity to dinoseb and dinocap, the associated toxicological concerns, and because EPA lacked adequate data to support the registrations of sodium 4,6-dinitro-o-cresylate. Data required in this notice included all scientific disciplines.

Concurrent with the DCI, EPA issued to FMC and all other registrants of List B pesticides guidance for making Phase Two reregistration commitments. FMC committed to support sodium 4,6-dinitro-o-cresylate under the DCI and reregistration Phase Two. They requested low-volume minor use data waivers for many specific data requirements. Because of the particular factors associated with this active ingredient and the need for a minimum set of data in order to conduct reasonable human health and environmental risk assessments, EPA did not grant the waiver requests. Instead EPA agreed to hold in reserve, using the tiered method, some of these data requirements. In response to EPA's decision, FMC filed a request for voluntary cancellation.

Because of the minor uses of sodium 4,6-dinitro-o-cresylate, EPA has considered whether easing regulatory requirements, such as data requirements and due dates for submission of required data, should be implemented. The concerns of a possible developmental toxicity risk to workers and the overall lack of data in all science areas are of significant concern to EPA. The EPA has decided not to lower the registration and reregistration requirements for sodium 4,6-dinitro-o-cresylate given these possible risks and data concerns, and the need to be able to conduct an adequate risk assessment of this pesticide's uses, but rather to proceed as described below.

III. Intent to Remove Sodium 4,6-Dinitro-o-Cresylate from Reregistration List B, And to Cancel Active Registrations Containing this Ingredient

Sodium 4,6-dinitro-o-cresylate is not being supported for reregistration. It occurs in 1 registration under section 3 and 1 registration under section 24(c) of FIFRA. This active ingredient and all associated registrations are listed in the following Table:

Chemical	Registration Numbers
Sodium 4,6-dinitro-o-cresylate ...	000279-01853 WA86000700

IV. Procedures for Preserving Registrations of Unsupported Sodium 4,6-Dinitro-o-Cresylate

Section 4(d)(5) of FIFRA defines a process for preventing cancellation of products containing active ingredients which, like sodium 4,6-dinitro-o-cresylate, are unsupported in Reregistration Phase Two. Under this procedure anyone who wishes to prevent cancellation of all sodium 4,6-dinitro-o-cresylate products must:

(1) Within 60 days of publication of this notice in the **Federal Register**, obtain the rights to a product listed in the above Table—i.e., with the agreement of the current registrant, submit to EPA in conformance with 40 CFR 152.135 an application for transfer of an existing active registration.

(2) Within 60 days of publication of this notice in the **Federal Register**, provide to EPA the information listed in section 4(d)(2) of FIFRA entitled "Notice of Intent to Seek or Not to Seek Reregistration".

(3) Within 120 days of publication of this notice in the **Federal Register**, comply with the provisions of section 4(d)(3) of FIFRA entitled "Missing or Inadequate Data", and pay any reregistration fee prescribed by section 4(i)(3) of FIFRA.

Anyone contemplating a commitment to support the ingredient listed above should consider carefully the full range of responsibilities involved in supporting this active ingredient through reregistration. In addition to the Phase Two commitment to provide all required supporting data and the reregistration fee, a full Phase Three response will be required within 120 days after publication of this notice in the **Federal Register**, and eventually all gaps in the supporting data base must be filled, on a strict schedule and subject to monitoring by EPA. The due dates for submission of certain of the studies required by the April 6, 1989 Comprehensive Data Call-In have passed and the data requirements are now overdue. Therefore, anyone contemplating a commitment to support sodium 4,6-dinitro-o-cresylate should be aware that these registrations are potentially suspendable until all overdue data requirements are fulfilled.

Guidance and forms for Phase Two responses and payments of the reregistration fees may be obtained from EPA contact person listed near the beginning of this notice. Small businesses and certain other registrants may be eligible for partial waivers of reregistration fees, and should investigate this possibility. In general, because of the variability and potential complexity of the reregistration process, anyone considering supporting this ingredient is strongly advised to discuss the circumstances of the individual case with EPA before making a formal commitment.

Sixty days after publication of this notice in the **Federal Register**, the active ingredient listed in the above Table for which the above procedure is not satisfactorily under way will be removed from Reregistration List B, and all registrations containing this ingredient will be cancelled by order and without hearing. If the requirements in this Unit IV are not satisfied within 120 days, this ingredient will also be removed from Reregistration List B and all registrations containing it will be cancelled. The name and address of the sole registrant of sodium 4,6-dinitro-o-cresylate is:

FMC Corporation, Agricultural Chemical Group, 2000 Market Street, Philadelphia, PA 19103.

V. Impact on Intrastate Registrations

EPA has by regulation effectively exempted certain intrastate pesticide products from the general prohibition (contained in FIFRA sections 3(a) and 12(a)(1)(A)) against sale or distribution of pesticides not registered under FIFRA. EPA regulations permit sale and distribution of pesticides registered under intrastate registrations provided that, among other things, the producer of the pesticide has submitted a timely application for Federal registration and EPA has not issued a Notice Of Intent to Cancel federally registered pesticide products containing the same active ingredient as the intrastate product (40 CFR 152.230(a)(4)). Once such a Notice Of Intent to Cancel is issued, the regulation no longer provides permission for the sale or distribution of the intrastate product, and the statutory prohibitions against sale or distribution of pesticides not registered under FIFRA apply with full force. On the date of publication of this Notice in the **Federal Register**, this exception will thus cease to apply to any intrastate products (if any exist) containing sodium 4,6-dinitro-o-cresylate as covered by this Notice Of Intent to Cancel. At that time, it will be unlawful under FIFRA for any person to sell or distribute any pesticide products under such intrastate registrations.

VI. Impact Of Anticipated Cancellations

Because this proposed cancellation may have an impact on users, EPA is making a special effort to communicate this notice. In addition to publishing this notice in the **Federal Register**, copies are being sent to minor use organizations, to the States, to the U.S. Department of Agriculture, and to other parties who have previously expressed concern for minor uses. When registrations disappear as a result of the action proposed in this notice, the cancellation orders will generally permit registrants to continue to sell and distribute existing stocks of the cancelled products for 6 months after the cancellation becomes effective. Dealers and users will be allowed to sell or use such stocks until such stocks are all sold or used up. These general provisions should serve in most cases to cushion the impact of these cancellations while the market adjusts.

Dated: February 9, 1991.

Linda J. Fisher,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 91–4500 Filed 2–26–91; 8:45 am]

BILLING CODE 6560–50–F

[FRL–3908–7]

Public Information Reference Unit (PIRU): Docket Temporarily Closed

ACTION: Notice of Temporary Shutdown of Public Information Reference Unit (PIRU) Docket.

SUMMARY: The Public Information Reference Unit (PIRU) will be closed temporarily from February 27th through March 15, 1991. This action is taken because of reorganization and carpeting in the entire library area. The dockets will not be accessible during this time. These are documents supporting the Agency's actions administered under the Clean Air Act (State Implementation Plans), and the Clean Water Act (Effluent Limitation Guidelines).

FOR FURTHER INFORMATION CONTACT: Gloris J. Butler, Project Manager, Public

BEST COPY AVAILABLE

Information Reference Unit (PIRU) at (202) 245–3939.

Dated: February 13, 1991.

Brigid Repp,

Chief, Information Access Branch.

[FR Doc. 91–4626 Filed 2–26–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-44564; FRL 3980–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (CAS No. 126–73–8), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for tributyl phosphate were submitted by the Tributyl Phosphate Task Force affiliated with the Synthetic Organic Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on January 28, 1991. The submissions describe a developmental toxicity test in the rat and the rabbit. Developmental toxicity testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the plutonium uranium reduction extraction process; as a defoamer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44564). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 15, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–4627 Filed 2–26–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

State and Local Programs and Support; Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: March 20–21, 1991.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsubrg, Maryland 21727.

Time:
March 20–8:30 a.m. to 5 p.m.
March 21–8:30 a.m. to 5 p.m.

Proposed Agenda: The Board will maximize its time on campus by meeting with Regional and State Training Managers attending an annual conference on campus, and EMI students from classes in session. The Board will also be briefed on the status of various EMI programs and establish its 1991 workplan.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301–447–1251) on or before March 8, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 4, 1991.

Grant C. Peterson,

Associate Director State and Local Programs and Support.

[FR Doc. 91–4561 Filed 2–26–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Part of Tacoma/Evergreen Marine Corp (Taiwan) Ltd.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200477.

Title: Port of Tacoma/Evergreen Marine Corp. (Taiwan) Ltd. Terminal Agreement.

Parties: Port of Tacoma (Port) Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The Agreement provides for the lease, operation and services at certain Port marine terminal facilities for an initial term ending December 31, 1996.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary

Dated: February 22, 1991.

[FR Doc. 91–4567 Filed 2–26–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–10]

Orient Overseas Container Line, Inc. v. Espee Trading Corporation; Filing of Complaint and Assignment

Notice is given that a complaint filed by Orient Overseas Container Line, Inc. ("Complainant") against Espee Trading Corporation ("Respondent") was served February 21, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight charges lawfully assessed pursuant to Complainant's applicable tariff on shipments of raw waste paper to Bombay, India between March 2, 1988, and August 8, 1988.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 21, 1992, and the final decision of the Commission shall be issued by June 22, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91–4533 Filed 2–26–91; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 91–11]

Sea-Land Service, Inc. v. Inter Alliance Trading Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Sea-Land Service, Inc. ("Complainant") against Inter Alliance Trading Corp. ("Respondent") was served February 21, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff for four shipments of waste paper from Florida to Kingston, Jamaica between November 19, 1989, and January 5, 1990.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examiantion are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 21, 1992, and the final decision of the Commission shall be issued by June 22, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91–4534 Filed 2–26–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

American Community Bank Group, Inc.,; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 18, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. American Community Bank Group, Inc., Minneapolis, Minnesota; to acquire 98.2 percent of the voting shares of Pierce County Bank & Trust Company, Ellsworth, Wisconsin.

Board of Governors of the Federal Reserve System, February 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–4558 Filed 2–26–91; 8:45 am]

BILLING CODE 6210–01–F

Bankers Trust New York Corporation; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 18, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York; to engage *de novo* through its subsidiary, Bankers Trust Company New York Limited, New York, New York, in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director) 101 Market Street, San Francisco, California 94105:

1. The Sanwa Bank Limited, Osaka, Japan; to engage *de novo* through its subsidiary, Sanwa-BGK/SLK, in a joint venture with Spear, Leeds & Kellog, a New York limited partnership, in dealing in obligations of the United States, general obligations of the states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. §§ 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by a bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks (such obligations being "Eligible Securities"), and engaging in activities incidental thereto pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4559 Filed 2-26-91; 8:45 am]

BILLING CODE 6210-01-F

George William Hardy, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 18, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. George William Hardy and Lillian Aileen Hardy, Shepherdsville, Kentucky; to acquire 10.79 percent of the voting shares of Peoples Bancorp, Inc. of Bullitt County, Shepherdsville, Kentucky, and thereby indirectly acquire The Peoples Bank of Bullitt County, Shepherdsville, Kentucky.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Duane E. Joseph, to retain an additional 24 percent of the voting shares of Riverside Bancshares Corporation, Minneapolis, Minnesota, for a total of 25 percent, and thereby indirectly acquire Riverside Bank, Minneapolis, Minnesota.

Board of Governors of the Federal Reserve System, February 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4560 Filed 2-26-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide Content of 475 Varieties of Domestic Cigarettes

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide Content of 475 Varieties of Domestic Cigarettes.

DATE: February 27, 1991.

ADDRESSES: Copies of the full report are available from the FTC's Public Reference Branch, room 130, 6th St. and Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-3222.

FOR FURTHER INFORMATION CONTACT: Joanna Crane-Murray, Bureau of Consumer Protection, at the address given above, telephone (202) 326-3256.

SUPPLEMENTARY INFORMATION: These are the most recent test results of the tar, nicotine, and carbon monoxide levels of the smoke of domestic cigarettes reported by the FTC. The Tobacco Institute Testing Laboratory, (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the supervision of a representative of the FTC. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic (no brand-name), private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and provided under compulsory process to the FTC. The methodology, processes and procedures that the companies and TITL employed are identical to those the Commission has followed in the past.

By Direction of the Commission.

Donald S. Clark,

Secretary.

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989

Brand name	Description [1]	Tar [2]	Nic [2]	CO [4]
Alpine	King, Men, F, SP	17	1.1	16
Alpine	100, Men, F, SP	15	1.1	15
Alpine	King, Men, F, SP, LT	09	0.7	11
Alpine	100, Men, F, SP, LT	09	0.8	11
Alpine*	Long, Men, F, HP, Ful-Fla	15	0.9	15
Alpine*	Long, Men, F, HP, LT	10	0.7	10
American Filter	100, F, SP	16	1.2	15
American Filter	King, F, SP	16	1.2	14
American Lights	100, F, SP, LT	12	1.0	13
American Lights	King, F, SP, LT	12	0.9	13
American Lights*	100, F, Men, SP, LT	12	1.0	12
Belair	SP, F, King, Men	10	0.8	10

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [2]	CO [4]
Belair	100, F, SP, Men	06	0.6	09
Belair*	King, Men, F, SP, Lo-price	14	1.2	12
Belair*	100, Men, F, SP, Lo-price	15	1.3	13
Belair*	LT, King, F, Men, SP, Lo-price	09	0.9	09
Belair*	LT, Long, Men, F, SP, Lo-price	10	0.9	10
Benson and Hedges	King, F, HP	15	1.2	13
Benson and Hedges	LT, 100, F, HP	11	0.9	12
Benson and Hedges	LT, 100, F, Men, HP	10	0.8	11
Benson and Hedges	100, F, SP	17	1.2	15
Benson and Hedges	F, HP, 100	16	1.2	15
Benson and Hedges	100, Men, F, HP	16	1.2	16
Benson and Hedges	Men, 100, SP, F	16	1.2	16
Benson and Hedges	100, LT, F, SP	11	0.8	13
Benson and Hedges	100, LT, Men, SP	11	0.9	12
Benson and Hedges	DLX, Ultra-LT, F, HP, 100	05	0.5	07
Benson and Hedges	DLX, Ultra-LT, Men, F, HP	05	0.5	07
Benson and Hedges	King, F, SP, Multi	11	0.9	11
Best Buy**	King, F, Ful-Fla, SP	16	1.2	NT
Best Buy**	100, F, Ful-Fla, SP	16	1.2	NT
Best Buy**	LT, King, F, SP	11	0.8	NT
Best Buy**	LT, 100, F, Men, SP	11	0.8	NT
Best Buy**	Ultra-LT, King, F, SP	06	0.5	NT
Best Buy**	Ultra-LT, 100, F, SP	06	0.5	NT
Best Buy**	King, NF, SP	24	1.6	NT
Best Buy**	Lt, King, F, Men, SP	<0.5	<0.05	<0.5
Best Buy**	100, LT, F, SP	<0.5	<0.05	<0.5
Best Value**	Full Flavor, King, F, SP	15	1.1	NT
Best Value**	100, Full Flavor, F, SP	16	1.1	NT
Best Value**	LT, King, SP, F	11	0.7	NT
Best Value**	LT, 100, F, SP	11	0.8	NT
Best Value**	Ultra, LT, 100, F, SP	05	0.5	<0.5
Best Value**	LT, Men, King, F, SP	10	0.8	NT
Best Value**	LT, Men, 100, F, SP	11	0.8	NT
Best Value**	King, F, SP, Ultra LT	05	0.5	NT
Briston**	King, F, SP, LT	11	0.9	12
Briston**	King, F, SP, LT, Men	11	0.9	12
Briston**	100, F, SP, LT	11	0.9	11
Briston**	100, F, SP, LT, Men	11	0.8	14
Bucks*	King, F, SP	14	1.0	13
Bucks*	King, F, SP, LT	11	0.7	11
Cambridge	100, F, SP, Ultra	04	0.4	06
Cambridge	LT, King, SP, F	12	0.9	13
Cambridge	LT, King, Men, F, SP	12	0.9	13
Cambridge	LT, 100, F, SP	12	0.9	14
Cambridge	LT, 100, Men, F, SP	12	0.9	14
Cambridge	Full-Fla, King, F, SP	17	1.1	16
Cambridge	Full-Fla, 100, F, SP	17	1.2	17
Camel	F, King, SP	15	1.0	14
Camel	HP, F, King	17	1.0	16
Camel	LT, 100, F, SP	11	0.8	14
Camel	LT, F, King, SP	09	0.7	12
Camel	LT, HP, F, King	09	0.6	12
Camel	70, NF, SP	22	1.4	14
Camel	100, F, SP	17	1.0	19
Capri	100, F, HP	10	0.8	07
Capri	Men, 100, F, HP	09	0.8	06
Capri	120, HP, F	14	1.1	10
Capri	120, F, HP, Men	12	1.0	08
Carlton	F, SP, 120	06	0.6	06
Carlton	F, SP King	01	0.1	02
Carlton	Men, SP, 120, F	06	0.6	05
Carlton	Men, SP, King, F	<0.5	0.1	01
Carlton	F, HP, King	01	0.1	02
Carlton	F, HP, 100	<0.5	0.1	01
Carlton	F, SP, 100	03	0.3	04
Carlton	Men, HP, 100, F	<0.5	0.1	01
Carlton	Men, SP, 100, F	04	0.4	06
Carlton	Ultra, King, F, HP	<0.5	<0.05	<0.5
Cartier Vendome*	100, F, HP	09	0.7	06
Cartier Vendome*	100, F, HP, Men, 10	09	0.7	07
Cartier Vendome*	100, F, Men, HP	09	0.7	07
Cartier Vendome*	100, F, HP, 10	09	0.7	06
Century	F, King, SP, 25	15	1.0	17
Century	LT, F, King, SP, 25	09	0.7	11
Century	100, F, SP, 25	17	1.1	20
Century	LT, 100, F, SP, 25	12	0.9	13
Century	LT, 100, F, SP, Men	11	0.8	13
Chelsea*	100, F, HP, Men	11	0.9	12
Chelsea*	100, F, HP	11	0.9	12
Chesterfield	REG, NF, SP	20	1.3	13

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [3]	CO [4]
Chesterfield	NF, King, SP	24	1.8	15
Chesterfield	LT, King, F, SP	10	0.8	12
Chesterfield	LT, 100, F, SP	10	0.9	11
Class A*	REG, NF, SP	19	1.3	13
Class A*	King, NF, SP	23	1.8	15
Class A*	King, F, SP, Full	18	1.3	13
Class A*	King, F, SP, Men, Full	18	1.3	14
Class A*	100, F, SP, Full	17	1.4	14
Class A*	100, F, SP, Men, Full	17	1.4	14
Class A*	King, F, SP, LT	14	1.2	13
Class A*	King, F, SP, Men, LTR	14	1.2	13
Class A*	100, F, SP, LT	14	1.2	14
Class A*	100, F, SP, Men, LT	14	1.2	12
Class A*	King, F, SP, Ultra LT	06	0.7	06
Class A*	King, F, SP, Men, Ultra LT	06	0.7	07
Class A*	100, F, SP, Ultra LT	06	0.7	05
Class A*	100, F, SP, Men, Ultra LT	06	0.7	04
Class A Deluxe*	King, F, SP, DLX, Full	16	1.3	13
Class A Deluxe*	100, F, SP, DLX, Full	17	1.4	14
Class A Deluxe*	King, F, HP, DLX, LT	14	1.2	13
Class A Deluxe*	King, F, SP, DEL, LT	14	1.2	13
Class A Deluxe*	King, F, SP, Men, DEL, LT	14	1.2	13
Class A Deluxe*	100, F, SP, DEL, LT	14	1.2	14
Class A Deluxe*	100, F, SP, Men, DEL, LT	14	1.2	12
Class A Deluxe*	100, F, SP, DLX, Ultra LT	06	0.7	05
Cost Cutter**	Full Flavor, King, SP, F	15	1.1	NT
Cost Cutter**	Full Flavor, 100, F, SP	16	1.1	NT
Cost Cutter**	LT, King, F, SP	11	0.7	NT
Cost Cutter**	LT, 100, F, SP	11	0.8	NT
Cost Cutter**	Ultra LT, 100, F, SP	05	0.5	NT
Cost Cutter**	LT, Men, King, F, SP	10	0.8	NT
Cost Cutter**	LT, Men, 100, F, SP	11	0.8	NT
Doral	LT, F, King, SP	10	0.7	11
Doral	LT, Men, F, King, SP	10	0.7	11
Doral	LT, F, 100, SP	10	0.8	10
Doral	LT, F, 100, Men, SP	11	0.9	11
Doral	F, King, Full Flavor, SP	16	1.0	17
Doril	100, F, Full Flavor, SP	16	1.1	18
Doral	Ultra-LT, 100, F, SP	05	0.5	06
Doral	Full Flavor, Men, King, SP, F	16	1.1	16
Doral	Full Flavor, 100, F, SP	16	1.1	17
English Oval	King, NF, HP	23	1.8	15
Eve	LT, HP, 120, F	13	1.1	11
Eve	LT, Men, HP, 120, F	13	1.1	11
Eve	Slim, LT, F, Men, 100, HP	13	1.0	11
Eve	Slim, LT, F, 100, HP	13	1.0	11
Eve	Ultra, LT, 120, HP, F	05	0.6	04
Eve	Ultra, LT, 120, HP, F, Men	05	0.6	04
F&L**	King, F, HP, LT	11	0.8	NT
F&L**	Ultra-LT, 100, SP	06	0.5	NT
F&L**	King, F, Men, SP, LT	11	0.8	NT
F&L**	LT, King, F, SP	11	0.8	NT
F&L**	LT, 100, F, SP	11	0.8	NT
F&L**	LT, 100, F, Men, SP	11	0.8	NT
Falcon	Lt, King, F, SP	11	0.7	11
Falcon	Men, LT, King, F, SP	10	0.8	12
Falcon	LT, 100, F, SP	11	0.8	14
Falcon	Men, LT, 100, F, SP	09	0.7	11
Famous Value**	King, F, SP, Full Flavor	16	1.2	NT
Famous Value**	LT, King, F, SP	11	0.8	NT
Famous Value**	LT, 100, F, Men, SP	11	0.8	NT
Famous Value**	Ultra-LT, King, F, SP	06	0.5	NT
Famous Value**	Ultra-LT, 100, F, SP	06	0.5	NT
Famous Value**	King, NF, SP	24	1.8	NT
Famous Value**	LT, King, F, Men, SP	11	0.8	NT
Famous Value**	100, F, SP, Full Flavor	16	1.2	NT
Genco**	LT, 100, F, SP	11	0.8	NT
Genco**	King, NF, SP	24	1.6	NT
Genco**	King, F, SP	16	1.2	NT
Genco**	100, F, SP	16	1.2	NT
Genco**	King, F, SP, LT	11	0.8	NT
Genco**	King, F, SP, Men, LT	11	0.8	NT
Genco**	100, F, SP, LT	11	0.8	NT
Genco**	100, F, SP, Men, LT	11	0.8	NT
Genco**	King, F, SP, Ultra, LT	06	0.5	NT
Genco**	100, F, SP, Ultra, LT	06	0.5	NT
Golden Lights	LT, King, F, SP	08	0.7	08
Golden Lights	LT, Men, King, F, SP	08	0.7	09
Golden Lights	LT, 100, F, SP	09	0.8	09
Golden Lights	LT, Men, 100, F, SP	10	0.9	10

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [3]	CO [4]
Golden Lights	LT, King, F, HP	06	0.7	09
Golden Lights	LT, 100, F, HP	09	0.8	10
GPA**	King, NF, SP	24	1.6	NT
GPA**	King, F, SP	16	1.2	NT
GPA**	100, F, SP	16	1.2	NT
GPA**	King, F, SP, LT	11	0.8	NT
GPA**	King, F, SP, Men, LT	11	0.8	NT
GPA**	100, F, SP, LT	11	0.8	NT
GPA**	100, F, SP, Men, LT	11	0.8	NT
GPA**	King, F, SP, Ultra, LT	06	0.5	NT
GPA**	100, F, SP, Ultra, LT	06	0.5	NT
GPC Approved**	Plain, REG, NF, SP	24	1.4	16
GPC Approved**	King, LT, F, SP	11	0.7	12
GPC Approved**	LT, 100, F, SP	11	0.8	13
GPC Approved**	King, LT, F, Men, SP	10	0.8	09
GPC Approved**	100, LT, F, Men, SP	09	0.8	09
GPC Approved**	King, Ultra LT, SP, F	06	0.5	06
GPC Approved**	100, Ultra LT, SP, F	06	0.5	07
GPC Approved**	King, F, SP	17	1.1	17
GPC Approved**	100, F, SP	16	1.1	18
GPC Approved**	Men, King, F, SP	16	1.0	13
GPC Approved**	Men, 100, F, SP	14	1.0	13
Gridlock	King, NF, SP	24	1.6	NT
Gridlock*	King, Full Flavor, SP	16	1.2	NT
Gridlock**	LT, 100, F, SP	11	0.8	NT
Gridlock**	Ultra-LT, 100, F, SP	06	0.5	NT
Gridlock**	100, F, SP, Full Flavor	16	1.2	NT
Harley Davidson*	F, King, SP	14	1.0	16
Harley Davidson	LT, King, F, SP	06	0.7	11
Herbert Tareyton	King, NF, SP	25	1.6	18
Hi-Lite*	100, F, HP	13	1.1	13
Kent	King, F, SP	12	0.9	14
Kent	100, F, SP	14	1.0	15
Kent	HP, King, F	11	0.8	13
Kent	Men, 100, F, SP	14	1.0	15
Kent	III, King, F, SP	03	0.3	05
Kent	III, 100, Plain, F, SP	05	0.4	07
Kent	III, 100, F, HP	05	0.5	07
Kool	Reg, NF, Men	22	1.4	15
Kool	King, Men, F, SP	17	1.2	16
Kool	King, Men, F, HP	16	1.1	16
Kool	LT, King, F, SP, Men	06	0.7	09
Kool	LT, 100, F, Men, SP	09	0.7	10
Kool	Mild, King, F, Men, SP	12	0.9	13
Kool	Mild, 100, F, Men, SP	12	0.9	13
Kool	Mild, King, F, Men, HP	11	0.9	11
Kool	Men, 100, F, SP, Super Long	17	1.3	17
L and M	F, King, SP	14	1.0	13
L and M	HP, F, King	14	1.1	13
L and M	100, F, SP, 10-PK, 30, Light	12	1.0	10
L and M	Long, SP, F, 100	08	0.9	07
L and M	Super, King, 100, F, SP	14	1.1	15
Lark	LT, F, King, SP	13	1.0	11
Lark	LT, F, 100, SP	13	1.1	13
Lark	King, F, SP	14	1.1	12
Lark*	Extra Long, F, SP, 100	14	1.2	14
Lucky Strike	Reg, NF, SP	25	1.6	17
Lucky Strike	King, F, SP	12	0.9	13
Lucky Strike	King, F, HP	12	0.9	13
Lucky Strike	F, 100, SP	12	1.0	13
Lucky Strike	LT, King, F, SP	06	0.7	10
Lucky Strike	LT, 100, F, SP	09	0.8	10
Lucky Strike*	Men, 100, F, SP	12	1.0	12
Magna	King, F, SP	14	0.9	14
Magna	King, F, HP	14	0.9	15
Magna	LT, King, F, SP	09	0.7	13
Magna*	King, F, HP, LT	13	0.9	10
Malibu	100, F, SP	14	1.1	14
Malibu	100, F, LT, SP	09	0.8	11
Malibu	100, Men, SP, F	11	0.9	12
Malibu	King, F, SP	17	1.2	15
Malibu	King, F, LT, SP	10	0.8	10
Malibu	King, F, Men, SP	16	1.2	14
Malibu*	100, Ultra-LT, F, SP	06	0.5	07
Marlboro	King, F, HP	17	1.2	15
Marlboro	King, F, SP	17	1.2	15
Marlboro	King, F, SP, 25	17	1.2	15
Marlboro	Men, King, F, SP	16	1.2	15
Marlboro	SP, 100, F	16	1.2	16
Marlboro	HP, 100, F	17	1.2	16

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [3]	CO [4]
Marlboro	LT, King, F, SP	11	0.9	12
Marlboro	LT, King, F, SP, 25	11	0.8	12
Marlboro	LT, King, F, HP	11	0.9	12
Marlboro	LT, 100, F, SP	11	0.9	12
Marlboro*	LT, King, Men, F, SP	10	0.8	10
Marlboro	LT, 100, F, HP	11	0.9	12
Marlboro*	LT, 100, Men, F, SP	11	0.9	12
Marlboro	LT, 100, Men, HP	10	0.8	11
Marlboro	LT, King, Men, HP	10	0.8	11
Marlboro*	King, F, HP, Ultra-LT	06	0.5	06
Marlboro*	100, F, HP, Ultra-LT	06	0.5	07
Max	F, 120, SP	17	1.3	19
Max	Men, 120, F, SP	17	1.3	18
Merit	King, F, SP	06	0.6	10
Merit	Men, King, F, SP	06	0.6	10
Merit	100, F, SP	10	0.8	12
Merit	100, Men, F, SP	10	0.8	11
Merit	King, HP, F	06	0.6	10
Merit	Ultra-LT, King, F, SP	05	0.5	06
Merit	100, F, SP, Ultra-LT	05	0.5	07
Merit	Ultra-LT, Men, King, F, SP	05	0.5	06
Merit	100, Men, F, SP, Ultra-LT	05	0.5	07
Merit*	Men, King, F, HP	09	0.7	NT
Merit	Ultra-LT, King, F, HP	05	0.5	06
Merit	Ultra-LT, 100, F, HP	06	0.6	07
Merit*	Long, F, HP	09	0.7	NT
Merit De-Nic*	King, F, SP	09	0.1	07
Merit De-Nic*	King, F, SP, Men	09	0.1	06
Merit De-Nic*	King, F, SP, Ultra	04	0.1	03
Merit De-Nic*	King, SP, Men, Ultra	04	0.1	03
Miami*	LT, King	14	1.2	13
Misty Slims*	100, LT, F, HP	09	0.8	10
Misty Slims*	100, LT, F, Men, HP	09	0.6	10
Montclair	100, F, SP	16	1.3	14
Montclair	100, LT, F, SP	12	1.0	13
Montclair	100, LT, F, Men, SP	12	1.0	13
Montclair	King, LT, F, SP	12	1.0	13
Montclair	King, LT, F, Men, SP	12	1.0	13
Montclair	King, F, SP	16	1.3	15
More	120, F, SP	17	1.2	22
More	LT, 100, F, HP	10	0.8	11
More	Men, 120, F, SP	17	1.3	22
More	LT, Men, 100, F, HP	09	0.7	11
More	LT, 120, Men, F, SP	13	1.0	20
More	LT, 120, F, SP	12	0.9	19
More	120, F, SP, White, LT	10	0.7	13
More	120, F, SP, Men, White, LT	10	0.8	15
Newport	King, Men, F, SP	17	1.2	18
Newport	King, Men, F, SP, 25	17	1.2	18
Newport	100, Men, F, SP	18	1.4	19
Newport	100, Men, F, SP, 25	19	1.4	19
Newport	HP, Men, F, King	16	1.2	17
Newport	LT, F, King, Men, SP	08	0.7	09
Newport	LT, 100, F, Men, SP	09	0.8	09
Newport	LT, HP, King, F, Men	08	0.7	09
Newport	Men, 100, F, HP	19	1.4	19
Newport	LT, Men, 100, HP, F	09	0.8	09
Newport Stripe	100, Slim, LT, F, Men, HP	10	0.8	11
Newport Stripe	100, F, HP	12	0.9	16
Newport Stripe	100, F, Men, HP	12	0.9	16
Next*	King, F, SP, Men, Lo-tar	09	0.1	06
Next*	100, F, SP, Lo-tar	09	0.1	06
Next*	100, F, SP, Men, Lo-tar	09	0.1	06
Next*	King, F, SP, Ultra Lo-tar	04	0.1	03
Next*	King, F, SP, Men, Ultra Lo-tar	04	0.1	03
Next*	100, F, SP, Ultra Lo-tar	06	0.1	05
Next*	100, F, SP, Men, Ultra Lo-tar	06	0.1	05
Next*	King, F, SP, Lo-tar	09	0.1	06
No Frills**	100, F, SP, Full	16	1.2	NT
No Frills**	LT, King, F, SP	11	0.8	NT
No Frills**	LT, King, Men, SP	11	0.8	NT
No Frills**	LT, 100, SP	11	0.8	NT
No Frills**	Ultra-LT, 100, SP	06	0.5	NT
No Frills**	100, F, SP, Men, LT	11	0.8	NT
No Frills**	King, F, SP, Ultra-LT	06	0.5	NT
No Frills**	King, F, SP, Full	16	1.2	NT
Now	100, F, SP	02	0.2	03
Now	F, King, SP	01	0.1	02
Now	HP, F, King	<0.5	<0.05	<0.5
Now	HP, 100 F	<0.5	<0.05	<0.5

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [3]	CO [4]
Now	Men, 100, F, SP	02	0.2	04
Now	Men, F, King, SP	01	0.1	02
Old Gold	SP, F, King	17	1.2	18
Old Gold	SP, F, 100	18	1.4	19
Old Gold	SP, Straight, King, NF,	26	1.8	18
Old Gold	SP, LT, F, King	09	0.8	10
Old Gold	SP, LT, F, 100	12	0.9	16
Pall Mall	King, NF, SP	25	1.7	16
Pall Mall	King, NF, SP, 25	25	1.7	16
Pall Mall	LT, 100, F, SP	10	0.9	12
Pall Mall	F, 100, SP	18	1.3	17
Pall Mall*	LT, King, NF, SP	18	1.3	17
Pall Mall*	LT, 100, Men, F, SP	10	0.8	10
Pall Mall	F, King, SP, Red	15	1.1	14
Pall Mall	F, 100, SP, Red	16	1.2	15
Pall Mall	LT, King, SP, Red	10	0.8	10
Pall Mall	LT, 100, F, SP, Red	09	0.8	10
Pall Mall Gold*	100, Lt, F, SP	15	1.2	15
Parliament	Lt, King, F, HP	09	0.7	10
Parliament	LT, F, King, SP	09	0.8	11
Parliament	Lt, 100, F, SP	12	1.0	13
Philip Morris	COM, King, NF, SP	26	1.7	16
Philip Morris	REG, NF, SP	24	1.4	14
Philip Morris	Intl, 100 F, HP	17	1.3	16
Philip Morris	Intl, Men,100, F, HP	17	1.3	16
Picayune*	NF, Reg, SP	16	1.2	10
Players	Reg, NF, HP	25	1.7	15
Players	King, F, HP	12	0.9	13
Players	King, F, Men, HP	12	0.9	13
Players	100, F, HP	14	1.0	13
Players	100, F, Men, HP	14	1.0	13
Players	LT, King, F, SP	10	0.8	11
Players	LT, King, F, Men, SP	10	0.7	11
Players	LT, 100 F, SP	12	0.9	14
Ptayers	LT, 100, F, Men, SP	12	0.9	14
Pyramid	King, LT, F, SP	14	1.1	13
Pyramid	LT,100, SP, F	13	1.1	14
Pyramid*	100, F, SP, Men, LT	12	1.1	12
Pyramid	NF, King, SP	23	1.5	15
Pyramid	Ultra-LT, 100, F, SP	06	0.6	05
Pyramid*	King, F, SP, Full FLA	16	1.3	13
Pyramid	King, Men, F, SP, Full FLA	16	1.3	14
Pyramid	100, F, SP, Full FLA	17	1.4	14
Pyramid*	100, F, Men, SP, Full FLA	17	1.4	14
Raleigh	King, F, SP	15	1.0	14
Raleigh	100 F, SP	16	1.0	16
Raleigh	LT, King, F, SP	11	0.9	13
Raleigh	LT, 100, F, SP	12	0.9	15
Raleigh	REG, NF, SP	25	1.5	17
Richland	F, King, SP	17	1.2	16
Richland	F, King, SP, 25	17	1.2	16
Richland	Men, King, F, SP	16	1.0	16
Richland	F, Men, King, SP, 25	16	1.1	16
Richland	LT, F, King, SP 25	12	0.9	13
Richland	LT, King, SP, F	12	0.9	13
Richland	100, F, SP	18	1.3	17
Richland	100, F, SP, 25	18	1.4	18
Richland	LT, 100, F, SP	12	0.9	14
Richland	LT, 100, F, SP, 25	13	1.0	14
Richland*	100, F, SP, Men, 25	16	1.2	15
Richland	Men, 100, F, SP	16	1.1	16
Ritz	100, F, Men, HP	11	0.8	11
Ritz	100, F, HP	10	0.8	11
Royale*	LT, King, F, SP	11	0.8	NT
Royale*	LT, King, F, Men, SP	11	0.8	NT
Royale*	LT, 100, F, SP	11	0.8	NT
Royale*	LT, 100, F, Men, SP	11	0.8	NT
Salem	King, F, Men, SP	17	1.2	17
Salem	LT,100, F, Men, SP	08	0.7	10
Salem	LT, King, F, Men, SP	09	0.7	12
Salem	100, F, SP, Men	16	1.2	16
Salem	Slim-LT, HP, 100, F, Men	10	0.7	10
Salem	F, King, Men, SP, Ultra	05	0.4	08
Salem	100, F, SP, Men, Ultra	04	0.4	07
Salem	LT, 100, Custom Case, HP, Men, F	11	0.8	11
Saratoga	120, F, HP	15	1.2	15
Saratoga	120 Men, F, HP	15	1.1	14
Satin	100, F, SP	11	0.9	13
Satin	Men,100, SP	11	0.9	14
Savvy	LT, 100, SP, F	10	0.9	11

TAR, NICOTINE, AND CARBON MONOXIDE CONTENT OF DOMESTIC CIGARETTES SOLD IN 1989—Continued

Brand name	Description [1]	Tar [2]	Nic [3]	CO [4]
Savvy	LT, 100, Men, F, SP	10	0.9	11
Savvy	100, F, SP, Ultra-LT	05	0.5	05
Scotch Buy**	King, F, SP, Full	15	1.1	NT
Scotch Buy**	100, F, SP, Full	15	1.1	NT
Scotch Buy**	King, F, SP, LT	11	0.7	NT
Scotch Buy**	100, F, SP, LT	11	0.8	NT
Scotch Buy**	King, F, SP, Men, LT	10	0.8	NT
Scotch Buy**	100, F, SP, Men, LT	11	0.8	NT
Scotch Buy**	100, F, SP, Ultra-LT	05	0.5	NT
Scotch Buy**	King, F, SP, Ultra-LT	05	0.5	NT
Silva Thins*	F, 100, SP	12	1.0	10
Silva Thins*	Men, F, 100, SP	12	1.1	10
Silva Thins	F, 100, HP	12	1.0	12
Silva Thins	Men, F, 100, HP	11	0.9	12
Spring	Men, F, 100, SP	18	1.4	18
Spring*	Lemon, LT, King, F	09	0.9	12
Spring*	Lemon, LT, King, F, Men, SP	09	0.9	12
Spring*	Lemon, LT, 100, F, SP	20	1.0	14
Spring*	Lemon, LT, 100, F, Men, SP	10	1.0	14
Tall	F, 120, SP	19	1.5	19
Tall	Men, 120, F, SP	18	1.6	17
Tareyton	F, King, SP	14	1.0	16
Tareyton	F, 100, SP	14	1.0	17
Tareyton	LT, F, SP	05	0.4	06
Tareyton	Long, LT, 100, F, SP	06	0.7	09
Triumph	King, F, SP	03	0.3	04
Triumph	Men, King, F, SP	03	0.4	04
Triumph	100, F, SP	05	0.5	06
Triumph	Men, 100, F, SP	06	0.5	06
True	SP, King, F	05	0.5	06
True	Men, King, F, SP	05	0.5	06
True	SP, 100, F	06	0.6	07
True	Men, 100, F, SP	06	0.6	07
Vantage	100, F, SP	09	0.6	11
Vantage	F, King, SP	10	0.7	13
Vantage	Ultra-LT, 100, F, SP	05	0.4	08
Vantage	Ultra-LT, F, King, SP	05	0.4	07
Vantage	Men, F, King, SP	10	0.7	12
Vantage	Men, 100, F, SP	08	0.6	13
Vantage	100, F, SP, Excel	09	0.7	09
Viceroy	King, F, SP	17	1.1	16
Viceroy	100, F, SP	16	1.2	15
Viceroy	LT, F, King, SP	11	0.9	13
Viceroy	LT, F, 100, SP	12	0.9	14
Virginia Slims	Slim, F, SP, 100	15	1.1	13
Virginia Slims	Slim, Men, 100, F, SP	15	1.2	13
Virginia Slims	Slim-LT, HP, F, 100	09	0.7	10
Virginia Slims	Slim-LT, HP, Men, Men, 100, F	09	0.7	10
Virginia Slims	Slim-LT, HP, 120, F	14	1.1	14
Virginia Slims	Slim-LT, HP, Men, 120, F	14	1.1	13
Virginia Slims	Ultra-LT, 100, F, HP	05	0.5	05
Virginia Slims	Ultra-LT, Men, 100, F, H	05	0.4	05
Virginia Slims*	100, F, HP, Super Slim	06	0.4	05
Virginia Slims*	100, F, HP, Men, Super Slim	06	0.4	05
Winston	100, F, SP	17	1.1	19
Winston	King, F, SP	17	1.1	16
Winston	HP, F, King	17	1.1	16
Winston	LT, 100, F, SP	11	0.8	13
Winston	LT, F, King, SP	10	0.7	11
Winston	LT, 100, F, HP	10	0.6	12
Winston	Ultra-LT, 100, F, SP	05	0.4	08
Winston	Ultra-LT, F, King, SP	05	0.5	08
Winston	LT, HP, F, King	10	0.7	12

* New brands or brands not widely available in the marketplace: data supplied by the company.
** Private label cigarettes: data supplied by the company.
< (less than) below the sensitivity of the testing method.
[1] F-Filter; NF-Non Filter; MEN-Menthol; HP-Hard Pack; SP-Soft Pack; Reg-Regular (70mm); K-King Size (80–85mm); 100 & 120 are in millimeters per cigarette; LT-Light; FLA-Flavor; DLX-Deluxe; 10, 25, or 30-Number of cigarettes per pack if other than 20.
[2] TAR: Total particulate matter in milligrams per cigarette less nicotine and water.
[3] NIC: Total alkaloids reported as milligrams of nicotine per cigarette.
[4] CO: Carbon monoxide reported in milligrams per cigarette. "NT" entered where CO data was not tested.

[FR Doc. 91–4583 Filed 2–26–91, 8:45 am]
BILLING CODE 6750-01-M

[Docket C-3316]

Budget Rent A Car Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Budget Rent A Car Corporation ("Budget") from failing to inspect and, if appropriate, repair its rental vehicles covered by manufacturers' safety recall notices within a reasonable period of time after receiving such notices. In addition, the consent order provides the respondent the option, if it chooses not to inspect and repair, to disclose to prospective renters of affected vehicles, prior to the signing of the rental agreement, that the vehicles are subject to safety recall notices and have not been inspected or repaired, and to describe to prospective renters the defect in question.

DATES: Complaint and Order issued December 27, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, FTC/H–238, Washington, DC 20580. (202) 326–3135.

SUPPLEMENTARY INFORMATION: On Tuesday, January 3, 1989, there was published in the **Federal Register**, 54 FR 35, a proposed consent agreement with analysis in the Matter of Budget Rent A Car Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

[1] Copies of the Complaint, the Decision and Order, and the statements of Commissioner Azcuenaga and Commissioner Strenio are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

Donald S. Clark,
Secretary.

[FR Doc. 91–4586 Filed 2–26–91; 8:45 am]
BILLING CODE 6750-01-M

[Dkt. C-3322]

Haverhills, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California mail order company and its owners from making certain misrepresentations and unsubstantiated health and safety claims, in the sale of artificial tanning devices or any other device, and from making unsubstantiated fuel economy claims, with respect to any engine oil additive, automobile gasoline additive, or automobile retrofit device. In addition, respondents would be required to distribute a copy of the order to officers, employees, and representatives involved in sales or advertising.

DATES: Complaint and Order issued January 25, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: On Wednesday, November 14, 1990, there was published in the **Federal Register**, 55 FR 47536, a proposed consent agreement with analysis In the Matter of Haverhills, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Authority: (Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.)

Donald S. Clark,
Secretary.

[FR Doc. 91–4585 Filed 2–26–91; 8:45 am]
BILLING CODE 6750-01-M

[Dkt. 9208]

Kraft, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order prohibits, among other things, a Delaware corporation from misrepresenting the calcium or any other nutrient content of any cheese, substitute cheese, or imitation cheese product in the future, and prohibits any such absolute or comparative nutrient or calcium-content claim that is not substantiated by competent and reliable scientific evidence.

DATES: Complaint issued June 17, 1987 Final order issued Janury 30, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Robert Cheek, FTC/S–4002 Washington, DC 20580. (202) 326–3045.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Deborah K. Owen, Roscoe B. Starek III.

Final Order

This matter has been heard by the Commission upon the appeals of respondent Kraft, Inc., and complaint counsel and upon briefs and oral argument in support of and in opposition to the appeals. For the reasons stated in the accompanying Opinion, the Commission has determined to affirm the Initial Decision of the Administrative Law Judge, except as otherwise noted, and enter the following Order. Accordingly,

I

It is ordered that respondent Kraft, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, offering for sale, sale or distribution of any

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, etc. are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

product that is a cheese, related cheese product, imitation cheese, or substitute cheese, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Misrepresenting in any manner, directly or by implication, the calcium content or amount, or the content or amount of any other nutrient of any such product;

B. Misrepresenting in any manner, directly or by implication, the comparative calcium content or amount, or the comparative content or amount of any other nutrient of any such product;

C. Representing in any manner, directly or by implication, the calcium content or amount, or the content or amount of any other nutrient of any such product, unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Competent and reliable scientific evidence" shall mean, for purposes of this Order, those tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results; or

D. Representing in any manner, directly or by implication, the comparative calcium content or amount, or the comparative content or amount of any other nutrient of any such product, unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean, for purposes of this Order, those tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

II

It Is Further Ordered that for three (3) years after the last date of dissemination of any representation concerning any product specified in Part I of this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials that were relied upon by respondent in disseminating such representation; and

2. All test reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation.

III

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order.

IV

It Is Further Ordered that respondent shall, within thirty (30) days after this Order becomes final, distribute a copy of this Order to each of its operating divisions, and to all distributors of any product manufactured or marketed by respondent that is specified in Part I of this Order.

V

It Is Further Ordered that respondent shall, within sixty (60) days after this Order becomes final, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

By the Commission, Commissioner Starek not participating.

Donald S. Clark,

Secretary.

[FR Doc. 91-4587 Filed 2-26-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3323]

Miles Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Indiana corporation from making any benefit claims relating to the consumption of any vitamin or mineral supplement, and from making any representation concerning the need for, or benefit from, consumption of any One-A-Day vitamin product, unless respondent possesses competent and reliable scientific evidence to substantiate the representation.

DATES: Complaint and Order issued January 28, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Brinley H. Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH. (216) 522-4210.

SUPPLEMENTARY INFORMATION: On Tuesday, November 6, 1990, there was published in the Federal Register, 55 FR 46726, a proposed consent agreement with analysis In the Matter of Miles Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 91-4584 Filed 2-26-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Experiment Protocol Review; Evaluating the Acceptability of Adjustable Rollover Protective Structures; Retrofits for Farm Tractors

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Experiment Protocol Review: Evaluating the Acceptability of Adjustable Rollover Protective Structures (ROPS) Retrofits for Farm Tractors

Time and Date: 9 a.m.-12 noon, March 14, 1991.

Place: Appalachian Laboratory for Occupational Safety and Health, room 209, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Status: Open to the public, limited only by the space available.

Purpose: To conduct peer review on a protocol for two studies evaluating the acceptability to farmers of retrofitting their tractors with ROPS and related factors.

Contact Person for Additional Information: John R. Etherton, NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop B-166, Morgantown, West Virginia 26505-2888, telephone 304/291-4509 or FTS 923-4509.

Dated: February 21, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-4550 Filed 2-26-91; 8:45 am]

BILLING CODE 4160-18-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Food and Drug Administration

[Docket No. 91N-0015]

Report on a High Temperature Migration Study; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a research report entitled "High Temperature Migration of Indirect Food Additives to Foods" is available to the public. The purpose of the report is to provide different ways to improve FDA's procedures for evaluating migration of indirect food additives from food packaging.

ADDRESSES: The research report "High Temperature Migration of Indirect Food Additives to Foods" may be ordered from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 91-127-209 and include payment of $31.00 for each copy of the document. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650. "High Temperature Migration of Indirect Food Additives to Foods" is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory M. Cramer, Center for Food Safety and Applied Nutrition (HFF-415), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5560.

SUPPLEMENTARY INFORMATION: Polymeric materials used in food packaging contain additives that may migrate from the packaging to food during food contact. A study entitled "High Temperature Migration of Indirect Food Additives to Food" was conducted under sponsorship of an FDA research contract with Arthur D. Little, Inc., of Cambridge, MA. The purpose of the study was to suggest ways to improve FDA's procedures for evaluating migration of indirect food additives from food packaging.

The study investigated the influence of food type and composition on additive migration during high temperature contact. Migration testing was performed using a newly developed test cell (permitting exposure of only one side of a polymer) at temperatures ranging from 77 °C to 135 °C with six radiolabeled additive-polyolefin resin combinations. Forty combinations of food/polymer/additive/temperatures were tested. A detailed analysis of the experimental findings is provided, along with recommended approaches for validating and extending the findings and conclusions to other food-contact polymer systems.

Dated: February 21, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4557 Filed 2-26-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: By this notice, the Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologics as of December 31, 1990. FDA has announced the availability of previous lists, which are brought up-to-date monthly, identifying the drugs and biologicals granted orphan-drug designation pursuant to section 526 of the Federal Food, Drug, and Cosmetic Act.

ADDRESSES: Copies of the list of current orphan-drug designations and of any future lists are or will be available from the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the National Information Center for Orphan Drugs and Rare Diseases (NICODARD), P.O. Box 1133, Washington, DC 20013-1133.

FOR FURTHER INFORMATION CONTACT: National Information Center for Orphan Drugs and Rare Diseases (NICODARD), P.O. Box 1133, Washington, DC 20013-1133, 1-800-456-3505.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biologicals. This list is made current on a monthly basis and is available upon request from NICODARD (contact identified above). At the end of each calendar year, the agency publishes an up-to-date cumulative list of designated orphan drugs and biologicals including the names of designated compounds, the specific disease or condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1988 was published in the Federal Register of April 21, 1989 (54 FR 16294). This list is available upon request from the Dockets Management Branch (address above). Those requesting a copy should specify the docket number found in brackets in the heading of this document. The list that is the subject of this notice consists of designated orphan drugs and biologicals through December 31, 1990, and, therefore, brings the March 28, 1990 (55 FR 11438) publication up to date.

The orphan-drug designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan drug or biological must apply for orphan-drug designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577, November 23, 1988.)

The names used in the cumulative list for the drug and biological products that have not been approved or licensed for marketing may not be the established or proper names approved by FDA for these products if they are eventually approved or licensed for marketing. Because these products are investigational, some may not have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: February 21, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4586 Filed 2-26-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

RIN 0938-AE11

[BPD-622-FN]

Medicare Program; Withdrawal of Coverage of Extracranial-Intracranial Arterial Bypass Surgery for the Treatment or Prevention of Stroke

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice announces the withdrawal of Medicare coverage of extracranial-intracranial (EC–IC) arterial bypass surgery when used to treat or prevent ischemic cerebrovascular disease of the carotid or middle cerebral arteries. Available evidence does not show that this surgery is effective.

EFFECTIVE DATE: This notice is effective March 29, 1991.

FOR FURTHER INFORMATION CONTACT: Sam Della Vecchia, 301-966-5316.

SUPPLEMENTARY INFORMATION:

I. Background

On April 10, 1990, we published a notice in the **Federal Register** (55 FR 13321) that proposed withdrawal of Medicare coverage of EC–IC arterial bypass surgery for the treatment or prevention of strike. The notice explained the recommendations that we had received from the Public Health Service (PHS) regarding the effectiveness of EC–IC arterial bypass surgery for the treatment or prevention of stroke. The notice provided a 60-day public comment period.

II. Provisions of the Proposed Notice

In the proposed notice, we stated that based on the PHS recommendation of August 3, 1988, there appears to be no probable benefit from EC–IC bypass surgery for the treatment or prevention of stroke. Therefore, we proposed to withdraw Medicare coverage of this surgery on the basis that it does not neet HCFA's criteria for effectiveness based on section 1862(a)(1)(A) of the Social Security Act (the Act) for reasonableness and necessity. In keeping with our longstanding policy for making national coverage decisions, we published the proposed notice to announce our intention to withdraw coverage.

We proposed to exclude EC–IC arterial bypass surgery when used to treat: (1) Occlusion or stenosis of the inaccessible portion of the internal carotid artery presenting with a transient ischemic attack (TIA), prolonged reversible ischemic neurological deficit (PRIND), or completed stroke (CS); (2) middle cerebral artery stenosis or occlusion presenting with TIA, PRIND, or CS; or (3) a longstanding complete internal carotid occlusion considered inoperable by carotid endarterectomy because of difficulties in establishing or maintaining patency. In short, EC–IC surgery for atherosclerotic disease of the internal carotid artery or middle cerebral arteries (stroke) would no longer be covered under Medicare. We would withdraw coverage for this surgery beginning 30 days after the date the final notice is published in the **Federal Register**. Upon publication, we would issue instructions to HCFA contractors.

Coverage of EC–IC would continue for prevention of an expected vascular insufficiency as a result of surgical treatment of a giant aneurysm of the carotid bifurcation or middle cerebral artery and of skull based tumors involving the internal carotid and middle cerebral artery. While the provisions of the proposed notice would not change any existing Medicare regulations, they would affect section 35–37 of the Coverage Issues Manual.

III. Discussion of Comments

We received 10 timely items of correspondence in response to the proposed notice. Of these, 3 were from professional organizations while the other 7 were from individual health professionals representing various health care institutions. The comments unanimously opposed Medicare withdrawal of coverage of EC–IC arterial bypass surgery for the treatment or prevention of stroke. A summary of those comments follows:

Comment: Most commenters suggested that coverage be allowed for various forms of "stroke" prevention or treatment. Suggested conditions to be considered eligible for coverage include cerebral ischemia, cerebrovascular occlusive disease, fluctuating ischemic neurological deficits, impairment of blood flow in association with progressive or frequent recurrent stroke-type symptoms, poor cerebral perfusion, transient ischemic attacks, and chronic cerebral ischemia secondary to major cerebral artery occlusive disease.

Response: The commenters did not submit data or provide convincing arguments that would support altering our proposal to withdraw coverage of EC–IC arterial bypass surgery for the treatment or prevention of strokes. Although one commenter submitted an article to support continued coverage of EC–IC for strokes, we were not persuaded that the one patient studied and the inconclusive findings were sufficient to change our noncoverage position.

Comment: The majority of commenters suggested that coverage be allowed under an individual consideration basis for a distinct subgroup of patients who have failed maximal medical management or have Moya-moya disease.

Response: The basis for withdrawing Medicare coverage of EC–IC surgery in the treatment or prevention of strokes is the recommendation of PHS, which carefully assessed the evidence. PHS, recognizing the controversy over the National Institutes of Health (NIH) supported clinical trial reported in the New England Journal of Medicine (NEJM) on November 5, 1985, nevertheless believes that EC–IC surgery for the treatment or prevention of stroke is ineffective. PHS made it clear, however, that its recommendation applied only to ischemic cerebrovascular disease of the carotid or middle cerebral arteries and NOT to other indications. While it is true that Moya-moya disease, an abnormality of the internal carotid artery, was not specifically addressed in the 1985 clinical trial reported in the NEJM, the reason for performing EC–IC surgery in the presence of this condition is, in fact, to prevent a stroke from occurring. Therefore, EC–IC surgery will not be covered in that circumstance. Medicare payment may only be exteneded to those items and services that are determined to be "reasonable and necessary" for the treatment of an illness or injury. There is no evidence that EC–IC surgery is beneficial for most patients; in fact, NIH noted that the clinical trial identified a subgroup of patients in which the procedure is harmful. Therefore, we cannot consider the procedure reasonable and necessary.

Comment: One commenter cited personal experience to support the conclusion that for most patients, EC–IC does not reduce the risk of stroke enough to warrant its continued use. Nevertheless, this commenter went on to endorse continued coverage for the procedure for those patients unresponsive to maximal medical management.

Response: As stated previously, there appears to be no evidence to support the effectiveness of EC–IC surgery in the treatment of stroke. The fact that the patient is unresponsive to other procedures does not lend any weight to the position that EC–IC is a reasonable and necessary procedure for the treatment of stroke.

Comment: Several commenters criticized the international randomized multi-center trial reported in 1985 that served as the basis for the PHS recommendation. The commenters believe the trial was too limited in its patient selection.

Response: PHS was cognizant of the debate over the validity of the multi-center trial and took this controversy into consideration in making its recommendation. The PHS recommendation expressed concerns within the medical community that some segments of the patient population were excluded from the study. Nonetheless, PHS believes the study was adequate and the evidence demonstrates that the procedure is ineffective. In none of the subcategories of patients believed to be most likely to benefit from bypass surgery (for example, frequent ischemic events) did the surgical patients have outcomes superior to those of nonoperated patients. Moreover, substantive evidence that there exists a group of patients in whom EC–IC bypass surgery reduces the frequency of stroke in operated patients compared to those managed by medical means has not been provided since the study results were published.

IV. Provisions of this Final Notice

There are no additional data or study results available since the time PHS conducted its last assessment of the effectiveness of EC–IC surgery to support altering our noncoverage proposal. We do not consider unsupported, undocamented testimonials about the benefits of EC–IC surgery appropriate considerations in making Medicare coverage decisions. For these reasons we accept the recommendation provided by PHS, and we are withdrawing Medicare coverage of EC–IC arterial bypass surgery in the treatment or prevention of strokes. Should future clinical trials or studies demonstrate that the surgery is effective for these purposes, we will re-evaluate this policy.

We will exclude EC–IC arterial bypass surgery when used to treat the following previously covered conditions: (1) Occlusion or stenosis of the inaccessible portion of the internal carotid artery presenting with a transient ischemic attack (TIA), prolonged reversible ischemic neurological deficit (PRIND), or completed stroke (CS); (2) middle cerebral artery stenosis or occlusion presenting with TIA, PRIND, or CS; or (3) a longstanding complete internal carotid occlusion considered inoperable by carotid endarterectomy because of difficulties in establishing or maintaining patency. In short, EC–IC surgery for atherosclerotic disease of the internal carotid artery or middle cerebral arteries (stroke) will no longer be covered under Medicare.

Coverage of EC–IC arterial bypass surgery will continue for prevention of an expected vascular insufficiency as a result of surgical treatment of a giant aneurysm of the carotid bifurcation or middle cerebral artery and of skull based tumors involving the internal carotid and middle cerebral artery. While the provisions of this notice will not change any existing Medicare regulations, they will affect section 35–37 of the Coverage Issues Manual. We will issue instructions to HCFA contractors via the Coverage Issues Manual.

Coverage of EC–IC arterial bypass surgery for conditions not specificially addressed here will continue to be handled at the individual carrier's discretion.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. criteria for a "major rule", that is, that would be likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with Foreign-based enterprises in domestic or export markets.

This notice does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final notice is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities. States and individuals are not considered small entities.

In 1988, according to HCFA's Part B Medicare Annual Data system (BMAD), Medicare paid for 92 surgical procedures for EC–IC arterial bypass surgery for the treatment or prevention of stroke at a median charge of $2,288 for the physician's surgical service. In its July 1988 report entitled "Medicare Coverage of Extracranial-Intracranial Arterial Bypass Surgery" (Report #A–09–87–00008), the OIG states that the 790 surgeries performed in calendar year 1985 cost Medicare an estimated $10.7 million. This estimate included the allowed charges of surgeons, anesthetists, and assistant surgeons, as well as hospitalization charges. Although only a small number of procedures are performed annually, we realize that there may be a few physicians who perform the majority of these procedures and who may be substantially affected by the withdrawal of Medicare coverage. However, a significant number of physicians will not be affected by this final notice. For these reasons, we have determined and the Secretary certifies, that this final notice will not meet RFA criteria and that we are not preparing a regulatory flexibility analysis.

Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural hospital impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Authority: Section 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)).
(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: September 28, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: January 24, 1991.

Louis W. Sullivan,

Secretary.

[FR. Doc. 91-4602 Filed 2-26-91; 8:45 am]

BILLING CODE 4120-01-M

[OACT-035-N]

RIN 0938-AE67

Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rates Beginning January 1, 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: As required by section 1839 of the Social Security Act, this notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1991. It also announces the monthly SMI premium rate to be paid by all enrollees during calendar year 1991. The monthly actuarial rates for 1991 are $62.60 for aged enrollees and $56.00 for disabled enrollees. The monthly SMI premium rate for 1991 is $29.90.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Carter S. Warfield (301) 966-6396.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient hospital services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR part 407, Subpart B, and Part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal government.

The Secretary of Health and Human Services is required by section 1839 of the Social Security Act (the Act) to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are different than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92-603, enacted on October 30, 1972), and until the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, enacted on September 3, 1982), the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II Social Security benefits.

Section 124 of Public Law 97-248 changed the premium basis to 25 percent of program costs. Section 606 of the social Security Amendments of 1983 (Pub. L. 98-21, enacted on April 20, 1983), section 2302 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, enacted on July 18, 1984), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, enacted on April 7, 1986), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted on December 22, 1987), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 100-239, enacted on December 19, 1989) extended through 1990 the provision that the premium be based on 50 percent of the actuarial rates for aged enrollees. This extension will expire at the end of 1990.

The premium rate for calendar year 1991 is legislated by section 1839(e)(1)(B)(i) as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted on November 5, 1990). The premium rate is $29.90.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted on December 13, 1989) did not repeal the revisions to section 1839(f) made by Pub. L. 100-360.) Section 1839(f) now provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premiums deducted from these benefit payments, the total premium increase will be reduced to avoid causing a decrease in the individual's net monthly payment. This occurs if the increase in the individual's Social Security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 203 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. (A check for benefits under section 202 or 223 is received in the month following the month for which the benefits are due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.) (This change, in effect, perpetuates former amendments that prohibited SMI premium increases from reducing an individual's benefits in years in which the dollar amount of the individual's cost-of-living increase in benefits was not at least as great as the dollar amount of the individual's SMI premium increase.)

Generally, if a beneficiary qualifies for this protection (in order to qualify, a beneficiary must have been in a current payment status for November and December of the previous year), the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits after the deduction of the SMI premium for December; or

(2) The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate before any reductions under 1839(f) are made or any rounding off under section 1839(f)(6) of the Act are made.

For calendar year 1991, the monthly actuarial rates and the monthy premium rate are indicated below.

II. Notice of Monthly Actuarial Rates

As required by sections 1839(a)(1) and (4) of the Act, I have determined that the monthly actuarial rates applicable for calendar year 1991 are $62.60 for enrollees age 65 and over, and $56.00 for disabled enrollees under age 65. The accompanying statement (section IV.) gives the actuarial assumptions and bases from which these rates are derived.

III. Notice of Monthly Premium Rate

As required by sections 1839(a)(3), (e)(1)(B)(i) and (f) of the Act, I have determined that the monthly premium amount will be $29.90 during calendar year 1991. However, for an individual whose monthly premium is deducted from his or her monthly Social Security benefit under sections 1840(a)(1) or 1840(b)(1) of the Act, the premium will remain at $28.60 if monthly Social Security benefits are not increased for 1991. Also, if an individual's cost-of-living increase for 1991 to his or her monthly Social Security benefit is not as much as his or her increase in Part B premiums, the individual's Social Security benefits will not be decreased below his or her level of benefits for December 1990.

A new enrollee and any individual who does not have the monthly premium deducted from his or her monthly Social Security benefit under section 1840(a)(1) or 1840(b)(1) of the Act will be required to pay the new premium amount regardless of whether monthly Social Security benefits are increased, or the individual's cost-of-living increase for 1991 is less than his or her increase in Part B premiums.

IV. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1991

A. Actuarial Status of the Supplementary Medical Insurance Trust Fund

Under the law, the starting point for determining the monthly premium is the amount that would be necessary to finance the SMI program on an incurred basis; that is, the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund and used when needed.

The rates are established prospectively and are therefore subject to projection error. Additionally, legislation enacted after the financing has been established, but effective for the periods for which the financing has been set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of variation between actual and projected costs in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 1989 through 1990.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1989–DEC. 31, 1990

[In millions of dollars]

Financing period ending	Assets	Liabilities	Assets less liabilities
Dec. 31, 1989	$13,541	$4,566	$8,975
Dec. 31, 1990	$13,499	$4,994	$8,505

B. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of variation between actual and projected costs and to amortize unfunded liabilities.

The monthly actuarial rates for enrollees age 65 and older for calendar year 1991 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1991 and June 30, 1992, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July annual fee screen update used for benefits prior to the passage of section 2306(b) of Public Law 98-369. The values for the 12-month period ending June 30, 1988, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. Those per-enrollee values are then adjusted to apply to a calendar year period. The projected values for

financing periods from January 1, 1988, through December 31, 1991, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1991 is $64.78. The monthly actuarial rate of $62.60 provides an adjustment of −$1.46 for interest earnings and −$0.70 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a negative contingency margin is needed to reduce assets toward a more appropriate level.

An appropriate level for assets depends on numerous factors. The most important of these factors are: (1) The difference from prior years in the actual performance of the program and estimates made at the time financing was established and (2) the expected relationship between incurred and cash expenditures. Ongoing analysis is made of the former as the trends in the differences vary over time.

C. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement (before age 65) to disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parallel to projection for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1991 is $71.10. The monthly actuarial rate of $56.00 provides an adjustment of −$3.08 for interest earnings and a −$12.02 for a contingency margin. Based on current estimates, it appears that assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of variation between actual and projected costs. Thus, a negative contingency margin is needed to reduce assets to more appropriate levels.

D. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical variation between actual and projected increases in the respective increase factors. All assumptions now shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of $8,623 million by the end of December 1991. This amounts to 11.2 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors) produce a deficit of $3,199 million by the end of December 1991, which amounts of 4.8 percent of the estimated total incurred expenditures for the following year. Under these more pessimistic assumptions, assets will be insufficient to cover outstanding liabilities. However, the cash balances in the trust fund should remain positive, allowing claims to be paid. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of $15,678 million by the end of December, 1991, which amounts to 29.9 percent of the estimated total incurred expenditures for the following year.

E. Premium Rate

Section 4301 of Public Law 101-508 added section 1839(e)(1)(B)(i) to the Act, which provides that the monthly premium rate for 1991, for both aged and disabled enrollees, is $29.90.

V. Cost to Beneficiaries

The monthly SMI premium rate of $29.90 for all enrollees during calendar year 1991 is a 4.5 percent higher than the $28.60 monthly premium amount for the previous financing period. The estimated cost of this increase over the current premium to the approximately 33 million SMI enrollees will be about $512 million for calendar year 1991.

VI. Regulatory Impact Statement

This notice merely announces amounts required by section 1839 of the Social Security Act. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612), or section 1102(b) of the Act.

TABLE 2.—PROJECTION FACTORS[1], 12-MONTH PERIODS ENDING JUNE 30, OF 1988–1992

(In percent)

12-month period endigg June 30	Physicians' services		Outpatient hospital services	Home health agency services [4]	Group practice prepayment plans	Independent lab services
	Fees [2]	Residual [3]				
Aged:						
1988	2.4	7.0	12.6	56.1	45.4	18.2
1989	1.3	8.4	11.0	1.7	16.3	14.5
1990	0.7	11.0	15.2	10.9	15.0	19.9
1991	2.5	8.5	12.8	9.5	11.6	20.1
1992	3.4	8.2	12.9	8.9	15.0	20.5
Disabled:						
1988	2.4	1.4	17.2	0.0	41.9	9.3
1989	1.3	3.0	4.3	0.0	14.6	7.5
1990	0.7	9.4	12.0	0.0	15.0	15.2

TABLE 2.—PROJECTION FACTORS[1], 12-MONTH PERIODS ENDING JUNE 30, OF 1988–1992—Continued

[In percent]

12-month period ending June 30	Physicians' services		Outpatient hospital services	Home health agency services [4]	Group practice prepayment plans	Independent lab services
	Fees [2]	Residual [3]				
1991	2.5	8.6	12.5	0.0	12.3	15.4
1992	3.4	8.6	12.3	0.0	15.1	14.4

[1] All values are per enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Since July 1, 1981, home health agency services have been almost exclusively provided by the Medicare hospital insurance (HI) program. However, for those SMI enrollees not entitled to HI, the coverage of these services is provided by the SMI program. Since all SMI disabled enrollees are entitled to HI, their coverage of these services is provided by the HI program.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FINANCING PERIODS ENDING DECEMBER 31, 1988 THROUGH DECEMBER 31, 1991

	Financing periods			
	CY1988	CY1989	CY 1990	CY 1991
Covered services (at level recognized):				
Physicians' reasonable charges	$41.94	$46.09	$51.40	$57.37
Outpatient hospital and other institutions	10.84	12.27	13.98	15.78
Home health agencies	0.06	0.07	0.06	0.06
Group practice prepayment plans	3.80	4.40	4.98	5.64
Independent lab	1.41	1.65	1.99	2.39
Total services	$58.05	$64.48	$72.43	$81.26
Cost-sharing:				
Deductible	−2.71	−2.72	−2.72	−2.68
Coinsurance	−10.83	−12.20	−13.80	−15.15
FY 1991 Sequester	0.00	0.00	0.00	−0.61
Total benefits	$44.51	$49.56	$55.91	$62.82
Administrative expenses	1.70	1.98	1.85	1.94
Incurred expenditures	$46.21	$51.54	$57.76	$64.76
Value of interest	−0.55	−1.09	−1.55	−1.46
Contingent margin for projection error and to amortize the surplus or deficit	3.94	5.35	0.99	−0.70
Monthly actuarial rate	$49.60	$55.80	$57.20	$62.60

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 1, 1988 THROUGH DECEMBER 31, 1991

	Financing periods			
	CY 1988	CY 1989	CY 1990	CY 1991
Covered service (at level recognized):				
Physicians' reasonable charges	$42.24	$45.35	$49.83	$54.74
Outpatient hospital and other institutions	24.36	25.89	28.16	30.57
Home health agencies	0.00	0.00	0.00	0.00
Group practice prepayment plans	1.31	1.50	1.70	1.93
Independent lab	1.28	1.42	1.64	1.86
Total services	$69.19	$74.16	$81.33	$89.10
Cost-sharing:				
Deductible	−2.42	−2.43	−2.44	−2.45
Coninsurance	−13.19	−14.28	−15.73	−16.95
FY 1991 Sequester	0.00	0.00	0.00	−0.86
Total benefits	$53.58	$57.45	$63.16	$69.02
Administrative expenses	1.92	2.13	2.15	2.08
Incurred expenditures	$55.50	$59.58	$65.31	$71.10
Value of interest	−7.12	−6.60	−4.92	−3.08
Contingency margin for projection error and to amortize the surplus or deficit	0.22	−18.88	−16.29	−12.02
Monthly actuarial rate	$48.60	$34.30	$44.10	$56.00

TABLE 5.—ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS OF FINANCING PERIODS THROUGH DEC. 31, 1991

	This projection 12-month period ending June 30,			Low cost projection—12-month period ending June 30,			High cost projection—12-month period ending June 30,		
	1990	1991	1992	1990	1991	1992	1990	1991	1992
Projection factors (in percent):									
Physician fees [1]									
Aged	0.7	2.5	3.4	−0.1	1.5	1.8	1.5	3.5	5.2
Disabled	0.7	2.5	3.4	−0.1	1.5	1.8	1.5	3.4	5.2
Utilization of physician services [2]									
Aged	11.0	8.5	8.2	9.5	4.6	4.3	12.5	12.3	12.1
Disabled	9.4	6.6	6.6	6.7	3.3	4.3	12.1	10.0	8.6
Outpatient hospital services per enrollee									
Aged	15.2	12.8	12.9	10.7	10.1	8.6	19.7	15.5	17.2
Disabled	12.0	12.5	12.3	5.8	5.9	9.4	18.2	19.1	15.1

	As of Dec. 31,			As of Dec. 31,			As of Dec. 31,		
	1989	1990	1991	1989	1990	1991	1989	1990	1991
Actuarial status (in millions):									
Assets	$13,541	$13,499	$12,739	$13,541	$15,869	$19,992	$13,541	$11,005	$4,798
Liabilities	4,566	4,994	6,116	3,259	3,495	4,314	5,993	6,529	7,997
Assets less liabilities	$8,975	$8,505	$6,623	$10,282	$12,374	$15,678	$7,846	$4,476	−$3,199
Ratio of assets less liabilities to expenditures (in percent) [3]	19.7	16.4	11.2	23.9	26.2	29.9	15.9	7.8	−4.8

[1] As recognized for payment under the program.
[2] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[3] Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

AUTHORITY: Section 1839 of the Social Security Act; 42 U.S.C. 1395r.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance).

EDITORIAL NOTE: This document was received by the Office of the Federal Register on February 22, 1991.

Dated: September 24, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: September 27, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-4001 Filed 2-26-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-14]

Stewart B. McKinney Homeless Assistance Act—Title V

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: Title V of the Stewart B. McKinney Homeless Assistance Act was amended to require that HUD, HHS, and GSA promulgate a regulation implementing title V no later than ninety days after the date of enactment of the amendments. Because the amendments were signed into a law by President Bush on November 29, 1990, the regulation was due to be published on February 27, 1991. This Notice explains why the regulation implementing title V will be published at a later time.

EFFECTIVE DATE: February 27, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: On October 25, 1990, Congress passed a bill that amended title V of the Stewart B. McKinney Homeless Assistance Act (Act). See Public Law 101-645, 104 Stat. 4673, *amending* 42 U.S.C. 11411. Title V requires the Secretary of Housing and Urban Development (HUD), the Secretary of Health and Human Services (HHS), and the Administrator of the General Services Administration (GSA) (collectively referred to herein as the "Agencies"), to make certain unutilized, underutilized, excess, and surplus Federal real property available for facilities to assist homeless individuals. The amendments to title V require HUD, HHS, and GSA to promulgate a regulation implementing title V no later than ninety days after the date of enactment of the amendments. Because the amendments were signed into law by President Bush on November 29, 1990, the regulation was due to be published on February 27, 1991.

Accordingly, the Agencies drafted a joint regulation to be published in compliance with this requirement. However, on February 13, 1991, Judge Oliver Gasch of the United States District Court for the District of Columbia issued an Order in the case of *The National Law Center on Homeless and Poverty, et al.* v. *Department of Veterans Affairs, et al.*, No. 88-2503-OG (D.D.C.), which imposes certain requirements regarding the title V process on HUD and HHS. The Agencies must not evaluate the effect of the Court's Order on the regulation as presently drafted. Thus, the Agencies have agreed that the regulation will not be published on February 27, 1991. The Agencies intend to publish the regulation within a reasonable time after this evaluation is completed. As required by section 501(c)(2)(B) of the McKinney Act, HUD has established a toll-free number to provide information regarding the title V process. The toll-free number will be in operation as of February 27, and will operate 24 hours a day, seven days a week. The number is 1-800-927-7588.

Dated: February 22, 1991.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-4595 Filed 2-26-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4212-13; N-54049]

Realty Action Exchange of Public and Private Lands in Elko and Clark Counties, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of Realty Action, legal description of private lands to be exchanged to the United States.

The notice published in the **Federal Register** on Monday, December 31, 1990, Vol. 55, No. 251, Pages 53588 and 53589, FR Doc. 90-30509, incorrectly identified the following legal description for private lands the United States would acquire through the exchange;

Mount Diablo Meridian, NV

T. 38 N., R. 59 E.,
Sec. 2, Lots 1-3, S½NE¼, SE¼NW¼, E½SW¼SE¼.

This description should be changed to read;

Mount Diablo Meridian, NV

T. 38 N., R. 59 E.,
Sec. 2, Lots 1-3, S½NE¼, SE¼NW¼, E½SW¼, SE¼.

All other terms and conditions of the previous notice continue to apply.

Dated: February 15, 1991.

Russell T. Dailey,

Acting District Manager.

[FR Doc. 91-4616 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018-0015), Washington, DC 20503, telephone 202-395-7340.

Title: Waterfowl Harvest Surveys.

OMB approval number: 1018-0015.

Abstract: The Migratory Bird Treaty Act authorizes the Secretary of the Interior to set appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations at healthy levels. The Fish and Wildlife Act of 1956 more specifically authorizes collection of such information as is necessary to determine appropriate regulations. Information on the magnitude and composition of the harvest is needed for sound management and to preclude over-harvest of the species involved.

Service form number(s): Forms 3-1823A, B & C, Federal Duck Stamp Cards; Forms 3-2056G, Waterfowl Hunter Survey & Follow-up Questionnaire; Form 3-165, Waterfowl Parts Survey Envelope; Form 3-2056H, Duck and Goose Hunting Record.

Frequency: Annually.

Description of respondents: Individuals and households.

Estimated completion time: The overall reporting burden is estimated to average slightly over 5 minutes per response with an overall response rate average of about 2.5 entries per respondent.

Annual response: 199,000 (57,300 respondents to Survey Cards & Questionnaires, same respondents; and 33,000 respondents to Parts Envelope, hunters return several).

Annual burden hours: 17,579.

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 703/358-1943.

Dated: January 14, 1991.

Rollin D. Sparrowe,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 91-4615 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

[FES 91-7]

Alaska Region; Availability of the Final Environmental Impact Statement for Proposed Navarin Basin Lease Sale 107

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf oil and gas lease sale of available unleased blocks in the Navarin Basin. The proposed Navarin Basin Sale 107 will offer for lease approximtely 28 million acres.

Single copies of the final EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503-4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261-4435.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Resources Library, U.S. Department of the Interior, Anchorage, Alaska; University of Alaska, Anchorage Consortium Library, 3211 Providence Drive, Anchorage, Alaska; Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, Alaska; Alaska State Library, Juneau, Alaska; Alaska Field Operation Center Library, U.S. Department of Interior, Bureau of Mines, Juneau, Alaska; Kenai Community Library, 163 Main Street Loop, Kenai, Alaska; Soldotna Public Library, 235 Binkley Street, Soldotna, Alaska; Alakanuk Public Library, Alakanuk, Alaska; North Slope Borough School District Library/Media Center, Barrow, Alaska; Brevig Mission Community Library, Brevig Mission, Alaska; Buckland Public Library, Buckland, Alaska; Davis Menadelook Memorial H.S. Library, Diomede, Alaska; Elim Community Library, Elim, Alaska; Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska; University of Alaska, Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska; Gambell Community Library/Learning Center, Gambell, Alaska; Golovin Community Library, Golovin, Alaska; Kaveolook School Library, Kaktovik, Alaska; Kiana Elementary School Library, Kiana, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Koyuk City Library, Koyuk, Alaska; Kegoayah Kozga Public Library, Nome, Alaska; Noorvik Elementary/High School Library, Noorvik, Alaska; Tikigaq Library, Point Hope, Alaska; Savoonga Public Library, Savoonag,

BEST COPY AVAILABLE

Alaska; Nellie Weyiouanna Ilisaavik Library, Shishmaref, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Kingikme Public Library, Wales, Alaska; Northwest College Library, Nome, Alaska; and Z. J. Loussac Public Library, 3600 Denali, Anchorage, Alaska.

Dated: February 22, 1991.

James W. Workman,

Acting Associate Director for Offshore Minerals Management.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91-4606 Filed 2-26-91; 8:45 am]

BILLING CODE 4320-MR-M

National Park Service

North RIM Visitor Facilities Development Concept Plan; Grand Canyon National Park, AZ; Public Meetings and Extension of Comment Deadline

SUMMARY: The National Park Service, Grand Canyon National Park, will hold public meetings to receive comments on the development concept plan and draft supplemental environmental impact statement that have been prepared to identify and assess the impacts of a variety of new visitor services proposed for the park's North Rim area located in Coconino County, Arizona. The plan and environmental statement, which supplement the park's 1976 Final Master Plan and Environmental Impact Statement, were circulated for public review in December 1990, and availability announced in the **Federal Register** editions of 12/28/90 (55 FR 53347) and 1/22/91 (56 FR 2186).

The dates, locations, and times of the public meetings are as follows:

March 18, 1991: St. George, UT, Dixie Center Auditorium, 425 S. 700 E—7:00P

March 20, 1991: Flagstaff, AZ, Little America Ballroom, 2515 E. Butler Av.—7:00P

March 21, 1991: Phoenix, AZ, Sheraton Grand Ballroom, 111 N. Central—7:00P

Because the dates of the public meetings are close to the originally established deadline of March 29, 1991 for receipt of comments on the plan/environmental statement, **THE COMMENT DEADLINE IS HEREBY EXTENDED TO APRIL 15, 1991.** For any questions on the public meetings or to receive copies of the plan/environmental statement, please contact the Superintendent, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023 telephone number (602) 638-7706

Dated: February 11, 1991.

B.J. Griffin,

Regional Director, Western Region.

[FR Doc. 91-4629 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting will be held Saturday, March 9, 1991, at the Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established in Public Law 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Mrs. Dorothy Tappe Grotos, Delaplane, Virginia
Mr. Samuel S.D. Marsh, Bethesda, Maryland
Mr. James F. Scarpelli, Sr., Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Captain Thomas F. Hahn, Shepherdstown, West Virginia
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Robert L. Ebert, Cumberland, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: February 15, 1991.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 91-4630 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-70-M

Delaware Water Gap National Recreation Area; Meeting

AGENCY: National Park Service; Delaware Water Gap National Recreation Area Citizens Advisory Commission, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the date of the next meeting of the Delaware Water Gap National Recreation Area Citizens Advisory Commission. Notice of the meeting is required under the Federal Advisory Committee Act.

Date: March 16, 1991.

Time: 9 a.m.

Location: Pike County Administration Building, Commissioners Meeting Room, 506 Broad Street, Milford, PA 18337.

Alternate Date in Case of Inclement Weather: March 23, 1991.

Agenda: The agenda will be devoted to election of officers, committee reports, Superintendent's report, old business, new business, correspondence, identification of topics of concern. An opportunity for public comment to the Commission will be provided.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area Bushkill, PA 18324; 717-588-2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities. The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209; Bushkill, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91-4631 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-70-M

Jimmy Carter National Park Historical Site Advisory Committee; Meeting

AGENCY: National Park Service, Jimmy Carter National Historic Site, Interior.

ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4 p.m. at the following location and date.

DATES: March 22, 1991.

ADDRESSES: The Jimmy Carter Library and Museum Conference Room, One Copen Hill Avenue, Atlanta, Georgia 30307.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1, Box 85, Andersonville, Georgia 31711.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site. The members of the Advisory Commission are as follows:

Professor Stephen Hochman
Professor James S. Young
Professor Donald B. Schewe
Dr. Henry King Stanford
Professor James David Barber
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed.

Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection approximately 4 weeks after the meeting.

Dated: February 12, 1991.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 91-4632 Filed 2-26-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-326]

Investigation

In the Matter of: Certain Scanning Multiple-Beam Equalization Systems for Chest Radiography and Components Thereof.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 22, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hologic, Inc., 590 Lincoln Street, Waltham, Massachusetts 02154. A supplement to the complaint was filed on February 7, 1991. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain scanning multiple-beam equalization systems for chest radiography and components thereof, by reason of direct and contributory infringement of claims 8-10, 13-18, 29-34, 41-44 and 49-52 of U.S. Letters Patent 4,953,189 and claims 1, 3, 4 and 6 of U.S. Letters Patent 4,953,192, and by reason of induced infringement of claims 29-34 of U.S. Letters Patent 4,953,189 and claims 4 and 6 of U.S. Letters Patent 4,953,192; and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue permanent general exclusion orders and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 20, 1991, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain scanning multiple-beam equalization systems for chest radiography and components thereof by reason of alleged direct, contributory or induced infringement of claims 8-10, 13-18, 29-34, 41-44 or 49-52 of U.S. Letters Patent 4,953,189 or claims 1, 3, 4 or 6 of U.S. Letters Patent 4,953,192; and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served: (a) The complainant is: Hologic, Inc., 590 Lincoln Street, Waltham, Massachusetts 02154.

(b) The respondents are the following companies alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

B.V. Optische Industrie, 'De Oude Delft', Van Miereveltaan 9, 2600 GB, Delft, Holland.
Delft Instruments Medical Imaging B.V., Van Miereveltaan 9, 2600 GB, Delft, Holland.
Oldelft Corporation of America, 2735 Dorr Avenue, Fairfax, Virginia 22031.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401, Washington, DC 20436, shall be the Commission investigative attorney; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to sections 201.16(d) an 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: February 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-4592 Filed 2-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 731-TA-472 (Final)]

Silicon Metal From the People's Republic of China; Notice of Institution

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-472 (Final) under section 735(b) of the Traiff Act of 1930 (19 U.S.C. 1673(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China (China) of silicon metal,[1] that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before April 16, 1991, and the Commission will make its final injury determination by June 3, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 4, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of silicon metal from China are being sold in the United States at less than fair value with the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on August 24, 1990, by the merchant-producer members of the U.S. silicon metal industry.[2] In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 42079, October 17, 1990).

Participation in the investigation — Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3) each public document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.— Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on Friday, April 12, 1991, and a public version will be issued thereafter,

[1] The merchandise covered by this investigation is silicon metal containing at least containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation.

[2] Members of the merchant-producer industry include American Alloys, Inc., Pittsburg, PA; Elkem Metals Company, Pittsburg, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech Inc., Seattle WA; SiMETCO, Inc., Canton, OH; and SKW Alloys, Inc., Niagara Falls, NY.

pursuant to § 207.21 of the Commission's rules (19 CFR § 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on Thursday, April 25, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on Tuesday, April 16, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Friday, April 19, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing preharing briefs is Monday, April 22, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due on Tuesday, April 23, 1991.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on Wednesday, May 1, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due on Thursday, May 2, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before Wednesday, May 1, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than Monday, May 6, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due Tuesday, May 7, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 19, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-4580 Filed 2-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-305 (Final)]

Steel Wire Rope From India; Institution of Final Countervailing Duty Investigation

AGENCY: International Trade Commission.

ACTION: Institution of final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-305 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of steel wire rope [1] that have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of India.

Pursuant to a request from petitioner under section 705(a)(1) of the act (19 U.S.C. 1671d(a)(1), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on steel wire rope from India. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for April 15, 1991).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 4, 1991.

FOR FURTHER INFORMATION CONTACT: George Deyman (202-252-1197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of steel wire rope.

[1] The imported steel wire rope covered by this investigation consists of ropes, cables and cordage, of iron or steel, other than stranded wire, not fitted with fittings or made into articles, and not made of brass plated wire. Such steel wire rope is provided for in subheadings 7312.10.60 and 7312.10.90 of the Harmonized Tariff Schedule of the United States (HTS) (previously in items 642.14 and 642.16 of the former Tariff Schedules of the United States (TSUS)).

The investigation was requested in a petition filed on November 5, 1990, by The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (56 FR 268, January 3, 1991).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR §§ 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: February 21, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-4581 Filed 2-26-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under CERCLA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 12, 1991, a proposed consent decree in *United States* v. *Marisol, et al.*, Civil Action No. CV-88-1640, was lodged with the United States District Court for the Middle District of Pennsylvania. The proposed consent decree resolves a judicial enforcement action brought by the United Staes against Marisol, Inc.; Inland Container Corporation; American Cyanamid Company; and Smithkline Beckman Corporation, now Smithkline Beecham Corporation ("Settling Defendants"), under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a).

In this action filed on September 30, 1988, the United States sought recovery of response costs incurred by the United States in connection with removal activities at the Keyser Avenue Borehole Site ("Site") in Scranton, Pennsylvania. In the complaint, the United States alleged that Settling Defendants arranged for disposal of hazardous substances at the Site, within the meaning of section 107(a)(3) of CERCLA. The proposed consent decree requires that Settling Defendants pay a total sum of $750,000, in satisfaction of and to settle the claims raised against the Settling Defendants in this lawsuit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Marisol, et al.*, D.J. Ref. 90-11-3-338.

The proposed consent decree may be examined at the office of the United States Attorney, suite 309 Federal Building, Washington and Linden Streets, Scranton, Pennsylvania, 18501, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-4617 Filed 2-25-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—United States Advanced Battery Consortium

Notice is hereby given that, on February 1, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the United States Advanced Battery Consortium ("USABC") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to USABC and (2) USABC's nature and objectives. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to USABC and its general area of planned activities are given below.

The current members to USABC are: Chrysler Corporation, Ford Motor Company, and General Motors Corporation. The members intend to file additional written notification disclosing all changes in membership.

The USABC intends to conduct or direct joint research and development on advanced battery technology for future electric vehicles. Their objective is to minimize inefficient duplication of effort and expense when researching various high risk/high cost technology candidates that could provide long-range effective power for future electric vehicles.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-4618 Filed 2-26-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-17]

Outer Solar System Exploration Program, Including the CRAF and Cassini Missions

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to prepare an environmental impact statement for the Outer Solar System Exploration Program, including the CRAF and Cassini Missions.

SUMMARY: The National Aeronautics and Space Administration, in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), and NASA's Procedures for Implementing NEPA (14 CFR 1216.300 et seq.), intends to prepare an Environmental Impact Statement (EIS) for NASA's Outer Solar System Exploration Program (hereafter referred to as "Program"). This EIS will (1) serve as a programmatic EIS for NASA's future Program activities, (2) and specifically address the planned Comet Rendezvous Asteroid Flyby (CRAF) and Cassini missions. The proposed lauch site for the CFAF/Cassini missions is Cape Canaveral Air Force Station, Florida.

DATES: Interested parties are invited to submit written comments to NASA by April 15, 1991, to assure full consideration during the scoping process.

ADDRESSES: Comments should be submitted to Mr. Howard Wright, CRAF/Cassini Program Manager, Office of Space Science and Applications, Code SL, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Wright (202) 453-1586.

SUPPLEMENTARY INFORMATION: In pursuit of the goal of understanding the birth and evolution of the planetary system, NASA has developed a strategy which calls for an orderly progression from planetary reconnaissance, through exploration, to intensive study of each of the three regions of the solar system: the inner solar system (terrestrial planets), the primitive bodies (comets and asteroids), and the outer solar system (the gas giants).

Until recently, NASA's Outler Solar System Exploration Program concentrated on flyby or reconnaissance type missions to the outer solar system. With the lauch of the Galileo mission, the Program began its transition to exploration level missions. Subsequent missions aimed at exploration include the Comet Rendezvous Asteroid Flyby (CRAF) mission and the Cassini mission to Saturn, to be followed by the Comet Nucleus Sample Return, Neptune Orbiter-Triton Probe and the Pluto Flyby missions. This series of exploration oriented missions is the current focus of the Outer Solar Systems Exploration Program.

These missions share common requirements for launch energy, on-board propulsion, power, communications and data handling, and navigation, guidance and control. Radioisotope theremoelectric generators (RTG's) are baselined as the power source for these missions based on such considerations as the spacecraft environment, power requirements, and payloand constraints. NASA is developing a modular, cost-effective spacecraft—the Mariner Mark II—to satisfy these common mission requirements. In addition to relying on this common spacecraft, these missions to the outer solar system are planned to use Titan IV launch vehicles and will fly trajectories that are likely to require planetary gravity assist flybys (most likely Earth).

Thus, this exploration-oriented series of missions possess all of the major characteristics of a major Federal action for which a programmatic EIS is appropriate. The programmatic EIS will serve as baseline document for the environmental evaluation of subsequent outer planet and planetary body missions. This EIS will address all of these common elements in a single document and will provide detailed information on each mission to the extent that such data are available at the time of the preparation of the programmatic EIS.

The EIS will also address the design, fabrication, launch, and operation of CRAF and Cassini as specific examples of the class of missions which utilize the Mariner Mark II spacecraft. The proposed baseline action calls for the launch of the CRAF and Cassini missions at Cape Canveral Air Force Station, Cape Canaveral, Florida, on Titan IV/Centaur expendable launch vehicles in the 1995-1996 time frame. Missions of this type generally require a trajectory that includes Earth flyby gravity-assists.

Programmatic and mission-specific alternatives to this proposed action include, but are not necessarily limited to, the (1) use of alternative sources of on-board power (including solar); (2) use of a trajectory that relies on a planet other than Earth to provide gravity assist; and (3) elimination of one or more missions ("no action").

The EIS will consider the potential environmental impacts associated with the launch and operation of these missions. Particular emphasis will be placed on potential safety and environmental impacts associated with the possible release of plutonium-238 from the RTG's in the event of a launch accident or an inadvertent spacecraft re-entry into the Earth's atmosphere. Environmental effects associated with the Titan IV are assessed in the Department of the Air Force Environmental Assessment for the Complementary Expendable Launch Vehicle (Now named Titan IV), Cape Canaveral Air Force Station, Florida (1988).

Written public input and comments on environmental issues of the proposed missions, including but not limited to, mission alternatives, spacecraft, launch vehicles, and on-board power source options, as well as related environmental concerns, are hereby solicited.

Dated: February 22, 1991.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 91-4582 Filed 2-26-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Extension of application period.

SUMMARY: The National Credit Union Administration ("NCUA") is extending the closing date for the acceptance of applications for participation in the Community Development Revolving Loan Program for Credit Unions from February 28, 1991, to March 22, 1991. Application procedures are set forth in part 705 of NCUA's Rules and Regulations ("Community Development

Revolving Loan Program for Credit Unions") (12 CFR part 705).

ADDRESSES: Applications to participate in the Program should be submitted to: NCUA, Community Development Revolving Loan Program for Credit Unions, 1776 G Street NW., Washington, DC 20456.

DATES: Applications must be received by March 22, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. LaPorte, Central Liquidity Facility, at the above address or telephone: (202) 682-9780.

SUPPLEMENTARY INFORMATION: Part 705 of NCUA's Regulations (12 CFR part 705) implements the Community Development Revolving Loan Program for Credit Unions (the "Program"). The purpose of the Program is to make reduced rate loans to both federally and state-chartered credit unions serving low-income communities so that the credit unions may provide needed financial services and help to stimulate the economy in the communities they serve.

On January 8, 1991, a notice was published (56 FR 713) that applications for Program participation would be accepted through February 28, 1991.

This Notice is published pursuant to § 705.9 of NCUA's Regulations (12 CFR 705.9) stating that NCUA will provide notice in the Federal Register when funds in the Program are available for loans, and the time period during which applications for participation in the Program will be accepted. Funds are currently available for loans. Applications for participation in the Progam will be accepted through March 22, 1991. Credit unions wishing to participate in the Program should refer to part 705 of NCUA's Regulations for the application procedures and Program Requirements. Only credit unions currently in existence may apply.

By the National Credit Union Administration on February 21, 1991.

Becky Baker,

Secretary, NCUA Board.

[FR Doc. 91-4607 Filed 2-26-91; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Biological, Behavioral, and Social Sciences has determined that the establishment of the Advisory Panel on Biotechnology Opportunities at NSF is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF) by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Panel on Biotechnology Opportunities at NSF.

Purpose: The Advisory Panel will critique an internal NSF self-study report that examines the Foundation's role in biotechnology and proposes an initiative to address current shortcomings in support of research in biotechnology. The report will be critiqued for its accuracy and completeness. The Advisory Panel will assist NSF in clarifying its role in the support of biotechnology. The strengths of NSF and its current programs, as well as biotechnology programs in place at other Federal agencies and in other countries, will be considered in this evaluation.

Balanced Membership Plan: The Panel consists of 10 members and is balanced in terms of geographic regions; private industry; and universities. Members are all academic and industrial scientists. Seven discrete areas of biotechnological expertise will be represented by individual committee members. Both male and female scientists will be represented on the committee.

Responsible NSF Official: Dr. Bruce Umminger, Director, Division of Cellular Biosciences, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Dated: February 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-4524 Filed 2-26-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Consumers Power Co.; Notice of Issuance of Facility Operating License No. DPR-20

[Docket No. 50-255]

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-20 to Consumers Power Company, authorizing operation of the Palisades Nuclear Plant (Palisades) at steady-state reactor core power levels not in excess of 2530 Megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications.

Palisades is a pressurized water reactor located in Van Buren County, Michigan. The Palisades reactor has operated since March 24, 1971, under Provisional Operating License No. CPR-20. Facility Operating License No. DPR-20 supersedes Provisional Operating License No. DPR-20 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the Federal Register on December 18, 1974 (39 FR 43753). The full-term operating license was not issued previously, pending completion of the reviews under the Systematic Evaluation Program (NUREG-0820, October 1982, and Supplement 1, November 1983), and by the Advisory Committee on Reactor Safeguards. The Final Addendum to the Final Environmental Statement (FES) related to the conversion to a full-term operating license was issued in February 1978. A Notice of Availability of the Final Addendum to the FES was published in the Federal Register on February 9, 1978 (43 FR 5603). Because the Final Addendum and the FES were issued a number of years ago, the staff performed an environmental assessment to determine if an FES supplement was necessary. This assessment, dated October 22, 1990, concluded that an FES supplement was not necessary. This conclusion was noticed in the Federal Register on October 30, 1990 (55 FR 45695).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR chapter I as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and Final Addendum to the FES, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement and Final Addendum.

Facility Operating License No. DPR-20 is effective as of its date of issuance and shall expire March 14, 2007.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated January 22, 1974, (2) the Final Environmental Statement (June 1972) and Final Addendum (February 1978), (3) the Commission's Environmental Assessment, dated, October 22, 1990, (4) Facility Operating License No. DPR-20, and (5) the Safety Evaluation Report (NUREG-1424) dated November 1990, all of which are

available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 and at the Local Public Document Room, Van Zoeren Public Library, Hope College, Holland, Michigan 49423.

A copy of Facility Operating License No. DPR-20 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report (NUREG-1424) may be purchased through the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22151. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 21st day of February, 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-4564 Filed 2-26-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382]

Entergy Operations, Inc.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-38, issued to Entergy Operations, Inc. (the licensee), for operation of the Waterford Steam Electric Station located in St. Charles Parish, Louisiana.

The amendment would revise the Technical Specifications to delete the reference to "key-locked" open and alter the text of the surveillance to require that the Shutdown Cooling System suction isolation valves be checked open instead of checked key-locked open.

The proposed change to section 4.4.6.3.1 of the Technical Specifications is required to ensure that surveillance requirements accurately reflect the design characteristics of the installed shutdown cooling system suction line isolation values. The licensee's application for amendment dated January 24, 1991, requested issuance prior to the scheduled shutdown associated with the March 15, 1991, refueling outage. Performance of the stated requirements during shutdown would force the licensee to violate current Technical Specifications. Consequently, the staff has determined that exigent circumstances exist which justify reducing the public notice period normally provided for licensing amendments.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated. No credit is taken for key-locked open Shutdown Cooling System Isolation values in any accident previously evaluated. All assumptions and results for previously evaluated accidents remain unchanged by the proposed amendment. As a result, the modification to Technical Specification 4.4.6.3.1 to enable the isolation valves to be checked "open" vice "key-locked open" will not cause an increase in the probability or consequence of any previously evaluated accident.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The amended surveillance requirement still prompts a valve lineup check once per 12 hours. This check provides the necessary high degree of confidence in the ability of the shutdown cooling system (SDCS) suction relief valves to protect the reactor vessel from low temperature overpressure transients.

Moreover, an amendment to the specification is clerly more desirable than the alternative—that is, an equipment change to satisfy the requirement as it currently written. Modifying control room equipment in order to provide the capability to key-lock open the suction line isolation valves would provide no measurable safety benefit. On the contrary, it would restrict SDCS flexibility and impede timely operator response to a potential casualty.

Consequently, operation in accordance with the amended Technical Specification surveillance requirement will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a significant reduction in the margin of safety. No credit is taken in any accident evaluation for the ability to lock open the SDCS suction line isolation valves. From a safety standpoint, the proposed amendment is clearly more desirable than the specification as it is currently written. Opertion with the values "open" vice "key-locked open" provides an increased margin of safety by providing the operational flexibility needed for timely response to SDCS casualties and avoidance of potential loss of shutdown cooling scenarios.

The protection provided by the amended specification is equivalent to that in the current specification. Since this change does not affect any of the assumptions or results of the safety analyses, does not diminish the protection provided by any limiting condition for operation in the Technical Specifications, and does not affect any bases, it does not involve a reduction in the margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document

Room, the Gelman Building, 2120 L Street NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 14, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 24, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland, this 25th day of February 1991.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4769 Filed 2–26–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–602]

University of Texas; Order Extending Construction Completion Date

The University of Texas is the current holder of Construction Permit No. CPRR–123, issued by the Nuclear Regulatory Commission on June 4, 1985, for construction of the University of Texas TRIGA Mark II research reactor. The reactor facility is presently under construction at the Balcones Research Center in Austin, Texas.

On November 20, 1990, as modified on December 11, 1990, the University of Texas (UT or the applicant) filed a request for an extension of the construction completion date from December 31, 1990 to June 30, 1991. The extension has been requested because additional time is required to close upon items identified during the inspection program and to submit the remaining documentation to support issuance of the Facility Operating License.

Good cause has been shown for the delay; the cause is beyond the control of the applicant; and the requested extension is for a reasonable period, the bases for which are set forth in the staff's evaluation of the request for extension.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion date will have no significant impact on the environment (56 FR 6690 on February 19, 1991).

The NRC staff's safety evaluation of the request for extension of the construction permit is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555.

It is hereby ordered that the latest completion date for Construction Permit No. CPRR–123 is extended from December 31, 1990 to June 30, 1991.

Date of Issuance: February 20, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4565 Filed 2–26–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8420a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in demographic rates approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences on or after May 1, 1991.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt (202) 606–0775, ext. 207.

SUPPLEMENTARY INFORMATION: Section 842.708(a) of title 5, Code of Federal Regulations, prescribes the method for computing annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 3420a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (52 FR 32387) on August 27, 1987.

The Board of Actuaries of the Civil Service Retirement System has approved new demographic rates for both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). The factors that are considered in determining those rates are listed in section 841.404 of title 5, Code of Federal Regulations. The rates are based on experience under CSRS and the transitional system over the period 1983 through 1987. OPM still lacks sufficient experience under FERS to determine separate FERS demographic rates.

The changed demographic rates require corresponding changes in the present value factors used to compute an alternative form of annuity under FERS. OPM is, therefore, revising the tables of FERS present value factors to read as follows:

TABLE I.—PRESENT VALUE FACTORS APPLICABLE TO ALL RETIREES EXCEPT THOSE DESCRIBED IN TABLE II

Age at retirement	Present value of monthly annuity	Age at retirement	Present value of monthly annuity
40	171.8	66	149.5
41	171.7	67	145.1
42	171.5	68	139.9
43	171.4	69	134.5
44	171.2	70	129.8
45	170.0	71	124.8
46	168.8	72	119.8
47	167.9	73	114.9
48	166.9	74	110.0
49	166.4	75	105.2
50	166.0	76	100.5
51	165.7	77	95.9
52	165.5	78	91.4
53	165.4	79	87.0
54	164.9	80	82.8
55	164.5	81	78.7
56	164.6	82	74.6
57	165.1	83	70.7
58	165.9	84	67.1
59	167.3	85	63.5
60	169.5	86	60.1
61	171.2	87	56.9
62	169.3	88	53.9
63	164.4	89	50.9
64	159.4	90	48.2
65	154.3		

TABLE II.—PRESENT VALUE FACTORS APPLICABLE TO INDIVIDUALS RETIRING BEFORE AGE 62 WHO ARE ELIGIBLE FOR COLA'S IN ACCORDANCE WITH 5 U.S.C. 8462(c)(3)(B)(ii) (i.e., MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(c) BY REASON OF DISABILITY, LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND AIR TRAFFIC CONTROLLERS)

Age at retirement	Present value of a monthly annuity
40	274.0
41	270.3
42	266.5
43	262.7
44	258.7
45	252.8
46	246.8
47	241.3
48	235.7
49	230.9
50	226.1
51	221.3

TABLE II.—PRESENT VALUE FACTORS APPLICABLE TO INDIVIDUALS RETIRING BEFORE AGE 62 WHO ARE ELIGIBLE FOR COLA'S IN ACCORDANCE WITH 5 U.S.C. 8462(c)(3)(B)(ii) (i.e., MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(c) BY REASON OF DISABILITY, LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND AIR TRAFFIC CONTROLLERS)—Continued

Age at retirement	Present value of a monthly annuity
52	216.5
53	211.7
54	206.3
55	200.8
56	195.7
57	191.1
58	186.7
59	182.5
60	178.9
61	174.4

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-4604 Filed 2-26-91; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Order No. 879; Docket No. A91-1]

Rock Point, Maryland 20682 (Joan L. Bowling, Petitioner); Order Substituting Petitioner

Issued February 21, 1991.

On February 14, 1991, the Commission received letters of clarification from Joan L. Bowling, the petitioner in this docket, and Samuel Y. Bowling.

In accordance with their intentions expressed in those letters, *the Commission orders*:

(A) Joan L. Bowling is removed as the petitioner in Docket No. A91-1.

(B) Samuel Y. Bowling is designated as the petitioner in Docket No. A91-1.

Charles L. Clapp,

Secretary.

[FR Doc. 91-4523 Filed 2-26-91; 8:45 am]

BILLING CODE 7715-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18013; 812-7620]

Colonial Advanced Strategies Gold Trust, et al.; Application

February 21, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Colonial Advanced Strategies Gold Trust, Colonial California Tax-Exempt Trust, Colonial Corporate Cash Trust I, Colonial Government Securities Plus Trust, Colonial Growth Shares Trust, Colonial High Yield Securities Trust, Colonial Income Trust, Colonial International Equity Index Trust, Colonial Massachusetts Tax-Exempt Trust, Colonial Michigan Tax-Exempt Trust, Colonial Minnesota Tax-Exempt Trust, Colonial New York Tax-Exempt Trust, Colonial Ohio Tax-Exempt Trust, Colonial Small Stock Index Trust, Colonial Strategic Income Trust, Colonial Tax-Exempt Trust, Colonial United States Equity Index Trust, Colonial U.S. Government Trust, The Colonial Fund (collectively, the "Trusts"), and any other open-end investment company which is or may become a member of the Colonial "group of investment companies" as that phrase is defined by paragraph (c)(4) of rule 11a-3 under the 1940 Act having the same sales load structure as the Trust (collectively with the Trusts, the "Funds"), and Colonial Management Associates, Inc. (the "Distributor").

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust's are registered under the 1940 Act as open-end diversified management investment companies and are organized as Massachusetts business trusts. The Distributor provides investment advisory services to the Trusts and serves as the Trusts' principal underwriter through its Colonial Investment Services Division.

2. The Trusts currently offer their shares for sale at net asset value plus a front-end sales charge on transactions of less than $4,000,000. The Distributor reallows all or a substantial part of the sales load received as commissions to broker-dealers with whom it has dealer agreements. Applicants propose to eliminate the front-end sales load on purchases of $1,000,000 or more and to assess a CDSL on those shares if they are redeemed within 12 months after the end of the calendar month in which the purchase order was accepted. The CDSL would be equal to 1% of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. The CDSL will be deducted from the redemption proceeds otherwise payable to the shareholder. No CDSL will be assessed on: (a) Shares representing amounts attributable to increases in the net asset value per share; (b) shares acquired through reinvestment of dividends or capital gain distributions, or shares acquired in an exchange from another Fund (not including money market funds) where the exchanged shares would not have been subject to a CDSL upon redemption; and (c) shares held for more than 12 months from the end of the calendar month in which the purchase order was accepted. In determining whether a CDSL is payable, shares, or amounts representing shares, that are not subject to a CDSL are deemed to be redeemed first, and other shares or amounts are then redeemed in the order purchased.

3. Under the proposed arrangement, the CDSL may be waived in the following instances: (a) Redemptions in connection with (i) distributions to participants in or beneficiaries of plans qualified under the Internal Revenue Code ("IRC") section 401(a), custodial accounts under IRC section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457, and other employee benefit plans, (ii) changes in investment choices of such plans, and (iii) returns of excess contributions to these plans; (b) redemptions resulting from the death or disability of a shareholder within the meaning of IRC section 72(m)(7); (c) redemptions pursuant to a Fund's systematic withdrawal plan but limited to 12% of the original account amount annally; (d) redemptions by current and retired directors and trustees of funds advised by the Distributor; directors, officers, and employees of the Distributor and its affiliates; and registered representatives and employees of broker-dealers with whom the Distributor has dealer agreements and of affiliates of such broker-dealers; and all such persons' spouses, children, and beneficial accounts; (e) redemptions by accounts managed by the Distributor or any affiliate; (f) redemptions effected pursuant to the Fund' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size; and (g)

redemptions by any registered investment company or its shareholders in connection with the combination of such company with any Fund by merger, acquisition of assets or by any other transaction. In addition, applicants may implement a system whereby shareholders would be credited with any CDSL paid if a reinvestment occurs within 90 days after a redemption. In accordance with rule 11a-3 under the 1940 Act, no CDSL will be assessed on an exchange of Fund shares for shares of another Fund.

Applicants' Condition

If the requested order is granted, Applicants expressly agree to the following condition:

Applicants will comply with proposed rules 6c-10 under the 1940 Act, as such rule is currently proposed ans as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4571 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18011; 812-7400]

Equus Investments II, L.P.; Application

February 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equus Investments II, L.P. (the "Partnership").

RELEVANT ACT SECTIONS: Order requested under section 6(c) granting exemption from the provisions of section 2(a)(3)(D).

SUMMARY OF APPLICATION: The Partnership seeks an order determining that persons who are or who become limited partners of the Partnership and who own less than 5% of the limited partnership interests in the Partnership will not be "affiliated persons" of the Partnership or any of its partners solely by reason of their status as limited partners.

FILING DATES: The application was filed on September 28, 1989, and amendments were filed on April 11 and August 13, 1990, and January 29, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on March 18, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons may request notification of the hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel, (202) 272-3567, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Partnership is a limited partnership organized under Delaware law. The Partnership has elected to be a business development company and, therefore, will be subject to Sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by Section 59 thereof. The Partnership has a term ending December 31, 1998, which may be extended for up to four additional years.

2. The Partnership filed a registration statement on Form N-2 (File No. 33-6767) under the Securities Act of 1933 ("1933 Act") with respect to an offering of up to 5,750,000 units of limited partnership interests. The offering, which had its final closing effective as of December 31, 1988, resulted in the sale of 1,644,041 units with an aggregate sales price of $36,821,728 (net of $59,092 of selling commission discounts on volume purchases and sales to employees). Equus Securities Incorporated acted as the selling agent for the Partnership on a "best efforts" basis.

3. The general partners of the Partnership consist of three Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act) and Equus Capital Corporation (the "Managing General Partner"). The SEC has issued an order under section 6(c) declaring that the Independent General Partners of the Partnership are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act. See Investment Company Act Release No. 15328 (September 25, 1986).

4. The partnership agreement provides that if at any time the number of Independent General Partners is less than a majority of the general partners, then, within 90 days thereafter, the remaining Independent General Partners shall designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

5. The Managing General Partner will be responsible, subject to the supervision of the Independent General Partners, for approving the Partnership's investments, assisting portfolio companies in arranging debt financing for leveraged buyout transactions, providing managerial assistance to portfolio companies and for the admission of additional or assignee limited partners to the Partnership. The Managing General Partner is a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Equus Capital Management Corporation (the "Management Company") owns common and preferred stock entitling it to 97% of the voting control of the Managing General Partner.

6. The Management Company will act as the management company to the Partnership pursuant to a management agreement (a "Management Agreement"). Under the Management Agreement, the Management Company will be responsible for the identification of all investments to be made by the Partnership and will perform other functions carried out by the investment adviser to a business development company. In addition, the Management Company will perform certain administrative services for the Partnership pursuant to a separate agreement. The Management Company is a registered investment adviser under the Advisers Act.

7. The Partnership will be managed solely by the Independent General Partners thereof, except with regard to those specific activities of the Partnership summarized above for which the Managing General Partner or the Management Company will be responsible. The Independent General Partners of the Partnership will provide overall guidance and supervision of Partnership operations and will perform the same functions as the non-interested

[Rel. No. IC-18009; 811-4831]

Institutional Income Fund; Application

February 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Institutional Income Fund.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on December 31, 1990 and an amendment was filed on February 11, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 20, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4900 Sears Tower, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a Massachusetts business trust. On September 4, 1986, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on December 12, 1986.

2. On April 19, 1990, applicant's board of trustees voted to dissolve applicant. By letter dated December 15, 1989, applicant had previously requested that its shareholders either redeem their shares or exchange their shares for shares of Goldman Sachs-Short-Intermediate Government Fund (an open-end investment company with objectives similar to applicant).

3. On various dates between December 16, 1989 and November 30, 1990, shareholders either redeemed or exchanged their shares. All redemption and exchange transactions were executed at a price equal to the net asset value per share (as determined in accordance with applicant's prospectus) on the day the redemption or exchange request was received by the applicant or its agent. A copy of the December 15, 1989 letter was sent periodically to shareholders who failed to respond to the initial letter until all shareholders had either redeemed or exchanged their shares.

4. Pursuant to liquidation, applicant's portfolio securities were sold in the ordinary course of business at market prices. No brokerage commissions were incurred in these transactions.

5. Applicant paid approximately $2,200 in legal and other expenses related to the liquidation.

6. On November 29, 1990, applicant wrote off $91,112 in unamortized organizational expenses. Being the only remaining shareholder at this time, Goldman, Sachs & Co., applicant's investment adviser and underwriter, bore these expenses.

7. Pursuant to applicant's Declaration of Trust, applicant will file an instrument of termination with the Secretary of State of Massachusetts.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is engaged only in the business of winding up its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4540 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18012; 811-2725]

Unified Income Fund, Inc.; Application

February 20, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Unified Income Fund, Inc.

RELEVANT 1940 ACT ACTION: Section 8 (F).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on January 31, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 18, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 429 N. Pennsylvania Street, Indianapolis, IN 46206-6110.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Indiana. On January 31, 1977, applicant filed a registration statement pursuant to Section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on February 7, 1977.

2. At a meeting held on July 27, 1990, applicant's board of directors adopted a plan of reorganization. On October 18, 1990, applicant filed proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the

directors of a registered investment company organized as a corporation.

8. The limited partners have no right to control the Partnership's business, but may exercise certain rights and powers of limited partners under the partnership agreement. The limited partners will be afforded all voting rights required by the Act. It is the opinion of legal counsel to the Partnership, which is relying on the opinion of the Partnership's Delaware counsel, that the existence of these voting rights does not subject the limited partners to liability as general partners under The Revised Uniform Limited Partnership Act of the State of Delaware. In addition, the partnership agreement will obligate the general partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the limited partners. An insurance policy to provide coverage to persons who become limited partners in the Partnership has not been obtained. The Independent General Partners of the Partnership will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicant's Legal Analysis

1. Applicant requests an exemptive order under section 6(c) determining that any limited partner owning less than 5% of limited partnership interest of the Partnership will not be deemed an "affiliated person" of the Partnership or any of its partners under section 2(a)(3)(D) solely because such person is a limited partner of the Partnership. Corporate shareholders with less than a 5% ownership interest are not defined as affiliated persons under section 2(a)(3). The requested relief will place investments in the Partnership on more equal footing with investments in business development companies organized as corporations.

Applicant's Conditions

If the requested relief is granted, Applicant agrees to the following conditions:

(1) The general partners, except the Managing General Partner, are natural persons. A majority of the Independent General Partners will not be interested persons of the Partnership.

(2) The Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on directors or general partners of a business development company. The Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on directors and general partners who are not interested persons of a business development company.

(3) The partnership agreement will provide that the Managing Partner will not resign or withdraw unless a successor managing general partner has been appointed in accordance with the partnership agreement and the provisions of sections 15(a), 15(c), and 15(f) of the Act.

(4) The limited partners will be afforded all of the voting rights required by the Act. The Partnership will obtain an opinion of counsel that the voting rights provided the limited partners do not subject them to liability as general partners under Delaware law. If a limited partner transfers his limited partnership interest in a manner which is effective under the Partnership Agreement, the general partners will promptly take all necessary actions to insure that such transferee or successor becomes a substitute limited partner.

(5) The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the Partnership Agreement are permissible under section 205 of the Advisers Act and under section 15(a) of the Act. Except to the extent that the partnership agreement allocates income, gain, and loss prorata to all partners in proportion to their capital contributions, the Managing General Partner and all other investment advisers to the Partnership will not receive or be allocated any portion of capital gains or capital appreciation if, as a result, cumulative allocations or payments of capital gains or capital appreciation to such persons would exceed twenty percent (20%) of cumulative capital gains, net of realized capital losses and unrealized capital depreciation.

(6) The Partnership will obtain an opinion of counsel that the current structure of the Partnership will entitle it to be taxed as a partnership for federal income tax purposes.

(7) Under the partnership agreement the Partnership is authorized to make in-kind distributions of its portfolio securities to its partners. However, the Partnership agrees not to make any in-kind distributions of portfolio securities to its partners until obtaining either a "no-action" letter from the staff of the SEC confirming the Partnership's interpretation of section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to securities distributed in-kind to partners are properly deemed realized upon such distribution) or, an exemption from section 205 of the Advisers Act under section 206A, permitting the Partnership to deem such gains or losses to be realized upon in-kind distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4538 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Frederick's of Hollywood, Inc., Capital Stock, Par Value $1.00 (File No. 1-8252)

February 21, 1991.

Frederick's of Hollywood, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Effective at the opening of business on March 4, 1991, the Company's capital stock will commence trading on the New York Stock Exchange ("NYSE"). In making the decision to withdraw its capital stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its capital stock on the NYSE and Amex. The Company does not see any particular advantage in the dual trading of its capital stock and believes that dual listing would fragment the market for its capital stock.

Any interested person may, on or before March 14, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-4536 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

reorganization at a special meeting held on October 31, 1990.

3. The plan of reorganization permitted applicant to merge with Unified Funds, an Indiana business trust (the "Trust"). Other Unified managed investment companies also merged into the Trust. Each such company will operate as a separate series of the Trust.

4. Pursuant to the merger, applicant's shareholders exchanged their shares for an equal number of shares in the Trust's Income Fund series. The exchange was based on net asset value.

5. Pursuant to applicant's plan of reorganization, applicant distributed 431,702 shares with a net asset value of $10.73 per share determined on October 31, 1990. Aside from the exchange of shares, there was no disposition of portfolio securities or any other assets of applicant made in connection with the reorganization.

6. The total expenditures incurred in connection with the merger was $10,000. This amount will be paid by applicant under its new existence as the Trust's Income Fund series over a period of five years.

7. Applicant has filed a certificate of dissolution with the Secretary of State of Indiana.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4535 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration; Western Digital Corp., Common Stock, $0.10 Par Value; 9% Convertible Subordinated Debentures Due 2014; Preferred Stock, $0.10 Par Value (File No. 1-8703)

February 21, 1991.

Western Digital Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Board of Directors of the Company has determined that it is in the best interest of the Company to list and trade the above-mentioned securities on the New York Stock Exchange, Inc. ("NYSE"). In order to avoid the direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE, the Company has determined to remove these securities from listing and registration on the Amex.

Any interested person may, on or before March 14, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-4537 Filed 2-26-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 29, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: William Cline, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB REVIEWER: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary Participation Guaranty and Certification Agreement.

Form No.: SBA Forms 1086, 1085, and 1502.

Frequency: On occasion.

Description of Respondents: SBA Participating Lenders.

Annual Responses: 6,200.

Annual Burden: 23,250.

Title: National Survey of Small and Minority-Owned Business Access to Equity Capital.

Form No.: SBA Temp. Form 1791.

Frequency: One-Time.

Description of Respondents: Small Business and Minority owned Businesses.

Annual Responses: 3,600.

Annual Burden: 1,800.

Elizabeth Zaic,

Deputy Director, Office of Administrative Services.

[FR Doc. 91-4549 Filed 2-26-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1352]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on March 13, 1991, at 9:30 a.m. in room 6600 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning problems related to the preparation of the documentary series entitled Foreign Relations of the United States and other responsibilities of that Office.

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 91-463), it has been determined that discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552(c)(1), and that the public interest requires that such activities will be withheld from disclosure. The meeting will therefore be closed.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663-1123.

Dated: February 22, 1991.

William Z. Slany,

Executive Secretary.

[FR Doc. 91-4603 Filed 2-26-91; 8:45 am]

BILLING CODE 4710-11-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 15, 1991.

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47410.

Date filed: February 13, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 461 (Fares between Japan and New Zealand).

Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-4529 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended February 15, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket number: 47404.

Date filed: February 11, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 11, 1991.

Description: Application of All Nippon Airways Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, requests amendment of its foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the terminal point Tokyo, Japan and the terminal point New York, New York.

Docket number: 47407.

Date filed: February 13, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 13, 1991.

Description: Application of China Eastern Airlines, d/b/a China Eastern, pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to engage in scheduled and non-scheduled foreign air transportation of passengers, property, and mail on the following routes: Between the coterminal points Beijing, Guangzhou, and Shanghai, People's Republic of China; a total of two intermediate or beyond points in Japan; and the coterminal points Honolulu, Hawaii or Seattle, Washington; Los Angeles and San Francisco, California; and Chicago, Illinois, with an optional technical stop in Anchorage, Alaska.

Docket number: 47412.

Date filed: February 14, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 14, 1991.

Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between Honolulu, Hawaii and Fukuoka, Japan.

Docket number: 47415.

Date filed: February 15, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 15, 1991.

Description: Joint Application of Delta Airlines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, for approval of the transfer to Delta of Eastern's authority to serve the New York/Newark-Montreal/Ottawa nonstop markets contained in Eastern's certificate for Route 72-F.

Docket number: 47416.

Date filed: February 15, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 15, 1991.

Description: Joint Application of Delta Air Lines, Inc. and Eastern Air Lines, Inc., pursuant to section 401(h) of the Act and subpart Q of the Act for approval of the transfer to Delta of Eastern's authority to serve the Pittsburgh-Toronto nonstop market contained in Easten's certificate for Route 148.

Docket number: 47337.

Date filed: February 11, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 11, 1991.

Description: Amendment No. 1 to the Joint Application of Eastern Air Lines, Inc. and USAir, Inc., requests that their Joint Application be amended to delete the request for approval of the transfer from Eastern to USAir of Eastern's route authority between Pittsburgh and Toronto.

Docket number: 45723.

Date filed: February 13, 1991.

Due date for answers, conforming applications, or motion to modify scope: March 13, 1991.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., for Amendment of its Foreign Air Carrier Permit, pursuant to section 402 of the Act and Subpart Q of the Regulations to authorize it to engage in daily scheduled air transportation of persons, property and mail, between Mexico (Benito Juarez), Mexico, on the one hand, and Laredo, Texas on the other hand, using B-737 or other aircraft.

Phyllis T. Kaylor,

Documentary Services Division.

[FR doc. 91-4528 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Notice 91-3]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee. The meeting will take place on Thursday, March 14, 1991, from 8:30 a.m. to 4:30 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street, SW. in Washington, DC. This will be the thirteenth meeting of the committee. The meeting will address issues as outlined in the attached agenda.

This meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366-5776.

Dated: February 20, 1991.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

Attachment

Tentative Agenda March 14, 1991

Room 2230—Nassif

Welcome/Opening Remarks—Paul Fuller, COMSTAC Chairman
OCST Activities Report—Stephanie Lee-Miller, OCST Director COMSTAC Working Group Reports
—Technology and Innovation
—Procurement
—Infrastructure
—Risk Management
—Program Development
—International Competition
Legislative Overview—102th Congress—Chairmen George Brown (Invited)
The FY '91 NASA Authorization As It Relates to OCST—Elaine David Lunch—MESS
Licensing Activities Update—Norman Bowles—Associate Director for Licensing Programs
Industry Plans and Policy Update—Richard Scott
Summary of the Recent European Space Agency (ESA) talks—Peter Algeier, Don Phillips, Gerald Musarra
Spaceport Florida and Aerospace States Association Activities—Edward O'Connor, Executive Director, Florida Spaceport
Advanced Launch System—Colonel Roger Colgrove—USAF
New Business
Adjourn

[FR Doc. 91-4597 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council (HMAC), will conduct a public meeting to exchange views on proposals submitted to the Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATES: March 22, 1991 at 9:30 a.m.

ADDRESSES: Department of Transportation, Nassif Building, room 8236, 400 Seventh Street SW., Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, (202) 366-0656, International Standards Coordinator for Hazardous Materials Safety, Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the ICAO Dangerous Goods Panel Working Group meeting. The primary purpose of the Working Group meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Working Group will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and amendments aligning the Technical Instructions with the latest revision of the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). The amendments deal with virtually all aspects of dangerous goods transport, including listing and classification, packaging requirements, requirements for infectious substances (particularly diagnostic substances and biological products), requirements for gases, requirements for self-reactive substances and the use of portable tanks for transporting certain dangerous goods by aircraft. The primary document that will be used to align the Technical Instructions with the UN Recommendations is the report of the 16th session of the Committee of Experts on the Transport of Dangerous Goods.

A second item which will be discussed by the Working Group concerns the simplification and improvement of procedures used by States (countries) to grant approvals and exemptions to carry dangerous goods not normally permitted by the Technical Instructions. The results of the Working Group meeting will be presented to the thirteenth session of the Dangerous Goods Panel at a meeting in Montreal, Canada on October 15-25, 1991. If adopted, the changes to the Technical Instructions would become effective on January 1, 1993.

Documents that will be discussed may be obtained for a nominal fee from HMAC, suite 250, 1110 Vermont Ave., NW., Washington DC 20005; telephone number (202) 728-1460. After the meeting, a summary of the public meeting will also be available from HMAC.

Issued in Washington, DC, on February 22, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91-4598 Filed 2-26-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 29, 1991.

Dated: February 20, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant, Secretary for Information Resources, Policies and Oversight.

Reinstatement

1. Veterans Benefits Administration.
2. VA Application for Home Loan Guaranty.
3. VA Form 26-1802a.
4. The form is used by lenders and veterans to apply for VA-guaranty of home loans. The information is used to determine compliance with eligibility requirements.
5. On occasion.
6. Individuals or households; Businesses or other for-profit.
7. 206,000 responses.
8. ¾ hour.
9. Not applicable.

[FR Doc. 91-4525 Filed 2-26-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list would be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before March 29, 1991.

Dated: February 20, 1991

By direction of the Secretary.

Frank E. Lalley,

Associate DAS for Information Resources Policies and Oversight

Extension

1. Veterans Benefit Administration
2. Request for Information to Make Direct Payment to Child Reaching Majority
3. VA Form Letter 21-863
4. The form letter is issued to gather the necessary information to enable VA to determine a child's continued eligibility to benefits and eligibility to receive direct payment at age of majority.
5. On occasion
6. Individuals or households.
7. 22,600 responses
8. ⅙ hour
9. Not applicable

[FR Doc. 91-4526 Filed 2-26-91; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Environmental Hazards

AGENCY: Department of Veterans Affairs.

ACTION: Cancellation of meeting.

The Department of Veterans Affairs gives notice that the meeting of the subcommittee of the Veterans' Advisory Committee on Environmental Hazards that had been scheduled for February 27, 1991, has been cancelled. (See FR Doc. 4074, 56 FR 7081, February 21, 1991.)

A full committee meeting has been scheduled for March 13-14, 1991. For more information please contact Mrs. Leney Holohan, Department of Veterans Affairs Central Office (phone 202/233-8018).

Dated: February 20, 1991.

By direction of the Secretary:

Lawrence M. Christman,

Executive Assistant.

[FR Doc. 91-4521 Filed 2-26-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 39
Wednesday, February, 27, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 1, 1991.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: CLOSED.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-4798 Filed 2-25-91; 2:45 p.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, March 8, 1991.
PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-4799 Filed 2-25-91; 2:45 p.m.]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 15, 1991.
PLACE: 2033 K St. N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-4800 Filed 2-25-91; 2:45 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 22, 1991.
PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-4801 Filed 2-25-91; 2:45 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, March 29, 1991.
PLACE: 2033 K St. N.W., Washington, D.C. 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-4802 Filed 2-25-91; 2:45 pm]
BILLING CODE 6351-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, March 6, 1991.
PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.
STATUS: The first two items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.
MATTERS TO BE CONSIDERED:

1. Proposed Board Policy: Release of Cockpit Voice Recorder Transcript.
2. Proposed Position Papers: Selected Highway Safety Issues.
3. Opinion and Order: Administrator V. Green, Docket SE-9611; disposition of respondent's appeal.

NEWS MEDIA CONTACT: 382-6600.
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: February 22, 1991.

Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 91-4822 Filed 2-25-91; 4:01 pm]
BILLING CODE 7533-01-M

RESOLUTION TRUST CORPORATION

Notice of Cancellation of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced open meeting of the Board of Directors of the Resolution Trust Corporation scheduled to be held on Tuesday, February 26, 1991 at 2:00 p.m. has been *Canceled.*

No earlier notice of the cancellation was practicable.

Dated: February 22, 1991.
Resolution Trust Corporation.

John M. Buckley, Jr.,
Executive Secretary.
[FR Doc. 91-4708 Filed 2-26-91; 9:48 am]
BILLING CODE 6714-01-M

federal register

Wednesday
February 27 1991

Part II

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1710
General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43, RIN 0572-AA38

General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII, by adding a new part 1710, General and Pre-loan Policies and Procedures Common to Insured and Guaranteed Electric Loans. This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in several existing REA Bulletins.

This part contains the provisions and requirements of the Rural Electrification Act (RE Act), as amended, and the administrative policies, requirements, and procedures of the REA electric program for applicants seeking financial assistance from REA for facilities to furnish electric service in rural areas. The primary objective of the proposed rule is to update, consolidate, clarify, and simplify REA policies and procedures common to electric insured and guaranteed loans.

A related proposed rule proposing to add 7 CFR 1710.2 and 1710.102 was published February 20, 1991 at 56 FR 1612.

DATES: Comments must be received by REA or carry a postmark or equivalent by April 29, 1991.

ADDRESSES: Written comments should be addressed to Bert L. Huntington, Management Analyst, U.S. Department of Agriculture, Rural Electrification Administration, room 0014–S, 14th & Independence Avenue, SW., Washington, DC 20250–1500. REA requests an original and 3 copies of all comments.

FOR FURTHER INFORMATION CONTACT: Frank W. Bennett, Deputy Assistant Administrator-Electric, U.S. Department of Agriculture, Rural Electrification Administration, room 4048–S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, Telephone: (202) 382–9547.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices to consumers, individual industries, Federal, state or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.* (1976)), and therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The existing reporting and recordkeeping requirements approved prior to this proposed rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. (Approved by the Office of Management and Budget under control numbers 0572–0032 and 0572–0017). The public reporting burden is estimated to average 59.06 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. The public recordkeeping burden for this collection of information is estimated to average 67.3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed.

Additional reporting requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). They will not be effective until approved by OMB.

Public reporting burden for this new collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, completing and reviewing the collection of information and maintaining the data needed. There is no additional recordkeeping burden for this new collection.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget Paperwork Reduction Project (OMB numbers 0572–0032 and 0572–0017), Washington, DC 20503.

Background

REA policies and requirements covering pre-loan activities are contained in several REA regulations and bulletins. Many of these are out of date and some contain ambiguous or redundant information. It is necessary to consolidate this information and make it available to the public by codifying and publishing it in the Federal Register.

This part consolidates, updates, clarifies and, in some instances, revises the policies and requirements contained in the following existing REA Bulletins:

20–2 Electric Loan Policies and Application Procedures
20–5:320–2 Extensions of Payments of Principal and Interest
20–6 Loans for Generation and Transmission
20–14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20–20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20–22 Guarantee of Loans for Bulk Power Supply Facilities
20–23 Section 12 Extensions for Energy Resources Conservation Loans
60–10 Construction Work Plans, Electric Distribution Systems
86–3 Headquarters Facilities for Electric Borrowers
105–5 Financial Forecast—Electric Distribution Systems
111–3 Power Supply Surveys
112–3 Area Coverage Service
120–1 Development, Approval, and Use of Power Requirements Studies
145–1 Development, Approval, and Use of Irrigation Studies

When this rule and other related rules are published in final form, the above bulletins will be rescinded, in whole or in part, or revised. In the future, REA bulletins will be used to provide certain procedural information, illustrative examples, and other guidance to assist

borrowers in complying with REA's published rules.

The primary purpose of this rule is to consolidate, clarify, update and, in some instances, revise REA general loan policies and pre-loan policies and requirements applicable to electric loans. Most of the provisions of this rule represent policies and requirements that have been in effect for some time, having been implemented through REA bulletins, mortgages, notes or loan contracts, and other agency issuances. Some provisions are either new, or a revision of existing policies and procedures, or an explicit statement of policies and procedures that formerly were implicit.

Another purpose of this rule is to strengthen the agency's credit policies. During the past few years, a number of electric borrowers have experienced considerable financial stress. By adopting the policies outlined in this rule, the agency hopes to avoid the reoccurrence of these situations.

This proposed rule sets forth general and pre-loan policies and requirements that are common to insured loans and guaranteed loans. Pre-loan policies, requirements and procedures that are specific to either insured loans or guaranteed loans, including 90 percent guaranteed loans recently authorized by the Omnibus Budget Reconciliation Act of 1990, will be set forth in subsequent regulations.

REA makes loans and loan guarantees to electric borrowers to provide and improve electric service in rural areas. These loans are limited to the purposes authorized in the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

To make the most effective use of limited loan funds and increase the funds available for the most essential facilities, this rule codifies a long established policy to concentrate financial assistance on the purposes and facilities that are most needed and effective in furthering rural electrification. Thus loans generally will continue to be unavailable for the following, except in cases of financial hardship: (1) Headquarters facilities, other than warehouse and garage facilities, (2) general plant equipment (including office, transportation, data processing and other work equipment), and (3) working capital. Borrowers are encouraged to use internally generated funds for these purposes.

To effectively use loan funds, to improve loan security, or to comply with certain lending provisions in the RE Act, loans will not be made for the following: (1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except certain load-management equipment, (2) facilities to serve consumers who are not beneficiaries of the RE Act, unless those facilities are necessary and incidental to providing or improving electric service in rural areas as authorized in the RE Act, and (3) any facilities known at the time of the loan application which a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities.

To make the most effective use of available loan funds, this rule will generally limit the funds loaned to reimburse general funds to the cost of approved construction completed during the two year period immediately preceding the loan period. Two years should provide sufficient time in most instances for borrowers to include the reimbursement of general funds in a loan application. In the case of extreme financial hardship, the Administrator may increase the reimbursement period. Until now REA has not had a written policy on the amount of loan funds allowed for reimbursement of general funds used for approved construction.

This rule continues the existing policy of generally processing loans in chronological order based on the date of the completed loan application, while allowing priority to be given to loans needed to restore electric service following a major storm or other catastrophe. In addition, it is proposed that priority consideration be given to the processing of loans required to bring existing facilities into compliance with new environmental requirements, and loans to finance the capital needs of borrowers that have merged or consolidated after the effective date of the rule, if the merger or consolidation will enhance the repayment or security of REA loans.

This rule retains REA's existing definitions of Times Interest Earned Ratio (TIER) and Debt Service Coverage (DSC). It adopts the standard requirements on the levels of TIER and DSC currently applicable to distribution borrowers as minimum requirements that will apply to distribution borrowers that receive a loan after the effective date of this rule. In addition, the minimum TIER level required of power supply borrowers that receive a loan after the effective date of the rule is raised from 1.00 to 1.05 to ensure that these borrowers will strive to earn at least a minimum margin to improve their credit worthiness. The rule also provides that the Administrator may require higher TIER and DSC levels or revise TIER and DSC requirements for individual borrowers or classes of borrowers to ensure loan feasibility and security and improve the credit worthiness of borrowers.

The application of the mortgage requirement for designing rates is changed so that borrowers receiving a loan after the effective date of the rule would have to design rates to meet TIER and DSC every year rather than achieving the required average level in 2 out of 3 test years. Borrowers receiving a loan after the effective date of the rule would also have to demonstrate that they will achieve the required TIER and DSC each year of the financial forecast rather than just during the first 3 years that payments of both principal and interest are due on the loan.

Existing policy is codified with respect to withholding the advance of funds on a new loan until a borrower has taken remedial action satisfactory to REA if the borrower failed to meet TIER or DSC in the most recent year or failed to meet the minimum average levels required in 2 out of the past 3 years. A new provision is added with respect to outstanding loans made after the effective date of the rule to enable REA to withhold advances of funds if REA determines, based on the borrower's actual or projected financial performance, that the borrower will not achieve the required TIER or DSC levels in the current or future years.

Subpart E of this rule sets forth requirements for borrowers to prepare a power requirements study (PRS). The load forecasting methodology suggested in REA Bulletin 120–1 is at least 10 years out of date and does not reflect modern analytical methods or current industry practice.

A proposed rule on power requirements studies, 7 CFR part 1709, Primary Support Documents, Subpart A—Power Requirements Studies, was published for comment at 51 FR 28722 on August 11, 1986. Seventy-five organizations, mostly REA borrowers, submitted written comments. Four major issues were raised in the comments: (1) The need for annual updating of a PRS and for coordination between a power supply borrower and its member systems, (2) the need for a PRS work plan, (3) the need for end-use consumer surveys, and (4) the need for sensitivity analyses.

REA believes that PRS requirements proposed in this new rule reflect prudent planning practices followed by most of the electric utility industry and do not impose unreasonable conditions on borrowers. Virtually all investor-owned utilities and most medium to large sized

municipal systems prepare annual plans that include load analyses and forecasts similar to those proposed for a PRS. The rule provides for adequate flexibility to allow borrowers, within widely accepted industry practice, to develop a PRS that will meet the needs of both the borrower and REA.

With rapid changes in end-use technologies and substantial uncertainty in energy and financial markets, annual revisions of load forecasts are needed by most borrowers for system planning and to ensure that revenues will be adequate. They are also necessary to enable REA to monitor a borrower's current and future financial condition and its effect on loan feasibility and security. An ongoing commitment and effort is needed by most borrowers to develop the information and expertise needed to stay abreast of market changes and their effects on power sales and revenues.

This new rule clarifies the annual requirement to update the PRS. The annual update must incorporate new data and assumptions as appropriate, but it need not include new or revised equations or models. The basic equations and models of the PRS must be evaluated and revised, as necessary, at least every 3 years.

Also, this rule excludes power supply borrowers with assests of less than $100 million, as well as their member systems, from the general requirement to prepare and maintain a PRS on an ongoing basis with annual updates. These borrowers and virtually all other distribution borrowers, except the few that have generation and transmission assets of $100 million or more, will be required to prepare a PRS only when seeking financial assistance from REA or approval of long-term power contracts or other actions as appropriate.

Some comments on the earlier rule said that the requirements for coordination between a power supply borrower and its members in preparing their respective PRSs were unnecessary or unreasonably burdensome. REA has required meaningful, effective coordination between a power supply borrower and its members in the preparation of PRSs since the "file with" amendment of Bulletin 120–1 in 1980. Such coordination is essential to ensure that all relevant information and expertise is brought to bear in preparing the load forecasts and that the load forecasts of the power supply borrower are consistent with those of its members.

These systems represent economic families whose financial fortunes are integrally related. A power supply borrower's load derives primarily from the loads of its members. To demonstrate loan feasibility and continuing loan security, a power supply borrower must be able to demonstrate that its load forecast is consistent with and supported by its members' forecasted loads.

Some comments on the earlier proposed rule opposed the requirement for a PRS work plan. This new rule requires a work plan only for power supply borrowers with total assets of $100 million or more and the few distribution borrowers with generation and transmission assets of $100 million or more. A power supply borrower's work plan will cover its PRS as well as the PRSs of its members.

REA believes it is essential that agreement be reached early in the planning process among a power supply borrower, its members, and REA as to the resources, methods and schedules to be used during the planning period to prepare and maintain the required PRSs. Such agreement in the form of a work plan will improve communications and coordination, facilitate management and monitoring of the process, and help ensure that PRSs acceptable to all parties will be prepared on time and kept up to date.

Several comments on the earlier rule opposed the requirement for end-use consumer surveys. This new rule requires residential consumer surveys at least every 3 years, if residential demand is a substantial portion of total demand, for those borrowers required to prepare and maintain a PRS on an ongoing basis. With rapid changes in end-use technologies and substantial uncertainty in energy markets and in consumer behavior, it is important to obtain detailed end-use data at least every 3 years. Such surveys are a common practice in the industry.

The requirement for sensitivity analyses of significant assumptions was criticized in several comments received on the earlier rule. This requirement has been retained because of the need to test economic relationships and load forecasts under different assumptions about the future. A single forecast based on the forecaster's best judgment about important assumptions tells only one story, and a rather narrow one at that. Sensitivity analysis of the effects of varying important assumptions is essential for understanding what will happen to forecasted loads and other key variables if the forecaster's best judgment misses the mark. Sensitivity analysis is a standard technique used in all economic forecasting and other types of analyses.

This rule contains a provision that PRS requirements can be waived by the Administrator if such waiver will not significantly affect accomplishment of the rule's objectives and if the requirement imposes a substantial burden on the borrower. This is intended to enhance flexibility in cases where waiving a particular requirement will not significantly affect the quality or timeliness of a PRS.

For several years REA has been encouraging borrowers to improve load management, load factors and energy conservation; to reduce energy losses; and to seek out alternative sources of power so as to reduce the need for new generation capacity and decrease the risk and costs of excess capacity. Capacity developed since the late 1970's has left several power supply borrowers with large amounts of excess capacity and onerous capital costs, resulting in loan defaults and bankruptcies in some cases.

It is REA's policy that before a borrower submits a loan application to finance additional generation capacity it must demonstrate to REA that it has explored all practical and feasible alternatives to adding new capacity, including improved load management, energy conservation, and power purchases from other suppliers. The borrower will be required to solicit bids for power from other utilities, including REA-financed systems, and from independent power producers, including co-generators. REA believes this will help improve the utilization of existing capacity, some of it owned by REA borrowers, further the development of lower cost power options, and reduce the risks and costs of developing excess generation capacity.

A great amount of information on the economics, feasibility, allowable rates, operating efficiency, credit risks, public support, and other key factors is developed in the process of obtaining state regulatory approvals of borrower construction projects and the associated financing. Experience with several financially troubled borrowers has emphasized the importance of evaluating all relevant information before committing to a loan or loan guarantee.

Therefore, in states having jurisdiction, borrowers may now be required, when feasible, to obtain state regulatory authority approvals for projects and their associated financing before REA will approve a loan or loan guarantee when an Environmental Impact Statement is required, or when the loan is for financing generation or transmission facilities and the loan request for such facilities is for $25 million or more. In any event, state regulatory authority approval will be required for all loans before loan funds are advanced.

REA believes this change will lead to a more effective planning process and reduce the financial risks to the borrower, its members and REA. REA will work closely with borrowers and state officials to encourage an orderly and timely planning process.

Pursuant to OMB Circular A–129, REA will require borrowers to report any Federal debt delinquency, such as Federal income tax obligations or a loan or guarantee from another Federal agency, and the reason for the delinquency prior to approval of a REA loan or advance of funds. Borrowers must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt.

REA believes this rule will clarify the general loan policies and pre-loan policies and requirements applicable to both insured and guaranteed electric loans, bring them up to date, facilitate understanding and compliance by borrowers, and improve program effectiveness.

List of Subjects in 7 CFR Part 1710

Administrative practices and procedures, Electric utilities, Guaranteed loan program, Insured loan program, Loan programs.

In view of the above, REA proposes to amend 7 CFR chapter XVII by adding a new part 1710 to read as follows: [1]

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

Subpart A—General

1710.1 General statement.
1710.2 Definitions and rules of construction.
1710.3 Form revisions.
1710.4 Exception authority.
1710.5 Availability of forms.
1710.6–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

1710.50 Insured loans.
1710.51 Loan guarantees.
1710.53–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies

1710.100 General.
1710.101 Types of eligible borrowers.
1710.102 Borrower eligibility for different types of loans. [Reserved]
1710.103 Area coverage.
1710.104 Service of non-RE Act beneficiaries.
1710.105 State regulatory approvals.
1710.106 Uses of loan funds.
1710.107 Amount lent for acquisitions.
1710.108 Mergers and consolidations.
1710.109 Reimbursement of general funds.
1710.110 Supplemental financing.
1710.111 Refinancing.
1710.112 Loan feasibility.
1710.113 Loan security.
1710.114 TIER and DSC requirements.
1710.115 Loan maturity.
1710.116 Equity development plan.
1710.117 Environmental considerations.
1710.118 Energy conservation and load management.
1710.119 Loan processing priorities.
1710.120 Construction standards and contracts.
1710.121 Insurance requirements.
1710.122 Equal opportunity and nondiscrimination.
1710.123 Debarment and suspension.
1710.124 Uniform Relocation Act.
1710.125 Restrictions on lobbying.
1710.126 Federal debt delinquency.
1710.127 Drug free workplace.
1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

1710.150 General.
1710.151 Required findings for all loans.
1710.152 Primary support documents.
1710.153 Additional requirements and procedures.
1710.154–1710.199 [Reserved]

Subpart E—Power Requirements Studies

1710.200 Purpose.
1710.201 Requirement to prepare a PRS—power supply borrowers.
1710.202 Requirement to prepare a PRS—distribution borrowers.
1710.203 Basic policies and requirements for a PRS.
1710.204 PRS work plan requirements.
1710.205 Basic criteria for REA approval of a PRS.
1710.206 Waiver of borrower requirements.
1710.207–1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

1710.250 General.
1710.251 Construction work plans—distribution borrowers.
1710.252 Construction work plans—power supply borrowers.
1710.253 Engineering and cost studies—addition of generation capacity.
1710.254 Alternative sources of power.
1710.255–1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

1710.300 General.
1710.301 Financial forecasts—distribution borrowers.
1710.302 Financial forecasts—power supply borrowers.
1710.303 Power cost studies—power supply borrowers.
1710.304–1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers

1710.350–1710.399 [Reserved]

[1] A related proposed rule proposing to add 7 CFR 1710.2 and 1710.102 was published February 20, 1991 at 56 FR 6812.

Authority: 7 U.S.C. 901–950(b); Public Law 99–591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—General

§ 1710.1 General statement.

(a) This part establishes general and pre-loan policies and requirements that apply to both insured and guaranteed loans to finance the construction and improvement of electric facilities in rural areas, including generation, transmission, and distribution facilities.

(b) Additional pre-loan policies, procedures, and requirements that apply specifically to either guaranteed or insured loans are set forth elsewhere:

(1) For guaranteed loans, in 7 CFR part 1712 and REA Bulletins 20–2, 20–6, 20–22, 60–10, 86–3, 105–5, 111–3, 112–3, and 145–1, or the successors to these bulletins, and

(2) For insured loans, in 7 CFR part 1714 and REA Bulletins 20–2, 20–14, 60–10, 86–3, 105–5, 111–3, 112–3, and 145–1, or the successors to these bulletins

(c) This part supersedes those portions of the following REA Bulletins and supplements that are in conflict.

20–2 Electric Loan Policies and Application Procedures
20–5 Extensions of Payments of Principal and Interest
20–6 Loans for Generation and Transmission
20–14 Supplemental Financing for Loans Considered Under Section 4 of the Rural Electrification Act
20–20 Deferment of Principal Repayments for Investment in Supplemental Lending Institutions
20–22 Guarantee of Loans for Bulk Power Supply Facilities
60–10 Construction Work Plans, Electric Distribution Systems
86–3 Headquarters Facilities for Electric Borrowers
105–5 Financial Forecast—Electric Distribution Systems
111–3 Power Supply Surveys
112–3 Area Coverage Service
120–1 Development, Approval, and Use of Power Requirements Studies
145–1 Development, Approval, and Use of Irrigation Studies

(d) When parts 1710, 1712, and 1714 are published in final form, the bulletins cited in § 1710.1(b) of this part will be rescinded, in whole or in part, or revised.

§ 1710.2 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this part, the following terms shall have the following meanings:

Administrator means the Administrator of REA.

APRR means Average Adjusted Plant Revenue Ratio calculated as a simple average of the adjusted plant revenue ratios for 1978, 1979 and 1980 as follows:

$$APRR = \frac{A+B}{C-D}$$

where:

A = Distribution (plant), which equals Part E, Line 14(e) of REA Form 7;
B = General Plant, which equals Part E, Line 24(e) of REA Form 7;
C = Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and
D = Cost of Power, which equals the sum of Part A, Lines 2, 3 and 4 of REA Form 7.

Area Coverage means the provision of adequate electric service to the widest practical number of rural users in the borrower's service area during the life of the loan.

Borrower means any organization that has an outstanding loan made or guaranteed by REA for rural electrification, or that is seeking such financing.

Bulk Transmission Facilities means the transmission facilities connecting power supply facilities to the subtransmission facilities, including both the high and low voltage sides of the transformer used to connect to the subtransmission facilities, as well as related supervisory control and data acquisition systems.

Consolidation means the combination of 2 or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

Distribution Borrower means a borrower that sells or intends to sell electric power and energy at retail in rural areas.

Distribution Facilities means all electrical lines and related facilities beginning at the consumer's meter base, and continuing back to and including the distribution substation.

DSC means Debt Service Coverage calculated as:

$$DSC = \frac{A+B+C}{D}$$

where:

A = Depreciation and Amortization Expense, which equals Part A, Line 12 of REA Form 7 (distribution borrowers) or Section A, Line 20 of REA Form 12a (power supply borrowers);
B = Interest on Long-term Debt, which equals Part A, Line 15 of REA Form 7 or Section A Line 22 of REA Form 12a, except that Interest on Long-term debt shall be increased by 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a;
C = Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 of REA Form 12a; and
D = Debt Service Billed (REA + other) which equals all interest and principal billed during the calendar year plus 1/3 of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a).

Generation Facilities means the generating plant and related facilities, including the building containing the plant, all fuel handling facilities, and the stepup substation used to convert the generator voltage to transmission voltage, as well as related energy management (dispatching) systems.

Insured Loan means a loan made pursuant to section 305 of the RE Act, and may include a direct loan made under section 4 of the RE Act.

Loan means any loan made or guaranteed by REA.

Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

Loan Feasibility means that borrower has the capability of repaying the loan in full as scheduled, in accordance with the terms of the mortgage, note, and loan contract.

Loan Guarantee means a guarantee by REA of a loan made by another lender pursuant to section 306 or section 314 of the RE Act to enable borrowers to secure financing from non-REA sources.

Loan Period means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1 of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers. The loan period is generally 2 years for distribution borrowers and, except in the case of a loan for new generating and associated tranmission facilities, 3 years for the transmission facilities and improvements or replacements of generating facilities of power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

Merger means the combining, pursuant to state law, of borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations.

Mortgage means any and all instruments creating a lien on or security interest in the borrower's assets in connection with loans or guarantees under the RE Act.

Ordinary Replacement means replacing one or more units of plant, called "retirement units", with similar units when made necessary by normal wear and tear, damage beyond repair, or obsolescence of the facilities.

Power Requirements Study (PRS) means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

Power Supply Borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

PRR means Plant Revenue Ratio calculated as:

$$PRR = \frac{A}{B-C}$$

where:

A = Total Utility Plant, which equals Part C, Line 3 of REA Form 7;
B = Operating Revenue and Patronage Capital, which equals Part A, Line 1 of REA Form 7; and
C = Cost of Power, which equals the sum of Part A, Lines 2, 3, and 4 of REA Form 7.

PRS Work Plan means the plan that sets forth the resources, methods, schedules, and milestones, to be used in the preparation and maintenance of a power requirements study.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

RE Act Beneficiary means a person, business, or other entity that is located in a rural area and is not receiving adequate central-station electric service, or that initially received central-station service through facilities financed by REA, or successors to such entities.

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

Retirement Unit means a substantial unit of property, which when retired, with or without being replaced, is accounted for by removing its book cost from the plant account.

Rural Area means any area of the United States, its territories and possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available, such as from the Bureau of the Census and Rand McNally and Company. For purposes of the "rural area" definition, the character of an area is determined as of the time the initial loan for the system is made.

Subtransmission Facilities means the transmission facilities that connect the high voltage side of the distribution substation to the low voltage side of the bulk transmission or generating facilities, as well as related supervisory control and data acquisition facilities.

System Improvement means the change or addition to electric plant facilities to improve the quality of electric service or to increase the quantity of electric power available to RE Act beneficiaries.

TIER means Times Interest Earned Ratio calculated as:

$$TIER = \frac{A+B}{A}$$

where:

A = Interest on Long-term Debt, which equals Part A, Line 15 of REA Form 7 (distribution borrowers) or Section A Line 22 of REA Form 12a (power supply borrowers), except that Interest on Long-term debt shall be increased by ⅓ of the amount, if any, by which the rentals of Restricted Property (Part M, Line 3 of REA Form 7 or Section K, Line 4 of REA Form 12h) exceeds 2 percent of Total Margins and Equities (Part C, Line 32 of REA Form 7 or Section B, Line 33 of REA Form 12a; and
B = Patronage Capital or Margins, which equals Part A, Line 27 of REA Form 7 or Section A, Line 34 of REA Form 12a.

Transmission Facilities means all electrical lines and related facilities, including certain substations, used to connect the distribution facilities to generation facilities. They include bulk transmission and subtransmission facilities.

(b) *Rules of Construction.* Unless the context otherwise indicates, "includes" and "including" are not limiting, and "or" is not exclusive. The terms defined in § 1710.2(a) of this part include the plural as well as the singular, and the singular as well as the plural.

§ 1710.3 Form revisions.

References in this part to REA forms or line numbers in REA forms will apply to corresponding information in future versions of the forms.

§ 1710.4 Exception authority.

Consistent with the RE Act and other applicable laws, the Administrator may make an exception to any requirement or provision of this part or other regulations pertaining to electric borrowers if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest.

§ 1710.5 Availability of forms.

Information about the availability of REA forms and publications cited in this part is available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250–1500. These REA forms and publications may be reproduced.

§§ 1710.6–1710.49 [Reserved]

Subpart B—Types of Loans and Loan Guarantees

§ 1710.50 Insured loans.

REA makes insured loans under section 305 of the RE Act for the extension and improvement of electric facilities in rural areas. Generally, insured loans are made for distribution and subtransmission facilities, including ordinary replacements and warehouse and garage facilities, and in the case of financial hardship, other headquarters facilities, general plant equipment, and working capital if required for the initial operation of a distribution system. These loans are made for a term of up to 35 years, and the standard interest rate is 5 percent per annum. Under certain circumstances, as set forth in the RE Act, the interest rate may be as low as 2 percent per annum.

§ 1710.51 Loan guarantees.

REA provides 100 percent loan guarantees pursuant to section 306 of the RE Act to enable borrowers to secure financing from certain non-REA sources, including the Federal Financing Bank. REA also provides 90 percent loan guarantees under section 314 of the RE Act to enable borrowers to secure financing from certain private lenders. The loan guarantees are made for a term of up to 35 years, and the interest rate is established at a rate agreed to by the borrower and the lender, with REA concurrence. The guarantee applies to the repayment of both principal and interest.

§§ 1710.52–1710.99 [Reserved]

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 General.

The Rural Electrification Administration (REA) makes loans and loan guarantees to finance the construction of electric distribution, transmission and generation facilities, including system improvements and replacements, required to provide adequate electric service in rural areas. In some circumstances, REA may finance selected operating expenses of its borrowers. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 *et seq.*), and 7 CFR chapter XVII. REA provides certain technical assistance to borrowers when necessary to aid the development of rural electric service and to protect loan security.

§ 1710.101 Types of eligible borrowers.

(a) REA makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide:

(1) The basic retail electric service needs of rural areas, or

(2) The power supply needs of distribution borrowers under the terms of a wholesale power contract satisfactory to REA.

(b) In making loans, REA gives preference to states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, or limited-dividend associations. REA does not make loans to individual consumers.

(c) Former borrowers that have paid off all outstanding loans may reapply for a loan to serve RE Act beneficiary loads accruing from the time the former borrower's complete loan application is received by REA. The determination of whether an area is rural will be based on the population of the area at the time of the reapplication for a loan.

(d) Former borrowers that have prepaid all then outstanding insured and direct loans in accordance with section 306B of the RE Act must comply with the provisions of 7 CFR part 1786 before being considered eligible to borrow additional funds from REA.

§ 1710.102 Borrower eligibility for different types of loans. [Reserved]

§ 1710.103 Area coverage.

(a) Borrowers shall make a diligent effort to extend electric service to all unserved persons within their service area who:

(1) Desire electric service, and

(2) Meet all reasonable requirements established by the borrower as a condition of service.

(b) If economically feasible and reasonable considering the cost of providing such service and the effects on all consumers' rates, such service shall be provided, to the maximum extent practicable, at the rates and minimum charges established in the borrower's rate schedules, without the payment by such persons of a contribution in aid of construction. The loan contract shall contain provisions to this effect.

§ 1710.104 Service of non-RE Act beneficiaries.

(a) To the greatest extent practical, loans are limited to providing electric facilities that serve RE Act beneficiaries. When it is determined by the Administrator to be necessary in order to furnish or improve electric service in rural areas, loans may be made to finance electric facilities that will also serve consumers in nonrural areas, or consumers in rural areas who are already receiving adequate central station service.

(b) Loan funds may be approved for facilities to serve non-RE Act beneficiaries only if:

(1) The primary purpose of the loan is to furnish or improve service for RE Act beneficiaries, and

(2) The use of loan funds to serve non-RE Act beneficiaries is necessary and incidental to the primary purpose of the loan.

(c) The determination whether adequate central station service is being provided in a rural area will be made by the Administrator on a case by-case-basis. It will be based on current normal standards for electric service, taking factors such as the following into consideration:

(1) The continuity of service.

(2) Voltage and frequency regulation.

(3) The age and condition of the existing electric facilities.

(4) The adequacy of capacity to meet the requirements of existing consumers.

(5) The ability of existing consumers to use modern electric appliances efficiently under the existing service.

§ 1710.105 State regulatory approvals.

(a) In states where a borrower is required to obtain approval of a project or its financing from a state regulatory authority, REA may require that such approvals be obtained, if feasible for the borrower to do so, before the following types of loans are approved by REA:

(1) Loans requiring an Environmental Impact Statement.

(2) Loans to finance generation and transmission facilities, when the loan request for such facilities is $25 million or more.

(b) At minimum in the case of all loans, such state approvals will be required before loan funds are advanced.

(c) In cases where state regulatory authority approval has been obtained, but the borrower has failed to proceed with the project in a timely manner according to the schedule contained in the borrower's project design manual, or if there are cost overruns or other developments that threaten loan feasibility or security, REA may require the borrower to obtain a reaffirmation of the project and its financing from the state authority before any additional loan funds are advanced.

§ 1710.106 Uses of loan funds.

(a) REA loan funds may be used to finance:

(1) *Distribution facilities.* (i) The construction of new distribution facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth requirements or improve the quality of service.

(ii) The purchase, rehabilitation and integration of existing distribution facilities and associated service territory when the acquisition is an incidental and necessary means of providing or improving service to persons in rural areas who are not receiving adequate central station service, and the borrower is unable to finance the acquisition from other sources. See § 1710.107 of this part.

(2) *Transmission and generation facilities.* (i) The construction of new transmission and generation facilities or systems and the cost of system improvements and removals, less salvage value, needed to meet load growth and improve the quality of service.

(ii) The purchase of an ownership interest in new or existing transmission or generation facilities to serve RE Act beneficiaries.

(3) *Ordinary plant replacements.* The excess of the total cost of ordinary replacements over the original cost of the facilities being replaced, unless financing of the total cost is specifically authorized by the Administrator.

(4) *Warehouse and garage facilities.* The purchase, remodeling, or construction of warehouse and garage facilities required for the operation of a borrower's system. See § 1710.106(b) of this part.

(5) *Interest.* The payment of interest on indebtedness incurred by a borrower to finance the construction of generation and transmission facilities during the period preceding the date such facilities are placed into service, if requested by the borrower and found necessary by REA.

(b) In cases of financial hardship, as determined by the Administrator, loans may also be made to finance the following items:

(1) The headquarters office and other headquarters facilities in addition to those cited in § 1710.106(a)(4) of this part.

(2) General plant equipment, including furniture, office, transportation, data processing and other work equipment.

(3) Working capital required for the initial operation of a new system.

(c) REA will not make loans to finance the following items:

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the consumer, except certain load-management equipment.

(2) Facilities to serve consumers who are not beneficiaries of the RE Act unless those facilities are necessary and incidental to providing or improving electric service in rural areas. See § 1710.104 of this part.

(3) Any facilities that a state regulatory authority having jurisdiction will not approve for inclusion in the borrower's rate base, or will not otherwise allow rates sufficient to repay with interest the debt incurred for the facilities.

(d) To make optimal use of available loan funds in furthering the purposes of the RE Act, the amount lent to any one borrower in a given year may be limited to less than the total amount eligible for REA financing, taking into consideration the amount of loan funds available and the size of REA's loan application inventory.

§ 1710.107 Amount lent for acquisitions.

The amount that will be lent for an acquisition is limited to the value of the property, as determined by REA. If the acquisition price exceeds this amount, the borrower shall provide the remainder without REA financial assistance.

§ 1710.108 Mergers and consolidations.

(a) REA encourages its borrowers to consider merging or consolidating with another electric borrower when such action will contribute to greater operating efficiency and financial soundness.

(b) After a merger or consolidation, REA will give priority consideration to making loans to the surviving system to finance the integration and rehabilitation of electric facilities, if necessary, and the improvement or extension of electric service in rural areas. REA does not make loans for costs incurred in effectuating mergers or consolidations, such as legal expenses or feasibility study costs.

§ 1710.109 Reimbursement of general funds.

Borrowers may request that a loan include funds to reimburse general funds used to finance facilities that were included in an REA-approved construction work plan or work plan amendment, and for which no loan funds were available at the time of construction. Except in cases of extreme financial hardship, reimbursement will generally be limited to the cost of construction completed during the 24 month period immediately preceding the loan period.

§ 1710.110 Supplemental financing.

(a) Borrowers may be required to obtain a portion of their financing needs from supplemental sources as a condition of obtaining REA loans or loan guarantees. See 7 CFR parts 1712 and 1714 and REA Bulletin 20–14.

(b) The terms and conditions of such supplemental financing and any security offered to the supplemental lender are subject to REA approval. Generally, supplemental financing must bear the same maturity and be amortized in the same manner as REA loans made concurrently. Borrowers may elect to repay the loans either in substantially equal periodic installments covering interest and principal, or in periodic installments that include interest and level amortization of principal.

(c) Applicants for an insured loan will generally be required to obtain a portion of their loan funds from a supplemental source without an REA guarantee.

(d) *Supplemental financing required for insured loans—(1) Distribution borrowers.* (i) Distribution borrowers that had, as of December 31, 1980, an average consumer density of 2 or fewer per mile or an average adjusted plant revenue ratio (APRR), as defined in § 1710.2, of over 9.0 shall obtain supplemental financing equal to 10 percent of their loan request.

(ii) All other distribution borrowers must obtain supplemental financing based on their plant revenue ratio (PRR), as follows:

PRR	Supplemental loan percentage
9.00 and above	10
6.01–8.99	20
6.00 and below	30

(2) *Power supply borrowers.* The supplemental loan proportion required of a power supply borrower is based on the simple arithmetic mean of the supplemental loan proportions required of the borrower's distribution members.

§ 1710.111 Refinancing.

(a) REA does not make loans or loan guarantees to refinance the outstanding indebtedness of borrowers, except in the following cases:

(1) Loans or loan guarantees to refinance long-term debt owed by borrowers to the Tennessee Valley Authority for credit extended under the terms of the Tennessee Valley Authority Act of 1933, as amended.

(2) Loan guarantees made in accordance with the provisions of section 306A of the RE Act to prepay a loan (or any loan advance thereunder) made by the Federal Financing Bank.

(b) In certain circumstances, such as those stated in article I, section 1 of the standard mortgage, REA may make a loan to replace interim financing obtained for the construction of facilities.

§ 1710.112 Loan feasibility.

(a) REA will make a loan only if there is reasonable assurance that the loan, together with all outstanding loans and other obligations of the borrower, will be repaid in full as scheduled, in accordance with the mortgage, notes, and loan contracts. The borrower must provide evidence satisfactory to the Administrator that the loan will be repaid in full as scheduled, and that all other obligations of the borrower will be met.

(b) Based on evidence submitted by the borrower and other information, REA will use the following criteria to evaluate loan feasibility:

(1) Projections of power requirements, rates, revenues, expenses, margins, and other factors for the present system and proposed additions are based on reasonable assumptions and adequate supporting data and analysis, including analysis of a range of assumptions for the significant variables.

(2) Projected revenues from the rates proposed by the borrower are adequate to meet the required TIER and DSC ratios based on the borrower's total costs, including the projected maximum debt service cost of the new loan.

(3) The economics of the borrower's operations and service area are such that consumers can reasonably be expected to pay the proposed rates required to cover all expenses and meet REA TIER and DSC requirements, and the borrower can reasonably compete with other utilities to prevent load loss while providing satisfactory service to its consumers.

(4) Any risks of possible loss of substantial loads from large consumers or from load concentrations in particular industries will not impair loan feasibility.

(5) Any risks of loss of portions of the borrower's service territory from annexation or other causes will not impair loan feasibility.

(6) In states where rates or investment decisions are subject to approval by state regulatory authorities, there is reasonable expectation that such approvals will be forthcoming to enable repayment of the loan in full according to its terms.

(7) The experience and performance of the system's management is acceptable.

(8) In the case of joint ventures, the borrower has sufficient management control or other contractual safeguards with respect to the construction and operation of the jointly owned facility to ensure that the borrower's interests are protected and the credit risk is minimized.

(9) The borrower has implemented adequate financial and management controls and there are and have been no significant financial or other irregularities.

(10) Other factors that REA determines to be relevant.

§ 1710.113 Loan security.

(a) REA makes loans only if, in the judgment of the Administrator, the security therefore is reasonably adequate and the loan will be repaid according to its terms within the time agreed.

(b) REA generally requires that borrowers provide it with a first lien on all of the borrower's real and personal property, including intangible personal property and any property acquired after the date of the loan. This lien shall be in the form of a mortgage by the borrower to the Government or a deed of trust between the borrower and a trustee satisfactory to the Administrator, together with such security agreements, financing statements, or other security

documents as REA may deem necessary in a particular case.

(c) When a borrower is unable by reason of preexisting encumbrances, or otherwise, to furnish a first mortgage lien on its entire system the Administrator may accept other forms of security, such as a pledge of revenues, if he or she determines such security is reasonably adequate and the form and nature thereof is otherwise acceptable.

(d) In the case of loans that include the financing of electric facilities that are operated as an integral component of a non-REA financed system (such as facilities co-owned with other electric utilities), the borrower shall, in addition to the mortgage lien on all of the borrower's electric facilities, furnish adequate assurance, in the form of contractual or other security arrangements, that the system will be operated on an efficient and continuous basis. Satisfactory evidence must also be provided that the non-REA financed system is financially sound and under capable management.

(e) Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

§ 1710.114 TIER and DSC requirements.

(a) *General.* TIER and DSC requirements are set forth in the borrower's mortgage, loan contract, or other contractual agreements with REA. The requirements set forth in this section apply to borrowers that receive a loan after the effective date of this rule. Nothing in this section, however, shall reduce the TIER or DSC requirements of a borrower that has contractually agreed with REA to a higher requirement.

(b) *TIER and DSC levels.* The minimum TIER and DSC levels required, whether applied on an annual or average basis, are 1.50 and 1.25, respectively, for distribution borrowers, and 1.05 and 1.00, respectively, for power supply borrowers. The Administrator, in his or her sole discretion, may require higher TIER and DSC levels or revise TIER and DSC requirements for individual borrowers or classes of borrowers to ensure loan feasibility and security and improve the credit worthiness of borrowers.

(c) *Requirements for loan feasibility.* To be eligible for a loan, borrowers must demonstrate to RA that they will, on a pro forma basis, earn the TIER and DSC levels required by § 1710.114(b) in each of the years included in the borrower's long range financial forecast prepared in support of its loan application, as set forth in subpart G of this part.

(d) *Requirements for rate design.* (1) Borrowers must design their rates for electric power and energy and other services to provide sufficient revenue to pay all fixed and variable expenses, to provide and maintain reasonable working capital and to maintain on an annual basis the TIER and DSC levels required by § 1710.114(b).

(2) As used in this section, fixed and variable expenses include, but are not limited to: all taxes, depreciation, maintenance expenses, and the cost of electric power and energy and other operating expenses of the electric system, including all obligations under the wholesale power contract, all lease payments when due, and all principal and interest payments on outstanding indebtedness when due.

(e) *Requirements for advance of funds.* (1) If a borrower applying for a loan has failed to achieve the TIER or DSC levels required by § 1710.114(b) during the calender year, or latest 12 month period, immediately preceding approval of the loan, or the borrower's average TIER or average DSC for the 2 highest years out of the most recent 3 calendar years was below the levels required in § 1710.114(b), no funds from such loan will be advanced to the borrower until it has adopted an annual financial plan and operating budget satisfactory to REA and taken such other action as REA may require to demonstrate that the required TIER and DSC levels will be maintained in the future. Such other action may include, for example, increasing system operating efficiency and reducing costs or adopting a rate design that will achieve the required TIER and DSC levels, and either placing such rates into effect or taking action to obtain regulatory authority approval of such rates.

(2) With respect to any outstanding loan made after the effective date of this rule, if based on actual or projected financial performance of the borrower, REA determines that the borrower may not achieve its required TIER or DSC levels in the current or future years, REA may withhold the advance of loan funds until the borrower has taken remedial action satisfactory to REA.

§ 1710.115 Loan maturity.

(a) REA is authorized to make loans and loan guarantees with a maturity of up to 35 years. Most of the electric facilities financed by REA have a long useful life, often approximating 35 years. Some facilities, such as load management equipment and Supervisory Control and Data Acquisition equipment, have a much shorter useful life due to obsolescence. Operating loans to finance working capital required for the initial operation of a new system are a separate class of loans and usually have a maturity of less than 10 years.

(b) Except for operating loans, loans made or guaranteed by REA generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the depreciation rates that the borrower proposes for the facilities financed by the loan, provided that these rates are deemed appropriate by REA. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by REA. Where a state regulatory authority does not approve depreciation rates, if the rates proposed by the borrower are not deemed appropriate by REA, REA will base expected useful life on the depreciation rates listed in Bulletin 183–1, or its successor, revising such rates as necessary to reflect current industry practice.

(c) Borrowers may request a repayment period shorter than the expected useful life of the facilities financed.

(d) The Administrator may approve a repayment period longer than the expected useful life of the facilities financed, up to 35 years, if a longer maturity is required to ensure repayment of the loan and loan security is adequate.

§ 1710.116 Equity development plan.

As a condition for obtaining a loan, a borrower whose total equity is less than 40 percent of its total assets, after taking into consideration the effects on the balance sheet of a new loan, will be required to prepare and follow an equity development plan acceptable to REA.

§ 1710.117 Environmental considerations.

Borrowers are required to comply with 7 CFR part 1794, which sets forth applicable requirements of the National Environmental Policy Act (NEPA), as amended (42 U.S.C. 4321 *et seq.*); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508); and certain other statutes, regulations and orders. They must also comply with any other applicable Federal or state environmental laws or regulations.

§ 1710.118 Energy conservation and load management.

Borrowers are encouraged to promote the efficient use of electric energy and to promote load management in order to improve system load factors, to reduce losses, to use existing facilities more effectively, and to reduce the need for new generating facilities.

§ 1710.119 Loan processing priorities.

(a) Generally loans are processed in chronological order based on the date the complete application is received in the Area office.

(b) The Administrator may give priority to loans that are required to meet the following needs:

(1) To restore electric service following a major storm or other catastrophe.

(2) To bring existing electric facilities into compliance with any environmental requirements imposed by Federal or state law that were not in effect at the time the facilities were originally constructed.

(3) To finance the capital needs of borrowers that have merged or consolidated after the effective date of this regulation, provided that the merger or consolidation has been approved by REA and determined to enhance the repayment or security of REA loans. Such priority will be considered for a period up to 5 years after REA approval of the merger or consolidation.

(4) To meet other objectives of the RE Act, as determined by the Administrator.

(c) The Administrator may also change the normal order of processing loan applications in order to ensure that all insured loan authority for the fiscal year is utilized.

§ 1710.120 Construction standards and contracts.

Borrowers shall follow all REA requirements regarding construction work plans, construction standards, approved materials, construction and related contracts, inspection procedures, and bidding procedures.

§ 1710.121 Insurance requirements.

Borrowers are required to comply with certain requirements with respect to insurance and fidelity coverage as set forth in 7 CFR part 1788.

§ 1710.122 Equal opportunity and nondiscrimination.

Borrowers are required to comply with certain regulations on nondiscrimination in program services and benefits and on equal employment opportunity as set forth in REA Bulletins 20–15 and 20–19 or their successors; 7 CFR parts 15 and 15b; and 45 CFR part 90.

§ 1710.123 Debarment and suspension.

Borrowers are required to comply with certain requirements on debarment and suspension as set forth in 7 CFR part 3017.

§ 1710.124 Uniform Relocation Act.

Borrowers are required to comply with 49 CFR part 24, which sets forth the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91–646; 84 Stat. 1894; U.S.C. 4601 *et seq.*), as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17; 101 Stat. 246–256).

§ 1710.125 Restrictions on lobbying.

Borrowers are required to comply with certain requirements with respect to restrictions on lobbying. See 7 CFR part 3018.

§ 1710.126 Federal debt delinquency.

(a) Prior to approval of a loan or advance of funds, a borrower must report to REA whether or not it is delinquent on any Federal debt, such as Federal income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained, and REA will take such explanation into consideration in deciding whether to approve the loan or advance of funds.

(b) Applicants for a loan or loan guarantee must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt.

§ 1710.127 Drug free workplace.

Borrowers are required to comply with the Drug Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Act's implementing regulations (7 CFR part 3017) when a borrower receives a Federal grant or enters into a procurement contract awarded pursuant to the provisions of the Federal Acquisition Regulation (title 48 CFR) to sell to a Federal agency property or services having a value of $25,000 or more.

§§ 1710.128–1710.149 [Reserved]

Subpart D—Basic Requirements for Loan Approval

§ 1710.150 General.

The RE Act and prudent lending practice require that the Administrator make certain findings before approving an electric loan or loan guarantee. The borrower shall provide the evidence determined by the Administrator to be necessary to make these findings.

§ 1710.151 Required findings for all loans.

(a) *Area coverage.* Adequate electric service will be made available to the widest practical number of rural users in the borrower's service area during the life of the loan. See § 1710.103 of this part.

(b) *Feasibility.* The loan is feasible and it will be repaid on time according to the terms of the mortgage, note, and loan contract. At any time after the original determination of feasibility, the Administrator may require the borrower to demonstrate that the loan remains feasible. See § 1710.112 and subpart G of this part.

(c) *Security.* REA will have a first lien on the borrower's total system or other adequate security, and adequate financial and managerial controls will be included in the loan documents. See § 1710.113 of this part.

(d) *Interim financing.* For loans that include funds to replace interim financing, there is satisfactory evidence that such funds are necessary.

(e) *Facilities for nonrural areas.* Whenever a borrower proposes to use loan funds for the improvement, expansion, construction, or acquisition of electric facilities for non-RE Act beneficiaries, there is satisfactory evidence that such funds are necessary and incidental to furnishing or improving electric service for RE Act beneficiaries. See § 1710.104 of this part.

(f) *Facilities to be included in rate base.* In states having jurisdiction, the borrower has provided satisfactory evidence based on the information available, such as an opinion of counsel, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities.

§ 1710.152 Primary support documents.

The following primary support documents and studies must be prepared by the borrower for approval by REA in order to support a loan application:

(a) *Power requirements study (PRS).* This study provides the borrower and REA with an understanding of the borrower's system loads, the factors influencing those loads, and valid estimates of future loads. It provides a basis for projecting annual kWh sales and revenues, and for engineering estimates of plant additions required to

accommodate the forecasted loads. The requirements for a PRS are set forth in subpart E of this part.

(b) *Construction work plans (CWP).* The CWP shall specify and document the capital investments required to serve a borrower's planned new loads, improve service reliability and quality, and service the changing needs of existing loads. The requirements for a CWP are set forth in subpart F of this part.

(c) *Long-range financial forecasts.* REA encourages borrowers to maintain on a current basis a long-range financial forecast, which should be used by a borrower's board of directors and manager to guide the system towards its financial goals. The forecast submitted in support of a loan application shall show the projected results of future actions planned by the board of directors. The requirements for a long-range financial forecast are set forth in subpart G of this part.

(d) *Borrower's environmental report (BER).* This document is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. In developing a BER a borrower shall follow the policy and procedural requirements set forth in 7 CFR part 1794. After reviewing the BER, REA will determine whether additional environmental studies will be required.

§ 1710.153 Additional requirements and procedures.

Additional requirements and procedures for obtaining REA financial assistance are set forth in 7 CFR part 1712 and REA Bulletins 20–6 and 20–22 for loan guarantees, and in 7 CFR part 1714 and REA Bulletin 20–2 for insured loans.

§§ 1710.154–1710.199 [Reserved]

Subpart E—Power Requirements Studies

§ 1710.200 Purpose.

This subpart sets forth the policies, procedures and criteria for the preparation, approval and use of power requirements studies (PRSs) and PRS work plans. A PRS is a thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity. The PRS of a power supply borrower includes and integrates the PRSs of its member systems.

§ 1710.201 Requirement to prepare a PRS—power supply borrowers.

(a) A power supply borrower having total assets of $100 million or more shall:

(1) Prepare and obtain REA approval of a new PRS not less frequently than every 3 years, which shall include new or revised equations and models,

(2) Annually update the PRS to REA's satisfaction in the intervening years based on new data and assumptions, but not necessarily including new or revised equations and models,

(3) Maintain a current PRS work plan approved by REA which shall set forth the resources, methods, schedules and milestones required for the preparation and maintenance of the PRS, and

(4) Provide a current PRS approved by REA in support of any request for REA financial assistance or for REA approval of long-term power contracts or other actions as appropriate.

(b) A power supply borrower with total assets of less than $100 million is not required to have a current, REA-approved PRS on an ongoing basis but is required to provide a current, REA-approved PRS in support of any request for REA financial assistance or for REA approval of long-term power contracts or other actions as appropriate. For purposes of this paragraph and paragraph (a)(4) of this section, the determination of whether a borrower's PRS is current will be made by REA at the time financial assistance or other REA action is requested. The borrower may be required to update the PRS to incorporate the most recently available operating data and other information.

(c) A power supply borrower that is a member of another power supply borrower that has total assets of $100 million or more is subject to the requirements of § 1710.201(a), except that such member is not required to have a separate PRS work plan. The distribution members of such a power supply borrower are also subject to the requirements of § 1710.201(a), except that such members are not required to have separate PRS work plans.

(d) At the borrower's request, REA may extend for up to 3 months the time frames set forth in § 1710.201(a) (1) and (2) if REA determines the borrower is in substantial compliance with its REA-approved work plan and significant changes in existing PRS models and assumptions are not required.

§ 1710.202 Requirement to prepare a PRS—distribution borrowers.

(a) If a distribution borrower is a member of a power supply borrower that has total assets of $100 million or more, it must meet the requirements of § 1710.201(a), except for the requirement to prepare a work plan, which is the responsibility of the power supply borrower. The provisions of § 1710.201(c) also apply.

(b) All other distribution borrowers, including unaffiliated distribution systems as well as members of power supply borrowers with total assets of less than $100 million, must either:

(1) Meet the requirements of § 1710.201(a), if the distribution borrower owns generation and bulk transmission plant valued at $100 million or more, or

(2) Meet the requirements of § 1710.201(b).

§ 1710.203 Basic policies and requirements for a PRS.

(a) A PRS or PRS update must be completed and submitted to REA on a timely basis to enable prompt review by REA.

(b) A PRS completed more than 12 months prior to submission will not be considered by REA.

(c) Adequate coordination is required between all power supply borrowers and their members in the preparation of their respective PRSs or PRS updates.

(d) To facilitate REA review of the work plan and the PRS, the borrower shall make reasonable staff resources available to REA, and all documents, data, working papers, and other information, in formats acceptable to REA, that support the work plan and the PRS.

(e) Notwithstanding any other provisions of this subpart, any power supply or distribution borrower may be required to prepare a new or updated PRS at any time, or to maintain a current PRS on an ongoing basis, if required for REA to determine loan feasibility, to ensure loan security, to consider requests submitted for approval under a borrower's loan contract or mortgage, or otherwise to effectively administer the electric program.

(f) All PRSs shall include the following, using a format approved by REA:

(1) A discussion of the scope of the PRS, including the proposed uses of the information developed for planning load management and energy efficiency programs, plant investments, and financial requirements.

(2) A discussion of the borrower personnel, consultants, data, and other resources used in the preparation of the PRS.

(3) A discussion of the procedures used to collect, validate, process, and update the data used in the study.

(4) Documentation of the analysis and modeling of the borrower's electric system loads and other pertinent information used in the PRS. All data, sensitivity analyses and other procedures used to test significant assumptions and to generate the load estimates and related factors must be included in the PRS or otherwise made available to REA, and clearly identified, sourced and dated.

(5) An analysis of the borrower's past, existing, and future electric system loads of RE Act beneficiaries and others, including explanation and documentation of all assumptions, sensitivity analyses and other considerations used to prepare the estimates. Areas of analysis shall normally include, but are not limited to: developing land use patterns; potential losses of load due to annexation or other causes; prospective residential and commercial development; probable rate levels; the effects of rates and competition from neighboring utilities on loads; existing and anticipated patterns of energy usage and appliance saturation; and availability of alternative energy sources. Load management, conservation, and power marketing considerations must also be included.

(6) A discussion and analysis of the high, most-probable and low estimates of the borrower's future electric system loads. In addition to analyzing alternative economic and demographic scenarios, this analysis usually shall include the effects of abnormal weather (severe or mild) on system loads.

(7) Completed REA Forms 341 and 345 and 10 years data from REA Form 7 Part R. Computer-generated facsimiles may be used if acceptable to REA. Graphs, tables, spreadsheets or other exhibits shall be included as appropriate.

(8) A discussion and documentation of the coordination activities between a power supply borrower and its REA-borrower members, as applicable, and between the borrower and REA. If a power supply borrower and any member disagree on an issue or estimate, REA will provide assistance, if requested, in attempting to resolve the disagreement.

(9) The borrower's general manager's recommendation to the board of directors on adoption of the PRS.

(10) Approval of the PRS by the borrower's board of directors.

(g) A PRS and its supporting data and analysis shall be retained in the borrower's records for a period of not less than 10 years after the date of REA approval of the PRS.

§ 1710.204 PRS work plan requirements.

(a) All borrowers required to prepare and maintain a PRS on an ongoing basis with annual updates are required to prepare and obtain REA approval of a PRS work plan, except for those borrowers that are members of a power supply borrower that is required to prepare a PRS work plan. The PRS work plan shall establish the resources, methods, schedules, and milestones to be used in the preparation and maintenance of the PRS.

(b) A power supply borrower's work plan shall include the member inputs and coordination mechanisms required for the preparation of its PRS as well as the PRSs of the system's members. Member concurrences on the work plan are required before the plan is submitted to REA for approval. The member systems, as well as the power supply borrower, are required to follow the work plan in preparing their respective PRSs.

(c) A PRS work plan must be approved by the borrower's board of directors.

(d) A borrower may amend its work plan subject to REA approval. A new or revised work plan may be required by REA if REA concludes the existing plan will not result in a satisfactory PRS on a timely basis.

(e) In addition, a PRS work plan shall:

(1) Identify the borrower and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the work plan.

(2) Provide for residential consumer surveys at least every 3 years to obtain data on appliance and equipment saturation and electricity demand, when residential demand is a substantial portion of total load, as determined by REA. In the case of a power supply borrower, such surveys shall be coordinated with the borrower's members.

(3) Provide for all other data collection and verification, analyses, modeling, and documentation required in § 1710.203.

(4) Provide for an ongoing REA review of the PRS.

(f) Generally, a work plan shall cover a period of 1 to 3 years.

(g) The work plan shall be retained in the borrower's records for a period of not less than 10 years after the date of REA approval of the plan.

§ 1710.205 Basic criteria for REA approval of a PRS.

REA will use the following basic criteria in deciding whether to approve a PRS:

(a) The borrower objectively analyzed all relevant factors that influence the consumption of electricity and the requirements for generation and transmission capacity.

(b) The borrower accurately analyzed RE Act beneficiary needs and non-RE Act beneficiary needs.

(c) The borrower developed adequate supporting data, used valid assumptions, analyzed all relevant alternative assumptions and scenarios, and used valid and verifiable analytical techniques and models.

(d) The borrower provided REA with adequate documentation and assistance to allow for a thorough and independent review.

(e) In the case of a power supply borrower, the preparation of the work plan and PRS was adequately coordinated with its members.

(f) The PRS was recommended for approval by the borrower's general manager and has been approved by the borrower's board of directors.

§ 1710.206 Waiver of borrower requirements.

If requested in writing by a borrower's general manager, the Administrator may, for good cause shown, waive any of the requirements applicable to borrowers in this subpart if the Administrator determines that waiving the requirement will not significantly affect accomplishment of the objectives of this subpart and the requirement imposes a substantial burden on the borrower.

(Approved by the Office of Management and Budget under control number 0572–0032)

§§ 1710.207–1710.249 [Reserved]

Subpart F—Construction Work Plans and Related Studies

§ 1710.250 General.

(a) An ongoing, integrated planning system is needed by borrowers to determine their short-term and long-term needs for plant additions, improvements, replacements, and retirements. The primary components of the system consist of long range engineering plans, construction work plans (CWPs), and special engineering and cost studies. Long range engineering plans identify plant investments required over a period of 10 years or more. CWPs specify and document plant requirements for the short-term, usually 2 to 3 years, and special engineering and cost studies are used to support CWPs and to identify and document requirements for specific additions of generation capacity and associated transmission plant.

(b) Generally, all borrowers are required to maintain up-to-date long range engineering plans approved by

their boards of directors and REA. Current CWPs approved by the borrower's board and REA must also be developed and maintained for distribution and transmission facilities and for improvements and replacements of generation facilities. Applications for REA financial assistance for such facilities must be supported by a current, approved CWP.

(c) A long range engineering plan specifies and supports the major system additions, improvements, replacements, and retirements needed for an orderly transition from the existing system to the system required 10 or more years in the future. The planned future system should be based on the most technically and economically sound means of serving the borrower's long-range loads in a reliable and environmentally acceptable manner.

(d) A CWP shall include investment cost estimates and supporting engineering and cost studies to demonstrate the need for each proposed facility or activity and the reasonableness of the investment projections and the engineering assumptions used in sizing the facilities. The CWP must be consistent with the borrower's long range engineering plan and both documents must be consistent with the borrower's power requirements study.

(e) REA approval is required for all facilities included in a CWP or CWP amendment. If REA disagrees with a borrower's estimate of the cost of one or more facilities included in a CWP or CWP amendment, REA may adjust the estimate.

(f) To be eligible for REA financing, the facilities included in a CWP or any amendments must be approved by REA before the start of construction.

(g) A CWP may be amended or augmented when the borrower can demonstrate the need for the changes.

(h) A borrower's CWP or special engineering studies must be supported by a Borrower's Environmental Report, Environmental Analysis, or Environmental Impact Statement, as set forth in 7 CFR part 1794 or required by other Federal or state regulations or laws.

§ 1710.251 Construction work plans—distribution borrowers.

(a) All distribution borrowers must maintain a current CWP approved by their board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements, replacements, and retirements of any generation plant. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies.

(b) A distribution borrower's CWP shall cover at least a 2-year construction period and include all facilities to be constructed, whether or not REA financial assistance will be sought or be available for certain facilities. The CWP may cover a period of up to 4 years, but any REA loan will be limited to a 2-year construction period.

(c) The facilities included in a distribution borrower's CWP may include:

(1) Line extensions required to connect consumers, improve service reliability or improve voltage conditions.

(2) Distribution tie lines to improve reliability of service and voltage regulation.

(3) Line conversions and changes required to improve existing service or provide additional capacity for new consumers.

(4) New substation facilities or additions to existing substations.

(5) Transmission and substation facilities required to support the distribution system.

(6) Distribution equipment required to serve new consumers or to provide adequate and dependable service to existing consumers, including replacement of existing plant facilities.

(7) Residential security lights.

(8) Headquarters facilities.

(9) Improvements, replacements, and retirements of generation facilities.

(10) Load management equipment, automatic sectionalizing facilities, and centralized System Control and Data Acquisition equipment.

§ 1710.252 Construction work plans—power supply borrowers.

(a) All power supply borrowers must maintain a current CWP approved by the borrower's board of directors and REA covering all new construction, improvements, replacements, and retirements of distribution and transmission plant, and improvements, replacements, and retirements of generation plant. Applications for REA financial assistance for such facilities must be supported by a current, approved CWP. Construction of new generation capacity need not be included in a CWP but must be specified and supported by specific engineering and cost studies.

(b) Normally, a power supply borrower's CWP shall cover a period of 3 years. While comprehensive CWPs are desired, if there are extenuating circumstances REA may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification.

(c) Facilities included in a power supply borrower's CWP may include:

(1) Distribution and related facilities as set forth in § 1710.251(c).

(2) Transmission facilities required to deliver the power needed to serve the existing and planned new loads of the borrower and its members, and to improve service reliability, including tie lines for improved reliability of service, line conversions, improvements and replacements, new substations and substation improvements and replacements, and Systems Control and Data Acquisition equipment.

(3) The borrower's proportionate share of transmission facilities required to tie together the operating systems of supporting power pools and to connect with adjacent power suppliers.

(4) Improvements and replacements of generation facilities.

(d) A CWP for transmission facilities shall normally include studies of load flows, voltage regulation, and stability characteristics to demonstrate system performance and needs.

§ 1710.253 Engineering and cost studies—addition of generation capacity.

(a) The construction or purchase of additional generation capacity and associated transmission facilities by a power supply or distribution borrower shall be supported by comprehensive project-specific engineering and cost studies as specified by REA. The studies shall cover a period from the beginning of the project to at least 10 years after the start of commercial operation of the facilities.

(b) The studies must include comprehensive economic present-value analyses of the costs and revenues of the available self-generation, load management, energy conservation, and purchased-power options, including assessments of service reliability and financing requirements and risks. Requirements for analyzing purchased-power options are set forth in § 1710.254.

(c) Generally, studies of self-generation, load management, and energy conservation options shall include, as appropriate, analyses of:

(1) Capital and operating costs.

(2) Financing requirements and risks.

(3) System reliability.

(4) Alternative unit sizes.

(5) Alternative types of generation.

(6) Fuel alternatives.

(7) System stability.

(8) Load flows.

(9) System dispatching.

§ 1710.254 Alternative sources of power.

(a) Loan requests for addition of generation capacity (100 percent owned or owned on an undivided ownership basis with other utilities) will be accepted by REA only when the applicant has satisfactorily completed the investigations of possible alternative sources of power as set forth in this section. The investigations must be coordinated in advance with REA.

(b) The applicant is required to search out and attempt to utilize available capacity owned by REA borrowers and other organizations before developing plans for additional generation capacity. The applicant shall:

(1) Solicit power and energy purchase proposals from other electric cooperatives, investor-owned utilities, municipal utility organizations, Federal and state power authorities, and any other reasonable potential source of power.

(2) Solicit proposals on a national basis from independent power producers, including co-generators, to determine the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without REA financial assistance. Such solicitations shall meet all planning, coordination or other requirements imposed by state authorities.

(c) The applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short- and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep REA fully informed on these evaluations and provide supporting information and analysis as requested by REA.

(d) After evaluation of all proposals and having obtained REA approval to proceed, the applicant will be expected to negotiate final proposals with the entities submitting the best acceptable offers, keeping REA fully informed. All contracts entered into shall either be approved in advance by the Administrator or contain language to the effect that the contract is not valid until approved in writing by the Administrator.

(e) REA reserves the right to make independent inquiries with potential power suppliers as to the availability of power to meet a borrower's needs.

(f) Further details of REA requirements for financing of generation and bulk transmission facilities are set forth in 7 CFR Part 1712 and REA Bulletin 20–6.

§§ 1710.255–1710.299 [Reserved]

Subpart G—Long-Range Financial Forecasts

§ 1710.300 General.

(a) REA encourages borrowers to maintain a current longrange financial forecast. The forecast should be used by the board of directors and the manager to guide the system towards its financial goals.

(b) A borrower must prepare, for REA review and approval, a long-range financial forecast, approved by its board of directors, in support of its loan application. The forecast must demonstrate that the borrower's system is economically viable and that the proposed loan is financially feasible. Loan feasibility will be assessed based on the criteria set forth in § 1710.112 of this part.

(c) The financial forecast and related projections submitted in support of a loan application shall include:

(1) The projected results of future actions planned by the borrower's board of directors.

(2) The financial goals established for margins, TIER, DSC, equity, and levels of general funds to be invested in plant.

(3) A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period.

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project loads, rates, revenues, power costs, operating expenses, plant additions, and other factors having a material effect on the balance sheet and financial ratios such as equity, TIER, and DSC.

(5) Current and projected cash flows.

(6) Projections of future borrowings and the associated interest and principal expenses required to meet the projected investment requirements of the system.

(7) Current and projected kW and kWh energy sales.

(8) Current and projected unit prices of significant variables such as retail and wholesale power prices, wage rates, and interest.

(9) Current and projected system operating costs, including, but not limited to, wholesale power costs, depreciation expenses, labor costs and debt service costs.

(10) Current and projected revenues from sales of electric power and energy.

(11) Current and projected non-operating income and expense.

(12) An analysis of the historical experience of the borrower, and in the case of a power supply borrower its member systems, with respect to the rates charged for electricity and the borrower's market competitiveness.

(13) An analysis of the effects of projected increases in the rates charged for electricity and the ability of the borrower, and in the case of a power supply borrower its member systems, to compete with neighboring utilities.

(d) The following plans, studies and assumptions shall be used in the financial forecast:

(1) The REA-approved CWP.

(2) The REA-approved PRS.

(3) The current rate schedules or new rates already approved by the board of directors.

(4) Future plant additions and operating expenses projected at anticipated future cost levels rather than in constant dollars, with the annual rate of inflation for major items specified.

(5) A range of assumptions for each of the significant variables to test the sensitivity of the results to changes in assumptions.

(e) The financial forecast shall use the accrual method for analyzing costs and revenues set forth in the REA Uniform System of Accounts, and compare the economic results of the various alternatives on a present value basis.

(f) REA will obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

§ 1710.301 Financial forecasts—distribution borrowers.

(a) Financial forecasts prepared by distribution borrowers that qualify for the alternative loan procedure shall cover at least a five year period. Financial forecasts prepared by all other distribution borrowers shall cover at least a ten year period.

(b) In addition to the requirements set forth in §1710.300 of this part, financial forecasts prepared by distribution borrowers in support of a loan application shall:

(1) Include expenditures for any maintenance determined to be needed in the current system's operation and maintenance review and evaluation in order to comply with mortgage covenants and prudent utility practice.

(2) Fully explain the basis for the power cost projections used. Generally, the power supplier's most recent forecasted rates shall be used.

(3) Use REA Form 325 or computer-generated equivalent reports.

§ 1710.302 Financial forecasts—power supply borrowers.

(a) The financial forecast prepared by power supply borrowers shall demonstrate the effects that the addition of generation, transmission and any distribution facilities will have on the power supply borrower's output, costs, and revenues, and on the cost of power to the member distribution systems.

(b) The financial forecast shall cover a period beginning with the present and extending at least 10 years beyond the projected in-service date of proposed generation and transmission facilities.

(c) Financial forecasts prepared in support of loan applications to finance additional generation capacity shall include a power cost study as set forth in § 1710.303 of this part.

(d) In addition to the requirements set forth in § 1710.300, financial forecasts prepared by power supply borrowers shall:

(1) Identify all plans for generation and transmission capital additions and system operating expenses on a year-by-year basis, beginning with the present and running for a minimum of 10 years after initial commercial operation of the facilities. REA may request projections for a longer period of time if deemed necessary.

(2) Integrate projections of operation and maintenance expenses associated with existing plant with those of new proposed facilities to determine total costs of system operation as well as the costs of new generation and generation-related facilities.

(3) Provide an in-depth analysis of the regional markets for power if loan feasibility depends to any degree on a borrower's ability to sell surplus power while its system loads grow to meet the planned capacity of a proposed plant.

(4) Furnish REA with all information on operating agreements, ownership agreements, fuel contracts and any other special agreements that affect annual cost projections.

(5) Include sensitivity analysis to determine the effects of various alternatives and assumptions on overall system expenses and revenues. Examples of sensitivity analysis that might be used are:

(i) Effects of a 100 to 200 basis point increase in the financing interest rate.

(ii) Effects of a 50 percent reduction in the rate of projected RE Act beneficiary load growth.

(iii) Effects of a 10 to 20 percent increase in the projections for fuel costs.

(iv) Effects of a 20 percent or more increase in construction costs.

(v) Effects of a 20 percent or more increase in maintenance, retrofit and decommissioning costs of nuclear power plants.

(e) The projections shall be coordinated in advance with REA so that agreement can be reached on major aspects of the economic studies. These include, but are not limited to, projections of future kW and kWh requirements, RE Act beneficiary loads, electricity prices, revenues from system and off-system power sales, the cost of prospective plant additions, interest and depreciation rates, fuel costs, cost escalation factors, the discount rate, and other factors.

(f) The projections, analysis, and supporting information must be included in a report that will provide REA with the information needed to:

(1) Understand and compare various power supply plans.

(2) Determine that the facilities to be financed will perform satisfactorily.

(3) Determine that the overall system is economically viable and the loan is financially feasible.

§ 1710.303 Power cost studies—power supply borrowers.

(a) All applications for financing of additional generation capacity and the associated bulk transmission facilities shall be supported by a power cost study to demonstrate that the proposed generation and associated transmission facilities are the most economical and effective means of meeting the borrower's power requirements.

(b) A power cost study shall include the following basic elements:

(1) A study of all reasonably available self-generation, purchased-power, load management, and energy conservation alternatives as set forth in §§ 1710.253 and 1710.254 of this part.

(2) A present-value analysis of the costs of the alternatives and their effects on total power costs, covering a period of at least 10 years beyond the projected in-service date of the facilities.

(3) A description of proposed new power-purchase contracts or revisions to existing contracts, and an analysis of the effects on power costs.

(4) Use of sensitivity analyses to determine the vulnerability of the alternatives to various assumptions about fuel costs, failure to achieve projected load growth, changes in operating and financing costs, and other factors.

(5) Assessment of the financial risks of the various alternatives, especially as between capital-intensive and non-capital-intensive alternatives, under the range of assumptions set forth in paragraph (b)(4) of this section.

(c) Power cost studies must use current, REA-approved power requirements data, and all major assumptions are subject to REA approval.

§§ 1710.304–1710.349 [Reserved]

Subpart H—Credit Support of Power Supply Borrowers

§§ 1710.350–1710.399 [Reserved]

Dated: December 14, 1990.

Jonathan Kislak,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 91–4362 Filed 2–26–91; 8:45 am]

BILLING CODE 3410–15–M

federal register

Wednesday
February 27, 1991

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Interim Final Rule and Request for Comments

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides interim final regulations for certain workers employed in computer related occupations under Regulations, 29 CFR part 541, which contain the criteria for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) from the minimum wage and overtime compensation requirements of the Act for executive, administrative, professional and outside sales personnel.

The purpose of this regulation is to implement provisions of Pub. L. 101–583, enacted November 15, 1990, which requires the issuance of regulations to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers to qualify for exemption.

DATES: Effective Date: The interim final rule is effective March 29, 1991.

Comments: Comments are due on or before April 29, 1991.

ADDRESSES: Submit written comments to John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Charles E. Pugh, Assistant Administrator, Office of Policy, Planning and Review, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3506, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523–8409. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 13(a)(1) of the FLSA exempts "any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary of Labor * * *)." The existing regulations provide that, in order to be exempt as a bona fide executive, administrative or professional employee, an individual must meet certain tests with respect to job duties and responsibilities and must be compensated on a salary basis at no less than a specified amount.

Section 2 of Public Law 101–583, enacted November 15, 1990, provides as follows:

> Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations that permit computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees under section 13(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(1)). Such regulations shall provide that if such employees are paid on an hourly basis they shall be exempt only if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate under section 6 of such Act (29 U.S.C. 206).

These regulations resolve certain ambiguities in the statute, as more fully explained below. It should be noted that the existing regulations do, in fact, permit computer systems analysts, computer programmers, and software engineers to qualify for exemption, provided such workers are paid, on a salary basis, not less than the amounts specified in the regulations and meet the duties and responsibilities tests contained in the regulations.

With respect to the language "if their hourly rate of pay is at least 6½ times greater than the applicable minimum wage rate", a literal reading would suggest a rate equal to the minimum wage plus 6½ times the minimum wage (i.e., 7½ times the minimum wage). Furthermore, the statute is silent with respect to computer systems analysts, computer programmers, and software engineers who are not paid on an hourly basis.

The Department has carefully reviewed the legislative history of the statute. In addition, the Department has considered the legislative history of a very similar measure which has initially included in the 1989 Amendments to the FLSA, and which the sponsors of Public Law 101–583 referenced in floor debate as identical legislation except for minor technical changes.[1] Based on this review, the Department has concluded that the Congress intended (1) that highly skilled workers in the computer field who are paid more than the equivalent of 6½ times the applicable minimum wage under section 6 of the FLSA should be exempt, and (2) that such workers should be exempt without regard to the basis of their compensation (e.g., salary or hourly wage). Thus, the new rule provides that workers in the computer field who meet the new duties tests specified and whose regular rate of pay is in excess of 6½ times the FLSA minimum wage are exempt from the Act's overtime requirements.

The Department has also concluded that workers in the computer field paid on a salary basis but who earn an amount equal to or less than 6½ times the minimum wage should continue to be eligible for exemption provided they meet the existing duties and responsibilities tests. Finally, the Department has concluded that the statute and the legislative history are clear that workers paid on an hourly basis and whose rate of pay is equal to or less than 6½ times the minimum wage should continue to be ineligible for exemption.

II. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in these regulations.

III. Summary of the Rule

A new § 541.3(f) is added to the regulations which exempts computer systems analysts, computer programmers, software engineers, and other similarly skilled workers in the computer field, as the duty requirements for such workers are defined in the new paragraph, provided the regular rate of pay of such workers is greater than 6½ times the applicable minimum wage. The regular rate of pay is derived by dividing the total remuneration received by the numbers of hours worked in the workweek. (See 29 CFR 778.)

[1] In the floor debate on Pub. L. 101–583, Cg. Steve Bartlett stated "The first correction is to restore section 10 of the Minimum Wage Act of 1989, as drafted and as passed out of the committees of both Houses, but was deleted because of a drafting error that was discovered, I am told, on the way to the floor of the House." Cg. Bartlett then read into the record the committee's section-by-section analysis pertaining to the prior measure which reads as follows: "Section 10 directs the Secretary to alter the regulations on the overtime exemption so as to permit certain computer professionals to qualify, as long as such professionals are compensated at a rate at least six and one-half times the minimum wage rate."

Executive Order 12291

This proposed rule is not a "major rule" within the meaning of Executive Order 12291, in that it is not likely to result in (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Analysis

The Department has determined that the proposed regulation will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the proposal merely incorporates a narrow, technical modification imposed by statute. Therefore, no regulatory flexibility analysis is required. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

Publication as an Interim Final Rule

The Secretary has determined that the public interest requires the immediate issuance of these interim final regulations in order to comply with the requirement of Public Law 101–583 that these rules be issued 90 days following enactment of the law. Insufficient time existed since the enactment of the legislation for the Department to issue a proposal for comments, review the comments, and promulgate a final rule to be effective 90 days after the law was enacted.

Accordingly, the Secretary for good cause finds that, pursuant to 5 U.S.C. 553(b)(3)(B), prior notice and public comment are impracticable and contrary to the public interest. However, interested parties are invited to submit comments on this regulation by [insert the date 60 days after publication]. Following evaluation of the comments received, a further proposal or a final regulation, modified as necessary, will be published.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Wages.

Accordingly, part 541 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC on this 22nd day of Feb. 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

1. The authority citation for part 541 is revised to read as follows:

Authority: 29 U.S.C. 213; Public Law 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 comp. p. 1004); Secretary's Order No. 13–71 (3 CFR 8755).

2. A new § 541.5c is added to subpart A of part 541 to read as follows:

§ 541.5c Special provision for employees in computer systems analysis and programing work.

(a) Pursuant to section 13(a)(1) of the Act and Public Law 101–583, the requirements of sections 6 (except section 6(d)) and 7 of the Act shall not apply to computer systems analysts, computer programers, software engineers, and other similarly skilled employees who meet the requirements of paragraph (c) below and who are paid a regular rate of pay that exceeds 6½ times the minimum wage provided by subsection 6(a)(1) of the Act as specified in paragraph (b) below.

(b) Whether or not an employee's regular rate of pay exceeds 6½ times the applicable minimum wage rate shall be determined by dividing the amount of compensation earned in the workweek by the number of hours worked in the workweek in accordance with 29 CFR part 778.

(c) Employees who qualify for this exemption are highly skilled in computer systems analysis or programing; and, because of the wide variety of job titles applied to such work, job titles alone are insufficient to make this determination. To qualify for exemption, the employee's primary duties must consist of one or more of the following:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware and software functional specifications,

(2) The design of computer systems based on and related to user specifications,

(3) The creation or modification of computer programs based on and related to system design specifications,

(4) The creation or modification of computer programs related to machine operating systems, or

(5) A combination of the aforementioned duties, the performance of which requires the same level of skills.

[FR Doc. 91–4704 Filed 2–26–91; 8:45 am]

BILLING CODE 4510–27–M

OL
56
SS
89
FE
27
991
MI

federal register

Wednesday
February 27, 1991

Part IV

The President

Executive Order 12752—Implementation of the Agricultural Trade Development and Assistance Act of 1954, as Amended, and the Food for Progress Act of 1985, as Amended

BEST COPY AVAILABLE

Federal Register
Vol. 56, No. 39
Wednesday, February 27, 1991

Presidential Documents

Title 3—

The President

Executive Order 12752 of February 25, 1991

Implementation of the Agricultural Trade Development and Assistance Act of 1954, as Amended, and the Food for Progress Act of 1985, as Amended

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Agricultural Trade Development and Assistance Act of 1954, as amended by Public Law 101–624 ("Agricultural Trade Development Act"), the Food for Progress Act of 1985, as amended by Public Law 101–624 ("Food for Progress Act"), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *Establishment of Programs.* There is hereby established:

(a) a program under title I of the Agricultural Trade Development Act to provide for the sale of agricultural commodities to developing countries. Such program shall be implemented by the Secretary of Agriculture (hereafter referred to as the "Secretary").

(b) a program under title II of the Agricultural Trade Development Act to provide for the donation of agricultural commodities to foreign countries. Such program shall be implemented by the Administrator of the Agency for International Development (hereafter referred to as the "Administrator").

(c) a program under title III of the Agricultural Trade Development Act to provide for the donation of agricultural commodities to least developed countries. Such program shall be implemented by the Administrator.

Sec. 2. *International Negotiations and Accounting for Foreign Currencies.* (a) The Secretary with respect to title I, and the Administrator with respect to titles II and III of the Agricultural Trade Development Act, shall negotiate and execute agreements under the Agricultural Trade Development Act in accord with section 112b of title I of the United States Code and applicable regulations and procedures of the Department of State.

(b)(1) Foreign currencies that accrue to the United States under titles I and III of the Agricultural Trade Development Act may be used for the purposes set forth in section 104 and section 306 of that Act, respectively, in amounts consistent with applicable provisions of law and agreements. Such foreign currencies shall be subject to regulations of the Department of the Treasury governing the purchase, custody, deposit, transfer, and sale of foreign currencies received under the Agricultural Trade Development Act.

(2) The Director of the Office of Management and Budget (hereafter referred to as the "Director") shall determine the amount of foreign currencies to be used for the purposes of section 104(c)(8) of the Agricultural Trade Development Act, and such purposes shall be carried out by the agencies with authority to pay the obligations abroad. The purposes of the remaining paragraphs of section 104(c) of that Act shall be carried out by the Department of Agriculture, utilizing, where appropriate, the expertise of other agencies.

(3) The Secretary and Administrator shall transmit the reports required by the provisions of paragraph 5 of the Act of August 13, 1957 (71 Stat. 345; 7 U.S.C. 1704a), as related to the use of foreign currencies accruing under title I and title III of the Agricultural Trade Development Act, respectively.

Sec. 3. *Policy Coordination.* (a) To ensure policy coordination of assistance provided under the Agricultural Trade Development Act and the Food for Progress Act, there is hereby established a Food Assistance Policy Council (hereafter referred to as the "Council").

(b) The Council will include senior representatives of the Department of Agriculture, the Agency for International Development, the Department of State, and the Office of Management and Budget. Meetings of the Council shall be called by the Secretary or his designee at the request of any senior representative of the Council.

(c) The Council shall advise the President on appropriate policies under the Agricultural Trade Development Act and the Food for Progress Act and shall coordinate decisions on allocations and other policy issues, as well as prepare the report required by section 407(g)(1) of the Agricultural Trade Development Act.

(d) As necessary for effective coordination, the Council shall provide its advice to the President through the appropriate Cabinet-level body.

Sec. 4. *Delegation of Responsibilities.* (a) The consultation required by section 401(a) of the Agricultural Trade Development Act shall be undertaken through the Council.

(b) The function conferred upon the President in section 403(j) of the Agricultural Trade Development Act is hereby delegated to the Secretary of State.

(c) The function conferred upon the President by section 407(h) of the Agricultural Trade Development Act is hereby delegated to the Administrator.

(d) The functions conferred upon the President by section 411 of the Agricultural Trade Development Act are hereby delegated to the Secretary, in consultation with the Council and the Department of the Treasury.

(e) The functions conferred upon the President by section 412(c) of the Agricultural Trade Development Act are hereby delegated to the Director, who shall consult with the Council on these functions.

(f) The functions conferred upon the President by title V of the Agricultural Trade Development Act are hereby delegated to the Administrator.

(g) The functions conferred upon the President by the Food for Progress Act, as amended, are hereby delegated to the Secretary.

Sec. 5. *Regulatory Review.* Policies, regulations, and analyses required by this Executive order shall be fully consistent with the standards and criteria, analyses and procedures set forth in Executive Order Nos. 12291 and 12498.

Sec. 6. *Revocations.* Executive Order No. 12220 of June 27, 1980, and Executive Order No. 12583 of February 19, 1987, are revoked.

THE WHITE HOUSE,
February 25, 1991.

[FR Doc. 91-4691
Filed 2-27-91; 11:28 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 56, No. 39
Wednesday, February 27, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3961-4172	1
4173-4522	4
4523-4706	5
4707-4926	6
4927-5150	7
5151-5304	8
5305-5646	11
5647-5738	12
5739-5922	13
5923-6260	14
6261-6548	15
6549-6788	19
6789-6938	20
6939-7298	21
7299-7550	22
7551-7782	25
7783-8100	26
8101-8256	27

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5817 (Superseded by 6245)	4921
5955 (Superseded by 6245)	4921
6123 (See 6245)	4921
6152 (See 6245)	4921
6243	4701
6244	4707
6245	4921
6246	4927
6247	5305
6248	5645
6249	5739
6250	6783
6251	7551
6252	7779
6253	7781

Executive Orders:

10982 (Amended by EO 12748)	4521
11721 (Revoked by EO 12748)	4521
12154 (Amended by EO 12749)	4921
12748	4521
12749	4711
12750	6785
12751	6787

Administrative Orders:

Presidential Determinations:

No. 91-15 of January 15, 1991	4713
No. 91-16 of January 16, 1991	4715
No. 91-17 of January 16, 1991	4717
No. 91-18 of January 22, 1991	4169
No. 91-19 of January 23, 1991	4171

Memorandums:

June 22, 1968 (see Memorandum of Feb. 22, 1991)	6099
Feb. 11, 1991	6789
Feb. 22, 1991	6099

5 CFR

531	6204
550	6205
553	6205
572	6204
591	6208
831	4929, 6549, 6552
842	4929, 6549, 6552
890	5647
930	6208
2500	8101
2502	5741
2637	3961
2641	3961

Proposed Rules:

297	7819
531	4562
532	5959
536	4562
591	7902
772	4562
831	4562
842	4562
846	4562
870	4562
890	4562

7 CFR

17	3966
47	5151
51	7553
301	4931-4933, 5647, 7783, 7784, 8101
800	4675
932	4223
981	5307
982	5151
998	4524
1001	5308
1002	5308
1004	5308
1106	5923
1210	5924
1270	8103
1403	6422
1421	5741
1430	4525
1806	6939
1807	6939
1900	6939
1922	8106
1940	6791, 6961
1941	3971, 6795
1943	3971
1944	6939
1945	3971
1951	6939
1955	6939
1956	6939
1965	6939

Proposed Rules:

55	7592
56	7592
58	4951, 6584, 7747
59	7592
70	7592
210	6297
215	6297
220	6297
235	6297
245	6297
275	7747
318	8148
319	4180, 6297
320	8148

330.....5146
352.....5146
354.....5146
426.....4736
718.....8044
719.....8044
777.....6994
911.....5357
915.....4963, 5367
966.....3983
968.....5161
981.....6996
1001.....4955
1002.....4955
1007.....4567
1093.....4567
1094.....4567
1096.....4567
1106.....4567
1220.....7594, 7597
1413.....8044
1414.....8044
1464.....6996
1496.....5161
1710.....6912, 8234
1941.....6315
1943.....6315
1945.....6315
1980.....4567
3407.....8156

9 CFR

3.....6426
77.....7785
78.....4936, 4937
92.....5925
114.....7785
166.....7554
391.....7291

10 CFR

2.....7787
11.....5926
25.....5926

Proposed Rules:

Ch. I.....5865
715.....6319

12 CFR

201.....6565
203.....5746
229.....7799
265.....6281
614.....5927
1613.....5649

Proposed Rules:

229.....4743
271.....5778
611.....7747
614.....6422
619.....6422
620.....7747
621.....7747
701.....5081, 5959

13 CFR

121.....5747

Proposed Rules:

120.....5781
121.....5734
125.....5734

14 CFR

1.....5465
23.....5465
39.....3972, 3974, 4532, 4540, 5337–5343, 5749–5752, 6556, 6796–6806, 7565–7563, 7802, 8107
71.....5153, 5154, 5345, 5932
73.....5154, 5345, 5926
75.....5926
93.....4676
97.....5346

Proposed Rules:

Ch. I.....5164, 5761
21.....4581, 4758
23.....4581, 4758
39.....3983, 4581, 5366–5375, 5781, 6812, 6820, 7611–7624, 7820, 8160
71.....483, 4584, 4760, 4956, 5184, 5376, 5377, 5564–5566, 7625, 7626
75.....5165, 5376
91.....5676, 5566, 6694
108.....4322
121.....6542
129.....4326
135.....6542
158.....4676
161.....5676
243.....5665

15 CFR

700.....6106
799.....5649

Proposed Rules:

940.....5282

16 CFR

Proposed Rules:

Ch. II.....5965
436.....5783
1500.....6321

17 CFR

4.....6109
30.....6262, 8112
211.....4936
229.....7242
230.....6113
239.....6113
240.....7242
249.....7242
270.....7242, 8113
274.....7242, 8113

Proposed Rules:

4.....8161
140.....8161

18 CFR

2.....5929
157.....7565
271.....4173
284.....6962
385.....4718

Proposed Rules:

Ch. I.....8164

19 CFR

4.....4174, 7804
161.....5347

Proposed Rules:

162.....5665

20 CFR

302.....6968
348.....6968
404.....4642
416.....5534

Proposed Rules:

330.....4585
416.....7821
Ch. V.....6999
626.....5124
655.....5870
658.....5124
Ch. IX.....5124

21 CFR

5.....6263
102.....6263
161.....6263
172.....6966
510.....7805
546.....7805
1308.....5753

Proposed Rules:

56.....5784
101.....4675
104.....4675
105.....4675
135.....5731
211.....5671
606.....5731
820.....5965
1000.....7316
1002.....7316
1301.....3987, 4181, 4182, 6423
1304.....4181, 6423

22 CFR

171.....6968

Proposed Rules:

120.....6332
123.....6332
126.....6332
136.....6167
521.....4761

23 CFR

230.....4720

24 CFR

Subtitle A.....4412, 4436, 4458, 4494
91.....4480
200.....5349, 7518
203.....4476
215.....7518
221.....7518
234.....4476
235.....6264, 7518
236.....7518
247.....7518
290.....7518
590.....6607
760.....7518
813.....7518
880.....7518
881.....7518
882.....7518
883.....7518
884.....7518
885.....7518
886.....7518
887.....7518
888.....6558
900.....7518
904.....7518
905.....7518
913.....7518
960.....7518

Proposed Rules:

200.....6216
203.....6216
234.....6216
886.....6714
966.....6246

25 CFR

Proposed Rules:

23.....5969

26 CFR

1.....3978, 4542, 5082, 5456, 5130
301.....4676, 6969
602.....4676, 6139

Proposed Rules:

1.....5456, 5732
31.....3988, 4023, 4183–4243, 4568, 4770, 4956
42.....4569
43.....4569
48.....7627
301.....7991

27 CFR

Proposed Rules:

4.....4770

28 CFR

14.....4943
511.....4156
540.....4158
541.....4158

Proposed Rules:

36.....7452, 7494
524.....5302
540.....5303

29 CFR

541.....6250
697.....5944
1613.....6963
1926.....5961
2619.....6295
2676.....6295

30 CFR

243.....5946
710.....6824
901.....4542
916.....6559
917.....4721
931.....7606
935.....6963, 7810
936.....6296

Proposed Rules:

56.....6168
57.....6168
58.....6168
70.....6168
71.....6168
72.....6168
75.....6168
100.....5171
701.....4956
816.....4956
817.....4956
901.....7822
917.....4590, 6594
920.....6333
935.....6336, 6596, 6597, 7002
943.....4243
946.....6337

31 CFR

500.....5360

535.....6546
570.....5351
575.....5636

32 CFR

40b.....6565
199.....6266, 7300
221.....6711
247.....6273
361.....6273
619.....5651
701.....6965
706.....7565

33 CFR

117.....4175, 6277, 7302
165.....4559, 4943, 5155, 5156, 5754, 6277, 7303
334.....5300

Proposed Rules:

100.....7824
110.....5379
117.....4023, 4024, 5166
151.....4676, 6423
165.....7316
1222.....3978

34 CFR

74.....4675
80.....4675

36 CFR

217.....4721
1254.....5731
1258.....5651

Proposed Rules:

219.....6508

37 CFR

201.....7811–7814
202.....7812–7814
211.....7816

38 CFR

3.....4729, 5755, 5756
17.....5756
21.....7566
36.....5950

Proposed Rules:

3.....7630–7632
4.....7632
17.....4025

40 CFR

30.....7304
51.....5488, 6278
52.....4944, 5458, 5488, 5652, 5653, 5757, 6567, 8130
60.....4176, 5488, 5525, 5758
80.....5352
81.....5653
180.....4946, 6966
185.....6967, 6969
228.....6569, 8133
260.....7134
261.....3978, 5910, 7134, 7567
264.....7134
265.....7134
266.....7134
270.....7134
271.....5656, 7134, 7305
300.....5596, 5634

Proposed Rules:

Ch. I.....4957, 5167, 5674, 5675, 7825
51.....5900
52.....5173, 5900
61.....6339
136.....5090
144.....4772
145.....4772
146.....4772
147.....4772
148.....4772
180.....4772, 4959, 5788, 6821, 7003
185.....5788
228.....4777
721.....8171–8173

41 CFR

Ch. 101.....5356
201–4.....4947
201–9.....4947
201–18.....4947
201–20.....4947
201–23.....4947
201–24.....4947
201–39.....4947

Proposed Rules:

101–8.....5380

42 CFR

410.....4675

Proposed Rules:

Ch. I.....4961

43 CFR

4.....5061
20.....6991

Public Land Orders:

6403 (Corrected by PLO 6826).....5731
6826.....5731

44 CFR

64.....5951, 8135–8139
65.....7306, 7307
67.....6279, 8142

Proposed Rules:

67.....5996, 6341, 8174

45 CFR

301.....7988
302.....7988
303.....7988
304.....7988
1235.....4730

Proposed Rules:

680.....5789

46 CFR

380.....3979
580.....6809
581.....6809
583.....6809

Proposed Rules:

15.....6596
16.....6778
580.....7634
581.....7634

47 CFR

0.....6582
2.....6991
15.....5658, 6288
61.....5952
73.....4178–4178, 4733, 4949, 4950, 5157, 5158, 7309–7311
80.....4734, 6582
90.....4178, 6991

Proposed Rules:

2.....7004
15.....7004
64.....4782
69.....5190
73.....4783–4785, 5191, 7317, 7318
76.....4027
90.....7635

48 CFR

570.....4734
Ch. 7, App. C.....7586
Ch. 7, App. D.....7586, 7586
Ch. 7, App. G.....7586
731.....7586
752.....7586
914.....8145
915.....5064, 8145
950.....5064
952.....8145
970.....5064
1501.....6288
1516.....6288
1537.....5957

Proposed Rules:

Ch. 2, App. C.....6054
Ch. 2, App. D.....6054
Ch. 2, App. T.....6054
201.....6054
204.....6054
215.....6054
217.....6054
223.....6054
225.....6054
237.....6054
239.....6054
241.....6054
242.....6054
244.....6054
245.....6054
252.....6054
253.....6054
522.....6600
552.....6600
901.....6826
904.....6826
908.....6826
909.....6826
914.....6826
915.....6826
922.....6826
933.....6826
935.....6826
942.....6826
943.....6826
952.....6826
970.....6826
971.....6826

49 CFR

1.....4560, 4736, 5957, 6809, 6810
27.....6811
172.....7312
173.....7312
385.....5363
541.....4736
571.....6288, 7589

Proposed Rules:

Ch. I.....6934
173.....7318
178.....7318
196.....7636
355.....7319
571.....5061, 5792, 6602, 6603, 7639, 7640, 7826
575.....7643
588.....6603
1033.....4028
1051.....7323
1220.....7323

50 CFR

611.....6290
652.....3980
661.....7312
672.....5158, 5775, 6992, 8146
675.....5859, 5775, 6290, 6993, 7314
683.....5159
685.....5159

Proposed Rules:

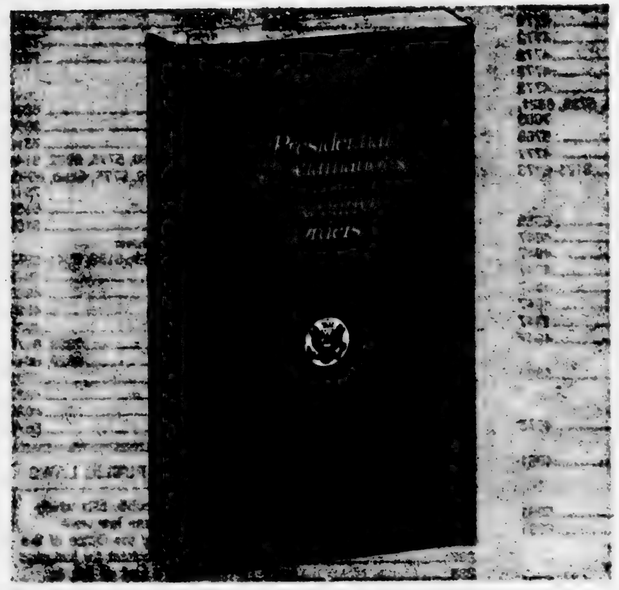
17.....4028, 5192, 6341–6353
18.....7645
23.....4965
91.....4591
216.....4029
301.....4029, 8178
611.....4029, 6614
658.....5792
672.....4029
675.....4029
683.....5875

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders**, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents **Publications** Order Form

Order Processing Code: *6661

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

VOL
56

SS
39

FE
27

991

UMI

OL
56
SS
40
FE
28
991
MI

2-28-91
Vol. 56 No. 40

federal register

Thursday
February 28, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
40
FE
28
991
MI

2-28-91
Vol. 56 No. 40
Pages 8257-8580

federal register

Thursday
February 28, 1991

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 56, No. 40

Thursday, February 28, 1991

Agricultural Marketing Service
RULES
State or regional dairy product promotion, research, or nutrition education programs; procedures for denying, suspending, or terminating certification of qualification, 8257
PROPOSED RULES
Milk marketing orders:
Georgia, 8284
Potato promotion and research, 8285

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Food, Agriculture, Conservation, and Trade Act; implementation, 8287

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Forest Service; Soil Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 8324

Animal and Plant Health Inspection Service
NOTICES
Genetically engineered organisms for release into environment; permit applications, 8319
Veterinary biological products; production and establishment licenses, 8320

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
PROPOSED RULES
Merchant marine officers and seamen:
Certification of seamen; withdrawal, 8311
NOTICES
Committees; establishment, renewal, termination, etc.:
Lower Mississippi River Waterway Safety Advisory Committee, 8286

Commerce Department
See Export Administration Bureau; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration

Commodity Credit Corporation
PROPOSED RULES
Food, Agriculture, Conservation, and Trade Act; implementation, 8287
Loan and purchase programs:
Feed grains, rice, upland and extra long staple cotton, wheat, and related programs; (1991–1995 crops), 8285

Customs Service
NOTICES
Rulings; availability in floppy disks; correction, 8394

Defense Department
See also Air Force Department
NOTICES
Federal information processing standards; waivers, 8323
Meetings:
Electron Devices Advisory Group, 8323
Tort claims settlement, 8324

Drug Enforcement Administration
RULES
Chemical Diversion and Trafficking Act of 1988; implementation:
Listed chemicals and certain machines; reporting and recordkeeping requirements, 8277

Education Department
NOTICES
Agency information collection activities under OMB review, 8324, 8334
(2 documents)
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Transition bilingual education and special alternative instructional programs, 8625
Migrant education coordination program for State educational agencies, 8610
(2 documents)

Employment and Training Administration
NOTICES
Adjustment assistance:
Andrea Sportswear et al., 8361
Donora Sportswear Co., 8362
Job Training Partnership Act:
National partnership program and national training demonstration program; identification of qualified sources, 8362
Nonimmigrant aliens temporarily employed as registered nurses; attestations by facilities; list, 8363

Employment Policy, National Commission
See National Commission for Employment Policy

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Engineering Foundation, 8334
Natural gas exportation and importation:
NMU Gas Purchasing Inc., 8348

Environmental Protection Agency
RULES
Air programs; State authority delegations:
New Mexico, 8280

NOTICES
Grants, State and local assistance:
State water pollution control revolving fund capitalization program, 8348
Meetings:
Scientific Advisory Board, 8350
(2 documents)
Toxic and hazardous substances control:
Asbestos-containing materials in schools—
EPA-approved courses and tests, and accredited laboratories, 8396

Equal Employment Opportunity Commission
PROPOSED RULES
Americans with Disabilities Act; equal employment for individuals with disabilities, 8578

Export Administration Bureau
RULES
Export administration regulations; editorial clarifications, 8273
NOTICES
Export privileges, actions affecting:
Delft Instruments N.V. et al., 8321

Farmers Home Administration
RULES
Program regulations:
Guaranteed farmer program loans, 8258

Federal Aviation Administration
RULES
Airports; construction, alteration, activation, and deactivation; effective date delayed, 8674
Standard instrument approach procedures, 8272
PROPOSED RULES
Air traffic operating and flight rules:
Stage 2 airplanes operating in 48 contiguous United States and District of Columbia; phaseout, 8628
Airport noise and access restrictions; Stage 2 and Stage 3 aircraft operations, 8644
Control zones, 8306
Rulemaking petitions; summary and disposition, 8300
(2 documents)
NOTICES
Exemption petitions; summary and disposition, 8386

Federal Communications Commission
RULES
Radio stations; table of assignments:
Indiana et al., 8281
Texas, 8282
PROPOSED RULES
Practice and procedure:
Computer III remand proceedings; Bell Operating Company and Tier 1 local exchange company safeguards, 8312
Radio stations; table of assignments:
Texas, 8312
Washington, 8313
NOTICES
Agency information collection activities under OMB review, 8350
Meetings:
Advanced Television Service Advisory Committee, 8351

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Southwestern Electric Power Co. et al., 8343
Natural gas certificate filings:
Inland Gas Co., Inc., et al., 8334
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 8345
Chandeleur Pipe Line Co., 8346
CNG Transmission Corp., 8346
Columbia Gas Transmission Corp., 8346
El Paso Natural Gas Co., 8346
South Georgia Natural Gas Co., 8347
Transcontinental Gas Pipe Line Corp., 8347
United Gas Pipe Line Co., 8348

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Mifflin County, PA, 8387
Westmoreland County et al., PA, 8388

Federal Maritime Commission
NOTICES
Agreements filed, etc., 8351
Freight forwarder licenses:
I.T.A.L.M.S. et al., 8351
Terramar Shipping Co., Inc., et al., 8352
Meetings; Sunshine Act, 8393

Federal Prison Industries, Inc.
NOTICES
Market study consulting service; proposals request, 8361

Federal Railroad Administration
NOTICES
Hazardous materials; cargo, portable, IM portable, and multi-unit tank car tanks; use in trailer-on-flatcar (TOFC) and container-on-flatcar (COFC) service; approvals extension, 8388

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Dunkin Family Trust, 8352
PBA Financial Corp. et al., 8352

Food and Drug Administration
RULES
Organization, functions, and authority delegations, 8275
NOTICES
Human drugs:
New drug applications—
Wallace Laboratories; withdrawn; correction, 8394

Forest Service
RULES
Bankhead-Jones Farm Tenant Act; administration of lands, 8279

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Indian Health Service; Public Health Service

Health Care Financing Administration
PROPOSED RULES
Medicare:
Inpatient hospital prospective payment system—
Capital-related costs, 8476
NOTICES
Committees; establishment, renewal, termination, etc.:
Medicare-Physician Relationships Advisory Committee, 8353
(2 documents)
Meetings:
Social Security Advisory Council, 8353

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Nurse anesthetist education programs, 8354

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 8356, 8357
(2 documents)
Public and Indian housing:
Lead-based paint; hazard identification and abatement, 8606

Indian Health Service
NOTICES
Terminated Utes; services cessation, 8355

Interior Department
See also Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Wetlands; strategies for working toward national goal of no net loss; meetings and written comments availability, 8560

Internal Revenue Service
PROPOSED RULES
Income taxes:
Debt instruments with original issue discount; contingent payments, 8306

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Tenneco Inc., 8361

Justice Department
See also Drug Enforcement Administration; Federal Prison Industries, Inc.
PROPOSED RULES
Nondiscrimination on basis of disability in State and local government services, 8358

Labor Department
See Employment and Training Administration; Pension and Welfare Benefits Administration; Wage and Hour Division

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona, 8358
(2 documents)
Resource management plans, etc.:
Gunnison Resource Area, CO, 8359
Uncompahgre Basin Resource Area, CO, 8360
Withdrawal and reservation of lands:
Montana; correction, 8394

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 8360

National Commission for Employment Policy
NOTICES
Meetings, 8369

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Dance Advisory Panel, 8369, 8370
(2 documents)
Media Arts Advisory Panel, 8370

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Hybrid III test dummy positioning issues, 8282
PROPOSED RULES
Odometer disclosure requirements, 8313

National Institute of Standards and Technology
NOTICES
Laboratory Accreditation Program, National Voluntary:
Directory of accredited laboratories; supplement, 8323

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 8317
Oil Pollution Act:
National resource damage assessments, 8307
NOTICES
Meetings:
North Pacific Fishery Management Council, 8323

National Science Foundation
NOTICES
Meetings:
Antarctic Pollution Control Task Group, 8371

Nuclear Regulatory Commission
PROPOSED RULES
Reactor site criteria:
Seismic and geologic siting criteria for nuclear power plants; meeting, 8300
NOTICES
Environmental statements; availability, etc.:
Commonwealth Edison Co., 8371
Export and import license applications for nuclear facilities or materials, 8372
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 8372
GPU Nuclear Power Corp., 8373
Public Service Co. of New Hampshire, 8373
Tennessee Valley Authority, 8375

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Individual retirement accounts (IRAs) and retirement plans for self-employed individuals (Keogh Plans)—
Services receipt by participants, 8365
Transactions involving participants, 8368

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; Indian Health Service
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration, 8356
National Institutes of Health, 8356

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous Materials Transportation Uniform Safety Act of 1990; implementation—
Maximum civil penalty amount increase, 8616

Securities and Exchange Commission
NOTICES
Self-regulatory organizations:
Securities information processor registration application exemptions—
Wunsch Auction Systems, Inc., 8377
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 8375

Small Business Administration
NOTICES
Disaster loan areas:
Alabama et al., 8383
Indiana et al., 8383
Micronesia, 8384
Mississippi et al., 8384
Tennessee et al., 8384

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Andrews Park RC&D Measure, NC, 8321

State Department
NOTICES
Claims against property:
Czech and Slovak Federal Republic, 8384

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 8277

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
Tennessee River and reservoir system operation and planning review; record of decision, 8385

Thrift Supervision Office
NOTICES
Conservator appointments:
FarWest Savings & Loan Association, F.A., 8382
Receiver appointments:
FarWest Savings & Loan Association, 8382
Mid Kansas Savings & Loan Association, F.A., 8382
Pima Federal Savings & Loan Association, 8382
Security Federal Savings, FSB, 8382
Applications, hearings, determinations, etc.:
Monumental Savings Bank, F.S.B., 8382

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration; Urban Mass Transportation Administration
PROPOSED RULES
Commercial space transportation; user fees, 8301
NOTICES
International cargo rate flexibility level:
Standard foreign fare level—
Index adjustment factors, 8385
Secretarial determinations:
Airport security standards; Lima, Peru, 8386

Treasury Department
See also Customs Service; Internal Revenue Service; Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 8390, 8391
(6 documents)

Urban Mass Transportation Administration
NOTICES
Grants; UMTA sections 3 and 9 obligations, 8389

Wage and Hour Division
RULES
Child labor:
Civil penalties for violations, 8678

Separate Parts In This Issue

Part II
Environmental Protection Agency, 8396

Part III
Department of Health and Human Services, Health Care Financing Administration, 8476

Part IV
Department of Justice, 8538

Part V
Department of the Interior, 8560

Part VI
Equal Employment Opportunity Commission, 8578

Part VII
Department of Housing and Urban Development, 8606

Part VIII
Department of Education, 8610

Part IX
Department of Transportation, Research and Special Programs Administration, 8616

Part X
Department of Education, 8625

Part XI
Department of Transportation, Federal Aviation Administration, 8628

Part XII
Department of Transportation, Federal Aviation Administration, 8674

Part XIII
Department of Labor, Wage and Hour Division, 8678

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
1150 8257
1980 8258
Proposed Rules:
1007 8284
1207 8285
1413 8285
1497 8287
1498 8287
10 CFR
Proposed Rules:
100 8300
14 CFR
97 8272
157 8674
Proposed Rules:
Ch. I (2 documents) 8300
Ch. III 8301
71 8306
91 8628
161 8644
15 CFR
769 8273
770 8273
771 8273
772 8273
773 8273
774 8273
777 8273
786 8273
799 8273
Proposed Rules:
Ch. IX 8307
21 CFR
5 8275
1310 8277
26 CFR
Proposed Rules:
1 8306
28 CFR
Proposed Rules:
35 8358
29 CFR
579 8678
580 8678
Proposed Rules:
1630 8578
30 CFR
901 8277
36 CFR
213 8279
40 CFR
60 8280
61 8280
42 CFR
Proposed Rules:
412 8476
46 CFR
Proposed Rules:
12 8311
47 CFR
73 (2 documents) 8281, 8282
Proposed Rules:
1 8312
73 (2 documents) 8312, 8313
49 CFR
107 8616
171 8616
173 8616
571 8282
Proposed Rules:
580 8313
50 CFR
Proposed Rules:
672 8317

Rules and Regulations

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[DA-89-026]

Dairy Promotion Program; Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Dairy Promotion and Research Order. The amendment establishes procedures for denying, suspending or terminating Department certification of qualification of State or regional dairy product promotion, research or nutrition education programs under the National Dairy Promotion Program, and includes the opportunity to petition the Secretary for review of an action.

The Dairy Promotion Program is funded by a mandatory assessment of 15 cents per hundredweight on all milk marketed commercially in the 48 contiguous states. Producers can receive a credit of up to 10 cents a hundredweight for payments made to a qualified program. The criteria that must be met by a State or regional program to be certified as a qualified program are specified in the order and would not be modified by this action.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Bonnie Taner, Chief, Promotion and Research Staff, USDA/AMS/Dairy Division, room 2732, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Invitation to Submit Comments on Proposed Amendments to the Order: Issued on March 21, 1990; published on March 26, 1990 (55 FR 11024).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. The amendment pertains to procedural matters with regard to certification of qualification of State or regional dairy product promotion, research or nutrition education programs and will not result in a significant economic impact on any entity engaged in the dairy industry. Also, this rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements contained in part 1150, including § 1150.153, have been approved previously by the Office of Management and Budget (OMB) under OMB Control No. 0581-0147.

Preliminary Statement

The Dairy Promotion Program is funded by a mandatory assessment of 15 cents per hundredweight on all milk marketed commercially in the 48 contiguous states. Producers can receive a credit of up to 10 cents a hundredweight for payments made to State or regional dairy product promotion, research or nutrition education programs that are certified by the Secretary as qualified programs. The order currently specifies the criteria that must be met by State or regional programs to be so certified.

The amendment to the order provides for the denial, suspension or termination of qualification of State or regional programs which do not meet statutory or order requirements at the time of application for certification as qualified programs, or which fail to satisfy such requirements after qualification. In addition, the amendment establishes a procedure for review of any proposed denial, suspension or termination of a program's qualified status. Basically, the amendment provides that any State or regional program may petition the Secretary for a review of the proposed adverse action. The review process provides for an informal hearing to gather evidence relevant to the issue, the preparation of preliminary findings and opportunity for exceptions, and the preparation of a final decision that sets forth the action to be taken and the basis for such action.

A notice of the proposed amendment to the order to establish the review process was published in the Federal Register on March 26, 1990. Interested parties were invited to submit written comments on the proposal by April 25, 1990.

Findings

Fourteen comments were received in response to the invitation to submit written comments on the proposal to establish procedures for denying, suspending or terminating Department certification of qualification of State or regional dairy product promotion, research or nutrition education programs; including the opportunity to petition the Secretary for a review of an action. All fourteen comments received supported the amendment to the order.

Virtually all of the comments indicated that support for the amendment was conditioned on the understanding that such an amendment would not modify the criteria specified in the order that must be met by a State or regional program to be certified as a qualified program. As indicated in the notice of the proposed amendment to the order, such criteria are not being modified. The amendment merely makes it clear that the Secretary's qualification of a State or regional program may be denied, suspended or terminated if the program does not meet the criteria for qualification specified in the order. In addition, the amendment establishes a procedure for the review of any proposed denial, suspension or termination of a program's qualified status. Accordingly, the amendment to the order, as contained in the notice of proposed rulemaking, should be implemented as set forth herein.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

It is hereby determined that 7 CFR Part 1150—Dairy Promotion Program be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: Pub. L. 98-180, 97 Stat. 1128.

2. Section 1150.153 is amended by the addition of a new paragraph (c) that reads as follows:

§ 1150.153 Qualified State or regional dairy product promotion, research or nutrition education programs.

* * * * *

(c) An application for certification of qualifications of any State or regional dairy product promotion, research or nutrition education program which does not satisfy the requirements specified in paragraph (b) of this section shall be denied. The certification of any qualified program which fails to satisfy the requirements specified in paragraph (b) of this section after certification shall be subject to suspension or termination.

(1) Prior to the denial of an application for certification of qualification, or the suspension or termination of an existing certification, the Director of the Dairy Division shall afford the applicant or the holder of an existing certification an opportunity to achieve compliance with the requirements for certification within a reasonable time, as determined by the Director.

(2) Any State or regional dairy product promotion, research or nutrition education program whose application for certification of qualification is to be denied, or whose certification of qualification is to be suspended or terminated shall be given written notice of such pending action and shall be afforded an opportunity to petition the Secretary for a review of the action. The petition shall be in writing and shall state the facts relevant to the matter for which the review is sought, and whether petitioner desires an informal hearing. If an informal hearing is not requested, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action. If petitioner requests a hearing, the Director of the Dairy Division, or a person designated by the Director, shall hold an informal hearing in the following manner:

(i) Notice of a hearing shall be given in writing and shall be mailed to the last known address of the petitioner or of the State or regional program, or to an officer thereof, at least 20 days before the date set for the hearing. Such notice shall contain the time and place of the hearing and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented. The hearing place shall be as convenient to the State or regional program as can reasonably be arranged.

(ii) Hearings are not to be public and are to be attended only by representatives of the petitioner or the State or regional program and of the U.S. Government, and such other parties as either the State or regional program or the U.S. Government desires to have appear for purposes of submitting information or as counsel.

(iii) The Director of the Dairy Division, or a person designated by the Director, shall be the presiding officer at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the petitioner or the State or regional program, or other participating parties, within the time specified by the presiding officer.

(iv) The presiding officer shall prepare preliminary findings setting forth a recommendation as to what action should be taken and the basis for such action. A copy of such findings shall be served upon the petitioner or the State or regional program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.

(v) After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

Effective date: April 1, 1991.

Signed at Washington, DC on February 22, 1991.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91-4775 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1980

Revision of Guaranteed Farmer Program Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its guaranteed loan regulations to provide for an Interest Assistance Program to replace the existing Interest Rate Buydown Program. These changes are made in order to (1) increase the potential level of government reimbursement for interest rate reductions made by lenders on guaranteed farms loans; (2) extend the potential term of interest rate reduction on guaranteed farm loans; (3) provide various administrative changes, clarification of regulations and changes of forms necessary to implement the Interest Assistance Program; and (4) extend authorization for the program through September 30, 1995. These changes in regulations are made, in part, to implement recently enacted legislation.

The legislation also extended the authorization for the "Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland" for one year, through January 6, 1992.

DATES: Effective February 28, 1991. Comments must be received on or before April 29, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale R. Carr, Loan Officer, Guaranteed Loan Branch, Farmers Home Administration, USDA, room 5440, Washington, DC 20250, telephone (202) 475-4017.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940-J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Discussion of the Interim Rule

It is the policy of the Department to publish notice of proposed rulemaking with a comment period before rules are issued, even though 5 U.S.C. 553 exempts rules relating to loans, grants, benefits, or contracts. However, exemptions are permitted where an agency finds, for good cause, that compliance would be impracticable, unnecessary, or contrary to the public interest.

In addition to broadening the authority for the interest rate reduction program, the legislation which is the basis for this rule reduced funding for loans made directly by FmHA to farmers by approximately 40% from FY 1990 authorizations.

In order to assist a similar number of farmers as those who needed assistance in FY 1990, over 5,000 farmers who received direct assistance in FY 1990 will need to be moved to guaranteed loan programs in FY 1991.

A primary tool in effecting this move is the enhanced interest reduction program. If FmHA publishes this rule under conventional proposed rule-making authorities, the regulation could not possibly be implemented until late spring of 1991. This is effective beyond the period when 1991 crop season loans are made. Therefore, without publication of this rule for immediate implementation under interim final rule making, it appears that a large number of farmers would be unable to obtain sufficient credit to operate in 1991.

FmHA is therefore publishing this regulation as interim final. Comments will be solicited and taken into account before publication of a final rule.

The authorization of the program is extended to September 30, 1995.

Major items changed in this rule include the following items:

The title of the program is changed from Interest Rate Buydown to Interest Assistance to avoid confusion with the earlier version of the program.

Provisions limiting the maximum term of the interest rate reduction to 3 years are revised to permit up to 10 years.

The provision which limited FmHA reimbursement of 50% of the lender's interest reduction up to a maximum annual reimbursement of 2% of the outstanding principal is revised to allow FmHA to reimburse 100% of the lender's interest reduction up to a maximum rate which will be established and published periodically by the Administrator of FmHA, within statutory limits.

The requirement for the lender to document, as part of the request for assistance, that the borrower will be able to project a positive cash flow during the year after the interest rate reduction expires is deleted.

Provisions are made for the level of Interest Assistance to be adjusted annually based on a review of the borrower's need for continued assistance.

The definition of a positive case flow under his program is changed to make it consistent with guaranteed farm loans which are not assisted under this program. A positive case flow will include the requirement for a 10 percent debt-service reserve.

Provisions are added to explain the treatment of loans made under the existing Interest Rate Buydown Program after the Interest Assistance Program is implemented.

Various other amendments have been made to provide clarification on the administration of the program.

Various forms referred to in the Exhibit have been modified in order to reflect the changes made in the regulations, and a new Interest Assistance Agreement form has been developed.

The reporting and recordkeeping requirements contained in this rule have been approved on an emergency basis by the Office of Management and Budget through May 1991.

The authorization for the "Demonstration Project for Purchase of Certain Farm Credit System Acquired Farmland" is extended through January 6, 1992.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Grant programs, Nonprofit corporations, Home improvement, Livestock loan programs—Business and Industry—Rural Development Assistance, Loan programs—Housing and Community Development, Loan programs—Community Programs, Rural areas.

Therefore, FmHA amends chapter XXIII, title 7, Code of Federal Regulations as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. § 1980.83(a) is revised to read as follows:

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449-34, "Loan Note Guarantee," FmHA 449-35, "Lender's Agreement," and FmHA 449-36, "Assignment Guarantee Agreement," are incorporated in this subpart A, made a part hereof, and appear as appendices A, B, and C in the **Federal Register.** Forms FmHA 1980-27, "Contract of Guarantee (Line of Credit)," FmHA 1980-38, "Lender's Agreement (Line of Credit)," FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," FmHA 1980-25, "Request for Guarantee, (Farmer Program Loans)," Form FmHA 1980-58, "Interest Rate Buydown Agreement," Form FmHA 1980-24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," and Form FmHA 1980-64, "Interest Assistance Agreement (Farmer Program Loans)," are incorporated in this subpart and are made a part hereof and appear as appendices D, E, F, G, H, I, and J of 7 CFR part 1980, subpart A in the **Federal Register.** Copies of the forms may be obtained from any FmHA office.

* * * * *

3. Section 1980.83 (b) is amended by adding the following form reference at the end of the listing of forms:

§ 1980.83 FmHA Forms.

* * * * *

(b) * * *

FmHA

Form no.	Title of form	Purpose and code
*	*	*
1940–3	Request for Obligation of Funds—Guaranteed Loans.	Used by FmHA to obligate guaranteed loan funds, interest assistance funds, and interest rate buydown funds.
*	*	*

3a. Section 1980.100 is revised to read as follows:

§ 1980.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0024. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 28 hours per response, with an average of .86 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0024), Washington, DC 20503.

4. Appendix I of subpart A of part 1980 is revised to read as follows:

BILLING CODE 3410-07-M

USDA-FARMERS HOME ADMINISTRATION

FORM APPROVED OMB NO. 0575-0079

Form FmHA 1980-24 (Rev. 1-91)

REQUEST INTEREST ASSISTANCE/INTEREST RATE BUYDOWN/ SUBSIDY PAYMENT TO GUARANTEED LOAN LENDER

Transaction 4031

1. CASE NO. — ST CO BORROWER'S ID (0 0)
2. BORROWER NAME
3. LENDER ID NO.
4. LENDER NAME
5. BRANCH NO.
6. LOAN NO.
7. ORIGINAL LOAN AMOUNT — $
8. BEGINNING CLAIM PERIOD — MO DA YR
9. END CLAIM PERIOD — MO DA YR
10. PRINCIPAL BALANCE AT BEGINNING OF CLAIM PERIOD — $
11. ACCRUED INTEREST AT BEGINNING OF CLAIM PERIOD — $
12. AMOUNT OF PRINCIPAL ADVANCED DURING CLAIM PERIOD — $
13. INTEREST PAYMENTS DURING CLAIM PERIOD — $
14. PRINCIPAL PAYMENTS DURING CLAIM PERIOD — $
15. ACCRUED INTEREST AT END OF CLAIM PERIOD — $
16. PRINCIPAL BALANCE AT END OF CLAIM PERIOD — $
17. INTEREST PAYABLE — $
18. FINAL PAYMENT — 1 = YES, 2 = NO
19. CHECK ISSUED CODE *(Completed by FmHA)* — 1 = SYSTEM GENERATED CHECK, 2 = MANUAL CHECK, 3 = NO CHECK ISSUED
20. DATE MANUAL CHECK ISSUED *(Completed by Finance Office)* — MO DA YR

REQUEST FOR CONTINUATION/ADJUSTMENT OF INTEREST ASSISTANCE

TERM OF NEXT INTEREST ASSISTANCE PERIOD

21. BEGINNING DATE — MO DA YR
22. ENDING DATE — MO DA YR
23. PERCENT OF ASSISTANCE REQUESTED NEXT PERIOD
24. TERMINATE INTEREST ASSISTANCE AGREEMENT — 1 = YES, 2 = NO — IF YES ALL ASSISTANCE FUNDS FOR THE LIFE OF THE ASSISTANCE ARE DEOBLIGATED (NO FUTURE PAYMENTS)
25. EFFECTIVE DATE OF TERMINATION — MO DA YR
26. REASON FOR TERMINATION CODE
27. AUTHORIZED LENDER'S SIGNATURE — *I hereby certify that the above claim is accurate and consistent with the terms of FmHA regulations and the Interest Assistance Agreement or Interest Rate Buydown Agreement. The Request for Continuation/ Adjustment was determined based on the borrower need in accordance with FmHA regulations and the Interest Assistance Agreement.*
28. TITLE
29. DATE

APPROVAL (FmHA USE ONLY)

30. Percent of Interest Assistance Approved for next period.

I have reviewed the above Request for Payment of Interest Assistance/Interest Rate Buydown/Subsidy and/or Request for Continuation/Adjustment of Interest Assistance. The requested payment and/or approved level of continued interest assistance is consistent with the supporting documentation, FmHA regulations and the Interest Assistance Agreement/Interest Rate Buydown Agreement.

31. AUTHORIZED FmHA OFFICIAL (SIGNATURE)
32. TITLE
33. DATE

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BILLING CODE 3410-07-C

FUNCTION OF FORM

Completed by lender to request periodic interest rate buydown payments or interest assistance payments for Farmer Program Loans or subsidy payments for EM Actual Loss Loans. This form is also used to continue or adjust interest assistance on the account.

PROCEDURE REFERENCE

FmHA Instruction 1980–B

PREPARED BY

Lender in consultation with the FmHA

ADDITIONAL INFORMATION

If this form is being completed to establish a continuation of interest assistance after a year with zero percent interest assistance, items 1 through 16 should be completed as usual; item 17 will be 0.00; item 18 as usual; item 19 as 3 (no check issued); and items 21 through 33 as usual.

DISTRIBUTION

Original to Finance Office; Copy to Servicing Office; and Copy to Lender.

INSTRUCTIONS FOR PREPARATION

Item 1. Enter the Borrower's Case Number. Show the state and county code and the borrower's Social Security or Internal Revenue Service Tax Identification Number.
Example: 290370987654326

Item 2. Enter Borrower's Name (Last Name First)—abbreviate when necessary.
Example: THOMPSON ROBERT L

Item 3. Enter the Lender's Internal Revenue Service Tax Identification Number.
Example: 076543456

Item 4. Enter Lender's Name—abbreviate when necessary.
Example: FIRST NATIONAL BANK

Item 5. Enter the FmHA assigned branch number.
Example: 03

Item 6. Enter FmHA assigned loan number.
Example: 02

Item 7. Enter the original loan amount.
Example: $56000.00

Item 8. Enter the beginning date of the current buydown, interest assistance or subsidy period.
Example: The loan/buydown/interest assistance/subsidy closing date is 05–04–88; initial request beginning date is 05–04–88; subsequent requests will begin with the ending date submitted on the previous request for payment.

Item 9. Enter the ending date of the current buydown, interest assistance, or subsidy period. The ending date on this request equals the beginning date on the next request.

NOTE: Interest rate buydown and interest assistance claims may only be submitted for a 12 month period unless it is the first or last claim.

Subsidy payments on EM Actual Loss Loans may be submitted for a 6 or 12 month period only.

If the Contract of Guarantee or Loan Note Guarantee is or becomes void or unenforceable, or terminates, or a transfer and assumption occurs, the subsidy/buydown/interest assistance should be claimed up to that date. In the case of assumptions to eligible transferees, the beginning date on the transferred loan is the assumption date; and the inital claim may be at anytime with future claims at 12-month intervals, except as described above.

Item 10. Enter the principal balance of the loan at the beginning of the subsidy period. If this is the first claim on a new loan, this amount will match the amount advanced on Form FmHA 1980–19, Loan Closing Report. If this loan was a buydown or interest assistance on an existing loan, this amount will match the loan amount on Form FmHA 1980–19. For subsequent claims the principal balance must equal the ending principal balance on the previous claim.

ALL INTEREST CALCULATIONS ON THIS FORM ARE BASED ON THE BORROWER'S EFFECTIVE INTEREST RATE.

Item 11: Enter the borrower's accrued interest at the beginning of the subsidy period. This accrued interest must equal the ending accrued interest shown on the previous claim.

Item 12. Enter the amount of principal disbursed during the current subsidy period. This amount does not include protective advances. If zero, enter 0.00.

Item 13. Enter the total amount of interest payments recevied from the borrower during the current claim period. If zero, enter 0.00.

Item 14. Enter the total amount of principal payments received from the borrower during the current claim period. If zero, enter 0.00.

Item 15. Enter the accrued interest balance at the end of the current claim period. If zero, enter 0.00. (This amount is the beginning accrued interest balance on the next claim.)

Item 16. Enter the principal balance at the end of the current claim period. If zero, enter 0.00. (This amount is the beginning principal balance on the next claim.)

Item 17. Enter the amount of interest rate buydown/interest assistance/subsidy payable.

BUYDOWN PAYMENT CALCULATION

(Item 13 + 15 − 11) × Buydown Rate Paid by FmHA ÷ Borrower's Effective Rate

EM ACTUAL LOSS SUBSIDY CALCULATION

(Item 13 + 15 − 11) × Loan Subsidy Rate ÷ Interest Rate on Note or Assumption Agreement

INTEREST ASSISTANCE PAYMENT CALCULATION

(Item 13 + 15 − 11) × Interest Assistance Rate ÷ Borrower's Effective Rate

Item 18. Enter the applicable code to identify if this is the final payment.

Item 19. Completed by FmHA servicing office or Finance Office.
1 = System Generated Check
2 = Manual Check (Finance Office Only)
3 = No Check Issued

Item 20. Completed by Finance Office Only. The Finance Office will enter the check issue date for manual checks only (item 19 equals 2).

ITEMS 21 THROUGH 28 ARE COMPLETED ONLY IF THE BORROWER IS AN INTEREST ASSISTANCE BORROWER.

Item 21. Enter the beginning date of the next interest assistance period.

Item 22. Enter the ending date of the next interest assistance period.

Item 23. Enter the percent of assistance requested for the next period. IF THIS PERCENT IS GREATER THAN THE PERCENT ON THE MASTER INTEREST ASSISTANCE AGREEMENT, FUNDS MUST BE OBLIGATED PRIOR TO SIGNING THIS FORM. If the borrower will need zero percent next year, enter 00.0000.

Item 24. Enter the applicable code.
1 = Yes
2 = No

IF CODE 1 (YES) IS ENTERED, THE ASSISTANCE FUNDS FOR THE REMAINING LIFE OF THE AGREEMENT ARE DEOBLIGATED; THEREFORE, THERE ARE NO FUTURE PAYMENTS.

Item 25. Enter the effective date of the interest assistance termination. Complete only if item 24 equals 1.

Item 26. Enter the reason for termination code. Complete only if item 25 is complete.
01—Borrower is no longer eligible for interest assistance.
02—Loan is paid in full.

Item 27. THIS FORM WILL BE RETURNED IF IT IS NOT SIGNED. Enter the authorized lender's signature.

Item 28. Enter the title of the person authorized to sign this form.

Item 29. Enter the date signed by the lender's representative.

Item 30. Enter the percent of interest assistance approved. TO BE COMPLETED BY FmHA SERVICING OFFICE ONLY. This amount may not exceed the Maximum Rate of Interest Assistance which was obligated and is stated on the Interest Assistance Agreement.

Item 31. Enter the authorized FmHA representative signature for approval.

Item 32. Enter the title of the authorized FmHA representative.

Item 33. Enter the date signed by FmHA representative.

5. Appendix J is added to subpart A of part 1980 and reads as follows:

BILLING CODE 3410-07-M

USDA-FmHA
Form FmHA 1980-64
(1-91)

FORM APPROVED
OMB NO. 0575-0079

☐ Loan Note Guarantee
☐ Contract of Guarantee

Type of Loan _____
7 CFR Part 1980
Subpart B

INTEREST ASSISTANCE AGREEMENT
(Farmer Programs)

State
County
Date of Note/Line of Credit Agreement

Borrower	Borrower's FmHA ID No.
Lender	Lender's IRS ID Tax No.
Lender's Address	Principal Amount of Loan/Line of Credit Ceiling

The principal amount of loan or line of credit is evidenced by _____ note(s) or line of credit agreement(s) described below. This instrument is attached to note or line of credit agreement dated _____ in the face amount of $_____ and is number _____ of _____.

Copies of the lender's Loan Note Guarantee, or Contract of Guarantee for a line(s) of credit, and any Assignment Guarantee Agreement, if applicable (Loan Note Guarantee cases only) are attached to this Agreement as a part of it.

Lender's Note No.	*Note/Line of Credits Agreement*	*Note Interest Rate*	*Fixed or Variable*

This agreement is effective beginning _____ and expires on _____. In consideration of the subject lender's reduction of the interest rate charged the borrower's account, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (called FmHA) pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) agrees that in accordance with and subject to the conditions and requirements in this agreement it will reimburse the lender for a maximum of _____ percentage points per annum of the Interest Reduction. The full amount of Interest Assistance payments made by FmHA to the lender will be passed on to the borrower.

For the initial period of this agreement beginning _____ and ending _____,

FmHA agrees to reimburse the lender for _____ percentage points per annum of the interest reduction. The rate of Interest Assistance in future years will be adjusted annually in accordance with the conditions of this agreement. The maximum percentage rate of Interest Assistance granted by FmHA during any given period will never exceed 4 percent.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BILLING CODE 3410-07-C

Conditions of Interest Assistance

1. Interest Rates

The lender may charge a fixed or variable interest rate which is specified in this agreement during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement.

The interest rate that the lender will charge will be clearly indicated in the Request for Interest Assistance. If a variable rate will be charged, the base rate, basis points and adjustment interval not only will be clearly set forth in the Request for Interest Assistance, but also will comply with § 1980.175(e) of 7 CFR part 1980, subpart B. If the lender uses a variable rate note or line of credit agreement, the rate may only be changed once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit the annual review date will be clearly set out in the note/line of credit agreement and has been set out on this agreement as the ending date of the initial period of Interest Assistance.

2. Interest Assistance Payments

FmHA payments made in connection with Interest Assistance will be calculated using a 360 or 365 day year method on a declining balance. The lender will indicate on Form FmHA 1980–19, "Guaranteed Loan Closing Report," the preferred method, which may not change once established.

3. Annual Interest Assistance Claims and Payments

The initial Interest Assistance claim will be prepared by the lender using Form FmHA 1980–24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," within 60 days after the ending date of the initial period specified in this agreement. Subsequent claims will be filed by the lender on or after the same date each year thereafter but no later than 60 days after the anniversary of the ending date of the initial Interest Assistance claim. Upon full payment of the note or line of credit agreement the lender will immediately prepare Form FmHA 1980–24 and mail a copy to the FmHA servicing office.

4. Request for Adjustment/Continuation of Interest Assistance

For all loans which extend beyond the ending date of the initial review period, the lender will analyze the borrower's need for continued Interest Assistance in accordance with the methodology defined in Exhibit D to supart B of 7 CFR, part 1980. The lender will then submit the Request for Continuation/Adjustment of Interest of Assistance by completing the applicable section of Form FmHA 1980–24. The request for payment of the claim from the previous period will not be processed until the analysis of the borrower's need and request for Continuation/Adjustment has been made by the lender.

5. When Interest Assistance Payments Cease

For Loan Note Guarantee cases, when FmHA purchases a portion of a loan, Interest Assistance payments on that portion will cease. Interest Assistance payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government. Interest Assistance payments shall cease upon the assumption/transfer of the loan if the transferee was not liable for the debt at the time the assistance was granted. The lender shall complete Form FmHA 1980–24, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to request payment for the Interest Assistance through the date of the transfer or assumption of the guaranteed loan.

6. Cash Flow

A cash flow budget of operation must show that a positive cash flow can be expected during the initial 24-month period of assistance. For those loans/lines of credit with terms less than 24 months, the operation must show a positive cash flow for the term of the loan/line of credit. Cash flow budget and positive cash flow are defined in Exhibit D to supart B of 7 CFR, part 1980, as appticable, and must be calculated in accordance with 1980.113(d)(8) of subpart B of part 1980.

7. Cancellation of Interest

Lender certifies that the amount of interest reduction on the subject borrower's account will be permanently cancelled as it becomes due and no attempt will be made to collect that portion of the debt which will be paid by FmHA.

8. Regulatory Changes

This agreement is subject to the present regulations of the FmHA and its future regulations not inconsistent with any provisions of this agreement.

9. Cancellation

The Interest Assistance Agreement is incontestable except for fraud or misrepresentation of which the lender has actual knowledge at the time this agreement is executed or for which the lender participates in or condones.

10. Excessive Interest Assistance

The Government may amend or cancel this agreement and collect from the lender any amount of reduction granted as a result of incomplete or inaccurate information, computation errors, or other circumstances which resulted in Interest Assistance payments that the lender was not entitled to receive.

11. Access to Leader's Files

Upon request by FmHA, the lender will permit representatives of FmHA (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of the records of the lender pertaining to FmHA guaranteed loans. Such inspection and copying may be made during regular office hours of the lender, or any other time the lender and FmHA find convenient.

To the extent permitted by law and the supervisory agency, the lender agrees to allow FmHA access to audit findings by the lender's supervising agency when examining Interest Assistance claims.

ATTEST: _____ *(SEAL)*
Address:

ATTEST: _____ *(SEAL)*
LENDER:
By

Title

UNITED STATES OF AMERICA FARMERS HOME ADMINISTRATION

By

Title

ACKNOWLEDGED
Borrower

Subpart B—Farmer Program Loans

6. Section 1980.101(a) is amended in the seventh sentence by changing the phrase "Interest Rate Buydown" to read "Interest Assistance."

7. Section 1980.110(b) is amended in the first sentence by changing form title "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender" to read "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

8. Paragraph C. of the "Administrative" material at the end of § 1980.113 is revised to read as follows:

§ 1980.113 Receiving and processing applications.

* * * * *

C. Immediately after a preliminary or complete application is received, and prior to County Committee action, the County Supervisor will send attachment 3 to exhibit D of this subpart which describes the Interest Assistance Program to any applicant and lender who did not request Interest Assistance as part of the guaranteed loan application.

9. Paragraph A.1. of the "Administrative" material at the end of § 1980.115 is amended by changing "Form FmHA 1940–1, Request for Obligation of Funds," to read "Form FmHA 1940–3, Request for Obligation of Funds—Guaranteed Loans."

10. Paragraphs B.1. and B.2. of the "Administrative" material at the end of § 1980.115 are revised to read as follows:

§ 1980.115 County Committee review.

* * * * *

B. *The approval official will:*

1. Approve or disapprove all guaranteed applications not later than 45 calendar days after receipt of completed applications, execute Forms FmHA 1940–3, 449–14 and/or 1980–15 and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when funds are temporarily exhausted and the loan will be approved, Form FmHA 1940–3 must be signed.

When funds are exhausted, a Conditional Commitment for Guarantee will not be executed until such time as funds become available and have been obligated in connection with the guarantee request.

2. Set forth in the space provided on Form FmHA 449–14 (A.2. above) or Form FmHA 1980–15 (A.2. above) any special conditions of approval, including requirements for security, improved management practices relating to highly erodible land and conversion of wetland found in exhibit M of subpart G of part 1940 of this chapter, and type of frequency of financial reports required by FmHA but not required by the lender. When Form FmHA 1980–15 is executed, the approval official will add the requirement that the lender will submit to FmHA a current financial statement and cash flow prepared in accordance with § 1980.113(d)(8) of this subpart for prior approval of advances to be made for the second and third years of a line of credit. The loan approval official will also include the following requirement as a condition of approval on the Conditional Commitment:

"The lender agrees that, if liquidation of the account becomes imminent, the lender will consider the borrower for Interest Assistance under exhibit D of subpart B of 7 CFR part 1980, and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan (or line of credit if Form FmHA 1980–15 is used) until 60 calendar days after a determination has been made with respect to the eligibility of the borrower to participate in the Interest Assistance Program."

11. Section 1980.122 of subpart B is amended in the fifth sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender" to read, "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

12. Section 1980.124(b)(5) is revised to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

* * * * *

(b) * * *

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes, OL loans secured by real estate, OL Contract of Guarantee lines of credit with unlike terms and OL loans/lines of credit with an outstanding Interest Rate Buydown Agreement, Interest Assistance Agreement, or Shared Appreciation Agreement will not be consolidated.

* * * * *

§ 1980.124 [Amended]

13. Section 1980.124(b)(9) is amended in the second sentence by removing the words "consolidated OL loan or," "still," and "consolidation or," respectively, and by adding the following sentence at the end of the paragraph: "If the rescheduled OL loan/line of credit has an outstanding Interest Assistance Agreement, the interest rate will not exceed the rate of the original Interest Assistance Agreement."

§ 1980.124 [Amended]

14. Section 1980.124(c)(4) is amended by adding the following sentence at the end of the paragraph: "If the reamortized FO or SW loan has an outstanding Interest Assistance Agreement, the interest rate will not exceed the rate of the original Interest Assistance Agreement."

§ 1980.125 [Amended]

15. Section 1980.125(a) is amended in the first sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance."

§ 1980.125 [Amended]

16. Section 1980.125(a)(1) is amended in the third sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance"; and in the fourth sentence by striking out the phrase "and the lender can achieve a positive cash flow at the end of the Interest Rate Buydown period."

§ 1980.125 [Amended]

17. Section 1980.125(b)(2) is amended by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance."

§ 1980.145 [Amended]

18. Section 1980.145(b) is amended in the first sentence by changing the phrase "Interest Rate Buydown" to read "Interest Assistance"; and in the third sentence by changing "Attachment 1" to read "Attachment 3."

§ 1980.175 [Amended]

19. Section 1980.175(e)(4) is amended in the first sentence by changing "Exhibit D" to read "Exhibit E."

20. Section 1980.175 is amended by adding paragraph (e)(6) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(e) * * *

(6) The lender and borrower may collectively effect a temporary reduction in the interest rate when processing an Interest Assistance under exhibit D of this subpart. The lender may charge a fixed or variable interest rate during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. If the lender uses a variable rate, the rate may only be changed once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit, the annual review dates will be clearly set out in the note/line of credit agreement.

* * * * *

20a. § 1980.200 is revised to read as follows:

§ 1980.200 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0079. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4 hours per response, with an average of 1.21 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0079), Washington, DC 20503.

21. Exhibit A to subpart B is amended in the first undesignated paragraph following paragraph IV. B. in the first sentence by changing the phrase "an Interest Rate Buydown" to read "Interest Assistance"; and in the second

sentence of the same paragraph by changing the words "Interest Rate Buydown" to read "Interest Assistance Program."

22. Exhibit C to subpart B is amended by adding the following forms references at the end of the listing of forms:

Exhibit C—Application Processing for Guaranteed Farmer Program Loans

FmHA form No.	Title	Requirement
•	•	•
1980-24	Request Interest Assistance/ Interest Rate Buydown/ Subsidy Payment to Guaranteed Lender	1980-B: 1980.110(b); Exhibit D; Exhibit E
1940-3	Request for Obligation of Funds—Guaranteed Loans	1980-B: 1980.83(b); 1980.115 Administrative A.1., B.1.; Exhibit D; Exhibit E

23. Exhibit D to subpart B and attachments 1 and 2 are revised and Attachment 3 is added to read as follows:

Exhibit D—Interest Assistance Program

I. General

This exhibit contains the policies and procedures pertaining to an Interest Assistance Program for guaranteed Operating (OL) loans and lines of credit described in § 1980.175 of this subpart, guaranteed farm ownership (FO) loans described in § 1980.180 of this subpart and guaranteed soil and water loans described in § 1980.185 of this chapter. Subparts A and B of part 1980 are applicable to this exhibit except as modified by Exhibits A and E of this subpart and this exhibit. Authority to enter into the Guaranteed Loan Assistance Agreement is provided for in this exhibit and expires September 30, 1995.

II. Introduction

The authorities contained in this exhibit provide lenders with a tool to enable them to provide credit to operations of not larger than family farms who are temporarily unable to project a positive cash flow as defined in paragraph III D of this exhibit without a reduction in the interest rate.

This exhibit also requires a lender who has a guaranteed loan/line of credit which is not already involved in the Interest Assistance Program or the earlier Interest Rate Buydown Program to agree that if liquidation of the account becomes imminent, the lender will consider the borrower for Interest Assistance under this exhibit and request a determination of the borrower's eligibility by FmHA. The lender may not initiate foreclosure action on the loan until 60 days after a determination has been made with respect to the eligibility of the borrower to participate in this program.

FmHA will enter into an agreement with lenders who participate in this program. The lender will reduce the interest rate paid by the borrower on a loan/line of credit. FmHA will make annual interest assistance payments to the lender equal to the amount of interest reduction on the loan. Agreements made with a lender under this exhibit will in no case provide for payments that exceed the Maximum Rate of Interest Assistance Available (MRIAA) at the time of approval. The MRIAA is defined in this exhibit and will be published periodically in FmHA Instruction 440.1, which is available in any FmHA office.

III. Definitions

A. *Projected Average Balance (PAB)*—The average amount of principal projected to be outstanding on a loan during a particular plan period. For purposes of the exhibit this amount will be calculated as follows:

1. For fully advanced loans with annual payments use the principal balance of loan at the beginning of the plan/review period.

2. For lines of credit and other loans that will not be fully advanced on the effective date of the annual Interest Assistance claims period or loans where payments are scheduled to be made on other than an annual basis, the average balance will be computed from the proposed debt repayment schedule or monthly cash flow budget. The ending principal balance on the loan/line of credit for each month of the plan will be totaled and divided by twelve.

B. *Cash Flow Budget*—A projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all expenses to be incurred by the borrower during the period of the budget (including all farm and nonfarm debt service and other expenses). Production records and prices used in the preparation of a cash flow will be calculated in accordance with § 1980.113(d)(8) of this subpart. A cash flow budget may be completed either for the entire review period (12 months, 24 months, or the life of the loan, as appropriate) or it may be prepared with a breakdown of cash inflows and outflows for each month of the review period. The latter type is referred to as a "monthly cash flow budget." A monthly cash flow budget, which includes the expected outstanding operating credit balance for the end of each month, must be completed for all lines of credit and loans made for annual operating purposes.

C. *Interest Assistance Agreement—(Form FmHA 1980-64).* The signed agreement between FmHA and the lender setting forth the terms and conditions of the Interest Assistance. The agreement will be executed by FmHA and the lender. The borrower will acknowledge the agreement by signing it.

D. *Positive Cash Flow*—A positive cash flow must project that all of the anticipated cash farm and nonfarm income will equal or exceed all the anticipated cash outflows plus the required debt service reserve for the period of the plan. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113(d)(8) of this subpart. A positive cash flow must show that a borrower will be at least able to:

(1) Pay all operating expenses and all taxes which are or will become due during the projected farm budget period.

(2) Meet scheduled payments on all debts, open accounts and carryover debts including delinquent taxes.

(3) Provide a reserve of at least 10 percent in addition to the loan/line of credit installments due and payable as recorded in Table K of the Farm and Home Plan or other similar plans of operation acceptable to FmHA. The reserve is to provide for risk and uncertainties associated with the farming operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash expenses to be incurred for the initial 24-month period.

(4) Provide family living expenses for an individual borrower's family or for the family of the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower. Families include the dependents of the borrower/farm operator which reside in the same household.

E. *Maximum Rate of Interest Assistance Available (MRIAA)*—The maximum percentage level of subsidy which FmHA may grant at any given time, but which cannot ever exceed 4 percent. This percentage level will be periodically established by the Administrator, within statutory limits, and will be published in an Exhibit to FmHA Instruction 440.1, which is available in any FmHA office.

F. *Pro Forma Income and Expense Statement*—A projected income and expense statement listing, on a typical 12-month basis, all anticipated cash flows, including all farm and nonfarm income and all expenses (including debt service) to be incurred by the borrower during such period. Production levels and prices used in the preparation of a cash flow will be calculated in accordance with § 1980.113(d)(8) of this subpart.

IV. General Provisions

The typical term of scheduled loan/line of credit repayment will not be reduced solely for the purpose of maximizing eligibility for Interest Assistance.

A. To be eligible for Interest Assistance, a loan/line of credit must be scheduled over the maximum terms typically used by lenders for similar type loans. At a minimum, loans will be scheduled for repayment over the terms listed below or the life of the security, whichever is less, as explained below:

1. FO loans and SW loans secured by real estate—20 years from the effective date of the proposed Interest Assistance Agreement (except that for existing guaranteed loans the term will not exceed 40 years from the date of the original note covered by the guarantee).

2. OL loans/lines of credit for the purpose of providing annual operating and living expenses will be scheduled for repayment when the income is scheduled to be received from the sale of the crops, livestock, and livestock products which will serve as security for the loan. In no case will the repayment term exceed 7 years.

3. OL loans for purposes other than annual operating and living expenses (i.e., equipment, livestock, refinancing of existing chattel or carryover debt, real estate development) and SW loans secured by chattel property—7 years from the effective date of the proposed Interest Assistance Agreement.

B. The lender must document that a positive cash flow projection is not possible without reducing the interest rate on the borrower's loan(s)/line(s) of credit. The documentation must show that a positive cash flow projection is not possible with the debt restructured over the term of repayment cited above.

C. The lender must determine whether the borrower owns any significant assets which do not contribute directly to essential family living or farm operating expense. The lender must determine the market value of these assets. The lender will then prepare a new cash flow budget based on the assumption that value of these assets will be used for debt reduction. If a positive cash flow can then be achieved, the borrower is not eligible for Interest Assistance. All Interest Assistance calculations will be made based on the cash flow budget which assumes that the assets will be sold.

D. In order for a borrower's loan to be eligible for Interest Assistance, a realistic plan of operation must show that a positive cash flow as defined in paragraph III D of this exhibit can be expected during the initial 24-month Interest Assistance period. For those loans with terms less than 24 months, the operation must show a positive cash flow for the term of the loan/line of credit.

E. If significant changes in the borrower's cash flow budget are anticipated after the initial 24 months with either expenses, income or debt repayment, then a typical plan(s) must show that the loan is expected to have a positive cash flow during all years of the loan/line of credit.

F. If a positive cash flow cannot be achieved, the lender may ask other creditors to voluntarily adjust their debts as outlined in subpart A of part 1903 of this chapter. If other creditors adjust their debts and a positive cash flow can be achieved with Interest Assistance, then Interest Assistance may be approved.

G. If a positive cash flow cannot be achieved, even with other creditors voluntarily adjusting their debts and with the Interest Assistance, the Interest Assistance request will not be approved.

H. The term of the Interest Assistance Agreement entered into under this exhibit shall not exceed the outstanding term of the loan/line of credit, as limited in paragraph IV A of this exhibit or 10 years, whichever is less.

I. The lender may charge a fixed or variable interest rate during the term of the Interest Assistance Agreement. The type of rate must be the same as the type of rate in the underlying note or line of credit agreement. The interest rate that the lender will charge will be clearly indicated in the Request for Interest Assistance. If a variable rate will be charged, the base rate, basis points and adjustment interval not only will be clearly set forth in the Request for Interest Assistance but also will comply with § 1980.175(e) of this subpart. If the lender uses a variable rate, the rate may be changed only once each year. During the term of the Interest Assistance Agreement, variable interest rates may not be increased by more than a total of 3 percent above the effective note rate of interest at the time this agreement is entered into. This cap on interest increases will be clearly spelled out in the note/line of credit agreement or in an allonge attached to the note/line of credit agreement or other legally effective amendment of the interest rate; however, no new note or line of credit agreement may be issued. The date of interest rate adjustment shall coincide with the annual payment date on loans/lines of credit with annual payments. On other loans/lines of credit, the annual review date will be clearly set out in the note/line of credit agreement.

V. Requests for Interest Assistance

A. Applications for guaranteed loan(s)/line(s) of credit shall be processed in accordance with § 1980.113 of this subpart and with this exhibit.

B. To apply for Interest Assistance in conjunction with a request for guarantee, the lender will complete Attachment 1 to this exhibit, "Request for Interest Assistance." Additionally, such applications must include a copy of Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test," completed by the lender. A proposed debt repayment schedule which shows principal and interest payments for the proposed loan, in each year of the loan, will also be submitted with the application.

C. To request Interest Assistance on an existing guaranteed loan, the lender shall submit to FmHA the following:

1. Attachment 1 to this exhibit, "Request for Interest Assistance."

2. Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test."

3. Proposed debt repayment schedule which shows scheduled principal and interest payments for the subject loan, in each of the remaining years of the loan.

4. Cash flow budgets, pro forma income and expense statements, and supporting justification to document that the request meets the requirements outlined in paragraph IV of this exhibit.

5. Verification of off-farm employment.

6. Form FmHA 440-32, "Request for Statement of Debts and Collateral," or similar documentation provided by other creditors.

7. Documentation of the borrower's and lender's compliance with the requirements of Exhibit M to subpart G of part 1940 of this chapter, if the affected loan/line of credit is not already subjected to this provision.

E. Requests for Interest Assistance on Contracts of Guarantee (Lines of Credit) or Loan Note Guarantees made for annual operating purposes must be accompanied by a projected monthly cash flow budget.

F. Within 3 working days of the receipt of any Loan Guarantee Request which does not include a Request for Interest Assistance, Attachment 3 to this exhibit will be mailed to the lender and the applicant by FmHA.

VI. FmHA Evaluation of Applications

Applications will be evaluated in accordance with § 1980.114 of this subpart. Additionally, the authorized approval official will determine whether or not all applicable provisions of this exhibit have been met. The approval official will check that:

A. Each item input on Attachment 2, "Interest Assistance Worksheet/Needs Test," is realistic for the area and type of operation and consistent with information provided in the request for guarantee and supporting documentation.

B. All mathematical computations are accurate.

C. The "Needs Test" was properly applied.

D. The loan/line of credit and applicant/borrower are eligible to receive interest assistance.

E. Nonessential assets were identified and that the computations were based on the assumption that these assets will be sold and the proceeds utilized to reduce debt.

Using Attachment 2 (including any necessary corrections), the approval official will determine the level of subsidy to be approved.

VII. Denial or Decrease of Interest Assistance Requested

If applicant is found ineligible for the loan guarantee or the guarantee cannot be approved for other reasons, the approval official will notify the lender and applicant in accordance with § 1980.114 or § 1980.115 of this subpart, respectively.

If the request for guarantee can be approved or has previously been approved and the request for interest assistance is denied or approved at a level less than that requested, the lender will be notified in accordance with paragraph XII of this exhibit.

VIII. Approval of Interest Assistance

If the approval official determines that Interest Assistance can be approved in accordance with paragraph IV of this exhibit, the approval official will:

A. Prepare Form FmHA 1940-3, "Request for Obligation of Funds—Guaranteed Loans." This form will be used to obligate interest assistance and loan funds for new loans and Interest Assistance funds only for those existing loans which are presently guaranteed without Interest Assistance.

B. Execute Form FmHA 1940-3 and distribute copies in accordance with the Forms Manual Insert (FMI).

C. Verify that the obligation of funds has been completed on Automated Discrepancy Processing System. A hard copy of this verification will be made and placed in the County Office case file.

D. For requests which include requesting funds in order to issue a guarantee on the loan/line of credit, prepare Form FmHA 449-14, "Conditional Commitment for Guarantee," or Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." In no case will Form FmHA 449-14 or 1980-15 be executed prior to verification of the obligation of both loan/line of credit and Interest Assistance funds.

E. The approval official will complete the following statement and insert it on the conditional commitment:

"The subject guranteed loan has been approved for participation in the Interest Assistance program. Interest Assistance

during the first annual operating plan period will be _____ percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of average outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980–64, "Interest Assistance Agreement," and compliance with the conditions of that agreement. Conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, which the lender is required to perform and obtain FmHA concurrence with."

F. For requests for Interest Assistance on existing guaranteed loans, the approval official will notify the lender, in writing, that the request has been approved. The letter will include the statement in paragraph VIII E and any special conditions.

IX. Interest Assistance Closing

A. The lender will prepare, and deliver to FmHA, a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each initial and existing guaranteed loan/line of credit which has been granted Interest Assistance under this exhibit.

B. The guarantee will be closed in accordance with § 1980.61 and § 1980.118 of this subpart.

1. If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 1980–64, "Interest Assistance Agreement." The borrower will acknowledge the agreement with its signature.

2. An original Form FmHA 1980–64 will be prepared for each note or line of credit agreement executed. All originals of Form FmHA 1980–64 will be provided to the lender and attached to the note(s) with the original Loan Note Guarantee or Contract of Guarantee.

X. Annual Interest Assistance Claims and Payments

The Interest Assistance claim will be prepared by the lender using Form FmHA 1980–24, "Request for Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

A. The first claim will be submitted to FmHA within 60 days after date of the initial annual payment/review date which is stated on this agreement. The claim will cover the entire period between the effective date of the agreement and the annual review/payment date.

B. Subsequent claims will cover the period between annual payment/review dates and will be prepared by the lender and submitted within 60 days following the annual payment review date.

C. Upon full payment of the note or line of credit, the lender will immediately prepare Form FmHA 1980–24 and submit it to the FmHA servicing office.

D. Interest Assistance payments shall cease upon the assumption/transfer of the loan if the transferee was not liable for the debt on the effective date of the Interest Assistance Agreement. The lender shall complete Form FmHA 1980–24 to request payment through the date of the transfer or assumption.

E. All claims for Interest Assistance other than final claims must be accompanied by an analysis of the applicant's continued need for assistance, during the period following the one for which the claim is made, as outlined in paragraph XI of this exhibit.

F. All claims will be submitted to the FmHA servicing office with documentation to support the assistance claim. The documentation will include:

1. A detailed statement of activity including all disbursements and payments applied to the loan/line of credit account.

2. Detailed calculations of interest charged, actual daily principal balances during the claim period and average principal balance for the claim period.

G. The authorized FmHA loan servicing official will review the information on Form FmHA 1980–24 and the supporting documentation. If the request is correct, the loan servicing official will approve and process the request. If the information on Form FmHA 1980–24 and the supporting documentation is not complete and/or correct, the loan servicing official will notify the lender in writing of the actions needed to correct the request. The notification letter will be in accordance with paragraph XII of this exhibit.

H. If the lender of the loan/line of credit is changed through a substitution of lender, a claim for the first lender's Interest Assistance, through the effective date of the substitution, will be submitted by the first lender and processed at the time the substitution takes place.

I. Interest Assistance claims shall be submitted concurrently with the submission of final loss claims and any estimated loss claims which cause interest to cease to accrue.

XI. Annual Request for Continuation/Adjustment of Interest Assistance

A. For all Interest Assistance Agreements that exceed one year, the lender will perform an annual analysis of the applicant's farming operation and need for continued Interest Assistance. This analysis will include the following:

1. A summary of the operation's actual financial performance in the previous year, including a detailed income and expense statement.

2. A narrative description of the causes of any major differences between the previous year's cash flow budget and actual performance.

3. A current balance sheet.

4. A copy of attachment 2 to this exhibit which has been completed based on the planned year's cash flow budget.

5. A cash flow budget for the year being planned. A monthly cash flow budget is required for all lines of credit and operating loans made for annual operating purposes. All other loans may include either annual or monthly cash flow budget.

The documentation listed above will be provided to FmHA concurrently with the lender's submission of Form FmHA 1980–24. Parts I and II of Form FmHA 1980–24 must be completed by the lender. This information will be provided to FmHA within 60 days after the annual payment/review date specified on the Interest Assistance Agreement.

B. The request for continuation/adjustment of Interest Assistance will be checked and evaluated by the authorized FmHA approval official in accordance with paragraph VI of this exhibit.

1. If the approval official's evaluation substantiates the requested level of Interest Assistance and it is equal to or less than the MRIAA stated on the Interest Assistance Agreement, the approval official will approve the request.

2. If the evaluation indicates that the borrower needs a higher level of Interest Assistance than the MRIAA provided for in the original Interest Assistance Agreement, and the current MRIAA is less than or equal to the MRIAA provided for in the original Interest Assistance Agreement, then the FmHA approval official will deny the continuation of Interest Assistance. Interest Assistance will be reduced to zero during that annual review period. The lender will be notified in accordance with paragraph XII of this exhibit.

3. If the evaluation indicates that the borrower needs a higher level of Interest Assistance than the MRIAA provided for in the original Interest Assistance Agreement, and the current MRIAA is higher than the MRIAA provided for in the original Interest Assistance Agreement, and the need does not exceed the current MRIAA, the FmHA approval official shall request additional subsidy funds using Form FmHA 1940–3.

a. If funds are available, the approval official will approve Interest Assistance at the level requested for the planned year only. For subsequent years the higher level of Interest Assistance will be subject to the availability of funds and the borrower's continued need.

b. If additional funds are not available, the request for Interest Assistance will be denied and the rate of Interest Assistance will be reduced to zero for that period. The lender will be notified in accordance with paragraph XII of this exhibit.

4. If the amount of Interest Assistance approved is less than that requested, the lender will be notified in accordance with paragraph XII of this exhibit.

5. The approval official will complete the appropriate portion of FmHA Form 1980–24 to reflect the amount of Interest Assistance which has been approved for the year. This should be completed even if this year's assistance level will be zero percent so that adjustments in the obligation records can be made. The original will be returned to the lender for attachment to the original Interest Assistance Agreement.

XII. Notification of Adverse Action

The lender will be notified in writing of all FmHA decisions in which request for Interest Assistance, a request for continuation/adjustment of Interest Assistance or a lender's claim for Interest Assistance are denied or approved a level less than requested.

The notification letter will provide specific reasons for the decision and appeals will be handled in accordance with § 1980.80 of this subpart. In addition, if the reason for the reduction/denial is that the rate of Interest Assistance requested exceeds the maximum amount allowed under this exhibit, then exhibit C of subpart B of part 1900 of this chapter will be sent to the lender.

XIII. Servicing of Loans/Lines of Credit Covered by an Interest Assistance Agreement

A. Loans/lines of credit covered by Interest Assistance Agreements cannot be consolidated.

B. Transfers will be processed in accordance with § 1980.123 of this subpart. The loan/line of credit will be transferred with the Interest Assistance Agreement only in cases where the transferee was liable for the debt at the time the Interest Assistance was granted. UNDER NO OTHER CIRCUMSTANCES WILL THE INTEREST ASSISTANCE BE TRANSFERRED. If Interest Assistance is necessary for the transferee to achieve a positive cash flow, the lender may request a new Interest Assistance Agreement which may be approved if interest Assistance funds are available and the applicant is eligible. The request for the obligation of these funds will be processed using Form FmHA 1940–3. If Interest Assistance is necessary for a positive cash flow and funds are not available, the request for assumption of the FmHA guaranteed debt will be denied.

C. When consideration is given to using a debt writedown to service a delinquent account, the subsidy level will be recalculated prior to any writedown. If a feasible plan can be obtained using a level of Interest Assistance less than or equal to the original MRIAA for this loan, then the Interest Assistance level will be adjusted and no writedown will be approved. If a feasible plan cannot be achieved using maximum Interest Assistance, all further calculations for determining debt writedown eligibility and amounts to be written down will be based on the borrower receiving the maximum Interest Assistance available.

D. In the event of reamortization, rescheduling or deferral of loans with Interest Assistance, Interest Assistance will remain available for that loan under the terms of the existing Interest Assistance Agreement. If additional years of Interest Assistance are required, the funds will be requested via the obligation process using Form FmHA 1940–3. If the additional Interest Assistance is needed in order to produce a feasible plan throughout the life of the rescheduled/reamortized loan and funds are not available for the additional Interest Assistance, then the rescheduling/reamortization will not be approved by FmHA. In no case, will the subsidy be extended more than 10 years from the initial effective date of the original Interest Assistance Agreement. Amendments to the original Interest Assistance Agreement will be made as required.

E. In a reorganization bankruptcy (chapter 11, 12 or 13) the court may order a temporary or permanent reduction in the interest rate that a lender may charge on a loan/line of credit. In cases where the interest on a loan/line of credit covered by an Interest Assistance Agreement is reduced by court order, the Interest Assistance Agreement will be terminated effective on the date of the court ordered interest reduction. The lender will file a Form FmHA 1980–24 to collect interest assistance due through the effective date of the court ordered interest reduction. Interest loss payments will be processed in accordance with paragraph XVI of Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)." Guaranteed loans which have had their interest reduced by bankruptcy court order are not eligible to subsequently receive Interest Assistance under this exhibit.

F. For Loan Note Guarantees held by holders, FmHA purchase of the guaranteed portion of a loan will stop Interest Assistance payments on that portion. Interest Assistance payments will cease upon termination of the Loan Note Guarantee or Contract of Guarantee, upon reaching the expiration date set forth in this agreement or upon cancellation by the Government. When Interest Assistance payments will be stopped because of the repurchase of a portion of the note by FmHA or termination of the guarantee, the lender shall immediately submit a Form FmHA 1980–24.

G. As required in Form FmHA 449–35, or Form FmHA 1980–38, a lender will notify FmHA when a borrower who is not receiving maximum Interest Assistance, is thirty (30) days past due on a payment and is unable to bring the account current within 30 days. The lender will request that FmHA make a determination as to the borrower's eligibility for Interest Assistance. The lender will submit a plan of operation for the farm projecting the repayment ability of the borrower with and without Interest Assistance. FmHA will make the eligibility determination and will notify the lender in writing within 10 calendar days of receipt of the request. Upon receipt of FmHA's determination of the borrower's eligibility for Interest Assistance the lender may submit a request for Interest Assistance. If the lender declines to utilize Interest Assistance, the lender will notify FmHA in writing within 30 days.

XIV. Cancellation of Interest Assistance Agreement

Form FmHA 1980–64 is incontestable except for fraud or misrepresentation, of which the lender and borrower have actual knowledge at the time that the Interest Assistance Agreement is executed, or which the lender/borrower participates in or condones.

XV. Mid-Year Adjustment of Assistance Level

After the initial or annual request for interest assistance is processed, no adjustments in the level of subsidy can be made until the next annual payment/review date.

XVI. Excessive Interest Assistance

Upon written notice to the lender, borrower and any holder(s), the Government may amend or cancel the Interest Assistance Agreement and collect from the lender any amount of Interest Assistance granted which resulted from incomplete or inaccurate information (of which the lender was aware), an error in computation, or any other reason which resulted in payment that the lender was not entitled to receive. The FmHA servicing office must notify the Finance Office of this condition using Form FmHA 1980–24 and provide the necessary documentation to establish an account receivable for the overpayment.

XVII. List of Eligible Lenders

The County Supervisor will maintain a current list of lenders in the area that participate in the guaranteed farm loan program and other lenders who express a desire to participate in the guaranteed farm program. This list will be made available to farmers upon request.

XVIII. Relationship of Interest Assistance Program With Interest Rate Buydown Program

A. The Interest Assistance Program replaces the Interest Rate Buydown (IRBD) Program which was previously described in this exhibit, effective February 28, 1991.

B. A guaranteed loan will not be covered by both an Interest Rate Buydown Agreement and an Interest Assistance Agreement simultaneously.

C. Loans covered by IRBD Agreements will continue to be serviced, and requests for payments will be made and paid, in accordance with the terms of the "Interest Rate Buydown Agreement," Form FmHA 1980–58.

D. Existing IRBD Agreements will expire on the date scheduled on Form FmHA 1980–58. Extensions of these agreements are prohibited.

E. If a request for Interest Assistance is made on an existing guaranteed loan which has previously been covered by an IRBD Agreement, the time that Form FmHA 1980–58 was in effect (rounded to the next full year) will be deducted from the 10 years to determine the maximum term that Interest Assistance can be granted. Example: If the borrower has a 20-year guaranteed FO loan with 15 years remaining on the term and the borrower had previously received 3 years of IRBD, the maximum term of Interest Assistance is 7 years.

F. A lender may cancel its IRBD Agreement by notifying FmHA. Such notification shall be made by executing Form FmHA 1980–24 and indicating that they wish the IRBD Agreement terminated. When the lender entered into the IRBD Agreement, the lender modified the borrower's interest rate to a final rate for the term of the original IRBD Agreement. Therefore, even if a lender cancels the IRBD Agreement the effective rate to the borrower will continue as indicated in the allonge or line of credit agreement. If the lender subsequently requests Interest Assistance on this loan, the existing note rate used in calculating the need

BEST COPY AVAILABLE

for Interest Assistance will be the rate which is specified in the IRBD aBcnge. This rate will also be used in calculating any loss claims payment which may be made on these loans/lines of credit.

G. Since 1987, IRBD program lenders have been required to agree that they will consider the IRBD program prior to the liquidation of guaranteed loans. This requirement has been included in § 1980.115 of this subpart and in various lenders agreements and conditional commitments. In all documents references to the IRBD program are now defined as meaning the Interest Assistance Program.

Attachment 1—Request for Interest Assistance

Borrower/Applicant Name _____.
Borrower/Applicant Social Security/Tax ID number _____.

I. Type of Request

A. Request for Interest Assistance in conjunction with a request for guarantee.

1. Loan amount/line of credit ceiling _____

2. The interest rate charged the lender's average farm customer, _____%. (Specify fixed or variable. If variable rates are used, the average farm customer's variable rate for the past 90 days shall be inserted.)

3. The proposed note interest rate to the subject borrower prior to Interest Assistance is _____% (may not exceed A.2). If variable, describe conditions for adjustment (i.e., base rate, basis points, and adjustment interval).

B. Request for Interest Assistance on an existing guaranteed loan. Original Loan/Line of Credit closing date _____. Current principal balance _____. Unpaid interest _____. Has the Loan/Line of Credit been fully advanced _____. Final due date of loan _____. Current note rate (before Interest Assistance) _____. If variable, describe conditions for adjustment (a base rate, basis points, and adjustment interval)

II. Level of Interest Assistance requested for initial year, (cannot exceed MRIAA and must be in increments of .25%) _____%.

III. Has this loan been previously covered by an Interest Rate Buydown (IRBD) or Interest Assistance Agreement? Yes/No _____. If yes, how long was Agreement effective (rounded up to next full year) _____ years. Requested term of the Interest Assistance agreement (cannot exceed term of the loan or 10 years including previous IRBD time, whichever is less) _____ years.

IV. In connection with the subject request the lender certifies that:

A. The amount of interest resulting from the percentage of interest which FmHA agrees to pay will be permanently cancelled as it becomes due and that no attempt will be made to collect that portion of the debt from the borrower.

B. The lender's reduction in interest charged to the borrower will result in a reduced payment schedule for the borrower and a projected positive cash flow (as defined in paragraph III D of this exhibit D to 7 CFR part 1980, subpart B) throughout the term of the Interest Assistance Agreement.

C. The borrower's cash flow projections and/or typical plan of operation have been prepared in accordance with 7 CFR part 1980, subpart B, § 1980.113(d)(6), and are attached to this document. For lines of credit and operating loans for annual operating purposes, a monthly cash flow budget (as defined in paragraph III B of exhibit D to 7 CFR part 1980, subpart B) has been prepared and is attached.

D. A copy of Attachment 2 to this exhibit, "Interest Assistance Worksheet/Needs Test," has been completed and attached.

Warning: Section 1001 of title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

_____
(Name of Lender)
By _____

_____
Title

_____
Lender's IRS ID No.
Date _____

Attachment 2—Interest Assistance Worksheet/Needs Test

Effective Dates of Review Period
_____ to _____ (cannot exceed 1 year except as noted in Needs Test)
Applicant/Borrower Name _____
Social Security/Taxpayer ID Number _____

Type of Request:
1. New Loan/Line of Credit Guarantee Request _____
2. New Interest Assistance Request on an Existing Guaranteed Loan/Line of Credit _____
3. Annual Review/Renewal Request Under an Existing Interest Assistance Agreement _____

Does the applicant/borrower own significant assets which do not contribute directly to essential family living and operating expenses? _____ yes _____ no. If yes, the following information on Balance Available and Debts To Be Paid will be based on the assumption that these assets will be sold and the proceeds used to reduce the debt.

A. Balance available for debt repayment (from Request for Guarantee or similar plan using the same calculation methods) _____

B. Maximum debt that the borrower can pay and still have a "positive cash flow" = (A/1.10) _____

C. Total debt repayment not including the loan/line of credit being considered for Interest Assistance. (Including Principal and Interest Payments, Income Taxes, Social Security Tax and open accounts not included in operating expenses.) (From Request for Guarantee or cash flow budget/debt repayment schedule _____

D. Amount of Annual Principal Payment on loans being considered for Interest Assistance (obtain from Loan/Line of Credit Payment Schedule provided by the lender) _____

E. Amount available for interest payments on loan/line of credit being considered for Interest Assistance = B − (C + D) _____

F. Projected Average Principal Balance. (Computed in accordance with paragraph III to exhibit D of 7 CFR part 1980, subpart B.) _____

G. Effective Rate of Interest that the borrower can pay and have a positive cash flow = (E/F) _____

H. Note Rate on Loan Without Interest Assistance (not to exceed lender's average farm customer interest rate for initial notes) _____

I. Rate of Interest Assistance borrower needs to achieve a positive cash flow (H–G) (rounded up to the next ¼ percent) = _____

J. Maximum Rate of Interest Assistance Available (MRIAA) currently available under the program (check with FmHA Instruction 440.1) = _____

K. Original MRIAA percentage rate which was obligated and appears on Interest Assistance Agreement (answer N/A for new Interest Assistance requests) _____

L. Percent of Interest Assistance requested based on Needs Test and eligibility requirements of exhibit D to 7 CFR part 1980, subpart B _____

_____
Preparer's Signature

_____
Title

_____
Date

Note: The Needs Tests listed below are offered as a guide for calculating the needed level of the Interest Assistance. Requests for new or continuing Interest Assistance must meet all requirements of this exhibit and subpart.

Needs Test—Interest Assistance With a New Request for Guarantee

—If the rate of Interest Assistance needed by the borrower is less than or equal to zero (I<0%), then the guaranteed loan can be approved without Interest Assistance. Interest Assistance will be denied.
—If the rate of Interest Assistance needed by the borrower is greater than zero and less than or equal to the Maximum Rate of Interest Assistance Available (0% < I < J), then the loan can be approved with the needed Interest Assistance (I).
—If the rate of subsidy needed by the borrower is greater than the MRIAA (I<J), then the loan guarantee request will be rejected for lack of repayment. (Lender/applicant may attempt to get other creditors to adjust their debts and redo the cash flow budget and Interest Assistance calculations based on the debt repayment subsidy.)

Needs Test—Interest Assistance Request on an Existing Guaranteed Loan

—If the rate of Interest Assistance needed by the borrower is less than or equal to zero (I<0%), then the Interest Assistance request will be denied.
—If the rate of Interest Assistance needed is greater than zero and less than or equal to the MRIAA rate (0% < I < J), then the Interest Assistance will be approved at the needed rate (I).
—If the rate of Interest Assistance needed during the first 12 months is greater than the MRIAA (I<J), then the reviewer will recalculate the worksheet using the information from the combined 24-month budget(s).> ≤
—If the rate of Interest Assistance recorded during the first 24 months is less than or equal to the MRIAA rate, then Interest Assistance will be granted for the first 12 months at the MRIAA rate.
—If the rate of Interest Assistance needed during the first 24 months still exceeds the MRIAA, then the Interest Assistance request will be rejected (the lender/applicant may attempt to get other creditors to adjust their debts and then redo the cash flow budget and Interest Assistance calculations based on the new debt repayment schedule).

Needs Test—for Annual Continuation/Adjustment Request for a Loan Covered by an Interest Assistance Agreement

—If the rate of Interest Assistance needed for the borrower is less than or equal to zero (I<0%) Interest Assistance will be reduced to zero for this review period.
—If the rate of Interest Assistance needed by the borrower is greater than zero and less than or equal to the MRIAA on the original Interest Assistance Agreement (0% < I < K), then Interest Assistance will be approved at the needs rate (I).
—If the rate of Interest Assistance needed is greater than the original MRIAA percentage rate which was obligated (I<K) and the current MRIAA is less than or equal to the original MRIAA (J<K), then the Interest Assistance will be reduced to zero for the plan period.
—If the rate of Interest Assistance needed is greater than the original MRIAA (I<K) and the current MRIAA is greater than the original MRIAA (J<K), and the rate of Interest Assistance needed is less than or equal to the current MRIAA (I<J) and additional Interest Assistance funds are available and have been obligated, then Interest Assistance can be approved at the current MRIAA level (J).

Attachment 3—Interest Assistance Information Letter

United States Department of Agriculture

Farmers Home Administration

(Location)

Dear _____:

The Farmers Home Administration (FmHA) has authority to make payments to lenders to reduce eligible borrower interest rates on guaranteed farm loans. The Interest Assistance Program provides lenders with a tool to enable them to provide credit to family farm operators who are unable to project a positive cash flow on all income and expenses, including debt service, without a reduction in the interest rate.

Lenders that participate in this program enter into an agreement with FmHA to reduce the interest rate paid by the borrower on a loan guaranteed by FmHA. In return, FmHA will make annual payments to the lender in the amount of the reduction in interest. Payments made to a lender under this authority are currently limited to _____ percent of the outstanding principal per annum. This limit is subject to periodic changes.

Borrowers with guaranteed Farm Operating (OL), Farm Ownership (FO), and Soil and Water (SW) loans may be included in this program.

If you would like additional information regarding the Interest Assistance Program for guaranteed loans and how to apply, you should contact this office.

I will be glad to discuss this program in detail with you.

Sincerely,

_____
County Supervisor

24. In exhibit E to subpart B, paragraph I. is amended in the third sentence by changing the date "January 6, 1991," to read "January 6, 1992."

25. In exhibit E to subpart B, paragraph V.A. is amended by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

26. In exhibit E to subpart B, paragraph VI.B.3. is amended in the fourth sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

27. In exhibit E to subpart B, paragraph XI. is amended in the second sentence by changing the title of Form FmHA 1980–24 from "Request Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," to "Request Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender."

Subpart D—Rural Housing Program Loans

§ 1980.340 [Amended]

28. Section 1980.340(c)(3) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

§ 1980.354 [Amended]

29. Section 1980.354(c)(1) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

Subpart E—Business and Industrial Loan Program

§ 1980.424 [Amended]

30. Paragraph A.5. of the "Administrative" material at the end of § 1980.424 is amended by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

31. In § 1980.451 "Administrative" material, paragraph B.7. is amended by revising the entry beginning with Form FmHA 1940–1 to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

B. * * *

7. * * *

FmHA 1940–3; Request for Obligation of Funds—Guaranteed Loans; Filing Position 2	

* * * * *

§ 1980.452 [Amended]

32. Paragraph D.6.b. of the "Administrative" material at the end of § 1980.452 is amended by changing "section 41" to read "section 35," and by changing "Form FmHA 1940–1" to read "Form FmHA 1940–3."

Subpart G—Nonprofit National Corporations Loan and Grant Program

§ 1980.628 [Amended]

33. Section 1980.628(e) is amended in the first sentence by changing "Form FmHA 1940–1, 'Request for Obligation of Funds,' " to "Form FmHA 1940–3, 'Request for Obligation of Funds—Guaranteed Loans.' "

§§ 1980.424, 1980.452, 1980.646, 1980.648, 1980.853 [Amended]

34. In part 1980, change the reference "Form FmHA 1940–1" to "Form FmHA 1940–3" in the following places:

a. Exhibit E V.B. to subpart B.
b. Section 1980.424 Administrative B. 4. of subpart E.
c. Section 1980.452 Administrative D. 6. of subpart E (6 places).
d. Section 1980.452 Administrative D. 6. a. of subpart E.
e. Section 1980.646 (b)(1) of subpart G.
f. Section 1980.646 (c) of subpart G.
g. Section 1980.648 (b)(2) of subpart G (2 places).
h. Introductory paragraph of § 1980.853 of subpart I (6 places).
i. Section 1980.853 (a) of subpart I.
j. Section 1980.853 (b) of subpart I.

Dated: January 28, 1991.
Jonathan L. Klubak,
Acting Under Secretary, Small Community and Rural Development, U.S. Department of Agriculture.
[FR Doc. 91-4594 Filed 2-27-91; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 25472; Amdt. No. 1446]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types of effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC.
Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:—

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective April 4, 1991

Gadsden, AL—Gadsden Muni, VOR RWY 6, Amdt. 12
Kotzebue, AK—Ralph Wien Memorial, VOR RWY 8, Amdt. 3
Kotzebue, AK—Ralph Wien Memorial, VOR/DME RWY 8, Amdt. 2
Kotzebue, AK—Ralph Wien Memorial, VOR RWY 26, Amdt. 2
Kotzebue, AK—Ralph Wien Memorial, VOR/DME RWY 26, Amdt. 1
Kotzebue, AK—Ralph Wien Memorial, NDB-A, Amdt. 12, CANCELLED
Kotzebue, AK—Ralph Wien Memorial, NDB-A, Orig.
Kotzebue, AK—Ralph Wien Memorial, ILS/DME RWY 8, Amdt. 5
Camarillo, CA—Camarillo, NDB/DME-A, Orig.
Winter Haven, FL—Winter Havens Gilbert, VOR/DME-A, Amdt. 5
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 8, Orig.
Lawrenceville, GA—Gwinnett County-Briscoe Field, NDB RWY 24, Orig.
Lawrenceville, GA—Gwinnett County-Briscoe Field, VOR/DME RWY 7, Orig. CANCELLED
Lawrenceville, GA—Gwinnett County-Briscoe Field, LOC RWY 25, Amdt. 2 CANCELLED
Lawrenceville, GA—Gwinnett County-Briscoe Field, NDB RWY 25, Amdt. 3 CANCELLED
Macon, GA—Herbert Smart Downtown, VOR-A, Amdt. 4
Macon, GA—Herbert Smart Downtown, VOR/DME-B, Amdt. 2
Macon, GA—Herbert Smart Downtown, LOC RWY 10, Amdt. 4
Macon, GA—Herbert Smart Downtown, RADAR-1, Amdt. 2
Vidalia, GA—Vidalia Muni, LOC RWY 24, Amdt. 1
Vidalia, GA—Vidalia Muni, NDB RWY 24, Amdt. 1
Greenville, KY—Muhlenberg County, VOR/DME-A, Amdt. 4
Hopkinsville, KY—Hopkinsville-Christian County, LOC RWY 28, Amdt. 1
Hopkinsville, KY—Hopkinsville-Christian County, NDB RWY 26, Amdt. 4
Madisonville, KY—Madisonville Muni, VOR RWY 23, Amdt. 11
Madisonville, KY—Madisonville Muni, VOR/DME RNAV RWY 23, Amdt. 2
Owensboro, KY—Owensboro-Daviess County Arpt, VOR RWY 17, Amdt. 7
Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 15
Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 7
Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 9
Springfield, KY—Lebanon-Springfield, VOR/DME RWY 11, Amdt. 3
Springfield, KY—Lebanon-Springfield, NDB RWY 11, Orig.
Sturgis, KY—Sturgis Muni, NDB RWY 36, Amdt. 6
Caribou, ME—Caribou Muni, Radar-1, Amdt. 2, CANCELLED
Morris, MN—Morris Muni, VOR RWY 14, Orig.
Morris, MN—Morris Muni, VOR RWY 32, Amdt. 4
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 10, Orig.
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 19, Amdt. 10
Elizabeth City, NC—Elizabeth City CG Air STA/Muni, VOR/DME RWY 28, Orig.
Huron, SD—Huron Regional, VOR RWY 12, Amdt. 21
Huron, SD—Huron Regional, LOC/DME BC RWY 30, Amdt. 11
Huron, SD—Huron Regional, NDB RWY 12, Amdt. 20
Huron, SD—Huron Regional, ILS RWY 12, Amdt. 9
San Angelo, TX—Mathis Field, VOR RWY 21, Amdt. 14
San Angelo, TX—Mathis Field, VOR/DME RWY 21, Orig.
San Angelo, TX—Mathis Field, LOC BC RWY 21, Amdt. 12
San Angelo, TX—Mathis Field, NDB RWY 3, Amdt. 13
San Angelo, TX—Mathis Field, ILS RWY 3, Amdt. 19
San Angelo, TX—Mathis Field, RNAV RWY 18, Amdt. 3, CANCELLED
San Angelo, TX—Mathis Field, RNAV RWY 36, Amdt. 3, CANCELLED
Tooele, UT—Bolinder Field-Tooele Valley, NDB RWY 16, Orig.

. . . Effective March 7, 1991

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 15L, Orig.
Baltimore, MD—Baltimore-Washington Intl, ILS/DME RWY 33R, Orig.
Kearney, NE—Kearney Muni, VOR RWY 13, Amdt. 1
Kearney, NE—Kearney Muni, VOR RWY 18, Amdt. 12
Kearney, NE—Kearney Muni, VOR RWY 36, Amdt. 9
Kearney, NE—Kearney Muni, LOC RWY 36, Amdt. 5
Kearney, NE—Kearney Muni, NDB RWY 36, Amdt. 4

. . . Effective February 7, 1991

Houston, TX—David Wayne Hooks Memorial, RNAV RWY 35L, Amdt. 3

[FR Doc. 91-4750 Filed 2-27-91; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 769, 770, 771, 772, 773, 774, 777, 786 and 799

[Docket No. 901182-0282]

Editorial Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are being amended to correct an inaccuracy contained in an Interpretation of the antiboycott provisions, to reflect the current format of the Commodity Control List (CCL) in the general license provisions for mail shipments, to include software in General License GUS, to correct inaccuracies in the "Special Instructions for Completing License Applications for Consolidated Shipments of Gift Parcels" section, to add batch mixers to the "Commodities Excluded from Certain Special License Procedures" list, to update the license recordkeeping requirements to reflect current practices, to change the name of the Exporter Assistance Staff to Export Counseling Division, and to change the name of the Office of Munitions Control (U.S. Department of State) to Office of Defense Trade Controls.

EFFECTIVE DATE: This rule is effective February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Gongwer, Office of Technolog, and Policy Analysis, Bureau of Export Administration, Telephone: 202-377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection o information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *e.*

seq.). This collection has been approved by the Office of Management and Budget under control number 0694–0005. This rule also eliminates the requirement that U.S. exporters record shipment data on the reverse side of the export license, but it does not relieve them of the obligation to keep shipment records in their files according to § 787.13 of the EAR. Therefore, the collection of information approved by the Office of Management and Budget under control number 0694–0014 pertaining to recordkeeping on the export license document is eliminated.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because the regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 769

Boycotts, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 772, 773, 774, 786, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Exports, Forest and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, parts 769, 770, 771, 772, 773, 774, 777, 786, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for 15 CFR parts 769, 770, 771, 772, 773, 774, 786 and 799 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

2. The authority citation for 15 CFR part 777 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 100–418 of August 23, 1988, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); sec. 103, Pub. L. 94–163 of December 22, 1975 (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; sec. 101, Pub. L. 93–153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95–372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976) as amended; secs. 201 and 201(11)(e), Pub. L. 94–258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); sec. 125, Pub. L. 99–64 of July 12, 1985 (46 U.S.C. 466(c)); Presidential Findings of June 14, 1985 (50 FR 25169, June 18, 1985) and December 31, 1988 (54 FR 271, January 5, 1989); and sec. 305, Pub. L. 100–449 of September 28, 1988; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 769—[AMENDED]

3. In Supplement No. 15 to part 769 (Interpretation), paragraph (c) is amended by revising the phrase "boycotted country" to read "boycotting country" in the first sentence of the second paragraph.

PART 770—[AMENDED]

§ 770.11 [Amended]

4. In § 770.11, paragraph (a)(2)(i)(B) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" in the first sentence.

§ 770.12 [Amended]

5. Section 770.12 is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" in the first sentence.

PART 771—[AMENDED]

§ 771.2 [Amended]

6. In § 771.2, paragraph (b)(2)(ii) is amended by revising the phrase "in the column headed" to read "in the paragraph headed".

7. In § 771.13, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 771.13 General License GUS; shipments to personnel and agencies of the U.S. Government.

(a) * * *

(1) *Commodities and software for personal use.* Commodities and software in quantities sufficient only for the personal use of members of the U.S. Armed Forces or civilian personnel of the U.S. Government (including U.S. representatives to public international organizations), and their immediate families and servants in each case. Commodities for personal use include household effects, food, beverages, and other daily necessities.

(2) *Commodities and software for official use.* Any commodity or software consigned to and for the official use of any agency of the U.S. Government.

* * * * *

PART 772—[AMENDED]

§ 772.4 [Amended]

8. In § 772.4, paragraphs (i)(1), (i)(1)(i) [two references], (i)(1)(ii), (i)(2), and (i)(3) [two references] are amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

9. In § 772.8, paragraph (d)(2) is amended by revising the entries for Blocks 6 and 7 to read as follows:

§ 772.8 Special types of individual license applications.

* * * * *

(d) * * *

(2) *Special instructions for completing license applications for consolidated shipments of gift parcels.*

Block 6—Enter the word "various" instead of the name and address of a single ultimate consignee;

Block 7—Enter the word "none";

* * * * *

§ 772.11 [Amended]

10. In § 772.11, paragraph (g)(1)(ii) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 773—[AMENDED]

11. Supplement No. 1 to part 773 is amended by revising entry "1116" to read "2116" and by adding entry 4116 immediately following the newly designated entry 2116 to read as follows:

Supplement No. 1 to Part 773—Commodities Excluded From Certain Special License Procedures

* * * * *

2116 * * *

4116 Batch mixers. (Entire entry.)

* * * * *

PART 774—[AMENDED]

§ 774.3 [Amended]

12. In § 774.3, paragraph (b)(4) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 777—[AMENDED]

§ 777.1 [Amended]

13. In § 777.1, paragraph (c)(3) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division".

PART 786—[AMENDED]

14. Section 786.2 is amended by removing footnote 3 in paragraph (d)(1), by removing paragraphs (d)(1) and (d)(2), by redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(1) and (d)(2), respectively, and revising them, and by removing the parenthetical at the end of the section to read as follows:

§ 786.2 Use of validated license. [3]

* * * * *

(d) * * *

(1) *Retention of licenses.* Licenses issued by the Office of Export Licensing shall be retained by the applicant, along with all applicable supporting documents and records of shipments in accordance with the provisions of § 787.13 of this subchapter. Revoked or suspended licenses shall be returned as provided in paragraph (d)(2) of this section.

(2) *Return of revoked or suspended licenses.* If the Office of Export Licensing revokes or suspends a license, the licensee shall return it immediately upon notification that the license has been revoked or suspended. The licensee shall return the revoked or suspended license to: Office of Export Licensing, P.O. Box 273, Washington, DC 20044. All applicable supporting documents and records of shipments shall be retained by the licensee as provided by § 787.13 of this subchapter. If the licensee fails to return a license immediately upon notification that it has been revoked or suspended, the Office of Export Enforcement may impose sanctions provided for in § 787.1 of this subchapter.

[3] Provisions relating to the export clearance of technical data under a validated license are set forth in § 779.6 of this chapter.

§ 786.3 [Amended]

15. In § 786.3, paragraph (p)(1) is amended by redesignating footnote 4 as footnote 3 in the introductory text.

16. Section 786.3 is amended by removing paragraphs (r)(5), (r)(6), and (r)(7) and by redesignating paragraphs (r)(8), (r)(9), and (r)(10) as paragraphs (r)(5), (r)(6), and (r)(7), respectively.

§ 786.6 [Amended]

17. Section 786.6 is amended by redesignating footnote 5 as footnote 4 in paragraph (d)(1), and by redesignating footnote 6 as footnote 5 in paragraphs (d)(2)(i)(B) and (d)(3).

PART 799—[AMENDED]

18. In Supplement No. 1 to § 799.2 (Commodity Interpretations), Interpretation 12 (Scrap Arms, Ammunition, and Implements of War) paragraph (c) is amended by revising the phrase "Exporter Assistance Staff" to read "Exporter Counseling Division" and by revising the phrase "Office of Munitions Control" to read "Office of Defense Trade Controls".

Dated: February 21, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–4553 Filed 2–27–91; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the current organizational structure of the agency as well as the current addresses for Headquarters and field offices.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4676.

SUPPLEMENTARY INFORMATION: The regulations are being amended in 21 CFR 5.100 and 5.115 to reflect the current organizational structure of the agency and provide current addresses for Headquarters and field offices.

The major changes in FDA's organizational structure in 1990 were the addition, in the Immediate Office of the Commissioner, of the Office of Biotechnology and the Office of Small Business, Scientific, and Trade Affairs. Also added were the AIDS Coordination Staff and the Ombudsman position. In addition, the following center offices renamed, added, or deleted divisions: Office of Generic Drugs and Office of Research Resources, Center for Drug Evaluation and Research; Office of Biologics Research, Center for Biologics Evaluation and Research; Office of New Animal Drug Evaluation, Center for Veterinary Medicine; and Office of Management, National Center for Toxicological Research.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1262, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.100 is revised to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Office of Regulatory Affairs.
Office of Management and Operations.
Office of Health Affairs.
Office of Science.
Office of Planning and Evaluation.
Office of Legislative Affairs.
Office of Public Affairs.
Office of Consumer Affairs.

Immediate Office

Office of Equal Employment and Civil Rights.
Office of Executive Operations.
Office of Orphan Products Development.
Office of Biotechnology.
Office of Small Business, Scientific, and Trade Affairs.
AIDS Coordination Staff.
Ombudsman.

Center for Drug Evaluation and Research [1]

Office of Management

Division of Management and Budget.
Division of Information Systems Design.
Division of Drug Information Resources.
Medical Library.

Office of Compliance

Division of Drug Labeling Compliance.
Division of Drug Quality Evaluation.
Division of Manufacturing and Product Quality.
Division of Scientific Investigations.
Division of Regulatory Affairs.

Office of Epidemiology and Biostatistics

Division of Epidemiology and Surveillance.
Division of Biometrics.

Office of Drug Evaluation I

Division of Cardio-Renal Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Pulmonary Drug Products.
Division of Medical Imaging, Surgical, and Dental Drug Products.
Division of Gastrointestinal and Coagulation Drug Products.

Office of Drug Evaluation II

Division of Metabolism and Endocrine Drug Products.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.

Office of Drug Standards

Division of OTC Drug Evaluation.
Division of Drug Advertising and Labeling.

Office of Generic Drugs

Division of Chemistry I.
Division of Chemistry II.
Division of Bioequivalence.

Office of Research Resources

Division of Research and Testing.
Division of Drug Analysis.
Division of Biopharmaceutics.
Division of Clinical Pharmacology.

Center for Biologics Evaluation and Research [2]

Office of Management

Division of Management and Budget.

Office of Compliance

Office of Biological Product Review

Division of Product Quality Control.
Division of Biological Investigational New Drugs.
Division of Product Certification.

Office of Biologics Research

Division of Bacterial Products.
Division of Transfusion Science.
Division of Hematology.
Division of Virology.
Division of Biochemistry and Biophysics.
Division of Cytokine Biology.

Center for Food Safety and Applied Nutrition [3]

Office of Management

Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Division of Toxicological Studies.
Division of Toxicological Review and Evaluation.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Division of Contaminants Chemistry.
Division of Colors and Cosmetics.
Division of Food Chemistry and Technology.

Office of Nutrition and Food Sciences

Division of Consumer Studies.
Division of Nutrition.
Division of Microbiology.

Center for Devices and Radiological Health [1]

Office of Management Services

Division of Planning, Evaluation, and Information Services.
Division of Resource Management.

Office of Information Systems

Division of Computer Services.
Division of Information Resources.

Office of Health Physics

Office of Health Affairs [4]

Office of Standards and Regulations

Office of Compliance and Surveillance [4]

Division of Management Information.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.
Division of Standards Enforcement.

Office of Device Evaluation [4]

Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Biometric Sciences.
Division of Electronics and Computer Sciences.

Office of Training and Assistance

Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center for Veterinary Medicine [1]

Office of Management

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Toxicology and Environmental Sciences.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [5]

Office of Management

Division of Research Information and Management Services.
Division of Facilities Engineering and Maintenance.

Office of Research

Division of Reproductive and Developmental Toxicology.
Division of Genetic Toxicology.
Division of Biochemical Toxicology.
Division of Comparative Toxicology.

Office of Research Services

Division of Microbiology.
Division of Veterinary Services.
Division of Chemistry.

§ 5.115 [Amended]

3. Section 5.115 *Field structure* is amended by removing "Rm. 1222" and replacing it with "1222 P.O. Bldg." appearing under the heading "MIDWEST REGION" for the "Chicago District Office".

Dated: February 21, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4732 Filed 2-27-91; 8:45 am]

BILLING CODE 4160-01-M

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: 8800 Rockville Pike, Bldg. 29, Bethesda, MD 20892.

[3] Mailing address: 200 C St. SW., Washington, DC 20204.

[4] Mailing address: 1390 Piccard Dr., Rockville, MD 20850.

[5] Mailing address: Jefferson, AR 72079-9502.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Records and Reports of Listed Chemicals and Certain Machines

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations implementing the Chemical Diversion and Trafficking Act of 1988 by excluding a specific transaction from the requirement to maintain records as required by § 1310.03.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307-7297.

SUPPLEMENTARY INFORMATION: On October 22, 1990, a notice of proposed rulemaking was published in the **Federal Register** (55 FR 42586). The Deputy Assistant Administrator, Office of Diversion Control, proposed to amend the regulations implementing the Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100-690) by excluding a specific transaction from the requirement to maintain records as required by § 1310.03. The DEA has determined that a non-regulated person who acquires a listed chemical for consumption or end use shall not be required to maintain receipt records for such acquisitions when the person becomes a regulated person by virtue of an infrequent distribution of the listed chemical. The proposed rule provided for interested parties to submit comments and objections. One party submitted comments in favor of the proposed rule.

The Deputy Assistant Administrator, Office of Diversion Control, hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to sections 3(c)(3) and 3(e)(2)(c) of Executive Order 12291, this rule has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.03 is amended by adding at the end the following:

§ 1310.03 Persons required to keep records and file reports.

* * * * *

However, a non-regulated person who acquires listed chemicals for internal consumption or "end use" and becomes a regulated person by virtue of infrequent or rare distribution of a listed chemical from inventory, shall not be required to maintain receipt records of listed chemicals under this section.

Dated: January 23, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-4654 Filed 2-27-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to Alabama's regulations relating to the extraction of coal incidental to the extraction of other minerals. The amendment is intended to make the State's regulations consistent with the revised Federal regulations contained in 30 CFR chapter VII.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, Room 302, Homewood, Alabama 35209. Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030). Actions taken subsequent to the conditional approval of the Alabama program are identified at 30 CFR 901.10 and 901.15.

II. Submission of Amendment

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on February 7, 1990, in two separate letters, that a number of the Alabama regulations were less effective than or inconsistent with the revised Federal requirements. One of the letters addressed the Alabama regulations regarding the extraction of coal incidental to the extraction of other minerals, and the other letter addressed all other Alabama regulations which were less effective than the Federal requirements as revised between June 8, 1988 and August 30, 1989.

By letter dated July 16, 1990 (Administrative Record No. AL–462), Alabama submitted to OSM a State program amendment package consisting of numerous revisions to the Alabama program regulations, including an entirely new subchapter, 880–X–2E, on the extraction of coal incidental to the extraction of other minerals. Alabama's amendment package also included revisions to its program regulations which were not required by Federal rule changes. Only subchapter 880–X–2E is being approved in this rule.

OSM announced receipt of the proposed amendment in the September 6, 1990 **Federal Register** (55 FR 36660), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 9, 1990.

Alabama's proposed revisions which were not required by Federal rule changes were inadvertently omitted from the September 6, 1990 **Federal Register** notice (55 FR 36660). They will be addressed in a **Federal Register** notice to be published shortly. Also, readvertised in that notice will be those proposed changes other than subchapter 880–X–2E which were properly advertised in the September 6, 1990, **Federal Register** notice (55 FR 36660).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Alabama program.

REVISIONS TO ALABAMA'S REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS

State regulation	Subject	Federal counterpart
Revised:		
880–X–2A–.07(1)(c).	Incidental Extraction (Applicability).	30 CFR 700.11(a)(4)
880–X–2E–.01.	Scope	30 CFR 702
880–X–2E–.02.	Definitions	30 CFR 702
880–X–2E–.03.	Information Collection.	30 CFR 702
880–X–2E–.04.	Application Requirements and Procedures.	30 CFR 702
New:		
880–X–2E–.05.	Contents of Application for Exemption.	30 CFR 702
880–X–2E–.06.	Public Availability of Information.	30 CFR 702
880–X–2E–.07.	Requirements for Exemption.	30 CFR 702
880–X–2E–.08.	Conditions of Exemption and Right of Inspection and Entry.	30 CFR 702
880–X–2E–.09.	Stockpiling of Minerals.	30 CFR 702
880–X–2E–.10.	Revocation and Enforcement.	30 CFR 702
880–X–2E–.11.	Reporting Requirements.	30 CFR 702

Because the proposed revisions listed above are identical in meaning to the corresponding Federal regulations, the Director finds that Alabama's proposed rules are no less effective than the Federal rules.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 6, 1990 **Federal Register** (55 FR 36660) ended on October 9, 1990. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The Advisory Council on Historic Preservation, the Alabama Historical Commission, and a private citizen submitted written comments which were not applicable to this rulemaking. The comments will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Alabama program.

The Mine Safety and Health Administration concurred without comment.

The U.S. Fish and Wildlife Service (FWS) commented that OSM should initiate formal consultation with the FWS including a request for a biological opinion concerning the impacts of underground and surface mining on streams and watersheds within the range of the flattened musk turtle, an endangered species. The Director notes that the comment relates to a portion of the amendment not being addressed at this time and is therefore outside the scope of this rulemaking. The comment will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

The Soil Conservation Service generally supported the amendment but felt that the extended period of responsibility for establishing vegetation was excessive. The Director notes that the comment relates to a portion of the amendment not being addressed at this time and is therefore outside the scope of this rulemaking. The comment will be addressed in the final rule which will cover the remainder of Alabama's original July 16, 1990, submittal.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment to the Alabama permanent program regulations at 880–X–2E, as submitted on July 16, 1990.

The Federal rules at 30 CFR Part 901 codifying decisions concerning the Alabama program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environment Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Alabama program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Alabama of such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements, rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 15, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, Part 901 of the Code of Federal Regulations is amended as set forth below:

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 901.15, a new paragraph (k) is added to read as follows:

§ 901.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendment to the Alabama regulations submitted to OSM on July 16, 1990 is approved effective February 28, 1991.

(1) Amendments to the following Alabama Surface Mining Commission regulations:

880–X–2A–.07(1)(c) Applicability
880–X–2E–.01 Scope
880–X–2E–.02 Definitions
880–X–2E–.03 Information Collection
880–X–2E–.04 Application Requirements and Procedures

(2) Addition of the following Alabama Surface Mining Commission regulations:

880–X–2E–.05 Contents of Application for Exemption
880–X–2E–.06 Public Availability of Information
880–X–2E–.07 Requirements for Exemption
880–X–2E–.08 Conditions of Exemption and Right of Inspection and Entry
880–X–2E–.09 Stockpiling of Minerals
880–X–2E–.10 Revocation and Enforcement
880–X–2E–.11 Reporting Requirements

[FR Doc. 91–4656 Filed 2–27–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 213

Administration of Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: By separate designation order, signed January 18, 1991, the Secretary of Agriculture has designated the Butte Valley Land Utilization Project (CA–22), located in Siskiyou County, California, as the Butte Valley National Grassland, to be administered by the Forest Supervisor, Klamath National Forest, Yreka, California. This final rule amends the table listing national grasslands at 36 CFR 213.1 to reflect this change in designation.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Bayles, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 453–8345.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture has determined that designation of the Butte Valley area in Siskiyou County, California, as a National Grassland is in the public interest and will foster long-term planning and management of the wildlife, water, soils, and vegetation of the area. Accordingly, pursuant to the authority granted at 50 U.S.C. 525, as amended 7 U.S.C. 1010–1012, the Secretary has signed an order, dated January 18, 1990, designating this area as a National Grassland. A copy of the Secretary's order is set out at the end of this rule for informational purposes, but will not be published in the Code of Federal Regulations. A component of the National Forest System, National Grasslands are managed under the principles of multiple-use, sustained yield and are subject to the same basic statutes that apply to National Forest management. Management direction for the Butte Valley National Grassland will be provided by the Klamath National Forest Land and Resource Management Plan when it is approved.

The rules at 36 CFR 213.1 provide for a listing of all National Grasslands designated by the Secretary. The final rule amends the listing to reflect the Secretary's order. This is a technical amendment to an existing rule which in and of itself has no effect on the public or the manner in which the public conducts business with the Forest Service, which administers the Grasslands. In evaluating the designation of this area as a grassland, the Forest Service gave direct notice and opportunity to comment to all government agencies and organizations with an interest in the designation of the Butte Valley area and held a general public meeting to receive comments on the designation. By law, designation of a grassland is done by separate order and not through rulemaking. Therefore, pursuant to 5 U.S.C. 553, prior public notice and opportunity to comment on this rule are unnecessary and there is good cause for the rule to take effect upon publication in the **Federal Register**.

As a technical amendment, this rule is not subject to review under Executive Order 12291. Moreover, the rule has no

impact on small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and imposes no paperwork burden on the public as defined in the Paperwork Reduction Act. Further, because this is a technical amendment, this rule has no effect on the human environment, individually or cumulatively and is, therefore, categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects in 36 CFR Part 213

National grasslands, Grazing lands.

Therefore, for the reasons set forth in the preamble, part 213 of title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 continues to read:

Authority: 50 Stat. 525, as amended, 7 U.S.C. 1010–1012.

§ 213.1 [Amended]

2. Revise the table in paragraph (e) to add the following in alphabetical order:

State in which grassland is located	National grassland	Counties where located
California	Butte Valley	Siskiyou.

Dated: February 19, 1991.

George M. Leonard,

Associate Deputy Chief.

Designation Order

Butte Valley National Grassland, Siskiyou County, CA

Pursuant to the authority granted to the Secretary of Agriculture 50 Stat. 525, as amended; 7 U.S.C. 1010–1012 the Butte Valley Land Utilization Project (CA–22), located in Siskiyou County, California, is hereby designated as the Butte Valley National Grassland effective this date.

These 18,425 acres, of the 19,020 acres of land within the boundary of Butte Valley National Grassland, were purchased under the authority of the Bankhead-Jones Farm Tenant Act of 1937 and are to be administered by the Goosenest Ranger District of Klamath National Forest.

The following areas, comprising 19,020 acres, of which 18,425 acres are National Forest System lands and 595 acres are other lands, are included in the designation:

Mount Diablo Meridian

T. 46 N., R. 1 W.,
Secs. 3, 4, and 5;
Sec. 6, E½
Sec. 7;
Sec. 8, N½, N½S½, E½SW¼SE¼ and SE¼SE¼;
Sec. 9, N½;
Sec. 16, N½;
Sec. 18, N½.
T. 47 N., R. 1 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 21, inclusive;
Secs. 27 to 30, inclusive;
Sec. 31, E½, NE¼NW¼;
Secs. 32 and 33.
T. 47 N., R. 2 W.,
Sec. 23, SE¼;
Sec. 24, S½;
Sec. 25, NE¼.

Dated: January 18, 1991.

Clayton Yeutter,

Secretary.

[FR Doc. 91–4759 Filed 2–27–91; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–3909–1]

Delegation of Authority to the State of New Mexico for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) announces the delegation of full authority to the State of New Mexico to implement and enforce additional source categories of the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) including the subsequent revisions and amendments to the standards for which full authority had been delegated to the State by the previous delegation agreement of March 15, 1985. The last coverage update of the delegation agreement was approved on February 8, 1990, and a notice of it was published in the **Federal Register** (55 FR 5990). Based on the State's request of June 8, 1990, the EPA has now granted full authority to the State for the NSPS and NESHAP through December 4, 1989, applicable only in certain areas of the State, and partial authority for new and amended standards after that date.

This delegation of authority does not apply to: (1) The sources located in Bernalillo County, New Mexico, (2) the sources located on Indian lands as specified in the delegation agreement and in this notice, (3) the standards of performance for New Residential Wood Heaters (subpart AAA) under 40 CFR part 60, and (4) the NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: January 30, 1991.

ADDRESSES: The State's request and delegation agreement may be requested by writing to one of the following addresses:

Chief, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655–7214.

Chief, Air Quality Bureau, New Mexico Environmental Improvement Division, 1190 St. Francis Drive, Sante Fe, New Mexico 87503, Telephone: (505) 827–0042.

All other requests, reports, applications and such other communications which are required to be submitted under 40 CFR part 60 and 40 CFR part 61 (including the notifications required under Subpart A of the regulations) for the affected facilities, in areas outside of Indian lands or Bernalillo County, should be sent directly to the State of New Mexico at the above address. Sources located on all Indian lands (including Bernalillo County), sources subject to the standards of performance for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 (except for Bernalillo County), and sources subject to the NESHAP radionuclides under 40 CFR part 61 in the State of New Mexico should submit the information specified above to the Chief, Air Enforcement Branch, EPA Region 6 Office at the address given in this notice. The affected sources located within the boundaries of Bernalillo County, outside of Indian lands, should submit all of the required information (except for the NESHAP radionuclides under 40 CFR part 61) to Director, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., Planning Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 145 Ross Avenue, Dallas, Texas 75202, telephone number (214) 655–7214.

SUPPLEMENTARY INFORMATION: Sections 111(c) and 112(d) of the Clean Air Act allow the Administrator of the EPA to delegate EPA's authority to any State which can submit adequate regulatory procedures for implementation and enforcement of the NSPS and NESHAP programs.

On October 19, 1984, New Mexico requested full delegation of authority for the implementation and enforcement of NSPS through March 14, 1984, and NESHAP through December 9, 1983. The State also requested partial authority for the technical and administrative review of new or amended NSPS and NESHAP in the October 19, 1984 letter. The delegation request was granted to the State subject to the conditions and limitations specified in the delegation agreement which was approved on March 15, 1985. The March 15, 1985, delegation agreement provided full authority for the State to implement and enforce the NSPS and NESHAP through March 14, 1984, and December 9, 1983, respectively. Also, the State received partial authority for implementation of NSPS and NESHAP subparts effective after the specified dates in the State regulations and for amendments of fully delegated NSPS and NESHAP subparts after the dates specified above. The State's authority was approved only for the areas outside the Indian lands and Bernalillo County. The last coverage update of the delegation agreement was approved on February 8, 1990, and a notice of it was published in the **Federal Register** (55 FR 5990).

On June 8, 1990, the NMEID requested the EPA to grant full authority for additional source categories and amendments to the fully delegated NSPS and NESHAP subparts by extending the coverage date through December 4, 1989, for the NSPS and NESHAP. Based on review of State's Air Quality Control Regulations (AQCR) 750 (for NSPS) and 751 (for NESHAP), the EPA delegated full authority to the State as requested in the letter of June 8, 1990. AQCRs 750 and 751 incorporate the Federal NSPS and NESHAP by reference through the date specified above except for the performance standards for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 and the NESHAP radionuclide standards under 40 CFR part 61. The provisions and conditions specified in the March 15, 1985, delegation agreement and its supplements shall remain unchanged and effective except the revision of the appropriate dates as cited above. The revised authorized dates have been listed in Table 1 for NSPS and Table 2 for NESHAP. These tables noting the revised effective date have been approved by the Regional Administrator, and are thereby incorporated as part of the March 15, 1985, delegation agreement. No authority has been delegated for the standards of performance for New Residential Wood Heaters—Subpart AAA under 40 CFR part 60 and the NESHAP radionuclide standards specified under 40 CFR part 61.

Today's notice informs the public that the EPA has expanded the State's full authority to implement and enforce the NSPS and NESHAP through December 4, 1989. All reports required pursuant to the Federal NSPS and NESHAP (40 CFR part 60 and 40 CFR part 61) by sources located in the State of New Mexico, in areas outside of Indian lands or Bernalillo County, should be submitted directly to the New Mexico Health and Environment Department, Environmental Improvement Division, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87503. Sources located on all Indian lands (including Bernalillo County), sources subject to the standards of performance for New Residential Wood Heaters—subpart AAA under 40 CFR part 60 (except for Bernalillo County), and sources subject to the NESHAP radionuclides under 40 CFR part 61 in the State of New Mexico should apply to the Chief, Air Enforcement Branch, EPA Region 6 Office at the address given in this notice. The affected sources located within the boundaries of Bernalillo County, outside of Indian lands, should submit all of the required information (except for the NESHAP radionuclides under 40 CFR part 61) to Director, The Albuquerque Environmental Health Department, the City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103.

The Office of Management and Budget has exempted this information notice from the requirements of section 3 of Executive Order 12291.

This delegation is issued under the authority of section 111(c) and 112(d) of the Clean Air Act, as amended (42 U.S.C. 7411(c) and 7412(d)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fossil-Fuel fired steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum, Phosphate, Fertilizer, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: January 30, 1991.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 91–4758 Filed 2–27–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–284; RM–6136, RM–6474, and RM–6480]

FM Radio Broadcasting Services; Angola, Berne, Decatur, Lagrange, and Roanoke, IN; Brooklyn and Hudson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 53 FR 25350, July 6, 1988, and a Request for Supplemental Information and Order to Show Cause, 55 FR 12869, April 6, 1990, the Commission adopted a Second Report and Order in this proceeding which grants the counterproposal of Midwest Communications Company, licensee of Station WQTZ(FM), Channel 224A, Decatur, Indiana, to upgrade its channel by substituting Channel 286B1 to provide that community with an expanded FM broadcast service. To accommodate the Decatur upgrade, the Commission also ordered the substitutions of Channel 224A for Channel 230A at Berne, Indiana, and Channel 231A for Channel 286A at Roanoke, Indiana. While Station WQTX(FM), Roanoke, had objected to changing from Channel 286A to Channel 231A at Roanoke, the Commission ordered the change because the channels are equivalent for allotment purposes. The Commission also granted the request of Station WLKI(FM), Angola, Indiana, to move from Channel 261A to Channel 262A. All of the above allotments can be made in compliance with the Commission's minimum distance separation requirements using the following sites: for Decatur, a site located at least 20.1 kilometers northwest of the community of coordinates 40–58–33 and 85–04–23; for Angola, a site located at coordinates 41–40–51 and 85–00–02; for Berne, a site located at least 2.5 kilometers north of the community at coordinates 50–40–46 and 84–57–17; and for Roanoke, a site specified in its construction permit at coordinates 40–55–00 and 85–27–30 or at a site specified in its pending modification application at coordinates 40–59–54 and 85–15–58. Since the

reference coordinates for all of these allotments are located within 320 kilometers (200 miles) of the U.S.-Canadian boarder, concurrence by the Canadian government has been obtained.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, MM Docket No. 88-284, adopted February 6, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 224A and adding Channel 286B1 at Decatur, removing Channel 261A and adding Channel 282A at Angola, removing Channel 230A and adding Channel 224A at Berne, and removing Channel 286A and adding Channel 231A at Roanoke.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4777 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-210]

Radio Broadcasting Services; Odem, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Capri Spanish Broadcasting, Inc., the Commission substitutes Channel 252C3 for Channel 252A at Odem, Texas, and modifies the license issued to Capri for Station KKHQ(FM) to specify operation on the higher powered channel. Coordinates for Channel 252C3 at Odem, Texas, are 27-53-31 and 97-30-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-210, adopted February 4, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 252A and adding Channel 252C3 at Odem.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4778 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 69]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This agency has discovered some errors in the most recent edition of title 49 of the Code of Federal Regulations, with respect to NHTSA's occupant crash protection standard. This notice corrects those errors, so that the replacement for this edition of the Code of Federal Regulations will be accurate. No new obligations or duties are imposed on any party as a result of these corrections, since the corrections merely remove obsolete provisions from the standard.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Kratzke can be reached by telephone at (202) 366-2992.

SUPPLEMENTARY INFORMATION: On June 5, 1989 (54 FR 23986), NHTSA published a final rule amending Standard No. 208, Occupant Crash Protection (49 CFR 571.208). S11.6 of Standard No. 208 sets forth the positioning procedures for the feet of Hybrid III test dummies positioned at the driver's or right front passenger's position.

Before the effective date of the June 5, 1989 final rule (December 4, 1989), the feet of Hybrid III test dummies could be positioned either in accordance with the procedures for positioning the feet of Hybrid II test dummies or in accordance with some less specific positioning procedures set forth in S11.6.1 through S11.6.3. However, the June 5, 1989 rule took away the option of using the less specific positioning procedure. Instead, that rule required that the feet of Hybrid III test dummies be positioned according to the procedures for positioning the feet of Hybrid II test dummies. The agency expressed this by revising S11.6 in the June 5, 1989 final rule. NHTSA believed that this amendatory language would remove all of S11.6, including the subordinate sections S11.6.1 through S11.6.3, from the version of Standard No. 208 printed in the Code of Federal Regulations, and replace it with the revised S11.6.

However, the October 1, 1990 version of title 49 of the Code of Federal Regulations shows only the old language in S11.6 removed and the new S11.6 appearing in its place. Each of the subordinate paragraphs to the old version of S11.6 still appear in the text of Standard No. 208. The result is that S11.6 now specifies that the feet of the Hybrid III test dummy shall be positioned using the same procedures specified for the feet of the Hybrid II test dummy, while S11.6.1 through S11.6.3 provide an option of either using the positioning procedures for the Hybrid II test dummy or some less specific procedures. This is confusing to the reader and does no effectuate the agency's intention of removing the option of using the less specific positioning procedures. This amendment will remedy this problem by ensuring that the next revision of title 49 of the Code of Federal Regulations removes S11.6.1 through S11.6.3 from Standard No. 208.

This amendment imposes no duties or responsibilities on any party, nor does it alter any existing obligations. Instead, this amendment will simply ensure that the public will have a correct copy of Standard No. 208 in title 49 of the Code of Federal Regulations. Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this amendment are unnecessary, and this amendment is effective as soon as this notice is published.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S11.6.1 through S11.6.3 are removed.

Issued on February 25, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-4766 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1007

[DA-91-004]

Milk in the Georgia Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions of the Georgia Federal milk order for the months of February through August 1991. The proposal would suspend the requirement that at least 10 days' production of any producer whose milk is diverted to nonpool plants be physically received at a pool plant if the diverted milk is to be pooled, allow the diversion of nonmember milk by a cooperative association to nonpool plants, and suspend the 25-percent limitation on the amount of milk that may be diverted by cooperative associations. In addition, the proposed suspension raises the question of whether the diversion limitations on nonmember producer milk diverted by a proprietary handler should also be suspended.

The proposed suspension was requested by a cooperative association representing producers supplying the Georgia market to maintain the pool status of the cooperative's members and to deal with a major disruption in the milk marketing situation in the Southeast.

DATES: Comments are due not later than March 7, 1991.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that diary farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criterion contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Georgia marketing area is being considered for the months of February through August 1991:

1. Section 1007.13(b)(2);
2. Section 1007.13(b)(4);
3. The proposed suspension of paragraphs (b)(2) and (b)(4) of Section 1007.13 raised the issue of whether paragraph (b)(5) should also be suspended.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include February 1991 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Southern Milk Sales, Inc. (SMS), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension of the order's "tough base" and diversion limitation provisions in order to maintain the pool status of its producers that historically have been associated with the Georgia market. For the months of February through August 1991, the suspension would remove the requirement that not less than 10 days' production of each producer whose milk is diverted be physically received at a pool plant. The restriction that a cooperative association divert only the milk of its member producers and the percentage limits on the aggregate amount of milk that a cooperative may divert to nonpool plants for its account also would be suspended for the same months. In addition, the proposed suspension raises the issue of whether the diversion limits on a proprietary handler's producer milk supply also should be considered.

SMS states that the percentage of its milk supply diverted to nonpool plants, together with the volume delivered to a manufacturing pool plant, equaled 22.4 percent of the cooperative's total milk supply in January 1991, or nearly as much as the order allows. SMS also observes that a pool distributing plant operator under the order has increased its proportion of deliveries from independent producers, and that as seasonal surpluses develop the plant probably will continue to receive increasing quantities of nonmember milk while ceasing deliveries of cooperative supplies. The cooperative projects that under these conditions, SMS probably will have great difficulty in maintaining the pool status of its members' producer milk.

A further market complication noted by SMS is the February 11, 1991, filing for Chapter 11 Bankruptcy by the Finevest Corporation, which operates a number of milk processing plants in the southeastern United States. SMS predicts that Finevest's action will result in major disruption in the marketing of milk in the Southeast which will affect the ability of handlers to maintain the pool status of their producers.

SMS notes that production bases under the Georgia order have already been earned for the current year, and producers will be unable to benefit from participation in the pool without having earned such bases. Therefore, the cooperative concludes, the integrity of the Georgia order pool will be protected in the absence of diversion limits.

SMS states that the requested suspension is needed to deal with expected market disruptions and increasing milk production that may make the pool qualification of its members' milk production impossible under the order's existing provisions.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: February 22, 1991.

L.P. Massaro,

Acting Administrator.

[FR Doc. 91-4660 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1207

[FV-91-235]

Invitation To Submit Proposals for Amending the Potato Research and Promotion Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Invitation to submit proposals for amending the Potato Research and Promotion Plan.

SUMMARY: The Agricultural Marketing Service invites submission of proposals for amendment of the Potato Research and Promotion Plan (Plan), or components of the Plan. The Plan is authorized by the Potato Research and Promotion Act (Act) which was amended by the Food, Agriculture, Conservation, and Trade Act of 1990. The amended Act authorizes the Secretary of Agriculture to issue amendments to the Plan. The amendments to the Act authorize the Plan to (1) eliminate the refund of assessments, (2) provide assessments for imported potatoes, and (3) provide for a referendum within two years to determine if the amendments to the Plan should continue in effect. Interested persons are also invited to submit views on whether it would be beneficial to hold a public meeting during an ensuing comment period to discuss the proposals.

DATES: Proposals must be received by April 1, 1991, to be ensured of consideration.

ADDRESSES: Proposals should be sent in triplicate to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Please state that your comments refer to Docket Number FV-91-235. Comments received may be inspected at the office of the Docket Clerk, USDA-AMS, room 2525, South Building, 14th and Independence Avenue SW., between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard H. Mathews at the above address; facsimile number 202-447-5698; telephone (202) 447-4140.

SUPPLEMENTARY INFORMATION: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624), signed on November 28, 1990, amended the Potato Research and Promotion Act (Act) and authorized the Secretary of Agriculture to amend the Plan which established a research and promotion program for potatoes. The program is funded by assessments of $0.02 per hundredweight of potatoes now levied on domestic potatoes handled by first handlers. The program is operated by the National Potato Promotion Board (Board) which consists of 95 members appointed by the Secretary of Agriculture from industry nominees.

The amendments to the Act to be addressed in any proposed amendments to the Plan would: (1) Eliminate the refund of assessments provision, but would, during the period between issuance of amendments to the Plan and prior to the referendum, establish an escrow account of 10 percent of the assessments collected to refund, upon request, assessments paid should this amendment fail to be approved in referendum; (2) provide for an assessment on imported potatoes equal to that imposed on domestic production; and (3) provide for a referendum within two years to determine if amendments should continue in effect.

Pursuant to the amended Act, any producer or producer organization may submit a proposal for amending the Plan to conform to the amended Act. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for amending the Plan or for various provisions thereof. Interested persons are also invited to submit views on whether it would be beneficial to hold a public meeting during an ensuing comment period to discuss the proposals. Any scheduled meeting would be held during the comment period.

In submitting proposals to amend the Plan, the following must be included: (1) The proposed amendment language to the Plan; (2) a separate description of the proposed amendments' provisions; (3) an explanation of the nature and purpose of proposed amendments; (4) identification of the section of the amended Act that would be implemented by the amendments' provisions; and (5) any other pertinent information concerning the proposal that would assist in this process of implementing the amended Act.

All proposals consistent with the amended Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of final amendments to the Plan.

List of Subjects in 7 CFR Part 1207

Administrative practice and procedure, Advertising, Agricultural research, Potatoes, Potato Promotion, and Reporting and recordkeeping requirements.

Authority: The Food, Agriculture, Conservation, and Trade Act of 1990; Pub. L. 101-624; title XIX.

Dated: February 22, 1991.

Signed at Washington, DC.

L.P. Massaro,

Acting Administrator.

[FR Doc. 91-4768 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Parts 1413

Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat and Related Programs

AGENCY: Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) amended the Agricultural Act of 1949 (The 1949 Act) to set forth numerous discretionary provisions which may be implemented by the Secretary of Agriculture and the Commodity Credit Corporation (CCC) with respect to the 1991 through 1995 crops of wheat, feed grains, upland and extra long staple (ELS) cotton and rice crops. This proposed rule sets forth the proposed action with respect to several of these provisions.

DATES: Comments must be received on or before March 13, 1991, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Bruce R. Weber, Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3741–S, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, room 3744–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–6923.

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major". It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this interim rule.

The paperwork requirements imposed by this rule will not become effective until they have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration.

It has been determined that the Regulatory Flexibility Act is not applicable to the final rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065, as found in the catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1990 Act amended the 1949 Act to mandate certain action by the Secretary and CCC with respect to the 1991 through 1995 crops; many of these provisions are identical to provisions which were authorized by the Food Security Act of 1985 for the 1986 through 1990 crops, while others are new provisions. Accordingly, this proposed rule, in conjunction with a separate proposed rule activity, would amend 7 CFR part 1413 to set forth the determination of whether certain of these provisions would be implemented and, if implemented, the manner in which implementation would be made.

This proposed rule is published separate from other proposed amendments to 7 CFR part 1413 since these amendments focus primarily upon the implementation of discretionary acreage reduction provisions of the 1991 crops based upon announced acreage reduction factors for such crops. On December 31, 1990, the Secretary announced acreage reduction percentages at: 15 percent for wheat; 7.5 percent for corn, barley, and grain sorghum; zero percent for oats; and 5 percent for upland and ELS cotton. On January 30, 1991, a 5-percent reduction for rice was announced. Accordingly, the following determinations are proposed:

A. Implementation of Targeted Option Payments (TOP)

If an acreage limitation program is in effect for a crop of wheat, feed grains, upland cotton or rice, the Secretary may offer producers the option of increasing or decreasing the acreage reduction level, within certain restrictions, with a corresponding decrease or increase in the target price. The target price may be decreased or increased by not less than 0.5 percent nor more than 1 percent for each percentage point change in the acreage reduction level. The Secretary shall, to the extent practicable, ensure that the TOP does not have a significant effect on program participation, total production or budget outlays.

It is proposed that this provision not be implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

B. Planting of Designated Crops on up to Half of the Announced Acreage Reduction

With respect to wheat, feed grains, upland cotton and rice, the Secretary may permit producers to plant a designated crop on one-half of the reduced acreage on the farm. The designated crops may be (a) any oilseed crop; (b) any industrial or experimental crop designated by the Secretary; and (c) any other crop, except any fruit or vegetable crop (including potatoes and dry edible beans) not designated by the Secretary as (i) an industrial or experimental crop; or (ii) a crop for which no substantial domestic production or market exist.

If producers on a farm elect to plant a designated crop, the amount of deficiency payment that producers are otherwise eligible to receive shall be reduced, for each acre that is planted to the designated crop, by an amount equal to the deficiency payment that would be made with respect to a number of acres of the crop that the Secretary considers appropriate. The Secretary must ensure that the reductions in deficiency payments are sufficient to ensure that this provision does not increase CCC outlays.

It is proposed that this provision not be implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

C. Planting of Conserving Crops on Acreage Conservation Reserve (ACR)

With respect to wheat, feed grains, upland cotton and rice, the Secretary may permit producers to plant all or any part of the ACR to be planted to sweet sorghum, guar sesame, castor beans, crambe, plantago ovato, triticale, rye, mung beans, milkweed or other commodity, if the Secretary determines that the production is needed to provide an adequate supply of the commodities, is not likely to increase the cost of the price support program and will not adversely affect farm income.

It is proposed that this provision not be implemented for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

D. Planting of Oats on Acreage Conservation Reserve (ACR)

In any crop year that the Secretary determines that projected domestic production of oats will not fulfill the projected domestic demand for oats, the Secretary (a) may provide that acreage designated as ACR under the wheat and feed grain programs may be planted to oats for harvest; (b) may make program benefits (including loans, purchases, and payments) available under the annual program for oats under section 105b of the 1949 Act available to producers with this paragraph and; (c) shall not make program benefits other than the benefits specified in (b) available to producers with respect to acreage planted to oats under this paragraph.

It is proposed that the planting of oats on wheat and feed grain ACR for harvest to be permitted for the 1991 crops. CCC will also consider comments for 1992 and subsequent crops.

E. Paid Land Diversion

The Secretary may make land diversion payments to producers of wheat, feed grains, upland and ELS cotton and rice, if the Secretary determines that such payments are necessary to assist in adjusting the national acreage of program crops to desirable goals.

The amount payable to producers can be prescribed by the Secretary as he deems appropriate.

If, at the time of final announcement of the acreage limitation program for upland cotton, the projected carryover of upland cotton for the crop year is equal to or greater than 6 million bales, the Secretary shall offer a paid land diversion program to producers of upland cotton. Payments are to be determined by multiplying; (i) the payment rate, of not less than 35 cents per pound, established by the Secretary; by (ii) the program payment yield established for the crop for the farm, by (iii) the number of permitted upland acres diverted on the farm. The Secretary shall limit the total acreage of upland cotton to be diverted under this paragraph to not more than 15 percent of the upland cotton crop acreage base for the farm. The Secretary may permit upland cotton producers to participate in a land diversion program at a level lower than the maximum level announced by the Secretary, at the option of the producer, if the Secretary determines that it will increase participation in the program.

No paid land diversions are proposed to be implemented for the 1991 crop of upland cotton and the 1991–95 crops of wheat, feed grains, ELS cotton and rice.

F. Malting Barley Exemption From Acreage Reduction Requirements

The Secretary may exempt producers of malting barley, as a condition of eligibility for feed grain loans, purchases and payments, from complying with the acreage reduction requirements.

It is proposed that malting barley not be exempted from the feed grain acreage reduction requirements for the 1991–95 crops.

List of Subjects in 7 CFR Part 1413

Acreage Allotment, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, and Wheat.

Accordingly, it is proposed that 7 CFR part 1413 which was proposed to be revised at 56 FR 8065, February 26, 1991 would be further amended as follows:

PART 1413—[AMENDED]

1. The authority citation for 7 CFR part 1413 is revised to read as follows:

Authority: Secs. 101B, 103B, 105B, and 107B of the Agricultural Act of 1949, as amended; 7 U.S.C. 1306; 7 U.S.C. 1309; and 7 U.S.C. 1308a.

2. Section 1413.54 is added to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) Target option payments shall not be available with respect to producers of the 1991 crops of wheat, feed grains, upland cotton and rice.

(b) Acreage designated as ACR under the 1991 wheat, feed grains, upland cotton and rice programs may not be devoted to oilseeds, industrial or experimental crops, oats, or any other crop and must be devoted to approved uses as otherwise provided in this part.

(c) Paid land diversion program payments shall not be made available to producers of the 1991–95 crops of wheat, feed grains, ELS cotton, rice and the 1991 crop of upland cotton.

(d) With respect to the 1991 through 1995 crop years, in order to receive feed grain loans, purchases and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reductioin program requirements of this part.

Keith D. Bjerke,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–4881 Filed 2–26–91; 12:53 pm]

BILLING CODE 3410–05–M

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 1497 and 1498

Food, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the Food Security Act of 1985 with respect to statutory maximum payment limitation provisions by making such provisions applicable to additional programs and by making changes with respect to the treatment of irrevocable trusts and husbands and wives. Accordingly, this proposed rule would amend 7 CFR part 1497 to reflect these changes. In addition, this proposed rule will make technical changes to 7 CFR parts 1497 and 1498 for clarity. These amendments will be implemented with respect to the 1991 crops of commodities and conservation program contracts and agreements executed in 1991. The preamble to the proposed rule also sets forth additional examples for new programs that are effected by these rules.

DATES: Comments must be received on or before March 15, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: William E. Penn, Assistant Deputy Administrator, State and County Operations, ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–8513.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive order 12372

which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal assistance programs to which this proposed rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; National Wool Act Payment—10.059; Agricultural Conservation Program—10.063; Forestry Incentives Program—10.064; Rice Production Program—10.065; Emergency Livestock Assistance—10.066; Grain Reserve Program—10.067; Conservation Reserve Program—10.069, as found in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560–0096 has been assigned.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Discussion of Changes

Major statutory revisions with respect to maximum payment limitation provisions which are applicable to certain agricultural programs were made in the Omnibus Budget Reconciliation Act of 1987 (the 1987 Act) which became effective for the 1989 crops of wheat, feed grains, upland cotton, rice, and honey; and certain Conservation Reserve Program (CRP) payments. 7 CFR parts 1497 and 1498 set forth the regulations implementing these statutory revisions and are used for determining whether a "person" is eligible to receive certain CCC payments and whether such "person" is separate and distinct from any other "person" for payment limitation purposes. 7 CFR part 1497 sets forth the provisions for determining whether a person is "actively engaged in farming" as required by these statutory revisions. 7 CFR part 1498 sets forth the provisions for determining if certain foreign individuals and entities are eligible to receive payments, loans, or benefits under the above mentioned programs.

Certain other programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and the Commodity Credit Corporation (CCC) also have limitations on the maximum payments which may be received by any person. These programs include CRP contracts entered into before December 22, 1987, Agricultural Conservation Program (ACP), Forestry Incentives Program (FIP), and the Livestock Feed Program (LFP). Determinations regarding "person" determinations with respect to all of these programs except the Livestock Feed Program have been made under the provisions found in 7 CFR part 795. For the Livestock Feed Program, "person" determinations have been made under the provisions found in 7 CFR part 1497. Those provisions in 7 CFR part 1497 which relate to "actively engaged in farming" determinations and "cash rent tenant" determinations have not been applied to the Livestock Feed Program.

In addition to extending the 1985 Act payment limitation provisions to the 1991–1995 crops, the 1990 Act provides for several new programs which are subject to payment limitations. These programs include the Wetlands Reserve Program (WRP) and the Agricultural Water Quality Incentives Program (AWQIP). In addition the 1990 Act provides, for the first time, that payments made under the Wool and Mohair programs are subject to payment limitations.

In order to enhance the administration of these regulations, it is proposed that the provisions that relate to the definition of a "person" for payment limitation purposes be uniformly applied to additional programs administered by CCC and ASCS; however, CRP contracts which were previously subject to 7 CFR part 795 will continue to be subject to the provisions of such part. In order to accomplish this change it is proposed that 7 CFR part 1497 be amended and reorganized into five subparts. Subpart A would address general provisions. Subpart B would address person determinations. Subpart C would address actively engaged in farming determinations. Subpart D would address permitted entity determinations. Subpart E would address cash rent tenant determinations. Numerous paragraphs are proposed to be moved into new sections and a complete renumbering of the part is proposed in order to accomplish this improved service.

Subparts A and B would be applicable to all payments subject to this part. These payments include deficiency and land diversion payments, resource adjustment payments, disaster payments under the Agricultural Act of 1949 (the 1949 Act), marketing loan gains, loan deficiency payments, inventory reduction payments, CRP payments, ACP payments, FIP payments, WRP payments, AWQIP payments, LFP payments, Wool and Mohair price support program payments, and such other payments as may be provided under individual program regulations.

Subparts C, D, and E would also be applicable to other payments including deficiency and land diversion payments, resource adjustment payments, disaster payments under the 1949 Act, marketing loan gains (except for honey), loan deficiency payments (except for honey), inventory reduction payments, Wool and Mohair price support program payments, and such other payments as may be provided under individual program regulations.

The provisions of § 1497.1, *Applicability*, are proposed to be amended to list which subparts would be applicable for each of the programs for which a payment limitation applies and to incorporate the new programs provided for in the 1990 Act. In addition, it is proposed that a table be added to show the amount of limitation per person for each of the payments subject to the payment limitation.

The 1990 Act provides discretionary authority for the Secretary to, in the event of a transfer of ownership of land by way of devise or descent, make payments to the new owner under such contract, if the new owner succeeds to the prior owner's contract under title XII of the 1985 Act, without regard to the amount of payments received by the new owner under any multiyear contract entered into under title XII of the 1985 Act executed prior to such devise or descent. In order to implement this discretionary authority, it is proposed, in § 1497.1(a)(4)(iv) that any CRP rental payments received by an heir with respect to inherited land which was under a CRP contract at the time of inheritance shall not be taken in account when making the heir's payment limitation determination if such heir succeeds to such contract.

The provisions of § 1497.2 *Administration*, are proposed to be amended to implment the statutory requirement set forth in the 1990 Act which requires that the State ASCS Office make initial determinations concerning the provisions for this part for all farming operations consisting of more than 5 persons.

Title II of the 1990 Act provides for a Wool and Mohair price support program for the 1991–1995 marketing years. Provisions in this title require that the Secretary issue regulations defining the term "person" and that the regulations be consistent with the regulations issued in accordance with sections 1001, 1001A, and 1001B of the Food Security Act of 1985 (7 U.S.C. 1308–1, and 1308–2). Accordingly, the provisions of 1497.1 and 1497.3 are proposed to be amended to facilitate the implementation of payment limitations for the Wool and Mohair Programs and to make minor adjustments to properly account for any livestock contributed to a farming operation. Specifically, in § 1497.3 the definition of the term "capital" is proposed to be amended to provide that the rental value of livestock provided by an individual or entity to the farming operation in order for such operation to conduct farming activities is considered to be "Capital" for purposes of determining whether a program participant is actively engaged in farming and a separate person for payment limitation purposes.

In order to clarify existing regulatory provisions which requires contributions of capital, land, or equipment which are leased from another individual or entity with an interest in the farming operation to be leased at a fair market value, the definitions of capital, land, and equipment, found at § 1497.3, are proposed to be amended.

The 1990 Act provides a definition for irrevocable trust which essentially codifies a definition provided in § 1497.3 prior to passage of the 1990 Act. The 1990 Act provides that an irrevocable trust (other than a trust established prior to January 1, 1987) must not allow for modification or termination of the trust by the grantor, allow for the grantor to have any future, contingent, or remainder interest in the corpus of the trust, or provide for the transfer to the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent on the remainder beneficiary achieving at least the age of majority or is contingent on the death of the grantor or income beneficiary. The definition of irrevocable trust provided in § 1497.3 is proposed to be amended to reflect this change.

It is also proposed that the definition of the term "payment" which is set forth in § 1497.3 be amended to include payments made under the additional programs made subject to this part. Because the term is not used in this part, it is proposed that the definition of the term "related entity" be deleted from § 1497.3.

In order to facilitate consistent use of the rules set forth in 7 CFR part 1497 for all programs, § 1497.7, *Commensurate contributions*, is proposed to be added to require that in order to be eligible to receive payments under any program subject to this part an individual or entity must make contributions to the farming operation which are commensurate with the individual's or entity's claimed share of the profits or losses from the farming operation and that the contributions must be at risk.

The 1990 Act provided discretionary authority to the Secretary to allow a husband and wife to be considered separate persons in certain cases. In order to implement this provision, § 1497.104, *Husband and Wife*, is proposed to be amended to enable spouses to receive farm program payments in the same amounts available to two unmarried individuals when each spouse is otherwise eligible to receive payments as a separate person and neither spouse receives farm program payments directly or indirectly through any other entity. Because the 1990 Act provides that payments under the honey price support program which are made to an entity are to be attributed to the members of the entity, this section further provides that, for the honey program only, a husband and wife may receive honey payments indirectly through any number of entities and still be considered separate persons if otherwise eligible.

As provided above the 1990 Act specifically provides for direct attribution for payment limitation purposes and loan forfeiture purposes with respect to honey. In order to implement this provision § 1497.109, *Honey producers*, is proposed to be added to provide that payments to entities will continue to be subject to the maximum payment limitation amounts; however, individual honey producers who indirectly receive marketing loan gains on honey or forfeit honey through an entity will have such benefits attributed to the individual.

The 1990 Act also provides that the existence of a contract for hybrid seed production which a producer might have shall have no impact on such producer's actively engaged in farming determination. Section 1497.212 is proposed to be added to implement this provision.

Numerous other technical changes are made throughout this part in order to clarify existing provisions.

Because many of the definitions which apply to part 1497 also apply to part 1498 it is proposed that the definitions of active personal labor, capital, entity, land, and person be deleted from § 1498.3 and such section be amended by adding a statement referencing the definitions in § 1497.3.

In accordance with the proposed amendments of 7 CFR parts 1497 and 1498, the following determinations would be made:

Individual

Example 1. Individual Z, a wool producer, grazes sheep on owned land. Individual Z also owns the shearing equipment, contributes at least 50 percent of Z's commensurate share of active personal labor, and contributes 100 percent of the farming operation's management. In this situation, Individual Z's share of the profits or losses from the farming operation are commensurate with Individual Z's contributions to the farming operation and the contributions are at risk.

Determination. Individual Z is considered to be actively engaged in farming under the general provisions.

Example 2. Individual I, a wool producer, grazes sheep on land that is gifted to Individual I by the Indian Tribal Venture. Individual I owns livestock and the shearing equipment and contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual I's share of the profits or losses from the farming operation are commensurate with Individual I's contributions to the farming operation and the contributions are at risk.

Determination. Individual I is considered to be actively engaged in farming under the general provisions.

Example 3. Individual H, a minor who is a wool producer, raises a sheep and produces the wool from the sheep as a 4–H project. The sheep has been gifted to Individual H by Q, and gift tax, as applicable has been paid. Individual H owns no equipment or land but instead uses Q's at no charge. Individual H contributes at least 50 percent of the producer's commensurate share of active personal labor and contributes 100 percent of the active personal management to the farming operation. In this situation, Individual H's share of the profits or losses from the farming operation are commensurate with Individual H's contributions to the farming operation and the contributions are at risk. Q is H's father and H lives in Q's house.

Determination. Individual H is considered to be actively engaged in farming under the general provisions and is combined as one "person" for payment limitation purposes with Individual H's parents.

Joint Operation

Example 1. Joint Venture X consists of 2 members who are Member N and Member M. Each of the members claim

BEST COPY AVAILABLE

a 50 percent share of the joint venture. Member N provides a significant amount of capital through the contribution of sheep to the farming operation, owned pasture land, a significant amount of owned equipment used for production of wool and mohair, and a significant amount of Active Personal management. Member M contributes sheep to the farming operation, the value of which provides a significant contribution of capital and provides 100 percent of the labor used in the joint venture. Member M informed the county ASC committee that Member N had provided a non interest bearing loan to Member M, so that Member M could purchase the sheep. In this situation, Member N's and Member M's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Member N is considered actively engaged in farming because of N's significant contributions of capital, land, equipment, and active personal management and because N's claimed shares of the joint venture are at lease commensurate with N's contributions and are at risk. The loan which member N made to member M was not at the prevailing interest rate and was, therefore, not a contribution by member M. Member M is not actively engaged in farming because Member M did not provide a significant contribution of capital, land or equipment.

Husband and Wife

Example 1. Husband A and Wife B have an individual farming operation comprised of 500 acres of owned land. In addition, Wife B has 25 percent interest in Corporation X, which is participating in the Conservation Reserve Program and earning annual payments. Husband A and Wife B jointly own all the equipment and provide all the capital. Husband A contributes at least 50 percent of A's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife B provides a significant contribution of active personal management. In this situation, Husband A's and Wife B's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband A and Wife B are considered to be actively engaged in farming. However, Husband A and Wife B are considered one "person" for payment limitation purposes because they receive payments indirectly through Corporation X.

Example 2. Husband X and Wife Y have an individual farming operation comprised of 500 acres of owned land. In addition, Husband X and Wife Y have combined interest of 33 percent in Corporation Z, which produces vegetables and does not earn USDA benefits. Husband X and Wife Y jointly own all the equipment and provide all the capital on the individual farming operation. Husband X contributes at least 50 percent of X's commensurate share of active personal labor and contributes a significant contribution of active personal management. Wife Y provides a significant contribution of active personal management. In this situation, Husband X's and Wife Y's share of the profits or losses from the farming operation are commensurate with their contributions to the farming operation and the contributions are at risk.

Determination. Husband X and Wife Y are considered to be actively engaged in farming and separate "persons" for payment limitation purposes.

Honey Producers

Example 1. In 1991, Zee Honey, Inc. produces enough honey to receive $300,000 in loan deficiency payments. Zee has two 50 percent stockholders, A and B. A also produces enough honey as an individual to receive $250,000 in loan deficiency payments. B has no other honey interests. Zee's contributions to its farming operation are commensurate with it's share of the profits and losses and are at risk. A's contributions to her farming operation are commensurate with her share of the profits and losses and are at risk. Neither Zee nor A or B are combined as one person with any other individual or entity.

Determination. In 1991 each person is limited to $200,000 in loan deficiency payments. $100,000 of Zee's payment would be denied since it exceeds the statutory limitation of $200,000. Of the remaining $200,000 earned by Zee, $100,000 is attributed to A and $100,000 is attributed to B. Therefore $150,000 of A's individual payment is also denied.

List of Subjects

7 CFR Part 1497

Price Support Programs.

7 CFR Part 1498

Aliens, Loan programs—agriculture, Grant programs—agriculture.

Accordingly, 7 CFR Chapter XIV is amended as follows:

1. Part 1497 is revised to read as follows:

PART 1497—PAYMENT LIMITATION

Subpart A—General Provisions

Sec.

1497.1 Applicability.
1497.2 Administration.
1497.3 Definitions.
1497.4 Timing for determining status of persons.
1497.5 Indian tribal ventures.
1497.6 Scheme or device.
1497.7 Commensurate contributions.
1497.8 Joint and several liability.
1497.9 Equitable adjustments.
1497.10 Appeals.
1497.11 Paperwork Reduction Act assigned number.

Subpart B—Person Determinations

1497.101 Limited partnerships, corporations and other similar entities.
1497.102 Trusts.
1497.103 Estates.
1497.104 Husband and wife.
1497.105 Minor children.
1497.106 States, political subdivisions, and agencies thereof.
1497.107 Charitable organizations.
1497.108 Changes in farming operations.
1497.109 Honey producers.

Subpart C—Actively Engaged in Farming Determinations

1497.201 General provisions for determining whether an individual or entity is actively engaged in farming.
1497.202 Individuals.
1497.203 Joint operations.
1497.204 Limited partnerships, corporations and other similar entities.
1497.205 Trusts.
1497.206 Estates.
1497.207 Landowners.
1497.208 Family members.
1497.209 Sharecroppers.
1497.210 Incapacitated individuals.
1497.211 Persons not considered to be actively engaged in farming.
1497.212 Hybrid seed producers.

Subpart D—Permitted Entities

1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

Subpart E—Cash Rent Tenants

1497.401 Cash rent tenants.

Authority: 17 U.S.C. 1308, 1308–1 and 1308–2; 16 U.S.C. 3834.

Subpart A—General Provisions

§ 1497.1 Applicability

(a) All of the provisions of this part are applicable to the following programs and any other programs as may be provided for in individual program regulations:

(1) The annual price support and production adjustment programs for the 1989 and subsequent crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, and oilseeds;

(2) Any program authorized by the Agricultural Act of 1949 under which a gain is realized by the repayment of a loan for a crop of any commodity (other than honey) at a level lower than the original loan level;

(3) The Wool and Mohair Price Support Programs authorized by the National Wool Act of 1954;

(4) The Conservation Reserve Program authorized by subchapter B of chapter 1 of subtitle D of Title XII of the Food Security Act of 1985;

(i) This part is applicable to rental payments made in accordance with a Conservation Reserve Program contract entered into on or after August 1, 1988. For Conservation Reserve Program contracts entered into before August 1, 1988, the person may elect to have the provisions of this part apply to such a contract by notifying the county committee in writing of such election. Such election shall be irrevocable.

(ii) The regulations set forth at part 795 of this title shall be applicable to Conservation Reserve Program contracs entered into prior to December 22, 1987, and to Conservation Reserve Program contracts entered into on or after such date and before August 1, 1988, if the person has not made the election specified in paragraph (a)(4)(i) of this section.

(iii) This part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to a State, political subdivision, or agency thereof in connection with agreements entered into under a special conservation reserve enhancement program carried out by such State, political subdivision, or agency thereof that has been approved by the Secretary, or a designee of the Secretary.

(iv) With respect to inherited land, this part is not applicable to rental payments made in accordance with a Conservation Reserve Program contract if such payments are made to an individual heir who has succeeded to such contract. Such land must have been subject to the Conservation Reserve Program contract at the time it was inherited by the individual.

(b) The provisions in subparts A and B are the only subparts applicable to the following programs; other programs may be subject to these subparts for in individual program regulations;

(1) Any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and any loan forfeiture limitation provisions set forth in such act;

(2) The Agricultural Conservation Program authorized under the Soil Conservation and Domestic Allotment Act;

(3) The Forestry Incentives Program;

(4) The Wetlands Reserve Program authorized by subchapter C of chapter 1 of subtitle D of Title XII of the Food Security Act of 1985;

(5) The Agricultural Water Quality Incentives Program authorized by chapter 2 of subtitle D of Title XII of the Food Security Act of 1985;

(6) The Livestock Feed Program authorized by the Agricultural Act of 1949.

(c) This part shall be applied to the programs specified in paragraphs (a) (1) and (2) and (b) (1) and (6) of this section on a crop year basis; with respect to the program specified in paragraph (a)(3) of this section on a marketing year basis; and with respect to the programs specified in paragraphs (a)(4) and (b)(2) through (5) of this section on a fiscal year basis.

(d) This part shall be used to determine whether certain individuals or legal entities are to be treated as one person or as separate persons for the purpose of applying the payment limitation provisions which are applicable to the programs specified in this section and to any other programs as may be provided for in individual program regulations.

(e) In cases in which more than one provision of this part are applicable, the provision which is most restrictive shall apply.

(f) Payments made to public schools with respect to land which is owned by a public school district and payments made to a State with respect to land owned by a State which is used to maintain a public school shall not be subject to the payment limitations.

(g) The following amounts are the limitation on payments per person per applicable period for each payment or combination of payments specified.

Payment type	Limitation				
	1991	1992	1993	1994	1995
● Deficiency	$50,000	$50,000	$50,000	$50,000	$50,000
● Diversion					
● Marketing loan gain	75,000	75,000	75,000	75,000	75,000
● Findley					
● Loan deficiency					
● Deficiency	250,000	250,000	250,000	250,000	250,000
● Diversion					
● Resource adjustment					
● Disaster					
● Marketing loan gain					
● Findley					
● Loan deficiency					
● Inventory reduction					
● Wool	200,000	175,000	150,000	125,000	125,000
● Mohair	200,000	175,000	150,000	125,000	125,000
● CRP	50,000	50,000	50,000	50,000	50,000
● Honey marketing loan gain	200,000	175,000	150,000	125,000	125,000
● Honey loan deficiency					
● Honey loan forfeiture	200,000	175,000	150,000	125,000	125,000
● ACP cost share	3,500	3,500	3,500	3,500	3,500
● FIP cost share	10,000	10,000	10,000	10,000	10,000
● WRP	50,000	50,000	50,000	50,000	50,000
● AWQIP incentive payments	3,500	3,500	3,500	3,500	3,500
● AWQIP cost share	1,500	1,500	1,500	1,500	1,500
*Note: This limitation is on a per contract basis rather than a per person basis.					
● LFP cost share	50,000	50,000	50,000	50,000	50,000

Payment type	Limitation				
	1991	1992	1993	1994	1995
● LFP gain					

§ 1497.2 Administration

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State and county committees", respectively).

(b) State executive directors, country executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) The initial "actively engaged in farming" and "person" determinations shall be made within 60 days after the producer files the required forms and any other supporting documentation needed in making such determinations. If the determination is not made within 60 days, the producer will receive a determination for that program year which reflects the determination sought by the producer unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented to the county or State committee for such year.

(f)(1) Initial determinations concerning the provisions of this part shall not be made by a county ASCS office with respect to any farm operating plan that is for a:

(i) Joint operation with more than 5 members;

(ii) Farm, as defined in 7 CFR part 719, on which more than 5 persons earn program payments specified in § 1497.1 and where expected total payments on the farm exceed $50,000.

(2) Additional criteria for determining plans covered by this paragraph may include, as deemed relevant and accessible, any of the following:

(i) The recent addition of a new person;

(ii) A recent farm reconstitution or reorganization;

(iii) A small proportion of financially fixed farm assets; or

(iv) Any other criteria deemed appropriate by the Deputy Administrator.

(3) Priority will be given to operations with payments exceeding $40,000 in payments.

(g) Data furnished by the producers will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1497.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Active personal labor. Active personal labor is personally providing physical activities necessary in a farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities in the farming operation. Other physical activities include those physical activities required to establish and maintain conserving cover crops or conserving use acreages and those physical activities necessary in livestock operations.

Active personal management. Active personal management is personally providing:

(1) The general supervision and direction of activities and labor involved in the farming operation; or

(2) Services (whether performed on-site or off-site) reasonably related and necessary to the farming operation including any of the following:

(i) Supervision of activities necessary in the farming operation, including activities involved in land preparation, planting, cultivating, harvesting, and marketing of agricultural commodities, as well as activities required to establish and maintain conserving cover crops or conserving use acreage and activities required in livestock operations.

(ii) Business-related actions which include discretionary decision-making;

(iii) Evaluation of the financial condition and needs of the farming operation;

(iv) Assistance in the structuring or preparation of financial reports or analyses for the farming operation;

(v) Consultations in or structuring of business-related financing arrangements for the farming operation;

(vi) Marketing and promotion of agricultural commodities produced by the farming operation;

(vii) Acquiring technical information used in the farming operation; or

(viii) Any other management function reasonably necessary to conduct the farming operation and for which service the farming operation would ordinarily be charged a fee.

Capital. Capital consists of the funding and the rental value of livestock provided by an individual or entity to the farming operation in order for such operation to conduct farming activities. In determining whether an individual or entity has contributed capital, in the form of funding, to the farming operation, such capital must have been derived from a fund or account separate and distinct from that of any other individual or entity involved in such operation. Capital does not include the value of any labor or management which is contributed to the farming operation. A capital contribution may be a direct out-of-pocket input of a specified sum or an amount borrowed by the individual or entity.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the capital is contributed by a member of the joint operation or an entity, such capital contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the capital is contributed by such joint operation such capital contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Livestock may be leased from any source. If livestock are leased from another individual or entity with an interest in the farming operation, the livestock must be leased at a fair market value.

Entity. An entity is a corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization including any such organization participation in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar organization.

Equipment. Equipment is the machinery and implements needed by the farming operation to conduct activities of the farming operation including machinery and implements involved in land preparation, planting, cultivating, harvesting, or marketing of the crops involved. Equipment also includes machinery and implements needed to establish and maintain conservation cover crops or conservation use acreages and those needed to conduct livestock operations.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the equipment is contributed by a member of the joint operation or entity, such equipment contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the equipment is contributed by such joint operation, such equipment contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.30(d) and 1497.15 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in paragraphs (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such equipment may be leased from any source. If such equipment is leased from another individual or entity with an interest in the farming operation, such equipment must be leased at a fair market value.

Family Member. The term family member means an individual to whom another member in the farming operation is related as lineal ancestor, lineal descendent, or sibling, including spouses of those family members who do not make a significant contribution to the farming operation themselves.

Farming operation. A farming operation is a business enterprise engaged in the production of agricultural products which is operated by an individual, entity, or joint operation which is eligible to receive payments, directly or indirectly, under one or more of the programs specified in § 1497.1. An entity or individual may have more than one farming operation if such individual or entity is a member of one or more joint operations.

Irrevocable trust. All trusts shall be considered to be revocable trusts, except a trust may be considered to be an irrevocable trust if it is a trust which:

(1) May not be modified or terminated by the grantor;

(2) The grantor does not have any future, contingent or remainder interest in the corpus of the trust; and

(3) For trusts established after January 1, 1987, does not provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years from the date the trust is established except in cases where the transfer is contingent upon the remainder beneficiary achieving at least the age of majority or is contingent upon the death of the grantor or income beneficiary.

Joint operation. A joint operation is a general partnership, joint venture, or other similar business organization.

Land. Land is farmland consisting of cropland, pastureland, wetland, or rangeland which meets the specific requirements of the applicable program.

(1) With respect to a farming operation conducted by an individual, a joint operation in which the land is contributed by a member of the joint operation, or entity, such land contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the individual or entity and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any other individual, joint operation, or entity that has an interest in such farming operation.

(B) Such individual, joint operation, or entity by any other individual, joint operation, or entity which has an interest in such farming operation.

(C) Any other individual, joint operation, or entity in whose farming operation such individual, joint operation, or entity has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the individual or entity and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, joint operations, or entities provided in paragraphs (1)(i)(A) through (1)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(2) With respect to a farming operation conducted by a joint operation in which the land is contributed by such joint operation such land contributed to meet the requirements of:

(i) Section 1497.201(b) must be contributed directly by the joint operation and must not be acquired as a result of a loan made to, guaranteed, or secured by:

(A) Any individual, entity, or other joint operation which has an interest in such farming operation, including either joint operation's members.

(B) Such joint operation by any individual, entity, or other joint operation which has an interest in such farming, operation.

(C) Any individual, entity, or other joint operation in whose farming operation such joint operation has an interest.

(ii) Section 1497.201(d) and § 1497.7 must be contributed directly by the joint operation and if acquired as a result of a loan made to, guaranteed, or secured by the individuals, entities, or joint operations provided in items (2)(i)(A) through (2)(i)(C) of this definition, the loan must bear the prevailing interest rate.

(3) Such land may be leased from any source. If such land is leased from another individual or entity with an interest in the farming operation, such land must be leased at a fair market value.

Payment. A payment includes:

(1) With respect to the programs specified in Section 1497.1(a) (1) and (2):

(i) Deficiency payments;

(ii) Land Diversion payments;

(iii) Resource adjustment payment which is any part of any payment that is determined by the Deputy Administrator to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

(iv) Disaster payment which is any disaster payment made under one or more of the annual programs established for a crop of wheat, feed grains, cotton, rice, and oilseeds under the Agricultural Act of 1949;

(v) Marketing loan gain which is any gain realized by a producer from repaying a loan for a crop of any commodity (other than honey) at a lower level than the original loan level established under the Agricultural Act of 1949;

(vi) Findley payment which is any deficiency payment received for a crop of wheat or feed grains under section 107B(c)(1) or 105B(c)(1), respectively, of the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107B(a)(3) or 105B(a)(3) of the Agricultural Act of 1949;

(vii) Loan deficiency payment which is any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, rice, or oilseeds, under section 107B(b), 105B(b), 103B(b), 101B(b), or 205(e), respectively, of the Agricultural Act of 1949;

(viii) Inventory reduction payment which is any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107B(f), 105B(f), 103B(f), or 101B(f), respectively, of the Agricultural Act of 1949;

(2) With respect to the Wool and Mohair Programs:

(i) Annual wool payments; and

(ii) Annual mohair payments.

(3) With respect to the Conservation Reserve Program, annual rental payments;

(4)(i) With respect to any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made:

(A) The honey marketing loan gain which is the amount of the gain; and

(B) The honey loan deficiency payment which is amount of the loan deficiency payment; and

(ii) With respect to any loan forfeiture limitation provision of such act, the value of the loan forfeiture.

(5) With respect to the Agricultural Conservation Program, the cost share payment;

(6) With respect to the Forestry Incentives Program, the cost share payment;

(7) With respect to the Wetlands Reserve Program, annual easement payments;

(8) With respect to the Agricultural Water Quality Incentives Program:

(i) Annual incentive payments; and

(ii) Cost share payments;

(9) With respect to the Livestock Feed Program:

(i) LFP cost share which is any cost share payment; and

(ii) LFP gain which is any gain realized as a result of a producer buying or receiving Commodity Credit Corporation inventory at a level lower than the market price; and

(10) With respect to other programs as designated in individual program regulations, any payments designated in such regulations.

Permitted Entity. A permitted entity is an entity designated annually by an individual which is to receive a payment, loan, or benefit under a program specified in § 1497.1(a).

Person. (1) A person is:

(i) An individual, including any individual participating in a farming operation as a partner in a general partnership, a participant in a joint venture, or a participant in a similar entity;

(ii) A corporation, joint stock company, association, limited partnership, irrevocable trust, revocable trust together with the grantor of the trust, estate, or charitable organization, including any such entity or organization participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust or as a participant in a similar entity; and

(iii) A State, political subdivision, or agency thereof.

(2) In order for an individual or entity other than an individual or entity who is a member of a joint operation to be considered a separate person for the purposes of this part, in addition to other provisions of this part, the individual or entity must:

(i) Have a separate and distinct interest in the land or the crop involved;

(ii) Exercise separate responsibility for such interest; and

(iii) Maintain funds or accounts separate from that of any other individual or entity for such interest.

(3) With respect to an individual or entity who is a member of a joint operation, such individual or entity will have met the requirements of paragraph (2) of this definition if the joint operation meets the requirements of such paragraph.

(4) Any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers shall not be considered to be a person.

Public School. A public school is a primary, elementary, secondary school, college, or university which is directly administered under the authority of a governmental body or which receives a predominant amount of its financing from public funds.

Sharecropper. An individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provisions of such labor.

Significant Contribution. A significant contribution is the provision of the following to a farming operation by an indvidual or entity:

(1)(i) With respect to land, capital, or equipment contributed by an individual or entity, a contribution which has a value which is equal to at least 50 percent of the individual's or entity's commensurate share of:

(A) The total value of the capital necessary to conduct the farming operation;

(B) The total rental value of the land necessary to conduct the farming operation;

(C) The total value of the equipment necessary to conduct the farming operation; or

(ii) If the contribution by an individual or entity consists of any combination of land, capital, and equipment, such combined contribution must have a value which is equal to 30 percent of the individual's or entity's commensurate share of the total value of the farming operation;

(2) With respect to active personal labor, an amount which is the smaller of:

(i) 1,000 hours per calendar year; or

(ii) 50 percent of the total hours which would be required to conduct a farming operation which is comparable in size to such individual's or entity's commensurate share in the farming operation;

(3) With respect to active personal management, activities which are critical to the profitability of the farming operations, taking into consideration the individual's or entity's commensurate share in the farming operation; and

(4) With respect to a combination of active personal labor and active personal management, when neither contribution meets the requirements of paragraphs (2) and (3) of this definition, a combination of active personal labor and active personal management when viewed together which results in a critical impact on the profitability of the farming operation in an amount at least equal to either the significantly contribution of active personal labor and active management as provided in paragraphs (2) and (3) of this definition.

Substantial Beneficial Interest. A substantial beneficial interest in any entity is an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests in the entity which are owned by an individual or entity directly or indirectly through such means as ownership of a corporation which owns the entity shall be taken into consideration. In order to ensure that the provisions of this part are not circumvented by an individual or entity, the Deputy Administrator may determine that an ownership interest requirement of less than 10 percent shall be applied to such individual or entity.

Total Value of the Farming Operation. The total value of the farming operation is the total of the costs, excluding the value of active personal labor and active personal management which is contributed by a person who is a member of the farming operation, needed to carry out the farming operation for the year for which the determination is made.

§ 1497.4 Timing for determining status of persons.

(a) Except as otherwise set forth in this part, the status of an individual or entity on April 1 of the current year, or such other date as may be determined and announced by the Deputy Administrator, shall be the basis on which determinations are made in accordance with this part for the year in which the determination is made.

(b) Actions taken by an individual or entity after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the final harvest date of the last program crop in the area, as determined by the Deputy Administrator, shall not be used to determine whether there has been an increase in the number of persons for the current year. Actions taken by a person after April 1, or such other date as may be determined and announced by the Deputy Administrator, but on or before the harvest of the last program crop in the area, shall be used to determine whether there has been a decrease in the number of persons for the current year.

§ 1497.5 Indian tribal ventures.

Individual Americans Indians which receive payments through other than an Indian tribal venture are required to certify that they will not accrue total payments, including payments made to the Indian tribal venture and to the individual American Indian, in excess of the applicable payment limitation for programs specified in § 1497.1.

§ 1497.6 Scheme or device.

(a) All or any part of the payment otherwise due a person on all farms in which the person has an interest may be withheld or be required to be refunded if the person adopts or participates in adopting a scheme or device which is designed to evade this part or which has the effect of evading this part. Such acts shall include, but are not limited to:

(1) Concealing information which affects the application of this part;

(2) Submitting false or erroneous information; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in a farming operation.

(b) If the Deputy Administrator determines that any person has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of section 1001, 1001A, or 1001C of the Food Security Act of 1985 such person shall be ineligible to receive payments under the programs specified in § 1497.1 with respect to the year for which such scheme or device was adopted and the succeeding year.

§ 1497.7 Commensurate contributions.

In order to be considered eligible to receive payments under the programs specified in § 1497.1 an individual or entity specified in § § 1497.202 through 1497.210 must have:

(a) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(b) Contributions to the farming operation which are at risk.

§ 1497.8 Joint and several liability.

If two or more individuals or entities are considered to be one person and the total payment received is in excess of the applicable payment limitation provision, such individuals or entities shall be jointly and severally liable for any liability which arises therefrom. The provisions of this section shall be applicable in addition to any liability which arises under a criminal or civil statute.

§ 1497.9 Equitable adjustments.

Actions taken by an individual or an entity in good faith on action or advice of an authorized representative of the Deputy Administrator may be accepted as meeting the requirements of this part to the extent the Deputy Administrator deems necessary in order to provide fair and equitable treatment to such individual or entity.

§ 1497.10 Appeals.

(a) Any person may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title. With respect to such appeals, the applicable reviewing authority shall:

(1) Schedule a hearing with respect to the appeal within 45 days following receipt of the written appeal; and

(2) Issue a determination within 60 days following the hearing.

(b) The time limitations provided in paragraph (a) of this section shall not apply if:

(1) The appellant, or the appellant's representative, requests a postponement of the scheduled hearing;

(2) The appellant, or the appellant's representative, requests additional time following the hearing to present additional information or a written closing statement;

(3) The appellant has not timely presented information to the reviewing authority; or

(4) Any investigation by the Office of Inspector General is ongoing or a court proceeding is involved which affects the amounts of payments a person may receive.

(c) If the deadlines provided in paragraphs (a) and (b) of this section are not met, the relief sought by the producer's appeal will be granted for the applicable crop year unless the Deputy Administrator determines that the producer did not follow the farm operating plan which was presented initially to the county committee for the year which is the subject of the appeal.

(d) An appellant may waive the provisions of paragraphs (a) and (b) of this section.

§ 1497.11 Paperwork Reduction Act assigned number.

The information requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560–0096. Public reporting burden for these collections is estimated to vary from 30 minutes to 16 hours per response including time for reviewing instructions, scheduling existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0096), Washington, DC 20503.

Subpart B—Person Determinations

§ 1497.101 Limited partnerships, corporations and other similar entities.

(a) A limited partnership, corporation, or other similar entity shall be considered to be a person separate from an individual partner, stockholder, or member except that a limited partnership, corporation, or other similar entity in which more than 50 percent of the interest in such limited partnership, corporation, or other similar entity is owned by an individual (including the interest owned by the individual's spouse, minor children, and trusts for the benefit of such minor children) or by an entity shall not be considered as a separate person from such individual or entity.

(b) If the same two or more individuals or entities own more than 50 percent of the interest in each of two or more limited partnerships, corporations, or other similar entities engaged in farming, all such limited partnerships, corporations, or other similar entities shall be considered to be one person.

(c) The percentage share of the interest in a limited partnership, corporation, or other similar entity which is owned by an individual or other entity shall be determined as of April 1, or such other date as may be determined and announced by the Deputy Administrator. If a partner, stockholder, or member acquires an interest in the limited partnership, corporation, or other similar entity after such date, and on or before the harvest of the last program crop in the area as determined by the Deputy Administrator, the amount of any such interest shall be included in determining the total ownership interest of such partner, stockholder, or member.

(d) Where there is only one class of stock or other similar unit of ownership, an individual's or entity's percentage share of the limited partnership, corporation, or other similar entity shall be based upon the outstanding shares of stock or other similar unit of ownership held by the individual or entity and compared to the total outstanding shares of stock or other similar unit of ownership. If the limited partnership, corporation, or other similar entity has more than one class of stock or other unit of ownership, the percentage share of the limited partnership, corporation, or other similar entity owned by an individual or entity shall be determined by the Deputy Administrator on the basis of market quotations. If market quotations are lacking or are too scarce to be recognized, such percentage share shall be determined by the Deputy Administrator on the basis of all relevant factors affecting the fair market value of such stock or other unit of ownership, including the various rights and privileges which are attributed to each such class.

§ 1497.102 Trusts.

(a) A trust shall be considered to be a person separate from the individual income beneficiaries of the trust except that a trust which has a sole income beneficiary shall not be considered to be a separate person from such income beneficiary.

(b) Where two or more irrevocable trusts have common income beneficiaries (including a spouse and minor children) with more than a 50 percent interest, all such trusts shall be considered to be one person.

(c) A revocable trust and the grantor of such revocable trust shall be considered to be one person.

§ 1497.103 Estates.

If the deceased individual would have been considered to be one person with respect to an heir, the estate shall also be considered to be one person with such heir.

§ 1497.104 Husband and wife.

With respect to any married couple, the husband and wife shall be considered to be one person except that a husband and wife, who:

(a) Prior to their marriage were separately engaged in unrelated farming operations, will be determined to be separate persons with respect to such farming operations so long as such operations remain separate and distinct from any farming operation conducted by the other spouse, or

(b) Except as provided in paragraph (c) of this section, do not hold, directly or indirectly, a substantial beneficial interest in more than one entity (including themselves) engaged in farm operations that also receive farm program payments, the spouses may be considered as separate persons if each spouse otherwise meets the requirements under this part to be considered a separate person and is otherwise eligible to receive payment.

(c) With respect to any payments received under any program authorized by the Agricultural Act of 1949 for a crop of honey under which a gain is realized by the repayment of a loan at a level lower than the original loan level or a loan deficiency payment is made, and with respect to any loan forfeiture

provision of such act a husband and wife may hold, directly or indirectly, a substantial beneficial interest in an unlimited number of entities engaged in farm operations that also receive such payments.

§ 1497.105 Minor children.

(a) Except as provided in paragraph (b) of this section, a minor, including a minor who is the beneficiary of a trust or who is an heir of an estate, and the parent or any court-appointed person such as a guardian or conservator who is responsible for the minor shall be considered to be one person.

(b) A minor may be considered to be a separate person from the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor if the minor is a producer on a farm and the minor's parent or any court appointed person such as a guardian or conservator who is responsible for the minor does not have any interest in the farm on which the minor is a producer or in any production from such farm. In addition it must be determined that the minor:

(1) Has established and maintains a separate household from the minor's parents or any court-appointed person such as a guardian or conservator who is responsible for the minor and such minor personally carries out the farming activities with respect to the minor's farming operation for which there is a separate accounting; or

(2) Does not live in the same household as such minor's parent and:

(i) Is represented by a court-appointed guardian or conservator who is responsible for the minor; and

(ii) Ownership of the farm is vested in the minor.

(c) A person shall be considered to be a minor until the age 18 is reached. Court proceedings conferring majority on a person under 18 years of age will not change such person's status as a minor.

§ 1497.106 States, political subdivisions, and agencies thereof.

A State, political subdivision and agencies thereof shall be considered to be one person.

§ 1497.107 Charitable organizations.

Charitable organizations, including a club, society, fraternal or religious organization, shall be considered to be a separate person to the extent that such an entity is engaged in the production of corps as a separate person, except where the land or the proceeds from the farming operation may transfer to an entity which exercises control or authority over such organization.

§ 1497.108 Changes in farming operations.

Any change in a farming operation that would increase the number of persons to which the provisions of this part apply must be bona fide and substantive. If bona fide, the following shall be considered to be substantive changes in the farming operation:

(a) The addition of a family member to a farming operation in accordance with § 1497.208, except that such an addition will not affect the status of any other individual or entity which is added to the farming operation.

(b) With respect to a landowner only, a change from a cash rent to a share rent.

(c) An increase through the acquisition of land not previously involved in the farming operation of approximately 20 percent or more in the total cropland involved in the farming operation if such cropland has crop acreage bases which are at least normal for the area.

(d) A change in ownership by sale or gift of a significant amount of equipment from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of equipment will be considered to be bona fide and substantive only if the transferred amount of such equipment is commensurate with the new individual's or entity's share of the farming operation.

(e) A change in ownership by sale or gift of a significant amount of land from an individual or entity who previously has been engaged in a farming operation to an individual or entity who has not been involved in such operation. The sale or gift of land will be considered to be bona fide and substantive only if the transferred amount of such land is commensurate with the new individual's or entity's share of the farming operation.

(f) An increase through the acquisition of livestock not previously involved in the farming operation of approximately 20 percent or more in the total livestock involved in the farming operation.

(g) The Deputy Administrator may determine other bona fide changes to be substantive.

§ 1497.109 Honey producers.

(a) Any gain realized by an entity or individual from repaying a loan for a crop of honey at a lower level than the original loan level and any loan deficiency payment received, directly or indirectly, by an entity or individual under the program specified in § 1497.1(b)(1) shall be limited to the maximum payment limitation amount applicable to a crop as specified in § 1497.1(g). A payment made to an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

(b) The total value of honey forfeited to CCC in satisfaction of a price support loan by an entity or individual shall be limited to the maximum amount applicable to a crop as specified in § 1497.1(g). A forfeiture by an entity shall be attributed to each member of the entity in an amount determined by the Deputy Administrator, or a designee, to be representative of the percentage interest of the entity which is owned by such member.

Subpart C—Actively Engaged in Farming Determinations

§ 1497.201 General provisions for determining whether an individual or entity is actively engaged in farming.

(a) To be considered a person who is eligible to receive payments with respect to a particular farming operation, a person must be an individual or entity actively engaged in farming with respect to such operation.

(b) Actively engaged in farming means, except as otherwise provided in this part, that the individual or entity, independently makes a significant contribution to a farming operation, of:

(1) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

(c) In determining if the individual or entity is actively contributing a significant amount of active personal labor or active personal management the following factors shall be taken into consideration:

(1) The types of crops and livestock produced by the farming operation;

(2) The normal and customary farming practices of the area; and

(3) The total amount of labor and management which is necessary for such a farming operation in the area.

(d) In order to be considered to be actively engaged in farming an individual or entity specified in §§ 1497.202 through 1497.210 must have:

(1) A share of the profits or losses from the farming operation which is commensurate with the individual's or entity's contribution to the operation; and

(2) Contributions to the farming operation which are at risk.

§ 1497.203 Individuals.

An individual shall be considered to be actively engaged in farming with respect to a farming operation if the individual makes a significant contribution of:

(a) Capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) Active personal labor or active personal management, or a combination of active personal labor and active personal management.

§ 1497.203 Joint operations.

(a) A member shall be considered to be actively engaged in farming with respect to a farming operation if the member makes a significant contribution of:

(1) Capital, equipment, or land or a combination of capital, equipment, or land; and

(2) Active personal labor or active personal management or a combination of active personal labor and active personal management.

(b) If a joint operation separately makes a significant contribution of capital, equipment, or land, or a combination of capital, equipment, or land, and the joint operation meets the provisions of § 1497.201(d), the members of the joint operation who make a significant contribution of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation shall be considered to be actively engaged in farming with respect to such farming operation.

§ 1497.204 Limited partnerships, corporations and other similar entities.

A limited partnership, corporation, or other similar entity shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The partners, stockholders, or members collectively make a significant contribution, whether compensated or not compensated, of active personal labor, active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined beneficial interest of all the partners, stockholders, or members providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent.

§ 1497.205 Trusts.

A trust shall be considered to be actively engaged in farming with respect to a farming operation if:

(a) The entity separately makes a significant contribution to the farming operation of capital, equipment, or land, or a combination of capital, equipment, or land; and

(b) The income beneficiaries collectively make a significant contribution of active personal labor or active personal management, or a combination of active personal labor and active personal management to the farming operation. The combined interest of all the income beneficiaries providing active personal labor or active personal management, or a combination of active personal labor and active personal management must be at least 50 percent; and

(c) The trust has provided a tax identification number of the trust and a copy of the trust agreement to the county committee.

§ 1497.206 Estates.

(a) For two program years after the program year in which an individual dies the individual's estate shall be considered to be actively engaged in farming if:

(1) The estate makes a significant contribution of either:

(i) Capital, equipment, or land; or

(ii) A combination of capital, equipment, or land; and

(2) The personal representative or heirs of the estate collectively make a significant contribution of either:

(i) Active personal labor or active personal management; or

(ii) A combination of active personal labor and active personal management.

(b) After the period set forth in paragraph (a) of this section, the deceased individual's estate shall not be considered to be actively engaged in farming unless, on a case by case basis, the Deputy Administrator determines that the estate has not been settled primarily for the purpose of obtaining program payments.

§ 1497.207 Landowners

A person who is a landowner, including landowners with an undivided interest in land, making a significant contribution of owned land to the farming operation, shall be considered to be actively engaged in farming with respect to such owned land, if the landowner receives rent or income for such use of the land based on the land's production or the operation's operating results. A landowner also includes a member of a joint operation when the joint operation holds title to land in the name of the joint operation if the joint operation or its members submit adequate documentation to determine that, upon dissolution of the joint operation, the title to the land owned by the joint operation will revert to such a member of such joint operation.

1497.208 Family members.

With respect to a farming operation conducted by persons, a majority of whom are individuals who are family members, an adult family member who makes a significant contribution of active personal management, active personal labor, or a combination of active personal labor and active personal management shall be considered to be actively engaged in farming.

1497.209 Sharecroppers.

A sharecropper who makes a significant contribution of active personal labor to the farming operation shall be considered to be actively engaged in farming.

1497.210 Incapacitated individuals.

The determining authority shall take into consideration the circumstances involving individuals who have died or become incapacitated during the program year. If the individual dies or is incapacitated before a determination is made that the individual is "actively engaged in farming," the representative of the deceased individual's estate or the incapacitated individual, or other person if necessary, must provide the determining authority information that verifies that such individual did make a conscious effort to and would have been determined to be actively engaged in farming if not for the individual's death or incapacitation. If the individual dies or is incapacitated after being determined to be "actively engaged in farming," the determining authority shall allow such determination to be in effect for that program year. However, the following year such individual or the individual's estate must meet all necessary requirements in order to be determined to be "actively engaged in farming" for that year.

1497.211 Persons not considered to be actively engaged in farming.

An individual or entity who does not meet any of the provisions of §§ 1497.202 through 1497.210 and a landowner who rents land to a farming operation for cash or a crop share guaranteed as to the amount of the commodity shall not be considered to be actively engaged in farming.

1497.212 Hybrid seed producers.

The existence of a hybrid seed contract for a producer shall not be taken into account when making an actively engaged in farming determination with respect to such producer. However, all other provisions of this part must be met by such producer.

Subpart D—Permitted Entities

1497.301 Limitation on the number of entities through which an individual or entity may receive a payment and required notification.

(a) An individual shall receive a payment under a program specified in § 1497.1(a) either directly or indirectly from no more than three permitted entities. An individual which receives such a payment shall notify the county committee in the county in which such individual maintains a farming operation whether or not the farming operation is to be considered a permitted entity. An individual shall only receive such payments as a result of a farming operation conducted by:

(1) The individual and by no more than two entities in which the individual holds a substantial beneficial interest; or

(2) No more than three entities in which the individual holds a substantial beneficial interest.

(b) Except for entities specified in paragraph (c) of this section, each entity entering into a contract or agreement under a program specified in § 1497.1(a) shall, by the date the contract or agreement is submitted to the county committee, notify in writing:

(1) Each individual or other entity that acquires or holds an interest in such entity of the requirements and limitations provided in this part; and

(2) The county committee of the name and social security number of each individual and the name and taxpayer identification number of each entity that holds or acquires a substantial beneficial interest in such entity.

(c) Entities shall not be subject to the provisions of paragraph (b) of this section if, as determined by the Deputy Administrator:

(1) Because of the number of members of such entity no member is likely to have a substantial beneficial interest in such entity; and

(2) Such provisions would cause undue financial hardship on such entity.

(d)(1) An individual or entity that holds a substantial beneficial interest in more than the number of permitted entities specified in paragraph (a) of this section, for which a contract or agreement has been submitted to the county committee shall notify the county committee, in each county in which they conduct a farming operation, in writing of those entities that shall be considered as permitted entities by a date as determined by the Deputy Administrator following the date the contract or agreement was submitted to the county committee.

(2) The remaining entities in which the individual or entity holds a substantial beneficial interest shall be notified that such entity is subject to reductions in the payments earned by the remaining entity. Such a reduction shall be made in an amount that bears the same relationship to the full payment that the individual's interest in the entity bears to all interests in the entity. The remaining entity's members shall have the opportunity to adjust among themselves their proportionate shares of the program benefits in the designated entity or entities before such reductions are made.

(e) In an individual or entity fails to make such a notification as specified in paragraph (d) of this section, all entities in which the individual or entity holds a substantial beneficial interest shall be subject to a reduction in payments in the manner specified in paragraph (d)(2) of this section.

Subpart E—Cash Rent Tenants

§ 1497.401 Cash rent tenants.

(a) Effective for the 1989 crops, except as provided in paragraphs (b) of this section, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents that land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(a) shall be considered to be the same person as the landlord unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant farm:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of a significant amount of the equipment during the current crop year.

(b) Any cash rent tenant that because of any act or failure to act would not meet the provisions of either paragraph (a)(1) or (2) of this section and would therefore be considered to be the same person as the landlord under the provisions in paragraph (a) of this section shall not be considered the same person if the county committee had previously determined the tenant and landlord to be separate persons, and the landlord did not consent to or knowingly participate in the tenants's failure to meet the provision of either paragraph (a)(1) or (2) of this section.

(c) Any cash rent tenant that would be considered to be the same person as the landlord except for the provisions of paragraph (b) of this section shall be eligible to receive payments with respect to such cash rented land only to the extent that the cash rent tenant would be received such payments if the provisions of paragraph (b) of this section did not apply.

(b) Effective for the 1990 through 1995 crops, any tenant that is actively engaged in farming under the provisions of subpart C and conducts a farming operation in which the tenant rents the land for cash or a crop share guaranteed as to the amount of the commodity and receives benefits, including planted history credit under part 1413 of this chapter, with respect to such land under a program specified in § 1497.1(a) shall be ineligible to receive any payment with respect to such cash rented land unless the tenant makes a significant contribution to the farming operation of:

(1) Active personal labor and capital, land or equipment; or

(2) Active personal management and equipment. If such equipment is leased by the tenant from:

(i) The landlord, the lease must reflect the fair market value of the equipment leased.

(ii) The same individual or entity that is providing hired labor to the farming operation, the contracts for the lease of the equipment and for the hired labor must be two separate contracts which reflect the fair market value of the leased equipment and the hired labor and the tenant must exercise complete control over the use of the significant amount of the equipment during the current crop year.

PART 1498—FOREIGN PERSONS INELIGIBLE FOR PROGRAM BENEFITS

2. The authority citation for 7 CFR part 1498 continued to read as follows:

Authority: 7 U.S.C. 1308, et seq.

3. In § 1498.3, paragraph (a) is revised, paragraph (b) is redesignated as (c) and a new paragraph (c) is added; and in redesignated paragraph (c), the definitions of "Active Personnel Labor", "Capital", "Entity", "Land", and "Person" as removed.

§ 1498.3 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable of this part and all documents issued in accordance with this part, except as otherwise provided in part 1497 or this section.

* * * * *

(b) The terms defined in part 1497 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

* * * * *

Signed this 20 day of February 1991 in Washington, DC

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation, Administrator, ASCS

[FR Doc. 91-4527 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Public Meeting To Discuss Seismic and Geologic Siting Criteria for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The purpose of this meeting is to further the licensees' understanding of the topics within appendix A that the NRC staff is considering for potential revision and to present the current schedule for the revision of appendix A.

DATES: March 6, 1991, 1:30–3:30 p.m.

ADDRESSES: U.S. Nuclear Regulatory Commission, room 013, 5650 Nicholson Lane, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Andrew J. Murphy, Division of Engineering, Office of Nuclear Regulatory Research, Washington, DC 20555 Telephone (301–492–3860).

L. C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 91-4773 Filed 2-27-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-91-5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 29, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Indpendence Avenue., SW., Washington, DC 20591; telephone (202) 267–9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 22, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26414.
Petitioner: Rohr Industries, Inc.
Regulations Affected: 14 CFR part 1.
Description of Petition: To amend part 1 to add the following definition, "Serial Number", one in a series of consecutive numbers which provides a permanent means of unique identification, allowing for traceability back to the point of origin for a critical part or major assembly.
Petitioner's Reason for the Request: The petitioner believes that defining the term would promote accuracy and consistency throughout the industry.

[FR Doc. 91-4744 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Ch. I

[Summary Notice No. PR-91-6]

Petition for Rulemaking: Notice of Withdrawal of Petition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of withdrawal of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a request for withdrawal of a petition that requested the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations (FAR). The purpose of this notice is to notify the public that a petition for rulemaking to amend § 91.55 of the FAR to prohibit a person from commencing a flight under visual flight rules during the time period of 1 hour after sunset until 1 hour before sunrise (56 FR 806; January 9, 1991) has been withdrawn by the petitioner. A summary of the withdrawal is being published because of the significant public interest in the petition.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9688.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 21, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26373 (Originally published as 26273)
Petitioner: Mr. Ken McKay.
Regulations Affected: 14 CFR 91.55 (old § 91.105).
Description of Petition: To amend § 91.55 to prohibit a person from commencing a flight under visual flight rules during the time period of 1 hour after sunset until 1 hour before sunrise.
Petitioner's Request for Withdrawal: The petitioner requests that the petition for rulemaking be dropped. The letter was a term paper and meant to be a personal letter to Mr. Busey and was in no way intended to be interpreted as a petition for rulemaking. The petitioner requests that this action go no further towards becoming an actual amendment to the FAR.

[FR Doc. 91-4791 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-13-M

Office of Commercial Space Transportation

14 CFR Ch. III

[OST Docket No. 47425; Notice 91-4]

RIN 2105-AB77

Commercial Space Transportation; User Fees

AGENCY: Department of Transportation, Office of the Secretary, Office of Commercial Space Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Commercial Space Launch Act of 1984, as amended, grants the Department of Transportation authority to license and regulate commercial launch activities. Pursuant to the Independent Offices Appropriations Act of 1952, as amended, the Department is authorized to prescribe regulations establishing charges or fees for services provided to any person (other than U.S. Government personnel on official business) in carrying out the Department's responsibilities under the Commercial Space Launch Act. The purpose of this Notice of Proposed Rulemaking is to propose a schedule of fees for certain activities involved in reviewing a license application and issuing and administering a license authorizing the conduct of commercial launch activities. The proposed fee schedule includes a fixed license application fee of $2,500 per year, a variable pre-launch fee of $2.50 per pound of delivery capability of the launch vehicle to low earth orbit for an orbital launch, and a fixed per-launch fee of $1,000 for a suborbital launch.

DATES: Comments must be received by April 1, 1991.

ADDRESSES: Comments should be mailed in duplicate to Documentary Services Division, C–55, Docket 47425, U.S. Department of Transportation, room 4107, 400 Seventh Street, SW., Washington, DC 20590. In order to facilitate the Department's review, we request that three (3) additional copies of the comments be submitted and that commenters include a reference to the docket number of this Notice. Persons wishing to receive acknowledgement of receipt of their comments should include a self-addressed, stamped postcard. The Documentary Services Division will time and date-stamp the card and return it to the commenter. Copies of materials relevant to this rulemaking, including copies of all public comments, are kept in the Documentary Services Division, room 4107, at the above address. The docket is available for inspection between 9 a.m. and 5 p.m. et Monday through Friday, excluding federal holidays.

Any person may obtain a copy of this NPRM by submitting a written request to the Office of Commercial Space Transportation, Associate Director for Program Affairs, 400 Seventh Street, SW., room 5415, Washington, DC 20590, or by calling (202) 366–5770. Requests must include the number of this NPRM. Persons interested in receiving copies of future rulemaking notices should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

FOR FURTHER INFORMATION CONTACT: Elaine Orfanos David, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9305.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Pursuant to Executive Order No. 12465, issued in 1984, the Department of Transportation (DOT) was designated lead agency for commercial space launch activities. The Commercial Space Launch Act of 1984, as amended (Pub. L. 98–575 and 100–657), 49 U.S.C. App. 2601–2623 (CSLA), granted the Secretary of Transportation the authority to license and regulate United States commercial space launch activities. Among the stated purposes of CSLA are protection of public health and safety, safety of property, and national security and foreign policy interests of the United States. Moreover, in carrying out the CSLA, the Secretary is required to encourage, promote, and facilitate development of a competitive commercial space transportation sector.

The Secretary's responsibilities under the CSLA are implemented by DOT's Office of Commercial Space Transportation (OCST), which has three divisions: The Industry Policy and Planning Division, the Program Affairs Division, and the Licensing Programs Division. The Industry Policy and Planning Division provides research and analysis in support of DOT and other federal policy-making entities. The Program Affairs Division coordinates OCST activities and engages in industry and public outreach. Licensing and regulatory activities are the responsibility of the Licensing Programs Division. The licensing program covers launches and launch site operations. Thus far, licenses have been geared to specific launches or groups of launches and associated launch site activities. In the near future, OCST also expects to issue licenses to cover separately launches (either individually, or in groups), and on-going support activities.[1] OCST also expects to implement required licensing for commercial launch sites.

OCST's appropriations for fiscal year 1991 reflect Congressional sentiment that "a viable user fee structure should be established" for its regulatory activities, and the FY91 DOT Appropriations Act provides that "there may be credited up to $300,000 to this account funds received from user fees."

The general statutory authority for the establishment of federal user fee programs is the Independent Offices Appropriations Act of 1952, as amended (IOAA). The IOAA authorizes federal agencies to prescribe regulations establishing charges for services provided to any person (other than a

[1] These new types of licenses will reflect the manner in which commercial launch firms carry out their launch activities, and will address more accurately the risks of such activities for purposes of establishing financial responsibility requirements.

persons on official business of the U.S. Government). The intent of the IOAA is to make such services "self-sustaining to fullest extent possible," by establishing charges that are fair and based on (i) The costs to the government, (ii) the value of the goods or services provided to the recipient, (iii) public policy served, and (iv) other relevant facts.

Guidelines for federal agency user fee programs are provided in OMB Circular A–25, User Charges (52 FR 128, 7/1/87). The Circular serves as the implementation directive for the user fee authority in the IOAA, and is the only government-wide policy statement on user fees. The Circular directs that user fees be charged when there is a specific, identifiable beneficiary, but not when the beneficiary is the general public, or when the identification of the ultimate beneficiary is obscure. The OMB Circular also provides that all costs—direct and indirect—be recovered, but allows for exceptions to the general policy in certain circumstances. DOT has issued its own implementing directive on user fees, Order No. 2510.1A, which defers to the OMB Circular for purposes of criteria to determine user charges.

User Fees

A. General

User fees are charges levied on identifiable recipients for government-provided goods or services that confer benefits beyond those received by the general public. User fees are distinguished from general taxes in that user fees are chargeable against those who benefit from a government activity, while general taxes are not directly related to consumption of specific government-provided goods or services. User fees are linked to consumption of the goods or services, and are intended ideally to achieve cost recovery in the interests of efficiency. Thus, a user fee will result in a more efficient allocation of society's resources to the extent that the user bears the full cost of producing a product, rather than deferring those costs to the general public.

Despite administrative and judicial consideration of user fees and different user fee programs, there are no specific guidelines for allocating the costs of benefits among identifiable recipients and other beneficiaries of the government activity. A workable rule of thumb, recommended by the Administrative Conference of the United States (ACUS) following a legal and economic analysis of federal user fees (1 CFR 305.87–4), is that where the general public or third parties benefit significantly from government goods or services, user fees should not be expected to recover fully the cost of providing such goods or services.

There is also no precise formula for determining how large or small a portion of the cost of providing a government service should be recovered through user fees. Determining the true allocation of benefits among beneficiaries and quantifying the value of those benefits are rarely possible. One method of setting an upper limit on user fees that is usually (although not always) used is to limit total fee revenues to the government's cost in providing the service. However, fees below this level are appropriate where identification of the specific beneficiary is obscure and the service can be considered primarily to benefit broadly the general public; or where such fees may help to achieve other policy or program objectives. (See OMB Circular A–25 and ACUS Recommendations, *supra*.)

The House Committee on Appropriations has requested OCST to submit by January 15, 1991, a comprehensive report on the potential for cost recovery of OCST's licensing and related activities through a user fee program. The report is to address the ability of the industry to pay such fees, a proposed user fee structure and an assessment of the feasibility of recovering all OCST costs through user fees. Moreover, preliminary guidance for OCST cost recovery through user fee has been given in the FY91 DOT Appropriations Act. No strict maximum for fee revenues is set, but the Act provides that up to $300,000 in user fees collected for regulatory services may be applied to OCST's operations and research appropriation in fiscal year 1991, signalling Congressional expectation about an appropriate level of user fees in FY 91.

B. Factors Influencing OCST Proposal

As discussed above, user fees are assessed on government-provided goods and services that confer benefit on identifiable beneficiaries. The identifiable beneficiaries of OCST program activities are considered to be firms in the commercial space transportation industry that apply for and/or receive "permission to operate" from the government, required by the CSLA and necessary because commercial space transportation activities impose external costs on the general public.

Licensing activities are directed toward specific commercial space transportation firms that have applied for or are operating under an OCST-issued license, providing an easily identifiable recipient of many OCST services. In contrast, other program activities (industry policy and planning, program affairs and certain regulatory activities) are directed to regulating, and promoting the development and facilitating the financial success of, the industry as a whole rather than individual firms. Indeed, some of these other program activities benefit commercial space transportation firms that may not even require a license in any given time period, as well as other commercial space sector entities with an interest in the success of the industry (e.g., insurers, financial institution, suppliers and satellite manufacturers and operators). Moreover, administrative concerns (such as the cost of collecting user fees) are most easily resolved by linking user fees to the licensing process, which already has in place procedures and timetables for interacting with specific firms.

At this time, it is proposed that cost recovery through OCST's user fee program will be limited to a portion of the total cost of OCST's licensing activities. This is consistent with national policy guidance reflected in the CSLA and articulated in the National Space Policy. Government space policy links a robust commercial launch sector with advancing U.S. national security and foreign policy interests, enhancing opportunities for economic growth and maintaining international leadership in space. Moreover, federal agencies are directed to encourage, promote and facilitate the development of a viable, competitive commercial space transportation industry, and to avoid taking action that could deter or preclude such activities. Indeed, the U.S. government has placed special emphasis on space policy and programs and has established specific decision-making mechanisms in the Executive Office of the President to ensure furtherance of national space objectives.

The U.S. commercial space transportation industry has made great progress in the last several years. It is, however, still an emerging industry carrying out high-risk operations in the context of a very competitive international market. Certain elements of the industry are also on the cutting edge of space transportation technological development. Additional operational costs for these firms, whether or not passed on to other parties, could have serious adverse impacts on their ability to survive.

The Department's user fee proposal reflects these concerns. Thus, consistent with Congressional guidance set forth in the FY91 DOT Appropriations Act, user fees for fiscal year 1991 have been set at a level to recover on an average annual basis a total of $300,000, representing a portion of OCST's costs for personnel, contracts, and travel associated with review of license applications and issuance and administration of licenses.

C. User Fee Proposal

OCST proposes to institute a schedule of user fees directed at identifiable OCST program beneficiaries to compensate the Government for activities involved in the review of a license application and issuance and administration of a license authorizing a private party to conduct commercial space transportation operations.

These activities include routine administration and maintenance of a license application and the license as issued; a mission review and a safety review associated with evaluation of a license application; development of financial responsibility requirements, including determination of maximum probable loss and reciprocal waiver of claims agreements, and other conditions of a license; and monitoring compliance with licensing requirements. Mission review, safety review, and the establishment of financial responsibility requirements are prerequisites for the issuance of a license authorizing commercial launch activities. Demonstration of compliance with financial responsibility and other requirements of the license is a condition of the licensee's authorization to commence licensed actitivies.

In performing mission and safety reviews, OCST considers the launch range to be used, the purpose of the mission, the nature of the launch and related activities, the flight plan, and the type of vehicle. Once the license is issued, OCST carries out a program of monitoring the activities of the licensee to ensure compliance with requirements of the CSLA, OCST regulations, and the license. Compliance monitoring can include inspections of the vehicle and payload, launch site facilities, and activities associated with preparation for and conduct of a launch.

To establish financial responsibility requirements for licensed activities, as provided in section 16 of the CSLA, a licensee must demonstrate financial responsibility in amounts equal to maximum probable loss from certain claims resulting from licensed activities. Determination of maximum probable loss requires extensive risks analyses and assessments of historical accident data for the various launch proposals. Once established, DOT is required to ensure that firms meet financial responsibility requirements, either by obtaining insurance or otherwise demonstrating financial responsibility. Section 16 of the CSLA also provides for reciprocal waiver of claims agreements among the principal launch participants, including the U.S. Government. To carry out this responsibility, OCST prepares and executes such agreements and monitors execution by the other parties.

One way of implementing a user fee regime to recover costs of OCST licensing activities described above would be to track the cost that OCST incurs in reviewing a license application and issuing and maintaining in force each license, and to charge each licensee an amount equal to such cost. However, such a tracking system would have a number of disadvantages.

First, it would require a complex cost accounting system, in which OCST staff would be required to log in and out to register the time required to perform the numerous review and processing steps associated with each license application. The additional costs of developing and implementing such a system would have to be spread across the nine or ten firms likely to seek launch licenses during the next few years. This would result in a higher fee, in the final analysis, than an alternative system that does not rely on a precise cost-accounting system.

Another disadvantage of the cost-accounting approach to user fees arises out of the fact that certain types of license applications—namely, those that incorporate the use of an innovative technology, a new launch site, or some other factors affecting public safety or U.S. national interests, or those that respond to a new OCST launch license format—require extensive one-time administrative effort to review and process. Once work is completed on the first such license application, subsequent applications involving the same or similar elements require considerably less staff time. The effect of the cost-accounting approach in this context would be that the first of many prospective licensees submitting such applications bears the burden of a higher fee while successor licensees obtain the benefit of the review without the same costs.

Moreover, in the case of proposals reflecting innovative technologies, this result is undesirable. Disproportionately higher fees would create a disincentive to develop and use innovative technologies, particularly for entrepreneurial firms. Thus, reliance on a cost-accounting approach would contravene OCST's mission to encourage and facilitate such innovation.

A further disavantage of the cost-accounting approach is that it does not accurately correlate with the benefits conferred on a licensee from the licensing process. Issuance of a license authorizes the licensee to conduct launch activities; the value of the launch license to the licensee is typically measured according to the size and weight of a payload, which, in turn corresponds to the revenues the launch is expected to produce. The cost-accounting approach could thus result in a fee that is relatively low compared to the benefits enjoyed by the licensee, simply because the launch proposal reflects no new or untested elements that would require more extensive staff review.

Rather than a strict cost-accounting fee system, OCST proposes a two-tiered user fee designed to overcome the disadvantages of a cost-accounting method and allocate fees in a more equitable manner. The first tier involves a license application fee and an annual license renewal fee; the second tier involves a per-launch fee that varies for orbital launches and is fixed for suborbital launches. The license application and annual license renewal fees generally cover the routine costs of reviewing a license application and issuing and administering a license. These costs are generally constant and do not vary significantly by type of vehicle or launch site. The per-launch fee for orbital launches is intended to cover license-specific costs that vary by launch vehicle, launch site, flight plan, etc., and will be based on a parameter that correlates closely with the benefit a licensee receives from its authorization to conduct the launch. The annual fee, the surrogate parameter and the orbital launch fee will be established in such a way as to generate revenues to cover a significant portion of the costs of OCST licensing activities.

OCST believes that the two-tiered fee approach is less onerous than a lump sum fee to recover total costs at the time a license is issued. The two-tiered approach requires that a launch company pay only a relatively small fee to apply for a license and, if necessary, to renew the license on an annual basis. Once a license is issued, the balance of the fee is assessed no later than thirty days after launch which correlates generally with the time that costs are incurred by OCST for compliance monitoring activities and revenue accrues to the licensee. OCST believes that this type of fee system will not act as a barrier to entry into the industry and will ease the payment process for new and/or entrepreneurial entrants.

One theoretical drawback to OCST's approach is the possibility that user fee revenues in any given year could be relatively low if launches do not actually take place as scheduled. OCST invites public comment specifically on the question of whether a cost-accounting approach would be free of this disadvantage.

The proposed license application fee of $2,500 per license application would be payable at the time of application. The application fee would be required regardless of whether a license is granted or denied. To maintain a license in effect beyond one year, a renewal fee of $2,500 would be payable on or before the anniversary date of license issuance. Both the license application and the renewal fees would be nonrefundable.

The proposed per-launch fee structure for an orbital launch would be based on payload lift capability of the launch vehicle to low earth orbit (28.5 degree inclination, nominal 150 mile circular orbit). The fee would involve a per-launch charge of $2.50 per pound of payload lift capability. The proposed per-launch fee for a suborbital launch would involve a flat fee of $1,000.

OCST believes that total payload lift capability in a baseline mission profile is an appropriate surrogate parameter with which to calculate the per-launch fee for orbital launches because it tends to correlate quantity of benefit conferred with amount of fee assessed. The required payload capacity data are readily available, and the surrogate measure accounts for variations in vehicle configuration leading to different payload capacities. Companies that launch larger, more capable vehicles receive greater benefits from a license due to their greater revenue potentials than those that launch smaller, less capable vehicles that produce less revenue in a given launch operation. The per-launch fee for suborbital launches does not vary by vehicle payload capability because the benefit accruing to the licensee is relatively modest, performance capability comparisons are difficult to quantify for such launches, and the variance among different launch vehicles is not significant for purposes of OCST activities.

OCST invites public comment on the selection of a user fee approach that is based on considerations of efficiency, policy objectives and value of benefits conferred, as well as actual costs of providing the licensing services.

D. Other Surrogate Parameter Alternatives

Other surrogate parameters that were considered by OCST to generate equivalent revenues to cover licensing activities included: 1. Orbital launch mass; 2. Maximum probable loss determination; and 3. Orbital launch price. Each of these is discussed briefly below:

1. Launch Mass

A per-launch fee of approximately $60 per full thousand pounds of orbital launch mass at ignition was considered. Launch mass at ignition refers to total weight of the vehicle, its fuel and payload. While there are user fee precedents based on mass in other transportation fields, this surrogate can produce anomalous results for launch vehicles because there is no necessary correlation among vehicle mass, productivity, and value of benefit conferred to the licensee. Although straightforward and easy to calculate, the assessment does not always track with the value of the launch to the licensee when compared with the value of benefits accruing from the launch of other vehicles.

2. Maximum Probable Loss Determination

A per-launch fee of $190 per million dollars of maximum probable loss to third parties associated with the launch was also considered. The maximum probable loss is determined by OCST during its launch application review process. It is calculated after considering the launch vehicle, launch site, flight plan, payload, and other characteristics of the launch. This option was not selected as the surrogate parameter because the maximum probable loss can be influenced strongly by such factors as launch range facility location. It may also be affected by circumstances and events involving other entities in the space industry and outside the control or responsibility of the licensee (e.g., changes in safety procedures at the launch site).

3. Launch Price

A per-launch fee of approximately $600 per million dollars of the price charged for the orbital launch was also considered by OCST. This option was not selected because the price among individual launches may vary depending on circumstances surrounding the price competition. Further, launch price is often considered confidential by the launch company. The fee rate, therefore, could not be established precisely and would not necessarily generate the appropriate revenue levels from user fee collection.

E. Suborbital Launches

Suborbital launch fees will be considered as a separate category. Because of the relatively modest value received for any one launch activity, and the lack of correlation of specific performance parameters, a flat fee for suborbital launches is established at $1,000 per launch.

Economic Impact of Alternative Measures

The U.S. commercial space launch industry is comprised of a small but growing number of firms offering a broad spectrum of different launch capabilities at various prices. User fees will be levied directly on the launch companies, which presumably would absorb the added costs (in part or in full), or recover these costs from the payload owner. The extent to which a launch company can pass through user fees will depend on the level of competition for its services and its operating profit margins. In general, the user fees proposed today represent a very small fraction of the total revenues derived from a launch operation and are not expected to have a negative impact on the rate of growth of the commercial space launch industry or the financial viability of any of the existing firms in the industry.

In support of this rulemaking, OCST has prepared a "Regulatory Evaluation of User Fees," which is available in the docket supporting this rulemaking. The regulatory evaluation subdivides commercial space launch vehicles into three groups: (1) Large vehicles defined as having a Low Earth Orbit (LEO) delivery capacity that is greater than 6,500 pounds; (2) Small vehicles defined as having a LEO delivery capacity that is less than or equal to 6,500 pounds; and (3) Suborbital vehicles. In order to provide a hypothetical projection of revenues from user fees, the regulatory evaluation assumes that, through 1995, there will be eight large vehicle launches annually, ten small vehicle launches annually, and six suborbital launches annually. OCST believes there are realistic scenarios where annual launch levels may exceed these projections; however, for the purposes of establishing a hypothetical reference point for the regulatory evaluation, these launch levels were selected. The economic analysis estimates that the average annual per-launch revenues (excluding license application and renewal fees) from the preferred user fee option would be $351,000. The average annual per-launch revenues (excluding license application and renewal fees) from the other options would range between $285,000 and $397,000.

Section-by-Section Analysis

Part 413—Applications

Section 413.5 has been amended by adding a new subsection (d) that specifies that an annual fee of $2,500 must accompany any license application to conduct commercial space activities. This annual fee is applicable regardless of the length of time the license is in force. That is, whether the license is in force for one month or several years, the annual fee of $2,500 must be paid. The full $2,500 fee must accompany the license application even if the license is denied or is in force for less than one year. If the license is for activities that cover more than one year, the $2,500 fee must accompany the original license application, and subsequent annual payments of $2,500 must be paid on or before the anniversary date of issuance of the license, in order for the license to remain in force. The $2,500 payment, in the form of a certified check or wire transfer payable to the Department of Transportation, Office of Commercial Space Transportation, must accompany any and all license applications and is non-refundable. Application for any license, including a launch license as well as any other type of license, must be accompanied by a license application fee.

Part 415—Launch Licenses

Section 415 Subpart A has been amended by adding a new § 415.4 that requires that a fee be paid to OCST for each launch that is conducted under a launch license issued by OCST. The per-launch fee differs for orbital and suborbital launches, and must be paid in addition to the license application fee. For orbital launches, the fee will vary depending on the maximum delivery capacity of the vehicle. The fee is $2.50 per pound of payload lift capability to low earth orbit, and will be calculated based on a nominal 150 nautical mile circular orbit with a 28.5 degree inclination, launched from the Eastern Space and Missile Center in Florida. These parameters are relevant only for the calculation of the launch fee; they allow for a uniform frame of reference and do not necessarily correlate with the parameters of the specific mission to which the fee applies. For suborbital launches, a fee of $1,000 must be paid to OCST for each launch. This fee does not vary by vehicle payload capability because the benefit accruing to the licensee is relatively modest, performance capability comparisons are difficult to quantify for such launches, and the variance among different launch vehicles is not significant for purposes of OCST activities.

Section 415.9 has been added to specify that full payment of the launch fee must be received by OCST no later than 30 days after launch. The fee must be payable to the Department of Transportation, Office of Commercial Space Transportation, and must be paid by certified check or wire transfer.

Summary of Supporting Analyses:

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

OCST has determined that the proposed rule is non-major because it would not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices referenced in (2) above, or any of the significant adverse effects referenced in (3) above.

This proposed rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Department Regulatory Policies and Procedures

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves a matter on which there is substantial public interest or controversy and initiates a substantial change in policy. A regulatory evaluation analyzing the economic effects of this proposal has been prepared and placed in the public docket for this rulemaking.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an agency issues a proposed or final rule, it must prepare and make available a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), unless the agency's administrator certifies that the rule will not have a significant impact on a substantial number of small entities. On the basis of the analysis contained in the economic analysis document supporting this rulemaking with respect to the impact of this proposed rule on small entities, I hereby certify that this rule will not have a significant impact on a substantial number of small entities. This proposed rule, therefore, does not require a Regulatory Flexibility Analysis.

D. Paperwork Reduction Act

There are no reporting or record-keeping provisions included in this rule that require approval from the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 14 CFR Chapter III

Administrative practice and procedure, Space transportation and exploration, Launch operations, Launch vehicles, User fees.

Issued in Washington, DC, February 22, 1991.

Stephanie Lee-Miller,

Director, Office of Commercial Space Transportation.

For the reasons set out in the preamble, title 14 of the Code of Federal Regulations will be amended as follows:

PART 413—APPLICATIONS

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 9, 10, 11 and 20, Pub. L. 98-575 (49 U.S.C. App. 2601 note). * * * § 413.5 also issued under 31 U.S.C. 9701.

2. In § 413.5 paragraph (d) is added to read as follows:

§ 413.5 Application

* * * * *

(d) *Payment with Application.* An application for a license authorizing the conduct of commercial space activities must be accompanied by a license application fee of two thousand, five hundred dollars ($2,500.00).

(1) The license application fee shall be payable upon submission of the application and shall be non-refundable.

(2) The license application fee shall be paid by certified check or wire transfer made payable to the Department of Transportation, Office of Commercial Space Transportation.

(3) Any license issued pursuant to § 413.13 which authorizes activities that continue beyond twelve (12) months may be administratively renewed annually upon payment of a two thousand five hundred dollar ($2,500.00) license application fee, payable on or before the anniversary date of the license issued pursuant to § 413.13.

PART 415—LAUNCH LICENSES

3. The authority citation for part 415 continues to read.

Authority: Secs. 6, 7, 8 and 9, Pub. L. 98–575 (49 U.S.C. App. 2601 note). * * * §§ 415.4 and 415.9 also issued under 31 U.S.C. 9701.

4. A new § 415.4 is added to read as follows:

§ 415.4 Launch fee.

(a) Each licensee shall pay a launch fee for each launch conducted by the licensee pursuant to a launch license.

(b) The launch fee for orbital launches is to be calculated based on maximum payload life capability of the launch vehicle to a nominal 150 nautical mile circular earth orbit with a 28.5 degree inclination launched from the Eastern Space and Missile Center, Florida.

(c) The launch fee for an orbital launch shall be $2.05 per pound of payload lift capability as defined in subsection (b) of this section.

(d) The launch fee for a suborbital launch shall be a flat rate of $1,000 per launch.

5. In Section 415.9 paragraph (e) is added to read as follows:

§ 415.9 Standard conditions.

* * * * *

(e) Provide, no later than 30 days after launch, full payment of the launch fee by certified check or wire transfer made payable to the Department of Transportation, Office of Commercial Space Transportation.

[FR Doc. 91–4586 Filed 2–27–91; 8:45am]

BILLING CODE 4910–62–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–ANM–16]

Proposed Amendment, Coeur d'Alene Control Zone, Coeur d'Alene, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho, by changing the hours of effectiveness. Currently, the control zone is effective part-time. An Automated Weather Observation System (AWOS) was recently commissioned to provide 24-hour official weather reporting capability for the airport, which makes it possible to designate a full-time control zone. This change would extend the time in which aircraft operating under instrument flight rules could be separated by air traffic control.

DATES: Comments must be received on or before March 29, 1991.

ADDRESSES: Send comments on the proposal to: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 90–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 90–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration. Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, ANM–530.

Communications must identify the notice number of this NRPM. Persons interested in being placed on mailing list for future NRPM's should also request a copy of Advisory Circular No. 11–2A which best describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the effective time of the Coeur d'Alene Control Zone, Coeur d'Alene, Idaho from part-time to full-time. Recent commissioning of an Automated Weather Observation System (AWOS) at the Coeur d'Alene airport provides 24-hour official weather reporting capability on frequency 135.075 and via telephone. Currently, airport operations and Empire Airways personnel are taking hourly weather observation during the control zone effective hours Monday through Friday 1400–0300 UCT. This change would extend the time in which aircraft operating under instrument flight rules could be separated by air traffic control.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Coeur d'Alene, Idaho [Revised]

Within a 5-mile radius of Coeur d'Alene Air Terminal, Coeur d'Alene, Idaho, (lat. 47°46'28"N., long. 116°49'05"W.); within 4 miles each side of the Coeur d'Alene VOR 251° radial extending from the 5-mile radius zone to 7 miles southwest of the airport.

Issued in Seattle, Washington, on February 7, 1991.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 91–4752 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Ch. IX

Natural Resource Damage Assessments Under the Oil Pollution Act of 1990

AGENCY: National Oceanic and Atmospheric Administration (NOAA), of the Department of Commerce.

ACTION: Extension of comment period and announcement of public meeting.

SUMMARY: On December 28, 1990 (55 FR 53478), NOAA provided advance notice of proposed rulemaking concerning the natural resource damage assessment and restoration regulations required by the Oil Pollution Act of 1990. NOAA requested comments, recommendations, ideas, and technical information concerning appropriate assessment procedures, as well as suggestions concerning the rulemaking process. Comments were to be received no later than February 26, 1991. NOAA has received requests to extend the comment period on that advance notice. Through this notice, NOAA announces the extension of the comment period to April 1, 1991, and announces a public meeting concerning this rulemaking process on March 20, 1991, in the Department of Commerce Auditorium in Washington, DC.

DATES: Requests to speak and present information during this public meeting must be received no later than March 15, 1991. The time for receiving written comments concerning the assessment procedures and the rulemaking process has been extended to April 1, 1991.

ADDRESSES: Requests to participate in the public meeting are to be submitted to Bill Triplett, Office of General Counsel, NOAA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; (202) 377–1406.

FOR FURTHER INFORMATION CONTACT: Randall Luthi, Office of General Counsel, NOAA, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230, telephone (202) 377–1409, or Linda Burlington, Office of General Counsel, NOAA, c/o NOAA/N/OMA, 6001 Executive Boulevard, room 323, Rockville, Maryland 20852, telephone (301) 443–8865.

SUPPLEMENTARY INFORMATION:

I. Background

The Oil Pollution Act of 1990 ("Act"), Public Law 101–380, provides for the prevention of, liability for, removal of, and compensation for the discharge of oil into or upon the navigable waters or adjoining shorelines of the United States, including the resources of the exclusive economic zone. Section 1006(b) of the Act provides for the designation of Federal, State, Indian, and foreign officials to act on behalf of the public as trustees for the nation's natural resources. In the event that natural resources are injured, lost, destroyed, or the loss use of natural resources occurs as a result of a discharge of oil covered by the Act, these officials are to assess natural resource damages under section 1002(b)(2)(A) of the Act, present a claim, recover damages as a result of injury to natural resources, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

Section 1006(e) of the Act provides that the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, shall promulgate regulations establishing procedures for the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources as covered by the Act. Natural resource damage assessments, conducted by the Federal, State, or Indian trustees, in accordance with the procedures promulgated through the Under Secretary of Commerce, shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under the Act. Sums recovered by the natural resource trustees as natural resource damages shall be retained by the trustees in a revolving trust account, without further appropriation, for use only to reimburse the trustees' assessment costs or pay the costs incurred by the trustees in planning and implementing the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

In the promulgating of these regulations, the Under Secretary is to consult with the Administrator of EPA, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies. Congress directed that these regulations are to be promulgated not later than two years after the enactment of the Act, no later than August 18, 1992.

II. Public meeting

In order to gather information to aid in promulgating these regulations, NOAA will hold a meeting open to the public on March 20, 1991, in the Department of Commerce Auditorium, at 14th St. and Constitution Ave., NW., in Washington, DC, from 9:30 a.m. to 4:00 p.m. This meeting will be open to the public, however representatives of organizations that have a direct interest in the assessment process are encouraged to attend. Such interested organizations can include, but not be limited to: Federal response and trustee agencies; States; foreign trustees; Indian tribes; industries, or industry organizations; environmental organizations; natural scientists; and economists.

III. Meeting Agenda Items

Due to the necessary time constraints of the meeting, it is suggested that commenters focus their oral remarks to the following issues:

(1) *Phase approach to rulemaking:* NOAA is currently considering phased approach to accomplish this rulemaking, i.e., first, proposing a form of compensation formula by the end of the calendar year; second, model for use by the natural resource trustees in certain circumstances in the near future; and finally, proposing detailed assessment procedures applicable to all spills before the statutory deadline of August 1992.

Comments are requested upon the use of this approach.

(2) *Feasibility of a compensation formula:* Comment is sought on whether it is technically feasible to develop a compensation formula that would fairly determine damages for a wide variety of spills in all U.S. navigable waters (fresh and salt) and waters within the exclusive economic zones, including adjoining shorelines.

(3) *Compensation formula or Type A computer model:* NOAA is contemplating first developing a compensation formula. Therefore, comment is sought on whether a new compensation formula should be developed or whether the computer model currently being used should be revised to determine damages for injuries to natural resources as a result of a discharge of oil or release of a hazardous substance. The model, referred to as the Type A model, 43 CFR 11.41, was developed under the authority of the Comprehensive Environmental Environmental Response, Compensation, and Liability Act (CERCLA) and establishes an amount of monetary damages based upon average use values. Since the concept of a compensation formula and the Type A model both represent a simplified procedure for determining damages, NOAA seeks comment on whether the use of a compensation formula would be appropriate in some spills, while the Type A model, revised to include average restoration costs and average use and nonuse values, would be more appropriate in other spills.

(4) *Measure of damages:* The strategy of a compensation formula to determine damages for injuries to natural resources is similar to the concept of "liquidated damages" or a "workmen's compensation" program, i.e., a predetermined schedule of monetary damages triggered by an event, in this case an oilspill. As such, any formula would be an estimate of appropriate damages and not based upon actual costs of restoration plus lost use and nonuse values. NOAA seeks comment concerning the measure of damages for a compensation table. For example, should damages be determined upon a dollar amount per gallon formula? If so, what is an appropriate range of dollars for that dollar figure.

(5) *Bases for habitat classification:* Since it is likely that any compensation formula will be based upon a combination of factors, including toxicity and/or persistence of oil and characteristics of the affected habitat, comment is sought concerning methods and ideas of how to determine habitat and oil classifications. For example, should there be different classifications for different times of the year? What types of factors should be considered in order to develop consistent habitat and oil toxicity and/or persistence classifications for U.S. navigable waters and/or adjoining shorelines and the exclusive economic zones?

(6) *Regional specificity in the compensation table:* Comment is sought concerning the development of a compensation formula, which will reflect regional characteristics. For example, what areas could be logically grouped into regions, either in terms of habitat or geographical factors? Should a regional approach be appropriate, what components within a compensation formula should be national in nature and which should be region-specific? What role should the States have in determining the regional components of the formula?

(7) *Benefits of more meetings before the proposed rule:* Comment is sought concerning the advisability of holding more public meetings before drafting a proposed rule. Would it be more beneficial to hold more public meetings after NOAA has a proposal ready to only which the public could respond?

IV. Information

While commenters will not be required to address only the above-mentioned agenda items, it is suggested that comments concerning other issues be submitted in writing. It is not required for all those submitting written comments either during the original comment period ending February 26, 1991, or before April 1, 1991, to submit oral comments at the public meeting. All comments received, either written or oral, will be a part of the administrative record and will be fully considered during the rulemaking process.

Parties interested in presenting information during this meeting should contact NOAA by March 15, 1991. NOAA will set the agenda and schedules based on the number of requests received and the interests represented. Speaking times may be rather brief depending upon the number of people who wish to present information. Parties representing similar interests may be asked to combine information and to choose one member to present that information. Written presentations can be submitted in lieu of oral remarks. Participants will be contacted during the week of March 18 with topics and times of presentations.

Authority: Sec. 1006(e), Pub. L. 101-380.

Dated: February 22, 1991.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 91-4606 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-189-84]

RIN 1545-AH46

Debt Instruments With Original Issue Discount; Contingent Payments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains amendments to proposed regulations relating to certain contingent instruments that are issued for cash or publicly traded property. These amendments would tax these contingent instruments in accordance with their economic substance. They would provide needed guidance to issuers and holders of these contingent instruments.

DATES: Written comments and requests for a public hearing must be received by May 3, 1991. The amendments are proposed to be effective for debt instruments issued on or after February 20, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention CC:CORP:T:R (FI-189-84), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Frederick S. Campbell-Mohn at (202) 566-6456 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1275(d) of the Internal Revenue Code grants the Secretary the authority to prescribe under the original issue discount ("OID") provisions of the Code regulations concerning the tax treatment of obligations that provide for contingent payments. Proposed regulations under section 1275(d) were issued on April 8, 1986 (51 FR 12022). Paragraphs (e) and (f) of § 1.1275-4 of the proposed regulations provide rules for contingent payment obligations that are issued for cash or publicly traded property.

The proposed regulations generally view a contingent payment obligation entirely as debt. If a contingent payment obligation is issued for cash or publicly traded property and the sum of all the noncontingent payments under the obligation is equal to or greater than its issue price, § 1.1275-4(e) of the proposed regulations provides for separate treatment of the noncontingent and the contingent payments. The noncontingent payments are treated as a separate noncontingent debt instrument under sections 1271 through 1275 of the Code, and all of the issue price of the obligation is allocated to the right to receive the noncontingent payments. The contingent payments are treated entirely as interest and are generally included in the gross income of the holder and deducted by the issuer in the taxable year in which the contingency becomes fixed.

Section 1.1275-4(e) of the proposed regulations ignores the economic substance of many contingent payment obligations. A contingent payment obligation may be equivalent to a combination of a noncontingent debt instrument and one or more options or other property rights. Treating the contingent payment obligation entirely as debt results in timing and character of income different from that which would result if the debt instrument and other property rights were treated as separate instruments.

Explanation of Provisions

The amendments to the proposed regulations apply to any contingent instrument that: (1) Is issued for cash or publicly traded property; (2) provides for noncontingent payments equal to or greater than the instrument's issue price; and (3) provides for one or more contingent payments determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property. These instruments are removed from the scope of § 1.1275-4(e) and made subject to new § 1.1275-4(g).

The amendments to the proposed regulations focus on the economic substance of the contingent instruments to which they apply and divide each instrument into its component parts. The issue price of the contingent instrument is allocated to the components on the basis of their respective values, and each component is taxed as it would have been taxed had it been issued as a separate instrument. The intent underlying the regulations is that there should be no tax advantage afforded a contingent instrument as compared to separate instruments that, taken together, have similar economic effect.

If the sum of the noncontingent payments on a contingent instrument equals or exceeds the issue price of the instrument, one component of the instrument clearly is noncontingent debt. The portion of the issue price of the contingent instrument that reflects the right to receive the noncontingent payments is the issue price of the noncontingent debt component. Once the issue price of the noncontingent debt component is determined, the OID accruals can be computed under sections 1271 through 1275 in the same manner as with any noncontingent debt instrument.

The components of the instrument that provide for contingent payments are not debt. Those components constitute one or more options or other property rights. In some cases, identical or nearly identical property rights may be available in the market; in other cases, similar property rights may not be available in the market as separate instruments. In either situation, the rights to the contingent payments will have the economic characteristics of one or more options or other property rights and can be taxed as they would be taxed if issued separately.

In separating a contingent instrument into its component parts, the amendments to the proposed regulations recognize that a contingent instrument is similar to an investment unit described in section 1273(c)(2) of the Code. Thus, rules similar to those prescribed for investment units are appropriate in determining the value of each component of a contingent instrument. Unless the contingent components are substantially equivalent to publicly traded property, the issue price of the contingent instrument is allocated to its components based on the rules of § 1.1273-2(d)(2)(iv) of the proposed regulations, which apply to an investment unit in which neither the property right nor the debt instrument is publicly traded.

This approach could be extended to all convertible debt instruments to identify the debt and option components of those instruments. Consistent with § 1.1273-2(e) of the proposed regulations, however, § 1.1275-4(a) of the proposed regulations has been amended to provide expressly that an instrument will not be subject to the proposed regulations as amended merely because the instrument is convertible into the stock or another debt instrument of the issuer. An instrument that has a cash settlement conversion right or that is convertible into the stock or a debt instrument of another corporation, however, will be separated into its component parts. Similarly, consistent with § 1.1272-1(f)(4), the proposed regulations have been amended to provide expressly that an instrument will not be subject to the proposed rules merely because the instrument is subject to a put or call option or an option to extend. Comments are invited regarding the appropriateness of continuing these exclusions.

The proposed regulations under § 1.1275-4(g) generally apply only when the sum of the noncontingent payments under the contingent instrument equals or exceeds its issue price, and only when one or more contingent payments are determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property. This approach, however, could be extended to other contingent instruments. For example, this approach could be applied to all instruments subject to § 1.1275-4(e) of the proposed regulations without regard to the way in which the contingent payments are determined. Moreover, it could be applied to contingent payment obligations subject to § 1.1275-4(f) of the proposed regulations, under which some or all of the repayment of principal is contingent. Many contingent principal instruments could be separated into debt components and components similar to futures or forward contracts. Consideration is being given to extending the application of the new rules, and comments on this subject are invited.

Section 1.1275-4(f) of the proposed regulations is amended to provide that an instrument with an insubstantial amount of contingent principal may nonetheless be subject to the rules of § 1.1275-4(g) if it more appropriately is taxed under those rules. The purpose of this amendment is not to change the rules for most contingent principal instruments, but to deal with instruments that are designed to avoid the scope of § 1.1275-4(g).

In addition to comments regarding the possible extension of the approach of these amendments to contingent payment obligations not currently within their scope, the Service invites comments on the merits of alternative approaches. For example, current income or loss could be determined by reference to changes in the market value of the contingent payment obligation ("marking to market") or in the value of the index or property right underlying the contingency ("marking to index"). Some alternative approaches might not feasibly be applied to all contingent instruments. The Service invites

BEST COPY AVAILABLE

comments on whether it is preferable to apply different approaches to different types of instruments or instead to attempt to tax all contingent payment obligations under a single set of rules. For example, it might be possible to allocate issue price between contingent and noncontingent payments as under § 1.1275–4(g), but tax all contingent payments under rules similar to § 1.1275–4(f). Any single set of rules should ensure that the timing and character of income and loss are consistent with the economic substance of the contingent payment obligations.

In general, a bond denominated entirely in a single nonfunctional currency (with no contingencies) is not subject to these rules. See § 1.988–2T(b) and Ann. 88–92, 1988–32 I.R.B. 46. The Service, however, may amplify or amend these rules in regulations published under section 988 addressing certain foreign currency obligations (e.g. dual currency bonds). The Service may also amplify or amend these rules in regulations published under section 897 addressing certain transactions relating to United States real property interests. Further, the amendments to the proposed regulations do not affect the possible characterization of income from certain financial products as income equivalent to interest under section 954(c)(1)(E) or the allocation and apportionment of interest expense under section 861.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these amendments to the proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)(1) of the Code, these amendments will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before adopting these amendments to the proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Frederick S. Campbell–Mohn, Office of Assistant Chief Counsel (Financial Institutions & Products), Office of Chief Counsel, Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.1271–1 through 1.1297–3

Income taxes, Capital gain and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.1275–4 also issued under 26 U.S.C. 1275(d).

Par. 2. Section 1.1275–4, as proposed on April 8, 1986 (51 FR 12087), is amended as follows:

1. Paragraph (a) is revised.
2. A new sentence is added to the end of paragraph (e)(1).
3. A new sentence is added to the end of paragraph (f)(1).
4. Paragraph (g) is redesignated as paragraph (h) and a new paragraph (g) is added.
5. The added and revised provisions read as follows:

§ 1.1275–4 Contingent payments.

(a) *Applicability.* The rules of this section apply to debt instruments that provide for one or more contingent payments (as defined in paragraph (b) of this section). Contingent payments under a debt instrument subject to section 1274 are governed by the provisions of paragraphs (c) or (d) of this section, whichever is applicable. Contingent payments under a debt instrument issued for cash or publicly traded property are governed by the provisions of paragraphs (e), (f), or (g) of this section, whichever is applicable. Except as otherwise provided in paragraph (g) of this section, nothing in this section or in the regulations under sections 1271 through 1274 shall influence whether an instrument calling for contingent payments is properly treated as debt, equity, or an option, future, forward or other financial instrument, or whether such instrument evidences a valid indebtedness for Federal income tax purposes. An instrument shall not be subject to the rules of this section merely because the instrument contains a right to convert the instrument into stock or another debt instrument of the issuer. An instrument also shall not be subject to the rules of this section merely because the instrument is subject to a put or call option or an option to extend. See § 1.1272–1(f)(4) for rules governing such instruments.

* * * * *

(e) *Certain debt instruments issued for cash or publicly traded property*—(1) *Separation into noncontingent and contingent components.* * * * Notwithstanding the preceding sentence, the rules of paragraph (g) of this section apply to a contingent instrument within the meaning of paragraph (g)(1) of this section.

* * * * *

(f) *Certain debt instruments issued for cash or publicly traded property that provide for contingent principal*—(1) *In general.* * * * Notwithstanding the preceding sentence, the Commissioner may apply the rules of paragraph (g) of this section to an instrument that would be subject to those rules but for the fact that the issue price of the instrument exceeds the total noncontingent payments by an insubstantial amount.

* * * * *

(g) *Certain debt instruments issued on or after February 20, 1991, for cash or publicly traded property that provide for contingent payments determined by reference to publicly traded property*—(1) *Applicability.* This paragraph applies to a debt instrument (a "contingent instrument") that is issued on or after February 20, 1991, for cash or publicly traded property, that provides for noncontingent payments equal to or greater than the issue price (regardless of whether designated as interest or principal), and that provides for one or more contingent payments determined, in whole or in part, by reference to the value of publicly traded stock, securities, commodities, or other publicly traded property.

(2) *Separation into noncontingent and contingent components.* In the case of a contingent instrument, the noncontingent payments shall be subject to the rules described in paragraph (g)(3) of this section, and the contingent payments shall be subject to the rules described in paragraph (g)(4) of this section.

(3) *Treatment of noncontingent payments.* The payments to which paragraph (g)(3) of this section applies shall be treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. Unless the rights to the contingent payments are substantially equivalent to publicly traded property, the issue price of this separate noncontingent debt instrument is determined in the same manner as if the separate noncontingent debt instrument were a debt instrument issued as part of an investment unit to which § 1.1273–2(d)(2)(iv) applied. The stated redemption price at maturity is determined under § 1.1273–1(b), and the yield is determined under § 1.1272–1(f), all without reference to the contingent payments. The *de minimis* rule of section 1273(a)(3) and § 1.1273–1(a)(3) shall not apply to the noncontingent debt instrument.

(4) *Treatment of contingent payments*—(i) *In general.* The payments to which paragraph (g)(4) of this section applies shall be treated in accordance with their economic substance as payments pursuant to one or more options or other property rights. Unless the rights to the contingent payments are substantially equivalent to publicly traded property, the price of the rights is determined by substracting the issue price of the separate noncontingent debt instrument from the issue price of the contingent instrument.

(ii) *Certain delayed contingent payments*—(A) *In general.* In the case in which a contingent payment is not due within six months of the date on which the amount of the payment becomes fixed, the parties shall be treated as if the borrower had issued a separate debt instrument on the date the amount of the payment becomes fixed, maturing on the date that the payment is due. This separate debt instrument shall be treated as a debt instrument to which section 1274 applies. The stated principal amount of this separate debt instrument shall be the amount of the payment that becomes fixed. An amount equal to the issue price of the separate debt instrument shall be accounted for as if an amount equal to such issue price had been paid by the borrower to the lender on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, all payments under the debt instrument shall be discounted from the date that the payment is due to the date that the payment becomes fixed. The amount of a contingent payment shall be treated as fixed even if, once fixed, the payment is payable in the future together with payments that are subject to further contingencies.

(B) *Special rules.* In applying section 1274 to a separate debt instrument described in paragraph (g)(4)(ii) of this section—

(*1*) The test rate shall be based on the term of the contingent instrument, and

(*2*) Any provision calling for a test rate other than the applicable Federal rate shall apply if, and only if, the provision would have been applied to the contingent payment instrument if it had been issued for nonpublicly traded property.

(5) *Example.* The provisions of paragraph (g) of this section may be illustrated by the following example:

Example. (i) On April 1, 1991, *A* purchases *B*'s contingent payment instrument at original issue for cash of $1,000,000. The instrument, with a term of five years, calls for a noncontingent payment at maturity of $1,000,000 and a contingent payment at maturity equal to $1,000,000 multiplied by the percentage increase, if any, in a nationally known composite price index of publicly traded stocks ("the Index") over the term of the instrument. Assume that there is no publicly traded property that is substantially equivalent to the right to the contingent payment. Also assume that the mid-term, applicable Federal rate with semiannual compounding for April 1991 is 8.15 percent and that the parties agree in accordance with the rules of § 1.1273–2(d)(2)(iv) to discount the separate noncontingent debt instrument at 9 percent compounded semiannually.

(ii) Under paragraph (g)(3) of this section, the noncontingent payment of $1,000,000 at maturity is treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. Based on a discount rate of 9 percent, compounded semiannually, the issue price of the separate noncontingent debt instrument equals $643,927.68. The stated redemption price at maturity (under § 1.1273–1(b)(1)) is $1,000,000.

(iii) Under paragraph (g)(4) of this section, the contingent payment is treated in accordance with its economic substance. In this case, the right to the contingent payment is equivalent to a cash settlement option on the Index. The portion of the $1,000,000 issue price that is allocated to the contingent component equals $356,072.32 ($1,000,000—$643,927.68). The contingent payment is treated in the same manner as a payment pursuant to a cash settlement option on the Index.

* * * * *

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–4676 Filed 2–26–91; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 12

[CGD 84–068]

RIN 2115–AC02

Certification of Seamen

AGENCY: Coast Guard, DOT.

ACTION: Notice of withdrawal.

SUMMARY: On February 4, 1985, the Coast Guard published in the Federal Register (50 FR 4875) an advance notice of proposed rulemaking (ANPRM) requesting comments on a revision to title 46, Code of Federal Regulations, part 12, Certification of Seamen. The Coast Guard is now withdrawing this rulemaking (CGD 84–068) because: (1) Several of the items to be covered by the revision have subsequently been accomplished in individual rulemakings, and; (2) since the publication of the ANPRM, Congress enacted the Oil Pollution Act of 1990 (OPA), which requires regulatory reform of other subjects addressed in the ANPRM.

DATES: This withdrawal is effective on February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Mack C. Gould, Merchant Vessel Personnel Division, (202) 267–0224.

SUPPLEMENTARY INFORMATION: In the ANPRM, it was noted that changes needed to be made to 46 CFR part 12 for several reasons: To account for amendments to the statutes; to revise physical standards; to provide for drug and alcohol testing; to establish basic training requirements and qualifications for entry level mariners; to require firefighting training for mariners; to establish Able Seaman—Sail and Able Seaman—Fishing Industry endorsements; and to establish Mobile Offshore Drilling Unit (MODU) regulations for unlicensed personnel.

Since the publication of the ANPRM, several of these changes have been the subject of other rulemakings, including drug and alcohol testing requirements and firefighting training. In addition, the OPA mandates certain changes to the regulations, including renewable Certificates of Registry and Merchant Mariner Documents (MMDs), access to the National Driver Register, and foreign vessel manning standards. The remaining changes intended in the ANPRM which are not completed by a separate rulemaking and are not affected by OPA will be addressed in a forthcoming rulemaking regarding 46 CFR part 12. These changes include: A

general updating of the regulations with new U.S. Code citations and use of current terminology; revision of the minimum physical standards for seamen, including requiring retention physical examinations; establishment of basic training and qualification requirements for entry rating MMDs; updating the Qualified Member of Engine Department (QMED) rating to more accurately reflect current technology and the needs of the industry; establishment of Able Seaman—Sail and Able Seaman—Fishing Industry endorsements; establishment of MODU regulations for unlicensed personnel; issuance of Temporary Certificates of Service/Identification; and issuance of entry rating MMDs to foreign seamen.

Dated: February 21, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 91-4740 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CC Docket No. 90-623, DA 91-177]

Computer III Remand Proceedings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Common Carrier Bureau granted requests for extension of time to file comments in CC Docket No. 90-623. Because of the complex issues raised by the Commission's Notice of Proposed Rulemaking and the states' interest in participating in this proceeding, interested parties have an additional twenty-one days to file comments. Interested parties are to file comments by March 8, 1991, and reply comments by April 8, 1991.

DATES: Comments must be received on or before March 8, 1991; replies must be received on or before April 8, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Melissa Newman, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Order

Adopted: February 13, 1991.
Released: February 13, 1991.

By the Chief, Common Carrier Bureau:

In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards.

1. The National Association of Regulatory Utility Commissioners (NARUC) and the Pennsylvania Public Utility Commission (Pennsylvania PUC) have requested an additional twenty-eight days for filing comments in this proceeding.[1] NARUC states that any expression of intent by the Federal Communications Commission to preempt state regulation affects the ability of NARUC's members to carry out their statutory obligations. NARUC states that an extension would enable it to develop a formal consensus position at its winter meetings, during the last week of February. The Pennsylvania PUC also states that any decision to preempt state regulation would have an impact on its ability to carry out its statutory responsibilities. The Pennsylvania PUC states that it is conducting a proceeding to determine whether to require telephone companies to file tariffs for the provision of enhanced services, and whether nonstructural or structural safeguards are appropriate for the provision of enhanced services. Both NARUC and the Pennsylvania PUC states that no party will be significantly prejudiced by the delay.

2. While we do not routinely grant extensions of time, we believe that in this case, there is good cause for a limited extension.[2] The issues raised by the Commission's Notice of Proposed Rulemaking are complex, and because the Commission has proposed to preempt certain types of state regulation, the states have a clear interest in participating in this proceeding. However, we believe that expeditious resolution of this proceeding is also in the public interest. We conclude that a twenty-one day extension of time to file comments will be sufficient to permit full participation by the states and the development of a complete record, without unnecessarily delaying a Commission decision in this proceeding.

3. *Accordingly, It is ordered*, that the requests for extension of time are granted to the extent described herein. Interested parties are to file comments by March 8, 1991, and reply comments by April 8, 1991.[3]

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 91-4645 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

[1] Request for an Extension of Time to File Comments by the National Association of Regulatory Utility Commission, filed on February 5, 1991; Request for an Extension of Time to File Comments by the Pennsylvania Public Utility Commission, filed February 11, 1991. The Commission established February 15, 1991 as the filing date for comments and March 18, 1991 for replies in the Notice of Proposed Rulemaking, CC Docket No. 90-623, 6 FCC Rcd 174 (1990).

[2] Section 1.46(a) of the Commission's Rules, 47 CFR 1.46(a).

[3] This action is taken pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§ 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291.

47 CFR Part 73

[MM Docket No. 91-26; RM-7585]

Radio Broadcasting Services; Hempstead, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Farmers Communications asking the Commission to allot Channel 287A to Hempstead, Texas, as that community's first local service. The coordinates for the proposed allotment are 30-11-25 and 96-10-20, with a site restriction of 13.9 kilometers (8.6 miles) northwest to avoid a short-spacing to Station KHCB(FM), Channel 289C, Houston, Texas.

DATES: Comments must be filed on or before April 18, 1991, and reply comments on or before May 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Shaun A. Maher, Esq., Blair, Joyce & Silva, 1825 K Street, NW., Suite 510, Washington, DC 20006. (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-26, adopted February 5, 1991, and released February 25, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this preceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 91-4779 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-27; RM-7549]

Radio Broadcasting Services; Castle Rock, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cowlitz Broadcasting Co. requesting the Commission to allot Channel 296C3 to Castle Rock, Washington, as that community's first local FM service. Channel 296C3 an be allotted to Castle Rock with a site restriction of 10.4 kilometers (6.5 miles) North at coordinates 46-22-10 and 122-55-29. The site restriction will avoid short-spacings to the site specified in the construction permit for Station KMXI, Channel 294C, Lake Oswego, Oregon, and to Channel 296C1, Sweet Home, Oregon. Since Castle Rock is located within 320 kilometers (200 miles) of the Canadian border, we have requested the concurrence of the Canadian government in this allotment.

DATES: Comments must be filed on or before April 18, 1991, and reply comments on or before May 3, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cowlitz Broadcasting Co., c/o Victoria A. Lord, 13313 SE 208th Street, Kent, Washington 98042 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-27, adopted February 4, 1991, and released February 25, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4780 Filed 2-27-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

RIN 2127-AC42

[Docket No. 87-09; Notice 14]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking and withdrawal of prior notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking issued on August 27, 1990. This notice proposes to amend § 580.3 to add a definition of "original secure power of attorney." This notice further proposes to amend § 580.13(f) to require the States to retain the powers of attorney and titles submitted to them in accordance with that section. In addition, this notice proposes to amend § 580.11 to allow a State to petition for approval of alternate procedures to the § 580.13(f) requirement. The petition would have to set forth the requirements in effect in the petitioning State, including a copy of the applicable State law or regulation and would have to explain how the requirements are consistent with the Motor Vehicle Information and Cost Savings Act. Notice of grant or denial of the petition would be issued by the Office of the Chief Counsel to the petitioner.

This notice also proposes to amend § 580.5 to require that the odometer disclosure made by the titled owner of a vehicle be made on the title document itself, and not on a reassignment document.

This notice also proposes additional clarifying amendments.

This notice is being issued pursuant to an amendment to the Motor Vehicle Information and Cost Savings Act.

DATES: Comments on this NPRM are due no later than April 1, 1991.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590. (Docket hours are 9:30 am to 4 pm).

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

To implement the Truth in Mileage Act of 1986, Public Law 99-579, and to make some needed changes in the Federal odometer regulations, the National Highway Traffic Safety Administration (NHTSA) published a notice of proposed rulemaking (NPRM) on July 17, 1987. 52 FR 27022 (1987). The agency received numerous comments on the NPRM representing the opinions of new and used car dealers, auto auctions, leasing companies, State motor vehicle administrators, and enforcement and consumer protection agencies. Each of the comments was considered, and a final rule was published on August 5, 1988. 53 FR 29464 (1988).

On October 31, 1988, Congress enacted the Pipeline Safety Reauthorization Act of 1988, Public Law 100-561. Section 401 of that Act amends section 408(d)(1) of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1988(d)(1) to authorize the use of secure powers of attorney in connection with the required mileage disclosure under certain circumstances. The law directed the agency to prescribe the form and content of the power of attorney and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof.' It also requires NHTSA's rule to provide for the retention of a copy of the power of attorney form by the person exercising it and to ensure that the person granted the power of attorney completes the disclosure on the title consistent with the disclosure on the power of attorney form. Finally, the statute provided that the original secure power of attorney form must be submitted back to the state by the person exercising the power of attorney.

To implement these provisions, NHTSA issued an interim final rule/request for comments on March 8, 1989 (54 FR 9809). The interim final rule permitted an individual, in limited instances when the title of the vehicle that is being transferred is physically held by a lienholder, to sign the odometer disclosure as both transferor and transferee through the use of a secure power of attorney form, issued by a State. When such vehicles are resold, the interim final rule allowed the transferee (in the second transaction) to use the same power of attorney form to authorize his transferor (the dealer who purchased the car) to sign the disclosure on the title document on the transferee's behalf.

Several provisions of the interim final rule prompted vigorous comment. In particular, the National Automobile Dealers Association (NADA) and the National Independent Automobile Dealers Association (NIADA) expressed dissatisfaction with three aspects of the interim final rule. First, they criticized the fact that the interim final rule did not allow for use of secure powers of attorney in situations in which the customer's title is not present because the customer has lost or misplaced the title. Second, they opposed the requirement that the person exercising the power of attorney certify that the title revealed no mileage discrepancies. Third, they objected to the requirement that title applications must accompany secure power of attorney forms when they are submitted back to the State.

After careful consideration of the comments received, NHTSA decided to amend some of the provisions in the interim final rule. On August 30, 1989, NHTSA published a final rule which allows secure powers of attorney to be used in lost title situations, as well as in situations where the title is physically held by a lienholder. In addition, while retaining the certification requirement, NHTSA changed the wording of the certification to reflect more clearly the intent of the requirement (that the individual exercising the power of attorney check to see that the mileage appearing on the title is lower than that disclosed on the power of attorney form). The agency also limited the certification requirement to those situations in which the power of attorney has been used for both the first and second sale transactions. NHTSA declined, however, to alter the requirement that title applications must be filed with power of attorney forms.

The agency received four petitions for reconsideration of the August 1989 final rule. These petitions requested that NHTSA reconsider the provision of the final rule that requires that title applications accompany power of attorney forms when those forms are returned to the State. In addition, Senator J. James Exon, Representatives Bob Whittaker and Norman F. Lent, and Representative Robert H. Michel sent letters to the Department of Transportation expressing the same sentiments as the petitioners. On February 22, 1990, the agency denied these petitions for reconsideration. 55 FR 6257.

The Florida Division of Motor Vehicles filed a petition with the agency on June 5, 1990, seeking approval for a procedure whereby dealers exercising secure powers of attorney would, in lieu of submitting them back to the State with a title application, submit them with copies of the front and back of the old titles only, and the States would retain these copies. Since the odometer disclosure requirements do not contain any mechanism to approve an alternate procedure such as the one proposed by Florida, the agency interpreted Florida's petition as a petition for rulemaking to create such a mechanism for approval. The agency granted Florida's petition for rulemaking on July 23, 1990. That rulemaking process was initiated on August 27, 1990, with the issuance of an NPRM. 55 FR 34941.

While the agency was reviewing the comments submitted in response to the NPRM, Congress passed the Independent Safety Board Act Amendments of 1990, Pubic Law 101-641. That Act amends Section 408(d)(1) of the MVICSA, which authorizes the use of secure powers of attorney in connection with the required mileage disclosure under certain circumstances. Like the PSRA amendment, the new law directs the agency to prescribe the form and content of the power of the attorney/disclosure document and to establish reasonable conditions for its use by the transferor "consistent with this Act and the need to facilitate enforcement thereof," requires NHTSA's rule to provide for the retention of a copy of the power of attorney form by the person exercising it, and provides that the original secure power of attorney form must be submitted back to the State by the person exercising the power of attorney. In addition, the new law permits the agency to require that the State retain the power of attorney for an appropriate period or that the State retain the power of attorney for an appropriate period or that the State adopt alternative measures consistent with the purposes of the Act. Finally, under the new law, the agency may not require that a vehicle be titled in the State in which the power of attorney was issued.

Definition of "Original Secure Power of Attorney"

The MVISCA specifies that the person exercising the power of attorney for mileage disclosure purposes must submit the "original" power of attorney form back to the issuing State. When the agency issued its rule implementing this provision of the statute it seemed clear enough that the "original" to which Congress was referring was the form issued by the State on secure paper and that Congress meant to exclude photocopies or other non-secure copies. This is because it is important for the secure copy to get back to the issuing State as soon as possible so that any alterations can be quickly detected.

Most, if not all, of the States that have chosen to make secure powers of attorney available have chosen to issue multicopy forms with a top, secure copy and a number of attached additional copies which may or may not be on secure paper. The question has arisen as to which, if any, of the attached additional copies may be considered "originals." In this context it is approriate to consider adding a definition of "original power of attorney" to clear up any confusion which might exist.

Accordingly, we propose to amend § 580.3 to define "original power of attorney," for a single copy forms, as the secure document issued by the State, and, for multicopy forms, as the secure document and any attached copies which are also printed on secured paper.

Retention of Powers of Attorney by the State

In instituting the requirement that an executed power of attorney be submitted back to the State with the old title and a title application, NHTSA was seeking to enhance the paper trail by ensuring that a copy of the power of attorney form, independent of the dealer and customer copies, would exist and be available in State records. It was suggested to NHTSA that this result could be reached by NHTSA requiring the States to retain the submitted powers of attorney and titles. NHTSA considered, but ultimately rejected this option because the MVICSA, at that time, did not authorize the agency to order the States to alter their record retention methods. Instead, because we were aware that the States would retain copies of documents submitted with title applications, we considered it wiser to make use of those existing State practices to meet our enforcement needs.

The new law, however, expressly prohibits NHTSA from requiring title applications to be filed with powers of attorney, and expressly grants NHTSA the authority to require the States to retain submitted powers of attorney. We are, therefore, proposing to amend § 580.13(f) to eliminate the requirement that title applications accompany the powers of attorney submitted back to the State by the persons exercising them. In accordance with the statute we are retaining the requirement that the person exercising the secure power of attorney submit the original power of attorney form back to the issuing State. We further propose to amend § 580.13(f) to require a State which receives an executed power of attorney and transferor's title in accordance with that section, to retain those documents for five years. Under the proposed amendment, the State may retain either the original copies it receives or a photostat, carbon or other facsimile copy. This includes any media by which such information may be stored, provided there is no loss of information. This requirement is intended to parallel the record retention requirement imposed on dealers, distributors and lessors.

Approval of Alternate Requirements

Section 408(f)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988(f)(2)) provides for the administrative approval of alternate odometer disclosure requirements submitted by a State to the extent that such alternate requirements are consistent with the purposes of Act. A mechanism for such adminstrative approval of alternate disclosure requirements is incorporated into the regulation at § 580.11. Specifically, § 580.11 permits States to "petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5 and 580.7 of ths part."

The new law contemplates the approval by NHTSA of alternate State methods to those incorporated into § 580.13(f), provided those alternate methods are consistent with the purposes of the Act. Section 580.11, however, is very specific in allowing for the approval of alternatives to §§ 580.5 and 580.7, only. There is, under the current regulation, no mechanism whereby the agency could grant a State's request for approval of an alternate to compliance with the requirements of § 580.13(f).

In light of the new law we are withdrawing the Notice of Proposed Rulemaking issued on August 27, 1990. We believe it would be appropriate to allow commenters to consider this issue in conjunction with the other proposals contained herein. Accordingly, we are proposing to amend § 580.11 to allow a State to petition for approval of alternate requirements to those contained in § 580.13(f). Under this proposal, a State could submit a petition to the Office of the Chief Counsel for approval. Such petitions would have to set forth the requirements in effect in the petitioning State, including a copy of the applicable State law or regulation and would have to explain how the requirements are consistent with the MVICSA. Notice of grant or denial of the petition would be issued by the Office of the Chief Counsel to the petitioner without further notice in the Federal Register.

Use of Reassignment Forms By Titled Owners

Another issue that the agency had not previously considered ripe for regulation is the practice of permitting titled owners to transfer their vehicles on reassignment forms, allowing them to skip the "assignment by owner" block on the title. We considered such a practice unlikely because in many, if not most, States it has been illegal for a titled owner to transfer the vehicle on a reassignment form, rather than on the title itself. It has come to our attention, however, that in increasing number of States are permitting or are planning to permit titled owners to transfer their vehicles on reassignment forms, allowing them to skip the "assignment by owner" block on the title. The rationale behind this practice is to allow individuals and dealers to avoid the power of attorney requirements.

Underlying the Truth in Mileage Act and the implementing regulations is the conviction that putting odometer disclosures directly on titles and having purchasers see the titles to the vehicles they purchase will result in a decrease in costly odometer fraud. Although use of the secure power of attorney for mileage disclosure interferes with these purposes, the use of the power of attorney is structured so as to reduce the possibility of fraud, and to allow consumers access to mileage and title information. The transactions described above thwart the purposes of the Federal law without providing the protection against fraud afforded by the secure power of attorney.

Accordingly, we propose to amend § 580.5 to require a transferor in whose name the vehicle is titled to make his or her odometer disclosure on the vehicle's title, and not on a reassignment document.

Clarification of Section 580.11(c)

In reviewing § 580.11 the agency has determined that the language of paragraph (c) of that section was unclear. Specifically, the use of the term "extension" in the sentence "The effect of a grant of a petition is to relieve a State from responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part during the time of the extension." could cause some confusion. The effect of a grant of such a petition would be to relieve a State from responsibility to conform its titles with §§ 580.5 and 580.7 for as long as the approved alternate disclosure requirements were in effect in that State, and the term "extension" in that sentence should not be confused with any extension a State may have in bringing its titles into conformance with the requirements of this part. Accordingly, to avoid any confusion, we are proposing to amend that sentence to read as follows: "The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7 or § 580.13(f) for as long as the approved alternate disclosure requirements remain in effect in that State."

Federalism Assessment

This action has been analyzed in accordance with the principles and

criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule may result in States adopting more costly new recordkeeping procedures; however, these costs could be offset by the lowered cost resulting from the issuance of fewer titles than the States would have to issue under the current rule.

Regulatory Impacts

A. Costs and Benefits to Dealers, States and Consumers

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. A regulatory evaluation has been prepared analyzing the impacts of the proposed rule and has been placed in Docket 87-09, Notice 14. Any interested person may obtain a copy of this regulatory evaluation by writing to the NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC, 20590, or by calling the Docket Section at (202) 366-4949. Summarizing this evaluation, this NPRM does not impose any costs on dealers or distributors. Any costs to the States may be offset by savings the States will achieve from the issuance of fewer titles than are required under the current rule.

B. Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared.

C. Environmental Impacts

NHTSA has considered the environmental implications of this rule, in accordance with the National Environmental Policy Act, and determined that it will not significantly affect the human environment. Accordingly, an environmental impact statement has not been prepared.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has already approved NHTSA's information collection requirements that require consumer, dealers, distributors, lessors and auction companies to disclose and/or retain mileage information. (OMB2127-0047). This NPRM does not propose any new information collection requirements as that term is defined by OMB in 5 CFR part 1320.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that ten copies be submitted.

All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the fifteen page limit. This limitation is to encourage commenters to detail their preliminary arguments in a concise fashion.

All comments received before the close of the business on the comment closing date listed above will be considered and will be available for examination in the docket both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration will be considered suggestions for further rulemaking action. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket, should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 580

Odometers.

Withdrawal of Prior Notice

The previously issued notice of proposed rulemaking, 55 FR 34941, is hereby withdrawn.

In consideration of the foregoing, 49 CFR part 580 would be amended as follows:

PART 580—[AMENDED]

The authority citation for 49 CFR part 580 continues to read as follows:

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

§ 580.3 [Amended]

1. In § 580.3 the following would be added between the definitions of "mileage" and "secure printing process or other secure process:"

* * * * *

Original power of attorney means, for single copy forms, the document set forth by secure process which is issued by the State, and, for multicopy forms, any and all copies set forth by secure process which are issued by the State.

2. In § 580.5, paragraph (c) would be revised as follows:

§ 580.5 Disclosure of odometer information.

* * * * *

(c) In connection with the transfer of ownership of a motor vehicle, each transfer shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:

* * * * *

3. In § 580.11, paragraphs (a) and (c) would be revised as follows:

§ 580.11 Petition for approval of alternate disclosure requirements.

(a) A State may petition NHTSA for approval of disclosure requirements which differ from the disclosure requirements of §§ 580.5, 580.7, or § 580.13(f) of this part.

* * * * *

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of the grant of a petition is to relieve a State from responsibility to conform the State disclosure requirements with §§ 580.5, 580.7, or § 580.13(f), as applicable, for as long as the approved alternate disclosure requirements remain in effect in that State. The effect of a denial is to require a State to conform to the requirements of §§ 580.5, 580.7 or § 580.13(f), as applicable, of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

4. In § 580.13, paragraph (f) would be revised as follows:

§ 580.13 Disclosure of odometer information by power of attorney.

* * * * *

(f) Upon receipt of the transferor's title, the transferee shall complete the space for mileage disclosure on the title exactly as the mileage was disclosed by the transferor on the power of attorney form. The transferee shall submit the original power of attorney form to the State that issued it, with a copy of the transferor's title. The State shall retain the power of attorney form and title document submitted to it for five years. If the mileage disclosed on the power of attorney form is lower than the mileage appearing on the title, the power of attorney is void and the dealer shall not complete the mileage disclosure on the title.

Issued on: February 21, 1991.

Paul Jackson Rice,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 91-4570 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 910224-1024]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to delay the start of the directed hook-and-line sablefish fishing season until May 15. This action is necessary to reduce the amount of Pacific halibut bycatch that would otherwise occur in this fishery. By reducing Pacific halibut bycatch, this proposed rule is intended to allow fuller utilization of the sablefish optimum yield, thereby promoting the goals and objectives of the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

DATES: Comments are invited until March 15, 1991.

ADDRESSES: Comments may be sent to Dale R. Evans, Chief, Fishery Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone in the Gulf of Alaska are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) and was approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 672.

At times, amendments to the FMP and/or its implementing regulations are necessary for conservation and management of the groundfish fisheries. The structure of the FMP provides for changes to fishing seasons by amending regulations (regulatory amendments) without accompanying amendments to the FMP (section 4.3.3).

At its December 3-7, 1990 meeting, the Council recommended that a regulatory amendment be implemented that would change the season for the hook-and-line directed sablefish fishery by delaying the starting date until May 15 instead of April 1. The purpose of the proposed season delay is to reduce halibut bycatch, which otherwise occurs at high rates in the sablefish hook-and-line fishery.

During the 1990 fishing year, hook-and-line fisheries in the Gulf of Alaska reached their assigned share of the prohibited species catch (PSC) mortality limit for Pacific halibut. When the PSC assignment was reached, further fishing with hook-and-line gear was prohibited. One of the hook-and-line fisheries experiencing halibut bycatch was directed at sablefish. Sablefish is a groundfish species occurring in deep water. Because the season for sablefish is conducted during a time of the year when Pacific halibut also occur in deep water, Pacific halibut are frequently caught as bycatch in the sablefish fishery.

Bycatches of Pacific halibut in the sablefish fishery are directly related to the life histories of these two species. During the winter and early spring months, the depth distributions of sablefish and halibut overlap. March appears to be a transitional period for halibut as they begin moving to shallow waters. By May, many adult halibut frequent shallow water, less than 100 fathoms, where they reside through the summer until September. In November, halibut return to deep water where they again are found with adult sablefish until March of the following year. When the sablefish hook-and-line fishery starts on April 1, halibut are still found in deep water where adult-size sablefish are fished, usually between 200 and 400 fathoms. Therefore, halibut are caught as bycatch in the sablefish hook-and-line fishery. These bycatches of halibut in the sablefish hook-and-line fishery reduce potential economic return in the halibut fishery, and result in premature groundfish fishery closures.

Prior to the 1990 fishing year, no measures were in place to constrain halibut bycatch by hook-and-line gear, although PSC mortality limits have been imposed on trawl gear since 1986. When the PSC limit assigned to trawl gear was reached, no further trawling with other than pelagic trawl gear was allowed. In 1990, a PSC limit of 750 metric tons (mt) also was imposed on hook-and-line gear. When the PSC limit assigned to hook-and-line gear was reached, further fishing and hook-and-line gear was prohibited.

The hook-and-line fishery for groundfish, expect sablefish, starts January 1. The starting date of the sablefish hook-and-line directed fishery is April 1. Fishing commences actively on that date and continues until shares of the sablefish total allowable catch (TAC) assigned to hook-and-line gear are met. Fishing effort is usually distributed such that hook-and-line shares are reached first in the Southeast Outside/East Yakutat (Southeast) and West Yakutat Districts of the Eastern Regulatory Area, followed by the Central Regulatory Area, and then the Western Regulatory Area.

For example, in 1990, respective directed fishery closure dates were as follows: Southeast District—April 20; West Yakutat District—April 16; Central Regulatory Area—May 29; and the Western Regulatory Area—May 29. In the Central Regulatory Area, all of the sablefish hook-and-line share was reached. In the Western Regulatory Area, which was closed when the halibut PSC hook-and-line gear share was reached, 1,497 mt of the sablefish hook-and-line share where not harvested.

Hook-and-line fisheries in the Gulf of Alaska mainly target on sablefish and Pacific cod. Other groundfish species may be caught. Halibut bycatches were especially high in the sablefish fishery.

For example, summarizing from the EA/RIR/IRFA prepared for this action, the amount of halibut mortality attributed to the sablefish fishery was about 94 percent of the total halibut bycatch mortality in the hood-and-line fishery, even though the amount of sablefish harvested in the hook-and-line fishery represented a relatively smaller

amount—about 79 percent of the hook-and-line groundfish catch of 30,430 mt.

Halibut bycatch rates by regulatory area showed declines during May compared to April in the Central and Western Regulatory Areas. No comparisons of halibut bycatch rates between April and May can be made for the Eastern Regulatory Area, because the fishery closed in that area in April. The overall Gulf of Alaska halibut bycatch rate declined from 3497 kg/mt in April to 244.5 kg/mt in May.

Together, fishing activity in statistical areas 630 and 650 accounted for 79 percent of the total halibut mortality in the hook-and-line fishery. Because the hook-and-line fishery for sablefish harvested all the amounts available to hook-and-line gear in the Eastern and Central Regulatory Areas prior to the halibut PSC limit for hook-and-line gear being reached on May 29, 1990, no amounts of sablefish were foregone in those areas. However, in the Western Regulatory Area, 1,497 mt of sablefish remained unharvested. Expressed in pounds and using a recovery rate of 0.63 for eastern cut product, the resulting shortfall is 2,078,614 pounds. At $1.10 per pound, fishermen probably lost approximately $2.6 million in gross exvessel revenue.

In reviewing this issue, the Council heard testimony from industry representatives suggesting that delaying the sablefish season starting date would allow halibut time to migrate into shallower water, thereby partly escaping the sablefish fishery. Declining halibut bycatch rates from April through May suggest that additional halibut could escape the sablefish fishery. Therefore, delaying the season should reduce the halibut bycatch rate and total bycatch of halibut in the sablefish hook-and-line fishery. Lower bycatch rates in this fishery would increase the fisheries' opportunity to harvest the available sablefish hook-and-line share, and make more halibut available to support other hook-and-line fisheries, thereby promoting greater groundfish harvests, including sablefish.

The Secretary has reviewed the Council's recommendations and hereby proposes to delay the sablefish season from April 1 until May 15.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment as part of the EA/RIR/IRFA for this proposed rule. A copy of the EA/RIR/IRFA is available from the Regional Director at the previously cited address.

The Assistant Administrator initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

An initial regulatory flexibility analysis was prepared as part of the EA/RIR/IRFA in accordance with section 603 of the Regulatory Flexibility Act. A summary of this analysis follows:

[A May 15 starting date] is superior to April 1 with respect to reducing halibut bycatch rates and minimizing conflicts with other fisheries, especially the salmon fishery. If the first halibut season were to open before the sablefish season, prospecting for halibut would not occur. Further, halibut abundance would be reduced by the halibut fishery, which could reduce halibut bycatch in the subsequent sablefish fishery. Although the Eastern Regulatory Area typically closes after about three weeks, the Central and Western areas usually close after about six weeks or longer. Because salmon fisheries start in late June, a sablefish starting date in June could conflict with the Southeast Alaska salmon fishery. Any sablefish season starting date after about the middle of May probably would conflict with salmon fisheries in the Central and Western areas. In 1990, 237 out of 501 vessels that landed sablefish also landed salmon. Most of these vessels fish salmon in Southeast Alaska. Weather should be improved in May relative to early April, resulting in greater vessel safety.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NOAA has determined that this proposed rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: February 22, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 672 is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority of citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.23, paragraph (c) is revised to read as follows:

§ 672.23 Seasons.

* * * * *

(c) Directed fishing for sablefish with hook-and-line gear in the regulatory areas and districts of the Gulf of Alaska is authorized from May 15 through December 31, subject to the other provisions of this part.

* * * * *

[FR Doc. 91-4689 Filed 2-23-91; 4:51 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-023]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 18 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
91-011-01	Monsanto Agricultural Company	01-11-91	Tomato plants genetically engineered to contain a gene which delays ripening process.	Illinois.
91-011-04	Monsanto Agricultural Company	01-11-91	Potato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *tenebrionis*.	Oregon, Washington, & Wisconsin.
91-014-01	Rogers NK Seed Company	01-14-91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1.	California.
91-014-02	Rogers NK Seed Company	01-14-91	Tomato plants genetically engineered to express the gene encoding the coat protein of the tomato mosaic virus.	California.
91-016-01	DuPont Agricultural Products	01-16-91	Tobacco plants genetically engineered to contain two marker genes, the kanamycin resistance gene and the betaglucuronidase gene.	Delaware & Texas.
91-018-01	Monsanto Agricultural Company	01-18-91	Soybean plants genetically engineered to express a gene encoding a modified 5-enolpyruvyl-shikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate.	Arkansas, Illinois, Indiana, & Maryland.
91-018-04	Monsanto Agricultural Company	01-18-91	Cotton plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California & Mississippi.
91-023-06 (Courtesy Permit)	Auburn University	01-23-91	*Pseudomonas putida* strain 61.9A.3L which has been modified by the insertion of a genetically engineered transposon Tn*5*-Lux.	Alabama.
91-024-01	Monsanto Agricultural Company	01-24-91	Potato plants genetically engineered to contain a gene encoding the coat protein of the potato leaf roll virus.	Idaho, Illinois, & Washington.
91-024-04	U.S. Department of Agriculture, Agricultural Research Service.	01-24-91	Potato plants genetically engineered to express a modified *Alcaligenes eutrophus* 2, 4-D monooxy-genase gene.	Idaho.
91-025-01	BioTechnica Agriculture Incorporated.	01-25-91	Corn plants genetically engineered to contain a chimeric marker gene and storage protein gene.	Illinois, Iowa, Minnesota, & Nebraska.
91-025-02	DuPont Agricultural Products	01-25-91	Cotton plants genetically engineered to express tolerance to sulfonylurea herbicides.	Delaware, Maryland, & Mississippi.
91-025-03	Ciba-Geigy	01-25-91	Corn plants genetically engineered to contain a gene for resistance to the antibiotic hygromycin and a marker gene encoding beta-glucuronidase.	Illinois.

Application number	Applicant	Date received	Organism	Field test location
91-025-06	Rohm & Haas Company	01-25-91	Tobacco plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis*.	North Carolina.
91-030-01	Monsanto Agricultural Company	01-30-91	Corn plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Illinois.
91-030-04	Monsanto Agricultural Company	01-30-91	Potato plants genetically engineered to express a carbohydrate biosynthetic enzyme.	Idaho.
91-035-06	Campbell Institute for Research and Technology.	02-04-91	Tomato plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California.
91-035-07	Calgene, Inc.	02-04-91	Cotton plants genetically engineered to express tolerance to the herbicide bromoxynil.	Georgia & South Carolina.

Done in Washington, DC, this 22nd day of February, 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4713 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-34-M

[Docket 91-091]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of October and November 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-4873.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be used, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the months of October and November 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
1015.10	10-03-90	Autogenous Vaccine, Killed Virus	Willmer Poultry Company	365
1232.10	10-01-90	Bronchitis Vaccine, Mass. Type, Live Virus	Immunogenetics, Inc.	196
1555.R0	10-25-90	Feline, Leukemia Vaccine, Killed Virus	Coopers Animal Health, Inc.	197
1705.12	10-19-90	Newcastle Disease Vaccine, Killed Virus	Maine Biological Laboratories, Inc.	240
264A.00	10-31-90	Erysipelothrix Rhusiopathiae-Haemophilus Pleuropneumoniae-Pasteurella Multocida Bacterin.	SmithKline Beckman Corporation	189
2658.00	10-31-90	Haemophilus Somnus Bacterin	American Home Products Corporation	112
2775.00	10-12-90	Mycoplasma Hyopneumoniae Bacterin	SmithKline Beckman Corporation	189
4639.21	10-01-90	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine—Leptospira Bacterin, Modified Live Virus.	American Home Products Corporation	112
4686.10	10-26-90	Newcastle-Bronchitis Vaccine—Mycoplasma Gallisepticum Bacterin, Mass. Type, Killed Virus.	Solvay Animal Health, Inc.	195
5601.00	10-31-90	Fowl Laryngotracheitis Antibody Test Kit	Kirkegaard & Perry Labs, Inc.	350
7910.01	10-16-90	Salmonella, Typhimurium Bacterin-Toxoid	IMMVAC, Inc.	345
A555.R0	10-25-90	Feline Leukemia Virus Antigen, For Further Manufacture.	Cambridge BioScience Corp.	317
A601.91	10-31-90	Fowl Laryngotracheitis Virus, Modified Live Virus, For Further Manufacture.	Schering-Plough Animal Health Corp.	185A
A6E1.20	10-31-90	Feline Rhinotracheitis-Calici-Panleukopenia-Chlamydia Pelleted Vaccine, Modified Live Virus and Chlamydia, For Further Manufacture.	SmithKline Beckman Corporation	189
1045.1V	11-08-90	Avian Reovirus Vaccine, Killed Virus	Biomune, Inc.	368
1831.00	11-16-90	Marek's Disease Vaccine, Live Chicken Herpesvirus.	Sanofi Animal Health, Inc.	243
1851.00	11-16-90	Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus.	Sanofi Animal Health, Inc.	243
4A15.00	11-06-90	Bordetella Bronchiseptica-Clostridium Perfringens Type C-Erysipelothrix Rhusiopathiae-Escherichia Coli-Pasteurella Multocida Bacterin-Toxoid.	Ambico, Inc.	281

Product license code	Date issued	Product	Establishment	Establishment license No.
4979.20	11-26-90	Porcine Rotavirus-Transmissible Gastroenteritis Vaccine—Bordetella Bronchiseptica-Clostridium Perfringens Type C-Erysipelothrix Rhusiopathiae-Escherichia Coli-Pasteurella Multocida Bacterin-Toxoid, Modified Live Virus.	Ambico, Inc.	281

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biologics Establishment Licenses were issued during the months of October and November 1990.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, on October 3, 1990, APHIS terminated the following product licenses and the U.S. Veterinary Biologics Establishment License No. 112A, issued to Franklin Laboratories, Inc.:

Product license code	Product
A905.51	Rabies Virus, Killed Virus, For Further Manufacture.
A905.55	Rabies Virus, Killed Virus, For Further Manufacture.
A965.50	Wart Vaccine, Killed Virus, For Further Manufacture.
B401.00	Clostridium Chauvoei-Septicum Bacterin, For Further Manufacture.
B641.00	Erysipelothrix Rhusiopathiae Bacterin, For Further Manufacture.
B69A.00	Pasteurella Haemolytica Bacterin, For Further Manufacture.
B662.10	Campylobacter Fetus, Killed Culture. For Further Manufacture.
H101.00	Clostridium Perfringens Type C Toxoid, For Further Manufacture.
H301.01	Clostridium Perfringens Type D Toxoid, For Further Manufacture.
2465.00	Clostridium Haemolytica Bacterin.
2862.00	Campylobacter Fetus Bacterin.
8201.01	Clostridium Perfringens Types C & D Toxoid.

Also, on October 10, 1990, APHIS terminated the following U.S. Veterinary Biological Product Licenses that had been issued to Boehringer Ingelheim Animal Health, Inc., Establishment License No. 124:

Product license code	Product
2862.00	Campylobacter Fetus Bacterin.
2865.00	Campylobacter Fetus-Leptospira Pomona Bacterin.

Done in Washington, DC, this 22nd day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-4712 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Andrews Park RC&D Measure, North Carolina

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Police Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Andrews Park Critical Treatment RC&D Measure, Jackson County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Bobbye J. Jones, State Conservationist, 4405 Bland Road, Raleigh, North Carolina 27609; phone (919) 790-2888.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and resulting sedimentation in Andrews Park. The planned works of improvement include installing pipe outlets, rock line channels, earthen fill and rock rip rap. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: February 19, 1991.

Bobbye J. Jones,

State Conservationist.

[FR Doc. 91-4711 Filed 2-27-91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges: Delft Instruments N. V. (Also Known as Oldelft, Old Delft, OldeDelft, Delft Instruments Electro-Optics, Delft Electronishe Products, Optishe Industrie Oude Delft), Oip Instrubel, and Franks & Co. Optik Gmbh

In the Matter of: Delft Instruments N.V.
also known as
Oldelft,
Old Delft,
Olde Delft,
Oude Delft,
Delft Instruments Electro-Optics,
Delft Electronische Products
and
Optische Industrie Oude Delft
with an address at: Van Miereveldtlaan 9,
P.O. Box 72, Delft, Netherlands and
OIP Instrubel

with an address at: Rue De Sacqs 75, 1060 Brussels, Belgium and,

FRANKS & Co. Optik GMBH

located in: Giessen, Germany, Respondents.

Order Temporarily Denying Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1990)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (Supp. 1990)) (Act),[1] has asked me to issue an order on and *ex parte* basis, temporarily denying all United States export privileges to Delft Instruments N.V., also known as Oldelft, Old Delft, Olde Delft, Oude Delft, Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft (hereinafter collectively referred to as Delft), and to OIP Instrubel (OIP) and Franks & Co. Optik GMBH (Franks), Delft subsidiaries located in Belgium and Germany, respectively.

As a result of an investigation, the Department has reason to believe that, before and possibly after August 2, 1990, Delft and OIP have reexported from the Netherlands and Belgium to Iraq, U.S.-origin forward looking infrared thermal imaging equipment (hereinafter imaging equipment), without first obtaining the required U.S. government authorizations. The imaging equipment is used to enance visibility at night and is controlled by the Department of State.

The investigation also has given the Department reason to believe that Delft and OIP have in their possession U.S.-origin integrated chips and transistors that have military significance. Those items are controlled by the Department. The Department has reason to believe that Delft, OIP and Franks may reexport the integrated chips and transistors, or any other Commerce-controlled items that they obtain, without the required authorizations.

Therefore, based on the showing made by the Department, I find that an order temporarily denying the export privileges of Delft, OIP and Franks is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Delft, OIP and Franks in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Delft, OIP and Franks will engage in activities which are in violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby *ordered*.

I. All outstanding validated export licenses in which Delft Instruments N.V., also known as Oldelft, Old Delft, Olde Delft, Oude Delft, Delft Instruments Electro-Optics, Delft Electronische Products and Optische Industrie Oude Delft, Van Miereveldtlaan 9, P.O. Box 72, Delft, Netherlands; OIP Instrubel, Rue De Sacqz 75, 1060 Brussels, Belgium, or Franks & Co. Optik, GMBH, Giassen, Germany, appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Delft, OIP and Franks, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department; (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith; (c) in obtaining or using any validated or general export license or other export control document; (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which either Delft, OIP or Franks is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judge, U.S. Department of Commerce, room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: February 22, 1991.

Quincy M. Kroeby,

Assistant Secretary for Export Enforcement.

[FR Doc. 91-4701 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-DT-M

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR. 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

National Institute of Standards and Technology

[Docket No. 910234-1034]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; Publication of 1990 NVLAP Third Quarterly Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the 1990 NVLAP Third Quarterly Supplement listing of laboratories accredited and de-accredited through December 31, 1990. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, Room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: The Directory of NVLAP Accredited Laboratories (NISTIR 90–4290) is published annually pursuant to 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: February 22, 1991.

John W. Lyons,

Director.

[FR Doc. 91-4774 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee will hold a public meeting on February 28, 1991, at the Juneau Airport Travelodge, 9200 Glacier Highway, Juneau, AK. The meeting will begin at 1 p.m., or after the Council's Data Committee adjourns. The Bycatch Committee meeting may extend into March 1.

The Committee will review the following: Halibut, crab, and salmon bycatch to date, progress on implementing the Council's vessel incentive program, and development of future bycatch control measures. Bycatch management may also be discussed by Council members at the Fishery Planning Committee meeting to be held on February 27, 1991, in Juneau, AK.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: February 22, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-4678 Filed 2-27-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Granting of Federal Information Processing Standards (FIPS) Waiver

AGENCY: Department of Defense (DoD).

ACTION: Notice of granting of FIPS waiver request.

SUMMARY: The Department of Defense hereby gives notice of granting waivers of FIPS 46–1, "Data Encryption Standard (DES)" and FIPS 140, "General Security Requirements for Equipment Using the Data Encryption Standard" for DoD components to acquire and use the Low-cost Encryption/Authentication Device for the protection of unclassified sensitive DoD information. These waivers were made pursuant to section 111(d)(3) of the Federal Property and Services Act of 1949 (40 U.S.C. 759(d)).

DATES: The waivers were effective February 21, 1991.

ADDRESSES: Assistant Secretary of Defense (C3I), Department of Defense, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Stephen A. Kramer, Information Systems Security Staff Assistant, (703) 697-7626.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4651 Filed 2-27-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 4 April 1991.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4652 Filed 2-27-91; 8:45 am]

BILLING CODE 3810-01-M

Settlement of Tort Claims

Pursuant to the Department of Justice order No. 1471–91 and 10 U.S.C. 113(d), the Secretary of Defense, Mr. Richard B. Cheney, delegates the Secretaries of the Army, Navy, and Air Force the authority to adjust, determine, compromise, and settle administrative claims involving respective Military Departments under 28 U.S.C. 2682 (relating to the administrative settlement of Federal tort claims), if the amount of the proposed settlement, compromise or award does not exceed $100,000.

The delegation to the Secretary of the Army includes the authority to adjust, determine, compromise, and settle administrative claims arising out of the acts or omissions of civilian personnel of DoD Components other than the Military Departments, in accordance with DoD Directive 5515.9, "Settlement of Tort Claims," September 12, 1990.

Dated: February 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–4650 Filed 2–27–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board will hold its Spring General Board Meeting on 9–10 April 1991 from 8 a.m. to 5 p.m. at Headquarters Strategic Command (SAC), Offutt Air Force Base, NE.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

The purpose of this meeting is to provide attendees the opportunity to become familiar with SAC's mission and planning outlook of the 21st century.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Dated: February 19, 1991.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–4718 Filed 2–27–91; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 13, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: February 22, 1991.

Mary P. Liggett,

Acting Director for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: District, Principal and Teacher Survey on Safe, Drug-Free, Disciplined Schools.

Abstract: These forms will be used to collect data on issues related to safety, drug use prevention, and discipline in elementary and secondary schools. The Department will use this information to assess schools' current status, determine ways to improve school environment and monitor progress toward toward achieving the goals.

Additional Information: The Office of Educational Research and Improvement is requesting an expedited review of these surveys to meet Departmental goals for the monitoring of the Nation's progress toward achieving safe and drug-free schools.

Frequency: One-time.

Affected Public: Individuals or households; State or local Governments.

Reporting Burden: Responses: 3150; *Burden Hours:* 1575.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

BILLING CODE 4000–01–M

U.S. DEPARTMENT OF EDUCATION NATIONAL CENTER FOR EDUCATION STATISTICS WASHINGTON, D.C. 20208-5651 SURVEY ON SAFE, DRUG-FREE, DISCIPLINED SCHOOLS FAST RESPONSE SURVEY SYSTEM	FORM APPROVED: O.M.B. No.: EXPIRATION DATE:

This survey is authorized by law (20 U.S.C. 1221e-l). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

DEFINITIONS FOR THIS SURVEY:

Drug use education refers to learning activities and related policies to prevent or reduce alcohol, drug (e.g., marijuana, inhalants, cocaine), and tobacco use by youth. It does not include clinical treatment or rehabilitation.

Disruptive behavior includes serious and/or unlawful actions that may interfere with order in school (e.g., physical attacks, property destruction, thefts). Alcohol, drug, and tobacco use should be reported separately on this questionnaire and not included under "disruptive behavior."

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:_____ Telephone Number:_____

Title:_____

RETURN COMPLETED FORM TO:

WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existiing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

March 1991

Dear Superintendent (Principal/Teacher)

On behalf of the National Center for Education Statistics (NCES), I request your participation in the national district survey on *Safe, Drug-Free, Disciplined Schools*. Westat is conducting the survey using the Fast Response Survey System (FRSS). Please complete the survey for your entire district.

The purpose of this survey is to collect information on policies and education programs intended to promote safe, drug-free, and disciplined schools. The data collected will play a vital role in helping the country meet the President's National Education Goals calling for safe, drug-free and disciplined schools. Your participation in this survey, while voluntary, is vital to the development of national estimates.

A copy of the survey findings will be sent to participating districts after this study is completed. If you have any questions about this survey, please call survey managers Sheila Heaviside or Wendy Mansfield at Westat's toll-free number, (800) 937-8281, or Judi Carpenter, the NCES Project Officer for FRSS, at (202) 219-1333.

Thank you very much for your assistance.

Sincerely,

Emerson J. Elliott
Acting Commissioner for
Education Statistics

1. Circle the number for each item describing your district's general discipline and alcohol, drug, and tobacco policies. *(Please describe the components separately, even if they are included in a single policy.)*

	GENERAL DISCIPLINE POLICY		ALCOHOL POLICY		DRUG POLICY		TOBACCO POLICY	
	YES	NO	YES	NO	YES	NO	YES	NO
a. Do you have a policy?	1	2	1	2	1	2	1	2
(If NO to a policy, skip items B, C, D, and E for that policy.)								
b. Are your district's policies:								
1) In writing?	1	2	1	2	1	2	1	2
2) Strict enough?	1	2	1	2	1	2	1	2
3) Comprehensive enough?	1	2	1	2	1	2	1	2
4) Clear?	1	2	1	2	1	2	1	2
5) Consistently applied at the school level?	1	2	1	2	1	2	1	2
6) Publicized enough?	1	2	1	2	1	2	1	2
c. Which of the following were involved in the development of your district's policies?								
1) Schools	1	2	1	2	1	2	1	2
2) Parents	1	2	1	2	1	2	1	2
3) State Education Agency	1	2	1	2	1	2	1	2
4) Community groups	1	2	1	2	1	2	1	2
5) Students	1	2	1	2	1	2	1	2
6) Outside experts	1	2	1	2	1	2	1	2

d. Which of the following are responsible for implementing your district's policies? *(Circle one number in each row.)*

	DISTRICT ONLY	DISTRICT, SOME SCHOOL INVOLVEMENT	DISTRICT AND SCHOOLS EQUALLY	SCHOOLS, SOME DISTRICT INVOLVEMENT	SCHOOLS ONLY
1) General discipline policy	1	2	3	4	5
2) Alcohol policy	1	2	3	4	5
3) Drug policy	1	2	3	4	5
4) Tobacco policy	1	2	3	4	5

e. Circle the number indicating when each of your policies was last changed significantly. (If never changed, indicate when they were adopted.)

	LESS THAN 1 YEAR AGO	1 - 3 YEARS AGO	MORE THAN 3 YEARS AGO
1) General discipline policy	1	2	3
2) Alcohol policy	1	2	3
3) Drug policy	1	2	3
4) Tobacco policy	1	2	3

2. a. Circle all grades taught in your district.

All K 1 2 3 4 5 6 7 8 9 10 11 12

b. Circle all grades in which alcohol, drug, and tobacco use education is required.

All K 1 2 3 4 5 6 7 8 9 10 11 12

c. In which of the following ways do schools in your district offer alcohol, drug, and tobacco use education?

	WITHIN HEALTH CURRICULUM		WITHIN SCIENCE CURRICULUM		AS A SEPARATE COURSE		THROUGHOUT THE CURRICULUM		AT SPECIAL ASSEMBLIES OR EVENTS		OTHER (SPECIFY)
	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	
Elementary	1	2	1	2	1	2	1	2	1	2	
Junior high	1	2	1	2	1	2	1	2	1	2	
Senior high	1	2	1	2	1	2	1	2	1	2	

d. How many hours of instruction in total in alcohol, drug, and tobacco use education are scheduled for the 1990-91 school year?

Elementary _____ hours Junior high _____ hours Senior high _____ hours

3. Circle the number indicating which components are currently part of your alcohol, drug, and tobacco use education program/activities. Check the three components that you feel are most effective.

	PART OF PROGRAM YES	PART OF PROGRAM NO	MOST EFFECTIVE
a. Teaching students about causes and effects of alcohol, drug, and tobacco use	1	2	___
b. Teaching students about laws regarding alcohol, drug, and tobacco use, possession, and sales	1	2	___
c. Teaching students skills to resist peer pressure	1	2	___
d. Peer counseling	1	2	___
e. School alcohol, drug, and tobacco policy/enforcement	1	2	___
f. Student assistance programs (SAPs)	1	2	___
g. School services for high-risk students	1	2	___
h. Referrals to counseling and treatment	1	2	___
i. Student drug-testing programs	1	2	___
j. Other (*specify*)_____	1	2	___

4. What did you use to evaluate the effectiveness of the components of your alcohol, drug, and tobacco use education programs/activities? *(Circle all that apply.)*

a. School records 1
b. Program evaluation 2
c. Student use surveys 3
d. Professional judgment 4
e. Other (*specify*)_____ 5

5. Circle the number indicating the extent to which each of the following organizations in your district provides assistance or educational support for alcohol, drug, and tobacco prevention programs.

	GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a. Parent groups	1	2	3	4
b. Private corporations and businesses	1	2	3	4
c. Social service agencies	1	2	3	4
d. Police	1	2	3	4
e. Civic organizations/service clubs	1	2	3	4
f. Colleges/universities	1	2	3	4
g. Religious organizations	1	2	3	4
h. Other (*specify*)_____	1	2	3	4

6. Circle the number indicating whether each type of support to promote safe, disciplined, drug-free schools is provided by groups outside the school system.

	YES	NO
a. Sponsoring alcohol and drug prevention education programs for teachers and/or school staff	1	2
b. Sponsoring alcohol and drug prevention education programs for students and families	1	2
c. Sponsoring after-school activities/programs	1	2
d. Serving on planning committee/task force	1	2
e. Supporting efforts to increase school safety	1	2
f. Other (*specify*)_____	1	2

7. How many times were the following actions taken in your district in the fall 1990 semester for disruptive behavior or student alcohol and drug use?

	NUMBER OF TIMES ACTIONS TAKEN FOR: DISRUPTIVE BEHAVIOR	NUMBER OF TIMES ACTIONS TAKEN FOR: ALCOHOL AND DRUG USE
a. Referral to outside services	___	___
b. Transfer to an alternative school for disruptive students	___	___
c. In-school suspension	___	___
d. Suspension	___	___
e. Expulsion	___	___
f. Notification of police	___	___
g. Other (*specify*)_____	___	___

8. To obtain an approximate socioeconomic measure for your district in order to better interpret the data of this survey, please indicate the percent of students in your district currently receiving federally funded free or reduced-price lunches. _____%

U.S. DEPARTMENT OF EDUCATION
NATIONAL CENTER FOR EDUCATION STATISTICS
WASHINGTON, D.C. 20208-5651

SURVEY ON SAFE, DRUG-FREE, DISCIPLINED SCHOOLS

FAST RESPONSE SURVEY SYSTEM

FORM APPROVED:
O.M.B. No.:
EXPIRATION DATE:

This survey is authorized by law (20 U.S.C. 1221e-l). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.

DEFINITIONS FOR THIS SURVEY:

Drug use education refers to learning activities and related policies to prevent or reduce alcohol, drug (e.g., **marijuana**, inhalants, cocaine), and tobacco use by youth. It does not include clinical treatment or rehabilitation.

Disruptive behavior refers to serious and/or unlawful actions that may interfere with order in school (e.g., physical attacks, property destruction, thefts). Alcohol, drug, and tobacco use should be reported separately on this questionnaire and not included under "disruptive behavior."

Misbehavior refers to less serious actions which may interfere with classroom teaching (e.g., student throwing something, talking back to teacher).

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:_____ Telephone Number:_____

Title/position:_____

What is the best day/time to reach you at this number, if we have any questions? _____ Day _____ Time

RETURN COMPLETED FORM TO:

WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

BEST COPY AVAILABLE

1. a. About how many students do you teach in a class? _____ students. b. In one day? _____ students.
c. How many hours a day do you usually teach classes? _____ hours.

2. Circle the number indicating to what extent, if any, each of the following has been a problem in your school during the 1990-91 school year.

		SERIOUS	MODERATE	MINOR	NOT A PROBLEM
a.	Student tardiness	1	2	3	4
b.	Student absenteeism/class cutting	1	2	3	4
c.	Physical conflicts among students	1	2	3	4
d.	Robbery or theft of items over $10	1	2	3	4
e.	Vandalism of school property	1	2	3	4
f.	Student alcohol use	1	2	3	4
g.	Student drug use	1	2	3	4
h.	Sale of drugs on school grounds	1	2	3	4
i.	Student tobacco use	1	2	3	4
j.	Student possession of weapons	1	2	3	4
k.	Trespassing	1	2	3	4
l.	Verbal abuse of teachers	1	2	3	4
m.	Physical abuse of teachers	1	2	3	4
n.	Racial tensions	1	2	3	4

3. Circle the number for each item describing your school's general discipline and alcohol, drug, and tobacco policies. *(Please describe the components separately, even if they are included in a single policy.)*

		GENERAL DISCIPLINE POLICY		ALCOHOL POLICY		DRUG POLICY		TOBACCO POLICY	
		YES	NO	YES	NO	YES	NO	YES	NO
a.	Does your school have a policy?	1	2	1	2	1	2	1	2
	(If NO to a policy, skip items b-g for that policy.)								
b.	In writing?	1	2	1	2	1	2	1	2
c.	Strict enough?	1	2	1	2	1	2	1	2
d.	Comprehensive enough?	1	2	1	2	1	2	1	2
e.	Clear?	1	2	1	2	1	2	1	2
f.	Consistently applied?	1	2	1	2	1	2	1	2
g.	Publicized enough?	1	2	1	2	1	2	1	2

4. Circle the number indicating how effective you think your school's policies have been in reducing the following types of student behavior during the 1990-91 school year?

		VERY EFFECTIVE	SOMEWHAT EFFECTIVE	NOT VERY EFFECTIVE	NOT AT ALL EFFECTIVE
a.	Alcohol use	1	2	3	4
b.	Drug use	1	2	3	4
c.	Tobacco use	1	2	3	4
d.	Disruptive behavior	1	2	3	4
e.	Misbehavior	1	2	3	4

5. a. Have you ever received training regarding your school's general discipline policy? ☐ Yes; ☐ No.

b. If YES, please estimate the number of inservice training hours on your school's general discipline policy you will receive during the 1990-91 school year.
_____ hours.

6 a. Have you ever received training regarding your school's alcohol, drug, and tobacco policy? ☐ Yes; ☐ No.

b. If YES, please estimate the number of inservice training hours on your school's alcohol, drug, and tobacco policy you will receive during the 1990-91 school year.
_____ hours.

(If NO to both 5a and 6a, skip to Q8.)

7. Circle the number indicating whether each of the following components was included in the training you received regarding general school discipline and alcohol, drug, and tobacco policies.

		YES	NO
a.	Causes and effects of alcohol, drug, or tobacco use	1	2
b.	Identifying signs of alcohol, drug, or tobacco use	1	2
c.	Intervention techniques for your use with students suspected of alcohol, drug, or tobacco use	1	2
d.	Application and enforcement of alcohol policies	1	2
e.	Application and enforcement of drug policies	1	2
f.	Application and enforcement of tobacco policies	1	2
g.	Application and enforcement of other discipline policies	1	2
h.	Laws regarding alcohol, drug, or tobacco use, possession, and sale	1	2
i.	Availability of school services and other services for students using alcohol, drugs or tobacco	1	2

8. On a scale of 0 - 5, circle the number that indicates how much each of the following limits your ability to maintain order and discipline in the school.

		NOT AT ALL					VERY MUCH
a.	Lack of or inadequate number of security personnel	0	1	2	3	4	5
b.	Lack of or inadequate teacher training in discipline procedures and school law	0	1	2	3	4	5
c.	Lack of or inadequate alternative placements/programs for disruptive students	0	1	2	3	4	5
d.	Likelihood of complaints from parents	0	1	2	3	4	5
e.	Lack of support from administration	0	1	2	3	4	5
f.	Faculty's fear of student reprisal	0	1	2	3	4	5
g.	Other *(specify)* _____	0	1	2	3	4	5

9. Circle the number that indicates to what extent the following interfere with your teaching.

		GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a.	Student alcohol use	1	2	3	4
b.	Student drug use	1	2	3	4
c.	Student disruptive behavior	1	2	3	4
d.	Student misbehavior	1	2	3	4

10. a. Has a student from your school ever verbally abused you? ☐ Yes; ☐ No.
b. In the last four weeks of school? ☐ Yes; ☐ No. If YES, how many times? _____

11. a. Has a student from your school ever threatened to injure you? ☐ Yes; ☐ No.
b. In the last 12 months? ☐ Yes; ☐ No. If YES, how many times? _____

12. a. Has a student from your school ever physically attacked you? ☐ Yes; ☐ No.
b. In the last 12 months? ☐ Yes; ☐ No. If YES, how many times? _____

13. On a scale of 1 to 5, with 1 = very safe and 5 = very unsafe, please circle the number indicating how safe you feel:

		VERY SAFE				VERY UNSAFE
a.	In the school building during school hours?	1	2	3	4	5
b.	In the school building after school hours?	1	2	3	4	5
c.	On school grounds/campus?	1	2	3	4	5
d.	In the neighborhood of the school?	1	2	3	4	5

14. What is the average daily rate of absenteeism (excused and unexcused) in your classes? _____%

15. a. How many years have you been teaching? _____ years. b. In this school? _____ years.

16. What grades are you currently teaching? (*Circle all that apply.*)
K 1 2 3 4 5 6 7 8 9 10 11 12

17. What is your sex? ☐ Female; ☐ Male.

18. a. What is your race? ☐ Black ☐ White ☐ Asian/Pacific Islander ☐ American Indian/Alaskan Native ☐ Other *(specify)* _____

b. Are you of Hispanic origin? ☐ Yes; ☐ No.

1. Circle the number indicating to what extent, if any, each of the following has been a problem in your school during the 1990-91 school year.

		SERIOUS	MODERATE	MINOR	NOT A PROBLEM
a.	Student tardiness	1	2	3	4
b.	Student absenteeism/class cutting	1	2	3	4
c.	Physical conflicts among students	1	2	3	4
d.	Robbery or theft of items over $10	1	2	3	4
e.	Vandalism of school property	1	2	3	4
f.	Student alcohol use	1	2	3	4
g.	Student drug use	1	2	3	4
h.	Sale of drugs on school grounds	1	2	3	4
i.	Student tobacco use	1	2	3	4
j.	Student possession of weapons	1	2	3	4
k.	Trespassing	1	2	3	4
l.	Verbal abuse of teachers	1	2	3	4
m.	Physical abuse of teachers	1	2	3	4
n.	Teacher absenteeism	1	2	3	4
o.	Teacher alcohol or drug use	1	2	3	4
p.	Racial tensions	1	2	3	4

2. How many times were the following school actions taken at your school during the fall 1990 semester? *(In Column A count each incident of the school action. In Column B count the total number of different students involved for each type of school action.)*

	SCHOOL ACTION	A. NUMBER OF TIMES	B. NUMBER OF STUDENTS
a.	Notification of parents for disciplinary reasons		
b.	Referral to outside services		
c.	Transfer to an alternative school for disruptive students		
d.	In-school suspension		
e.	Suspension		
f.	Expulsion		
g.	Notification of police		

3. Circle the number that indicates whether your school has any of the following types of services or practices specifically for disruptive students (Column A), students using alcohol, drugs, or tobacco (Column B), and the general student body (Column C).

		A. DISRUPTIVE STUDENTS		B. STUDENTS USING ALCOHOL, DRUGS, OR TOBACCO		C. GENERAL STUDENT BODY	
		YES	NO	YES	NO	YES	NO
a.	Individual or group counseling programs	1	2	1	2	1	2
b.	Peer counseling program	1	2	1	2	1	2
c.	In-school suspension	1	2	1	2	1	2
d.	Program to identify high risk students	1	2	1	2	1	2
e.	Referrals to alternative programs or schools	1	2	1	2	1	2
f.	Academic assistance programs	1	2	1	2	1	2
g.	Student assistance programs (SAPs)	1	2	1	2	1	2
h.	Support groups for recovering students (aftercare)	1	2	1	2	1	2
i.	Community service projects	1	2	1	2	1	2
j.	Alcohol-, drug-, and tobacco-free extracurricular activities	1	2	1	2	1	2
k.	Health services	1	2	1	2	1	2
l.	Referrals to social services outside the school system	1	2	1	2	1	2
m.	Parent participation in school decisions about students	1	2	1	2	1	2
n.	Outreach or education programs for parents	1	2	1	2	1	2
o.	Instruction in conflict management	1	2	1	2	1	2

4. On a scale of 0 to 5, circle the number that indicates how much the following limit the ability to maintain order and discipline in your school.

		NOT AT ALL	VERY LITTLE				VERY MUCH
a.	Lack of or inadequate number of security personnel	0	1	2	3	4	5
b.	Lack of or inadequate teacher training in discipline procedures and school law	0	1	2	3	4	5
c.	Lack of or inadequate alternative placements/programs for disruptive students	0	1	2	3	4	5
d.	Likelihood of complaints from parents	0	1	2	3	4	5
e.	Lack of teacher support for policies	0	1	2	3	4	5
f.	Faculty's fear of student reprisal	0	1	2	3	4	5
g.	Other (*specify*)	0	1	2	3	4	5

5. How many hours of inservice training on general discipline policy and alcohol, drug, and tobacco policy are required for school staff for the 1990-91 school year?

		GENERAL DISCIPLINE POLICY	ALCOHOL, DRUG, AND TOBACCO POLICY
a.	For principals/administrators	_____ hours	_____ hours
b.	For teachers	_____ hours	_____ hours

6. Circle the number indicating how effective do you think your school's policies have been in reducing each of the following types of student behavior during the 1990-91 school year.

		VERY EFFECTIVE	SOMEWHAT EFFECTIVE	NOT VERY EFFECTIVE	NOT AT ALL EFFECTIVE
a.	Alcohol use	1	2	3	4
b.	Drug use	1	2	3	4
c.	Tobacco use	1	2	3	4
d.	Disruptive behavior	1	2	3	4
e.	Misbehavior	1	2	3	4

7. a. In which of the following ways does your school offer alcohol, drug, and tobacco use education? *(Circle one for each.)*

	YES	NO		YES	NO
1) Within health curriculum?	1	2	4) Throughout the curriculum?	1	2
2) Within science curriculum?	1	2	5) At special assemblies or events?	1	2
3) As a separate course?	1	2	6) Other (*specify*) _____	1	2

b. What is the average number of hours alcohol, drug, and tobacco use education will be taught in each grade during the 1990-91 school year? *(Write 0 for each grade in which it is not taught; write NA for each grade not offered at your school.)*

GRADE	HOURS	GRADE	HOURS	GRADE	HOURS	GRADE	HOURS
K	_____	4	_____	7	_____	10	_____
1	_____	5	_____	8	_____	11	_____
2	_____	6	_____	9	_____	12	_____
3	_____						

8. Circle the number indicating the extent to which each of the following organizations in your community provides assistance or educational support for your school's alcohol, drug, and tobacco prevention programs.

		GREAT EXTENT	MODERATE EXTENT	SMALL EXTENT	NOT AT ALL
a.	Parent groups	1	2	3	4
b.	Private corporations and businesses	1	2	3	4
c.	Social services agencies	1	2	3	4
d.	Police	1	2	3	4
e.	Civic organizations/service clubs	1	2	3	4
f.	Colleges/universities	1	2	3	4
g.	Religious organizations	1	2	3	4
h.	Other (*specify*) _____	1	2	3	4

9. a. To obtain an approximate socioeconomic measure for your school in order to better interpret the data of this survey, please indicate the percent of students in your school currently receiving federally funded free or reduced-price lunches. _____%

b. What was the average daily rate of student absenteeism (excused and unexcused) during the fall 1990 semester? _____%

[FR Doc. 91-4690 Filed 1-27-91; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 1, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: February 22, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Performance Report for Christa McAuliffe Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden: Responses: 75; *Burden Hours:* 225.

Recordkeeping Burden: Recordkeepers: 0; *Burden Hours:* 0.

Abstract: This report is used by State agencies to provide caseload data. The Department uses this information collected to assess the accomplishment of program management goals.

[FR Doc. 91–4691 Filed 2–27–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to Engineering Foundation

AGENCY: Pittsburg Energy Technology Center, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Engineering Foundation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (B), it intends to make a Non-Competitive Financial Assistance (Grant) Award to Engineering Foundation for a conference entitled "Inorganic Transformations and Depositions During Combustion."

SCOPE: The objective of this conference is to provide an opportunity for researchers working on ash related problems in combustion systems. Speakers will be invited who represent both the research community and industry in order to provide such interaction.

The program will include the following subjects:

Fireside Deposition Experience in Large-Scale Systems
Advanced Methods of Fuel, Ash and Deposit Characterization
Transformations of Inorganic Species During Combustion
Deposit Formation Mechanisms-Growth and Strength Development
Modeling of Ash Deposition Processes
Ash Deposition in Advanced Combustion Systems

In accordance with 10 CFR 600.7(b)(2)(i) criteria (B), a noncompetitive financial Assistance Award to Engineering Foundation has been justified.

This effort would be conducted by Engineering Foundation using their own resources; however DOE support of the activity would enhance public benefits to be derived by further understanding of ash deposition during combustion. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is considered suitable for noncompetitive financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

The grant is for an estimated total value of $125,000. The DOE share of cofunding for the conference is estimated at $10,000 and shall be used to pay for the reasonable cost of staff, administrative support personnel, consultants, and experts as necessary for the Conference.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Rhonda L. Dupree. Telephone: AC (412) 892–4959.

Dated: February 12, 1991.

Carroll Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–4781 Filed 2–27–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–1228–000, et al.]

The Inland Gas Co., Inc. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. The Inland Gas Company, Inc.

[Docket No. CP91–1228–000]

February 19, 1991.

Take notice that on February 12, 1991, The Inland Gas Company, Inc. (Inland), P.O. Box 1180, Ashland, Kentucky 41105–1180 filed in Docket No. CP91–1228–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Magnum Drilling of Ohio, Inc. (Magnum), a portion of Inland's pipeline system consisting of approximately 69 miles of various pipeline sizes, 99 existing points of delivery and appurtenant facilities located in Floyd, Johnson, Lawrence and Carter Counties, Kentucky, and associated service obligations, along with an interruptible transportation service for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inland states that the facilities constitute a portion of the existing system through which it transports gas supply which is produced from company-owned wells and third-party wells, as well as gas received from Tennessee Gas Pipeline Company (Tennessee) and Columbia. Under a sales agreement dated November 30, 1990, Inland states that it will transfer the facilities to Magnum and Magnum has agreed to continue the operation of this system. It is stated that the facilities Magnum will purchase will be operated as an entity solely in the State of Kentucky.

Inland proposes to abandon and sell to Magnum the following facilities: (i) Approximately 44 miles of 16-inch pipeline known as T–88 and a 50-foot section of 16-inch pipeline known as T–1, located in Floyd, Johnson, Lawrence and Carter Counties, Kentucky; (ii) approximately 22 miles of 8 and 12-inch pipeline known as Line T–2, located in Carter County, Kentucky; (iii) approximately 3 miles of 4 and 6-inch pipeline, one line known as T–45, one line known as T–46 and the third line known as T–47, all located in Carter County, Kentucky; (iv) Measuring and regulating facilities located at the existing point of receipt (Straight Creek) between Inland and Tennessee located in Carter County, Kentucky [1]; (v) point of receipt of gas transportation volumes from Columbia located in Johnson County, Kentucky; and (vi) 99 points of delivery through which service is provided to Louisville, Carter County Board of Education, General Refractories Company and 96 mainline rural customers' taps served pursuant to the terms of right-of-way agreements or pursuant to Kentucky Revised Statute 278.485.

Inland also seeks to abandon the interruptible transportation service provided for Columbia in Docket No. CP83–498, 28 FERC ¶ 61,287 (1984). According to Inland, Magnum has indicated that it will continue this interruptible transportation service via the facilities to be abandoned to either Tennessee or Inland for ultimate delivery to Columbia. Inland states that it will provide any additional transportation for Columbia under its blanket certificate in Docket No. CP89–779–000.

Inland states that it currently provides up to 300 Mcf per day of interruptible transportation service for Louisville under its blanket certificate and the request for authorization in Docket No. CP89–2137–000. Inland notes that it has pregranted abandonment authority under its blanket certificate and that the term of the transportation agreement with Louisville has expired. It is stated that Magnum will continue to make the transportation service available to Louisville after the transfer of facilities.

It is stated that Magnum will assume the existing obligation of Inland to provide certain non-jurisdictional sales and/or transportation services to the following customers: (i) Carter County Board of Education, served under a gas sales agreement dated August 1, 1990; (ii) General Refractories Company, currently in idle service; (iii) a right of way grantor, Harry Burton (now Loraine Burton), who purchases gas for distribution and resale in the community of Blaine, Lawrence County, Kentucky; and (iv) 95 other mainline rural customers currently served pursuant to contractual right-of-way agreements or Kentucky statutory requirements.

In connection with the non-jurisdictional sales service, Inland notes that it received certificate authority to acquire the facilities from a predecessor company in Docket No. CP61–266, 28 FERC 683 (1962). Inland states that the Commission order authorized the acquisition and operation of the facilities for the transportation of natural gas in interstate commerce to enable Inland to sell natural gas directly to consumers. Additionally, Inland states that it noted in its application that it would also sell natural gas produced and consumed in the State of Kentucky to Harry Burton for resale and distribution in the town of Blaine and that the gas would not be commingled with natural gas originating in or transported from another state. It is stated that Magnum will also purchase two existing Inland wells located on the facilities and will obtain purchase rights from the third-party wells which will be utilized to continue service to Mainline customers.

Inland submits that the abandonment of the facilities by sale is appropriate under the present circumstances and will reduce its operation and maintenance costs by approximately $50,000 annually. Inland has determined that the facilities proposed to be abandoned are no longer required for its remaining operations. The principal segment of pipeline proposed for abandonment, Line T–88 has, according to Inland, for a number of years been utilized to transport limited volumes of company production and purchased gas, which are primarily used to provide service to customers located on that portion of the system. Inland states that the gas originating on this portion of the pipeline does not flow through the entire length of Inland's system.

In fact, Inland states that this line is operationally isolated from Inland's facilities to the north by a closed valve. Inland avers that supply from the southern portion of its system, which is utilized to serve additional customers located on the northern portion of the system, is delivered to those customers through displacement under the terms of the exchange agreement with Columbia. Inland states that it will continue to utilize the exchange agreement with Columbia in this manner following the transfer of the facilities, and, therefore, service to remaining customers on Inland's system will not be affected by the transfer of facilities.

Inland states that transfer of the facilities will, by necessity, require transfer of the service currently provided to customers served from the facilities. According to Inland, Magnum has expressly agreed to assume all current obligations of Inland for providing service to existing customers. Inland believes that the abandonment will not affect the availability of gas service to existing customers.

Comment date: March 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

[1] Inland stated that Tennessee has indicated that it will file a request for authorization under the prior notice procedures for the transfer of this point of delivery to Magnum. It is stated that Magnum will utilize this point of receipt from Tennessee to continue transportation service for Louisville Fire Brick Works (Louisville).

2. Williston Basin Interstate Pipeline Co.

[Docket No. CP91–1230–000]

February 19, 1991.

Take notice that on February 12, 1991, Williston Basin Interstate Pipeline Company, (Williston Basin), Suite 200, 304 East Rosser Avenue, North Dakota 58501, filed in Docket No. CP91–1230–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation for North Canadian Resources, Inc. (North Canadian), a marketer of natural gas, under Williston Basin blanket certificate issued in Docket No. CP89–1118–000 under section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Williston Basin states that it proposes to transport, on an interruptible basis, up to 120,000 dekatherms (Dkt) of natural gas per day for North Canadian from receipt points in North Dakota, Montana, Wyoming, and South Dakota and to delivery points in North Dakota. Williston Basin anticipates transporting 60,000 Dkt of natural gas on an average day and 43,800,000 Dkt of natural gas on an annual basis. Williston Basin also indicates that construction of facilities will not be required to provide the proposed service.

Williston Basin states that the transportation of natural gas for North Canadian commenced on December 13, 1990, as reported in Docket No. ST91–6335–000.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Co., Columbia Gulf Transmission Co., and Columbia Gulf Transmission Co.

[Docket Nos. CP91–1248–000, CP91–1248–000, and CP91–1249–000]

February 19, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] Avg. Annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91–1248–000 2–13–91	Colorado Interstate Gas. Co., P.O. Box 1087, Colorado Springs, CO 80944.	Coastal Gas Marketing Co.	7,500 7,500 2,738,000	WY	CO	11–1–90, TF–1	CP86–589–000, ST91–5332–000.
CP91–1248–000 2–13–91	Columbia Gulf Transmission Co., 3805 West Alabama, Houston, TX 77027.	Chevron U.S.A., Inc.	80,000 20,000 7,300,000	LA	LA	1–1–91, ITS–1	CP86–239–000, ST91–6506–000.
CP91–1248–000 2–13–91	Columbia Gulf Transmission Co., 3805 West Alabama, Houston, TX 77027.	Elf Exploration, Inc.	15,000 10,000 3,650,000	Off LA	Off LA	1–1–91, ITS–2	CP86–239–000, ST91–6690–000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Williston Basin Interstate Pipeline Co.

[Docket Nos. CP91–1250–000 and CP91–1251–000]

February 19, 1991.

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.[3] (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets
CP91–1250–000 2–13–91	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Avenue, Bismark, ND 58501.	Farmers Union Central Exchange Inc..	2,336 1,168 852,840	WY	MT	1–1–91, IT–1	CP89–1118–000, ST91–6795–000.
CP91–1251–000 2–13–91	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Avenue, Bismark, ND 58501.	Amerada Hess Corporation.	41,000 31,000 14,965,000	ND	ND	1–1–91, IT–1	CP89–1118–000, ST91–6704–000.

[1] Quantities are shown in Dt.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. United Gas Pipe Line Co.

[Docket No. CP91–1247–000]

February 20, 1991.

Take notice that on February 13, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP91–1247–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to operate an existing one-inch sales tap and to replace a one-inch riser on the existing tap for the sale of natural gas to Trans Louisiana Gas Company (Trans Louisiana) for resale to O.S. Johnson Asphalt Plant for commercial use, in Natchitoches Parish, Louisiana, under its blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to replace a one-inch riser on an existing tap to comply with Trans Louisiana's request to deliver an estimated maximum volume of 1,000 Mcf of natural gas per day to O.S. Johnson Asphalt Plant in Natchitoches Parish, Louisiana.

United states that the tap be used to facilitate the sale of gas to Trans Louisiana was previously authorized in Docket No. G–9423 which authorized United to provide all of Trans Louisiana's natural gas requirements for residential and commercial use in its Natchitoches Parish billing area. United also states that the cost for the proposed replacement of the one-inch riser is $850 and that Trans Louisiana will reimburse United for all costs resulting from the proposed replacement.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Florida Gas Transmission

[Docket No. CP91–1238–000]

February 20, 1991.

Take notice that on February 12, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91–1238–000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade the Plymouth Meter Station for Lake Apopka Natural Gas District (LANG), under FGT's blanket certificates issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that LANG, a local distribution company serving certain customers in the state of Florida, has requested FGT to upgrade the Plymouth delivery point to allow for increased hourly flows but would remain within the currently certificated levels of sales entitlement for LANG as authorized by Commission Order dated June 15, 1990, approving FGT's Stipulation and Agreement in Docket No. RP89–60–000, *et al.*

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

7. Midwestern Gas Transmission Co., Texas Eastern Transmission Corp., Columbia Gulf Transmission Co. and Mississippi River Transmission Corp.

[Docket Nos CP91–1286–000, CP91–1274–000, CP91–1275–000 and CP91–1276–000]

February 20, 1991.

Take notice that on February 15, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1266-000 (2-15-91)	The Polaris Pipeline Corp. (Marketer).	25,000 25,000 [2] 9,125,000	Various	TN, IL, IN, KY	1-4-91, IT, Interruptible.	ST91-6761-000, 1-17-91.
CP91-1274-000 (2-15-91)	Equitable Resources Marketing Co. (Marketer).	200,000 200,000 73,000,000	Various	LA, MS, NJ, OH, PA	1-8-91, IT-1, Interruptible.	ST91-6846-000, 1-24-91.
CP91-1275-000 (2-15-91)	Texaco Gas Marketing, Inc. (Marketer).	25,000 10,000 3,650,000	OLA, OTX	TX, OLA	6-26-89, ITS-2, Interruptible.	ST91-6480-000, 12-13-90.
CP91-1276-000 (2-15-91)	KN Gas Marketing, Inc. (Marketer/Broker).	150,000 4,904 1,800,000	AR, IL, LA, TX	IL, MO	11-28-90, ITS, Interruptible.	ST91-6428-000, 12-21-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Midwestern's quantities are in dekatherms.

Appendix B

Applicant's address	Blanket docket
Columbia Gulf Transmission Co., 3805 West Alabama, P.O. Box 683, Houston, Texas 77001	CP86-239-000
Midwestern Gas Transmission Co., P.O. Box 2511 Houston, Texas 77252	CP90-174-000
Mississippi River Transmission Corp., 9900 Clayton Road, St. Louis, Missouri 63124	CP89-1121-000
Texas Eastern Transmission Corp., 5400 Westheimer Court, P.O. Box 1642 Houston, Texas 77251-1642	CP86-136-000

8. Columbia Gulf Transmission Co. and Mississippi River Transmission Corp.

[Docket Nos. CP91-1265-000 and CP91-1277-000]

February 20, 1991.

Take notice that on February 15, 1991, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, and Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of two shippers under the blanket certificates issued in Docket No. CP86-239-000 and Docket No. CP89-1121-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1265-000 (2-15-91)	Graham Energy Marketing Corporation (Marketer).	200,000 60,000 21,900,000	OLA, LA	OLA, LA, AL	11-15-89 [2], ITS-1&2, Interruptible.	ST91-5443-000, 12-7-90.
CP91-1277-000 (2-15-91)	Consolidated Fuel Corporation (Marketer).	1,030 1,030 375,950	IL, TX, LA, AR	MO	11-28-90, ITS, Interruptible.	ST91-6212-000, 12-1-90.

[1] Offshore Louisiana is shown as OLA.
[2] Columbia Gulf's Agreement No. 9186A is for ITS-2 service and Agreement No. 9189B is for ITS-1 service. Both agreements are dated November 15, 1989, and provide for a transportion quantity of 200,000 Dth per day.

9. Texas Gas Transmission Corp.

[Docket Nos. CP91-1254-000,[4] CP91-1255-000, CP91-1256-000 and CP91-1257-000]

February 20, 1991.

Take notice that on February 14, 1991, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the reference transportation rate schedule(s).

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-1254-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Centran Corporation.	30,000 24,000 9,855,000	LA, TX, Off. LA, TN, Off. TX, KY, IL, AR, OH.	LA	1-09-91 IT	CP86-586-000 ST91-6587-000
CP91-1255-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Phibro Energy, Inc.	1,000 700 255,500	LA, IN, KY, TX, Off. LA, TN, IL, Off. TX, OH, AR.	LA	1-10-91 IT	CP86-586-000 ST91-6647-000
CP91-1256-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	O & R Energy, Inc.	40,000 30,000 5,475,000	LA, IN, Off. LA, Off. TX, KY, IL, AR, OH, TN.	LA	1-17-91 IT	CP86-586-000 ST91-6526-000
CP91-1257-000 2-14-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Bishop Pipeline Corporation.	50,000 10,000 9,125,000	LA, IN, KY, TX, Off. LA, TN, IL, Off. TX, AR, OH.	IN, IL, KY	1-09-91 IT	CP86-586-000 ST91-6648-000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90-639-001]

February 20, 1991.

Take notice that on February 14, 1991, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP90-639-001, an amendment to its pending application in said docket to reflect a reconfiguration of its proposed facilities in light of changes in Phase II of the Iroquois/Tennessee Project, all as more fuly set forth in the application, which is on file with the Commission and open to public inspection.

In Opinion No. 357, the Commission authorized Tennessee to provide certain transportation services and to construct and operate certain facilities, proposed in Docket No. CP89—629-001, that related to Phase I of the Iroquois/Tennessee Project. The remaining facilities and services proposed in Docket No. CP89-629-001 and those proposed in Docket No. CP90-639-000 were to be addressed in Phase II of the project. In Docket No. CP90-639-000, Tennessee requested a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to transport 118,000 Mcf of natural gas per day for three Iroquois/Tennessee Project shippers (Boston Gas Company, Granite State Gas Transmission, Inc., and New England Power Company (NEP)) and to construct and operate facilities necessary to transport and deliver such gas. Tennessee states that, as a result of the withdrawal of its proposal to provide additional transportation service for NEP in Docket No. CP89-629-001, Tennessee no longer requires certain of the facilities proposed in Docket No. CP89-629-001. Since the facilities proposed in its application in this proceeding were originally designed on the assumption that all facilities proposed in Docket Nos. CP89-629-001 would be installed first, the elimination of certain of those facilities now requires changes in the proposed facilities design in this proceeding. Tennessee states that the amendment sets forth its revisedd design which reflects a combination of facilities originally proposed in Docket No. CP90-639-000 and certain facilities previously proposed in Docket No. CP89-629-001, along with other minor adjustments.

Tennessee states that, with one minor exception, the facilities as reconfigured have all been proposed either in this proceeding or in Docket No. CP89-629-001. The exception is the relocation of a new compressor station and associated substitution of 0.65 miles of loop for replacement pipeline on the Blackstone Lateral. It is stated that the new proposed facility design reflects the elimination of 8.54 miles of 36-inch loop in Albany County, New York; a 3,700 horsepower addition at Station 264 in Worcester County, Massachusetts; and 5.07 miles of 36-inch loop in Berkshire County, Massachusetts. In addition, two compressor additions would be rerated. The estimated total direct cost of the facilities now proposed in Docket No. CP90-639-001 is $68,582,000. Tennessee proposes to roll the facilities authorized in Docket Nos. CP89-629, *et al.*, together with the facilities proposed in this proceeding in determining the proposed consolidated incremental rates.

Tennessee requests that the application, as amended herein, receive expedited Commission consideration

and that the Commission act by May 1, 1991 to issue the requested authorizations. Tennessee states that it may not be able to complete the already approved Phase I facilities in time to provide service in accordance with the phase-in of volumes requested by customers. If the Phase I facilities cannot be completed in time to provide the phase-in of services, Tennessee would propose in 1991 to install and operate the 2,850 horsepower compression facilities at Station 261 that have been requested in Phase II to ensure that the phase-in volumes can be provided in a manner that will make additional gas capacity available to Northeast consumers at the earliest practicable time.

Comment date: March 13, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Williams Natural Gas Co.

[Docket No. CP91-1201-000]

February 21, 1991.

Take notice that on February 8, 1991, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-1201-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale, a portion of its Lindsay 16-inch lateral pipeline and appurtenant facilities located in Garvin County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Williams seeks to abandon by sale, to Texaco Exploration and Production Company, approximately 6.4 miles of 16-inch lateral pipeline and appurtenant facilities. It is further stated that the cost to reclaim the facilities is approximately $700, the salvage value is $355,000 and the sales price is $355,000.

Comment date: March 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Florida Gas Transmision Co.

[Docket Nos. CP91-1281-000, CP91-1282-000, CP91-1283-000, CP91-1284-000, CP91-1285-000, CP91-1286-000

February 21, 1991.

Take notice that on February 19, 1991, Florida Gas Transmission Company (Applicant), P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-555-000, pursuant to seciton 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name	Peak day avg. annual [1]	Points of Receipt	Points of Delivery	Start up date, rate schedule, Service Type	Related docket contract date [2]
CP91-1281-000 (2-19-91)	Consolidated Fuel Corporation.	20,000 15,000 7,300,000	AL, FL, LA, MS, TX, OLA, OTX.	FL, LA, TX	2-1-91 ITS-1 Interruptible.	ST91-6862-000 2-23-90
CP91-1282-000 (2-19-91)	Heath Petra Resources	100,000 75,000 36,500,000	AL, FL, LA, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX	2-1-91 ITS-1 Interruptible.	ST91-6863-000 2-23-90
CP91-1283-000 (2-19-91)	Tropicana Products, Inc.	50,000 37,500 18,250,000	AL, FL, LA, MS, TX, OLA, OTX.	FL	2-1-91 ITS-1 Interruptible.	ST91-6891-000 2-23-90
CP91-1284-000 (2-19-91)	Lake Apopka Natural Gas District.	10,500 7,875 3,832,500	AL, FL, LA, MS, TX, OLA, OTX.	FL	2-1-91 ITS-1 Interruptible.	ST91-6894-000 2-23-90
CP91-1285-000 (2-19-91)	City Gas Company of Florida.	4,200 3,150 1,533,000	AL, FL, LA, MS, TX, OLA, OTX.	FL	2-1-91 ITS-1 Interruptible.	ST91-6889-000 2-23-90
CP91-1286-000 (2-19-91)	Citizens Gas Supply Corporation.	800,000 600,000 292,000,000	AL, FL, LA, MS, TX, OLA, OTX.	AL, FL, LA, MS, TX, OLA	2-1-91 ITS-1 Interruptible.	ST91-6890-000 2-23-90

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

13. Northern Natural Gas Co., Northern Natural Gas Co., Northwest Pipeline Corp., Stingray Pipeline Co., Natural Gas Pipeline Co. of America

[Docket Nos. CP91-1280-000, CP91-1295-000, CP91-1287-000, CP91-1290-000, CP91-1291-000, CP91-1292-000]

February 21, 1991.

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1289-000 (2-19-91)	Lower Colorado River Authority (End-user).	4,500 3,375 1,642,500	OLA, LA	LA	1-2,91, IT-1, Interruptible.	ST91-6654-000 1-2-91
CP91-1287-000 (2-19-91)	BC Gas Inc. (LDC)	26,000 800 300,000	[3]	[3]	12-13-90, TI-1, Interruptible.	ST91-6625-000 12-29-90
CP91-1290-000 (2-19-91)	Amerada Hess Corporation (Producer).	40,000 15,000 5,475,000	LA, OLA, OTX	LA, OTX	12-8-89, ITS, Interruptible.	ST91-6618-000 12-28-90
CP91-1291-000 (2-19-91)	Entrade Corporation (Marketer).	150,000 50,000 18,250,000	Various	Various	9-22-89 [4], ITS, Interruptible.	ST91-6885-000 12-20-90
CP91-1292-000 (2-19-91)	Entrade Corporation (Marketer).	200,000 75,000 27,375,000	Various	Various	11-2-89 [4], ITS, Interruptible.	ST91-6919-000 12-15-90
CP91-1295-000 (2-20-91)	Arco Natural Gas Marketing, Inc. (Marketer).	15,000 11,250 5,475,000	OLA, OTX, LA, TX	OLA, OTX, LA, TX	1-3-91, IT-1, Interruptible.	ST91-6655-000 1-3-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Any transportation receipt point on Northwest's system.
[3] Any transportation delivery point on Northwest's system.
[4] As amended.

Applicant's address	Blanket docket
Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148.	CP86-582-000
Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108.	CP86-578-000
Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148.	[5] RP89-70-000

[5] Order No. 509 issued Stingray a blanket transportation certificate corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000.

14. United Gas Pipe Line Co.

[Docket Nos. CP91-1267-000, CP91-1268-000, CP91-1270-000, CP91-1271-000, CP91-1272-000, and CP91-1273-000]

February 21, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[9]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP91-1267-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Mobil Natural Gas, Inc.	51,000 51,500 18,797,000	Offshore LA, TX	LA, MS, AL, KS	ITS Interruptible 1/16/91	CP88-6-000 ST91-6594-000
CP91-1268-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Pennzoil Gas Marketing Co.	206,000 206,000 75,190,000	TX, Offshore LA, MS.	LA, TX, MS, FL, AL	ITS Interruptible 1/16/91	CP88-6-000 ST91-6663-000

Docket number (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related dockets [2]
CP91-1270-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Midcon Marketing Corporation.	721,000 721,000 263,165,000	Offshore LA, TX, MS, NM, OK.	Offshore LA, TX, MS, FL, AL.	ITS..... Interruptible..... 1/11/91.....	CP88-6-000 ST91-6595-000
CP91-1271-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	NGC Transportation Inc.	154,500 154,500 56,392,500	LA, TX, MS, AL.....	LA, TX, FL, AL.....	ITS..... Interruptible..... 12/31/90.....	CP88-6-000 ST91-6470-000
CP91-1272-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Transamerican Gas Transmission Corporation.	154,500 154,500 56,392,500	LA, TX.....	LA, TX, FL, MS.....	ITS..... Interruptible..... 1/11/91.....	CP88-6-000 ST91-6596-000
CP91-1273-000 2/15/91	United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478.	Prior Intrastate Corporation.	515,000 515,000 187,975,000	Offshore LA, TS, MS, AL.	LA, TX, AL, MS, FL..	ITS..... Interruptible..... 10/29/90.....	CP88-6-000 ST91-3942-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

15. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1186-000]

February 21, 1991.

Take notice that on February 7, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit Michigan 48226, filed an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Great Lakes to provide natural gas transportation services for Northern States Power Company, a Minnesota corporation (NSP-Minnesota), and Northern States Power Company, a Wisconsin corporation (NSP-Wisconsin), all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Great Lakes states that NSP-Minnesota and NSP-Wisconsin are local distribution companies serving the public within their authorized service territories within the states of Michigan, Minnesota, North Dakota, and Wisconsin, and that both have requested Great Lakes to provide natural gas transportation services. NSP-Minnesota and its wholly-owned subsidiary, NSP-Wisconsin, will be collectively referred to as "Northern States."

Great Lakes states that Northern States has requested it to provide the following firm natural gas transportation service. Great Lakes would receive up to 15,000 Mcf of gas per day at an interconnection between the facilities of Great Lakes and TransCanada PipeLines Limited at the United States-Canadian international boundary near Emerson, Manitoba, (Emerson Interconnection), or at an interconnection between the facilities of Great Lakes and Northern Natural Gas Company at Carlton, Minnesota (Carlton Interconnection) and transport and deliver on a firm basis thermally equivalent quantities to the Carlton Interconnection, to a to-be-constructed interconnection between the facilities of Great Lakes and Northern States at Ashland, Wisconsin (Ashland Delivery Point), to a to-be-constructed interconnection between the facilities of Great Lakes and Northern States at Ironwood, Michigan (Ironwood Delivery Point), to an interconnection between the facilities of Great Lakes and ANR Pipeline Company (ANR Pipeline) at Fortune Lake, Michigan (Fortune Lake Delivery Point), and to an interconnection between the facilities of Great Lakes and ANR Storage Company at Deward, Michigan (Deward Interconnection).

During the months of April through November, Great Lakes states that it would receive up to 10,000 Mcf of gas per day at an interconnection between the facilities of Great Lakes and ANR Pipeline at Farwell, Michigan (Farwell Interconnection), and transport and deliver thermally equivalent quantities of gas to the Deward Interconnection.

During the months of Novmeber through April, Great Lakes states that it would receive up to 35,000 Mcf of gas per day at either the Farwell Interconnection or the Deward Interconnection, and transport and deliver thermally equivalent quantities of up to 10,000 Mcf of gas to the Ironwood Delivery Point and to the Ashland Delivery Point, and/or up to 35,000 Mcf of gas to the Fortune Lake Delivery Point, to the Carlton Interconnection, and to the Emerson Interconnection.

Great Lakes states that the reservation fees and utilization fees for the transportation services will be the equivalent of a maximum rate under Great Lakes' FERC Gas Tariff, Original Volume No. 3 for services similar to those provided to Northern States.

Great Lakes states that in order to provide the transportation services to Northern States, Great Lakes must construct two new meter stations (one at Ashland, Wisconsin and the other at Ironwood, Michigan), plus 12.2 miles of 36-inch diameter loop pipeline. It is indicated that the 12.2 miles of loop pipeline would consist of two loop segments located in Minnesota, a 3.1-mile loop in Marshall County and a 5.9-mile loop in Beltrami County, and three loop segments located in Michigan, a 0.8-mile loop in Delta County, a 2.0-mile loop in Mackinac County, and a 0.4-mile loop in Otsego County. Great Lakes states that the projected cost of construction is approximately $17,600,000, expressed in 1991 dollars. Great Lakes further states that the proposed facilities would be financed with funds generated internally, together with borrowings from banks, or commercial paper (if required).

Great Lakes states that the public convenience and necessity will benefit by a grant of the application because Northern States will be able to diversify its sources of supply, add supply source options, and utilize storage services, thereby providing a secure and reliable supply for the winter heating needs of

the customers within its authorized service territories.

Comment date: March 14, 1991, in accordance with Standard Paragraph F at the end of the notice.

16. Sonat Marketing Co., Anthem Energy Co.

[Docket Nos. CI88-503-005, CI88-346-005] [10]

February 21, 1991.

Take notice that on February 15, 1991, Sonat Marketing Company of P.O. Box 2563, Birmingham, Alabama 35202-2563 and on February 19, 1991, Anthem Energy Company of 333 Clay Street, suite 2000, Houston, Texas 77002 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) rgulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI86-503-004 and CI88-455-004 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket Nos. CI86-503-005 requests extension for an unlimited term, or, in the alternative, for a term extending until wellhead price controls are permanently eliminated on January 1, 1993 pursuant to the Natural Gas Wellhead Decontrol Act, 15 U.S.C. 311 *et seq.*, and authorization to resell (1) Imported and/or liquified natural gas, and (2) natural gas sold under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales of surplus system supply (ISS gas). Applicant in Docket No. CI88-346-005 requests extension for an unlimited term, and that its authority to market ISS gas continue to be coextensive with its authority to market gas purchased from other sources.

Comment Date: March 13, 1991, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Louis D. Cashell,

Secretary.

[FR Doc. 91-4660 Filed 2-27-91; 8:45 am]

BILLING CODE 6717-01-M

[10] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket Nos. ER91-260-000, et al.]

Southwestern Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Southwestern Electric Power Co.

[Docket No. ER91-260-000]

February 19, 1991.

Take notice that Southwestern Electric Power Company on Febuary 11, 1991, tendered for filing a Power Supply Agreement (Agreement) dated November 15, 1990 between SWEPCO and Tex-La Electric Cooperative of Texas, Inc. (TEX-LA).

This Agreement supersedes and replaces the Power Supply Agreement between SWEPCO and TEX-LA, dated June 23, 1988, accepted for filing by order of the Federal Energy Regulatory Commission (Commission) on February 10, 1988, and provides for the extension of service to certain new loads to be transferred to the SWEPCO load control area.

SWEPCO requests waiver of the notice requirement in order that the Agreement may become effective as of January 1, 1991.

Copies of the filing were served upon TEX-LA and the Public Utility Commission of Texas.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corp.

[Docket No. ER90-316-000]

February 19, 1991.

Take notice that on February 8, 1991, New York Electric & Gas Corporation (NYSEG) tendered for filing pursuant to § 35.13 of the regulations under the Federal Power Act, as a rate schedule, an agreement with New England Power Company (NEP). The short term

agreement provides that NYSEG shall sell surplus capacity and associated energy to NEP and make available to NEP additional capacity and energy. This constitutes merely a continued service under Rate Schedule NYSEG FERC No. 102. Under this agreement, service for 50 megawatts began May 1, 1990, and terminated August 31, 1990. The contract also has provisions for additional service subject to availability and notice as follows: an additional 50 megawatts from September 1, 1990 to October 31, 1990, and an additional 25 megawatts from May 1, 1990 to October 31, 1990. Neither additional service was actually provided. Contract durations may be extended in writing by both parties.

NYSEG has filed a copy of this filing with New England Power Company, with the Massachusetts Department of Public Utilities, and with the Public Service Commission of the State of New York.

NYSEG requests that the 30-day filing requirement be waived and that May 1, 1990 be allowed as the effective date of the filing.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corp.

[Docket No. ER91-258-000]

February 19, 1991.

Take notice that on February 11, 1991, tendered for filing a cancellation of its Rate Schedule No. 117 between Niagara and Northeast Utilities Service Company (NU), acting as agent for the Hartford Electric Light Company, the Connecticut Light and Power Company and the Western Massachusetts Electric Company.

Niagara presently has on file an Agreement with NU dated October 1, 1981 which provides for the delivery of power and energy to NU from time to time. This Agreement is designated as Niagara Mohawk Power Corporation Rate Schedule No. 117. This cancellation is a result of the expiration of the October 1, 1981 agreement by its own terms.

Copies of the cancellation were served upon NU and the New York State Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Co.

[Docket No. ER91-275-000]

February 19, 1991.

Take notice that on February 11, 1991, Idaho Power Company (IPA) tendered for filing amended rates applicable to the Agreement to Supply of Power and Energy between Idaho Power Company and Utah Associated Municipal Power Systems, dated February 10, 1988 and the Agreement for Supply of Power and Energy between Idaho Power Company and Washington City, Utah, dated July 5, 1967.

IPC has requested an effective date of April 1, 1991 for the amended rates.

IPC states that copies of the filing were served on the Utah Associated Municipal Power Systems, Washington City, Utah, the Idaho Public Utilities Commission and the Utah Public Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Electric Power Co.

[Docket No. ER91-259-000]

February 19, 1991.

Take notice that on February 11, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing a Power Supply Agreement (Agreement), dated December 28, 1990, between SWEPCO and the City of Bentonville, Arkansas (City).

The Agreement supersedes and replaces the Contract for Electric Service between SWEPCO and City dated July 31, 1973, as amended. Pursuant to the Agreement, SWEPCO will sell to City, and City shall purchase from SWEPCO, City's power and energy requirements in excess of the power and energy City purchases from the Southwestern Power Administration.

SWEPCO requests waiver of the notice requirement in order that the Agreement may become effective as of January 1, 1991.

Copies of the filing were served upon City and the Arkansas Public Service Commission.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Edison Co.

[Docket No. ER91-261-000]

February 19, 1991.

Take notice that on February 13, 1991, Ohio Edison Company submitted for filing under § 35.12 of the Commission's regulations an agreement concerning the sale of limited term energy by the Ohio Edison parties to Potomac Electric Power Company on an as-available basis.

The parties state that the agreement is beneficial to all parties and their customers and is in the public interest, and that charges for the aforesaid services were negotiated at arms' length and are mutually advantageous. The request an effective date of December 31, 1990, and request waiver of the Commission's notice requirements as necessary therefore. Copies of the filing have been served upon the Public Utilities Commission of Maryland, Ohio, Pennsylvania and Washington, DC.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Co.

[Docket Nos. ER91-3-000, ER91-4-000, ER91-5-000 and ER91-6-000]

February 19, 1991.

Take notice that on February 14, 1991 The Washington Water Power Company (WWP), tendered for filing an amendment to each of its filings in these four unconsolidated dockets. In its filing WWP amends the Agreement for the Sale of Energy between WWP and the City of Seattle. WWP also provided additional information concerning its cost of generation, and its incremental costs.

Comment date: March 4, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Oklahoma Gas and Electric Co.

[Docket No. ER91-264-000]

February 21, 1991.

Take notice that on February 15, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing an amended Appendix between OG&E and the Oklahoma Municipal Power Authority (OMPA).

The Amendment modifies the Transmission Service Agreement appendix D.

Copies of this filing have been served on OMPA, the Corporation Commission of the State of Oklahoma and the Arkansas Public Service Commission.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corp.

[Docket No. ER91-111-000]

February 21, 1991.

Take notice that Central Vermont Public Service Corporation (CVPS) on February 8, 1991, tendered for filing supplemental financial information, an amended contract and a notice of termination in the above docket.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective in accordance with their terms.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Co.

[Docket No. ER91-263-000]

February 21, 1991.

Take notice that on February 15, 1991 Pennsylvania Power & Light Company (PP&L) tendered for filing a Capacity Credit Sales Agreement (Agreement) between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company (GPU Companies), which complements the Capacity and Energy Sales Agreement, dated December 21, 1989, between PP&L and GPUSC on file with the Commission as the Company's Rate Schedule FERC No. 100, as supplemented. The Agreement provides for the sale by PP&L to GPUSC of Daily Generating Capacity Megawatts solely for the GPU Companies' use in Pennsylvania-New Jersey-Maryland (PJM) Interconnection's planned and/or actual installed capacity accounting.

PP&L request waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of February 15, 1991. Service under the Agreement is expected to commence on February 15, 1991.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Industrial Committee South Carolina Public Service Authority

[Docket No. EL82-9-000]

February 21, 1991.

On March 1, 1982, the South Carolina Industrial Committee (South Carolina) filed a complaint against South Carolina Public Service Authority. On March 26, 1982, the City of Georgetown, South Carolina, and the Litchfield Beach Property Owners Association joined South Carolina's complaint. On January 22, 1991, South Carolina filed a notice of withdrawal of its complaint in Docket No. EL82-9-000. On February 4, 1991, both the City of Georgetown, South Carolina, and the Litchfield Beach Property Owners Association joined South Carolina's notice of withdrawal.

No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to § 385.216 of the Commission's Rules of Practice and Procedure, 18 CFR 385.216 (1990), the withdrawal of South Carolina's complaint became effective on February 19, 1991.

12. PJM Group—NEH Transmission Service Agreement

[Docket No. ER91-20-000]

February 21, 1991.

Take notice that on February 8, 1991, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection on behalf of the members of the PJM Interconnection (PJM Group) and New England Hydro-Transmission Electric Company, Inc. (NEH) submitted an amendment to the supporting material previously submitted in this docket. The amendment provides more detailed explanation of the need for the proposed rate schedule.

Comment date: March 8, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Paul L. Miller, Jr.

[Docket No. ID-2523-000]

February 21, 1991.

Take notice that on February 19, 1991, Paul L. Miller Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director: Union Electric Company

Director: Stifel Financial Corp.

Comment date: March 13, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (118 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4679 Filed 2-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 21, 1991

Take notice that Algonquin Gas Transmission Company ("Algonquin") on February 15, 1991, tendered for filing proposed changes in its FERC Gas Tariff as set forth in the revised tariff sheets:

Proposed to be Effective January 10, 1991, Second Revised Volume No. 1

30 Revised Sheet No. 211
2 Sub 28 Revised Sheet No. 214

Proposed to be Effective February 1, 1991, Third Revised Volume No. 1 Sub Original Sheet No. 41

Sub Original Sheet No. 42

Algonquin states that in a filing dated January 29, 1991, Texas Eastern Transmission Corporation (Texas Eastern) filed to flow through changes to the rates underlying its Rate Schedules SS-2 and SS-3. Such changes are proposed to be effective on January 10, 1991 and February 1, 1991. These Rate Schedules underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to Section 10 of Rate Schedule STB and Section 9 of Rate Schedule SS-III, Algonquin is filing to track and the latest changes proposed by Texas Eastern. Pursuant to section 10.3 of Rate Schedule STB and section 9.3 of Rate Schedule SS-III, the proposed effective dates for the tariff sheets filed herein are January 10, 1991 and February 1, 1991, as listed above, to correspond with the effective dates of Texas Eastern's filing.

Algonquin states the effect under Rate Schedule STB is to increase the Damand rate by 39¢ per MMBtu, decrease the Space rate by 0.08¢ per MMBtu and increase the Injection and Withdrawal rates by 1.53¢ per MMBtu.

Algonquin further states that the effect under Rate Schedule SS-III is to increase the demand rate 39¢ per MMBtu, decrease the Space rate by 0.08¢ per MMBtu and increase the Injection and FDDQ Withdrawal rates by 1.53¢ per MMBtu. It also increases the Non-FDDQ Withdrawal rate by 1.53¢ per MMBtu on January 10, 1991, and on February 1, 1991 further increases it by 0.276 per MMBtu.

Algonquin states that Substitute Original Sheet No. 41, which sets forth Rate Schedule STB's rate for February 1, 1991, is being filed solely to bring forward the proposed January 10, 1991 rate changes into Algonquin's Third Revised Volume No. 1.

Algonquin states that Texas Eastern also filed alternate tariff sheets in the

event that the Commission approves alternate tariff sheet in the underlying rates. Therefore, Algonquin is also filing alternate tariff sheets, which are listed below, should the Commission approve Texas Eastern's alternate tariff sheets.

Proposed to be Effective January 10, 1991, Second Revised Volume No. 1

Alt 30 Revised Sheet No. 211
Alt 2 Sub 26 Revised Sheet No. 214

Proposed to be Effective February 1, 1991, Third Revised Volume No. 1

Alt Sub Original Sheet No. 41
Alt Sub Original Sheet No. 42

Algonquin states that the effect of these alternate tariff sheets under Rate Schedule STB is to increase the Demand rate by 60¢ per MMBtu, increase the Space rate by 0.03¢ per MMBtu and increase the Injection and Withdrawal rates by 2.23¢ per MMBtu.

Algonquin also states that the effect under Rate Schedule SS–III is to increase the Demand rate by 60¢ per MMBtu, increase the Space rate by 0.03¢ per MMBtu and increase the Injection and FDDQ Withdrawal rates by 2.23¢ per MMBtu. It also increases the Non-FDDQ Withdrawal rate by 2.23¢ per MMBtu on January 10, 1991, and on February 1, 1991 further increases it by 0.26¢ per MMBtu.

Algonquin states that Alternate Substitute Original Sheet No. 41, which sets forth Rate Schedule STB's rate for February 1, 1991, is being filed solely to bring forward the alternate proposed January 10, 1991 rate changes into Algonquin's Third Revised Volume No. 1.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determing the approporiate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4681 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–86–003 and RP90–128–001]

Chandeleur Pipe Line Co.; Report of Refunds

February 21, 1991

Take notice that on January 14, 1991, Chandeleur Pipe Line Company (Chandeleur) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds made in accordance with the provisions of the Settlement Agreement filed in these proceedings on August 27, 1990 and approved by Commission Letter Order issued November 23, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4682 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–143–000]

CNG Transmission Corp.; Informal Settlement Conference

February 21, 1991

Take notice that a conference will be convened in this proceeding on February 28, 1991, at 10 a.m., and continued on March 1, 1991 at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Marsha L. Gransee at (202) 208–0783, or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4683 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–115–016]

Columbia Gas Transmission Corp.; Notice of Report of Refunds

February 21, 1991.

Take notice that on February 5, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds, made to customers which had utilized Columbia's Firm Transportation Capacity on Texas Gas Transmission Corporation (Texas Gas) via Columbia's Capacity Access Program. The refund flows through that portion of Texas Gas' refund in Docket No. RP88–115 applicable to quantities transported on Texas Gas by such customers under Columbia's Capacity Access Program.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4684 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–91–000]

El Paso Natural Gas Co.; Compliance Tariff Filing

February 21, 1991.

Take notice that on February 19, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing and acceptance, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1–A, to implement the provisions of an experimental capacity brokering program authorized on the High Island Offshore System ("HIOS").

El Paso states that on October 30, 1990, at Docket No. RP89–37–000, *et al.*, the Commission issued to HIOS an "Order Approving Uncontested Settlement, Amending Blanket Certificate, and Granting a Request for Waiver," which, among other things, authorized an experimental capacity brokering program ("brokering program") for firm transportation capacity on the HIOS system. By letter order dated December 18, 1990, the Commission accepted for filing certain tariff sheets implementing the brokering program to be included in HIOS' FERC Gas Tariff, First Revised Volume No. 1.

El Paso states that it currently holds firm transportation capacity rights on the HIOS system and accordingly may choose to broker its firm transportation capacity rights to a third-party assignee pursuant to the provisions of HIOS' brokering program. El Paso states that the October 30, 1990 order and HIOS' tariff requires certain preconditions to participation in its brokering program. Firstly, an interstate pipeline must have accepted a blanket certificate of public convenience and necessity under subparts G and/or K of part 284 of the Commission's Regulations. Secondly, HIOS' tariff requires that an interstate pipeline must also have on file with the Commission tariff sheets that (i) reflect the pertinent procedures and conditions set forth in HIOS' brokering program; and (ii) provide for the establishment of an open season for the allocation of assignable capacity. Accordingly, in compliance with the Commission's October 30, 1990 order and HIOS' tariff, El Paso is tendering certain tariff sheets which, when accepted and permitted to become effective, will establish a new section 25 to its Transportation General Terms and Conditions contained in its FERC Gas Tariff, First Revised Volume No. 1–A, to provide for the brokering of its firm transportation capacity rights on the HIOS system and procedures describing an open season.

El Paso respectfully requests that the Commission accept the tariff sheets for filing and permit them to become effective March 21, 1991, which is not less than thirty (30) days after the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 351.211 of this chapter. All such motions, or protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4685 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–63–001]

South Georgia Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

February 21, 1991.

Take notice that on February 15, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following proposed tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of February 1, 1991:

First Substitute Sixth Revised Sheet No. 4C
First Substitute Second Revised Sheet No. 16D
First Substitute Second Revised Sheet No. 16T
First Revised Sheet No. 34A.01
First Revised Sheet No. 34A.02
Original Sheet No. 34A.03

South Georgia states that its filing has been made pursuant to the Commission's order date January 31, 1991 in Docket No. RP91–63. South Georgia's tariff sheets reflect the adjustment of the total amount of take-or-pay buy-out and buy-down costs allocated to South Georgia by Southern included in South Georgia's fixed charge proposed in Docket No. RP91–63 by taking 50% of the total amount of such costs allocated to South Georgia's historical G–2 customers and reallocating such amount to its traditional G–1 customers. Additionally, the tariff sheets reflect South Georgia's implementation of a true-up mechanism for volumetric charges incurred under South Georgia's take-or-pay allocation methodology proposed in this docket. Such mechanism will be implemented on an annual basis in conformance with the terms of the order as further described in Order 528–A.

South Georgia states that copies of the filing have been mailed to its customers, shippers and interested state commissioners.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4686 Filed 2–27–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–031]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

February 21, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on February 15, 1991 Third Revised Tariff Sheet No. 189 to its FERC Gas Tariff, Second Revised Volume No. 1.

Transco states that the purpose of the instant filing is to eliminate effective October 1, 1990 Section 3.10 of its Rate Schedule FT in compliance with the Commission's January 17, 1991, letter order. Such order accepted Transco's November 29, 1990, filing in Docket No. RP88–68–029 to eliminate the rate reference to Transco's FERC Account No. 191 commodity surcharge contained in the Rate Schedule FT rate sheet, which surcharge applied to all quantities delivered under the limited term Rate Schedule FT service agreements during the period November 1, 1989 through September 30, 1990. Transco requests a waiver of any notice requirements so that the attached tariff sheet may become effective on October 1, 1990.

Transco states that copies of the instant filing are being mailed to all parties served the November 29, 1990 filing in Docket No. RP88–68–029.

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before February 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4687 Filed 2-27-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-11-000]

United Gas Pipe Line Co. Filing of Revised Tariff Sheets

February 21, 1991.

Take Notice that on February 15, 1991, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of March 1, 1991.

Second Revised Volume No. 1

First Revised Eleventh Revised Sheet No. 4
First Revised Eleventh Revised Sheet No. 4A
First Revised Eleventh Revised Sheet No. 4B
First Revised Ninth Revised Sheet No. 4D
First Revised Eleventh Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's Regulations to reflect changes in United's gas cost rate as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

On January 31, 1991 United submitted a PGA Interim Adjustment in Docket No. TF91-2-11 to be effective February 1, 1991. The Commission rejected United's filing without prejudice to United filing an Out-of-Cycle PGA.

The purpose of this revision is to reflect the referenced out-of-cycle PGA rate adjustment to United's current gas cost rate. This filing reflects a gas cost rate increase of $0.0717 per Mcf as compared to United's prior out-of-cycle PGA filing in Docket No. TQ91-2-11-000, effective February 1, 1991. The increase in the current adjustment is the result of an overall increase in cost due to higher projected volumes of gas to be withdrawn from storage in March.

United states that the revised tariff sheets are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before February 28, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4688 Filed 2-27-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-103-NG]

NMU Gas Purchasing, Inc.; Order Granting Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting NMU Gas Purchasing Inc. authorization to import up to 110 Bcf of Canadian natural gas and export up to 110 Bcf of natural gas over a two-year term beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 20, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4782 Filed 2-27-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[WH-FLR-3908-3]

State and Local Assistance; Grants for State Water Pollution Control Revolving Funds (Title VI) Under the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of allotment.

SUMMARY: This notice sets forth the State allotments of fiscal year (FY) 1991 funding for the State revolving fund capitalization grants program under the Clean Water Act (the Act). On November 5, 1990 in Public Law No. 101-507 Congress appropriated $2,047,600,000 in funding for the State revolving fund capitalization grants program (title VI). The funds are alloted in accordance with the table in section 205(c)(3) of the Act, as amended by Public Law No. 100-4.

Through promulgation of this notice the requiremnts of the Act are fulfilled and the public is notified of the amounts made available to the States to capitalize the State water pollution control revolving funds. This notice also explains an adjustment to the allotment formula in section 205(c)(3) necessitated by laws affecting the funding status of the former Trust Territories of the Pacific Islands.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Fitch, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control (202) 382-5858.

SUPPLEMENTARY INFORMATION: Public Law No. 100-507 appropriated and made available $2,047,600,000 for State revolving fund capitalization grants (title VI) for fiscal year 1991. Section 604(a) of the Act requires that funds appropriated for title VI for fiscal years 1989 and 1990 be allotted in accordance with the table in section 205(c)(3) of the Act. Congress has given the Agency no instruction regarding the allotment of FY 1991 funds. In the absence of congressional action, the Agency will retain the existing formula and allot the fiscal year 1991 funds in accordance with the table in section 205(c)(3) except as described below. Adjustments to States' allotments were made to reflect that funding is no longer provided the Federated States of Micronesia and the Republic of the Marshall Islands (formerly part of the Trust Territories of the Pacific Islands). The adjustments necessitated by the change in stutus of the former Trust Territories are explained below. The amount of FY 1991 funding that is made available to each State is listed in the table at the end of this notice.

Trust Territory Adjustment

In Public Law No. 99-658, Congress approved a Compact of Free Association for the Trust Territories' members. At the effective date of this allotment the Republic of Palau, a member of the Trust Territories, has yet to implement a Compact of Free Association. To cover this contingency, Public Law No. 99-239, section 105(h)(2) states that, "Upon the effective date of the Compact, the laws of the United States generally applicable to the Trust Territory of the Pacific Islands shall continue to apply to the Republic of Palau and the Republic of Palau shall be eligible for such proportion of Federal assistance as it would otherwise have been eligible to receive under such laws prior to the effective date of the Compact, as provided in Appropriations Acts or other Acts of Congress." To comply with both statutes it is necessary to decrease the Trust Territories' share of the appropriation by reducing its allotment. Funds that otherwise would have been allotted to the Trust Territories are redistributed to the States and Territories by proportionally increasing their respective shares of the appropriation as shown in the column titled "Allotment Formula After Trust Territory Adjustments." The actual allotments resulting from the adjusted allotment shares are shown in the column titled "FY 1991 State Allotment." The table at the end of this notice lists the amount of funding made available to each State. These funds have been issued by the EPA Comptroller and are available for obligation until September 30, 1992.

Grants from the allotments may be awarded as of the date that the funds were issued to the Regional Administrators by the Comptroller of EPA.

Dated: February 20, 1991.

William K. Reilly,

Administrator.

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1991 State allotment
Alabama	0.011309	0.011320	$23,180,100
Alaska	0.006053	0.006059	12,406,800
Arizona	0.006831	0.006837	14,001,500
Arkansas	0.006816	0.006822	13,560,800
California	0.072333	0.072400	148,261,100
Colorado	0.008090	0.008098	16,582,100
Connecticut	0.012390	0.012402	25,395,800
Delaware	0.004965	0.004970	10,176,800
Dist. of Columbia	0.004965	0.004970	10,176,800
Florida	0.034139	0.034171	69,974,800
Georgia	0.017100	0.017116	35,049,900
Hawaii	0.007833	0.007840	16,055,300
Idaho	0.004965	0.004970	10,176,800
Illinois	0.045741	0.045783	93,755,400
Indiana	0.024374	0.024397	49,959,400
Iowa	0.013688	0.013701	28,056,300
Kansas	0.009129	0.009137	18,711,700
Kentucky	0.012872	0.012884	26,383,800
Louisiana	0.011118	0.011128	22,788,600
Maine	0.007829	0.007838	16,047,100
Maryland	0.024461	0.024484	50,137,800
Massachusetts	0.034338	0.034370	70,382,700
Michigan	0.043487	0.043527	89,135,400
Minnesota	0.018589	0.018606	38,101,900
Mississippi	0.009112	0.009120	18,676,900
Missouri	0.028037	0.028063	57,467,500
Montana	0.004965	0.004970	10,176,800
Nebraska	0.005173	0.005178	10,603,100
Nevada	0.004965	0.004970	10,176,800
New Hampshire	0.010107	0.010116	20,716,300
New Jersey	0.041329	0.041367	84,712,100
New Mexico	0.004965	0.004970	10,176,800
New York	0.111632	0.111736	228,812,300
North Carolina	0.018253	0.018270	37,413,200
North Dakota	0.004965	0.004970	10,176,800
Ohio	0.056936	0.056989	116,701,800
Oklahoma	0.008171	0.008179	16,748,100
Oregon	0.011425	0.011436	23,417,800
Pennsylvania	0.040062	0.040089	82,115,200
Rhode Island	0.006791	0.006797	13,919,500
South Carolina	0.010361	0.010371	21,237,000
South Dakota	0.004965	0.004970	10,176,800
Tennessee	0.014692	0.014706	30,114,200
Texas	0.046226	0.046269	94,749,500
Utah	0.005329	0.005334	10,922,900
Vermont	0.004965	0.004970	10,176,800
Virginia	0.020698	0.020717	42,424,700
Washington	0.017586	0.17804	36,050,200
West Virginia	0.015766	0.015781	32,315,800
Wisconsin	0.027342	0.027367	56,043,000
Wyoming	0.004965	0.004970	10,176,800
American Samoa	0.000908	0.000909	1,861,100
Guam	0.000657	0.000658	1,346,700
Northern Marianas	0.000422	0.000422	865,000

BEST COPY AVAILABLE

State	Allotment formula	Allotment formula after trust terr. adjustments	FY 1991 State allotment
Puerto Rico	0.013191	0.013203	27,087,800
Pacific Trust Terr	0.001295	0.000367	752,200
Virgin Islands	0.000527	0.000527	1,080,200
Total	1.000000	1.000000	$2,047,900,000

[FR Doc. 91-4756 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3908-2]

Science Advisory Board; Closed Meeting

Under Public Law 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on March 11-12, 1991 to determine the recipients of the Agency's 1990 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer-reviewed journals.

Pursuant to the appropriate provision of the Federal Advisory Committee Act, section 10(d) of 5 U.S.C. appendix 1, and the appropriate provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), I have determined that this meeting may be closed to the public. In determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. In addition, the Board will advise on the amount of money to be allocated for each award. Discussions of such a personal nature, where disclosure would constitute an unwarranted invasion of personal privacy, may be closed to the public under section 10(d) of 5 U.S.C. appendix 1. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting and for providing an annual report setting forth a summary of the meeting consistent with the policy of 5 U.S.C. appendix 1 section 10(d).

For further information contact: Donald G. Barnes at (202) 382-4126.

Dated: February 20, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-4758 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

Science Advisory Board

[FRC-3908-3]

Environmental Health Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Environmental Health Committee of the Science Advisory Board will be held on March 26-27, 1991 at the Holiday Inn, 8120 Wisconsin Ave., Bethesda MD 20814. The hotel telephone number is (301) 652-2000.

The meeting will start at 9 a.m. on March 26, and will adjourn no later than 5 p.m. March 27, and is open to the public. The main purpose of this meeting is to review the following draft documents: (1) "Response to Issues and Data Submissions on the Carcinogencity of Tetrachloroethylene (Perchloroethylene)" (EPA/600/6-91/002A) developed by the Agency's Office of Research and Development. The review will include a discussion of the classification of the compound under the Agency's weight of evidence classification system; and (2) "Alpha-2u Globulin: Association with Chemically Induced Renal Toxicity and Neoplasia in the Male Rat" (EPA/625/3-91/019A), prepared by the Agency's Risk Assessment Forum on the significance of the occurrence of kidney tumors in male rats exposed to certain toxicants. Single copies of both draft reports will be available on or about March 8, 1991 from the U.S. EPA, Office of Research and Development Publications Office, CERI-FRN, U.S. Environmental Protection Agency 26 W. Martin Luther King Drive, Cincinnati OH, 45268. Telephone (513) 569-7562, or on the Federal Telephone System (FTS) at 684-7562. Please provide your name and mailing address and request the document by title and EPA number. These documents are not available from the Science Advisory Board.

The Committee will also receive a briefing by Forum staff on the latest revisions to the draft "Guidelines for Health Assessment of Suspect Development Toxicants," which was reviewed by the Committee on October, 1989.

An Agenda for the meeting is available from Mary Winston, Staff Secretary, Scienced Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202-382-2552). Members of the public desiring additional information should contact Mr. Samuel Rondberg, Executive Secretary, Environmental Health Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting should forward a written statement to Mr. Rondberg by March 19, 1991. The Science Advisory Board expects that the public statements presented at its meeting will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91-4757 Filed 2-27-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 21, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235, NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0064.

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service.

Form Number: FCC Form 402.

Action: Revision.

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting

Estimated Annual Burden: 7,619 responses; 6.166 hours average burden per response; 46,978 hours total annual burden.

Needs and Uses: FCC Rules require that applicants file FCC Form 402 to apply for a new station authorization for private operational fixed microwave station, a new station authorization to operate one or more fixed stations at locations in this service, or modification or renewal of station authorization. The data is used by Commission staff to determine whether the licensee is entitled to their authorization to operate.

OMB Number: 3060-0134.

Title: Application for Renewal of Private Radio Station License.

Form Number: FCC Form 574-R.

Action: Revision.

Respondents: Individuals or households, state or local governments, business or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 84,000 responses; .166 hours average burden per response; 13,944 hours total annual burden.

Needs and Uses: The FCC Form 574-R is filed by applicants in the Private Land Mobile and General Mobile Radio Services for renewal of an existing authorization. The data are used to determine eligibility for a renewal and issue a radio station license. The data are also used by Compliance personnel in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-4647 Filed 2-27-91; 8:45 am]
BILLING CODE 6712-01-M

[DA 91-221]

Advisory Committee on Advanced Television Service Implementation Subcommittee Meeting

February 21, 1991.

A meeting of the Implementation Subcommittee of the Advisory Committee on Advanced Television Service will be held on: March 20, 1991, 10 a.m., Commission Meeting Room (room 856), 1919 M Street, NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Minutes of Last Meeting.
3. Report of Working Party 1 Policy and Regulation.
4. Report of Working Party 2 Transition Scenarios.
5. General Discussion.
6. Other Business.
7. Date and Location of Next Meeting.
8. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Implementation Subcommittee Chairman.

Any questions regarding this meeting should be directed to Dr. James J. Tietjen at (609) 734-2237 or David R. Siddall at (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-4648 Filed 2-27-91; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Southeastern Caribbean Discussion Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 203-011036-006.

Title: Southeastern Caribbean Discussion Agreement.

Parties: United States Atlantic and Gulf/Southeastern Caribbean Conference, Trailer Marine Transport Corporation, Seaboard Marine, Ltd., Tecmarine Line, Inc., Bernuth Lines, North American Caribbean Line Ltd., Blue Caribe Line.

Synopsis: The proposed amendment would add Kirk Line Ltd. as an independent carrier party to the Agreement. The parties have requested a shortened review period.

Agreement no.: 212-011213-019.

Title: Spain-Italy/Puerto Rico Island Pool Agreement.

Parties: Compania Trasatlantica Espanola, S.A., d'Amico Societa de Navigazione, S.p.A., Nordana Line A/S, Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify Article 5.F.4(c) to provide that the method of distribution of excess funds set forth in this Article may be amended if the members of the relevant Section unanimously agree.

By Order of the Federal Maritime Commission.

Dated: February 22, 1991.

[FR Doc. 91-4663 Filed 2-27-91; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; I.T.A.L.M.S. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

International Trade and Logistics Management, Inc. dba I.T.A.L.M.S., 301 Moon Clinton Road, Coraopolis, PA 15108
Officers: Alessandra Busatta in Gruelle, President Durard Timothy Gruelle, Secretary/Treasurer

Marli Shipping, 144A Fairfield Rd., Fairfield, NJ 07004
Alan P. Antaki, Sole Proprietor.

Leo Shipping Inc., 15549 Dupage, Taylor, MI 48180
Officer: M. Abdul Qayyum Kahn, President

C & F International, Inc., 1952 Lancaster, Grosse Pte. Wds., Michigan 48236

Officers: Gary L. Clements, President, Heinrich A. Freidemann, Vice President, Kenneth R. Howse, Treasurer, Brian P. Palmer, Director, Donald R. McMillan, Secretary

Atrade Forwarding Corporation, 145-18 156th Street, Jamaica, New York 11434
Officers: Raul Barbosa, President

Techelon Industries, Inc. dba Kennelly & Sisman Company, 14300 Tireman, Detroit, Michigan 48228
Officers: Ronald L. Koos, President, Steve Koos, Vice President, Thomas W. Koos, Chairman of the Board, Rosita Koos, Secretary.

Dated: February 22, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4694 Filed 2-27-91; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Terramar Shipping Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders CFR part 510.

License number: 131.
Name: Terramar Shipping Company, Inc.
Address: One World Trade Center, Suite 1215, New York, NY 10048.
Date revoked: December 14, 1990.
Reason: Surrendered license voluntarily.

License number: 1195.
Name: L. Braverman & Company.
Address: 2501 Crawford, Houston, TX 77004.
Date revoked: January 20, 1991.
Reason: Failed to furnish a valid surety bond.

License number: 3345.
Name: MRH International, Ltd.
Address: 145in Avenue & Hook Creek Blvd., Valley Stream, NY 11581.
Date revoked: January 31, 1991.
Reason: Surrendered license voluntarily.

License number: 1443R.
Name: ALZO International Company, Inc.
Address: 1222 East Imperial Avenue, El Segundo, CA 90245-0783.
Date revoked: February 2, 1991.
Reason: Failed to furnish a valid surety bond.

License number: 2668.
Name: S & Z International Air Forwarders, Inc.
Address: 7520 Connelley Drive, Hanover, MD 21076.
Date revoked: February 8, 1991.
Reason: Failed to furnish a valid surety bond.

Robert G. Drew,

Director, Bureau of Domestic Regulation

[FR Doc. 91-4666 Filed 2-27-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dunkin Family Trust; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than March 19, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Dunkin Family Trust, Harlingen, Texas; to acquire an additional 19.47 percent of the voting shares of Harlingen National Bancshares, Inc., Harlingen, Texas, for a total of 44.52 percent, and thereby indirectly acquire Harlingen National Bank, Harlingen, Texas.

Board of Governors of the Federal Reserve System, February 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4714 Filed 2-27-91; 8:45 am]

BILLING CODE 6210-01-F

PBA Financial Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 19, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. PBA Financial Corporation, Mobile, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of PBA Bancorporation, Centreville, Alabama, and thereby indirectly acquire Peoples Bank of Alabama, Centreville, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire 100 percent of the voting shares of Central Banc Systems, Inc., Fairview Heights, Illinois, and thereby indirectly acquire Central Bank of Fairview Heights, Fairview Heights, Illinois, and Farmers & Merchants Bank of Carlinville, Carlinville, Illinois.

2. HP Holding Company, Oak Park, Illinois; to acquire 97.15 percent of the voting shares of Bank of Commerce and Industry, Chicago, Illinois.

3. Prairie Bancorp, Inc., Manlius, Illinois; to acquire 99 percent of the voting shares of Tampico National Bank, Tampico, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Independent Colorado Bancshares, Inc., Philadelphia, Pennsylvania; to acquire at least 66 percent of the voting shares of The Berthoud Bancorp, Inc., Berthoud, Colorado, and thereby indirectly acquire 100 percent of the voting shares of The Berthoud National Bank, Berthoud, Colorado.

Board of Governors of the Federal Reserve System, February 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4715 Filed 2-27-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Request for Nominations for Members on the Advisory Committee on Medicare—Physician Relationships

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Care Financing Administration (HCFA) is requesting nominations for members to serve on the Advisory Committee on Medicare—Physician Relationships. The Committee is comprised on eight members, one of which is the Senior Medical Advisor of HCFA.

DATES: Nominations must be received or postmarked no later than March 15, 1991.

ADDRESSES: All nominations for membership should be submitted to Bill Pickens, Health Care Financing Administration, Office of Legislation and Policy, HHH Building, 200 Independence Ave. SW., Washington, DC 20201, 202-245-0444.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, 202-245-0444 (see address above).

SUPPLEMENTARY INFORMATION: HCFA is requesting nominations for members to serve on the Advisory Committee on Medicare—Physician Relationships. The function of the Committee is to advise the Secretary on existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare beneficiaries and, in particular, on those Peer Review Organization and carrier policies and procedures which are perceived as administratively burdensome. Also, the Committee will look at methods to improve existing Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. The Committee will not consider payment issues.

The Advisory Committee on Medicare—Physician Relationships is not the Practicing Physicians Advisory Council which was mandated by Congress in the Omnibus Budget Reconciliation Act of 1990. The latter committee will discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary.

Criteria for Members

Persons nominated for membership on this Committee shall be physicians who are actively engaged in the practice of medicine, with Medicare beneficiaries representing at least 25 percent of their patients, and currently accepting new Medicare patients. Medicare participation is not a condition of membership.

Nomination Procedure

Nominations shall state that the nominee is aware of the nomination and is willing to serve as a member of the advisory committee. Potential candidates will be asked by HCFA to provide detailed information concerning such matters as financial holdings, consultant positions, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Authority: This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App.I)) and 21 CFR Part 14, relating to advisory committees.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-4717 Filed 2-27-91; 8:45 am]

BILLING CODE 4120-03-M

Medicare Program; Establishment of the Advisory Committee on Medicare—Physician Relationships; Establishment

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, the Department of Health and Human Services announces the establishment by the Secretary of the Advisory Committee on Medicare—Physician Relationships.

The Committee shall advise the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare beneficiaries, and in particular, on those Peer Review Organization and carrier policies and procedures which are perceived as administratively burdensome. Also, the Advisory Committee will look at the methods to improve Medicare carrier services, responsiveness to physicians, and the cost and administrative burden the Medicare program places on physicians. This committee will not consider payment issues.

The Advisory Committee on Medicare—Physician Relationships is not the Practicing Physicians Advisory Council which was mandated by Congress in the Omnibus Budget Reconciliation Act of 1990. The latter committee will discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary.

Unless renewed by appropriate action prior to its expiration, the Advisory Committee will terminate December 31, 1991.

Dated: February 20, 1991.

Signed:

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-4716 Filed 2-27-91; 8:45am]

BILLING CODE 4120-15-M

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on March 15, 1991 from 9 a.m. to 6:30 p.m.; and on March 16, 1991, from 9 a.m. to 4:30 p.m.

ADDRESSES: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza East SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert Lagoyda, Program Analyst, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing

structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

• Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and

• Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A. L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will discuss issues relating to health care financing policy.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: February 22, 1991.

Barbara Cooper,

Deputy Executive Director, Advisory Council on Social Security.

[FR Doc. 91-4644 Filed 2-27-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement and Proposed Review Criteria for Grants for Nurse Anesthetist Education Programs

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year 1991 for Grants for Nurse Anesthetist Education Programs and invites comments on the proposed review criteria stated below.

Section 831(a) of the Public Health Service Act authorizes grants to public or private nonprofit institutions to cover the costs of:

1. Traineeships for licensed registered nurses to become nurse anesthetists; and
2. Projects to develop and operate programs for the education of nurse anesthetists.

This announcement addresses grants for projects to develop and operate programs for the education of nurse anesthetists.

To be eligible for a grant, an applicant must be a public or nonprofit institution accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.

For purposes of this program eligible projects will be limited to proposals for developing and operating new programs. This is in keeping with the intent of Congress that additional nurse anesthetist education programs be created (Senate Report 101–516, p. 55). An application may be submitted for a project at any stage of program development beginning with the planning period but prior to the graduation of a class. Projects which include a planning period must, before the end of the first year of the project, complete the Capability Review required to achieve Preaccreditation Status from the Council on Accreditation of Nurse Anesthesia Educational Programs (AANA Council). Projects for Nurse Anesthetist Programs which have achieved Preaccreditation status from the AANA Council must have students enrolled or accepted for enrollment, to be eligible. Projects for programs which have graduated a class or will be graduating a class before a grant can be awarded are not eligible.

Approximately $450,000 is available in Fiscal Year 1991 for competing awards. It is anticipated that approximately 3 awards will be made at an average of $150,000 per grant.

The period of Federal support should not exceed three years.

National Health Objectives for the Year 2000

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000: National Health Promotion and Disease Prevention Objectives, (a recent Departmental report), as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Proposed Review Criteria

The HRSA proposes to review applications taking into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve with special emphasis on meeting shortages in underserved areas;
2. The potential effectiveness and impact of the proposed project including its potential contribution to nursing;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The appropriateness of the plan, including the timetable, for carrying out the activities of the proposed project and achieving and measuring the project's stated objectives;
5. The capability of the applicant to carry out the proposed project;
6. The reasonableness of the budget for the proposed project, including the justification of the grant funds requested; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Interested persons are invited to comment on the proposed review criteria. Normally the comment period would be 60 days but due to the need to implement any changes for the fiscal year 1991 award cycle, this comment period has been reduced to 30 days. All comments received on or before April 1, 1991 will be considered before the final review criteria are established. No funds will be allocated or final selections made until a final notice is published stating whether the final review criteria will be applied.

Written comments should be addressed to:

Acting Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours at 8:30 a.m. and 5 p.m.

The application deadline date is April 30, 1991. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or
2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

Requests for application materials and questions regarding business management issues and grants policy should be directed to:

Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to:

Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 5C–13, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763.

The standard application form and general instructions, PHS 6025–1, HRSA Competing Training Grant Application for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The supplemental instructions are in process of being submitted for review.

This program is listed at 93.918 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: January 23, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-4731 Filed 2-27-91; 8:45 am]

BILLING CODE 4160-15-M

Indian Health Service

Cessation of Services to Terminated Utes

AGENCY: Indian Health Service (IHS).

ACTION: Notice of cessation of services to terminated Utes.

SUMMARY: The IHS is correcting a regional policy of providing services to descendants of terminated Utes. The regional practice of deeming descendants of terminated Utes eligible for IHS services has been determined to be contrary to the purpose of the Ute Termination Act 25 U.S.C. 677, as we interpret that Act, and, therefore, descendants of such terminated Utes are outside the scope of authorized IHS services.

DATES: Effective May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Indian Health Service, 5600 Fishers Lane, 6A–23, Rockville, Maryland 20675, telephone: (301) 443–1116. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Ute Partition and Termination Act of 1954 (the Act) Public Law 83–671, 25 U.S.C. 677 et seq. provided for the partition and distribution of the assets of the Ute Tribe of the Unitah and Ouray Reservation, Utah, between the mixed-blood and the full-blood members and for the termination of the mixed-blood's status as Indians. Pursuant to the requirements of the Act, the Secretary of the Interior prepared the final rolls listing the full-blood and mixed-blood members of the Ute Tribe. These rolls were published in the Federal Register on April 5, 1956, 21 FR 2208. The Act provided that upon publication of the rolls, "the tribe shall thereafter consist exclusively of full-blood members." The legislative history of the Act and the broader termination and assimilation policy, of which it was a part, reflect a congressional intent to end the Federal Government's ongoing relationship with the mixed-blood portion of the Ute Tribe. Such an assimilation could not be achieved through a statute which terminated the federal supervision of mixed-blood Utes for a single generation only. This statutory purpose is reflected in the terms of the Act, the distribution of property to mixed-bloods, and the removal of restrictions for mixed-bloods on individually owned property.

The regional practice of serving descendants of mixed-blood Utes primarily at the Fort Duchesne Clinic in Utah, is contrary to longstanding IHS policy of not considering Indians terminated by Congress and their descendants (including mixed-blood members of the Ute Indian Tribe) to be eligible for IHS services (See Chapter 2–1.7 of the IHS Manual "Terminated Tribes"). This policy has been objected to by the Ute Tribe and the Bureau of Indian Affairs, prompting a review by the IHS. This review has determined that descendants of mixed-blood Utes are outside the scope of authorized IHS services as we interpret the Act. Therefore, the purpose of this notice is to withdraw IHS services from those terminated Utes currently receiving treatment from IHS in a manner that provides such patients adequate and reasonable time to secure another source of medical treatment. In order to accomplish this we are implementing the following procedures:

1. Terminated and descendants of terminated mixed-blood Utes who are presently inpatients in IHS facilities shall continue to be hospitalized until the need for hospitalization has ended. The determination as to when hospitalization is no longer needed shall be made by the patient's physician and be based upon the medical circumstances of each patient. These patients shall be notified that after discharge they will no longer be eligible for services as IHS beneficiaries except for necessary follow-up services and should be assisted in locating other health care providers. The need for necessary follow-up services will be determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities.

2. Terminated and descendants of terminated mixed-blood Utes who were regarded as beneficiaries prior to the effective date of this Notice and who are presently undergoing a course of outpatient treatment may not be given further treatment unless, in the judgment of the medical officer in charge, immediate termination of treatment would threaten the life of or seriously impair the health of the patient. These patients shall also be notified that they are no longer eligible for services as IHS beneficiaries and should be assisted in locating other health care providers.

3. After the effective date of this Notice, no further initial authorization of contract health services will be made for any services provided after such date to terminated and descendants of terminated mixed-blood Utes.

4. Terminated and descendants of terminated mixed-blood Utes who were provided services prior to the effective date of this Notice and who are presently receiving inpatient contract care authorized under regulations as 42 CFR 36.21 et seq., may be authorized additional inpatient contract health services, within medical priorities until the need for hospitalization has ended. No outpatient contract health care shall be authorized for these individuals after the effective date of this Notice.

Outpatient contract health care authorized for these individuals before the effective date of this Notice shall be honored. These patients shall be notified that after discharge or completion of their previously authorized outpatient contract health care, they will no longer be eligible for services as IHS beneficiaries and will be assisted in locating other health care providers. The need for necessary follow-up services will be determined by the responsible IHS or tribal physician, all other conditions being met including medical priorities.

This notice makes no substantive change with respect to the eligibility of Indians for IHS services. It also does not preclude treatment of non-beneficiaries on a fee or other basis where otherwise authorized by law. Examples are treatment of non-beneficiaries in case of emergency authorized by section 322(b) of the Public Health Service Act, and regulations at 42 CFR 36.14 (1986); or under section 713 of Public Law 100–713, the 1988 Amendments to the Indian Health Care Improvement Act.

Those under treatment for chronic degenerative conditions may be provided additional treatment at Indian Health Service expense for no longer than 1 year beyond the effective date of this Notice notwithstanding any determination that it was otherwise safe to transfer treatment to other providers, all other conditions being met including medical priorities.

This Notice will be posted in the public area of the Fort Duchesne Clinic in Utah, as well as all other IHS facilities, whether operated by IHS or an Indian tribe under authority of Public Law 93–638.

Finally, every reasonable effort will be made at the Fort Duchesne Service Unit to provide a copy of this notice to all descendants of mixed-blood Utes currently undergoing treatment at the clinic/and to assist them in locating other health care providers.

Dated: January 18, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91–4645 Filed 2–27–91; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Office of the Assistant Secretary for Health, Title III, Part D, of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, all of the authorities under title III, part D, of the Public Health Service Act, as amended, pertaining to Primary Health Care, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees or councils.

Redelegation

This authority may be redelegated.

Prior Delegations

All previous delegations and redelegations under title III of the Public Health Service Act shall continue in effect, provided they are consistent with this delegation.

Effective Date

This delegation became effective on February 13, 1991.

Dated: February 13, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91–4653 Filed 2–27–91; 8:45 am]

BILLING CODE 4160-18-M

NATIONAL INSTITUTES OF HEALTH

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HN, (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 55 FR 248, December 26, 1990) is amended to reflect the following change in the Office of Administration (HNA7), Office of the Director, NIH: (1) Retitle the Division of Management Survey and Review (HNA78) to the Division of Management Assessment and Internal Control (HNA78) and revise its functional statement. This retitling and functional statement revision will more clearly identify the Division's expanded roles and responsibilities.

Section HN–B, Organization and Functions, is amended as follow: (1) Under the heading Office of Administration (HNA7), Division of Management Survey and Review (HNA78), delete the divisional title and functional statement in their entirety and substitute the following:

Division of Management Assessment and Internal Control (HNA78). (1) Has overall responsibility for all matters related to internal controls to prevent fraud, waste, abuse and conflict of interest or the appearance of these, and develops a planned management oversight activity that focuses on early identification and prevention of such occurrences; (2) provides broad management oversight and advice to the Associate Director for Administration (ADA) on strategies for management reviews in both program and administrative areas, preventive maintenance strategies, and corrective action; (3) keeps abreast of activities within the Institutes, Centers, and Divisions (ICDs), advising them on the implementation of necessary internal controls; (4) in consultation with the Director, NIH, and the Associate Director for Administration, develops internal control policy for the entire NIH and ensures that policy changes are implemented; (5) serves as HIH's central liaison on matters involving the Office of the Inspector General, DHHS, the General Accounting Office, the DHHS Office of Audit, the Federal Bureau of Investigation, congressional staff members, etc., related to internal controls and audits; (6) develops and implements the Annual Internal Control Plan; and (7) advises NIH's top management staff on major management decisions in the field of current operations and long-range policy involving NIH management controls.

This reorganization is effective on the date of the selection of the Director, Division of Management Assessment and Internal Control.

Dated: February 12, 1991.

William F. Raub,

Acting Director, NIH.

[FR Doc. 91–4823 Filed 2–27–91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3217]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency from number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 14, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Lease and Grievance Requirements 24 CFR part 966, subparts A and B.

Office: Public and Indian Housing.

Description of the Need For the Information and its Proposed Use: This collection covers the record-keeping requirements incidental to the implementation of Federal regulations at 24 CFR Part 966 governing dwelling lease and grievance procedures in public housing. The information is retained by the public housing agencies that manage public housing and is used for operational purposes.

Form Number: None.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	1,233,775		1.135		3.5919		50,301

Total Estimated Burden Hours: 50,301.

Status: Reinstatement.

Contact: Edward C. Whipple, HUD, (202) 708–0744. Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 14, 1991.

[FR Doc. 91–4695 Filed 2–27–91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N–91–3218]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the toal numbers of hours needed to prepare the information submission including numer of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 20, 1991

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Cooperative Membership Exhibit.

Office: Housing.

Description of the Need For the Information and its Proposed Use: This form is needed to list the prospective cooperative members. It indicates the identification number of the property, the number of rooms, the unit cost, the down payment, and the monthly unit payment for each prospective member. The form is used as evidence of compliance of selling the property or project to an eligible cooperative group.

Form Number: HUD–93203.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93203	300		1		.5		150

Total Estimated Burden Hours: 150.
Status: Extension.
Contact: Kerry J. Malholland, HUD, (202) 708-0283. Wendy Sherwin, OMB, (202) 395-7285.

Dated: February 20, 1991.

Proposal: Community Development Block Grants: State's Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Section 104 (A) and (D) of the Housing Community Development Act of 1974, as amended, requires states to submit to HUD a final statement and a performance and evaluation report annually concerning the use of funds made available under Section 106 of the act for HUD to determine statutory compliance.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	49		1		351		17,199

Total Estimated Burden Hours: 17,199.
Status: Reinstatement.
Contact: Richard J. Kennedy, HUD, (202) 708-1322. Wendy Sherwin, OMB, (202) 395-6880.

Dated: February 20, 1991.

[FR Doc. 91-4696 Filed 2-27-91; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-01-5410-AZFA; AZA-23560]

Gila and Salt River Meridian, Arizona; Realty Action

ACTION: Notice of receipt of conveyance of mineral interest application AZA-23560.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,
Sec. 33, S½S½;
Sec. 34, S½.
T. 7 S., R. 11 E.,
Sec. 25, all.
T. 7 S., R. 12 E.,
Sec. 3, lots 1, 2, S½NE¼.
T. 7. S., R. 13 E.,
Sec. 12, S½;
Sec. 13, E½;
Sec. 27, SW¼SW¼.
T. 7. S., R. 14 E.,
Sec. 17, E½, S½ NW¼, SW¼;
Sec. 21, N½NW¼;
Sec. 28, S½NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, lots 1 to 4, incl., SE¼SW¼, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SE¼;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
T. 8 S., R. 13 E.,
Sec. 8, E½;
Sec. 9, S½;
Sec. 11, E½;
Sec. 12, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 13, N½N½;
Sec. 14, SW¼, S½SE¼;
Sec. 15, E½SW¼, W½SE¼;
Sec. 22, all;
Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 25, all;
Sec. 26, N½;
Sec. 27, all.
T. 8 S., R. 14 E.,
Sec. 2, S½;
Sec. 5, all;
Sec. 6, lot 6, NE¼SW¼;
Sec. 7, E½;
Sec. 8, all;
Sec. 11, N½;
Sec. 14, all;
Sec. 18, lot 1, NE¼, NE¼NW¼;
Sec. 20, W½;
Sec. 22, SE¼;
Sec. 23, S½S½;
Sec. 24, E½, SW¼;
Sec. 26, N½N½;
Sec. 27, NE¼;
Sec. 29, N½NW¼;
Sec. 30, NE¼, N½SE¼.

Containing 15,207.25 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from October 5, 1990.

Dated: February 7, 1991.

Henri R. Bisson,
District Manager.

[FR Doc. 91-4719 Filed 2-27-91; 8:45 am]
BILLING CODE 4310-32-M

[AZ-920-01-4212-14; AZA-23858]

Arizona; Conveyance of Public Land in Yavapai County

February 20, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of the conveyance of public land to George A. Guirguis and Tafida Y. Guirguis.

FOR FURTHER INFORMATION CONTACT: Mary Jo Yoas, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 640-5534.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976, (43 U.S.C. 1713, 1719), George A. Guirguis and Tafida Y. Guirguis have purchased by competitive sale for $81,500.00 the following described land:

Gila and Salt River Meridian, Arizona
T. 8 N., R. 5 W.,
Sec. 15, NW¼NW¼.

The area described contains 40.00 acres in Yavapai County, Arizona.

The purpose of this notice is to inform the public and interested State and local government officials of the transfer of this land out of Federal ownership.

Angela Mogel,
Acting Chief, Branch of Lands Operations.

[FR Doc. 91-4720 Filed 2-27-91; 8:45 am]
BILLING CODE 4310-32-M

[CO-030-01-4410-08]

Colorado; Availability of Draft Resource Management Plan and Environmental Impact Statement for the Gunnison Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management, Montrose District, has prepared a draft resource management plan and associated draft environmental impact statement (DRMP/EIS) for the Gunnison Resource (GRA) in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR part 1600. This document is now available to the public for review and comment.

SUMMARY: A DRMP/EIS has been developed for the GRA. This plan, when finalized, will replace and supersede the two existing land use plans and other various related environmental documents for the GRA. This plan will provide the overall framework for managing and allocating BLM-administered land resources in the GRA over the next 10 to 12 years. Located in west-central Colorado, the GRA encompasses 585,012 acres of federal surface estate and a total of 728,567 acres of federal subsurface mineral estate within Gunnison, Hinsdale, Montrose, Saguache, and Ouray Counties.

DATES: The public review and comment period for the DRMP/EIS will begin on March 1, 1991, and will run through May 31, 1991. The BLM invites interested or affected parties to provide written comments on the DRMP/EIS prior to the May 31, 1991, closing date. In order to be considered, comments must be received by the close of business (4:30 p.m.) on the May 31, 1991, closing date. The public is also invited to attend two formal public hearings and make oral comments on the DRMP/EIS. The hearings will be held on April 17, 1991, in Gunnison and on April 18, 1991, in Lake City, Colorado. Both hearings will start at 7:30 p.m., and a record of each hearing will be prepared. The public is also invited to an informal open house session prior to each hearing to give individuals an opportunity to meet with BLM representatives to discuss and ask questions about the contents of the DRMP/EIS. These open house sessions will be from 6:30 p.m. to 7:30 p.m. The hearings will be held at the Gunnison County Commissioners' meeting room, Gunnison County Courthouse, 200 East Virginia Avenue in Gunnison, and at the Hinsdale County Commissioners' meeting room, Hinsdale County Courthouse, 317 North Henson Street, in Lake City.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain a copy of the draft document by writing to Bill Bottomly, Gunnison RMP Team Leader, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401, or by calling Mr. Bottomly at (303) 249-6047. Copies may also be obtained from the Gunnison Resource Area Office, 216 North Colorado Street, Gunnison, Colorado 81230; or the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215. Interested parties who wish to make written comments on the DRMP/EIS are requested to send them to Bill Bottomly, Gunnison RMP Team Leader, Bureau of Land Management, 2505 South Townsend Avenue, Montrose, Colorado 81401, by the close of business on May 31, 1991.

SUPPLEMENTARY INFORMATION: Some of the highlights of the DRMP/EIS are as follows:

1. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. Decisions within the plan cover a 10 to 12-year period. The plan directs future resource condition objectives, land use allocations, and management actions on BLM-administered lands within the Gunnison Resource Area. The DRMP/EIS describes five different management alternatives and presents an analysis of the environmental consequences of implementing each. These alternatives are:

Alternative A (Continuation of Current Management Alternative): Continues the present mix of multiple-use resources, maintaining outputs and output rates, and protection activities; assumes a continuation of current funding and staffing. This alternative corresponds to the No Action Alternative required by the National Environmental Policy Act (NEPA).

Alternative B: Emphasizes the management of resources compatible with promoting outdoor recreation, tourism, economic stability, and the general quality of life.

Alternative C: Emphasizes a high degree of economic return and resource production, while maintaining, protecting, or enhancing natural values at a compatible, nonrestricting level.

Alternative D: Emphasizes a high degree of protection, enhancement, and maintenance for natural values, while sustaining compatible levels of production for renewable and nonrenewable resources.

Alternative E (Preferred Alternative): Consists of the mix and variety of actions which, in the opinion of the Area Manager and the Team Members, best resolve the issues or concerns, and attempts to achieve a balance of competing uses; would continue multiple-use management by protecting important environmental values and sensitive resources while allowing development of resources which provide important goods and services.

The range of alternatives was limited to those considered to be reasonable and implementable.

2. Sixteen (16) potential Areas of Critical Environmental Concern (ACECs) were identified early in the planning process. Six (6) of the sixteen potential ACECs would be designated as ACECs in Alternative E (Preferred Alternative). These six areas are listed below.

(a) American Basin ACEC, a 1595-acre area recommended for scenic, recreation, and natural values.

(b) Redcloud Peak ACEC, a 5947-acre area recommended for management and protection of existing habitat and populations of the Uncompahgre fritillary butterfly, a U.S. Fish and Wildlife Service (USF&WS) "Category One" listed species.

(c) Slumgullion Earthflow National Landmark ACEC, a 1407-acre area recommended as an outstanding example of the geologic phenomenon of mass wasting.

(d) West Antelope Creek ACEC, a 28,215-acre area recommended for the management and protection of crucial habitat, important for the viability of wintering elk and deer and some bighorn sheep.

(e) South Beaver Creek ACEC, a 4565-acre area recommended for the management and protection of scattered populations of skiff milkvetch (*Astragalus microcymbus*), a USF&WS and Colorado sensitive plant species.

(f) Dillon Pinnacles ACEC, a 532-acre area recommended for scenic and recreational values.

In Alternative B, five ACECs, and one Research Natural Area/Area of Critical Environmental Concern (RNA/ACEC) would be designated, and in Alternative D, eight ACECs and two RNA/ACECs would be designated. The potential ACECs are described in Appendix H of the DRMP/EIS. The designation recommendations are contained in the descriptions of each alternative in chapter Three.

During the RMP planning process, a Wild and Scenic River Study was conducted on the Lake Fork of the Gunnison River. The study report is included as Appendix I in the DRMP/EIS. The study concluded that a 13.3-mile segment is eligible, but not suitable, for designation and inclusion into the National Wild and Scenic River System (NW&SRS). The segment was considered for inclusion into the NW&SRS in Alternatives B and D. Other streams were also examined.

All substantive written and verbal comments regarding the DRMP/EIS will be analyzed in the preparation of the proposed resource management plan and final environmental impact statement (PRMP/FEIS). Teh PRMP/FEIS is tentatively scheduled to be completed late in 1991.

Dated: February 4, 1991.

Bob Moore,

State Director.

[FR Doc. 91-3666 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-JB-M

[CO-030-01-4351-09-1617]

Planning Amendment; San Juan-San Miguel Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to modify a resource management plan (RMP).

SUMMARY: Notice is hereby given, that the Uncompahgre Basin Resource Area is initiating two actions which will modify the San Juan-San Miguel RMP.

1. Administrative Action

Designation of the Tabeguache Outstanding Natural Area (ONA) as an Area of Critical Environmental Concern (ACEC). The Tabeguache ONA was not formally identified as an ACEC in the RMP approved in 1985. Current guidance requires ONA's to also be designated as ACEC's. This designation will not alter the analysis presented in the RMP, land use decisions, or current management of the area. Notice is hereby given that the Area is designated as the Tabeguache ACEC/ONA.

2. Planning Amendment

In accordance with 43 CFR subpart 1610.2, the Uncompahgre Basin Resource Area, of the Montrose District will begin, on the date of this notice, analysis of a public nomination to designate 21,500 acres of the upper San Miguel River as an Area of Critical Environmental Concern (ACEC). The proposed San Miguel River ACEC, designed to protect high value reparian systems, would include public lands, on the San Miguel River, from Leopard Creek downstream to Horsefly Creek. Public land on the tributary streams of Beaver, Saltado, Horsefly, and Leopard Creeks will be considered for inclusion in the ACEC. Adjacent public lands form Placerville, Colorado, upstream to Willow Creek, and from Horsefly Creek downstream to Pinyon, Colorado, will be included in the planning analysis. This proposed amendment would also establish land use decisions for 2,832 acres of lands acquired, in 1990, through exchange with a private landowner. Public comments will be accepted for 60 days from the date of this notice, and one "open house" for public comment is scheduled for April 3, 1991, at the Placerville, Colorado, school building, from 10 a.m. until 8 p.m.

ADDRESSES: For further information, contact James Ferguson, Bureau of Land Management, Uncompahgre Basin Resource Area, 2505 South Townsend Avenue, Montrose, CO 81401; Telephone (303) 249-6047.

SUPPLEMENTARY INFORMATION: Documents pertinent to this proposal may be examined at the address shown above. One issue has been identified: Recreation and resource use vs. riparian and scenic values. Additional factors to be considered include the level and intensity of recreation management, grazing of livestock, management of the mineral estate, tansportation and utility corridors, off-highway vehicle designations, and forest product disposal. The following disciplines will be represented on the BLM planning team: Wildlife management, fisheries management, range management, forestry, geology, realty, soils, and hydrology.

Planning criteria include: Policy, legal, and regulatory constraints, as well as requirements to maintain riparian vegetation quality, maintain scenic values, maintain recreational values and meet recreation demands, determine the level of management intensity required, determine the need for land or easement acquisition, and set management objectives to protect the priority resources within the proposed ACEC.

Dated: February 13, 1991.

Alan L. Kesterke,

District Manager.

[FR Doc. 91-4721 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Meeting of the Gulf of Mexico Regional Technical Working Group

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92-463). The Gulf of Mexico RTWG meeting will be held April 2-3, 1991, 9 a.m. to 5 p.m., at the Minerals Management Service Offices, 1201 Elmwood Park Boulevard, New Orleans, Louisiana.

The RTWG business meeting will be held in conjunction with the Environmental Studies meeting. Tentative agenda items are as follows:

- Roundtable Discussion
- Naturally Occurring (Low-Level) Radioactive Material (NORM)
- 5-Year Program
- Summary of Recently Passed Legislation that will Affect the Gulf of Mexico

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736-2589 by March 15, 1991. Written statements should be submitted by the same date to the Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123. A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG is one of six such Committees that advises the Director of the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: February 15, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-4722 Filed 2-27-91; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31774]

Tenneco Inc.—Control Exemption—Marinette, Tomahawk & Western Railroad Co. and Valdosta Southern Railroad

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition of control by the Corinth and Counce Railroad Company, and the acquisition of indirect control by Packaging Corporation of America, and, in turn, Tenneco Inc., of the Marinette, Tomahawk & Western Railroad Company, and the Valdosta Southern Railroad, subject to standard labor protective conditions.

DATES: The exemption will be effective on March 30, 1991. Petitions for stay must be filed by March 11, 1991, and petitions for reconsideration must be filed by March 20, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31774 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423

(2) Petitioner's representative: Michael W. Meyer, 1010 Milam, Houston, TX 77001

Fritz R. Kahn, The McPherson Bldg., suite 700, 901 15th St., NW., Washington, DC 20005-2301

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359.

Decided: February 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-4776 Filed 2-27-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc., UNICOR Independent Market Study Briefings

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Efforts are underway to complete an independent market study of UNICOR, based on the objectives set forth in Public Law 101-515 and the statement of work RFP 1PI-003-91, as announced in the Federal Register on December 7, 1990 (55 FR 50618). To ensure that all interested parties have ample opportunity to provide their comments and suggestions related to the study, two briefings have been scheduled. The first briefing will focus on the overall study approach and task activities, as well as potential interviewees and data sources. The second briefing will focus on the interpretation of the source data and information gathered through April 1, 1991. During the course of the study, written comments and suggestions may be submitted prior to the release of the interim report on May 1, 1991.

DATES: The briefings are scheduled as follows:

1. March 5th (Tuesday)—1 p.m. to 3 p.m.
2. April 2nd (Tuesday)—1 p.m. to 4:30 p.m.

ADDRESSES: The March 5th briefing will be held in the Pennsylvania Avenue location of Deloitte & Touche, at 1001 Pennsylvania Avenue, NW., suite 350, Conference Room A, Washington, DC. The location of the April 2nd briefing will be announced at a later date. Comments and suggestions on the market study may be sent to John C. Foreman, Deloitte & Touche, 1900 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: James Hagerty (202) 508-8554.

Dated: February 22, 1991.

James Hagerty,

Manager, Market Research, Federal Prison Industries, Inc.

[FR Doc. 91-4677 Filed 2-27-91; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Andrea Sportswear, et al.; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,019; Andrea Sportswear, Fall River, MA

TA-W-25,181; Piezo Electric Products, Metuchen, NJ

TA-W-24,971; Fairfield Textile Corp., Fairfield, NJ

TA-W-25,089; Chrysler Corp., Warren Stamping Plant. Warren, MI

TA-W-25,293; Mannington Ceramic Tile, Mt. Vernon, TX

TA-W-25,250; Extrudart Metal Products, Cohoes, NY

TA-W-24,982; Unisys Corp., Paoli, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,206; Kelley-Coppedge, Inc., Fort Worth, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,158; Burro Crane, Chicago, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,308; Bivouac Automotive Corp., Vandalia, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-24,927; The Trane Co., Trenton, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,346; Marriott Corp., Woodstock, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,215; Performance Semiconductor Corp., Bloomington, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-25,220; Encore Shoe Corp., Sanford, ME

A certification was issued covering all workers separated on or after December 5, 1989.

TA-W-25,201; Encore Shoe Corp., Rochester, NH

A certification was issued covering all workers separated on or after December 5, 1989.

TA-W-25,202; Encore Shoe Corp., Newport, NH

A certification was issued covering all workers separated on or after December 5, 1989

TA-W-25,099; National-Standard Co., Machine Systems Div., Rome, NY

A certification was issued covering all workers separated on or after October 1, 1990.

TA-W-24,996; Billie Jo Sportswear, Inc., New York, NY

A certification was issued covering all workers separated on or after October 17, 1989.

TA-W-25,110; Aberdeen Sportswear, Inc., Trenton, NJ

A certification was issued covering all workers separated on or after October 7, 1989.

TA-W-25,190; Western Atlas International, Atlas Wireline Service, Houma, LA

A certification was issued covering all workers separated on or after November 27, 1989.

TA-W-25,148; Pyke Manufacturing Co., Lehi, UT

A certification was issued covering all workers separated on or after November 14, 1989.

TA-W-24,965; Wellman Thermal Systems, Shelbyville, IN

A certification was issued covering all workers separated on or after October 8, 1989.

TA-W-25,192; Wrangler Co., Orange, VA

A certification was issued covering all workers separated on or after December 3, 1989 and before October 15, 1990.

TA-W-25,193; Wrangler Co., Elkton, VA

A certification was issued covering all workers separated on or after December 3, 1989 and before October 15, 1990.

TA-W-25,188; Warnaco Knitwear Div., Altoona, PA

A certification was issued covering all workers separated on or after November 28, 1989.

TA-W-25,189; Warnaco Knitwear Div., Duncansville, PA

A certification was issued covering all workers separated on or after November 28, 1989.

TA-W-25,001; ISC-Bunker Ramo, Spokane, WA

A certification was issued covering all workers separated on or after November 5, 1990.

TA-W-25,069; Gates Mills, Inc., Johnstown, NY

A certification was issued covering all workers separated on or after September 21, 1989.

TA-W-24,883; R.E. Dietz Co., Syracuse, NY

A certification was issued covering all workers separated on or after September 11, 1989.

TA-W-25,194; Amoco Corp., Technical Support, Operating at Amoco Production Co., New Orleans Regional Office, New Orleans, LA

A certification was issued covering all workers separated on or after November 29, 1989.

TA-W-25,195; Amoco Corp., Technical Support, Operating at Amoco Production Co., Denver Regional Office, Denver, CO

A certification was issued covering all workers separated on or after November 29, 1989.

I hereby certify that the aforementioned determinations were issued during the month of February, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 19, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-4705 Filed 2-27-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,970]

Donora Sportswear Co., Donora, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Donora Sportswear Company, Donora, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,970; Donora Sportswear Company, Donora, Pennsylvania (February 19, 1990)

Signed at Washington, DC this 19th day of February, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91- Filed 2-27-91; 8:45 am]

BILLING CODE 4510-30-M

Identification of Qualified Sources To Administer Training and Employment Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration, seeks to identify qualified sources which currently operate national level Multi-State training and employment programs servicing the specialized needs of disabled individuals across the country for the possibility of participating in the Department of Labor's Job Training Partnership Act (JTPA) National Partnership Program and on its National Training Demonstration Program.

DATES: Interested organizations should submit the information requested in this notice by March 20, 1991.

FOR FURTHER INFORMATION CONTACT: Charlotte A. Adams; Telephone: (202) 535-8702 (this is not a .oll-free number).

ADDRESSES: Responses to the notice should have all the information required in this notice above and should be mailed to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Rm C-4305, Washington, DC 20210. Attention: FR-SOURCES SOUGHT DESK. Acknowledgment of receipt will not be made, nor will telephone inquiries be honored.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, seeks to identify qualified sources which currently operate national level Multi-State training and employment programs serving the specialized needs of disabled individuals across the country for the possibility of participating in the Department of Labor's Job Training Partnership Act (JTPA) National Partnership Program and on its National Training Demonstration Program. Section 451 of Title IV, Part D of the Job Training Partnership Act (JTPA) authorizes the Secretary of Labor to make funds available to conduct training and employment programs for disabled individuals to assist in eliminating artificial and other barriers faced by such persons. The general purpose of these programs is to increase the number and quality of job opportunities for disable individuals by providing specialized outreach service, tailored training, job development, and job placement. To enhance as well as supplement the services made available to these individuals, the program must have close linkages with local rehabilitation agencies and facilities.

The Employment and Training Administration (ETA) currently awards grants to the following non-profit organizations to provide services to the specific client groups:

Association for Retarded Citizens—Provides on-the-job training in a variety of occupations for mentally retarded individuals through sub-grants with public and private employers throughout the nation. All trainees are judged to be "work-ready" by the Vocational Rehabilitation Agency, after successfully completing their training and before entering into unsubsidized employment.

Electronic Industries Foundation—Provides a national outreach, pre-employment counseling and job placement program and fosters new employment opportunities for disabled persons, providing a centralized job referral service with the electronic and other industries and rehabilitation agencies. The project operates on a national scale. Epilepsy Foundation of America—Provides screening and preemployment evaluation, support services, job seeking skills training, job search assistance and job placement tailored to the special needs of epileptics who are unemployed or underemployed. Project are operated on a national scale and the Commonwealth of Puerto Rico. Clients who require standardized testing are referred to the following resources, as appropriate: State Employment agency, Vocational Rehabilitation agency, Licensed Psychological Evaluators, and Licensed Neuropsychologists.

National Association of Rehabilitation Facilities—Develops and promotes on-the-job training programs in rehabilitation facilities on a national scale to individuals who are economically disadvantaged, disabled, displaced from the employment market, or otherwise unemployed and underemployed. NARF also provide job placement to disabled individuals.

Goodwill Industries of America—Provides employment and training programs for all disabled persons through a program of multi-occupational inhouse training. Job placement is provided through Goodwill Industries Facilities in various sites throughout the country. All individuals referred to the program must be certified as being handicapped by the State Vocational Rehabilitation Office.

National Federation of the Blind—Provides an applicant register, job announcements, counseling, job referrals and employer education seminars, and operates a job bank to promote the interests of the blind and place them in employment opportunities. The project operates on a national scale.

Mainstream, Inc.—This organization operates a project that conducts promotional activities to encourage employers to hire all persons with disabilities and provides information on workplace accommodations. It recruits and places disabled individuals through a variety of services and a computerized job bank system.

The International Association of Machinists Center for Administering Rehabilitation and Employment Services (IAM-CARES)—This organization operates programs to train and place persons with all disabilities. These services are provided to disable individuals on a national scale with a program designed specifically for disabled youth operating in Seattle, WA. In addition to regular training and placement activities, this project is aided by advisory groups with members from the private sector, labor and government and by the interest and assistance of Machinists Union members.

Non-profit organizations that conduct employment and training programs on a national scale (multi-state) to the specific client groups currently being serviced by these organizations are invited to respond to this sources-sought notice by submitting the following information:

(1) Capability statement of organization;

(2) Previous and current training and employment projects operated on a national scale;

(3) A description of professional personnel specifically qualified in the training and employment field outlined; and

(4) Any other available descriptive literature about the organization and its services.

No contracts will be made to clarify information submitted.

Note: This is not a Solicitation for Grant Applications and no selection for funding will result from this notice.

Signed at Washington, DC, this 22nd day of February, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 91-4707 Filed 2-27-91; 8:45 am]

BILLING CODE 4510-30-M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards

Administration, U.S. Department of Labor. The addresses of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the attestation process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the complaint process: Chief, Farm Labor Programs, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 22nd day of February, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[02/11/91 to 02/15/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. Jeff Ashin	602–969–9111	Mesa General Hospital, 515 No. Mesa Drive, Mesa, AZ 85201	AZ	02/15/91
Mr. Sam Pangburn	818–797–1141	St. Luke Medical Center, 2632 E. Washington Blvd., Pasadena, CA 91109.	CA	02/13/91
Mr. Bryan Burklow	714–547–2565	Doctors Hospital of Santa Ana, 1901 N. College Ave., Santa Ana, CA 92706.	CA	02/13/91
Mr. Bryan Burklow	714–554–1653	Santa Ana Hospital Medical Center, 1901 N. Fairview Street, Santa Ana, CA 92706.	CA	02/13/91
Mr. Charles H. Mason	415–872–5400	Mills-Peninsula Hospitals, 1783 El Camino Real, Burlingame, CA 94010.	CA	02/15/91
Mr. Robert M. Jarami	213–653–1958	Jaramillo Cares, Inc. dba Spe, 6404 Wilshire Blvd., Suite 720, Los Angeles, CA 90048.	CA	02/15/91
Mr. Edward J. Rosasc	305–285–2100	Mercy Hospital, 3663 Wouth Miami Avenue, Miami, FL 33133	FL	02/15/91
Mr. Ralph R. Aleman	305–545–8050	Victoria Hospital, 955 N.W. Third Street, Miami, FL 33128	FL	02/15/91
Mr. Gary K. Jajwara	808–547–9450	Kuakini Health System, 347 N. Kuakini Street, Honolulu, HI 96817	HI	02/13/91
Mr. Romero Carino	312–338–1170	Progressive Services, Inc., 2800 W. Peterson Ave., Chicago, IL 60659.	IL	02/15/91
Mr. Fred Martinez, Jr	504–785–6242	St. Charles Parish Hospital, P.O. Box 67, Luling, LA 70070	LA	02/15/91
A. Jason Geisinger	617–233–8123	First Health Care Corp., d.b.a., Hammersmith House Nursing Care, Saugus, MA 01906.	MA	02/15/91
Mr. William R. Fried	201–854–5018	Palisades General Hospital, 7600 River Road, North Bergen, NJ 07047.	NJ	02/15/91
Mr. James Toomey	702–645–1900	El Jen Convalescent Hospital, 5530 W. Duncan Street, Las Vegas, NV 89130.	NV	02/15/91
Mr. David P. Rosen	718–262–6000	The Jamaica Hospital, 89th Avenue & Van Wyck Expressway, Jamaica, NY 11418.	NY	02/13/91
Mr. Keith Safian	914–631–6100	Phelps Memorial Hosp. Center, 701 No. Broadway, No. Tarrytown, NY 10591.	NY	02/13/91
Mr. Irwin M. Langer	718–945–7100	Peninsula Hosp. Center, 51–15 Beach Channel Drive, Far Rockaway, NY 11691.	NY	02/15/91
Mr. Robert K. Match	718–470–7000	Long Island Jewish Med. Center, 269–01 76th Ave., New Hyde Park, NY 11042.	NY	02/15/91
Ms. Sheila Blutstein	718–252–3000	Kings Highway Hosp. Center, Inc., 3201 Kings Highway, Brooklyn, NY 11234.	NY	02/15/91
Ms. Louise Kane	718–377–7900	Community Hospital of Brooklyn, 2525 Kings Highway, Brooklyn, NY 11229.	NY	02/15/91
Mr. Robert Stone	914–592–7555	Blythedale Children's Hospital, Bradhurst Avenue, Valhalla, NY 10595.	NY	02/15/91
Mr. Jacob Reingold	212–549–8700	Hebrew Home for the Aged at Riverdale/Palisade Nursing Home, Bronx, NY 10471.	NY	02/15/91
Sister Rita K. Kerr	212–548–1700	Frances Schervier Home and Ho, 2975 Independence Avenue, Bronx, NY 10463.	NY	02/15/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[02/11/91 to 02/15/91]

CEO-Name	Phone	Facility name	State	Approval date
Mr. Eddie A. George	713–467–6555	HCA Spring Branch Med. Center, 8850 Long Point, Houston, TX 77055.	TX	02/15/91

Number of Attestations: 24.

[FR Doc. 91–4667 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application Nos. D–8243 and D–8323]

Proposed Class Exemption for the Receipt of Certain Services by Individuals Establishing or Maintaining Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The proposed class exemption would permit the receipt of services at reduced or no cost by an individual establishing or maintaining an individual retirement account (IRA) or a retirement plan for a self-employed individual (Keogh Plan) from a bank, provided the conditions of the proposed exemption are met. If granted, the proposed exemption would affect individuals with a beneficial interest in the IRAs or Keogh Plans who receive such services, as well as the banks that provide the services.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 15, 1991.

EFFECTIVE DATE: If adopted, the proposed exemption would be effective as of the date of publication of the final exemption in the **Federal Register.**

ADDRESSES: All written comments and requests for a hearing (preferably at least three copies) should be sent to: Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20201, Attention: "Relationship Banking" Exemption. The applications for exemption as well as all additional information and comments received from interested persons will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–7901 (this is not a toll-free number); or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9141 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the sanctions resulting from the application of section 4975 (a) and (b), 4975(c)(3), and 408(e)(2) of the Code by reason of section 4975(c)(1) (D), (E) and (F) of the Code.[1] This proposal is the Department's response to applications filed on behalf of the American Bankers Association on November 14, 1989 and the Consumer Bankers Association on February 20, 1990 (together, the Applicants). The applications were filed under section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). In addition, this document contains proposals the Department is making on its own motion pursuant to the authority described above.

Section 4975(c)(1) (D), (E) and (F) of the Code prohibits the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; an act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; and the receipt of any consideration for his own personal account by any disqualified person who is a fiduciary for any party dealing with the plan in connection with a transaction involving the income or assets of the plan. The term "disqualified person", as defined in Code section 4975(e)(2), includes a fiduciary and a person providing services to the plan. Persons who exercise discretionary authority or control over the assets of a plan are fiduciaries subject to the prohibitions contained in section 4975 of the Code.[2] The receipt of reduced or no cost services by such an individual under an arrangement in which plan assets are taken into account for purposes of pricing the services is a prohibited transaction.[3] In the absence of an exemption, the individual who receives such services as a result of establishing or maintaining his or her IRA or Keogh Plan would benefit from the use of his or her plan's assets in violation of section 4975 of the Code.

In recognition of the business practice of providing premiums to encourage individuals to establish IRAs and Keogh Plans, the Department and the Internal Revenue Service (the Service; together, the Agencies) proposed a conditional class exemption in 1983 that would exempt the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans to an individual establishing or contributing to an IRA or Keogh Plan (the 1983 Proposal).[4] The 1983 Proposal has not been finalized.[5]

Recently, the Department was contacted by representatives of the banking industry concerning the business practice of offering banking

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] See Section 4975(e)(3) of the Code.

[3] See Advisory Opinion 89–12A (July 14, 1989).

[4] See 48 FR 4592 (February 1, 1983). The exemption proposed in 1983 contemplated that the premiums offered would be in the form of a cash bonus or a gift item such as a toaster, blanket or other promotional merchandise with a limited cash value.

[5] With respect to final disposition of the 1983 Proposal, the Department recognizes that the offering of cash and premiums by financial institutions may no longer reflect current industry practices and that, therefore, the relief provided by the 1983 Proposal is not necessary. Accordingly, the Department is also publishing a notice in today's Federal Register soliciting comments regarding the need for the relief provided in the 1983 Proposal

services at reduced or no cost as an inducement to customers to begin or expand banking relationships (i.e. a practice known as "relationship banking"). Specifically, inquiries were directed to the Department regarding the prohibited transaction implications of including IRA account balances for purposes of determining eligibility for relationship banking programs. At the same time, the Service was also contacted concerning the tax exempt status of IRAs whose account balances are included in such programs.

In response to these articulated concerns, the Service issued an IRA nonenforcement policy (the IRA Nonenforcement Policy),[6] which provides that the Service will not raise issues concerning the tax effects resulting from possible prohibited transactions arising from certain cash, property or services offered by financial institutions to individuals for whom the financial institution maintains certain IRAs and Keogh Plans.[7] The IRA Nonenforcement Policy is effective until the Department makes a final determination with respect to the class exemption request.

Accordingly, upon consideration of the record developed to date, the Department has decided to propose a class exemption, more fully described below, from the prohibited transaction restrictions of section 4975(c)(1)(D), (E) and (F) of the Code for the receipt of services at reduced or no cost by individuals in connection with the establishment or maintenance of an IRA or Keogh Plan.

Summary of Facts and Representations

The applications contain facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the Applicants.

1. The Applicants represent that relationship banking is widely practiced by banks as an inducement to customers to begin or expand their banking relationships with a particular institution. Relationship banking developed gradually throughout the 1980s in response to consumer demand as well as improvements in bank computer systems which permitted banks to track the various relationships an individual can have with a single institution. Relationship banking programs have been adopted by banks of all sizes throughout the country. These programs are not exclusively a money center or multi-state bank product and are as likely to be offered by a small community bank as a large, money center bank. However, the level of the relationship and the services included vary widely as different banks have set different marketing strategies.

2. The Applicants state that relationship banking programs price banking services according to an individual's total relationship to the bank. The objective of such programs is to expand the services an individual purchases from a bank by giving the customer the benefit of the economies of scale created by the level of the customer's business with the bank. The typical relationship banking program involves the establishment of a minimum qualifying level of account balances and the offering of an array of discounted or no-cost services for customers who meet or exceed that balance level. In determining whether the customer reaches the qualifying threshold, IRA and Keogh Plan balances, as well as all other types of deposit and loan balances, may be considered.

For example, a bank may offer free checking services, discounted safe deposit box rents, or free loan closing costs to customers with qualifying account balances, in any combination of accounts, of $20,000 or more.

3. The Applicants represent that the practice of relationship banking can be explained by both the revenue and the cost side of the banking business, and the fact that retail banking has become highly competitive as a result of banking deregulation. The major source of a bank's revenues is interest on loans. Banks derive the overwhelming proportion of their lendable funds from deposits and investment instruments. The Applicants state that by encouraging customers to place more funds with a particular bank, relationship banking increases the pool of funds which the bank may lend, thereby increasing its interest revenues. Cost savings arise because it is easier and cheaper for a bank to sell additional services to existing customers than it is to cultivate new customers. Moreover, there are economies of scale in serving larger customers which can be shared with such customers. For example, if a customer maintains three separate deposit accounts and two loan accounts with a bank, that bank can service that customer at far less expense than would be the case if the same five financial products were offered to five separate customers. These cost savings derive from such efficiencies as the ability to prepare a single consolidated monthly statement for multiple accounts and from the ability to use fewer separate credit reports. The Applicants state that banks pass on some of the economies of scale and cost savings that arise from providing services to customers with accumulated balances over a certain size because of the increased competition in the financial services business.

4. Relationship banking is advantageous to banks because the value of the benefits provided to qualifying customers (i.e. the value of the discounts or foregone fees) is more than offset by the revenues derived from the bank's increase in its pool of lendable funds and the bank's own cost savings associated with servicing customers with which the bank has an extensive, typically multi-product, relationship. The Applicants state that the value of the benefits provided to qualifying customers is not paid for by reducing investment rates of return, which are instead driven by market forces and the need to obtain funds in order to lend. Any reductions in rates paid on deposits would make the bank less attractive to customers, which would be contrary to the purpose of relationship banking. Therefore, the rationale for relationship banking is that the increase in interest earned on loans achieved by increasing the actual number of deposits will far outweigh a marginal reduction in income received from service fees, and that such foregone fees need not be recouped by reducing investment rates of return.

5. The Applicants state that banks are quite limited by the nature of their charters in the services they may offer to customers. Banks generally are prohibited by applicable federal and state law from engaging in activities that are not related to basic banking functions. The services offered by banks are subject to scrutiny under these standards by federal and state banking agencies and the courts. The Applicants state that although these standards are subject to continuing interpretation, they do establish significant limitations on the conduct of banks and assure that their business activities are consistant with the business of banking.

Discussion of the Proposed Exemption

1. Scope

The exemption proposed herein by the Department would provide relief from the sanctions of Code section 4975(c)(1)(D), (E) and (F) for the receipt of services at reduced or no cost by an individual establishing or maintaining an IRA or Keogh Plan, or by members of his or her family, from a bank defined in Code section 408(n) pursuant to an arrangement in which IRA or Keogh Plan deposit balances are taken into account for purposes of determining eligibility to receive such services.[8]

The Applicants request prospective and retroactive relief for those arrangements in which reduced or no cost services are provided to bank customers whose IRA or Keogh Plan balances were included in determining the cost of such services. After considering the request, the Department has determined not to provide any retroactive relief in the proposed exemption. In this regard, the Department has consulted with the Service regarding application of the IRA Nonenforcement Policy described in Announcement 90-1. The Service has indicated that regardless of the Department's resolution of the class exemption request, the Service will continue to apply the IRA Nonenforcement Policy described in Announcement 90-1 to the transactions that take place prior to the Department's final determination. Therefore, the Department has concluded that retroactive relief for such transactions is unnecessary.

Lastly, the Department notes that where a transaction involves plans not subject to title I of the Act, the particular concern in considering relief is to assure that the transactions do not conflict with the basic purpose for which such plans are established and afforded special tax benefits, i.e. to provide retirement savings for participants and their beneficiaries.[9] In recognition of the Service's role with respect to the administration of the law regarding such tax-favored arrangements, the Department requested the Service's views regarding a conditional exemption for the provision of reduced or no cost services involving IRAs and Keogh Plans which are not subject to title I of the Act. The Service agrees that the relief contained in this proposed exemption does not appear to be inconsistent with the provisions of the Code encouraging the establishment of such plans to provide retirement income.

2. Proposed Conditions

The proposed exemption contains conditions, that are described below, which are viewed by the Department as necessary to ensure that the retirement income of IRA and Keogh Plan participants and beneficiaries is not jeopardized by relationship banking arrangements.

Under the proposed exemption, only those services that may be offered by banks under applicable federal and state banking law would be covered by the proposed exemption. In those cases where the service is offered by an affiliate of the bank, the service must be one that the bank itself could offer. Such services must be provided by the bank in the ordinary course of the bank's business to customers who do not qualify for reduced or no cost banking services. Thus, no relief would be provided for a service that was offered solely to customers who maintain IRAs or Keogh Plans with the bank.

In addition, the IRA or Keogh Plan, whose deposit balance is taken into account for purposes of determining eligibility to receive services at reduced or no cost, must be established and maintained for the exclusive benefit of the participant establishing the IRA or Keogh Plan, his or her spouse, or their beneficiaries.

The proposal also provides that for the purpose of determining eligibility to receive services at reduced or no cost, the deposit balance in the IRA or Keogh Plan must be treated in the same manner as account balances of the same dollar amount, other than those in IRAs or Keogh Plans, which are maintained by customers of the bank. Under this requirement, all banking balances would be fungible and counted in the same manner. This requirement will ensure that the IRA or Keogh Plans will not get preferential or discriminatory treatment in determining eligibility for relationship banking services.

For example, if a bank establishes a $10,000 threshold for certain relationship banking services, any combination of balances (such as savings accounts, IRA or Keogh Plan accounts, checking accounts or loan balances) that equals $10,000 would be sufficient to satisfy the threshold requirement. In complying with this condition, the bank could not establish a $10,000 threshold for an IRA customer for eligibility for relationship banking services and a $20,000 threshold for other customers for such services.

In addition, IRA or Keogh Plan customers who become eligible for relationship banking services must be eligible to receive the same services that are provided to non-IRA or non-Keogh Plan customers with account balances of the same dollar amount. For example, a customer with total IRA deposit balances of $10,000 must be eligible for the same services as a customer with total non-IRA balances of $10,000. Conversely, a bank could not establish a $10,000 threshold for IRA and non-IRA customers, but provide additional reduced or no cost services only to IRA customers. Thus, no relief would be available under the exemption for a relationship banking program under which a bank offers free checking to both IRA and non-IRA customers with balances of $10,000 but offers safety deposit boxes only to the IRA customers.

The proposed exemption also requires that the rate of return on the IRA or Keogh Plan investment must be no less favorable than the rate of return on an identical investment that could have been made at the same time by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services. For example, if a bank offers a five year certificate of deposit earning 10%, the certificate of deposit offering the same rate of return must be available to customers who receive reduced or no cost services as well as those who do not receive such services. Thus, under the proposal, a bank could not offer an investment to an IRA or Keogh Plan of a customer who receives reduced or no cost services unless the IRA or Keogh Plan earns no less than that which could be earned on an identical investment available to customers at such bank without the reduced or no cost services.

Notice to Interested Persons

Because many participants in IRAs or Keogh Plans, and financial institutions

---

[6] Announcement 90-1, 1990-2 I.R.B. 33 (January 8, 1990).

[7] The IRA Nonenforcement Policy applies to cash or property described in the 1988 Proposal.

[8] The exemption requested by the Applicants would apply only to IRAs and Keogh Plans which are not "employee benefit plans" covered by title I of the Act. In this regard, 29 CFR 2510.3-2(d) explains that IRAs described in section 408(a) of the Code will not be considered pension plans subject to title I of the Act, provided that: (1) No contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program, to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

29 CFR 2510.3-3(b) explains that for purposes of title I of the Act, the term "employee benefit plan" shall not include a Keogh Plan under which no employees are covered under the plan. In this regard, 29 CFR 2510.3-3(c) states that for purposes of the above referenced section: (1) An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse; and (2) a partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.

[9] See 48 FR 4592, *op. cit.*

sponsoring IRAs or Keogh Plans, could conceivably be considered interested persons, the only practical form of notice is publication in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) Before this exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans and of their participants and beneficiaries and protective of the rights of participants and beneficiaries of such plans.

(2) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed class exemption will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced applications at the above address.

Proposed Exemption

On the basis of the facts and representations set forth in the applications and this document, the Department is considering granting the following exemption under the authority of section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 [40 FR 18471, April 28, 1975]:

Section I: Covered Transactions

Effective [date of publication of final class exemption], the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) (D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual establishing or maintaining an IRA or Keogh Plan, or by members of his or her family, from a bank pursuant to an arrangement in which the deposit balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied.

Section II: Conditions

(a) The IRA of Keogh Plan, the deposit balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant establishing the IRA or Keogh Plan, his or her spouse, or their beneficiaries.

(b) The services must be of the type that the bank itself could offer consistent with applicable federal and state banking law.

(c) The services are provided by the bank [or an affiliate of the bank] in the ordinary course of the bank's business to customers who do not qualify for reduced or no cost banking services.

(d) For the purpose of determining eligibility to receive services at reduced or no cost, the deposit balance in the IRA or Keogh Plan is treated in the same manner as account balances of the same dollar amount, other than those in IRAs or Keogh Plans, which are maintained by customers of the bank.

(e) The rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

Section III: Definitions

The following definitions apply to this exemption.

(a) The term bank means a bank described in section 408(n) of the Code.

(b) The term IRA means an individual retirement account described in Code section 408(a). For purposes of this exemption, the term IRA shall not include an IRA which is an employee benefit plan covered by title I of the Act.

(c) The term Keogh Plan means a pension, profit sharing, or stock bonus plan qualified under Code section 401(a) and exempt from taxation under Code section 501(a) under which some or all of the participants are employees described in section 401(c) of the Code. For purposes of this exemption, the term Keogh Plan shall not include a Keogh Plan which is an employee benefit plan covered by title I of the Act.

(d) The term deposit balance means a deposit as that term is defined under 29 CFR 2550.408b–4(c)(3).

(e) An affiliate of a bank includes any person directly or indirectly controlling, controlled by, or under common control with the bank. The term control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term members of his or her family refers to individuals who would be a member of the family as that term is defined in Code section 4975(e)(6), or a brother, a sister, or spouse of a brother or a sister.

Signed at Washington, DC., this 22nd day of February, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–4788 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4064]

Proposed Class Exemption for Certain Transactions Involving Persons Establishing Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Solicitation of comments.

SUMMARY: This document requests comments from interested persons regarding the Department of Labor's disposition of a proposed class exemption from certain prohibited transaction restrictions of the Internal Revenue Code of 1986 (the Code). The proposed class exemption would exempt the receipt of certain premiums, gifts or other consideration paid to an individual in connection with a transaction involving an individual Retirement Account (IRA) or retirement plan for a self-employed individual (Keogh Plan) provided certain conditions are met. The Department believes that additional information provided by interested persons will help it to determine whether exemptive relief for such transactions is needed, and if so, upon what standards and safeguards relief should be conditioned.

DATES: Comments should be submitted on or before April 15, 1991.

ADDRESSES: Comments (preferably, at least three copies) should be addressed to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, Washington, DC 20210. Attention: Application No. D–4064. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allison Padams, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 523–7901 (this is not a toll-free number); or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–9141 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On February 1, 1983 the Department of Labor (the Department) and the Internal Revenue Service published a notice of proposed class exemption (48 FR 4592) from the sanctions resulting from the application of section 4975 the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code.[1] The transactions involve the payment of premiums and gifts to individuals in connection with the establishment or contribution to an IRA or Keogh Plan by organizations authorized to sponsor IRA or Keogh Plans. The exemption was proposed pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Revenue Procedure 75–26 (1975–1 C.B. 722) and ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The Department and Service received a number of public comments with regard to the proposed class exemption. In addition, a public hearing was held on August 17, 1983.

DISCUSSION: In 1983, the Department and the Service jointly proposed a class exemption on their own motion in recognition of the apparent prevalence of this type of transaction.[2] To date, the Department has not granted relief for the transactions described in that proposal. It has come to the attention of the Department that many financial institutions may no longer offer premiums as incentives for their customers to establish IRAs or Keogh Plans with their particular institution. Rather, it appears that financial institutions now offer banking services at reduced or no cost as an inducement to customers to begin or expand banking relationships.[3] Inasmuch as the practice of offering premiums no longer appears to be prevalent among financial institutions, the Department contemplates withdrawing the proposal.

Accordingly, this notice is being published in order to provide interested persons with an opportunity to submit written comments which will be considered by the Department in deciding whether to provide exemptive relief for the receipt of premiums, gifts or other consideration by an individual in connection with the establishment of, or contribution to, an IRA or Keogh plan. Specifically, the Department requests that interested persons provide current information on the extent of the need for exemptive relief for transactions of this type and the standards and safeguards upon which exemptive relief should be conditioned.

Written Comments

All interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. All comments will be made a part of the record of this proceeding and will be available for public inspection.

Signed at Washington, DC, this 22nd day of February, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–4789 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–29–M

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] The proposed exemption provides that the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an IRA pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the payment of cash, property, or other consideration by an organization authorized to sponsor IRAs or Keogh Plans, to an individual establishing or contributing to an IRA or Keogh Plan or to members of his or her family as defined by section 4975(e)(6) of the Code, provided that

(a) The IRA or Keogh Plan in connection with which cash property or other consideration is given, is established solely to benefit the participant, his or her spouse and their beneficiaries; and

(b) The fair market value to the financial institutions of the property or other consideration or the cash received, is not more than $20 for deposits to the IRA or Keogh Plan for less than $5,000 and $20 for deposits to the IRA or Keogh Plan of $5,000 or more.

[3] By notice appearing elsewhere in this issue of the Federal Register, the Department has proposed a conditional class exemption to permit the receipt of certain services at reduced or no cost by an individual establishing or maintaining an IRA or a Keogh Plan from a bank. Interested persons also are referred to the American Bankers Association's and the Consumer Bankers Association's applications for exemption (Application Nos. D–8243 and D–8323) on file with the Department for further details.

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting to be held in Ballroom B, located on the Ballroom Level of the Washington Vista International, Washington, DC.

DATES: Monday, March 25, 1991, 8:30 a.m.–12 p.m.; Tuesday, March 26, 1991, 8:30 a.m.–12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005; (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 21st day of February.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 91–4668 Filed 2–27–91; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Heritage Initiative Section) to the National

BEST COPY AVAILABLE

Council on the Arts will be held on March 18, 1991 from 9:30 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.–5 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9:30 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accomodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) seven days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4725 Filed 2–27–91; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on March 19–20, 1991 from 9 a.m.–6 p.m. and March 21 from 9 a.m.–4 p.m. in room 716 at the Nancy Hanks Center, 100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 21 from 1 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on March 19–20 from 9 a.m.–6 p.m. and March 21 from 9 a.m.–1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 20, 1991

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4726 Filed 2–27–91; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Television Programming in the Arts Section) to the National Council on the Arts will be held on March 20, 1991 from 9:15 a.m.–6:30 p.m. and March 21 from 9 a.m.–5:30 p.m. in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 20 from 9:15 a.m.–9:45 a.m. and March 21 from 4 p.m.–5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 20 from 9:45 a.m.–6:30 p.m. and March 21 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: February 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–4727 Filed 2–27–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Division of Polar Programs; Meeting

The National Science Foundation announces the following meeting:

Name: Antartic Pollution Control Task Group.

Date and time: March 11, 1991; 10 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G St., NW, Washington, DC 20550 room 536.

Type of meeting: Open.

Contact person: Lawrence Rudolph, Deputy General Counsel, Office of the General Counsel, room 501, National Science Foundation, Washington, DC 20550 (202) 357–9435.

Purpose of meeting: The Committee will advise the Foundation on the designation of pollutants and their disposal or discharge from any source within the Antarctica.

Agenda:

* 10 a.m. to 12 p.m.—Review of materials.
* 2 p.m. to 5 p.m.—Discussion.

Summary of agenda: Discharge standards and regulatory and policy considerations will be among the topics discussed.

Reason for late notice: Because of the short-term nature of this group and the availability of participants, it is necessary to meet as schedules permit.

Dated: February 22, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–4662 Filed 2–27–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR part 50, appendix R, to Commonwealth Edison Company (CECo, the licensee), for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant several specific plant exemptions from certain requirements of "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979" prescribed in Appendix R to 10 CFR Part 50. These requirements are: (1) That the plant be able to achieve hot shutdown without performing repairs; (2) that cable and equipment and associated non-safety circuits of redundant trains be separated by a horizontal distance of more than 20 feet (section III.G.2.b of appendix R); and (3) that emergency lighting with an 8-hour battery power supply be provided in areas needed for safe shutdown (section III.J).

The proposed action is in accordance with the licensee's request for exemptions dated September 30, 1987, October 1, 1987, November 23, 1987, and April 11, 1990.

In addition, the proposed action would change the combustible load limits in the Exemption that was granted on August 18, 1989.

The Need for the Proposed Action

Since it is not possible to predict all conditions or plant configurations under which a fire can occur and propagate, the Appendix R rule only prescribes general fire protective measures. As such, there will be instances where plant specific configurations or system features could safely allow for different protection from fire damage than specified in the rule.

For these situations, strict compliance may not be required to meet the underlying purpose of the rule. Whereupon, for special circumstances identified in § 50.12, the licensee can be permitted to forego unnecessary plant modifications. For the particular instances in this proposed action, the licensee has demonstrated, by detailed fire hazards analysis, that existing protection and/or other proposed modifications provide a level of safety for certain plant areas and zones which is equivalent to the technical requirements in appendix R.

Environmental Impact of the Proposed Action

The proposed exemptions are intended to provide a level of safety equivalent to the technical requirements of appendix R. These exemptions will not change the types, or allow an increase in the amounts, of effluents that may be released offsite. Nor would they result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential nonradiological impacts, the proposed exemptions involve features located entirely within the restricted areas as defined in 10 CFR 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action

Since the Commission has concluded there are no measurable environmental impacts associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to require rigid compliance with the requirements of appendix R of 10 CFR 50. Such action would not enhance the protection of the environment and would result in unwarranted licensee expenditures of engineering and construction resources, as well as associated capital costs.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (construction permit and operating license) for Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letters dated September 30, 1987, October 1, 1987, November 23, 1987 and April 11, 1990. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland, this 21st day of February, 1991.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III–2 Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4770 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

Application for License to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear materials noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Nissho Iwai Corp., 02/08/91, 02/14/91, XSNM02467, Amendment 02.	45.90% Enriched Uranium...	68.45	30.80	Fuel for JMTR Research Reactor.	Japan.

Dated this 21st day of February 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director, for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91–4643 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–237]

Commonwealth Edison Co; Issuance of Facility Operating License No. DPR–19

The U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR–19 to Commonwealth Edison Company, authorizing operation of the Dresden Nuclear Power Station, Unit 2 (Dresden Unit 2) at steady-state reactor core power levels not in excess of 2527 megawatts (thermal), in accordance with the provisions of the license and the Technical Specifications.

Dresden Unit 2 is a boiling water reactor located in Grundy County, Illinois. The Dresden Unit 2 reactor has operated since December 22, 1969, under Provisional Operating License No. DRP–19. Facility Operating License No. DPR–19 supersedes Provisional Operating License No. DPR–19 in its entirety.

Notice of Consideration of Conversion of Provisional Operating License to Full-Term Operating License and Opportunity for Hearing was published in the **Federal Register** on August 17, 1973 (38 FR 22247). The full-term operating license was not issued previously pending completion of the reviews under the Systematic Evaluation Program (NUREG–0823, February 1983, and Supplement 1, October 1989), and by the Advisory Committee on Reactor Safeguards. The final Environmental Statement (FES) connected with the conversion to a full-term operating license was issued in November 1973. A Notice of Availability of the FES was published in the **Federal Register** on November 13, 1973 (38 FR 31329). Because the FES was issued a number of years ago, the staff performed an environmental assessment to determine if an FES supplement was necessary. This assessment, dated June 7, 1990, concluded that an FES supplement was not necessary. This conclusion was noticed in the **Federal Register** on June 19, 1990 (55 FR 24947).

The application for the full-term operating license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, as set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Facility Operating License No. DPR–19 is effective of of its date of issuance and shall expire January 10, 2006.

For further information concerning this action see: (1) The licensee's application for a full-term operating license dated November 15, 1972, as substantially supplemented March 16, 1973, (2) the Final Environmental Statement (November 1973), (3) the Commission's Environmental Assessment dated June 7, 1990, (4) Facility Operating License No. DPR–19, and (5) the Safety Evaluation Report (NUREG–1403) dated October 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

A copy of Facility Operating License No. DPR–19 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report (NUREG–1403) may be purchased through the U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5585 Port Royal Road, Room 303, Springfield, Virginia 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 20th day of February, 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 91–4771 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of Amendment to Provisional Operating License.

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 148 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified in Technical Specifications to allow draining of the 15,000 gallon emergency diesel generator (EDG) fuel oil storage tank for the purpose of internal inspection during periods of cold shutdown or refueling. The revision would allow temporary connection of fuel oil tanker trucks to the EDG fuel oil fill station. This arrangement would bypass the fuel oil storage tank and supply fuel to the EDGs directly.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 27, 1990 (55 FR 53222). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated December 7, 1990, (2) Amendment No. 148 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local document room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 21st day of February 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Sr. Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4772 Filed 2–27–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket NO. 50–443]

Public Service Co. of New Hampshire; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–86, issued to the Public Service Company of New Hampshire (the licensee), for operation of the Seabrook Station located in Rockingham County, New Hampshire.

The licensee submitted a request for an amendment by letter, dated November 13, 1990 as supplemented on January 14, 1991.

The proposed amendment would authorize a newly created entity, North Atlantic Energy Corporation (NAEC), to be included as a licensee and to acquire and possess Public Service Company of New Hampshire's (PSNH) ownership interest in Seabrook Station, Unit 1 (Seabrook).

As described in the application, the transfer from PSNH to NAEC is a part of the reorganization plan ordered by the Bankruptcy Court as a resolution to the pending PSNH bankruptcy proceedings. The reorganization plan invloves the acquisition of PSNH by Northeast Utilities (NU) and, through a merger action, the formation of NAEC and Reorganized PSNH as two wholly owned subsidiaries of NU. NAEC will acquire PSNH's 35.56942% ownership share of Seabrook, and Reorganized PSNH will acquire the other assets of PSNH. After the merger, NAEC will enter into a life-of-the-unit power contract for the sale of all of its share of the capacity and energy from Seabrook to Reorganized PSNH.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application and determined that the proposed changes do not involve significant hazards considerations. In regard to the three standards, the licensee provided the following analysis.

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

As a result of the proposed license amendment, there will be no physical change to the Seabrook facility, and all Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications will remain unchanged. Also, the Seabrook Quality Assurance Program, and the Seabrook Emergency Plan, Secretary Plan, and Operator Training and Requalification Program will be unaffected.

(2) The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will have no effect on the physical configuration of Seabrook or the manner in which it will operate. The Seabrook plant design and design basis will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications for Seabrook are not affected

by the proposed license amendment. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon its review, the staff agrees with the licensee's analysis.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 1, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C. 20555 and at the Local Public Document Room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard Wessman: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritscher, Esq., Ropes and Gray, One International Place, Boston, MA 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Antitrust Issues

Pursuant to 10 CFR 2.101 and 50.80 of the Commission's Regulations, the staff is publishing receipt of PHNH's request to transfer the stated ownership interest in Seabrook from PSNH to NAEC.

Any person who wishes to express views relating to any antitrust issues believed to be raised by this transfer request should submit said views within 30 days of the initial publication of this Notice in the Federal Register to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation. The Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensees' activities or proposed activities have occurred since the completion of the previous antitrust review.

Although the staff is providing the opportunity for comments pursuant to the competitive aspects of the proposed transfer, the staff would like to note that it is aware of and is closely following the proceeding at the Federal Energy Regulatory Commission (FERC) that, among other concerns, is addressing competitive aspects of the proposed acquisition of PSNH by NU. The NRC will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC.

For further details with respect to this action, see the application for amendment dated November 13, 1990 as supplemented on January 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 21st day of February, 1991.

For the Nuclear Regulatory Commission.

Gordon Edison,

Senior Project Manager, Project Directorate I-3, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-4563 Filed 2-27-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327-OLA and 50-328-OLA (Technical Specification Changes); ASLBP No. 91-635-07-OLA]

Tennessee Valley Authority; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Tennessee Valley Authority

Sequoyah Nuclear Plant, Units 1 and 2 Facility Operating License Nos. DPR-77 and DPR-79.

This Board is being established pursuant to a notice published by the Commission on January 23, 1991 in the Federal Register (56 FR 2546, 2556) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination And Opportunity for Hearing." The proposed amendments would modify section 6.0, Administrative Controls, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes would (1) incorporate the overall limit requirements that were provided in Generic Letter (GL) 82-16, "NUREG-0737 Technical Specifications," (2) delate the requirement for reporting Offsite Dose Calculation Manual changes and radiological waste treatment system changes in the monthly report, (3) change certain position titles, (4) change Plant Operations Review Committee (PORC) membership, (5) specify Plant Manager or Duty Plant Manager to approve administrative procedures and proposed plant modifications that affect plant nuclear safety, (6) revise the review and approval of proposed modifications, and (7) correct typographical errors.

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 22nd day of February 1991.

[FR Doc. 91-4760 Filed 2-27-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28907; File No. SR-CBOE-91-06]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Summary Fines for Failure to Perform Certain Reporting Duties

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II

and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.51A to provide more stringent summary fine procedures for Market Makers and Floor Brokers who fail to perform certain transaction reporting duties. Specifically, the Exchange proposes to amend CBOE Rule 6.51A(b)(2), which imposes fines on Market Makers and Floor Brokers who fail to report, or who report inaccurately, the transaction time for specified percentages of their trades during a given month. In particular, for Market Makers and Floor Brokers who execute at least five transactions on each of at least ten different trading days during an applicable month, CBOE Rule 6.51A(b)(2) currently imposes the following schedule of fines: (1) $100 for Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions; (2) $250 for Market Makers and Floor Brokers with inaccurate or omitted reports of 40% to less than 50% of their transactions; and (3) $500 for Market Makers and Floor Brokers with inaccurate or omitted reports of 50% or more of their transactions. The proposal decreases the percentage of inaccurate or omitted transactions necessary to fall with each of the three fine categories, so that, for each month after March 1, 1991, until June 1, 1991: (1) Market Makers and Floor Brokers with inaccurate or omitted reports of 25% to less than 35% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 35% to less than 45% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 45% or more of their transactions will be fined $500. After June 1, 1991, the percentages are decreased further, so that: (1) Market Makers and Floor Brokers with inaccurate or omitted reports of 20% to less than 30% of their transactions will be fined $100; (2) Market Makers and Floor Brokers with inaccurate or omitted reports of 30% to less than 40% of their transactions will be fined $250; and (3) Market Makers and Floor Brokers with inaccurate or omitted reports of 40% or more of their transactions will be fined $500.

The Exchange also proposes to amend Exchange Rule 6.52A(c). Currently, CBOE Rule 6.51A(c) imposes a $1,000 fine on certain Market Makers and Floor Brokers who fail to submit required information to the Standard & Poors 100 Index option ("OEX") price reporter for at least 80% of their OEX sale transactions during a given month. The CBOE proposes to provide additional fines under CBOE Rule 6.51A(c) and to extend the Rule's reporting requirement to include all options sale transactions. Specifically, for Market Makers and Floor Brokers who execute at least 25 sale transactions during an applicable month, CBOE Rule 6.51A(c), as amended, will impose the following fines for applicable months prior to June 1, 1991: (1) $500 for Market Makers and Floor Brokers who fail to report 40% to less than 50% of their sale transactions; and (2) $1,000 for Market Makers and Floor Brokers who fail to report 50% or more of their sale transactions. For applicable months after June 1, 1991, the Rule will include an additional fine level in the amount of $300 for Market Makers and Floor Brokers who fail to report 30% to less than 40% of their sale transactions.

In addition, the Exchange proposes to extend CBOE Rule 6.51A(j)'s suspension of reporting requirements under unusual circumstances to include all sale transactions, rather than only OEX sale transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.51A in order to provide more stringent summary fine procedures for Market Makers and Floor Brokers who fail to perform certain transaction reporting duties required under Exchange Rule 6.51. The proposal is intended to encourage accurate price and transaction time reporting, which will help the Exchange refine the accuracy and completeness of its audit trail.

The text of the proposed rule change is available at the offices of the CBOE and the Commission.

The CBOE believes that the proposed rule change is consistent with the requirements of the Act and, specifically, with section 6(b)(5), in that it is designed to prevent fradulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the CBOE believes that the proposal is consistent with section 6(b)(6), in that it provides for the appropriate discipline of Exchange members, and with section 6(b)(7), in that the proposal provides a fair procedure for the disciplining of Exchange members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approved such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 21, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4655 Filed 2-27-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29899; File No. 10-100]

Self-Regulatory Organizations; Wunsch Auction Systems, Inc.; Order Granting Limited Volume Exemption from Registration as an Exchange Under Section 5 of the Securities Exchange Act

Dated: February 20, 1991.

I. Summary

Wunsch Auction Systems Inc. ("WASI") owns and proposes to operate a computerized, "single-price" auction system ("Wunsch System") designed to facilitate secondary market trading of certain equity and fixed income securities. By letter, dated October 3, 1990, WASI filed with the commission, pursuant to section 5 of the Securities Exchange Act of 1934 ("Act"), an application for exemption for both WASI and the Wunsch System from registration as a national securities exchange under section 6 of the Act by reason of the fact that WASI anticipates that the Wunsch System will account for limited volume in trading of securities.[1] On October 30, 1990, the Commission solicited comment on WASI's application for exemption.[2] In response to the request for comments, the Commission received 30 letters: 25 in favor of Wunsch's application and five opposed.[3]

Based on its conclusion that WASI will have such limited volume of transactions effected on its exchange, that it is not practicable and not necessary or appropriate in the public interest or for the protection of investors for WASI to register under section 6 of the Act, the Commission hereby grants WASI's application for exemption from registration as a national securities exchange.[4]

II. The System

The Wunsch System,[5] through electronic facilities owned and operated by WASI, will permit institutional and broker-dealer participants [6] to enter buy and sell orders for particular securities selected by WASI and offered through an auction format. As proposed, the System would provide for the trading of United States corporate equity and debt securities and Treasury bonds, notes and bills. By bringing those buy and sell orders together at one point in time, the System will arrive at a single, "equilibrium" price at which the securities offered in the auction will be sold.[7] By means of linkages from the customers' terminals to the main computer,[8] customers will enter limit orders through their terminals until a previously established cutoff time; once logged into the System, the customers will be able to view the order books for the auction of any security and place orders in such auctions. Bids and offers, their prices and volumes, separately and in the aggregate, are displayed. The current equilibrium price based upon orders in the system also is displayed. Prior to the auction cutoff time, customers may at any time replace or cancel orders by referencing a screen montage showing continuously updated indications of the auction price and volume based on current orders in the system.[9]

Immediately after each auction cutoff time, the System will commence a review of orders entered to determine the price at which the largest volume could be traded, which is also the price at which the volume of buying interest is most nearly equal to the volume of selling interest. That price will be the "auction price." The customers that entered bids above, and offers below, the auction price will be entitled to executions at the auction price. Limit orders equal to the auction price will be filled on the basis of time priority to the extent that counterparties are available. To consummate auction trades and to provide each customer with a known counterparty with credit standing, a broker-dealer [10] will, at its option, either

---

[1] See Form 1, Amended Application for Registration or Exemption from Registration as a National Securities Exchange, dated October 5, 1990. See also letter from Kristen N. Geyer, Cadwalader, Wickersham & Taft, counsel for WASI, to Jonathan G. Katz, Secretary, dated October 3, 1990, both contained in Public File No. 10-100.

[2] See Securities Exchange Act Release No. 28577 (Otober 24, 1990), 55 FR 45705.

[3] For a discussion of the comments received, see notes 12-35 and accompanying text.

[4] Wunsch has also requested that the Division of Market Regulation take non-action positions with respect to: (1) The non-registration of WASI and the Wunsch System as a broker-dealer under section 15(a) of the Act; (2) the non-registration of a brokerage subsidiary of Bankers Trust New York Corporation, BT Brokerage, as a national securities exchange under the section 6 of the Act; and (3) the non-registration of WASI, the Wunsch System, and BT Brokerage as a securities information processor, transfer agent, and clearing agency under sections 11A and 17A of the Act, respectively. Letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, counsel for WASI, to John M. Ramsey, Attorney, Division of Market Regulation, SEC, dated August 20, 1990.

[5] The description of the Wunsch System is based upon the material representations made by WASI in its application requesting the exemption, *see supra* note 1.

[6] The System's institutional customers would include both so called "buy-side" firms, such as private and public pension funds, endowments, foundations, money managers, bank trust departments and insurance companies, and so-called "sell-side" firms, such as broker-dealers, including "upstairs" members of exchanges and exchange specialists.

[7] WASI contemplates that, initially, the auctions will take place three times a week, outside the trading hours of the New York Stock Exchange ("NYSE"). Each auction will last approximately one-half hour.

[8] Customers' terminals will be linked to the main computer by direct lines, modems, or public data networks, at the discretion of the customer. The main computer, located in WASI's data center in Minneapolis, Minnesota, operates on an uninterruptable power supply and is serviced by the manufacturer under a contract to repair any failure on the day in which it occurs. WASI has adopted a system of passwords (one password for logging in, another for order entry), a proprietary communications protocol, data encryption, error detection and other security measures designed to protect the System against unauthorized entry. The Wunsch System has sufficient capacity to handle a large number of transactions within a short period of time. For example, the Wunsch System theoretically could handle simultaneously up to 5,000 separate securities, and process up to 500 orders per second.

[9] In order to discourage the cancellation of orders, WASI proposes to charge customers two commissions, on both the buy and sell side, for each cancelled order. Customers may replace orders with more aggressive orders (*i.e.*, higher bids or lower offers) without penalty, but will be penalized for replacing an order with a less aggressive one (*i.e.*, a lower bid or higher offer).

[10] A broker-dealer subsidiary of Bankers Trust New York Corporation, BT Brokerage, will perform this function. WASI will not assume positions or handle customer funds.

execute all orders as agent obligated to complete the trade or purchase from each "in the money" offeror and sell to each "in the money" bidder the requisite amount of securities at the auction price.[11] A bank subsidiary of Bankers Trust ("bank subsidiary") will clear and settle, and facilitate the comparison of, trades executed in the Wunsch System through an account established by the bank subsidiary at the Depository Trust Company ("DTC"), a clearing agency registered with the Commission under section 17A of the Act.

III. Comments

In light of the novelty of determining whether the Commission should grant WASI a limited volume exemption from registration as a national securities exchange under section 5 of the Act, the Commission requested comment on whether: (1) The Commission should grant WASI the exemption it seeks; and (2) if so, the conditions that should apply to such exemption.[12]

In response to the solicitation of public comment on WASI's application, the Commission received 30 letters: 25 in favor of WASI's application [13] and five opposed.[14]

In general, commentators in favor of WASI's application cited to the ability of the System to reduce trading costs while providing an even playing field among investors. Some institutional investors anticipated that the System would complement their traditional trading methods by providing an alternative market for transactions not requiring immediacy.[15]

Commentators also liked the direct and equal access to the System. TSA wrote that "the structure of the system with direct access by investors and open book price discovery serves to protect investors from the potential abuses inherent in traditional exchanges."[16]

One commentator argued that due to the limited trading time on the System there would be relatively low volume on the exchange.[17] As the planned initial operating schedule is three transactions in each security per week, the sponsor of the System also explained that he anticipates volume on the exchange to be low.[18]

Five commentators, the Amex, NASD, NYSE, PHLX, and PSE opposed WASI's application. In general, they urged the Commission to deny WASI an exemption from registration as a national securities exchange, or to defer final action on the WASI application until more precise standards for exemption from registration, such as those in proposed rule 15c2–10, are adopted by the Commission.[19]

The NYSE argued that the Commission did not have the statutory authority to grant the exemption because Congress intended section 5's exemptive language to be a one-time, transitional provision applicable to the exchanges that existed in 1934. Instead of allowing for "start-up" exchange, the NYSE argued, Congress intended that section 5 take into account those exchanges that already existed in 1934 which had little trading volume due to the effects of the Great Depression and the regional interest of their listings. In any event, the NYSE argued, the Commission cannot reasonably find limited volume except with reference to an exchange that has an operating history; since the Wunsch System has no such history, the NYSE argued that the Commission cannot reasonably grant the exemption.[20]

[11] In a procedure that WASI believes constitutes compliance with the off-board trading rule adopted by the NYSE (*i.e.*, rule 390), BT Brokerage may route orders in NYSE listed securities executed by BT Brokerage in New York City to one or more overseas affiliates of that broker-dealer for time-stamping in the appropriate overseas market (*e.g.*, the International Stock Exchange in London or the Singapore Stock Exchange).

[12] Although section 5 does not require publication of such a request for exemption, this is the first such request in 54 years; accordingly the Commission determined, in its discretion, to publish notice in order to solicit the views of interested persons on this application. The Commission has granted section 5 exemptions on other than a temporary basis to seven exchanges. The applications of those exempted exchanges were made available to the public.

[13] See letters from: Charles N. Dawkins, CFA, Senior Vice President, Aetna Life Insurance and Annuity Company ("Aetna"), to Jonathan Katz, Secretary, Commission, (hereinafter "Secretary"), dated November 8, 1990; Theodore R. Aronson, Aronson + Fogler ("Aronson"), to Secretary, dated November 12, 1990; Peter W. Lert, Investment Analyst, Batterymarch Financial Management ("Batterymarch"), to Secretary, dated November 6, 1990; Jeffrey A. Geller, Managing Director, BEA Associates, Inc. ("BEA"), to Secretary, dated November 1, 1990; Robert G. Wade, Jr., President and Chairman of the Board, Chancellor Capital Management, Inc. ("Chancellor"), to Secretary, dated November 28, 1990; Bruce N. Lehmann, Associate Professor of Economics and Finance, Columbia University ("Columbia"), to Secretary, dated November 18, 1990; John L. Dorian, First Quadrant ("First"), to Secretary, dated November 15, 1990; Michael Fellers, Vice President, Investment Research Company ("Investment"), to Secretary, dated November 7, 1990; John W. O'Brien, Chairman and Chief Executive Officer, Leland O'Brien Rubinstein Associates, Inc. ("Leland"), to Secretary, dated November 28, 1990; Arnold S. Wood, President, Martingale Asset Management ("Martingale"), to Secretary, dated November 16, 1990; Thomas B. Hazuka, Executive Vice President, Mellon Capital Management Corporation ("Mellon"), to Secretary, dated November 26, 1990; Brad Pope, Assistant Vice President, NCNB Texas ("NCNB") to Secretary, dated January 8, 1991; Preston Estep, New Amsterdam Partners L.P. ("New Amsterdam"), to Secretary, dated November 2, 1990; Robert A. Schwartz, Profesor of Economics and Finance, New York University, Leonard N. Stern School of Business ("Stern"), to Secretary, dated November 12, 1990; Wayne H. Wagner, Partner, Plexus Group ("Plexus") to Secretary, dated February 7, 1991; Ralph S. Tate, Vice President and Director, Standish, Ayer & Wood, Inc. ("Standish"), to Secretary, dated December 18, 1990; Robert E. Shultz, Managing Director, Trust Company of the West ("Trust Company"), to Secretary, dated November 16, 1990; T. Scott Wittman, Senior Vice President, TSA Capital Management ("TSA"), to Secretary, dated November 8, 1990; Shawn LaMaster, Manager, Economic Science Systems Development, Economic Science Laboratory, University of Arizona ("Arizona/LaMaster"), to Secretary, dated November 26, 1990; Vernon L. Smith, Research Director and Regents' Professor of Economics, University of Arizona ("Arizona/Smith"), to Secretary, dated November 15, 1990; Patricia A. Small, The Associate Treasurer, The Regents of the University of California ("University of California"), to Secretary, dated November 18, 1990; Dean Furbush, Center for Study of Futures and Options Market, Virginia Polytechnic Institute and State University ("Virginia"), to Secretary, dated November 21, 1990; Eric T. Clothier, Senior Vice President, Wells Fargo Nikko Investment Advisors ("Wells Fargo"), to Secretary, dated November 27, 1990; R. Steven Wunsch, President, Wunsch Auction Systems, Inc. ("Steven Wunsch"), to Secretary, dated November 27, 1990 and January 31, 1991.

[14] See letters from: James T. Duffy, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Secretary, dated December 14, 1990; Lynn Nellius, Secretary, National Association of Securities Dealers ("NASD"), to Secretary, dated December 7, 1990; James E. Buck, Senior Vice President and Secretary, New York Stock Exchange ("NYSE"), to Secretary, dated January 7, 1991; David P. Semak, Vice President Regulation, Pacific Stock Exchange ("PSE"), to Secretary, dated November 29, 1990; William W. Uchimoto, General Counsel, Philadelphia Stock Exchange ("PHLX"), to Secretary, dated December 5, 1990.

[15] *See e.g.*, University of California letter, Aronson letter, Trust Company letter.

[16] TSA letter at 1.

[17] *See* Arizona/LaMaster letter at 2.

[18] Wunsch letter at 4.

[19] Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429.

[20] NYSE letter at 3.

In addition, the NYSE argued that the proper focus of registration which is "not practicable" under the statute should be that which is not practicable for the Commission rather than the proposed exchange. The NYSE argued that "[w]hile the legislative history of the Act sheds little light on what Congress had in mind, the sense of the language and the contemporaneous actions of the Kennedy and Landis Commissions suggest that Congress intended that the burden in question was the one upon the Commission, not that upon the applicant exchange." [21] The NYSE pointed to the exemptions given the Manila, Philippines Exchange and Honolulu Exchange as examples of when registration was "not practicable" for the Commission in 1934 because of the difficulties in oversight as communication with and travel to those exchanges would have been limited. Finally, the NYSE argued that, even if the concept of practicability could be interpreted to apply to the exchange itself, WASI has not met its burden of proving impracticability, but rather than cited only "serious, perhaps insurmountable difficulties," in registering its System under section 6.

The NASD, PSE, and PHLX argued that the Commission should develop concrete standards defining "limited volume" before it grants WASI an exemption from registration.[22] In addition, the NYSE argued that section 5's language requires registration if WASI's volume, expressed either in number and transactions or number of shares, exceeds either the transaction volume or the share volume of the smallest registered exchanges as measured on a stock-by-stock basis.[23]

Even with the existing "limited volume" guidelines, Amex and PSE argued that Wunsch has not shown that it fits within the "limited volume" exemption. The PSE pointed to the lack of any prediction of WASI's volume and noted that WASI simply states, without proof, that the nature of the system will result in a sufficiently limited trading volume to eliminate the need for registration as an exchange. The PSE and NYSE argued it is likely that both the immediate and future volume of the Wunsch's system could be "sizable" as its users could be among the most significant volume traders in the nation.[24] In addition, the PSE, Amex, and NYSE argued that the large capacity of the Wunsch System—a capacity greater than that of the NYSE—indicates that volume on the Wunsch System will not in fact be limited.[25] Instead, these commentators urged that the "limited volume" exemption should be reserved for those entities that serve only a niche market with a clearly limited investor base.

Both the NASD and the PHLX questioned how and to whom WASI will be required to report its trading activity. The PHLX asked if WASI trading would be reported to the NASD.[26] The NASD suggested that Form T is inappropriate for WASI as Form T is limited to the reporting of transactions effected by NASD members over-the-counter. Further, the NASD suggested that WASI be required to participate in the Consolidated Tape Association ("CTA") and the NASDAQ/NMS reporting plans. Alternatively, the NASD suggested that WASI could distribute auction results through vendor channels; the NASD recommended that registration as an exclusive securities information processor ("SIP") would then be necessary.[27]

The commentators also raised the question of whether granting an exemption would pose a threat to investors. The NASD argued that since WASI is not a self-regulatory organization ("SRO"), it therefore has no statutory responsibility to surveil trades consummated through its System. The NASD asked that the Commission condition the grant of section 5 exemption upon WASI's entering into a suitable agreement with an SRO for routine trading surveillance.[28] The PHLX also expressed concern for investor protection citing section 6 and other Commission requirements for registered national securities exchanges which mandate a comprehensive scheme of self-regulatory oversight, e.g., market surveillance, audit trail monitoring.

Both the NASD and PHLX questioned whether WASI would be responsible for removing an affected security if either a primary market or the Commission suspended trading in an eligible security.[29] The NASD asked that WASI's application be amended to clarify the responsibilities of WASI and BT Brokerage with respect to regulatory halts imposed by the Commission or an SRO.

The NYSE and PHLX argued that granting WASI an exemption from registration would result in unequal regulation of exchanges and therefore in unfair competition. The PHLX expressed concern that WASI would have an advantage over national securities exchanges that may offer similar automated services. If WASI is not registered as a national securities exchange under section 6 of the Act, WASI will not be subject to the "intensive regulatory rule filing regimen" of section 19(b) and rule 19b–4.[30] The PHLX questioned why SROs must pay the expense of justifying security and capacity measures of their systems when private systems such as Wunsch will avoid the expense of Commission scrutiny. The PHLX argued that Commission review also puts SROs at a competitive disadvantage when introducing new products and services, as the rule filing and public notice required under the Administrative Procedure Act ("APA") "discloses the internal operations of the exchange to the world." [31] The PHLX argued that

[21] Appendix to NYSE letter at 2.

[22] Two commentators on the Commission's release proposing rule 15c2–10, addressed more specifically the proper interpretation of the term "limited volume." *See* Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429. The Chicago Board Options Exchange ("CBOE") suggested that the term "limited volume" should be defined in terms of a maximum dollar volume or percentage share of the relevant market, whichever is the lower standard; it stated that the number and characteristics of the participants, as well as the characteristics of the instruments traded, would be relevant to determing the appropriate dollar volume or percentage share. CBOE further suggested that the maximum threshold for a limited volume exemption should be either 1 percent of the relevant market or a previously established dollar volume amount, whichever is lower. In other words, the CBOE felt that the overall concept of limited volume was meant to be a *de minimis* or insignificant amount of volume. The Chicago Board of Trade ("CBT") stated that all three elements of the test proposed by the Commission could be relevent to a determination to grant an exemption to a particular exchange, however, CBT cautioned that, in applying those factors, the Commission should not "swallow the exchange registration rule" and thus defeat Congress' purpose. Letters from: (1) Algar B. Chapman, Chairman, CBOE, to the Commission, dated August 7, 1989 ("CBOE letter") and (2) Thomas R. Donovan, President, ("CBT"), to the Commission, dated July 19, 1989 ("CBT letter"). These letters are contained in Public File No. S7–13–89.

[23] NYSE letter at 2.

[24] PSE letter at 3. Appendix to NYSE letter at 3, note 8.

[25] PSE letter at 3; Amex letter at 4; and NYSE letter at 3, note 6. PHLX argued that WASI has no incentive to ensure a low level of trading on its system and that Wunsch will try to increase it to the highest degree. PHLX letter at 5.

[26] See PHLX letter at 2, note 4.

[27] NYSE also raises the issue of SIP registration in appendix to NYSE letter at 4, note 8.

[28] The NASD points out that an agreement could be fashioned from existing agreements which have been implemented pursuant to rule 17d–2 under the Act.

[29] The Commission has the authority to suspend trading in a security pursuant to section 12(k) of the Act. A primary market may also suspend trading in a security (*i.e.*, for pending news).

[30] PHLX letter at 1.

[31] PHLX letter at 2.

unfair competition and unequal regulation demand that Wunsch be subject to the standards being applied to current SRO sponsored automated systems.

The NYSE echoed these concerns and identified activities that an exempted exchange would be able to undertake but a national securities exchange could not, *e.g.*, trade stocks and corporate bonds without regard to whether they are registered under section 12 of the Act, permit issuers to trade their own securities during an off-hours pricing session without regard to the timing restrictions of rule 10b–18,[32] and trade OTC stocks unconstrained by the 100-stock pilot to which national securities exchanges are limited.[33]

Both NYSE and PHLX raised the concern that granting WASI an exemption would create a private institutional market which would fragment the current market into separate institutional and retail markets thus working against the goals of the National Market System ("NMS") set out by the 1975 Acts. Order flow that is diverted to "this shadow market will be taken away from the NMS auction environment which will result in fewer orders interacting in the national auction to determine the best price in the nation."[34] Both commentators argued that if WASI were able to "cherry pick" the institutional orders that do not require a continuous auction, the listed securities market pricing would be less efficient because price spreads would grow, adding more cost to the continuous market across fewer orders.[35]

IV. Discussion

Section 5 of the Act requires that all exchanges subject to the jurisdiction of the United States either register with the Commission as national securities exchanges or obtain a Commission exemption from that requirement.[36] Section 5 authorizes the Commission to grant an exemption from registration if the Commission concludes that, "by reason of the limited volume of transactions effected on [the] exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors" to require such registration.[37] Under the statute, the Commission is required to make a threshold conclusion that the exchange has (or will have) a limited volume of transactions, and an additional two-pronged determination that, by reason of that limited volume, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require registration.

A. Limited Volume

Because the Wunsch System has not operated, it is appropriate for the Commission to predict the volume of transactions the Wunsch System will experience.[38] We believe that it is reasonable to predict that the Wunsch System will have a limited volume of transactions, based on the facts that the Wunsch System proposes to operate by conducting single auctions at discrete, relatively infrequent points of time (no more frequently than once a day, and initially only three times a week), and without the participation of broker-dealers with market-making obligations.[39] The predictability that the System will see only limited volume is substantially increased by the fact that it will operate after normal trading hours in the United States. At this time, relatively little trading occurs in the U.S. during the after-hours period. While some trading does occur overseas in U.S. stocks, particularly through the facilities of the International Stock Exchange ("ISE"), much of this trading appears to involve arbitrage or other pre-negotiated trades. These pre-negotiated trades would not appear to be benefitted by the auction characteristics of the System. Moreover, the attractiveness of the novel, fully-disclosed single priced auction feature of the System is entirely unproven. While a significant number of institutional market participants clearly are reviewing participation in the System, relatively few institutional investors have previously demonstrated a willingness to disclose their priced orders to other market professionals. Accordingly, the Commission believes that it is reasonable to predict that the auctions conducted by the System will result in only a very limited number of executions and a limited share volume.

The statute provides no absolute guidelines as to what level of volume does not justify a continuing exemption. The Commission agrees generally with the NYSE, however, that the present volume levels of fully regulated national securities exchanges provide a useful benchmark. The Commission would be concerned over the competitive implications of the Wunsch System operating pursuant to an exemption if its volume exceeded that of any of the fully regulated national securities exchanges. The Cincinnati Stock Exchange ("CSE") is the smallest of the currently registered fully regulated national securities exchanges in terms of shares and transactions.[40]

---

[32] In this connection, we note that rule 10b–18 is a safe harbor provision that creates timing restrictions on issuers re-purchasing their own stock. Conduct falling outside of this safe harbor is neither *per se* legal or illegal. Thus, the exemption for WASI neither sanctions trading outside the safe-harbor conditions of rule 10b–18 nor prohibits it.

[33] *See* Securities Exchange Act Release No. 28146 (June 28, 1990), 55 FR 27917.

[34] PHLX letter at 5.

[35] NYSE letter at 3.

[36] 15 U.S.C. 78e (1988). As a preliminary matter, the Commission has determined that WASI is an "exchange" as that term is defined in section 3(a)(1) of the Act, because the elements of the WASI trading system discussed above, such as the mechanism for setting the equilibrium price, are designed to create a liquid market where buyers and sellers have a reasonable expectation that they can regularly execute orders. See Securities Exchange Act Release No. 27611 (Jan. 12, 1990); 55 FR 1890 (January 19, 1990).

[37] *Id.*

[38] The section 5 exemption is not limited by its terms to exchanges with operating histories. In this connection, the Commission disagrees with the views, expressed by the NYSE, that section 5 is a "one-time transitional provision designed to address the circumstances of 1934", and that the section 5 exemption is available only to exchanges with operating histories, and not to start-up exchanges such as the Wunsch System. Without a clearer indication from Congress, the Commission is unwilling to employ a narrow reading of the limited volume requirement to take a section that appears to have prospective application and make it retrospective only.

[39] The fact that the capacity of the Wunsch System exceeds that of the NYSE and Amex does not necessarily imply that the volume of transactions on the Wunsch System will not be limited. At a threshold level, system capacity does not bear a direct relationship to actual volume: A system sponsor may choose to build capacity in excess of the volume that reasonably can be expected based on the configuration of the system. Moreover, it is reasonable for WASI to build large capacity into the System because order input and access messages will be heavily concentrated in discrete periods of time rather than spread throughout an entire trading day, as in the case of the NYSE, Amex and other exchanges. The large capacity is also reasonable as WASI may someday seek to register as an exchange.

[40] For calendar year 1990, CSE's average daily volume, expressed in reported trades was 717; its average daily volume, expressed in shares traded was 1,238,241. We do not believe that the Spokane Stock Exchange ("SSE") is an appropriate measure of limited volume in this context. For calendar year 1990, the SSE's average daily volume expressed in reported trades was 7; its average daily volume, expressed in shares traded was 30,083. The SSE is limited purpose market specializing purely in local issues that is exempt from participation in the national trading and quotation reporting systems. Thus, the SSE's volume is not representative of the minimum levels of volume that preclude consideration olf an exemption from registration. We would emphasize, however, that this does not suggest that the SSE would qualify for an exemption; we expect it would be difficult for the SSE to show that it is impractical and not in the public interest for it to be registered. Among other things, the SSE holds itself out as an exchange and has operated as a registered exchange.

B. By Reason of This Anticipated Limited Volume, Registration of the Wunsch System as a National Securities Exchanges is Not Practicable

In view of the limited volume anticipated to be attained by the Wunsch System, the Commission believes that it would be so disproportionately burdensome to compel WASI to satisfy all of the regulatory requirements imposed upon registered national securities exchanges under the Act as to be impracticable. The Act requires all SROs, including national securities exchanges,[41] among other things, to file with the Commission, copies of proposed rules and proposed rule changes for Commission approval or disapproval,[42] to assure fair representation of "members,"[43] to undertake a long list of other duties and responsibilities,[44] and to comply with significant limitations.[45] Although the costs of complying with such obligations and limitations are themselves in large part a function of the volume of an exchange, so that they can be expected to be less for a smaller exchange than for a larger one, these costs do not decrease in a purely linear fashion as volume decreases. Thus, there are a minimum fixed costs of compliance that these obligations entail even for small exchanges. Moreover, the costs of compliance with these requirements and limitations are especially large, if not prohibitive, for proprietary exchanges designed to accommodate direct institutional trading.[46] On the other hand, the revenues of an exchange are more directly related to volume and are not in any sense fixed.[47] For a proprietary exchange with the limited volume and thus limited revenues we anticipate for WASI, the costs of compliance with the obligations and limitations of registration would represent prohibitive business, administrative, and financial burdens. Thus, in light of the limited volume of trading anticipated to be experienced by the Wunsch System, the Commission believes that it would be disproportionately burdensome to subject WASI to the rule filing requirements.[48]

C. In View of Its Limited Volume, It Is Not Necessary or Appropriate in the Public Interest or for the Protection of Investors To Compel the Wunsch System To Register as a National Securities Exchange

In making this final determination, the Commission has considered whether the grant of an exemption may: (1) Result in gaps in the Commission's regulation of the Wunsch System or in WASI's own surveillance of trading taking place in the System; or (2) afford WASI an undue competitive advantage vis-a-vis other trading systems, especially systems operated as national securities exchanges; or (3) unfairly or inappropriately fragment the markets for equity and fixed income securities by attracting volume away from the NYSE and the regional exchanges. In light of the limited volume of trading anticipated to be one on the System, and in view of the regulatory protections over system activity that are either currently in place or that will be imposed by the Commission upon the System in the form of terms and conditions upon this exemption, the Commission finds that it is not necessary or appropriate in the public interest or for the protection of investors to require the System to register.

1. Possible Gaps in Regulation

a. *Trade Reporting.* As a preliminary matter, the Commission notes that, regardless of the NYSE's position concerning the location of WASI trades for purposes of NYSE rule 390, the Commission believes that trades negotiated in the U.S. on a U.S. exchange are domestic, not foreign trades. The fact that the trade may be time-stamped in London for purposes of rule 390 does not in our view affect the obligation of WASI and BT Brokerage to maintain a complete record of such trades and report them as U.S. trades to U.S. regulatory and self-regulatory authorities and, where applicable, to U.S. reporting systems.

b. *Surveillance and Other Matters.* WASI has developed internal surveillance procedures designed to identify possible violations of the Act by WASI employees and by System participants. In addition, the basic system design of the System ensures a complete locked in audit trail, including information as to the institution involved in the trade. WASI has designed a system of surveilling activity on its market through use of the audit trail to detect abusive trading activity. In addition to its own internal surveillance procedures, WASI has undertaken to provide to the SROs information similar to that provided by the SROs to the consolidated audit trail.[49] In addition, WASI has an arrangement to provide trade reporting to a vendor for public dissemination.[50]

---

[41] The term "self-regulatory organization", as defined in section 3(a)(26) of the Act, encompasses national securities exchanges, registered securities associations, registered clearing agencies, and, for some purposes, the Municipal Securities Rulemaking Board ("MSRB").

[42] Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1).

[43] Section 6(b)(3) of the Act. The term "member" is defined generally under section 3(a)(3) A of Act as a registered broker-dealer or natural person associated with a registered broker-dealer—institutions required by the Commission to comply with the rules of an exchange pursuant to section 6(f) of Act are included in the definition of "member," but only for the purposes of certain enumerated sections of the Act.

[44] *See* sections 6(b)(1)–6(b)(8) of the Act.

[45] *See e.g.*, section 11(a) of the Act (members of exchanges may not trade for their own account) and section 6(c)(1) (exchanges generally may only admit broker-dealers as "members").

[46] *See e.g.*, section 6(b)(3) of the Act (requirement that an exchange assure fair representation of its "members"); section 6(b)(6) of the Act (requirement that an exchange have an apparatus for the appropriate disciplining of members and persons associated with members); and section 6(c)(1) of the Act (limitation that exchanges generally admit only registered broker-dealers as members).

[47] In this connection we note that WASI's sole source of revenue is transaction fees.

[48] The Commission does not credit the NYSE's views that WASI somehow bears the burden of proving impracticability, or that an exemption should be granted only if registration is impracticable for the Commission. In discussing practicability, section 5 references "the opinion of the Commission," thus leaving the Commission free to evaluate the representations made in the application for exemption, to investigate matters on its own, or to do both. Moreover, although it may have been impracticable, as the NYSE states, for the Commission to visit some of the exchanges to which it granted exemptions in the 1930s (*i.e.*, the Honolulu Stock Exchange), the Commission did not base its finding of impracticability on the difficulties of travel and communication over long distances, because the Commission also exempted the Richmond Stock Exchange, which did not pose similar difficulties (*see* Securities Exchange Act Release No. 432 (December 2, 1935)). The term "practicable" should thus not be applied narrowly to refer only to the convenience of the Commission, but should be interpreted more broadly to take into account undue hardship to the applicant.

[49] The major registered securities exchanges and the NASD submit their audit trail data—time-sequenced compilations of trading activity, including certain characteristics of the trade (*i.e.*, price, quantity, time, principal/agency designations, and the identities of clearing firms and executing brokers)—to the consolidated tape operated by the Consolidated Tape Association ("CTA"); in turn, the Securities Information Automation Corporation ("SIAC"), under the auspices of the Intermarket Surveillance Group ("ISG"), receives the feed of information from the consolidated tape, combines that information with clearing information and with information concerning late trades submitted to the NASD on Form T, and distributes that information to the registered exchanges and the NASD to assist their surveillance efforts.

[50] The NASD suggests that WASI be required to submit real-time transaction information to the CTA; similarly, the NYSE urges that WASI disclose competitive information comparable to that disclosed by the national securities exchanges. There is currently no real-time transaction reporting service, including CTA and NASDAQ, that is available to systems that, like the Wunsch System, trade outside the NYSE's normal trading hours. Thus, it is not feasible for WASI to report trades to

Continued

Moreover, BT Brokerage, a broker-dealer registered with the Commission under section 15(b) of the Act and a member of the NYSE, NASD, and Amex, is subject to the oversight and examination authority of the Commission and those self-regulatory organizations, and, more specifically, to requirements to maintain adequate net capital (rule 15c3–1 under the Act), to provide for the protection of customers' securities (rule 15c3–3 under the Act), and to keep records and make reports to the Commission (rules 17a–3 and 17a–5 under the Act). The fact that a registered broker-dealer will be involved in all executions effected by the Stystem will provide both the Commission and the SROs with full authority to examine trading which occurs in the System.

Finally, this exemption from registration is subject to specific terms and conditions, including, among others, requirements that WASI: (1) Permit the Commission to conduct examinations of the System; (2) comply with its agreement to report volume and price data to the Commission and to SROs, and provide other information (such as the identities of participants who have entered orders) to the Commission and the SROs upon request; (3) comply with its undertaking to implement procedures to conduct surveillance of its employees and adopt requirements to ensure the non-disclosure of confidential information; (4) suspend trading in any security subject to regulatory halt for pending news called by the primary market for the security or during suspensions of trading ordered by the Commission pursuant to section 12(k) of the Act, and consult with the Commission subsequent to an exchange or NASDAQ session in which an operational trading halt has occurred or a circuit breaker has gone into effect; (5) suspend any auction at the request of the Commission, assuming adequate notice is given, and (6) continue to comply with the capacity, security, and contingency planning guidelines contained in the Commission's Automation Review Policy ("ARP").[51]

The Commission may rescind the exemption if WASI does not adhere to those terms and conditions.[52] The Commission believes that the combination of self-surveillance by WASI, the provision of information to the Commission, SROs, and vendors, and the protections of broker-dealer regulation and of Commission control over the exemption will ensure that there are no gaps in the regulation of the System that could undermine the objectives of the Act.

2. Concerns about Possible Competitive Unfairness and Undue Market Fragmentation and Disintermediation

Several commentators voiced a concern that the grant of an exemption to WASI would create an uneven playing field in which the Wunsch System would be free from the regulatory regime to which registered trading markets are subject. For example, commentators suggested that the Wunsch System, by enabling its participants to "cherry pick" selected securities from the registered markets, would contribute to the fragmentation of those markets, ultimately increasing spreads in those markets. Finally, the concern (discussed above) that the Wunsch System be subject to transaction reporting requirements similar to those applicable to the registered markets, touches on both the competitive concern and the fragmentation concern.

Given the limited volume of trading anticipated to be done on the Wunsch System, any incongruity in regulatory requirements and any slight fragmentation of the markets for equity and fixed income securities, are outweighed by the disproportionataly high burden that would be borne by WASI if the System were forced to conform to the structure contemplated by the Act to apply to national securities exchanges, or to consolidate its trading and trade reporting with that of other markets. Given the predicted limited volume, the Commission finds that it is not necessary or appropriate in the public interest or for the protection of investors, to impose such burdens on the Wunsch System.[53]

V. Terms and Conditions of the Exemption

Pursuant to its authority to ensure that the exemption is consistent with the public interest,[54] the Commission hereby imposes the following requirements upon WASI as conditions of this exemption: (1) Continued registration of BT Brokerage as a broker-dealer under section 15(b) of the Act and the continued membership of BT Brokerage in at least one of the three SROs—the NYSE, NASD, and Amex, of which it is currently a member; (2) the effective registration of any security traded on the Wunsch System under sections 12(b) or 12(g) of the Act, or the provision of information with respect to the security pursuant to section 15(d) of the Act, or an exemption from registration because the security is a "government security" as defined in section 3(a)(42) (A), (B), or (C) of the Act; (3) the Wunsch System's supplying to the Commission, on a monthly basis, or on a more frequent basis, if deemed necessary by the staff, data describing (a) the number and identity of participants that have signed participation agreements and of applicants that have been denied application, and the reasons for such denial,(b) the number of auctions conducted and the identity of securities included in each auction, (c) the prices at which particular blocks of securities were sold during the auction, (d) the number and volume of any transactions that fail to settle after an auction and the identity of defaulting parties, and (e) the daily dollar, transaction, and share volume of business transaction through the system;[55] (4) an undertaking by WASI to (a) adopt and implement procedures to conduct surveillance of trading by WASI employees, to conduct surveillance of trading in WASI by WASI participants for potential insider trading or manipulative abuses, ensure the protection of confidential information in the possession of WASI employees, and, in response to regulatory trading halts on other markets, either suspend auction trading on the Wunsch System or consult with the Commission with respect to a possible suspension of trading,[56] (b) cooperate with any investigation of trading on the Wunsch System conducted by any SRO or by the Commission,[57] and (c) provides SROs and the Commission with any requested information pertaining to trading on the Wunsch System; (5) continued compliance with the capacity, security and contingency plan requirements of the ARP; and (6) the provision of 30 days prior notice of any material changes in the operation of the auction. The Commission, of course, reserves the right to apply further conditions or rescind the exemption if circumstances change, the System does not operate as represented, or if the Commission deems it otherwise necessary for the protection of investors and the public interest. In this connection, as discussed in detail in this Order, should the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached, or should the reports provided by WASI indicate that average weekly transaction or trade volume [58] has risen to levels equivalent to those of the Cincinnati Stock Exchange ("CSE") [59] over the first year of operation, the Commission will commence a review to determine whether to rescind the exemption.[60]

VI. Conclusion

The Commission has reviewed WASI's application for exemption from registration as a national securities exchange and has determined that WASI qualifies for the limited volume exemption under the Act.

It is therefore ordered, pursuant to section 5 of the Act, that WASI's exemption from registration as a national securities exchange be granted, subject to the conditions contained in this Order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4659 Filed 2–27–91; 8:45 am]

BILLING CODE 8010–01–M

---

the CTA and the NASDAQ/NMS reporting systems; WASI's agreement to seek agreements with vendors and report to self-regulatory organizations is the most comprehensive trade reporting that can be required of WASI at this time given WASI's likely limited volume. In this connection, WASI has represented that all trades matched through the System, whether or not receiving formal execution by BT Brokerage in London, will be reported to the SROs for surveillance purposes.

[51] *See* Automation Review Policy, Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989). As part of its application, WASI has submitted documentation of its capacity testing procedures, its security procedure, and its contingency plans.

[52] The NASD suggests that, if WASI is required to submit to the Commission a plan for the distribution of auction results to vendors, WASI should register with the Commission as an exclusive securities information processor ("SIP"). Such registration is not required because WASI does not meet the definition of "Exclusive processor" set forth in section 3(a)(22)(B) of the Act. That Section defines "exclusive processor" as, in pertinent part, "any securities information processor * * * which, directly or indirectly, engages on an exclusive basis on behalf of *any national securities exchange or registered securities association* * * * in collecting, processing, or preparing" certain information for distribution or publication (emphasis added). By virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term "national securities exchange" implies a registered entity (*see, e.g.,* sections 3(a)(26) of the Act (defining the term "self-regulatory organization") and section 6(a) of the Act. As a result, WASI, which collects trade information generated by the Wunsch System, nevertheless falls outside the definition of "exclusive processor" and thus, absent a specific Commission rule or order finding that registration is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of section 11A of the Act, is not subject to registration under section 11A(b)(1) of the Act.

[53] In this connection, any competitive concerns are diminished by the regulatory requirements imposed upon the System under the terms and conditions of this exemption which, although not intended to duplicate the regulatory regime to which national securities exchanges are subject, nevertheless impose significant protections. For example, the Wunsch System may trade only securities registered pursuant to sections 12(b), 12(g), or 15(d) of the Act. As a result of this condition, foreign issuers will not have an "open door" through which to introduce unregistered foreign securities to U.S. investors without adequate disclosure.

[54] *See* section 5 of the Act.

[55] In order to meet these conditions, WASI has submitted to the staff written representations that it will undertake to provide to the Commission (and to any self-regulatory organization): (1) At the end of the next business day after a particular auction, data describing the securities traded, and the prices and aggregate volumes of securities traded in the auction; (2) exception reports on unusual trading activity and abnormally high rates of order cancellations, by the end of the business day following the last auction whose data is included in the exception report; and (3) upon reasonable request, supplemental post-auction data, including the identities of auction participants, by the next business day after the request. In addition, WASI undertakes to accord the Commission real-time, log-in access to each ongoing auction, with the capacity to discover the identity of participants whose orders are visible (but anonymous) in the System.

[56] In order to meet these conditions, WASI has undertaken to adopt and implement employee surveillance procedures, to impose non-disclosure requirements applicable to WASI employees in possession of confidential information, to implement specific surveillance and exception reporting procedures, and to halt any scheduled auction at the request of the Commission, provided adequate notice is given. WASI will consult with the Commission before conducting any auction subsequent to an exchange session in which a trading halt has occurred or a circuit breaker has gone into effect. Finally, WASI will not permit trading in any security subject to a regulatory halt for pending news that has been called by the primary market for the affected security or during suspensions of trading ordered by the Commission pursuant to section 12(k) of the Act.

[57] In this connection, the written undertakings submitted by WASI grant the Commission examination authority to conduct inspections of System operations at any time.

[58] We agree with the NYSE that for these purposes the Commission should give effect to all trades effected through the Wunsch System, without regard to whether they purport to be domestic or foreign. *See supra,* note 47. We also agree with the NYSE that there may be reason to expect the System to generate, relative to the regional national securities exchanges, a small number of transactions involving a large number of shares. We address this possibility by taking into account not only the number of transactions, but the number of shares as well. We do not agree with the NYSE's contention that an analysis of whether the threshold has been breached must be conducted, as to listed stocks, on a stock-by-stock basis. If, as the NYSE fears, trading activity on the System is concentrated in the most active stocks traded on certain national securities exchanges, rather than spread over a broader range of stocks, that high level of activity can be expected to be reflected in the overall transaction or share volume of the System, which the Commission will closely monitor in order to judge whether the threshold has been breached.

[59] *See supra* note 17.

[60] As set forth above, a condition of this exemption is that WASI supply the Commission with monthly reports detailing for each security traded on WASI the dollar, transaction, and share volume in the System.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2475, Amendment 2]

Alabama (With Contiguous Counties in Tennessee, Mississippi & Georgia): Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 16, 1991, to the President's major disaster declaration of January 4, to establish the incident period as beginning December 21, 1990 and continuing through January 16, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 4, 1991, and for economic injury until the close of business on October 4, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–4761 Filed 2–27–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2477, Amt. 2]

Indiana (With Contiguous Counties in Ohio, Kentucky, Michigan, & Illinois): Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated January 18, 22, 23, and 29, 1991, to the President's major disaster declaration of January 5, to include the Counties of Benton, Daviess, Jennings, LaPorte, Martin, Perry, Randolph, Spencer, and Wells in the State of Indiana as a disaster area as a result of damages caused by severe storms and flooding and to establish the incident period as beginning December 28, 1990 and continuing through January 22, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous County of Orange in the State of Indiana and Breckenridge, Daviess, and Hancock Counties in the State of Kentucky may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The economic injury numbers are 722900 for the State of Indiana and 722800 for the State of Kentucky.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 7, 1991, and for economic injury until the close of business on October 7, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-4782 Filed 2-27-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2478]

Federated States of Micronesia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 17, 1991, I find that the State of Pohnpei (Ponape) in the Federated States of Micronesia constitutes a disaster area as a result of damages caused by Typhoon Russ which occurred December 16 through December 17, 1990. Applications for loans for physical damage may be filed until the close of business on March 18, 1991, and for loans for economic injury until the close of business on October 17, 1991, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247806 and for economic injury the number is 723500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 31, 1991.

Alfred E. Judd,

Acting Assistant Administrator.

[FR Doc. 91-4783 Filed 2-27-91; 8:45 am]

BILLING CODE 8025-01-M

U.S. SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2474, Amdt. 2]

Mississippi (With Contiguous Counties in Louisiana & Alabama); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 11, 1991, to the President's major disaster declaration of January 3, to include the Counties of Itawamba and Webster in the State of Mississippi as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning December 19, 1990 and continuing through January 14, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Calhoun, Choctaw, Prentiss, and Tishomingo in the State of Mississippi may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 3, 1991, and for economic injury until the close of business on October 3, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 15, 1991.

Alfred E. Judd,

Acting Assistant, Administrator for Disaster Assistance.

[FR Doc. 91-4784 Filed 2-27-91; 8:45 am]

BILLING CODE 8025-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2476, Amdt. 2]

Tennessee (With Contiguous Counties in MO, AR, KY, MS, NC, & GA); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 16, 1991, to the President's major disaster declaration of January 4, to establish the incident period as beginning December 19, 1990 and continuing through January 14, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 4, 1991, and for economic injury until the close of business on October 4, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-4785 Filed 2-27-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1350]

Claims for Property Located in the Czech and Slovak Federal Republic

On October 2, 1990, the Federal Assembly of the Czech and Slovak Federal Republic enacted the "Law on Mitigation of the Consequences of Certain Property Losses" (403/1990 Sb.) which provides for the restitution of property or payment of compensation for property expropriated or taken by the Czechoslovakian Government during a certain time period. The law went into effect on November 1, 1990 and provides for a 6-month period within which claims must be filed.

Claimants may wish to consider sending their claims by registered mail, so that they will have proof that the applications were submitted. There is no single address to which claims are to be submitted. Rather, claimants must file by April 30, 1991 with the appropriate organization or ministry in Czechoslovakia.

The United States Government cannot advise claimants as to whether their claims will be considered valid. In considering whether to pursue their claims, claimants should examine the provisions of the October 2 law to determine whether the law may apply to them.

It is important to note that claimants should *not* attempt to register their claims by sending them to the U.S. State Department, the U.S. Foreign Claims Settlement Commission, or any other agency of the U.S. Government. The U.S. Government may not register claims under the October 2 law on its nationals' behalf.

The Foreign Claims Settlement Commission ("FCSC"), an independent agency within the Department of Justice, was authorized to adjudicate U.S. citizens' claims against Czechoslovakia for uncompensated expropriations and other takings of property under two statutes enacted in 1958 and 1981. The awards entered by the FCSC in those claims, totalling some $113 million, were paid pro rata by the Department of Treasury out of an $81.5 million compensation fund received from the Government of Czechoslovakia under the terms of the U.S.—Czechoslovak claims settlement agreement which took effect on February 2, 1982.

The FCSC completed the adjudication of all claims against Czechoslovakia on February 24, 1985, and since then, it has had no further authority to act on such claims or to receive additional filings. However, as a service to claimants, the FCSC will furnish, upon request, a letter confirming that an individual or organization has not filed a claim against Czechoslovakia, or received payment of an award out of the compensation fund received from Czechoslovakia under the U.S.—Czechoslovakia claims settlement agreement, if such was the case or had applied with the FCSC but was subsequently denied. Interested persons should direct their request to the Foreign Claims Settlement Commission, Attn: David Bradley, Chief Counsel, Washington, DC 20579 (Tel. 202-208-7730). Claimants should be aware that the FCSC letter is *not* to be considered as the only necessary certificate. As expressed in the law, the proper certificate must be issued in Czechoslovakia.

Claimants seeking further information regarding the new Czechoslovakian property laws should contact the Embassy of the Czech and Slovak Federal Republic, 3900 Linnean Ave., NW., Washington, DC 20008, Attn: Vladimir Galuska, Consul (Tel: 202-363-6315). In view of the short deadline, claimants should not wait for responses to any inquiries before filing their claims. The Czech Embassy has notified the U.S. Government that the only proper way to register a claim is submit it to the proper organization in Czechoslovakia, and not to the Embassy in the United States. The Embassy recommends hiring a Czechoslovakia attorney to assist the claimant.

For the claimant's benefit, a list of attorneys who practice in Czechoslovakia, which was put together in July 1990, is available through the U.S. State Department. Copies may be obtained by contacting Tom Glover, Consular Affairs (Tel: 202-647-3445). Please note that the U.S. Government assumes no responsibilities for the professional ability or integrity of the attorneys on the list.

Claimants may also contact the Foreign Claims Settlement Commission (address and telephone number noted above) or the Office of International Claims and Investment Disputes, Department of State, 2100 K. St., NW., Washington, DC 20037-7160, Attn: Julie Haughn, Attorney Adviser (Tel: 202-653-5920).

Claimants should be advised, however, that neither the Foreign Claims Settlement Commission nor the Department of State's Legal Adviser's Office has any information concerning the law which is the subject of this notice other than what is noted here. Claimants are reminded that the U.S. Government cannot advise them as to whether their claims will result in any form of compensation.

Dated: February 11, 1991.

Ronald J. Bettauer,

Assistant Legal Adviser, Office of International Claims and Investment Disputes.

[FR Doc. 91-4728 Filed 2-27-91; 8:45 am]

BILLING CODE 4710-08-M

TENNESSEE VALLEY AUTHORITY

Tennessee River and Reservoir System Operation and Planning Review; Record of Decision

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of the record of decision for TVA's Tennessee River and Reservoir System Operation and Planning Review.

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act (NEPA) and section 5.4.9 of TVA's implementing procedures, 45 FR 54,511-15 (1980), that TVA has decided to adopt the preferred alternatives identified in TVA's final environmental impact statement (FEIS), "Tennessee River and Reservoir System Operation and Planning Review." A notice of availability of the FEIS was published in the Federal Register on January 4, 1991. TVA has decided to: (1) Maintain minimum flows below 16 dams and to aerate releases below 16 dams to increase dissolved oxygen in order to improve water quality, and (2) delay unrestricted and associated economic development.

FOR FURTHER INFORMATION: Copies of the record of decision and final environmental impact statement may be obtained by writing to the Tennessee Valley Authority, M. Paul Schmierbach, Manager, Environmental Quality, 309 Walnut Street, room 201, Knoxville, Tennessee 37902, or by calling (615) 632-6578.

Dated: February 22, 1991.

M. Paul Schmierbach,

Manager, Environmental Quality.

[FR Doc. 91-4700 Filed 2-27-91; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 90-12-48 established the currently effective two-month SFFL applicable through January 31, 1991.

In establishing the SFFL for the two-month period beginning February 1, 1991, we have projected non-fuel costs based on the year ended September 30, 1990 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the dramatic increase in fuel prices precipitated by the August Mid East crisis. Indeed, on a compounded basis, the February 1991 SFFL indices overtake the two fuel surcharges granted by the Department in September and December 1990. Thus, carriers will be able to increase their fares further as a result of this order.

By Order 91-2-29 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5627
Latin America	1.6207
Pacific	2.0295
Canada	1.5377

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-4784 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Lima, Peru; Airport Security Standards

SUMMARY: The Secretary of Transportation has now determined that Jorge Chavez International Airport, Lima, Peru, maintains and administers effective security measures.

By notice published at 55 FR 53380 (December 28, 1990), I announced that I had determined on September 25, 1990 that Jorge Chavez International Airport, Lima, Peru, did not maintain and administer effective security measures. I now find that the security measures used at Jorge Chavez International Airport are effective. My determination is based on a recent Federal Aviation Administration assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my December 24, 1990 determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Lima, Peru.

Dated: February 22, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-4767 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD8 91-01]

Lower Mississippi River Waterway Safety Advisory Committee

ACTION: Solicitation for membership.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Lower Mississippi River Waterway Safety Advisory Committee. Present appointments will expire with the present committee charter on October 3, 1991. Approximately twenty-four memberships will be filled.

Applicants may be from State and local government, the marine industry, environmental groups, academia, and other interested entities. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Lower Mississippi River area as required by the Coast Guard. The committee normally meets once each quarter at various locations in the New Orleans area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 3, 1993.

DATES: Requests for applications should be received no later than April 3, 1991. Completed applications should be returned no later than May 3, 1991.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396.

FOR FURTHER INFORMATION CONTACT: Commander C.T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan) room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-4686.

Dated: February 20, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 91-4741 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-91-8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 20, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Building, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on February 21, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23771.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.9 and 91.531 [old 91.31 and 91.213)
Description of Relief Sought: To extend Exemption No. 4050E, which allows operators of Cessna Citation models 550, S550, 552, and 560 airplanes to operate these airplanes without a second-in-command pilot. Exemption No. 4050E will expire on July 31, 1991.

Docket No.: 25103.
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought: To extend Exemption No. 4803A, which allows petitioner to employ certain foreign original equipment manufacturers (OEM's) to perform maintenance, preventive maintenance, and alterations outside the United States on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft. Exemption No. 4803A will expire on May 31, 1991.

Docket No.: 28454.
Petitioner: U.S. Department of Justice, Federal Bureau of Investigation
Sections of the FAR Affected: 14 CFR part 91
Description of Relief Sought: To allow petitioner's pilots relief from multiple sections of part 91 for the conduct of drug law enforcement operations and investigative programs.

Docket No.: 26461.
Petitioner: Aviation Services, Ltd.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to perform the preventive maintenance function of removal and/or replacement of passenger seats on the PA32-3000 aircraft used in part 135 operations.

Docket No.: 26465.
Petitioner: National Air Transportation Association
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow appropriately trained and qualified pilots of part 135 nonscheduled air carriers to remove and install passenger seats, medical equipment, and cargo restraining devices in aircraft operated under part 135. This exemption, if granted, would be applicable to all of petitioner's member part 135 nonscheduled air carrier companies who subscribe to the requirements of the petition and whose compliance with those requirements have been reviewed and accepted by the Administrator.

Dispositions of Petitions

Docket No.: 25864.
Petitioner: Gulfstream Pacific Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3 (a) and (g)
Description of Relief Sought/Disposition: To allow pilots employed by petitioner to remove and install passenger seats when necessary to accommodate a flight. *Grant, February 14, 1991, Exemption No. 5278.*

[FR Doc. 91-4743 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Mifflin County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Mifflin County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3411 or Joseph A. Walter, P.E., Liaison Engineer, Pennsylvania Department of Transportation, 1924-30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone: (814) 765-0440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement for a section of U.S. Route 22, in Mifflin County, Pennsylvania. Located near Lewistown, Pennsylvania, this six mile project will improve the safety and relieve traffic congestion on the section of U.S. Route 22. The western terminus and study area limits will be the intersection of S.R. 3007 and U.S. Route 22, approximately 2.5 miles West of Strodes Mills. The eastern terminus and study area limits will be approximately 1.0 mile East of the Borough of Lewistown at the intersection of U.S. Routes 22 and 322.

It is anticipated that at least four alternatives will be evaluated during the course of the study. Based on existing and projected traffic volumes, the build alternatives will be evaluated to determine the need for a four-lane facility to accommodate the traffic volumes. The alternates under consideration are: Upgrading the existing facility, transportation system management, an alternative on new location North of existing U.S. Route 22 with at least three (3) alternatives considered for both the western and eastern termini and the "NO BUILD" alternate. Two interchanges will be evaluated, one being at the western terminus in the vicinity of Strodes Mills and the second being the eastern terminus of relocated U.S. Route 22 at the intersection with U.S. Route 322 in the vicinity of Burnham.

A phased approach will be used to develop the Environmental Impact Statement. The initial phase of this project will be the development of the need for the project. A Preliminary Alternative Analysis will evaluate all suggested alternatives against the need, and environmental and engineering constraints. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to State and Federal agencies for those alternatives recommended as feasible by the Preliminary Alternative Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis a preferred alternative will be identified which best meets the needs of the traffic demand, and satisfies the environmental, socioeconomic, and engineering evaluations and public comments.

An active public participation program will be pursued during the project. At the beginning of the study, an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the study. A Citizens Advisory Committee will be formed and will meet regularly during the study. This committee will provide liaison between the Commonwealth of Pennsylvania and the local citizens, and participate in all aspects of the study. Public meetings will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identifies, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1991.

George L. Hennon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 91-4729 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Westmoreland, Armstrong, Butler, and Allegheny Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Westmoreland, Armstrong, Butler and Allegheny Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, PA 17108–1086, Telephone: (717) 782–3411 or Mr. William W. Oshnack, Project Engineer, Pennsylvania Department of Transportation, North Gallatin Avenue Extension, P.O. Box 459, Uniontown, Pennsylvania 15401, Telephone: (412) 439–7321.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) for the relocation of Traffic Route 356 (State Route 356, section B10), the Kiski Valley Expressway, in Westmoreland, Armstrong, Butler and Allegheny Counties, Pennsylvania.

The proposed action begins approximately 3 miles north of Vandergrift at the northern terminus of the existing Vandergrift Bypass (State Route 56) in Allegheny Township, Westmoreland County, and extends through Allegheny and Armstrong Counties to a terminus at the existing Allegheny Valley Expressway (State Route 28) near Freeport, in Buffalo Township, Butler County. The proposed action roughly parallels the Kiskiminetas River and is approximately 7 miles in length. The project is needed to complete a missing link and provide improved access from the Kiskiminetas (Kiski) Valley to Pittsburgh via State Route 28. Construction of the project would also stimulate industrial and economic development throughout the Kiski Valley.

An undetermined number of alternatives will be studied. These include four-lane expressway-type relocation on a new alignment, improvements to State Route 356 on the existing alignment, and the no-build alternative. All relocation alternatives will generally parallel State Route 356.

A two-phase approach will be used to develop the Environmental Impact Statement. The initial phase of project development will be identifying the Project Need. A Preliminary Alternatives Analysis will be prepared to evaluate whether all suggested alternatives satisfy the Project Need and to identify engineering and environmental constraints in the project study area. Public and agency coordination meetings will be held during the first phase to collect data and present the results of the Preliminary Alternatives Analysis. A Plan of Study for the Environmental Impact Statement will be prepared and circulated to Federal, State, and local agencies for those alternatives recommended as feasible by the Preliminary Alternatives Analysis.

The second phase of the study process will consist of analyzing the alternatives selected for detailed study. These alternatives will be the basis for the detailed environmental studies and the Environmental Impact Statement. From this analysis, a preferred alternative will be identified which best meets all project needs and traffic demands, and which satisfies public and agency comments.

An active public and agency participation program will be pursued during both phases of the project. Public meetings and agency coordination meetings will be held throughout the study process to gather data, distribute information, and receive comment on the results of all studies. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on the alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the Public Hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments or questions concerning this action and the environmental impact statement should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 22, 1991.

George L. Hannon,

Assistant Division Administrator, Harrisburg, PA.

[FR Doc. 91–4730 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Extension of Existing Approvals for the Use of Cargo Tanks, Portable Tanks, IM Portable Tanks, and Multi-Unit Tank Car Tanks in TOFC and COFC Service

AGENCY: Federal Railroad Administration, Office of Safety Enforcement, DOT.

ACTION: Notice extending existing approvals.

SUMMARY: This notice extends all FRA approvals granted for the transportation of cargo tanks, portable tanks, IM portable tanks, and multi-unit tank car tanks (multimodal tanks) in trailer-on-flat car (TOFC) and container-on-flatcar (COFC) service from March 1, 1991 until the issuance of a final rule in Docket HM–197. This action is necessary to allow the uninterrupted transportation of multimodal tanks in domestic rail transportation.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, (202) 366–0897, Office of Safety, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations, at § 174.61(c), state:

> A cargo tank or a multi-unit tank car tank containing hazardous materials may not be transported in trailer-on-flatcar, or container-on-flatcar service except under conditions approved by the Federal Railroad Administrator.

The Regulations, at § 174.63(b), state:

> A specification 51, 52, 53, 56 or 57 portable tank may not be transported on flatcards or on flat trailers, except under conditions approved by the Federal Railroad Administrator.

At § 174.63(d), the Regulations state:

> An IM 101 or IM 102 portable tank: (1) May not be transported in container-on-flatcar service (COFC) except under conditions approved by the Associate Administrator for Safety, FRA; and (2) May not be transported in trailer-on-flatcar (TOFC) service except under conditions approved by the Associate Administrator for Safety, FRA.

When these sections were added to the regulations, the movement of hazardous materials by portable tank was not a major segment of that traffic and the IM portable tank had only recently appeared in significant numbers in domestic, import/export, and land-bridge movements. The Department decided that it needed to closely monitor the development of this phase of hazardous materials traffic. Since that time, multi-modal transportation of hazardous materials has increased markedly and, on April 30, 1985, the Research and Special Programs Administration (RSPA) published an Advance Notice of Proposed Rulemaking, Docket HM–197, announcing that DOT was considering the development of safety standards for the use of cargo tanks, portable tanks, IM portable tanks, and multi-unit tank car tanks in TOFC and COFC service.

In Docket HM–197, RSPA mentioned that only a few approvals had been granted in previous years but that the number of requests was increasing. In fact, FRA has by now granted a large number of approvals for the movement of multimodal containers in TOFC and COFC service.

Virtually all of the previously granted approvals under 49 CFR 174.61 and 174.63 expire on March 1, 1991. This date was chosen because RSPA and FRA anticipated that it would allow sufficient time to bring Docket HM–197 to a conclusion. That did not happen, primarily because of the resource requirements of Docket HM–181, but a Notice of Proposed Rulemaking (NPRM) in Docket HM–197 is now in administrative review within RSPA and FRA. Because it is impossible to predict either the final contents of any rule which may be issued under Docket HM–197 or the date for any such issuance, FRA has decided to continue the effectiveness of those approvals previously issued and thereby allow the uninterrupted transportation of multimodal containers.

Accordingly, approvals issued by FRA under 49 CFR 174.61 and 174.63, for the movement of multimodal containers in TOFC and/or COFC service, are hereby extended pending the issuance of a final rule in Docket HM–197. FRA and RSPA anticipate that any final rule issued in Docket HM–197 will also contain further announcements about the status of previously issued approvals. These extensions are granted under the authority of 49 CFR 174.61 and 174.63, based on matters considered in the applications and requests previously received, and not as part of Docket HM–197, hence this matter is considered effective immediately. Nothing in this extension of previously granted approvals should be taken to predict the timing or outcome of Docket HM–197.

Authority 49 App. U.S.C. 1803, 1804, 1808; 49 CFR part 174.

Bruce Fine,

Acting Associate Administrator for Safety.

[FR Doc. 91–4849 Filed 2–27–91; 8:45 am]

BILLING CODE 4910–06–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101–516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
North San Diego County Transit Development Board San Diego, CA	CA–03–0354–00	$1,312,500	01/24/91
City & County of San Francisco, Public Utilities Commission, San Francisco-Oakland, CA	CA–03–0363–00	13,500,000	01/24/91
Chicago Transit Authority, Chicago, IL-Nothwestern IN	IL–03–0155–00	28,916,250	01/29/91
East-West Gateway Coordinating Council, St. Louis, MO.-IL	MO–03–0031–00	450,000	01/22/91

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Long Beach Public Transportation Company, Los Angeles-Long Beach, CA	CA–90–X415–00	$5,495,000	01/03/91
City of Riverside, San Bernardino-Riverside, CA	CA–90–X417–00	105,600	01/03/91
San Mateo County Transit District, San Francisco-Oakland, CA	CA–90–X418–00	2,414,769	01/14/91
Central Contra Costa Transit Authority, San Francisco-Oakland, CA	CA–90–X425–00	2,222,852	01/03/91
Santa Clara County Transit District, San Jose, CA	CA–90–X426–00	12,621,998	01/03/91
Jefferson Parish, New Orleans, LA	LA–90–X111–00	4,152,868	01/24/91

BEST COPY AVAILABLE

Issued on: February 22, 1991.
Brian W. Clymer,
Administrator.
[FR Doc. 91-4699 Filed 2-27-91; 8:45 am]
BILLING CODE 4910-67-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.
Form Number: SS-4 and SS-4PR.
Type of Review: Revision.
Title: Application for Employer Identification Number; Solicitud de Numero de Identification Patronal.
Description: Taxpayers required to have an identification number for use on any return, statement, or other document must prepare and file Form SS-4 or Form SS-4PR (Puerto Rico only) to obtain a number. The information is used by IRS and SSA in tax administration and by the Bureau of the Census for business statistics.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 2,112,737.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—7 minutes.
Learning about the law or the form—21 minutes.
Preparing the form—45 minutes.
Copying, assembling, and sending the form to IRS—20 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 3,274,794 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91-4733 Filed 2-27-91; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0015.
Form Number: CF 7511.
Type of Review: Reinstatement.
Title: Notice of Exportation of Articles With Benefit of Drawback.
Description: The CF 7511 is used by commercial exporters and manufacturers upon the export of shipments of merchandise on which drawback is to be claimed.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response/ Recordkeeping: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 33,000 hours.

OMB Number: 1515-0077.
Form Number: CF 7514.
Type of Review: Reinstatement.
Title: Drawback Notice (Lading/Foreign Trade Zone Transfer).
Description: The form is used by drawback liquidators to determine that a drawback claimant has received supplies (normally oil) for use in operating the vessels or aircraft and therefore is entitled to drawback of these supplies or that articles were properly transferred to a foreign trade zone rather than being exported.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response/ Recordkeeping: 10 minutes.
Frequency of Response: On occasion
Estimated Total Recordkeeping/ Reporting Burden: 10,335 hours.
Clearance Officer: Ralph Meyer, (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91-4734 Filed 2-27-91; 8:45 am]
BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1076.
Form Number: 8807.
Type of Review: Revision.
Title: Computation of Certain Manufacturers and Retailers Excise Taxes.
Description: Form 8807 is used to compute the excise tax on fishing equipment, bows and arrows, trucks and trailer chassis and bodies and tractors and the luxury tax on aircraft, boats, passenger vehicles, furs, and jewelry. This form enables IRS to monitor the excise tax liability on these articles. (Internal Revenue Code sections 4161, 4051, 4003, 4002, 4001, 4007, and 4008.)
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 46,750.
Estimated Burden Hours Per Response/ Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
8807 Pt. 1	3 hrs., 7 mins	6 mins	9 mins.
8807 Pt. 2	2 hrs., 36 mins	6 mins	9 mins.
8807 Wksht. 1	1 hr., 40 mins		2 mins.
8807 Wksht. 2	1 hr., 55 mins		2 mins.

Frequency of Response: Quarterly.
Estimated Total Recordkeeping/ Reporting Burden: 827,360 hours.
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91-4735 Filed 2-27-91; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 21, 1991.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Office listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: 1505-0121.
Form Number: None.
Type of Review: Extension.
Title: Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons.
Description: Treasury will disseminate this information to seven other agencies which are members of the Committee on Foreign Investment in the United States to enable the Committee to review and/or investigate certain acquisitions for their possible impact on the national security. Respondents are companies in the United States or abroad.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small Businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Lois K. Holland, (202) 566-6579, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91-4736 Filed 2-27-91; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 21, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1002.
Form Number: 8621.
Type of Review: Extension.
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Description: Form 8621 is filed by a U.S. person who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 7,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—11 hours, 58 minutes.
Learning about the law or the form—1 hour, 41 minutes.
Preparing and sending the form to IRS—1 hour, 58 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 109,200 hours.
Clearance officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224..
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 91-4737 Filed 2-27-91; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearing Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0140.
Form Number: None.
Type of Review: Extension.
Title: Textiles and Textile Products.
Description: Information is needed by Customs to be able to identify the country of origin of textiles. The requirement prevents circumvention of bilateral agreements and insures the proper assessment of duties. The declaration will be executed by the foreign manufacturer, exporter or U.S. importer to be filed with entry.
Respondents: Businesses or other for-profit, Small business or organizations.
Estimated Number of Respondents: 44,476.
Estimated Burden Hours Per Response: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 128,691 hours.
Clearance Officer: Ralph Meyer, (202) 343–0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–4730 Filed 2–27–91; 8:45 am]
BILLING CODE 4820-02-M

Office of Thrift Supervision

FarWest Savings and Loan Association, F.A., Newport Beach, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for FarWest Savings and Loan Association, F.A., Newport Beach, California, on February 15, 1991.

Dated: February 22, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4670 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

FarWest Savings and Loan Association, Newport Beach, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for FarWest Savings and Loan Association, Newport Beach, California OTS No. 1314, on February 15, 1991.

Dated: February 22, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4671 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

Mid Kansas Savings and Loan Association, F.A.; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4672 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

Pima Federal Savings and Loan Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Pima Federal Savings and Loan Association, Tucson, Arizona with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4673 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

Security Federal Savings, FSB; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporatioin as Conservator for Security Federal Savings, FSB, Columbia, South Carolina, with the Resolution Trust Corporation as sole Receiver for the Association on February 15, 1991.

Dated: February 22, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4674 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

[AC–4; OTS No. 8487]

Monumental Savings Bank, F.S.B., Baltimore, MD; Final Action; Approval of Conversion Application

Notice is hereby given that on January 31, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Monumental Savings Bank, F.S.B., Baltimore, Maryland, for permission to convert to the stock form or organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: February 28, 1991.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Corporate Secretary.
[FR Doc. 91–4675 Filed 2–27–91; 8:45 am]
BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION
TIME AND DATE: 10:00 a.m., March 6, 1991.
PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573–0001.
STATUS: Closed.
MATTER(S) TO BE CONSIDERED:
1. Japan Harbor Management Fund.
CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.
[FR Doc. 91–4963 Filed 2–26–91; 3:37 pm]
BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0141; DESI 12708]

Diutensen Tablets; Withdrawal of Approval of New Drug Application; Amendment

Correction

In notice document 91-3741 beginning on page 6402 in the issue of Friday, February 15, 1991, make the following correction:

On page 6403, in the first column, in the second line from the top, "DNA 12-708" should read "NDA 12-708".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4214-11; MTM 014967, MTM 060295, MTM 069190, and MTM 20067]

Proposed Continuation of Withdrawals; Montana

Correction

In notice document 91-3020 beginning on page 5232 in the issue of Friday, February 8, 1991, make the following corrections:

1. On page 5233, in the first column, in the land description for **Principal Meridian Lolo National Forest:**

a. Under Big Horn Recreation Area, in Sec. 6, in the second line, remove the comma after "S½".

b. Under Harry's Flat Camp, in Sec. 16, in the second line, remove the hyphen after "SW¼".

c. Under Norton Picnic Site, in Sec. 25, in the second line, insert a comma after "HES 52".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[GN90-3 ADM-8-03:C:R:C 068249 ALS]

Further Dissemination of Existing Information Product

Correction

In notice document 91-3834 beginning on page 6707 in the issue of Tuesday, February 19, 1991, make the following correction:

On page 6707, in the third column, in the first full paragraph, in the eighth line from the bottom of the paragraph, "unfurnished" should read "furnished".

BILLING CODE 1505-01-D

federal register

Thursday
February 28, 1991

Part II

Environmental Protection Agency

Asbestos-Containing Materials in Schools: EPA-Approved Courses; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62102; FRL-3877-7]

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 206(c)(3) of the Toxic Substances Control Act (TSCA) directs the EPA Administrator to publish (and revise as necessary) a list of EPA-approved asbestos courses and tests which are consistent with the Agency's Model Accreditation Plan required under section 206(b) of TSCA. Also required is a list of those courses and tests which had qualified for equivalency treatment for interim accreditation during the time period established by Congress in AHERA. Effective July 1990, that time period has expired in all States. All courses approved for interim accreditation have therefore been included in this list for information purposes only.

Section 206(f) of TSCA Title II requires the Administrator to publish quarterly in the **Federal Register**, beginning August 31, 1988, and ending August 31, 1991, a list of EPA-approved asbestos training courses. Accordingly, this **Federal Register** notice presents the fourteenth cumulative listing of EPA-approved courses and also includes a list of State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3949, TDD: (204) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Accreditation Plan by April 20, 1987. The Plan was issued on April 20, 1987, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as appendix C to subpart E, 40 CFR part 763. Persons must receive accreditation in order to inspect school buildings for asbestos, develop school asbestos management plans, and design or conduct school asbestos response actions. Such persons can be accredited by States, which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR part 763, subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A through E.

In Section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of EPA-approved asbestos courses and tests which the Administrator has determined are consistent with the Model Plan and which qualify a contractor for accreditation.

This quarterly notice formerly included a list of laboratories accredited by the National Institute of Standards and Technology (NIST) for the polarized light microscopy (PLM) analysis of bulk materials for asbestos. The EPA is no longer publishing this laboratory list because it is now available from the NIST National Voluntary Laboratory Accreditation Program (NVLAP). Persons wishing to obtain current information on the accreditation of asbestos laboratories in general or the accreditation status of any particular laboratory should contact NIST directly for this information by: (1) Writing to: Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, Rm. A124, Gaithersburg, MD 20899 (please include a self-addressed mailing label); (2) computer-to-computer communication with the NVLAP electronic bulletin board on 301-948-2058; (3) Fax on 301-975-3839; or (4) calling NVLAP on 301-975-4016. EPA interim approval for laboratories ended October 30, 1989, and since that date laboratory asbestos accreditation has been administered by NIST through the NVLAP.

The **Federal Register** notice of October 30, 1987, included EPA's initial list of course approvals. In addition, the initial list also included those State accreditation programs that EPA had approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), the fourth **Federal Register** notice of August 31, 1988 (53 FR 33574), the fifth **Federal Register** notice of November 30, 1988 (53 FR 48424), the sixth **Federal Register** notice of February 28, 1989 (54 FR 8438), the seventh **Federal Register** notice of May 31, 1989 (54 FR 23392), the eighth **Federal Register** notice of August 31, 1989 (54 FR 36166), the ninth **Federal Register** notice of November 29, 1989 (54 FR 49190), the tenth **Federal Register** notice of February 28, 1990 (55 FR 7202), the eleventh **Federal Register** notice of May 31, 1990 (55 FR 22176), the twelfth **Federal Register** notice of August 31, 1990 (55 FR 35760), and the thirteenth **Federal Register** notice of November 30, 1990 (55 FR 49758), were subsequent listings of cumulative EPA course approvals and EPA-approved State accreditation programs.

This **Federal Register** notice is divided into four units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses the AHERA-imposed deadline for persons with interim accreditation. Unit IV

provides the list of State accreditation programs and training courses approved by EPA as of January 8, 1991. Subsequent **Federal Register** notices will add other State programs as they are approved.

As announced in the **Federal Register** of September 20, 1989, EPA is no longer accepting for review and contingent approval training courses for AHERA accreditation after October 15, 1989. However, a course's status may change after that cut-off date. For example, a contingently approved course may become fully approved and a course with full approval may become disapproved. As mentioned in the September 1989 **Federal Register** notice, EPA has said it would continue to conduct full approval audits of courses that already have received contingent approval and review for contingent approval and subsequent full approval, courses received by EPA which had been postmarked on or before October 15, 1989. EPA may reach agreements with States that do not currently have an accreditation program, to turn over responsibility for auditing courses with contingent and full approval, as these States develop accreditation programs.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA may approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately, rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, Alabama, Alaska, Arkansas, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Alabama, Colorado, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Montana, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Utah, Virginia, and Wisconsin have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA-approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for the discipline. Current lists of training courses approved by Alaska, Arkansas, Colorado, Delaware, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wisconsin are listed under Unit IV. Alabama and Indiana do not have separate provider listings since these States have not independently approved any additional courses.

Each State accreditation program may have different requirements. For example, New Jersey requires participants of its courses to take the State exam. Therefore, those New Jersey-approved course sponsors who want to provide training in another State must develop their own examination. They must also submit for EPA approval to the Regional Asbestos Coordinator in their Region, a detailed statement about the development of the course examination as required by the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is included under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. As noted in Unit III, interim accreditation is no longer in effect as of July 1990. Each course that had been approved for interim accreditation will show inclusive dates of this approval. EPA's deadlines for interim accreditation are discussed further in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet or exceed the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

Thus far, EPA has taken formal action to revoke or suspend course approvals in two instances. EPA revoked approval from Living Word College's inspector and management planner training courses offered after May 6, 1988. Living Word College is located in EPA Region VII. In addition, EPA has suspended approval from the Safety Management Institute's training courses and refresher courses for workers, inspectors/management planners, and contractors/supervisors. The effective date for the course suspensions is the first week of October 1989. Safety Management Institute is located in EPA Region III. Certain EPA-approved State programs have also taken actions to suspend or revoke courses within their jurisdictions.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

State accreditation programs may have more stringent requirements than does the Model Plan. As a result, some EPA-approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being approved. It should be noted that the persons who have successfully completed these

courses are fully accredited; they are not only accredited on an interim basis.

III. Phase out of Interim Accreditation.

TSCA Title II allowed EPA to accredit persons on an interim basis if they had attended EPA-approved asbestos training before the effective date of the AHERA regulation and passed an asbestos exam. As a result, the Agency approved, on an interim basis, a number of training courses which had been offered prior to the effective date of the AHERA regulation. Only those persons who had taken training courses equivalent to the Model Plan's requirements between January 1, 1985, and December 14, 1987, were considered accredited under these interim provisions. Equivalent means that the courses had to be essentially similar in length and content to the curriculum found in the Model Plan. In addition, an examination had to be essentially equivalent to the examination requirements found in the Model Plan. If no examination was offered at the time, course providers seeking interim approval needed to provide an examination.

Persons who took one of the EPA-approved courses for interim accreditation, and could produce evidence that they had successfully completed the course by passing an examination, were accredited on an interim basis. This accreditation was interim since the person was considered accredited for only 1 year after the date on which the State where the person was employed was required to have established an accreditation program at least as stringent as the EPA Model Plan. TSCA Title II requires States to adopt a contractor accreditation program at least as stringent as the Model Plan within 180 days after the first regular session of the State's legislature convened following the date EPA issued the Model Plan.

The deadline for all States to establish a complete accreditation program was July 1989. In fact, most States were required to have developed a program by July 1988. As a result, after July 1989, the period of interim accreditation expired for persons in all States but Arkansas, Montana, Nevada, North Carolina, Oregon, Pennsylvania, and Texas. In these seven States, the legislatures meet on a bi-annual basis and last met in January 1989; therefore, persons in these States with interim accreditation lost their interim status in these States after July 1990. Because interim accreditation has now expired in all States, anyone who had previously received interim accreditation is no longer eligible to perform AHERA work unless he or she has subsequently acquired AHERA accreditation by completing an approved course. To receive accreditation, such persons, if they have not already done so, must complete an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan. For example, a person who had interim accreditation as a supervisor would have to take a 4-day supervisor course approved by EPA or an EPA-approved State program to become fully accredited.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fourteenth cumulative listing of EPA-approved State accreditation programs and training courses follows. As discussed above, quarterly notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent Federal Register notices. The closing date for the acceptance of submissions to EPA for inclusion in this fourteenth notice was January 8, 1991. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses listed by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes).

As of January 8, 1991, a total of 595 training providers are offering 1,167 EPA-approved training courses for accreditation under TSCA Title II. There are 504 asbestos abatement worker courses, 394 contractor/supervisor courses, 206 inspector/management planner courses, 18 inspector-only courses, and 45 project designer courses. In addition, EPA has approved 763 refresher courses.

Twenty-five States currently have EPA-approved State accreditation programs in one or more disciplines. These State programs have approved a total of 803 courses, including 424 worker courses, 265 contractor/supervisor courses, 28 inspector-only courses, 63 inspector/management planner courses and 25 project designer courses. In addition, these state programs have approved 528 refresher courses. It should be noted that certain training course providers may have course approval in more than one State; therefore, there may be some double-counting of these courses reflected in the above numbers.

An EPA-funded model course for inspectors and management planners is available for use by training providers. In addition, an earlier EPA-developed course for asbestos abatement contractors and supervisors has now been revised and is also available. EPA is also announcing that its newly developed model worker course is now available as well. A fee for each course will be charged to cover the reproduction and shipping costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468–1916.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

Alabama

(1)(a) *State Agency:* Alabama Safe State Program, Address: Box 870388, Tuscaloosa, AL 35487-0388, Contact: George Wade, Phone: (205) 348-7136.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/13/90).
Contractor/Supervisor (full from 11/13/90).
Inspector (full from 11/13/90).
Inspector/Management Planner (full from 11/13/90).
Project Designer (full from 11/13/90).

Alaska

(2)(a) *State Agency:* Department of Labor, Address: P.O. Box 1149, Juneau, AK 99802, Contact: Richard Arab, Phone: (907) 465-4856.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 10/1/85).
Abatement Worker (full from 1/29/90).
Contractor/Supervisor (interim from 10/1/85).
Contractor/Supervisor (full from 1/29/90).

(i)(a) *Training Provider:* Alaska Laborers Training School.

Address: 13500 Old Seward Highway, Anchorage, AK 99515, Contact: Leslie Lauinger, Phone: (907) 345-3653.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/89).
Contractor/Supervisor (Certified 11/1/89).

(ii)(a) *Training Provider:* Alaska Quality Control & Technical Service, Ltd.

Address: 907 E. Dowling Rd., Suite 18, Anchorage, AK 99518, Contact: Gracita O. Torrijos, Phone: (907) 561-2400.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/90).
Contractor/Supervisor (Certified 5/1/90).

(iii)(a) *Training Provider:* Arctic Slope Consulting Group, Inc.

Address: 6700 Arctic Spur Rd., Anchorage, AK 99518-1550, Contact: Tom Tessier, Phone: (907) 349-5148.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).
Contractor/Supervisor (Certified 12/1/89).

(iv)(a) *Training Provider:* Asbestos Removal Specialists of Alaska.

Address: 1896 Marika Rd., Unit No. 3, Fairbanks, AK 99709, Contact: J. J. Middleton, Phone: (907) 451-8555.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(v)(a) *Training ProviderT1Central & Southeastern Alaska District Council of Carpenters.*

Address: 100 W. International Airport Rd., No. 102, Anchorage, AK 99518, Contact: William Matthews, Phone: (907) 561-4568.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/89).
Contractor/Supervisor (Certified 2/1/89).

(vi)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth D. Johnson, Phone: (907) 272-8056.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(vii)(a) *Training Provider:* Environmental Science & Engineer, Inc.

Address: 1205 E. International Airport Rd., Suite 100, Anchorage, AK 99518-1409, Contact: Robert Morgan, Phone: (907) 561-3055.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/90).
Contractor/Supervisor (Certified 6/1/90).

(viii)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers.

Address: 407 Denali St., Suite 303, Anchorage, AK 99501, Contact: Dan Middaugh, Phone: (907) 272-8224.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/89).
Contractor/Supervisor (Certified 8/1/89).

(ix)(a) *Training Provider:* Martech Construction Co.

Address: 300 E. 54th Ave., Anchorage, AK 99518, Contact: Gary Lawley, Phone: (907) 561-1970.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/89).
Contractor/Supervisor (Certified 9/1/89).

(x)(a) *Training Provider:* Sheet Metal Worker Int'l. Association Local 23.

Address: 1818 W. Northern Lights Blvd. No. 100, Anchorage, AK 99517, Contact: Randall E. Pysher, Phone: (907) 277-5313.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/90).
Contractor/Supervisor (Certified 1/1/90).

(xi)(a) *Training Provider:* University of Alaska Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/89).
Contractor/Supervisor (Certified 4/1/89).

Arkansas

(3)(a) *State Agency:* Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

(i)(a) *Training Provider:* American Specialty Contractors.

Address: P.O. Box 66375, Baton Rouge, LA 70896, Contact: Daniel L. Anderson, Phone: (504) 928-9624.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/90).
Contractor/Supervisor (Certified 2/13/90).

(ii)(a) *Training Provider:* Arkansas Laborers Training Fund.

Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(iii)(a) *Training Provider:* Asbestos Training & Employment, Inc.

Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iv)(a) *Training Provider:* Critical Environmental Training, Inc.

Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88 to 12/20/90 only).
Contractor/Supervisor (Certified 9/12/88 to 12/20/90 only).

(v)(a) *Training Provider:* Enviro Sciences, Inc.

Address: 3810 F Merton Dr., Raleigh, NC 27609, Contact: Chester Hudlow, Phone: (919) 782-1487.

(b) *Approved Courses:*

Abatement Worker (Certified 6/6/90).
Abatement Worker Annual Review (Certified 8/21/90).
Contractor/Supervisor (Certified 7/31/90).
Contractor/Supervisor Annual Review (Certified 8/21/90).

(vi)(a) *Training Provider:* Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(vii)(a) *Training Provider:* Environmental Technologies.

Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 569-3518.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/30/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/30/89).

(viii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2381.

(b) *Approved Courses:*

Abatement Worker (Certified 6/6/88).
Contractor/Supervisor (Certified 6/6/88).

(bx)(a) *Training Provider:* ICU, Inc.
Address: P.O. Box 2688, Farmington, NM 87499, Contact: Sharon Adams, Phone: (505) 326-0472.
(b) *Approved Courses:*
Abatement Worker (Certified 10/8/90).
Contractor/Supervisor (Certified 10/8/90).
(x)(a) *Training Provider:* Labor Education Program, University of Arkansas.
Address: 2801 S. University Ave., Little Rock, AR 72204, Contact: Bernica Tackett, Phone: (501) 562-7444.
(b) *Approved Course:*
Abatement Worker (Certified 12/12/89).
(xi)(a) *Training Provider:* Meta Inc.
Address: P.O. Box 786, Lawrence, KS 66044, Contact: Karen P. Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/27/90).
Contractor/Supervisor (Certified 3/27/90).
Contractor/Supervisor Annual Review (Certified 3/27/90).
(xii)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0221.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 3/30/90).
Contractor/Supervisor Annual Review (Certified 3/30/90).
(xiii)(a) *Training Provider:* Professional Asbestos Training Service.
Address: P.O. Box 19092, Little Rock, AR 72219, Contact: Harold Lewis, Phone: (501) 562-1519.
(b) *Approved Courses:*
Abatement Worker (Certified 4/18/88).
Abatement Worker Annual Review (Certified 1/4/90).
Contractor/Supervisor (Certified 4/18/88).
Contractor/Supervisor Annual Review (Certified 1/4/90).
(xiv)(a) *Training Provider:* University of Arkansas.
Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.
(b) *Approved Course:*
Abatement Worker (Certified 10/7/88).
(xv)(a) *Training Provider:* Wellington House.
Address: 120 West State St., High Point, NC 27262, Contact: R. Donald Phillips, Phone: (919) 889-3722.
(b) *Approved Courses:*
Abatement Worker (Certified 6/6/90).
Contractor/Supervisor (Certified 6/6/90).

Colorado

(4)(a) *State Agency:* Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 320-8333.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).
(i)(a) *Training Provider:* Air Technology & Associates.
Address: 724 Oil Hill Rd., P.O. Box 23, El Dorado, KS 67042, Contact: Richard Green, Phone: (913) 841-1193.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(ii)(a) *Training Provider:* Haz - Cure International.
Address: 1555 Simms St., Lakewood, CO 80215, Contact: Edmund C. Garthe, Phone: (303) 232-3174.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iii)(a) *Training Provider:* Precision Safety and Services Inc.
Address: 1245 Windemaker Lane, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(iv)(a) *Training Provider:* QA Training & Inspection Services.
Address: 1405 Krameria St., Suite 4-D, Denver, CO 80220, Contact: Garrett Fleming, Phone: (303) 388-7388.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
(v)(a) *Training Provider:* The Environmental Training Center.
Address: 2781 West Oxford Ave. Unit No.7, Englewood, CO 80110, Contact: Harvey Lindenberg, Phone: (303) 781-0422.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor Annual Review (Certification Pending).
Inspector/Management Planner (Certification Pending).
Inspector/Management Planner Annual Review (Certification Pending).
(vi)(a) *Training Provider:* U.S. Army Environmental Hygiene Activity - West.
Address: Fitzsimons Army Medical Center, Aurora, CO 80045-5001, Contact: Wendell C. King, Phone: (303) 361-8681.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

Delaware

(5)(a) *State Agency:* Delaware Dept. of Administrative Services, Address: Short Building, 21 The Green, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 739-3630.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).
(i)(a) *Training Provider:* Delaware Technical & Community College, Stanton Campus.
Address: Churchman Center, Churchman's Rd., New Castle, DE 19804, Contact: Fritz Kin, Phone: (302) 323-9602.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(ii)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus.
Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(iii)(a) *Training Provider:* Local Union No. 42 Heat - Pipe & Frost Union.
Address: 1188 River Rd., New Castle, DE 19720, Contact: Robert Holden, Phone: (302) 328-4203.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/87).
Abatement Worker Annual Review (Certified 3/5/87).
Contractor/Supervisor (Certified 3/5/87).
Contractor/Supervisor Annual Review (Certified 3/5/87).
(iv)(a) *Training Provider:* Local Union No. 626 United Brotherhood of Carpenters and Joiners of America.
Address: 626 Wilmington Road, New Castle, DE 19720, Contact: Robert A. McCullough, Phone: (302) 328-9430 Ext. 9439.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/90).
Abatement Worker Annual Review (Certified 8/8/90).
Contractor/Supervisor (Certified 8/8/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).

Illinois

(6)(a) *State Agency:* Illinois Department of Public Health Division of Environmental Health, Address: 525 West Jefferson St, Springfield, IL 62761, Contact: R. Kent Cook, Phone: (217) 782-3517.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 3/13/90).
Contractor/Supervisor (full from 3/13/90).
Inspector (full from 3/13/90).
Inspector/Management Planner (full from 3/13/90).
Project Designer (full from 3/13/90).
(i)(a) *Training Provider:* Aerostat Environmental Engineering Corp.
Address: 2817 Atchison Avenue, Lawrence, KS 66047, Contact: Joe Stimac, Phone: (800) 828-6269.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 9/17/90).
Contractor/Supervisor Annual Review (Certified 9/17/90).
Inspector/Management Planner (Certified 9/17/90).
Inspector/Management Planner Annual Review (Certified 9/17/90).
(ii)(a) *Training Provider:* American Asbestos Institute Inc.
Address: P.O. Box 7477, Springfield, IL 62791, Contact: Donald Handy, Phone: (217) 523-8747.
(b) *Approved Courses:*
Abatement Worker (Certified 8/15/90).
Abatement Worker Annual Review (Certified 8/15/90).
Contractor/Supervisor (Certified 8/15/90).
Contractor/Supervisor Annual Review (Certified 8/15/90).
Inspector Annual Review (Certified 9/20/90).
Inspector/Management Planner (Certified 9/20/90).
(iii)(a) *Training Provider:* Asbestos Abatement Training Center Inc.
Address: Route 1 Box 209, Lacon, IL 61540, Contact: Brian Kline, Phone: (309) 246-3183.
(b) *Approved Courses:*
Abatement Worker (Certified 8/22/90).
Abatement Worker Annual Review (Certified 8/22/90).
Contractor/Supervisor (Certified 8/22/90).
Contractor/Supervisor Annual Review (Certified 8/22/90).
(iv)(a) *Training Provider:* Asbestos Professional Services, Inc.
Address: 501 North Second St., P.O. Box 364, Breese, IL 62230, Contact: Donald T. Anderson, Jr., Phone: (618) 526-2742.
(b) *Approved Courses:*
Abatement Worker (Certified 10/22/90).
Abatement Worker Annual Review (Certified 10/22/90).
(v)(a) *Training Provider:* Asbestos Workers Local No. 1.
Address: 3325 Hollenberg Drive, St. Louis, MO 63044, Contact: James Hagen, Phone: (314) 291-7399.
(b) *Approved Courses:*
Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).
(vi)(a) *Training Provider:* Auburn Environmental Services.
Address: 416 East Jefferson, Auburn, IL 62615, Contact: Linda Funk, Phone: (217) 438-6694.
(b) *Approved Course:*
Abatement Worker (Certified 10/18/90).
(vii)(a) *Training Provider:* Construction/General Labor of Chicago.
Address: 4 N 250 Old Gary Avenue, Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 323-8990.
(b) *Approved Courses:*
Abatement Worker (Certified 8/10/90).
Abatement Worker Annual Review (Certified 8/10/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 9/18/90).
(viii)(a) *Training Provider:* ESCOR, Inc.
Address: 629 Greenbay Road, Wilmette, IL 60091, Contact: R. Eric Zimmerman, Phone: (708) 256-6970.
(b) *Approved Courses:*
Abatement Worker (Certified 11/2/90).
Abatement Worker Annual Review (Certified 11/2/90).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).
Inspector Annual Review (Certified 11/2/90).
Inspector/Management Planner (Certified 11/2/90).
(ix)(a) *Training Provider:* Emergency Medical Service Consults of America Emsc.
Address: 12125 S. 90th Avenue, Palos Park, IL 60464, Contact: Fred Debow, Phone: (707) 448-7500.
(b) *Approved Courses:*
Abatement Worker (Certified 9/6/90).
Abatement Worker Annual Review (Certified 9/6/90).
(x)(a) *Training Provider:* Environmental Group Service LTD (EGSL).
Address: 215 West Huron, Chicago, IL 60610, Contact: Vahooman Mirkaef, Phone: (312) 642-8434.
(b) *Approved Courses:*
Abatement Worker (Certified 5/14/90).
Abatement Worker Annual Review (Certified 5/14/90).
Contractor/Supervisor (Certified 5/14/90).
Contractor/Supervisor Annual Review (Certified 5/14/90).
(xi)(a) *Training Provider:* Environmental Safety Training Services.
Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.
(b) *Approved Courses:*
Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 12/6/90).

(xii)(a) *Training Provider:* Environmental Science & Engineering, Inc.
Address: 8900 N. Industrial Rd., Peoria, IL 61615, Contact: Kirk Sweetland, Phone: (309) 692-4422.
(b) *Approved Courses:*
Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 8/10/90).
(xiii)(a) *Training Provider:* Georgia Tech Research Institute.
Address: GTRI/ESTL/ESB-29 O'Keef Building, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-8078.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 11/8/90).
Contractor/Supervisor Annual Review (Certified 11/8/90).
(xiv)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 75 Executive Drive, Suite 434, Aurora, IL 60504, Contact: Greg Corder, Phone: (708) 898-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 8/3/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 8/3/90).
Contractor/Supervisor Annual Review (Certified 8/9/90).
Inspector/Management Planner (Certified 8/3/90).
Inspector/Management Planner Annual Review (Certified 8/16/90).
(xv)(a) *Training Provider:* Heat and Frost Insulators Local No. 17.
Address: 3850 Racine Avenue, Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*
Abatement Worker (Certified 8/29/90).
Abatement Worker Annual Review (Certified 8/29/90).
Contractor/Supervisor (Certified 8/29/90).
Contractor/Supervisor Annual Review (Certified 8/29/90).
(xvi)(a) *Training Provider:* Hinds Asbestos Consultant & Technical Services.
Address: 1037 South Fourth Street, Springfield, IL 62703, Contact: Patricia Elmore, Phone: (217) 789-7823.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 12/5/90).
Contractor/Supervisor Annual Review (Certified 12/5/90).
(xvii)(a) *Training Provider:* Hygienetics, Inc.
Address: 2200 Powell Street, Suite 800, Emeryville, CA 94608, Contact: Allison Roberts, Phone: (415) 547-3886.
(b) *Approved Course:*
Inspector/Management Planner (Certified 11/1/90).
(xviii)(a) *Training Provider:* I.P.C., Chicago, Inc.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert Cooley, Phone: (312) 718-7395.
(b) *Approved Courses:*
Abatement Worker (Certified 8/7/90).
Abatement Worker Annual Review (Certified 8/7/90).
Contractor/Supervisor (Certified 8/7/90).
Contractor/Supervisor Annual Review (Certified 8/7/90).
(xix)(a) *Training Provider:* IL Laborers & Contractors Training Program.
Address: R.R. 3, Mt Sterling, IL 62353, Contact: Anthony Romolo, Phone: (217) 773-2741.
(b) *Approved Courses:*
Abatement Worker (Certified 8/9/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 9/24/90).
Contractor/Supervisor Annual Review (Certified 10/31/90).
(xx)(a) *Training Provider:* Ideal & Associate Environmental Engineer Services, Inc.
Address: 1102 South Main St., Bloomington, IL 61702, Contact: James S. Langan, Phone: (309) 828-4259.
(b) *Approved Courses:*
Abatement Worker (Certified 8/15/90).
Abatement Worker Annual Review (Certified 8/15/90).
Contractor/Supervisor (Certified 8/15/90).
Contractor/Supervisor Annual Review (Certified 8/15/90).
(xxi)(a) *Training Provider:* Keter Environmental, Ltd.
Address: 699 Edgewood Avenue, Elmhurst, IL 60126, Contact: Phil Pekron, Phone: (708) 941-0201.
(b) *Approved Courses:*
Abatement Worker (Certified 9/28/90).
Abatement Worker Annual Review (Certified 9/28/90).
Contractor/Supervisor (Certified 9/28/90).
Contractor/Supervisor Annual Review (Certified 9/28/90).
(xxii)(a) *Training Provider:* Local 101 Technical Training Center.
Address: 728 Broadway, Gary, IN 46402, Contact: Thomas Moore, Phone: (219) 885-0005.
(b) *Approved Course:*
Abatement Worker (Certified 9/17/90).
(xxiii)(a) *Training Provider:* MAIC Chicago Lung Association University of Illinois.
Address: 1440 W. Washington, Chicago, IL 60607, Contact: Steve Margevich. Phone: (312) 829-1277.
(b) *Approved Courses:*
Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 7/30/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 7/30/90).
Inspector/Management Planner (Certified 7/30/90).
Inspector/Management Planner Annual Review (Certified 7/30/90).
Project Designer (Certified 8/2/90).
(xxiv)(a) *Training Provider:* Mayhew Environmental Training Assoc.
Address: 901 Kentucky, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (913) 842-6382.
(b) *Approved Courses:*
Abatement Worker (Certified 9/20/90).
Abatement Worker Annual Review (Certified 9/20/90).
Contractor/Supervisor (Certified 9/20/90).
Contractor/Supervisor Annual Review (Certified 9/20/90).
(xxv)(a) *Training Provider:* McDowell Business Training Center.
Address: 1313 S Michigan 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.
(b) *Approved Course:*
Abatement Worker (Certified 9/12/90).
(xxvi)(a) *Training Provider:* Midwest Institute of Asbestos.
Address: 4747 W. Peterson, Suite 101, Chicago, IL 60646, Contact: Bogdan Mucha, Phone: (312) 545-3222.
(b) *Approved Courses:*
Abatement Worker (Certified 10/17/90).
Abatement Worker Annual Review (Certified 10/17/90).
(xxvii)(a) *Training Provider:* Milwaukee Asbestos Information Center.
Address: 2224 S. Kinnickinnic, Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (800) 848-3298.
(b) *Approved Courses:*
Abatement Worker (Certified 12/6/90).
Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 12/6/90).
Contractor/Supervisor Annual Review (Certified 12/6/90).

Project Designer (Certified 12/6/90).
Project Designer Annual Review (Certified 12/6/90).
(xxviii)(a) *Training Provider:* Moraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).
Inspector/Management Planner (Certified 8/8/90).
Inspector/Management Planner Annual Review (Certified 8/22/90).
(xxix)(a) *Training Provider:* Olive-Harvey College Skill Center.
Address: 10001 South Woodlawn Avenue, Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.
(b) *Approved Course:*
Abatement Worker (Certified 10/5/90).
(xxx)(a) *Training Provider:* Pat Services.
Address: 133 Hollywood Circle, Creve Coeur, IL 61611, Contact: Cheryl McGinnis, Phone: (309) 698-0703.
(b) *Approved Courses:*
Abatement Worker (Certified 11/21/90).
Abatement Worker Annual Review (Certified 11/21/90).
Contractor/Supervisor (Certified 11/21/90).
Contractor/Supervisor Annual Review (Certified 11/21/90).
(xxxi)(a) *Training Provider:* Performance Systems, Inc.
Address: 4894 Oakwood Avenue, Downers Grove, IL 60515, Contact: John T. Gammuto, Phone: (708) 968-5959.
(b) *Approved Course:*
Abatement Worker (Certified 11/21/90).
(xxxii)(a) *Training Provider:* Safer Foundation.
Address: 571 W. Jackson, Chicago, IL 60606, Contact: Eli Caliph, Phone: (312) 922-2200.
(b) *Approved Courses:*
Abatement Worker (Certified 8/17/90).
Abatement Worker Annual Review (Certified 8/17/90).
(xxxiii)(a) *Training Provider:* Safety Training of Illinois.
Address: P.O. Box 11093, Springfield, IL 62791, Contact: Dave Farris, Phone: (217) 787-6091.
(b) *Approved Courses:*
Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).
(xxxiv)(a) *Training Provider:* Schemel Asbestos Abatement Co.
Address: 104B North Jackson, Perryville, MO 63775, Contact: Claire E. Schemel, Phone: (314) 547-2558.
(b) *Approved Course:*
Contractor/Supervisor (Certified 12/4/90).
(xxxv)(a) *Training Provider:* Summit Abatement Contracting, Inc.
Address: 7255 Tower Road, Battle Creek, MI 49017, Contact: Treina Norris, Phone: (616) 968-4242.
(b) *Approved Courses:*
Abatement Worker (Certified 10/19/90).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 10/19/90).
Contractor/Supervisor Annual Review (Certified 10/19/90).
(xxxvi)(a) *Training Provider:* The American Center for Educational Developement.
Address: 316 South Wabash Ave., Chicago, IL 60604, Contact: Francine F. Rossi, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).
(xxxvii)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/2/90).
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).
(xxxviii)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Road, Suite 360, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.
(b) *Approved Courses:*
Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).
(xxxix)(a) *Training Provider:* The Environmental Training Center.
Address: 1885 Innerbelt Business Center Dr, St. Louis, MO 63114, Contact: Ronald Neisler, Phone: (314) 428-7020.
(b) *Approved Courses:*
Abatement Worker (Certified 9/26/90).
Abatement Worker Annual Review (Certified 9/26/90).
Contractor/Supervisor (Certified 9/26/90).
Contractor/Supervisor Annual Review (Certified 9/26/90).
(xl)(a) *Training Provider:* The National Training Fund.
Address: 601 N. Fairfax Street, Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 793-7200.
(b) *Approved Courses:*
Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 10/25/90).
Contractor/Supervisor Annual Review (Certified 10/25/90).
(xli)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners UBC.
Address: 101 Constitution Avenue, NW., Washington, DC 20001, Contact: Joseph Darst, Jr., Phone: (202) 546-6706.
(b) *Approved Courses:*
Abatement Worker (Certified 8/27/90).
Abatement Worker Annual Review (Certified 8/27/90).
(xlii)(a) *Training Provider:* United Environmental System, Inc.
Address: 202 South State Street, Chicago, IL 60604, Contact: David Mizrahi, Phone: (312) 663-5693.
(b) *Approved Courses:*
Abatement Worker (Certified 8/23/90).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 8/23/90).
(xliii)(a) *Training Provider:* United Science Industries, Inc.
Address: 621 Ninth Street, Carlyle, IL 62231, Contact: Jay Koch, Phone: (618) 594-4023.
(b) *Approved Courses:*
Abatement Worker (Certified 9/19/90).
Abatement Worker Annual Review (Certified 9/19/90).
Contractor/Supervisor (Certified 9/19/90).
Contractor/Supervisor Annual Review (Certified 9/19/90).
(xliv)(a) *Training Provider:* University of Cincinnati Department of Environmental Health.

Address: 3223 Eden Avenue ML-056, Cincinnatti, OH 45267, Contact: Judy Jarrell, Phone: (513) 558-1730.

(b) *Approved Courses:*

Abatement Worker (Certified 10/15/90).
Abatement Worker Annual Review (Certified 10/15/90).
Contractor/Supervisor (Certified 10/15/90).
Contractor/Supervisor Annual Review (Certified 10/15/90).
Inspector/Management Planner (Certified 10/15/90).
Inspector/Management Planner Annual Review (Certified 10/15/90).

Indiana

(7)(a) *State Agency:* Indiana Department of Environmental Management, Office of Air Management, Address: 105 South Meridian St., P.O. Box 6015, Indianapolis, IN 46206-6015, Contact: Debra Dubenetzky, Phone: (317) 232-8373.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Academy for Environmental Training Inc.
Address: 316 South State Avenue, Indianapolis, IN 46201, Contact: Anne Gress, Phone: (317) 269-3620.

(b) *Approved Courses:*

Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/12/90).

(ii)(a) *Training Provider:* Environmental Management Institute, Inc.
Address: 611 North Capitol, Indianapolis, IN 46204, Contact: Jack Leonard, Phone: (317) 262-5029.

(b) *Approved Courses:*

Abatement Worker (Certified 10/19/90).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 10/19/90).
Contractor/Supervisor Annual Review (Certified 10/19/90).
Inspector/Management Planner (Certified 10/26/90).
'nspector/Management Planner Annual Review (Certified 10/26/90).

(iii)(a) *Training Provider:* Environmental Safety Training Services Fund.
Address: 11802 Hanson Road, Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.

(b) *Approved Course:*

Abatement Worker (Certified 10/23/90).

(iv)(a) *Training Provider:* Indiana Laborers' Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.

(b) *Approved Courses:*

Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 10/1/90).
Contractor/Supervisor (Certified 10/1/90).
Contractor/Supervisor Annual Review (Certified 10/1/90).

Iowa

(8)(a) *State Agency:* Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).

(i)(a) *Training Provider:* Advanced Technologies Corp.
Address: P.O. Box 902, Cedar Falls, IA 50613, Contact: Michael L. Llewellyn, Phone: (319) 266-7524.

(b) *Approved Course:*

Contractor/Supervisor (Certified 7/15/90).

(ii)(a) *Training Provider:* Ames Environmental, Inc.
Address: 3910 Lincoln Way, Ames, IA 50010, Contact: Ann Fairchild, Phone: (515) 292-3400.

(b) *Approved Courses:*

Abatement Worker (Certified 1/18/90).
Abatement Worker Annual Review (Certified 1/18/90).
Inspector Annual Review (Certified 12/8/89).

(iii)(a) *Training Provider:* Iowa Electric Light & Power.
Address: Duane Arnold Nuclear Energy Center, 3363 DEAC Rd., Palo, IA 52324, Contact: Robert Tucker, Phone: (319) 851-7574.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/1/89).

(iv)(a) *Training Provider:* Iowa Environmental Services, Inc.
Address: 820 First St., Suite 200, West Des Moines, IA 50265, Contact: Glenn Soyer, Phone: (515) 279-8042.

(b) *Approved Courses:*

Abatement Worker (Certified 3/27/89).
Contractor/Supervisor (Certified 10/1/89).

(v)(a) *Training Provider:* Iowa Illinois Thermal Insulation Inc.
Address: P.O. Box 931, Davenport, IA 52805-0931, Contact: Richard H. Knauss, Phone: (319) 324-0685.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).

(vi)(a) *Training Provider:* M & W Environmental Consultants, Inc.
Address: RR No. 1 Wells Dr., Canton, IA 61520, Contact: Vahooman Mirkhaef, Phone: (800) 445-8745.

(b) *Approved Course:*

Inspector/Management Planner (Certified 10/1/89).

(vii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc.
Address: N9402 Lakeshore Drive, Van Dyne, WI 54979, Contact: Robert P. LaPoint, Phone: (414) 922-8110.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 7/15/90).
Contractor/Supervisor Annual Review (Certified 7/15/90).

Kansas

(9)(a) *State Agency:* Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Gary Miller, Phone: (913) 296-1547.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/6/88).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/88).
Contractor/Supervisor (full from 12/16/87).

Maine

(10)(a) *State Agency:* State of Maine Department of Environmental Protection, Address: State House Station No. 17, Augusta, ME 04333, Contact: Ed Antz, Phone: (207) 582-8740.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/5/90).

* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

Contractor/Supervisor (full from 11/5/90).
Inspector (full from 11/5/90).
Inspector/Management Planner (full from 11/5/90).
Project Designer (full from 11/5/90).

(i)(a) *Training Provider:* Balsam Environmental Consultants.
Address: 5 Industrial Way, Salem, NH 03079, Contact: Douglas Lawson, Phone: (603) 893-0616.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 12/3/90).
Project Designer (Certified 12/3/90).

(ii)(a) *Training Provider:* Maine Labor Group on Health.
Address: P.O. Box V, Augusta, ME 04330, Contact: Diana White, Phone: (207) 622-7823.

(b) *Approved Courses:*

Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).

(iii)(a) *Training Provider:* National Asbestos Council.
Address: c/o MACC, P.O. Box 1568, 416 Lewiston Jct. Road, Auburn, ME 04210, Contact: Ron Tillson, Phone: (207) 783-4280.

(b) *Approved Courses:*

Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).

(iv)(a) *Training Provider:* Northeast Test Consultants.
Address: 587 Spring Street, Westbrook, ME 04092, Contact: Tom Sukeforth, Phone: (207) 854-3939.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).

Massachusetts

(11)(a) *State Agency:* Massachusetts Dept. of Labor & Industries; Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).

(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William L Roberts, Phone: (717) 257-1360.

(b) *Approved Courses:*

Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).
Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).

(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Mohen, Phone: (609) 692-0883.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88 to 4/28/89 only).
Contractor/Supervisor (Certified 4/28/88 to 4/28/89 only).
Inspector/Management Planner (Certified 4/28/88 to 4/28/89 only).
Project Designer (Certified 4/28/88 to 4/28/89 only).

(iii)(a) *Training Provider:* Asbestos Workers Union Local 43.
Address: 1053 Burts Pit Rd., Northampton, MA 01000, Contact: John Charest, Jr., Phone: (413) 584-0028.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 4/27/90).
Contractor/Supervisor Annual Review (Certified 4/27/90).

(iv)(a) *Training Provider:* Asbestos Workers Union Local No. 6.
Address: 56 Rolland St., Boston, MA 02129, Contact: James P. McCourt, Phone: (617) 387-2679.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).

(v)(a) *Training Provider:* Astoria Industries, Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.

(b) *Approved Course:*

Abatement Worker (Certified 4/8/88 to 4/8/89 only).

(vi)(a) *Training Provider:* Astral Environmental Assoc.
Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.

(b) *Approved Courses:*

Abatement Worker (Certified 6/5/89).
Abatement Worker Annual Review (Certified 7/13/89).
Contractor/Supervisor (Certified 7/13/89).
Contractor/Supervisor Annual Review (Certified 7/13/89).

(vii)(a) *Training Provider:* BCM Engineering.
Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(viii)(a) *Training Provider:* Balsam Environmental Consultants.
Address: 59 Stiles Rd., Salem, NH 03079, Contact: Dougles Lawson, Phone: (603) 893-0616.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 3/1/90).
Inspector/Management Planner Annual Review (Certified 3/1/90).
Project Designer (Certified 3/1/90).
Project Designer Annual Review (Certified 3/1/90).

(ix)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/88).
Abatement Worker Annual Review (Certified 9/26/88).
Contractor/Supervisor (Certified 9/26/88).
Contractor/Supervisor Annual Review (Certified 9/26/88).
Inspector/Management Planner (Certified 9/26/88).
Inspector/Management Planner Annual Review (Certified 9/26/88).
Project Designer (Certified 9/26/88).

(x)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pike, Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7060.

(b) *Approved Courses:*

Contractor/Supervisor Annual Review (Certified 2/5/90).
Inspector/Management Planner Annual Review (Certified 8/3/89).

(xi)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1196.

(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 2/25/88).

(xii)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932-9400.
(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Planner Annual Review (Certified 4/8/89).

(xiii)(a) *Training Provider:* ESTRI.
Address: 55 Ferncraft Rd., Suite 201, Danvers, MA 01923, Contact: Martin Leavitt, Phone: (508) 777-6789.
(b) *Approved Courses:*
Abatement Worker (Certified 7/17/89).
Abatement Worker Annual Review (Certified 7/17/89).
Contractor/Supervisor (Certified 7/17/89).
Contractor/Supervisor Annual Review (Certified 7/17/89).
Inspector/Management Planner (Certified 9/12/89).
Inspector/Management Planner Annual Review (Certified 9/12/89).

(xiv)(a) *Training Provider:* EcoSystems, Inc.
Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Contractor/Supervisor (Certified 6/13/89).

(xv)(a) *Training Provider:* Enviromed Services.
Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.
(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).
Contractor/Supervisor Annual Review (Certified 10/16/89).

(xvi)(a) *Training Provider:* Environmental Training Corp.
Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.
(b) *Approved Courses:*
Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).

(xvii)(a) *Training Provider:* Environmental Training Services.
Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0655.
(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Project Designer (Certified 4/8/88).
Project Designer Annual Review (Certified 4/8/89).

(xviii)(a) *Training Provider:* General Physics Corp.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).

(xix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).
Inspector/Management Planner (Certified 4/25/88).
Inspector/Management Planner Annual Review (Certified 4/25/89).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/89).

(xx)(a) *Training Provider:* Harvard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgess, Phone: (617) 732-1171.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xxi)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.
(b) *Approved Courses:*
Abatement Worker (Certified 8/5/88).
Contractor/Supervisor (Certified 8/5/88).
Inspector/Management Planner (Certified 3/23/90).
Inspector/Management Planner Annual Review (Certified 3/23/90).
Project Designer (Certified 8/5/88).

(xxii)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4664.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/89).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Inspector/Management Planner Annual Review (Certified 2/25/89).

(xxiii)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/28/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/28/89).
Inspector/Management Planner (Certified 4/28/88).
Inspector/Management Planner Annual Review (Certified 5/28/89).
Project Designer (Certified 4/28/88).
Project Designer Annual Review (Certified 4/28/88).

(xxiv)(a) *Training Provider:* JF Walton & Co.
Address: 201 Marginal St., P.O. Box 6120, Chelsea, MA 02150, Contact: James O'Connor, Phone: (617) 884-0350.
(b) *Approved Courses:*
Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xxv)(a) *Training Provider:* Kaselaan & D'Angelo Associates.
Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: Paul Heffernan, Phone: (617) 472-1330.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).

(xxvi)(a) *Training Provider:* Mystic Air Quality Consultants.
Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.
(b) *Approved Courses:*
Abatement Worker (Certified 1/11/89).
Abatement Worker Annual Review (Certified 2/2/90).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Inspector/Management Planner (Certified 2/2/90).
Inspector/Management Planner Annual Review (Certified 2/2/90).

(xxvii)(a) *Training Provider:* National Asbestos Training Center of Kansas.
Address: 6600 College Blvd., Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxviii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1128 16th St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xxix)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Jr., Phone: (617) 435-6316.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 8/8/89).

(xxx)(a) *Training Provider:* Northern Asbestos Abatement Co.
Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.
(b) *Approved Courses:*
Abatement Worker (Certified 3/18/89 to 4/15/89 only).
Abatement Worker Annual Review (Certified 3/18/89 to 4/15/89 only).
Contractor/Supervisor (Certified 3/18/89 to 4/15/89 only).
Contractor/Supervisor Annual Review (Certified 3/18/89 to 4/15/89 only).

(xxxi)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.
(b) *Approved Courses:*
Inspector/Management Planner (Certified 11/7/88).
Project Designer (Certified 11/7/88).

(xxxii)(a) *Training Provider:* Quality Control Services, Inc.
Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.
(b) *Approved Courses:*
Abatement Worker (Certified 5/6/88).
Abatement Worker Annual Review (Certified 5/16/89).
Contractor/Supervisor (Certified 5/6/88).
Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxxiii)(a) *Training Provider:* Safety Council of Western Massachusetts.
Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7908.
(b) *Approved Courses:*
Abatement Worker (Certified 6/21/88).
Abatement Worker Annual Review (Certified 6/21/89).

(xxxiv)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2000.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 10/28/88).
Contractor/Supervisor Annual Review (Certified 10/28/88).
Inspector/Management Planner (Certified 10/28/88).
Project Designer (Certified 10/28/88).

(xxxv)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.
(b) *Approved Courses:*
Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/16/89).
Inspector/Management Planner (Certified 3/16/88).
Inspector/Management Planner Annual Review (Certified 3/16/89).
Project Designer (Certified 3/16/88).
Project Designer Annual Review (Certified 3/16/89).

(xxxvi)(a) *Training Provider:* University of Massachusetts Environmental Health & Safety.
Address: N. 414 Morrill Science Center, Amherst, MA 01003, Contact: Al Soreuseu, Phone: (413) 545-2682.
(b) *Approved Course:*
Abatement Worker Annual Review (Certified 10/3/89).

(xxxvii)(a) *Training Provider:* Weston-Atc, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/25/89).
Contractor/Supervisor Annual Review (Certified 5/25/89).
Inspector/Management Planner (Certified 5/25/89).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 5/25/89).
Project Designer Annual Review (Certified 5/25/89).

(xxxviii)(a) *Training Provider:* Young Sales Corp.
Address: 1054 Central Industrial Drive, St. Louis, MO 63110, Contact: W. Todd McCane, Phone: (314) 771-3080.
(b) *Approved Course:*
Abatement Worker (Certified 6/13/89).

Michigan

(12)(a) *State Agency:* State of Michigan Dept. of Public Health, Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLisfde, Phone: (517) 335-8186.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/13/89).
Contractor/Supervisor (full from 4/13/89).
Inspector (full from 4/13/89).
Inspector/Management Planner (full from 4/13/89).
Project Designer (full from 4/13/89).

(i)(a) *Training Provider:* Aerospace America, Inc.

Address: P.O. Box 148, Bay City, MI 48707, Contact: Joseph P. Goldring, Phone: (517) 684-2121.

(b) *Approved Courses:*

Abatement Worker (Certified 3/16/90).
Abatement Worker Annual Review (Certified 4/26/90).
Contractor/Supervisor (Certified 5/16/90).
Contractor/Supervisor Annual Review (Certified 4/26/90).

(ii)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 3 Miles Rd., NW., Grand Rapids, MI 49504, Contact: David Lutheuhoff, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).
Contractor/Supervisor (Certified 11/28/89).
Contractor/Supervisor Annual Review (Certified 11/28/89).

(iii)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 S. Huron Rd., New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6155.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).
Abatement Worker Annual Review (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).
Contractor/Supervisor Annual Review (Certified 12/20/89).
Inspector/Management Planner (Certified 12/20/89).
Inspector/Management Planner Annual Review (Certified 12/20/89).

(iv)(a) *Training Provider:* Asbestos Services Inc.

Address: 9026 Hills Rd., Baroda, MI 49101, Contact: Dennis W Calkins, Phone: (616) 422-2174.

(b) *Approved Courses:*

Abatement Worker (Certified 1/11/90).
Abatement Worker Annual Review (Certified 1/11/90).
Contractor/Supervisor (Certified 1/11/90).
Contractor/Supervisor Annual Review (Certified 1/11/90).

(v)(a) *Training Provider:* Asbestos Workers Local 25.

Address: 29200 Vasser, Livonia, MI 48152, Contact: Dan A. Somenauer, Phone: (313) 471-1007.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 7/12/90).
Contractor/Supervisor Annual Review (Certified 7/12/90).

(vi)(a) *Training Provider:* Asbestos Workers Local 47.

Address: 125 S. Michigan Ave., Room 217, Coldwater, MI 49036, Contact: LaVern Max Bowman, Phone: (517) 279-8054.

(b) *Approved Courses:*

Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).

(vii)(a) *Training Provider:* BDN Industrial Hygiene Consultants.

Address: 8105 Valleywood Ln., Portage, MI 49002, Contact: Brent Bassett, Phone: (616) 329-1237.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/89).
Abatement Worker Annual Review (Certified 11/13/89).
Contractor/Supervisor (Certified 11/13/89).
Contractor/Supervisor Annual Review (Certified 11/13/89).
Inspector/Management Planner (Certified 12/14/89).
Inspector/Management Planner Annual Review (Certified 4/24/90).
Project Designer Annual Review (Certified 11/21/90).

(viii)(a) *Training Provider:* Barton Associates.

Address: 1285 Westport Rd., Ann Arbor, MI 48103, Contact: Sara Bassett, Phone: (313) 665-3681.

(b) *Approved Courses:*

Abatement Worker (Certified 1/19/90).
Abatement Worker Annual Review (Certified 4/5/90).
Contractor/Supervisor (Certified 9/18/89).
Contractor/Supervisor Annual Review (Certified 11/2/90).

(ix)(a) *Training Provider:* Bierlein Demolition.

Address: 2903 S. Graham Rd., Saginaw, MI 48603, Contact: Ramond E. Passeno, Phone: (517) 781-1810.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/90).

(x)(a) *Training Provider:* Clayton Environmental Consult.

Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Charlotte Heideman, Phone: (313) 344-1770.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 2/9/90).
Inspector/Management Planner Annual Review (Certified 1/9/90).

(xi)(a) *Training Provider:* Clean Air Management, Inc.

Address: 39319 Plymouth Rd., Livonia, MI 48150, Contact: James Kukalis, Phone: (313) 462-0800.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xii)(a) *Training Provider:* DeLisle Associates, LTD.

Address: 8225 Moorsbridge Rd., Portage, MI 49002, Contact: Mark DeLisle, Phone: (616) 327-8225.

(b) *Approved Courses:*

Abatement Worker (Certified 12/12/89).
Abatement Worker Annual Review (Certified 12/12/89).
Contractor/Supervisor (Certified 12/12/89).
Contractor/Supervisor Annual Review (Certified 12/12/89).
Inspector/Management Planner (Certified 12/12/89).
Inspector/Management Planner Annual Review (Certified 12/12/89).

(xiii)(a) *Training Provider:* EMU Corporate Services.

Address: 3075 Washtenaw Ave., Ypsilanti, MI 48197, Contact: Bertrand Ramsay, Phone: (313) 487-2259.

(b) *Approved Courses:*

Abatement Worker (Certified 1/5/90).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 1/5/90).
Contractor/Supervisor Annual Review (Certified 1/5/90).
Inspector/Management Planner (Certified 1/5/90).
Inspector/Management Planner Annual Review (Certified 1/5/90).

(xiv)(a) *Training Provider:* ENTELA Engineering Service.

Address: 4020 W. River Dr., Comstock Park, MI 49321, Contact: Bruce H. Connell, Phone: (616) 784-7774.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/89).
Abatement Worker Annual Review (Certified 12/14/89).
Contractor/Supervisor (Certified 9/26/89).
Contractor/Supervisor Annual Review (Certified 12/14/89).

(xv)(a) *Training Provider:* Environmental & Occupational, Consulting & Training.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-6065.

(b) *Approved Courses:*

Abatement Worker (Certified 11/14/89).
Abatement Worker Annual Review (Certified 11/14/89).
Contractor/Supervisor (Certified 11/14/89).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xvi)(a) *Training Provider:* Environmental Abatement System.

Address: 6416 Ellsworth Rd., Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xvii)(a) *Training Provider:* Environmental Diversified Service.

Address: 24356 Sherwood, Centerline, MI 48015, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Course:*

Abatement Worker (Certified 6/13/90).

(xviii)(a) *Training Provider:* Fibertec Inc.

Address: 700 Abbott Rd., East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/4/89).

(xix)(a) *Training Provider:* G & H Contracting Assoc.

Address: 300 Acron St., Plainwell, MI 49080, Contact: Gregory G. Moe, Phone: (616) 685-1606.

(b) *Approved Courses:*

Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

(xx)(a) *Training Provider:* Hall-Kimbrell Environ Services.

Address: 4840 W. 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 4/2/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

(xxi)(a) *Training Provider:* Howard Abatement Inc.

Address: 25415 Glendale Ave., Redford, MI 48239, Contact: William R. Wyler, Phone: (313) 537-4974.

(b) *Approved Courses:*

Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xxii)(a) *Training Provider:* Industrial Environmental Consulting.

Address: 2875 Northwind, E. Lansing, MI 48823, Contact: Michael Tillotson, Phone: (517) 332-7028.

(b) *Approved Courses:*

Abatement Worker (Certified 1/2/90).
Abatement Worker Annual Review (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 10/12/90).
Inspector/Management Planner Annual Review (Certified 1/2/90).

(xxiii)(a) *Training Provider:* Jensen Environmental & Training.

Address: 651 Fisher Rd., Grosse Pointe, MI 48230, Contact: Leonard L. Jensen, Phone: (313) 882-2021.

(b) *Approved Courses:*

Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 8/25/89).
Contractor/Supervisor (Certified 5/7/90).
Contractor/Supervisor Annual Review (Certified 8/25/89).
Inspector/Management Planner Annual Review (Certified 6/25/90).
Project Designer Annual Review (Certified 12/21/90).

(xxiv)(a) *Training Provider:* Kemron Environmental Services.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Henry D. Baier, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 1/22/90).
Inspector (Certified 3/15/90).
Inspector Annual Review (Certified 3/15/90).

(xxv)(a) *Training Provider:* Manage Right Asbestos.

Address: 314 W. Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.

(b) *Approved Courses:*

Abatement Worker (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).

(xxvi)(a) *Training Provider:* Michigan Laborers' Training.

Address: 11155 S. Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (Certified 9/21/90).
Abatement Worker Annual Review (Certified 9/21/90).
Contractor/Supervisor (Certified 9/21/90).
Contractor/Supervisor Annual Review (Certified 9/21/90).

(xxvii)(a) *Training Provider:* NTH Consultants, Ltd.

Address: 38955 Hills Tech Drive, Farmington Hills, MI 48331, Contact: Vickie Jo Armstrong, Phone: (313) 553-6300.

(b) *Approved Courses:*

Abatement Worker (Certified 9/14/90).
Abatement Worker Annual Review (Certified 8/6/90).
Contractor/Supervisor (Certified 12/7/90).
Contractor/Supervisor Annual Review (Certified 12/7/90).

(xxviii)(a) *Training Provider:* National Asbestos Abatement.

Address: 3080 N. Center Rd., Flint, MI 48506, Contact: James Sheaffer, Phone: (313) 736-7911.

(b) *Approved Courses:*

Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).
Contractor/Supervisor (Certified 3/20/90).
Contractor/Supervisor Annual Review (Certified 3/20/90).

(xxix)(a) *Training Provider:* National Training Fund/Workers Institute.

Address: 1126 Sixteenth St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1960.

(b) *Approved Courses:*

Abatement Worker (Certified 6/21/90).
Abatement Worker Annual Review (Certified 6/21/90).
Contractor/Supervisor (Certified 6/21/90).
Contractor/Supervisor Annual Review (Certified 6/21/90).

BEST COPY AVAILABLE

(xxx)(a) *Training Provider:* Northern Safety Consultants.
Address: 1408 Lincoln Ave., Marquette, MI 49855, Contact: Christopher Baker, Phone: (906) 228-5161.
(b) *Approved Courses:*
Abatement Worker (Certified 3/14/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 3/14/90).
Contractor/Supervisor Annual Review (Certified 3/14/90).
Project Designer (Certified 3/14/90).
Project Designer Annual Review (Certified 3/14/90).

(xxxi)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/13/90).
Contractor/Supervisor (Certified 9/28/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 12/14/89).

(xxxii)(a) *Training Provider:* Onikepo Inc.
Address: 3843 W. Outer Dr., Detroit, MI 48221, Contact: Constance S. Molette, Phone: (313) 862-8321.
(b) *Approved Courses:*
Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 5/7/90).
Contractor/Supervisor (Certified 5/7/90).

(xxxiii)(a) *Training Provider:* SE MI Coalition on Occ Safety.
Address: 2727 Second Ave., Detroit, MI 48201, Contact: Susan V. Hayes, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).

(xxxiv)(a) *Training Provider:* Sierra Analytical & Consulting.
Address: 237 Dino Dr., Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 662-1155.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 12/18/89).
Contractor/Supervisor Annual Review (Certified 11/1/90).
Inspector (Certified 6/25/90).

(xxxv)(a) *Training Provider:* Summit Abatement Contracting.
Address: 7255 Tower Rd., Battle Creek, MI 49017, Contact: William Morris, Phone: (616) 966-4242.
(b) *Approved Courses:*
Abatement Worker (Certified 11/22/89).
Abatement Worker Annual Review (Certified 11/22/89).
Contractor/Supervisor (Certified 11/22/89).
Contractor/Supervisor Annual Review (Certified 11/22/89).

(xxxvi)(a) *Training Provider:* Testing Engineers & Consultants.
Address: 1333 Rochester Rd., Troy, MI 48099, Contact: Karen Brunch, Phone: (313) 588-6200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/13/90).
Contractor/Supervisor (Certified 12/1/89).
Contractor/Supervisor Annual Review (Certified 6/28/90).
Inspector/Management Planner (Certified 11/13/89).
Inspector/Management Planner Annual Review (Certified 11/13/89).

(xxxvii)(a) *Training Provider:* The Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 6/27/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).

(xxxviii)(a) *Training Provider:* The Environmental Management.
Address: 314 S. State Ave., Indianapolis, IN 46201, Contact: Joseph Parker, Phone: (317) 269-3618.
(b) *Approved Courses:*
Abatement Worker (Certified 5/16/90 to 12/28/90 only).
Abatement Worker Annual Review (Certified 5/16/90 to 12/28/90 only).

(xxxix)(a) *Training Provider:* Thermico Inc.
Address: 3405 Centennial Dr., Midland, MI 48640, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xl)(a) *Training Provider:* Trust Thermal Systems.
Address: 13109 Schavey Rd., Suite 2 Dewitt, Dewitt, MI 48820, Contact: Thomas J. Lowe, Phone: (517) 669-8834.
(b) *Approved Courses:*
Abatement Worker (Certified 1/8/90).
Abatement Worker Annual Review (Certified 1/8/90).
Contractor/Supervisor (Certified 1/8/90).
Contractor/Supervisor Annual Review (Certified 1/8/90).

(xli)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo, Kalamaoo, MI 49006, Contact: Michael Pinto, Phone: (616) 382-4154.
(b) *Approved Courses:*
Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).
Inspector/Management Planner (Certified 11/20/89).
Inspector/Management Planner Annual Review (Certified 11/20/89).

Minnesota

(13)(a) *State Agency:* Minnesota Dept. of Health, Division of Environmental Health, Section of Occupational Health, Address: 925 Southeast Delaware St., P.O. Box 59040, Minneapolis, MN 55459-0040, Contact: William A. Fetzner, Phone: (612) 627-5097.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/3/88).
Contractor/Supervisor (full from 10/3/88).

(i)(a) *Training Provider:* Applied Environmental Sciences, Inc. (AES).
Address: Minneapolis Business & Tec. Center, Box 220, 511 11th Ave. South, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5550.
(b) *Approved Courses:*
Abatement Worker (Certified 1/16/90).
Abatement Worker Annual Review (Certified 12/11/89).
Contractor/Supervisor (Certified 1/16/90).
Contractor/Supervisor Annual Review (Certified 12/11/89).

(ii)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 840 Hampden Ave., Suite 110 St. Paul, MN 55114, Contact: James Risimini, Phone: (612) 649-0043.
(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/29/89).
Contractor/Supervisor Annual Review (Certified 12/29/89).

(iii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Alice M. Hartz, Phone: (800) 348-2880.
(b) *Approved Courses:*
Abatement Worker (Certified 1/12/90).
Abatement Worker Annual Review (Certified 1/12/90).
Contractor/Supervisor (Certified 1/12/90).
Contractor/Supervisor Annual Review (Certified 1/12/90).

(iv)(a) *Training Provider:* Ilse Engineering Inc.
Address: 205 Board of Trade Building, Duluth, MN 55802, Contact: John F. Ilse, Phone: (218) 720-3526.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(v)(a) *Training Provider:* Institute for Environmental Assessment, Inc.
Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (612) 323-9770.
(b) *Approved Courses:*
Abatement Worker (Certified 11/12/89).
Abatement Worker Annual Review (Certified 11/12/89).
Contractor/Supervisor (Certified 11/12/89).
Contractor/Supervisor Annual Review (Certified 11/12/89).

(vi)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (Certified 11/2/89).
Abatement Worker Annual Review (Certified 6/27/89).
Contractor/Supervisor (Certified 11/2/89).
Contractor/Supervisor Annual Review (Certified 6/27/89).

(vii)(a) *Training Provider:* Laborers District Council of Minnesota and North Dakota.
Address: 1598 Carroll Ave., St. Paul, MN 55104, Contact: Kenneth J. Lynch, Phone: (612) 646-7981.
(b) *Approved Courses:*
Abatement Worker (Certified 12/17/90).
Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(viii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew or Betty Fenstemaker, Phone: (800) 444-6382.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/90).
Abatement Worker Annual Review (Certified 3/5/90).
Contractor/Supervisor (Certified 3/5/90).
Contractor/Supervisor Annual Review (Certified 3/5/90).

(ix)(a) *Training Provider:* McNeil Environmental, Inc.
Address: 755 East Cliff Rd., Burnsville, MN 55337, Contact: Philip Allmon, Phone: (612) 890-3452.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/22/89).
Contractor/Supervisor Annual Review (Certified 10/22/89).

(x)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.
Address: 640 Jackson St., St. Paul, MN 55101, Contact: Jeanne F. Ayers, Phone: (612) 221-3992.
(b) *Approved Courses:*
Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xi)(a) *Training Provider:* Midwest Consultants, Inc.
Address: 219 23rd St. North, Box 1708, Fargo, ND 58102, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).

(xii)(a) *Training Provider:* Nova Environmental Services, Inc.
Address: Suite 420, Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.
(b) *Approved Courses:*
Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).

(xiii)(a) *Training Provider:* Southwest Technical College.
Address: Continuing Education, SW State University, FT 103, Marshall, MN 53103, Contact: Carole Treadway, Phone: (507) 537-7396.
(b) *Approved Courses:*
Abatement Worker (Certified 4/27/89).
Abatement Worker Annual Review (Certified 7/24/89).
Contractor/Supervisor (Certified 4/27/89).
Contractor/Supervisor Annual Review (Certified 7/24/89).

(xiv)(a) *Training Provider:* The Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/30/90).
Contractor/Supervisor Annual Review (Certified 5/30/90).

(xv)(a) *Training Provider:* Twin City Area Carpenter's Joint Apprenticeship Committee/United Brotherhood of Carpenters & Joiners.
Address: 2203 County Rd. C2, Roseville, MN 55113, Contact: Gerald W. Setterholm, Phone: (612) 633-8096.
(b) *Approved Courses:*
Abatement Worker (Certified 6/14/89).
Abatement Worker Annual Review (Certified 3/19/90).
Contractor/Supervisor (Certified 6/14/89).
Contractor/Supervisor Annual Review (Certified 3/19/90).

(xvi)(a) *Training Provider:* University of North Dakota, Occupational Safety and Environmental Health Office.
Address: University Station, Box 8275, Grand Forks, ND 58202, Contact: Dale P. Patrick, Phone: (701) 777-3341.
(b) *Approved Courses:*
Abatement Worker (Certified 7/5/91).
Abatement Worker Annual Review (Certified 7/5/91).
Contractor/Supervisor (Certified 7/5/91).
Contractor/Supervisor Annual Review (Certified 7/5/91).

Montana

(14)(a) *State Agency:* Department of Health & Environmental Sciences, Address: Cogswell Building, Helena, MT 59620, Contact: Adrian C. Howe, Phone: (406) 444-3671.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 5/16/90).
Contractor/Supervisor (full from 5/16/90).

Inspector/Management Planner (full from 5/16/90).
Project Designer (full from 5/16/90).
(i)(a) *Training Provider:* Bison Engineering.
Address: 30 5 Ewing, Helena, MT 59601, Contact: Don Hurst, Phone: (406) 442-5768.
(b) *Approved Courses:*
Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
(ii)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: P.O. Box 218, Sturgis, SD 57785, Contact: Randy Morris, Phone: (605) 347-4467.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/90).
Contractor/Supervisor (Certified 10/5/90).
(iii)(a) *Training Provider:* Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores Lott, Phone: (708) 298-1200.
(b) *Approved Course:*
Abatement Worker (Certified 1/19/90).
(iv)(a) *Training Provider:* Chen-Northern, Inc.
Address: 600 South 25th St., Billings, MT 59601, Contact: Kathy Smit, Phone: (406) 248-9161.
(b) *Approved Courses:*
Abatement Worker (Certified 1/24/90).
Abatement Worker Annual Review (Certified 2/5/90).
Contractor/Supervisor (Certified 1/24/90).
Contractor/Supervisor Annual Review (Certified 2/5/90).
(v)(a) *Training Provider:* Georgia Tech Research Institute.
Address: Georgia Institute of Technology, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3075.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 10/5/90).
Contractor/Supervisor Annual Review (Certified 10/5/90).
(vi)(a) *Training Provider:* Hall-Kimbrell.
Address: 3333 Quebec St., Suite 4060, Denver, CO 80207, Contact: Perry Ford, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
Inspector/Management Planner (Certified 10/1/90).
Inspector/Management Planner Annual Review (Certified 2/21/90).
Project Designer (Certified 4/26/90).
Project Designer Annual Review (Certified 2/21/90).
(vii)(a) *Training Provider:* Laborer's AGC, Training Program of Montana.
Address: RR2, Box 221-D, Helena, MT 59601, Contact: Dan Holland, Phone: (406) 442-9964.
(b) *Approved Courses:*
Abatement Worker (Certified 1/17/90).
Abatement Worker Annual Review (Certified 1/17/90).
(viii)(a) *Training Provider:* Montana State Council of Carpenters.
Address: P.O. Box 821, Helena, MT 59624, Contact: Bruce Morris, Phone: (406) 442-5256.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/90).
Abatement Worker Annual Review (Certified 3/1/90).
(ix)(a) *Training Provider:* Rocky Mountain Center.
Address: University of Utah, Bldg. 512, Salt Lake City, UT 84112, Contact: Jeff Lee, Phone: (801) 581-5710.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 6/19/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).
Inspector/Management Planner (Certified 7/27/90).
Inspector/Management Planner Annual Review (Certified 7/27/90).

Nebraska

(15)(a) *State Agency:* Department of Health Division of Asbestos Control, Address: 301 Centennial Mall South, P.O. Box 95007, Lincoln, NE 68509-5007, Contact: Jacqueline M. Fiedler, Phone: (402) 471-2541.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 5/9/89).
Contractor/Supervisor (full from 5/9/89).
Inspector (full from 5/9/89).
Inspector/Management Planner (full from 5/9/89).
Project Designer (full from 5/9/89).
(i)(a) *Training Provider:* Environmental Salvage, LTD.
Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn Knudtson, Phone: (402) 733-2595.
(b) *Approved Courses:*
Abatement Worker (Certified 3/14/89).
Abatement Worker Annual Review (Certified 8/3/89).
Contractor/Supervisor (Certified 3/14/89).
Contractor/Supervisor Annual Review (Certified 8/3/89).
(ii)(a) *Training Provider:* Institute for Environmental Assessment.
Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (800) 233-9513.
(b) *Approved Course:*
Contractor/Supervisor Annual Review (Certified 12/19/89).
(iii)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.
Address: Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.
(b) *Approved Courses:*
Abatement Worker (Certified 5/22/89).
Abatement Worker Annual Review (Certified 4/12/90).
Contractor/Supervisor (Certified 5/22/89).
Contractor/Supervisor Annual Review (Certified 11/27/89).
(iv)(a) *Training Provider:* National Asbestos Council.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tina Smith, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/90).
Abatement Worker Annual Review (Certified 12/15/89).
(v)(a) *Training Provider:* Safety and Health Council of Greater Omaha.
Address: 2513 St. Mary's Avenue, Omaha, NE 68105, Contact: Kay Farrell, Phone: (402) 345-1067.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/12/90).
Contractor/Supervisor Annual Review (Certified 10/16/90).

New Jersey

(16)(a) *State Agency:* State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 6/18/85).
Contractor/Supervisor (full from 6/18/85).
(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Robert Bradshaw or Robyn Brunson, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (Certified 5/20/85).
Contractor/Supervisor (Certified 5/20/85).
(ii)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Ave., Bellmawr, NJ 08031, Contact: Donna Weiss or John Luxford, Phone: (609) 933-3300.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/85).
Abatement Worker Annual Review (Certified 3/15/90).
Contractor/Supervisor (Certified 4/25/85).
Contractor/Supervisor Annual Review (Certified 3/15/90).
(iii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Carol Pacquin, Phone: (703) 684-2924.
(b) *Approved Courses:*
Abatement Worker (Certified 6/17/87 to 9/28/89 only).
Contractor/Supervisor (Certified 6/17/87 to 9/28/89 only).
(iv)(a) *Training Provider:* Asbestos Training Academy, Inc. - NJ.
Address: 216 Cooper Center, Pennsauken, NJ 08109, Contact: Joseph Bower, Phone: (609) 488-9200.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/85).
Abatement Worker Annual Review (Certified 6/6/90).
Contractor/Supervisor (Certified 5/1/85).
Contractor/Supervisor Annual Review (Certified 6/6/90).
(v)(a) *Training Provider:* Asbestos Training Academy, Inc. - NY.
Address: 315 West 36th St., 9th Fl., New York, NY 10018, Contact: Richard Green or Charlotte Hicks, Phone: (212) 971-0370.
(b) *Approved Courses:*
Abatement Worker (Certified 9/20/88 to 9/19/90 only).
Contractor/Supervisor (Certified 9/20/88 to 9/19/90 only).
(vi)(a) *Training Provider:* Asbestos Training Institute, Inc.
Address: 47 West 13th St., 2nd Floor, New York, NY 10011, Contact: Jean Bodman or Ron Rominski, Phone: (212) 206-7019.
(b) *Approved Courses:*
Abatement Worker (Certified 3/4/87).
Abatement Worker Annual Review (Certified 5/30/90).
Contractor/Supervisor (Certified 3/4/87).
Contractor/Supervisor Annual Review (Certified 5/30/90).
(vii)(a) *Training Provider:* BCM Eastern, Inc.
Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: R. Ferguson or C. Sterchak, Phone: (215) 825-3800.
(b) *Approved Courses:*
Abatement Worker (Certified 6/7/87 to 12/13/89 only).
Contractor/Supervisor (Certified 6/7/87 to 12/13/89 only).
(viii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.
Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi or Pat Collura, Phone: (201) 521-0200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/19/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 7/19/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).
(ix)(a) *Training Provider:* Drexel University, Office of Continuing Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert T. Ross or Rita Karmiol, Phone: (215) 895-2156.
(b) *Approved Courses:*
Abatement Worker (Certified 4/13/88).
Abatement Worker Annual Review (Certified 7/13/90).
Contractor/Supervisor (Certified 4/13/88).
Contractor/Supervisor Annual Review (Certified 7/13/90).
(x)(a) *Training Provider:* E.I. DuPont DeNemours & Co.
Address: Chamber Works, Deepwater, NJ 08023, Contact: Jeffery Thomason or Jayne Lane, Phone: (609) 540-2434.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/86).
Abatement Worker Annual Review (Certified 6/12/89).
Contractor/Supervisor (Certified 5/1/86).
Contractor/Supervisor Annual Review (Certified 6/12/89).
(xi)(a) *Training Provider:* Hazard Management Division of Curtin Management Consultants, Inc.
Address: 200 Smith St., Keasbey, NJ 08832, Contact: Daniel Curtin or Lori Abrams, Phone: (201) 738-9700.
(b) *Approved Courses:*
Abatement Worker (Certified 6/3/87).
Contractor/Supervisor (Certified 6/3/87).
(xii)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: c/o Carpenters Union-No. 455, 1931 Route 22 West, Bound Brook, NJ 08805-1519, Contact: Jack Caravanos or Joseph Marino, Phone: (201) 526-1116.
(b) *Approved Courses:*
Abatement Worker (Certified 5/23/85).
Contractor/Supervisor (Certified 5/23/85).
(xiii)(a) *Training Provider:* IT Corporation.
Address: 17461 Derian Ave., Suite 190, Irvine, CA 92714, Contact: Keith Soesbe, Phone: (714) 261-6441.
(b) *Approved Courses:*
Abatement Worker (Certified 8/29/85 to 9/13/90 only).
Contractor/Supervisor (Certified 8/29/85 to 9/13/90 only).
(xiv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.
Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Jim Capritti or Patricia Cancglin, Phone: (609) 547-6500.
(b) *Approved Courses:*
Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).
(xv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NY.
Address: 220 5th Ave; 17th Floor, New York, NY 10001, Contact: L. Fredericks or M. Cox-Abdalla, Phone: (212) 216-6340.
(b) *Approved Courses:*
Abatement Worker (Certified 8/28/89).
Contractor/Supervisor (Certified 8/28/89).
(xvi)(a) *Training Provider:* Local Union No. 14.
Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens or Lewis Fitzgerald, Phone: (215) 533-0395.
(b) *Approved Courses:*
Abatement Worker (Certified 8/9/85).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 8/9/85).
Contractor/Supervisor Annual Review (Certified 11/1/89).
(xvii)(a) *Training Provider:* Local Union No. 32.
Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini or John Dwyer, Phone: (201) 485-3626.

(b) *Approved Courses:*
Abatement Worker (Certified 5/9/87).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/8/87).
Contractor/Supervisor Annual Review (Certified 8/14/89).
(xviii)(a) *Training Provider:* Local Union No. 42.
Address: 1188 River Rd., New Castle, DE 19720, Contact: Joseph Noble, Phone: (302) 328-4203.
(b) *Approved Courses:*
Abatement Worker (Certified 10/30/85).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 10/30/85).
Contractor/Supervisor Annual Review (Certified 8/23/90).
(xix)(a) *Training Provider:* Local Union No. 89.
Address: 2733 Nottingham Way, Trenton, NJ 08912, Contact: Charles DaBronzo or John DaBronzo, Phone: (609) 587-0082.
(b) *Approved Courses:*
Abatement Worker (Certified 5/13/86).
Abatement Worker Annual Review (Certified 11/27/89).
Contractor/Supervisor (Certified 5/13/86).
Contractor/Supervisor Annual Review (Certified 11/27/89).
(xx)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.
Address: 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Lenstren or Doris Danaluk, Phone: (201) 463-5092.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 1/17/90).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 1/17/90).
(xxi)(a) *Training Provider:* NDI Training Institute.
Address: 7050 Kaighn Ave., Pennsauken, NJ 08109, Contact: J. Rodney Walton or John O'Brien, Phone: (609) 663-5042.
(b) *Approved Courses:*
Abatement Worker (Certified 9/13/88).
Contractor/Supervisor (Certified 9/13/88).
(xxii)(a) *Training Provider:* National Asbestos Council Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 1/13/87 to 10/3/90 only).
Contractor/Supervisor (Certified 1/13/87 to 10/3/90 only).
(xxiii)(a) *Training Provider:* National Asbestos Training Institute.
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler or Lisa Criscuolo, Phone: (201) 918-0510.
(b) *Approved Courses:*
Abatement Worker (Certified 5/3/85).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/3/85).
Contractor/Supervisor Annual Review (Certified 8/14/89).
(xxiv)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.
Address: 114 West State St., P.O. Box 1733, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (609) 422-2836.
(b) *Approved Courses:*
Abatement Worker (Certified 1/16/88 to 10/24/89 only).
Contractor/Supervisor (Certified 1/16/88 to 10/24/89 only).
(xxv)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider or Matthew Gillen, Phone: (202) 887-1986.
(b) *Approved Courses:*
Abatement Worker (Certified 3/31/88).
Contractor/Supervisor (Certified 3/31/89).
(xxvi)(a) *Training Provider:* Northeastern Analytical Corporation.
Address: 4 Stow Rd., Marlton, NJ 08053, Contact: R. Holwitt or M. Dutkiewicz, Phone: (609) 985-9000.
(b) *Approved Courses:*
Abatement Worker (Certified 5/28/85).
Abatement Worker Annual Review (Certified 6/30/89).
Contractor/Supervisor (Certified 5/28/85).
Contractor/Supervisor Annual Review (Certified 6/30/89).
(xxvii)(a) *Training Provider:* Princeton Testing Laboratory.
Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3158, Contact: Charles Schneekloth, Phone: (609) 452-9050.
(b) *Approved Courses:*
Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 6/14/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 6/14/89).
(xxviii)(a) *Training Provider:* Temple University Asbestos Center.
Address: CECSA, 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Benarde or Diane Dymski, Phone: (215) 787-8546.
(b) *Approved Courses:*
Abatement Worker (Certified 11/24/87).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 11/24/87).
Contractor/Supervisor Annual Review (Certified 10/25/90).
(xxix)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Nelson Helu or Barbara Zeluck, Phone: (212) 619-2270.
(b) *Approved Courses:*
Abatement Worker (Certified 9/21/88 to 12/21/89 only).
Contractor/Supervisor (Certified 9/28/88 to 12/21/89 only).
(xxx)(a) *Training Provider:* White Lung Association of NJ.
Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley or Gregory Camacho, Phone: (201) 824-2823.
(b) *Approved Courses:*
Abatement Worker (Certified 5/21/85).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 5/21/85).
Contractor/Supervisor Annual Review (Certified 10/25/90).

New York

(17)(a) *State Agency:* Department of Health, Address: Asbestos Safety Training Program, Bureau of Occupational Health, II University Place, Room 312, Albany, NY 12203-3313, Contact: George R. Estel, Phone: (518) 458-6483.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 12/19/90).
Contractor/Supervisor (full from 12/19/90).
Inspector (full from 12/19/90).
Inspector/Management Planner (full from 12/19/90).
Project Designer (full from 12/19/90).
(i)(a) *Training Provider:* AAC Contracting, Inc.
Address: 1225 Ridgeway Ave., Rochester, NY 14615, Contact: Mario DiNottia, Phone: (716) 458-8780.

(b) *Approved Course:*
Abatement Worker (Certified 8/7/89).
(ii)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th Street, New York, NY 10010, Contact: David Chambers, Phone: (212) 353-8280.
(b) *Approved Courses:*
Abatement Worker (Certified 3/15/89).
Inspector (Certified 2/20/90).
(iii)(a) *Training Provider:* Abatement Safety Training Institute.
Address: 323 West 39th Street, New York, NY 10018, Contact: Martin Mateo, Phone: (212) 629-8400.
(b) *Approved Courses:*
Abatement Worker (Certified 7/12/88).
Inspector (Certified 1/12/90).
(iv)(a) *Training Provider:* Adelaide Environmental Health Associates.
Address: 61 Front Street, Binghamton, NY 13905-4705, Contact: William Carter, Phone: (607) 722-8839.
(b) *Approved Course:*
Abatement Worker (Certified 6/20/88).
(v)(a) *Training Provider:* Advanced Analytical Laboratories, Inc.
Address: 30th and North Church Streets, Hazelton, PA 18201, Contact: Steve Hahn, Phone: (717) 455-5115.
(b) *Approved Course:*
Abatement Worker (Certified 3/16/88).
(vi)(a) *Training Provider:* Aerosol Monitoring and Analysis.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steven Blizzard, Phone: (301) 684-3327.
(b) *Approved Course:*
Abatement Worker (Certified 12/6/88).
(vii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 Seventh Street SE., Washington, DC 20003-2756, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Course:*
Abatement Worker (Certified 5/3/89).
(viii)(a) *Training Provider:* Alleghany Council for Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.
(b) *Approved Course:*
Abatement Worker (Certified 7/17/89).
(ix)(a) *Training Provider:* Allwash of Syracyse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul Watson, Phone: (315) 454-4476.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).
(x)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Avenue, Bellmawr, NJ 08031, Contact: Donna Weiss, Phone: (609) 933-3300.
(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).
(xi)(a) *Training Provider:* American Environmental Institute.
Address: 20220 Center Ridge Road, Cleveland, OH 44116, Contact: Gary Block, Phone: (216) 333-6225.
(b) *Approved Course:*
Abatement Worker (Certified 8/25/88).
(xii)(a) *Training Provider:* Anderson International.
Address: Rd No.2 North Main Street Extension, Jamestown, NY 14701, Contact: Sally Gould, Phone: (716) 664-4028.
(b) *Approved Courses:*
Abatement Worker (Certified 4/5/89).
Inspector (Certified 5/24/90).
(xiii)(a) *Training Provider:* Applied Respiratory Technology.
Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Charles Mayo, Phone: (914) 265-4330.
(b) *Approved Course:*
Abatement Worker (Certified 2/9/89).
(xiv)(a) *Training Provider:* Asbestos Control Management, Inc.
Address: 126 South Third Street, Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.
(b) *Approved Course:*
Abatement Worker (Certified 6/16/89).
(xv)(a) *Training Provider:* Asbestos Technical Services.
Address: Dogwood Road, Peekskill, NY 10566, Contact: Kenneth Strusz, Phone: (914) 739-7146.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/88).
(xvi)(a) *Training Provider:* Asbestos Training Institute.
Address: 47 West 13th Street, 2nd Floor, New York, NY 10011, Contact: Jean Bodman, Phone: (212) 206-7019.
(b) *Approved Courses:*
Abatement Worker (Certified 2/1/87).
Inspector (Certified 9/19/90).
(xvii)(a) *Training Provider:* Asteco, Inc.
Address: 4287 Witmer Road, Niagara Falls, NY 14105, Contact: David Root, Phone: (716) 297-5981.
(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).
(xviii)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Avenue, Brooklyn, NY 11222, Contact: J. Gajeski, Phone: (718) 387-0011.
(b) *Approved Course:*
Abatement Worker (Certified 5/1/87).
(xix)(a) *Training Provider:* BOCES 2 - Suffolk County.
Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Louise Baxter, Phone: (516) 563-2954.
(b) *Approved Course:*
Abatement Worker (Certified 3/29/89).
(xx)(a) *Training Provider:* BOCES III - Suffolk County.
Address: 17 Westminster Ave, Dix Hills, NY 11746, Contact: George Flemming, Phone: (516) 667-6000.
(b) *Approved Course:*
Abatement Worker (Certified 1/4/88).
(xxi)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Court, Beltsville, MD 20705, Contact: Joyce Eger, Phone: (301) 369-3900.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).
(xxii)(a) *Training Provider:* Buffalo Laborers Training Fund No. 210.
Address: 1370 Seneca St., Buffalo, NY 14210, Contact: Victor Sansanese, Phone: (716) 825-0883.
(b) *Approved Course:*
Abatement Worker (Certified 3/7/88).
(xxiii)(a) *Training Provider:* Building Laborers of NJ - Training and Education Trust Fund.
Address: 31 Mott Ave., P.O. Box 553, Jamesburg, NJ 08831, Contact: Emanuel Riggi, Phone: (201) 521-0200.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/88).
(xxiv)(a) *Training Provider:* CA Rich Consultants, Inc.
Address: 404 Glen Cove Ave., Sea Cliff, NY 15799, Contact: Bruce Beck, Phone: (516) 674-3889.
(b) *Approved Course:*
Abatement Worker (Certified 6/5/90).
(xxv)(a) *Training Provider:* Calibrations, Inc.
Address: 802 Watervliet-Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Inspector (Certified 8/13/90).
(xxvi)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.
(b) *Approved Course:*
Abatement Worker (Certified 5/18/90).

(xxvii)(a) *Training Provider:* Cayuga - Onondaga BOCES.
Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pinnie, Phone: (315) 253-6361.
(b) *Approved Course:*
Abatement Worker (Certified 3/21/88).
(xxviii)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.
Address: 814 East Pittsburgh Plaza, East Pittsburgh, PA 15112, Contact: Joseph Hughes, Phone: (412) 823-1002.
(b) *Approved Course:*
Abatement Worker (Certified 1/11/90).
(xxix)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Robert Thornburgh, Phone: (617) 337-7667.
(b) *Approved Course:*
Abatement Worker (Certified 8/28/88).
(xxx)(a) *Training Provider:* Comprehensive Analytical Group, Inc.
Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: David Serino, Phone: (315) 432-0855.
(b) *Approved Course:*
Abatement Worker (Certified 10/20/88).
(xxxi)(a) *Training Provider:* Con-Test.
Address: 39 Spruce St., P.O. Box 581, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/88).
(xxxii)(a) *Training Provider:* Corning, Inc.
Address: Corporate Safety & Health, HP C-3-10, Corning, NY 14831, Contact: Ron Kitson, Phone: (607) 974-8836.
(b) *Approved Course:*
Abatement Worker (Certified 1/10/88).
(xxxiii)(a) *Training Provider:* D/ES, Inc.
Address: 19701 South Miles Parkway, N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1200.
(b) *Approved Course:*
Abatement Worker (Certified 7/6/89).
(xxxiv)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Ryan, Phone: (617) 932-9400.
(b) *Approved Course:*
Abatement Worker (Certified 3/28/88).
(xxxv)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., Bay City, MI 48707, Contact: Joseph Goldwig, Phone: (517) 684-8358.
(b) *Approved Course:*
Abatement Worker (Certified 6/28/88).
(xxxvi)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.
Address: Chambers Workers, Petroleum Labs, Deepwater, NJ 08023, Contact: Jeff Thomason, Phone: (609) 540-2916.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/88).
(xxxvii)(a) *Training Provider:* Edward O. Watts & Associates.
Address: 1331 N. Forrest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward Watts, Phone: (716) 688-4827.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/88).
Inspector (Certified 9/24/90).
(xxxviii)(a) *Training Provider:* Enclosure Technology, Inc.
Address: 861 Manhattan Ave., Suite 14, Brooklyn, NY 11222, Contact: Roland Baronowski, Phone: (718) 349-3235.
(b) *Approved Course:*
Abatement Worker (Certified 9/5/90).
(xxxix)(a) *Training Provider:* Enviro Med Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Phone: (203) 789-5568.
(b) *Approved Course:*
Abatement Worker (Certified 10/12/88).
(xl)(a) *Training Provider:* Environmental Safety Institute.
Address: 4225 Millersport Highway, Amherst, NY 14228, Contact: Betty Glovins, Phone: (716) 688-4800.
(b) *Approved Course:*
Abatement Worker (Certified 3/1/88).
(xli)(a) *Training Provider:* Environmental Training Corporation.
Address: 100 Moody St., Ludlow, MA 01056, Contact: Anne Polta, Phone: (413) 589-1062.
(b) *Approved Course:*
Abatement Worker (Certified 8/28/89).
(xlii)(a) *Training Provider:* Environmental Training Inc.
Address: Tinicum Industrial Park, Bldg. N, 70 Industrial Highway, Philadelphia, PA 19113, Contact: Gary Hyrne, Phone: (215) 521-5459.
(b) *Approved Course:*
Abatement Worker (Certified 12/8/89).
(xliii)(a) *Training Provider:* Environmental Training Services.
Address: 62 H Montvale Ave., Stoneham, MA 02180, Contact: Kenneth Martin, Phone: (617) 279-8855.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(xliv)(a) *Training Provider:* Failsafe Risk Management Alternatives, Inc.
Address: 1670 Western Ave., Albany, NY 12203, Contact: James McKeon, Phone: (518) 452-4380.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).
Inspector (Certified 10/3/90).
(xlv)(a) *Training Provider:* Fostack Corperation.
Address: 392 Fifth Ave., Paterson, NJ 07514, Contact: Anna Ghassibi, Phone: (201) 345-0040.
(b) *Approved Course:*
Abatement Worker (Certified 8/19/90).
(xlvi)(a) *Training Provider:* Future Environmental Designs, Inc.
Address: 114 Old Country Rd., Suite 620, Mineola, NY 11501, Contact: Michael Marcik, Phone: (516) 742-2557.
(b) *Approved Courses:*
Abatement Worker (Certified 8/21/90).
Inspector (Certified 8/21/90).
(xlvii)(a) *Training Provider:* G.S.T. Company.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Course:*
Abatement Worker (Certified 10/4/88).
(xlviii)(a) *Training Provider:* General Building Laborers Local No. 66.
Address: 266 Middle Island Rd., Medford, NY 11763, Contact: Peter Purezzella, Phone: (516) 696-2260.
(b) *Approved Course:*
Abatement Worker (Certified 10/4/89).
(xlix)(a) *Training Provider:* General Physics Corporation.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046-2100, Contact: Andrew Marsh, Phone: (301) 290-2300.
(b) *Approved Course:*
Abatement Worker (Certified 6/15/88).
(l)(a) *Training Provider:* Geo-Environmental Company, Inc.
Address: P.O. Box 274, Yonkers, NY 10710, Contact: Carol Califano, Phone: (914) 375-1554.
(b) *Approved Course:*
Abatement Worker (Certified 4/12/89).
(li)(a) *Training Provider:* Georgia Institute of Technology.
Address: O'Keefe Bldg., ESTD Room 027, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3982.
(b) *Approved Course:*
Abatement Worker (Certified 5/11/87).
(lii)(a) *Training Provider:* Health/Safety/Risk Management - Albany Schoharie Schenectady BOCES.
Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.
(b) *Approved Courses:*
Abatement Worker (Certified 8/30/89).
Inspector (Certified 1/31/90).
(liii)(a) *Training Provider:* Hillman Technical Services.
Address: 1089 Cedar Ave., Suite 2, Union, NJ 07083, Contact: Steven Gladstone, Phone: (201) 686-3461.
(b) *Approved Course:*
Abatement Worker (Certified 3/3/90).
(liv)(a) *Training Provider:* Hudson Asbestos Training Institute.
Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Ann Sumiec, Phone: (718) 383-2656.
(b) *Approved Course:*
Abatement Worker (Certified 4/30/90).
(lv)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: 425 East 25th St., New York, NY 10010, Contact: Jacquenette Locker, Phone: (212) 481-7569.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(lvi)(a) *Training Provider:* Hygeia Research & Training.
Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard Gigliotti, Phone: (315) 732-8567.
(b) *Approved Course:*
Abatement Worker (Certified 3/7/88).
(lvii)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.
(b) *Approved Course:*
Inspector (Certified 5/18/90).
(lviii)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: MaryBeth Carver, Phone: (617) 723-4664.
(b) *Approved Courses:*
Abatement Worker (Certified 6/6/88).
Inspector (Certified 9/27/90).
(lix)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Park, Suite 3650, Woburn, MA 01801, Contact: Starla Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certified 8/1/88).
Inspector (Certified 8/21/90).
(lx)(a) *Training Provider:* Institute of Asbestos Technology.
Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.
(b) *Approved Course:*
Abatement Worker (Certified 10/24/87).
(lxi)(a) *Training Provider:* International Technology Corporation.
Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9831.
(b) *Approved Course:*
Abatement Worker (Certified 12/30/87).
(lxii)(a) *Training Provider:* Jenkins Professional Inc.
Address: 5024 Campbell Blvd, Suite D, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 931-7588.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/88).
(lxiii)(a) *Training Provider:* Joint Apprenticeship & Training Committee.
Address: 425 Broad Hollow Rd., Suite 405, Melville, NY 11747, Contact: R. Erickson, Phone: (516) 694-2022.
(b) *Approved Course:*
Abatement Worker (Certified 11/30/87).
(lxiv)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.
Address: 220 Fifth Ave., 17th Floor, New York, NY 10001, Contact: Lance Fredricks, Phone: (212) 216-6340.
(b) *Approved Course:*
Abatement Worker (Certified 4/1/88).
(lxv)(a) *Training Provider:* Kemron Environmental Services, Inc.
Address: 755 New York Ave., Huntington, NY 11743, Contact: John Peters, Phone: (516) 427-0950.
(b) *Approved Course:*
Abatement Worker (Certified 10/4/88).
(lxvi)(a) *Training Provider:* Korean Asbestos Training Center.
Address: 136-15 Roosevelt Ave., 3rd Floor, Flushing, NY 11354, Contact: Tchang Bahrk, Phone: (718) 321-2700.
(b) *Approved Course:*
Abatement Worker (Certified 1/3/90).
(lxvii)(a) *Training Provider:* Laborer's Local No. 17 Education & Training Fund.
Address: 305 C Little Britain Rd., Newburgh, NY 12550, Contact: Victor Mandia, Phone: (914) 562-1121.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(lxviii)(a) *Training Provider:* Laborer's Local No. 91 Training & Education Fund.
Address: 2556 Seneca Ave., Niagara Falls, NY 10010, Contact: Joel Cicero, Phone: (716) 297-6001.
(b) *Approved Course:*
Abatement Worker (Certified 7/27/90).
(lxix)(a) *Training Provider:* Laborer's Local No. 214 Training & Education Fund.
Address: 23 Mitchell St., Oswego, NY 13126, Contact: John Shannon, Phone: (315) 343-8553.
(b) *Approved Course:*
Abatement Worker (Certified 8/17/87).
(lxx)(a) *Training Provider:* Long Island Lighting Company.
Address: 131 Hoffman Lane, Central Islip, NY 11722, Contact: Ernest Papadoulias, Phone: (516) 436-4070.
(b) *Approved Course:*
Abatement Worker (Certified 2/20/89).
(lxxi)(a) *Training Provider:* Lozier Architects & Engineers.
Address: 1050 Pittsford-Victor Rd., Pittsford, NY 14534, Contact: Dyke Coyne, Phone: (716) 381-2210.
(b) *Approved Course:*
Abatement Worker (Certified 1/12/88).
(lxxii)(a) *Training Provider:* META.
Address: P.O. Box 786, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.
(b) *Approved Course:*
Abatement Worker (Certified 4/3/90).
(lxxiii)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center.
Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NY 08854, Contact: Lee Lausten, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/86).
Inspector (Certified 3/30/90).
(lxxiv)(a) *Training Provider:* Monroe Community College.
Address: 1000 East Henrietta Rd., Bailey Center, Rochester, NY 14623-5780, Contact: David Duford, Phone: (716) 292-2000.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/88).
(lxxv)(a) *Training Provider:* Mystic Air Quality Consultants, Inc.
Address: 1204 North Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.
(b) *Approved Course:*
Abatement Worker (Certified 5/2/88).
(lxxvi)(a) *Training Provider:* National Asbestos Training Institute.
Address: 1766 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker (Certified 5/27/85).
Inspector (Certified 8/6/90).
(lxxvii)(a) *Training Provider:* National Training Fund for Sheet Metal & Air Conditioning Industry.

Address: 1126 16th Street NW., Washington, DC 20036, Contact: Matthew Gillen, Phone: (202) 887-1960.

(b) *Approved Course:*

Abatement Worker (Certified 11/1/88).

(lxxviii)(a) *Training Provider:* New England Laborer's Training Fund.

Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Course:*

Abatement Worker (Certified 4/7/88).

(lxxix)(a) *Training Provider:* New York Committee for Occupational Safety and Health.

Address: 275 Seventh Ave., 25th Floor, New York, NY 10001, Contact: Joel Shufro, Phone: (212) 627-3900.

(b) *Approved Course:*

Abatement Worker (Certified 1/27/88).

(lxxx)(a) *Training Provider:* New York District Council of Carpenters Labor Technical College.

Address: 395 Hudson St., Clarkson St. Entrance, New York, NY 10014, Contact: Charles Fanning, Phone: (212) 727-2224.

(b) *Approved Course:*

Abatement Worker (Certified 5/19/89).

(lxxxi)(a) *Training Provider:* New York State Carpenters Labor Management Committee.

Address: P.O. Box 266, Milford, NY 13807, Contact: Maurice Torruella, Phone: (607) 286-7755.

(b) *Approved Course:*

Abatement Worker (Certified 3/23/89).

(lxxxii)(a) *Training Provider:* New York University School of Continuing Education.

Address: 10 East 38th St., New York, NY 10016, Contact: Charles Schwartz, Phone: (212) 545-0077.

(b) *Approved Courses:*

Abatement Worker (Certified 8/7/89).
Inspector (Certified 10/16/90).

(lxxxiii)(a) *Training Provider:* Niagara County Community College.

Address: 160 Washburn St., P.O. Box 70, Lockport, NY 14095, Contact: Mary Baldi-Fron, Phone: (716) 433-1856.

(b) *Approved Courses:*

Abatement Worker (Certified 1/4/87).
Inspector (Certified 8/22/90).

(lxxxiv)(a) *Training Provider:* Niagara Mohawk Power Corporation.

Address: Training Dept., 300 Erie Blvd., West Syracuse, NY 13202, Contact: Eileen Reynolds, Phone: (315) 428-5534.

(b) *Approved Course:*

Abatement Worker (Certified 4/10/90).

(lxxxv)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 5000 Brittonfield Parkway, P.O. Box 4873, Syracuse, NY 13221, Contact: Michael Quirk, Phone: (315) 437-6100.

(b) *Approved Courses:*

Abatement Worker (Certified 2/23/89).
Inspector (Certified 7/23/90).

(lxxxvi)(a) *Training Provider:* Orange-Ulster BOCES.

Address: Gibson Rd., Rd. No. 2, Goshen, NY 10924, Contact: Arthur Lange, Phone: (914) 294-5431.

(b) *Approved Course:*

Abatement Worker (Certified 2/3/89).

(lxxxvii)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Flushing.

Address: 129-02 26 St., Flushing, NY 11354, Contact: William Audley, Phone: (718) 445-9090.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/87).
Inspector (Certified 12/4/90).

(lxxxviii)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Kansas.

Address: 4840 West 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (315) 463-5542.

(b) *Approved Course:*

Abatement Worker (Certified 8/1/87).

(lxxxix)(a) *Training Provider:* PSI-Hall Kimbrell Environmental Services, Inc.-Syracuse.

Address: 6103 East Molloy Rd., East Syracuse, NY 13057, Contact: Julie Williams, Phone: (315) 463-5542.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/87).
Inspector (Certified 12/4/90).

(xc)(a) *Training Provider:* Paradigm Environmental Services, Inc.

Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberrov, Phone: (716) 647-2530.

(b) *Approved Course:*

Abatement Worker (Certified 8/29/89).

(xci)(a) *Training Provider:* Professional Testing Laboratories, Inc.

Address: 18 Seaview Blvd., Port Washington, NY 11050, Contact: Yelena Goodman, Phone: (516) 484-7878.

(b) *Approved Course:*

Abatement Worker (Certified 5/10/90).

(xcii)(a) *Training Provider:* Quality Control Services.

Address: 10 Lowell Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (518) 475-0623.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/88).

(xciii)(a) *Training Provider:* Rennselaer, Columbia, Green BOCES.

Address: Brookview Rd., P.O. Box 20, Brookview, NY 12026, Contact: Shirley Readdean, Phone: (518) 732-4474.

(b) *Approved Course:*

Abatement Worker (Certified 4/10/89).

(xciv)(a) *Training Provider:* Retra Services, Inc.

Address: 211 Oxford Blvd., Allison Park, PA 15101, Contact: Phillip Parroff, Phone: (412) 487-1711.

(b) *Approved Course:*

Abatement Worker (Certified 5/10/90).

(xcv)(a) *Training Provider:* Rochester Gas and Electric.

Address: 89 East Ave., Rochester, NY 14649-0001, Contact: Jeffrey Williams, Phone: (716) 724-8129.

(b) *Approved Course:*

Abatement Worker (Certified 4/4/88).

(xcvi)(a) *Training Provider:* Safety Training, Inc.

Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.

(b) *Approved Course:*

Abatement Worker (Certified 1/31/90).

(xcvii)(a) *Training Provider:* Seagull/ Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311, Contact: James Stump, Phone: (305) 524-7209.

(b) *Approved Course:*

Abatement Worker (Certified 2/29/88).

(xcviii)(a) *Training Provider:* Sevenson Environmental Services.

Address: 2749 Lockport Rd., Niagara Falls, NY 14302, Contact: Paul Hitcho, Phone: (716) 284-0431.

(b) *Approved Course:*

Abatement Worker (Certified 2/1/88).

(xcix)(a) *Training Provider:* State University of New York at Buffalo.

Address: 111 Faber Hall, Buffalo, NY 14214, Contact: Joseph Syracuse, Phone: (716) 831-2125.

(b) *Approved Courses:*

Abatement Worker (Certified 2/2/90).
Inspector (Certified 7/9/90).

(c)(a) *Training Provider:* Suffolk County Carpenters Apprenticeship and Journeymans Retraining Fund.

Address: 3390 Route No. 112, Medford, NY 11763, Contact: Carl Berglin, Phone: (516) 732-2501.

(b) *Approved Course:*

Abatement Worker (Certified 2/14/89).

(ci)(a) *Training Provider:* Temple University College of Engineering.

Address: 12th and Norris St., Philadelphia, PA 19122, Contact: M. A. Bernarde, Phone: (212) 787-6479.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/87).

(cii)(a) *Training Provider:* Testwell Craig Laboratories - Albany.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George Stowell, Phone: (518) 436-4114.

(b) *Approved Courses:*

Abatement Worker (Certified 3/8/88).
Inspector (Certified 4/11/90).

(ciii)(a) *Training Provider:* Testwell Craig Laboratories - Ossining.

Address: 518 Clinton Ave., Albany, NY 12206, Contact: George Stowell, Phone: (518) 436-4114.

(b) *Approved Course:*

Abatement Worker (Certified 9/7/90).

(civ)(a) *Training Provider:* The Environmental Institute.

Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/88).
Inspector (Certified 3/28/90).

(cv)(a) *Training Provider:* Tri-Cities Laborers.

Address: 666 Wemple Rd., Box 100, Glenmont, NY 12077, Contact: Joseph Zappone, Phone: (518) 426-0290.

(b) *Approved Course:*

Abatement Worker (Certified 12/1/87).

(cvi)(a) *Training Provider:* Tufts University Division of Education.

Address: 177 College Ave., Medford, NY 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/88).

(cvii)(a) *Training Provider:* Union Occupational Health Center.

Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 894-9366.

(b) *Approved Course:*

Abatement Worker (Certified 10/28/88).

(cviii)(a) *Training Provider:* United Environmental Systems.

Address: 35 W. 35th St., New York, NY 10001, Contact: Eyal Bakshi, Phone: (212) 643-9833.

(b) *Approved Course:*

Abatement Worker (Certified 5/18/88).

(cix)(a) *Training Provider:* University of Cincinnati Medical Center, Institute of Environmental Health.

Address: 3223 Eden Ave., ML56, Cincinnati, OH 45267-0056, Contact: Judy Jarrell, Phone: (513) 558-1729.

(b) *Approved Course:*

Abatement Worker (Certified 11/15/88).

(cx)(a) *Training Provider:* University of Illinois - Chicago.

Address: 1440 W. Washington Blvd., Chicago, IL 60607, Contact: Richard Lyons, Phone: (312) 829-1277.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/88).

(cxi)(a) *Training Provider:* University of Kansas/National.

Address: 6600 College Blvd., Suite 315, Overland, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0161.

(b) *Approved Course:*

Abatement Worker (Certified 9/1/87).

(cxii)(a) *Training Provider:* Utilicon, Inc.

Address: 7 Tobey Villiage Office Park, Pittsford, NY 14534, Contact: Dennis Money, Phone: (716) 381-8710.

(b) *Approved Course:*

Abatement Worker (Certified 7/25/89).

(cxiii)(a) *Training Provider:* Warren Mae Associates.

Address: 1480 Park St., White Bear Lake, MN 55110, Contact: Janine Rogelstad, Phone: (607) 754-8386.

(b) *Approved Course:*

Abatement Worker (Certified 7/19/88).

(cxiv)(a) *Training Provider:* White Lung Association.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley, Phone: (201) 624-2623.

(b) *Approved Course:*

Abatement Worker (Certified 12/1/86).

(cxv)(a) *Training Provider:* Wild Apple Enterprises LTD.

Address: North Hollow Rd., Granville, VT 05747, Contact: John Furman, Phone: (612) 767-4415.

(b) *Approved Course:*

Abatement Worker (Certified 4/24/90).

North Dakota

(18)(a) *State Agency:* State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 224-2348.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 4/21/89).
Contractor/Supervisor (full from 4/21/89).
Inspector (full from 4/21/89).
Inspector/Management Planner (full from 4/21/89).
Project Designer (full from 4/21/89).

(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.

Address: Box 1706, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (Certified 6/30/89).
Abatement Worker Annual Review (Certified 7/31/89).

(ii)(a) *Training Provider:* Survey Management and Design.

Address: 2605 35th Ave. SW., Fargo, ND 58104, Contact: Peter L. Mehl, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 1/5/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 6/10/89).
Inspector/Management Planner (Certified 6/24/89).
Inspector/Management Planner Annual Review (Certified 3/28/90).

(iii)(a) *Training Provider:* University of North Dakota.

Address: Box 8275 University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 3/28/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 3/28/90).
Inspector/Management Planner (Certified 10/2/90).

Oregon

(19)(a) *State Agency:* State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204-1390, Contact: Bruce E. Arnold, Phone: (503) 229-5506.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/23/88).
Contractor/Supervisor (full from 9/23/88).

(i)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 7th Street, SE., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Course:*

Abatement Worker (Certified 12/6/90).

(ii)(a) *Training Provider:* Asbestos Training Project Workplace Resources.

Address: 1906 Southeast Pershing St., Portland, OR 97203, Contact: Wendy Wiles, Phone: (503) 233-7707.

(b) *Approved Courses:*

Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/89).

(iii)(a) *Training Provider:* Hazcon, Inc.
Address: 9500 Southwest Barbur, Portland, OR 97219, Contact: Randi Olson, Phone: (503) 244-8045.

(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.
Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.

(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).

(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.
Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 286-2950.

(b) *Approved Course:*
Abatement Worker (Certified 12/3/88 to 9/18/89 only).

(vi)(a) *Training Provider:* NAC Corporation.
Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*
Abatement Worker (Certified 3/23/89).
Contractor/Supervisor (Certified 4/1/90).

(vii)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: P.O. Box 4638, Vancouver, WA 98662, Contact: Debbie Dunn, Phone: (206) 699-4015.

(b) *Approved Courses:*
Abatement Worker (Certified 12/14/88).
Contractor/Supervisor (Certified 12/14/88).

(viii)(a) *Training Provider:* PSI/Hall-Kimbrell Environmental Division.
Address: 4621 SW Kelly Avenue, Portland, OR 97201, Contact: Kelly Champion, Phone: (503) 223-1440.

(b) *Approved Courses:*
Abatement Worker (Certified 12/28/88).
Contractor/Supervisor (Certified 9/7/89).

Rhode Island

(20)(a) *State Agency:* State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., Three Capitol Hill, Providence, RI 02908, Contact: William Dundulis, Jr., Phone: (401) 277-3601.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).
Inspector/Management Planner (full from 8/3/89).
Project Designer (full from 8/3/89).

(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William L Roberts, Phone: (717) 257-1360.

(b) *Approved Course:*
Contractor/Supervisor (Certified 3/31/89).

(ii)(a) *Training Provider:* Analytical Testing Services, Inc.
Address: 180 Weeden St., Pawtucket, RI 02860, Contact: Robert Weisberg, Phone: (401) 723-7978.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/10/88).
Contractor/Supervisor Annual Review (Certified 12/10/88).

(iii)(a) *Training Provider:* Applied Occupational Health Systems.
Address: 29 River Rd., Suite 18, Concord, NH 03301, Contact: H. Charles Claridge, II, Phone: (603) 228-3610.

(b) *Approved Courses:*
Abatement Worker (Certified 6/11/90).
Contractor/Supervisor (Certified 6/11/90).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 Northwest Sixth Ave., Fort Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Course:*
Abatement Worker (Certified 11/21/89).

(v)(a) *Training Provider:* Center for Environmental Management-Tufts University.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*
Abatement Worker (Certified 7/1/88).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/88).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(vi)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*
Abatement Worker (Certified 8/22/89).
Abatement Worker Annual Review (Certified 8/22/89).
Contractor/Supervisor (Certified 8/22/89).
Contractor/Supervisor Annual Review (Certified 8/22/89).

(vii)(a) *Training Provider:* Chemscope, Inc.
Address: P.O. Box 389, Newhaven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 865-5805.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 11/27/90).
Contractor/Supervisor Annual Review (Certified 11/27/90).

(viii)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7166.

(b) *Approved Courses:*
Abatement Worker (Certified 11/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).
Inspector/Management Planner Annual Review (Certified 12/14/90).

(ix)(a) *Training Provider:* Con-Test Educational Center.
Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/88).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(x)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Lion, Phone: (617) 932-9400.

(b) *Approved Courses:*
Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(xi)(a) *Training Provider:* Environmed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Jr., Phone: (203) 786-5560.

(b) *Approved Courses:*
Abatement Worker (Certified 9/28/89).

Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 9/28/89).
Contractor/Supervisor Annual Review (Certified 12/6/90).

(xii)(a) *Training Provider:* Environmental Training Corp.
Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

(xiii)(a) *Training Provider:* Environmental Training Services.
Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Courses:*
Abatement Worker (Certified 1/23/90).
Abatement Worker Annual Review (Certified 1/23/90).
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(xiv)(a) *Training Provider:* Georgia Institute of Technology/GTRI.
Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.

(b) *Approved Courses:*
Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(xv)(a) *Training Provider:* Harvard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.

(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(xvi)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.
Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6666.

(b) *Approved Courses:*
Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xvii)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 3/6/90).
Contractor/Supervisor (Certified 12/7/89).
Contractor/Supervisor Annual Review (Certified 3/6/90).

(xviii)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.

(b) *Approved Courses:*
Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xix)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*
Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xx)(a) *Training Provider:* Mystic Air Quality Consultants.
Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(xxi)(a) *Training Provider:* NAACO.
Address: 790 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-8711.

(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor Annual Review (Certified 4/3/89).

(xxii)(a) *Training Provider:* National Asbestos Council (NAC), Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.

(b) *Approved Course:*
Abatement Worker (Certified 9/5/88).

(xxiii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1128 16th St., NW., Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*
Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xxiv)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Courses:*
Abatement Worker (Certified 7/1/88).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor Annual Review (Certified 2/15/89).

(xxv)(a) *Training Provider:* Quality Control Services, Inc.
Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*
Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

South Dakota

(21)(a) *State Agency:* Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Bob McDonald, Phone: (605) 773-3153.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

(i)(a) *Training Provider:* ATC Environmental.
Address: 1515 East 10th St., Sioux Falls, SD 57701, Contact: Jim Stout, Phone: (605) 338-0555.

(b) *Approved Courses:*
Abatement Worker (Certified 2/6/90).

Contractor/Supervisor (Certified 2/6/90).
Inspector/Management Planner (Certified 2/6/90).
(ii)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 NW. 6th Ave., Fort Lauderdale, FL 33311, Contact: Marl Knick, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (Certified 6/20/90).
Abatement Worker Annual Review (Certified 6/20/90).
Contractor/Supervisor (Certified 6/20/90).
Contractor/Supervisor Annual Review (Certified 6/20/90).
(iii)(a) *Training Provider:* Black Hills Special Services Cooperative.
Address: Box 218, Sturgis, SD 57784, Contact: Steve Miller, Phone: (605) 347-4467.
(b) *Approved Courses:*
Abatement Worker (Certified 3/22/89).
Abatement Worker Annual Review (Certified 8/9/88).
Contractor/Supervisor (Certified 3/22/89).
Contractor/Supervisor Annual Review (Certified 8/9/88).
Inspector/Management Planner (Certified 3/22/89).
Inspector/Management Planner Annual Review (Certified 2/28/90).
Project Designer Annual Review (Certified 12/7/90).
(iv)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: 1400 Harrison Avenue, P.O. Box 14643, Cleveland, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.
(b) *Approved Courses:*
Abatement Worker (Certified 9/10/90).
Abatement Worker Annual Review (Certified 9/10/90).
(v)(a) *Training Provider:* Enviro-safe Inc.
Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.
(b) *Approved Courses:*
Abatement Worker (Certified 2/28/89 to 1/1/90 only).
Contractor/Supervisor (Certified 2/28/89 to 1/1/90 only).
Inspector/Management Planner (Certified 2/28/89 to 1/1/90 only).
(vi)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.
Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4961.
(b) *Approved Courses:*
Abatement Worker (Certified 4/20/89).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/20/89).
Contractor/Supervisor Annual Review (Certified 4/25/90).
(vii)(a) *Training Provider:* Fox & Fox, Inc.
Address: 1904 Willow Creek Rd., Casper, WY 82604, Contact: David Fox, Phone: (307) 234-0064.
(b) *Approved Courses:*
Abatement Worker (Certified 1/29/90).
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/29/90).
Contractor/Supervisor Annual Review (Certified 1/29/90).
(viii)(a) *Training Provider:* Iowa Laborers Training Fund.
Address: 5806 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-8965.
(b) *Approved Course:*
Abatement Worker (Certified 3/22/88).
(ix)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 4/3/90).
Abatement Worker Annual Review (Certified 4/3/90).
Contractor/Supervisor (Certified 4/3/90).
Contractor/Supervisor Annual Review (Certified 4/3/90).
Inspector/Management Planner Annual Review (Certified 4/3/90).
(x)(a) *Training Provider:* Pickering Environmental.
Address: 1750 Madison Ave., Memphis, TN 38104, Contact: David Wright, Phone: (901) 726-0810.
(b) *Approved Course:*
Inspector/Management Planner (Certified 2/8/89).
(xi)(a) *Training Provider:* South Dakota State University, College of Engineering.
Address: P.O. Box 2218, Brookings, SD 57007-0697, Contact: James Ceglian, Phone: (605) 688-4107.
(b) *Approved Courses:*
Abatement Worker (Certified 5/18/88).
Abatement Worker Annual Review (Certified 9/8/88).
Contractor/Supervisor (Certified 5/18/88).
Contractor/Supervisor Annual Review (Certified 9/8/88).
Inspector/Management Planner (Certified 5/18/88).
Inspector/Management Planner Annual Review (Certified 9/8/88).

Utah

(22)(a) *State Agency:* Utah Dept. of Health Bureau of Air Quality, Address: 1950 West North Temple, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 536-4000.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).
(i)(a) *Training Provider:* Asbestos Training Associates (ATA).
Address: 10256 S. Flanders Road, Sandy, UT 84092, Contact: Joseph B. Liqori, Phone: (801) 571-4116.
(b) *Approved Course:*
Contractor/Supervisor (Certified 4/5/90).
(ii)(a) *Training Provider:* Industrial Health Incorporated.
Address: 640 E. Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald Morano, Phone: (801) 466-2223.
(b) *Approved Courses:*
Abatement Worker (Certified 1/10/89).
Contractor/Supervisor (Certified 4/24/89).
Inspector/Management Planner (Certified 3/23/89).
(iii)(a) *Training Provider:* JKL Asbestos, Inc.
Address: P.O. Box 406, Lehi, UT 84043, Contact: James K. Libberton, Phone: (801) 768-4231.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).
(iv)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 South, West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 4/12/89).
Contractor/Supervisor Annual Review (Certified 5/22/89).
(v)(a) *Training Provider:* Power Master Incorporated.

Address: 13205 South State St., Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.
(b) *Approved Course:*
Abatement Worker (Certified 7/29/88).
(vi)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health.
Address: University of Utah, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.
(b) *Approved Courses:*
Abatement Worker (Certified 2/8/89).
Abatement Worker Annual Review (Certified 2/13/89).
Contractor/Supervisor (Certified 10/7/88).
Contractor/Supervisor Annual Review (Certified 6/7/88).
Inspector/Management Planner Annual Review (Certified 12/15/88).
Project Designer (Certified 10/7/88).
(vii)(a) *Training Provider:* S & H Asbestos Consultants, Inc.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.
(b) *Approved Courses:*
Abatement Worker (Certified 8/12/88).
Abatement Worker Annual Review (Certified 7/28/89).
(viii)(a) *Training Provider:* Utah Carpenters Joint Apprenticeship & Training Committee.
Address: 2261 S. Redwood Rd., Suite J, Salt Lake City, UT 84119, Contact: Ken Mayne, Phone: (801) 972-5147.
(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).
(ix)(a) *Training Provider:* Utah Correctional Industries.
Address: P.O. Box 850, Draper, UT 84020-850, Contact: Vic Middleton, Phone: (801) 571-9284.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 9/25/89).
Contractor/Supervisor Annual Review (Certified 4/5/90).

Virginia

(23)(a) *State Agency:* Commonwealth of Virginia Dept. of Commerce, Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Nelle P. Hotchkiss, Phone: (804) 367-8595.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).
(i)(a) *Training Provider:* Aerosol Monitoring & Analysis.
Address: The Commons Corporate Center, 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (800) 221-1745.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/18/89).
Contractor/Supervisor (Certified 10/31/89).
Contractor/Supervisor Annual Review (Certified 10/18/89).
Inspector/Management Planner (Certified 10/18/89).
(ii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 7th St., SE., 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (Certified 3/2/88).
Abatement Worker Annual Review (Certified 1/1/89).
Contractor/Supervisor (Certified 3/2/88).
Contractor/Supervisor Annual Review (Certified 1/1/89).
Inspector/Management Planner (Certified 3/2/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).
(iii)(a) *Training Provider:* Asbestos Analytical Association.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 397-0695.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 7/27/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).
Inspector/Management Planner (Certified 7/27/88).
Inspector/Management Planner Annual Review (Certified 6/1/89).
(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 Northwest Sixth Ave., Ft. Lauderdale, FL 33311, Contact: Mark Knick, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (Certified 10/6/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/6/89).
Contractor/Supervisor Annual Review (Certified 2/1/90).
(v)(a) *Training Provider:* Asbestos Removal Corp. of Maryland.
Address: 521-D Pulaski Highway, Joppa, MD 21085, Contact: John Therappas, Phone: (301) 679-6062.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).
(vi)(a) *Training Provider:* Atlantic Environmental Resources.
Address: 10111-B Bacon Dr., Beltsville, MD 20705, Contact: John Profitt, Phone: (301) 595-1737.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).
(vii)(a) *Training Provider:* BCM Engineers, Inc.
Address: 108 St. Anthony St., Mobile, AL 36602, Contact: H. Conrad Freeman, Phone: (205) 433-3981.
(b) *Approved Courses:*
Inspector/Management Planner Annual Review (Certified 9/1/89).
Project Designer Annual Review (Certified 9/1/89).
(viii)(a) *Training Provider:* Barco, Inc.
Address: 2439 N. Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).
(ix)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 369-3900.
(b) *Approved Courses:*
Abatement Worker (Certified 9/13/88).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 9/13/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 9/13/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).
(x)(a) *Training Provider:* Briggs Assoc. Inc.
Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Roos Voorhees, Phone: (301) 381-4434.
(b) *Approved Course:*
Abatement Worker (Certification Pending).

(xl)(a) *Training Provider:* Critical Environmental.
Address: 5615 Gulf Freeway, Houston, TX 77023, Contact: Ronald F. Dodson, Phone: (713) 921-8921.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).
(xli)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.
Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.
(b) *Approved Courses:*
Abatement Worker (Certified 5/11/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 5/11/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).
(xlii)(a) *Training Provider:* EME, Inc.
Address: P.O. Box 8643, Greensboro, NC 27408, Contact: Russ Luther, Phone: (919) 855-5752.
(b) *Approved Course:*
Abatement Worker (Certified 4/1/90).
(xliv)(a) *Training Provider:* Environmental Specialties, Inc.
Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 452-1212.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).
(xlv)(a) *Training Provider:* Fluor Daniel.
Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2166.
(b) *Approved Courses:*
Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).
(xlvi)(a) *Training Provider:* GST Company.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Courses:*
Abatement Worker (Certified 6/1/89).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor (Certified 6/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).
(xlvii)(a) *Training Provider:* Georgia Tech Research Group.
Address: Georgia Tech Institute of Technology, Atlanta, GA 30332, Contact: Vicki H. Ainslie, Phone: (404) 895-3806.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 4/1/89).
(xlviii)(a) *Training Provider:* Global Waste System Inc.
Address: Smith Reynolds Airport Hangar 14, Winston Salem, NC 27105, Contact: Carl Reid, Phone: (919) 744-9382.
(b) *Approved Courses:*
Abatement Worker (Certified 3/2/90).
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor (Certified 3/2/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).
(xlix)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.
(b) *Approved Courses:*
Abatement Worker (Certified 5/23/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/23/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).
Inspector/Management Planner Annual Review (Certified 2/1/90).
(l)(a) *Training Provider:* Harman Engineering Associates, Inc.
Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Schrimsher, Phone: (205) 821-9250.
(b) *Approved Course:*
Abatement Worker (Certified 9/21/89).
(li)(a) *Training Provider:* Hazard Abatement Consultants.
Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/89).
(lii)(a) *Training Provider:* Hercules Aerospace Co.
Address: Radford Army Ammunition Plant, Caller Service 1, Radford, VA 24141-0299, Contact: Lance Hudnall, Phone: (703) 639-7730.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 12/19/90).
Inspector Annual Review (Certified 10/30/90).
(liii)(a) *Training Provider:* Ind-Tra-Co., Ltd.
Address: 511 W. Grace St., Richmond, VA 23220, Contact: Ernest Drew, Phone: (804) 648-7836.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Abatement Worker Annual Review (Certified 3/1/89).
Contractor/Supervisor (Certified 3/7/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 3/7/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).
(liv)(a) *Training Provider:* Industrial Training & Support Services.
Address: P.O. Box 496, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.
(b) *Approved Courses:*
Abatement Worker (Certified 10/22/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 6/1/89).
(lv)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certified 12/1/89).
Inspector (Certification Pending).
(lvi)(a) *Training Provider:* Jenkins Professionals Inc.
Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.
(b) *Approved Courses:*
Abatement Worker (Certified 12/27/89).
Contractor/Supervisor (Certified 12/27/89).
(lvii)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund

Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-6148.
(b) *Approved Courses:*
Abatement Worker (Certified 6/8/88).
Abatement Worker Annual Review (Certified 6/1/89).
(lviii)(a) *Training Provider:* META.
Address: P.O. Box 1981, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6282.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).
(lix)(a) *Training Provider:* Marcus Environmental.
Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1555.
(b) *Approved Courses:*
Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).
(lx)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.
Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.
(b) *Approved Courses:*
Abatement Worker (Certified 5/19/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/19/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).
(lxi)(a) *Training Provider:* Medical College of Virginia, Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.
(b) *Approved Courses:*
Abatement Worker (Certified 12/6/87).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 3/8/87).
Contractor/Supervisor Annual Review (Certified 11/1/88).
Inspector/Management Planner (Certified 12/8/87).
Inspector/Management Planner Annual Review (Certified 1/1/88).
Project Designer (Certified 8/25/89).
(lxii)(a) *Training Provider:* Metropolitan Laboratories.
Address: P.O. Box 8821, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.
(b) *Approved Courses:*
Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).
(lxiii)(a) *Training Provider:* National Asbestos Council, Inc.
Address: 1777 Northeast Expressway, Route 150, Atlanta, GA 30329, Contact: Cynthia Clavon, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 10/1/89).
(lxiv)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.
Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2940.
(b) *Approved Courses:*
Abatement Worker (Certified 6/15/88).
Abatement Worker Annual Review (Certified 7/1/89).
(lxv)(a) *Training Provider:* OMC.
Address: 4451 Parliament Place, Lanham, MD 20706, Contact: Ellen J. Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor (Certified 8/25/89).
Contractor/Supervisor Annual Review (Certified 8/17/90).
(lxvi)(a) *Training Provider:* Old Dominion University.
Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 683-4256.
(b) *Approved Courses:*
Abatement Worker (Certified 6/8/88).
Abatement Worker Annual Review (Certified 5/1/89).
Contractor/Supervisor (Certified 6/8/88).
Contractor/Supervisor Annual Review (Certified 5/1/89).
Inspector/Management Planner (Certified 6/8/88).
Inspector/Management Planner Annual Review (Certified 4/1/89).
(lxvii)(a) *Training Provider:* Quality Specialties, Inc.
Address: One Westover Park, 501 Westover Ave., Hopewell, VA 23860, Contact: Bowen Hyatt, Phone: (804) 748-9637.
(b) *Approved Course:*
Abatement Worker Annual Review (Certified 7/20/90).
(lxviii)(a) *Training Provider:* Retra Services.
Address: 200 Oxford Blvd., Allison Park, PA 15101, Contact: David Servadi, Phone: (800) 229-8724.
(b) *Approved Courses:*
Abatement Worker (Certified 8/18/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/22/90).
Contractor/Supervisor Annual Review (Certified 2/1/90).
(lxix)(a) *Training Provider:* Roy F. Weston, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Michael Skotnick, Phone: (205) 826-6100.
(b) *Approved Course:*
Inspector/Management Planner (Certified 12/27/89).
(lxi)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.
(b) *Approved Courses:*
Abatement Worker (Certified 6/10/88).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).
(lxii)(a) *Training Provider:* State Council of Carpenters of Virginia.
Address: 3801 Jefferson Davis Hwy., Richmond, VA 23234, Contact: Frank Hollis, Phone: (804) 275-0701.
(b) *Approved Courses:*
Abatement Worker (Certified 6/31/89).
Contractor/Supervisor (Certified 6/31/89).
(lxiii)(a) *Training Provider:* The Environmental Institute.
Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.
(b) *Approved Course:*
Contractor/Supervisor Annual Review (Certified 12/1/89).
(lxiii)(a) *Training Provider:* The Francis L. Greenfield Institute.
Address: Route 8344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.
(b) *Approved Courses:*
Abatement Worker (Certified 10/10/88).
Abatement Worker Annual Review (Certified 10/1/89).
(lxiv)(a) *Training Provider:* The Glaser Company.
Address: 200 Kanawha Terrace, St. Albans, WV 25177, Contact: Gina Silbaugh, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 6/1/90).

Contractor/Supervisor Annual Review (Certified 6/1/90).

(xlv)(a) *Training Provider:* Tidewater Community College.

Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7196.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/89).

(xlvi)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.

Address: 106 Midmont Lake, Charlottesville, VA 22903, Contact: Gregory Pels, Phone: (804) 924-7114.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/88).

(xlvii)(a) *Training Provider:* Waco, Inc.

Address: 4407 Theodore Green Blvd., White Plains, MD 20695-0740, Contact: Wayne Cooper, Phone: (301) 870-3323.

(b) *Approved Courses:*

Abatement Worker (Certified 10/31/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 10/31/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).

(xlviii)(a) *Training Provider:* White Lung Association.

Address: 1601 St. Paul St., Baltimore, MD 21202, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 7/11/88).
Inspector/Management Planner Annual Review (Certified 2/1/90).

Washington

(24)(a) *State Agency:* Washington Department of Labor and Industries, Division of Industrial Safety and Health, Address: 300 West Harrison St., Seattle, WA 98119, Contact: James Catalano, Phone: (206) 281-5325.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 12/28/87).
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (interim from 12/28/87).
Contractor/Supervisor (full from 11/10/89).

(i)(a) *Training Provider:* Asbestos Training Project/Workplace Resources.

Address: 1906 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).

(ii)(a) *Training Provider:* Bison Engineering/Research.

Address: 1020 S. 344th No. 204, Federal Way, WA 98003, Contact: Don Hurst, Phone: (206) 838-7261.

(b) *Approved Course:*

Abatement Worker (Certified 5/12/87 to 5/12/89 only).

(iii)(a) *Training Provider:* Carpenters-Employers Apprenticeship & Training Trust Fund of Western Washington.

Address: 1709 Hickox Rd., Mt. Vernon, WA 98273, Contact: Emil Lippert, Phone: (206) 428-2933.

(b) *Approved Courses:*

Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., P.O. Box 30615, Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9282.

(b) *Approved Course:*

Abatement Worker (Certified 12/22/88 to 12/22/89 only).

(v)(a) *Training Provider:* Enviro-tec, Inc.

Address: 2825 - 152nd Ave. NE., Redmond, WA 98052, Contact: Lawrence Short, Phone: (206) 867-5111.

(b) *Approved Course:*

Abatement Worker (Certified 6/22/88 to 6/22/89 only).

(vi)(a) *Training Provider:* Environmental Health Sciences, Inc.

Address: 9 Lake Bellevue Bldg., Suite 104, Bellevue, WA 98005, Contact: Robert Gilmore, Phone: (206) 455-2959.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 3/1/88).

(vii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8056.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/89 to 1/10/90 only).

(viii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Ray Donahue, Phone: (206) 857-3222.

(b) *Approved Course:*

Abatement Worker (Certified 1/10/89 to 1/10/90 only).

(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc.

Address: 5319 SW. Westgate, No. 239, Portland, OR 97221, Contact: Peter Clark, Phone: (503) 292-9406.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).

(x)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 SW. Barbur Blvd., Suite 100, Portland, OR 97219, Contact: Harvey McGill, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 11/1/89).

(xi)(a) *Training Provider:* Hazcon, Inc.

Address: 5950 Sixth Ave. S., No. 200, Seattle, WA 98108, Contact: Mike Krausc, Phone: (206) 763-7364.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 3/1/86).
Contractor/Supervisor (Certified 11/1/89).

(xii)(a) *Training Provider:* Heavey Engineers, Inc.

Address: P.O. Box 832, Stevenson, WA 98648, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*

Abatement Worker (Certified 11/7/87 to 8/1/89 only).
Abatement Worker Annual Review (Certified 7/1/88 to 8/1/89 only).

(xiii)(a) *Training Provider:* Long Services.

Address: 8025 10th Ave. S., P.O. Box C 81435, Seattle, WA 98018-4498, Contact: Michael Cole, Phone: (206) 763-8422.

(b) *Approved Course:*

Abatement Worker (Certified 8/5/85).

(xiv)(a) *Training Provider:* M & M Environmental, Inc.

Address: 3902 N. 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 759-3443.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/86 to 2/4/90 only).
Abatement Worker Annual Review (Certified 1/1/89 to 2/4/90 only).

(xv)(a) *Training Provider:* NW Envirocon, Inc.

Address: 285 SW. 41 St., Renton, WA 98055, Contact: Matt Johnson, Phone: (206) 251-6033.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvi)(a) *Training Provider:* NW Envirocon, Inc.

Address: P.O. Box 188, Washoughal, WA 98671, Contact: Ed Hemsley, Phone: (206) 835-8570.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvii)(a) *Training Provider:* NW Laborers - Employers Training Trust Fund.

Address: 27055 Ohio Ave., Kingston, WA 98346, Contact: Harold Avery, Phone: (206) 297-3035.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/85).
Abatement Worker Annual Review (Certified 8/1/85).

(xviii)(a) *Training Provider:* NW Washington Painting, Drywall Joint Apprenticeship Committee.

Address: 6770 E. Marginal Way S., Seattle, WA 98108, Contact: Paul Norling, Phone: (206) 762-8332.

(b) *Approved Courses:*

Abatement Worker (Certified 5/25/88 to 6/30/89 only).
Abatement Worker Annual Review (Certified 5/25/88 to 6/30/89 only).

(xix)(a) *Training Provider:* Oregon, Southern Idaho, Wyoming, SW Washington Apprenticeship.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Larry Porter, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/85).
Abatement Worker Annual Review (Certified 9/1/85).

(xx)(a) *Training Provider:* Prezant Associates, Inc.

Address: 711 8th Ave. N., Suite 200, Seattle, WA 98109, Contact: Sue Nelson, Phone: (206) 281-8858.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/88).
Abatement Worker Annual Review (Certified 8/1/88).
Contractor/Supervisor (Certified 9/1/89).

(xxi)(a) *Training Provider:* Seattle Area Roofers Joint Apprenticeship Committee.

Address: 2800 1st Ave., Rm. 318, Seattle, WA 98121, Contact: Pat Gilliland, Phone: (206) 728-2777.

(b) *Approved Course:*

Abatement Worker (Certified 1/28/90).

Wisconsin

(25)(a) *State Agency:* Department of Health & Social Services Division of Health, Address: 1414 East Washington Ave., Rm. 117, Madison, WI 53703, Contact: Regina Cowell, Phone: (608) 267-2289.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Aerostat Environmental Engineering.

Address: P.O. Box 3096, 2517 Atchison Ave., Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Course:*

Project Designer (Certified 4/9/90).

(ii)(a) *Training Provider:* Biological & Environmental Control Laboratories Inc.

Address: 615 Front St., Toledo, OH 43605, Contact: James Burk, Phone: (419) 693-5307.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 4/11/90).
Inspector/Management Planner (Certified 3/28/90).

(iii)(a) *Training Provider:* Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.

(b) *Approved Course:*

Abatement Worker (Certified 5/8/90).

(iv)(a) *Training Provider:* Daniel J. Hartwig & Associates.

Address: P.O. Box 80, Oregon, WI 53575, Contact: Naomi Gray, Phone: (608) 835-5761.

(b) *Approved Courses:*

Abatement Worker (Certified 8/14/90).
Abatement Worker Annual Review (Certified 3/2/90).
Contractor/Supervisor (Certified 8/14/90).
Contractor/Supervisor Annual Review (Certified 3/2/90).
Inspector/Management Planner (Certified 6/27/90).
Inspector/Management Planner Annual Review (Certified 2/28/90).

(v)(a) *Training Provider:* Environmental Rehab. Inc.

Address: 1030 Parkview Rd., Greenbay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/90).
Abatement Worker Annual Review (Certified 5/8/90).

(vi)(a) *Training Provider:* Good Armstrong and Associates.

Address: 7709 West Beloit Rd., Milwaukee, WI 53219, Contact: Bonnie Good, Phone: (414) 541-6740.

(b) *Approved Courses:*

Abatement Worker (Certified 3/29/90).
Abatement Worker Annual Review (Certified 6/1/90).
Contractor/Supervisor (Certified 3/29/90).
Contractor/Supervisor Annual Review (Certified 6/1/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 9/14/90).

(vii)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: 901 Kentucky, Suite 305, P.O. Box 786, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (800) 444-6381.

(b) *Approved Courses:*

Abatement Worker (Certified 12/19/90).
Abatement Worker Annual Review (Certified 5/17/90).
Contractor/Supervisor (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 8/20/90).

(viii)(a) *Training Provider:* Milwaukee Asbestos Information Center MAIC.

Address: 2224 S. Kinnickinnic Dr., Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (414) 747-0700.

(b) *Approved Courses:*

Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 10/15/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 10/15/90).
Inspector/Management Planner (Certified 12/6/90).
Inspector/Management Planner Annual Review (Certified 12/6/90).
Project Designer (Certified 6/27/90).
Project Designer Annual Review (Certified 6/27/90).

(ix)(a) *Training Provider:* National Asbestos Council (NAC).

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2822.

(b) *Approved Courses:*

Abatement Worker (Certified 5/9/90).
Abatement Worker Annual Review (Certified 5/9/90).

(x)(a) *Training Provider:* Northland Environmental Services Inc.
Address: 15 Park Ridge Dr., Stevens Point, WI 54481, Contact: Robert Voborsky, Phone: (715) 341-9699.
(b) *Approved Courses:*
Abatement Worker (Certified 7/11/90).
Abatement Worker Annual Review (Certified 7/11/90).
Contractor/Supervisor (Certified 7/11/90).
Contractor/Supervisor Annual Review (Certified 7/11/90).
Inspector/Management Planner (Certified 10/22/90).
Inspector/Management Planner Annual Review (Certified 10/22/90).
(xi)(a) *Training Provider:* PSI-Hall-Kimbrell.
Address: 72 Executive Dr., Suite 434, Aurora, IL 60504-8137, Contact: Greg Corder, Phone: (708) 898-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).
(xii)(a) *Training Provider:* University of Wisconsin College of Engineering.
Address: 432 N. Lake Dr., Madison, WI 53706, Contact: Michael Waxman, Phone: (608) 262-2101.
(b) *Approved Courses:*
Project Designer (Certified 11/5/90).
Project Designer Annual Review (Certified 11/5/90).
(xiii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc. (WAAT).
Address: North 9420 Lakeshore Dr., Van Dyne, WI 54979, Contact: Jerry Martin, Phone: (800) 236-8123.
(b) *Approved Courses:*
Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).
Contractor/Supervisor (Certified 4/9/90).
Contractor/Supervisor Annual Review (Certified 4/9/90).
(xiv)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Route 1, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 10/16/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

EPA-Approved Training Courses

REGION I – Boston, MA

Regional Asbestos Coordinator: James Bryson, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3835.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Applied Occupational Health Systems.
Address: P.O. Box 894, Concord, NH 03301, Contact: Karen Long, Phone: (603) 228-3610.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/13/90).
Abatement Worker Refresher Course (contingent from 7/20/90).
Contractor/Supervisor (contingent from 3/13/90).
Contractor/Supervisor Refresher Course (contingent from 7/20/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 7/19/90).
(2)(a) *Training Provider:* Brooks Safe & Sound, Inc.
Address: 44 Codfish Ln., Weston, CT 06883, Contact: Keith Brooks, Phone: (203) 226-6970.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/27/89).
Abatement Worker Refresher Course (contingent from 11/27/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor Refresher Course (contingent from 11/27/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).
(3)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1196.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).
(4)(a) *Training Provider:* Ecosystems, Inc.
Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/5/87).
(5)(a) *Training Provider:* Enviromed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker (full from 1/12/90).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor (full from 1/12/90).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 1/30/89).
(6)(a) *Training Provider:* Environmental Training Services Inc.
Address: 62-H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.
(b) *Approved Course:*
Abatement Worker (contingent from 4/22/88).
(7)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Mary Beth Carver, Phone: (617) 723-4664.
(b) *Approved Course:*
Inspector (contingent from 10/2/87).
(8)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.
Address: 915 Bridgeport Ave., Shelton, CT 06484, Contact: Angela D. Rath, Phone: (203) 929-1131.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).

Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).
(9)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk, Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/28/89).
Project Designer (full from 6/7/90).
Project Designer Refresher Course (contingent from 8/8/89).
Project Designer Refresher Course (full from 4/5/90).
(10)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.
Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 265-3547.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 7/27/88).
(11)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box V, Augusta, ME 04332-1042, Contact: Diana White, Phone: (207) 622-7823.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/87).
Abatement Worker (full from 3/22/90).
Abatement Worker Refresher Course (contingent from 10/17/88).
Abatement Worker Refresher Course (full from 5/25/90).
Contractor/Supervisor (contingent from 5/18/87).
Contractor/Supervisor (full from 3/2/90).
Contractor/Supervisor Refresher Course (full from 3/26/88).
(12)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: Route 97 & Murdock Rd., P.O. Box 77, Pomfret Center, CT 06259, Contact: Gennaro Lepore, Phone: (203) 974-1455.
(b) *Approved Course:*
Abatement Worker (contingent from 5/25/89).
(13)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748-2899, Contact: Jim Merloni, Jr., Phone: (617) 435-6316.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).
(14)(a) *Training Provider:* Radiation Safety Associates, Inc.
Address: P.O. Box 107, 10 Pendleton Dr., Hebron, CT 06248, Contact: K. Paul Steinmeyer, Phone: (203) 228-0487.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).
(15)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

REGION II – Edison, NJ

Acting Regional Asbestos Coordinator: Albert Kramer, EPA, Region II, 2890 Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6793, (FTS) 340-6793.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* AAC Contracting, Inc.
Address: 243 Paul Rd., Rochester, NY 14624, Contact: Mario DiNottia, Phone: (716) 328-7010.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/8/89).
Abatement Worker (full from 1/25/90).
(2)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10010, Contact: David V. Chambers, Phone: (212) 353-8280.
(b) *Approved Courses:*
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).
Inspector/Management Planner (full from 3/8/89).
(3)(a) *Training Provider:* Abatement Safety Training Institute.
Address: 323 West 39th St., New York, NY 10018, Contact: Rosemarie Bascianilli, Phone: (212) 629-8400.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/88).
Abatement Worker (full from 12/11/89).
Contractor/Supervisor (contingent from 10/25/88).
Contractor/Supervisor (full from 2/9/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).
(4)(a) *Training Provider:* Adelaide Environmental Health Associates.
Address: 61 Front St., Binghamton, NY 13905-4705, Contact: William S. Carter, Phone: (607) 722-6839.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).
(5)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).
Address: P.O. Box 1346, Schenectady, NY 12301, Contact: Kevin Pilgrim, Phone: (518) 374-4801.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/8/89).
(6)(a) *Training Provider:* Allegheny Council on Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.
(b) *Approved Course:*
Abatement Worker (contingent from 7/26/89).
(7)(a) *Training Provider:* Allwash of Syracuse, Inc.

BEST COPY AVAILABLE

Address: P.O. Box 606, Syracuse, NY 13201, Contact: Paul D. Watson, Phone: (315) 454-4476.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/16/87).
Abatement Worker (full from 12/7/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/30/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).

(8)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.

Address: Barclay Pavilion E, Suite 222, Route 70, Cherry Hill, NJ 08034, Contact: Linda A. Pardi, Phone: (609) 795-1991.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/88).
Abatement Worker (full from 12/1/89).
Contractor/Supervisor (contingent from 4/11/88).
Contractor/Supervisor (full from 12/1/89).
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/28/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 2/14/90).

(9)(a) *Training Provider:* Anderson International.

Address: RD 2, North Main Street Extension, Jamestown, NY 14701, Contact: Sally L. Gould, Phone: (716) 664-4028.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 9/23/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/24/90).

(10)(a) *Training Provider:* Applied Respiratory Technology.

Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Paul M. Madigan, Phone: (914) 265-4330.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Abatement Worker Refresher Course (full from 11/21/90).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).

(11)(a) *Training Provider:* Asbestos Control Management, Inc.

Address: 126 South Third St., Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.

(b) *Approved Course:*

Abatement Worker (contingent from 5/5/89).

(12)(a) *Training Provider:* Asbestos Training Academy, Inc.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: S. J. Sieracki, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88 to 12/28/90 only).
Abatement Worker (full from 11/7/88 to 12/28/90 only).
Contractor/Supervisor (contingent from 9/15/88 to 12/28/90 only).
Contractor/Supervisor (full from 11/7/88 to 12/28/90 only).
Inspector (contingent from 4/27/89 to 12/28/90 only).
Inspector (full from 1/24/90 to 12/28/90 only).

(13)(a) *Training Provider:* Asteco, Inc.

Address: 140 Telegraph Rd., P.O. Box 179, Middleport, NY 14105, Contact: Claudine R. Larocque, Phone: (716) 735-3894.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker (full from 4/13/88).
Abatement Worker Refresher Course (contingent from 12/20/88).

(14)(a) *Training Provider:* Astoria Industries, Inc.

Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary DiPaolo, Jr., Phone: (718) 387-0011.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (contingent from 9/20/89).
Contractor/Supervisor (full from 1/4/90).
Inspector (contingent from 1/18/89).

(15)(a) *Training Provider:* BOCES-Albany-Schoharie-Schenectady Counties.

Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/20/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 7/31/89).
Contractor/Supervisor (contingent from 7/20/89).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(16)(a) *Training Provider:* BOCES-Cayuga-Onondaga Counties.

Address: 234 South St. Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.

(b) *Approved Course:*

Abatement Worker (contingent from 6/17/88).

(17)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.

Address: 431 Philo Road, Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/89).
Abatement Worker Refresher Course (contingent from 6/1/89).
Abatement Worker Refresher Course (full from 7/31/90).
Contractor/Supervisor (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (full from 7/31/90).
Inspector/Management Planner Refresher Course (contingent from 6/1/89).
Inspector/Management Planner Refresher Course (full from 4/18/90).

(18)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.

Address: 507 Deer Park Rd., Dix Hills, NY 11746, Contact: Ciro Aiello, Phone: (516) 667-6000 Ext. 300.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/6/89).
Abatement Worker (full from 11/27/89).
Contractor/Supervisor (contingent from 2/6/89).

(19)(a) *Training Provider:* Board of Cooperative Educational Services of Rensselaer, Columbia & Green Counties of New York.

Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Paul D. Bowler, Phone: (518) 732-7266.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 3/22/90).
Inspector/Management Planner (contingent from 4/10/89).

(20)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing Ed.

Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Edward J. Milliken, Phone: (516) 563-6159.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).
Abatement Worker (full from 10/11/90).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 5/17/90).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor (full from 5/9/90).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).

(21)(a) *Training Provider:* Branch Services, Inc.

Address: 1255 Lakeland Ave., Bohemia, NY 11716, Contact: Luis Sanders, Phone: (516) 563-7300.

(b) *Approved Course:*

Abatement Worker (contingent from 6/1/89).

(22)(a) *Training Provider:* Buffalo Laborers Training Fund.

Address: 1370 Seneca St., Buffalo, NY 14210-1647, Contact: Victor J. Sansanese, Phone: (716) 825-0883.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 3/9/90).
Abatement Worker Refresher Course (contingent from 8/8/89).

(23)(a) *Training Provider:* Building Laborers Local Union No. 17.

Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562-1121.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(24)(a) *Training Provider:* Calibrations, Inc.

Address: 802 Watervliet - Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 3/6/89).
Abatement Worker Refresher Course (full from 9/6/90).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 3/6/89).
Inspector/Management Planner (contingent from 9/28/88).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
Inspector/Management Planner Refresher Course (full from 5/2/90).
Project Designer (full from 5/23/88).
Project Designer Refresher Course (contingent from 3/6/89).

(25)(a) *Training Provider:* Comprehensive Analytical Group.

Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: Susan Richardson, Phone: (315) 432-1332.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 2/16/90).
Abatement Worker Refresher Course (contingent from 4/25/89).
Abatement Worker Refresher Course (full from 3/27/90).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 2/16/90).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 3/27/90).
Inspector (contingent from 10/27/89).

(26)(a) *Training Provider:* Ecology & Environment, Inc.

Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.

(b) *Approved Course:*

Inspector/Management Planner Refresher Course (contingent from 4/7/89).

(27)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.

Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-6001.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/20/88).
Abatement Worker Refresher Course (full from 10/22/88).

(28)(a) *Training Provider:* Edward O. Watts & Associates.

Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4827.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 1/20/90).
Abatement Worker Refresher Course (contingent from 3/3/89).
Contractor/Supervisor (contingent from 7/12/89).
Contractor/Supervisor (full from 1/20/90).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).

(29)(a) *Training Provider:* General Bldg. Laborer's Local Union No. 66.

Address: 288 Middle Island Rd., Medford, NY 11763, Contact: Peter Purrazzella, Phone: (516) 698-2280.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 12/1/89).

(30)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.

Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).

(31)(a) *Training Provider:* Hudson Asbestos Training Institute.

Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2656.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 3/13/89).
Contractor/Supervisor (contingent from 1/30/89).

(32)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.

(b) *Approved Courses:*

Abatement Worker (full from 7/1/88).
Abatement Worker Refresher Course (contingent from 6/20/89).
Contractor/Supervisor (full from 7/1/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/89).
Inspector/Management Planner (contingent from 12/21/89).

(33)(a) *Training Provider:* Hygeia Research & Training.

Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/88).
Abatement Worker (full from 5/6/88).

Abatement Worker Refresher Course (contingent from 12/12/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/8/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/88).
Contractor/Supervisor Refresher Course (full from 1/17/90).

(34)(a) *Training Provider:* Institute of Asbestos Awareness.

Address: 2 Heitz Pl., Suite 1000, Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.

(b) *Approved Courses:*

Abatement Worker (full from 10/24/88 to 10/12/90 only).
Abatement Worker Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Contractor/Supervisor (full from 10/24/88 to 10/12/90 only).
Contractor/Supervisor Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Inspector/Management Planner (contingent from 9/28/88 to 10/12/90 only).
Inspector/Management Planner (full from 3/2/89 to 10/12/90 only).
Inspector/Management Planner Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Project Designer (contingent from 9/28/89 to 10/12/90 only).

(35)(a) *Training Provider:* Institute of Asbestos Technology Corp.

Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/89).
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 12/20/88).
Abatement Worker Refresher Course (full from 6/15/90).
Contractor/Supervisor (contingent from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 10/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/27/89).

(36)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.

Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/15/89).
Abatement Worker (full from 3/16/90).
Contractor/Supervisor (contingent from 3/27/89).
Inspector/Management Planner (contingent from 2/12/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (full from 4/27/89).

(37)(a) *Training Provider:* Korean Asbestos Training Center.

Address: 46-12 Queens Blvd, Long Island City, NY 11104, Contact: Tchang S. Bahrk, Phone: (718) 361-6464.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/11/89).
Abatement Worker (full from 4/25/90).
Abatement Worker Refresher Course (contingent from 5/22/89).
Abatement Worker Refresher Course (full from 4/19/90).
Contractor/Supervisor (contingent from 5/11/89).
Contractor/Supervisor (full from 5/19/90).
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(38)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.

Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 2/15/89).
Contractor/Supervisor (contingent from 10/7/89).

(39)(a) *Training Provider:* Lozier Architects/Engineers.

Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Coyne, Phone: (716) 223-7610.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/12/89).
Abatement Worker Refresher Course (contingent from 7/12/89).

(40)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.

Address: 444 Park Ave. South, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/15/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 3/7/90).
Contractor/Supervisor (contingent from 10/18/88).
Contractor/Supervisor (full from 12/5/88).

(41)(a) *Training Provider:* Monroe Community College of Rochester, New York.

Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 272-9839.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 4/26/89).

(42)(a) *Training Provider:* National Asbestos Training Institute (NATI).

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/1/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 12/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Contractor/Supervisor Refresher Course (full from 1/31/90).
Inspector/Management Planner (contingent from 6/13/88).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 5/25/89).
Inspector/Management Planner Refresher Course (full from 1/31/90).
Project Designer (contingent from 11/3/89).
Project Designer (full from 2/7/90).
Project Designer Refresher Course (contingent from 10/20/89).
Project Designer Refresher Course (full from 7/13/90).

(43)(a) *Training Provider:* National Institute on Abatement Science & Technology (NIAST).

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Inspector (contingent from 3/8/88).
Inspector (full from 4/11/88).

(44)(a) *Training Provider:* New York University School of Continuing Education.

Address: 11 West 42nd St., New York, NY 10036, Contact: Charles Schwartz, Phone: (212) 790-1647.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/18/89).
Abatement Worker (full from 11/17/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 5/18/89).
Contractor/Supervisor (full from 11/17/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 5/18/89).
Inspector/Management Planner (full from 12/8/89).
Inspector/Management Planner Refresher Course (contingent from 6/8/89).
Inspector/Management Planner Refresher Course (full from 3/27/90).
Project Designer (contingent from 5/18/89).
Project Designer (full from 1/10/90).
Project Designer Refresher Course (contingent from 6/8/89).

(45)(a) *Training Provider:* Niagara County Community College.

Address: Corporate Training Center, P.O. Box 70, Lockport, NY 14095, Contact: Eugene Zinni, Phone: (716) 433-1856.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 9/14/90).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor (full from 2/19/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 5/18/88).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).

(46)(a) *Training Provider:* Northeastern Analytical Corporation.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Robert Howlitt, Phone: (609) 985-8000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).

(47)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.

Address: 5000 Brittonfield Pkwy., P.O. Box 4873, Syracuse, NY 13221, Contact: Michael P. Quirk, Phone: (315) 437-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/19/89).
Abatement Worker (full from 4/10/89).
Abatement Worker Refresher Course (contingent from 9/21/88).
Contractor/Supervisor (contingent from 1/19/89).
Contractor/Supervisor (full from 4/10/89).
Contractor/Supervisor Refresher Course (contingent from 9/21/88).
Inspector/Management Planner (full from 10/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (full from 1/17/90).

(48)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.

Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/18/90).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/18/90).

(49)(a) *Training Provider:* P.A. Environmental Corp.

Address: 4240-24F Hutchinson River Pkwy. E., Bronx, NY 10475, Contact: Pichai Arjarasumpun, Phone: (212) 379-8716.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/31/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).

(50)(a) *Training Provider:* Paradigm Environmental Services, Inc.

Address: 991 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Marsha R. Cummings, Phone: (716) 647-2530.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/89).
Abatement Worker Refresher Course (contingent from 10/3/89).
Contractor/Supervisor (contingent from 12/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(51)(a) *Training Provider:* Princeton Testing Laboratory, Inc.

Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/21/88).

(52)(a) *Training Provider:* Puerto Rico Environmental Consultants and Training Center, Inc.

Address: Cond. Banco Cooperativo Plaza Office, 302-B, Hato Rey, PR 00917, Contact: Roberto Berberena, Phone: (809) 250-6052.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/1/89).
Abatement Worker Refresher Course (contingent from 11/26/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 11/20/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/20/89).

(53)(a) *Training Provider:* R. J. Fletcher, Inc.

Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-0141.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).

(54)(a) *Training Provider:* SUNY College of Technology at Farmingdale.

Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: Charles Erlanger, Phone: (516) 420-2000.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner (full from 4/27/90).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).

(55)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 1767, Williamsville, NY 14231, Contact: L. J. Beenau or Cronan Long, Phone: (716) 632-0707.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/4/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/8/88).
Contractor/Supervisor (full from 4/4/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).

(56)(a) *Training Provider:* Safety Training, Inc.
Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.
(b) *Approved Course:*
Abatement Worker (contingent from 4/25/88).

(57)(a) *Training Provider:* State University of New York at Buffalo Toxicology Research Center.
Address: 111 Farber Hall, Buffalo, NY 14214, Contact: Paul J. Kostyniak or J. Syracuse, Phone: (716) 831-2125.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/89).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 10/19/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(58)(a) *Training Provider:* State of New Jersey Dept. of Health.
Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(59)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.
Address: 518 Clinton Ave., Albany, NY 12206, Contact: George W. Stowell, Phone: (518) 436-4114.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/15/88).
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 6/20/89).
Contractor/Supervisor Refresher Course (contingent from 10/15/90).

(60)(a) *Training Provider:* Tri-Cities Laborers Training Program.
Address: 666 Wemple Road, Box 100, Glenmont, NY 12077, Contact: Joseph A. Zappone, Phone: (518) 370-3463.
(b) *Approved Courses:*
Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/26/88).
Abatement Worker Refresher Course (full from 2/2/89).

(61)(a) *Training Provider:* Union Occupational Health Center.
Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/17/89).

(62)(a) *Training Provider:* Univ. Med. & Dentistry of N.J. Robert Wood Med. School, Mid-Atlantic Asbestos Training Center.
Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (interim from 7/28/88 to 10/17/89).
Abatement Worker (full from 10/17/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (interim from 7/28/88 to 10/17/89).
Contractor/Supervisor (full from 10/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (full from 11/16/88).
Project Designer (contingent from 11/20/89).
Project Designer Refresher Course (contingent from 10/17/89).

(63)(a) *Training Provider:* Utilicom Corp.
Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Jackie Aab, Phone: (716) 381-8710.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 4/21/89).

(64)(a) *Training Provider:* Warren Mas Associates.
Address: RD 3, Box 390, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-8386.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).
Abatement Worker Refresher Course (full from 3/20/90).

(65)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker (full from 1/24/88).

(66)(a) *Training Provider:* Wetlands & Environmental Technologies, Inc.
Address: 88 Willow Ave., Hackensack, NJ 07601, Contact: John J. Borris, Phone: (201) 361-4799.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 11/8/89).
Project Designer (contingent from 11/8/89).

(67)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manasia, Phone: (212) 619-2270.
(b) *Approved Course:*
Inspector (contingent from 2/23/89).

(68)(a) *Training Provider:* White Lung Association of New Jersey.
Address: 901 Broad St., Newark, NJ 07102, Contact: Antonio Legorreta, Phone: (201) 824-2623.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner (full from 5/18/90).

(69)(a) *Training Provider:* Zola Sookias Associates Environmental Consultants.
Address: 545 Eighth Ave., Suite 401, New York, NY 10018, Contact: Zola Sookias, Phone: (212) 330-0914.
(b) *Approved Courses:*

Abatement Worker (contingent from 10/8/89).
Contractor/Supervisor (contingent from 10/8/89).

REGION III – Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3AM-32), 841 Chestnut Bldg., Philadelphia, PA 19107. (215)597-3160, (FTS) 597-3160.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anna Marie Sossong, Phone: (717) 257-1300.
(b) *Approved Courses:*
Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Advance Analytical Laboratories Inc.
Address: 30th & North Church Sts., Hazleton, PA 18201, Contact: Steven L. Hahn, Phone: (717) 788-6155.
(b) *Approved Courses:*
Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(3)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (301) 684-3327.
(b) *Approved Courses:*
Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 9/1/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 9/1/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner (full from 3/31/89).

(4)(a) *Training Provider:* Alcam, Inc.
Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2780
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(5)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.
Address: 416 7th St., SE., 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/18/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 2/22/90).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (full from 2/22/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(6)(a) *Training Provider:* American Asbestos Training Institute, Inc.
Address: 2136 Arch St., Philadelphia, PA 19103, Contact: Linda McNeil, Phone: (215) 988-8710.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(7)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.
Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 7/21/89).

(8)(a) *Training Provider:* Apex Environmental, Inc.
Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(9)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1888 Common St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2324.
(b) *Approved Courses:*
Abatement Worker (full from 6/17/87).
Contractor/Supervisor (full from 6/17/87).

(10)(a) *Training Provider:* Asbestos Analytical Association, Inc.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0695.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(11)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.
Address: P.O. Box 28, Timonium, MD 21093, Contact: David George, Phone: (301) 584-7490.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(12)(a) *Training Provider:* Asbestos Removal Co.
Address: 521 D Pulaski Hwy., Joppa, MD 21085, Contact: Nick Thrappas, Phone: (301) 679-8662.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/88).

(13)(a) *Training Provider:* Asbestos Training Center.
Address: 628 Spring St., Fairmont, WV 26554, Contact: Theodore Jackson, Phone: (304) 363-3603.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 6/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/20/90).
Inspector Refresher Course (contingent from 6/28/88).

(14)(a) *Training Provider:* Asbestos Workers Local Union No. 24.
Address: 6713 Annendale Rd., Beltsville, MD 20705, Contact: Thomas Hess, Phone: (301) 937-7666.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker Refresher Course (contingent from 12/1/88).

Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(15)(a) *Training Provider:* Associated Thermal Services.
Address: 121 Edgewood Ave., Pittsburgh, PA 15218, Contact: Renee Yuhasz, Phone: (412) 247-4003.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 4/20/90).
Contractor/Supervisor (contingent from 12/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/90).
Inspector/Management Planner (contingent from 12/11/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/90).
Project Designer (contingent from 12/11/89).
Project Designer Refresher Course (contingent from 4/20/90).

(16)(a) *Training Provider:* Atlantic Environmental Resources Inc.
Address: 10111-B-Bacon Dr., Beltsville, MD 20705, Contact: John E Kee, Phone: (301) 595-1014.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(17)(a) *Training Provider:* BARCO Enterprises, Inc.
Address; 2439 North Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(18)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.
(b) *Approved Courses:*
Abatement Worker (full from 10/1/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Abatement Worker Refresher Course (full from 10/31/88).
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (full from 10/31/88).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner (full from 8/15/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(19)(a) *Training Provider:* Briggs Associates, Inc.
Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 1/26/90).
Contractor/Supervisor (full from 1/12/90).

(20)(a) *Training Provider:* Brujos Scientific, Inc.
Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.
(b) *Approved Courses:*
Abatement Worker (full from 11/21/88).
Contractor/Supervisor (contingent from 9/29/88).

(21)(a) *Training Provider:* Business Industrial Safety Supplies.
Address: 118 East Patapsco Ave., Baltimore, MD 21225, Contact: Ronald Mace, Phone: (301) 354-2477.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/20/89).

(22)(a) *Training Provider:* Calvert Asbestos Training Services Inc.
Address: P.O. Box 799, Huntingtown, MD 20639, Contact: Carol F. Newhouse, Phone: (301) 535-0960.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/90).
Contractor/Supervisor (contingent from 8/1/90).
Inspector/Management Planner (contingent from 8/1/90).
Project Designer (contingent from 8/1/90).

(23)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 10/13/89).

(24)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.
Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 10/6/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor (full from 11/27/89).
Contractor/Supervisor Refresher Course (full from 11/27/89).

(25)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.
Address: 814 East Pittsburgh Plaza, Pittsburgh, PA 15112, Contact: David Ginsburg, Phone: (412) 823-1002.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 12/8/88).
Abatement Worker Refresher Course (full from 1/19/89).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 12/8/88).
Contractor/Supervisor Refresher Course (full from 1/19/89).
Inspector/Management Planner (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/1/89).
Project Designer (contingent from 6/29/89).
Project Designer (full from 12/21/89).
Project Designer Refresher Course (contingent from 12/13/89).

(26)(a) *Training Provider:* Center for Hazardous Materials Research.
Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/28/88).
Contractor/Supervisor (contingent from 11/28/88).

(27)(a) *Training Provider:* Charles County Community College.
Address: Mitchell Rd., Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker Refresher Course (contingent from 4/20/89).

Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(28)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus/Stanton Campus.
Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 454-3900.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/88).
Abatement Worker Refresher Course (contingent from 3/1/88).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 3/1/88).

(29)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.
Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2156.
(b) *Approved Courses:*
Abatement Worker (interim from 9/1/86 to 11/11/87).
Abatement Worker (full from 11/12/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 9/1/86 to 11/11/87).
Contractor/Supervisor (full from 11/12/87).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 3/8/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/19/90).
Project Designer (contingent from 11/27/89).

(30)(a) *Training Provider:* Dynamac Corp.
Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 3/2/89).
Inspector/Management Planner (contingent from 9/1/88).
Inspector/Management Planner Refresher Course (contingent from 6/28/89).

(31)(a) *Training Provider:* E.I. DuPont De Nemours & Co. Spruance Plant.
Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.
(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).

(32)(a) *Training Provider:* Eagle Industrial Hygiene Association Inc.
Address: 359 Dresher Rd., Horsham, PA 19044, Contact: Stephen R. Bell, Phone: (215) 657-2261.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Abatement Worker (full from 7/14/89).
Abatement Worker Refresher Course (contingent from 10/30/89).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor (full from 7/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/30/89).
Inspector/Management Planner (contingent from 5/16/89).
Inspector/Management Planner Refresher Course (contingent from 7/20/89).
Project Designer (contingent from 12/11/89).

(33)(a) *Training Provider:* Environmental Education Associates.
Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).

(34)(a) *Training Provider:* Environmental Training & Consultants, Inc.
Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Abatement Worker Refresher Course (contingent from 1/13/90).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor Refresher Course (contingent from 1/13/90).
Inspector/Management Planner (contingent from 4/6/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/90).

(35)(a) *Training Provider:* Environmental Training, Inc.
Address: 10 Industrial Hwy., Building N, Tinicum Industrial Park, Philadelphia, PA 19113, Contact: Gary D. Hyrne, Phone: (215) 521-5469.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).

(36)(a) *Training Provider:* Facilities Management Consultants, Inc.
Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 7/21/89).
Abatement Worker Refresher Course (full from 10/5/89).
Contractor/Supervisor (full from 10/18/88).
Contractor/Supervisor Refresher Course (contingent from 7/21/89).
Contractor/Supervisor Refresher Course (full from 10/5/89).

(37)(a) *Training Provider:* GA Environmental Services, Inc.
Address: Pier 5 Penn's Landing, Philadelphia, PA 19106, Contact: Frank E. Cona, Phone: (215) 351-4045.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/7/89).
Project Designer (contingent from 8/17/89).
Project Designer Refresher Course (contingent from 12/13/89).

(38)(a) *Training Provider:* GST Co.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7486.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 1/30/89).
Contractor/Supervisor (contingent from 11/14/88).

Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/12/89).

(39)(a) *Training Provider:* Galson Technical Services, Inc.
Address: 5170 Campus Dr., Suite 290, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/17/88).

(40)(a) *Training Provider:* General Physics Corp.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(41)(a) *Training Provider:* Genty Associates.
Address: 6080 Woodland Ave., Philadelphia, PA 19143, Contact: Frank Genty, Phone: (215) 727-4420.
(b) *Approved Course:*
Abatement Worker (contingent from 9/14/89).

(42)(a) *Training Provider:* Gerald T. Fenton, Inc.
Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).

(43)(a) *Training Provider:* Hazard Abatement Training Center.
Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0630.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 4/12/88).

(44)(a) *Training Provider:* Hazardous Materials Management.
Address: 932 West Patipso Ave., Baltimore, MD 21230, Contact: Anthony Bizzari, Phone: (301) 355-6566.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(45)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.
Address: P.O. Box 395, Moon-Clinton Rd., Clinton, PA 15026, Contact: Terry Larkin, Phone: (412) 695-2883.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/25/88).
Abatement Worker (full from 10/27/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 8/28/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (full from 8/3/89).

(46)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.
Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Joe Klocek, Phone: (717) 564-7563.
(b) *Approved Course:*
Abatement Worker (contingent from 10/20/88).

(47)(a) *Training Provider:* Ind. Tra. Co. Ltd.
Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (full from 9/16/88).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(48)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.
Address: 315 - 317 North Washington St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 3/20/90).
Abatement Worker Refresher Course (contingent from 6/6/90).

(49)(a) *Training Provider:* JMR Associates.
Address: P.O. Box 9895, Philadelphia, PA 19140, Contact: Joseph Faulk, III, Phone: (215) 227-3035.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/24/89).
Abatement Worker (full from 9/15/89).
Contractor/Supervisor (contingent from 8/24/89).
Contractor/Supervisor (full from 9/15/89).

(50)(a) *Training Provider:* Jenkins Professionals, Inc.
Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 11/1/89).

(51)(a) *Training Provider:* John H. Lange Associates.
Address: 4623 Northridge Dr., Pittsburgh, PA 15235-3510, Contact: John H. Lange, Phone: (412) 733-1446.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/9/90).
Abatement Worker Refresher Course (contingent from 10/15/89).
Contractor/Supervisor (contingent from 7/9/90).
Contractor/Supervisor Refresher Course (contingent from 10/15/89).
Inspector/Management Planner (contingent from 7/9/90).
Inspector/Management Planner Refresher Course (contingent from 10/15/89).
Project Designer (contingent from 7/9/90).
Project Designer Refresher Course (contingent from 10/15/89).

(52)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.
Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1860.
(b) *Approved Course:*
Abatement Worker (contingent from 4/10/89).

(53)(a) *Training Provider:* Laborers District Council of Eastern Pennsylvania.
Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/88).
Abatement Worker (full from 1/30/89).

Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 3/20/90).

(54)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.
Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-8533.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 6/17/89).

(55)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.
Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 636-1175.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/18/88).
Contractor/Supervisor (contingent from 4/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(56)(a) *Training Provider:* Marcus Environmental.
Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1855.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(57)(a) *Training Provider:* Maryland Department of the Environment.
Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/16/89).
Contractor/Supervisor (contingent from 11/16/89).
Inspector/Management Planner (contingent from 4/14/89).

(58)(a) *Training Provider:* Maryland Industrial Safety Training Services.
Address: 668 Shore Dr., Joppa, MD 21085, Contact: Brain Stewart, Phone: (301) 679-9362.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 9/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(59)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University Dept. of Preventive Medicine.
Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9765.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(60)(a) *Training Provider:* National Association of Minority Contractors.
Address: 806 15th St., NW., Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).

(61)(a) *Training Provider:* National Training Fund for the Sheet Metal and Air Conditioning Industry.
Address: 601 North Fairfax St., Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 739-7200.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/26/88).

(62)(a) *Training Provider:* Occupational Medical Center.
Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 9/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(63)(a) *Training Provider:* Old Dominion University, Office of Continuing Education, College of Health Services.
Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 7/27/88).

(64)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/89).
Abatement Worker Refresher Course (contingent from 10/12/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor Refresher Course (contingent from 10/12/89).
Inspector (contingent from 3/14/88).

(65)(a) *Training Provider:* Paskal Environmental Services.
Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/88).

(66)(a) *Training Provider:* Pennsylvania Dept. of Welfare.
Address: Capitol Associates Bldg., Room 103, P.O. Box 2675, Harrisburg, PA 17105, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 12/14/89).

(67)(a) *Training Provider:* Philadelphia Electric Co.
Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewiez, Phone: (215) 270-8600.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/19/88).
Abatement Worker (full from 7/28/89).

Abatement Worker Refresher Course (contingent from 2/24/89).
Abatement Worker Refresher Course (full from 11/15/89).
(68)(a) *Training Provider:* Phoenix Safety Associates, Ltd.
Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).
(69)(a) *Training Provider:* Quality Specialities, Inc.
Address: P.O. Box 46, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5855.
(b) *Approved Course:*
Abatement Worker (contingent from 6/8/88).
(70)(a) *Training Provider:* RCW Environmental Consulting & Training.
Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/89).
Contractor/Supervisor (contingent from 8/1/89).
Inspector/Management Planner (contingent from 11/1/89).
(71)(a) *Training Provider:* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.
Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).
(72)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.
(b) *Approved Course:*
Abatement Worker (contingent from 7/12/88).
(73)(a) *Training Provider:* SE Technologies., Inc. (SET).
Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/88).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
(74)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/30/89).
(75)(a) *Training Provider:* STIC Corporation.
Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 4/7/89).
(76)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.
(b) *Approved Courses:*
Abatement Worker (Approval Suspended 10/2/89).
Abatement Worker Refresher Course (Approval Suspended 10/2/89).
Contractor/Supervisor (Approval Suspended 10/2/89).
Contractor/Supervisor Refresher Course (Approval Suspended 10/2/89).
Inspector/Management Planner (Approval Suspended 10/2/89).
Inspector/Management Planner Refresher Course (Approval Suspended 10/2/89).
(77)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.
Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.
(b) *Approved Courses:*
Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).
(78)(a) *Training Provider:* Tetra Services, Inc.
Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/89).
(79)(a) *Training Provider:* The Glaser Co.
Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).
(80)(a) *Training Provider:* The J.O.B.S. Company.
Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0048.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/28/89).
Abatement Worker (full from 2/14/90).
Contractor/Supervisor (contingent from 5/25/89).
(81)(a) *Training Provider:* Tracor Jitco, Inc.
Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).
(82)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners of America.
Address: 101 Constitution Ave. NW., Washington, DC 20001, Contact: Joseph L Durst, Jr., Phone: (202) 546-6206.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 3/21/90).
Contractor/Supervisor (contingent from 12/11/88).
Contractor/Supervisor Refresher Course (contingent from 3/21/90).
(83)(a) *Training Provider:* United Environmental Systems, Inc.

Address: 104-106 Arch St., Philadelphia, PA 19106, Contact: Holly Tate, Phone: (215) 829-9454.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/3/88).
Abatement Worker (full from 9/25/89).
Abatement Worker Refresher Course (contingent from 1/30/90).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).
(84)(a) *Training Provider:* University of Pittsburgh, Graduate School of Public Health.
Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
(85)(a) *Training Provider:* University of Scranton Technology Center.
Address: Scranton, PA 18510-2192, Contact: Jerome P. De Santo, Phone: (717) 961-4050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/26/89).
(86)(a) *Training Provider:* Volz Environmental Services, Inc.
Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 11/21/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 11/21/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner (full from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 12/18/89).
Project Designer (contingent from 9/1/89).
Project Designer (full from 12/8/89).
Project Designer Refresher Course (contingent from 12/13/89).
(87)(a) *Training Provider:* W.S. Keyes Associates.
Address: 55 Frazer Rd., Bech 232, Malvern, PA 19355, Contact: W. Scot Keyes, Phone: (215) 647-2878.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/25/90).
Contractor/Supervisor (contingent from 1/25/90).
Inspector/Management Planner (contingent from 1/25/90).
(88)(a) *Training Provider:* Waco, Inc.
Address: Highway 925, N., P.O. Box 740, White Plains, MD 20695, Contact: Wayne Cooper, Phone: (301) 843-2468.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/89).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).
(89)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.
Address: One Monogalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 348-0581.
(b) *Approved Course:*
Abatement Worker (contingent from 8/29/88).
(90)(a) *Training Provider:* West Virginia University Extension Service.
Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4013.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker Refresher Course (contingent from 11/2/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/2/89).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 4/25/89).
(91)(a) *Training Provider:* White Lung Association.
Address: 1901 St. Paul St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-9329.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
(92)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5830.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 11/7/89).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/7/87).

REGION IV -- Atlanta, GA

Regional Asbestos Coordinator: Larinda Gronner, EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certificatin indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A.S.C. Consultants, Inc.
Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.
(b) *Approved Course:*
Abatement Worker (contingent from 6/22/89).
(2)(a) *Training Provider:* AHP Research, Inc.

Address: 1505 Johnson's Ferry Rd., Marietta, GA 30062, Contact: Dwight Brown, Phone: (404) 565-0061.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/6/89).
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).

(3)(a) *Training Provider:* ARI Institute.

Address: P.O. Box 60599, Nashville, TN 37206, Contact: Mike Carver, Phone: (615) 228-3820.

(b) *Approved Course:*

Abatement Worker (contingent from 12/6/89).

(4)(a) *Training Provider:* ASC Asbestos Training Center.

Address: P.O. Box 291569, Nashville, TN 37229-1569, Contact: Don Hoffman, Phone: (615) 399-2221.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).

(5)(a) *Training Provider:* ATEC Associates, Inc.

Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 4/14/89).

(6)(a) *Training Provider:* ATI Environmental Services.

Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5306.

(b) *Approved Courses:*

Abatement Worker (full from 1/12/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (full from 1/12/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).

(7)(a) *Training Provider:* All Gulf Contractors, Inc.

Address: 3654 Halls Mill Rd., Mobile, AL 36693, Contact: Robert Pettis, Phone: (205) 665-5199.

(b) *Approved Course:*

Abatement Worker (contingent from 2/22/89).

(8)(a) *Training Provider:* American Environmental Safety Institute.

Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 771-7463.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/89).
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 12/16/88).
Abatement Worker Refresher Course (full from 6/12/90).
Contractor/Supervisor (full from 10/17/88).
Contractor/Supervisor Refresher Course (contingent from 12/16/88).
Contractor/Supervisor Refresher Course (full from 6/13/90).
Inspector/Management Planner (full from 2/8/89).

(9)(a) *Training Provider:* Asbestos Abatement Associates, Inc.

Address: P.O. Box 8178, Spartanburg, SC 29305, Contact: John McNamara, Phone: (803) 582-1222.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 6/26/89).
Abatement Worker Refresher Course (contingent from 5/1/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (contingent from 3/7/89).
Contractor/Supervisor (full from 7/19/89).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (full from 7/19/89).
Inspector/Management Planner Refresher Course (contingent from 5/1/89).
Inspector/Management Planner Refresher Course (full from 7/31/89).
Project Designer (contingent from 11/14/89).
Project Designer (full from 1/12/90).
Project Designer Refresher Course (contingent from 10/18/89).
Project Designer Refresher Course (full from 11/21/89).

(10)(a) *Training Provider:* Asbestos Consultants, Inc.

Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 3/9/88).

(11)(a) *Training Provider:* Asbestos Disease Association.

Address: 800 West Platt St., Tampa, FL 33706, Contact: John D. Householter, Phone: (813) 254-0003.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 12/11/89).
Inspector/Management Planner (contingent from 12/11/89).

(12)(a) *Training Provider:* Asbestos Technical Resource Center, Inc.

Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/2/89).
Abatement Worker Refresher Course (full from 6/7/89).
Contractor/Supervisor (contingent from 6/2/89).
Contractor/Supervisor (full from 8/10/89).
Contractor/Supervisor Refresher Course (full from 6/7/89).

(13)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.

Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.

(b) *Approved Course:*

Abatement Worker (contingent from 8/11/88).

(14)(a) *Training Provider:* BCM Engineers, Inc.

Address: 104 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*

Inspector/Management Planner (full from 11/11/87).
Inspector/Management Planner Refresher Course (contingent from 11/10/88).
Inspector/Management Planner Refresher Course (full from 10/16/90).
Project Designer (full from 12/8/87).
Project Designer Refresher Course (contingent from 5/4/89).
Project Designer Refresher Course (full from 10/17/90).

(15)(a) *Training Provider:* Betchel Construction, Inc.

Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slo ver, Phone: (305) 246-6565.

(b) *Approved Course:*

Abatement Worker (contingent from 3/13/89).

(16)(a) *Training Provider:* Big Bend Abatement, Inc.

Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-6130.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89).
Abatement Worker (full from 9/28/90).

(17)(a) *Training Provider:* Briggs Associates Int'l. Inc.

Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.

(b) *Approved Course:*

Abatement Worker (contingent from 5/4/89).

(18)(a) *Training Provider:* CRU Incorporated.

Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-6644.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 5/26/89).

(19)(a) *Training Provider:* Chemalytics.

Address: 33 East 7th St., Covington, KY 41011, Contact: Kenneth Reed, Phone: (606) 431-6224.

(b) *Approved Course:*

Abatement Worker (contingent from 1/17/90).

(20)(a) *Training Provider:* DPC General Contractors, Inc.

Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/89).
Abatement Worker (full from 5/2/89).

(21)(a) *Training Provider:* Diversified Industries, Inc.

Address: P.O. Box 10452, 7316 Market St., Wilmington, NC 28405, Contact: Greg Hale, Phone: (919) 686-1736.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/23/90).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 1/23/90).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).

(22)(a) *Training Provider:* EEC, Inc.

Address: 2265 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimenker, Phone: (919) 572-8910.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/7/89).
Abatement Worker (full from 11/16/89).
Abatement Worker Refresher Course (contingent from 5/3/89).
Abatement Worker Refresher Course (full from 5/1/90).
Contractor/Supervisor (contingent from 7/14/89).
Contractor/Supervisor (full from 5/3/90).
Contractor/Supervisor Refresher Course (contingent from 9/28/89).
Contractor/Supervisor Refresher Course (full from 5/2/90).

(23)(a) *Training Provider:* ELB & Associates, Inc.

Address: 805 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.

(b) *Approved Course:*

Abatement Worker (contingent from 6/30/89).

(24)(a) *Training Provider:* Eagle Environmental Laboratory.

Address: 1119 Ellard Rd., Fultondale, AL 35068, Contact: Mark Cambron, Phone: (205) 841-7693.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/89).

(25)(a) *Training Provider:* Energy Support Services, Inc.

Address: P.O. Box 6098, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8668.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/8/89).
Contractor/Supervisor (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (contingent from 11/8/89).
Inspector/Management Planner (contingent from 3/5/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).

(26)(a) *Training Provider:* Enpuricon Asbestos Management.

Address: 3200 Glen Royal Rd., No. 110, Raleigh, NC 27612-7804, Contact: Terry E. Slate, Phone: (919) 781-0886.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/11/89).
Contractor/Supervisor (contingent from 2/6/89).

(27)(a) *Training Provider:* Enviro Science, Inc.

Address: P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew Schauder, Phone: (803) 585-4900.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 9/15/89).

(28)(a) *Training Provider:* Enviro-Tech.

Address: 350 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/28/89 to 7/6/90 only).
Contractor/Supervisor (contingent from 7/11/89 to 7/6/90 only).

(29)(a) *Training Provider:* Environmental Control Systems Training Institute.

Address: 377 Harrods Woods Rd., Frankfurt, KY 40601, Contact: William A. Sadler, Phone: (502) 896-1245.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 8/10/89).
Inspector/Management Planner (contingent from 11/6/89).

(30)(a) *Training Provider:* Environmental Engineering Co., Inc.

Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7846.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 9/22/89).
Abatement Worker Refresher Course (contingent from 9/28/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 2/17/89).
Contractor/Supervisor (full from 9/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/89).
Contractor/Supervisor Refresher Course (full from 2/1/90).

(31)(a) *Training Provider:* Environmental Resources Group.

Address: P.O. Box 18283, Memphis, TN 38181-0283, Contact: Lee C. Thompson, Phone: (901) 795-0432.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(32)(a) *Training Provider:* Environmental Training Corporation.

Address: 2252 Rocky Ridge Rd., Suite 205, Birmingham, AL 35216, Contact: William E. Hicks, Phone: (800) 677-8761.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/89).
Abatement Worker (full from 11/28/90).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor (full from 11/29/90).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 11/28/90).
Project Designer (contingent from 10/31/89).
Project Designer (full from 8/1/90).

(33)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.
Address: 2631 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 856-7458.
(b) *Approved Course:*
Abatement Worker (contingent from 1/31/89).

(34)(a) *Training Provider:* Fayetteville Technical Community College.
Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).

(35)(a) *Training Provider:* Georgia Tech. Institute.
Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3806.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Inspector/Management Planner Refresher Course (full from 11/29/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 3/22/89).

(36)(a) *Training Provider:* Great Barrier Insulation Co.
Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 4/4/89).
Abatement Worker Refresher Course (contingent from 3/30/89).

(37)(a) *Training Provider:* Harmon Engineering Associates.
Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Roger W. Thompson, Phone: (205) 821-9250.
(b) *Approved Course:*
Abatement Worker (contingent from 1/4/89).

(38)(a) *Training Provider:* Harrison Contracting, Inc.
Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/11/88).
Abatement Worker (full from 10/12/88).

(39)(a) *Training Provider:* Howard L. Henson Training Institute.
Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.
(b) *Approved Course:*
Abatement Worker (full from 2/16/88).

(40)(a) *Training Provider:* International Association of Heat & Frost Insulation & Asbestos Workers Local Union No. 13.
Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 388-1601.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 7/27/90).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 6/14/90).
Contractor/Supervisor (contingent from 1/23/89).
Contractor/Supervisor (full from 4/24/89).
Contractor/Supervisor Refresher Course (contingent from 1/23/89).
Contractor/Supervisor Refresher Course (full from 6/15/90).

(41)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.
Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.
(b) *Approved Courses:*
Abatement Worker (full from 10/11/88).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 11/8/89).
Contractor/Supervisor (full from 1/9/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/88).
Contractor/Supervisor Refresher Course (full from 11/9/89).

(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.
Address: 7815 Old Morrow Rd., Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 478-1393.
(b) *Approved Courses:*
Abatement Worker (full from 5/4/88).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (full from 11/2/88).
Inspector (contingent from 9/26/88).
Inspector (full from 9/28/88).

(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.
Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-0679.
(b) *Approved Courses:*
Abatement Worker (full from 11/15/88).
Contractor/Supervisor (full from 12/12/88).

(44)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.
Address: 7930 U.S. Hwy. 301 N., Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985-3067.
(b) *Approved Courses:*
Abatement Worker (full from 8/23/89).
Abatement Worker Refresher Course (contingent from 11/15/89).
Abatement Worker Refresher Course (full from 11/29/89).
Contractor/Supervisor (full from 11/29/88).
Contractor/Supervisor Refresher Course (contingent from 11/15/89).
Contractor/Supervisor Refresher Course (full from 11/28/89).

(45)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.
Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.
(b) *Approved Course:*
Abatement Worker (full from 8/10/88).

(46)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.
Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-5236.
(b) *Approved Courses:*
Abatement Worker (full from 10/25/88).
Contractor/Supervisor (contingent from 12/6/89).
Contractor/Supervisor Refresher Course (full from 5/17/89).

(47)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.
Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.
(b) *Approved Courses:*
Abatement Worker (full from 7/10/89).
Contractor/Supervisor (full from 7/10/89).

(48)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.
Address: P.O. Box 623, Pooler, GA 31322-0623, Contact: Kem Dugger, Phone: (912) 748-6282.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (full from 8/17/89).
Contractor/Supervisor (full from 9/13/88).
Contractor/Supervisor Refresher Course (full from 8/17/89).

(49)(a) *Training Provider:* Kentucky Laborers Training Trust Fund.
Address: US 127 Bypass South, P.O. Box 208, Lawrenceburg, KY 40342, Contact: David Vinson, Phone: (502) 839-3155.
(b) *Approved Course:*
Abatement Worker (contingent from 1/10/89).

(50)(a) *Training Provider:* LCI Training Institute.
Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8881.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/9/88).
Contractor/Supervisor (contingent from 6/9/88).

(51)(a) *Training Provider:* Laborers District Council of Southeast Florida.
Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2859.
(b) *Approved Course:*
Abatement Worker (full from 3/15/88).

(52)(a) *Training Provider:* Laborers Local Union No. 517 North & Central Florida Education & Training Fund.
Address: 4625 Old Wintergarden Rd., Bldg. A-6, Orlando, FL 32811, Contact: Patrick O' Donnell, Phone: (407) 298-3446.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/22/89).

(53)(a) *Training Provider:* Lang Engineering of Florida, Inc.
Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-8311.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/17/89).
Abatement Worker (full from 4/2/90).
Abatement Worker Refresher Course (contingent from 8/9/89).

(54)(a) *Training Provider:* Laseter & Associates, Inc.
Address: P.O. Box 176, Collierville, TN 38017, Contact: Kenneth M. Laseter, Phone: (800) 456-8617.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Contractor/Supervisor (contingent from 11/7/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).

(55)(a) *Training Provider:* Law Engineering, Inc.
Address: 7616 Southland Blvd., Suite 110, Orlando, FL 32809, Contact: Diana Rigdon, Phone: (407) 855-8740.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/89).
Contractor/Supervisor (contingent from 9/1/89).

(56)(a) *Training Provider:* Mississippi State University, Dept. of Continuing Education.
Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Billy G. Smith, Phone: (601) 325-3473.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 3/22/90).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor (full from 6/29/89).
Contractor/Supervisor Refresher Course (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (full from 3/19/90).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 5/26/89).
Project Designer (contingent from 12/15/88).
Project Designer Refresher Course (contingent from 5/26/89).

(57)(a) *Training Provider:* Mobile Asbestos Resource Services, Inc.
Address: 10 Airport Lane, Archer, FL 32618, Contact: Walter Heope, Phone: (904) 495-9214.
(b) *Approved Course:*
Abatement Worker (contingent from 12/6/89).

(58)(a) *Training Provider:* Mur-Shel, Inc. Asbestos Abatement.
Address: 1038 Grace Ave., Panama City, FL 32401, Contact: Lois Shelton, Phone: (904) 763-2010.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 9/1/89).

(59)(a) *Training Provider:* Napri/Cisco.
Address: 4545 St. Augustine Rd., Jacksonville, FL 32207, Contact: Otey C. Reynolds, Phone: (904) 730-2222.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/16/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/16/89).
Inspector/Management Planner (contingent from 10/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/16/89).

(60)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
Abatement Worker Refresher Course (contingent from 2/6/89).
Abatement Worker Refresher Course (full from 9/17/90).

(61)(a) *Training Provider:* National Monitoring Labs, Inc.
Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Bakshi, Phone: (800) 347-3414.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 5/23/89).
Inspector/Management Planner (contingent from 4/14/89).
Inspector/Management Planner (full from 1/19/90).
Inspector/Management Planner Refresher Course (contingent from 5/23/89).

(62)(a) *Training Provider:* Occupational Training Academy, Inc.
Address: 8409 Laurel Fair Circle, Suite 102, Tampa, FL 33610, Contact: John Burke, Phone: (813) 621-5586.
(b) *Approved Course:*
Abatement Worker (contingent from 1/17/90).

(63)(a) *Training Provider:* PDR Engineers, Inc.
Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298-2065.
(b) *Approved Course:*
Inspector (contingent from 9/15/88).

(64)(a) *Training Provider:* Practical Environmental Training Institute.
Address: 230 S. Tryon St., Suite 910, Charlotte, NC 28221-6308, Contact: Dianne Christenbery, Phone: (704) 375-9382.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 6/18/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor (full from 3/20/89).
Contractor/Supervisor Refresher Course (contingent from 6/18/89).
Contractor/Supervisor Refresher Course (full from 2/6/90).

(65)(a) *Training Provider:* Republic Industries, Inc.
Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2864.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 1/24/90).
Abatement Worker Refresher Course (contingent from 5/5/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 4/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/5/89).
Contractor/Supervisor Refresher Course (full from 12/11/90).

(66)(a) *Training Provider:* Retra Services, Inc.
Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Paroff, Phone: (800) 548-5848.
(b) *Approved Courses:*
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 1/24/89).

(67)(a) *Training Provider:* Seagull Environmental Management Asbestos Consulting & Training Systems.
Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (full from 5/8/88).
Abatement Worker Refresher Course (contingent from 9/22/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/22/89).
Inspector/Management Planner (contingent from 10/30/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(68)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.
Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 246-6000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/18/89).

(69)(a) *Training Provider:* Technical Abatement Service, Inc.
Address: 897 East Lemon St., Bartow, FL 33830, Contact: John W. Pevy, Phone: (813) 533-0885.
(b) *Approved Course:*
Abatement Worker (contingent from 6/21/89).

(70)(a) *Training Provider:* Technical Education Resources, Inc.
Address: 2212 Swann Ave., Suite D, Tampa, FL 33606, Contact: Robert Greene, Phone: (813) 251-1095.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/16/89).
Abatement Worker Refresher Course (contingent from 11/14/89).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor Refresher Course (contingent from 11/14/89).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner Refresher Course (contingent from 11/14/89).

(71)(a) *Training Provider:* Technical Environmental Service Training Institute (T.E.S.T).
Address: Box 28210, Raleigh, NC 27611-8210, Contact: Dennis Mast, Phone: (800) 868-7248.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/18/89).
Abatement Worker Refresher Course (full from 3/29/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 7/7/89).
Inspector/Management Planner Refresher Course (contingent from 10/20/89).

(72)(a) *Training Provider:* Technical Training Institute.
Address: 4124 Clemson Blvd., Anderson, SC 29622, Contact: Bill Martin, Phone: (803) 226-3622.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/13/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor (full from 9/7/90).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (contingent from 11/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/17/89).
Project Designer (contingent from 11/13/89).
Project Designer Refresher Course (contingent from 10/17/89).

(73)(a) *Training Provider:* Tennessee Environmental Services.
Address: 1804 Williamson Ct., Brentwood, TN 37027, Contact: Gary J. Lang, Phone: (615) 373-8792.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/26/89).
Abatement Worker (full from 8/15/90).
Abatement Worker Refresher Course (contingent from 11/1/89).
Abatement Worker Refresher Course (full from 8/17/90).
Contractor/Supervisor (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 8/16/90).

(74)(a) *Training Provider:* Testwell Craig Labs of Florida, Inc.
Address: 7104 North 51st St., Miami, FL 33166, Contact: George W. Stowell, Phone: (305) 593-0561.
(b) *Approved Course:*
Abatement Worker (contingent from 9/8/89).

(75)(a) *Training Provider:* The Environmental Institute.
Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/10/87).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 12/10/87).
Contractor/Supervisor (full from 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (full from 11/8/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
Project Designer Refresher Course (contingent from 4/17/89).
Project Designer Refresher Course (full from 4/19/89).

(76)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies.
Address: P.O. Box 870388, Tuscaloosa, AL 35486-0388, Contact: William Weems, Phone: (800) 452-5923.
(b) *Approved Courses:*
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/13/89).
Contractor/Supervisor (full from 12/14/88).
Contractor/Supervisor Refresher Course (contingent from 11/13/89).
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 11/13/89).

(77)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.
Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (full from 7/30/90).

(78)(a) *Training Provider:* University of Florida TREEO Center.
Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Sara Levin, Phone: (904) 392-9570.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/24/89).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(79)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.
Address: CRMS Building, Room 320, Lexington, KY 40506-0108, Contact: Liz Haden, Phone: (606) 257-3972.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Inspector Refresher Course (contingent from 3/3/89).
Inspector/Management Planner (full from 2/15/88).

(80)(a) *Training Provider:* University of North Carolina, Occupational Safety & Health Educational Resource Center.
Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Larry Hyde, Phone: (919) 962-2101.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 6/7/89).
Inspector/Management Planner (contingent from 11/9/87).
Inspector/Management Planner (full from 11/9/87).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 5/2/89).
Project Designer Refresher Course (contingent from 6/22/89).

(81)(a) *Training Provider:* University of North Florida, Division of Continuing Education & Extension Environmental Ed. & Safety Institute.
Address: 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216, Contact: Elaine Puri, Phone: (904) 646-2690.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/89).
Abatement Worker (full from 5/16/90).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 5/16/90).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (full from 5/17/90).
Inspector/Management Planner (contingent from 9/1/89).
Inspector/Management Planner (full from 7/27/90).

(82)(a) *Training Provider:* University of South Carolina Medical (M) Dept. of Environmental Health.
Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.
(b) *Approved Courses:*
Abatement Worker (full from 12/19/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (full from 3/8/88).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/89).
Inspector/Management Planner (full from 3/1/88).

Inspector/Management Planner Refresher Course (contingent from 2/2/89).
Inspector/Management Planner Refresher Course (full from 5/2/89).
(83)(a) *Training Provider:* University of South Carolina, School of Public Health, c/o Azimuth Inc.
Address: 386 St. Andrews Rd., Columbia, SC 29210, Contact: Donald Cobb, Phone: (803) 798-2343.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/9/89).
Abatement Worker (full from 12/7/89).
Contractor/Supervisor (contingent from 5/5/89).
Contractor/Supervisor (full from 8/21/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Contractor/Supervisor Refresher Course (full from 9/20/89).
(84)(a) *Training Provider:* Westinghouse Environmental & Geotechnical Services, Inc.
Address: 3980 Dekalb Technology Parkway, Suite 700, Atlanta, GA 30340, Contact: Russell Dukes, Phone: (404) 452-1911.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/89).
Contractor/Supervisor (contingent from 7/18/89).
Inspector/Management Planner (contingent from 1/3/90).
(85)(a) *Training Provider:* Weston, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: David Whittington, Phone: (205) 826-6100.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 11/1/90).
Contractor/Supervisor (contingent from 10/13/88).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 1/31/89).
Contractor/Supervisor Refresher Course (full from 9/25/89).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner (full from 9/27/89).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (full from 3/17/89).
Project Designer (contingent from 8/23/88).
Project Designer (full from 3/8/90).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 9/28/89).
(86)(a) *Training Provider:* Williams & Associates, Inc., Environmental Training Center.
Address: 460 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-9030.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Abatement Worker Refresher Course (contingent from 5/1/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 4/18/88).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).

REGION V – Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5-SPT-7), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* Abatement Training Institute, Inc.
Address: P.O. Box 26835, Columbus, OH 43226-0835, Contact: Steven Ritchie, Phone: (614) 267-0906.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.
Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).
(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.
Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/14/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 5/30/89).
(4)(a) *Training Provider:* Alderink & Associates, Inc.
Address: 3221 Three Mile Rd., NW., Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).
Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbestos Council).
Address: Box 7477, Springfield, IL 62791, Contact: Donald G. Handy, Phone: (217) 523-8747.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 8/14/89).
Abatement Worker Refresher Course (contingent from 8/31/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 8/14/89).
Contractor/Supervisor Refresher Course (contingent from 9/11/89).
Inspector/Management Planner (contingent from 3/29/89).
Inspector/Management Planner Refresher Course (contingent from 9/11/89).
Project Designer Refresher Course (contingent from 9/19/89).
(6)(a) *Training Provider:* American Environmental Institute.
Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker Refresher Course (contingent from 12/8/88).

Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Inspector/Management Planner (contingent from 11/14/88).
(7)(a) *Training Provider:* American Industrial Hygiene Association.
Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1087, Contact: Mary Christ, Phone: (216) 762-7294.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 2/23/89).
(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.
Address: Minneapolis Business & Technology, Center, 511 11th Ave. S., Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 10/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).
(9)(a) *Training Provider:* Aries Environmental Services, Ltd.
Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
(10)(a) *Training Provider:* Asbestech, Inc.
Address: 326 Front St., Marietta, OH 45750, Contact: Phillip Lee, Phone: (614) 373-0714.
(b) *Approved Course:*
Abatement Worker (contingent from 11/9/89).
(11)(a) *Training Provider:* Asbestos Abatement, Inc.
Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.
(b) *Approved Course:*
Abatement Worker (contingent from 7/6/88).
(12)(a) *Training Provider:* Asbestos Consulting Group, Inc.
Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1670.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 7/12/88).
Inspector/Management Planner (contingent from 10/14/88).
(13)(a) *Training Provider:* Asbestos Management, Inc.
Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 8/18/87).
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/1/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).
(14)(a) *Training Provider:* Asbestos Professional Services, Inc.
Address: 501 North Second St., Breese, IL 62230, Contact: Donald T. Anderson, Phone: (618) 526-2742.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/9/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/9/89).
(15)(a) *Training Provider:* Asbestos Removal Inc.
Address: Waterworks Rd., P.O. Box 522, Wabash, IN 46992, Contact: Karen S. Eckman, Phone: (219) 563-2407.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/18/89).
Abatement Worker Refresher Course (contingent from 12/20/89).
(16)(a) *Training Provider:* Asbestos Roofing Technology, Inc.
Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refleuna, Phone: (312) 352-0400.
(b) *Approved Course:*
Abatement Worker (contingent from 4/13/89).
(17)(a) *Training Provider:* Asbestos Services, Inc.
Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 3/17/89).
(18)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 1186 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).
(19)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/15/88).
Abatement Worker (full from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 6/20/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).
(20)(a) *Training Provider:* Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5988.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).
(21)(a) *Training Provider:* Astesco Laboratory, Inc.
Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.
(b) *Approved Courses:*
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 2/7/89).

BEST COPY AVAILABLE

Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(22)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 6105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 1/15/88).
Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider:* Baker Midwest, Maple Grove, Minnesota.
Address: 10650 State Highway 152, Suite 112, Maple Grove, MN 55369, Contact: Joseph Reeves, Phone: (612) 493-2595.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/15/89).
Contractor/Supervisor (contingent from 6/15/89).

(24)(a) *Training Provider:* Ball State University.
Address: College of Sciences & Humanities, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5780.

(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/30/89).

(25)(a) *Training Provider:* Bems Engineering, Inc.
Address: 18600 Northville Rd., Suite 200, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).
Project Designer (contingent from 3/2/89).

(26)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.
Address: 2903 South Graham Rd., Saginaw, MI 48608-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.

(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/7/89).

(27)(a) *Training Provider:* Boelter Associates, Inc.
Address: 8700 West Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.

(b) *Approved Course:*
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(28)(a) *Training Provider:* Bonne Terre Training Services.
Address: P.O. Box 673, Tiffin, OH 44883, Contact: Timothy E. Blott, Phone: (419) 447-5061.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(29)(a) *Training Provider:* Bowling Green State University Environmental Health Program.
Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.

(b) *Approved Course:*
Abatement Worker (contingent from 4/21/89).

(30)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.
Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4486.

(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(31)(a) *Training Provider:* Centin Corp.
Address: 6601 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.

(b) *Approved Course:*
Abatement Worker (contingent from 3/30/89).

(32)(a) *Training Provider:* Charles J. Ogg and Associates.
Address: P.O. Box 815, Newburgh, IN 47629-0615, Contact: Charles J. Ogg, Phone: (812) 853-7607.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Contractor/Supervisor (contingent from 5/1/89).

(33)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/16/88).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(34)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/21/89).

(35)(a) *Training Provider:* Cleveland Wrecking Co.
Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/89).
Abatement Worker Refresher Course (contingent from 8/3/89).
Contractor/Supervisor (contingent from 8/3/89).
Contractor/Supervisor Refresher Course (contingent from 8/3/89).

(36)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/4/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(37)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.
Address: 4N250 Old Gary Ave., Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 653-0006.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 12/1/88).
Abatement Worker Refresher Course (full from 12/12/89).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 3/23/90).

(38)(a) *Training Provider:* Construction Laborer Local Union No. 499.

Address: 5945 North Ridge Rd., P.O. Box 190, Madison, OH 44057, Contact: Floyd Conrad, Phone: (216) 428-7177.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).
Inspector (contingent from 10/25/89).
Inspector Refresher Course (contingent from 12/1/89).

(39)(a) *Training Provider:* D/E 3.
Address: 19701 South Miles Pkwy., N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1500.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/10/89).

(40)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.

(b) *Approved Courses:*
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/25/89).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(41)(a) *Training Provider:* Darla Environmental, Inc.
Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(42)(a) *Training Provider:* DeLisle Associates, Ltd.
Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(43)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., P.O. Box 146, Bay City, MI 48707, Contact: Joseph Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(44)(a) *Training Provider:* Ecological Services, Inc.
Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88 to 11/30/90 only).
Abatement Worker Refresher Course (contingent from 3/7/89 to 11/30/90 only).

(45)(a) *Training Provider:* Emscos-Emergency Medical Service Consultants of America.
Address: 12125 South 80th Ave., Palos Park, IL 60464, Contact: Fred Debow, Phone: (708) 448-7500.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(46)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.
Address: 9206 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/89).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.
Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 3/7/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 3/7/89).

(48)(a) *Training Provider:* Environmental Abatement Systems, Inc.
Address: 6416 Ellsworth, Detroit, MI 48236, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(49)(a) *Training Provider:* Environmental Diversified Services, Inc.
Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/14/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(50)(a) *Training Provider:* Environmental Management Consultants, Inc.
Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/13/89).
Abatement Worker (full from 12/13/89).
Contractor/Supervisor (contingent from 3/9/89).
Contractor/Supervisor (full from 12/13/89).

(51)(a) *Training Provider:* Environmental Management Institute.
Address: 5610 Crawfordsville Rd. 15, Indianapolis, IN 46224, Contact: Jack Leonard, Phone: (800) 486-8642.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/13/88).

Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 8/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(52)(a) *Training Provider:*
Environmental Professionals, Inc.
Address: 1406 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(53)(a) *Training Provider:*
Environmental Rehab, Inc.
Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 3/29/89).
Abatement Worker Refresher Course (contingent from 10/13/89).

(54)(a) *Training Provider:*
Environmental Response Systems, Inc.
Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 12/29/88).

(55)(a) *Training Provider:*
Environmental Safety Training Services, Inc.
Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (217) 525-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 1/17/89).

(56)(a) *Training Provider:*
Environmental Science & Engineering, Inc.
Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Phillip G. Zerwer, Phone: (309) 692-4422.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/30/89).
Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(57)(a) *Training Provider:*
Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).
Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.
(b) *Approved Course:*
Abatement Worker (contingent from 3/17/89).

(58)(a) *Training Provider:*
Environmental Training Institute.
Address: 4708 Angold Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/10/89).
Abatement Worker Refresher Course (contingent from 10/5/89).

(59)(a) *Training Provider:* Envirplus, Inc.
Address: 600 Hartrey Ave., Suite 203 A, Evanston, IL 60202, Contact: Salvadar Garcia, Phone: (312) 475-0022.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/31/89).

(60)(a) *Training Provider:* Escor, Inc.
Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(61)(a) *Training Provider:* Foley Occupational Health Consulting.
Address: 2400 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7191.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/4/88).
Contractor/Supervisor Refresher Course (contingent from 1/4/89).

(62)(a) *Training Provider:* G & H Contracting Associates, Ltd.
Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 4/21/89).

(63)(a) *Training Provider:* Gandee & Associates, Inc.
Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.
(b) *Approved Courses:*
Abatement Worker (full from 1/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 8/29/88).
Contractor/Supervisor Refresher Course (contingent from 7/26/89).
Inspector/Management Planner (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (contingent from 8/2/89).

(64)(a) *Training Provider:* Hazard Management Group, Inc.
Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).

(65)(a) *Training Provider:* Hazardous Materials Institute, Inc.
Address: 1550 Old Henderson Rd., Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).

(66)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.
(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Abatement Worker Refresher Course (full from 1/9/90).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(67)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/8/88).

(68)(a) *Training Provider:* Helix Environmental, Inc.
Address: 416 Triangle, Dayton, OH 45419, Contact: Ralph Froehlich, Phone: (513) 298-2990.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 12/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 12/20/89).

(69)(a) *Training Provider:* I.P.C. of Chicago.
Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(70)(a) *Training Provider:* Illinois Environmental Institute.
Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 2/9/90).

(71)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.
Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.
(b) *Approved Courses:*
Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 12/13/89).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).

(72)(a) *Training Provider:* Ilse Engineering, Inc.
Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-6858.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(73)(a) *Training Provider:* Indiana Laborers Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 8/15/88).
Contractor/Supervisor Refresher Course (contingent from 6/14/89).

(74)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).

(75)(a) *Training Provider:* Institute for Environmental Assessment.
Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(76)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.
Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 1/26/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(77)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(78)(a) *Training Provider:*
International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.
Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5973.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).

(79)(a) *Training Provider:* JWP Enterprises, Ltd.
Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.
(b) *Approved Courses:*

Abatement Worker (contingent from 6/6/89).
Abatement Worker Refresher Course (contingent from 6/6/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor (full from 12/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).

(80)(a) *Training Provider:* Kemron Environmental Services, Inc.
Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 5/13/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(81)(a) *Training Provider:* Keter Environmental Ltd.
Address: 699 Edgewood Ave., Elmhurst, IL 60126, Contact: Philip Pekron, Phone: (312) 941-0201.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(82)(a) *Training Provider:* Lakeland Contractors, Inc.
Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/4/89).
Abatement Worker Refresher Course (contingent from 4/11/89).

(83)(a) *Training Provider:* Lepi Enterprises, Inc.
Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1162.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 4/25/89).

(84)(a) *Training Provider:* Lyle Training Institute.
Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8622.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/21/88).
Contractor/Supervisor (contingent from 3/7/89).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 9/16/89).

(85)(a) *Training Provider:* M.K. Moore & Sons, Inc.
Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/31/89).
Abatement Worker (full from 5/3/90).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(86)(a) *Training Provider:* MacNeil Environmental, Inc.
Address: 755 East Cliff Rd., Burnsville, IL 55332, Contact: Phil Allmon, Phone: (612) 890-3452.
(b) *Approved Courses:*
Contractor/Supervisor Refresher Course (contingent from 7/6/89).
Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(87)(a) *Training Provider:* Manage Right Asbestos Consultants.
Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/24/89).
Abatement Worker Refresher Course (contingent from 4/27/89).
Contractor/Supervisor (contingent from 4/7/89).

(88)(a) *Training Provider:* Mark A. Kriesemint, Ltd.
Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(89)(a) *Training Provider:* McDowell Business Training Center.
Address: 1313 S. Michigan Ave., 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.
(b) *Approved Course:*
Abatement Worker (contingent from 10/6/89).

(90)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.
Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1000.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/12/88).
Contractor/Supervisor (contingent from 6/12/88).

(91)(a) *Training Provider:* Michigan Laborers Training Institute.
Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(92)(a) *Training Provider:* Mid-Central Illinois District Council of Carpenters.
Address: 910 Brenkman Dr., Pekin, IL 61554, Contact: Jeff Burnett, Phone: (309) 353-4232.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).

(93)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.
Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(94)(a) *Training Provider:* Midwest Health Training.
Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.
(b) *Approved Courses:*

Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 2/23/89).

(95)(a) *Training Provider:* Milwaukee Asbestos Information Center.
Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-8100.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Project Designer (contingent from 9/22/89).
Project Designer Refresher Course (contingent from 10/16/89).

(96)(a) *Training Provider:* Moraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor (full from 5/7/90).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Contractor/Supervisor Refresher Course (full from 5/1/90).
Inspector/Management Planner (full from 2/9/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).
Inspector/Management Planner Refresher Course (full from 4/30/90).

(97)(a) *Training Provider:* National Asbestos Abatement Corp.
Address: 1198 Robert T. Longway Blvd., Flint, MI 48503, Contact: James S. Sheaffer, Phone: (313) 232-7100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 4/18/89).

(98)(a) *Training Provider:* National Institute for Abatement Education.
Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271-7281.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88 to 11/30/90 only).
Contractor/Supervisor (contingent from 7/15/88 to 11/30/90 only).

(99)(a) *Training Provider:* Northern Safety Consultants, Inc.
Address: 1408 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.
(b) *Approved Courses:*
Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(100)(a) *Training Provider:* Northland Environmental Services, Inc.
Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9699.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(101)(a) *Training Provider:* Nova Environmental Services.
Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 4/13/89).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(102)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 3/27/89).
Contractor/Supervisor (contingent from 10/7/88).
Contractor/Supervisor (full from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(103)(a) *Training Provider:* Occupational Safety Training, Inc.
Address: 237 Dino Dr., Suite A, Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 428-3300.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/17/89).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).

(104)(a) *Training Provider:* Ohio Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5969.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/17/88).
Contractor/Supervisor (full from 5/12/88).

(105)(a) *Training Provider:* Ohio Laborers' Training & Upgrading Trust Fund.
Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.
(b) *Approved Courses:*
Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 2/8/90).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).
Contractor/Supervisor Refresher Course (full from 2/9/90).

(106)(a) *Training Provider:* Olive - Harvey College Skill Center.
Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.
(b) *Approved Course:*
Abatement Worker (contingent from 3/6/89).

(107)(a) *Training Provider:* Peoria Public Schools.
Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.

(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 11/14/88).
(108)(a) *Training Provider:*
Professional Asbestos Control Company Inc.
Address: 5739 West Howard St., Niles, IL 60648, Contact: William Foss, Phone: (312) 647-0077.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/2/89).
Contractor/Supervisor (contingent from 11/2/89).
(109)(a) *Training Provider:*
Professional Asbestos Labor Services, Inc.
Address: 2955 W 5th Ave., Gary, IN 46404-1201, Contact: George Bradley, Phone: (219) 883-8541.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/16/88).
Abatement Worker Refresher Course (contingent from 12/5/88).
(110)(a) *Training Provider:*
Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148, Contact: W. K. Swartzendruber, Phone: (312) 691-1490.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/89).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner (full from 4/27/89).
Inspector/Management Planner Refresher Course (contingent from 10/11/89).
(111)(a) *Training Provider:* Rend Lake College.
Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 10/10/89).
(112)(a) *Training Provider:* Risk Services, Inc.
Address: 26364 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker Refresher Course (contingent from 4/11/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).
(113)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S. Z. Mansdorf, Phone: (216) 928-5434.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 2/12/88).
Contractor/Supervisor Refresher Course (contingent from 1/19/89).
Inspector/Management Planner (contingent from 6/24/88).
Inspector/Management Planner (full from 3/23/90).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).
(114)(a) *Training Provider:* SEMCOSH.
Address: 2727 2nd Ave., Detroit, MI 48201-2654, Contact: Barbara Boylan, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
(115)(a) *Training Provider:* Safer Foundation.
Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 11/3/89).
(116)(a) *Training Provider:* Safety Dynamics.
Address: 124 Massachussetts Ave., Poland, OH 44514, Contact: Ronald G. Zikmund, Phone: (216) 757-3899.
(b) *Approved Course:*
Abatement Worker (contingent from 8/18/89).
(117)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.
(b) *Approved Courses:*
Abatement Worker (full from 12/18/87).
Abatement Worker Refresher Course (contingent from 11/14/88).
(118)(a) *Training Provider:* Sear Corp.
Address: 8802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 7/7/89).
(119)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.
Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 11/15/89).
(120)(a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 8/22/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
(121)(a) *Training Provider:* The American Center for Educational Development, Inc.
Address: 316 S. Wabash, 2nd Floor, Chicago, IL 60604, Contact: Ron Broom, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/13/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 1/19/90).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).
(122)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 5/1/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 7/7/89).
Contractor/Supervisor Refresher Course (contingent from 8/16/89).
(123)(a) *Training Provider:* The Clear Consortium.
Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.

(b) *Approved Course:*
Abatement Worker (contingent from 7/18/89 to 11/30/90 only).
(124)(a) *Training Provider:* The Environmental Institute.
Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 12/22/88).
(125)(a) *Training Provider:* Thermico, Inc.
Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Course:*
Abatement Worker (contingent from 4/7/89).
(126)(a) *Training Provider:* Tillotson Consulting & Training, Inc.
Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).
(127)(a) *Training Provider:* Trust Thermal Systems.
Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).
(128)(a) *Training Provider:* United Science Industries, Inc.
Address: 621 Ninth St., P.O. Box 21, Carlyle, IL 62231, Contact: Mr. Koch, Phone: (618) 594-8670.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/4/89).
Abatement Worker (full from 5/17/90).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 12/4/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).
(129)(a) *Training Provider:* University of Cincinnati, Medical Center Department of Environmental Health Kettering Laboratory.
Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1730.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 7/11/89).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/4/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).
Project Designer (contingent from 10/26/89).
(130)(a) *Training Provider:* University of Illinois at Chicago M.A.I.C.
Address: 1440 West Washington, Chicago, IL 60607, Contact: Dick Lyons, Phone: (312) 829-1277.
(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (full from 6/1/86).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).
Inspector/Management Planner Refresher Course (full from 2/17/89).
Project Designer (contingent from 7/7/89).
(131)(a) *Training Provider:* University of Wisconsin.
Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.
(b) *Approved Courses:*
Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).
(132)(a) *Training Provider:* William E. Fink & Associates.
Address: 25 South State St., Girard, OH 44420, Contact: William Fink, Phone: (216) 545-1222.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 8/18/89).
(133)(a) *Training Provider:* William E. Fink & Associates, Inc.
Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6299.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/88).
Contractor/Supervisor (contingent from 8/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/13/89).
(134)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/87).
Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).
(135)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).

Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

REGION VI -- Dallas, TX

Regional Asbestos Coordinator: John West, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733. (214) 655-7244, (FTS) 255-7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AAR, Training.
Address: P.O. Box 1064, Channelview, TX 77530-1064, Contact: David S. Barnett, Phone: (713) 452-6406.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker (full from 11/1/90).

(2)(a) *Training Provider:* AC & C Systems Corp.
Address: 5909 Northwest Expressway, Suite 310, Oklahoma City, OK 73132, Contact: Turner Stallings, Phone: (405) 728-0444.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/28/88).

(3)(a) *Training Provider:* AEGIS Associates, Inc.
Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-8320.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/14/89 to 4/16/90 only).
Contractor/Supervisor (contingent from 5/25/89 to 4/16/90 only).
Inspector Refresher Course (contingent from 4/4/89 to 4/16/90 only).

(4)(a) *Training Provider:* ASCTC Asbestos Training Center.
Address: P.O. Box 1419, Albany, LA 70711, Contact: Alphia Ross, Phone: (800) 999-7986.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
Project Designer Refresher Course (contingent from 2/5/90).

(5)(a) *Training Provider:* Abateco, Inc.
Address: 10696 Haddington, Suite 100, Houston, TX 77043, Contact: E. H. Zanaler, Phone: (713) 461-0602.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/14/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 3/17/89).
Abatement Worker Refresher Course (full from 8/21/90).
Contractor/Supervisor (contingent from 8/14/89).
Contractor/Supervisor (full from 3/9/90).
Contractor/Supervisor Refresher Course (full from 8/22/90).

(6)(a) *Training Provider:* Ahera Training Institute.
Address: 12116A Jekel Circle, Austin, TX 78727, Contact: Rick Orr, Phone: (512) 837-8851.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/10/89).
Abatement Worker (full from 5/9/90).
Abatement Worker Refresher Course (contingent from 12/15/89).
Contractor/Supervisor (contingent from 1/11/88).
Contractor/Supervisor (full from 3/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/89).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (contingent from 10/2/89).

(7)(a) *Training Provider:* Allied Training Systems.
Address: 1808 D Brothers Blvd., College Station, TX 77840, Contact: Dan Sheppard, Phone: (409) 693-8300.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/30/89).
Abatement Worker Refresher Course (contingent from 10/26/89).
Contractor/Supervisor (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).

(8)(a) *Training Provider:* Allison Sheridan Environmental Training Services.
Address: P.O. Box 6101, Katy, TX 77492, Contact: Don Rawlings, Phone: (713) 492-2309.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/90).
Contractor/Supervisor (contingent from 1/8/90).

(9)(a) *Training Provider:* American Specialty Contractors, Inc.
Address: 8161 West Darryl Pkwy., Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 926-9624.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).

(10)(a) *Training Provider:* Analytical Labs Training Center.
Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1284.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 2/7/90).
Contractor/Supervisor (contingent from 4/21/89).
Contractor/Supervisor (full from 2/9/90).

(11)(a) *Training Provider:* Asbestos Consulting Services, Inc. (A.C.S.I.).
Address: 13523 Ridgeview Dr., Baton Rouge, LA 70817, Contact: Ken Talbot, Phone: (504) 756-9160.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/10/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/11/90).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(12)(a) *Training Provider:* Asbestos Education Services.
Address: 11609 Barchetta Dr., Austin, TX 78758, Contact: Rick Orr, Phone: (512) 832-5296.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/89).
Abatement Worker Refresher Course (contingent from 11/28/89).

Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Project Designer Refresher Course (contingent from 11/28/89).

(13)(a) *Training Provider:* Asbestos Surveys & Training, Inc.
Address: 5959 Central Crest, Houston, TX 77092, Contact: J. T. Stoneburger, Phone: (713) 681-2639.
(b) *Approved Course:*
Abatement Worker (full from 10/22/87 to 5/1/89 only).

(14)(a) *Training Provider:* Ashley Environmental Services.
Address: 5959 Central Crest, Houston, TX 77092, Contact: Jesse Ashley, Phone: (713) 683-6311.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/89).
Abatement Worker (full from 9/13/90).
Contractor/Supervisor (contingent from 9/29/89).

(15)(a) *Training Provider:* Beaumont Business Incubator.
Address: 1090 South Fourth St., Beaumont, TX 77701, Contact: Jerry Plaia, Phone: (409) 835-1554.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/29/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).

(16)(a) *Training Provider:* Carpenters Apprenticeship Training School.
Address: 8505 Glen Vista, Houston, TX 77061, Contact: S. C. Strunk, Jr., Phone: (713) 641-1011.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(17)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.
Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/88).

(18)(a) *Training Provider:* El Paso Community College, Transmountain Campus.
Address: P.O. Box 20500, El Paso, TX 79998, Contact: Jim Rath, Phone: (915) 757-5053.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/28/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(19)(a) *Training Provider:* Enviro-Con Services, Inc.
Address: 4916 Highway 6 North, Houston, TX 77084, Contact: Douglas S. Shotwell, Phone: (713) 855-9677.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/22/89).
Abatement Worker (full from 3/28/90).
Abatement Worker Refresher Course (contingent from 10/2/89).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 3/29/90).
Contractor/Supervisor Refresher Course (contingent from 10/2/89).

(20)(a) *Training Provider:* Environmental Consultant Service.
Address: P.O. Box 586422, Dallas, TX 75258, Contact: Thomas Armstrong, Phone: (214) 638-3589.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 4/20/89).

(21)(a) *Training Provider:* Environmental Monitoring Service, Inc. (EMS).
Address: 12731 Research Blvd., Building A, Austin, TX 78759, Contact: Rick Pruett, Phone: (512) 335-9116.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 1/15/90).
Contractor/Supervisor (contingent from 2/5/90).
Contractor/Supervisor Refresher Course (contingent from 2/5/90).
Inspector/Management Planner (contingent from 4/19/89).

(22)(a) *Training Provider:* Environmental Specialists, Inc.
Address: 320 Broadway SE., Albuquerque, NM 87102, Contact: Fernando E.C Debaca, Phone: (505) 243-2499.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/25/90).
Contractor/Supervisor (contingent from 6/25/90).
Inspector/Management Planner (contingent from 7/27/90).

(23)(a) *Training Provider:* Field Sciences Institute.
Address: 2309 Renard Pl. SE., Suite 104, Albuquerque, NM 87106, Contact: Robert L. Edgar, Phone: (505) 764-9251.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (full from 8/1/89).
Inspector Refresher Course (full from 8/1/89).
Inspector/Management Planner (contingent from 4/22/88).

(24)(a) *Training Provider:* Fort Worth Independent School District.
Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H. D. Duncan, Phone: (817) 336-8311.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (full from 7/28/89).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (full from 6/16/89).

(25)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 669 Airport Freeway, Suite 210, Hurst, TX 76053-3962, Contact: Ed Kirch, Phone: (817) 268-4006.
(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Abatement Worker Refresher Course (full from 7/5/89).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (full from 7/28/89).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (full from 6/16/89).

(26)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.

Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/14/88).

Abatement Worker (full from 4/12/89).

(27)(a) *Training Provider:* Houston Independent School District.

Address: 228 McCarty Dr., Houston, TX 77029, Contact: Bennie Jenkins, Phone: (713) 676-2222 Ext. 396.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/10/89).

Abatement Worker Refresher Course (contingent from 10/12/89).

(28)(a) *Training Provider:* IMPACT Inc.

Address: 5330 Griggs Rd., Houston, TX 77021, Contact: Edgar Harvey, Phone: (713) 845-2416.

(b) *Approved Course:*

Abatement Worker (contingent from 8/17/89).

(29)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.

Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 10/4/87).

Abatement Worker (contingent from 10/5/87).

Abatement Worker (full from 3/22/88).

Abatement Worker Refresher Course (contingent from 10/5/87).

Contractor/Supervisor (full from 6/27/88).

(30)(a) *Training Provider:* K & T Safety Service, Inc.

Address: 9688 Bissonnett, Houston, TX 77036, Contact: Kevin Clothier, Phone: (713) 988-9021.

(b) *Approved Course:*

Abatement Worker (contingent from 3/28/89).

(31)(a) *Training Provider:* Keers Environmental, Inc.

Address: P.O. Box 6846, Albuquerque, NM 89197, Contact: Robert W. Keers, Phone: (505) 888-9525.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 3/28/89).

Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(32)(a) *Training Provider:* Kiser Engineering, Inc.

Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/27/89).

Abatement Worker Refresher Course (contingent from 8/24/89).

Contractor/Supervisor (contingent from 3/29/89).

Contractor/Supervisor Refresher Course (contingent from 8/24/89).

(33)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.

Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 887-3740.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/21/88).

Contractor/Supervisor (contingent from 7/21/88).

(34)(a) *Training Provider:* Lamar University, Hazardous Materials Program.

Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2369.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/19/88).

Abatement Worker (full from 4/26/89).

Contractor/Supervisor (contingent from 5/20/88).

Contractor/Supervisor Refresher Course (contingent from 10/24/88).

Inspector/Management Planner (contingent from 1/15/90).

(35)(a) *Training Provider:* Law Engineering.

Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/14/89).

Contractor/Supervisor (contingent from 2/26/90).

(36)(a) *Training Provider:* Little-Tex Insulation Co., Inc.

Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8004.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/88).

Contractor/Supervisor (contingent from 8/1/88).

(37)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.

Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).

Abatement Worker Refresher Course (contingent from 4/4/89).

(38)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.

Address: 181 Pleasant Hall, Baton Rouge, LA 70803-1520, Contact: Marcia L. Gilman, Phone: (504) 388-6591.

(b) *Approved Courses:*

Abatement Worker (full from 1/1/88).

Abatement Worker Refresher Course (contingent from 11/16/88).

Abatement Worker Refresher Course (full from 3/8/89).

Contractor/Supervisor (contingent from 10/6/87).

Contractor/Supervisor (full from 4/7/88).

Contractor/Supervisor Refresher Course (contingent from 11/16/88).

Contractor/Supervisor Refresher Course (full from 3/6/89).

Inspector/Management Planner (full from 1/18/88).

Inspector/Management Planner Refresher Course (full from 3/7/89).

Project Designer (contingent from 10/13/89).

Project Designer Refresher Course (contingent from 10/13/89).

(39)(a) *Training Provider:* MARTECH International, Inc.

Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3880.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/17/89).

Contractor/Supervisor (contingent from 1/17/89).

(40)(a) *Training Provider:* Maxim Engineers Inc.

Address: 2342 Fabens, Dallas, TX 75229, Contact: Leonard Kern, Phone: (214) 247-7575.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/6/89).

Abatement Worker (full from 6/9/89).

Inspector (contingent from 12/11/89).

Inspector (full from 8/9/90).

(41)(a) *Training Provider:* McClelland Management Services in Conjunction with the University of Houston.

Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: David Winburne, Phone: (713) 995-9000.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/90).

Abatement Worker Refresher Course (contingent from 1/5/90).

Contractor/Supervisor (contingent from 1/5/90).

Contractor/Supervisor (full from 9/21/90).

Contractor/Supervisor Refresher Course (contingent from 1/5/90).

Inspector/Management Planner (contingent from 1/5/90).

Inspector/Management Planner Refresher Course (contingent from 1/5/90).

Project Designer (contingent from 1/5/90).

Project Designer Refresher Course (contingent from 1/5/90).

(42)(a) *Training Provider:* Meador-Wright & Associates, Inc.

Address: 6211 W. Northwest Hwy., Suite C260, Dallas, TX 75225, Contact: Carl Teel, Phone: (214) 691-3485.

(b) *Approved Course:*

Inspector/Management Planner (full from 10/12/89).

(43)(a) *Training Provider:* Micro Analysis Laboratory, Inc.

Address: 8499 Greenville Ave., Dallas, TX 75231, Contact: Carolyn Jones, Phone: (214) 340-0890.

(b) *Approved Course:*

Abatement Worker (contingent from 9/6/89).

(44)(a) *Training Provider:* Moore-Norman Area Vocational Training School.

Address: 4701 12th Ave. NW., Norman, OK 73069, Contact: Frank Coulter, Phone: (405) 364-7032.

(b) *Approved Courses:*

Abatement Worker (full from 3/3/86).

Abatement Worker Refresher Course (contingent from 5/19/89).

Abatement Worker Refresher Course (full from 12/14/89).

Contractor/Supervisor (full from 12/14/89).

Contractor/Supervisor Refresher Course (contingent from 12/14/89).

Contractor/Supervisor Refresher Course (full from 12/14/89).

Inspector/Management Planner (contingent from 1/25/88).

Inspector/Management Planner (full from 4/4/88).

Inspector/Management Planner Refresher Course (contingent from 5/19/89).

(45)(a) *Training Provider:* NATEC of Texas, Inc.

Address: 5555 West Loop South, Suite 636, Bellaire, TX 77041, Contact: Paul Speck, Phone: (713) 524-9444.

(b) *Approved Course:*

Abatement Worker (contingent from 11/22/89).

(46)(a) *Training Provider:* Nelson/Imel, Inc.

Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3276.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).

Abatement Worker Refresher Course (contingent from 11/16/88).

Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* O'Connor McMahon, Inc.

Address: 1568 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: James M. Walley, Phone: (214) 245-3300.

(b) *Approved Course:*

Abatement Worker (contingent from 7/27/88).

(48)(a) *Training Provider:* Occupational Safety Health Consultants of Louisiana.

Address: 1034 Willow Brook Ave., Denham Springs, LA 70726, Contact: Clayton Joe Mitchell, Phone: (504) 664-0288.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/22/89).

Abatement Worker Refresher Course (contingent from 8/22/89).

Contractor/Supervisor (contingent from 8/22/89).

Contractor/Supervisor Refresher Course (contingent from 8/22/89).

(49)(a) *Training Provider:* Occupational Safety Training Institute.

Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).

Abatement Worker Refresher Course (contingent from 12/8/88).

Contractor/Supervisor (contingent from 7/27/88).

Contractor/Supervisor (full from 7/27/88).

Contractor/Supervisor Refresher Course (contingent from 12/8/88).

Inspector/Management Planner (contingent from 9/15/88).

(50)(a) *Training Provider:* PAN AM World Services Inc.

Address: P. O. Box 58938, Houston, TX 77258, Contact: Audrey Hall, Phone: (713) 483-7951.

(b) *Approved Course:*

Abatement Worker (contingent from 8/23/89).

(51)(a) *Training Provider:* Phoenix Services.

Address: 1813 Harvard, Richardson, TX 75081, Contact: Alcee Chriss, Phone: (214) 437-0150.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).

Abatement Worker Refresher Course (contingent from 11/29/89).

Contractor/Supervisor (contingent from 11/29/89).

Contractor/Supervisor Refresher Course (contingent from 11/29/89).

(52)(a) *Training Provider:* Protechnics Environmental Services.

Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Fabian Limon, Phone: (713) 496-9874.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/5/89).

Abatement Worker (full from 6/30/89).

Contractor/Supervisor (contingent from 6/22/89).

Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(53)(a) *Training Provider:* R & H Associates, Inc.

Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).

Abatement Worker Refresher Course (contingent from 4/20/89).

Contractor/Supervisor (contingent from 1/12/89).

Contractor/Supervisor Refresher Course (contingent from 4/20/89).

Inspector/Management Planner (contingent from 1/12/89).

Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(54)(a) *Training Provider:* Raba-Kistner Training Institute.

Address: 12821 West Golden Ln., San Antonio, TX 78249, Contact: Donald Fetzer, Phone: (512) 699-9090.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/23/89).

Contractor/Supervisor Refresher Course (contingent from 12/13/89).

Inspector/Management Planner (contingent from 12/13/89).

Inspector/Management Planner Refresher Course (contingent from 12/13/89).

(55)(a) *Training Provider:* Region 6 Environmental Training.

Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Charlotte Ramzel, Phone: (512) 837-9296.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).

Abatement Worker (full from 3/21/90).

Abatement Worker Refresher Course (contingent from 3/2/89).

Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 10/10/89).
Inspector/Management Planner Refresher Course (contingent from 10/10/89).

(58)(a) *Training Provider:* Regional Environmental Training Center.
Address: 9934 Garland Rd., Dallas, TX 75218, Contact: Lisa Adams, Phone: (214) 328-2038.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/20/89).
Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(57)(a) *Training Provider:* Safety & Health Research Institute.
Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/12/88 to 1/1/89 only).
Contractor/Supervisor (contingent from 9/12/88 to 1/1/89 only).
Inspector/Management Planner (contingent from 9/12/89).

(58)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.
Address: U.A.M. - Willard Hall, P.O. Box 3567, Monticello, AR 71655, Contact: Lloyd Cressley, Phone: (501) 367-6848.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(59)(a) *Training Provider:* Specialized Environmental Services Inc.
Address: 6614 John Ralston Rd., Houston, TX 77066, Contact: James Hommings, Phone: (713) 456-7274.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/29/89).
Abatement Worker (full from 4/19/90).
Abatement Worker Refresher Course (contingent from 11/29/89).

(60)(a) *Training Provider:* Specialized Environmental Training.
Address: P.O. Box 7001, Pasadena, TX 77508-7001, Contact: Sue Ann Williams, Phone: (713) 487-4415.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/90).
Contractor/Supervisor (contingent from 1/12/90).

(61)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.
Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Tom Garner, Phone: (409) 845-6682.
(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(62)(a) *Training Provider:* Texas State Conference of Painters & Allied Trades.
Address: P.O. Box 130441, Houston, TX 77223-0441, Contact: John S. Dolney, Phone: (713) 527-0152.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/7/89).

(63)(a) *Training Provider:* Texas Tech University.
Address: P.O. Box 4388, Lubbock, TX 79409, Contact: Paul Cotter, Phone: (806) 742-3576.
(b) *Approved Courses:*
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 11/7/89).
Abatement Worker Refresher Course (full from 11/14/90).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (full from 11/15/90).

(64)(a) *Training Provider:* The Institute of Environmental Training.
Address: P.O. Box 171161, San Antonio, TX 78217, Contact: Gene Walker, Phone: (512) 822-8436.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker (full from 9/17/90).
Abatement Worker Refresher Course (contingent from 9/17/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor (full from 9/19/90).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).
Inspector/Management Planner (contingent from 8/24/89).

(65)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept. of Environmental Health Sciences.
Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 8/1/89).
Inspector/Management Planner (contingent from 5/20/89).
Inspector/Management Planner Refresher Course (contingent from 8/1/89).

(66)(a) *Training Provider:* U.S. Analytical, Inc.
Address: P.O. Box 892, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3293.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/13/89).
Abatement Worker Refresher Course (contingent from 1/5/90).
Contractor/Supervisor (contingent from 2/13/89).

(67)(a) *Training Provider:* U.S. Environmental Services.
Address: 3801 Hulen St., Suite 105, Ft. Worth, TX 76107, Contact: Steve Salmon, Phone: (817) 429-9400.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/90).
Abatement Worker Refresher Course (contingent from 1/8/90).

(68)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.
Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/18/89).
Inspector/Management Planner (full from 9/13/90).
Inspector/Management Planner Refresher Course (contingent from 8/20/89).

(69)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.
Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-3268.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(70)(a) *Training Provider:* University of New Mexico, The Environmental Training Center Division of Continuing Education.
Address: 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Ed Rodriguez, Phone: (505) 277-9060.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/4/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
Contractor/Supervisor (contingent from 6/16/85).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(71)(a) *Training Provider:* University of Texas Health Center at TYLER.
Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-7877.
(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(72)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.
Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.
(b) *Approved Courses:*
Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(73)(a) *Training Provider:* Veltmann Engineering.
Address: Midland Air Park, P.O. Box 50741, Midland, TX 79710, Contact: Clyde Veltmann, Phone: (915) 683-1874.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).

(74)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.
Address: P.O. Box 5098, Amarillo, TX 79117, Contact: Dennis C. Clayton, Phone: (806) 372-4329.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

REGION VII -- Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, (ARTX), 726 Minnesota Ave., Kansas City, KS 66101. (913) 551-7381, (FTS) 551-7381.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AEROSTAT Environmental Engineering Corporation.
Address: Box 3096, Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.
(b) *Approved Courses:*
Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 3/3/89).
Abatement Worker Refresher Course (full from 3/16/89).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(2)(a) *Training Provider:* Abatement Project Training.
Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 788-3440.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor (full from 4/28/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).
Contractor/Supervisor Refresher Course (full from 1/8/90).

(3)(a) *Training Provider:* Accredited Project Design Environmental Management.
Address: 1532 S.W. Clontarf, Topeka, KS 66611, Contact: Richard H. Pointer, Phone: (913) 256-2003.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/13/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 2/21/90).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/15/90).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner (full from 1/22/90).
Inspector/Management Planner Refresher Course (contingent from 2/16/90).

(4)(a) *Training Provider:* American Asbestos Training Center, Ltd.
Address: 121 East Grand, Monticello, IA 52310, Contact: Steve Intlekofer, Phone: (319) 465-5786.
(b) *Approved Courses:*
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 6/26/89).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/26/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).
Inspector/Management Planner Refresher Course (contingent from 11/10/89).
Inspector/Management Planner Refresher Course (full from 11/16/89).

(5)(a) *Training Provider:* Asbestos Consulting Testing (ACT).
Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.

(b) *Approved Courses:*
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(6)(a) *Training Provider:* Baird Scientific, Inc.
Address: 221 West Fourth St., P.O. Box 842, Carthage, MO 64836, Contact: Timmothy Redfern, Phone: (417) 358-5567.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/26/89).
Abatement Worker (full from 10/19/89).
Abatement Worker Refresher Course (contingent from 7/3/90).
Contractor/Supervisor (contingent from 9/26/89).
Contractor/Supervisor (full from 10/19/89).
Contractor/Supervisor Refresher Course (contingent from 7/31/90).

(7)(a) *Training Provider:* CHART Services, Ltd.
Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3842.
(b) *Approved Courses:*
Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (full from 11/28/88).

(8)(a) *Training Provider:* Construction Industry Laborers' Training Institute for Eastern Missouri.
Address: Route 1, Box 79 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2391.
(b) *Approved Courses:*
Abatement Worker (full from 1/19/88).
Abatement Worker Refresher Course (contingent from 5/18/89).
Abatement Worker Refresher Course (full from 5/31/89).

(9)(a) *Training Provider:* Construction Laborers Building Corp.
Address: 11000 North 72nd St., Omaha, NE 68122, Contact: Leonard Schaffer, Sr., Phone: (402) 572-1470.
(b) *Approved Course:*
Abatement Worker (full from 11/2/87).

(10)(a) *Training Provider:* Educational Innovations.
Address: 23 West 3rd St., Lee's Summit, MO 64063, Contact: JoAnn Onwiler, Phone: (816) 525-6911.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker (full from 5/2/89).
Abatement Worker Refresher Course (contingent from 3/29/89).
Abatement Worker Refresher Course (full from 8/2/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor (full from 5/2/89).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (full from 8/2/89).
Project Designer Refresher Course (contingent from 6/21/89).
Project Designer Refresher Course (full from 7/31/89).

(11)(a) *Training Provider:* Enviro-Impact Inspections, Inc.
Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Bolea, Phone: no longer available.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88 to 11/8/90 only).
Contractor/Supervisor (contingent from 3/8/88 to 11/9/90 only).

(12)(a) *Training Provider:* Environmental Salvage, Ltd.
Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn A. Kundtson, Phone: (402) 733-2595.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/89).
Abatement Worker (full from 2/16/89).
Abatement Worker Refresher Course (contingent from 8/22/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor (full from 2/16/89).
Contractor/Supervisor Refresher Course (contingent from 8/22/89).
Contractor/Supervisor Refresher Course (full from 8/1/89).

(13)(a) *Training Provider:* Environmental Technology, Inc. (ETI).
Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Mike Bouska, Phone: (913) 236-5040.
(b) *Approved Courses:*
Abatement Worker (full from 2/29/88).
Abatement Worker Refresher Course (contingent from 4/28/89).
Abatement Worker Refresher Course (full from 7/19/89).

(14)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.
Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.
(b) *Approved Course:*
Abatement Worker (full from 3/7/88).

(15)(a) *Training Provider:* General Services Administration (GSA)- Region 6 Safety & Environmental Management Div.
Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.
(b) *Approved Courses:*
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 7/18/89).
Inspector/Management Planner Refresher Course (full from 8/28/89).

(16)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.
Address: 8044 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(17)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc. a Division of Professional Service Industries.
Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Margaret Maninger, Phone: (800) 346-2650.
(b) *Approved Courses:*
Abatement Worker (full from 8/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/19/88).
Contractor/Supervisor (full from 8/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 8/17/87).
Inspector/Management Planner Refresher Course (full from 9/19/88).
Project Designer (full from 8/17/87).
Project Designer Refresher Course (contingent from 9/19/88).
Project Designer Refresher Course (full from 12/20/88).

(18)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.
Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: no longer available.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/88 to 12/7/88 only).
Contractor/Supervisor (contingent from 10/19/88 to 12/7/88 only).

(19)(a) *Training Provider:* Hazardous Materials Training & Research Institute.
Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Barkdoll, Phone: (319) 322-5015.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 4/13/89).
Contractor/Supervisor (contingent from 6/8/89).
Contractor/Supervisor (full from 7/21/89).

(20)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.
Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.
(b) *Approved Courses:*
Abatement Worker (full from 6/28/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
Abatement Worker Refresher Course (full from 4/24/89).
Contractor/Supervisor (full from 6/28/88).
Contractor/Supervisor Refresher Course (contingent from 4/4/89).
Contractor/Supervisor Refresher Course (full from 4/24/89).

(21)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No.1.
Address: 3325 Hallenberg Dr., St. Louis, MO 63044, Contact: James M. Hagen, Phone: (314) 291-7399.
(b) *Approved Courses:*
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 6/28/89).
Abatement Worker Refresher Course (full from 6/30/89).
Contractor/Supervisor (full from 9/16/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).
Contractor/Supervisor Refresher Course (full from 8/18/89).

(22)(a) *Training Provider:* Iowa Dept. of Education.
Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/4/88).

(23)(a) *Training Provider:* Iowa Laborers District Council Training Fund.
Address: 5806 Meredith Dr., Suite B, Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-6965.
(b) *Approved Courses:*
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 11/10/89).
Abatement Worker Refresher Course (full from 11/14/89).
Contractor/Supervisor (contingent from 10/14/88).
Contractor/Supervisor (full from 12/6/89).

(24)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.
Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 267-0140.
(b) *Approved Courses:*
Abatement Worker (full from 1/5/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(25)(a) *Training Provider:* Kansas State University.
Address: Division of Facilities Management, Dykstra Hall, Manhattan, KS 66506, Contact: Robert D. Williams, Phone: (913) 532-6369.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/7/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 1/3/90).
Abatement Worker Refresher Course (full from 2/8/90).

(26)(a) *Training Provider:* Living Word College.
Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.
(b) *Approved Course:*
Inspector/Management Planner (Approval Revoked 5/6/88).

(27)(a) *Training Provider:* MI-TON, Inc.
Address: 205 W. Walnut, Springfield, MO 65836, Contact: Barry Mills, Phone: (417) 831-4647.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/14/89).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 4/16/90).
Abatement Worker Refresher Course (full from 5/18/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 4/17/90).
Contractor/Supervisor Refresher Course (full from 5/11/90).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Inspector/Management Planner Refresher Course (full from 4/3/89).

(28)(a) *Training Provider:* Maple Woods Community College.
Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-8500.
(b) *Approved Courses:*
Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (full from 1/13/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (full from 1/13/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/89).
Inspector/Management Planner Refresher Course (full from 7/28/89).

(29)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).
Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew or Teri Herberger, Phone: (800) 444-6382.
(b) *Approved Courses:*
Abatement Worker (full from 10/20/87).
Abatement Worker Refresher Course (full from 11/14/88).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (full from 11/14/88).
Inspector/Management Planner (full from 8/8/88).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(30)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.
Address: 635 Southwest 2nd St., Box 1029, Lee's Summit, MO 64063, Contact: Steve Minshall, Phone: (816) 525-6681.

(b) *Approved Courses:*
Abatement Worker (full from 5/9/88 to 6/5/89 only).
Abatement Worker Refresher Course (contingent from 4/28/89 to 6/5/89 only).
Contractor/Supervisor (full from 5/9/88 to 6/5/89 only).
Contractor/Supervisor Refresher Course (contingent from 4/28/89 to 6/5/89 only).
(31)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/5/88).
Abatement Worker Refresher Course (full from 9/26/89).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/87).
Contractor/Supervisor Refresher Course (contingent from 10/5/88).
Contractor/Supervisor Refresher Course (full from 10/11/88).
Inspector/Management Planner (full from 10/26/87).
Inspector/Management Planner Refresher Course (contingent from 10/5/88).
Inspector/Management Planner Refresher Course (full from 10/10/88).
(32)(a) *Training Provider:* Occu-Tec, Inc.
Address: 6501 East Commerce Ave., Suite 208, Kansas City, MO 64120, Contact: Duncan Heydon, Phone: (816) 231-5580.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/29/90).
Abatement Worker (full from 7/26/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Abatement Worker Refresher Course (full from 4/2/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor (full from 7/26/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (full from 4/2/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner (full from 12/12/90).
Inspector/Management Planner Refresher Course (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (full from 4/2/90).
(33)(a) *Training Provider:* PS&H Inc.
Address: 1810 Craig Rd., Suite 114, St. Louis, MO 63146, Contact: Carol E. Hoag, Phone: (314) 275-7733.
(b) *Approved Courses:*
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 9/14/89).
Abatement Worker Refresher Course (full from 11/2/89).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/14/89).
Contractor/Supervisor Refresher Course (full from 11/2/89).
Inspector/Management Planner (full from 6/23/88).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 3/2/89).
(34)(a) *Training Provider:* Performance Abatement Services, Inc.
Address: 14801 West 99th St., P.O. Box 19328, Lenexa, KS 66215, Contact: Tony Chiaverini, Phone: (913) 888-2423.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 7/6/89).
Contractor/Supervisor (full from 7/27/89).
(35)(a) *Training Provider:* Ramsey - Schilling Consulting Group, Inc.
Address: 503 Main, Belton, MO 64012, Contact: George McDowell, Phone: (816) 331-0002.
(b) *Approved Course:*
Inspector (contingent from 1/30/90).
(36)(a) *Training Provider:* Roth Asbestos Consultants, Inc.
Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 3/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Abatement Worker Refresher Course (full from 7/24/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 7/20/89).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 7/24/89).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 1/23/89).
(37)(a) *Training Provider:* Ryckman's Emergency Action & Consulting Team (REACT).
Address: 2206 Welsch Industrial Ct., St. Louis, MO 63146, Contact: Nicolaus P. Neuman, Phone: (800) 325-1398.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 8/3/89).
Contractor/Supervisor (full from 7/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/26/89).
Contractor/Supervisor Refresher Course (full from 8/4/89).
(38)(a) *Training Provider:* University of Missouri-Columbia Environmental Health and Safety.
Address: Research Park Development Bldg., Columbia, MO 65211, Contact: Brent S. Mattox, Phone: (314) 882-7018.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 8/8/90).
Contractor/Supervisor (full from 8/23/90).

REGION VIII – Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1442, (FTS) 330-1442.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.
Address: 9101 Pearl St., Suite 307, Thornton, CO 80229, Contact: Eugene Aragon, Phone: (303) 450-5026.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/26/89).
Abatement Worker (full from 11/22/89)
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 7/26/89).
Contractor/Supervisor (full from 11/22/89).
(2)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/2/89).
Abatement Worker (full from 5/4/90).
(3)(a) *Training Provider:* Chen-Northern, Inc.
Address: P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-8161.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 2/16/89).
Abatement Worker Refresher Course (full from 11/6/90).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 1/11/90).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (full from 11/9/90).
(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.
Address: 4290 Holly St., Denver, CO 80216, Contact: Manuel Rodriquez, Jr., Phone: (303) 393-6060.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).
(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.
Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/89).
Abatement Worker (full from 2/16/89).
(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences.
Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491-7240.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/23/88).
Abatement Worker (full from 9/22/90).
Abatement Worker Refresher Course (contingent from 12/9/88).
Abatement Worker Refresher Course (full from 4/6/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/22/90).
Contractor/Supervisor Refresher Course (contingent from 12/9/88).
Contractor/Supervisor Refresher Course (full from 4/6/90).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 1/17/89).
(7)(a) *Training Provider:* Colorado Training Institute.
Address: 10255 E. 25th Ave., Suite 13, Aurura, CO 80010, Contact: Carlos M. Guerra, Phone: (303) 367-8666.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Abatement Worker (full from 9/19/90).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 9/20/90).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).
Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88 to 6/1/90 only).
Abatement Worker (full from 6/22/88 to 6/1/90 only).
(9)(a) *Training Provider:* Engineering Extension College of Engineering South Dakota State University.
Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/18/88).
Inspector/Management Planner (contingent from 5/18/88).
(10)(a) *Training Provider:* Envir-o-Tech.
Address: 300 Moore Ln., Billings, MT 59102, Contact: Leonard Cranford, Phone: (406) 252-7536.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 7/6/88).
(11)(a) *Training Provider:* Front Range Community College.
Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 7/27/90).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 1/28/90).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
(12)(a) *Training Provider:* HWS Technologies, Inc.
Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-8888.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/7/89).
Abatement Worker Refresher Course (contingent from 2/28/89).
Abatement Worker Refresher Course (full from 6/29/89).
Contractor/Supervisor (contingent from 2/28/89).
Contractor/Supervisor (full from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/28/89).
Contractor/Supervisor Refresher Course (full from 6/29/89).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (contingent from 2/28/89).
Inspector/Management Planner Refresher Course (full from 6/29/89).
(13)(a) *Training Provider:* Hager Laboratories, Inc.
Address: 5930 McIntire St., P.O. Box 4012, Golden, CO 80403, Contact: Charles Metzger & D. Robinson, Phone: (303) 278-3400.
(b) *Approved Courses:*
Abatement Worker (full from 3/28/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 4/28/89).

Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (full from 12/6/89).

(14)(a) *Training Provider:* Industrial Health, Inc. (IHI).
Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 11/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor (full from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 4/24/89).
Contractor/Supervisor Refresher Course (full from 11/2/90).
Inspector/Management Planner (contingent from 2/28/89).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (full from 1/6/89).
Project Designer Refresher Course (contingent from 4/24/89).

(15)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.
Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham or Pat Pfeifer, Phone: (303) 778-8602.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/28/89).
Abatement Worker (full from 4/28/89).
Abatement Worker Refresher Course (full from 7/21/89).

(16)(a) *Training Provider:* Laborers AGC Training Program for Montana.
Address: 3100 Horseshoe Bend Rd., Helena, MT 59601, Contact: Daniel F. Holland, Phone: (406) 442-9964.
(b) *Approved Course:*
Abatement Worker (contingent from 9/19/88).

(17)(a) *Training Provider:* Major Environmental & Training Services, Inc.
Address: 100 Garfield St., Suite 100, Denver, CO 80206, Contact: Tom Major, Sr., Phone: (303) 322-9490.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/28/88).
Abatement Worker (full from 9/15/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/14/88).
Contractor/Supervisor (full from 9/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 1/2/88).
Inspector/Management Planner (full from 3/27/89).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/12/90).
Project Designer (contingent from 1/28/88).
Project Designer Refresher Course (contingent from 1/18/89).

(18)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).
Address: 219 23rd St. North, Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 5/23/89).
Abatement Worker Refresher Course (contingent from 7/31/89).
Abatement Worker Refresher Course (full from 8/24/89).

(19)(a) *Training Provider:* Misers Inspection & Training, Inc.
Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-0367.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 7/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Abatement Worker Refresher Course (full from 1/27/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 7/5/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).
Contractor/Supervisor Refresher Course (full from 1/27/89).

(20)(a) *Training Provider:* NATEC International, Inc.
Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Lester Ablin, Phone: (303) 781-0422.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/15/88 to 6/1/90 only).
Inspector/Management Planner (contingent from 6/2/89 to 6/1/90 only).

(21)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 S., West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 6/22/89).
Abatement Worker Refresher Course (contingent from 5/22/89).
Contractor/Supervisor (contingent from 5/22/89).
Contractor/Supervisor (full from 6/22/89).
Contractor/Supervisor Refresher Course (full from 7/3/90).

(22)(a) *Training Provider:* Power Master, Inc.
Address: 13205 Minuteman Drive, Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.
(b) *Approved Course:*
Abatement Worker (contingent from 6/13/88 to 6/22/90 only).

(23)(a) *Training Provider:* Precision Safety & Services, Inc.
Address: 1045 W. Garden of Gods Rd., Unit T, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/2/88).

(24)(a) *Training Provider:* R. S. Christiansen Asbestos Consultant.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R. S. Christiansen, Phone: (801) 277-2323.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/29/88).
Abatement Worker (full from 12/7/88).

(25)(a) *Training Provider:* Survey Management & Design (SMD).
Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: Peter Mehl, Phone: (701) 234-9556.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).

Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/2/89).
Inspector/Management Planner (contingent from 9/14/89).
Inspector/Management Planner (full from 10/15/89).

(26)(a) *Training Provider:* The Environmental Training Center.
Address: 2761 W. Oxford Ave., No. 7, Englewood, CO 80110, Contact: Les Ablin, Phone: (303) 781-0422.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/21/89).
Abatement Worker (full from 4/27/90).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 4/27/90).

(27)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.
Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/27/88).
Abatement Worker (full from 9/27/88).
Contractor/Supervisor (contingent from 6/1/87).
Contractor/Supervisor (full from 6/1/87).
Contractor/Supervisor Refresher Course (contingent from 6/7/88).
Contractor/Supervisor Refresher Course (full from 11/13/88).
Inspector/Management Planner (contingent from 12/23/87).
Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-4), EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105. (415) 556-5408, (FTS) 556-5976.

List of Asbestos Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Ahearn & Associates, Inc.
Address: 4015 44th St., Phoenix, AZ 85018, Contact: Robert L Hutzel, Phone: (602) 840-9446.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(2)(a) *Training Provider:* Arizona Carpenters Joint Apprenticeship & Training Committee.
Address: 2825 W. Holly, Phoenix, AZ 85009, Contact: Thomas E. Quine, Phone: (602) 272-6547.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/18/89).

(3)(a) *Training Provider:* Arizona Laborers' Joint Training Center.
Address: P.O. Box 565, Chino Valley, AZ 86323, Contact: Bill Hadley, Phone: (602) 636-2532.
(b) *Approved Course:*
Abatement Worker (contingent from 10/18/89).

(4)(a) *Training Provider:* Asbestos C.T.I.
Address: P.O. Box 228, Mokelumne Hill, CA 95245, Contact: Ed Leonard, Phone: (209) 286-1472.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/31/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).
Inspector (contingent from 3/21/89).
Inspector Refresher Course (contingent from 10/31/89).

(5)(a) *Training Provider:* Asbestos Training Institute.
Address: 210 S. La Fayette Park Pl., Suite 205, Los Angeles, CA 90057, Contact: Kayode Akinrele, Phone: (213) 252-0166.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).

(6)(a) *Training Provider:* California State University - Sacramento.
Address: 650 University Ave., Suite 101A, Sacramento, CA 95825, Contact: Jackie Branch, Phone: (916) 923-0282.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(7)(a) *Training Provider:* Carpenters No. 46 Northern California Counties J.A.T.C. & T.B.
Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(8)(a) *Training Provider:* Center for Accelerated Learning.
Address: P.O. Box 6327, Vacaville, CA 95696-6327, Contact: David Esparza, Phone: (707) 446-7996.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 12/7/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(9)(a) *Training Provider:* DWC Consulting Co., Inc.
Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/3/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 4/3/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 4/3/89).

Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(10)(a) *Training Provider:* Dan Napier & Associates.

Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/88).

Abatement Worker Refresher Course (contingent from 1/18/89).

Contractor/Supervisor (contingent from 3/27/89).

Contractor/Supervisor Refresher Course (contingent from 1/18/89).

Inspector/Management Planner (contingent from 4/3/89).

Inspector/Management Planner Refresher Course (contingent from 3/30/89).

Project Designer Refresher Course (contingent from 3/30/89).

(11)(a) *Training Provider:* Design for Health.

Address: 1516 W. Redwood St., Suite 104, San Diego, CA 92101, Contact: Virginia Sbafa, Phone: (619) 291-1777.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/30/89).

Abatement Worker Refresher Course (contingent from 12/6/89).

Contractor/Supervisor (contingent from 10/18/89).

Contractor/Supervisor Refresher Course (contingent from 12/6/89).

Inspector/Management Planner (contingent from 11/30/89).

(12)(a) *Training Provider:* Eagle Environmental.

Address: 8840-A Elder Creek Rd., Sacramento, CA 95828, Contact: Larry West, Phone: (916) 381-5448.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 10/18/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

Inspector/Management Planner (contingent from 10/18/89).

Inspector/Management Planner Refresher Course (contingent from 10/18/89).

Project Designer (contingent from 10/18/89).

Project Designer Refresher Course (contingent from 10/18/89).

(13)(a) *Training Provider:* EnviroMD, Inc.

Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Lee Allen, Phone: (602) 881-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/15/89).

Contractor/Supervisor (contingent from 1/17/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

Inspector/Management Planner (contingent from 11/14/88).

Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(14)(a) *Training Provider:* Environmental Control Industries.

Address: 2700 Teagarden St., San Leandro, CA 94577, Contact: Carlos Aleman, Phone: (415) 655-5855.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 10/31/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(15)(a) *Training Provider:* Environmental Sciences, Inc.

Address: 106 E. Speedway, Tucson, AZ 85705, Contact: Paula Keyes, Phone: (602) 792-0097.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 9/29/87).

Inspector/Management Planner (full from 10/5/87).

Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(16)(a) *Training Provider:* Environmental Service & Technology, Inc.

Address: 3445 32nd St., San Diego, CA 92104, Contact: Mary Lacey, Phone: (800) 633-0373.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).

Abatement Worker Refresher Course (contingent from 12/6/89).

Contractor/Supervisor (contingent from 10/18/89).

Contractor/Supervisor Refresher Course (contingent from 12/6/89).

Inspector/Management Planner (contingent from 10/18/89).

Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(17)(a) *Training Provider:* Excel Environmental, Inc.

Address: 730 Allston Way, Berkeley, CA 94710, Contact: Dave Stover, Phone: (415) 548-4300.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/28/87).

Abatement Worker Refresher Course (contingent from 12/1/88).

Contractor/Supervisor (contingent from 6/1/88).

Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(18)(a) *Training Provider:* Hawaii Laborers Training School.

Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 486-6161.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/27/88).

Abatement Worker Refresher Course (contingent from 10/18/89).

(19)(a) *Training Provider:* Herring & Herring Enterprises.

Address: No. 9 Grits Court, Sacramento, CA 95823, Contact: Leslie Herring, Phone: (916) 421-6260.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/2/90).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 1/2/90).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(20)(a) *Training Provider:* INFOTOX.

Address: 8531 Mission Blvd, Suite 24, Riverside, CA 92509, Contact: Jim Maclam, Phone: (714) 685-5053.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/18/89).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 10/18/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(21)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Asbestos Training Fund.

Address: 2035 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2292.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).

Contractor/Supervisor (contingent from 10/31/89).

(22)(a) *Training Provider:* International Technology Corp.

Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9831.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/24/87).

Abatement Worker Refresher Course (contingent from 3/29/89).

Contractor/Supervisor (contingent from 4/15/88).

Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(23)(a) *Training Provider:* Joint Apprenticeship Trust Asbestos Workers Local 5.

Address: 520 So. La Fayette Park Pl., Suite 300, Los Angeles, CA 90057, Contact: Tom L. Gutierrez, Phone: (213) 383-8010.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 1/26/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(24)(a) *Training Provider:* KELLCO Training Institute.

Address: 44804 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 651-7401.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/1/88).

Contractor/Supervisor (contingent from 7/20/88).

Contractor/Supervisor Refresher Course (contingent from 10/31/88).

Inspector/Management Planner (contingent from 3/21/89).

Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(25)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.

Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).

Abatement Worker Refresher Course (contingent from 12/15/88).

(26)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.

Address: P.O. Box 76, Anza, CA 92306-0076, Contact: Don Sanders, Phone: (714) 763-4341.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).

Abatement Worker Refresher Course (contingent from 12/6/89).

(27)(a) *Training Provider:* Lehr Training Institute, Inc.

Address: 4125 East La Palma Ave. Suite 300, Anaheim, CA 92807, Contact: Susan Patnode, Phone: (714) 572-0110.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/16/88).

Abatement Worker Refresher Course (contingent from 2/21/89).

Contractor/Supervisor (contingent from 2/16/88).

Contractor/Supervisor Refresher Course (contingent from 2/21/89).

Inspector/Management Planner (contingent from 10/31/88).

Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(28)(a) *Training Provider:* Los Angeles District Council of Carpenters and Vicinity.

Address: 4665 Mercury St., Suite 203, San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 495-1850.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).

Contractor/Supervisor (contingent from 10/31/88).

(29)(a) *Training Provider:* National Asbestos Technology Education Center (NATEC).

Address: 11552 Knott St., Suite 8, Garden Grove, CA 92641, Contact: Rodger D. Sandlin, Phone: (714) 894-7577.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/30/87).

Abatement Worker Refresher Course (contingent from 11/8/88).

Contractor/Supervisor (contingent from 12/30/87).

Contractor/Supervisor Refresher Course (contingent from 11/8/88).

(30)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.

Address: 1019 West Manchester Blvd., Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.

(b) *Approved Courses:*

Abatement Worker (full from 12/24/87).

Abatement Worker Refresher Course (contingent from 10/19/88).

Contractor/Supervisor (full from 12/24/87).

Contractor/Supervisor Refresher Course (contingent from 10/19/88).

Inspector/Management Planner (contingent from 6/30/88).

Inspector/Management Planner Refresher Course (contingent from 11/4/88).

(31)(a) *Training Provider:* Naval Civil Engineering Laboratory.

Address: Code L-15, Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-1136.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/31/89).

Abatement Worker Refresher Course (contingent from 10/18/89).

Contractor/Supervisor (contingent from 10/31/89).

Contractor/Supervisor Refresher Course (contingent from 10/18/89).

Inspector (contingent from 4/6/89).

(32)(a) *Training Provider:* Occupational Training Institute, Inc.

Address: 5 Civic Plaza, Suite 310, Newport Beach, CA 92660, Contact: Charles Goeshall, Phone: (714) 721-9578.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/21/89).

Abatement Worker Refresher Course (contingent from 2/21/89).

Contractor/Supervisor (contingent from 2/21/89).

Contractor/Supervisor Refresher Course (contingent from 2/21/89).

Inspector/Management Planner (contingent from 3/16/89).

Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(33)(a) *Training Provider:* Painters District Council No. 36.

Address: 3601 W. Alameda Ave., Suite 200, Burbank, CA 91505, Contact: William Sauerwald, Phone: (818) 941-1366.

(b) *Approved Course:*

Abatement Worker (contingent from 10/15/89).

(34)(a) *Training Provider:* Robert Harvey Griese.

Address: 5933 Telegraph Rd., City of Commerce, CA 90040, Contact: Robert H. Griese, Phone: (213) 720-1805.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/6/89).

Contractor/Supervisor (contingent from 12/6/89).

Inspector/Management Planner (contingent from 12/6/89).

(35)(a) *Training Provider:* Salem Kroeger, Inc.

Address: 106 Church St., Roseville, CA 95678, Contact: Owen C. Tilley, Phone: (916) 784-7222.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).

Abatement Worker Refresher Course (contingent from 4/3/89).

BEST COPY AVAILABLE

Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(36)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.
Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 283-6941.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/21/89).
Abatement Worker Refresher Course (contingent from 10/18/89).

(37)(a) *Training Provider:* Spectrum Environmental Training.
Address: 6245 Bristol Pkwy., Suite 305, Culver City, CA 90230, Contact: James H. Mondy, Phone: (213) 322-2332.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).

(38)(a) *Training Provider:* The Asbestos Institute.
Address: 2701 East Camelback, Suite 381, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 224-5404.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(39)(a) *Training Provider:* The Environmental Institute.
Address: 41 East Foothill Blvd., Suite 104, Arcadia, CA 91006, Contact: Alan M. Lamson, Phone: (818) 447-5216.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).
Project Designer Refresher Course (contingent from 10/18/89).

(40)(a) *Training Provider:* Univ. of Calf. Extension Programs in Environmental Hazard Management (PHEM) (Formerly Pacific Asbestos Info. Ctr.).
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Debra Dobin, Phone: (415) 643-7143.

(b) *Approved Courses:*
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).
Project Designer (contingent from 10/31/88).

(41)(a) *Training Provider:* University Associates.
Address: 3791 N. Camino de Oeste, Tucson, AZ 85745, Contact: John D. Repko, Phone: (602) 624-9366.

(b) *Approved Course:*
Inspector/Management Planner (contingent from 12/1/88).

(42)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.
Address: 927 W. 35th Pl., Room 102, Los Angeles, CA 90089-0021, Contact: James O. Pierce, Phone: (213) 740-3996.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner (full from 2/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

REGION X -- Seattle, WA

Regional Asbestos Coordinator: Matt Wilkening, EPA, Region X, 1200 Sixth Ave. (5T-083), Seattle, WA 98101. (206) 442-8282 (FTS) 399-8282

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Arctic Slope Consulting Group.
Address: 3801 South Cushman, Fairbanks, AK 99701-7529, Contact: Robert A.Perkins or Clark Milne, Phone: (907) 451-6009.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner (full from 10/5/90).
Inspector/Management Planner Refresher Course (contingent from 10/25/89).

(2)(a) *Training Provider:* Asbestos Removal Technologies.
Address: P.O. Box 4782, Vancouver, WA 98662, Contact: Skip Gaultier, Phone: (800) 321-4121.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 10/25/89).
Inspector/Management Planner Refresher Course (full from 12/25/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 12/26/89).

(3)(a) *Training Provider:* Asbestos Services International, Inc.
Address: 12360 Southwest Butner Rd., Portland, OR 97225-5618, Contact: Jim Jones, Phone: (503) 644-0246.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).
Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(4)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.

(b) *Approved Course:*
Inspector (contingent from 3/25/88).

(5)(a) *Training Provider:* Engineering Continuing Education University of Washington.
Address: GG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/28/88 to 6/1/90 only).
Inspector/Management Planner (full from 2/8/88 to 6/1/90 only).

(6)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE., Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.

(b) *Approved Courses:*

Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).
Project Designer (contingent from 12/11/89).

(7)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Debra Chrisman or Gordon Randall, Phone: (907) 272-8056.

(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(8)(a) *Training Provider:* Hazcon, Inc.
Address: 4636 Marqiael Way S., Suite 215, Seattle, WA 98134, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(9)(a) *Training Provider:* Heavey Engineers, Inc.
Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648-0832, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 3/10/89).

(10)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.
Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

(11)(a) *Training Provider:* Northwet Envirocon, Inc.
Address: P.O. Box 169, Washougal, WA 98671, Contact: Debbie Stevison, Phone: (503) 659-8899.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(12)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.
Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Kelly Strother, Phone: (503) 248-1939.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/14/89).
Inspector/Management Planner Refresher Course (full from 6/30/89).
Project Designer (contingent from 6/9/89).
Project Designer (full from 6/19/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 9/18/90).

(13)(a) *Training Provider:* South East Regional Resource Center, Inc.
Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Inspector/Management Planner Refresher Course (full from 6/1/90).

(14)(a) *Training Provider:* Specialized Environmental Consulting, Inc.
Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 3/7/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(15)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*
Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).

(16)(a) *Training Provider:* Valley Research Corporation.
Address: 1299 E. 2400 St., Hagerman, ID 83332, Contact: Leon Urie, Phone: (208) 837-6437.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 10/20/89).
Contractor/Supervisor (full from 6/8/90).

(17)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.
Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Colin MacRae, Phone: (206) 455-6054.

(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

Dated: February 6, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-3967 Filed 2-27-91; 8:45 a.m.]
BILLING CODE 6560-50-F

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Prospective Payment System for Inpatient Hospital Capital-Related Costs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-681-P]

RIN 0938-AE58

Prospective Payment System for Inpatient Hospital Capital-Related Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare payment methodology for inpatient hospital capital-related costs for hospitals paid under the prospective payment system. We would replace the current reasonable cost-based payment methodology with a prospective payment for capital-related costs. This methodology would provide for a 10-year transition period from a blend of a Federal payment and a hospital-specific payment to a fully Federal payment rate. During the transition, a hospital that has a hospital-specific rate above the Federal rate would receive payment on a reasonable cost basis for 90 percent of its costs for "old capital".

DATES: To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on April 29, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-681-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection recordkeeping requirements, please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD-681-P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 am. to 5 p.m. (phone: 202-245-7890).

COPIES: To order copies of the Federal Register containing this document, send your request to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325. Specify the date of the issue requested and enclose a check payable to the Superintendent of Documents, or enclose your Visa or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the Federal Register document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register. Ask the order desk operator for the location of the Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this proposed rule, we are changing the regulations that govern the way in which inpatient capital-related costs for hospitals paid under the prospective payment system are treated for Medicare payment purposes. Provisions in the final rule will be effective for hospital cost reporting periods beginning on or after October 1, 1991. Capital-related costs under Medicare include depreciation, interest, taxes, insurance, and similar expenses (defined further in 42 CFR 413.130) for plant and fixed equipment, and for movable equipment. Capital costs do not include a return on equity capital for proprietary hospitals.

Currently, inpatient operating costs are the only costs covered by the prospective payments received by hospitals under the prospective payment system (Part 412). Payment for capital-related costs has been on a reasonable cost basis (§ 413.5) under part 413, subpart G because, under sections 1886 (a)(4) and (d)(1)(A) of the Act, those costs have been specifically excluded from the definition of inpatient operating costs. Section 1886(g)(1) of the Act requires that capital-related costs be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991 for hospitals paid under the prospective payment system. In this proposed rule, we would add a new subpart M to part 412 to provide for a prospective payment system for inpatient capital-related hospital costs. (Certain conforming changes and other technical changes to other subparts in part 412 would be made in the final rule.) Hospitals and hospital distinct part units that are excluded from the prospective payment system would continue to be paid for capital-related costs on a reasonable cost basis (§ 413.5) under part 413, subpart G.

II. Background

Under section 1886(d) of the Act, the Medicare program pays for the operating costs attributable to inpatient hospital services under a prospective payment system in which payment is made at a predetermined, specific rate for each discharge. Operating costs are defined in section 1886(a)(4). As originally enacted, section 1886(a)(4) of the Act excluded capital costs from the definition of inpatient operating costs for cost reporting periods beginning before October 1, 1986. On June 3, 1986, we published a notice of proposed rulemaking to amend the regulations to incorporate capital-related costs into the Medicare prospective payment system effective with cost reporting periods beginning in Federal fiscal year (FY) 1987, which began on October 1, 1986 (51 FR 19970). However, on July 2, 1986, section 206 of the Urgent Supplemental Appropriations Act of 1986 (Pub. L. 99-349) amended section 1886(a)(4) of the Act to postpone for an additional year the inclusion of capital-related costs into the definition of operating costs (that is, for cost reporting periods beginning on or after October 1, 1987). Subsequently, section 9303(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) further revised section 1886(a)(4) of the Act by providing that capital-related costs be excluded from inpatient operating costs for cost reporting periods beginning prior to October 1, 1987 or later at the Secretary's discretion.

On May 19, 1987, we published a proposed rule in the Federal Register (52 FR 33168) to amend the Medicare regulations to incorporate capital-related costs into the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1987.

We think it is important to note that, in developing the capital payment policy described in the May 1987 proposed rule, we took into consideration the 1986 recommendations of the Prospective Payment Assessment Commission (ProPAC) concerning capital payment policy and numerous public comments on the June 3, 1986 proposed rule (51 FR 19970) in which we initially proposed to incorporate capital costs into the prospective payment system. Based on those recommendations and comments, we significantly revised the original proposal, published in the June 1986 proposed rule, before publishing the May 1987 proposed rule. Based on public comment, we further revised the capital payment policy before publishing the final rule in the Federal Register on September 1, 1987 (52 FR 33168).

The September 1987 final rule to amend the Medicare regulations to incorporate capital-related costs into the prospective payment system effective with hospital cost reporting periods beginning after September 30, 1987 provided for the following policies:

- We established national urban and rural capital rates separately for plant and fixed equipment and for moveable equipment using the best data currently available.
- We standardized the capital costs for differences in case mix complexity, indirect medical education, and disproportionate share payments. We also standardized plant and fixed capital costs by an area construction cost adjustment. In addition, we standardized moveable equipment capital costs for hospitals in Alaska and Hawaii by a cost-of-living adjustment.
- We updated the standardized average capital costs to FY 1988 by the estimated actual increase in capital costs per case. We provided that subsequent updates would be based on the overall prospective payment update factor (which would include changes in the price of items included in a capital market basket).
- We provided for two transition periods as follows—
  - —A ten-year transition period for incorporating capital payments for plant and fixed equipment; and
  - —A seven-year transition period for incorporating capital payments for moveable equipment.
- We amended the existing payment policy for outliers (42 CFR part 412, subpart F), which is authorized by section 1886(d)(5)(A) of the Act, to include Federal capital payments for outlier cases. We provided that the cost outlier policy (§ 412.84) would be based on inpatient operating costs including capital, and that we would pay cost outliers only when inpatient operating costs (including capital) for a case are above the cost outlier threshold.
- We stated that we would determine the hospital-specific portion each year based on Medicare's allowable capital costs in that year (a rolling base), subject to the applicable blending percentages for each year of the transition.
- We included Puerto Rico hospitals in the prospective capital payment process in accordance with sections 1886(d)(9) and (g)(3)(A) of the Act.
- For FY 1988 and FY 1989, we provided for an adjustment to the capital payment amounts (Federal and hospital-specific portions) in order that the aggregate capital payment amounts under the prospective payment system would have approximated the aggregate capital payment amounts that would have been made on a reasonable cost basis during FYs 1988 and 1989, taking into account the reductions then prescribed under section 1886(g)(3) of the Act.
- We provided for capital payments to new hospitals on the same basis as all other hospitals subject to the prospective payment system, using the rolling base approach and the applicable Federal/hospital-specific blend for the Federal fiscal year in which the hospital first participated in the Medicare program.
- We excluded sole community hospitals from prospective payments for capital for cost reporting periods beginning before October 1, 1990, in accordance with section 1886(g)(3)(C)(i) of the Act (prior to amendment by Pub. L. 100-203).
- We provided for additional capital payments to hospitals that would have been financially disadvantaged during the capital payment transition period by the changeover from reasonable cost-related payment to prospective payments for capital. The amounts paid under this exceptions process would have been obtained by reducing the average standardized capital payment rates by five percent of the total Federal capital payments.

A hospital would have been eligible for an additional payment if the portion of the hospital's allowable inpatient capital costs paid under the Federal rate was 175 percent or more than the total of the hospital's Federal capital payments (excluding payments for the hospital-specific portion) for that period. The amount of the additional capital payment would have been equal to 70 percent of the difference between 175 percent of the hospital's total Federal capital payments and its portion of the actual allowable inpatient capital cost paid through the Federal rate.

On December 22, 1987, section 4006 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) voided the September 1, 1987 final rule on payment for capital-related costs (52 FR 33168). Section 4006(b) of Public Law 100-203 revised section 1886(g)(1) of the Act to require the Secretary to establish a prospective payment system for the capital-related costs of prospective payment system hospitals for cost reporting periods beginning in FY 1992. The amendment also dropped the earlier exemption from the capital prospective payment system for sole community hospitals. The accompanying conference committee report (H.R. Rep. No. 495, 100th Cong., 1st Sess. 535 (1987)) noted that "At that point (October 1, 1991) hospitals will have had more than eight years since the Congress originally indicated its intent in 1983 to reimburse for capital-related costs on a prospective basis."

As amended by Public Law 100-203, section 1886(g)(1)(B) of the Act provides that the capital prospective payment is to be on a per discharge basis appropriately weighted for the classification of the discharge. It also gives the Secretary discretion to provide for adjustments to capital prospective payments for relative cost variations in construction by building type or area, for appropriate exceptions (including those to reflect capital obligations), and for adjustments to reflect hospital occupancy rate. Beyond the specific guidance provided by revised section 1886(g)(1) of the Act and supporting Congressional reports, the Secretary has substantial latitude in implementing the capital prospective payment system.

As amended by Public Law 100-203, section 1886(g)(3)(A) of the Act provided for a 12 percent reduction in capital payments for portions of cost reporting periods or discharges, as appropriate, occurring on or after January 1, 1988 and a 15 percent reduction during FY 1989. This 15 percent reduction was effectively extended through FY 1990 by section 6002 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239).

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) was enacted. Section 4001(a) of that law amended section 1886(g)(3)(A)(v) of the Act to further extend the 15 percent reduction in capital-related costs of inpatient hospital services through FY 1991.

In addition, section 4001(b) of Public Law 101-508 amended section 1886(g)(1)(A) of the Act by specifying that during FY 1992 through FY 1995 aggregate payments under section 1886(d) and section 1886(g)(1)(A) should be reduced in a manner that results in

savings equivalent to 10 percent of the amount of payments attributable to capital-related costs that would otherwise have been made on a reasonable cost basis during each of those fiscal years. The Committee Report accompanying the legislation noted that the provision provides the Secretary with the flexibility to adjust either or both the operating or capital payments, so long as the net reduction is 10 percent, and indicated that the Secretary may estimate the 10 percent reduction based on the best available data (H.R. Rep. No. 964, 101st Cong., 2nd Sess. p. 691 [1990]).

III. Summary of the Proposed Rule

A. Differences From the 1987 Final Rule

In light of comments on our previous approaches to include capital-related costs in the prospective payment system and payment methods, the vacating of our September 1, 1987 final rule (52 FR 33166), the wider latitude provided to the Secretary to create a prospective payment system for capital-related costs under section 1886(g)(1) of the Act, and more recent discussion and comments received from hospital industry representatives and other interested individuals, we have revised our methodology for a prospective payment system for capital-related inpatient hospital costs.

First, we have modified our transition payment policy. A major dilemma in establishing a prospective payment system for capital costs has been how to provide for an appropriate transition from reasonable cost reimbursement to a prospective payment rate based on industry-wide average capital costs. Under an average pricing system, payment will not be based on the experience of an individual hospital. Although this should not adversely impact hospitals in the long-term, payment on this basis in the short-run could significantly overpay or underpay many hospitals relative to actual capital costs. Capital expenditures, particularly for plant and fixed equipment, are subject to long-term replacement, renovation and expansion plans and may not be amenable to short-term adjustment due to the commitment of capital funds involved. Of particular concern are hospitals that have recently undertaken major capital expansions, and therefore have relatively high capital costs, and hospitals that currently have relatively low capital costs but will be undertaking major capital projects in the future.

A transition payment policy is needed to provide hospitals with sufficient time to adjust their operations and capital financing to accommodate prospective Federal capital payment rates. Our transition payment policy in the 1987 rule provided for a rolling-base approach to the hospital-specific portion of the prospective payment. That is, in each year of the transition, the hospital-specific portion would have been based on a hospital's actual allowable capital costs for that year. By weighting the transition blend heavily toward the hospital-specific portion for several years, payment in the early years would have been largely based on cost reimbursement. This provides time-limited protection not only for a hospital's prior commitments but also for new capital acquisitions.

Hospital industry representatives have expressed concern that the rolling-base option may not adequately recognize the capital requirements of those hospitals that have recently undertaken capital expansions and those that will be undertaking major capital projects in the future. The rolling-base approach provides only time-limited protection to hospitals for their prior capital commitments since, under the payment blending schedule used with that approach, the hospital-specific portion of the payment declines significantly after five years. During the early part of the transition when the high percentage of the payment is based on the hospital-specific portion, the payment to hospitals with relatively low capital costs may not be sufficient to provide them with the additional funds they would need to undertake capital projects at a later date when all or most of the prospective payment would be based on the Federal payment rate.

In developing this proposed rule, we considered a transition provision that would grandfather "old" capital, that is, continue to pay indefinitely on a reasonable cost basis for capital-related costs for assets that were acquired by a certain date. Under the pure grandfathering approach, payment for capital-related costs under the prospective payment system would be for "new" capital only. Because of the budget neutrality constraint on total capital payments, higher payments for "old" capital would result in lower payments for "new" capital. Thus, although the grandfathering approach would provide maximum protection for capital expenditures for "old" capital, the "new" capital payment could be insufficient to allow a hospital with relatively low "old" capital costs to save enough to cover its costs when it invests in new capital. Because the pure grandfathering approach does not adequately address the concerns of these hospitals, we do not believe that it is appropriate. Instead, we believe that the underlying goal of the grandfathering approach, protecting hospitals that currently have relatively high capital cost obligations, can be achieved by grandfathering the "old" capital costs for these hospitals only (which we refer to as a "hold-harmless" provision). This approach would also provide greater protection to hospitals that currently have relatively low "old" capital costs and face major capital expenditures in the future.

We are making other significant changes from the policies in the September 1, 1987 final rule. First, we no longer believe that there should be a distinction between expenses for fixed capital and moveable capital during the transition period. Such a distinction is complex and burdensome on both the Medicare fiscal intermediaries and prospective payment system hospitals since it would require that all capital assets be categorized, and that interest expenses be allocated, between the two types of capital. Therefore, we are not proposing to deal differently with these two types of capital-related costs in the transition period to a full capital prospective payment system.

Also, the September 1, 1987 final rule provided for incorporating capital into the prospective payment system for operating costs under section 1886(d) of the Act. Section 1886(g)(1)(A) of the Act requires that the Secretary establish a prospective payment system for capital-related costs. Consistent with the greater discretion afforded the Secretary under section 1886(g)(1), we are proposing payment policies that are specifically appropriate for capital prospective payments and do not necessarily follow the prospective payment system for operating costs.

Finally, the September 1, 1987 final rule provided for an update equivalent to the rate of increase in the capital market basket. We are proposing to develop an update framework for capital prospective payments that, in addition to taking into consideration changes in the capital market basket, would take into account other changes in capital requirements resulting from new technology and other factors, such as changes in occupancy rates. Through FY 1995 and until such time our work on the update framework is completed, we would base the update on the actual rate of increase in Medicare inpatient capital costs per case that occurred two years previous to the fiscal year in question, adjusted for changes in case mix. Aggregate capital payments through FY 1995 would be equal to 90 percent of the amounts that would have been payable on a reasonable cost basis.

B. Major Provisions of the Proposed Rule

In this proposed rule, we are changing the regulations that apply to the way in which inpatient hospital capital-related costs would be treated for Medicare payment purposes for hospitals subject to the prospective payment system, effective with cost reporting periods beginning on or after October 1, 1991. The major provisions of this proposed rule follow:

- We would establish a standard Federal rate for capital-related inpatient hospital costs on a per discharge basis based on the estimated FY 1992 national average Medicare capital cost per discharge for hospitals and hospital units subject to the prospective payment system.
- We would also calculate a rate specific to hospitals located in Puerto Rico. Puerto Rico hospitals would be paid based on 75 percent of the Puerto Rico rate and 25 percent of the national rate.
- We would make the following payment adjustments to the Federal rate:

—We would adjust for case mix using the DRG relative weight.

—We would adjust for geographic location using an adjustment factor that is derived from the hospital wage index. The adjustment, which would be applied consistent with the regression results, would increase payments 4.6 percent for each 10 percent increase in the value of the wage index. In addition, we would include a 1.6 percent higher payment to hospitals located in large urban areas (urban areas with more than one million population or 970,000 in New England).

—We would provide for a disproportionate share payment adjustment for urban hospitals with 100 or more beds. The adjustment would increase payments approximately 4.2 percent for each 10 percent increase in a hospital's disproportionate share percentage.

- In lieu of standardizing each hospital's capital cost per discharge for the payment adjustments and computing a national standardized amount for capital, we would determine by formula a standard Federal payment rate that, after taking into account the payment adjustments, would result in aggregate payments equal to aggregate FY 1992 Medicare inpatient capital costs (which would be further adjusted for budget neutrality).
- We would provide additional payments for extraordinarily costly or long length of stay cases. We would amend the existing payment policy for outlier cases (42 CFR part 412, subpart F) to include Federal capital payments for these cases and we would reduce the Federal capital payment by the estimated capital outlier payments. We propose that the cost outlier threshold (§ 412.84) would be based on inpatient operating costs and capital costs, and that we would pay cost outliers only if both inpatient operating and capital costs for a case are above the cost outlier threshold.
- We propose to determine a hospital-specific rate based on the hospital's Medicare allowable inpatient capital costs per discharge for its latest 12-month cost reporting period ending in FY 1990 (that is, cost reporting periods ending after September 30, 1989 and on or before September 30, 1990). We would standardize the hospital-specific rate for case mix and would update it to FY 1992 based on the estimated national average increase in Medicare capital-related costs per discharge adjusted for case mix change.
- We propose to define old capital costs as allowable Medicare inpatient interest and depreciation expenses for capital assets that are reported on the Medicare cost report for the hospital's latest cost reporting period ending in FY 1990.
- We propose to define new capital costs as allowable Medicare depreciation and interest for capital assets that were first reported as being used for patient care in a cost reporting period ending after September 30, 1990 and allowable Medicare inpatient costs for other capital-related expenses including leases, rentals (including license and royalty fees for the use of depreciable assets), insurance expense on depreciable assets, related organization capital-related costs for assets that are not maintained on the hospital's premises and taxes on land or depreciable assets used for patient care.
- We propose to establish a 10 year transition period (that is, cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001.) A hospital would be paid under one of two different payment methodologies during this period. Generally, hospitals with a hospital-specific rate below the Federal rate would be paid on a fully prospective payment methodology. Hospitals with a hospital-specific rate that is above the Federal rate would be paid based on the hold-harmless payment methodology. A hospital would be paid under one methodology throughout the entire transition After the transition period, all hospitals would be paid the Federal rate.
- Under the fully prospective payment methodology, a hospital that has a hospital-specific rate below the Federal rate would receive capital payments per discharge based on a blend of its hospital-specific rate and the Federal rate. The FY 1992 payment would be based on a 90 percent hospital-specific rate and 10 percent Federal rate blend. The Federal portion of the payment would increase by 10 percentage points per year. After 9 years, the hospital would be paid 100 percent of the Federal rate.
- Under the hold-harmless payment methodology, a hospital would receive capital payments per discharge based on the higher of:

—90 percent of reasonable costs for old capital costs (subject to a budget neutrality adjustment discussed below) plus a payment for new capital costs which is a proportion of the Federal rate. The proportion of the Federal rate paid for new capital would be based on the ratio of the hospital's Medicare inpatient costs for new capital to total Medicare inpatient capital costs and could not exceed the national ratio of Medicare inpatient new capital to total Medicare inpatient capital; or,

—100 percent of the Federal rate (or the applicable blend of its hospital-specific rate and the Federal rate, if lower).

Once a hospital under the hold-harmless payment methodology was paid based on 100 percent of the Federal rate, it would continue to be paid on that basis throughout the remainder of the transition and could not receive a reasonable cost payment for old capital in subsequent cost reporting periods. After 10 years, the hold-harmless payment would end and all hospitals would be paid 100 percent of the Federal rate.

- To determine the amount of payment under the hold-harmless payment methodology, we would require that throughout the transition hospitals separately identify on their Medicare cost reports depreciation and interest expenses on old capital. Reasonable cost principles for capital-related costs would continue to apply to capital expenses paid under the hold-harmless provision.
- We would provide for an exceptions process to make additional payments to hospitals that are financially disadvantaged during the transition period. For FY 1992, we would provide that a hospital would be eligible

for an exceptions payment if its capital costs exceed 150 percent of the capital payments it would have received in the absence of the exceptions process. A hospital would be paid 75 percent of its costs in excess of the 150 percent threshold. This exceptions policy would be applicable to hospitals paid under either the fully prospective or the hold-harmless payment methodology.

• Recognizing the special need to maintain access to care in rural areas and for low income patients, we would provide special protection to urban hospitals with more than 100 beds that have a disproportionate share percentage of 30 percent or more and for rural sole community hospitals that are financially vulnerable. The amount of the additional payment would be based on the relative size of the new capital project. If the project results in capital costs per case that are 5.0 times the hospital's hospital-specific rate, the hospital would be eligible for a capital exceptions payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of its Medicare inpatient capital payments in the absence of the exceptions process. If the resulting capital costs per case are less than 1.5 times the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with Medicare inpatient costs per discharge that are greater than 1.5 and less than 3.0 times its hospital-specific rate. The amount of the exceptions payment under this provision could not result in total Medicare payments for inpatient hospital services that exceed the hospital's total Medicare inpatient costs during the cost reporting period.

• We would reduce the Federal rate and the hospital-specific rate by up to 10 percent each year to make additional payments for exceptions. The actual exceptions adjustment factor would result in an aggregate reduction in payments based on the Federal rate and the hospital-specific rate equal to the estimated amount of the total exceptions payments. We estimate that the level of exception payments would require less than a 10 percent reduction in the first two years of the transition. After the first two years, we would raise the eligibility criteria or the payment levels for exceptions as necessary to limit the exceptions payments to 10 percent of total prospective payments for inpatient capital costs.

• If a newly participating hospital does not have a 12-month cost reporting period ending on or before September 30, 1990, we would use the first 12-month cost reporting period for combination of cost reporting periods totalling at least 12 months) as the hospital's base period for purposes of determining its hospital-specific rate. The hospital would be paid under the fully prospective payment methodology since by definition it has no old capital.

• Through FY 1995, we would provide for an update in the Federal rate and the hospital-specific rate based on actual increases in Medicare capital-related costs per case that occurred two years previous to the Federal fiscal year in question (the most recent year for which we would have data), adjusted for changes in case mix. Beginning in FY 1996, we propose to determine the update through an analytical framework that would take into consideration increases in the capital market basket and appropriate changes in capital requirements resulting from new technology and other factors, such as changes in occupancy rates.

• In FY 1992 through FY 1995, we would adjust payments in accordance with section 1886(g)(1) of the Act as amended by section 4001(b) of Public Law 101–508 so that aggregate payments for capital each year are equal to 90 percent of what would have been payable for capital-related costs on a reasonable cost basis. If a positive adjustment in capital payments is required, we would apply a percentage increase to the Federal rate and the hospital-specific rate. If a negative adjustment is required, we would apply a percentage reduction to the hold-harmless payments in addition to the Federal rate and the hospital-specific rate.

IV. Capital Payment Policy—Specific Methodology

Under this proposed rule, a hospital subject to the prospective payment system would begin receiving payments for inpatient hospital capital-related costs on a prospective payment basis as required by section 1886(g)(1) of the Act effective with its first cost reporting period beginning on or after October 1, 1991. During the transition period, the hospital's capital payment would be based on the hospital's own capital cost experience and the Federal payment rate. Two different payment methodologies would apply during the transition. Generally hospitals with a hospital-specific rate below the Federal rate would be paid based on a blend of the hospital-specific rate and the Federal rate. Hospitals with a hospital-specific rate above the Federal rate would receive the higher of the Federal rate or a hold-harmless payment for old capital plus a payment for new capital. All capital payments would be based on the Federal payment rate effective with cost reporting periods beginning on or after October 1, 2001.

To achieve budget neutrality in aggregate payments, our proposal requires that we develop a dynamic model of Medicare inpatient capital costs, that is, a model that projects changes in Medicare inpatient capital costs over time. The model would be used to project the amount of capital that would be covered by the hold-harmless provision, the rate at which the old capital will be depreciated and written off, and the rate at which new capital will be acquired. The model is necessary to establish the combination of payment policies that would result in total capital payments each year during the period of FY 1992 through FY 1995 that are equivalent to 90 percent of the amount that would have been payable in that year on a reasonable cost basis. It would also be used to estimate the proportion of total capital costs that represents new capital costs for purposes of determining the limit on new capital payments to hospitals paid under the hold-harmless provision. It would also be used to estimate payments under the exceptions process.

The model, which projects capital expenditures for 6,000 hypothetical hospitals by hospital and year since 1956, includes the following assumptions:

• Aggregate capital expenditures are equal to historical Medicare inpatient capital cost levels for periods for which actual data are available (FY 1984–88) and to the reasonable cost levels that were used to project capital payments in the Medicare budget for subsequent periods. The proportions that are attributable to fixed and moveable equipment and to the major components of capital costs (interest, depreciation, and other) are based on historical proportions.

• Fixed and moveable assets are modeled separately. The average useful life for moveable equipment is 7 years and for fixed equipment is 25 years. On average, fifty percent of capital is financed at an interest rate of 6.3 percent. Interest expense is amortized over the useful life of the asset.

• The total amount of new capital in a given year is determined as the difference between total capital costs and the costs for old capital. New capital is randomly assigned to hospitals each year because we observed in the cost report data irregular capital growth patterns. For individual hospitals, we observed a general pattern of small increases in capital costs in most years but random large increases in a few years.

Combining these assumptions with the specific payment policies outlined in greater detail below, we propose to use this actuarial model to estimate the basic payments that would be made under the fully prospective payment methodology and under the hold-harmless payment methodology, project the amount of payments that would be made under the exceptions policy, and determine the budget neutrality adjustment factor. The model and its application are more fully described in appendix A.

In addition to the actuarial model, we would use the most recent Medicare cost report data to determine the Federal rate and the appropriate payment adjustments to the Federal rate.

A. Determination of the Federal Capital Payment Rates

Step 1—Base Year Average Capital Cost Per Case

a. *National Average.* We propose to base the Federal capital prospective payment rates on the projected FY 1992 national average Medicare inpatient capital-related cost per discharge for all hospitals and hospital units subject to the prospective payment system. The FY 1992 national average would be determined by updating the FY 1988 discharge weighted national average capital-related cost per discharge determined from cost report data by an actuarial estimate of the increase in Medicare inpatient capital costs per discharge. The estimate takes into account projected changes in total inpatient capital costs, hospital admissions, and Medicare utilization.

The following update factor percentages were used to establish the Federal capital prospective payment rates set forth in Table 1 of the preamble of this proposed rule:

Fiscal year	Estimated increase in medicare inpatient capital costs per case
FY 1989	10.55 percent
FY 1990	7.25 percent
FY 1991	6.04 percent
FY 1992	6.80 percent

b. *Average for Puerto Rico Hospitals.* Pursuant to section 1886(d)(9)(A) of the Act, under the prospective payment system for operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that takes into account their large urban, other urban, or rural designation and is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. The September 1, 1987 capital rule provided that the same payment formula would be followed with respect to the capital prospective payments to Puerto Rico hospitals.

As in the case of operating costs per case, Puerto Rico hospitals have significantly lower capital costs per case than other hospitals. The average PPS–5 capital cost per case for Puerto Rico hospitals ($209) was 40 percent of the national average ($533). Only one hospital had a capital cost per case ($584) that exceeded the national average, and 75 percent of the hospitals had capital costs per case below $300. We do not believe that the capital prospective payment system should result in windfall payments to Puerto Rico hospitals. Therefore, we are proposing to follow the blended payment rate used in the prospective payment system for operating costs. We would compute a separate payment rate specific to Puerto Rico hospitals using the same methodology as is used to compute the national rate. Hospitals in Puerto Rico would be paid based on 75 percent of the Puerto Rico rate and 25 percent of the national rate.

Step 2—Payment Adjustments

We are proposing a different combination of payment adjustments for use in establishing the Federal capital prospective payment rates than were set forth in the September 1, 1987 final rule. When the September 1, 1987 final rule incorporating capital-related cost into the prospective payment system was issued, sections 1886(a)(4) and (d)(1)(A) of the Act required that we incorporate the payment of capital-related costs into the existing framework of the prospective payment system by including capital-related costs in the definition of operating costs. Thus, the September 1, 1987 capital final rule provided for establishing separate capital-related standardized amounts for urban and rural hospitals and hospitals located in Puerto Rico and for adjusting the Federal capital payment for the DRG weight, the indirect teaching adjustment factor and the disproportionate share adjustment factor applicable to noncapital-related operating costs. At the time, we noted that the evidence for adjusting capital-related costs for the indirect costs of medical education and disproportionate share was inconclusive. In lieu of adjusting the Federal capital payment by the hospital wage index, we provided that local cost variation in capital-related costs would be accounted for by applying a construction cost index to the Federal payment portion for plant and fixed equipment. In addition, we provided that the Federal payment portion of payments to hospitals located in Alaska and Hawaii for moveable equipment would be adjusted for the effects of higher cost of living.

Section 4006(b)(1) of Public Law 100–203, which voided the September 1, 1987 capital final rule, amended section 1886(g)(1)(A) of the Act to establish a specific provision for a capital prospective payment system that provides the Secretary with wider latitude than previously provided to determine which payment adjustments are appropriate for a capital prospective payment system and the level at which these adjustments should be made. As added by section 4006(b)(1) of Public Law 100–203, section 1886(g)(1)(B) of the Act requires only that the prospective payment for capital-related costs is to be on a per discharge basis and that it should be appropriately weighted for the classification of the discharge. In addition, revised section 1886(g)(1)(B) indicates that the capital prospective payment system may provide for adjustments for variations in the relative costs of capital and construction, appropriate exceptions, and a suitable adjustment to reflect hospital occupancy rate.

We have done extensive regression analysis of the relationship between capital costs and the payment variables used in the prospective payment system for operating costs in order to determine which adjustments would be appropriate for capital payments. Our analysis indicates that variables relating to the age and financing of capital are significant factors in explaining the variation in capital costs per case. In the short run, we are recognizing the impact of these variables on capital costs per case through the different transition payment methodologies. However, we do not believe that it is appropriate to recognize the effect of these variables in the payment system for the long run. We believe the Federal capital payment should be independent of the age of an individual hospital's assets or its capital financing. Hospitals that are identical except that one recently purchased a new piece of equipment and the other is accumulating funds to purchase the same equipment next year should not be paid differently for treating the same type of case. By severing the link between Medicare payment and capital spending decisions, we will provide neutral incentives with respect to the

timing and financing of new capital acquisitions. This will provide hospitals with an incentive to minimize the overall cost of new capital investment and to make decisions that are sensitive to market conditions. We would expect hospitals to adapt to the fact that, after the transition period, their payments would no longer vary based on their actual capital cost experience. Accordingly, we are not creating payment adjustments for capital age and financing attributes. However, as explained below, we controlled for these characteristics in determining the appropriate payment adjustments by including variables for asset age, financing, and occupancy in our regression equation. By including these variables, we are able to determine what the appropriate payment adjustments would be after accounting for differences in the capital age and financing characteristics. If we did not include these variables in our regression, their effects could have been attributed to the payment variables that we are proposing to establish and affected the level of the payment adjustments. We controlled for the following capital characteristics in our regression equations:

• Age

We measured the age of fixed assets and moveable assets using their ratios of accumulated depreciation (including any fully depreciated assets) to current depreciation. We measured the remaining depreciable life of fixed assets using the ratio of remaining depreciation to current depreciation (which would not include any fully depreciated assets). We found that these variables explain variations in capital costs and included them in our regression equations. We found that the remaining depreciable life of moveable capital does not help explain variation in capital costs; therefore, we did not include this variable in our equations.

• Financing

We included two financing variables. The first financing variable is the ratio of total liabilities to total assets, which measures the hospital's reliance on debt. Medicare capital costs include interest expense, but not return on equity, and so more highly leveraged hospitals will necessarily have higher capital costs, all else being equal. An alternative measure of leverage was considered, the ratio of long term debt to net fixed assets, but this variable did not explain as much of the variation in capital costs per case and was dropped from further analysis. The second financing variable measures the extent to which assets are held in the form of financial or other investments rather than physical hospital assets. In this case, we would expect hospitals that have a higher proportion of investment in non-capital assets to have lower capital costs, all else being equal. Our analysis found that the relationship between the two financing variables and capital costs per case was as expected and that the two variables were statistically significant.

• Occupancy.

We believe it is more appropriate to control for the effects of occupancy on capital costs per case in determining the appropriate level of other payment adjustments than to make an explicit payment adjustment for occupancy. Therefore, we included the ratio of total inpatient days to available bed days with the age and financing variable categories in our regression equations. Other things being equal, we would expect higher occupancy hospitals to have lower capital costs per case because the capital costs are spread over more patients. We found that when only the age and financing variables are included in the regression equation, occupancy was strongly positive, demonstrating that higher occupancy hospitals tend to invest more heavily than lower occupancy hospitals. However, after adding the payment variables that are used in the prospective payment system for operating costs to the regression equation, we found, as expected, that higher occupancy hospitals have lower capital costs per case. The variable was statistically significant.

We used several different regression equations to analyze the relationship between capital costs and potential payment variables. As dependent variables, we used total Medicare inpatient capital costs per case, as well as fixed and moveable components, and the ratio of capital costs to operating costs. In addition to the age and financing variables, we used the prospective payment system for operating costs payment variables and a construction cost index as independent variables. We analyzed one series of regression equations to make a variable by variable comparison with the regression coefficients for operating costs per case, in order to determine which payment variables are significant in explaining variations in capital costs and to discover any differences in the magnitude and direction of the adjustment for these variables compared to the adjustment for operating costs.

We drew the following conclusions from the regression results:

• Case mix has a greater impact on capital costs than on operating costs. Capital costs vary more than proportionately with the variation in case mix; that is, a 10 percent increase in case mix results in more than a 10 percent increase in capital costs per case. However, the disproportionate effect is attributable to hospitals with fewer than 100 beds. For other hospitals, which account for most of Medicare discharges, capital costs increase proportionately with case mix.

• Hospitals with a higher proportion of outlier payments have higher capital costs, although outliers have a smaller impact on capital costs than on operating costs.

• Hospitals located in high wage areas have higher fixed and moveable capital costs. The wage index consistently explains more of the variation in capital costs than the construction cost index.

• The intern to bed ratio, which is used as a measure of teaching intensity, is significant and consistently negative. In other words, all else being equal, teaching hospitals have lower capital costs than nonteaching hospitals. This indicates that the other variables more than account for the higher capital costs of teaching hospitals.

• A hospital's disproportionate share percentage of low income patients has a comparable effect on capital costs and on operating costs. For urban hospitals with more than 100 beds, hospitals with a higher disproportionate share percentage have higher capitals costs. The disproportionate share effect for these hospitals is attributable solely to moveable equipment. The disproportionate share effect on the capital costs of other hospitals is not significant.

• Urban hospitals have significantly higher capital costs per discharge than rural hospitals.

After determining which payment variables were not significant (or had negative coefficients), we used a final regression equation to determine the size of the adjustments for the payment variables that we concluded should be accounted for in the capital prospective payment system. Our dependent variable was capital costs per case standardized by the case mix index. (The effect of standardizing the capital costs by the case mix index is to constrain the effect of the case mix index to 1.0.) The independent variables were: the hospital wage index based on 1988 wage data; the disproportionate share percentage for urban hospitals with 100 beds or more; dummy variables for large urban (urban areas with more than 1 million population) and other urban location; and the capital age, financing, and occupancy variables.

As a final step, we simulated the payments that would result from the level of the payment adjustments indicated by the regression equation and compared them with actual capital costs per case and capital costs per case standardized for the capital age and financing variables. We used the simulation results to confirm, and revise as appropriate, the proposed payment adjustments.

Thus, we used both regression analysis and payment simulations to develop payment adjustments that take into account variations in costs between groups of hospitals in an equitable manner.

In performing our regression analysis, we used PPS–5 cost report data (that is, data from cost reporting periods beginning in FY 1988). We found that we were able to develop reliable capital age and financing variables from the cost report balance sheet information for only 1,906 of the 4,902 hospitals in our data base. Therefore, the regression analysis as well as the payment simulation used data for the 1,906 hospitals. Although the 1,906 hospitals are not a statistical sample of all hospitals subject to the prospective payment system, the distribution of these hospitals across the major hospital groupings is generally representative of the national distribution of hospitals. On average, the 1,906 hospitals have a somewhat lower average PPS–5 cost per case ($489.18) than the 4,902 hospitals ($532.52).

In the payment simulation, we constrained total payments to the hospitals' PPS–5 reasonable costs for capital. We are using the results of these analyses to establish the proposed payment adjustments for the Federal capital payments. We will re-examine the level of the adjustments and make any appropriate changes if more recent data become available before publication of the final rule. Moreover, we propose to re-examine the appropriateness of the adjustments on a periodic basis in the future.

Based on our analyses, we propose to make adjustments to the capital Federal payment rate for case mix, local cost variation, large urban location and percentage of low income patients. In addition, we propose to make additional payments for outlier cases, as discussed in Step 4, below. A discussion of each payment adjustment follows.

• Case mix.

Under the prospective payment system for operating costs, all discharges are classified according to a list of diagnosis-related groups (DRGs). The payment per discharge varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources required to treat cases in other DRGs. The DRG classification system and the methodology used to recalibrate the DRG relative weights are described in the September 4, 1990 prospective payment system final rule (55 FR 36008).

We propose to use the DRG patient classification system for the capital prospective payment system and to adjust the Federal capital payment (and the hospital-specific rate) by the DRG relative weight that is currently applied to operating costs. The regression result indicating that capital costs vary more than proportionately with the case mix index implies that there should be a relatively greater case-mix adjustment for capital costs than for operating costs. However, the disproportionate case mix effect is attributable to hospitals with less than 100 beds. The regression coefficient for larger hospitals, which have most of the Medicare discharges, indicates that the case mix effect on capital costs for these hospitals is comparable to the case mix effect on operating costs. Therefore, we believe it is appropriate to use the same DRG relative weights. Further, we use total charges to recalibrate the DRG relative weights used in the prospective payment system for operating costs. As a result, capital costs are already reasonably represented in the relative weights and a set of weights specific to capital costs is unnecessary. We also note that as capital use intensity changes in an individual DRG, future recalibrations would take into consideration such changes and automatically adjust the payment levels.

• Large urban location.

Consistent with the prospective payment system for operating costs, the September 1, 1987 capital final rule provided for separate standardized amounts for hospitals located in urban and rural areas. Subsequently, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) provided for a higher update factor for hospitals located in large urban areas than in other urban areas and thereby established three standardized amounts under the prospective payment system for operating costs. Large urban areas are defined as those metropolitan statistical areas (MSAs) with a population of more than 1 million (or New England County metropolitan statistical areas (NECMAs) with a population of more than 970,000). Beginning with discharges on or after April 1, 1988 and continuing to FY 1995, the Congress has also established higher update factors for rural hospitals than for urban hospitals. The differential updates have had the effect of substantially reducing the differential between the rural and other urban standardized amounts. Section 4002(c) of Pub. L. 101–508 provides for the elimination of the separate standardized amounts for rural and other urban hospitals in FY 1995 by equating the rural standardized amount to the other urban standardized amount. The separate standardized amount for large urban hospitals would continue. Currently, the large urban standardized amount is 1.6 percent higher than the standardized amount for hospitals located in other urban areas.

Our regression analysis indicated that large urban and other urban hospitals have higher capital costs, with regression coefficients of .087 and .069 respectively. This would imply that the Federal payment rate for large urban and other urban hospitals should be approximately 8.7 percent and 6.9 percent higher, respectively, than the Federal payment rate for rural hospitals.

To assess the appropriateness of the differentials indicated by the regression equation, we simulated payments on this basis together with the other payment adjustments that we are proposing. We compared the payments to FY 1988 capital costs per case. This comparison shows what the redistribution of payments would have been if payments had been based on 100 percent of the Federal rate in FY 1988 and aggregate payments equaled 100 percent of reasonable cost. It provides an indication of what the impact of the prospective payment system would be after the transition (when payment would be based on 100 percent of the Federal rate) assuming no behavioral changes. We also compared the payments to FY 1988 capital costs per case after standardization for the capital age and financing variables and occupancy rate. To the extent the Federal rate should be independent of capital timing and financing decisions, this comparison is a more appropriate indicator of the long-run impact of payment based on 100 percent of the Federal rate.

Under either basis of comparison, we found that we would underpay rural hospitals relative to other hospitals if

we were to adopt the differentials indicated by the regression equation. Moreover, we believe payment differentials of the magnitude suggested by the regression equation would be contrary to the direction taken by the Congress in section 4002(c) of Public Law 101–508 to phase out by FY 1995 the separate standardized amounts for rural and other urban hospitals under the prospective payment system for operating costs.

When we simulated a payment system with no payment differential between urban or rural location, we determined that we would underpay large urban hospitals and overpay rural hospitals relative to their actual capital costs per case. Based on this comparison, we concluded that some payment adjustments for large urban hospitals is appropriate. However, the results of the payment simulation comparing a payment system with no payment differential to standardized costs per case indicated we would slightly overpay urban hospitals and underpay rural hospitals relative to standardized costs. This suggests that the large urban differential should be relatively small. Therefore, we examined the impact of a 1.6 percent higher payment to large urban hospitals with no distinction between rural and other urban hospitals. This is the same as the differential between large urban and other urban hospitals in the prospective payment system for operating costs that will continue after the separate rates for rural and other urban hospitals are phased out. The 1.6 percent also closely approximates the percentage differential between the large urban and other urban payment rate suggested by the difference between the coefficients for large urban and other urban hospitals (that is, .087 and .069) in the regression equation for capital costs per case. We found that the 1.6 percent differential strikes a balance between the impact based on actual costs per case and the impact based on standardized costs per case.

The following tables display the results of our payment simulations.

Simulation of Urban Differential Payments Assuming Payment Based on 100 Percent Federal Rate

TABLE 1—PERCENTAGE CHANGE FROM ACTUAL COSTS PER CASE

	No.	PPS–5 actual cost per case	Percentage Change From Actual Cost Per Case		
			8.7% LU, 6.9% OU, Add-on	1.6% LU, Add-on	No urban Add-on
All hospitals	1906	$489.18	0.00	0.00	0.00
Large Urban	422	568.05	−0.04	−1.28	−2.20
Other Urban	533	505.65	0.88	−0.26	0.36
Rural	951	350.02	−2.05	3.52	4.17

TABLE 2—PERCENTAGE CHANGE FROM COST PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

[Percentage Change from Standardized Cost Per Case]

	No.	PPS–5 standardized average cost per case	8.7% LU 6.9% OU Add-on	1.6% LU add-on	No urban add-on
All hospitals	1906	$489.18	0.00	0.00	0.00
Large urban	422	553.16	2.85	1.40	0.43
Other urban	533	502.53	1.51	0.35	0.99
Rural	95	376.32	−6.89	−3.71	−3.11

LU = Large Urban
OU = Other Urban.

We are proposing that hospitals in large urban areas receive a 1.6 percent add-on to the Federal capital payment rate. We believe that the results of our regression analyses and the payment simulations support the 1.6 percent differential. Moreover, it is consistent with the changes made by Public Law 101–508 with respect to the prospective payment system for operating costs.

• Local Cost Variation.

In the 1987 final rule, we provided that we would adjust the fixed capital portion of the Federal payment rate by a construction cost index that measured relative output costs (the cost of a finished structure per square foot). Since then, the Center for Health Economics Research developed under a cooperative agreement with HCFA a construction index based on relative input prices (cost per unit of materials and labor). (A copy of the final report entitled: Refinement of HCFA's Area Cost Index—Final Report, dated March 16, 1989, may be obtained from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (1–800–336–4700) Report No. PB–89–191–I91). Although we believe the revised construction cost index addresses many of the concerns that were raised regarding the September 1, 1987 construction cost index (52 FR 33190), our regression analysis indicated that the hospital wage index was a better predictor of capital costs than the revised construction cost index. Moreover, the hospital wage data are more readily available to the public than the proprietary data used to develop the construction cost index. Therefore, we are proposing to use the hospital wage index that is applicable to hospitals under the prospective payment system for operating costs to develop the geographic payment adjustment for capital. The wage index is described in the September 4, 1990 final rule (55 FR 36035) and in the interim final rule with comment period, which was published in the **Federal Register** on January 7, 1991 (56 FR 568), setting forth changes in the hospital wage index effective January 1, 1991 that were required by section 4002 of Public Law 101–508. Separate wage index values have been established for each Metropolitan Statistical Area or New England County Metropolitan Area and for the rural

counties within a State. Special rules apply to the wage index applicable to hospitals in certain geographic areas that are deemed to be located in another geographic area under sections 1886(d)(8) and (d)(10) of the Act. The wage index that would be applicable to discharges occurring on or after October 1, 1991 would be based on FY 1988 wage data and would be set forth in the final rule for the FY 1992 prospective payment rates for operating costs.

As expected, the regression equation results indicate that the wage index has a smaller effect on capital costs than it does on operating costs. The regression indicated that there is a 4.6 percent increase in capital costs per case for every 10 percent increase in the hospital wage index (WI) value. Instead of adjusting a portion of the Federal capital payment by the hospital wage index, we are proposing to develop a geographic adjustment factor that would be determined consistent with the regression results and applied to the entire Federal capital payment. It would also reflect the 1.6 percent add-on for hospitals located in large urban areas discussed above. We propose to calculate the geographic adjustment factor as follows:

GEOGRAPHIC ADJUSTMENT FACTOR

Hospital location	Formula
Rural and Other Urban Areas.	$WI^{.46}$
Large Urban Areas	$(1.016)(WI^{.46})$.

The proposed geographic adjustment factors are based on the hospital wage index values effective for discharges occurring on or after January 1, 1991 that were published in the **Federal Register** on January 7, 1991 (56 FR 568). The proposed factors are set forth in Table 2 of this document.

The September 1, 1987 capital final rule provided that a cost-of-living adjustment would be made to the moveable equipment portion of the Federal capital payment for hospitals located in Alaska and Hawaii. This adjustment paralleled the cost-of-living adjustment that is made to the nonlabor-related portion of the prospective payment for operating costs. We have examined the FY 1988 capital costs per case of hospitals located in Alaska and Hawaii and have concluded that an additional payment adjustment for these hospitals is not warranted. Although the average PPS–5 capital costs per case of Alaska hospitals ($1,192) is significantly higher than the national average ($533), further examination indicates this effect is solely attributable to the two urban hospitals with capital costs per case of $1,713 and $1,577. The average capital cost per case for the remaining Alaska hospitals ($529) is comparable to the national average.

However, there is a wide distribution of capital costs per case among these hospitals, and the Hawaii hospitals with high capital costs per case fall within the range of capital costs per case of hospitals located in the Pacific region. The median capital cost per case ($468) for Hawaii is comparable to median capital cost per case ($486) of other hospitals located within the Pacific region. Since there does not appear to be a systematic difference in capital costs per case that would distinguish the Alaska and Hawaii hospitals from other hospitals, we are not proposing to make an additional payment adjustment for hospitals located in these two States.

• Disproportionate share of low income patients.

Our regression equation indicated that for urban hospitals with more than 100 beds, the disproportionate share percentage of low income patients has an effect on capital costs per case. Consistent with our regression equation, we would apply the disproportionate share adjustment on a curvilinear basis.

We are proposing that urban hospitals with 100 or more beds receive an additional payment equal to $((1 + DSHP)^{0.4176} - 1))$. (This formula is consistent with the specification of the DSHP in log form in the regression equation.) There would be no minimum disproportionate share percentage required to qualify for the payment adjustment. A hospital would receive approximately a 4.2 percent increase in payments for each 10 percent increase in its disproportionate share percentage. This method is similar to the one used for the indirect medical education adjustment on the operating side.

Since we did not find a disproportionate share effect on the capital costs of urban hospitals with fewer than 100 beds or on rural hospitals, we are not proposing to make a disproportionate share adjustment to the capital payment to these hospitals.

• Indirect medical education.

We are not proposing to make an adjustment for the indirect costs of medical education because the results of all our capital regressions consistently indicated that the teaching variable was negative and statistically significant. The negative coefficient indicates that the other payment variables more than fully account for the higher capital costs of teaching hospitals and that a payment adjustment for teaching activity is not warranted.

Step 3—Standard Federal Payment Rate

When the prospective payment system for operating costs was established, the 1981 operating costs per case were standardized for the payment adjustments (other than outliers). "Standardization" involves dividing each hospital's cost per discharge by a factor that incorporates the payment adjustments for each individual hospital prior to computing an average cost per discharge used to compute the basic payment rate, or standardized amount. Standardization was previously thought to be necessary to establish a basic payment rate for each payment group (regional, urban, or rural) that could then be adjusted up or down for individual hospitals based on their respective payment adjustments. We no longer believe standardization is necessary to determine the basic payment rate. Instead, it is possible to determine by formula a standard payment rate that, after applying the payment adjustments, will result in the desired level of aggregate payments.

There are only two requirements that must be met in a prospective payment system. The first requirement is that the payments to each hospital must be in the desired relation to one another. These relationships are independent of the level of the standard Federal capital payment rate:

$$P_i/P_j = (R_oA_i)/(R_oA_j)$$

P_i and P_j represent prospective payment system payments to the ith and jth hospitals; A_i and A_j represent the combined payment adjustments for the ith and the jth hospitals; R_o is the basic prospective payment system payment rate. Clearly, P_i/P_j does not depend on the value of R_o. We have used regression analysis and payment simulations to establish the appropriate payment adjustments that will determine the relative relationships among hospitals.

The second requirement is that aggregate payments to all hospitals must equal some desired target payment level. For purposes of developing the Federal capital rate (before taking budget neutrality into account), the payment target is the estimated FY 1992 Medicare inpatient capital costs. On a per case basis, the standard payment rate, after applying the payment adjustments, should result in an average payment per case equal to the estimated FY 1992 average capital cost per case. If the aggregate payment target is T, then multiplying R_o by the ratio of T to the aggregate payments (ΣR_oA_i) that would result if R_o equaled the FY 1992 average

capital cost per case will yield the desired aggregate payments:

$$\Sigma_i \left(\frac{T}{\Sigma R_o A_i} \times R_o \right) \left(A_i \right) = T \times \frac{\Sigma R_o A_i}{\Sigma R_o A_i} = T$$

The payment simulation model can be used to determine the ratio of T to the aggregate payments before adjustment ($\Sigma R_o A_i$). This process is similar to the method used in budget neutrality calculations under the prospective payment system for operating costs.

In the September 1, 1987 capital final rule, we standardized each hospital's capital costs per discharge for the payment adjustments and computed standardized amounts for capital. In this proposed rule, to simplify the rate construction process and better assure that the appropriate budgetary effects of future payment adjustment formula changes are realized, we would determine by formula a standard payment rate that, after taking into account the payment adjustments discussed in Step 2 above, would result in aggregate payments equal to aggregate FY 1992 Medicare inpatient capital costs.

To calculate the standard Federal payment rate before adjusting for outlier and exception payments and budget neutrality, we applied the payment adjustments to the updated base-year national average capital cost per case. In applying the payment adjustments, we used the most recent hospital-specific data available for case mix and disproportionate share. We trended each hospital's case mix forward to FY 1992 by assuming a 2 percent annual increase in case mix. The case-mix index has risen steadily since the advent of the prospective payment system for operating costs. If we did not recognize the case mix increase in our calculation, the standard payment rate would be inflated and FY 1992 payments would exceed predicted levels. We based the level of the geographic adjustment factor on the hospital wage index that is effective for discharges occurring on or after January 1, 1991. For each hospital, we applied the payment adjustments (case mix, disproportionate share, and geographic adjustment factor) applicable for that hospital to the FY 1992 national average capital cost per case and multiplied by the number of discharges for the hospital. We summed the results to determine aggregate payments based on the national average cost per case and the payment adjustments. We determined that the ratio of estimated FY 1992 Medicare capital costs to the aggregate payments based on the national average cost per case and the payment adjustments was 0.7180. Therefore, we multiplied the national average cost per case by 0.7180 to determine the standard Federal payment rate. We made this adjustment in lieu of standardizing each hospital's capital cost per case and determining a national standardized amount. Prior to making the adjustments for exceptions and budget neutrality, aggregate payments based on the standard Federal payment rate and the payment adjustments would equal estimated FY 1992 Medicare capital costs.

Step 4—Additional Payment for Outlier Cases

Under the prospective payment system for operating costs, the standardized amounts are reduced by 5–6 percent to pay additional amounts for extraordinarily costly or long length of stay cases. For FY 1991, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the larger of two times the Federal rate for the case (that is, the standardized amount adjusted for DRG weight and wage index value) or $35,000 (adjusted for the wage index). Except in the DRGs for burn cases, the cost outlier payment equals 75 percent of the difference between the standardized cost and the threshold. For burn cases, the outlier payment equals 90 percent of the difference.

A case qualifies as a day outlier if the length of stay is greater than the mean length of stay for the DRG plus the lesser of three standard deviations of the mean length of stay or 29 days. The day outlier payment is equal to 60 percent of the average per diem payment for the DRG. A case that qualifies as both a day and a cost outlier will be paid according to which methodology yields the higher payment. The indirect teaching and disproportionate share adjustments are applicable to outlier payments.

Section 1886(d)(5)(A)(iv) and section 1886(d)(9)(D)(i) of the Act direct that outlier payments under the prospective payment system for inpatient operating costs may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year. Section 1886(d)(3)(B) requires that the standardized amounts be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments. In FY 1991, we estimate the outlier payments will constitute 5.2 percent of total DRG payments.

Our regression results indicate that hospitals with higher proportions of outlier payments have higher capital costs; therefore, we propose to provide for additional payments to be made for extraordinarily costly or atypically long length of stay cases. We would amend the current outlier policy (in 42 CFR part 412, subpart F) to include capital payments for outlier cases.

We believe that it is appropriate to establish a unified outlier payment methodology for operating and capital costs. Thus, we would establish a single set of thresholds that would be used to identify outlier cases for both operating and capital payments, and we would make the percentage reduction in the standard capital payment rates for the estimated value of outlier payments the same as the aggregate percentage reduction in the operating standardized amounts. In this proposed rule, we have assumed 5.1 percent of total Federal capital payments would be for outlier payments (consistent with the outlier payment percentages in the September 4, 1990 final rule) and have reduced the Federal rate accordingly. We would revise the outlier thresholds and the outlier reduction factors as necessary to reflect the unified outlier payment methodology in conjunction with the final rule setting forth the FY 1992 payment rates for the prospective payment system for operating costs.

We are proposing that payment for capital-related day outliers (extended length-of-stay cases) be determined based on the same provisions in effect for noncapital-related day outliers (§ 412.82). We are proposing that payment for capital-related cost outliers (extraordinarily high-cost cases) be determined based on both capital-related and noncapital-related costs and that the same marginal cost factors be used. We would amend § 412.84 to provide that payment for high capital cost cases would occur only when both the capital-related and noncapital-related costs exceed the cost outlier threshold. We believe it would be inappropriate to make cost outlier payments for high capital cost cases in which total capital-related and noncapital-related costs are below the cost outlier threshold. The outlier payment would be payable only for the portion of the capital payment that is based on the Federal rate.

Step 5—Exceptions Reduction Factor

As explained in section C below, we propose to reduce the Federal rate (and the hospital-specific rate) by an exceptions reduction factor equal to the estimated additional payments that will be made under the exceptions policy.

In FY 1992, we estimate the additional payments will equal 6.92 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we would multiply the standard Federal rate by an exceptions reduction factor of 0.9308 (1.00–0.0692).

Step 6—Budget Neutrality Adjustment Factor

As explained in section D, we propose to adjust the Federal rate (and the hospital-specific rate) each year by a budget neutrality adjustment factor so that aggregate payments for capital in FY 1992 through FY 1995 are equal to 90 percent of what would have been payable each year on a reasonable cost basis. In FY 1992, the budget neutrality factor will increase the standard Federal rate. We would multiply the standard Federal rate by a budget neutrality adjustment factor of 1.1088.

B. Determination of Basic Hospital Inpatient Capital Payments During Transition

Before implementing full Federal rate payments for hospital inpatient capital-related expenditures, we would provide for a 10-year transition period to allow hospitals adequate time to adjust to the new payment system. The transition period for all hospitals subject to the prospective payment system would commence with the hospital's first cost reporting period beginning on or after October 1, 1991, and extend through the hospital's last cost reporting period beginning before October 1, 2001. Payments during the transition period would vary among hospitals, generally depending on the relationship between their hospital-specific rate and the Federal rate.

Because the transition period payments would be based in part on actual allowable capital costs, we would require strict adherence to the rules for classifying, allocating, and determining the reasonable cost of capital-related costs under the Medicare principles of payment that implement section 1861(v) of the Act and 42 CFR part 413, subpart G. We would seek to ensure that these principles are followed consistently during the pertinent cost reporting periods in the determination of the hold-harmless amount, the hospital-specific rate, and capital exceptions payments during the transition period.

An intermediary's determination of the hospital-specific rate and the payment amount for old capital would be subject to review and appeal under the provisions at 42 CFR part 405, subpart R, Provider Reimbursement Determinations and Appeals. In addition, we would revise the hospital-specific rate and the determination of old capital costs retroactively to reflect revisions in the amounts recognized as allowable for the hospital's base year as a result of administrative or judicial actions affecting the base-period notice of amount of program reimbursement. Any retroactive adjustments would also result in an adjustment to any hold-harmless or exceptions payments the hospital may have received.

Hospitals with 52–53 week fiscal year periods ending September 25–30 of the calender year would be deemed to have Medicare cost reporting periods beginning October 1 in each such calendar year for capital payment purposes in order to assure a commensurate transition for all hospitals. We would apply this approach to such hospital cost reporting periods consistent with the direction provided by section 5(a) of the Emergency Extension Act of 1985 (Pub. L. 99–107) as amended by section 9307(d) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509). Section 9307(d) of Public Law 99–509 similarly adjusted the related cost reporting periods and Federal fiscal years for the prospective payment system for inpatient hospital operating costs. This policy would initiate and maintain consistent payment levels between cost reporting periods and their related Federal fiscal years for purposes of the prospective payment system for capital-related costs.

Step 1—Determination of the Hospital-Specific Rate

The base period used to determine the hospital-specific rate would be the hospital's latest 12 month cost reporting period ending in FY 1990 (that is, after September 30, 1989 and on or before September 30, 1990). If the hospital's last cost reporting period ending in FY 1990 is for less than 12 months, the fiscal intermediary would use a combination of cost reporting periods ending on or before September 30, 1990 that cover at least 12 months. Fiscal intermediaries would determine each hospital's FY 1992 hospital-specific rate as follows:

a. *Base Year Allowable Cost Per Discharge.* We would divide the hospital's total allowable Medicare inpatient capital-related costs in the base year by the number of Medicare discharges in the base year to determine the base year allowable capital cost per discharge. A discharge is defined as the formal release of a patient, including death, but excluding newborns and patients who are dead on arrival. Under § 412.4, a transfer to another acute care hospital is not considered a discharge for DRG payment purposes since special payment rules apply to these cases. However, for cost reporting purposes and for purposes of determining the hospital-specific rate, all transfers count as discharges in calculating the hospital's allowable base year cost per discharge.

b. *Case-Mix Adjustment.* We would divide the base year allowable capital cost per discharge by the hospital's case-mix index for its base year cost report. The most recent case-mix data available, which is for the Federal fiscal year 1989 (October 1, 1988 through September 30, 1989) was published in the September 4, 1990 final rule (55 FR 36081) and is not being republished as part of this document. The final rule will include hospital case-mix indexes for cost reporting periods ending in FY 1990.

We would standardize the hospital-specific rate for case mix in the base year because individual case complexity will be taken into account in determining the hospital-specific portion of the payment for a discharge by multiplying the hospital-specific rate by the DRG weight. By doing so, the hospital-specific payments will reflect any changes in case-mix occurring between the base year and the payment year.

c. *Update Factor.* We would update the resulting case-mix adjusted base period costs per discharge to apply to discharges occurring in FY 1992. Although the prospective payment system for capital will be effective by cost reporting period beginning dates, we propose to update the hospital-specific rate in the future on a Federal fiscal year basis to coincide with the update of the Federal capital payment rate and to maintain a consistent relationship between the hospital-specific rate and the Federal rate

throughout the transition. This will facilitate the comparison of a hospital's hospital-specific rate and the Federal rate for purposes of determining the applicable transition payment methodology. It will also provide for a consistent match between the inflation factor used to update the hospital-specific rate and the period covered by the rate.

We propose to update the base period costs per discharge from the mid-point of the hospital's base cost reporting period to March 31, 1992 (the mid-point of FY 1992).

The update factor would be based on an actuarial estimate of the increase in Medicare inpatient capital costs per discharge adjusted for case mix change. Part of the increase in capital costs is attributable to increases in case-mix. If we did not account for case mix change, we would be paying for case mix twice, once through the higher update factor and again in higher FY 1992 case mix. The rates of increase are as follows:

ESTIMATED INCREASE IN MEDICARE CAPITAL COST PER DISCHARGE (PERCENT)

Federal fiscal year	Total increase	Increase in case-mix	Case-mix adjusted increase
FY 1989	10.56	2.49	[1] 7.86
FY 1990	7.25	[2] 0.77	6.43
FY 1991	6.03	2.0	3.95
FY 1992	6.80	2.0	4.71

[1] Calculated by dividing 1.1055 by 1.0249.
[2] Takes into account 1.22 percent reduction in DRG weights.

To compute the update factor, the case mix-adjusted inflation rates are compounded using the number of months in each calendar year. Based on the case-mix adjusted inflation rates, we propose to update the hospital's base period costs per discharge for inflation using the following update factors:

COMPOUNDED UPDATE FACTORS FOR HOSPITAL-SPECIFIC RATE

12-month base year cost reporting period ending	Update factor
October 31, 1989	1.16101
November 30, 1989	1.15371
December 31, 1989	1.14646
January 31, 1990	1.13926
February 28, 1990	1.13210
March 31, 1990	1.12523
April 30, 1990	1.12040
May 31, 1990	1.11459
June 30, 1990	1.10882
July 31, 1990	1.10308
August 31, 1990	1.09736
September 30, 1990	1.09168

If a hospital's base year 12-month cost reporting period ends on a day other than those listed above, the intermediary would use the nearest whole month to the date on which the hospital's cost reporting period actually ends. If a hospital's base year cost reporting period is for other than 12 months, the update factor would be computed from the midpoint of the cost reporting period to March 1, 1992.

d. *Exceptions Reduction Factor.* As explained in section C below, we propose to reduce the hospital-specific rate (and the Federal rate) by an exceptions reduction factor equal to the estimated additional payments under the exceptions process. In FY 1992, we estimate that additional payments will equal 6.92 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we would multiply the hospital-specific rate by an exceptions reduction factor of .9308 (1–.0692).

e. *Budget Neutrality Adjustment.* As explained in section D below, we propose to adjust the hospital-specific rate (and the Federal rate) each year by a budget neutrality adjustment so that aggregate payments for capital in FY 1992 through FY 1995 are equal to 90 percent of what would have been payable on a reasonable cost basis that year. In FY 1992, the budget neutrality adjustment would increase the hospital-specific rate. We would multiply the hospital-specific rate by a budget neutrality adjustment factor of 1.1086.

The resulting amount as determined by the fiscal intermediary would be the hospital-specific rate used for each hospital's capital transition payment calculation.

Step 2—Identification of Old Capital

We would use a hospital's lastest cost reporting period ending prior to October 1, 1990 as the base period to establish a cutoff point to distinguish old capital from new capital to establish the capital hold-harmless payment amount. This is, old capital would be defined as an asset that has been acquired and reported on the Medicare cost report for the hospital's latest cost reporting period ending on or before September 30, 1990.

Although practically any point in time between October 1, 1983 and the implementation of the capital prospective payment system could be selected to distinguish between old capital and new capital, we believe our definition is both reasonable and the most practical approach for several reasons. First of all, we note that hospitals have had advance notice that capital would be paid for on a prospective basis. Section 601(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98–21) amended section 1886(a)(4) of the Act to provide that capital-related costs would be excluded from the prospective payment system only with respect to costs incurred prior to cost reporting periods beginning prior to October 1, 1986. We also note that section 601(a)(3) of Public Law 98–21 indicated Congressional intent that in considering the implementation of prospective payments for capital-related costs, costs for capital projects that were obligated on or after the effective date of the system "may or may not be distinguished and treated differently" from costs for projects for which expenditures were obligated before the effective date of capital prospective payments. Thus, hospitals were put on notice that capital obligated before the effective date of capital prospective payments would not necessarily receive special treatment.

Conference committee language accompanying section 4006(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which amended section 1886(g)(1)(A) of the Act to require the Secretary to establish a prospective payment system for capital-related costs in FY 1992, included a further cautionary statement to hospitals planning capital expenditures. The conference committee report on this provision specifically notes that at that time (FY 1992) "* * * hospitals will have had more than eight years since Congress originally indicated its intent in 1983 to reimburse for capital costs on a prospective basis" (H.R. Rep. No. 495, 100th Cong., 1st Sess. 535 (1987)).

As a practical matter, we believe that an earlier cutoff than the cost reporting period ending in FY 1990 for old capital could be detrimental to hospitals and that it would be administratively difficult to reconstruct expenditures for an earlier fiscal year and for the intervening years. Selection of a cutoff point subsequent to publication of this proposal, on the other hand, could serve as an incentive for hospitals to increase expenditures with the assurance that the cost would be paid under the hold-harmless provision.

We recognize that there may be a time lag of several years between the date a hospital may become obligated for higher capital expenditures and when the asset is put into operation and included in the Medicare cost report. This is particularly true for major projects such as plant renovation or expansions. Nevertheless, we are proposing to extend the hold-harmless provision only to obligated capital that was put in use for patient services before the close of cost reporting period ending on or before September 30, 1990.

Our reasons for limiting the old capital definition to only those assets that are included on the base period Medicare cost report include the following:

- The issue of whether capital is obligated is a grey area. We were unable to develop criteria for determining whether capital has been obligated that could be readily administered equitably and uniformly across fiscal intermediaries and that would not be subject to dispute.
- Under the aggregate payment constraints for the capital prospective payment system, any increase in hold-harmless payments (such as those resulting from a more lenient definition of old capital) would require lower payments for new capital.
- We do not have data on Medicare inpatient capital costs for capital projects that have been obligated but have not been put in use for patient services. To define these projects, some of which may never be completed and put into service, as old capital, would complicate our projections of the amount of payments under the hold-harmless methodology and the budget neutrality calculations required by Public Law 101–508 for the first four years of the transition.

To partially address the concerns of those hospitals that have made capital commitments that would not be eligible for reasonable cost payment under the hold-harmless provision, we propose to pay a hospital whose hospital-specific rate is below the Federal rate, but whose FY 1992 costs are above the Federal rate (prior to adjustment for exceptions or outliers), on the basis of whichever payment methodology is most advantageous to the hospital in FY 1992. This special rule would only be available to hospitals for FY 1992. The FY 1992 determination would establish which payment methodology would be applicable throughout the rest of the transition. Although new capital acquired between FY 1990 and FY 1992 would not be eligible for a hold-harmless payment, the impact of those acquisitions would be reflected in the determination of the applicable payment methodology. Further, we note that if future capital obligations result in substantial capital costs after the base period, an "exception" payment would be available if the necessary criteria are met regardless of whether the hospital is paid under the fully prospective or hold-harmless payment methodology.

We believe that our policy to use a base period to establish old capital under this proposed capital payment rule sets the proper balance among competing concerns over this issue. However, we are specifically interested in receiving public comment on our definition of old capital and alternative suggestions that would broaden the definition to include obligated capital. Commenters favoring consideration of obligated capital under the hold-harmless provision should suggest readily applied national criteria that could be used by fiscal intermediaries in an equitable manner to determine if capital has been obligated.

A definition that relates the criteria to an enforceable contract, for example, appears problematic because the criteria would vary according to state law and would involve the intermediary in legal determinations. On the other hand, a definition that did not require a binding contract would be subject to abuse. Such criteria should also specify the entities to which the obligations should be made before the capital would be considered obligated (for example, construction and/or financing) to qualify and the extent to which penalty clauses should influence the determination.

An alternative approach to defining obligated capital would be to require that the hospital demonstrate financial commitment by incurring substantial expenses, such as $750,000, related to the capital project by a date certain. This approach would limit the expanded definition of old capital to major capital projects.

Either approach would need to include an appropriate cut-off date that would preclude anticipatory actions by hospitals to obligate capital solely for purposes of favorable treatment under the prospective payment system.

Step 3—Determination of the Hold-Harmless Payment Amount

Subject to a budget neutrality adjustment, (see section D below), we propose to pay hospitals under the hold-harmless payment methodology for 90 percent of the Medicare reasonable costs for depreciation and interest expenses related to old capital. The depreciation and interest costs related to old capital for each year of the transition would be determined on an interim basis based on cost-reporting data for the most recent cost reporting period for which such data are available, adjusted to estimated current year levels. Subsequently, once audited capital cost and discharge data are available for the applicable fiscal year, a final determination of the payment amount for old capital costs would be made. Thus, for FY 1992, an interim determination of FY 1992 old capital costs would be made based on cost-reporting data for the base period cost reporting period adjusted to estimated FY 1992 levels. Subsequently, a final determination would be made, and applied retrospectively, based on audited FY 1992 capital cost and discharge data.

In order to determine the amount of old capital costs for purposes of the hold-harmless payment, Medicare fiscal intermediaries would determine the amount of each hospital's Medicare inpatient capital-related costs and categorize these costs as depreciation costs, capital-related interest costs, or other capital costs. Other capital costs include costs other than interest and depreciation that are defined as capital-related costs under § 413.130 of the current regulations, including all lease arrangements, rental agreements, insurance, taxes, license, royalty fee and related organization capital-related costs for depreciable assets that are not maintained on the premises of the hospital. (Any depreciable asset that is maintained on the hospital's premises for the use of the hospital's patients but is kept on the related organization's books for recordkeeping purposes only may qualify as old capital if the asset was first reported on the hospital's Medicare cost report for a cost reporting period ending on or before September 30, 1990.) For depreciable assets that were reported on the hospital's Medicare cost report ending on or before September 30, 1990, the allowable depreciation and interest costs related to the assets in a given transition year would be eligible for the hold-harmless payment in that year. As the old capital assets are retired, the amount of the hospital's hold-harmless payment would decline. In this regard, we note that betterment and improvement costs and replacement costs for old capital occurring subsequent to the base period would be considered new capital costs.

a. *Cost Reporting Requirements.* Beginning with cost reporting periods ending in FY 1991, hospitals would be required to separately maintain, and fiscal intermediaries to verify, the identity of the old capital assets and their related depreciation and interest expenses and to track scheduled depreciation and remaining interest on debt related to the old capital assets less any appropriate offsets for interest income. Similarly, new capital acquisitions and expenses, including all other capital costs (insurance, taxes, lease, rental and related organization capital costs), would be separately identified and maintained.

Hospital cost reporting forms would be revised for future periods to provide for the following:

• Separate identification of interest and depreciation by old and new capital categories.

• Separate identification of other capital costs.

• Identification of all new acquisitions, sales and retirement of capital assets.

b. *Interest Expense.* Interest expense, as described in § 413.153, is an integral part of capital costs. Under the current Medicare capital payment system (reasonable costs), it is important for hospitals to distinguish operating interest from capital interest appropriately since interest on funds borrowed for operating expenditures is included under the inpatient hospital prospective payment system, and therefore is not a passthrough, while interest on funds borrowed for capital expenditures is paid for on a reasonable cost passthrough basis. We propose to continue this policy without change throughout the transition period. We would apply this policy and Medicare's principles of reasonable cost payment to establish the amount of capital interest expense and the appropriate allocation between new and old capital for purposes of determining the old and new capital portions of a hospital's prospective capital payment during the transition period.

We would determine capital interest expense based on current regulations (§ 413.153) and program guidelines (see § 3202.1 of the Provider Reimbursement Manual (HCFA Pub. 15–1)). To be allowed as a Medicare expense, interest must be:

• Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of funds are required.

• Identifiable in the hospital's records.

• Related to the reporting period in which the costs are incurred.

• Necessary and proper for the operation, maintenance, or acquisition of the hospital's facilities.

To support the existence of a loan, the hospital must have available a signed copy of the loan contract, which should contain the purpose and pertinent terms of the loan. If the lender does not customarily furnish a copy of the loan contract, correspondence from the lender stating the pertinent terms of the loan would be acceptable. If interest expense has been determined to be allowable and the interest expense records are maintained physically away from the hospital's premises, for example, in a county treasurer's office, these records will be deemed to be those of the hospital. This is applicable when bond issues have been specifically designated for the construction or acquisition of hospital facilities and the financial records relative to the bond issue are maintained by some governmental body.

Once the allowable interest expense on capital indebtedness is determined, the interest expense is to be properly classified as either old or new capital expense. In determining the amount of interest expense that would be eligible for a hold-harmless payment, interest income would be offset against old capital interest expense on the basis of the ratio of old capital interest expense to total interest expense. If the interest expense solely relates to a debt instrument that was in effect for old capital in the base year cost reporting period, the allowable capital-related interest would be eligible for a hold-harmless payment.

When hospital financing activities result in a revision of the debt instrument applicable to old capital and/or a commingling of debt on old and new capital, the amount of interest expense related to old capital cannot exceed the amount of interest expense that would have been recognized prior to the commingling of debt or revision of the debt instrument. If the debt is commingled, the interest expense must be distributed between old and new capital based on the loan principal as it relates to each category. An example of this follows:

Assets covered under loan	Loan principal
Outstanding loan balance for old capital	$240,000
Newly financed additions or improvements	60,000
Total consolidated loan	300,000

Of the $300,000 total new outstanding principal amount, $240,000 is for the outstanding loan principal on the old assets, and $60,000 is for the loan principal on the betterments and improvements. Annual interest on the loan is at 10 percent and thus is equal to $30,000. The allocation to old capital and new capital is shown below:

Interest expense for Old Capital:

$$\frac{\$240,000}{\$300,000} \times \$30,000 = \$24,000$$

Interest Expense for New Capital:

$$\frac{\$60,000}{\$300,000} \times \$30,000 = \$6,000$$

Total Interest Expense = $30,000

However, the terms of the old loan on the old capital stipulated a 9 percent interest rate with the loan to be paid over a 10-year period for which five years have elapsed. If the new loan is to be paid over a 10-year period, only $21,600 ($240,000 x .09) in interest expense for the remaining five years that would have been recognized under the terms of the old loan would be recognized during the transition period.

If a loan is obtained to finance the purchase of a facility and equipment and the loan exceeds the asset value of the acquisitions, the interest expense on that portion of the loan in excess of the asset value would be considered general operating interest expense. The portion of the interest expense related to the financial assets must be distributed among the old and new financed assets. Again, the interest expense related to any old debt for old assets can not exceed the allowable interest expense that would have been allowable on the outstanding balance of the old debt.

There are some cases in which a hospital may, for a variety of reasons, undertake advance refunding (that is, replace existing debt prior to its scheduled maturity with new debt). The revenues and expenses associated with the advance refunding are treated in accordance with the principles set forth in section 233 of the Provider Reimbursement Manual. The allocation of interest expense on the new debt would be dependent upon the allocation used for the old debt and may not exceed the interest expense allowed under the terms of the old debt.

If a hospital has consolidated various individual debts through advance refunding, the interest expense on the new debt would be allocated to the appropriate accounts based on the old debt balances that were refinanced, not to exceed the interest expense that would have been allowable under the old debt.

We would develop further refinements and clarifications to the cost-finding rules and the cost reporting methodology through HCFA's administrative issuances system.

c. *Reevaluation of Assets.* Under section 1861(v)(1)(O) of the Act, for hospital acquisitions that involve reevaluation of assets, the new depreciation value of the purchased asset is limited to the lesser of the purchase price or the original book value of the asset. If the sale price of the asset exceeds the net book value, Medicare recaptures its proportion of previous depreciation payments from the seller.

Under the proposed rule, adjustments would be made for gains or losses only with respect to old capital for which a hold-harmless payment is made. No adjustment would be made if payment is based on 100 percent of the Federal rate. The amount of the capital expenses after adjustments for gains and losses due to changes of ownership would be equal to the percentage of assets (based on book value) that are eligible for the hold-harmless payment.

Step 4—Determination of Applicable Capital Transition Methodology

To determine the payment methodology that would be applicable to a hospital throughout the transition period, a comparison would be made between its hospital-specific rate and the applicable Federal rate. The comparison would be made by adjusting the Federal rate for the disproportionate share and geographic adjustment factors applicable to the hospital and increasing the adjusted rate by the estimated value of outlier payment (5.1 percent). If the hospital-specific rate is higher than the Federal rate, the hospital would be paid under the hold-harmless payment methodology. If the hospital-specific rate is less than the Federal rate, the hospital would be paid under the fully prospective payment methodology, unless its FY 1992 allowable capital costs per case are higher than the Federal rate (after taking the payment adjustments for case mix, disproportionate share, geographic location and outlier payments into account). In the latter situation, the hospital would be paid under which of the two payment methodologies, exclusive of exception payments, would provide the higher payment amount in FY 1992. The hospital would continue to be paid under that same payment methodology for the remainder of the transition and could not in subsequent years switch from one payment methodology to the other. We note that this special rule for determining the transition payment methodology applicable to the hospital would have no effect on the determination of the hospital-specific rate or the determination of old capital costs. This payment provision is intended to benefit hospitals that complete capital projects between the end of their base year cost reporting period and FY 1992 which result in the hold-harmless methodology becoming advantageous even though the project would be classified as new capital.

The fiscal intermediary would advise each hospital in writing at least 30 days prior to the date of the hospital's first cost reporting period beginning on or after October 1, 1991 of its hospital-specific rate. In addition, based on a comparision of the hospital-specific rate with the applicable Federal rate, the intermediary would advise the hospital of the payment methodology under which it would be paid for the duration of the transition.

In the case of hospitals with hospital-specific rates lower than the Federal rate, the determination that payment will be made under the fully prospective methodology would be subject to change upon settlement of the FY 1992 cost report. This is because of the special rule allowing payment to these hospitals under the hold-harmless methodology if their FY 1992 allowable capital costs are higher than the Federal rate. After the hospital's FY 1992 cost report is reviewed and audited, the intermediary would provide written notice to each hospital being paid under the fully prospective payment method concerning the amount of its actual FY 1992 allowable capital costs and whether the hospital would now qualify for payment under the hold-harmless methodology for the transition period.

Any hospital dissatisfied with the determination of which payment methodology will apply during the transition would be able to challenge that determination by appealing the determination of the hospital-specific rate or the determination of its FY 1992 allowable capital costs under the provisions at 42 CFR part 405, Subpart R, Provider Reimbursement Determinations and Appeals.

Step 5—Payment Under the Fully Prospective Payment Methodology

Under the fully prospective payment methodology, a hospital will be paid a blend of its hospital-specific rate and the Federal rate, as follows:

FULLY PROSPECTIVE PAYMENT METHODOLOGY BLEND

Cost reporting period beginning in:	Hospital-Specific blend percentage	Federal blend percentage
Fiscal Year 1992	90	10
Fiscal Year 1993	80	20
Fiscal Year 1994	70	30
Fiscal Year 1995	60	40
Fiscal Year 1996	50	50
Fiscal Year 1997	40	60
Fiscal Year 1998	30	70
Fiscal Year 1999	20	80
Fiscal Year 2000	10	90
Fiscal Year 2001	0	100

Step 6—Payment Under the Hold-Harmless Payment Methodology

Under the hold-harmless payment methodology, a hospital would receive in each year of the transition the higher of:

• 90 percent of actual reasonable costs for depreciation and interest expenses on old capital in the transition year plus a hospital-specific payment for new capital (subject to a budget neutrality adjustment as explained in section D below); or

• 100 percent of the Federal rate (or the applicable blend of its hospital specific rate and Federal rate, if lower).

a. *Hold-Harmless Payment for Old Capital.* We would discount our payment for Medicare depreciation and interest costs of old capital (determined under step 3 above) by 10 percent in order to assure adequate funds to pay for the formation of new capital for both categories of hospitals. We note that this discount is less than the 15 percent reduction applicable to reasonable cost payments for Medicare inpatient capital costs under current law. If necessary, we would also adjust the payment by the budget neutrality adjustment factor (See section D below).

b. *Payment for New Capital.* Hospitals that receive a hold-harmless payment for old capital would be paid for new capital on the basis of the Federal capital rate applicable to all hospitals times the hospital's own ratio of Medicare inpatient new capital cost to total Medicare inpatient capital cost. New capital would be defined as all allowable Medicare inpatient capital-related costs other than depreciation and interest expense on old capital. The ratio could not exceed the national ratio of Medicare inpatient new capital cost to Medicare inpatient total capital cost as determined by HCFA for each Federal fiscal year. Our current estimate of the national ratio of new capital cost to total capital cost for the first two years of transition is the following:

FY 1992: 47.31 percent

FY 1993: 55.05 percent

c. *Comparison with Federal Rate.* As a hospital fully depreciates, retires, or sells old capital, its payments for old capital would decline and, at some point, payment based on 100 percent of th Federal rate would become more advantageous than the hold-harmless payment alternative. The hospital controls which payment alternative would be applicable through its capital decisions; the intermediary would make the actual determination regarding which payment alternative would result in higher payment. The comparison between the hold-harmless payment and 100 percent of the Federal rate would be made without regard to additional payments for exceptions. In addition, in any year of the transition, once a hospital is paid based on the Federal rate as a result of this comparison, the

BEST COPY AVAILABLE

hospital will continue to be paid based on the Federal rate for the remainder of the transition. The hospital will not be able to receive the hold-harmless payment for old capital in a subsequent cost reporting period of the transition.

d. *Payment Under the Special Rule.* In general, hospitals must have a hospital-specific rate that is higher than the Federal rate in order to be paid under the hold-harmless methodology. However, as previously discussed, there would be a special rule permitting hospitals whose hospital-specific rate is less than the Federal rate to be paid under the hold-harmless methodology if their FY 1992 allowable capital costs per case are higher than the Federal rate. We are providing that this particular group of hospitals would not be paid 100 percent of the Federal rate when it is no longer advantageous to receive the hold-harmless payment. Instead, they would be paid based on the applicable hospital-specific/Federal blend in effect under the fully prospective payment methodology.

e. *Interim Payment Determination Under the Hold-Harmless Methodology.* The hold-harmless payment amount for old capital costs for each year of the transition period would be based on that year's reasonable costs for depreciation and interest expenses on old capital (that is, assets that were reported on the hospital's Medicare cost report ending on or before September 30, 1990). Since this reasonable cost amount cannot be finally determined in advance of audit and settlement of a hospital' cost report, the payment amount for old capital costs would be estimated and paid on an interim basis until final data are available. Similarly, the ratio of the hospital's Medicare inpatient new capital costs to total Medicare inpatient capital costs cannot be determined until final settlement; thus, the payment for new capital would also be estimated and paid on an interim basis until final data are available.

Payment for old capital costs for the first year of the capital prospective payment system would be based on FY 1992 reasonable costs for depreciation and interest expenses on old capital. Since audited FY 1992 capital cost and discharge data would not be available at the time a hospital's capital-related costs first became subject to the capital prospective payment system, the intermediary would make an interim prospective payment to hospitals paid under the hold-harmless payment methodology until the pertinent cost report data are available and a final determination can be made.

We would have fiscal intermediaries use the capital cost data from the base year cost report to prepare an interim capital payment rate determination at the time a hospital begins its first cost reporting period on or after October 1, 1991. To determine interim capital payments timely, hospitals would have to provide fiscal intermediaries with documentation of the following FY 1990 Medicare inpatient capital costs:

- Total Medicare capital costs.
- Depreciation and interest costs for old capital.
- FY 1990 Medicare discharges.

This information would have to be submitted no later than 120 days prior to the date the hospital would begin its first cost reporting period on or after October 1, 1991 in order to allow fiscal intermediaries adequate time to verify the data and make the interim capital payment determination.

Medicare fiscal intermediaries would be responsible for making the following determinations:

- Review and verify the old and new capital cost data submitted for the base year by each hospital.
- Adjust the depreciation and interest expenses for old capital to FY 1992 levels based on hospital depreciation schedules and interest rate data.
- Estimate the payment ratio to be applied to the Federal rate for determining payment for new capital by subtracting the FY 1992 depreciation and interest expenses for old capital from total FY 1990 capital-related costs and dividing the difference by the total FY 1990 capital-related costs. A fiscal intermediary may also take into account hospital documentation of assets acquired from the base year through FY 1992 and their estimated Medicare depreciation and related annual interest costs or other changes in new capital costs since the base year.

The intermediary would then advise the hospital in writing of the interim payment rate determination at least 30 days prior to the date of the hospital's first cost reporting period beginning on or after October 1, 1991. At a hospital's request, the fiscal intermediary would make interim rate adjustments if necessary based on a hospital's submission of supporting documentation.

C. Exceptions Process

Under the authority of section 1886(g)(1)(B)(iii) of the Act, we propose to establish an exceptions process to assist hospitals that are financially disadvantaged during the transition period. The exceptions process would be available to hospitals paid under either the fully prospective payment methodology or the hold-harmless payment methodology that incur capital costs significantly in excess of their payments. In FY 1992, we propose that any hospital would be eligible for an additional payment under the exceptions process if its capital costs exceed 150 percent of the capital payments it would receive in the absence of the exceptions process. A hospital would be paid 75 percent of its costs in excess of the 150 percent threshold. As explained below, under certain circumstances, an urban hospital with 100 beds or more that has a disproportionate share percentage of at least 30 percent or a rural sole community hospital may receive a higher level of payment under the exceptions process.

The basic purpose of the exceptions policy is to assure continuing access to high quality care for Medicare beneficiaries. In this regard, we are particularly sensitive to the need to provide special protection to rural sole community hospitals, which serve as the sole source of care reasonably available to Medicare beneficiairea residing in their service area, and urban hospitals with more than 100 beds that serve a disproportionate share of low income population. We propose to establish a more lenient exceptions policy for these two classes of hospitals. The amount of the additional payment would be based on the relationship of current capital costs to the hospital-specific rate. If the hospital's capital costs per case are 3.0 times or more the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of payments. If the resulting capital costs per case are 1.5 times the hospital-specific rate or less, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with cost-to-hospital-specific rate ratios between 1.5 and 3.0. The applicable percentage would be determined by applying a formula. It would be calculated by subtracting the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0, multiplying the difference by 16.67, and adding the result to 100 percent.

The amount of the exceptions payment under this special provision could not exceed the difference between the hospital's total Medicare inpatient costs (operating, capital, and direct medical education costs) and its Medicare payments for Part A inpatient hospital services for the cost reporting period. A rural sole community hospital or urban hospital with more than 100 beds and a disproportionate share percentage of at least 30 percent would be paid under the general exceptions policy applicable to other hospitals if it would receive a higher payment under the general exceptions policy.

We would limit the aggregate amount of the exceptions payments to no more than 10 percent of the total capital payments made on a prospective basis, that is, 10 percent of the payments based on the hospital-specific and the Federal rate. We would reduce the hospital-specific and the Federal rate so that the aggregate reduction in a given year would equal the estimated amount of additional payments that would be made under the exceptions process in that year. In FY 1992, we estimate that the exceptions payments will constitute 6.92 percent of total prospective payments; therefore, we have multiplied the hospital-specific and Federal rate by an exceptions reduction factor of .9308 (1-.0692). If the payment formula we propose for FY 1992 would result in estimated exceptions payments that exceed 10 percent of total prospective payments in a subsequent year, we would raise the cost threshold to qualify for an exception or reduce the payment percentage so that the estimated payments under the exceptions process would equal 10 percent of total prospective payments in that year.

We note that with the two different transition payment methodologies we are proposing, a hospital would not qualify for an exception unless it has significant new capital expenditures. Since hospitals will have increasingly more discretion over the timing and financing of these expenditures as the transition progresses, we believe it is appropriate for the percentage of capital costs an individual hospital would receive under the exceptions process to decline in the later years of the transition. By the end of the transition, hospitals will have had ample time to adjust their capital spending and financing activities to the prospective payment system and an exceptions process should no longer be necessary. Since the Federal rate is independent of capital decisions, we would underpay a hospital in some years and overpay the hospital in other years relative to its costs in each of those years. It would not be appropriate to make an additional payment to a hospital because its costs exceed payments in a given year when the hospital may have received payments in excess of its costs in prior years and had an opportunity to accumulate additional funds for future capital acquisitions during those years. Therefore, we are proposing to establish an exceptions process only for the transition period. At the end of ten years, additional payments for exceptions would no longer be available. Since we would no longer protect hospitals that have costs that are significantly in excess of their Medicare payments in a given year, we invite public comment on this issue and suggestions regarding any special protections that should be extended to hospitals after the transition has ended.

D. Budget Neutrality Adjustment

Section 4001(b) of Public Law 101-508 amended section 1886(g)(1)(A) of the Act by adding a requirement that aggregate payments made each year in FY 1992 through FY 1995 for inpatient hospital services be reduced in a manner that results in savings equivalent to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. The statute provides the flexibility to achieve the savings through the design of the capital prospective payment system or through an adjustment to the standardized amounts for operating costs, or both. Since hospitals have been paid for capital based on their costs, they have less incentive to control their capital costs than their operating costs. We believe that the capital prospective payment system ought to generate at least 10 percent savings over reasonable costs. Currently, Medicare payments are subject to a 15 percent reduction so the 10 percent savings would actually result in a 5.9 percent increase in aggregate Medicare payments for inpatient capital costs. We propose to achieve the savings only through a reduction in payment for capital costs in FY 1992 through FY 1995. After the budget neutrality provision expires, payments would be made without regard to the budget neutrality adjustments that were applied during the first four years.

As explained in appendix A, we would use our actuarial model to determine the amount of the budget neutrality adjustment needed to assure that estimated payments under the capital prospective payment system are 90 percent of the estimated payments that would have been made on a reasonable cost basis assuming no change in spending for new capital acquisitions. If we determine a positive adjustment in payments is needed to achieve the appropriate aggregate payment level, we would apply a percentage increase to the Federal rate and the hospital-specific rate, but we would not make a positive adjustment to the hold harmless payment. We do not believe it is appropriate to pay more than 90 percent of reasonable costs for old capital since the costs were incurred when hospitals did not have an incentive to control capital costs. To the extent payments need to be increased to assure budget neutrality, the additional payments should be made available for new capital. To the extent payments need to be reduced to assure budget neutrality, we believe the reduction should be spread across payments for both old as well as new capital, and we would apply the negative adjustment to the Federal rate, the hospital-specific rate, and the hold-harmless payment.

In FY 1992 and FY 1993, we estimate that a positive adjustment will be required to achieve aggregate payments equal to 90 percent of the amount that would have been payable on a reasonable cost basis. Accordingly, we would increase the Federal rate and the hospital-specific rate by the following factors:

Fiscal year	Budget neutrality adjustment factor
1992	1.1086
1993	1.0033

We note that the budget neutrality adjustment factors would be determined each year independently of the adjustment made in prior years; that is, the budget neutrality adjustments would not be built permanently into the rates. The Federal rate and hospital-specific rate to which the budget neutrality adjustment would be applied in a given year would not incorporate prior budget neutrality adjustments. In the case of the hold-harmless amount, the payment in any year would be based on 90 percent of reasonable costs unless a negative adjustment were required in that year (regardless of whether negative budget neutrality adjustments were required in prior years).

Since the budget neutrality provision is applicable only for the first four years of the capital prospective payment system, we believe that it is more appropriate to remove the effect of prior year budget neutrality adjustments from the prospective rates before determining the current year adjustment than to build the budget neutrality adjustments permanently into the prospective rates. Through FY 1995, the choice between the one year application and a permanent application of the budget neutrality adjustment has no aggregate impact on program payments. For example, either approach in FY 1993 would result in a 1.4 percent reduction in relation to the FY 1992 payment rate

before updating for inflation: (1.0933/1.1068=.988; 1-.986=.014). However, the one year application permits us to implement the different budget neutrality policies for the prospective payments and the hold-harmless payments. If we were to determine the FY 1993 budget neutrality adjustment without removing the effect of the FY 1992 adjustment, the FY 1993 adjustment would be negative (.986). This is because a smaller adjustment in the standard Federal rate and the hospital-specific rate is required in FY 1993 than in FY 1992 to achieve budget neutrality. By removing the effect of the FY 1992 budget neutrality adjustment from the rates before making the calculation, the FY 1993 budget neutrality adjustment is positive (1.0933). Beginning in FY 1996, when the budget neutrality provision expires, the payment rates would be updated without regard to the budget neutrality adjustments that were applied during the first four years.

E. Payments to New Hospitals

For purposes of the capital prospective payment system, we would define a new hospital as one which is newly participating in the Medicare program (under previous and present ownership) that does not have a 12-month cost reporting period ending on or before September 30, 1990. New hospitals would be paid on a fully prospective payment basis during the transition period since by definition they have no old capital. For purposes of determining the hospital-specific rate, the hospital's base period would be its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months). If the base period begins on or after October 1991, the hospital would be paid a blend of its Medicare inpatient capital costs and the Federal rate during its base period. The blend would be the blend applicable to the Federal fiscal year in which the base period cost reporting period begins. For example, a new hospital with a base period beginning in FY 1992 would be paid 90 percent of its capital-related costs for Medicare inpatient services and 10 percent of the Federal rate.

After the base period, a new hospital will be paid the appropriate blend of its hospital-specific rate and the Federal rate, regardless of whether its hospital-specific rate is above or below the Federal rate. During the transition period, new hospitals will have the exceptions process available to them (under § 412.322) if their capital costs exceed their payment rate.

F. Total Capital Payment

The total capital payment to a hospital for a cost reporting period would be the total of the following components by payment methodology:

Hold-Harmless Payment Methodology

Unless it qualifies for the hold-harmless payment methodology under the special rule at § 412.316(d), a hospital paid under the hold-harmless payment provision would be paid the higher of:

1. (Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor); or

2. (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor) × (The Lesser of—

a. The Hospital's Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost; or

b. The Applicable Federal Fiscal Year National Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost)

Plus

(Applicable Fiscal Year's Remaining Depreciation + Interest Expense for Old Capital × 90 percent) × (Budget Neutrality Adjustment Factor, if applicable).

3. In addition, the hospital would receive any outlier or exception payments applicable to the payment alternative.

If the hospital qualifies for the hold-harmless payment methodology under the special rule at § 412.316(d), the hospital would be paid the higher of:

1. (Hospital-Specific Rate × DRG weight × Hospital-Specific Blend Percentage) + (Standard Federal Rate × DRG Weight × Geographic Adjustment Factor × Disproportionate Share Adjustment Factor × Federal Transition Blend Percentage); or

2. (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor) × (Disproportionate Share Adjustment Factor) × (The Lesser of—

a. The Hospital's Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost; or

b. The Applicable Federal Fiscal Year National Ratio of New Capital Medicare Inpatient Cost to Total Medicare Inpatient Capital Cost)

Plus

(Applicable Fiscal Year's Remaining Depreciation + Interest Expense for Old Capital × 90 percent) × (Budget Neutrality Adjustment Factor, if applicable).

3. In addition, the hospital would receive any outlier or exception payments applicable to the payment alternative.

Fully Prospective Payment Methodology

Under the fully prospective payment methodology, a hospital would receive:

(Hospital-Specific Rate × DRG Weight × Hospital-Specific Blend Percentage)

Plus

(Standard Federal Rate × DRG Weight × Georgraphic Adjustment Factor × Disproportionate Share Adjustment Factor × Federal Transition Blend Percentage)

Plus

Any Applicable Outlier or Exception Payments.

G. Payment Determinations During the Transition Period

We are providing examples of the payment determination for two hypothetical hospitals below using illustrative FY 1992 data (except for rates, updates and reduction factors published in this document) in order to demonstrate the payment determinations that would be required under this proposal.

The examples assume audited FY 1992 cost report data that would be used for fiscal intermediaries to make a final determination on the applicable payment methodology. However, the same process would be used to make the interim determination, using estimates of FY 1991 and FY 1992 cost report data (for example, projected new capital amounts and old capital depreciation and interest expenses) as described in B., Step 6d., above.

1. Payment Methodology Determination Examples

Example 1—Hospital A is located in Abilene, Texas. It has more than 100 beds and a disproportionate share percentage of 10 percent in FY 1992.

Cost report data:	
Base period cost report ending 10/31/89	
Medicare discharges	1,000
Medicare case mix	1.2000
Total Medicare inpatient capital costs	$300,000
FY 1992 cost reporting period ending 10/31/92	
Medicare discharges	1,000
Medicare case mix	1.2500
Total capital cost	$336,000
Old capital cost	544,000
New capital cost	292,000

Payment Adjustment data:	
Geographic adjustment factor for Abilene, Texas (Table 2a)	0.9841
Disproportionate share (DSH) adjustment factor	1.04060
Rate adjustment factors:	
Update factor for cost reporting period ending 10/31/89	1.16101
Exception reduction factor for FY 1992	0.9308
Budget neutrality factor for FY 1992	01.1068
Outlier adjustment factor for FY 1992	0.949
a. Hospital-specific rate calculation:	
Allowable cost per discharge in base period ($800,00 + 1,000)	$800.00
CMI adjustment ($800 + 1.2000)	666.67
Update to FY 1992 ($666.67 × 1.16101)	774.01
Adjustment for exception reduction factor ($774.01 × 0.9308)	720.45
Adjustment for FY 1992 budget neutrality factor ($720.45 × 1.1068)	798.83
Hospital A's Hospital-specific rate	798.83
b. Adjusted federal capital rate comparison calculation:	
FY 1992 Federal capital rate (Table 1)	$471.54
Adjustment for outlier reduction factor reflected in Federal rate ($471.54 + 0.9490)	496.88
Adjustment for wage index and disproportionate share adjustment ($496.88 × 0.9841 × 1.04080)	498.49
Adjusted federal capital rate	498.49

[Note: The outlier reduction factor is implicit in the calculation of the Federal rate. Since the Federal rate already includes the same exceptions reduction factor and the budget neutrality adjustment factor, and both the Federal rate and the hospital-specific rate would be adjusted by the DRG weight, no further adjustments are needed to make the comparison.)

Since Hospital A's hospital-specific rate is above the adjusted Federal capital rate, Hospital A would be paid under the hold-harmless payment methodology throughout the transition period.

C. Comparison of Payments under Federal Rate and Hold Harmless Provision

FY 1992 adjusted Federal capital rate (from Calculation b., above)	$498.49
FY 1992 payment based on 100% Federal rate Case-mix adjusted Federal capital rate ($498.49×1.2500=$623.11)	$623.11

C. Comparison of Payments under Federal Rate and Hold Harmless Provision—Continued

New capital payment portion of hold-harmless methodology:	
Hospital ratio of new capital costs to total capital costs in FY 1992 (292,000÷836,000)	0.3493
Apply lower of hospital-specific ratio (0.3493) or the national ratio for FY 1992 (0.4731) to the case-mix adjusted Federal rate ($623.11×0.3493=$217.65)	$217.65
Old capital payment portion of hold-harmless methodology: (FY 1992 old capital amount × 0.9 × applicable budget neutrality factor[1] ÷ FY 1992 Medicare discharges) ($544,000×0.9÷1,000=$489.60)	489.60
Total payment under hold-harmless payment methodology: Payment amount per discharge for new capital in FY 1992 plus payment amount per discharge for old capital ($217.65+$489.60=$707.25)	707.25

[1] No hold-harmless budget neutrality factor is applied for FY 1992.

Since Hospital A would receive a higher payment in FY 1992 if there were a hold-harmless payment for old capital than if payment were based on 100 percent of the Federal rate, Hospital A would be paid under the hold-harmless method in FY 1992.

Example 2—Hospital B is located in Baltimore, Maryland. It has more than 100 beds and a disproportionate share percentage of 25 percent in FY 1992.

Cost Report Data:	
Base period cost report ending 10/31/89:	
Medicare discharges	1,000
Medicare case mix	1.1000
Total Medicare inpatient capital costs	$338,500
FY 1992 cost reporting period ending 10/31/92:	
Medicare discharges	1,100
Total capital cost	$862,000
Old capital cost	$320,000
New capital cost	$342,000
Payment Adjustment Data:	
Geographic adjustment factor (Table 2a)	1.0242
Disproportionate share (DSH) adjustment factor (DSH percentage equals 25 percent)	1.0977
FY 1992 Case Mix Index	1.2000
Rate Adjustment Factors: (Same As Hospital A's)	
a. Hospital-Specific Rate Calculation:	
Allowable cost per discharge in base period ($338,500÷1,000)	$338.50
CMI adjustment ($338.50÷1.100)	$307.73
Update to FY 1992 for cost reports ending 10/31/89 ($307.73×1.16101)	$357.28
Adjustment for exception reduction factor ($357.28×0.9308)	$332.56
Adjustment for budget neutrality reduction factor ($332.56×1.1068)	$368.74
Hospital B's Hospital-Specific Rate	$368.74
b. Adjusted Federal Capital Rate Comparison Calculation:	
FY 1992 Federal capital rate (Table 1)	$471.54
Adjustment for Outlier Reduction Factor ($471.54÷0.9490)	$496.88
Adjustment for wage index and disproportionate share adjustment ($496.88×1.0242×1.0977)	$558.62
Adjusted Federal capital rate	$558.62

Since Hospital B's hospital-specific rate is below the adjusted Federal capital rate, Hospital B would be paid under the fully prospective payment methodology unless Hospital B's FY 1992 actual capital cost per case is above the Federal rate. In this case, either the hold-harmless methodology or the fully prospective payment methodology may be applicable under the special rule in § 412.256(d). As a result, a comparison of the FY 1992 total Medicare capital cost per case to the payments under the adjusted Federal capital rate must also be made under the following determination:

c. Determination of Eligibility and Methodology under § 412.256(d):	
FY 1992 Medicare cost per discharge = (FY 1992 total Medicare inpatient capital costs + FY 1992 Medicare discharges) ($762,000÷1,100)	$692.73
FY 1992 adjusted Federal rate (From calculation b. above)	558.62
FY 1992 case-mix adjusted Federal rate ($558.62×1.20)	670.34

Since Hospital B has a higher FY 1992 cost per case than the adjusted FY 1992 Federal capital rate, Hospital B would receive capital prospective payments during the transition period on the basis of which payment methodology (the hold-harmless payment methodology or

the fully prospective payment methodology) would provide the higher payment as determined on a per case comparison basis prior to consideration of additional payments under the exceptions process.

d. Hold-Harmless Payment Methodology:

Federal capital rate:	
(FY 1991 case-mix adjusted Federal rate) (from Calculation c., above)	$670.34
Hospital Ratio of New Capital Costs to Total Capital Costs in FY 1992:	
FY 1992 new capital costs	$342,000
FY 1992 total capital costs	$662,000
The ratio of new capital costs to old capital costs ($342,000 ÷ $662,000)	0.5166
Apply lower of hospital-specific ratio (0.5166) or national ratio for FY 1992 (0.4731)	0.4731
New Capital Payment Portion of Hold-Harmless Methodology: (Federal capital rate × ratio of new capital to total capital) ($670.34 × 0.4731)	$317.14
Old Capital Payment Portion of Hold-Harmless Methodology (FY 1992 old capital amount × 0.9 × applicable budget neutrality factor* + FY 1992 discharges) ($320,000 × .9 × 1.000) ÷ 1,100)	261.82
Total Payment under Hold-Harmless Methodology Payment amount per discharge for new capital in FY 1992 plus payment amount per discharge for old capital in FY 1992 ($317.14 + $261.82)	578.96

*No hold-harmless budget neutrality factor is applied for FY 1992.

e. Fully Prospective Payment Methodology:

Hospital-specific rate (HSR) calculation (HSR × FY 1992 CMI × HSR transition blend percentage) ($366.74 × 1.2000 × 0.9)	$396.24
Federal capital rate calculation FY 1992 case-mix adjusted Federal rate ($670.34 × 0.10)	67.03
Total fully prospective payment calculation (HSR payment per discharge plus Federal capital rate payment per discharge) ($396.24 + $67.03)	466.27

Since Hospital B would receive more under the hold-harmless payment methodology in FY 1992, payment would be made on that basis throughout the transition period.

2. Exception Payment Process

For FY 1992, we would provide that any hospital receiving capital prospective payments would be eligible for an exception payment if its total allowable Medicare inpatient capital costs exceed 150 percent of the total capital payment it receives. The additional payment would be equal to 75 percent of the cost in excess of 150 percent of the payment total. As a special payment protection, we would provide that a rural sole community hospital or an urban hospital with more than 100 beds that has a disproportionate share percentage of 30 percent or more would be eligible for a higher capital exceptions payment, as follows:

(a) If the hospital's inpatient cost per discharge is 3.0 times or more than its hospital-specific rate, the hospital is paid an additional payment equal to 75 percent of costs in excess of 100 percent of payments.

(b) If the hospital's inpatient cost per discharge is between 1.5 and 3.0 times its hospital-specific rate, the hospital is paid an amount equal to 75 percent of its Medicare inpatient capital costs in excess of the applicable threshold. The applicable threshold is determined as follows:

Step 1—Subtract the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0.

Step 2—Multiply the result in Step 1 by 16.67.

Step 3—Add the result in Step 2 to 100 percent.

(c) If the hospital's inpatient cost per discharge is 1.5 times or less than its hospital-specific rate, the hospital is paid an additional payment equal to 75 percent of costs in excess of 125 percent of payments.

The amount of the exceptions payment under this special provision could not result in total Medicare payments for inpatient hospital services (including payments for operating, capital, and graduate medical education costs) that exceed the hospital's total Medicare inpatient costs for the cost reporting period.

The determination of whether the exception criteria are met by a hospital and the amount of the exception payment would be made by the fiscal intermediary. These additional capital payments would be determined and adjusted retroactively for each cost reporting period during the transition based on each hospital's actual allowable inpatient capital costs as determined in its Notice of Amount of Program Reimbursement under cost reimbursement principles pursuant to section 1861(v) of the Act and implementing regulations.

The following examples indicate the process that would result from application of the exception rules for FY 1992 hospital cost reporting periods.

Example 1: Hospital A is a 200-bed, urban facility paid for inpatient capital on the basis of the hold-harmless method with no DSH adjustment. Based on settlement of its FY 1992 cost report the hospital had total allowable Medicare inpatient capital costs of $1,440,000 and received capital prospective payments totalling $840,000. Since the hospital exceeded the 150 percent exception criteria ($840,000 × 1.5 = $1,260,000) by $180,000, an exception payment adjustment of $135,000 would be made by the fiscal intermediary for the cost reporting period ($180,000 × .75 = $135,000).

Example 2: Hospital B is identical to Hospital A in situation and costs except that it has a DSH percentage of 32 percent. Prior to taking the additional payments under the exceptions policy into account, the hospital's total Medicare Part A inpatient costs are $300,000 more than its Medicare payments for Part A inpatient services. The hospital's actual capital cost per discharge in the pertinent cost reporting period is less than 1.5 times its hospital-specific rate. Hospital B exceeds the applicable 125 percent exception criteria by $390,000 ($1,440,000 − ($840,000 × 1.25) = $390,000). Thus, the payment adjustment in this case would be $292,500 for the FY 1992 cost reporting period for Hospital B ($390,000 × .75 = $292,500). Since the exception payment would not cause the hospital to exceed the difference between its total Medicare inpatient costs and its Medicare payment total in the cost reporting period, the fiscal intermediary would make the adjustment in the Notice of Amount of Program Reimbursement process.

Example 3: Hospital C is identical to Hospital B except that its Medicare inpatient capital cost per discharge is 2.5 times its hospital-specific rate. As a result, the hospital is eligible for an exception payment for costs above 108.33 percent of its Medicare inpatient capital payments in that cost reporting period ([3.0−2.5]×16.67+100=108.33). Thus, the hospital exceeds its applicable exception criteria by $530,028 (that is, $1,440,000−[$840,000×1.0833] =$530,028). The hospital would be eligible for an additional exception adjustment of up to $397,521 (that is, $530,028×0.75=$397,521). Since the amount of the exception is limited to the difference between total Medicare inpatient payments and total Medicare inpatient hospital costs, the Medicare fiscal intermediary would make a payment adjustment in the hospital's Notice of Amount of Program Reimbursement for $300,000. With this adjustment, the hospital would receive total Medicare inpatient hospital payments equal to its total Medicare inpatient costs.

3. Outlier Payment Process

The following is an example of how additional payment to a hosital paid under the fully prospective payment methodology would be determined for an outlier case in FY 1992. The example is for illustrative purposes, and uses the FY 1991 operating outlier thresholds and DRG weights published in the calculations in the September 4, 1990 final rule (55 FR 35990). The IME and DSH adjustments are those that will be made in FY 1992, and the standardized amounts and wage index are those that were effective for discharges occurring on or after January 1, 1991 that were published in the January 7, 1991 final rule.

Hospital A is a 150 bed hospital located in the San Francisco, California MSA, which is a large urban area. Hospital A has a ratio of interns and residents to beds of 0.1, and a disproportionate patient percentage of 30.2 percent. Mr. Jones is admitted to Hospital A on October 1, 1991 and is discharged on November 30, 1991. The billed charges for Mr. Jones' stay are $100,000. Mr. Jones is classified in DRG 286. Because Mr. Jones' 61 day stay exceeds the 39 day length of stay outlier threshold for DRG 286, Hospital A is eligible for payment for 22 outlier days in addition to the otherwise applicable prospective payment. The amount of Hospital A's outlier payment (excluding the usual Federal payments for operating and capital costs that apply for both outlier and non-outlier cases, and the hospital-specific portion of the capital payment) is calculated as follows:

Day Outlier

Step 1: Computation of the Payment Rate for Operating Costs (excludes capital, indirect medical education (IME) and disproportionate share hospital (DSH) payments)

National Large Urban Standardized Amounts:	
Labor-Related	$2,480.60
Nonlabor-Related	$1,021.98
San Francisco MSA Wage Index	1.4568
DRG 286 Relative Weight	2.4946

DRG Relative Weight × [(Labor-Related National Large Urban Standardized Amount × San Francisco MSA Wage Index) + Nonlabor-Related National Large Urban Standardized Amount] = Federal Rate for Operating Costs.

2.4946×[($2,480.60×1.4568)+ $1,021.98]=$11,564.26

Step 2: Computation of Federal Capital Payments

Federal Capital Rate	$471.54
DRG 286 Relative Weight	2.4946
Federal Portion of Capital Rate	[1] 10%
Geographic Adjustment Factor	1.2085

DRG Relative Weight × Federal Capital Rate × Federal Portion of Capital Rate × Geographic Adjustment Factor = Federal Rate for Capital Costs.

2.4946×$471.54×0.10×1.2085=$142.16

Step 3: Computation of Day Outlier Payments

Geometric Mean Length of Stay for DRG 286	10.1 days.
Outlier Days (61−39)	22 days.
Marginal Cost Factor	60 percent.

[1] If Hospital A were paid a hold harmless payment for old capital, the Federal portion (for new capital) would be the lesser of—

- The hospital-specific ratio of new to total capital; or
- The national average ratio of new to total capital.

A. Operating Outlier Payment (excludes IME and DSH) = Number of Outlier Days × (Operating Federal Payment Geometric Mean Length of Stay for DRG 286) × Marginal Cost Factor

22 × ($11,564.26÷ 10.1) × 0.60 = $15,113.69

B. Capital Outlier Payment (excludes DSH) = Number of Outlier Days × (Capital Federal Payment Geometric Mean Length of Stay for DRG 286) × Marginal Cost Factor

22 × ($142.16 ÷ 10.1) × 0.60 = $185.79

Step 4: Computation of Operating IME and DSH Adjustment for Day Outliers:

IME Adjustment Factor	0.0744
Operating DSH Adjustment Factor	0.1262

Operating Outlier Payment × (IME Adjustment Factor + DSH Adjustment Factor) = Operating Outlier Adjustment for IME and DSH

$15,113.69×(0.0744 + 0.1262) = $3,031.81

Step 5: Computation of Capital DSH Adjustment for Day Outliers

Capital DSH Adjustment Factor	0.1165
Capital Outlier Payment	$185.79

Capital DSH Adjustment Factor × Capital Outlier Payment = DSH Outlier Adjustment

0.1165 × $185.79 = $21.64

Step 6: Total Day Outlier Payments

Regular Operating Outlier Payment	$15,113.69
Regular Capital Outlier Payment	185.79
IME and DSH for Operating	3,031.81
DSH for Capital	21.64
Total	$18,352.93

Cost Outlier

Step 1: Computation of Hospital A's Standardized Costs

Billed Charges	$100,000
Hospital A's Operating Cost-To-Charge Ratio	[1] 0.72
Hospital A's Capital Cost-To-Charge Ratio	0.06
IME Adjustment Factor	0.0744
DSH Operating Adjustment Factor	0.1252
DSH Capital Adjustment Factor	0.1165

[1] This is the same cost-to-charge ratio currently used to determine outlier payments using operating costs only. The capital cost-to-charge ratio, when added to the operating cost-to-charge ratio, will yield a total cost-to-charge ratio. [This occurs because the denominator in both cases is total charges. The charges are not divided into operating and capital charges.]

(Billed Charges × Operating Cost-to-Charge Ratio)÷(1 + IME Adjustment Factor + Operating DSH Adjustment Factor) = Standardized Operating Costs

($100,000 × 0.72)÷(1 + 0.0744 + 0.1262) = $59,970.01

(Billed Charges × Capital Cost-to-Charge Ratio)÷(1 + Capital DSH Factor) = Standardized Capital Costs

($100,000 × 0.06)÷(1 + 0.1165) = $5,373.94

Step 2: Determination of Capital Cost Thresholds

Computation 1—Based on Federal Rate

A. Operating Federal Rate for DRG 286 = $11,564.26 2 × Federal Rate = $23,128.52

B. Capital Federal Rate for DRG 286

Federal Rate × DRG 286 Relative Weight × San Francisco MSA Geographic Adjustment Factor = Capital Federal Rate

$471.54 × 2.4946 × 1.2085 = $1,421.56 2 × Federal Rate = $2,843.12

Computation 2—Based on Adjusted Standard Cost Outlier Thresholds

Standard Cost Outlier Threshold	$35,000
Labor-Related Share, Operating	0.7140
Nonlabor Share, Operating	0.2860

Operating Portion of Cost Threshold

Operating Cost-to-Charge Ratio ÷ (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) = Operating Cost Portion.

0.72÷(0.72+0.06)=0.9231

Capital Portion of Cost Threshold

Capital Cost-to-Charge Ratio ÷ (Operating Cost-to-Charge Ratio + Capital Cost-to-Charge Ratio) = Capital Cost Portion.

0.06÷(0.72+0.06)=0.0769

A. Wage Index Adjusted Operating Cost Outlier Threshold = Operating cost portion as a share of total costs × [(Standard Cost Outlier Threshold × Labor-Related Share × San Francisco MSA Wage Index)+(Standard Cost Outlier Threshold × Nonlabor-Related Share)].

0.9231×[$35,000×.7140×(1.4566) +($35,000×0.2860)]=$42,846.09

B. Capital Cost Outlier Threshold Adjusted by Geographic Adjustment Factor = Capital Standard Cost as a Share of Total Costs × Standard Cost Outlier Thresholda × San Francisco MSA Geographic Adjustment Factor.

0.0769×35,000×1.2085=$3,252.68

Computation 1 Result, Operating—$23,128.52.

Computation 1 Result, Captial—$2,843.12.

Threshold Using Computation 1=$23,128.52+$2,843.12=$25,971.64.

Computation 2 Result, Operating—$42,846.09.

Computation 2 Result, Capital—$3,252.68.

Threshold Using Computation 2=$42,846.09+$3,252.68=$46,098.77.

The applicable cost outlier threshold equals the results of Computation 2.

Step 3: Determination of Cost Outlier Payment

Marginal Cost Factor—0.75.

A. Operating Outlier Payment

Operating Outlier Cost = Standard Operating Costs − Operating Threshold.

$50,970.01−$42,846.09=$17,123.92

Operating Outlier Payment = Operating Outlier Cost × Marginal Cost Factor.

$17,123.92×0.75=$12,842.94

B. Federal Portion of Capital Outlier Payment

Capital Outlier Cost = Standard Capital Costs − Capital Threshold.

$5,373.94−$3,252.68=$2,121.26

Capital Outlier Payment = Capital Outlier Cost × Marginal Cost Factor.

2,121.26×0.75=$1,590.95

Federal Portion of Capital Outlier Payment = Federal Portion of Capital Rate × Capital Outlier Payment.

$1,590.95×0.10=$159.10

Step 4: Computation of Operating IME and DHS Adjustment for Cost Outliers

Operating Outlier Payment × (IME Adjustment Factor + Operating DSH Adjustment Factor) = Operating Cost Outlier Payment for IME and DSH.

$12,842.94×(0.0744+0.1282)=$2,576.29

Step 5: Computation of Capital DSH Adjustment for Cost Outliers

Capital Outlier Payment × Capital DSH Adjustment Factor = Cost Outlier Payment for DSH.

$159.10×0.1165=$18.35

Step 6: Total Cost Outlier Payments

Operating	$12,842.94
Federal Portion of Capital	159.10
IME and DSH for Operating	2,576.29
DSH for Capital	18.35
Total	15,596.68
Determination of Outlier Payment:	
Total Day Outlier Payment	18,352.93
Total Cost Outlier Payment	15,596.68

Hospital A receives the greater of the two payments, which is $18,352.93, the day outlier payment.

V. Other Required Information

A. Paperwork Reduction Act

Sections 412.300ff of this proposed rule contain information collection requirements subject to review by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3501 through 3511). This section requires hospitals that are paid under the "hold harmless" provision to segregate capital costs between old capital and new capital as defined in § 412.300(b) throughout the payment transition. We estimate that approximately 1,750 hospitals would receive a hold harmless payment for old capital. Because we are uncertain about the burden required to maintain separate records for old and new capital, we invite public comment on the amount of burden this may impose on hospitals. Organizations and individuals desiring to submit comments on the information collection requirements and respondent and burden estimates should direct them to HCFA and the OMB official whose name appears in the Addresses section of this preamble. A notice will be published in the Federal Register after approval is obtained for the additional recordkeeping requirements.

B. Public Comment Period

Because of the large number of comments that we normally receive during a comment period, we are unable to acknowledge or respond to each comment individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Date" section of this preamble and respond to those comments in the preamble to that final rule.

C. Regulatory Impact Analysis

1. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas and hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area. Section 1886(d)(8)(B) of the Act specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in the adjacent urban area. We have identified 52 rural hospitals, some of which may be considered small, that we have reclassified as urban hospitals. Also, section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of incorporating capital-related costs into the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

2. Objectives

By incorporating capital-related costs into the prospective payment system, we are extending the objectives underlying the current payment system for operating costs to this area of hospital inpatient costs consistent with the Medicare law. Because we have continued to pay hospital capital-related costs on a pass-through basis, hospital administrators have had less incentive to bring their capital-related spending in line compared to inpatient hospital operations under the prospective payment system.

Under reasonable cost payment, a hospital has very little financial incentive to invest prudently in capital assets because the pass-through method of paying for capital-related costs partially shields the hospital from the full economic consequences of its decisions. Thus, access to financial markets and competitive pressures may be more important factors in determining a hospital's capital investments than the overall contribution of such assets to the effective or efficient operation of the facility. For example, under cost-based reimbursement, a hospital could borrow funds for expansion of its plant that would result in surplus capacity, and Medicare would still pay its share of those capital costs. In this manner, the Medicare program may absorb some of the risk for an unsound investment by partially underwriting that investment regardless of its cost or its contribution to patient care services.

Although the congressionally mandated reduction in Medicare payments for capital-related costs may have achieved some savings, the reasonable cost system still remains largely unchecked by competitive market forces. The retrospective payment system now in effect does not constrain hospital capital-related spending sufficiently to bring these costs under control.

As the following table illustrates, in spite of the congressionally mandated reductions in capital payments, Medicare inpatient capital costs per case have increased as a percent of total Medicare inpatient costs per case.

	PPS–I	PPS–II	PPS–III	PPS–IV	PPS–V
Total Medicare inpatient costs per case	3413.37	3815.73	4237.33	4674.57	5081.27
Medicare inpatient capital cost per case	311.06	381.10	431.10	486.23	528.91
Capital costs as a percent of inpatient costs	9.1	10.0	10.2	10.4	10.4

The chief objective we hope to achieve through paying for inpatient capital-related costs on a prospective payment basis is to establish the same kind of economic relationship between hospital operational characteristics and market conditions on the one hand, and capital investment decisions, on the other hand, as exists in a price-competitive market. This proposal to establish prospective payment rates for inpatient hospital capital-related costs, therefore, would establish a payment system that would result in hospitals accepting a greater degree of risk for their investment decisions. Extending the prospective payment system principles to payments for capital-related costs would subject these costs to the same financial and economic incentives to which operating costs are now subject.

Our other objectives include:

- Assuring adequate payments for the cost of assets acquired and expensed prior to program implementation;
- Adhering to the specific payment reductions set forth in section 4001 of Public Law 101–508 enacted on November 5, 1990; and
- Implementing a fair and equitable transition from reasonable cost payments to a perspective rate based on industry-wide average capital costs.

We believe these proposals would further all of our goals while maintaining the financial viability of the hospital industry and ensuring access to high quality care for beneficiaries.

We also expect these proposed changes to further these objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable.

In the analysis that follows we confine our discussion to the effects of our proposed policy on hospitals. Nevertheless, we are aware that other sectors of the economy and individuals may be affected by these proposals. For example, the proposal should have a beneficial impact on beneficiary and private patients. Reduced capital spending would benefit Medicare and private patients and other third party payers through lowering direct payments of deductibles and coinsurance amounts, and slowing the growth of FICA taxes and health insurance premiums. Yet reduced spending for capital projects and equipment may result in slowing the growth in the access needed medical

services. However, we also believe that our proposals would not adversely affect the quality of care and access to needed health services.

The effects of our proposal on the construction industry is uncertain. In the short run, as hospitals reduce their capital programs to bring spending in line with payments, there may be a slowdown in hospital construction activity. However, as funds that would have gone into hospital capital spending through third party contributions are shifted into other sectors of the economy, construction in these other areas may increase, thus, offsetting or reducing the losses in hospital construction. Furthermore, since we believe that the hospital sector of the economy is over-capitalized relative to demand, freeing up funds for spending in other sectors may also result in greater overall economic productivity.

Nevertheless, because we lack the data and resources to evaluate the costs and benefits of our proposals to these other sectors of the economy and to private patients and other third party payers, we specifically ask for comments on these issues.

3. Hospitals Included In and Excluded From the Capital Prospective Payment System

In general, hospitals began operating under the prospective payment system with the start of their cost reporting period beginning on or after October 1, 1983. Section 1886(g)(1)(A) of the Act requires that all hospitals subject to section 1886(d) of the Act be paid for the capital-related costs of their inpatient services on a prospective payment basis effective with the hospitals' first cost reporting period after September 30, 1991. Since September 1985, both Massachusetts and New York have terminated the waivers under which they were excluded from the Medicare prospective payment system, and hospitals in those States have entered the prospective payment system. (Massachusetts hospitals came under the Medicare prospective payment system in October 1985, while New York hospitals began receiving Medicare prospective payments in January 1986). Effective January 1, 1989, the 94 short-term, acute care hospitals located in New Jersey came under the prospective payment system. The demonstration project being conducted in the Rochester region of New York State has ended and the 10 hospitals in that region are now under the prospective payment system.

With the enactment of section 9304 of Public Law 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in Puerto Rico began receiving payments under the prospective payment system effective with discharges occurring on or after October 1, 1987. Also, effective with cost reporting periods that began on or after October 1, 1987, alcohol/drug hospitals and units that had been excluded from the prospective payment system under § 412.22(c) of the regulations began receiving Medicare prospective payments. Thus, only 59 short-term, acute care hospitals remain excluded from the prospective payment system under section 1814(b)(3) of the Act (in Maryland) or demonstration projects (in the Finger Lakes regions of New York State). As of December 31, 1990, about 5,530 hospitals (85 percent of all Medicare-participating hospitals) were operating under the prospective payment system.

As of December 31, 1990, almost 690 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of their reasonable cost, subject to limits on the rate of their cost increases. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,810 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost subject to limits on the rate of their cost increases. Although hospitals extensively involved either in the treatment of cancer or cancer research have been paid on a reasonable cost basis, section 6004(a) of Public Law 101–239 specifically excluded these hospitals from the prospective payment system effective with cost reporting periods beginning on or after October 1, 1989. There are currently eight hospitals that HCFA has designated as cancer research or treatment hospitals.

Since hospitals excluded from the prospective payment system would also be excluded from the capital-related prospective payments, we anticipate no effect on payments for capital-related costs to these hospitals and do not consider them further in this impact analysis.

4. Impact of Capital Payments on Hospitals

a. *General Considerations.* Any impact analysis of payment changes for capital-related costs is limited by our ability to develop meaningful projections of new capital investment.

Because investment in capital assets do not occur evenly over time, there can be significant differences in individual hospital rates of growth in Medicare capital costs per case. We do not have the hospital-specific data on capital investment to incorporate these different growth rates into projections of FY 1992 capital costs per case for individual hospitals from PPS–5 data, the latest actual data available. Since our FY 1992 projection of capital-related costs could be inaccurate for individual hospitals, a cross-sectional impact analysis using the usual prospective payment system hospital groupings (for example, urban/rural, teaching/nonteaching, etc.) that relied on individual hospital projections from PPS–5 data may not be representative of the impact of the capital prospective payment system.

Further, our analysis of the variation in capital costs per case indicates that the groupings of hospitals used in impact analyses of the prospective payment system for operating costs are not very useful in identifying hospitals that would be affected by the proposed change in capital payment policy. The most important factors that would determine the impact of the proposed capital prospective payment system on an individual hospital are the timing and amount of its capital expenditures. Our analysis reveals that the timing and amount of spending for capital are not highly correlated with the characteristics used for grouping hospitals in impact analyses of the prospective payment system for operating costs. This is because the hospital characteristics used to establish these groupings are not highly correlated with other variables, such as the age of the capital assets and financing variables, that are important factors in explaining the variation in capital costs per case among hospitals.

b. *Projected Impact Based on the Capital Acquisition Model.* Based on these considerations, our approach to the impact analysis in this proposed rule is different from the approach we have taken in earlier proposals to pay for capital on a prospective basis. In those proposed rules, we presented static impact analyses that assumed all hospitals experienced the same rate of growth in capital costs per case. However, in developing this proposed rule, we need to model individual hospital capital growth rates for budget neutrality purposes. Consequently, we believe our impact analysis should rest on the same assumptions underlying the proposed payment methodology. In this impact analysis, therefore, we have attempted to model dynamically the impact of the capital prospective payment system from FY 1992 through FY 1995 using a capital acquisition model. This model, which is described in Appendix A, contains 6000 hypothetical hospitals and includes the payment variables needed to estimate aggregate payments under the capital prospective system; however, it does not include the detailed hospital characteristics needed to produce the cross-sectional impact analysis we have presented in the previous capital prospective payment proposals. For purposes of the impact analysis, the model includes the following assumptions:

- Medicare inpatient capital costs per discharge would increase at the following rates during these periods:

Fiscal year	Average rate of increase (percent)
1991	6.04
1992	6.80
1993	7.76
1994	7.73
1995	7.76

- The Medicare case mix index would increase by 2 percent annually.
- The Federal capital rate as well as the hospital-specific rate would be updated by the average increase in Medicare capital costs per case, adjusted for case mix change, that occurred two years previous to the fiscal year in question. For example, the FY 1995 update would be 5.65 percent (the FY 1993 increase adjusted for a 2 percent increase in case mix, or 1.0776/1.02).
- Payments under the exceptions process would be limited to 10 percent of aggregate payments made under the Federal and hospital-specific rates. The percentage of payment in excess of the qualifying threshold for an exception would be reduced as necessary to maintain the 10 percent limitation.
- Consistent with the budget neutrality constraints provided by section 4001(b) of Public Law 101–508, aggregate Medicare payments for capital costs in each year would equal 90 percent of total Medicare inpatient capital costs. Since the model projects a positive adjustment would be required each year, the budget neutrality adjustment factor would be applied to the Federal and hospital-specific rates only (and not to the hold-harmless payment for old capital).

We have used the model to estimate the change in payment for capital-related costs relative to payments based on 85 percent of reasonable costs from FY 1992 through FY 1995. The results are presented separately for hospitals that would be paid under the fully prospective rate and for hospitals that would be paid under the hold-harmless methodology. The breakdown of hospitals by transition payment methodology is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Payment methodology	Percent of hospitals	FY 1992 percent of discharges	FY 1992 percent of capital costs	FY 1992 average cost per discharge
Fully Prospective	54	54	25	$316.29
Hold-Harmless	46	46	75	1124.98

Assuming no behavioral changes in capital expenditures, Table 1 displays the percentage change in payments from FY 1992 through FY 1995 relative to payment based on 85 percent of reasonable costs. We have used 85 percent of reasonable costs as the baseline because it is the FY 1991 payment level. The percentage of hospitals were calculated for each cell in Table 1 compared to the total universe of hospitals used in our impact model. Since aggregate payments under the capital prospective payment system for FY 1992 through FY 1995 will equal 90 percent of what would have been payable on a reasonable cost basis there will be an aggregate 5.9 percent increase in Medicare capital payments during this period compared to 85 percent of reasonable cost. We project that hospitals paid under the fully prospective payment methodology would experience an average case-weighted increase in payments of 42.8 percent; hospitals paid under the hold-harmless methodology would experience an average decrease of 6.5 percent. A 20 percent change in capital payments represents about a 2 percent change in total Medicare inpatient payments.

In the short run, we would not expect there to be a significant change in the rate of new capital investments. Immediate behavorial changes in captial expenditures are unlikely because of the time required for the planning and completion of capital projects and for modifying financing arrangements. We would expect, however, that hospitals would respond to the incentives of the capital prospective payment system within a few years and modify their behavior accordingly.

Under the hold-harmless provision, hospitals would be paid 90 percent of their reasonable costs for old capital. New capital costs, over which they have more discretion, would be paid on a prospective basis based on a portion of the Federal rate. The reductions in payments compared to 85 percent reasonable cost reimbursement that are reflected in our projections are attributable solely to payments for new capital investment. The analysis of changes in rates of new investment indicate that hospitals with relatively high capital costs would be able to significantly lessen the impact of the capital prospective payment system by reducing their new capital investment by, for example, choosing to postpone the acquisition of noncritical assets or purchasing less costly assets. In addition, hospitals have the ability to undertake various term financing arrangements that could bring their stream of debt payments over time into line with the expected Medicare capital payments. Further, we note that the projected reductions in FY 1992 payments do not necessarily imply losses for hospitals. A noncash expense, such as depreciation, may cause a hospital to show an accounting loss, but does not affect cash flow.

In Tables 2 and 3, we present the average dollar change in capital payments per case compared to payments based on 85 percent of reasonable costs using different assumptions regarding the rate of new capital investment. A $200 increase or decrease in capital payments represents about a 3 percent change in total Medicare inpatient payments. The percentage of hospitals in these tables were calculated using the number of hospitals in each payment category (that is, hold harmless or fully prospective) rather than the total universe as in Table 1. Table 2 displays the impact for hospitals paid under the fully prospective payment methodology. Scenario 1 assumes no behavioral change; that is, the rate of growth is the same as under the reasonable cost payment system. Scenario 2 assumes that there would be a 10 percent aggregate reduction in new capital investment beginning in FY 1994 compared to the currently projected increase in new capital investments under the reasonable cost payment system. Since most hospitals paid under the fully prospective payment methodology would accumulate surpluses during the transition, Scenario 3 assumes a 10 percent aggregate increase in new capital investment beginning in FY 1994. Assuming no behavioral change, the average payment per case would increase $115.08 in FY 1992 (under any of the scenarios) and $164.82 in FY 1994 (Scenario 1). In FY 1994, the average payment per case would increase $169.80 relative to

payment based on 85 percent of reasonable costs if new capital investment declined by 10 percent and would increase $360.38 if new capital investment increased by 10 percent.

The relationship between changes in the rate of new capital investment and the impact of capital prospective payments on hospitals paid under the hold-harmless methodology is illustrated in Table 3. Scenario 1 assumes no change in capital investment patterns. Scenario 2 assumes a 10 percent aggregate reduction in capital spending compared to spending under cost reimbursement beginning in FY 1994, and Scenario 3 assumes a 20 percent aggregate reduction beginning in FY 1994. Assuming no behavioral changes, the average payment per case would decrease $62.27 in FY 1992 and $109.55 in FY 1994 relative to payment based on 85 percent of reasonable cost. In FY 1994, the average payment per case would decrease $95.89 and $83.46 if hospitals reduced new capital investment by 10 and 20 percent, respectively. In FY 1995, the average payment per case would decrease $146.47 if there were no change in the rate of new capital investment. The average payment per case would decrease $117.16 if hospitals paid under the hold-harmless methodology reduced new capital investments by 10 percent and $91.23 if new capital investment were reduced by 20 percent.

c. *Cross-sectional Comparison of Average Capital Costs Per Case.* Using PPS–5 cost report data (cost reporting periods beginning in FY 1988), we compared the case-weighted average capital cost per case for major hospital groupings to the national average cost per case. The purpose of this analysis is to provide the public with the most recent data available regarding the magnitude and direction of cost differences across hospitals. It is important to recognize, however, that changes that have occurred since the PPS–5 cost reports may well result in different relative relationships in FY 1992.

In order to provide an indication of which hospitals would be likely to be paid under the fully prospective payment methodology and which hospitals would be paid under the hold-harmless methodology, Table 4 displays within each hospital grouping the case-weighted cost per case adjusted for the payment variables that would be used in the capital prospective payment system (other than outliers). That is, we adjusted each hospital's average cost per case for its FY 1988 case mix, the disproportionate share adjustment factor, and geographic adjustment factor. We did not adjust for outliers because the comparison between the Federal rate and the hospital-specific rate for purposes of determining which payment methodology would be applicable throughout the transition is made exclusive of the outlier payments to an individual hospital. Table 4 shows the average case-weighted adjusted cost for all hospitals and separately for hospitals above and below the national average adjusted cost per case.

The relationship between the case-weighted adjusted cost per case for the hospital grouping and the national average adjusted cost per case is comparable to what the relationship between the hospital-specific rate and the Federal rate would be if the hospital-specific rate were based on PPS–5 data. This provides an indication of which hospital groupings tend to have relatively high costs after the payment variables are taken into account. These groupings are likely to have a higher proportion of hospitals paid under the hold-harmless methodology. Conversely, those hospital groupings that end to be low cost are likely to have a higher proportion of hospitals paid under the fully prospective methodology. We note that hospital investments in new capital between PPS–5 and the actual base year used to establish the hospital-specific rate (the latest cost reporting period period ending on or before September 30, 1990) may result in a somewhat different distribution of hospitals than the one shown in Table 5.

Within most hospital groupings, there is a roughly equal division of hospitals above and below the national average. The difference between the cost per case for large urban hospitals and the national average is 6.1 percent and the hospitals are evenly divided between those with an average adjusted cost per case above the national average and those with an average adjusted cost per case below the national average. The difference between the average cost per case for rural hospitals and the national average is −9.8 percent; however, 75 percent of rural hospitals have a adjusted cost per case below the national average. In particular, 83 percent of rural hospitals with fewer than 50 beds have adjusted cost below the national average, and 70 percent of rural hospitals with 50 to 99 beds have an average adjusted cost below the national average. The average difference between the national average cost per case for hospitals with fewer than 50 beds and for hospitals with 50 to 99 beds is −45.7 percent and −36.9 percent, respectively.

For major teaching hospitals, the average adjusted cost per case is 0.9 percent higher than the national average; 57 percent of major teaching hospitals have an average cost per case that is below the national average after adjustment for the payment variables.

The percentage difference between the average adjusted cost per case and the national average for proprietary hospitals is to 29.6 percent. The proprietary hospitals are the only group of hospitals that is likely to have a majority of hospitals paid under the hold-harmless methodology. About 64 percent of proprietary hospitals have a capital cost per case on average above the national average cost per case. The case weighted average cost for these hospitals is 61.2 percent above the national average. As a group, proprietary hospitals have significantly newer fixed assets and somewhat newer moveable equipment than other hospitals. Our measure of average asset age is the ratio of accumulated depreciation to current depreciation. Using PPS–5 cost report balance sheet information on 1906 hospitals, the average age of fixed assets is 5.66 years for the proprietary hospitals, compared to the national ratio of 9.63 years. For moveable equipment, the ratio for proprietary hospitals was 4.77 years compared to the national ratio of 5.84 years. The proprietary hospitals also have a higher ratio of total liabilities to total assests (.65) than any other hospital grouping and the lowest ratio of non-capital investments to total assets (.28). Table 5 displays comparative information on capital age and financing variables as well as case mix for the 1906 hospitals. Other than the proprietary hospitals, the case-weighted means of the capital age and financing variables for each hospital grouping are similar to the national averages.

The preceding analysis gives an indication of those hospitals that have below average capital costs per case and those with above average costs. Keeping in mind that more current cost report data could alter our analysis. Table 4 indicates which groups of hospitals would most likely qualify for fully prospective payments and those that would most likely qualify under the proposed hold-harmless provisions. In Table 5 we present data developed from our regression analysis that helps explain why proprietary hospitals, in particular, are likely to qualify under the hold-harmless provisions.

d. *Federal Rate Payment Simulations.* To estimate the potential impact of payment based solely on the Federal rate, we simulated what payments would have been if PPS–5 capital payments had been based solely on the Federal rate and the proposed payment adjustments instead of reasonable cost payments. We constrained the total capital payments in the simulation to the PPS–5 cost levels; thus, the case-weighted average payment per case equals the case-weighted PPS–5 average cost per case. Table 6 displays the percentage difference between the average cost per case and the average payment per case and the percentage difference between the average cost per case after standardizing for the capital age and financing variables and the average payment per case. These data are for the 1906 hospitals for which sufficient balance sheet information was available to develop the capital age and financing variables. We standardized for these variables to illustrate the effect they have on capital costs per case and on the impact of prospective payments and because we expect hospitals to adapt their capital timing and financing decisions to the incentives of the prospective payment system. The comparison between payments and actual costs illustrates the impact of a Federal rate assuming no changes in behavior. The comparison between payments and standardized costs provides an indication of what the impact would be in the long run, assuming no changes in new capital acquisitions. We would expect the differences in capital financing and age attributes to even out over time. To provide an indication of the effect of the payment adjustments, the comparisons are made to both payments based on the Federal rate without further adjustment and payment based on the Federal rate adjusted for case mix, outliers, disproportionate share, and the geographic adjustment factor; that is, the payment rules applicable to 100 percent of payment after the transition expires.

The simulation results are consistent with the other analyses of PPS–5 costs per case. As expected, both the payment adjustments and standardization for the capital age and financing variables serve to reduce the percentage difference between costs and payments. For most hospital groupings, there would have been less than a 5 percent difference between their actual costs per case or their standardized cost per case and the adjusted Federal rate. Hospitals in five groupings, in this simulation, would have received adjusted Federal payments that are more than 5 percent below their standardized cost per case. These are: rural hospitals with between 150 and 200 beds, rural hospitals with more than 200 beds, sole community hospitals, rural referral centers and hospitals with between 0 and 25 percent Medicare utilization. Of these groups, only rural referral centers would have also received payments that are more than 5 percent below their actual costs per case. In this simulation, rural hospitals with fewer than 50 beds and 50–99 beds would have received payments that were about 25 percent and 9 percent, respectively, higher than their actual costs per case and about 1 percent above their standardized costs per case.

For proprietary hospitals, the difference between the impact based on actual costs and on standardized costs is marked. The adjusted Federal rate payments would have been 21.5 percent lower than actual average costs per case compared to .3 percent higher than standardized average costs per case.

e. *Impact of the Proposed Exceptions Policy.* In accordance with the authority given to the Secretary under section 1886(g)(1)(B) of the Act to grant exceptions to the capital prospective payment system, we are proposing to pay hospitals in financial difficulties additional amounts for their capital related costs. These exceptions are intended to help hospitals that have committed themselves to major capital projects that would be brought into service sometime during the transition period. We recognize that major capital projects are often planned for in advance of their completion date and the plans for these projects assume specific cash flow levels. Thus, our proposed prospective payment system for capital could disrupt a hospital's financial plans and may cause some hospitals financial distress. We are therefore proposing the exceptions policy described in section IV. C of the preamble to this proposed rule. These exceptions would be available only during the transition period in keeping with the principle that the price paid for hospital services should be independent of a hospital's investment decisions.

Under the proposed exceptions policy, beginning in fiscal year 1992, any hospital would be eligible for an exception if its capital costs exceed 150 percent of the capital payments without consideration of any payments under this exceptions process. A hospital that meets this requirement would receive an additional payment equalling 75 percent of those capital-related costs in excess of the 150 threshold.

Rural sole community hospitals and urban hospitals with 100 or more beds that have a disproportionate patient share of 30 percent or more would be eligible for a special exception. As explained in the preamble to this proposed rule, the amount of this special exception would be based on the relationship of current capital costs to the hospital-specific rate. If the hospital's capital costs per case are 3.0 times or more the hospital-specific rate, the hospital would be eligible for an additional payment equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of payments. If the resulting capital costs per case are 1.5 times the hospital-specific rate or less, the hospital would be eligible for an additional payment equal to 75 percent of costs above 125 percent of payments. We would use a sliding scale for hospitals with cost-to-hospital-specific rate ratios between 1.5 and 3.0. The applicable percentage would be determined by applying a formula. It would be calculated by subtracting the hospital's ratio of Medicare inpatient capital costs per discharge to its hospital-specific rate from 3.0, multiplying the difference by 16.67, and adding the result to 100 percent.

The amount of the exceptions payment under this special provision could not result in total Medicare payments that exceed the hospital's total Medicare inpatient costs for part A inpatient hospital services for the cost reporting period. A rural sole community hospital or urban hospital with more than 100 beds and a disproportionate share percentage of at least 30 percent would be paid under the general exceptions policy applicable to other hospitals if the hospital would receive a higher payment under the general exceptions policy.

We examined the PPS–5 cost report data to determine the number of hospitals that are potentially eligible for the special exceptions provision. We estimate that there are 400 urban hospitals with more than 100 beds and a disproportionate share percentage of 30 percent or more. Approximately 36 percent of these hospitals had Medicare payments that were less than their total Medicare inpatient costs in their PPS–5 cost reporting period and would benefit from the special exceptions provisions if they incurred significant increases in capital costs. Of the 391 sole community hospitals in our data base, 60 percent had Medicare payments that were less than their total Medicare inpatient costs. We note that an estimate based on the PPS–5 data may not reflect the number of potentially eligible hospitals. This is because changes since PPS–5 in the payment formula for both disproportionate share hospitals and sole community hospitals have increased Medicare payments so these

two classes of hospitals and should result in fewer hospitals having a negative Medicare operating margin. In addition, the extent to which their total Medicare inpatient costs exceed their Medicare payments would be affected by the relationship between the capital prospective payments and a hospital's capital costs. We are, therefore, unable, to estimate how many hospitals may qualify for the special exception.

The simulation results indicate that most of the additional payments under the exceptions process would be paid to hospitals paid under the hold-harmless methodology. In fiscal year 1992, 12 percent of hospitals would qualify for an exceptions payments. However, 26 percent of the hold-harmless hospitals would receive 99 percent of the additional payments; less than 2 percent of hospitals paid under the fully prospective payment rate would qualify for an additional payment under the exceptions process.

5. Alternatives Considered

In addition to the alternative of determining hospital specific payments on a "rolling average" basis, we could have also calculated separate hospital specific and Federal payments for fixed and movable equipment as we proposed in our May 19, 1987 notice of proposed rulemaking. We decided not to develop separate payment schedules for fixed and movable capital because—

- This is a highly regulatory approach that requires classifying each asset as to whether it is fixed or movable;
- The distinction between fixed and movable equipment is often artificial and could lead to inappropriate incentives to favor one type of capital expenditures over the other;
- We thought it fairer to establish one payment schedule that would allow hospital staff the greater flexibility to decide how their capital funds should be spent rather than determine, in advance, the proportion of funds allocated for fixed and movable capital based on historical data.

Thus we are proposing one basic rate for all capital (but two payment methods in recognition of those hospitals with higher than average capital costs and those with below average costs.)

BILLING CODE 4120-01-M

ISS
40
FE
28
991
UMI

TABLE 1 - IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON ALL HOSPITALS

CHANGE IN PAYMENT COMPARED TO 85 PERCENT OF REASONABLE COST REIMBURSEMENT

Percent of Total Hospitals

	Hospitals Paid Under Fully Prospective Methodology (54 Percent of Hospitals)				Hospitals Paid Under Hold-Harmless Methodology (46 Percent of Hospitals)			
	FY 1992	FY 1993	FY 1994	FY 1995	FY 1992	FY 1993	FY 1994	FY 1995
LOSS								
20 percent or more	0.3	0.5	0.9	1.3	5.8	7.2	15.2	17.5
10-20 percent	0.7	1.1	0.9	1.0	11.2	12.3	7.8	7.6
0-10 percent	1.5	1.8	2.1	1.7	12.2	11.9	8.7	6.4
GAIN								
0-10 percent	2.6	2.7	2.6	2.5	6.3	4.9	4.2	3.7
10-20 percent	3.0	3.0	2.7	2.4	3.1	2.8	2.6	2.7
20 percent or more	45.8	44.8	44.5	44.9	7.6	7.2	7.8	8.3
Average percentage change	42.8	45.5	50.8	57.0	(6.5)	(8.8)	(10.0)	(12.5)

BILLING CODE 4120-01-C

TABLE 2.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER FULLY PROSPECTIVE METHODOLOGY

[Payment Change per (Dollars) Case Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
Scenario 1: No Change in New Capital Costs				
LOSS:				
$200+	0.1	0.2	0.4	1.2
$100–200	0.5	1.1	1.8	2.3
$0–100	4.0	4.9	5.0	4.1
GAIN:				
$0–100	43.3	25.2	15.2	11.3
$100–200	45.4	56.2	47.8	28.2
$200+	6.7	12.4	29.6	53.1
Average dollar change per case	115.08	134.59	164.82	201.27
Average Percentage Change	42.8	45.5	50.8	57.0
Scenario 2: 10 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	0.1	0.2	0.4	0.9
$100–200	0.5	1.1	1.5	1.7
$0–100	4.0	4.9	4.6	3.6
GAIN:				
$0–100	43.3	25.2	14.5	10.1
$100–200	45.4	56.2	48.0	27.6
$200+	6.7	12.4	31.0	56.2
Average dollar change per case	115.08	134.67	169.80	211.30
Average Percentage Change	42.8	45.5	53.2	61.6
Scenario 3: 10 Percent Increase in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	0.1	0.2	0.3	1.3
$100–200	0.5	1.1	2.3	2.5
$0–100	4.0	4.9	5.7	5.2
GAIN:				
$0–100	43.3	25.2	15.6	12.3
$100–200	45.4	56.5	47.8	26.2
$200+	6.7	12.4	28.3	50.4
Average dollar change per case	115.08	134.59	160.38	192.46
Average Percentage Change	42.8	45.5	48.7	52.9

TABLE 3.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER HOLD-HARMLESS METHODOLOGY

[Payment Change per Case (Dollars) Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
Scenario 1: No Change in New Capital Costs				
LOSS:				
$200+	20.7	25.9	33.6	39.9
$100–200	15.7	16.8	15.0	12.3
$0–100	26.7	25.2	20.0	15.8
GAIN:				
$0–100	20.9	16.7	14.1	12.4
$100–200	13.0	11.0	10.8	11.0
$200+	3.0	4.4	6.6	8.5
Average dollar change per case	62.27	79.80	109.85	146.47
Average Percentage Change	6.5	7.8	10.0	12.5
Scenario 2: 10 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	20.7	25.9	31.5	37.0
$100–200	15.7	16.8	15.3	12.7
$0–100	26.7	25.2	20.4	16.8
GAIN:				
$0–100	20.9	16.7	14.7	12.6

TABLE 3.—IMPACT OF CAPITAL PROSPECTIVE PAYMENT SYSTEM ON HOSPITALS PAID UNDER HOLD-HARMLESS METHODOLOGY—Continued

[Payment Change per Case (Dollars) Compared to 85 Percent of Reasonable Cost Reimbursement]

	Percent of hospitals			
	FY 1992	FY 1993	FY 1994	FY 1995
$100–200	13.0	11.0	11.1	11.4
$200+	3.0	4.4	7.0	9.5
Average dollar change per case	62.27	79.80	95.86	117.16
Average Percentage Change	6.5	7.8	8.9	10.2
Scenario 3: 20 Percent Reduction in New Capital Costs Beginning in FY 1994				
LOSS:				
$200+	20.7	25.9	29.8	34.1
$100–200	15.7	16.8	15.4	12.9
$0–100	26.7	25.2	20.9	17.1
GAIN:				
$0–100	20.9	16.7	15.1	13.5
$100–200	13.0	11.0	11.4	11.7
$200+	3.0	4.4	7.3	10.8
Average dollar change per case	62.27	79.80	83.46	91.23
Average Percentage Change	6.5	7.8	7.8	8.2

BILLING CODE 4120-01-M

TABLE 4 - PPS-5 CAPITAL COST PER CASE ADJUSTED FOR CAPITAL PAYMENT VARIABLES

				HOSPITALS WITH COST PER CASE BELOW THE NATIONAL AVERAGE			HOSPITALS WITH COST PER CASE ABOVE THE NATIONAL AVERAGE		
	NUMBER OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE
ALL HOSPITALS	4,902	403	0.0	64.3	280	-30.5	35.7	577	43.2
LARGE URBAN AREAS	1,298	428	6.1	49.7	287	-28.9	50.3	588	45.8
OTHER URBAN AREAS	1,340	393	-2.5	60.3	284	-29.6	39.7	561	39.1
RURAL AREAS	2,264	364	-9.8	75.1	258	-36.0	24.9	588	45.8
MEDICARE GROUPS									
URBAN HOSPITALS	2,638	411	2.0	55.1	285	-29.2	44.9	576	42.9
0 - 99 BEDS	534	416	3.3	65.9	257	-36.3	34.1	667	65.5
100 - 199 BEDS	702	470	16.5	46.3	272	-32.4	53.7	644	59.6
200 - 299 BEDS	549	422	4.6	51.7	281	-30.4	48.3	585	45.1
300 - 499 BEDS	588	390	-3.2	58.3	288	-28.6	41.7	550	36.4
OVER 500 BEDS	245	393	-2.5	58.8	295	-26.8	41.2	531	31.7
RURAL HOSPITALS	2,264	364	-9.8	75.1	258	-36.0	24.9	588	45.8
0 - 49 BEDS	883	293	-27.3	83.4	219	-45.7	16.6	614	52.3
50 - 99 BEDS	750	345	-14.5	75.5	246	-38.9	24.5	604	49.8
100 - 149 BEDS	345	396	-1.7	63.8	266	-33.9	36.2	599	48.6
150 - 200 BEDS	140	397	-1.6	58.6	269	-33.3	41.4	587	45.6
OVER 200 BEDS	139	366	-9.2	66.9	281	-30.2	33.1	549	36.3
TYPE OF OWNERSHIP									
VOLUNTARY	2,772	395	-1.9	64.6	283	-29.8	35.4	560	38.9
PROPRIETARY	734	524	30.0	35.8	292	-27.6	64.2	650	61.2
GOVERNMENT	1,362	340	-15.6	79.6	262	-35.1	20.4	553	37.2
TEACHING STATUS									
NON-TEACHING	3,869	412	2.1	65.9	273	-32.3	34.1	598	48.4
RESIDENT/BED RATIO LESS THAN .25	862	390	-3.1	58.7	290	-28.2	41.3	552	37.0
RESIDENT/BED RATIO .25 OR GREATER	171	407	0.9	56.7	279	-30.9	43.3	556	38.0
DISPROPORTIONATE SHARE HOSPITALS FOR OPERATING PROSPECTIVE PAYMENT SYSTEM									
NON DSH	3,541	402	-0.2	67.0	280	-30.6	33.0	584	44.8
DSH URBAN WITH MORE THAN 100 BEDS	1,009	407	1.1	52.9	283	-29.9	47.1	567	40.6
DSH URBAN WITH LESS THAN 100 BEDS	50	435	7.8	60.0	243	-39.6	40.0	690	71.1
DSH RURAL	302	359	-11.0	72.5	254	-37.0	27.5	591	46.7
PROPOSED DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM									
NON DSH	2,851	376	-6.6	73.0	258	-36.1	27.0	611	51.5
DSH URBAN WITH MORE THAN 100 BEDS	2,051	410	1.8	52.4	287	-28.8	47.6	571	41.5

TABLE 4 - PPS-5 CAPITAL COST PER CASE ADJUSTED FOR CAPITAL PAYMENT VARIABLES BY GEOGRAPHIC REGION

				HOSPITALS WITH COST PER CASE BELOW THE NATIONAL AVERAGE			HOSPITALS WITH COST PER CASE ABOVE THE NATIONAL AVERAGE		
	NUMBER OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE	PERCENT OF HOSPITALS	COST PER CASE	PERCENT DIFFERENCE FROM NATIONAL AVERAGE
OTHER SPECIAL STATUS (RURAL)									
MEDICARE DEPENDENT	483	321	-20.4	82.8	232	-42.3	17.2	624	54.8
SOLE COMMUNITY HOSPITALS	346	367	-9.0	70.5	254	-37.0	29.5	573	42.1
RURAL REFERRAL CENTERS	205	385	-4.4	61.0	281	-30.3	39.0	560	38.8
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	25	383	-5.0	56.0	262	-35.0	44.0	623	54.5
UTIL - MC PERCENT OF DAYS									
0 - 25 PERCENT	259	406	0.8	59.5	248	-38.4	40.5	642	59.2
25 - 50 PERCENT	2,652	401	-0.5	62.1	285	-29.4	37.9	568	40.8
50 - 65 PERCENT	1,563	396	-1.7	68.6	273	-32.2	31.4	577	43.1
OVER 65 PERCENT	344	472	17.1	66.3	285	-29.4	33.7	632	56.8
URBAN BY REGION	2,638	411	2.0	55.1	285	-29.2	44.9	576	42.9
NEW ENGLAND	169	328	-18.6	76.3	251	-37.7	23.7	541	34.3
MIDDLE ATLANTIC	390	379	-6.0	64.1	266	-34.0	35.9	550	36.5
SOUTH ATLANTIC	388	433	7.4	47.4	304	-24.7	52.6	589	46.0
EAST NORTH CENTRAL	478	394	-2.2	63.6	295	-26.8	36.4	547	35.6
EAST SOUTH CENTRAL	151	445	10.5	40.4	295	-26.9	59.6	580	43.8
WEST NORTH CENTRAL	167	436	8.1	50.3	294	-27.0	49.7	576	43.0
WEST SOUTH CENTRAL	321	497	23.4	35.8	304	-24.7	64.5	621	54.1
MOUNTAIN	94	449	11.6	44.7	295	-26.9	55.3	588	45.9
PACIFIC	444	399	-1.1	57.9	284	-29.5	42.1	586	45.5
PUERTO RICO	30	252	-37.4	83.3	214	-46.8	16.7	554	37.5
RURAL BY REGION	2,264	364	9.8	75.1	258	-36.0	24.9	588	45.8
NEW ENGLAND	59	281	-30.3	86.4	240	-40.4	13.6	483	19.7
MIDDLE ATLANTIC	72	317	-21.4	79.2	255	-36.8	20.8	510	26.5
SOUTH ATLANTIC	306	374	-7.2	69.6	261	-35.2	30.4	604	49.8
EAST NORTH CENTRAL	305	341	-15.4	80.3	262	-35.0	19.7	590	46.3
EAST SOUTH CENTRAL	278	384	-4.7	68.3	254	-37.0	31.7	575	42.6
WEST NORTH CENTRAL	512	337	-16.4	84.8	253	-37.3	15.2	548	35.9
WEST SOUTH CENTRAL	363	415	3.0	68.3	263	-34.8	31.7	650	61.3
MOUNTAIN	215	384	-4.7	76.3	255	-36.7	23.7	615	52.5
PACIFIC	148	376	-6.6	64.9	272	-32.6	35.1	553	37.3
PUERTO RICO	0	0	0.0	0.0	0	0.0	0.0	0	0.0

TABLE 5 - PPS-5 COMPARISON OF CASE-WEIGHTED MEANS FOR CAPITAL VARIABLES

	NUMBER OF HOSPITALS	PPS-5 COST PER CASE	AVERAGE AGE-FIXED ASSETS	AVERAGE AGE MOVABLE EQUIPMENT	REMAINING LIFE FIXED ASSETS	RATIO OF TOTAL LIABILITIES TO TOTAL ASSETS	RATIO OF INVESTMENTS TO TOTAL ASSETS	OCCUPANCY RATIO	AVERAGE CASE MIX INDEX
ALL HOSPITALS	1,906	489	9.83	5.84	14.46	0.49	0.34	0.56	1.26
LARGE URBAN AREAS	423	568	9.12	5.70	14.09	0.54	0.35	0.62	1.31
OTHER URBAN AREAS	533	506	9.32	5.71	14.21	0.50	0.33	0.58	1.29
RURAL AREAS	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
URBAN HOSPITALS	956	534	9.23	5.70	14.16	0.52	0.34	0.60	1.30
0 - 99 BEDS	169	411	9.87	5.79	15.35	0.51	0.38	0.46	1.13
100 - 199 BEDS	245	509	9.08	5.52	14.40	0.56	0.32	0.54	1.20
200 - 299 BEDS	227	536	8.83	5.77	13.28	0.53	0.33	0.60	1.26
300 - 499 BEDS	222	528	9.54	5.77	14.08	0.52	0.34	0.60	1.31
OVER 500 BEDS	92	581	9.13	5.63	14.78	0.48	0.34	0.66	1.43
RURAL HOSPITALS	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
0 - 49 BEDS	340	254	14.20	7.55	16.26	0.35	0.39	0.28	1.01
50 - 99 BEDS	324	312	12.59	6.43	15.44	0.41	0.38	0.35	1.07
100 - 149 BEDS	149	362	10.84	6.03	14.96	0.43	0.36	0.45	1.13
150 - 200 BEDS	62	378	11.30	6.28	15.46	0.42	0.33	0.46	1.15
OVER 200 BEDS	73	406	10.72	5.66	15 39	0.41	0.36	0.52	1.20
TYPE OF OWNERSHIP									
VOLUNTARY	1,118	495	10.22	5.98	14.41	0.49	0.35	0.58	1.27
PROPRIETARY	232	608	5.66	4.77	13.68	0.65	0.28	0.53	1.26
GOVERNMENT	550	372	11.18	5.95	15.22	0.39	0.38	0.48	1.17
TEACHING STATUS									
NON-TEACHING	1,547	451	9.99	5.78	14.70	0.49	0.34	0.50	1.19
RESIDENT/BED RATIO LESS THAN .25	309	519	9.74	5.89	13.91	0 49	0.35	0.62	1.33
RESIDENT/BED RATIO .25 OR GREATER	50	697	8.87	6.05	15.14	0.53	0.36	0.73	1.47
DISPROPORTIONATE SHARE HOSPITALS FOR OPERATING PROSPECTIVE PAYMENT SYSTEM									
NON DSH	1,425	467	10.14	5.86	14.97	0.48	0.34	0.53	1.24
DSH URBAN WITH MORE THAN 100 BEDS	366	555	9.03	5.81	13.27	0.54	0.36	0.62	1.31
DSH URBAN WITH LESS THAN 100 BEDS	18	350	10.18	6.03	15.34	0.48	0.44	0.43	1.03
DSH RURAL	97	342	11.19	5.55	15.45	0.43	0.37	0.48	1.12
PROPOSED DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM									
NON DSH	1,133	358	11.48	6.19	15.44	0.42	0.37	0.43	1.12
DSH URBAN WITH MORE THAN 100 BEDS	773	541	9.18	5.70	14.08	0.52	0.34	0.61	1.31

TABLE 5 - PPS-5 COMPARISON OF CASE-WEIGHTED MEANS FOR CAPITAL VARIABLES

	NUMBER OF HOSPITALS	COST PER CASE	AVERAGE AGE-FIXED ASSETS	AVERAGE AGE MOVEABLE EQUIPMENT	REMAINING LIFE FIXED ASSETS	RATIO OF TOTAL LIABILITIES TO TOTAL ASSETS	RATIO OF INVESTMENTS TO TOTAL ASSETS	OCCUPANCY RATIO	AVERAGE CASE MIX INDEX
OTHER SPECIAL STATUS (RURAL)									
MEDICARE DEPENDENT	191	261	14.87	7.35	15.20	0.34	0.39	0.29	1.04
SOLE COMMUNITY HOSPITALS	125	357	10.98	6.50	14.71	0.40	0.36	0.37	1.08
RURAL REFERRAL CENTERS	101	428	10.37	5.75	15.99	0.41	0.35	0.53	1.20
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	12	406	9.09	5.34	11.23	0.43	0.28	0.49	1.29
VTIL - MC % OF DAYS									
0 - 25 %	72	678	9.04	4.89	14.70	0.52	0.36	0.54	1.33
25 - 50 %	1,028	508	9.56	5.76	14.53	0.49	0.34	0.56	1.29
50 - 65 %	662	437	10.57	6.09	14.57	0.48	0.35	0.54	1.19
OVER 65 %	119	502	8.95	5.77	12.83	0.55	0.32	0.56	1.23
URBAN BY REGION	956	534	9.23	5.70	14.16	0.52	0.34	0.60	1.30
NEW ENGLAND	103	448	11.35	5.95	15.17	0.53	0.39	0.63	1.26
MIDDLE ATLANTIC	188	511	8.82	6.27	12.11	0.59	0.37	0.67	1.26
SOUTH ATLANTIC	142	532	7.52	4.88	14.08	0.53	0.31	0.61	1.32
EAST NORTH CENTRAL	164	502	10.60	6.17	14.52	0.45	0.34	0.55	1.30
EAST SOUTH CENTRAL	45	504	10.88	5.44	18.27	0.49	0.29	0.56	1.22
WEST NORTH CENTRAL	72	591	9.92	5.52	14.23	0.44	0.32	0.56	1.39
WEST SOUTH CENTRAL	89	654	7.31	4.97	14.71	0.48	0.30	0.54	1.32
MOUNTAIN	27	575	7.25	4.71	12.08	0.51	0.34	0.50	1.38
PACIFIC	124	615	9.09	5.69	15.50	0.51	0.32	0.57	1.36
PUERTO RICO	1	237	1.40	6.05	21.96	0.63	0.38	0.46	1.06
RURAL BY REGION	950	350	11.72	6.25	15.41	0.41	0.36	0.42	1.12
NEW ENGLAND	30	333	11.68	5.95	14.62	0.43	0.35	0.47	1.16
MIDDLE ATLANTIC	36	315	12.76	6.17	14.31	0.43	0.36	0.52	1.12
SOUTH ATLANTIC	121	356	10.86	5.75	16.34	0.43	0.36	0.49	1.14
EAST NORTH CENTRAL	148	330	12.74	6.42	14.45	0.39	0.37	0.38	1.12
EAST SOUTH CENTRAL	78	382	9.68	5.72	16.49	0.47	0.37	0.49	1.10
WEST NORTH CENTRAL	294	313	13.89	6.97	14.51	0.33	0.36	0.32	1.10
WEST SOUTH CENTRAL	110	380	10.29	6.57	17.01	0.41	0.37	0.39	1.11
MOUNTAIN	73	398	10.15	5.64	15.89	0.39	0.33	0.35	1.13
PACIFIC	59	416	10.84	6.19	14.88	0.45	0.36	0.46	1.17

TABLE 6 - PPS-5 CAPITAL PAYMENT SIMULATION PERCENT DIFFERENCE BETWEEN 100 PERCENT FEDERAL RATE AND CAPITAL COSTS PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

	NUMBER OF HOSPITALS	ACTUAL COST PER CASE	PERCENT CHANGE FROM ACTUAL COST PER CASE		STANDARDIZED COST PER CASE	PERCENT CHANGE FROM STANDARDIZED COST PER CASE	
			UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE		UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE
ALL HOSPITALS	1906	489.18	0.0	0.0	489.18	0.0	0.0
LARGE URBAN AREAS	422	568.05	-13.9	-1.3	556.32	-11.6	1.4
OTHER URBAN AREAS	533	505.65	-3.3	-0.3	504.41	-2.7	0.4
RURAL AREAS	951	350.02	39.8	3.5	368.69	30.0	-3.7
URBAN HOSPITALS	955	534.22	-8.4	-0.8	528.18	-7.0	0.9
0 - 99 BEDS	168	411.18	19.0	-0.8	395.72	21.0	0.9
100 - 199 BEDS	245	509.07	-3.9	-5.6	473.49	2.9	1.1
200 - 299 BEDS	227	535.98	-8.7	-5.2	520.32	-5.6	-1.9
300 - 499 BEDS	222	528.02	-7.4	1.0	533.38	-7.8	0.6
OVER 500 BEDS	92	580.74	-15.8	4.1	590.48	-16.2	3.5
RURAL HOSPITALS	951	350.02	39.8	3.5	368.69	30.0	-3.7
0 - 49 BEDS	341	253.94	92.6	24.8	294.88	56.7	1.5
50 - 99 BEDS	324	312.35	56.6	8.9	323.22	45.6	1.1
100 - 149 BEDS	149	362.46	35.0	1.3	375.29	28.4	-3.7
150 - 200 BEDS	62	378.07	29.4	-3.0	395.42	22.6	-8.1
OVER 200 BEDS	73	406.06	20.5	-1.7	429.21	13.6	-7.3
TYPE OF OWNERSHIP							
VOLUNTARY	1118	494.89	-1.2	1.7	508.77	-3.7	-0.9
PROPRIETARY	232	607.80	-19.5	-21.5	476.92	2.8	0.3
GOVERNMENT	550	372.14	31.5	15.4	405.57	19.1	4.6
TEACHING STATUS							
NON-TEACHING	1547	450.84	8.5	-2.5	438.08	10.8	-0.4
RESIDENT/BED RATIO LESS THAN .25	309	518.93	-5.7	4.8	539.55	-8.6	1.7
RESIDENT/BED RATIO GREATER THAN .25	50	697.50	-29.9	-3.7	709.97	-30.4	-4.5
DISPROPORTIONATE SHARE HOSPITALS UNDER OPERATING PROSPECTIVE PAYMENT SYSTEM							
NON DSH	1422	466.02	5.0	-0.6	466.68	4.6	-1.0
DSH URBAN WITH MORE THAN 100 BEDS	365	555.88	-12.0	1.0	554.14	-11.3	1.7
DSH URBAN WITH LESS THAN 100 BEDS	19	349.68	39.9	3.1	324.94	47.8	9.0
DSH RURAL	100	347.36	40.8	2.4	352.30	38.0	0.3

BEST COPY AVAILABLE

TABLE 6 - PPS-5 CAPITAL PAYMENT SIMULATION PERCENT DIFFERENCE BETWEEN 100 PERCENT FEDERAL RATE AND CAPITAL COSTS PER CASE STANDARDIZED FOR CAPITAL AGE AND FINANCING VARIABLES

	NUMBER OF HOSPITALS	ACTUAL COST PER CASE	PERCENT CHANGE FROM ACTUAL COST PER CASE		STANDARDIZED COST PER CASE	PERCENT CHANGE FROM STANDARDIZED COST PER CASE	
			UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE		UNADJUSTED FEDERAL RATE	ADJUSTED FEDERAL RATE
DISPROPORTIONATE SHARE HOSPITALS UNDER CAPITAL PROSPECTIVE PAYMENT SYSTEM							
NON DSH	1126	359.98	35.9	2.8	373.74	28.3	-2.9
DSH URBAN WITH MORE THAN 100 BEDS	780	539.66	-9.4	-0.7	534.28	-7.9	0.8
OTHER SPECIAL STATUS (RURAL)							
MEDICARE DEPENDENT	188	261.22	86.6	23.6	301.77	54.3	-0.5
SOLE COMMUNITY HOSPITALS	143	354.18	38.1	-1.3	364.79	30.0	-9.6
RURAL REFERRAL CENTERS	102	486.19	14.8	-6.3	443.76	9.9	-12.7
SOLE COMMUNITY AND RURAL REFERRAL CENTERS	11	418.62	16.9	5.7	438.65	13.7	2.8
UTILIZATION - MEDICARE PERCENT OF DAYS							
0 - 25%	72	677.89	-27.8	-13.7	625.20	-22.0	-5.6
25 - 50%	1028	508.43	-3.8	0.1	507.30	-3.5	0.3
50 - 65%	662	436.86	12.0	1.9	447.20	9.2	-0.7
OVER 65%	119	501.68	-2.5	-9.6	465.69	5.5	-1.8
URBAN	955	534.22	-8.4	-0.8	528.18	7.0	0.9
NEW ENGLAND	103	447.73	9.3	21.3	486.72	0.7	11.7
MID ATLANTIC	188	511.20	-4.3	6.4	505.93	-2.3	8.6
SOUTH ATLANTIC	142	532.39	-8.1	-3.3	493.85	-8.1	5.2
EAST NORTH CENTRAL	164	502.33	-2.6	0.9	534.33	-8.4	-5.1
EAST SOUTH CENTRAL	45	503.88	-2.9	-7.0	503.36	-2.5	-6.7
WEST NORTH CENTRAL	72	590.57	-17.2	-9.3	610.54	-19.2	-11.5
WEST SOUTH CENTRAL	89	654.20	-25.2	-23.0	574.57	-14.7	-12.1
MOUNTAIN	27	575.11	-14.9	-3.4	544.42	-10.3	1.9
PACIFIC	123	615.39	-20.5	-3.8	593.86	-17.8	-0.5
PUERTO RICO	1	237.44	106.0	16.8	125.57	259.6	103.9
RURAL	951	350.08	36.8	3.5	368.69	30.0	-3.7
NEW ENGLAND	30	332.77	47.0	23.9	366.28	32.4	11.6
MID ATLANTIC	36	314.78	55.4	23.6	339.49	43.6	14.3
SOUTH ATLANTIC	121	355.52	37.6	2.3	360.26	34.6	0.1
EAST NORTH CENTRAL	148	330.40	48.1	10.5	366.24	30.0	-3.0
EAST SOUTH CENTRAL	78	381.38	28.2	-9.0	375.15	28.8	-8.6
WEST NORTH CENTRAL	294	313.43	56.1	8.8	358.75	32.0	-8.8
WEST SOUTH CENTRAL	110	380.46	28.6	-9.0	378.64	25.5	-11.2
MOUNTAIN	73	398.21	22.8	-4.5	364.78	30.2	1.0
PACIFIC	60	415.48	17.7	-0.8	447.57	7.5	-9.5
PUERTO RICO	0	0.00	0.0	0.0	0.00	0.0	0.0

BILLING CODE 4120-01-C

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR part 412 would be amended as follows:

Subchapter B—Medicare Programs

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

I. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

II. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.80, the introductory text of paragraph (a)(1) is republished, and paragraph (a)(1)(ii) is revised to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA provides for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if either of the following conditions is met:

* * * * *

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to operating costs and, effective with cost reporting periods beginning on or after October 1, 1991, capital costs, by applying cost-to-charge ratios as described in § 412.84(h), exceed the greater of the following:

(A) A fixed dollar amount (adjusted for area wage levels) as specified by HCFA.

(B) A fixed multiple of the Federal operating rate and, effective with cost reporting periods beginning on or after October 1, 1991, Federal capital prospective rate as determined under § 412.308.

* * * * *

2. In § 412.84, paragraphs (g), (h), and (j) are revised to read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(g) The intermediary bases the operating and capital costs of the discharge on the billed charges for covered inpatient services adjusted by the cost to charge ratios applicable to operating and capital costs, respectively, as described in paragraph (h) of this section. The costs are adjusted further to exclude, for operating costs, an estimate of indirect medical education costs and operating payments for hospitals that service a disproportionate share of low-income patients, and for capital costs, capital payments for hospitals that service a disproportionate share of low-income patients.

(h) The operating cost-to-charge ratio and, effective with cost reporting periods beginning on or after October 1, 1991, the capital cost-to-charge ratio used to adjust covered charges are computed annually by the intermediary for each hospital based on the latest available settled cost report for that hospital and charge data for the same time period as that covered by the cost report. Statewide cost-to-charge ratios are used in those instances in which a hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. HCFA sets forth these parameters and the statewide cost-to-charge ratios in each year's annual notice of prospective payment rates published under § 412.8(b).

* * * * *

(j) Except as provided in paragraph (k) of this section, the additional amount is derived by first taking 75 percent of the difference between the hospital's adjusted operating cost for the discharge (as determined under paragraph (g) of this section) and the operating threshold criteria established under § 412.80(a)(1)(ii); 75 percent is also taken of the difference between the hospital's adjusted capital cost for the discharge (as determined under paragraph (g) of this section) and the capital threshold criteria established under § 412.80(a)(1)(ii). The resulting capital amount is then multiplied by the applicable Federal portion of the payment as determined in § 412.340(a) or § 412.344(a).

* * * * *

III. A new subpart M consisting of §§ 412.300–412.374 is added to read as follows:

Subpart M—Prospective Payment System for Inpatient Hospital Capital-Related Costs

General Provisions

Sec.
412.300 Scope of subpart and definitions
412.304 Implementation of Capital Prospective Payment System

Basic Methodology for Determining the Federal Capital Prospective Payment Rate

Sec.
412.308 Determining and updating the Federal rate
412.312 Payment based on the Federal rate
412.316 Geographic adjustment factor
412.320 Disproportionate share adjustment factor

Determination of Transition Period Payment Rates for Capital-Related Costs

Sec.
412.324 General description
412.328 Determining base-year costs and determining and updating the hospital-specific rate
412.332 Payment based on the hospital-specific rate
412.336 Transition period payment methodologies
412.340 Fully prospective payment methodology
412.344 Hold-harmless payment methodology
412.348 Exception payments during transition period
412.352 Budget neutrality adjustment
412.356 Review and modification of the hospital specific rate and base-period old capital costs

Special Rules for Puerto Rico Hospitals

Sec.
412.370 General provisions for hospitals located in Puerto Rico
412.374 Payments to hospitals located in Puerto Rico

Subpart M—Prospective Payment System for Inpatient Hospital Capital-Related Costs

General Provisions

§ 412.300 Scope of subpart and definitions.

(a) *Purpose.* This subpart implements section 1886(g)(1)(A) of the Act by establishing a prospective payment system for inpatient hospital capital-related costs. Under this system, payment is made on the basis as described in §§ 412.304 through 412.374 for inpatient hospital capital-related costs furnished by hospitals subject to the prospective payment system for inpatient operating costs under subpart B of this part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

New capital costs means allowable Medicare depreciation and interest expenses for capital assets that were first reported as being used for patient care on the hospital's Medicare cost report for a cost reporting period ending after September 30, 1990 and allowable Medicare inpatient costs for other capital-related expenses including leases, rentals (including license and royalty fees for the use of depreciable assets), insurance expense on depreciable assets, related organization capital-related costs for depreciable assets that are not maintained on the

premises of the hospital and taxes on land or depreciable assets used for patient care.

New hospital means a hospital that is newly participating in the Medicare program (under previous and present ownership) and does not have a 12-month cost reporting period ending on or before September 30, 1990, or a combination of cost reporting periods ending on or before September 30, 1990 that covers at least 12 months.

Old capital costs means allowable Medicare inpatient depreciation and interest expenses for capital assets (including depreciable assets that are maintained on the hospital's premises but are kept on the books of a related organization for recordkeeping purposes) that were reported as being used for patient care on the hospital's Medicare cost report for the latest cost reporting period ending on or before September 30, 1990 as provided in § 412.328(a).

§ 412.304 Implementation of capital prospective payment system.

(a) *General rule.* As described in sections § 412.312 through § 412.370, effective with cost reporting periods beginning on or after October 1, 1991, HCFA pays an amount determined under the capital prospective payment system for each inpatient hospital discharge as defined in § 412.4. This amount is in addition to the amount payable under the prospective payment system for inpatient hospital operating costs as determined under § 412.63.

(b) *Cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001.* For cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, the capital payment amount is based on either a combined payment for old capital-related costs and new capital-related costs or a fully prospective rate, as determined under § 412.324 through § 412.348.

(c) *Cost reporting periods beginning on or after October 1, 2001.* For cost reporting periods beginning on or after October 1, 2001, the capital payment amount is based solely on the Federal rate determined under paragraphs (a) and (b) of § 412.308 and updated under paragraph (c) of § 412.308.

Basic Methodology for Determining the Federal Capital Prospective Payment Rate

§ 412.308 Determining the updating the Federal rate.

(a) *FY 1992 national average cost per discharge.* HCFA determines the FY 1992 estimated national average cost per discharge by updating the discharge weighted national average capital-related cost per discharge for FY 1988 by the estimated increase in Medicare inpatient capital costs per discharge.

(b) *Standard Federal rate.* HCFA determines the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated aggregate payments based on the standard Federal rate adjusted by the payment adjustments described in §§ 412.316 and 412.320 equal estimated aggregate payments based solely on the national average cost per discharge.

(c) *The Federal rate.* HCFA determines the Federal rate each year by adjusting the standard Federal rate by the following factors.

(1) *Update factor.* After FY 1992, HCFA updates the standard Federal rate as follows:

(i) *For FY 1993 through FY 1995.* For FY 1993 through FY 1995, the standard Federal rate is updated based on actual increases in capital-related costs per discharge that occurred two years previous to the Federal fiscal year in question, excluding the portion of the increase attributable to changes in case mix.

(ii) *Effective FY 1996.* Effective FY 1996, the standard Federal rate is updated based on an analytical framework that considers increases in the capital market basket, appropriate changes in capital requirements resulting from new technology, and other factors.

(2) *Outlier payment adjustment factor.* HCFA reduces the updated standard Federal rate by an adjustment factor equal to the proportion of total payments under the Federal rate that are additional payments for capital-related costs for outlier cases under subpart F of this part.

(3) *Exceptions payment adjustment factor.* For FY 1992 through FY 2000, HCFA reduces the updated standard Federal rate by an adjustment factor equal to the proportion of total payments under the hospital-specific rate and Federal rate that are additional payments for capital-related costs for exceptions under § 412.348.

(4) *Budget neutrality adjustment factor.* For FY 1992 through FY 1995, HCFA adjusts the updated standard Federal rate by a budget neutrality factor determined under § 412.352.

§ 412.312 Payment based on the Federal rate.

(a) *General.* The payment amount for each discharge based on the Federal rate determined under § 412.308(c) is determined under the following formula: (Federal rate × DRG weight × Geographic adjustment factor × Disproportionate share adjustment factor) + (Any applicable outlier payment).

(b) *Payment adjustments*—(1) *DRG weights.* The relative resource requirements of the discharge are taken into account by using the DRG weighting factor that is applied to the prospective payment system for operating costs under § 412.60.

(2) *Geographic adjustment.* A geographic adjustment factor is applied that takes into account geographic variation in capital-related costs and, for a hospital in a large urban area, an additional factor that reflects its location.

(3) *Disproportionate share adjustment.* For hospitals with at least 100 beds located in an urban area and serving low-income patients, a disproportionate share adjustment factor is applied that reflects the higher costs attributable to furnishing services to low income patients.

(c) *Additional payment for outlier cases.* Payment is made for day outlier cases as provided for in § 412.82 and for cost outlier cases if both capital-related and noncapital-related costs exceed the cost outlier threshold as provided for in § 412.84.

§ 412.316 Geographic adjustment factor.

(a) *Local cost variation.* HCFA adjusts for local cost variation based on the hospital wage index value that is applicable to the hospital under § 412.63(k). The adjustment factor increases by 4.6 percent for each 10 percent increase in the hospital wage index and is applied to 100 percent of the Federal rate.

(b) *Large urban location.* HCFA provides an additional payment to a hospital located in a large urban area as defined in § 412.63(c)(6) equal to 1.6 percent of what would otherwise be payable to the hospital based on the Federal rate.

§ 412.320 Disproportionate share adjustment factor.

(a) *Criteria for classification.* A hospital is classified as a "disproportionate share hospital" for the purposes of capital prospective payments if the hospital is located in an urban area, has 100 or more beds, and serves low-income patients, as determined under the provisions in § 412.106 of this part.

(b) *Payment adjustment factor.* If a hospital meets the criteria in paragraph (a) of this section, the disproportionate share payment adjustment is determined by increasing the hospital's payment by approximately 4.2 percent of each 10 percent increase in the hospital's disproportionate patient percentage as determined under § 412.106(b)(5) of this part.

Determination of Transition Period Payment Rates for Capital-Related Costs

§ 412.324 General description.

(a) *Hospitals under Medicare in FY 1991.* During the initial ten-year transition period, payments to a hospital with a hospital-specific rate below the Federal rate are based on the fully prospective payment methodology under § 412.340 or for a hospital with a hospital-specific rate above the Federal rate, the hold-harmless payment methodology under § 412.344.

(b) *New hospitals.* A new hospital, as defined under § 412.300(b), is paid based on the fully prospective payment methodology under § 412.340.

§ 412.328 Determining base-year costs and determining and updating the hospital-specific rate.

(a) *Base-year cost reporting period.* (1) For each hospital, the intermediary uses the hospital's latest 12-month or longer cost reporting period ending after September 30, 1989 and on or before September 30, 1990 as the base period—

(i) To determine a hospital's hospital-specific rate; and

(ii) To identify its old capital costs that could qualify for a hold-harmless payment.

(2) If the hospital's last cost reporting period ending in FY 1990 is for less than 12 months, the fiscal intermediary uses the combination of cost reporting periods ending on or before September 30, 1990 that cover at least 12 months.

(3) A hospital with 52–53 week fiscal year period ending September 25 through 29 of the calendar year is deemed to have a cost reporting period beginning October 1 of each year.

(4) The base-year cost reporting period for a new hospital is its first 12-month cost reporting period or combination of cost reporting periods that cover at least 12 months.

(b) *Base-year costs per discharge.* (1) HCFA determines the base year allowable inpatient capital costs per discharge for the hospital by dividing the hospital's total allowable Medicare inpatient capital-related cost in the base year by the number of Medicare discharges in the base year.

(2) For the purpose of determining a hospital's base period capital costs per discharge, a discharge includes discharges defined in § 412.4(a) and transfers defined in § 412.4(b).

(3) In determining the hospital's base period capital costs per discharge, no distinction is made between old capital costs and new capital costs.

(c) *Case-mix adjustment.* HCFA adjusts the base period capital costs per discharge for each hospital by the hospital's case mix index for the cost reporting period.

(d) *Updating to Federal fiscal year 1992.* HCFA updates the case-mix adjusted base period costs per discharge to Federal fiscal year 1992 based on the national average increase in Medicare inpatient capital costs per discharge, as estimated by HCFA, excluding the portion of the increase in capital costs per discharge attributable to changes in case mix.

(e) *Hospital-specific rate.* HCFA determines the hospital-specific rate each year by adjusting the amount determined under paragraph (d) of this section for the following factors:

(1) *Update factor.* After FY 1992, HCFA updates the hospital-specific rate in accordance with § 412.308(c)(1).

(2) *Exceptions payments adjustment factor.* HCFA reduces the updated amount determined in paragraph (d) of this section by an adjustment factor equal to the proportion of the total amount of payments under the hospital-specific rate and Federal rate that are additional payments for capital-related costs for exceptions under § 412.348.

(3) *Budget neutrality adjustment factor.* For FY 1992 through FY 1995, HCFA adjusts the updated amount determined in paragraph (d) of this section by a budget neutrality adjustment factor determined under § 412.352.

§ 412.332 Payment based on the hospital-specific rate.

The payment amount for each discharge based on the hospital-specific rate determined under § 412.328(e) is determined by multiplying the applicable hospital-specific rate by the DRG weighting factor applicable to the discharge under § 412.60.

§ 412.336 Transition period payment methodologies.

(a) *General.* For discharges occurring in cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001, a hospital is paid under one of two payment methodologies described in §§ 412.340 and 412.344.

(b) *Hospital-specific rate below the Federal rate.* A hospital with a hospital-specific rate below the Federal rate (after taking into account the estimated effect of the payment adjustments and outlier payments) is paid under the fully prospective payment methodology as described in § 412.340.

(c) *Hospital-specific rate above the Federal rate.* A hospital with a hospital-specific rate that is above the Federal rate (after taking into account the estimated effect of the payment adjustments and outlier payments) is paid under the hold-harmless payment methodology as described in § 412.344.

(d) *Special rule.* A hospital that has a hospital-specific rate below the Federal rate but FY 1992 allowable capital costs above the Federal rate (after taking into account the effect of the payment adjustments and outlier payments) is paid on the basis of either the fully prospective payment methodology or the hold-harmless payment methodology, depending on which of the two payment methodologies is determined to be most advantageous to the hospital in FY 1992. The hospital will continue to be paid throughout the transition period based on the payment methodology determined to be applicable for FY 1992.

§ 412.340 Fully prospective payment methodology.

(a) *General.* A hospital paid under the fully prospective payment methodology receives capital payments per discharge based on a blend of payments based on its hospital-specific rate and the Federal rate as follows:

Cost reporting periods beginning on or after	Federal rate percentage	Hospital-specific rate percentage
Oct. 1, 1991	10	90
Oct. 1, 1992	20	80
Oct. 1, 1993	30	70
Oct. 1, 1994	40	60
Oct. 1, 1995	50	50
Oct. 1, 1996	60	40
Oct. 1, 1997	70	30
Oct. 1, 1998	80	20
Oct. 1, 1999	90	10
Oct. 1, 2000	100	0

(b) *New hospitals.* If a new hospital's base year cost reporting period begins on or after October 1, 1991, the hospital-specific portion of its payments for that cost reporting period is based on the hospital's allowable inpatient capital-related costs in that cost reporting period.

§ 412.344 Hold-harmless payment methodology.

(a) *General.* A hospital paid under the hold-harmless payment methodology receives capital payments per discharge based on the higher of:

(1) 90 percent of reasonable costs for old capital costs (subject to a budget neutrality adjustment under § 412.352) plus a payment for new capital costs per discharge based on a proportion of the

Federal rate. The proportion is based on the ratio of the hospital's Medicare inpatient costs for new capital to total Medicare inpatient capital costs but may not exceed the national ratio of Medicare inpatient new capital costs to total Medicare inpatient capital costs as estimated by HCFA; or

(2) 100 percent of payments based on the Federal rate, or, in the case of a hospital that qualifies for the hold harmless payment under § 412.336(d), the blend of the hospital's hospital-specific rate and Federal rate provided under § 412.340(a).

(b) *Continued basis of payment.* A hospital paid based on 100 percent of the Federal rate (or a blend of its hospital-specified rate and the Federal rate) continues to be paid on that basis in subsequent cost reporting periods during the transition period and does not receive a reasonable cost payment for old capital-related costs.

(c) *Basis of determination.* The determination under paragraph (a) of this section regarding which payment alternative is applicable is made without regard to additional payments under the exceptions process under § 412.348.

(d) *Interim and final payment determinations.* (1) Using the best data available, the intermediary makes interim payments during the cost reporting period based on an interim determination under paragraph (a) of this section concerning the applicable payment alternative, and, in the case of payment under paragraph (a)(1) of this section, the payment amounts for old and new capital.

(2) The final determination of the amount payable under paragraph (a) of this section is based on final settlement of the Medicare cost report for the applicable cost reporting period. This final determination is subject to administrative and judicial review in accordance with subpart R of part 405 of this chapter, governing provider reimbursement determinations and appeals.

§ 412.348 Exception payments during transition period.

(a) *Financially disadvantaged hospitals.* An additional payment is made to each hospital paid under either the fully prospective payment methodology or the hold-harmless payment methodology that is financially disadvantaged during the transition period as determined under paragraph (b) of this section.

(b) *Eligibility and types of additional payment.* (1) For FY 1992, if any hospital's capital costs exceed 150 percent of the capital payments it would have received in FY 1992 without an exceptions process, the hospital is paid an additional amount equal to 75 percent of its costs in excess of the 150 percent threshold.

(2) For FY 1992, an urban hospital with more than 100 beds and a disproportionate share percentage of at least 30 percent or a rural sole community hospital is paid as follows:

(i) If the hospital's inpatient capital cost per discharge is not more than 1.5 times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital costs in excess of 125 percent of its Medicare inpatient capital payments.

(ii) If the hospital's inpatient capital cost per discharge is 3.0 or more times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital costs in excess of 100 percent of its Medicare capital payments.

(iii) If the hospital's inpatient capital cost per discharge is between 1.5 and 3.0 times its hospital-specific rate, the hospital is paid an additional amount equal to 75 percent of its Medicare inpatient capital cost in excess of the percent threshold calculated by the following formula: [(3.0)−(the hospital's capital cost per discharge÷its hospital-specific rate)×(16.67)+(100 percent)].

(3) The total amount payable under paragraph (b)(2) of this section is limited to an amount equal to the difference between the hospital's total Medicare inpatient costs and its total Medicare inpatient payments during the cost reporting period.

(c) *Limitation on amount of overall payments.* Beginning with FY 1993, if application of the criteria in paragraph (b) of this section would result in estimated exceptions payments that exceed 10 percent of total capital prospective payments to be made in a Federal fiscal year, the criteria in paragraph (b) of this section will be adjusted so that estimated exceptions payments approximate 10 percent of total capital prospective payments in that Federal fiscal year.

§ 412.352 Budget neutrality adjustment.

(a) *General.* For FY 1992 through FY 1995, HCFA adjusts capital payments so that aggregate payments under this subpart for hospital inpatient capital costs each fiscal year equal 90 percent of what HCFA estimates would have been paid for capital-related costs on a reasonable cost basis under § 413.130.

(b) *Positive adjustment.* If the budget neutrality adjustment is greater than 1.0, a percentage increase is applied to the Federal rate and the hospital-specific rate.

(c) *Negative adjustment.* If the budget neurality adjustment is less than 1.0, a percentage reduction is applied to the Federal rate, the hospital-specific rate, and the hold-harmless payments.

§ 412.356 Review and modification of the hospital-specific rate and base-period old capital costs.

(a) *Determination and notice.* The intermediary notifies the hospital of its determination of the hospital-specific rate and base-period old capital costs.

(b) *Right to administrative and judicial review.* (1) The intermediary's determinations of the hospital-specific rate and base-period old capital costs are considered final intermediary determinations of the amount of program reimbursement for purposes of subpart R of part 405 of this chapter, governing provider payment determinations and appeals, and are subject to administrative and judicial review.

(2) Administrative review is available to a hospital upon receipt of the notice of its hospital-specific rate or base-period old capital costs.

(c) *Modification of determination of hospital-specific rate or old capital costs.* (1) The intermediary adjusts the hospital-specific rate or the base-period old capital costs to reflect any modifications that result from administrative or judicial review of the intermediary's determinations of the base-period allowable costs, the hospital-specific rate, or the base-period old capital costs.

(2) Adjustments to the hospital-specific rate or the base-period old capital costs made under this paragraph are effective retroactively to the date of the intermediary's initial determination.

Special Rules for Puerto Rico Hospitals

§ 412.370 General provisions for hospitals located in Puerto Rico.

Except as provided in § 412.374, hospitals located in Puerto Rico are subject to the rules in this subpart governing the prospective payment system for inpatient hospital capital-related costs.

§ 412.374 Payments to hospitals located in Puerto Rico.

Payments for capital-related costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

(a) 75 percent of a Puerto Rico capital rate based on data from Puerto Rico hospitals only, which is determined in accordance with procedures for developing the Federal rate and

(b) 25 percent of the Federal rate, as determined under § 412.308.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: January 28, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 19, 1991

Louis W. Sullivan,

Secretary.

TABLE 1—STANDARD FEDERAL PAYMENT RATE

	Rate
National	471.54
Puerto Rico	295.82

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Abilene, TX	0.9641
Taylor, TX	
Aguadilla, PR	.6979
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	.9747
Portage, OH	
Summit, OH	
Albany, GA	.9056
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9496
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0066
Bernalillo, NM	
Alexandria, LA	.9172
Rapides, LA	
Allentown-Bethlehem-Easton, PA–NJ	.9938
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	.9650
Blair, PA	
Amarillo, TX	.9406
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA [1]	1.1055
Orange, CA	
Anchorage, AK	1.1757
Anchorage, AK	
Anderson, IN	.9614
Madison, IN	
Anderson, SC	.8634
Anderson, SC	
Ann Arbor, MI	1.0626
Washtenaw, MI	
Anniston, AL	.8994
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	.9521
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	.8524
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.9406
Buncombe, NC	
Athens, GA	.9138
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA [1]	.9978
Barrow, GA	
Butts, GA	
Charokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0240
Atlantic, NJ	
Cape May, NJ	
Augusta, GA–SC	.9726
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	.9853
Kane, IL	
Kendall, IL	
Austin, TX	.9822
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0401
Kern, CA	
Baltimore, MD [1]	1.0242
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9566
Penobscot, ME	
Baton Rouge, LA	.9578
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.9759
Calhoun, MI	
Beaumont-Port Arthur, TX	.9824
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0085
Beaver, PA	
Bellingham, WA	1.0235
Whatcom, WA	
Benton Harbor, MI	.9103
Berrien, MI	
Bergen-Passaic, NJ [1]	1.0307
Bergen, NJ	
Passaic, NJ	
Billings, MT	.9691
Yellowstone, MT	
Biloxi-Gulfport, MS	.9063
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9660
Broome, NY	
Tioga, NY	
Birmingham, AL	.9421
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9442
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9356
Monroe, IN	
Bloomington-Normal, IL	.9366
McLean, IL	
Boise City, ID	.9896
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA [1]	1.0960
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0078
Boulder, CO	
Bradenton, FL	.9661
Manatee, FL	
Brazoria, TX	.9610
Brazoria, TX	
Bremerton, WA	.9792
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danburym CT	1.0901
Fairfield, CT	
Brownsville-Harlingen, TX	.9337
Cameron, TX	
Bryan-College Station, TX	.9770
Brazos, TX	
Buffalo, NY	9489
Erie, NY	
Burlington, NC	.9023
Alamance, NC	
Burlington, VT	.9706
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	.6911
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	.9388
Carroll, OH	
Stark, OH	
Casper, WY	.9481
Natrona, WY	
Cedar Rapids, IA	.9489
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9409
Champaign, IL	
Charleston, SC	.9201

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	.9988
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC [1]	.9925
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9830
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.9830
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9982
Laramie, WY	
Chicago, IL [1]	1.0409
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0253
Butte, CA	
Cincinnati, OH-KY-IN [1]	1.0086
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.9888
Christian, KY	
Montgomery, TN	
Cleveland, OH [1]	1.0509
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	.9924
El Paso, CO	
Columbia, MO	.9778
Boone, MO	
Columbia, SC	.9505
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.9756
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
Columbus, OH [1]	1.0014
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9334
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.9167
Allegany, MD	
Mineral, WV	
Dallas, TX [1]	.9893
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8769
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	.9271
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	.9853
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.9507
Volusia, FL	
Decatur, AL	.8759
Lawrence, AL	
Morgan, AL	
Decatur, IL	.9178
Macon, IL	
Denver, CO [1]	1.0518
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	.9617
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI [1]	1.0546
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8795
Dale, AL	
Houston, AL	
Dubuque, IA	.9223
Dubuque, IA	
Duluth, MN-WI	.9763
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9275
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	.9393
El Paso, TX	
Elkhart-Goshen, IN	.9509
Elkhart, IN	
Elmira, NY	.9441
Chemung, NY	
Enid, OK	.9491
Garfield, OK	
Erie, PA	.9610
Erie, PA	
Eugene-Springfield, OR	.9963
Lane, OR	
Evansville, IN-KY	.9668
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	.9873
Clay, MN	
Cass, ND	
Fayetteville, NC	.9183
Cumberland, NC	
Fayetteville-Springdale, AR	.9825
Washington, AR	
Flint, MI	1.0694
Genesee, MI	
Florence, AL	.8981
Colbert, AL	
Lauderdale, AL	
Florence, SC	.9250
Florence, SC	
Fort Collins-Loveland, CO	1.0118
Larimer, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL [1]	1.0335
Broward, FL	
Fort Myers-Cape Coral, FL	.9916
Lee, FL	
Fort Pierce, FL	1.0477
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.8694
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.9493
Okaloosa, FL	
Fort Wayne, IN	.9486
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX [1]	.9925
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0343
Fresno, CA	
Gadsden, AL	.9133
Etowah, AL	
Gainesville, FL	.9435
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	.9737
Galveston, TX	
Gary-Hammond, IN	.9941
Lake, IN	
Porter, IN	
Glens Falls, NY	.9646
Warren, NY	
Washington, NY	
Grand Forks, ND	.9612
Grand Forks, ND	
Grand Rapids, MI	.9955
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0805
Cascade, MT	
Greeley, CO	.9707
Weld, CO	
Green Bay, WI	.9615
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9412
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9457

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9611
Washington, MD	
Hamilton-Middletown, OH	.9720
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9971
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Hartford-Middletown-New Britain-Bristol, CT [1]	1.1026
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.9407
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.0710
Honolulu, HI	
Houma-Thibodaux, LA	.8589
Lafourche, LA	
Terrebonne, LA	
Houston, TX [1]	1.0064
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9745
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.9453
Madison, AL	
Indianapolis, IN [1]	.9964
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	.9788
Johnson, IA	
Jackson, MI	.9853
Jackson, MI	
Jackson, MS	.8690
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.8983
Madison, TN	
Jacksonville, FL	.9559
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.8576
Onslow, NC	
Jamestown-Dunkirk, NY	.8691
Chatauqua, NY	
Janesville-Beloit, WI	.9269
Rock, WI	
Jersey City, NJ	1.0249
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.9370
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnston, PA	.9567
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0137
Grundy, IL	
Will, IL	
Joplin, MO	.8988
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.0785
Kalamazoo, MI	
Kankakee, IL	.9280
Kankakee, IL	
Kansas City, KS-MO [1]	.9974
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	.9463
Kenosha, WI	
Killeen-Temple, TX	1.0587
Bell, TX	
Coryell, TX	
Knoxville, TN	.9361
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9689
Howard, IN	
Tipton, IN	
LaCrosse, WI	.9513
LaCrosse, WI	
Lafayette, LA	.9147
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9252
Tippecanoe, IN	
Lake Charles, LA	.9223
Calcasieu, LA	
Lake County, IL	1.0006
Lake, IL	
Lakeland-Winter Haven, FL	.9119
Polk, FL	
Lancaster, PA	.9659
Lancaster, PA	
Lansing-East Lansing, MI	1.0111
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8545
Webb, TX	
Las Cruces, NM	.8963
Dona Ana, NM	
Las Vegas, NV	1.0296
Clark, NV	
Lawrence, KS	.9503
Douglas, KS	
Lawton, OK	.9230
Comanche, OK	
Lewiston-Auburn, ME	.9562
Androscoggin, ME	
Lexington-Fayette, KY	.9259
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9078
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9513
Lancaster, NE	
Little Rock-North Little Rock, AR	.9246
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.9382
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	.9510
Lorain, OH	
Los Angeles-Long Beach, CA [1]	1.1211
Los Angeles, CA	
Louisville, KY-IN	.9579
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.9431
Lubbock, TX	
Lynchburg, VA	.9309
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9436
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0151
Dane, WI	
Manchester-Nashua, NH	1.0129
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	.9232
Richland, OH	
Mayaguez, PR	.7115
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.8566
Hidalgo, TX	
Medford, OR	1.0030
Jackson, OR	
Melbourne-Titusville, FL	.9631
Brevard, FL	
Memphis, TN-AR-MS	.9564
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0152
Merced, CA	
Miami-Hialeah, FL [1]	1.0257

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0982
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0491
Midland, TX	
Milwaukee, WI [1]	1.0036
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI [1]	1.0545
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.9166
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.0706
Stanislaus, CA	
Monmouth-Ocean, NJ	.9963
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.8959
Ouachita, LA	
Montgomery, AL	.8993
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	.9066
Delaware, IN	
Muskegon, MI	.9807
Muskegon, MI	
Naples, FL	1.0157
Collier, FL	
Nashville, TN	.9726
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY [1]	1.1489
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9977
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.0927
New Haven, CT	
New London-Norwich, CT	1.0705
New London, CT	
New Orleans, LA [1]	.9937
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY [1]	1.1888
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ [1]	1.0729
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.9226
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA [1]	.9443
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA [1]	1.1066
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.9344
Marion, FL	
Odessa, TX	1.0378
Ector, TX	
Oklahoma City, OK	.9805
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0459
Thurston, WA	
Omaha, NE-IA	.9529
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9847
Orange, NY	
Orlando, FL	.9625
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8090
Daviess, KY	
Oxnard-Ventura, CA	1.1015
Ventura, CA	
Panama City, FL	.9369
Bay, FL	
Parkersburg-Marietta, WV-OH	.9366
Washington, OH	
Wood, WV	
Pascagoula, MS	.8414
Jackson, MS	
Pensacola, FL	.9349
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.8391
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ [1]	1.0505
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ [1]	1.0368
Maricopa, AZ	
Pine Bluff, AR	.8984
Jefferson, AR	
Pittsburgh, PA [1]	1.0229
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0363
Berkshire, MA	
Ponce, PR	.8997
Juana Diaz, PR	
Ponce, PR	
Portland, ME	.9876
Cumberland, ME	
Sagadahoc, ME	
York, ME	
Portland, OR [1]	1.0874
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0046
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0213
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI [1]	1.0454
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0115
Utah, UT	
Pueblo, CO	.8397
Pueblo, CO	
Racine, WI	.9461
Racine, WI	
Raleigh-Durham, NC	.9759
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9236
Pennington, SD	
Reading, PA	.9430
Berks, PA	
Redding, CA	1.0259
Shasta, CA	
Reno, NV	1.0728
Washoe, NV	
Richland-Kennewick, WA	.9729
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9736

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Geochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA [1]	1.0894
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.9177
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0472
Olmsted, MN	
Rochester, NY	.9874
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	.8871
Boone, IL	
Winnebago, IL	
Sacramento, CA [1]	1.1180
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0003
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.9737
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9794
Buchanan, MO	
St. Louis, MO-IL [1]	.9878
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0212
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.1313
Monterey, CA	
Salt Lake City-Ogden, UT [1]	1.0137
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.9102
Tom Green, TX	
San Antonio, TX [1]	.9495
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA [1]	1.0992
San Diego, CA	
San Francisco, CA [1]	1.2085
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA [1]	1.2127
Santa Clara, CA	
San Juan, PR [1]	.7378
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Cerozal, PR	
Corado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Las Piedras, PR	
Loiza, PR	
Luquillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.0780
Santa Barbara, CA	
Santa Cruz, CA	1.1209
Santa Cruz, CA	
Santa Fe, NM	.9602
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.1273
Sonoma, CA	
Sarasota, FL	.9907
Sarasota, FL	
Savannah, GA	.9199
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9511
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA [1]	1.0566
King, WA	
Snohomish, WA	
Sharon, PA	.9564
Mercer, PA	
Sheboygan, WI	.9471
Sheboygan, WI	
Sherman-Denison, TX	.9578
Grayson, TX	
Shreveport, LA	.9679
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	.9298
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	.9452
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0040
St. Joseph, IN	
Spokane, WA	1.0323
Spokane, WA	
Springfield, IL	.8578
Menard, IL	
Sangamon, IL	
Springfield, MO	.8073
Christian, MO	
Greene, MO	
Springfield, MA	1.0154
Hampden, MA	
Hampshire, MA	
State College, PA	.8963
Centre, PA	
Steubenville-Weirton, OH-WV	.8892
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.0723
San Joaquin, CA	
Syracuse, NY	.9694
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0154
Pierce, WA	
Tallahassee, FL	.9541
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL [1]	.9780
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	.9415
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8974
Miller, AR	
Bowie, TX	
Toledo, OH	1.0049
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.9084
Shawnee, KS	
Trenton, NJ	1.0927
Mercer, NJ	
Tucson, AZ	.9648
Pima, AZ	
Tulsa, OK	.9233
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	.8997
Tuscaloosa, AL	
Tyler, TX	.9637
Smith, TX	
Utica-Rome, NY	.8197
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.1378
Napa, CA	
Solano, CA	
Vancouver, WA	1.0370
Clark, WA	
Victoria, TX	.9531
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9897
Cumberland, NJ	
Visalia-Tulare-Portervile, CA	1.0188
Tulare, CA	
Waco, TX	.8988
McLennan, TX	
Washington, DC-MD-VA [1]	1.0890

TABLE 2a—GEOGRAPHIC ADJUSTMENT FACTORS WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Geographic adjustment factor
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9368
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9892
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0071
Palm Beach, FL	
Wheeling, WV-OH	.8643
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	.9921
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.9119
Wichita, TX	
Williamsport, PA	.9464
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0401
New Castle, DE	
Cecil, Md	
Salem, NJ	
Wilmington, NC	.9362
New Hanover, NC	
Worcester-Fitchburgh-Leominster, MA	1.0377
Worcester, MA	
Yakima, WA	1.0060
Yakima, WA	
York, PA	.9545
Adams, PA	
York, PA	
Youngstown-Warren, Oh	.9947
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0066
Sutter, CA	
Yuba, CA	
Yuma, AZ	.9478
Yuma, AZ	

[1] Areas that qualify as large urban areas.

TABLE 2b.—GEOGRAPHIC ADJUSTMENT FACTORS FOR RURAL AREAS

Nonurban area	Geographic adjustment factor
Alabama	0.8537
Alaska	1.1466
Arizona	0.9335
Arkansas	0.8472
California	1.0084
Colorado	0.9240
Connecticut	1.0348

TABLE 2b.—GEOGRAPHIC ADJUSTMENT FACTORS FOR RURAL AREAS—Continued

Nonurban area	Geographic adjustment factor
Delaware	0.9323
Florida	0.9402
Georgia	0.9867
Hawaii	0.9831
Idaho	0.9511
Illinois	0.8678
Indiana	0.8868
Iowa	0.8799
Kansas	0.8739
Kentucky	0.8922
Louisiana	0.8703
Maine	0.9199
Maryland	0.9062
Massachusetts	1.0741
Michigan	0.9444
Minnesota	0.9186
Mississippi	0.8364
Missouri	0.8609
Montana	0.9162
Nebraska	0.8486
Nevada	0.9970
New Hampshire	0.9797
New Jersey [1]	
New Mexico	0.9183
New York	0.9252
North Caroline	0.8662
North Dakota	0.8682
Ohio	0.9243
Oklahoma	0.8712
Oregon	0.9801
Pennsylvania	0.9356
Puerto Rico	0.8606
Rhode Island [1]	
South Caroline	0.8625
South Dakota	0.8584
Tennessee	0.8679
Texas	0.8798
Utah	0.9526
Vermont	0.9552
Virginia	0.8628
Washington	0.9839
West Virginia	0.9299
Wisconsin	0.9248
Wyoming	0.9265

[1] All counties within the State are classified urban.

TABLE 2c.—GEOGRAPHIC ADJUSTMENT FACTOR FOR RURAL COUNTIES WHOSE HOSPITALS ARE DEEMED URBAN

County	Urban area	Geographic adjustment factor
Macoupin Co., IL	St. Louis, MO–IL	0.9878
Mason Co., IL	Peoria, IL	0.9301
Clinton, IN	Lafayette, IN	0.9252
Jefferson Co., KS	Topeka, KS	0.9864
Allegan Co., MI	Grand Rapids, MI	0.9955
Barry Co., MI	Battle Creek, MI	0.9759
Cherokee Co., SC	Greenville-Spartanburg, SC	0.9487
Shiawassee Co., MI	Flint, MI	1.0094
Clinton Co., MO	Kansas City, MO–KS	0.9974
Bedford Co., VA	Roanoke, VA	0.9177
Fredericksburg City, VA	Washington, DC–MD–VA	1.0000
Jefferson Co., WI	Milwaukee, WI	1.0036
Jefferson Co., WV	Washington, DC–MD–VA	1.0000
Walworth Co., WI	Milwaukee, WI	1.0036
Limestone Co., AL	Huntsville, AL	0.9247
Charlotte Co., FL	Sarasota, FL	0.9764
Indian River Co., FL	Fort Pierce, FL	1.0152
Henry Co., IN	Anderson, IN	0.9737
Lenawee Co., MI	Ann Arbor, MI	1.0554
Marshall Co., AL	Huntsville, AL	0.9247
Christian Co., IL	Springfield, IL	0.9628
Cass Co., MI	Benton Harbor, MI	0.8444
Ionia Co., MI	Lansing-East Lansing, MI	1.0060
Tuscola Co., MI	Saginaw-Bay City-Midland, MI	1.0017
Van Buren Co., MI	Kalamazoo, MI	1.0656
Genesee Co., NY	Rochester, NY	0.9816
Harnett Co., NC	Fayetteville, NC	0.9057
Columbiana Co., OH	Beaver Country, PA	0.9566
Morrow Co., OH	Mansfield, OH	0.9243
Van Wert Co., OH	Lima, OH	0.9243
Lawrence Co., PA	Beaver County, PA	0.9566

Appendix A: Description of the Capital Acquisition Model and Budget Neutrality Adjustment

Section 1886(g)(1) of the Act (as amended by section 4001 of Pub. L. 101–508) requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) and prospective payments for capital costs under section 1886(g)(1) be reduced each year in a manner that results in savings equal to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. We have decided to generate the 10 percent capital savings entirely from the capital prospective payment system so that for purposes of budget neutrality the capital payments for FY 1992 through FY 1995 would approximately equal 90 percent of Medicare inpatient capital costs.

To calculate budget neutrality, the hold harmless provision of this proposed regulation requires that we identify old and new capital; that is, we must be able to project the rate at which old capital will be depreciated and written off and at which new capital will be acquired and depreciated. (Old capital costs are depreciation and

interest expenses for depreciable assets that are first reported on the hospital's Medicare cost report for the hospital's cost reporting period ending on or before September 30, 1990.)

The capital amounts reported on the Medicare cost report as well as the amounts reported through other systems such as the American Hospital Association panel survey are composed of depreciation and interest amounts for assets acquired over many different years, and also include capital-related costs such as insurance, leases, and taxes. We had no source of data available to disaggregate the composite capital amounts into old and new capital. If we had capital asset acquisitions by year, and by hospital, we could develop depreciation schedules to allocate capital amounts over the useful lives of the assets. Given a sequence of depreciation expenses over time, it is possible to estimate a reasonable sequence of capital acquisitions that reproduce the sequence of depreciation expenses. Because of inflation in capital, capital acquisitions in recent years have more weight in current depreciation expenses than capital assets acquired long ago. Consequently, capital expenses that are generated using an actuarial capital acquisition model are not overly sensitive to the assumptions used to estimate capital acquisitions for the distant past since the very old capital is so much smaller than recent capital and has little effect on depreciation.

We needed to model a series of capital asset acquisitions to develop depreciation schedules and to separate capital amounts into "new" and "old" capital. We needed the following outputs from the model to estimate payments under the proposed regulation, and to set budget neutrality:

"Old" capital depreciation and interest
"New" capital depreciation and interest
Other capital expenses (leases, taxes, insurance)
"Medicare" share of above capital expenses
Occupancy rate
Payment parameters (such as case-mix, and disproportionate share adjustment.)

The basic variables generated by the model are bed size and capital acquisitions. Since we needed to develop depreciation expenses, we needed to develop a pattern of capital acquisitions in the past. We chose a 25 year average useful life for fixed assets and a 7 average year useful life for movable assets. The chosen useful lives are a reasonable average based on the expected useful lives of the assets involved in the fixed and movable categories. We needed to match the generated depreciation expenses to the expenses reported by the AHA panel survey. The more years for which depreciation expenses can be matched, the better the modeled capital acquisition sequence will be. We decided to match depreciation expenses back to 1969, and all later years. To compute depreciation for fixed assets in 1969, we needed capital acquisitions 25 years before 1960. Thus, the first depreciation amount that can be completely calculated and matched to the AHA panel survey data is in 1960.

Capital asset acquisition costs going back into the 1950's are not available. We needed a way to develop acquisition costs using patterns found in the Medicare cost reports. Using data from cost reports for the first five years of the prospective payment system, we examined the growth in gross assets to find any patterns. We found that most hospitals had very low rates of growth, while a few hospitals had high rates of growth. We also found that the rate of growth in one year is generally independent of the rate of growth in the prior year. The one year rate of growth distribution fit the gamma distribution very closely both for fixed and movable capital. The gamma distribution fit the movable asset increases if hospitals without movable asset increases were removed from the fit. Consequently, the growth in movable assets had to be handled in two pieces. We assumed twelve percent of hospitals would have no increase in movable assets in a year, while the remaining 88 percent of hospitals would have movable increases assigned from the gamma distribution. We then randomly generated numbers from the gamma distribution and multiplied them to generate 2 year, 3 year, and 4 year rates of increase in capital costs. We compared these rates of increases to the corresponding increases in the cost report data. The increase distributions matched closely as shown in figure 1 for fixed assets, and in figure 2 for movable assets. Since the gamma distribution described the growth in capital so well, we used the gamma distribution as the foundation of the capital model.

Since many people claim the existence of a capital cycle, we looked for a capital cycle in the Medicare hospital cost report data. We found no regular, recurring capital cycle in the data, but we found that randomly generated numbers from the gamma distribution would produce capital cycles, but in an irregular pattern. The irregular patterns better describe actual capital growth patterns because of differences among hospitals, and because of differences in capital acquisitions over time. Figure 3 shows an example of how numbers generated from the gamma distribution produce a cycle effect.

We have found through regression analysis that other factors such as the number of physicians per capita, the percent of physicians that are specialists, the county per capita income, the percent of population with health insurance, and the number of hospitals in the county have a major effect on hospital capital costs. These findings imply that a hospital's position in the "capital cycle" doesn't explain all of the capital variation, and that major differences in capital costs among hospitals persist over time.

Since capital levels vary with bed size, especially between large (100 or more beds) and small (less than 100 beds) hospitals, the model needed to adjust for bed size. Further, bed size changes imply changes in capital acquisitions. Even though hospital bed size is available from the hospital cost report, we needed bed sizes, and changes in bed size going back to the 1950's. We found that bed size frequently changed by small amounts for many hospitals. We determined that these small changes and their effect on capital were immaterial, and that only significant bed size changes should result in changes in capital. For these reasons, we decided to randomly model bed size for hospitals. The initial bed size was developed from the cost report data and it also very closely fit a gamma distribution. Since the average bed size has not changed significantly, and because of low average occupancy, we do not expect average bed size to change. For this reason, the model had to balance bed size increases with bed size decreases. In modeling bed size changes, two conditions had to be met. First, the changes had to be significant. We chose a minimum change of plus or minus 10% for large hospitals, and plus or minus 20% for small hospitals. We used a normal distribution which was split and separated to assign the rate of bed size change. (See figure 4.) This was done by randomly generating a number from the normal distribution and, if it was positive, by adding .15 [.10 for small hospitals], or, if it was negative, by subtracting .15 [.10 for small hospitals] to assign the rate of change in bed size. Second, bed size changes must be relatively infrequent. We expect that most hospitals should not have more than two significant bed size changes in 25 years. A two per cent probability of bed size change in any one year satisfies this condition.

The basic projection unit of the model is capital asset acquisitions per bed. The hospital bed is the fundamental unit of capacity in the hospital. Other measurement units of capital such as capital per hospital, or capital per admission are less appropriate because these amounts are dependent on bed size or occupancy rates. For a hospital assumed to increase bed size, we attributed capital to the new beds at the same level as the old beds (no change in capital per bed). For a hospital assumed to decrease bed size, we adjusted the capital per bed to ensure that the aggregate capital for the hospital did not change. We did this because the hospital had already acquired capital assets that had to be depreciated.

At this point we can describe how the model develops depreciation costs per bed and how these depreciation costs are calibrated. Bed sizes are first developed. We found from the hospital cost reports that the distribution of bed size among hospitals fits the gamma distribution. We initially has to have bed size numbers for 1985. We generated these numbers from the gamma distribution. We did this for 6,800 hospitals. We assigned changes in bed size for all subsequent years using the procedure described above. We compared the average bed size for 1988 with the average bed size in the PPS & cost reports. If the bed size numbers did not match, we multiplied all the bed sizes by the ratio of the two averages so that the correct average bed size was generated. Next, we generated gross capital assets in 1985 separately for fixed and movable capital. We found that the distribution of asset amounts also fit a gamma distribution for both fixed and movable capital. For all subsequent years, we computed increases in capital assets from random gamma distributions as described above. Once the capital increases are computed, we have the new acquisitions for each year. Using the capital acquisitions, we computed straight line depreciation for each year starting with 1960 (25 years for fixed,

and 7 years for movable). We compared the modeled 1980 depreciation with the 1980 depreciation reported in the AHA panel survey. We used a fixed-movable split developed from the Medicare hospital cost reports. If the numbers differed, we multiplied all generated capital acquisition amounts by the ratio of the AHA depreciation to the generated depreciation. At this point the model is calibrated to 1980. For 1981, the capital acquisition amounts for 1981 were adjusted so that when 1981 depreciation is computed, it matches the AHA panel survey depreciation. All subsequent years were adjusted in the same way. At this point, the model has been calibrated for depreciation.

Interest amounts were computed by initially assuming that all new acquisitions would be financed 100 per cent by the amortization method. Doing this, we found that the interest was about double the interest report in the AHA panel survey. Since all hospitals do not finance 100 percent of capital, we adjusted the interest by assuming that 50 percent of capital is financed industry-wide, and that some hospitals finance all capital, some none of their capital, and some part of their capital. A number from the uniform distribution between zero and one was randomly assigned to each hospital to indicate the portion of capital that is financed.

At this point we developed total capital costs per bed. Since Medicare doe not identify other capital costs such as rent, leases, insurance, and taxes, we had to assign these amounts. We analyzed the capital expenses reported on the Medicare cost reports and found that the other capital cost categories represent about 20 per cent of capital. We reduced depreciation and interest for each hospital by 20 per cent and assigned the residual to the other capital category.

Since we reimburse for capital associated with a Medicare admission, we needed to convert the capital per bed costs to capital per Medicare admission costs. The average capital cost per admission that is developed must match actual Medicare average cost per admission (before legislated reductions). Dividing Medicare capital cost per admission by the developed average capital cost per bed gives the correct conversion factor which automatically takes several factors into consideration such as average occupancy rate, length of stay, and cost allocation rules. The average occupancy rate is 60 per cent, but varies among hospitals. The conversion factor has the 60 per cent occupancy rate built in, but the occupancy rate varies among hospitals which directly affects capital per admission. We looked at distributions of occupancy rates, separately for large and small hospitals, and we were able to satisfactorily fit them to triangular distributions. In the triangular distribution, the probability density is zero at a minimum occupancy rate, and uniformly rises to a maximum density at an intermediate occupancy rate and then uniformly falls to zero density at a maximum occupancy rate. Even though the actual curve for occupancy rates is rounded, it fit the triangular distribution fairly well and facilitated the generation of random numbers. Each hospital was randomly assigned an occupancy rate which was divided into 0.60 and then multiplied by the capital cost per admission to get the final capital per admission cost.

At this point, the model has completely estimated capital cost per admission for each hospital. To be useful, the estimates must meet the following conditions. First, the model's estimation of aggregate capital expenditures must reproduce capital expenditures that occurred historically. Second, the model must reproduce the interest-depreciation split that occurred historically, and the fixed-movable split that occurred historically. Third, the model should reflect differences between large and small hospitals in capital expenditures. Fourth, the model must allocate capital between old and new capital cost categories consistent with the definition in this proposed rule. All of these requirements have been met specifically by the design of the model. The last requirement is that the model must reproduce the actual distribution of Medicare capital costs per hospitals. We compared the estimated Medicare costs per admission distribution for fiscal year 1988 with the distribution in the 1988 cost reports. The distributions were almost identical. It is remarkable that this was achieved by running the model with all its random simulations for all the years 1955 through 1988 and with all the other adjustments described above. The comparison of the distributions is shown in figure 5.

To determine budget neutrality, we must model payments under the cost reimbursement system, as well as payments under the proposed prospective payment system. The model has already determined capital costs, so payments under the cost reimbursement system are readily available. The model does not have the characteristics that are factors in the proposed payment system. In fact, the model does not specifically identify any hospital. Consequently, in order to model payments under this proposed rule, the payment parameters (case mix, geographic adjustment, outlier adjustment, disproportionate share adjustment, and special exceptions treatment for qualifying disproportionate share hospitals and sole community hospitals) must be assigned to the generated hospitals. Urban-rural status also must be assigned since it affects some of the payment parameters. All of the following distributions and regressions were performed on the cost report data, or the capital impact files. Statistical distributions were chosen that best approximated the shape of the distributions, and the parameters were chosen to give the best fit. A regression equation was used to examine the distribution of case mix levels relative to the available hospital characteristics generated by the model, that is, bed size, occupancy rate, capital cost level, and year. The deviation from the mean case mix was computed from the regression results and added to the projected mean case mix. The mean case mix is projected to increase by two percent per year. Any effects of case-mix change are already included in the capital cost per admission projections. Since we are modeling payments that must be budget neutral to costs, all case mix changes must be considered in the budget neutrality calculation, regardless of the reason. We have monitored case mix changes since the beginning of PPS. Total case mix levels have increased about two per cent every year after correcting for the distortion in 1986 and the DRG relative weight adjustment in 1990. We project that case mix will continue to increase at the rate of two per cent per year.

Urban-rural status is randomly assigned with the assignment varying with large or small hospital status. The geographic adjustment is assigned from a triangular distribution. The disproportionate share adjustment is generated from a gamma distribution for large hospitals in urban areas. We randomly determine by urban-rural status and large-small status if a hospital has outliers. If a hospital is assigned outliers, the level of outliers is generated from a gamma distribution. We randomly assign the special exceptions status for urban disproportionate share hospitals (with more than 100 beds), and for rural sole community hospitals.

Budget neutrality is computed by comparing modeled prospective payments with 90 percent of modeled cost. We propose that if the legislatively required budget neutrality factor is greater than 1.0, it will be applied to the Federal and hospital-specific rates, but not to the hold harmless payments. If the budget neutrality factor is less than 1.0, it is applied to the hold harmless amounts as well as the Federal and hospital-specific rates. We propose that exceptions will be financed from the prospective payments. Consequently, we need to compute a second factor to apply to the hospital-specific and Federal payments. This factor should ensure that aggregate prospective payments including exceptions payments would be the same as aggregate prospective payments in the absence of an exceptions process. Since changes in the level of the payment rates changes the level of exceptions, the budget neutrality and exceptions adjustment factors must be determined by repeated trials. Further, these two factors interact with each other so that they must be determined simultaneously. We successfully determined values for these factors so that the exceptions adjustments are correct and estimated payments under the capital prospective payment system equal 90 per cent of estimated Medicare inpatient capital costs.

BILLING CODE 4120-01-M

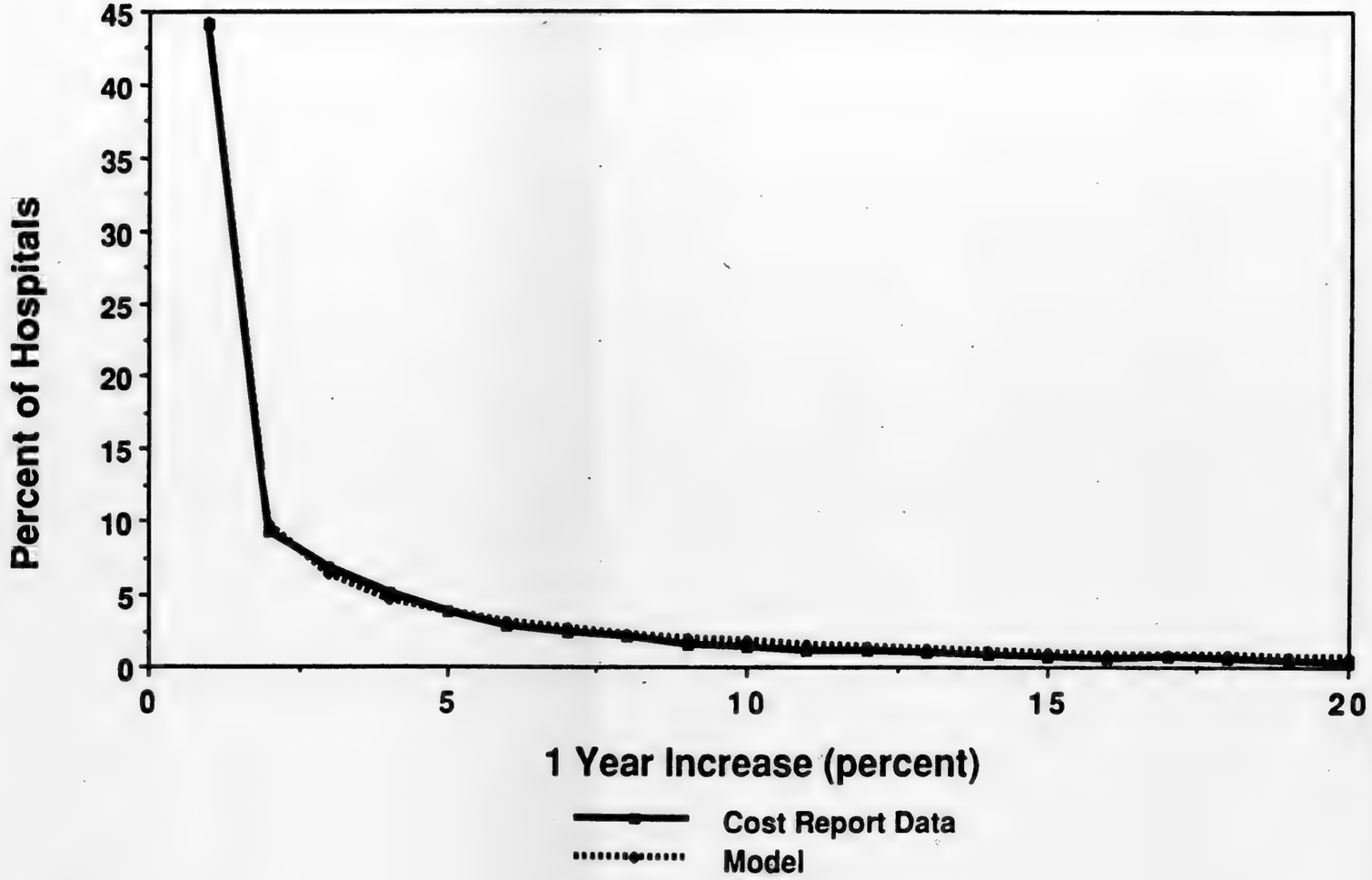

Comparison of Fixed Capital per Bed
Increase Distributions
Percent of Hospitals
45
40
35
30
25
20
15
10
5
0
0
5
10
15
20
1 Year Increase (percent)
Cost Report Data
Model

Figure 1

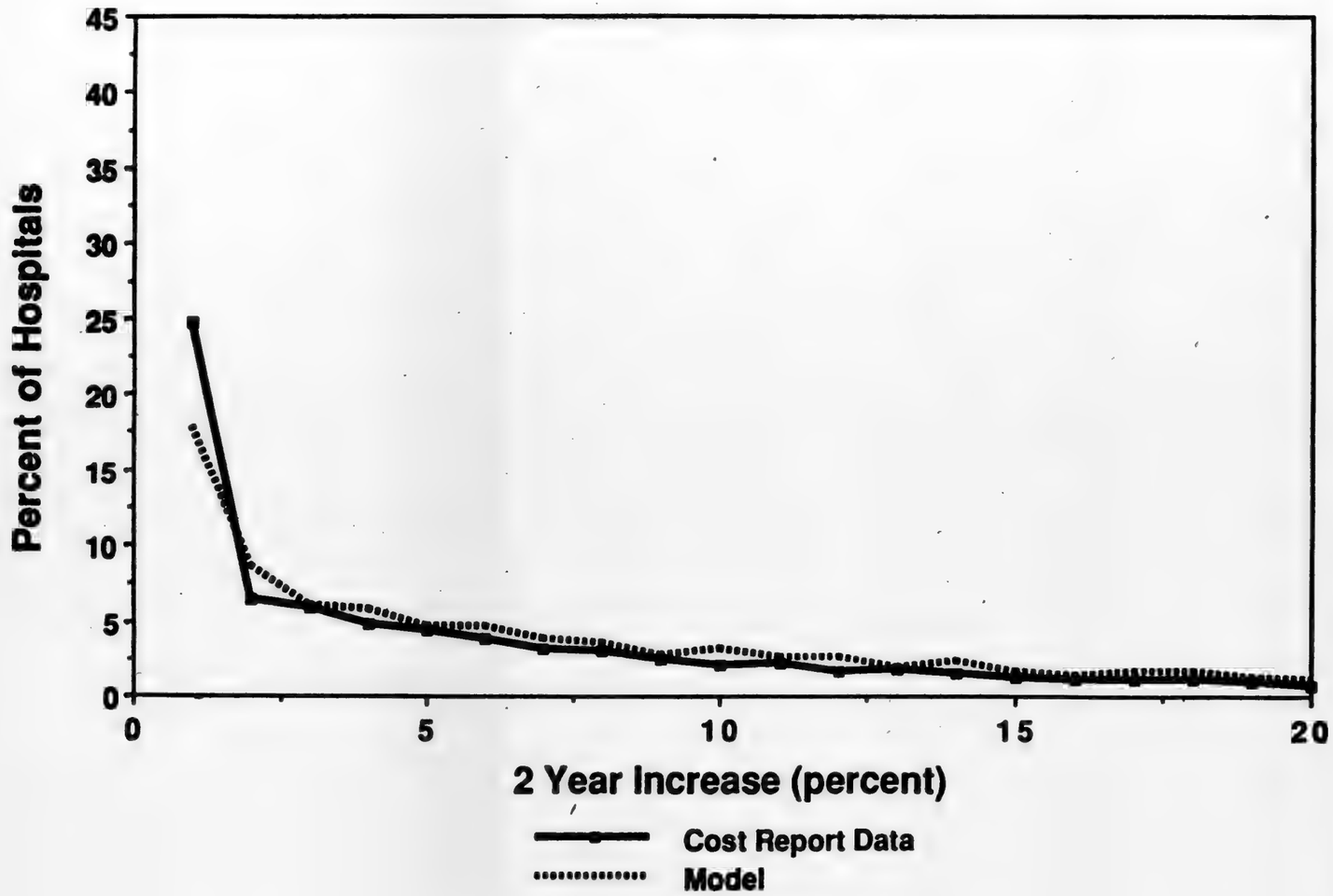


Figure 1 (Continued)

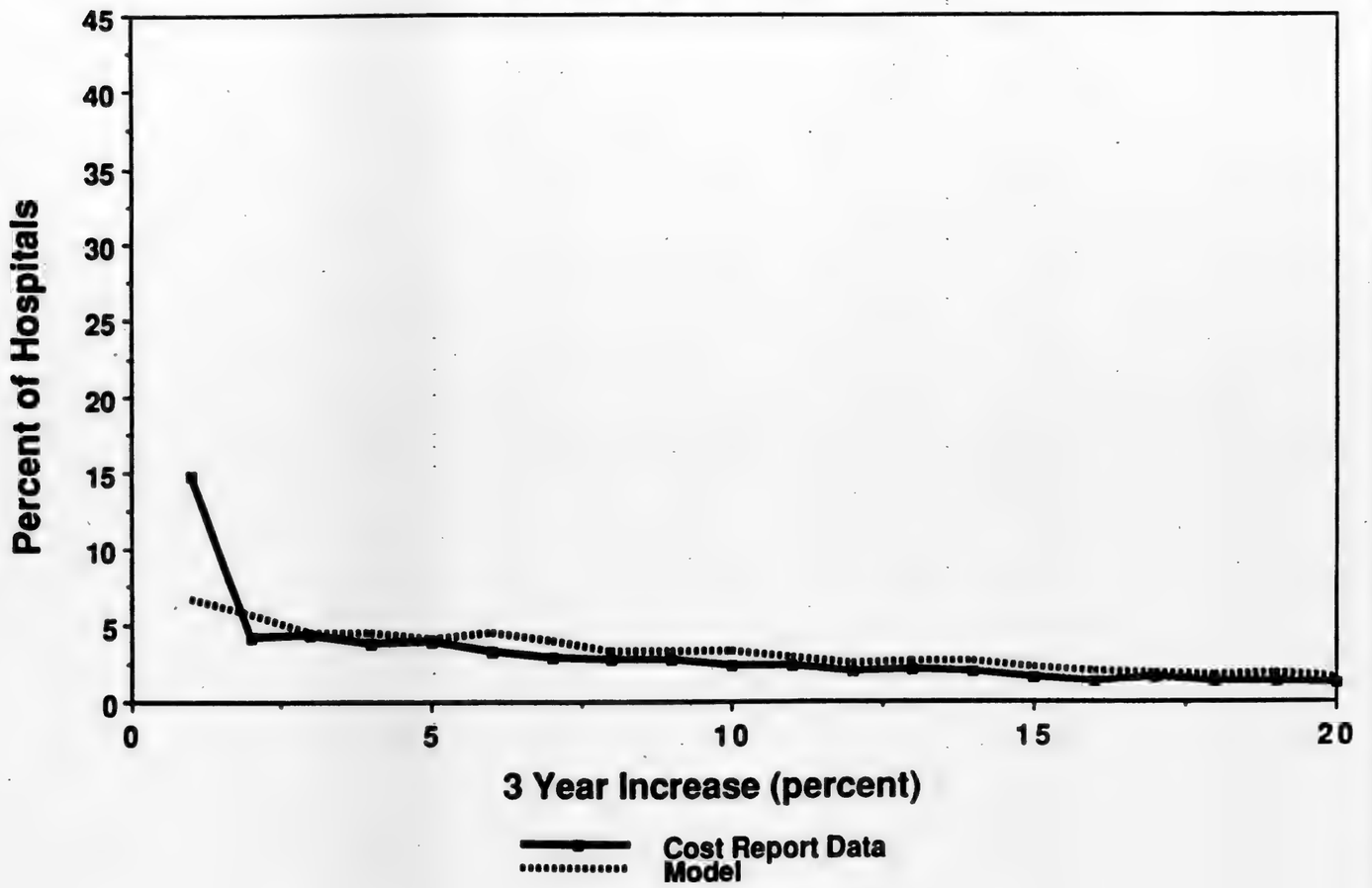


Figure 1 (Continued)

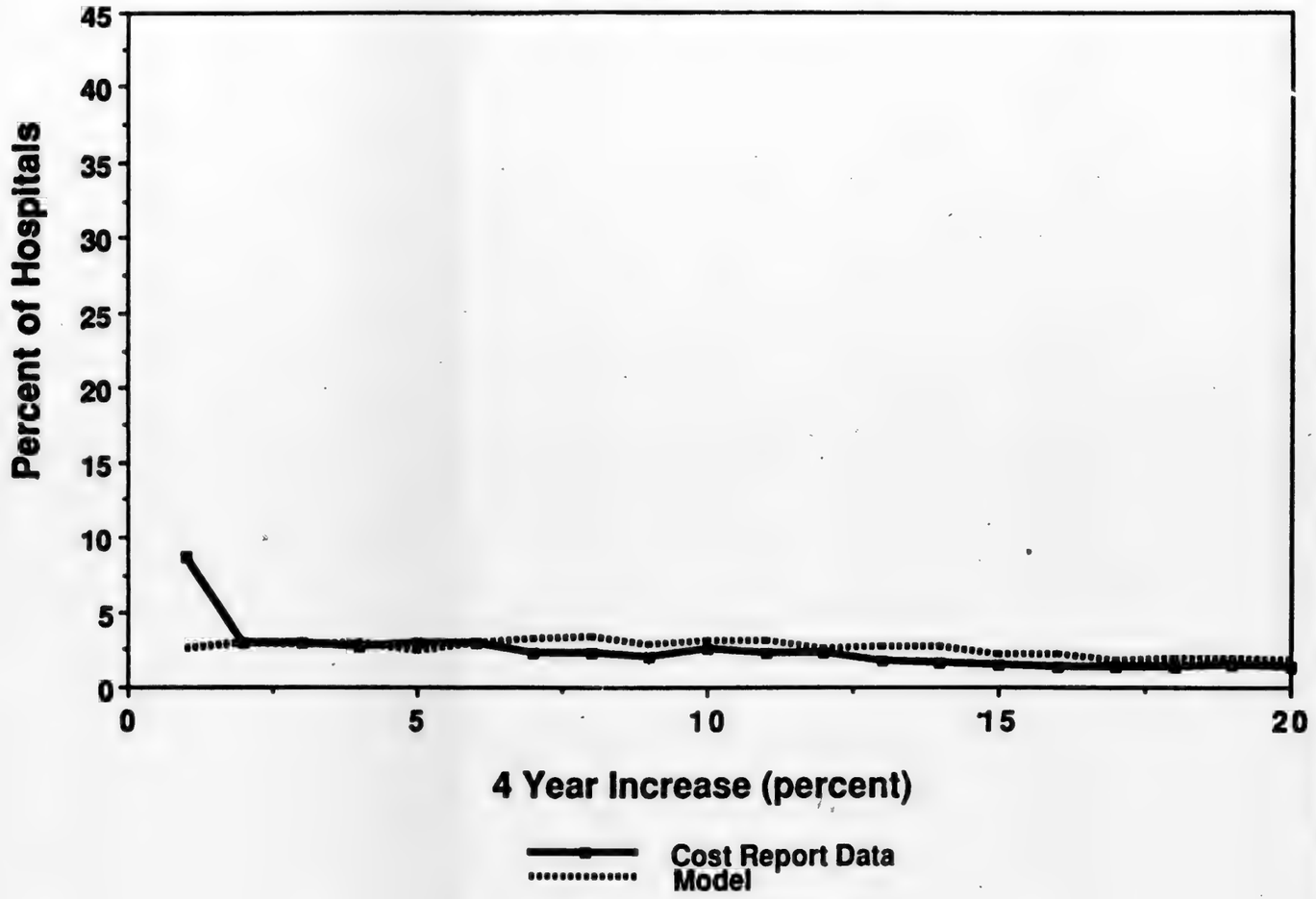


Figure 1 (Continued)

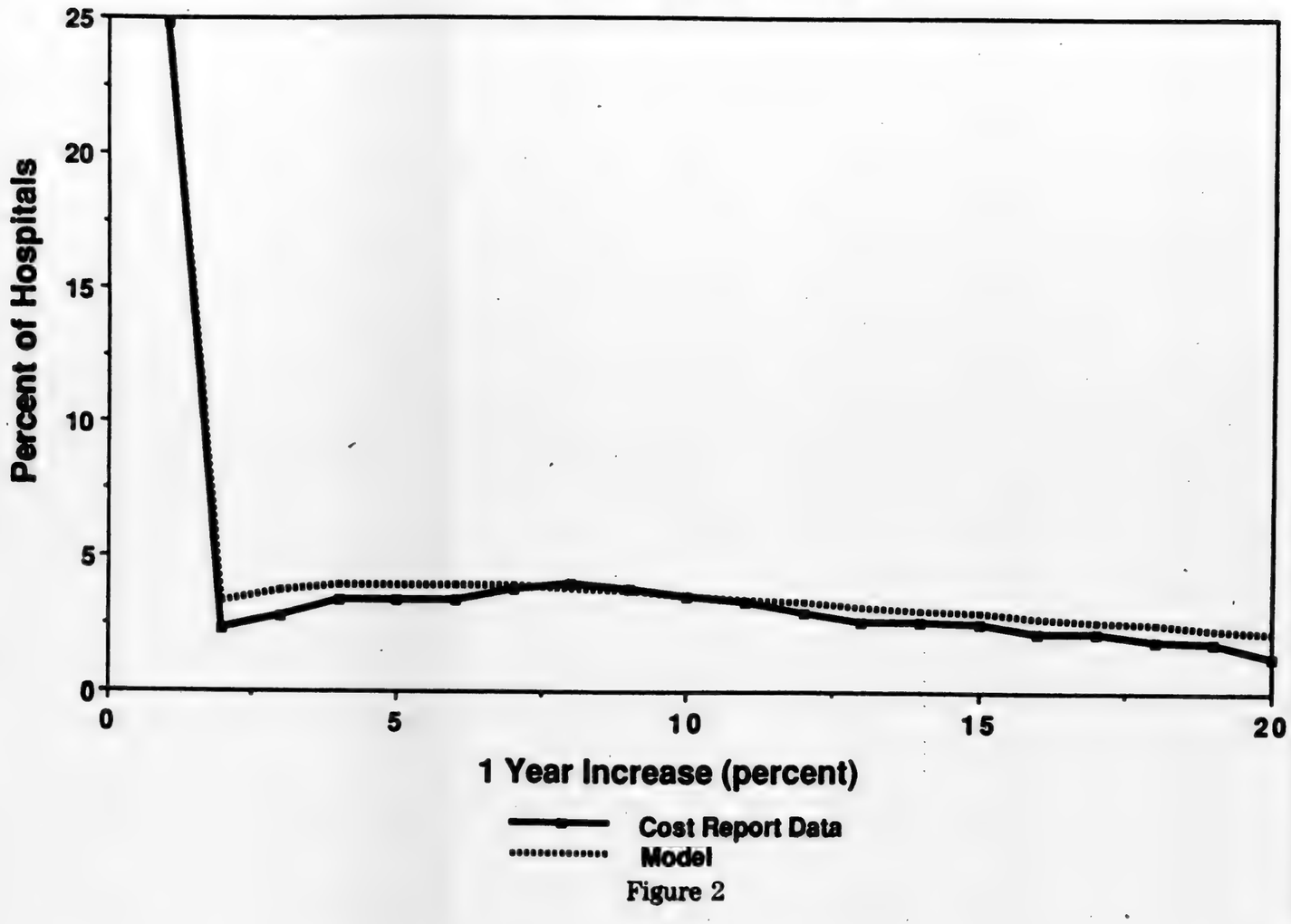

Comparison of Movable Capital per Bed
Increase Distributions
Percent of Hospitals
25
20
15
10
5
0
0
5
10
15
20
1 Year Increase (percent)
Cost Report Data
Model

Figure 2

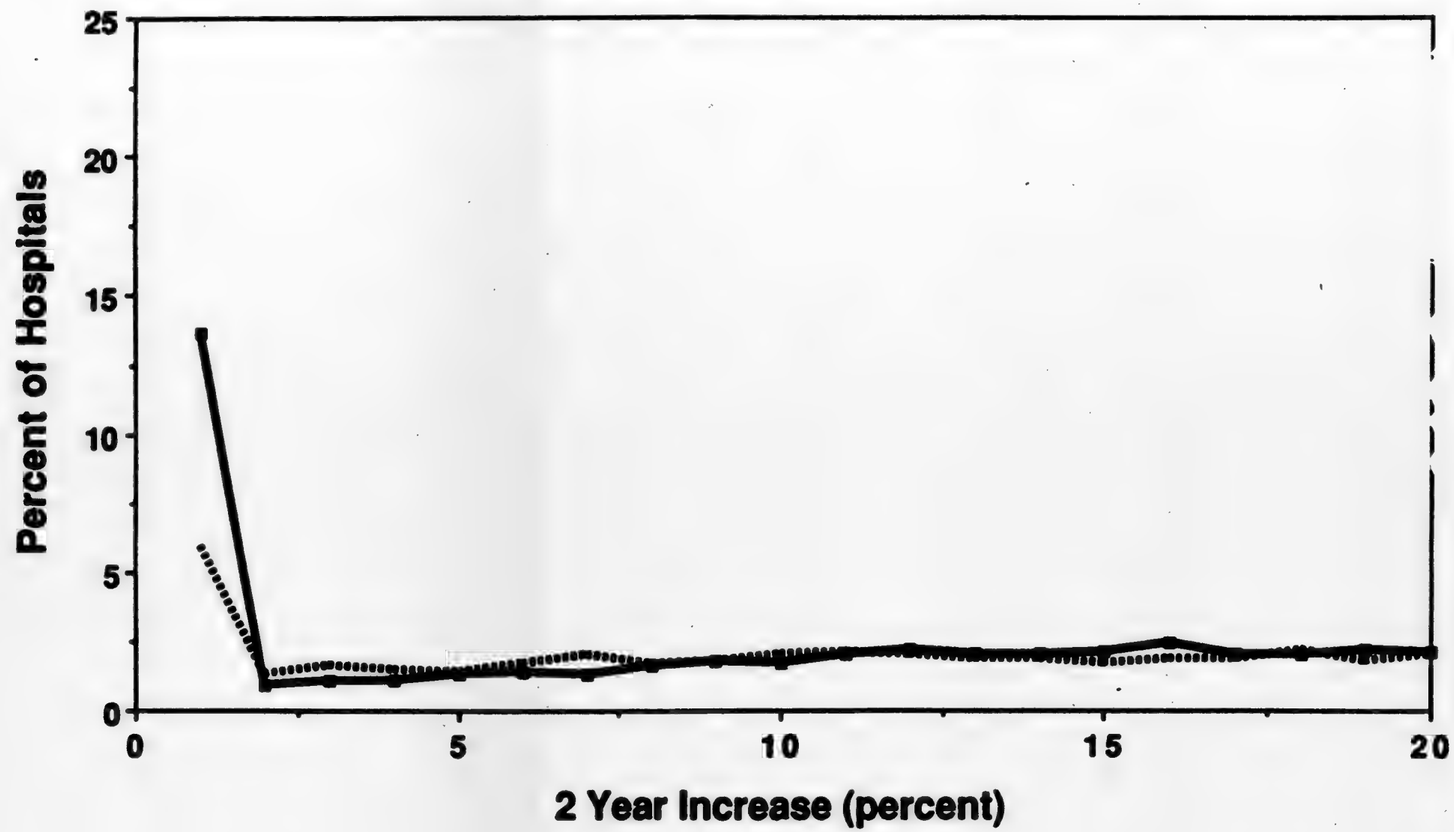


Figure 2 (Continued)

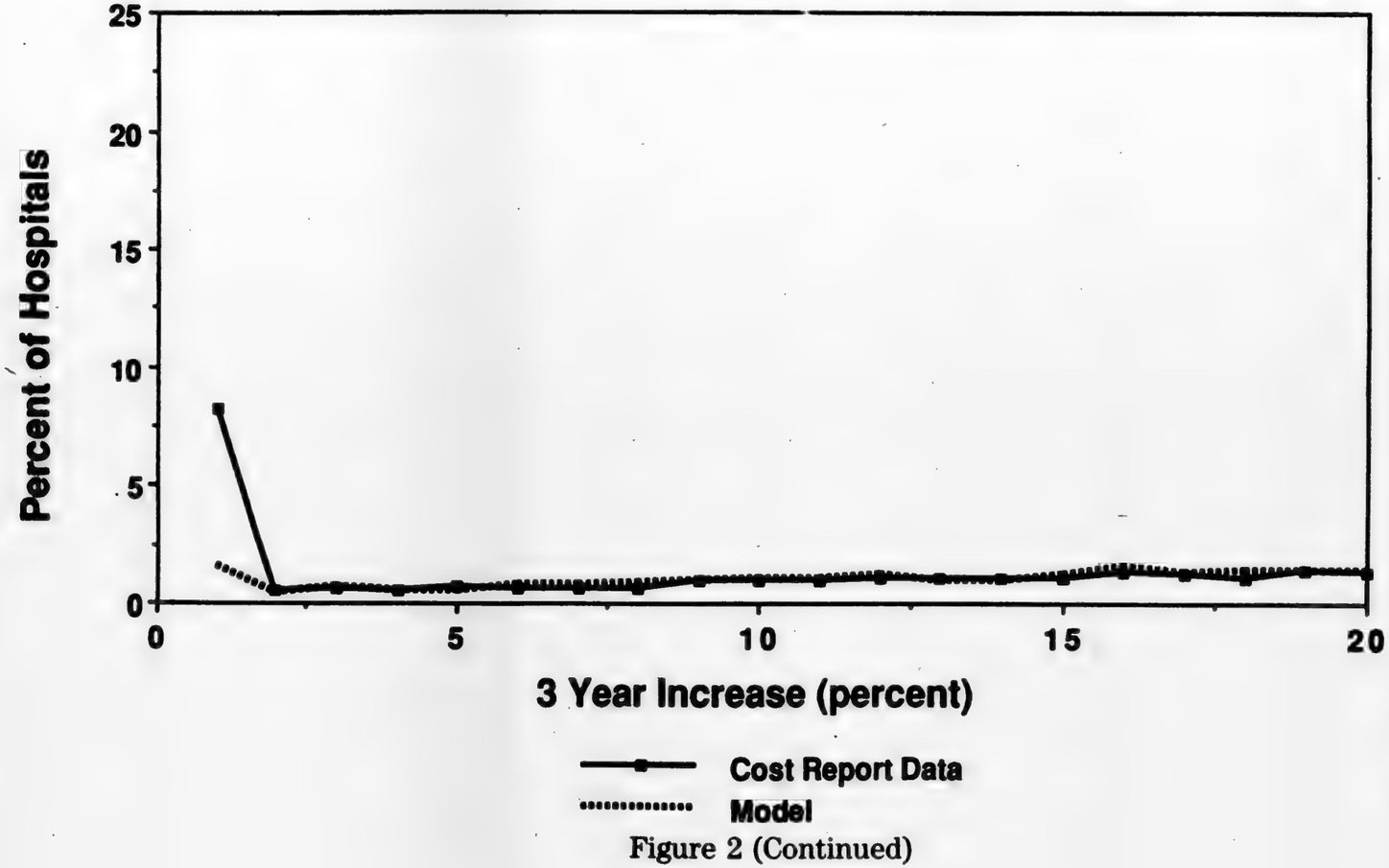


Figure 2 (Continued)

BEST COPY AVAILABLE

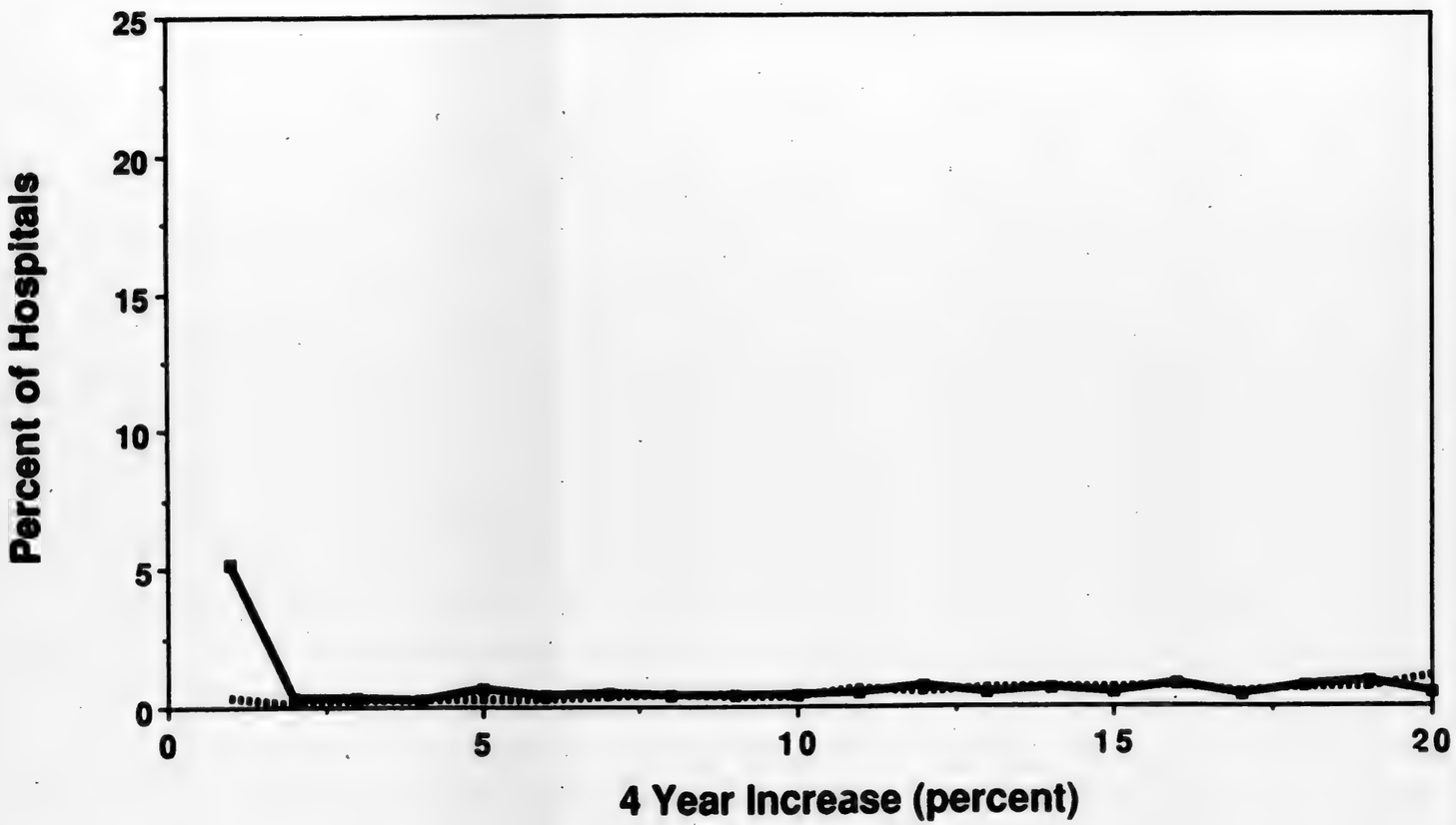


Figure 2 (continued)

ISS
40
FE
28
991
UMI

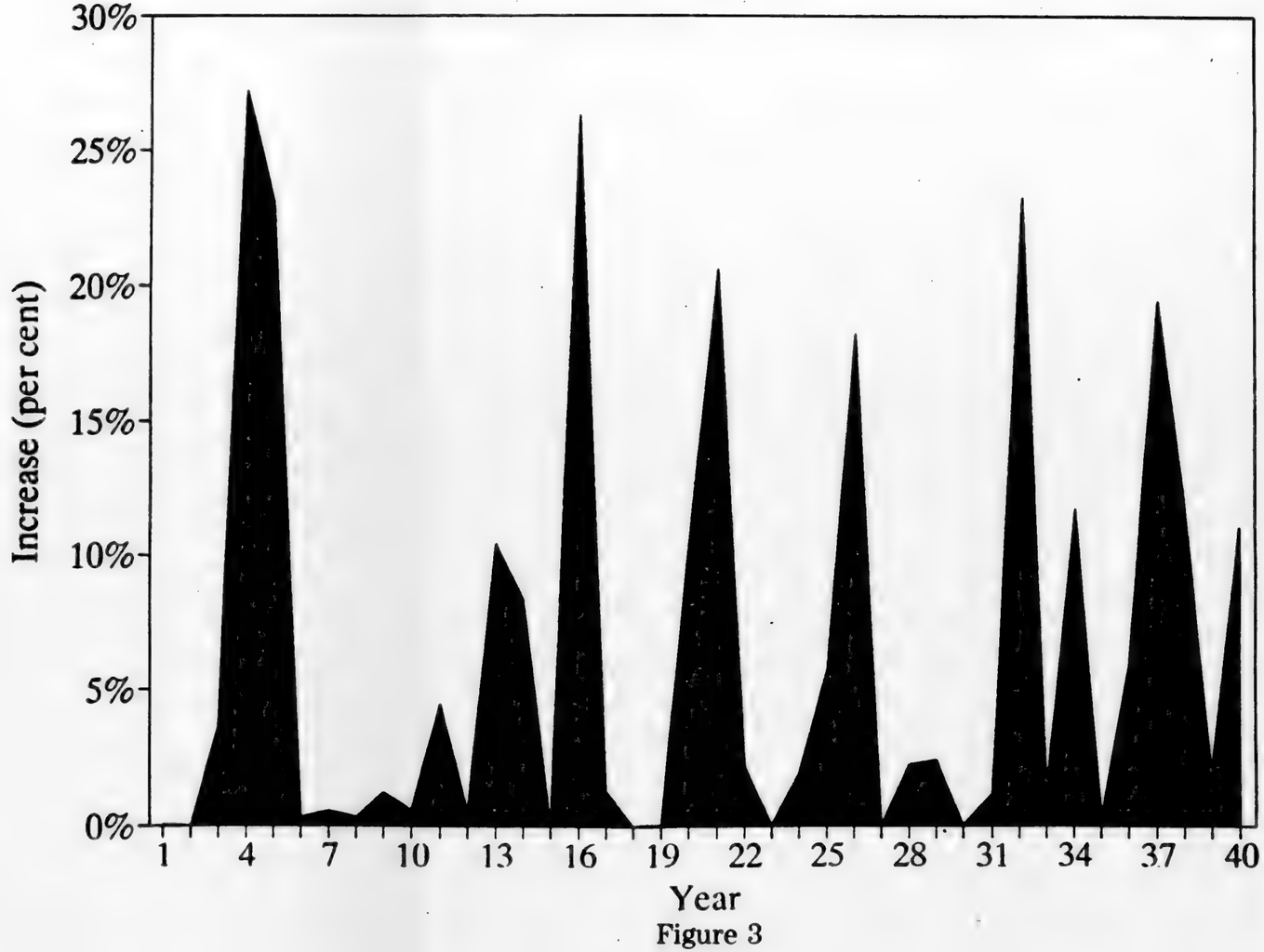


Figure 3

Splitting Normal Distribution for Bed Size Changes

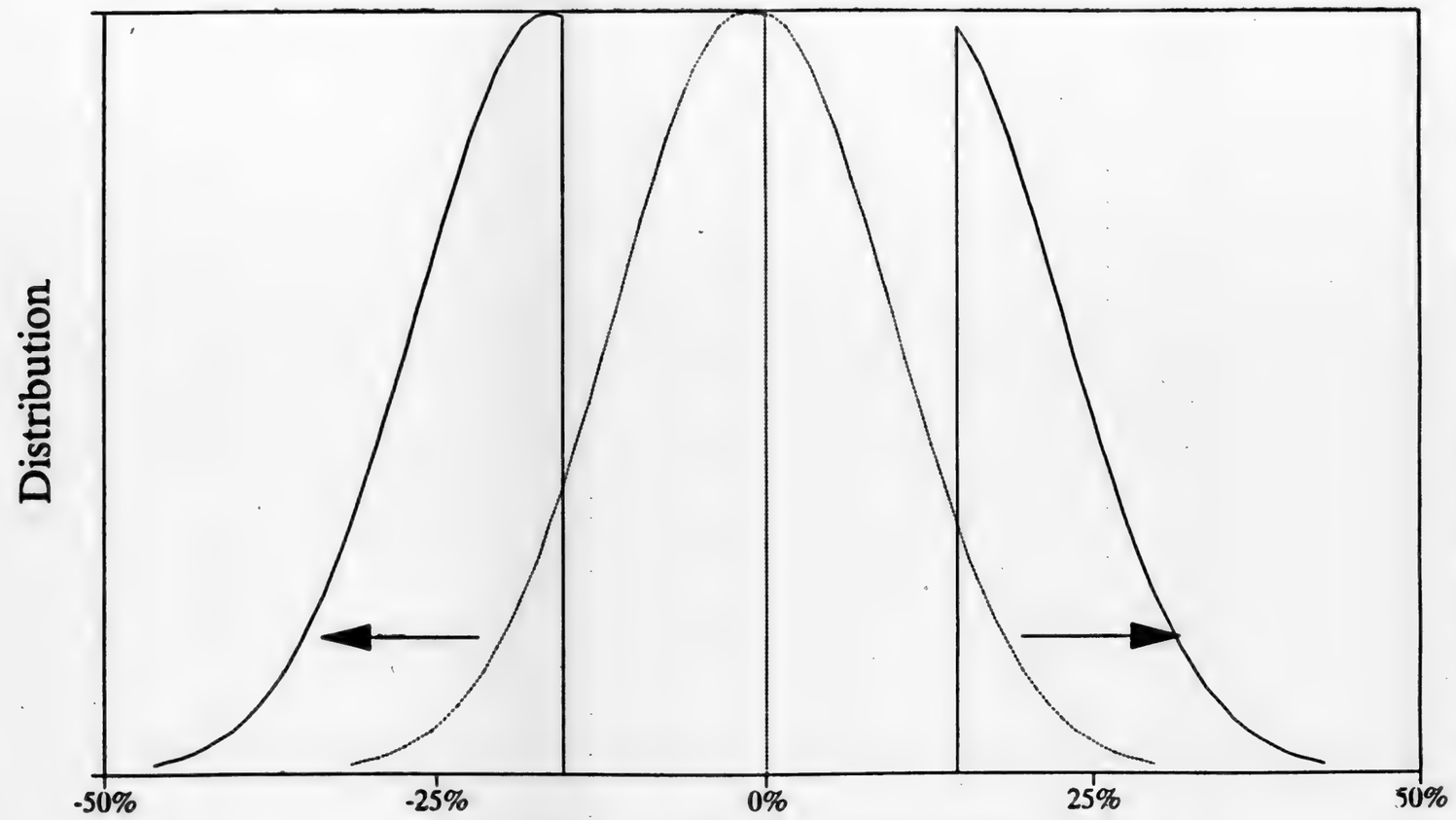


Figure 4

Distribution of Medicare Capital per Admission

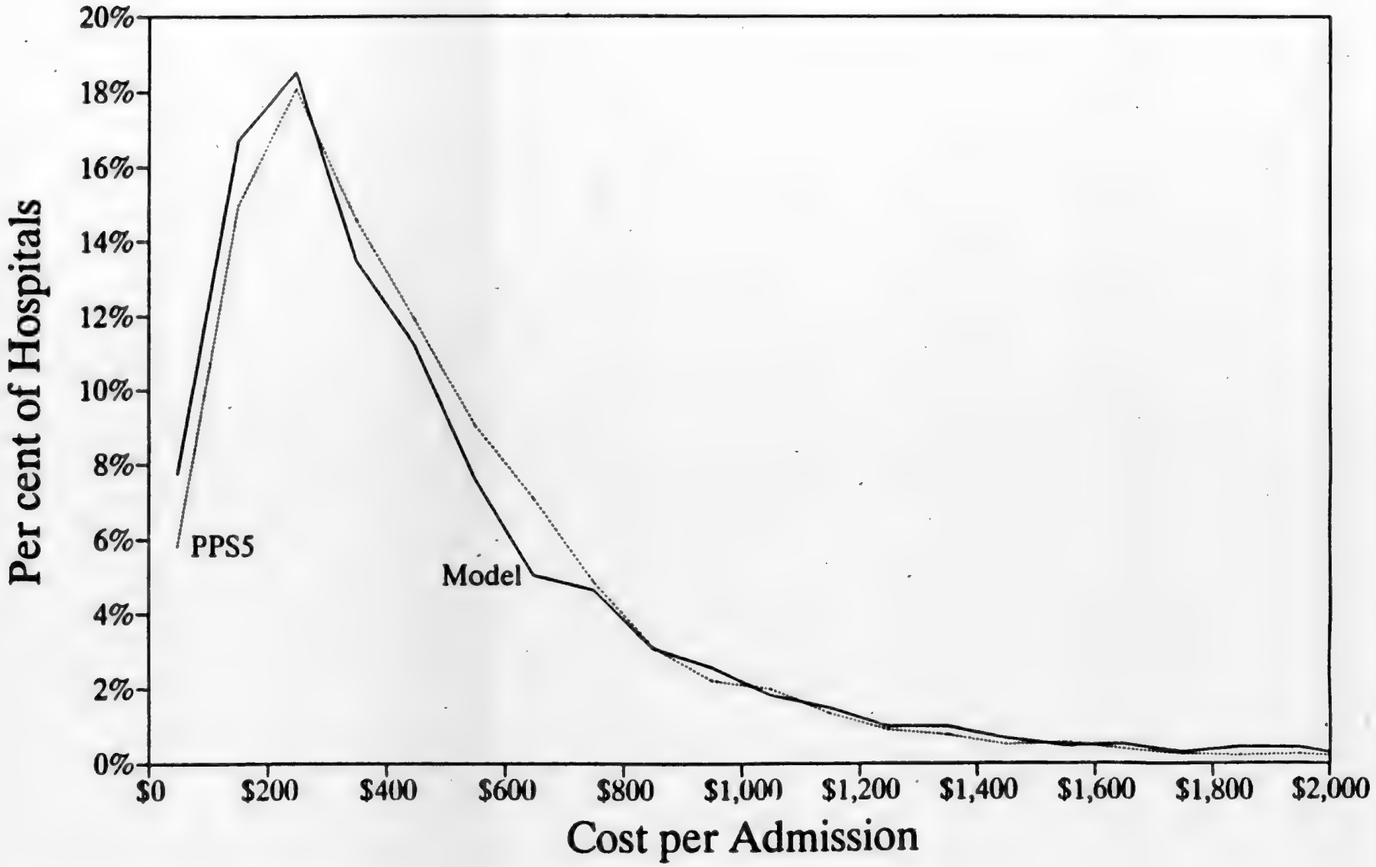


Figure 5

[FR Doc. 91-4474 Filed 2-22-91; 8:45 am]
BILLING CODE 4120-01-C

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part IV

Department of Justice

Office of the Attorney General

28 CFR Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 35

[Order No. 1474-91]

Nondiscrimination on the Basis of Disability in State and Local Government Services

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule implements subtitle A of title II of the Americans with Disabilities Act, Public Law 101–336, which prohibits discrimination on the basis of disability by public entities. Subtitle A extends the prohibition of discrimination in federally assisted programs established by section 504 of the Rehabilitation Act of 1973 to all activities of State and local governments, including those that do not receive Federal financial assistance. This proposed rule, therefore, adopts the general prohibitions of discrimination established under section 504, as well as the requirements for making programs accessible to individuals with disabilities and for providing equally effective communications. It also sets forth standards for what constitutes discrimination on the basis of mental or physical disability, provides a definition of disability and qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received on or before April 29, 1991. Whenever possible, comments should refer to specific sections in the proposed regulation. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to: John L. Wodatch, Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Rulemaking Docket 003, P.O. Box 75087, Washington, DC 20013.

Comments received will be available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except legal holidays, from March 14, 1991, until the Department publishes this rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers.

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office on the Americans with Disabilities Act at (202) 514–0301 (Voice) or (202) 514–0381 (TDD). The notice of proposed rulemaking is also available on electronic bulletin board at (202) 514–6193.

FOR FURTHER INFORMATION CONTACT: John Wodatch, Office on the Americans with Disabilities Act, or Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530. These individuals may be contacted through the Division's ADA Information Line at (202) 514–0301 (Voice), (202) 514–0381 (TDD), or (202) 514–0383 (TDD). These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The landmark Americans with Disabilities Act ("ADA" or "the Act"), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications.

The Department of Justice has published separately its proposed regulation for implementation of title III of the ADA, which applies to public accommodations and commercial facilities. (56 FR 7452, February 22, 1991.)

This proposed regulation implements title II of the ADA, which applies to State and local governments. Most programs and activities of State and local governments are recipients of Federal financial assistance from one or more Federal funding agencies and, therefore, are already covered by section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) ("section 504"), which prohibits discrimination on the basis of handicap in federally assisted programs and activities. Because title II of the ADA is, in essence, an extension of the nondiscrimination mandate of section 504 to those State and local governments that do not receive Federal financial assistance, this proposed rule hews as closely as possible to the provisions of existing section 504 regulations. This approach is also based on section 204 of the ADA, which provides that the regulations issued by the Attorney General to implement title II shall be consistent with the ADA and with the Department of Health, Education, and Welfare's coordination regulation, now codified at 28 CFR part 41, and, with respect to program accessibility and communications, with the Department of Justice's regulation for its federally conducted programs and activities, codified at 28 CFR part 39.

The first regulation implementing section 504 was issued in 1977 by the Department of Health, Education, and Welfare (HEW) for the programs and activities to which it provided Federal financial assistance. The following year, pursuant to Executive Order 11914, HEW issued its coordination regulation for federally assisted programs, which served as the model for regulations issued by the other Federal agencies that administer grant programs. HEW's coordination authority, and the coordination regulation issued under that authority, were transferred to the Department of Justice by Executive Order 12250 in 1980.

In 1978, Congress extended application of section 504 to programs and activities conducted by Federal Executive agencies and the United States Postal Service. Pursuant to Executive Order 12250, the Department of Justice developed a prototype regulation to implement the 1978 amendment for federally conducted programs and activities. More than 80 Federal agencies have now issued final regulations based on that prototype, prohibiting discrimination based on handicap in the programs and activities they conduct.

Despite the large number of regulations implementing section 504 for federally assisted and federally conducted programs and activities, there is very little variation in their substantive requirements, or even in their language. Major portions of this proposed regulation, therefore, are taken directly from the existing regulations. The sections on communications and program accessibility are based on the regulations for federally conducted programs, which provide specific guidance on the requirements applicable to communications and explain that the statute does not require any action that the entity can demonstrate would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens.

The proposed rule is organized into seven subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation. It also includes administrative requirements, adapted from the section 504 regulations, for self-evaluations, notices, designation of responsible employees, and adoption of grievance procedures by public entities.

Subpart B, "General Requirements," contains the general prohibitions of discrimination based on the section 504 regulations. It also contains certain "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion against those asserting ADA rights, illegal use of drugs, and restrictions on smoking. These provisions are also included in the Department's proposed title III regulation, as is the general provision on maintenance of accessible features.

Subpart C addresses employment by public entities, which is also covered by title I of the Act. The Department proposes to adopt, as compliance standards for employment under title II, the definitions and requirements that will be established by the Equal Employment Opportunity Commission (EEOC) for title I.

Subpart D, which is also based on the section 504 regulations, sets out the requirements for program accessibility in existing facilities and in new construction and alterations.

Subpart E contains specific requirements relating to communications.

Subpart F establishes administrative procedures for enforcement of title II. As provided by section 203 of the Act, these are based on the procedures for enforcement of section 504, which, in turn, are based on the enforcement procedures for title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Subpart F also restates the provisions of title V of the ADA on attorneys fees, alternative means of dispute resolution, the effect of unavailability of technical assistance, and State immunity.

Subpart G designates the Federal agencies responsible for investigation of complaints under this part. It assigns enforcement responsibility for particular public entities, on the basis of their major functions, to nine Federal agencies that currently have substantial responsibilities for enforcing section 504. The Department of Justice would have enforcement responsibility for all State and local government entities not assigned to other designated agencies. The part would not, however, displace the existing enforcement authorities of the Federal funding agencies under section 504.

Section-by-Section Analysis

Subpart A—General

Section 35.101 Purpose.

Section 35.101 states the purpose of the proposed rule, which is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), which prohibits discrimination on the basis of disability by public entities. This part does not, however, apply to matters within the scope of the authority of the Secretary of Transportation under the Act.

Section 35.102 Application

Except as provided in paragraph (b) of this section, the proposed regulation applies to all services, programs or activities provided or made available by public entities, as that term is defined in § 35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those activities of public entities that receive Federal financial assistance. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or instrumentalities or agencies thereof, regardless of the receipt of Federal financial assistance. The scope of Title II's coverage of public entities is comparable to the coverage of Federal Executive agencies under the 1978 amendment to section 504, which extended section 504's application to all programs and activities "conducted by" Federal Executive agencies. In that title II applies to anything a public entity does. Aside from employment, which is also covered by title I of the Act, there are two major categories of programs or activities covered by this regulation: those involving general public contact as part of ongoing operations of the entity and those directly administered by the entities for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the entity's facilities. Activities in the second category include programs that provide State or local government services or benefits.

Paragraph (b) of § 35.102 explains that public transportation services, programs, and activities of public entities covered by subtitle B of title II of the Act are subject to regulations issued by the Department of Transportation at 49 CFR part 37. The specific provisions in the Department of Transportation's regulation, including the limitations on those provisions, control over the general provisions of this part in circumstances where both specific and general provisions apply. Resort to the general provisions of this part is only appropriate where there are no applicable specific rules of guidance in the Department of Transportation's regulation. For example, services, programs, and activities that are covered by the Department of Transportation's regulation implementing subtitle B are not required to be included in the self-evaluation required by § 35.105.

Section 35.103 Relationship to Other Laws

Section 35.103 restates the requirements of section 501(b) of the ADA. It makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws (including section 504) or other State laws (including State common law) that provide greater or equal protection to individuals with disabilities. As discussed above, the standards adopted by title II of the ADA for State and local government services are generally the same as those required under section 504 for federally assisted programs and activities. Subpart F of the proposed regulation establishes compliance procedures for processing complaints covered by both this part and section 504.

With respect to State law, a plaintiff may choose to pursue claims under a State that does not confer greater substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, a person with a physical disability could seek damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but not on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws. Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

Because the ADA itself allows exclusion of clients and customers who pose a direct threat to the health or safety of others, a State public health law that guards against such threats, but that does not discriminate against people with disabilities, would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

Section 35.104 Definitions

Act. The word "Act" is used in this part to refer to the Americans with Disabilities Act of 1990, Public Law 101–

336, which is also referred to as the "ADA."

Assistant Attorney General. The term "Assistant Attorney General" refers to the Assistant Attorney General of the Civil Rights Division of the Department of Justice.

Auxiliary aids and services. Auxiliary aids and services include a wide range of services and devices. The definition in § 35.104 provides a list of examples of auxiliary aids and services that is taken from the definition of auxiliary aids and services in section 3(l) of the ADA and supplemented by examples from regulations implementing section 504 in federally conducted programs (see, 28 CFR 39.103).

Complete complaint. "Complete complaint" is defined to include all the information necessary to enable the Federal agency designated under subpart G as responsible for investigation of a complaint to initiate its investigation.

Current illegal use of drugs. The phrase "current illegal use of drugs" is used in § 35.131. Its meaning is discussed in the preamble for that section.

Designated agency. The term "designated agency" is used to refer to the Federal agency designated under subpart G of this proposed rule as responsible for carrying out the administrative enforcement responsibilities established by subpart F of the proposed rule.

Disability. The definition of the term "disability" is the same as the definition in the proposed title III regulation. It is comparable to the definition of the term "individual with handicaps" in section 7(8) of the Rehabilitation Act of 1973 and section 802(h) of the Fair Housing Act. The Education and Labor Committee report makes clear that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare (HEW) in its regulations implementing section 504 (42 FR 22685 (May 4, 1977)) and the analysis by the Department of Housing and Urban Development in its regulations implementing the Fair Housing Amendments Act of 1988 (54 FR 3232 (Jan. 23, 1989)) should also apply fully to the term "disability." H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 50 (1990) (hereinafter "Education and Labor report).

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Congress to make use of up-to-date, currently accepted terminology. As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities, and organizations representing such individuals, object to the use of such terms as "handicapped person" or "the handicapped." In other recent legislation, Congress also recognized this shift in terminology, *e.g.*, by changing the name of the National Council on the Handicapped to the National Council on Disability (Pub. L. 100–630).

In enacting the Americans with Disabilities Act, Congress concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.

The term "disability" means, with respect to an individual—

(A) A permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such an impairment; or

(C) Being regarded as having such an impairment. If an individual meets any one of these three tests, he or she is considered to be an individual with a disability for purposes of coverage under the Americans with Disabilities Act.

Congress adopted this same basic definition of "disability," first used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988, for a number of reasons. First, it has worked well since it was adopted in 1974. Second, it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities, especially because new disorders may be recognized in the future, as they have since the definition was first established in 1974.

Test A—A physical or mental impairment that substantially limits one or more of the major life activities of such individual

Physical or mental impairment. Under the first test, an individual must have a physical or mental impairment. As explained in paragraph (1)(i)(A) of the definition, "impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine. It also means any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. This is the list used in the regulations for section 504 of the Rehabilitation Act of 1973 (see, *e.g.*, 45 CFR 84.3(j)(2)(i)).

It is not possible to include a list of all the specific conditions, contagious and noncontagious diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. However, the list of examples in paragraph (1) (ii) of the definition includes: Orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

The list of examples of "physical or mental impairments" in paragraph (l)(ii) is the same as those contained in many section 504 regulations, except for the addition of the phrase "contagious and noncontagious" to describe the types of diseases and conditions included, and the addition of "HIV disease" and "tuberculosis" to the list of examples. These additions are based on the committee reports, caselaw, and official legal opinions interpreting section 504. In *School Board of Nassau County* v. *Arline*, 480 U.S. 273 (1987), a case involving an individual with tuberculosis, the Supreme Court held that people with contagious diseases are entitled to the protections afforded by section 504. Following the *Arline* decision, this Department's Office of Legal Counsel issued a legal opinion that concluded that symptomatic HIV disease is an impairment that substantially limits a major life activity; therefore it has been included in the definition of disability under this part. The opinion also concluded that asymptomatic HIV disease is an impairment which may substantially limit a major life activity either because of its actual effect on the individual with HIV disease or because the reactions of other people to individuals with HIV disease cause such individuals to be treated as though they are disabled. See Memorandum from Douglas W. Kmiec, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), reprinted in Hearings on S. 933, the Americans with Disabilities Act, Before the Subcomm. on the Handicapped of the Senate Comm. on Labor and Human Resources, 101st. Cong., 1st Sess. 346 (1989).

Paragraph (1)(iii) states that the phrase "physical or mental impairment" does not include homosexuality or bisexuality. These conditions were never considered impairments under other Federal disability laws. Section 511(a) of the statute makes clear that they are likewise not to be considered impairments under the Americans with Disabilities Act.

Physical or mental impairment does not include simple physical characteristics, such as blue eyes or black hair. Nor does it include environmental, cultural, economic, or other disadvantages, such as having a prison record, or being poor. Nor is age a disability. However, a person who has these characteristics and also has a physical or mental impairment may be considered as having a disability for purposes of the Americans with Disabilities Act based on the impairment.

Substantial limitation of a major life activity. Under Test A, the impairment must be one that "substantially limits a major life activity." Major life activities include such things as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic is substantially limited in the major life activity of walking, a person who is blind is substantially limited in the major life activity of seeing, and a person who is mentally retarded is substantially limited in the major life activity of learning.

A person is considered an individual with a disability for purposes of Test A, the first prong of the definition, when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person with a minor, trivial impairment, such as a simple infected finger, is not impaired in a major life activity. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain, because most people would not be able to walk eleven miles without experiencing some discomfort.

An impairment is not necessarily excluded from the definition of "disability" simply because it is temporary. The duration, or expected duration, of an impairment is, however, one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. Temporary impairments, such as a broken leg, are not commonly regarded as disabilities, but in rare circumstances the degree of the limitation and its expected duration may be substantial. Similarly, obesity rarely results in a substantial limitation on a major life activity. It must be emphasized that each case involving a determination of substantial limitation must be evaluated on its own merits.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids. For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Test B—A record of such an impairment

This test is intended to cover those who have a record of an impairment. As explained in paragraph (3) of the proposed rule's definition of disability, this includes a person who has a history of an impairment that substantially limited a major life activity, such as someone who has recovered from an impairment. It also includes persons who have been misclassified as having an impairment.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment that previously substantially limited them in a major life activity. Discrimination on the basis of such a past impairment is prohibited. Frequently occurring examples of the first group (those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (those who have been misclassified as having an impairment) are persons who have been misclassified as having mental retardation or mental illness.

Test C—Being regarded as having such an impairment

This test, as contained in paragraph (4) of the definition, is intended to cover persons who are treated by a public entity as having a physical or mental impairment that substantially limits a major life activity. It applies when a person is treated as if he or she has an impairment that substantially limits a major life activity, regardless of whether that person has an impairment.

The Americans with Disabilities Act uses the same "regarded as" test set forth in the regulations implementing section 504 of the Rehabilitation Act. See, *e.g.*, 28 CFR 42.540(k)(2)(iv), which provides:

(iv) "Is regarded as having an impairment" means (A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

The perception of the covered entity is a key element of this test. A person who perceives himself or herself to have an impairment, but does not have an impairment, and is not treated as if he or she has an impairment, is not protected under this test.

A person would be covered under this test if a public entity refused to serve the person because it perceived that the person had an impairment that limited his or her enjoyment of the goods or services being offered.

For example, persons with severe burns often face discrimination in community activities, resulting in substantial limitation of major life activities. These persons would be covered under this test based on the attitudes of others towards the impairment, even if they did not view themselves as "impaired."

The rationale for this third test, as used in the Rehabilitation Act of 1973, was articulated by the Supreme Court in *Arline*, 480 U.S. 273 (1987). The Court noted that although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. "Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment." *Id.* at 283. The Court concluded that, by including this test in the Rehabilitation Act's definition, "Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment." *Id.* at 284.

Thus, a person who is denied services or benefits by a public entity because of myths, fears, and stereotypes associated with disabilities would be covered under this third test whether or not the

person's physical or mental condition would be considered a disability under the first or second test in the definition.

If a person is refused admittance on the basis of an actual or perceived physical or mental condition, and the public entity can articulate no legitimate reason for the refusal (such as failure to meet eligibility criteria), a perceived concern about admitting persons with disabilities could be inferred and the individual would qualify for coverage under the "regarded as" test. A person who is covered because of being regarded as having an impairment is not required to show that the public entity's perception is inaccurate (e.g., that he will be accepted by others) in order to receive benefits from the public entity.

Paragraph (5) of the definition lists certain conditions that are not included within the definition of "disability." The excluded conditions are: Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs. Unlike homosexuality and bisexuality, which are not considered impairments under either section 504 or the Americans with Disabilities Act (see the definition of "disability," paragraph (1)(iv)), the conditions listed in paragraph (5), except for transvestism, are not necessarily excluded as impairments under section 504. (Transvestism was excluded from the definition of disability for section 504 by the Fair Housing Act Amendments of 1988, Pub. L. 100-430, section 6(b).)

Drug. The definition of the term "drug" is taken from section 510(d)(2) of the ADA.

Facility. "Facility" means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located. Senate and House committee reports made clear that the definition of facility was drawn from the definition of facility in the current Federal regulations implementing section 504 of the Rehabilitation Act. Education and Labor report at 114. It includes both indoor and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

Illegal use of drugs. The definition of "illegal use of drugs" is taken from section 510(d)(1) of the Act and clarifies that the term includes the illegal use of one or more drugs.

Individual with a disability means a person who has a disability but does not include an individual who is currently illegally using drugs, when the public entity acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 35.131.

Public entity. The term "public entity" is defined in accordance with section 201(l) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; or the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability. The definition of "qualified individual with a disability" is taken from section 201(2) of the Act, which is derived from the definition of "qualified handicapped person" in the Department of Health and Human Services' regulation implementing section 504 (45 CFR § 84.3(k)). It combines the definition at 45 CFR 84.3(k)(1) for employment ("a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question") with the definition for other services at 45 CFR 84.3(k)(4) ("a handicapped person who meets the essential eligibility requirements for the receipt of such services"), with specific references to the requirements of title II.

State. The definition of "State" is identical to the statutory definition in section 3(3) of the ADA.

Section 35.105 Self-evaluation

Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part. Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA. Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-evaluation required under an existing regulation implementing section 504.

Section 35.106 Notice

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 35.107 Designation of Responsible Employee and Adoption of Grievance Procedures

Section 35.107(a) requires public entities with 50 or more employees to designate at least one employee responsible for coordination of its efforts to carry out its responsibilities under this part. The requirement for designation of a responsible employee is derived from the HEW regulation implementing section 504 in federally assisted programs (45 CFR 84.7(a)). The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (see, *e.g.*, 45 CFR 84.7(b)). The proposed rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under § 35.170(b).

Subpart B—General Requirements

Section 35.130 General Prohibitions Against Discrimination

The general prohibitions against discrimination in the proposed rule are based on the prohibitions in existing regulations implementing section 504 and, therefore, are already familiar to State and local entities covered by section 504.

Paragraph (a) restates the nondiscrimination mandate of section 202 of the ADA. The remaining paragraphs in § 35.130 establish the general principles for analyzing whether any particular action of the public entity violates this mandate.

Paragraph (b) prohibits overt denials of equal treatment of individuals with disabilities. A public entity may not refuse to provide an individual with disabilities with an equal opportunity to participate in or benefit from its program simply because the person has a disability.

Paragraph (b)(1)(i) provides that it is discriminatory to deny a person with a disability the right to participate in or benefit from the aid, benefit, or service provided by a public entity. Paragraph (b)(1)(ii) provides that the aids, benefits, and services provided to persons with disabilities must be equal to those provided to others, and paragraph (b)(1)(iii) requires that the aids, benefits, or services provided to individuals with disabilities must be as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as those provided to others. These paragraphs are taken from the regulations implementing section 504 and simply restate principles long established under section 504.

Paragraph (b)(1)(iv) permits the public entity to develop separate or different aids, benefits, or services when necessary to provide individuals with disabilities with an equal opportunity to participate in or benefit from the public entity's programs or activities, but only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Paragraph (b)(1)(iv) must be read in conjunction with paragraphs (b)(2), (d), and (e). Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with disabilities still has the right to choose to participate in the program that is not designed to accommodate individuals with disabilities. Paragraph (d) requires that a public entity administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, and paragraph (e), which is based on section 501(d) of the Act, provides that a public entity may not require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

Integration is fundamental to the purposes of the Americans with Disabilities Act. Provision of segregated accommodations and services relegate persons with disabilities to second-class status. For example, it would be a violation of this provision to require persons with disabilities to eat in the back room of a government cafeteria or to refuse to allow a person with a disability the full use of recreation or exercise facilities because of stereotypes about the person's ability to participate.

Paragraph (b)(2) specifies that, notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different. Paragraph (e), which is derived from section 501(d) of the Americans with Disabilities Act, states that nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit that he or she chooses not to accept.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

These provisions should not be construed to jeopardize in any way the continued viability of separate schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and overarching principle of the Americans with Disabilities Act. Separate, special, or different programs that are designed to provide a benefit to persons with disabilities cannot be used to restrict the participation of persons with disabilities in general, integrated activities.

For example, a person who is blind may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his or her own pace with the museum's recorded tour. It is not the intent of this section to require the person who is blind to avail himself or herself of the special tour. Modified participation for persons with disabilities must be a choice, not a requirement.

In addition, it would not be a violation of this section for a public entity to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this section if the entity then excluded these children from other recreational services for which they are qualified to participate when these services are made available to nondisabled children, or if the entity required children with disabilities to attend only designated programs.

Paragraph (b)(1)(v) provides that a public entity may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program. This paragraph is taken from the regulations implementing section 504 for federally assisted programs.

Paragraph (b)(1)(vi) prohibits the public entity from denying a qualified individual with a disability the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vii) prohibits the public entity from limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the public entity from utilizing criteria or methods of administration that deny individuals with disabilities access to the public entity's services, programs, and activities or that perpetuate the discrimination of another public entity, if both public entities are subject to common administrative control or are agencies of the same State. The phrase "criteria or methods of administration" refers to official written policies of the public entity and to the actual practices of the public entity. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985). The Court in *Choate* explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted: "These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design." *Id.* at 297 (footnote omitted).

Paragraph (b)(4) specifically applies the prohibition enunciated in § 35.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the public entity. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the public entity, in the selection of procurement contractors, from using criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

Paragraph (b)(6) prohibits the public entity from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 35.104).

In addition, the public entity may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. For example, the public entity must comply with this requirement when establishing safety standards for the operations of licensees. In that case the public entity must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with disabilities in an impermissible manner.

Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate.

Paragraph (b)(7) is a specific application of the requirement under the general prohibitions of discrimination that public entities make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability. Section 302(b)(2)(A)(ii) of the ADA sets out this requirement specifically for public accommodations covered by title III of the Act, and the House Judiciary Committee Report directs the Attorney General to include those specific requirements in the title II regulation to the extent that they do not conflict with the regulations implementing section 504. H.R. Rep. No. 485, 101st Cong., 2d Sess., part 3, at 52 (1990)(hereinafter "Judiciary report").

For example, a parking facility operated by a public entity may be required to modify a rule barring all vans with raised roofs (including those that are wheelchair accessible), if a wheelchair-user operating such a van wishes to park in the facility and overhead structures are, in fact, high enough to accommodate the height of the van.

Paragraph (c) provides that nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part. It is derived from a provision in the section 504 regulations that permits programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with disabilities or a given class of individuals with disabilities to be limited to those individuals with disabilities. Section 504 ensures that federally assisted programs are made available to all individuals, without regard to disabilities, unless the Federal program under which the assistance is provided is specifically limited to individuals with disabilities or a particular class of individuals with disabilities. Because coverage under this part is not limited to federally assisted programs, paragraph (c) has been revised to clarify that State and local governments may provide special benefits, beyond those required by the nondiscrimination requirements of this part, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring additional obligations to persons without disabilities or to other classes of individuals with disabilities.

Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.*, in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

Paragraph (f) provides that a public entity may not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover any costs of measures required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part. Such measures may include the provision of auxiliary aids or of modifications required to provide program accessibility.

Section 35.131 Illegal Use of Drugs

Section 35.131 effectuates section 510 of the ADA, which clarifies the Act's application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

The Act and the regulation distinguish between *illegal* use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 35.131 (although alcoholics are individuals with disabilities, subject to the protections of the statute). Section 35.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It is the *use* of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the use of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are

individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 35.104, which is based on the report of the Conference Committee, H.R. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990) (hereinafter "Conference report"), is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use, is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided in connection with drug rehabilitation to an individual on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services. A health care facility, such as a hospital or clinic, may not refuse treatment to an individual in need of the services it provides on the grounds that the individual is illegally using drugs, but it is not required by this section to provide services that it does not ordinarily provide. For example, a health care facility that specializes in a particular type of treatment, such as care of burn victims, is not required to provide drug rehabilitation services, but it cannot refuse to treat a individual's burns on the grounds that the individual is illegally using drugs.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 510(b) of the Act that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure that an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully is no longer engaging in the illegal use of drugs. The section is not to be "construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs."

Paragraph 35.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures that would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

Section 35.132 Smoking

Section 35.132 restates the clarification in section 501(b) of the Act that the Act does not preclude the prohibition of, or imposition of restrictions on, smoking in transportation covered by title II.

Section 35.133 Maintenance of Accessible Features

Section 35.133 provides that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part. The Act requires that, to the maximum extent feasible, facilities must be accessible to, and usable by, individuals with disabilities. This section recognizes that it is not sufficient to provide features such as accessible routes, elevators, or ramps, if those features are not maintained in a manner that enables individuals with disabilities to use them. Inoperable elevators, locked automatic doors, or "accessible" routes that are obstructed by furniture, filing cabinets, or potted plants are neither "accessible to" nor "usable by" individuals with disabilities.

It is, of course, impossible to guarantee that mechanical devices will never fail to operate. Therefore, it is not intended that isolated instances of mechanical failure be considered violations of the Act or this part. However, repeated mechanical failures due to improper or inadequate maintenance would violate this part. Failure of the public entity to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate this part.

Section 35.134 Retaliation or coercion

Section 35.134 implements section 503 of the ADA, which prohibits retaliation against any person who exercises his or her rights under the Act. Paragraph (a) provides that no private or public entity shall discriminate against any individual because that individual has exercised his or her right to oppose any act or practice made unlawful by the Act or this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

Paragraph (b) provides that no private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise of his or her rights under this part or because that individual aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by the Act or this part.

Subpart C—Employment

Section 35.140 Employment discrimination prohibited

Title II of the ADA applies to all activities of public entities, including their employment practices. In its report on title II of the ADA, the House Education and Labor Committee stated that title II "essentially simply extends the antidiscrimination prohibition embodied in section 504 to all actions of state and local governments," and that "the forms of discrimination prohibited by section 202 (are) identical to those set out in the applicable provisions of titles I and III of this legislation." Education and Labor report at 84. Section 504's broad coverage of employment practices is well-established. See *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984).

Section 204(b) of the Act requires that regulations issued to implement title II be consistent not only with specified section 504 regulations but with the Act itself. In title I of the ADA, Congress

carefully considered the remedial scheme that it wished to create for attacking discrimination in employment. In order to give effect to these provisions, § 35.140 of the proposed rule provides that the definitions, requirements, and procedures of title I of the Act, as established by the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to complaints of employment discrimination against public entities.

This incorporation of title I standards includes the title I definition of "employer." Under that definition, a public entity with 25 or more employees will only become subject to the ADA's employment provisions on July 26, 1992, and those with 15–24 employees on July 26, 1994. Public entities with fewer than 15 employees will not be subject to the ADA's employment requirements.

Section 35.140 does not affect a public entity's coverage under section 504 with respect to programs or activities receiving Federal financial assistance.

Subpart D—Program Accessibility

Section 35.149 Discrimination Prohibited

Section 35.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 35.150 and 35.151.

Section 35.150 Existing Facilities

Consistent with section 204(b) of the Act, this proposed regulation adopts the program accessibility concept found in the section 504 regulations for federally conducted programs or activities (e.g., 28 CFR part 39). Section 35.150 requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. The regulation makes clear, however, that a public entity is not required to make each of its existing facilities accessible (§ 35.150(a)(1)).

Paragraph (a)(2), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph (b).

Paragraph (a)(3), which is taken from the section 504 regulations for federally conducted programs, generally codifies case law that defines the scope of the public entity's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, a public entity is not required to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens. A similar limitation is provided in § 35.164.

This paragraph does not establish an absolute defense; it does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity is not required to take actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity.

It is the Department's view that compliance with § 35.150(a), like compliance with the corresponding provisions of the section 504 regulations for federally conducted programs, would in most cases not result in undue financial and administrative burdens on a public entity. In determining whether financial and administrative burdens are undue, all public entity resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of § 35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the public entity. The decision that compliance would result in such alteration or burdens must be made by the public entity head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the public entity head's decision or failure to make a decision may file a complaint under the compliance procedures established in subpart F.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the public entity shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with disabilities. Structural changes in existing facilities are required only when there is no other feasible way to make the public entity's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alteration to a load-bearing structural member.) The public entity may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

The legislative history of title II of the ADA makes it clear that, under title II, "local and state governments are required to provide curb cuts on public streets." Education and Labor report at 84. As the rationale for the provision of curb cuts, the House report explains, "The employment, transportation, and public accommodation sections of . . . (the ADA) would be meaningless if people who use wheelchairs were not afforded the opportunity to travel on and between the streets." *Id.* Section 35.151, which establishes accessibility requirements for new construction and alterations, will apply to any curbing on a public street, road or highway that is to be constructed or altered by a public entity, and would require the entity to install ramps at any intersection having curbs or other barriers to entry onto the street or road from a sidewalk. The general requirement for program accessibility would apply to the provision of curb cuts at existing crosswalks. Similarly, a public entity should provide an adequate number of accessible parking spaces in existing parking lots or garages over which it has jurisdiction.

Historic preservation programs. Paragraph (a)(2) of § 35.150 provides a special limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties, on the one hand, and to eliminate discrimination against individuals with disabilities on the other, paragraph (a)(2) provides that, in historic preservation programs, the public entity is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, paragraph (b)(2) requires the public entity to give priority to methods of providing program accessibility that permit individuals with disabilities to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the public entity administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities (§ 35.130(d)). Only when

providing physical access would result in a substantial impairment of significant historic features, a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the public entity adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in paragraph (b)(2).

The special limitation on program accessibility set forth in paragraph (a)(2) is applicable only to programs that have preservation of historic properties as a primary purpose. Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the public entity is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Time periods. Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. Like the regulations for federally assisted programs (e.g., 28 CFR 41.57(b)), paragraph (c) requires the public entity to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation.

Where structural modifications are required, paragraph (d) requires that a transition plan be developed by an entity that employs 50 or more persons, within six months of the effective date of this regulation. Paragraph (d)(3) provides that, if a public entity has already completed a transition plan required by a regulation implementing section 504, the transition plan required by this part will apply only to those policies and practices that were not covered by the previous transition plan.

Aside from structural changes, all other necessary steps to achieve compliance with this part shall be taken within sixty days. Of course, this section does not reduce or eliminate any obligations that are already applicable to a public entity under section 504.

Section 35.151 New Construction and Alterations

Section 35.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of a public entity, after the effective date of this part, shall be designed, constructed, or altered to be readily accessible to and usable by individuals with disabilities. Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of this section with respect to those facilities. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

The Department proposes to adopt UFAS as the interim accessibility standard under this rule because it is the standard now referenced by the regulations implementing section 504 of the Rehabilitation Act promulgated by most Federal funding agencies. It is, therefore, familiar to the State and local government entities subject to this rule. However, it should be noted that section 504 of the ADA requires the Architectural and Transportation Barriers Compliance Board (Board) to issue supplemental Minimum Guidelines and Requirements for Accessible Design of buildings and facilities subject to the Act. Section 204(c) of the ADA provides that the Attorney General shall promulgate regulations implementing title II that are consistent with the Board's ADA guidelines. The Department anticipates that after the Board's title II guidelines have been published, this rule will be amended to adopt those guidelines as the accessibility standards.

Existing buildings leased by the public entity after the effective date of this part are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 35.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the same program accessibility standard should apply to both owned and leased existing buildings.

On the other hand, the more accessible the leased space is, the fewer structural modifications will be required in the future for particular employees whose disabilities may necessitate barrier removal as a reasonable accommodation. Pursuant to the requirements for leased buildings contained in the Minimum Guidelines and Requirements for Accessible Design published under the Architectural Barriers Act by the Architectural and Transportation Barriers Compliance Board, 36 CFR 1190.34, the Federal Government may not lease a building unless it contains (1) one accessible route from an accessible entrance to those areas in which the principal activities for which the building is leased are conducted, (2) accessible toilet facilities, and (3) accessible parking facilities, if a parking area is included within the lease (36 CFR 1190.34). Although these requirements are not applicable to buildings leased by public entities covered by this regulation, such entities are encouraged to look for the most accessible space available to lease and to attempt to find space complying at least with these minimum Federal requirements.

Section 35.151(d) gives effect to the intent of Congress, expressed in section 504(c) of the Act, that this part recognize that the national interest in preserving significant historic structures warrants deference to statutory restrictions placed on alterations to historic facilities by Federal, State, and local statutes. Therefore, paragraph (d)(1) of § 35.151 provides that in making alterations to facilities that are subject to Federal, State, or local statutes requiring historic preservation of the facility, priority shall be given to methods that provide physical access to individuals with disabilities, but paragraph (d)(2) provides that if it is not possible to provide physical access to an historic property without substantially impairing the historic features of the facility, then alternative methods of accessibility shall be provided pursuant to the requirements of § 35.150.

Subpart E—Communications

Section 35.160 General

Section 35.160 requires the public entity to take such steps as may be necessary to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

Paragraph (b) requires the public entity to furnish appropriate auxiliary aids when necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The public

entity must provide an opportunity for individuals with disabilities to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the public entity (§ 35.160(b)(1)). The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164.

Section 35.160 (b)(2) provides that the public entity need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. For example, the public entity need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the public entity to provide wheelchairs to persons with mobility impairments.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate.

Section 35.161 Telecommunication Devices for the Deaf (TDD's)

Section 35.161 requires that, where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems be used to communicate with individuals with impaired speech or hearing.

Many persons with impaired speech or hearing are unable to communicate effectively using telephone voice transmissions. Title IV of the ADA addresses this problem by requiring establishment of telecommunications relay services to permit individuals using Telecommunication Devices for the Deaf (TDD's) to communicate with people using voice telephones. A TDD is a device that converts letters typed on a keyboard into tones that are transmitted over standard telephone circuits to another TDD at the receiving end which, in turn, converts them back to letters that are printed or displayed on a screen. When both the caller and the person being called have compatible TDD's, they are able to communicate directly without any voice transmission. Problems arise when an individual who does not have a TDD needs to communicate with an individual who uses a TDD. The relay services required by title IV would involve a relay operator using both a voice telephone and a TDD to type the voice messages to the TDD user and speak the TDD messages to the voice user.

Section 204(b) of the ADA requires that the regulation implementing title II with respect to communications be consistent with the Department of Justice's regulation implementing section 504 for its federally conducted programs and activities at 28 CFR part 39. Section 35.161 is taken from paragraph (a)(2) of § 39.160 of the Justice federally conducted regulation, which requires use of TDD's or equally effective telecommunication systems for communication with people who are unable to use the Department's voice telephone system. Of course, where relay services, such as those required by title IV of the ADA are available, a public entity may use those services to meet the requirements of this section.

Section 35.162 Telephone Emergency Services

Many public entities provide telephone emergency services by which individual's can seek immediate assistance from police, fire, ambulance, and other emergency services. These telephone emergency services—including "911" services—are clearly a vital public service whose reliability can be a matter of life or death. The legislative history of title II specifically reflects congressional intent that public entities must ensure that telephone emergency services, including 911 services, be accessible to persons with impaired hearing and speech through telecommunications technology. Conference report at 67–68; Education and Labor report at 84–85.

Telecommunications technology makes it feasible for public entities to provide direct access to telephone emergency systems for persons with speech or hearing impairments who use telecommunications devices for the deaf (TDD's). TDD's use either the Baudot format or the American Standard Code for Information Interchange (ASCII) format to make telephone calls. Computer modems generally use the ASCII format. The House and Senate conferees intended that, to be accessible, telephone emergency services must be able to use both Baudot and ASCII codes for telecommunications. Conference report at 68.

Section 35.162 mandates that public entities that provide emergency telephone services provide services to persons with disabilities that are functionally equivalent to the services provided to others. The section is drafted to reflect the congressional intent embodied in the legislative history of the ADA. Public entities must equip their telephone emergency services with technology that provides persons with disabilities with services that are "functionally equivalent" to voice services offered to non-disabled persons. See 136 Cong. Rec. H2431 (daily ed. May 17, 1990) (statement of Rep. Gunderson).

The requirement for accessible telephone emergency services should not have the effect of freezing technology or thwarting the introduction of superior or more efficient technology. Telecommunications technology to be required refers not only to "installation of a TDD or compatible ASCII or Baudot computer modems by programs operating these services," but also to "future technological advances—such as speech to text services." Education and Labor report at 85.

Section 35.163 Information and Signage

Section 35.163 requires the public entity to provide information to individuals with disabilities concerning accessible services, activities, and facilities. Paragraph (b) requires the public entity to provide signage at all inaccessible entrances to each of its facilities that directs users to an accessible entrance or to a location with information about accessible facilities.

Section 35.164 Duties

Section 35.164, like paragraph (a)(3) of § 35.150, is taken from the section 504 regulations for federally conducted programs. Like paragraph (a)(3), it limits the obligation of the public entity to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it. It also includes specific requirements for determining the existence of undue financial and administrative burdens. The preamble discussion of § 35.150(a) regarding that determination also applies to this section and should be referred to for a complete understanding of the public entity's obligation to comply with §§ 35.160–35.164. Because of the essential nature of the services provided by telephone emergency systems, the Department anticipates that § 35.164 will rarely be applied to § 35.162.

Subpart F—Compliance Procedures

Subpart F sets out the procedures for administrative enforcement of this part. Section 203 of the Act provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) for enforcement of section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance, shall be the remedies, procedures, and rights for enforcement of title II. Section 505, in turn, incorporates by reference the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to 2000d–4a). Title VI, which prohibits discrimination on the basis of race, color, or national origin in federally assisted programs, is administratively enforced by the Federal agencies that provide the Federal financial assistance to the covered programs and activities in question, and the primary enforcement sanction is the termination of Federal funds to a program that is found to discriminate.

Title II of the ADA extended the requirements of section 504 to all services, programs, and activities of State and local governments, not only those that receive Federal financial assistance. The House Committee on Education and Labor explained the enforcement provisions as follows:

> It is the Committee's intent that administrative enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.
>
> The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local governments. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, . . . the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.
>
> The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities, which includes the full panoply of remedies. Again, consistent with section 504, it is not the Committee's intent that persons with disabilities need to exhaust Federal administrative remedies before exercising their private right of action.

Education & Labor report at 98. See also Senate report at 57–58.

Subpart F effectuates the congressional intent by deferring to section 504 procedures where those procedures are applicable, that is, where a Federal agency has jurisdiction under section 504 by virtue of its provision of Federal financial assistance to the program or activity in which the discrimination is alleged to have occurred. Deferral to the 504 procedures also makes the sanction of fund termination available where necessary to achieve compliance. Because the Civil Rights Restoration Act (Pub. L. 100–259) extended the application of section 504 to all of the operations of the public entity receiving the Federal financial assistance, many activities of State and local governments are already covered by section 504. The procedures in subpart F apply to complaints concerning services, programs, and activities of public entities that are covered by the ADA.

Subpart G designates the Federal agencies responsible for enforcing the ADA with respect to specific components of State and local government. It does not, however, displace existing jurisdiction under section 504 of the various funding agencies. Individuals may still file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. Subpart F establishes the procedures to be followed by the agencies designated in subpart G for processing complaints against State and local government entities that do not receive Federal funds.

Section 35.170 Complaints

Section 35.170 provides that any individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part within 180 days of the date of the alleged discrimination, unless the time for filing is extended by the agency for good cause. Filing the complaint with any Federal agency will satisfy the requirement for timely filing. As explained below, a complaint filed with an agency that has jurisdiction under section 504 will be processed under the agency's procedures for enforcing section 504.

Section 35.171 Acceptance of Complaints

Section 35.171 establishes procedures for determining jurisdiction and responsibility for processing complaints against public entities. The Department is proposing to provide complainants an opportunity to file with the Federal funding agency of their choice. If that agency does not have jurisdiction under section 504, however, and is not the agency designated under subpart G as responsible for that public entity, the agency must refer the complaint to the appropriate designated agency. Whenever the appropriate designated agency receives a complaint, it will process the complaint under section 504, if it has jurisdiction under section 504, or, if it does not have jurisdiction under section 504, it will treat the complaint as an ADA complaint under the procedures established in this subpart. Section 35.171 also contains procedures for coordinating the processing of employment complaints with the EEOC.

Section 35.172 Resolution of Complaints

Section 35.172 requires the designated agency to either resolve the complaint or issue to the complainant and the recipient a Letter of Findings containing findings of fact and conclusions of law and a description of a remedy for each violation found.

The Act requires the Department of Justice to establish administrative procedures for resolution of complaints, but does not require complainants to exhaust these administrative remedies. The Committee Reports make clear that Congress intended to provide a private right of action with the full panoply of remedies for individual victims of discrimination. Thus, as explained in paragraph (b) of § 35.172, the complainant may elect to pursue a private suit if the designated agency does not find a violation. If the agency does find a violation, the complainant may still file a private suit, or the procedures in §§ 35.173 and 35.174 shall be followed. The complainant may also elect to proceed with a private suit at any time, because the Act provides a private right of action and does not require exhaustion of administrative remedies.

Section 35.173 Voluntary Compliance Agreements

Section 35.173 requires the agency to attempt to resolve all complaints in which it finds noncompliance through voluntary compliance agreements enforceable by the Attorney General.

Section 35.174 Referral

Section 35.174 provides for referral of the matter to the Department of Justice if the agency is unable to obtain voluntary compliance.

Section 35.175 Attorney's Fees

Section 35.175 states that courts are authorized to award attorney's fees, as provided in section 505 of the Act.

Section 35.176 Alternative Means of Dispute Resolution

Section 35.176 restates section 513 of the Act, which encourages use of alternative means of dispute resolution.

Section 35.177 Effect of Unavailability of Technical Assistance

Section 35.177 explains that, as provided in section 506(c) of the Act, a public entity is not excused from compliance with the requirements of this part because of any failure to receive technical assistance.

Section 35.178 State Immunity

Section 35.178 restates the provision of section 502 of the Act that a State is not immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court for violations of the Act, and that the same remedies are available for any such violations as are available in an action against an entity other than a State.

Subpart C—Designated Agencies

Section 35.190 Designated Agencies

Subpart G designates the Federal agencies responsible for investigating complaints under this part. At least 28 agencies currently administer programs of Federal financial assistance that are subject to the nondiscrimination requirements of section 504 as well as other civil rights statutes. A majority of these agencies administer modest programs of Federal financial assistance and/or devote minimal resources exclusively to "external" civil rights enforcement activities. Under Executive Order 12250, the Department of Justice has encouraged the use of delegation agreements under which certain civil rights compliance responsibilities for a class of recipients funded by more than one agency are delegated by an agency or agencies to a "lead" agency. For example, many agencies that fund institutions of higher education have signed agreements that designate the Department of Education as the "lead" agency for this class of recipients.

The use of delegation agreements reduces overlap and duplication of effort, and thereby strengthens overall civil rights enforcement. However, the use of these agreements to date generally has been limited to education and health care recipients. These classes of recipients are funded by numerous agencies and the logical connection to a lead agency is clear (e.g., the Department of Education for colleges and universities, and the Department of Health and Human Services for hospitals).

The ADA's expanded coverage of State and local government operations further complicates the process of establishing Federal agency jurisdiction for the purpose of investigating complaints of discrimination on the basis of disability. Because all operations of public entities now are covered, irrespective of the presence or absence of Federal financial assistance, many additional State and local government functions and organizations now are subject to Federal jurisdiction. In some cases, there is no historical or single clear-cut subject matter relationship with a Federal agency as was the case in the education example described above. Further, the 33,000 governmental jurisdictions subject to the ADA differ greatly in their organization, making a detailed and workable division of Federal agency jurisdiction by individual State, county, or municipal entity unrealistic.

The Department of Justice proposes to apply the delegation concept to the investigation of complaints of discrimination on the basis of disability by public entities under the ADA. The Department of Justice proposes to designate nine agencies, rather than all agencies currently administering programs of Federal financial assistance, as responsible for investigating complaints under this part. These "designated agencies" generally have the largest civil rights compliance staffs, the most experience in complaint investigations and disability issues, and broad yet clear subject area responsibilities. The proposed division of responsibilities is made functionally rather than by public entity type or name designation. For example, under this proposal all entities (regardless of their title) that exercise responsibilities, regulate, or administer services or programs relating to lands and natural resources would fall within the jurisdiction of the Department of Interior.

It is anticipated that complaints under this part will be investigated by the designated agency most closely related to the functions exercised by the governmental component against which the complaint is lodged. For example, a complaint against a State real estate commission or a local housing code enforcement division, where such a commission or division is a recognizable entity, would be investigated by the Department of Housing and Urban Development (the designated agency for real estate industry and housing code enforcement functions), even though both entities were part of a general umbrella department of planning and regulation (for which the Department of Justice is the designated agency). If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

This proposal also assigns the Department of Justice as the designated agency responsible for all State and local government functions not assigned to other designated agencies. The Department of Justice, under an agreement with the Department of the Treasury, continues to receive and coordinate the investigation of complaints filed under the Revenue Sharing Act. This entitlement program, which was terminated in 1986, provided civil rights compliance jurisdiction for a wide variety of complaints regarding the use of Federal funds to support various general activities of local governments. In the absence of any similar program of Federal financial assistance administered by another Federal agency, placement of designated agency responsibilities for miscellaneous and otherwise undesignated functions with the Department of Justice is proposed as an appropriate continuation of current practice.

The Department of Justice seeks comments on the proposed listing of designated agencies and their areas of responsibility. Suggestions and alternatives are welcomed to improve the proposed complaint investigation procedures.

Regulatory Process Matters

This notice of proposed rulemaking has been reviewed by the Office of Management and Budget under Executive Order 12291. The Department has determined that it is not a major rule for purposes of that executive order. The Department has nonetheless prepared a preliminary regulatory impact analysis (RIA) of this rule and will provide copies of this document to the public on request. The Department encourages comment on this RIA as well as the submission of any data that would assist the Department in estimating the costs and benefits of the proposed rule.

The Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, it is not subject to the Regulatory Flexibility Act.

The Department is preparing a statement of the federalism impact of the proposed rule under Executive Order 12612 and will provide copies of this statement on request.

The reporting and recordkeeping requirements described in the proposed rule are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR part 1320. Accordingly, those proposed information collection requirements are being submitted to OMB for review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Department of Justice. The Department requests that comments sent to OMB also be sent to the rulemaking docket for this proposed action, at the address given in the **"ADDRESSES"** section of this notice.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Civil rights, Drug abuse, Handicapped, Historic preservation, Intergovernmental relations, Reporting and recordkeeping requirements.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510, 5 U.S.C. 301, and section 204 of the Americans with Disabilities Act, and for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 35 to read as follows:

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Subpart A—General

Sec.
35.101 Purpose.
35.102 Application.
35.103 Relationship to other laws.
35.104 Definitions.
35.105 Self-evaluation.
35.106 Notice.
35.107 Designation of responsible employee and adoption of grievance procedures.
35.108–35.129 [Reserved]

Subpart B—General Requirements

35.130 General prohibitions against discrimination.
35.131 Illegal use of drugs.
35.132 Smoking.
35.133 Maintenance of accessible features.
35.134 Retaliation or coercion.
35.135–35.139 [Reserved]

Subpart C—Employment

35.140 Employment discrimination prohibited.
35.141–35.148 [Reserved]

Subpart D—Program Accessibility

35.149 Discrimination prohibited.
35.150 Existing facilities.
35.151 New construction and alterations.
35.152–35.159 [Reserved]

Subpart E—Communications

35.160 General.
35.161 Telecommunication devices for the deaf (TDD's).
35.162 Telephone emergency services.
35.163 Information and signage.
35.164 Duties.
35.165–35.168 [Reserved]

Subpart F—Compliance Procedures

35.170 Complaints.
35.171 Acceptance of complaints.
35.172 Resolution of complaints.
35.173 Voluntary compliance agreements.
35.174 Referral.
35.175 Attorney's fees.
35.176 Alternative means of dispute resolution.
35.177 Effect of unavailability of technical assistance.
35.178 State immunity.
35.179–35.189 [Reserved]

Subpart G—Designated Agencies

35.190 Designated agencies.
35.191–35.999 [Reserved]

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; title II, pub. L. 101–336 (42 U.S.C. 12134).

Subpart A—General

§ 35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability by public entities.

§ 35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) Public transportation services, programs, and activities of public entities are covered by regulations implementing subtitle B of title II of the ADA issued by the Department of Transportation at 49 CFR part 37. The specific provisions of the Department of Transportation's regulation, including the limitations on those provisions, control over the general provisions in this part in circumstances where both specific and general provisions apply.

§ 35.103 Relationship to other laws.

This part does not invalidate or limit the remedies, rights, and procedures of any Federal laws, or State or local laws (including State common law), that provide greater or equal protection for the rights of individuals with disabilities.

§ 35.104 Definitions.

For purposes of this part, the term—

Act means the Americans with Disabilities Act (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611).

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, television decoders, telecommunication devices for deaf persons (TDD's), or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Disability means, with respect to an individual, a permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

BEST COPY AVAILABLE

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction, and alcoholism.

(iii) The phrase *physical or mental impairment* does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.

(5) The term *disability* does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term *illegal use of drugs* does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term *individual with a disability* does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

§ 35.105 Self-evaluation.

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108-35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

§ 35.131 Illegal use of drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and drug rehabilitation services.* A public entity shall not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

§ 35.133 Maintenance of accessible features.

A public entity shall maintain in operable working condition those

features of facilities and equipment that are required by the Act or this part to be readily accessible to and usable by persons with disabilities.

§ 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

§§ 35.135–35.139 [Reserved]

Subpart C—Employment

§ 35.140 Employment discrimination prohibited.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity. The definitions, requirements, and procedures of title I of the Act, as established by the Equal Employment Opportunity Commission in 29 CFR part 1630, shall apply to employment in any service, program, or activity conducted by a public entity.

§§ 35.141–35.148 [Reserved]

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities.

(a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require a public entity to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) *Methods*—(1) *General.* A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Uniform Federal Accessibility Standards. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 35.150(a of this part in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraphs (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include —

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* A public entity shall comply with the obligations established under this section within sixty days of the effective date of this regulation, except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this regulation, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of the effective date of this regulation, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(3) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph shall apply only to those policies and practices that were not included in the previous transition plan.

§ 35.151 New construction and alterations.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a public entity after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

(c) *Accessibility standards.* Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (Appendix A to 41 CFR part 101–19, subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those facilities. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) *Alterations: Historic preservation.* (1) In making alterations to facilities that are subject to Federal, State, or local statutes requiring historic preservation of the facility, priority shall be given to methods that provide physical access to individuals with disabilities.

(2) If it is not possible to provide physical access to an historic property without substantially impairing the historic features of the facility, alternative methods of accessibility shall be provided pursuant to the requirements of § 35.150.

§§ 35.152–35.159 [Reserved]

Subpart E—Communications

§ 35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b) A public entity shall furnish appropriate auxiliary aids where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(1) In determining what type of auxiliary aid is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

(2) A public entity need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

§ 35.161 Telecommunication devices for the deaf (TDD's).

Where a public entity communicates with applicants and beneficiaries by telephone, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§ 35.162 Telephone emergency services.

Telephone emergency services, including 911 services, must provide to individuals who use TDD's or computer modems access that is functionally equivalent to that provided to other telephone users. The services must be provided in all commonly used formats, such as Baudot and ASCII, that are compatible with these devices.

§ 35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§ 35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165–35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints.

(a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

§ 35.171 Acceptance of complaints.

(a) *Designated agency.* Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall determine under subpart G of this part whether it is the designated agency responsible for complaints filed against that public entity.

(1) If the agency determines that it is not the designated agency, it shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(i) If the agency has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly notify the complainant that it is referring the complaint to the appropriate agency designated in subpart G of this part.

(2) If the agency determines that it is the designated agency under subpart G of this part, it shall promptly review the complaint to determine whether it has jurisdiction under section 504.

(i) If the designated agency has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the designated agency does not have section 504 jurisdiction, it shall process the complaint according to the procedures established by this subpart.

(b) *Employment complaints.* (1) Complaints alleging employment discrimination subject to both section 504 and this part shall be processed in accordance with procedures established in the coordination regulation issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) Complaints alleging employment discrimination subject to this part, but not to section 504, shall be referred to the Equal Employment Opportunity Commission for processing under the definitions, requirements, and procedures of title I of the Act, 29 CFR part 1630.

(c) *Complete complaints.* (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds no violation, the complainant may file a private suit pursuant to section 203 of the Act. If the designated agency finds noncompliance, the procedures in §§ 35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate compliance activities for State and local government components.

(b) The Federal agencies listed in paragraphs (b) (1) through (9) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) *Department of Agriculture:* All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) *Department of Commerce:* All programs, services, and regulatory activities relating to the development and operation of commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business.

(3) *Department of Education:* All programs, services, and regulatory activities relating to the operation of preschool and daycare programs, elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than medical and nursing schools), museums and libraries, the arts and humanities, and historic and cultural preservation.

(4) *Department of Health and Human Services:* All programs, services, and regulatory activities relating to the provision of health care and social services including medical and nursing schools, and the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs.

(5) *Department of Housing and Urban Development:* All programs, services and regulatory activities relating to state and local public housing, housing assistance and referral, rent control, the real estate industry, and housing code administration.

(6) *Department of Interior:* All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, and energy.

(7) *Department of Justice:* All programs, services, and regulatory activities relating to public safety and the administration of justice, including courts; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e. g., audit, personnel, comptroller, administrative services); all other government' functions not assigned to other designated agencies.

(8) *Department of Labor:* All programs, services, and regulatory activities relating to labor and the work force.

(9) *Department of Transportation:* All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.

§§ 35.191–35.999 [Reserved]

Dated: February 20, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–4384 Filed 2–27–91; 8:45 am]

BILLING CODE 4410-01-M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part V

Department of the Interior

Office of the Secretary

Wetlands Task Force Meetings and Written Comments—Summary; Notice of Availability

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Wetlands Task Force Meetings and Written Comments—Summary

AGENCY: Office of the Secretary, Interior.
ACTION: Notice of Availability.

SUMMARY: The Domestic Policy Council's Task Force on Wetlands announced in the July 25, 1990 **Federal Register** (55 FR 30279–80), a series of public meetings and requested comments regarding strategies for working toward a national goal of "no net loss" of wetlands. The Task Force held six meetings between August 17, 1990, and September 17, 1990. Public comments were received between July 25, 1990 and September 28, 1990. A summary of the results of the public meetings and responses received by the Domestic Policy Council Task Force follows.

ADDRESSES: The complete file of public meeting transcripts, written testimony, and written responses received by mail is available for inspection, by appointment, during normal business hours (7:45 am to 4:15 pm) at the U.S. Department of the Interior, Fish and Wildlife Service, Division of Habitat Conservation, room 400, 4401 N. Fairfax Drive, Arlington, Virginia, 22203. Copies of this summary document are also available through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Please identify the document by the title "Domestic Policy Council's Task Force on Wetlands—Summary of Public Meetings and Written Comments" and the assigned document number PB 91–144113. If requesting a paper copy, use the code number A06; for microfiche copies, use the code number A01. The Sales desk number for the National Technical Information Service is (703) 487–4650. The FAX number for sales is (703) 321–8547. A three dollar handling fee applies for each order.

FOR FURTHER INFORMATION CONTACT: William E. Knapp, Chief of the Division of Habitat Conservation, Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: In an address before the Ducks Unlimited Sixth International Waterfowl Symposium in 1989, President Bush identified the goal of "no net loss" of wetlands as a major element of his Administration's environmental program. The President directed the Domestic Policy Council's Task Force on Wetlands to solicit and receive comments and public input on strategies for working toward a national goal of "no net loss" of wetlands. The Task Force includes representatives from The White House Offices of Cabinet Affairs, Policy Development, and Management and Budget; the Departments of Agriculture, Commerce, Defense, Energy, Housing and Urban Development, Interior, Justice, and Transportation; the Environmental Protection Agency; and the Council of Environmental Quality.

In order to obtain public comment and input regarding the "no net loss" goal, the Task Force announced a series of public meetings and requested written comments in the **Federal Register** (55 FR 30279–80). Among the policy issues the Task Force identified as topics for public comment were: (1) Possible revisions to Executive Order 11990 on the "Protection of Wetlands," and (2) the roles of Federal, State and local governments in developing and using regulatory and non-regulatory tools, including market-based incentives, to achieve "no net loss" of wetlands. The Task Force encouraged participants at the public meetings and those making written comments to focus their remarks on ways to pursue the goal of "no net loss" of wetlands. Questions developed by the Task Force for the public comment process included:

- What should be the appropriate Federal, State and local government roles in working toward the national goal of "no net loss" of wetlands?
- What regulatory and non-regulatory mechanisms now in place offer the best and most effective means of helping achieve the goal?
- What new or revised regulatory and non-regulatory approaches, including market-based incentives, should be considered?
- How effective are current Federal, State and local laws in protecting wetlands?
- At what level should the "no net loss" goal be applied—on an individual property basis, locally within the State or region, or at the national level?
- To what extent can wetlands effectively be created or restored? What tools or approaches should be used to ensure that creation or restoration projects are successful, especially over the long term?
- What role should mitigation banking play in working toward the "no net loss" goal?
- Should wetlands be indexed according to their functions and values in applying the "no net loss" goal? If so, what criteria should be used to determine the index?
- What are the potential effects of specific wetland policies on farmers, public works projects, businesses, and the environment?
- How do we balance the need to protect wetlands against the potential effects on farmers, businesses and public works projects?
- What research or data collection is necessary in working toward the "no net loss" goal?
- How should the Federal Government manage its wetlands? How should the existence of wetlands be addressed prior to disposal of Federal properties?
- What can be done to encourage public awareness of the value of wetlands?

The U.S. Department of the Interior was assigned responsibility for arranging the public meetings, managing the public record, and summarizing the comments, testimony, and transcripts of the meetings.

Overview of Written Comments Received

All written comments received or postmarked by September 28, 1990 (the close of the public comment period), were included in the public record. Approximately 4500 written responses including letters, form letters, maps, issue papers, video tapes, technical papers and other documents presenting a wide and divergent range of information and opinion regarding "no net loss" of wetlands were received during that time. Comments were received from United States Congressional representatives; State, regional, tribal and local governments; national and local trade and industrial organizations; national and local conservation organizations; individual companies and corporations; citizen groups; agricultural agencies; professional societies; forestry groups and organizations; and other organizations and individuals. Most written comments expressed general support for the concept of "no net loss" of wetlands. A large number of commenters recognized the ecological and economic values associated with wetlands and the majority of them supported their protection. Many expressed concerns over the nature and implementation of such a concept and the potential effects of a "no net loss" policy on landowners, natural resources, public projects, and a variety of economic activities. Letters and other materials received from conservation and environmental organizations, wetland scientists and many other individuals focused on the seriousness of wetland losses that have already occurred and the need to arrest the decline of wetlands. These commenters also cited the contribution of wetlands to wildlife and fisheries habitat; to economic activities such as commercial fisheries; and to water quality and flood protection. Most letters and other materials received from agricultural groups, individual farmers and ranchers, business organizations, forestry and forest product organizations, industry groups and consultants, and other organizations and individuals expressed concern about the effects of present and future wetlands regulations and policies on economic activities and private property rights. A second concern of these organizations and individuals is the potentially adverse effects of a rigid "no net loss" of wetlands policy on other natural resources and on innovative approaches to wetlands protection.

Overview of Public Meetings

The Task Force held a series of six national meetings to encourage public participation and gather input on strategies for achieving "no net loss" of wetlands. Representatives from the Task Force attended these six meetings. All of the public meetings were set up in a similar manner, and consisted of two main parts. Each meeting began with presentations by panels, representing individuals and groups having similar backgrounds or interests, who were invited by the Task Force. Each meeting had four panels representing State and local governments; industry, agriculture and commercial interests; conservation groups; and technical experts. The public meeting in Alaska included an additional panel representing Native interests. Following the presentations by each panel, there was a short question and answer period that provided Task Force members the opportunity to discuss specific topics with panel members. The panel sessions were followed by an open microphone session. During this portion of the meeting, all attendees had the opportunity to provide brief oral comments or submit written testimony. All remarks made during the meetings were recorded by professional reporting services.

Comments received during the public meetings, particularly during the open microphone sessions, differed notably from comments received by mail. A majority of the comments heard during the open microphone sessions focused on the potential effects of a "no net loss" policy on landowners, particularly farmers. This is in contrast with the responses received by mail, the majority of which expressed support for a strong "no net loss" policy.

A brief summary of each meeting is listed below:

Bismarck, North Dakota—The first meeting convened by the Wetlands Task Force was held August 17, 1990, in the Doublewood Hotel, Bismarck, North Dakota. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the primary focus of this meeting was the relationship between agriculture and wetlands, with secondary emphasis on wetlands restoration and creation, and migratory waterfowl programs. The geographic scope of the meeting encompassed the States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Montana, Wyoming and Colorado. Governor George Sinner of North Dakota provided opening remarks, and was followed by four panels that included 18 speakers. An estimated 250 to 300 individuals attended this meeting, of whom approximately 60 individuals made oral comments during the open microphone session.

Peoria, Illinois—The second meeting was held August 20, 1990, in the Continental Hotel, Peoria, Illinois. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the meeting focused on wetlands conservation and industrial contamination; wetlands conservation and agriculture; and wetlands restoration and creation. The geographic scope of the meeting encompassed the States of Wisconsin, Michigan, Illinois, Indiana, Ohio, and West Virginia. West Virginia State Senator J.D. Brackenrich was the only Federal or State elected official who provided comments. Four panels, including 21 panelists, provided testimony. Panel presentations were followed by an open microphone session that included approximately 40 speakers. An estimated 250 individuals attended this public meeting.

New Orleans, Louisiana—The third meeting convened by the Wetlands Task Force was held August 27, 1990 in the Airport Hilton Hotel, New Orleans, Louisiana. In addition to the issues and questions raised in the July 25 **Federal Register** notice, the meeting specifically focused on the issues of coastal wetlands losses, the relationships between agricultural activities and wetlands conservation, and the relationships between Federal water resources projects and wetlands restoration. The geographic scope of the meeting encompassed the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Arkansas, Louisiana, Texas and Oklahoma. Governor Buddy Roemer of Louisiana opened the meeting and provided remarks, as did Congressman Robert Livingston of Louisiana. These public officials were followed by four panels that included 22 speakers. The afternoon open microphone session included approximately 80 speakers. It was estimated that 500 individuals attended the public meeting during the course of the day.

Olympia, Washington—The fourth public meeting sponsored by the Wetlands Task Force was held at the Tyee Hotel, Olympia, Washington, on September 5, 1990. In addition to the questions and issues raised in the July 25 **Federal Register** notice, the Olympia meeting focused on coastal wetlands, with secondary emphasis on wetlands conservation and water management. The geographic scope of the meeting included the States of Washington, Oregon, California, Idaho, Nevada, Arizona, New Mexico, Utah, Hawaii, and the Pacific Trust Territories. Governor Booth Gardner of Washington welcomed the Task Force and attendees and provided remarks on "no net loss". Twenty-two speakers from four panels provided testimony followed by an open microphone session that included approximately 50 individuals. Approximately 200 people attended the Olympia public meeting.

Anchorage, Alaska—The fifth Task Force meeting was held on September 7, 1990, in the Clarion Hotel, Anchorage, Alaska. This meeting focused specifically on wetland issues in Alaska. In addition to the four panels that characterized the other public meetings, a fifth panel was organized to focus on interests of Alaskan natives as they involve "no net loss" of wetlands. The meeting was opened by Governor Steve Cowper, followed by the five panels. Twenty-seven panel members made presentations and 49 individuals provided oral or written comments during the open microphone session.

Providence, Rhode Island—The final public meeting held by the Wetlands Task Force was convened in the Omni Biltmore Hotel, Providence, Rhode Island, on September 17, 1990. In addition to the questions and issues raised in the July 25 **Federal Register** Notice, the Providence meeting focused on effects of urban development on wetland resources, the role of State and local wetlands protection programs and estuary and other comprehensive wetlands protection programs. The geographic scope of the meeting encompassed the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware,

Maryland, Virginia and the District of Columbia. Federal elected officials who spoke at the meeting were Senator John Chafee of Rhode Island, Congressman Thomas Ridge of Pennsylvania and Congressman Jimmy Hayes of Louisiana. Twenty-three panel members provided testimony and approximately 60 individuals spoke during the open microphone session. An estimated 350 people attended the meeting.

Summary of Comments

In the July 25, 1990, **Federal Register** Notice (55 FR 30279–80), public comment was sought regarding strategies for working toward a national goal of "no net loss" of wetlands, and public meetings on this topic were announced. All written comments, written testimony, and oral statements recorded during the public meetings or provided by September 28, 1990, were examined and are summarized below. This summary reflects the content of the record of public comments on "no net loss" of wetlands. It does not contain any responses, recommendations, or opinions of the Department of the Interior, or other members of the Task Force. Care was taken not to embellish discussions or make them more complete than the public record. Although discussion is not limited to the questions posed in the July 25, 1990 **Federal Register** notice, those questions provide a framework for this summary.

Issue 1. Public Hearing/Public Comment Process

Several commenters stated that the public meetings were not publicized as extensively as they might have been and that they were conducted too rapidly for citizens and groups to adequately prepare comments. One commenter expressed strong concerns that State governments, and particularly State legislators, were not adequately informed concerning the request for comments or the public meetings. Another felt that the process of putting together panels for the public meetings favored industry and commercial interests, since many potential panel members from academic institutions were unable to attend because they lacked the financial resources of industry, commercial and agricultural groups.

Several commenters were concerned about the number and locations of the public meetings. One respondent captured these concerns by stating that many other regions of the country also have complex and diverse issues that merited additional meetings by the Task Force. Commenters from California and the southwestern States cited issues regarding water rights, controversy regarding the potential effects of a "no net loss" policy on irrigation activities, and the unique characteristics of western wetlands as reasons for additional meetings in their regions. Others felt that the Intermountain and Great Basin regions of the United States have important wetland resources and that a meeting should have been held in those areas. In addition, several commenters noted that no meetings were held in the mid-Atlantic or southeastern States.

Issue 2. What Should Be the Appropriate Federal, State and Local Government Roles in Working Toward the National Goal of "No Net Loss" of Wetlands?

This question attracted many comments. There was general agreement that close cooperation between all levels of government is essential. There was a consensus that the Federal government should provide leadership in developing national policy. However, there were fundamental differences of opinion among respondents as to which level of government should have primacy in regulating wetlands. State and local agencies generally advocated a strong State role. Industry, commercial and agricultural interests generally favored a reduced Federal role. However, many other commenters stated that a strong Federal regulatory presence is necessary to effectively stem the loss of wetlands. Others commented that strong efforts by all levels of government, undertaken in a spirit of cooperation, are necessary to achieve the "no net loss" goal.

A. Role of Federal Government

There was general agreement that the Federal government should establish overall policy and definitions for "no net loss." The rationale for a strong Federal role was that wetlands are a national resource of critical importance. Most commenters felt that this requires not only a uniform policy, but uniform regulation and implementation. One commenter stated that the Federal government should adopt a "no net loss" policy in order to reduce current inconsistencies in the administration of Federal programs as they relate to wetlands. Another commented that Federal adoption of this goal would serve to establish a foundation upon which States and local programs could be built and that the "no net loss" goal should apply to Federally-regulated activities as well as Federally-supported actions.

Many comments were received that recommended a leadership role for the Federal government in wetlands research, particularly in regard to restoration, creation and mitigation banking, and in education and public outreach. One commenter stated that the Federal government could assume a leadership role by example, through good stewardship and by achieving a net gain of wetlands on Federal properties.

Many comments were received regarding the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (Federal Interagency Committee for Wetland Delineation 1989). There was strong agreement that establishment of a single standard for wetlands delineation by Federal agencies is necessary and appropriate. However, there was a strong divergence of opinion concerning the content and application of the manual currently used by the Fish and Wildlife Service, Environmental Protection Agency, Army Corps of Engineers, and Soil Conservation Service.

One issue regarding the Federal role in attaining "no net loss" of wetlands that attracted many comments was the establishment of a single lead agency to direct Federal policies and regulations regarding wetlands. One commenter stated that the current scheme of having multiple agencies directing and influencing regulatory and non-regulatory programs and activities is confusing and counter-productive. Many commenters, particularly from the business and agricultural communities, stated that current Federal and State regulatory programs result in significant delays in permitting, as well as in implementation of mitigation and wetland restoration. Several Federal agencies were named as appropriate for such a leadership role, as follows:

- Several commenters suggested that the Soil Conservation Service (SCS) should have the lead in inventorying and identifying wetlands. SCS has a strong field presence and works closely with many landowners potentially affected by a "no net loss" policy. Similarly, another commenter noted that agricultural groups prefer working with traditional agricultural agencies, and felt that these groups should play an important role in developing wetland policy.
- Other commenters felt that the Army Corps of Engineers (COE) is the appropriate lead agency for wetland issues. COE was recommended primarily by industry and commercial interests who cited the COE public interest review process as a means to balance economic considerations with the "no net loss" goal.
- A significant number of comments, particularly those representing conservation organizations, recommended the U.S. Environmental Protection Agency (EPA) as the lead agency. One commenter contrasted the broad mandate of EPA to restore and maintain the chemical, physical and biological integrity of the Nation's waters under the Clean Water Act to COE's traditional role in navigation and water development projects. Other commenters noted EPA's existing authority under section 404(c) of the Clean Water Act and its role in interpreting the section 404(b)(1) Guidelines.
- Several commenters recommended that the U.S. Fish and Wildlife Service (FWS) of the Department of the Interior take the lead in addressing "no net loss" of wetlands. Commenters cited the Fish and Wildlife Service's expertise in managing wetlands in the National Wildlife Refuge System and helping private landowners manage their own wetlands, as well as its responsibilities for protecting and enhancing fish and wildlife habitats, particularly for waterfowl. The Service's current responsibilities to develop data for the National Wetlands Inventory were also noted.

Not all commenters agreed with the concept of placing a single agency in the lead for developing and managing "no net loss" policies and programs. For example, one commenter noted that the current division of responsibilities for Section 404 acts as a "checks and balances" system that promotes balanced decision-making. Another commented that, in fact, decisions regarding wetlands will always have wide-ranging effects on natural resource management, agriculture, commerce, navigation and transportation, and that realistically, no one Federal agency could, or should, shoulder all of these responsibilities. Many commenters felt that coalitions of Federal, State, regional and local governments are necessary for good decision-making and planning.

Many commenters proposed reducing Federal regulation of wetlands. Specifically, recommendations were made to:

- Have the Federal government establish wetland value categories and allow the States to identify and classify wetlands.
- Provide Federal guidelines for State-administered wetlands programs, using the Coastal Zone Management Act (CZMA) as a model.
- Provide Federal guidance (but not necessarily regulations) for State and local development of area-wide master plans. Utilize existing mechanisms or new approaches at the watershed or regional level.
- At the Federal level, regulate only wetlands of national importance. Wetlands of special importance should be protected by acquisition, with compensation to landowners.
- Limit the Federal role to mediation of inter-State disputes.

Other commenters stressed the need for a continued strong Federal presence, and specifically a strong regulatory program. Several commenters cited examples of where Federal programs made the critical difference in decisions to protect or destroy wetlands. One example was the use of EPA's section 404(c) authority to protect wetlands threatened by a water supply project proposed in Rhode Island. The commenter stated that EPA's denial of the permit was instrumental in the State's subsequent determination that less costly alternatives, both in terms of costs to the State and environmental costs, were feasible.

B. Role of State Government

There was general agreement that the States have an important role in achieving the "no net loss" goal. Many respondents noted a wide disparity among the States in their ability to provide protection for wetlands, making it difficult to achieve a national goal of "no net loss." On the other hand, it was argued that States can be more innovative and flexible in their approaches to realizing that goal.

Comments from conservation organizations and many individuals recognized the importance of State involvement, but expressed concern about the ability of some States to resist development pressures. They generally opposed delegation of regulatory responsibility to States, unless it would be accompanied by very tough conditions and assurances to maximize wetland protection. Some commenters stated that many States are presently ill-prepared to assume the primary responsibility for wetlands regulation.

Many organizations representing industry and businesses, such as real estate and commercial development, and many individuals recommended State regulation under an umbrella of uniform Federal policy and standards. In addition to Federal guidelines, several commenters recommended that assistance in the form of funding be provided by the Federal government; otherwise States might be unwilling to assume these responsibilities. Specific suggestions regarding the States' role in achieving "no net loss" included:

- Delegate all section 404 regulatory responsibility to the States, with no Federal veto, or with veto by COE and not EPA.
- Recognize that wetland protection is a land-use program and that only the States should provide the necessary planning and implementation.
- Delegate to States responsibility for restoration, creation and all mitigation.
- Encourage States to assume a lead role in wetlands inventory, research, acquisition and public education.

Many individuals and organizations representing diverse views on wetlands issues cited Protecting America's Wetlands: an Action Agenda, the Final Report of the National Wetlands Policy Forum (Conservation Foundation 1988), in recommending that States assume a larger role in regulating wetlands. Many commenters noted that the Forum Report recommended a key role for States in implementing its other recommendations. The Forum Report noted that States are probably in the best position to work cooperatively with local governments in promoting private stewardship. It pointed out that States can use a variety of tools, including property tax incentives, creation of local tax districts and land trusts, flexible zoning guidelines, and transferable development rights, to help direct additional development away from wetlands. Several commenters pointed out that the Forum's recommendations are a package, and that State regulatory control is linked to other policy recommendations in the Forum Report.

C. Role of Local Government

The appropriate role of local government in achieving "no net loss" of wetlands did not receive as much comment as Federal and State roles in achieving this goal. One exception was the public hearing held in Anchorage, Alaska, September 7, 1990, where the Task Force convened a panel specifically to solicit viewpoints of local government. Many of the comments discussed below are the result of that panel.

Several comments noted that local government is an appropriate level for developing and implementing land-use planning because local governments have primary responsibilities for developing zoning regulations and land use plans; developing infrastructures such as roadways, sewer and water services, and schools; and providing other community services. Some commenters felt that local governments must play a key role both in developing and implementing wetland policies "on

the ground". Some specific recommendations included:

• Working with State and Federal agencies in developing comprehensive land use plans. Generally, local governments suggested that they should implement such plans.

• Administering section 404 general permits for certain classes of activities, such as rights-of-way for utilities, within local jurisdictions. This would be with certification by the State or Federal permitting authority.

• Participating in regional (such as watersheds) or State coastal planning. Alaska's Coastal Management Program and coastal zone management under the CZMA were cited as examples.

• Working cooperatively with State and Federal governments in developing natural resource inventories and using them in making decisions and in planning.

Several commenters recognized an important role for local government in wetland protection, but expressed concerns that local governments need strong State or Federal guidelines for protecting wetlands. Concerns were expressed about local government's susceptibility to development pressures. Some commenters felt that, without strong guidelines, cities, towns and counties might compete among themselves for industry and development by offering less stringent zoning and wetlands protection measures. One commenter emphasized the need to discourage such competition and stressed that only strong State and Federal guidelines will achieve consistency among localities in their approaches to managing both wetlands and development. Comments from some industry groups recommended a substantial local role. This included developing comprehensive local land-use plans, accompanied by ordinances and zoning for wetland protection.

Issue 3. What Regulatory and Non-Regulatory Approaches Now in Place Offer the Best and Most Effective Means of Helping Achieve the Goal? What New or Revised Regulatory and Non-Regulatory Approaches, Including Market-Based Incentives, Should be Considered?

Nearly all comments received through the public meeting process and through written correspondence referred to this broad issue. Very few comments expressed satisfaction with current regulatory and non-regulatory programs. Much of the discussion focused on the permitting process under Section 404 of the Clean Water Act. Suggestions for improving the process varied widely. Industry, commercial and agricultural organizations and many individuals, including farmers, ranchers, landowners and several State and local officials, generally expressed the view that the present Section 404 regulatory program is complex, lengthy, and may act to deny landowners full use and economic benefit of their lands. These comments generally recommended minimum government regulation and maximum flexibility in determining how the "no net loss" goal should be achieved.

In contrast, most commenters representing conservation organizations, hunters, recreational fisherman, commercial fishermen, and many State regulatory agencies pointed out that section 404 has been ineffective in preventing losses of wetlands and their important values and functions. These commenters noted that section 404 does not effectively regulate many activities that result in losses of wetlands or their functions, and that other destructive activities are not regulated at all. It was pointed out that the deposition of dredged or fill material is regulated under section 404, but that other activities are not. For example, normal agriculture and silviculture activities are exempt from regulation under section 404.

Other commenters stated that the 404 regulatory program is critically understaffed, and that illegal filling of wetlands continues to occur largely due to a lack of enforcement personnel. Finally, one commenter stated that over ninety-five percent of all permit requests are approved, and that such a high ratio of approvals seems to indicate that the section 404 program itself results in a significant loss of wetlands. However, a large number of comments were received that cited the Memorandum of Agreement (MOA) between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act section 404(b)(1) Guidelines, and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands as important changes that have affected implementation of the section 404 program.

There was general agreement that clear definitions of wetlands are critical to developing wetlands policy and protection goals. Many respondents advocated adoption of recommendations by the National Wetland Policy Forum Report in this regard.

A. Regulatory Approaches

The Clean Water Act's section 404 program drew the greatest number of comments. There was general dissatisfaction with the current regulatory process. Commenters who were also permit applicants complained about a lack of clear requirements for acquiring a permit, delays, inconsistencies between COE Districts, lack of coordination and agreement between Federal agencies and enforcement personnel, inadequate training for personnel, and most of all, a lack of clear definitions of wetlands and their values.

There was a wide range of recommendations for resolving problems with the section 404 regulatory program. There was some discussion about terminating it altogether, arguing that it was never intended to be a wetland protection program. Specific recommendations for modifying the program included:

• Streamline the permitting process, particularly by specifying clear definitions of wetlands; what is required to secure a permit, including mitigation requirements; specific deadlines for permit decisions; and a single enforcement agency.

• Make the process flexible enough to recognize regional differences in wetlands. Examples cited included western riparian wetlands, with unique hydrologic and soil conditions; Alaskan permafrost wetlands; pocosin wetlands in the Carolinas; and farmed wetlands.

• Eliminate or modify the Nationwide 26 Permit of the general permits program. It cumulatively results in significant losses of wetlands and is contrary to the goal of "no net loss".

• Initiate permit application fees and assessments, and require them of all applicants, regardless of whether or not a permit is granted. Revenues received could be used to increase staffing and training for wetland regulatory programs.

• Return the permit process to dealing only with navigable waters of the United States and require mitigation only to the "extent appropriate and practical."

• Require that the MOA between the COE and EPA regarding mitigation and the Federal Manual for Identifying and Delineating Jurisdictional Wetlands be subject to administrative procedures and processes.

• Promote the use of Advance Identification under section 404 and use by the COE of Special Area Management Plans (SAMPS) to direct development away from valuable wetlands.

• Develop regional or watershed plans that would be binding and which would provide direction for the permitting process.

• Develop regulations that define wetland functions in terms that most people can understand and accept.

• Address the concerns of highway agencies regarding mitigation by being flexible about on-site, in-kind, mitigation requirements.

• Establish regional and temporary disturbance permits modeled on the Nationwide General Permit System which allows certain kinds of activities in wetlands to occur without the need to obtain individual permits, under the presumption that the adverse effects of these activities are inconsequential.

Many commenters, including farmers, ranchers, and Farm Bureaus commented on section 404 and the "Swampbuster" provision of the Food Security Act. Among their recommendations relating to these regulatory programs were:

• Exempt prior-converted wetlands from Swampbuster restrictions.

• Exempt farmed wetlands from Swampbuster restrictions.

• Compensate landowners for wetlands that are regulated, thereby enabling them to realize the full economic value of their lands.

• Eliminate the placement of easements on foreclosed Farmers Home Administration (FmHA) properties.

• Establish the right of landowners to appeal a Swampbuster wetland determination by the Soil Conservation Service (SCS).

• Delegate to SCS sole responsibility for wetland regulation on farm lands.

• Eliminate regulation of artificial wetlands such as farm ponds, irrigation ponds, rice levees, beaver ponds, and man-made impoundments.

B. Non-Regulatory Approaches

The emphasis on non-regulatory means of encouraging protection of wetlands was toward providing incentives to landowners, and toward acquisition, but to a lesser extent. Successful existing Federal programs identified by respondents included the SCS Water Bank, the Department of Agriculture's Conservation Reserve, and the Fish and Wildlife Service's acquisition and easement programs.

Landowners generally advanced the argument that Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights", should be rigorously adhered to, and that landowners losing the use of their property should receive compensation. Executive Order 11990, "Protection of Wetlands", was the subject of a great deal of comment. Many commenters supported strengthening Executive Order 11990 to require all Federal agencies to vigorously support and enforce the "no net loss" policy, including programs that restore wetlands. Comments from the electric utilities industry recommended against including independent regulatory agencies, such as the Federal Energy Regulatory Commission, under the Executive Order. It was also suggested that the Executive Order be used as a vehicle to establish a Federal mitigation banking program.

C. Market-based Incentives

There was general agreement that tax relief should be used to provide incentives to landowners to protect wetland resources. Since more than seventy percent of all wetlands are on private lands and since economic considerations drive most land use decisions, many commenters felt it is proper and prudent to use economic incentives to help wetlands. Incentives should include establishment of wetlands preservation trusts with special tax incentives for wetland donations, land exchanges, and restoration activities. Purchase or preservation of existing wetlands should be considered as possible forms of compensatory mitigation. One commenter suggested that Federal and State agencies could provide technical information, such as wetlands maps and information about wetland functions and values, to private land trusts. This would assist private organizations in identifying valuable wetlands for purchase or easements. Other market-based incentives recommended by commenters included:

• Develop a program that combines set-aside payments and cost sharing arrangements in order to encourage creation and restoration of wetlands.

• Develop State or Federal tax incentives to create or restore wetlands, but require those wetlands to be protected by a conservation easement.

• Develop Federal legislation to facilitate land or resource exchanges as a method of compensation.

• Acquire the highest value wetlands, and, as a supplement, provide increased tax incentives for easements, donations or other setaside programs.

• Stabilize tax policy concerning wetlands; a stable tax policy and enhancement of returns for long-term investments are cornerstones for using market-based incentives to conserve wetlands. Restoration of capital gains differential, applicable for *bona fide* long-term risks, will also encourage wetlands preservation. Passive loss regulations need to be redirected to eliminate current disincentives.

• Allow compatible uses that provide an economic return to landowners who have wetlands under conservation easements. This will reduce the cost of such easements, provide for appropriate multiple uses, and still preserve valuable functions of wetlands.

• Revise the Federal Tax Code to encourage citizens and corporations to permanently protect and restore wetlands.

• Establish additional programs like the Federal Water Bank program to provide technical and financial assistance to private property owners interested in protecting wetlands. Existing programs should be expanded, supported, and modified to increase the permanence of protection given to wetlands.

Issue 4. How Effective Are Current Federal, State and Local Laws in Protecting Wetlands?

The majority of comments concerning market-based incentives expressed dissatisfaction with present laws and regulations relating to wetlands, and many suggested that new legislation is needed. Commenters from conservation and environmental organizations emphasized the need for an organic wetlands protection act modeled on the proposed "Wetlands No Net Loss Act of 1989" (HR 1746). It was stated that this proposed legislation should clearly define wetlands, establish a National Wetlands Clearinghouse, expand such programs as the Conservation Reserve, provide preservation incentives, and eliminate subsidies that result in wetland losses.

Other commenters emphasized legislation to protect property rights and provide compensation for landowners adversely affected by wetlands conservation policies or programs. There were also recommendations for delegation of regulatory responsibility to the States, using the Coastal Zone Management Act as a model.

Numerous commenters felt that the legal definition of wetlands should be made more understandable to the public, so that average citizens can recognize wetlands. An example cited by one commenter was the expired Corps of Engineers 1988 Regulatory Guidance Letter No. 86-9, which stated that wetlands are marshes, bogs, and truly aquatic areas. Definitions should help classify the values of wetlands, and mitigation should be based on those values. Other commenters felt that legislation was also needed to speed the completion of national mapping and to require all Federal agencies to utilize the same maps to identify wetlands and guide agency actions. Many commenters

supported mapping efforts of the National Wetlands Inventory project.

Comments on State laws were generally limited to discussion of their shortcomings, with very little comment regarding specific changes to State statutes. Commenters generally recommended developing Federal legislation in order to provide guidance to the States.

Issue 5. At What Level Should the "No Net Loss" Goal Be Applied—on an Individual Basis, Locally Within the State or Region, or at the National Level?

Commenters generally interpreted this question in two ways. Many commenters appeared to view this question as asking where policies concerning "no net loss" of wetlands should be promulgated. Others viewed the question as asking at what level the accounting or "balance sheet" for wetland losses and gains should be kept. As stated by one of the Task Force members during the course of the public meetings, the question asks whether we achieve "no net loss" at an individual site, by watershed, by biogeophysical region, or by political jurisdiction. Most commenters interpreted the question as it was intended, and went on to discuss the level at which they felt that compensation for wetland losses should occur.

Commenters who addressed this issue from a regulatory viewpoint generally stated that "no net loss" should be a national goal and therefore addressed at the national level. Some respondents emphasized the need to articulate this goal at the national level, but apply it at all levels of government. Other commenters suggested that levels or units with natural boundaries, such as watersheds, are more appropriate if the "no net loss" goal is to be achieved.

Many respondents favored application of the "no net loss" accounting system at the level of individual properties and permit sites, and emphasized the importance of each individual wetland, no matter what its size. The importance of mitigation on-site and in-kind was also emphasized. Some commenters felt that focusing on individual sites would encourage avoidance of wetland destruction and increase the likelihood that regulatory agencies would deny permits for losses of small wetlands. This would reduce "piecemeal" losses. It was the general consensus of those who commented that if "no net loss" could be achieved at the level of each individual project, the national goal would be met.

Regional and watershed levels were often used interchangeably in comments concerning how best to account for wetlands losses and gains. When commenters referred to the State and local levels, they generally did so in the context of regulation. The watershed or regional level was usually considered preferable for mitigation from an ecological or planning perspective. There was some emphasis on the importance of this level in reaching a balance between economic and environmental values. Some commenters felt that regional planning is needed to reach this balance and argued for regulation at the State level, so this might happen.

Several respondents favored the watershed level for mitigation, particularly when mitigation for wetland losses is not feasible on or near the site of the loss. Another point stressed by several commenters was that wetlands can differ markedly between watersheds, and for that reason, they recommended against mitigating wetland losses outside of a watershed. One commenter suggested that when compensation for losses occurs outside the local region or watershed, requirements for mitigation should be greater than for mitigation within the watershed. He felt that more acres would need to be restored or created in order to ensure that benefits were sufficient to compensate for wetland losses.

There were sharply divergent views about how well, if at all, a "no net loss" policy could be applied at a national level. Respondents favoring the national level stressed the following points:

- National goals are necessary and must recognize that all wetlands are not created equal.
- National goals should emphasize wetlands of national importance.
- National goals are necessary to provide Congressional oversight.

Commenters who addressed the question of where the "balance sheet" on gains and losses should be kept were sharply split on the question. A national approach would allow mitigation of losses outside of the geographical area of the wetlands loss. Commenters from several industries and forest product companies preferred the national level. They stated that wetland losses are a national problem. They felt that by addressing the question in such a manner, areas suffering the greatest losses would potentially receive the greatest benefit from compensation for losses. Commenters representing large companies that managed wetlands in many States preferred the national level; such a policy would allow them to trade-off gains and losses among their properties. Others commented that national coordination was necessary, and strongly supported such an approach.

Several members of technical and conservation panels opposed the concept of a national level for balancing wetlands gains and losses. Several commented that wetlands are only one important element of aquatic ecosystems, and that the proper functioning of ecosystems should be the major goal of any attempts to manage changes in ecosystems, such as gains and losses in the quality or quantity of wetlands. They argued that watersheds, therefore, are the only boundaries that make sense for managing aquatic ecosystems, despite the fact that they complicate management by crossing political boundaries.

One commenter stated that we should not place ourselves in the position of trading off wetlands among regions; there is no way to exchange the values of Alaska tundra wetlands for those furnished by Louisiana bottomlands. Another commenter questioned whether it is wise ecologically to create or restore bogs in New Jersey in order to mitigate losses of salt marsh in the Carolinas.

Issue 6. To What Extent Can Wetlands Effectively Be Created or Restored? What Tools or Approaches Should Be Used To Ensure That Creation or Restoration Projects Are Successful, Especially Over the Long Term?

There was general agreement that restoration is more feasible and desirable then creation of new wetlands. However, many respondents emphasized the desirability of protecting existing wetlands first. These commenters stated that, as a national policy, we should not trade-off existing functioning wetlands for the promise of future restoration or creation. Because our knowledge of restoration and creation of wetlands is limited, there is always a substantial risk that wetlands and wetland functions and values would be lost in such a trade-off. Therefore, restoration was considered a second choice to avoidance, and creation of wetlands was generally rejected as a substitute for loss of original wetlands.

Comments received from mining companies and several organizations pointed out that mining operations often create new wetlands specifically to treat acid mine drainage and other effluents. This is done as a standard restoration practice, and not specifically as compensation for wetland losses. In this way, the mining industry can contribute to a net gain of wetlands. Commenters stated that with proper planning and execution, mined areas can be transformed into valuable wetlands.

A. Wetlands Creation

The majority of comments provided by technical experts and organizations having expertise in wetlands management emphasized that creating new wetlands from uplands or shallow water is difficult, expensive and unreliable. Wetlands creation was characterized as more of an art than a science; a great deal of long-term research is necessary before it should be considered a viable option for replacing existing wetlands. Problems identified by commenters included:

- Creating some wetland types is very difficult and requires a very long time for functions to be replaced. Examples include bogs and mature bottomland hardwood forests.
- Converting uplands to wetlands results in the loss of potentially valuable upland habitats.
- Creating hydrological conditions that will result in the wetland community desired is technically difficult.
- Creating wetlands is costly.
- Assuring long-term monitoring of creation sites and assuring additional investment or work to enhance their viability is often difficult, usually impossible, but necessary.
- Introducing and maintaining animal populations on created sites and measuring the recovery of animal populations on created sites are often difficult, but necessary.

Several commenters provided specific examples of wetlands creation and restoration projects, and provided an analysis of how well these sites have developed wetlands or recovered wetland functions. One example was an examination of a created tidal cordgrass marsh from a highly disturbed high marsh area in southern California. Several years of data indicate that this site has not fully gained many of the functions of a near-by reference site. Another commenter provided a technical review of several restoration and creation sites in Connecticut, and compared these wetlands to undisturbed natural systems. Again, not all wetland functions returned to the restored and created sites. The commenter concluded that wetlands creation has proven to be consistently effective only for two wetland types. These types are low marsh *Spartina* tidal areas and freshwater emergent wetlands.

Some suggestions to enhance the effectiveness of wetlands creation included:

- Establish a clearinghouse to share information, particularly about techniques that have proven successful in restoring or creating wetlands.
- Develop plans and create wetlands prior to permitting losses of established wetlands.
- Assure that funding and capability are available for long-term monitoring and remedial actions.
- Develop effective, long-term research programs. This was strongly recommended by many commenters of diverse interests.
- Establish long-term reference sites and demonstration sites, both for restoration and creation of wetlands.
- Establish training programs for both the private and government sectors. Wetland regulators in Federal, State and local government need additional training to evaluate or assist in the preparation of wetland creation or restoration. The private sector also often lacks such training.

B. Wetlands Restoration

The majority of commenters who addressed restoration agreed that many degraded or drained wetlands can be restored. Emphasis was given to the need for careful planning, monitoring, and operation and maintenance of restored wetlands. Several technical experts stated that the key element in restoring freshwater wetlands is the restoration of a suitable hydrologic regime. Simple actions such as plugging drainage ditches and drain tiles are often sufficient to restore wetland hydrology.

Some suggestions in addition to those for creation included:

- Bonding of developers to ensure adequate funding for restoration, monitoring, and maintenance of wetlands. Bonding of western strip-mined areas until restoration is completed and successful was cited as an example.
- Establishing responsibility at the local level of government or with an independent organization in order to assure long-term oversight of restoration projects.
- Developing a comprehensive and coordinated regional planning process to ensure maximum benefits. Such planning could direct restoration efforts to those parts of a watershed where restoration would yield the greatest benefits.

Issue 7. What Role Should Mitigation Banking Play in Working Toward the "No Net Loss" Goal?

Most commenters understood wetland mitigation banking to consist of treating wetland impacts as debits, and wetland creation, restoration, and mitigation as credits. The accounting process where they offset each other is the bank account. Similar to a checking account, a wetland mitigation bank account ideally maintains a positive balance. Debits come about when a construction project (1) adversely affects wetlands, (2) on-site mitigation is not feasible, or (3) on-site mitigation is feasible, but does not entirely compensate for the adverse impacts.

Suggestions for defining the role of mitigation banking in achieving "no net loss" of wetlands varied widely. Mitigation banking as an issue was commented on primarily by individuals representing industry, commercial interests, the forest products industry, State and local governments and conservation organizations. It attracted relatively few comments from private individuals commenting solely on behalf of themselves.

Commenters representing several industries stated that mitigation should be flexible and banking allowed when on-site mitigation is not possible. Further comments by these groups included:

- Develop a consistent, nationwide mitigation policy.
- Practice mitigation on a local scale, such as on-site or within the watershed impacted, in order to ensure that lost wetland acreage is replaced with wetlands having the same values.
- Limit regulators to placing conditions upon developers only if those conditions directly ameliorate some harm created by the project itself.
- Standardize mitigation policies and techniques to the degree practicable in order to avoid *ad hoc* approaches to mitigation. Such approaches sometimes result in high costs for the amount of mitigation gained, project delays, and unanticipated losses of wetland resources.
- Improve coordination among local, State and Federal regulators. Developers commented that coordination on mitigation requirements was often done on a case-by-case, piecemeal basis. They felt it was unfair when agreements reached on a given project could not be used to design other similar projects, or where different processes had to be pursued to resolve identical conflicts associated with identical projects.
- Give greater consideration to the cost-effectiveness of mitigation efforts. Commenters stated that high costs were not always justifiable on the basis of the quality of the benefit received by the wetland resource.
- Provide incentives for mitigation that exceeds the minimum required. Developers commented that sometimes extra mitigation measures were possible

on a project, but there was no incentive to do a better job. When mitigation was more than the minimum necessary or required, extra efforts of industry often went unnoticed and unappreciated.

• Develop new approaches regarding mitigation of small impacts, especially impacts that should not or cannot be mitigated onsite or ones that are too small to warrant off-site mitigation. Commenters stated that rectifying these impacts causes much work and costly delays. Conversely, small impacts sometimes "fall through the cracks" and are not mitigated at all.

A majority of comments from industry and commercial respondents stated that mitigation banking, if properly administered, may be a positive factor in compensating for wetlands losses and achieving the "no net loss" goal. It was viewed as a potential means for maintaining and restoring large areas of degraded wetlands. In principle, it permits pooling of private sector resources under supervision of experts. These could be private or government managers. Most proponents of mitigation banking stated that banking needs to be maintained under the supervision of experts to assure acceptable performance. Industry feels that small, "band-aid" mitigation should be replaced by a few, large-scale mitigation banks. When mitigation is required for small wetland losses and where on-site compensation may not be practicable, individual permittees should be allowed to make a cash contribution to the bank. These funds could collectively be used to upgrade or enhance a large area in a way that benefits environmental values more cost-effectively than smaller, uncoordinated efforts.

The concept of a Federally-mandated mitigation banking program was supported by many in industry. Commenters suggested that mitigation banks could be established for the States to coordinate mitigation activities in wetland ecosystems. Most respondents were in agreement that mitigation banking should play a larger role than it does currently, to insure that the goal of "no net loss" of wetlands can be obtained. Commenters stated that banking should be pursued in the context of local and regional management plans that provide protection for wetlands over the long term. Most respondents generally agreed that contiguous wetland areas and larger wetlands are likely to have significantly higher values for wildlife than smaller tracts. They view mitigation banks as providing an opportunity to maximize functional values for a given area of restored or created wetlands.

Another commenter suggested that a major advantage of mitigation banks is that the functional values of the mitigation wetlands can be fully developed and verified before wetland impacts occur. Developers of wetlands could be required, or could have the option, to establish credits with a mitigation bank prior to initiating specific projects that result in unavoidable wetland losses. In this way, developers would be able to document their successes. Commenters suggested that each bank could also have its own credit system based upon the functional values of the wetlands in the particular area to which the bank applies.

A number of comments stated that government should create a role for mitigation banking in the section 404 program. They suggested that the program could include credits for voluntary creation or restoration of wetlands, provide minimum standards for replacing wetlands, and establish an institutional framework for banking so companies and individuals could receive credit for creating or restoring wetlands. The permitting authority could then be responsible for providing a yearly report describing each mitigation banking proposal submitted, the disposition of the proposal, and reasons for individual dispositions. In summary, developers felt that mitigation banking should be accepted by regulatory agencies as a mitigation practice. They emphasized that wetland banks will be able to replace the functions and values of the impacted wetlands if designed properly, with regulatory agencies assisting. Regional banks are favored because they could be located in areas that are more isolated and easier to protect, and could be designed to provide a variety of functions and values.

Commenters characterized banking as helpful in solving some of the problems identified earlier, by speeding up inter-agency coordination, standardizing the approach to mitigation requirements, and outlining a means of mitigation acceptable to all agencies involved. To summarize the views of commenters who favored mitigation banking, it should be flexible, should be allowed when on-site mitigation is not possible, and should be based on implementing a consistent mitigation policy nationwide.

Other respondents, including conservation organizations and individuals, expressed opinions and made recommendations that were more skeptical about mitigation banking than those expressed by industry, commercial interests and others. Several suggestions were received from technical experts and other commenters regarding the ratios that should be considered for mitigation banking and other mitigation efforts. "Ratios", as discussed in mitigation banking, refers to the ratio of wetlands loss from a project or activity to the offset required for restoration or creation. For example, a ratio of two to one would mean that two acres or functional units of wetlands would need to be restored or created for each acre or unit lost. Other concerns and comments expressed by conservation organizations and other respondents are summarized below:

• Acquisition of existing wetlands or "preservation" is not mitigation banking. In order to meet the goal of "no net loss", it is necessary for mitigation banks to include the acquisition of non-wetland or former wetlands, with subsequent restoration of those areas to fully-functioning wetlands.

• Mitigation banking should not be a substitute for avoidance or minimization of wetlands impacts, or for on-site mitigation of impacts. Avoidance, as one commenter stated, is far preferable to mitigation; avoidance should be the national goal, not just "no net loss" of wetlands.

• Mitigation banking should be a last choice after avoidance and minimization of wetlands impacts are found to be insufficient to fully reduce those impacts.

• Mitigation ratios should be greater than one to one because there is potential risk that restored sites may not provide all the functions and values that characterize undisturbed sites.

• Mitigation banking relieves the pressure on developers and agencies to look for alternatives to issuing a permit which leads to destruction of wetlands. Most respondents felt that as long as sequencing of the 404 permit process is followed, mitigation banking could be used to offset impacts that could not be avoided, or mitigated on site.

• Creation of wetlands for mitigation banks is still largely experimental and untested. Banking that includes wetlands creation should not be regarded as "saving" an existing wetland. However, most commenters felt that banking could play a valuable role in certain situations.

• Mitigation banking should largely be the responsibility of project sponsors and beneficiaries, operating under Federal or State guidelines. Commenters felt that mitigation banking will be a viable tool only if project proponents plan, sponsor and pay for mitigation banks.

• Credits to wetland banks should be accepted only after efforts to restore or create wetlands have proven successful, and not merely because of the intent of such efforts.

• Mitigation should not be a central part of a national policy or program of "no net loss". "No net loss" should focus on avoidance and restoration.

• Mitigation banks must be subject to approval by Federal and State fish and wildlife agencies. With appropriate initial funding, State and Federal fish and wildlife agencies could establish and operate banks.

• Mitigation banking must be committed to the conservation, enhancement, restoration and creation of wetlands on an ecosystem basis.

• Mitigation banks should be regulated so that they only consist of wetlands that have been effectively restored or created. Preservation of existing wetlands should not contribute to the "no net loss" goal.

Some commenters suggested that there is potential for abuse of the intent of mitigation banking. They believe that some developers would disregard ways to minimize or avoid wetland losses and simply turn to banking as their preferred option. They were concerned that this would undercut mitigation sequencing requirements and diminish efforts by permittees and permitting agencies to seek the most environmentally sound alternatives. In cases where mitigation banking is used, conservation and environmental organizations and some individual respondents have suggested ways of managing mitigation banks. These commenters included the following requirements for mitigation banks:

• Legal control over the wetlands, such as a conservation easement.

• A methodology for determining the credits and debits for the banked wetlands and projects utilizing the bank.

• A management plan that identifies the functions and values that are to be attained by wetlands created or restored.

• Operation and maintenance requirements that are intended to achieve the goals of banking management plans.

• Permission to engage in periodic monitoring and inspections of banked wetlands by the EPA, FWS and COE or other Federal, State and local agencies.

• Development of minimum qualifications, experience and financial capability of organizations and individuals managing projects to restore or create wetlands.

Issue 8. Should Wetlands Be Indexed According to Their Functions and Values in Applying the "No Net Loss" Goal? If So, What Criteria Should Be Used To Determine the Index?

This was a controversial issue that received substantial comment. Industry, agricultural and commercial commenters, and many individual respondents were strongly in favor of indexing, arguing that all wetlands are not of equal value. Generally, although not always, respondents from conservation organizations, hunting and fishing organizations and groups, commercial fisheries organizations, and many individual respondents made the point that virtually all wetlands have functions and values worth preserving. They opposed indexing, emphasizing that it would result in a continued loss of the nation's wetlands base.

Nearly all commenters who addressed the issue agreed that additional research is needed to better determine the functions and values performed by wetlands. Many respondents urged that an accurate and simple procedure for assessing wetland values be developed. They also felt that information on wetland functions and values needs to be made widely available to decision-makers and the public, so that better decisions are made regarding wetlands protection.

A. Desirability of Indexing According to Function and Value

Proponents of indexing identified several important advantages of assigning values to wetlands. These included:

• Balancing losses and providing for restoration of functional values. In particular, commenters felt that indexing would result in less costly and less extensive mitigation requirements, particularly when development affects wetlands that are dysfunctional or that provide few, if any, significant values.

• Establishing wetland protection priorities. Again, commenters believed that this would facilitate development in wetlands that they understand to have little or minimal value.

• Identifying high value wetlands for protection. Low value wetlands, by definition, have little value, and impacts to them can be readily compensated for or mitigated.

• Providing landowners, government and the public with clear criteria that identify the most important wetlands.

• Providing flexibility in determining mitigation options.

Proponents of indexing also argued for an indexing system that takes into consideration the tangible economic benefits and other uses of wetlands, and assigns them numerical values.

Commenters who expressed opposition to the concept of indexing wetlands stated that indexing:

• Will encourage destruction of so-called low value wetlands without a clear understanding of their values or functions.

• Will serve to protect the most valuable wetlands, but sacrifice those of lesser value, eventually leading to elimination of most wetlands, not protection.

• Will not provide an objective measure of wetland values. Although all wetlands are not of equal value or provide the same values, it is subjective to compare one value against another. The value of wetlands for fisheries habitat may or may not be more important than its value for water quality enhancement. In many cases, its value may depend on perceptions shaped by an individual's or organization's needs, roles, or responsibilities. Once functions are established, determining indexing values becomes a subjective process.

• Will not be scientifically accurate. We do not have the scientific information to accurately quantify functions and values.

• Will not be able to measure values of a series of wetlands interacting as an ecosystem. Most evaluation techniques currently used can not quantify and compare landscape-level functions. Revised and improved evaluation and assessment techniques, and techniques that reflect the unique characteristics of various regions of the country, are needed.

• Will tend to underestimate the value of smaller wetland tracts. the minimum acreage needed for various wetland functions is not well understood.

• Will become a bargaining chip for destruction of so-called low-value wetlands.

Several commenters agreed that indexing had some value, if certain caveats were considered. They included:

• Indexing could be used to set priorities for acquisition of wetland sites. However, indexing should not be considered when establishing mitigation requirements.

• Indexing should be used as a measure for protecting and maintaining wetland values, but not as a basis for economic evaluation.

• Indexing can be used as a tool, but cannot replace professional judgement.

• Indexing can be applied on a regional, State, or local basis, and can

be useful in establishing local and State preservation goals.

• Indexing can provide information on wetland functions that is valuable in Federal and State permitting processes, but its use must be considered on a case-by-case basis.

• Indexing, if used in the mitigation process, should only be used to identify in-kind restoration and replacement.

B. Criteria for Indexing

It was generally agreed criteria for indexing must be built around functions and values of wetlands. Specific criteria recommended by commenters depended on the objectives of the commenter. A number of systems presently in place were suggested, although fault was found with all of them. Included were the Fish and Wildlife Service's Habitat Evaluation Procedures, and the Corps of Engineers Wetlands Evaluation Techniques (WET). Commenters made references to State statutes and programs in Massachusetts, New Jersey and Georgia that rated wetlands, and described these programs as useful. The list of functions developed and cited by the Wetlands Forum Report was also recommended as a basis for evaluating wetlands.

Specific recommendations relative to indexing criteria included:

• Consider wetland type, location, relative abundance, condition, status of the watershed, importance to the community, and general ecology of the area being affected.

• Rate functions and values quantitatively.

• Consider the presence of endangered and sensitive species, the extent of resource degradation, threats of development to the site, and the importance of the site both locally and regionally.

• Take development of artificial wetlands into account.

• Consider the amount of each wetlands type remaining in the State, exceptional functions, storm surge protection, value to migratory birds and other wildlife, aquifer recharge, and the extent of protected wetlands in the State.

• Determine value by weighing each value and expressing it in measurable units, such as biomass, energy stored, economic value, etc. Develop models based on these units.

• Develop regional evaluation techniques that take into consideration unique ecological and economic conditions of various regions of the country.

Issue 8. What Are the Potential Effects of Specific Wetland Policies on Farmers, Public Works Projects, Businesses, and the Environment?

A. Effects on Farmers

Wetland policies may affect farmers more than any other single group of people because they own, rent, lease or are near much of the land potentially affected by wetland policies. Several commenters stated that many of the nation's farmers and ranchers would potentially be impacted by wetland policies developed to achieve a "no net loss" of wetlands. Comments by agricultural organizations, some State and local governments, and many individuals regarding the effects of wetland policies on farmers are summarized below:

• Policies developed to address "no net loss" should not restrict a farmer's right to manage his lands as he sees fit and produce food and fiber cost-effectively. Farmers should be included in deciding how to attain "no net loss" of wetlands. Unless special provisions or compensation are provided, wetland policies are likely to affect a farmer's day-to-day activities, long term planning, the value of his land, and his ability to produce a crop and income.

• Farmers may not be able to cultivate additional cropland because of the existence of potential wetlands on their property; lands owned by farmers should not become unavailable for farming simply because they have potential to be restored or converted to wetlands.

• Farmers will not be able to maintain or improve drainage on existing farmlands because of potential wetlands. This will decrease the productivity of existing farmlands, increase the costs of farming, or both.

• Farmers may not have flexibility in short term or long term planning because of uncertainty about restrictions that may apply to their operations near wetlands or potential wetlands.

• Wetlands attract wildlife that can cause significant damage to crops. This problem is currently increasing throughout the country according to farmers.

Some commenters stated that a "no net loss" policy could force farmers into bankruptcy, if mitigation is required for farm improvements and significant acreage is taken out of production. Several commenters cited an example reported in April, 1990, in the New York Times. The Times reported that a landowner was requested by the Corps of Engineers to cede half of his 187 acres to Federal control for a wildlife easement in exchange for building a levee to guard his fields against flooding. Commenters stated that such actions place unfair and highly unreasonable burdens on farmers. Other commenters stated that full exemptions to "no net loss" of wetlands should be allowed for normal ranching and farming, so this country will have abundant food and fiber.

Agricultural organizations and many individual farmers expressed strong concerns regarding the current regulatory program and focused their comments on the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. According to commenters, this new effort at defining wetlands has caused tens of millions of acres of prior-converted wetlands currently in production to be classified as jurisdictional wetlands. These same commenters stated that this is because the delineation manual assumes that if an area would "normally" support hydrophytic vegetation and contains the basic wetlands hydrology and hydric soils, then it is a wetland. (Revisions to this manual are being considered by the four agencies that developed it.)

Many farmers and ranchers objected to such assumptions. They feel that the manual should only identify "true wetlands", which they perceive as wetlands that exhibit functions and values that support wildlife. One commenter noted that farmers and ranchers cannot accept delineating land that is inundated for less than five percent of the growing season as regulated wetlands. Examples that were provided included "piney woods" in the coastal plains of Georgia, Florida and the Carolinas; types of bottomland hardwoods in the southeastern United States; bosque lands in the southwest; and prior-converted wetlands in many other parts of the county.

Many farmers and ranchers stated that the net effects of adopting the Federal Manual for Identifying and Delineating Jurisdictional Wetlands are economic and land use restrictions, permit requirements, and costly mitigation required of people whose only primary asset is often their land. They feel that additional government regulation is the principal cause of declining property values. Commenters cited figures that approximately 60 million acres, consisting primarily of prior-converted wetlands, are subject to classification as wetlands, as defined in the Federal delineation manual.

Some commenters stated that many of the benefits of wetlands protection accrue to someone other than the landowner, although the cost and burden of regulatory compliance falls to the landowner or farmer. From the viewpoint of many agricultural organizations and individual commenters in the agricultural community, one of the major shortcomings of current wetland protection efforts has been a failure to recognize and respect private property rights.

Many farmers and ranchers stated that a major issue underlying the "no net loss" goal is the effect of conservation efforts on landowner's private property rights. They stated that these rights need to be preserved. If society wants to protect wetlands, society should be willing to pay for that protection. Farmers and ranchers feel there are no provisions for just compensation for lost property rights or lost economic potential resulting from wetland regulations. The use of privately-owned wetlands should not be restricted by law or regulation without just compensation.

Not all farmers agreed with this perspective of "no net loss" and a few cited the benefits to themselves and society of preserving wetlands on their properties such as providing a source of water in dry years, protecting groundwater, and providing habitats for fish and wildlife. One farmer stated that much of the land converted to croplands is marginal and provides little added value to farming operations. He felt such lands have much higher values as wetlands than as farmlands. Others cited successful programs, such as the Conservation Reserve Program, that benefitted their farms.

Some commenters felt that concerns about taking of private property by virtue of wetlands legislation have been greatly exaggerated. They cited the fact that wetlands, as "waters of the United States," have already been recognized as having public values. If they are lost or not properly managed, the public will suffer. Concerns were raised that mismanagement could result in pollution of public water supplies, increased flooding of downstream properties, and reduced abundance of public resources, such as fisheries and wildlife.

Several commenters remarked that the Federal government frequently pays compensation when it takes land for Federal highways and Federal water reservoirs, and should do the same when land is taken to protect or restore wetlands. Having recognized the importance of protecting the nation's remaining wetlands, the government should be prepared to provide landowners just compensation in those relatively rare instances in which wetlands restoration is deemed a "taking." Some commenters suggested that when wetland protection precludes other desirable land uses, landowners should receive compensation, using revenues from wetland tax check-off programs and impact-fee programs.

B. Effect of Wetland Policies on Businesses and Public Works Projects

Commenters stated that wetland policies may restrict land use unnecessarily and unwisely. Public works projects may be required to avoid wetlands and, as a result, may potentially affect other valuable lands, such as croplands and commercial properties. Commenters expressed concern that this may make new public works projects more expensive and reduce lands available for agriculture. Similar comments concerning the potential effects of wetland policies are summarized below:

• Strict Federal wetland policies do not account fully for public project needs and benefits, such as those provided by water and transportation projects. The section 404 program of The Clean Water Act was criticized extensively by developers because it has impacted proposed major water projects in the arid West, either by delaying them or by making it impossible for project sponsors to construct or operate them in the manner they feel is necessary.

• Section 404 and particularly 404(c) have taken long-term water planning projects out of the realm of the local community and placed them under Federal authority because 404(c) provides EPA with final veto power.

• The "no net loss" program must accommodate due process considerations for businesses. Several commenters felt that the definition of wetlands in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands is overly expansive and could affect a significant portion of future development, since approximately three-fourths of all wetlands are privately-owned. Costs of compensating landowners could be prohibitive.

• The COE and EPA, in issuing the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, have effectively expanded the definition of wetlands, and thus expanded Federal jurisdiction over wetlands, according to several business organizations and individual commenters. They feel that this has had a dramatic impact on numerous local economies. In its April 1990 report, Economic Implications of Wetlands Regulations in Southeastern Virginia, the Southeastern Virginia Planning District Commission indicated that the cost of wetlands regulation to southeastern Virginia could range, under a worst case scenario, from $50 billion to $97 billion.

• Wetlands regulations affect land prices and thus, the cost of housing. Yet, few studies have been done to determine the economic implications of wetland regulations. One study by the President's Commission on Housing found that the section 404 regulatory program limited the amount of land available for housing and contributed to delays in development of new housing in some areas.

• Depending on how a "no net loss" policy is applied, it could have additional effects on housing. If one were to apply a strict wetlands protection policy on a site-specific basis and make it a requirement for each development permit, the impact could be tremendous. This would, in all likelihood, result in increased permit processing times and increased costs for mitigation.

• Section 404 of the Clean Water Act has become a national zoning law by limiting business and development in wetlands. According to several commenters, it has made development very costly and allows groups whose primary interests are other than development to secure a major foothold into development planning.

• Current and proposed wetland policy and practice have increased costs to project proponents and society as a whole, and disrupted both private and public planning efforts. Increased costs and inefficiencies arise largely from delays inherent in the permitting process. Commenters from several business organizations felt that this happens because both the COE and EPA have regulatory authority over development projects affecting wetlands. While EPA seldom vetoes projects under section 404(c), the threat of a veto is constant. As a result, the COE is often unwilling to make a permit decision without EPA's concurrence. In practice, this means that an applicant must satisfy both the COE and EPA, even though the two agencies may have differing views on a proposed project. This process can take months and can detract from efforts to provide or promote a positive business atmosphere.

• The lack of enforceable deadlines for action on section 404 permit applications is another important concern of the business community. An application may wait for months without a decision, particularly when the COE and EPA disagree. Standards for issuance of permits are often vague and

BEST COPY AVAILABLE

inconsistent, leaving permit applicants without clear direction.

• Delays and added costs to businesses also result from the perception of some agencies and regulators that development must avoid all wetlands, regardless of their functional values. This strict avoidance approach is a result of the recent mitigation MOA between the COE and EPA which advocates a sequencing process for identifying mitigation requirements. The effect of the MOA in the field, whether or not intended by policy-makers, is that regulators focus on avoidance of impacts to the exclusion of all else. This often requires permit applicants to demonstrate "avoidance" without reference to the standard of the section 404 (b)(1) Guidelines, which specify that avoidance is required only to the extent it is practicable.

• The long time period required for permit decisions, the lack of clear and specific goals and processes under section 404, and the sometimes conflicting mandates of Federal agencies were cited as problems by several commenters representing business and commercial interests.

Conservation groups stated that businesses should first seek to avoid impacts to wetlands, and if that is not feasible, they should fully replace the functions and values lost. These groups feel this is reasonable and essential to ensure that individual actions do not further degrade the public's wetland base and associated resources, such as fish and wildlife, and water quality. Costs of protecting and restoring wetlands should be assimilated into a development project in the same way other necessary project costs are reflected. Project beneficiaries would then be responsible for project costs.

Many commenters were concerned with the potential impacts of a "no net loss" policy on Alaskan businesses and public projects. They raised concerns about the effects of a "no net loss" policy on urban growth and development in that State. Commenters also addressed the effects of "no net loss" on activities such as oil and gas exploration, commercial fisheries, and mining. One commenter stated that Alaska wetlands cover more than 170 million acres, which accounts for approximately 50 percent of the total land area and about 70 percent of the non-mountainous area of the State. Wetlands cover the bulk of the unrestricted lands available for development. Thus, wetland protection programs and policies have particularly significant consequences for Alaska.

Several commenters felt that a "no net loss" of wetlands program in Alaska cannot be justified since only one half of one percent of Alaska's wetlands have been lost, compared to over fifty percent in the lower forty-eight States. In addition, half of Alaska is already protected as Federal and State parks, wildlife refuges, wilderness areas and other conservation units. Commenters stated that Alaska is unique and that wetland policies and principles applied to Alaska need to be tailored to meet the unusual circumstances in this part of the nation.

Organizations and individuals that represented or reflected the viewpoints of the oil and gas industry in Alaska expressed many of the same general concerns already summarized in this section. Most commenters who addressed the subject of "no net loss" from the oil and gas perspective emphasized that development of these resources has had few, if any, significant impacts on Alaska's wetlands. They pointed out that most areas disturbed by oil and gas development should not be considered as being wetlands because they do not provide the same values as wetlands in the lower 48 States. Some noted that the size of disturbed areas, when compared with the vast acreage of undisturbed wetlands in Alaska, is so small as to make the impacts of oil and gas development insignificant. Others argued that oil and gas disturbances are only temporary and that disturbed wetlands will recover soon after the facilities responsible for the disturbances serve their useful life. In general, representatives of the oil and gas industries expressed a firm belief that these industries have an exemplary record of doing everything reasonable to keep wetlands disturbances to a minimum. They also felt that since wetlands comprise so much of the Alaskan landscape, it is virtually impossible to avoid disturbing wetlands, regardless of where development occurs. Many felt that any impacts that cannot be minimized or avoided should be accepted as necessary consequences of ensuring economic growth and reliable sources of energy.

Some representatives of oil and gas interests expressed dissatisfaction with the regulatory climate in Alaska, as it involves wetlands. They described regulatory processes as sometimes being needlessly restrictive, too often insensitive to national needs, and characterized by unnecessary and costly uncertainties, delays, and interagency disputes. Their concerns were not unlike other commenters who offered observations and recommendations concerning regulatory processes.

Some commenters who represented conservation organizations cautioned against being too quick to accept or accommodate wetlands impacts caused by oil and gas development in Alaska. They expressed concern about the need to include Alaska in a national "no net loss" program or policy, and suggested that Alaska not be treated as an exception. They also pointed out that Alaskan wetlands are more similar to wetlands in the lower 48 States than they appear to be, providing benefits to fish and wildlife and to the public. In addition, they recommended against accepting the argument that the vastness of Alaska's wetlands makes disturbances caused by individual activities or facilities of the oil and gas industry insignificant and acceptable ecologically.

Several representatives of Alaskan cities stated that a strict wetlands policy further regulating the use of wetlands and waterfront property would restrict growth. For example, representatives of the city of Valdez commented that the city is in the process of addressing the protection of valuable wetlands as part of its Coastal Zone Management Program. They noted, on one hand, that protecting critical wetlands has the potential of serving the city's tourist industry and that it would preserve resources that are valuable to its residents. But the City wants flexibility in any wetlands policy for Alaska in order to help stimulate and diversify economic growth. Similarly, Anchorage's efforts to secure permits enabling the city to fill wetlands adjacent to its port to accommodate infrastructure expansion was cited as another example of where flexibility is needed.

Commenters stated that Native land ownership and the possible effects of a stringent "no net loss" policy on Alaskan Natives present an issue unique to Alaska. Alaska Native corporations have received approximately 44 million acres of land from the Federal government under the Alaska Native Land Claims Settlement Act. These lands were conveyed specifically for development purposes as partial compensation for the extinguishment of their claims to aboriginal title, and to ease the transition to a cash economy. A large part of the value of those lands and thus much of the worth of the corporations based on those lands could be lost if restrictive development policies were placed on them. Commenters stated that development on Native-owned wetlands should not require construction of additional wetlands as mitigation if the development area is already dominated by wetlands. Furthermore, commenters felt that Native corporations should not be required to purchase wetlands in California to satisfy mitigation requirements for development on their own lands.

Commercial fishermen from Alaska urged that strong and balanced policies be developed to ensure Alaska's future and the future growth of industries such as commercial fishing. The seafood industry is Alaska's largest private basic industry, providing nearly 70,000 seasonal jobs, which translate to 33,000 direct and indirect year-round jobs. Commenters emphasized that this industry is the second largest revenue generator in the State. Commercial fishermen paid $27 million in fish taxes during 1987, and are the major contributor of marina fuel taxes. Expenditures in Alaska on goods and services in support of processing and harvesting fish are nearly $300 million annually, according to commenters.

Representatives of commercial fishing interests noted that Alaska leads the nation in value of commercial seafood landings. The 1987 harvest was worth $1.1 billion to fishermen. The wholesale value was $1.9 billion in 1987 and $3.0 billion in 1988. Fishermen stressed that Alaska's fisheries and the revenues they generate are critically dependent upon protection and wise management of wetland habitats.

C. Effects of Wetlands Protection on the Environment

Many commenters stated that application of "no net loss" of wetlands nationwide would result in a balancing of environmental enhancement and degradation. New projects would require concise documentation of environmental benefits and losses. Projects would need to be clearly justified. They felt that if regulatory programs were applied consistently, it would provide a predictable framework needed for development and also reduce environmental degradation.

Other commenters felt that converting marginal land from agricultural uses back to wetland habitats would provide positive environmental benefits and offset agricultural conversion of other wetlands to croplands. Similarly, for public works projects, marginal impoundments and impacted water bodies could be restored through abandonment or removal to create wetlands needed to offset impacts caused by other projects. Most commenters felt that more coordination must take place if restoration of old project sites is to offset environmental impacts resulting from new projects.

Issue 10. How Do We Balance the Need To Protect Wetlands Against the Potential Effects on Farmers, Businesses and Public Works Projects?

A. Balancing Effects of Wetlands Protection on Farmers

The farming community asked that the Federal Manual for Identifying and Delineating Jurisdictional Wetlands be published for comment and that an economic impact study be completed. In addition, many farmers commented that agricultural land that has been converted should be excluded from wetlands designation.

Many farmers commented that wetland protection programs should emphasize economic incentives to farmers and ranchers, rather than rely on acquisition and perpetual easements. They stressed that farmers must be represented on any appointed study commissions, State or national, that are investigating "no net loss" of wetlands. Such commissions should first develop methods for evaluating the benefi of converting individual wetlands and then apply those methods when deciding whether or not to restrict use of lands for agriculture and other purposes.

Commenters also pointed out that such commissions could develop guidelines for establishing a wetlands fund to which developers would contribute money to create, manage or develop wetlands. Funds collected would be used to restore or establish wetlands of equal or greater value than those lost. Deposits to the fund could depend on the quality of the wetlands lost.

Several respondents stated that compatible economic uses of wetlands should be encouraged rather than impeded. Balancing should allow for such uses as timber harvesting and production of native wetland crops. Many of these types of agricultural activities can be conducted in wetlands without significant loss of wetlands function. Many farmers feel that compatible agricultural programs should be encouraged and that regulatory programs that restrict and impede compatible uses should be revised. They believe that all efforts and programs must rely on voluntary and willing participants.

Some commenters stated that cooperative efforts to conserve wetlands should provide farmers with more involvement and flexibility, which would help conserve wetlands in a more balanced fashion. They felt that flexibility could be provided by permitting farmers to maintain or develop upland drainage and other rights-of-way into or across wetlands without restrictions. They stated that another example would be to allow multiple uses of wetlands, such as for watering stock, in order to help reduce the potential effects of wetlands conservation on farmers and public works projects.

Several commenters supported legislation to remove normal farming operations, including aquacultural activities on prior-converted and farmed wetlands, from the jurisdiction of the regulations governing section 404 of the Clean Water Act.

Many commenters stated they are specifically opposed to inclusion of the term "wetland" in the definition of Navigable Waters of the United States. They further oppose giving EPA final authority in matters of wetlands delineation. Farmers believe this determination should rest with the Corps of Engineers or the Soil Conservation Service.

Some farmers recommended Congress review the scope and intent of wetlands protection programs and their impacts on normal farming operations, and provide exemptions from Federal and State regulation for small wetlands.

Several commenters felt that the definition of a wetland needs to be changed to provide more fairness to them. They would like to see the following definition used: Wetlands are naturally occurring areas of predominantly hydric soils that presently support hydrophytic vegetation. Supporting definitions should be:

• "Hydric soils" are soils that are always wet enough to maintain an anaerobic condition that supports primarily hydrophytic vegetation.

• "Hydrophytic vegetation" means plants that grow in water or in soils made deficient in oxygen due to excessive water content.

Many farmers commented that regulators should exempt normal farming activities, including agriculture activities on prior-converted and farmed wetlands, from the jurisdiction of the regulations based on section 404 of the Clean Water Act. They believe this would better balance the burden of wetlands protection. They also felt that an incentive-driven program would also help balance the burden more fairly. It would provide opportunities for farmers to better serve society's goals as a whole.

Other respondents stated that the severely depleted condition of the nation's wetlands alone should provide

the answer to the question of whether or not we should trade off more of this valuable and irreplaceable natural resource to make further development possible in wetlands. They felt the need to avoid any further "net losses" should be translated into national, State and local standards for wetlands conservation that are applicable to all activities that impact wetlands. Development should only be allowed to adversely affect wetlands when impacts are offset by measures which fully replace all unavoidable impacts.

Some respondents argued that the "no net loss" goal should be treated as any other vital standard, such as for air or water quality, and no further degradation in quality or quantity should be permitted. Commenters from conservation organizations felt that compliance with such a standard should become a routine and necessary cost of doing business. Each project sponsor or beneficiary should be held responsible for off-setting its own individual impacts to wetlands.

B. Balancing the Effects of Wetland Policy on Public Works Projects

Many commenters stated that the key to achieving a proper balance between wetlands protection and the needs of the general public as they relate to public works projects is to:

- Protect wetlands that have real functional values.
- Spread the costs of protecting those wetlands over society as a whole.
- Make it easier for public works projects to use property, so long as both developmental and wetlands protection needs are identified.

Commenters stated that wetland values can be adequately protected by developers without burdening the regulated community or increasing costs to society by excluding areas that have little or no functional value from the definition of wetlands. Areas of minimal value should be readily available for public works projects and should be covered by a general permit. For wetlands of moderate value, the burden on the public works developer would be eased if the permit process were improved, with little resulting effect on wetland values. Many commenters felt that a single agency should be given the responsibility for making decisions regarding public works project applications.

Respondents suggested that a better balance between wetlands protection and economic progress could also be achieved by giving greater consideration to the public purposes served by proposed projects, especially those proposed by public agencies. For example, in order to accommodate societal goals and needs for public housing, water supplies or public schools, society may have to accept some impacts to wetlands. Some measure of compensatory mitigation was recommended for such public projects in order to minimize wetlands impacts.

Other commenters recommended area-wide planning as a means for balancing the effects of wetlands protection. Area-wide plans could identify high quality wetlands that should be avoided. They could also make it easier for projects to proceed in areas where wetland impacts are deemed acceptable, thus reducing transaction costs.

Developers of hydroelectric projects stated that wetlands policy should not be used to circumvent or incumber the Federal Power Act, or interfere with making balanced decisions about energy development. The Act accords the Federal Energy Regulatory Commission (FERC) broad control over siting, design, construction and operation of projects within FERC's jurisdiction. Commenters from the hydroelectric community recommended that Federal wetlands policy should not:

- Unreasonably promote consideration of wetlands above all other resources or otherwise interfere with FERC's ability to implement its responsibility to balance energy, economic, environmental, and other factors in licensing projects.
- Reduce the certainty of a project license by allowing subsequent modifications to approved licenses for the benefit of wetlands.
- Hamper or curtail normal maintenance and operation activities associated with power production.

C. Balancing the Effects of Wetlands Protection on Businesses

Many commenters from the business community stated that issues of equity relate to questions as to who should bear the principal burden of a national wetlands program. The question of balance is not only one of public versus private costs, but also one of relative costs to be borne by different private business projects that affect wetland resources. The business community believes that the benefits attributed to wetlands accrue principally to the general public but that current policies and programs assign much of the costs of protecting or providing those benefits to businesses and the private sector. A national wetlands policy must consider the appropriate roles of all levels of government, the potential impact of such a policy on the economy, and the costs that should be borne by the private sector, businesses, and the public. Mechanisms that should be considered to achieve fairness include mitigation banking, as an option for private developers; tax exempt wetlands trusts; compensation to businesses where regulations infringe on traditional property rights; and government cost-sharing with the business community. These mechanisms should be available when benefits obtained from wetlands conservation are significant nationally or regionally.

Many commenters felt that the best way to balance the needs for wetlands protection and development is to establish a national inventory of priority wetlands. This would be similar to the advanced identification of wetlands under section 230.80 of the section 404(b)(1) Guidelines. It would assist the public in identifying areas unsuitable for development and other areas acceptable as fill sites. Such a practice would not mean that wetlands identified as possible future disposal sites would be "written off" for development. It would simply notify developers about areas in which they would be unlikely to receive permits.

Some respondents expressed concerns that government needs to establish meaningful conservation incentives for landowners; incentives are critical in order to balance the impacts of wetlands conservation on businesses. In areas where no development would be allowed to take place, developers should be fairly compensated for their losses. Commenters emphasized that the Federal government should recognize its fiscal responsibility in protecting wetlands, instead of passing the financial burden of conservation onto the private landowner.

Many individuals and conservation organizations commented that the country needs to balance the need to protect wetlands against the potential adverse economic effects of conservation on farmers, businesses, and public works projects. While many of these commenters recognized the fact that the nation has already lost over half its wetlands in the lower forty-eight States, they stressed the need to reconcile the interests of individuals, businesses, and public projects with wetlands protection. They recommended coordination among conservationists and wetland users at the local, regional, State and Federal levels to achieve this goal. Without development of land use and conservation plans, and development of a wetlands policy that is the product of consensus at many levels, they felt it will be impossible to adequately assess the effects of wetlands conservation on individuals and public projects.

One respondent cited statistics from the National Marine Fisheries Service (NMFS) that provide evidence of the economic impacts of the cumulative loss of wetlands. NMFS estimates that coastal wetland losses in the continental United States cost the commercial fisheries industry $208 million annually. Commercial fisheries for species that depend on coastal wetlands contributed over $7 billion to the nation's Gross National Product in 1987.

Conservation groups and many individuals provided a perspective on balancing development and wetland protection economic needs that differs markedly from views expressed by many agricultural and commercial respondents. One commenter cited estimates that between fifty and eighty percent of Oregon's intertidal wetlands have been lost to diking activities by farmers. The commenter felt that it may not be reasonable to forgo more of this wetlands resource and its attendant fisheries values simply to increase agricultural production. The commenter pointed out that the wetlands "conflict" does not appear to stem from marshes displacing agricultural interests, but rather from those interests displacing marshes.

Issue 11. What Research or Data Collection Is Necessary in Working Toward the "No Net Loss" Goal?

There were few detailed responses to this question, especially concerning research. However, some commenters pointed out the need for a rapid completion of wetlands mapping nationwide. Many commenters suggested that mapping efforts be expanded to include site-specific information on wetlands functions and values. Some commenters felt this could be done easily and quickly by increasing funding of the National Wetland Inventory project.

There was considerable disagreement, as reflected throughout this summary, regarding the technical definition of a wetland. Additional research on the definition of wetlands, and how this definition may vary among various regions of the country, was urged by several commenters. A majority of commenters who addressed wetlands restoration and creation highlighted the need for expanded research in this area. A number of commenters endorsed research recommendations made by the National Wetlands Policy Forum, including initiation of a national data bank.

A. Research Needed

Many comments emphasized the need for a thorough understanding of how wetlands function. Specific suggestions included:

- Develop quantitative measures of wetlands and ecosystem functional values, including primary and secondary productivity, nutrient cycling and diversity.
- Use the Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979) to understand interdependence of various wetland systems.
- Initiate long-term research on wetland restoration and creation, including establishment of reference sites for major wetland types, and experimental sites where the success or failure of specific restoration and creation techniques could be tested. Identify techniques that succeed and the reasons why.
- Identify and evaluate economic benefits provided by wetlands. Develop quantitative measures for determining the economic values of wetlands.
- Develop a national data base to house and provide current information about the location and acreage of all wetlands.
- Identify forestry practices that are compatible with wetland functions.
- Conduct studies on different types of wetlands to improve understanding of their ecological structure, functions, and values. Emphasize research in Alaska, Western drylands and riparian habitats, and artificial wetlands, particularly those created unintentionally.

B. Information Needed

The majority of respondents emphasized the need for wetlands maps. Products produced by the National Wetlands Inventory project were recognized as very valuable and helpful by many commenters. The need for other wetland data was also emphasized. Respondents stressed that maps and other information needs to be accessible to decision-makers and landowners. An evaluation of the effects of Swampbuster programs was suggested by one commenter.

Issue 12. How Should the Federal Government Manage Its Wetlands? How Should the Existence of Wetlands Be Addressed Prior to Disposal of Federal Properties?

A. Federal Management

Two broad recommendations were submitted by respondents. One was that Federal lands should be managed under the same restrictions and permitting requirements as private lands. The Federal government should take the lead in assuring strict compliance with all legal and regulatory requirements. Second, Federal wetlands should be carefully managed to assure long-term productivity, with emphasis on ecological diversity. Commenters stressed that this should include an in-depth inventory of all Federal wetlands, which should include details on the functions and values of each.

Additional specific recommendations included:

- Prioritize wetlands by region, State and watershed.
- Manage Federal wetlands in a manner that does not interfere with private and public water rights.
- Manage wetlands on Federal properties for uses compatible with wetlands conservation, such as silviculture, hunting, fishing, trapping, and general outdoor recreation. This should be part of a scientifically-sound program of land management.
- Restore lost or degraded wetlands.
- Work cooperatively with States, Tribes, and regional and local governments.
- Manage to prevent animal and plant "pest" species, such as weeds and mosquitos, from becoming nuisances on adjacent private lands.
- Use fees generated from leasing Federal wetlands to private individuals as a means of supporting wetlands conservation efforts elsewhere.
- Require all Federal land management agencies to use the Federal Manual for Identifying and Delineating Jurisdictional Wetlands in identifying wetlands they manage.
- Require Department of Transportation (DOT) to fund efforts to inventory and manage wetlands acquired by the State DOTs.
- Manage Federal properties for a net gain in wetland acreage and quality.

B. Disposal of Properties Having Wetlands

The consistent recommendation of commenters on this subject was that when Federal property containing wetlands is sold, permanent easements protecting those wetlands should be retained. Specific recommendations included:

- Ensure there is a uniform Federal policy concerning wetland easements. Federal properties that are eligible for sale or disposal should be inventoried to identify wetlands.
- Consider land exchanges for the purpose of conserving wetlands.
- Make certain that properties held by Farmer's Home Administration (FmHA) and the Resolution Trust

Corporation (RTC) are not resold without wetland easements.

- Coordinate disposal of properties with State wildlife agencies, to allow for acquisition or management of easements.
- Provide for easements that allow compatible uses such as forestry.
- Require alternative economic analyses before placing Federal properties on the market.

Issue 13. What Can Be Done To Encourage Public Awareness of the Value of Wetlands?

This question received limited response, primarily from organizations providing detailed comment on all of the questions. There was general agreement that expanded public awareness is important. The importance of education programs in public schools was stressed. At the university level, there was a recommendation for a cooperative extension program to teach wetland values. One commenter stressed the need to greatly expand education opportunities at the university level. Efforts should focus on individuals interested in wetlands and specifically in wetlands restoration. He stressed that there will be a great need and great opportunities for individuals skilled in restoration ecology.

Another commenter offered examples of education programs that have been effective in teaching young people the importance of natural ecosystems, such as wetlands. These include "Project Learning Tree" and "Project Wild." It was also suggested that young people in urban settings, who have the least opportunity to become familiar with wetlands first-hand, should be a special focus of public outreach programs. Hands on opportunities and field trips were viewed as very helpful.

A number of responses emphasized the need to provide more information to individuals most affected by wetlands conservation policies and programs, particularly permittees and regulators. A few commenters felt that the general public is already adequately aware of the controversy surrounding wetlands conservation. However, there was a difference of opinion about how well they understood issues underlying the controversy. Commenters also pointed out that it is difficult for the general public to understand problems and values associated with wetlands when agencies regulating them do not appear in agreement. Industry stressed the need to focus on recognizable wetlands in educating the public about the values and problems of wetlands management and protection.

A basic problem identified by several commenters is the difficulty of establishing wetlands educational programs when there is little agreement on the definition of wetlands, their values, and the importance ecologically and economically. There were several suggestions for establishing a National Wetlands Information Center to address this problem.

One suggestion was to use Executive Order 11990 to require all Federal agencies to develop public information programs.

References Cited

The Conservation Foundation. 1988. Protecting America's Wetlands: An Action Agenda. The Final Report of the National Wetlands Policy Forum. The Conservation Foundation, Washington DC. 69 pp.

Cowardin, L.M., V. Carter, F.C. Golet and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service, Washington, DC, Publ. No FWS/OBS–79/31. 103 pp.

Federal Interagency Committee for Wetland Delineation. 1988. Federal Manual for Identifying and Delineating Jurisdictional Wetlands. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and U.S.D.A. Soil Conservation Service, Washington DC, Cooperative Technical Publication. 76 pp. plus appendices.

Southeastern Virginia Planning District Commission. 1990. Economic Implications of Wetlands Regulations in Southeastern Virginia. Southeastern Virginia Planning District Commission, Hampton Roads.

Dated: February 21, 1991.

June M. Whelan,

Deputy Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc 91–4605 Filed 2–27–91; 8:45 am]

BILLING CODE 4310–55–M

federal register

Thursday
February 28, 1991

Part VI

Equal Employment Opportunity Commission

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities; Notice of Proposed Rulemaking

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1630

Equal Employment Opportunity for Individuals With Disabilities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 26, 1990, the Americans with Disabilities Act (ADA) was signed into law. Section 106 of the ADA requires that the Equal Employment Opportunity Commission (EEOC) issue substantive regulations implementing title I (Employment) within one year of the date of enactment of the Act. Pursuant to this mandate the Commission is publishing a proposed new part 1630 to its regulations to implement title I and sections 3(2), 3(3), 501, 503, 508, 510 and 511 of the ADA as those sections pertain to employment. These regulations prohibit discrimination against qualified individuals with disabilities in all aspects of employment.

DATES: To be assured of consideration, comments must be in writing and must be received on or before April 29, 1991. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments that are received after the closing date will be considered to the extent practicable.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street NW., Washington, DC 20507.

As a convenience to commenters, the Executive Secretariat will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Only public comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat Staff at (202) 663–4078. (This is not a toll-free number).

Comments received will be available for public inspection in the EEOC Library, room 6502, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from March 14, 1991, until the Commission publishes the rule in final form. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD).

Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Thornton, Deputy Legal Counsel, (202) 663–4638 (voice), (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Commission actively solicited and considered public comment in the development of proposed part 1630. On August 1, 1990, the Commission published an advance notice of proposed rulemaking (ANPRM), 55 FR 31192, informing the public that the Commission had begun the process of developing substantive regulations pursuant to title I of the ADA and inviting comment from interested groups and individuals. The comment period ended on August 31, 1990. In response to the ANPRM, the Commission received 138 comments from various disability rights organizations, employer groups, and individuals. Comments were also solicited at 62 ADA input meetings conducted by Commission field offices throughout the country. More than 2400 representatives from disability rights organizations and employer groups participated in these meetings.

The format of the regulations reflects congressional intent, as expressed in the legislative history, that the regulations implementing the employment provisions of the ADA be modeled on the regulations implementing section 504 of the Rehabilitation Act of 1973, as amended, 34 CFR part 104. Accordingly, in developing these regulations, the Commission has been guided by the section 504 regulations and the case law interpreting those regulations.

It is the intent of Congress that these regulations be comprehensive and easily understood. Proposed part 1630, therefore, defines terms not previously defined in the regulations implementing section 504 of the Rehabilitation Act, such as "substantially limits," "essential functions," and "reasonable accommodation." Of necessity, many of the determinations that may be required by this proposed part must be made on a case by case basis. Where possible the regulations establish parameters to serve as guidelines in such inquiries.

The Commission is also issuing interpretive guidance concurrently with the issuance of part 1630 in order to ensure that qualified individuals with disabilities understand their rights under these regulations and to facilitate and encourage compliance by covered entities. Therefore, proposed part 1630 is accompanied by a proposed appendix. This proposed appendix represents the Commission's interpretation of the issues discussed and the Commission will be guided by it when resolving charges of employment discrimination. The proposed Appendix addresses the major provisions of the regulations and explains the major concepts of disability rights.

One especially complex area for which the Commission has attempted to provide additional definitions and parameters involves the question of how to determine whether an employer regards a particular individual as having an impairment that substantially limits the major life activity of working. This question arises only when the individual is being regarded as substantially limited in working as opposed to substantially limited in any of his or her other major life activities. Also, it does not apply when an individual has an actual disability, or has a record of being an individual with a disability. The Commission has proposed, in the appendix to part 1630, that an employer be considered to regard an individual as substantially limited in the major life activity of working if the employer's qualification standard excluding individuals with a particular impairment, would, if assumed to be generally applied by employers facing comparable hiring decisions, exclude the individual from a class of jobs or from a broad range of jobs in various classes. The Commission invites specific comment on this proposal.

More detailed guidance on specific issues will be forthcoming in the Commission's Compliance Manual. Several Compliance Manual sections and policy guidances on ADA issues are currently under development and are expected to be issued prior to the effective date of the Act. Among the issues to be addressed in depth are the theories of discrimination; definitions of disability and of qualified individual with a disability; reasonable accommodation and undue hardship, including such matters as the scope of reassignment and supported employment; and pre-employment inquiries.

To assist us in developing this guidance, the Commission requests comment from disability rights organizations, employers, unions, State agencies concerned with employment or worker's compensation practices, and interested individuals on the following specific questions concerning the application of Title I of the ADA.

Insurance

1. What are the current risk assessment or classification practices with respect to health and life insurance coverage in the area of employment?

2. Must risk assessment or classification be based on actuarial statistics?

3. What is the relationship between "risk" and "cost?"

4. Must an employer or insurance company consider the effect on individuals with disabilities before making cost saving changes in its insurance coverage?

Worker's Compensation

1. Is submission of medical information to worker's compensation offices a permissible use of information obtained as a result of a medical examination or inquiry?

2. Is an inquiry into the history of an individual's worker's compensation claims a prohibited pre-employment inquiry? Is such an inquiry ever permissible as an inquiry that is job-related and consistent with business necessity?

3. What has been the experience of federal contractors subject to section 503 of the Rehabilitation Act with respect to State worker's compensation requirements?

Collective Bargaining Agreements

1. Can the effect of a particular accommodation on the provisions of a collective bargaining agreement ever be considered an undue hardship? For example, may an employer decline to restructure a job or refuse to grant light duty because to do so would violate seniority or other provisions of the collective bargaining agreement?

2. What is the relationship between collective bargaining agreements and the accommodation of reassignment to a vacant position?

3. Should a position be considered "vacant" when the employer has other obligations, such as consent decrees or arbitration agreements, with respect to filling the position?

4. If a necessary reasonable accommodation is challenged as a violation of a collective bargaining agreement, would the employer or union violate the confidentiality requirements of the ADA by explaining that the accommodation was made to comply with the ADA?

Executive Order 12291 and Regulatory Flexibility Act

The Commission has determined that this proposed rule will not exceed the threshold level of $100 million and thus is not a major rule for the purposes of Executive Order 12291. In making this determination the Commission prepared a Preliminary Regulatory Impact Analysis. The text of the Analysis appears below.

The Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Preliminary Regulatory Impact Analysis

Executive Summary

The following analysis estimates three economic effects likely to result from the regulation implementing Title I of the Americans with Disabilities Act. Reasonable accommodation expenses are estimated at approximately $16 million, productivity gains are estimated at more than $164 million and decreased support payments and increased tax revenue is estimated at about $222 million. Lost benefits of not promulgating the rule could exceed $400 million.

It appears that the rule is unlikely to have a significant economic impact on smaller entities. Because small entities employ fewer workers, the chance that an individual small business will be required to take reasonable accommodation is quite low. Further, the availability of tax credits, the two-year exemption period and the lack of reporting requirements all reduce the economic effect of the rule on these firms.

Introduction

The Equal Employment Opportunity Commission (EEOC) has drafted regulations to implement title I of the Americans with Disabilities Act (ADA), requiring equal employment opportunity for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities. The Commission is required by the ADA to issue regulations to enforce Title I within one year of the date of enactment. The regulation raises no issues for discretionary rulemaking. Title I of the ADA is an unusual statute in that it contains a level of detail more commonly found in regulations, leaving very little room for regulatory discretion, and thus limits regulatory costs to those preset by the Congress in its choice of statutory requirements. The regulation merely explains and provides guidance on the statutory requirements by relying primarily on existing case law,[1] which is another limitation on Commission discretion in constructing the regulation.

The purpose of this preliminary regulatory impact analysis is to determine the costs and benefits of the proposed rule as required by Executive Order 12291, 46 FR 131391 (1981). This preliminary analysis suffers from a number of constraints. The ADA establishes very stringent time frames for developing implementing regulations. The limited time available necessitates the use of very rough estimates that can readily be drawn from existing literature. Additionally, a lack of regulatory alternatives available to the Commission and a scarcity of data relevant to the regulation at hand prevent this analysis from being an ideal application of cost benefit analysis. Even more limiting is the lack of a clear definition of costs associated with the rule as benefits, costs or simply transfers. Nevertheless, this analysis will address the five areas proscribed as necessary elements of a regulatory impact analysis by the Office of Management and Budget.[2] These areas are: (1) Statement of potential need for the proposal, (2) an examination of alternative approaches, (3) an analysis of benefits and costs, (4) rationale for choosing the proposed regulatory action, and (5) a statement of statutory authority. Also included in the final section of this preliminary regulatory impact analysis is a regulatory flexibility analysis.

Background

On July 26, 1990, the ADA was signed into law. The Commission invited public comment on the development of regulations through the publication of an advanced notice of proposed rulemaking on August 1, 1990. As directed by the legislative history, the regulations are modeled on those implementing section 504 of the Rehabilitation Act of 1973, as amended, 34 CFR part 104. Substantively, the regulations parallel

[1] Case law is a result of experiences encountered in implementing the Rehabilitation Act of 1973.

[2] "Appendix V, Regulatory Impact Analysis Guidance", *Regulatory Program of the United States Government, April 1, 1990–March 31, 1991*. The Executive Office of the President, Office of Management and Budget, pp. 653–666.

the act. Succinctly stated, the act and the regulations prohibit employers from discriminating in employment decisions against qualified individuals with disabilities. This includes the requirement that employers make reasonable accommodation to known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. There are certain economic effects expected as a result of title I: (1) Reasonable accommodation expenses, (2) reduction of social welfare payments and an increase in tax revenues, and (3) increased labor productivity. As will be discussed, these costs can be viewed as being positive (benefits), negative (costs) or neutral (transfers). Government administrative costs in implementing Title I could also be considered an economic effect.

Statement of Potential Need for the Proposal

Beyond the legislative requirements for the regulations, Office of Management and Budget (OMB) guidance requires regulatory impact analyses to establish the potential need for a proposal by demonstrating that "(a) market failure exists that is (b) not adequately resolved by measures other than Federal regulation."[5] The labor market failures at issue here include those addressed by other equal employment opportunity requirements. These failures have been explained in three different ways in the seminal works of Becker, Thurow and Arrow. These works originally addressed race discrimination but they are applicable to discrimination against disabled workers.[6] Becker treats discrimination as a commodity in which employers, co-workers and consumers all have to determine their discrimination coefficient, that is, their taste for discrimination or how much discrimination will affect their utility.[8] Here the market failure is the substitution of a human capital factor (that is, a qualification for or contributor to labor productivity) with factors unrelated to productivity, such as race, sex, or disability. Becker indicates that individuals and firms are willing to accept the reduced productivity arising from using such factors because they prefer not to be associated (due to uncomfortableness or displeasure) with blacks, women or disabled workers in the work place. Becker's general theorem on market discrimination assumes that all employees in a given market are either perfect substitutes or perfect complements. Discrimination by employers converts minority or female wage rates into a net wage rate with the added costs of discrimination. The discrimination cost adds to the actual wage rate by adding costs from employees, customers, unions and others who prefer not to associate with certain classes of individuals. This cost of discrimination makes the black, female, or disabled worker more expensive to the firm and therefore stimulates the employer to discriminate in wages or to fail to hire these individuals. The effect on the labor market is that it artificially constricts the labor pool and allows a non-human capital factor to be considered in labor decisions, thus reducing gross productivity.

Thurow relies strongly on the marginal productivity theory in labor economics.[9] The author explains that in studying discrimination, the important source of income is individual labor. Labor income is determined by labor's marginal productivity, its contribution to the firm's production. Firms are expected to set labor costs equal to labor's marginal productivity. As productivity increases, income should increase. In explaining employment discrimination, Thurow rejects Becker's notion of tastes for discrimination. Instead he sees the discriminator as a profit maximizer. Given a situation where firms pay black, female, ethnic or disabled workers less for comparable work, Becker would suggest that a portion of these workers' marginal productivity must go to buy off discrimination tastes. Thurow would argue that it occurs because the firm knows it can use that portion of a black, female, ethnic or disabled worker's marginal productivity as profit. Thurow's theory has limited applicability to hiring discrimination because if firms were able to capture wage disparities as profits, they would place a greater demand on these workers. This seems to be a particular weakness with respect to disabled workers because of the high rate of disabled unemployment. Nevertheless, Thurow provides a theoretical basis for observed wage disparities between equally qualified disabled and non-disabled workers. Thurow's theory also points out another market failure having to do with human capital. Although Thurow's theory could not create an artificially constricted labor market, as Becker's theory does, it would reduce returns on human capital investments for certain workers.[7] As a result, disabled workers (and others that are discriminated against in the manner described by Thurow) would be less willing and less able to make human capital investments. This will result in a less qualified work force than would be expected in a perfectly competitive market. This again can have serious national productivity effects.

Arrow, like Becker, operates from an assumption that disparities between black and white employment (and in the present instance, disabled and non-disabled employment) are caused in part by discriminatory tastes, and that these discriminatory tastes have a certain utility for an employer and for the actors in an economy such as complementary workers.[8] However, Arrow concludes that, if Becker's model is correct, in the long run the likely outcome or equilibrium point would be perfectly segregated labor pools and no disparity in wages. Noting that this condition cannot be observed in reality, he offers an alternative explanation: Imperfect information. Employers, according to Arrow's theory, may have a preconceived notion that black workers (or in this case, disabled workers) are less productive than white (or non-disabled) workers and will reduce black wages or employment opportunities accordingly. Arrow notes that in making employment decisions, an employer seeks information about candidates and this information has varying costs. Some information such as race, sex, ethnicity or disability status is particularly cheap, as the employer can usually observe these traits. In many instances the employer uses this cheap (and irrelevant) information to predict performance. The employer is able to do this and not have a disadvantage in the market because other employers also use this cheap information and because the market is sufficiently noncompetitive as to allow the use of such inefficient information. By using the cheap information (race, sex, ethnicity, and/or disability), the employer saves money in the short run and ignores the long run productivity losses. This, of course, imposes a cost on society in the form of lost productivity that stems from the use of a less competitive labor market.

Burkhauser and Haveman indicate that there are other market failure rationales for government policy in the disability area.[9] Three market failures are offered by the authors as general justification for government intervention. Burkhauser and Haveman view these three market failures as externalities. The first externality occurs, according to the authors, because when an individual becomes impaired, the costs of impairment become shared. Under this condition then one can view the welfare payments received by disabled workers as a type of externality and the reduction in these benefits caused by equal employment requirements will result in a decrease in this externality. While in some circumstances, such welfare payments may be viewed as a transfer, it is appropriate to view the reduction of the payments as a benefit as individuals become more responsible for the cost of their impairments and the externality is reduced. Expressed in another manner, the individual's income becomes more directly related to his/her productivity.

The second externality cited by these authors is relevant to the need to provide support for these individuals. In explaining this market failure, the authors point out that the amount individuals are willing to contribute to provide support is likely to depend on the contributions by others and an optimal level of support is not reached. This occurs as even individuals who prefer providing support will attempt to avoid such payments by taking a "free ride" on the contributions of others. The ADA's reasonable accommodation requirement might be viewed in this light. This requirement fixes the cost and eliminates the "free rider" problem. By selecting the employer to bear the cost the responsibility is fixed on the individual that receives the benefits of the disabled worker's productivity, thus approaching a more competitive market place. Ideally, however, the employee would be expected to bear such costs. This brings us to the third externality cited by these authors. This problem stems from the fact that disabled workers are constrained in financing investments in human capital which are frequently reflected in reasonable accommodation, for example, the purchase of a TDD by a hearing impaired individual. The authors point out that due to the lack of economic well-being among disabled workers such investments by these workers are likely to be less than optimal. Transferring the cost to the employer through government intervention is more likely to produce the optimal investment.

Burkhauser and Haveman's view of disability as an externality raises a number of issues for calculating the cost benefit of the Title I regulations. Their view indicates that welfare disability payments can be viewed as an externality that forces others to share in the cost of an individual's disability. Analysts often view such payments as transfers. Instead, it may be possible to view the reduction of such payments as a social benefit reflecting the ability to have individuals bear the costs of their own disabilities. Also their view can be used to argue that at a certain level reasonable accommodation costs are simply pecuniary as employers bear human capital investment costs rather than the disabled worker. By having the employer, who is more sound financially, bear the costs, investments will be more optimal. Therefore, the reasonable accommodation costs which are required by title I can be viewed as those that would not be taken voluntarily by the disabled worker due to financial constraints and all such costs could be viewed as benefits. Viewing disability as an externality, changes the way that many researchers have defined costs and benefits of requiring equal employment opportunity for disabled workers. Traditionally, one would normally view the reduction in social welfare payments as a transfer rather than a benefit and one would view reasonable accommodation as a cost rather than a transfer with some benefits. As it is necessary to rely on prior studies to provide estimates of costs and benefits, Burkhauser and Haveman's view of market failures raises issues that cannot be readily resolved. This makes the calculation of a cost benefit ratio difficult as there is no clear consensus on what factors are benefits and which are costs. Rather than calculate a cost benefit ratio, it will be much more valuable to simply outline regulatory costs with the recognition that these costs will be viewed as positive (benefits), as negative (costs), and as neutral (transfers) but with no definitive consistency in this view.

If the market failures, outlined above, exist, we might expect to see them reflected in disabled workers having lower employment status than similarly qualified non-disabled workers. Haveman and Wolfe make such a finding with respect to wages.[10] These authors calculate the ratio of real earnings of disabled to non-disabled males controlling for age (a proxy for experience), years of education and race. For example, in 1984, disabled workers with 13 or more years of education earned only 71 percent of the earnings of a non-disabled worker with that amount of education. The disparities were even greater when educational levels were lower. Disabled workers with less than 12 years of education earned less than one-third of that earned by non-disabled workers with less than 12 years of education. Similarly, a study by Johnson and Lambrinos indicates that 35 percent of the difference between disabled and non-disabled workers' wages is due to discrimination.[11]

Unemployment rates also reflect the lower employment status of the disabled, that would be expected particularly from Becker and Arrow's theories. The Congressional Research Service, using a 1978 Social Security Administration survey, reports that disabled men in the work force had an unemployment rate of 5.8 percent, in contrast to 3.5 percent for non-disabled men. Disabled women had an unemployment rate of 9.0 percent compared to 5.9 percent for non-disabled women.[12] Even these disparities do not completely capture the extent of unemployment, as disabled workers have been historically excluded from the work force. A Lou Harris poll found that two-thirds of disabled Americans between ages 16 and 64 are not working. Sixty-six percent of those not working say that they would like to work.[13]

[5] "Appendix V, Regulatory Impact Analysis Guidance", Regulatory Program of the United States Government, April 1, 1990–March 31, 1991, The Executive Office of the President, Office of Management and Budget, p. 653.

[6] The term "disabled worker" is used to refer to applicants and employees covered by the act. It is not intended to be a legal term but is simply a term of convenience for this analysis.

[8] Becker, Gary S. The Economics of Discrimination, The University of Chicago Press, 1957.

[9] Thurow, Lester C. Poverty and Discrimination, The Brookings Institute, Washington, DC, 1969.

[7] Such human capital investments would include education and training. For a detailed discussion of human capital theory see, Mincer, Jacob, Schooling, Experience and Earnings, National Bureau of Economic Research, New York, 1974.

[8] Arrow, Kenneth J. Arrow, "The Theory of Discrimination", Discrimination in Labor Markets, edited by Orley Ashenfelter and Albert Rees, Princeton University Press, Princeton, New Jersey, 1973, pp. 3–33.

[9] Burkhauser, Richard V. and Robert H. Haveman, Disability and Work: the Economics of American Policy, The Johns Hopkins University Press, 1982, pp. 18–22.

[10] Haveman, Robert and Barbara Wolfe, "The Economic Well-Being of the Disabled, 1962–1984", *The Journal of Human Resources*, Vol. 25 No. 1, 1990, pp. 32–54.

[11] Johnson, William G. and James Lambrinos, "Employment Discrimination", Society, March/April 1983, pp. 47–50.

[12] Digest of Data on Persons with Disabilities, Congressional Research Service, June 1984.

[13] The ICD Survey of Disabled Americans, Bringing Disabled Americans Into Mainstream, a Nationwide Survey of the 1,000 Disabled People, ICD-International Center for the Disabled and Lou Harris and Associates, Ind., 1986.

In conclusion, discrimination against disabled individuals can be viewed, like discrimination against minorities and women, as a market failure due to a taste for discrimination, short run profit maximizing, and/or use of imperfect information. It can also be viewed as an externality where others pay for the cost of an individual's disability, which becomes particularly problematic without government intervention because optimal investments in human capital (including accommodations) are not made. The effect of this failure is a reduction in national productivity that stems from use of a constricted labor market, failure to accurately return investments on human capital, failure to make optimal investments in human capital and/or use of imperfect information to predict productivity. Additionally, all theories of discrimination recognized that society suffers when there is an inequitable work force.

An Examination of Alternative Approaches

The regulation implementing the ADA represents a direct adoption of statutory requirements. Little leeway is seen for discretionary rulemaking and hence regulatory alternatives. To demonstrate this limitation, it is useful to briefly examine the seven different regulatory alternatives recommended by the regulatory impact analysis guidance.[14] The first alternative is the use of performance-oriented standards. While these types of standards have been shown to be useful alternatives for environmental regulation, they probably have limited utility in this area due to, among other factors, equity considerations for both disabled and non-disabled individuals.

The second type of alternative recommended in the regulatory impact analysis guidance is to impose different requirements for different segments of the regulated population. This is not a viable alternative for the subject regulation, as the rule represents a bare minimum compliance standard. Under somewhat similar regulations, like section 503 of the Rehabilitation Act of 1973, there are differing standards based on the value of the employer's Federal contracts. With more extensive compliance requirements like affirmative action programs, it is possible to have greater variation in regulatory requirements such as only requiring employers with large contracts to have written plans. This type of gradation is not possible with a simple nondiscrimination requirement and the Commission is not given this authority in the ADA.

The third type of requirement recommended is alternative level of stringency. This type of regulation is not appropriate to the current rule for a number of reasons. First, the Act specifies level of stringency. Second, unlike pollution or risk in occupational safety, it is difficult to have little or to have much nondiscrimination. Third, even if graduated discrimination standards could be developed, it would result in the denial of individual rights to certain employees. Such a denial is certain to be tested in the courts, imposing significant costs on the government.

The fourth alternative is variation of effective dates of compliance. This has already been addressed in the Act. Any further variation would be confusing to the public and might also be challenged through litigation.

The fifth alternative is alternative methods of ensuring compliance. The proposed regulation makes no assumptions about methods of ensuring compliance. Considering that the statute is new and the Commission has no experience in implementing the Act, it is not reasonable at this time to develop, through regulation, alternative compliance techniques.

The sixth alternative is to provide informational measures. This is a viable approach, given that one of the cited market failures creating the need for the regulation is the use of imperfect information by employers. Additionally, the employer will have information needs when determining appropriate types of reasonable accommodation. Unfortunately, neither of these information needs is well met by government intervention. The employer is much more capable of determining the information needed to make personnel decisions. Given a prohibition against using cheap discriminatory information like an individual's disability, the employer will be best able to determine the most cost effective alternatives. With respect to information regarding reasonable accommodation, since accommodations are tailored to the individual, the most cost effective manner for designing them is information exchange between employee and employer. Increased information regarding reasonable accommodation solutions will both increase compliance and reduce compliance costs. It should be noted that information can be provided by the government and can aid employers' compliance efforts. The ADA imposes such a requirement on the Commission. The Commission will provide technical assistance to employers and general information through a variety of activities, including the development of a technical assistance manual, participation in conferences and the publication of booklets and brochures.

The seventh alternative is to create more market-oriented approaches. This alternative is difficult to apply to equal employment opportunity requirements, as the buying and selling of individual rights is different than the buying and selling of tax deductions or pollution rights. Some incentives, however, through tax credits and tax deductions related to the Act, are available and will be discussed in a later section.

Faced with a scarcity of alternatives, relevant guidance has been provided.

Ordinarily, one of the alternatives will be to promulgate no regulation at all, and this alternative will commonly serve as a base from which increments in benefits and costs are calculated for the other alternatives. Even if alternatives such as no regulation are not permissible statutorily, it is often desirable to evaluate the benefits and costs of such alternatives to determine if statutory change would be desirable.[15]

Therefore the two alternatives to be examined in this analysis are the proposed regulation and no regulation.[16]

Reasonable Accommodation Expenses

The title I substantive regulations contain compliance but not reporting requirements. Of compliance requirements, the cost borne by employers is reflected in their provision of reasonable accommodation. However, as the prior discussion of market failures indicates, it is not clear whether these costs should be viewed as positive or negative costs. While traditionally viewed as negative costs, Burkhauser and Haveman's perception that disability is an externality would make reasonable accommodation expenses a benefit. Nevertheless, there is rather abundant literature indicating

[14] "Appendix V, Regulatory Impact Analysis Guidance", Regulatory Program of the United States Government, April 1, 1990–March 31, 1991. The Executive Office of the President, Office of Management and Budget.

[15] Because the alternative of no regulation appears to be intended, by OMB, to serve as a base for comparing regulatory alternatives, no regulation will be treated as if there was no legislation. While Title I of the ADA could be implemented without regulations, treating no regulation as no legislation will provide the most useful contrast. Additionally the effect of this alternative is more readily computed when viewed in this manner.

that accommodation expenses are normally quite low. The literature comes from a wide array of sources. For example, an official charged with implementing section 503 of the Rehabilitation Act noted that "there really is not any great cost attached to making accommodations." [17] A major corporation reported that "The cost of most accommodations is nominal".[18]

The basic method to estimate the economic cost of reasonable accommodation is to multiply the expected number of accommodations by the expected cost of accommodations. Four variables are needed to estimate number and cost of accommodations: the expected proportion of employment opportunities to be gained by disabled workers, the number of employees covered, the average cost of accommodation, and turnover rates.

The expected proportion of employment opportunities to be gained by disabled workers is critical in determining the number of accommodations expected. Given some knowledge of relevant employment opportunities, this figure will indicate the number of opportunities that disabled workers would be expected to receive. Availability estimates of disabled workers range from 1.1 percent to 10 percent. The Digest of Data on Persons with Disabilities uses Social Security Administration data reports to estimate that 10 percent of those 18 to 64 years old who participate in the labor force are disabled.[19] The much lower estimated of 1.1 percent availability represents that proportion of the federal work force having targeted disabilities.[20] The 10 percent availability figure is only appropriate if immediate and total compliance is expected. That is, as soon as the regulations are implemented, employers begin filling job vacancies with disabled workers at the same rate as these workers are available for employment (10 percent according to the estimate above). As few regulations ever achieve immediate and total compliance, it is useful to introduce another estimate that accounts for experience in compliance behavior. The 1.1 percent estimate reflecting compliance of federal agencies may not be appropriate, as it is limited to targeted disabilities, is from a relatively unique labor market and also represents an extreme estimate. In its place, an estimate of the employment of disabled workers by federal contractors subject to Section 503 of the Rehabilitation Act can be used. A 1982 study conducted for the Department of Labor found that 3.5 percent of federal contractors' work forces were disabled. Note that this figure was reached nearly ten years after federal contractors were subject to Section 503.

The number of employees covered by title I is another variable necessary to estimate the number of expected accommodations. The impact of title I on the economy is limited because a large number of employees are already covered by Federal, State and local statutes that require equal employment opportunity for the disabled. Two estimates of newly covered employees are relevant.[21] Twenty million employees not already covered by the Rehabilitation Act or State statutes comparable to the ADA will be covered by title I. If State statutes similar to ADA are included, only 15 million employees will be newly covered.[22]

The cost of accommodation is, of course, critical to determining the influence of Title I on the nation's economy. (For this analysis, average cost of accommodation refers to the average cost per disabled employee, not average cost per accommodation. This is necessary to account for the large proportion of disabled workers who do not require accommodation). One estimate is provided by the Berkeley Planning Associates (BPA) survey of federal contractors subject to section 503.[23] The study provides a table with percentage of accommodations within cost ranges. For example, most frequently cited are the first three ranges, where 51.1 percent of all accommodations are made at no cost, 18.5 percent at costs between $1 and $99 and 11.9 percent at costs between $100 and $499. Thus more than 80 percent of all accommodations cost less than $500. The average cost of accommodation according to that report is $304 when (1) mid-points of the published cost ranges are used for calculation, (2) it is recognized that at least one-half of disabled workers require no accommodation,[24] and (3) the highest cost range accounting for only 1.6 percent of accommodations is excluded as expenses of this caliber are likely to be structural changes that are probably covered by title III.

A second estimate can be developed from a study conducted for the Business Roundtable regarding Section 503 and other regulatory costs.[25] This study calculated that the annual cost of complying with section 503 was $3,574,000 per year. Cost estimates specific to reasonable accommodations were not made. It would be expected that these costs are much higher than those required by title I because Section 503 requires federal contractors to take affirmative action. As affirmative action requirements necessitate costs such as reporting and affirmative action plan development that are not necessary under title I, this estimate is upwardly biased. To determine the average cost of accommodations, the number of annual employment opportunities in the work force of survey firms (2,800,000 employees) was estimated by using the monthly turnover rate of large firms, 0.8 percent,[26] to estimate that there were 22,400 employment opportunities each month, or 268,000 vacancies per year. Since the Berkeley Planning Associates study found that 3.5 percent of federal

[17] Rougeau, Weldon, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, statement before Congress, Equal Employment Opportunity for the Handicapped Act of 1979: Hearings on S. 446 Before the Senate Committee on Labor and Human Resources, 96th Congress 1st Session 103 (1979) p. 103.

[18] Equal to the Task, 1981 DuPont Survey of Employment of the Handicapped, 1982, pp. 17–18.

[19] Digest of Data on Persons with Disabilities, Congressional Research Service, June 1984.

[20] D'Innocenzio, Anne, "Accommodating Disabilities", Government Executive, October 1990, p. 2.

[21] Estimates were developed by the Commission's Office of Program Operations, Program Research and Surveys Division. The estimates begin from an initial estimate of the number of employers and employees subject to the Uniform Guidelines on Employee Selection Procedures. These figures can be shown to be consistent with estimates developed privately and for other purposes by Dunn and Bradstreet. Employers and their work forces are then classified depending on their coverage by State statutes resembling in some way the ADA.

[22] As the analysis will depend on the number of workers likely to be affected by Title I, terms like "15 million newly covered employees" is used. The more accurate term might be "covered employers employing 15 million employees" as employers rather than employees will be covered by title I.

[23] A Study of Accommodations Provided to Handicapped Employees by Federal Contractors, Vol 1: Study Findings, Berkeley Planning Associates for the U.S. Department of Labor, Employment Standards Administration, June 17, 1982, p. 29.

[24] Not all disabled workers require accommodation. The ICD Survey of Disabled Americans, Bringing Disabled Americans Into the Mainstream, a Nationwide Survey of 1,000 Disabled People, ICD-International Center for the Disabled and Lou Harris Associates, Inc., 1986 reports that only 35 percent of disabled persons who are employed, report some sort of accommodation. Another study (Finnegan, Daniel, Robert Reuter and Gail Armstrong Taff, "The Costs and Benefits Associated with the Americans with Disabilities Act", Quality Planning Associates, September 11, 1989) indicates that one-half of disabled employees would require accommodation.

[25] Cost of Government Regulation Study for the Business Roundtable, Arthur Andersen & Co. for the Business Roundtable, (March 1979).

[26] Turnover rates used in this analysis are from "BNA's Job Absence and Turnover Report—2nd Quarter 1990", Bulletin to Management, The Bureau of National Affairs, September 13, 1990, pp. 293.

contractor's work forces were disabled, it is assumed that 3.5 percent of these vacancies went to disabled individuals. Thus the $3,574,000 required to comply with section 503 can be divided among 9,406 disabled employees for an average cost of $380.

Using an analysis of Section 504 costs, a study projecting the impact of the "Americans with Disabilities Act of 1989 estimated that the average cost of accommodations was $200 but this average cost did not account for their estimate that one-half of accommodations require no cost.[27] Thus the average cost would actually be $100.

Relevant estimates then of the average cost of accommodation are $384, and $380, and $100. These estimates are quite consistent considering the divergency of the sources. The mean of these three estimates is $261. This figure can be used to predict accommodation expenses that might result from title I.

If we count as newly covered employees those without either a comparable or similar State statute, then 15 million employees will annually produce 1,800,000 vacancies applying a 1 percent monthly turnover rate. If we assume the same level of compliance as Berkeley Planning Associates observed by federal contractors, then 3.5 percent or 63,000 vacancies would go to disabled workers, resulting in annual accommodation expenses of $16,443,000.

Productivity Gains

Title I is expected to increase productivity because employers will use a larger labor pool, and there will be more optimal investments in human capital. In order to estimate productivity gains from the Act, it must be assumed that as the marginal productivity theory of labor economics suggests, a worker's increased marginal productivity will equal the worker's increased marginal income. Thus, the increased wages of disabled workers after ADA will indicate increased productivity. This approach was used by O'Neill in his finding that benefits far outweigh costs in the Department of Health, Education, and Welfare's (HEW) implementation of section 504.[28] He estimated that the $50 million required to implement the employment provisions (reasonable accommodation expenses) would yield $500 million in benefits (increased productivity). Therefore the benefits are 10 times greater than the costs. Given the range of cost benefit estimates cited by Martin, O'Neill's estimate is conservative. His estimate is particularly relevant to the Title I rule since it is modeled on the section 504 regulation. If O'Neill's cost/benefit ratio is applied to the reasonable accommodation expenses presented above, increased productivity that can be attributed to the rule can be estimated at $164,430,000.

Decreased Support Payments

The social benefits of decreasing support payments and increasing tax revenues by expanding the employment of the disabled seem particularly important currently as Federal, state and local governments are frequently confronting budget deficits. Reduced support and increased tax payments have been examined in various contexts involving legislation affecting disabled workers.

Hearne explains the setting for understanding the gains to be achieved if support payments are reduced.

> If these billions of dollars [spent on an annual basis for supplemental social security income for the disabled] are continually spent to keep [the disabled] * * * population alive and not spent by Congress or by the States on access to employment, on transportation, on the real issues that affect disabled people, it is far more costly, since there is no return with this money. If this money is turned into vocational rehabilitation funds [or funds for reasonable accommodation] and individuals are placed in jobs, they become taxpayers. So that there is a two-fold benefit: One, they are taken off the public assistance rolls; and two, not only are they functionally employed and attaining independent lives as well as economic independence, but they are also paying taxes and broadening the tax base.
>
> In 1974 the three public benefit programs—public assistance, which is the State welfare, AFDC and home relief; social security disability insurance, which is primarily paid to injured workers; and SSI which, as I mentioned earlier, is the benefit program which goes to most disabled people unemployed—payments amounted to a total of about $6.3 billion.[29]

A summary of research regarding section 504 of the Rehabilitation Act of 1973 provides an indication of tax revenues lost as a result of no regulation.

One study commissioned by the Department of Health, Education, and Welfare's Office of Civil Rights estimated that eliminating discrimination against handicapped people in HEW funded grant programs would yield $1 billion annually in increased employment and earnings for handicapped people. In addition to increasing the gross national product it has been estimated that such an earnings increase by handicapped workers would result in some $58 million in additional tax revenues to Federal, State, and local governments.[30]

In support of a national rehabilitation program in 1973, Senator Cranston noted the same increase in tax revenues but also addressed the reduction in support payments. "And these figures do not reflect the approximately $33 million in savings to Federal and State governments in 1972 caused by removal of many rehabilitation persons from the public assistance rolls."[31]

A case study, while not providing the overall savings from reducing support payments, provides concrete evidence that such reductions will occur. The Rehabilitation Institute of Chicago worked towards the placement of 176 disabled workers. The gainful employment of these relatively few individuals was estimated to result in a savings of $1,056,000 in disability benefits in one year.[32]

In a similar vein, a hypothetical example explains the long range benefits of only hiring three disabled employees.

> As an example, take a disabled person who starts work at a $10,000 per annum job. He or she will pay slightly over $2,000 in taxes and will no longer collect $6,000 in [support] benefits. The gain to society is in general at least $8,000 per year for the remainder of this person's working life. Assuming a starting age of 25, this means 40 years of constructive work for a minimum net savings of $320,000. Using this simple analogy, hiring only three disabled people will eventually save society one million dollars.[33]

It was estimated above that title I will generate 63,000 employment opportunities for the disabled. It was also noted that two-thirds of disabled Americans are not working and that of these, two-thirds say they would like to work. Thus we might expect as much as

[27] Flanagan, Daniel, Robert Reuter and Gail Armstrong Taff. "The Costs and Benefits Associated with the Americans with Disabilities Act", Quality Planning Associates, September 11, 1989, p. 26.

[28] O'Neill, Dave M., "Discrimination Against Handicapped Persons, the Costs, Benefits and Inflationary Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance", Public Research Institute, February 16, 1976.

[29] Hearne, Paul G., statement in Civil Rights Issues of Handicapped Americans: Public Policy Implications, consultation before the U.S. Commission on Civil Rights, Washington, DC, May 13–14, 1980, p. 260.

[30] Accommodating the Spectrum of Individual Abilities, United States Commission on Civil Rights, Clearinghouse Publication 84, 1983, p. 75.

[31] Statement of Senator Cranston, 119 Congressional Record, 24,586, July 18, 1973.

[32] Special Report: Disability and Employment, Facts About Costs and Benefits, The President's Committee on Employment of the Handicapped, Washington, DC, 1980.

[33] Tucker, Bonnie P., "Section 504 of the Rehabilitation Act After Ten Years of Enforcement: the Past and the Future", University of Illinois Law Review, vol 1989, no 4, 1989, p. 860.

44 percent (0.66 times 0.66) or 27,720 of these employment opportunities to go to individuals receiving support payments. Using Tucker's modest estimate of tax and support payment savings of $8,000 per worker results in total savings of $221,760,000 per year. This is an extremely rough estimate, but it may be conservative. For example, tax revenues would be based on income, and the assumption that the average income of the newly employed disabled workers would be $10,000 is clearly too low.

Benefits of Equity

The utility of cost benefit analysis for equal employment opportunity rules has been questioned, as it is difficult to quantify benefits like equity. This argument has been applied specifically to equal employment opportunity for the disabled.

> The degree to which cost-benefit analysis may be applied appropriately to government programs for handicapped people has been the subject of controversy. Many authorities agree that the analysis of financial costs and benefits is an important consideration in selecting the most efficient alternative among several choices for reaching a particular goal. It is not so clear, however, that using cost-benefit analysis to select societal goals or evaluate social programs is appropriate. Cost benefit analysis strongly favors quantifiable data, usually dollars and cents, on the theory that marketplace prices, fixed by supply and demand, are more reliable than subjective value judgments. Many social programs exist, however, because the marketplace does not adequately provide needed public services or because it is unfairly biased.[34]

It is clear that even if one accepts cost benefit analysis for the title I rule, the benefits of the regulation will be vastly underestimated due to the inability to quantify the value of a more equitable labor market.

Administrative Costs

OMB guidance indicates that one cost that should be considered in projecting regulatory impact is government administrative costs. The main administrative cost from implementation of title I is the salaries for EEOC employees investigating charges received from individuals alleging discrimination in violation of title I. While, other substantial administrative costs, such as staff training and information system modifications, will be incurred during the initial implementation of title I, these costs will eventually decline. EEOC has estimated that the cost of the first full year of implementation is roughly $25 million. This excludes some one-time only expenses such as modification of management information systems. Table 1 summarizes title I costs, both positive, negative and neutral from the three major effects on the economy plus EEOC administrative costs.

TABLE 1.—SUMMARY OF ANNUAL EFFECTS ON THE ECONOMY AS A RESULT OF TITLE I

Reasonable Accommodation Expenses	$16,443,000
Productivity Gains	$164,430,000
Decreased Support Payments and Increased Taxes	$221,760,000
EEOC Administrative Costs	$25,000,000

Cost Benefit Ratio

Due to the inability to clearly define costs as positive or negative, it is not particularly useful to calculate a cost benefit ratio. However, there is considerable evidence that the cost/benefit ratio of the proposed regulation is positive. Martin indicates that "conservative estimates of the ratio of benefits to costs for such requirements have ranged between 8 to 1 to 35 to 1."[35] Irrespective of how the economic effects outlined above are labelled, the cost benefit ratio of title I is clearly positive.

The No Regulation Alternative

In examining the "no regulation" alternative, there are clearly no costs. Therefore the analysis focuses on lost benefits, that is, social benefits that will be lost if the regulation is not promulgated. As discussed earlier, it is possible to treat each of the effects on the economy except administrative costs borne by EEOC as benefits. This approach would indicate that the annual total benefits lost by not promulgating title I is $402,663,000. If a more traditional approach is taken and reasonable accommodation expenses are counted as costs rather than benefits, the lost annual benefits are still quite substantial at $386,190,000.

Biases in Estimates

It is important to briefly explain biases in the estimates provided above. First, the estimates of economic impact do not account for the transferability of accommodations. Whenever an accommodation is made, there is a possibility that the accommodation can be used for future hires. This suggests that while the provided expense estimates might be appropriate during an earlier period of compliance, future expenses will be much lower. It is also probable that some accommodations may be used by more than one individual with a disability, for example, a sign interpreter may serve several hearing impaired employees.

Second, while in the analysis above, costs of some structural accommodations were eliminated, some of the less expensive of these accommodations may still be included in the estimates. Since the elimination of these barriers are likely to be made as a result of title II or title III of the ADA, they overstate costs under the employment provisions of title I.

Third, the number of newly covered employees, used in this analysis, does not exclude employees who are already covered by local statutes comparable or similar to the ADA. Failure to account for local statutes overestimates the number of title I required accommodations. Thus, the economic effect of accommodation expenses, productivity gains and reduction in support payments and increased tax revenues may be less than estimated. Fourth, reasonable accommodation estimates are based, in two instances, on experience implementing section 503. This section contains an affirmative action requirement, and the Department of Labor requires written affirmative action plans. It is possible that the costs of meeting the affirmative action requirement are, in part, reflected in contractors' estimations of the cost of reasonable accommodation. This is certainly the case when using the Business Roundtable estimate.

Fourth, the estimates do not account for tax deductions or tax credits available to firms making accommodations. Tax credits are available for small businesses that are equal to 50 percent of reasonable accommodation expenses between $250 and $10,250. The effect of these credits, using Berkeley Planning Associates breakdown of accommodations by cost ranges, is demonstrated in Table 2. It is based on an assumption that those eligible for the credit are employing between 15 and 25 employees. There are only one million newly covered employees in this group. The 1 percent monthly turnover rate and 3.5 percent availability rate indicate that the expected number of accommodations for these firms is 2,100. Thus the 63,000 new employment opportunities for disabled workers expected as a result of ADA, would produce tax credits offsetting

[34] *Accommodating the Spectrum of Individual Abilities*, United States Commission on Civil Rights, Clearinghouse Publication 81, September 1983, p. 73.

[35] Martin, Mark E., "Accommodating the Handicapped: the Meaning of Discrimination Under Section 504 of the Rehabilitation Act", (a note) New York University Law Review, Vol. 55, November 1980, p. 901.

reasonable accommodation expenses by about $372,292. The tax credits are underestimated, as some firms with more than 25 employees would qualify. Tax deductions will also lower costs, but sufficient information to estimate the full effect of the deductions is not readily available. While tax credits and deductions can be viewed as transfers rather than pecuniary costs, it indicates a lower level of expense may be required by businesses.

TABLE 2.—CALCULATION OF TAX CREDITS

Percent	No.	Cost (dollars)	Tax credit	Total tax credit
11.9	250	299.5	$149.75	$37,422.52
6.2	130	749.5	374.75	48,792.45
4.3	90	1,499.5	749.75	67,702.43
3.8	80	3,499.5	1,749.75	139,630.05
1.0	21	7,499.5	3,749.75	78,744.75
Total				$372,292.20

Finally, no attempt was made to place the estimates of economic effects in constant dollars. While a number of estimates are based on data collection around 1980, the estimate of administrative costs is very recent. As the rate of inflation during the 1980's was relatively low (for example, 5.5 percent from 1980 to 1985) and the estimates are quite rough, adjustments for inflation would not be useful. However, the failure to make adjustments will tend to overestimate administrative costs relative to other estimated costs.

Rationale for Choosing the Proposed Regulatory Action

As mentioned previously, the ADA does not provide much discretion in the Commission's development of implementing regulations. Therefore the true rationale for the proposed regulatory action is legislative direction. However, absent this direction, the adopted course of action seems to be the most appropriate one. Whether reasonable accommodation expenses are defined as costs or benefits, the title I regulation is likely to have benefits exceeding costs.

A Statement of Statutory Authority

The statutory authority is title I of the Americans With Disabilities Act.

Impact on Smaller Businesses

According to guidance published by the Small Business Administration, a Regulatory Flexibility Analysis (RFA) requires:

> the agencies of the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. If a proposed rule is expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis must be prepared and published in the **Federal Register** describing the impact.[56]

A key rationale for this requirement is found in section 2(a)(2) of the Regulatory Flexibility Act,

> uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources.

The cost of reasonable accommodation is not uniform across firms but dependent on the number of disabled applicants and employees who need an accommodation. This will ultimately be related to the number of employment opportunities. Therefore a significant economic impact on small entities is not expected.

Because smaller firms have fewer employees, the rule can be expected to impose fewer costs on these employers as they will have fewer employment opportunities and fewer applicants and employees who need an accommodation. The values used to calculate reasonable accommodation expenses can be used as an example. Recall 15 million newly covered employees are expected under title I. Of these, 14 million work for firms with more than 25 employees. There were 56,100 such firms. Based on a 1 percent monthly turnover rate, the expected proportion of employment opportunities to be gained by disabled workers of 3.5 percent and recognizing that 50 percent of disabled workers require no accommodation, these firms would be expected to make 29,400 accommodations per year, or 0.524 accommodations per firm. Firms with between 15 and 25 employees only employ one million of the newly covered employees. Based on the same turnover and availability rates, these employers, which number 141,200, would be expected to make 2,100 accommodations per year, or 0.015 per firm. So on average, smaller firms would rarely make an accommodation and larger firms are more than 30 times more likely to make an accommodation. Further, firms with fewer than 15 employees are not covered by the title I regulation and would not be required to make any accommodations.

The economic impact of the rule is also less on smaller firms, those between 15 and 25 employees, than on larger firms because smaller firms are not covered during the first two years that title I is in effect. This lag benefits smaller businesses by directly reducing the economic burden and by allowing smaller employers to benefit from technological or production innovations in accommodations made by larger firms during the period when smaller firms are not covered.

Finally, it should be noted again that the title I rule has no reporting requirements. A major concern regarding the inequitable impact of regulation on small firms is that reporting and accompanying record keeping requirements can be as costly to smaller firms as large ones. The absence of reporting requirements eliminates this concern for the title I regulation.

In conclusion, the economic impact of the rule on small entities is not expected to be significant, with the vast majority of small businesses not expected to make an accommodation during a year. Additionally, there are aspects of the rule that result in small businesses having lower compliance costs than large businesses.

List of Subjects in 29 CFR Part 1630

Equal employment opportunity, Handicapped, Individuals with disabilities.

For the Commission,

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR chapter XIV by adding part 1630 to read as follows:

PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT

Sec.

1630.1 Purpose, applicability, and construction.
1630.2 Definitions.
1630.3 Exceptions to the definitions of "Disability" and "Qualified Individual with a Disability."
1630.4 Discrimination prohibited.
1630.5 Limiting, segregating, and classifying.
1630.6 Contractual or other arrangements.
1630.7 Standards, criteria, or methods of administration.
1630.8 Relationship or association with an individual with an individual with a disability.
1630.9 Not making reasonable accommodation.
1630.10 Qualification standards, tests, and other selection criteria.
1630.11 Administration of tests.
1630.12 Retaliation and coercion.
1630.13 Prohibited medical examinations and inquiries.
1630.14 Medical examinations and inquiries specifically permitted.
1630.15 Defenses.
1630.16 Specific activities permitted.

Appendix to part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act.

Authority: 42 U.S.C. 12116.

§ 1630.1 Purpose, applicability, and construction.

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 508, 510, and 511 of the ADA as those sections pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to "covered entities" as defined at § 1630.2(b).

(c) *Construction.*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

§ 1630.2 Definitions.

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands.

(e) *Employer.*—(1) *In general.* The term "employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(See § 1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(j) *Substantially limits.*—(1) The term "substantially limits" means:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of "working"—

(i) The term "substantially limits" means significant restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors should be considered in determining whether an individual is substantially limited in the major life activity of "working":

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(k) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) *Is regarded as having such an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraphs (h) (1) or (2) of

[56] "The Regulatory Flexibility Act", U.S. Small Business Administration, October 1982, p. 11.

this section but is treated by a covered entity has having such an impairment.

(m) *Qualified individual with a disability* means an individual with a disability who satisfies the requisite skill, experience and education requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. (See § 1630.3 for exceptions to this definition).

(n) *Essential functions.*—(1) *In general.* The term "essential functions" means primary job duties that are intrinsic to the employment position the individual holds or desires. The term "essential functions" does not include the marginal or peripheral functions of the position that are incidental to the performance of primary job functions.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence that may be considered in determining whether a particular function is essential includes but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The work experience of past incumbents in the job; and/or

(vi) The current work experience of incumbents in similar jobs.

(o) *Reasonable accommodation.*—(1) The term *reasonable accommodation* means:

(i) Any modification or adjustment to a job application process that enables a qualified individual with a disability to be considered for the position such qualified individual desires, and which will not impose an undue hardship on the covered entity's business; or

(ii) Any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position, and which will impose an undue hardship on the operation of the covered entity's business; or

(iii) Any modification or adjustment that enables a covered entity's employee with a disability to enjoy the same benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities, and which will not impose an undue hardship on the operation of the covered entity's business.

(2) *Reasonable accommodation* may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(p) *Undue hardship.*—(1) *In general. Undue hardship* means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) *Factors to be considered.* In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and cost of the accommodation needed under this part;

(ii) The overall financial resources of the site or sites involved in the provision of the reasonable accommodation, the number of persons employed at such site, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the site or sites in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the site, including the impact on the ability of other employees to perform their duties and the impact on the site's ability to conduct business.

(3) *Site* means a geographically separate subpart of a covered entity.

(q) *Qualification standards* means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired. Qualification standards may include a requirement that an individual not pose a direct threat to the health or safety of the individual or others. (See § 1630.10 Qualification standards, tests and other selection criteria).

(r) *Direct Threat* means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated by reasonable accommodation. The determination that an individual with a disability poses a "direct threat" should be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm; and

(3) The likelihood that the potential harm will occur.

§ 1630.3 Exceptions to the definitions of "Disability" and "Qualified individual with a disability."

(a) The terms *disability* and *qualified individual with a disability* do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(1) *Drug* means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) *Illegal use of drugs* means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration.

This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms *disability* and *qualified individual with a disability* may not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) *Disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) *Homosexuality and bisexuality* are not impairments and so are not disabilities as defined in this part.

§ 1630.4 Discrimination prohibited.

It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:

(a) Recruitment, advertising, and job application procedures;

(b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(c) Rates of pay or any other form of compensation and changes in compensation;

(d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(e) Leaves of absence, sick leave, or any other leave;

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(g) Selection and financial support for training, including, apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(h) Activities sponsored by a covered entity including social and recreational programs; and

(i) Any other term, condition, or privilege of employment.

The term *discrimination* includes but is not limited to the acts in §§ 1630.5 through 1630.13 of this part.

§ 1630.5 Limiting, segregating, and classifying.

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

§ 1630.6 Contractual or other arrangements.

(a) *In general.* It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(b) *Contractual or other arrangement defined.* The phrase "contractual or other arrangement or relationship" includes, but is not limited to, a relationship with an employment or referral agency; labor union, including collective bargaining agreements; an organization providing fringe benefits to an employee of the covered entity; or an organization providing training and apprenticeship programs.

(c) *Application.* This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

§ 1630.7 Standards, criteria, or methods of administration.

It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and:

(a) That have the effect of discriminating on the basis of disability; or

(b) That perpetuate the discrimination of others who are subject to common administrative control.

§ 1630.8 Relationship or association with an individual with a disability.

It is unlawful for a covered entity to exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

§ 1630.9 Not making reasonable accommodation.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the ADA.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

§ 1630.10 Qualification standards, tests, and other selection criteria.

(a) *In general.* It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

(b) *Direct threat as a qualification standard.* Notwithstanding paragraph (a) of this section, a covered entity may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others. (See § 1630.2(r) defining "direct threat").

§ 1630.11 Administration of tests.

It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

§ 1630.12 Retaliation and coercion.

(a) *Retaliation.* It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this part or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this part.

(b) *Coercion, interference or intimidation.* It is unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this part.

§ 1630.13 Prohibited medical examinations and inquiries.

(a) *Pre-employment examination or inquiry.* Except as permitted by § 1630.14, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) *Examination or inquiry of employees.* Except as permitted by § 1630.14, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

§ 1630.14 Medical examinations and inquiries specifically permitted.

(a) *Acceptable pre-employment inquiry.* A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

(b) *Employment entrance examination.* A covered entity may require a medical examination after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination, if all entering employees in the same job category are subjected to such an examination regardless of disability.

(1) Information obtained regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this part shall be provided relevant information on request.

(2) The results of such examination may be used only in accordance with this part.

(3) Medical examinations conducted in accordance with this Section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this part. (See § 1630.15(b) Defenses to charges of discriminatory application of selection criteria).

(c) *Other acceptable examinations and inquiries.* A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(1) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, except that:

(i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials investigating compliance with this Part shall be provided relevant information on request.

(2) Information obtained under paragraph (c) of this section regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this part.

§ 1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) *Disparate treatment charges.* It may be a defense to a charge of disparate treatment brought under §§ 1630.4–1630.8 and 1630.11–1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) *Charges of discriminatory application of selection criteria.* It may be a defense to a charge of discrimination, as described in § 1630.10, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criteria, or policy has a disparate impact on an individual or class of individuals with disabilities that the challenged standard, criteria or policy has been shown to be job-related and consistent with business necessity and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in § 1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(e) *Conflict with other Federal laws.* It may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(f) *Additional defenses.* It may be a defense to a charge of discrimination under this part that the alleged discriminatory action is specifically permitted by §§ 1630.14 or 1630.16.

§ 1630.16 Specific activities permitted.

(a) *Religious entities.* A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, because of his or her disability.

(b) *Regulation of alcohol and drugs.* A covered entity:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations.

(c) *Drug testing.*—(1) *General policy.* For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of drug tests by a covered entity to its job applicants or employees is not a violation of § 1630.13 of this part. However, this part does not encourage, prohibit, or authorize a covered entity from conducting drug testing of job applicants or employees for the illegal use of drugs or from making employment decisions based on such test results.

(2) *Transportation Employees.* This part does not encourage, prohibit, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to:

(i) Test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and

(ii) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (c)(2)(i) of this section.

(3) Any information regarding the medical condition or history of any employee or applicant obtained from a drug test, except information regarding the illegal use of drugs, is subject to the requirements of § 1630.14(b) (2) and (3) of this part.

(d) *Regulation of smoking.* A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this part.

(e) *Infectious and communicable diseases; food handling jobs.*—(1) *In general.* Under title I of the ADA, section 103(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases which can be transmitted through the handling of food. If an individual with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(2) *Effect on State or other laws.* This part does not preempt, modify, or amend any State, county, or local law, ordinance or regulation applicable to food handling which:

(i) Is in accordance with the list, referred to in paragraph (e)(1) of this section, of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and

(ii) Is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

(f) *Health insurance, life insurance, and other benefit plans.*—(1) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law regulating insurance.

(2) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law regulating insurance.

(3) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(4) The activities described in paragraphs (f) (1), (2), and (3) of this section are permitted unless these activities are being used as a subterfuge to evade the purposes of this part.

Appendix to Part 1630—Interpretive Guidance on Title I of the Americans with Disabilities Act

Introduction

The Equal Employment Opportunity Commission (the Commission or EEOC) is responsible for enforcement of title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990), which prohibits employment discrimination on the basis of disability. The Commission believes that it is essential to issue interpretive guidance concurrently with the issuance of these regulations in order to ensure that qualified individuals with disabilities understand their

BEST COPY AVAILABLE

rights under these regulations and to facilitate and encourage compliance by covered entities. This appendix represents the Commission's interpretation of the issues discussed, and the Commission will be guided by it when resolving charges of employment discrimination. The appendix addresses the major provisions of the regulations and explains the major concepts of disability rights.

The terms "employer" or "employer or other covered entity" are used interchangeably throughout this document to refer to all covered entities subject to the employment provisions of the ADA.

Section 1630.1 Purpose, Applicability and Construction

Section 1630.1(a) Purpose

The Americans with Disabilities Act was signed into law on July 26, 1990. It is an antidiscrimination statute which requires that individuals with disabilities be given the same consideration for employment that individuals without disabilities are given. An individual who is qualified for an employment opportunity cannot be denied that opportunity because of the fact that the individual is disabled. The purpose of title I and these regulations is to ensure that qualified individuals with disabilities are protected from discrimination on the basis of disability.

The ADA uses the term "disabilities" rather than the term "handicaps" used in the Rehabilitation Act of 1973, 29 U.S.C. 701–796. Substantively, these are equivalent. As noted by the House Committee on the Judiciary, "[t]he use of the term 'disabilities' instead of the term 'handicaps' reflects the desire of the Committee to use the most current terminology. It reflects the preference of persons with disabilities to use that term rather than 'handicapped' as used in previous laws, such as the Rehabilitation Act of 1973 * * *" H.R. Rep. No. 485 part 3, 101st Cong., 2d Sess. 28–27 (1990) [hereinafter House Judiciary Report]; see also S. Rep. No. 116, 101st Cong., 1st Sess. 21 (1989) [hereinafter Senate Report]; H.R. Rep. No. 485 part 2, 101st Cong., 2d Sess. 50–51 (1990) [hereinafter House Labor Report].

The use of the term "Americans" in the title of the ADA is not intended to imply that the Act only applies to United States citizens. Rather, the ADA protects all qualified individuals with disabilities, regardless of their citizenship status or nationality.

Section 1630.1(b) and (c) Applicability and Construction

Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.

The ADA does not preempt any Federal law, or any state or local law, that grants to individuals with disabilities protection greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense for failing to meet a higher standard under another law. Thus, for example, title I of the ADA would not be a defense to failing to collect information required to satisfy the affirmative action requirements of Section 503 of the Rehabilitation Act. On the other hand, the existence of a lesser standard under another law will not provide a defense for failing to meet a higher standard under the ADA. See House Labor Report at 136; House Judiciary Report at 69–70.

The ADA does not preempt medical standards or safety requirements established by Federal law or regulations. It does not preempt State, county, or local laws, ordinances or regulations that are consistent with this Part, and are designed to protect the public health from individuals who pose a direct threat which cannot be eliminated by reasonable accommodation to the health or safety of others. However, the ADA does preempt inconsistent requirements established by state or local law for safety or security sensitive positions. See Senate Report at 27; House Labor Report at 57.

An employer allegedly in violation of this part cannot successfully defend its actions by relying on the obligation to comply with the requirements of any state or local law that imposes prohibitions or limitations on the eligibility of qualified individuals with disabilities to practice any occupation or profession. For example, suppose a municipality has an ordinance that prohibits individuals with tuberculosis from teaching school children. If an individual with dormant tuberculosis challenges a private school's refusal to hire him or her because of the tuberculosis, the private school would not be able to rely on the city ordinance as a defense under the ADA.

Sections 1630.2(a)–(f) Commission, Covered Entity, etc.

The definitions section of the regulations includes several terms that are identical, or almost identical, to the terms found in title VII of the Civil Rights Act of 1964. Among these terms are "Commission," "Person," "State," "Employer" and "Employee." These terms are to be given the same meaning under the ADA that they are given under title VII. The term "covered entity" is not found in title VII. However, the title VII definitions of the entities included in the term "covered entity" (*e.g.*, employer, employment agency, *etc.*) are applicable to the ADA.

Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA. The first of these is the term "disability." Congress adopted the definition of this term from the Rehabilitation Act definition of the term "individual with handicaps." By so doing, Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term "disability" as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27.

The definition of the term "disability" is divided into three parts. An individual must satisfy at least one of these parts in order to be considered an individual with a disability for purposes of this regulation. An individual is considered to have a "disability" if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or, (3) is regarded by the covered entity as having such an impairment.

To understand the meaning of the term "disability," it is necessary to understand, a preliminary matter, what is meant by the terms "physical or mental impairment," "major life activity," and "substantially limits." Each of these terms is discussed below.

Section 1630.2(h) Physical or Mental Impairment

This term adopts the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. It defines physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder.

The existence of an impairment is to be determined without regard to mitigating measures such as medicines or prosthetic devices. *See* Senate Report at 23, House Labor Report at 52, House Judiciary Report at 28. For example, an individual with epilepsy would be considered to have an impairment even if the symptoms of the disorder were completely controlled by medicine. Similarly, an individual with hearing loss would be considered to have an impairment even if the condition were correctable through the use of a hearing aid.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight or muscle tone that are within "normal" range and are not the result of a physiological disorder. Nor does the definition include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of these regulations. See Senate Report at 22–23; House Labor Report at 51–52; House Judiciary Report at 28–29.

Section 1630.2(i) Major Life Activities

This term adopts the definition of the term "major life activities" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, performing manual tasks, walking, seeing, breathing, learning, working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, and reaching. See

Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

Section 1630.2(j) Substantially Limits

Determining whether a physical or mental impairment exists is only the first step in determining whether or not an individual is disabled. Many impairments do not impact an individual's life to the degree that they constitute disabling impairments. An impairment rises to the level of disability if the impairment substantially limits one or more of the individual's major life activities. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

An impairment that prevents an individual from performing a major life activity substantially limits that major life activity. For example, an individual whose legs are paralyzed is substantially limited in the major life activity of walking because he or she is unable, due to the impairment, to perform that major life activity.

Alternatively, an impairment is substantially limiting if it significantly restricts the condition, manner or duration under which an individual can perform a particular major life activity as compared to the average person in the general population. For example, an individual who uses artificial legs is substantially limited in the major life activity of walking because the individual can only perform that major life activity in a significantly restricted manner, *i.e.*, only with the use of prosthetic devices. An individual is also substantially limited in the major life activity of walking if the individual can only walk for very brief periods of time. Similarly, a diabetic who without insulin would lapse into a coma would be substantially limited because the individual can only perform major life activities with the aid of medication. See Senate Report at 23; House Labor Report at 52. It should be noted that the term "average person" is not intended to imply a precise mathematical "average."

The regulation notes several factors that should be considered in making the determination of whether an impairment is substantially limiting. These factors are (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment. The term "duration," as used in this context, refers to the length of time an impairment persists, while the term "impact" refers to the residual effects of an impairment. Thus, for example, a broken leg that takes eight weeks to heal is an impairment of fairly brief duration. However, if the broken leg heals improperly that "impact" of the impairment would be the resulting permanent limp.

The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis. An individual is not substantially limited in a major life activity if the limitation, when viewed in light of the factors noted above, does not amount to a significant restriction when compared with the abilities of the average person. For example, an individual who has once been able to walk at an extraordinary speed would not be substantially limited in the major life activity of walking if, as a result of a physical impairment, he or she were only able to walk at an average speed, or even at moderately below average speed.

It is important to remember that the restriction on the performance of the major life activity must be the result of a condition that is an impairment. As noted earlier, advanced age, physical or personality characteristics, and environmental, cultural, and economic disadvantages are not impairments. Consequently, even if such factors substantially limit an individual's ability to perform a major life activity, this limitation will not constitute a disability. For example, an individual who is unable to read because he or she was never taught to read would not be an individual with a disability because lack of education is not an impairment. However, an individual who is unable to read because of dyslexia would be an individual with a disability because dyslexia, a learning disability, is an impairment.

An individual who is not substantially limited with respect to any other major life activity may be substantially limited with respect to the major life activity of working. The determination of whether an individual is substantially limited in working must also be made on a case by case basis. If an individual is substantially limited in another major life activity, it is not necessary to consider whether he or she is substantially limited in working.

The regulation lists specific factors that should be used in making the determination of whether the limitation in working is "substantial." These factors are:

(1) The geographical areas to which the individual has reasonable access;

(2) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or

(3) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

Thus, an individual is not substantially limited in working just because he or she is unable to perform a particular job for one employer, or because he or she is unable to perform a specialized job or profession requiring extraordinary skill, prowess or talent. For example, a surgeon who is no longer able to perform surgery because of an impairment that results in a slightly shaky hand would not be substantially limited in working merely because of the inability to perform this chosen specialty. This is so because the surgeon would only be excluded from a narrow range of jobs, and would still be able to perform various other positions, in the same class, utilizing his or her training as a physician. For instance, the surgeon could continue to examine patients and advise on the need for surgery, or teach medicine or surgical techniques within the same geographical area. Nor would a professional baseball pitcher who develops a bad elbow and can no longer throw a baseball be considered substantially limited in the major life activity of working. In both examples, the individuals are not substantially limited in the ability to perform any other major life activity and, with regard to the major life activity of working, are only unable to perform a particular specialized job. See *Forrisi* v. *Bowen*, 794 F.2d 931 (4th Cir. 1986); *Jasany* v. *U.S. Postal Service*, 755 F.2d 1244 (6th Cir. 1985); *E.E. Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088 (D. Hawaii 1980).

On the other hand, an individual does not have to be totally unable to work in order to be considered substantially limited in the major life activity of working. An individual is substantially limited in working if the individual is significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes, when compared with the ability of the average person with comparable qualifications to perform those same jobs. For example, an individual who has a back condition that prevents the individual from performing any heavy labor job would be substantially limited in the major life activity of working because the individual's impairment eliminates his or her ability to perform a class of jobs. This would be so even if the individual were able to perform jobs in another class, *e.g.*, the class of semi-skilled jobs. Similarly, suppose an individual has an allergy to a substance found in most high rise office buildings, but seldom found elsewhere, that makes breathing extremely difficult. Since this individual would be substantially limited in the ability to perform the broad range of jobs in various classes that are conducted in high rise office buildings within the geographical area to which he or she has reasonable access, he or she would be substantially limited in working.

If an individual has a "mental or physical impairment" that "substantially limits" his or her ability to perform one or more "major life activities," that individual will satisfy the first part of the regulatory definition of "disability" and will be considered an individual with a disability. An individual who satisfies this first part of the definition of the term "disability" is not required to demonstrate that he or she satisfies either of the other parts of the definition. However, if an individual is unable to satisfy this part of the definition, he or she may be able to satisfy one of the other parts of the definition.

Section 1630.2(k) Record of a Substantially Limiting Condition

The second part of the definition provides that an individual with a record of an impairment that substantially limits a major life activity is an individual with a disability. The intent of this provision, in part, is to ensure that people are not discriminated against because of a history of disability. For example, this provision protects former cancer patients from discrimination based on their prior medical history. This provision also ensures that individuals are not discriminated against because they have

been misclassified as disabled. For example, individuals misclassified as learning disabled are protected from discrimination on the basis of that erroneous classification. Senate Report at 23; House Labor Report at 52–53; House Judiciary Report at 29.

This part of the definition is satisified if a record relied on by an employer indicates that the individual has or has had a substantially limiting impairment. The impairment indicated in the record must be an impairment that would substantially limit one or more of the individual's major life activities. There are many types of records that could potentially contain this information, including but not limited to, education, medical employment or other records.

The fact that an individual has a record of being a disabled veteran, or of disability retirement, or is classified as disabled for other purposes does not guarantee that the individual will satisfy the definition of "disability" under these regulations. Other statutes, regulations and programs may have a definition of "disability" that is not the same as the definition set forth in the ADA and contained in these regulations. Accordingly, in order for an individual who has been classified in a record as "disabled" for some other purpose to be considered disabled for purposes of these regulations, the impairment indicated in the record must be a physical or mental impairment that substantially limits one or more of the individual's major life activities.

Section 1630.2(l) Regarded as Substantially Limited in a Major Life Activity

If an individual cannot satisfy either the first part of the definition of "disability" or the second "record of" part of the definition, he or she may be able to satisfy the third part of the definition. The third part of the definition provides that an individual who is regarded by an employer or other covered entity as having an impairment that substantially limits a major life activity is an individual with a disability.

There are three different ways in which an individual may satisfy the definition of "being regarded as having a disability":

(1) The individual may have an impairment which is not substantially limiting but is perceived by the employer or other covered entity as constituting a substantially limiting impairment;

(2) The individual may have an impairment which is only substantially limiting because of the attitudes of others toward the impairment; or

(3) The individual may have no impairment at all but is regarded by the employer or other covered entity as having a substantially limiting impairment. Senate Report at 23; House Labor Report at 53; House Judiciary Report at 29.

An individual satisfies the first part of this definition if the individual has an impairment that is not substantially limiting, but the covered entity perceives the impairment as being substantially limiting. For example, an employee with controlled high blood pressure that is not, in fact, substantially limiting who is reassigned to less strenuous work because of the employer's unsubstantiated fears that the individual will suffer a heart attack if he or she continues to perform strenuous work would be "regarded as" disabled.

An individual satisfies the second part of the "regarded as" definition if the individual has an impairment that is only substantially limiting because of the attitude of others toward the condition. For example, an individual may have a prominent facial scar or disfigurement, or may have a condition that periodically causes an involuntary jerk of the head but does not limit the individual's major life activities. If an employer discriminates against such an individual because of the negative reactions of customers, the employer would be regarding the individual as disabled and acting on the basis of that perceived disability. *See* Senate Report at 24; House Labor Report at 53; House Judiciary Report at 30–31.

An individual satisfies the third part of the "regarded as" definition of "disability" if the employer or other covered entity erroneously believes the individual has a substantially limiting impairment that the individual actually does not have. This situation could occur, for example, if an employer discharged an employee in response to a rumor that the employee is infected with Human Immunodeficiency Virus (HIV). Even though the rumor is totally unfounded and the individual has no impairment at all, the individual is considered an individual with a disability because the employer perceived of this individual as being disabled. Thus, in this example, the employer, by discharging this employee, is discriminating on the basis of disability.

In determining whether or not an individual is regarded as substantially limited in the major life activity of working, it should be assumed that all similar employers would apply the same exclusionary qualification standard that the employer charged with discrimination has used. The determination of whether there is a substantial limitation in working is contingent upon the number and types of jobs from which the individual is excluded because of an impairment. An assessment of the number and types of jobs from which an individual "regarded as" disabled in working would be excluded can only be achieved if the qualification standard of the employer charged with discrimination is attributed to all similar employers. Were it otherwise, an employer would be able to use a discriminatory qualification standard as long as the standard was not widely followed.

For example, suppose an individual has a heart murmur that has gone undetected and has not caused any limitations on the individual's activities. In the course of a routine medical examination given to all newly employed heavy machine operators, the murmur is discovered. The employer then withdraws the offer of employment because it believes the heart murmur disqualifies the individual from operating the heavy machinery. Assuming all employers hiring heavy machine operators use this standard, the individual would be excluded from the broad range of jobs requiring the use of heavy machinery. Therefore, the employer is regarding the impairment as a substantial limitation of the major life activity of working and has acted on the basis of that perception.

Frequently Disabling Impairments

The ADA, like the Rehabilitation Act of 1973, does not attempt a "laundry list" of impairments that are "disabilities." The determination of whether an individual has a disability is not based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors.

There are, however, a number of impairments that far more often than not result in disability. The following list is provided to indicate the types of impairments that usually are disabling. However, an individual should not automatically be considered an individual with a disability merely because he or she has one of the impairments indicated on this list. Rather, such an individual is an individual with a disability only if the impairment impacts on the individual to such a degree that it substantially limits a major life activity. Commonly disabling impairments include substantial orthopedic, visual, speech, and hearing impairments, tuberculosis, HIV infection, AIDS, cerebral palsy, epilepsy, muscular dystrophies, multiple sclerosis, cancers, heart disease, diabetes, mental retardation, and emotional or mental illness.

By contrast, temporary, non-chronic impairments of short duration, with little or no long term or permanent impact, are usually not disabilities. Such impairments may include, but are not limited to, broken limbs, sprained joints, concussions, appendicitis, and influenza. Similarly, except in rare and limiting circumstances, obesity is not considered a disabling impairment.

Section 1630.2(m) Qualified Individual with a Disability

The ADA prohibits discrimination on the basis of disability against qualified individuals with disabilities. The determination of whether an individual with a disability is "qualified" should be made in two steps. The first step is to determine if the individual satisfies the prerequisites for the position, such as possessing the appropriate educational background, employment experience, skills, licenses, etc. For example, the first step in determining whether an accountant who is paraplegic is qualified for a certified public accountant (CPA) position is to examine the individual's credentials to determine whether the individual is a licensed CPA. This is sometimes referred to in the Rehabilitation Act caselaw as determining whether the individual is "otherwise qualified" for the position. See Senate Report at 33; House Labor Report at 64–65. (See Section 1630.9 Not Making Reasonable Accommodation).

The second step is to determine whether or not the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. The purpose of this second step is to ensure that individuals with disabilities who can perform the essential functions of the position held or desired are not denied employment opportunities because they are not able to perform marginal or peripheral functions of the position. House Labor Report at 55.

Section 1630.2(n) Essential Functions

The determination of which functions are essential may be critical to the determination of whether or not the individual with a disability is qualified. The essential functions are those functions that the individual who holds the position must be able to perform unaided or with the assistance of a reasonable accommodation.

The inquiry into whether a particular function is essential initially focuses on whether the employer actually requires employees in the position to perform the functions that the employer asserts are essential. For example, an employer may state that typing is an essential function of a position. If, in fact, the employer has never required any employee in that particular position to type, this will be evidence that typing is not actually an essential function of the position.

If the individual who holds the position is actually required to perform the function the employer asserts is an essential function, the inquiry will then center around whether removing the function would fundamentally alter the position. This determination of whether or not a particular function is essential will generally include one or more of the following factors listed in the regulation.

The first factor is whether the reason the position exists is to perform that function. For example, an individual may be hired to proofread documents. The ability to proofread the documents would then be an essential function, since this is the only reason the position exists.

The second factor in determining whether a function is essential is the number of other employees available to perform that job function or among whom the performance of that job function can be distributed. This may be a factor either because the total number of employees is low, or because of the fluctuating demands of the business operations. For example, if an employer has a relatively small number of employees for the volume of work to be performed, it may be necessary that each employee perform a multitude of different functions. Therefore, the performance of those functions by each employee becomes more critical and the options for reorganizing the work become more limited. In such a situation, functions that might not be essential if there were a larger staff may become essential because the staff size is small compared to the volume of work that has to be done. *See Treadwell* v. *Alexander*, 707 F.2d 473 (11th Cir. 1983).

A similar situation might occur in a larger work force if the workflow follows a cycle of heavy demand for labor intensive work followed by low demand periods. This type of workflow might also make the performance of each function during the peak periods more critical and might limit the employer's flexibility in reorganizing operating procedures. *See Dexler* v. *Tisch*, 660 F. Supp. 1418 (D. Conn. 1987).

The third factor is the degree of expertise or skill required to perform the function. In certain professions and highly skilled positions the employee is hired for his or her expertise or ability to perform the particular function. In such a situation, the performance of that specialized task would be an essential function.

Whether a particular function is essential is a factual determination that must be made on a case by case basis. In determining whether or not a particular function is essential, all relevant evidence should be considered. The regulation lists various types of evidence, such as an established job description, that may be considered in determining whether a particular function is essential. Since the list is not exhaustive, other relevant evidence may also be presented. Greater weight will not be granted to the types of evidence included on the list than to the types of evidence not listed.

The employer's judgment as to what functions are essential and written job descriptions prepared before advertising or interviewing applicants for the job are among the relevant evidence to be considered in determining whether a particular function is essential. The work experience of past employees in the job or of current employees in similar jobs is also relevant to the determination of whether a particular function is essential. *See* H.R. Conf. Rep. No. 101–596, 101st Cong., 2d Sess. 58 (1990) [hereinafter Conference Report]; House Judiciary Report at 33–34. See also *Hall* v. *U.S. Postal Service*, 857 F.2d 1073 (6th Cir. 1988).

The time spent performing the particular function may be an indicator of whether that function is essential. For example, if an employee spends the vast majority of his or her time working at a cash register, this would be evidence that operating the cash register is an essential function. The consequence of failing to require the employee to perform the function may be another indicator of whether a particular function is essential. For example, although a firefighter may not regularly have to carry an unconscious adult out of a burning building, the consequence of failing to require the firefighter to be able to perform this function would be serious.

It is important to note that the inquiry into essential functions is not intended to second guess an employer's business judgment with regard to production standards, whether qualitative or quantitative, nor to require employers to lower such standards. (See section 1630.10 Qualification Standards, Tests and Other Selection Criteria). If an employer requires its typists to be able to type 75 words per minute, it will not be called upon to explain why a typing speed of 65 words per minute would not be adequate. Similarly, if a hotel requires its service workers to clean 16 rooms a day, it will not have to explain why it chose a 16 room requirement rather than a 10 room requirement. However, if an employer does not require 75 words per minute typing or the cleaning of 16 rooms, it will have to show that it actually imposes such requirements on its employees in fact, and not simply on paper. It should also be noted that, if it is alleged that the employer intentionally selected the particular level of production to exclude individuals with disabilities, the employer may have to offer a legitimate, nondiscriminatory reason for its selection.

Section 1630.2(o) Reasonable Accommodation

An individual is considered a "qualified individual with a disability" if the individual can perform the essential functions of the position held or desired with or without reasonable accommodation. In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. There are three categories of reasonable accommodation. These are (1) accommodations that are required to ensure equal opportunity in the application process; (2) accommodations that enable the employer's employees with disabilities to perform the essential functions of the position held or desired; and (3) accommodations that enable the employer's employees with disabilities to enjoy the same benefits and privileges of employment as are enjoyed by employees without disabilities. It should be noted that nothing in these regulations prohibits employers or other covered entities from providing accommodations beyond those required by these regulations.

The regulations list the examples, specified in title I of the ADA, of the most common types of accommodation that an employer or other covered entity may be required to provide. There are any number of other specific accommodations that may be appropriate for particular situations but are not specifically mentioned in this listing. This listing is not intended to be exhaustive of accommodation possibilities. For example, other accommodations could include permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment, making employer provided transportation accessible, providing personal assistants—such as a page turner or travel attendant, and providing reserved parking spaces. Senate Report at 31; House Labor Report at 62; House Judiciary Report at 39.

The accommodations included on the list of reasonable accommodations are generally self explanatory. However, there are a few that require further explanation. One of these is the accommodation of making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities. This accommodation includes both those areas that must be accessible for the employee to perform essential job functions, as well as non-work areas used by the employer's employees for other purposes. For example, accessible break rooms, lunch rooms, training rooms, etc., may be required as reasonable accommodations.

Another of the potential accommodations listed is "job restructuring." An employer or other covered entity may restructure a job by reallocating or redistributing nonessential, marginal job functions. For example, an employer may have two jobs, each of which entails the performance of a number of marginal functions. The employer hires a

qualified individual with a disability who is able to perform some of the marginal functions of each job but not all of the marginal functions of either job. As an accommodation, the employer may redistribute the marginal functions so that all of the marginal functions that the qualified individual with a disability can perform are made a part of the position to be filled by the qualified individual with a disability. The remaining marginal functions that the individual with a disability cannot perform would then be transferred to the other position. See Senate Report at 31; House Labor Report at 62.

An employer or other covered entity is not required to reallocate essential functions. The essential functions are by definition those that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For example, suppose a security guard position requires the individual who holds the job to inspect identification cards. An employer would not have to provide an individual who is legally blind with an assistant to look at the identification cards for the legally blind employee. In this situation the assistant would be performing the job for the individual with a disability rather than assisting the individual to perform the job. See *Coleman* v. *Darden*, 595 F.2d 533 (10th Cir. 1979).

Reassignment to another vacant position is also listed as a potential reasonable accommodation. In general, reassignment should be considered only when accommodation within the individual's current position would pose an undue hardship. Reassignment is not available to applicants. An applicant for a position must be qualified for, and be able to perform the essential functions of, the position sought with or without reasonable accommodation.

Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position, in terms of pay, status, etc., if the individual is qualified and if the position is vacant. An employer may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. An employer is not required to promote an individual with a disability as an accommodation. See Senate Report at 31–32; House Labor Report at 63.

The determination of which accommodation is appropriate in a particular situation involves a process in which the employer and employee identify the precise limitations imposed by the disability and explore potential accommodations that would overcome those limitations. This process is discussed more fully in § 1630.9 Not Making Reasonable Accommodation.

Section 1630.2(p) Undue Hardship

An employer or other covered entity is not required to provide an accommodation that will impose an undue hardship on the operation of the employer's or other covered entity's business. The term "undue hardship" means significant difficulty or expense in, or resulting from, the provision of the accommodation. The "undue hardship" provision is sensitive to the financial realities of the particular employer or other covered entity. However, the concept of undue hardship is not limited to financial difficulty. "Undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business. See Senate Report at 35; House Labor Report at 67.

For example, suppose an individual with a disabling visual impairment that makes it extremely difficult to see in dim lighting applies for a position as a waiter in a nightclub and requests that the club be brightly lit as a reasonable accommodation. Although the individual may be able to perform the job in bright lighting, the nightclub will probably be able to demonstrate that that particular accommodation, though inexpensive, would impose an undue hardship if the bright lighting would destroy the ambience of the nightclub and/or make it difficult for the customers to see the stage show. The fact that that particular accommodation poses an undue hardship, however, only means that the employer is not required to provide that accommodation. If there is another accommodation that will not create an undue hardship, the employer would be required to provide the alternative accommodation.

An employer's claim that the cost of a particular accommodation will impose an undue hardship will be analyzed in light of the factors outlined in the regulations. In part, this analysis requires a determination of whose financial resources should be considered in deciding whether the accommodation is unduly costly. In many cases the financial resources of the employer or other covered entity in its entirety should be considered in determining whether the cost of an accommodation poses an undue hardship. In other cases, consideration of the financial resources of the employer or other covered entity as a whole may be inappropriate because it may not give an accurate picture of the financial resources available to the particular site that will actually be required to provide the accommodation. See House Labor Report at 68–69; House Judiciary Report at 40–41; see also Conference Report at 56–57.

If the employer or other covered entity asserts that only the financial resources of the site where the individual will be employed should be considered, the regulations require a factual determination of the relationship between the employer or other covered entity and the site that will provide the accommodation. As an example, suppose that an independently owned fast food franchise that receives no money from the franchisor refuses to hire an individual with a hearing impairment because it asserts that it would be an undue hardship to provide an interpreter to enable the individual to participate in monthly staff meetings. Since the financial relationship between the franchisor and the franchise is limited to payment of an annual franchise fee, only the financial resources of the franchise would be considered in determining whether or not providing the accommodation would be an undue hardship. See House Labor Report at 68; House Judiciary Report at 40.

If the employer or other covered entity can show that the cost of the accommodation would impose an undue hardship, it will still be required to provide the accommodation if the funding is available from another source, *e.g.*, a State vocational rehabilitation agency, or if Federal, State or local tax deductions or tax credits are available to offset the cost of the accommodation. If the employer or other covered entity receives or is eligible to receive monies from an external source that would pay the entire cost of the accommodation, it cannot claim cost as an undue hardship. To the extent that such monies pay or would pay for only part of the cost of the accommodation, only that portion of the cost of the accommodation that could be recovered—the final net cost to the entity—may be considered in determining undue hardship.

The individual with a disability requesting the accommodation must also be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business. As with outside funding available to enable the employer or other covered entity to provide the reasonable accommodation, only the net cost of the accommodation to the employer or other covered entity is to be included in the calculation of undue hardship. (See § 1630.9 Not Making a Reasonable Accommodation). See Senate Report at 36; House Labor Report at 69.

Section 1630.2(r) Direct Threat

An employer may require, as a qualification standard, that an individual not pose a direct threat to the health or safety of himself/herself or others. Like any other qualification standard, such a standard must apply to all applicants or employees and not just to individuals with disabilities. If, however, an individual poses a direct threat as a result of a disability, the employer must determine whether a reasonable accommodation would either eliminate the risk or reduce it to an acceptable level. If no accommodation exists that would either eliminate or reduce the risk, the employer may refuse to hire an applicant or may discharge an employee who poses a direct threat.

An employer, however, is not permitted to deny an employment opportunity to an individual with a disability merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, *i.e.*, high probability, of substantial harm; a speculative or remote risk is insufficient. See Senate Report at 27; House Report Labor Report at 56–57; House Judiciary Report at 45.

Determining whether an individual poses a significant risk of substantial harm to others must be made on a case by case basis. The employer should identify the specific risk posed by the individual. For individuals with mental or emotional disabilities, the employer must identify the specific behavior on the part of the individual that would pose the direct threat. For individuals with physical disabilities, the employer must identify the aspect of the disability that would pose the direct threat. The employer should then consider the three factors listed in the regulations:

(1) The duration of the risk;

(2) The nature and severity of the potential harm; and

(3) The likelihood that the potential harm will occur.

Such consideration must rely on objective, factual evidence—not on subjective perceptions, irrational fears, patronizing attitudes, or stereotypes—about the nature or effect of a particular disability, or of disability generally. See Senate Report at 27; House Labor Report at 56–57; House Judiciary Report at 45–46. See also *Strathie* v. *Department of Transportation*, 716 F.2d 227 (3d Cir. 1983).

An employer is also permitted to require that an individual with a disability not pose a direct threat of harm to his or her own safety or health. If performing the particular functions of a job would result in a high probability of substantial harm to the individual, the employer would reject or discharge the individual unless a reasonable accommodation that would not cause an undue hardship would avert the harm. For example, an employer would not be required to hire an individual, disabled by narcolepsy, who frequently and unexpectedly loses consciousness for a carpentry job the essential functions of which require the use of power saws and other dangerous equipment, where no accommodation exists that will reduce or eliminate the risk.

The assessment that there exists a high probability of substantial harm to the individual with a disability must be strictly based on valid medical analyses or on other objective evidence. This determination must be based on individualized factual data rather than on stereotypic or patronizing assumptions and must consider potential reasonable accommodations. Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used by an employer to disqualify an individual with a disability. Nor can generalized fears about risks to individuals with disabilities in the event of an evacuation or other emergency be used by an employer to disqualify an individual with a disability. See Senate Report at 56; House Labor at 73–74; House Judiciary Report at 45. See also *Mantolete* v. *Bolger*, 767 F.2d 1416 (9th Cir. 1985); *Bentivegna* v. *U.S. Department of Labor*, 694 F.2d 619 (9th Cir. 1982).

Section 1630.3 Exceptions to the Definitions of "Disability" and "Qualified Individual with a Disability"

Section 1630.3 (a)–(c) Illegal Use of Drugs

The regulations provide that an individual currently engaging in the illegal use of drugs is not an individual with a disability for purposes of this part when the employer or other covered entity acts on the basis of such use. Illegal use of drugs refers both to the use of unlawful drugs such as cocaine and to the unlawful use of prescription drugs.

Employers, for example, may discharge or deny employment to persons who illegally use drugs, on the basis of such use, without fear or being held liable for discrimination. The term "currently engaging" is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct. See Conference Report at 64.

Individuals who are erroneously perceived as engaging in the illegal use of drugs, but are not in fact illegally using drugs are not excluded from the definitions of the terms "disability" and "qualified individual with a disability." Individuals who are no longer illegally using drugs and who have either been rehabilitated successfully or are in the process of completing a rehabilitation program are, likewise, not excluded from the definitions of those terms. The term "rehabilitation program" refers to both in-patient and out-patient programs, as well as to appropriate employee assistance or other programs that provide professional (not necessarily medical) assistance and counseling for individuals who illegally use drugs. See Conference Report at 64; see also House Labor Report at 77; House Judiciary Report at 47.

An individual cannot demonstrate that he or she is no longer engaging in the illegal use of drugs by simply showing participation in a drug treatment program. It is essential that the individual offer evidence, such as drug test results, to prove that he or she is not currently engaging in the illegal use of drugs. Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. An employer, such as a law enforcement agency, may also be able to impose a qualification standard that excludes individuals with a history of illegal use of drugs if it can show that the standard is job-related and consistent with business necessity. (See § 1630.10 Qualification Standards, Tests and Other Selection Criteria) See Conference Report at 64.

Section 1630.4 Discrimination Prohibited

This provision prohibits discrimination against a qualified individual with a disability in all aspects of the employment relationship. The range of employment decisions covered by this nondiscrimination mandate is to be construed in a manner consistent with the regulations implementing section 504 of the Rehabilitation Act of 1973.

These regulations are not intended to limit the ability of covered entities to choose and maintain a qualified workforce. Employers can continue to use job-related criteria to select qualified employees, and can continue to hire employees who can perform the essential functions of the job.

Section 1630.5 Limiting, Segregating and Classifying

This provision and the several provisions that follow describe various specific forms of discrimination that are included within the general prohibition of § 1630.4. Covered entities are prohibited from restricting the employment opportunities of qualified individuals with disabilities on the basis of stereotypes and myths about the individual's disability. Rather, the capabilities qualified individuals with disabilities must be determined on an individualized, case by case basis. Covered entities are also prohibited from segregating qualified employees with disabilities into separate work areas or into separate lines of advancement.

Thus, for example, it would be a violation of these regulations for an employer to limit the duties of an employee with a disability based on a presumption of what is best for an individual with such a disability, or on a presumption about the abilities of an individual with such a disability. It would be a violation of these regulations for an employer to adopt a separate track of job promotion or progression for employees with disabilities based on a presumption that employees with disabilities are uninterested in, or incapable of, performing particular jobs. Similarly, it would be a violation for an employer to assign or reassign (as a reasonable accommodation) employees with disabilities to one particular office or installation, or to require that employees with disabilities only use particular employer provided non-work facilities such as segregated break-rooms, lunch rooms, or lounges. It would also be a violation of these regulations to deny employment to an applicant or employee with a disability based on generalized fears about the safety of an individual with such a disability, or based on generalized assumptions about the absenteeism rate of an individual with such a disability.

In addition, it should also be noted that these regulations are intended to require that employees with disabilities be accorded equal access to whatever health insurance coverage the employer provides to other employees. These regulations do not, however, affect pre-existing condition clauses included in health insurance policies offered by employers. Consequently, employers may continue to offer policies that contain such clauses, even if they adversely affect individuals with disabilities, so long as the clauses are not used as a subterfuge to evade the purposes of these regulations.

So, for example, it would be permissible for an employer to offer an insurance policy that limits coverage for certain procedures or treatments to a specified number per year. Thus, if a health insurance plan provided coverage for five blood transfusions a year to all covered employees, it would not be discriminatory to offer this plan simply because a hemophiliac employee may require more than five blood transfusions annually. However, it would not be permissible to limit or deny the hemophiliac employee coverage for other procedures, such as heart surgery or the setting of a broken leg, even though the plan would not have to provide coverage for the additional blood transfusions that may be involved in these procedures. Likewise, limits may be placed on reimbursements for certain procedures or on the types of drugs or procedures covered (e.g. limits on the number

of permitted X-rays or non-coverage of experimental drugs or procedures), but that limitation must be applied equally to individuals with and without disabilities. See Senate Report at 28–29; House Labor Report at 58–59; House Judiciary Report at 36.

Leave policies or benefit plans that are uniformly applied do not violate these regulations simply because they do not address the special needs of every individual with a disability. Thus, for example, an employer that reduces the number of paid sick leave days that it will provide to all employees, or reduces the amount of medical insurance coverage that it will provide to all employees, is not in violation of these regulations, even if the benefits reduction has an impact on employees with disabilities in need of greater sick leave and medical coverage. Benefits reductions adopted for discriminatory reasons are in violation of these regulations. See *Alexander* v. *Choate*, 469 U.S. 287 (1985). See Senate Report at 85; House Labor Report at 147. (See also, the discussion at Section 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans).

Section 1630.6 Contractual or Other Arrangements

An employer or other covered entity may not do through a contractual or other relationship what it is prohibited from doing directly. This provision only applies to situations where an employer or other covered entity has entered into a contractual relationship that has the effect of discriminating against its own employees or applicants with disabilities. Accordingly, it would be a violation for an employer to participate in a contractual relationship that results in discrimination against the employer's employees with disabilities in hiring, training, promotion, or in any other aspect of the employment relationship. This provision applies whether or not the employer or other covered entity intended for the contractual relationship to have the discriminatory effect.

The regulation notes that this provision applies to parties on either side of the contractual or other relationship. This is intended to highlight that an employer whose employees provide services to others, like an employer whose employees receive services, must ensure that those employees are not discriminated against on the basis of disability. Thus a copier company would be required to ensure the provision of any reasonable accommodation necessary to enable its copier service representative with a disability to service a client's machine.

The existence of the contractual relationship adds no new obligations, beyond those already imposed by these regulations. The employer, therefore, is not liable through the contractual arrangement for any discrimination by the contractor against the contractor's own employees or applicants, although the contractor, as an employer, may be liable for such discrimination.

An employer or other covered entity, on the other hand, cannot evade the obligations imposed by these regulations by engaging in a contractual or other relationship. For example, an employer cannot avoid its responsibility to make reasonable accommodation subject to the undue hardship limitation through a contractual arrangement. See Conference Report at 59; House Labor Report at 59–61; House Judiciary Report at 36–37.

To illustrate, assume that an employer is seeking to contract with a company to provide training for its employees. Any responsibilities of reasonable accommodation applicable to the employer in providing the training remain with that employer even if it contracts with another company for this service. Thus, if the training company were planning to conduct the training at an inaccessible location, thereby making it impossible for an employee who uses a wheelchair to attend, the employer would have a duty to make reasonable accommodation unless to do so would impose an undue hardship. Under these circumstances, appropriate accommodations might include (1) having the training company identify accessible training sites and relocate the training program; (2) having the training company make the training site accessible; (3) directly making the training site accessible or providing the training company with the means by which to make the site accessible; (4) identifying and contracting with another training company that uses accessible sites; or (5) any other accommodation that would result in making the training available to the employee.

As another illustration, assume that instead of contracting with a training company, the employer contracts with a hotel to host a conference for its employees. The employer will have a duty to ascertain and ensure the accessibility of the hotel and its conference facilities. To fulfill this obligation the employer could, for example, inspect the hotel first-hand or ask a local disability group to inspect the hotel. Alternatively, the employer could ensure that the contract with the hotel specifies it will provide accessible guest rooms for those who need them and that all rooms to be used for the conference, including exhibit and meeting rooms, are accessible. If the hotel breaches this accessibility provision, the hotel may be liable to the employer, under a non-ADA breach of contract theory, for the cost of any accommodation needed to provide access to the hotel and conference, and for any other costs accrued by the employer. (In addition, the hotel may also be independently liable under Title III of the ADA). However, this would not relieve the employer of its responsibility under these regulations nor shield it from charges of discrimination by its own employees. See House Labor Report at 40; House Judiciary Report at 37.

Section 1630.8 Relationship or Association with an Individual with a Disability

This provision is intended to protect any qualified individual, whether or not that individual has a disability, from discrimination because that person is known to have an association or relationship with an individual who has a disability. This protection is not limited to those who have a familial relationship with an individual with a disability.

To illustrate the scope of this provision, assume that a qualified applicant without a disability applies for a job and discloses to the employer that his or her spouse has a disability. The employer thereupon declines to hire the applicant because the employer believes that the applicant would have to miss work or frequently leave work early in order to care for the spouse. Such a refusal to hire would be prohibited by this provision. Similarly, this provision would prohibit an employer from discharging an employee because the employee does volunteer work with AIDS patients, and the employer fears that the employee may contract the disease.

It should be noted, however, that an employer need not provide the applicant or employee without a disability with a reasonable accommodation because that duty only applies to qualified applicants or employees with a disability. Thus, for example, an employee would not be entitled to a modified work schedule as an accommodation to enable the employee to care for a spouse with a disability. See Senate Report at 30; House Labor Report at 61–62; House Judiciary Report at 38–39.

Section 1630.9 Not Making Reasonable Accommodation

The obligation to make reasonable accommodation is a form of nondiscrimination. It applies to all employment decisions and to the job application process. This obligation does not extend to the provision of adjustments or modifications that are primarily for the personal benefit of the individual with a disability. Thus, if an adjustment or modification is job-related, *e.g.*, specifically assists the individual in performing the duties of a particular job, it will be considered a type of reasonable accommodation. On the other hand, if an adjustment or modification assists the individual throughout his or her daily activities, on and off the job, it will be considered a personal item that the employer is not required to provide. Accordingly, an employer would not be required to provide an employee with a disability with a prosthetic limb, wheelchair, or eyeglasses. Nor would an employer have to provide as an accommodation any amenity or convenience that is not job-related, such as a private hot plate, hot pot or refrigerator that is not provided to employees without disabilities. See Senate Report at 31; House Labor Report at 62.

The term "supported employment," which has been applied to a wide variety of programs to assist individuals with severe disabilities in both competitive and non-competitive employment, is not synonymous with reasonable accommodation. Examples of supported employment include modified training materials, restructuring essential functions to enable an individual to perform a job, or hiring an outside professional ("job coach") to assist in job training. Whether a particular form of assistance would be required as a reasonable accommodation must be determined on an individualized, case by case basis without regard to whether that assistance is referred to as "supported employment." For example, an employer, under certain circumstances, may be required to provide modified training materials or a temporary "job coach" to assist in the training of a qualified individual with a

disability as a reasonable accommodation. However, an employer would not be required to restructure the essential functions of a position to fit the skills of an individual with a disability who is not otherwise qualified to perform the position, such as is done in certain supported employment programs. See 34 CFR part 363. It should be noted that it would not be a violation of this Part for an employer to provide any of these personal modifications or adjustments, or to engage in supported employment or similar rehabilitative programs.

The obligation to make reasonable accommodation applies to all services and programs provided in connection with employment, and to all non-work facilities provided or maintained by an employer for use by its employees. Accordingly, the obligation to accommodate is applicable to employer sponsored placement or counseling services, and to employer provided cafeterias, lounges, gymnasiums, auditoriums, transportation and the like.

The reasonable accommodation requirement is best understood as a means by which barriers to the equal employment opportunity of an individual with a disability are removed or alleviated. These barriers may, for example, be physical or structural obstacles that inhibit or prevent the access of an individual with a disability to job sites, facilities or equipment. Or they may be rigid work schedules that permit no flexibility as to when work is performed or when breaks may be taken, or inflexible job procedures that unduly limit the modes of communication that are used on the job, or the way in which particular tasks are accomplished.

The term "otherwise qualified" is intended to make clear that the obligation to make reasonable accommodation is owed only to an individual with a disability who is qualified within the meaning of § 1630.2(m) in that he or she satisfies all the skill, experience, education and other job-related selection criteria. An individual with a disability is "otherwise qualified," in other words, if he or she is qualified for a job, except that he or she needs a reasonable accommodation to be able to perform the job's essential functions.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a visual impairment who has not met these selection criteria. That individual is not entitled to a reasonable accommodation because the individual is not "otherwise qualified" for the position.

On the other hand, if the individual has graduated from an accredited law school and passed the bar examination, the individual would be "otherwise qualified." The law firm would thus be required to provide a reasonable accommodation, such as a reader, to enable the individual to perform the essential functions of the attorney position, unless the necessary accommodation would impose an undue hardship on the law firm. See Senate Report at 33–34; House Labor Report at 64–65.

The reasonable accommodation that is required by this regulation should provide the qualified individual with a disability with an equal employment opportunity. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee with a disability in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the relevant position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. Accordingly, an employer would not have to provide an employee disabled by a back impairment with a state-of-the art mechanical lifting device if it provided the employee with a less expensive or more readily available device that enabled the employee to perform the essential functions of the job. *See* Senate Report at 35; House Labor Report at 66; *see also Carter* v. *Bennett*, 840 F.2d 63 (D.C. Cir. 1988).

Employers are obligated to make reasonable accommodation only to the physical or mental limitations of a qualified individual with a disability that are known to the employer. Thus, an employer would not be expected to accommodate disabilities of which it is unaware. If an employee with a known disability is having difficulty performing his or her job, an employer may inquire whether the employee is in need of a reasonable accommodation. In general, however, it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed. See Senate Report at 34; House Labor Report at 65.

Process of Determining the Appropriate Reasonable Accommodation

Once a qualified individual with a disability has requested provision of a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation. The process of determining the appropriate reasonable accommodation is an informal, interactive, problem solving technique involving both the employer and the qualified individual with a disability. Although this process is described below in terms of accommodations that enable the individual with a disability to perform the essential functions of the position held or desired, it is equally applicable to accommodations involving the job application process, and to accommodations that enable the individual with a disability to enjoy equal benefits and privileges of employment. See Senate Report at 34–35; House Labor Report at 65–67.

When a qualified individual with a disability has requested a reasonable accommodation to assist in the performance of a job, the employer, using a problem solving approach, should:

(1) Analyze the particular job involved and determine its purpose and essential functions;

(2) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation;

(3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and

(4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

In many instances, the appropriate reasonable accommodation may be so obvious to either or both the employer and the qualified individual with a disability that it may not be necessary to proceed in this step-by-step fashion. For example, if an employee who uses a wheelchair requests that his or her desk be placed on blocks to elevate the desktop above the arms of the wheelchair and the employer complies, an appropriate accommodation has been requested, identified, and provided without either the employee or employer being aware of having engaged in any sort of "reasonable accommodation process."

However, in some instances neither the individual requesting the accommodation nor the employer can readily identify the appropriate accommodation. For example, the individual needing the accommodation may not know enough about the equipment used by the employer or the exact nature of the work site to suggest an appropriate accommodation. Likewise, the employer may not know enough about the individual's disability or the limitations that disability would impose on the performance of the job to suggest an appropriate accommodation. Under such circumstances, it may be necessary for the employer to initiate a more defined problem solving process, such as the step-by-step process described above, as part of its reasonable effort to identify the appropriate reasonable accommodation.

This process requires the individual assessment of both the particular job at issue, and of the specific physical or mental limitations of the particular individual in need of reasonable accommodation. With regard to assessment of the job, "individual assessment" means analyzing the actual job duties and determining the true purpose or object of the job. Such an assessment is necessary to ascertain which job functions are the essential functions that an accommodation must enable an individual with a disability to perform.

After assessing the relevant job, the employer, in consultation with the individual requesting the accommodation, should make an assessment of the specific limitations imposed by the disability on the individual's performance of the job's essential functions. This assessment will make it possible to ascertain the precise barrier to the employment opportunity which, in turn, will make it possible to determine the accommodation(s) that could alleviate or remove that barrier.

If consultation with the individual in need of the accommodation still does not reveal potential appropriate accommodations, then

the employer, as part of this process, may find that technical assistance is helpful in determining how to accommodate the particular individual in the specific situation. Such assistance could be sought from the Commission, from state or local rehabilitation agencies, or from disability constituent organizations. It should be noted, however, that the failure to obtain or receive technical assistance will not excuse the employer from its reasonable accommodation obligation.

Once potential accommodations have been identified, the employer should assess the effectiveness of each potential accommodation in assisting the individual in need of the accommodation in the performance of the essential functions of the position. If more than one of these accommodations will enable the individual to perform the essential functions, the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations, and may choose the less expensive accommodation or the accommodation that is easier for it to provide.

Reasonable Accommodation Process Illustrated

The following example illustrates the informal reasonable accommodation process. Suppose a sack handler position requires that the employee pick up fifty pound sacks and carry them from the company loading dock to the storage room, and that a sack handler who is disabled by a back impairment requests a reasonable accommodation. Upon receiving the request, the employer analyzes the sack handler job and determines that the essential function and purpose of the job is not the requirement that the job holder physically lift and carry the sacks, but the requirement that the job holder cause the sack to move from the loading dock to the storage room.

The employer then meets with the sack handler to ascertain precisely the barrier posed by the individual's specific disability to the performance of the job's essential function of relocating the sacks. At this meeting the employer learns that the individual can, in fact, lift the sacks to waist level, but is prevented by his or her disability from carrying the sacks from the loading dock to the storage room. The employer and the individual agree that any of a number of potential accommodations, such as the provision of a dolly, hand truck, or cart, could enable the individual to transport the sacks that he or she has lifted.

Upon further consideration, however, it is determined that the provision of a cart is not a feasible effective option. No carts are currently available at the company, and those that can be purchased by the company are the wrong shape to hold many of the bulky and irregularly shaped sacks that must be moved. Both the dolly and the hand truck, on the other hand, appear to be effective options. Both are readily available to the company, and either will enable the individual to relocate the sacks that he or she has lifted. The sack handler indicates his or her preference for the dolly. In consideration of this expressed preference, and because the employer feels that the dolly will allow the individual to move more sacks at a time and so be more efficient than would a hand truck, the employer ultimately provides the sack handler with a dolly in fulfillment of the obligation to make reasonable accommodation.

Section 1630.9(b)

This provision states that an employer or other covered entity cannot prefer or select a qualified individual without a disability over an equally qualified individual with a disability merely because the individual with a disability will require a reasonable accommodation. In other words, an individual's need for an accommodation cannot enter into the employer's or other covered entity's decision regarding hiring, discharge, promotion, or other similar employment decisions, unless the accommodation would impose an undue hardship on the employer. See House Labor Report at 70.

Section 1630.9(d)

The purpose of this provision is to clarify that an employer or other covered entity may not compel a qualified individual with a disability to accept an accommodation, where that accommodation is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may not be considered qualified. For example, an individual with a visual impairment that restricts his or her field of vision but who is able to read unaided would not be required to accept a reader as an accommodation. However, if the individual were not able to read unaided and reading was an essential function of the job, the individual would not be qualified for the job if he or she refused a reasonable accommodation that would enable him or her to read. *See* Senate Report at 34; House Labor Report at 65; House Judiciary Report at 71–72.

Section 1630.10 Qualification Standards, Tests, and Other Selection Criteria

The purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they are actually unable to do the job. It is to ensure that there is a fit between job criteria and an applicant's (or employee's) actual ability to do the job. Accordingly, job criteria that even unintentionally screen out, or tend to screen out, an individual with disabilities or a class of individuals with disabilities may not be used unless the employer demonstrates that that criteria, as used by the employer, are job-related to the position to which they are being applied and are consistent with business necessity. The concept of "business necessity" has the same meaning as the concept of "business necessity" under section 504 of the Rehabilitation Act of 1973.

Selection criteria that exclude, or tend to exclude, an individual with a disability or a class of individuals with disabilities but do not concern an essential function of the job would not be consistent with business necessity.

It is possible for the use of selection criteria that concern an essential function to be consistent with business necessity. However, selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with the provision of a reasonable accommodation, including the adoption of an alternative, less discriminatory criterion. Experience under a similar provision of the regulations implementing section 504 of the Rehabilitation Act indicates that challenges to selection criteria are, in fact, most often resolved by reasonable accommodation. It is therefore anticipated that challenges to selection criteria brought under these regulations will generally be resolved in a like manner.

This provision is applicable to all types of selection criteria, including requirements that an employee not pose a direct threat to self or others, vision or hearing requirements, walking requirements, lifting requirements, and employment tests. See Senate Report at 37–39; House Labor Report at 70–72; House Judiciary Report at 42. As previously noted, however, it is not the intent of these regulations to second guess an employer's business judgment with regard to production standards. (See § 1630.2(n) Essential Functions). Consequently, production standards will generally not be subject to a challenge under this provision.

The Uniform Guidelines on Employee Selection Procedures (UGESP) 29 CFR part 1607 do not apply to the Rehabilitation Act and are similarly inapplicable to these regulations.

Section 1630.11 Administration of Tests

The intent of this provision is to further emphasize that individuals with disabilities are not to be excluded from jobs that they can actually perform merely because a disability prevents them from taking a test, or negatively influences the results of a test, that is prerequisite to the job. Read together with the reasonable accommodation requirement of § 1630.9, this provision requires that employment tests be administered to eligible applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill.

The employer or other covered entity is only required to provide such reasonable accommodation if it knows that the individual is disabled and that the disability impairs sensory, manual or speaking skills. Thus, for example, it would be unlawful to administer a written employment test to an individual that the employer knows is disabled with dyslexia and unable to read. In such a case, as a reasonable accommodation and in accordance with this provision, an alternative oral test should be administered to that individual. By the same token, a written test may need to be substituted for an oral test if the applicant taking the test is an individual with a disability that impairs speaking skills or impairs the processing of auditory information.

Other alternative or accessible test modes or formats include the administration of tests in large print or braille, or via a reader or sign interpreter. An employer may also be required, as a reasonable accommodation, to allow more time to complete the test. In addition, the employer's obligation to make reasonable accommodation extends to ensuring that the test site is accessible. See Senate Report at 37–38; House Labor Report at 70–72; House Judiciary Report at 42; *see also Stutts* v. *Freeman*, 694 F.2d 666 (11th Cir. 1983); *Crane* v. *Dole*, 617 F. Supp. 156 (D.D.C. 1985).

The provision does not require that an employer offer every applicant his or her choice of test format. Rather, this provision only requires that an employer provide, upon request, alternative, accessible tests to individuals with disabilities that impair sensory, manual, or speaking skills needed to take the test.

This provision does not apply to employment tests that require the use of sensory, manual, or speaking skills where the tests are intended to measure those skills. Thus, an employer could require that an applicant with dyslexia take a written test for a particular position if the ability to read is essential to the effective performance of the job. However, the results of such a test could not be used to exclude an individual with a disability unless the skill was necessary to perform an essential function of the position and no reasonable accommodation was available to enable the individual to perform that function, or the necessary accommodation would impose an undue hardship.

Section 1630.13 Prohibited Medical Examinations and Inquiries

Section 1630.13(a) Pre-employment Examination or Inquiry

This provision makes clear that an employer cannot inquire as to whether an individual has a disability at the pre-offer stage of the selection process. Employers may ask questions that relate to the applicant's ability to perform job-related functions. However, these questions should not be phrased in terms of disability. An employer, for example, may ask whether the applicant has a driver's license, if driving is a job function, but may not ask whether the applicant has a visual disability. Employers may ask about an applicant's ability to perform both essential and marginal job functions. Employer's, though, may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions. See Senate Report at 39; House Labor Report at 72–73; House Judiciary Report at 42–43.

Section 1630.13(b) Examination or Inquiry of Employees

The purpose of this provision is to prevent the administration to employees of medical tests or inquiries that do not serve a legitimate business purpose. For example, if an employee suddenly starts to use increased amounts of sick leave or starts to appear sickly, an employer could not require that employee to be tested for AIDS, HIV infection, or cancer unless the employer can demonstrate that such testing is job-related and consistent with business necessity. See Senate Report at 39; House Labor Report at 73; House Judiciary Report at 44.

This provision does not prohibit employers from making inquiries or requiring medical examinations (fitness for duty exams) when there is a need to determine whether an employee is still able to perform the essential functions of his or her job. Nor does this provision prohibit periodic physicals to determine fitness for duty if such physicals are required by medical standards or requirements established by Federal, state, or local law that are consistent with the ADA (or in the case of a federal standard, with section 504 of the Rehabilitation Act) in that they are job-related and consistent with business necessity. Such standards may include federal safety regulations that regulate bus and truck driver qualifications, as well as laws establishing medical requirements for pilots or other air transportation personnel. These standards also include health standards promulgated pursuant to the Occupational Safety and Health Act of 1970, the Federal Coal Mine Health and Safety Act of 1969, or other similar statutes that require that employees exposed to certain toxic and hazardous substances be medically monitored at specific intervals. See House Labor Report at 74–75.

Section 1630.14 Medical Examinations and Inquiries Specifically Permitted

Section 1630.14(a) Pre-employment Inquiry

Employers are permitted to make pre-employment inquiries into the ability of an applicant to perform job-related functions. This inquiry must be narrowly tailored. The employer may describe or demonstrate that job function and inquire whether or not the applicant can perform that function with or without accommodation.

For example, an employer may explain that the job requires assembling small parts and ask if the individual will be able to perform that function. See Senate Report at 39; House Labor Report at 73; House Judiciary Report at 43.

On the other hand, however, an employer may not use an application form that lists a number of potentially disabling impairments and ask the applicant to check any of the impairments he or she may have. Nor may an employer ask how a particular individual became disabled or the prognosis of the individual's disability. The employer is also prohibited from asking how often the individual will require leave for treatment or use leave as a result of incapacitation because of the disability. However, the employer may state the attendance requirements of the job and inquire whether the applicant can meet them.

Section 1630.14(b) Employment Entrance Examination

An employer is permitted to require post-offer medical examinations before the employee actually starts working. The employer may condition the offer of employment on the results of the examination, provided that all entering employees in the same job category are subjected to such an examination, regardless of disability, and that the confidentiality requirements specified in the regulations are met.

This provision recognizes that in many industries, such as air transportation or construction, applicants for certain positions are chosen on the basis of many factors including relevant physical and psychological criteria, some of which may be identified as a result of post-offer medical examinations given prior to entry on duty. Only those employees who meet the employer's relevant physical and psychological criteria for the job will be qualified to receive confirmed offers of employment and begin working.

Medical examinations permitted by this section are not required to be job-related and consistent with business necessity. However, if an employer withdraws an offer of employment because the medical examination reveals that the employee does not satisfy certain employment criteria, either the exclusionary criteria must not screen out or tend to screen out an individual with disabilities or a class of individuals with disabilities, or they must be job-related and consistent with business necessity. As part of the showing that an exclusionary criteria is job-related and consistent with business necessity, the employer must also demonstrate that there is no reasonable accommodation that will enable the individual with a disability to perform the essential functions of the job. See Conference Report at 56–60; Senate Report at 39; House Labor Report at 73–74; House Judiciary Report at 43.

As an example, suppose an employer makes a conditional offer of employment to an applicant, and it is an essential function of the job that the incumbent be available to work every day for the next three months. An employment entrance examination then reveals that the applicant has a disabling impairment that, according to reasonable medical judgment that relies on the most current medical knowledge, will require treatment that will render the applicant unable to work for a portion of the three month period. Under these circumstances, the employer would be able to withdraw the employment offer without violating these regulations.

The information obtained in the course of a permitted entrance examination is to be treated as a confidential medical record and may only be used for the limited purposes specified in the regulation at § 1630.14(b) (2) and (3).

Section 1630.14(c) Other Acceptable Examinations and Inquiries

The regulations permit voluntary medical examinations, including voluntary medical histories, as part of the employee health programs. These programs often include, for example, medical screening for high blood pressure, weight control counseling, and cancer detection. Voluntary activities, such as blood pressure monitoring and the administering of prescription drugs, such as insulin, are also permitted. It should be noted, however, that the medical records developed in the course of such activities must be maintained in the confidential manner required by this regulation and must not be used for any purpose in violation of these regulations, such as limiting health insurance

eligibility. House Labor Report at 75; House Judiciary Report at 43–44.

Section 1630.15 Defenses

The section on defenses in the regulation is not intended to be exhaustive. However, it is intended to inform employers of some of the potential defenses available to a charge of discrimination under the ADA.

Section 1630.15(a) Disparate Treatment Defenses

The "traditional" defense to a charge of disparate treatment under Title VII, as expressed in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), and their progeny, is applicable to charges of disparate treatment brought under the ADA. See *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292 (5th Cir. 1981). Disparate treatment means, with respect to Title I of the ADA, that an individual was treated differently on the basis of his or her disability. For example, disparate treatment has occurred where an employer excludes an employee with a severe facial disfigurement from staff meetings because the employer does not like to look at the employee. The individual is being treated differently because of the employer's attitude towards his or her perceived disability.

Disparate treatment has also occurred where an employer has a policy of not hiring individuals with AIDS regardless of the individuals' qualifications. The crux of the defense to this type of charge is that the individual was treated differently not because of his or her disability but for a legitimate nondiscriminatory reason such as poor performance unrelated to the individual's disability. The defense is rebutted if the alleged legitimate nondiscriminatory reason is shown to be pretextual.

Section 1630.15 (b) and (c) Disparate Impact Defenses

Disparate impact means, with respect to title I of the ADA, that uniformly applied criteria have an adverse impact on an individual with a disability or a disproportionately negative impact on a class of individuals with disabilities. Section 1630.15(b) clarifies that an employer may use selection criteria that have such a disparate impact, *i.e.*, that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities only when they are job related and consistent with business necessity.

For example, an employer interviews two candidates for a position, one of whom is blind. Both are equally qualified. The employer decides that while it is not essential to the job it would be convenient to have an employee who has a driver's license and so could occasionally be asked to run errands by car. The employer hires the individual who is sighted because this individual has a driver's license. This is an example of a uniformly applied criterion, having a driver's permit, that screens out an individual who has a disability that makes it impossible to obtain a driver's permit. The employer would, thus, have to show that this criterion is job-related and consistent with business necessity. See House Labor Report at 55.

However, even if the criterion is job-related and consistent with business necessity, an employer could not exclude an individual with a disability if there is a less discriminatory alternative criterion that meets the legitimate needs of the business, or if the criterion could be met or job performance accomplished with a reasonable accommodation. For example, suppose an employer requires as part of its application process an interview that is job-related and consistent with business necessity. The employer would not be able to refuse to hire a hearing impaired applicant because he or she could not be interviewed. This is so because an interpreter could be provided as a reasonable accommodation that would allow the individual to be interviewed, and thus satisfy the selection criterion.

Section 1630.15(c) clarifies that there may be uniformly applied standards, criteria and policies not relating to selection that may also screen out or tend to screen out an individual with a disability or a class of individuals with disabilities. Like selection criteria that have a disparate impact, non-selection criteria having such an impact may also have to be job-related and consistent with business necessity, subject to consideration of reasonable accommodation.

It should be noted, however, that some uniformly applied employment policies or practices, such as leave policies, are not subject to challenge under the adverse impact theory. "No-leave" policies (*e.g.*, no leave during the first six months of employment) are likewise not subject to challenge under the adverse impact theory. However, an employer, in spite of its "no-leave" policy, may, in appropriate circumstances, have to consider the provision of leave to an employee with a disability as a reasonable accommodation, unless the provision of leave would impose an undue hardship. See discussion at § 1630.5 Limiting, Segregating and Classifying, and § 1630.10 Qualification Standards, Tests, and Other Selection Criteria.

Section 1630.15(d) Defense to Not Making Reasonable Accommodation

An employer or other covered entity alleged to have discriminated because it did not make reasonable accommodation, as required by this regulation, may offer as a defense that it would have been an undue hardship to make the required accommodation.

It should be noted, however, that an employer cannot simply assert that a needed accommodation will cause it undue hardship, as defined in § 1630.2(p), and thereupon be relieved of the duty to provide accommodation. Rather, an employer will have to present evidence and demonstrate that the accommodation will, in fact, cause it undue hardship. Whether a particular accommodation will impose an undue hardship for a particular employer is determined on a case-by-case basis. Consequently, an accommodation that poses an undue hardship for one employer at a particular time may not pose an undue hardship for another employer, or even for the same employer at another time. See House Judiciary Report at 42.

The concept of undue hardship that has evolved under section 504 of the Rehabilitation Act and is embodied in these regulations is unlike the "undue hardship" defense associated with the provision of religious accommodation under title VII of the Civil Rights Act of 1964. To demonstrate undue hardship pursuant to the ADA, an employer must show substantially more difficulty or expense than would be needed to satisfy the "de minimis" title VII standard of undue hardship. For example, to demonstrate that the cost of an accommodation poses an undue hardship, an employer would have to show that the cost is undue as compared to the employer's budget. Simply comparing the cost of the accommodation to the salary of the individual with a disability in need of the accommodation will not suffice. Moreover, even if it is determined that the cost of an accommodation would unduly burden an employer, the employer cannot avoid making the accommodation if the individual with a disability can arrange to cover that portion of the cost that rises to the undue hardship level, or can otherwise arrange to provide the accommodation. Under such circumstances, the necessary accommodation would no longer pose an undue hardship. See Senate Report at 36; House Labor Report at 68–69; House Judiciary Report at 40–41.

Excessive cost is only one of several possible bases upon which an employer might be able to demonstrate undue hardship. Alternatively, for example, an employer could demonstrate that the provision of a particular accommodation would be unduly disruptive to its other employees or to the functioning of its business. Accordingly, by way of illustration, an employer would likely be able to show undue hardship if the employer could show that the requested accommodation of the upward adjustment of the business' thermostat would result in it becoming unduly hot for its other employees, or for its patrons or customers. The employer would thus not have to provide this accommodation. However, if there were an alternate accommodation that would not result in undue hardship, the employer would have to provide that accommodation. It should be noted, moreover, that the employer would not be able to show undue hardship if the disruption to its employees was the result of those employees' fears or prejudices toward the individual's disability and not the result of the provision of the accommodation.

Section 1630.15(e) Defense—Conflicting Federal Laws and Regulations

There are several Federal laws and regulations that address medical standards and safety requirements. If the alleged discriminatory action was taken in compliance with another Federal law or regulation, the employer may offer its obligation to comply with the conflicting standard as a defense. The employer's defense of a conflicting Federal requirement or regulation may be rebutted by a showing of pretext, or by showing that the Federal standard did not require the discriminatory action, or that there was a less discriminatory means to comply with the statute that would not conflict with these regulations. See House Labor Report at 74.

Section 1630.16 Specific Activities Permitted

Section 1630.16(a) Religious Entities

Religious organizations are not exempt from Title I of the ADA. A religious corporation, association, educational institution, or society may give a preference in employment to individuals of the particular religion, and may require that applicants and employees conform to the religious tenets of the organization. However, a religious organization may not discriminate against an individual who satisfies the permitted religious criteria because that individual is disabled. The religious entity, in other words, is required to consider qualified individuals with disabilities who satisfy the permitted religious criteria on an equal basis with qualified individuals without disabilities who similarly satisfy the religious criteria. See Senate Report at 42; House Labor Report at 76–77; House Judiciary Report at 46.

Section 1630.16(b) Regulation of Alcohol and Drugs

This provision permits employers to establish or comply with certain standards regulating the use of drugs and alcohol in the workplace. It also allows employers to hold alcoholics and persons who engage in the illegal use of drugs to the same performance and conduct standards to which it holds other employees. Individuals disabled by alcoholism are otherwise entitled to the same protections accorded other individuals with disabilities under these regulations. As noted above, individuals currently engaging in the illegal use of drugs are not individuals with disabilities for purposes of these regulations when the employer acts on the basis of such use.

Section 1630.16(c) Drug Testing

This provision reflects Title I's neutrality toward drug testing. Drug tests are neither encouraged nor prohibited. The results of drug tests may be used as a basis for disciplinary action. Drug tests are not considered medical examinations for purposes of these regulations. If the results reveal information about an individual's medical condition beyond whether the individual is currently engaging in the illegal use of drugs, this additional information is to be treated as a confidential medical record. For example, if a test for the illegal use of drugs reveals the presence of a controlled substance that has been lawfully prescribed for a particular medical condition, this information is to be treated as a confidential medical record. See House Labor Report at 79; House Judiciary Report at 47.

Section 1630.16(e) Infectious and Communicable Diseases; Food Handling Jobs

This provision addressing food handling jobs applies the "direct threat" analysis to the particular situation of accommodating individuals with infectious or communicable diseases that are transmitted through the handling of food. The Department of Health and Human Services is to prepare a list of infectious and communicable diseases that are transmitted through the handling of food. If an individual with a disability has one of the listed diseases and works in or applies for a position in food handling, the employer must determine whether there is a reasonable accommodation that will eliminate the risk of transmitting the disease through the handling of food. If there is an accommodation that will not pose an undue hardship, and that will prevent the transmission of the disease through the handling of food, the employer must provide the accommodation to the individual. The employer, under these circumstances, would not be permitted to discriminate against the individual because of the need to provide the reasonable accommodation and would be required to maintain the individual in the food handling job.

If no such reasonable accommodation is possible, the employer may refuse to assign, or to continue to assign the individual to a position involving food handling. This means that if such an individual is an applicant for a food handling position the employer is not required to hire the individual. However, if the individual is a current employee, the employer would be required to consider the accommodation of reassignment to a vacant position not involving food handling for which the individual is qualified. Conference Report at 61–63. (See § 1630.2(r) Direct Threat).

Section 1630.16(f) Health Insurance, Life Insurance, and Other Benefit Plans

This provision is a limited exemption that is only applicable to those who establish, sponsor, observe or administer benefit plans, such as health and life insurance plans. It does not apply to those who establish, sponsor, observe or administer plans not involving benefits, such as liability insurance plans.

The purpose of this provision is to permit the development and administration of benefit plans in accordance with accepted principles of risk assessment. This provision is not intended to disrupt the current regulatory structure for self-insured employers. These employers may establish, sponsor, observe, or administer the terms of a bona fide benefit plan not subject to state laws that regulate insurance. This provision is also not intended to disrupt the current nature of insurance underwriting, or current insurance industry practices in sales, underwriting, pricing, administrative and other services, claims and similar insurance related activities based on classification of risks as regulated by the States.

The activities permitted by this provision do not violate these regulations even if they result in limitations on individuals with disabilities, provided that these activities are not used as a subterfuge to evade the purposes of these regulations. Whether or not these activities are being used as a subterfuge is to be determined without regard to the date the insurance plan or employee benefit plan was adopted.

However, an employer or other covered entity cannot deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks. This regulation requires that decisions not based on risk classification be made in conformity with non-discrimination requirements. See Senate Report at 84–86; House Labor Report at 136–138; House Judiciary Report at 70–71. See the discussion of § 1630.5 Limiting, Segregating and Classifying.

[FR Doc. 91–4638 Filed 2–27–91; 8:45 am]
BILLING CODE 6750–06–M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part VII

Department of Housing and Urban Development

Office of the Secretary

Lead-Based Paint Guidelines for Public and Indian Housing; Request for Comments; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-91-3196; FR-2814-N-01]

Lead-Based Paint Guidelines (Public and Indian Housing); Request for Comments on Content of Lead-Based Paint Guidelines and for Comments Regarding General Applicability of Guidelines for HUD and Other Federal Programs

AGENCY: HUD, Office of the Secretary.

ACTION: Notice.

SUMMARY: On April 18, 1990, HUD published in the **Federal Register** (55 FR 14555) Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, effective April 1, 1990, which provide information on appropriate methods of identifying and abating lead-based paint (LBP) in the Department's Public and Indian Housing Programs. At 55 FR 39674, on September 28, 1990, a substitute chapter 8 of the Guidelines was published. The April 18, 1990, publication as revised is hereafter referred to as Guidelines. The Guidelines are intended to assist Public Housing Agencies and Indian Housing Authorities in carrying out their LBP responsibilities under the Lead-Based Paint Poisoning Prevention Act (LPPPA), 42 U.S.C. 4821 *et seq.*

This notice solicits comments from the public regarding the testing and abatement methods set forth in the Guidelines. This notice also requests advice from the public regarding the potential use of the Guidelines for other HUD housing programs (such as section 8 Housing, Community Development Block Grants, and the Rental Rehabilitation program, programs of the Federal Housing Administration (FHA)), other federally-owned housing, and as to privately-owned single and multifamily housing in the United States.

DATES: Comment Due Date is April 29, 1991.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. on regular business days at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile [FAX] machine. The telephone number of the FAX receiver is (202) 708–4337. (This is not a toll-free telephone number.) Only comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk on voice, ((202) 708–2084; or TDD (202) 708–3259).

FOR FURTHER INFORMATION CONTACT: Ronald J. Morony, Director, Division of Innovative Technology, Office of Research, (202) 708–0640, room 8136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Lead-Based Paint Poisoning Prevention Act (LPPPA) requires the Department of Housing and Urban Development to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD issued three regulations in response to judicial direction in *Ashton* v. *Pierce*, 541 F. Supp. 635 (D.D.C. 1982), *aff'd*, 716 F. 2d 56 (D.C. Cir. 1983) on August 1, 1986 (Public Housing), January 15, 1987 (FHA and section 8), and February 17, 1987 (CPD). (51 FR 27774, 52 FR 1876, and 52 FR 4870).

On June 6, 1988 (53 FR 20790), as part of its final rule implementing amendments to the LPPPA contained in the Housing and Community Development Act of 1987, HUD announced in the preamble that updated testing and abatement guidance would be published in the Federal Register. HUD also stated that further regulatory action would be needed to extend Section 566 of the HCD Act of 1987 to other HUD programs, after completion of a demonstration project. Shortly thereafter, the Secretary was instructed with regard to Public and Indian housing in the HUD-Independent Agencies Appropriations Act, 1989, Public Law 100–404, August 19, 1988, to spend no appropriated funds "with respect to the testing and abatement of lead-based paint in public housing until the Secretary develops comprehensive technical guidelines on reliable testing protocols, safe and effective abatement techniques, clean-up methods, and acceptable post-abatement lead dust levels." In the HUD-Independent Agencies Appropriations Act, 1990, Public Law 101–144, November 9, 1989, HUD was further instructed to issue lead-based paint testing and abatement guidelines no later than April 1, 1990.

The Guidelines published in the Federal Register as part II (55 FR 14555, as amended at 55 FR 39674) represent the first national compilation of technical protocols, practices, and procedures on testing, abatement, worker protection, clean-up and disposal of lead-based paint in residential structures. They were designed to be used in conjunction with State or local codes or regulations pertaining to lead-based paint by Public Housing Agencies and Indian Housing Authorities. When it issued the Guidelines, HUD satisfied the requirement which limited the expenditure of funds created by language in the above-cited 1989 and 1990 HUD-Independent Agencies Appropriations Acts. HUD will use its experience with these Guidelines, as well as comments received in response to this Notice, as it prepares revised rules for HUD and other federal programs. HUD anticipates that these Guidelines will be periodically amended as necessary to reflect the evolving state of technology in the testing and abatement of lead-based paint.

While HUD has performed statutorily required consultations and been advised by distinguished consultants and other public and private experts in creating the Guidelines, HUD recognizes that lead-based paint testing and abatement are highly complex and evolving technological areas, and that other public and private researchers and public and private agencies may possess useful expert knowledge. Accordingly, HUD is seeking comments from interested persons and organizations regarding the content and practicability of these Guidelines. The initial applicability of these Guidelines is to Public Housing Agencies and Indian Housing Authorities to improve the physical condition of existing public housing developments. The cost of such testing and abatement will be largely funded by HUD. Most of the programs of HUD are not so funded; therefore, HUD also requests comments regarding the practicability and affordability of using the subject Guidelines in any other HUD program.

HUD must establish procedures for all federally-owned properties whose proposed use is for residential habitation. Therefore, comments addressed to the practicability and affordability of these guidelines in relation to testing and abatement of lead-based paint in federally-owned housing are also encouraged. LPPPA also provides that the Secretary of HUD is to "establish and implement procedures to eliminate the hazards of lead-based paint poisoning in all federally-owned properties prior to the sale of such properties when their use is intended for residential habitation." Federally owned properties would include properties to be sold by VA, FmHA, FHA, GSA, the Department of Defense, Coast Guard, National Park Service and the Resolution Trust Corporation for residential use, and the expansion of the use of these guidelines would have a potentially significant impact on the sale activities of other Federal agencies (24 CFR part 35, subpart E sets forth the current requirements). The Department is seeking the advice as contemplated by LPPPA at 42 U.S.C. 4842, of agencies which it believes have federally-owned properties, but may not be aware of all property-disposing federal agencies or entities. Thus, identification of such entities, as well as comments are requested.

Finally, HUD is charged under 42 U.S.C. 4822(d)(4) to prepare and transmit to Congress a comprehensive and workable plan based on the testing and abatement demonstration authorized by 42 U.S.C. 4822(d)(2) with recommendations leading to the "prompt and cost-effective inspection and abatement of privately owned single family and multifamily housing . . ." A report, entitled "Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing" was transmitted to Congress on December 7, 1990. The Department also requests comments regarding the Guidelines in relation to their use in private housing, as well as comments regarding HUD's charge to make recommendations for changes in the legislation.

The Guidelines may be read in the above-cited editions of the **Federal Register**. In addition, a copy may be obtained by writing HUD USER, P.O. Box 6091, Rockville, MD 20850 or calling 1–800–245–2691 or 301–251–5154 in Maryland and the DC metropolitan area. A charge will be made for this service.

Dated: February 19, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–4697 Filed 2–27–91; 8:45 am]

BILLING CODE 4210-32-M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part VIII

Department of Education

Chapter 1 Migrant Education Coordination Program for State Educational Agencies; Notices

DEPARTMENT OF EDUCATION

Chapter 1 Migrant Education Coordination Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years (FY) 1991 and 1992.

SUMMARY: The Secretary of Education establishes absolute priorities for fiscal years 1991 and 1992 grant competitions under the Chapter 1—Migrant Education Coordination Program for State Educational Agencies. Under the priorities, and as mandated by statute, funds would be reserved first for a project that addresses a national system for credit exchange and accrual. Remaining funds would be reserved for projects in the seven additional priorities, developed in consultation with the States, that are designed to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students. The number of projects funded, and the number of priority areas in which there will be projects, will depend on the availability of funds.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Francis V. Corrigan, Office of Elementary and Secondary Education, U.S. Department of Education, room 2145, 400 Maryland Avenue, SW., Washington, DC 20202–6135. Telephone (202) 401–0740. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Authority for the Chapter 1—Migrant Education Coordination Program for State Educational Agencies is contained in section 1203 of the Elementary and Secondary Education Act of 1965. Under this program, awards are made to State educational agencies (SEAs) to improve the inter- and intrastate coordination of the educational programs available for migratory students. The statute directs the Secretary to make awards to SEAs in consultation with, and with the approval of, the States. The statute also directs the Secretary to support a national system for credit exchange and accrual.

On October 1, 1990, the Secretary published a notice of proposed funding priorities for this competition in the **Federal Register** (55 FR 40004). In response to the notice, three parties submitted comments. One concurred with the Secretary's rankings and suggested minor language changes; two others suggested changes to the rank ordering. No additional priorities were suggested. The Secretary has considered the results of a survey of State directors conducted by the Office of Migrant Education (OME) and described in the October 1 notice, the input of State directors at professional meetings and conferences of migrant educators, and the comments received in response to the October 1 notice in announcing these final funding priorities for fiscal years 1991 and 1992.

Analysis of Comments and Changes

Comment: One commenter agreed with the ranking of the priority areas suggested by the Secretary, but recommended clarifying changes in the wording of proposed Priority 2, Establishing a Migrant Stop-Over Service Center. The commenter suggested that (1) the priority clarify that stop-over site project services be provided to those who migrate to locations in the State of the stop-over site as well as in other States; (2) the project inform the children, as well as their parents or guardians, of services available near locations to which they are migrating; (3) the project be responsible for informing only State-level program officials in those locations rather than the local personnel, of the children's expected arrival; and (4) the project be responsible for establishing linkages with other appropriate programs that benefit migrant children and that are located near the project site, such as those offered by the Department of Labor, Head Start, or health care agencies.

Discussion: The Secretary agrees that the commenter's suggestions would clarify the desired activities to be conducted under this priority. However, the Secretary believes that, in some cases, notification of State-level personnel alone about the expected arrival of students may be inadequate, and so has determined that this notification should be made to State- or local-level personnel, as appropriate.

Changes: Priority 2 has been changed accordingly.

Comment: Two commenters suggested that the priority ranking be changed. One of these commenters suggested that the fifth proposed priority, NASDME Analysis and Support, be moved up to the second position, directly behind Credit Exchange and Accrual. The commenter felt that these two priorities, as well as certain functions of the Stop-Over Site project, are the only ones that truly address interstate coordination. The commenter stated that the proposed priorities for Preschool Services, Parental Involvement, and Dropout Prevention do not directly address inter- and intrastate coordination. The second commenter, by contrast, felt that the proposed priorities for Parental Involvement, Summer School Programs, and Preschool Services would address the greatest needs and should be moved to the top of the priority ranking. The second commenter also recommended that projects with experienced personnel in these areas be given preference in funding competition, and additional credit be given for projects or material already under development in these areas, to reduce waste and overlap.

Discussion: The priority to establish a national project for a system of credit exchange and accrual is required by statute and therefore must be ranked first.

The Secretary continues to believe that the second priority, the establishment of a stop-over migrant service center, warrants a higher ranking than the remaining priorities, because of the significant recruitment and coordination services that can be provided annually to a large number of migrant children and their families who pass through a particular State enroute to locations elsewhere. As noted in the discussion of public comment in the October 23, 1989, final regulations for the Chapter 1 Migrant Education Program (54 FR 43238), the Secretary believes that Section 1203 funds are a particularly good source of support for this type of project since the children passing through a stopover site will likely remain in the State for too short a period to generate adequate funding for the project out of the State's section 1201 allocation.

With regard to the third priority, early childhood education has been identified by the President and the Governors as a high priority area in the national goals for education, which declare that by the year 2000, every American child will enter school ready to learn. In addition, most State directors responding to the OME survey indicated that there is a pressing need to provide technical assistance and share preschool education program expertise within and among States. Finally, with the new emphasis on preschool education in a number of Department programs, the Secretary recognizes the great need of State projects to receive coordination support for early childhood education through section 1203 funds. The Secretary therefore believes the Preschool Services Priority should remain third.

The Secretary also regards Priority 4, Parental Involvement, as a higher priority than Priority 5, NASDME Analysis and Support. The Secretary seeks to strengthen parental involvement, emphasizing parents' responsibility to be teachers of their children and advocates for their children's education. Moreover, the majority of survey respondents ranked Parental Involvement as a higher priority than NASDME Analysis and Support.

Addressing the other concern of the first commenter, the Secretary is convinced that the Preschool Services, Parental Involvement, and Dropout Prevention priorities do directly address inter-and intrastate coordination, because they would require two or more States to work together in conducting activities to improve coordination among State and local education agencies in those areas.

However, the Secretary does not agree with the second commenter that Parental Involvement, Summer School Programs, and Preschool Services should be moved to the top of the priority ranking. The rationale supporting the placement of Preschool Services and Parental Involvement in the priority ranking is discussed above. The Secretary also believes that the ranking of Summer School Services should remain unchanged. State directors responding to the OME survey did not identify summer school as a higher priority area than the other priorities to receive coordination support through section 1203 funds.

The Secretary takes note of the second commenter's concerns about prior experience and duplication of effort; however, these concerns go beyond the scope of both this announcement and the application selection criteria contained in 34 CFR 205.31.

The Secretary believes that the ordering of the remaining final priorities best meets the coordination needs of the Migrant Education Program and is consistent with the expressed needs and concerns of the States.

Changes: None.

Absolute Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary establishes the following absolute priorities under the Migrant Education Coordination Program for State Educational Agencies. The publication of these absolute priorities does not bind the Department of Education to fund projects in these areas, except as otherwise directed by statute. Moreover, the publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements. Projects may be funded by grant, cooperative agreement, or contract. One or more of these priorities may be addressed by continuing to fund existing projects for additional years, or by funding wholly new projects.

The Secretary publishes an application notice elsewhere in this issue of the **Federal Register** announcing the expected availability of funds for these priorities in fiscal year 1991, and the priority areas for which funds will be awarded.

A directory of absolute priorities is listed first for convenience of review, with discussion of each priority further in this notice.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual.

Priority 2. Establishing a Migrant Stop-Over Site Service Center.

Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children.

Priority 4. Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement.

Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support.

Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children.

Priority 7. Dropout Prevention for Migrant Students.

Priority 8. Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs.

Priority 1. Establishing a National Project for a System of Credit Exchange and Accrual.

Under this priority, as required by statute, the Secretary funds a project to develop and establish a national program of credit exchange and accrual to help currently migratory students meet high school graduation requirements and receive their high school diplomas.

The project would build upon the existing Migrant Student Record Transfer System (MSRTS). MSRTS tracks credits earned by students towards their current school district's graduation requirements, but is not a vehicle for ensuring that credits earned in one jurisdiction will count towards graduation requirements in another State or locality. The grantee would work with SEAs to develop a system whereby credits earned by migrant students could be uniformly acknowledged, transferred, and counted towards graduation requirements among the various States and school districts. The project would take into account the varying SEA and local educational agency regulations and policies concerning credit accrual, credit transfer, and graduation requirements.

The project would also utilize findings from recent studies on secondary education for migratory students, such as the Secondary Dropout Prevention Program and ED's Handbook of Effective Migrant Education Practices.

Priority 2. Establishing a Migrant Stop-Over Site Service Center

Under this priority, the Secretary funds a project that would provide educational, health, recreation, and other services at a stop-over site used by migrant children and their families who are migrating to work at locations in the State of the stop-over site or in other States. Through recruitment efforts at the site, the project would identify migratory children and inform them, as well as their parents or guardians, of educational services available near the locations to which they are planning to travel, and inform State or local migrant officials in these destinations of the expected arrival of the children. The project would also be responsible for establishing linkages to appropriate nearby agencies such as Department of Labor, Head Start, health care and others that benefit migrant children. The project's location must enable it to serve large numbers of migrant children and their families annually through cooperative efforts of various Federal, State and local agencies, and its staff must possess adequate expertise and experience to set up quick education linkages in many States.

Priority 3. Improving the Coordination and Delivery of Preschool Services to Migratory Children

Under this priority, the Secretary awards a grant to one or more SEAs to establish one or more local demonstration projects that implement innovative methods to improve the coordination and operation of preschool services across school district or State boundaries or both. The innovative

practices for coordinating boundaries or both. The innovative methods for coordinating and serving migrant preschool children, especially currently migratory preschool children, would be designed by the grantee and put into practice as local demonstration projects based on a review of current research on preschool education, including current ED studies of preschool education and ED's Handbook of Effective Migrant Education Practices.

After implementing innovative practices through the local demonstration projects, the grantee would identify the particular innovative techniques employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. In addition, as a subsidiary focus, the grantee would develop and disseminate appropriate training materials and conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and local educational agency (LEA) personnel in coordinating and operating preschool services for migrant children.

Priority 4. Improving Coordination of Educational Opportunities for Migratory Children Through Parental Involvement

Under this priority, the Secretary awards a grant to one or more SEAs to establish one or more local demonstration projects that implement innovative methods to coordinate and conduct—across State or school district boundaries—parental involvement activities for migrant children. The innovative methods for coordinated parent involvement activities would be designed by the grantee and put into practice as local demonstration projects. The design would be based on a review of current research and practices related to parent involvement, including ED's Handbook of Effective Migrant Education Practices.

After implementing innovative practices through local demonstrations, the grantee would identify the particular innovative techniques that were employed at the demonstration sites, as well as the effectiveness, costs, and cost-effectiveness of these techniques. As a subsidiary focus, the grantee would develop and disseminate appropriate training materials. The grantee would conduct, in cooperation with ED, a limited number of training workshops to assist other SEA and LEA personnel in coordinating and conducting activities for the parents of migrant children.

Priority 5. National Association of State Directors of Migrant Education (NASDME) Analysis and Support

Under this priority, the Secretary supports a project for State Directors of Migrant Education that would (1) improve their ability to coordinate programs and projects among the States and (2) improve the quality of those programs and projects. The project would enhance the State directors' collective efforts to provide analysis, program implementation, management and improvement activities; conduct special committee meetings on program requirements or initiatives common to all SEAs such as evaluation, MSRTS, credit accrual, or quality control; engage in special coordination endeavors within the migrant education program and with other Federally funded programs; and ensure dissemination and specific collaborative efforts among Federal, State and local staff pertaining to migratory students and their families. Additional activities to enhance interstate coordination would include attention to technological applications, comprehensive data reporting requirements, policy development, and technical assistance. To support this operation, the funded SEA would receive financial support to maintain a small NASDME support staff to assist State directors in performing the above-mentioned coordination activities. The NASDME staff would also assemble, maintain and disseminate information on exemplary program practices, and work in conjunction with MSRTS to provide a data bank on exemplary programs. Funds would also be made available to help State directors defray the costs of attending NASDME national and subcommittee meetings and other related professional activities.

Priority 6. Improving Coordination of Interstate and Intrastate Identification and Recruitment of Currently Migratory Children

Under this priority, the Secretary funds a project that would build upon previous identification and recruitment (I&R) studies, MSRTS data, and ongoing practices in I&R. The project would be designed for the purpose of more rapidly identifying migrant families as they move from school district to school district. Presently, States and their operating agencies use different types of notification systems to inform potential receiving school districts that new migrant families will either be arriving or that they may have already arrived in the receiving school districts. Identifying and assessing the different notification systems used would be the major task of this project. Following assessment of the systems, recommendations would be made to the SEAs and the Secretary concerning which systems work best and which are the ones most easily replicated. Criteria to assess the efficacy of the notification systems would include: (a) Frequency and accuracy of identification and recruitment of previously unidentified currently interstate migratory children in the receiving State; and (b) The number of currently migratory children that each notification system identifies for enrollment in two or more school districts during a 12-month period.

Priority 7. Dropout Prevention for Migrant Students

Under this priority, the Secretary funds a local demonstration project to help two or more States adopt and institutionalize model programs for jointly assisting high-risk currently migratory students who are potential or actual dropouts from secondary school and who would benefit from special services in those States. The project would utilize a variety of research and operational projects such as the Migrant Education Secondary Assistance project (MESA), the Interstate Migrant Secondary Team Project, Migrant Dropout Model, ED's Handbook of Effective Migrant Education Practices, and the Migrant Attrition Project (MAP) to develop a strategy for improving retention rates and recruiting dropouts back into the classroom.

The project would provide information and practical approaches to State directors and specialists on identifying potential dropouts, preventing dropout, reducing attrition rates, and expanding migrant education services to dropouts (including alternative schooling programs such as work-study projects). As a subsidiary focus, the project would develop and disseminate appropriate training materials and conduct a limited number of training workshops for SEA personnel to assist them in addressing the dropout problem within and among States.

Priority 8. Improving Coordination of Educational Programs and Opportunities for Migratory Children in Summer Programs

Under this priority, the Secretary funds a project to identify issues related to coordinating migrant education summer programs with regular school programs and improve communications between sending and receiving States in which migratory children enroll in summer programs. The project would: (1) Examine the varieties of summer migrant programs in terms of their duration, costs, intensity, and methods of instruction; (2) Analyze the short- and long-term effects selected summer migrant education programs have upon continued schooling and graduation from high school; (3) Organize workshops to develop training materials to facilitate improved coordination among SEAs and LEAs serving the same children in receiving and sending schools; and (4) Analyze the additional costs of serving migratory children in various types of summer programs compared to costs of serving those children in regular school programs.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 2783.

(Catalog of Federal Domestic Assistance Number 84.144, Chapter 1—Migrant Education Coordination Program for State Educational Agencies)

Dated: February 21, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91-4693 Filed 2-27-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No: 84.144A-2]

Chapter 1 Migrant Education Coordination Program for State Educational Agencies Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: To award grants to State educational agencies to improve interstate and intrastate coordination of migrant education programs and projects.

Eligible applicants: State educational agencies.

Deadline for transmittal of applications: May 1, 1991.

Deadline for intergovernmental review: July 1, 1991.

Applications available: March 1, 1991.

Available funds: $200,000–$400,000.

Estimated number of awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 3 years.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations for this program in 34 CFR part 205.

Priority: Under 34 CFR 75.105 and the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, the Secretary will give absolute preference to applications that meet the following priority:

Priority 2. Establishing a Migrant Stop-Over Site Service Center

Under 34 CFR 75.105(c)(3), the Secretary will fund under this competition only applications that meet this absolute priority.

For applications or information contact: Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue SW., room 2151, Washington, DC 20202–6135. Telephone (202) 401–0744. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2783.

Dated: February 21, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-4693 Filed 2-27-91; 8:45 am]

BILLING CODE 4000-01-M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part IX

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 171, and 173

Amendments to the Hazardous Materials Program Procedures and Regulations; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, and 173

[Docket No. HM-207; Amdts. 107-24; 171-12; 173-226]

RIN 2137-AC01

Amendments to the Hazardous Materials Program Procedures and Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), enacted on November 16, 1990, amended the Hazardous Materials Transportation Act of 1975 (HMTA). RSPA is issuing this final rule to conform its regulations to certain provisions of the HMTUSA amendments.

This rule amends the regulations by increasing the maximum civil penalty that may be assessed for violations of the HMTA and the regulations issued under the HMTA, and by establishing a minimum civil penalty amount. This rule also adds new definitions, establishes standards and procedures for preemption and waiver of preemption determinations, and makes other changes consistent with the HMTUSA.

EFFECTIVE DATE: November 16, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel, or Mary Crouter, Senior Attorney, Hazardous Materials Safety & Research and Technology Law Division, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

I. Changes Effected by the Hazardous Materials Transportation Uniform Safety Act of 1990

The Hazardous Materials Transportation Uniform Safety Act (HMTUSA; Public Law 101-615) was enacted on November 16, 1990. The HMTUSA amends the Hazardous Materials Transportation Act (HMTA; 49 app. U.S.C. 1801-1813) in many significant respects. The amendments addressed by this final rule include the following:

(1) Section 3 of the HMTUSA adds to or amends the definitions in the HMTA.

(2) Section 4(a) of the HMTUSA establishes a new preemption standard for State, political subdivision, or Indian tribe requirements that concern certain covered subjects.

(3) Section 4(b) of the HMTUSA establishes a new preemption standard for State or Indian tribe designations of highway routes for the transportation of hazardous materials or any limitations or requirements with respect to such routes.

(4) Section 5 of the HMTUSA prohibits unlawful representations concerning compliance with the HMTA and the implementing regulations, or the presence of a hazardous material. It also prohibits unlawful tampering with placards or other markings, or with a package used for transporting hazardous materials.

(5) Section 9 of the HMTUSA removes the requirement that the Secretary publish a notice in the Federal Register when an application for renewal of an exemption is received.

(6) Section 10 of the HMTUSA allows the Secretary to determine those radioactive materials which may be moved on passenger-carrying aircraft.

(7) Section 12 of the HMTUSA provides for the assessment of civil penalties for violations of "orders" issued by the Secretary; increases the maximum civil penalty that may be assessed from $10,000 to $25,000, and establishes a minimum civil penalty of $250; defines "acting knowingly" for purposes of assessing civil penalties for violations; and provides criminal penalties for knowingly violating 49 U.S.C. 1804(2) (unlawful tampering) or for willfully violating a provision of the HMTA, or an order or regulation issued under the HMTA.

(8) Section 13 of the HMTUSA codifies the preemption standard for State, political subdivision, or Indian tribe requirements contained in RSPA regulations governing the inconsistency ruling process, 49 CFR 107.201-107.211. This section also states that State, political subdivision, or Indian tribe requirements are preempted pursuant to 49 app. U.S.C. 1804(a)(4) (covered subjects) or 49 app. U.S.C. 1804(b) (highway routing); and provides for administrative preemption and waiver of preemption determination processes and judicial review of those determinations.

(9) Section 20 of the HMTUSA extends application of Federal, state, and local law to persons who, under contract to the Federal government, transport or cause to be transported or shipped, a hazardous material, or manufacture, repair, or test a package or container which is represented as qualified for use in the transportation of hazardous materials.

(10) Section 31 of the HMTUSA provides, with certain exceptions not relevant here, that the HMTUSA, including the amendments made by the HMTUSA, shall take effect on the date of enactment (November 16, 1990). Section 31 also states that any regulation or ruling issued before the date of enactment and any authority granted under such a regulation shall continue in effect according to its terms until repealed, amended, or modified by the Secretary of Transportation or a court of competent jurisdiction.

II. Public Participation

The final rule adopted today mirrors the statutory changes and makes other corresponding editorial and technical changes. Any editorial changes made to other provisions of the regulations have merely been made for consistency and clarity. Therefore, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). Any delay necessitated by notice and comment procedures would be contrary to the public interest. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the HMTUSA since its enactment on November 16, 1990. In addition, it is impracticable to have regulations that are contrary to the HMTA as amended by the HMTUSA. Section 31 of the HMTUSA specifically provides that the amendments shall take effect on the date of enactment.

Other provisions of the HMTUSA, however, will require the Department to initiate rulemaking proceedings utilizing notice and comment procedures. Those provisions will be addressed at a later date.

III. Preemption

The HMTUSA made several significant changes to the preemption provisions of the HMTA.

Covered Subjects

Section 4 amended section 105 of the HMTA by adding new subsections (a)(4)(A) and (B) to preempt any requirement of a State, political subdivision thereof, or Indian tribe concerning the following subjects if the non-Federal requirement is not substantively the same as any provision of the HMTA or any Federal regulation issued under the HMTA:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In its legislative proposal to reauthorize the HMTA (See, July 11, 1989 letter from Samuel K. Skinner, Secretary of Transportation, to The Honorable Dan Quayle, President of the Senate, hereinafter referred to as the July 11, 1989 Letter), the Department of Transportation delineated these subject areas as "critical areas of hazardous materials transportation regulation" that should be Federally preempted, unless the non-Federal requirements are identical to the Federal requirements.

Congress agreed that these areas are important, and the new preemption standard was added to clarify the "relationship of Federal and non-Federal laws governing the transportation of hazardous materials. In certain areas that are critical to the safe and efficient transportation of hazardous materials, the bill preempts State and local requirements that are different from the HMTA or regulations issued thereunder." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 21 (1990). Congress stated that the "enforcement of consistent Federal, State, and local laws is the best way to assure the safe transportation of hazardous materials," and that the "subjects listed * * * are critical both to the safe transportation of hazardous materials and to the free flow of commerce." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 33 (1990).

Congress also stated that "[c]onflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder, with respect to the specific subjects listed in section 105(a)(4)(B), will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 34 (1990).

RSPA plans to define the new standard of "substantively the same" in a future rulemaking.

Highway Routing

Section 4 of the HMTUSA also amended section 105 of the HMTA to add a new subsection (b) to provide, with certain exceptions, that after the last day of the 2-year period beginning on the date of the issuance of the Federal standards for highway routing, no State or Indian tribe may establish, maintain, or enforce:

(i) Any highway route designation over which hazardous materials may or may not be transported by motor vehicles, or

(ii) Any limitation or requirement with respect to such routing, unless such designation, limitation, or requirement is made in accordance with the procedural requirements of the Federal standards and complies with the substantive requirements of the Federal standards.

49 App. U.S.C. 1804(b)(4).

RSPA is adding this new preemption standard to its regulations to mirror the statute. The HMTUSA requires Federal standards for States and Indian tribes to use in establishing, maintaining, and enforcing highway routes. These highway routing standards will be the subject of future rulemaking.

Standards for Preemption and Preemption Determination Process

Section 13 of the HMTUSA amends section 112 of the HMTA to provide that any requirement of a State, political subdivision, or Indian tribe is preempted if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

(3) It is preempted under section 105(a)(4) or section 105(b) [Discussed above under "Covered Subjects" and "Highway Routing"].

49 App. U.S.C. 1811(a).

Until amended by section 13 of the HMTUSA, section 112 of the HMTA preempted any requirement of a State or political subdivision that was "inconsistent" with any requirement set forth in the HMTA or a regulation issued under the HMTA. The HMTA did not define "inconsistent" or provide any standards for determining what requirements were "inconsistent." By regulation, RSPA set forth two criteria it would consider in determining whether a non-Federal requirement was inconsistent with the HMTA or the regulations:

(1) Whether compliance with both the non-Federal and Federal requirement is possible, and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder.

49 CFR 107.209(c) (1) and (2).

These two criteria were originally established by Supreme Court decisions determining whether a conflict exists between a State and a Federal statute in areas where Congress has not completely foreclosed State regulation (*Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)). In its proposal to reauthorize the HMTA, the Department of Transportation included these two standards, edited to reflect the proposed change in their use from advisory criteria to statutory preemption standards. July 11, 1989 Letter. In the HMTUSA, Congress adopted these standards proposed by the Department. The "two standards [adopted] are the same requirements that are currently codified in regulations relating to inconsistency rulings." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990). Congress stated its intention to clarify the current preemption process "by more clearly identifying the standards against which a determination of preemption is made.

Those standards are now reflected in Court decisions and they are documented in the precedents established in administrative rulings issued by the Department." H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. 25 (1990).

The previous criteria were considerations used by RSPA in making advisory inconsistency rulings, while the new statutory standards are to be used by RSPA (and the courts) in making legally binding preemption determinations. Thus, the first standard sets forth an affirmative statement of preemption if compliance with both the Federal and non-Federal requirements is not possible. The second standard sets forth an affirmative statement of preemption if the non-Federal requirement as applied or enforced creates an obstacle to the accomplishment and execution of the HMTA or the regulations thereunder. The third standard sets forth an affirmative statement of preemption if the non-Federal requirement is

preempted under amended sections 105(a)(4) or 105(b).

The first standard against which a non-Federal requirement may be compared is whether it is "possible" to comply with both the Federal and non-Federal requirements at the same time. Where "dual compliance" is not possible, then the non-Federal requirement will be preempted.

The second standard pertains to those non-Federal requirements that, "as applied or enforced," create an obstacle to the accomplishment and execution of the HMTA and regulations thereunder. This standard reflects RSPA's prior experience in issuing inconsistency rulings. Under the previous inconsistency ruling process, most of the rulings were issued without any knowledge on the part of RSPA as to whether there had been any enforcement of the non-Federal requirement. RSPA did not require an applicant to show that a non-Federal requirement had been enforced against the applicant before RSPA would entertain an application for a ruling. In fact, the potential application of a non-Federal requirement was sufficient for RSPA to issue a ruling.

The second standard requires an applicant for a ruling to demonstrate that the non-Federal requirement covers a particular person, entity, or situation as opposed to a purely hypothetical matter requiring an advisory opinion. As noted below, Section 13 of the HMTUSA also requires that any person who seeks a determination of preemption, whether administratively or judicially, must demonstrate that the non-Federal requirement "directly affects" the applicant. When this "standing" requirement is coupled with the "as applied or enforced" language of revised section 112, it is clear that the agency's determination under this standard will relate to those situations where the non-Federal requirement "applies" to the applicant and its circumstances *or* that the non-Federal requirement actually has been or is about to be enforced against the applicant.

The third standard of preemption applies to certain "covered subjects" pertaining to the Transportation of hazardous materials set out in amended section 105(a)(4)(B) and to "highway routing" matters which are described in amended section 105(b). Under this third Standard of preemption, a non-Federal requirement will be preempted as provided by the standards set forth in sections 105(a)(4)(A) and 105(b)(4), respectively.

Section 13 of the HMTUSA also amends section 112 of the HMTA by adding a new subsection (c) to provide that any person, including a State, political subdivision thereof, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Secretary of Transportation, in accordance with regulations prescribed by the Secretary, for a determination of whether that requirement is preempted by section 105(a)(4) or section 105(b) or section 112(a).

In order to improve the effectiveness of the advisory inconsistency ruling process that RSPA had established by regulation (49 CFR 107.203–107.211), the Department included in its HMTA reauthorization proposal an administrative preemption determination process that was subsequently adopted in Section 13 of the HMTUSA. Congress stated that the inconsistency ruling process is "advisory in nature only and has no binding effect on either States or political subdivisions thereof or on persons affected by requirements thereof." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). In making the change from an advisory process to the statutory preemption determination process requested by the Department, Congress stated that the "inconsistency ruling process has proven to be time-consuming, burdensome, and ineffective." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Although the inconsistency ruling process was "initially conceived to provide an alternative to litigation, the process has failed to prevent or deter parties from resolving disputes in the courts." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 48 (1990). Thus, in the HMTUSA, Congress amended the HMTA to provide a preemption determination process to replace the existing advisory inconsistency ruling process.

As under the previous inconsistency ruling process, only the question of statutory preemption under the HMTA will be considered under the preemption determination process. A court might find a non-Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute (e.g. the Federal Railroad Safety Act), preemption under State law, or preemption under the Commerce Clause and the Supremacy Clause of the U.S. Constitution because of an undue burden on interstate commerce.

To make the administrative preemption process more effective, the HMTUSA also provides that no applicant for an administrative determination may seek relief with respect to the same or substantially the same issue in any court until the Secretary has taken final action or until 180 days after filing of an application, whichever occurs first. The 180-day time limit "is intended to provide sufficient time for the Secretary to make a final determination of preemption based upon the criteria set forth in the bill. Alternatively, if the Secretary fails to act within the 180-day period, the bill seeks to provide the expeditious and definitive resolution of preemption issues by allowing the affected party to proceed with any available judicial remedies." H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 49 (1990).

Under the previous process, RSPA required that an applicant for an inconsistency ruling demonstrate how it was "affected" by the non-Federal requirement. RSPA returned applications for rulings where the applicant did not make the required demonstration. (See, e.g., February 26, 1986 letter from Alan I. Roberts, Director, Office of Hazardous Materials Transportation, to Mr. Lindsay Audin, Technical Director, Citizens Against Nuclear Trucking, stating "you have failed to demonstrate sufficiently how * * * [you] will be affected (adversely) * * *.) The HMTUSA amended the HMTA to require that the applicant be a person "directly affected" by a non-Federal requirement. As it did under the previous process, RSPA will continue to require an applicant for a preemption determination to demonstrate how it is directly affected.

There is a need to avoid issuing such determinations in the abstract. For example, a citizens' group with no identifiable interest in the outcome should not be able to seek a determination of preemption with respect to a State or local requirement. However, a citizens' group representing residents of a community with local routing requirements may be directly affected and thus have a sufficient interest in the outcome to justify access to the administrative process. The local government itself would be directly affected in that the outcome would affect its ability to enforce its requirements.

The regulated industry could be directly affected if the requirements are applied to it or enforced against it. Thus, both the preemption standard ("as applied or enforced") and the preemption determination process ("directly affected") have language intending to codify this "standing" requirement. Section 13 of the HMTUSA also amends section 112 of the HMTA to provide that a State, political subdivision thereof, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials transportation that is not "equitable" and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability. Therefore, RSPA has included this provision in the rule to reflect this statutory requirement.

Section 13 of the HMTUSA amended section 112 of the HMTA by adding a new subsection (d) to retain the administrative waiver of preemption provision. The waiver of preemption provision previously contained in the HMTA has been amended to clarify that the Secretary has the discretion to waive preemption upon a determination that the statutory criteria have been met. In this final rule, RSPA is amending its existing procedures to be consistent with this amendment.

Section 13 of the HMTUSA amends section 112 of the HMTA to allow a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision. The final rule is consistent with this provision.

IV. Section-by-Section Analysis

Nomenclature and Editorial Amendments

On September 24, 1990, RSPA was reorganized. The title of the Director of the Office of Hazardous Materials Transportation (OHMT) was changed to Associate Administrator for Hazardous Materials Safety. This rule amends the regulations covered by this rule to make those nomenclature changes whereever appropriate. This rule also makes technical and editorial changes to correspond to the nomenclature amendments and the amendments discussed below.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

Subpart A—General Provisions

Section 107.3 Definitions

This rule adds several new definitions that are set forth in the HMTUSA, and revises two of the current definitions contained in § 107.3.

(1) This rule adds a definition of "imminent hazard" to mean the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

The HMTUSA amended the definition of "imminent hazard" that was contained in section 111 of the HMTA, to create a lower threshold for proving that an imminent hazard exists. The amendment also makes it clear that harm to property and the environment are situations which may be addressed when an imminent hazard exists.

(2) This rule adds a definition of "Indian tribe" consistent with the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b). The HMTUSA added this definition to the HMTA.

(3) This rule revises the definition of "person" in § 107.3 to mean an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include (A) the United States Postal Service, or (B) for the purposes of sections 110 and 111 of the HMTA, any agency or instrumentality of the Federal Government.

The HMTUSA added this definition of "person" to the HMTA, to establish clearly the jurisdiction of the HMTA over governmental entities when they engage in the commercial transportation of hazardous materials.

(4) This rule revises the definition of "State" in § 107.3 to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 of the HMTA, relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

The HMTUSA amended the definition of "State" that was contained in section 103 of the HMTA, to clarify that the jurisdiction of the HMTA extends to the Northern Mariana Islands, and territories or possessions of the United States designated by the Secretary. The Secretary has not designated any additional territories or possessions to be subject to the HMTA.

(5) This rule adds a definition of "transports" or "transportation" to § 107.3 to mean any movement of property by any mode, and any loading, unloading, or storage incidental thereto. This definition is contained in section 103 of the HMTA, and RSPA believes it merits inclusion in the regulations to clarify for the public the scope of the HMTA and the regulations issued thereunder.

All other terms used in the regulations are used in accordance with their statutory definitions in the HMTA.

Subpart B—Exemptions

Section 107.109 Processing of Application

This final rule revises § 107.109(a) to remove the requirement that a notice be published in the Federal Register of applications received for renewal of exemptions. Section 9 of the HMTUSA amended section 107(a) of the HMTA to delete this requirement. A corresponding amendment is made to § 107.111.

Subpart C—Preemption

As discussed above under *III. Preemption*, RSPA is amending its existing regulations in Subpart C to reflect the amendments made by the HMTUSA. This rule amends the existing inconsistency ruling process in 49 CFR 107.203–107.211 and the existing non-preemption determination process in 49 CFR 107.215–107.225 by simply adapting them to reflect the amendments made by the HMTUSA. Thus, the new process for preemption determinations will be identical to the previous inconsistency ruling process, and the waiver of preemption process will be identical to the previous non-preemption determination process.

Section 107.201 Purpose and Scope

This section has been revised to reflect the new terminology of preemption and waiver of preemption instead of "inconsistent" and "not preempted."

Section 107.202 Standards for Determining Preemption

This new section is added to include the standards for preemption added to the HMTA by the HMTUSA, including the standards for covered subjects (49 App. U.S.C. 1804(a)) and highway routing (49 App. U.S.C. 1804(b)), and the standards in section 13 of the HMTUSA (49 App. U.S.C. 1811(a)). New § 107.202(c) reflects the statutory requirement (49 App. U.S.C. 1811(b)) that

a State, political subdivision, or Indian tribe may not levy any fee in connection with the regulation of hazardous materials transportation that is not equitable and used for purposes related to hazardous materials transportation, including enforcement and the planning, development, and maintenance of an emergency response capability.

Sections 107.203–107.221

These sections have been revised to reflect the new terminology of preemption and waiver of preemption in place of "inconsistent" and "not preempted."

Section 107.227 Judicial Review

This final rule adds a new § 107.227 to implement 49 U.S.C. 1811(e) as amended by section 13 of the HMTUSA. Section 107.227 allows a party to a preemption or waiver of preemption determination proceeding to seek judicial relief in the appropriate Federal district court with respect to such a determination of preemption or waiver of preemption, but provides that such actions must be commenced within 60 days after a final decision.

Subpart D—Enforcement

Section 107.299 Definitions

This rule removes the definition of "knowledge" or "knowingly" in § 107.299 to add a definition of "acting knowingly" consistent with section 12(a)(2) of the HMTUSA. The HMTUSA amended section 110 of the HMTA to define "acting knowingly" to mean a person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising due care would have such knowledge. Because the HMTA did not previously define the word "knowingly," RSPA had defined "knowledge" or "knowingly" in § 107.299 as essentially a negligence standard. In the HMTUSA, Congress effectively adopted the Department's historic interpretation of the term "knowingly."

Section 107.311 Notice of Probable Violation

With respect to civil penalties, section 12(a) of the HMTUSA extended civil penalty sanctions to violations of orders issued by the Secretary. In issuing orders directing compliance with the HMTA or the regulations issued thereunder, the Secretary's only available avenue to enforce such orders was to commence a lawsuit. Congress believed that this avenue of enforcement was time-consuming and that the costly judicial action was burdensome and contrary to the purposes of the HMTA. H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 46 (1990). Therefore, § 107.311 is amended to include civil penalty sanctions for violations of orders.

Section 107.329 Maximum Penalties

Section 12(a) of the HMTUSA also increased the amount of the maximum civil penalty that may be assessed, from $10,000 to $25,000 for each violation, and establishes a minimum civil penalty of $250 for each violation. Thus, § 107.329 is amended to incorporate these two statutory changes.

Section 107.333 Criminal Penalties Generally

Section 12(b) of the HMTUSA amended section 110(b) of the HMTA concerning criminal penalties for violations of the HMTA. This rule revises § 107.333 to make the corresponding changes. Section 107.333 provides that a person who knowingly violates § 171.2(g), concerning unlawful tampering, or willfully violates a provision of the HMTA or an order or regulation issued under the HMTA shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

Section 107.336 Limitation on Fines and Penalties

This new section is added to reflect the amendment made by section 4 of the HMTUSA, which added a new subsection 105(a)(4)(C) of the HMTA to provide that if a State, political subdivision, or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in subparagraph (B) of section 105(a)(4), no additional fine or penalty may be assessed for such violation by any other authority. 49 U.S.C. 1804(a)(4)(C).

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

Section 171.1 Purpose and Scope

In § 171.1, this final rule adds a new paragraph (c) to amend the scope of the Hazardous Materials Regulations (HMR) to provide that any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal government, transports, or causes to be transported or shipped, a hazardous material shall be subject to and comply with all provisions of the HMTA, all orders and regulations issued under the HMTA, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any requirements that have been preempted), in the same manner and to the same extent as any person engaged in such activities is subject to such provisions, orders, regulations, and requirements.

Section 171.1(c) also extends the scope of the HMR to any person who, under contract to the Federal government, manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials. This rule is consistent with section 20 of the HMTUSA, which clarifies that Federal contractors are subject to the HMTA and the HMR and to the same State and local laws that apply to other shippers and carriers that are not operating pursuant to a contract with the Federal Government.

Section 171.2 General Requirements

This rule amends § 171.2 to add provisions for unlawful representation and unlawful tampering. Section 5 of the HMTUSA amended section 105 of the HMTA to prohibit misrepresenting that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present in a package or container if it is not.

With respect to tampering, section 5 of the HMTUSA provides that no person shall alter, remove, deface, destroy, or otherwise tamper with any marking, label, placard, or description on a document, or any package, container or vehicle used for the transportation of hazardous materials. Therefore, consistent with the HMTUSA, this rule adds § 171.2(f) to prohibit misrepresentation that a package or container is safe, certified, or in compliance with relevant regulations, or that a hazardous material is present when it is not. This rule also adds § 171.2(g) to prohibit a person from tampering with any marking, label, placard, or description in a document, or any package, container, or vehicle used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Section 10 of the HMTUSA amends section 108(b) of the HMTA to allow certain products containing minor radioactive components to be moved on aircraft without an exemption.

Therefore, provisions in §§ 173.4(b), 173.421–1(b)(2), and 173.421–2(d), requiring an exemption, have been removed to reflect this statutory change.

Rulemaking Analyses

Administrative Procedure Act

Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because, in making these technical amendments to give effect to the new statute, RSPA is not exercising discretion in a way that could be affected by public comment. As a consequence, RSPA is proceeding directly to a final rule. For similar reasons, and to immediately implement Congressional mandates, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d).

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has determined that this rule is not major under Executive Order 12291 and is not significant under DOT's regulatory policies and procedures. (44 FR 11034; Feb. 26, 1979.) This rule will not have any direct or indirect economic impact because it does not alter any existing substantive regulations in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. Therefore, preparation of a regulatory evaluation is not warranted. Under DOT's regulatory policies and procedures, notice is not necessary because RSPA does not believe it would receive any meaningful comment.

Executive Order 12612

This final rule implements specific statutory mandates that affect the relationship between the Federal government and the States, and RSPA has no discretion in implementing these changes. Therefore, preparation of a Federalism assessment pursuant to Executive Order 12612 is not warranted.

Regulatory Flexibility Act

RSPA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

National Environmental Policy Act

RSPA has concluded that this final rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, parts 107, 171, and 173 of title 49, Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 App. U.S.C. 1653(d), 1655; 49 App. U.S.C. 1802, 1806, 1808–1811; 49 CFR 1.45 and 1.53.

§§ 107.103, 107.107, 107.109, 107.111, 107.113, 107.115, 107.119, 107.121, 107.123, 107.207, 107.219, 107.221 [Amended]

2. In 49 CFR part 107 subparts A–D remove the words "Director, OHMT" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.103 (a), (c);
(b) Section 107.107;
(c) Section 107.109 (b), (c), (c)(2), (d), (e);
(d) Section 107.111 (a), (c);
(e) Section 107.113 (c);
(f) Section 107.115 (a), (b), (c);
(g) Section 107.119 (b), (c), (d), (e);
(h) Section 107.121;
(i) Section 107.123 (b);
(j) Section 107.207 (a), (b);
(k) Section 107.219 (a), (b), (c); and
(l) Section 107.221 (a).

§§ 107.103, 107.105, 107.111, 107.123, 107.215 [Amended]

3. In 49 CFR part 107 subparts A–D remove the words "Office of Hazardous Materials Transportation" and add, in their place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.103 (b)(1);
(b) Section 107.105 (a)(1);
(c) Section 107.111 (b)(1);
(d) Section 107.123 (a); and
(e) Section 107.215(b)(1).

§§ 107.5, 107.7, 107.117, 107.205, 107.217, 107.219, 107.221, 107.223, 107.301, 107.303, 107.305, 107.309, 107.335 [Amended]

4. In 49 CFR part 107 subparts A–D remove the word "OHMT" each place it appears and add, in its place, the words "Associate Administrator for Hazardous Materials Safety" in the following places:

(a) Section 107.5 (a), (b);
(b) Section 107.7 (a), (c);
(c) Section 107.117 (a);
(d) Section 107.205 (a), (b), (c);
(e) Section 107.217 (a), (b)(2), (c), (d), (e);
(f) Section 107.219 (d);
(g) Section 107.221 (d);
(h) Section 107.223;
(i) Section 107.301;
(j) Section 107.303;
(k) Section 107.305 (a), (b), (c), (d);
(l) Section 107.309 (a), (b)(1); and
(m) Section 107.335.

Subpart A—General Provisions

§ 107.3 [Amended]

5. Section 107.3 is amended by revising the introductory language, revising the definitions of "person" and "State" and adding new definitions in alphabetical order as follows:

§ 107.3 Definitions.

All terms defined in Section 103 of the Act are used in their statutory meaning. Other terms used in this part are defined as follows:

* * * * *

Imminent Hazard means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects.

Indian Tribe shall have the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b).

* * * * *

Person means an individual, firm, copartnership, corporation, company,

association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but such term does not include:

(1) The United States Postal Service, or

(2) For the purposes of sections 110 and 111 of the Act (49 App. U.S.C. 1809–1810), any agency or instrumentality of the Federal Government.

* * * * *

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States designated by the Secretary; except that as used in section 121 (49 App. U.S.C. 1819), relating to uniformity of State registration and permitting forms and procedures, such term means a State of the United States and the District of Columbia.

Transports or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto.

§ 107.9 [Amended]

6. In § 107.9(c), remove the words "Applications for inconsistency rulings and nonpreemption" and add, in their place, the words "Applications for preemption and waiver of preemption."

Subpart B—Exemptions

7. In Section 107.109 paragraph (a) is revised to read as follows:

§ 107.109 Processing of application.

(a) After an application for an exemption or renewal of an exemption is determined to be complete, the Associate Administrator for Hazardous Materials Safety dockets the application and, for an application under § 107.103, publishes a notice in the Federal Register affording an opportunity for interested persons to comment. All comments received before the close of the comment period are considered before final action is taken on such an application.

* * * * *

8. In § 107.111 paragraph (d) is revised to read as follows:

§ 107.111 Party to an exemption.

* * * * *

(d) The Associate Administrator for Hazardous Materials Safety publishes in the Federal Register a notice of each application received under § 107.103, each initial determination made and each renewal granted under this section.

Subpart C—Preemption

9. In § 107.201, paragraphs (a) and (d) are revised to read as follows:

§ 107.201 Purpose and scope.

(a) This subpart prescribes procedures by which:

(1) Any person, including a State or political subdivision thereof or Indian Tribe, directly affected by any requirement of a State or political subdivision or Indian tribe, may apply for a determination as to whether that requirement is preempted under the section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder, and

(2) A State or political subdivision or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian Tribe acknowledges to be preempted by section 105(a)(4), section 105(b), or section 112(a) of the Act or regulations issued thereunder.

* * * * *

(d) Unless otherwise ordered by the Associate Administrator for Hazardous Materials Safety, an application for a preemption determination which includes an application for a waiver of preemption will be treated and processed solely as an application for a preemption determination.

10. Section 107.202 is added to part 107 to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in subsection 105(b) (49 App. U.S.C. 1804(b)) and unless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is preempted:

(1) The designation, description, and classification of hazardous materials.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(3) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(5) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

(b) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision or Indian tribe is preempted if—

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement under the Act or of a regulation issued under the Act is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of the Act or the regulations issued under the Act, or

(3) It is preempted under section 105(a)(4) or section 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)).

(c) A State or political subdivision thereof or Indian tribe may not levy any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

§ 107.203 [Amended]

11. Remove the caption "Inconsistency Rulings" that precedes § 107.203 and add in its place "Preemption Determinations."

12. Section 107.203 is amended by revising paragraphs (a), (b), and (c), and adding paragraph (d) to read as follows:

§ 107.203 Application.

(a) Any person, including a State, political subdivision, or Indian tribe, directly affected by any requirement of a State, political subdivision, or Indian tribe, may apply to the Associate Administrator for Hazardous Materials Safety for a determination of whether that requirement is preempted by section 105(a)(4) or 105(b) of the Act (49 U.S.C. 1804(a)(4) or 1804(b)) or 49 CFR 107.202(b). The Associate Administrator for Hazardous Materials Safety shall publish notice of the application in the Federal Register.

(b) Each application filed under this section for a determination must:

(1) Be submitted to Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Attention: Hazardous Materials Preemption Docket;

(2) Set forth the text of the State or political subdivision or Indian tribe requirement for which the determination is sought;

(3) Specify each requirement of the Act or the regulations issued under the Act with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

(4) Explain why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and

(5) State how the applicant is affected by the State or political subdivision or Indian tribe requirement.

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Act or any regulation issued under the Act.

(d) Once the Associate Administrator for Hazardous Materials Safety has published notice in the Federal Register of an application received under paragraph (a) of this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first. Nothing in § 107.203(a) prohibits a State or political subdivision or Indian tribe, or any other person directly affected by any requirement of a State or political subdivision thereof or Indian tribe, from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Associate Administrator for Hazardous Materials Safety under paragraph (a) of this section.

§ 107.207 [Amended]

13. In § 107.207(b)(1), remove the word "ruling" and add in its place the word "determination."

14. In § 107.209, the section heading and paragraphs (a) and (b) are revised, paragraph (c) is removed, and paragraphs (d), (e), and (f) are revised and redesignated as paragraphs (c), (d), and (e) as follows:

§ 107.209 Determination.

(a) Upon consideration of the application and other relevant information received, the Associate Administrator for Hazardous Materials Safety issues a determination.

(b) Notwithstanding that an application for a determination has not been filed under § 107.203, the Associate Administrator for Hazardous Materials Safety, on his or her own initiative, may issue a determination as to whether a particular State or political subdivision or Indian tribe requirement is preempted under the Act or the regulations issued under the Act.

(c) The determination includes a written statement setting forth the relevant facts and the legal basis for the determination and provides that any person aggrieved thereby may file an appeal with the Administrator, RSPA.

(d) The Associate Administrator for Hazardous Materials Safety serves a copy of the determination upon the applicant, any other person who participated in the proceeding, and upon any other person readily identifiable by the Associate Administrator as one who is affected by the determination. A copy of each determination is placed on file in the public docket. The Associate Administrator may publish the determination or notice of the determination in the Federal Register.

(e) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or regulations issued thereunder. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Act or regulations issued thereunder.

§ 107.211 [Amended]

15. In § 107.211, remove the word "ruling" each time it appears and replace it with the word "determination."

§ 107.215 [Amended]

16. In the heading preceding § 107.215 remove the word "Non-Preemption" and add, in its place, the words "Waiver of Preemption."

17. In § 107.215, paragraph (a) is revised to read as follows:

§ 107.215 Application.

(a) Any State or political subdivision or Indian tribe may apply to the Associate Administrator for Hazardous Materials Safety for a waiver of preemption with respect to any requirement that the State or political subdivision or Indian tribe acknowledges to be preempted by section 105(a)(4) or section 105(b) of the Act or § 107.202. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement—

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of the Act or regulations issued under the Act, and

(2) Does not unreasonably burden commerce.

* * * * *

18. In § 107.215(b) remove the word "nonpreemption" and, add in its place, the words "waiver of preemption."

19. In § 107.215(b) (4) and (5) remove the word "inconsistent" and add, in its place, the word "preemption."

§ 107.219 [Amended]

20. In § 107.219(c), (d) and (e) remove the word "non-preemption" and add, in its place, the words "waiver of preemption."

21. In § 107.221, paragraphs (b) and (e) are revised to read as follows:

§ 107.221 Determination and Order.

* * * * *

(b) The Associate Administrator for Hazardous Materials Safety may issue a waiver of preemption order only if he finds that the State or political subdivision or Indian tribe requirement affords the public a level of safety at least equal to that afforded by the requirements of the Act and the regulations issued under the Act and does not unreasonably burden commerce. In determining whether the State or political subdivision or Indian tribe requirement unreasonably burdens commerce, the Associate Administrator considers the following factors:

* * * * *

(e) An order issued under this section constitutes an administrative determination whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Act or any regulations issued thereunder, or whether preemption is waived.

22. Section 107.227 is added to read as follows:

§ 107.227 Judicial Review.

A party to a proceeding under § 107.203(a) or § 107.215(a) may seek review by the appropriate district court of the United States of a decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

Subpart D—Enforcement

23. The authority citation for Subpart D—Enforcement is amended to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1808, and 1809; 49 CFR 1.53 and part 1, App. A.

24. Section 107.298 is amended by removing the definition of "knowledge" and "knowingly" and by adding the following new definition.

§ 107.299 Definitions.

* * * * *

Acting knowingly means acting or failing to act while (1) having actual knowledge of the facts giving rise to the violation, or (2) having such knowledge as a reasonable person acting in the circumstances and exercising due care would have had.

* * * * *

§ 107.311 [Amended]

25. In § 107.311 (a) and (b)(1) after the word "Act," insert the words "an order issued under the Act,".

26. Section 107.329 is revised to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, Subchapter C of this chapter, or an exemption issued under Subchapter B of this chapter applicable to the transporting of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $25,000 and not less than $250 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Act, an order issued under the Act, this subchapter, subchapter C of this chapter, or an exemption issued under subchapter B of this chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified or sold by that person as being qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $25,000 and not less than $250 for each violation.

27. Section 107.333 is revised to read as follows:

§ 107.333 Criminal penalties generally.

A person who knowingly violates § 171.2(g) or willfully violates a provision of the Act or an order or regulation issued under the Act shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

28. Section 107.336 is added to part 107 to read as follows:

§ 107.336 Limitation on fines and penalties.

If a State or political subdivision or Indian tribe assesses any fine or penalty determined by the Secretary to be appropriate for a violation concerning a subject listed in § 107.202(a), no additional fine or penalty may be assessed for such violation by any other authority.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

29. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

30. Section 171.1 is amended by adding a new paragraph (c) to read as follows:

§ 171.1 Purpose and scope.

* * * * *

(c) Any person who, under contract with any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government, transports, or causes to be transported or shipped, a hazardous material or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation of hazardous materials shall be subject to and comply with all provisions of the Act, all orders and regulations issued under the Act, and all other substantive and procedural requirements of Federal, State, and local governments and Indian tribes (except any such requirements that have been preempted by the Act or any other Federal law), in the same manner and to the same extent as any person engaged in such activities that are in or affect commerce is subject to such provisions, orders, regulations, and requirements.

31. Section 171.2 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 171.2 General requirements.

* * * * *

(f) No person shall, by marking or otherwise, represent that—

(1) A container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under the Act; or

(2) A hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if the hazardous material is not present.

(g) No person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

(1) Any marking label, placard, or description on a document required by the Act, or a regulation issued under the Act; or

(2) Any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

32. The authority citation for part 173 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR part 1, unless otherwise noted.

§ 173.4 [Amended]

33. In § 173.4, paragraph (b) is amended by removing the words "After May 2, 1991, a package containing a radioactive material may not be offered for transportation aboard a passenger-carrying aircraft unless that material is intended for use in, or incident to, research, medical diagnosis or treatment."

§ 173.421-1 [Amended]

34. In § 173.421-1, paragraph (b)(2) is amended by removing the words "After May 2, 1991, it is also necessary to comply with §§ 173.448(f) and 175.700(c) of this subchapter."

§ 173.421-2 [Amended]

35. In § 173.421-2, paragraph (d) is removed.

Issued in Washington, DC, on February 20, 1991, under authority delegated in 49 CFR 1.53.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91-4531 Filed 2-27-91; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
February 28, 1991

Part X

Department of Education

Developmental Bilingual Education and Special Alternative Instructional Programs; Notice of Proposed Priority

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Developmental Bilingual Education and Special Alternative Instructional Programs

AGENCY: Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Secretary of Education proposes an absolute priority for a special competition in fiscal year (FY) 1991 under the Developmental Bilingual Education and Special Alternative Instructional Programs administered by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

DATES: Comments must be received on or before April 1, 1991.

ADDRESSES: All comments concerning this proposed priority should be addressed to Harry G. Logel, U.S. Department of Education, OBEMLA, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6510.

FOR FURTHER INFORMATION CONTACT: Harry G. Logel, telephone: (202) 732-5715. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the Developmental Bilingual Education (DBE) and the Special Alternative Instructional (SAI) Programs are made to local educational agencies (LEAs) to provide instructional services to limited English proficient (LEP) children. The DBE Program provides structured English language instruction and instruction in a second language. It is designed to help LEP children achieve competence in English and also to help children whose native language is English achieve competence in a second language. The SAI Program provides structured English language instruction and special instructional services to enable LEP children to achieve competence in English and to meet grade-promotion and graduation standards. Authority for these programs is found in section 7021 of the Bilingual Education Act (20 U.S.C. 3291).

The Secretary proposes a special competition for demonstration middle school projects under the DBE and SAI Programs in order to identify effective educational approaches that foster academic achievement and dropout prevention. The key components these projects would have to include are magnet schools, instructional approaches emphasizing the arts and humanities, and evaluation plans designed to measure project effectiveness in increasing academic achievement and student retention. The evaluation plans would have to meet the evaluation requirements that apply to all projects funded under the Basic Programs, as specified in the program regulations in 34 CFR 500.50-500.52.

The Secretary would be particularly interested in applications that address the following additional elements: site-based management, community involvement, and collaboration with local institutions of higher education. However, an application that addresses one or more of these additional elements would not receive additional consideration or additional points in the competition. An application that does not address one or more of these additional elements would not be at any competitive disadvantage.

Approximately $781,000 would be available for funding these projects. The average size of awards is estimated to be higher than the average funding level of current grants under the DBE and SAI Programs in order to support the extensive evaluation activities necessary to enable grantees to develop effective program models suitable for widespread replication.

The final priority will be established on the basis of public comment regarding this proposed priority and other relevant Departmental considerations, and will be announced in a notice in the **Federal Register**. A notice inviting applications for this competition will be published at that time, after which application packages will be available. This competition will be in addition to the regular competitions under the DBE and SAI Programs in FY 1991.

This notice of proposed priority does not solicit applications, and Department of Education staff will not review concept papers or pre-applications. The publication of this proposed priority does not bind the Federal government to fund projects in this area, except as otherwise directed by statute. Funding of particular projects depends on the final priority, the availability of funds, and the quality of applications that are received.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference in a special competition in FY 1991 under the Developmental Bilingual Education and Special Alternative Instructional Programs to applications that meet the following priority:

To be eligible for funding, a proposed project would have to:

(1) Be restricted to one or more grade levels from grades six through nine in a district-wide magnet school;

(2) Involve an instructional approach that emphasizes the arts and humanities; and

(3) Incorporate an evaluation plan designed to measure the project's effectiveness in increasing academic achievement and student retention.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period in room 5607, Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Authority: 20 U.S.C. 3291.

Dated: February 2, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91-4692 Filed 2-27-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
February 28, 1991

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Part 91 and 161

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia and Approval of Airport Noise and Access Restrictions; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Notice No. 91-7]

RIN 2120-AD96

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes revisions to the airplane operating rules to require a phaseout of Stage 2 airplanes operated in the 48 contiguous United States and the District of Columbia before December 31, 1999. These revisions implement sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990.

DATES: Comments must be received on or before April 15, 1991. Because of the statutory requirement to issue a final rule in this proceeding by July 1, 1991, the FAA will be unable to entertain requests to extend the comment period; however, late-filed comments will be considered to the extent practicable.

ADDRESSES: Send comments on the notice in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket, room 916G, Docket No. 26433, 800 Independence Avenue, SW., Washington, DC, 20591 or deliver comments in triplicate to: FAA Rules Docket, room 916G, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William Albee, Manager, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impacts of this proposal. Comments should contain the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing any substantive public contact with Federal Aviation Administration personnel on this rulemaking will be filed in the docket. In addition, the FAA plans to conduct public meetings in Washington, DC, Chicago, Illinois, and Seattle, Washington, in March, 1991, for the purpose of receiving public comment. All comments received at public meetings concerning this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments. Before taking any final action on the proposal, the Administrator will consider the comments made on or before March 29, 1991, and the proposal may be changed in response to the comments received. The FAA will acknowledge the receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: "Comments to Docket No. 26433." When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In December 1976, the FAA added "Subpart E—Operating Noise Limits" to part 91 of the Federal Aviation Regulations (FAR) (14 CFR part 91), which became Subpart I—Operating Noise Limits with the August 18, 1989, recodification of part 91. Subpart I requires that airplanes operated by U.S. operators comply with part 36 Stage 2 noise levels by January 1, 1985, in order to operate in the United States (41 FR 56046, December 23, 1976). This subpart required the reduction of aircraft noise by (1) replacing the older fleet with new, quieter airplanes; (2) reengining the aircraft; or (3) using noise reduction technology, such as hushkits, that had been shown to be technologically feasible and economically reasonable for use on older, four-engine turbojets. In November 1980, subpart E was amended to include foreign operations in the United States whether conducted by foreign or U.S. operators (45 FR 79302, November 28, 1980).

The total number of air carrier operations and enplanements has increased considerably since 1978. Despite such growth, noise levels around most airports have decreased, primarily because of the introduction of quieter aircraft into the fleet. Stage 1 airplanes have been retired or modified to meet Stage 2 aircraft noise standards, and quieter Stage 3 airplanes have come into service. However, even with such advances, approximately 2.7 million individuals currently live within areas that are considered to be exposed to significant airplane noise (a day-night average sound level of 65 decibels or more).

Currently, more than 400 U.S. airports have adopted some type of airport access restriction or other action to reduce aircraft noise or to mitigate the effects of that noise. These efforts range from restrictions that generally do not affect the efficiency of the national aviation system (e.g., rapid airplane climb to altitude or preferential runway use to minimize takeoff noise impact on local communities) to those that have an obvious impact on system operations (e.g., curfews and limits on operations by aircraft type). Noise-related restrictions have been levied by airport proprietors and the courts in response to pressure from local community complaints concerning airport noise.

On November 5, 1990, Congress passed the Airport Noise and Capacity Act of 1990 ("the legislation"). In the legislation, the Congress recognized the need to establish a national aviation noise policy. Congress found that, because aviation is a national and international system, such a policy must be created at the national level. A critical part of that national policy was set by Congress when it directed an expedited phaseout of Stage 2 airplanes. Specifically, the legislation prohibits the operation of Stage 2 aircraft to or from an airport in the contiguous United States and the District of Columbia ("the contiguous States") after December 31, 1999.

In addition, the legislation provides limited authority to the Secretary of Transportation to grant waivers to allow operation of a limited number of Stage 2 airplanes beyond the statutory deadline.

The legislation also directs the Secretary of Transportation to issue regulations implementing the review and approval procedures defined in the statute for noise and access restrictions on Stage 2 and Stage 3 operations proposed by airport proprietors. These regulations are to be proposed as part of the national aviation noise policy. The legislation requires that this national policy be in place by July 1, 1991. The Secretary of Transportation has delegated the authority to issue regulations for the phaseout and the noise restriction review to the Administrator of the Federal Aviation Administration. This document sets forth proposed regulations regarding the phaseout and nonaddition of Stage 2 airplanes. The proposed regulations regarding airport restrictions are presented elsewhere in this issue of the **Federal Register.**

Synopsis of the Proposal

Pursuant to the legislative mandate, this NPRM proposes to amend subpart I of 14 CFR part 91 by establishing a schedule of reductions of affected Stage 2 airplanes, leading to a prohibition on their use in the contiguous States by December 31, 1999, and by precluding the operation of airplanes in the contiguous States that were imported pursuant to contracts executed after November 5, 1990. The preamble addresses two options that may form the basis for a final rule. The difference between the two is that the second option would permit transferability of the right to operate Stage 2 airplanes within the overall ceiling set by the phaseout schedule.

With regard to enforcement, the legislation states that:

> Violations of (sections 9308 and 9309) and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title IX.

Accordingly, the FAA intends that the final regulations adopted will be enforced in accordance with FAR part 13, Investigative and Enforcement Procedures.

The proposed rule uses a concept referred to as a "base level" for operators of Stage 2 airplanes. An existing U.S. operator's base level would be the maximum number of owned or leased Stage 2 airplanes that were listed on its operations specifications for operation to or from airports in the contiguous States on any one day in 1990. In addition, the base level would include those Stage 2 airplanes returned to service after lease to a foreign carrier, as defined in the legislation and proposed § 91.805(a)(5), and those Stage 2 aircraft imported by an eligible entity, as defined in the legislation and proposed § 91.805(a)(6).

Any such airplanes added to the base level under either of these provisions would be subject to the phaseout compliance dates. As an example, under option 1 below, if the largest number of Stage 2 airplanes for which a U.S. operator held operations specifications during any day in 1990 was 100, it would need to reduce the number of Stage 2 airplanes it operates to 75 by December 31, 1994. If before that date the operator adds to its base level three airplanes that were leased to foreign carriers and one that was imported, its base level would be increased to 104, and it would be authorized to operate a maximum of 78 Stage 2 airplanes on and after December 31, 1994. Under Option 2, the operator would have the choice of proceeding in the same fashion or attempting to acquire additional operating rights from another operator. Such rights would be available only if the second operator had already exceeded its required reduction. That is, only "extra" reductions could be transferred.

Under Option 1, once an operator has reduced the number of Stage 2 airplanes it operates to a required compliance point, it would not be permitted to increase its Stage 2 fleet above that level. However, if the operator further reduces the number of its Stage 2 airplanes below the permitted maximum, the operator may add Stage 2 airplanes to its fleet as long as the maximum level is not exceeded. For example, if an operator had a base level of 100 airplanes, it would need to reduce that number to 75 by the first compliance date. If between the first and second compliance dates, the operator reduces its operating Stage 2 airplanes to 70, it would then be able to operate up to 5 more airplanes that were added pursuant to one of the two proposed provisions or acquired from another U.S. operator. These additional airplanes could be operated until the second compliance date, when the operator's number of Stage 2 airplanes would have to be reduced to 50. Under Option 2, an operator would have the flexibility to operate additional Stage 2 airplanes for which it is able to obtain rights from other operators.

New entrant U.S. operators would not have a base level. New entrants instituting service prior to December 31, 1994, could operate any number of Stage 2 airplanes. On and after December 31, 1994, the new entrant carrier would have to operate at least 25 percent Stage 3 airplanes. Similarly, a new entrant that institutes service after December 31, 1996, would have to begin operations with at least 50 percent of its fleet complying with Stage 3. After December 31, 1998, a new entrant would have to have a fleet of at least 75 percent Stage 2 airplanes at the start of service.

For a foreign operator of Stage 2 airplanes, the base level would be the total number of Stage 2 operations that it conducted to or from airports in the contiguous States from January 1, 1990, through December 31, 1990. A foreign operator would be required to reduce its annual Stage 2 operations under the same compliance schedule required of U.S. operators for Stage 2 airplanes. For the reasons discussed below, it appears that transfer of operating rights among foreign operators would be substantially more difficult. Comments are invited on whether a program of Stage 2 transferability could be adapted to the phaseout of Stage 2 operations by these operators.

The following section-by-section explanation describes the FAA's proposed approach to implementing the provisions of the legislation.

Section-by-Section Explanation of Proposed Rule

Section 91.801 Applicability: Relation to Part 36

Proposed § 91.801 states that 14 CFR part 91, subpart I Operating Noise Limits, which encompasses §§ 91.801 through 91.821, would apply to any civil subsonic turbojet airplane that has a maximum certificated takeoff weight of more than 75,000 pounds, that has a standard airworthiness certificate (or its equivalent), and that operates to or from any airport in the United States under 14 CFR part 121, 125, 129, or 135.

References in part 91 to part 36, subpart I refer to the noise levels of appendix C of part 36.

The proposed rule also would include a provision to allow for the acceptance of noise level determinations made pursuant to Annex 16 of the International Civil Aviation Organization, which specifies noise requirements, divided into various chapters, that are generally comparable to the U.S. stage determinations.

The FAA notes that, although the operating noise limit regulations have applied only to certain aircraft that have standard airworthiness certificates, the legislation does not distinguish the aircraft subject to the legislation by the type of airworthiness certificates they possess. The FAA intends to cover those airplanes normally subject to the noise rules and does not intend to limit the operation of those airplanes that have experimental or other restricted certificates. The FAA notes that there are few civil subsonic turbojet airplanes

with a maximum certificated takeoff weight of more than 75,000 pounds that possess other than standard airworthiness certificates. Moreover, the FAA believes that these airplanes, which are generally experimental and owned by manufacturers or used for limited purposes such as firefighting, do not significantly add to the noise environment in the United States and that their operation for these limited purposes should not be discouraged.

Section 91.803 Final Compliance: Subsonic Airplanes

Paragraph (a) of proposed § 91.803 would prohibit the operation of aircraft that do not meet Stage 2 or Stage 3 noise levels to or from any airport in the contiguous States.

Proposed § 91.803(b) would implement the final compliance date for Stage 3 operations set by the legislation, which states:

After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary.

The legislation also provides that this prohibition:

* * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States.

Accordingly, proposed § 91.803(b) limits the phaseout to Stage 2 airplanes that are operated to or from any airport in the contiguous States. Finally, the legislation provides a limited waiver provision for certain operators. That waiver provision, described in the discussion of proposed § 91.809, is acknowledged in proposed § 91.803(b) as an exception to the final compliance date.

Section 91.805 Entry of Stage 2 Aircraft; Prohibition on Additions to Stage 2 Fleet

The legislation contains a provision, known as the "nonaddition rule," that prohibits any addition to the total number of Stage 2 airplanes currently operated or eligible to be operated into the contiguous States. Specifically, this portion of the legislation states:

[N]o person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after (November 5, 1990) unless—

(1) it complies with Stage 3 noise levels, or

(2) it was purchased by the person who imports the aircraft into the United States under a written contract executed before (November 5, 1990).

Section 91.805(a) would prohibit the operation to or from any airport in the contiguous States of any airplane that does not comply with one of the categories of airplanes described therein. The categories of airplanes described in paragraph (a) were derived from several sections of the legislation.

Proposed § 91.805(a)(1) would allow the operation of any airplane that meets the Stage 3 noise levels.

Proposed § 91.805(a)(2) would allow the operation of an airplane that complies with Stage 2 noise levels and is included in the base level of a U.S. operator, as defined in proposed § 91.807(b)(1).

Proposed § 91.805(a)(3) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of proposed § 91.807. Proposed § 91.805(a)(4) would allow the operation of an airplane that complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce.

Proposed § 91.805(a)(5) is taken directly from the legislation and would provide for the operation of an airplane that is owned by one of the U.S. entities described and was leased to a foreign air carrier on November 5, 1990. The legislation does this by limiting the statutory construction of the term "imported," effectively allowing the operation of these airplanes that would otherwise be prohibited by the nonaddition rule. The legislation states that for purposes of the nonaddition rule:

* * * an aircraft shall not be considered to have been imported into the United States if such aircraft—

(1) on the date of the enactment of this Act is owned—

(A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia);

(B) by an individual who is a citizen of the United States; or

(C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and

(2) enters into the United States not later than 6 months after the date expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (1) and a foreign air carrier.

The FAA notes that the term "owner" as used in the nonaddition rule is not equivalent to the term citizen of the United States as that term is defined in section 101 of the Federal Aviation Act. Under proposed § 91.805(a)(5), owners of Stage 2 airplanes could bring them into the United States, and those airplanes would not be considered "imported" under the nonaddition rule. For purposes of this section, an owner would be any entity described in § 91.805(a)(5)(i) that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of the Federal Aviation Regulations. Examples of such owners would include trustees and conditional vendees under purchase option leases intended for security only. For a recent interpretation of ownership with regard to leased aircraft, see the FAA Notice of Legal Opinion published at 55 FR 40502, October 3, 1990.

As quoted above, the legislation also allows the operation of an airplane that was imported in to the United States on or after November 5, 1990, and—

* * * was purchased by the person who imports that aircraft into the United States under a written contract executed before (November 5, 1990).

This language is adopted in proposed § 91.805(a)(6) to allow the operation of such airplanes. The FAA interprets this section of the law as protecting the ownership interests of individual U.S. citizens and certain entities.

Without proposed § 91.805(a)(6), an entity so situated might be able to bring its airplane into the United States, but not operate it; nor would it be able to lease or sell the airplane to a U.S. operator with an established base level of Stage 2 airplanes. Accordingly, proposed § 91.805(a)(6) allows for the operation of these airplanes, and the foreseeable market of these airplanes is facilitated by the additions to the number of airplanes available to an operator under proposed § 91.807(b).

The FAA does not interpret the term "importer" in proposed § 91.805(a)(6) to mean anyone other than a person described in the legislation as incorporated in proposed § 91.805 (a)(5)(i) (recognizing that the term "owner" may not apply). To expand the definition of "person who imports" beyond these designations might unreasonably expand the number of Stage 2 airplanes that Congress specifically sought to limit by including the nonaddition rule in the legislation. The FAA specifically seeks comment from any person that potentially would be covered under proposed § 91.805(a)(6), but that is not described in proposed § 91.805(a)(5)(i), so that all relevant circumstances may be considered before a final rule is issued. The FAA does not intend that the terms "contract" or "written contract executed" be given other than the standard legal interpretation as accepted in the field of contract law.

The legislation also states that the nonaddition rule:

* * * shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into a noncontiguous State or territory or possession of the United States on or after the date of enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the Stage 3 noise levels.

Under the legislation, it is permissible for U.S. operators to import a Stage 2 airplane into places outside the contiguous States after November 5, 1990. In order to distinguish these airplanes—which cannot be included in an operator's base level—from those that may be operated in the contiguous States, proposed § 91.805(d) would require that an operator acquiring such an airplane amend its operations specifications to preclude the inadvertent operation of that airplane in the contiguous States. While this provision may seem redundant in the context of the general operating prohibition of the entry and nonaddition rule, the FAA believes that amending the airplane's operations specifications is necessary to prevent the substitution of a prohibited Stage 2 airplane. The legislation is clear that substitution of such an airplane for one already in an operator's base level is not to be allowed.

The only Stage 2 airplanes that may be substituted for those in an operator's base level are those owned by an entity described in proposed § 91.805 (a)(5) or (a)(6) of this section; that is, the airplane must already be included in the pool of Stage 2 airplanes authorized by the nonaddition rule in the legislation.

Section 91.807 Phased Compliance Under Part 121, 125, 129, and 135: Subsonic Airplanes

In addition to setting a final compliance date for the cessation of operation of Stage 2 airplanes in the contiguous States, the legislation directs the FAA to:

* * * establish a schedule for phased-in compliance with the prohibition (the final compliance date of December 31, 1999). The period of such phase-in shall begin on (November 5, 1990) and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with projected rates of growth for the airline industry, the impact of competition within the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on an analysis of the impact of aircraft noise on persons residing near airports.

The FAA recognizes that although the general prohibition in the legislation speaks in terms of airplane operations, a phaseout of actual individual U.S. Stage 2 operations for U.S. air carriers is considered impractical for the FAA to equitably propose, implement, and enforce. A phaseout of actual U.S. operations for U.S. operators also might represent a substantial cost both to the FAA and the affected operators. Instead, the FAA proposes to phase out Stage 2 airplanes operated by U.S. operators. However, since the FAA is unable to control the number of Stage 2 airplanes owned by foreign operators but is able to control the number of operations conducted by them in the contiguous States, the FAA proposes a phaseout of foreign operations under the same compliance schedule proposed for the elimination of U.S. Stage 2 airplanes.

The FAA considered a number of concepts for effecting an orderly and efficient phaseout of Stage 2 airplanes. The two concepts found to be most feasible are discussed below, and the FAA seeks comment on the specific advantages, disadvantages, and burdens that each would impose on affected operators and other interested persons.

The first option proposes a phased compliance schedule under which each operator would be required to meet the specified reduction of its Stage 2 fleet by each interim compliance date. This approach is reflected in the language of proposed § 91.807, and in other proposed sections which govern the phaseout.

The second option is characterized by the issuance of transferable Stage 2 operating rights that expire in increments over the file of the phaseout period. (We note that adoption of this option in the final rule would require corresponding modification to several other sections of the proposed rule.)

Option 1

Under the proposed regulations, each U.S. operator of Stage 2 aircraft would determine its "base level" of airplanes according to a formula that includes those airplanes on its operations specifications on one day during calendar year 1990 and those added pursuant to either of two statutory provisions. Proposed § 91.807 would require each operator to reduce the number of Stage 2 airplanes in its base level under a specified schedule. In developing the proposed interim compliance schedule, the FAA considered the following: possible manufacturing and delivery schedules for Stage 3 airplanes, replacement engines, and hushkits; competition within the air carrier industry; the effect on small airports; the effect on new entrants into the market; projected and potential growth of the carriers; and an analysis of the impact of noise on persons residing near airports. Of particular concern was the relationship between the degree of noise reduction and the relative increase in costs to carriers. Based on the economic analysis, the FAA believes the dates proposed in the schedule optimize the tradeoffs between noise reduction and economic burden to the air carrier industry and the public. These considerations are discussed in detail in the preliminary Regulatory Impact Analysis. Comments addressing the feasibility of the proposed phaseout compliance schedule should include specific economic data for the FAA to consider in formulating a final rule.

Proposed § 91.807(b) would establish the number of Stage 2 airplanes to be included in the "base level" of each operator. For a U.S. operator, the base level would be the number of Stage 2 airplanes listed on its operations specifications for operation in the contiguous States on any one day during calendar year 1990; the base level would also include Stage 2 airplanes acquired under two other limited provisions. A foreign operator's base level would be determined by the total number of Stage 2 operations it conducted into the contiguous States during calendar year 1990. Proposed § 91.807(b) does not address the effect on the base level of an acquiring operator in the event of a merger or other acquisition of an operator's Stage 2 airplanes. The FAA acknowledges that merger-like transactions may occur during the phaseout, in which part or all of the base level of an operator may be combined with the base level of another operator. The FAA specifically solicits comment on how such transactions should be accommodated in the final rule, particularly with regard to the adjustment of the base levels of the operators involved.

Proposed § 91.807(c) would provide a Stage 2 airplane fleet allocation for new entrants into the market that are certificated for operation under FAR part 121 or part 135. The proposal specifies the minimum percentage of a new entrant's airplanes that must be operated as Stage 3 in the contiguous States when service is initiated, based

on the timing of that operator's entry into the market. Paragraph (c)(6) of this proposed section would specify that Stage 2 airplanes with a maximum certificated takeoff weight of less than 75,000 pounds may not be used to meet compliance schedule percentage for new entrants.

Proposed § 91.807(d) would set out the compliance schedule for the reduction of U.S. Stage 2 airplanes. Each operator would be required to reduce the number of Stage 2 airplanes it operates to a level 25 percent below its base level on and after December 31, 1994, to 50 percent below its base level on and after December 31, 1996, and to 75 percent below its base level on and after December 31, 1998.

Proposed § 91.807(d)(2) would allow U.S. operators to acquire and operate additional Stage 2 airplanes from other U.S. operators. These airplanes would not increase the acquiring operator's base level, and would not affect the number of airplanes the operator would be permitted to operate after the next compliance date.

Each foreign air carrier would calculate its required percentage reduction in Stage 2 operations for each compliance date under the schedule provided in proposed § 91.807(d)(4). The reduced number arrived at by this calculation would then represent the maximum number of Stage 2 operations that the foreign air carrier would be permitted to operate in any calendar year until the next compliance date.

Proposed § 91.807(d)(5) would allow a foreign air carrier that had no more than two Stage 2 airplanes listed on its U.S. operations specifications at any time during the period January 1, 1990, through December 31, 1990, to operate that number of Stage 2 airplanes to or from airports in the contiguous States without regard to the compliance schedule in paragraph (d)(3) of this section. This exception is intended to limit the hardship on some small foreign air carriers. Calculating a base level from the total number of 1990 operations might be unfair to small carriers with operations whose frequency varied widely through the year.

The FAA recognizes that certain U.S. operators operate Stage 2 airplanes exclusively outside the contiguous States, and anticipates that these operators will desire to continue operation of these airplanes. The FAA seeks comment from such operators as to the best means by which these airplanes may be identified as ineligible for operation in the contiguous States (e.g., the operations specifications proposed in § 91.806(d)), and the timing of this prohibition. The FAA also seeks comment on whether the decision to continue operation should be considered an exclusion from the base level, or, if the airplanes should be included in the operator's base level and phased out by removing them from operation in the contiguous States. The FAA specifically seeks data from such operators as to the number of Stage 2 airplanes covered under these circumstances and the economic costs and benefits associated with any suggested means of compliance.

Option 2

The FAA is considering an alternative proposal in which the rights to operate Stage 2 airplanes that are reflected in an operator's base level would be freely transferable among operators and other parties. That is, any operator that at any time reduced its Stage 2 fleet below that required by the phaseout schedule could transfer the "unused" base level to another operator. Upon notification to the FAA by both the transferring and receiving operator, the receiving operator would be permitted to have a Stage 2 fleet equal to its required level, plus the number of operating rights transferred from the operator that reduced its fleet below the required level.

The FAA believes that such transferability of operating rights could significantly reduce the overall cost of achieving the phaseout, and make the phaseout generally less burdensome to operators by giving them additional flexibility in achieving compliance. For example, under Option 1, an operator that has airplanes on order that would permit compliance, but that will receive the new aircraft too late to meet an upcoming phaseout deadline might be forced to choose between canceling flights and leasing airplanes until the new airplanes arrive. If operating rights were transferable, such an operator might be able to find another operator that could reduce its Stage 2 fleet below the required level at lower cost. In that case it is possible that the first operator could pay the second for the unused Stage 2 operating rights that the second operator has following its additional reductions.

Option 2 would also mitigate any distortion of operators' economic planning and decisionmaking created by the phaseout requirement. For example, operators typically buy and sell airplanes among themselves; the decision to sell aircraft is based on a conclusion that the airplanes' values on the market exceeds its value to the current owner. A phaseout implemented under Option 1 may well reduce the sales value of Stage 2 airplanes relative to their value to their current owners. This is because the current owner could operate the airplane, subject to the phaseout, but another operator could operate the airplane to a point in the contiguous 48 States only in lieu of another airplane. Thus Option 1 has an undesirable distorting effect on the airplane market that would be eliminated by the transferability allowed under Option 2.

Because transfers of operating rights would be purely voluntary for operators, they would only occur if they made both operators better off. Thus allowing transferability of operating rights creates a "win-win" situation that has the potential to reduce the costs of phaseout compliance to operators. It is FAA policy for its regulations to be cost-effective, meaning that they achieve their intended objectives at the lowest possible cost. To the extent that the desirable features of transferability are not offset by other compelling public policy concerns, transferability would be the preferred option.

The FAA believes that allowing such transferability would not significantly increase the complexity or enforcement costs of the proposed regulation. Indeed, Option 2 might simplify the administration of the phase out in certain circumstances. As noted above, we recognize the need under either option to accommodate mergers, acquisitions, and other corporate restructuring. To do this, operating rights would probably have to be at least partially transferable among operators in a restructuring situation (in connection with the transfer of a substantial portion of an operator's fleet). Since operating rights would generally not be transferable under Option 1, however, implementation of Option 1 might necessitate difficult regulatory distinctions regarding the circumstances under which transfers of operating rights would and would not be allowed. By permitting transfers in general, Option 2 would eliminate this problem entirely.

The FAA believes that such an approach might benefit airlines that have more limited financial resources and thus are potentially most adversely affected by the phaseout requirement. While transferability of the right to operate Stage 2 airplanes would give greater flexibility to individual operators, the FAA would not permit the transfers to delay the overall compliance schedule for phaseout of Stage 2 airplanes.

This option would involve issuing operating rights to each operator for each Stage 2 airplane subject to the phaseout. Following issuance of these rights, no U.S. operator would be permitted to operate a Stage 2 airplane to or from any point within the contiguous States unless it possessed a Stage 2 operating right for that airplane, in addition to any other required authority.

A portion of each operator's Stage 2 operating rights would expire at each interim compliance date. The expiration schedule would be the same proposed under Option 1. That is, all Stage 2 airplanes would be operable until December 31, 1994, at which point 25 percent of each operator's operating rights would expire. An additional 25 percent would expire on December 31, 1996, and another 25 percent on December 31, 1998. The final 25 percent of the Stage 2 operating rights would expire on December 31, 1999. As with Option 1, this schedule may be altered after review of the comments. Irrespective of the schedule adopted the periodic expiration of portions of the Stage 2 operating authority would ensure corresponding reductions in the national Stage 2 fleet by each expiration date, since each operator would need valid Stage 2 operating rights for each Stage 2 airplane operated within the 48 contiguous States.

Until the expiration date, an operator could use each Stage 2 operating right to operate one Stage 2 airplane. In the event an operator ceased operating a Stage 2 airplane prior to the expiration of its Stage 2 operating right, it could transfer the remaining life of that operating right to operate another Stage 2 airplane. This would enable each operator to determine which of its Stage 2 airplanes to retire or modify first, based on the airplane's age, condition, and other considerations.

Under this approach, an operator also would have the right to transfer unused Stage 2 operating rights to other U.S. operators, and possibly to third parties. This could create an incentive for some operators to move away from the use of Stage 2 airplanes more quickly than would be required by regulation. This approach also recognizes that some operators might have difficulty meeting the interim compliance dates for the industry's overall phaseout of Stage 2 airplanes because of financial, scheduling, or equipment availability problems. If one of these circumstances occurs, an operator could acquire Stage 2 operating rights from another operator. This may provide an operator with additional flexibility in arranging the conversion of its fleet to Stage 3. However, it would not affect compliance with the overall phaseout of Stage 2 airplanes, because Stage 2 certificates would become available only to the extent that some operators eliminate Stage 2 airplanes more quickly than required.

The FAA is particularly interested in receiving public comment on the likely effectiveness of permitting transferability in promoting efficiency and flexibility for operators. The FAA is requesting comments on whether, and to what extent, transferability during the phaseout of Stage 2 airplanes, is preferable to a phase-out in which Stage 2 operating rights are not available from other operators and in which operators would have to make specific Stage 2 fleet reductions at each compliance date.

Option 2 would give operators an unrestricted right to acquire or transfer Stage 2 operating rights but it does not specify the means by which those rights would be represented and recorded. One vehicle for representing Stage 2 operating rights could be certificates, i.e., printed documents, containing an expiration date and the airplanes serial and tail numbers. Under this system, a transfer of the operating right for a Stage 2 airplane would be accomplished through the transfer of the certificates representing those rights. One variant on this approach would be to dispense with certificates. In the absence of certificates, the FAA would maintain a record of the ownership of Stage 2 operating rights, including their dates of expiration. Any operator transferring or acquiring operating rights would then be required to notify the FAA immediately of the transaction.

Comments are requested on the use of these or any other mechanisms under which the right to operate Stage 2 airplanes could be transferred. If it appears from the comments that Option 2, or an approach similar to it, would facilitate airline compliance, particularly among airlines with limited current financial resources, or reduce the costs incurred by such operators, then it is likely that the final rule will incorporate such an approach. If, on the other hand, it appears that an approach involving transferability of operating rights would not provide cost reduction relief or flexibility to comply with the phaseout requirement, it is likely the final rule would not contain such a system.

The FAA notes that adoption of Option 2, especially if it does not involve the use of certificates, would require alteration in the proposed reporting requirements. For example, it would be necessary for the FAA to establish a method under which it would maintain records of operating rights and/or certificates and any transfers, with additional costs to both operators and the FAA. Commenters are invited to make recommendations on this matter. The final rule will also address any changes in the necessary record-keeping requirements.

These are some issues regarding the operation of a system of transferable rights on which the FAA requests the comments of interested parties:

- Should parties other than operators be permitted to acquire unused rights? There might be benefits to permitting nonoperating owners, as well as other parties, to serve as "brokers" who buy and sell operating rights without using themselves. We request comment on this possibility.
- The FAA believes that it will be necessary to impose a minimum time period during which a transferred right cannot be retransferred to a third party, in order to ensure that transferability does not lead to effectively simultaneous operation of multiple Stage 2 airplanes under a single operating right. We request comment on the necessity for an appropriate length of such a minimum period.

Commenters are also invited to address whether a transferable rights system might also be applied to the phaseout of operations within the contiguous States by foreign carriers. The FAA notes that Option 2 contemplates that operating rights would apply to specific Stage 2 airplanes. Any changes would be recorded as a transfer of rights to another Stage 2 airplane. This is intended to simply enforcement and record-keeping for operators and the FAA. However, the phaseout proposal for foreign air carriers would involve eliminating Stage 2 operations rather than eliminating airplanes. Accordingly, any transferrable rights program applicable to foreign air carriers would have to be tailored to take this important difference into account. The FAA's preliminary assessment is that this distinction means that a transferable rights program for foreign air carriers poses enforcement and record-keeping requirements substantially more complex than would be created by a comparable program for U.S. operators. Comments favoring extending a mechanism involving the transfer of operating rights to foreign air carrier operations are therefore requested to make specific recommendations on how these issues would be handled, and the resources that would be needed.

Section 91.809 Waiver

The legislation provides that:

If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the Stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

The legislation goes on to state that:

The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

The FAA does not currently foresee granting a large number of waivers under this provision. While not now proposing specific criteria for the issuance of waivers, the FAA might consider granting a waiver if failure to do so would result in, for example, a severe disruption of competition through the serving of a market by a single air carrier or foreign air carrier, a community losing essential air service, or a carrier suffering financial havoc.

There is some concern that a 75% reduction from its base level may force certain operators to have more than 85% of its fleet at Stage 3. Accordingly, the proposed rule includes a provision, § 91.805(d)(3), that exempts carriers that achieve and maintain a fleet composed of at least 85 percent Stage 3 airplanes from the interim compliance schedule. This provision ensures that no carrier will have to exceed the 85 percent level to apply for a waiver. The FAA seeks comment on whether such relief is seen as necessary and appropriate under the circumstances of individual operators.

The legislation also included a limitation to such a waiver:

A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

These provisions of the legislation have been incorporated in § 91.809 of the proposed rule.

Section 91.811 Annual Progress Report

The legislation requires that:

Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

Proposed § 91.811(c) lists the information that would be required to be submitted by U.S. air carriers to show the airplanes included in the carrier's base level, any additions made to the base level, any Stage 2 airplanes acquired from another U.S. operator, the carrier's progress toward compliance with the interim schedule and final phaseout date, and the carrier's current plan to meet the interim schedule and compliance date. Similar information (except with respect to plans) would be required from a foreign air carrier under proposed § 91.811(d) relevant to its Stage 2 operations to or from the contiguous States.

Comments Received During Development of the NPRM

The FAA received approximately 17 unsolicited comments before the publication of the NPRM regarding the agency's actions under the legislation. These comments were submitted by airport operators, aircraft lessors, citizen groups concerned about noise, air freight operators, and other industry groups.

These unsolicited comments have been placed in Docket No. 26433 to make them available to the public. The content of these comments range from interpretations of the legislation to suggested phaseout dates and implementation schemes.

Among the unsolicited communications described above are requests from aircraft lessors that the FAA act to protect their interests during the phaseout. In particular, they are concerned that focusing the phaseout rule on the operators of aircraft rather than on owners could lead to results they consider inequitable. For the reasons stated below, the FAA believes that operators of Stage 2 airplanes should be responsible for the phaseout of Stage 2 airplanes. The FAA is sensitive to the assertions of airplane lessors regarding the economic importance of any such determination, and the FAA agrees that this is a significant issue. However, for that reason, among others, the FAA believes that the issue should not be resolved solely on the irregular record now before us. The FAA invites all interested persons to submit comments on the appropriate roles and responsibilities for operators and lessors of leased airplanes.

The NPRM proposes to make Stage 2 operators responsible for phasing out their Stage 2 airplanes. This proposal is based on several considerations.

First, the FAA notes that section 9308(a) of the legislation, in requiring the elimination of Stage 2 airplanes, specifically refers to the operation of airplanes rather ownership: "After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels as determined by the Secretary."

Moreover, the FAA is concerned that compliance monitoring would be considerably more difficult if owners rather than operators were responsible for the phaseout. Airplane ownership is often the subject of highly complex financial arrangements, frequently involving individuals or corporations with which the FAA has little or no regular contract and over which the FAA has limited direct authority. Keeping track of the various owners and interests and ensuring that they are complying with the phaseout program may be substantially more difficult than monitoring compliance by airplane operators; these operators are, of course, at airports, and thus readily accessible to FAA inspectors.

The problem is further compounded by the fact that many airplane owners are investors whose proportional ownership interest is less than one whole airplane. The concept of a phased reduction in the percentage of an owner's Stage 2 airplanes has little meaning for owners with fewer than two airplanes. The FAA does not have data currently available about the number of airplanes that might be exempt from interim phaseout dates because their owners have fractional ownership interests. If that number is substantial, however, it could reduce the noise benefits that would otherwise be generated by the interim phaseout dates.

If the final rule in this proceeding presents too many compliance problems, local airport operators might not accept it as a credible national response to the problem of Stage 2 noise. In that event, there would undoubtedly be increased pressure in many communities for local Stage 2 restrictions. Local airport operators, however, can exert control only over airplane operators.

None of these problems is necessarily insurmountable. Taken together, however, they are sufficient to persuade the FAA that it should propose to base the Stage 2 phaseout on operations rather than ownership. However, the FAA remains open to consideration of other methods of phaseout that would be consistent with statutory obligations, and the final rule may adopt an owner-based approach if it appears superior.

Owners of aircraft are invited to comment both on the need for an desirability of an owner-based approach, and on any adjustments or accommodations that should be made to protect the interests of owners, in the event that the FAA adopts an operator-based rule.

Economic Summary

This section summarized the regulatory impact analysis prepared by the FAA on the proposed amendments to 14 CFR part 91, Subpart I—Operating Noise Limits. This summary and the full regulatory impact analysis quantify, to the extent practicable, estimated costs to the private sector, consumers, and federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation or regulatory impact analysis. However, by enacting the Airport Noise and Capacity Act of 1990 which mandates that the FAA promulgate regulations, Congress has in effect already determined that the phaseout of Stage 2 airplanes by the end of 1999 is in the public interest; that is, the collective public benefits of the phaseout outweigh its costs to the public. Nevertheless, the FAA has prepared a regulatory impact analysis of the proposed rule. The purpose of the analysis is to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the proposed rule.

Executive Order 12291 requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that: Has an annual effect on the economy of $100 million or more; creates a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies, or geographic regions; or has a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. The Executive Order requires that alternative actions be considered and evaluated for major rules.

In addition to a summary of the regulatory analysis, this section also contains various alternatives for accomplishing the phaseout, a regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354), and an international trade impact assessment. Detailed economic information supporting this NPRM is contained in the Regulatory Impact Analysis, available in the docket.

Examination of Alternative Approaches

The discussion below reviews alternative strategies and timetables (within the limits allowed by Congress) that were considered in this proceeding. The FAA considered four alternatives for conducting the phaseout of Stage 2 airplane operations to or from airports in the contiguous United States by December 31, 1999. One alternative would accomplish the Stage 2 airplane phaseout using an industry fleet measure. The second would accomplish the phaseout based on a required percentage reduction of each operator's Stage 2 fleet for different compliance dates during the 1990s. The third would allow the Stage 2 fleet phaseout objectives to be accomplished through the addition of Stage 3 airplanes rather than solely through the reduction of Stage 2 airplanes. The fourth alternative would allow Stage 2 operating right to be transferred among operators.

A detailed discussion of the four alternatives is presented below.

Alternative One

This alternative would set interim Stage 2 phaseout goals for the whole industry rather than for individual operators. Operators could work together to achieve each interim compliance date. Because no individual operator would be responsible for a specific portion of the progress of the phaseout, this alternative would be difficult to enforce. No operator would have any incentive to proceed more rapidly than others to phase out Stage 2 airplanes, because additional costs would result from a faster phaseout schedule. Competition within the industry makes it unlikely that operators would effectively cooperate to produce a largely self-regulated phaseout.

Alternative Two

This alternative, which is incorporated in the proposed rule text, would require each operator to reduce a specific percentage of its Stage 2 airplanes at different compliance dates during the 1990s. This alternative is more readily enforceable than Alternative One, because each operator would be responsible for meeting a specific goal. By requiring each operator to reduce its fleet by the same percentage as other operators at each compliance date, Alternative Two would require all operators to bear some of the burden.

Alternative Three

This alternative would allow operators to meet interim goals through increases in Stage 3 airplanes (thereby reducing the percentage of the operations of Stage 2 airplanes) as well as reductions in Stage 2 airplanes. The phaseout goals would set Stage 2 fleet reductions as a percentage of the operator's total fleet. This alternative would favor an operator that is expanding by adding Stage 3 airplanes to its fleet. This alternative could also means higher noise levels during the phaseout period because the absolute number of Stage 2 airplanes could be higher than under Alternatives One or Two.

Alternative Four

This alternative, which is fully explained elsewhere in this preamble, would propose an approach involving transferability of operating rights for Stage 2 airplanes. Under this alternative, operators would be allocated operating rights to use Stage 2 airplanes for a specified period and such rights could be transferred or sold to others. Compared to other alternatives, this approach could make it more flexible for individual operators to phase out their Stage 2 airplanes. In particular, the FAA believes that such an approach might benefit airlines that have more limited financial resources and thus would be potentially more adversely affected by the proposed phaseout requirement. This approach also might increase operator flexibility during the phaseout by allowing operators that are unable to keep up with the phaseout schedule to buy operating rights from airlines that are able to exceed the schedule.

The FAA is considering Alternatives Two and Four for the final rule. These are viewed as more enforceable than Alternative One, because each operator has the responsibility of meeting a specific goal. Alternatives Two and Four are preferred to Alternative Three, because they give no advantage to operators expanding their fleets, and they also achieve more rapid noise reductions. This NPRM incorporates Alternative Two, because the novelty of Alternative Four raises many questions on which we would like to receive comment before drafting the regulatory language. As noted above, however, to the extent that the desirable features of transferability are not offset by other

BEST COPY AVAILABLE

compelling public policy concerns, transferability would be the preferred option. The FAA would not, however, permit the transferability of operating rights to adversely affect the overall national reduction in Stage 2 airplanes.

To implement Alternative Two, the FAA evaluated five different compliance schedules. Although the analysis of compliance schedules performed here is directed specifically at Alternative Two, the scheduled rate of elimination of Stage 2 airplanes would be the same if Alternative Four were adopted in the final rule. To measure the cost of these compliance schedules, a baseline cost (the lowest cost of having all Stage 2 airplanes phased out by December 31, 1999) to the industry was determined using the natural attrition of Stage 2 airplanes (assuming a 25-year useful life span). Airplanes that would not have reached 25 years of age at the end of the phaseout period would have to be replaced or converted to Stage 3 airplanes, and the loss of economic utility from these younger airplanes represents the baseline cost of early replacement or conversion to Stage 3. This baseline cost is also the cost of the law requiring the ban of Stage 2 airplane operations after December 31, 1999. However, Congress has mandated phased compliance. In selecting the proposed schedule of interim dates to phase out Stage 2 airplanes, the FAA considered the following: Costs to the industry, technological availability of Stage 3 airplanes, and the need to accomplish the Stage 2 phaseout by the end of 1999. An economic analysis of several alternative compliance schedules was performed. Compliance schedule one would require a total phaseout in 20 percent increments from December 31, 1995 through December 31, 1999. Compliance schedule two would require a 50 percent phaseout by the end of 1993, 75 percent by the end of 1998, and the remainder by the end of 1999. Compliance schedule three would phase out 50 percent by the end of 1994, 75 percent by the end of 1997, and the remainder by the end of 1999. Compliance schedule four would phase out 50 percent by the end of 1998, 75 percent by the end of 1998 and the remainder by the end of 1999. Compliance schedule five would phase out 25 percent by the end of 1994, 50 percent by the end of 1998, 75 percent by the end of 1998, and the remainder by the end of 1999.

Costs

Sections 9306 and 9309 of the Airport Noise and Capacity Act of 1990 require the elimination of Stage 2 airplanes by December 31, 1999 in the contiguous 48 States. Many of the costs associated with this proposed rule are directly attributable to the statute because Congress determined that the elimination of Stage 2 airplane noise by the end of 1999 is in the public interest. Those costs that are directly attributable to the legislation will be so identified. The legislation also requires the FAA to establish interim compliance dates for the phaseout. The additional costs of phasing out Stage 2 airplanes would be the result of FAA policy decisions and will be identified as costs of the proposed rule.

The phaseout of Stage 2 airplanes will impose certain costs on many operators. Among the direct costs are the purchase of Stage 3 airplanes, the replacement of engines on Stage 2 airplanes, or the purchase and installation of hushkits on Stage 2 airplanes. Another cost to the aviation industry is the loss in market value of Stage 2 airplanes as a result of early retirement forced by the phaseout. In addition to the costs of the phaseout schedule itself, administrative costs are anticipated for the FAA and industry. The cost of the legislation (the prohibition of all Stage 2 airplane operations within the 48 contiguous States after December 31, 1999) is estimated to be $4.4 billion. The industry is expected to pass a considerable portion of these costs on to travelers and shippers.

To the extent that using hushkits and replacement engines is less costly (when all costs of operation are concluded) than replacing existing Stage 2 airplanes with Stage 3 airplanes, the FAA believes that the total compliance costs associated with the legislation will be less than that stated above. The FAA requests information on the likelihood of using hushkits and replacement engines to comply with the legislation and proposed rule.

The FAA has calculated from public information the cost to the U.S. air carrier industry for the above five compliance schedules. All five schedules are based on a nationwide Stage 2 phaseout by December 31, 1999. For this analysis, a useful life of 25 years was assumed for all Stage 2 airplanes.

Baseline	Industry-wide cost
Total elimination of Stage 2 fleet. One-time phaseout by December 31, 1999.	$4,442 million.
Compliance schedule one:	
20 percent annual phaseout each year beginning December 31, 1995 and continuing until December 31, 1999.	Second most costly.
Compliance schedule two:	
50 percent by December 31, 1993, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	Most costly.
Compliance schedule three:	
50 percent by December 31, 1994, 75 percent by December 31, 1997, and 100 percent by December 31, 1999.	Third most costly.
Compliance schedule four:	
50 percent by December 31, 1998, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,186 million (least costly).
Compliance schedule five:	
25 percent by December 31, 1994, 50 percent by December 31, 1998, 75 percent by December 31, 1998, and 100 percent by December 31, 1999.	$1,330 million (second least costly.

The impact on individual operators would vary depending on the size of an individual operator's Stage 2 fleet. Accordingly, the FAA has examined the size of the Stage 2 fleet by operator in order to analyze these costs. The operators affected the most by the phaseout and ban would be those that: (1) Have a large number of Stage 2 airplanes; (2) have a relatively young Stage 2 fleet; or (3) have difficulty in obtaining the necessary financing for replacement airplanes, engines, or hushkits. The effect on cargo operators would be minimal when the assumption of a 25-year useful life for all airplanes is applied. Only one cargo operator would be significantly affected because it owns a relatively young Stage 2 fleet. The FAA believes that the cargo operators would generally purchase hushkits rather than purchase new Stage 3 airplanes.

In addition to the cost of the phaseout schedule, proposed § 91.811 would require that beginning in calendar year 1992, each U.S. operator and foreign air carrier affected by this proposed rule must submit to the Administrator an annual report on the progress such carrier has made toward complying with the proposed requirements. The FAA estimated that the net present value for all air carrier costs of annual progress reports will be $21,400. The FAA also estimated that the net present value of FAA costs to review annual progress reports and monitor the program will be $441,700.

Benefits

The principal benefit of the proposed regulations is the reduction in the number of people living in the 65 dB DNL contours around the nation's airports. In 1990, an estimated 2.7 million individuals were within the DNL 65 dB contour. Simply by normal attrition of Stage 2 airplanes, this number would drop to 1.3 million by the year 2000. The eventual ban on Stage 2 airplanes mandated by the legislation would reduce this number by 900,000; these noise reduction benefits would be experienced sooner under the proposed compliance schedule than under the legislation alone.

The proposed rule should reduce the noise impact that has caused a patchwork of Stage 2 noise regulations to be promulgated by local governments at over 400 U.S. airports. While difficult to quantify, numerous segments of the industry have alleged serious economic harm from dealing with such restrictions. This proposed rule is expected to result in improved efficiencies to both air carriers and the flying public. Public comment on this issue is solicited.

Many studies have shown that high levels of airplane noise may have an adverse effect on the health of individuals. A number of these studies have been reviewed in the economic impact analysis. At this time no quantitative risk assessment exists upon which to calculate the quantitative health benefits. The FAA requests any information that quantifies the economic health benefits associated with this proposed rule.

As a general rule, noise levels are inversely correlated with residential property values. That is, as airplane noise levels decrease, property values around airports increase. To quantify the economic impact associated with the decrease in residential property values, the FAA has used a case study approach to provide a benchmark comparison of the expected benefits of rulemaking actions over an extended period of time. Based on a review of several studies on the change in property values as they relate to airplane noise, studies conclude that property values increase one-half of one percent for every decibel decrease in day-night sound level (DNL). Using the conclusion of these reports, the FAA calculated that inside the 65 dB DNL contours that the net present value of the quantitative benefits associated with the legislation for reducing noise to the population affected by a DNL of 65 dB or higher would be $508 million. For the first three compliance schedules, the FAA evaluated the incremental noise-reduction benefits to be $42.4 million under compliance schedule one, $109.2 million under compliance schedule two, and $61.6 million for compliance schedule three. For compliance schedules four and five, the increased benefits are presented in the following table.

The numbers represent the residential populations affected around most of the nation's airports that receive jet service, the change in day-night sound level (in dB), and the dollar benefits for each of the following years:

ESTIMATED BENEFITS RESULTING FROM AN INCREASE IN RESIDENTIAL PROPERTY VALUES FOR COMPLIANCE SCHEDULES FOUR AND FIVE, 1990.[1]

Year	Schedule Four [2]			Schedule Five [3]		
	Cumulative number of individuals benefiting as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value	Cumulative number of individuals affected as a result of FAA rule	Cumulative reduction in airport noise as a result of FAA rule —dB—	Net present value change in property value
1994				0	−.10	$0
1995				200,000	−.50	1,180,992
1996	300,000	−0.80	$2,576,711	300,000	−.80	2,576,711
1997	300,000	−1.40	4,099,311	300,000	−1.40	4,099,311
1998	500,000	−2.10	9,316,611	500,000	−2.10	9,316,611
1999	700,000	−4.90 [4]	27,667,560	700,000	−[4]4.90	27,667,560
Total			43,660,193			44,841,185

[1] Benefits are calculated for people impacted within the 65 dB DNL Contour.
[2] Schedule 4 is a 50 percent phaseout by the end of 1998 and a 75 percent phaseout by the end of 1998.
[3] Schedule 5 is a 25 percent phaseout by the end of 1994, a 50 percent phaseout by the end of 1998 and a 75 percent phaseout by the end of 1998.
[4] Noise reduction benefits would be experienced sooner under the proposed compliance schedules that under the legislation alone. After December 31, 1999, noise will be reduced by an average of DNL 7.7 dB to 900,000 individuals.

Source: Derived from information provided by U.S. Department of Transportation, Federal Aviation Administration, Office of Energy and Environment, December 1990.

These estimates represent only a portion of the benefits, because such variables as the effect of airplane noise on commercial properties and on occupational injuries have not been included. Again, the FAA seeks comment from interested parties on this subject.

Competitive Impact Analysis

This section analyzes the impact of interim compliance dates (based on Alternative Two and compliance schedules four and five) for the phaseout of Stage 2 airplanes on competition in the airline industry. The following is a discussion of the competitive impact of this proposed rule.

The Financial Health of the U.S. Airline Industry

Of the nine major U.S. carriers, five are profitable (three have operating profits of more than $150 million each and two have operating profits of more than $25 million each). The remaining U.S. carriers reported operating losses of more than $80 million each. Of the 12 national carriers, 9 are profitable (four with operating profits of more than $17 million each and five with operating profits of at least $2 million each). The three remaining national carriers were not profitable (with operating losses in excess of $50 million). Part of this assessment is based on financial information contained in the FAA Report entitled, Quarterly Industry Overview: Fiscal Year 1990, December 1990, Office of Aviation Policy and Plans.

Among the major U.S. operators, the proposed rule under compliance schedule four is expected to impose the following costs between 1996 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

U.S. air carriers	1996	1998	2000	Total
Majors				
American	32	134	176	342
Continental	39	48	135	223
Delta	292	343	499	1128
Eastern	0	139	159	298
Federal Exp.	80	82	70	232
Northwest	0	167	199	366
Pan American	0		67	
Trans World	0	5	106	111
United	84	241	230	555
USAir	141	418	548	1,107
Subtotal	$578	$1,577	$2,183	$4,439
Nationals				
Air Wisconsin	0			
Alaska Airlines	66	63	49	200
Aloha	30	25	32	87
Am. Trans. Air	0			
America West	66	72	66	207
Evergreen Intl.	0			0
Hawaiian	30	13	10	53
Horizon Air	0	0	0	0
Midway Airlines	0	0	89	89
Southern A.T.	0	0	0	0
Tower Air	0	0	0	0
Trump Shuttle	0	0	0	0
United Parcel	0	0	30	30
World Airways	0	0	0	0
Southwest Airl.	157	85	88	330
Subtotal	$373	$258	$364	$998
Grand Total	$1,051	$1,835	$2,547	$5,435

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Among the major U.S. operators, the proposed rule under compliance schedule five is expected to impose the following costs between 1994 and 2000:

PRESENT VALUE OF COSTS [1] 1990 DOLLARS

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Majors					
American	12	32	134	176	354
Continental	0	39	48	135	223
Delta	153	263	300	493	1,208
Eastern	0	0	139	159	298
Federal Exp.	48	48	82	70	248
Northwest	0	5	167	199	371
Pan American	0	0	0	67	67
Trans World	0	0	5	106	111
United	0	94	241	230	565
USAir	0	141	418	548	1,107
Subtotal	$213	$622	$1,534	$2,183	$4,552
Nationals					
Air Wisconsin	0	0	0	0	0
Alaska Airlines	36	60	63	49	207
Aloha	3	30	25	32	90
Am. Trans. Air	0	0	0	0	0
America West	2	66	72	66	206
Evergreen Intl.	0	0	0	0	0
Hawaiian	18	16	13	10	57
Horizon Air	0	0	0	0	0
Midway Airlines	0	0	0	89	89
Southern A.T.	0	0	0	0	0
Tower Air	0	0	0	0	0
Trump Shuttle	0	0	0	0	0
United Parcel	0	0	0	30	30
World Airways	0	0	0	0	0

PRESENT VALUE OF COSTS [1] 1990 DOLLARS—Continued

[In millions]

Air Carrier	1994	1996	1998	2000	Total
Southwest Airl.	84	89	85	89	347
Subtotal	$143	$283	$258	$364	$1,028
Grand Total	$356	$885	$1,792	$2,547	$5,580

[1] Totals may not add due to rounding. It is likely that the costs associated with Alaska, Aloha, and Hawaiian Airlines will be less because many of their operations are outside the contiguous 48 States.

Based on this information, it is clear that the proposed rule would have a significant effect on many air carriers in the U.S. airline industry. The worsening financial condition of some air carriers will obviously affect the achievement of projected rates of growth for the airline industry. Many airlines, including some financially strong ones, may have to divert funds from capacity expansion to the replacement of State 2 airplanes earlier than planned.

Overview of Competitive Impact

A reduction in the number of airlines offering scheduled passenger service probably will not reduce price and service competition within the industry. In February, 1990, a Department of Transportation task force released a comprehensive assessment of the state of airline competition that was initiated at the direction of Secretary of Transportation Samuel Skinner. This study, entitled Secretary's Task Force on Competition in the U.S. Domestic Airline Industry, U.S. Department of Transportation, Office of the Secretary of Transportation, Volumes I–XI, February 1990, concluded that the domestic airline industry is more competitive than ever before. The study also showed that the increase in national concentration has not resulted in a reduction in competitive pressures in city-pair markets, but, rather, has actually resulted in more competition as individual carriers expanded their systems from a regional to a national basis. It demonstrated how concentration at an airport actually intensifies competition in the hundreds of markets that can be served. Finally, the study showed that fare premiums at concentrated hubs tend to be limited to short-haul, high-density markets that affect less than five percent of the system traffic. The Department's study, however, confirmed that the industry was consolidating at the national level, that concentration had increased at many airports, and that passengers in certain markets at concentrated hub airports were paying fare premiums.

The hub-and-spoke system of service has lead to the geographical expansion of most carriers and the resulting increase in city-pair competition. In other words, connecting services created by airport hubs allow more competitors than would be possible with linear-type systems of service. This is particularly true for small traffic-generating points, and is the reason that smaller points have been the prime beneficiaries of deregulation.

The basic issue is whether the forced early retirement of Stage 2 airplanes would cause a reduction in competition. Of course, the answer depends on the number of carriers affected and the extent to which they are affected. Any change in relative fleet sizes would affect industry concentration. The Department's study shows, however, that this does not necessarily affect competition. The national hub-and-spoke systems have enabled a relatively small number of carriers to provide more intense competitve service in most city-pair markets. On a city-pair basis, it does not take a large number of carriers to provide very competitive service. This strongly suggests that some loss of capacity by financially weak carriers or the loss of a financially weaker carrier would not necessarily have any lasting impact on competition at the city-pair level.

Achieving Projected Rates of Growth for the Airline Industry

The State 2 ban and the proposed phaseout rule, however, could have an impact on many air carriers' plans to expand their fleets. Many air carriers do not plan to replace or convert their State 2 airplanes as soon as would be required under the proposed rule. Some of these airlines may not have the financial strength both to increase their fleets and to replace many of their State 2 airplanes early. The State 2 ban and the proposed phaseout rule, as a result, might reduce the growth rate of the U.S. airline industry.

The Impact on Competition Within the Air Passenger and Air Cargo Industries

The FAA has already discussed competition within the air passenger industry in other sections of this summary. Competition within the air cargo industry, however, is not expected to change significantly over the next ten years. FAA data show that the age of many cargo carriers airplanes is greater than that of air passenger carriers. Consequently, many of these airplanes would be replaced during the 1990's (assuming a 25-year life for State 2 airplanes) and, therefore their replacement would not be considered a cost of this rule. The airplanes that would be replaced as a consequence of this rule are not expected to adversely affect competition within the air cargo industry.

The finding is based on the assumption that airplanes have a useful life of only 25 years. Although many air cargo operators plan to use their airplanes well beyond 25 years, the FAA still believes that its 25-year assumption is valid. The FAA is currently issuing Airworthiness Directives and writing new regulations that will greatly increase the cost of operating old airplanes and the air cargo industry is not exempt from these AD's. As a result, air cargo operators may find it uneconomical to operate airplanes more than 25 years old.

The proposed rule is not expected to have a significant impact on competition between the airline and air cargo industries because the proposed rule would not change the manner by which these two industries compete for carriage of cargo commodities. There would still be a sufficient number of operators to maintain a competitive market structure. Based on information in the earlier subsection on the financial health of the U.S. airline industry, there will probably be four or more major carriers in the U.S. airline industry over the next 10 years. The number of cargo operators is not expected to change significantly over the next ten years. This evaluation concludes that

competition between the airline and air cargo industries would remain intact after implementation of the proposed rule.

The Impact on Nonhub and Small Community Air Service

The proposed rule, which presents a schedule for the phaseout of Stage 2 airplanes, is expected to have little or no effect on nonhub and small communities for two reasons. First, a large proportion of the service provided to such communities is provided with commuter airplanes, most of which have a maximum certificated takeoff weight of less than 75,000 pounds and would not be subject to the phaseout requirement. Of the 374 nonhub communities, only 66 are now served with as many as two roundtrips a day, six days per week, by Stage 2 airplanes with a gross weight of more than 75,000 pounds that would be subject to the phaseout requirement. These 66 communities are served primarily with smaller airplanes that would not be subject to the proposed rule. These 66 communities had approximately 600,000 departures, and only one out of every five departures was provided with a Stage 2 airplane subject to the proposed rule.

The second reason for the negligible effect is that many of these communities receive service to several alternative hubs by different operators. Because a majority of traffic from small communities moves beyond the various connecting hubs, a decrease in service at any given hub would generally not affect a large number of local passengers traveling to cities served by that hub. For example, Akron, Ohio, which is a nonhub city, receives service to seven different connecting hub complexes by six different U.S. carriers. In the event that any one of these U.S. carriers discontinued service to Akron, the remaining operators would be expected to continue to compete vigorously for most connecting passengers.

The hub-and-spoke system of service enables operators to compete for very small volumes of traffic. This is the principal reason that smaller communities have been the prime beneficiaries of deregulation. This is also the reason why these communities will continue to receive very competitive service even if additional concentration occurs at the national level. To illustrate, again using Akron as an example, most city-pair markets involving Akron have very small traffic volumes. Nevertheless, as many as six U.S. carriers compete for this traffic through their respective hubs. Thus, the proposed rule is expected to have a negligible impact on this component of the industry.

The Impact on New Entry into the Airline Industry

Many factors affect new entry into the airline industry. These factors include the cost of airplanes, availability of passenger gates, gaining priority listing on reservation systems, operating and maintenance costs (e.g., labor and fuel), and financing. The added cost of purchasing Stage 3 airplanes instead of Stage 2 airplanes will obviously increase the costs of entry into the airline industry. The FAA believes, however, that the added costs of the Stage 2 phaseout regulations will be a small percentage of the total cost of entry.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that would be affected by this proposed rule are the owners of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in the contiguous States.

There are about 115 U.S. airlines and private operators that operate more than 4,000 jet airplanes over 75,000 pounds. Fleet sizes range from one to several hundred. Many of the fleets and many of the airplanes in these fleets are Stage 3 and are not affected by the proposed rule. Others are Stage 2 airplanes that have been converted to Stage 3. In addition, many airplanes are operated, but not owned, by the carriers under whose names they fly. These leased airplanes are owned by other air carriers, banks, insurance companies, and leasing companies. Finally, many operators own only one Stage 2 airplane; they would be excluded from compliance with the phaseout because of a round-up provison for calculations in the phaseout schedule.

The FAA's Order on Regulatory Flexibility Criteria and Guidance[1] size threshold for a small operator is: "9 aircraft owned, but not necessarily operated." The Order also defines a substantial number of small entities as a number that is not less than eleven and that is more than one-third of the small entities subject to the rule.

The FAA has identified 12 air carriers (five "nationals" and seven "regionals") that own fewer than nine Stage 2 airplanes. These carriers own a total of 37 Stage 2 airplanes. Four carriers own one Stage 2 airplane each. Through rounding of calculations the proposed rule would allow these carriers to operate those airplanes through December 31, 1999. Only eight of these small air carriers would be required to phase out Stage 2 airplanes to comply with the schedule in the proposed rule.

Most private operators own only one jet airplane, and would be thus exempt from the phaseout schedule. Of the six operators that own more than one airplane, one owns two DC–8's that have been hushkitted to Stage 3. The other five are large companies with tens of millions of dollars in sales and hundreds of employees.

Therefore, the proposed rule would not affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

Other small entities that could be affected by the proposed rule are the lessors who do not operate the aircraft they own. The FAA has been unable to obtain information on the identity of these lessors or the number and types of aircraft that they lease. The FAA solicits this information in order to determine whether a substantial number of them would be significantly affected by the proposed rule.

International Trade Impact

The proposed rule is expected to have little or no impact on trade opportunities of United States firms conducting business overseas or for foreign firms conducting business in the United States. The proposed rule would impose similar requirements on both domestic air carriers under FAR part 121 and on foreign air carriers subject to FAR part 129. The cost of compliance to foreign air carriers for phasing out Stage 2 operations into the United States under part 129 would probably be similar to the cost incurred by U.S. operators. In addition, other countries are also phasing out Stage 2 airplanes. Therefore, it would not cause a competitive fare disadvantage for U.S. air carriers operating between the contiguous states and overseas or for foreign air carriers operating between the contiguous States and overseas.

[1] U.S. Department of Transportation, Federal Aviation Administration, Regulatory Flexibility Criteria and Guidance, Order No. 2100.14A, September 16, 1986.

Environmental Analysis

The proposed rule is in response to section 9306 of the Airport Noise and Capacity Act of 1990. This secton of the Act directs the Secretary of Transportation to promulgate final rules for the phaseout of Stage 2 airplane operations by July 1, 1991. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, requires all federal agencies "to the fullest extent possible" to include in "major Federal actions significantly affecting the quality of the human environment" an environmental impact statement analyzing the consequences of, and alternatives to, the proposed action. Since the proposed regulation is a federal action subject to NEPA, the FAA will determine its potential impacts by preparing an environmental assessment (EA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, absent extraordinary circumstances, the FAA normally prepares an environmental assessment to determine the potential impacts of a proposed regulation that may affect the human environment. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

For the reasons explained below, the FAA's preliminary analysis supports the preparation of an EA and suggests that an EIS will not be required. The 1990 Act appears to only afford the Secretary discretion to set the interim dates for phaseout; the percentages to require on these dates; and the method of implementation. Given these limitations, any decision made in promulgating the mandated regulations is unlikely to have a significant impact on the quality of the human environment.

At the close of the period for public comments, the FAA will review the EA and comments to determine whether to issue a finding of no significant impact or an environmental impact statement (EIS). If the FAA concludes from the EA that an EIS is required, the FAA will then address how to integrate its NEPA responsibilities with its statutory obligations under the 1990 Act. If an EIS is required, it may be that the FAA may not be able to complete an EIS and simultaneously adopt final regulations within the 180-day time from mandated by the Act. We invite suggestions and comments on our options.

The legislation sets a final compliance date of December 31, 1999, for the cessation of operations of Stage 2 airplanes in the contiguous United States. The legislation provides for a waiver of this final compliance date only under strict circumstances and to a limited number of operators, sets a strict limitation on the life of the waiver, and defines those issues the Secretary must consider in granting the waiver. By these actions, the Congress has effectively determined the improvement in noise levels that will result from the legislation before granting any discretion to the Secretary.

In addition, the legislation places significant restriction on the importation and operation of additional Stage 2 airplanes after November 5, 1990. The legislation strictly defines who may import such airplanes, and the time at which they must be brought back into the United States in order to operate. The only exemption allowed under the legislation is for airplanes that must be operated in order to obtain modification to Stage 3 noise levels.

The proposed rule sets forth a schedule that would require a U.S. operator to phase out 25% of its base level of Stage 2 airplanes by December 31, 1994, 50% by December 31, 1996, and 75% by December 31, 1998. The FAA believes that this proposed phaseout schedule optimizes the tradeoffs between noise reduction for communities surrounding airports and the economic burden on operators that it was required to consider.

Other phaseout options were considered by the FAA, one of which is explained in this NPRM as an alternative to the proposed rule. That alternative includes the use of transferrable operating rights but does not alter the concept of a compliance schedule. Another alternative considered included a compliance schedule based on the percentage of an operator's fleet that had to be Stage 3 on a given interim date, rather than a reduction in an actual number of Stage 2 airplanes. Because Congress mandated interim phaseout dates, the only choice became the dates in the compliance schedule and the method of implementation.

Within this framework, the FAA believes that among the alternatives discussed, there is no significant range of environmental impacts from which to choose; all of the alternatives considered to be within the FAA's discretion are unlikely to have a potentially significant impact on the quality of the human environment. Moreover, the FAA believes that any environmental impact that these regulations may have will be positive by reducing the amount of noise from Stage 2 airplanes. The discretion given to the Secretary as to how soon those positive benefits accrue is strictly limited by the matters the agency is directed to consider under the legislation.

Considering these factors, the FAA believes it has done the best possible job of not significantly affecting the quality of the human environment. The FAA seeks public comment on this issue, and will, on that basis, determine the potential significant environmental impacts of the proposed phaseout schedule.

Paperwork Reduction Act

Information collection requirements in the proposed amendment to § 91.811 will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC 20503, Attention: FAA Desk Officer (telephone: (202) 395–7340). A copy should be submitted to the FAA docket.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Conclusion

For the reasons discussed throughout this preamble, and based on the findings in the Regulatory Impact Analysis and the International Trade Impact Analysis, the FAA has determined that this proposed rule would be a major rule under Executive Order 12291. In addition, in consideration of the cost information discussed under the Regulatory Flexibility Determination, it is certified that this amendment to part 91, if adopted, would not have a significant economic impact on a substantial number of small entities in the air carrier industry. This proposed rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A regulatory impact analysis of this proposed rule, including an initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Airspace, Air transportation.

The proposed amendment

Accordingly, the FAA proposes to amend 14 CFR part 91 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; 49 U.S.C. App. 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.801 is revised to read as follows:

§ 91.801 Applicability: Relation to part 36.

(a) This subpart prescribes operating noise limits and related requirements for the operation of civil airplanes in the United States. This subpart applies to operations to or from any airport in the United States conducted under this part and parts 121, 125, 129, or 135 of this chapter. Sections 91.803, 91.805, 91.807, 91.809, and 91.811 apply to any civil subsonic turbojet airplane with a maximum certificated takeoff weight of more than 75,000 pounds and if—

(1) U.S.-registered, that has a standard airworthiness certificate; or

(2) Foreign-registered, that would be required by this chapter to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. Those sections apply to operations to or from airports in the United States under this part and parts 121, 125, 129, or 135 of this chapter.

(b) Unless otherwise specified, as used in this subpart, "part 36 of this chapter" refers to 14 CFR part 36, including the noise levels under Appendix C of that part. For purposes of this subpart, the various stages of noise levels, the terms used to describe airplanes with respect to those levels, and the terms "subsonic airplane" and "supersonic airplane" have the meaning specified under 14 CFR part 36.

(c) For purposes of this subpart, for any subsonic airplane operated in foreign air commerce in the United States, the Administrator may accept compliance with the noise requirements specified under annex 16 of the International Civil Aviation Organization when those requirements have been shown to be substantially compatible with, and achieve results equivalent to those achievable under 14 CFR part 36, as if those noise levels were 14 CFR part 36 noise levels.

2A. Section 91.803 is revised to read as follows:

§ 91.803 Final compliance: civil subsonic airplanes.

(a) No person may operate to or from an airport in the United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 2 or Stage 3 noise levels under part 36 of this chapter.

(b) Except as provided in § 91.809, on or after January 1, 2000, no person shall operate to or from any airport in the 48 contiguous United States or the District of Columbia any civil subsonic airplane covered by this subpart unless that airplane has been shown to comply with the Stage 3 noise levels.

3. Section 91.805 is revised to read as follows:

§ 91.805 Entry and nonaddition rule.

(a) No person may operate to or from an airport in the 48 contiguous United States or the District of Columbia a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds on or after November 5, 1990, unless one or more of the following conditions apply:

(1) The airplane complies with Stage 3 noise levels;

(2) The airplane complies with Stage 2 noise levels and is included in a U.S. operator's base level as defined in § 91.807(b), or was acquired from another U.S. operator after December 31, 1990;

(3) The airplane complies with Stage 2 noise levels and is operated by a foreign air carrier pursuant to the applicable provisions of § 91.807;

(4) The airplane complies with Stage 2 noise levels and is operated by a foreign operator other than for the purpose of foreign air commerce;

(5) The airplane complies with Stage 2 noise levels and—

(i) On November 5, 1990, was owned by:

(A) A corporation, trust, or partnership organized under the laws of the United States or any State (including the District of Columbia);

(B) An individual who is a citizen of the United States; or

(C) An entity owned or controlled by a corporation, trust partnership, or individual described in paragraph (a)(5)(i) (A) or (B) of this section; and

(ii) Enters into the United States not later than 6 months after the expiration of a lease agreement (including any extensions thereof) between an owner described in paragraph (a)(5)(i) of this section and a foreign air carrier; or

(6) The airplane complies with Stage 2 noise levels and was purchased by the importer under a written contract executed before November 5, 1990.

(b) As used in this section, the term—

Importer means one or more individuals and/or organizations specified in paragraph (a)(5)(i) of this section.

Owner means any entity described under paragraph (a)(5)(i) of this section that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of this chapter.

(c) A person may apply for a special flight authorization under SFAR No. to operate an airplane otherwise precluded by paragraph (a) of this section from operating to or from an airport in the 48 contiguous United States and the District of Columbia for the purpose of obtaining modifications to meet the Stage 3 noise levels.

(d) An operator of a civil subsonic turbojet aircraft with a maximum certificated takeoff weight of more than 75,000 pounds that does not comply with Stage 3 noise levels and was imported into a noncontiguous State, territory or possession of the United States on or after November 5, 1990, must include in its operations specifications a statement that such aircraft may not be used to provide air transportation to or from any airport in the 48 contiguous United States or the District of Columbia.

4. Section 91.807 is revised to read as follows:

§ 91.807 Phased Compliance under part 121, 125, 129, or 135: subsonic airplanes.

(a) General. Each person operating an airplane under parts 121, 125, 129, or 135 of this chapter, regardless of the national registry of the airplane, shall comply with this section with respect to subsonic airplanes covered by this subpart.

(b) Definition of base level. For purposes of this subpart, "base level" shall have the following meaning—

(1) For each U.S. operator the maximum number of owned or leased Stage 2 airplanes covered by this subpart that were listed on that operator's operations specifications for operations to or from airports in the 48 contiguous United States or the District of Columbia on any one day during the period January 1, 1990, through December 31, 1990, plus—

(i) the number of Stage 2 airplanes returned to service in the United States pursuant to § 91.805(a)(5); and

(ii) the number of Stage 2 airplanes imported pursuant to § 91.805(a)(6).

(2) For each foreign air carrier, the total number of Stage 2 airplane operations to or from the 48 contiguous States and the District of Columbia for the 12-month period from January 1, 1990, through December 31, 1990.

(c) New Entrants. For purposes of this subpart, the term "new entrant" means a U.S. air carrier that, on or before November 5, 1990, did not operate an airplane covered by this subpart to or from any airport in the 48 contiguous United States or the District of Columbia under 14 CFR parts 121 or 135, but that subsequently initiates such operations.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to new entrant air carriers*]:

(1) A new entrant initiating 14 CFR part 121 or 135 operations prior to the first interim compliance date shown in paragraph (d)(1) of this section may initiate service without regard to the percentage of its fleet composed of Stage 3 airplanes.

(2) After December 31, 1994, at least 25 percent of the airplane fleet of a new entrant initiating operating under 14 CFR part 121 to 135 must comply with the requirements of Stage 3.

(3) After December 31, 1996, at least 50 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

(4) After December 31, 1998, at least 75 percent of the airplane fleet of a new entrant initiating 14 CFR part 121 or 135 operations must comply with the requirements of Stage 3.

[Note: Under Option 2, discussed in greater detail in the preamble, new entrants, along with other U.S. air carriers, would either achieve a required percentage reduction from their base level or obtain Stage 2 operating rights from another operator.]

(5) To be eligible to apply for the waiver under § 91.809, a new entrant must initiate service no later than January 1, 1999, and comply fully with all provisions of that section.

(d) Compliance schedules.

[*Under Option 1, discussed in the preamble, the following phaseout schedule would apply to U.S. operators, other than new entrants*].

(1) Each U.S. operator of a Stage 2 airplane to or from any airport in the 48 contiguous United States or the District of Columbia shall reduce the number of Stage 2 airplanes it operates to a maximum of—

(i) 75 percent of the operator's base level on and after December 31, 1994,

(ii) 50 percent of the operator's base level on and after December 31, 1996, and

(iii) 25 percent of the operator's base level on and after December 31, 1998.

(2) Except as provided under § 91.809, a U.S. operator shall achieve compliance with the schedule in paragraph (d)(1) of this section by reducing its fleet of Stage 2 airplanes by the required percentage of its base level for each compliance date. A Stage 2 airplane operated by a U.S. operator that was acquired from another U.S. operator after December 31, 1990, does not increase the base level of the acquiring operator.

[Note: Under Option 2, discussed in greater detail in the preamble, a percentage of each carrier's Stage 2 operating rights would expire on these dates, requiring the operator to retire a corresponding number of airplanes, convert them to Stage 3, or obtain unexpired Stage 2 operating rights from another operator.]

(3) Notwithstanding the compliance date specified in paragraph (d)(1) of this section, any U.S. airplane operator that achieves and maintains a fleet of airplanes that is composed of at least 85% Stage 3 airplanes that are permitted to operate in the 48 contiguous United States and the District of Columbia need not further reduce the number of Stage 2 airplanes it operates. Such operator shall still comply with the December 31, 1999, compliance requirement.

(4) Each foreign air carrier shall reduce the number of annual Stage 2 operations it conducts to all points in the 48 contiguous United States or the District of Columbia to a maximum of—

(i) 75 percent of the foreign air carrier's base level on and after December 31, 1994,

(ii) 50 percent of the foreign air carrier's base level on and after December 31, 1996, and

(iii) 25 percent of the foreign air carrier's base level on and after December 31, 1998.

(5) A foreign air carrier that had no more than two airplanes listed on its U.S. operations specifications during the period January 1, 1990 through December 31, 1990, may operate that number of Stage 2 airplanes in the 48 contiguous United States and the District of Columbia without regard to the compliance schedule in paragraph (d)(4) of this section.

(6) A foreign operator not engaged in foreign air commerce may operate a Stage 2 airplane to or from airports in the 48 contiguous United States and the District of Columbia through December 31, 1999, without regard to the compliance schedule in paragraph (d)(4) of this section.

(7) A new entrant shall comply with the phaseout schedule by achieving a total fleet composition comprised of no more than—

(i) 75 percent Stage 2 airplanes between January 1, 1995, and December 31, 1996;

(ii) 50 percent Stage 2 airplanes between January 1, 1997, and December 31, 1998;

(iii) 25 percent Stage 2 airplanes between January 1, 1999, and December 31, 1999.

(8) Calculations resulting in fractions may be rounded up to permit the continued operation of the next whole number of Stage 2 airplanes.

(e) As used in this section, the term "Stage 3 airplane" is limited to a civil subsonic turbojet airplane whose maximum certificated takeoff weight is not less than 75,000 pounds.

5. Section 91.809 is revised to read as follows:

§ 91.809 Waiver.

(a) If, by July 1, 1999, at least 85 percent of the airplanes used by a U.S. air carrier to provide air transportation to and from the 48 contiguous United States and the District of Columbia would comply with the Stage 3 noise levels of Part 36 of this chapter, such carrier may apply to the Administrator for a waiver of the prohibition contained in § 91.803 on the operation of Stage 2 airplanes for the remaining 15 or less percent of the airplanes by the carrier. Such applications must be filled with the Administrator no later than January 1, 1999, and must include a plan with firm orders for replacing or modifying Stage 2 airplanes operated by the carrier to comply with Stage 3 noise levels not later than December 31, 2003.

(b) The Administrator may grant a waiver under this subsection if the Administrator finds that granting such waiver is in the public interest. In making such a finding the Administrator will consider the effect of granting such waiver on competition in the air carrier industry and on small community air service.

(c) No waiver granted under this subsection shall permit the operation of Stage 2 airplanes after December 31, 2003.

6. Section 91.811 is revised to read as follows:

§ 91.811 Annual progress report.

(a) Each U.S. and foreign air carrier providing air transportation to or from any airport in the 48 contiguous States or the District of Columbia shall submit

to the Administrator an annual report on the progress such carrier has made toward complying with the requirements of this subpart. Such reports shall be submitted no later than 45 days after the end of the calendar year, beginning with calendar year 1992.

(b) U.S. and foreign air carrier progress reports must contain the information specified under paragraph (c) or (d) of this section. All progress reports must provide the information as it existed at the end of the calendar year, and must be certified by the carrier as true and complete (under penalty of 18 U.S.C. 1001).

(c) For U.S. air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the carrier;

(ii) Name, title and telephone number of the person designated by the carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplanes identified as the air carrier's base level, listed by airplane type, model, and series (including serial and registration numbers). Those airplanes included in the carrier's base level pursuant to § 91.807(b)(1) (i) and (ii) shall be listed separately under the categories "Imported" or "Returned."

(iv) The total number of Stage 2 airplanes acquired by the carrier from other U.S. operators after December 31, 1990, listed by airplane type, model, and series (including serial and registration numbers). Such airplanes shall not be identified as part of the carrier's base level.

(v) The carrier's current plan to meet the compliance schedule required in § 91.807(d) and the final compliance date in § 91.803(b), including the schedule for delivery of replacement Stage 3 airplanes or the installation of replacement engines or hush kits.

(vi) The carrier's progress during the reporting period toward compliance with the requirements of this subpart, identifying:

(A) The type, model, and series (including serial and registration numbers) of each Stage 2 airplane removed from operation or modified to Stage 3 (identifying the make and model of replacement engines or hush kits); and

(B) The name and address of the recipient (including foreign entities) of any Stage 2 aircraft removed from operation.

(vii) The initial report shall cover the period between January 1, 1991, though December 31, 1992.

(2) Subsequent annual progress reports must include:

(i) The information required by paragraphs (c)(1) (i), (ii), and (viv) of this section;

(ii) The total number or Stage 2 airplanes added to the carrier's base level during the reporting period pursuant to § 91.807(b)(1) listed separately under the categories: "Imported" or "Returned";

(iii) The total number of Stage 2 airplanes acquired during the reporting period from other U.S. operators, listed by airplane type, model, and series (including serial and registration numbers); and

(iv) One of the following:

(A) Statement that the air carrier's current plan to meet the compliance schedule has not been revised;

(B) A statement listing specific revisions made to the plan during the reporting period in the same format as the initial plan; or

(C) A final statement reflecting actions completed by the carrier during the reporting period that accomplished compliance with § 91.803(b).

[Note: Under Option 2, discussed in greater detail in the preamble, U.S. carriers would instead report the number of Stage 2 operating rights in their possession, including expiration dates and source of acquisition.]

(d) For foreign air carriers—

(1) The initial progress report must include the following information—

(i) Name and address of the foreign air carrier;

(ii) Name, title, and telephone number of the person designated by the foreign air carrier to be responsible for ensuring the accuracy of the information in the report;

(iii) The total number of Stage 2 airplane operations included in the foreign air carrier's base level;

(iv) The foreign air carrier's progress toward compliance with the requirements of this subpart, listing, by city pair, the number of Stage 2 operations conducted during the reporting period, identifying—

(A) The type and model of airplane formerly used to perform the operation; and, if there has been a change,

(B) The type and model of airplane now being used to perform the operation.

(v) The number of all operations performed by Stage 2 airplanes to or from any airport in the 48 contiguous United States or the District of Columbia that were added during the reporting period, including city pairs for each operation.

(vi) The initial report will cover the period between January 1, 1991, and December 31, 1992.

(2) Subsequent annual progress reports must include the same information required by paragraphs (d)(1) (i), (ii), (iv), and (v) of this section or a final statement reflecting actions completed during the reporting period which accomplished compliance with § 91.803(b).

Issued in Washington, DC, on February 25, 1991.

James E. Densmore,

Director, Office of Environment and Energy.

[FR Doc. 91-4785 Filed 2-25-91; 3:19 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 161

[Notice No. 91-5; Docket No. 26432]

RIN 2120-AD66

Notice and Approval of Airport Noise and Access Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes regulations to establish a program for reviewing airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft. This proposal is in response to specific provisions in the Airport Noise and Capacity Act of 1990 and is intended to become a major element of the national aviation noise policy, which is required to be established by that statute.

DATES: Comments should be submitted on or before April 15, 1991. Because of the statutory deadline for the issuance of a final rule, the FAA will not be able to entertain requests for extension of the comment period. However, late filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, attn: Rules Docket (AGC-10), Docket No 26432, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John M. Rodgers, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proceeding by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments on the economic impact should be accompanied by cost estimates. Comments should identify the docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available, both before and after the closing date for comments in the Rules Docket, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26432." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Airport Noise and Capacity Act of 1990 (the Act), Public Law 101-508, enacted November 5, 1990, directs the Secretary of Transportation to initiate several rulemaking proceedings. One of the provisions of the statute is to develop a national program to review noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft.

Specifically, paragraph (a)(1) of section 9304 of the Act states:

> Sec. 9304. Noise and Access Restriction Reviews.
>
> (a) In General—
>
> (1) Establishment of program.—The national aviation noise policy to be established under this subtitle shall require the establishment, by regulation, in accordance with the provisions of this section of a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

The development of a national policy with respect to airport noise has been under consideration by the FAA and encouraged by various segments of the aviation community for many years. Various organizations, groups, and task forces have made specific proposals along these lines. However, the aviation noise problem is a longstanding one, and serious efforts to deal with it extend back to the 1960's.

The aircraft noise issue became increasingly apparent in the early 1960's with the advent of jet aircraft, and was soon magnified by the rapidly increasing number of commercial operations in the latter part of that decade. Aircraft noise and attempts to limit it were recognized as major constraints on further developing the commercial aviation network, threatening the construction and expansion of airports, as well as access. Joint action by government and the private sector was taken to address community noise concerns. The engine manufacturers and the federal government both engaged in extensive research to quiet jet engines. In 1968, Congress gave the FAA authority to regulate aircraft design and equipment for noise reduction purposes. The FAA then embarked upon a long-term program of controlling aircraft noise at its source.

A regulation promulgated in 1969 (34 FR 18355, November 11, 1969) established noise standards for turbojet aircraft of new design (14 CFR part 36). A 1973 amendment to part 36 (38 FR 29569, October 26, 1973) extended the same standards to all new aircraft of older design. A third step in the source noise control program was a further amendment to part 36 (42 FR 12360, March 3, 1977) to require that jet aircraft already in the fleet be retrofitted to comply with noise standards.

In 1976, the DOT/FAA issued a comprehensive Aviation Noise Abatement Policy and promulgated a noise compliance rule (41 FR 56056, December 23, 1976). Recognizing the need for a comprehensive response to the noise problem, the Aviation Noise Abatement Policy set forth basic policy principles, specific authorities and responsibilities, based on the division of legal authority and practical responsibility of the federal government; airport proprietors; state and local governments and planning agencies; air carriers; air travelers and shippers; and residents and prospective residents in areas surrounding the airports. In addition, it set forth a clear understanding of what was technologically and financially attainable at that time, and how each party—the federal government, air carriers, and local airports and governments—could and should perform the functions for which it is uniquely suited.

On January 26, 1981, the FAA published an interim rule (46 FR 8316), titled "Establishment of New Part 150 to Govern the Development and Submission of Airport Operator's Noise Compatibility Planning Programs and the FAA's Administrative Process for Evaluating and Determining the Effects of Those Programs." The interim rule was in response to portions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193). The interim regulations prescribed a standardized airport noise compatibility program that is to include: (1) Noise exposure maps and noise compatibility programs by airport operators; (2) standard noise methodologies; (3) land uses that are normally compatible (or noncompatible) with various levels of noise around airports; and (4) procedures and criteria for FAA evaluation and approval or disapproval of noise compatibility programs. The interim rule was revised and became final on December 13, 1984 (49 FR 49260). In part, the revisions addressed comments received following promulgation of the interim rule. Throughout this period, the FAA worked in consultation with the Environmental Protection Agency.

More recent efforts to alleviate airport noise problems began in September 1984, when the Air Transport Association of America (ATA) petitioned the FAA to, among other things, issue a formal statement of policy concerning noise restrictions at federally certificated airports. The petitioner suggested issuing a Notice of Proposed Rulemaking that would announce the FAA's intention to establish an administrative mechanism to review current or future use restrictions and determine whether such

restrictions would be consistent with the agency's policy statement.

In January 1986, the FAA published in the Federal Register a notice of intent to state Federal policy on airport access and capacity. Generally local authorities are responsible for developing and managing the airport and controlling land use, while the Federal Government is responsible for managing and developing the air traffic control, navigation aids, and communications systems. The policy FAA proposed in 1986 was based on this concept of shared local-federal responsibility. The FAA intended to build upon the Federal action plan announced in the 1976 Policy by establishing common national policy objectives. These objectives would facilitate resolution of airport noise issues while respecting the needs that are unique to a local airport and its surrounding communities. The notice also announced plans for a series of public meetings on this subject.

In response to this notice, groups representing various interested parties formed committees to review aircraft noise/airport capacity issues (including economic studies, environmental issues, and legal issues) and to make recommendations to the FAA. While valuable work was accomplished by the committees, they were unable to reach full consensus on a recommended national aviation noise policy. Where the committees were unable to reach a consensus, such as on phase-out of Stage 2 operations, individual parties sometimes submitted alternative recommendations.

On March 8, 1990, the Secretary of Transportation announced a National Transportation Policy. The aviation noise element of the policy reflected many years of analysis and consultation with interested parties on airport use restrictions. Transportation, by its nature, cannot avoid affecting the environment, but a major goal of the federal transportation policy is to minimize those negative effects. With regard to aviation noise and noise restrictions, the federal government will provide the leadership necessary to protect quality of life from noise pollution, while ensuring that actions to minimize noise will not adversely affect the quality of the national aviation transportation system that Americans enjoy today. It is Federal transportation policy to opose noise-related restrictions that are unsafe, unreasonable, arbitrary, unjustly discriminatory, or an undue burden on interstate or foreign commerce or the national aviation transportation system, and to work with local communities and airport users to deter local actions that unreasonably interfere with system efficiency or increase system costs.

The FAA already has received a number of unsolicited comments regarding rulemaking to implement the Aviation Noise and Capacity Act of 1990. Comments were submitted by the National Business Aircraft Association, Airport Operators Council International and American Association of Airport Executives, Florida West Airlines, National Airport Watch Group, National Organization to Insure a Sound-controlled Environment, Air Transport Association of America, Air Freight Association, and Burlington Air Express. The comments were considered in developing this rulemaking action and, pursuant to Department of Transportation procedures, copies have been placed in Docket No. 26432.

General Discussion of Proposals

The proposed rule, 14 CFR part 161, Notice and Approval of Airport Noise and Access Restrictions, has been promulgated in response to direction given in "The Airport Noise and Capacity Act of 1990, 49 U.S.C. 2153, 2154, 2155, 2156." The Secretary has delegated his authority under section 9304 of the 1990 Act to the FAA Administrator.

The proposed rule provides for notice and analysis by airport operators of restrictions on Stage 2 aircraft operations. In addition, restrictions by airport operators on Stage 3 aircraft operations must be approved by the FAA. Federal approval is not required for restrictions on Stage 2 aircraft operations. The Act specifically exempts voluntary agreements regarding the operation of Stage 3 aircraft from federal oversight, and the proposed regulation extends that exemption to agreements on Stage 2 aircraft operation restrictions as well. Therefore, subpart B provides a process to identify such agreements respecting Stage 2 and Stage 3 aircraft operations and exempts them from requisite analysis and approval.

The Act mandates two conditions for airports' unilateral imposition of restrictions on Stage 2 aircraft operations. These statutory requirements, reflected in subpart C of this proposal are: (1) Analysis of the proposed restriction by the airport operator; and (2) a public notice and comment period. As required by the Act, the analysis must include costs and benefits of the proposal, a description of alternative measures considered, and comparative cost-benefit analyses of these alternatives. It is proposed that notice include both publication and direct notice to interested aircraft operators, the FAA and certain federal, state, and local government agencies. The airport operator is allowed to utilize the notice and comment procedures contained in 14 CFR part 150 as an alternative to these notice and comment requirements.

Restrictions unilaterally imposed by airports on Stage 3 aircraft operations are required by the Act to be approved by the Secretary of Transportation, with approval contingent upon substantial evidence that six statutory conditions have been met. Subpart D would establish the approval process for restrictions on Stage 3 aircraft operations. It includes completion and submission of an analysis of the restriction, notice and comment requirements, plus submission of a summary of evidence that the six necessary conditions are met. Publication and direct notice requirements are identical to those proposed for Stage 2 restrictions (including the Part 150 procedure alternative). The FAA has applied an expansion of the statutorily mandated analysis for Stage 2 restrictions to the Stage 3 restriction process, plus the additional requirement that the analysis contain evidence that the six statutory conditions necessary for approval are satisfied. At the close of the comment period, the applicant submits the proposal (with the analysis, a summary of evidence that the statutory conditions are met, evidence of the public review process and a summary of comments, and a draft environmental document) to the FAA. The FAA has a limited period for initial review of an application for completeness and return for supplemental information. On receipt of a complete application, the FAA publishes a notice of the proposal in the Federal Register and invites comments. At the end of this comment period, the FAA publishes an approval/disapproval order in the Federal Register.

A reevaluation process for existing restrictions and agreements on Stage 3 aircraft operations is mandated by the Act. This process, proposed in subpart E, requires FAA approval, is limited to Stage 3 restrictions, and must be requested by an aircraft operator. An applicant seeking a reevaluation must produce evidence that the statutory condition for reevaluation—a change in the affected airport's noise environment—has been met. If the FAA agrees, the applicant must publish notice of its request; directly notify interested parties; prepare an analysis that one or more of the conditions necessary for federal approval of a restriction on airport operations has been violated; and seek public comment. At the close of the comment period, the applicant sends its analysis and comments to the FAA, along with evidence that at least one of the six statutory conditions necessary for initial approval of the Stage 3 restrictions have been violated. After receiving this documentation, the FAA will publish a notice in the Federal Register of the request, solicit comments, and determine whether the challenged restriction continues to meet federal standards. The FAA will publish its decision in the Federal Register.

Statute-mandated sanctions for noncompliance with this rule are covered in proposed subpart F. They consist of termination of Airport Improvement Program funds and rescission of Passenger Facility Charge collection authority. Consideration of sanctions is triggered by a complaint to the FAA or other evidence of noncompliance. The process allows for airport operator response to the allegations, as well as public comment on the complaint. After consideration of the evidence, the FAA publishes a notice of the complaint in the Federal Register and notifies the affected airport operator.

Each of the proposed subparts of the rule is discussed in greater detail below.

Subpart A, proposed general provisions, addresses the purpose, applicability, and limitations of the proposed rule as outlined in the Act. Based on section 9304 of the Act, the proposed rule would apply to restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. The subpart also defines common terms used throughout the proposed regulation.

Determinations and actions by the Administrator under this part would not constitute determinations or actions with respect to an airport's compliance status under specific grant agreements, or preclude the Administrator from responding to complaints involving grant compliance. Information and documents used under this part may also be used with respect to grant compliance matters.

As required by the Act, the proposed rule covers "noise" and "access" restrictions on the operations of Stage 2 and Stage 3 aircraft. Section 9304(b) of the Act states four specific kinds of Stage 3 restrictions that must either be agreed to by the airport "proprietor" and aircraft operators or approved by the FAA. These are: (1) Restrictions on noise levels; (2) direct or indirect limits on the number of operations; (3) noise budgets and noise allocation programs; and (4) limits on the hours of Stage 3 operations. Section 9304(b) also prohibits "any other limit on Stage 3 aircraft," unless it is agreed to or approved by the FAA. While the Act does not provide comparable guidance on the kinds of noise or access restrictions on Stage 2 aircraft that are to be covered by this rulemaking, the FAA proposes the same scope for Stage 2 as for Stage 3. That is, noise restrictions would be subject to the proposed rule, as would access restrictions, that limit or reduce the hours of operation at the airport or the total number of Stage 2 or Stage 3 operations.

Certain restrictions, however, would not be subject to some requirements of the proposed rule. Section 9304 of the Act prescribes specific exemptions from the requirements for notice, review, and approval, and these are included in proposed § 161.7(c). In addition, the proposed rule would not apply to noise abatement operational procedures, unless such procedures have the effect of limiting the total number of operations or the hours of operation of the airport.

The FAA notes that the definition of a covered noise or access restriction under proposed § 161.5 would include "a program of airport use charges that has the direct effect of controlling airport noise." However, this phrase is not intended to preclude airports' application of a peak-hour pricing program designed to align operations with capacity. The phrase is primarily intended to refer to noise-based landing fees and other such noise-based charge-assessment programs. We invite comments on the proposed definition in this section and on ways to ensure that the final rule carries out the requirements of the Act without placing unnecessary or unintended limitations on the right of airport operators to promote efficient operations. Public comment is also invited on these related questions:

1. Is the proposed definition of "noise or access restriction" too broad? If so, why, and how should it be revised?

2. Should an "access" restriction that is unrelated to noise be subject to this regulation? If not, how should the FAA reasonably distinguish whether a restriction is related to noise? Is there a risk that restrictions nominally adopted for other purposes will actually be intended to circumvent requirements for noise restrictions?

3. Should a restriction or airport use charge that has an "indirect" effect of controlling noise be subject to this regulation?

4. What procedure, if any, should the FAA adopt to resolve any dispute over whether a restriction is subject to this regulation?

It should be noted that this proposal does not address the safety aspects of operational procedures that have been (or may be) recommended by airport operators to reduce noise impact. Noise or access restrictions must be acceptable to the Administrator from a safety, as well as an environmental, perspective. To the extent that the FAA has any safety concerns about such airport noise or access restrictions, they will be dealt with under applicable existing safety regulatory authorities, e.g., 14 CFR parts 91, 121, 129, 135, and 139.

Finally, subpart A specifies that noise measurement systems and land use categories used to comply with prescribed notice and approval requirements must be in accordance with 14 CFR part 150. Part 150 establishes the noise measurement systems and the identification of land uses that are normally compatible or noncompatible with various levels of noise around airports. Part 150 was promulgated in response to a mandate in the Aviation Safety and Noise Abatement Act of 1979 that the FAA issue a regulation including a single, standardized methodology for measuring aircraft noise and for determining the exposure of individuals to aircraft noise. The FAA uses the methodology in Part 150 for airport noise compatibility planning, for evaluating the noise effects of proposed airport development projects, as well as for other types of environmental evaluations that the FAA performs or requires. It is consistent for the FAA to apply this methodology to the analysis of restrictions in the proposed rule. The objective is to assure that similar methods will be used to characterize each proposed restriction, thereby facilitating comprehensive, fair, and consistent evaluations of the restrictions by the public and the FAA.

Subpart B pertains to voluntary agreements between airport operators and aircraft operators concerning noise or access restrictions on Stage 2 or Stage 3 aircraft operations. These agreements, while exempt from the analysis requirements for restrictions unilaterally imposed, do have notice requirements. Notice by publication is required, as well as direct notice to interested or affected aircraft operators, the FAA, and certain federal, state and local agencies. The FAA must be notified of the agreement's implementation, receive evidence that

the notification requirements have been met, and receive a copy of the signed agreement. FAA notification is also necessary when the agreement is terminated. While the Act discusses agreements only in the context of an alternative to Secretarial approval of Stage 3 restrictions (section 9304(b)(5)), proposed subpart B would treat agreements involving Stage 2 and Stage 3 restrictions alike. The objective of the proposed subpart is to clearly identify the existence and nature of the agreements. Subpart B would provide advantages to involved parties by excluding agreements from the process requirements proposed in subparts C and D (below). For example, analyses would not be mandated for agreements, nor would FAA final approval be required. Additionally, the proposed agreement procedure imposes minimal notice requirements compared to those proposed for restrictions. By limiting process requirements, reducing attendant costs, and minimizing federal government involvement, the agency views the proposed subpart B as advantageous to all concerned.

The proposal includes definitional limitations, discussed below, that are intended to simplify the agreement process. It also proposes to require the airport operator to provide notice of the agreement to the FAA and other interested parties, and to provide the FAA with a copy of the signed agreement. While the Act provides that "all aircraft operators" must join in the agreement, the statutory language focuses on the restrictions proposed at a particular airport. Because it would serve no useful purpose to require agreement from every U.S. and foreign aircraft operator that might at some point operate at a particular airport, the FAA is proposing two practical limitations.

First, under proposed § 161.101, it would only be necessary to obtain agreement of affected operators. This simply means that only those aircraft operators subject to the restriction contained in the agreement need to agree to it. If, for example, an agreement is proposed with respect to certain types of aircraft, only operators of those aircraft types would have to enter into the agreement.

Second, and more important, it would only be necessary to obtain the agreement of affected aircraft operators that are currently serving the airport or that have indicated an intention to institute service at the airport within 180 days of the effective date of the agreement. This proposal is intended to strike a balance between the interest in keeping the number of aircraft operators that must consent to the agreement within practicable limits and the need to ensure that new entrants at the airport are not excluded by virtue of the agreement.

Of course, most agreements will not have any exclusionary effects: many will involve little more than a promise by affected aircraft operators who have signed it to use their best efforts to conform with practices designed to limit noise in the areas surrounding the airport. In most cases, the FAA does not anticipate that any aircraft operator would have difficulty subscribing to an agreement of this nature. Other types of agreements are potentially more troubling. For example, agreements regarding the types of aircraft that may be used, the hours of operation at the airport, and noise budgets may all affect specific aircraft operators or classes of operators differently than others. For this reason, the proposed rule would require that any agreement include aircraft operators with firm plans to institute service as well as those already at the airport. The FAA chose 180 days as a reasonable cut-off point to distinguish aircraft operators whose intention to provide service is well developed, and who therefore may be viewed as having a significant interest in the subject of the agreement, from those operators whose plans for service are still under development.

For similar reasons, the proposed rule would require the airport operator to publish a notice of the agreement in a newspaper of national circulation, an areawide newspaper of general circulation, and aviation trade publications, and to give direct written notification to aircraft operators serving the airport or known to be interested in serving the airport, if they would be affected by the agreement. The airport operator would also have to notify the FAA and other interested federal, state, and local government agencies. The published and direct notifications provided by the airport would have to provide a clear description of the terms of the agreement, including its purpose, effective date, and the aircraft operators or types of operators affected by the agreement. In order to qualify as parties to the agreement, new entrant aircraft operators would have 45 days following the initial publication to provide evidence that they intended to institute service at the airport within 180 days after the effective date of the agreement.

The proposed rule would also require that the airport operator notify the FAA when the agreement actually goes into effect. If the agreement is terminated for any reason, such as expiration or withdrawal by one or more parties, the airport operator would have to notify the FAA and state its intention with respect to the provisions of the terminated agreement. Any continued application of a noise or access restriction would require compliance with proposed subpart C or subpart D.

As noted above, the FAA proposes to recognize noise or access agreements with respect to State 2 operations, and exempt them from cost benefits analysis requirements prescribed by the Act for restrictions on State 2 aircraft operations under subpart C, even though the Act is silent on this matter. This proposal is based on the benefits of agreements and the safeguards of public notice contained in the NPRM. Just as an agreement pertaining to State 3 operations would not be covered by the notice, analysis, and approval requirements proposed for restrictions under Subpart D of this NPRM, an agreement pertaining to Stage 2 operations would not involve the notice and economic analysis that would be required for restrictions under proposed subpart C. In addition, although airports would have to give the 45-day notice described above, the agreements could be effective without the 180-day waiting period required for Stage 2 restrictions under subpart C.

The FAA invites comments on all of the provisions discussed above. In addition, commenters' attention is particularly directed to the following questions. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Are the notice requirements proposed for agreements reasonable? Although the Act does not expressly require the form of notice proposed here, should this rulemaking require it? If published and direct notification should be mandatory, can the requirements be made less burdensome? For example, since affected aircraft operators would, by definition, be parties to the agreement, could the regulatory burden be reduced appreciably by relying exclusively on published notice, and deleting the requirement for direct notification of aircraft operators and public agencies? Would publication alone, as outlined in the proposed rule, be sufficient notice? Would this provide adequate information to new entrants? Is 45 days a reasonable period for reply to published notices? Is it reasonable to require that the FAA be notified of the implementation and termination of agreements?

2. Is the proposed requirement for a written and signed agreement reasonable? A signed, written agreement would undoubtedly lessen the chance of misunderstanding among parties. On the other hand, the FAA is concerned that requiring agreements to be in writing might unnecessarily complicate and delay the agreement process. This, in turn, might mean fewer agreements, more noise problems, and more restrictions requiring FAA approval, which could result in even more delay and expense.

3. The FAA has proposed to require the agreement of those aircraft operators currently serving the airport or intending to do so within 180 days of the effective date of the agreement. Is this a reasonable requirement in light of the statutory reference to agreement by "all aircraft operators"? One alternative might be to give constructive notice to all aircraft operators through publication of the agreement; the failure of an aircraft operator to object to the restriction contained in the agreement would be considered consent. One potential drawback to such an approach would be that any aircraft operator, whether or not it serves the airport, could then object to the agreement and delay its implementation until the airport operator complies with proposed subpart C or obtains FAA approval of the restriction under proposed subpart D. This would require the airport to undertake the time and expense necessary to conduct the analyses required for a restriction under proposed subpart C or subpart D.

4. What recourse, if any, should be available to an aircraft operator not covered by the 180-day new entrant limitation? That is, if an aircraft operator wants to initiate service some months or years after the agreement has gone into effect, to what extent may it appropriately be barred by the terms of the agreement? Should the FAA treat an agreed to restriction on a new entrant as a subpart C or subpart D restriction, which would then be subject to FAA approval with respect to the new entrant? Should it matter whether the new entrant was in existence at the time the original agreement was announced? Would other remedies, e.g., the antitrust laws (where treble damages may be available), be sufficient to protect the interests of new entrants against exclusionary agreements?

5. Is it appropriate to allow agreements to cover Stage 2 operations as well as Stage 3? Is there a need to require an economic analysis and 180 days' notice on Stage 2 restrictions, as contemplated by the Act, if the airport operator and the affected aircraft operators can agree?

Subpart C pertains to review of proposed restrictions on Stage 2 aircraft operations. Restrictions on Stage 2 aircraft operations that are unilaterally imposed by airport operators are subject to analysis, notice and comment requirements. The analysis must include cost and benefit estimates of the proposal and alternatives that were rejected. Publication and direct notice by airport operators is mandated (as required in subpart B for agreements), but use of the 14 CFR part 150 notice and comment procedures are allowed as an alternative. If substantial changes are made to the proposal, a new notice and comment period is triggered.

The Act permits airport operators to impose restrictions on Stage 2 aircraft operations, subject to two conditions. First, the airport operator must prepare an analysis of the anticipated costs and benefits of the proposed restriction. Second, the operator must publish the proposed restriction, together with its analysis, at least 180 days before the effective date. Interested parties would then have an opportunity to comment. The statute requires the analysis to include: (1) Anticipated or actual costs and benefits of the existing or proposed noise or access restriction; (2) a description of alternative restrictions; and (3) a description of the alternative measures considered that do not involve aircraft restrictions, along with a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction. The Act applies to Stage 2 restrictions proposed after October 1, 1990.

In carrying out the Act, the rule proposes a process for analysis of, and notice and comment on, the proposed restriction. FAA has attempted to limit the burden of requirements while still ensuring that adequate information is available to provide a clear understanding of the proposed restriction and its effects. The Act maintains the existing authority (and limitations thereon) and discretion of airport operators to restrict the operation of Stage 2 aircraft. Airport operators are not required to obtain approval by the FAA of a restriction imposed on Stage 2 aircraft operations. However, the Act instructs the Secretary to formulate a national program to phase out the operation of Stage 2 aircraft by December 31, 1999, and a Notice of Proposed Rulemaking to carry out this requirement appears elsewhere in this issue of the Federal Register.

Given this national program, it is anticipated that only in exceptional circumstances will airports propose to eliminate or phase out the operation of Stage 2 aircraft in advance of the deadlines established by the Federal Government. Airports that do propose early phase outs are encouraged to highlight the net benefits of the "accelerated local phase out," in the public notice and analyses required by the Act as described later in the discussion of this subpart. It is important that airport operators demonstrate that the local restrictions are not discriminatory and do not constitute an undue burden on interstate commerce, or an undue burden on the national aviation system.

The statutory requirement for review of restrictions on Stage 2 aircraft operations does not apply to those reached through agreement in subpart B or those exempted by the Act. The Act specifically exempts amendments to existing restrictions on Stage 2 aircraft operations that do not reduce or limit aircraft operations or affect aircraft safety.

As the Act requires, the proposed rule states that an airport operator must provide notice and opportunity to comment at least 180 days before the effective date of the restriction. The FAA has determined that the notice should be published in a newspaper of national circulation, an areawide newspaper of general circulation, and in aviation trade publications. The airport operator would also be required to notify directly aircraft operators currently serving the airport and those known to the airport operator to be interested in serving the airport that could be affected by the restriction. The latter requirement was added to consider potential new entrants. The airport operator would also be required to notify the FAA and other federal, state, and local government agencies with facilities or land use control jurisdiction within the airport noise study area. While the requirements for notification as proposed are extensive, they do not specify a unique source that can always be relied on by various airport users or interested parties. Comments are therefore invited on whether the FAA should publish in the Federal Register a brief summary of any restriction proposed by airport operators.

The proposed rule specifies the information that would have to be included in the published and direct notifications to ensure that consistent and complete information is provided to those affected or interested in the

proposed restriction. The primary requirements are for a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the restriction. The full analysis of the restriction could be included in the notice if the airport operator so chooses or could otherwise be made available by the airport operator for interested parties to review.

Other requirements for notice include identification of the aircraft operators expected to be affected, so that it is clear which carriers the airport operator believes are affected by the proposed restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism. The proposed method of implementation and any proposed enforcement mechanism will provide further clarification on the restriction and ramifications of failure to comply with it.

In carrying out the statutory requirement for analysis of the proposed restriction, the proposed rule reiterates the language in the Act, as stated earlier in the preamble, requiring analysis of anticipated or actual costs and benefits, description of alternative restrictions, and a description of alternative measures considered and a comparison of the costs and benefits. The analyses must be conducted in accordance with generally accepted economic analysis methods and reflect airline industry practice. Noise analysis and the identification of the airport noise study area must conform to the requirements of 14 CFR part 150, as prescribed in subpart A of this proposal. The airport operator must specify methods used to analyze costs and benefits so that interested parties are able to conduct an informed review.

In addition to the analysis required by the Act, the proposed rule encourages the airport operator to provide specific information about the proposed restriction, similar to information provided for a Stage 3 restriction. The analysis for Stage 3 restrictions includes four types of information: (1) Background information; (2) analysis of the effect of the rule on airport operations, capacity, and aircraft noise; (3) description of alternative restrictions; and (4) a comparative analysis of the benefits and costs of proposed restrictions and alternative restrictions. The latter two requirements are directly mandated by the Act, while the first two are considered necessary to comprehend and evaluate the analysis required by the Act.

While not specifically required by law or the proposed rule, the FAA believes that this kind of information would be a useful element of an adequate analysis of a noise or access restriction and the alternatives. The airport operator would be given discretion in applying this guidance to its specific restriction because each proposed restriction may require a unique approach to properly estimate its impact and that of alternative nonaircraft restrictions. The FAA seeks comments on these issues.

In the final rule, it may be more useful to those reviewing the proposed restrictions to require the analysis described above rather than just encourage it. On the other hand, types of restrictions may vary considerably, and it may be difficult to adequately apply all the analysis requirements to various specific situations. It may also be appropriate to require different levels of analysis depending on the nature of the airport or airport operations where the restrictions are proposed (e.g., commercial service versus general aviation airports) or on the type of restriction itself (e.g., absolute ban on operations versus an hourly limit or curfew). Permitting some airport operators to provide more limited analysis may reduce the cost to the airport operator of implementing the restriction and expedite timely implementation without adversely affecting aircraft operators or the public.

The final rule may, therefore, require all or a portion of the analysis components identified in subpart D for each proposed restriction on Stage 2 aircraft operations. The public is specifically invited to comment on the following issues:

1. Should detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 aircraft operations, be specified in the rule? Alternatively, should optional detailed analysis requirements be described in an FAA advisory circular? Beyond the requirements of the statute, should any specific analysis be required or encouraged in the final rule?

2. Should the analysis required for restrictions on Stage 2 aircraft operations vary with either type of airport or type of restriction? If so, what should be the basis for differentiating analysis requirements?

3. Should the airport proposing a restriction on Stage 2 aircraft operations be required to explain explicitly why the restriction is not unreasonable, arbitrary, or discriminatory; an undue burden on interstate or foreign commerce; or an undue burden on the national aviation system, since these are among the grounds for FAA legal action?

Proposed Subpart C would require each airport operator to establish a public docket or similar method for receiving and considering comments and to make the comments available to interested parties upon request. A minimum 45-day comment period would be required. The public is invited to comment on whether the minimum length of time to comment is adequate. If changes are made to the proposed restriction, the operator would be required to advise interested parties, and make any changes to the proposed restriction and its analysis available.

If there is a substantial change to the proposed restriction or the analysis during the 180-day notice period, the operator would be required to begin the notice process again. Examples of a substantial change are a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. A new notice would be required to permit parties an adequate opportunity to comment. The FAA seeks comments on what types of changes to the proposal should require a new notice.

Airport operators would have the option of using part 150 procedures for notice and comment, because much of the required process is similar to that required under part 150. The part 150 process is more comprehensive in scope in that it includes compatible land use planning, as well as restrictions on aircraft operation. The FAA, therefore, encourages use of part 150 for meeting the notice and comment requirements of this subpart. The analysis of restrictions on Stage 2 aircraft operations would have to be provided in the part 150 process to meet the requirements of this rule.

If an airport operator decides not to implement the restriction, the interested parties must be notified that the restriction will not go into effect.

As proposed, Subpart C would require airport operators to provide notice and comment on any proposed restriction with respect to all categories of Stage 2 aircraft, regardless of the weight of the aircraft. As directed by the Act, the FAA is conducting a study for the Secretary of Transportation on the applicability of subsections 9304 (a), (b), (c), and (d) of the Act to restrictions on the operation of Stage 2 aircraft that weigh less than 75,000 pounds. A draft of the study results produced thus far, "Application of Notice and Analysis Requirements to Operating Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," is

included in the docket for public inspection. This FAA study is ongoing. A final report and final recommendations to the Secretary on the applicability of section 9304 to small Stage 2 aircraft will be completed prior to issuance of the final rule.

The draft FAA study considers noise levels produced by such aircraft, the benefits of general aviation, differences in the nature of operations at airports, and international standards with respect to airport noise and other factors. Nothing in the analysis suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. Study results thus far do not provide clear justification to treat Stage 2 aircraft under 75,000 pounds in the same manner as Stage 3 aircraft as advocated by the National Business Aircraft Association (NBAA).

The NBAA arguments are provided in an unsolicited submission to the Secretary entitled "The Applicability of Section 9304 of the Airport Noise and Capacity Act of 1990 to Stage 2 Aircraft Weighing Less than 75,000 Pounds." As required by Department of Transportation procedures, a copy of this submission has been placed in Docket No. 26432. NBAA contends that Congress contemplated according Stage 2 aircraft weighing less than 75,000 pounds the status of Stage 3 aircraft for purposes of section 9304 of the Act. The Act exempts aircraft of less than 75,000 pounds from the Stage 2 phase-out requirement and the non-addition rule. NBAA argues that, in general, small Stage 2 aircraft are comparable to single-event noise created by Stage 3 air carrier aircraft, and that small Stage 2 aircraft do not generally cause noise problems at airports served by air carriers.

Data presented in the FAA draft study do not show a consistent relationship between noise produced and the weight of Stage 2 aircraft. Some small Stage 2 aircraft are noisier than Stage 3 aircraft. Aircraft noise heard on the ground is the result of complex factors in the design and operation of the aircraft, and weight alone cannot be used to determine noise produced. Also, general aviation airports that are frequented by Stage 2 aircraft weighing less than 75,000 pounds often have less land in buffer zones around the airport, or are surrounded by noncompatible land uses. Typically, the ambient noise levels surrounding general aviation airports are also distinctly lower, making individual flights more noticeable. The public is invited to comment on the FAA and NBAA studies, and to provide data that would help resolve the issue on whether the final rule should distinguish Stage 2 aircraft weighing less than 75,000 pounds. Comments on both studies should be submitted to the docket and will also be considered as comments on this aspect of the proposal.

Subpart D concerns the approval of restrictions on Stage 3 aircraft operations that are not the product of voluntary agreements (within the scope of subpart B). In subsection 9304(c), the Act provides that no airport noise or access restriction on the operations of Stage 3 aircraft may be imposed unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval. The Secretary is required by subsection 9304(d) of the Act to approve or disapprove an application not later than the 180th day after receipt of a request for approval and shall not approve a restriction unless there is substantial evidence that six conditions have been met. Secretarial authority has subsequently been delegated to the FAA Administrator. The Federal Government is only empowered with approval or disapproval authority for Stage 3 restrictions and does not have similar authority with respect to voluntary agreements.

The conditions of approval, as defined in the Act, are that the proposed restriction: (1) Is reasonable, nonarbitrary, and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

To implement the requirements of the Act, the FAA proposes a four-step process. First, to provide substantial evidence, the applicant (airport operator or aircraft operator) must develop an analysis of the proposed restriction. Second, the analysis and other pertinent information must be made available for notice and comment to interested parties. Third, the operator must develop and submit an application to the FAA, including a summary of substantial evidence of compliance with the six statutory conditions. Fourth, the FAA will review and approve or disapprove the application within 180 days.

The FAA has attempted to limit the compliance burden while ensuring that adequate information is available to allow an approval or disapproval to be made based on an evaluation of evidence presented regarding the six statutory conditions.

As required by the Act, the rule would apply to proposed restrictions on Stage 3 aircraft that first become effective after October 1, 1990, except for those specifically exempted by subsection 9304(a) of the Act. As with the treatment of proposed restrictions on Stage 2 aircraft, a subsequent amendment to a restriction on Stage 3 aircraft in effect on the date of enactment, or an amendment to a restriction on Stage 3 aircraft previously approved by the FAA, would be subject to the procedures of this subpart, as required by the statute, if the amendment will: (1) Further reduce or limit aircraft operations; or (2) affect aircraft safety.

As mandated by law, the proposed rule would require that the applicant provide notice and opportunity for public comment before submitting the restriction for FAA approval. To provide adequate notice, the FAA proposes that the notice be published in a newspaper of national circulation, and areawide newspaper of general circulation, and in aviation trade publications.

Airport operators would also be required to directly notify the FAA and other interested federal, state, and local government agencies, and aircraft operators serving the airport, and those known to the airport operator to be interested in serving the airport, that could be affected by the restriction. Consistent with the Stage 2 process, the latter requirement was added to take into account potential new entrants.

The proposed requirements of subpart D for publication and direct notice would be the same as those proposed in subpart C for the Stage 2 notice process. As proposed here in subpart D, the primary notice requires a clear, concise description of the proposed restriction, a brief discussion of the specific need for and goal of the restriction, and a summary of the analysis of the proposed restriction. The full analysis of the restriction could either be included in the notice, if the applicant so chooses, or made available by the applicant for interested parties to review. The notice would also include identification of the aircraft operators expected to be affected, the proposed method of implementation (e.g., city ordinance, airport rule) and any proposed enforcement mechanism.

The proposed analysis requirements are designed to provide the FAA with the information necessary to make the statutorily required findings. By statute,

the Secretary cannot approve a proposed restriction unless there is substantial evidence that the proposed restriction: (1) Is reasonable, nonarbitrary and nondiscriminatory; (2) does not create an undue burden on interstate or foreign commerce; (3) is not inconsistent with maintaining the safe and efficient use of the navigable airspace; (4) does not conflict with any existing Federal statute or regulation; (5) has been subject to adequate opportunity for public comment; and (6) does not create an undue burden on the national aviation system.

The FAA believes that the burden is properly placed on the applicant to prove substantial evidence of compliance with the six statutory conditions. To ensure that substantial evidence is available, the FAA proposes that an analysis be developed to provide an adequate understanding of the proposed restriction and to provide the information necessary to support the six statutory conditions. Using that analysis, the applicant would provide a summary of evidence establishing that each of the six statutory conditions has been met. Because the Act requires an analysis of costs and benefits for proposed restrictions on Stage 2 aircraft, and because such analysis has a direct bearing on determinations of undue burden, the FAA believes the same information is appropriate for the review and approval of proposed restrictions on Stage 3 aircraft.

Both the analysis and the summary of evidence regarding compliance with the six conditions would be made available during the notice and comment period and provided to the FAA as part of the application.

To develop the analysis, the FAA proposes that the following elements must be provided: (1) the text of the proposed restriction; (2) a detailed description of the problem; (3) background information, including maps and projected activity data; (4) descriptions of alternative nonaircraft measures that have been considered and rejected; (5) the effect of the restriction on airport operations and capacity; (6) the expected impact on aircraft noise, with and without the restriction; and (7) comparative analyses of the benefits and costs of the proposed restriction and alternative measures.

The FAA believes that the first three elements are necessary to understand the purpose and context of the proposed restriction and should not present a burdensome requirement. The remaining four elements should demonstrate that the proposed restriction is not unreasonable, arbitrary, discriminatory, an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Specifically, a description of alternative nonaircraft measures considered and rejected would address whether the proposed restriction is arbitrary. The effect of the proposed restriction on airport operations and capacity would be important to determine whether the restriction is discriminatory or an undue burden. The expected impact on aircraft noise, with and without the restriction, would be essential in determining reasonableness of the restriction. Finally, an analysis of the benefits and costs would also be important in determining whether the proposed restriction would be an undue burden on interstate or foreign commerce, or an undue burden on the national aviation system.

Within these general requirements for analysis, the rule proposes guidance on the type of information that should be developed as the basis for the analysis of the restriction, if reasonably available and appropriate in the particular case. There are no mandatory requirements, only guidance, in the proposed rule as to consideration of specific components in the required cost-benefit analysis; considerable discretion is allowed applicants in the proposed rule with regard to the components utilized in the analysis. For instance, general aviation airports that are not used by scheduled air carriers may not need to consider the economic effect of the proposed restriction on air carriers and airline passengers. Similarly determined by a specific airport's situation, an analysis of the proposed restriction's economic effect on providers of airport services other than aircraft operators would not be needed if none would be affected. These instances exemplify the flexibility envisioned by the proposed rule's guidance.

The analysis would be conducted in accordance with generally accepted professional practice for estimating costs and benefits and applicable Federal guidelines for analyses of noise. Proposed subpart D identifies components of costs and benefits that the analysis should consider, if appropriate. However, consideration of specific components of costs or benefits would not be mandatory in this rule as proposed; flexibility is allotted to applicants as to the components of the requisite cost-benefit analysis.

The proposed rule thus provides general requirements for cost-benefit analyses, instead of detailed methodology, because a unique approach may be required to estimate properly the effect of each proposed restriction and its alternatives. The FAA is seeking comments on the proposed requirements of the analysis and the supporting guidance. While the FAA understands that each item of information may not always be appropriate for all situations, the proposed rule sets out an illustrative list of elements of an analysis. The final rule may specifically require that the applicant conduct all or a portion of analysis components identified in proposed subpart D. The public is specifically invited to comment on the following issues regarding the analysis:

1. Are the proposed analysis requirements appropriate?

2. How would compliance with the conditions of approval be demonstrated in the absence of equivalent analysis?

3. Should the elements of analysis for proposed restrictions on Stage 3 aircraft be detailed in the rule, or described in an FAA advisory circular?

4. Should all applicants be required to consider a specific list of costs and benefits in the analysis of their proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed?

5. Should the required analysis of a restriction on Stage 3 aircraft operations vary with either type of airport or type of restriction? If so, what categories should be established to differentiate analysis requirements.

As proposed, once the analysis is complete, the applicant would develop a summary of evidence, based on the analysis, showing that the six statutory conditions for approval have been met. FAA would also review the applicant's analysis with regard to the six conditions. However, FAA believes that it is to the applicant's benefit to construct its own summary of evidence, highlighting those results of the analysis that the applicant believes would substantiate the conditions for approval.

The FAA further proposes guidance on each of the six conditions defining evidence that the FAA believes would demonstrate fulfillment of the statutory conditions. For instance, under evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, the proposed guidance recommends evidence that a current or projected noise or access problem exists, and evidence that there is a reasonable change that expected benefits will equal or exceed expected costs.

The guidance includes elements that would be developed as part of the analysis, but also permits the use of other information. Taken together, the types of evidence listed in the proposed rule would be regarded as sufficient, substantial evidence for approval.

However, it would not be necessary to provide each type of evidence to fulfill the statutory conditions, provided that all statutory conditions are supported by substantial evidence. The more evidence provided, the greater the likelihood of condition fulfillment. The summary of evidence should be drawn from the analyses.

The proposed rule would thus provide general requirements on evidence in recognition that each proposed restriction may require a unique approach. While the proposed rule would provide discretion to the applicant in presenting substantial evidence of the six statutory conditions, it may be helpful for the final rule to provide more specific guidance. It may be desirable for evidence requirements to vary either by the nature of the airport or airport operations or by the type of restriction. The final rule may, therefore, require all or a portion of the evidence identified in proposed subpart D for each restriction proposed on Stage 3 aircraft operations. The public is specifically invited to comment on the following questions:

1. Should a mandatory list of evidence be provided in the rule to demonstrate fulfillment of each statutory condition for approval of the restriction? If so, what should the evidence consist of?

2. Should evidence requirements for approval of restrictions on Stage 3 aircraft vary with either type of airport or type of restriction? If so, what categories should be established to differentiate evidence requirements?

If a restriction of Stage 3 aircraft operations would also affect other classes of aircraft, the analysis must be sufficient for the FAA to understand the entire proposal. However, the FAA is limited to acting only on the Stage 3 component; the Stage 2 component may be implemented 180 days after the public notice required in subpart C.

Airport operators would have the alternative of using 14 CFR part 150 procedures for notice and comment to comply with requirements proposed in subpart D, as long as the analysis of the restriction complies with the requirements of subpart D. Again, as proposed in subpart C, the FAA would encourage use of the part 150 process because it is more comprehensive in that it considers land use compatibility.

As with the Stage 2 review process, proposed subpart D would require each applicant to establish a public docket or similar method to receive and consider comments, and to make them available to interested parties upon request.

Once the comment period has closed, the applicant could submit the proposed restriction to the FAA for approval. Within 30 days of receipt, the FAA will review the application for completeness and will subsequently return an incomplete application to the applicant with identification of any deficiencies. An application that is returned as incomplete may be revised and resubmitted to the FAA if, within 30 days after return of the application, the applicant notifies the FAA of its intent to resubmit a supplemented application. If an applicant declines to complete an application that has been returned twice by the FAA as being incomplete, the FAA (with one exception) will deny the application. The exception is that the FAA may continue to review environmental documents that have been supplemented and resubmitted to the FAA. The initial review for completeness is to ensure that sufficient information has been provided by the applicant to permit a prudent decision on whether the proposed restriction meets the statutory conditions for approval. Based upon this information and other information that the FAA may obtain by inquiry or analysis, the FAA would approve or disapprove a restriction within 180 days of the date of receipt of a complete application. Incomplete applications may be denied by the FAA because of noncompliance with proposed § 161.311, "Application procedure for approval of proposed restriction." In such a case, the FAA would not assume liability for noise damages resulting from a taking as described in section 9306 of the Act.

Restrictions would be approved or disapproved in total, i.e., in whole only, and not in part. The FAA is considering a procedure to allow applicants to propose alternative restrictions and their order of preference. Under this procedure, if the applicant has given public notice and has conducted an analysis of the alternatives in compliance with this subpart, the FAA may approve an alternative in the event that the proposed restriction is disapproved. Thus, applicants would be provided flexibility, and would not have to wait 180 days to propose and receive approval of an alternate restriction. The FAA would not independently approve portions of a restriction and disapprove other portions. Formulation of a noise restriction program incorporating restrictions on Stage 3 aircraft is solely the initiative of the applicant. Comments are invited on this procedure.

A restriction that is approved by the FAA may be subject to a condition that the applicant adhere to commitments and actions described by the applicant in its application for approval of proposed restrictions. The FAA would not, however, impose conditions unrelated to the presentation made by the applicant.

The FAA would notify the applicant of receipt of a complete application and of the date by which a decision will be made. Notice of the proposed restriction would be published in the Federal Register to ensure the widest possible notification. Interested parties may file comments on the application within 30 days of publication. The FAA believes that 30 days is adequate notice given that it must approve or disapprove the proposed restriction in 180 days, and that interested parties have already had an opportunity to review the proposal during the initial 45-day notice period provided by the applicant.

The application for a proposed restriction would have to include evidence that the public review process was carried out and a summary of any comments received. The application would also have to include an analysis of the proposed restriction and summary of evidence that the six statutory conditions are met. Finally, the application would have to be accompanied by a draft environmental document that complies with FAA guidelines. The rationale for requiring an environmental document for proposed restrictions and reevaluations as proposed in subparts D and E is addressed in the Environmental Issues section below.

The FAA would test a proposed restriction on Stage 3 aircraft using standards for approval contained in the Airport Noise and Capacity Act of 1990. However, as appropriate, the FAA would also consider the significance of the proposed restriction under the requirements of other laws, including the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 *et seq*), the Aviation Safety and Noise Abatement Act of 1978 (49 U.S.C. App. 2201 *et seq*), the Airport and Airways Improvement Act, as amended (49 U.S.C. App. 2201 *et seq*), and the National Environmental Policy Act of 1969 (49 U.S.C. App. 4321 *et seq*).

If changes are made to the proposed restriction during any part of the process, the applicant would be required to advise interested parties and make any changes to the proposed restriction and its analysis available. If there is a substantial change in the proposed restriction or the analysis after the period of notice and comment, the applicant would be required to publish a new notice. If there is a substantial change in the proposed restriction or the analysis during the 180-day FAA approval process, the applicant would be required to notify the FAA that it is withdrawing its proposal and to publish

a new notice. The FAA would then publish in the **Federal Register** a notice stating that it has terminated review of the proposal.

The FAA proposes a definition of substantial change as including, but not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators. The FAA seeks comment on what level of change to a proposed restriction should be required to begin the process again.

Following review of the application, the FAA would issue an order approving or disapproving the proposed restriction and would publish its decision in the **Federal Register** and notify the applicant in writing. The order would include a full statement of the reasons for the FAA's decision. Failure to provide substantial evidence supporting the conditions for approval specified in the Act would be grounds for disapproval of the proposed restriction.

If a proposed restriction on Stage 3 aircraft operations has been approved and the airport operator decides not to implement the restriction, interested parties would have to be notified.

Subpart E of the proposed rule prescribes procedures for reevaluation of restrictions produced in conformance with the requirements of subparts B or D. Subsection 9304(f) of the Act (encompassing both agreements and restrictions) states that the Secretary "may reevaluate any noise restrictions previously agreed to or approved" pertaining to Stage 3 aircraft operations. Subsection 9304(g) authorizes the Secretary to establish procedures for conducting a reevaluation. However, subsection 9304(g) also requires that reevaluations "shall not occur less than two years after a determination [to approve or disapprove the restriction under proposed subpart D] has been made with respect to such restriction." The reevaluation procedures of the Act do not apply to restrictions on Stage 2 aircraft operations.

Subpart E of the proposed rule implements the two provisions of the Act regarding reevaluation. The proposed rule contemplates a three-step procedure for conducting reevaluations of restrictions on Stage 3 aircraft operations. First, an aircraft operator applying for reevaluation would provide evidence to the FAA that the statutory conditions for considering a reevaluation have been met. Second, when the FAA determines that the statutory conditions have been met, the petitioner would be instructed to publish a notice of its request, conduct an analysis, and obtain public comment. [This step would parallel the requirements that would have been placed on the airport operator that originally requested approval of the restriction.) Third, the petitioner would submit to the FAA evidence that one or more of the statutory conditions necessary for approval of restrictions on Stage 3 aircraft have been violated, along with the comments and analysis. The FAA would offer an additional opportunity for comment, and subsequently issue a determination as to whether the restriction should be allowed to continue.

Under subsection 9304(f), only an aircraft operator may request reevaluation of a restriction. The Act provides two initial demonstrations before a reevaluation proceeding may begin. The aircraft operator must be "able to demonstrate that there has been a change in the noise environment of the affected airport." However, the simple fact of a change in the noise environment is not enough. The aircraft operator must also show that "reevaluation * * * of the previously approved or agreed to noise restriction is therefore justified," i.e., the aircraft operator must show a potential relationship between the changed noise environment and a change in the conditions for approval that had been met previously for restrictions on Stage 3 aircraft operations.

Proposed § 161.403 would quantify the amount of change in the noise environment that would ordinarily be required for the FAA to consider instituting a reevaluation proceeding. The petitioner would be expected to show that there had been either a DNL change of 1.5 dB or greater over noncompatible land use, or a change of 17 percent or greater in the noncompatible land use within the airport noise study area. That is, the FAA would look at whether there had been a significant change in either noise levels or land use. The 1.5 dB noise change is derived from FAA guidelines for implementation of the National Environmental Policy Act of 1969 (NEPA) that identify a 1.5 dB increase as significant. Similarly, 14 CFR part 150 requires noise exposure maps to be revised when such an increase has occurred. Since a 1.5 dB DNL change increases a noise contour area by approximately 17 percent, a 17 percent change in noncompatible land use is proposed as an alternate threshold. As proposed, this rule would consider either an increase or decrease in noise. An increase in noise could indicate that a restriction is not reasonably related to relieving a noise problem, or that the benefits are less than previously estimated. A decrease in noise could indicate a restriction is no longer needed to resolve a noise problem. The FAA invites comments on whether the proposed quantitative criteria are appropriate.

It should be noted that the FAA does not intend that these thresholds be abolute barriers in considering an application for reevaluation. An aircraft operator may submit reasons why a noise change that, while not meeting these standards, nevertheless justifies the reevaluation, and such a requests would be considered on a case-by-case basis.

An aircraft operator would also have to show the connection between the alleged noise change and the need for reevaluation. In particular, the aircraft operator would have to demonstrate the likelihood that the restriction would no longer meet one or more of the statutory conditions for approval of a restriction. These statutorily mandated conditions are set forth in proposed § 161.317. The aircraft operator would be expected to refer to any previous analysis relevant to the challenged restrictions submitted under proposed subpart D. Comments are requested on the extent to which such references should be mandatory and what amount of access should be provided to models and data used in the application for approval under proposed subpart D.

An aircraft operator would submit this information to the FAA, along with a concise description of the restriction, its effective date, a copy of the full text, and other identifying information set forth in proposed § 161.405. In addition, the aircraft operator would be required to show that it had attempted to resolve the dispute at the local level with the airport operator and other interested parties. While a matter of discretion, the FAA believes that aircraft operators should make an effort to achieve a mutually agreeable solution to a dispute before requesting the FAA to overturn a restriction. If, following review of these submissions, the FAA determines that reevaluation is not justified, it would notify the aircraft operator and the affected airport operator and indicate the reasons for this determination.

If the reevaluation appears to be justified, however, the FAA would direct the petitioner to publish a notice of the reevaluation and to notify directly specified classes of persons expected to have an interest in the proceeding. The published notice and direct notification procedures would be essentially the same as those proposed for the initial proponent of a restriction. The public comment period would have to be at least 45 days, and the aircraft operator would have to notify parties and extend the comment period if it changes the analysis during or after the comment period. The FAA invities comments on whether the proposed 45-day comment period is appropriate.

At the conclusion of the comment period, the aircraft operator would then submit to the FAA its analyses and evidence that the public had been given adequate notice and opportunity to comment (including a summary of the comments received). The FAA would then provide for an additonal 45-day comment period, during which time the public could submit comments directly to the FAA. This comment period is longer than that provided in subpart D because the FAA is not under a statutory 180-day limit for reevaluations. The FAA would specifically solicit comments from the airport operator during this period, and may confer with the aircraft operator, the airport operator, or other parties to gather additional information. The FAA may also hold an informal meeting to gather additional information.

The FAA would consider the petition for reevaluation under the same conditions as the initial request for approval of a restriction. That is, the proponent, in this case the aircraft operator, would be expected to carry the burden of demonstrating by substantial evidence that the restriction did not meet the statutory conditions for approval. Because the FAA recognizes that airport and aircraft operators both have a need for stability and certainty in planning operations, restrictions should not be lightly imposed or overturned.

There would be one important difference, however, between the burden on the initial proponent and the burden on the applicant for reevaluation. By the terms of the Act, the airport operator imposing a restriction must meet all six statutory conditions for approval. Because a restriction does not comply with the Act unless it meets all six conditions, it follows that an aircraft operator seeking reevaluation would need only demonstrate, by substantial evidence, that the restriction now failed to meet any one of those conditions.

It should be noted here that, while subsection 9304(f) of the Act clearly refers to reevaluation of both restrictions and agreements, the two-year minimum waiting period for a reevaluation described in subsection 9304(g) refers only to restrictions. However, the rule proposes a similar two-year minimum on Stage 3 restrictions contained in agreements. The FAA believes that the underlying rationale of a stable noise requirement also supports this two-year waiting period. In any event, few, if any, petitions under this subpart are expected with respect to agreements.

If the FAA concludes its reevaluation with a determination that the restriction still meets the conditions for approval, the FAA will terminate the proceeding and take no further action. But if a restriction is found to no longer meet the statutory conditions, the airport operator would be required to rescind the restriction. Failure to do so would subject the airport operator to the sanctions described in proposed subpart F, discussed below, plus possible administrative action by the FAA and legal action by the United States. Where the improper restriction is contained in an agreement, the agreement could not be enforced with respect to Stage 3 operations. It should be noted that the FAA's action would be prompted only by the airport's enforcement of the disapproved restriction. The FAA actions would not affect any contractural obligations contained in the agreement.

Subpart F speaks to sanctions imposed for noncompliance with the rules: limitations that are mandated by the Act on Airport Improvement Program Funds and Passenger Facility Charges (PEC). The statute requires that AIP funds and PFC authority be terminated upon the airport operator's receipt of notice of a violation of the requirements of the rule. The FAA interprets sanctions for noncompliance as applicable to all agreements and restrictions under proposed part 161.

Section 9304 of the Act states:

> Sponsors of facilities operating under airport noise or access restrictions on Stage 3 aircraft operations shall not be eligible to impose a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 and shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under subsection 9304(a) of this Act, unless such restrictions have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

Similarly, Section 9307 of the Act states:

> Under no conditions shall any airport receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restrictions not in compliance with this subtitle.

Although the FAA assumes that such violations will occur only rarely, if ever, proposed subpart F delineates procedures to implement the statutory requirements. The procedures would apply when the FAA obtains evidence that a noise or access restriction is being imposed by an airport operator or a "public agency" in violation of the final rule adopted in this rulemaking. (In Docket 26385, the FAA has issued an NPRM titled Passenger Facility Charges, proposed 14 CFR part 158, which would define a "public agency" as "a State or any agency of one or more States, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo that: (1) Controls a commercial service airport; and (2) is legally, financially, and otherwise able to assume and carry out the assurances in an application for PFC authority and any condition imposed by the Administrator on approval." See 56 FR 4678, February 5, 1991. Comments on the proposed definition should be directed to the Passenger Facility Charges docket.)

The FAA would give written notice of the apparent violation to the airport operator or public agency, which would then have 30 days following receipt of the notice to provide satisfactory evidence that it is in compliance with this part. Such evidence could include, for example, a written certification that the alleged restriction is not being imposed at the airport, or evidence that the restriction was approved by the FAA under the provisions of subpart D of the proposed rule or was agreed to under Subpart B.

Once the 30-day reply period has expired without satisfactory evidence of compliance, the FAA would notify the airport operator or public agency that it intends to terminate Airport Improvement Program (AIP) grants and rescind approval of any authority to collect a Passenger Facility Charge (PFC). The FAA would also publish a notice in the **Federal Register** and invite public comment. Following review of the comments, if any, the FAA would issue a final determination.

If the FAA determines to terminate AIP funds and PFC authority, there will be no further reimbursement to the airport operator for costs incurred prior to the notice and additional AIP grants would be discontinued immediately upon notice. The authority to collect PFC's would be terminated within 30 days following the FAA's determination.

It should be noted that the FAA's determination that an airport operator or public agency was imposing a noise

BEST COPY AVAILABLE

or access restriction in violation of this rule would be separate from any finding of a violation of the grant assurances required under the Airport and Airway Improvement Act (AAIA). A violation of the grant assurances would be investigated and acted upon under applicable provisions of the AAIA. However, any evidence developed in an action under this subpart would, of course, also be relevant with regard to a finding of a violation of the AAIA grant assurances.

Commenters on this subpart are requested to address the following questions, in addition to their other concerns. After further consideration by the FAA and review of the comments received, the final rule may be modified significantly from this proposal.

1. Although the prohibition on eligibility for AIP funds and collection of PFC's is required by the Act, and the FAA expects that proceedings under this subpart will be rare, the agency recognizes that any risk of withdrawal of funding could be viewed adversely by the capital markets. Is there any way for the FAA to minimize this problem consistent with our statutory obligation?

2. Note that the Act does not provide for, and the FAA will not adopt in this rulemaking, the use of trial-type procedures under subpart F. Nevertheless, comments are invited on the feasibility of making the necessary findings on the documentary record.

3. Are the proposed notice requirements appropriate? Is there a need for a public comment period in addition to the time allowed for the airport operator or public agency to respond to the alleged violation?

4. Should authority to impose a PFC be suspended immediately following a determination of a violation, just as additional AIP funds would be suspended immediately, or is 30 days (or some other period) necessary to allow air carriers to make an orderly adjustment? What should become of PFC funds received by the airport following an FAA determination of a violation, but prior to the end of the 30-day period?

Postponement Requested

Because of the statutorily imposed short timeframe for finalization of this rulemaking, the FAA requests airport operators now considering restrictions to postpone further action until the FAA issues a final rule. With certain specific exceptions, the Act governs restrictions on Stage 2 aircraft operations that are proposed after October 1, 1990, and restrictions on Stage 3 aircraft operations that become effective after that date. Not included in these statutory exceptions are restrictions proposed or adopted during the federal rulemaking process. Thus, airport operators who proceed to adopt restrictions before the final rule is adopted, and without complying with the Act, risk the consequences for violation specified in the Act.

Environmental Issues

Analysis Requirements for Restrictions on Stage 3 Aircraft Operations and Their Reevaluation. Subparts D and E require Federal decisions involving the approval or disapproval of a proposed restriction on Stage 3 aircraft operations or the reevaluation of a restriction on Stage 3 aircraft, respectively. Moreover, the Federal decisions on the proposals (i.e., the restriction or reevaluation of the restriction) are subject to the requirements of the National Environmental Policy Act (NEPA). In accordance with FAA environmental procedures implementing NEPA with regard to each proposal, the FAA must either (1) determine that a proposal is categorically excluded from the preparation of an environmental document because it neither individually nor cumulatively has a significant effect on the environment; or (2) prepare an environmental impact statement or a finding of no significant impact, as appropriate.

The FAA does not anticipate that proposals submitted under subparts D and E will have a significant environmental impact, although there may be some extraordinary circumstances in which a significant impact could occur. At this time, the FAA does not have sufficient data on which to base a categorical exclusion for these proposals. Therefore, there is a requirement in both proposed subparts D and E for the applicant to submit to the FAA a draft environmental document complying with FAA's environmental guidelines, together with the applicant's other analyses. The FAA will independently evaluate this draft environmental document and use its information (supplemented as necessary by the FAA) to prepare a finding of no significant impact or, possibly, an environmental impact statement before issuing a determination on the applicant's proposal.

The FAA specifically invites comments on the appropriateness of requiring applicants to submit draft environmental documents, and seeks response to the following questions:

1. What environmental considerations other than noise should be analysed for proposals submitted under subparts D or E?

2. What data is available with respect to whether noise and any other impacts resulting from such proposals may reach significant levels as defined in FAA Order 5050.4A, Airport Environmental Handbook? (A copy of this order is available in the docket.)

3. Is there any data to support categorical exclusion of these types of proposals from FAA NEPA requirements?

4. Are there any alternative procedures for conducting an environmental evaluation of these proposals to ensure compliance with NEPA other than through those in existing FAA environmental orders?

Environmental Analysis of the Proposed Rule

This proposed rulemaking is in response to section 9304 of the Airport Noise and Capacity Act of 1990. The Act directs the FAA to establish by regulation a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft, including the provision for adequate public notice and comment opportunities on such restrictions. The Act sets forth requirements specific to Stage 2 and Stage 3 restrictions that must be met before these restrictions become effective; mandates FAA review and approval or disapproval of Stage 3 restrictions according to specific criteria; establishes criteria for reevaluation of Stage 3 restrictions; delineates a number of limitations on the applicability of the Act; and provides that sponsors of facilities implementing Stage 3 restrictions that fail to comply with the Act shall not be eligible to impose a Passenger Facility Charge or receive an Airport Improvement Program grant. The FAA's discretion is very limited with regard to implementing the requirements of the Act.

The program that the FAA is directed to establish to review proposed restrictions on Stage 2 aircraft is procedural in nature, not substantive. The Act requires an airport operator to publish notice of a proposed restriction on Stage 2 aircraft 180 days before it becomes effective and to provide an opportunity for public comment. The Act provides, in relevant part, that no noise or access restriction shall be effective unless the airport operator publishes the proposed noise or access restriction, and prepares and makes available for public comment a cost/benefit analysis and certain information about alternatives at least 180 days before the effective date of the restriction. The greatest discretion afforded the FAA with respect to review of Stage 2 restrictions is whether to exempt Stage 2 aircraft of less than 75,000 pounds from the procedural scheme established for restrictions on heavier Stage 2 aircraft.

In contrast to proposed restrictions on Stage 2 aircraft, the statute authorizes the FAA to implement a review of proposed Stage 3 restrictions that is substantive in nature, not merely procedural. However, even here FAA authority is circumscribed by statutory dictate prescribing conditions warranting approval, designating a time frame for a decision, and limiting the scope-of-review authority. The Act directs the FAA to approve or disapprove proposed restrictions on Stage 3 aircraft within 180 days of receipt. It mandates that no airport noise or access restriction on Stage 3 aircraft shall be effective unless it has been agreed to by the airport operator and all aircraft operators, or has been submitted to and approved by the FAA pursuant to a request for approval. Approval may be given only if the applicant has demonstrated substantial evidence that the six statutorily specified conditions have been met.

The Act also grants the FAA substantive authority to reevaluate Stage 3 restrictions. However, here as well, the FAA's discretion is limited by statute. Noise restrictions agreed to by the airport operator and aircraft operators, or approved by the FAA, are subject to reevaluation only where there has been a change in the noise environment. Those approved by the FAA are not subject to reevaluation for 2 years. By these actions, the Congress has given the FAA very limited discretion to approve or reevaluate a proposed restriction on Stage 3 aircraft operations.

Significantly, the FAA has no discretion to determine when to apply the requirements or whether to apply requirements to all use restrictions. The Act sets specific dates for applicability of its requirements and carves out specific exemptions from those requirements.

The only discretion left to the FAA under the Act largely concerns implementation. The FAA has latitude to decide: (1) How to require the airport operator to publish notice of, and to accept public comments for, restrictions on Stage 2 aircraft operations; (2) what procedures, if any, to adopt for agreements; (3) what procedures to adopt for Federal approval or disapproval of a proposed restriction on Stage 3 aircraft operations; and (4) what procedure to adopt for reevaluation of previously approved restrictions. The FAA considered, and continues to consider, alternative methods of implementation as described in this preamble.

Because the statutory framework severely limits the range of reasonable alternatives to those chiefly involving implementation, there is no significant range of alternatives from which to choose, and none of the alternatives within the FAA's discretion are likely to have a significant effect on the quality of the human environment. In the new substantive area of FAA authority and discretion—approval or disapproval, and reevaluation of restrictions on Stage 3 aircraft operations—the FAA proposes to comply with NEPA with respect to each decision.

This proposed rule contains procedures for complying with the Act's specific requirements. These procedures are not anticipated to have a significant effect on the quality of the human environment. Prior to issuing a final rule, the FAA will complete a review of the environmental impacts associated with rule compliance in accordance with Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D). Comments relating to the environmental impacts that might result from adopting this rule are invited.

A discussion of the application of NEPA to FAA determinations relating to approval or disapproval of restrictions and reevaluation of previously approved restrictions on Stage 3 aircraft operations are discussed above.

Noise Liability, Land Use, and Related Grant Assurances

Section 9306 of the Act provides that, in the event that a proposed restriction on Stage 3 aircraft is disapproved by the Federal Government, the Federal Government shall assume liability for noise damages "only" to the extent that a taking has occurred as a "direct result" of that disapproval. In order to make a determination of whether such liability can attach to a particular disapproval action, a number of factors must be considered, including an assessment of whether that airport operator has made a reasonable effort on its own behalf to assure land use compatibility in the vicinity of the airport prior to proposing restrictions on the operation of Stage 3 aircraft. Such an inquiry is necessary in order to assure that the federal liability addressed by section 9306 is limited to compensation only for takings that directly result from its disapproval of Stage 3 aircraft restrictions. Since Congress did not alter the historic responsibility and liability of airport operators for noise damage, the Department has the obligation to insure that section 9306 is not used to compensate for inadequate land use planning, a failure to attempt to achieve land use compatibility, or a failure to utilize nonaircraft alternative measures available to an airport operator.

Section 9304 sets forth various conditions that a proposed noise restriction must meet before it may be approved by the Secretary, including a determination that the noise restriction is reasonable, nonarbitrary and nondiscriminatory, and does not constitute an undue burden on the national aviation system. The FAA proposes to require an applicant to include in its application for approval of a Stage 3 restriction a description of the nonaircraft alternative measures that have been employed to achieve land use compatibility with normal airport operations. In particular, FAA would require a description of measures proposed in submittals under 14 CFR part 150 and whether they have been carried out. "Land use" measures are generally within local control and this proposal is not intended to affect the traditional local responsibility for such measures.

Thus, neither airport operators, local jurisdictions nor other affected persons should interpret sections 9304(d)(2) and 9306 as an invitation to relax or delay responsible programs for compatible land use. In particular, the FAA encourages airport operators to take advantage of the noise compatibility program that is available under the Aviation Safety and Noise Abatement Act of 1979, 42 U.S.C., App. 2101, *et seq.*, and the implementing provisions of 14 CFR part 150. Similarly, airport operators are encouraged to review their grant agreements with the FAA to ensure that they are in compliance with the terms of those agreements, including particularly the commitment to take appropriate action, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities that are compatible with normal airport operations. These obligations are set forth in section 511(a)(5) of the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210(a)(5)).

Paperwork Reduction Act

Paperwork and recordkeeping requirements will be submitted to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office

Building, room 3001, Washington, DC 20503; attention: FAA Desk Officer (telephone (202) 395-7340). A copy must be submitted to the FAA docket.

Regulatory Evaluation Summary

This section summarizes the Initial Regulatory Evaluation to the proposed rule to establish a program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft.

Executive Order 12291, issued February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for customers or for individual industries, government entities or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

The notice, review, and approval procedures set forth in the proposed rule are intended to carry out the mandates of section 9304 of the "Airport Noise and Capacity Act of 1990" (the Act). Because the Act requires the establishment of the program described in the proposed rule, it is debatable whether the economic effects of the proposed rule can or should be separated from those of the Act. Thus, this evaluation focuses primarily on the procedural aspects of the program without distinguishing those solely associated with the proposed rule from other potential economic impacts that may be attributable to the Act. In some portions of the proposed rule, especially the subpart that deals with agreements between airport and aircraft operators, the proposed procedures are believed to provide savings to program participants by avoiding alternative, more complex procedures that might otherwise be necessary to conform to the requirements of the Act.

The notice, review, and approval procedures in this NPRM are not expected to have an overall effect on the economy in excess of $100 million. The only economic costs that would be imposed stem from the costs associated with providing public notice of a proposal and of conducting the analyses required by this rule. These costs will be incurred by the airport operator or by an aircraft operator. An airport operator would incur these costs only if it takes an initiative that would bring itself within the purview of the rule by deciding to impose a use restriction and can forego all costs associated with the rule by continuing business as usual and not deciding to restrict aircraft operations. The total cost depends on the number and type of restrictions that an airport operator would want to impose in any year. The total anticipated benefits also would depend on the number and type of access and noise restrictions that might be implemented by an airport operator in any year. Based on the following analysis of costs and benefits, the FAA has determined that the proposed rule is not a major rule.

The proposed rule would require public notice and a comment period for airport noise and access agreements and for proposed airport restrictions on Stage 2 and Stage 3 aircraft operations. An analysis would be required for proposed mandatory restrictions. A proposed restriction on Stage 3 aircraft operations would require FAA approval as a condition for continued eligibility of an airport operator to receive federal Airport Improvement Program grants and to collect passenger facility charges. An aircraft operator may request the reevaluation of a restriction on Stage 3 aircraft operations by demonstrating to the FAA that there has been a significant change in the airport noise environment. If a reevaluation is deemed justified by the FAA, the aircraft operator may, if it chooses, then publish a notice of the reevaluation and provide an analysis that reevaluates the restriction.

Local airport restrictions that are the subject of the proposed rule could: (1) Have significant effects on individual air carriers, other aircraft operators, and intercarrier competition; (2) cause losses in market value of aircraft that would be excluded as a result of an airport restriction; (3) raise air fares; and (4) affect real estate values surrounding airports that impose restrictions on operations, for instance, by raising the value of noise-impacted residential properties as a result of reducing noise exposure.

The potential benefits of the proposed procedures arise from mitigating some of the adverse effects of Stage 2 and Stage 3 aircraft restrictions that are excessive, suboptimal, or restrict competition, or are an undue burden on interstate or foreign commerce or the national aviation system. A reasonable analysis of a proposed restriction would include the major benefits and costs that affect parties involved. In most cases, a major focus of this analysis would be whether the potential benefits from reduced noise exposure near an airport could be significant enough to offset the costs that may be imposed on air commerce as a result of proposed restrictions. Benefits and costs of compliance with the proposed rule are expected to vary significantly among airports that will be proposing restrictions that are subject to the proposed notice, analysis, and review requirements. Thus, the effects of the proposed procedural requirements are treated only in a qualitative manner in this draft regulatory analysis. Some quantitative estimates of the potential benefits of applying the proposed rule may be provided in the final rule. Commenters are invited to provide quantitative estimates of such benefits (which may be in the form of avoided costs) expected from this proposed rule due to the avoidance of, or greater efficiency of, local airport restrictions on the operation of Stage 2 and Stage 3 aircraft.

Costs Associated With Requirements for Public Notice and Analysis

Cost of Public Notice Requirement

Notice of all agreements and proposed restrictions would be provided to: (1) Aircraft operators serving or intending to serve the affected airport; (2) the FAA and other affected Federal agencies; and (3) other governmental units within the airport noise study area. The incremental cost for the required notifications is estimated to vary from $15,000 to as much as $45,000 (in the case of a complex restriction) per airport for each notification. Some airports would incur little additional cost to implement the public notice requirement, because they would have provided the public notice and solicited comments on noise restrictions even in the absence of the proposed rule. If notice were not normally given prior to actions equivalent to those covered in the proposed rule, there would be some incremental cost for public notice.

Publication of a single notice in a major national business newspaper is estimated to cost approximately $600 per column inch. Thus, if a notice covers 12-column inches, publication costs for reaching a nationwide audience would be approximately $7,200. Similar notices are estimated to cost about $1,000 in a major regional paper, and could range from $1,500 to $4,000 for publication in an aviation trade journal. If a notice were put in a major local newspaper, a trade journal, and a major national business newspaper, publication costs per notice could range up to $12,000. If the cost of direct notification to 100 aircraft operators (including air carriers) and jurisdictions is $20 per letter, with enclosure, direct notification costs would be $2,000. The cost of preparing a notice for publication depends on is complexity and impact. A notice for a very simple restriction with very limited impact may cost $1,000 or less (several hours of professional and clerical time). In these simple cases, the total incremental notification costs could average $15,000 per implementation or modification thereof. However, if the restrictions is complex and an analysis reveals numerous effects, the preparation of the notice itself may require substantial professional staff attention to draft the notice per se (two months of professional and clerical time). These staff costs are assumed to be on the order of $20,000. Review of comments and revisions may result in further costs of $10,000. Thus, the total cost of notice and comment for a proposed complex restriction (exclusive of analysis cost described below) is estimated to be up to $45,000. If 100 airports in the U.S. were to implement restrictions on Stage 2 and Stage 3 aircraft operations or modifications thereto, the total notification costs (exclusive of analysis cost described below) could range up to approximately $1.5 million for simple restrictions or $5 million for complex restrictions.

Cost of Analysis

Analysis of airport noise, including the mapping of projected noise levels and associated demographic projections, and analysis of the benefits and costs of restricting aircraft operations at airports, have been performed in the past. Similar analyses are prepared in whole or in part in compliance with 14 CFR part 150, for airport development and master planning, and in conjunction with the solicitation of airport finance. Thus, much information required to fulfill the analysis requirements of proposed subparts C and D probably already exists as a result of current airport administrative and planning procedures. Further, if additional information is needed, the required skills have been developed and the analysis can be performed by the airport staff or through existing relationships with consultants. The skills required to perform the analyses can also be readily learned by individuals with training in engineering or physical sciences and economics or finance.

The incremental cost imposed by the proposed rule for analyzing a set of proposed noise and access restrictions may vary from no cost to $200,000 per airport. Because airports are given broad discretion, costs can be kept low in many cases. Some airports already prepare substantial analyses associated with potential noise restrictions and alternatives.

Costs associated with environmental analyses and documents are assumed to arise because of the National Environmental Policy Act (NEPA) and existing regulations, i.e., they are not the result of requirements that would be imposed under this proposed rule. If the costs of these analyses would occur in the absence of the proposed rule, they should be excluded from these estimates. If the environmental analysis costs are included in the estimate, an additional nominal value of $100,000 to $150,000 per analyzed restriction may be assumed.

(By way of background, it is noted that current submissions in response to 14 CFR Part 150, Airport Noise Compatibility Planning include similar analyses of restrictions, but focus more extensively on noise benefits of restrictions as compared to nonrestrictive alternatives. Part 150 analyses have been prepared using federal grants ranging from $50,000 to $300,000 per submission, with the majority of analyses ranging from $80,000 to $150,000. Part 150 study costs are considered analogous to the analysis costs that would be imposed by this NPRM.)

If 50 airports were to prepare analyses, including environmental analyses, solely in response to subpart D of the proposed rule, which deals with restrictions on Stage 3 aircraft operations, the total incremental cost of analyses attributable to the proposed rule could be as high as $15 million to $18 million. (Note that an analysis is not required for notices of agreements.) In the event that 100 analyses were prepared in response to the proposed rule, this cost could be as high as $30 million to $35 million. If environmental analyses are not included in the costs attributed to the proposed rule, costs for 50 and 100 analyses would range up to $10 million and $20 million, respectively. Costs for federal review of 50 to 100 analyses are expected to be on the order of $1 million to $2 million. Costs are expected to vary with the level of operations at affected airports and the extensiveness and complexity of the proposed restriction. Comments relating to the costs of analyses are specifically invited.

Benefits of Applying the Proposed Regulations of Proposed Restrictions on Aircraft Operations

Agreements (Subpart B).

Subpart B applies to airport noise or access restrictions on Stage 2 or Stage 3 aircraft that are agreed to by the airport operator and all aircraft operators. New entrant aircraft operators that have applied to serve the airport within 180 days of the effective date of the restriction and have submitted a plan of operations to the airport operator would be included in these agreements. Potential new entrants would be given 45 days to apply to the airport operator to be a party to the agreement. An analysis of an agreement is optional.

An agreement can result in positive net benefits to affected interest groups considered as a whole, and very likely to each of the affected interest groups (although not necessarily to all members of such groups). This would be the case as long as all potential entrants that wish to service an airport are notified and the airport operator adequately represents both the interests of the local aviation/passenger community and persons who may be adversely affected by aircraft noise.

The use of agreements may help airport operators by reducing the costs that they would incur in order to implement proposed restrictions on aircraft operations. Public notice would provide an opportunity for those with an interest in starting airport operations to become parties to an agreement. The notice, with this new-entrant provision, tries to open up agreements to parties beyond those currently serving an airport, but stops short of the needless costs that would be associated with identifying "all" aircraft operators, whether or not they have an interest in operation at the airport in the reasonably foreseeable future.

It is noted that cost savings would occur through the avoidance of what is likely to be a costlier process including analysis requirements that would be involved in attempting to restrict aircraft operations through subparts C and D, as outlined below. The provision for agreements would formalize a procedure under which communities and aircraft operators can efficiently reach agreement on measures to mitigate aircraft noise problems that the affected parties find mutually acceptable. As drafted, the proposed rule would permit restrictions on Stage 2 aircraft to be handled through the less costly means of agreements under subpart B. Additionally, the use of such agreements can be expected to facilitate the

handling of local environmental concerns by minimizing federal involvement in the process.

Further, it is possible that the public notice required by Subpart B may itself produce additional benefits, in part by reducing the likelihood of a number of possible adverse effects. One potential concern is a situation in which an agreement on operations at an airport has the effect of excluding improved air carrier service when such service might provide an overall increase in net benefits to current and potential users of air transportation in the area served by the airport. Current providers of air service may have an economic incentive to seek, through agreements, to prevent the entry of additional competitive providers of air service. Public notice can help to mitigate potential adverse effects by improving the chances for potential entrants to service at an airport to protect themselves from undesirable constraints on their future activities. For instance, a noise budget can have the effect of making it more difficult for new entrants (new competition) to enter service at a particular airport. By preserving and enhancing competition, the proposed rule may benefit air travelers by lower air fares and/or increased service.

It is also possible that voluntary agreements may have the effect of regulating rates or services. Although this is prohibited by section 105 of the Federal Aviation Act of 1958, agreements may achieve these objectives indirectly. For instance, because aircraft have varying ranges, voluntary agreements on the type of aircraft that may be used at an airport can have the indirect effect of regulating the price and availability of air carrier service. Agreements that, for example, restrict the passenger-carrying capacity of aircraft using an airport could have the effect of excluding the aircraft of potential competitors that are larger, quieter, and have a longer range.

The public notice may not only inform interested parties, but may also stimulate those adversely affected to protect their interests by taking part in the negotiations that lead to the agreement or by seeking redress through other political or judicial processes. For instance, local companies adversely affected by potential restrictions or aircraft operators that wish more freedom, for instance, in airport operating hours, may object to terms of an agreement that they perceive as objectionable. Thus, the proposed rule may ultimately improve the efficiency of air commerce, the local economy, and the quality of life.

Although the Federal government may take action to mitigate the effects of exclusionary agreements under other statutes, it has no power under the Act, or the proposed rules derived from it, to grant relief to, e.g., the customers of air carriers who may experience high ticket prices that result from de facto cartelization of an airport. Remedies would be obtained under federal antitrust laws and the terms of airport development grant agreements.

Requirements for Stage 2 Restrictions (Subpart C)

Subpart C would require analysis and notice of new noise or access restrictions that are proposed for Stage 2 aircraft after October 1, 1990. These requirements would also apply to amended restrictions that become effective after the date of the Act if they further limit Stage 2 aircraft operations or affect aircraft safety. As indicated in the discussion of the preceding subpart, the public notice provided to affected parties under subpart C is expected to facilitate the protection of these parties' interests by informing them of the impacts of proposed restrictions. Adversely affected parties can then seek remedies through political or judicial means.

Benefits associated with the notice, analysis, and 180-day waiting period include assuring that: (1) There is wide advance notification of potentially affected parties; (2) the airport operator and others are aware of the full ramifications of proposed restrictions, including anticipated costs and benefits; (3) data errors in estimating costs and benefits have a chance to be rectified and appropriate changes made in the proposed restrictions; (4) objections of affected parties and the FAA may lead airport operators to modify objective provisions of a restriction; (5) the Federal government and other affected parties have a chance to make a case against objectionable restrictions in court before the restriction is imposed; and (6) affected parties have a reasonable amount of time to accommodate their operations to a restriction before it goes into effect.

Proposed subpart C includes requirements for an analysis of the anticipated costs and benefits of the proposed noise access restriction, a description of alternative measures considered that do not involve aircraft restrictions, and comparative analyses of benefits and costs of these measures. The use of specified noise measurement systems and accepted economic methodology are required. Components may include, as appropriate, data and projections on airport activity, estimates of land use, noise, and other conditions, as well as the effects of the proposed restriction on noise contours, population, aircraft operations, and safety implications, if any. The analyses may include the examination of continuing service under the restriction, the effects of discontinued aircraft operations, and the effect of nonaircraft alternatives or nonaircraft components of the restriction. The cost analysis may include data and projections on additional aircraft capital costs; other incremental costs; and decreases in carrier and other profits, safety, and consumer and producer surpluses.

Stage 2 aircraft tend to be less expensive to acquire or lease. For this reason, those aircraft have been favored by new airline companies starting operations. Restrictions on the operation of Stage 2 aircraft, therefore, may have the effect on inhibiting market competition from new entrants.

Restrictions on aircraft operations at a single airport that is an airline's major hub may or may not have a significant impact on a particular aircraft operator depending on whether its equipment can be moved to alternate routes or sold without incurring a significant loss. Simultaneous restrictions at a significant number of airports may force premature retirement of affected aircraft, including their sale at reduced prices, thereby imposing losses on the owners of such aircraft. Thus, a single airport's restrictions should also be viewed in the context of conditions existing in the national airport system. As noted, analyses under proposed subpart C may include estimates of real estate and other property values, health costs (if any), other quality of life effects, and airport revenues, as well as other measures of benefits and costs. However, the airport operator that proposes restrictions is given discretion with respect to the elements contained in the analysis so long as the analysis is consistent with the general requirements of the Act.

The imposition of major premature restrictions on Stage 2 aircraft operations at an airport that acts as a major hub for a carrier that is highly dependent on these aircraft may also impose significant adverse effects on air carriers and passengers. These effects would be in the form of reduced service because of less air carrier competition, and likely higher air fares. If air carriers cannot find alternative uses for aircraft that are barred by the restrictions, the air carrier would experience a loss of revenue and profit. The effects on passengers may include substantial burdens in the form of the cost of time consumed through delays or inconvenient air carrier schedules. It should be noted that, in analyses of air transport operations, the delay costs for air travelers may be a high as the air carriers' costs for operating the delayed aircraft. Ther merit of a particular proposed restriction on Stage 2 aircraft operations would depend on whether benefits (perhaps measured by a projected increase in residential property values) are greater than the sum of costs imposed on air commerce (including such elements as passenger delay costs together with aircraft operating and capital costs.)

Notice, Review, and Approval Requirements for Stage 3 Restrictions (Subpart D)

This proposed subpart would apply to airport noise or access restrictions on Stage 3 aircraft operations that first become effective after October 1, 1990. With certain limited exceptions detailed in the statute, all proposed restrictions on Stage 3 aircraft, other than those agreed to by the airport operator and aircraft operators, would be subject to this proposed subpart and must be reviewed and approved by the FAA before they become effective. The restrictions can be approved only if there is substantial evidence that they: (1) are reasonable, nonarbitrary, and nondiscriminatory; (2) do not create an undue burden on interstate or foreign commerce; (3) maintain safe and efficient utilization of navigable airspace; (4) do not conflict with any existing Federal statute or regulation; (5) have been given an adequate opportunity for public comment; and (6) do not create an undue burden on the national aviation system. The Act mandates sanctions against airport operators that implement restrictions on Stage 3 aircraft operations that have not been agreed to or approved by the FAA in conformance with the proposed rule.

As was noted in the discussion of proposed subpart C above, restrictions at either a single major hub airport or at a significant number of airports may reduce the efficient use of an airline's fleet, thereby imposing major losses on the owners of such aircraft. This subpart deals with proposed restrictions on Stage 3 aircraft, which represent state-of-the-art noise control and are significantly newer than the Stage 2 aircraft that they are intended to replace. Restrictions on aircraft that fall under this subpart can be expected to result in losses to aircraft operators that are potentially much larger than would comparable restrictions on Stage 2 aircraft alone. Restrictions that result in the suboptimum use of substantially new aircraft could constitute an undue burden on commerce and the national aviation system by preventing aircraft operators from recouping through revenues the substantial cost of their investment in aircraft (a new Stage 3 aircraft may cost between $50 million and $120 million). Stage 3 aircraft are likely to have higher market values and lower operating costs than otherwise comparable State 2 aircraft. Thus, the earnings foregone by a carrier that finds that it is unable to put a Stage 3 aircraft to its most profitable use are likely to be larger than the lost earnings that would result from a comparable restriction on a Stage 2 aircraft.

Restrictions on Stage 3 aircraft are also likely to impose significantly higher costs on air travelers than would comparable restrictions on Stage 2 aircraft. If Stage 2 aircraft are restricted at an airport, it is likely that they will, to some extent, be replaced with Stage 3 aircraft that provide comparable or better passenger service. Any restrictions on Stage 3 aircraft have the effect of limiting total aircraft operations at an airport because an airport operator is unlikely to attempt to restrict Stage 3 operations unless Stage 2 operations have already been, or are being simultaneously, restricted. With a resulting general reduction in air service at an airport, passenger delay costs will be imposed as a result of less convenient schedules for passengers for whom the airport is an origin or destination and more waiting time if the airport is a hub at which passengers transfer between airplanes. As with Stage 2 aircraft, simultaneous restrictions on Stage 3 aircraft at a number of airports can have significantly greater adverse impacts on both aircraft operators and passengers than would restrictions at a single airport. The greater public and Federal examination of proposed restrictions on Stage 3 aircraft (as compared to Stage 2) is justified, in large part, by the greater potential for imposing costs on the national aviation system that do not have equal or better benefits.

Reevaluation of Restrictions on Stage 3 Aircraft Operations (Subpart E)

Reevaluation may be requested by an aircraft operator that demonstrates to the satisfaction of the FAA that there has been a change in the noise environment that would be sufficient to justify the review. The burden of notice and analysis requirements, including a draft environmental document, is placed on the aircraft operator that initiates the request for reevaluation. These costs are comparable to those for airport operators that propose restrictions under subpart D, above. The FAA will review the documentation submitted and comments received and issue appropriate findings on the request. The benefits of proposing a change for one aircraft operator would be primarily the operating economies and resulting improved profits that may be projected to result from less stringent airport restrictions. The reevaluation costs for an aircraft operator may be reduced by sharing these costs among a group of aircraft operators that wish to take advantage of less restrictive operation at an airport. It may be presumed that an aircraft operator (or whoever requests a reevaluation) would not request a reevaluation of a restriction unless it perceived that the benefits it expects to accrue would be in excess of costs it will incur in successfully completing the reevaluation process. The proposed rule does not require reevaluation, hence it does not directly impose any cost. Parties such as airport operators with an interest in commenting on the reevaluation may choose to incur costs in preparing comments, but do so at their own discretion.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The FAA has provisionally determined that it is unlikely that the proposed regulations could have a significant economic impact on a substantial number of small entities. (FAA Order 2100.14A specifies the threshold regulatory cost at $5,400 in 1983 dollars (approximately $7,000 in 1991 dollars) for airports serving cities with a population of less than 49,000. According to this Order, a "substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a . . . rule.") While the costs of required analysis may exceed $7,000, it is noted that the cost of the required analysis may in

some cases be moderate because many proposed restrictions will not require the amount of data handling and complexity of analysis appropriate for major restrictions at larger airports. In addition, it is believed unlikely that an airport operator would initiate an action that would make it subject to the proposed rule unless it believed that the benefits would be well in excess of the costs of complying with the rule. The proposed rule allows an airport operator that proposes restrictions on Stage 2 aircraft substantial latitude in determining the components of the associated analysis. It may be appropriate to establish thresholds for analysis requirements that vary with the level of operations at airports or other considerations. Further, and more important, it is believed to be unlikely that "substantial number of small entities"—one third of the airports serving cities with a population of 49,000 or less—will propose restrictions, or changes to restrictions, during any single year. It is not expected that airports considered small entities will, as a group, impose restrictions subject to this proposed rule at as high a relative frequency as larger airports. Smaller metropolitan areas tend to generate less air traffic, have smaller airports, and be served by smaller aircraft than do the larger urban areas that are more likely to be served by Stage 2 and Stage 3 aircraft. However, in recognition of potential cost burdens on small entities, the FAA solicits comments relating to an appropriate variation in the threshold for analysis and notice requirements.

Initial Trade Impact Assessment

The costs that may be incurred as a result of implementing the proposed rules at the airports that account for most of the U.S. international air commerce are believed to be small relative to other charges imposed by the airports on air carriers operating in international commerce. As a result, the requirements of this proposed rule are not expected to have a significant impact on U.S. international trade.

Federalism Implications

Although the agency has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment, it should be noted that, regardless of that determination, it is also the agency's determination that the problem described in this document requires action that can only be effectively implemented at the national level. In support of this finding, it is noted that, in the Airport Noise and Capacity Act of 1990, section 9002, Congress found that, among other things, "airport noise management is crucial to the continued increase in airport capacity; community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation system;" and that "a noise policy must be implemented at the national level."

The proposed regulations would implement a new statute that authorizes state and local governments that operate airports to enter into agreements that may affect the operation of certain aircraft at their airports. While the initiation of restrictions on the affected aircraft at these airports would be a local decision, the statute imposes federal requirements on the applicant (e.g., for notice and/or analysis of the proposed restrictions) and requires Federal oversight (e.g., where there may be substantial adverse affects on interstate commerce).

Although a national solution is required by the Act, provisions of the proposed rule are intended to impose on state and local governments the minimum restrictions and requirements that are consistent with the statutory limitations and the Federal oversight role contemplated by the Airport Noise and Capacity Act of 1990 and other regulations that would pertain to airport operations.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 161

Air carriers, Aircraft, Airport, Airport noise, Air transportation, Noise control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to add a new part 161 to title 14, Chapter I, subchapter I of the Code of Federal Regulations to read as follows:

PART 161—NOTICE AND APPROVAL OF AIRPORT NOISE AND ACCESS RESTRICTIONS

Subpart A—General Provisions

Sec.
161.1 Purpose.
161.3 Applicability.
161.5 Definitions.
161.7 Limitations.
161.9 Designation of noise measurement systems.
161.11 Identification of land uses in airport noise study area.

Subpart B—Notice Requirements for Noise Agreements

161.101 Scope.
161.103 Notice of proposed agreement.
161.105 Implementation of agreement.
161.107 Termination of agreement.

Subpart C—Notice Requirements for Stage 2 Restrictions

161.201 Scope.
161.203 Notice of proposed restrictions.
161.205 Required analysis of proposed restriction and alternatives.
161.207 Comment by interested parties.
161.209 Requirement for a new notice.
161.211 Optional use of 14 CFR part 150 procedures.
161.213 Notification of a decision not to implement a restriction.

Subpart D—Notice, Review, and Approval Requirements for Stage 3 Restrictions

161.301 Scope.
161.303 Notice of proposed restrictions.
161.305 Required analysis of proposed restrictions.
161.307 Comment by interested parties.
161.309 Requirement for a new notice.
161.311 Application procedure for approval of proposed restriction.
161.313 Review of application.
161.315 Federal Register publication.
161.317 Conditions for approval.
161.319 Approval or disapproval of proposed restriction.
161.321 Withdrawal or revision of restriction.
161.323 Optional use of 14 CFR part 150 procedures.
161.325 Notification of a decision not to implement a restriction.

Subpart E—Reevaluation of Stage 3 Restrictions

161.401 Scope.
161.403 Criteria for reevaluation.
161.405 Request for reevaluation.
161.407 Notice of reevaluation.
161.409 Required analysis by reevaluation petitioner.
161.411 Comment by interested parties.
161.413 Reevaluation procedure.
161.415 Reevaluation action.
161.417 Notification of status of restrictions and agreements not meeting conditions of approval criteria.

Subpart F—Failure to Comply With This Part

161.501 Scope.
161.503 Notice of potential restrictions on airport improvement program funds and passenger facility charges.

Authority: 49 U.S.C. 1301, 1305, 1348, 1349(a), 1354, 1421, 1423, 1431, and 1486, 49 U.S.C. 1655(c), 49 U.S.C. 2101, 2102, 2103(a), and 2104 (a) and (b), 49 U.S.C. 2210(a)(5), and 49 U.S.C. 2153, 2154, 2155, and 2156.

Subpart A—General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act, Public Law 101–508, 49 U.S.C. 2153, 2154, 2155, and 2156 enacted November 5, 1990. It prescribes:

(a) Notice requirements and procedures for aircraft noise and access agreements between airport operators and aircraft operators;

(b) Analysis and notice requirements for Stage 2 aircraft noise and access restrictions proposed by airport operators;

(c) Notice, review, and approval requirements for Stage 3 aircraft noise and access restrictions; and

(d) Procedures for reevaluation by the Federal Aviation Administration of agreements and aircraft noise and access restrictions affecting Stage 3 aircraft operations.

§ 161.3 Applicability.

(a) This part applies to airport restrictions on Stage 2 aircraft operations proposed after October 1, 1990, and to airport restrictions on Stage 3 aircraft operations that become effective after October 1, 1990.

(b) The notice, review, and approval requirements set forth in this part apply to all airport noise or access restrictions as defined in § 161.5 of this part.

§ 161.5 Definitions.

For the purposes of this part, the following definitions apply:

Agreement means a program or plan for the control of airport noise or access agreed to by the airport operator and all affected aircraft operators.

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport noise study area means that area surrounding the airport within the DNL 65 dB contour, as defined in 14 CFR part 150, that contains noise-sensitive land uses (typically residential neighborhoods, educational, health or religious structures or sites and outdoor recreational, cultural, and historic sites).

Aircraft operator includes any representative empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft. This may include representatives of air carriers or the operator of any aircraft affected by a Stage 2 or Stage 3 noise and access restriction.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under part 121 or part 129, commuters and other carriers operating under parts 127 and 135, general aviation, military, or government operations.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn}.

Noise or access restrictions means restrictions affecting access or noise that affect the operation of Stage 2 or Stage 3 aircraft, such as limits as to noise generated on either a single event or cumulative basis; a limit, direct or indirect, on the total number of Stage 2 or Stage 3 aircraft operations; a noise budget or noise allocation program that includes Stage 2 or Stage 3 aircraft; a restriction imposing limits on hours of operations; a program of airport use charges that has the direct or indirect effect of controlling airport noise; and any other limit on Stage 2 or Stage 3 aircraft that has the direct or indirect effect of controlling airport noise. This definition does not include peak-period pricing programs whose objective is to align the number of aircraft operations with airport capacity.

Stage 2 aircraft means an aircraft that has been shown to comply with the Stage 2 requirements under 14 CFR part 36.

Stage 3 aircraft means an aircraft that has been shown to comply with the Stage 3 requirements under 14 CFR part 36.

§ 161.7 Limitations.

(a) Noise abatement operational procedures, including but not limited to preferential runway use, noise abatement approach and departure procedures and profiles, flight tracks, taxiing, engine runups, do not fall within the purview of this part unless they limit the total number of Stage 2 or Stage 3 aircraft operations at an airport or limit the hours of Stage 2 or Stage 3 aircraft operations.

(b) The notice, review, and approval requirements set forth in this part do not apply in the following cases as specified in section 9304(a)(2)(C) of Public Law 101–508:

(1) A local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on November 5, 1990.

(2) A local action to enforce a negotiated or executed airport aircraft noise or access restriction between the airport operator and the aircraft operators agreed to before November 5, 1990.

(3) An intergovernmental agreement including airport aircraft noise or access restriction in effect on November 5, 1990.

(4) A subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on November 5, 1990, where the amendment does not reduce or limit aircraft operations or affect aircraft safety.

(5) A restriction that was adopted by an airport operator on or before October 1, 1990, and that was stayed as of October 1, 1990, by a court order or as a result of litigation, if such restriction, or a part thereof, is subsequently allowed by a court to take effect.

(6) In any case in which a restriction described in paragraph (c)(5) of this section is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction, if such new restriction would not prohibit aircraft operations in effect on November 5, 1990.

(7) A local action that represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction, where the initial portion of such program was adopted during calendar year 1988 and was in effect on November 5, 1990.

(c) The notice, review, and approval requirements of Subpart D of this part with regard to Stage 3 aircraft restrictions do not apply if the FAA has, prior to November 5, 1990, formed a working group (outside of the process established by 14 CFR part 150) with a local airport operator to examine the noise impact of air traffic control procedure changes. In any case in which an agreement relating to noise reductions at such airport is then entered into between the airport proprietor and an air carrier or air

carrier constituting a majority of the air carrier users of such airport, the requirements of subparts B and D with respect to restrictions of Stage 3 aircraft operators do apply to local actions to enforce such agreements.

(d) Except to the extent required by the application of the provisions of the Act, nothing in this part eliminates, invalidates, or supersedes the following:

(1) Existing law with respect to airport noise or access restrictions by local authorities;

(2) Any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and

(3) The authority of the Secretary of Transportation to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

§ 161.9 Designation of noise measurement systems.

For purposes of this part, the following requirements apply:

(a) The A-weighted sound pressure level (L_A) at an airport and surrounding areas must be measured in units of decibels (dB) in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150;

(b) The exposure of individuals to noise resulting from operation of an airport must be established in terms of yearly day-night average sound level (DNL) calculated in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150; and

(c) Use of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of 14 CFR part 150.

§ 161.11 Identification of land uses in airport noise study area.

For the purposes of this part, uses of land that are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of 14 CFR part 150. Determination of land use must be based on professional planning, zoning, and building and site design information and expertise.

Subpart B—Notice Requirements for Noise Agreements

§ 161.101 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 2 or Stage 3 aircraft that is voluntarily agreed to by the airport proprietor; all aircraft operators serving the airport that are affected by the agreement; and all affected new entrants that have applied to serve the airport within 180 days following the effective date of the agreement and that have submitted a plan of operations to the airport operator. This subpart does not apply to restrictions specifically exempted in § 161.7 of this part.

§ 161.103 Notice of proposed agreement.

(a) An airport operator may not implement a Stage 2 or Stage 3 restriction in accordance with an agreement with all affected aircraft operators unless there has been public notice and opportunity for comment as prescribed in this subpart.

(b) Before concluding an agreement, an airport operator shall publish a notice of the proposed agreement in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the agreement;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed agreement, including its voluntary nature;

(3) A brief discussion of the specific need for and goal of the agreement;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the agreement;

(6) A notification to potential new entrant aircraft operators that they have 45 days to submit to the airport operator an application to serve the airport within 180 days following the proposed effective date of the agreement, together with a plan of operations, in order to qualify as parties to an agreement; and

(7) Information on how to submit a new entrant application and other comments, including the name and address of a contact person at the airport.

§ 161.105 Implementation of agreement.

(a) An airport operator may not implement an agreement until after the 45-day period provided for new entrant applications and unless agreed to by all affected aircraft operators.

(b) Each airport operator shall notify the FAA of the implementation of an agreement and shall include in the notification evidence of adequate notice and of agreement by all affected aircraft operators, as well as a copy of the signed agreement.

(c) To be eligible for treatment under this subpart, a noise or access agreement must be in writing and must be signed by the airport operator and aircraft operators.

§ 161.107 Termination of agreement.

If an agreement terminates, an airport operator shall so notify the FAA and shall report on the airport operator's intent with regard to the provisions contained in the terminated agreement.

Subpart C—Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 2 aircraft, but not Stage 3 aircraft, proposed after October 1, 1990.

(2) An amendment to an existing Stage 2 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 2 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 2 restriction specifically exempted in § 161.7 of this part or an agreement in accordance with subpart B of this part.

§ 161.203 Notice of proposed restriction.

(a) An airport operator may not implement a Stage 2 restriction within the scope of § 161.201 unless the airport operator provides an analysis of the proposed restriction and a public notice and opportunity for comment as prescribed in this subpart. The required analysis in § 161.205 shall be made available for public comment at least 180 days before the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the restrictions;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 2 restriction, and the location where the complete text of the restriction and sanctions for noncompliance is available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator;

(7) An invitation to comment on the proposed restriction and analysis with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments fon the airport operator, including a contact person at the airport.

§ 161.205 Required analysis of proposed restriction and alternatives.

(a) Each airport operator proposing a noise or access restriction on Stage 2 aircraft operations shall prepare the following and make it available for public comment:

(1) An analysis of the anticipated or actual costs and benefits of the proposed noise or access restriction;

(2) A description of alternative restrictions; and

(3) A description of the alternative measures considered that do not involve aircraft restrictions, and a comparison of the costs and benefits of such alternative measures to costs and benefits of the proposed noise or access restriction.

(b) In preparing the analyses required by this section, the airport operator shall use the noise measurement systems and identify the airport noise study area as specified in §§ 161.9 and 161.11, respectively, and shall use currently accepted economic methodology and reflect current airline industry practice. The airport operator shall specify the methods used to analyze the costs and benefits of the proposed restriction and the alternatives.

(c) The kinds of information set forth in § 161.305 are useful elements of an adequate analysis of a noise or access restriction on Stage 2 aircraft operations.

§ 161.207 Comment by interested parties.

(a) Each airport operator shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each airport operator shall promptly advise interested parties of changes to a proposed restriction, including changes that affect noncompatible land uses, that take place within the 180-day notice period and make available any changes to the proposed restriction and its analysis. Interested parties include those who received direct notification under § 161.203(b), or that were required to be consulted in accordance with the procedures in § 161.211 of this part, and those who have commented on the proposed restriction.

§ 161.209 Requirement for new notice.

(a) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate a new notice and direct notification following the procedures in § 161.203 or, alternately, the procedures in § 161.211. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.203(c), a new notice and direct notification must indicate that the airport operator is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction. The effective date of the restriction must be at least 180 days after the date the new notice and revised analysis are made available for public comment.

§ 161.211 Optional use of 14 CFR Part 150 procedures.

An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.207(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the restriction in the airport operator's 14 CFR part 150 submission must include the information in §§ 161.203(c) (2) through (5) and 161.205.

§ 161.213 Notification of a decision not to implement a restriction.

If a proposed restriction has been through the procedures prescribed in this subpart and the restriction is not subsequently implemented, the airport operator shall so advise the interested parties. Interested parties are described in § 161.207(b).

SUBPART D—NOTICE, REVIEW, AND APPROVAL REQUIREMENTS FOR STAGE 3 RESTRICTIONS

§ 161.301 Scope.

(a) This subpart applies to—

(1) An airport noise or access restriction on the operation of Stage 3 aircraft that first becomes effective after October 1, 1990.

(2) An amendment to an existing Stage 3 restriction, if the amendment becomes effective after November 5, 1990, and reduces or limits Stage 3 aircraft operations or affects aircraft safety.

(b) This subpart does not apply to a Stage 3 restriction specifically exempted in § 161.7, or an agreement in accordance with subpart B of this part.

(c) A Stage 3 restriction within the scope of this subpart may not become effective unless it has been submitted to and approved by the FAA. The FAA will review only those Stage 3 restrictions that are proposed by or on behalf of an entity empowered to implement the restriction.

§ 161.303 Notice of proposed restrictions.

(a) Each airport operator or aircraft operator (hereinafter referred to as applicant) proposing a Stage 3 restriction shall provide public notice and an opportunity for public comment, as prescribed in this subpart, before submitting the restriction to the FAA for review and approval.

(b) Except as provided in § 161.323, an applicant shall publish a notice of the proposed restriction in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties:

(1) Aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that are expected to be affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control jurisdiction within the airport noise study area.

(c) Each published notice and direct notification provided in accordance with paragraph (b) of this section shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the proposed restriction, including a statement that it will be a mandatory Stage 3 restriction; and the location where text of the restriction and sanctions for noncompliance are available for public inspection;

(3) A brief discussion of the specific need for, and goal of, the restriction;

(4) Identification of the aircraft operators expected to be affected;

(5) The proposed effective date of the restriction, the proposed method of implementation (e.g., city ordinance, airport rule), and any proposed enforcement mechanism;

(6) An analysis of the proposed restriction or an announcement that the analysis is available upon request from the airport operator or aircraft operator proposing the restriction;

(7) An invitation to comment on the proposed restriction and analysis, with a minimum 45-day comment period; and

(8) Information on how to request the analysis (if not included with the notice) and the address for submitting comments to the airport operator or aircraft operator proposing the restriction, including the name of a contact person.

§ 161.305 Required analysis of proposed restrictions.

Any proposed restriction on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must analyze the restriction in a manner that permits it to be understood in its entirety. Nothing in this section is intended to limit or prohibit the issuance of restrictions on Stage 2 aircraft, as long as the requirements of subpart B or subpart C, as appropriate, of this part are met. Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare the following analysis and make it available for public comment:

(a) The complete text of the proposed restriction, including the proposed wording in a city ordinance, airport rule, or other document, and all sanctions, if any, for noncompliance;

(b) A detailed description of the problem precipitating the proposed restriction, with relevant background information on factors contributing to the proposal; a description of any noise agreements or noise or access restrictions currently in effect at the airport; and measures taken to achieve land use compatibility, such as controls or restrictions on land use in the vicinity of the airport, grant assurances and measures carried out in response to 14 CFR part 150, and actions taken to comply with grant assurances requiring that—

(1) Airport development projects be reasonably consistent with plans of public agencies that are authorized to plan for the development of the area around the airport; and

(2) The sponsor—

(i) Give fair consideration to the interests of communities in or near which the project may be located;

(ii) Take appropriate action, including the adoption of zoning laws, to the extent reasonable, to restrict the use of land near the airport to activities and proposes compatible with normal airport operations; and

(iii) Not cause or permit any change in land use, within its jurisdiction, that will reduce the compatibility, with respect to the airport, of any noise compatibility program measures upon which federal funds have been expended;

(c) Maps denoting the airport geographic boundary, the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area and, if appropriate, airspace and obstacles to navigation in the vicinity of the airport. Data on current and projected airport activity that would exist in the absence of the proposed restriction;

(d) Descriptions of alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection, any land use or other nonaircraft controls or restrictions that have been considered and rejected, including those proposed under 14 CFR part 150 and not implemented, and the reasons for the rejection, or failure to implement;

(e) An analysis of the effect of the proposed restriction on airport capacity, on the number of affected operations of aircraft by class of user (and for air carriers, the number of operations of aircraft by carrier), and on the volume of passengers and cargo for the year the restriction is expected to be implemented and for the forecast timeframe;

(f) An analysis of the estimated noise impact of aircraft operations with and without the proposed restriction for the year the restriction is expected to be implemented, for a forecast timeframe after implementation, and for any other years critical to understanding the noise impact of the proposed restriction. The analysis of noise effect with and without the proposed restrictions will include—

(1) Maps of the airport noise study area overlaid with noise contours as specified in §§ 161.9 and 161.11;

(2) The number of people and the noncompatible land uses within the airport noise study area for each year the noise restriction is compared;

(3) A description of the relationship of the effect of the proposed restriction on airport users (by user class), and the noise attributable to these users in the absence of the proposed restrictions; and

(4) Technical data supporting the noise impact analysis, including the classes of aircraft, fleet mix, runway use percentage, and day/night breakout of operations;

(g) Analyses of other effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, safety, and environmental factors other than noise. The analyses shall include a description of the methods and data used;

(h) Comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. In preparing the economic analyses required by this section, the applicant shall use currently accepted economic methodology and reflect current airline industry practice. The applicant shall specify the methods used to analyze costs and benefits of the proposed restriction and the alternatives:

(1) Comprehensive analyses of estimated costs of the proposed restriction and alternative nonaircraft restrictions considering the following, as appropriate:

(i) Any additional cost of continuing aircraft operations under the restriction. Such costs must include reasonably available information concerning—

(A) Any net capital costs of acquiring or retrofitting aircraft (net of salvage and operating efficiencies) by user class; and

(B) Any other incremental recurring costs;

(ii) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning—

(A) Loss to carriers of operating profits;

(B) Decreases in passenger and shipper consumer surplus by aviation user class;

(C) Loss in profits associated with other airport services or other entities;

(D) Any significant economic effect on parties other than aviation users;

(iii) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning—

(A) Estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and

(B) Estimates of associated incremental recurring costs; or

(C) An explanation of the legal or other impediments to implementing such restrictions;

(2) Analyses of estimated benefits of the proposed restriction and alternative restrictions considering the following, as appropriate—

(i) Anticipated increase in real estate values and future construction cost savings;

(ii) Anticipated increase in airport revenues;

(iii) Other benefits, including increases in the quality of life; and

(iv) Valuation of positive safety effects;

(i) A complete draft environmental document complying with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 321);

(j) A summary of the evidence in the submission supporting the statutory conditions of approval, as delineated in § 161.317.

§ 161.307 Comment by interested parties.

(a) Each applicant proposing a restriction shall establish a public docket or similar method for receiving and considering comments and shall make comments available to interested parties upon request. Comments must be retained as long as the restriction is in place.

(b) Each applicant shall promptly advise interested parties of changes to a proposed restriction, including changes that impact noncompatible land use, that take place before the effective date of the restriction and make available any changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notification under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.323 of this part, and those who commented on a published notice of the proposed restriction.

(c) The analyses and other documentation submitted to the FAA to request approval of the restriction must include evidence that the public review process was carried out in accordance with §§ 161.303 and 161.307 (and with § 161.309, if applicable) and must include a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirement for a new notice.

(a) If there are substantial changes to a proposed restriction or changes in the analysis made prior to the effective date of the restriction, the applicant proposing the restriction shall initiate a new notice and direct notification following the procedures in § 161.303 or, alternatively, the procedures in § 161.323. A substantial change includes, but is not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft operators.

(b) In addition to the information in § 161.303(c), a new notice and direct notification must indicate that the applicant is revising a previous notice, provide the reason for making the revision, and provide a new effective date (if any) for the restriction.

(c) If substantial changes requiring a new notice and direct notification are made during the FAA's 180-day review of the proposed restriction, the applicant submitting the proposed restriction shall notify the FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, public review, and documentation of the public review. Resubmission to the FAA will restart the FAA review.

§ 161.311 Application procedure for approval of proposed restriction.

Each applicant proposing a Stage 3 restriction shall submit to the FAA the following information, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) Analysis as specified in § 161.305, as appropriate to the proposed restriction;

(b) Summary of evidence of fulfillment of conditions for approval, as specified in § 161.317;

(c) Evidence of adequate opportunity for public comment as specified in § 161.307(c); and

(d) A statement that the entity submitting the proposal is the party empowered to implement the restriction, or is submitting the proposal on behalf of such party.

§ 161.313 Review of application.

(a) *Determination of completeness.* The FAA, within 30 days of receipt of an application, will determine whether the application is complete in accordance with § 161.311. This is not an approval or disapproval of the proposed restriction itself.

(b) *Process for complete application.* When the FAA determines that a complete application has been submitted, the following procedures apply:

(1) The FAA notifies the airport operator/aircraft operator (applicant) that it intends to approve or disapprove the proposed restriction and publish notice of the proposed restriction in the Federal Register in accordance with § 161.315. In this case, the 180-day period for approving or disapproving the proposed restriction will start on the date of original receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for judicial review purposes.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete, the following procedures apply:

(1) The FAA shall notify the applicant by mail, returning the application and setting forth the type of information and analysis needed to complete the application in accordance with § 161.311.

(2) Within 30 days after the receipt of this notification, the applicant shall advise the FAA by mail whether or not it intends to resubmit and supplement its application.

(3) If the applicant does not respond in 30 days, or advises the FAA that it does not intend to resubmit and supplement the application, the application will be denied. This closes the matter without prejudice to later application and does not constitute disapproval of the proposed restriction.

(4) If the applicant chooses to resubmit and supplement the application, the following procedures apply:

(i) Upon receipt of the resubmitted application, the FAA determines whether the application, as supplemented, is complete as set forth in paragraph (a) of this section.

(ii) If the application is complete, the procedures set forth in § 161.315 shall be followed. In this case, the 180-day review period starts on the date of receipt of the supplemented application.

(iii) If the application is still not complete, the FAA so advises the applicant as set forth in paragraph (c)(1) of this section, and provides the applicant with an additional opportunity to supplement the application as set forth in paragraph (c)(2) of this section.

(iv) If the environmental document is incomplete, the FAA will so notify the applicant by mail, returning the application and setting forth the types of information and analysis needed to complete the draft environmental document. The FAA may continue to return an application until an adequate environmental document is provided. When the application is determined to be complete, including the environmental document, the 180-day period for approval or disapproval will begin upon receipt of the last supplement to the application.

(v) Following review of the application and its supplements, public comments and any other information obtained under § 161.319(a), the FAA will issue a decision approving or disapproving the application. This decision is a final decision of the Administrator for the purpose of judicial review.

(5) If the applicant declines to complete an application that has been returned twice for reasons other than to complete the environmental document, the FAA will deny the application and return it to the applicant. This closes the matter without prejudice to later application.

§ 161.315 Federal Register publication.

(a) When a complete application has been received, the FAA will notify the applicant by letter that the FAA intends to rule on the application.

(b) The FAA will also publish notice of the proposed restriction in the **Federal Register**, inviting interested persons to file comments on the application within 30 days after publication of the notice in the **Federal Register**.

§ 161.317 Conditions for approval.

When submitting an application for approval of noise or access restrictions on Stage 3 aircraft operations, the applicant must provide a summary of evidence establishing that the proposed restriction meets statutory conditions for approval. The following criteria are essential elements of acceptable evidence of fulfilling approval conditions:

(a) Evidence that the restriction is reasonable, nonarbitrary, and nondiscriminatory, such as—

(1) Evidence that a current or projected noise or access problem exists, including any court-ordered action or estimated liability concerns;

(2) Evidence that the proposed actions could relieve the problem;

(3) Evidence that there is a reasonable chance that expected benefits will equal or exceed expected cost, or that other available remedies are infeasible or would be less cost-effective;

(4) Evidence that the level of any noise-based fees that may be imposed reflects the cost of mitigating noise impacts produced by the aircraft, or that the fees are reasonably related to the intended level of noise impact mitigation; and

(5) Evidence that the noise or access standards are the same for all airport users or that the differences are justified.

(b) Evidence that the restriction does not create an undue burden on interstate or foreign commerce, such as—

(1) Evidence that the affected carriers have a reasonable chance to continue service at the airport or at other points in the national airport system and maintain similar levels of profitability;

(2) Evidence that other air carriers are able to provide adequate service to the airport and other points in the system without diminishing competition;

(3) Evidence, based on a cost-benefit analysis (prepared in compliance with § 161.305), that the estimated potential benefits of the restriction exceed the estimated potential cost of the adverse effects on interstate and foreign commerce.

(4) Evidence that similar or equal services or facilities are available at another airport controlled by the airport operator in the market area, and evidence of services available at other airports;

(5) Evidence that alternative transportation service can be attained through other means of transportation;

(6) As an alternative to paragraphs (b)(1) through (b)(5) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden on interstate or foreign commerce. The absence of comments may be submitted as evidence that there is no undue burden.

(c) Evidence that the proposed restriction maintains safe and efficient use of the navigable airspace.

(d) Evidence pertaining to any possible conflict between the proposed restriction and any existing Federal statute or regulation including those governing—

(1) Exclusive rights;

(2) Control of aircraft operations; and

(3) Existing Federal grant agreements;

(e) Evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303; and

(f) Evidence that the proposed restriction does not create an undue burden on the national aviation system, such as—

(1) Evidence regarding the current airport system capacity and any change in current and projected future airport system delays or congestion; or

(2) Evidence that nonaircraft alternative measures are inappropriate.

(3) As an alternative to paragraphs (f)(1) and (f)(2) of this section, the applicant may provide national notice in a manner similar to that required in § 161.303 of the proposed restriction and request arguments on any perceived undue burden to the national airspace system. The absence of comments may be submitted as evidence that there is no undue burden.

§ 161.319 Approval or disapproval of proposed restriction.

(a) The FAA will review the applicant's request and may request additional information from affected aircraft operators, or any other party, and may convene an informal meeting in order to gain all facts relevant to its determination.

(b) Following review of the application and any supplementary information provided under § 161.313, public comments, applicable environmental documents, and the FAA's responsibilities under this part, the FAA will issue an order approving or disapproving the application within 180 days after receipt of the application or supplement thereto under § 161.313, and will publish its decision in the **Federal Register** and notify the applicant in writing.

(c) The applicant's failure to provide substantial evidence supporting the statutory conditions for approval of the restriction is grounds for disapproval of a proposed restriction.

(d) The FAA will approve or disapprove only the Stage 3 elements of a restriction, if the restriction applies to both Stage 2 and Stage 3 aircraft operations.

(e) An order approving a restriction may be subject to the requirement that the applicant—

(1) Ensure continued compliance with factual representations and commitments by the applicant in support of the restriction; and

(2) Ensure that any environmental mitigation actions or commitments by any party that are set forth in the environmental document provided in support of the restriction are carried out.

§ 161.321 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to the FAA's approval or disapproval, and must do so if substantial changes are made as described in § 161.309. The applicant shall notify the FAA in writing of a decision to withdraw the proposed restriction for any reason. The FAA will publish a notice that it has terminated its review. A resubmittal will initiate a new FAA review.

(b) A subsequent amendment to a Stage 3 restriction in effect on the date of enactment of the Act or an amendment to a Stage 3 restriction previously approved by the FAA is subject to the procedures in this subpart if the amendment will further reduce or limit aircraft operations or affect aircraft safety. In addition, the applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments and revisions are subject to the same requirements and procedures as initial submissions.

§ 161.323 Optional use of 14 CFR part 150 procedures.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in this subpart, as a means of providing an adequate public notice and comment opportunity on a proposed Stage 3 restriction. If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the analysis of the proposed Stage 3 restriction in the airport operator's 14 CFR part 150 submission must include the information in § 161.303 (c)(2) through (c)(5), the required analysis in § 161.305, and must meet the conditions for approval in § 161.317 of this part.

(b) An amendment of a restriction, as specified in § 161.321(b) of this part, may also be processed under 14 CFR part 150 procedures.

§ 161.325 Notification of a decision not to implement a restriction.

If a Stage 3 restriction has been approved by the FAA and the restriction is not subsequently implemented, the applicant shall so advise the interested parties specified in § 161.307 of this part.

Subpart E—Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport noise or access restriction on the operation of Stage 3 aircraft that was previously agreed to in accordance with the procedures in subpart B of this part or previously approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions. It does not apply to Stage 3 restrictions specifically exempted in § 161.7 of this part.

§ 161.403 Criteria for reevaluation.

(a) A request for reevaluation must be submitted by an aircraft operator.

(b) An aircraft operator must demonstrate to the satisfaction of the FAA that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria in § 161.317 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5dB or greater over noncompatible land uses or a change of 17 percent or greater in the noncompatible land uses within an airport noise study area. The change in the noise environment or in the noncompatible land uses may be either an increase or decrease in noise or in noncompatible land uses. An aircraft operator may submit to the FAA reasons why a change that does not fall within either of these parameters justifies reevaluation, and the FAA will consider such arguments on a case-by-case basis.

(2) A change in the noise environment justifies reevaluation if the change is likely to result in the restriction's not meeting one or more of the conditions for approval set forth in § 161.317 of this part for approval. The aircraft operator must demonstrate that such a result is likely to occur.

(c) A reevaluation may not occur less than 2 years after the date of the FAA approval. The FAA will apply the same 2-year requirement to agreements under subpart B of this part that affect Stage 3 aircraft operations. An aircraft operator may submit to the FAA reasons why an agreement under subpart B of this part should be reevaluated in less than 2 years, and the FAA will consider such arguments on a case-by-case basis.

(d) An aircraft operator must demonstrate that it has made a good faith attempt to resolve any dispute over a restriction locally with the affected parties, including the airport operator, before requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

§ 161.405 Request for reevaluation.

(a) A request for reevaluation submitted to the FAA by an aircraft operator must include the following information:

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule or other document;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between the change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317;

(5) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection; and

(6) A description and evidence of the aircraft operator's attempt to resolve the dispute locally with the affected parties, including the airport operator.

(b) The FAA will evaluate the aircraft operator's submission and determine whether or not a reevaluation is justified. The FAA may request information from the affected airport operator or any other party and may convene an informal meeting in order to gather all facts relevant to its determination.

(c) The FAA will notify the aircraft operator by mail, with a copy to the affected airport operator, of its determination.

(1) If the FAA determines that a reevaluation is not justified, it will indicate the reasons for this decision.

(2) If the FAA determines that a reevaluation is justified, the aircraft operator will be notified to complete its analysis and to begin the public notice procedure, as set forth in this subpart.

§ 161.407 Notice of reevaluation.

(a) After receiving an FAA determination that a reevaluation is justified, an aircraft operator wanting to continue the reevaluation process shall publish a notice of the reevaluation in a newspaper with national circulation, an areawide newspaper of general circulation, and in aviation trade publications, and shall directly notify in writing the following parties—

(1) The airport operator, other aircraft operators serving the airport, and aircraft operators known to be interested in serving the airport that are affected by the restriction;

(2) The Federal Aviation Administration;

(3) Each Federal agency with facilities or land use control jurisdiction within the airport noise study area; and

(4) Each state and local agency and land use planning or control agency with jurisdiction within the airport noise study area.

(5) Any other party who commented on the original restriction and any group known to represent affected owners of noncompatible land use in the noise study area.

(b) Each published notice and direct notification shall include—

(1) The name of the airport and associated cities and states;

(2) A clear, concise description of the restriction, including whether the restriction was approved by the FAA or agreed to by the airport proprietor and aircraft operators, and the date of the approval or agreement;

(3) The name of the aircraft operator requesting a reevaluation and a statement that a reevaluation has been requested and that the FAA has determined that a reevaluation is justified;

(4) A brief discussion of the reasons why a reevaluation is justified;

(5) An analysis supporting the aircraft operator's reevaluation request or an announcement that an analysis is available upon request from the aircraft operator;

(6) An invitation to comment on the analysis supporting the proposed reevaluation, with a minimum 45-day comment period offered; and

(7) Information on how to request the analysis (if not in the notice) and the address for submitting comments to the aircraft operator, including the name of a contact person.

§ 161.409 Required analysis by reevaluation petitioner.

(a) An aircraft operator that has petitioned the FAA to reevaluate a restriction shall assume the burden of analysis for the reevaluation.

(b) The aircraft operator's analysis shall be made available for public review under the procedures in § 161.407 and shall include the following:

(1) A copy of the restriction or the language of the agreement as incorporated in a local ordinance, airport rule, or other document;

(2) The aircraft operator's status under the restriction (e.g., currently affected operator, potential new entrant) and an explanation of the aircraft operator's specific objection to the restriction;

(3) The quantified change in the noise environment using methodology specified in this part;

(4) Evidence of the relationship between this change and the likelihood that the restriction does not meet one or more of the conditions in § 161.317; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (a)(4) of this section, including a complete draft environmental document complying with FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.317 that are alleged to be violated, and the amount of previous analysis developed in support of the restriction. The applicant may incorporate analysis submitted in support of the restriction if it was previously approved by the FAA. The applicant is responsible for providing substantial evidence, as described in § 161.317, that one or more of the conditions are violated.

§ 161.411 Comment by interested parties.

(a) Each aircraft operator requesting a reevaluation shall establish a docket or similar method for receiving and considering comments and shall make comments available to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for at least two years after the FAA has issued its findings following reevaluation and must be made available to the FAA upon request.

(b) Each aircraft operator shall promptly notify interested parties if it makes significant changes in its analysis that substantially change the costs or benefits analyzed or affect the criteria in § 161.317 in a way that is different from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notification under paragraph (a) of § 161.407 and those who have commented on a reevaluation. An aircraft operator shall make a revised analysis available to an interested party upon request and shall extend the comment period at least 45 days from the date the revised analysis is made available.

(c) The reevaluation documentation submitted to the FAA must include evidence that the public review process was carried out in accordance with §§ 161.407 and 161.411, including the aircraft operator's summary of the comments received.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA the analysis described in § 161.409 and the evidence of adequate opportunity for public comment specified in paragraph (c) of § 161.411, with a request that the FAA complete a reevaluation of the restriction and issue findings.

(b) Following confirmation by the FAA that the aircraft operator's documentation is complete according to the requirements of this subpart, the FAA will publish a notice of reevaluation in the **Federal Register** and provide for a 45-day comment period during which interested parties may submit comments to the FAA. The FAA will specifically solicit comments from the affected airport operator and affected local governments. A submission that is not complete will be returned to the aircraft operator with a letter indicating the deficiency, and no notice will be published.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.317. To the extent necessary, the FAA may confer with the aircraft operator, airport operator, and others known to have information material to the reevaluation and may convene an informal meeting for the purpose of gathering all facts relevant to a reevaluation finding.

§ 161.415 Reevaluation action.

(a) Upon completing the reevaluation, the FAA will issue appropriate orders regarding whether or not there is substantial evidence that the restriction meets the criteria in § 161.317.

(b) If the FAA's reevalaution confirms that the restriction meets the criteria, the restriction may remain as previously agreed to or approved. If the FAA's reevaluation concludes that the restriction does not meet the criteria, the FAA will withdraw a previous approval of the restriction issued under subpart D of this part or, with respect to a restriction reached by agreement under subpart B of this part, the FAA will specify which criteria are not met.

(c) The FAA will publish a notice of its reevaluation findings in the **Federal Register** and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

§ 161.417 Notification of status of restrictions and agreements not meeting conditions of approval criteria.

If the FAA has withdrawn a previous approval made under subpart D of this part, the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.317. Agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

Subpart F—Failure to Comply With This Part

§ 161.501 Scope.

This subpart describes the penalties for failing to comply with this part with respect to Airport Improvement Program funds and FAA approval to collect Passenger Facility Charges.

§ 161.503 Notice of potential restrictions on Airport Improvement Program funds and Passenger Facility Charges.

(a) No airport operator or public agency, as defined in 14 CFR part 158 shall receive revenues under the provisions of the Act or impose a Passenger Facility Charge under section 1113(e) of the FA Act of 1958, as amended, if the FAA determines the airport is imposing any noise or access restriction in violation of this part.

(b) Upon receipt of a complaint or other evidence that an airport operator or public agency has imposed a noise or access restriction that appears to be in violation of this part, the FAA will notify the airport operator or public agency in writing of the apparent violation.

(c) The airport operator or public agency shall have 30 days from the date of receipt of the written notice specified in paragraph (b) of this section to provide satisfactory evidence that it has complied with this part.

(d) If the airport operator or public agency fails to provide satisfactory evidence that it has complied as required by paragraph (c) of this section, the FAA will provide further written notification to the airport operator or public agency that the FAA intends to terminate any outstanding Airport Improvement Program grants and rescind approval of the authority to collect a Passenger Facility Charge. The FAA will also publish the notice of intent in the **Federal Register** and invite comment from interested parties.

(e) The FAA will review the comments. If the FAA determines that the airport operator or public agency is in violation of this part, and that no satisfactory corrective action has been taken, the FAA will notify the airport operator or public agency in writing of such determination to discontinue Airport Improvement Program funds and rescind the authority to collect Passenger Facility Charges. After notification, the following will occur:

(1) Airport Improvement Program funds will be discontinued immediately upon notice, including reimbursement for costs incurred prior to the notice;

(2) The FAA will not issue new grant agreements; and

(3) The termination date of authority to collect the Passenger Facility Charge will be not more than 30 days after such determination.

Issued in Washington, DC on February 25, 1991.

John M. Rodgers,

Director, Aviation Policy and Plans.

[FR Doc. 91-4786 Filed 2-25-91; 3:32 pm]

BILLING CODE 4910-13-M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part XII

Department of Transportation

Federal Aviation Administration

14 CFR Part 157

Construction, Alteration, Activation, and Deactivation of Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 157

[Docket No. 25706, Amdt. No. 157-5]

RIN 2120-AB74

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays, until August 30, 1991, the effective date of an amendment to part 157 of the Federal Aviation Regulations (FAR). That amendment was to become effective on February 27, 1991. The amendment establishes, in part, a requirement for operators to provide the FAA with notice prior to establishing (1) a temporary airport located within a specified distance of another airport, or (2) a temporary heliport located in a residential, business, or industrial area. Based on comments from aviation organizations and operators, the FAA has identified an ambiguity in the amendment. Specifically, the amendment may imply that a limited number of landings at a site that is not an established airport constitutes the establishment of a new airport which would require notice to the FAA. To eliminate any potential interpretation of the regulation to require notice in situations where notice is not needed or intended by the FAA, the agency is considering further action that would expressly limit the applicability of Part 157 and address the ambiguity. The FAA intends to issue that action in the near future.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1990, the FAA published Amendment No. 157-4 which revises, effective February 27, 1991, certain notice requirements associated with the construction, alteration, activation, and deactivation of airports (55 FR 34994). Amendment No. 157-4 was based on comments to a Notice of Proposed Rulemaking published on October 4, 1988 (Docket No. 25706, Notice No. 88-15; 53 FR 39062). Specifically, Amendment No. 157-4 revises part 157 (CFR 14 part 157) in the following manner: (1) It provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) It clarifies the notice requirement for certain changes in the status of airport use; (3) It defines the term "private use of public lands or waters"; (4) It eliminates the term "personal use" as an airport use category; (5) It provides for an FAA determination void date; (6) It reduces the time that an airport proponent must notify the FAA of the completion of an airport project from 30 to 15 days; (7) It clarifies the scope of part 157 to include consideration of the safety of persons and property on the surface, and states that an FAA determination is not based on any environmental or land-use compatibility issue; (8) It incorporates certain editorial changes to simplify and clarify part 157; and (9) It establishes a reporting requirement for certain temporary airports and landing areas.

Based on comments from various aviation users and proponents, the FAA believes that § 157.1, Applicability (as revised by Amendment No. 157-4) may suggest that an operator who conducts a limited number of landings and takeoffs at a site that is not an established airport has established a new airport, which would require that operator to provide notice to the FAA. The FAA believes that the potential misunderstanding of the revised § 157.1 was created, in part, because of the difference in the wording and form of § 157.1 as proposed in Notice No. 88-15 and as it appeared in Amendment No. 157-4.

The Rule

To eliminate any potential reading of an agency regulation that suggests that notice is required in situations where notice is not needed or intended, the FAA is delaying the effective date of Amendment No. 157-4 to provide time for review and revision of the provisions involved to reduce the possibility of misunderstanding. The FAA intends to complete that action in the near future.

Effective Date

This amendment is adopted as a final rule to ensure that the public will not be unnecessarily inconvenienced by an apparent requirement for notice which the agency did not intend and does not require. Accordingly, I find that further notice and comment are unnecessary and contrary to the public interest, and this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b). For the same reasons, and because this amendment relieves a restriction, I find that good cause exists for making the amendment effective immediately.

Economic Evaluation

An analysis of the economic impact of the changes to part 157 resulting from Amendment No. 157-4 appears in the preamble discussion to that amendment (55 FR 34994; August 27, 1990). This delay of effective date does not affect that analysis; therefore, further regulatory evaluation is unnecessary. Additionally, the FAA believes that safety will not be affected by this delay of effective date because the time period of this delay is minimal, and the FAA is receiving voluntary reports of traffic pattern changes and temporary airport establishments from airport proponents, in addition to all other airport changes for which notice is required under existing part 157.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to insure, among other things that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

This rule will delay, until August 30, 1991, the effective date of an amendment to FAR part 157. The Regulatory Flexibility Determination that analyses the effect of the part 157 amendment is located in the docket to this rule. This delay in implementing the part 157 amendment will impose no additional costs to any party. Hence, the FAA certifies that the determination has not changed and that this rule will not have a significant economic impact, neither positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This amendment delays the effective date of an agency regulation. It does not change any reporting requirement associated with part 157.

Conclusion

For the reasons discussed in the preamble, and based on the regulatory analysis contained in the preamble to Amendment No. 157-4, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in Part 157

Airports, Aviation safety.

The Amendment

For the reasons set forth above, 14 CFR part 157 of the Code of Federal Regulations is amended as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

1. The authority citation for part 157 continues to read as follows:

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

2. The effective date of the revision to 14 CFR part 157 (Amendment No. 157-4), February 27, 1991, is delayed. The new effective date is August 30, 1991.

Issued in Washington, DC, on February 22, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-4787 Filed 2-25-91; 3:19 pm]

BILLING CODE 4910-13-M

OL
56
SS
40
FE
28
991
MI

federal register

Thursday
February 28, 1991

Part XIII

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Child Labor: Civil Penalties for Violations; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Child Labor: Civil Penalties for Children

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This rule provides technical regulatory amendments regarding the assessment of increased civil money penalties for child labor violations. On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 amended the Fair Labor Standards Act of 1938 (FLSA) by providing, among other changes, increased civil money penalties for child labor violations. These technical regulatory changes specify that all violations of the FLSA's child labor provisions occurring on or after November 5, 1990, shall be subject to the new statutory civil money penalties in any assessments made by the Department on or after March 1, 1991.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1990 (Reconciliation Act), Public Law 101-508 (Nov. 5, 1990), amended section 16(e) of the FLSA (29 U.S.C. 216(e)) to raise to $10,000 the maximum civil money penalty to be assessed for each employee who is the subject of a violation of that Act's provisions relating to child labor. Also, section 16(e) of the FLSA was modified to direct that the civil money penalty funds assessed and collected for child labor violations be deposited in the general fund of the U.S. Treasury. Prior to the Reconciliation Act, section 16(e) of the FLSA provided for a civil money penalty not to exceed $1,000 for each child labor violation and included a provision whereby any such civil money penalties collected were to be applied toward reimbursement of the costs of determining the violations and assessing and collecting the penalties.

Section 3103 of the Reconciliation Act does not specify an effective date. The Department carefully considered a number of alternatives for implementing the higher penalties. Consideration was given to applying the new penalties in any investigation opened or active after November 5, 1990, the effective date of the Act, even if some or all of the violations occurred prior to that date. (The Wage and Hour Division's investigations generally cover a prior two-year period, except in the case of willful violations in which a three-year statute of limitations applies.) However, the Department was concerned about the time needed to effect changes in its penalty system. Also, under this approach, employers could find themselves subject to penalties which could not have been contemplated at the time of the violations.

The Department also considered delaying the effective date so that the new penalties would apply only to violations occurring on or after the effective date of this rule. However, in the absence of an express provision, an act of Congress is effective on the date it is signed into law by the President. *See United States* v. *Govrilovic*, 551 F.2d 1099, 1103 (8th Cir. 1977); *United States* v. *Kowal*, 598 F. Supp. 375, 376 (D. Conn. 1984). The Reconciliation Act was signed into law on November 5, 1990. Therefore, under established rules of statutory construction, the civil penalty provisions of that law should be construed to take effect on its enacted date, November 5, 1990.

Thus, the Department concluded that the new civil penalty provisions of the Reconciliation Act apply to all child labor violations occurring on or after November 5, 1990.

The Department recognizes that a single investigation may disclose child labor violations that occurred prior to November 5, 1990, and others that occurred on or after that date. Those violations occurring before November 5 will be subject to the penalties under the prior law and those occurring on or after November 5 will be subject to the new penalties.

Finally as a matter of policy, the Department has decided not to issue any assessments under the higher penalty structure before March 1, 1991. The old (lower) penalties are thus to be assessed until March 1, 1991. The Department used this transitional period to publicize the higher penalties. The Department will continue to work with employer groups to ensure that they are made fully aware of the new penalties.

In determining the amounts assessed after March 1, 1991, the Department will consider the size of the firm and the gravity of the violations (as required by the statute) as well as such factors as the duration of violations and the exposure of individual minors to multiple violations. It is anticipated that these considerations will result in relatively small increases in assessments for nonserious violations and much larger increases for very serious violations.

Paperwork Reduction Act

These rules contain no new reporting or recordkeeping requirements subject to the Paperwork Reduction Act. The FLSA information collection requirements have been approved by the Office of Management and Budget under the control number 1215-0017.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because, as discussed below, no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

It has been determined, under 5 U.S.C. 553(b)(A), that technical amendments to regulations do not require prior public notice with an opportunity to comment. The changes being made to 29 CFR 579 and 29 CFR 580 do not affect the substantive requirements of the underlying laws and rules; nor do they modify or revoke existing rights or obligations, or establish new ones. Also, these technical changes merely conform the existing regulations to the new statutory provisions by indicating that increased penalties are authorized. Therefore, there is good cause to dispense with public comment on these new regulations. See 5 U.S.C. 553(b)(3)(B).

Also, it has been determined that good cause exists for waiving requirements to delay the effective date of these technical amendments. See 5 U.S.C. 553(d). It is impracticable and unnecessary to provide for a delayed effective date because the statutory amendments went into effect on November 5, 1990, when the President signed the Reconciliation Act.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Parts 579 and 580

Child Labor, Law enforcement, Penalties.

For the reasons set forth above, 29 CFR parts 579 and 580 are amended as set forth below.

Signed at Washington, DC, on this 26th day of February, 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

1. The authority citation for part 579 is revised to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; Sec. 3103, Pub. L. 101-508.

2. Part 579 is amended by adding a new § 579.9 to read as follows:

§ 579.9 Effective date.

The assessment of civil penalties, not to exceed $10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall apply to all such violations occurring on or after November 5, 1990. A civil penalty not to exceed $1,000 per violation shall be applicable to any such violation occurring before November 5, 1990.

3. Section 579.1 is amended by revising paragraph (a) to read as follows:

§ 579.1 Purpose and scope.

(a) Section 16(e), added to the Fair Labor Standards Act of 1938, as amended, by the Fair Labor Standards Amendments of 1974, and as further amended by the Fair Labor Standards Amendments of 1989 and the Omnibus Budget Reconciliation Act of 1990, provides that—

(1) Any person who violates the provisions of section 12, relating to child labor, or any regulation issued under that section shall be subject to a civil penalty of not to exceed $10,000 for each employee who was the subject of such a violation.

(2) Any person who repeatedly or willfully violates section 6 or 7 shall be subject to a civil penalty of not to exceed $1,000 for each such violation.

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The amount of any penalty under this subsection, when finally determined, may be—

(i) Deducted from any sums owing by the United States to the person charged;

(ii) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(iii) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary.

(5) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of title 5, United States Code, and regulations to be promulgated by the Secretary.

(6) Except for civil penalties collected for violations of section 12, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 2 of an Act entitled "An Act to authorize the Department of Labor to make special statistical studies upon payment of the cost thereof, and for other purposes" (29 U.S.C. 9a).

(7) Civil penalties collected for violations of section 12 shall be deposited in the general fund of the Treasury.

* * * * *

4. In § 579.5, paragraph (a) is revised to read as follows:

§ 579.5 Assessing the penalty.

(a) The administrative determination of the amount of the civil penalty, of not to exceed $10,000 for each employee who was the subject of a violation of section 12 of the Act relating to child labor or of any regulation issued under that section, shall be based on the available evidence of the violation or violations and shall take into consideration the size of the business of the person charged and the gravity of the violation as provided in paragraphs (b) through (d) of this section.

* * * * *

5. In § 579.8, paragraph (c) is revised to read as follows:

§ 579.8 Collection and recovery of penalty.

* * * * *

(c) As provided in section 16(e) of the Act, the sums collected for violations of section 12 of the Act shall be deposited in the general fund of the U.S. Treasury.

PART 580—CIVIL PENALTIES FOR CHILD LABOR VIOLATIONS—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS

1. The authority citation for part 580 is revised to read as follows:

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13-71, 36 FR 8755; 5 U.S.C. 500, 503, 551, 559; Sec. 9, Pub. L. 101-157, 103 Stat. 938; sec. 3103, Pub. L. 101-508.

2. In § 580.1, paragraph (a) is amended to read as follows:

§ 580.1 Applicability of rules; definitions.

(a) This part provides the rules of practice for administrative proceedings relating to determination of civil penalties for violations of the child labor provisions of the Fair Labor Standards Act of 1938, as amended by the Fair Labor Standards Amendments of 1974 (Pub. L. 93-259, 88 Stat. 55) and by the Omnibus Budget Reconciliation Act of

1990 (Pub. L. 101-508), and of the regulations issued thereunder. See also part 579 of this chapter for rules governing the issuance of notices of penalties for violations of section 12 of the Act and of the regulations issued under such section relating to child labor.

* * * * *

[FR Doc. 91-4895 Filed 2-27-91; 8:45 am]
BILLING CODE 4510-27-M

Reader Aids

Federal Register
Vol. 56, No. 40
Thursday, February 28, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3961-4172	1
4173-4522	4
4523-4706	5
4707-4926	6
4927-5150	7
5151-5304	8
5305-5646	11
5647-5738	12
5739-5922	13
5923-6260	14
6261-6548	15
6549-6788	19
6789-6938	20
6939-7298	21
7299-7550	22
7551-7782	25
7783-8100	26
8101-8256	27
8257-8680	28

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5617 (Superseded by 6245)	4921
5955 (Superseded by 6245)	4921
6123 (See 6245)	4921
6152 (See 6245)	4921
6243	4701
6244	4707
6245	4921
6246	4927
6247	5305
6248	5645
6249	5739
6250	6783
6251	7551
6252	7779
6253	7781

Executive Orders:

10982 (Amended by EO 12748)	4521
11721 (Revoked by EO 12748)	4521
12154 (Amended by EO 12749)	4921
12748	4521
12749	4711
12750	6785
12751	6787

Administrative Orders:

Presidential Determinations:

No. 91-15 of January 15, 1991	4713
No. 91-16 of January 16, 1991	4715
No. 91-17 of January 16, 1991	4717
No. 91-18 of January 22, 1991	4169
No. 91-19 of January 23, 1991	4171

Memorandums:

June 22, 1988 (see Memorandum of Feb. 22, 1991)	8099
Feb. 11, 1991	6789
Feb. 22, 1991	8099

5 CFR

531	6204
550	6205
553	6205
572	6204
591	6208
831	4929, 6549, 6552
842	4929, 6549, 6552
890	5647
930	6208
2500	8101
2502	5741
2637	3961
2641	3961

Proposed Rules:

297	7819
531	4562
532	5959
536	4562
591	7902
772	4562
831	4562
842	4562
846	4562
870	4562
890	4562

7 CFR

17	3966
47	5151
51	7553
301	4931-4933, 5647, 7783, 7784, 8101
800	4675
932	4223
981	5307
982	5151
998	4524
1001	5308
1002	5308
1004	5308
1106	5923
1150	8257
1210	5924
1270	8103
1403	6422
1421	5741
1430	4525
1806	6939
1807	6939
1900	6939
1922	8106
1940	6791, 6961
1941	3971, 6795
1943	3971
1944	6939
1945	3971
1951	6939
1955	6939
1956	6939
1965	6939
1980	8258

Proposed Rules:

55	7592
56	7592
58	4951, 6584, 7747
59	7592
70	7592
210	6297
215	6297
220	6297
235	6297
245	6297
275	7747
318	8148

319.....4160, 6297
320.....8148
330.....8148
352.....8148
354.....8148
425.....4736
718.....8044
719.....8044
777.....6994
911.....5367
918.....4953, 5367
966.....3983
968.....5161
981.....6996
1001.....4955
1002.....4955
1007.....4567, 8284
1093.....4567
1094.....4567
1096.....4567
1106.....4567
1207.....8285
1220.....7594, 7597
1413.....8044, 8285
1414.....8044
1464.....6996
1496.....5161
1497.....8287
1498.....8287
1710.....6912, 8234
1941.....8315
1943.....8315
1945.....8315
1980.....4567
3407.....8156

9 CFR

3.....6426
77.....7785
78.....4936, 4937
92.....5925
114.....7785
166.....7554
391.....7291

10 CFR

2.....7787
11.....5926
25.....5926

Proposed Rules:

Ch. I.....5665
100.....8300
715.....6319

12 CFR

201.....6555
203.....5746
229.....7799
265.....6261
614.....5927
1613.....5648

Proposed Rules:

229.....4743
271.....5778
611.....7747
614.....6422
619.....6422
620.....7747
621.....7747
701.....5061, 5959

13 CFR

121.....5747

Proposed Rules:

120.....5781
121.....5734
125.....5734

14 CFR

1.....5455
23.....5455
39.....3972, 3974, 4532, 4540, 5337–5343, 5749–5752, 6556, 6796–6806, 7555–7563, 7802, 8107
71.....5153, 5154, 5345, 6662
73.....5154, 5345, 5926
75.....5926
93.....4676
97.....5346, 8272
157.....8674

Proposed Rules:

Ch. I.....5164, 5781, 8300
Ch. III.....6301
21.....4581, 4758
23.....4581, 4758
39.....3983, 4581, 5368–5375, 5781, 6812, 6820, 7611–7624, 7820, 8160
71.....483, 4584, 4760, 4956, 5164, 5376, 5377, 6584–6593, 7625, 7626, 8306
75.....5165, 5378
91.....5576, 5580, 6594, 8628
108.....4322
121.....6542
129.....4326
135.....6542
158.....4676
161.....5576, 6644
243.....5665

15 CFR

700.....8106
769.....8273
770.....8273
771.....8273
772.....8273
773.....8273
774.....8273
777.....8273
786.....8273
799.....5649, 8273

Proposed Rules:

Ch. IX.....8307
940.....5262

16 CFR

Proposed Rules:

Ch. II.....5965
436.....5783
1500.....8321

17 CFR

4.....8109
30.....6262, 8112
211.....4938
229.....7242
230.....8113
239.....8113
240.....7242
249.....7242
270.....7242, 8113
274.....7242, 8113

Proposed Rules:

4.....8161
140.....8161

18 CFR

2.....5829
157.....7565
271.....4173
284.....6962
385.....4719

Proposed Rules:

Ch. I.....8164

19 CFR

4.....4174, 7804
161.....5347

Proposed Rules:

162.....5665

20 CFR

302.....6966
348.....6966
404.....4542
416.....5534

Proposed Rules:

330.....4585
416.....7821
Ch. V.....6999
626.....5124
655.....5670
656.....5124
Ch. IX.....5124

21 CFR

5.....6263, 8275
102.....6263
161.....6263
172.....6968
510.....7805
546.....7805
1308.....5753
1310.....8277

Proposed Rules:

60.....5784
101.....4675
104.....4675
105.....4675
135.....5731
211.....5671
808.....5731
820.....5965
1000.....7316
1002.....7316
1301.....3987, 4181, 4182, 6423
1304.....4181, 6423

22 CFR

171.....6968

Proposed Rules:

120.....6332
123.....6332
126.....6332
138.....8167
521.....4761

23 CFR

230.....4720

24 CFR

Subtitle A.....4412, 4436, 4458, 4494
91.....4480
200.....5349, 7518
203.....4476
215.....7518
221.....7518
234.....4476
235.....6264, 7518
236.....7518
247.....7518
290.....7518
590.....8807
760.....7518
813.....7518
880.....7518
881.....7518
882.....7518
883.....7518
884.....7518
885.....7518
886.....7518
887.....7518
888.....6556
900.....7518
904.....7518
905.....7518
913.....7518
960.....7518

Proposed Rules:

200.....6216
203.....6216
234.....6216
888.....6714
966.....6248

25 CFR

Proposed Rules:

23.....5568

26 CFR

1.....3976, 4542, 5062, 5455, 8130
301.....4676, 6969
602.....4676, 8130

Proposed Rules:

1.....5456, 5732, 8306
31.....3988, 4023, 4183–4243, 4586, 4770, 4956
42.....4589
43.....4590
48.....7627
301.....7001

27 CFR

Proposed Rules:

4.....4770

28 CFR

14.....4943
511.....4158
540.....4158
541.....4156

Proposed Rules:

35.....8356
36.....7452, 7494
524.....5302
540.....5303

29 CFR

541.....8250
579.....8678
580.....8678
697.....5944
1613.....6963
1926.....5061
2619.....8285
2676.....6266

Proposed Rules:

1630.....8578

30 CFR

243.....5946
710.....6224
901.....4542, 8277
916.....5559
917.....4721
931.....7806
935.....6963, 7810

936.....6266

Proposed Rules:

56.....8168
57.....8168
58.....8168
70.....8168
71.....8168
72.....8168
75.....8168
100.....8171
701.....4956
816.....4956
817.....4956
901.....7822
917.....4590, 6594
920.....6333
935.....6336, 6596, 6597, 7002
943.....4243
948.....6337

31 CFR

500.....5350
535.....6546
570.....5351
575.....5838

32 CFR

40b.....6565
199.....6268, 7300
221.....6711
247.....6273
361.....6273
619.....5651
701.....6985
706.....7565

33 CFR

117.....4175, 6277, 7302
165.....4559, 4943, 5155, 5156, 5754, 6277, 7303
334.....5300

Proposed Rules:

100.....7824
110.....5379
117.....4023, 4024, 5166
151.....4676, 6423
165.....7316
1222.....3978

34 CFR

74.....4675
80.....4675

36 CFR

213.....8279
217.....4721
1254.....5731
1258.....5651

Proposed Rules:

219.....6506

37 CFR

201.....7811–7814
202.....7812–7814
211.....7816

38 CFR

3.....4729, 5755, 5756
17.....5756
21.....7568
36.....5950

Proposed Rules:

3.....7630–7632
4.....7632
17.....4025

40 CFR

30.....7304
51.....5488, 6278
52.....4944, 5458, 5488, 5652, 5663, 5757, 6567, 8130
60.....4176, 5488, 5525, 5758, 8280
61.....8280
80.....5352
81.....5653
180.....4946, 6996
185.....6987, 6989
228.....6569, 8133
260.....7134
261.....3978, 5910, 7134, 7567
264.....7134
265.....7134
266.....7134
270.....7134
271.....5656, 7134, 7305
300.....5598, 5634

Proposed Rules:

Ch. I.....4957, 5167, 5674, 5675, 7825
51.....5900
52.....5173, 5900
61.....6339
136.....5090
144.....4772
145.....4772
146.....4772
147.....4772
148.....4772
180.....4772, 4959, 5788, 6821, 7003
185.....5788
228.....4777
721.....8171–8173

41 CFR

Ch. 101.....5356
201–4.....4947
201–9.....4947
201–18.....4947
201–20.....4947
201–23.....4947
201–24.....4947
201–39.....4947

Proposed Rules:

101–8.....5360

42 CFR

410.....4675

Proposed Rules:

Ch. I.....4961
412.....8476

43 CFR

4.....5061
20.....6991

Public Land Orders:

6403 (Corrected by PLO 6626).....5731
6626.....5731

44 CFR

64.....5951, 8135–8139
65.....7306, 7307
67.....6279, 8142

Proposed Rules:

67.....5966, 6341, 8174

45 CFR

301.....7988
302.....7988
303.....7988
304.....7986
1235.....4730

Proposed Rules:

689.....5789

46 CFR

380.....3979
580.....6809
581.....6809
583.....6809

Proposed Rules:

12.....8311
15.....6598
16.....6778
580.....7634
581.....7634

47 CFR

0.....6582
2.....6991
15.....5658, 6288
61.....5952
73.....4176–4178, 4733, 4949, 4950, 5157, 5158, 7309–7311, 8281, 8282
80.....4734, 6582
90.....4178, 6991

Proposed Rules:

1.....8312
2.....7004
15.....7004
64.....4782
69.....5190
73.....4783–4785, 5191, 7317, 7318, 8312, 8313
76.....4027
90.....7635

48 CFR

570.....4734
Ch. 7, App. C.....7586
Ch. 7, App. D.....7568, 7586
Ch. 7, App. G.....7586
731.....7568
752.....7586
914.....8145
915.....5064, 8145
950.....5064
952.....8145
970.....5064
1501.....6288
1516.....6288
1537.....5957

Proposed Rules:

Ch. 2, App. C.....6054
Ch. 2, App. D.....6054
Ch. 2, App. T.....6054
201.....6054
204.....6054
215.....6054
217.....6054
223.....6054
225.....6054
237.....6054
239.....6054
241.....6054
242.....6054
244.....6054
245.....6054
252.....6054
253.....6054
522.....6800
552.....6800
901.....6826
904.....6826
908.....6826
909.....6826
914.....6826
915.....6826
922.....6826
933.....6826
935.....6826
942.....6826
943.....6826
952.....6826
970.....6826
971.....6826

49 CFR

1.....4560, 4736, 5957, 6809, 6810
27.....6811
107.....6616
171.....6616
172.....7312
173.....7312, 8616
385.....5363
541.....4736
571.....6268, 7589, 8282

Proposed Rules:

Ch. I.....6934
173.....7318
178.....7318
196.....7636
355.....7319
571.....5061, 5792, 6602, 6603, 7639, 7640, 7826
575.....7643
580.....8313
588.....6603
1033.....4028
1051.....7323
1220.....7323

50 CFR

611.....6290
652.....3980
661.....7312
672.....5158, 5775, 6992, 8146
675.....5659, 5775, 6290, 6993, 7314
683.....5159
685.....5159

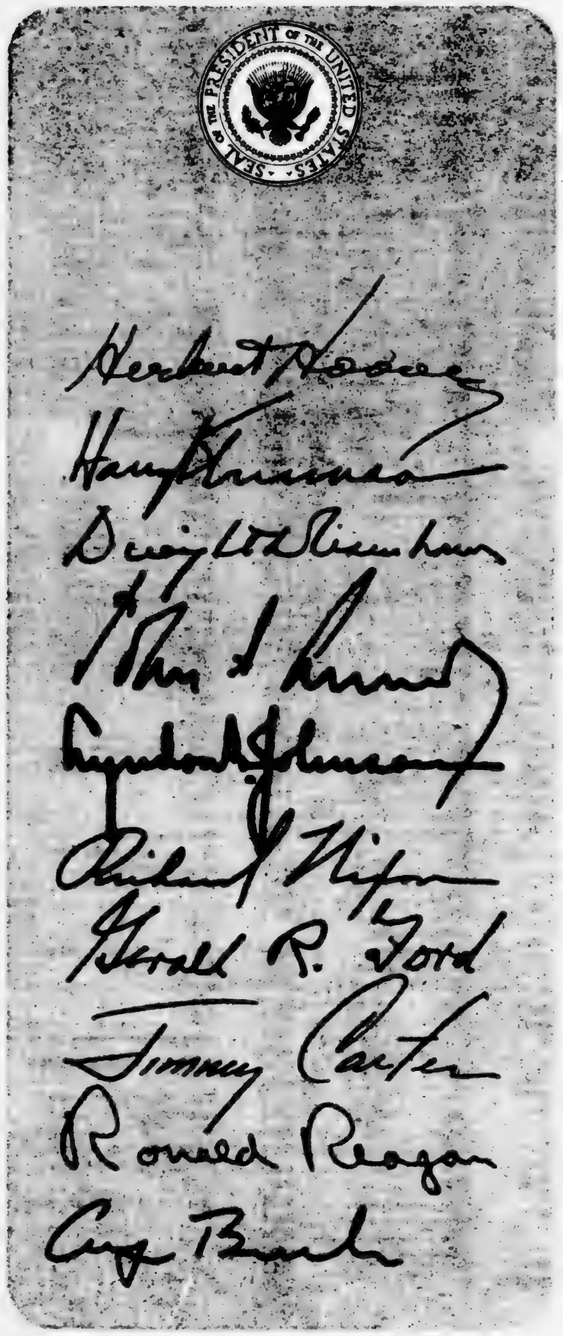
Proposed Rules:

17.....4028, 5192, 6341–6353
18.....7645
23.....4965
91.....4591
216.....4029
301.....4029, 8178
611.....4029, 6614
658.....5792
672.....4029, 8317
675.....4029
683.....5675

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Jimmy Carter

1978
(Book I) $24.00

1979
(Book I) $24.00

1979
(Book II) $24.00

1980–81
(Book I) $21.00

1980–81
(Book II) $22.00

1980–81
(Book III) $24.00

Ronald Reagan

1981 ..... $25.00

1982
(Book II) $25.00

1983
(Book I) $31.00

1983
(Book II) $32.00

1984
(Book I) $36.00

1984
(Book II) $36.00

1985
(Book I) $34.00

1985
(Book II) $30.00

1986
(Book I) $37.00

1986
(Book II) $35.00

1987
(Book I) $33.00

1987
(Book II) $35.00

1988
(Book I) $39.00

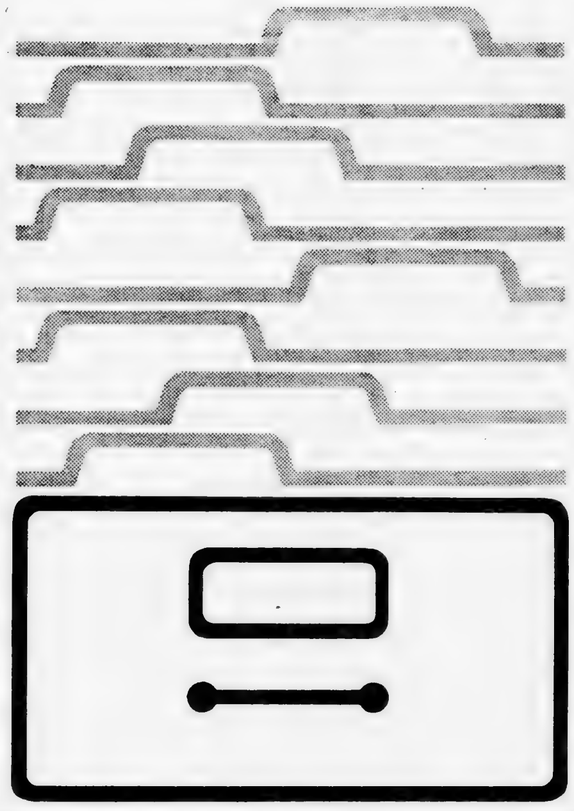
George Bush

1989
(Book I) $38.00

1990
(Book II) $40.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy!
To fax your orders and inquiries. 202-275-0019

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1990 SUPPLEMENT TO THE GUIDE, S/N 069-000-00025-8 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 8/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

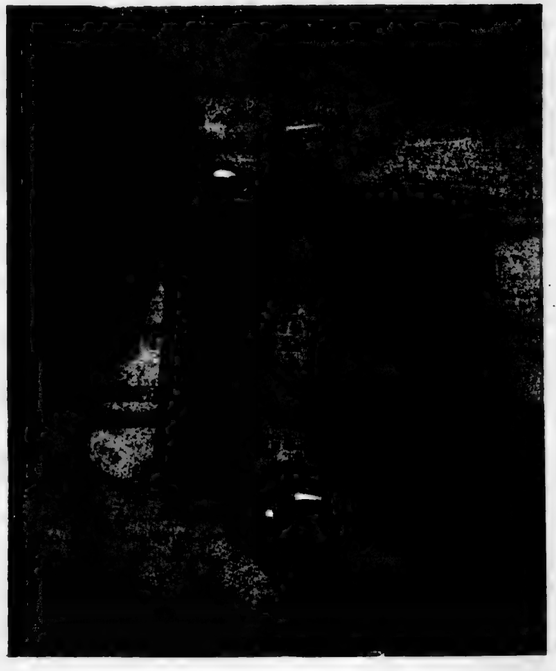
Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188



Superintendent of Documents Subscriptions Order Form

Order Processing Code
* 6462

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ Federal Register: ____ One year: $195 ____ Six months: $97.50

____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6216

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me ____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

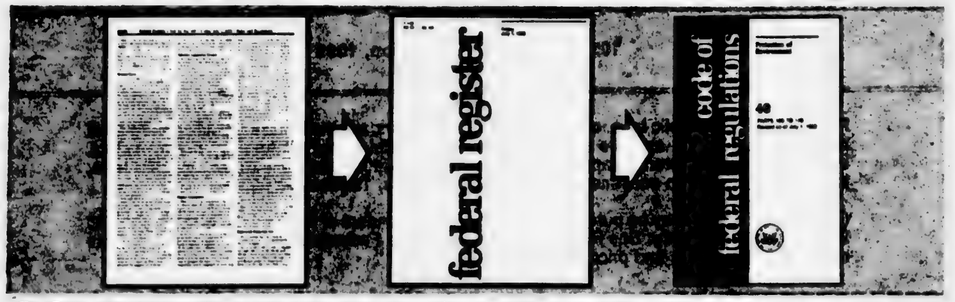
Thank you for your order!

_____
(Signature) 1/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly LSA (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*6463

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

OL
56

SS
40

FE
28

091

MI

OL
56
SS
41
MR
1
991
MI

3-1-91
Vol. 56 No. 41

federal register

Friday
March 1, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
41
MR
1
991
MI

3-01-91
Vol. 56 No. 41
Pages 8881-8904

federal register

Friday
March 1. 1991

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-3186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-3186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-3186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

Acquired Immune Deficiency Syndrome, National Commission
See National Commission on Acquired Immune Deficiency Syndrome

Agricultural Marketing Service
RULES
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 8684
Perishable Agricultural Commodities Act:
License fee increase, 8683

Agricultural Stabilization and Conservation Service
NOTICES
Feed grain donations:
Affiliated Tribes of Fort Berthold Indian Reservation, ND, 8739

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 8750

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
High risk youth; drug and alcohol abuse; prevention, treatment, and rehabilitation, 8763
Pregnant and postpartum women and their infants; model projects, 8771

Arms Control and Disarmament Agency
NOTICES
Meetings:
General Advisory Committee, 8739

Army Department
See also Engineers Corps
NOTICES
Meetings:
Military personal property claims symposium, 8751
Military personal property symposium, 8750
Military/industry mobile homes symposium, 8750

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
State and community-based childhood lead poisoning prevention programs, 8779

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
California, 8739

Coast Guard
RULES
Drawbridge operations:
Connecticut, 8712
Pollution:
Prevention of pollution from ships; garbage discharges records, waste management plans, and informational placards, 8828
NOTICES
Meetings:
Coast Guard Academy Advisory Committee, 8824
Lower Mississippi River Waterway Safety Advisory Committee, 8825

Commerce Department
See also Export Administration Bureau; Foreign Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; Patent and Trademark Office
NOTICES
Agency information collection activities under OMB review, 8739

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 8749, 8750 (2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Mauritius, 8746

Defense Department
See Air Force Department; Army Department; Engineers Corps

Drug Enforcement Administration
RULES
Administrative functions, practices, and procedures:
Seizure, forfeiture, and disposition of property; conforming amendments, 8685

Employment and Training Administration
NOTICES
Meetings:
Achieving Necessary Skills Commission, 8799

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 8794, 8798 (2 documents)

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Grant and cooperative agreement awards:
Guided Wave, Inc., 8751
Natural gas exportation and importation:
ProGas Ltd., 8754
Spot Market Corp., 8754

Engineers Corps
NOTICES
Meetings:
Inland Waterways Users Board, 8751

Environmental Protection Agency
PROPOSED RULES
Air pollution control; new motor vehicles and engines:
Fuel economy test procedures; alternative-fueled automobile CAFE incentives and fuel economy labeling requirements, 8856
NOTICES
Agency information collection activities under OMB review, 8759
Grants and cooperative agreements; availability, etc.:
Agency statements—
Comment availability, 8759
Weekly receipts, 8760
Pesticide programs:
E.I. du Pont de Nemours & Co., Inc.; nonindigenous microbial pesticide; field test, 8760
Water pollution control:
Prince William Sound and Gulf of Alaska; restoration work plan and program, 8898

Executive Office of the President
See Presidential Documents; Science and Technology Policy Office

Export Administration Bureau
NOTICES
Meetings:
Automated Manufacturing Equipment Technical Advisory Committee, 8740

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 8704, 8705
(2 documents)
Pratt & Whitney, 8707
Schweizer, 8706
Airworthiness standards:
Special conditions—
Embraer model CBA-123 airplanes, 8699
McDonnell Douglas model DC-8-70 series airplanes, 8701
PROPOSED RULES
Airworthiness standards:
Air Cruisers Co., 8732
Pratt & Whitney, 8733

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 8829

Federal Emergency Management Agency
NOTICES
Flood insurance program:
Mortgage portfolio protection program, 8882

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 8829
Natural gas certificate filings:
Williams Natural Gas Co. et al., 8751
Applications, hearings, determinations, etc.:
East Tennessee Natural Gas Co., 8753
Mayo, Doyle, 8753
Penn-York Energy Corp., 8754
Transcontinental Gas Pipe Line Corp., 8754

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Pulaski County, AR, 8825

Federal Housing Finance Board
RULES
Affordable housing program, 8688

Federal Maritime Commission
NOTICES
Complaints filed:
Barbeau, John, et al., 8761
Cape Fear Bonded Warehouse, Inc., et al., 8761

Federal Reserve System
RULES
Organization, functions, and authority delegations:
Reserve Banks et al., 8687
NOTICES
Meetings; Sunshine Act, 8829
(2 documents)
Applications, hearings, determinations, etc.:
Meridian Mutual Holding Co. et al., 8761
Norwest Corp. et al., 8762

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Walnut Creek National Wildlife Refuge, IA, 8791
Wetlands losses in United States, 1780's to 1980's; report to Congress, 8792

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Halofuginone hydrobromide, 8710
Kanamycin, etc., 8709
Oxfendazole suspension; correction, 8710
Organization, functions, and authority delegations:
Assistant General Counsel, 8709
NOTICES
Color additive petitions:
Hilton Davis Co., 8761
GRAS or prior-sanctioned ingredients:
Uncle Ben's, Inc., 8761
Meetings:
Advisory committees, panels, etc., 8761

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Indiana, 8740

Maine—
Northern Trading Company, Inc.; toiletries/cosmetics plant, 8740

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service; Social Security Administration
RULES
Grants administration:
Audits of institutions of higher education and other nonprofit organizations, 8712

Health Care Financing Administration
RULES
Medicare and Medicaid:
Miscellaneous amendments, 8832

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS)—
Regional education and training centers program, 8782
National practitioner data bank; research capacity expansion; medical malpractice and liability, 8784

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 8755
Decisions and orders, 8756

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Historically black colleges and universities; technical assistance, 8893
Facilities to assist homeless—
Excess and surplus Federal property, 8785

Immigration and Naturalization Service
RULES
Seizure and forfeiture of conveyances; conforming amendments, 8685

Indian Affairs Bureau
NOTICES
Irrigation projects; operation and maintenance charges:
Flathead Indian Irrigation Project, MT, 8786

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Mines Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
National Indian Gaming Commission, 8786

International Trade Administration
NOTICES
Antidumping:
Circular welded carbon steel pipes and tubes from Taiwan, 8741
Oscillating fans and ceiling fans from China, 8742
Countervailing duties:
Apparel from Thailand, 8743
Cotton shop towels from Pakistan, 8743
Short supply determinations:
Steel tubes, 8745

Interstate Commerce Commission
RULES
Organization, functions, and authority delegations:
Secretary, 8721
Tariffs and schedules:
Rail rate quotations; filing exemptions, 8722
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 8792
Railroad services abandonment:
CSX Transportation, Inc., 8792

Justice Department
See also Drug Enforcement Administration; Immigration and Naturalization Service
RULES
Seizure and forfeiture; conforming amendments, 8685
PROPOSED RULES
Federal claims collection:
Tax refund offset, 8734

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration
NOTICES
Agency information collection activities under OMB review, 8793

Land Management Bureau
NOTICES
Classification of public lands:
Nevada, 8788
Coal leases, exploration licenses, etc.:
Colorado, 8788
Conservation and recreation areas:
California Desert Conservation Area Plan, 8788
El Malpais National Conservation Area General Management Plan, NM, 8789
Meetings:
Salmon District Advisory Council, 8789
Oil and gas leases:
Wyoming, 8789
Realty actions; sales, leases, etc.:
California, 8790
Michigan, 8790
Santa Rosa Mountains National Scenic Area, CA; management philosophy statement, 8790
Survey plat filings:
Oregon and Washington, 8791

Merit Systems Protection Board
NOTICES
Agency information collection activities under OMB review, 8804

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Beaver Creek Coal Co. et al., 8800
Cyprus Empire Corp. et al., 8800

Mines Bureau
NOTICES
Meetings:
Mining and Mineral Resources Research Advisory Committee, 8792

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 8718
NOTICES
Meetings:
Aeronautics Advisory Committee, 8805
(2 documents)
Space Science and Applications Advisory Committee, 8805

National Commission on Acquired Immune Deficiency Syndrome
NOTICES
Meetings, 8806

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Foreign fishing and domestic fisheries—
Fishery enforcement officers, 8722
Gulf of Alaska groundfish, 8723, 8730
(2 documents)
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico shrimp, 8737
NOTICES
Exxon Valdez oil spill; State/Federal natural resource damage assessment and restoration planning activities, 8746
Meetings:
Western Pacific Fishery Management Council, 8748

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Research Initiation and Improvement Special Emphasis Panel, 8806
Meetings:
Cellular Biosciences Special Emphasis Panel et al., 8807
Teacher Preparation and Enhancement Special Emphasis Panel, 8806

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 8807
Meetings:
Reactor Safeguards Advisory Committee, 8807
Applications, hearings, determinations, etc.:
Radiology-Ultrasound-Nuclear Consultants, PA, 8808
Sacramento Municipal Utility District, 8811

Nuclear Waste Technical Review Board
NOTICES
Meetings, 8812

Occupational Safety and Health Administration
NOTICES
Variance applications, etc.:
Gannett Outdoor Companies, 8801

Patent and Trademark Office
NOTICES
Meetings:
Patent Law Reform Advisory Commission, 8748

Personnel Management Office
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 8813
Pay-for-Performance Labor-Management Committee, 8813

Presidential Documents
ADMINISTRATIVE ORDERS
International Narcotics Control Act of 1990; delegation of authority (Presidential Determination 91-20 of January 25, 1991), 8661

Public Health Service
See also Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 8785

Research and Special Programs Administration
NOTICES
Pipeline safety; waiver petitions:
Texas Gas Transmission Corp., 8826

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 8829

Science and Technology Policy Office
NOTICES
Meetings:
President's Council of Advisors on Science and Technology, 8813

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Hyperion Government Mortgage Trust II et al., 8821
Merrill Lynch Short-Term Global Income Fund, Inc., et al., 8814
Public utility holding company filings, 8817
UNIX System Laboratories, Inc., 8819
Value Line U.S. Government Securities Trust, 8820

Small Business Administration
NOTICES
Disaster loan areas:
California et al., 8822
Meetings:
Veterans Business Affairs Advisory Committee, 8824
Meetings; regional advisory councils:
Arkansas, 8822
California, 8823
Connecticut, 8823
Indiana, 8822
Mississippi, 8823

Oklahoma, 8823
Texas, 8823, 8824
(4 documents)
Applications, hearings, determinations, etc.:
Empire State Capital Corp., 8824

Social Security Administration
NOTICES
Agency information collection activities under OMB review, 8785

State Department
NOTICES
Munitions exports to Oldelft et al.; suspension and denial, 8824

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Archer Federal Savings & Loan Association, 8827
Citizens Federal Savings & Loan Association of Rome, 8827
First Federal Bank of Northwest Georgia, 8827
First Federal Savings & Loan Association of Leitchfield, 8827
First Federal Savings Bank, 8827
(2 documents)
Great American Federal Savings Bank, F.S.B., 8828
Great Valley Savings Association, 8828
Inter-City Federal Savings Bank, 8828
Perpetual Federal Savings Bank, 8828
Western Federal Savings & Loan Association, 8828

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Research and Special Programs Administration

Treasury Department
See Thrift Supervision Office

United States Information Agency
RULES
Exchange visitor program:
Citizenship of responsible officers and sponsors; correction, 8711

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 8832

Part III
Environmental Protection Agency, 8856

Part IV
Department of Transportation, Coast Guard, 8878

Part V
Federal Emergency Management Agency, 8882

Part VI
Department of Housing and Urban Development, 8893

Part VII
Environmental Protection Agency, 8898

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders
Presidential Determinations:
No. 91-20 of January 25, 1991 8681
Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991) 8681

7 CFR
46 8683
905 8684

8 CFR
274 8685

12 CFR
265 8687
960 8688

14 CFR
21 (2 documents) 8699-8701
25 (2 documents) 8699-8701
39 (4 documents) 8704-8707
Proposed Rules:
39 (2 documents) 8732, 8733

21 CFR
5 8709
520 (2 documents) 8709, 8710
556 8710
1316 8685

22 CFR
514 8711

28 CFR
8 8685
Proposed Rules:
11 8734

33 CFR
117 8712
151 8878

40 CFR
Proposed Rules:
86 8856
600 8856

42 CFR
400 8832
405 8832
406 8832

45 CFR
74 8712

46 CFR
25 8878

48 CFR
1803 8718
1804 8718
1805 8718
1806 8718
1814 8718
1815 8718
1819 8718
1836 8718
1849 8718
1852 8718
1853 8718

49 CFR
1011 8721
1330 8722

50 CFR
611 (2 documents) 8722, 8723
620 8722
672 (2 documents) 8723-8730
Proposed Rules:
658 8736

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 91-20 of January 25, 1991

Delegation of Presidential Authorities Under the International Narcotics Control Act of 1990

Memorandum for the Secretary of State [and] the Secretary of Defense

By virtue of the authority vested in me by the Constitution and the laws of the United States of America, including the provisions of the International Narcotics Control Act of 1990 (the INCA), Public Law 101-623, and 3 U.S.C. section 301, I hereby:

(1) Delegate to the Secretary of State the functions conferred upon me by the following sections of the INCA:

Section 4(a); section 4(e); and, in consultation with the Secretary of Defense, section 13.

(2) Delegate to the Secretary of Defense the functions conferred upon me by section 8 of the INCA.

(3) Delegate to the heads of executive departments and agencies those functions under the INCA relating to notifications to the Congress insofar as such functions relate to programs for which those heads of departments and agencies have responsibilities for notifications to the Congress under Executive Order No. 12163, as amended; provided that the heads of departments and agencies shall consult with the Secretary of State before exercising the functions delegated by this paragraph with regard to narcotics-related assistance.

The Secretary of State is authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 25, 1991.

[FR Doc. 91-5077
Filed 2-27-91; 3:51 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket No. FV-91-361]

Increase in License Fees: Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the regulations (other than Rules of Practice) under the Perishable Agricultural Commodities Act (PACA) to increase license fees. The purpose of the revision is to cover increased operating costs associated with administration of the program.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: N.E. Riddle, Assistant to the Chief, PACA Branch, room 2095–S., Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, Phone (202) 475–3244.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established in the Secretary's Memorandum 1512–1 and supplemental memorandum dated March 5, 1980, to implement Executive Order 12291 and has been classified as "Non-Major" because it does not meet any of the criteria identified under the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Although there are numerous small entities doing business subject to the Perishable Agricultural Commodities Act, the regulation revision merely assures that the program, intended to prevent unfair trade practices in the industry, is sufficiently funded to perform its responsibilities.

The proposed action will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices.

Background

The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent practices.

The law provides for the enforcement of contracts by providing for the collection of damages from anyone who fails to meet contractual obligations. On May 7, 1984, an amendment to the PACA, Public Law 98–273, impressed a statutory trust on licensees for perishable agricultural commodities received, products derived from, and any receivables or proceeds due from the sale of the commodities for the benefit of suppliers, sellers, or agents that have not been paid.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the Act must be licensed. The cost of administering the Act is financed entirely through the license fees paid by those engaging in business subject to the law. The Secretary is charged with setting the license fee at a level necessary to meet the expenses of administration within the maximum provided in the law by Congress. Amendments to the Act in 1986 permitted the Secretary to assess a base annual fee of up to $400, plus an assessment of up to $200 for each branch operation exceeding nine. The maximum aggregate annual license fee for any firm cannot exceed $4,000.

The administration of the trust statute has increased the workload under the program along with related travel expenses. As a by-product of the Trust amendment, there has also been an increase in disciplinary complaint filings and investigations that require extensive in-depth personal audits. The U.S. Department of Agriculture anticipates that the workload and travel requirements will continue to increase as more growers, shippers, and distributors seek to utilize the benefits and protection of the Trust statute.

Under the current fee assessment, the program has been operating with a deficit and drawing down its trust fund reserve. Unless fees are increased, the program will deplete its trust fund reserve during Fiscal Year 1991, at which time enforcement activities will have to be curtailed.

Comments

On January 8, 1991, AMS published in the Federal Register (56 FR 654) a proposed revision of the regulations to increase license fees to cover operating costs associated with the program. The public was invited to submit written comments for 30 days, ending February 7, 1991. During that period, the Agency received six comments on the proposed rule. Five were from trade associations representing large numbers of PACA licensees. The sixth was from an individual firm subject to the law. All supported the fee increase. While favoring the fee increase, three of the commentors also urged the Department to seek legislation to implement the proposals contained in the recent PACA Industry Advisory Committee's report to Congress. These proposals include recommendations to expand the license fee base to certain other segments of the fruit and vegetable industry. It is contemplated that the Advisory Committee's recommendations will be subject to Congressional review.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The requirements set forth below are substantially similar to those published as a proposed rule on January 8, 1991, (2) the availability of funding at a higher fee level is needed sooner for sound administration of the program, and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 46

Agricultural commodities.

Accordingly, 7 CFR part 46 is amended as set forth below:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Section 15, 46 Stat. 537; 7 U.S.C 499o, 499c(b).

2. Section 46.6 is revised to read as follows:

§ 46.6 License fee.

The annual license fee is four hundred (400) dollars plus two hundred (200) dollars for each branch or additional business facility operated by the applicant exceeding nine. In no case shall the aggregate annual fees paid by any applicant exceed four thousand (4,000) dollars. The Director may require that the fee be in the form of a money order, bank draft, cashier's check, or certified check made payable to Agricultural Marketing Service. Authorized representatives of the Division may accept fees and issue receipts therefore.

Dated: February 20, 1991.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 91-4960 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 905

[Docket No. FV-91-248IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redistricting of Citrus Districts and Reapportionment of Grower Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule redefines districts in the production area for Florida citrus and reapportions Citrus Administrative Committee (CAC) membership established under Marketing Order No. 905. The CAC is comprised of nine grower members apportioned among the four districts within the Florida citrus production area. This action is designed to more accurately apportion the grower members among the districts in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

DATES: This rule becomes effective March 1, 1991. Comments which are received by April 1, 1991, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and majority of the producers may be classified as small entities.

Section 905.114 (7 CFR 905.114) of the order's rules and regulations defines the four citrus districts into which the production area is currently divided. That section also outlines the apportionment of nine grower members on the CAC, each with an alternate, among those districts. Under current representation, Citrus Districts One, Two, and Three each have two grower members, while Citrus District Four has three grower members.

Section 905.14 (7 CFR 905.14) of the order authorizes the CAC, with the approval of the Secretary, to redefine the districts into which the production area is divided and reapportion or otherwise change the grower membership of the districts. The objective is to align the districts and apportion the grower membership in accordance with proportionate quantities of shipments, production, and citrus acreage in the production area in Florida.

Section 905.14 requires that the number of members from each district be based, insofar as practicable, upon the respective averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and, (3) the total number of acres of citrus in each district. That section also requires that the CAC consider such redistricting and reapportionment during this fiscal period (1990-91) and that it be announced on or before March 1, 1991. With a nine-member committee, each member represents about 11 percent of the acreage, production, and shipments.

The CAC recommended, based on an analysis of these factors, that one grower member position be moved from Citrus District One to Citrus District Three. In addition, the CAC recommended that the District boundaries be changed by moving Osceola County from Citrus District One to Citrus District Two. As reapportioned, Citrus District One will be represented by one member, Citrus District Two by two members, and Citrus Districts Three and Four by three members each.

The CAC reports that these changes reflect shifts in production from the northern to the southern part of the Florida citrus producing area over the past five year period. The CAC also reports that during the five year period (1986-90), the combined average percentages used as the basis for this reapportionment and redistricting are as follows: Citrus District One, 12.0 percent; Citrus District Two, 20.9 percent; Citrus District Three, 32.5 percent; and Citrus District Four, 34.7 percent.

This action reflects the CAC's and the Department's appraisal of the need to make the changes hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it more accurately aligns the districts and apportions the CAC membership in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) This action provides more equitable representation on the CAC by bringing representation more in line with the citrus acreage within the districts of the production area in Florida, and the quantities of citrus produced and shipped from this area;

(2) Redistricting and reapportionment actions are to be announced by March 1, 1991 to be effective for the 1991-92 season as provided by the order; and

(3) This interim final rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 905.114 is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the Counties of Indian River and Brevard not included in Regulation Area II. This district shall have one grower member and alternate.

(b) Citrus District Two shall include the Counties of Polk and Osceola. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the Counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(d) Citrus District Four shall include the County of St. Lucie and that part of the Counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have three grower members and alternates.

Dated: February 26, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-4920 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 274

Drug Enforcement Administration

21 CFR Part 1316

Office of the Attorney General

28 CFR Part 8

[Order No. 1476-91]

Seizure and Forfeiture of Conveyances; Seizure, Forfeiture, and Disposition of Property; and FBI Forfeiture Authority for Certain Statutes; Conforming Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General is amending certain regulations regarding jurisdictional limits for administrative civil forfeiture in order to achieve conformity with recent changes to title 19, U.S.C., section 1607, included in Public Law 101-382, enacted August 20, 1990. The regulations are also being amended to reflect the redesignation of the Drug Enforcement Administration (DEA) Asset Forfeiture Unit as the DEA Asset Forfeiture Section and to conform the Immigration and Naturalization Service (INS) procedure for the handling of cost bonds to the procedures of the DEA and the Federal Bureau of Investigation (FBI). It is anticipated that this rule will result in more efficient handling of civil forfeiture cases to the extent that more cases will be eligible to be handled administratively.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Yost, Office of Enforcement, Immigration and Naturalization Service, Department of Justice, Washington, DC 20536; telephone (202) 514-2554; William J. Snider, Forfeiture Counsel, Drug Enforcement Administration, Department of Justice, Washington, DC 20537; telephone (202) 307-8555; William R. Schroeder, Unit Chief, Legal Forfeiture, Legal Counsel Division, Federal Bureau of Investigation, Department of Justice, Washington, DC 20535; telephone (202) 393-6858.

SUPPLEMENTARY INFORMATION: The provisions of 8 CFR part 274, 21 CFR

part 1316 and 28 CFR part 8 refer to the jurisdictional limits for administrative civil forfeitures contained in section 1607 of title 19, U.S.C. Forfeiture procedures under the customs laws, including section 1607, are incorporated by reference in forfeiture statutes enforced and administered by the Department of Justice. On August 20, 1990, Public Law 101–382 was enacted. This law amended title 19, U.S.C., section 1607, by increasing the $100,000 jurisdictional limit for administrative forfeiture to $500,000, and adding monetary instruments to conveyances used to import, export, or otherwise transport or store controlled substances, as another category of administratively forfeitable property for which there is no value limitation. This final rule amends the applicable regulations governing Department of Justice procedures for civil forfeitures to achieve conformity with Public Law 101–382, to reflect the DEA's redesignation of its asset forfeiture unit as the DEA Asset Forfeiture Section, and to conform the INS procedure relating to cost bonds to the procedures used by the DEA and FBI, which direct such bonds to be forwarded to the appropriate United States Attorney for disposition in connection with judicial forfeiture proceedings.

This rule is not a major rule for the purposes of Executive Order 12291. Also, it is hereby certified that this matter will have no impact upon small entities within the meaning and intent of the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

List of Subjects

8 CFR Part 274

Administrative practice and procedure, Aircraft, Immigration, Law enforcement, Motor carriers, Motor vehicles, Seizures and forfeitures, Vessels.

21 CFR Part 1316

Administrative practice and procedure, Authority delegations (Government agencies), Drug traffic control, Research, Seizures and forfeitures.

28 CFR Part 8

Administrative practice and procedure, Arms and munitions, Communications equipment, Copyright, Crime, Gambling, Infants and children, Motor vehicles, Prisons, Seizures and forfeitures, Wiretapping and electronic surveillance.

By virtue of the authority vested in me by law, including 28 U.S.C. 509, 510 and section 122 of the Customs and Trade Act of 1990, Public Law 101–382, title 8, chapter I, title 21, chapter II, and title 28, chapter I of the CFR are amended as follows:

Title 8

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 274—SEIZURE AND FORFEITURE OF CONVEYANCES

1. The authority citation for part 274 continues to read as follows:

Authority: 8 U.S.C. 1103, 1324(b).

§ 274.9 [Amended]

2. In § 274.9, paragraph (a) is amended by removing "$100,000" in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607".

§ 274.10 [Amended]

3. In § 274.10, paragraph (a) is amended by removing "$100,000" in the introductory text and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607", by removing the words "Immigration and Naturalization Service" in paragraph (a)(4) and adding in place thereof the words "Department of Justice", by removing the words "The bond will be held by the custodian." contained in the undesignated paragraph following paragraph (a)(4), and by adding to the end of paragraph (a)(4) the last two sentences in the undesignated paragraph following paragraph (a)(4).

§ 274.11 [Amended]

4. Section 274.11 is amended by removing "$100,000" in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, U.S.C., section 1607".

§ 274.12 [Amended]

5. Section 274.12 is amended by removing "$100,000" at the two places it appears therein and adding in place thereof the words "the monetary amount set forth in title 19, United States Code, Section 1607".

6. Section 274.12 is further amended by adding the words "the claim and bond, as well as" after the words "the regional commissioner shall transmit".

Title 21

CHAPTER II—DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

PART 1316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart E—Seizure, Forfeiture, and Disposition of Property

7. The authority citation for subpart E of part 1316 continues to read as follows:

Authority: 21 U.S.C. 871(b), 881, 965, 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618, 28 U.S.C. 509, 510.

§ 1316.75 [Amended]

8. In § 1316.75, paragraph (a) is amended by removing "$100,000," in the first phrase and adding in place thereof the words "the monetary amount set forth in title 19, United States Code, Section 1607; the seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code;".

§§ 1316.75, 1316.76, 1316.77, 1316.78, 1316.79, and 1316.81 [Amended]

9. In addition to the amendments set forth above, in 21 CFR part 1316, subpart E, remove the words "DEA Asset Forfeiture Unit" and add, in their place, the words "DEA Asset Forfeiture Section" in the following places:

(a) Section 1316.75 (a) and (b);
(b) Section 1316.76(a);
(c) Section 1316.77(a);
(d) Section 1316.78;
(e) Section 1316.79(a); and
(f) Section 1316.81.

Title 28

CHAPTER I—DEPARTMENT OF JUSTICE

PART 8—FBI FORFEITURE AUTHORITY FOR CERTAIN STATUTES

10. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.

11. Section 8.7 is revised to read as follows:

§ 8.7 Judicial forfeiture.

If the appraised value exceeds the monetary amount set forth in title 19, United States Code, section 1607, or a claim and satisfactory bond have been received either for property appraised at that amount or less, or for seized merchandise which is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code, the Special Agent in Charge of the FBI field office that seized the property shall transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made for the purpose of instituting judicial forfeiture proceedings. Also transmitted with the claim and bond will be a description of the property and a complete statement of the facts and circumstances leading to the seizure of the property.

§ 8.8 [Amended]

12. The heading of § 8.8 is revised to read as follows:

§ 8.8 Advertisement and declaration of forfeiture.

13. In § 8.8, paragraph (a) is amended by removing the words "not exceeding $100,000 in value".

Dated: February 20, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–4723 Filed 2–28–91; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0726]

Delegation of Authority to the Federal Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation Together With the General Counsel of the Board, to Approve Certain Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending § 265.2 of its Rules Regarding Delegation of Authority (12 CFR 265.2) in order to delegate to the Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation acting together with the General Counsel of the Board, authority to approve certain transactions requiring approval of the Federal Reserve pursuant to section 5(d)(3) of the Federal Deposit Insurance Act ("FDI Act") (12 U.S.C. 1815(d)(3)).

This amendment adds new paragraphs (b)(14), (c)(37) and (f)(52) to § 265.2 to effect the delegation.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452-3583), Michael J. O'Rourke, Senior Attorney (202/452-3288), or Thomas M. Corsi, Attorney (202/452-3275), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638) or Beverly L. Evans-Church, Supervisory Financial Analyst (202/452-2573), Division of Banking Supervision and Regulation. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 5(d) of the FDI Act, as amended by section 206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (Pub. L. No. 101-73, section 206, 103 Stat. 183, 199 (1989)) imposes a five year moratorium on the conversion of insured depository institutions from membership in the Savings Association Insurance Fund to membership in the Bank Insurance Fund ("SAIF" and "BIF," respectively). 12 U.S.C. 1815(d)(2)(A)(ii). This section provides a limited exception to the moratorium on conversion transactions to allow the merger of a savings association owned by a bank holding company with and into a BIF-insured bank subsidiary of the same holding company.[1] These provisions also provide that the resulting bank must continue to pay insurance premiums to the SAIF for that portion of the deposit base of the bank attributable to the former savings association.

Section 5(d)(3) of the FDI Act requires bank holding companies seeking to engage in these transactions to obtain the prior approval of the Federal Reserve. The section provides that the Board may not approve an application by a bank holding company to engage in a transaction under these provisions unless the Board determines that certain criteria are satisfied.

The Board is now amending § 265.2 of its Rules Regarding Delegation of Authority to delegate to the Federal Reserve Banks, and to the Staff Director of the Division of Banking Supervision and Regulation acting together with the General Counsel of the Board, authority to determine that transactions occurring under these provisions conform to the criteria for Board approval set forth in section 5(d)(3) of the FDI Act.[2] Authority to approve merger applications in connection with such transactions would remain with the appropriate Federal banking agency for the institution resulting from the merger.

In that regard, where the appropriate Federal banking agency is the Board, paragraphs (c)(30) and (f)(22) of this section delegate to the Staff Director of the Division of Banking Supervision and Regulation and to the Reserve Banks, respectively, authority to approve such merger applications.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities that will be subject to the regulation.

Public Comment

The provisions of section 553 of title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rule making procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegation (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, the Board amends 12 CFR part 265 as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: Section 11(k), 38 Stat. 261 and 80 Stat. 1314 (12 U.S.C. 248(k)).

2. The Board adds paragraphs (b)(14), (c)(37) and (f)(52) to section 265.2, to read as set forth below:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(b) * * *

(14) With the concurrence of the Staff Director of Banking Supervision and Regulation, to exercise the functions described in paragraph (f)(52) of this section in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(c) * * *

(37) With the concurrence of the General Counsel, to exercise the functions described in paragraph (f)(52) of this section in those cases in which the appropriate Federal Reserve Bank

[1] Certain specified *de minimis* transactions, as well as failing institution transactions, also are excepted from the moratorium.

[2] The Staff Director and the General Counsel would have delegated authority to act on behalf of the Board in processing Oakar transactions in those cases in which a Reserve Bank concludes it should not take action.

concludes that, because of unusual considerations, or for other good cause, it should not take action.

* * * * *

(f) * * *

(52) Under the provisions of section 5(d)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(E)), to approve requests by a bank holding company to engage in any transaction described in subparagraph (A) of section 5(d)(3) of that Act.

By order of the Board of Governors of the Federal Reserve System, February 22, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-4832 Filed 2-28-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. FHFB 91-58]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is adopting final regulations governing the operation of the Affordable Housing Program ("Program" or "AHP") by the Federal Home Loan Banks ("Banks" or "District Banks"). This final rule modifies the interim regulations published by the Finance Board and effective on March 2, 1990 (55 FR 7479). The Program is authorized by section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 423-426 ("FIRREA"), and requires the Banks to assist their members in financing affordable housing for very low-, low-, and moderate-income households. The final rule reflects public comments received in response to the request for public comment issued with the interim regulations and the experience with the Program during its first year of operation.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Housing Finance Directorate, (202) 408-2848, or Stephen D. Johnson, Attorney Advisor, Housing Finance Directorate, (202) 408-2847, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

FIRREA added section 10(j) to the Federal Home Loan Bank Act of 1932, 12 U.S.C.A. 1430(j) ("FHLB Act"), which provides that, pursuant to regulations promulgated by the Finance Board, each Bank must establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System ("Bank System") engaged in lending for long-term, very low-, low-, and moderate-income, owner-occupied and affordable rental housing.

FIRREA specifies the annual dollar contribution of each Bank to be the greater of 5 percent of the previous year's net income or a *pro rata* share of $50 million, increasing to the greater of 10 percent of the previous year's net income or a *pro rata* share of $100 million in 1995. Following the expressed intent of the statute, the AHP was established as a series of Programs—one for each of the twelve Banks with District-wide competitions.

B. AHP in 1990

In 1990, the Banks committed $80.1 million in subsidies to 383 projects from the 895 applications received. Over half of the subsidized units are for very low-income households, and 65 percent of the approved units are rental. The AHP funds are leveraged by a wide array of other public and private funds, and the AHP subsidy represents only 6.8 percent of the development cost of the projects.

C. Comments Received

The Finance Board received a total of 95 comment letters from Federal Home Loan Bank System members (13), Federal Home Loan Banks (11), Federal Home Loan Bank Advisory Councils (9), community groups (11), nonprofit developers (19), private developers (3), trade associations (6), state and local government agencies (20), Congress (1), foundations (1), and commercial banks (1).

Comments focused on the issues of final decision making (71), application timing and processing (36), frequency of AHP offerings (39), maximum subsidy rule (41), scoring system (35), priorities (17), advisory councils (24), urban versus rural projects (20), geographic set asides (9), AHP Reserve Fund (16), and monitoring and reporting (18). In practical terms, the first four categories are slightly different aspects of the same general issue: the AHP funding process, but they are separated for analytical purposes.

1. Decision Making

Three quarters of the comments submitted in response to the interim final rule addressed the issue of Finance Board centralized decision making. The interim regulations vested final approval authority for projects recommended by the Banks with the Finance Board. Almost all of these commenters supported transferring the authority to make final decisions on applications for funding to the District Banks, opining that the Banks are best able to determine what District and local priorities should be met and to expedite funding. The comments supporting District Bank final funding decisions generally included recommendations for Finance Board monitoring and overall control. Private-sector commenters, community groups, nonprofit developers, and others were close to unanimous in opposing centralized funding decisions, but some recommended that the Finance Board retain a veto authority. While recognizing the special requirements of the AHP, many commenters urged that the Program more closely resemble other District Bank advance programs where the funding decisions are made at the Bank and the funds are made available within a matter of days.

In light of the favorable experience with the 1990 Program, the Finance Board believes that it should retain final decision making, for the reasons indicated below. The Finance Board feels that many of the concerns expressed in the comments received in March of 1990 have been addressed by the expeditious handling of the two 1990 funding rounds. All of the deadlines imposed on the Federal Home Loan Banks and the Finance Board were met without exception despite the receipt of nearly 900 applications. In addition, the Finance Board believes that changes in the application submission periods and the number of funding rounds will ameliorate most of the timing problems alleged in the comment letters. Finally, the Finance Board believes that centralized decision making ensures that the Program is administered in a consistent manner and continues to meet the national priorities established by FIRREA.

2. Timing and Availability

One third of the commenters addressed the 120-day application-processing period. Most commenters said that the four-month application process established by the interim regulations reduced the effectiveness of the Program. In addition, a number of commenters stated that the timetable for the AHP application process may not correspond to the timetables of other housing programs that provide subsidized assistance. The comments concerning the "cumbersome" and extended application process came from the full range of commenters. In the vast majority of letters, these comments were linked with the suggestion of eliminating the Finance Board role in the final funding decision.

Forty percent of the commenters said that making funds available only once or twice per year was unworkable. The commenters were concerned that this provision precludes individual Banks from adjusting the availability of AHP funds to serve particular needs of their Districts, either by offering AHP funds more frequently or by offering them on an alternate schedule.

The Finance Board agrees that coordination with other housing programs and close linking of funding cycles to project cycles are critical elements for the continued success of the AHP. The final regulations eliminate the concept of an application period. The final regulations provide that the District Bank will evaluate all pending applications as a group twice each year on two of four quarterly dates, i.e., the District Banks will have the option of choosing the two offering dates that best meet the needs of their districts. For those years after 1991, each Bank will be required to publish its offering schedule late in the preceding year. The year 1991 will be a transition year with three available application deadline dates: April 15, July 15, and October 15. After 1991, the uniform dates will be January 15, April 15, July 15, and October 15. If one of these dates falls on a holiday or weekend, the deadline date will be the next working day. The final regulations also shorten the period for District Bank review to 30 days. These changes will result in a shortening of the current four-month process to two months.

3. Maximum Subsidy

FIRREA requires the Finance Board to set a limitation on the subsidy to any one project. The interim regulations limited the subsidy on any single project to that amount necessary to reduce the target household's housing expenses to not less than 28 percent of gross monthly income. This issue is important because it serves as the primary basis for qualification in the Program.

In drafting the interim regulations, 28 percent was selected, because it is a widely accepted "front ratio" in the mortgage qualification process. Many of the households targeted by the Program currently spend in excess of half their income on housing. Therefore, 28 percent was considered a significant reduction in housing expenditures, while still representing a fair and substantial portion of income being spent for housing.

Over forty percent of the commenters, especially the nonprofit developers and community organizations, called for a change in the maximum subsidy rule. Many commenters said this requirement was too rigid and would hamper the Program's effectiveness in serving the needs of very low-income households. Several community organizations recommended that the Finance Board delete the 28-percent requirement for rental projects. They also recommended that the requirement be waived in situations where this requirement would conflict with the requirements of other government-sponsored housing programs. A few commenters recommended denominating the maximum allowable subsidy in terms of an interest-rate reduction, but the majority of commenters urged a lower (or no) requirement.

The Finance Board has adopted the suggestion of many commenters to lower the proportion of gross monthly income that must be spent on housing to 20 percent. Additionally, since many of the first-round applications were for direct subsidies rather than subsidized advances, an income limitation rather than an interest-rate limitation continues to make the most sense.

Due to the limited amount of subsidy available, the success of the Program depends in great measure on its ability to combine with other sources of funding including other subsidized funds. In section 102 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 ("HUD Reform Act"), Congress addressed the potential for abuse in the layering of HUD subsidies if this practice of combining subsidies is not monitored and controlled. Under the HUD reform Act, the Secretary of HUD is required to certify that the amount of HUD assistance provided to certain activities does not exceed the amount necessary to make the activity feasible. HUD is developing rules and procedures to implement those legislative requirements.

The Finance Board is equally concerned that AHP subsidies only be used for critical housing finance needs and that the Program not be abused. The Finance Board believes that the design of the Program, the fact that subsidies are provided through independently regulated financial institutions, the Program's detailed monitoring and reporting requirements, effective provisions for recapture of subsidy funds in the event of non-compliance, an emphasis on community-based nonprofit organizations as project sponsors, and the small dollar size of the Program should serve to prevent such abuses. The Finance Board will continue to carefully monitor the Program with this important policy goal in mind. The Finance Board intends to utilize HUD's experience and expertise in the development and implementation of rules and procedures designed to prevent excessive subsidy layering, and will create additional safeguards in the form of a subsidy layering model specifically designed for the nature of the AHP program, as necessary.

4. Priorities and Scoring System

The interim regulations stated seven AHP priorities of which three were required to be met in order to be considered for AHP funding:

(1) Projects that finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects that finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States including those held by the U.S. Department of Housing and Urban Development, the Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, any state or political subdivision of any state, any local housing authority, or state housing agency; or

(5) Projects that empower the poor through resident management, urban homesteading and similar programs; or

(6) Projects that promote fair housing; or

(7) Projects that provide permanent housing for the homeless.

Almost two-fifths of the commenters addressed the priorities and the scoring system. Several commenters alleged that projects with both owner and rental units were given an unfair advantage, because they automatically met two priorities.

While the interim regulations encouraged the District Banks to be

"innovative" in project financing, the priority weighting given to projects addressing multiple national priorities could preclude viable projects that better respond to a particular District's needs. For example, numerous commenters and the District Banks stated that the interim scoring system places rural projects at a competitive disadvantage to urban projects, because applications for projects in rural areas are more likely to be from smaller institutions, and less likely to have nonprofit sponsors, urban homesteading, or large inventories of government-owned properties.

The scoring scheme in the interim regulations may also have an implicit bias in favor of rental housing. First, the scoring scheme awarded points for income targeting, and very low-income households are more likely to rent than they are to own. Second, nonprofit involvement, also awarded points, is more common with rental housing than it is with owner-occupied housing. Third, rental housing is likely to score well on effectiveness, because multifamily rental housing is typically less expensive to build and uses less land than detached houses.

The final regulations make several substantive and technical changes to the priorities and scoring system to address these concerns.

5. District Bank Advisory Councils

A quarter of the comment letters addressed the limited role of the Advisory Councils in the interim regulations. They argued that since the interim regulations placed the responsibility for final project approval with the Finance Board, the Advisory Councils were ignored and their only remaining role was one of an annual report writer. The commenters said that these provisions are contrary to the intent of FIRREA.

The final regulations create a District Bank priority developed by the Advisory Council on an annual basis, adopted by the Bank's Board of Directors, and approved by the Finance Board. This will enhance the role of the Councils in making the Program more responsive to local housing finance needs.

D. Analysis of the Final Regulations

1. Establishment of the Program

The board of directors of each Federal Home Loan Bank must adopt an implementing plan for the Program established by FIRREA and these regulations. The final regulations require the Banks to submit their plan to the Finance Board annually. This plan must include the Bank's overall strategy for the Program and the staffing, monitoring, education, and promotion planned for the Program. The plan must also address the technical issues of (1) controlling arbitrage associated with AHP funds, and (2) dealing with the relationship between interest-rate changes and subsidy calculations.

Under the Program, it is the responsibility of the Banks and their members to meet the civil rights requirements of the Fair Housing Act, 42 U.S.C. 3601–19, and other applicable civil rights laws and regulations. The Fair Housing Act prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, sex, national origin, handicap, and familial status; and prohibits discrimination in residential real estate-related transactions, which include the making or purchasing of loans or providing other financial assistance, and the selling, brokering, or appraising of residential real property.

Further, section 808(d) of the Fair Housing Act requires that federal agencies that administer housing programs do so in a manner that affirmatively furthers the goal of fair housing. To meet that objective, AHP applicants should carry out their advertising activities so as to assure that potential buyers or tenants from all racial and ethnic groups in the housing market area know about the availability of the housing. Special emphasis should be given to persons and/or organizations who might not otherwise learn about the availability of the housing without such outreach efforts, particularly members of minority groups and protected classes. Advertising and media selected for such groups should be oriented to the targeted audience. Special emphasis should be placed on minority newspapers, minority-oriented radio and television stations, and other organizations, such as fair housing groups and community groups, with significant contact with the targeted groups.

Accordingly, the final regulations raise the goal of fair housing from one of seven priorities to an absolute threshold that must be met by all applicants.

2. Use of Subsidized Advances and Direct Subsidies

As provided by FIRREA, the final regulations require the Banks to subsidize the interest rates on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied and rental housing. Additionally, since the Finance Board believes the Banks should maximize the resources provided under the Program through the innovative use of Program subsidies, the final regulations continue to permit the use of direct subsidies and other types of subsidized assistance.

The final regulations define the term "subsidy" as the direct cash payments under the Program or the net present value of the foregone interest revenues to the Bank resulting from making funds available under the Program at rates below the cost of funds. This funding mechanism is in accordance with generally accepted accounting principles. Calculation of the subsidy commitment in present-value terms ensures that adequate funding will be available in future years.

The Finance Board expects that, with the exception of interest rates, the terms and conditions of the advances offered by the Banks to members as part of the Program will conform to the Banks' standard collateral requirements and tests of creditworthiness. The Finance Board also expects that the members, in making loans under the Program, will apply prudent underwriting standards. Members are required to maintain safe and sound lending practices consistent with the requirements of their primary regulator to ensure that Program loans are within acceptable risk levels.

The final regulations prescribe two broad purposes for AHP subsidies: (1) To finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; and (2) to finance the purchase, construction, and/or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

The Finance Board recognizes that counseling and related community services can play a vital role in the development and success of affordable housing programs. However, given the limited amount of AHP subsidy available and the clear Congressional mandate to use these funds to provide programs to finance housing, the Finance Board believes that AHP funds should not be used to pay or defray indirect or third party costs not standard for housing finance transactions. The Finance Board believes this policy best reflects Congressional intent in establishing the AHP and maximizes the use of AHP resources.

While the Finance Board encourages financing arrangements that may be used for leveraging the funds to be allocated under the Program, it realizes that some of these innovative concepts and financing arrangements may not be familiar to some members. Because of the Finance Board's concern for safety and soundness and prudent lending, institutions not familiar with these financing techniques are encouraged to consider participating in such efforts with experienced lenders. The final regulations continue to require that members "maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit."

3. Application for Funding

AHP funds will be made available in two offerings each year on quarterly dates selected by each Bank. Each Bank is to notify its members of the amount of annual Program funds available for the District, the date of fund rounds, and the approximate amount to be offered each funding period. Applications must be received by the Banks by the 15th day of the quarter (January, April, July, October) in which funds are available. For 1991, however, because of the late publication of these final regulations, only three offering dates will be made available. Applications for 1991 AHP funding must be received by April 15th, July 15th, and October 15th depending on the two dates selected by the Banks.

The Banks will evaluate and score eligible applications. Those applications receiving the highest ratings will be forwarded by the Bank to the Finance Board not later than 30 days after the application deadline. The Finance Board will announce final funding decisions within 30 days thereafter.

To ensure that Program subsidies are allocated for the priority uses intended and the specific households targeted, the final regulations require that a member's application for a subsidized advance, direct subsidy, or other assistance include a description of the project and its conformity with Program objectives. The application must also include: A description of the feasibility of the project, including local market conditions; a statement of its compliance with fair housing laws; the qualifications and role of the sponsor; the subsidy requested; a disclosure of any applicant's interest in the property or project; and certifications that the project will not receive a subsidy in excess of that allowed by the FHLB Act or the regulations and that the subsidy will only be used for authorized purposes. The application must also include a description of the long-term monitoring techniques that will be used by the member to ensure the appropriate use of Program funds and the recapture provisions for any unused or improperly used subsidy.

4. Project Scoring and Funding

The Program will operate through a nationally administered series of District-wide competitions. Each Bank will evaluate applications on the basis of a number of criteria or objectives that are included in the final regulations. These objectives reflect the broad goals of reaching the targeted households, providing maximum assistance per subsidy dollar, and encouraging innovation, community involvement, and community stability.

The final regulations have four threshold tests—two of which are new. The new tests that all projects must meet are compliance with fair housing laws and the ability of the project to begin using Bank assistance within twelve months of approval. The other two threshold tests are project feasibility and creditworthiness of the member. Only projects that meet all four threshold tests are eligible for further consideration.

Priorities. Projects satisfying all four threshold tests and meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which is sponsored by any nonprofit organization, a state or political subdivision of any state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Finance Board.

The final regulations make a minor change in the first two priorities by adding language about the "principal purpose" of the project. This change corrects an unintended feature of the interim regulations that allowed projects with both owner-occupied and rental units to automatically meet two priorities. The final regulations also raise fair housing from a priority to a threshold test, and include a new District Bank priority.

Each Bank will first separate the submitted projects into two groups: (1) Those that meet at least three of the priorities identified in the final regulations, and (2) those that meet fewer than three of the priorities. Projects in the first group will be rated before projects in the second group. Second-group projects will only be rated and forwarded to the Finance Board if there are insufficient applications in the first group. Projects not forwarded to the Finance Board should be considered for assistance under the Community Investment Program or other programs.

To ensure that the projects funded conform to Program objectives, the Banks will evaluate all projects using the 100-point scoring system described in the final regulations. The Banks will rank order the applications within each of the groups identified above based on the sum of the point totals for the applications.

The scoring system divides the Program objectives into three groups. The total possible score a project may receive is 100 points. The first, and most important, objective is the consistency of the project with the priorities identified in the final regulations. Projects may receive up to 25 points for this objective, with a project's actual point total reflecting its consistency with, or potential for achievement of, the priorities.

The second group of objectives includes: (1) The extent to which the project targets households below the statutory maximums, especially very low-income households; (2) the potential for long-term retention of owner-occupied and rental housing affordable for very low-, low-, and moderate-income households; and (3) the effective use of Program dollars, *i.e.*, the amount of AHP subsidy per unit and the extent to which the project is able to draw upon other sources of funds and

programs designed to benefit targeted households. The Bank may award each project up to 15 points per objective in this group.

The third group of objectives includes: (1) The extent to which the project actively involves nonprofit or community organizations, other than application sponsors; (2) the extent to which the project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households; and (3) the use of innovative and experimental nonfinancial and financial approaches toward providing affordable housing for very low-, low-, and moderate-income households. The Bank may award a project up to 10 points for each objective in this group.

After the Bank has evaluated applications from members, the Bank will forward to the Finance Board for final funding consideration those applications receiving the highest overall rankings. To ensure an adequate pool of projects for Finance Board consideration, the final regulations require each Bank to forward to the Finance Board applications from the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. The final regulations provide, however, that if in the Finance Board's opinion there is an insufficient number of applications from any Bank, it may request that the Bank submit additional eligible applications to the Finance Board for review.

The final regulations also require the Bank to submit a summary of each project forwarded to the Finance Board. The summary shall include a brief description of the project, the amount of subsidy recommended by the Bank, a description of how the member and Bank will monitor the project, a description of the provisions for recapture of the subsidy, and the reason for the points awarded for each of the enumerated objectives.

The Finance Board will review the applications submitted by each Bank to ensure national consistency with the Program's stated priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Finance Board will make final funding decisions.

5. Reporting

Members that receive Program subsidies will be required to file periodic reports with the Bank until the subsidy has been fully used or repaid by the member. The reports shall, at a minimum, describe the manner in which the member has used the proceeds of the subsidy and contain a certification that the subsidy has been passed through to the borrower by the member and continues to be used for the approved purposes.

6. Monitoring

A variety of safeguards have been built into the Program to monitor project performance and ensure adherence to Program regulations and guidelines. These monitoring elements are designed to prevent Program misuse and ineffective use of Program funds.

Active monitoring by the member and its board of directors is required. The member must include in each AHP application an explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including copies of any agreements entered into for this purpose. Each Bank must monitor, audit, and review its Program and member Program projects to ensure full compliance.

At a minimum, the Banks shall audit the following Program elements: Subsidy calculations, pricing, development, promotion, marketing, and compliance. In addition, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight will be monitored. The Finance Board has the responsibility and authority to monitor, audit, and review Bank and member compliance using all the resources at its disposal. Techniques for monitoring by the Banks and Finance Board may include audits of applications and supporting documentation, loan-record analysis, specialized reporting and data gathering, and site inspections.

Monitoring AHP advances and assistance for single-family homeownership will in all instances require compliance with a one-time initial income eligibility requirement to ensure that only the targeted households are the recipients of the subsidies. In certain cases, such as community land trusts and limited-equity housing cooperatives, where long-term retention of income eligibility requirements and use restrictions are present, longer-term monitoring will be necessary, particularly at the time of sale or transfer of the housing unit.

Monitoring multifamily rental projects will require long-term tracking (both of use and income levels) to ensure that Program subsidy benefits remain available to very low-, low-, and moderate-income households. Most local, state, and federally funded housing programs are targeted to very low-, low-, and moderate-income households, and income eligibility is set and maintained for a designated period. Where Program subsidies are used in tandem with such programs, the income level recertification process required by the other program (usually annual) will normally satisfy the income eligibility monitoring requirements of the Program. Where other local, state, and federal officials perform field visits, loan and lease reviews, and other inspections, additional information will be available to assist the Finance Board and the Banks in these monitoring efforts.

7. Recapture

If at any time the proceeds of a subsidized advance will not be or cease to be used for authorized uses and eligible projects, the member who received such an advance must immediately notify the Bank that granted the advance. The member must immediately cease to provide additional subsidized funds to the project. Upon receipt of such notice, the Bank shall recover the unused or improperly used portion of the subsidized advance, and in doing so, may exercise a number of options, including: Repricing the advance to the interest rate applicable at the time the advance was made on non-subsidized advances of comparable type and maturity; requiring the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance; assessing a prepayment fee; or calling such advance. Under all circumstances, any subsidy committed but no longer used for an eligible project will become available to the Bank for future projects.

To prevent potential windfall profits on the premature sale of rental housing that has been subsidized using AHP funds, members must agree to either provide the Banks with evidence that the sales contract includes a provision that the rental housing will continue to be used for its original purpose, or to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

8. Maximum Subsidy

The final regulations set the maximum subsidized assistance at the amount needed to reduce the monthly housing cost (excluding utilities) for households in the targeted income group to 20 percent of gross monthly income. In situations where other forms of subsidized assistance are being used with the AHP, particular care should be taken to ensure that the total amount of subsidies provided does not exceed this amount.

If the subsidized assistance is in the form of an advance, the final regulations also specify that the loan to the borrower shall be subsidized at least to the same extent as the advance is subsidized; the borrower must receive the full benefit of the subsidy.

The Finance Board does not expect 20 percent to become the norm for all AHP projects. Indeed, this maximum subsidy should be reserved for selected very low-income units. Deeper subsidies, as represented by lower proportions of a household's income spent on housing, will increase the AHP subsidy per unit, reduce the effectiveness of the subsidy, and potentially result in fewer units.

The maximum subsidy rule applies only to (1) the *initial* purchase of an owner-occupied unit, (2) the initial financing of a rental project, and (3) a rental project as units become vacant and are re-rented. In this third case, the practical application means that vacant units must be rented to households of the income levels specified in these regulations so that the income limitation for the targeted unit continues to be met.

9. Contributions to Program

The final regulations set forth the funding requirements for the Program. As provided in FIRREA, the Banks are required to contribute a percentage of their preceding year's net income to the Program. Beginning in 1990, this amount was five percent of the preceding year's net income, increasing to six percent in 1994, and to 10 percent annually in years thereafter. The final regulations also set forth minimum annual total amounts that must be contributed by the Bank System as a whole, as required in FIRREA. From 1990 through 1993, at least $50 million must be contributed annually to the Program by the Banks. This amount will increase to $75 million in 1994, and to $100 million annually thereafter.

To the extent that the percentage of income-based annual contributions of the Banks does not meet these minima, additional contributions shall be made *pro rata* by each Bank based on its previous year's net income such that the minimum dollar requirement shall be met. Each Bank's *pro rata* share of such additional contributions will be determined by dividing the Bank's net income for the relevant period by the total Bank System net income for the same period and then multiplying the percentage derived by the amount of the Bank System shortfall.

The regulations provide that, for purposes of calculating the annual amount of contributions, the Banks' annual net income is reduced by the contribution to the Resolution Funding Corporation.

10. Temporary Suspension of Contributions

Consistent with section 721 of FIRREA, the Finance Board is providing a procedure for the temporary suspension of contributions in extraordinary circumstances. If a Bank believes that a temporary suspension is appropriate, the Bank must immediately notify the Finance Board and make written application for relief. The application should be accompanied by the Bank's preceding year's annual report and its most recent quarterly and monthly financial statements. Banks that apply for a temporary suspension may also submit additional information not provided for in these regulations to support their case for suspension.

The final regulations specify factors the Finance Board will consider in determining whether to approve an application for temporary suspension, including, any decline in the Bank's quarterly or annual net income, paid-in membership capital, and level of advances, and projections for these trends to continue. The Finance Board will also consider other financial conditions that may contribute to the Bank's financial instability and financial data the Bank submits in support of its application.

The Finance Board will disapprove a temporary suspension application if the Bank's financial instability results from a change in the terms of advances (other than subsidized advances) not justified by market conditions, inordinate operating and administrative expenses, nonstandard banking practices or mismanagement, or if for any other reason a temporary suspension is not warranted.

The Finance Board will act on written applications for temporary suspension within 30 days of receipt, but the temporary suspension shall not take effect until the time period expires for a joint resolution of Congress disapproving the temporary suspension. The Finance Board decisions shall be accompanied by specific findings and reasons for the action.

All temporary suspensions will be granted for a specified time period. The Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate and each Bank shall receive written notice of any temporary suspension.

During a temporary suspension, the subject Bank shall provide the Finance Board with any and all financial reports the Finance Board may require. The Finance Board may determine at any time during the suspension that the Bank has returned to a position of financial stability, and the Finance Board may terminate the temporary suspension upon written notice to the Bank. A Bank may apply in writing for an extension of a temporary suspension, and the Finance Board shall act on the request within 30 days of receipt. The Finance Board will determine the effective date, issue written notice, and notify Congress and the Banks of extensions in a fashion similar to that for original temporary suspensions.

The Finance Board will send notice of suspensions to the Committees at least 60 days prior to the effective date of a suspension, and at least 30 days prior to the effective date of an extension. The temporary suspensions granted by the Finance Board will become effective on their prescribed dates, unless a joint resolution of Congress disapproving the temporary suspension is enacted prior to the effective date.

11. Reserve Fund

If a Bank fails to use or commit the amount it is required to contribute to the Program in a given year, 90 percent of the unused or uncommitted amount in that year shall be paid over to the Affordable Housing Reserve Fund at the end of the year. The 10 percent of the unused or uncommitted amount retained by the Bank should be fully used or committed by that Bank during the following year, and any remaining portion must be deposited in the Reserve Fund.

The Reserve Fund will be administered by the Finance Board. Any Bank may apply to the Finance Board to use any available Reserve Funds, but only after all of its current annual allocation to the Program has been used or committed.

12. Coordination

The final regulations require the Finance Board and the Banks to coordinate Program activities, to the maximum extent possible, with other government agencies and with appropriate nonprofit organizations involved in affordable housing activities.

13. Advisory Councils

FIRREA requires the establishment of Program Advisory Councils by each Bank pursuant to regulations promulgated by the Finance Board. In

BEST COPY AVAILABLE

recognition of the economic and geographic differences among the Bank Districts, the Finance Board provides in these final regulations that each Bank has the discretion to determine the size and member composition of its Advisory Council. Each Bank shall give consideration to the size and diversity of its District and the very low-, low-, and moderate-income housing needs of its District. The final regulations provide that the composition of each Bank's Advisory Council must reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of the community and nonprofit organizations concerns.

FIRREA provides flexibility in the selection of Council members in each District. At the same time, experience and commitment to providing and/or promoting very low-, low-, and moderate-income housing should be the most important factors in choosing members. The Finance Board recognizes that state and local housing agencies represent a significant resource, based on their extensive experience in affordable housing, that may be included in the Advisory Councils. However, in an effort to encourage broad representation, state and local agency officials should not constitute an undue proportion of the Council membership.

The nomination and selection process in the final regulations is aimed at encouraging broad local participation in the process. Each Bank shall actively solicit nominations from as many community and nonprofit organizations as can be identified. In order to defray the expense of participating in the Advisory Councils, members will be compensated by the Banks for travel expenses and paid a subsistence allowance.

The final regulations require that Council members serve staggered two-year terms. In so directing, the Finance Board seeks to provide continuity in experience and service to the Advisory Council, as well as to provide frequent opportunities for new groups and individuals to serve on the Councils.

Each Council shall designate one of its members or a member of the Bank's staff to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The Secretary's reports will be the initial basis for the annual Council reports to each Bank and the Finance Board.

The final regulations require that each Bank submit annually to the Finance Board, for review and approval, a detailed plan for the operation of its Advisory Council. The final regulations also require each Advisory Council to submit to the Finance Board an annual report analyzing the low-income housing activity of the Bank.

E. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Finance Board is providing the following regulatory flexibility analysis.

1. Need for and Objectives of the Rules

As explained in the SUPPLEMENTARY INFORMATION, these Finance Board regulations are mandatory under FIRREA.

2. Issues Raised by Commenters and Agency Assessment and Response

These issues are discussed in the SUPPLEMENTARY INFORMATION.

3. Significant Alternatives Minimizing Small-Entity Impact and Response

No new requirements are being added by the amendments. There are no alternatives that would be less burdensome in meeting the objectives discussed in the SUPPLEMENTARY INFORMATION.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, by revising subchapter E, consisting of part 960, to read as follows:

Subchapter E—Affordable Housing

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.

960.1 Definitions.
960.2 Establishment of program.
960.3 Use of subsidized advances and direct subsidies.
960.4 Applications for funding.
960.5 Project scoring and funding.
960.6 Reporting requirements.
960.7 Monitoring.
960.8 Recapture.
960.9 Maximum subsidy.
960.10 Annual contributions.
960.11 Temporary suspension of contributions.
960.12 Affordable Housing Reserve Fund.
960.13 Coordination.
960.14 Advisory Councils.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 911, 105 Stat. 394 (12 U.S.C. 1441b).

§ 960.1 Definitions.

(a) *Advances* means extensions of credit by Banks to members under the provisions of 12 CFR part 935 and this part 960.

(b) *Affordable for very-low income households* means the monthly housing expense charged to tenants for rental units made available for occupancy by very low-income households shall not exceed 30 percent of the income of a very low-income household, adjusted for family size.

(c) *Area* means a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

(d) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(e) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(f) *Cost of funds* means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance.

(g) *Low- and moderate-income households* means households for which the aggregate income is 80 percent or less of the area median income.

(h) *Median income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development.

(i) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(j) *Net earnings of a Bank* means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the annual contribution to The Resolution Funding Corporation.

(k) *Program* means the Affordable Housing Program established by this part.

(l) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural prior to October 1, 1990, and determined not to be rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000 is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.

(m) *Sponsor* means a nonprofit or for-profit organization or public entity that is integrally involved in a project, such as exercising control over the planning, development, and/or management of a project.

(n) *Subsidy* means the direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making funds available under the Program at rates below the cost of funds.

(o) *Very low-income households* means households for which the aggregate income is fifty percent (50%) or less of the area median income.

§ 960.2 Establishment of program.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through the use of subsidized advances, direct subsidies, and other assistance to members.

(b) Each Bank's board of directors shall adopt an annual implementation plan consistent with Federal Home Loan Bank Act, 12 U.S.C.A. 1430(j) ("the Act"), and this part to provide subsidized advances, direct subsidies, or other assistance to members engaged in long-term lending that provides owner-occupied and rental housing affordable to very low-, low-, and moderate-income households. A copy of the Bank's plan shall be submitted to the Board annually.

(c) The Program will be carried out in accordance with the requirements of the Fair Housing Act, 42 U.S.C. 3601–19, and other applicable civil rights laws and regulations.

§ 960.3 Use of subsidized advances and direct subsidies.

(a) *General.* (1) Funds under each Bank's Program shall be used to provide subsidized assistance to members engaged in lending for activities eligible to receive subsidized assistance pursuant to the provisions of section 10(j) of the Act and this part. Subsidized advances made under the Program shall be consistent with the provisions of the Act and the regulations applicable to advances in general contained in 12 CFR part 935, except to the extent modified by this part. Direct subsidies and other assistance provided to members shall comply with the provisions of this part.

(2) In making extensions of credit under the Program, members shall use prudent, flexible, and innovative underwriting standards. Members shall maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit, but members will be encouraged and assisted in funding qualified projects that do not meet customary underwriting criteria or existing secondary mortgage market requirements or for which no secondary market exists. The Board and the Banks shall encourage and assist the development of new secondary markets for projects funded by the Program.

(b) *Authorized uses.* All members receiving subsidized advances, direct subsidies, and other assistance from a Bank shall use the proceeds of such subsidies and the benefits of such assistance to:

(1) Finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; or

(2) Finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

(c) Program funds may only be used for direct costs required to produce and/or finance affordable housing units.

(d) Each Bank shall ensure that the preponderance of assistance provided by the Bank is ultimately received by very low-, low-, and moderate-income households.

§ 960.4 Applications for funding.

(a) The Program is based on District-wide competitions administered by the Board. Banks may accept applications for funding during two of four quarterly application periods each year, as announced by the Banks no later than December 1 of the preceding year. Applications must be received by the 15th day of each quarter (January, April, July, October), or the next subsequent business day if the 15th falls on a weekend or holiday. For 1991, Banks may accept applications for funding on two of three dates, which dates are April 15th, July 15th, and October 15th.

(b) Each Bank shall notify its members of the approximate amount of annual program funds available for the District, and the approximate amount to be offered in each funding period. The amount of funds made available in each offering should be comparable.

(c) Each member shall include in its application for a subsidized advance, direct subsidy, or other assistance:

(1) A concise description of the purpose for the request, its relationship to the Program's priorities identified in § 960.5(b), and its consistency with the criteria identified in §§ 960.5(c), 960.5(d) and 960.5(e);

(2) A statement of how the project complies with fair housing laws and regulations;

(3) A description of the feasibility of the project, including the local market conditions justifying the project;

(4) The qualifications and role of the sponsor;

(5) The subsidy requested;

(6) A disclosure of any applicant's interest, direct or indirect, in the property or project;

(7) An explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted groups;

(8) A certification signed by member's managing officer that the subsidy received by the project will not exceed the maximum allowable under the Program and an explanation of how any excess subsidy will be recaptured;

(9) A certification signed by the member's managing officer that the subsidy or other assistance shall only be for authorized uses; and

(10) Such other information as the Bank or Board may require.

§ 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate all applications received from its members that satisfy the use provisions identified in § 960.3(b).

(2) Projects should first be evaluated for:

(i) Compliance with fair housing laws and regulations;

(ii) Feasibility of the project;

(iii) The ability of the member to qualify for an advance to fund the project; and

(iv) The ability of the project to begin using Bank assistance within twelve months.

(3) Projects meeting all four of the requirements of § 960.5(a)(2) that also meet at least three of the priorities identified in paragraph (b) of this section shall be grouped and rated before projects that meet fewer than three of the priorities. Each Bank will

then rank the projects within the first group (*i.e.*, those meeting at least three priorities) based on the criteria contained in paragraphs (c), (d), and (e) of this section. Projects in the second group will be rated only if there are insufficient applications in the first group.

(4) The total possible score a project may receive is 100 points. The maximum numerical score that a Bank may assign any project meeting the criterion identified in paragraph (c) of this section is 25 points; in paragraph (d) of this section, 15 points per criterion; and in paragraph (e) of this section, 10 points per criterion. In determining the number of points to award a project for any given criterion, the Bank should evaluate each proposed project relative to the other proposals received by the Bank. The project(s) best achieving each criterion shall receive the maximum point score available for that criterion, with the remaining projects scored on a declining scale.

(b) *Priorities.* Projects meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, for example, the U.S. Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which are sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Board.

(c) *25 Point Category—Consistency with Priorities.* To ensure consistency with the priorities identified in paragraph (b) of this section, the project(s) that achieves the greatest number of priorities or achieves more than one goal in a clearly superior manner shall be awarded 25 points, and the remaining projects shall be scored on a declining scale.

(d) *15 Point Categories.*—In each of the following three categories, 15 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Targeting.* To encourage the flow of Program resources to households with incomes below the statutory maximums, the Bank shall consider the extent to which the project targets households below the statutory maximums. The most points shall be awarded to projects serving the greatest percentage of very low-income households.

(2) *Long-term Retention.* To promote the continued availability of housing affordable for very low-, low- and moderate-income households, the Bank shall consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, land trusts, and similar techniques. The Bank shall evaluate the type of housing and the type of assurances and the percentage of units and years for which these assurances are given.

(3) *Effectiveness.* To ensure that the Program resources help the greatest number of households, the Bank shall consider how effectively the project uses the Program subsidy dollars. Within this context, effectiveness should be measured by the amount of Program subsidy dollars per subsidized unit.

(e) *10 Point Categories.*—In each of the following three categories, 10 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Community Involvement.* The Bank shall consider the extent to which a project involves demonstrated support by community organizations, other than as project sponsors, the community interests served by the project, and the extent to which the support is local in nature.

(2) *Community Stability.* The Bank shall evaluate the extent to which a project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households and the extent to which the project serves existing very low, low-, and moderate-income members of the community.

(3) *Innovation.* The Bank shall consider the extent to which the project involves a particularly new or unusual approach for meeting housing needs in the area being served. The Bank shall consider both nonfinancial and financial innovation in providing affordable housing.

(f) *Application Processing.* (1) No later than 30 days after each offering deadline, the Bank shall forward to the Board for final funding consideration applications from those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, each Bank shall forward to the Board the highest ranking projects sufficient to exhaust the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. If in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit to the Board for review additional eligible applications.

(2) The Bank shall also submit a summary of each project forwarded to the Board. The summary shall:

(i) Briefly describe the project;

(ii) Indicate the amount of subsidy recommended by the Bank;

(iii) Describe how the member and the Bank will monitor the project;

(iv) Describe the provisions for recapture of the subsidy; and

(v) State the reason for the points awarded for each of the enumerated objectives.

(3) The Board will review the applications submitted from each Bank to ensure consistency with the Program's priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Board will make a final funding decision and notify the Banks within 30 days.

§ 960.6 Reporting requirements.

(a) Each Bank shall provide reports and documentation concerning the Program as the Board may from time to time request.

(b) To meet Board requests for reports and documentation, at least annually each Bank shall require members that receive a subsidy to file periodic reports supported by appropriate documentation, with such Bank continuing until the subsidy has been fully used or repaid by the member.

Reports shall, at a minimum, state the manner in which the member has used the proceeds of the subsidy.

(c) Each Bank shall require the boards of directors of members receiving subsidies to certify that the subsidy has been passed through to the borrower and continues to be used for the approved purposes.

§ 960.7 Monitoring.

(a) The Board shall have the responsibility and authority to monitor, audit, and review Bank and member compliance with the Program requirements of the Federal Home Loan Bank Act, this part, and other applicable laws and regulations. The Board shall, in its discretion, use all necessary resources, including Office of Inspector General and Office of General Counsel personnel, Program support staff, and specialized contractors to carry out this responsibility.

(b) Each Bank shall monitor, audit, and review its Program and member Program projects and lending to assure full compliance with the requirements of this part. The Banks shall audit the following Program elements: subsidy calculations, pricing, development, promotion, marketing, compliance, member project development, subsidy delivery, loan pricing (including mark-up, fees, and terms), community involvement, and oversight.

(c) Monitoring of Program performance and compliance shall be by audits of applications and supporting documentation, loan-record analysis, specialized reporting, data gathering, site inspections, and such other techniques determined by the Board as necessary to detect and eliminate violations, fraud, mismanagement, and dissipation of Program assets.

(d) Miscalculations, errors, and violations of Program regulations identified by the Board or a Bank shall be corrected immediately. In cases where subsidies have been improperly received, the Bank shall recover the subsidy amount, with fees and interest, if appropriate, in accordance with § 960.8 of this part. Other violations of the Act, this part, or other laws and regulations shall be referred to the Board, the Bank, and other agencies of competent jurisdiction for criminal prosecution or civil recovery.

§ 960.8 Recapture.

(a) A member shall notify the Bank immediately upon receiving information that the proceeds of a subsidized advance or other subsidized assistance granted by the Bank to the member will not be or are no longer being used for the purposes approved by the Bank and the Board. The member shall not advance any additional subsidized funds. Furthermore, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future projects.

(b) In recapturing unused or improperly used subsidies, the Bank shall, at its discretion, take any or all of the following actions, without limitation on other remedies:

(1) Reprice the advance to the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

(2) Call the advance;

(3) Assess a prepayment fee; or

(4) Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

(c) To preclude potential windfall profits on the premature sale of rental housing where a Program subsidy has already been fully used to develop or rehabilitate the property, the member shall agree, in the event of such a sale, to:

(1) Provide the Bank with evidence that the sales contract includes a provision that the rental housing will continue to be used for the purpose originally intended; or

(2) Agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

§ 960.9 Maximum subsidy.

(a) A Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing cost (excluding utilities) for targeted households in the targeted income group to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(b) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

§ 960.10 Annual contributions.

(a) Each Bank shall fund its Program in accordance with the following formula:

(1) On January 1 of 1990, 1991, 1992, and 1993, the greater of:

(i) 5 percent of the Bank's net income for the previous year (as defined in § 960.1(i) of this part); or

(ii) That Bank's *pro rata* share of an aggregate of $50 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(2) On January 1, 1994, the greater of:

(i) 6 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(3) On January 1, 1995 and each year thereafter, the greater of:

(i) 10 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(b) Funding sources for subsidized advances and subsidies under the Program shall be at the discretion of each Bank.

§ 960.11 Temporary suspension of contributions.

(a) If making the contributions required by § 960.10 of this part will lead to the financial instability of a Bank, the Bank shall immediately notify the Board. The Bank may apply for a temporary suspension of Program contributions. The application for the temporary suspension shall be in writing and shall be accompanied by the Bank's preceding year's annual report, if available, and the Bank's most recent quarterly and monthly financial statements. In addition, the application shall state the period of time for which the Bank seeks a suspension and shall include a plan for returning the Bank to a financially stable position.

(b) In reviewing a Bank application for temporary suspension of contributions, the Board shall consider the following factors and financial data:

(1) The extent to which the Bank's quarterly or annual net income has decreased from the preceding quarter or year and whether such decline is projected to continue;

(2) The extent to which the Bank's paid-in membership capital has declined in any given quarter or year and whether such decline is projected to continue;

(3) The extent to which the Bank's level of advances has declined in any given quarter or year and whether such decline is projected to continue;

(4) Other financial conditions, which, in the opinion of the Bank's board of directors, have resulted, or are likely to result, in the financial instability of the Bank; and

(5) The financial data submitted by the Bank in support of its application.

(c) The Board shall disapprove an application for a temporary suspension if it determines that a Bank's financial instability is a result of:

(1) A change in the terms of advances (other than subsidized advances) not justified by market conditions;

(2) Inordinate operating and administrative expenses;

(3) Operation of the Bank in a manner contrary to accepted banking practices for the Banks;

(4) Mismanagement; or

(5) If for any other reason the temporary suspension is not warranted.

(d) Within thirty (30) days after receipt of a written application made pursuant to paragraph (a) of this section, the Board shall approve or disapprove such application in writing. The Board's decision shall be accompanied by specific findings and reasons for its action and shall state the time period for any temporary suspension. A copy of the decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(e) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of such Bank. If, in the opinion of the Board, a Bank has returned to a position of financial stability prior to the conclusion of the temporary suspension period, the Board may, upon written notice to the Bank, terminate such temporary suspension.

(f) A Bank may apply for an extension of a temporary suspension when such Bank's board of directors determines that the Bank has not, or is not likely to, return to a position of financial stability at the conclusion of the temporary suspension. A request for an extension is to be in written form and shall be approved or disapproved by the Board within thirty (30) days of receipt. The Board's decision to approve or disapprove a request for an extension shall be accompanied by specific findings and reasons for its action and shall state the effective date and time period of any extension. A copy of such decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(g) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate of any temporary suspension and any extension of a temporary suspension. A temporary suspension may not take effect until at least 60 days after the Board gives the notice of its action required by this section. An extension of a temporary suspension may not take effect until at least 30 days after the Board gives the notice of its action required by this section. Such suspension or extension shall become effective as determined by the Board, unless a joint resolution of Congress is enacted, prior to the Board's determined effective date, disapproving such suspension.

§ 960.12 Affordable Housing Reserve Fund.

(a) If a Bank fails to use or commit the amount it is required to contribute to the Program pursuant to § 960.10 of this part in a given year, ninety percent of the amount that has not been used or committed in that year shall be paid over to the Affordable Housing Reserve Fund established and administered by the Board. The ten percent of the unused or uncommitted amount retained by a Bank should be fully used or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. For purposes of this section, approval of applications sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.10 of this part shall constitute use or commitment of the funds.

(b) No later than January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of funds from the prior year, if any, which will be paid over to the Affordable Housing Reserve Fund.

(c) No later than January 31 of each year, the Board will notify the Banks of the total amount of funds available in the Affordable Housing Reserve Fund.

(d) Upon receipt of an application from a member, a Bank may apply to the Board for use of the available Reserve Funds. Such application shall only be made after the Bank has used or committed all of its current annual allocation to the Program. Such application shall state the amount of funds desired, the purpose of the advance to be made with such funds, and the subsidy to be made on the advance or other subsidized assistance. The application shall be accompanied by the written application of the member requesting a subsidy and shall be acted upon by the Board.

§ 960.13 Coordination.

The Board and the Banks shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and nonprofit organizations involved in affordable housing activities.

§ 960.14 Advisory councils.

(a) Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in the District. The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on very low-, low-, and moderate-income housing programs and needs in the District, and on the use of subsidized advances, direct subsidies, and other assistance for these purposes.

(b) Advisory Councils shall be appointed by the Banks giving consideration to the size and diversity of the District, and the very low-, low-, and moderate-income housing needs of the District.

(c) The composition of the Advisory Council shall reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of community and nonprofit organizations' concerns. Local and state housing officials may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership.

(d) The nomination and selection process shall be as broad and as participatory as possible. Each Bank shall actively solicit nominations from community and nonprofit organizations, allowing sufficient lead time for responses.

(e) Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings.

(f) Council members shall serve terms of 2 years, but the terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(g) Each Council shall designate a member or request that a member of the Bank's staff be designated to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(h) Meetings of the Advisory Council shall be held at least once each quarter and may be held more frequently at the call of the Bank.

(i) By January 31 of each year each Bank shall submit to the Board for review and approval a detailed plan for the operation of its Advisory Council during the year. Such plan shall be subject to review by the Board. Plans shall contain such information as the Board may from time to time require and shall be updated by each Bank as necessary.

(j) By January 31 of each year, each Advisory Council shall submit to the Board its analysis of the low-income housing activity of the Bank by which it is appointed.

Dated: February 20, 1991.

By the Federal Housing Finance Board.

Daniel F. Evans,

Chairman.

[FR Doc. 91-4661 Filed 2-28-91; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-46; Special Conditions No. 25-ANM-38]

Special Conditions: Embraer Model CBA-123 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to Embraer for the Model CBA-123 airplane. This airplane is equipped with high-technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Hank Jenkins, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2141.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1986, Embraer applied for a type certificate for their new Model CBA-123 airplane. The CBA-123 is a pressurized 19-passenger transport category airplane with a maximum takeoff gross weight of 18,739 pounds, maximum cruise speed of 272 knots, maximum operating altitude of 40,000 feet, and a range of approximately 800 miles fully loaded. It is powered by two Garrett TPF351-20 turboprop engines mounted on the aft fuselage in a pusher configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model CBA-123 also incorporates other unrelated novel or unusual design features. Those features will be the subject of separate notices of proposed special conditions.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Embraer must show that the Model CBA-123 meets the applicable requirements of subchapter C in effect on the date of application for that certificate unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under § 21.17; or (3) special conditions are prescribed by the Administrator.

Based on the provisions of § 21.17(a)(1), the Model CBA-123 would be required to comply with part 25, as amended through Amendment 25-60; however, Embraer has elected to comply with part 25, as amended through Amendment 25-61, and is expected to comply with §§ 25.571(e)(2) and 25.905(d), as amended by Amendment 25-72. In addition, SFAR 27 and part 36, through the latest amendments in effect at the time of awarding the type certificate, must be met. These special conditions will form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model CBA-123 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Model CBA-123 which require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), engine indication and crew alerting system (EICAS), and full authority digital engine control (FADEC), be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strikes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates or rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate or rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak} = 200 KA 100 KA 50 KA 10 KA

and

$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	—
Action integral (amp² sec)	=	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	—

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	8,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	800
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	500
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice No. SC–90–5–NM for the Embraer Model CBA–123 airplane was published in the **Federal Register** on November 9, 1990 [55 FR 47065]. No comments were received, and the special conditions are adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model CBA–123 airplane:

1. Lightning Protection.

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.

Issued in Renton, Washington, on February 20, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–4746 Filed 2–28–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM–48; Special Conditions No. 25–ANM–39]

Special Conditions: McDonnell Douglas Model DC–8–70 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the McDonnell Douglas Model DC–8–70 series airplanes modified by The Dee Howard Company. These airplanes are equipped with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: February 20, 1991.

FOR FURTHER INFORMATION CONTACT: Greg Holt, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4046; telephone (206) 227–2140.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1990, The Dee Howard Company of San Antonio, Texas, applied for a supplemental type certificate to modify the McDonnell Douglas Model DC–8–70 series airplanes. The DC–8–70 is a three-crew, four-engine airplane with a maximum takeoff weight of approximately 335,000 pounds. The modification incorporates a number of novel or unusual design

features, such as digital avionics consisting of dual electronic flight instrument systems (EFIS), dual inertial navigation systems (INS), a dual air data computer (ADC), and an integrated autopilot system, which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, Subpart C, of the FAR, The Dee Howard Company must show that the altered Model DC–8–70 meets the regulations incorporated by reference in Type Certificate No. 4A25, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101(a) and (b); or (3) special conditions are prescribed by the Administrator.

Based on the provisions of §§ 21.101(a) and (b), The Dee Howard Company will have to show compliance with the basic type certification basis per Type Certificate Data Sheet (TCDS) No. 4A25, plus the following FAR Part 25 requirements, up to Amendment 25–70, that are deemed necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference in TCDS 4A25: § 25.255; § 25.397(b); §§ 25.561 (c) and (d); §§ 25.581 (a) and (b) (systems only); § 25.869; §§ 25.913 (c) and (e); § 25.871 (a), (b), and (c); § 25.872 (a), (b), and (c) (autopilot); §§ 25.1305 (a), (b), and (c); § 25.1307(e); §§ 25.1309 (a) thru (g); §§ 25.1321 (a) thru (e); § 25.1322 (a) thru (d); §§ 25.1323 (a), (c), and (d); §§ 25.1329 (a) thru (k); §§ 25.1331 (a) and (b); § 25.1353(c); §§ 25.1355 (a) and (c); §§ 25.1360 (a) thru (d); §§ 25.1431 (a), (b), and (c); § 25.1528; § 25.1529; and § 25.1541.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Model DC–8–70 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 1.28 and 11.28(b), and become part of the type of certification basis in accordance with § 21.115(a).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the Model DC–8–70 which require that the new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), the dual inertial navigation systems (INS), the dual air data computer (ADC), and the integrated autopilot system be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1985, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components, A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where;

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak} = 200 KA 100KA 50KA 10KA

and

$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	—
Action integral (amp² sec)	=	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	—

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	5,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	900
6 GHz–8 GHz	4,000	886
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	509
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–91–1–NM for the McDonnell Douglas Model DC–8–70 series airplanes was published in the Federal Register on January 17, 1991, for public comment. No comments were received, and the special conditions are adopted as proposed.

As a delay in issuance of these special conditions would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that good cause exists for making these special conditions effective upon issuance, as opposed to 30 days from the date of publication in the Federal Register.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1346, 1348(c), 1352, 1354(a), 1355, 1422 through 1428, 1502, 1655(b)(3), 42 U.S.C. 2857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified McDonnell Douglas Model DC-8-70 series airplanes:

1. Lightning Protection.

a. Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on February 20, 1991.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4745 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-209-AD; Amendment 39-6917]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer; and repair, if necessary. This amendment would require installation of the terminating modification for the inspections required by the current airworthiness directive. This amendment is prompted by reports of additional cracking detected by the inspections required by the current airworthiness directive. This condition, if not corrected, could result in loss of the horizontal stabilizer.

EFFECTIVE DATE: April 5, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-07-12, Amendment 39-6556 (55 FR 11161, March 27, 1990), applicable to Boeing Model 747 series airplanes, to require inspection for cracks in the fuselage station 2598 upper bulkhead, which supports the horizontal stabilizer, and repair, if necessary, was published in the Federal Register on November 6, 1990 (55 FR 46861).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, and one foreign operator of Boeing Model 747 airplanes requested an extension of the compliance time for the proposed mandatory modification requirement from 2 years to periods ranging from 3 to 5 years, since it would be more convenient to accomplish this modification during normally scheduled maintenance. The required inspections would maintain safety in the interim. One operator indicated that such an extension is justified since its fleet of affected airplanes had accumulated as much as 27,000 flight cycles and had not experienced the addressed cracking problem. The FAA does not concur. The requirement to modify the bulkhead structure is not based on the number of cycles, flight hours, or age of the aircraft, but rather on the flight loads which can occur on the horizontal stabilizer. This modification requirement was also supported by the Boeing Model 747 Airworthiness Assurance Task Force and the manufacturer, both of whom concurred that the requirement to modify the airplanes is unrelated to an aircraft's age. It represents the maximum interval of time wherein the modification can be accomplished and an acceptable level of safety can be maintained. Therefore, the rule remains unchanged.

A member of the ATA further commented that long lead times may be encountered in obtaining retrofit kits and, therefore, the 2 year compliance time should be extended. The FAA does not concur. Since the parts required are common aluminum sheets and fasteners which would normally be available to any airline or repair station capable of performing repairs to aircraft, the FAA cannot foresee that any parts unavailability problem would occur.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 224 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 174 airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,044,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6556 (55 FR 11161, March 27, 1990), AD 90-07-11, with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 002 through 226, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the horizontal stabilizer, accomplish the following:

A. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), perform either a close detailed visual inspection or a high frequency eddy current (HFEC) inspection of the fuselage station 2598 bulkhead upper web in the corners of the access cut-out, in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Repeat these inspections as follows:

1. If the immediately preceding inspection was accomplished visually, the next inspection must be conducted within 250 landings.

2. If the immediately preceding inspection was accomplished using HFEC, the next inspection must be conducted within 1,000 landings.

B. If cracks less than 1.5 inches are found, repair prior to further flight, in accordance with repair procedures defined in Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990, or accomplish the terminating modification specified in paragraph E. of this AD. Inspect repairs for cracks in accordance with paragraph A. of this AD, until the terminating modification specified in paragraph E. of this AD, is accomplished.

C. If cracks are found that are 1.5 inches or longer, modify prior to further flight by installing the terminating modification specified in paragraph E. of this AD.

D. Within the next 30 days after April 13, 1990 (the effective date of Amendment 39-6556), remove the fastener common to the web and the tab on the vertical stiffener, at each corner of the upper bulkhead cut-out, and perform a high frequency eddy current inspection of the open hole in accordance with Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. If no cracks are found, replace the fastener with a ⅛-inch oversized equivalent fastener. If any cracks are found, prior to further flight, accomplish the repair and inspections required by paragraph B. of this AD, or modify prior to further flight in accordance with the terminating modification specified in paragraph E. of this AD.

E. Within the next 2 years after the effective date of this AD, accomplish the terminating modification specified in Boeing Alert Service Bulletin 747-53A2332, dated March 8, 1990. Installation of the modification constitutes terminating action for the inspections required by this AD.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

Note: Any alternate means of compliance previously approved for paragraph G. of AD 90-07-11, Amendment 39-6556, constitutes an alternate means of compliance with paragraph F. of this AD.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6556, AD 90-07-11.

This amendment becomes effective April 5, 1991.

Issued in Renton, Washington, on February 19, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4747 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-214-AD; Amendment 39-6918]

Airworthiness Directives; Boeing Model 747-200, 747-300, and 747-400 Series Airplanes Equipped With General Electric CF6-80C2 PMC and CF6-80C2 FADEC Engines, and Pratt and Whitney PW4000 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-200, 747-300, and 747-400 series airplanes, which requires inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube. In addition, this amendment requires inspection and replacement of the adjacent pneumatic duct clamp with a non-rotating type clamp if a non-rotating clamp is not already installed. This amendment is prompted by reports of a fuel leak in the number 4 engine strut, due to a punctured fuel feed line that had chafed as a result of contact with the clamp. This condition, if not corrected, could result in an engine fire.

EFFECTIVE DATE: April 5, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2866. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

airworthiness directive, applicable to Boeing Model 747-200, 747-300, and 747-400 series airplanes, which requires inspection of each outboard engine fuel feed line in the engine strut to determine if interference with an adjacent pneumatic duct clamp has caused damage, and, if necessary, repair or replacement of the fuel feed tube, was published in the **Federal Register** on November 20, 1990 (55 FR 48243).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only comment received did not object to the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 42 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, equipped with General Electric CF6-80C2 PMC and CF6-80C2 FADEC engines, and Pratt and Whitney PW4000 Engines, as listed in Boeing Service Bulletin 747-36A2097, dated August 16, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential of an engine fire due to a punctured fuel feed line, accomplish the following:

A. Within the next 60 days or 450 hours time-in-service after the effective date of this AD, whichever occurs first, inspect the upper gap area in the engine strut numbers 1 and 4 to determine if interface with the adjacent pneumatic duct clamp has caused damage to the fuel feed tube, such as chafing or punctures. If any such damage is found, prior to further flight, repair or replace the fuel tube. If a non-rotating clamp is not installed, prior to further flight, install a non-rotating clamp one inch from the existing stationary clamp in accordance with Boeing Service Bulletin 747-36A2097, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 5, 1991.

Issued in Renton, Washington, on February 19, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4748 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ASW-46; Amendment 39-6857]

Airworthiness Directives; Schweizer Aircraft Corporation (Hughes Helicopter Inc.) Model 269C Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), which requires an immediate visual inspection, a repetitive dye penetrant and visual inspection for cracks, and a terminating action by requiring replacement of the tailboom center attachment (saddle) fitting on Schweizer Aircraft Corporation (Hughes Helicopters, Inc.) Model 269C series helicopters. The AD is prompted by four reports of fatigue damage in the tailboom center attachment saddle fitting. This damage could result in the complete failure of the fitting and the resultant loss of the tailboom and consequently, control of the helicopter.

EFFECTIVE DATE: March 29, 1991.

ADDRESSES: This applicable service information may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Building 3B, Room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791-6220, Fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Four helicopter accidents have occurred involving a complete or partial failure of the tailboom center attachment fitting. One accident occurred in Sweden, in which a tailboom center attachment (saddle) fitting, part number (P/N) 269A2324-7, failed. Another accident occurred in Canada, in which the tailboom center attachment fitting

reportedly failed in flight as a result of fatigue. Two other accidents occurred in which fatigue damage in the tailboom center attachment (saddle) fitting was reported. The FAA has only recently received investigative findings of a foreign airworthiness authority concerning the accident in Canada. In October 1990, the manufacturer recommended and the FAA agrees that mandatory inspections of the magnesium tailboom center attachment fittings are necessary until the existing magnesium saddle fitting, P/N 269A2324-7, is replaced with a new aluminum saddle fitting, P/N 269A2324-11.

FAA-approved Schweizer Aircraft Corporation Service Bulletin B-239, dated October 8, 1990, which contains the inspection procedures and retirement schedule of the magnesium tailboom center attachment (saddle) fitting, P/N 269A2324-7, installed on Model 269C helicopters, pertains to this AD.

Since this situation is likely to exist or develop on other helicopters of the same type design, this AD requires 10-power visual inspections and dye penetrant inspections for cracks, looseness, and corrosion in the tailboom and center attachment (saddle) fitting, and replacement of this fitting as terminating action.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Schweizer Aircraft Corporation (Hughes Helicopters, Inc.): Amendment 39-6857. Docket No. 90-ASW-46.

Applicability: All Model 269C series helicopters, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent fatigue failure of the magnesium tailboom center attachment (saddle) fittings which could result in loss of the tailboom of the helicopter, accomplish the following:

(a) For helicopters with a magnesium tailboom center attachment fitting, P/N 269A2324-7, installed with 400 hours' or less total time in service, perform the following in accordance with the 269 Series Basic Handbook of Maintenance Information, as revised by Temporary Revision No. R-42, dated October 8, 1990 (HMI):

(1) Prior to further flight after the effective date of this AD, and thereafter at intervals not to exceed 50 hours' time in service from the last inspection, inspect the magnesium tailboom center attachment fitting and tailboom visually using a 10-power or higher magnifying glass, in accordance with the HMI.

(2) Within 25 hours' time in service after the effective date of this AD, and thereafter at intervals not to exceed 100 hours' time in service from the last inspection, inspect the magnesium tailboom center attachment fitting using a dye penetrant inspection in accordance with the HMI.

(3) Remove and replace the magnesium tailboom center attachment fitting, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, as prescribed by the HMI prior to attaining 500 hours' total time in service.

(b) For helicopters with magnesium tailboom center attachment fitting, P/N 269A2324-7, installed with more than 400 hours' total time in service, perform the following in accordance with the HMI:

(1) Prior to further flight and thereafter at an interval not to exceed 50 hours' time in service from the last inspection, inspect the tailboom center attachment fitting using a dye penetrant inspection as prescribed in paragraph (a)(2) of this AD.

(2) Before the first flight of each day inspect the tailboom center attachment fitting and tailboom visually using a 10-power or higher magnifying glass as prescribed in paragraph (a)(1) of this AD.

(3) Remove and replace the magnesium tailboom center attachment fitting, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, as prescribed in the HMI, within the next 100 hours time in service after the effective date of this AD.

(c) Remove and replace the magnesium tailboom center attachment, P/N 269A2324-7, with an aluminum tailboom center attachment fitting, P/N 269A2324-11 or P/N 269A2324-11T, fitting before further flight if it is cracked or otherwise unserviceable.

Note: Schweizer Service Bulletin B-239, dated October 8, 1990, pertains to this AD. The tailboom assembly service life is 2,100 hours.

(d) Aircraft may be ferried in accordance with the provisions of FAR sections 21.197 and 21.199 to a base where the requirements of this AD can be accomplished.

(e) Alternate inspections, modification, or adjustments of the compliance times, which provide an equivalent level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, Room 202, Valley Stream, NY 11581.

Amendment 39-6857 becomes effective on March 29, 1991.

Issued in Fort Worth, Texas, on January 31, 1991.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-4749 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-ANE-07; Amdt. 39-6919]

Airworthiness Directives; Pratt & Whitney (PW) PW4152, PW4156, and PW4158 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to PW4152, PW4156, and PW4158 turbofan engines, installed on Airbus A310-300 and A300-600 type aircraft, which requires the engine cowl

anti ice to be "ON" prior to takeoff and during any aircraft inflight operation below 15,000 feet. This amendment is prompted by eight engine failures during pre-delivery testing and is required to prevent high pressure compressor (HPC) damage and surge caused by excessive blade/airseal interference. This condition, if not corrected, could result in HPC failure and possible total loss of aircraft engine thrust.

DATES: Effective March 1, 1991: Comments must be received no later than March 28, 1991.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–07, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Airbus Industrie, Performance & Operations Engineering Department, Flight Division, Engineering Directorate, 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedec, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: This action is prompted by six engine failures which occurred during production acceptance testing at Pratt & Whitney test facilities, and by two additional inflight engine failures experienced during a specialized flight test program intended to corroborate the production test failures. All failed engines exhibited excessive HPC blade tip to airseal interference, resulting in a substantial loss of outer airseal material from the ninth through fifteenth stages of the HPC. An investigation has identified that HPC blade tip to airseal clearances are insufficient to ensure proper engine operation during rapid acceleration to takeoff power when that acceleration is preceded by several minutes of operation at takeoff power and minimum idle rotor speed, sequentially. At minimum idle rotor speed, compressor bore internal cooling flow is insufficient to provide the necessary compressor rotor thermal contraction and resultant blade/airseal clearances to prevent excessive blade tip rubbing during a subsequent rapid acceleration to takeoff power. For this reason, higher inflight engine idle rotor speeds are needed to assure proper HPC bore cooling airflow. Although no revenue service engine failures have been reported, the flight test failures confirm that certain inflight operating profiles can occur which produce excessive blade tip to airseal interference. This condition, if not corrected, could result in an HPC failure and possible total loss of engine thrust.

Since this condition is likely to exist or develop in other engines of the same type design, this AD requires that the engine anti ice be switched to the "ON" position prior to takeoff, and be in the "ON" position for any flight operation below 15,000 feet to provide the required increase in idle rotor speed. The AD also requires installation of a placard in the cockpit with the appropriate instructions to highlight that requirement to the flight crew.

Since this condition can result in total loss of engine thrust and inflight shutdown should a HPC failure occur, there is a need to minimize the exposure of revenue service engines to operations where HPC blade tip to airseal clearances are insufficient to ensure proper engine operation. Therefore, safety in air transportation requires adoption of this regulation without prior notice and public comment. It is found that notice and public procedures are impracticable, and good cause exists for the adoption of the amendment without public comment and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–07, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pratt & Whitney: Applies to Pratt & Whitney (PW) PW4152, PW4156, and PW4158 turbofan engines installed on, but not limited to, Airbus A300 and Airbus A310 aircraft.

Compliance is required within 30 days after the effective date of this airworthiness directive (AD), unless previously accomplished.

To prevent a high pressure compressor (HPC) failure that can result in a total loss of aircraft engine thrust, accomplish the following:

(a) The ENGINE ANTI ICE must be switched to "ON" prior to takeoff and must be in the "ON" position for any flight operation below 15,000 feet.

(b) Install placards in the cockpit of Airbus A310–300 and A300–600 aircraft, just above the Captain and First Officer Primary Flight Displays, indicating the following: "BEFORE TAKE OFF, SET ENG. ANTI ICE ON. KEEP ENG. ANTI ICE ON FOR ANY OPERATION BELOW 15,000 FT."

Note: Further information may be obtained from Airbus Industrie Service Information Letter 72–001, Revision 1, dated September 16, 1990.

(c) Aircraft may be ferried in accordance with the provisions of FARs 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD, may be approved by the Manager, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

All persons affected by this AD who have not already received the appropriate service information may obtain copies upon request to Airbus Industrie, Performance & Operations Engineering Department, Flight Division, Engineering Directorate, 1 Rond Point, Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

This amendment becomes effective March 1, 1991.

Issued in Burlington, Massachusetts, February 15, 1991.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91–4742 Filed 2–28–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Editorial Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to update some obsolete references to the Assistant General Counsel. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATES: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robin F. Thomas, Office of Regulatory Affairs (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: FDA is amending the regulations for delegations of authority in § 5.10(b) (21 CFR 5.10(b)) and § 5.105 (21 CFR 5.105) to remove the current references to the Assistant General Counsel. Currently the Assistant General Counsel is known as the Chief Counsel or Associate General Counsel, and the term "Assistant" is obsolete.

The amendments are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

§ 5.10 [Amended]

2. Section 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials* is amended in paragraph (b) by removing "Assistant" and replacing it with the words "the Chief Counsel of the Food and Drug Administration, i.e., the Associate"; and by adding a comma after "Division".

§ 5.105 [Amended]

3. Section 5.105 *Chief Counsel, Food and Drug Administration* is amended by removing the word "Assistant" and replacing it with the word "Associate".

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–4944 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–01–M

21 CFR PART 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Kanamycin Sulfate, Pectin, Bismuth Subcarbonate, Activated Attapulgite

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a Supplemental new animal drug application (NADA) filed by Fort Dodge Laboratories. The supplement provides for the use of a revised tablet formulation containing kanamycin (as the sulfate), pectin, bismuth subcarbonate, and activated attapulgite and deleting aminopentamide hydrogen sulfate. The product is indicated for the treatment of bacterial enteritis caused by kanamycin susceptible organisms and for symptomatic relief of associated acute bacterial diarrhea in dogs.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, filed a supplement to NADA 42–841 which provided updated labeling and a revised tablet formulation deleting aminopentamide hydrogen sulfate. The supplement was approved by letter dated February 21, 1991. The regulations are amended by removing the previously approved tablet formulation from 21 CFR 520.1204 and adding new § 520.1205 to reflect approval of the revised formulation. In addition, the regulation in § 520.1204 is amended to reflect approval of the oral suspension only.

Under 21 CFR 514.106(b)(2) approval of this supplement did not require a reevaluation of the underlying safety or effectiveness data in the NADA. However, in accordance with the freedom of information provisions of 21 CFR part 20 and § 514.11(e)(2)(i), a summary of data and information submitted to support approval of the NADA may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600

Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), approval of this supplemental application does not qualify for exclusivity because new clinical or field investigations were not required for approval.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1204 is amended by revising the section heading, by removing in paragraph (a) the phrase "tablet or each", and by removing in paragraph (c)(2) the phrase "one tablet or" to read as follows:

§ 520.1204 Kanamycin sulfate, aminopentamide hydrogen sulfate, pectin, bismuth subcarbonate, activated attapulgite suspension.

* * * * *

3. Section 520.1205 is added to read as follows:

§ 520.1205 Kanamycin sulfate, pectin, bismuth subcarbonate, activated attapulgite tablets.

(a) *Specifications.* Each tablet contains 100 milligrams of kanamycin (as the sulfate), 25 milligrams of pectin, 250 milligrams of bismuth subcarbonate, and 500 milligrams of activated attapulgite.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* One tablet per 44 kilograms (20 pounds) of body weight every 8 hours. Maximum dose 3 tablets every 8 hours. For animals under 22 kilograms (10 pounds) 1/2 tablet every 8 hours. The initial loading dose should be twice the amount of a single dose.

(2) *Indications for use.* For the treatment of bacterial enteritis caused by organisms susceptible to kanamycin and the symptomatic relief of associated diarrhea in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: February 21, 1991.

Robert Furrow,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-4795 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Oxfendazole Suspension; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that published in the Federal Register of November 8, 1990 (55 FR 46942). That document amended the animal drug regulations to reflect approval of Syntex Animal Health, Inc.'s, new animal drug application (NADA) 140-854 for the use of oxfendazole suspension as a bovine anthelmintic (except for use in lactating dairy cattle). The approval document limited the use to beef cattle. This document corrects that error.

EFFECTIVE DATE: November 8, 1990.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Syntex Animal Health, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, is the sponsor of NADA 140-854 which provides for the use of oxfendazole suspension as a bovine anthelmintic (except for use in lactating dairy cattle). The approval document inadvertently limited the use to beef cattle. This document corrects that publication to indicate that approval is for use in cattle except for lactating dairy cattle by amending 21 CFR 520.1630(d)(2) by removing the phrase "beef cattle" and inserting "cattle".

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1630 is amended by revising the heading in paragraph (d)(2) and the first sentence in paragraph (d)(2)(iii) to read as follows:

§ 520.1630 Oxfendazole suspension.

* * * * *

(d) * * *

(2) *Cattle.* * * *

(iii) *Limitations.* For use in cattle only. * * *

Dated: February 22, 1991.

Richard H. Teske,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 91-4794 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Halofuginone Hydrobromide

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplement provides for revising the tolerance for safe residues of halofuginone hydrobromide in the edible broiler tissues from 0.1 to 0.18 part per million (ppm).

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876, has filed a supplement to NADA 130-661. The NADA provides for the use of Stenorol® (halofuginone hydrobromide) Type A medicated article to make Type C medicated broiler feed for the prevention of coccidiosis. The supplement provides for revising the

tolerance for safe residues of halofuginone hydrobromide in edible broiler tissues by changing the marker residue concentration from 0.1 to 0.16 ppm in liver for parent halofuginone hydrobromide. This revised tolerance reflects a re-evaluation of the data originally submitted in the NADA as well as an evaluation of a residue study newly submitted with this supplemental application. The safe concentrations for total halofuginone hydrobromide residues in uncooked edible broiler tissues remain 0.1 ppm in muscle, 0.3 ppm in liver, and 0.2 ppm in skin with adhering fat. The supplemental NADA is approved and 21 CFR 556.308 is amended to reflect the approval. The basis for approval is discussed in the revised freedom of information summary. The change implemented by approval of the supplemental application does not qualify for exclusivity under the Generic Animal Drug and Patent Term Restoration Act, because exclusivity is not to be granted for an increase in a tolerance. (See 54 FR 35534; August 28, 1989.)

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

2. Section 556.308 is amended by revising the second and third sentences to read as follows:

§ 556.308 Halofuginone hydrobromide.

* * * A tolerance is established in broilers of 0.16 part per million and in turkeys of 0.1 part per million for parent halofuginone hydrobromide in liver. These marker residue concentrations in liver correspond to total residue concentrations of 0.3 part per million in liver. * * *

Dated: February 25, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-4855 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 3]

Citizenship of Responsible Officers and Sponsors; Exchange—Visitor Program; Correction

AGENCY: United States Information Agency

ACTION: Final rule; correction.

SUMMARY: The Agency issued a final rule on November 8, 1990, at 55 FR 46943, concerning the citizenship of Responsible Officers and Sponsors of designated exchange visitor programs. Because of an administrative error a part of one sentence in § 514.1 was incorrectly stated. Specifically, paragraph 4(i) of the term "Citizen of the United States" in § 514.1 was not intended to apply exclusively to subsection (3) of section 501(c) of the Internal Revenue Code but rather to any non-profit organization organized under any subsection of section 501(c) of the Internal Revenue Code. This notice corrects the error.

EFFECTIVE DATE: November 8, 1990.

ADDRESSES: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547 (202) 619-6829.

Accordingly, the rule amending 22 CFR, which was published in the Federal Register on November 8, 1990 at page 46948, in the second column, is corrected by correctly revising the definition of "Citizen of the United States" as follows:

§ 514.1 Definitions.

* * * * *

Citizen of the United States means:

(1) An individual who is a citizen of the United States or one of its territories or possessions; or,

(2) A general or limited partnership created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, of which a majority of the partners are citizens of the United States; or,

(3) A for-profit corporation, association, or other legal entity created or organized under the laws of the United States, or of any State, the District of Columbia, or a territory or possession of the United States, which

(i) Has its principal place of business in the United States, and

(ii) Whose shares or voting interests are publicly traded on a U.S. stock exchange; or, if its shares or voting interests are not publicly traded on a U.S. stock exchange, it shall nevertheless be deemed to be a citizen of the United States if a majority of its officers, Board of Directors, and its shareholders are citizens of the United States; or,

(4) A non-profit corporation, association, or other legal entity created or organized under the laws of the United States, or any States, the District of Columbia, or a territory or possession of the United States, and which is

(i) Qualified with the Internal Revenue Service as a tax-exempt organization pursuant to section 501(c) of the Internal Revenue Code; and,

(ii) Which has its principal place of business in the United States; and,

(iii) A majority of its officers and a majority of its Board of Directors or other body vested with its management are citizens of the United States; or,

(5) An accredited college, university or other institution of higher education created or organized under the laws of the United States, or of a State, including a county, municipality or other political subdivision thereof, the District of Columbia, or of a territory or possession of the United States; or,

(6) An agency of the United States, or of a State, the District of Columbia, or a territory or possession of the United States.

* * * * *

Dated: February 22, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-4841 Filed 2-28-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1 91-005]

Temporary Drawbridge Operation Regulations; Saugatuck River, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of Metro-North Commuter Railroad (Metro-North), the Coast Guard is adding temporary regulations governing the US Route 1 drawbridge over Saugatuck River, at mile 1.1, at Westport, Connecticut to provide that the draw need not be opened for the passage of vessels for 45 days from February 15 through March 31, 1991. This temporary regulation is being considered to facilitate the rehabilitation of the north leaf of the bridge before the boating season. This action will relieve the bridge owner of the burden of having to open the draw during the rehabilitation of the bridge and will only permit the transit of marine traffic which can pass under the closed span.

EFFECTIVE DATES: This temporary regulation becomes effective on February 15, 1991 and will terminate on March 31, 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: On February 1, 1991, the Coast Guard published a proposed temporary rule (56 FR 4023) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1-730 dated January 22, 1991. In each notice, interested persons were given until February 10, 1991 to submit comments. The Coast Guard received no comments or objections in response to this notice.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project officer, and Lieutenant John Gately, Project Attorney.

Discussion of Comments

No comments or objections were received to the public notice. No changes have been made in the final rule. The temporary regulations will suspend a portion of the existing regulations and allow the bridge to remain in the closed position from 7 a.m. on February 15 through 11 p.m. on March 31, 1991. Metro-North has the contractor and all equipment ready to facilitate structural repairs to the north span upon closure.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulations, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This is based upon the fact that the closure will be accomplished outside the peak boating season when recreational boats are out of the water. The regulation also will not prevent the passage of vessels who are able to pass under the closed span. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that it does not warrant the preparation of a federalism assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1461; 33 CFR 1.05-1(g).

2. Section 117.221(b) (1) and (2) are suspended for a 45 day period and (b) (3) is added for the same 45 day period from 15 February through 31 March 1991 to read as follows: Because this is a temporary rule, this paragraph will not be codified in the Code of Federal Regulations.

§ 117.221 Saugatuck River.

* * * * *

(b) * * *

(3) *Repair of the SAGA bridge.* The draw need not be opened for the passage of any vessel and paragraphs (b) (1) and (2) are suspended from 7 a.m. on February 15 through 11 p.m. on March 31, 1991, inclusive, to effect major repairs to the north bridge leaf.

* * * * *

Dated: February 21, 1991.

P.L. Collom,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-4892 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 74

RIN 0991-AA29

Administration of Grants; Audits of Institutions of Higher Education and and Other Nonprofit Organizations, Implementation of OMB Circular A-133

AGENCY: Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comments.

SUMMARY: These amendments to 45 CFR part 74 implement, for HHS, Office of Management and Budget (OMB) Circular A-133 by requiring institutions of higher education and other nonprofit organizations to comply with the requirements of the Circular. The Circular provides Government-wide policy and standards for non-Federal, organization-wide audits of recipients of Federal awards. The Circular and these amendments replace the audit requirements of OMB Circular A-110. In addition, the Department offers interested parties an opportunity to comment on a definition, contained in the amendments, of the concept of affiliation between a hospital and an institution of higher education. This definition is important because the Circular applies to hospitals which are affiliated with institutions of higher education, but exempts all other hospitals. The Circular, however, does not define "affiliated." Consequently, a definition of this term is included in the amendments to assure consistent implementation.

DATES: Interim rule effective March 1, 1991. Comments on the definition of "affiliated" must be received by April 30, 1991.

ADDRESSES: Comments on the definition of "affiliated" should be addressed to Edward M. Tracy, Director, Division of Cost Determination Management, Department of Health and Human Services, room 513D HHH Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: John Strauch (202) 245-7840.

SUPPLEMENTARY INFORMATION:

Background

Section 74.62(b) of 45 CFR part 74 currently requires nongovernmental recipients of Federal awards to comply with the audit requirements of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." That Circular requires these organizations to obtain organization-wide audits of their activities by independent non-Federal auditors at least once every two years.

On November 10, 1988, OMB published a proposed Circular A-133 for public comment in the Federal Register, at 53 FR 45744-45748. The new Circular proposed to replace the audit requirements of Circular A-110 with a more comprehensive set of audit policies and procedures for institutions of higher education and other nonprofit organizations.

After considering the comments received, OMB issued the Circular in final form on March 8, 1990. OMB also published the Circular in the Federal Register on March 16, 1990 at 55 FR 10019-10025. The Circular supersedes the audit requirements in Attachment F of Circular A-110 which are referenced in 45 CFR 74.62(b).

Circular A-133 applies to recipient fiscal years that begin on or after January 1, 1990. The Circular applies to all nonprofit organizations which receive Federal awards except (a) Hospitals which are not affiliated with an institution of higher education, (b) State, local and Indian Tribal governments covered by Circular A-128 and (c) those public institutions of higher education which are audited as part of a single audit of a State or local government under Circular A-128. Audits are usually to be performed annually but not less frequently than every two years.

The Circular divides organizations into three categories, as follows:

1. Organizations which receive $100,000 or more a year in Federal awards must have an audit made in accordance with the provisions of the Circular, except that an organization which receives awards only under one Federal program may choose instead to have an audit performed of that program.

2. Organizations receiving at least $25,000 but less than $100,000 in Federal awards a year may choose to have an audit made in accordance with the provisions of the Circular or to have an audit made of each Federal award in accordance with the Federal laws and regulations governing the programs in which they participate.

3. Organizations receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements but their records must be available for review by the Federal grantor agency or the subgranting entity.

For purposes of the foregoing, the term "award" means financial assistance as well as cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through other recipients.

Submission of Audit Reports

The Circular requires audit reports to be submitted in accordance with the reporting standards for financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. To minimize the burden on HHS recipients, these amendments specify that copies of the reports for HHS are to be submitted only to the responsible Regional Inspector General for Audit Services. These officials will distribute copies as appropriate within the Department.

Affiliated Institutions

OMB exempted hospitals not affiliated with institutions of higher education because such hospitals receive most of their Federal reimbursements from the Medicare and Medicaid programs which have their own audit mechanisms. The amount of research and training awards received by non-affiliated hospitals were deemed by OMB not to be significant enough to justify an additional audit at these hospitals. However, OMB did not provide a definition of the term "affiliated." We discussed this issue with OMB and were advised that the term should be interpreted broadly enough to assure audit coverage of significant amounts of Federal research and training funds.

Therefore, in order to assure consistent application of this aspect of the Circular and to ensure that significant amounts of research and training funds are audited, an appropriate definition of "affiliated" is included in this regulation. Under that definition, the existence of an affiliation would include those situations where a formal affiliation exists by virtue of ownership or a formal affiliation agreement. It would also include de facto affiliations where the Federally-supported research or training activities of one organization make use of the facilities or staff of the other. We have been advised by OMB that this definition is consistent with their intent.

Because only the definition of "affiliated" has not previously been made available for public comment by OMB, we are providing the public an opportunity to comment on the definition. However, since this definition is interpretative and we have been advised by OMB that our definition is consistent with the intent of the Circular, we do not believe that this should delay final issuance of the amendments. We are therefore issuing these amendments as an interim final rule, making them effective immediately but inviting public comment on the definition of "affiliated." If persuasive comments are received, we will modify the definition as soon as possible to avoid any hardship to affected parties.

Changes to 45 CFR Part 74

HHS is amending § 74.62 as follows:

1. Footnote 1 to paragraphs (a) and (b) is deleted. This footnote described in general terms the audit requirements of OMB Circulars A-102 and A-110. Since these Circulars only apply to earlier periods and will soon have no applicability, the footnote is not longer necessary.

2. Subparagraph (a)(3) is renumbered and reordered as paragraph (c) and expanded to apply to Circular A-133 as well as Circular A-128 since the requirements concerning submission of audit reports now also apply to nongovernmental organizations. An editorial change recognizes the current title of the HHS Regional Inspector General for Audit Services and a new footnote is added explaining that the responsibilities for processing non-Federal audit reports is in the process of being incrementally transferred to the Kansas City Office.

3. The existing text of paragraph (b) is being renumbered subparagraph (b)(1) and its applicability is limited to fiscal periods beginning prior to January 1, 1990, the effective date of Circular A-133.

4. Subparagraph (b)(2) is added requiring all nongovernmental recipients to comply with Circular A-133, including any future amendments published in the Federal Register by OMB.

5. Subparagraph (b)(3) is added to define the term "affiliated" for purposes of determining which hospitals are and

BEST COPY AVAILABLE

are not exempted from coverage by Circular A–133. The definition includes all situations where: (a) Either a hospital or an institution of higher education has an ownership interest in the other entity or some other party (other than a State or local unit of government) has an ownership interest in each of them; (b) an affiliation agreement exists; or (c) Federal research or training awards to a hospital or educational institution are performed in the facilities of, or involve the staff of, the other entity.

6. OMB Circular A–133 is included verbatim as Appendix I to part 74.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354) which requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities, the Secretary certifies that this rule has no significant effect on a substantial number of small entities. Therefore a regulatory flexibility analysis is not included.

Paperwork Reduction Act

HHS was requested by OMB to serve as the lead agency on behalf of OMB and all of the Federal agencies that will be implementing Circular A–133 for the purpose of processing the request for approval under the Paperwork Reduction Act. The request was reviewed and approved by the OMB Office of Information and Regulatory Affairs with OMB Control Number 0991–0003.

Waiver of Notice of Proposed Rule Making

The definition of "affiliated" is interpretive of that word as used in OMB Circular A–133, but not defined there. Accordingly, we conclude that the portion of this regulation containing the definition of "affiliated" is an interpretive rule for which notice and comment is not legally required. At the same time, however, we are inviting parties to comment on this definition, so that we may have the full benefit of public participation. If persuasive comments on this term are received, we will modify this definition.

This regulation is being published in interim final form with an immediate effective date. We are disposing with prior notice and comment procedures because we believe there is good cause to do so. Specifically, we find that publication of this regulation in proposed form is unnecessary for the following reasons:

1. Except for the definition of "affiliated", on which we are inviting comments, public comments on the Circular have been sought and considered by OMB in developing the Circular. The Department has no discretion to change the Circular's requirements or its effective date.

2. Current regulations already require the performance of organization-wide audits. A delay in implementing the Circular would delay the improvements in these audits that are likely to accrue from the improved guidance in the Circular. It would also require certain smaller organizations to continue to comply with the more restrictive requirements in the current regulations.

List of Subjects in 45 CFR Part 74

Accounting, Administrative practice and procedures, Grant programs—health, Grant programs—social programs, Grants administration.

Accordingly, 45 CFR part 74 is amended to read as follows:

Dated: December 31, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for part 74 continues to read as follows:

Authority: 5 U.S.C. 301; § 74.62(a) and appendix J also issued under section 7505, P.L. 96–502, 96 Stat. 2333 (31 U.S.C. 7505).

2. Section 74.62 is revised to read as follows:

§ 74.62 Non-Federal Audits.

(a) *Governmental recipients*—(1) Fiscal periods of recipients beginning before January 1, 1985. Recipients that are governments shall comply with the requirements concerning non-Federal audits in Attachment P to OMB Circular A–102 (October 1979) (see appendix G to part 74).

(2) *Fiscal periods of recipients beginning on or after January 1, 1985.* Recipients that are governments shall comply with OMB Circular A–128. The Circular is codified verbatim in appendix J to this part.

(b) *All other recipients.—Fiscal periods of recipients beginning before January 1, 1990.* Recipients that are not governments shall comply with the requirements concerning non-Federal audits in OMB Circular No. A–110 (see appendix H to part 74).

(2) *Fiscal periods of recipients beginning on or after January 1, 1990.* Recipients that are not governments shall comply with OMB Circular A–133. The Circular is codified verbatim in appendix I to this part.

(3) *Hospitals.* OMB Circular A–133 exempts hospitals not affiliated with an institution of higher education. In determining whether or not this exemption applies, the term "affiliated" shall include all situations where:

(i) Either a hospital or an institution of higher education has an ownership interest in the other entity or some other party (other than a State or local unit of government) has an ownership interest in each of them;

(ii) An affiliation agreement exists; or

(iii) Federal research or training awards to a hospital or institution of higher education are performed in whole or in part in the facilities of, or involve the staff of, the other entity.

(c) *Submission of audit reports.* All copies of audit reports that a recipient is required under OMB Circular A–128 or A–133 to submit to HHS shall be addressed to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the recipient is located. The HHS Office of Inspector General will distribute copies as appropriate within the Department. Recipients, therefore, are not required to send their audit reports to any HHS officials other than the responsible Regional Inspector General for Audit Services.[1]

3. By adding appendix I to part 74 to read as follows:

OMB Circular NO–133 Audits of Institutions of Higher Education and Other Nonprofit Institutions

OMB Circular No. A–133

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A–133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

[1] The Office of Inspector General is in the process of transferring this responsibility for recipients located in all regions to its Kansas City Office. Recipients in the New York, Philadelphia and Denver Regions should submit their reports to the Regional Inspector General for Audit Services, Kansas City, MO. Recipients in other regions will be advised directly by the Office of Audit Services when responsibility for their region is to be transferred.

2. *Authority.* Circular A–133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

4. *Supersession.* Circular A–133 supersedes Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. *Applicability.* The provisions of Circular A–133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.* The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A–133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A–110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A–133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information concerning Circular A–133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Richard G. Darman,

Director.

OMB Circular A–133

Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. "Award" means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term 'agency' in section 551(1) of title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

—Grants;
—Contracts;
—Cooperative agreements;
—Loans;
—Loan guarantees;
—Property;
—Interest subsidies;
—Insurance;
—Direct appropriations;
—Other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. "Generally accepted accounting principles" has the meaning specified in the *Government Auditing Standards.*

g. "Independent auditor" means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards*; or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three per nt of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

—Research and Development.
—Student Financial Aid.
—Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Nonprofit institution" means any corporation, trust, association, cooperative or other organization which (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A–128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A–128 "Audits of State and Local Governments."

l. "Oversight" agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. "Recipient" means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. "Research and development" includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. "Student Financial Aid" includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to

students on a competitive basis, or for specified studies or research.

p. "Sub-recipient" means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. "Vendor" means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. *Audit of Nonprofit Institutions.*

a. *Requirements based on awards received.* (1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of this Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. *Oversight by Federal agencies.* (1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. *Cognizant Agency Responsibilities.* A cognizant agency shall:

a. Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. *Oversight agency responsibilities.* An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. *Recipient responsibilities.* A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A-128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. *Relation to Other Audit Requirements.*

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards.*

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

—Withholding a percentage of awards until the audit is completed satisfactorily;
—Withholding or disallowing overhead costs; or
—Suspending Federal awards until the audit is made.

9. *Audit costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-21, "Cost Principles for Universities" or Circular A-122, "Cost Principles for Nonprofit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations."

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.* a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews.* a. *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the *Government Auditing Standards.*

b. *Internal control review.* (1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance review.* (1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the *Catalog of Federal Domestic Assistance* (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (*e.g.*, inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and
—The records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,
—Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and
—Amounts claimed or used for matching were determined in accordance with (1) OMB Circular A-21, "Cost Principles for Educational Institutions"; (2) matching or cost sharing requirements in Circular A-110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; (3) Circular A-122, "Cost Principles for Nonprofit Organizations"; (4) FAR subpart 31 cost principles; and (5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the "*Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations,*" and the "*Compliance*

Supplement for Single Audits of State and Local Governments," issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the *Government Auditing Standards*.

15. *Audit Reports.* a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the *Catalog of Federal Domestic Assistance*. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: (1) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, (2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations, and (3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

• The size of the universe in number of items and dollars,

• The number and dollar amount of transactions tested by the auditors,

• The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards*.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards*.

g. In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards*. Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including sub-recipient reports, on file for three years from their issuance.

16. *Audit resolution.* a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternate arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

[FR Doc. 91-4414 Filed 2-28-91; 8:45 am]

BILLING CODE 4120-04-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853

[NASA FAR Supplement Directive 90-6]

RIN 2700-AD11

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Procurement Integrity; (2) Competition Documentation; and (3) Field Pricing Support.

EFFECTIVE DATE: December 31, 1990.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933-003-00000-1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700-0042.

List of Subjects in 48 CFR Parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1803, 1804, 1805, 1806, 1814, 1815, 1819, 1836, 1849, 1852, and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Part 1803 is amended by revising subpart 1803.1 to read as follows:

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.
1803.101-1 General.
1803.101-2 Solicitation and acceptance of gratuities by Government personnel.
1803.104 Procurement integrity.
1803.104-4 Definitions.
1803.104-5 Disclosure, protection, and marking of proprietary and source selection information.
1803.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.
1803.104-9 Certification requirements.
1803.104-11 Processing violations or possible violations.
1803.104-12 Ethics program training requirements.

Subpart 1803.1—Safeguards

1803.101 Standards of conduct.

1803.101-1 General.

(a) Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to Government procurement. Among these statutes are (1) 18 U.S.C. 201, relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203, relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205, relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208, relating to transacting business as an officer or agent of the United States with firms of which the officer or agent, or a spouse, minor child, or partner, is an official or in which the officer or agent has a pecuniary interest; and (5) 18 U.S.C. 209, relating to compensation from non-Government sources in connection with Government services.

(b) The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitons. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitons are voidable (18 U.S.C. 218). (See subpart 18-3.70 for policy on contracting with former NASA employees.)

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

1803.104 Procurement integrity.

1803.104-4 Definitions.

Designated agency ethics official means for Headquarters, the General Counsel, and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

1803.104-5 Disclosure, protection, and marking of proprietary and source selection information.

(a) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsbile for preparing material described in FAR 3.104-4(k)(2)(i) through (ix) shall assure that the material is marked with the legend in FAR 3.104-5(c) at the time the material is prepared.

(b) Unless marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information when released during a market survey in order to determine the capabilities of potential competitive sources (see FAR subaprt 7.1). If marked with the legend, they may be released during a market survey as authorized by the contracting officer after removal of the legend. Draft documents, after having been released, must remain available to the public until the conclusion of the procurement.

(c) Government employees serving in the following positions are authorized access to proprietary or source selection information for the particular procurements for which they have responsiblity:

(1) Personnel participating in source evaluation board (SEB) procedures under 1815.613-71 and 1870.303, App. I.

(2) Personnel assigned to the contracting office.

(3) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(4) Small business specialists.

(5) Personnel assigned to counsel's office.

(6) Personnel who evalaute an offeror's or bidder's technical or cost proposal.

(7) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(8) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(9) Other Government employees authorized by the contracting officer.

(10) Supervisors, at any level, of the personnel listed in subparagraphs (c) (1) through (9).

(d) Release of proprietary or source selection information to other than Government employees may be authorized in accordance with FAR 15.413-2, 1815.413, and 1815.413-2.

(e) For contracts and contract modifications over $100,000, release of proprietary or source selection

information to another Government activity shall be made by a letter citing the obligation under FAR 3.104–5(d) to maintain a list of persons or classes of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for the contract file.

1803.104–8 Knowing violations, duty to inquire, and ethics advisory opinions.

When a contracting officer has not been appointed, questions regarding whether information was proprietary or source selection information shall be referred to the procurement officer (see FAR 3.104–8 (d) and (e)).

1803.104–9 Certification requirements.

The contracting officer shall obtain the following certification from any procurement official leaving the Government or transferring to another Government agency or any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of a procurement expected to result in a contract or modification in excess of $100,000 (see FAR 3.104–7(a)).

(Certification)

Procurement Official Certification Upon Termination of Government Service

I, [Name of procurement official], hereby certify that I understand the continuing obligation under Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) not to disclose proprietary or source selection information relating to any ongoing procurement for which I have served as a procurement official.

Signature of Procurement Official and Date

Identify applicable procurements (ones for which awards have not been made at the time of the Procurement Official's departure):

[List procurements]

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of certification)

1803.104–11 Processing violations or possible violations.

(a) The Procurement Officer is the individual designated to receive the contracting officer's report of violations in accordance with FAR 3.104–11.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Assistant Administrator for Procurement (Attn: Code HM).

(c) When the HCA or designee determines under FAR 3.104–11(f) that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Assistant Administrator for Procurement (Attn: Code HP) simultaneous with transmittal to the Administrator.

1803.104–12 Ethics program training requirements.

Individuals who will serve as procurement officials shall complete either Optional Form 333 or the following certification (see FAR 3.104–12(a)). The Privacy Act Notice is intended for use when either the executed Optional Form 333 or the executed certification will be filed in the employee's official personnel file and a social security number is needed. When an individual's social security number is being requested, Centers may use the attached Privacy Act Notice or an appropriate alternative Privacy Act Notice. The Privacy Act Notice may be omitted if a social security number is not being requested.

(Certification)

Procurement Integrity Certification for Procurement Officials

As a condition of serving as a procurement official, I, [Name], hereby certify that I am familiar with the provisions of subsections 27 (b), (c), and (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101–189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27 (a) through (f) has been made available to me. I understand that, should I leave the Government during the conduct of a procurement for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to the procurement and a requirement to so certify.

I understand that my execution of this certification does not make me a procurement official, nor will it be utilized to establish that I am a procurement official.

Signature and date

(End of certification)

(Notice)

Name

Social Security Number

Privacy Act Notice to Employees and Officials

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided:

Authority for Collection of Information: 41 U.S.C. 423 and Executive Order 9397.

Your signature on the Procurement Integrity Certification for Procurement Officials and disclosure of your Social Security Number are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal purpose for collection of this information:

To obtain and maintain a completed certification from any person designated as a "Procurement Official," as defined by 41 U.S.C. 423 and applicable procurement regulations.

Routine uses which may be made of the collected information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "OPM/GOVT–1, General Personnel Records," as published in the Federal Register periodically by OPM.

(End of Notice)

PART 1804—ADMINISTRATIVE MATTERS

3. Part 1804 is amended as set forth below:

1804.470–2 [Amended]

a. In section 1804.470–2, the word "viz." is removed, and the words "for example," are added in its place.

1804.671–4 [Amended]

b. In section 1804.671–4, paragraph (qqq), the sentence "For award-fee contracts, enter the base fee, the maximum available award fee." is revised to read "For award-fee contracts, enter the base fee plus the maximum available award fee "

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.207 [Amended]

4. In section 1805.207, paragraph (b), the phrase "R. Architect-Engineer Services." is revised to read "C. Architect-Engineer Services."

PART 1806—COMPETITION REQUIREMENTS

5. Sections 1806.302–4 and 1806.302–470 are added to read as set forth below:

1806.302–4 International agreement.

1806.302–470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302–4 is not required when the procurement officer signs a Memorandum for the Record that:

(a) describes the specific terms of the international agreement or treaty that limit procurements in support of, or as a result of, the agreement or treaty to less than full and open competition;

(b) is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304; and

(c) is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

PART 1814—SEALED BIDDING

1814.404–170 [Amended]

6. In section 1814.404–170, paragraph (b) introductory text, the reference "FAR 14.404–1(c)(6) or (7)" is revised to read "FAR 14.404–1(c)(6), (7), or (8)."

PART 1815—CONTRACTING BY NEGOTIATION

7. Part 1815 is amended as set forth below:

1815.613–70 [Amended]

a. In section 1815.613–70, the word "differs" is revised to read "differ".

b. In section 1815.805–5, paragraph (b) is revised to read as set forth below:

1815.805–5 Field pricing support.

* * * * *

(b) Whenever available data are adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination.

* * * * *

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1819.1—[Removed]

8. Subpart 1819.1 is removed in its entirety.

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1836.7—[Amended]

9. In the Table of Contents and the title of subpart 1836.7, the phrase "Standard Forms" is revised to read "Standard and Optional Forms."

PART 1849—TERMINATION OF CONTRACTS

1849.102–70 [Amended]

10. In section 1849.102–70, in paragraph (b) introductory text and in paragraphs (c) and (d), the phrase "Office of External Relations, NASA Headquarters (Code X)" is revised to read "Office of Legislative Affairs, NASA Headquarters (Code LB)."

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.219–72 [Removed]

11. Section 1852.219–72 is removed in its entirety.

PART 1853—FORMS

12. Part 1853 is amended as set forth below:

1853.207 [Amended]

a. In section 1853.207, paragraphs (a) and (b), the citation "1807.170–1(a)" is revised to read "1807.170–1(b)."

[FR Doc. 91–4703 Filed 2–28–91; 8:45 am]
BILLING CODE 7510–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

[Ex Parte 55 Sub No. 82]

Commission Organization; Delegations of Authority to the Secretary

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Chairman of the Commission delegates to the Secretary the authority previously delegated to the Director of the Office of Proceedings (1) to dispose of routine procedural matters in proceedings assigned for handling under the modified procedure; (2) to decide, unless otherwise ordered by the Chairman or a majority of the Commission in individual proceedings, whether operating rights and complaint proceedings should be handled under the modified procedure or assigned to the Office of Hearings; and (3) to grant requests for voluntary dismissals of complaints and applications. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned. This action is necessary to implement a realignment of functions that will expedite the disposition of routine procedural matters. The intended effect of this action is to enhance the efficiency of the Commission's operations and improve the quality of its service to the public.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275–7429. (TDD for hearing impaired: (202) 275–1721.)

SUPPLEMENTARY INFORMATION: Part 1011 of title 49 of the Code of Federal Regulations describes the organization of the Interstate Commerce Commission and the delegation of jurisdiction and responsibilities to the Commission and its components. The Chairman is delegated certain authority to act for the Commission, largely in matters of a procedural nature. Section 1011.7 of title 49 redelegates to specified Commission employees the authority to act in certain matters assigned to the Chairman. Several functions that were previously delegated by the Chairman to the Director of the Office of Proceedings are now being delegated instead to the Secretary by the accompanying amendments, for the reasons stated in the summary. Because these rules involve the internal organization and procedures of the Commission, they are issued by the Chairman in final form, and public comments are not being requested.

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

This action will not have a significant economic impact on a substantial number of small business entities. It imposes no new regulatory requirements on any entity.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

Decided: February 21, 1991.

By the Commission, Edward J. Philbin, Chairman.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble, title 49, chapter X, part 1011 of the Code of Federal Regulations is amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 continues to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.7 is amended by revising paragraphs (c)(3) and (d) to read as follows:

§ 1011.7 Delegations of authority by the Chairman of the Interstate Commerce Commission

* * * * *

(c) * * *

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an administrative law judge, or arising in a proceeding after the issuance of an initial decision of a hearing officer in proceedings which have been the subject of an oral hearing, is delegated to the Secretary of the Commission. The Secretary shall also have authority, unless otherwise ordered by the Chairman or a majority of the Commission in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or assigned to the Office of Hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned.

(d) Except as provided in § 1113.3(b)(1), authority to dismiss complaints at the request of the complainant, or applications at the request of applicants, is delegated to the Secretary and the Chief Administrative Law Judge of the Commission.

* * * * *

[FR Doc. 91-4675 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1330

[Ex Parte No. 346 (Sub-No. 23)]

Railroad Exemption—Filing Quotations Under Section 10721

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules at 49 CFR 1330.1 to exempt nonagricultural rate quotations by railroads from the filing requirements of 49 U.S.C. 10721. The Notice of Proposed Rulemaking was published March 25, 1987, at 52 FR 9513. The amendment is unopposed, and will result in less regulation, and cost savings to the Commission and rail industry. The Commission emphasized that revocation petitions under 49 U.S.C. 10505(d) could be filed at any time should circumstances change.

EFFECTIVE DATE: The amendment is effective on March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This rule will not have a significant economic impact on a substantial number of small entities. It will result in a reduction of, and not an addition to, regulatory requirements.

List of Subjects in 49 CFR Part 1330

Freight, Freight forwarders, Government procurement, Maritime carriers, Motor carriers, Pipelines, Railroads.

Authority: 49 U.S.C. 10321, 10721, 10762, and 10505.

Decided: February 21, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1330 of the Code of Federal Regulations is amended as follows:

PART 1330—FILING QUOTATIONS FOR GOVERNMENT SHIPMENTS AT REDUCED RATES

1. The authority citation for part 1330 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10721, 10762, and 10505.

2. Section 1330.1 is revised to read as follows:

§ 1330.1 Applicability.

The provisions of this part shall apply to copies of all quotations or tenders made by all common carriers by railroad, including express and sleeping-cars companies, by pipeline, by motor vehicle, and by water, and household goods freight forwarders, to the United States Government, or any agency or department thereof, for the transportation, storage or handling of property or the transportation of persons free or at reduced rates as permitted by 49 U.S.C. 10721, except quotations or tenders by railroads for transportation of nonagricultural commodities and quotations or tenders which, as indicated by the United States Government or any department or agency thereof to any carrier or carriers, involves information the disclosure of which would endanger the national security.

[FR Doc. 91-4676 Filed 2-28-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 620

[Docket No. 910227-1027]

Foreign Fishing, General Provisions for Domestic Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends foreign and domestic fishing regulations contained in 50 CFR parts 611 and 620 by adding fishery enforcement officers (FEOs) to the list of persons designated by the Secretary of Commerce (Secretary) as authorized officers for the purposes of enforcement of provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The intent is to increase efficiency of fishery enforcement efforts.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Special Agent Gary A. Wood, NOAA, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, 301-427-2300.

SUPPLEMENTARY INFORMATION: Section 311(b)(1) of the Magnuson Act provides authority to the Secretary to authorize officers to enforce the provisions of the Magnuson Act. An authorized officer may, with or without a warrant, arrest any person if he or she has reasonable cause to believe that such person has committed an act prohibited by section 307 of the Magnuson Act; board, search or inspect any fishing vessel that is subject to the provisions of the Magnuson Act; seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Magnuson Act; and seize any other evidence related to any violation or any provision of the Magnuson Act. Authorized officers may also execute any warrant or other process issued by any court of competent jurisdiction, and execute any other lawful authority.

The Magnuson Act also confers upon authorized officers with law enforcement responsibilities the authority to make an arrest, without a warrant, for an offense against the United States committed in his or her presence, or for a felony cognizable under the laws of the United States. Such authority can be exercised only if the authorized officer is performing a duty regarding fishery or other marine law enforcement, and he or she has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

FEOs will be uniformed officers whose primary function under the Magnuson Act will be to conduct dockside patrols to inspect fishing vessels, catches, gear, logbooks and other routine duties to ensure that fishermen are in compliance with the provision of applicable fishery management plans. FEOs may also inspect the facilities and records of fish dealers, fish processors, warehouse operators, and persons engaged in the transportation of fish. They may also conduct at-sea surface and aerial patrols and conduct at-sea boardings.

The intent of NMFS in employing FEOs is to increase the efficiency of the patrol effort by creating a unit that specializes in this task.

Classification

This final rule is issued under the Magnuson Act. Because this is a rule relating to agency management or personnel, section 553 of the Administrative Procedures Act does not apply.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

Executive Order 12291 does not apply because this is a rule relating to agency management or personnel. The rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612, and does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act. There is no change in the regulatory impacts previously reviewed and analyzed.

List of Subjects in 50 CFR Parts 611 and 620

Fish, Fisheries, Foreign fishing.

Dated: February 22, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 611 and 620 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

2. In § 611.2, under the definition for *Authorized officer*, paragraph (b) is revised to read as follows:

§ 611.2 Definitions.

* * * * *

Authorized officers means—

* * * * *

(b) Any special agent or fishery enforcement officer of the National Marine Fisheries Service;

* * * * *

PART 620—GENERAL PROVISIONS FOR DOMESTIC FISHERIES

3. The authority citation for part 620 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 620.2, under the definition for *Authorized officer*, paragraph (b) is revised to read as follows:

§ 620.2 Definitions.

* * * * *

Authorized officer means:

* * * * *

(b) Any special agent or fishery enforcement officer of NMFS;

* * * * *

[FR Doc. 91-4679 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Parts 611 and 672

[Docket No. 901184-1042]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of 1991 initial specifications of groundfish and Pacific halibut bycatch management measures; directed fishing allowances; prohibition of directed fishing; and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces initial specifications of groundfish in the Gulf of Alaska for the 1991 fishing year and determinations pertaining to 1991 management of the Gulf of Alaska groundfish fisheries with the exception of pollock initial specifications. This action is necessary to inform the public of the determinations. The measures are intended to carry out management objectives contained in the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP).

DATES: Effective: 5:05 p.m., February 25, 1991. Comments are invited on the proposed apportionments of reserves on or before March 18, 1991.

ADDRESSES: Comments should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 021668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

This notice announces for the 1991 fishing year (1) total allowable catches (TACs) for each category of groundfish in the Gulf of Alaska and apportionments thereof to domestic annual processing (DAP) except for pollock; (2) proposed apportionment of reserves to DAP; (3) assignments of the sablefish TAC to authorized fishing gear users; (4) prohibited species catch (PSC) limits relevant to fully utilized groundfish species; (5) halibut PSC mortality limits; (6) seasonal apportionments of the halibut PSC limits; and (7) prohibition of directed fishing for shortraker/rougheye rockfish

in the Western Regulatory Area of the Gulf of Alaska. Each of these items is discussed as follows.

The process for determining TACs for groundfish species in the Gulf of Alaska is established by the FMP, which was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations appearing at 50 CFR 611.92 and part 672. The sum of the TACs for all species must fall within the combined optimum yield (OY) range established for these species of 116,000–800,000 metric tons (mt) (§ 672.20(a)(2)(ii)).

Under § 611.92(c)(1) and § 672.20(a)(2)(i), TACs are apportioned initially among DAP, joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves. The DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. Any JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea. Any TALFF amounts are intended for harvest by foreign fishermen. The reserves for the Gulf of Alaska are 20 percent of the TAC for pollock, Pacific cod, flatfish species, and "other species." If necessary, these reserve amounts may be set aside for possible reapportionment to DAP and/or JVP if the initial apportionments prove inadequate. Reserves that are not reapportioned to DAP or JVP may be reapportioned to TALFF. Other groundfish target species, including sablefish and the rockfish species, are fully utilized by DAP, and no reserves are established.

Under § 672.20(c)(1), the preliminary specifications of DAP were published in the **Federal Register** (55 FR 47897, November 16, 1990). No JVP or TALFF amounts were specified. Under § 672.20(c)(1)(i), one-fourth of preliminary specifications and apportionments and one-fourth of halibut prohibited species catch limits are effective January 1 on an interim basis and are superseded by this **Federal Register** notice of final specifications.

The Council met December 3–7, 1990, to review the best available scientific information concerning groundfish stocks, intended harvest plans for 1991, and estimates made by NMFS concerning the extent to which U.S. fishermen would harvest amounts of groundfish. This information is contained in the Stock Assessment and Fishery Evaluation Report for the 1991 Gulf of Alaska Groundfish Fishery (SAFE report) dated November 1990, which was prepared and presented by the Gulf of Alaska Groundfish Plan Team to the Council and to the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP). Information contained in the SAFE report was derived from:

1. The 1990 hydroacoustic survey in Shelikof Strait conducted by the NMFS Alaska Fisheries Science Center;
2. 1990 NMFS observer reports;
3. Results of the 1990 bottom-trawl survey in the Gulf of Alaska;
4. Results from the 1990 Domestic and U.S.-Japan Cooperative Longline Surveys; and
5. Groundfish catches obtained from the 1990 Weekly Production Reports.

New information and subsequent actions by the Council for each species and species complex are summarized as follows. Additional information can be found in the SAFE report.

1. Total Allowable Catches

The sum of the TACs approved by the Council for Gulf of Alaska groundfish is 331,089 mt, within the OY range specified by the FMP.

Pollock—The exploitable biomass of pollock for 1991 is estimated to be 1,303,000 mt based on a projection of 1990 biomass estimated from a stock synthesis (SS) model. The current assessment incorporates two major changes into the SS model. First, the 1990 Gulf-wide bottom-trawl survey estimated biomass at 1,004,377 mt. Second, because a significant component of older fish (age 10 and older) was discovered in offshore waters outside of Shelikof Strait in 1989 and 1990, the natural mortality rate was lowered from 0.4 to 0.3.

When the SS model incorporates survey selectivity, 1990 biomass is estimated at 1,372,000 mt for ages 3 years and older. Similarly, the current assessment estimates the 1989 biomass to be 1,564,000 mt for ages 3 years and older. According to the current assessment with a revised hindcast of historical biomasses, the population is at a medium level of abundance.

Although higher than previously believed, the abundance of pollock has been declining since 1988. Hydroacoustic survey estimates in 1990 failed to show an increase from the 1989 hydroacoustic survey estimates. The contribution of the older fish will be minimal in future years. The current decline in abundance is attributed to weak 1982, 1983, 1986, and 1987 year classes.

The SSC adopted the Plan Team's recommended allowable biological catch (ABC) for the combined Western/Central Regulatory Area of 130,000 mt, which was derived by applying a 10-percent exploitation rate to the estimated 1991 exploitable biomass. The AP recommended that TAC be equal to the ABC. The SSC concurred with the Plan Team's recommendation that part of the TAC (6,250 mt) be allocated to the Shelikof Strait District to provide for a fishery for the collection of data. The SSC and AP also recommended that the ABC and TAC in the Eastern Regulatory Area be 3,400 mt, which is the same specification made in 1990.

The Council adopted the AP's recommendations for pollock TACs and the SSC's recommendations for ABCs of 130,000 mt in the combined Western/Central Regulatory Area and 3,400 mt in the Eastern Regulatory Area.

Pacific cod—The 1990 bottom-trawl survey of the Gulf of Alaska provided data for estimating biomass of Pacific cod by management area. Incorporating the bottom-trawl results in the Stock Reduction Analysis model resulted in an estimated exploitable biomass for 1991 of 424,100 mt, a decline in biomass from previous years. The projection model estimates that this decline may continue.

The SSC recommended that the ABC be 77,900 mt. The AP recommended that the TAC be equal to the ABC. The Council adopted the SSC recommendations for ABC and the AP recommendations for TAC, including apportionments among the Regulatory Areas as follows: Western—30,000 mt; Central—45,000 mt; and Eastern—2,900 mt.

Flatfish—In 1990, three categories of flatfish were established: Deep-water, shallow-water, and arrowtooth flounder. In 1991, flathead sole is in a category by itself, and the 1991 categories are as follows: Deep-water flatfish, shallow-water flatfish, arrowtooth flounder, and flathead sole.

In 1990, flathead sole was in the deep-water flatfish category; however, results of the 1990 trawl survey and fishery information show that most of the flathead sole biomass is in shallow water. A separate TAC for flathead sole was established because the TAC for that category would be inflated and could result in too high an exploitation rate for rock sole if flathead sole were included in the shallow-water flatfish category. Deep-water flatfish includes rex sole, dover sole, and Greenland turbot. Although an ABC for Greenland turbot is not included in the calculation of ABC for deep-water flatfish, small catches of Greenland turbot are reported and will be accounted for in the deep-water flatfish component.

Shallow-water flatfish includes all flatfish not including deep-water flatfish, flathead sole, or arrowtooth flounder.

The Council adopted the SSC's recommendations for the flatfish ABCs, which were apportioned among the regulatory areas (see table 1), and the AP's recommendations for flatfish TACs, which are less than the ABCs (see table 2 for TACs). Reductions in flatfish TACs reflect the concern that halibut PSC limits would not support harvest amounts equal to the sum of the ABCs.

TABLE 1.—ABCs FOR FLATFISH CATEGORIES IN 1991

[All values are in metric tons]

	Regulatory area			
	Western	Central	Eastern	Total
Deep-water	2,000	38,900	9,600	50,500
Shallow-water	48,800	22,200	3,000	74,000
Arrowtooth flounder	40,800	272,100	27,200	340,100
Flathead sole	12,600	32,700	5,000	50,300

TABLE 2.—ABCs, INITIAL GROUNDFISH TACs AND DAPs (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.

Species and area [1]	ABC	TAC=DAP
Pacific cod:		
W	30,000	30,000
C	45,000	45,000
E	2,900	2,900
Total	77,900	77,900
Flatfish [2] (deep water):		
W	2,000	2,000
C	38,900	10,000
E	9,600	3,000
Total	50,500	15,000
Flatfish [3] (shallow water):		
W	48,800	3,000
C	22,200	7,000
E	3,000	2,000
Total	74,000	12,000
Flathead sole:		
W	12,600	2,000
C	32,700	5,000
E	5,000	3,000
Total	50,300	10,000
Arrowtooth flounder:		
W	40,800	5,000
C	272,100	10,000
E	27,200	5,000
Total	340,100	20,000
Sablefish:		
W	2,925	2,925
C	10,575	10,575

TABLE 2.—ABCs, INITIAL GROUNDFISH TACs AND DAPs (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.—Continued

Species and area [1]	ABC	TAC=DAP
YK	4,050	4,050
EO/EYK	4,950	4,950
Total	22,500	22,500
Pelagic [4] shelf rockfish:		
W		800
C		3,100
E		900
Total	4,800	4,800
Pacific ocean perch [5]:		
W		1,824
C		1,798
E		2,378
Total	5,800	5,800
Shortraker/rougheye rockfish [6]:		
W		100
C		1,320
E		580
Total	2,000	2,000
Demersal shelf rockfish [7]:		
SEO	445	425
"Other rockfish" [8 9]:		
W		1,212
C		5,454
E		3,434
Total	10,100	10,100

TABLE 2.—ABCs, INITIAL GROUNDFISH TACs AND DAPs (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE/EAST YAKUTAT (SEO/EYK), GULF-WIDE (GW), AND SOUTHEAST OUTSIDE (SEO) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOW LEVEL OF FOREIGN FISHING (TALFF) INITIALLY ARE SET AT ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE APPORTIONED TO DAP, EFFECTIVE JANUARY 1, 1991.—Continued

Species and area [1]	ABC	TAC=DAP
Thornyhead rockfish:		
GW	1,798	1,398
"Other species" [10]:		
GW	N/A	15,786
Total	540,243	197,689

[1] See figure 1 of § 672.20 for description of regulatory areas/districts.

[2] The category "deep-water flatfish" means rex sole, Dover sole, and Greenland turbot.

[3] The category "shallow-water flatfish" means flatfish not including deep-water flatfish, arrowtooth flounder, or flathead sole.

[4] The category "pelagic shelf rockfish" includes five species: *Sebastes melanops* (black rockfish), *S. mystinus* (blue rockfish), *S. ciliatus* (dusky rockfish), *S. entomelas* (widow rockfish), and *S. flavidus* (yellowtail rockfish).

[5] Pacific ocean perch means *S. alutus*.

[6] The category shortraker/rougheye rockfish includes two species *Sebastes borealis* and *S. aleutianus*, respectively.

[7] The category demersal shelf rockfish includes eight species: *Sebastes nebulosus* (China rockfish), *S. caurinus* (copper rockfish), *S. maliger* (quillback rockfish), *S. helvomaculatus* (rosethorn rockfish), *S. nigrocinctus* (tiger rockfish), *S. ruberrimus* (yelloweye rockfish), *S. pinniger* (canary rockfish), and *S. babcocki* (redbanded rockfish).

[8] The category slope rockfish includes 17 species: *Sebastes polyspinis* (northern rockfish), *S. zacentrus* (sharpchin rockfish), *S. aurora* (aurora rockfish), *S. melanostomus* (blackgill rockfish), *S. goodei* (chilipepper rockfish), *S. crameri* (darkblotched rockfish), *S. elongatus* (greenstriped rockfish), *S. variegatus* (harlequin rockfish), *S. wilsoni* (pygmy rockfish), *S. jordani* (shortbelly rockfish), *S. diploproa* (splitnose

rockfish), *S. aurora* (splitnose rockfish), *S. reedi* (yellowmouth rockfish), *S. paucispinis* (bocaccio), *S. brevispinis* (silvergray rockfish), and *S. proriger* (redstripe rockfish).

[1] The "other rockfish" category in the Western and Central Regulatory Areas and in the West Yakutat and East Yakutat Districts includes slope rockfish and demersal shelf rockfish. The "other rockfish" category in the Southeast Outside District includes slope rockfish.

[2] The "other species" category includes Atka mackerel, sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC is equal to 5 percent of the TACs of the target species.

Sablefish—The abundance of sablefish has decreased from 1980 and other recent years. An ABC was computed for 1991 for the combined Gulf of Alaska, Bering Sea, and Aleutian Islands management areas. The proportion of the Alaska-wide ABC attributed to the Gulf of Alaska is 22,500 mt, based on the distribution of biomass as determined by the 1990 longline survey.

The SSC recommended that the ABC be 22,500 mt. The AP recommended that the Gulf-wide TAC be set equal to the ABC and be apportioned among the regulatory areas and districts in the same proportions as the biomass distribution shown from the 1990 longline survey. The Council adopted the SSC recommendations for ABC and the AP recommendations for TAC, including apportionments among the regulatory areas and districts, as follows: Western—2,925 mt; Central—10,575 mt; West Yakutat—4,050 mt; and Southeast Outside/East Yakutat—4,950 mt.

Rockfish Assemblages—In 1990, three categories of rockfish in the genus *Sebastes* were managed: "Other rockfish," pelagic shelf rockfish, and demersal shelf rockfish. Starting in 1991, two additional rockfish categories—shortraker/rougheye rockfish and Pacific ocean perch—will be managed. Shortraker/rougheye rockfish includes shortraker rockfish (*S. borealis*) and rougheye (*S. aleutianus*) rockfish. Pacific ocean perch includes only *S. alutus*. All three species were part of the "other rockfish" category in 1990.

Shortraker and rougheye rockfish are being managed separately because the abundance of these deep-water rockfishes is low. Rather than reduce the ABC for the "other rockfish" category to avoid overharvesting these species, a separate category is established.

Pacific ocean perch are the most abundant species in the rockfish assemblage and make up 40.1 percent of the Gulf of Alaska rockfish biomass. Exploitation rates for the "other rockfish" category based primarily upon Pacific ocean perch exploitation rates could lead to overfishing of some species; therefore, Pacific ocean perch is made a separate category.

The condition of, and Council action for, each of the five rockfish categories is as follows:

Shortraker/Rougheye Rockfish

Shortraker and rougheye rockfish are managed as a single category in the Wester, Central, and Eastern Regulatory Areas. The proportion of shortraker and rougheye rockfish in trawl surveys at depths greater than 200 meters (23.8 percent) was 62 percent higher than the total 1990 estimate of exploitable biomass for the "other rockfish" category as sepcified in 1990 (14.7 percent). The effective exploitation rate for shortraker and rougheye rockfish wold be much higher than intended if the exploitation rate for the "other rockfish" category were used. To avoid overharvesting shortraker and rougheye rockfish, the SSC recommended that the ABC be 2,000 mt. The AP recommended that the TAC equal the ABC for shortraker/rougheye rockfish and be apportioned among the areas as follows: Western—100 mt, Central—1,320 mt, and Eastern—580 mt. the Council adopted the SSC and AP recommendations.

Pacific Ocean Perch

Pacific ocean perch, formerly part of the "other rockfish" category, are now a single species for management purposes in the Western, Central, and Eastern Regulatory Areas. The SSC recommended an ABC for Pacific ocean perch of 5,800 mt, and the AP recommended that the TAC be equal to the ABC and apportioned among the management areas as follows: Western—1,624 mt, Central—1,798 mt, and Eastern—2,378 mt. The Council adopted the SSC and AP recommendations.

Pelagic Shelf Rockfish

In the Western, Central, and Eastern Regulatory Areas, pelagic shelf rockfish includes the five rockfish species listed in footnote 4 of table 2 of this notice.

The SSC recommended that the ABC for pelagic shelf rockfish be 4,600 mt. This amount is based on an exploitation rate equal to the natural mortality rate of 0.05. The AP recommended that the TAC equal the ABC and be apportioned among the regulatory areas according to the average of the 1987 and 1990 biomass estimates as follows: Western—800 mt, Central—3,198 mt, and Eastern—800 mt. The Council adopted the SSC and AP recommendations.

Demersal Shelf Rockfish

In the Southeast Outside District, demersal shelf rockfish means the eight rockfish species listed in footnote 7 to table 2 of this notice. A TAC is established only in the Southeast Outside District. After a review of commercial fisheries and survey data, the Alaska Department of Fish and Game (ADF&G) recommended that the demersal shelf rockfish category be modified by (1) removing bocaccio (*S. pauciepinie*), silvergray (*S. brevispinis*), and redstripe (*S. proriger*) rockfishes and placing them in the slope rockfish category and by (2) adding redbanded rockfish (*S. babcocki*). In 1990, redbanded rockfish were in the slope rockfish category. The Council adopted the ADF&G's recommendations.

The SSC recommended that the ABC for demersal shelf rockfish be 445 mt. The AP recommended that the TAC be equal to the ABC. The Council adopted the SSC recommendation for the ABC, but recommended that the TAC be set conservatively at 425 mt because the condition of demersal shelf rockfish is not well known.

"Other Rockfish"

In the Western and Central Regulatory Areas and the Eastern Regulatory Area west of 137° W. longitude, "other rockfish" includes the 17 species of slope rockfish and the eight species of demersal shelf rockfish listed in footnotes 8 and 9 to table 2 of this notice. TACs are established for these combined assemblages in the Western and Central Regulatory Areas.

In the Southeast Outside District, "other rockfish" means species of slope rockfish in the footnote 8 of table 2 of this notice.

The SSC recommended that the ABC for "other rockfish" be 10,100 mt. The AP recommended that the TAC equal the ABC and be apportioned among the regulatory areas as follows: Western—2,925 mt, Central—5,454 mt, and Eastern—3,434 mt. The Council adopted the SSC's recommendation for ABC and the AP's recommendation for TAC.

Thornyhead Rockfish

The SSC recommended that the ABC should be 1,798 mt. This amount is calculated by multiplying a fishing mortality rate of 0.07 times the adjusted trawl biomass obtained from the 1990 trawl survey. The AP recommended that the TAC be 1,398 mt to protect this category from being overfished. The Council adopted the SSC's recommendation for ABC and the AP's recommendation for TAC.

"Other Species" Category

Under the FMP, the TAC for this species category is 5 percent of the sum of the TACs established for the other groundfish categories. Thus, TAC is 15,766 mt.

Apportionment of TACs

The Council, after adopting the TACs in table 2, deliberated on the apportionment of the TACs for each category between DAP, JVP, TALFF, and reserve. The Council reviewed the results of the NMFS U.S. processor survey that was conducted before the Council's meeting. (The U.S. processing industry is queried about its processing capacity and the amounts of each groundfish species needed during 1991.)

The Regional Director presented the results of the survey to the Council and made recommendations for initial DAP specifications. As a result of this process, the Council recommended that TALFF and JVP be set at zero because all species are expected to be fully utilized by U.S. fishermen in DAP fisheries. DAP is set to equal the TAC for each category.

Secretarial Approval of TACs

The Secretary has reviewed the Council's recommendations for TAC specifications and apportionments and hereby approves and implements these specifications under § 672.20(c)(1), with the exception of the pollock TAC. The Secretary defers approval of the pollock TAC. The interim preliminary initial specification for pollock TAC will remain in effect until superseded by the final 1991 initial TAC specification, which will be published in the Federal Register at a later date.

In reviewing the recommended ABCs for the rockfish categories, the Secretary notes that the Council adopted Gulf of Alaska-wide ABCs for each of the rockfish categories and apportioned the ABCs among the management areas in proportion to the biomass distribution determined from the trawl surveys. Information on the life history of Pacific ocean perch shows that stock mixing occurs during early life stages. NMFS scientists believe that this stock mixing during early life stages is typical for each of the rockfish categories, and that further apportioning of Gulf of Alaska-wide ABCs is not appropriate for rockfish. The secretary concurs with the Council's TAC distributions among the regulatory areas for each of the rockfish categories but has adjusted table 2 of this notice to show Gulf of Alaska-Wide ABCs without further apportionments among the regulatory areas.

2. Prohibition of Directed Fishing for Shortraker/Rougheye Rockfish in the Western Regulatory Area

The Regional Director has determined that the TAC for shortraker/rougheye rockfish will be taken as incidental catch to support other directed fisheries for other groundfish species in the Western Regulatory Area.

The Regional Director, under § 672.20(c)(2), establishes a directed fishing allowance in the Western Regulatory Area of 0 mt for shortraker/rougheye rockfish effective February 25, 1991, and prohibits for the remainder of the fishing year directed fishing for shortraker/rougheye rockfish in the Western Regulatory Area. Under § 672.20(g)(3), the operator of a vessel is engaged in directed fishing for shortraker/rougheye rockfish if he retains at any particular time during a trip an amount of this species group in an amount equal to or greater than 20 percent of all other fish species retained at the same time on the vessel during the same trip.

3. Proposed Apportionment of Reserves to DAP

The FMP stipulates that 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in a reserve for possible reapportionment at a later date (§ 672.20(a)(2)(i)). Because DAP is projected to need all reserve amounts, the Secretary, at this time, is proposing to reapportion reserves for each species category, except pollock, to DAP. By doing so, the Secretary is anticipating that the domestic industry will need all of the DAP amounts so specified. The specifications of DAP shown in table 2 of this notice reflect proposed DAP totals if the reserves are apportioned after a 15-day comment period.

The Secretary is deferring approval of the pollock TAC. The reserve attributed to pollock under § 672.20(a)(2)(i) will be apportioned when a TAC for pollock is approved and implemented.

Under § 672.20(d)(5)(iv), comments should focus on whether, and the extent to which, vessels of the United States will harvest reserve or DAH amounts during the remainder of the year and whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or received at sea by foreign fishing vessels.

4. Assignments of the Sablefish TAC to Authorized Fishing Gear Users

Sablefish TACs for each of the regulatory areas and districts are further assigned to hook-and-line and trawl gear (Table 4) according to the percentages required by § 672.24(c).

TABLE 4.—SABLEFISH TOTAL ALLOWABLE CATCHES (TACS) IN METRIC TONS, ALLOCATED TO AUTHORIZED GEAR IN THE REGULATORY AREAS AND DISTRICTS OF THE GULF OF ALASKA.

Area/District	TAC	Hook-and-line share	Trawl share
Western	2,925	2,340	585
Central	10,575	8,460	2,115
West Yakutat	4,050	3,850	200
Southeast Outside/ East Yakutat	4,950	4,700	250
Total	22,500	19,350	3,150

5. PSC Limits Relevant to Fully Utilized Groundfish Species

Under § 672.20(b)(1), if the Secretary determines after consultation with the Council that the TAC for any species or species group will be fully utilized in the DAP fishery, he may specify a groundfish PSC limit applicable to the JVP fisheries for that species or species group.

The Council recommended that DAP equal TAC for each species category. Zero amounts of JVP are available. The Secretary concurs with the Council's recommendation, and has not established any JVP amounts. Therefore, no PSC limits under § 672.20(b)(1) are necessary. If future apportionments from DAP to JVP occur, the Secretary will also make the necessary determinations under § 672.20(c)(4) for PSC limits at that time.

6. Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 672.20(f)(2)(ii), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be apportioned to pot gear. For 1991, the Council recommended that 2,000 mt and 750 mt of halibut mortality be apportioned to trawl and hook-and-line gear, respectively. For purposes of accounting for halibut bycatch mortality, hook-and-line gear includes jigs.

The Regional Director will use observed halibut bycatch rates and reported groundfish catch to project when the 1991 halibut PSC limits will be reached during the fishing year. Mortality rates vary, depending on the gear being used. Based on information contained in the SAFE report, assumed rates of halibut mortality are the following: non-pelagic trawl, 50 percent

of those caught and released; hook-and-line, 16 percent; and pot, 12 percent.

The Council recommended that pot gear be exempt from accountability for halibut bycatch mortality for the 1991 fishing year. Groundfish catches by pot gear have been small to date. Observer information, although not substantial, suggests that bycatch mortality is low, about 12 percent of the halibut caught in pots. No new information is available to warrant changing the 12-percent assumption. The Council decided to exempt pot gear for one more year, during which time additional information will be forthcoming to make recommendations about apportioning a PSC allowance to pot gear in future years.

The Secretary concurs with the Council's recommendations listed above. In doing so, the Secretary has considered the following types of information as presented in and summarized from the 1991 SAFE report, or as otherwise available from NMFS, ADF&G, the International Pacific Halibut Commission (IPHC), or public testimony.

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is 1990 data on the groundfish fishery collected by NMFS Observers. The total calculated halibut bycatch mortality by all gear types through November 7, 1990, was 2,758 mt. Resulting mortality by gear type was trawl gear—1,760 mt (64 percent of all mortality), hook-and-line gear—967 mt (35 percent), and pot gear—31 mt (1 percent). In 1990, these amounts constrained groundfish catches in fisheries using hook-and-line gear and trawl gear: hook-and-line fisheries were closed on May 29, and trawl fisheries were closed on November 21. Pot gear was exempt from halibut PSC accountability during 1990.

Sablefish is the only Gulf of Alaska groundfish species that is allocated by gear type. When the hook-and-line fishery was closed on May 29, 1990, all the TAC for sablefish assigned to hook-and-line in the Eastern and Central Regulatory Areas had been caught. In the Western Regulatory Area, 7,497 mt of sablefish TAC remained unharvested because the halibut PSC assigned to hook-and-line gear had been reached.

(B) Expected Changes in Groundfish Catch

The sum of the 1991 groundfish TACs excluding the pollock TAC is 197,679 mt. The 1991 TAC for Pacific cod is 77,900 mt, which is a 16,600 mt decrease from the 1990 TAC. The 1991 TAC for sablefish is 22,500 mt, a 3,500 mt decrease from 1990. The sum of the 1991 TACs for the flatfish species is 57,000 mt, which is a 7,900 mt decrease from the summed 1990 TACs of 64,900 mt. The 1991 sum of TACs for rockfish is 24,523 mt, which is a 5,647 mt decrease from the sum of the 1990 TACs of 30,170 mt.

Actual catches in 1991 are expected to reach 1991 TACs for sablefish, rockfish, Pacific cod, and pollock. The TACs for sablefish, rockfish, flatfish, and Pacific cod are reduced from 1990. If the pollock TAC is increased, most of the pollock catch will be with pelagic trawls.

Halibut bycatch is important in all bottom-trawl fisheries. Halibut bycatch could still be constraining in bottom-trawl fisheries for rockfish, Pacific cod, and sablefish. The sablefish hook-and-line fishery is expected to be delayed until May 15, 1991, so that halibut can escape into water depths shallower than those where the sablefish fishery is conducted.

(C) Expected Changes in Groundfish Stocks

Reductions in the groundfish TACs listed above have resulted from new stock assessments based on decreased biomass estimates for rockfish, Pacific cod, and sablefish as shown by the 1990 bottom-trawl survey. Conversely, the increased pollock TAC, if approved and implemented, results from an increased biomass estimate. Except for reduced abundance of rock sole, which is a component of shallow-water flatfish, all flatfish species are at high levels of abundance. A full discussion of these changes is contained in the final SAFE report.

(D) Current Estimates of Halibut Biomass and Stock Condition

The most current stock assessment of halibut biomass from the IPHC indicates that the total exploitable biomass of Pacific halibut available in 1990 was 232.9 million pounds (105,624 mt). This amount represents a decline of 6 percent from 1989, which is consistent with the 5–6 percent annual decline observed in recent years. A substantial decline in recruitment (abundance of 6-year-old fish) was also noted for 1990, an observation that is consistent with cyclical patterns of recruitment that have occurred over the last 50 years. This year's 12-year-old age class continues to make up a large part of the catch and should continue to influence the catch for several more years. The low recruitment exhibited in recent years in conjunction with an exploitation rate greater than the recommended 0.35 can be expected to contribute to a continued decline in the overall stock at a rate of 5–15 percent over the next several years.

(E) Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

Impacts of the groundfish fishery on halibut stocks and the halibut fisheries will be constrained by the overall PSC mortality limit. The 1991 groundfish fisheries are expected to use the entire halibut PSC limit of 2,750 mt. According to the IPHC, the PSC limit will result in an equal amount of 2,750 mt being deducted from the directed halibut fishery quota. The effect of this deduction depends on the constant exploitable yield (CEY) as determined by the IPHC. The CEY represents about one-third of the exploitable biomass, based on an exploitation rate of 0.35. The allowable directed commercial catch is determined by subtracting recreational catch and waste and bycatch amounts from the CEY, and then providing the remainder to the directed fishery.

(F) Methods Available for, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries

Methods available for reducing halibut bycatch include (1) reducing amounts of groundfish TACs, (2) reducing the halibut bycatch rate through vessel incentive programs, (3) gear modifications, and (4) changes in groundfish fishing seasons. Reductions in groundfish TACs provide no incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depends on species and amounts of groundfish foregone. For example, if the sablefish TAC were reduced by 1,497 mt, which is the amount foregone in the 1990 hook-and-line fishery when it was closed upon reaching the halibut PSC gear assignment, fishermen would forego $2.3 million in gross revenue.

The Secretary has implemented regulations that require groundfish pots to have halibut exclusion devices to reduce halibut bycatches by that gear type. Amounts of halibut PSC that otherwise might have been caught by pots were then made available to trawl and hook-and-line gear, promoting the potential for increased groundfish catches.

The Council has also recommended that the Secretary delay the start of the sablefish hook-and-line fishery from April 1 to May 15. A proposed rule delaying the fishery is being published in the Federal Register. The purpose of the delay is to allow sufficient time for

most halibut to migrate into shallower water and thereby escape the sablefish fishery, which is primarily conducted in deep water.

Methods listed under (F) will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be implemented, as necessary, in response to this review, either through regulatory or FMP amendments.

In keeping with the goals and objectives of the FMP to reduce halibut bycatches while providing opportunity to harvest the groundfish OY, the Secretary has approved the assignments of 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. Although these limits will reduce the harvest quota for commercial halibut fishermen, the Secretary has determined that they will not result in unfair allocation to any particular user group. The Secretary recognizes that some halibut bycatch will occur in the groundfish fishery, but the proposed delay in the sablefish season and currently required changes in gear designs are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the optimum yield from the groundfish fishery.

7. Seasonal Apportionments of Halibut PSC Limits

Under § 672.20(f)(2)(iii), the Secretary is apportioning the halibut PSC limits based on recommendations from the Council (Table 6). Regulations specify that any overages or shortfalls in PSC catches will be accounted for in the next season only within the fishing year.

TABLE 6.—ALLOCATION OF HALIBUT PSC LIMITS BETWEEN GEAR TYPES

Trawl gear		Hook-and-line gear	
Dates	Amount (mt)	Dates	Amount (mt)
Jan. 1–Mar. 31	600 (30%)	Jan. 1–May 14	200 (25%)
Apr. 1–Jun. 30	600 (30%)	May 15–Aug. 31	500 (50%)
Jul. 1–Sep. 29	400 (20%)	Sep. 1–Dec. 31	50 (25%)
Sep. 30–Dec. 31	400 (20%)		
Total	2,000 (100%)		750 (100%)

As required by § 672.20(f)(2)(iii), the Secretary based his determinations about seasonal allocations of the halibut PSC limits on information found in the SAFE report, or as otherwise available, which is summarized as follows:

(A) Seasonal Distribution of Halibut

Adult halibut spawn in deep water during winter months, then migrate to shallow water in summer months and feed. They generally spawn in water 230–450 meters deep from November through March; the peak of spawning is in December and January. During April and May, halibut migrate onto the offshore banks in water 135–270 meters deep. During June through August, halibut are found in much shallower water, 45 meters or less. During September and October, halibut migrate back to deeper water for spawning.

The recommended seasonal trawl apportionments will accommodate intensive fishing for deep-water rockfish and flatfish species, which occurs during the first half of the fishing year when most halibut will be in deep water. These amounts also will accommodate intensive fishing for Pacific cod. Although Pacific cod is mostly a shallow-water species, some juvenile halibut in shallow water will be caught as bycatch in this fishery. The recommended seasonal hook-and-line apportionments will accommodate intensive fishing for sablefish starting on May 15. Even though halibut bycatches should be markedly reduced after that date as halibut migrate into shallower water, the sablefish fishery is so valuable that the industry prefers to have substantial bycatch to support the sablefish fishery.

(B) Seasonal Distribution of Target Groundfish Species Relative to Halibut Distribution

Most of the groundfish species are found in deep water during winter when water temperatures are relatively warmer (4 °C) than temperatures in shallower water (1 °C). As detailed in the SAFE report, pollock, Pacific cod, shallow-water flatfish species, and certain rockfish species are in deep water during winter but generally at depths shallower than where halibut are found. In summer, these species are in the same shallow water as halibut.

In winter, deep-water flatfish, rockfish species, and sablefish are found in deep water with halibut and remain in deep water throughout the year, whereas halibut move to shallow water in summer. The Council's recommended larger first and second quarterly apportionments of the halibut PSC limit assigned to trawl gear will accommodate fishing for deep-water flatfish and rockfish species, as well as the Pacific cod fishery, which is in shallower water and has some halibut bycatch.

(C) Expected Halibut Bycatch Needs on a Seasonal Basis Relevant to Changes in Halibut Biomass and Expected Catches of Target Groundfish Species

Although sablefish, rockfish, Pacific cod, and flatfish TACs are lower in 1991 than in 1990, only catches of sablefish and rockfish will be reduced. Because catches of Pacific cod and flatfish will probably be greater in 1991 than in 1990, halibut bycatch mortality will probably not be lowered, even though halibut are less abundant in 1991 than in 1990. The entire 2,750-mt halibut PSC limit is expected to be caught.

The Council has recommended that a proportionally larger halibut PSC be available to support trawl fishing during the first and second quarters. Most of the trawl share of the halibut PSC limit is expected to be needed during the first two quarters. During this time, substantial trawl effort will be directed at Pacific cod after the pollock fishery is closed. The TAC for pollock is also allocated quarterly. The Council has recommended that the second quarter pollock fishery in the Gulf of Alaska be delayed until June 1, when the Bering Sea pollock fishery will reopen. Should the Secretary implement the Council's recommendation, trawl fishing effort would be directed at Pacific cod, flatfish, and rockfish before June 1. Halibut bycatch mortality while trawling for deep-water species of flatfish and rockfish could be proportionately higher and require a

larger proportion of the halibut seasonal allocation at this time.

Less halibut PSC is needed for trawl fisheries for Pacific cod during the third quarter because trawl fishing for this species will be minimal when the fish are dispersed. Most of the Pacific cod TAC will likely have been harvested before the fourth quarter. Nonetheless, some PSC could be needed to harvest the remaining Pacific cod TAC and to continue fishing for flatfish. The latter will probably be the principal species category available during the fourth quarter.

The Council recommended that the sablefish hook-and-line fishery be delayed until May 15. Although halibut bycatch rates are expected to be lower after May 15, hook-and-line fishermen have requested that substantial amounts of the halibut PSC be allocated to support the sablefish fishery because it is so valuable to them. The Secretary is implementing the Council's recommendation for the seasonal apportionments of the halibut PSC to gear types. The seasonal apportionments will support all hook-and-line fisheries, not just the sablefish fishery.

(D) Expected Variations in Bycatch Rates Throughout the Fishing Year

Halibut bycatch rates will vary with the seasonal distribution of halibut. During winter months when halibut are in deep water, groundfish fisheries for deep-water species will result in higher halibut bycatch rates. Fisheries for shallow-water species will result in lower halibut bycatch rates. This situation will be reversed during summer months when halibut are in shallower water. For a given amount of effort, higher bycatch rates would be expected in summer when halibut commingle with shallow-water species, such as Pacific cod, and in winter when halibut commingle with deep-water species, such as sablefish. Nonetheless, the Council's recommended large first and second quarterly apportionments to trawl gear and large second trimester apportionment to hook-and-line gear reflect expected increases in bycatch rates resulting from higher catches per unit of effort in trawl fisheries for Pacific cod and hook-and-line fisheries for sablefish, respectively.

(E) Expected Changes in Directed Groundfish Fishing Seasons

As of the date of this notice, the only changes in the groundfish fishing seasons are those for the sablefish hook-and-line fishery and for the pollock trawl fishery. The Council has recommended that the sablefish hook-and-line fishery be delayed until May 15. It also recommended that the second quarter pollock fishery be delayed until June 1. Should the Secretary implement the Council's recommendation for the sablefish hook-and-line fishery, a substantial amount of halibut PSC is expected to be needed starting May 15. Because halibut bycatch is relatively minor in the pollock fishery, the Council's recommended season change for pollock is not a major factor for the Secretary's consideration of halibut PSC management.

(F) Expected Start of Fishing Effort

Fishing started for most groundfish species on January 1 or soon thereafter. Fishing with trawl, hook-and-line, and pot gear for Pacific cod also started in early January because Pacific cod are aggregated into spawning schools, promoting good catch rates. Trawling for rockfish species started in January. Trawling for pollock started in late January on roe-bearing stocks and will peak in February when roe quality is optimal. Trawling for flatfish will probably be spread throughout the year. Hook-and-line fishing for sablefish will start on May 15, assuming the Secretary implements the Council recommendation for season delay.

(G) Economic Effects of Establishing Seasonal Halibut Allocations on Segments of the Target Groundfish Industry

The manner in which PSC limits are seasonally apportioned will affect the amount of groundfish OY that will be harvested during a season. Ideally, the seasonal apportionment of halibut PSC limits will provide the means for each fishery to exploit fully the available resource without exceeding the PSC limits for each gear group.

Expressed in pounds and round weight, the resulting shortfall in 1990 was 3.3 million pounds of sablefish that, at $0.69 per pound, cost fishermen about $2.3 million in gross revenue.

Hook-and-line fishermen could have also continued to harvest Pacific cod if the closure had not occurred in 1990. The proportion of the total Pacific cod TAC they had harvested before the closure was 8.8 percent. Assuming this proportion, the amount of Pacific cod forgone is 2,600 mt, or 5.7 million pounds round weight. At $0.20 per pound, hook-and-line fishermen could have lost $1.1 million in gross revenue.

After the trawl fisheries were closed November 21, 1990, after reaching the PSC limit for halibut, 50,000 mt of groundfish remained unharvested. Lacking market incentives, some groundfish would not have been harvested, regardless of the closure. About 20,000 mt of Pacific cod remained, and because market demand was strong in 1990, fishing for Pacific cod likely would have continued. At $0.20 per pound round weight for Pacific cod, trawl fishermen could have lost $3.8 million in gross revenue. A fuller discussion of economic effects is contained in the SAFE report.

Public Comments

Written comments were requested to be submitted to the Regional Director on or before December 10, 1990. No written comments were received by the Regional Director on the proposed 1991 specifications.

Other Matters

This action is taken under § 611.92 and § 672.20 and complies with Executive Order 12291. The Secretary finds that the purpose of the reserves is to save portions of the TAC in case they were needed by DAP later in the fishing year rather than apportioning them to JVP or TALFF at the beginning of the fishing year. Because the best available information indicates that DAP will harvest all the TAC amounts, no JVP or TALFF specifications have been established. Providing an opportunity for public comment on the apportioning of reserves before actually apportioning them would serve no purpose when no JVP or TALFF has been established. This adjustment is effective February 25, 1991. Comments are invited on the reserve apportionments for 15 days after the date of filing of this notice.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: February 25, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-4824 Filed 2-25-91; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Gulf of Alaska area; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the total allowable catch (TAC) amounts for (1) sablefish allocated to trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska and for (2) the shortraker/rougheye rockfish category in the Eastern Regulatory Area for the 1991 fishing year are needed as bycatch amounts to support directed fisheries in those areas for remaining groundfish species. The Secretary of Commerce (1) is prohibiting directed fishing for sablefish by vessels using trawl gear in the Western and Central Regulatory Areas of the Gulf of Alaska and (2) is prohibiting directed fishing for shortraker/rougheye rockfish by all gear in the Eastern Regulatory Area of the Gulf of Alaska, from noon, Alaska local time (A.l.t.), February 25, 1991, through midnight, A.l.t. December 31, 1991. This action is necessary to prevent the trawl shares of sablefish in the Western and Central Regulatory Areas and the TAC for the shortraker/rougheye category in the Eastern Regulatory Area from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of all groundfish and not exceed allowable catches of sablefish and shortraker/rougheye rockfish.

DATES: *Effective:* noon, A.l.t., February 25, 1991, through midnight, A.l.t., December 31, 1991. *Comments* are invited on or before March 13, 1991.

ADDRESSES: Comments should be mailed to Dale Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under § 672.20(c)(2), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. The amount of a species or species group apportioned to a fishery is the TAC, as defined in § 672.20(c)(1)(i). In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The 1991 specifications of TACs of groundfish in the Gulf of Alaska were filed with the **Federal Register** on February 25, 1991. The TAC for sablefish in the Western Regulatory Area is 2,925 metric tons (mt), and 585 mt is specified for trawl gear. For the Central Regulatory Area, the TAC for sablefish is 10,575 mt, and 2,115 mt is specified for trawl gear. The TAC for the shortraker/rougheye category in the Eastern Regulatory Area is 580 mt.

The Regional Director has determined that the entire trawl gear shares of sablefish in the Western and Central Regulatory Areas will be necessary as bycatch to support the main directed groundfish fisheries in those regulatory areas. With this action, the Regional Director (1) is establishing a directed fishing allowances of 0 mt sablefish for trawl gear and (2) is closing the directed fisheries for sablefish taken with trawl gear in the Western and Central Regulatory Areas. After the closure, in accordance with the standards for directed fishing (§ 672.20(g)(1)), amounts of sablefish retained on board trawl vessels in the Western and Central Regulatory Areas must be less than the total of (1) 15 percent of the aggregate amount of deepwater flatfish species and all rockfish species of the genera *Sebastes* and *Sebastolobus*, plus (2) 5 percent of the total amount of all other fish species, all as measured in round weight equivalents, retained on board the vessel at the same time during the same trip.

The Regional Director has also determined that the entire TAC for the shortraker/rougheye rockfish category in the Eastern Regulatory Area (580 mt) will be necessary as bycatch to support the main groundfish fisheries in that area. Therefore, he is establishing a directed fishing allowance of 0 mt, and is closing all directed fishing for the shortraker/rougheye rockfish category in the Eastern Regulatory Area, effective noon, A.l.t., February 25, 1991. After the closure, in accordance with § 672.20(g)(3), amounts of the shortraker/rougheye rockfish group retained must be less than 20 percent of the amount of all other fish species, all as measured in round weight equivalents, retained at the same time by the vessel during the same trip.

Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The immediate effectiveness of this notice is to prevent the TACs for sablefish in the Western and Central Regulatory Areas of Alaska and for shortraker/rougheye rockfish in the Eastern Regulatory Area of the Gulf of Alaska from being exceeded; however, interested persons are invited to submit comments in writing to the address on or before March 13, 1991.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 21, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-4825 Filed 2-25-91; 5:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-ANE-36]

Airworthiness Directives: Air Cruisers Company, TSO-C69 Evacuation Slide System, Part Number (P/N) D31005-( ) and D30543-( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Air Cruisers Company TSO-C69 Evacuation Slide Systems, which would require certain modifications to the Air Cruisers Evacuation Slides P/N D31005-( ) and D30543-( ). This proposal is prompted by an evacuation slide having failed to deploy correctly as a result of an incorrectly routed slide valve release cable. This condition, if not corrected, could result in an evacuation slide not inflating properly and hampering an emergency evacuation of the aircraft.

DATES: Comments must be received no later than April 10, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 90-ANE-36, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or delivered in duplicate to room 311 at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Air Cruisers Co., P.O. Box 160, Belmar, NJ 07719-0160. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or the New York Aircraft Certificate Office, 181 South Franklin Avenue, room 202 Valley Stream New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. D. Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, room 202 Valley Stream, New York 11581; telephone no. (516) 791-6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ANE-36." The postcard will be date/time stamped and returned to the commenter.

Discussion

The FAA has determined that an unsafe condition exists on airplanes equipped with certain Air Cruisers Co. TSO-C69 Emergency Evacuation Slide Systems P/N D31005-( ) and D30543-( ). British Aerospace in BAe-146 Inspection Service Bulletin 25-198, dated June 30, 1990, has reported improper or incomplete deployment of these slides.

Investigation by British Aerospace and Air Cruisers Co. disclosed cases where an evacuation slide had failed to deploy correctly as a result of an incorrectly routed slide valve release cable.

The FAA has reviewed and approved Air Cruisers Co., Service Bulletin 201-25-13, dated September 17, 1990, which describes procedures necessary to replace the evacuation system's inflation cable and reidentify the evacuation slide.

Since this condition is likely to exist or develop on other emergency evacuation slides of this same TSO approved design, an AD is proposed which would require that certain Air Cruisers Evacuation Slides, P/N D31005-( ) and D30543-( ) be modified in accordance with the service bulletin previously described.

There are approximately 939 slides of the affected design in the worldwide fleet. It is estimated that it will cost approximately $60 for the kits, and that it would take approximately 0.3 manhours per slide at $40 per manhour. Based on these figures the total cost impact of the AD is estimated to be $67,606.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Air Cruisers Co.: Applies to Air Cruisers Co., TSO-C69 Emergency Evacuation Slide Systems P/N D31005-( ), Serial Numbers 0001 through 0670 and P/N D30543-( ), Serial Numbers 0001 through 0067, installed on, but not limited to British Aerospace Model BAe-146 series airplanes.

Compliance is required within the next 3 months after the effective date of this AD, unless already accomplished.

To prevent the possibility of the emergency evacuation slides from inflating improperly which could result in hinderance of the emergency evacuation of the airplane, accomplish the following:

(a) Replace the inflation cable, and reidentify the emergency evacuation slides in accordance with paragraph 2, of the Accomplishment Instructions of Air Cruisers Co., Service Bulletin (SB) 201-25-13, dated September 17, 1990.

(b) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance time specified in this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Engine & Propeller Directorate, Aircraft Certification Service, FAA, 181 South Franklin Avenue, Valley Stream, New York 11581.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Air Cruisers Co., P.O. Box 160, Belmar, New Jersey 07719-0160. This document may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, or the New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Burlington, Massachusetts, on February 13, 1991.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-4751 Filed 2-28-91: 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-ANE-06]

Airworthiness Directives; Pratt & Whitney Canada (PWC) PT6A Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) applicable to certain PWC PT6A series turboprop engines, which would require removal of the compressor delivery air line (P3) filter assembly. This proposal is prompted by aircraft flight test results which have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. This condition, if not corrected, could result in the aircraft's inability to safely perform the required balked landing maneuver.

DATES: Comments must be received no later than April 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91-ANE-06, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to room 311 at the above address.

Comments may be inspected at the above location in Room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Marc J. Bouthillier, Engine Certification Office, ANE-142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7080.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-06." The postcard will be date/time stamped and returned to the commenter.

Discussion

Recent aircraft flight test results have revealed an engine configuration and a set of operating conditions where engine acceleration is insufficient to provide for required aircraft balked landing performance. It has been determined that installation of a P3 filter on engine installations utilizing an inflight low idle in the 51% core rotational speed range, can increase engine acceleration time such that the aircraft balked landing performance required by Federal Aviation Regulation (FAR), part 23, Paragraphs 23.75(d), 23.77 and 23.143(a)(5), cannot be achieved. This condition, if not corrected, could result in the aircraft's inability to safely perform the balked landing maneuver as required by the noted FAR paragraphs.

Since this condition is likely to exist or develop on other engines of the same

BEST COPY AVAILABLE

type design, an AD is proposed which would require removal of the P3 filter assembly from certain PWC PT6A series engines installed on certain Beech Aircraft Corporation (BAC) aircraft.

There are approximately 4,330 affected PT6A series engines in the U.S. fleet. Pratt & Whitney Canada has advised the FAA that it would assume the parts and labor cost to remove the subject filter assemblies from affected engines. Consequently, there should be no cost impact on U.S. operators for parts or labor.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney Canada: Applies to Pratt & Whitney Canada (PWC) PT6A-4, PT6A-6/C20, PT6A-20, PT6A-20A, PT6A-21, PT6A-27, PT6A-28, PT6A-34, PT6A-34B, and PT6A-36 turboprop engines installed on Beech Aircraft Corporation Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, 99, 100, 99A, B90, C90, C90A, E90, H90, A99, A99A, B99, and C99 aircraft.

Compliance is required within the next 100 days after the effective date of this AD, unless already accomplished.

To prevent excessive engine acceleration time which could result in aircraft inability to safely perform the balked landing maneuver required by FAR part 23, §§ 23.75(d), 23.77 and 21.143(a)(5), accomplish the following:

(a) Perform a visual inspection to determine if a compressor delivery air line (P3) filter assembly has been installed on the engine.

Note: The compressor delivery air line assembly may have been installed on the engine as original equipment, or may have been installed per any of the following PWC Service Bulletins: 1205, 1253, 1280, 1294, 1330, 1343, or 1378.

(b) Remove from service, if installed, the P3 filter assembly defined in (a) above.

Note: The engine compressor delivery air line assembly can be returned to an approved configuration without a P3 filter. For information, refer to the applicable PWC Maintenance Manual and Parts Catalog.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD, or adjustments to the compliance schedule specified in this AD, may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on February 13, 1991.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc 91-4752 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

28 CFR Part 11

[Order No. 1477-91]

Debt Collection; Tax Refund Offsets

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to amend Part 11 of Title 28 of the Code of Federal Regulations by modifying procedures for referring debts that have been reduced to judgment or are legally enforceable to the Secretary of the Treasury for collection by offset against Federal income tax refunds. This regulation is intended to contain safeguards for the debtor while strengthening the ability of the Department to collect outstanding debts.

DATES: Comments must be received by April 1, 1991.

ADDRESSES: Comments should be sent to Imogene McCleary, United States Department of Justice, Debt Collection Management, Justice Management Division, room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Imogene McCleary, United States Department of Justice, Debt Collection Management, Justice Management Division, room 1121, 10th Street and Constitution Avenue NW., Washington, DC 20530; (202) 514-6345. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 2653 of the Deficit Reduction Act of 1984, 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor.

The Department published an interim final rule to implement section 2653 of the Act on March 9, 1989 (54 FR 9979), in accordance with regulations issued by the Secretary of the Treasury (Treasury) at 26 CFR 301.6402-6T (1989). Treasury's rules for offsets against tax refund are limited to the period January 1, 1988 through January 10, 1994. The interim rule allows the Department to use the procedures described in the rule to obtain tax offsets to collect outstanding

debts from individuals in favor of the United States by referring to the Department of the Treasury for tax refund offset by the Internal Revenue Service (IRS) final civil judgments containing money awards and final criminal judgments that include fines and/or other assessments of money.

The proposed rule would expand the coverage of tax refund offset procedures to enforce debt collection by (1) broadening the scope of coverage of these procedures to include, in addition to individual debtors, organizations and entities not currently covered, and (2) allowing referral to the Department of the Treasury for collection of both debts that are past due and legally enforceable but not reduced to judgment, and debts that have been reduced to judgment. The proposed rule would be substituted for the interim rule published on March 9, 1989.

The legislative history of section 2653 of the Deficit Reduction Act (set out in the United States Code Annotated as a note under section 6402 of title 26, Internal Revenue Code) indicates that nothing in that section shall be construed as exempting debts of corporations or any other category of persons from the section's applicability. The proposed rule will extend authority to the Department to refer debts of organizations and entities, in addition to those of individuals, to the Department of the Treasury for collection by tax refund offset. Current Department of the Treasury regulations and the participation agreement between the Department and IRS governing referrals to IRS for tax refund offset do not provide for referrals for offset of debts owed by organizations and entities. Accordingly, the Department does not intend to exercise its authority to refer such debts until the Treasury Department issues regulations and modifies the participation agreement governing use of tax offset procedures to collect claims from organizations and entities.

Offset is permitted for "past due, legally enforceable" obligations that have not been reduced to judgment, in addition to those that have been reduced to judgment. For past due, legally enforceable debts that have not been reduced to judgment, the proposed rule permits debtors to inspect records, present evidence and contentions, and secure an administrative review regarding the past due status, existence, amount, and legal enforceability of the debt to be collected. For debts that have been reduced to judgment, the debtor may present evidence regarding the current amount owed or evidence that the judgment has been satisfied or stayed.

The proposed regulation for offset of past due debts allows for the collection of any legally enforceable debt not reduced to judgment, when the legally enforceable non-judgment debt has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made, and for judgment debts delinquent for any length of time. This is consistent with Treasury's rules. See 26 CFR 301.6402-6T(b).

A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) (individual has retired or resigned before collection of the amount of the indebtedness is completed) and is ineligible for administrative offset under 31 U.S.C. 3716(a), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency. The taxpayer (individual, organization or entity) will be provided with notice that the Department plans to refer the taxpayer's debt to the Secretary of the Treasury for offset of any Federal tax refund, and will be provided 65 days in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the amount owed has been satisfied or that judgment has been stayed.

The Treasury Department's regulation provides that debts that may be referred to IRS for refund offset must first have been disclosed by the referring agency to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless the debt amount is less than $100. 26 CFR 301.6402-6T(b)(6). Section 3720A of title 31 requires a 60-day notice period and an opportunity for an administrative review of the debt. The Department adopts the same procedures for reporting delinquent debts to consumer reporting agencies (credit bureaus) as are used for tax refund offsets. Thus, the Department may provide a single notice and an opportunity for review applicable to both the enforcement actions of reporting the debt to a consumer reporting agency and initiating the tax refund offset.

Because securing evidence of the date of receipt of the notice is costly and potentially time consuming and the Department considers five days an adequate period for notices to be delivered by mail, the rule allows five mailing days in addition to the statutory minimum of 60 days from the date of the notice of proposed offset within which the taxpayer may present evidence. The date of the notice is the date shown on the notice letter as its date of issuance. Use of the notice date rather than its receipt will eliminate confusion and disputes regarding calculation of the 60 day period required by the statute.

If the taxpayer does not pay the amount due or present evidence that the amount is not past due or satisfied, or, for debts reduced to judgment, that the debt has been satisfied or stayed, the Department will report the debt to a consumer reporting agency at the end of the notice period and refer the debt to the Department of the Treasury for offset of the taxpayer's Federal tax refund. If the taxpayer responds to the notice by disputing the existence or amount of the debt, the Assistant Attorney General for Administration will review the evidence presented by the debtor and determine whether to terminate efforts to offset the debt, modify the amount to be referred or refer for offset the amount stated in the notice. The Assistant Attorney General for Administration will notify the debtor of this decision in writing. There is no appeal of this decision.

Other Matters

This is not a major rule within the meaning of section 1(b) of Executive Order 12291. The Department certifies that this regulation will not have a significant economic impact on a substantial number of small entities. These procedures will only apply to named individuals, organizations, or units of state or local government. Thus, the regulation will not affect any small entities. Accordingly, this rule is exempt from requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

This rule requires debtors to submit information if they wish to dispute an offset. This information requirement is part of an administrative action that begins when the Department sends a notice to a particular party as required by section 11.16. Therefore, this collection is exempt from the requirements of the Paperwork Reduction Act of 1980. 5 CFR 1320.3(c).

List of Subjects in 28 CFR Part 11

Claims, Debt collection, Government contracts, Government employees, Income taxes, Lawyers.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3720A and 28 U.S.C. 301, 509 and 510, part 11 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 11—DEBT COLLECTION

1. The authority citation for part 11 is revised to read as follows:

Authority: 26 U.S.C. 301, 308, 810; 31 U.S.C. 3718, as amended by Pub. L. 99-578, 31 U.S.C. 3720A.

2. Part 11 is proposed to be amended by revising subpart C to read as follows:

Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts

Sec.
11.10 Scope.
11.11 Definitions.
11.12 Procedures.

Subpart C—IRS Tax Refund Offset Provisions for Collection of Debts

§ 11.10 Scope.

Section 2653 of the Deficit Reduction Act of 1984, 26 U.S.C. 6402(d) and 31 U.S.C. 3720A, authorizes the Secretary of the Treasury to offset a delinquent debt owed to the Federal Government from the income tax refund due a taxpayer when other collection efforts have failed to recover the amount due. The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections for the debtor. This subpart authorizes the collection of debts due the Federal Government owed by persons, organizations or entities by offset of refunds due to the debtor by the Internal Revenue Service (IRS). It allows referral to the Secretary of the Treasury for collection of debts which are past due and legally enforceable but not reduced to judgment and those that have been reduced to judgment.

§ 11.11 Definitions.

(a) *Debt.* Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the U.S. from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs and all other similar sources. A debt becomes eligible for tax refund offset procedures if it cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1) and is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a) against amounts payable to the debtor by the Department of Justice. A non-judgment debt is eligible for tax refund offset procedures if it has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made. Judgment debts are eligible for referral for any length of time.

(b) *Past Due.* Any accelerated debt or any judgment debt is past due for the purpose of this section, and remains past due until paid in full. An unaccelerated debt is past due if, at the time of the notice required by § 11.12, any part of the debt has been due, but not paid for at least 90 days. Such an unaccelerated debt remains past due until paid to the current amount of indebtedness.

(c) *Notice.* Notice means the information sent to the debtor pursuant to § 11.12. The date of the notice is the date shown on the notice letter as its date of issuance.

(d) *Dispute.* A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

§ 11.12 Procedures.

(a) The Department may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to the Secretary of the Treasury for offset when the debt has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made. Debts reduced to judgment may be referred beyond ten years from the date of delinquency. Debts in amounts lower than $25.00 are not subject to referral.

(b) The Department will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS' prior year's tax records or from information regarding the debt maintained by the Department of Justice. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) The Department intends to refer the debt to the Secretary of the Treasury for offset from income tax refunds that may be due to the taxpayer;

(3) The Department intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau (credit bureau); and

(4) The debtor is being provided 65 days from the date of notice in which to present evidence that all or part of the debt is not past due, or to present evidence that the amount is not the amount currently owed, or to show that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied or stayed, before the debt is reported to a consumer reporting agency and referred to the Secretary of the Treasury for offset from income tax refunds.

(c) If the debtor does not pay the amount due or present evidence that the amount is not past due or satisfied or stayed, the Department will report the debt to a consumer reporting agency at the end of the notice period and refer the debt to the Secretary of the Treasury for offset of the taxpayer's Federal tax refund.

(d) A debtor may request a review by the Department if the debtor believes that all or part of the debt is not past due or legally enforceable, or, in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or, if a judgment debt, that the debt has been satisfied or stayed.

(3) The request must include any documents which the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to review records establishing the nature and amount of the debt, the debtor must request review in writing. The office holding the relevant records shall make them available for inspection during normal business hours.

(5) The request for review and any additional information submitted pursuant to the request must be received by the Department at the address stated in the notice within 65 days of the date of issuance of the notice.

(6) The Department will review disputes and shall consider any documentation and arguments submitted by the debtor and the agency's records. A decision that any disputed portion of the debt is eligible for referral to the Secretary of the Treasury shall be made by an official not involved in the original decision to offset the debt. Such individual shall be either the Assistant Attorney General for Administration or someone in a position at least one supervisory level above the official who made the decision to offset the debt. The Department shall send a written notice of the decision to the debtor. There is no appeal of this decision.

(7) Any debt which previously has been reviewed pursuant to this section or any other section of this part, or which has been reduced to a judgment, may not be disputed except on the grounds of payments made, or events occurring subsequent to the previous review or judgment.

(e) The Department will notify IRS of any change in the amount due promptly after receipt of payments or notice of other reductions.

(f) In the event that more than one debt is owed, the IRS refund offset procedure will be applied in the order in which the debts became past due.

(g) The authority of the Assistant Attorney General for Administration may be redelegated to subordinate officials as appropriate.

Dated: February 20, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-4724 Filed 2-28-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 910244-1044]

RIN 0648-AD24

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This proposed rule would (1) change from June 1 to May 15 the commencement date of the closure to trawl fishing of the exclusive economic zone (EEZ) off Texas (Texas closure) and extend the maximum allowable Texas closure to 90 days; and (2) remove seabobs and rock shrimp from management under the FMP, except for the recordkeeping and catch reporting requirements. The intended effects of this rule are to allow flexibility in the dates of the Texas closure so that juvenile brown shrimp may be adequately protected and to remove from the management unit those species of shrimp not in need of Federal management.

DATES: Written comments must be received on or before April 15, 1991.

ADDRESSES: Copies of Amendment 5, which includes a Regulator Impact Review and an Environmental Assessment, may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL 33609. Comments on the proposed rule should be sent to Michael E. Justen, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery of the Gulf of Mexico is managed under the FMP, prepared and amended by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 5 to the FMP proposes to revise the commencement date and allow for a longer period for the annual Texas closure. Currently, the closure is from June 1 through July 15, but the opening and closing dates may be adjusted by as much as 15 days. Fishery biologists have found that brown shrimp in the warmer waters of the southern coastal estuaries of Texas grow more quickly and move into the Gulf of Mexico earlier than their cohorts in the northern estuaries. To allow these shrimp to grow to a larger, more valuable size, closure of the EEZ to trawling may be required earlier than May 17, the earliest date currently allowable under the Federal regulations. Closure through July 15 may still be necessary to protect the later emigrating brown shrimp from the northern estuaries. Accordingly, Amendment 5 proposes a closing date of May 15 and an opening date of July 15. These closing and opening dates may be adjusted in accordance with the criteria specified in the FMP and its implementing regulations, but the closure may not be less than 45 days or more than 90 days. Closures and openings would commence at 30 minutes after sunset on the specified dates. These changes are compatible with the closure dates and times for the waters of Texas and will enhance compliance with and enforcement of both Federal and State regulations.

Amendment 5 also proposes to delete management of seabobs and rock shrimp under the FMP. There are no measures in the implementing regulations that restrict the harvest of seabobs and rock shrimp. The recordkeeping and reporting requirements relating to seabobs and rock shrimp would remain in effect.

Amendment 5 contains definitions of overfishing for brown, pink, and royal red shrimp, as required by 50 CFR 602.11(c), and specifies actions to be taken if recruitment overfishing of brown or pink shrimp occurs. Additional information on the proposed definitions and actions is contained in Amendment 5, the availability of which was announced in the Federal Register on February 13, 1991 (56 FR 5792).

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a regional fishery management council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR), which concludes that Amendment 5, if adopted, (1) would have minimal economic effects; and (2) would not have a significant economic impact on a substantial number of small entities. Compatibility of the closure dates between state waters and the EEZ will ease enforcement and will increase the number of juvenile brown shrimp allowed to grow to a larger, more valuable size.

Accordingly, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities; and a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. this determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Texas does not participate in the coastal zone management program.

A consultation conducted in accordance with section 7 of the Endangered Species Act concluded that this action would not adversely affect populations of endangered/threatened species such as sea turtles, as long as the current Turtle Excluder Device regulations remain in effect.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implication sufficient to warrant preparations of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 5, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is proposed to be amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.1, paragraph (b) is revised to read as follows:

§ 658.1 Purpose and scope.

* * * * *

(b) The regulations in this part govern fishing for brown shrimp, white shrimp, pink shrimp, and royal red shrimp by vessels of the United States in the EEZ of the Gulf of Mexico. In addition, the regulations in this part govern recordkeeping and reporting for the above-mentioned shrimp and for seabobs and rock shrimp that are caught in the EEZ of the Gulf of Mexico or adjoining state waters, or landed in a Gulf of Mexico coastal state.

* * * * *

3. In § 658.6, paragraph (a) introductory text is revised to read as follows:

§ 658.6 Vessel identification.

(a) *Official number.* Each vessel of the United States that takes brown shrimp, white shrimp, pink shrimp, or royal red shrimp in the Gulf of Mexico EEZ must:

* * * * *

4. Section 658.20 is revised to read as follows:

§ 658.20 Fishing year.

The fishing year for brown shrimp, white shrimp, and pink shrimp begins on May 1. The fishing year for royal red shrimp begins on January 1.

5. In § 658.21, paragraphs (a) and (b) are revised to read as follows:

§ 658.21 Allowable levels of harvest.

(a) *Catch quotas.* The domestic quota for royal red shrimp harvested from the EEZ is 111.6 metric tons. There are no domestic quotas for brown shrimp, white shrimp, or pink shrimp harvested from the EEZ.

(b) *State waters.* These regulations do not limit the harvest of brown shrimp, white shrimp, pink shrimp, or royal red shrimp in water landward of the EEZ. However, harvests from waters landward of the EEZ are taken into account in the calculations of maximum sustainable yield and optimum yield for those shrimp species.

* * * * *

6. In § 658.25, paragraph (a) and paragraph (b) introductory text are revised to read as follows:

§ 658.25 Texas closure.

(a) *Area and season restrictions.* From 30 minutes after sunset on May 15 to 30 minutes after sunset on July 15, the area described in this paragraph is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The area is that part of the EEZ off Texas west of a line connecting point A at 29°32.1'N. latitude, 93°47.7'W. longitude, to point B at 26°11.4'N. latitude, 92°53.9'W. longitude (see Figure 4).

(b) *Adjustment of dates.* The Regional Director may adjust the closing or opening date to provide an earlier, later, shorter, or longer closure, but the duration of the closure may not exceed 90 days or be less than 45 days.

* * * * *

7. Section 658.26 is revised to read as follows:

§ 658.26 Size restrictions.

There are no minimum size restrictions for brown shrimp, pink shrimp, or royal red shrimp harvested in the EEZ. White shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

[FR Doc. 91-4651 Filed 2-28-91; 2:57pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARMS CONTROL AND DISARMAMENT AGENCY

The President's General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: General Advisory Committee on Arms Control and Disarmament.
Date: April 8–9, 1991.
Time: 8:30 a.m.
Place: State Department Building, Washington, DC.
Type of Meeting: Closed.
Contact: Robert M. Meissner, Executive Director, General Advisory Committee on Arms Control and Disarmament, room 5927, Washington, DC., 20451. (202)–647–5178.
Purpose of Advisory Committee: To advise the President, the Secretary of State, and Director of the Arms Control and Disarmament Agency respecting matters affecting arms control, disarmament, and world peace.
Agenda: The Committee will review specific national security policy and arms control issues. Members will be briefed on current START, CFE and CW negotiations, current events in the Persian Gulf, status of chemical demilitarization verification and technology. An Executive Session will be held.
Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.
Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated December 5, 1990, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 91-4674 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota have been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Affiliated Tribes of the Fort Berthold Indian Reservation of North Dakota for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the tribes to be acute distress areas and authorize the donation of feed grain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the CCC may commence upon February 15, and shall be made available through May 18, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC on February 22, 1991.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-4919 Filed 2-28-91; 8:45 am]

BILLING CODE 3410-05-M

CIVIL RIGHTS COMMISSION

California Advisory Committee to the Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 10 p.m. on March 15, 1991, at the Miyako Hotel, 1625 Post Street, San Francisco, California 94115. The purpose of the meeting is to update the Committee on the state university system and the border violence project, and to review other Committee programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael C. Carney or Philip Montez, Director of the Western Regional Division, (213) 894–3437, TDD (213) 894–0508. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, February 21, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-4806 Filed 2-28-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Respondent Opinion Survey for the Plant and Equipment Expenditures Survey.
Form Number(s): PE–7.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 75 hours.
Number of Respondents: 150.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Respondent Opinion Survey is part of an integrated research plan developed to improve performance of the Plant and Equipment Expenditures (P&E) Survey. The research plan was submitted to OMB in the Fall of 1990 as part of a request for reclearance of the P&E Survey. The Respondent Opinion Survey fulfills that part of the research plan designed to study why 27 percent of the companies in the P&E Survey have not responded during the past year. By categorizing reasons for nonresponse into "controllable" and "noncontrollable" factors, we should be able to determine an upper limit for response and be better able to determine what specific actions will be effective to improve response.

Affected Public: Businesses or other for-profit organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: February 25, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-4870 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held March 28, 1991, 9:30 a.m. in the Herbert C. Hoover Building, room 1629, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The meeting is called on short notice due to the unanticipated results of recent negotiations of COCOM (Coordinating Committee for Multilateral Export Controls). The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: February 23, 1991.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 91-4868 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 38-90]

Proposed Foreign-Trade Zone—Fort Wayne, Indiana Amendment to Application

Notice is hereby given that the application submitted by the City of Fort Wayne, Indiana, requesting authority to establish a general-purpose foreign-trade zone at three sites in Fort Wayne, Indiana, has been amended to increase Site 1 from 9,600 square feet to 14,400 square feet within the warehouse facility located at 3402 Meyer Road, and Site 2 from 10,000 square feet to 17,500 square feet within the warehouse facility at 2122 Bremer Road. The application remains otherwise unchanged.

The comment period is reopened until April 1, 1991.

The application and amendment material are available for public inspection at the following locations:

Department of Economic Development, 840 City-County Building, One Main Street, Fort Wayne, Indiana 46802.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: February 22, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-4866 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 9-91]

Proposed Foreign-Trade Zone for Madawaska (Aroostook County), Maine, and Subzone for Northern Trading Company, Inc. (Toiletries/Cosmetics Plant), Madawaska; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Madawaska Foreign-Trade Zone Corporation (a private not-for-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in the town of Madawaska, Aroostook County, Maine, within the Madawaska Customs port of entry, and for subzone status at the toiletries and cosmetics packaging and manufacturing plant of Northern Trading Company, Inc. (NTC), in Madawaska. It was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400), and was formally filed on February 15, 1991. The applicant is authorized to make this proposal under title 5, section 13062 of the Maine Revised Statutes Annotated.

The proposed general-purpose zone would be located at a warehousing complex owned and operated by NTC at 190-202 East Main Street (U.S. Route 1), Madawaska, within 1.5 miles of the U.S. Customs office at the border crossing on the St. John River, opposite Edmunston, New Brunswick, Canada. The facility is on a 6.5 acre site which contains a series of interconnected one- and two-story buildings covering some 29,000 square feet.

Zone authority is being requested to aid local economic development and revitalization efforts in northern Maine. Several firms have expressed an interest in using zone procedures for warehousing/distribution of products including liquor and merchandise used in gift sets. No specific manufacturing approvals are being sought for the general-purpose zone site at this time.

Such requests would be made to the Board on a case-by-case basis.

The proposed subzone would be located at the cosmetics and toiletries plant of NTC, located on U.S. Route 1, some 2 miles east of the general-purpose zone site, Madawaska, Maine. The company is involved in contract packaging and manufacturing for fragrance and cosmetics companies (colognes, perfumes, deodorants, body lotions and other cosmetics and toiletries). The finished products are generally classified under HTS Headings 3303, 3304 and 3307 (duty range 0.0%-9.0%). NTC receives components and materials (including containers and packaging) from domestic and foreign sources. Among the items sourced abroad are:

—Finished toiletries and cosmetics (HTS Headings 3303, 3304, 3307—0.0-9.0%)
—Odiferous substances and mixtures (HTS Heading 3202—4.1%-4.7% + 11¢/Kg)
—Perfume bottles with stoppers (HTS Heading 7013—9%)
—Containers for perfume or other toilet preparations (HTS Heading 7010—3.7%-7.5%)
—Scent sprayers (HTS Heading 9616—3.7%)
—Cartons and pkg. material (HTS Headings 3923/4819—2.8%-5.3%)

Zone procedures would exempt foreign items used in products which are exported from Customs duty payments. On products sold in the U.S. market, duties would be paid at the finished product rate (0-6%) when applicable. The duty rates on the components/containers range from 3.7 to 9.0 percent. The application notes the existence of increasing foreign competition in this industry and indicates that the savings resulting from zone procedures will help improve the Madawaska plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Edward A. Goggin, Assistant Regional Commissioner of Customs, U.S. Customs Service, Northeast Region, suite 801, 10 Causeway Street, Boston, MA 02222-1056; and Colonel Philip R. Harris, Division Engineer, U.S. Army Engineer Division, New England, 424 Trapelo Road, Waltham, MA 02254-9149.

As part of its investigation, the examiners committee will hold a public hearing on March 21, 1991, beginning at 10 a.m., at the Madawaska Public Safety Complex Building, Conference Room (second floor), 344 East Main Street, Madawaska, Maine.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by March 14, 1991. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 22, 1991.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Area Port Director, U.S. Customs Service, 2 Bridge Street, Madawaska, Maine 04756.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 22, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-4865 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-008]

Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Final Results of an Antidumping Duty Administrative Review and Determination not to Revoke in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of an antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On November 5, 1990, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan. The review covers shipments of this merchandise to the United States by three producers/exporters from Taiwan during the period beginning May 1, 1987, and ending April 30, 1988.

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke in part. We received comments only from the petitioners. The final dumping margins are unchanged from the preliminary results of the review.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1990, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Taiwan (55 FR 46538). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated ("TSUSA") to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4½ inches in outside diameter. These products are commonly referred to in the industry as "standard pipe" and are produced to various American Society for Testing Materials specifications, most notably A-53, A-120, or A-135. Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, and 610.3252 of the TSUSA. Standard pipe is currently classified under HTS item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. As was the case with the TSUSA numbers, the HTS numbers are provided for convenience and

customs purposes. The written product description remains dispositive.

The review covers three manufacturers/exporters of certain circular welded carbon steel pipes and tubes during the period May 1, 1987 through April 30, 1988.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent not to revoke in part. We received comments only from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members.

Comment 1

Petitioners contend that reviewing all Special Summary Steel Invoices ("SSSI") from the named respondents for entries of the subject merchandise during the review period is an insufficient basis for finding that there were no shipments by any of the respondents.

Department's Position

The Department did not limit itself to a simple review of SSSI data in its effort to ascertain that there were no entries of the subject merchandise from Taiwan during the review period. In addition to conducting a thorough search of all SSSI's collected by the Department on shipments of all pipe and tube by all producers and exporters that were entered during the review period, we requested Customs to report any shipments of the subject merchandise made by the named respondents to the United States during the review period. Customs reported no entries from any of the named respondents during the period, and the Department found no entries in the SSSI data during the period by any of the named respondents or by resellers or trading companies. We have no reason to believe, therefore, that any shipments of the subject merchandise by the named respondents or by resellers or trading companies entered the commerce of the United States during the review period.

Comment 2

Petitioners assert that respondents failed to disclose whether they had made sales to unrelated intermediaries outside the United States that the respondents knew at the time of the sale were destined for the U.S. market. Petitioners argue that the Department, given this lack of information, should have sent the respondents a list of the exporters of the merchandise under review and required the respondents to report all sales of the merchandise to those exporters.

Department's Position

As noted in the response to comment 1, the Department has no reason to believe that there were any shipments of the subject merchandise by unrelated intermediaries or exporters during the review period. Therefore, there was no need for the Department to solicit any further information from the respondents.

Final Results of the Review

Based on our analysis, the final results, unchanged from the preliminary results, are as follows:

Manufacturer/exporter	Time period	Ad valorem margin (percent)
An Mau Steel Co., Ltd.	05/01/87-04/30/88	[1] 0.66
Far East Machinery Co., Ltd.	05/01/87-04/30/88	[1] 0.00
Yieh Hsing Enterprise Co., Ltd.	05/01/87-11/16/88	[1] 0.00

[1] No shipments during the period. Rates noted are from the last antidumping duty administrative review in which there were shipments.

A cash deposit of estimated antidumping duties based on the above margin shall be required for An Mau Steel Co., Ltd. No cash deposit shall be required for shipments from the Far East Machinery Co. Ltd. or Yieh Hsing Enterprises Co. Ltd. ("Yieh Hsing"). For any shipments of this merchandise produced or exported by any producers and/or exporters not covered in this review but covered in a previous review, the cash deposit rate will continue to be at the rate published in the final results of the last administrative review for these firms. For any shipments of this merchandise produced or exported by producers and/or exporters not covered in this or a previous review, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. Similarly, for any future entries of this merchandise from a new producer and/or exporter not covered in this or prior administrative reviews, whose first shipment occurred after April 30, 1988, and which is unrelated to the reviewed firms or any previously reviewed firm, the Customs Service will require a cash deposit of 0.66 percent *ad valorem*. These deposit requirements shall remain in effect for all shipments of circular welded carbon steel pipes and tubes from Taiwan which are entered, or withdrawn from warehouse, for consumption, until publication of the final results of the next administrative review.

Determination Not to Revoke in Part

Yieh Hsing requested a partial revocation of the order based on the fact that it had no sales at less than fair value for two years. Under the regulations applicable to this case [19 CFR 353.54 (1988)], the Department must be "satisfied that there is no likelihood of sales at less than fair value" in order to revoke an antidumping duty order. On November 5, 1990, the Department published its intent not to revoke the order in part with respect to Yieh Hsing and invited interested parties to comment (55 FR 46336). The Department was not satisfied that there was no likelihood of sales at less than fair value because of Yieh Hsing's history of selling pipe and tube products at less than fair value in the United States and its strong incentive to shift its production from light-walled rectangular tube, recently placed under order, to circular pipes and tubes. We received no comments on our intent. The Department, therefore, has determined not to revoke in part the antidumping order with respect to Yieh Hsing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: February 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4967 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-807]

Postponement of Preliminary Antidumping Duty Determinations: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is postponing its preliminary determinations in the antidumping duty investigations of oscillating fans and ceiling fans from the People's Republic of China (PRC). The statutory deadline for issuing these preliminary determinations is now no later than May 29, 1991.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Bradford Ward (202/377-5288) or Steven Lim (202/377-4087), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the Department initiated antidumping duty investigations of oscillating fans and ceiling fans from the People's Republic of China. The notice stated that we would issue our preliminary determinations on or before April 9, 1991. (55 FR 49320, November 27, 1990).

The Department has determined that these investigations are "extraordinarily complex" under section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act). Accordingly, we are postponing the preliminary determinations until not later than May 29, 1991.

We determine that these cases are extraordinarily complicated because (1) They involve a large number of respondents, most of which are part of a complex related entity involving exporters, importers and/or foreign affiliated companies; and (2) a variety of novel methodological issues have been raised. There are a variety of complex ownership, production, and selling arrangements. The PRC's status as a non-market economy has been challenged with respect to the industries under investigation. Not all of the respondents in these investigations are majority PRC-owned and controlled, but in fact are majority-owned by non-PRC entities and claim that they are independent of the government of the PRC. We have determined that the parties concerned are cooperating and that additional time is necessary to make preliminary antidumping duty determinations.

For these reasons, we determine that these investigations are extraordinarily complicated in accordance with section 733(c)(1)(B)(i) (II) and (III) of the Act and that additional time is necessary to make these preliminary determinations in accordance with section 733(c)(1)(B)(ii) of the Act. The statutory deadline for issuing these determinations is now no later than May 29, 1991.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: February 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4864 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-401]

Certain Apparel From Thailand Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain apparel from Thailand. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce (the Department) published a countervailing duty order on certain apparel from Thailand (48 FR 9818). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain apparel from Thailand for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than March 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 22, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-4863 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-535-001]

Cotton Shop Towels From Pakistan; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan for the period January 1, 1989 through December 31, 1989. We preliminarily determine the total bounty or grant to be 8.63 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1990, the Department of Commerce (the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 11417) of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). On March 30, 1990, Milliken & Company, the petitioner, requested an administrative review of the order. We published the initiation on April 27, 1990 (55 FR 17792). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of the last administrative review on April 12, 1989 (54 FR 14671).

Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. During the review period, such

merchandise was classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Custom purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and five programs.

Analysis of Programs

(1) Export Financing

The Export Finance Scheme (EFS), which is administered by the State Bank of Pakistan, grants short-term loans at below-market interest rates to exporters. The EFS has two parts. Under part I, exporters may obtain financing on specific letters of credit or irrevocable contracts. Under part II, exporters may establish a credit line based on 33 percent of the previous year's exports. During the current year, a company must export merchandise for a total value equivalent to three times the amount of financing obtained under Part II. The exports used to obtain financing under Part I do not satisfy the export performance requirement under Part II. If exports fall short of the Part II requirement, there is an interest penalty of 20 percentage points. Because this program provides loans only to exporters at less than commercial rates, we preliminarily determine that it is countervailable.

During the review period, shop towel exporters made interest payments on loans obtained under Parts I and II of the EFS. The loans had an interest rate of 8 percent, and the term of the loans varied from three to twelve months. We used as our commercial benchmark the average lending rate of 14 percent reported in the questionnaire response.

To calculate the benefit, we took the difference between the actual interest paid and the interest that would have been paid if the loans were obtained at commercial rates. Since EFS loans can be tied to exports to specific countries, we divided each firm's interest benefit on loans obtained for exports to the United States by the value of its exports to the United States. We then weight-averaged the result by each firm's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 2.86 percent *ad valorem* during the review period.

(2) Excise Tax, Sales Tax and Customs Duty Rebate Programs

The Central Bureau of Revenue administers the rebate of excise taxes, customs duties and sales taxes on both domestic and imported inputs used in exported products. During the review period, the excise tax rebate was 3.89 percent, the sales tax rebate was 9.11 percent, and the customs duty rebate was 0.37 percent. All the rebates were calculated on the basis of the f.o.b. value of exports.

The Government of Pakistan failed to provide any documentation linking the amount of these rebates to actual indirect taxes borne in the production of shop towels. Therefore, we preliminarily determine that the Government of Pakistan pays these rebates without regard to specific duties and taxes incurred in the production of shop towels and that the full amount of the rebates is countervailable because the rebates are contingent upon export performance.

These cash rebates are earned on a sale-by-sale basis, and a firm can precisely calculate the amount of rebate it will receive for each export sale at the moment the sale is made. Because the amount of these rebates is known at the time of export, we calculate the benefit from these programs on a credit-as-earned basis. Using the rates applicable to cotton shop towel exports during the review period, we preliminarily determine the benefit from these programs to be 4.25 percent *ad valorem* during the review period.

(3) Income Tax Reductions

The Government of Pakistan provides firms with a maximum 50-percent reduction of taxes on income generated from exports. The percentage of the reduction depends on the size of the company and the form of business ownership. Because this program is contingent upon export performance, we preliminarily determine that it is countervailable.

Thirteen companies used this program during the review period. For eight companies that provided incomplete information concerning their benefits under this program, we used as the best information available the highest income tax reduction benefit reported in the questionnaire response for a shop towel producer. On this basis, we preliminarily determine the benefit to be 1.49 percent *ad valorem* during the review period.

(4) Other Programs

We examined the following programs and preliminarily determine that exporters of cotton shop towels did not use them during the review period: a. Import Duty Rebates; and b. Export Credit Insurance.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 8.63 percent *ad valorem* during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to assess countervailing duties of 8.63 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 8.63 percent of the f.o.b. invoice price on all merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4882 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

Steel Tubes: Short Supply Determination

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain steel tubes.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 2,122 metric tons of certain steel axle tubes for the the remainder of 1991 under Article 7 of the U.S.-EC Steel Pipe and Tube Arrangement.

SHORT-SUPPLY REVIEW NUMBER: 43.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, published in the **Federal Register** on January 12, 1991, 55 FR 1348 ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain steel tubes for use in the manufacture of axles and trailer frames for trailer manufacturers. On February 21, 1991, the Secretary received an adequate petition from AL-KO Kober Corporation ("AL-KO") requesting a short-supply allowance for 2,122 metric tons of this material for the remainder of 1991 under Article 7 of the Arrangement Between the European Economic Community and the Government of the United States of America Concerning Trade in Steel Pipes and Tubes. AL-KO has requested short supply for this material because it has been unable to obtain this material domestically and its potential foreign suppliers do not have quota available to meet AL-KO's needs.

The requested material consists of four sizes of custom shaped asymmetrical hexagonal tubes and five sizes of trilobe tubes. The two shapes of tubing are complimentary and used together to form a unified axle.

The exact sizes, grades and quantity requested of each tube is as follows:

HEXAGONAL TUBES

Size(mm)	Steel grade	Quantity (metric tons)
62x3	SAE 1012 or 1020.	31
80x3	SAE 1012 or 1020.	69

HEXAGONAL TUBES—Continued

Size(mm)	Steel grade	Quantity (metric tons)
97x4	SAE 1012 or 1020.	538
120x5	SAE 1012 or 1020.	691

TRILOBE TUBES

41x4	SAE 1513 or ROPS Steel.	6
56x4.7	QSIE 460 TM	42
66x5.6	SAE 1513 or ROPS Steel.	61
66x7.1	SAE 1513 or ROPS Steel.	234
84x6	HSLA 60 or ROPS Steel.	450

The hexagonal tubes are welded but have smoothed outer seams. The cross-section of the 120x5 mm hexagonal tube consists of one 105 degree angle and two 100 degree angles, between which are 140 degree angles, in alternating order. The 140 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 97x4 mm hexagonal tube and the 80x3 mm hexagonal tube consists of three 96 degree angles, between which are two 144 degree angles and one 149 degree angle, in alternating order. The 144 degree and 149 degree angles tend to be sharper than the other angles, which are more rounded. The cross-section of the 62x3 mm hexagonal tube consists of three 90 degree angles, between which are three 150 degree angles, in alternating order. The 150 degree angles tend to be sharper than the other angles, which are more rounded.

The trilobe tubes are welded, but have smoothed outer seams. The cross-section of the trilobe tubes are essentially rounded equiangular, equilateral triangles comprised of three equiangular lobes. Each of the three lobes is a bell-shaped, rounded curve, the sides of which form a 60 degree angle. Between the bell-shaped lobes are shallow, U-shaped curves, the sides of each of which form a 120 degree angle.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than March 21, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than March 8, 1991, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after March 8, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1382 or (202) 377-0159.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5029 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

The 1991 State/Federal Natural Resource Damage Assessment and Restoration Planning Activities for the Exxon Valdez Oil Spill

AGENCY: National Oceanic and Atmospheric Administration Department of Law, State of Alaska.

ACTION: Advance notice of the 1991 natural resource damage assessment and restoration planning for the Exxon Valdez Oil Spill.

SUMMARY: This Notice announces that the Federal/State Natural Resource Trustee Council is in the process of preparing the 1991 Natural Resource Damage Assessment and Restoration Planning for the Exxon Valdez Oil Spill and notifies the public that the proposed 1991 plan will be available for public review and comment by early April. Responses to the public comments received concerning the 1990 Federal/State Plan will also be made available. This notice invites requests for copies of the 1991 Federal/State Natural Resource Damage Assessment and Restoration Planning.

DATES: Requests for Copies of the proposed 1991 plan should be received no later than April 1, 1991.

ADDRESSES: All requests must be written and submitted to the following address: Trustee Council, P.O. Box 22755, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: U.S. Forest Service Office of Public Affairs, (907) 586–8806.

SUPPLEMENTARY INFORMATION: The March 24, 1989, *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The *Exxon Valdez* Oil Spill (EVOS) and subsequent clean up operations affected natural resources in the Sound and along the coasts of the Kenai Peninsula, Kodiak and the Alaska Peninsula.

The natural resources Trustees (the State of Alaska, National Oceanic and Atmospheric Administration, and the Departments of Agriculture and the Interior) and the Environmental Protection Agency (EPA) instituted a natural resource damage assessment process to estimate the damages as compensation for the injury, loss or destruction of natural resources and services, as a result of EVOS, and to provide for the restoration of those resources or services, as authorized under section 311 of the Clean Water Act and section 107 of the Comprehensive Environmental Response, Compensation and Liability Act. The Trustees established a Trustee Council, based in Alaska, to manage the damage assessment and restoration processes. EPA is an advisor to the Trustees and the Trustee Council and has been designated by the President to coordinate the overall long-term restoration planning for the affected area on behalf of the Federal Trustees. The Trustees and EPA, through the Trustee Council, prepared the 1989 and 1991 Damage Assessment and Restoration Activity Plans.

The Trustee Council has completed preliminary analysis of data collected in the course of the 1989 and 1990 studies and, subject to available funding, has recommended to the Trustees a number of studies to be continued during the 1991 field season. The Trustee Council evaluated the studies considering the degree of injury indicated by their preliminary analysis of the data collected to date and the potential to identify further injury to the natural resources through additional study. In addition, each study was evaluated in terms of its interrelationship with other studies, its importance to determine the effects of EVOS in the Alaskan ecosystem, and its role in planning for restoration.

Previously collected data are currently being analyzed and verified to ensure accuracy before presenting them to the public for review. This is necessary due to the actual and potential litigation concening injury, loss or destruction of natural resources. The Trustees intend to provide information to the public as data are compiled and scientifically reviewed, subject to litigation considerations. In addition, discussions between the State of Alaska, Federal Government and Exxon may result in the additional release of information to the public. The information made available to the public to date has been housed in the Oil Spill Public Information Center in Anchorage, Alaska.

The fact that some studies are proposed to be discontinued does not mean that the subject resource did not suffer injury. Where studies are being considered for discontinuation, the Trustee Council has determined that additional study will not be necessary or practical. Information gathered through these studies will be used, as appropriate, in the course of the damage assessment and restoration process.

Detailed descriptions of the 1990 studies are available in Volume I of "The 1990 Federal/State Natural Resource Damage Assessment and Restoration Plan for the Exxon Valdez Oil Spill". This plan, which s available at the Oil Spill Public Information Center in Anchorage, was made availble to the public on September 15, 1990. Similar to the 1990 Plan, the studies recommended for continuation in 1991 are grouped into the following categories: Marine Mammals, Terrestrial Mammals, Birds, Fish/Shellfish, Coastal Habitat (Intertidal), Technical Services, Archaeology, Economics and Restoration Planning. In addition, some studies in the 1990 Plan, including those under the category of Air/Water, are recommended for regrouping into a new category, Subtidal. The following is a summary of the studies recommended for the 1991 season:

Marine Mammals Studies

Marine Mammals Study No. 2 (Killer Whales) will continue, with emphasis upon Prince William Sound whales due to evidence of missing individual that were exposed to oil during the EVOS. This is an observation study, with visual tracking of pods and individuals since EVOS. Individuals are identified by comparison with past photo-identifications and a mortality rate is determined for the pods. This rate is compared with pre-spill mortality rates.

Surveys of harbor seals to count the number of adults and pups at oiled and unoiled sites in Prince William Sound under Study No. 5 will continue. There is concern that the seals have adverse residual effects due to their exposure to oil. The completion of the toxicology and histology work on previously collected samples will continue to determine their exposure to hydrocarbons and the extent of injury to the seals' nervous systems. Additional collection of specimens is not contemplated.

The direct mortality of sea otters was highly visible immediately following EVOS. Study No. 6 (Sea Otters), will continue, with modifications, to gather data on population (mortality/lost production) and the physiological effects of oiling, i.e., sublethal conditions, decreased survival, and/or decreased production. Increased emphasis will be placed upon data analysis and integration and population modelling. Study No. 7, which assesses the fate of sea otters oiled and rehabilitated as a result of EVOS, will be incorporated into Study No. 6, for increased efficiency.

No further work in 1991 is recommended for Studies No. 1 (Humpback Whales) and 4 (Sea Lions). It does not appear that further study will assist in documenting additional injury due to the EVOS.

Terrestrial Mammals

Terrestrial Mammal Study No. 3 (River Otters) will continue to collect data on population and latent effects of the EVOS. Otters may be experiencing nutritional stress. River otters in oiled and unoiled areas will be live-captured, and blood and body conditions will be analyzed and compared with earlier samples. The otters in established study areas will be monitored to detect changes in population size, survivorship, reproduction, home range size, food habits and activity patterns. Study No. 4 (Brown Bears) will continue at a much reduced level, with continued monitoring of radio-collared bears. An additional year of study will provide a more reliable quantification of mortality effects.

Studies Nos. 1 (Sitka Black-Tail Deer) and 2 (Black Bear) have been completed. Study No. 6 (Mink Reproduction) was discontinued during 1990, but, analysis of collected samples will be completed during 1991.

Birds

Bird Study No. 1 (Water Birds/ Beached Birds) will continue, but with a change of emphasis to complete analysis and examination of the samples and data collected during the first two years. This study will be modified to include a review and cataloging of carcasses collected immediately after EVOS to provide data valuable to other studies and to prepare specimens for eventual distribution to scientific institutions. The collected birds will be examined to verify body counts, species identification, degree of oiling and the condition of the carcasses. Tissue samples will be taken for further hydrocarbon analysis. Boat-based surveys of migratory birds to determine abundance and population trends (Bird Study No. 2B) will continue at a reduced level, but the aerial surveys (Study 2A) are no longer necessary. Bird Study No. 3 (Population Surveys of Seabird Colonies) will be continued, with increased emphasis placed upon the impact of EVOS upon nesting murres.

Bird Study No. 4 (Bald Eagles) will be modified to include additional documentation of the locations where eagles affected by the EVOS died. The telemetry work will continue to determine the winter survival rate of the currently instrumented eagles and additional blood and tissue samples will be taken to further document sublethal effects. Study No. 11 (Sea Ducks) will be modified in light of the data collected during 1989 and 1990 and will concentrate on completion of toxicology and histology on previous samples and will also investigate reproductive status of ducks within oiled areas compared to unoiled areas.

Bird Studies Nos. 5 (Peregrine Falcons) and 13 (Passerines) have been completed.

Fish/Shellfish

Study No. 1 (Salmon Spawning Area Injury) will continue and will map the distribution of spawners in 1991 relative to three intertidal spawning zones and upstream spawning areas and compare them to historical levels to determine the effect of EVOS on intertidal spawning stocks. Adult pink salmon returning in 1991 will represent the first opportunity to observe the abundance and spawning location of adult salmon exposed to oil as developing egg, alevin, and early marine fry and juveniles. Study No. 2 (Salmon eggs and Pre-emergent Fry) will continue to compare pink salmon egg mortality between oiled and unoiled areas. Fry abnormality will also continue to be compared between oiled and unoiled areas. An additional year of study will assist in determining long-term effects upon yearly spawning efforts. Study No. 3 (Salmon Coded Wire Tagging) will be modified to include only recovery of coded wire tags from returning wild and hatchery stocks to provide survival rates. Studies 4a and 4b (Early Marine Salmon Injury) will continue to document the effects of oil on fry growth.

Study No. 5 (Dolly Varden/Cutthroat Injury) will continue to document and compare growth and mortality rates of Dolly Varden and Cutthroat trout in oiled and unoiled areas. A modeling component is being added to estimate population effects and continued histopathological analyses will indicate oil-related effects. Study No. 11 (Herring Injury) will document egg mortality, gross abnormalities and genetic and cytological injury to herring. Study No. 13 (Clam Injury) will concentrate on the analysis of samples collected to date, rather than additional field work. Study No. 27 (Sockeye Salmon Over-escapement) will be continued to determine the effect of over-escapement upon the ecosystem documented in 1990. Study No. 28 (Run reconstruction) is a modelling exercise to determine specific stock abundance of pink salmon in Prince William Sound fishing districts to quantify the injuries, in terms of lost adults, indicated in other salmon studies. Study No. 30 (Salmon Database Management) will continue to create a data base of salmon information for use in the assessment studies and restoration activities.

Studies Nos. 15 (Shrimp Injury), 17 (Rockfish Injury) and 24 (Trawl Assessment Outside Prince William Sound) are being modified and shifted to the Subtidal category. Studies Nos. 7a (Salmon Spawning, Lower Cook Inlet), 7b (Salmon Spawning, Kodiak/Chignik), 8a and 8b (Egg and Pre-emergent Fry, Lower Cook Inlet, Kodiak/Chignik), 18 (Trawl Assessment) and 22 (Crabs, Outside Prince William Sound) are completed, although analysis of the data collected will continue into 1991.

Coastal Habitat Intertidal Study

This study will continue to document the effects of oil on the intertidal ecosystem. Analysis of the data gathered during the first two years of this study will continue. Continued sampling will concentrate exclusively on intertidal habitat. Biological experimentation work will continue in Herring Bay. Intertidal extrapolation will continue in Prince William Sound, Cook Inlet/Kenai, Kodiak Archipelago/ Alaska Peninsula, but will concentrate on specific habitats of particular concern. Shallow benthic studies will be transferred to the Subtidal category of studies. Spectrographic monitoring of seaweeds will be discontinued.

Subtidal

This category consists of modified studies previously identified under other categories and is intended to assess the presence and effect of oil in the subtidal ecosystem. Included are: Air/Water No. 2a (Hydrocarbon Exposure, Microbial and Meiofaunal Community Effects), Air/Water 2b and a segment of Coastal Habitat No. 1 (Injury to Benthic Communities), Air/Water No. 3 (Bio-availability and Transport of Hydrocarbons), Air/Water No. 6 (Sediment Toxicity Bioassays), Fish/ Shellfish No. 15 (Injury to Shrimp), Fish/ Shellfish No. 17 (Injury to Rockfish) and Fish/Shellfish No. 24 (Injury to Demersal Fish in Prince William Sound).

Air/Water Studies

All 1990 studies are transferred to the Subtidal category of studies.

Technical Services

Studies Nos. 1 (Hydrocarbon Analysis) and 3 (Mapping) are planned to continue, since both are essential to the assessment process. Technical Services Study No. 2 (Histopathology) was discontinued as a separate study in 1990 and the necessary histopathological analyses are to be conducted within the relevant studies.

Archaeology

The Archaeological Survey, including field work to identify and quantify

injury to cultural resources and continued analysis, is recommended to continue. This study will identify archaeological and historical sites that have been affected by the EVOS.

Economics

Economic damage determination studies are continuing in 1991 with only minor modifications to the overall scope of the studies and to some of the individual work plans. Changes in scope and content reflect new information obtained during the previous year's work. Economics Studies Nos. 1 (Commercial Fishery Losses Caused by EVOS), 5 (Economic Damage To Recreation), 6 (Losses to Subsistence Households), 7 (Losses of Intrinsic Value Due to EVOS) and 8 (Economic Damage Assessment of Research Projects Affected by EVOS) will continue. Study No. 4 (Affects of EVOS on Public Lands) has been dropped from further consideration. Study No. 9 (Quantification of Damages to Natural Resources) did not commence in 1990, however; its implementation is anticipated this year. In addition, an assessment of possible damages caused by the EVOS's affect on petroleum prices is also under consideration for 1990.

Restoration Planning

Work will continue on the development of a comprehensive restoration plan. Potential restoration activities will be identified through technical reviews and public input. In some cases, evaluation of potential activities will require field studies to determine feasibility, provide needed biological and resource assessment information, or to monitor natural resource recovery times. Subject to additional technical review and availability of funds, some restoration studies and projects are expected to be carried out in 1991. These projects and the overall restoration planning process will be outlined in an upcoming **Federal Register** notice in the near future. Additional information on the Trustees' plan to implement restoration projects in 1991 was provided in the November 19, 1990, **Federal Register**, (55 FR 48160).

Other planning activities in 1991 will include development of a framework for a long-term comprehensive monitoring program and completion of reviews of the scientific literature on the recovery of species and ecosystems from environmental perturbations. There will also be consideration of additional public involvement activities, including workshops and publications.

Dated: February 28, 1991.

Thomas A. Campbell,

General Counsel, NOAA.

Charles E. Cole,

Attorney General, State of Alaska.

[FR Doc. 91-4886 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-12-M

Western Pacific Fishery Management Council; Addition of Meeting Agenda Items

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An agenda, published in the **Federal Register** at 56 FR 7015, on February 21, 1991, for the Western Pacific Fishery Management Council's public meeting in Honolulu, HI, on February 27–March 1, 1991, has been amended. The amended agenda item is reprinted with revisions.

Amended Agenda Items

3. *Pelagics:* Discussion of the status of overfishing amendment #1; the status of the longline permit and logbook amendment #2; the status of the emergency moratorium on new entry into the Hawaii longline fishery; recommendations from the Task Force on NWHI longline/monk seal interactions, including a possible emergency closure to longlining of certain areas around the NWHI; recommendations from the workshop on transferability of permits; amendment #3 to establish a three-year moratorium on new entry into the Hawaii longline fishery; recommendations from the task force on gear conflict and allocation issues, including a possible emergency closure to longlining of certain areas around the Hawaiian Islands; and recommendations on preferential treatment for indigenous people.

All other information published at 56 FR 7015 remains unchanged. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 25, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-4850 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-22-M

Patent and Trademark Office

Advisory Commission on Patent Law Reform: Open Meeting

AGENCY: Patent and Trademark Office, Department of Commerce.

SUMMARY: The Commission was established on August 23, 1990, to advise the Secretary of Commerce on the state of and need for any reform in the United States laws relating to the enforcement and the licensing of U.S. patents.

TIME & PLACE: March 28, 1991, 10 a.m. to 4 p.m., U.S. Department of Commerce, Office of the Secretary, 5th Floor, 14th Street and Constitution Avenue, NW., Washington, DC.

AGENDA: The meeting will be primarily organizational in nature, and will address the following topics:

(1) Orientation of members as to the purposes and objectives of the Commission; and

(2) Identification of issues to be considered by the Commission.

How the Commission can effectively address these issues (i.e., subcommittees, working groups, etc.) may also be addressed.

PUBLIC OBSERVATION: The meeting will be open to public observation. Approximately 10 seats have been reserved for the public. Reservations for these seats will be available on a first-come, first-served basis through the contact person indicated below. Written comments and suggestions will be accepted before or after the meeting on any of the agenda matters.

FOR FURTHER INFORMATION CONTACT: E. R. Kazenske, Executive Assistant to the Commissioner, Box 15, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–3071.

Dated: February 25, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-4932 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement and Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Mauritius

February 25, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and adjusting limits.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius agreed to extend the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and 4, 1985, as amended, through September 30, 1992.

Also, the two governments agreed to establish specific limits for Categories 351/651 for the periods February 28, 1990 through September 30, 1990 and October 1, 1990 through September 30, 1991. The agreed level for the period October 1, 1990 through September 30, 1991 period is being increased by application of swing; reducing the current limit for Categories 342/642/842 to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 46238, published on November 2, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

February 25, 1991

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive dated October 29, 1990 concerning imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Mauritius and exported during the period which began on October 1, 1990 and extends through September 30, 1991.

Effective on February 28, 1991, you are directed to establish and adjust limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Mauritius:

Category	Twelve-month limit [1]
351/651	141,775 dozen
342/642/842	169,440 dozen

[1] The limits have not been adjusted to account for any imports exported after September 30, 1990.

Imports charged to the category limit for Categories 351/651 for the period beginning February 28, 1990 and extending through September 30, 1990 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level established in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-4869 Filed 2-28-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to and deletes from the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 28, November 16, December 28, 1990, and January 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 39685, 47905, 53329 and 56 FR 1180/1) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to its concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR subpart 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pouch, Mechanic's Tool

5140–00–329–4306

Mask, Surgical

6515–00–882–7493
(Remaining Government Requirement)

Skirt, Womans

8410.–01–279–7730
8410.–01–279–7731
8410.–01–279–7732
8410.–01–279–7733
8410.–01–279–7734
8410.–01–279–7735
8410.–01–279–7736
8410.–01–279–7737
8410.–01–279–7738
8410.–01–279–7739
8410.–01–279–7740
8410.–01–279–7741
8410.–01–279–7742
8410.–01–279–7743
8410.–01–279–7744
8410.–01–279–7745
8410.–01–279–7746
8410.–01–279–7747
8410.–01–279–7748
8410.–01–279–7749
8410.–01–279–7750
8410.–01–279–7751
8410.–01–279–7752
8410.–01–279–7753

Services

Janitorial/Custodial

Federal Building, U.S. Post Office and Courthouse, Pine Bluff, Arkansas

Janitorial/Custodial

Federal Building, St. Maries, Idaho

Janitorial/Custodial

U.S. Army Reserve Center, Spartanburg, South Carolina

Operation of Postal Service Center

Robins Air Force Base, Georgia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committe has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Strap, Mail Tray, P.S. Item No. 01067.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–4913 Filed 2–28–91; 8:45 am]

BILLING CODE [illegible]

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 1, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR subpart 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Harness, Carrying

1660–00–571–2239

Strap, Fuel Tank

2910–00–740–9419

Gown, Surgical

6532–00–083–8634

6532–00–083–8635

Kit, Preventive Dentistry

6520–00–890–2060

Frame, Picture

7105–00–052–8684

7105–00–052–8690

Box, Wood

8115–00–L00–1525 123⅛" x 39⅛"

8115–00–L00–1526 147⅛" x 39⅛"

8115–00–L00–1527 123⅛" x 51⅛"

8115–00–L00–1528 147⅛" x 51⅛"

8115–00–L00–1780 147⅛" x 63⅛"

8115–00–L00–1532 99⅛" x 39⅛"

8115–00–L00–1648 99⅛" x 51⅛"

(Requirements of the Defense Industrial Plant Equipment Center, Memphis, TN only)

Cap, Garrison

8405–01–232–5330

8405–01–232–5331

8405–01–232–5332

8405–01–232–5333

8405–01–232–5334

8405–01–233–5335

8405–01–232–5336

8405–01–232–5337

8405–01–233–5338

8405–01–232–5339

8405–01–232–5340

8405–01–232–5341

8405–01–232–5342

Toothpaste

8520–01–303–4037

8520–01–303–6436

Services

Janitorial/Custodial, Naval Air Station, Whidbey Island, Building 13, Oak Harbor, Washington

Janitorial/Custodial, for the following Casper, Wyoming locations:

Federal Building and U.S. Post Office, 100 E. B Street

Federal Building and U.S. Courthouse, 111 S. Walcott Street

Parts Sorting

Defense Reutilization and Marketing Office—San Antonio

Kelly Air Force Base, Texas

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–4914 Filed 2–28–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 25, 1991.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 20 March 1991, at 8 a.m. to 5 p.m. The purpose of the meeting is to receive briefings and discuss information related to potential SAB study topics. The request for the closed meeting is based on the fact that contractor proprietary information will be discussed. In accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (4), these meetings should be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–4933 Filed 2–28–91; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Military Traffic Management Command; Military/Industry Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 18 July 1991 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, at telephone number (703) 756–1600, between 0800–1630 hours. Topics to be discussed should be received on or before 14 June 1991.

Roger F. Maguire,

Colonel, GS, Director of Personal Property.

[FR Doc. 91–4810 Filed 2–28–91; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 20 June 1991, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 hours and adjourn at approximately 1630 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, at telephone number (703) 756–1600, between 0800–1630 hours. Topics to be discussed should be received on or before 9 May 1991.

Roger F. Maguire,

Colonel, GS, Director of Personal Property.

[FR Doc. 91–4809 Filed 2–28–91; 8:45 am]

BILLING CODE 3710–08–M

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Symposium. This meeting will be held on 29 May 1991 at the Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia, and will convene at 0930 hours and adjourn at approximately 1600 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, at telephone number (703) 756–1600, between 0800–1630 hours. Topics to be discussed should be recevied on or before 24 April 1991.

Roger F. Maguire

Colonel, GS, Director of Personal Property.

[FR Doc 91–4811 Filed 2–28–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Inland Waterways Users Board; Meeting

AGENCY: Department of the Army.

SUBAGENCY: Corps of Engineers.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Inland Waterways Users board.

Date of Meeting: March 26, 1991.

Place: San Luis Hotel, 5222 Seawall Boulevard, Galveston, Texas 77551, (Tel. (409) 744–1500.

Time: 8:30 a.m. to 4 p.m.

Proposed Agenda

AM Session

8:30 Registration.

Business Session

9 Administrative Announcements; Chairman's Call to Order; Executive Director's Comments; Approval of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Major Rehabilitation Program Changes
10:15 Break
10:30 Trust Fund Analysis
11:30 Lunch

PM Session

Southwestern Division Presentations

1 Montgomery Point L&D—Update & Status
1:30 Sargent Beach—Update & Status
2 Aransas & Other GIWW West Problems
2:30 Break
2:45 Public Comment Period
3:45 Instructions to Board Staff
4 Adjourn

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

Hugh F. Boyd III,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 91–4807 Filed 2–28–91; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

Financial Assistance: Guided Wave, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Intent to negotiate a cooperative agreement entitled "Thin-Film Device for Process Measurement" with Guided Wave, Inc., El Dorado Hills, CA.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2) it plans to award a cooperative agreement noncompetitively to Guided Wave, Inc. for development of a miniature analytical device based on thin-film optical waveguide technology. This award will be for a period of two years at a total cost of approximately $880,000. DOE's share of the cost will total approximately $500,000. This action is authorized by Public Law 93–577, Federal Nonnuclear Energy Research and Development Act of 1974, Public Law 96–294, Energy Security Act, Public Law 93–438, Energy Reorganization Act of 1974, and Public Law 94–385, Energy Conservation and Production Act. The proposed activity will provide funds for the development of a new industrial process sensor. The proposed sensor would be a near-infrared spectrophotometer with a sensing probe constructed using thin-film waveguide technology. This device would be suitable for rapid in-situ composition determination of many industrial liquids. The award of this noncompetitive assistance is justified under subparagraph D of 10 CFR 600.7(b)(2)(i) as follows: (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

CONTACT: U.S. Department of Energy, Idaho Operations Office, Attn: Scott D. Applonie, Contracts Management Division, 785 DOE Place, Idaho Falls, ID 83402–1129, (208) 526–8558.

PROCUREMENT REQUEST NUMBER: 07–91ID13063.000.

Dated: February 7, 1991.

Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91–4934 Filed 2–28–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–1288–000, et al.]

Williams Natural Gas Company, et al.; Natural gas certificate filings

February 22, 1991.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP91–1288–000]

Take notice that on February 19, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 7401, filed in Docket No. CP91–1288–000, a

request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon the sale of natural gas to the U.S.A. Department of the Army, Sunflower Army Ammunition Plant (Sunflower) in Johnson County, Kansas, pursuant to WNG's blanket authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states the customer, Sunflower has agreed to cancellation of its sales contract. The facilities will remain in place to allow Sunflower to access transportation gas, as noted by WNG.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Texas Eastern Transmission Corporation, Columbia Gas Transmission Corporation, Colorado Interstate Gas Company, Western Transmission Corporation, El Paso Natural Gas Company

[Docket Nos. CP91-1258-000, CP91-1259-000, CP91-1260-000, CP91-1261-000, CP91-1262-000, CP91-1263-000]

Take notice that Applicants filed in the above-referenced dockets prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-1258-000 (2-14-91)	Endevco Oil & Gas Company (marketer).	400,000 400,000 146,000,000	Various	Various	10-8-90, IT-1, Interruptible	ST91-6850, 1-10-91
CP91-1259-000 (2-14-91)	Sheldon Gas Company, Inc. (LDC).	500 400 182,500	KY	OH	12-24-90, ITS, Interruptible	ST91-6640, 1-9-91
CP91-1260-000 (2-14-91)	Southern Gas Company, Inc. (marketer).	10,000 8,000 3,650,000	KY	WV	12-28-90, ITS, Interruptible	ST91-6639, 1-1-91
CP91-1261-000 (2-14-91)	PSI, Inc. (marketer)	25,000 [1] 2,525 922,000	WY	TX	10-1-88, TI-1, Interruptible	ST91-6830, 1-1-91
CP91-1262-000 (2-15-91)	Sagebrush Services, Inc. (producer).	1,000 [2] 500 182,500	WY	WY	1-4-91, TI-1, Interruptible	ST91-6916, 1-13-91
CP91-1263-000 (2-15-91)	Southwestern Public Service Company (end-user).	103,000 14,111 5,150,515	Various	NM, TX	8-30-90, T-1, Interruptible	ST91-6645, 1-11-91

[1] Measured in Mcf.
[2] Measured in Mcf.

Applicant's address	Blanket docket
Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944.	CP86-589, et al.
Columbia Gas Transmission Corp., 1700 MacCorkle Avenue, SE., Charleston, WV 25314.	CP85-240-000.
El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978.	CP86-433-000.
Texas Eastern Transmission Corp., 5400 Westheimer Court, P.O. Box 1642, Houston, TX 77251-1642.	CP86-136-000.
Western Transmission Corp., 1801 California Street, suite 3500, Denver, CO 80202.	CP85-717-000.

MIGC, Inc.

[Docket No. CP91-1264-000]

Take notice that on February 15, 1991, MIGC, Inc. (MIGC), 12200 North Pecos Street, suite 230, Denver, Colorado 80234, filed in Docket No. CP91-1264-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap for the delivery of natural gas to the working interest owners of the Sand Dunes Unit, end-users, in Converse County, Wyoming, under the blanket certificate issued in Docket No. CP82-409-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

MIGC states that it would deliver the MMBtu equivalent of up to 35 MMcf per day of natural gas for the first three to six months of operation and the MMBtu equivalent of up to 20 MMcf per day of natural gas thereafter. MIGC states that it anticipates no significant impact on its peak day or annual natural gas deliveries as a result of the proposed service. MIGC also states that it would charge the Sand Dunes Unit a rate pursuant to MIGC's interruptible FERC Rate Schedule ITS-1.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Texas Eastern Transmission Corporation

[Docket No. CP89-2021-004]

Take notice that on February 14, 1991, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-2021-004 pursuant to section 7(c) of the Natural Gas Act a petition to amend the certificate of public convenience and necessity issued by the Commission's Order dated March 30, 1990, in Docket No. CP89-2021-000 (50 FERC ¶61,435), so as to add their Rate Schedule I, sale for resale service, to the service already provided to UGI Corporation (UGI) in the above mentioned docket, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Eastern States that pursuant to a Service Agreement dated August 11, 1989, it will offer interruptible sales service under Rate Schedule I as a service now available to UGI. Texas Eastern states that service under this Rate Schedule was inadvertently omitted from the original application.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

Mississippi River Transmission Corporation

[Docket No. CP91-1054-000]

Take notice that on February 15, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1054-000 an application pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Arkla Energy Marketing Company (Arkla) a shipper, under MRT's blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes to transport up to 140,000 MMBtu of natural gas per day for Arkla from receipt points located in Arkansas, Illinois, Louisiana, Oklahoma and Texas to delivery points located in Illinois, Louisiana, Arkansas and Missouri. Arkla estimates that the average day and annual transportation quantities would be 140,000 and 51,100,000 MMbtu, respectively. MRT states that the transportation of natural gas for Arkla commenced September 15, 1990, pursuant to Section 284.223(a) of the Commission's Regulations, as reported in Docket No. ST91-6427-000.

Comment date: April 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4835 Filed 2-28-91; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-2-002, TM91-2-2001 and TF91-5-2-002]

East Tennessee Natural Gas Co.; Compliance Filing

February 22, 1991.

Take notice that on January 28, 1991, to comply with the Commission's December 28, 1991 letter order in Docket Nos. TA91-1-2 and TM91-2-2, East Tennessee Natural Gas Company (East Tennessee) filed the followng revised tariff sheets to First Revised Volume No. 1 of its FERC Gas tariff, to be effective January 1, 1991:

TA91-1-2

Third Substitute Second Revised Sheet No. 4
Third Substitute Second Revised Sheet No. 5

TF91-5-2

Third Substitute First Revised Second Revised Sheet No. 4
Second Substitute First Revised Second Revised Sheet No. 5

East Tennessee states that a copy of the tariff filing is being mailed to all affected customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before March 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4837 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA91-7-000]

Doyle Mayo; Petition for Staff Adjustment Under NGPA Section 502(c)

February 22, 1991.

Take notice that on February 13, 1991, Doyle Mayo filed with the Commission, a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and part 385 (subpart K) of the Commission's regulations. The gas produced from the Miles # 1 well has been purchased by Colorado Interstate Gas Company (CIG) under a long-term gas purchase agreement dated June 19, 1978, and which expired December 31, 1988.

Mr. Mayo requests that the Commission grant for the Miles # 1 well located in Beaver County, Oklahoma, an adjustment from the requirements of § 271.805 of the Commission's regulations governing the continuing qualification of natural gas produced from stripper wells pursuant to section 108 of the NGPA. Mr. Mayo alleges that this relief is justified on grounds of special hardship and that an unfair distribution of burdens and inequity would result if the requested relied were not granted.

Any person desiring to be heard or protest this petition should file a motion to interevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 15, 1991. All protests filed will be considered, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules. Copies of this

BEST COPY AVAILABLE

petitor, are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4836 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-68-002]

Penn-York Energy Corp.; Compliance Filing

February 22, 1991.

Take notice that on February 15, 1991, Penn-York Energy Corporation (Penn-York), filed as part of its FERC Gas Tariff the following tariff sheets, to comply with the Commission's order issued January 31, 1991, in the above-referenced proceeding:

Third Revised Volume No. 1

Substitute First Revised Sheet No. 8
Substitute First Revised Sheet No. 17

Penn-York states that the revised tariff sheets and revised statements and schedules reflect the Commission's rejection of Penn-York's proposal to recover the costs associated with extraordinary past losses from its storage fields.

Penn-York states that copies of this filing have been mailed to Penn-York's purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatry Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before March 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4838 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-63-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

February 22, 1991.

Take notice that on February 19, 1991, Transcontinental Gas Pipe Line Corporation (Transco) sumbitted for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 4 of the Natural Gas Act and part 154 of the Commission's Regulations, First Revised Sheet No. 1307 to its FERC Gas Tariff Original Volume No. 2, which incorporates the provisions of an amendment to Rate Schedule X-140. The proposed effective date of the tariff sheet is April 1, 1990.

Transco states that the purpose of this filing is to revise Rate Schedule X-140, contained in Volume 2 of Transco's FERC Gas Tariff to amend the provision addressing gas loss charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatry Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4839 Filed 2-28-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-99-NG]

ProGas Limited; Order Granting Blanket Authorization To Import and Export Natural Gas From and to China

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice to an order granting blanket authorization to import and to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas Limited (ProGas) blanket authorization to import from, and to export to, Canada, up to 400 Bcf of natural gas over a two-year term beginning on the date of first delivery of the import or export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4835 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-07-NG]

Spot Market Corp.; Application for Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 25, 1991, of an application by Spot Market Corporation (SM Corp.) for blanket authority to import up to 300 Bcf of natural gas from Canada over a two-year term from the date of first delivery. All transactions contemplated under the SM Corp. import proposal would utilize existing facilities and would be subject to FE's reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 1, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4708

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Departmental of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: SM Corp., a Texas corporation with its principal place of business in Houston, Texas, is engaged in the marketing of natural gas throughout the U.S. SM Corp. asserts that the blanket authorization requested to import competitively priced natural gas will enable it to make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies, electric utilities, and industrial and agricultural end-users. SM Corp. claims that the proposed imports will be competitive in the markets served as the price, terms and conditions for each proposed sale will be negotiated at arms length between the parties involved.

The decision on this application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import authority. The applicant asserts that this import arrangement will be competitive and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA) 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of SM Corp.'s application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-4836 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of January 18 through January 25, 1991

During the Week of January 18 through January 25, 1991, the appeals and applications for exception or other relief listed in the appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated February 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 18 through January 25, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 22, 1991	Smith Tank Lines, Fresno, CA	LEE-0020	Exception to the reporting requirements. If granted: Smith Tank Lines would not be required to file Form EIA-782B, "Resellers'/ Retailers Monthly Petroleum Sales Report."
Jan. 23, 1991	Texaco/Fagan's Texaco, Hardin, KY	RR321-48	Request for modification/rescission in the Texaco refund proceeding. If granted: The December 17, 1990 Decision and Order (Case No. RF321-3204 and RF321-6312) would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 18 through January 25, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 23, 1991	Teesdale Oil, Bridger, MT	LEE-0021	Exception to the reporting requirements. If granted: Teesdale Oil would not be required to file Form EIA-782-B, "Resellers'/ Retailers Monthly Petroleum Sales Report."
Jan. 23, 1991	Great Lakes Carbon Corporation Washington, DC	RR272-62	Request for modification/rescission in the crude oil refund proceeding. If granted: The November 27, 1990 Decision and Order (Case No. RF272-5971 and RF272-67247) issued to Great Lakes Carbon Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Jan. 25, 1991	The Lowry Coalition, Denver, CO	LFA-0095	Appeal of an information request denial. If granted: The Lowry Coalition would receive documents not previously provided pertaining to disposal of waste at the Lowry Landfill Superfund Site by DOE, Rockwell and other DOE contractors.
Jan. 25, 1991	Associated Service Corporation, Washington, DC	RR272-66	Request for modification/rescission in the crude oil refund proceeding. If granted: The January 4, 1991 Decision and Order (Case No. RF272-41459) would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of January 18 to January 25, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case number
06/02/89	C & T Arco	RF304-12191
01/17/91	Don McCoy	RF309-1420
01/18/91	Horner's Exxon Service	RF307-10171
01/18/91	Dearman Transportation Co., Inc.	RF272-86034
01/22/91	Hillman Oil Co.	RF331-1
01/22/91	The Anschutz Corp.	RF326-216
01/22/91	Harbor Fuel Company, Inc.	RF326-217
01/22/91	Vantage Petroleum Corp.	RF326-218
01/22/91	Hyor Service Station	RF321-13097
01/22/91	Yellow Cab Co.	RF300-15207
01/23/91	G. Crawford Delivery & Storage	RF272-34
01/23/91	Edson, Inc.	RF315-10120
01/23/91	Jerald Wright's Gulf	RF300-15342
01/23/91	Marben Oil Co.	RF321-12978
01/25/91	East Central ISD	RF326-219
01/25/91	Rapid 1-90 Truck Stop	RF326-220
01/25/91	Bill's Gulf Centre	RF300-15345
01/25/91	Gilbert's Garage	RF300-15361
01/25/91	Southside Food Store	RF300-15362
01/25/91	Wilmot Gulf	RF300-15363
01/25/91	Cook's Gulf	RF300-15364
01/25/91	Cook's Gulf #2	RF300-15365
01/28/91	American Colloid Company	RF326-221
01/28/91	Smokey's Service Station	RF326-222
01/28/91	Anchorage Borough School District	RF326-223
01/28/91	St. Regis/Champion Internat'l	RF307-10172
01/28/91	North Kitsap School District	RF272-86284
01/28/91	Piatt County, Illinois	RF272-86285
01/28/91	Winter Haven, FL	RF272-86286
01/18/91 thru 01/25/91	Crude Oil Refund, Application received	RF272-86101 thru RF272-86292
01/18/91 thru 01/25/91	Gulf Oil Refund, application received	RF300-15192 thru RF300-15381
01/18/91 thru 01/25/91	Texaco Oil Refund, application received	RF321-12869 thru RF321-13015

[FR Doc. 91-4837 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders During the Week of January 21 through January 25, 1991

During the week of January 21 through January 25, 1991, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Delta Petroleum Products, Inc., Pam Oil, Inc., 1/22/91, RF272-36130, RF272-36229

The DOE issued a Decision and Order denying Applications for Refund filed by two resellers of refined petroleum products in the Subpart V crude oil proceeding. During the crude oil control period, each applicant purchased diesel fuel for use in its delivery trucks. Since none of this diesel fuel was resold, each applicant claimed that it was an end-user and entitled to utilize the end-user presumption of injury. The DOE rejected this claim finding that as resellers of refined petroleum products both applicants were allowed to pass through their increased diesel fuel costs to their customers. Accordingly, both applicants' applications were denied.

Earl C. Smith, Inc., 1/24/91, RF272-70618, RD272-70618

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Earl C. Smith (Smith) based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products for its transportation operations. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 32 States and two territories (the States) filed a Statement of Objections and a Motion for Discovery with respect to Smith's Application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore, Smith's Application for Refund was granted and the State's Motion for Discovery was denied. The refund granted to Smith was $5,614.

Exxon Corporation/Consumers Power Co., 1/25/91, RF307-10074

The DOE issued a Decision and Order denying an Application for Refund filed in the Exxon Corporation refund proceeding on behalf of Consumers Power Company. Consumers, a public utility, requested a refund based on its purchases of imported crude oil from Imperial Oil Ltd., a Canadian subsidiary of Exxon. However, the firm alleged that the product it purchased should be considered residual fuel oil and requested a refund from the Exxon refined product pool. The DOE determined that the product purchased was crude oil and that Consumers' claim should be evaluated under the standards set forth in *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), which implemented refund procedures for crude oil funds. The DOE found that Consumers was not eligible for a Subpart V crude oil refund since it had previously released its rights to all other crude oil refunds by participating in the Stripper Well Refiners Escrow. Accordingly, Consumers application was denied.

Exxon Corporation/Marlen L. Knutson Distributing, Inc., Fletcher-Hendley Oil Co., Inc., 1/23/91, RF307-8838, RF307-8904

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Exxon Corporation special refund proceeding. Each applicant is a reseller of Exxon products, and has elected to limit its claim to the greater of $5,000 or 40 percent of its allocable share. For Knutson, 40 percent is greater, and its total refund is $17,229 ($12,567 principal plus $4,662 interest) and for Fletcher, $5,000 is greater, and its total refund is $6,855 ($5,000 principal plus $1,855 interest).

Fibreboard Corporation, 1/23/91, RF272-63202, RD272-63202

The Department of Energy (DOE) issued a Decision and Order denying Fibreboard Corporation's (Fibreboard) Application to receive a Refund in the Subpart V crude oil refund proceeding. Fibreboard applied for a refund based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, an affiliate of Fibreboard had previously executed a valid Waiver and Release in its receipt of a refund from the Surface Transporters' Escrow account, one of the eight Stripper Well escrows. Therefore, because the Waiver and Release filed by its affiliate bars Fibreboard from receiving a Subpart V crude oil refund, the DOE denied Fibreboard's Application for Refund. In light of this finding, the DOE dismissed a Motion for Discovery filed by a consortium of States in regard to Fibreboard's Application.

Luhr Bros., Inc., 1/25/91, RF272-63109, RD272-63109

The Department of Energy (DOE) issued a Decision and Order denying Luhr Bros., Inc.'s (Luhr) Application to receive a Refund in the Subpart V crude oil refund proceeding. Luhr applied for a refund based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. However, Luhr acknowledged having previously executed a valid Waiver and Release in its receipt of a refund from the Rail and Water Transporters' Escrow account, one of the eight Stripper Well escrows. Luhr applied for a Subpart V crude oil refund based on the refined petroleum products for which it did not receive a refund in the Stripper Well proceeding. However, the DOE decided that a company executing a valid Waiver and Release and receiving a refund from the Rail and Water Transporters' escrow is ineligible to receive a refund in the Subpart V crude oil refund proceeding for any of its purchases of refined petroleum products between 1973 and 1981. Therefore, the DOE denied Luhr's Application for Refund. In light of this finding, the DOE dismissed a Motion for Discovery filed by a consortium of States in regard to Luhr's Application.

Marathon Petroleum Company/ Township Oil Company, 1/25/91, RR250-8

The DOE issued a Decision and Order reviewing a Motion for Reconsideration filed by Township Oil Company in the Marathon Petroleum Company special refund proceeding. In approving the Motion, the DOE found that Township had provided information to allow it to approve a refund at greater than the volumetric rate. Specifically, the DOE measured the per gallon overcharge to Township as the differences between (i) the May 15 price to Township's class of purchaser (the jobber class) plus estimated deemed recovery amounts passed through to the Dealer Tankwagon class and (ii) the price that Township actually paid. Township's principal refund was $195,359. The firm showed that it had incurred injury at that level. Township also received interest of $79,126.

Shell Oil Company/Dunahoo Shell, White House Service Station, Childs Service Station, Ladson Shell, 1/22/91, RF315-2114, RF315-2177, RF315-2118, RF315-2120

The DOE issued a Decision and Order denying the Shell refund application of four retailers who claimed to have purchased Shell petroleum products indirectly. None of the four applicants was able to establish a reasonable gallonage figure or verify that the product it purchased originated with Shell. Accordingly, the four applications were denied.

State of New York, 1/23/91, RF272-62522

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of New York (New York) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The State applied for a refund based solely on its purchases of refined petroleum products for its end-use and included in its claim the purchases of all State agencies in New York. Phillip P. Kalodner, counsel for utilities, transporters and manufacturers filed objections to this application in which he argues that governmental entities are ineligible to receive Subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut New York's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to New York's eligibility unconvincing and granted the State a refund of $946,836.

Stolaruk Corporation, 1/25/91, RF272-49625, RD272-49625

Stolaruk Corporation is involved in the manufacturing and selling of specialty asphalts. It filed an Application for Refund as an end-user of

refined petroleum products is the Subpart V crude oil refund proceeding. A group of State governments and two territories of the United States (the States) objected to the application filed by Stolaruk Corporation, provided evidence concerning the construction industry as a whole, and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Stolaruk Corporation had been able to pass on the crude oil overcharges to its customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Stolaruk Corporation were injured by crude oil overcharges. Stolaruk Corporation was unable to pass through its alleged overcharges through the use of price escalator clauses. The DOE therefore denied the Motion for Discovery filed by the States, and granted Stolaruk Corporation a refund of $30,575 based on its approved purchases of 30,218,216 gallons of petroleum products.

Superba Print Works, 1/25/91, RF272-77262

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Superba Print Works (Superba) based upon its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Petroleum Funds, Inc., the filing service which submitted Superba's application, estimated Superba's middle distillate and naphtha purchases based on yearly purchases during the period 1973 through 1976. Superba's maintenance manager (who was with the company during the refund period) substantiated that Superba purchases middle distillates throughout the refund period, but only purchased naphthas through 1978. Accordingly, the DOE determined that Superba was eligible to receive a refund based on Petroleum Funds' estimation of its middle distillate purchases from 1973–1981 and naphtha purchases from 1973–1978. The refund granted to Superba Print Works in this Decision is $1,068.

Texaco Inc./Miller Oil Co., Miller Oil Co., Inc., 1/23/91, RF321-2344, RF321-4549

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The Applications for Refund were filed on behalf of Miller Oil Co., Inc. by unrelated parties who both requested a refund based on that firm's purchases of Texaco products during the consent order period. Mr. Benny Magness contended that he is entitled to a refund for the firm's purchases of Texaco product since Miller Oil Co., Inc.'s marketing contract with Texaco was transferred to him in a 1987 sale. However, Miller Oil Co., Inc. still exists as a corporation and retained all of its capital stock in the sale of assets to Mr. Magness. Since the actual Texaco refund was not specifically transferred to Mr. Magness as an asset, the DOE determined that Mr. Magness was not entitled to the Texaco refund and denied his Application for Refund (Case No. RF321-2344). The DOE determined that Miller Oil Co., Inc. was the proper recipient of the refund in this proceeding. Accordingly, Miller Oil Co., Inc. (Case No. RF321-4549) was granted a refund of $14,932 ($12,307 principal plus $2,625 interest).

Vrontados Naftiki Etairia P.E., Home Lines, Inc., Seagroup, Inc., The Shipping Corporation of India, 1/25/91, RF272-25262, RD272-25262, RF272-27325, RD272-27325, RF272-44158, RD272-44158, RF272-45925, RD272-45925

The DOE granted four Applications for Refund filed by foreign flagship carriers operating ocean-going vessels in the foreign commerce of the United States in the Subpart V crude oil refund proceeding. Rejecting arguments raised by a group of State governments, the DOE concluded that (i) the applicants were eligible to receive crude oil refunds even though they were under foreign ownership and (ii) foreign ocean carriers were not automatically able to pass through increased bunker fuel costs to their customers. The DOE concurred with the States' position that the DOE price regulations did not apply to sales in the Panama Canal Zone (PCZ), and subtracted those gallons of purchases which the applicants certified had been made in the PCZ. As end-user of the petroleum products involved, the applicants were presumed injured by the crude oil overcharges. The total of the refunds granted in this Decision is $368,528. The DOE also denied the four Motions of Discovery filed by the States for reasons discussed in previous Decisions.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Alice Independent School District.	RC272-110	01/25/91
Atlantic Richfield Co./Boston's, Inc..	RF304-2368	01/22/91
Atlantic Richfield Co./Louie P. Nacum *et al.*	RF304-2175	01/22/91
Atlantic Richfield Co./Wo Wo Wash *et al.*	RF304-9592	01/22/91
Exxon Corporation/ MacArthur Petroleum & Solvent Co., Inc.	RF307-5976	01/24/91
Bedford Farm Bureaucooperative.	RF307-5984	
Exxon Corporation/ Seaside Petroleum Co., Inc. *et al.*	RF307-6146	01/23/91
Florida Keys Electric Cooperative Association, Inc.	RF272-47804	01/25/91
Gulf Oil Corp./ Jackson Hilltop U-Haul.	RF300-11304	01/25/91
Gulf Oil Corp./Roy's Gulf Service *et al.*	RF300-8639	01/25/91
Hackney Farmers Union Cooperative Association.	RF272-47671	01/22/91
Houston Coca-Cola Bottling Co.	RC272-112	01/25/91
Jefferson Davis County Schools.	RC272-109	01/25/91
Kenneth Brooks	RC272-111	01/25/91
Lewis Cooperative Company *et al.*	RF272-70058	01/23/91
Maseman Construction Co. *et al.*	RF272-26264	01/25/91
Murphy Oil Corp./ Eastern Oil Company of SC, Inc. *et al.*	RF309-1085	01/22/91
Oregon Health Sciences University *et al.*	RF272-60752	01/23/91
Placid Oil Co./Kirk's Services, Inc.	RF314-36	01/24/91
Shell Oil Company/ Boise Cascade Corp. *et al.*	RF315-1394	01/23/91
Shell Oil Company/ Carmel Littlejohn Shell *et al.*	RF315-91	01/23/91
Shell Oil Company/ Kerr-McGee Corporation.	RF315-5241	01/25/91
Shell Oil Company/ William E. Tribou Oil Company *et al.*	RF315-5255	01/24/91
Texaco Inc./Cheshire Oil Company, Inc.	RF321-3759	01/23/91
Cheshire Oil Co., Inc.	RF321-7106	
Scenic State Oil Company.	RF321-11476	
Texaco Inc./ Gordon's Texaco Service *et al.*	RF321-393	01/22/91
Texaco Inc./I.B. Lansaine *et al.*	RF321-4636	01/23/91
Texaco Inc./ Keenan's Oil Service, Inc..	RF321-2637	01/23/91
Texaco Inc./Poor Boys Texaco *et al.*	RF321-3997	01/24/91
Texaco Inc./Ward Oil Co..	RF321-42	01/22/91
Mauritz & Carroll	RF321-2289	
Butler Petroleum Corporation.	RF321-2347	

Name	Case No.	Date
Maine Potato Growers, Inc.	RF321-2363	
Walter Delanoit	RC272-113	01/25/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Al's Texaco	RF321-11820
Bob's Texaco	RF321-4483
Briarwood Gulf	RF300-11669
City of Buffalo	RF321-12211
Cliff's Texaco	RF321-11969
Cottage Hill Texaco & Auto	RF321-7190
Dick Hodge Texaco	RF321-6483
George's Texaco	RF321-9635
Glades Road Gulf	RF300-11511
Kar-Park Service Co.	RF321-4142
Lakewood Texaco	RF321-11859
Lewis Dukes Gulf	RF300-11645
Miyakawa Service Inc.	RF321-8221
Myrtletowne Texaco	RF321-397
Parkers Texaco Service	RF321-12302
Paul Yates Co.	RF272-71699
Pawiak's Texaco Service	RF321-1176
Perrino's Gulf Service	RF300-9183
Plaza Texaco Service	RF321-1201
Rogers Texaco	RF321-1367
Ron's Texaco Inc.	RF321-5657
Sam's Gulf	RF300-9153
Stuart's Interstate	RF321-10766
Virgil's Texaco	RF321-1459
W.E. Beck Oil Co.	RF321-3531
Westchester County	RF272-2983
Whitaker's Texaco	RF321-1270

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-4938 Filed 2-28-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3910]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Polychlorinated Biphenyls (PCBs): Use in Electric Equipment and Transformers. (EPA ICR No. 1000.04; OMB #2070-0003). This is a revision of a currently approved collection.

Abstract: In compliance with TSCA section 6(e), owners of PCB transformers must keep records on unit use, inspection and corrective action for leaks. These records must be maintained for at least 3 years after disposing of the transformer. Owners of PCB tranformers must also report any fire-related incidents immediately to the National Response Center. EPA conducts periodic inspections of facilities operating PCB transformers. The inspections are used to generate reports, and to ensure compliance.

Burden Statement: The public burden for this collection of information is estimated to average 1 hour per response for reporting, less than 0.2 hour per recordkeeper annually. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

Respondents: Owners of PCB transformers.

Estimated No. of Respondents: 11 respondents for reporting, and 95,000 recordkeepers.

Estimated No. of Responses per respondent: 1.

Estimated Total Annual Burden on Respondents: 15,781.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: February 19, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-4887 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3910-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 11, 1991 through February 15, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-J65165-MT Rating LO1, Flathead National Forest Land and Resource Management Plan, Amendment No. 10 Open Road Density Standard for Non-Wilderness Portion of the Forest, Implementation, Flathead, Lake, Lincoln and Missoula Counties, MT.

Summary

EPA has reviewed the draft EIS for the Open Road Density Standards and has no comments. The Forest Service's preferred Alternative 6 will improve protection of wildlife habitat and water quality.

ERP No. D-AFS-J65165-MT Rating EC2, Harvey-Eightymile Project Area, Timber Sale and Road Construction, Implementation, Deerlodge National Forest, Silver King Roadless Area, Philipsburg Ranger District, Granite County, MT.

Summary

EPA believes that Alternative B provides the greatest degree of environmental protection for area resources. The preferred Forest Service alternative, Alternative D, has high potential for impacts on fisheries and water quality. All stage monitoring of water quality, habitat quality and biological conditions should be incorporated into a preferred alternative management plan.

ERP No. D-AFS-L65142-AK Rating EC2, Shelter Cove and George Inlet Areas Timber Sale, Implementation,

Tongass National Forest, Ketchikan Ranger District, AK.

Summary

EPA has environmental concerns about the effect of the action alternatives on water quality and fisheries. Additional information is needed on standards and guidelines, monitoring, mitigation, log transfers facilities, and air quality.

ERP No. D-FHW-J40121-UT Rating EO2, US-89/Logan Canyon Highway, Improvements, Right Fork 9 miles East of Logan to Garden City, Funding 404 Permit and Special Use Permit, Wasatch-Cache National Forest, Cache and Rich Counties, UT.

Summary

EPA does not object to the overall proposed action of necessary route rehabilitation, but recommends that a supplement to the draft EIS be prepared because of the absence of a preferred alternative and insufficient information to fully assess the environmental impacts.

ERP No. DA-COE-L34006-OR Rating EO2, Elk Creek Lake Project, Construction and Operation, Rogue River, Implementation, Jackson County, OR.

Summary

EPA feels additional information is needed to identify existing need for the dam and the incremental contribution of this dam to meeting the need associated with the primary authorized purposes. Additional analyses are warranted on fishery effects. A detailed feasible mitigation plan needs to be developed for loss of elk and deer habitat.

Final EISs

ERP No. F-AFS-L61182-ID Valbois Destination Resort Village, Special Use Permit and Land/Resource Management Plan Amendments, Cascade Lake, Boise National Forest, Valley County, ID.

Summary

EPA has environmental objections with the proposed action based on several issues. Implementation of mitigation measures needed to insure no net increase in phosphorous input to Cascade Reservoir is uncertain. Water quality and public health concerns resulting from septic systems around the reservoir have been understated. Air quality effects, including the exceedence of air quality standards due to woodstoves, have not been disclosed. The extent of wetland effects and needed mitigation have not been determined.

ERP No. F-CGD-E40723-FL Miracle Parkway Everest Parkway Improvement and Midpoint Bridge Construction, Over the Caloosahatchee River, US Coast Guard Approval and Permit, Cape Coral to Fort Myers, Lee County, FL.

Summary

EPA concludes that with the mitigation proposed to reduce noise, water quality and wetland impacts, environmental impacts from the roadway/bridge project would be minimal.

Dated: February 26, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-4943 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3910-4]

Environmental Impact Statements: Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed February 18, 1991 Through February 22, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910052, Draft EIS, FRC, WA, Elwha (FERC No. 2683) and Glines Canyon (FERC No. 588) Hydroelectric Projects, Operation and Maintenance, License, Elwha River, Clallam County, WA, Due: April 29, 1991, Contact: S. Ronald McKitrick (202) 219-2783.

EIS No. 910053, Draft EIS, AFS, MT, Moose Creek Timber Sales and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, Kings Hill Ranger District, Meagher County, MT, Due: April 22, 1991, Contact: Craig Cowie (406) 547-3361.

EIS No. 910054, Draft EIS, NOA, SC, Ashepoo—Combahee—Edisto (ACE) Basin National Estuarine Research Reserve Management Plan, Site Designation, Beaufort, Colleton, and Charleston Counties, SC, Due: April 15, 1991, Contact: Susan Darden (202) 673-5122.

EIS No. 910055, Final EIS, BLM, AZ, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino, Counties, AZ, Due: April 01, 1991, Contact: Dennis Curtis (801) 673-3545.

EIS No. 910056, Final EIS, BIA, CA, AZ, NV, Spirit Mountain Planned Community Development, Lease Approval, Section 404 Permit, Fort Mojave Indian Reservation, Clark County, NV and San Bernardino County, CA, Due: April 01, 1991, Contact: Wilson Barber (602) 379-6600.

EIS No. 910057, Final EIS, FHW, MI, I-94BL/Michigan Avenue Improvement, Dickman Road to Columbia Avenue, Funding, Calhoun County, MI, Due: April 01, 1991, Contact: James Kirschensteiner (517) 377-1851

EIS No. 910058, Final EIS, USN, AK, Second Relocatable-Over-The-Horizon-Radar (ROTHR) System/Surveillance Installations in the Northwest Pacific Base Camp Facilities, Improvement and Construction, Section 404 and 10 Permits, NPDES Permit, Amchitka Island, AK, Due: April 01, 1991, Contact: Joseph DiVittorio (209) 476-1091.

EIS No. 910059, Final EIS, MMS, AK, Navarin Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 107, Leasing, Bering Sea, AK, Due: April 01, 1991, Contact: Richard Miller (907) 261-4655.

Dated: February 26, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-4942 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50717; FRL-3880-9]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of three notifications of intent to conduct small-scale field testing of nonindigenous strains of *Bacillus thuringiensis* from the E.I. duPont deNemours and Company, Inc.

DATES: Written comments must be received on or before March 15, 1991.

ADDRESSES: Comments in triplicate, should bear the docket control number OPP-50717 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: Three notifications of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), have been received from the E.I. duPont deNemours and Company, Inc. of Wilmington, Delaware. The purpose of the proposed testing is to extend efficacy evaluations of the nonindigenous *Bacillus thuringiensis* strains toward lepidopterous and coleopterous insect pests of vegetables. All three strains have been exempted previously by the Agency from requirement of an Experimental Use Permit. The field tests are to take place in California, Delaware, Florida, Illinois, Mississippi, and Texas for a maximum combined acreage of 6 acres. All treated crops will be destroyed. Following the review of the application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: February 22, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-4916 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

[Docket No. 91-13]

John Barbeau and Clelia Barbeau v. M. Anderson, Ocean Beach Transfer & Storage, Inc., HC&D Forwarders International, Inc., Gene Texeira, Crown Pacific; Ray Dasilva, and Does 1-30; Filing of Complaint and Assignment

Notice is given that a complaint filed by John Barbeau and Clelia Barbeau ("Complainants") against M. Anderson, Ocean Beach Transfer & Storage, Inc., HC&D Forwarders International, Inc., Gene Texeira, Crown Pacific, Ray Dasilva, and Does 1-30 ("Respondents") was served February 25, 1991. Complainant alleges that Respondents engaged in violations of sections 10(b) and 19(d) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b) and 1718(d), section 16 and 17 of the Shipping Act, 1916, 46 U.S.C. app. §§ 815 and 816, and 46 CFR 510.21(f) and 510.22(b) and (c), by engaging in unjust and unreasonable practices regarding the transportation, against Complainant's wishes, of Complainant's household goods from San Diego, California to Honolulu, Hawaii.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 25, 1992, and the final decision of the Commission shall be issued by June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4933 Filed 2-28-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-12]

Cape Fear Bonded Warehouse, Inc. v. Polish Ocean Lines and Sea-Gal Express Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Cape Fear Bonded Warehouse, Inc. ("Complainant") against Polish Ocean Lines ("POL") and Sea-Gal Express Inc. ("Sea-Gal") (hereinafter collectively referred to as "Respondents") was served February 25, 1991. Complainant alleges that Respondents have violated sections 5(a) and 10(d), (b)(8), (b)(11), (b)(12), and (a)(2) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1704(a) and 1709(d)(1), (b)(8), (b)(11), (b)(12), and (a)(2), by failing to file an agreement between themselves, Sea-Gal's failure to file a tariff, and POL's inclusion of terminal charges in its carrier tariff, thereby forcing all shippers to pay for trucking between Wilmington and Lumberton, North Carolina, whether or not the trucking services are used.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by February 25, 1992, and the final decision of the Commission shall be issued by June 24, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-4934 Filed 2-28-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Meridian Mutual Holding Company, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 22, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Meridian Mutual Holding Company, East Boston, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of East Boston Savings Bank, East Boston, Massachusetts.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Chesapeake Bancorp, Chestertown, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Chesapeake Bank & Trust Company, Chestertown, Maryland.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Caldwell County Bancshares, Inc., Hamilton, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Caldwell County Bank, Hamilton, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Northpark Financial Corporation of Delaware, Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Northpark National Bank, Dallas, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company and International Regulation) 101 Market Street, San Francisco, California 94105:

1. Denali Bancorporation, Inc., Fairbanks, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of Denali State Bank, Fairbanks, Alaska.

Board of Governors of the Federal Reserve System, February 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4847 Filed 2-28-91; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of United Banks of Colorado, Inc., Denver, Colorado. In connection with this application, United Banks of Colorado, Inc., Denver, Colorado, has applied to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Boulder, N.A., Boulder, Colorado; United Bank of Colorado Springs, N.A., Colorado Springs, Colorado; United Bank of Denver, N.A., Denver, Colorado; United Bank of Fort Collins, N.A., Fort Collins, Colorado; United Bank of Greeley, N.A., Greeley, Colorado; United Bank of Montrose, N.A., Montrose, Colorado; United Bank of Steamboat Springs, N.A., Steamboat Springs, Colorado; United Bank of Sterling, N.A., Sterling, Colorado; United Bank of Grand Junction - Downtown, N.A., Grand Junction, Colorado; United Bank of Brighton, N.A., Brighton, Colorado; United Bank of Aurora, N.A., Aurora, Colorado; United Bank of Ignacio, N.A., Ignacio, Colorado; United Bank of Pueblo, N.A., Pueblo, Colorado; United Bank of Littleton, N.A., Littleton, Colorado; United Bank of Broomfield, N.A., Broomfield, Colorado; United Bank of Sunset Park, N.A., Pueblo, Colorado; United Bank of Lakewood, N.A., Lakewood, Colorado; United Bank of Northglenn, N.A., Northglenn, Colorado; United Bank of Lasalle, N.A., Lasalle, Colorado; United Bank of Grand Junction, N.A., Grand Junction, Colorado; United Bank of Delta, N.A., Delta, Colorado; United Bank of Bear Valley, N.A., Denver, Colorado; United Bank of Colorado Springs - East, N.A., Colorado Springs, Colorado; United Bank of Southglenn, N.A., Arapahoe County, Colorado; United Bank of Longmont, N.A., Longmont, Colorado; United Bank of Durango, N.A., Durango, Colorado; United Bank of Skyline, N.A., Denver, Colorado; United Bank of Buckingham Square, N.A., Aurora, Colorado; United Bank of Monaco, N.A., Denver, Colorado; United Bank of Garden of the Gods, N.A., Colorado Springs, Colorado; United Bank of Arvada, N.A., Arvada, Colorado; United Bank of Fort Collins - South, N.A., Fort Collins, Colorado; United Bank of Arapahoe, N.A., Englewood, Colorado; United Bank of Southwest Plaza, N.A., Jefferson County, Colorado; United Bank of Cherry Creek, N.A., Denver, Colorado; United Bank of Highlands Ranch, N.A., Highlands Ranch, Colorado; United Bank of Academy Place, N.A., Colorado Springs, Colorado; United Bank of Aurora - City Center, N.A., Aurora, Colorado; United Bank of Aurora - South, N.A., Aurora, Colorado; United Bank of Westminster, N.A., Westminster, Colorado.

Board of Governors of the Federal Reserve System, February 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4848 Filed 2-28-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth

OFFICE: Office for Substance Abuse Prevention, HHS.

ACTION: Program announcement.

Introduction and Background

This Program Announcement reflects a considerable shift in approach from previous OSAP announcements concerned with high risk youth in that it requires far more rigor in the conceptualization and design of projects and in the evaluation plans. In addition, proposals considered under this Program Announcement must be client- and not systems-oriented and must be focused on strategies directed solely at prevention of and early intervention for alcohol and other drug abuse. Grant proposals directed at demonstrating effective treatment and/or rehabilitation programs for alcohol and other drug use are outside the scope of this announcement.

The use of alcohol and other drugs by children and youth is a serious national problem. Alcohol and other drug use by the youth of our nation is often accompanied by academic failure; a high rate of school dropout; early sexual activity with increased probabilities of teenage pregnancy or AIDS; mental/emotional disorders; high adolescent mortality rates from drunken driving, violence, and crime; and a poor prognosis for a productive adult life (Penkower L. et al., 1981; Dryfoos, J., 1990). Although the direction of causality among these deleterious conditions may not be fully understood, the search for interventions that will prevent the youth of this nation from engaging in such self-destructive behavior has been accorded top priority.

In response to this national problem, the Congress passed legislation in 1986 (the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) and the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690)). These congressional actions established the Office for Substance Abuse Prevention (OSAP) within the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), and among other things, authorized the Director of OSAP to support a demonstration grant program for innovative and effective models for the prevention of alcohol and other drug abuse among high-risk youth.

This Program Announcement seeks grant proposals that:

(1) Test the feasibility of implementing previously untested innovative prevention strategies that hold great promise for expanding our repertoire of strategies and interventions in the prevention of alcohol and other drug abuse among high-risk youth populations; or

(2) Assess the program effectiveness, replicability, and generalizability of knowledge-based, established strategies for the prevention of alcohol and other drug use among high risk youth populations, including those derived from previous OSAP experience but not systematically evaluated.

In either case, evaluation of sufficient rigor to produce implementation and outcome findings worthy of dissemination is a requirement for these proposals. The emphasis on evaluation for this demonstration grant program emerges not only from the statutory guidelines in the legislation (Pub. L. 100-690) but also from the knowledge and experience OSAP has gained from the demonstration grant projects funded under two earlier Requests for Applications (RFAs). The purpose of rigorous evaluation is to aid those engaged in substance abuse prevention to discard ineffective strategies and pursue the development of those that are promising with respect to both implementation and outcome. A rigorous evaluation also serves to identify specific approaches and questions that might be suitable for testing in research projects funded by other ADAMHA components. Applications considered to lack a sufficiently detailed evaluation plan or to have an inadequate evaluation design will be judged non-competitive. This announcement reflects OSAP's commitment to the improvement of our knowledge and understanding of how to prevent the use and abuse of alcohol and other drugs by high risk-youth.

Healthy People 2000: The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000 a PHS-led national activity for setting priority areas. This Program Announcement, "Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth", is related to the priority areas of Tobacco; Alcohol and Other Drugs; Family Planning; Mental Health and Mental Disorders; Violent and Abusive Behavior; Educational and Community Based Programs; and HIV Infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Program Goals

OSAP's overriding program goal is to decrease the incidence and prevalence of alcohol and other drug use among high-risk youth. The earlier the use of drugs, the greater the risk of drug disorders. (Robins & Przybeck, 1985). Strategies that prevent or delay the onset of alcohol and other drug problems and/or intervene early in the drug-using behavior of youth are part of the body of preventive interventions designed to decrease the incidence and prevalence of alcohol and other drug use among high risk youth. OSAP is establishing the following goals for projects submitted under this announcement:

- to identify and reduce factors in the individual, in the parents and extended family, school, peer group, and neighborhood that place youth at high risk for using alcohol and other drugs; and
- to increase resiliency/protective factors within youth, peer groups, and families to reduce the likelihood that youths will use alcohol and other drugs.

Proposed projects should have one or both of these goals and a set of specific measurable objectives consonant with the selected goal(s).

Program Emphasis

Prevention and Early Intervention

OSAP's program emphasis is on primary prevention and early intervention. OSAP will fund service demonstration projects that: (1) Propose and evaluate innovative prevention/early intervention strategies that hold promise for making a contribution to the knowledge base; or (2) Assess the effectiveness, replicability, and generalizability of existing promising

models for prevention and/or early intervention services for high-risk youth, relating to OSAP's Program Goals. Primary prevention focuses on youth who are not users of alcohol or other drugs but are at high risk for such activity. Early intervention focuses on youth who have an early involvement or are experimenting with alcohol, tobacco, marijuana, or other illicit drugs; or misuse substances such as inhalants, solvents, anabolic steroids, or prescription medications.

Multiple Risk/Multiple Level Interventions

OSAP will fund applications that target youths with multiple risk factors, and propose comprehensive, multilevel prevention/intervention strategies that address clearly specified risk factors. Research evidence suggests that substance abuse among youth is associated with multiple risk and resiliency factors that are inherent within the individual, the individual's environment, and the individual's interaction with his/her environment (Jones & Battjes, 1985). The likelihood that a young person will use and possibly become dependent on alcohol and other drugs appears to increase with an increase in the number and severity of the precursory risk factors; the impact of risk factors may be offset by resiliency/protective factors (ADAMHA Demand Reduction Report, 1990).

Risk and resiliency factors affecting high risk youth include individual (e.g., genetic, personality, skills development, physical and mental health) factors as well as those associated with significant individuals and environments in which high risk children and youth function (e.g., parents, immediate and extended family, peers, school, and neighborhood). Special stresses and protective factors for youth may also be associated with socio-economic status.

Any prevention or early intervention strategy is likely to be more effective if it focuses on reducing risk factors and enhancing resiliency factors in the individual and in the environment in which the individual functions (e.g. the parents and extended family, the school, the peer group, and the immediate neighborhood). Prevention/intervention models proposing to target risk factors only at the individual level are likely to be less effective than more comprehensive interventions (Bernard 1988).

GUIDELINES FOR CONCEPTUALIZING THE PROPOSAL

Project Model

A logic model should underlie the conceptual development and preparation of the proposal. The logic model is a conceptual framework that links (1) basic assumptions about risk/protective factors, (2) mechanisms of intervention and (3) outcomes. In this model, the application:

- Specifies the risk factors and/or resiliency/protective factors at the individual, parent and family, peer group, school or neighborhood levels being addressed in the proposal; articulates the assumptions being made, that is, relates these risk or resiliency/protective factors to the use and abuse of alcohol and other drugs by youth; and justifies these assumptions with appropriate literature documentation;
- Relates the proposed strategies or interventions to specific risk/protective factors, that is, explains why these interventions should help reduce these risk factors or enhance these resiliency factors; and
- Identifies the measurable/observable outcomes that can logically be anticipated from the interventions.

Below is an example outline for conceptualizing and developing a demonstration grant application using the components of a logic model. It contains a *sample* or risk factors at the individual and environmental levels and relevant strategies that might be proposed by an applicant to deal with these risk factors in conjunction with outcomes that might be anticipated from the use of such intervention strategies.

Risk Factors

Individual: Failing academic performance; poor school bonding; no vocational objectives; psychological disorders such as conduct disorders, anti-social behavior, depression; learning disabilities.

Parents and Extended Family: Parents present poor model; parents have lost control of their children.

Peer Group: Peer gangs operate in school and exercise a powerful negative influence on students.

School: No drug/health information curriculum in school; school/teacher orientation toward students is not sensitive to racial/ethnic differences, causing low self-regard.

Neighborhood: Lack of bonding for neighborhood, (i.e. lack of pride and responsibility for the neighborhood) and lack of bonding to social institutions such as the schools, police department, etc.; presence of drug dealers, runners, and look-outs in the neighborhood.

Applicant Assumptions/Literature Findings

- A higher probability for the abuse of alcohol and other drugs has been observed among school failures and school dropouts.
- Substantial evidence indicates that peers influence substance use (Kandel, 1978; Evans et al. 1978; McAllister et al. 1980; Brook et al. 1983).
- The quality and consistency of family management, family communication, and parental role modeling have been found to affect children's use of substances (Baumrind, 1983; Patterson, 1982; Pennings and Barnes, 1982).
- Information concerning the deleterious effects of drugs is not known in the target population; such information, as part of a comprehensive program, will change attitudes and behavior in the use of substances.
- Low self-regard increases vulnerability toward dependency on alcohol and other drugs (findings relating self-esteem and early and later use of drugs are not conclusive; Jessor and Jessor, 1978).
- Childhood antisocial behaviors and conduct disorders, are strongly related to subsequent drug abuse and other serious behavior problems (Robins, 1978; Jessor & Jessor, 1978).

Strategies/Interventions

- Peer tutoring to improve academic performance.
- Program of parental skill building in communications and discipline.
- Early diagnosis and treatment of antecedent psychological problems.
- Remedial training for learning disabilities.
- After school and school associated clubs, sports, games, and recreation to improve school bonding.
- A program in cultural enrichment.
- Mentoring program involving successful community citizens to provide a positive, caring adult success model.
- Vocational planning and guidance; establish student entrepreneur program to clarify and establish educational and vocational objectives.
- Involve students in planning councils for establishing alternative peer groups to gangs and to drug runners that provide recognition and status to students for community service.
- Institute a drug/health curriculum in school, including AIDS prevention.
- Institute training to teachers in cultural sensitivity; plan and implement school-wide project on values as reflected by different cultural groups.

Anticipated Consequences of the Interventions (i.e., Outcomes)

- Improved grades and academic competence.
- Improved school bonding as measured by decreased school dropout rate, truancy, tardiness, classroom disruptive behavior, vandalism.
- Enhanced appreciation of cultural roots and sense of self.
- Establishment of realistic long-term educational and vocational goals.
- Devaluation of gangs by student groups.
- Improved family functioning and parental control.
- Improved drug knowledge and attitudes toward the use of drugs; measurement of drug use if this is a drug-using population.

Target Population

Risk Factors

Some of the factors that place a child at risk for using alcohol and other drugs are a function of the individual while some are a function of the physical, cultural, social, political, and economic environment in which the individual resides. It is the multiplicity of these risk factors that increases the probability of alcohol and other drug use among youth. High risk-youth are those who experience multiple risk factors. For a demonstration grant proposal, it is important to select risk factors that are amenable to change by some intervention strategy or to identify resiliency factors that may be enhanced by some intervention.

The Anti-Drug Act of 1988 (Pub. L. 100–690) defined "high-risk youth" as "any individual who has not attained the age of 21 years, who is at high risk of becoming or who has become a drug abuser or an alcohol abuser and who:

(1) Is identified as a child of a substance abuser;

(2) Is a victim of physical, sexual, or psychological abuse;

(3) Has dropped out of school;

(4) Has become pregnant;

(5) Is economically disadvantaged;

(6) Has committed a violent or delinquent act;

(7) Has experienced mental health problems;

(8) Has attempted suicide;

(9) Has experienced long-term physical pain due to injury; or

(10) Has experienced chronic failure in school."

Authority: Sec. 509A(f); Pub. L. 100–690.

This list, for the most part, presents categories of youth that have multiple factors at the individual and environmental levels that place them at risk for the use of alcohol and other drugs. This list is neither exhaustive nor meant to exclude other documented groups of high-risk youth, for example, youth with a conduct disorder or with physical or sensory impairments. Of particular interest to OSAP is the category of youth with mental disorders/emotional problems since these children and youth are highly vulnerable to using alcohol and other drugs. The above list of high-risk youth groups is useful only to guide applicants in selecting high-risk populations. It is up to the applicant to identify the specific factors that place the youth in these groups at risk, at the same time, are amenable to change through an intervention program.

Age Groups

Client-oriented interventions should be designed for specific developmental age groups to optimize effectiveness. The following age groups are recommended:

- 3–5 years (preschool).
- 6–11 years (elementary school).
- 12–14 years (middle school/school dropouts).
- 15–18 years (high school/school dropouts).
- 19–20 years (college or non-college).

If a single intervention is proposed for more than one developmental age group, the evaluation plan must indicate separate evaluations for each age group so that it is possible to assess independently the efficacy of the intervention on each developmental group.

Comprehensivesness of Project

Current prevention theory recognizes that the use of alcohol and other drugs by youth is caused by multiple risk factors involving genetic, personality, environmental (parents, family, peer, school, playground, and immediate neighborhood) and behavioral variables. It is the intent of this program to encourage the planning and implementation of prevention and early intervention strategies that address the individual holistically by considering a multiplicity of risk factors for alcohol and other drug use at the individual as well as environment levels.

Coordination with Other Agencies

The use of alcohol and other drugs, juvenile delinquency, conduct disorder, impaired and reckless driving, chronic school failure, dropping out of school, and sexual activity at an early age are problem behaviors frequently found in the same young people (Dryfoos, 1987; Jessor and Jessor, 1977). Depending upon which problem behavior is manifested, a different human service system may be activated. Prevention and early intervention strategies may require coordination with other human service systems on behalf of the members of the target population, as appropriate, to effect optimal interventions to reduce risk factors or strengthen resiliency factors.

Project Orientation

Projects supported under this announcement must be client oriented. That is, the focus of the project must be on reducing risk factors or enhancing specific resiliency/protective factors in a specific target population.

Evaluation

The Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) stipulates that priority should be given to prevention demonstration grant applications that employ appropriate strategies for evaluating the effectiveness of their proposed projects. OSAP will support only projects with a well-developed evaluation plan, explicitly described in the application. Evaluation plans will be expected to include both process and outcome evaluation.

Process evaluation is a quantitative and qualitative description of the intervention, target population, and staff of a project from inception. Process evaluation should clearly and comprehensively document the relationship of the resources and program activities to the project objectives so as to permit mid-project adjustments as needed to optimize project implementation and ultimate replication. The evaluation plan should include a description as to how the components of a process evaluation have been or will be obtained/collected and maintained. The following are components of a process evaluation:

1. *Problem:* The process by which the problem was defined as to (a) what is being demonstrated, (b) selection of risk factors to be addressed, (c) analysis of process by which population becomes at risk.

2. *Target Population:* Including demographic and other relevant characteristics, case finding and retention strategies.

3. *Goals and Objectives of the Project to be Evaluated:* The process by which the goals and objectives of the project to be evaluated were selected.

4. *Staffing Patterns:* Staff characteristics and qualifications including that of project director; supervision patterns; staff selection processes; staff activities and work schedule.

5. *Referral and Case Finding Patterns (if applicable):* Number, type, characteristics of referrals to and from project; participating agencies in project including the development of inter-organizational linkages with these agencies.

6. *Intervention:* Frequency, duration, type of contact; client flow, intervention materials, manuals, staff training; staff and client perceptions of the interventions and objectives of the project.

7. *Cost Data:* Funding sources; cost per service; cost per client.

8. *Evaluation Procedures:* Monitoring instruments, need and risk assessment instruments; feedback mechanisms to director, staff, community representatives.

9. *Generalizability of Program Findings for Program Dissemination:* Manuals and/or curricula that will be produced.

Outcome Evaluation: The evaluation plan should be detailed and clearly articulated. It should present an evaluation design appropriate to the project and of sufficient rigor to permit drawing valid conclusions concerning the effectiveness of the various intervention strategies. Outcome variables should be derived from the logic model.

In addition to individual project evaluation, OSAP is planning a national evaluation for selected demonstration projects funded by this grant program. The outcome measures that will be utilized during the course of the national evaluation will be developed by OSAP in concert with the national contractor and the grantees. Representatives grantees will be invited to work closely with the national evaluator and to provide data.

OSAP does not support prevention research or prevention research demonstrations. Accordingly, theory-driven, hypothesis-testing applications using rigorously controlled experimental designs are more appropriate for the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), or the National Institute of Mental Health (NIMH). Individuals interested in prevention research or research demonstrations should contact NIDA, NIAAA, or NIMH which support prevention research.

General Information

Project Requirements

—Allow for two persons (project director and one other person to be designated by the project director) to attend one 3-day national meeting in the Washington, DC area each year.
—Allow for three persons (project director, evaluator, and one other to attend one 2-day new grantee workshop during the first year of the grant.
—Include a commitment to cooperate fully in the development and conduct of a national evaluation of the grant program.
—Submit progress, expenditure, and final reports in accord with PHS Grants Policy requirements.
—Include letters of commitment and/or cooperative working agreements from all agencies participating in the project, specifying the terms of their commitment (e.g., allocation of resources, amount of staff participation, priority for project clients etc.). Participating agencies include those that may not be providing services but merely serve as the setting in which the intervention is being provided; e.g., schools.

Eligibility

Any public or nonprofit private entity is eligible to apply for support under the terms of this Program Announcement. Women and minority organizations are encouraged to apply.

Current and past recipients of OSAP demonstration grants are eligible to apply for support for completely new projects under the terms of this Program Announcement.

New projects include those that (a) test the feasibility of implementing a truly new innovative strategy that holds promise for expanding the state of the art in prevention/early intervention; or (b) assess program effectiveness, replicability, and generalizability of knowledge-based, established strategies.

Current and past OSAP grant recipients are eligible as a Type (a) project above if the combinations of strategies as well as the target population proposed for the new application differ markedly from that found in their current OSAP grant.

Current and past OSAP grant recipients are eligible as a Type (b) project above if an established strategy or combination of strategies is applied to a new target population.

OSAP grantees who are completing a three-year project are eligible to apply for a competitive renewal for one or two years of support to make specified improvements or refinements to their intervention strategies, accompanied by a rigorous process and outcome evaluation as described in this announcement concerning the effectiveness of the improved prevention/early intervention strategies developed for the project.

The following chart summarizes the above information:

	Prevention strategies	Target population
Type (a)	New	New.
Type (b)	Established	New.
Competitive renewal	New/modified; refined.	Current; no change.

Period of Support

Applicants for new projects may apply for a period up to 5 years support under this Program Announcement. Applicants applying for a competitive renewal of a 3-year grant may request up to 2 additional years for a total of 5 years, provided the proposal meets the conditions of this Program Announcement.

Each year's awards will be made subject to continued availability of funds and progress achieved.

Availability of Funds

It is estimated that approximately $9 million will be available to support approximately 30–35 grants under this announcement in Fiscal Year 1992. However, the exact amount of funding available will depend upon appropriated funds, the quality of proposals, and program priorities at the time of award.

Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs that can be specifically identified with the project and allowable indirect costs of the organization.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support project activities.

Indirect Costs:

In order for programs to be able to recover allowable indirect costs, it is necessary for the organization to negotiate and establish an indirect cost rate unless such a rate has already been established. For information and assistance regarding the submission of an indirect cost rate proposal, contact the Director, Division of Cost Allocation for your DHHS region. The application kit contains a list of the names and addresses of these Directors, by DHHS Region (see "Offices Negotiating Indirect Cost Rates").

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Federal regulations at title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

Receipt and Review Schedule

Receipt date	IRG review	Earliest start date
May 20, 1991 and thereafter with the regular receipt dates of:	September/ October 1991.	March 1992.
September 20	January/ February.	July.
January 20	May/June	December.
May 20	September/ October.	March.

Consequences of Late Submission

Applications must be received by the Division of Research Grants (DRG), NIH, by the dates specified above. If the receipt date falls on a holiday, it will be extended to the following work day. Applications received after the above receipt dates may be assigned to the next review cycle or returned to the applicant without review.

Application Characteristics

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions (e.g., comments from the State's Single Point of Contact), supplementary or corrective material pertinent to an application will not be accepted after the specified receipt date unless specifically solicited by or agreed to in prior discussion with the Executive Secretary of the Initial Review Group. Because there is no guarantee that such later material will be accepted or that reviewers will consider such late material, it is important that the application be complete at the time of submission.

The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized succinct, and contain all information necessary for reviewers to understand the project fully.

The narrative (sections A through E) may not exceed 25 single-spaced pages. This is exclusive of the abstract, the Index page, and the one-page Introduction section for a Revised application.

The Project Managment Plan (section F) and Resources (section G), together, may not exceed a total of ten pages. Applications exceeding these pages limits (that is, a total of 35 pages for sections A through G) will not be accepted for review.

Appendices will not be counted toward the page limits. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative.

Abstract

The narrative section of the application must be preceded by a single spaced abstract not to exeed 30 lines. It should identify the applicant by name and type of applicant (e.g., private nonprofit); indicate what is being demonstrated; describe the logic model for the project (i.e., specify the risk factors that will be addressed, the proposed intervention, and the anticipated outcomes); specify the demographic and other characteristics of the target population; and identify the locale for the project (e.g., urban, rural, housing development, etc.). Competing renewal applications from demonstration projects currently funded by OSAP should be identified as such in the first sentence of the abstract, and should include the previously assigned OSAP grant number (e.g., H86 SP——). The abstract will not be counted toward the total page limit of the narrative.

Index

Immediately following the abstract page, the application shall include an index page to guide the reader to each section of the application.

Revised Applications

If the application is a revision of one previously submitted and reviewed, please follow the instructions below. Applicants may wish to consult with program staff before revising and resubmitting.

Resubmitted applications which are essentially identical to prior ones will not be accepted and will be returned without review. Therefore, make sure the revisions are significant and that revisions to the applications are readily identifiable, as explained below. Also, if revising an application that was submitted in response to a previous RFA, be sure that the application is complete and responsible to the specific requirements of the present Program Announcement.

In an Introduction section (not to exceed two pages) that precedes the Index, identify the original application by number and indicate when it was submitted. If there has been a change from the original project director, please note that as well. For example: "This is a revision of an application (1 H86 SP12345–01) which was submitted for the——receipt date. The project director for that submission was ——."

—Summarize in the Introduction any substantial additions, deletions, and changes that have been made. Include responses to questions or criticisms found in the previous summary statement. The Introduction will not be counted toward the total page limit of the application.
—Within the text of the proposal, highlight these changes by appropriate bracketing, indenting, or changing of typography. However, do not indicate changes by underlining or shading. Incorporate in the Background and Significance section any work done since the prior version was submitted.

A revised application will be returned if an introduction is not included and/or substantial revisions are not clearly apparent.

Acceptance of a revised application automatically withdraws the prior version.

Intergovernmental Review

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the State's applicable review procedure. A current listing of all SPOCs is enclosed with the application kit. The following States do not participate in the intergovernmental review of programs under Executive Order 12372: Alaska, Idaho, Nebraska, Kansas, Louisiana, Minnesota, and Virginia. Applicants should note that comments received from the State will be considered as a factor in the review of their applications.

SPOC comments should be sent to the: Acting Director, Office of Program

Coordination and Review, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, Room 630, Rockville, Maryland 20857 no later than 60 days after the relevant receipt date. The OSAP does not guarantee to accommodate or explain comments from the SPOC that are received after the 60-day cut-off.

The application must include a copy of a letter sent to the Single State Agency (SSA) briefly describing the grant proposal. Evidence of support for the proposed project from the SSA for Drug and/or Alcohol Abuse will be used in making award decisions (See Award Criteria Section).

Application Procedures

Application kits (PHS 5161–1; rev. 3/89) containing guidance for completing OSAP demonstration grant applications are available from: National Clearinghouse for Alcohol and Drug Information (NCADI) Post Office Box 2345, Rockville, Maryland 20852, 1–800–729–6686.

All applicants should use Form PHS 5161–1 which contains Standard Form 424. The title of the announcement "Demonstration Grants for the Prevention of Alcohol and Other Drug Abuse Among High-Risk Youth" should be typed in Item 10 of the face page of the PHS 5161–1.

Applicants should return a complete application consisting of the signed original form PHS 5161–1 and the set of appendices and two (2) permanent, legible copies of all of these documents to: OSAP Programs, Division of Research Grants, NIH, 5333 Westbard Avenue, Bethesda, Maryland 20892*.

Important

The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP High-Risk Youth Demonstration Grants".

The Following Sections A Through I Replace the General Instructions for Completing the Program Narrative of the Application Form PHS 5161–1 (Rev. 3/89)

The instructions on completing sections A through I apply to all applicants (new as well as previously OSAP-funded grantees) who are: (1) Proposing an innovative approach, or (2) assessing the effectiveness, replicability, and generalizability of an existing promising model for the prevention of and/or early intervention against alcohol and other drug use among high-risk youth. It also applies to applicants seeking a competitive renewal of their grant.

A. *Specific Aims.* Indicate whether this proposal is to (1) test the feasibility of implementing innovative prevention strategies; or (2) assess the effectiveness, replicability, and generalizability of knowledge-based, established strategies for the prevention of and/or early intervention against alcohol and other drug use among high-risk youth. If this application is proposing an innovative strategy, it is incumbent on the applicant to explain from the literature review what makes this approach innovative. If this application is designed to assess effectiveness, generalizability, and replicability of established strategies, discuss what is known about the established strategies and how this application addresses generalizability and replicability of those strategies.

Using a logic model, describe what is being demonstrated in this project (See section entitled Project Model, above). The conceptual framework underlying this project that links the basic assumptions about risk/protective factors, the proposed interventions, and the anticipated outcomes should be discussed fully in this section.

Applicants should address the following types of questions in this section of the application:

Which risk factors are expected to be reduced by the intervention proposed by this project? Which resiliency/protective factors will be enhanced? What assumptions are being made concerning the impact of these risk/resiliency factors? Are these assumptions literature based? If so, cite references.

How are the outcome indices identified in the lobic model related to the OSAP goal to decrease incidence and prevalence of the use of substances among high-risk youth?

What is the rationale for each of the intervention strategies? What are they expected to accomplish? Where have they been used previously? Why should they be expected to reduce risk factors or enhance resiliency/protective factors?

Suggested length of section: Three to five pages.

B. *Background and Significance.* This section should sketch the background that led to the proposed project. Cite current literature on the risk/resiliency factors to be addressed, the effectiveness of the type of interventions to be implemented, and the gaps in the knowledge base that the project is designed to fill. A brief and focused review of the literature, as well as any relevant prior work, observations, or experiences of the applicant in prevention with the proposed target population, must be included in this section.

Previous or current OSAP grantees applying for a new grant must describe the intervention strategies and age, race/ethnicity and other characteristics of the target population served in the current/previous grant and how and in what ways this application differs from what has already been demonstrated in the previous grant.

Competing renewal applications must include a detailed report on the findings (what has been learned to date) from the previous grant and how proposed improvements justify continuation of the project in order to assess an anticipated higher level of effectiveness of this model.

Suggested length of section: Five to six pages.

C. *Target Population.* Describe the anticipated composition of your target population with respect to face/ethnicity; age development group(s); sex; preponderance of risk factors; urben/rural/suburban population(s); socioeconomic level; and any special characteristics not mentioned. Explain why this population was selected and specifiy the estimated number and kind of persons that will be served.

Suggested length of section: One to two pages.

D. *Approach/Method.* Clearly describe, in some detail, the components of the proposed intervention. The only page length guideline that can be given is that this section forms to core of the proposal and sufficient detail should be offered to provide reviewers a clear understanding of the total project; how the proposed intervention is linked to the risk/resiliency factors being addressed; and why these strategies are likely to be effective. Applications should include the following information in this section:

- Procedures for identifying, accessing, recruiting, retaining, and following up the proposed target group with treatment referrals as appropriate.
- Where appropriate, procedures for attending to the unique needs and concerns of members of cultural and ethnic minority groups within the target populations.
- Plans for the implementation of all strategies employed in the intervention, detailing dosage, that is, how much of each intervention is proposed per member of target population.
- Plans for coordination program, management, and data collection among the sites, if there are multiple sites in the project.
- Plans for, and evidence of, coordination with existing local, State, and/or Federal programs, (e.g., Community Partnership Demonstration Grant operating in the community), if appropriate.
- Specific working agreements or commitments from participating agencies in the project (pending funding) should be included in the appendix, where appropriate. Such agreements should be specific with respect to the commitment of resources (e.g., personnel, referral acceptance of clients, access and acceptability to the target population. Resubmissions should have updated working agreements. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available.

E. *Evaluation Plan.* OSAP will support only projects with well-developed program evaluation plans. Such plans will be expected to include process evaluation strategies sufficient to facilitate replication of the project if the approach proves promising.

Process evaluation involves the design and collection of data that permits a quantitative and qualitative description of the implementation of the project (see earlier discussion of Process Evaluation).

Proposals must also include plans for an outcome evaluation. The purpose of the outcome evaluation is to demonstrate the extent to which the intervention(s) had effects on the target population. Outcome indices will vary as a function of the objectives of the project. Applications should include a description of the evaluation design, proposed instruments (with copies of the instruments included in the appendices) or plan for developing such instruments, a tentative schedule and the procedures for collecting data, and the data analysis plan.

Depending on the complexity of the proposed program, and the degree to which early program activities are devoted to implementation and stabilization of programs, it may be unrealistic to expect evidence of effectiveness during the first year of funding. However, it is advisable to collect evaluation data on a trial or pilot basis during the first year of the demonstration program to test the evaluation procedures and protocol. Some types of evaluation data (e.g., impact indices) should be collected in the first year to serve as baseline information for comparative analyses.

Projects are expected to have qualified evaluators who participate in the project from its initial design and who retain a continuing relationship with the project throughout its grant life. It is estimated that at least 15 percent of the cost of a project is needed for evaluation activities, but that the true cost of evaluation should be determined by the size of the program and the complexity of the evaluation. The application must include a description of the resources allocated to evaluation. Applicants are encouraged to explore the possibility of in-kind support and cost-sharing with universities or public or private organizations to enhance the project's evaluation component.

Applications considered to lack a sufficiently detailed evaluation plan or to have an inadequate evaluation design will be judged non-competitive and removed from further review.

Suggested section length: Four to five pages.

F. *Project Management Plan.* The Project Management Plan must include a description of the tasks to be performed, a schedule of the tasks, and their relationship to each other and to the program goals. The individual/staff positions responsible for each task should be identified. Describe the role and responsibilities of the project director in implementing and managing the overall project. Biographical sketches of proposed key personnel should be included in a readily identifiable appendix.

The management plan should show how tasks are related to the project goals and objectives, as well as to the management of the project. A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

1. *Organizational Structure.* A narrative description of the organizational structure of the proposed demonstration project should indicate the organizational relationships and responsibilities of the project director and each project unit or activity. The responsibilities and composition of governing or supervisory boards should be included, where applicable. Organizational relationships between the applicant and other State/local level health and human services agencies should be briefly described, if these relate to the proposed project. An organizational chart should be provided which illustrates relationships and lines of responsibility.

2. *Organizational Capability.* Applicants should provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indicators of capability should be provided as appropriate. The use of external expertise (e.g., evaluation consultants) is encouraged when needed and not available within the organization.

3. *Staffing.* Briefly describe the jobs/roles that will make up the proposed project. Job descriptions should be included in the appendices for each key professional position identified in the proposed budget. Job descriptions should include: Job title, description of duties and responsibilities, qualifications for the position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Include as appendices resumes for all key staff and consultants proposed for the project. These resumes should include names, educational background, major professional interest(s), membership in professional organizations, professional experience, honors received, and recent relevant publications. Experience and/or training pertinent to the proposed project should be highlighted.

This portion of the management plan should include a brief description of staff recruitment and selection that addresses the project's need for staff differing with respect to discipline, skills, gender, personal qualities, race/ethnicity, and culture to serve the target population.

G. *Resources.* Describe the facilities, equipment, service capabilities, and other resources available to the project. Justify requested resources.

Provide a line item justification for the budget.

Identify grant writer and indicate the relationship of grant writer to the applicant organization.

H. *Other Support.* "Other support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the application information is accurate and complete.

For the applicant organization and key organizations that are collaborating

*If an overnight carrier or Express Mail is being used, the zip code is 20816.

in this proposed project, all currently active support and any applications/proposals pending review or funding that relate to the project should be listed. If none, state "none."

For all active and pending support listed, also provide the following information:

(1) Source of support (including identifying number and title).

(2) Dates of entire project period.

(3) Annual direct costs supported/requested.

(4) Brief description of the project.

(5) Whether project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

This information must be designated section H and labeled "Other Support". This section will not be counted toward the total page limit of the application.

I. *Confidentially and Other Ethical Concerns Regarding Target Population(s).* Applicants and awardees are expected to make appropriate plans and take necessary steps to deal with potential ethical issues concerning participants in proposed projects. This section of the application should discuss pertinent ethical issues such as confidentiality, privacy, and voluntariness of participation, and describe plans to address these issues. Section I will not be counted toward the total page limit of the application.

A major area of concern is confidentially. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the Code of Federal Regulations, 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

In those projects where individually identifiable, private information will be collected to achieve project objectives and/or carry out the proposed evaluation, the application must clearly identify and describe the population(s) for which such information will be collected, including their age(s), sex, ethnicity, and health status. In addition, this section of the application must include a description of (1) the sources and kinds of data that are to be obtained and maintained in identifiable form, and (2) the procedures that will be implemented to ensure the privacy and confidentiality of these records (e.g., using code numbers instead of participants' names on data records, limiting access to records, maintaining security for records). Applicants should consider minimizing the time that identifiers are kept, consistent with the project's objectives.

Applicants must also discuss how they are planning to deal with other potential concerns about ethical issues. This section of the application should (1) identify any potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks that participation in the project might present; (2) discuss what steps will be implemented to eliminate or minimize these risks; (3) discuss what procedures will be followed in obtaining assent or consent from participants and, if relevant, parental consent; and (4) specify what information will be provided regarding the nature, purpose, requirements, and potential risks of their participation.

Awardees may be required to obtain written informed consent from participants and/or their parents or legal guardians if participation in the project poses potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks. This section of the application should indicate whether it is planned to obtain informed consent from participants and/or their parents or legal guardians and should describe the procedures to be followed in obtaining such consent, including the circumstances under which agreement to participate will be sought and the information that will be provided regarding the voluntary nature of the participation, the right of participants to withdraw from the project without prejudice, and procedures for assuring confidentiality and minimizing potential risks. Copies of sample consent forms should be included in an appendix.

Review Process

Applications submitted in response to this Program Announcement will be reviewed for technical merit in accordance with established PHS/ADAMHA review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions (e.g., exceeds the page limits or omits required sections), or if the material presented is insufficient to permit an adequate review. Returned applications will not be accepted for this review cycle, but (if applicable) may be corrected and submitted for the next receipt/review cycle.

Applications considered complete will enter a multi-stage review process. In the first stage, the evaluation component will be assessed. Applications judged to be lacking in the measures or method to assess the proposed project will be considered noncompetitive and removed from further review consideration. OSAP will notify and advise the applicant and the organization's business official of this action. Applications judged to be competitive will be reviewed for technical merit by an Initial Review Group (IRG) composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the IRG recommendation on technical merit will be sent to the applicant. In addition, all applications receiving complete IRG review may receive a second-level review by the Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations as well as technical merit.

Review Criteria

Criteria for technical merit review of applications will include the following:

—Relevance of project objectives to OSAP program goals, as stated in this announcement.

—Potential contribution to the knowledge base and state of the art in prevention/early intervention of alcohol and other drug abuse among high risk youth, including potential for replicability at other sites.

—Clarity and appropriateness of the conceptual framwork (logic model) linking basic assumptions about risk/protective factors, intervention strategies, and outcomes in relation to project objectives.

—Clarity, appropriateness, and comprehensiveness of plans for process and outcome evaluation, including adequate allocation of resources and selection of qualified evaluators. *

—Appropriateness and soundness of procedures for identifying, gaining access to, recruiting, retaining, and following up the target population(s); and adequacy of procedures to be implemented to ensure confidentiality of client data.

—Adequacy and appropriateness of the intervention(s) to age-development levels and to specified individuals and environmental risk factors, including attention to comorbidity issues.

—Evidence of sensitivity to racial, ethnic, and cultural issues in relation to all aspects of the project, including intervention, evaluation, and staffing.

* Reviewers will be directed to give extra weight to this criterion as outlined in section E, Evaluation Plan.

—Feasibility of proposed project within the resources and time frames proposed; appropriateness of the proposed budget; and inclusion of specific commitments or working agreements from cooperating agencies, including agencies that may be providing services and/or the setting for these services (e.g. schools).

—Adequacy and soundness of the staffing and project management plans, including evidence of the organizations capability and the experience and qualifications of the project director, consultants, and other key staff, to implement the project successfully.

Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process.

Other criteria will include:

—Geographical and urban/rural balance;

—Adequate coverage of racial, ethnic, cultural minority populations and various risk groups;

—Programmatic balance among types of intervention strategies;

—Availability of funds; and

—Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse.

Funding priority will be given to projects that address:

(1) Drug use prevention/intervention issues for Black male youth, and/or

(2) Co-morbid risk factors such as conduct disorders and suicide.

Contacts for Additional Information

Questions concerning program issues or grants management issues may be directed to the office listed below:

Division of Demonstrations and Evaluation, Office for Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, room 9B-03, Rockville, MD 20857, (301) 443-0353.

Grants Management Unit, Office of Substance Abuse Prevention, 5600 Fishers Lane, Rockwall II Building, room 640, Rockville, MD 20857, (301) 443-3956.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96-511, OMB Approval Number 0937-0189.

The statutory authority for this program is section 509A of the Public Health Service Act, as amended by section 2951 of the Anti-Drug Abuse Act of 1988 (P.L. 100-690).

(The Catalog of Federal Domestic Assistance number for this program is 93.144.)

Joseph R. Leone,

Associate Administrator for Management Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-4856 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-20-M

Demonstration Grants for the Development of Model Projects for Pregnant and Postpartum Women and Their Infants

AGENCY: Office for Substance Abuse Prevention, HHS.

ACTION: Program announcement.

Introduction and Background

This Program Announcement reflects a considerable shift in approach from previous OSAP announcements concerned with pregnant and postpartum women and their infants since it requires far more rigor in the conceptualization and design of projects and in the evaluation plans. The proposals submitted under this Program Announcement must be focused on strategies directed at prevention, early intervention, and treatment for the use/abuse of alcohol and other drugs even though they may be implemented in service settings.

In October 1988, Congress passed the Anti-Drug Abuse Act, Public Law 100-690. Sections 509F and 509G of the PHS Act, as amended by Public Law 100-690 authorize grants to public and private profit and nonprofit entities to demonstrate model projects for substance-using (alcohol and other drug) pregnant and postpartum women and their infants. In accordance with this legislation, the Office for Substance Abuse Prevention (OSAP) has funded projects that focus on prevention, education, and treatment located in community-based, inpatient, outpatient, and residential settings. The continuing need to develop effective prevention strategies and innovative interventions leads to this Program Announcement for a further development of demonstration projects for substance-using pregnant and postpartum women and their infants.

The Maternal and Child Health Bureau (MCHB), of the Health Resources and Services Administration—which has a broad, ongoing mandate to promote the health of mothers and infants—has joined with OSAP in planning and providing funds for these demonstrations as a collaborative, inter-agency grant program.

There is increased clinical and research evidence of the wide array of potentially unfavorable consequences that maternal use of alcohol and other drugs during pregnancy can have on the fetus, the newborn, and the developing child. These effects include retarded fetal growth, premature and/or complicated delivery, low birth weight, infant mortality, drug-specific neonatal withdrawal syndromes, and infant mental and physical developmental deficits. Even with more specifically targeted obstetrical care, many infants born to mothers using alcohol and other drugs present difficult problems for caregivers and the mothers of those infants. These babies may show signs of developmental problems including poor motor control, difficulty learning, and, as they mature, appear either hyperactive or hypoactive in response to their environment. The consequences of early mother-child bonding problems and the impact of voluntary and involuntary separations require attention.

Many women using alcohol and other drugs during pregnancy have multiple needs, including the need for alcohol and drug abuse treatment, health care, and a variety of psychosocial supports. They may often face simultaneous stresses of poverty, addiction, and new motherhood with inadequate familial and social resources. Also, these women and their infants are among the groups most vulnerable to AIDS/HIV. In addition, service delivery systems are often inadequate and poorly coordinated. For example, many alcohol and other drug treatment programs refuse to serve pregnant women. Conversely, many maternal health care facilities are inadequately prepared for the problems of alcohol- and other drug-using women. There is often a failure to recognize the coexistence of mental illness with alcohol and other drug use. As a result, many clients fail to respond to limited interventions. Many substances-using pregnant women receive prenatal care very late or not at all during their pregnancy. It is important to develop strategies that will identify and recruit this population into treatment effectively. Furthermore, alcohol- and other drug using-women are often difficult to locate for purposes of follow-up after delivery, thus limiting the duration of interventions that may have an impact on the woman's future and subsequent pregnancies. Many of those who are located prove reluctant to receive services. Even after successful identification and recruitment, program attrition rates are usually high.

Despite these difficulties, it is important that new and continuing efforts be made to minimize fetal exposure effects. Toward this end, it is

necessary to coordinate a variety of service delivery systems and/or to provide new or expanded services where gaps exists. Such services must include a continuum of therapeutic programs, comprehensive supportive services, and medical care in a readily accessible form. Service providers need the benefit of a longitudinal perspective that takes into account the needs of the women and their babies before, during, and after delivery. Extensive community outreach and retention efforts must be made to eliminate existing barriers to treatment.

This Program Announcement solicits applications for service demonstration projects that propose promising models or innovative approaches to addressing the issues outlined above. Among many areas that have been identified as requiring continuing attention, model development, and replication are strategies for promoting client retention in prenatal care, the impact of different models of out-patient versus residential treatment services, outreach, the importance of early bonding between mother and infant, the role of the father and extended family in subsequent prevention of maternal alcohol and other drug use, the factors contributing to recidivism, the coexistence of mental illness and alcohol or other drug use (comorbidity), the impact of the exposure to alcohol and other drugs on siblings through family disruption and other disruptions, and the longer term developmental consequences for children.

All projects will be required to have a well-developed program evaluation plan that is derived from, and that applies to, all of the project's activities. Applicants should propose approaches with a sound conceptual basis consistent with state-of-the-art practices, knowledge, and theories in the fields of prevention and treatment. Applicants are encouraged to develop specific project designs appropriate for the purpose of assessing the efficacy of particular interventions.

OSAP does not support *prevention research or prevention research demonstrations*. Accordingly, theory-driven, hypothesis-testing applications using rigorously controlled experimental designs are more appropriate for the National Institute on Drug Abuse (NIDA), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), or the National Institute of Mental Health (NIMH). Individuals interested in prevention research or research demonstrations should contact NIDA, NIAAA, or NIMH which support prevention research.

The same application may not be submitted to more than one PHS component. In particular, the same application may not be submitted to NIAAA, NIDA, the Office for Treatment Improvement (OTI), and OSAP for the same programmatic activities and/or the same client population.

Healthy People 2000: The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2000*, a PHS-led national activity for setting priority areas. This Program Announcement, Demonstration Grants for the Development of Model Projects for Pregnant and Postpartum Women and Their Infants, is related to the priority areas of Tobacco; Alcohol and Other Drugs; Family Planning; Mental Health and Mental Disorders; Maternal and Infant Health; Sexually Transmitted Diseases; Educational and Community Based Programs; and HIV Infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017-001-00474-0) or *Healthy People 2000* (Summary report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Program Goals

The goals of this announcement are to identify and fund a number of programs to develop and implement promising or innovative service programs and activities with demonstrable outcomes designed to:

—Promote the involvement and coordinated participation of multiple organizations in the delivery of integrated, comprehensive services for alcohol- and other drug-using pregnant and postpartum women, and their infants
—Increase the availability and accessibility of prevention, early intervention, and treatment services for these populations
—Decrease the incidence and prevalence of drug and alcohol use among pregnant and postpartum women
—Reduce the incidence of abuse and neglect among children of alcohol- and other drug-using mothers
—Improve the birth outcomes and reduce the infant mortality of women who use alcohol and other drugs during pregnancy and decrease the incidence of infants affected by maternal substance use
—Reduce the severity of impairment among children born to substance using women
—Improve provider recognition of co-occurring mental and substance abuse disorders (i.e., co-morbidity)
—Increase the availability, accessibility, and coordination of comprehensive mental health and substance abuse programs for pregnant and postpartum women who have co-occurring mental and substance abuse disorders

The specific aims and objectives of a project need not address *all* of these program goals. However, proposed projects should be consonant with one or more of these goals.

Program Emphasis and Scope

A. Populations

The ultimate target of projects should be potential or current alcohol- and other drug-using pregnant and postpartum women, and their infants with priority for low-income women. The pattern of drug use for the target population must be definable, and the nature of the impact of socio-economic and cultural factors on the population should be elaborated. These potential clients may be accessed directly or through other populations or programs, including women entering the family planning process; women utilizing day care services; women coming to the attention of school personnel; male partners of alcohol and other drug using pregnant or postpartum women; sexually and physically abused women; women with mental illness and alcohol and other drug use (co-morbidity), leading to an impairment in functioning that is not helped by addressing either problem alone; foster parents of infants affected by maternal drug use; physical and mental health service providers; Head Start service providers; and a variety of social service agents who have contact with the target populations.

B. Settings

Project activities may be community-based or may be located in inpatient, outpatient, or residential settings.

C. Modes of Intervention

Projects incorporating prevention (including education), early intervention, and/or treatment are eligible. The interventions should be appropriate to the ethnic, racial, and cultural backgrounds of the population being addressed.

D. Target Substances

All non-prescribed drugs that may have a deleterious effect on the fetus, including alcohol and tobacco, are eligible targets for intervention. A project may focus on poly-drug use or the use of a single drug if the rationale for the single drug focus is appropriately defined for the target population.

E. Needs

Applicants are encouraged to address the complex and varied needs of the target populations in a comprehensive manner. These needs may be broadly categorized as:

1. Biological/physical (e.g., detoxification, dietary, pediatric, obstetrical, AIDS/HIV).
2. Psychological (e.g., support, treatment for anxiety, depression, low self-esteem).
3. Support services (e.g., housing, child care, transportation to facilitate the receipt of services, financial incentives).
4. Informational and educational—multiple skills and behaviors (e.g., prenatal and postpartum health, substance use, parenting).

In many cases, the achievement of desired outcomes will require that attention be paid to all of these need categories.

While OSAP will fund a variety of approaches, experience indicates that the diverse needs of the target population(s) and the frequent gaps in the service delivery systems require an emphasis on programs that provide or coordinate a comprehensive service system.

Applicants are encouraged to create processes that will result in the coordinated use of existing services. Development of new service components should be limited to situations where such services do not currently exist, where they are inadequate or where a demonstrably unique type of service is employed. Demonstration programs coordinate their efforts with other appropriate Federal and State funded programs, such as the OSAP Community Partnership Program, Head Start programs and centers, the Maternal and Child Health Bureau, and other programs funded by the Department of Health and Human Services. In the absence of such programs, documentation of the gaps should be provided. Systems of comprehensive services should be "user friendly" or otherwise structured to ensure that vulnerable clients actually receive the services. One means of increasing the use of services is the involvement of existing social networks and natural support systems (including family, neighbors, religious organizations).

It is also recognized that, in many communities, existing services are inadequate or even non-existent. Where such gaps exist, applicants may propose the addition of new services, or the expansion or augmentation of existing services if they are incomplete or not meeting the existing levels of need. Applicants may therefore propose any of the following types of projects (or combinations thereof):

1. Coordination and integration of existing services.
2. Outreach—identification of the target populations and encouragement (e.g., social or logistical support) for provisions of services.
3. Financial and other incentives that increase the accessibility and acceptance of services, such as child care and transportation to programs.
4. Augmentation of existing services (e.g., the addition of prenatal and/or postpartum care to drug treatment programs or vice versa).
5. The creation of new comprehensive services.

An outreach approach with no service delivery component would only be acceptable if the applicant could provide evidence that sufficient services are already in place. Conversely, the creation of entirely new comprehensive services would only be acceptable if the applicant can demonstrate there are no appropriate existing or sufficient services to address the priority needs.

Activities for Which Grant Support is Available

Proposed activities should be consistent with the orientation described above, and be appropriate to the cultural, ethnic and racial composition of the population being served. Examples of such activities, to be implemented individually or (preferably) in some combination, may include, but are not limited to:

Primary prevention

—Information and education on alcohol and other drug use at the point of family planning.
—Forms of public education concerning the risks of alcohol and other drug use during pregnancy linked to other programmatic efforts.

Intervention with pregnant and postpartum women

—Routine implementation of effective screening of pregnant women for past and present alcohol use and other drug use and for co-occurring mental disorders
—Innovative methods of outreach to identify and recruit the large populations for services, preferably in the early stages of pregnancy
—Integration and coordination of alcohol and other drug treatment with prenatal and postpartum health care
—Psychological and emotional support for pregnant and/or postpartum alcohol and drug using women
—Education and skill-building designed to increase the likelihood of positive familial, social and vocational functioning (e.g., parenting skills, job-seeking skills)
—Support services (e.g., child care, transportation) to facilitate women's use of other services
—Advocacy for the assurance of care

Infant-Oriented Interventions

—Direct intervantion/treatment/rehabilitation with infants in order to reduce the impact of maternal substance use
—Informational, emotional support and resources for biological, foster parents or other guardians of infants affected by maternal substance use (follow-up services)

Service delivery strategies

—Coordination—for purposes of identification and service delivery—with other likely points of access for vulnerable women (e.g., shelters, AFDC, WIC programs, crisis pregnancy centers, public housing, centers for battered women, Head Start centers, jails, AIDS/HIV prevention programs)
—Innovative, integrated services for pregnant and postpartum women with co-occurring mental and substance abuse disorders
—Involvement of significant others as direct intervention targets or as resources of aiding in the outreach and service delivery processes for women
—Co-location or multiple locations (e.g., satellite centers, extension services, "one-stop shopping") to increase client access to services and to facilitate service delivery
—Innovative strategies (e.g., case management) to ensure the coordinated utilization of generally unrelated service systems
—Targeted services to prevent recurrence of substance-abusing behavior
—Other services to eliminate barriers to service that would increase the time a client stays in treatment

Personnel strategies

—Inter—organizational personnel exchange for the creation of interdisciplinary terms within service settings
—Expanded roles for professionals and other caregivers in encouraging the development of comprehensive service systems

BEST COPY AVAILABLE

—Continuing education of providers regarding the needs and intervention strategies appropriate for the target populations
—Utilization of trained caregivers recruited from the community (natural helpers)
—Educational programs of primary care providers to improve recognition and referral of pregnant and postpartum women with co-occurring mental and substance abuse disorders

Project Model

A logic/impact model should underlie the conceptual development and preparation of each application. In this model, the applicant should:

1. Define the population(s) being targeted by the specific intervention.

2. Specify the nature of the risk factors associated with the target population(s), including environmental factors, and relate these to the project's observed impact. Document any causal relationships that may have been previously identified in the literature.

3. Describe the rationale for the proposed interventions or strategies explaining why these interventions or strategies may impact on the problems facing the target population.

4. Identify the measurable/observable outcomes that can logically be anticipated from these interventions.

For example:

Risk factors—teenage pregnancy; alcohol and other drug use during pregnancy; lack of support network; involvement with the criminal justice system; malnutrition; poverty.

Assumptions—There is the likelihood that a malnourished, alcohol and other drug using teenage mother will give birth prematurely. Also, many children born to mothers who have used drugs during pregnancy are more difficult to manage in the preschool years; this often leads to an increased incidence of abuse.

Strategies—Case management when pregnant, substance-using women are first identified to facilitate access to prenatal care; modeling behaviors for pregnant women and mothers to facilitate bonding following birth; providing residential care for the pregnant woman using alcohol and other drugs, followed by residential care for her and her infant during the child's first year of life.

Anticipated Outcomes—Reduced incidence of premature births among the target population(s); improved behavior during the first five years of life; enhanced self-esteem among mothers who are able to keep and care for their children.

It should be possible to trace the path of a targeted individual or population through the various interventions to the point where the outcome can be logically predicted and assessed by the identified measures.

Project Requirements

The proposed budget should allow for three persons (project director and two other persons to be designated by the grantee) to attend three national meetings each year. The primary program evaluator will be required to attend one of these meetings.

Grantees will be required to submit progress, expenditure, and final reports in accordance with PHS Grants Policy requirements.

Evaluation

A detailed evaluation plan linked directly to the project's objectives must be included as part of the grant submission. Linkage of the evaluator and the evaluation process to the grantee organization must be delineated. Process and outcome evaluation must be incorporated in the overall plan.

OSAP is planning a national evaluation for selected demonstration projects funded by this grant program. The outcome measures that will be utilized during the course of the national evaluation will be developed by OSAP in concert with the national contractor and the grantees. Representative grantees will be invited to work closely with the national evaluator and to provide data.

Eligibility

Applications may be submitted by public or private non-profit or for-profit organizations such as universities, colleges, hospitals, community-based organizations, units of State or local governments, and private organizations. Women and minorities are especially encouraged to apply.

Period of Support

Support must be requested for a period of at least 3 years but may not exceed 5 years. Annual awards will be made subject to continued availability of funds and progress achieved. Competing renewals will be considered, but total funding under this Program Announcement (including under the prior RFA) may not exceed 5 years.

Availability of Funds

It is estimated that approximately $6 million will be available to support approximately 20–25 grants under this announcement in Fiscal Year 1992. However, the exact amount of funding available will depend on appropriated funds, the quality of proposals, and program priorities at the time of award.

Application Procedure

Application kits (PHS 5161–1; rev. 3/89) containing guidance for completing OSAP demonstration grant applications are available from: National Clearinghouse for Alcohol and Drug Information (NCADI); P.O. Box 2345, Rockville, Maryland 20852, Telephone: 1–800–729–6686.

All applicants should use Form PHS 5161–1, which contains Standard Form 424. The title of this Announcement, "Model Projects for Pregnant and Postpartum Women and Their Infants (Substance Abuse)", should be typed in item 10 on the face page of the PHS 5161–1.

Applicants should return a complete application consisting of the signed original form PHS 5161–1 and the set of appendices and two (2) permanent, legible copies of these documents to: OSAP Programs, Division of Research Grants, NIH; room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

IMPORTANT—The mailing envelope (including that provided by an express carrier) must be clearly marked "OSAP Demonstration Grants for Pregnant and Postpartum Women."

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions (e.g., comments from the State's Single Point of Contact), supplementary or corrective material pertinent to an application will not be accepted after the specified receipt date unless specifically solicited by or agreed to in prior discussion with the Executive Secretary of the Initial Review Group (IRG). Because there is no guarantee that such late material will be accepted or that reviewers will consider such late material, it is important that the application be complete at the time of submission.

Applications submitted in response to this announcement are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through Department of Health and Human Services Regulations at 45 CFR part 100. Through this process, States, in consultation with local governments, are provided the opportunity to review and comment on applications for Federal financial assistance. Applicants should contact the State's Single Point of Contact (SPOC) as early as possible to determine the State's applicable review procedure. A current listing of SPOCs will be included in the application kit.

* If using an overnight carrier or Express Mail, the Zip Code is 20892.

The following States do not participate in the intergovernmental review of programs under Executive Order 12372: Alaska, Idaho, Nebraska, Kansas, Louisiana, Minnesota, and Virginia. Applicants should note that comments received from the State will be considered as a factor in the review of their applications. SPOC comments should be sent to the Acting Director, Office of Program Coordination and Review, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, room 630, 5600 Fishers Lane, Rockville, Maryland 20857, no later than 60 days after the relevant receipt date. OSAP does not guarantee to accommodate comments received from the SPOC that are received after the 60-day cut-off.

The application must include a copy of a letter sent to the Single State Agency (SSA) briefly describing the grant proposal. Evidence of support for the proposed project from the SSA for Drug and/or Alcohol Abuse and the State Public Health Agency will be used in making award decisions (See Award Criteria Section).

Application Characteristics

The narrative section should be written in a manner that is self-explanatory to outside reviewers unfamiliar with prior related activities of the applicant. It must be well-organized and contain the information necessary for reviewers to understand the project. Sections A–E may not exceed a total length of 25 single-spaced pages. Sections F and G may not exceed a total length of 10 pages. Applications exceeding these page limits will not be accepted for review and will be returned to the applicant. The page limit will be rigorously enforced. Suggestions for page lengths for specific sub-sections of the narrative are merely for guidance and may be modified by the applicant. Appendices may be attached for technical or specialized materials but should not be used merely to extend the narrative.

Revised Applications

If the application is a revision of one previously submitted and reviewed, please follow the instructions below. Applicants may wish to consult with OSAP program staff before revising and resubmitting.

—Resubmitted applications which are essentially identical to prior ones will not be accepted and will be returned without review. Therefore, make sure the revisions are significant and that they are readily identifiable, as explained below. Also, if revising an application that was submitted in response to a previous RFA, be sure that the application is complete and responsive to the specific requirements of the present Program Announcement
—In an INTRODUCTION, not to exceed 1 page, that precedes the INDEX, identify the original application by number and indicate when it was submitted. If there has been a change from the original project director, please note that as well. For example: "This is a revision of an application (1 H86 SP12345–01) which was submitted for the —— receipt date. The project director for that submission was ——
—Summarize in the Introduction any substantial additions, deletions, and changes that have been made. Include responses to questions or criticisms found in the previous summary statement. The Introduction will not be counted toward the total page limit of the application
—Within the text of the proposal, highlight these changes by appropriate bracketing, indenting, or changing of typography. However, do not indicate changes by underlining or shading. Incorporate in the Background and Significance section any work done since the prior version was submitted

A revised application will be returned if an introduction is not included and/or substantial revisions are not clearly apparent.

Acceptance of a revised application automatically withdraws the prior version.

Abstract—This should precede the body of the narrative, be single-spaced, and should not exceed 30 lines. The abstract should clearly present the grant application in summary form, from a "who-what-when-how-where" point of view. It should allow reviewers to see how the multiple parts of the application fit together to form a coherent whole. The abstract is not counted toward the narrative page total.

Index Page—Immediately following the abstract page, the applicant is required to provide an index page identifying the page where each section of the outline begins.

The Following Sections A–H Replace the General Instructions for Completing the Program Narrative of the Application Form PHS 5161–1 (REV. 3/89)

A. Specific Aims

Identify the goals and specific objectives for the proposed project and how these relate to the goals stated in this grant announcement. (Suggested length: ½–1 page)

B. Background and Significance

Demonstrate familiarity with the understanding of previous work done in the area of the proposed project. A brief review of the literature and of other related projects or studies, as well as any relevant prior work, observations, or experiences of the applicant should be included in this section. For competing renewals a progress report discussing progress to date and results should be included. (Suggested length: 1–3 pages)

C. Target Population

This section should include a rationale, preliminary analysis, and operational definition(s) of the target population(s) in the proposed project; a summary of currently available data on the target population(s) (e.g., incidence and/or prevalence, age, culture, location, demographic and socioeconomic characteristics, minority composition); a discussion of available human services for the target population(s); and a discussion of the gaps and other problems in the availability and acceptability of prevention and/or treatment services for the population(s).

D. Approach/Method

Discuss the approach to be used in conducting the proposed demonstration project with attention to detail. The following information must be provided:

—Procedures for gaining access to the target group. Applicants should indicate plans for dealing with the difficult issues of identification, recruitment, involvement, retention, and follow-up with these populations
—Where appropriate, plans for any special attention to be given to the unique needs and concerns of members of social and ethnic minority groups within the target population(s)
—A plan of action that describes the project, discusses how each activity related to the project will be approached, coordinated with existing programs (where appropriate), and implemented. Program components should be related to information from the background section of the proposal (needs, existing services, previous accomplishments)
—A logic/impact model that provides reasoning for the linkages between specific program activities and immediate as well as eventual expected outcomes (intervention rationale)
—Where appropriate, evidence of coordination with related Federal, State, and local programs. There is a

strong need for coordination among health, social service, voluntary and other relevant community-based organizations and service systems. Such coordination allows more efficient use of funds and reduces duplication of services. Demonstration of a proposed comprehensive and coordinated service delivery can be accomplished using a continuum of approaches. Applications from a consortium of organizations would be accepted, though one organization would be required to accept responsibility for project management. Specific working agreements (pending funding) should be included as appendices, where appropriate. Justification should be provided if no such working agreements are included. Evidence of existing or previous joint efforts should be submitted, if available. At a minimum, letters of support from all cooperating organizations should be provided. Such letters should be specific with respect to the type and level of commitment (e.g., minimum number of clients to be provided with specified type of services, personnel and other resources, access to populations) and the intent of the organizations involved. Specific working agreements and letters of support should be attached as appendices. The applicant should also discuss the anticipated impact of the project on the problems of the target population(s) and gaps in the service delivery systems for this population(s)

The following must be addressed:

—Estimate the number and demographic composition of individuals to be served or otherwise addressed for each year

—State the anticipated specific program accomplishments for each year (e.g., program linkages made, materials developed, procedures implemented)

—State specific anticipated outcomes for each year (e.g., number of clients served, reduction in substance use in target population(s), increase in skills)

E. Evaluation Plan

The OSAP will support only projects with a well-developed evaluation plan. As part of the application screening and review processes, applications will be examined for the presence of a defined evaluation component. Applications with a clearly inadequate evaluation plan will be judged to be incomplete and returned without further review.

Applicants should have appropriate evaluation expertise on their staff or should make arrangements for obtaining such consultation to assist in achieving these objectives. The results of such consultation should be apparent in the application. It is estimated that at least 15 percent of the cost of a project is needed for evaluation activities, but that the true cost of evaluation should be determined by the size of the program and the complexity of the evaluation. The applicant should document in the narrative the evaluation costs requested from OSAP in the budget section.

All projects should conduct both process and outcome evaluations. Together, the process and outcome evaluations should allow an assessment of the extent to which the project's objectives were met.

The process evaluation should be sufficient to facilitate replication of the project if the approach proves promising. The process evaluation consists of the collection of quantitative and qualitative data that permit a description of the implementation of the project (e.g., description of size and nature of client population, staff characteristics, amount and types of services provided). The results of the process evaluation should be a useful description of who provided what services to whom, when, how often, and in what setting(s).

Program evaluation plans should also include outcome/impact evaluation plans directed toward assessing whether the program was effective in meeting its goals. The nature of the outcome data and evaluation design will vary as a function of the goals of the project.

Applicants should include both a plan and time line for the process and outcome evaluation, both of which must be operational at the time the program begins. Depending on the complexity of the program and the degree to which the first year of funding is devoted to implementation and stabilization, it may be unrealistic to expect evidence of effectiveness during the first year. However, it would be considered advisable to indicate how the program will collect such data on a trial or pilot basis, as well as to provide baseline information for comparison purposes.

If the proposed project contains linkages with other programs, the evaluation should address the total comprehensive service array and not just the specific services provided by the applicant (if any):

For both outcome and process evaluations, applications should provide an evaluation design, including a description of the proposed instruments (with copies added as appendices if available), a schedule and procedure for the collection of data, and a description of the data analysis plan. (Suggested length: 2–3 pages)

F. Project Staffing, Management and Organization

1. Organizational Structure. Provide a narrative description of the organizational structure of the proposed demonstration project. This description should clearly indicate the organizational relationships and responsibilities of the Project Director and each project unit or activity. It should also indicate the percentage of time devoted to the project by all staff. Indication should be provided as to which positions require new hiring.

The responsibilities and composition of Boards—of Supervisors, Directors, Trustees, and/or Advisors—should be included, where applicable.

Provide a description of organizational relationships between the applicant and other State/local level health and human services agencies as these relate to the proposed project. If the applicant agency is responsible to or receives program and/or management direction from a State, regional, or other office or agency, this relationship should be clearly described. An organizational chart should be provided which illustrates relationships and lines of responsibility.

2. Organizational Capability. Provide evidence that the organization is capable of implementing the proposed project. Documentation of experience in similar or other relevant activities, access to the target population(s), expertise in service delivery and evaluation, experience in developing and effectively using inter-organizational agreements, and other indications of capability should be provided as appropriate. The use of external expertise is encouraged when helpful (e.g., evaluation consultants) and should also be presented in this section.

3. Staffing Pattern. Biographical sketches should be included in a readily identifiable appendix. These sketches should not be counted toward the page limit. Experience and/or training pertinent to the proposed project should be highlighted.

Job descriptions must be submitted, as appendices, for each key professional position identified in the proposed budget. Only one job description needs to be submitted for identical positions. Job descriptions should include job title, description of duties and responsibilities, qualifications for position, supervisory relationships, skills and knowledge required, prior experience required, educational background required, and job site (if appropriate). Documentation should be provided to ensure that staff loaned to the project from other units or agencies will be available for the amount of time required.

The narrative must include a brief section describing how staff will be recruited and selected, and whether any particular mix of background, skills, and/or personal qualities is proposed. The relationship of staff characteristics to the objectives of the demonstration project should be discussed.

Consideration must be given to the use of multidisciplinary staff and staff representing the sexual, ethnic, and cultural characteristics of the population to be served.

4. Project Task Plan. The management plan must include a description of tasks to be performed, their sequence, performance schedule, and their relationship to each other. The accomplishment of these tasks should be related to the project goals and objectives, as well as to the management of the project. The level of effort required for each task also should be shown.

A PERT or Gantt chart and/or flow diagrams may be helpful to display these tasks.

G. Resources

Describe the facilities, equipment, services, and other resources available to carry out the project. Justify requested resources. List other sources of Federal or non-Federal funding impacting on this or related programs.

Also, describe planned activities to secure continued financial support for the program beyond the OSAP-supported demonstration grant, if the project is successful.

Other Support: The following information must be provided in a specially labeled appendix, "Other Support."

"Other Support" refers to all current or pending support related to this application. Applicant organizations are reminded of the necessity to provide full and reliable information regarding "other support," i.e., all Federal and non-Federal active or pending support. Applicants should be cognizant that serious consequences could result if failure to provide complete and accurate information is construed as misleading to PHS and could therefore lead to delay in the processing of the application. In signing the face page of the application, the authorized representative of the applicant organization certifies that the applicant information is accurate and complete.

For your organization and key organizations that are collaborating with you in this proposed project, list all currently active support and any applications/proposals pending review or funding that relate to the project. If none, state "*none.*"

For all active and pending support listed, also provide the following information:

(1) Source of support (including identifying number and title).

(2) Dates of entire project period.

(3) Annual direct costs supported/requested.

(4) Brief description of the project.

(5) Whether the project overlaps, duplicates, or is being supplemented by the present application; delineate and justify the nature and extent of any programmatic and/or budgetary overlaps.

H. Confidentiality and Other Ethical Concerns

Applicants and awardees are expected to make appropriate plans and take necessary steps to deal with potential ethical issues concerning participants in proposed projects.

This section of the application should discuss pertinent ethical issues such as confidentiality, privacy, and voluntariness of participation, and describe plans to address these issues. Section H will not be counted toward the total page limit of the application.

A major area of concern is confidentiality. Awardees must agree to maintain the confidentiality of alcohol and drug abuse client data in accordance with the Code of Federal Regulations, 42 CFR part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

In those projects where individually identifiable, private information will be collected to achieve project objectives and/or carry out the proposed evaluation, the application must clearly identify and describe the population(s) for which such information will be collected, including their age(s), sex, ethnicity, and health status. In addition, this section of the application must include a description of (1) the sources and kinds of data that are to be obtained and maintained in identifiable form, and (2) the procedures that will be implemented to ensure the privacy and confidentiality of these records (e.g., using code numbers instead of participants' names on data records, limiting access to records, maintaining security for records). Applicants should consider minimizing the time that identifiers are kept, consistent with the project's objectives.

Applicants must also discuss how they are planning to deal with other potential concerns about ethical issues. This section of the application should (1) identify any potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks that participation in the project might present; (2) discuss what steps will be implemented to eliminate or minimize these risks; (3) discuss what procedures will be followed in obtaining assent or consent from participants and, if relevant, parental consent; and (4) specify what information will be provided regarding the nature, purpose, requirements, and potential risks of their participation.

Awardees may be required to obtain written informed consent from participants and/or their parents or legal guardians if participation in the project poses potential physical (including medical), psychological, legal, social (e.g., labeling), or other risks. This section of the application should indicate whether it is planned to obtain informed consent from participants and/or their parents or legal guardians and should describe the procedures to be followed in obtaining such consent, including the circumstances under which agreement to participate will be sought and the information that will be provided regarding the voluntary nature of the participation, the right of participants to withdraw from the project without prejudice, and procedures for assuring confidentiality and minimizing potential risks. Copies of sample consent forms should be included in an appendix.

Review Process

Applications submitted in response to this Program Announcement will be reviewed for technical merit in accordance with established PHS/ADAMHA review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will be considered incomplete and returned if it is illegible, if it fails to follow the instructions (e.g., exceeds the page limits, or omits required sections), or if the material presented is insufficient to permit an adequate review. Returned applications *will not* be accepted for this review cycle, but (if applicable) may be corrected and submitted for the next receipt/review cycle.

Applications considered complete will enter a multi-stage review process. In the first stage, the evaluation component will be assessed. Applications judged to be lacking in the measures or method to assess the proposed project will be considered noncompetitive and removed from further review consideration.

OSAP will notify and advise the project director and the organization's business official of this action. Applications judged to be competitive will be reviewed for technical merit by an Initial Review Group (IRG) composed primarily of non-Federal experts. OSAP reserves the right to conduct the multi-stage review at one time or in two discrete steps. Notification of the IRG recommendation on technical merit will be sent to the applicant. In addition, all applications receiving complete IRG review may receive a second-level review by the Advisory Committee on Substance Abuse Prevention, whose review may be based on policy considerations as well as technical merit.

Review Criteria

Criteria for technical merit review of applications will include:

—Relevance of project objectives to the OSAP program goals, as stated in this announcement
—Adequacy of information documenting the needs and availability of the target population(s); appropriateness and soundness of procedures for client identification and recruitment; and adequacy of procedures to be implemented to ensure confidentiality of client data
—Evidence of familiarity with the relevant literature and state of the art in alcohol and other drug prevention, treatment, and rehabilitation
—Adequacy and appropriateness of the prevention/intervention approach as it relates to: meeting specific goals and objectives; addressing the multiple needs of the target population(s), including attention to co-morbidity issues; filling program gaps; and increasing the availability of services and opportunities through delivery of new services and/or coordination of existing services
—Potential for widespread replicability
—Clarity, adequacy, appropriateness, and feasibility of the evaluation plan *
—Evidence of coordination with relevant State and/or local alcohol and other drug abuse prevention programs, treatment or rehabilitation programs, health care facilities, community or voluntary groups, and/or other relevant programs and systems; and where appropriate documentation of specific commitments and support from these organizations
—Evidence that the proposed project is ethnically, racially, and culturally relevant (for example, use of minority professional staff or staff that have received, or will receive, cross-cultural training)
—Adequacy, appropriateness, and feasibility of the project management plan; reasonableness of the proposed budget; and evidence of the organization's capability and the qualifications and experience of the project director, consultants, and other key staff to implement the project successfully

Award Criteria

Applications will be considered for funding on the basis of overall technical merit of the project as determined by the review process. Other criteria will include:

—Geographical and/or urban/rural balance
—Balance among types of interventions, approaches, and target populations (including projects which focus on problems of co-morbidity)
—Availability of funds
—Focus on low income and/or minority populations
—Evidence of support for the proposed project from the Single State Authority for Drug and/or Alcohol Abuse, and the State Public Health Agency

Terms and Conditions of Support

Grant funds may be used for expenses clearly related and necessary to carry out the described project, including both direct costs which can be specifically identified with the project and allowable indirect costs of the organization. In order to recover allowable indirect costs, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, you should contact the appropriate HHS Division of Cost Allocation office referenced in the list of "Offices Negotiating Indirect Cost Rates," included in this program's application kit.

Funds cannot be used to supplant current funding for existing activities.

Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out activities under the approved project;
- Supplies, communications, and rental of space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support project activities.

Grants must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990).

Federal regulations at Title 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to these awards.

OSAP Application Receipt and Review Schedule

Receipt date	IRG review	Earliest start date
May 20, 1991	September/October 1991.	March 1992.
and thereafter with the regular receipt dates of:		
September 20	January/February.	July.
January 20	May/June	December.
May 20	September/October.	March.

Consequences of Late Submission

Applications received after the above receipt dates are subject to assignment to the next review cycle or may be returned to the applicant without review.

Contacts for Additional Information

Questions concerning program issues or grants management issues may be directed to the offices listed below:

Division of Demonstrations and Evaluation, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, room 9B03, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4564.

Maternal and Child Health Bureau, Health Resources and Services Administration, Parklawn Building, room 9-31, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-5720.

Grants Management Unit, Office for Substance Abuse Prevention, Parklawn Building/Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3958.

The reporting requirements contained in this announcement are covered under the Paperwork Reduction Act of 1980, Public Law 96-511, OMB Approval Number 0937-0189.

The statutory authorities for this program are sections 509F and 509G(a) of the Public Health Service Act, as added by section 2054 of Public Law 100-690.

The Catalog of Federal Domestic Assistance number for this program is 93.109.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-4857 Filed 2-28-91; 8:45 am]

BILLING CODE 4160-20-M

* Reviewers will be directed to give extra weight to this criterion as outlined in Section E. Evaluation Plan.

Centers for Disease Control

Grants for State and Community-Based Childhood Lead Poisoning Prevention Programs

[ANNOUNCEMENT 118]

Introduction

The Centers for Disease Control (CDC) announces the availability of grant funds in Fiscal Year 1991 for the initiation or expansion of State and community-based childhood lead poisoning prevention programs that (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning.

Authority

This program is authorized under sections 301 (42 U.S.C. 241) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in title 42, Code of Federal Regulations, part 51b.

Eligible Applicants

Eligible applicants are State health departments or other State health agencies or departments deemed most appropriate by the State to coordinate the State's childhood lead poisoning prevention program, and agencies of units of local governments that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authorities (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. Also eligible are federally recognized Indian tribal governments.

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application.

Availability of Funds

It is anticipated that $5,590,000 will be available in Fiscal Year 1991 to fund approximately 13 childhood lead poisoning prevention programs. Approximately $2,840,000 will be available to fund 7 noncompeting continuation awards that will average $400,000 each. Approximately $2,750,000 will be available to fund about 6 new programs. It is expected that the average new award will be $400,000, the range being $200,000 to $600,000. The new awards are expected to begin on or about May 24, 1991. Awards generally are made for 12-month budget periods within project periods not to exceed 5 years. Funding estimates may vary and are subject to change, depending upon the availability of funds. Continuation awards will be for the recommended project period indicated in the original award and are based on satisfactory progress and the availability of funds.

These grants are intended to develop, expand, or improve prevention programs in communities with demonstrated high-risk populations. Grant awards cannot supplant existing funding for childhood lead poisoning prevention programs or activities. Grant funds should increase the level of expenditures from State, local, and other funding sources for childhood lead poisoning prevention. Awards will be made with the expectation that program activities will continue when grant funds are terminated at the end of the project period.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Note: Grant funds may not be expended for medical care and treatment or for environmental remediation of lead sources. However, the applicant must provide an acceptable plan to ensure that these program activities are appropriately carried out.

Purpose

The purpose of this grant program is to provide financial assistance and support to State and community-based government agencies to develop, improve, and expand the capacity of State and community-based programs to adequately address the problem. This grant program addresses the national year 2000 objective on the reduction of the prevalence of elevated blood lead levels among children. Grant-supported programs are expected to provide new opportunities to prevent lead poisoning. They also will serve as catalysts for the development of non-grant supported programs and activities in other States and communities.

These programs are designed to: (1) Screen large numbers of infants and young children and identify those with lead poisoning, (2) identify their possible sources of lead exposure, (3) Monitor medical and environmental management of lead poisoned children, (4) Provide information on childhood lead poisoning, its prevention, and management to the public, health professionals, and policy and decision-makers, and (5) Encourage community action programs directed to the goal of eliminating childhood lead poisoning.

Program Requirements

Recipients of awards are expected to meet the following requirements:

1. Establish or expand screening services in communities with large numbers of children at high risk for lead poisoning.

2. Intensify medical management efforts to ensure that children with lead poisoning receive appropriate and timely follow-up services.

3. Establish, expand, or improve environmental investigations so that sources of lead are rapidly identified and abated.

4. Develop an efficient information/management system compatible with CDC data guidelines to monitor and evaluate program progress.

5. Improve the actions of other agencies and organizations to facilitate the rapid abatement of lead sources in high-risk communities.

6. Enhance knowledge and skills of program staff through training and other methods.

7. Provide information on childhood lead poisoning to the public, policy-makers, the academic community, and others based upon program findings.

Grant awards address the need to prevent childhood lead poisoning through the development and implementation of a comprehensive and coordinated screening, medical, and environmental management approach by State and community-based government agencies. Education and outreach activities are an important aspect of a management system approach to the problem. Successful programs depend on activities that create community awareness of the problem, especially among community and business leaders, the medical community, parents, educators, and property owners. Grant-supported programs will serve as models to assist other State and community prevention programs in planning, implementing, and evaluating their prevention efforts.

Program goals and objectives should reflect national, State, and local priorities, and established guidelines (e.g., the CDC statement, Preventing Lead Poisoning in Young Children).

The following are essential requirements for Childhood Lead Poisoning Prevention Projects:

1. A full-time director/coordinator who has the authority and responsibility to carry out the requirements of the program.

2. Ability to provide qualified staff, other resources, and knowledge to implement the provisions of the program.

3. Established capacity to collect and analyze data.

4. Demonstrated experience in conducting and evaluating public health programs.

5. Ability to translate program findings to State and local public health officials, policy and decision-makers, and to others seeking to strengthen program efforts.

6. Information that describes why communities were selected for screening activities, including information on housing conditions, income, other socioeconomic factors, and previous surveys or screening activities for childhood lead poisoning prevention.

7. Effective, well-defined working relationship within and outside the public health agency at national, States and community levels (e.g., Department of Housing and Urban Development, environmental agencies, maternal and child health programs, State and local housing rehabilitation offices, schools of public health and medical schools, and environmental interest groups) to appropriately address the needs and requirements of progams, (e.g., training to ensure the safety of abatement workers) in the implementation of proposed activities. This includes the establishment of relationships with other State and local agencies with expertise in childhood lead poisoning prevention programing.

8. A plan to ensure continuation of the childhood lead poisoning prevention program beyond expiration of grant support.

9. For awards to State agencies, there must be a demonstrated commitment to provide technical, analytical, and program assistance to local agencies interested in developing or strengthening childhood lead poisoning prevention programs.

The major factors to be considered in the evaluation of responsive applications are:

1. Evidence of the Childhood Lead Poisoning Problem (30%)

The applicant's ability to identify populations and communities at high risk, as defined by data from previous screening efforts, environmental data, and/or demographic data.

2. Understanding the Problem (10%)

The applicant's understanding of the requirements, objectives, and complexities of and interactions required for a successful program.

3. Program Personnel (15%)

The extent to which the proposal has described (a) the qualifications and commitment of the applicant, (b) detailed allocations of time and effort of staff devoted to the project, (c) information on how the applicant will develop, implement and administer the program, and (d) the qualifications of the support staff.

4. Technical Approach (20%)

The overall balance of the program measured in terms of intensive screening, medical management, lead hazard identification and abatement, and education and outreach activities. The adequacy of the program design includes the extent to which the evaluation plan can be used to effectively measure progress towards the stated objectives.

5. Collaboration (15%)

The applicant should demonstrate the ability to collaborate with political subdivisions of States in developing childhood lead poisoning prevention programs and collaboration with other program-related entities. Letters of support are encouraged.

6. Plans to become Self-Sustaining (10%)

An explanation of how program services will be continued after termination of Federal grant funds, which includes identifying other sources of support that will be utilized during the project period. By the end of the second budget year, grantees must have concrete plans to ensure institutionalization of the program after termination of grant support.

7. Budget Justification and Adequacy of Facilities (not scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds. The adequacy of existing and proposed facilities to support program activities also will be evaluated.

Executive Order 12372 Review

The intergovernmental review requirements of Executive Order 12372, as implemented by DHHS regulations in 45 CFR 100, the applicable to this program. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list of SPOCS is included in the application kit. The due date for State process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

(The Catalog of Federal Domestic Assistance number is 93.197.)

Applications Submission and Deadline

The original and two copies of the application must be submitted on PHSs Form 5161–1 and should carefully adhere to the instruction sheet and information provided. Applications should be submitted on or before March 22, 1991 to Henry S. Cassell, III, Grants Management Officer, Centers for Disease Control, Grants Management Branch, Procurement and Grants Office, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and application package may be obtained from the Grants Management Office by writing to: Lisa Tamaroff Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia, 30305, or by calling: (404) 842–6630 or FTS 236–6630.

Technical assistance pertaining to the Childhood Lead Poisoning Program may be obtained from: Jerry M. Hershovitz, Deputy Chief, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, Mail Stop F–28, Atlanta, Georgia 30333, Telephone: (404) 488–4880 or FTS 236–4880.

Please refer to announcement number 113 when requesting information and submitting any application.

Dated: February 25, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–4849 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91C–0033]

Hilton Davis Co.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hilton Davis Co. has filed a petition proposing that the color additive regulations for FD&C Blue No. 1 be amended to provide for the safe use of manganese dioxide to manufacture the color additive.

FOR FURTHER INFORMATION CONTACT: Wes Long, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that Hilton Davis, Co., 2235 Landon Farm Rd., Cincinnati, OH 45237, has filed a petition (CAP 0C0227), proposing that part 74 (21 CFR part 74) of the color additive regulations be amended to provide for the safe use of manganese dioxide in the manufacture of FD&C Blue No. 1.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–4793 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91G–0030]

Uncle Ben's, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Uncle Ben's, Inc., has filed a petition (GRASP 1G0370) proposing to affirm that alginic acid for use as a pH control agent is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Comments by April 30, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Uncle Ben's, Inc., 5721 Harvey Wilson Dr., P.O. Box 1752, Houston, TX 77252–1752, has filed a petition (GRASP 1G0370), proposing that alginic acid for use as a pH control agent be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before April 30, 1991, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 19, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–4792 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Circulatory System Devices Advisory Committee scheduled for March 11, 1991. The meeting was announced by notice in the **Federal Register** of February 19, 1991 (56 FR 6672 at 6673).

FOR FURTHER INFORMATION CONTACT: Wolf Sapirstein, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1018.

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-4945 Filed 3-28-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Project Requirements, Funding Preference, Funding Priorities and Funding Set-Aside for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program

The Health Resources and Services Administration (HRSA), announces the final project requirements, funding preference, funding priorities, and funding set-aside for Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers (ETCs) program as authorized by section 788A of the Public Health Service Act (the Act).

The ETCs will provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Eligibility

Awards are made to accredited health professional schools and academic health science centers (see below):

1. To train the faculty of schools and graduate departments of medicine, nursing, osteopathic medicine, dentistry, public health, psychology, and allied health to teach health profession students to provide for the health care needs of individuals with HIV/AIDS;

2. With respect to improving clinical skills in the diagnosis, treatment and prevention of such syndrome, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

3. To develop and disseminate curricula relating to the care and treatment of individuals with HIV/AIDS.

Accredited Health Professional Schools means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as defined in section 701(4) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act and a program for the training of physician assistants as defined in section 701(6)(A).

Academic Health Science Center means an organization within a post-secondary educational system, which brings together major divisions or programs of health professions instruction, research in the health sciences, and health services.

Proposed project requirements, a funding preference, funding priorities, and a funding set-aside were published in the Federal Register of December 10, 1990 (55 FR 50778) for public comment. No comments were received during the 30-day comment period. The project requirements, funding preference, funding priorities and funding set-aside will be retained as proposed.

Final Project Requirements

The final project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus of FY 1991 will be on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the Federal funds provided must be expended to provide education to primary care providers (i.e., physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists).

A needs assessment must be made to guide program implementation. This assessment must be based on current epidemiological data, as well as training and educational needs within the defined region. Established centers will have up to one year to conduct the needs assessment and make required adjustments. New centers will also have up to one year for start-up activities and to conduct an educational and training needs assessment. The assessment must include training needs associated with rural and other low incidence areas within the defined region.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists;
- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkage to PHS funded AIDS Service Demonstration projects (sec. 301);
- Linkage to PBS funded migrant (sec. 329) and community health (sec. 330) centers, health care for the homeless programs (sec. 340), State and local health agencies;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

Collaboration

The ETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, AIDS Service Demonstration projects, Health Care for the Homeless programs, community and migrant health centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

ETC projects also are encouraged to collaborate with the national network of 47 AIDS Clinical Trial Units (ACTUs) and the 16 Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the American Foundation for AIDS Research. Listings of the federally-funded programs were provided to each applicant with the ETC application kit.

Conversion of Funding Mechanism from Grant to Cooperative Agreement

Effective in FY 1991 the funding mechanism for this program (competing and continuation projects) changed from grants to cooperative agreements to allow for a greater degree of Federal involvement in the conduct of the funded programs. This will permit greater Federal participation in many program areas. Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key ETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

Review Criteria

The review criteria stated below, which were established in FY 1989 after public comment, will remain unchanged in FY 1991.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;

2. The degree to which the project plan adequately provides for meeting the project requirements;

3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;

4. The soundness of the fiscal plan for assuring effective utilization of funds; and

5. The potential of the project to continue on a self-sustaining basis after the period of support.

Statutory Funding Preferences

In making awards in FY 1991, as required by Section 788A, the Secretary shall give preference to projects which will:

1. Train, or result in the training of, health professionals who will provide treatment for minority individuals with acquired immunodeficiency syndrome and other individuals who are at a high risk of contracting such syndrome; and

2. Train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with HIV/AIDS.

Final Funding Preference for Fiscal Year 1991

The Health Resources and Services Administration will give a funding preference to applications that spend the majority of Federal funds in a designated HIV/AIDS high incidence area(s). For purposes of this announcement in FY 1991, high incidence area means the 20 metropolitan statistical area(s) (MSA) with the highest cumulative number of cases or the 20 MSAs with the highest rate of AIDS as indicated in the July 1990 Centers for Disease Control HIV/AIDS Surveillance Report. A listing of the eligible MSAs was provided to applicants with the program materials.

Where applicable, there must be remaining funds for lower incidence areas. Based on the needs assessment, and if applicable, the remaining effort and funds must be spent in lower incidence contiguous or regional localities, including rural or other areas experiencing significant increases in the incidence of HIV/AIDS. Projects must assume training responsibility for outlying areas where practitioners are providing care for HIV-infected persons.

Final Funding Priorities for Fiscal Year 1991

In determining the order of funding of approved applications, the HRSA will give funding priorities to the following:

1. Applications proposing substantial training in: Area Health Education Centers, (section 781 of the Act); Health Professional Shortage Areas, (section 332 of the Act); Migrant Health Centers, (section 329 of the Act); Community Health Centers, (section 330 of the Act); or Health Care for the Homeless Programs, (section 340 of the Act).

The term "Health Manpower Shortage Area" which appeared in the notice published in the Federal Register on December 10, 1990 (55 FR 50778) has been changed to "Health Professional Shortage Area", section 401 Public Law 100-507, signed into law November 16, 1990.

2. Applications documenting the participation of underrepresented minorities as faculty or key staff in the ETC program.

Definitions

The following definitions apply to training sites/facilities included in the first final funding priority listed above:

Facilities

Area Health Education Center means an entity as defined in section 781 of the Public Health Service Act and in regulations at 42 CFR § 57.3802. This reference was inadvertently omitted in the proposed Federal Register notice (FR 50778), published on December 10, 1990.

Comunity Health Center means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR § 57.102(c).

Health Care for the Homeless Program, as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population under section 340 of the PHS Act. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in Federal Register, (55 FR 31233) (August 1, 1990).

Health Professional Shortage Area means an area designated under section 332 of the PHS Act.

Migrant Health Center means an entity as defined in section 329(a) of the Public Health Service Act and in regulations at 42 CFR § 56.102(g)(1).

Other Definitions

Rural Area means a Non-Metropolitan Statistical area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget.

Rural regional education and training center is an AIDS ETC project which meets the essential characteristics of an ETC, is adapted to serve the health professions education needs of rural areas and rural primary care providers and has components which may be replicated in other rural areas.

Final Funding Set-Aside for Fiscal Year 1991

Up to 10 percent of appropriated funds for this program will be set aside to fund rural regional education and training center projects that focus on training in early diagnosis, counseling, prevention, and treatment for primary care practitioners in rural areas.

For further information regarding this program contact: AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services

Administration, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6384.

This program is listed at 93.145 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: February 25, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–4864 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–15–M

Elements Under Consideration for Expanding the Research Capacity of the National Practitioner Data Bank

SUMMARY: This notice sets forth a description of data elements which could be added to § 60.7 of the title IV Final Regulations, at 45 CFR part 60 (implementing the Health Care Quality Improvement Act of 1986, Title IV of Public Law 99–660), and the medical malpractice payment report form in order to foster research into medical malpractice and liability. The expanded research capacity of the data base could be used by government and private researchers to enhance the understanding of medical malpractice issues. Before going forward with the rulemaking process, the Health Resources and Services Administration (HRSA) is soliciting comments on suggested data elements it believes would assist researchers while continuing to minimize the burden of entities required to report the information.

DATES: Comments should be submitted by April 30, 1991.

ADDRESSES: Send comments to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions, Health Resources and Services Administration, room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Daniel D. Cowell, M.D., Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, room 8–67, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301 443–2300.

SUPPLEMENTAL INFORMATION: It has been suggested that the Data Bank represents a unique opportunity to study a number of the issues involved with medical malpractice and liability. However, in order to increase the usefulness of the Data Bank as a research resource, the data currently collected from medical malpractice payors would require expansion.

As stated in the preamble to the title IV regulations, the Department planned to request additional information regarding medical malpractice actions to support important medical liability and malpractice research, and that the public would have the opportunity to comment on these plans.

The Secretary is considering the expansion of the data collected under § 60.7(b) which concerns the reporting of information regarding the practitioner, facility and settlement or judgment. Such an expansion might require the reporting of additional information concerning the facility or site in which the act or omission supporting the malpractice action or claim occurred, and on the individual (claimant) who filed the medical malpractice action or claim. The expansion could also include selected personal and professional characteristics of the practitioner at the time of the act or omission which is the basis of the claim.

Examples of the types of data elements under consideration regarding the facility or site might include:

* Name and Zip code of the facility or site where the act(s) or omission(s) occurred;
* Description of the facility or site (e.g., public, private voluntary or private proprietary); and
* Specific location within the facility at which the act(s) or omission(s) occurred (e.g., outpatient clinic, operating room, recovery room).

Examples of the types of data elements under consideration regarding the claimant might include:

* Zip code of principal residence;
* Date of birth;
* Gender;
* Occupational status;
* Educational level;
* Total annual family income from all sources;
* Major sources of payment of the claimant's health care costs at the time of the injury (e.g., self, commercial insurance, workmen's compensation, Medicare); and
* Number, description, and outcome of previous claims, if known.

Examples of the types of data elements under consideration regarding personal and professional information which might be requested regarding the practitioner include:

* Gender;
* Specialty designation;
* Career status at the time of the act(s) or omission(s) which was the basis of the claim (e.g., intern, resident, independent practitioner);
* Type of practice at the time of the act(s) or omission(s) which was the basis of the claim (e.g., self-employed solo practitioner, hospital based-salaried, emergency care center-salaried);
* Predominant professional activity, including hours per week, at the time of the act(s) or omission(s) which was the basis for the claim (e.g., administration, direct patient care, research); and
* Health care entities other than hospitals with which he or she was affiliated at the time of the act(s) or omission(s) which was the basis of the claim (e.g., HMOs, group medical practices).

Examples of the types of data elements under consideration regarding the judgment or settlement resulting in payment which might be requested from insurers or other entities:

* Where an action or claim has been filed with an adjudicative body, identification of the adjudicative body, case number and the date of filing;
* Amount of claim, paid amount, date of payment, and whether payment was for a judgment or a settlement;
* Classification of act(s) or omission(s) in accordance with a reporting code adopted or developed by the Secretary;
* Classification of the severity of the injury or illness in accordance with a reporting code adopted or developed by the Secretary;
* Procedural status of the claim when the payment was made (e.g., before trial, during trial, after jury verdict); and
* Reason for the settlement.

These data elements could be added to the current "Medical Malpractice Payment Report" form and reported with each report submitted to the Data Bank. We have estimated that it would take approximately 30 additional minutes to complete the form with the addition of these data elements. The estimate for completion of the form as currently structured is 30 minutes. Thus, it will take approximately 1 hour to complete a malpractice payment report. We estimate that 45,000 reports will be filed annually.

The affected respondents are the same estimated 1,800 entities which are currently using the "Medical Malpractice Payment Report" form. These are insurance companies, self-insured individuals, self-insured organizations, and other entities which make payments or which serve as authorized representatives of such payors.

As provided for in § 60.11(a)(7) of the title IV Final Regulations, the data proposed to be added to the Data Bank

by the expansion of the reporting requirements under § 60.7, in addition to data already collected under § 60.7, would be made available to persons or entities who request information which does not permit the identification of any particular patient, health care entity, or physician, dentist or other health care practitioner. The data would also be included in reports requested by eligible entities.

The Bureau of Health Professions is seeking comments on:

1. Additional research needs and potential uses of information which are not addressed by the proposed research elements;
2. Whether the suggested elements are the most useful elements in meeting the current and anticipated research needs;
3. The problems in availability, obtaining, and reporting the additional elements suggested;
4. Suggestions regarding available codes which would simplify and standardize reporting; and
5. Levels of aggregation needed to maintain patient and practitioner anonymity and the security of Data Bank information.

Dated: February 25, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–4853 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, February 22, 1991.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Honolulu Heart Program—0925–0122—This research project is a re-examination of the 5,000 surviving members of the original Honolulu Heart Program cohort. The results of this study will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in American men of Japanese ancestry. Respondents: Individuals or households; Number of Respondents: 2,500; Number of Responses per Respondent: 1; Average Burden per Response: 1.41 hours; Estimated Annual Burden: 3,525 hours.

2. Interstate Shipment of Etiologic Agents, 42 CFR 72, NPRM—0920–0256—CDC proposes to revise and update the current regulation, 42 CFR part 72, Interstate Shipment of Etiologic Agents (OMB No. 0920–0199). As a result, some increase in reporting burden is anticipated. The revision is necessary to clarify and expand the requirements for proper packaging and handling of etiologic agents, thereby minimizing the risk of exposure to these agents by people who handle the packages. Respondents: Individuals or households, businesses or other for-profit; Number of Respondents: 1; Estimated Annual Burden: 1 hour.

3. National Hospital Ambulatory Medical Care Survey—NEW—Data collected from hospital outpatient departments and emergency departments concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; Number of Respondents: 448; Number of Responses per Respondent: 202; Average Burden per Response: .08 hours; Estimated Annual Burden: 7,114 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: February 22, 1991.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 91–4788 Filed 2–28–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on February 15, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package.)

1. State Agency Report of Obligations For SSA Disability Programs—0960–0421—The information collected on the form SSA–4513 is used by the Social Security Administration to budget and account for expenditures which are incurred by the State Disability Determination Services' (DDS) while implementing certain provisions of the disability portion of the Social Security Act. The affected public is comprised of DDS' which contract to the Social Security Administration.

Number of respondents: 54
Frequency of response: 4
Average burden per response: 1 hour
Estimated annual burden: 216 hours.
OMB desk officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 22, 1991.

Ron Compston,

Social Security Administrotion, Reports Clearance Officer.

[FR Doc. 91–4786 Filed 2–28–91; 8:45 am]

BILLING CODE 4110–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–1917; FR–2934–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 1, 1991.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. [These telephone numbers are not toll-free.]

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: February 22, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91–4696 Filed 2–28–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Nomination for National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act (25 U.S.C. 2701, *et seq.*) provides for appointment by the Secretary of the Interior of two associate members of the National Indian Gaming Commission after public notice and an opportunity for comment. Notice is hereby given of the proposed appointment of Jana McKeag as an associate member of the Commission.

DATES: Comments must be received by: April 1, 1991.

ADDRESSES: Comments should be addressed to: Morris Simms, Director of Personnel, Department of the Interior, 1849 C Street NW., Washington, DC 20240, (202) 208–6761.

SUPPLEMENTARY INFORMATION: Section 5(a) of the Indian Gaming Regulatory Act (25 U.S.C. 2704(a)) establishes a three-member National Indian Gaming Commission within the Department of the Interior. The Act provides that the Chairman of the Commission is to be appointed by the President with the advice and consent of the Senate. The two associate members of the Commission are to be appointed by the Secretary of the Interior (25 U.S.C. 2704(b)(1)). The Act provides that the Secretary shall publish notice of nominations for the associate member positions in the **Federal Register** and provide an opportunity for public comment.

Notice is hereby given of the proposed appointment of the following individual to be an associate member of the Commission for a term of one (1) year:

Jana McKeag. Ms. McKeag, a member of the Cherokee tribe, currently serves as Director of Native American Programs, Office of Intergovernmental Affairs, U.S. Department of Agriculture. From August 1988 to December 1990, Ms. McKeag was Staff Assistant to the Deputy Assistant Secretary—Office of Trust and Economic Development in the Bureau of Indian Affairs. Prior to this appointment, she served as a Program Analyst and as Executive Assistant to the Deputy Assistant Secretary in the Bureau of Indian Affairs. Ms. McKeag also served the Department of the Interior as a Program Analyst in the Office of Policy Analysis from August 1985 to August 1988, and as a Budget Analyst Intern with the Office of Budget from July 1983 to January 1984. She served as a Program Analyst for the Equal Employment Opportunity Commission from January 1984 to May 1985, and as an Equal Employment Opportunity Specialist for the U.S. Commission on Civil Rights from August 1976 to September 1979. Ms. McKeag's experience in American Indian affairs also includes serving as Executive Assistant to the Director for the Congressional Commission for American Indian Policy Review from September 1975 to August 1976, and as Education Director for the National Congress of American Indians from July 1974 to September 1975. Ms. McKeag is an officer and a member of the board of directors for the Y.M.C.A. of Metropolitan Washington, and a member of the board of directors for the Coalition for the Homeless. She holds a bachelor of arts degree from Gettysburg College, Gettysburg, Pennsylvania, and a master of public administration degree from Harvard University Kennedy School of Government.

Persons wishing to comment on this proposed appointment may submit written comments to the address identified above. Comments must be received within 30 days of the date of the publication of this notice.

Dated: February 22, 1991.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 91–4694 Filed 2–28–91; 8:45 am]

BILLING CODE 4310–RJ–M

Bureau of Indian Affairs

Flathead Indian Irrigation Project, MT

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final notice of operation and maintenance rates.

SUMMARY: The purpose of this notice is to establish the assessment rates for operating and maintaining the Flathead Indian Irrigation Project for 1991. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: This public notice will become effective on publication in the **Federal Register** and remain in effect until changed by further notice.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3 and pursuant to § 171.1(e) of part 171, subchapter H, chapter 1, title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for operation and maintenance assessments and related information on the Flathead Indian Irrigation Project for calendar year 1991 and subsequent years.

SUPPLEMENTARY INFORMATION: On October 18, 1990 the Bureau published notice of proposed operation and maintenance rates for 1991, 55 FR 42275. The notice provided opportunity to comment before a final rate is published. The Bureau of Indian Affairs received several comments which were considered in arriving at a final rate.

The Flathead Joint Board of Control (JBC) submitted several comments.

First, the JBC stated the BIA had not transmitted a proposal to the JBC for the 1991 rate prior to publishing the rate in the **Federal Register**. However, the Superintendent personally presented to the JBC the proposed 1991 budget and assessment in March 1990. Following discussion on the budget, the Superintendent revised and resubmitted a budget and assessment of $18.40 by letter dated June 28, 1990. An impasse was reached, and the JBC refused to acknowledge and levy any assessment except for what already existed, that being $14.36 per acre.

Next, the JBC questions if normal operations and maintenance include costs associated with other benefits such as Fishery, recreation, aesthetics, and flood control. The BIA notes any costs associated with providing for senior water rights would be a cost of normal operation and maintenance, and any costs associated with minimizing other impacts caused by irrigation facilities would be normal operation and maintenance.

The JBC asks what is the impact of maintaining instream flows on pumping charges in the O&M assessment? Management states maintaining of instream flows may increase pumping cost some years but, instream flows is not a discretionary item as senior water rights must be served.

The JBC continues, would a rehabilitation and betterment program reduce O&M? Is the proposed rate "normal" in view of the need for rehabilitation and betterment. The BIA replies that a rehabilitation and betterment program in future years will increase the annual repayment and should decrease annual O&M costs. However, the 1991 Budget and assessment are based on the actual costs required to operate and maintain the existing Project facilities at the level allowed by the $18.40 per acre assessment.

In addition the JBC urges that the O&M rate be frozen at $14.36 until these questions can be answered. The BIA postulates the amount proposed by JBC is not sufficient to adequately deliver the irrigation water to the waterusers in this Project. The final assessment of $16.40 attempts to reflect a request for less administration and overhead but yet maintain a level of service that just delivers water. Maintenance will be minimized. Water accounting will be reduced, and planning for the future delayed.

In another comment JBC is opposed to the principle which forces them to pay for fish rescue without receiving any information concerning the numbers of fish retrieved in rescue operations. Management contends all activities entailed in delivering irrigation water include operation, maintenance, pumping and peripheral activities related to minimizing irrigation impacts to fisheries that interact with project facilities. The additional cost to gather this information would increase already escalated assessments with no relative benefit to the water user as a whole. Therefore, costs were not included in the final rate to provide for the collection of this data.

The JBC believes that a joint effort by all parties with an interest in the Flathead Irrigation Project should be undertaken to secure interim funding from the Department of the Interior. The BIA is not able to respond to this request at this time. Any funding request to the Department of the Interior requires justification and 1 to 2 years lead time.

Another commenter noted that an increase of another $4.00 per acre would put our water at $20.76 per acre which is a prohibitive cost for what little water that is allotted to the irrigators of this Project. The BIA in making this final rule has acknowledged that the economy faced by the waterusers is not good. The $2.00 per acre reduction in assessment deals with the concern that the higher cost could severely impact the wateruser.

This commenter also stated in 1983, we were paying approximately $10 per acre for the same service we are receiving now. Management replies that the districts were furnishing employees to the project in addition to paying the O&M assessment in 1983. The salaries have also increased by 27% since then and the management team was employed from the Bureau of Reclamation at the irrigators request for increased technical assistance.

Another commenter suggested that an increase in O&M should not be used to increase administration. The BIA in setting the final rate of $16.40 per acre provides for reduced administrative cost.

Another comment stated one improvement that has been neglected for years is the cleaning of existing reservoirs of silt to increase their holding capacity. This comment is not addressed by the BIA in this final rule. Money for such studies and final action would have to come from future budgets.

The commenter further stated the amount of water allocated to the irrigators across the valley is not a fair proportion. The final rule does not consider a study for reapportionment of duty of water within the project. Water is currently delivered as equitably as possible under existing regulations.

Another commenter suggested the proposed O&M charge of $16.40 are too high when you figure what this land will produce. The BIA acknowledges that the wateruser economics are not good. The final assessment of $16.40 per acre reflects a reduction of $2.00 per acre.

Another comment recommended that the project should reduce the engineering staff. The BIA's final assessment reflects a decrease in administrative staff, which includes eliminating one engineering position.

One commenter stated the last two years, users got only one (1) irrigation before all the water was taken the second week in July for the instream flows of 8 cfs. The final rate reflects that all available water will be equitably delivered to users. The 8 cfs instream flow on East Finley Creek is established as part of the interim water management planning consistent with a 1985 court agreement.

In light of the comments submitted the Area Director established the Flathead Irrigation Project rate of $16.40 per acre for 1991 and subsequent years.

The revised budget reflects a 4.1% cost of living increases in personnel cost in lieu of the 3.5% originally forecasted for Irrigation Division personnel.

The Irrigation Division will not fill three (3) vacancies originally forecasted to be filled—an Equipment Operator, a Carpenter, and a Pumping Plant Operator. A reduction in existing staff will be required—a Supply Clerk, a Custodian, and an Engineer. These reductions are in line with comments made by the waterusers.

All duties will be absorbed by existing staff with the exception of office cleaning for which we have added $10,000 to other services as an additional cost. Pumping costs have been reduced by $25,000 due to early run off predictions. The Bureau of Reclamation overhead cost has been reduced from 35% to 15%.

All other costs remain the same as originally anticipated in the $16.40 per acre budget. The $16.40 budget will work all Career Seasonal Field staff for a period of nine (9) months and purchase the supplies needed to do some fall maintenance, as requested in the waterusers comments.

Irrigation Operation and Maintenance Charges: In compliance with the above, the operation and maintenance charges for the lands under the Flathead Irrigation Project, Montana, for the season of 1991 and subsequent years until further notice, are hereby fixed as follows:

Lands included in an Irrigation District, and lands held in trust for Indians and non-District lands will be assessed operation and maintenance charges at $16.40 per acre for the season of 1991 and subsequent years.

Payment: The operation and maintenance charges on the trust and non-District lands become due on April 1 each year and on the lands within a Irrigation District are billed biannually. To all assessments on lands in non-Indian ownership, remaining unpaid 60 days after the due date, there shall be added a penalty and interest for each month, or fraction thereof, from the due date until paid. No water shall be delivered to any farm unit until all O&M charges have been paid for that farm unit.

Interest and Penalty Fees: Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Ronald Brown,

Acting Portland Area Director.

[FR Doc. 91-4812 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-91-4212-16; N-30782, N-30784, N-30790, N-30791, N-30792, N-30793, N-30795, N-30796]

Termination of Desert Land Classifications; Nevada

Dated: February 12, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates desert land classifications N-30782, N-30784, N-30790, N-30791, N-30792, N-30793, N-30795, and N-30796.

EFFECTIVE DATE: Termination of the classifications is effective with the publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classifications N-30782, N-30784, N-30790, N-30791, N-30892, N-30793, N-30795, and N-30796 are hereby terminated in their entireties. The following described lands are affected by this action:

Mt. Diablo Meridian, Nevada

T. 16 N., R. 45 E.,
Secs. 21, 23, 33, and 35.

The area described aggregates 2,560 acres in Nye County.

The classifications were accomplished pursuant to the Desert Land Act (43 U.S.C. 231, as amended) and the Carey Act (43 U.S.C. 641-647, as amended) in response to eight desert land applications. All the applications were approved and entries allowed. Entry to the lands provided segregation from all other forms of appropriation under the public land laws, including location under the mining laws. None of the entries proved up for patent and the entries have been cancelled. The classifications are no longer considered appropriate and are hereby terminated.

The cancellations were noted to the official records on February 7, 1991, and on that date the lands became open to the operation of the public land laws and location under the mining laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91-4840 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-HC-M

[CO-920-91-4120-11; COC52402]

Colorado: Invitation for Coal Exploration License Application; Western Fuels-Utah, Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Western Fuels-Utah, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

Township 3 North, Range 101 West, 6th P.M.

Sec. 25, all;
Sec. 26, all;
Sec. 34N½, and N½SE¼;
Sec. 35, N½, and N½S½;
Sec. 36, N½, and N½S½.

The area described contains approximately 2640.00 acres, more or less.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC52402 at the BLM Colorado State Office, Public Room, 2850 Youngfield Street, Lakewood, Colorado 80215 and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and shall be made within 30 days after the publication of this Notice of Invitation in the **Federal Register:**

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, and

Don L. Deardorff, Manager, Engineering and Exploration, Western Fuels-Utah, Inc., 405 Urban Street, suite 305, Lakewood, Colorado 80228

Richard D. Tate,

Chief, Mining Law and Solid Minerals, Adjudication Section.

[FR Doc. 91-4817 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-JB-M

[CA-060-1-4410-12]

Amendment of the Recreation Element of the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period and notice of additional public workshop.

SUMMARY: On February 8, 1991, in accordance with 43 CFR 1610.5-5, the Bureau of Land Management published in the **Federal Register** a notice of intent and notice of public workshops for the purpose of identifying issues related to a proposed amendment to the recreation element of the California Desert Conservation Area Plan.

The public has expressed considerable interest in this proposed amendment and requested additional opportunities for public input. The purpose of this notice, therefore, is to extend the deadline for submission of written comments, to announce an additional public workshop meeting and to provide additional information on the availability of documents which may be helpful to the public in identifying issues.

DATES: Written comments will be accepted from the public until March 29, 1991. An additional public workshop will be held as follows: March 21, 1991, 7-9:30 p.m., Pasadena Convention Center, 300 E. Green Street, Pasadena, California.

ADDRESSES: Written comments should be sent to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

FOR FURTHER INFORMATION CONTACT: Molly S. Brady, Chief, Planning and Environmental Assistance, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 276-6428.

SUPPLEMENTARY INFORMATION: Background information was provided in the February 8, 1991 **Federal Register** notice. Copies of relevant documents identified in that notice as well as additional documents and references listed below are available for review in the California Desert District Office, 1695 Spruce Street, Riverside, California. These documents will also be available for review at the public workshop session.

The California Desert Conservation Area Plan, Bureau of Land Management, 1980.

Draft Environmental Impact Statement and Proposed Plan, California Desert Conservation Area, BLM, September 1980.

Volume C, appendix V: Recreation, Final Environmental Impact Statement and Proposed Plan, BLM, September 1980.

Draft California Desert Conservation Area Plan Alternatives and Environmental Impact Statement, BLM, February 1980.

1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Record of Decision, BLM, May 1983.

Proposed 1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Final Environmental Impact Statement, BLM, March 1983.

Proposed 1982 Plan Amendments to the California Desert Plan and the Eastern San Diego County MFP, Draft Environmental Impact Statement, BLM, 1982.

1989 Amendment Review of California Desert Plan, Correction and Amendment Notice, **Federal Register,** Vol. 55. No. 12, January 18, 1990.

Review of California Desert Plan, Correction and Amendment Notice, **Federal Register,** Vol. 55, No. 83, April 30, 1990.

Dated: February 20, 1991.

Richard E. Crowe,

Acting District Manager.

[FR Doc. 91-4453 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[NM-010-4333010/G1-109]

Final El Malpais National Conservation Area General Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Final El Malpais National Conservation Area (NCA) General Management Plan (GMP), Rio Puerco Resource Area.

SUMMARY: In accordance with section 501 of Public Law 100-225, the Bureau of Land Management's Rio Puerco Resource Area has completed the preparation of the Final El Malpais NCA GMP. As required by the legislation, copies of this document are being transmitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The GMP describes the appropriate uses and development of the NCA, in order to protect for the benefit and enjoyment of future generations that area in western New Mexico containing La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flows.

DATES: Implementation of the Final GMP will begin on April 1, 1991.

ADDRESSES: Requests for copies of the Final GMP should be sent to: Albert Abee, Area Manager, Rio Puerco Resource Area, Bureau of Land Management, 435 Montano NE, Albuquerque, NM, 87107.

FOR FURTHER INFORMATION CONTACT: Steve Fischer, (505) 287-7911.

SUPPLEMENTARY INFORMATION: An Environmental Impact Statement (EIS) will be prepared later this year for the Chain of Craters Wilderness Study Area (WSA), which is contained in the NCA. The wilderness recommendation for the Chain of Craters WSA will be transmitted to Congress following completion of the Final EIS.

Robert T. Dale,

Albuquerque District Manager.

[FR Doc. 91-4814 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-84-M

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATES: The meeting will be held Wednesday, March 27, 1991 at 10 a.m.

ADDRESSES: The meeting will be held at the BLM Salmon District Office, Highway 93 South, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss Special Recreation Use Permit procedures, status of the District Resource Objective Management Plans (ROMP), overview of the BLM Hazardous Material Management Program, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make oral statment must notify the District Manager at the Salmon District Office by March 22, 1991.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: February 12, 1991.

Roy S. Jackson,

District Manager.

[FR Doc. 91-4816 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-GG-M

[WY-920-41-5700; WYW113553]

Oil and Gas Lease; Proposed Reinstatement of Termination

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113553 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113553 effective November

1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: February 21, 1991.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91-4815 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-910-01-4212-13, CA-23913FD, S-1595C]

Realty Action; Nevada County, CA

REALTY ACTION: Amendment of notice of realty action: exchange of public lands and termination of Recreation and Public Purposes (R&PP) Act Classification in Nevada County, California.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The document amends the Notice of Realty Action (CA-25916FD, S-1595C) published in 56 FR 6034, February 14, 1991. It is amended to include: The public lands will be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

R&PP lease S-1595 will terminate upon issuance of patent. Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances shall be completed prior to conveyance of title by the United States.

Dated: February 20, 1991.

D.K. Swickard,

Area Manager.

[FR Doc. 91-4820 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[ES-962-91-5420-10; SRES 42141]

Disclaimer of Interest; Michigan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of intent of the United States to disclaim certain property interests in Kalkaska County, Michigan.

DATES: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: A. Nate Felton, Chief, Branch of Adjudication, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 461-1488.

SUPPLEMENTARY INFORMATION: United States Department of the Interior, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. The United States of America, pursuant to section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1745, does hereby give notice of its intention to disclaim any interest to Ms. Alzada Stuck, any lands in the following described property:

Michigan Meridian, Kalkaska County, Michigan

Township 28 North, Range 6 West,
Section 8, NE¼NW¼ (excepting the Village of Sigma).

It was determined that these lands were patented to the State of Michigan pursuant to the Swamp and Overflowed Lands Act of September 28, 1850 (9 Stat. 352). A Supplemental List of Swamp Lands was approved October 27, 1853. The purpose of this notice is to afford an opportunity to all persons having an adverse interest in the land to file their objects in this office within 90 days of the publication date of this notice. If no protest is received, the disclaimer will issue shortly after the expiration of the 90-day period. A protestant must serve the applicant above with a copy of the objections and furnish evidence of such service to this office.

Robert J. Bainbridge,

Acting State Director.

[FR Doc. 91-4819 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-84-M

[CA-060-00-4410-08]

Adoption of the Santa Rosa Mountains National Scenic Area Management Philosophy Statement and Interim Program Guidance

AGENCY: Bureau of Land Management, Interior.

ACTION: Adoption of Santa Rosa Moutains National Scenic Area Management Philosophy Statement.

SUMMARY: A Management Philosophy Statement was prepared by the citizen's Executive Steering Committee to provide overall direction and guidance for the Santa Rosa Mountains National Scenic Area (SRMNSA). This management philosophy has local broadbased public support and was presented by the SRMNSA Executive Steering Committee to the California Desert District Advisory Council and adopted by unanimous vote at a meeting on November 16, 1990. The text of the Management Philosophy Statement is set forth below:

Santa Rosa Mountains National Scenic Area Management Philosophy Statement

The Santa Rosa Mountains form part of the last frontier in the California Desert's rapidly urbanizing Coachella Valley environment. Burgeoning population pressures exerted by major metropolitan areas in Southern California place extreme stress and a premium value on the last vestiges of open space.

On March 31, 1990, Secretary of the Interior Manuel Lujan designated the Santa Rosa Mountains as a National Scenic Area. The establishment of the Scenic Area provides national recognition and a unified planning and management approach for the rugged, spectacular desert mountains that form the scenic backdrop to the Coachella Valley and constitute one of the major attractions to this historic and tourism/resort area.

The people of the Coachella Valley have always looked to the rugged and nobel desert mountains that rise dramatically from the valley floor for their sense of spiritual strength and physical well-being. In recognition of this community tradition and the inherent open space and scenic values of the Santa Rosa Mountains, the BLM has formed a partnership with the people of the Coachella Valley. This partnership is hereby dedicated to the careful planning, wise use, and conservation of that area in the California Desert designated as the Santa Rosa Mountains National Scenic Area. It was created for the purpose of protecting the unique and nationally important scenic, scientific, ecological, archaeological, cultural, geological, recreational and wilderness resources for the benefit and enjoyment of future generations.

The Santa Rosa Mountains National Scenic Area is the heritage of all citizens and its stewardship and lasting preservation is our mutual responsibility. The legacy and natural wonders of the Santa Rosa Mountains that we hold in trust will endure only as long as we dedicate ourselves to that end. As stated by the citizens' Ad Hoc Committee whose efforts helped to achieve the National Scenic Area designation: "The time needed to accomplish this task is fleeting."

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, California 92507, (714) 276-6566.

SUPPLEMENTARY INFORMATION: A Coordinated Resource Management Planning effort is ongoing. The planning team is represented by citizens of diverse interests who meet on a regularly scheduled basis to develop a community base plan. Target date for the completion of a draft management plan in December 30, 1991. During the planning period, interim activities such as developing information centers, signing, and acquiring land will proceed. Insofar as these activities are consistent with the goals of the National Scenic Area designation, they will continue and may be completed. The designation of the Scenic Area is intended to protect resources, therefore, no disposal of public lands within the Scenic Area will be considered at the current time.

Dated: February 15, 1991.

Gerald E. Hillier,

Disctric Manager.

[FR Doc. 91-4816 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12; GP1-121]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 17 S., R. 1 W., accepted 2/11/91
T. 40 S., R. 13 W., accepted 2/11/91
T. 12 S., R. 30 E., accepted 1/25/91

Washington

T. 6 N., R. 13 E., accepted 2/8/91
T. 7 N., R. 13 E., accepted 2/8/91
T. 6 N., R. 15 E., accepted 2/11/91
T. 7 N., R. 15 E., accepted 2/11/91

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE., 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE., 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: February 19, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-4821 Filed 2-28-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on the Master Plan for the Walnut Creek National Wildlife Refuge in the Walnut Creek Watershed Near Prairie City in Jasper County, Iowa

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (FWS) intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the Master Plan for the Walnut Creek National Wildlife Refuge in the Walnut Creek watershed near Prairie City in Jasper County, Iowa. A series of public meetings will be held during the development of the Master Plan and the preparation of the EIS. Notices of the dates, times and locations of these public meetings will be advertised in local publications prior to the event. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by April 1, 1991. A public meeting will be held in Reynolds, Iowa, on Tuesday, March 12, 1991.

ADDRESSES: Comments should be addressed to:

Regional Director, Region 3, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The public meeting on March 14, 1991, will be held at 7:30 p.m. at the Southeast Polk Community High School at 8325 NE. University, Reynolds, Iowa 50237. The school is located east of Des Moines on Route 163, approximately 10 miles west of Prairie City and 6 miles east of Des Moines.

FOR FURTHER INFORMATION CONTACT: Richard Birger, Refuge Manager, Walnut Creek National Wildlife Refuge, P.O. Box 399, Prairie City, Iowa 50228, Telephone: (515) 994-2415.

SUPPLEMENTARY INFORMATION: Dave Shaffer is the primary author of this document.

The Fish and Wildlife Service, Department of the Interior, proposes to develop a Master Plan for the Walnut Creek National Wildlife Refuge. The primary purpose of the Master Plan is to achieve the following refuge objectives:

1. To restore native tall grass prairie, wetland, woodland habitats for breeding and migratory waterfowl and resident waterfowl;

2. To serve as a major environmental education center providing opportunities for study;

3. To provide outdoor recreation benefits to the public; and

4. To provide assistance to local landowners to improve their lands for wildlife habit.

In 1990, an Environmental Assessment (EA) was prepared by the FWS on the establishment of the Refuge to comply with the provisions of the NEPA. NEPA requires Federal agencies such as the FWS to evaluate the impacts associated with major Federal actions which potentially affect the quality of the social, economic, and natural environment. In August of 1990, following preparation and review of the EA, the FWS determined that the establishment of the refuge would not result in adverse impacts to the quality of the human environment.

As established, the Walnut Creek National Wildlife Refuge will occupy approximately 8,600 acres approximately 20 miles east of Des Moines in Jasper County, Iowa. The refuge will provide opportunities for the public to visit and appreciate restored native prairie, wetlands, streamside woodlands, and the resident and migratory wildlife. The refuge is a part of the Des Moines Recreational River and Greenbelt. The refuge affords an

opportunity to complement other recreational areas such as Red Rocks State Wildlife Management Area and Elk Rock State Park.

In December 1990, the FWS initiated the preparation of a Master Plan for the newly established Walnut Creek National Wildlife Refuge. The Master Plan will be prepared to establish which uses, facilities and features will be incorporated into the refuge, in addition to the location, size, and composition of these elements. The Master Plan will be developed based upon coordination with the public, including Federal, state, and local agencies, as well as citizen interest groups.

The environmental review of the Master Plan for the Walnut Creek National Wildlife Refuge will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

The FWS estimates that the Draft Environmental Impact Statement (DEIS) will be made available to the public by December 1991.

Dated: February 21, 1991.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 91–4946 Filed 2–28–91; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Report to Congress, Entitled "Wetlands Losses in the United States, 1780's to 1980's"

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) announces the availability of a report to Congress, entitled "Wetlands Losses in the United States, 1780's to 1980's". The report was prepared in response to requirements of section 401(a) of the Emergency Wetlands Resources Act (Act) of 1986 (16 U.S.C. 3931(a)), as amended. The report includes an assessment of the estimated total number of acres of wetland habitat as of the 1780's for each state, an assessment of the estimated total number of acres of wetlands for each state as of the 1980's, and the percentage of loss of wetlands for each state between the 1780's and the 1980's.

ADDRESSES: Persons wishing a copy of the report should contact the U.S. Fish and Wildlife Service, Publications Unit, MS–130 Arlington Square, 1849 C Street NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Don Woodard, National Wetlands Inventory, 9720 Executive Center Drive, Monroe Building, suite 101, St. Petersburg, Florida 33702. (Telephone FTS 826–5834; Commercial 813/893–3624.)

SUPPLEMENTARY INFORMATION:

Background

Section 401(a) of the Act was amended by section 18 of the North American Wetlands Conservation Act of 1989 (Pub. L. 101–233). The amendment requires assessments of the estimated total acres of wetland habitat as of the 1780's in the areas that now comprise each state; and of the estimated total number of acres of wetlands in each state as of the 1980's, and the percentage of loss of wetlands in each state between the 1780's and the 1980's.

Authority: The authority for this action is section 401(a) of the Emergency Wetlands Resources Act of 1986, as amended.

Dated: January 8, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91–4871 Filed 2–28–91; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Mines

Meeting of The Advisory Committee on Mining and Mineral Resources Research

The Advisory Committee on Mining and Mineral Resources Research will meet from 8 a.m. to 5 p.m. (or completion of business) on Tuesday, April 2, 1991, in the Cocos Suite No. 1, Hershey Lodge and Convention Center, West Chocolate Avenue and University Drive, Hershey, Pennsylvania. The primary purpose of the meeting is the review of the Respirable Dust Generic Mineral Technology Center. The proposed agenda is:

1. Welcome and introductions.
2. Approval of the minutes of the meeting of December 11, 1990.
3. Congressional outlook for 1991.
4. Committee initiatives.
5. Review and approval of the Report on the Review of the Pyrometallurgy Generic Mineral Technology Center.
6. Review and discussion of the Interim Report on the Commission Generic Mineral Technology Center.
7. Review of the Respirable Dust Generic Mineral Technology Center and a site visit of the Hershey Medical Center.
8. Consideration of draft report on the review of the Respirable Dust Generic Mineral Technology Center.
9. New business.

This meeting is open to the public with seating for visitors on a first-come, first-served basis. Written statements concerning agenda subjects and the operation of the Mineral Institutes program are welcome.

Visitors having written statements to put before the Committee or who wish to address the Committee should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, Mail Stop 1020, 2401 E Street NW., Washington, DC 20241, phone (202) 634–1328, FAX (202) 634–2208, BITNET MININSTS@GWUVM, no later than noon, Friday, March 22, 1991.

Dated: February 25, 1991.

T. S. Ary,

Director.

[FR Doc. 91–4893 Filed 2–28–91; 8:45 am]

BILLING CODE 4310–53–M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cal-State Lumber Sales, Inc., 10145 Via de la Amistad, San Ysidro, California 92073.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) San Diego Wood Products Transportation, 7435 Via de la Amistad, suite K, San Ysidro, California 92073. Incorporated in California.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–4873 Filed 2–28–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 349X)]

CSX Transportation, Inc.—Abandonment Exemption—In Gaston County, NC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by CSX Transportation, Inc., of 15.94 miles of rail line in Gaston County, NC,

subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective March 16, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 11, 1991 and petitions for reconsideration must be filed by March 26, 1991. Requests for a public use condition must be filed by March 11, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 349X) to.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721.).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423 Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202 275–1721.]

Decided: February 19, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–4877 Filed 2–28–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Officer of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/ OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80–51

Recordkeeping

Businesses or other for-profit

1 hour; 1 respondent; 1 hour per response; 0 forms.

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions between a bank collective investment fund and persons who are parties in interest with respect to a plan as long as the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund.

Existing Collection in Use Without an OMB Number

Assistant Secretary for Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 77–10—Leasing of Office Space and Provision of Administrative Services and Goods to Certain Parties in Interest by Multiemployer and Multiple

Employer Plans

Recordkeeping

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

1 total burden hours.

This class exemption compliments class exemption 76–1. It permits participating employers, unions, or another plan to lease office space from or to obtain administrative services or goods for a multiple employer or multiemployer plan.

Prohibited Transaction Class Exemption 78–6—Apprenticeship Plans Purchasing and Leasing Property from Contributing Employers

Recordkeeping; reporting on occasion

Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

5,000 recordkeepers; 417 total burden hours; 5 minutes per response.

This class exemption exempts from the prohibited transaction restrictions of ERISA transactions involving the purchase of personal property and leasing of real or personal property by an apprenticeship plan from a contributing employer or wholly owned subsidiary.

Reinstatement

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 80–83

1210–0064

Recordkeeping

Businesses or other for-profit

1 hour; 1 respondent; 1 hour per response; 0 forms.

This class exemption exempts from the prohibited transaction provisions of ERISA certain transactions involving an

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

BEST COPY AVAILABLE

employee benefit plan's purchase of securities which may aid the issuer of the securities to reduce or retire indebtedness to a party in interest.

Prohibited Transaction Exemption 90–I
1210–0054
Recordkeeping
Business or other for-profit; small businesses or organizations
1 Respondent; 1 hour.

This exemption allows parties in interest of an employee benefit plan that invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. Six year recordkeeping is required.

Signed at Washington, DC this 26th day of February, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–4909 Filed 2–28–91; 8:45 am]

BILLING CODE 4510–29–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Supersedeas Decisions to General Wage

Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Alabama:
AL90–1 (AL91–1)..... Feb. 22, 1991.
AL90–2 (AL91–2)..... Feb. 22, 1991.
AL90–3 (AL91–3)..... Feb. 22, 1991.
AL90–4 (AL91–4)..... Feb. 22, 1991.
AL90–5 (AL91–5)..... Feb. 22, 1991.
AL90–6 (AL91–6)..... Feb. 22, 1991.
AL90–7 (AL91–7)..... Feb. 22, 1991.
AL90–8 (AL91–8)..... Feb. 22, 1991.
AL90–9 (AL91–9)..... Feb. 22, 1991.
AL90–10 (AL91–10)..... Feb. 22, 1991.
AL90–11 (AL91–11)..... Feb. 22, 1991.
AL90–12 (AL91–12)..... Feb. 22, 1991.
AL90–13 (AL91–13)..... Feb. 22, 1991.
AL90–14 (AL91–14)..... Feb. 22, 1991.
AL90–15 (AL91–15)..... Feb. 22, 1991.
AL90–16 (AL91–16)..... Feb. 22, 1991.
AL90–18 (AL91–18)..... Feb. 22, 1991.
AL90–19 (AL91–19)..... Feb. 22, 1991.
AL90–20 (AL91–20)..... Feb. 22, 1991.
AL90–21 (AL91–21)..... Feb. 22, 1991.
AL90–22 (AL91–22)..... Feb. 22, 1991.
AL90–23 (AL91–23)..... Feb. 22, 1991.
AL90–24 (AL91–24)..... Feb. 22, 1991.
AL90–25 (AL91–25)..... Feb. 22, 1991.
AL90–26 (AL91–26)..... Feb. 22, 1991.
AL90–27 (AL91–27)..... Feb. 22, 1991.
AL90–28 (AL91–28)..... Feb. 22, 1991.
AL90–29 (AL91–29)..... Feb. 22, 1991.
AL90–31 (AL91–31)..... Feb. 22, 1991.
AL90–32 (AL91–32)..... Feb. 22, 1991.
Alaska, AK90–1 (AK91–1).... Feb. 22, 1991.
Arizona:
AZ90–1 (AZ91–1)..... Feb. 22, 1991.
AZ90–2 (AZ91–2)..... Feb. 22, 1991.
AZ90–3 (AZ91–3)..... Feb. 22, 1991.
AZ90–4 (AZ91–4)..... Feb. 22, 1991.
Arkansas:
AR90–1 (AR91–1)..... Feb. 22, 1991.
AR90–2 (AR91–2)..... Feb. 22, 1991.
AR90–3 (AR91–3)..... Feb. 22, 1991.
AR90–4 (AR91–4)..... Feb. 22, 1991.
AR90–5 (AR91–5)..... Feb. 22, 1991.
AR90–6 (AR91–6)..... Feb. 22, 1991.
AR90–7 (AR91–7)..... Feb. 22, 1991.
AR90–8 (AR91–8)..... Feb. 22, 1991.
California:
CA90–1 (CA91–1)..... Feb. 22, 1991.
CA90–2 (CA91–2)..... Feb. 22, 1991.
CA90–3 (CA91–3)..... Feb. 22, 1991.
CA90–4 (CA91–4)..... Feb. 22, 1991.
CA90–5 (CA91–5)..... Feb. 22, 1991.
CA90–6 (CA91–6)..... Feb. 22, 1991.
CA90–7 (CA91–7)..... Feb. 22, 1991.
Colorado:
CO90–1 (CO91–1)..... Feb. 22, 1991.
CO90–2 (CO91–2)..... Feb. 22, 1991.
CO90–3 (CO91–3)..... Feb. 22, 1991.
CO90–4 (CO91–4)..... Feb. 22, 1991.
CO90–5 (CO91–5)..... Feb. 22, 1991.
CO90–6 (CO91–6)..... Feb. 22, 1991.
CO90–7 (CO91–7)..... Feb. 22, 1991.
CO90–8 (CO91–8)..... Feb. 22, 1991.
CO90–9 (CO91–9)..... Feb. 22, 1991.
Connecticut:
CT90–1 (CT91–1)..... Feb. 22, 1991.
CT90–2 (CT91–2)..... Feb. 22, 1991.
Delaware:
DE90–1 (DE91–1)..... Feb. 22, 1991.
DE90–2 (DE91–2)..... Feb. 22, 1991.
District of Col.:
DC90–1 (DC91–1)..... Feb. 22, 1991.
DC90–2 (DC91–2)..... Feb. 22, 1991.
Florida:
FL90–1 (FL91–1)..... Feb. 22, 1991.

FL90–2 (FL91–2)..... Feb. 22, 1991.
FL90–3 (FL91–3)..... Feb. 22, 1991.
FL90–4 (FL91–4)..... Feb. 22, 1991.
FL90–5 (FL91–5)..... Feb. 22, 1991.
FL90–6 (FL91–6)..... Feb. 22, 1991.
FL90–7 (FL91–7)..... Feb. 22, 1991.
FL90–8 (FL91–8)..... Feb. 22, 1991.
FL90–9 (FL91–9)..... Feb. 22, 1991.
FL90–10 (FL91–10)..... Feb. 22, 1991.
FL90–11 (FL91–11)..... Feb. 22, 1991.
FL90–12 (FL91–12)..... Feb. 22, 1991.
FL90–13 (FL91–13)..... Feb. 22, 1991.
FL90–14 (FL91–14)..... Feb. 22, 1991.
FL90–15 (FL91–15)..... Feb. 22, 1991.
FL90–16 (FL91–16)..... Feb. 22, 1991.
FL90–17 (FL91–17)..... Feb. 22, 1991.
FL90–18 (FL91–18)..... Feb. 22, 1991.
FL90–19 (FL91–19)..... Feb. 22, 1991.
FL90–20 (FL91–20)..... Feb. 22, 1991.
FL90–21 (FL91–21)..... Feb. 22, 1991.
FL90–22 (FL91–22)..... Feb. 22, 1991.
FL90–23 (FL91–23)..... Feb. 22, 1991.
FL90–24 (FL91–24)..... Feb. 22, 1991.
FL90–25 (FL91–25)..... Feb. 22, 1991.
FL90–26 (FL91–26)..... Feb. 22, 1991.
FL90–27 (FL91–27)..... Feb. 22, 1991.
FL90–28 (FL91–28)..... Feb. 22, 1991.
FL90–29 (FL91–29)..... Feb. 22, 1991.
FL90–30 (FL91–30)..... Feb. 22, 1991.
FL90–31 (FL91–31)..... Feb. 22, 1991.
FL90–32 (FL91–32)..... Feb. 22, 1991.
FL90–33 (FL91–33)..... Feb. 22, 1991.
FL90–34 (FL91–34)..... Feb. 22, 1991.
FL90–35 (FL91–35)..... Feb. 22, 1991.
FL90–36 (FL91–36)..... Feb. 22, 1991.
FL90–37 (FL91–37)..... Feb. 22, 1991.
FL90–38 (FL91–38)..... Feb. 22, 1991.
FL90–39 (FL91–39)..... Feb. 22, 1991.
FL90–40 (FL91–40)..... Feb. 22, 1991.
FL90–42 (FL91–42)..... Feb. 22, 1991.
FL90–43 (FL91–43)..... Feb. 22, 1991.
FL90–44 (FL91–44)..... Feb. 22, 1991.
FL90–45 (FL91–45)..... Feb. 22, 1991.
FL90–46 (FL91–46)..... Feb. 22, 1991.
Georgia:
GA90–1 (GA91–1)..... Feb. 22, 1991.
GA90–2 (GA91–2)..... Feb. 22, 1991.
GA90–3 (GA91–3)..... Feb. 22, 1991.
GA90–4 (GA91–4)..... Feb. 22, 1991.
GA90–5 (GA91–5)..... Feb. 22, 1991.
GA90–6 (GA91–6)..... Feb. 22, 1991.
GA90–7 (GA91–7)..... Feb. 22, 1991.
GA90–8 (GA91–8)..... Feb. 22, 1991.
GA90–9 (GA91–9)..... Feb. 22, 1991.
GA90–10 (GA91–10)..... Feb. 22, 1991.
GA90–11 (GA91–11)..... Feb. 22, 1991.
GA90–12 (GA91–12)..... Feb. 22, 1991.
GA90–13 (GA91–13)..... Feb. 22, 1991.
GA90–14 (GA91–14)..... Feb. 22, 1991.
GA90–15 (GA91–15)..... Feb. 22, 1991.
GA90–16 (GA91–16)..... Feb. 22, 1991.
GA90–17 (GA91–17)..... Feb. 22, 1991.
GA90–18 (GA91–18)..... Feb. 22, 1991.
GA90–19 (GA91–19)..... Feb. 22, 1991.
GA90–20 (GA91–20)..... Feb. 22, 1991.
GA90–21 (GA91–21)..... Feb. 22, 1991.
GA90–22 (GA91–22)..... Feb. 22, 1991.
GA90–23 (GA91–23)..... Feb. 22, 1991.
GA90–24 (GA91–24)..... Feb. 22, 1991.
GA90–25 (GA91–25)..... Feb. 22, 1991.
GA90–26 (GA91–26)..... Feb. 22, 1991.
GA90–27 (GA91–27)..... Feb. 22, 1991.
GA90–28 (GA91–28)..... Feb. 22, 1991.
GA90–29 (GA91–29)..... Feb. 22, 1991.
GA90–30 (GA91–30)..... Feb. 22, 1991.
GA90–31 (GA91–31)..... Feb. 22, 1991.
GA90–32 (GA91–32)..... Feb. 22, 1991.
GA90–33 (GA91–33)..... Feb. 22, 1991.
GA90–34 (GA91–34)..... Feb. 22, 1991.
GA90–35 (GA91–35)..... Feb. 22, 1991.
GA90–36 (GA91–36)..... Feb. 22, 1991.
GA90–37 (GA91–37)..... Feb. 22, 1991.
GA90–38 (GA91–38)..... Feb. 22, 1991.
Guam:
GU90–1 (GU91–1)..... Feb. 22, 1991.
Hawaii:
HI90–1 (HI91–1)..... Feb. 22, 1991.
Idaho:
ID90–1 (ID91–1)..... Feb. 22, 1991.
ID90–2 (ID91–2)..... Feb. 22, 1991.
ID90–3 (ID91–3)..... Feb. 22, 1991.
ID90–4 (ID91–4)..... Feb. 22, 1991.
ID90–5 (ID91–5)..... Feb. 22, 1991.
Illinois:
IL90–1 (IL91–1)..... Feb. 22, 1991.
IL90–2 (IL91–2)..... Feb. 22, 1991.
IL90–3 (IL91–3)..... Feb. 22, 1991.
IL90–4 (IL91–4)..... Feb. 22, 1991.
IL90–5 (IL91–5)..... Feb. 22, 1991.
IL90–6 (IL91–6)..... Feb. 22, 1991.
IL90–7 (IL91–7)..... Feb. 22, 1991.
IL90–8 (IL91–8)..... Feb. 22, 1991.
IL90–9 (IL91–9)..... Feb. 22, 1991.
IL90–10 (IL91–10)..... Feb. 22, 1991.
IL90–11 (IL91–11)..... Feb. 22, 1991.
IL90–12 (IL91–12)..... Feb. 22, 1991.
IL90–13 (IL91–13)..... Feb. 22, 1991.
IL90–14 (IL91–14)..... Feb. 22, 1991.
IL90–15 (IL91–15)..... Feb. 22, 1991.
IL90–16 (IL91–16)..... Feb. 22, 1991.
IL90–17 (IL91–17)..... Feb. 22, 1991.
IL90–18 (IL91–18)..... Feb. 22, 1991.
IL90–19 (IL91–19)..... Feb. 22, 1991.
Indiana:
IN90–1 (IN91–1)..... Feb. 22, 1991.
IN90–2 (IN91–2)..... Feb. 22, 1991.
IN90–3 (IN91–3)..... Feb. 22, 1991.
IN90–4 (IN91–4)..... Feb. 22, 1991.
IN90–5 (IN91–5)..... Feb. 22, 1991.
IN90–6 (IN91–6)..... Feb. 22, 1991.
IN90–7 (IN91–7)..... Feb. 22, 1991.
IN90–8 (IN91–8)..... Feb. 22, 1991.
IN90–9 (IN91–9)..... Feb. 22, 1991.
IN90–10 (IN91–10)..... Feb. 22, 1991.
IN90–11 (IN91–11)..... Feb. 22, 1991.
IN90–12 (IN91–12)..... Feb. 22, 1991.
IN90–13 (IN91–13)..... Feb. 22, 1991.
IN90–14 (IN91–14)..... Feb. 22, 1991.
IN90–15 (IN91–15)..... Feb. 22, 1991.
Iowa:
IA90–1 (IA91–1)..... Feb. 22, 1991.
IA90–2 (IA91–2)..... Feb. 22, 1991.
IA90–3 (IA91–3)..... Feb. 22, 1991.
IA90–4 (IA91–4)..... Feb. 22, 1991.
IA90–5 (IA91–5)..... Feb. 22, 1991.
IA90–6 (IA91–6)..... Feb. 22, 1991.
IA90–7 (IA91–7)..... Feb. 22, 1991.
IA90–8 (IA91–8)..... Feb. 22, 1991.
IA90–9 (IA91–9)..... Feb. 22, 1991.
IA90–10 (IA91–10)..... Feb. 22, 1991.
IA90–11 (IA91–11)..... Feb. 22, 1991.
IA90–12 (IA91–12)..... Feb. 22, 1991.
IA90–13 (IA91–13)..... Feb. 22, 1991.
IA90–14 (IA91–14)..... Feb. 22, 1991.
Kansas:
KS90–1 (KS91–1)..... Feb. 22, 1991.
KS90–2 (KS91–2)..... Feb. 22, 1991.
KS90–3 (KS91–3)..... Feb. 22, 1991.
KS90–4 (KS91–4)..... Feb. 22, 1991.
KS90–5 (KS91–5)..... Feb. 22, 1991.
KS90–6 (KS91–6)..... Feb. 22, 1991.
KS90–7 (KS91–7)..... Feb. 22, 1991.
KS90–8 (KS91–8)..... Feb. 22, 1991.
KS90–9 (KS91–9)..... Feb. 22, 1991.
KS90–10 (KS91–10)..... Feb. 22, 1991.
KS90–11 (KS91–11)..... Feb. 22, 1991.
Kentucky:
KY90–1 (KY91–1)..... Feb. 22, 1991.
KY90–2 (KY91–2)..... Feb. 22, 1991.
KY90–3 (KY91–3)..... Feb. 22, 1991.
KY90–4 (KY91–4)..... Feb. 22, 1991.
KY90–5 (KY91–5)..... Feb. 22, 1991.
KY90–6 (KY91–6)..... Feb. 22, 1991.
KY90–7 (KY91–7)..... Feb. 22, 1991.
KY90–8 (KY91–8)..... Feb. 22, 1991.
KY90–9 (KY91–9)..... Feb. 22, 1991.
KY90–10 (KY91–10)..... Feb. 22, 1991.
KY90–11 (KY91–11)..... Feb. 22, 1991.
KY90–12 (KY91–12)..... Feb. 22, 1991.
KY90–13 (KY91–13)..... Feb. 22, 1991.
KY90–14 (KY91–14)..... Feb. 22, 1991.
KY90–15 (KY91–15)..... Feb. 22, 1991.
KY90–16 (KY91–16)..... Feb. 22, 1991.
KY90–17 (KY91–17)..... Feb. 22, 1991.
KY90–18 (KY91–18)..... Feb. 22, 1991.
KY90–19 (KY91–19)..... Feb. 22, 1991.
KY90–20 (KY91–20)..... Feb. 22, 1991.
KY90–21 (KY91–21)..... Feb. 22, 1991.
KY90–22 (KY91–22)..... Feb. 22, 1991.
KY90–23 (KY91–23)..... Feb. 22, 1991.
KY90–24 (KY91–24)..... Feb. 22, 1991.
KY90–25 (KY91–25)..... Feb. 22, 1991.
KY90–26 (KY91–26)..... Feb. 22, 1991.
KY90–27 (KY91–27)..... Feb. 22, 1991.
KY90–28 (KY91–28)..... Feb. 22, 1991.
KY90–29 (KY91–29)..... Feb. 22, 1991.
Louisiana:
LA90–1 (LA91–1)..... Feb. 22, 1991.
LA90–2 (LA91–2)..... Feb. 22, 1991.
LA90–3 (LA91–3)..... Feb. 22, 1991.
LA90–4 (LA91–4)..... Feb. 22, 1991.
LA90–5 (LA91–5)..... Feb. 22, 1991.
LA90–6 (LA91–6)..... Feb. 22, 1991.
LA90–7 (LA91–7)..... Feb. 22, 1991.
LA90–8 (LA91–8)..... Feb. 22, 1991.
LA90–9 (LA91–9)..... Feb. 22, 1991.
Maine:
ME90–1 (ME91–1)..... Feb. 22, 1991.
ME90–2 (ME91–2)..... Feb. 22, 1991.
ME90–3 (ME91–3)..... Feb. 22, 1991.
Maryland:
MD90–1 (MD91–1)..... Feb. 22, 1991.
MD90–2 (MD91–2)..... Feb. 22, 1991.
MD90–3 (MD91–3)..... Feb. 22, 1991.
MD90–4 (MD91–4)..... Feb. 22, 1991.
MD90–5 (MD91–5)..... Feb. 22, 1991.
MD90–6 (MD91–6)..... Feb. 22, 1991.
MD90–7 (MD91–7)..... Feb. 22, 1991.
MD90–8 (MD91–8)..... Feb. 22, 1991.
MD90–9 (MD91–9)..... Feb. 22, 1991.
MD90–10 (MD91–10)..... Feb. 22, 1991.
MD90–11 (MD91–11)..... Feb. 22, 1991.
MD90–12 (MD91–12)..... Feb. 22, 1991.
MD90–13 (MD91–13)..... Feb. 22, 1991.
MD90–14 (MD91–14)..... Feb. 22, 1991.
MD90–15 (MD91–15)..... Feb. 22, 1991.
MD90–16 (MD91–16)..... Feb. 22, 1991.
MD90–17 (MD91–17)..... Feb. 22, 1991.
MD90–18 (MD91–18)..... Feb. 22, 1991.
MD90–19 (MD91–19)..... Feb. 22, 1991.
MD90–20 (MD91–20)..... Feb. 22, 1991.
MD90–21 (MD91–21)..... Feb. 22, 1991.
MD90–22 (MD91–22)..... Feb. 22, 1991.
Massachusetts:
MA90–1 (MA91–1)..... Feb. 22, 1991.

MA90-2 (MA91-2)	Feb. 22, 1991.
MA90-3 (MA91-3)	Feb. 22, 1991.
MA90-4 (MA91-4)	Feb. 22, 1991.
MA90-5 (MA91-5)	Feb. 22, 1991.
Michigan:	
MI90-1 (MI91-1)	Feb. 22, 1991.
MI90-2 (MI91-2)	Feb. 22, 1991.
MI90-3 (MI91-3)	Feb. 22, 1991.
MI90-4 (MI91-4)	Feb. 22, 1991.
MI90-5 (MI91-5)	Feb. 22, 1991.
MI90-6 (MI91-6)	Feb. 22, 1991.
MI90-7 (MI91-7)	Feb. 22, 1991.
MI90-8 (MI91-8)	Feb. 22, 1991.
MI90-9 (MI91-9)	Feb. 22, 1991.
MI90-10 (MI91-10)	Feb. 22, 1991.
MI90-11 (MI91-11)	Feb. 22, 1991.
MI90-12 (MI91-12)	Feb. 22, 1991.
MI90-13 (MI91-13)	Feb. 22, 1991.
MI90-14 (MI91-14)	Feb. 22, 1991.
MI90-15 (MI91-15)	Feb. 22, 1991.
MI90-16 (MI91-16)	Feb. 22, 1991.
MI90-17 (MI91-17)	Feb. 22, 1991.
MI90-18 (MI91-18)	Feb. 22, 1991.
MI90-19 (MI91-19)	Feb. 22, 1991.
MI90-20 (MI91-20)	Feb. 22, 1991.
Minnesota:	
MN90-1 (MN91-1)	Feb. 22, 1991.
MN90-2 (MN91-2)	Feb. 22, 1991.
MN90-3 (MN91-3)	Feb. 22, 1991.
MN90-4 (MN91-4)	Feb. 22, 1991.
MN90-5 (MN91-5)	Feb. 22, 1991.
MN90-6 (MN91-6)	Feb. 22, 1991.
MN90-7 (MN91-7)	Feb. 22, 1991.
MN90-8 (MN91-8)	Feb. 22, 1991.
MN90-9 (MN91-9)	Feb. 22, 1991.
MN90-10 (MN91-10)	Feb. 22, 1991.
MN90-11 (MN91-11)	Feb. 22, 1991.
MN90-12 (MN91-12)	Feb. 22, 1991.
MN90-13 (MN91-13)	Feb. 22, 1991.
MN90-14 (MN91-14)	Feb. 22, 1991.
MN90-15 (MN91-15)	Feb. 22, 1991.
MN90-16 (MN91-16)	Feb. 22, 1991.
Mississippi:	
MS90-1 (MS91-1)	Feb. 22, 1991.
MS90-2 (MS91-2)	Feb. 22, 1991.
MS90-3 (MS91-3)	Feb. 22, 1991.
MS90-4 (MS91-4)	Feb. 22, 1991.
MS90-5 (MS91-5)	Feb. 22, 1991.
MS90-6 (MS91-6)	Feb. 22, 1991.
MS90-7 (MS91-7)	Feb. 22, 1991.
MS90-8 (MS91-8)	Feb. 22, 1991.
MS90-9 (MS91-9)	Feb. 22, 1991.
MS90-10 (MS91-10)	Feb. 22, 1991.
MS90-11 (MS91-11)	Feb. 22, 1991.
MS90-12 (MS91-12)	Feb. 22, 1991.
MS90-13 (MS91-13)	Feb. 22, 1991.
MS90-14 (MS91-14)	Feb. 22, 1991.
MS90-15 (MS91-15)	Feb. 22, 1991.
MS90-16 (MS91-16)	Feb. 22, 1991.
MS90-17 (MS91-17)	Feb. 22, 1991.
MS90-18 (MS91-18)	Feb. 22, 1991.
MS90-19 (MS91-19)	Feb. 22, 1991.
MS90-20 (MS91-20)	Feb. 22, 1991.
MS90-21 (MS91-21)	Feb. 22, 1991.
MS90-22 (MS91-22)	Feb. 22, 1991.
MS90-23 (MS91-23)	Feb. 22, 1991.
MS90-24 (MS91-24)	Feb. 22, 1991.
MS90-25 (MS91-25)	Feb. 22, 1991.
MS90-26 (MS91-26)	Feb. 22, 1991.
MS90-27 (MS91-27)	Feb. 22, 1991.
Missouri:	
MO90-1 (MO91-1)	Feb. 22, 1991.
MO90-2 (MO91-2)	Feb. 22, 1991.
MO90-3 (MO91-3)	Feb. 22, 1991.
MO90-4 (MO91-4)	Feb. 22, 1991.
MO90-5 (MO91-5)	Feb. 22, 1991.
MO90-6 (MO91-6)	Feb. 22, 1991.
MO90-7 (MO91-7)	Feb. 22, 1991.
MO90-8 (MO91-8)	Feb. 22, 1991.
MO90-9 (MO91-9)	Feb. 22, 1991.
MO90-10 (MO91-10)	Feb. 22, 1991.
MO90-11 (MO91-11)	Feb. 22, 1991.
MO90-12 (MO91-12)	Feb. 22, 1991.
Montana:	
MT90-1 (MT91-1)	Feb. 22, 1991.
MT90-2 (MT91-2)	Feb. 22, 1991.
MT90-3 (MT91-3)	Feb. 22, 1991.
MT90-4 (MT91-4)	Feb. 22, 1991.
MT90-5 (MT91-5)	Feb. 22, 1991.
MT90-6 (MT91-6)	Feb. 22, 1991.
MT90-7 (MT91-7)	Feb. 22, 1991.
MT90-8 (MT91-8)	Feb. 22, 1991.
Nebraska:	
NE90-1 (NE91-1)	Feb. 22, 1991.
NE90-2 (NE91-2)	Feb. 22, 1991.
NE90-3 (NE91-3)	Feb. 22, 1991.
NE90-4 (NE91-4)	Feb. 22, 1991.
NE90-5 (NE91-5)	Feb. 22, 1991.
NE90-6 (NE91-6)	Feb. 22, 1991.
NE90-7 (NE91-7)	Feb. 22, 1991.
NE90-8 (NE91-8)	Feb. 22, 1991.
NE90-9 (NE91-9)	Feb. 22, 1991.
NE90-10 (NE91-10)	Feb. 22, 1991.
NE90-11 (NE91-11)	Feb. 22, 1991.
NE90-12 (NE91-12)	Feb. 22, 1991.
NE90-13 (NE91-13)	Feb. 22, 1991.
Nevada:	
NV90-1 (NV91-1)	Feb. 22, 1991.
NV90-2 (NV91-2)	Feb. 22, 1991.
NV90-3 (NV91-3)	Feb. 22, 1991.
NV90-4 (NV91-4)	Feb. 22, 1991.
NV90-5 (NV91-5)	Feb. 22, 1991.
New Hampshire:	
NH90-1 (NH91-1)	Feb. 22, 1991.
NH90-2 (NH91-2)	Feb. 22, 1991.
NH90-3 (NH91-3)	Feb. 22, 1991.
NH90-4 (NH91-4)	Feb. 22, 1991.
New Jersey:	
NJ90-1 (NJ91-1)	Feb. 22, 1991.
NJ90-2 (NJ91-2)	Feb. 22, 1991.
NJ90-3 (NJ91-3)	Feb. 22, 1991.
NJ90-4 (NJ91-4)	Feb. 22, 1991.
NJ90-5 (NJ91-5)	Feb. 22, 1991.
NJ90-6 (NJ91-6)	Feb. 22, 1991.
NJ90-7 (NJ91-7)	Feb. 22, 1991.
New Mexico:	
NM90-1 (NM91-1)	Feb. 22, 1991.
NM90-2 (NM91-2)	Feb. 22, 1991.
NM90-3 (NM91-3)	Feb. 22, 1991.
NM90-4 (NM91-4)	Feb. 22, 1991.
New York:	
NY90-1 (NY91-1)	Feb. 22, 1991.
NY90-2 (NY91-2)	Feb. 22, 1991.
NY90-3 (NY91-3)	Feb. 22, 1991.
NY90-4 (NY91-4)	Feb. 22, 1991.
NY90-5 (NY91-5)	Feb. 22, 1991.
NY90-6 (NY91-6)	Feb. 22, 1991.
NY90-7 (NY91-7)	Feb. 22, 1991.
NY90-8 (NY91-8)	Feb. 22, 1991.
NY90-9 (NY91-9)	Feb. 22, 1991.
NY90-10 (NY91-10)	Feb. 22, 1991.
NY90-11 (NY91-11)	Feb. 22, 1991.
NY90-12 (NY91-12)	Feb. 22, 1991.
NY90-13 (NY91-13)	Feb. 22, 1991.
NY90-14 (NY91-14)	Feb. 22, 1991.
NY90-15 (NY91-15)	Feb. 22, 1991.
NY90-17 (NY91-17)	Feb. 22, 1991.
NY90-18 (NY91-18)	Feb. 22, 1991.
NY90-19 (NY91-19)	Feb. 22, 1991.
NY90-20 (NY91-20)	Feb. 22, 1991.
North Carolina:	
NC90-1 (NC91-1)	Feb. 22, 1991.
NC90-2 (NC91-2)	Feb. 22, 1991.
NC90-3 (NC91-3)	Feb. 22, 1991.
NC90-4 (NC91-4)	Feb. 22, 1991.
NC90-5 (NC91-5)	Feb. 22, 1991.
NC90-6 (NC91-6)	Feb. 22, 1991.
NC90-7 (NC91-7)	Feb. 22, 1991.
NC90-8 (NC91-8)	Feb. 22, 1991.
NC90-9 (NC91-9)	Feb. 22, 1991.
NC90-10 (NC91-10)	Feb. 22, 1991.
NC90-11 (NC91-11)	Feb. 22, 1991.
NC90-12 (NC91-12)	Feb. 22, 1991.
NC90-13 (NC91-13)	Feb. 22, 1991.
NC90-14 (NC91-14)	Feb. 22, 1991.
NC90-15 (NC91-15)	Feb. 22, 1991.
NC90-16 (NC91-16)	Feb. 22, 1991.
NC90-17 (NC91-17)	Feb. 22, 1991.
NC90-18 (NC91-18)	Feb. 22, 1991.
NC90-19 (NC91-19)	Feb. 22, 1991.
NC90-20 (NC91-20)	Feb. 22, 1991.
NC90-21 (NC91-21)	Feb. 22, 1991.
NC90-22 (NC91-22)	Feb. 22, 1991.
NC90-23 (NC91-23)	Feb. 22, 1991.
NC90-24 (NC91-24)	Feb. 22, 1991.
NC90-25 (NC91-25)	Feb. 22, 1991.
NC90-26 (NC91-26)	Feb. 22, 1991.
NC90-27 (NC91-27)	Feb. 22, 1991.
NC90-28 (NC91-28)	Feb. 22, 1991.
NC90-29 (NC91-29)	Feb. 22, 1991.
NC90-30 (NC91-30)	Feb. 22, 1991.
NC90-31 (NC91-31)	Feb. 22, 1991.
NC90-32 (NC91-32)	Feb. 22, 1991.
NC90-33 (NC91-33)	Feb. 22, 1991.
North Dakota:	
ND90-1 (ND91-1)	Feb. 22, 1991.
ND90-2 (ND91-2)	Feb. 22, 1991.
ND90-3 (ND91-3)	Feb. 22, 1991.
ND90-4 (ND91-4)	Feb. 22, 1991.
ND90-5 (ND91-5)	Feb. 22, 1991.
Ohio:	
OH90-1 (OH91-1)	Feb. 22, 1991.
OH90-2 (OH91-2)	Feb. 22, 1991.
OH90-3 (OH91-3)	Feb. 22, 1991.
OH90-4 (OH91-4)	Feb. 22, 1991.
OH90-5 (OH91-5)	Feb. 22, 1991.
OH90-6 (OH91-6)	Feb. 22, 1991.
OH90-7 (OH91-7)	Feb. 22, 1991.
OH90-8 (OH91-8)	Feb. 22, 1991.
OH90-9 (OH91-9)	Feb. 22, 1991.
OH90-10 (OH91-10)	Feb. 22, 1991.
OH90-11 (OH91-11)	Feb. 22, 1991.
OH90-12 (OH91-12)	Feb. 22, 1991.
OH90-13 (OH91-13)	Feb. 22, 1991.
OH90-14 (OH91-14)	Feb. 22, 1991.
OH90-15 (OH91-15)	Feb. 22, 1991.
OH90-16 (OH91-16)	Feb. 22, 1991.
OH90-17 (OH91-17)	Feb. 22, 1991.
OH90-18 (OH91-18)	Feb. 22, 1991.
OH90-19 (OH91-19)	Feb. 22, 1991.
OH90-20 (OH91-20)	Feb. 22, 1991.
OH90-21 (OH91-21)	Feb. 22, 1991.
OH90-22 (OH91-22)	Feb. 22, 1991.
OH90-23 (OH91-23)	Feb. 22, 1991.
OH90-24 (OH91-24)	Feb. 22, 1991.
OH90-25 (OH91-25)	Feb. 22, 1991.
OH90-26 (OH91-26)	Feb. 22, 1991.
OH90-27 (OH91-27)	Feb. 22, 1991.
OH90-28 (OH91-28)	Feb. 22, 1991.
OH90-29 (OH91-29)	Feb. 22, 1991.
OH90-30 (OH91-30)	Feb. 22, 1991.
OH90-31 (OH91-31)	Feb. 22, 1991.
OH90-32 (OH91-32)	Feb. 22, 1991.
OH90-33 (OH91-33)	Feb. 22, 1991.
OH90-34 (OH91-34)	Feb. 22, 1991.

OH90-35 (OH91-35)	Feb. 22, 1991.
Oklahoma:	
OK90-1 (OK91-1)	Feb. 22, 1991.
OK90-2 (OK91-2)	Feb. 22, 1991.
OK90-3 (OK91-3)	Feb. 22, 1991.
OK90-4 (OK91-4)	Feb. 22, 1991.
OK90-5 (OK91-5)	Feb. 22, 1991.
OK90-6 (OK91-6)	Feb. 22, 1991.
OK90-7 (OK91-7)	Feb. 22, 1991.
OK90-8 (OK91-8)	Feb. 22, 1991.
OK90-9 (OK91-9)	Feb. 22, 1991.
OK90-10 (OK91-10)	Feb. 22, 1991.
OK90-11 (OK91-11)	Feb. 22, 1991.
OK90-12 (OK91-12)	Feb. 22, 1991.
OK90-13 (OK91-13)	Feb. 22, 1991.
OK90-14 (OK91-14)	Feb. 22, 1991.
OK90-15 (OK91-15)	Feb. 22, 1991.
OK90-16 (OK91-16)	Feb. 22, 1991.
OK90-17 (OK91-17)	Feb. 22, 1991.
OK90-18 (OK91-18)	Feb. 22, 1991.
OK90-19 (OK91-19)	Feb. 22, 1991.
OK90-20 (OK91-20)	Feb. 22, 1991.
Oregon:	
OR90-1 (OR91-1)	Feb. 22, 1991.
OR90-2 (OR91-2)	Feb. 22, 1991.
OR90-3 (OR91-3)	Feb. 22, 1991.
Pennsylvania:	
PA90-1 (PA91-1)	Feb. 22, 1991.
PA90-2 (PA91-2)	Feb. 22, 1991.
PA90-3 (PA91-3)	Feb. 22, 1991.
PA90-4 (PA91-4)	Feb. 22, 1991.
PA90-5 (PA91-5)	Feb. 22, 1991.
PA90-6 (PA91-6)	Feb. 22, 1991.
PA90-7 (PA91-7)	Feb. 22, 1991.
PA90-8 (PA91-8)	Feb. 22, 1991.
PA90-9 (PA91-9)	Feb. 22, 1991.
PA90-10 (PA91-10)	Feb. 22, 1991.
PA90-11 (PA91-11)	Feb. 22, 1991.
PA90-12 (PA91-12)	Feb. 22, 1991.
PA90-13 (PA91-13)	Feb. 22, 1991.
PA90-14 (PA91-14)	Feb. 22, 1991.
PA90-15 (PA91-15)	Feb. 22, 1991.
PA90-16 (PA91-16)	Feb. 22, 1991.
PA90-17 (PA91-17)	Feb. 22, 1991.
PA90-18 (PA91-18)	Feb. 22, 1991.
PA90-19 (PA91-19)	Feb. 22, 1991.
PA90-20 (PA91-20)	Feb. 22, 1991.
PA90-21 (PA91-21)	Feb. 22, 1991.
PA90-22 (PA91-22)	Feb. 22, 1991.
PA90-23 (PA91-23)	Feb. 22, 1991.
PA90-24 (PA91-24)	Feb. 22, 1991.
PA90-25 (PA91-25)	Feb. 22, 1991.
PA90-26 (PA91-26)	Feb. 22, 1991.
Puerto Rico:	
PR90-1 (PR91-1)	Feb. 22, 1991.
PR90-2 (PR91-2)	Feb. 22, 1991.
PR90-3 (PR91-3)	Feb. 22, 1991.
Rhode Island:	
RI90-1 (RI91-1)	Feb. 22, 1991.
South Carolina:	
SC90-1 (SC91-1)	Feb. 22, 1991.
SC90-2 (SC91-2)	Feb. 22, 1991.
SC90-3 (SC91-3)	Feb. 22, 1991.
SC90-4 (SC91-4)	Feb. 22, 1991.
SC90-5 (SC91-5)	Feb. 22, 1991.
SC90-6 (SC91-6)	Feb. 22, 1991.
SC90-7 (SC91-7)	Feb. 22, 1991.
SC90-8 (SC91-8)	Feb. 22, 1991.
SC90-15 (SC91-15)	Feb. 22, 1991.
SC90-16 (SC91-16)	Feb. 22, 1991.
SC90-17 (SC91-17)	Feb. 22, 1991.
SC90-18 (SC91-18)	Feb. 22, 1991.
SC90-19 (SC91-19)	Feb. 22, 1991.
SC90-20 (SC91-20)	Feb. 22, 1991.
SC90-21 (SC91-21)	Feb. 22, 1991.
SC90-22 (SC91-22)	Feb. 22, 1991.
South Dakota:	
SD90-1 (SD91-1)	Feb. 22, 1991.
SD90-2 (SD91-2)	Feb. 22, 1991.
SD90-3 (SD91-3)	Feb. 22, 1991.
SD90-4 (SD91-4)	Feb. 22, 1991.
Tennessee:	
TN90-1 (TN91-1)	Feb. 22, 1991.
TN90-2 (TN91-2)	Feb. 22, 1991.
TN90-3 (TN91-3)	Feb. 22, 1991.
TN90-4 (TN91-4)	Feb. 22, 1991.
TN90-5 (TN91-5)	Feb. 22, 1991.
TN90-6 (TN91-6)	Feb. 22, 1991.
TN90-7 (TN91-7)	Feb. 22, 1991.
TN90-8 (TN91-8)	Feb. 22, 1991.
TN90-9 (TN91-9)	Feb. 22, 1991.
TN90-10 (TN91-10)	Feb. 22, 1991.
TN90-11 (TN91-11)	Feb. 22, 1991.
TN90-12 (TN91-12)	Feb. 22, 1991.
TN90-13 (TN91-13)	Feb. 22, 1991.
TN90-14 (TN91-14)	Feb. 22, 1991.
TN90-15 (TN91-15)	Feb. 22, 1991.
TN90-16 (TN91-16)	Feb. 22, 1991.
TN90-17 (TN91-17)	Feb. 22, 1991.
Texas:	
TX90-1 (TX91-1)	Feb. 22, 1991.
TX90-2 (TX91-2)	Feb. 22, 1991.
TX90-3 (TX91-3)	Feb. 22, 1991.
TX90-4 (TX91-4)	Feb. 22, 1991.
TX90-5 (TX91-5)	Feb. 22, 1991.
TX90-6 (TX91-6)	Feb. 22, 1991.
TX90-7 (TX91-7)	Feb. 22, 1991.
TX90-8 (TX91-8)	Feb. 22, 1991.
TX90-9 (TX91-9)	Feb. 22, 1991.
TX90-10 (TX91-10)	Feb. 22, 1991.
TX90-11 (TX91-11)	Feb. 22, 1991.
TX90-12 (TX91-12)	Feb. 22, 1991.
TX90-13 (TX91-13)	Feb. 22, 1991.
TX90-14 (TX91-14)	Feb. 22, 1991.
TX90-15 (TX91-15)	Feb. 22, 1991.
TX90-16 (TX91-16)	Feb. 22, 1991.
TX90-17 (TX91-17)	Feb. 22, 1991.
TX90-18 (TX91-18)	Feb. 22, 1991.
TX90-19 (TX91-19)	Feb. 22, 1991.
TX90-20 (TX91-20)	Feb. 22, 1991.
TX90-21 (TX91-21)	Feb. 22, 1991.
TX90-22 (TX91-22)	Feb. 22, 1991.
TX91-23 (TX91-23)	Feb. 22, 1991.
TX90-24 (TX91-24)	Feb. 22, 1991.
TX90-25 (TX91-25)	Feb. 22, 1991.
TX90-26 (TX91-26)	Feb. 22, 1991.
TX90-27 (TX91-27)	Feb. 22, 1991.
TX90-28 (TX91-28)	Feb. 22, 1991.
TX90-29 (TX91-29)	Feb. 22, 1991.
TX90-30 (TX91-30)	Feb. 22, 1991.
TX90-31 (TX91-31)	Feb. 22, 1991.
TX90-32 (TX91-32)	Feb. 22, 1991.
TX90-33 (TX91-33)	Feb. 22, 1991.
TX90-34 (TX91-34)	Feb. 22, 1991.
TX90-35 (TX91-35)	Feb. 22, 1991.
TX90-36 (TX91-36)	Feb. 22, 1991.
TX90-37 (TX91-37)	Feb. 22, 1991.
TX90-38 (TX91-38)	Feb. 22, 1991.
TX90-39 (TX91-39)	Feb. 22, 1991.
TX90-40 (TX91-40)	Feb. 22, 1991.
TX90-41 (TX91-41)	Feb. 22, 1991.
TX90-42 (TX91-42)	Feb. 22, 1991.
TX90-43 (TX91-43)	Feb. 22, 1991.
TX90-44 (TX91-44)	Feb. 22, 1991.
TX90-45 (TX91-45)	Feb. 22, 1991.
TX90-46 (TX91-46)	Feb. 22, 1991.
TX90-47 (TX91-47)	Feb. 22, 1991.
TX90-48 (TX91-48)	Feb. 22, 1991.
TX90-49 (TX91-49)	Feb. 22, 1991.
TX90-50 (TX91-50)	Feb. 22, 1991.
TX90-51 (TX91-51)	Feb. 22, 1991.
TX90-52 (TX91-52)	Feb. 22, 1991.
TX90-53 (TX91-53)	Feb. 22, 1991.
TX90-54 (TX91-54)	Feb. 22, 1991.
TX90-55 (TX91-55)	Feb. 22, 1991.
TX90-56 (TX91-56)	Feb. 22, 1991.
TX90-57 (TX91-57)	Feb. 22, 1991.
TX90-58 (TX91-58)	Feb. 22, 1991.
TX90-59 (TX91-59)	Feb. 22, 1991.
TX90-60 (TX91-60)	Feb. 22, 1991.
TX90-61 (TX91-61)	Feb. 22, 1991.
TX90-62 (TX91-62)	Feb. 22, 1991.
TX90-63 (TX91-63)	Feb. 22, 1991.
Utah:	
UT90-1 (UT91-1)	Feb. 22, 1991.
UT90-2 (UT91-2)	Feb. 22, 1991.
UT90-3 (UT91-3)	Feb. 22, 1991.
UT90-4 (UT91-4)	Feb. 22, 1991.
UT90-5 (UT91-5)	Feb. 22, 1991.
UT90-6 (UT91-6)	Feb. 22, 1991.
UT90-7 (UT91-7)	Feb. 22, 1991.
UT90-8 (UT91-8)	Feb. 22, 1991.
UT90-9 (UT91-9)	Feb. 22, 1991.
UT90-10 (UT91-10)	Feb. 22, 1991.
UT90-11 (UT91-11)	Feb. 22, 1991.
UT90-12 (UT91-12)	Feb. 22, 1991.
UT90-13 (UT91-13)	Feb. 22, 1991.
UT90-14 (UT91-14)	Feb. 22, 1991.
UT90-15 (UT91-15)	Feb. 22, 1991.
UT90-16 (UT91-16)	Feb. 22, 1991.
Vermont:	
VT90-1 (VT91-1)	Feb. 22, 1991.
VT90-2 (VT91-2)	Feb. 22, 1991.
Virginia:	
VA90-1 (VA91-1)	Feb. 22, 1991.
VA90-2 (VA91-2)	Feb. 22, 1991.
VA90-3 (VA91-3)	Feb. 22, 1991.
VA90-4 (VA91-4)	Feb. 22, 1991.
VA90-5 (VA91-5)	Feb. 22, 1991.
VA90-6 (VA91-6)	Feb. 22, 1991.
VA90-7 (VA91-7)	Feb. 22, 1991.
VA90-8 (VA91-8)	Feb. 22, 1991.
VA90-9 (VA91-9)	Feb. 22, 1991.
VA90-10 (VA91-10)	Feb. 22, 1991.
VA90-11 (VA91-11)	Feb. 22, 1991.
VA90-12 (VA91-12)	Feb. 22, 1991.
VA90-13 (VA91-13)	Feb. 22, 1991.
VA90-14 (VA91-14)	Feb. 22, 1991.
VA90-15 (VA91-15)	Feb. 22, 1991.
VA90-16 (VA91-16)	Feb. 22, 1991.
VA90-17 (VA91-17)	Feb. 22, 1991.
VA90-18 (VA91-18)	Feb. 22, 1991.
VA90-19 (VA91-19)	Feb. 22, 1991.
VA90-20 (VA91-20)	Feb. 22, 1991.
VA90-21 (VA91-21)	Feb. 22, 1991.
VA90-22 (VA91-22)	Feb. 22, 1991.
VA90-23 (VA91-23)	Feb. 22, 1991.
VA90-24 (VA91-24)	Feb. 22, 1991.
VA90-25 (VA91-25)	Feb. 22, 1991.
VA90-26 (VA91-26)	Feb. 22, 1991.
VA90-27 (VA91-27)	Feb. 22, 1991.
VA90-28 (VA91-28)	Feb. 22, 1991.
VA90-29 (VA91-29)	Feb. 22, 1991.
VA90-30 (VA91-30)	Feb. 22, 1991.
VA90-31 (VA91-31)	Feb. 22, 1991.
VA90-32 (VA91-32)	Feb. 22, 1991.
VA90-33 (VA91-33)	Feb. 22, 1991.
VA90-34 (VA91-34)	Feb. 22, 1991.
VA90-35 (VA91-35)	Feb. 22, 1991.
VA90-36 (VA91-36)	Feb. 22, 1991.
VA90-37 (VA91-37)	Feb. 22, 1991.
VA90-38 (VA91-38)	Feb. 22, 1991.
VA90-39 (VA91-39)	Feb. 22, 1991.
VA90-40 (VA91-40)	Feb. 22, 1991.
VA90-41 (VA91-41)	Feb. 22, 1991.
VA90-42 (VA91-42)	Feb. 22, 1991.

VA90-43 (VA91-43)	Feb. 22, 1991.
VA90-44 (VA91-44)	Feb. 22, 1991.
VA90-45 (VA91-45)	Feb. 22, 1991.
VA90-46 (VA91-46)	Feb. 22, 1991.
VA90-47 (VA91-47)	Feb. 22, 1991.
VA90-48 (VA91-48)	Feb. 22, 1991.
VA90-49 (VA91-49)	Feb. 22, 1991.
VA90-50 (VA91-50)	Feb. 22, 1991.
VA90-51 (VA91-51)	Feb. 22, 1991.
VA90-52 (VA91-52)	Feb. 22, 1991.
VA90-53 (VA91-53)	Feb. 22, 1991.
VA90-54 (VA91-54)	Feb. 22, 1991.
VA90-55 (VA91-55)	Feb. 22, 1991.
VA90-56 (VA91-56)	Feb. 22, 1991.
VA90-57 (VA91-57)	Feb. 22, 1991.
VA90-58 (VA91-58)	Feb. 22, 1991.
VA90-59 (VA91-59)	Feb. 22, 1991.
VA90-60 (VA91-60)	Feb. 22, 1991.
VA90-61 (VA91-61)	Feb. 22, 1991.
VA90-62 (VA91-62)	Feb. 22, 1991.
VA90-63 (VA91-63)	Feb. 22, 1991.
VA90-64 (VA91-64)	Feb. 22, 1991.
VA90-65 (VA91-65)	Feb. 22, 1991.
VA90-66 (VA91-66)	Feb. 22, 1991.
VA90-67 (VA91-67)	Feb. 22, 1991.
VA90-68 (VA91-68)	Feb. 22, 1991.
VA90-69 (VA91-69)	Feb. 22, 1991.
VA90-70 (VA91-70)	Feb. 22, 1991.
Virgin Islands:	
VI90-1 (VI91-1)	Feb. 22, 1991.
VI90-2 (VI91-2)	Feb. 22, 1991.
Washington:	
WA90-1 (WA91-1)	Feb. 22, 1991.
WA90-2 (WA91-2)	Feb. 22, 1991.
WA90-3 (WA91-3)	Feb. 22, 1991.
WA90-4 (WA91-4)	Feb. 22, 1991.
WA90-5 (WA91-5)	Feb. 22, 1991.
WA90-6 (WA91-6)	Feb. 22, 1991.
WA90-7 (WA91-7)	Feb. 22, 1991.
WA90-8 (WA91-8)	Feb. 22, 1991.
WA90-9 (WA91-9)	Feb. 22, 1991.
West Virginia:	
WV90-1 (WV91-1)	Feb. 22, 1991.
WV90-2 (WV91-2)	Feb. 22, 1991.
WV90-3 (WV91-3)	Feb. 22, 1991.
Wisconsin:	
WI90-1 (WI91-1)	Feb. 22, 1991.
WI90-2 (WI91-2)	Feb. 22, 1991.
WI90-3 (WI91-3)	Feb. 22, 1991.
WI90-4 (WI91-4)	Feb. 22, 1991.
WI90-5 (WI91-5)	Feb. 22, 1991.
WI90-6 (WI91-6)	Feb. 22, 1991.
WI90-7 (WI91-7)	Feb. 22, 1991.
WI90-8 (WI91-8)	Feb. 22, 1991.
WI90-9 (WI91-9)	Feb. 22, 1991.
WI90-10 (WI91-10)	Feb. 22, 1991.
WI90-11 (WI91-11)	Feb. 22, 1991.
WI90-12 (WI91-12)	Feb. 22, 1991.
WI90-13 (WI91-13)	Feb. 22, 1991.
WI90-14 (WI91-14)	Feb. 22, 1991.
WI90-15 (WI91-15)	Feb. 22, 1991.
WI90-16 (WI91-16)	Feb. 22, 1991.
WI90-17 (WI91-17)	Feb. 22, 1991.
Wyoming:	
WY90-1 (WY91-1)	Feb. 22, 1991.
WY90-2 (WY91-2)	Feb. 22, 1991.
WY90-3 (WY91-3)	Feb. 22, 1991.
WY90-4 (WY91-4)	Feb. 22, 1991.

Modifications to General Wage Determination Decisions

Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia, GA91-3 (Feb. 22, 1991). p. 223, p.225.
New Jersey, NJ91-3 (Feb. 22, 1991). p. 721, p. 724.

Volume II

Indiana, IN91-6 (Feb. 22, 1991). p. 315, pp. 316, 321.
Minnesota, MN91-15 (Feb. 22, 1991). p. 637, pp. 638, 647.
Nebraska, NE91-2 (Feb. 22, 1991). p. 749, pp. 750, 751.
New Mexico, NM91-1 (Feb. 22, 1991). p. 778, pp. 780–784, 789–790.
Ohio, OH91-35 (Feb. 22, 1991). p. 951, p. 952.
Oklahoma, OK91-16 (Feb. 22, 1991). p. 999, p. 1,001.

Volume III

Colorado:
CO91-1 (Feb. 22, 1991) ..... p. 151, p. 152–153.
CO91-3 (Feb. 22, 1991) ..... p. 163, p. 164.
CO91-5 (Feb. 22, 1991) ..... p. 175, p. 176.
Montana MT91-1 (Feb. 22, 1991). p. 231, pp. 232–234.
Oregon, OR91-1 (Feb. 22, 1991). p. 371, p. 385.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of February 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-4183 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-27-M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume I

Alabama, AL91-33 (Mar. 1, 1991). p. 62a. p.62b.

Volume II

Ohio, OH91-36 (Mar. 1, 1991). p.952a. p.952b.

Volume I

South Carolina:
SC91-9 (Mar. 1, 1991) ..... p.1172a. p.1172b.
SC91-19 (Mar. 1, 1991) ..... p.1172c. p.1172d.
SC91-11 (Mar. 1, 1991) ..... p.1172e. p.1172f.
SC91-12 (Mar. 1, 1991) ..... p.1172g. p.1172h.
SC91-13 (Mar. 1, 1991) ..... p.1172i. p.1172j.
SC91-14 (Mar. 1, 1991) ..... p.1172k. p.1172l.

Modifications to General Wage Determinations Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama, LA91-5 (Feb. 22, 1991). p.9. p.10.
Florida, FL91-17 (Feb. 22, 1991). p.141. p.142.
Pennsylvania:
PA91-5 (Feb. 22, 1991) ..... p.995. p.996.
Virginia:
VA91-31 (Feb. 22, 1991) .... p.1317.
VA91-32 (Feb. 22, 1991) .... p.1319.
VA91-41 (Feb. 22, 1991) .... p.1339.
VA91-47 (Feb. 22, 1991) .... p.1351. .1352.
VA91-48 (Feb. 22, 1991) .... p.1353.
VA91-49 (Feb. 22, 1991) .... p.1355.
VA91-51 (Feb. 22, 1991) .... p.1361.
VA91-53 (Feb. 22, 1991) .... p.1365.
VA91-54 (Feb. 22, 1991) .... p.1367.
VA91-55 (Feb. 22, 1991) .... p.1369. p. 1370
VA91-60 (Feb. 22, 1991) .... p.1381.
VA91-65 (Feb. 22, 1991) .... p.1389.
VA91-70 (Feb. 22, 1991) .... p.1399.

Volume II

Indiana, IN91-6 (Feb. 22, 1991). p.315. p320.
Louisiana, LA91-4 (Feb. 22, 1991). p.399. pp. 402–403.

Volume III

None.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 2nd Day of Feb. 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-4689 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Secretary's Commission on Achieving Necessary Skills; Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on February 20, 1990. The SCANS is to advise the Secretary on national competency guidelines for the skills required of high school graduates for entry into employment. The Commission has the practical task of specifying and quantifying levels of skill's attainment to perform different types of jobs adequately.

TIME AND PLACE: The fifth meeting will be held Friday, March 15, 1991 from 9 a.m. until 5 p.m. in the Ball Room East, Holiday Inn Crowne Plaza, 300 Army/Navy Drive (Crystal City), Arlington, Virginia 22202.

AGENDA: The agenda for the meeting follows:

1. Introduction of meeting agenda
2. Presentation on job analysis findings
3. (Functional) Group discussions on functional skill definitions and minimums
4. Full Commission discussion of functional skill definitions and minimums

Lunch

5. Presentations by The College Board and ETS
6. Presentation on Board
7. Presentation on Assessment
8. General Discussion on Assessment and Board
9. Public Comment
10. Adjourn

PUBLIC PARTICIPATION: The meeting will be open to the public. Time will be set aside for public comments. Seating will be available for the public on a first-come, first-serve basis. Five seats will be reserved for the media. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Arnold Packer, Executive Director, SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Papers received on or before March 5, 1991 will be included in the record of the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Packer, Exec. Dir., SCANS—room C-2318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-4840.

Signed at Washington, DC this 25th day of February, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91-4804 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification; Beaver Creek Coal Co. et al.

The following parties have filed petitions to modify the application of mandatory safety standards under 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Beaver Creek Coal Company, P.O. Box 1378, Price, Utah 84501 has filed a petition (M-91-09-C) to modify the application of 30 CFR 75.1805 (examination of electrical equipment; recording requirements; approved books) to its Trail Mountain No. 9 Mine (I.D. No. 42-01211) located in Emery County, Utah. The petitioner requests modification of the approved books for recording the results of electric equipment examinations.

2. Jim Walter Resources, Inc., 5920 Mud Creek Road, Adger, Alabama 35006 has filed a petition (M-91-10-C) to modify the application of 30 CFR 75.303 (preshift examinations) to its No. 3 Mine (I.D. No. 01-00758) located in Jefferson County, Alabama. The petitioner proposes to remotely monitor seals for methane and carbon monoxide in lieu of an examination by a certified person.

3. Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition (M-91-11-C) to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hamilton No. 2 Mine (I.D. No. 15-02706) located in Union County, Kentucky. Due to hazardous roof conditions, the petitioner proposes to monitor for hazardous conditions outby the seals.

4. Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition (M-91-12-C) to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Galatia Mine 56-1 (I.D. No. 11-02752) located in Saline County, Illinois. The petitioner proposes to use electric nonpermissible motor-driven mine equipment in the longwall recovery area.

5. Trapper Mining, Inc., P.O. Box 187, Craig, Colorado 81626 has filed a petition (M-91-13-C) to modify the application of 30 CFR 77.1304 (blasting agents; special provisions) to its Trapper Mine (I.D. No. 05-02838) located in Moffat County, Colorado. The petitioner requests a modification of the standard to permit the use of fuel oil, blended with recycled oil as a blasting agent.

6. Trent Coal, Inc., R.D. #1, Friedens, Pennsylvania 15541 has filed a petition (M-91-14-C) to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Rice No. 2 Mine (I.D. No. 36-03636) located in Cambria County, Pennsylvania. The petitioner proposes to conduct weekly examinations on both sides of a cave in a section return entry.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 1, 1991. Copies of the petitions are available for inspection at that address.

Dated: February 19, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-4910 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-43-M

Petitions for Modification; Cyprus Empire Corp., et al.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Cyprus Empire Corporation, P.O. Box 68, Craig, Colorado 81265 has filed a petition (M-91-04-C) to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Eagle No. 5 Mine (I.D. No. 05-01370) located in Moffat County, Colorado. The petitioner proposes to operate a submersible pump in a borehole with a modified ground monitor system.

2. Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896 has filed a petition (M-91-06-C) to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its Orient No. 6 Mine (I.D. No. 11-00569) located in Jefferson County, Illinois. The petitioner proposes to operate a diesel powered generator without an earth referenced grounded system.

3. Arch of Kentucky, Inc., P.O. Box 787, Lynch, Kentucky 40855 has filed a petition (M-91-07-C) to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its No. 37 Mine (I.D. No. 15-04670) located in Harland County, Kentucky. The petitioner proposes to use air ventilating belt haulage entries to ventilate active working places.

4. Mid-Continent Resources, Inc., P.O. Box 158, Carbondale, Colorado 81623 has filed a petition (M-91-08-C) to modify the application of 30 CFR 77.1605(k) (berms or guards on elevated roadways) to its Dutch Creek Mine (I.D. No. 05-00301) located in Pitkin County, Colorado. The petitioner proposes to include all roads at mine site in a previously granted petition allowing roadways to be used without berms or guards being provided.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 1, 1990. Copies of the petitions are available for inspection at that address.

Dated: February 1, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-4911 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-90-1]

Gannett Outdoor Companies: Variance Applications

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Grant of variance.

SUMMARY: This notice announces the grant of variance to Gannett Outdoor Companies from the standards prescribed in 29 CFR 1910.27(d)(1)(ii) and 29 CFR 1910.27(d)(2) concerning fixed ladders used in general industry.

DATES: The effective date of the variance is March 1, 1991.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210, Telephone: (202) 523-7193.

Or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 133 Portland Street, 1st Floor, Boston, Massachusetts 02114.
U.S. Department of Labor—OSHA, Federal Office Building, 450 Main Street—room 508, Hartford, Connecticut 06103.
U.S. Department of Labor—OSHA, 201 Varick Street—room 670, New York, New York 10014.
U.S. Department of Labor—OSHA, 500 Route 17 South, Hasbrouck Heights, New Jersey 07604.
U.S. Department of Labor—OSHA, 32nd Floor—room 3244, 230 South Dearborn Street, Chicago, Illinois 60604.
U.S. Department of Labor—OSHA, 2360 East Devon Avenue, suite 1010, Des Plaines, Illinois 60018.
U.S. Department of Labor—OSHA, 525 Griffin Square—room 602, Dallas, Texas 75202.
U.S. Department of Labor—OSHA, 2320 LaBranch Street—room 1103, Houston, Texas 7704.
U.S. Department of Labor—OSHA, 911 Walnut Street—room 406, Kansas City, Missouri 64106.
U.S. Department of Labor—OSHA, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120.
U.S. Department of Labor—OSHA, Federal Building—room 1576, 1961 Stout Street, Denver, Colorado 80294.
U.S. Department of Labor—OSHA, 1244 Speer Boulevard—suite 360, Denver, Colorado 80204.
U.S. Department of Labor—OSHA, 3221 North 16th Street—suite 100, Phoenix, Arizona 85016.

I. Background

Gannett Outdoor Companies, 535 Madison Avenue, New York, New York 10022 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596); 29 U.S.C. 655 and 29 CFR 1905.11 for a variance from the Safety standards prescribed in 29 CFR 1910.27(d)(1)(ii), 1910.27(d)(2) and 1910.27(d)(5). The standards set requirements governing the use of fixed ladders.

The addresses of the places of employment that will be affected by the application are as follows:

Gannett Outdoor Co., Inc., of New Jersey, 185 U.S. Highway 46, Fairfield, NJ 07006.
Gannett Outdoor Co. of Colorado, 4647 Ledyen, Denver, CO 80216.
Gannett Outdoor Co. of Texas, Katy Freeway/1600 Studemont, Houston, TX 77007.
Gannett Outdoor Co. of Kansas City, 2459 Summit Street, Kansas City, MO 64108.
Gannett Outdoor Co. of Connecticut, 119 Water Street, New Haven, CT 06500.
Gannett Outdoor Co. of Kansas City d/b/a, Gannett Outdoor Co. of St. Louis, 6767 N. Hanley Rd., St. Louis, MO 63134.
Gannett Outdoor Co. of Kansas City d/b/a, Gannett Outdoor Co. of Chicago, suite 200, 444 N. Michigan Avenue, Chicago, IL 60611.
Gannett Outdoor Co. of Arizona, 2502 North Black Canyon Highway, P.O. Box 934, Phoenix, AZ 85009.

The **Federal Register** notice of June 29, 1990 (55 FR 26796) notified the public that OSHA had received the variance application and invited interested persons, including affected employers and employees, to submit written comments, data, views and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the variance application. There were five responses to the **Federal Register** notice of Gannett Outdoor Companies application (Docket No. Gannett 1-90—Exhibits 3-1 through 3-5). The issues raised by the commentators are discussed below. No request for a hearing was received.

Where variance requests involve multiple locations, including one or more in a state with an approved occupational safety and health plan, the variance is granted under the Federal/State Reciprocity Agreement established at 29 CFR 1905.14(b)(3) and under the provisions of 29 CFR 1952.9. Under those provisions, a permanent variance granted by Federal OSHA takes effect in state plan states insofar as the pertinent state standards are identical to those promulgated by Federal OSHA.

The Gannett Outdoor Companies variance request involved multiple locations, including the States of Arizona, California and Michigan, which have OSHA-approved occupational safety and health plans. Our review of the state plans revealed that only the State of Arizona has fixed ladder standards identical to the Federal standards. The state of California exempts cages or wells on "Fixed ladders on outdoor advertising structures, where employees wear and use approved safety vbelts and lanyards which can be utilized if a rest period is required" (section 3277, title 8-Register 85, No. 9-3-2-85). On the other hand, the State of Michigan requires that a cage, well or ladder safety device be provided on a fixed ladder between 20 and 30 feet in unbroken length (Michigan Administrative Code Rule 408.10351(1)). For the purpose of its Michigan operations, the applicant would request a variance directly from the state of Michigan.

II. Facts

Gannett Outdoor Companies, the applicant, is engaged in the outdoor advertising business where it uses billboard-type signs, usually on their own structural supports, that in most cases are placed well above the ground level. Employees must climb to a work platform at the bottom of the sign face to change the message on the sign or to perform maintenance.

While on the work platform, employees wear a safety belt or harness with a lanyard attached to a cable or other anchorage fastened to the sign structure, as a positive means of fall prevention. The applicant uses two types of signs. The smaller signs, known as "posters," have a sign face of 12' x 25' on which preprinted messages are posted. The larger signs are known as "bulletins" or "rotary bulletins." A bulletin has a sign face of 14' x 48', which consists of prepainted plywood panels that are attached to the sign

structure, usually with the assistance of a boom truck. The advertising messages on both types of signs are changed at regular intervals. Posters are usually changed monthly and bulletins are usually "rotated" every two months. Gannett Outdoor Companies currently maintains approximately 17,361 posters and 4,366 bulletins.

Where the work platform is low (usually 15 feet or less above grade), workers use only portable aluminum ladders to gain access to the platform. On platforms more than 15 feet above grade, there is usually a metal ladder permanently attached to the sign structure. To restrict public access to work platforms, the fixed ladder on most signs starts at 12 to 15 feet above grade. Employees climb a portable ladder to reach the bottom of the fixed ladder and then climb the fixed ladder up to the work platform. This means of ascent, with combined use of fixed and portable ladders shall hereinafter be referred to as a combination ladder. The average height above grade of the applicant's sign platforms is approximately 23 feet.

The applicant requests a variance from the following standards:

29 CFR 1910.27(d)(1)(ii), which requires that cages and wells be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet;

29 CFR 1910.27(d)(2), which states in part that when ladders are used to ascend to heights exceeding 20 feet, landing platforms shall be provided for each 30 feet of height or fraction thereof, except that, where no cage, wells or ladder safety device is provided, landing platforms shall be provided for each 20 feet of height or fraction thereof.

29 CFR 1910.27(d)(5), which states that ladder safety devices may be used on towers, water tanks and chimney ladders over 20 feet in unbroken lenth in lieu of cage protection. No landing platform is required when ladder safety devices are used.

The purpose of the cage, well and landing platform standards is to require an appropriate means of rest should a climber become fatigued. The ladder safety device is designed either to prevent accidental falls from ladders or to limit the length of such falls.

In lieu of installing cages or wells and landing platforms as required by 29 CFR 1910.27(d)(1)(ii) and 29 CFR 1910.27(d)(2), respectively, the applicant proposes to equip a qualified climber with an 18-inch lanyard attached to a safety belt or harness for climbs either or fixed ladders up to 50 feet or a height up to 65 feet from grade. A qualified climber (as defined in the proposed § 1910.21(b), April 10, 1990) is "An employee who by virtue of physical capabilities, training, work experience and job assignment, is authorized by the employer to routinely climb fixed ladders, step belts or similar climbing device attached to structures." The applicant states that the 18-inch lanyard provides a ladder rest attachment which is as safe for the climber as the use of a cage, well or landing platform. For ladders on which the length of climb exceeds 50 feet or which ascend to heights exceeding 65 feet from grade, whichever is less, the applicant proposes to have a climber use a ladder safety device in lieu of cages, wells or landing platforms.

Moreover, the applicant will continue to require all of its employees who routinely climb fixed ladders to undergo training in climbing and demostrate the physical capability to perform the necessary climbs safely. The applicant will permit only workers who satisfy the "qualified climber" requirements regarding training and physical ability, found in the proposed revision of 29 CFR part 1910, subpart D (proposed § 1910.32(b)(5); April 10, 1990), to climb fixed ladders. According to the applicant, this will result in additional safety, compared to compliance with the existing standards, because of the assurance that qualified climbers have the training and physical ability to climb ladders safely. The use of fixed ladders on outdoor advertising signs is not mandated by any past or current OSHA standard. Therefore, the applicant could substitute the use of portable ladders for climbs up to 60 feet above grade (29 CFR 1910.26(a)(2)(ii)). The applicant states that the practice of using its combination ladders has been and continues to be regarded by the outdoor advertising industry as inherently safer than using portable ladders to reach all sign platforms.

There has never been a safety problem with the applicant's use of combination ladders on outdoor advertising structures. All available accident records indicate that the risk of falls by workers while climbing the fixed ladder portion of its combination ladder is virtually nonexistent. From 1969 to 1977, for example, the three largest outdoor advertising companies in California, with a combined total of 21,000 structures, recorded no falls by employees from fixed ladders. Employees of those three California companies made over 1.5 million climbs during that period without a single fall. The applicant notes that more recent statistics confirm that conclusion. The Gannett Outdoor companies of California, for example, shows no falls from fixed ladders in 1984 to the present. During that period, employees of the Gannett Outdoor Companies of California made over 205,000 climbs. In addition, the records for a recent five year period at Gannett Outdoor companies of Michigan, which has over 3,500 signs, indicate that no employees feel while climbing fixed ladders on sign structures. Thus, the applicant's use of fixed combination ladders, without cages, wells or landing platforms does not appear to present a safety hazard. In support of the application, the applicant has submitted a detailed training program which outlines safe work procedures for, among other things, the use of combination ladders and 18-inch rest lanyards.

III. Comments

In response to the **Federal Register** notice published on June 29, 1990 (50 FR 26797), five comments were received (Docket No. V-90-1, Exhibits 3-1 through 3-5).

In one of the comment letters (Ex. 3-1), the commenters asked OSHA to deny Gannett's application, but the substance of their comment provided some support for the application. First, the commenters did not request that OSHA require the installation of cages or wells on fixed ladders. Second, the commenters advocated the use of ladder safety devices on all fixed ladders and expressed concern that, under the permanent variance, the applicant would discontinue the use of those ladder safety devices already installed on billboard ladders in favor of rest lanyards. OSHA notes that the variance application proposes the use of ladder safety devices in lieu of cages or wells on sign structures which satisfy the height criteria set out in the Facts discussion above. In addition, the applicant has informed OSHA that ladder safety devices have already been installed on some of its billboards and that those devices will not be removed. Finally, the commenters, in effect, agreed with the applicant that while shifting to the use of portable ladders to access the taller signs would not violate current regulations, such a change would present a greater hazard for employees. One of the commenters who was involved in the preparation of Ex. 3-1 restated the points discussed above in a comment (Ex. 10-214 in Docket S-041) on Issue #1 (Application of Qualified Climber concept to Outdoor Advertising Industry and Use of Rest Lanyards by Qualified Climbers) of the hearing notice for proposed subpart D.

Two of the respondents (Exs. 3-2 and 3-3) did not discuss the merits of the variance application, but supported the comments presented above (Ex. 3-1). One of the respondents (Ex. 3-3) urged OSHA to deny the variance application based on the general safety concerns expressed by the commentators in Ex 3-1.

One commenter (Ex. 3-4) objected to the granting of the variance and recommended a ladder safety device as a means of protecting employees from fall hazards while climbing fixed ladders to access working platforms. The commenter also addressed general billboard safety issues rather than matters pertinent to the variance application. These issues will be addressed in the above-mentioned subpart D rulemaking.

Another commenter (Ex. 3-5) stated "the use of a portable ladder to make a mid-air transfer to a fixed ladder without even the benefit of a landing platform should be discouraged." Regarding the use of an 18-inch rest lanyard, the commenter stated that the variance would not offer protection equal to or better than that provided through compliance with the existing standards. In particular, the commenter stated:

> A ladder cage is always in place providing protection without effort by the employee. It provides protection should an employee fall backwards allowing them a chance to catch themselves and get another grip on the ladder. The proposed eighteen-inch lanyard would not protect the employee who loses their grip or missteps on the ladder.

The commenter also stated that compared to a ladder safety device, which would protect the employee by arresting a fall, "there is no reason to consider this variance request equal to exisitng standards nor better." OSHA notes, however, that existing 29 CFR 1910.27(d)(5), which regulates the use of ladder safety devices, does not provide for the use of ladder safety devices on billboard ladders.

Moreover, cage and well installation can be hazardous. As one member of the California OSHA Advisory Committee put it in the "minutes" of a meeting where the promulgation of California exception to the fixed ladders standard (discussed above) was considered:

> People in the outdoor advertising industry were highly expertise at working from and climbing ladders as would be firemen, linemen, etc. It was recognized that because of the safety belt system that we utilized and that each employee wear a safety belt when working above ground at any height, the outdoor advertising employee had a built in safety that superseded whatever advantage a cage could supply. A cage does not prevent a fall, but merely gives the victim something to bounce off from or become entangled into on the way down.

According to the Outdoor Advertising Association of American, Inc. (OAAA) (Ex. 3-62 in Docket S-041, the walking and working surfaces rulemaking record), only physically qualified climbers are allowed to climb fixed ladders on sign platforms. Workers climb the combination ladders as part of their daily work routine and receive extensive training in their use and maintenance.

Moreover, the OAAA explained:

> The unique elevated access of fixed ladders in the outdoor advertising industry does not lend itself to the use of cages. Pursuant to 29 CFR 1910.27(d)(1)(iv) the bottom of the cage must be at a level not less than seven feet above the point of access. A fixed ladder on a sign structure that is at a height of 25 feet from grade, with an access point of 15 feet from grade, is only 10 feet in length. If the cage requirement applied to that situation, the cage would start only 3 feet from the bottom of the work-platform.

OSHA received testimony supporting the variance application at the public hearing on proposed subpart D from the Sign & Pictorial Painters Local Union 820 (Tr. 9-11-90, p. 57), the OAAA (Tr. 9-11-90, p. 83) and the United Steelworkers of America (Tr. 9-14-90, p. 1387). In addition, the posthearing submission by Penn Advertising, Inc. (Ex. 84) supported the variance application and indicated that Penn's fall protection program for climbers was very similar to that set out in the variance application.

IV. Decision

As noted above, the use of fixed ladders on outdoor advertising signs has never been mandated by OSHA. Therefore, Gannett could have its employees access billboards by complying with existing 29 CFR 1910.25 or 1910.26, using portable extension ladders up to 60 feet in length. The applicant and other members of the outdoor advertising industry have indicated that the use of a combination ladder, as described above, is inherently safer than using only portable ladders to reach all sign platforms. OSHA believes that where the fixed ladder sections of combination ladders extend less than 50 feet or where the height of the platform above grade is less than 65 feet the installation and maintenance of ladder safety devices, cages, wells or landing platforms on those fixed ladders would expose employees to a greater hazard than having climbs performed by qualified climbers equipped with rest lanyards.

The State of California has allowed the use of a rest lanyard in lieu of cages or wells since 1978. As stated above, the California standard does not require that "Fixed ladders on outdoor advertising structures, have a cage or well, where employees use an approved safety belt and lanyard which can be used if a rest period is required."

As noted above, Gannett Outdoor of California shows no falls from fixed ladders during 1984 to the present. During that period workers for Gannett Outdoor of California made over 250,000 climbs. The other accident data indicate that the applicant has never had a problem ensuring the safety of its employees while using combination ladders.

Although the applicant has requested a variance from the ladder safety device requirement in 29 CFR 1910.27(d)(5), such devices are not required on billboard ladders. Therefore, OSHA has determined that a variance from 29 CFR 1910.29(d)(5) is not necessary. However, the Order accompanying this notice requires the applicant to use ladder safety devices to assure the safety of employees climbing fixed ladders at heights over 65 feet from grade or when length of fixed ladder climb is over 50 feet, whichever is less. Moreover, the Order provides that the applicant will maintain and use those ladder safety devices currently installed on its billboard fixed ladders. Based on its review of the record for this proceeding and its evaluation of the potential fall hazards for qualified climbers on combination ladders, OSHA has determined that ladder safety devices need not be installed on fixed ladders which are below the thresholds discussed above.

OSHA has determined that the successful completion of the applicant's training program in conjunction with the use of 18-inch rest lanyards, as set out in the Order below, will permit the applicant's employees to perform the necessary climbs safely.

The Agency notes that, based on existing 29 CFR 1910.27(d)(1)(iv) (which requires that cages extend down a latter to within 7 to 8 feet above the base), if OSHA required installation of cages on billboard fixed ladders, the cages would start between 2 and 3 feet from the bottom of most work platforms. OSHA believes this scenario indicates that application of 29 CFR 1910.27(d)(1)(ii) and (d)(2) to billboard ladders is not appropriate. Therefore, pending completion of the subpart D rulemaking, the Agency will require Gannett to comply with the Order set out below in lieu of complying with the above-referenced standards.

The 50-foot limit on the length of fixed ladders covered by this variance is based on ergonomic data, which indicates that employees can climb 50 feet on a fixed ladder without increased risk of falling due to fatigue. The limit is also based on proposed subpart D (proposed 29 CFR 1910.23(c)(16). The

proposed requirement, which is based on the ANSI standard for fixed ladders, A14.3-1984, section 4.1, provides that the length of continuous climb on a fixed ladder equipped only with a cage or well shall not exceed 50 feet. Insofar as OSHA has concluded that the applicant's alternative means of compliance with the existing fixed ladder standards is equivalent to the use of cages or wells, the Agency believes it is appropriate to set consistent limits on their use.

As part of the Order, the applicant will be required to comply with the provisions for "qualified climbers" set out in proposed subpart D (proposed 29 CFR 1910.32(b)(5)). Compliance with the "qualified climber" provision will ensure that all employees using 18-inch rest lanyards in lieu of cages or wells have been properly trained and are physically capable of climbing safely.

It appears from the application, and supporting data that the use of an 18-inch rest lanyard is as safe as the use of cages, wells, or landing platforms for resting should a climber become fatigued. The applicant has furnished information which indicates that there have been no accidents while using the fixed combination ladders, that the applicant's training program ensures the safety of employees who climb combination ladders, and that only qualified climbers will be allowed to use the 18-inch rest lanyard. Therefore, based on the record discussed above, OSHA has determined that compliance with the terms of the Order set out below, will provide employment and places of employment which are safe and healthful as those which would provided if the applicant were to comply with the requirements of 29 CFR 1910.27(d)(1)(ii) and 29 CFR 19101.27(d)(2).

IV. Order

Pursuant to section 6(d) of the Occupational Safety and Health Act of 1970, the Secretary of Labor's Order No. 1-91 (55 FR 9033) and 29 CFR part 1905, it is ordered that Gannett Outdoor Companies is authorized to comply with the following conditions in lieu of com[illegible]ng with the provisions in 29 CFR 1910.2[illegible](d)(1)(ii) and 1910.27(d)(2).

1. Each employee who climbs combination ladders shall wear a safety belt or body harness equipped with an appropriate 18-inch rest lanyard as a means to tie off to the fixed ladder on lengths of climbs on fixed ladder of up to feet or heights of up to 65 feet from grade.

2. Each employee shall have both hands free of tools or material when climbing or descending a ladder.

3. Each employee who climbs combination ladders where the length of fixed ladder climb exceeds 50 feet or where the ladder ascends to heights exceeding 65 feet from grade shall be protected through the installation of appropriate ladder safety devices for the entire length of fixed ladder climb.

4. Each employee who climb fixed ladders equipped with ladder safety devices shall use those devices properly and shall follow appropriate procedures for inspection and maintenance of those devices.

5. Each employee who routinely climbs fixed ladders shall undergo training and demonstrate the physical capability to safely perform the necessary climbs. These employees shall satisfy the "qualified climber" requirements in proposed 29 CFR 1910.32(b)(5) (proposed subpart D), as follows:

A. Qualified climbers shall be physically capable (demonstrated though observations of actual climbing activities or by a physical examination) of performing the duties which may be assigned to them;

B. Qualified climbers shall have successfully completed a training or apprenticeship program that covered hands-on traning for the safe climbing of ladders or step bolts and shall be retrained as necessary to ensure the necessary skills are maintained;

C. The employer shall ensure through performance observations, and formal classroom or on-the-job training that the qualified climber has the skill to safely perform the climbing;

D. Qualified climbers shall have climbing duties as one of their routine work activities; and

E. Qualified climbers, when reaching their work position, shall be protected by an appropriate fall protection system.

6. All ladder safety devices that are currently installed on Gannett's fixed ladders less than 50 feet in length of climb or which ascend to heights less than 65 feet above grade shall be properly maintained and used by employees.

Effective date: This order shall become effective on March 1, 1991, and shall remain in effect unless otherwise modified or revoked in accordance with section 6(d) of the Occupational Safety and Health Act of 1970.

Signed at Washington, DC on this 25th day of February, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 91-4912 Filed 2-28-91; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Collection of Information Concerning Quality of Performance of Federal Procurement Specialists

AGENCY: Merit Systems Protection Board.

ACTION: Notice of request for OMB approval of a collection of information under the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35 and 5 CFR part 1320.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is seeking approval of OMB to collect information concerning the quality of work performed by persons working as procurement specialists for the Federal Government. As part of its study of the procurement work force, MSPB is seeking approval to collect information concerning the contracting process from businesses which currently provide contracted goods or services to the Government. The purpose of this survey is to obtain information relating to customer satisfaction with both the procurement process and the persons who work for the Government as procurement specialists. A total of 1500 businesses will be randomly selected to participate in the study. The information obtained from this survey will be included as part of an MSPB report to the President and Congress on the quality of the procurement work force. The information will also be used by the Office of Federal Procurement Policy of OMB to develop training plans and chart the future development of this field.

DATES: Comments on this approval should be received on or before April 2, 1991.

ADDRESSES: Send or deliver comments to:

Joseph Lackey, MSPB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., room 3235, Washington, DC 20503

and

Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Ave., NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Dr. John Crum, Office of Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Ave. NW., Washington, DC 20419, (202) 653-8066.

Dated: February 25, 1991

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 91-4830 Filed 2-28-91; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-18]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Aeronautical Facilities.

DATES: March 26, 1991, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, Room 468, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Stein, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2706.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Aeronautical Facilities, chaired by Dr. Renso L. Caporali, is composed of six members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

March 26, 1991

8:30 a.m.—Introduction and Plenary Session.
9:30 a.m.—Programmatic Requirements for Facilities Plans.
1 p.m.—Aeronautical Facilities Revitalization/Fiscal Year 92-97 Construction of Facilities Plan.
3 p.m.—Group Discussion.
4 p.m.—Adjourn.

Dated: February 25, 1991.

Philip D. Waller,

Deputy Director Management Operations Office.

[FR Doc. 91-4858 Filed 2-28-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-19]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: March 26, 1991, 8 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The Committee, chaired by Mr. Phil M. Condit, is comprised of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

March 26, 1991

8 a.m.—Opening Remarks.
8:30 a.m.—Welcome.
8:45 a.m.—Aeronautics Strategy.
11 a.m.—NASA/Aviation Administration Cooperation Update.
12:30 p.m.—NASA/Department of Defense Update.
1:30 p.m.—Status of Current Ad Hoc Activities.
2 p.m.—Discussion of Future Ad Hoc Activities.
3 p.m.—Discussion of Issues and Recommendations from January AAC/Aerospace Research and Technology Subcommittee Meeting.
4 p.m.—Adjourn.

Dated: February 25, 1991.

Philip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-4859 Filed 2-28-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-20]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: March 25, 1991, 9 a.m. to 4:15 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1544).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee (SSAAC) consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Application programs. The Astrophysics Subcommittee provides advice to the Astrophysics Division and to the SSAAC on operation of the Astrophysics Program and on the formulation and implementation of the Astrophysics research strategy. The Subcommittee will meet to discuss the developments since the Decemer 1990 Astrophysics meeting, the Final Report of the Astronomy and Astrophysics Survey Committee published by the National Academy of Sciences (Bahcall Report), and new initiatives. The Subcommittee is chaired by Dr. Irwin Shapiro and is composed of 28 members. The meeting will be open to the public up to the capacity of the room

(approximately 80 people including Subcommittee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda

Monday, March 25

9 a.m.—Introduction, Developments Since December 1990 Meeting.
10 a.m.—Community Perspectives on the Final Report of the Astronomy and Astrophysics Survey Committee (Bahcall Report).
11:15 a.m.—Astrophysics Division Perspective on the Bahcall Report.
1 p.m.—Strategic Discussion/New Initiatives.
4 p.m.—Discussion of Future Meeting Planning.
4:15 p.m.—Adjourn.

Dated: February 26, 1991.

Phillip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-4860 Filed 2-28-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME:

March 11, 1991—2 p.m. to 5 p.m. (optional site visits)
March 12, 1991—8:30 a.m. to 5 p.m.
March 13, 1991—8:30 a.m. to 5 p.m.

PLACE: Park Hyatt Hotel, 800 N. Michigan Avenue, Chicago, Illinois 60611.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 615, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The Commission will discuss issues relating to pediatric HIV disease, HIV disease among adolescents, and issues surrounding the HIV epidemic in Hispanic communities.

Interpreting services are available for deaf people. Please call our TDD number (202) 254-3816 to request services no later than March 6, 1991.

Maureen Byrnes,

Executive Director.

[FR Doc. 91-4845 Filed 2-28-91; 8:45 am]

BILLING CODE 6820-CM-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Establishment

The Assistant Director for Education and Human Resources has determined that the establishment of the Special Emphasis Panel in Research Initiation and Improvement is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.*. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

NAME OF COMMITTEE: Special Emphasis Panel in Research Initiation and Improvement.

PURPOSE: To advise on the merit of special initiative proposals submitted to the Research Initiation and Improvement Division for financial support.

BALANCE MEMBERSHIP PLAN: Membership will be selected on an "as needed" basis in response to specific proposals/sites to be reviewed. About 157 individual panelists will be used each year. Members will be selected for their demonstrated scientific and engineering expertise so as to represent a reasonable balance of capability in the various subfields of the proposals to be reviewed. Consideration will also be given to achieving geographic balance and the enhancing representation for women, minorities, younger and disabled scientists.

RESPONSIBLE NSF OFFICIAL: Dr. Joseph Danek, Director for Research Initiation and Improvement, room 1225, Phone 357-5052, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dated: February 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-4843 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Teacher Preparation and Enhancement; Meetings

The National Science Foundation announces the following meetings:

Site visit teams of the Special Emphasis Panel in Teacher Preparation and Enhancement will conduct meetings at the following locations.

Date	Place and Time
Mar. 5, 1991	Board of Regents Office, Baton Route, LA; 8-5
Mar. 5, 1991	Northeaster Bell Building, Hartford, CT; 8-5
Mar. 5, 1991	Great Southern Hotel, Columbus, OH; 8-5
Mar. 5, 1991	Colonial Inn, Helena, MT; 8-5
Mar. 7, 1991	State Capitol Building, Pierre, SD; 8-5
Mar. 7, 1991	Georgia Power Building, Atlanta, GA; 8-5
Mar. 7, 1991	Texas A & M University, College Station, TX; 8-5
Mar. 12, 1991	Microelectronics Cent. of NC, Research Triangle Park; and NC State Administration Bldg., Raleigh, NC; 8-5
Mar. 12, 1991	Boston Museum of Science, Boston, MA; 8-5
Mar. 12, 1991	Florida Education Center, Tallahassee, FL; 8-5
Mar. 14, 1991	Hotel DuPont, Wilmington, DE; 8-5
Mar. 14, 1991	State Dept of Education, Providence, RI; 8-5
Mar. 14, 1991	University of Nebraska, Lincoln, NE; 8-5

Type of Meeting: Closed.

Contact: Mr. Charles R. Eilber, Program Director, Division of Teacher Preparation and Enhancement, room 504, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7751.

Purpose of Meeting: To provide advice concerning support for Statewide Systemic Initiatives programs.

AGENDA: Review and evaluation of Statewide Systemic Initiatives proposals as part of the selection process of awards.

REASONS FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

REASON FOR LATE NOTICE: The difficulty of arranging for 13 different sites to be visited within a two week period, and finding 41 reviewers with national stature in these fields who also had these dates free to travel.

Dated: February 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc 91-4842 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

Meeting; Cellular Biosciences Special Emphasis Panel

Name: Joint Meeting of Special Emphasis Panels in Cellular and Molecular Biosciences.

Date & time: March 18-19, 1991.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, Conference Room 1242.

Type of meeting: Closed.

Contact persons:

Dr. Eve Ida Barak, Division of Cellular Biosciences, room 321 (202) 357-7474.
Ms. Brenda Flam, Division of Molecular Biosciences, room 325 (202) 357-9400.

Minutes: May be obtained from contact person listed above.

Purpose: To provide advice and recommendations concerning research proposals submitted to the Divisions of Cellular and Molecular Biosciences for Research Planning Grants and Career Advancement Awards FY 1991 competition.

Agenda: Closed—To review and evaluate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: February 25, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-4844 Filed 2-28-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents containing reporting or recordkeeping requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR part 55.

3. The form number if applicable: N/ A.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses and perform a review of applications and reports for simulation facilities submitted to the NRC for approval.

5. Who will be required or asked to report: Licensees and applicants for nuclear power plants, and research and test reactors.

6. An estimate of the number of responses: 3,039.33 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 2,665.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 55 of the NRC's regulations, "Operators' Licenses" specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing of operators for nuclear power plants necessary to promote the health and safety of the public.

ADDRESSES: Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

FOR FURTHER INFORMATION: Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0018), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by the telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 21st day of February 1991.

Patricia G. Norry,

Designated Senior, Official for Information Resources Management.

[FR Doc. 91-4885 Filed 2-28-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors:

The Subcommittee on Improved Light Water Reactors will hold a meeting on March 14 and 15, 1991, at EPRI, 3412 Hillview Avenue, Palo Alto, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, March 14, 1991—8:30 a.m. until the conclusion of business.

Friday, March 15, 1991—8:30 a.m. until the conclusion of business.

The Subcomittee will review NRC staff's Draft Safety Evaluation Reports corresponding to Chapters 6-13 of the EPRI-ALWR Requirements Document for the Evolutionary Designs and other related issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcomittee will then hear presentation by and hold discussions with representatives of EPRI and the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Medhat El-Zeftawy (telephone 301/492-9901) betweeen 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 22, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-4862 Filed 2-28-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-12686 and 030-09761; License Nos. 29-06760-07 and 29-06760-08; EA 90-061]

Radiology-Ultrasound-Nuclear Consultants, PA. Freehold, NJ: Order Imposing a Civil Monetary Penalty

I

Radiology-Ultrasound-Nuclear Consultants, PA. (Licensee) is the holder of byproduct material License Nos. 29-06760-07 and 29-06760-08 issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the Licensee to possess and use byproduct material for both diagnostic and therapeutic procedures in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on March 14, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 13, 1990. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the License had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in a letter dated "June 21-July 10, 1990." In its response, the Licensee: (1) Admitted Violation D (but asserted Violation D is irrelevant); (2) denied Violation A; (3) denied Violation C, in that the Licensee contended that it had recorded daily wipe tests; and (4) neither admitted nor denied Violations B, E.1, E.2, F, G, and H. The Licensee also requested cancellation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated in the Notice, with the exception of Violation E.2, which needed clarification. The NRC staff, as set forth in the appendix to this Order, has determined that: (1) The Licensee violated the NRC requirements associated with Violation E.2 as stated in the Notice; (2) Violation E.2 should be amended for clarification of the violation; and (3) the amendment of Violation E.2 should have no effect on the civil penalty. In addition, as set forth in the appendix to this Order, the NRC staff has determined that cancellation of the civil penalty is not warranted and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $1,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as described in Violations A, B, C, E.1, F, G, and H set forth in the Notice referenced in section II above and Violation E.2, as amended and as set forth in the appendix to this Order referenced in section III above, which the Licensee either denied, or did not admit or deny, and

(b) Whether, on the basis of the violations referred to in section V.(a) above, and Violation D set forth in the Notice, which the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 22nd day of February 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix

Evaluation and Conclusion

On June 13, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Radiology-Ultrasound-Nuclear Consultants, PA (G. Anthony Doener, M.D.) (Licensee) responded to the Notice by letter dated June 21-July 10, 1990. In its response, the Licensee: (1) Admitted Violation D (but asserted Violation D is irrelevant); (2) denied Violations A and C; and (3) neither admitted nor denied Violations B, E.1, E.2, F, G, and H. The Licensee also requested cancellation of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's requests are as follows:

Restatement of the Violations

A. 10 CFR 35.615(d)(3) requires that the permanent radiation monitor installed in each teletherapy room be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

Contrary to the above, on those days prior to March 14, 1990, that the teletherapy unit was used for treatment of patients, the permanent radiation monitor in the teletherapy room was not checked with a dedicated check source for proper operation before the teletherapy unit was used for treatment.

B. 10 CFR 35.634(f) requires, in part, that a licensee's retained record of each spot-check required by 10 CFR 35.634 (a) and (d) must include, among other things, the difference between the anticipated output and the measured output of the teletherapy unit.

Contrary to the above, as of March 14, 1990, the licensee's retained spot check records did not include the difference between the anticipated output and the measured output of the teletherapy unit.

C. 10 CFR 35.70(h) requires, in part, that a licensee retain for three years a record of each survey. 10 CFR 35.70(a) requires, in part, that a licensee survey at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

Contrary to the above, as of March 14, 1990, the licensee did not retain records of daily surveys of areas where radiopharmaceuticals were routinely prepared for use or administered.

D. 10 CFR 35.632(a)(2)(i) requires that a licensee perform full calibration measurements on each teletherapy unit whenever the spot-check measurements indicate that the output differs by more than 5 percent from the output obtained at the last full calibration, corrected mathematically for radioactive decay.

Contrary to the above, the licensee did not perform full calibration measurements when spot check measurements performed by the licensee in November 1988, in January, February, March, May and June 1987, and in March 1988, indicated that the teletherapy unit output differed by more than 5 percent from the output obtained at the last full calibration.

E. 10 CFR 35.21(a) requires that the licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, is required to ensure that radiation safety activities are performed in accordance with approved procedures. 10 CFR 35.21(b)(2) requires, in part, that the Radiation Safety Officer (RSO) establish and implement written policy and procedures for using byproduct material safely and performing checks of survey instruments and other safety equipment.

For using byproduct materials safely and performing checks of survey instruments and other safety equipment, the Licensee's Radiation Safety Officer established the procedures in NRC Regulatory Guide 10.8, Revision 2, appendix C and D, which are required by Condition 13 of License No. 29-06760-08 to be met.

Appendix C requires in part, that the measurements obtained during the dose calibrator linearity test be plotted and that the percent deviation be determined. Appendix D requires, in part, that all individuals who are occupationally exposed to ionizing photon radiation on a regular basis be issued a film or TLD whole body monitor and that individuals who, on a regular basis handle radioactive material that emits ionizing photon radiation, be issued a film or TLD finger monitor to be processed on a monthly basis.

Contrary to the above:

1. Between January 1987 and February 1988, the dose calibrator linearity test results did not include either a plot of the measurements or a determination of the percent deviation.

2. As of March 14, 1990, the RSO neither wore the issued whole body monitor while working with radioactive material on a regular basis, nor was he issued a finger monitor for use when handling radioactive material.

F. 10 CFR 35.50(b)(3) requires, in part, that the Licensee test the dose calibrator for linearity at least quarterly.

Contrary to the above, the Licensee did not test the dose calibrator for linearity during the last three quarters of 1988, nor at any time during 1989.

This is a repeat violation.

G. 10 CFR 35.51(a)(3) and (c) require that a licensee conspicuously note on each survey instrument the apparent exposure rate from a dedicated check source as determined at the time and date of the calibration and check each survey instrument for proper operation with the dedicated check source each day of use.

Contrary to the above, as of March 14, 1990, the licensee did not conspicuously note on the survey instrument the apparent exposure rate from a dedicated check source as determined at the time and date of the calibration, and did not check each survey instrument for proper operation with a dedicated check source each day of use.

H. 10 CFR 35.92(b) requires that a licensee retain a record of each disposal of byproduct material held for decay-in- storage as permitted under 10 CFR 35.92(a) for three years. The record must include, among other things, the date on which the byproduct material was placed in storage, the radionuclides disposed, and the background dose rate.

Contrary to the above, as of March 14, 1990, the licensee's retained records of disposal of byproduct material held for decay-in-storage did not include the date on which the byproduct material was placed in storage; the radionuclides disposed; or the background dose rate.

These violations have been classified in the aggregate as a Severity Level III problem. (Supplement VI)

Civil Penalty—$1,000—(assessed equally among the 9 violations)

Summary of Licensee's Response

Violation A

The licensee denies Violation A. The Licensee asserts that the permanent radiation monitor in the teletherapy room is checked each day as required, and is also checked before each radiation treatment using the cobalt unit as a dedicated check source. The Licensee states that a special dedicated check source is not used because this would result in unnecessary exposure to the radiation worker. The Licensee also states that no written records of the daily routine checks are kept because the checks are considered a "normal routine."

NRC Evaluation of Licensee's Response

Violation A

The Licensee is required to check the permanent radiation monitor in the teletherapy room with the cobalt unit each day *before* the teletherapy unit is used for treatment of patients. However, on the day of the inspection, the NRC inspector observed the Licensee treat the day's first patient with the teletherapy unit without checking the radiation monitor with the cobalt unit or any other dedicated check source. Further, when questioned by the inspector, the Radiation Safety Officer stated that he does not check the monitor until he begins the treatment. The regulation clearly requires that the monitor be checked *before* the teletherapy unit is used for treatment of a patient. Therefore, the NRC concludes that the violation occurred as stated.

Summary of Licensee's Response

Violation B

The Licensee asserts that the anticipated output and the measured output of the teletherapy unit are recorded, and that the difference between the two measurements is self-explanatory.

NRC Evaluation of Licensee's Response

Violation B

The NRC agrees that the Licensee's records specified the measured output and the anticipated output of the teletherapy unit. However, these records did not include the difference between the two output values expressed as a percentage of the anticipated output as required by 10 CFR 35.634(a)(6). Therefore, the NRC concludes that the violation occurred as stated.

As a separate matter, the NRC acknowledges that, as indicated in 10 CFR 35.634, "Periodic spot-checks," item (a)(6) contains a typographical error. This item references the measured output required by paragraph (a)(5), not paragraph (b)(5) as stated in the regulation. A correction of this typographical error will be incorporated into the NRC's next revision of part 35.

Summary of Licensee's Response

Violation C

The Licensee denies Violation C. The Licensee states that areas where radiopharmaceuticals are routinely prepared for use and administration are continuously surveyed by a Geiger instrument equipped with an acoustic alarm. The Licensee asserts that the acoustic alarm is better "perceived" than a visual reading of a monitoring instrument which might go unnoticed. Therefore, the Licensee maintains that any excess radioactivity is readily monitored. The Licensee also states that the daily wipe tests of areas where radiopharmaceuticals are used is recorded.

NRC Evaluation of Licensee's Response

Violation C

Continual acoustical monitoring may be superior to a visual reading from a survey instrument for a given purpose. *Monitoring* with a Geiger instrument, however, does not by itself satisfy the requirements of 10 CFR Part 30.70(h) to *retain records* of the results of certain surveys. While the NRC agrees that the Licensee performed and documented wipe tests beyond those required by 10 CFR 35.70(e), those tests detect removable surface contamination, and do not measure the ambient radiation exposure rates that 10 CFR Part 35.70(h) requires to be recorded. The Licensee did not retain records of surveys required by 10 CFR part 35.70(a).

The Licensee did not document these surveys. Therefore, the NRC concludes the violation occurred as stated.

Summary of Licensee's Response

Violation D

The Licensee admits that spot check measurements of the teletherapy unit indicated that the teletherapy unit output differed by more than 5% from the output obtained at the last full calibration. However, the Licensee asserts this fact is irrelevant because: (1) The measuring instruments have an inaccuracy of more than 5%; and (2) Cobalt-60 decay is at a constant rate. Therefore, the Licensee asserts the required tests do not represent a test of the cobalt unit, but only represent a test of the measuring

instrument which has no significance concerning the output of the cobalt unit. For these reasons, the Licensee concludes that spot check measurements exceeding +/−5% do not justify the expense it would incur to perform a full calibration of the cobalt unit and suggests that the NRC rescind the requirement for recalibration of the teletherapy unit under these circumstances since it constitutes an unnecessary burden on the workers and patients.

NRC Evaluation of Licensee's Response

Violation D

The Licensee admits the violation. As for the Licensee's contention that the violation is irrelevant to safety, the difference between the measured output and the anticipated output may indicate problems with the teletherapy unit such as malfunction of the timer, the collimator, or the source drive mechanism. The measured dose and doses administered to patients are not solely dependent on the decay of the source. In addition, the formula used to calculate the output dose from a spot check measurement contains a correction factor to compensate for any measuring instrument inaccuracy. Accordingly, the NRC staff concludes that Violation D is a significant violation.

Summary of Licensee's Response

Violation E

The Licensee did not admit or deny Violation E.1 in its response.

With respect to Violation E.2, the Licensee neither admits nor denies the violation. The Licensee asserts that the RSO did in fact wear a whole body monitor while working with radioactive material and that he exhibited the monitor to the inspector at the time of the inspection. The Licensee did acknowledge that the RSO had lost his finger monitor. The Licensee also points out that the RSO always wore a pocket dosimeter which is checked with a cesium source.

NRC Evaluation of Licensee's Response

Violation E

The Licensee did not admit or deny Violation E.1. The Licensee enclosed a letter concerning a linearity test of the cobalt unit timer, but the violation involves linearity test results for the dose calibrator, which is used for administering radiopharmaceuticals to patients. Therefore, based on the inspector's review during the inspection, the NRC concludes that the violation occurred as stated.

With respect to Violation E.2, the NRC has clarified the citation, upon reconsideration of the matter based on the Licensee's response. The NRC acknowledges that the RSO wore a whole body badge while working with radioactive material. However, the particular badge worn by the RSO is assigned from a local hospital and is not a whole body badge assigned to monitor exposure received exclusively while working at the Licensee's private practice facility. Under these circumstances, if an exposure were to occur, the Licensee would not be able to immediately ascertain from which facility, and under what conditions, the exposure occurred. In addition, the RSO admitted that he had lost his finger monitor and had not been wearing it. Under such conditions (the loss of the finger monitor) activities should not have continued without the finger monitor having been replaced. Therefore, it is clear from the Licensee's response that the RSO did not use a whole body badge issued by the Licensee nor did he use a finger badge issued by the Licensee. Accordingly, the Licensee was in violation of 10 CFR 35.21 (a) and (b) as set forth in the amended Violation E.2 and restated below.

Restatement of Violation E.2, as Amended

E.2 10 CFR 35.21(a) requires that the licensee appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, is required to ensure that radiation safety activities are performed in accordance with approved procedures. 10 CFR 35.21(b)(2) requires, in part, that the Radiation Safety Officer (RSO) establish and implement written policy and procedures for using byproduct material safely and performing checks of survey instruments and other safety equipment.

For using byproduct materials safely and performing checks of survey instruments and other safety equipment, the licensee's Radiation Safety Officer established procedures in accordance with NRC Regulatory Guide 10.8, Revision 2, (Reg Guide 10.8) Appendix D, which is required by Condition 13 of License No. 29–06760–08 to be met.

Appendix D of Reg Guide 10.8 requires, in part, that all individuals who are occupationally exposed to ionizing photon radiation on a regular basis be issued a film or TLD whole body monitor and that individuals who, on a regular basis handle radioactive material that emits ionizing photon radiation, be issued a film or TLD finger monitor to be processed on a monthly basis.

Contrary to the above as of March 14, 1990, the RSO neither wore a whole body monitor issued by the Licensee while working with radioactive material on a regular basis, nor did he wear a finger monitor issued by the Licensee for use when handling radioactive material.

Summary of Licensee's Response

Violation F

The Licensee did not admit or deny Violation F, but argued that, because of its practices for administering radiopharmaceuticals, it has a wide margin for error in measuring dose activity before any error would cause the Licensee to give any excessive dose to its patients.

NRC Evaluation of Licensee's Response

Violation F

The Licensee did not admit or deny Violation F. The staff finds no validity in the Licensee's argument that, because of its practices for administering radiopharmaceuticals, it has a wide margin for error in measuring dose activity before the error would cause the Licensee to give any excessive dose to its patients. The Licensee had not performed a linearity test of its dose calibrator in over one year. This test is of safety significance because it is one of the quality assurance tests that assures that the dose given is within the parameters set by the regulations of the NRC. Dose calibrator quality assurance testing is also supported by national equipment standards of the American National Standards Institute, safety recommendations of the National Council on Radiation Protection and Measurements, and accepted practice of the American College of Nuclear Physicians. Without such testing, the Licensee cannot assure its dose calibrator response is within the appropriate range over the activity ranges it uses. Without such quality assurance testing, a failure of the dose calibrator would not be detected and could contribute to a misadministration. Therefore, based on the inspector's observation during the inspection, the NRC concludes that the violation occurred as stated and is safety significant.

Summary of Licensee's Response

Violation G

The Licensee did not specifically admit or deny Violation G. The Licensee states that it now has labeled its radiation survey meter and has indicated the apparent exposure rate from a dedicated source of cesium-137. The Licensee also states that it has used dedicated check sources, either Cesium-137 or Radium 227 regularly.

NRC Evaluation of Licensee's Response

Violation G

The Licensee did not admit or deny Violation G. The Licensee stated it now has indicated the apparent exposure rate from a dedicated cesium-137 source on the label on the radiation survey instrument. The Licensee also states that it has regularly used its dedicated check sources. The NRC acknowledges that during the inspection the Licensee stated it performed a check of its survey instrument for proper operation with a dedicated check source each day of use. However, according to the Licensee's consultant, the Licensee did not supply a dedicated check source to the consultant at the time that the consultant performed the calibration of the Licensee's survey instruments. An apparent exposure rate from a dedicated check source was not determined. Since the exposure rate from a dedicated check source was not determined at the time of instrument calibration, the daily checks by the Licensee did not fulfill the requirements of 10 CFR 35.51(a)(3) and (c) as stated in Violation G. Therefore, the NRC concludes that the violation occurred as stated.

Summary of Licensee's Response

Violation H

The Licensee did not specifically admit or deny Violation H. The Licensee states it "checks" its waste (consisting of alcohol pads) with a crystal probe after every injection before it is put into storage and that it has never encountered any activity in the waste.

NRC Evaluation of Licensee's Response

Violation H

Although the Licensee asserts that its surveys of all waste after use indicated that the waste material was non-radioactive, the Licensee treated the material as byproduct material held for decay-in-storage (radioactive waste). In addition, contrary to the Licensee's assertion, it has been the NRC's experience that alcohol pads (held over injection sites) are radioactively contaminated and should be treated as radioactive waste. Because the Licensee treats its waste material (alcohol pads) as radioactive waste, it is required to maintain waste disposal records which reflect the information required by 10 CFR 35.92(b). Specifically, the Licensee's waste disposal records did not contain: (1) The date on which the byproduct material was placed in storage; (2) the radionuclides disposed; and (3) the background dose rates. Therefore, the NRC concludes that violation occured as stated.

Summary of Licensee's Request for Mitigation

The Licensee requested cancellation of the civil penalty; however, no basis for this request was provided.

NRC Conclusion

The Licensee provided information which the NRC considered in amending Violation E.2 to clarify the citation. However, it is clear from the Licensee's response that it was in violation of Violation E.2, as amended and restated in this appendix. Therefore, for the reasons set forth above, the NRC has concluded that the violations occurred as stated in the Notice of Violation and as amended and restated in this appendix. No basis for mitigation of the civil penalty was provided. As a result, the NRC finds that mitigation of the civil penalty is not warranted. Accordingly, the NRC concludes that a civil penalty in the amount of $1,000 should be imposed for the violations set forth in the Notice.

[FR Doc. 91–4883 Filed 2–28–91; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

Sacramento Municipal Utility District (SMUD or the licensee) is the holder of Facility Operating License No. DPR–54, which authorizes operation of the Rancho Seco Nuclear Generating Station (the facility) at steady-state reactor power levels not in excess of 2772 megawatts thermal. The license states, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee's site in Sacramento, California. The facility is currently shut down and defueled.

In a letter dated September 20, 1990, as amended in a letter dated December 20, 1990, the licensee submitted a request for exemption from certain provisions of emergency preparedness as required by 10 CFR 50.54(q).

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to possess and operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section 50.47(b) provides that both offsite and onsite emergency plans must meet the standards specified in subparagraphs (1) through (16) of 10 CFR 50.47(b). With respect to offsite emergency preparedness, SMUD states that an exemption from 10 CFR 50.54(q) is necessary because, with the proposed cessation of offsite response capability for Rancho Seco, SMUD will no longer meet the standards for offsite preparedness that are listed in 10 CFR 50.47(b) and in appendix E to 10 CFR part 50. In particular, SMUD will not meet the standards for offsite preparedness because under the proposed Change 4 of the Rancho Seco Emergency Plan, "Long Term Defueled Condition" (referred to as the Emergency Plan (EP) in this document), the Emergency Operations Facility and the Emergency News Center will be eliminated, and the Emergency Response Organization (ERO) staffing for offsite support by SMUD, coordination with Amador and San Joaquin Counties, and SMUD's maintenance of systems for alerting members of the public will also be deleted from the plan.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Further, 10 CFR 50.12(a)(2) provides that the Commission will not consider granting an exemption unless special circumstances are present. At least two of the special circumstances listed under 10 CFR 50.12(a)(2) apply to Rancho Seco's situation:

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

(iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

III

By letter dated September 20, 1990, as amended by letter dated December 20, 1990, the licensee requested an exemption from the emergency preparedness requirements of 10 CFR 50.54(q) based on the facility's shutdown and defueled condition. Rancho Seco was shut down on June 7, 1989. The licensee indicated that the potential risk to the public was significantly reduced and the range of credible accidents and accident consequences were limited for a shutdown and defueled Rancho Seco. The worst case accident for this facility is the dropping of a loaded spent fuel shipping cask.

The NRC staff has independently calculated the offsite does resulting from a fuel handling accident using the assumptions and parameters in the standard review plan, the Updated Safety Analysis Report (USAR) and the licensee's submittal. The NRC staff's analysis indicated that at 100 meters, which is the Protected Area boundary and proposed EPZ boundary, the two hour whole body gamma dose and thyroid dose would be 2.20 2.8 x 10^{-3} mrem respectively. The licensee's two-hour calculated doses at 100 meters were 13.1 mrem and 2.7 x 10^{-4} mrem for whole body and for the thyroid, respectively. These values are a small fraction of the Environmental Protection Agency's (EPA) Protective Action Guidelines of one to five rem whole body gamma dose from exposure to airborne radioactive materials, and five to twenty-five rem thyroid dose from inhalation of airborne radioactive material. Under the general guidelines defining emergency classifications in NUREG–0654/FEMA–REP–1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Procedures in Support of Nuclear Power Plants," dated November 1980, as well as the nature of the accident, the facility would not be in an emergency situation in which the result would be classified greater than an Alert. Under these circumstances, the staff believes that the offsite emergency response plan is not required. The staff took this finding into consideration while reviewing the proposed EP based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), and NUREG–0654.

The NRC staff has reviewed the EP, based on the acceptance criteria included in the planning standards of 10 CFR 50.47(b), the requirements of appendix E to 10 CFR part 50, and the guidance criteria of NUREG–0654. The NRC staff also reviewed the EP based on the requirements of 10 CFR 50.47(d) for a license authorizing only fuel loading and low power testing. The requirements of 10 CFR 50.47(d) address the lower risk associated with low power operation and are generally appropriate for reviewing the offsite aspects of the EP.

Based on this review, the Commission has concluded that the Rancho Seco EP provides an acceptable emergency preparedness plan for Rancho Seco in its non-operating and defueled condition, and the plan provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at Rancho Seco.

The licensee's request for exemption, based on the standards set forth in 10 CFR 50.12, is reasonable in light of the highly reduced offsite radiological risk associated with Rancho Seco's shutdown and defueled condition. The requested exemption, is (1) Authorized by law, is consistent with the common defense and security, and will not present an undue risk to the public health and safety, and (2) presents special circumstances.

IV

Regarding the existence of special circumstances which justify the exemption, 10 CFR 50.12(a)(2)(ii) applies to Rancho Seco's situation. For operating nuclear plants, emergency planning is essential to safety and the NRC's emergency planning regulations exist to ensure that adequate protective measures can and will be taken to protect the public health safety in the event of a radiological emergency. The Commission concurs in SMUD's analysis that no credible accident can occur that would require emergency preparedness actions offsite and thus adversely impact public health and safety. Considering the defueled condition at Rancho Seco, requiring SMUD to continue to meet the full range of NRC's emergency planning regulations is not necessary in order to achieve the underlying purpose of 10 CFR 50.54(q). With the level of emergency preparedness provided by the EP, SMUD will be fully capable of responding adequately to the spectrum of credible accidents that could occur at Rancho Seco in its defueled condition.

Section 50.12(a)(2)(iii) also is applicable in these circumstances. The current regulations governing the requirements for the emergency response program do not contemplate plants that are shut down and defueled. For plants in this situation, compliance with these regulations presents an unwarranted hardship. SMUD must spend significant resources and effort to maintain the current level of onsite and offsite emergency preparedness to respond to accident scenarios that can only occur at an operating plant and cannot credibly occur at Rancho Seco in the shutdown and defueled state. These resources include facilities, support equipment, as well as personnel training, and annual exercises and drills. By operating a smaller emergency response program, limited to onsite emergency preparedness, SMUD will reduce its costs significantly without impacting safety.

Without the exemption, SMUD must carry significantly higher costs than other plants that have received relief similar to that requested by SMUD. With an exemption, SMUD would be excused from those costs associated with compliance to inapplicable or unnecessary requirements of the regulation. Thus, continuing the current EP program, without the exemption, would constitute an undue hardship on the licensee.

V

For these reasons, the Commission has determined that, pursuant to 10 CFR 50.12, (1) The exemption requested by SMUD's letter dated September 20, 1990, as amended December 20, 1990, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) special circumstances are present as described above.

Accordingly, the Commission hereby grants the following exemption:

The Rancho Seco Nuclear Generating Station is exempt from the requirements of 10 CFR 50.54(q) in regard to offsite emergency response for emergency preparedness, provided that (1) The reactor is shut down and defueled, and (2) the Rancho Seco Nuclear Emergency Plan, "Long Term Defueled Condition" is implemented.

This Exemption will remain in effect unless and until revoked by the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (56 FR 7421, dated February 22, 1991).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 22d day of February 1991.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–4884 Filed 2–28–91; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (Board) authority under section 5051 of Public Law 100–203 of the Nuclear Waste Policy Amendments Act of 1987, the Board's Panels on Structural Geology & Geoengineering and Quality Assurance will hold a joint meeting on March 26, 1991. Then, on March 27, 1991, the Quality Assurance Panel will hold its own meeting. Both meetings will be held at the Adolphus Hotel, Sam Rayburn Room, 1321 Commerce, Dallas, Texas 75202; (214) 742–8200. The March 26 meeting will run from 8:30 a.m. to 5 p.m., and the March 27 meeting will run from 10:30 a.m. to 4 p.m.

On March 26, the panels have invited representatives of the Department of Energy (DOE) and its contractors to discuss the preliminary design of the exploratory shaft facility (ESF). Panel members are interested in reviewing the quality assurance (QA) controls that will be applied to the design of the ESF from its conceptual phase through implementation. Discussions will focus on the process for assuring that the people designing the shaft are adequately qualified and that adequate verification and documentation of all phases of the design process will take place. During the morning session, the DOE will provide an overview of the development of the ESF requirements document and the design control process. A discussion of the QA criteria applicable to the design process will follow. At the afternoon session, representatives from Sandia National Laboratories and Raytheon, a private corporation, will discuss technical input to the design and control aspects of the process, respectively. A representative from the Yucca Mountain Project Office also will comment on the project office's QA overview of the design process.

On March 27, representatives of the DOE will brief QA panel members on three aspects of the DOE QA process. First, they will update panel members on the progress made in remedying a number of QA implementation problems that were identified at the last QA Panel meeting in November 1990.

Next, panel members will hear from DOE staff on a specific component of the QA process called "grading." Grading refers to the process of determining whether an activity should be subjected to the QA requirements and if so, the number and kind of QA criteria that should be applied to it. DOE staff will give a briefing on the details involved in grading.

Last, panel members will be briefed by a member of the newly-created technical advisory committee, should that committee be established by March 27, 1990. DOE's QA division in the waste management program is creating the committee at the recommendation of researchers in the site-characterization program to address issues of concern to them. It will be staffed from, among other organizations, the national laboratories.

The public is welcome to attend the meeting as observers. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board librarian, beginning April 22, 1991.

For further information, contact Ms. Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: February 26, 1991.

Dennis G. Condie,

Acting Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–4940 Filed 2–28–91; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Pay-for-Performance Labor-Management Committee; Meeting

The Office of Personnel Management announces the following meeting:

Name: Pay-for-Performance Labor-Management Committee.

Date and Time: March 18, 1991, 2 p.m. to 5 p.m.

Place: Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Type of Meeting: Open.

Point of Contact: Ms. Doris Hausser, Chief of the Performance Management Division, Room 7454, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Purpose of Meeting: To consider ways to strengthen the linkage between the performance of General Schedule employees and their pay.

Agenda: Introduction; committee organization and administration; public input; closing.

Supplementary Information: Thirty minutes will be provided for the public input portion of the meeting, with each individual's or organization's comments limited to five minutes or less, depending on the number who wish to speak. In addition, written comments will be accepted before the meeting date or after the meeting, and should be submitted to the point of contact identified above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–4941 Filed 2–28–91; 8:45 am]

BILLING CODE 6325–01–M

OFFICER OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463,), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, April 11, 1991.
Thursday, May 2, 1991.
Thursday, May 16, 1991.
Thursday, June 13, 1991.
Thursday, June 27, 1991.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 522b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: February 22, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 91–4797 Filed 2–28–91; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology will meet on March 7–8, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy.

2. Briefing of the Council on current federal activities and policies in science and technology.

3. Discussion of progress of working group panels.

4. Discussion of composition of future working groups.

BEST COPY AVAILABLE

Portions of the March 7–8 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to *5 U.S.C. 552b(c) (1), (2), and (9)(B).*

A portion of the discussion of panel composition will necessitate discussion of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to *5 U.S.C. 552b(c)(6).*

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Sally Sherman (202) 395–3902, prior to 3 p.m. on March 6, 1991. Ms. Sherman is also available to provide specific information regarding time, place and agenda.

Dated: February 18, 1991.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91–4803 Filed 2–28–91; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18015; 812–7652]

Merrill Lynch Short-Term Global Income Fund, Inc., et al.; Application

February 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Merrill Lynch Short-Term Global Income Fund, Inc. ("Short-Term Global") and each open-end management investment company to be established, advised, or managed subsequent to December 13, 1990 by Merrill Lynch Asset Management, Inc. ("MLAM") or Fund Asset Management, Inc. ("FAMI") or to be distributed by Merrill Lynch Funds Distributor, Inc. (all of the latter investment companies being referred to collectively, as the "New Funds" and, together with Short-Term Global, as the "Funds"), MLAM and FAMI (together, the "Advisers"), and Merrill Lynch Funds Distributor, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 18(f), 18(g), and 18(i) of the 1940 Act.

SUMMARY OF APPLICANTION: Applicants request an order to amend a prior order, Merrill Lynch California Municipal Series Trust, et al., Investment Company Act Release No. 16535 (August 23, 1988) (the "Prior Order"), which granted an exemption from sections 18(f), 18(g), and 18(i) to permit certain open-end management investment companies to sell two classes of securities. The requested relief would permit each Fund to sell its Class A shares subject to an account maintenance fee (the "Account Maintenance Fee") that would be paid to the Distributor.

FILING DATE: The application was filed on December 13, 1990 and an amendment was filed on February 8, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 20, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. Each Fund will be an open-end management investment company registered under the 1940 Act and will enter into an investment advisory or management agreement with one of the Advisers and a distribution agreement with the Distributor pursuant to which the Distributor will act as principal underwriter for the Fund.

2. Pursuant to the Prior Order, the Advisors and the Distributor have established a Dual Distribution System which enables each Fund and the other open-end investment companies operating pursuant to the Prior Order and advised or managed by MLAM or FAMI or distributed by the Distributor prior to December 13, 1990 (the "Existing Funds") to offer investors the option of purchasing (a) Class A shares subject to a front-end sales load (the "Front-End Load Option") or (b) Class B shares subject to a contingent deferred sales charge ("CDSC") and a distribution plan adopted pursuant to rule 12b-1 under the 1940 Act (the "Deferred Option"). Each of the two classes of shares represents interests in the same portfolio of investments of a Fund, and is identical in all respects with the other class, except that Class B shares bear the expenses of the deferred sales arrangements, any incremental transfer agency costs resulting from such sales arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class (which must be approved by the Commission pursuant to an amended order). In addition, the Class B shares have exclusive voting rights with respect to the rule 12b–1 plan to which they are subject. Also, Class A shares and Class B shares have different exchange privileges.

3. The Dual Distribution System enables an investor to choose the method of purchasing shares that is most beneficial given the amount of his purchase, the length of time he expects to hold his shares, and other relevant circumstances. For example, an investor that qualifies for a significant discount on the front-end sales load, such as a pension or other retirement plan, may determine that the Front-End Load Option is preferable to payment of an ongoing distribution fee. Conversely, an investor that does not qualify for a discount may prefer to defer the sales charges and have all of its investment immediately committed to shares.

4. Applicants propose to modify the Dual Distribution System to permit each Fund to pay to the Distributor an Account Maintenance Fee which would be borne by the holders of Class A shares and would pay for certain account maintenance and shareholder support services provided to holders of Class A shares and certain other costs of the Distributor properly allocated to such shares. The Account Maintenance Fee also would provide additional resources to the Distributor to encourage sales of Class A shares, diminish the level of redemptions by Class A shareholders, and compete with other fund groups that pay similar fees to their distributors. The Account Maintenance Fee would be imposed at a maximum annual rate of 0.25% of the average daily net asset value of a Fund's Class A shares, pursuant to a plan adopted with respect to such Class A shares in accordance with rule 12b–1 under the 1940 Act.

5. The addition of the Account Maintenance Fee to the Class A shares would be implemented by each Fund in a manner similar to the implementation of the Dual Distribution System, except that there would be no specific shareholder vote with respect to the proposal. However, the rule 12b–1 plan authorizing the Account Maintenance Fee would be adopted by the Class A shareholders of each Fund in the same manner as the rule 12b–1 plan that applies to Class B shares, which are sold under the Deferred Option. Any such plan would be approved by the Fund's Directors/Trustees, including a majority of the independent Directors/Trustees, and by the Fund's Class A shareholders at the first shareholders' meeting.[1]

6. Applicants submit that the imposition of an Account Maintenance Fee would not constitute a major modification of the Dual Distribution System permitted under the Prior Order. The proposed conditions to the requested relief (as set forth below) are virtually identical to those of the Prior Order. The only significant difference in such conditions is that the calculations and determinations presently required with respect to the Class A shares would have to reflect the Account Maintenance Fee. Moreover, under the Dual Distribution System as it is proposed to be revised, as under the present Dual Distribution System, investors would have the same options with respect to how they pay for the distribution of their shares—the Front-End Load Option or the Deferred Option. The Account Maintenance Fee, which is significantly lower than the Rule 12b–1 fee imposed on Class B shares, would not alter that fundamental choice.

7. Applicants represent that they have not experienced any conflicts of interest between the two classes of shares offered by the Existing Funds, nor do they believe that any conflicts would develop if the proposed modification of Class A shares were implemented.

Applicants' Legal Conclusions

1. Applicants seek an exemption from the provisions of sections 18(f), 18(g), and 18(i) of the 1940 Act to the extent that the imposition of the Account Maintenance Fee could be deemed to (a) result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act, which is prohibited by section 18(f) (1), or (2) violate the requirement in section 18(i) of the 1940 Act that every share of stock issued by a registered management investment company shall have equal voting rights with every other share of outstanding voting stock.

2. Applicants submit that the imposition of the Account Maintenance Fee on Class A shares would not result in shares of that class having "priority over [another such] class as to * * * payment of dividends" because the Class A and Class B shares of a Fund would each bear the expense of their respective Rule 12b–1 plan and any incremental transfer agency costs resulting from their distribution arrangement. Applicants note that each class of shares would have equal voting rights, except that each class would have exclusive rights with respect to matters concerning its rule 12b–1 plan. Applicants submit that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described above is equitable and would not discriminate against any group of shareholders.

3. Applicants assert that the Commission has permitted other investment companies offering Class A type shares under a dual distribution arrangement to impose a fee that is similar in amount and purpose to the Account Maintenance Fee.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:[2]

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Class A and Class B shares of the same Fund will relate solely to: (a) The impact of the respective Rule 12b–1 fee payments made by each of the Class A and Class B shares of a Fund, any incremental transfer agency costs paid by the Class A and Class B shares of a Fund resulting from the Class A and Class B shares sales arrangements, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to rule 12b–1 plans, (c) the different exchange privileges of the Class A and Class B shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, and (d) the designation of each class of shares of a Fund.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, will approve the Dual Distribution System, as modified. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the modified Dual Distribution System will reflect in detail the reasons for determining that the proposed modified Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall

[1] If such meeting occurs prior to the granting of the order sought by the application, the Rule 12b–1 plan authorizing the Account Maintenance Fee would be presented for shareholder approval with effectiveness pending the date of issuance of any order on the application. Upon the effectiveness of any such order, the Account Maintenance Fee would be imposed by those Funds that had authorized the Account Maintenance Fee as of such date, subject to shareholder approval, as is the case with existing Rule 12b–1 plans.

[2] Short-Term Global, such of the New Funds as may, from time to time, determine to offer two classes of shares on the basis described herein and the Advisers and Distributor, in connection with the respective management and distribution services provided to any such funds, will comply with the conditions set forth herein; the Existing Funds, all other New Funds, and the Advisers and Distributor, in connection with the respective management and distribution services provided to any such funds, will continue to comply with the conditions set forth in the Prior Order.

take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Advisers and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Advisers and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The rule 12b–1 plans relating to Class A and Class B shares of each Fund have been or will be approved and reviewed by the Fund's Directors/Trustees in accordance with the requirements and procedures set forth in rule 12b–1, both currently and as that rule may be amended in the future. Any rule 12b–1 plan adopted or amended to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Directors/Trustees of the Fund will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale of Class A or Class B shares, respectively, or to the provision of services to holders of such shares, will be used to justify the rule 12b–1 fee attributable to such class. Expenditures not related to the sale of the Class A or Class B shares, or to services provided to holders of such shares, will not be presented to the Directors/Trustees to justify the Rule 12b–1 fees attributable to such class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to its Class A and Class B shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee payments made by a Fund under its Rule 12b–1 plan for Class A or Class B shares, and any incremental transfer agency costs relating to Class A and Class B shares, will be borne exclusively by the respective class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the Class A and Class B classes as they presently exist, and the proper allocation of expenses between those classes has been reviewed by the expert who has rendered a report to the applicants, which has been provided to staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. Such expert has also informed the applicants that, in its opinion, the imposition of the Account Maintenance fee would not alter such expert's prior conclusions with respect to such methodology and procedures. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made under the modified Dual Distribution System and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the expert with the respect to such reports, following request by the Funds which the Funds agree to provide, will be available for inspection by the Commission staff. The initial report of the expert was a "Special Purpose" report on the "Design of a System" and the ongoing reports have been and will continue to be "Design of a System and Certain Compliance Tests," as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the classes of shares and the proper allocation of expenses between the classes of shares. This representation has been concurred with by the expert with respect to existing Class A and Class B shares in both the initial report and subsequent ongoing reports referred to in condition (7) above, and with respect to the proposed modified two classes of shares and the existing Class A and Class B shares, will be concurred with by the expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the expert, or appropriate substitute expert, does not so concur in the ongoing reports.

9. The prospectuses of each of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling shares of the Fund may receive different compensation for selling Class A or Class B shares.

10. Merrill Lynch, Pierce, Fenner & Smith Incorporated will continue to follow its existing compliance standards, adopted in connection with the Dual Distribution System and set forth as Exhibit E to the application for the Prior Order, as to when Class A and Class B shares may appropriately be sold to particular investors. Applicants will require all persons selling Class A or Class B shares to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Dual Distribution System, as modified, will be set forth in guidelines which have been and will be furnished to the Directors/Trustees and made a part of the MLAM Directors' Manual setting forth the duties and responsibilities of the Directors/Trustees of the investment companies advised by MLAM and FAMI.

12. Each of the Funds will disclose its respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. For instance, the supplementary financial information including the per share table in each Fund's prospectus and the balance sheet in each Fund's prospectus or statement of additional information will be separately presented for each class of shares. Each of the Funds will disclose its respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of any Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of the Fund. Similarly, the information provided by the applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present the Class A and Class B shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 distribution plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4827 Filed 2–28–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25262]

Filings—Public Utility Holding Companies

February 22, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 18, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates et al. (70–7830)

Ocean State Power I ("OSP I") and Ocean State Power II ("OSP II"), both located at One Bowdoin Square, Boston, Massachusetts 02114, general partnerships and subsidiaries of EUA Ocean State Corporation ("EUA–OS"), Washington Highway, Lincoln, Rhode Island 02865, and Narragansett Energy Resources Company ("NERC"), 280 Melrose Street, Providence, Rhode Island 02901; and their respective indirect and direct parent companies, Eastern Utilities Associates ("EUA"), One Liberty Square, Boston, Massachusetts 02107 and New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582; EUA Service Corporation, 750 West Center Street, West Bridgewater, Massachusetts 02379, and New England Power Service Company, 25 Research Drive, Westborough, Massachusetts 01582, service company subsidiaries of EUA and NEES, respectively; Blackstone Valley Electric Company, Washington Highway, Lincoln, Rhode Island 02865, a subsidiary of EUA; TransCanada PipeLines Company, 54 Commerce Court West, Toronto, Ontario M5L 1C2, Canada, and its indirect subsidiary TCPL Power Ltd., 123 Dyer Street, Providence, Rhode Island 02903, as affiliate of OSP I and OSP II, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) and rules 42, 43, 45 and 46 thereunder to their joint application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(d), 12(f), 13(b) and 13(e) of the Act and rules 43, 44, 45, 50(a)(5), 90, 91 and 95 thereunder.

By orders dated October 13, 1988 (HCAR No. 24727), December 23, 1988 (HCAR No. 24790), September 28, 1989 (HCAR No. 24960) and December 18, 1990 (HCAR No. 25217), the Commission authorized, among other things, certain transactions with respect to Unit I and Unit II of the Ocean State Power Project ("Project"), a combined cycle electric generating facility located in Rhode Island, which included: (1) The formation by EUA and NEES of new subsidiary companies, EUA–OS and NERC, respectively; (2) the respective acquisition by EUA–OS and NERC of 29.9% and 20% equity interests in each of two partnerships, OSP I and OSP II, formed to own and operate Unit I and Unit II of the Project for aggregate investment amounts of $71.27 million and $50 million; (3) the funding by EUA and NEES of EUA–OS and NERC to enable them to meet their obligations to make capital contributions to OSP I and OSP II in the same aggregate investment amounts; and (4) the financing of 100% of the construction of each of the units through non-recourse loans under separate general construction loan credit facilities ("Unit I and Unit II Credit Facilities") in connection with which: (1) EUA–OS, NERC and the other partners in OSP I and OSP II entered into Equity Contribution Agreements whereby they agreed that upon commercial operation of each of Unit I and Unit II to make equity contributions aggregating no more than approximately 50% of the total commitments under the respective credit facilities, and (2) EUA, NERC and other parent corporations of partners in OSP I and OSP II agreed to enter into Equity Contribution Support Agreements to provide proportional quarantees of their respective subsidiaries' obligations under the Equity Agreements.

EUA–OS and NERC now propose to make distributions of capital to EUA and NEES, respectively, which has been returned to them by OSP II as the Project is depreciated. The capital will be returned through repurchases of common stock or the payment of dividends out of capital.

EUA–OS and NERC further propose to make additional capital contributions to their subsidiary OSP II to satisfy rate refund obligations that OSP II may incur. The Unit I Credit Facility contained a provision designed to protect the banks ("Banks") from regulatory risk in the event any of the purchasers of power from Unit I instituted a proceeding at the Federal Energy Regulatory Commission ("FERC") to challenge the rates being charged under power purchase contracts ("Proceeding"). This provision required that partnership distributions, which otherwise could have been made to the OSP II partners, would be retained to the extent of the refund amount at issue in a reserve account with the agent ("Agent") pending resolution of the Proceeding, and then would be used to satisfy any resulting FERC-ordered rate refund obligation incurred by the partnership.

The lending banks and the OSP II partners amended the Unit I and Unit II Credit Facility to provide for an alternative method for meeting such refund obligations. Partners may now elect to continue to receive available partnership distributions if they agree to repay such distributions to the Banks in the event any such Proceeding results in a refund obligation, which (i) Is greater than $45 million and (ii) reduces OSP II's Debt Service Coverage Ratio, as defined, for any calendar quarter below 1.4 to 1, and provided that each partner's repayment obligation is guaranteed by the partner's sponsor. EUA and NEES in this case. EUA and NEES have applied for authority to make such guarantees by post-effective amendment to S.E.C. File No. 70–7540, for which a public notice was issued by the Commission on

February 1, 1991 (HCAR No. 25250). The amount of the repayment obligation, and therefore the amount of any capital contribution would be determined by the amount of the refund obligation, but could never be more than the distributions made to the individual partner from the effective date of any FERC-ordered refund. Payments made by a sponsor under its guaranty would be deemed to be a capital contribution by the partner to the partnership, and would be investments in the partner by the sponsor, in addition to those previously authorized.

Northeast Utilities et al. (70-7761)

Northeast Utilities ("NU"), a registered holding company, and two of its subsidiaries, Northeast Utilities Service Company ("NUSCO") and The Rocky River Realty Company ("Rocky River") (collectively, "Companies"), all located at Selden Street, Berlin, Connecticut 06037, have filed a declaration under sections 6(a), 7, 12(b) and 12(f) of the Act and rules 45, 50, 90 and 91 thereunder.

The Companies propose to enter into a series of transactions related to the financing of a new, 253,000 square-foot office building and three-tiered employee parking facility ("Project") in Berlin, Connecticut that will be used primarily by 960 NUSCO employees currently located in leased office space in Rocky Hill and Meriden, Connecticut. The Project, estimated cost $28 million, will be financed, constructed and owned by Rocky River on land adjacent to the NU system's general offices in Berlin, Connecticut. Rocky River proposes to: (1) Issue and sell, through December 31, 1991, short-term notes ("Short-Term Notes") to Swiss Bank ("Short-Term Lender") in the principal amount of $28 million, pusurant to a note purchase agreement ("Short-Term Note Agreement"); (2) issue and sell, through December 31, 1992, long-term notes to banks or other financial institutions ("Long-Term Lender") in the aggregate principal amount of $28 million ("Series B Notes"), pursuant to a note purchase agreement ("Long-Term Note Agreement"); and (3) issue and sell, through December 31, 1992, long-term notes to banks or other financial institutions ("Refinancing Lender") in the aggregate principal amount of $15 million ("Series A Notes"), pursuant to a note purchase agreement ("Series A Note Agreement"). The Series A Notes and the Series B Notes will be sold in accordance with the alternative procedures authorized by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623). The proceeds of the Series B Notes will be used to repay the short-term notes and provide long-term financing for the Project. The proceeds of the Series A Notes will be used to repay funds lent by NU to Rocky River through the NU system Money Pool. In addition, NU proposes to make, through December 31, 1992, a capital contribution of $2.8 million to Rocky Rivery for relocation expenses.

The Short-Term Note Agreement provides that, prior to the maturity date, Rocky River may request advances of principal ("Advances") from the Short-Term Lender. Proceeds of the Advances may be used for general corporate purposes, including payment of direct or indirect incurred with respect to construction of the Project. Advances will bear interest from the date of each Advance to the maturity date, which will be a date of not more than two years from the date of the first advance ("Maturity Date"). Interest on the Advances will be payable, on the Maturity Date, on the daily aggregate principal balance of such Advances outstanding for the applicable interest period ("Interest Period") at the London Interbank Borrowing Rate "("LIBOR"). Interest Period means the period from and including the first day of each month to and including the last day of such month. The LIBOR is defined as the sum of (i) The interest rate per annum (computed on the basis of a 360-day year of actual days elapsed) equal to the rate at which dollar deposits approximately equal in principal to the amount of Advances outstanding and for a maturity equal to the applicable Interest Period are offered to the Short-Term lender in immediately available funds in the Cayman Islands Interbank Market at approximately 11:00 a.m. New York time two business days prior to the commencement of such Interest Period, plus (ii) 0.625 percent. At the end of each Interest Period, accrued and unpaid interest on the Advances will be added to the principal amount outstanding and will thereafter be deemed principal for all purposes.

The Short-Term Note Agreement also provides that if the Advances requested by Rocky River aggregate less than $14 million over the life of the Note, Rocky River will pay a facility fee of .125 percent per annum on the difference between the actual aggregate amount of the Advances and $14 million. The Short-Term Notes may be prepaid without premium at any time upon thirty days' notice to the owner of the Short-Term Note.

The Series B notes will bear interest at a fixed rate equal to the rate of the 17.5-year United States Treasury Security, plus a percentage to be determined during the competitive bid process. Interest will be payable monthly, in arrears, commencing on the date of purchase. Principal and interest will be payable in level monthly installments, in arrears, beginning no later than thirty days after the date of purchase over the life of the notes. The Series B Notes may be prepaid in whole or in part, in minimum amounts of $5 million, on any monthly payment date beginning not less than two years after the date of purchase.

The Series A Notes will bear interest at a fixed rate equal to the rate of the 9.5-year United States Treasury Security, plus a percentage to be determined during competitive bidding. Interest will be payable monthly, in arrears, commencing on the date of purchase. Principal and interest will be payable in level monthly payments of principal and interest, beginning no later than thirty days after the date of purchase. The Series A Notes may be prepaid, in whole or in part, in minimum amounts of $5 million, on any monthly payment date beginning not less than two years after the date of purchase.

NU will guarantee Rocky River's obligations under the Short-Term Note Agreement, the Series A Note Agreement and the Series B Note Agreement and the Short-Term Notes, the Series A Notes and the Series B Notes.

Rocky River also proposes to terminate existing leases for the NU general offices site and facilities and enter into two new leases with NUSCO that would, together, cover the entire 121-acre parcel ("Project Lease" and "Offices Lease"). The Project Lease would cover the Project and the Offices Lease would cover the balance of the site (including the aerial device facility built in 1989 but not including the adjacent 20-acre parcel acquired in 1989). Rocky River will collaterally assign the Project Lease to the Long-Term Lender as security for the Series B Notes and the Offices Lease to the Refinancing Lender as security for the Series B Notes. The Offices Lease will cover the general offices property exclusive of the adjacent parcel acquired in 1989. It will be a net lease and will incorporate the terms of the existing leases. It will provide for rental payments covering debt service on the Series A Notes for so long as the collateral assignment is in effect, together will all costs of operating and maintaining the property.

The Project Lease will be a net lease with provisions patterned on the provisions of the Offices Lease. It will have a term that is coterminous with that of the Series B Notes and will provide for rental payments sufficient to cover the debt service on the Series B Notes, as well as all costs of operating and maintaining the Project.

The Potomac Edison Co. (70-7786)

The Potomac Edison Company ("Potomac Edison"), Downsville Pike, Hagerstown, Maryland 21740, a subsidiary of Allegeheny Power System, Inc., a registered holding company, has filed an application-declaration under sections 6(a), 6(b), and 7 of the Act and rule 50(a) (5) thereunder.

Potomac Edison proposes to issue and sell, from time-to-time through March 31, 1993, short-term notes ("Notes") to banks and commercial paper ("Commercial Paper") to dealers to commercial paper in an aggregate principal amount not to exceed $93 million outstanding at any one time. Each note payable to a bank will be dated as of the date of the borrowing it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, will bear interest at a mutually agreed upon rate provided that the effective rate for any 30 day period, on an annualized basis, not exceed prime plus 2 percentage points. The Notes may or may not have prepayment provisions.

The Commercial Paper will not be prepayable and will have varying maturities, none more than 270 days. The Commercial Paper will be sold directly to the dealers at a discount rate to Potomac Edison not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. The dealers may reoffer the Commercial Paper at a discount rate of up to 1/10 of 1% per annum less than the discount rate to Potomac Edison. An exemption from the competitive bidding requirements of rule 50 has been requested under rule 50(a)(5) for the proposed issuance and sale of Commercial Paper.

Southwestern Electric Power Co. (70-7830)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

SWEPCO proposes to sell certain distribution substation facilities ("Facilities") located at Big Three Industries' ("Big Three") Longview Plant in Gregg County, Texas to Big Three for $103,000.00. The Facilities consist of one 69kv transformer, three 5kv and three 60kv lightning arresters, one 100 amp fuse cutout, three 69kv fuse switches and miscellaneous insulators, conduit, cable, wire, structural steel and other substation equipment. SWEPCO will execute a bill of sale and receive a release deed in order to release the Facilities from the lien of the SWEPCO's mortgage indenture, as amended, dated February 1, 1940, between SWEPCO and Continental Bank, National Association and M.J. Kruger, successor co-trustee, as Trustees. SWEPCO anticipates that the proceeds from the proposed sale will be added to SWEPCO's general operating funds.

Arkansas Power & Light Co. (70-7834)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, a wholly owned electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

AP&L proposes to issue and sell shares of its preferred stock, $.01 par value ("Class A Preferred"). The Class A Preferred will have an aggregate price payable in the event of involuntary liquidation ("Liquidation Value") not to exceed (1) $100 million, and/or (2) four million shares of its preferred stock, cumulative, $25 par value, and/or (3) one million shares of its preferred stock, cumulative, $100 per value; provided, however, that the aggregate of the Liquidation Value of Class A Preferred issued, together with the total par value of other classes issued shall not exceed $100 million (collectively, "New Preferred Stock"). The New Preferred Stock will be issued and sold in one or more new series through August 31, 1992 under the exemption provisions of rule 52.

The terms of one or more series of the New Preferred Stock may include provisions for mandatory or optional redemption at various prices and may include various restrictions on optional redemption for a given number of years. AP&L may include provisions for a sinking fund for any series of New Preferred Stock designed to redeem annually, commencing a specified number of years after the first day of the calendar month in which such series is issued, at par value or, in the case of Class A Preferred, Liquidation Value per share of such series plus accumulated dividends, a number of shares equal to a given percentage of the total number of shares of such series, with AP&L possibly having a non-cumulative option to redeem annually an additional number of shares up to a given number of percentage of the total number of shares of such series. Pursuant to the terms of the sinking fund, AP&L can purchase shares and credit the shares against the sinking fund requirement. In addition, AP&L may "sink" New Preferred Stock in amounts equal to its sinking fund option, by purchasing amounts equal to or less than the optional sinking fund redemption price.

AP&L requests authorization for the period during which any shares of the New Preferred Stock are outstanding to (1) Redeem shares of its New Preferred Stock in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance, and (2) redeem (or purchase in lieu of redemption) shares of New Preferred Stock in accordance with the sinking fund provisions established at the New Preferred Stock's initial issuance.

In addition, AP&L proposes to acquire from time-to-time through August 31, 1992, in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (a) $350 million aggregate principal amount of one or more series of AP&L's first mortgage bonds, (b) $175 million aggregate principal amount of one or more series of the pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit and (c) $150 million aggregate par value of one or more series of AP&L's preferred stock (collectively, "Proposed Acquisitions"). The Proposed Acquisitions will be acquired through tender offers, negotiated, open market or other forms of purchase or redemption.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4826 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-848]

Application and Opportunity for Hearing: UNIX System Laboratories, Inc.

February 25, 1991.

Notice is hereby given that UNIX System Laboratories, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant

from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than March 22, 1991 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4829 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18014; File No. 811-5512]

The Value Line U.S. Government Securities Trust

February 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Value Line U.S. Government Securities Trust ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 12, 1990, and amended on December 20, 1990 and on February 6, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on March 20, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Value Line U.S. Government Securities Trust, 711 Third Avenue, New York, NY 10017, Attn: Rodd M. Baxter, Esq.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Staff Attorney, at (202) 272-2058 or Nancy M. Rappa, Senior Attorney, at (202) 272-2822, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. Applicant is an open-end investment company which was organized as a business trust under the laws of Massachusetts on May 14, 1987. Applicant filed registration statements pursuant to the Securities Act of 1933 on June 29, 1987 and September 22, 1987. The registration statement filed on June 29, 1987 registered an indefinite number of shares pursuant to rule 24f-2. The registration statements became effective on September 30, 1987.

2. Applicant's shares are only made available to the public in connection with the purchase and ownership of single premium variable life insurance contracts. Value Line, Inc. ("Value Line") serves as the Applicant's investment adviser.

3. The Board of Trustees of the Applicant authorized the liquidation of the Applicant at a meeting held on June 20, 1990. At such meeting it was noted that the Applicant's assets had plateaued at less than $5 million and it was unlikely that such assets would increase. Accordingly, it was not economical for Value Line, Inc. to continue to manage the Applicant. The Board of Trustees then authorized the appropriate officers of Value Line, Inc. to take the steps necessary to effect the liquidation of the Applicant. At a meeting held on September 19, 1990, the Board of Trustees set the date of liquidation for September 21, 1990. At that time, the Board of Trustees also authorized the filing of this application with the SEC to withdraw the Applicant's registration as a registered investment company under the Act.

4. Guardian Insurance & Annuity Company, Inc. ("GIAC"), a stock life insurance company incorporated under the laws of the State of Delaware, is the sole shareholder of the Applicant. GIAC, through a separate account, invested in shares of the Applicant to fund variable life insurance contracts issued by GIAC. GIAC determined that it was in the best interest of its policy owners to eliminate the investment division of Separate Account B which purchased shares of the Applicant. GIAC applied for and received an order from the SEC approving the substitution of the Guardian Cash Fund's shares for the Applicant's shares. Upon the receipt of the order, GIAC automatically transferred account values from the Applicant to the Guardian Cash Fund at relative net asset value without the imposition of any charges. On September 21, 1990 shares of stock issued by the Guardian Cash Fund, Inc. were substituted for shares of the Applicant. Only those shares that represent GIAC's initial seed capital investment remain in the Applicant.

5. The Applicant's Declaration of Trust provides that the Applicant can be terminated by a two-thirds vote of its shareholders. GIAC as sole shareholder of the Applicant approved the liquidation by written instrument on September 19, 1990.

6. The only assets retained by the Applicant as of the date of this filing are the shares representing GIAC's initial seed capital contribution. On September 21, 1990, these shares were valued at $130,351.80. Such shares are being retained until all expenses have been paid. All unamortized organizational expenses will be assumed by GIAC. No assets will be reinvested in securities.

7. All expenses directly incurred in connection with the liquidation are being paid by GIAC or Value Line, Inc. The only debts pending are outstanding legal, accounting and printing expenses of the Applicant.

8. GIAC is the only securityholder of the Applicant at the time of filing of this Application. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for winding up its affairs. Applicant intends to file a Certificate of Termination of Trust in accordance with state law after the relief requested has been granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4828 Filed 2-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18016; 812-7673]

Hyperion Government Mortgage Trust II, et al.; Application

February 22, 1991.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Hyperion Government Mortgage Trust II (the "Trust") and Signature Broker-Dealer Services, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) that would grant an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and Rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit a series of the Trust, and other registered open-end investment companies in the same group of investment companies, to assess a contingent deferred sales load ("CDSL") on certain redemptions of the shares, and to waive the CDSL in certain cases.

FILING DATES: The application was filed on January 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writers interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Trust, 520 Madison Avenue, New York, New York 10022; Distributor, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504-2524 or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end diversified management investment company registered under the Act. The Trust intends to offer shares of Hyperion/Ranieri Adjustable Rate U.S. Government Fund II (the "Fund") upon the SEC declaring the Fund's registration statement effective. The Trust intends to invest substantially all of the assets of the Fund in a registered investment company (the "Portfolio"), with the same investment objectives as the Fund. Hyperion Capital Management, Inc. serves as the Portfolio's investment adviser. The Distributor acts as principal underwriter of the Fund's shares. The Trust intends to make Rule 12b-1 plan payments to the Distributor at an annual rate of up to 1.25% of the Fund's average daily net assets.

2. Applicants request that any relief also apply to future series of the Trust and other registered open-end investment companies (i) whose principal underwriter is the Distributor or a principal underwriter that is under common control with the Distributor (as "control" is defined by section 2(a)(19) of the Act), (ii) which hold themselves out to investors as being related for purposes of investment and investor services and (iii) whose CDSC, rate of distribution fees and exchange privileges are identical to those applicable to the Fund's shares as described in the application. Any such series or investment companies will be subject to the condition contained in the application.

3. Applicants seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to permit the Fund to assess a CDSL on redemptions of Fund shares and to permit the Fund to waive the CDSL for certain types of redemptions. The CDSL is expected to be 3% of the net asset value of the shares redeemed during the first year after purchase (but, subject to the requirement that the CDSL comply, to the extent applicable, with the NASD sales load limitations and the provisions of proposed Rule 6c-10,[1] may be higher or lower) and will be reduced at a rate of 1% per year over the applicable CDSL period, so that redemptions after that period will not be subject to a CDSL.

4. The CDSL will not be imposed on redemptions of (a) shares which were purchased more than a specified period of up to six years (the "CDSL Period") prior to their redemption or (b) shares derived from the reinvestment of distributions. Furthermore, no CDSL will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL Period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of shares derived from reinvestment of distributions, second of shares held for a period longer than the CDSL Period and third of shares held for a period not longer than the CDSL Period.

5. The Fund seeks the ability to waive the CDSL on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "IRC"), of a shareholder, or (b) in connection with certain distributions from an individual retirement account, a custodial account maintained pursuant to IRC Section 403(b)(7) or a qualified pension or profit-sharing plan.[2] In addition, the CDSL may be waived in connection with the exercise of certain exchange privileges among shares of the Fund and the shares of any other fund in the same family of funds. Any exchange privilege of Fund shares will comply with the provisions of Rule 11a-3. In waiving or reducing a CDSL, the Fund will comply with the requirements of Rule 22d-1 under the Act as if such CDSL were a sales load. If the Fund waives or reduces the CDSL, such waiver or reduction will

---

[1] On November 2, 1988, the Commission proposed Rule 6c-10 under the Act. See Investment Company Act Release No. 16619 [53 FR 45275, November 9, 1988]. If adopted as proposed, Rule 6c-10 would permit open-end management companies to impose deferred sales loads, subject to the requirements of the rule.

[2] The CDSL would be waived for any redemption (a) in connection with a lump-sum or other distribution after attaining age 59½ or, in the case of a qualified pension or profit-sharing plan, after termination of employment after age 55, or (b) which results from the tax-free return of an excess contribution pursuant to IRC Section 408(d)(4) or (5), or the return of excess deferral amounts pursuant to IRC Section 401(k)(8) or 402(g)(2).

be uniformly applied to all offerees in the class specified.

6. If the Trustees determine to discontinue the waiver of the CDSL, the disclosure in the Fund's prospectus will be appropriately revised. Also, the CDSL relating to any shares purchased prior to the termination of such waiver will be waived as provided in the Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Conclusions

1. Section 2(a)(32) of the Act defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder from receiving a proportionate share of the current net assets, but will merely defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit the imposition of the proposed CDSL.

2. Section 2(a)(35) of the Act defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSL to the Distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event that may not occur, does not change the basic nature of this charge, that is in every other respect a sales charge.

3. Section 22(c) of the Act and Rule 22c–1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of their shares is based on current net asset value. The CDSL is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and Rule 22c–1, applicants request an exemption from Rule 22c–1 to the extent necessary to permit applicants to impose the proposed CDSL.

4. Applicants request an exemption from the provisions of section 22(d) of the Act to permit the waiver of the CDSL as described in this notice. Section 22(d) requires a registered investment company, principal underwriter or dealer in redeemable securities to sell those securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, Rule 22d–1 provides an exemption from section 22(d) allowing investment companies to charge different sales loads to different classes of investors. The CDSL and the waivers therefrom will be applied as described in the Fund's registration statement. Further, applicants will comply with the conditions of Rule 22d–1 as if the CDSL was a sales load. However, to preclude any assertion that Rule 22d–1 is inapplicable to the CDSL, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the CDSL and waivers therefrom as described above.

Applicants' Condition

1. Applicants agree that any order granting the requested relief shall be subject to applicants' compliance with the provisions of proposed Rule 6c–10 under the Act as currently stated and as it may be adopted and modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4873 Filed 2–28–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #7247]

Declaration of Disaster Loan Area; California (With Contiguous Counties in Arizona (#7248) and Nevada (#7249))

The Counties of Alameda, Butte, Colusa, Fresno, Glenn, Imperial, Kern, Los Angeles, Madera, Marin, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Tulare, Ventura, Yolo, and Yuba, and the contiguous counties of Amador, Calaveras, Contra Costa, Humboldt, Inyo, Kings, Lake, Mariposa, Mono, Nevada, Orange, Placer, Plumas, Sacramento, San Francisco, Sierra, Stanislaus, Tehama, Trinity, and Tuolumne in the State of California; LaPaz, Mohave, and Yuma Counties in the State of Arizona; and Clark County in the State of Nevada constitute an Economic Injury Disaster Loan Area due to freezing temperatures beginning on December 19, 1990 and continuing through January 3, 1991.

Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on November 15, 1991 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 15, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91–4896 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Little Rock, will hold a public meeting at 10 a.m. on Thursday, March 7, 1991, at the Big Mac State Capitol Complex, room 4A400, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 320 W. Capitol, suite 601, Little Rock, Arkansas 72201, telephone (501) 324–5871.

Dated: February 15, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4897 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Indianapolis, will hold a public meeting at 9:30 a.m. on Tuesday, March 19, 1991, at the North Meridian Inn, 1530 North Meridian Street, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, 429 North Pennsylvania Street, suite 100, Indianapolis, Indiana 46204–1873, telephone (317) 226–7275.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4900 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region IX Regional Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 11 a.m. on Thursday, March 7, 1991, at the Verdugo Club, 400 West Glenoaks Boulevard, Glendale, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, telephone (213) 894–2977.

Dated: February 21 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4898 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 8:30 a.m. on Monday, April 1, 1991, at the Days Inn, 900 East Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael P. McHale, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (203) 240–4670.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4899 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Jackson, will hold a public meeting from 1:30 p.m. to 4:30 p.m., on Thursday, April 25, 1991, in the Jackson District Office of the U.S. Small Business Administration, Jackson, Mississippi, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jack Spradling, District Director, U.S. Small Business Administration, 101 W. Capitol Street, suite 400, Jackson, Mississippi 39201, telephone (601) 965–4378.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4901 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting from 1 p.m. to 5 p.m., on Tuesday, March 19, 1991, at Metro Tech Conference Center, 1900 Springlake Drive, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Harry L. Turk, District Director, U.S. Small Business Administration, 200 NW. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, telephone (405) 213–5237.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4902 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Corpus Christi, will hold a public meeting at 1 p.m. on Tuesday, April 16, 1991, at the U.S. Small Business Administration, Corpus Christi Branch Office, 400 Mann Street, Suite 403, Corpus Christi, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call David Royal, Business Development Specialist, U.S. Small Business Administration, Government Plaza, 400 Mann Street, Suite 403, Corpus Christi, Texas 78401, telephone (512) 888–3333.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4903 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of El Paso, will hold a public meeting at 9 a.m. on Thursday, March 14, 1991, at the M Bank, 221 N. Kansas, the Old El Paso Room, 7th Floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway West, Suite 320, El Paso, Texas 79935, telephone (915) 540–5676.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4904 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, will hold a public meeting at 10 a.m. on Tuesday, March 12, 1991, at the First City Financial Center, Fannin Room, 13th Floor, 1301 Fannin, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 2525 Murworth, Suite 112, Houston, Texas 77054, telephone (713) 660–4409.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–4905 Filed 2–28–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lubbock, will hold a public meeting at 1:15 p.m. to 3 p.m. on Thursday, March 28, 1991, in the Conference Room of the U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Walter Fronstin, District Director, U.S. Small Business Administration, 1611 10th Street, Suite 200, Lubbock, Texas 79401, telephone 1-800-676-1005.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4906 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

Advisory Committee on Veterans Business Affairs; Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs, will hold a public meeting at 10 a.m. on Wednesday, March 20, 1991, at the U.S. Small Business Administration, 409 3rd Street, 5th Floor, SW., Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

Fur further information, write or call Leon J. Bechet, District Director of the Office of Veterans Affairs, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6773.

Dated: February 21, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-4907 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5543]

Empire State Capital Corp.; Issuance of a Small Business Investment Company License

On April 26, 1990, a notice was published in the **Federal Register** (55 FR 17706) stating that an application has been filed by Empire State Capital Corporation, 330 Seventh Avenue, 15th Floor, New York, New York 10001, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business May 25, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5543 on February 5, 1991, to Empire State Capital Corporation, to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 25, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-4908 Filed 2-28-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1354]

Office of Defense Trade Control; Munitions Exports to Oldelft and Related Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all licenses and approvals issued to the firm DELFT INSTRUMENTS N.V., commonly referred to as OLDELFT, and any of its subsidiaries and associated companies, to export or otherwise transfer defense articles and defense services pursuant to section 38 of the Arms Export Control Act are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications involving, directly or indirectly, DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH.

EFFECTIVE DATE: January 25, 1991.

FOR FURTHER INFORMATION CONTACT: Clyde Bryant, Chief, Compliance Division, Office of Defense Trade Controls, Center for Defense Trade, Department of State (703-875-6650).

SUPPLEMENTARY INFORMATION: On January 25, 1991, the Department of State suspended all licenses and other written approvals (including manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services to the firm DELFT INSTRUMENTS N.V., commonly referred to as OLDELFT, and any of its subsidiaries or associated companies.

The firm is also known as: OLD DELFT; OLDE DELFT; OUDE DELFT; DELFT INSTRUMENTS ELECTRO-OPTICS; OPTISCHE INDUSTRIE OUDE DELFT; DELFT ELECTRONISCHE PRODUCTS. Its subsidiaries include OIP INSTRUBEL (Belgium) and FRANKS & CO. OPTIC GMBH (Germany). These are not exhaustive lists, however, and exporters should consult the Office of Defense Trade Controls regarding exports destined for an end user not listed above, but which they suspect is related to OLDELFT.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (AECA) (22 U.S.C. 2778, 2791) and §§ 126.7(a)(1) and 126.7(a)(2) of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.7(a)(1), 126.7(a)(2)) in furtherance of the foreign policy and national security of the United States. It will remain in force until rescinded.

In addition, pursuant to section 38(g)(4)(B) of the AECA (22 U.S.C. 2778(g)(4)(B)), § 126.7(a)(6) of the ITAR (22 CFR 126.7(a)(6)), and the Department of Commerce Order Denying Export Privileges to DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH (February 22, 1991), it shall be the policy of the Department of State to deny all export license applications involving, directly or indirectly, DELFT INSTRUMENTS N.V., OIP INSTRUBEL, and FRANKS & CO. OPTIK GMBH. This action also precludes the use in connection with such entities of any exemptions from license or other approval requirements included in the ITAR (22 CFR parts 120—130). It will remain in effect until the Commerce Department denial order is lifted.

Dated: February 26, 1990.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs.

[FR Doc. 91-4860 Filed 2-28-91; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-014]

Coast Guard Academy Advisory Committee; Meeting

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday, Tuesday and Wednesday March 25 through 27, 1991. Open sessions on Monday will be from 9:30 a.m. to 10:30 a.m. and 1:15 p.m. to 2:15 p.m. The open session on Tuesday will be held from 2:30 p.m. to 3:15 p.m. and the open session on Wednesday will be held from 9 a.m. to 9:45 a.m. The agenda for the meeting consists of the following items: 1. Recruiting and Admissions, 2. Athletics, 3. Faculty and Curricula, 4. Library.

The Coast Guard Academy Advisory Committee was established in 1937 by Public Law 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than March 8, 1991. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Dr. William A. Sanders, Dean of Academics, U.S. Coast Guard Academy, New London, CT 06320, ph (203) 444-8275.

Issued in Washington, DC, on February 25, 1991.

G.D. Passmore,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 91 Filed 2-28-02; 8:45 am]

BILLING CODE 4910-14-M

[CGD8 90-02]

Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee meeting. The meeting will be held on Tuesday, March 26, 1991. The meeting will be held at the Crescent River Port Pilots office, 409 Belle Chasse Hwy. South, Belle Chasse, LA 70037. The meeting is scheduled to begin at 9 a.m. The agenda for the meeting consists of the following items: 1. Call to order, 2. Recommendations for a proposed New Orleans Vessel Traffic Service, 3. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: February 20, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 91-4891 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement: Pulaski County, AR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Pulaski County, Arkansas.

FOR FURTHER INFORMATION CONTACT: H.C. Wieland, Division Administrator, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201; or John Isom, Ecologist, Environmental Division, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569-2281. Doug Ford or Don McChesney, Engineers, Public Works/Engineering Division, City of Little Rock, 701 West Markham, Little Rock, Arkansas 72201, Telephone (501) 371-4820.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the City of Little Rock and the Arkansas State Highway and Transportation Department, will prepare an EIS on a proposal to construct an expressway connecting I-30 and U.S. 65/167 serving southern Little Rock and Pulaski County, Arkansas.

The proposal will help solve the problem of a lack of continuous arterial streets and general roadway system development in a part of the City and County that is experiencing growth at a more rapid rate than previously anticipated. The proposed facility will meet at least three objectives for this area. The objectives are:

1. Providing a continuous east-west principal arterial route connecting the Pine Bluff Freeway (Highway 65/167 at Pratt Road with the I-30/I-430 interchange.

2. Providing at least one additional, either principal or minor arterial, route traversing the study area to maintain the principle of continuity and spacing.

3. Improving the utility of existing arterial streets crossing the study area in a north-south direction.

Alternatives to be considered are:

1. The "Do-Nothing" Alternative where roads are constructed according to the regional plan with the exception of the proposed facility.

2. The "Reconstruction" Alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility.

3. The "Mass Transit" Alternative.

4. The "New Location" Alternative considering several different alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations, including conservation groups and groups of individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions have been held in a mobile trailer situated directly in the areas to be affected. In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting has been held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning Construction. The regulations implementing Executive Order 1372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 19, 1991.

Charles Boyd,

Field Operations Engineer, Little Rock, Arkansas.

[FR Doc. 91-4613 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. P-90-5W; Notice 1]

Transportation of Natural and Other Gas by Pipeline; Petition for Waiver by Texas Gas Transmission Corp.

Texas Gas Transmission Corporation (Texas Gas) has petitioned the Research and Special Programs Administration for a waiver from compliance with 49 CFR 192.179(a)(2), which requires each point on the pipeline in a Class 3 location to be within 4 miles of a sectionalizing block valve. Texas Gas is adding a 13.06-mile section of 36-inch outside diameter loop line along its existing main line system in Jefferson County, Kentucky and seeks permission to align placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines.

The 3 existing valve sites (BV-55A, BV-56, and BV-56A) are shown on Emergency Response Location Drawing Nos. SK-871-PL, SK-872-PL and SK-873-PL which are available in the Docket. Two proposed sites for the new line at the 579.41 (BV-56) and 586.28 (BV-56A) mile locations require a waiver because between them they contain an 0.87-mile section of pipeline that is more than 4 miles from a valve (between the 583.41 and 584.28 mile points) as required by the Class 3 location regulation. The BV-56 valve site is in a Class 3 location and is surrounded by a trailer park. The BV-56A site is within a Class 1 area. Class 3 locations are characterized (see 49 CFR 192.5 for class location definitions) as areas with 46 or more buildings per mile of pipeline. Class 1 locations have 10 or less buildings within the prescribed area. The 13.06-mile section of new construction is located within Class Locations 1, 2, and 3 and includes farmland, single-family housing areas, and urban development.

In preparing justification for a waiver, Texas Gas conducted an exercise wherein they dispatched crews from the Jeffersontown Compressor Station to potential valve sites along the pipeline. The purpose was to determine expected response time if emergency shut-in of a section of pipeline were needed. They reported that, dependent upon the location of the cause of the emergency, driving time to the sites required by the regulation exceeded that to Texas Gas' proposed sites by 3 to 16 minutes and required 2 to 4 more response employees due to the increased number of sites. The public could be subject to exposure from escaping gas the additional response time. We believe the company finding seems reasonable.

Strict adherence to the regulation would require Texas Gas to locate valves at the 575.71 and 583.71 mile markers. The 575.71 mile marker is located in a small area between 2 public roads that is insufficient in size for a block valve location. Furthermore, the area along the pipeline route in an easterly direction from the site is zoned for subdivision development. Relocating the site in a westerly direction would violate the 4-mile limit established in the regulation. The other regulation site, at the 583.71 mile location, borders on an existing subdivision. Although constructing a valve site in a subdivision might not endanger the residents, it would require additional land disturbance and expose residential areas to irritating loud noises if a blow-down became necessary. Photographs of existing and potential sites are available in the Docket.

Texas Gas estimates that, if an emergency occurs along the 13.06-mile section of line, deliveries to consumers would be diminished by 72.2 to 171.3 mmcf gas per day due to reduced system flexibility if valves are installed at the sites required by regulation rather than at existing sites. If such an emergency situation occurs and a section of line is shut-in, the Company can cross-connect the remaining lines and maintain the higher delivery level if the valves are located adjacent to the valves at existing sites. The option to cross-connect is not available at the site required by regulation.

Texas Gas estimates an additional cost of approximately $281,000 to complete the construction of facilities under their proposal compared to constructing the required sites. The additional cost occurs as a result of the additional cross-over valves and piping at the BV-56 and BV-56A sites. Texas Gas justifies the increased expenditure on the basis of a greater degree of public convenience and safety.

Because the proposed valve placement coincides with existing valves currently qualified to operate on the pipelines adjacent to the proposed line, it seems reasonable to waive the requirements of § 192.179(a)(2) for the new line. There is no reason to anticipate a lesser level of safe performance for the proposed line than for the existing lines. Granting the waiver would provide uniform treatment for this section of line take as a unit. There does not appear to be any additional risks to the population in proximity to the line. In view of these reasons, and those stated in the foregoing discussion, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice numbers and be submitted to the Dockets Unit, room 8417, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590.

All comments received before April 1, 1991 will be considered before final action is taken. Late filed comments will be considered so far as practicable. All comments and other docketed material will be available for inspection and copying in room 8419 between the hours of 8:30 a.m. and 5 p.m. before and after the closing date. No public hearing is contemplated, but one may be held at a time and place set in a Notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue.

Issued in Washington, DC on February 26, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-4939 Filed 2-28-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC-14; OTS No. 1467]

Archer Federal Savings and Loan Association, Chicago, IL; Final Action; Approval of Conversion Application

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Archer Federal Savings and Loan Association, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4923 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-5; OTS No. 0295]

Citizens Federal Savings and Loan Association of Rome, Rome GA; Final Action; Approval of Conversion Application

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Citizens Federal Savings and Loan Association of Rome, Rome, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4921 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-15; OTS No. 6003]

First Federal Bank of Northwest GA, Federal Savings Bank, Cedartown, Georgia; Final Action; Approval of Conversion Application

Notice is hereby given that on February 7, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Federal Bank of Northwest Georgia, Federal Savings Bank, Cedartown, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Atlanta District Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348-5217.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4922 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-13; OTS No. 6656]

First Federal Savings and Loan Association of Leitchfield; Final Action; Approval of Conversion Application

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Leitchfield, Leitchfield, Kentucky, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Cincinnati, Ameritrust Center, 525 Vine Street, Cincinnati, OH 45201-5364.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4924 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-7; OTS No. 2553]

First Federal Savings Bank, Winston-Salem, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on February 15, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Winston-Salem, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4925 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-10; OTS No. 3224]

First Federal Savings Bank, SD; Final Action; Approval of Conversion Application

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Watertown, South Dakota for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Des Moines, Regency West 2, Suite 300, 1401 50th Street, Des Moines, IA 50265.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4926 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-6; OTS No. 2589]

Great American Federal Savings Bank, F.S.B., Wauwatosa, WI; Final Action; Approval of Conversion Application

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Great American Federal Savings Bank, F.S.B. Wauwatosa, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4927 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-12; OTS No. 4968]

Great Valley Savings Association, Reading, PA; Final Action; Approval of Conversion Application

Notice is hereby given that on February 11, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Great Valley Savings Association, Reading, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW, Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4928 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-8; OTS No. 2494]

Inter-City Federal Savings Bank, Louisville, MS; Final Action; Approval of Conversion Application

Notice is hereby given that on February 11, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Inter-City Federal Savings Bank, Louisville, Mississippi for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Dallas District Office, 122 Carpenter Freeway, Irving Texas 75039.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4929 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-9; OTS No. 2644]

Perpetual Federal Savings Bank, Urbana, OH; Final Action; Approval of Conversion Application

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Perpetual Federal Savings Bank, Urbana, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, Cincinnati District Office, Ameritrust Center, 525 Vine Street, Cincinnati, Ohio 45201-5364.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4930 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-11; OTS No. 2714]

Western Federal Savings and Loan Association, Sparta, WI; Final Action; Approval of Conversion Application

Notice is hereby given that on February 12, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Western Federal Savings and Loan Association, Sparta, Wisconsin for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: February 22, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-4931 Filed 2-28-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 41

Friday, March 1, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

February 26, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

DATE AND TIME: February 27, 1991, 9:00 a.m.

PLACE: 825 North Capitol Street NE, Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Docket No. RP88-68-000, *et al.*, Transcontinental Gas Pipe Line Corporation.
(2) Docket No. IN89-1-000, Transcontinental Gas Pipe Line Corporation.
(3) Docket No. IN89-1-001, Transcontinental Gas Pipe Line Corporation.
(4) Transcontinental Gas Pipe Line Corporation, Sulpetro Limited Natural Gas.
(5) Docket No. TA85-3-29-009, *et al.*, Transcontinental Gas Pipe Line Corporation.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required under the Government in the Sunshine Act:

Chairman Allday
Commissioner Trabandt
Commissioner Moler
Commissioner Langdon
Commissioner Terzic

Lois D. Cashell,

Secretary.

[FR Doc. 91-5081 Filed 2-27-91; 4:00 pm]

BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-4283.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 28, 1991, 2:00 p.m., Meeting Open to the Public.

The above meeting will convene at 10:00 a.m., and not 2:00 p.m. as previously stated.

The following item had been added to the agenda:

Future Meetings

DATE AND TIME: Tuesday, March 5, 1991, 2:00 p.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-5046 Filed 2-27-91; 3:04 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM: BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 6, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed revision of Regulation P (Minimum Security Devices and Procedures for Federal Reserve Banks and State Member Banks) following zero-based review. (Proposed earlier for public comment; Docket No. R-0688.)

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation CC (Availability of Funds and Collection of Checks) regarding certain Federal Reserve Bank services to be offered in a same-day settlement environment.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204

Dated: February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4983 Filed 2-27-91; 10:44 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Wednesday, March 6, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-4984 Filed 2-27-91; 10:44 am]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:06 p.m. on Tuesday, February 26, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C.

Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)((8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street NW., Washington, DC.

Dated: February 26, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-4995 Filed 2-27-91; 10:51 am]

BILLING CODE 6714-01-M

federal register

Friday
March 1, 1991

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 400, et al.

Medicare and Medicaid Programs; OBRA '87 Conforming Amendments; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 406, 408, 409, 410, 413, 416, 417, 424, 430, 431, 435, 436, 440, 441, 447, 455, 482, 485, 489, 491, and 498

[BPD-484-FC; RIN 0938-AD92]

Medicare and Medicaid Programs; OBRA '87 Conforming Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These regulations amend certain sections of Medicare and Medicaid rules to reflect 15 self-executing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) and changes made by sections 102, 103, and 211(b) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), section 608(d)(3)(G) of the Family Support Act of 1988 (Pub. L. 100-485), and sections 6113 and 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89). They also clarify related rules.

The amendments are needed to make HCFA rules consistent with current provisions of law and to ensure that users of the regulations are not confused by outdated provisions or unclear language. This document also makes technical amendments, primarily to correct internal cross-references, make nomenclature changes, and revise an outdated definition.

DATES:

Effective date: These regulations are effective April 1, 1991.

Comment date: We will consider comments received by April 30, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-484-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-484-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias (202) 245-0383.

SUPPLEMENTARY INFORMATION: Of the 15 provisions noted under SUMMARY, seven affect the Medicare program, and eight, the Medicaid program. Of the seven Medicare provisions, 3 expand coverage of services, and the other four—

- Make the Part B deductibles and coinsurance applicable to ambulatory surgical center (ASC) physician services.
- Remove the requirement, that as a condition for a hospital to participate in Medicare, hospital inpatients other than those who are Medicare beneficiaries must be "under the care of a physician";
- Extend, for one more year, the basis for computing the supplementary medical insurance (SMI) premiums and the "hold harmless" provision applicable when there is no cost-of-living increase in social security monthly benefits; and
- Change the method for determining payment for hospital outpatient radiology services and other diagnostic procedures.

Of the eight provisions that affect Medicaid, two expand coverage of services, three deal with waivers of the State plan requirements that are set forth in section 1902 of the Act, one requires disregard of certain supplemental security income (SSI) benefits for beneficiaries in institutions, and one pertains to organ transplant procedures. The eighth provision amends title XVI of the Act with respect to monthly SSI payments to beneficiaries in medical institutions.

Sections 103 and 211 of the MCCA affect the determination of Medicare Part A and Part B premiums, and the date for promulgation of the Part A premium.

The changes we have made in the rules, to reflect these self-executing provisions of the law and to clarify other related regulations, are discussed below. References to "the Act" are to the Social Security Act. Sections without specific statutory citation are sections of OBRA '87.

I. Expansion of Medicare Coverage

A. Services of Podiatrists

1. Statutory Provision

Section 4039(b) amends paragraph (3) of section 1861(r) of the Act (definition of physician) to remove the requirement that the activities of a doctor of podiatric medicine "be consistent with the policy of the institution with respect to which he performs them" for purposes of the provisions of the Act that pertain to utilization review, home health services, outpatient physical therapy, and certification by a physician as to a patient's need for care.

2. Changes in the Regulations

a. *To reflect changes in the law.* This section required us to remove all provisions stating that a podiatrist's activities must be "consistent with the policy of the institution * * *" which appeared in §§ 409.42(d), 424.11(e), 424.22(a), and 424.24(c). (Previous §§ 405.1625, 405.1633, and 405.1634 were redesignated as §§ 424.11, 424.22, and 424.24 by final rules published on March 2, 1988 at 43 FR 8629.) The revised rules specify that a doctor of podiatric medicine may perform only those plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.

b. *Technical and editorial revisions of pacemaker rules.* In amending part 409, we noted that the rules on cardiac pacemakers and pacemaker leads contained repetition and unclear cross-references. In order to improve readability and ease of comprehension, we revised §§ 409.19 and 410.64 to provide a more logical organization, clarify cross-references, and simplify presentation. No substantive change is intended.

B. Outpatient Psychiatric Services

1. Statutory Provisions

Sections 4070 (a)(1) and (c)(1) of OBRA '87 amended section 1833(d) of the Act to increase the dollar limit for expenses incurred during a calendar year for outpatient psychiatric treatment from $312.50 to $562.50 for 1988, and to $1,375 for subsequent calendar years. Section 6113 of OBRA '89 further amended section 1833(d) of the Act to remove the dollar limit but retain the 62½ percent limit, to be applied to "incurred expenses".

2. Changes in the Regulations

The provisions discussed are above reflected in changes to §§ 410.152 and 410.155.

C. Comprehensive Outpatient Rehabilitation Facility (CORF) Services

1. Statutory Provisions

Section 4078 amends section 1862(cc) of the Act to provide that Medicare Part B may pay for physical therapy, occupational therapy, and speech pathology services furnished by a CORF outside its own premises if—

- The plan of treatment requirement is met; and
- The services are not otherwise paid for under Medicare.

Under previous law, all CORF services (except a single home visit if necessary to evaluate the impact of the home environment on the rehabilitation goals) had to be furnished on the premises of the CORF.

2. Changes in the Regulations

To reflect the section 4078 provision, we have amended §§ 410.105(b) and 485.58.

II. Medicare: Miscellaneous Changes

A. "Under the Care of a Physician"

1. Statutory Provision

Section 1861(e) of the Act sets forth the conditions an institution must meet in order to participate in Medicare as a hospital. One of those conditions, which has been in effect since the beginning of the program, is that the institution have a requirement that each inpatient be under the care of a physician. Section 4009(f) amends section 1861(e)(4) to make that requirement applicable only to patients who are Medicare beneficiaries.

Change in the Regulation

This amendment required a change in § 482.12 of the conditions of participation for hospitals.

B. Medicare Premiums

1. Statutory Provisions

a. *Medicare Part A premiums.* Section 103 of the MCCA amends section 1818 of the Act to change the promulgation date and the formula for computing the monthly premium for those individuals who can become entitled to Medicare Part A only by paying a premium.

b. *Part B premiums.* The provision for making the SMI premium equal to 50 percent of the actuarial rate for the aged, that is, 50 percent of the estimated expenditures for services furnished to enrollees age 65 and over (section 1839(e) of the Act) was extended through 1989 by section 4080 of OBRA '87, and through 1990 by section 6301 of OBRA '89.

c. *Hold harmless provision.* The "hold harmless" provision limits the premium increase when there is no cost-of-living increase in social security monthly benefits (section 1839(f) of the Act). This provision was extended for one more year by section 4080 of OBRA '87, and made permanent by section 211(b) of the MCCA.

Under this provision, for individuals who are eligible for Social Security cash benefits for both November and December of a calendar year, there are limits on premium increases. The Part B premiums of those individuals cannot be increased to the point where, because of that increase, the Social Security cash benefit paid for December (the check received in January) is less than the benefit paid for November (the check received in December).

In amending section 1839(f), of the Act, section 211(b) changed "monthly benefit" to "amount of benefits payable". "Monthly benefit" had always been interpreted to mean the amount to which the beneficiary was entitled, regardless of how much was actually paid. The change to "amount payable" permits application of the hold harmless provision even if the payable benefit is also reduced because of government pension offset or workers' compensation payments.

2. Changes in the Regulations

In order to avoid confusion, the section 1818 changes made by the MCCA and the section 1839 changes made by the three cited laws are reflected in these final regulations through amendments to §§ 406.22 and 408.20, respectively.

C. Deductibles and Coinsurance: ASC Services

1. Statutory Provisions

Section 9343(e) of OBRA '86, as amended by section 4085(i)(21)(D) of OBRA '87, amended section 1833 (a) and (b) of the Act to rescind the exemption of ASC facility services from the Part B annual deductible and coinsurance. OBRA '86 did not specify an effective date for this provision. However, on the basis of congressional advice, we determined that the intent was to make the provision effective for services furnished on or after July 1, 1987.

Section 4054 of OBRA '87 was later renumbered 4055 because of duplication of 4052. This section, as amended by section 411(f)(12) of the MCCA, amended sections 1833 (a) and (b) of the Act to make the Part B deductible and coinsurance provisions applicable to ASC physician services, that is, to physician services performed (in an ASC or in a hospital on an outpatient basis) in connection with surgical procedures approved for reimbursement in ASCs. This change is effective for services furnished on or after April 1, 1988.

2. Changes in the Regulations

In order to reflect both the OBRA '86 and the OBRA '87 provisions, and to clarify some confusing aspects of the rules that pertain to ASC services, we have amended §§ 410.152, 410.155 and 410.160 and made the following changes in Part 416:

a. Designated the sections under 5 subparts instead of 3 to facilitate reference to particular aspects.

b. In Subpart A—

- Revised § 416.1 to provide a single comprehensive "Basis and scope" section applicable to the whole part.
- Corrected cross reference in § 416.2.
- Removed § 416.3, as inconsistent with current law, which makes the deductible and coinsurance provisions applicable to ASC services.

c. In subpart B—

Revised the heading to reflect the fact that the "conditions for coverage" are being designated under a new subpart C.

- Removed § 416.20 as duplicative of revised § 416.1.
- Revised § 416.25 and added a new § 416.26 to separate the basic requirements from the procedures for qualifying to participate in Medicare as an ASC.
- Revised § 416.30 to reflect the changes in the deductible and coinsurance provisions of the law, to conform paragraph (f) to the changes being made in § 416.120, as discussed later in this preamble, to change "prospectively" to "next" in paragraph (f)(1) to make clear when the agreement is effective, and to correct internal cross-references.
- In § 416.35, changed future tense to present indicative for consistency with the rest of these rules.
- Moved the content of § 416.39 (deeming of compliance) to the new § 416.26, since "deeming" is one way to qualify to participate as an ASC.
- Designated the "scope of benefits" provisions under a new subpart D, and the "payment" provisions under a new subpart E.

d. In the newly designated subpart D, revised §§ 416.60 and 416.61—

- To eliminate repetition and provide paragraph headings to guide the reader;
- Make clear that, although payment differs depending on where the services are furnished, the scope is the same;
- Reflect the fact that the provisions apply not just to ASC services but also to services furnished in hospital outpatient departments; and
- To specify that intra-ocular lenses are covered.

e. In the redesignated subpart E—

BEST COPY AVAILABLE

• Removed § 416.100 as duplicative of revised § 416.1.

• Removed § 416.110 as inconsistent with current law.

• Revised § 416.120 as follows:

a. To remove paragraph (b) because the HAASC classification, originally established to make clear that a hospital component furnishing ambulatory surgery could be owned and operated as part of the hospital, does not represent a valid distinction. The fact is that all Medicare participating ASCs, regardless of whether they are "independent" or owned by a hospital, must meet the same participation requirements and are paid in the same manner. A hospital component that furnishes ambulatory surgical services may be considered by the hospital to be part of its outpatient department or a separate entity. If the component is considered to be part of the hospital outpatient department, the ambulatory surgical services are covered and paid for as hospital outpatient services. If the component is considered a separate entity, it must be certified as an ASC and is paid under the ASC rules.

b. To clarify policy on payment for multiple surgical procedures performed at a single operative session (paragraph (c)).

• Made minor editorial changes in § 416.125.

• In §§ 416.130 and 416.140, changed future tense to present indicative for consistency with the rest of these rules, and made clarifying editorial changes in § 416.140.

D. Application of Blood Deductible

1. Statutory Provisions

a. Section 102 of the MCCA amends section 1813(a)(2) of the Act to provide that the Medicare Part A blood deductible shall be reduced to the extent that a blood deductible has been applied under Medicare Part B.

b. Section 608(d)(3)(G) of the Family Support Act of 1988, enacted October 13, 1988, amends section 104 of the MCCA to add a new subsection (d)(7) which, in turn, amends section 1833(b) of the Act to provide that the Part B blood deductible shall be reduced to the extent that a blood deductible has been applied under Medicare Part A.

2. Changes in the Regulations

a. In § 409.87, we have revised paragraphs (a)(3) and (a)(6).

b. In § 410.161, we have made a conforming technical amendment, which appears at the end of the rules text with other technical amendments.

c. In part 489, we have revised section 489.31.

E. Partial Hospitalization Services

1. Statutory Provisions

Section 4070(b), as amended by section 411(h)(1)(B) of the MCCA, amends the definitions section of the Medicare title as follows:

a. Amends section 1861(s)(2)(B) of the Act to provide that partial hospitalization services incident to physician services, furnished by a hospital to its outpatients, are covered as medical and other health services.

b. Adds to section 1861 a new subsection (ff) to—

1. Define "partial hospitalization services" as a program that is furnished by a hospital to its outpatients and is a distinct and organized intensive ambulatory treatment program offering less than 24-hour-daily care;

2. Specify eight services included in partial hospitalization services;

3. Provide that the Secretary may add other services, with the exception of meals and transportation;

4. Require that the services be—

• Reasonable and necessary for the diagnosis or active treatment of the individual's condition;

• Reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization; and

• Furnished pursuant to such guidelines relating to frequency and duration of services as are established by regulation, taking into account accepted norms of medical practice and the reasonable expectation of patient improvement; and

5. Require that the services be prescribed by a physician under a written individualized plan of treatment that (1) is established and periodically reviewed by a physician, in consultation with appropriate staff participating in the program and (2) sets forth the physician's diagnosis, the type, amount, duration, and frequency of the services and the goals for treatment under the plan.

At this time we do not consider it desirable to establish by regulation specific limits on the frequency and duration of these services. We believe that the physician who establishes and reviews the plan of treatment can best determine what is necessary and appropriate for each patient. Accordingly, the guidelines in these rules make the physician responsible for specifying how often and for how long partial hospitalization services are to be furnished to each patient. If experience indicates the need to regulate this aspect, we would follow the notice and opportunity for comment procedures. In the meantime, we plan to seek a technical amendment that would authorize but not require the Secretary to issue additional guidelines. Section 4070(b) also amends section 1835(a)(2) by adding a new subparagraph (F) to require that, as a condition for Medicare payment, a physician certify that—

a. The individual would require inpatient psychiatric care in the absence of partial hospitalization services;

b. An individualized written plan of care has been established and is reviewed periodically by a physician; and

c. The services are or were furnished while the individual is or was under the care of a physician.

(Physician certification is not required for any other "incident to" services.)

2. Changes in the Regulations

a. In § 410.2 we have inserted a definition of "partial hospitalization services".

b. In § 410.10 we have made a conforming change in paragraph (c).

c. In § 410.27, we have added a new paragraph (d) to specify the conditions for coverage of these services. This paragraph would be amended later if it is found necessary to establish limits on the frequency and duration of these services.

d. In § 424.24, we have made conforming changes in paragraphs (a) and (b) and added a new paragraph (e) to set forth the physician certification and plan of treatment requirements for these services.

F. Delayed Action Amendment

Section 4033 amends section 226(f) of the Act to permit months from a previous period of disability benefit entitlement to be counted in determining when Medicare Part A may begin for an individual who becomes disabled more than 60 months (84 months if previous entitlement was as a disabled child, widow, or widower) after the month in which the previous period of disability benefit entitlement ended. The earlier months of disability may be counted only if the physical or mental impairment that is the basis for the current disability is the same as or directly related to the impairment that was the basis for the previous period of entitlement to disability benefits.

The amendment applies only if the previous period of disability benefit entitlement ended on or after February 21, 1988. This, in conjunction with the requirement that the previous period must have ended more than 60 or 84 months before the onset of the current disability, means that the earliest anyone could qualify for Medicare Part A under the section 4033 amendment is March 1993, or March 1995 if previous entitlement was as a disabled child, widow, or widower.

We have made no changes in the regulations because we anticipate that further changes will be made in the law before 1993.

III. Expansion of Medicaid Coverage

A. Services of Dentists

1. Statutory Provision

Section 4103 amends section 1905(a)(5) of the Act to require the State Medicaid plan to include medical and surgical services furnished by a dentist, if under State law those services may be performed either by a doctor of medicine or a doctor of dental surgery or dental medicine, and would be considered physicians' services if furnished by a physician.

The requirement is effective for calendar quarters beginning on or after January 1, 1988. However, the law makes special provision for States that must seek legislative action (for purposes other than appropriation of funds) before they can amend their State plans. In those circumstances, the State plan would not be considered to be out of compliance with the title XIX requirements until the first day of the first quarter that begins after the close of the first regular legislative session that begins after enactment of the provision (December 22, 1987).

2. Changes in the Regulations

This additional Medicaid coverage is shown in revised § 440.50.

B. Clinic Services

1. Statutory Provision

Section 4105 amends the definition of "clinic services" (section 1905(a)(9) of the Act) to clarify that the term includes services furnished outside the clinic, by clinic personnel, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

2. Changes in the Regulations

This provision required that we amend § 440.90, which defines "clinic services".

We are amending the clinic definition to reflect the recent legislative change, and to clarify that this represents an exception to the general coverage requirement for services to be furnished on the premises of the clinic. Clinic services have always been limited to people who go to the clinic (or a satellite location) and get the services onsite. In regulations this result was achieved by virtue of defining the services as furnished "to outpatients." The outpatient definition (§ 440.2) originally was written in terms of a patient who is receiving services "at an organized medical facility." In BERC–513–F, a regulation which grew out of the regulatory reform effort, we revised the outpatient definition from a patient receiving services "at" an organized medical facility to a patient "of" an organized medical facility (52 FR 47934, December 17, 1987). This change had the unintended effect of creating confusion in the context of the clinic benefit over whether services still had to be furnished on the premises of a clinic in order to be covered under the clinic benefit. It was never our intention to rescind the onsite requirement, and we are not aware of any changes made by States in clinic coverage as a result of the revision to the outpatient definition. Accordingly, we are correcting our error in this regulation. We would note that, in enacting the recent provision for coverage of clinic services for homeless individuals, Congress has now established an explicit exception to the normal requirement that clinic services be furnished onsite in order to be covered, thus ratifying the current requirement that other services must be furnished onsite.

IV. Medicaid: Waivers of State Plan Requirements

A. Freedom of Choice of Providers of Family Planning Services

1. Statutory Provisions

Section 1915(b) of the Act, which authorizes the Secretary to waive State plan requirements set forth in section 1902 of the Act, specifies that no such waiver may restrict an individual's freedom of choice of providers of family planning services.

Subsequent amendments to the Act have retained or extended this rule, as shown below.

a. Section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 amended section 1915 of the Act to provide, effective April 7, 1986, that a State—

• Could furnish case-management services as medical assistance, with a waiver of the State-wideness and comparability of services requirements; but

• Could not, with respect to an individual receiving case-management services, restrict that individual's freedom of choice of providers of family planning services.

b. OBRA '87 sections 4113 (c)(1) and (c)(2) amend sections 1902(a)(23) and 1902(e)(2)(A) of the Act, respectively, to apply this rule effective for services furnished on or after July 1, 1988.

The amendment to section 1902(a)(23) of the Act provides that a Medicaid recipient enrolled in a primary care case-management system, an HMO, or a similar entity, may not be restricted in his or her freedom of choice of providers of family planning services.

The amendment to section 1902(e)(2)(A) of the Act excludes family planning services from the restriction imposed on HMO enrollees who lose Medicaid eligibility but are deemed to continue to be eligible for the remainder of a minimum HMO enrollment period. The restriction is that the enrollee is eligible only for services furnished by the HMO. Under the amendment, the enrollee is free to seek family planning services from any qualified provider.

2. Changes in the Regulations

These provisions required us to amend §§ 431.51 and 435.212. In § 431.51(b)(1), we have added language to counteract a misunderstanding that has arisen in the past: freedom of choice does not obligate a Medicaid provider to furnish services to every recipient. Within specified limits, a recipient may seek to obtain services from any qualified provider, but the provider determines whether to furnish services to the particular recipient. This is consistent with the language of § 1902(a)(23) of the Act; "* * * who undertakes to provide him such services."

B. Extension of Special Waivers to the Northern Mariana Islands

1. Statutory Provision

Section 4116 amends section 1902(j) of the Act to extend the waiver provisions of that section to the Northern Mariana Islands.

2. Changes in the Regulations

In § 431.56, we have added "Northern Mariana Islands" where appropriate.

C. Time Allowed for Decision on Waiver Requests

1. Statutory Provision

Section 4118(l) amends section 1915(h) of the Act to provide that—

• A request for continuation of a section 1915 waiver shall be deemed granted unless, within 90 days, the Secretary denies the request or requests additional information; and

• If the Secretary requests additional information, the 90 days allowed for the Secretary to reach a decision begin anew when he or she receives the additional information. This is

consistent with the time frames already applicable to initial waiver requests.

2. Changes in the Regulations

This provision highlighted the need to set forth the procedures that HCFA follows in processing waiver requests. This need is met by adding a new § 430.25, in which paragraph (f) reflects the amendment discussed above. Except for paragraph (f), the new § 430.25 is merely a codification of practice that has long been in effect but had not been set forth in regulations.

We also noted that Subpart B of Part 431 (which deals with exceptions and waivers) needed clarification and updating. The specific changes in Subpart B include the following:

a. A new § 431.40 to set forth the basis and scope of the subpart.

b. Revision of §§ 431.50(c) and 431.51 for consistency in dealing with "exceptions".

c. Removal of outdated content:

- References to title IV–E children are removed from § 431.52 (Payment for out-of-State services) because, under section 1902(a) of the Act, the State where these children reside is responsible for providing their Medicaid services.
- References to section 1903(m) waivers are removed from § 431.55 because those waivers had to be in place before August 10, 1982 and could not be renewed.
- The presumed exception that would permit a State to limit payment for rural health clinic services to services provided by a rural health clinic (paragraph (c) of § 431.54) is removed because, by definition (§ 440.20(b)), "rural health clinic services" are already limited to services "furnished by a rural health clinic".

d. Editorial revisions that clarify the rules and follow the general style conventions of HCFA rules, such as—

- Reduction of overlong sentences (70 to 100 words) in § 431.55(c) and (e).
- Use of active voice and present tense rather than passive voice and future tense.
- More designated items and more headings to guide the reader.

V. Medicaid: Post-Eligibility Treatment of Income of Individuals in Institutions

1. Background

a. Title XIX of the Act and the Medicaid regulations provide for mandatory and-optional disregards of certain amounts of income of individuals who are in institutions. These disregards help to determine how much of a recipient's income is applied to the cost of institutional care.

b. Final regulations published on February 8, 1988 (53 FR 3586), to be effective April 8, 1988, amended Medicaid rules with the intent of making optional for States what had previously been required: The disregard of income needed to cover expenses incurred for necessary medical and remedial care recognized under State law but not included in the State Medicaid plan.

c. The statutory amendments discussed below made it necessary to restore the requirement that the February 8 rules would have made optional, and to make other changes in the regulations pertaining to treatment of income of individuals in institutions.

2. Statutory Provisions

a. Section 303(d) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360, commonly referred to as the MCCA) amended section 1902 of the Act to add a new subsection (r), which was redesignated as (r)(1) by section 303(e)(5) of the same law. Subsection (r)(1) requires disregard of income needed for the type of expenses noted in 1. b. above. Since the change in the law was made effective on April 8, 1988, the result is that the February 8 provision never went into effect and the previous disregard requirement continues without interruption. (Section 303(a)(1)(B) of the MCCA added to the Act a new section 1924 that also affects posteligibility treatment of the income and resources of an institutionalized spouse and of the spouse who remains in the community. The new provisions are being implemented by States under general instructions and will be codified in the CFR through other regulations identified as BPD–609–P.)

b. Section 9115 of OBRA '87 amends section 1611(e)(1) of the Act to provide, in subparagraph (G), that full SSI and SSP benefits be continued for up to three months after the beneficiary enters a medical institution if specified conditions are met. Section 9115 also amends section 1902(o) of the Act (which already required disregard of any SSI and SSP benefits continued under section 1611(e)(1)(E) of the Act) to require that, in determining the amount of any post-eligibility contribution by the individual to the cost of care and services, the full SSI and SSP benefits continued under section 1611(e)(1)(G) of the Act also be disregarded.

c. Section 9119 amends title XVI (SSI) of the Act to increase the monthly SSI payment to recipients in medical institutions from $25 to $30 for individuals, and from $50 to $60 for couples.

As enacted, section 9119 did not amend the Medicaid law. However, section 411(n)(3) of Pub. L. 100–360 adds to section 1902 a new subsection (q) which—

- Requires Medicaid personal needs allowances of at least $30 for an individual and $60 for a couple; and
- Makes the amendment effective for Medicaid payments made on or after July 1, 1988.

Previous regulations specified minimum personal allowance amounts for the 50 States, the District of Columbia, American Samoa, and the Northern Mariana Islands, but not for Puerto Rico, the Virgin Islands, and Guam. Now that minimum amounts are required by law, they must be applied also to the latter three jurisdictions. Disregard of continued SSI or SSP payments does not apply because the SSI program is not in effect in those three jurisdictions.

3. Changes in the Regulations

a. Sections 435.725 and 435.733 of the Medicaid rules are revised to provide that, in determining the amount that a recipient in a medical institution will contribute to the cost of institutional care, the full SSI and SSP benefits continued under sections 1611(e)(1) (E) and (G) of the Act must be disregarded.

b. Sections 435.725, 435.733, 435.832, and 436.832 of the Medicaid rules are revised—

- To require a minimum personal needs allowance of $30 for individuals and $60 for couples; and
- To conform to section 1902(r)(1) by revising the paragraphs that deal with expenses incurred for necessary medical and remedial care recognized under State law but not included in the State Medicaid plan, to restore the requirement that was in effect before publication of the February 8 rules.

VI. Medicaid—Requirements for Organ Transplant Procedures

A. Statutory Provisions

COBRA section 9507(a) amended section 1903(i) of the Act to add a new paragraph (1) under which FFP would be denied for organ transplant procedures after December 1988 unless—

1. The State plan provides for written standards for coverage of those procedures; and
2. Those standards provide that—
   - Similarly situated individuals are treated alike; and
   - Any restriction on the facilities or practitioners that may provide such procedures is consistent with the accessibility of high quality care to individuals eligible for the procedures under the plan.

OBRA '87 section 4118(d), through a technical amendment made effective as though it had been enacted with COBRA, added, at the end of the paragraph (i):

> Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this title that are not reasonable in amount, duration, and scope to achieve their purpose.

B. Changes in the Regulations

Section 441.10 has been amended and a new § 441.35 has been added to reflect both of the statutory amendments.

VII. Medicare—Payment for Hospital Outpatient Radiology and Other Diagnostic Services

1. Statutory Provisions

Part B of the Medicare program covers medical and other health services as defined in section 1861(s) of the Act. The method for determining payment for covered radiology services and other diagnostic procedures furnished by a hospital on an outpatient basis has changed as a result of section 4066 of OBRA '87. Specifically, section 4066 (which was subsequently amended by section 411(g)(4) of the Medicare Catastrophic Coverage Act of 1988) amends section 1833 of the Act to add a new subparagraph (a)(2)(E) and a new subsection (n) that change the basis for Medicare payment—

- For outpatient hospital radiology services furnished on or after October 1, 1988; and
- For certain other diagnostic procedures (as defined by the Secretary) furnished on or after October 1, 1989.

2. Changes in the Regulations

The new method determines payment to the hospital partly on the basis of the prevailing charges in the locality for the same services furnished by physicians in their offices. The law provides that the prevailing charge portion of the radiology payment is computed on the basis of "62 percent * * * of 80 percent of the prevailing charge * * * for participating physicians for the same services * * *". The 62 percent adjustment is necessary to exclude the professional component of the prevailing charge, and the 80 percent adjustment excludes beneficiary coinsurance amounts. The order of the computation as stated in the law does not properly take into account the Part B annual deductible which must be subtracted from the technical component of the professional charge before the coinsurance adjustment is made. We do not believe that Congress intended to change the way that Part B deductible and coinsurance are applied in determining Medicare payment. We have made this clear in a new § 413.122 which conforms to current billing practices for outpatient radiology and for other diagnostic procedures. The section 4066 changes also required us to amend § 413.13(c) to specify that these costs are aggregated and treated separately from all other hospital costs.

VIII. Medicare—Physician Certification of Need for Services

As noted above, final rules published on March 2, 1988 redesignated subpart P of part 405 of the Medicare rules under a new part 424—Conditions for Medicare Payment. We requested comments from any reader who believed that, in the process of simplifying, clarifying, and redesignating the old rules we had unintentionally made substantive changes not discussed in the preamble.

We received two comments (from a national professional association and a law firm) indicating that the following change was substantive.

Previous § 405.1625 stated:

> (a) The health insurance program recognizes the physician as the key figure in determining utilization of health services; the physician decides upon admission to a hospital, orders tests, drugs, and treatments, and determines the length of stay.

New § 424.10 reads:

> (a) *Purpose.* The physician has a major role in determining utilization of health services furnished by providers. The physician decides upon admissions, orders tests, drugs and treatments, and determines the length of stay.

In the revised section, using "major role" rather than "key figure" was not intended as a substantive change. The second clause, which provides the "evidence" of the physician's importance, the things he or she does that influence utilization, was retained unchanged. However, in order to ensure that others do not misinterpret the change as reducing the physician's importance in determining utilization of services, we are restoring the term "key figure" in § 424.10. This change appears among the technical amendments at the end of the rules text.

IX. Medicare and Medicaid: Handling of a New Term

"Conditions of participation" is the term that has long been used in connection with providers that participate or seek to participate in Medicare. In some cases, the same conditions apply to participation in Medicaid.

Final rules published on February 2, 1989 (54 FR 5316) amended part 483 (established by a final rule published on June 3, 1988 at 53 FR 20448) to add a new subpart B. Subpart B redesignated and revised the Medicare rules previously contained in subpart K of part 405 (Conditions of Participation; Skilled Nursing Facilities (SNFs)) and the Medicaid rules in subparts D through F of part 442 (Requirements for SNFs and Intermediate Care Facilities (ICFs)), and standards for ICFs other than ICFs for the Mentally Retarded (ICFs/MR).

The rules published on February 2, 1989 used the term "requirements for participation" in lieu of "conditions of participation".

This new terminology would require us to identify all the Medicare and Medicaid rules that refer to "conditions of participation" in order to insert "requirement for participation" where appropriate.

We have chosen, as a simpler way to take care of current and future needs in this area, to define "conditions of participation" to include "requirements for participation", as the latter term is used in part 483. The definition is inserted in § 400.200, and appears at the end of the text with other technical and conforming amendments.

X. Technical Amendments

The technical amendments that appear under part 430 and at the end of the text are necessary to—

- Make explicit what was implicit in the language of 45 CFR 201.3(g) before it was redesignated as 42 CFR 430.20 by final rules published on September 21, 1988 at 53 FR 36573. The § 201.3(g) reference to "additional assistance" (to be provided under an amendment to the State Medicaid plan) means not only additional services, but also increased payment for services already included in the plan.
- Explain acronyms and abbreviations that are used frequently in the HCFA rules.
- Correct references to sections of the law and regulations that have been redesignated or removed, and to organizations that have changed their names.
- Make clear the relationship between "*conditions of participation*" and "*requirements for participation*", and between "*condition level*" deficiencies, and deficiencies with respect to "*level A requirements*".
- Make clear, by amending parts 410 and 424, that physician certification of need for medical and other health services is required only if those part B services are furnished by providers and, accordingly, is not required for home dialysis support services furnished by

an ESRD facility. (The plan of treatment requirements for home dialysis support services are set forth in § 410.52(b) of the Medicare rules.)

• Conform the definition of "institution for mental diseases" (as it appears in §§ 435.1009 and 440.140(a)(2)) to the clarification made by section 411(k)(14) of Pub. L. 100-360.

• Conform an appeals provision (§ 498.3(d)(3)) to the pertinent provider agreement rule (§ 489.12).

XI. Waiver of Proposed Rulemaking

These rules conform HCFA regulations to 14 self-executing amendments to the Medicare and Medicaid laws (titles XVIII and XIX of the Social Security Act) and one amendment to the SSI law (title XVI of the Act).

With two minor exceptions, the amendments to the Act are so specific and detailed that they leave no room for alternative interpretations or implementation. The two exceptions are in the amendments made by sections 4066 and 4070(b).

Section 4066 Amendments

Amended sections 1833(a)(2)(E) and 1833(n) of the Act are specific as to the changes in the method for computing payment for hospital outpatient radiology services. However, the Secretary is to define the "other outpatient diagnostic procedures" that are subject to those changed computation methods. We plan to publish the definition in the Federal Register.

Added section 1861(ff) of the Act requires us to establish guidelines as to the frequency and duration of partial hospitalization services. In these rules we are adopting guidelines under which we delegate responsibility to the physician who establishes and reviews the plan of treatment. We believe that the physician is best able to determine the frequency and duration that is necessary and appropriate for each patient. If experience indicates the need for Federal limits, we will publish additional guidelines as a notice of proposed rulemaking.

The editorial changes and technical amendments to other related regulations have no substantive effect, and the new § 430.25 simply codifies long-standing practice. Accordingly, we find that there is good cause to dispense with proposed rulemaking.

However, as previously indicated, we will consider timely comments from anyone who believes that, in the conforming amendments we have misinterpreted the intent of the law, or in the technical and editorial changes, we have unintentionally made substantive changes other than those discussed in this preamble.

Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all comments in the preamble to the revised rules.

XII. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that is likely to have an annual impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

In addition, consistent with the Regulatory Flexibility Act (RFA) and section 1102(b) of the Social Security Act, we prepare a regulatory flexibility analysis for each rule, unless the Secretary certifies that the particular rule will not have a significant economic impact on a substantial number of small entities, or a significant impact on the operation of a substantial number of small rural hospitals.

The RFA defines "small entity" as a small business, a nonprofit enterprise, or a governmental jurisdiction (such as a county, city, or township) with a population of less than 50,000. We also consider all providers and suppliers of services to be small entities. For purposes of section 1102(b) of the Act, we define small rural hospital as a hospital that has fewer than 50 beds, and is located anywhere but in a metropolitan statiatical area.

These regulations amend the HCFA rules to reflect changes made by specified provisions of the four laws identified at the beginning of this preamble. Since the provisions are already in effect, publication of these conforming amendments to the HCFA rules will have no additional impact, but will simply ensure that the rules reflect current statutory requirements.

Accordingly—

• We have determined that these rules will not have a significant impact on the general economy nor do they meet any of the other threshold criteria contained in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

• We have determined, and the Secretary certifies, that these rules will not have a significant economic impact on a substantial number of small entities, and will not significantly affect the operation of a substantial number of small rural hospitals. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 408

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 417

Administrative practice and procedures, Health maintenance organization (HMO), Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Assignment of benefits, Physician certification, Claims for payment, Emergency services, Plan of treatment.

42 CFR Part 430

Grant programs—health, Medicaid.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family planning, Grant programs—health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 455

Fraud, Grant programs—health, Health facilities, Health professions, Investigations, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 491

Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare practitioners, providers and suppliers.

42 CFR chapter IV is amended as set forth below:

A. Part 406.

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Insurance Without Monthly Premiums

2. The heading of subpart B is revised to read as set forth below.

3. Section 406.22 is amended by revising paragraphs (a) and (b) to read as follows:

§ 406.22 Monthly premiums.

(a) *Promulgation and effective date.* Beginning with 1984, premiums are promulgated each September, effective for the succeeding calendar year.

(b) *Premium amounts.* (1) Before July 1974, the monthly premium was $33.

(2) For months after June 1974 and before January 1989, the dollar amount was determined by multiplying $33 by the ratio of next year's inpatient deductible to $76, which was the inpatient deductible determined for 1973. (Because of price controls, the deductible actually charged for 1973 was $72.)

(3) Beginning with 1989, the monthly premium is equal to one twelfth of the per capita amount that the Secretary estimates will be payable under part A for services and administrative costs with respect to individuals age 65 and over who are entitled to part A benefits throughout the year for which the premium applies.

(4) The amount determined by the formula is rounded to the nearest multiple of $1 ($0.50 is rounded to the next higher dollar).

* * * * *

B. Part 408.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1818, 1837-1840, 1843, 1871, and 1861(d) of the Social Security Act (42 U.S.C. 1302, 1395i-2, 1395p-1395s, 1395v, 1395hh, and 1395rr(d)), and the Federal Claims Collection Act (31 U.S.C. 3711).

2. Section 408.20 is revised to read as follows:

§ 408.20 Monthly premiums.

(a) *Statutory provisions.* (1) The law established a monthly premium of $3 for the initial period of the program. It also set forth criteria and procedures for the Secretary to follow each December, beginning with December 1968, to determine and promulgate the standard monthly premium for the 12-month period beginning with July of the following year.

(2) The law was amended in 1983 to require that the Secretary promulgate the standard monthly premium in September of that year, and each year thereafter, to be effective for the 12 months beginning with the following January.

(3) The standard monthly premium applies to individuals who enroll during their initial enrollment periods. In other situations, that premium may be increased or decreased as specified in this subpart.

(4) The law was further amended in 1984 to include a temporary "hold harmless" provision (set forth in paragraph (e) of this section), that was subsequently extended and finally made permanent in 1988.

(b) *Criteria and procedures for the period from July 1976 through December 1983, and for periods after December 1990.* (1) For periods from July 1976 through December 1983, the Secretary determined and promulgated as the standard monthly premium (for disabled as well as aged enrollees) the lower of the following:

(i) The actuarial rate for the aged.

(ii) The monthly premium promulgated the previous December for the year beginning July 1, increased by a percentage that is the same as the latest cost-of-living increase in old age insurance benefits that occurred before the current promulgation. (Because of the change in the effective dates of the premium amount (under paragraph (a)(2) of this section), there was no increase in the standard monthly premium for the period July 1983 through December 1983.)

(2) For periods after December 1990, the Secretary determines the standard monthly premium in the manner specified in paragraph (b)(1) of this section, but promulgates it in September, for the following calendar year.

(c) *Premiums for calendar years 1984 through 1990.* For calendar years 1984 through 1990, the standard monthly premium for all enrollees—

(1) Is equal to 50 percent of the actuarial rate for enrollees age 65 or over, that is, is calculated on the basis of 25 percent of program costs without regard to any cost-of-living increase in old age insurance benefits; and

(2) Is promulgated in the preceding September.

(d) *Limitation on increase of standard premium: 1987 and 1988.* If there is no cost-of-living increase in old age or disability benefits for December 1985 or December 1986, the standard monthly premiums for 1987 and 1988 (promulgated in September 1986 and September 1987, respectively) may not be increased.

(e) *Nonstandard premiums for certain cases*—(1) *Basic rule.* A nonstandard

premium may be established in individual cases only if the individual is entitled to old age or disability benefits for the months of November and December, and actually receives the corresponding benefit checks in December and January.

(2) *Special rules: Calendar years 1987 and 1988.* For calendar years 1987 and 1988, the following rules apply:

(i) A nonstandard premium may be established if there is a cost-of-living increase in old age or disability benefits but, because the increase in the standard premium is greater than the cost-of-living increase, the beneficiary would receive a lower cash benefit in January than he or she received in December.

(ii) A nonstandard premium may not be established if the reduction in the individual's benefit would result, in whole or in part, from any circumstance other than the circumstance described in paragraph (e)(2)(i) of this section.

(3) *Special rule: Calendar years after 1988.* (i) Beginning with calendar year 1989, a premium increase greater than the cost-of-living increase is still a prerequisite for a nonstandard premium.

(ii) However, a nonstandard premium is not precluded solely because the cash benefit is further reduced as a result of government pension offset or workers' compensation payment.

(4) *Amount of nonstandard premium.* The nonstandard premium is the greater of the following:

(i) The premium paid for December.

(ii) The standard premium promulgated for January, reduced as necessary to compensate for—

(A) The fact that the cost-of-living increase was less than the increase in the standard premium; or

(B) The further reduction in benefit because of government pension offset or workers' compensation payments.

(5) *Effective dates of nonstandard premium.* A nonstandard premium established under this paragraph (e) continues in effect for the rest of the calendar year even if later there are retroactive adjustments in benefit payments. (The nonstandard premium could be affected by a determination that the individual had not established, or had lost, entitlement to monthly benefits for November or December, or both.)

(6) *Effect of late enrollment or reenrollment.* A nonstandard premium is subject to increase for late enrollment or reenrollment as required under other sections of this subpart. The increase is computed on the basis of the standard premium and added to the nonstandard premium.

C. Part 409.

PART 409—HOSPITAL INSURANCE BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1812, 1813, 1861, 1862(h), 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395d, 1395e, 1395x, 1395y(h), 1395hh, and 1395rr.

2. Section 409.19 is revised to read as follows:

§ 409.19 Services related to cardiac pacemakers and pacemaker leads.

(a) *Requirement.* (1) Providers that request or receive Medicare payment for the implantation, removal, or replacement of permanent cardiac pacemakers and pacemaker leads must submit to HCFA the information required for the pacemaker registry.

(2) The required information is set forth under 21 CFR part 805 of the FDA regulations and must be submitted in accordance with general instructions issued by HCFA.

(b) *Denial of payment.* If HCFA finds that a provider has failed to comply with paragraph (a) of this section, HCFA will deny payment for the implantation, removal, or replacement of any permanent cardiac pacemaker or pacemaker lead, effective 45 days after sending the provider written notice in accordance with paragraph (c) of this section.

(c) *Notice of denial of payment.* The notice of denial of payment—

(1) States the reasons for the determination;

(2) Grants the provider 45 days from the date of the notice to submit the information or evidence showing that the determination is in error; and

(3) Informs the provider of its right to hearing.

(d) *Right to hearing.* If the denial of payment determination goes into effect at the expiration of the 45-day period, it constitutes an "initial determination" subject to administrative and judicial review under part 498 of this chapter.

3. In § 409.42, paragraph (d) is revised to read as follows:

§ 409.42 Requirements and conditions for home health services.

* * * * *

(d) *Plan of treatment requirements.*[1] The home health services must be furnished under a plan of treatment that is established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine. A doctor of podiatric medicine may establish a plan of treatment only if that is consistent with the functions he or she is authorized to perform under State law.

4. Section 409.87 is amended to revise paragraphs (a)(3) and (a)(6) to read as follows:

§ 409.87 Blood deductible.

(a) General provisions. * * *

3. Medicare does not pay for the first 3 units of whole blood or units of packed red cells that a beneficiary receives, during a benefit period, as an inpatient of a hospital or SNF, or on an outpatient basis under Medicare Part B.

* * * * *

(6) The Part A blood deductible is reduced to the extent that the Part B blood deductible has been applied. For example, if a beneficiary had received one unit under Medicare Part B, and later in the same benefit period received three units under Medicare Part A, Medicare Part A would pay for the third of the latter units. (As specified in § 410.161 of this chapter, the Part B blood deductible is reduced to the extent a blood deductible has been applied under Medicare Part A.)

* * * * *

D. Part 410.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1832, 1835, 1861(r), (s), and (cc), 1871, and 1881 of the Social Security Act (42 U.S.C.) 1302, 1395K, 13951, 1395n, 1395x(r), (s), and (cc), 1395hh, and 1395rr.

§ 410.2 [Amended]

2. Section 410.2 is amended to add the following definition in alphabetical order:

Partial hospitalization services means (a) A distinct and organized intensive ambulatory treatment program that offers less than 24-hour daily care and furnishes services that—

(1) Are reasonable and necessary for the diagnosis or active treatment of the individual's condition;

(2) Are reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization; and

(3) Include any of the following:

(i) Individual and group therapy with physicians or psychologists or other mental health professionals to the extent authorized under State law.

(ii) Occupational therapy requiring the skills of a qualified occupational therapist.

(iii) Services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients.

(iv) Drugs and biological furnished for therapeutic purposes, subject to the limitations specified in § 410.29.

(v) Individualized activity therapies that are not primarily recreational or diversionary.

(vi) Family counseling, the primary purpose of which is treatment of the individual's condition.

(vii) Patient training and education, to the extent the training and educational activities are closely and clearly related to the individual's care and treatment.

(viii) Diagnostic services.

(ix) Other items and services as specified by HCFA, excluding meals and transportation.

3. Section 410.10 is amended to correct the heading, and revise the introductory text, and paragraph (c) to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(c) Services and supplies, including partial hospitalization services, that are incident to physician services and are furnished to outpatients by or under arrangements made by a hospital.

* * * * *

4. Section 410.27 is revised to read as follows:

§ 410.27 Outpatient hospital services and supplies incident to physicians' services: Conditions.

(a) Medicare Part B pays for hospital services and supplies furnished incident to physicians' services to outpatients, including drugs and biologicals that cannot be self-administered, if—

(1) They are furnished—

(i) By or under arrangements made by a participating hospital; and

(ii) As an integral though incidental part of a physician's services; and

(2) In the case of partial hospitalization services, also meet the conditions of paragraph (d) of this section.

(b) Drugs and biologicals are also subject to the limitations specified in § 410.168.

(c) Rules on emergency services furnished to outpatients by nonparticipating hospitals are specified in § 410.168.

(d) Medicare Part B pays for partial hospitalization services if they are—

(1) Prescribed by a physician who certifies and recertifies the need for the services in accordance with subpart B of part 424 of this chapter; and

(2) Furnished under a plan of treatment as required under subpart B of part 424 of this chapter.

5. Section 410.64 is revised to read as follows:

§ 410.64 Services related to cardiac pacemakers and pacemaker leads.

(a) *Requirement.* (1) Physicians or providers that request or receive payment for the implantation, removal, or replacement of permanent cardiac pacemakers and pacemaker leads, must submit to HCFA the information required for the pacemaker registry.

(2) The required information is set forth under 21 CFR part 805 of the FDA regulations and must be submitted in accordance with general instructions issued by HCFA.

(b) *Denial of payment.* If HCFA finds that a physician or provider has failed to comply with paragraph (a) of this section, HCFA will deny payment for the implantation, removal, or replacement of any permanent cardiac pacemaker or pacemaker lead, effective 45 days after sending the physician or provider written notice in accordance with paragraph (c) of this section.

(c) *Notice of denial of payment.* The notice of denial of payment—

(1) States the reasons for the determination;

(2) Grants the physician or provider 45 days from the date of the notice to submit the information or evidence showing that the determination is in error; and

(3) Informs the physician or provider of its right to hearing.

(d) *Right to hearing.* If the denial of payment goes into effect at the expiration of the 45-day period, it constitutes an "initial determination" subject to administrative and judicial review under part 498 of this chapter.

6. In § 410.105, the introductory text and paragraph (b) are revised to read as follows:

§ 410.105 Requirements for coverage of CORF services.

Services specified in § 410.100 and not excluded under § 410.102 are covered as CORF services if they are furnished by a participating CORF (that is, a CORF that meets the conditions of subpart B of part 485 of this chapter, and has in effect a provider agreement under part 489 of this chapter) and if the following requirements are met:

* * * * *

(b) *When and where services are furnished.* (1) All services must be furnished while the individual is under the care of a physician.

(2) Except as provided in paragraph (b)(3) of this section, the services must be furnished on the premises of the CORF.

(3) *Exceptions.* (i) Physical therapy, occupational therapy, and speech pathology services may be furnished away from the premises of the CORF.

(ii) The single home visit specified in § 410.100(m) is also covered.

* * * * *

7. In § 410.152, paragraph (a)(1) is republished, and paragraphs (a)(1)(iv), (a)(2)(iii), and (i) are revised to read as follows:

§ 410.152 Amounts of payment.

(a) *General provisions*—(1) *Exclusion from incurred expenses.* As used in this section, "incurred expenses" are expenses incurred by an individual, during his or her coverage period, for covered Part B services, excluding the following:

* * * * *

(iv) In the case of physician and CORF services for the treatment of a mental, psychoneurotic, or personality disorder, furnished to an individual who is not an inpatient of a hospital, the expenses excluded from incurred expenses under § 410.155(c).

* * * * *

(2) *Other applicable provisions.* * * *

* * * * *

(iii) The special rules for payment to health maintenance organizations (HMOs), health care prepayment plans (HCPPs), and competitive medical plans (CMPs) that are set forth in part 417 of this chapter. (A prepayment organization that does not qualify as an HMO, CMP, or HCPP is paid in accordance with paragraph (b)(4) of this section.)

* * * * *

(i) *Amount of payment: ASC facility services.* For ASC facility services that are furnished in connection with the surgical procedures specified in part 416 of this chapter, Medicare Part B pays 80 percent of a standard overhead amount, as specified in § 416.120(c) of this chapter.[1]

---

[1] Before January 1981, only a doctor of medicine or osteopathy could establish a plan for home health services. A plan of treatment established before July 1981 was acceptable for Medicare Part A payment only if it was established within 14 days after the individual's discharge from a hospital or SNF.

[1] For services furnished before July 1, 1987, Medicare Part B paid 100 percent of the standard amount.

8. In § 410.155, paragraph (b) is republished, and paragraph (c) is revised to read as follows:

§ 410.155 Psychiatric services limitations: Expenses incurred for physician services and CORF services.

* * * * *

(b) *Services subject to limitation.* The psychiatric services limitation applies to physician services and CORF services (furnished by physicians or nonphysicians) for the treatment of a mental, psychoneurotic, or personality disorder, when the services are furnished to an individual who is not an inpatient in a hospital.

(c) *Limitation on incurred expenses*—(1) *Current limit.* For purposes of §§ 410.152 and 410.160, incurred expenses for the services specified in paragraph (b) of this section exclude expenses that are in excess of 62½ percent of the sum of the reasonable charges for physician services and the customary charges for CORF services.

(2) *Previous limits.* For years before calendar year 1990, incurred expenses that could be considered were limited to the lower of the current 62½ percent and a fixed dollar amount that—

(i) For calendar years before 1988, was $312.50;

(ii) For calendar year 1988, was $562.50; and

(iii) For calendar year 1989, was $1,375.

* * * * *

9. In § 410.160, paragraph (a) is republished, and paragraph (b) is revised to read as follows:

§ 410.160 Part B annual deductible.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, incurred expenses (as defined in § 410.152) are subject to, and count toward meeting the annual deductible.

(b) *Exceptions.*[6] The following incurred expenses are not subject to the Part B annual deductible and do not count toward meeting that deductible:

(1) Home health services.

(2) Pneumococcal vaccines and their administration.

* * * * *

E. Part 413 is amended as set forth below:

[6] The deductible provisions did not apply to ASC facility services that were furnished before July 1987, nor to physician services that were furnished before April 1988 and that met the requirements for payment of 100 percent of the reasonable charges.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833 (a), and (n), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l (a) and (n), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.13 is amended to add new paragraphs (c)(3) and (c)(4), to read as follows:

§ 413.13 Amount of payments if customary charges for services furnished are less than reasonable costs.

* * * * *

(c) * * *

(3) *Hospital outpatient radiology services.* The reasonable costs and customary charges for hospital outpatient radiology services furnished on or after October 1, 1988, that are subject to the payment method described in § 413.122, are aggregated and treated separately from all other hospital costs and charges incurred during the cost reporting period.

(4) *Other diagnostic procedures performed by a hospital on an outpatient basis.* The reasonable costs and customary charges for other diagnostic procedures identified by HCFA, that are performed on an outpatient basis by a hospital on or after October 1, 1989, and that are subject to the payment method described in § 413.122, are aggregated and treated separately from all other hospital costs or charges incurred during the cost reporting period.

3. A new § 413.122 is added, to read as follows:

§ 413.122 Payment for hospital outpatient radiology services and other diagnostic procedures.

(a) *Basis and purpose.* (1) This section implements section 1833(n) of the Act and establishes the method for determining Medicare payments for radiology services and other diagnostic procedures performed by a hospital on an outpatient basis.

(2) For purposes of this section—

(i) Radiology services include diagnostic and therapeutic radiology, nuclear medicine, CAT scan procedures, magnetic resonance imaging, ultrasound and other imaging services; and

(ii) Other diagnostic procedures are those identified by HCFA, and do not include diagnostic radiology procedures or diagnostic laboratory tests.

(b) *Payment for hospital outpatient radiology services.* (1) The aggregate payment for hospital outpatient radiology services furnished on or after October 1, 1988 is equal to the lesser of the following:

(i) The hospital's reasonable cost or customary charges, as determined in accordance with § 413.13, reduced by the applicable Part B annual deductible and coinsurance amounts.

(ii) The blended payment amount described in paragraph (b)(2) of this section.

(2) The blended payment amount for hospital outpatient radiology services furnished on or after October 1, 1988, but before October 1, 1989, is equal to the sum of—

(i) 65 percent of the hospital-specific amount (the hospital's reasonable cost or customary charges, whichever is less, reduced by the applicable Part B annual deductible and coinsurance amounts); and

(ii) 35 percent of a prevailing charge or fee schedule amount that is calculated as 80 percent of the amount determined by subtracting the applicable Part B annual deductible from 62 percent of the prevailing charges (or for services furnished on or after January 1, 1989, the fee schedule amount established) for the same services when furnished by participating physicians in their offices in the same locality.

(3) For hospital outpatient radiology services furnished on or after October 1, 1989, the blended payment amount is equal to the sum of 50 percent of the hospital-specific amount and 50 percent of the fee schedule amount.

(c) *Payment for other diagnostic procedures.* (1) The aggregate payment for other diagnostic procedures performed by a hospital on an outpatient basis on or after October 1, 1989 is equal to the lesser of the following:

(i) The hospital's reasonable cost or customary charges, as determined in accordance with § 414.13, reduced by the applicable Part B annual deductible and coinsurance amounts.

(ii) The blended payment described in paragraph (c)(2) of this section.

(2) The blended payment amount for other diagnostic procedures furnished on or after October 1, 1989, but before October 1, 1990, is equal to the sum of—

(i) 65 percent of the hospital-specific amount (the hospital's reasonable cost or customary charges, whichever is less, reduced by the applicable Part B annual deductible and coinsurance amounts); and

(ii) 35 percent of a prevailing charge amount that is calculated as 80 percent of the amount determined by subtracting the applicable Part B annual deductible from 42 percent of the prevailing charges for the same services furnished by participating physicians in their offices in the same locality.

(3) For other diagnostic procedures performed by a hospital on or after October 1, 1990, the blended payment is equal to 50 percent of the hospital-specific amount and 50 percent of the prevailing charge amount.

F. Part 416 is amended as set forth below:

1. The table of contents is revised to read as follows:

PART 416—AMBULATORY SURGICAL SERVICES

Subpart A—General Provisions and Definitions

Sec.
416.1 Basis and scope.
416.2 Definitions.

Subpart B—General Conditions and Requirements

416.25 Basic requirements.
416.26 Qualifying for an agreement.
416.30 Terms of agreement with HCFA.
416.35 Termination of agreement.

Subpart C—Specific Conditions for Coverage

416.40 Condition for coverage—Compliance with State licensure law.
416.41 Condition for coverage—Governing body and management.
416.42 Condition for coverage—Surgical services.
416.43 Condition for coverage—Evaluation of quality.
416.44 Condition for coverage—Environment.
416.45 Condition for coverage—Medical staff.
416.46 Condition for coverage—Nursing services.
416.47 Condition for coverage—Medical records.
416.48 Condition for coverage—Pharmaceutical services.
416.49 Condition for coverage—Laboratory and radiologic services.

Subpart D—Scope of Benefits

416.60 General rules.
416.61 Scope of facility services.
416.65 Covered surgical procedures.
416.75 Performance of listed surgical procedures on an inpatient hospital basis.

Subpart E—Payment for Facility Services

416.120 Basis for payment.
416.125 ASC services payment rate.
416.130 Publication of revised payment methodologies.
416.140 Reporting requirements.
416.150 Beneficiary appeals.

Authority: Secs. 1102, 1832(a)(2), 1833, 1863 and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 13951, 1395z and 1395aa).

2. In subpart A, §§ 416.1 and 416.2 are revised, and § 416.3 is removed, to read as follows:

§ 416.1 Basis and scope.

(a) *Statutory basis.* (1) Section 1832(a)(2)(F)(i) of the Act provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by the Secretary under section 1833(i)(1) of the Act.

(2) Section 1833(i)(1)(A) of the Act requires the Secretary to specify the surgical procedures that can be performed safely on and ambulatory basis in an ambulatory surgical center, or a hospital outpatient department.

(3) Section 1833(i) (2)(A) and (3) specify the amounts to be paid for facility services furnished in connection with the specified surgical procedures when they are performed, respectively, in an ASC, or in a hospital outpatient department.

(b) *Scope.* This part sets forth—

(1) The conditions that an ASC must meet in order to participate in the Medicare program;

(2) The scope of covered services; and

(3) The conditions for Medicare payment for facility services.

§ 416.2 Definitions.

As used in this part:

Ambulatory surgical center or *ASC* means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, has an agreement with HCFA under Medicare to participate as an ASC, and meets the conditions set forth in subparts B and C of this part.

ASC services means facility services that are furnished in an ASC.

Covered surgical procedures means those surgical and other medical procedures that meet the criteria specified in § 416.65 and are published by HCFA in the **Federal Register**.

Facility services means services that are furnished in connection with covered surgical procedures performed in an ASC, or in a hospital on an outpatient basis.

3. In subpart B, the subpart heading and § 416.25 are revised, a new § 416.26 is added, § 416.30 is amended by revising the introductory text and paragraphs (a), (b), (e), and (f) to read as follows, and the undesignated center heading entitled "Conditions of Coverage" and §§ 416.20 and 416.39 are removed.

Subpart B—General Conditions and Requirements

§ 416.25 Basic requirements.

Participation as an ASC is limited to facilities that—

(a) Meet the definition in § 416.2; and

(b) Have in effect an agreement obtained in accordance with this subpart.

§ 416.26 Qualifying for an agreement.

(a) *Deemed compliance.* HCFA may deem an ASC to be in compliance with any or all of the conditions set forth in subpart C of this part if—

(1) The ASC is accredited by a national accrediting body, or licensed by a State agency, that HCFA determines provides reasonable assurance that the conditions are met;

(2) In the case of deemed status through accreditation by a national accrediting body, where State law requires licensure, the ASC complies with State licensure requirements; and

(3) The ASC authorizes the release to HCFA, of the findings of the accreditation survey.

(b) *Survey of ASCs.* (1) Unless HCFA deems the ASC to be in compliance with the conditions set forth in subpart C of this part, the State survey agency must survey the facility to ascertain compliance with those conditions, and report its findings to HCFA.

(2) HCFA surveys deemed ASCs on a sample basis as part of HCFA's validation process.

(c) *Acceptance of the ASC as qualified to furnish ambulatory surgical services.* If HCFA determines, after reviewing the survey agency recommendation and other evidence relating to the qualification of the ASC, that the facility meets the requirements of this part, it sends to the ASC—

(1) Written notice of the determination; and

(2) Two copies of the ASC agreement.

(d) *Filing of agreement by the ASC.* If the ASC wishes to participate in the program, it must—

(1) Have both copies of the ASC agreement signed by its authorized representative; and

(2) File them with HCFA.

(e) *Acceptance by HCFA.* If HCFA accepts the agreement filed by the ASC, returns to the ASC one copy of the agreement, with a notice of acceptance specifying the effective date.

(f) *Appeal rights.* If HCFA refuses to enter into an agreement or if HCFA terminates an agreement, the ASC is entitled to a hearing in accordance with Part 498 of this chapter.

§ 416.39 Terms of agreement with HCFA.

As part of the agreement under § 416.26 the ASC must agree to the following:

(a) *Compliance with coverage conditions.* The ASC agrees to meet the conditions for coverage specified in subpart C of this part and to report promptly to HCFA any failure to do so.

(b) *Limitation on charges to beneficiaries.*[1] The ASC agrees to charge the beneficiary or any other person only the applicable deductible and coinsurance amounts for facility services for which the beneficiary—

(1) Is entitled to have payment made on his or her behalf under this part; or

(2) Would have been so entitled if the ASC had filed a request for payment in accordance with § 410.165 of this chapter.

* * * * *

(e) *Acceptance of assignment.* The ASC agrees to accept assignment for all facility services furnished in connection with covered surgical procedures. For purposes of this section, assignment means an assignment under § 424.55 of this chapter of the right to receive payment under Medicare Part B and payment under § 424.64 of this chapter (when an individual dies before assigning the claim).

(f) *ASCs operated by a hopsital.* In an ASC operated by a hospital—

(1) The agreement is made effective on the first day of the next Medicare cost reporting period of the hospital that operates the ASC; and

(2) The ASC participates and is paid only as an ASC, without the option of converting to or being paid as a hospital outpatient department, unless HCFA determines there is good cause to do otherwise.

(3) Costs for the ASC are treated as a non-reimbursable cost center on the hopsital's cost report.

* * * * *

§ 416.35 [Amended]

3a. In § 416.35, the following changes are made:

a. In paragraph (b)(2), "will send" is changed to "sends".

b. In paragraph (c) "will not be" is changed to "is not".

§ 416.39 [Removed]

4. Section 416.39 is removed.

[1] For facility services furnished before July 1987, the ASC had to agree to make no charge to the beneficiary, since those services were not subject to the part B deductible and coinsurance provisions.

Subpart C—[Redesignated as Subpart E]

4a. Subpart C is redesignated as subpart E.

Subpart C—[Added]

5. Sections 416.40 through 416.49 are designated under a new "Subpart C—Specific Conditions for Coverage".

6. The undesignated center heading entitled "Scope of Benefits" is designated to read: "Subpart D—Scope of Benefits."

Subpart D—Scope of Benefits

7. In newly designated subpart D, §§ 416.60 and 416.61 are revised to read as follows:

§ 416.60 General rules.

(a) The services payable under this part are facility services furnished to Medicare beneficiaries, by a participating facility, in connection with covered surgical procedures specified in § 416.65.

(b) The surgical procedures, including all preoperative and post-operative services that are performed by a physician, are covered as physician services under part 410 of this chapter.

§ 416.61 Scope of facility services.

(a) *Included services.* Facility services include, but are not limited to—

(1) Nursing, technician, and related services;

(2) Use of the facilities where the surgical procedures are performed;

(3) Drugs, biologicals, surgical dressings, supplies, splints, casts, and appliances and equipment directly related to the provision of surgical procedures;

(4) Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure;

(5) Administrative, recordkeeping and housekeeping items and services: and

(6) Materials for anesthesia.

(7) Intra-ocular lenses (IOLs).

(b) Excluded services.

Facility services do not include items and services for which payment may be made under other provisions of Part 405 of this chapter, such as physicians' services, laboratory, X-ray or diagnostic procedures (other than those directly related to performance of the surgical procedure), prosthetic devices (except IOLs), ambulance services, leg, arm, back and neck braces, artificial limbs, and durable medical equipment for use in the patient's home.

8. Redesignated subpart E is amended to revise the subpart heading, remove §§ 416.100 and 416.110, and revise §§ 416.120 and 416.125 to read as follows:

Subpart E—Payment for Facility Services

§ 416.120 Basis for payment.

The basis for payment depends on where the services are furnished.

(a) *Hospital outpatient department.* Payment will be in accordance with part 413 of this chapter.

(b) [Reserved]

(c) *ASC*—(1) *General rule.* Payment is based on a prospectively determined rate. This rate covers the cost of services such as supplies, nursing services, equipment, etc., as specified in § 416.61. The rate does not cover physician services or other medical services covered under part 410 of this chapter (for example, X-ray services or laboratory services) which are not directly related to the performance of the surgical procedures. Those services may be billed separately and paid on a reasonable charge basis.

(2) *Single and multiple surgical procedures.* (i) If one covered surgical procedure is furnished to a beneficiary in an operative session, payment is based on the prospectively determined rate for that procedure.

(ii) If more than one surgical procedure is furnished in a single operative session, payment is based on—

(A) The full rate for the procedure with the highest prospectively determined rate; and

(B) One half of the prospectively determined rate for each of the other procedures.

(3) *Deductibles and coinsurance.* Part B deductible and coinsurance amounts apply as specified in § 410.152 (a) and (i) of this chapter.

§ 416.125 ASC facility services payment rate.

(a) The payment rate is based on a prospectively determined standard overhead amount per procedure derived from an estimate of the costs incurred by ambulatory surgical centers generally in providing services furnished in connection with the performance of that procedure.

(b) The payment must be substantially less than would have been paid under the program if the procedure had been performed on an inpatient basis in a hospital.

§ 416.130 [Amended]

8a. In § 416.130, "will publish", wherever it appears, is changed to "publishes", and "will also explain" is changed to "also explains".

8b. In § 416.140, the section heading and paragraph (a) are revised, and a heading is provided for paragraph (b), to read as follows:

§ 416.140 Surveys.

(a) *Timing, purpose, and procedures.* (1) No more often than once a year, HCFA conducts a survey of a randomly selected sample of participating ASCs to collect data for analysis or reevaluation of payment rates.

(2) HCFA notifies the selected ASCs by mail of their selection and of the form and content of the report the ASCs are required to submit within 60 days of the notice.

(3) If the facility does not submit an adequate report in response to HCFA's survey request, HCFA may terminate the agreement to participate in the Medicare program as an ASC.

(4) HCFA may grant a 30-day postponement of the due date for the survey report if it determines that the facility has demonstrated good cause for the delay.

(b) *Requirements for ASCs.* * * *

* * * * *

G. Part 424.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation continues to read as follows:

Authority: Secs. 216(j), 1102, 1814, 1815(c), 1835, 1842(b), 1861, 1866(d), 1870 (e) and (f), 1871, and 1872 of the Social Security Act (42 U.S.C. 416(j), 1302, 1395f, 1395g(c), 1395n, 1395u(b), 1395x, 1395cc(d), 1395gg (e) and (f), 1395hh, and 1395ll).

2. In § 424.11, the introductory text of paragraph (e) is republished and paragraph (e)(3) is revised to read as follows:

§ 424.11 General procedures.

* * * * *

(e) *Limitation on authorization to sign statements.* A physician certification or recertification statement may be signed only by one of the following:

* * * * *

(3) A doctor of podiatric medicine if his or her certification is consistent with the functions he or she is authorized to perform under State law.

3. Section 424.22 is amended to revise paragraphs (a)(1)(iii) and (a)(1)(iv) and to remove and reserve paragraph (c), to read as follows:

§ 424.22 Requirements for home health services.

(a) *Certification*—

(1) Content of certification. * * *

* * * * *

(iii) A plan for furnishing the services has been established and is periodically reviewed by a physician who is a doctor of medicine, osteopathy, or podiatric medicine, and who is not precluded from performing this function under paragraph (d) of this section. (A doctor of podiatric medicine may perform only plan of treatment functions that are consistent with the functions he or she is authorized to perform under State law.)

(iv) The services were furnished while the individual was under the care of a physician who is a doctor of medicine, osteopathy, or podiatric medicine.[1]

* * * * *

4. Section 424.24 is amended to revise paragraphs (a), (b), and (c)(1), redesignate paragraph (e) as (f), and add a new paragraph (e), to read as follows:

§ 424.24 Requirements for medical and other health services under Medicare Part B.

(a) *Exempted services.* Certification is not required for the following: (1) Hospital services and supplies incident to physicians' services furnished to outpatients. The exemption applies to drugs and biologicals that cannot be self-administered, but not to partial hospitalization services, as set forth in paragraph (e) of this section.

(2) Outpatient hospital diagnostic services, including necessary drugs and biologicals, ordinarily furnished or arranged for by a hospital for the purpose of diagnostic study.

(3) Outpatient physical therapy services furnished in the patient's home or in the practitioner's office, by or under the direct supervision of a qualified physical therapist in independent practice. (See § 424.25 for plan of treatment requirements applicable to these services.)

(b) *General rule.* Medicare Part B pays for medical and other health services not exempted under paragraph (a) of this section only if a physician certifies the content specified in paragraph (c)(1), (c)(4), (d), (e) or (f)(1) of this section, as appropriate.

(c) *Outpatient physical therapy and speech pathology services*—(1) *Content of certification.* (i) The individual needs, or needed, physical therapy or speech pathology services.

(ii) The services were furnished while the individual was under the care of a physician. (For physical therapy services furnished after July 17, 1984, the physician may be a doctor of podiatric medicine, provided the services are consistent with the functions he or she is authorized to perform under State law.)

(iii) The services were furnished under a plan of treatment that meets the requirements of § 424.25.

* * * * *

(e) *Partial hospitalization services: Content of certification and plan of treatment requirements*—(1) *Content of certification.* (i) The individual would require inpatient psychiatric care if the partial hospitalization services were not provided.

(ii) The services are or were furnished while the individual was under the care of a physician.

(iii) The services were furnished under a written plan of treatment that meets the requirements of paragraph (e)(2) of this section.

(2) *Plan of treatment requirements.* (i) The plan is an individualized plan that is established and is periodically reviewed by a physician in consultation with appropriate staff participating in the program, and that sets forth—

(A) The physician's diagnosis;

(B) The type, amount, duration, and frequency of the services; and

(C) The treatment goals under the plan.

(ii) The physician determines the frequency and duration of the services taking into account accepted norms of medical practice and a reasonable expectation of improvement in the patient's condition.

[1] As a condition of Medicare Part A payment for home health services furnished before July 1981, the physician was also required to certify that the services were needed for a condition for which the individual had received inpatient hospital or SNF services.

H PART 430—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 430.2 [Amended]

2. In paragraph (b), the listing of part 16 is changed to read:

Part 16—Procedures of the Departmental Appeals Board.

§ 430.3 [Amended]

3. In paragraph (b), "Departmental Grants Appeals Board" is changed to "Departmental Appeals Board".

§ 430.20 [Amended]

4. a. In paragraph (b)(1), the following is inserted immediately before "or": "increases the payment amounts for services already included in the plan,".

b. Paragraph (b)(2) is redesignated as paragraph (b)(3).

c. A new paragraph (b)(2) is added to read as follows:

(b) * * *

(2) For a plan amendment that changes the State's payment method

and standards, the rules of § 447.256 of this chapter apply.

5. A new § 430.25 is added to read as follows:

§ 430.25 Waivers of State plan requirements.

(a) *Scope of section.* This section describes the purpose and effect of waivers, identifies the requirements that may be waived and the other regulations that apply to waivers, and sets forth the procedures that HCFA follows in reviewing and taking action on waiver requests.

(b) *Purpose of waivers.* Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440, and subpart G of part 441 of this chapter.

(c) *Effect of waivers.* (1) Waivers under section 1915(b) allow a State to take the following actions:

(i) Implement a primary care case-management system or a specialty physician system.

(ii) Designate a locality to act as central broker in assisting Medicaid recipients to choose among competing health care plans.

(iii) Share with recipients (through provision of additional services) cost-savings made possible through the recipients' use of more cost-effective medical care.

(iv) Limit recipients' choice of providers (except in emergency situations and with respect to family planning services) to providers that fully meet reimbursement, quality, and utilization standards, which are established under the State plan and are consistent with access, quality, and efficient and economical furnishing of care.

(2) A waiver under section 1915(c) of the Act allows a State to include as "medical assistance" under its plan home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF, ICF, or ICF/MR, and is reimbursable under the State plan.

(3) A waiver under section 1916 (a)(3) or (b)(3) of the Act allows a State to impose a deduction, cost-sharing or similar charge of up to twice the "nominal charge" established under the plan for outpatient services, if—

(i) The outpatient services are received in a hospital emergency room but are not emergency services; and

(ii) The State has shown that Medicaid recipients have actually available and accessible to them alternative services of nonemergency outpatient services.

(d) *Requirements that are waived.* In order to permit the activities described in paragraph (c) of this section, one or more of the title XIX requirements must be waived, in whole or in part.

(1) Under section 1915(b) of the Act, and subject to certain limitations, any of the State plan requirements of section 1902 of the Act may be waived to achieve one of the purposes specified in that section.

(2) Under section 1915(c) of the Act, the following requirements may be waived:

(i) Statewideness—section 1902(a)(1).

(ii) Comparability of services—section 1902(a)(10)(B).

(iii) Income and resource rules—section 1902(a)(10)(C)(i)(III).

(3) Under section 1916 of the Act, paragraphs (a)(3) and (b)(3) require that any cost-sharing imposed on recipients be nominal in amount, and provide an exception for nonemergency services furnished in a hospital emergency room if the conditions of paragraph (c)(3) of this section are met.

(e) *Submittal of waiver request.* (1) The State Governor, the head of the Medicaid agency, or an authorized designee may submit the waiver request.

(f) *Review of waiver requests.* (1) This paragraph applies to initial waiver requests and to requests for renewal or amendment of a previously approved waiver.

(2) HCFA regional and central office staff review waiver requests and submit a recommendation to the Administrator, who—

(i) Has the authority to approve or deny waiver requests; and

(ii) Does not deny a request without first consulting the Secretary.

(3) A waiver request is considered approved unless, within 90 days after the request is received by HCFA, the Administrator denies the request, or the Administrator or the Regional Administrator sends the State a written request for additional information necessary to reach a final decision. If additional information is requested, a new 90-day period begins on the day the response to the additional information request is received by the addressee.

(g) *Basis for approval—(1) Waivers under section 1915 (b) and (c).* The Administrator approves waiver requests if the State's proposed program or activity meets the requirements of the Act and the regulations at § 431.55 or subpart G of part 441 of this chapter.

(2) *Waivers under section 1916.* The Administrator approves a waiver under section 1916 of the Act if the State shows, to HCFA's satisfaction, that the Medicaid recipients have available and accessible to them sources, other than a hospital emergency room, where they can obtain necessary nonemergency outpatient services.

(h) *Effective date and duration of waivers—(1) Effective date.* Waivers receive a prospective effective date determined, with State input, by the Administrator. The effective date is specified in the letter of approval to the State.

(2) *Duration of waivers—(i) Home and community-based services under section 1915(c).* The initial waiver is for a period of three years and may be renewed thereafter for periods of five years.

(ii) *Waivers under sections 1915(b) and 1916.* The initial waiver is for a period of two years and may be renewed for additional periods of up to two years as determined by the Administrator.

(3) *Renewal of waivers.* (i) A renewal request must be submitted at least 90 days (but not more than 120 days) before a currently approved waiver expires, to provide adequate time for HCFA review.

(ii) If a renewal request for a section 1915(c) waiver proposes a change in services provided, eligible population, service area, or statutory sections waived, the Administrator may consider it a new waiver, and approve it for a period of three years.

§ 430.33 [Amended]

6. In paragraph (c)(2), the word "Grant" is removed.

§ 430.42 [Amended]

7.a. In paragraph (b)(1), the word "Grant" is removed.

b. In the introductory text of paragraph (b)(2), "Chairperson" is changed to "Chair", and the word "Grants" is removed.

I. Part 431

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Subpart B is revised to read as follows:

Subpart B—General Administrative Requirement

431.40 Basis and scope.
431.50 Statewide operation.
431.51 Free choice of providers.
431.52 Payments for services furnished out of State.
431.53 Assurance of transportation.
431.54 Exceptions to certain State plan requirements.
431.55 Waiver of other Medicaid requirements.
431.56 Special waiver provisions applicable to American Samoa.

Subpart B—General Administrative Requirements

§ 431.40 Basis and scope.

(a) This subpart sets forth State plan requirements and exceptions that pertain to the following administrative requirements and provisions of the Act:

(1) Statewideness—section 1902(a)(1);

(2) Proper and efficient administration—section 1902(a)(4);

(3) Comparability of services—section 1902(a)(10) (B)–(E);

(4) Payment for services furnished outside the State—section 1902(a)(16);

(5) Free choice of providers—section 1902(a)(23);

(6) Special waiver provisions applicable to American Samoa and the Northern Mariana Islands—section 1902(j); and

(7) Exceptions to, and waiver of, State plan requirements—sections 1915 (a)–(c) and 1916 (a)(3) and (b)(3).

(b) Other applicable regulations include the following:

(1) Section 430.25 Waivers of State plan requirements.

(2) Section 440.250 Limits on comparability of services.

§ 431.50 Statewide operation.

(a) *Statutory basis.* Section 1902(a)(1) of the Act requires a State plan to be in effect throughout the State, and section 1915 permits certain exceptions.

(b) *State plan requirements.* A State plan must provide that the following requirements must be met:

(1) The plan will be in operation statewide through a system of local offices, under equitable standards for assistance and administration that are mandatory throughout the State.

(2) If administered by political subdivisions of the State, the plan will be mandatory on those subdivisions.

(3) The agency will ensure that the plan is continuously in operation in all local offices or agencies through—

(i) Methods for informing staff of State policies, standards, procedures, and instructions;

(ii) Systematic planned examination and evaluation of operations in local offices by regularly assigned State staff who make regular visits; and

(iii) Reports, controls, or other methods.

(c) *Exceptions.* (1) "Statewide operation" does not mean, for example, that every source of service must furnish the service State-wide. The requirement does not preclude the agency from contracting with a comprehensive health care organization (such as an HMO or a rural health clinic) that serves a specific area of the State, to furnish services to Medicaid recipients who live in that area and chose to receive services from that HMO or rural health clinic. Recipients who live in other parts of the State may receive their services from other sources.

(2) Other allowable exceptions and waivers are set forth in §§ 431.54 and 431.55.

§ 431.51 Free choice of providers.

(a) *Statutory basis.* This section is based on sections 1902(a)(23), 1902(e)(2), and 1915 (a) and (b) of the Act.

(1) Section 1902(a)(23) of the Act provides that recipients may obtain services from any qualified Medicaid provider that undertakes to provide the services to them.

(2) Section 1915(a) of the Act provides that a State shall not be found out of compliance with section 1902(a)(23) solely because it imposes certain specified allowable restrictions on freedom of choice.

(3) Section 1915(b) of the Act authorizes waiver of the section 1902(a)(23) freedom of choice of providers requirement in certain specified circumstances, but not with respect to providers of family planning services.

(4) Section 1902(a)(23), as amended by section 4113(c) of OBRA '87, provides that, for services furnished after June 1988, a recipient enrolled in a primary care case-management system, an HMO, or a similar entity, may not be denied freedom of choice of qualified providers of family planning services.

(5) Section 1902(e)(2), as amended by section 4113(c)(2) of OBRA '87, provides that HMO enrollees deemed eligible only for services furnished by the HMO (while they complete a minimum enrollment period) may, as an exception, seek family planning services from any qualified provider.

(b) *State plan requirements.* A State plan, except the plan for Puerto Rico, the Virgin Islands, or Guam, must provide as follows:

(1) Except as provided under paragraph (c) of this section, a recipient may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is—

(i) Qualified to furnish the services; and

(ii) Willing to furnish them to that particular recipient.

This includes an organization that furnishes, or arranges for the furnishing of, Medicaid services on a prepayment basis.

(2) A recipient enrolled in a primary care case-management system, an HMO, or other similar entity will not be restricted in freedom of choice of providers of family planning services.

(c) *Exceptions.* Paragraph (b) of this section does not prohibit the agency from—

(1) Establishing the fees it will pay providers for Medicaid services;

(2) Setting reasonable standards relating to the qualifications of providers: or

(3) Subject to paragraph (b)(2) of this section, restricting recipients' free choice of providers in accordance with one or more of the exceptions set forth in § 431.54, or under a waiver as provided in § 431.55.

(d) *Certification requirement.* (1) *Content of certification.* If a State implements a project under one of the exceptions allowed under § 431.54 (d), (e) or (f), it must certify to HCFA that the statutory safeguards and requirements for an exception under section 1915(a) of the Act are met.

(2) *Timing of certification.* (i) For an exception under § 431.54(d), the State may not institute the project until after it has submitted the certification and HCFA has made the findings required under the Act, and so notified the State.

(ii) For exceptions under § 431.54 (e) or (f), the State must submit the certificate by the end of the quarter in which it implements the project.

§ 431.52 Payments for services furnished out of State.

(a) *Statutory basis.* Section 1902(a)(16) of the Act authorizes the Secretary to prescribe State plan requirements for furnishing Medicaid to State residents who are absent from the State.

(b) *Payment for services.* A State plan must provide that the State will pay for services furnished in another State to the same extent that it would pay for services furnished within its boundaries if the services are furnished to a recipient who is a resident of the State, and any of the following conditions is met:

(1) Medical services are needed because of a medical emergency;

(2) Medical services are needed and the recipient's health would be endangered if he were required to travel to his State of residence;

(3) The State determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other State;

(4) It is general practice for recipients in a particular locality to use medical resources in another State.

(c) *Cooperation among States.* The plan must provide that the State will establish procedures to facilitate the furnishing of medical services to individuals who are present in the State and are eligible for Medicaid under another State's plan.

§ 431.53 Assurance of transportation.

A State plan must—

(a) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and

(b) Describe the methods that the agency will use to meet this requirement.

(Sec. 1902(a)(4) of the Act)

§ 431.54 Exceptions to certain State plan requirements.

(a) *Statutory basis.* Section 1915(a) of the Act provides that a State shall not be deemed to be out of compliance with the requirements of sections 1902(a) (1), (10), or (23) of the Act solely because it has elected any of the exceptions set forth in paragraphs (b) and (d) through (f) of this section.

(b) *Additional services under a prepayment system.* If the Medicaid agency contracts on a prepayment basis with an organization that provides services additional to those offered under the State plan, the agency may restrict the provision of the additional services to recipients who live in the area served by the organization and wish to obtain services from it.

(c) [Reserved]

(d) *Special procedures for purchase of medical devices and laboratory and X-ray tests.* The Medicaid agency may establish special procedures for the purchase of medical devices or laboratory and X-ray tests (as defined in § 440.30 of this chapter) through a competitive bidding process or otherwise, if the State assures, in the certification required under § 431.51(d), and HCFA finds, as follows:

(1) Adequate services or devices are available to recipients under the special procedures.

(2) Laboratory services are furnished through laboratories that meet the following requirements:

(i) They are independent laboratories, or inpatient or outpatient hospital laboratories that provide services for individuals who are not hospital patients, or physician laboratories that process at least 100 specimens for other physicians during any calendar year.

(ii) They meet the requirements of subpart M of part 405 or part 482 of this chapter.

(iii) Laboratories that require an interstate license under 42 CFR part 74 are licensed by HCFA or receive an exemption from the licensing requirement by the College of American Pathologists. (Hospital and physician laboratories may participate in competitive bidding only with regard to services to non-hospital patients and other physicians' patients, respectively.)

(3) Any laboratory from which a State purchases services under this section has no more than 75 percent of its charges based on services to Medicare beneficiaries and Medicaid recipients.

(e) *Lock-in of recipients who over-utilize Medicaid services.* If a Medicaid agency finds that a recipient has utilized Medicaid services at a frequency or amount that is not medically necessary, as determined in accordance with utilization guidelines established by the State, the agency may restrict that recipient for a reasonable period of time to obtain Medicaid services from designated providers only. The agency may impose these restrictions only if the following conditions are met:

(1) The agency gives the recipient notice and opportunity for a hearing (in accordance with procedures established by the agency) before imposing the restrictions.

(2) The agency ensures that the recipient has reasonable access (taking into account geographic location and reasonable travel time) to Medicaid services of adequate quality.

(3) The restrictions do not apply to emergency services furnished to the recipient.

(f) *Lock-out of providers.* If a Medicaid agency finds that a Medicaid provider has abused the Medicaid program, the agency may restrict the provider, through suspension or otherwise, from participating in the program for a reasonable period of time.

Before imposing any restriction, the agency must meet the following conditions:

(1) Give the provider notice and opportunity for a hearing, in accordance with procedures established by the agency.

(2) Find that in a significant number or proportion of cases, the provider has:

(i) Furnished Medicaid services at a frequency or amount not medically necessary, as determined in accordance with utilization guidelines established by the agency; or

(ii) Furnished Medicaid services of a quality that does not meet professionally recognized standards of health care.

(3) Notify HCFA and the general public of the restriction and its duration.

(4) Ensure that the restrictions do not result in denying recipients reasonable access (taking into account geographic location: and reasonable travel time) to Medicaid services of adequate quality, including emergency services.

§ 431.55 Waiver of other Medicaid requirements.

(a) *Statutory basis.* Section 1915(b) of the Act, authorizes the Secretary to waive the requirements of sections 1902 of the Act to the extent he or she finds proposed improvements or specified practices in the provision of services under Medicaid to be cost-effective, efficient, and consistent with the objectives of the Medicaid program. Sections 1915 (e), (f), and (h) of the Act prescribe how such waivers are to be approved, continued, monitored, and terminated. Sections 1916 (a)(3) and (b)(3) of the Act specify the circumstances under which the Secretary is authorized to waive the requirement that cost-sharing amounts be nominal.

(1) General requirements for submittal of waiver requests, and the procedures that HCFA follows for review and action on those requests are set forth in § 430.25 of this chapter.

(2) In applying for a waiver to implement an approvable project under paragraph (c), (d), (e), or (f) of this section, a Medicaid agency must document in the waiver request and maintain data regarding:

(i) The cost-effectiveness of the project;

(ii) The effect of the project on the accessibility and quality of services; and

(iii) The anticipated impact of the project on the State's Medicaid program.

(3) No waiver under this section may be granted for a period longer than 2 years, unless the agency requests a continuation of the waiver.

(4) HCFA monitors the implementation of waivers granted under this section to ensure that requirements for such waivers are being met.

(i) If monitoring demonstrates that the agency is not in compliance with the requirements for a waiver under this section, HCFA gives the agency notice and opportunity for a hearing.

(ii) If, after a hearing, HCFA finds an agency to be out of compliance with the requirements of a waiver, HCFA terminates the waiver and gives the agency a specified date by which it must demonstrate that it meets the applicable requirements of section 1902 of the Act.

(c) *Case-management system.* (1) Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to implement a primary care case-management system or specialty physician services system.

(i) Under a primary care case-management system the agency assures that a specific person or persons or agency will be responsible for locating, coordinating, and monitoring all primary care or primary care and other medical care and rehabilitative services on behalf of a recipient.

(ii) A specialty physician services system allows States to restrict recipients of specialty services to designated providers of such services, even in the absence of a primary care case-management system.

(2) A waiver under this paragraph (c) may not be approved unless the State's request assures that the restrictions—

(i) Do not apply in emergency situations; and

(ii) Do not substantially impair access to medically necessary services of adequate quality.

(d) *Locality as central broker.* Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to allow a locality to act as a central broker to assist recipients in selecting among competing health care plans. States must ensure that access to medically necessary services of adequate quality is not substantially impaired.

(1) A locality is any defined jurisdiction, e.g., district, town, city, borough, county, parish, or State.

(2) A locality may use any agency or agent, public or private, profit or nonprofit, to act on its behalf in carrying out its central broker function.

(e) *Sharing of cost savings.* (1) Waivers of appropriate requirements of section 1902 of the Act may be authorized for a State to share with recipients the cost savings resulting from the recipients' use of more cost-effective medical care.

(2) Sharing is through the provision of additional services, including—

(i) Services furnished by a plan selected by the recipient; and

(ii) Services expressly offered by the State as an inducement for recipients to participate in a primary care case-management system, a competing health care plan or other system that furnishes health care services in a more cost-effective manner.

(f) *Restriction of freedom of choice—*(1) Waiver of appropriate requirements of section 1902 of the Act may be authorized for States to restrict recipients to obtaining services from (or through) qualified providers or practitioners that meet, accept, and comply with the State reimbursement, quality and utilization standards specified in the State's waiver request.

(2) An agency may qualify for a waiver under this paragraph (f) only if its applicable State standards are consistent with access, quality and efficient and economic provision of covered care and services and the restrictions it imposes—

(i) Do not apply to recipients residing at a long-term care facility when a restriction is imposed unless the State arranges for reasonable and adequate recipient transfer.

(ii) Do not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services; and

(iii) Do not apply in emergency circumstances.

(3) Demonstrated effectiveness and efficiency refers to reducing costs or slowing the rate of cost increase and maximizing outputs or outcomes per unit of cost.

(g) *Cost sharing requirement.* (1) Under sections 1916 (a)(3) and (b)(3) of the Act, for nonemergency services furnished in a hospital emergency room, the Secretary may by waiver permit a State to impose a copayment of up to double the "nominal" copayment amounts determined under § 447.54(a)(3) of this chapter.

(2) Nonemergency services are services that do not meet the definition of emergency services at § 447.53(b)(4) of this chapter.

(3) In order for a waiver to be approved under this paragraph (g), the State must establish to the satisfaction of HCFA, that alternative sources of nonemergency, outpatient services are available and accessible to recipients.

(4) Although, in accordance with paragraph (b)(3) of this section, a waiver will generally be granted for a 2 year duration, HCFA will re-evaluate waivers approved under this paragraph (g) if the State increases the nominal copayment amounts in effect when the waiver was approved.

(5) A waiver approved under this paragraph cannot apply to services furnished before the waiver was granted.

§ 431.56 Special waiver provisions applicable to American Samoa and the Northern Mariana Islands.

(a) *Statutory basis.* Section 1902(j) of the Act provides for waiver of all but three of the title XIX requirements, in the case of American Samoa and the Northern Mariana Islands.

(b) *Waiver provisions.* American Samoa or the Northern Mariana Islands may request, and HCFA may approve, a waiver of any of the title XIX requirements except the following:

(1) The Federal medical assistance percentage specified in section 1903 of the Act and § 433.10(b) of this chapter.

(2) The limit imposed by section 1108(c) of the Act on the amount of Federal funds payable to American Samoa or the Northern Mariana Islands for care and services that meet the section 1905(a) definition for Medicaid assistance.

(3) The requirement that payment be made only with respect to expenditure made by American Samoa or the Northern Mariana Islands for care and services that meet the section 1905(a) definition of medical assistance.

J. Part 435.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.212 is revised to read as follows:

§ 435.212 Individuals who would be ineligible if they were not enrolled in an HMO.

The agency may provide that a recipient who is enrolled in a federally qualified HMO (under a risk contract as specified in § 434.20(a)(1) of this chapter) and who becomes ineligible for Medicaid is considered to continue to be eligible—

(a) For a period specified by the agency, ending no later than 6 months from the date of enrollment; and

(b) Except for family planning services (which the recipient may obtain from any qualified provider) only for services furnished to him or her as an HMO enrollee.

3. Section 435.725 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii), (c)(4), (c)(5), and (d), to read as follows:

§ 435.725 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

* * * * *

(c) *Required deductions.* * * *

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) $30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) $60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

* * * * *

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(5) *Continued SSI and SSP benefits.* The full amount of SSI and SSP benefits that the individual continues to receive under sections 1611(e)(1) (E) and (G) of the Act.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

* * * * *

4. Section 435.733 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii), (c)(4), (c)(5), and (d), to read as follows:

§ 436.733 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to cost of care.

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

* * * * *

(c) *Required deductions.* * * *

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) $30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) $60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(5) *Continued SSI and SSP benefits.* The full amount of SSI and SSP benefits that the individual continues to receive under sections 1611(e)(1) (E) and (G) of the Act.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

* * * * *

5. Section 435.832 is amended to revise paragraphs (a), (c)(1) introductory text, (c)(1) (i) and (ii) (c)(4), and (d), to read as follows:

§ 435.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to the cost of care.

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

* * * * *

(c) *Required deductions.* * * *

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) $30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or diability.

(ii) $60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

* * * * *

(4) Expenses not subject to third party payment. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance permiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; and

(2) A physician has certified that either of the individuals is likely to return to the home within that period.

* * * * *

K. Part 436.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO AND THE VIRGIN ISLANDS

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.832 is amended to revise paragraphs (a), (c)(1), (c)(4) and (d) to read as follows:

§ 436.832 Post-eligibility treatment of income and resources of institutionalized individuals: Application of patient income to cost of care.

(a) *Basic rules.* (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section from the individual's total income.

(2) The individual's income must be determined in accordance with paragraph (e) of this section.

(3) Medical expenses must be determined in accordance with paragraph (f) of this section.

* * * * *

(c) *Required deductions.* * * *

(1) *Personal needs allowance.* A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution. This protected personal needs allowance must be at least—

(i) $30 a month for an aged, blind, or disabled individual, including a child applying for Medicaid on the basis of blindness or disability;

(ii) $60 a month for an institutionalized couple if both spouses are aged, blind, or disabled and their income is considered available to each other in determining eligibility; and

(iii) For other individuals, a reasonable amount set by the agency, based on a reasonable difference in their personal needs from those of the aged, blind, or disabled.

* * * * *

(4) *Expenses not subject to third party payment.* Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses.

(d) *Optional deduction: Allowance for home maintenance.* For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(i) The amount is deducted for not more than a 6-month period; and

(ii) A physician has certified that either of the individuals is likely to return to the home within that period.

* * * * *

L. Part 440.

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.50 is revised to read as follows:

§ 440.50 Physicians' services and medical and surgical services of a dentist.

(a) "Physicians' services," whether furnished in the office, the recipient's home, a hospital, a skilled nursing facility, or elsewhere, means services furnished by a physician—

(1) Within the scope of practice of medicine or osteopathy as defined by State law; and

(2) By or under the personal supervision of an individual licensed under State law to practice medicine or osteopathy.

(b) "Medical and surgical services of a dentist" means medical and surgical services furnished, on or after January 1, 1988, by a doctor of dental medicine or dental surgery if the services are services that—

(1) If furnished by a physician, would be considered physician's services.

(2) Under the law of the State where they are furnished, may be furnished either by a physician or by a doctor of dental medicine or dental surgery; and

(3) Are furnished by a doctor of dental medicine or dental surgery who is authorized to furnish those services in the State in which he or she furnished the services.

3. Section 440.90 is revised to read as follows:

§ 440.90 Clinic services.

Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. The term includes the following services furnished to outpatients:

(a) Services furnished at the clinic by or under the direction of a physician or dentist.

(b) Services furnished outside the clinic, by clinic personnel under the direction of a physician, to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(c) Services furnished at the clinic that are nurse-midwife services, as defined in § 440.165.

M. Part 441.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.10 [Amended]

2. Paragraph (f) of § 441.10 is revised to read as follows:

(f) Section 1903(i)(1) for organ transplant procedures, and 1903(i)(5) for certain prescribed drugs.

3. A new § 441.35 is added, to read as follows:

§ 441.35 Organ transplants.

(a) FFP is available in expenditures for services furnished in connection with organ transplant procedures only if the State plan includes written standards for the coverage of those procedures, and those standards provide that—

(1) Similarly situated individuals are treated alike; and

(2) Any restriction on the practitioners or facilities that may provide organ transplant procedures is consistent with the accessibility of high quality care to individuals eligible for the procedures under the plan.

(b) Nothing in paragraph (a) permits a State to provide, under its plan, services that are not reasonable in amount, duration, and scope to achieve their purpose.

N. Part 482.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(G), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1320, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(G), (z),

and (ee), 1395aa, 1395hh, 1395ll, 1395ww, 1395x(a)(20), and 1395(a)).

2. In § 482.12, the introductory text of paragraph (c) is republished and paragraphs (c)(1) introductory text, (c)(2) and (c)(4) are revised to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(c) *Standard: Care of patients.* In accordance with hospital policy, the governing body must ensure that the following requirements are met:

(1) Every Medicare patient is under the care of:

* * * * *

(2) Patients are admitted to the hospital only on the recommendation of a licensed practitioner permitted by the State to admit patients to a hospital. If a Medicare patient is admitted by a practitioner not specified in paragraph (c)(1) of this section, that patient is under the care of a doctor of medicine or osteopathy.

* * * * *

(4) A doctor of medicine or osteopathy is responsible for the care of each Medicare patient with respect to any medical or psychiatric problem that is present on admission or develops during hospitalization and that is not specifically within the scope of practice, as defined by the medical staff and permitted by State law and as limited by paragraphs (c)(1) (iv) and (v) of this section, of any of the practitioners specified in paragraphs (c)(1) (ii) through (v) of this section.

* * * * *

O. Part 485.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861 (aa) and (cc), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x (aa) and (cc), and 1395(hh)).

2. The § 485.58, paragraph (e) is revised to read as follows:

§ 485.58 Condition of participation: Comprehensive rehabilitation program.

* * * * *

(e) *Standard: Scope and site of services.*—(1) *Basic requirements.* The facility must provide all the CORF services required in the plan of treatment and, except as provided in paragraph (e)(2) of this section, must provide the services on its premises.

(2) *Exceptions.* Physical therapy, occupational therapy, and speech pathology services furnished away from the premises of the CORF may be covered as CORF services if Medicare payment is not otherwise made for these services. In addition, a single home visit is covered if there is need to evaluate the potential impact of the home environment on the rehabilitation goals.

P. Part 489

Q. Technical Amendments.

1. Nomenclature Changes. Throughout this chapter IV, all references to "section 1910(c) of the Act" are changed to "section 1910(b) of the Act".

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. chapter 35.

§ 400.200 [Amended]

2. In § 400.200, the following statements are added in alphabetical order:

CMP stands for competitive medical plan.

Conditions of participation includes *requirements for participation* as the latter term is used in part 483 of this chapter.

Condition level deficiencies includes deficiencies with respect to "level A requirements" as the latter term is used in parts 442 and 483 of this chapter.

CORF stands for comprehensive outpatient rehabilitation facility.

HCPP stands for health care prepayment plan.

ICF/MR stands for intermediate care facility for the mentally retarded.

OIG stands for the Department's Office of the Inspector General.

§ 400.202 [Amended]

3. In § 400.202, in the definition of *Provider*, the phrase "effective November 1, 1983 through September 30, 1986," is removed.

§ 400.203 [Amended]

4. In § 400.203, the definition of *Services* is revised to read: *Services* means the types of medical assistance specified in section 1905(a) of the Act and defined in subpart A of part 440 of this chapter.

§ 408.24 [Amended]

5. In § 408.24, in paragraphs (a)(6)(ii) and (a)(7)(ii), "section 9319(c) of Pub. L. 99–509" is changed to "section 1837(i) of the Act".

§ 410.24 [Amended]

6. In § 410.24, the superscript for the footnote in the text and in the footnote is changed from "6" to "1".

§ 410.60 [Amended]

7. In § 410.60, the following changes are made:

(a) In paragraph (a)(2), "subpart B of part 424 of this chapter" is changed to "§ 410.63".

(b) In paragraph (c)(2), the superscript for the footnote in the text and in the footnote is changed from "7" to "2".

§ 410.62 [Amended]

8. In § 410.62, in paragraph (a)(2)(iii), "subpart B of part 424 of this chapter" is changed to "§ 410.63".

§ 410.160 [Amended]

9. In § 410.160, in paragraph (b)(1), the superscript for the footnote in the text and in the footnote is changed from "8" to "3".

§ 410.161 [Amended]

10. In § 410.161, the following changes are made:

a. In paragraph (a)(3), "Part A or" is inserted before "Part B", and the following sentence is added at the end: "The Part B blood deductible is reduced to the extent that a blood deductible has been applied under Part A.".

b. Paragraph (a)(6) is removed.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701; and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e–17), unless otherwise noted.

§ 417.104 [Amended]

2. In § 417.104, the footnote to paragraph (e) is revised as follows:

[1] Further information entitled "Guidelines for Rating by Class" may be obtained from the Office of Prepaid Health Care, Division of Qualification Analysis, HHS Cohen Bldg., Room 4360, 330 Independence Ave. SW., Washington, DC 20201.

§ 417.107 [Amended]

3. In § 417.107, the following changes are made:

a. In paragraph (i), "42 CFR part 405" is changed to "part 405 of this chapter".

b. Paragraph (j)(2)(i) is revised to read:

(j) * * *

(2) * * *

(i) A copy of the report, if any, filed with HCFA, containing the information that disclosing entities are required to report under §§ 420.206 and 455.104 of this chapter; and

§ 417.112 [Amended]

4. In § 417.112, in the concluding text at the end of paragraph (d), the superscript "1" and the corresponding footnote are removed.

§ 417.144 [Amended]

5. In § 417.144, paragraph (e) is revised to read as follows:

(e) The Secretary will publish on a monthly basis in the **Federal Register** the names, addresses, and descriptions of the service areas of the newly qualified HMOs. A cumulative list of qualified HMOs may be contained by writing the Document Control Unit, Office of Prepaid Health Care, Office of Compliance, HHS Cohen Bldg., room 4360, 330 Independence Ave., SW., Washington, DC 20201, or by visiting that Office between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Interested persons may contact that Office during those hours to make an appointment to obtain additional information regarding qualified HMOs.

§ 417.242 [Amended]

6. In § 417.242, paragraph (b)(7) is removed and reserved and the footnote is also removed.

§ 417.243 [Amended]

7. In § 417.243, paragraph (b), "§§ 405.480, 413.55, and 413.24" is changed to "§§ 405.480, 413.24, and 413.53".

§ 417.404 [Amended]

8. In § 417.404, paragraph (b)(1), the last sentence is removed.

§ 417.406 [Amended]

9. In § 417.406, the following changes are made:

a. In paragraph (a)(2), "§ 110.604 of this title." is changed to "§ 417.143.".

b. In paragraph (a)(2)(i), "(f)" is removed.

c. In paragraph (a)(2)(ii), the last three words "or an HMO" are removed.

d. In paragraph (a)(3), "§ 110.605 (a) through (d) of this title" is changed to "§ 417.144 (a) through (d)", and "subpart A of part 110, and § 110.603" is changed to "§§ 417.100 through 417.109, and § 417.142".

§ 417.407 [Amended]

10. In § 417.407, the following changes are made:

a. In paragraph (b), "subpart A of part 110 of this title." is changed to "§§ 417.100 through 417.109.".

b. In paragraph (c)(4), "§ 110.108(b) of this title" is changed to "§ 417.107(b)".

c. In paragraph (c)(5), "110.108(a)(1) (i) through (iv) and (a)(3) of this title." is changed to "§ 417.107(a)(1) (i) through (iv) and (a)(3)."

§ 417.408 [Amended]

11. In § 417.408, paragraph (a) the designation of (a)(1) and paragraph (a)(2) are removed and the text is run together.

§ 417.418 [Amended]

12. In § 417.418, paragraph (b), "§ 110.108(h) of this title." is changed to "§ 417.107(h).".

§ 417.478 [Amended]

13. In § 417.478, paragraph (d), "§ 110.108(j)(1) of this title" is changed to "§ 417.107".

§ 417.522 [Amended]

14. In § 417.522, paragraph (a)(3)(iii) is revised to read:

(a) * * *

(3) * * *

(iii) The successor organization meets the requirements to qualify as an eligible organization under this subpart.

§ 417.594 [Amended]

15. In § 417.594, paragraph (b)(1)(i), "§ 110.105(b) of this title;" is changed to "§ 417.104(b);".

§ 424.1 [Amended]

16. In § 424.1, the following changes are made:

a. The heading "(c) *Other applicable rules"* is inserted immediately before the concluding text of paragraph (b) that begins "Except for * * *".

b. The following sentence is added at the end of the newly designated paragraph (c):

(c) * * *

The rules for physician certification of terminal illness, required in connection with hospice care, are set forth in § 418.22 of this chapter.

Subpart B—Physician Certification Requirements

17. The heading of subpart B is revised to read as set forth above.

§ 424.10 [Amended]

18. In § 424.10, the following changes are made:

a. In paragraph (a), first sentence, "has a major role" is changed to "is the key figure".

b. In paragraph (a), "1814(a)(2)" is changed to "1814(a) (2) and (3)".

c. Paragraph (b) is revised to read as follows:

(b) *Scope.* This subpart sets forth the timing, content, and signature requirements for physician certification and recertification with respect to certain Medicare services furnished by providers.

19. In § 424.24, the following changes are made:

§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B.

a. The section heading is revised to read as set forth above.

b. Paragraph (a)(3) is removed.

c. Paragraph (b) is revised to read as follows:

(b) *General rule.* Medicare Part B pays for medical and other health services furnished by providers (and not exempted under paragraph (a) of this section) only if a physician certifies the content specified in paragraph (c)(1), (c)(4) or (e)(1) of this section, as appropriate.

d. Paragraph (d) is removed and reserved.

BEST COPY AVAILABLE

§ 424.26 [Redesignated as § 498.83]

20. Section 424.26 is redesignated as § 498.83.

§ 435.725 [Amended]

21. In § 435.725, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of spouse.*".

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of family.*".

§ 435.733 [Amended]

22. In § 435.733, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of spouse.*"

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of family.*"

§ 435.832 [Amended]

23. In § 435.832, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of spouse.*"

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of family.*"

§ 435.1009 [Amended]

24. In § 435.1009, in the first sentence of the definition of *Institution for mental disease*, "an institution" is changed to "a hospital, nursing facility, or other institution of more than 16 beds".

§ 436.832 [Amended]

25. In § 436.832, the following changes are made:

a. In paragraph (c)(2), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of spouse.*".

b. In paragraph (c)(3), the following heading is inserted at the beginning of the paragraph: "*Maintenance needs of family.*"

§ 440.110 [Amended]

26. In paragraphs (a)(2)(i) and (b)(2)(ii), the phrase "Council on Medical Education" is changed to "Committee on Allied Health Education and Accreditation".

§ 440.140 [Amended]

27. In § 440.140(a)(2), "an institution" is changed to "a hospital, nursing facility, or other institution of more than 16 beds".

§ 447.256 [Amended]

28. In § 447.256, the following changes are made:

a. In paragraph (a), "45 CFR 201.2 and 201.3" is changed to "subpart B of part 430 of this chapter".

b. In paragraph (c), "45 CFR 201.3(g)" is changed to "subpart B of part 430 of this chapter".

§ 455.20 [Amended]

29. In § 455.20(b), "433.113 (e) and (f)" is changed to "§ 433.116 (e) and (f)".

§ 489.66 [Amended]

30. In § 489.66, in paragraph (a), the words "inpatient tuberculosis hospital services and" are removed, and "extended care services" is changed to "SNF care".

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

31. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1101 of the Social Security Act (42 U.S.C. 1302).

§ 491.2 [Amended]

32. In § 491.2, paragraph (d)(3), the phrase "has been assisting" is changed to "assisted", and "immediately preceding the effective date of this subpart" is changed to "that ended on December 31, 1986".

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

33. The authority citation for part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395 ff(c), 1395hh and 1395ii), unless otherwise noted).

§ 498.3 [Amended]

34. In § 498.3, the following changes are made:

a. In paragraph (b)(10), "§ 409.10 or § 409.64" is changed to "§ 409.19 or § 410.64".

b. Paragraph (d)(2) is revised to read as follows:

(d) * * *

(2) The finding that a prospective provider does not meet the conditions of participation set forth elsewhere in this chapter, if the prospective provider is, nevertheless, approved for participation in Medicare on the basis of special access certification, as provided in subpart B of part 488 of this chapter.

c. Paragraph (d)(3) is revised to read as follows:

(d) * * *

(3) The refusal to enter into a provider agreement because the prospective provider is unable to give satisfactory assurance of compliance with the requirements of title XVIII of the Act.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.773, Medicare—Hospital Insurance; Program No. 13.774, Medicare—Supplementary Medical Insurance)

Editorial Note: This document was received by the Office of the Federal Register on February 20, 1991.

Dated: June 15, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: July 9, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-4415 Filed 2-28-91; 8:45 am]

BILLING CODE 4120-01-M

federal register

Friday
March 1, 1991

Part III

Environmental Protection Agency

40 CFR Parts 86 and 600

Fuel Economy Test Procedures; Alternative-Fueled Automobile CAFE Incentives and Fuel Economy Labeling Requirements; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL-3811-9]

RIN 2060-AC78

Fuel Economy Test Procedures; Alternative-Fueled Automobile CAFE Incentives and Fuel Economy Labeling Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the fuel economy regulations (40 CFR part 600) to include alternative-fueled automobiles. The Alternative Motor Fuels Act (AMFA) of 1988 (Pub. L. 100-494, October 14, 1988) includes alternative-fueled automobiles (passenger automobiles and light trucks) in the Corporate Average Fuel Economy (CAFE) program on a favorable basis to encourage the manufacture of such vehicles. The act provides CAFE credits for automobiles designed to be fueled with methanol, ethanol, other alcohols, natural gas, or dual fuel automobiles designed to operate on one or more of these alternative fuels and gasoline or diesel fuel. Fuel economy labeling requirements for alternative-fueled automobiles are also specified in the AMFA. The purpose of this notice of proposed rulemaking (NPRM) is to propose rules to codify the requirements of the AMFA. In order to save time and printing costs, some technical amendments of 40 CFR part 86 have also been included in this NPRM.

DATES: Public Comment: Comments on the NPRM must be submitted on or before April 1, 1991.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to the U.S. Environmental Protection Agency, The Air Docket: Docket No. A-89-24, room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20460. Materials relevant to this proposed rulemaking are contained in Docket No. A-89-24. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zerafa, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, (313) 668-4331.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted the Alternative Motor Fuels Act of 1988 (AMFA), Public Law 100-494 (codified at 15 U.S.C. 2001(i), 2002(e), 2006(a)(4), 2006(b)(3), and 2013, 42 U.S.C. 6374(a-d)) on October 14, 1988. Its purpose is to encourage (1) the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and (2) the production of methanol, ethanol, and natural gas-fueled motor vehicles. (S. Rep. No. 100-271 at 1-2 (1987); H. Conf. Rep. No. 100-929 at 15-16 (1988).)

The AMFA amended subchapter V, "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 1901-2034. That subchapter, added by title III of the Energy Policy and Conservation Act of 1975, established a ten-year program designed to double the average fuel efficiency of new cars.

Specifically, subchapter V requires automakers to meet a series of fuel economy standards for passenger cars, beginning with the 1978 model year. It also requires automakers to meet CAFE standards set each year by the Secretary of Transportation for light trucks. However, it does not require that every new automobile meet the applicable standards, but only that each manufacturer's passenger car and light truck fleets achieve the standards on a sales-weighted basis. Thus, the standards are referred to as corporate average fuel economy ("CAFE") standards.

Subchapter V of the MVICSA also imposes penalties on manufacturers that fail to comply. It directs the Secretary of Transportation to fine a manufacturer $5.00 for every tenth of a mile per gallon (mpg) by which it misses an applicable standard, multiplied by the number of automobiles in its fleet for that year. Under that formula, failure by a large manufacturer to meet a CAFE standard by even one tenth of a mpg can result in fines totalling millions of dollars.

Subchapter V assigns to EPA the task of measuring and calculating manufacturers' fleet-wide fuel economies for purposes of determining compliance with a CAFE standards.

Section 501(5) of the MVICSA defines "fuel" as including gasoline and diesel oil. It then authorizes the Secretary of Transportation, by rule, to include any other liquid or gaseous fuel in the definition if he determines it would be consistent with the need of the nation to conserve energy.

The AMFA amended subchapter V of the MVICSA by directing EPA to include in the CAFE calculation the fuel economy of certain alternative-fueled automobiles ("automobiles" as defined in section 2001 of the MVICSA and as amended by the AMFA includes passenger automobiles and light trucks) on a favorable basis, beginning with model year 1993, to provide incentives to manufacture such automobiles. The AMFA directs EPA to include in the CAFE calculation automobiles fueled exclusively by alcohol (alcohol-fueled automobiles),[1] and automobiles fueled exclusively by natural gas (natural gas-fueled automobiles),[2] and automobiles that can operate on either gasoline or diesel fuel, as well as either alcohol (alcohol dual fuel automobiles) [3] or natural gas (natural gas dual fuel automobiles) [4] or a combination of gasoline or diesel fuel and alcohol or natural gas (section 2013(e)). The term alcohol is defined in 15 U.S.C. 2013(h)(1) as "a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination."

The statute also requires that alcohol dual fuel automobiles and natural gas dual fuel automobiles are to provide equal or superior energy efficiency while operating on the alternative fuel as when operating on gasoline or diesel fuel (section 2013(h)(1) (C)(ii) and (D)(ii)). With respect to alcohol dual fuel automobiles, the AMFA further provides that such automobiles manufactured in model years 1993 through 1995 (or for a longer period if extended by the Administrator) are to achieve energy efficiency when they are operated on a mixture of 50 percent alcohol and 50 percent gasoline or diesel fuel equal to or superior to that achieved when they are operated exclusively on gasoline or diesel fuel (section 2013(h)(1)(C)(iii)). One further requirement established by the AMFA for alcohol dual fuel automobiles and natural gas dual fuel automobiles which are also passenger automobiles is that they comply with minimum driving range requirements established by the Secretary of Transportation (section 2013(h)(1) (C)(iv) and (D)(iii)). These ranges were established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register on April 26, 1990 (55 FR 17611). The minimum driving range for alcohol dual fuel vehicles is

[1] Referred to in the AMFA as "alcohol powered automobiles."

[2] Referred to in the AMFA as "natural gas powered automobiles."

[3] Referred to in the AMFA as "dual energy automobiles."

[4] Referred to in the AMFA as "natural gas dual energy automobiles."

200 miles and the range for natural gas dual fuel vehicles is 100 miles.

The CAFE calculation is to include automobiles manufactured after model year 1992 that operate exclusively on alcohol or natural gas, and dual fuel automobiles manufactured in model years 1993 through 2004. (The period during which dual fuel automobiles are to be included in the CAFE calculation may be extended through model year 2008 by the Secretary of Transportation.) (section 2013(f)).

The basis on which alternative-fueled automobiles are to be included in the CAFE calculation under the AMFA is favorable and is intended to encourage manufacturers to produce such automobiles. With respect to alcohol-fueled automobiles, the AMFA provides that the CAFE calculation is to be based on the gasoline or diesel content of the mixture, which is deemed to be 15 percent. For example, an alcohol-fueled automobile which has a measured fuel economy of 18 mpg while operating on alcohol would receive a rating of 120 mpg (18/0.15) for CAFE purposes. It must be noted that the 0.15 divisor is a fixed number (i.e., it is not proportional to the actual gasoline or diesel content of the blend). With respect to natural gas-fueled automobiles, the AMFA provides that 100 cubic feet of natural gas shall be considered to contain 0.823 gallon equivalent of natural gas and that the CAFE calculation is to be based on the assumption that a gallon equivalent of natural gas has a petroleum fuel content of 15 percent. For dual fuel automobiles, the fuel economy for CAFE purposes is to reflect the assumption that the automobiles are operated half of the time on gasoline or diesel fuel and half of the time on the alternative fuel and the two measured fuel economies are harmonically averaged (section 2013 (a)-(d)).

The AMFA also limits the maximum increase in a manufacturer's average fuel economy attributable to dual fuel automobiles to 1.2 mpg for model years 1993 through 2004 and, if extended by the Secretary of Transportation, to 0.9 mpg for model years 2005 through 2008 for each compliance category of automobiles (i.e., domestic passenger, import passenger, domestic light truck, and import light truck). Furthermore, if the Secretary of Transportation reduces the average fuel economy standard applicable to passenger automobiles to less than 27.5 mpg for any model year, increases in the manufacturer's fuel economy attributable to dual fuel passenger automobiles above 0.7 mpg are to be reduced by the amount the standard was lowered, but may not be reduced to less than 0.7 mpg (section 2013(g)).

The AMFA also amends the fuel economy labeling provisions of section 506 of the MVICSA to require that specific fuel economy information for dedicated alternative-fueled automobiles and dual fuel automobiles appear on the label and in the Gas Mileage Guide published by the Department of Energy (15 U.S.C. 2006 (a)(4) and (b)(5)).

For alcohol-fueled automobiles or natural gas-fueled automobiles, the AMFA states that the fuel economy for labeling purposes shall be the fuel economy value calculated for CAFE purposes multiplied by the value, 0.15.

In the case of alcohol dual fuel automobiles or natural gas dual fuel automobiles, the AMFA states that each label must: (i) Indicate the fuel economy of such automobiles when operated on gasoline or diesel fuel; (ii) clearly identify such automobiles as alcohol dual fuel or natural gas dual fuel automobiles, as the case may be; (iii) clearly identify the fuels on which such automobiles may be operated; and (iv) contain a statement informing the consumer that the additional information is contained in the booklet published and distributed by the Department of Energy.

A more detailed discussion of the requirements of the AMFA can be found in a memo entitled CAFE Incentives and Fuel Economy Labeling Requirements of the Alternative Motor Fuels Act of 1988 to the docket (no. A-89-24) of this NPRM.

II. Discussion of Proposal

As described in the introduction, the AMFA specifies the amount of CAFE credits obtainable by particular vehicle types; the proposed regulatory language implements these provisions. Test procedures and other issues not specified in the AMFA are addressed below.

A. Options Considered to Include Methanol, Ethanol, and Natural Gas in the Fuel Economy Regulations

Section 503 of the MVICSA requires, to the extent practicable, that fuel economy tests be conducted in conjunction with emission tests conducted under section 206 of the Clean Air Act (42 U.S.C. 7525). Accordingly, the current certification test procedures of the Federal Motor Vehicle Control Program (FMVCP) for gasoline or diesel-fueled automobiles are also those used for fuel economy testing. The current fuel economy program regulations specify that only automobiles meeting Federal emission standards can generate acceptable fuel economy data.

On April 11, 1980, the EPA published a final rulemaking in the Federal Register (54 FR 14426) which established emission standards and test procedures for methanol-fueled automobiles. However, this regulation did not include test, measurement, or calculation procedures for fuel economy of methanol-fueled automobiles or no fuel equivalency factor (the amount of an alternative fuel which is equivalent to a gallon of gasoline) for methanol was available.

The AMFA now provides the fuel equivalency factor for methanol for CAFE purposes and specifies the steps to include methanol-fueled automobiles in the CAFE program. It is thus a straightforward matter for EPA to propose specific fuel economy test, measurement, and calculation procedures for methanol-fueled automobiles consistent with the fuel economy program requirements placed on gasoline-fueled and diesel-fueled automobiles, since emission standards and test procedures have been promulgated and a fuel equivalency factor for CAFE purposes has been established.

Less straightforward is how to deal with automobiles fueled with natural gas and ethanol with regard to the new fuel economy provisions of the AMFA. The AMFA provides fuel equivalency factors for ethanol and natural gas for CAFE purposes. However, no emission standards or test procedures have been promulgated for ethanol-fueled or natural gas-fueled automobiles.

A threshold issue is whether fuel economy data vehicles must be subject to emission standards. As noted above, the current regulations require that fuel economy data vehicles be covered by a certificate of conformity with emission standards (§ 600.007-80(f)). Since a certificate may be obtained only by demonstrating compliance with emission standards, the regulations indirectly require that fuel economy data vehicles be subject to emission standards.

The requirement that fuel economy data vehicles be covered by a certificate was promulgated when the only vehicles included in the fuel economy calculation were gasoline- and diesel-fueled vehicles. These vehicles were and are subject to emission standards as well. One reason to require that fuel economy data vehicles also meet emission standards is to ensure that such vehicles be representative of vehicles found in use.

Obviously, this rationale for requiring fuel economy data vehicles to meet emission standards does not apply where vehicles are not subject to emission standards. On the other hand, an advantage of setting emission standards and test procedures for alternative-fueled vehicles which are included in the CAFE program is to remove the possibility that the absence of such standards could obstruct the development of such vehicles. Moreover, in the process of setting standards for other types of fuels, EPA would develop test procedures that would serve as fuel economy test procedures as well.

One option considered by EPA was to only include the fuel economy provisions for methanol-fueled vehicles in 40 CFR Part 600 since emission standards are in place for methanol-fueled vehicles. Inclusion of the provisions for automobiles fueled with ethanol and natural gas would be postponed until emission standards and test procedures for these automobiles are developed. However, delaying adopting fuel economy procedures for these alternative fuel automobiles might tend to undermine the AMFA's intent to encourage the use of alternative fuels on a fuel neutral basis. Also, the AMFA requires EPA to calculate CAFE subject to the requirements therein, beginning with model year 1993. Therefore, any delays to including the CAFE credit mechanism for alternative-fueled automobiles manufactured after model year 1992 could undermine AMFA requirements. Further, there seems no benefit in delaying adopting general fuel economy calculation procedures for automobiles fueled with ethanol or natural gas. Therefore, EPA is not proposing this option.

A second option considered was to develop emission standards and test procedures for natural gas-fueled automobiles and ethanol-fueled automobiles and include these emission standards and test procedures along with the fuel economy provisions for automobiles fueled with these fuels and the provisions for methanol-fueled automobiles in one package. However, due to the greater number of issues that would have to be resolved, this approach would delay the inclusion of alternative fuels in the CAFE program and the accompanying potential incentive for the development of automobiles fueled by methanol, ethanol, and natural gas. It is outside the scope of this rulemaking to establish emission standards and emission test and measurement procedures for natural gas and ethanol-fueled automobiles. For these reasons, EPA is not proposing this option.

A third option is the one EPA is today proposing to implement. This option is to establish the fuel economy incentive mechanism (credit calculation procedures) for methanol, ethanol, and natural gas-fueled automobiles in the regulations. In addition, since emission standards and emission measurement procedures have already been developed for methanol-fueled automobiles, fuel economy measurement procedures are also proposed for methanol-fueled automobiles. However, before manufacturers will be able to receive CAFE credits for automobiles fueled with natural gas or ethanol, fuel economy measurement procedures or provisions need to be established covering these alternative fuels. In addition, to maintain a level playing field for the different types of fuels, emission standards for natural gas-fueled and ethanol-fueled vehicles should be set.

EPA has begun work on a separate rulemaking to develop emission standards and test procedures for automobiles fueled with natural gas. This separate rulemaking will address the natural gas-fueled automobile emission and fuel economy measurement procedures necessary to determine the fuel economy values to which the CAFE credit mechanism (proposed in this NPRM) is applied. EPA expects to complete this rulemaking before the start of the 1992 model year, in time for manufacturers to include any 1993 model year natural gas-fueled automobiles in the fuel economy program.

As for ethanol-fueled automobiles, EPA is not in a position to develop emission standards and test procedures for such automobiles at this time. The Agency is unaware of any plans by any manufacturer to develop ethanol-fueled automobiles for sale in the U.S. (Ethanol-fueled vehicles currently are used in Brazil and other countries, but those vehicles are not subject to emission controls similar to those required in the United States. The vehicles thus provide little insight into what emission control ethanol vehicles could achieve.) With no ethanol automobiles under development for this market, EPA has little or no basis for determining emission standards and test procedures for such automobiles at this time. When any manufacturer develops an ethanol-fueled automobile for sale in the United States, the Agency will conduct a rulemaking to establish test procedures and, if time allows, emission standards. The manufacturer may then include such automobiles in its fuel economy calculation beginning with the 1993 model year or, if later, the model year in which the automobiles are introduced. Since EPA cannot be sure that it will have emission standards in place for all types of alternative fuel vehicles by the time they are included in CAFE calculation, EPA here proposes to revise the requirement that fuel economy data vehicles be covered by a certificate demonstrating compliance with emission standards so that it applies only where the vehicles are subject to emission standards.

The Energy Policy and Conservation Act (EPCA) requires that fuel economy measurement and calculation procedures be established by rule (15 U.S.C. 2003(d)(3)) not less than 12 months prior to the model year to which such procedures apply. Therefore, to ensure timely promulgation of such procedures and avoid delaying the receipt of CAFE credits, manufacturers should inform EPA as far in advance as possible of any plans to market alternative-fueled vehicles other than methanol-fueled vehicles. EPA solicits comment on how the Agency could expedite the promulgation of fuel economy test procedures for these other alternative-fueled vehicles if the need arises.

For example, under a direct final rulemaking, the Administrative Procedures Act (APA), which governs rulemakings under EPCA, allows the Agency to promulgate regulations without prior notice and comment if it has "good cause" to do so. The APA provides that good cause exists when notice and public comment are "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)). Courts have construed the "good cause" exception narrowly. EPA solicits comment on whether the Agency would have good cause to dispense with prior notice and comment if necessary to promulgate test procedures in time for manufacturers to obtain credits for vehicles designed to run on alternative fuels not already covered by established test procedures. The Agency is also interested in any other suggestions regarding how test procedures for such vehicles could be promulgated on a timely basis.

The Agency seeks comments on whether there are any alternative fuels, including other liquid or gaseous fuel, under consideration by the automotive industry for future use in addition to those addressed by the Alternative Motor Fuels Act (i.e., alcohol and natural gas) the inclusion of which in the CAFE program would be consistent with

the need of the nation to conserve energy, as discussed in section 501(5) of the MVICSA.

B. Fuel Economy Calculations for Methanol Automobiles

The general equation used by EPA to calculate fuel economy is:

miles/gallon = (grams carbon/gallon fuel)/(grams carbon/mile)

The current method of calculating fuel economy for gasoline and diesel-fueled automobiles is based on this equation, but it can be applied to any carbon-based fuel. The equation is based on the carbon balance technique which relies on the premise that the quantity of carbon contained in the exhaust is equal to the quantity of carbon consumed by the engine as fuel.

The major carbon-containing compounds found in the exhaust of automobiles fueled with methanol are carbon dioxide (CO_2), carbon monoxide (CO), methanol (CH_3OH), formaldehyde (HCHO), and hydrocarbons (HC). These are proposed to be included in the denominator of the basic equation to account for the carbon in the exhaust. For methanol/gasoline blends, EPA proposes the following equation for calculating fuel economy:

$mpg = N/D$

Where:

$N = [(0.866)(2798)(G) + (0.375)(2994)(M)]$ = grams carbon/gallon fuel

$D = [(CWF_{HC} \times HC) + (0.429 \times CO) + (0.273 \times CO_2) + (0.375 \times CH_3OH) + (0.400 \times HCHO)]$ = grams carbon in exhaust/mile

Where:

0.866 = carbon weight fraction of gasoline
0.375 = carbon weight fraction of methanol
2798 = density of gasoline [grams/gallon]
2994 = density of methanol [grams/gallon]
G = gasoline volume fraction (percent/100)
M = methanol volume fraction (percent/100)
HC, CO, CO_2, CH_3OH, and HCHO are the weighted mass emissions [grams/mile] as calculated in 40 CFR 86.144.
CWF_{HC}, 0.429, 0.273, 0.375, and 0.400 = carbon weight fractions of the respective exhaust constituent compounds.

The term, CWF_{HC}, in the denominator is the carbon weight fraction of the hydrocarbon constituent in the exhaust. EPA considered two options for determining which value(s) should be used for the CWF_{HC} term:

Option 1

Since the proposed fuel economy equation is applicable to different gasoline/methanol blends, the carbon weight fraction of the exhaust hydrocarbon constituent will vary depending on the fuel blend (e.g., percentage of methane relative to total exhaust hydrocarbons will increase with increasing methanol content of the fuel). EPA has obtained limited data on the hydrogen to carbon ratio (H/C) of exhaust hydrocarbons from vehicles operating on M85 and M100 [8]. The average H/C for total exhaust hydrocarbons of vehicles operating on M85 was 2.28 (CWF = 0.840) and that for M100 was 3.23 (CWF = 0.787) for the vehicles tested by EPA (FTP cycle at 75 °F). One option considered by EPA is to use these values for the CWF_{HC} term for the respective gasoline/methanol blend. Although the AMFA defines alcohol fuel as containing at least 85 percent (by volume) alcohol, EPA expects the most prevalent fuels to be M85 and M100. However, should fuel blends containing greater than 85 and less than 100 percent methanol be used for methanol-fueled automobiles, the carbon weight fraction could be determined by the linear interpolation of the carbon weight fractions used for the exhaust hydrocarbons from vehicles operating on M85 and M100.

With one exception, for fuel economy purposes, the proposed carbon balance equation for methanol-fueled automobiles does not apply to blends which contain less than 85 percent methanol (by volume). The AMFA requires that alcohol dual fuel automobiles that are capable of operating on a range of mixtures of gasoline and methanol must provide equal or superior energy efficiency while operating on a 50 percent (by volume) alcohol and 50 percent gasoline fuel mixture as while operating on a 100 percent gasoline fuel. Although no data were obtained by EPA for M50, EPA expects the carbon weight fraction of exhaust hydrocarbons from vehicles operating on M50 to be between the carbon weight fraction for gasoline (i.e., 0.866) and the carbon weight fraction for M85 (i.e., 0.840) exhaust hydrocarbons. For M50, under this option, EPA considered using the value of 0.853 which is the average of the gasoline and M85 carbon weight fractions.

Due to the added complexity in accounting for the different carbon weight fractions and their likely negligible impact on measured fuel economy, EPA does not favor Option 1, preferring instead Option 2 explained below.

Option 2

A second option considered by EPA assumes a fixed carbon weight fraction of 0.866 (H/C = 1.85) for the exhaust hydrocarbon constituents regardless of fuel blend. This option eliminates the complexity of determining and using individual values for each fuel blend. Also, the contribution to the total grams carbon per mile of the exhaust hydrocarbon term in the fuel economy equation is expected to be very small relative to the carbon dioxide term and therefore expected to have a very limited effect on fuel economy. For this reason small differences in the exhaust hydrocarbon carbon weight fraction due to combustion of different fuel blends will have a negligible affect on the fuel economy determination and a single constant carbon weight fraction could be used for any methanol/gasoline blend. In addition, this option is consistent with the 40 CFR part 86 emission measurement procedures which assume a H/C of 1.85 for the exhaust hydrocarbon constituent of gasoline/methanol blends. For the reasons stated above, EPA is proposing the fixed carbon weight fraction value of 0.866 for the exhaust hydrocarbon constituent of vehicles operating on gasoline/methanol blends.

This equation is proposed not to apply to automobiles fueled with 100 percent gasoline (i.e., methanol volume percentage equal to zero). The equation established in 40 CFR 600.113(e) will continue to be used to determine the fuel economy of automobiles fueled with gasoline.

The proposed equation is based on fixed fuel property values (carbon weight fraction and density) for methanol and gasoline. EPA will evaluate the need to use measured fuel properties (i.e., measured for each fuel economy test or periodically for each batch of fuel) of methanol fuels and methanol/gasoline blends as experience is gained with the use of these fuels. Blends containing a high percentage of methanol may or may not display fuel property variations significant enough to warrant the use of measured fuel properties in the fuel economy calculations. Therefore, at least for the near term, EPA is not proposing the use of measured fuel properties for calculating the fuel economy of automobiles fueled with methanol or methanol/gasoline blends. EPA is soliciting comments on the proposed method for calculating fuel economy for methanol-fueled automobiles. In particular, EPA requests comment on the appropriateness of using fixed fuel properties in place of measured fuel properties. EPA also is soliciting comments on the appropriate carbon weight fractions and densities of

[8] The data is available for review in EPA Docket No. A-89-24 under the title, "H/C Ratio From M-85 and M-100 Vehicles" and originated from the Atmospheric Research & Exposure Laboratory of EPA.

methanol fuel and gasoline used for blending to use in calculating fuel economy of automobiles operating on these fuels.

C. Alternative Procedure Option

The regulations for emission testing of methanol-fueled automobiles (54 FR 14427) established emission standards for organics intended to control carbon-based organics from methanol-fueled automobile emissions to a level equivalent to that allowed from petroleum-fueled automobiles under their respective hydrocarbon standards. The primary organic emissions from methanol-fueled automobiles are methanol, formaldehyde, and hydrocarbons. These are required to be measured separately to determine compliance with the carbon-based organic standard and are also proposed to be required for fuel economy calculations. However, to reduce testing costs and complexity and provide manufacturers with more flexibility during development of methanol-fueled automobiles, EPA is providing an interim alternative method (54 FR 14430) for determining organic emissions and fuel economy for methanol-fueled automobiles. The method, which is applicable through 1994, employs the use of a flame ionization detector (FID) calibrated on methanol to perform a single measurement of hydrocarbons and oxygenated organics. This alternative method would accurately measure methanol but would overmeasure hydrocarbons. Formaldehyde, which generally comprises only about five percent of the total organic emissions from methanol-fueled vehicles, would remain virtually undetected. However, the anticipated net effect is that carbon in the exhaust would be reported high because the method's overmeasure of hydrocarbon is expected to be greater than the undermeasure of formaldedyde. As a result, fuel economy would be slightly lower with this optional procedure since the carbon measured by the FID would be assumed to have a hydrocarbon origin for fuel economy calculation purposes. If this procedure is adopted for fuel economy purposes, it would be applicable during model years 1993 and 1994. EPA is requesting comments on the desirability of this optional method for calculating fuel economy.

D. Energy Efficiency of Dual Fuel Automobiles

The AMFA requires that alcohol dual fuel automobiles and natural gas dual fuel automobiles provide equal or superior energy efficiency while operating on natural gas or alcohol, as the case may be, as while operating on gasoline or diesel fuel. In addition, since a range of mixtures of alcohol and gasoline fuel can be used to operate alcohol dual fuel automobiles (also referred to as flexible fuel automobiles), these automobiles must provide equal or superior energy efficiency on a 50 percent (by volume) alcohol and 50 percent gasoline fuel mixture, as on a 100 percent gasoline fuel. The AMFA specifies that these energy efficiency determinations are to be made during fuel economy testing for the Federal Government.

EPA is proposing the method described below for the determination of equal or superior energy efficiency. For an automobile to be eligible for the CAFE credit for dual fuel automobiles, the following relation must hold true for both the city and highway fuel economy values for each test of each dual fuel automobile tested for fuel economy purposes:

$E_{alt}/E_{test}>1$

where:

$E_{alt}=[FE_{alt}/(NHV_{alt}\times D_{alt})]\times 10^6$= energy efficiency while operating on alternative fuel [miles/million BTU].

$E_{test}=[FE_{test}/(NHV_{test}\times D_{test})]\times 10^6$= energy efficiency while operating on gasoline or diesel (petroleum) fuel [miles/million BTU].

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 cubic feet for gaseous fuels] while operating on the alternative fuel;

FE_{test} is the fuel economy [miles/gallon] while operating on gasoline or diesel (petroleum) fuel;

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel;

NHV_{test} is the net (lower) heating value [BTU/lb] of gasoline or diesel fuel;

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 cubic feet for gaseous fuels] of the alternative fuel;

D_{test} is the density [lb/gallon] of gasoline or diesel fuel.

The AMFA also requires that 1993 through 1995 model year alcohol dual fuel automobiles provide equal or superior energy efficiency while operating on a blend of 50 percent alcohol and 50 percent gasoline (by volume), as while operating on gasoline or diesel fuel. The statute provides EPA with the authority to extend this requirement until model year 2004, or 2006, at the latest. To implement this requirement, EPA is proposing that manufacturers perform city and highway fuel economy tests using a 50 percent alcohol, 50 percent gasoline (by volume) mixture for each test automobile used for fuel economy purposes. EPA is proposing the relation described above must then also hold true for each test of each automobile when the fuel economy and fuel property values for this mixture are substituted into the 'alt' subscripted terms of the energy efficiency equations. This 50 percent alcohol, 50 percent gasoline testing requirement would be applicable for model years 1993 through 1995. If the Administrator of the Environmental Protection Agency determines that an extension of the requirement is warranted, an extension will be pursued in a separate rulemaking.

Under this proposal, manufacturers would be required to determine the net heating values and densities of the alternative fuel, petroleum fuel, and a 50 percent alcohol, 50 percent gasoline mixture to be used in the above relation. Manufacturers would also be responsible for showing that the test fuels used are representative of commercially available fuels. Upon reviewing the net heating values and densities submitted by the manufacturer, the Administrator shall determine the net heating values and densities to be used. The net heating values and densities of gasoline are to be determined in accordance with 40 CFR 600.113 paragraph (c).

Use of the net (lower) heating value is proposed rather than the higher heating value since the water formed by combustion is in the vapor state. EPA is soliciting comment on the appropriateness of the use of the net heating value. EPA also requests comment on the proposed procedure to meet the AMFA requirements for dual fuel automobile energy efficiency.

E. Fuel Economy Label Format Requirements—Alcohol-Fueled and Natural Gas-Fueled Automobiles

Currently the fuel economy label format is specified for gasoline-fueled and diesel-fueled automobiles. To fulfill the labeling requirements of section 8 of the AMFA (15 U.S.C. 2006(a)), EPA is proposing to use this format for fuel economy labeling of alcohol-fueled or natural gas-fueled automobiles with minor modification. To help avoid consumer confusion while comparison shopping, the label should clearly indicate the type of fuel the automobile operates on. EPA is proposing that a fuel title (example: "Natural Gas") be positioned above the fuel pump logo on the fuel economy label. EPA is also proposing that a statement: "This vehicle operates on (insert appropriate fuel(s)) only." be included on the label of 1993 and later model year vehicles. The proposed location of this statement is that it appear on the bottom border of the label.

The AMFA requires that, in the case of alcohol-fueled and natural gas-fueled automobiles, the fuel economy for labeling purposes shall be the product of the fuel economy value calculated for CAFE purposes and the value, 0.15. Therefore, the city and highway fuel economy values to appear on the fuel economy label for alcohol-fueled automobiles are in terms of miles traveled per gallon of alcohol fuel consumed. For natural gas-fueled automobiles, the fuel economy label values determined in this way would be in terms of miles traveled per equivalent gallon of gasoline consumed, where 100 ft^3 of natural gas is designated as 0.823 gallons equivalent of natural gas. However, consumers considering the purchase of natural gas-fueled automobiles are also interested in driving range and cost to operate the automobile. Therefore, also expressing natural gas-fueled automobile fuel economy in miles traveled per actual volume of fuel consumed may be desirable. For this reason, EPA is proposing that the fuel economy labels for natural gas-fueled vehicles include the statement, "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823."

For labeling purposes, the 0.9 and 0.78 multiplicative factors for adjusting the city and highway fuel economy values to better represent in-use fuel economy are proposed to apply to alcohol-fueled automobiles, natural gas-fueled automobiles, and dual fuel automobiles. Since these factors were developed to account for differences in travel environment, owner travel and driving habits, and vehicle maintenance, they are presumed to be reasonable for any fuel type.

F. Fuel Economy Label Format Requirements—Alcohol Dual Fuel and Natural Gas Dual Fuel Automobiles

To fulfill the labeling requirements of section 8 of the AMFA for alcohol dual fuel vehicles and natural gas dual fuel automobiles, EPA is proposing the following modifications and additions to the existing label requirements. The label must clearly identify the automobile as a dual fuel vehicle and list the fuels on which it can be operated. EPA is proposing that the title "Dual Fuel" be positioned above the fuel pump logo on the fuel economy label. EPA is also proposing that the statement, "This dual fuel vehicle operates on (gasoline or diesel) or (list alcohols or natural gas)" appear on the bottom border of the label. Also proposed to appear on the label is, "All fuel economy values on this label pertain to (gasoline or diesel) fuel usage. (List alcohols or natural gas) fuel usage will yield different values. See the Gas Mileage Guide for information on (list alcohols or natural gas) fuel(s) usage." The proposed location for these statements is illustrated in the sample label of Appendix VIII of the proposed regulations.

G. Gas Guzzler Tax

Section 201 of the Energy Tax Act of 1978, 26 U.S.C. 4064 *et. seq.*, authorizes the Secretary of the Treasury (after consultation with the Secretary of Transportation) to include in the gas guzzler tax program automobiles fueled with any product of petroleum or natural gas, if such inclusion is consistent with the need of the nation to conserve energy. Consequently, the alternative fuels covered by the AMFA could conceivably be included in the gas guzzler tax program even though the program is presently limited to vehicles powered by gasoline or diesel fuel. The Energy Tax Act of 1978 gives EPA the responsibility for determining the amount of an alternative fuel that is equivalent to a gallon of gasoline, which is the fuel equivalency factor. The resulting gasoline-equivalent fuel economy of automobiles operating exclusively on alternative energy sources would then be used for purposes of the gas guzzler tax program.

As yet, however, the Department of the Treasury has not decided whether to include methanol, ethanol, or natural gas in the gas guzzler tax program. It would therefore be premature for EPA to establish a fuel equivalency factor for methanol, ethanol, or natural gas for purposes of the gas guzzler tax program. If and when methanol, ethanol, or natural gas are included in the gas guzzler tax program, EPA will initiate action to establish fuel equivalency factors for gas guzzler tax program purposes for those fuels.

The Department of Treasury has not decided how dual fuel automobiles should be treated for purposes of the gas guzzler tax program. Comments are requested regarding whether alternative-fueled automobiles or dual fuel automobiles should be included in the gas guzzler tax program.

III. Technical Amendments

To save the time and printing costs involved in publishing them under a separate notice, the following technical amendments to the test procedures for methanol vehicles are also included in this NPRM:

A. A formaldehyde concentration term is being added to the dilution factor equation located in 40 CFR 86.144-90(c)(7)(ii). Although the magnitude of the formaldehyde concentration is very low, it is possible that an assumption of zero concentration could lead to a slight change in calculated fuel economy. There is no reason why the formaldehyde concentration term should be left out of the equation. With this amendment, all measured carbon-containing compounds will be included in the dilution factor equation.

B. The symbol "x" is struck from the dilution factor equation of 40 CFR 86.144-90(c)(7)(ii) the first time it appears in the equation. As currently written, the symbol "x" has two meanings. The first time "x" appears in the equation it is used to represent multiplication. All other occurrences of "x" in the equation represent the measured fuel composition parameter: $C_xH_yO_z$. By dropping the first occurrence of "x", only the latter meaning is retained. The multiplication function can be assumed by virtue of a number adjacent to a variable enclosed in parenthesis.

IV. Reporting and Recordkeeping Requirements

This proposed regulation essentially requires no new reporting or recordkeeping requirements for manufacturers currently included under the provisions of 40 CFR part 86 or 40 CFR part 600. This proposed regulation requires slight changes in fuel economy label wording for alternative-fueled automobiles.

V. Administrative Designation and Economic Impact

Under Executive Order 12291, EPA must judge whether a rule it intends to propose or to issue is a major rule and prepare a Regulatory Impact Analysis (RIA) for all major rules. EPA has determined that this proposed rule is not a "major rule" since it meets none of the conditions for a major regulation. This proposed rule is classified as "minor" since it may result in cost benefits to the automobile industry through CAFE credits and should result in no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires Federal agencies to identify potentially adverse impacts of proposed Federal regulations upon small entities. In instances where significant impacts

are possible on a substantial number of these entities, agencies are required to perform a preliminary Regulatory Flexibility Analysis (RFA). EPA has determined that proposed fuel economy regulation revisions herein will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Administrative practice and procedure, Fuel economy.

Authority: 15 U.S.C. 2001, 2002, 2003, 2006, 2013; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7601(a).

Dated: February 14, 1991.

William K. Reilly,

Administrator.

TABLE OF CHANGES MADE TO VARIOUS SUBPARTS

Section	Change	Reason
1. Part 86, Authority		None
2. § 86.144–90, (c)(7)(ii)	Addition of formaldehyde concentration term to DF equation and clarification of "x" term.	Technical amendments.
3. Part 600, Authority	Addition of citations	Incorporate all authority citations.
4. Table of Contents	Addition of 1993 MY sections	Incorporation of alcohol-fueled, natural gas-fueled, and alcohol dual fuel, and natural gas dual fuel vehicles into the regulations.
5. §600.001–93	Addition of section 60.001–93	Do.
6. §600.002–93	Addition of section 600.002–93	Do.
7. §600.007–90,(f)	Add words "and for which emission standards apply"	Add language to clarify requirements for vehicle acceptability.
8. §600.101–93	Addition of section 600.101–93	Do.
9. §600.107–93	Addition of section 600.107–93	Do.
10. §600.111–93	Addition of section 600.111–93	Do.
11. §600.113–93	Addition of section 600.113–93	Add fuel economy equation for methanol-fueled and methanol dual fuel vehicles.
12. §600.201–93	Addition of section 600.201–93	Incorporation of alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel vehicles into the regulations.
13. §600.206–93	Addition of section 600.206–93	Do.
14. §600.207–93	Addition of section 600.207–93	Do.
15. §600.209–93	Addition of section 600.209–93	Do.
16. §600.301–93	Addition of section 600.301–93	Do.
17. §600.307–93	Addition of section 600.307–93	Do.
18. §600.501–93	Addition of section 600.501–93	Do.
19. §600.510–93	Addition of section 600.510–93	Do.
20. Appendix VIII	Addition of sample labels	Do.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 86 and part 600 as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), of the Clean Air Act as Amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, and 7601(a).

2. Section 86.144–90 is amended by revising paragraph (c)(7)(ii) to read as follows:

§ 86.144–90 Calculations; exhaust emissions.

* * * * *

(c) * * *

(7) * * *

(ii) $DF = 100(x/(x + y/2 + 3.76(x + y/4 - z/2)/(CO_{t_w} + (HC_e + CO_{t_w} + C_{CO_{2w}} + C_{HC_{2w}}))$

For methanol-fueled vehicles where fuel composition is $C_2H_3O_a$ as measured for the fuel used.

* * * * *

PART 600—FUEL ECONOMY REGULATIONS FOR 1977 AND LATER MODEL YEAR AUTOMOBILES—GENERAL PROVISIONS

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 600 as follows:

3. The authority citation for part 600 is revised to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871; title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3206; Alternative Motor Fuels Act of 1988, Pub. L. 100–494, 102 Stat. 2452.

4–5. A new § 600.001–93 is added to subpart A as follows:

§ 600.001–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

6. A new § 600.002–93 is added to subpart A as follows:

§ 600.002–93 Definitions.

(a) As used in this subpart, all terms are defined herein shall have the meaning given them in the Act.

(1) *Act* means part I of title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

(2) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) *Secretary* means the Secretary of Transportation or his authorized representative.

(4) *Automobile* means:

(i) Any four-wheel vehicle propelled by a combustion engine using onboard fuel, or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service),

(ii) Which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails)

(iii) Which is rated at not more than 8,500 pounds gross vehicle weight, which has a curb weight of not more than 6,000 pounds, and which has a basic vehicle frontal area of not more than 45 square feet, or

(iv) Is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) "Passenger Automobile" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) *Model Year* means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year"means the calendar year.

(7) *Federal Emission Test Procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in part 86 for the respective model year, which are used to derive city fuel economy data.

(8) *Federal Highway Fuel Economy Test Procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in subpart B of this part and which are used to derive highway fuel economy data.

(9) *Fuel* means (i) gasoline and diesel fuel for gasoline- or diesel-powered automobiles or (ii) electrical energy for electrically powered automobiles or (iii) alcohol for alcohol-powered automobiles or (iv) natural gas for natural gas-powered automobiles.

(10) *Fuel Economy* means (i) the average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as computed in § 600.113 or § 600.207 or (ii) the equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

(11) *City Fuel Economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

(12) *Highway Fuel Economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

(13)(i) *Combined Fuel Economy* means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(ii) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

(14) *Average Fuel Economy* means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

(15) *Certification Vehicle* means a vehicle which is selected under § 86.084–24(b)(1) and used to determine compliance under § 86.084–30 for issuance of an original certificate of conformity.

(16) *Fuel Economy Data Vehicle* means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) *Label* means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

(18) *Dealer* means a person who resides or is located in the United States or any territory of the United States and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) *Model Type* means a unique combination of car line, basic engine, and transmission class.

(20) *Car Line* means a name denoting a group of vehicles within a make or car division which has a degree of commonality in constuction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) *Basic Engine* means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

(22) *Transmission Class* means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four-wheel-drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

(23) *Base Level* means a unique combination of basic engine inertia weight class and transmission class.

(24) *Vehicle Configuration* means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

(25) *Engine Code* means a unique combination, within an engine-system combination (as defined in part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

(26) *Inertia Weight Class* means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of part 86.

(27) *Transmission Configuration* means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.

(28) *Axle Ratio* means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) *Auxiliary Emission Control Device (AECD)* means an element of design as defined in part 86.

(30) *Rounded* means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29–67.

(31) *Calibration* means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

(32) *Production Volume* means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) *Body Style* means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

(34) *Hatchback* means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) *Pickup Truck* means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

(36) *Station Wagon* means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) *Gross Vehicle Weight Rating* means the manufacturer's gross weight rating for the individual vehicle.

(38) *Ultimate Consumer* means the first person who purchases an automobile for purposes other than resale or leases an automobile.

(39) *Van* means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) *Base Vehicle* means the lowest priced version of each body style that makes up a car line.

(41) *Nonpassenger Automobile* means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) *Four-Wheel-Drive General Utility Vehicle* means a four-wheel-drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 533.4.

(43) *Test Weight* means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86.

(44) *Secretary of Energy* means the Secretary of Energy or his authorized representative.

(45) *Electric Traction Motor* means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

(46) *Energy Storage Device* means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

(47) *Motor Controller* means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

(48) *Electrical Charging System* means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

(49) *Battery Configuration* means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

(50) *Drive System* is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four-wheel-drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

(51) *Subconfiguration* means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

(52) *Alcohol* means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination.

(53) *Alcohol-Fueled Automobile* means an automobile designed to operate exclusively on alcohol.

(54) *Alcohol Dual Fuel Automobile* means an automobile: (i) which is designed to operate on alcohol and on gasoline or diesel fuel; (ii) which provides equal or greater energy efficiency as calculated in accordance with § 600.510(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel; (iii) which, for model years 1993 through 1995, provides equal or superior energy efficiency, as calculated in § 600.510(g)(2) while operating on a mixture containing 50 percent alcohol and 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel; and (iv) which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation.

(55) *Natural Gas-Fueled Automobile* means an automobile designed to operate exclusively on natural gas.

(56) *Natural Gas Dual Fuel Automobile* means an automobile: (i) which is designed to operate on natural gas and on gasoline or diesel fuel; (ii) which provides equal or greater energy efficiency as calculated in § 600.510(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and (iii) which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation.

7. Section 600.007–80 of subpart A is amended by revising paragraph (f) to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data and subject to emission standards must be covered by a certificate of conformity under part 86 before:

* * * * *

8. A new § 600.101–93 is added to subpart B, to read as follows:

§ 600.101–93 General applicability.

The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

9. A new § 600.107–93 is added to subpart B, to read as follows:

§ 600.107–93 Fuel specifications.

(a) The test fuel specifications for gasoline-fueled automobiles are given in paragraphs (a) (1) and (2) of § 86.113 of this chapter.

(b) The test fuel specifications for diesel-fueled automobiles are given in paragraphs (b) (1) through (3) of § 86.113 of this chapter.

(c) Alcohol fuel used for fuel economy testing and service accumulation of alcohol-fueled automobiles and alcohol dual fuel automobiles shall be representative of commercially available alcohol motor fuel and shall consist of at least 85 percent alcohol by volume except as provided for in § 600.111(i)(3).

(d) Natural gas used for fuel economy testing and service accumulation of natural gas-fueled automobiles and natural gas dual fuel automobiles shall be representative of commercially available natural gas for motor vehicle use.

(e) The specification range of the fuels to be used under paragraphs (c) and (d) of this section shall be reported in accordance with § 86.090–21(b)(3).

10. A new § 600.111–93 is added to subpart B, to read as follows:

§ 600.111–93 Test procedures.

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (d) of this section. (The evaporative loss portion of the test procedure may be omitted unless specifically required by the Administrator.)

(b) The test procedures to be followed for generation of the highway fuel economy data are those specified in § 600.111–93 (b) through (j) inclusive.

(1) The Highway Fuel Economy Dynamometer Procedure consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The highway fuel economy test is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stops per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(c) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(d) *Road-load power and test weight determination.* Section 86.129 of this chapter applies for determination of road-load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration. In the case of methanol dual fuel vehicles, for city and highway fuel economy testing, the equivalent test weight for a fuel economy data vehicle is to be determined from the loaded vehicle weight when the vehicle is fueled with the appropriate test fuel.

(e) *Vehicle preconditioning.* The Highway Fuel Economy Dynamometer Procedure is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (e) (1) or (2) of this section, as applicable.

(1) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure or if the vehicle has experienced periods of storage outdoors or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(2) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of paragraph (a)(3) of § 86.132 of this chapter apply.

(f) *Highway fuel economy dynamometer procedure.* (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(2) The provisions of paragraphs (b), (c), (e), (f), (g) and (h) of § 86.135 *Dynamometer procedure* of this chapter, apply for highway fuel economy testing.

(3) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(4) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(g) *Engine starting and restarting.* (1) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(2) False starts and stalls during the preconditioning cycle must be treated as in paragraphs (d) and (e) of § 86.136 of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079–25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) *Dynamometer test run.* The following steps must be taken for each test:

(1) Place the drive wheels of the vehicle on the dynamometer. The

vehicle may be driven onto the dynamometer.

(2) Open the vehicle engine compartment cover and position the cooling fan(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(3) Preparation of the CVS must be performed before the measurement highway driving cycle.

(4) Equipment preparation. The provisions of paragraphs (b) (3) through (6) inclusive § 86.137 of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(5) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109.

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

(7) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in paragraph (b) of § 600.109 while sampling the exhaust gas.

(8) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(i) For alcohol dual fuel automobiles, the procedures of § 600.111 (a) and (b) shall be performed for each of the required test fuels:

(1) Gasoline or diesel fuel as specified in § 600.107 (a) and (b),

(2) Alcohol fuel as specified in § 600.107(c), and

(3) A mixture containing 50% gasoline or diesel and 50% alcohol by volume, applicable during model years 1993 through 1995.

(j) For natural gas dual fuel automobiles, the procedures of § 600.111 (a) and (b) shall be performed for each of the required test fuels:

(1) Gasoline or diesel fuel as specified in § 600.107 (a) and (b), and

(2) Natural gas fuel as specified in § 600.107(d).

(11) A new § 600.113–93 is added to subpart B, to read as follows:

§ 600.113–93 Fuel Economy calculations.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA testing of vehicles fueled with gasoline, diesel, or methanol fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for HC, CO, and CO_2, and, where applicable CH_3OH and HCHO for both the city fuel economy test and the highway fuel economy test. Additionally, for tests for gasoline-fueled vehicles, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The city and highway fuel economy values shall be calculated as specified in this section. A sample appears in appendix II of this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and CO_2, and where applicable, CH_3OH and HCHO as specified in § 86.144 of this chapter. For test of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO, and CO_2, and CH_3OH and HCHO where applicable, as specified in paragraph (b) of § 86.144 of this chapter. For tests of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO, and CO_2, and CH_3OH and HCHO where applicable, by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in paragraph (h) of § 86.135 of this part.

(c) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(1) Specific gravity per ASTM D 1298.

(2) Carbon weight fraction per ASTM D 3343.

(3) Net heating value (Btu/lb) per ASTM D 3338.

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for HC, CO, CO_2, and CH_3OH and HCHO where applicable, and, for test of gasoline-fueled vehicles, the test fuel's specific gravity, carbon weight fraction and net heating value. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.084–28(a)(6)(iii). The CO_2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this secation) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(e) For automobiles fueled with gasoline, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = \{5174 \times 10^4 \times CWF \times SG\} / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (d) of this section.
CO = Grams/mile CO as obtained in paragraph (d) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (d) of this section.
CWF = Carbon weight fraction of test fuel as obtained in paragraph (d) of this section.
NHV = Net heating value by mass of test fuel as obtained in paragraph (d) of this section.
SG = Specific gravity of test fuel as obtained in paragraph (d) of this section.

Round the calculated result to the nearest 0.1 miles per gallon.

(f) For automobiles fueled with diesel, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(1) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (d) of this section).

(2) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (d) of this section), and

(3) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (d) of this section).

Round the quotient to the nearest 0.1 mile per gallon.

(g) For methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = [(0.866 \times 2778 \times G) + (0.375 \times 2694 \times M)] / [(0.866 \times HC) + (0.429 \times CO) + (0.273 \times CO_2) + (0.375 \times CH_3OH) + (0.400 \times HCHO)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (d) of this section.
CO = Grams/mile CO as obtained in paragraph (d) of this section.
CO_2 = Grams/mile CO_2 as obtained in paragraph (d) of this section.
CH_3OH = Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.
HCHO = Grams/mile HCHO (formaldehyde) as obtained in paragraph (d) of this section.
G = gasoline volume percentage divided by 100.
M = methanol volume percentage divided by 100.

(h) For methanol dual fuel vehicles tested on gasoline, the fuel economy is determined as specified in paragraph (e) of this section.

12. A new § 600.201–93 is added to subpart C, to read as follows:

§ 600.201–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and atler model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

13. A new § 600.206–93 is added to subpart C, to read as follows:

§ 600.206–93 Calculation and use of fuel economy values for gasoline-fueled, diesel-fueled, electric, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel vehicle configurations.

(a) Fuel economy values determined for each vehicle, and as approved in § 600.008 (b) or (f), are used to determine city, highway, and combined fuel economy values for each vehicle configuration (as determined by the Administrator) for which data are available.

(1) If only one set of city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.0207(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All city fuel economy values and all highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the city and highway fuel economy values for the vehicle configuration.

(3) The combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the city and highway fuel economy values, as determined in § 600.206(a) (1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in appendix II to this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a) (1) through (3) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each configuration.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will compose the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configurtation.

14. A new § 600.207–93 is added to subpart C, to read as follows:

§ 600.207–93 Calculation of fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206(a) for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacture will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label.

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values), and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each care line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph may be satisfied by providing an amended application for certification, as described in § 86.084–21.

(4) Vehicle configuration fuel economy values, as determined in § 600.206(a), are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration

fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.207(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a) (1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas tests fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sale of the base level within the model type by the projected sale of the model type and rounding the quotient to the nearest 0.0001.

(3) The city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sale fraction of a base level, by

(ii) The city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraph (b) (1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy value for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

15. A new § 600.209–93 is added to subpart C, to read as follows:

§ 600.209–93 Calculation of fuel economy values for labeling.

(a) For the purposes of calculating the city model type fuel economy value for labeling the manufacturer shall:

(1)(i) *For general labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles* multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg.

(ii) *For general labels for natural gas-fueled automobiles,* multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg.

(iii) *For general labels for alcohol dual fuel and natural gas dual fuel automobiles*:

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207(b)(5)(i) by 0.90, rounding the product to the nearest whole mpg, and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.207(b)(5)(ii) by 0.90, rounding the product to the nearest whole mpg, or

(2)(i) *For specific labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles,* multiply the city model type fuel economy value determined in § 600.206(a)(2)(iii), by 0.90, rounding the product to the nearest whole mpg.

(ii) *For specific labels for natural gas-fueled automobiles,* multiply the city model type fuel economy value determined in § 600.206(a)(2)(iii), by 0.90, rounding the product to the nearest whole mpg.

(iii) *For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206(a) (2)(iii) and (4)(i) by 0.90, rounding the product to the nearest whole mpg, and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.206(a) (2)(iii) and (4)(ii) by 0.90, rounding the product to the nearest whole mpg, and

(b) For the purposes of calculating the highway model type fuel economy value for labeling the manfacturer shall:

(1)(i) *For general labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles,* multiply the highway model type fuel economy value determined in § 600.207(b), by 0.78, rounding the product to the nearest whole mpg.

(ii) *For general labels for natural gas-fueled automobiles,* multiply the highway model type fuel economy value determined in § 600.207(b), by 0.78, rounding the product to the nearest whole mpg.

(iii) *For general labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207(b)(5)(i) by 0.78, rounding the product to the nearest whole mpg, and

(B) Multiply the highway model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.207(b)(5)(ii) by 0.78, rounding the product to the nearest whole mpg, or

(2)(i) *For specific labels for gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles,* multiply the highway model type fuel economy value determined in § 600.206(a)(iii), by 0.78, rounding the product to the nearest whole mpg.

(ii) For specific labels for natural gas-fueled automobiles, multiply the highway model type fuel economy value determined in § 600.206(a)(iii), by 0.78, rounding the product to the nearest whole mpg.

(iii) *For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:*

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206(a) (2)(iii) and (4)(i) by 0.78, rounding the product to the nearest whole mpg, and

(B) Multiply the highway model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.206(a) (2)(iii) and (4)(ii) by 0.78, rounding the product to the nearest whole mpg.

(c) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the city value will be set equal to the highway value.

(d) For the purposes of calculating the combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.307, the manufacturer shall (except as provided for in paragraph (d)(2) of this section):

(1)(i) *For gasoline-fueled, diesel-fueled, and alcohol-fueled automobiles,* harmonically average the unrounded city and highway values, determined in (a)(1)(i) and (b)(1)(i), or (a)(2)(i) and (b)(2)(i) of this section weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in appendix II of this part).

(ii) *For natural gas-fueled automobiles,* harmonically average the unrounded city and highway values, determined in (a)(1)(ii) and (b)(1)(ii), or (a)(2)(ii) and (b)(2)(ii) of this section weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg.

(iii) *For alcohol dual fuel and natural gas dual fuel automobiles,* harmonically average the unrounded city and highway values from the tests performed using gasoline or diesel test fuel as determined in (a)(1)(iii)(A) and (b)(1)(iii)(A), or (a)(2)(iii)(A) and (b)(2)(iii)(A) of this section.

(2) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the combined fuel economy will be set equal to the highway value, rounded to the nearest whole mpg.

Subpart D—Fuel Economy Regulations for 1977 and Later Model Year Automobiles—Labeling

16. A new § 600.301–93 is added to subpart D, to read as follows:

§ 600.301–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

17. A new § 600.307–93 is added to subpart D, to read as follows:

§ 600.307–93 Fuel economy label format requirements.

(a)(1) Fuel economy labels must be:

(i) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as depicted in appendix VIII.

(ii) Printed in a color which contrasts with the paper color.

(iii) The label shall have a contrasting border at least 0.25 inches (6.4 mm) wide.

(2) The top 50 percent of the total fuel economy label area shall contain only the following information and in the same format depicted in the label format in appendix VIII:

(i) The titles "CITY MPG" and "HIGHWAY MPG" centered over the applicable fuel economy estimates, in bold caps 10 points in size,

(ii)(A) *For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles,* the city and highway fuel economy estimates calculated in accordance with § 600.209 (a) and (b).

(B) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles,* the city and highway fuel economy estimates for operation on gasoline or diesel fuel as calculated in § 600.209(a) (1)(iii)(A) or (2)(iii)(A) and § 600.209(b) (1)(iii)(A) or (2)(iii)(A).

(iii) The fuel pump logo, and

(iv) The phrase "Compare this (vehicle/truck) to others in the FREE GAS MILEAGE GUIDE available at the dealer," shall be "dropped-out" of the top border as depicted in the sample label format in appendix VIII. The phase shall be in lower case in a medium condensed type except for the words "FREE GAS MILEAGE GUIDE" which shall be capitalized in a bold condensed type and no smaller than 12 points in size.

(v)(A) *For alcohol-fueled automobiles,* the title "(insert appropriate fuel (example "METHANOL")*)". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(B) *For natural gas-fueled automobiles,* the title "NATURAL GAS *". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(C) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles,* the title "DUAL FUEL *". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(3) The bottom 50 percent of the label shall contain the following information:

(i) The (vehicle/truck) description, as described in paragraph (c) or (d) of the section, when applicable.

(ii)(A) A statement: "Actual mileage will vary with options, driving conditions, driving habits and [vehicle's/truck's] condition. Results reported to EPA indicate that the majority of (vehicle/truck) with these estimates will achieve between ____ and ____ (mpg) in the city, and between ____ and ____ (mpg) on the highway."

(B) The range values for this statement are to be calculated in accordance with the following:

(*1*) The lower range values shall be determined by multiplying the city and highway estimates by 0.85, then rounding to the next lower integer value.

(*2*) The upper range values shall be determined by multiplying the city and highway estimates by 1.15 and rounding to the next higher integer value.

(iii)(A) A statement: "For comparison shopping, all [vehicles/trucks] classified as (insert category as determined in § 600.315) have been issued mileage ratings ranging from ____ to ____ (mpg) city and ____ to ____ (mpg) highway." (The range values are those determined in accordance with § 600.311.) or, when applicable,

(B) A statement: "A range of fuel economy values for other (vehicles/trucks) classified as (insert category as determined in § 600.315) is not available at this time." or by the statement: "Not available."

(iv)(A) The statement: "Estimated Annual Fuel Cost:" followed by the appropriate value calculated in accordance with paragraph (g) or (h) of this section. The estimated annual fuel cost value for alcohol dual fuel automobiles and natural gas dual fuel vehicles to appear on the fuel economy label shall be that calculated based on operating the vehicle on gasoline or diesel fuel as determined in § 600.307 (g) and (h).

(B) At the manufacturers option, it may include the fuel cost and the annual mileage interval used to determine the annual fuel cost.

(v) For the 1986 model year only, the statement: "Under EPA's previous fuel

economy program, used prior to the 1985 model, year this (vehicle/truck) would have received a single estimate of (insert unadjusted city value rounded to the nearest whole mpg, as determined in § 600.207(b)) mpg."

(vi)(A) The Gas Guzzler statement, when applicable (see paragraph (f) of this section), must be centered on a separate line between the bottom border and the Estimated Annual Fuel Cost statements. The words "Gas Guzzler" shall be highlighted.

(B) The type size shall be at least as large as the largest type size in the bottom 50 percent of the label.

(vii)(A) *For alcohol-fueled and natural gas-fueled automobiles,* the statement: "'This vehicle operates on (insert appropriate fuel(s)) only." shall appear on the bottom border. The phrase shall be in lower case in a medium condensed type except for the fuels listed which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(B) *For natural gas-fueled automobiles,* the statements: "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823."

(C) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles,* the statement: "'This dual fuel vehicle operates on (insert appropriate alternative fuel(s)) or (insert gasoline or diesel as appropriate)." shall appear on the bottom border. The phrase shall be in lower case in a medium condensed type except for the words "gasoline" or "diesel" (as appropriate) and the other fuels listed, which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(viii) *For alcohol dual fuel automobiles and natural gas dual fuel automobiles,* the statement: "All fuel economy values on this label pertain to (insert gasoline or diesel as appropriate) fuel usage. (insert other fuel(s) as appropriate) fuel(s) usage will yield different values. See the GAS MILEAGE GUIDE for information on (insert other fuel(s)) fuel(s) usage."

(4) The maximum type size for the statements located in the lower 50 percent of the label shall not exceed 10 points in size, except as provided for in paragraphs (a)(3)(vii) (A) and (B) of this section.

(b)(1) The city mpg number shall be displayed on the left and the highway mpg number displayed on the right.

(2)(i) Except for the digit "one," each mpg digit shall measure at least 0.35 inches by 0.6 inches (9 x 15 mm) in width and height respectively.

(ii) The digit "one," shall measure at least 0.2 inches by 0.6 inches (5 x 15 mm) in width and height respectively.

(3) The strike width of each mpg digit shall be at least 0.075 inches (1. 9 mm).

(4)(i) MPG digits not printed as a single character shall be made of a matrix of smaller characters. This matrix shall be at least four characters wide by five characters high (with the exception of three characters wide for the numerical character denoting "one".)

(ii) The small characters shall be made of successive overstrikes to form a reasonably dark and continuous line that approximates a single large character.

(5)(i) If a manufacturer chooses to enlarge the label from that depicted in appendix VIII, the logo and the fuel economy label values, including the titles "CITY MPG" and "HIGHWAY MPG" must be increased in the same proportion.

(ii) The area bounded by the bottom of the fuel pump logo to the top of the border must continue to represent at least 50 percent of the available label area.

(C) The vehicle description on general labels will be as follows:

(1) Model year;

(2) Vehicle car line;

(3) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders or rotors;

(5) Additional engine description, if necessary to distinguish otherwise identical model types, as approved by the Administrator;

(6) Fuel metering system, including number of carburetor barrels, if applicable;

(7) Transmission class;

(8) Catalyst usage, if necessary to distinguish otherwise identical model types; and

(9) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(d) The vehicle description on specific labels will be as follows:

(1) The descriptions of paragraph (c) of this section;

(2) Inertia weight class;

(3) Axle ratio; and

(4) Other engine or vehicle parameters, if approved by the Administrator.

(e) Where the fuel economy label is incorporated with the pricing information sticker, the applicable vehicle description, as set forth in paragraph (c) or (d) of this section, does not have to be repeated if the information is readily found on the Motor Vehicle Information and Cost Savings Act label.

(f)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase "' * * * Gas Guzzler Tax: $_____ * * *".

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg. Adjustments in accordance with § 600.209 will not be used to determine the tax liability.

(g) *General labels.* The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per gallon and average annual mileage, predetermined by the Administrator, and the fuel economy determined in § 600.209(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest, 1,000 miles per year, by

(iii) The average, rounded to the nearest 0.0001 gallons per mile of the fuel economy value determined in § 600.209(d) for a model type.

(2) The product computed in paragraph (g)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(h) *Specific labels.* The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using the values for the fuel cost per gallon and average mileage and the fuel economy determined in paragraph (h)(1)(iii) of this section.

(1) The annual fuel cost estimate for vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar, by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile, of the fuel economy value determined in § 600.208(a)(2)(iii) for a vehicle configuration (city and highway values will be adjusted by the factors in § 600.209 (a) and (b) and combined according to § 600.209(d) before the calculation).

(2) The product computed in paragraph (h)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

18. A new § 600.501–93 is added to subpart F, to read as follows:

§ 600.501–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

19. A new § 600.510–93 is added to subpart F, to read as follows:

§ 600.510–93 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified herein, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(1) and has two-wheel drive.

(4) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(1) and has four-wheel-drive.

(5) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has two-wheel drive.

(6) An average fuel economy calculation will be made for the category of light trucks which is defined in § 600.511(e)(2) and has four-wheel-drive.

(b) For the purpose of calculating average fuel economy under paragraph (c) of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.502(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.207 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent galloan of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg;

(v) At the manufacturer's option, those vehicle configurations that are selfcompensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of paragraph § 600.207(a)(4)(ii), and

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.208 except that;

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported:

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in § 600.510(a) as follows:

(1) Divide the total production volume of that category of automobiles by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing

(i) The number of automobiles of that model type produced by the manufacturer in the model year by:

(ii) *For gasoline-fueled and diesel-fueled model types,* the fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section, and

(iii) *For alcohol-fueled model types,* the fuel economy value calculated for that model type in accordance with paragraph (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg, and

(iv) *For natural gas-fueled model types,* the fuel economy value calculated for that model type in accordance with (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg, and

(v) *For alcohol duel fuel model types,* for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel fuel as determined in § 600.207(b)(5)(i), and

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510(g) are met, and

(vi) *For natural gas duel fuel model types,* for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel as determined in § 600.207(b)(5)(i), and

(B) The combined model type fuel economy value for operation on natural gas as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510(g) are met.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of section 503(b) of U.S.C. 2003(b).

(e) For passenger categories identified in paragraphs (a) (1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = AFE[((0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487)/((0.55 \times a) + 0.45)] + IW$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weight average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

...0022 for the 1988 model year.

c = ... constant value, fixed by model year. For 1987, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available.

$IW = (9.2917 \times 10^{-5} \times SF_{3\ rwc} \times FE_{3\ rwc}) - (3.5123 \times 10^{-5} \times SF_{4\ srw} \times FE_{4\ rwc})$

Note: Any calculated value of IW less than zero shall be set equal to zero.

$SF_{3\ rwc}$ = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$SF_{4\ srw}$ = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$FE_{3\ rwc}$ = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

$FE_{4\ rwc}$ = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibility within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles.

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effects on in-use fuel economy.

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

(g)(1) *Alcohol dual fuel automobiles and natural gas dual fuel automobiles* must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel. The following equation must hold true:

$E_{alt}/E_{pet} > 1$

where:

$E_{alt} = [FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^4$ = energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet} = [FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^4$ = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113;

FE_{pet} is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113;

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel;

NHV_{pet} is the net (lower) heating value [BTU/lb] of the petroleum fuel;

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 cubic feet for gaseous fuels] of the alternative fuel;

D_{pet} is the density [lb/gallon] or petroleum fuel.

(i) The equation must hold true for both the city and highway fuel economy values for each test of each test vehicle.

(ii)(A) Manufacturers shall submit to the Administrator the net heating values and densities of the alcohol, natural gas, and diesel fuels. Manufacturers shall support these values by fuel property test data submitted by the fuel supplier or by the automobile manufacturer.

(B) Upon reviewing the values submitted by the manufacturer, the Administrator shall determine the net heating values and densities of the alcohol, natural gas, and diesel fuels.

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(c).

(2) For model years 1993 through 1995, alcohol dual fuel automobiles designed to operate on mixtures of alcohol and gasoline must, in addition to paragraph (g) (1) and (2) of this section, provide equal or superior energy efficiency while operating on a mixture of 50% alcohol, 50% gasoline by volume, as while operating on gasoline fuel. The following equation must hold true:

$E_{50}/E_g > 1$

where:

$E_{50} = [FE_{50}/(NHV_{50} \times D_{50})] \times 10^6$ = energy efficiency while operating on 50% alcohol, 50% gasoline rounded to the nearest 0.01 miles/millin BTU.

$E_g = [FE_g/(NHV_g \times D_g)] \times 10^6$ = energy efficiency while operating on gasoline rounded to the nearest 0.01 miles/million BTU.

FE_{50} is the fuel economy [miles/gallon] while operated on 50% alcohol, 50% gasoline as determined in § 600.113;

FE_g is the fuel economy [miles/gallon] while operated on gasoline as determined in § 600.113;

NHV_{50} is the net (lower) heating value [BTU/lb] of the 50/50 blend;

NHV_g is the net (lower) heating value [BTU/lb] of gasoline;

D_{50} is the density [lb/gallon] of the 50/50 blend;

D_g is the density [lb/gallon] of the gasoline.

(i) The equation must hold true for both the city and highway fuel economy values for each test of each test vehicle.

(ii)(A) Manufacturers shall submit to the Administrator the net heating values and densities of the alcohol and 50/50 alcohol/gasoline blend. Manufacturers shall support these values by fuel property test data submitted by the fuel supplier or by the automobile manufacturer.

(B) Upon reviewing the values submitted by the manufacturer, the Administrator shall determine the net heating values and densities of the alcohol and 50/50 alcohol/gasoline blend.

(h) For each of the model years 1993 through 2004, and for each category of automobile identified in § 600.510(a), the maximum increase in average fuel economy determined in § 600.510(c) attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be 1.2 miles per gallon or as provided for in paragraph (i) of this section.

(1) The Administrator shall calculate the increase in average fuel economy to determine if the maximum increase provided in paragraph (h) of this section has been reached. The Administrator shall calculate the average fuel economy for each category of automobiles specified in § 600.510(a) by subtracting the average fuel economy values calculated in accordance with § 600.510 by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or diesel) fuel from the average fuel economy values determined in § 600.510(b)(2)(vi), (vii), and paragraph (c). The difference is limited to the maximum increase specified in paragraph (h) of this section.

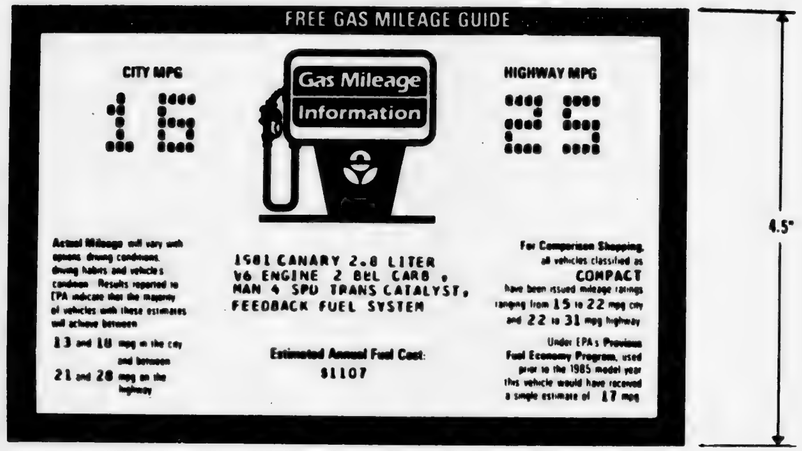
(i) In the event that the Secretary of Transportation lowers the corporate average fuel economy standard applicable to passenger automobiles below 27.5 miles per gallon for any model year during 1993 through 2004, the maximum increase of 1.2 mpg per year specified in paragraph (h) shall be reduced by the amount the standard was lowered, but not reduced below 0.7 mpg per year.

20. Appendix VIII to part 600 is revised to read as follows:

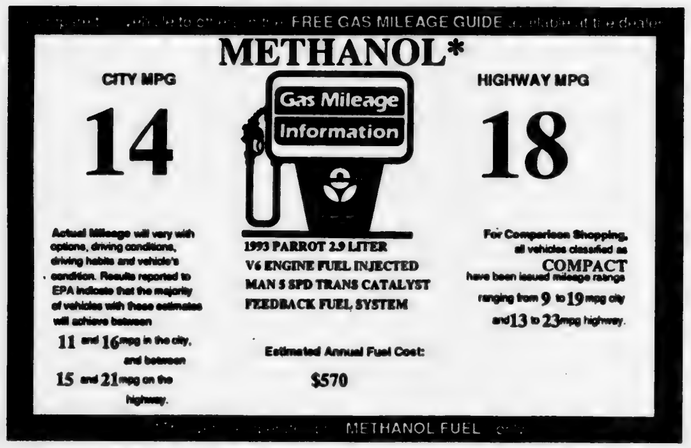
BILLING CODE 6560-50-M

BEST COPY AVAILABLE

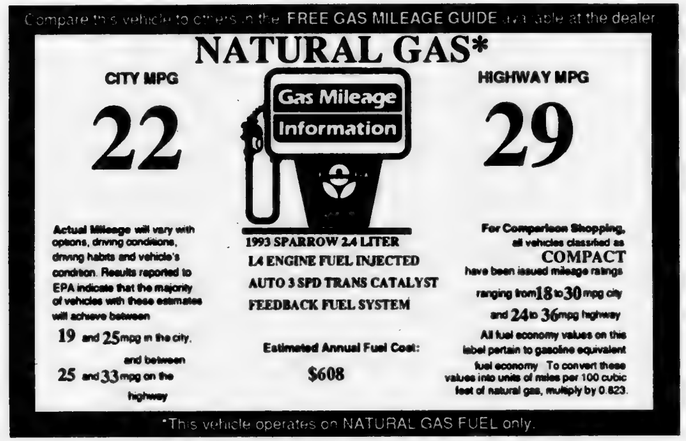
APPENDIX VIII



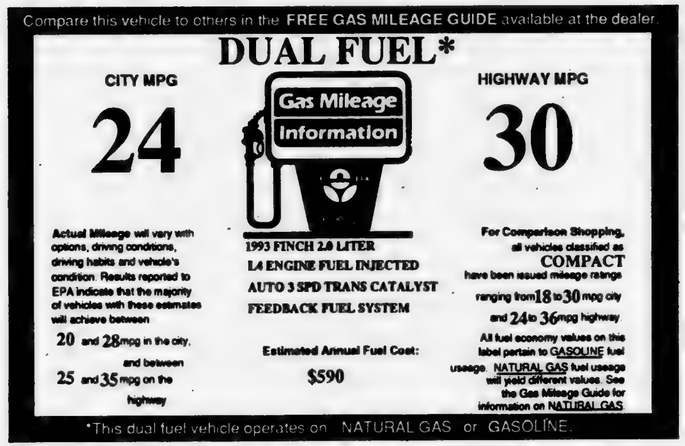
a. Gasoline-fueled vehicle fuel economy label.



b. Methanol-fueled vehicle fuel economy label.



c. Natural gas-fueled vehicle fuel economy label.



d. Dual fuel vehicle fuel economy label.

[FR Doc. 91-4383 Filed 2-28-91; 8:45 am]
BILLING CODE 6560-50-C

OL
56
SS
41
MR
1
991
MI

federal register

Friday
March 1, 1991

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151
46 CFR Part 25
Prevention of Pollution From Ships; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

46 CFR Part 25

[CGD 88-032A]

RIN 2115-AD40

Prevention of Pollution From Ships

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action amends the Coast Guard's garbage pollution regulations by adding waste management plan and placard requirements for certain U.S. ships, including recreational vessels and fixed or floating platforms. These provisions are needed to ensure that persons on the ship are made aware of garbage pollution laws and penalties and that garbage is discharged in accordance with a waste management plan based on those laws. This action should help reduce the number of unlawful garbage discharges and the resulting pollution.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Lt. James H. McDowell, Project Manager, Port Safety and Security Division (G-MPS), (202) 267-0491.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lt. James H. McDowell, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On September 6, 1989, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Prevention of Pollution From Ships" in the Federal Register (54 FR 37084). On May 2, 1990, an interim final rule was published (55 FR 18578) to allow the public to comment on changes made following publication of the NPRM. On July 26, 1990, a notice was published (55 FR 30455) to suspend the effective date of 33 CFR 151.59 as it applies to placards on Great Lakes ships, on manned fixed platforms, and on manned floating platforms not in transit. This final rule resolves this issue for these ships and platforms.

The Coast Guard received thirteen letters commenting on the interim final rule. A public hearing was not requested and one was not held.

Background and Purpose

The Marine Plastic Pollution Research and Control Act of 1987 (the Act) directed the Coast Guard to require certain ships (including fixed or floating platforms) of United States registry or nationality, and ships operated under the authority of the United States, wherever located, to maintain refuse record books and shipboard waste management plans, and to display placards which notify the crew and passengers of the requirements of Annex V of MARPOL 73/78 (the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978). This rulemaking is in response to that directive.

Discussion of Comments

The "SUPPLEMENTARY INFORMATION" section of the interim final rule (55 FR 18578; May 2, 1990) expressly limited public comments to paragraphs (a)(2) and (b) of § 151.59, Placards. Paragraph (a)(2) was added to make it clear that the placarding requirements are to apply also to manned fixed or floating platforms. Paragraph (b) was revised to require more than one placard if necessary to sufficiently inform the crew and passengers. An opportunity to comment on the other provisions of this rulemaking was provided in the comment period to the NPRM.

All comments on these two paragraphs are addressed in this preamble. Comments received on other provisions, such as § 151.57, Waste Management Plans, or on other issues, such as the refuse record books, are not addressed in this preamble. These other comments not addressed here may be considered in separate, future rulemakings as the Coast Guard assesses the effectiveness of this rule.

1. Five comments pointed out that § 151.59 should apply to manned floating platforms only when they are in transit because there are already garbage discharge regulations in 33 CFR 151.73 for platforms when they are engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources. On July 26, 1990, the Coast Guard published a notice in the Federal Register (55 FR 18578) suspending indefinitely the effective date for the placarding requirements applicable to manned fixed platforms and manned floating platforms not in transit.

The Coast Guard agrees that it would be confusing to require manned floating platforms not in transit, as well as manned fixed platforms, to post placards containing information that conflicts with the actual discharge requirements applicable to those platforms. A platform is stationary when engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources. The applicable discharge restrictions do not change while the platform is engaged in these activities. Conversely, a floating platform in transit is mobile and the discharge regulations applicable to the platform change as its distance from land changes. Placards serve as a ready reference to remind the crew of the restrictions applicable for that particular distance from land. When the platform is stationary, its waste management plan serves this same purpose. Therefore, § 151.59(a)(2) has been changed so that the placarding requirement no longer applies to manned floating platforms not in transit and to manned fixed platforms.

2. One comment stated that § 151.59 would fail to prohibit the dumping of solid wastes from offshore fixed or floating platforms, which is in violation of 30 CFR 250.40(b)(6).

The Coast Guard concurs that § 151.59 does not prohibit the dumping of wastes from these platforms. Section 151.59 requires the posting of a placard and outlines the information to be displayed on the placard. As discussed in paragraph 1 above, § 151.59(a)(2) has been changed so that the placarding requirement no longer applies to manned floating platforms not in transit and to manned fixed platforms. This should remove any confusion on this point.

3. Two comments were received concerning the number of placards required under § 151.59(b). One comment suggested that a placard be posted at each entrance to the ship, every 100 feet of open deck area with each deck considered separately, and any other location specified by the Captain of the Port (COTP). Another suggested setting a maximum of three placards per ship.

In drafting § 151.59(b), the Coast Guard considered the wide variety of ships and their various configurations. Paragraph (b) was drafted to be as flexible as possible. There was no intention to set a fixed or maximum number of placards to be posted. The only requirement was that they be posted in prominent locations and in sufficient numbers so that they may be read by the crew and passengers. On some larger ships, three placards may not be sufficient to notify all the crew of these restrictions. Posting placards every 100 feet of open deck space could be more than is necessary to inform crew and passengers.

The Coast Guard has concluded that the master or person in charge of the ship is best suited to determine the number of placards required and where they should be posted, to best inform the passengers and crew of the discharge restrictions. However, additional placards may be required if the COTP determines that the number or location of the placards is inadequate to inform the crew and passengers.

Discussion of Changes

In addition to the changes to § 151.59(a)(2) explained under "Discussion of Comments", the Coast Guard has made two other changes, both intended to clarify certain provisions of the interim final rule.

1. A requirement that placards display the information specified in § 151.59 (c)(2)(ii) through (c)(2)(v) of the interim final rule may mislead the placards' readers to assume that garbage may be discharged by ships operating beyond three miles from the nearest land on the Great Lakes. In fact, the discharge of all garbage in the navigable waters of the U.S., which include the Great Lakes and their connecting or tributary waters, is prohibited by existing § 151.66.

Therefore, a new paragraph (e) has been added which allows ships, while operating on the Great Lakes or their connecting or tributary waters, the option of having placards which address only the garbage discharge restrictions applicable to those waters, i.e. that the discharge of all garbage in those waters is prohibited. This does not change the placarding requirement as published in the interim final rule for ships while operating on waters other than the Great Lakes or their connecting or tributary waters.

A definition of "Great Lakes" has been added to § 151.05, Definitions. The definition is consistent with the definition of "Great Lakes" used in other Coast Guard regulations.

2. The words "applicable to the vessel" have been added to 46 CFR 25.50-1, which reminds owners of uninspected vessels that their vessels also must meet the garbage discharge, waste management plan, and placard requirements of 33 CFR part 151. The words are added to make it clear that not all uninspected vessels must meet all of the requirements of Part 151, but only those applicable to the particular vessel. For example, if the vessel is less than 26 feet in length, it need not meet the placard requirements in § 151.59. (See § 151.59(a)(1).)

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A final Regulatory Evaluation is available in the docket for inspection or copying at the Office of the Marine Safety Council, U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Changes to the rule since publication of the interim final rule will impose no new costs or burdens. In fact, they will reduce both costs and burdens for certain ships, while still providing protection for the environment. The changes to § 151.59(a)(2) remove floating platforms not in transit and fixed platforms from the placarding requirements of § 151.59. The discharge requirements for these platforms are covered already under existing § 151.73 and the wording of placards under § 151.59 would be misleading. This change will eliminate the cost of placards under § 151.59 for these platforms. Also, the addition of an optional placard under § 151.59(e) for ships operating on the Great Lakes may reduce the costs slightly for those ships because the wording of the optional placard can be shorter than that of the standard placard.

The total annual projected cost for all ships subject to the final rule is estimated to be $4.36 million. This cost is allocated as follows: merchant vessels, $0.059 million; passenger vessels, $2.247 million; towing vessels, $.024 million; fishing vessels, $.494 million; recreational boats, $1.306 million; vessels engaged in offshore oil and gas operations and manned fixed or floating platforms, $.217 million; and research and other miscellaneous classes of vessels, $.012 million. The differences among these figures are due primarily to the differences in population of each type of ship subject to these requirements. Also the totals have been adjusted to reflect the changes made since publication of the interim final rule.

These regulations should benefit the environment by reducing the number of improper discharges. The amount of that benefit, however, is not quantifiable.

Small Entities

A regulatory flexibility analysis was conducted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) to evaluate the impact of the final rule on small entities. The analysis has been made part of the final Regulatory Evaluation. In the analysis, an entity is considered small, under this definition, if its annual receipts do not exceed $3.5 million.

The changes to the rule, as discussed under the "Regulatory Evaluation" section of this preamble, will have no effect on small entities, other than to slightly reduce placarding costs for ships operating on the Great Lakes.

The Coast Guard does not have accurate information on how many ships would qualify as small entities. No comments were received on the draft regulatory flexibility analysis. However, the Coast Guard estimates that this rule will affect 2,200 miscellaneous U.S. flag vessels of less than 1,000 gross tons, 14,800 fishing vessels, and 600 vessels engaged in offshore oil and gas operations.

Most vessels which are small entities will have to comply with the requirements for placards and waste management plans. The Coast Guard estimates that the cost of compliance will average less than 0.6 percent of the net income or the operational cost of each small entity.Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains information collection requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB has approved them. The section number is § 151.57 and the corresponding OMB approval number is OMB Control Number 2115-0120.

Federalism

The Coast Guard has analyzed the final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of the final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is

available in the docket for inspection or copying at the address in the "Regulatory Evaluation" section of this preamble.

The regulations are administrative in nature and are expected to have some positive but no negative impact on the environment. The regulations should contribute to the reduction of the occurrence of plastic, as well as other ship-generated garbage, in the marine environment. The placarding requirement (§ 151.59) is intended to remind persons of their pollution prevention responsibilities under the law and the waste management plan (§ 151.57) should reduce the number of unlawful discharges.

List of Subjects

33 CFR Part 151

Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 25

Fire prevention, Marine safety.

Accordingly, the interim rule amending 33 CFR part 151 and 46 CFR part 25 which was published at 55 FR 18578–18583 on May 2, 1990, is adopted as a final rule with the following changes:

TITLE 33—[AMENDED]

PART 151—[AMENDED]

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 151.05 is amended by adding a new definition to read as follows:

§ 151.05 Definitions.

As used in this part—

* * * * *

Great Lakes means the Great Lakes of North America and the St. Lawrence River west of a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

* * * * *

3. Section 151.59 is added to read as follows:

§ 151.59 Placards.

(a) This section applies to the following:

(1) Each manned U.S. ship (other than a fixed or floating platform) that is 26 feet or more in length.

(2) Each manned floating platform in transit that is—

(i) Documented under the laws of the United States; or

(ii) Operating under the authority of the United States, including, but not limited to, a lease or permit issued by an agency of the United States.

(b) The master or person in charge of each ship under paragraph (a)(1) or (a)(2) of this section shall ensure that one or more placards meeting the requirements of this section are displayed in prominent locations and in sufficient numbers so that they can be read by the crew and passengers. These locations must be readily accessible to the intended reader and may include embarkation points, food service facilities, garbage handling spaces, and common spaces on deck. If the Captain of the Port determines that the number or location of the placards is insufficient to adequately inform crew and passengers, the Captain of the Port may require additional placards and may specify their locations.

(c) Each placard must be at least nine inches wide by four inches high, made of a durable material, and lettered with letters at least ⅛ inch high.

(d) Except as under paragraph (e) of this section, the placard must notify the reader of the following:

(1) The discharge of plastic or garbage mixed with plastic into any waters is prohibited.

(2) The discharge of all garbage is prohibited in the navigable waters of the United States and, in all other waters, within three nautical miles of the nearest land.

(3) The discharge of dunnage, lining, and packing materials that float is prohibited within 25 nautical miles of the nearest land.

(4) Other unground garbage may be discharged beyond 12 nautical miles from the nearest land.

(5) Other garbage ground to less than one inch may be discharged beyond three nautical miles of the nearest land.

(6) A person who violates the above requirements is liable for a civil penalty of up to $25,000, a fine of up to $50,000, and imprisonment for up to five years for each violation.

(7) Regional, State, and local restrictions on garbage discharges also may apply.

(e) For ships while operating on the Great Lakes or their connecting or tributary waters, the placard must—

(1) Notify the reader of the information in paragraph (d) of this section; or

(2) Notify the reader of the following:

(i) The discharge of all garbage into the Great Lakes or their connecting or tributary waters is prohibited.

(ii) A person who violates the above requirement is liable for a civil penalty of up to $25,000, a fine of up to $50,000, and imprisonment for up to five years for each violation.

TITLE 46—[AMENDED]

PART 25—[AMENDED]

4. The authority citation for part 25 continues to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3306, 4104, and 4302; 49 CFR 1.46.

5. Section 25.50–1 is revised to read as follows:

§ 25.50–1 Criteria.

Each uninspected vessel must meet the garbage discharge, waste management plan, and placard requirements of 33 CFR part 151 applicable to the vessel.

Note: 33 CFR 151.67 prohibits the discharge of plastic or garbage mixed with plastic into the sea or the navigable waters of the United States. "Plastic" and "garbage" are defined in 33 CFR 151.05.

Dated: January 29, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–4739 Filed 2–28–91; 8:45 am]

BILLING CODE 4910–14–M

federal register

Friday
March 1, 1991

Part V

Federal Emergency Management Agency

Mortgage Portfolio Protection Program; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Mortgage Portfolio Protection Program

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Insurance Administration (FIA), the Directorate within the Federal Emergency Management Agency (FEMA) responsible for the administration of the National Flood Insurance Program (NFIP), has developed a Mortgage Portfolio Protection Program (MPPP). The MPPP is intended for use by mortgage lenders in securing flood insurance protection for those properties that are part of the lending institution's mortgage portfolio when such properties:

(1) Have been determined to be located within special flood hazard areas,

(2) Are located within a community that is participating in the NFIP, and

(3) Are not covered by a flood insurance policy even after required notices have been given to the property owner (mortgagor) by the lending institution of the requirement for obtaining and maintaining such coverage, but the mortgagor has failed to respond.

Thus, the MPPP is a mechanism by which lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios can bring their mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: H. Joseph Coughlin, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone (202) 646-2780.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administration (FIA) has developed the Mortgage Portfolio Protection Program (MPPP) as a mechanism to be used as a last resort and at the option of a lending institution for securing flood insurance coverage for properties which are part of the lending institution's mortgage portfolio. The goals of the MPPP are, through the MPPP notification process, to encourage property owners whose structures are potentially susceptible to flood damage to purchase a conventional NFIP flood insurance policy, or, failing that, have the lending institution obtain an MPPP policy on the structure.

It is expected that the MPPP notification process will result in a greater number of conventional NFIP Standard Flood Insurance Policies being written. Thus, the MPPP will benefit the lending community by providing a vehicle through which lending institutions can bring their mortgage portfolios into compliance with Federal law as well as protect the collateral security for such loans. The MPPP will also benefit: (1) The policyholder who will have financial protection against loss in the event of flood damage, (2) the taxpayers, since those policyholders will not need to apply for disaster assistance related to damages for which their policies will respond and they will not need to write off uninsured casualty losses on their taxes, both of which positively impact the Federal budget, and (3) all NFIP policyholders, since the greater number of policies-in-force will result in a greater spread of the risk which should mean that the overall cost of the insurance will hold steady or even possibly be lowered depending upon the magnitude of the insurance reserves.

Background

The National Flood Insurance Act of 1968 (42 U.S.C. 4001, *et seq.*), as amended, created the NFIP to provide federally backed flood insurance to property owners whose properties are located within communities which have become eligible to participate in the NFIP. Such communities establish their eligibility by adopting and enforcing floodplain management measures to regulate new construction and substantial improvement within their special flood hazard areas so as to eliminate or minimize future flood damage. A special flood hazard area is defined as the area within the flood plain having a one percent or greater chance of flood occurrence in any given year (also known as the 100-year [or base] flood). Special flood hazard areas are delineated on maps issued by the Federal Emergency Management Agency (FEMA) for individual communities.

The NFIP was amended by the Flood Disaster Protection Act of 1973, Public Law 93-234, to require the purchase of flood insurance as a condition of receipt of federal and federally related financing for acquisition and construction purposes in flood hazard areas of participating communities and to require Federal Instrumentalities to direct lenders regulated by them, or whose deposits are insured by them, to require flood insurance protection for any improved real property located in a special flood hazard area of a participating community when such real property serves as security for any loan.

The term "Federal Instrumentality" is defined in section 3(a)(5) of the 1973 Act as the "Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board (currently, Office of Thrift Supervision), the Federal Savings and Loan Insurance Corporation (whose responsibilities have been taken over by the Federal Deposit Insurance Corporation), and the National Credit Union Administration."

The FIA does not have any statutory or regulatory authority over lending institutions nor does the 1973 Act, by itself, require or prohibit activities on the part of lenders directly. Rather, the Act directs the Federal Instrumentalities to adopt regulations requiring lenders subject to their jurisdiction to compel borrowers to purchase flood insurance protecting any "improved real estate or mobile home" located within a special flood hazard area of a community participating in the NFIP, if the building or mobile home (and any personal property securing such loan) were to be used as security for the loan. Lenders should follow the interpretation of the particular Federal Instrumentality or Agency to whose regulations they are subject for authoritative guidance.

The history of the NFIP since the enactment of the 1973 Act indicates that lenders have not consistently required the purchase and/or renewal of flood insurance policies as required by regulations issued by the Federal Instrumentalities and Agencies. The less compliance there is in conjunction with loan origination, the greater the problem for servicers of loan portfolios. Therefore, over the past two and a half years, FIA has been working with interested parties to develop a program to help lenders and mortgage servicers meet their statutory duty to ensure that properties in their mortgage portfolios comply with Federal law related to flood insurance. This collaboration has resulted in the introduction of the MPPP.

Implementation

The MPPP will be available to all lending institutions and Write Your Own (WYO) companies which elect to participate by signing an agreement to adhere to the MPPP criteria and requirements, including specific multiple notices to a borrower whose property is in a special flood hazard area as delineated on the appropriate FEMA map concerning the need to purchase and maintain a flood insurance policy for the duration of the mortgage loan and encouraging the borrower to obtain a Standard Flood Insurance Policy (SFIP) from the borrower's local insurance agent.

The MPPP cannot be used in connection with new loan transactions but can be used only in connection with a lender's efforts to bring its mortgage portfolio into compliance with the flood insurance purchase requirements of Federal law. A flood insurance policy under the MPPP can be purchased only from a WYO company and only as a last resort for those properties where the borrower, after having been given the required notices of the need to purchase a flood insurance policy, has not done so.

A policy purchased under the MPPP (1) will be written covering the interest of both the mortgagee and the mortgagor, (2) will be rated using special high rates, reflecting the uncertainty as to the degree of risk due to the limited underwriting data required, and (3) will be for a policy term of one year only (subject to renewal after a special renewal notification process). Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be those available to single-family buildings and their contents, i.e., $185,000 for building coverage and $60,000 for contents. The higher limits that are available under the conventional SFIP to other occupancy types such as small business, other residential, or non-residential, can be provided under the MPPP policy only if the occupancy type can be identified on the application. If the mortgaged property is located in a community participating in the Emergency phase of the NFIP, then the covered limits available will be the lower limits available in that phase, i.e., $35,000 for building coverage and $10,000 for contents. Again, if the higher Emergency phase limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form will be used. The current NFIP rules will apply with respect to the waiting period and effective dates of coverage. With respect to the premium payment, the lender or mortgage servicer (or Payor) has the option of following its usual business practices so long as the NFIP rules are followed.

The rates (per $100 of insurance) are as follows:

Zone	Building	Contents
A Zone—All building/occupancy types	$1.25	$1.25
V Zone—All building/occupancy types	$3.00	$3.00

In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone in which the property is located. The amount of coverage may be changed if the building occupancy supports a greater amount than the amount of insurance in force but this must be done prior to a loss. Further, since the underwriting information available at the policy's inception may be limited, it will be the WYO company's responsibility (acting on behalf of the mortgage lender) to notify the mortgagor of all coverage limitations at the inception of coverage and to impose any applicable limitations (e.g., the coverage restrictions in basements) at the time of loss adjustment.

The WYO companies which have so far agreed to participate in the NFIP MPPP are as follows:

American Bankers Insurance Company of Florida, Miami, FL
American Loyalty Insurance Company, Gahanna, OH
American Modern Home Insurance Company, Cincinnati, OH
American Road Insurance Company, Dearborn, MI
Bankers Insurance Company, St. Petersburg, FL
Bankers & Shippers Insurance Company, Burlington, NC
Colonial Penn Insurance Company, Philadelphia, PA
Consolidated Insurance Group, Inc. (American Centennial Insurance Co.) (Wesco Insurance Company), Wilmington, DE
Empire Fire and Marine Insurance Company, Omaha, NE
First Colonial Insurance Company, Jacksonville, FL
Florida Fire & Casualty Insurance Co., Ft. Lauderdale, FL
Great Pacific Insurance Company, San Bruno, CA
Independent Fire Insurance Company, Jacksonville, FL
Island Insurance Company, LTD, Honolulu, HI
Minnesota Mutual Fire & Casualty, Minnetonka, MN
Omaha Property and Casualty Company, Omaha, NE
Pan American Insurance Company, Hato Rey, PR
Patrons Mutual Insurance Company of Connecticut, Glastonbury, CT
Redland Insurance Company, Council Bluffs, IA
Regency Insurance Company, Hallandale, FL
Unisun Insurance Company, Charleston, SC
U.S. Security Insurance Company, Miami, FL

The Mortgage Portfolio Protection Program Write Your Own Company Guidelines and Requirements, as referenced in this document, is reproduced in its entirety as appendix A to this notice.

Dated: February 22, 1991.

C. M. "Bud" Schauerte,

Federal Insurance Administrator.

Appendix A—Federal Emergency Management Agency, Federal Insurance Administration, National Flood Insurance Program; Mortgage Portfolio Protection Program, Write Your Own Company Guidelines and Requirements

December 14, 1990.

Background

The Mortgage Portfolio Protection Program (MPPP) will be introduced on January 1, 1991 as an additional tool, provided by the Federal Insurance Administration (FIA), to assist the mortgage lending and servicing industries, in response to their requests of the past few years, in bringing their mortgage portfolios in compliance with the flood insurance requirements of the Flood Disaster Act of 1973.

The MPPP is not intended to act as a substitute for the need for mortgagees to review all mortgage loan applications at the time of loan origination and comply with flood insurance requirements as appropriate.

It is expected that the proper implementation of the various requirements of this MPPP will result in mortgagors, following their notification of the need for flood insurance will either show evidence of such a policy, contacting their local insurance agent or appropriate Write Your Own (WYO) company and purchasing the necessary coverage. It is also intended that flood insurance policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by this MPPP.

The following represents the criteria and requirements that must be followed by all parties engaged in the sale of flood insurance under the National Flood Insurance Program's Mortgage Portfolio Protection Program:

Requirements for Participating in the MPPP

1. General

a. All mortgagors notified, in conjunction with this Program, of their need to purchase flood insurance, must be encouraged to obtain a Standard Flood Insurance Policy (SFIP) from their local agent.

b. When, as a result of a mortgage portfolio review, properties are determined to be in an SFHA, the mortgagee/mortgage servicing company has no evidence of flood insurance on these properties and the mortgagors have failed to respond to notices requesting flood insurance, the MPPP provides a vehicle for lending institutions to obtain (force place) the required flood insurance coverage. The MPPP process can be accomplished with limited underwriting information and with special flat rates.

c. In the event of a loss, the policy will have to be reformed if the wrong rate has been applied for the zone the property is located in. Also, the amount of coverage may have to be changed if the building occupancy does not support that amount.

d. It will be the WYO companies' responsibility to notify the mortgagor of the coverage limitations at the inception of coverage and to impose those limitations at the time of loss adjustment.

2. WYO Arrangement Article III—Fees

a. With the implementation of the MPPP there is no change in the method of WYO company allowance from that which is provided in the Financial Assistance/Subsidy Arrangement for all flood insurance written for an initial period of two years.

b. The allowance level percentage referenced by the Arrangement will be used for the first two years while the success of the MPPP is being measured. One of the measures of success will be the level of policies written through MPPP that remain rated as such, versus the expected greater number of policies generated in the conventional NFIP as a result of the MPPP notification process.

3. Use of WYO Company Fees for Lenders/Servicers or Others

a. No portion of the allowance that WYO companies retain under the WYO Financial Assistance/Subsidy Arrangement for the MPPP may be used to pay, reimburse or otherwise remunerate a lending institution, mortgage servicing company, or other similar type of company that the WYO company may work with to assist in their flood insurance compliance efforts.

b. The only exception to this is a situation where the lender/servicer may be actually due a commission on any flood insurance policies written on any portion of the institution's portfolio because it was written through a licensed property insurance agent on their staff or through a licensed insurance agency owned by the institution or servicing company.

4. Notification

a. *WYO Company/Mortgagee*—Any WYO Company participating in the MPPP must notify the lender or servicer, for which it is providing the MPPP capability, of the requirements of the MPPP. The WYO company must obtain signed evidence from each such lender or servicer indicating their receipt of this information, and keep a copy in their files. An example of such evidence of receipt follows as Addendum #5.

b. Mortgagee to Mortgagor—In order to participate in the MPPP, the lender (or its authorized representative, which will typically be the WYO company providing them the coverage through the MPPP) must notify the borrower of the following, at a minimum:

(1) The requirements of the Flood Disaster Protection Act of 1973,
(2) The flood zone location of their property,
(3) The requirement for flood insurance,
(4) The fact that the lender has no evidence of the borrower having flood insurance,
(5) The amount of coverage being required and its cost under the MPPP, and
(6) The options of the borrower for obtaining conventially underwritten flood insurance coverage and the potential cost benefits of doing so.

A more detailed discussion of the notification requirements is made a part of this program document in both Section 15 and as Addendums 1&2.

5. Eligibility

a. Type of Use—The MPPP will be allowed only in conjunction with mortgage portfolio reviews and the servicing of those portfolios by lenders and mortgage servicing companies. The MPPP is not allowed to be used in conjunction with any form of loan origination.

b. Type of Property—The standard NFIP rules apply, and all types of property eligible for coverage under the NFIP will be eligible for coverage under the MPPP.

6. Source of Offering

The force placement capability will be offered by the WYO companies only and not by the NFIP Servicing Agent (CSC).

7. Dual Interest

The policy will be written covering the interest of both the mortgagee and the mortgagor. The name of the mortgagor must be included on the Application Form. It is not, however, necessary to include the mortgagee as a named insured because the Mortgage Clause (Article VIII.O of the Dwelling Form and Article VII.M of the General Property Form) affords building coverage to any mortgagee named as mortgagee on the Flood Insurance Application. If contents coverage for the mortgagee is desired, the mortgagee should be included as a named insured.

8. Term of Policy

NFIP policies written under the MPPP will be for a term of one year only (subject to the renewal notificiaion process).

9. Coverage Offered

Both building and contents coverage will be available under the MPPP. The coverage limits available under the Regular Program will be $185,000 for building coverage and $80,000 for contents. If the WYO company wishes to provide higher limits that are available to other occupancy types such as small business, other residential, or non-residential, it may do so only if it can indicate that occupancy type as appropriate. If the mortgaged property is in an Emergency Program Community, then the coverage limits available will be $35,000 for building coverage and $10,000 for contents. Again, if the higher limits are desired for other types of property, then the building occupancy type must be provided at the inception of the policy or when that information may become available, but it must be prior to any loss.

10. Policy Form

The current SFIP Dwelling Form and General Property Form will be used, depending upon the type of structure insured. In the absence of building occupancy information, the Dwelling Form should be used.

11. Waiting Period

The current NFIP rules for the waiting period and effective dates apply to the MPPP.

12. Premium Payment

The current rules applicable to the NFIP will apply. The lender or servicer (or Payor) has the option to follow its usual business practices regarding premium payment, so long as the NFIP rules are followed.

13. Underwriting—Application

a. The MPPP will require less underwriting data than is normally required under the standard NFIP rules and regulations. The MPPP data requirements for rating, processing and reporting are, at a minimum:

(1) Name and mailing address of insured (mortgagor—also see Dual Interest),
(2) Address of insured (mortgaged) property,
(3) Community information (complete NFIP map panel number and date; program type, Emergency or Regular) countywide maps,
(4) Occupancy type (so statutory coverage limits are not exceeded. This data may be difficult to obtain. Also see Coverage Offered.),
(5) NFIP flood zone where property is located (lender must determine, in order to determine if flood insurance requirements are necessary and to use the MPPP),
(6) Amount of coverage,
(7) Name and address of mortgage,
(8) Mortgage loan number,
(9) Policy number.

b. No elevation certificates will be required as there will be no elevation rating.

c. For more detailed information regarding reporting requirements, see the WYO TRRP Plan.

14. Rates (per $100 of insurance)

Zone	Building	Contents
A Zone: All building/occupancy types	$1.25	$1.25
V Zone: All building/occupancy types	$3.00	$3.00

15. Policy Declaration Page Notification Requirements

In addition to the routine information, such as, amounts of coverage, deductibles and premiums, that a WYO company may place on the Policy Declarations Page issued to each insured under the NFIP, the following messages are required:

a. This policy is being provided for you as it is required by Federal law as has been mentioned in the previous notices sent to you on this issue. Since your mortgage company has not received proof of flood insurance coverage on your property in response to those notices, we provide this policy at their request.

b. The rates charged for this policy may be considerably higher than those that may be available to you if you contact your local insurance agent (or the WYO company at * * *)"

c. The amounts of insurance coverage provided in this policy may not be sufficient to protect your full equity in the property in the event of a loss.

d. You may contact your local insurance agent (or WYO company at * * *) to replace this policy with a conventionally underwritten Standard Flood Insurance Policy, at any time, and typically at a significant savings in premium.

The WYO company may add other messages to the Declarations Page and make minor editorial modifications to the language of these messages if it believes any are necessary to conform to the style or practices of that WYO company, but any such additional messages or modifications may not change the meaning or intent of the above messages.

Since the amount of underwriting data obtained at the time of policy inception will typically be limited, the extent of any coverage limitations, such as, when replacement coverage is not available or coverage is limited if the building has a basement or is considered an elevated building with an enclosure. It is, therefore, the responsibility of the WYO company to notify the mortgagor/insured of any coverage limitations at the inception of coverage and impose them at the time of the loss adjustment.

16. Policy Reformation—Policy Correction

Article VIII F 2. of the Dwelling Policy and Article VII E 2. of the General Property Policy will apply as appropriate.

Examples of circumstances under which reformation or correction might be needed would be:

Policy Reformation—The wrong flat rate was applied for the zone in which the property was actually located.

Policy Correction—The amount of coverage exceeds the amount available under the NFIP for the type of building occupancy that represents the building insured. In such case, the amount of coverage would have to be adjusted to the amount available and any appropriate premium adjustments made.

17. Coverage Basis—ACV or Replacement Cost

There are no changes from the standard practices of the NFIP for these provisions. The coverage basis will depend on the type of occupancy of the building covered and the amount of coverage carried.

18. Deductible

Only the Standard Deductible of $500 is permitted for policies written under the MPPP.

19. Expense Constant

There is no change from the standard practice. The Expense Constant in effect at the time the MPPP policy is written must be used.

20. Renewability

The MPPP policy is a one-year policy. Any renewal of that policy can occur only following the full notification process spelled out in Addendum #2 that must take place between the lender (or their authorized representative) and the insured/mortgagor, when the insured/mortgagor has failed to provide evidence of obtaining a substitute flood insurance policy.

21. Cancellations

a. *Existing Policy*—When the mortgagor provides evidence of a flood insurance policy, from any source, that is currently in effect and has been in effect prior to the effective date of the MPPP policy, the MPPP policy may be cancelled flat with a full refund on premium, provided that the policy in effect is acceptable to the mortgagee. If the existing policy is an NFIP policy (WYO or direct business), the NFIP rules require that one of the NFIP policies must be cancelled. The full premium, including the expense constant will be returned to the payor. The WYO servicing allowance is not earned by the WYO company.

b. New Flood Insurance Policy—When the mortgagor/borrower purchases a flood insurance policy, from any source, following notification of the need for the policy, the MPPP policy may be cancelled but on a pro-rata basis. Any premium refund may be calculated with or without the pro rata share of the expense constant, depending on the company's normal business practice.

c. Other—The NFIP Insurance Manual rules for Cancellation/Nullification Notices are to be followed, when applicable.

d. See the WYO TRRP Plan for further premium refund instructions.

22. Endorsement

An MPPP policy may not be endorsed to convert it directly to a conventionally underwritten SFIP. Rather a new policy application, with a new policy number, must be completed according to the underwriting requirements of the SFIP, as contained in the NFIP Insurance Manual. The MPPP policy may be endorsed to assign it under rules of the NFIP. It may also be endorsed for other reasons such as, increasing coverage.

23. Assignment to a Third Party

Current NFIP rules remain unchanged, therefore an MPPP policy may be assigned to another mortgagor or mortgagee. Any such assignment must be through an endorsement, however.

24. Article XIII—Restrictions Other Flood Insurance

ARTICLE XIII of the Arrangement is also applicable to the MPPP and, as such, does not allow a company to sell other flood insurance that may be in competition with NFIP coverage. This restriction, however, applies solely to policies providing flood insurance. It also does not apply to insurance policies provided by a WYO company in which flood is only one of several perils provided, or when the flood insurance coverage amounts are in excess of the statutory limits provided under the NFIP or when the coverage itself is of such a nature that it is unavailable under the NFIP, such as blanket portfolio coverage.

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements—Addendum #1

Initial Portfolio Review Letter Notification Process

Once it has been determined by the lender/servicer or its representative, that flood insurance is needed on mortgages in their portfolio, and there is no evidence of flood insurance, and it decides to use FIA's MPPP to assist in bringing the lender's portfolio into compliance with flood insurance, then the following notification process must be used.

This process will consist of three initial notification letters. Each letter will contain certain messages, at a minimum in the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) The requirements of the Flood Disaster Protection Act of 1973, (2) reminding the insured of the previous letters sent that resulted in the current flood insurance policy, (3) the high premiums on the current policy, (4) potentially inadequate coverage limits, (5) coverage limitations, if any, and (6) the options available to the insured.

Initial Notification Letter to Mortgagor

The first letter is to be issued after the review of the lender's portfolio reveals the need for the flood insurance coverage and the absence of it. This letter must contain, at a minimum the following messages:

1. The Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan for buildings located in a Special Flood Hazard Area shown on a map published by FIA. This applies to such loans from lending institutions that are under the jurisdiction of a Federal regulatory agency or instrumentality.

2. We have determined that your property (building), on which we hold the mortgage loan, is located in a SFHA and, therefore, you are required by law to have a policy of flood insurance on that property.

• This letter must then include language advising the mortgagor that in the event they wish to challenge the zone determination, they should provide written factual evidence supporting their challenge obtained from a community official, registered engineer, architect or surveyor, stating the specifics of the location of the building and the reason for their challenge.

• The lender/servicer is reminded that since the Act places the responsibility of determining the flood zone location of each mortgaged property on the lender/servicer, he cannot discharge that responsibility by simply obtaining some form of self certification from the mortgagor. If the lender wishes to change its original determination on the location of the mortgagor's property based upon information submitted by the mortgagor, the lender/servicer must convince itself, after reviewing that submission, that its original determination was in error and make any such change based on that review. He should not simply accept unsubstantiated allegations, from whatever source, as to the building's flood zone location. The ultimate responsibility for making such determinations under the status rests with the mortgagee, not the mortgagor.

3. There is no evidence in your mortgage loan file of your having a flood insurance policy on your property. In case this information is in error, please contact us at

---

4. If you do not have a flood insurance policy on this property, you may wish to contact your local insurance agency (or WYO company at * * *.

5. If you do not respond within 45 days of this letter, either providing evidence of a flood insurance policy in effect on this property, or requesting that we provide you with such coverage, the necessary flood insurance coverage will be provided for you. In that event, since certain insurance underwriting information about your property that is necessary to determine the appropriate flood insurance rate for your policy would not have been obtained, due to your not responding, the Federal government's Mortgage Portfolio Protection Program's flood insurance rates will have to be used. These rates may be considered higher than those that could be obtained for you if you respond to this notice.

This letter, or an attachment, must also include such other information as: (1) The name of the lender/servicer, (2) the mortgage loan number, (3) the address of the property in question, (4) the flood zone in which the property has been determined to be located, (5) the amount of flood insurance being required, and (6) coverage limitations (if any).

The Second Initial Notification Letter

This letter will be sent 30 days following the first initial notification letter if no response has been received from the mortgagor. It will contain, at a minimum, the following messages:

1. About a month ago you were notified that Federal law requires all mortgages, such as yours, on properties determined to be located in a Special Flood Hazard Area, must be covered by a policy of flood insurance.

2. That letter mentioned that if you did not respond positively within 45 days from that letter, it would be necessary to obtain a policy of flood insurance for you.

3. This is to remind you that since you have not responded to the earlier notice as yet, and if you do not respond within the next fifteen days (or the actual expiration date), flood insurance, as mentioned previously, will be obtained on your property, on your behalf.

4. In the event that you do not respond and the coverage must be obtained as mentioned, the cost of that coverage may be significantly higher than the premium that you could obtain if you were to contact your local insurance agent (or WYO company at * * *).

Third and Final Initial Notification Letter

This letter must be sent to the mortgagor accompanying the flood insurance policy Declaration Page.

This letter must be sent as soon after the end of the 45 day notification period as possible, if no positive response has been received to the two previous notification letters. It must contain the following messages, at a minimum:

1. This letter is to inform you that a policy of flood insurance has been obtained on your behalf, to cover the mortgage on your property, as required by the Flood Disaster Protection Act of 1973.

2. You have been notified on two previous occasions explaining the circumstances surrounding your need to have flood insurance coverage and explaining your options, but to date no response has been received.

3. Attached is the flood insurance policy purchased on your behalf and its accompanying Declarations Page that explains: the amount of coverage purchased on your behalf, its cost, some limitations to that coverage, and the options you may still

wish to exercise to obtain similar coverage, but typically at a significantly lower cost.

4. If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements.

Mortgage Portfolio Protection Program (MPPP) Guidelines and Requirements—Addendum #2

MPPP Renewal/Expiration Notification Process

When an MPPP policy has been purchased and the expiration date of that policy is approaching the end of its one year term, and the insured has not requested or produced a substitute policy of flood insurance, the following notification process will be followed.

This process will consist of a total of three renewal MPPP letters. Each letter will contain certain required messages within the body of the letter. The lender/servicer (or their authorized representative) may add their own messages, make minor editorial modifications to the messages to conform to the style and practice of the WYO company or lender and structure the letter to their liking, but they may not alter the meaning or intent of the messages listed here for any of the letters.

Each letter will contain mandatory messages on one or more of the following items: (1) Reminding the insured of the previous letters sent that resulted in the current flood insurance policy that is about to expire; (2) the requirements of the Flood Disaster Protection Act of 1973; (3) the high premiums on the current policy; (4) potentially inadequate coverage limits; (5) coverage limitations, if any; and (6) the options available to the insured.

First MPPP Renewal/Expiration Notice (Letter)

The first MPPP renewal letter will be sent to the insured/mortgagor at least 45 days prior to the renewal/expiration of the MPPP policy. It will, at a minimum, contain the following messages:

1. This letter is to notify you that the flood insurance policy that was required to be purchased on your property about a year ago is about to expire.

2. When you were originally notified of the need for this coverage, it was explained that the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained for the life of the loan, on mortgage loans for buildings (and their contents, if appropriate) located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency.

3. The premium on the flood insurance policy currently in effect and written on your behalf, and due to expire, may be considerably higher than would be the case if you had responded to the suggestions contained in the previous notices sent you, recommending that you contact your local insurance agent (or the WYO company) to obtain a conventionally underwritten Standard Flood Insurance Policy.

4. As has been mentioned in previous notices, you may wish to replace this policy with a conventionally underwritten Standard Flood Insurance Policy now, and benefit from rates that potentially are significantly lower than the rates being used with this policy.

5. Failure to respond to this notice within 45 days (or by [*date*]) will result in this policy being renewed, and at rates that are most likely to be much higher than are otherwise available.

Second MPPP Renewal/Expiration Notice (Letter)

The second renewal notice will be sent out at least 30 days after the first notice, but at least 15 days prior to expiration of the MPPP policy. It will contain the following messages:

1. About a month ago (or on [*date*]) you were sent a notice that your flood insurance policy was about to expire.

2. Since you have not responded, you are again being reminded that your flood insurance policy will expire within 15 days (or on [*date*]).

3. As has been previously mentioned, you have the option of contacting your local insurance agent (or WYO company name and #) to obtain a conventionally underwritten Standard Flood Insurance Policy (SFIP) at potentially significant savings.

4. Failure to respond by (*date*), submitting evidence that you have purchased or wish to purchase a substitute flood insurance policy or a conventionally underwritten SFIP, will result in the current policy being written again, and most likely at much higher rates than could be obtained with a conventionally underwritten SFIP.

Third MPPP Renewal/Expiration Notices (Letter)

The third and final notice will be sent out as part of the renewed MPPP policy. The notice containing the following required messages may be sent as a cover letter or an attachment to the Policy Declaration Page and policy itself, or the required messages may be included on the Declaration page that accompanies the renewal policy. It must contain the following messages:

1. Since you have not responded to our previous notices that your flood insurance policy, which is required by Federal law, was about to expire, we have renewed that policy for the next year.

2. As has been previously explained, the Flood Disaster Protection Act of 1973, a Federal law, requires that flood insurance be purchased and maintained on mortgage loans for buildings (and their contents, if appropriate) for the life of the loan, for property located in a Special Flood Hazard Area shown on a map produced by the Federal Emergency Management Agency.

3. The premium on this flood insurance policy just renewed may be considerably higher than would be the case if you had contacted your local insurance agent (or WYO company at * * *), which you may still do, to obtain a conventionally underwritten Standard Flood Insurance Policy.

4. If you purchase another flood insurance policy and notify us, or contact us to request that we purchase a substitute policy under the NFIP for you, we will cancel this policy and issue you a refund for the unearned portion of the premium, if we deem that the other policy is acceptable to satisfy the requirements.

National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP)—Addendum #3

Portfolio Review Considerations for Lenders/Servicers Prior to Participating in the MPPP—Questions and Answers

November 16, 1990.

1. Q. What is the MPPP and who is this Q & A aimed at?

A. WYO companies, lender/servicers participating in the MPPP, Federal regulatory agencies and other interested parties.

2. Q. What is the first step in using the MPPP.

A. The MPPP is only intended to be utilized when the lender (or its representative) has reviewed its portfolio and determined which of the loans are on buildings located in a Special Flood Hazard Area (SFHA), and, therefore, in need of flood insurance.

3. Q. What source of information should the MPPP participant, or their authorized representative, be using in reviewing a loan portfolio, to determine flood zone location of the properties in question?

A. The flood insurance maps published by the Federal Emergency Management Agency (FEMA), augmented by other official documentation available from local officials or other sources, as may be deemed necessary.

The Flood Disaster Protection Act of 1973, which imposes the flood insurance requirement, makes specific reference to "areas identified by the Secretary (since changed to Director [of FEMA] as an area having special flood hazards". The National Flood Insurance Act of 1968 charged the Federal Insurance Administration with the responsibility of identifying areas which have special flood hazards. Therefore, the official source of information that serves as the

basis for identifying such areas is the maps published by FEMA.

4. Q. What if a source of information other than the FEMA maps is used as the basis for determining the flood zone location of properties?

A. The lender may be risking erroneous determinations, thereby potentially placing the lender in a position of a liability exposure, bad customer relations and/or problems with their Federal regulatory agency or worse.

5. Q. Does it mean that if the system used to make these flood zone determinations is not based on the FEMA maps that it should not be used?

A. Due to the potential for problems as mentioned above, the lender must be careful as to the basis behind the system it uses to make these flood zone determinations. Also, since the lender must keep evidence of the determination in every mortgage file, if that evidence doesn't reflect the map panel used to make the determination, the lender may have difficulty proving to their Federal regulatory agency, or in court if the need arose, that the lender is complying with the law.

6. Q. What flood zone determination information should the lenders keep in each mortgagor's file to indicate evidence of compliance?

A. Lenders should keep, at a minimum, the ten digit flood insurance map panel number, suffix and date. The first six digits of that number represent an identification code for the community. Since most flood insurance maps contain multiple pages or panels, the full ten digit number is necessary in order for an examiner (or anyone else) to be able to know which panel was used. The community number (six digit) alone would not be sufficient when the ten digit number exists.

7. Q. Are all FEMA flood insurance maps ten digit maps?

A. No. Some are in the old format, are 11" x 17" and have only the single six digit identifying number and date, with possible suffix for the entire map regardless of the number of pages or panels. The great bulk of the maps published since the mid 1970's in which mortgage activity occurs, however, have been converted to this ten digit format.

8. Q. What version of the flood map should be used in conjunction with the MPPP portfolio review?

A. The provisions of the Flood Disaster Protection Act of 1973 require that the flood zone determination be made at the time of, and in conjunction with, the loan origination or any new making, such as, a home equity loan, second mortgage, etc.

9. Q. Doesn't the fact that the MPPP was designed to assist lenders/servicers in bringing their portfolios into compliance with flood insurance requirements mean that they will be dealing with loans that can range from being very new to being many years old, and that the maps that may have been in effect at the time of the loan origination might not be readily available now.

A. Yes. However, as a practical matter, the users of the MPPP will probably use the flood maps and related information that they have available to them at the time of the review which reflect current information but not that which was in effect at the time of the loan origination.

10. Q. Could the use of current flood maps and related flood zone information in conjunction with portfolio review, cause any problems?

A. That may depend on a number of factors, such as:

- How many loans in the portfolio are older than the maps being used to make the current determination, or
- Whether the map information source being used for the review reflects a different flood zone than the one in effect at the time of loan origination.
- Whether the mortgagor raises the issue that the map being used to make the current flood zone determination was not the one in effect at the time of loan origination.

11. Q. What if only a few loans in the portfolio are older than the maps being used today to make the determination?

A. Then the issue may not surface.

12. Q. Might a borrower challenge the notice it received from the lender/servicer (or its representative) using the MPPP and if so, what would be the reason?

A. Yes, there could be several reasons such as:

- The map used to make the determination is different from the one in effect at the time of the loan origination (which was either non-existent or showed the property outside the SFHA).
- The loan origination date preceded 3/1/1974 (the effective date of the 1973 Act), or the initial flood insurance map for the community.
- The language in the mortgagor's contract does not mention a flood insurance requirement.

13. Q. What should a lender/servicer do if challenged on these issues?

A. The lender has different options to consider depending on the basis for the challenge and should consider the following:

Challenge(s) based on:

- The date of the map used to make the determination—If the date of the mortgage precedes the date of the map used, the lender will have to decide whether to determine which version of the map was in effect at the time of origination and attempt to obtain a copy of that map, or drop the requirement on that mortgagor. The lender could also, following a review of the language of that mortgagor's mortgage contract, determine whether it (lender) had been granted sufficient authority by that language to impose flood insurance on that mortgage at any time during the life of that contract.
- The date of mortgage precedes the 1973 Act and/or date of map—If the mortgage contract provides the lender with the authority to impose broad-base hazard insurance requirements at any time during the life of the loan, then the lender must decide whether it wishes to invoke this authority regardless of the date of the mortgage/map date.
- The mortgage contract language doesn't mention flood insurance—Many mortgage contracts written prior to the late 1970s contained language that either mentioned property insurance requirements by referring to fire and extended coverage (windstorm & hail) or mentioned fire and other hazards. Since most of this language preceded the availability of flood insurance, it typically meant the windstorm hazard, but may not be limited to just that peril It was many lenders intent, in those days, to give themselves the option of imposing other forms of hazard insurance that might become available and/or be deemed necessary to protect the interests of the mortgagee (and mortgagor) from that peril. If the lender believes that the language in the mortgage contract of the mortgagor raising the issue is sufficiently broad to allow it to impose the flood insurance requirement at any time during the life of that mortgage contract, then it may wish to do so, without regard to whether or not there was a flood insurance map in effect at the time of loan origination.

Lender/servicers are advised to consider these issues and decide in advance, what response(s) it will provide its mortgagors if they present these issues.

14. Q. Once the lender/servicer's portfolio has been reviewed and determinations have been made as to which properties need flood insurance, is there anything critical that the lender (or its representative) should consider before beginning the process of mailing the initial notices to their mortgagors?

A. Yes, how the mailing will be handled and the results of that mailing. There is a strong likelihood that once the mailings begin, that a certain percentage of the mortgagors' recipients of those notices will challenge the notices, as mentioned earlier. Some of those challenges will be directed, in one way or another, to the lender/servicer, regardless of any instructions in the notices. The lender should therefore determine at the outset whether it wants the notices to be sent all at once, or metered out so many at a time. The larger the volume, the more consideration to the metering approach that should be given.

Also, the lender needs to consider how it wants the review of its portfolio carried out. If the results of the review are provided to the lender all at the same time and the lender decides to send the notices to the mortgagors so many at a time, it may be exposing itself to additional liability. This could occur since the lender was aware of all the mortgages in its portfolio that needed flood insurance, but acted on only a certain number at a time. The lender, therefore, needs to consider having the portfolio review carried out in such a fashion that the results of each portion of that review are made available to the lender as soon as they are available from the party conducting the review, and are acted upon as soon as possible thereafter.

Addendum #4—National Flood Insurance Program Mortgage Portfolio Protection Program (MPPP) Questions and Answers

December 14, 1990.

1. Q. What is the MPPP and what is it designed to do?

A. The MPPP is a tool made available to the lending and mortgage servicing industries that provides them with the capability to write flood insurance policies quicker and easier that will assist them with their efforts to bring their portfolios into compliance with flood insurance requirements.

2. Q. Is this available to lenders for all their loans?

A. No! It may only be used in conjunction loan portfolios. It may not be used as a compliance vehicle for loan originations.

3. Q. Is the MPPP mandatory for lenders/servicers?

A. No! It is voluntary, but lenders/servicers that believe their loan portfolios may not in compliance with flood insurance requirements are strongly encouraged to use it if they believe it could be helpful.

Q. What are the benefits of the MPPP?

A. The specific benefits will vary with the category of participant as follows:

- For lenders/servicers.
- Portfolios can be brought into complaince satisfying the law and regulators.
- Reduce, limit or eliminate certain potential liability.
- Protect equity (lender/servicer, borrower).
- For WYO companies.
- Increased policy sales/fees.
- Increase lender/servicer client base.
- For insurance agents.
- Increased policy sales.

4. Q. Is it possible for WYO companies and insurance agents to benefit from the MPPP even if they don't directly participate in it?

A. Yes! Property insurance (fire and auto) is already being sold by insurance agents to many of these same borrowers because lenders require it in conjunction with home mortgages and auto loans. As a result, many agents already have established business relationships with their local lenders. These agents could alert these lenders to the availability of the MPPP and advise them as to how to proceed even if the agent was not going to directly participate.

At the same time the agent could offer to assist the lender with determining the flood zone location of the addresses of all new mortgage loan applications for that lender and ask in return, for the opportunity to write all the flood insurance policies on those properties that are determined to need it. The notices that will be sent to the borrowers will generate inquiries and sales.

5. Q. How will flood policies actually be sold under the MPPP?

A. Policies will be written through the insurance companies participating in FIA's Write Your Own (WYO) Program.

6. Q. Will all the insurance companies participating in the WYO Program be writing policies under the MPPP?

A. Any WYO company may write policies under the MPPP, but only those that traditionally have dealt with the lending industry are expected to participate in this Program. Any such company that does wish to participate must agree in writing to comply with the requirements of the MPPP.

7. Q. Will FIA maintain and publish a list of the WYO companies that participate in the MPPP?

A. Yes! Such a list will be developed and both modified and republished as needed.

8. Q. What is the first thing a lender/servicer should do if it wishes to utilize the MPPP.

A. The lender must review its loan portfolio and determine which of the properties are located in Special Flood Hazard Areas (SFHA).

10. Q. When a lender/servicer decides to utilize the MPPP, must they use the MPPP to service their portfolio all at the same time?

A. No! Lenders/servicers should carefully analyze the pros and cons of phasing in their portfolio compliance effort. (See the Q & A that FIA has developed on "Portfolio Review Considerations")

11. Q. Is use of the MPPP limited to only those properties located in SFHAs?

A. Yes!

12. Q. What will happen if a policy is written through the MPPP, but the property is not located in a SFHA?

A. The policy would be honored in the event of a claim. It would then have to be cancelled, re-written and re-rated in the normal way with any premium overpayment refunded. The effective date of the policy written in the normal way would be the same as that of the now cancelled MPPP. The loss, however, should be reported under the new policy number.

13. Q. What differences are there between a flood policy sold under the traditional flood insurance program and one under the MPPP?

A. The actual policy and coverage are the same, but there are differences primarily in the areas of:

- Rates,
- A letter notification process to the borrowers,
- The underwriting information necessary.

14. Q. What are the rate differences?

A. The rates under the MPPP are, on the average, several times those used under the traditional flood insurance program.

15. Q. Why are the MPPP rates so high?

A. Due to the fact that the borrower did not respond to the notices sent, key information necessary to underwrite the risk is not available. Therefore it is necessary to assume that these properties have a very high risk and the rates charged reflect that risk.

16. Q. Does the borrower have any option in avoiding the MPPP policy with its higher cost?

A. Yes! They can simply contact their local insurance agent, obtain a conventionally underwritten flood insurance policy and present it to their lender/servicer.

17. Q. If a borrower pays off the mortgage loan can the MPPP then be cancelled?

A. Yes, but any refund due the borrower will be paid on a pro-rata basis.

18. Q. If the borrower or lender/servicer sell or assign the mortgage to

another borrower or lender/servicer, can the MPPP policy be assigned?

A. Yes! The Standard Flood Insurance Policy language allows for the assignment of all NFIP policies. Any such assignment of an NFIP policy must be done by way of an endorsement.

19. Q. Must a WYO company participating in the MPPP maintain copies of all its MPPP documents.

A. The companies are responsible for the data on each Application Form, in keeping with its normal practices. Although some of the data beyond that required, does not have to be reported, the companies are still responsible for it. The WYO companies may use their normal business practices in determining which form they will use to retain data, forms or other required information.

20. Q. Who initiates the letter notification process required by the MPPP?

A. The letter notification process is one of the requirements of the MPPP. The FIA requires any WYO company that wishes to participate in the MPPP to agree to comply with all those requirements. However, lenders/servicers differ on how their force placed hazard insurance notices are sent to their borrowers. Some lenders insist on sending such notices directly. Others let the insurance company, with whom the force placed policies are written, send out the notices. Since the MPPP is a part of the NFIP, then any policies written through the MPPP must have been written in compliance with all of its requirements, regardless of the entity that actually sends the notices.

21. Q. Must the lender or WYO company maintain copies of the notification letters?

A. The WYO company is responsible for assuring that the letters are sent regardless of whether they or the lender actually sends them. The WYO company must maintain some form of evidence that the letters are being sent. It will be the WYO company's decision as to the form the evidence takes, such as, paper copies, micro fiche, computer images or a record of the mortgagor addresses to whom the letters were sent with an indication as to the date when those mortgagors were notified.

22. Q. What does a WYO company do if all of the information FIA requires on the DEC page won't fit on that page?

A. The company may wish to include some of that information on the DEC page and some on an "endorsement". In such a case it should indicate an endorsement number on the DEC page.

23. Q. Does a policy declarations (DEC) page have to be issued each time an MPPP policy is renewed?

A. Yes, and it must accompany the third renewal notification letter.

24. Q. When an MPPP is renewed, can the same policy number that was assigned to the original MPPP policy be used?

A. Yes!

25. Q. Will the rating credits that will be available in a community participating in the Community Rating System (CRS) apply to a policy written under the MPPP?

A. No!

26. Q. The MPPP requirements call for the full map panel number and date to be obtained. What does the WYO company do with that information since the NFIP Application Form in use today doesn't contain enough space to even capture all this information?

A. The WYO companies have never been required to use NFIP forms in the WYO program, but have been free to develop their own forms. They are, however, responsible for all required data, some of which must be reported and some of which isn't, but must be kept in the company files. The data requirements for the MPPP follow the same conditions. The full map panel number for that panel used to determine flood zone location and rate the policy is the one that must be captured and sense maintained. The majority of the maps FIA has published for many years have the ten digit number, suffix and date for each panel. Some of the maps still in use have only the six digit community number and date. The six digit community number cannot be used when the ten digit number exists. FIA will revise its Application form in the future to provide more space for this item.

27. Q. The MPPP requirements state that certain data, that is not normally reported under the WYO program, such as mailing addresses and mortgagee information will be required to be reported. Are there more specifics on how that is supposed to work?

A. How that information will have to be reported and how often, is being developed and will be provided to the WYO companies when available, and in sufficient time to allow for any necessary adjustments to their operations.

28. Q. Will the MPPP rates be affected by the rate and other changes FIA is proposing for later in FY 1991?

A. The MPPP rates themselves will most likely not be affected, but the expense constant in effect at the time a policy is written must be used and any other fee in effect, such as the proposed policy service fee, must also be applied.

29. Q. Is contents coverage under the MPPP optional?

A. Yes! The lender must decide whether or not it will require it as part of the MPPP policy.

30. Q. What is meant by the term "coverage limitations" that is mentioned in the MPPP materials?

A. Primarily ACV coverage instead of Replacement Cost coverage, when appropriate. It could also apply, however, to the situation where only an amount to cover the loan balance is purchased which may be insufficient to cover the full insurable value of the property. The WYO company will have to determine what limitations may apply depending on the decisions of the lender/servicer as to how it wants to use the MPPP and the amount of underwriting information obtained.

31. Q. The notification process contains standards for the letters being mailed and the MPPP policy being written such as 45, 30, and 15 days. Must these standards be strictly adhered to?

A. There are a number of standards similar to this in the NFIP and some limited flexibility has been built into the actual implementation process through the underwriting review process that FIA uses with the companies. FIA is preparing modifications of that review process to incorporate the MPPP criteria and will attempt to incorporate such flexibility into these changes.

32. Q. May WYO companies, under the requirements of the MPPP, use any portion of the MPPP fee they retain, for any purpose other than as a commission to an insurance agent or agency for their writing the policy, such as for flood zone determinations or the tracking of loans?

A. No!

The National Flood Insurance Program's Mortgage Portfolio Protection Program Implementation Package; Addendum #5—Receipt for Materials and Agreement to Adhere to Criteria and Requirements

The Federal Insurance Administration (FIA) has published a package of materials for implementing their Mortgage Portfolio Protection Program (MPPP) on 1/1/91. This package contains the Criteria and Requirements that the insurance companies participating in FIA's MPPP through FIA's Write Your Own (WYO) program and any lending institutions and/or mortgage servicing or similar companies must adhere to when participating in the MPPP.

The Implementation Package contains the following:

- A cover letter from the FIA Administrator to the WYO companies and other users of the MPPP.
- A Guide for WYO Companies, Lending Institutions, Mortgage Servicers and Other Potential Users.
- Addendum #1—Initial Portfolio Review Letter Notification Process.
- Addendum #2—Portfolio Review Renewal Letter Notification Process.
- Addendum #3—Portfolio Considerations Q & A.
- Addendum #4—MPPP Q & A.
- Addendum #5—"Receipt for Materials and Agreement to Adhere to Criteria and Requirements (this document).

This "Receipt and Agreement" together with the Package referenced above must be presented by any WYO company that offers the MPPP to a lender/servicer and the lender/servicer that agrees to participate in the MPPP to assist in bringing its portfolio into compliance with flood insurance requirements must sign this "Receipt and Agreement" as evidence of having actually received the Package and agreeing to comply with the criteria and requirements contained therein.

This acknowledges that the package of implementation materials for the Federal Insurance Administration's (FIA) Mortgage Portfolio Protection Program (MPPP) has been received.

_____

(Name of WYO company representative providing the Package)

_____

(Name of lender/mortgage servicer's representative receiving the Package)

_____

(Name of WYO company being represented)

_____

(Name of lender/mortgage servicer being represented)

_____

(Date of receipt)

_____

(Date of receipt)

Note: WYO companies are required to keep a copy of this Receipt in their files for each lender/mortgage servicer to which they provide services under the MPPP. Lenders/mortgage servicers may wish to do the same.

WRITE YOUR OWN COMPANIES WHO HAVE AGREED TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM MORTGAGE PORTFOLIO PROTECTION PROGRAM

Company	Principal Coordinator
American Bankers Insurance Company of Florida, 11222 Quail Roost Drive, Miami, FL 33157	Christine M. Elwood, Director, Flood Operations, (305) 253-2244 X5321.
American Loyalty Insurance Company, 555 Officenter Place, Gahanna, OH 43230-5813	Wayne Moultrie, Assistant Vice President, (614) 251-1497.
American Modern Home Insurance Company, 537 E. Pete Rose Way, P.O. Box 85323, Cincinnati, OH 45201.	Joseph Daniel Caskey, Vice President, (513) 721-3010 X254.
American Road Insurance Company, FMCC Building—room 2060, One American Road, Dearborn, MI 48121.	Jack Gillespie, Product Manager, (313) 322-3453.
Bankers Insurance Company, 10051 5th Street North, P.O. Box 15707, St. Petersburg, FL 33702	Kathleen Batson, Vice President, (813) 579-4000.
Bankers & Shippers Insurance Company, 3060 South Church Street, Burlington, NC 27215	Barbara Solomon Paps, Sales Manager, (919) 538-4000 x4136. (305) 431-3385.
Colonial Penn Insurance Company, Property/Casualty Accounting & Reporting, 11 Penn Center Plaza, 14th floor, Philadelphia, PA 19181.	Mary Ellen Ford, Product Manager, (215) 988-6066.
Consolidated Insurance Group, Inc., (American Centennial Insurance Co.), (Wesco Insurance Company), 1100 Carr Road, Wilmington, DE 19809.	Kathleen W. Koch, Director-FACS Center, (302) 792-5685.
Empire Fire & Marine Insurance Company, 1824 Douglas Street, Omaha, NE 68102	Richard F. Williams, President, (402) 341-0135.
First Colonial Insurance Company, 11 East Forsyth Street, Jacksonville, FL 32202	Howard D. Taylor, Vice President, (904) 359-2633.
Florida Fire & Casualty Insurance Co., 800 Corporate Drive, suite 700, Ft. Lauderdale, FL 33334	Dianne Bovender, Vice President, (305) 776-3330.
Great Pacific Insurance Company, 1250 Bayhill Drive, suite 100, San Bruno, CA 94066	Jim Wunderlich, Vice President, (415) 872-6576.
Independent Fire Insurance Company, One Independent Drive, Jacksonville, FL 32276	Kay McNeill, Supervisor, Flood Administration, (904) 632-8480.
Island Insurance Company, Ltd., 1022 Bethel Street, P.O. Box 1520, Honolulu, HI 96813	Ronald K. Toguchi, Assistant Vice President, (808) 531-1311.
Minnesota Mutual Fire & Casualty, 10225 Yellow Circle Drive, Minnetonka, MN 55343	Kevin DeVann, Counsel & Assistant Sec., (612) 933-5033.
Omaha Property and Casualty Company, 3102 Farnam Street, Omaha, NE 68131	Ted Johnson, Manager Special Products, (402) 342-3326.
Pan American Insurance Company, Chardon Avenue, Corner Caeser Gonzalez, Hato Rey, PR 00918.	Raul Rosario, Assistant Supervisor, (809) 250-6500.
Patrons Mutual Insurance of Conn., 769 Hebron Avenue, P.O. Box 6517, Glastonbury, CT 06033-6517.	Alden A. Ives, President, (203) 633-4678.
Redland Insurance Company, 535 West Broadway, P.O. Box 1574, Council Bluffs, IA 51502	Larry W. Palmer, Director, Flood Insurance Program, (712) 325-1545.
Regency Insurance Company, 217 E Hallandale Beach Blvd., Hallandale, FL 33009-0190	Wendy Iglesias, Underwriting Manager, (305) 456-4590.
Unisun Insurance Company, #1 South Park Circle, P.O. Box 31190, Charleston, SC 29417-1190	James A. Brazill, V.P. Underwriting, (803) 571-0510.
U.S. Security Insurance Company, 3915 Biscayne Boulevard, Miami, FL 33137	Lori Scaramellino, Product Manager-Flood, (305) 576-1115 X317.

[FR Doc. 91-4872 Filed 2-28-91; 8:45 am]

BILLING CODE 6718-05-M

OL
56
SS
41
R
1
991
MI

federal register

Friday
March 1, 1991

Part VI

Department of Housing and Urban Development

Office of the Secretary

Notice of Fund Availability for Historically Black Colleges and Universities To Provide Technical Assistance to Eligible Community Development Block Grant Communities; Notice

BEST COPY AVAILABLE

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-91-3208; FR-2535-N-03]

NOFA for Historically Black Colleges and Universities To Provide Technical Assistance to Eligible Community Development Block Grant (CDBG) Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability (NOFA).

DATES: An application for funding under this notice will be due no earlier than April 1, 1991. The date for receipt of applications will be specified in the application kit.

SUMMARY: The Department of Housing and Urban Development invites applications from Historically Black Colleges and Universities (HBCUs) for funding programs to provide technical assistance to help cities use their CDBG funds more effectively. In the body of this document is information concerning the purpose of the NOFA and information regarding eligibility, available amounts, selection criteria and information processing, including how to apply and how selections will be made. Applicant HBCUs should have academic programs in community development or related fields. A variety of technical assistance approaches will be funded, including the development of CDBG economic development projects; assisting small cities in preparing CDBG applications; providing on-site peer-to-peer technical assistance to cities to improve the management of their CDBG programs; and conducting workshops to aid local governments in more effectively utilizing their CDBG funds.

FOR FURTHER INFORMATION CONTACT: Karen Williams, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1162. Applications may be requested at the same address after publication of this notice. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2535–0084.

Purpose and Substantive Description

I. Authority

This notice solicits cooperative agreement applications from Historically Black Colleges and Universities (HBCUs) which have academic programs in community development, economic development, community planning, community management or related fields. The purpose of the funding is to provide assistance to help cities use their CDBG funds more effectively and to increase HBCU participation in federal programs in accordance with Executive Order 12677. The source of the assistance is the CDBG Technical Assistance program implemented by the Department's regulations at 24 CFR 570.400 and 570.402.

The goal of this technical assistance is to aid communities in using their CDBG funds more effectively. Related objectives are:

a. To increase the capacity of eligible communities in the administration, planning and implementation of their CDBG programs.

b. To assist in the development of CDBG-funded economic development projects.

c. To provide on-site peer-to-peer assistance to local CDBG officials in improving the effectiveness and management of their local CDBG programs.

d. To conduct technical assistance workshops in requested subject areas (e.g. HUD CDBG-funded Small and Minority Business Loan Programs, CDBG-funded State Enterprise Zones Programs, CDBG activities designed to affirmatively further fair housing, and CDBG-funded Rehabilitation Programs).

II. Allocation Amounts

Approximately $1.5 million is available for cooperative agreements. HUD anticipates funding up to 15 colleges and universities for approximately $100,000 each.

III. Eligibility

To be eligible to participate in this competition, an applicant must meet the following criteria as listed in 34 CFR 608.2:

(1) Be an historically black college or university;

(2) Have been established before 1964;

(3) Have a principal mission that was and is, the education of Black Americans; and

(4) Be, and have been, an HBCU for five academic years preceding the academic year for which it seeks a cooperative agreement.

In addition, an applicant must:

(1) Have an academic program in community development, economic development, community planning, community management, or related fields.

IV. Selection Criteria/Ranking Factors

The following factors will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merit. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each area of the response.

The factors and corresponding weights are as follows (100 total points):

1. The probable effectiveness of the applicant's approach in meeting the CDBG-related needs of localities and in accomplishing the application's overall objectives. (25 points as allocated below)

a. The extent to which the application clearly demonstrates an understanding of the CDBG programs and CDBG-related needs of communities in the HBCU's geographic area. (10 points)

b. The extent to which the HBCU describes clear, feasible, CDBG-relevant and appropriate criteria for selecting communities to be assisted. (3 points)

c. The extent to which the applicant presents a clear and feasible plan for:

—Notifying communities of the availability of the assistance and the criteria to be used to select communities to be assisted (2 points);

—Obtaining designation as a technical assistance provider to the community's CDBG program by the chief executive officer of each community to be assisted (2 points);

—Ensuring adequate liaison with the State CDBG Program Manager responsible for the HBCU's geographic area (5 points); and

—Ensuring that the small cities in its area are targeted by, or having plans to better the position of the small cities to be targeted by, the State to receive CDBG funds. (3 points)

2. Soundness of approach based on the extent to which the application identifies techniques or systems that can significantly impact on the key problem(s) identified. (25 points as allocated below)

a. The extent to which the application demonstrates a congruent relationship between the CDBG-related needs of communities in the HBCU's geographic area and the tasks it proposes to undertake to meet those needs. (12 points)

b. The extent to which the application provides a feasible, technically sound and cost effective plan for designing, organizing and carrying out the HBCU's chosen approach and proposed tasks. (13 points)

3. Methodology for transfer of successful technical assistance techniques to other HBCU's which are potential assistance providers. (10 points)

The extent to which the application demonstrates a feasible plan for identifying and transferring technical assistance techniques and approaches which were most successful and appropriate for transference to other HBCU assistance providers.

4. Organizational and management plan reflecting a rational project management system. (15 points as allocated below)

a. Clear delineation in the application of staff responsibilities within the project and clear allocation of accountability for all work required. (5 points)

b. A work plan which presents a clear and feasible schedule for conducting all project tasks. (5 points)

c. Reasonableness and adequacy of the planned budget, as reflected in the budget-by-task and supporting rationale and justification for the budget. (5 points)

5. HBCU qualifications based on present and past relevant experience and the competence of key personnel assigned to the project. (15 points as allocated below)

a. Capabilities (6 points)

—The HBCU's overall capabilities and recent and past experience in providing or potential to provide technical assistance in community development, economic development, community planning, community management, or related fields as evidenced by the nature and scope of the HBCU's programs in these areas, the staff size, capabilities, and past contracts of the department or organization in the HBCU which is to provide the proposed technical assistance.

b. Staffing

—Project Director: The extent to which the proposed project director has relevant experience in managing community development or related projects. (5 points)

—Project staff: The extent to which the staff members proposed for this project have backgrounds suitable for the CDBG technical assistance effort based upon prior experience in projects of a comparable nature. (4 points)

6. Potential for assistance activities being sustained beyond the period of the cooperative agreement. (10 points) The extent to which the HBCU demonstrates that it has a potentially successful plan for sustaining assistance activities beyond the period of the agreement with CDBG and CDBG-eligible communities in its geographic area.

Application Process

Requests for the application kit and completed applications should be submitted to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, Attention: Karen Williams, 451 7th Seventh Street, SW, room 5252, Washington, DC 20410.

No more than one application per HBCU will be accepted by HUD.

An application for funding under this notice will be due no earlier than 30 days after publication of this notice. The date for receipt of applications will be specified in the application kit.

Checklist of Application Submission Requirements

The application must include the following elements:

1. A Standard Form 424 signed by the Chief Executive Officer of the HBCU;

2. A description of the proposed method of notifying communities in the HBCU's geographic area (within a 150 mile radius of the HBCU) of the availability of the assistance and a description of the specific criteria to be used (required by the HUD Reform Act of 1989) to select communities to be assisted by the HBCU. One selection criterion required by HUD is that each assisted community must have committed or plans to commit or apply for CDBG funds related to the technical assistance the HBCU will provide.

3. A description of how the HBCU proposes to obtain designation as a technical assistance provider for the community's CDBG program by the chief executive officer of each unit of general local government the HBCU will assist. (Obtaining the designation as a technical assistance provider is a prerequisite to an HBCU's eligibility to provide services to a community.)

4. A description of the need for the technical assistance the HBCU proposes to provide and how the need for the technical assistance was determined. It also should discuss the problems to be surmounted in conducting the technical assistance.

5. A description of how the proposed technical assistance could improve the CDBG programs of communities in its geographic area, including a description of the specific types of CDBG activities to be assisted and the extent to which communities in its area are spending or plan to spend or apply for CDBG funds for such activities.

6. A description of the methods the HBCU will use to ensure adequate liaison with the State program officials responsible for the CDBG Small Cities program and the methods it proposes to use to aid small cities in the HBCU's geographic area in obtaining State CDBG funds.

7. A task-by-task description of the specific activities to be undertaken, a schedule for undertaking the activities, a proposed budget clearly showing how HUD technical assistance funds and other project funds would be used, the amount of HUD funds budgeted for each task, the basis for the estimates, and a staffing chart by person-by-task.

8. A description of the plans for identifying the most successful technical assistance techniques and approaches used during the project and for transferring them to other HBCU assistance providers.

9. A description of the department or organization within the HBCU which will provide the assistance, including a description of its structure, staff size and staff capabilities, annual budget, current and past contracts (within the last three years) with public and private organizations, and recent experience in addressing issues involving technical assistance and local CDBG programs. Any previously or currently funded efforts such as Minority Business Development Centers (MBDC), Small Business Development Centers (SBDC), Economic Development Administration (EDA) University Center Projects, etc., or related activities funded by the Small Business Administration (SBA), Department of Commerce, etc., should be cited. It should identify the nature and scope of the HBCU's academic programs in community development, economic development, community planning, community management, or related fields. It also should identify and similarly describe any proposed sub-contractors or consultants.

10. A description of the backgrounds of *key personnel* to be involved in the project, including relevant prior experience in managing, planning or carrying out community development or related projects.

11. A description of the HBCU's plan for sustaining assistance activities beyond the period of the cooperative agreement.

A complete checklist of all steps that must be followed by an applicant and all exhibits, including certifications, that an applicant is required to submit will be included in the application kit.

Corrections to Deficient Applications

Applicants will be given an opportunity to cure nonsubstantive, technical deficiencies in their applications. HUD will notify an applicant in writing, shortly after the expiration of the application deadline, of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

Technical deficiencies that may be cured relate to items that are not necessary for HUD review under the selection criteria/ranking factors. Material cannot be submitted, after the application due date has passed, to improve the substantive quality of the proposal.

Other Matters

Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section

319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990 (Pub. L. 100–121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The certification and full text of the clause will be contained in the application kit.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA will not have potential significant impact on family formation maintenance, and general well being and, therefore, is not subject to review under the order. The NOFA funds HBCUs to provide technical assistance to help cities use their CDBG funds more effectively. Any family impact would be incidental and indirect.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide funding to HBCUs to provide technical assistance to cities, and in this way decentralizes the source of technical assistance away from the Federal government, but its impact is limited to a single program.

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.20 (b) of the HUD Regulations, the policies and procedures in this document relate only to the provision of technical assistance therefore are categorically excluded from NEPA requirements.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential grantee must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. The Drug Free Workplace certification and clause will be contained in the application kit.

Catalog of Federal Domestic Assistance (CFDA) No. 14.227

Authority: Section 107(b)(4), Housing and Community Development Act of 1974, as amended, and 24 CFR 570.400 and 570.402, Technical Assistance Program Regulation.

Date: February 14, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–4831 Filed 2–28–91; 9:45 am]

BILLING CODE 4210–32–M

federal register

Friday
March 1, 1991

Part VII

Environmental Protection Agency

Prince William Sound and Gulf of Alaska; Draft 1991 Restoration Work Plan; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH-FRL-3910-8]

Prince William Sound and Gulf of Alaska Restoration

AGENCY: Environmental Protection Agency and the Alaska Department of Law.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, acting to coordinate restoration on behalf of the Federal Trustees (the U.S. Departments of Interior and Agriculture and the National Oceanic and Atmospheric Administration), and with the Alaska State Trustees (the Alaska Attorney General as the lead State Trustee and the Alaska Departments of Fish and Game and Environmental Conservation) are publishing here (1) a discussion of the overall process the State and Federal governments intend to follow to enhance and expedite the recovery of Prince William Sound, lower Cook Inlet, and the Gulf of Alaska from the *Exxon Valdez* oil spill and (2) a draft 1991 Restoration Work Plan comprised of restoration planning and implementation activities being considered by the Trustees. The public is invited to comment and to suggest other activities that should be considered by the Trustees in preparing this draft 1991 Restoration Work Plan. Notice of intent to take this action was published in the **Federal Register** in November (55 FR 48160, November 19, 1990).

DATES: The Federal and State of Alaska governments will accept comments through April 15, 1991.

ADDRESSES: Written comments should be submitted to: Secretary, Restoration Planning Work Group, Oil Spill Restoration Planning Office, 437 "E" Street, Suite 301, Anchorage, Alaska 99501, Phone (907) 271–2461.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin at (202) 245–4373.

SUPPLEMENTARY INFORMATION:

I. Introduction

Purpose

The U.S. Departments of Agriculture (DOA) and the Interior (DOI), the National Oceanic & Atmospheric Administration (NOAA), and the Alaska Attorney General, the Alaska Departments of Fish and Game and Environmental Conservation, (hereafter referred to as "the Trustees") and the Environmental Protection Agency (EPA) desire to implement restoration activities in the areas affected by the *Exxon Valdez* oil spill as soon as practicable. This Notice contains a draft 1991 Restoration Work Plan comprised of restoration planning and initial implementation activities under consideration by the Trustee Council, an Alaska-based intergovernmental group charged by the Trustees with managing the natural resources damage assessment and restoration program for 1991. Restoration activities in 1991 and subsequent years will be undertaken as appropriate, based on the Trustees' increasing understanding of resource injuries and other relevant considerations. Implementation activities in 1991 will not foreclose future restoration options and are not intended to be a complete or comprehensive restoration program. Implementation of all restoration activities will follow appropriate procedures for compliance with applicable State and Federal laws and regulations. The President of the United States has designated EPA to coordinate, on behalf of the Federal Trustees, the long-term restoration of Prince William Sound and other areas affected by the *Exxon Valdez* oil spill. Accordingly, the EPA Administrator is issuing this document as an action under the Clean Water Act and the Alaska Attorney General is working in concert with the EPA under State authority.

Although preparation of the draft 1991 Restoration Work Plan is not required under the Clean Water Act or the laws of Alaska, the Trustees and EPA have chosen to present this document to obtain public comment and to invite suggestions about other restoration activities that should be considered by the State and Federal governments. The public is also invited to comment on the overall process the governments intend to follow in enhancing environmental recovery in Prince William Sound, lower Cook Inlet, and the Gulf of Alaska and achieving restoration of affected resources and services after the *Exxon Valdez* oil spill.

The Trustees expect to complete the assessment of damages, determine liability, and collect funds from the responsible parties before they prepare a final Restoration Plan. Although the Trustees wish to resolve damage assessment and liability issues as promptly as possible, it is not possible to predict when this will occur. Considering this uncertainty, in cases where the nature of the resource injury, loss or destruction [hereinafter referred to as "injury"] is reasonably clear, and where no alternatives would be foreclosed, it may be desirable to begin implementation of certain restoration activities prior to a final Restoration Plan. As a result, the Trustees are considering implementation in 1991 of activities described in section III of this notice. Other activities related to restoration, such as feasibility studies, technical support projects, and monitoring (see sections 2 and 3), will be considered in the following months and will be presented to the public for review and comment. The Trustees also expect to publish a revised 1991 Restoration Work Plan in the **Federal Register** in Spring 1991. The Trustees also expect subsequently to publish notice of and to solicit public comment on detailed descriptions for each of the restoration projects selected for implementation in 1991.

Organization of this Notice

This notice has three main sections: I. Introduction, II. Restoration Planning, and III. Draft 1991 Restoration Work Plan. The Introduction presents a synopsis of the purpose of this notice and background information. Section II, Restoration Planning, describes the overall approach to restoration and reports on the planning activities conducted in 1990. In Section III, this notice provides information on restoration planning and initial implementation actions under consideration for 1991.

Further Information

Further information about the *Exxon Valdez* oil spill, the damage assessment studies, and restoration planning activities is contained in the documents referenced at the end of this notice and in the **Federal Register** published on November 19, 1990 (55 FR 48160). These documents and other information on restoration and damage assessment are available from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501.

II. Restoration Planning

A. The Planning Process

The Trustees' and EPA's restoration planning activities are designed to determine appropriate ways to restore natural resources and services injured by the *Exxon Valdez* oil spill. Restoration builds upon the spill response and damage assessment process by planning for, and then implementing, activities to restore the environment to its baseline condition.

The Natural Resource Damage Assessment (NRDA) regulations [43 CFR part 11], which implement certain provisions of CERCLA and CWA, define "restoration" or "rehabilitation" as "* * * actions undertaken [in addition to response actions], to return an injured resource to its baseline condition as measured in terms of the injured resource's physical, chemical, or biological properties or the services it previously provided * * *". This definition of restoration from the NRDA regulations is provided here for informational purposes. The NRDA regulations are not mandatory but do provide a model for restoration planning.

The Trustees have determined that restoration after the *Exxon Valdez* oil spill should be subject to continuing review as information is developed about injuries and possible restoration opportunities. The Trustees expect that each year's work will build on the last, and that all information pertinent to the *Exxon Valdez* oil spill will be examined in the course of the restoration process.

1. Steps in the Planning Process

The restoration planning process is a dynamic and evolving process that will generally include the following steps:

a. *Determining the Need for Restoration.* The need for restoration depends on the nature and extent of natural resources injured, lost, or destroyed and the adequacy of natural recovery. The primary information sources regarding resource injury, loss, or destruction are the studies conducted by State and Federal agencies as part of the natural resources damage assessment. These studies are described in the 1989 and 1990 *Exxon Valdez* damage assessment plans (see the documents referenced at the end of this notice). Other sources of information include public comments, data gathered as part of the oil spill response, and other studies conducted by government agencies outside of the damage assessment process.

b. *Identifying Potential Restoration Activities.* For any injury, there are three possible types of restoration which may be used singularly or in any combination:

Direct restoration refers to measures in addition to response actions, usually taken on site, to directly restore or rehabilitate an injured, lost, or destroyed resource or otherwise to promote or enhance the recovery of such resources;

Replacement refers to substituting one resource for an injured, lost, or destroyed resource of the same or similar type; and

Acquisition of equivalent resources means to compensate for an injured, lost, or destroyed resource by substituting another resource that provides the same or substantially similar services as the injured resource.

Determining the adequacy of natural recovery is fundamental to the choice of a restoration activity. In some cases the Trustees may determine that it is most appropriate to allow natural recovery to proceed without further intervention by man (i.e., no action alternative). The definition of direct restoration includes any administrative actions that may be taken by the Federal or State agencies, such as limiting certain activities in the affected areas, to promote recovery of injured resources.

c. *Evaluating Potential Restoration Alternatives.* Evaluation of potential restoration alternatives will consider such factors as:

—Nature and extent of injury;
—Adequacy of natural recovery;
—Technical feasibility;
—Net environmental benefit (including indirect impacts);
—Cost effectiveness;
—Reasonableness of cost of the restoration project in light of the value or ecological significance of the resource; and
—Results of actual or planned response actions.

Some restoration proposals may be readily evaluated. In other cases additional information, for example, biological, ecological, or resource assessment data, will be gathered to support the evaluation process. The goal of the Trustees and EPA is to conduct restoration planning for the recovery of the injured environment as a whole. In general, priority will be given to alternatives which benefit multiple rather than single species or resources. By necessity, however, individual elements of the restoration program may be species- or resource-specific.

d. *Recommending and Implementing Restoration Activities on a Continuing Basis.* As information about injuries, resources recovery, restoration methods or costs becomes available, certain activities may be recommended and carried out in advance of the receipt of funds for restoration from the parties responsible for the oil spill (see Section III, below).

e. *Presenting a Damage Claim to Parties Responsible for the Oil Spill and Receiving Funds for Restoration.* The damage assessment process initiated by the Trustees is designed to identify and quantify specific resource injuries and determine restoration costs and other corresponding monetary values. The Federal and State governments will present their claims for these amounts to the parties responsible for the oil spill as required by Federal and State law.

f. *Preparing and Implementing a Final Restoration Plan.* When the full amount of restoration funds that will be recovered has been resolved, final determinations will be made concerning the nature and scope of the remaining phases of restoration.

g. *Evaluating the Effectiveness of Restoration Measures, and Recommending Additional Actions.* Implementation of restoration activities and the success of resource recovery will be monitored and evaluated based on standards appropriate to individual projects and resources to verify that restoration goals have been met. Long-term monitoring activities also may be implemented to verify that the affected area is recovering.

Restoration planning, as outlined above, is underway; the overall pace of restoration is dependent on the availability of information to determine injury and the resolution of a claim for damages. Implementation of restoration and monitoring activities may take a number of years. The Trustees and EPA intend to follow the restoration planning process as outlined above in order to accelerate the restoration of the Prince William Sound-Gulf of Alaska ecosystem and the affected natural resources and services.

2. Public Participation

The Trustees and EPA intend to encourage, provide for, and be responsive to public participation and review during the restoration planning process. Carrying out this intent, however, is complicated by the need for confidentiality with respect to damage assessment information due to pending or possible future litigation with the parties responsible for the *Exxon Valdez* oil spill. Notwithstanding these considerations, the Trustees intend to provide an opportunity for meaningful public review and comment on all restoration implementation activities.

In September of 1990, the Oil Spill Public Information Center was opened in Anchorage to provide the public with scientific data and other information related to the 1989 *Exxon Valdez* oil spill. The Trustees will continue to place information in the center as it becomes available.

3. Restoration Planning Activities in 1990

The Trustees and EPA began to solicit public opinion in March 1990 with a symposium on restoration in Anchorage, Alaska. In April and May of 1990, eight public scoping meetings were held throughout southcentral Alaska to ascertain the public's priorities for the restoration program. For a detailed description of these meetings, see the

documents referenced at the end of this notice. In addition to these public meetings, the governments have communicated individually with such constituencies as Native corporations and villages, fishing groups, and environmental organizations.

To gather specific scientific input for the restoration planning process, technical workshops were held in Anchorage in April 1990. Follow-up meetings were held in October and November 1990. Participants included members of the Restoration Planning Work Group (the Alaska Departments of Fish and Game, Environmental Conservation, and Natural Resources, and the U.S. Departments of Interior and Agriculture, the National Oceanic and Atmospheric Administration, and the U.S. Environmental Protection Agency) Federal and State resource managers, and scientists and technical experts under contract to the governments. Due to the necessary discussion of litigation-sensitive damage assessment information, these workshops were closed to the general public.

The Restoration Planning Work Group completed a preliminary literature search, which identified articles and other published material concerning techniques for ecological restoration following oil spills. Approximately 200 publications were acquired for detailed review and are listed in the August 1990 Progress Report.

The Trustees and EPA initiated several small-scale field studies to evaluate the feasibility of restoration techniques. Results from these studies will help determine the costs and effectiveness of full-scale restoration projects. Several technical support studies were also initiated to provide information needed to evaluate or carry out some potential restoration activities. These studies are described in the "State/Federal Natural Resources Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill," August 1990. The 1990 studies and preliminary results are summarized below.

B. 1990 Restoration Feasibility Studies

1. Reestablishment of *Fucus* in Rocky Intertidal Ecosystems

Agencies: U.S. Environmental Protection Agency, U.S. Forest Service.

Early observations indicated that *Fucus*, a marine plant (rockweed) found on rocky shorelines in the intertidal zone throughout the oil spill area, was extensively damaged by both the spilled oil and cleanup efforts. If the natural recovery of *Fucus* could be significantly accelerated or enhanced it would benefit the recovery of associated flora and fauna on intertidal rocky shores.

Specific objectives of this study were to identify the causes of variation in *Fucus* recovery at and near Herring Bay, Knight Island in Prince William Sound; to document the effects of alternative cleaning methods on *Focus;* and to test the feasibility of enhancing the reestablishment of *Fucus.* Although results are preliminary at this time, it appears that *Fucus* recovers most slowly at the sites that were intensively cleaned and that almost no recovery occurs where tar cover persists.

2. Reestablishment of Critical Fauna in Rocky Intertidal Ecosystems

Agencies: U.S. Forest Service, U.S. Environmental Protection Agency.

This feasibility study was designed to compare the rates of faunal recovery in rocky intertidal communities, and to demonstrate the feasibility of restoration of these communities by enhancing recolonization rates for such key species as limpets and starfish. Recolonization rates for these organisms and for the rockweed, *Fucus,* may limit the natural rates of recovery for the entire community.

Parameters examined included the presence or absence of comon intertidal species on impacted and reference sites, population dynamics of several species of invertebrates, larval settlement on oiled versus non-oiled surfaces, and differences in algal grazing by limpets between oiled and referenced sites. Preliminary results indicate that heavy predation of several species of transplanted invertebrates was probably due to the lack of cover usually provided by *Fucus.*

3. Identification of Potential Sites for Stabilization and Restoration With Beach Wildrye

Lead Agency: Alaska Department of Natural Resources, United States Forest Service.

This study was designed to identify sites at which damage to beach wildrye grass has occurred and to recommend restoration measures. This species was affected by both spilled oil and subsequent cleanup activities. Beach wildrye grass is important in the prevention of erosion in the coastal environment and is a key component of supratidal habitats in locations throughout the oil spill area. Erosion resulting from loss of beach wildrye can lead to the destabilization and degradation of wildlife habitats and of cultural and recreational sites. Survey work in 1990 in Prince William Sound indicated injury to several beach rye communities. Following confirmation in the 1991 spring shoreline assessment, restoration activities can be initiated (see Restoration Project 1 summary).

4. Identification of Upland Habitats Used by Wildlife Affected by the Oil Spill

Agencies: U.S. Fish and Wildlife Service, Alaska Department of Fish and Game.

A diversity of birds, mammals, and other animals were killed by the spill or injured by contamination of prey and habitats. Many of these species are dependent on aquatic or intertidal habitats for activities such as feeding and resting, but many also use upland habitats. Protection of upland habitats from further degradation may reduce cumulative effects on injured fish and wildlife populations, and thereby help them recover from the effects of the oil spill. This study focused specifically on marbled murrelets and harlequin ducks, two species known to have been affected by the spill and known to use upland habitats.

Based on surveys of 140 streams, preliminary results of the harlequin duck study indicate that this species nests along larger-than-average anadromous fish streams, with moderate gradients and clear waters. Preliminary results on murrelets suggest that murrelets use slopes facing north or west, and inland areas at the heads of bays as opposed to the outer peninsulas. Open bog meadows, especially at the heads of bays, appear to be used as flight corridors to upper wooded areas.

5. Land Status, Uses, and Management Plans in Relation to Natural Resources and Services

Agencies: Alaska Department of Natural Resources, U.S. Forest Service, U.S. National Park Service, Alaska Department of Fish and Game.

The objective of this study is to locate, categorize, evaluate, and determine the availability of maps, management plans, and other resource documents relevant to restoration planning throughout the oil-spill region. Resource materials identified will assist in planning for and implementing site-specific restoration activities, including direct restoration, replacement, and the acquisition of equivalent resources.

To date, a variety of documents, maps, and management plans have been identified and are being evaluated; other resource materials are being located. This preliminary project will be completed in Spring 1991. A second phase, directly supporting the proposed Restoration Project Number 4, Protection of Strategic Fish and Wildlife Habitats and Recreation Sites, is under consideration.

C. 1990 Technical Support Projects

1. Peer Reviewer Process for Restoration Feasibility Studies

Agencies: Alaska Department of Fish and Game, Alaska Department of Environmental Conservation, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency.

This project provided funds to ensure that scientists with expertise on natural resource restoration were available to provide peer review of restoration feasibility projects and other restoration planning studies and activities.

2. Assessment of Beach Segment Survey Data

Agencies: Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, Alaska Department of Fish and Game, U.S. Forest Service, U.S. Park Service, U.S. Environmental Protection Agency.

The objective of this project is to review and summarize beach survey information (obtained through oil spill response activities) to assist in planning for and implementing site-specific restoration activities, particularly in the area of direct restoration. This study was initiated late in 1990 and continues to date.

A master database is being created from that portion of the beach surveys relevant to restoration. The primary sources of this information are the Alaska Departments of Natural Resources and Environmental Conservation. Data from local and regional governments as well as non-governmental sources will also be reviewed and integrated into the system as appropriate. This preliminary project will be completed in Spring 1991.

3. Development of Potential Feasibility Studies for 1991 Agencies: Alaska Department of Fish and Game, U.S. Environmental Protection Agency, Alaska Department of Natural Resources, Alaska Department of Environmental Conservation, U.S. Forest Service, U.S. Department of Fish and Game, U.S. National Park Service, U.S. National Oceanic and Atmospheric Administration.

This project provided for the orderly development of additional feasibility studies including: (a) Monitoring "natural" recoveries; (b) pink salmon stock identification; (c) herring stock identification/spawning site inventory; (d) artificial reefs for fish and shellfish; (e) alternative recreation sites and facilities; (f) historic sites and artifacts; and (g) availability of forage fish. Currently feasibility study proposals are under consideration for all of the above themes.

III. 1991 Restoration Work Plan

The Trustees are currently developing and evaluating restoration planning and implementation activities, which will be described in the 1991 Restoration Work Plan to be published in the **Federal Register** later in the Spring. Planning activities will include feasibility studies, technical support studies, and natural recovery monitoring which will be made available to the public for review and comment. Implementation activities that are now under consideration are presented in this section. The Trustees and EPA are asking, through this notice, for public comment on and additional suggestions for restoration planning and implementation activities for 1991. As noted previously, the Trustees and EPA anticipate publishing later this Spring a notice of the restoration projects identified for implementation in 1991. More detailed descriptions for 1991 restoration projects will be made available to the public for comment.

A. 1991 Restoration Planning Activities

The fundamental purpose of restoration planning is to identify and evaluate potential restoration implementation activities, in consultation with technical experts and the public. The integration of results from the damage assessment and other information into restoration planning is critical to the success of the oil spill program. As damage assessment results are reviewed and evaluated, the Trustees will identify potential restoration implementation activities and related feasibility and technical support projects. This process involves ongoing consultation with principal investigators for damage assessment studies, agency experts, and outside peer reviewers to review the nature and extent of oil spill injuries in relation to the biology and ecology of injured species, habitats, and ecosystems. A key goal is to identify life history requirements, limiting factors, and environmental processes that are especially sensitive or that may be enhanced.

Section II describes five feasibility studies carried out in 1990, some of which may continue in 1991. The Trustees and EPA are considering additional feasibility and technical support projects in 1991 and, following additional review, intend to discuss them in the Spring 1991 **Federal Register** Notice. Studies now being considered concern a variety of resources, including pink salmon, tidal marshes, Pacific herring, bald eagles, recreation, and sea otters. Feasibility and technical support studies will be implemented as damage assessment data and funding become available.

The scientific literature and experience from oil spills other than the *Exxon Valdez* will provide background on restoration and information from other oil spills. In 1991, the Restoration Planning Work Group expects to review and evaluate previously identified literature on restoration (see Appendix B, August 1990 Progress Report) and to continue review and evaluation of literature on species and ecosystem recoveries following anthropogenic and natural environmental disturbances.

Information on the adequacy of natural recovery is central to determining whether to implement restoration actions or to allow injured resources to recover on their own. Direct measures of recovery, such as species distribution, abundance, diversity, growth, reproductive success, or other physiological and biochemical properties, may be appropriate monitoring objectives. In some cases, it is appropriate to indirectly determine the degree of recovery by measuring exposure (presence of oil residuals and/or metabolites) and by applying knowledge or toxicological effects derived from the oil spill literature. For these reasons, the recovery of injured resources can best be followed by implementing a balanced program of monitoring. The duration of recovery monitoring will depend on the time necessary to establish a trend for recovery, and this in turn will necessarily depend on the severity and duration of effects resulting from the oil spill.

Some recovery monitoring studies will be considered for implementation in 1991. As with feasibility and technical support projects, these will be discussed in the March 1991 **Federal Register** document.

Public participation will continue to be an important component of restoration planning in 1991. The Restoration Planning Work Group is interested in and will try to accommodate requests for meetings with individuals or groups. In addition, the Trustees will consider whether and what additional actions, such as publications and workshops, are appropriate and possible in 1991. Requests and suggestions from the public are invited.

B. 1991 Restoration Implementation Activities

Where the nature of the resource injury is reasonably clear, it may be desirable to begin restoration prior to receipt of funds from the parties responsible for the oil spill. There are several reasons why this may be so.

Failure to undertake timely restoration may allow damages initiated by the spill to continue or accelerate, as in the case of the loss of stabilizing vegetation on beaches. In other cases, protection of strategic habitats, subject to land-use changes, can reduce cumulative stresses on injured resources and maintain, in the near term, a full range of restoration options. Finally, the importance of a resource for subsistence, commercial, or recreational purposes may justify prompt restoration action.

The restoration activities being considered by the Trustees for implementation in 1991 are described below. Before making final decisions for the 1991 program, the Trustees are prepared to conduct public meetings in some of the oil spill communities, if requested to do so. Moreover, the Trustees expect to provide further opportunity for public comment on the 1991 restoration projects after detailed descriptions for each project are available. The projects now under consideration for the initial phase of the restoration process are:

1. Restoration of the Beach Wildrye Community

Lead Agencies: Alaska Department of Environmental Conservation, U.S. Forest Service

Need and Objectives:

The high intertidal-supratidal beach wildrye grasses (*Elymus arenarius* and *E. mollis*) communities show signs of localized injury as a result of the *Exxon Valdez* oil spill and the associated cleanup activities. Injury appears to have resulted from oiling and the stress of mechanical abrasion resulting from oil removal operations carried out by cleanup workers and equipment. Beach wildrye grasses are major contributors to natural beach stability. Injury to this important plant community may result in accelerated erosion of the beaches and adjacent upland plant communities. Also at risk from increased erosion are several nearshore archaeological sites.

Once the beach wildrye root masses are disturbed, natural recovery may be slow, taking several years. Wildrye recolonizes primarily by spreading outward from undamaged plants, and this process can be stopped altogether if the rate of erosion is too great. This may result in a significant loss of intertidal and supratidal area. Restoration intervention may often stabilize a beach in one growing season.

The objective of this project is to stabilize injured sites where natural or cultural resources are at risk. Specific sites for restoration will be chosen following the 1991 Spring Shoreline Assessment. The Department of Environmental Conservation and the Forest Service are also exploring whether this project may more appropriately be carried out under the State/Federal response program.

Methods:

Replanting beach wildrye for stabilization is a proven technology. Nearby healthy stocks of beach wildrye grass will be used as a source of donor material. After replanting, fertilizer will be applied (20-20-10 fertilizer up to 800 pounds per acre) to help the transplanted beach wildrye grass recolonize. At some locations fertilizer alone may be sufficient to encourage existing injured plant communities to recover without transplanting new stock.

Estimated 1991 Cost: $180,000

2. Public Information and Education for Recovery and Protection of Alaska's Marine and Coastal Resources

Lead Agencies: U.S. Fish and Wildlife Service, U.S. National Park Service, Alaska Department of Environmental Conservation

Need and Objectives:

The *Exxon Valdez* oil spill caused direct and indirect injury to the marine birds and mammals of southcentral Alaska. The purpose of this project is to make users of the area aware of the changes to the ecosystem resulting from the oil spill and to lessen the potential for additional harmful human disturbances.

Methods:

The project's sponsors will publish and distribute information explaining the potential adverse impacts of human activities, and the importance of increased conservation and protection of marine birds and mammals in key habitats in the oil spill area. Print media such as posters, brochures, and possibly books and video tapes will be produced. Consideration will also be given to production of material for school curricula.

Print media will be distributed through traditional outlets including but not limited to refuge, park, and tourist information and visitor centers. Additional distribution will occur at airports, boat harbors, commercial tour operators, and to public agency and private industry training staffs.

Some species identification information will be included but the primary content of the media will emphasize strategies to allow public use and enjoyment of marine birds and mammals while preventing harmful disturbances to these species.

Estimated 1991 Cost: $100,000

3. Salmonid Stocks and Habitat Restoration

Lead Agencies: Alaska Department of Fish and Game, U.S. Forest Service

Need and Objectives:

Spawning and nursery areas of wild stocks of pink and chum salmon which were impacted by the *Exxon Valdez* oil spill occur throughout Prince William Sound, lower Cook Inlet, and the Gulf of Alaska. Pink and chum salmon are major components of the ecosystem, serving as important food sources for other fish, birds, terrestrial and marine mammals. Pink and chum salmon are also harvested by man in subsistence, commercial, and sport fisheries. Since salmon return to the individual streams in which they were born, with little straying to other streams, genetically unique wild salmon stocks will be restored through site specific rehabilitation of salmon spawning and rearing habitats.

Methods:

This project consists of several proven fisheries enhancement techniques that may be applied immediately at specific sites. In addition to those sites and streams at which potential rehabilitation activities already have been identified, a survey of affected salmon spawning habitat within the oil spill area will be conducted in 1991 to determine additional restoration measures. The proposed techniques include fish passage through stream channelization or fish ladders to overcome physical and hydrological barriers and construction of spawning channels. All of these measures provide oil-free spawning areas to replace oil-impacted spawning areas. Additional wild salmon stock restoration measures include remote egg-taking and incubation at existing hatcheries for ultimate fry release in oil-impacted streams. Other measures may include optimal fry release programs that will enhance marine survival of juvenile salmonids.

Estimated 1991 Cost: $1,300,000

4. Protection of Strategic Fish and Wildlife Habitats and Recreation Sites

Lead Agencies: Alaska Department of Fish and Game, Alaska Department of Natural Resources, U.S. Department of the Interior, U.S. Department of Agriculture

Need and Objectives:

The marine and intertidal habitats where most oil spill injuries occurred are ecologically linked to adjacent uplands. The water quality in streams and estuaries where salmon spawn depends on the adjacent uplands. Eagles nest and roost in large trees along the coasts and streams, and marbled murrelets nest in association with forested uplands. Harlequin ducks nest in riparian habitats and feed in the streams as well as in nearby intertidal and estuarine areas. Common and thick-billed murres and other seabirds nest on off-shore islands.

Tourism and recreation activities, such as sport fishing and camping, also depend on the quality and accessibility of shorelines and uplands. The diversity, productivity, and uses of intertidal and estuarine habitats, and of freshwater streams along the coast depend on the ecological integrity of the adjacent uplands. Continued productivity in the undamaged parts of the regional ecosystem, including strategic marine, intertidal, and estuarine habitats and adjacent uplands, may be necessary for the recovery of biological communities that were injured.

During the public scoping process the governments received many restoration suggestions that involved the protection and prime fish and wildlife habitats, recreation sites, and adjacent uplands. Suggested approaches to this protection included land acquisition and changes in management practices.

Land-use activities may occur in the oil spill area in 1991 or 1992. These activities may impact important habitats and recreation sites or slow the recovery of spill-injured resources.

The objective of this project is to identify and protect strategic wildlife and fisheries habitats and recreation sites and to prevent further potential environmental damages to resources injured by the *Exxon Valdez* oil spill. This project will be preceded by a technical support project to identify and evaluate potential properties which if publicly owned will contribute to this objective. Where acquisition of property rights is determined to be appropriate, they will be acquired on a willing buyer/willing seller basis. Primary considerations in deciding which properties should be acquired during this project will include (1) the nature and immediacy of changes in use that may further affect resources injured by the oil spill and (2) the prospect that failure to act will foreclose restoration opportunities.

The Trustees have developed the following preliminary sequence of steps for use in identifying and protecting strategic fish and wildlife habitats and recreation sites:

1. Identification of key upland habitats that are linked to the recovery of injured resources or services by scientific data or other relevant information.

2. Characterization and evaluation of potential impacts from changed land use in relation to their effects on recovery of the ecosystem and its components; comparative evaluation of recovery strategies not involving acquisition of property rights (e.g., redesignation of land use classification), including an assessment of protection afforded by existing law, regulations, and other alternatives.

3. Evaluation of cost-effective strategies to achieve restoration objectives for key upland habitats, identified through steps one and two above. This would include evaluation of other restoration alternatives for these resource injuries.

4. Willing seller/buyer negotiations with private landowners for property rights.

5. Incorporation of acquired property rights into public management.

Habitat and recreation site acquisition proposals that meet the appropriate evaluation factors for restoration (see section 2) will be identified and assigned by priority for implementation in accordance with this preliminary five-step process and applicable State and Federal laws and regulations.

The geographic scope of the 1991 project will be the oil spill area. Subsequent to this initial effort, the Trustees will continue to survey potential acquisitions, including acquisitions outside the spill area.

Estimated Cost: To be determined

C. Funding for the 1991 Restoration Work Plan

Although it is expected that the responsible parties will pay for the costs of the damage assessment and restoration program, there is no certainty about the final amount and when such funds will be forthcoming. It is possible, therefore, that funds to carry out the 1991 Restoration Work Plan, including the proposed planning and implementation activities, will have to be advanced by the State and Federal governments. To date, those funds have not been committed or secured by either government.

D. References

The documents listed below provide additional information on damage assessment and restoration. They are available from the Oil Spill Public Information Center, The Simpson Building, 645 G Street, Anchorage, Alaska, 99501.

1. "The 1990 State/Federal Natural Resource Damage Assessment and Restoration Plan for the *Exxon Valdez* Oil Spill, Volume I Assessment and Restoration Plan Appendices A, B, C."

2. "State/Federal Natural Resource Damage Assessment Plan for the *Exxon Valdez* Oil Spill," August 1989.

3. "Restoration Planning following the *Exxon Valdez* Oil Spill: August 1990 Progress Report."

4. "Restoration following the *Exxon Valdez* Oil Spill: Proceedings of the Public Symposium," July 1990.

Dated: February 26, 1991.

LaJuana S. Wilcher,

Assistant Administrator, Office of Water, U.S. Environmental Protection Agency.

Dated: February 25, 1991.

Charles E. Cole,

Attorney General, State of Alaska.

[FR Doc. 91-5014 Filed 2-28-91; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register
Vol. 56, No. 41
Friday, March 1, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8804 1

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991

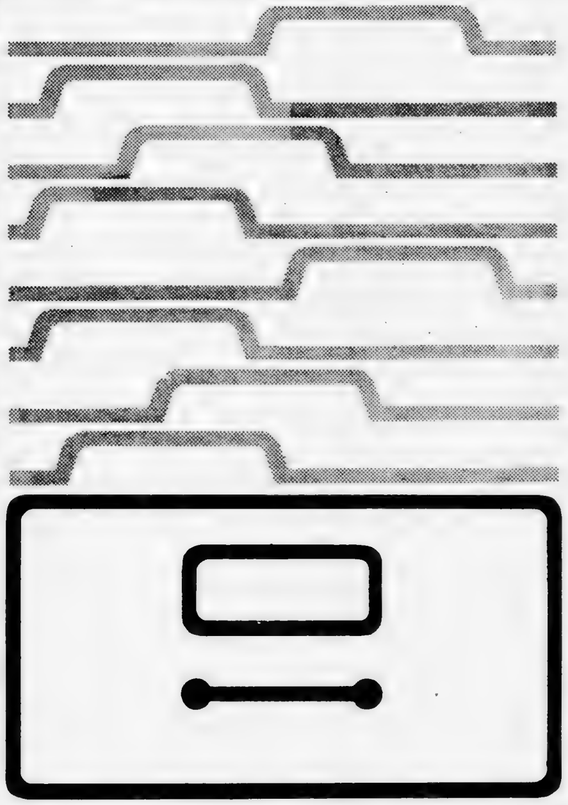
TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 1	March 18	April 1	April 15	April 30	May 30
March 4	March 19	April 3	April 18	May 3	June 3
March 5	March 20	April 4	April 19	May 6	June 3
March 6	March 21	April 5	April 22	May 6	June 4
March 7	March 22	April 8	April 22	May 6	June 5
March 8	March 25	April 8	April 22	May 7	June 6
March 11	March 26	April 10	April 25	May 10	June 10
March 12	March 27	April 11	April 26	May 13	June 10
March 13	March 28	April 12	April 29	May 13	June 11
March 14	March 29	April 15	April 29	May 13	June 12
March 15	April 1	April 15	April 29	May 14	June 13
March 18	April 2	April 17	May 2	May 17	June 17
March 19	April 3	April 18	May 3	May 20	June 17
March 20	April 4	April 19	May 6	May 20	June 18
March 21	April 5	April 22	May 6	May 20	June 19
March 22	April 8	April 22	May 6	May 21	June 20
March 25	April 9	April 24	May 9	May 24	June 24
March 26	April 10	April 25	May 10	May 28	June 24
March 27	April 11	April 26	May 13	May 28	June 25
March 28	April 12	April 29	May 13	May 28	June 26
March 29	April 15	April 29	May 13	May 28	June 27



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-0019

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069–000–00020–7 at $12.00 each.

_____copies of the 1990 SUPPLEMENT TO THE GUIDE, S/N 069–000–00025–8 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 8/90. After this date, please call Order and Information Desk at 202–783–3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325

Order Now!

The United States Government Manual 1990/91



As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy

Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

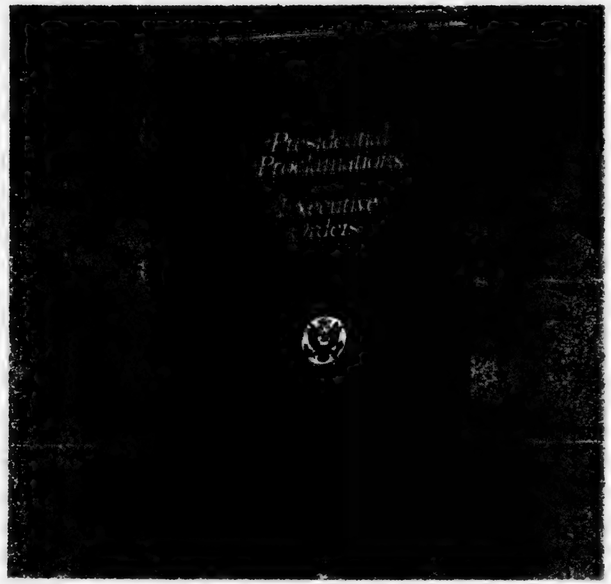
Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ _____
(Credit card expiration date) *Thank you for your order!*
_____
(Signature) (Rev. 10-90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325

Order Processing Code: *6661

Superintendent of Documents Publications Order Form

Charge your order. It's easy! VISA

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

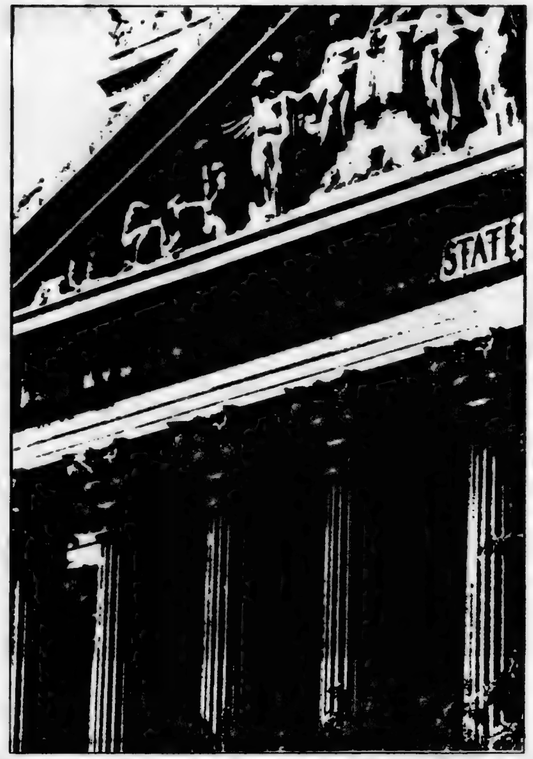
_____
(Company or personal name) (Please type or print)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

Please Choose Method of Payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature)

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.



LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers.
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.

Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6483

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

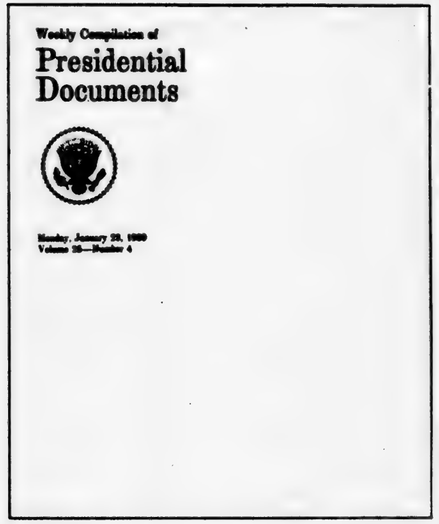
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____
(Credit card expiration date)
Thank you for your order!
_____
(Signature)
(REV. 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6466

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____
(Credit card expiration date)
Thank you for your order!
_____
(Signature)
(Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register** Index.

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly LSA (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*6463

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

VOL
56

ISS
41

MR
1

1991

UMI

OL
56
SS
42
MR
4
991
MI

3-4-91
Vol. 56 No. 42

federal register

Monday
March 4, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

OL
56
SS
42
MR
4
991
MI

3-04-91
Vol. 56 No. 42
Pages 8905-9120

federal register

Monday
March 4, 1991

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-0186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-0186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-0186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 56, No. 42

Monday, March 4, 1991

Administrative Conference of the United States
NOTICES
Meetings:
Regulation Committee et al., 8977

Agricultural Marketing Service
RULES
Peaches grown in Georgia, 8905

Agriculture Department
See also Agricultural Marketing Service; Commodity Credit Corporation; Food Safety and Inspection Service; Forest Service; Rural Electrification Administration
NOTICES
Agency information collection activities under OMB review, 8977

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards; list, 9010

Alcohol, Tobacco and Firearms Bureau
RULES
Alcoholic beverages:
Vodka; identity standard, 8922

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service

Commission of Fine Arts
NOTICES
Meetings, 8987

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
Price support levels—
Barley, 8977

Defense Department
See also Defense Logistics Agency
RULES
Acquisition regulations:
Miscellaneous amendments, 9062
NOTICES
Meetings:
Wage Committee, 8987

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 8987

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Environmental statements; availability, etc.:
Nuclear weapons complex reconfiguration, 8988
Recommendations by Defense Nuclear Facilities Safety Board:
Rocky Flats Plant, CO—
Operational readiness review; agency response, 8991

Environmental Protection Agency
PROPOSED RULES
Air programs; fuel and fuel additives:
Clean fuels; guidelines and proposed regulations negotiating advisory committee; meeting, 8972
Toxic substances:
Testing requirements—
Acrylonitrile, etc., 9092
Neurotoxicity, 9092
Water pollution control:
National pollutant discharge elimination system—
Aquatic life biomonitoring; hearing, 8973
NOTICES
Agency information collection activities under OMB review, 8907
Grants, State and local assistance:
Financial assistance programs—
PCB State enhancement program, 9008

Executive Office of the President
See Management and Budget Office

Family Support Administration
RULES
Public assistance programs:
Aid to families with dependent children (AFDC), and adult assistance programs—
Income and eligibility verification system, 8924
Aid to families with dependent children (AFDC)—
Third part health coverage; cooperation in identifying and providing information to assist State in pursuing, 8926

Farm Credit Administration
RULES
Farm credit system:
Technical amendments, 8910

Federal Aviation Administration
PROPOSED RULES
Air traffic operating and flight rules:
Stage 2 airplanes operating in 48 contiguous United States and District of Columbia; phaseout
Correction, 8936
Airworthiness directives:
Boeing, 8935

Federal Communications Commission
RULES
Radio stations; table of assignments:
Michigan, 8933
Minnesota, 8933
(2 documents)
Mississippi, 8934
Wisconsin, 8934

PROPOSED RULES
Radio stations; table of assignments:
Michigan, 8974
Montana, 8975
South Carolina et al., 8975
Texas, 8975
Vermont, 8976
Wisconsin, 8974
NOTICES
Agency information collection activities under OMB review, 9009, 9010
(3 documents)

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 9043

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Calculation of cash working capital allowance, 8938
NOTICES
Environmental statements; availability, etc.:
Oswego, NY, 9002
Hydroelectric applications, 9002

Fine Arts Commission
See Commission of Fine Arts

Food and Drug Administration
PROPOSED RULES
Medical devices:
Hearing aid requirements; Federal preemption exemptions—
Vermont; hearing, 8940
NOTICES
Food additive petitions:
Th. Goldschmidt A. G., 9012

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Maryland; special purposes designation, 8907, 8908
(2 documents)

Forest Service
NOTICES
Appeal exemptions; timber sales:
Eldorado National Forest, CA, 8979
Environmental statements; availability, etc.:
Klamath National Forest, CA, 8980, 8981
(2 documents)

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Family Support Administration; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health

Health Care Financing Administration
NOTICES
Agency information collection activities under OMB review, 9012

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedure; implementation, 9005

Housing and Urban Development Department
PROPOSED RULES
Mortgage and loan insurance programs:
Mutual mortgage insurance and rehabilitation loans—
Seven unit rule; waiver, 8941
NOTICES
Agency information collection activities under OMB review, 9021
(2 documents)

Immigration and Naturalization Service
RULES
Immigration:
Judicial recommendations against deportation; elimination, 8906

Interior Department
See Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Employee business expense reimbursements and allowances; reporting and withholding; correction, 8911
OMB control numbers under the Paperwork Reduction Act, 8912
PROPOSED RULES
Income taxes:
Accuracy-related penalty, 8943
Large corporate underpayments interest payable; rate increase; hearing, 8967
Preparers penalty for understatement of taxpayer's liability on tax return or refund claim, 8959

International Trade Administration
NOTICES
Antidumping:
Canned bartlett pears from Australia, 8982
Chloropicrin from China, 8983
Television receivers, monochrome and color, from Japan, 8983
European Community common approach to standards, testing, and certification (1992); issue papers availability, 8984

Justice Department
See also Immigration and Naturalization Service; Parole Commission
RULES
Organization, functions, and authority delegations:
Assistant Attorneys General et al.; judgments, fines, penalties, and forfeitures, 8923
NOTICES
Pollution control; consent judgments:
Zimmer Paper Products, Inc., 9023

Labor Department
See Wage and Hour Division

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 9022
Meetings:
Craig District Advisory Council, 9022

Management and Budget Office
NOTICES
Federal information resources management (Circular A-130), 9026

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 9023

National Aeronautics and Space Administration
RULES
Boards and committees:
Contract Appeals Board, 8910
NOTICES
Meetings:
Space Systems and Technology Advisory Committee, 9023

National Institutes of Health
NOTICES
Meetings:
National Institute on Aging, 9020

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Bering Sea and Aleutian Islands king and tanner crab, 8985

National Technical Information Service
NOTICES
Inventions, Government-owned; availability for licensing, 8986

Nuclear Regulatory Commission
NOTICES
Export and import license applications for nuclear facilities or materials, 9024
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 9024
GPU Nuclear Corp. et al., 9025

Office of Management and Budget
See Management and Budget Office

Parole Commission
NOTICES
Meetings; Sunshine Act, 9043

Pennsylvania Avenue Development Corporation
NOTICES
Meetings; Sunshine Act, 9043

Public Health Service
See Alcohol, Drug Abuse, and Mental Health Administration; Food and Drug Administration; National Institutes of Health

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Co-Mo Electric Cooperative, 8982

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 9032
Chicago Board Options Exchange, Inc., 9028
Depository Trust Co., 9031
Midwest Stock Exchange, Inc., 9028
National Association of Securities Dealers, Inc., 9034
New York Stock Exchange, Inc., 9036
Pacific Stock Exchange, Inc., et al., 9029
Philadelphia Stock Exchange, Inc., 9032
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 9034
Applications, hearings, determinations, etc.:
Provident Bancorp, Inc., 9039
Thomson Fund Group, 9039

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Alabama, 8967
Illinois, 8969

Transportation Department
See Federal Aviation Administration

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 9040, 9041
(3 documents)

Wage and Hour Division
RULES
Employee Polygraph Protection Act; implementation, 9046

Separate Parts In This Issue

Part II
Department of Labor, Wage and Hour Division, 9046

Part III
Department of Defense, 9062

Part IV
Environmental Protection Agency, 9092

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
918 8905
8 CFR
241 8906
242 8906
9 CFR
331 (2 documents) 8907, 8906
381 (2 documents) 8907, 8906
12 CFR
600 8910
601 8910
602 8910
603 8910
604 8910
606 8910
611 8910
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
14 CFR
1209 8910
Proposed Rules:
39 8935
91 8938
16 CFR
Proposed Rules:
35 8938
21 CFR
Proposed Rules:
808 8940
24 CFR
Proposed Rules:
203 8941
26 CFR
1 8911
31 8911
602 8912
Proposed Rules:
1 (3 documents) 8943, 8967
27 CFR
5 8922
28 CFR
0 8923
29 CFR
801 9046
30 CFR
Proposed Rules:
901 8967
913 8969
40 CFR
Proposed Rules:
Ch. I 8972
123 8973
799 (2 documents) 8974-9092
45 CFR
205 8924
232 8926
234 8926
235 8926
47 CFR
73 (5 documents) 8933, 8934
Proposed Rules:
73 (5 documents) 8974-8976
48 CFR
Ch. 2, App. N 9082
202 9082
203 9082
204 9082
217 9082
225 9082
228 9082
232 9082
245 9082
252 9082

Rules and Regulations

Federal Register
Vol. 56, No. 42
Monday, March 4, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV-91-237FR]

Expenses and Assessment Rate for Marketing Order Covering Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 918 for the 1991–92 fiscal period (March 1, through February 29) established for that order. The action is needed for the Georgia Peach Industry Committee (committee) to incur operating expenses during the 1991–92 fiscal period and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1991, through February 29, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456, telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 918 (7 CFR part 918), regulating the handling of fresh peaches grown in Georgia. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Georgia peaches regulated under this marketing order each season, and approximately 150 peach producers in Georgia. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of Georgia peaches may be classified as small entities.

The Georgia peach marketing order, administered by the Department, requires that the assessment rate for a particular fiscal period shall apply to all assessable peaches received by regulated handlers from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are peach producers. They are familiar with the committee's needs and with the costs for goods, services and personnel to their local areas, and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected peach receipts (in bushels). Because that rate is applied to actual receipts, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on November 28, 1990, and unanimously recommended 1991–92 fiscal period expenditures of $18,000 and an assessment rate of $0.01 per bushel of assessable peaches received by handlers. This compares with the 1990–91 projected budget of $18,450, based on an assessment rate of $0.005.

The 1991–92 budget projects an estimated assessment income of $16,000, based on shipments of 1,600,000 bushels. The 1990–91 budget projected an assessment income of approximately $6,600 on 1.3 million bushels. In addition to the projected assessment income, additional funds will be made available by drawing $750 from the reserve account ($9,700 in 1990–91); $750 interest on the reserve account ($1,500 in 1990–91), and $500 received from miscellaneous income ($650 in 1990–91). The committee's reserve is well within the amount authorized by the program.

The fee paid to the Georgia Farm Bureau Marketing Association (GFBMA) to manage the committee for the fiscal period is increased from $10,000 to $12,000. However, this increase will be offset by deletions or reductions in individual budget items such as mileage and telephone charges, recording of minutes, stationery/supplies and postage. One budget item, "Miscellaneous Expenses," is increased from $600 to $1,200 because the committee anticipates program expenses in such areas as developing and evaluating new sizes and designs of containers.

Notice of this action was published in the **Federal Register** on January 11, 1991 (56 FR 1124). The comment period ended February 11, 1991. No comments were received.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all the relevant matter presented, including the information and recommendations submitted by the committee, it is found and determined that this final rule will tend to effectuate the declared policy of the Act.

The budget and assessment rate approvals for the Committee should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a committee basis. The 1991–92 fiscal period begins March 1, 1991. Therefore, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 918

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 918 is amended as follows:

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR part 918 continues to read as follows:

Authority: Secs. 1–12, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 918.227, is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 932.227 Expenses and assessment rate.

Expenses of $18,000 by the Georgia Peach Industry Committee are authorized, and an assessment rate of $0.01 per bushel of assessable peaches is established, for the fiscal period ending February 29, 1992. Any unexpended funds from the 1991–92 fiscal period may be carried over as a reserve into the 1992–93 fiscal period.

Dated: February 27, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5039 Filed 3–1–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 241 and 242

[INS Number: 1411–91]

Elimination of Judicial Recommendations Against Deportation

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule provides for the elimination of Judicial Recommendations Against Deportation consistent with section 505 and section 602 of the Immigration Act of 1990, Public Law No. 101–649, enacted on November 29, 1990. This rule also provides for the continued validity of a Judicial Recommendation Against Deportation granted before the enactment of the Immigration Act of 1990. These changes are necessary to eliminate regulatory language inconsistent with the Immigration Act of 1990.

EFFECTIVE DATE: November 29, 1990.

FOR FURTHER INFORMATION CONTACT: Kathryn E. Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I Street NW., room 2108, Washington, DC 20536, Telephone: (202) 514–6612; or Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street NW., room 7048, Washington, DC 20536, Telephone: (202) 514–2895.

SUPPLEMENTARY INFORMATION: This rule removes existing 8 CFR 241.1 relating to Judicial Recommendations Against Deportation, redesignates 8 CFR 241.2 as 8 CFR 241.1, and expands 8 CFR 242.16(c). This deletion and expansion is necessitated by sections 505 and 602 of the Immigration Act of 1990 (IMMACT 90) which removed Judicial Recommendations Against Deportation from the Immigration and Nationality Act. Judicial Recommendations Against Deportation were a form of relief available to certain criminal aliens which precluded reliance on the conviction to establish deportability. By foreclosing the availability of a Judicial Recommendation Against Deportation in the criminal court, Congress has limited the relief available to convicted criminal aliens in deportation proceedings.

A sentencing court's Judicial Recommendation Against Deportation granted before November 29, 1990, due notice having been provided, continues to be valid and continues to have the effect of precluding the use of the conviction to establish deportability. However, a Judicial Recommendation Against Deportation issued on or after November 29, 1990 is ineffectual. No Judicial Recommendation Against Deportation is effective, in any case, against a charge of deportability under section 241(a)(11) of the Act.

The Service has determined that notice and public comment regarding this final rule are unnecessary under 5 U.S.C. 553 (b) and (d). These changes are required to remove a regulation which implemented section 241(b)(2) of the Act that provided for Judicial Recommendations Against Deportation. Section 241(b)(2) of the Act was eliminated by section 505 of IMMACT 90.

In accordance with 5 U.S.C. section 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

List of Subjects

8 CFR Part 241

Administrative practice and procedure, Aliens, Courts, Crime, Deportation.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Custody, Detention, Crime.

For the reasons set forth in the preamble, parts 241 and 242 of title 8 of the Code of Federal Regulations are amended as follows:

PART 241—CONTROLLED SUBSTANCE VIOLATIONS

1. The heading for part 241 is revised as set forth above.

2. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1251, 1252, 1357, 8 CFR part 2.

§ 241.1 [Removed]

3. Section 241.1 is removed.

§ 241.2 [Redesignated as § 242.1]

4. Section 241.2 is redesignated as 241.1.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

5. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362; 8 CFR part 2.

6. Section 242.16(c) is amended by adding two sentences to the end of the paragraph to read as follows:

§ 242.16 Hearing.

* * * * *

(c) * * *

The respondent shall provide a court certified copy of a Judicial Recommendation Against Deportation to the special inquiry officer when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the respondent. No Judicial Recommendation Against Deportation is effective against a charge of deportability under section 241(a)(11) of the Act or if the Judicial Recommendation Against Deportation was granted on or after November 29, 1990.

* * * * *

Dated: February 5, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91–5023 Filed 3–1–91; 8:45 am]

BILLING CODE 4410–10–M

Food Safety and Inspection Service

9 CFR Parts 331 and 381

[Docket No. 91–004F]

Designation of the State of Maryland Under the Federal Meat Inspection Act and the Poultry Products Inspection Act for Special Purposes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Governor of the State of Maryland has advised this Department that Maryland is no longer in a position to administer meat and poultry inspection programs for special purposes. The Secretary of Agriculture is, therefore, authorized by section 205 of the Federal Meat Inspection Act and section 11(e) of the Poultry Products Inspection Act to assume the responsibility of administering these programs.

DATES: This final rule on notice of designation is effective on March 4, 1991.

Effective date of application of regulation: March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Clerkin, Acting Assistant Deputy Administrator, Compliance Program, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–5604.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. No alternative actions under the law are available to the Department.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. No additional requirements are being imposed on small entities.

Background

Sections 202, 203, and 204 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 642, 643, and 644) provide for recordkeeping, access, and related requirements; registration requirements; and regulation of transactions involving dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules or other equines, or parts of the carcasses of such animals that died otherwise than by slaughter, with respect to operators engaged in specified kinds of businesses in or for "commerce" as defined in the Act. Similar provisions for poultry and poultry products are set forth in section 11(b), (c), and (d) of the Poultry Products Inspections Act (PPIA) (21 U.S.C. 460(b), (c), and (d)).

Section 205 of the FMIA (21 U.S.C. 645) authorizes the Secretary of Agriculture to exercise authorities under the aforesaid sections with respect to persons, firms, and corporations engaged in the specified kinds of businesses but not in or for "commerce" in any State or organized Territory when he determines, after consultation with an appropriate advisory committee, that the State or Territory does not have at least equal to authority under its laws or is not exercising such authority in a manner to effectuate the purposes of the FMIA. Similar authorization is provided in section 11(e) of the PPIA (21 U.S.C. 460(e)) with respect to persons engaged in specified kinds of businesses involving poultry and poultry products. The Governor of the State of Maryland has advised this Department that the State of Maryland is no longer in a position to continue administering authorities under the aforesaid sections after March 30, 1991, with respect to persons, firms, and corporations engaged in the specified kinds of businesses in Maryland, but not in or for "commerce".

The Secretary, after consultation with the appropriate advisory committee, has now determined that the State of Maryland is not exercising, in a manner to effectuate the purposes of said Acts, with respect to businesses, operating wholly within the State of Maryland, authorities at least equal to those under sections 202, 203, and 204 of the FMIA and section 11 (b), (c), and (d) of the PPIA, including the Secretary or his representatives being afforded access to such places of business and the facilities, inventories, and records thereof. Therefore, the State of Maryland is hereby designated under section 205 of the FMIA and section 11(e) of the PPIA for the exercise of the specified authorities with respect to businesses operating wholly within the State of Maryland, and hereafter sections 202, 203, and 204 of the FMIA and section 11 (b), (c), and (d) of the PPIA shall apply as hereafter provided, to persons, firms, and corporations engaged in the kinds of businesses specified in said sections, but not in or for commerce, to the same extent and in the same manner as if they were engaged in such businesses in or for commerce and the transactions involved were in commerce.

Final Rule

For reasons prescribed in the preamble, the Food Safety and Inspection Service is amending 9 CFR parts 331 and 381 as set forth below.

List of Subjects.

9 CFR Part 331

Designated States, Meat inspection.

9 CFR Part 381

Designated States, Poultry and poultry products.

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 U.S.C. 2.17, 2.55.

§ 331.6 [Amended]

2. The table in § 331.6 is amended as follows:

a. In the "State" column, "Maryland" is added in alphabetical order in all three places.

b. In the "Effective date of designation" column "March 31, 1991" is added on the line with "Maryland" in all three places.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 U.S.C. 2.17, 2.55.

§ 381.224 [Amended]

4. The table in § 381.224 is amended as follows:

a. In the "State" column, "Maryland" is added in alphabetical order in all three places.

b. In the "Effective date" column, "March 31, 1991" is added on the line with "Maryland" in all three places.

After consulting with the appropriate advisory committee, I have determined that it is necessary to designate the State of Maryland in accordance with section 205 of the FMIA and section 11(e) of the PPIA, in order to carry out the Secretary's responsibilities under the Acts. Therefore, it does not appear that any additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding.

Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to public interest.

Done at Washington, DC, on: February 21, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91–5001 Filed 3–1–91; 8:45 am]

BILLING CODE 3410–DM–M

---

9 CFR Parts 331 and 381

[Docket No. 91–002F]

Designation of the State of Maryland Under the Federal Meat and Poultry Products Inspection Acts

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Representatives of the Governor of the State of Maryland have advised this Department that the State of Maryland will no longer be in the position to continue administering State meat and poultry inspection programs after March 30, 1991. Accordingly, effective March 31, 1991, all establishments operating under the Maryland meat inspection program shall be subject to the provisions of titles I and IV of the Federal Meat Inspection Act. Additionally, effective March 31, 1991, all establishments operating under the Maryland poultry inspection program shall be subject to sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. By this designation, the U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and intrastate operations and transactions, wholly within that State.

EFFECTIVE DATES: This final rule on notice of designation is effective on March 4, 1991.

Effective date of application of regulation: March 31, 1991.

As a result of this amendment, the provisions of titles I and IV of the Federal Meat Inspection Act and sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act will apply to wholly intrastate operations within the State of Maryland on and after March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Lester Nordyke, Director, Federal-State Relations Staff, Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–6313.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." The U.S. Department of Agriculture, pursuant to law, is assuming, as of March 31, 1991, the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and intrastate operations and transactions, wholly within that State. This action is being taken because the State of Maryland indicated it was no longer in a position to enforce requirements with respect to said establishments at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

Since the State of Maryland has advised the United States Department of Agriculture that the State-operated meat and poultry inspection program will be discontinued due to lack of funding, the Federal Government is mandated by law to assume the responsibilities for the meat and poultry inspection program with respect to establishments operating, and intrastate operations and transactions, wholly within the State. Therefore, no alternative actions under the law are available to the Department.

Effect on Small entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the U.S. Department of Agriculture, pursuant to law, is assuming the responsibility, previously held by the State of Maryland, of administering the meat and poultry inspection programs with respect to establishments operating, and operations and transactions, wholly within that State. This action will affect approximately 79 heretofore State inspected meat and poultry establishments in Maryland, most, if not all, of which may be presumed to be small businesses. However, this is not a substantial number of establishments given the approximately 10,600 small meat establishments and small poultry establishments nationwide, which are either federally or State inspected. Additionally, the application of certain Federal facility and other requirements to such establishments will be flexible insofar as each facility will be reviewed with regard to the circumstances peculiar to that establishment. Furthermore, it is not anticipated that significant costs will be incurred by these Maryland establishments as a result of this action. Those specific establishments for which some upgrading of facilities is indicated will be provided up to 16 months in which to make such changes.

Background

Representatives of the Governor of Maryland have advised this Department that the State of Maryland will no longer be in a position to continue administering a State meat inspection program after March 30, 1991, and have requested the Department to assume responsibility for carrying out the provisions of titles I and IV of the Federal Meat Inspection Act, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered or their carcasses or parts or products thereof, are prepared for use as human food, solely for distribution within such State, and with respect to intrastate operations and transactions concerning meat and meat food products and other articles and animals subject to the Federal Meat Inspection Act, and persons, firms, and corporations engaged therein.

Also, representatives of the Governor of Maryland have advised this Department that Maryland will no longer be in a position to continue administering a State poultry inspection program after March 30, 1991, and have requested the Department to assume the responsibility for carrying out the provisions of sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act with respect to establishments within the State of Maryland at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within the State, and with respect to operations and transactions wholly within the State concerning products or other articles and animals subject to the Poultry Products Inspection Act, and persons, firms, and corporations engaged therein.

The Secretary heretofore determined that the State of Maryland had developed and activated requirements at least equal to the requirements under titles I and IV of the Federal Meat Inspection Act, and sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. However, such titles and sections contemplate continuous, ongoing programs, and in view of the termination date now applicable to the Maryland meat and poultry inspection programs, it is hereby determined that Maryland is not effectively enforcing requirements at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act and sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act. Therefore, notice is hereby given that the Secretary of Agriculture designates said State under section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the Poultry Products Inspection Act.

On and after March 31, 1991, the provisions of titles I and IV of the Federal Meat Inspection Act shall apply to intrastate operations and transactions in said State, and to persons, firms, and corporations and transactions in said State, and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce", within the meaning of the Federal Meat Inspection Act, and any establishment in the State which conducts any slaughtering or preparation of carcasses or parts or products thereof, as described above, must have Federal meat inspection or cease its operations, unless it qualifies for an exemption under sections 23(a) or 301(c)(2) of the Federal Meat Inspection Act.

Also, on and after March 31, 1991, the provisions of sections 1–4, 6–10, and 12–22 of the Poultry Products Inspection Act shall apply to intrastate operations and transactions in said State and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce", within the meaning of the Poultry Products Inspection Act, and any establishment in the State which conducts any slaughter or processing or poultry products must have Federal inspection or cease its operations, unless it qualifies for an exemption under sections 15 or 5(c)(2) of the Poultry Products Inspection Act.

Therefore, the operator of each such establishment who desires to continue any such operations after March 30, 1991, should immediately communicate with the Regional Director for Inspection Operations as listed below, for information concerning the requirements and exemptions under the Acts and application for inspection and survey of the establishment: Dr. D. L. White, Director, Northeastern Regional Office, Inspection Operations, U.S. Department of Agriculture, 1421 Cherry Street, 7th Floor, Philadelphia, PA 19102 (215) 597–4217.

List of Subjects

9 CFR Part 331

Designated States, Meat inspection.

9 CFR Part 381

Designated States, Poultry and poultry products.

Accordingly, part 331 of the Federal meat inspection regulations (9 CFR part 331) is amended as follows:

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

1. The authority citation for part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 331.2 [Amended]

2. The table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is amended as follows:

In the "State" column, "Maryland" is added immediately below "Maine".

In the "Effective date of application of Federal provisions" column, "March 31, 1991," is added on the line with "Maryland".

Further, part 381 of the poultry products inspection regulations (9 CFR part 381) is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

§ 381.221 [Amended]

2. The table in § 381.221 of the poultry products inspection regulations (9 CFR 381.221) is amended as follows:

In the "State" column, "Maryland" is added immediately below "Maine".

In the "Effective date of application of Federal provisions" column, "March 31,

1991" is added on the line with "Maryland".

The Administrator, Food Safety and Inspection Service, has determined that it is necessary to designate the State of Maryland immediately, in accordance with section 301(c)(3) of the Federal Meat Inspection Act and section 5(c)(3) of the poultry products Inspection Act, in order to carry out the Secretary's responsibilities under the Acts.

Therefore, it does not appear that additional relevant information would be made available to the Secretary by public participation in this rulemaking proceeding. Accordingly, under the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures are impracticable and contrary to the public interest.

Done at Washington, D.C., on: February 21, 1991.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 91-5002 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-DM-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621

RIN 3052-AB17

Miscellaneous Technical Changes; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 600, 601, 602, 603, 604, 606, 611, 612, 614, 615, 617, 618, 619, and 621 on January 24, 1991 (56 FR 2671). The final regulations relate to (1) revisions necessary to reflect statutory changes made in 1986 and 1987 to the Farm Credit Act of 1971; (2) revisions that are technical and typographical corrections; and (3) revisions that reflect changes in the FCA internal organization. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 4, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT:

Patricia W. DiMuzio, Manager, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TDD (703) 883-4444,

or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a) (9) and (10).

Dated: February 27, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5038 Filed 3-1-91; 8:45 am]

BILLING CODE 6705-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

Boards and Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1209 by revising subpart 1, "Board of Contract Appeals." This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978 (41 U.S.C. 601-613) and prescribes its authority, duties, and membership.

EFFECTIVE DATE: March 4, 1991.

ADDRESSES: Board of Contract Appeals, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carroll C. Dicus, Jr., Chairperson, 202-453-2890.

SUPPLEMENTARY INFORMATION: NASA published its final rule in the **Federal Register** on January 4, 1980 (45 FR 1006). This revision reflects the Administrator's determination to reestablish the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601-613, as amended by the Federal Courts Improvement Act of 1982 (Pub. L. 97-164), to conform the regulations with the amendments and to implement the provisions of the Contract Disputes Act, as amended, consistently with efficient administration.

Since this action involves administrative procedural matters, it has been determined that no public comment period is required.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact in a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1209

Board of Contract Appeals, Organization and functions (Government agencies).

For reasons set out in the preamble, 14 CFR part 1209 is amended as follows:

PART 1209—BOARDS AND COMMITTEES

1. The authority citation for 14 CFR part 1209 continues to read as follows:

Authority: Sec. 203, 72 Stat. 429, 42 U.S.C. 2473.

2. 14 CFR part 1209 is amended by revising subpart 1 to re .d as follows:

Subpart 1—Board of Contract Appeals

Sec.

1209.100 Scope.
1209.101 Establishment.
1209.102 Authority and duties of the Board.
1209.103 Membership.
1209.104 Responsibilities of the Chairperson.

Subpart 1—Board of Contract Appeals

§ 1209.100 Scope.

This subpart establishes the NASA Board of Contract Appeals in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 601-613.

§ 1209.101 Establishment.

The NASA Board of Contract Appeals was established by NASA Management Instruction 2-4-1, June 25, 1959, and was subsequently continued in effect by NASA Management Instruction (NMI) 1152.1. The Board is continued in effect by this subpart.

§ 1209.102 Authority and duties of the Board.

(a) The Board, located at NASA Headquarters, Washington, DC, shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relating to a contract made by NASA and (2) relating to a contract made by any other agency when such agency or the Administrator for Federal Procurement Policy has designated the NASA Board to decide the appeal. In exercising this jurisdiction, the Board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Claims Court.

(b) The Board shall continue to act for and exercise the full authority of the Administrator in hearing and deciding all appeals in which, by the terms of a contract executed prior to March 1, 1979, the contractor may appeal to the Administrator from decisions of the contracting officer.

(c) There shall be no administrative appeal from decisions rendered by the Board. Either party to the dispute may appeal a decision of the Board under paragraph (a) of this section to the United States Court of Appeals for the Federal Circuit, as provided in section 10 of the Contract Disputes Act of 1978, 41 U.S.C. 609.

(d) The Board shall have all customary powers necessary for the performance of its duties including, but not limited to, the authority to issue rules of procedure, to conduct hearings, dismiss appeals or other proceedings, call witnesses, order the production of documents or other evidence, take official notice of facts within general knowledge, and decide all questions of fact or law raised by the appeal.

(e) A member of the Board may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal.

(f) The member or members of the Board assigned to hear an appeal shall have authority to conduct prehearing conferences, hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to a designated panel of the Board. A single member of a panel may be assigned to hear and decide motions which are not dispositive of the appeal.

(g) An appeal shall normally be adjudicated by a panel of two or more members. If a panel of two members is unable to agree upon a decision, the Chairperson may assign a third member to consider the appeal. In the event of a vacancy on the NASA Board of Contract Appeals, or if the third member of the Board shall be disqualified or disabled, the Chairperson may assign a third member from another federal board of contract appeals to consider the appeal.

§ 1209.103 Membership.

(a) The Board shall consist of at least three members appointed by the Administrator, one of whom shall be designated as Chairperson. A Vice Chairperson may also be designated from the appointed members. Members may perform other duties, not inconsistent with their primary duty, as assigned by the Administrator. The Board is responsible directly to the Administrator.

(b) Members of the Board are hereby designated Administrative Judges.

(c) Members must be qualified in accordance with the provisions of section 8(b)(1) of the Contract Disputes Act of 1978, 41 U.S.C. 607(b)(1).

(d) No member of the Board shall consider an appeal if the member has participated in any aspect of the award or administration of a contract in dispute.

§ 1209.104 Responsibilities of the Chairperson.

The Chairperson of the Board of Contract Appeals shall be responsible for:

(a) The administration of the Board;

(b) The assignment of a member or members of the Board to act for the Board in each appeal and the assignment of the panel of Board members to decide each appeal;

(c) The receipt and custody of all papers and material relating to contract appeals; and

(d) The designation of an acting Chairperson during the Chairperson's absence, disqualification, or disability, who is empowered to exercise the powers of the Chairperson, provided a Vice Chairperson has not been formally designated;

(e) The submission of a report, not less often than annually, to the Administrator on the status of the Board's activities.

Dated: February 25, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-4961 Filed 3-1-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[T.D. 8324]

RIN 1545-A006

Reporting and Withholding on Employee Business Expense Reimbursements and Allowances; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (T.D. 8324), which were published Monday, December 17, 1990 (55 FR 51688). The regulations concern the taxation of and reporting and withholding on payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement.

FOR FURTHER INFORMATION CONTACT: Richard Pavel (202) 377-9372 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections, reflect changes to the law made by the Family Support Act of 1988. The final regulations will affect employees who receive payments and payors who make payments under reimbursement or other expense allowance arrangements.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8324), which were the subject of FR Doc. 90-29475, is corrected as follows:

Paragraph 1. On page 51689, column one, under the **"EFFECTIVE DATES"** heading in the preamble, line 20, the phrase "provisions of §§ 1.62-2(d)(3) and 1.62-", is corrected to read "provisions of §§ 1.62-(d)(3)(ii) and 1.62-".

§ 1.62-2 [Corrected]

Par. 2. On page 51695, column three, in § 1.62-2, paragraph (m), line 16, the phrase "Paragraphs (d)(3) and (h)(2)(i)(B) of this" is corrected to read "Paragraphs (d)(3)(ii) and (h)(2)(i)(B) of this".

PART 31—[CORRECTED]

Par. 3. On page 51698, column one, under "PART 31—[AMENDED]", the instructional par. 6. and the authority citation are corrected to read as follows:

"**Par. 6.** The authority citation for part 31 is revised to read as follows:

Authority: 26 U.S.C. 7805 * * *. Secs. 31.3121(a)-3, 31.3231(e)-3, 31.3306(b)-2, and 31.3401(a)-4 also issued under 26 U.S.C. 62."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-4947 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-M

[T.D. 8335]

26 CFR Part 602

RIN 1545-AC68

OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Technical Amendments to § 602.101.

SUMMARY: This document contains technical amendments to § 602.101(c) which collects and displays the control numbers assigned to regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and the Paperwork Reduction Reauthorization Act of 1986, which require that agencies display control numbers assigned by that Office to regulations that solicit or obtain information from the public. By displaying these control numbers, these regulations provide necessary guidance to taxpayers subject to reporting or recordkeeping requirements. It is the intention of the Service to update, correct and clarify the display of control numbers due to omission, duplication, and/or of a typographical nature, etc., which might otherwise be misleading to those relying on this information.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Dale Goode at 202-566-3935.

SUPPLEMENTARY INFORMATION:

Background

The Office of Management and Budget (OMB) issued 5 CFR part 1320—Controlling Paperwork Burdens on the Public—on March 31, 1983 (48 FR 13666). This rule implemented provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. chapter 35) concerning agency responsibilities for obtaining OMB approval of their collections of information and other paperwork control functions.

The Paperwork Reduction Reauthorization Act of 1986 (section 101(m) (title VIII, part A) of Public Law 99-500 (October 18, 1986) and 99-591 (October 30, 1986), 100 Stat. 1783-335, 3341-335) amended the Paperwork Reduction Act of 1980, effective October 30, 1986. As a result of these legislative amendments, OMB published a notice of proposed rulemaking on July 23, 1987 (52 FR 27768), and final rules on May 10, 1988 (53 FR 16618).

Section 602.101 is intended to comply with the requirements of §§ 1320.7(f), 1320.12, and 1320.15 of 5 CFR part 1320 (OMB regulations implementing the Paperwork Reduction Act and amendments thereto by the Paperwork Reduction Reauthorization Act of 1986), for display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of this regulation is Dale D. Goode of the Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulations

Accordingly, title 26, part 602 of the Code of Federal Regulations, is amended as follows:

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 1. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Part 602 is amended by revising the table in § 602.101(c) to read as follows:

§ 602.101 OMB Control Numbers

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
1.1-1	1545-0067
1.23-5	1545-0074
1.25-1T	1545-0822
	1545-0830
1.25-2T	1545-0822
	1545-0830
1.25-3T	1545-0822
	1545-0830
1.25-4T	1545-0822
1.25-5T	1545-0822
1.25-6T	1545-0822
1.25-7T	1545-0822
1.25-8T	1545-0822
1.28-1	1545-0619
1.31-2	1545-0074
1.37-1	1545-0074
1.37-3	1545-0074
1.41-2	1545-0619
1.41-3	1545-0619
1.41-4A	1545-0074
1.41-4 (b) and (c)	1545-0074
1.41-6	1545-0619
1.42-1T	1545-0984
	1545-0988
1.42-2	1545-1005
1.43-2	1545-0074
1.44A-1	1545-0068
1.44A-3	1545-0074
1.44B-1	1545-0219
1.44C	1545-0214
1.44F-5	1545-0732
1.44F-6	1545-0732
1.46-1	1545-0123
	1545-0155
1.46-3	1545-0155
1.46-4	1545-0155
1.46-5	1545-0155
1.46-6	1545-0155
1.46-8	1545-0155
1.46-9	1545-0155
1.46-10	1545-0118
1.46-11	1545-0155
1.47-1	1545-0166
	1545-0155
1.47-3	1545-0166
	1545-0155
1.47-4	1545-0123
1.47-5	1545-0082
1.47-6	1545-0099
1.48-3	1545-0155
1.48-4	1545-0808
	1545-0155
1.48-5	1545-0155
1.48-6	1545-0155
1.48-7	1545-0808
1.48-8	1545-0155
1.48-12	1545-0155
1.50A-1	1545-0095
1.50A-2	1545-0095
1.50A-3	1545-0095
1.50A-4	1545-0095
1.50A-5	1545-0095
1.50A-6	1545-0095
1.50A-7	1545-0095
1.50B-1	1545-0095
1.50B-2	1545-0095
1.50B-3	1545-0095
1.50B-4	1545-0095
1.50B-5	1545-0095
1.51-1	1545-0219
	1545-0241
	1545-0944
	1545-0797
1.52-2	1545-0219
1.52-3	1545-0219
1.52-4	1545-0074
1.56-1	1545-0123
1.56A-1	1545-0227
1.56A-2	1545-0227
1.56A-3	1545-0227
1.56A-4	1545-0227
1.56A-5	1545-0227
1.57-5	1545-0227
1.58-1	1545-0178
1.58-9T	1545-1093
1.61-2	1545-0771
1.61-2T	1545-0771
1.61-4	1545-0187
1.61-15	1545-0074
1.62-1	1545-0130
1.62-2	1545-1146
1.63-1	1545-0074
1.64	1545-0074
1.67-2T	1545-0110
1.67-3T	1545-0118
1.71-1T	1545-0074
1.72-4	1545-0074
1.72-6	1545-0619
1.72-9	1545-0074
1.72-17	1545-0074
1.72-17A	1545-0074
1.72-18	1545-0074
1.74-1	1545-1100
1.79-2	1545-0074
1.79-3	1545-0074
1.83-2	1545-0074
1.83-5	1545-0074
1.103-10	1545-0123
	1545-0940
1.103-15AT	1545-0720
1.103(n)-2T	1545-0874
1.103(n)-4T	1545-0874
1.103A-2	1545-0720
1.105-4	1545-0074
1.105-5	1545-0074
1.105-6	1545-0074
1.105-7	1545-0074
1.105-8	1545-0074
1.105-9	1545-0074
1.105-10	1545-0074
1.108(a)-1	1545-0046
1.108(a)-2	1545-0046
1.117-5	1545-0669
1.117-6	1545-0006
1.119-1	1545-0067
1.120-3	1545-0057
1.121-1	1545-0072
1.121-2	1545-0072
1.121-3	1545-0072
1.121-4	1545-0072
	1545-0091
1.121-5	1545-0072
1.127-2	1545-0768
1.131-1	1545-0914
1.132-1T	1545-0771
1.132-2	1545-0771
1.132-2T	1545-0771
1.132-5	1545-0771
1.132-5T	1545-0771
1.143(a)(5)	1545-0720
1.148-0T	1545-1098
1.148-1T	1545-0720
	1545-1098
1.148-2T	1545-0720
1.148-3T	1545-0720
	1545-1098
1.148-4T	1545-0720
1.148-5T	1545-0720
1.148-6T	1545-0720
1.148-7T	1545-0720
1.148-8T	1545-0720
	1545-1098
1.149(e)-1T	1545-0720
1.149-1	1545-0945
1.151-1	1545-0074
1.152-3	1545-0071
1.152-4	1545-0074
1.152-4T	1545-0074
1.162-1	1545-0139
1.162-2	1545-0139
1.162-3	1545-0139
1.162-4	1545-0139
1.162-5	1545-0139
1.162-6	1545-0139
1.162-7	1545-0139
1.162-8	1545-0139
1.162-9	1545-0139
1.162-10	1545-0139
1.162-11	1545-0139
1.162-12	1545-0139
1.162-13	1545-0139
1.162-14	1545-0139
1.162-15	1545-0139
1.162-16	1545-0139
1.162-17	1545-0139
1.162-18	1545-0139
1.162-19	1545-0139
1.162-20	1545-0139
1.162-24	1545-0074
1.163-5	1545-0786
	1545-1132
1.163-8T	1545-0995
1.163-10T	1545-0074
1.165-1	1545-0177
1.165-2	1545-0177
1.165-3	1545-0177
1.165-4	1545-0177
1.165-5	1545-0177
1.165-6	1545-0177
1.165-7	1545-0177
1.165-8	1545-0177
1.165-9	1545-0177
1.165-10	1545-0177
1.165-11	1545-0074
	1545-0177
	1545-0786
1.165-12	1545-0786
1.166-1	1545-0123
1.166-4	1545-0123
1.167(a)-5T	1545-1021
1.166-10	1545-0123
1.167(a)-7	1545-0172
1.167(a)-11	1545-0152
	1545-0172
1.167(a)-12	1545-0172
1.167(d)-1	1545-0172
1.167(e)-1	1545-0172
1.167(e)-2	1545-0172
1.167(f)-11	1545-0172
1.167(l)-3	1545-0172
1.167(k)-3	1545-0074
1.167(k)-4	1545-0074
1.167(l)-1	1545-0172
1.168(d)-4	1545-1146
1.168(f)(8)-1T	1545-0923
1.168(h)-2	1545-0923
1.168-1	1545-0172
1.168-2	1545-0172
1.168-3	1545-0172
1.168-4	1545-0172
1.168-5	1545-0172
1.168-6	1545-0172
1.169-4	1545-0172
1.170-1	1545-0074
1.170-2	1545-0074
1.170-3	1545-0123
1.170A-1	1545-0074
1.170A-2	1545-0074
1.170A-4(A)(b)	1545-0123
1.170A-8	1545-0074
1.170A-9	1545-0052
	1545-0074
1.170A-11	1545-0123
	1545-0074
1.170A-12	1545-0020
	1545-0074
1.170A-13	1545-0074
	1545-0754
	1545-0908
1.170A-13T	1545-0908
1.170A-14	1545-0783
1.171-3	1545-0172
1.172-1	1545-0172
1.172-11	1545-0074
1.172-13	1545-0863
1.173-1	1545-0172
1.174-3	1545-0152
1.174-4	1545-0152
1.175-3	1545-0187
1.175-6	1545-0152
1.177-1	1545-0172
1.179-2	1545-0172
1.179-4	1545-0172
1.180-2	1545-0074
1.182-6	1545-0074
1.183-1	1545-0195
1.183-2	1545-0195
1.183-3	1545-0195
1.183-4	1545-0195
1.185-3	1545-0152
	1545-0172
1.190-3	1545-0074
1.194-2	1545-0735
1.194-4	1545-0735
1.213-1	1545-0074
1.215-1T	1545-0074
1.216-1(d)(2)	1545-1041
1.217	1545-0082
1.217-2	1545-0182
1.243-3	1545-0123
1.243-4	1545-0123
1.243-5	1545-0123
1.248-1	1545-0172
1.250-1	1545-0132
1.254-1	1545-0074
1.261-1	1545-1041
1.263(e)-1	1545-0123
1.263A-1T	1545-0187
	1545-0987
1.265-1	1545-0074
1.265-2	1545-0123
1.266-1	1545-0123
1.267-1T	1545-0685
1.267(f)-1T	1545-0685
1.268-1	1545-0184
1.274-1	1545-0139
1.274-2	1545-0139
1.274-3	1545-0139
1.274-4	1545-0139
1.274-5	1545-0139
	1545-0771
1.274-5T	1545-0074
	1545-0172
	1545-0771
1.274-6	1545-0139
	1545-0771
1.274-6T	1545-0074
	1545-0771
1.274-7	1545-0139
1.274-8	1545-0139
1.279-6	1545-0123
1.280A-3	1545-0074
1.280C-4	1545-1155
1.280F-3T	1545-0074
1.281-4	1545-0123
1.302-4	1545-0074
1.305-3	1545-0123
1.307-2	1545-0074
1.312-15	1545-0172
1.316-1	1545-0123
1.331-1	1545-0074
1.332-4	1545-0123
1.332-6	1545-0123
1.333-3	1545-0123
1.333-6	1545-0123
1.337-1T	1545-0702
1.337-5	1545-0123
1.337-6	1545-0123
1.337(d)-1	1545-1160
1.338-1T	1545-0702
	1545-1115
1.338-2T	1545-0702
	1545-1115
1.338-3T	1545-0702
1.338-4T	1545-0702
	1545-1115
1.338-5T	1545-0702
1.338-6T	1545-1115
1.338(b)-4T	1545-0702

CFR part or section where identified and described	Current OMB control number
1.338(l)-1T	1545-0702
1.338(l)(10)-1T	1545-0702
1.341-7	1545-0123
1.351-3	1545-0074
1.355-5	1545-0123
1.358-6	1545-0123
1.382-2	1545-0123
1.397(a)-1T	1545-0026
1.397(a)-2T	1545-0026
1.397(a)-3T	1545-0026
1.397(a)-5T	1545-0026
1.397(b)-1T	1545-0026
1.397(e)-1T	1545-1124
1.397(e)-2T	1545-1124
1.398-3	1545-0123
1.370-2	1545-0074
1.371-1	1545-0123
1.371-2	1545-0123
1.374-3	1545-0123
1.381-2	1545-0123
1.381(b)-1	1545-0123
1.381(c)(4)-1	1545-0123 1545-0152 1545-0879
1.381(c)(5)-1	1545-0123 1545-0152
1.381(c)(6)-1	1545-0123 1545-0152
1.381(c)(8)-1	1545-0123
1.381(c)(10)-1	1545-0123
1.381(c)(11)-1(k)	1545-0123
1.381(c)(13)-1	1545-0123
1.381(c)(17)-1	1545-0046
1.381(c)(25)-1	1545-0045
1.382-1T	1545-0123
1.382-2	1545-0123
1.382-2T	1545-0123 1545-1120
1.383-1	1545-0074
1.401(a)-11	1545-0710
1.401(a)-11T	1545-0928
1.401(a)-20	1545-0928
1.401(a)-50	1545-0710
1.401(b)-1	1545-0197
1.401(f)-1	1545-0710
1.401(k)-1	1545-1039 1545-1088
1.401(m)-1	1545-1039
1.401-1	1545-0020 1545-0197 1545-0200 1545-0534 1545-0710
1.401-12(n)	1545-0806
1.401-14	1545-0710
1.402(a)(2)	1545-0183
1.402(a)(3)	1545-0183
1.402(a)(14)	1545-0183
1.402(a)-12	1545-0119
1.402(a)-13	1545-0119
1.402(a)-14	1545-0119
1.402(f)-1	1545-0826
1.402(f)-1T	1545-0928
1.403(b)-1	1545-0710
1.403(b)-2	1545-0928
1.403-1(n)	1545-0710
1.404(a)-4	1545-0710
1.404(a)-12	1545-0710
1.404A-2	1545-0123
1.404A-6	1545-0123
1.408-2	1545-0390
1.408-5	1545-0747
1.408-6	1545-0203 1545-0390
1.408-7	1545-0119
1.408-8	1545-0203
1.410(a)-2	1545-0710
1.410(d)-1	1545-0710
1.412(b)-5	1545-0710
1.412(c)(1)-2	1545-0710
1.412(c)(2)-1	1545-0710
1.412(c)(3)-2	1545-0710
1.414(c)-5	1545-0797
1.415-2	1545-0710
1.415-6	1545-0710
1.441-1	1545-0123
1.441-2	1545-0123
1.441-3T	1545-0134
1.442-1	1545-0074 1545-0123 1545-0134 1545-0152
1.442-2T	1545-0134
1.442-3T	1545-0134
1.443-1	1545-0123
1.444-3T	1545-1036
1.445-6	1545-0123
1.446-	1545-0736
1.446-1	1545-0074 1545-0152
1.446-1	1545-0152
1.446-1T	1545-0152 1545-1147
1.446-2	1545-0152
1.446-2T	1545-0736
1.451-	1545-0091
1.451-1	1545-0152
1.451-3	1545-0736
1.451-4	1545-0123
1.451-5	1545-0074
1.451-6	1545-0074
1.451-7	1545-0074
1.453-1	1545-0152
1.453-2	1545-0152
1.453-9	1545-0152 1545-0228
1.453-10	1545-0152
1.453A-1	1545-0152 1545-1134
1.453A-2	1545-0152 1545-1134
1.453A-3	1545-0963
1.454-1	1545-0074
1.455-2	1545-0152
1.455-6	1545-0123
1.456-2	1545-0123
1.456-6	1545-0123
1.456-7	1545-0123
1.458-1	1545-0879
1.458-10	1545-0152
1.460-6	1545-1031
1.461-1	1545-0074
1.461-2	1545-0098
1.461-3	1545-0098
1.461-3T	1545-0152 1545-0917
1.461-4	1545-0098
1.463-1T	1545-0916
1.465-1T thru 95	1545-0712
1.466-3	1545-0152 1545-0152
1.466-4	1545-0964
1.468A-3	1545-0954
1.468A-3T	1545-0964
1.468A-4	1545-0964
1.468A-4T	1545-0954
1.468A-5T	1545-0954
1.468A-7	1545-0964
1.468A-7T	1545-0964
1.468A-8	1545-0964
1.468A-8T	1545-0964
1.469-1T	1545-1008
1.469-2	1545-0985
1.469-2T	1545-0712
1.469-4T	1545-1091
1.471	1545-0985 1545-1037 1545-0736
1.471-2	1545-0123
1.471-5	1545-0123
1.471-6	1545-0123
1.471-8	1545-0123
1.471-11	1545-0123 1545-0152
1.472-1	1545-0042 1545-0152
1.472-2	1545-0152
1.472-3	1545-0042
1.472-5	1545-0152
1.472-8	1545-0026 1545-0042
1.481-4	1545-0152
1.481-5	1545-0152
1.482-2	1545-0123
1.486-1	1545-0152
1.501(a)-1	1545-0055 1545-0057
1.501(c)(3)-1	1545-0056
1.501(c)(9)-5	1545-0047
1.501(c)(17)-3	1545-0047
1.501(e)-1	1545-0814
1.503(c)-1	1545-0047 1545-0052
1.505(c)-1T	1545-0916
1.507-1	1545-0052
1.507-2	1545-0052
1.508-1	1545-0052 1545-0056
1.509(a)-3	1545-0047
1.509(a)-5	1545-0047
1.509(c)-1	1545-0052
1.512(a)-1	1545-0687
1.512(a)-4	1545-0047 1545-0687
1.521-1	1545-0061 1545-0068
1.527-2	1545-0129
1.527-5	1545-0129
1.527-6	1545-0129
1.527-8	1545-0129
1.528-8	1545-0127
1.533-2	1545-0123
1.534-2	1545-0123
1.542-3	1545-0123
1.545-2	1545-0123
1.545-3	1545-0123
1.547-2	1545-0046 1545-0123
1.547-3	1545-0123
1.551-4	1545-0074
1.552-3	1545-0099
1.552-4	1545-0099
1.552-5	1545-0099
1.556-2	1545-0704
1.561-1	1545-0044
1.561-2	1545-0123
1.562-3	1545-0123
1.563-2	1545-0123
1.564-1	1545-0123
1.565-1	1545-0043 1545-0123
1.565-2	1545-0043
1.565-3	1545-0043
1.565-5	1545-0043
1.565-8	1545-0043
1.565-1T	1545-0043
1.565-2T	1545-0043
1.565-3T	1545-0043
1.565-5T	1545-0043
1.565-6T	1545-0043
1.565-1	1545-0123
1.565-3	1545-0123
1.565-2	1545-0123
1.593-1	1545-0123
1.593-6	1545-0123
1.593-6A	1545-0123
1.593-7	1545-0123

CFR part or section where identified and described	Current OMB control number
1.595-1	1545-0123
1.611-2	1545-0099
1.611-3	1545-0007 1545-0099
1.612-4	1545-0074
1.612-5	1545-0099
1.613-3	1545-0099
1.613-4	1545-0099
1.613-6	1545-0099
1.613-7	1545-0099
1.613A-3	1545-0619
1.613A-5	1545-0099
1.613A-6	1545-0099
1.614-2	1545-0099
1.614-3	1545-0099
1.614-5	1545-0099
1.614-6	1545-0099
1.614-8	1545-0099
1.617-1	1545-0099
1.617-3	1545-0099
1.617-4	1545-0099
1.631-1	1545-0007
1.631-2	1545-0007
1.641(b)-2	1545-0092
1.642(c)-1	1545-0092
1.642(c)-2	1545-0092
1.642(c)-5	1545-0074
1.642(c)-6	1545-0020 1545-0074 1545-0092
1.642(a)-2	1545-0092
1.642(g)-1	1545-0092
1.642(i)-1	1545-0092
1.661-1	1545-0123
1.663(b)-2	1545-0092
1.664-1	1545-0196
1.664-2	1545-0196
1.664-3	1545-0196
1.664-4	1545-0020 1545-0196
1.665(a)-0A through 1.665(g)-2A	1545-0192
1.666(d)-1A	1545-0092
1.671-4	1545-0092
1.701-1	1545-0099
1.702-1	1545-0074
1.703-1	1545-0099
1.704-1T	1545-1090
1.706-1	1545-0099 1545-0074 1545-0134
1.706-1T	1545-0099
1.708-1	1545-0099
1.732-1	1545-0099
1.736-1	1545-0074
1.743-1	1545-0074
1.751-1	1545-0074 1545-0099 1545-0941
1.752-4T	1545-1090
1.754-1	1545-0099
1.755-1	1545-0099
1.755-2T	1545-1021
1.761-2	1545-0099
1.801-1	1545-0123 1545-0128
1.801-3	1545-0123
1.801-5	1545-0128
1.801-8	1545-0128
1.804-4	1545-0128
1.811-2	1545-0128
1.811-8	1545-0128
1.812-2	1545-0128
1.815-6	1545-0128
1.818-4	1545-0128
1.818-5	1545-0128
1.818-8	1545-0128
1.819-2	1545-0128
1.820	1545-0128
1.820-2	1545-0128
1.821-1	1545-1027
1.821-3	1545-1027
1.821-4	1545-1027
1.822-5	1545-1027
1.822-6	1545-1027
1.822-8	1545-1027
1.822-9	1545-1027
1.823-2	1545-1027
1.823-5	1545-1027
1.823-6	1545-1027
1.824-1	1545-1027
1.824-3	1545-1027
1.825-1	1545-1027
1.826-1	1545-1027
1.826-2	1545-1027
1.826-3	1545-1027
1.826-4	1545-1027
1.826-6	1545-1027
1.831-3	1545-0123
1.831-4	1545-0123
1.832-4	1545-0123
1.832-5	1545-0123
1.845-7	1545-0123
1.851-2	1545-1010
1.851-4	1545-0123
1.852-1	1545-0123
1.852-4	1545-0123 1545-0145
1.852-6	1545-0123 1545-0144
1.852-7	1545-0074
1.852-9	1545-0074 1545-0123 1545-0144 1545-0145
1.852-11	1545-1094
1.853-3	1545-0123
1.853-4	1545-0123
1.854-2	1545-0123
1.854-4	1545-0123
1.855-1	1545-0123
1.856-2	1545-0123 1545-1004
1.856-6	1545-0123
1.856-7	1545-0123
1.856-8	1545-0123
1.856-9	1545-0123
1.857-8	1545-0123
1.857-9	1545-0074
1.858-1	1545-0123
1.859-2	1545-0045 1545-0123
1.859-4	1545-0123
1.860-2	1545-0045
1.860-4	1545-0045
1.860D-1	1545-1018
1.860D-1T	1545-0118
1.860F-4	1545-1018
1.860F-4T	1545-0118 1545-1054 1545-1057
1.861-2	1545-0069
1.861-3	1545-0069
1.861-8	1545-0126
1.861-9	1545-0126
1.861-9T	1545-0121 1545-1072
1.861-12	1545-1072
1.863-3	1545-0126
1.863-4	1545-0126
1.863-7	1545-0132
1.864-4	1545-0126
1.871-1	1545-0096
1.871-6	1545-0795
1.871-7	1545-0069
1.871-10	1545-0069 1545-0165
1.874-1	1545-0069
1.882-4	1545-0126
1.884-0T	1545-1070
1.884-1T	1545-1070
1.884-2T	1545-0126 1545-1070
1.884-5T	1545-1070
1.892-1	1545-0126
1.892-1T	1545-1053
1.892-2T	1545-1053
1.892-3T	1545-1053
1.892-4T	1545-1053
1.892-5T	1545-1053
1.892-6T	1545-1053
1.892-7T	1545-1053
1.897-2	1545-0123 1545-0802
1.897-3	1545-0123
1.897-4	1545-0123
1.897-5T	1545-0802
1.897-6T	1545-0802
1.901-2	1545-0746
1.901-2A	1545-0746
1.901-3	1545-0122
1.902-1	1545-0122
1.904-1	1545-0121 1545-0122
1.904-2	1545-0121 1545-0122
1.904-3	1545-0121
1.904-4	1545-0121
1.904-5	1545-0121
1.904(f)-1	1545-0121 1545-0122
1.904(f)-2	1545-0121
1.904(f)-3	1545-0121
1.904(f)-4	1545-0121
1.904(f)-5	1545-0121
1.904(f)-6	1545-0121
1.904(f)-7	1545-1127
1.904(f)-8	1545-1127
1.904(f)-9	1545-1127
1.904(f)-10	1545-1127
1.904(f)-11	1545-1127
1.905-2	1545-0122
1.905-3	1545-0122
1.905-3T	1545-1056
1.905-4	1545-0122
1.905-4T	1545-1056
1.905-5T	1545-1056
1.911-1	1545-0067 1545-0070
1.911-2	1545-0067 1545-0070
1.911-3	1545-0067 1545-0070
1.911-4	1545-0067 1545-0070
1.911-5	1545-0067 1545-0070
1.911-6	1545-0067 1545-0070
1.911-7	1545-0067 1545-0070
1.913-1	1545-0067
1.913-2	1545-0067
1.913-3	1545-0067
1.913-4	1545-0067
1.913-5	1545-0067
1.913-6	1545-0067
1.913-7	1545-0067
1.913-8	1545-0067
1.913-9	1545-0067
1.913-10	1545-0067
1.913-11	1545-0067
1.913-12	1545-0067
1.913-13	1545-0067

CFR part or section where identified and described	Current OMB control number
1.921-1T	1545-0190
	1545-0864
	1545-0935
	1545-0939
1.921-2	1545-0864
1.921-2T	1545-0864
1.921-3T	1545-0935
1.922-1	1545-0864
1.922-1T	1545-0864
1.923-1T	1545-0935
1.924	1545-0904
1.924(a)-1T	1545-0935
1.924(d)-1T	1545-0904
1.925(a)-1T	1545-0935
1.925(b)-1T	1545-0935
1.926(a)-1T	1545-0935
1.927(a)-1T	1545-0935
1.927(b)-1T	1545-0935
1.927(d)-1	1545-0864
1.927(d)-2T	1545-0935
1.927(e)-1T	1545-0935
1.927(e)-2T	1545-0935
1.927(f)-1	1545-0864
1.927(f)-1T	1545-0864
1.927(f)-3	1545-0864
1.931-1	1545-0074
	1545-0123
[illegible]-1	1545-0782
[illegible]-1	1545-0074
	1545-0087
	1545-0803
1.936-1	1545-0215
	1545-0217
1.936-4	1545-0215
1.936-5	1545-0704
1.936-6	1545-0215
1.936-7	1545-0215
1.936-10T	1545-1138
1.952-2	1545-0126
1.952-7T	1545-1142
1.953-2	1545-0126
1.953-2T	1545-1142
1.953-4T	1545-1142
1.953-5T	1545-1142
1.953-6T	1545-1142
1.954-1	1545-0123
	1545-0755
1.954-1T	1545-1068
1.954-2T	1545-1068
1.955-2	1545-0123
1.955-3	1545-0123
1.955A-2	1545-0755
1.955A-3	1545-0755
1.956-1	1545-0704
1.956-2	1545-0704
1.959-1	1545-0704
1.959-2	1545-0704
1.960-1	1545-0122
1.962-2	1545-0704
1.962-3	1545-0704
1.962-4	1545-0704
1.964-1	1545-0126
	1545-0704
	1545-1072
1.964-3	1545-0126
1.970-2	1545-0126
1.985-2	1545-1051
1.985-2T	1545-1051
1.988-1T	1545-1053
	1545-1131
1.988-2T	1545-1053
1.988-3T	1545-1053
	1545-1131
1.988-4T	1545-1053
1.988-5T	1545-1053
	1545-1131
1.992-1	1545-0190
	1545-0938
1.992-2	1545-0190
	1545-0864
	1545-0938
1.992-3	1545-0190
	1545-0938
1.992-4	1545-0190
	1545-0938
1.993-3	1545-0938
1.993-4	1545-0938
1.994-1	1545-0938
1.995-5	1545-0938
1.995(f)-1	1545-0939
1.1012-1	1545-0074
	1545-1139
1.1014-4	1545-0184
1.1015-1	1545-0020
1.1017-2	1545-0026
	1545-0046
1.1031(d)-1T	1545-1021
1.1033(a)-2	1545-0184
1.1033(g)-1	1545-0184
1.1034-1	1545-0072
1.1039-1	1545-0184
1.1041-1T	1545-0074
1.1042-1T	1545-0916
1.1058-1	1545-0770
1.1060-1T	1545-1021
1.1071-1	1545-0184
1.1071-4	1545-0184
1.1081-4	1545-0026
	1545-0046
	1545-0123
1.1081-11	1545-0074
	1545-0123
1.1082-1	1545-0046
1.1082-2	1545-0046
1.1082-3	1545-0046
	1545-0184
1.1082-4	1545-0046
1.1082-5	1545-0046
1.1082-6	1545-0046
1.1083-1	1545-0123
1.1092(b)-1T	1545-0644
1.1092(b)-2T	1545-0644
1.1092(b)-3T	1545-0644
1.1092(b)-4T	1545-0644
1.1092(b)-5T	1545-0644
1.1101-4	1545-0074
1.1102-2	1545-0123
1.1205-1	1545-0184
1.1205-2	1545-0184
1.1205-3	1545-0184
1.1205-4	1545-0184
1.1205-5	1545-0184
1.1211-1	1545-0074
1.1212-1	1545-0074
1.1221-4	1545-0098
1.1231-1	1545-0177
	1545-0184
1.1231-2	1545-0177
	1545-0184
1.1231-2	1545-0074
1.1232-3	1545-0074
1.1237-1	1545-0184
1.1239-1	1545-0091
1.1242-1	1545-0184
1.1243-1	1545-0123
1.1244(e)-1	1545-0123
1.1245-1	1545-0184
1.1245-2	1545-0184
1.1245-3	1545-0184
1.1245-4	1545-0184
1.1245-5	1545-0184
1.1245-6	1545-0184
1.1247-1	1545-0122
1.1247-2	1545-0122
1.1247-4	1545-0122
1.1247-5	1545-0122
1.1248-7	1545-0074
1.1250-1	1545-0184
1.1250-2	1545-0184
1.1250-3	1545-0184
1.1250-4	1545-0184
1.1250-5	1545-0184
1.1251-1	1545-0074
1.1251-2	1545-0184
1.1251-3	1545-0184
1.1251-4	1545-0184
1.1252-1	1545-0184
1.1252-2	1545-0184
1.1254-1	1545-0074
	1545-0184
1.1254-2	1545-0184
1.1254-3	1545-0074
	1545-0184
1.1254-4	1545-0184
1.1254-5	1545-0184
1.1256(h)-1T	1545-0644
1.1256(h)-2T	1545-0644
1.1256(h)-3T	1545-0644
1.1271-3	1545-0887
1.1274-1	1545-0887
1.1274-2	1545-0887
1.1274-3	1545-0887
1.1274-3T	1545-0887
1.1274-4	1545-0887
1.1274-5	1545-0887
1.1274-6	1545-0887
1.1274A-1	1545-0887
1.1275-2	1545-0887
1.1275-3	1545-0887
	1545-1018
1.1275-3T	1545-0887
1.1279-6	1545-0123
1.1287-1	1545-0786
1.1287-1T	1545-0786
1.1291-0T	1545-1026
1.1291-10T	1545-1026
1.1294-1T	1545-1002
	1545-1026
1.1295-1T	1545-1026
1.1297-3T	1545-1026
1.1304-1	1545-0074
1.1304-3	1545-0074
1.1304-5	1545-0074
1.1311(a)-1	1545-0074
1.1361-1A	1545-0731
1.1362-3	1545-0146
1.1362-4	1545-0146
1.1362-5	1545-0146
1.1362-6	1545-0146
1.1362-7	1545-0146
1.1368-1	1545-1139
1.1368-2	1545-1139
1.1372-2	1545-0146
1.1372-3	1545-0146
1.1372-4	1545-0146
1.1373-1	1545-0130
1.1374-1	1545-0130
1.1374-1A	1545-0130
1.1375-1	1545-0130
1.1375-4	1545-0130
1.1375-6	1545-0130
1.1383-1	1545-0074
1.1385-1	1545-0074
	1545-0098
1.1388-1	1545-0118
	1545-0123
1.1402(a)-2	1545-0074
1.1402(a)-5	1545-0074
1.1402(a)-11	1545-0074
1.1402(a)-15	1545-0074
1.1402(a)-16	1545-0074
1.1402(b)-1	1545-0171
1.1402(c)-2	1545-0074
1.1402(e)	1545-0168
1.1402(e)(1)-1	1545-0074

CFR part or section where identified and described	Current OMB control number
1.1402(e)(2)-1	1545-0074
1.1402(e)-1A	1545-0168
1.1402(e)-2A	1545-0168
1.1402(e)-3A	1545-0168
1.1402(e)-4A	1545-0168
1.1402(e)-5A	1545-0168
1.1402(e)-5T	1545-0168
1.1402(f)-1	1545-0074
1.1402(h)-1	1545-0084
1.1441-2	1545-0795
1.1442-4	1545-0086
1.1441-3	1545-0089
	1545-0086
	1545-0795
1.1441-4	1545-0086
	1545-0165
	1545-0795
1.1441-5	1545-0086
	1545-0795
1.1441-6	1545-0055
	1545-0795
1.1441-7	1545-0795
1.1441-8T	1545-1053
1.1442-4	1545-0086
1.1443-1	1545-0086
1.1445-1	1545-0802
1.1445-2	1545-0802
	1545-1060
1.1445-3	1545-0802
	1545-1060
1.1445-4	1545-0802
1.1445-5	1545-0802
1.1445-6	1545-0802
	1545-1060
1.1445-7	1545-0802
1.1445-8	1545-0086
1.1445-1T	1545-0802
1.1445-2T	1545-0802
1.1445-3T	1545-0802
1.1445-4T	1545-0802
1.1445-5T	1545-0802
1.1445-6T	1545-0802
1.1445-7T	1545-0802
1.1445-8T	1545-0802
1.1445-10T	1545-0802
1.1451-1	1545-0054
1.1451-2	1545-0054
1.1461-1	1545-0054
	1545-0055
	1545-0795
1.1461-2	1545-0054
	1545-0055
	1545-0086
	1545-0795
1.1461-3	1545-0054
	1545-0055
	1545-0086
	1545-0795
1.1461-4	1545-0054
	1545-0055
	1545-0086
1.1462-1	1545-0795
1.1465-1	1545-0795
1.1492-1	1545-0026
1.1494-1	1545-0026
1.1502-6	1545-0257
1.1502-8	1545-0121
1.1502-13	1545-0123
	1545-0865
1.1502-13T	1545-1161
1.1502-14	1545-0123
1.1502-14T	1545-1161
1.1502-18	1545-0123
1.1502-19	1545-0123
1.1502-19T	1545-0123
1.1502-20T	1545-1160
1.1502-31T	1545-1046
1.1502-32	1545-0123
1.1502-32T	1545-1021
1.1502-33	1545-0123
1.1502-33T	1545-1046
1.1502-47	1545-0126
1.1502-75	1545-0025
	1545-0123
	1545-0133
	1545-0152
1.1502-76	1545-0123
	1545-0135
1.1502-77	1545-0123
1.1502-77T	1545-1046
1.1502-78	1545-0582
1.1503-2T	1545-1063
1.1552-1	1545-0123
1.1561-3	1545-0123
1.1561-3A	1545-0123
1.1563-1	1545-0123
	1545-0797
1.1563-3	1545-0123
1.4441-3	1545-0089
1.6001-1	1545-0058
	1545-0074
	1545-0099
	1545-0123
	1545-0863
1.6011-1	1545-0055
	1545-0074
	1545-0085
	1545-0089
	1545-0090
	1545-0091
	1545-0096
	1545-0121
	1545-0456
	1545-0866
	1545-0675
	1545-0908
1.6011-2	1545-0055
	1545-0936
1.6011-3	1545-0236
	1545-0239
1.6012(a)(7)	1545-0092
1.6012-0	1545-0087
1.6012-1	1545-0074
	1545-0085
	1545-0089
	1545-0675
1.6012-2	1545-0047
	1545-0051
	1545-0087
	1545-0123
	1545-0126
	1545-0130
	1545-0175
	1545-0687
	1545-0890
	1545-1023
	1545-1027
1.6012-3	1545-0047
	1545-0087
	1545-0092
	1545-0196
	1545-0687
1.6012-4	1545-0087
1.6012-5	1545-0087
	1545-0687
	1545-0970
	1545-0991
	1545-0936
	1545-1023
	1545-1033
	1545-1079
1.6012-6	1545-0087
	1545-0089
	1545-0129
1.6013-1	1545-0074
1.6013-2	1545-0091
1.6013-6	1545-0074
1.6013-7	1545-0074
1.6015(a)-1	1545-0087
1.6015(b)-1	1545-0087
1.6015(d)-1	1545-0087
1.6015(e)-1	1545-0087
1.6015(f)-1	1545-0087
1.6015(g)-1	1545-0087
1.6015(h)-1	1545-0087
1.6015(i)-1	1545-0087
1.6017-1	1545-0074
	1545-0087
	1545-0089
1.6031(b)-1T	1545-0089
1.6031(c)-1T	1545-0089
1.6031-1	1545-0089
	1545-0970
1.6032-1	1545-0089
1.6033-2	1545-0047
	1545-0049
	1545-0052
	1545-0092
	1545-0687
	1545-1150
1.6033-3	1545-0052
1.6034-1	1545-0092
	1545-0094
1.6035-1	1545-0704
1.6035-2	1545-0704
1.6035-3	1545-0704
1.6037-1	1545-0130
	1545-1023
1.6038-2	1545-0704
	1545-0805
1.6038A-1	1545-0805
1.6038B-1T	1545-0026
1.6039-2	1545-0820
1.6041	1545-0008
1.6041-1	1545-0008
	1545-0108
	1545-0112
	1545-0115
	1545-0120
	1545-0295
	1545-0350
	1545-0367
	1545-0387
	1545-0441
	1545-0957
1.6041-2	1545-0008
	1545-0119
	1545-0350
	1545-0441
1.6041-3	1545-1148
1.6041-4	1545-0115
	1545-0295
	1545-0367
	1545-0387
	1545-0957
1.6041-5	1545-0295
	1545-0367
	1545-0387
	1545-0957
1.6041-6	1545-0008
	1545-0115
1.6041-7	1545-0112
	1545-0295
	1545-0350
	1545-0367
	1545-0387
	1545-0441
	1545-0957
1.6041A-1	1545-0115
1.6042-1	1545-0110
1.6042-2	1545-0110
	1545-0295
	1545-0367
	1545-0387
	1545-0957

CFR part or section where identified and described	Current OMB control number
1.6042-3	1545-0295
	1545-0367
	1545-0387
	1545-0957
1.6042-4	1545-0110
1.6043-1	1545-0041
1.6043-2	1545-0041
	1545-0110
	1545-0295
	1545-0387
1.6043-3	1545-0047
1.6044-1	1545-0118
1.6044-2	1545-0118
1.6044-3	1545-0118
1.6044-4	1545-0118
1.6044-5	1545-0118
1.6045(T)(f)	1545-0115
1.6045-1	1545-0715
1.6045-2	1545-0115
1.6045-2T	1545-0115
1.6045-3T	1545-0715
	1545-0997
	1545-1065
1.6045-4	1545-1065
1.6046-1	1545-0704
	1545-0794
1.6046-1T	1545-1142
1.6046-2	1545-0704
1.6046-3	1545-0704
1.6047-1	1545-0119
	1545-0295
	1545-0387
1.6049-1	1545-0112
	1545-0117
	1545-0295
	1545-0367
	1545-0387
	1545-0597
	1545-0957
1.6049-2	1545-0117
1.6049-3	1545-0117
1.6049-4	1545-0096
	1545-0112
	1545-0117
	1545-1018
	1545-1050
1.6049-5	1545-0096
	1545-0112
	1545-0117
1.6049-7	1545-1018
1.6049-7T	1545-0112
	1545-0117
	1545-0118
1.6049-8	1545-1050
1.6050A-1	1545-0115
1.6050B-1	1545-0120
1.6050D-1	1545-0120
	1545-0232
1.6050E-1	1545-0120
1.6050H-1	1545-0901
1.6050H-2	1545-0901
1.6050H-1T	1545-0901
1.6050I-1	1545-0892
1.6050I-1T	1545-0892
1.6050J-1T	1545-0877
1.6050K-1	1545-0941
1.6050K-1T	1545-0941
1.6050L	1545-0908
1.6050L-1T	1545-0908
1.6051-1	1545-0123
	1545-0597
1.6052-1	1545-0008
1.6052-2	1545-0008
1.6056-1	1545-0052
1.6060-1	1545-0074
1.6061-1	1545-0123
1.6062-1	1545-0123
1.6063-1	1545-0123
1.6065-1	1545-0123
1.6071-1	1545-0123
	1545-0610
1.6072-1	1545-0074
1.6072-2	1545-0123
	1545-0607
1.6073-1	1545-0087
1.6073-2	1545-0087
1.6073-3	1545-0087
1.6073-4	1545-0087
1.6074-1	1545-0123
1.6074-2	1545-0123
1.6081-1	1545-0066
	1545-0148
	1545-0233
	1545-1057
	1545-1081
1.6081-3	1545-0233
1.6081-4	1545-0188
1.6081-2T	1545-0148
	1545-1054
	1545-1057
1.6081-3T	1545-0148
	1545-1036
	1545-1057
	1545-1054
1.6081-4T	1545-0148
1.6083-3T	1545-0148
1.6091-3	1545-0089
1.6107-1	1545-0074
1.6109-1	1545-0074
1.6109-2	1545-0074
1.6151-1	1545-0074
1.6152-1	1545-0135
	1545-0233
1.6153-1	1545-0087
1.6153-4	1545-0087
1.6154-2	1545-0257
1.6154-3	1545-0135
1.6154-5	1545-0976
1.6161-1	1545-0087
1.6162-1	1545-0135
1.6164-1	1545-0135
1.6164-2	1545-0135
1.6164-3	1545-0135
1.6164-5	1545-0135
1.6164-6	1545-0135
1.6164-7	1545-0135
1.6164-8	1545-0135
1.6164-9	1545-0135
1.6262-1	1545-0087
1.6302-1	1545-0257
1.6302-2	1545-0096
	1545-0257
1.6302-3	1545-0971
1.6411-1	1545-0096
	1545-0135
	1545-0582
1.6411-2	1545-0096
	1545-0582
1.6411-3	1545-0096
	1545-0582
1.6411-4	1545-0582
1.6414-1	1545-0096
1.6425-1	1545-0170
1.6425-2	1545-0170
1.6425-3	1545-0170
1.6654-1	1545-0087
	1545-0140
1.6654-2	1545-0087
1.6654-3	1545-0087
1.6654-4	1545-0087
1.6656-1	1545-0142
1.6656-2	1545-0142
1.6656-3	1545-0142
1.6656-7	1545-0123
1.6656-8T	1545-0123
1.6661	1545-0889
1.6661-3	1545-0988
	1545-1031
1.6661-4	1545-0739
1.6694-1	1545-0074
1.6694-2	1545-0074
1.6695-1	1545-0074
1.6696-1	1545-0074
	1545-0240
1.6851-1	1545-0066
	1545-0136
1.6851-2	1545-0066
	1545-0136
1.7476-1	1545-0197
1.7476-2	1545-0197
1.7519-2T	1545-1036
1.7872-5	1545-0913
1.7872-6	1545-0913
1.7872-11	1545-0913
1.9100-1	1545-0074
1.9101-1	1545-0006
2.1-4	1545-0123
2.1-5	1545-0123
2.1-6	1545-0123
2.1-10	1545-0123
2.1-11	1545-0123
2.1-12	1545-0123
2.1-13	1545-0123
2.1-20	1545-0123
2.1-22	1545-0123
2.1-26	1545-0123
3.2	1545-0123
5.44B-1	1545-0219
5.51-1	1545-0219
5.852-1	1545-0123
5.6411-1	1545-0096
	1545-0562
5c.0	1545-0016
	1545-0042
	1545-0074
	1545-0129
	1545-0172
	1545-0619
5c.44F-1	1545-0619
5c.126-1	1545-0123
5c.168(f)(8)-1	1545-0123
5c.168(f)(8)-2	1545-0123
5c.168(f)(8)-6	1545-0123
5c.168(f)(8)-8	1545-0123
5c.305-1	1545-0110
5c.442-1	1545-0152
5f.103-1	1545-0720
5f.103-3	1545-0720
5f.338-1	1545-0702
5f.338-2	1545-0702
5f.338-3	1545-0702
5f.6045-1	1545-0715
5h.4	1545-0872
5h.5	1545-0982
	1545-0999
5h.6	1545-1016
6.3	1545-1112
6a.103A-2	1545-0123
	1545-0720
6a.103A-3	1545-0720
7.0	1545-0026
	1545-0074
	1545-0172
	1545-1027
7.367(a)-1	1545-0126
7.367(b)-1	1545-0026
7.367(b)-3	1545-0026
7.367(b)-7	1545-0026
7.367(b)-9	1545-0026
7.367(b)-10	1545-0026
7.465-1	1545-0712
7.465-2	1545-0712
7.465-3	1545-0712
7.465-4	1545-0712
7.465-5	1545-0712
7.936-1	1545-0217

CFR part or section where identified and described	Current OMB control number
7.999-1	1545-0216
7.6039A-1	1545-0015
7.6041-1	1545-0115
7a.1	1545-0046
7a.2	1545-0046
7a.3	1545-0046
10.2	1545-0152
11.401	1545-0197
11.402	1545-0193
11.410-1	1545-0710
11.412(c)-7	1545-0710
11.412(c)-11	1545-0710
12.7	1545-0190
12.8	1545-0191
12.9	1545-0195
13.16-1	1545-0123
14a.422A-1	1545-0123
15A.453-1	1545-0228
16.3-1	1545-0159
16A.126-2	1545-0074
16A.1255-1	1545-0184
16A.1255-2	1545-0184
18.1 7	1545-0074
18.1271-1	1545-0130
18.1361-1	1545-0130
18.1362-1	1545-0130
	1545-0146
18.1362-2	1545-0130
	1545-0148
18.1362-3	1545-0130
18.1362-4	1545-0130
18.1362-5	1545-0130
18.1371-1	1545-0130
18.1377-1	1545-0130
18.1378-1	1545-0130
18.1379-1	1545-0130
18.1379-2	1545-0130
20.2011-1	1545-0015
20.2014-5	1545-0015
	1545-0260
20.2014-6	1545-0015
20.2016-1	1545-0015
20.2031-2	1545-0015
20.2031-3	1545-0015
20.2031-4	1545-0015
20.2031-6	1545-0015
20.2031-7	1545-0020
20.2031-10	1545-0015
20.2032-1	1545-0015
20.2032A-3	1545-0015
20.2032A-4	1545-0015
20.2032A-5	1545-0015
20.2035-1	1545-0015
20.2039-4	1545-0015
20.2051-1	1545-0015
20.2053-3	1545-0015
20.2053-9	1545-0015
20.2053-10	1545-0015
20.2056-1	1545-0015
20.2055-2	1545-0015
	1545-0092
20.2055-3	1545-0015
20.2056(b)-4	1545-0015
20.2106-1	1545-0015
20.2106-2	1545-0015
20.2204-1	1545-0015
20.2204-2	1545-0015
20.6001-1	1545-0015
20.6011-1	1545-0015
20.6018-1	1545-0015
	1545-0531
20.6018-2	1545-0015
20.6018-3	1545-0015
20.6018-4	1545-0015
	1545-0022
20.6036-2	1545-0015
20.6061-1	1545-0015
20.6065-1	1545-0015
20.6075-1	1545-0015
20.6081-1	1545-0015
	1545-0181
20.6091-1	1545-0015
20.6161-1	1545-0015
	1545-0046
	1545-0181
20.6161-2	1545-0015
	1545-0181
20.6163-1	1545-0015
20.6166-1	1545-0181
20.6166A-1	1545-0015
20.6166A-3	1545-0015
20.6324A-1	1545-0754
22.0	1545-0015
25.2511-2	1545-0020
25.2512-2	1545-0020
25.2512-3	1545-0020
25.2512-5	1545-0020
25.2512-9	1545-0020
25.2513-1	1545-0020
25.2513-2	1545-0020
	1545-0021
25.2513-3	1545-0020
25.2518-2	1545-0959
25.2522(a)-1	1545-0196
25.2522(c)-3	1545-0020
	1545-0196
25.2523(a)-1	1545-0020
	1545-0196
25.6001-1	1545-0020
	1545-0022
25.6011-1	1545-0020
25.6019-1	1545-0020
25.6019-2	1545-0020
25.6019-3	1545-0020
25.6019-4	1545-0020
25.6061-1	1545-0020
25.6065-1	1545-0020
25.6075-1	1545-0020
25.6081-1	1545-0020
25.6091-1	1545-0020
25.6091-2	1545-0020
25.6151-1	1545-0020
25.6161-1	1545-0020
26.2601-1	1545-0965
26.2662-1	1545-0015
	1545-0965
27.1-1	1545-0020
27.642-1	1545-0020
31.3102-3	1545-0029
	1545-0059
	1545-0065
31.3121(a)(2)-2	1545-0008
31.3121(b)(3)-1	1545-0034
31.3121(b)(19)-1	1545-0029
31.3121(d)-1	1545-0004
31.3121(i)-1	1545-0034
31.3121(k)-4	1545-0137
31.3121(r)-1	1545-0029
31.3121(s)-1	1545-0029
31.3231(e)-2	1545-0008
31.3302(a)-2	1545-0028
31.3302(a)-3	1545-0028
31.3302(b)-2	1545-0028
31.3302(e)-1	1545-0028
31.3306(c)(18)-1	1545-0029
31.3401(a)-1	1545-0029
31.3401(a)(6)-1	1545-0029
	1545-0096
	1545-0795
31.3401(a)(7)-1	1545-0029
31.3401(a)(8)(A)-1	1545-0029
	1545-0965
31.3401(a)(8)(A)-2	1545-0029
31.3401(a)(8)(C)-1	1545-0029
31.3401(a)(15)-1	1545-0182
31.3401(c)-1	1545-0004
31.3402(b)-1	1545-0010
31.3402(c)-1	1545-0010
31.3402(f)(2)-1	1545-0010
	1545-0410
31.3402(f)(3)-1	1545-0010
31.3402(f)(4)-1	1545-0010
31.3402(f)(4)-2	1545-0010
31.3402(f)(5)-1	1545-0010
31.3402(h)-1	1545-0010
31.3402(h)(1)-1	1545-0029
31.3402(h)(3)-1	1545-0010
31.3402(h)(3)-1	1545-0029
31.3402(h)(4)-1	1545-0010
31.3402(i)-(1)	1545-0010
31.3402(i)-(2)	1545-0010
31.3402(k)-1	1545-0065
31.3402(l)-(1)	1545-0010
31.3402(m)-(1)	1545-0010
31.3402(n)-(1)	1545-0010
31.3402(o)-2	1545-0415
31.3402(o)-3	1545-0008
	1545-0010
	1545-0415
	1545-0717
31.3402(p)-1	1545-0415
	1545-0717
31.3402(q)-1	1545-0238
	1545-0239
31.3404-1	1545-0029
31.3406(b)2-3	1545-0112
31.3406(c)-1	1545-0112
31.3406(d)-1	1545-0112
31.3406(d)-4	1545-0112
31.3406(g)-3	1545-0112
31.3406(h)-2	1545-0112
31.3406(h)-3	1545-0112
31.3501(a)-1T	1545-0771
31.3503-1	1545-0024
31.3504-1	1545-0029
31.3506-1	1545-0115
31.6001-1	1545-0798
31.6001-2	1545-0034
	1545-0798
31.6001-3	1545-0798
31.6001-4	1545-0026
31.6001-5	1545-0798
31.6001-6	1545-0029
	1459-0798
31.6011(a)-1	1545-0029
	1545-0034
	1545-0035
	1545-0059
	1545-0074
	1545-0718
	1545-0256
31.6011(a)-2	1545-0001
	1545-0002
31.6011(a)-3	1545-0028
31.6011(a)-3A	1545-0955
31.6011(a)-4	1545-0034
	1545-0035
	1545-0718
31.6011(a)-5	1545-0718
	1545-0026
31.6011(a)-6	1545-0026
31.6011(a)-7	1545-0074
31.6011(a)-8	1545-0028
31.6011(a)-9	1545-0028
31.6011(a)-10	1545-0112
31.6011(b)-1	1545-0003
31.6011(b)-2	1545-0029
31.6015-3	1545-0008
31.6051	1545-0008
31.6051-1	1545-0008
	1545-0182
	1545-0456
31.6051-2	1545-0008
31.6051-3	1545-0008
31.6051-4	1545-0112

CFR part or section where identified and described	Current OMB control number
31.6063–1	1545–0029
	1545–0062
	1545–0064
	1545–0066
31.6063–2	1545–0006
31.6063–3	1545–0066
	1545–0714
31.6063–4	1545–0066
31.6065(a)–1	1545–0029
31.6071(a)–1	1545–0001
	1545–0029
	1545–0029
31.6071(a)–1A	1545–0955
31.6071(a)–1T	1545–0955
31.6081(a)–1	1545–0029
	1545–0029
31.6091–1	1545–0029
	1545–0029
31.6157–1	1545–0955
31.6205–1	1545–0029
31.6301(c)–1AT	1545–0257
31.6301(c)–2AT	1545–0257
31.6302(c)–1	1545–0001
	1545–0035
	1545–0112
	1545–0257
31.6302(c)–2	1545–0001
	1545–0257
31.6302(c)–2A	1545–0955
31.6302(c)–2AT	1545–0257
31.6302(c)–3	1545–0257
31.6302(c)–5	1545–0257
31.6402(a)–2	1545–0256
31.6413(a)–1	1545–0029
31.6413(a)–2	1545–0029
	1545–0256
31.6413(a)–3	1545–0112
31.6413(c)–1	1545–0029
	1545–0171
31.6414–1	1545–0029
32.1	1545–0029
	1545–0415
32.2	1545–0029
35.3405	1545–0415
	1545–0119
35.6063–1	1545–0714
35a.3405–1	1545–0955
35a.3405–2	1545–0112
35a.9999–3	1545–0112
35a.9999–6	1545–0029
36.3121(f)(1)–1	1545–0137
36.3121(f)(1)–2	1545–0137
36.3121(f)(3)–1	1545–0123
36.3121(f)(3)(b)	1545–0123
36.3121(f)(1)–4	1545–0137
36.3121(1)(7)–1	1545–0123
36.3121(1)(10)–1	1545–0029
36.3121(1)(10)–3	1545–0029
36.3121(1)(10)–4	1545–0257
36.3121(2)(3)	1545–0123
36.6302–1	1545–0257
41.4481–1	1545–0143
41.4481–1T	1545–0143
41.4481–2	1545–0143
41.4482(b)–1T	1545–0143
41.4483–2T	1545–0143
41.4483–3	1545–0143
41.4483–3T	1545–0143
41.6001–1	1545–0143
41.6001–2	1545–0143
41.6001–3	1545–0143
41.6001–3T	1545–0143
41.6011(a)–1	1545–0143
41.6071(a)–1	1545–0143
41.6081(a)–1	1545–0143
41.6091–1	1545–0143
41.6109–1	1545–0143
41.6151(a)–1	1545–0143
41.6156–1	1545–0143
41.6161(a)(1)–1	1545–0143
44.4401–1	1545–0235
44.4403–1	1545–0235
44.4412–1	1545–0236
44.4901–1	1545–0236
44.4905–1	1545–0236
44.4905–2	1545–0236
44.5001–1	1545–0235
44.6011(a)–1	1545–0236
	1545–0236
44.6071–1	1545–0236
44.6081–1	1545–0235
44.6151–1	1545–0235
44.6418–1	1545–0235
44.6419–1	1545–0235
44.6419–2	1545–0235
45.4908–1	1545–0236
45.6001–1	1545–0236
46.4374–1	1545–0023
46.4701–1	1545–0023
46.6001–4	1545–0023
46.6011(a)–1	1545–0023
46.6011(a)–2	1545–0023
46.6061–1	1545–0023
46.6065–1	1545–0023
46.6071(a)–1	1545–0023
	1545–0257
46.6109–1	1545–0003
46.6151–1	1545–0257
46.6902	1545–0257
47.4341–1	1545–0123
47.4346–1	1545–0123
47.6001–1	1545–0123
47.6001–2	1545–0123
48.0–1	1545–0723
48.0–3	1545–0955
48.401–5T	1545–0725
48.4041–2T	1545–0143
48.4041–4	1545–0023
48.4041–5	1545–0023
48.4041–6	1545–0023
48.4041–7	1545–0023
48.4041–8	1545–0023
48.4041–10	1545–0023
48.4041–11	1545–0023
48.4041–12	1545–0023
48.4041–13	1545–0023
48.4041–18	1545–0023
48.4041–19	1545–0023
48.4041–20	1545–0023
48.4041–21	1545–0977
48.4042–2	1545–0023
48.4042–12	1545–0023
48.4051–1T	1545–0143
48.4081(a)–1	1545–0023
48.4081(a)–2	1545–0023
48.4081(a)–3	1545–0023
48.4084–1	1545–0014
	1545–0242
48.4071–1	1545–0023
48.4073–1	1545–0023
48.4073–3	1545–0023
48.4081–1	1545–0725
	1545–1074
	1545–1087
48.4081–2	1545–0023
48.4081–18	1545–0023
48.4082–1	1545–0725
48.4083–1	1545–0023
	1545–0725
48.4083–2	1545–0725
48.4084–1	1545–0725
48.4091–0	1545–0725
48.4091–1	1545–0725
48.4091–1T	1545–1074
48.4091–2	1545–0725
48.4091–3	1545–0725
48.4091–4	1545–0725
48.4091–5	1545–0725
48.4092–1	1545–0725
48.4093–1	1545–0725
48.4101–1	1545–0023
	1545–0725
	1545–0014
48.4101–2T	1545–0725
48.4102–1	1545–0023
	1545–0725
48.4161(a)–1	1545–0723
48.4161(a)–2	1545–0723
48.4161(a)–3	1545–0723
48.4161(b)–1	1545–0723
48.4161–1	1545–1076
48.4161–2	1545–0723
48.4162–1	1545–0023
	1545–0723
48.4162–2	1545–0723
48.4221–5	1545–0023
48.4221–7	1545–0023
48.4221–9	1545–0023
48.4216(a)–2	1545–0023
48.4216(a)–3	1545–0023
48.4216(c)–1	1545–0023
48.4221–1	1545–0023
48.4221–2	1545–0023
48.4221–3	1545–0023
48.4221–4	1545–0023
48.4221–6	1545–0023
48.4221–7	1545–0023
48.4221–8	1545–0023
48.4221–9	1545–0023
48.4222(a)–1	1545–0023
	1545–0014
48.4222(b)–1	1545–0023
48.4223–1	1545–0023
48.4253–2	1545–0023
48.4964–1	1545–0725
48.6011	1545–0023
	1545–1076
48.6011(a)–1	1545–0723
48.6011(a)–2	1545–0023
	1545–0723
48.6071(a)–1	1545–0257
	1545–0723
48.6081(a)–1	1545–0723
48.6091–1	1545–0723
48.6101–1	1545–0023
48.6109–1	1545–0023
	1545–0723
48.6151–1	1545–0257
48.6151–1T	1545–0143
48.6302(c)–1	1545–0023
	1545–0257
48.6412–1	1545–0723
48.6416(a)–1	1545–0023
	1545–0723
48.6416(a)–2	1545–0723
48.6416(a)–3	1545–0723
48.6416(b)–1	1545–0023
48.6416(b)–2	1545–0023
48.6416(b)(2)–3	1545–1087
48.6416(b)–3	1545–0023
48.6416(b)–4	1545–0023
48.6416(b)–5	1545–0023
48.6416(b)(1)–1	1545–0723
48.6416(b)(1)–2	1545–0723
48.6416(b)(1)–3	1545–0723
48.6416(b)(1)–4	1545–0723
48.6416(b)(2)–1	1545–0723
48.6416(b)(2)–2	1545–0723
48.6416(b)(2)–3	1545–0723
	1545–1087
48.6416(b)(2)–4	1545–0723
48.6416(b)(2)–1	1545–0723
48.6416(b)(2)–2	1545–0723
48.6416(b)(2)–3	1545–0723
48.6416(b)(4)–1	1545–0723
48.6416(b)(5)–1	1545–0723
48.6416(c)–1	1545–0723

CFR part or section where identified and described	Current OMB control number
48.6416(e)–1	1545–0023
	1545–0723
48.6416(f)–1	1545–0023
	1545–0723
48.6416(g)–1	1545–0723
48.6416(h)–1	1545–0723
48.6420(c)–2	1545–0023
48.6420(f)–1	1545–0023
48.6420–0	1545–0723
48.6420–1	1545–0162
	1545–0723
48.6420–2	1545–0162
	1545–0723
48.6420–3	1545–0162
	1545–0723
48.6420–4	1545–0162
	1545–0723
48.6420–5	1545–0162
	1545–0723
48.6420–6	1545–0162
	1545–0723
48.6420–7	1545–0162
	1545–0723
48.6421(c)–1	1545–0024
48.6421–0	1545–0162
	1545–0723
48.6421–1	1545–0162
	1545–0723
48.6421–2	1545–0162
	1545–0723
48.6421–3	1545–0162
	1545–0723
48.6421–4	1545–0162
	1545–0723
48.6421–5	1545–0162
	1545–0723
48.6421–6	1545–0162
	1545–0723
48.6421–7	1545–0162
	1545–0723
48.6424–0	1545–0723
48.6424–1	1545–0723
48.6424–2	1545–0723
48.6424–3	1545–0723
48.6424–4	1545–0723
48.6424–5	1545–0723
48.6424–6	1545–0723
48.6424–7	1545–0723
48.6427–0	1545–0723
48.6427–1	1545–0023
	1545–0182
	1545–0723
48.6427–1T	1545–0143
48.6427–2	1545–0162
	1545–0723
48.6427–2T	1545–0143
48.6427–3	1545–0723
48.6427–4	1545–0723
48.6427–5	1545–0723
48.6427–7	1545–0143
	1545–0162
48.6675–1	1545–0723
48.9091–0	1545–0725
48.9091–1	1545–0725
48.9091–2	1545–0725
48.9091–3	1545–0725
48.9091–4	1545–0725
48.9091–5	1545–0725
48.4064–1	1545–0014
48.4101–1	1545–0014
48.4221–3	1545–0023
48.4221–4	1545–0023
48.4221–5	1545–0023
48.4222(a)–1	1545–0014
48.4222(b)–1	1545–0023
49.4243–11	1545–0023
49.4251–1	1545–1075
49.4251–2	1545–1075
49.4253–3	1545–0023
49.4253–4	1545–0023
49.4261	1545–0023
49.4264(b)–1	1545–0023
49.6011(a)–1	1545–0029
49.6011(a)–2	1545–0023
49.6109–1	1545–0029
49.6151–1	1545–0257
49.6302(c)–1	1545–0222
51.4998–2	1545–0226
51.4993–1	1545–0230
51.4993–2	1545–0230
51.4993–3	1545–0230
51.4993–4	1545–0230
51.4994–1	1545–0224
	1545–0226
51.4995–1	1545–0912
51.4995–2	1545–0230
	1545–0912
51.4995–3	1545–0023
	1545–0257
51.4995–4	1545–0023
	1545–0230
51.4995–5	1545–0230
51.4996–1	1545–0023
51.4996–5	1545–0984
51.4997–1	1545–0222
	1545–0224
	1545–0225
51.4997–2	1545–0222
	1545–0224
	1545–0230
51.6232	1545–0224
51.6402–1	1545–0226
52.4682–1T(b)(2)(iii)	1545–1153
52.4682–2T(b)	1545–1153
52.4682–2T(d)	1545–1153
52.4682–3T(c)(2)	1545–1153
52.4682–3T(g)	1545–1153
52.4682–4T(f)	1545–1153
52.6011	1545–0023
52.6011(a)–1	1545–0023
52.6011(a)–2	1545–0023
52.6302(c)–1	1545–0023
	1545–0257
53.4940–1	1545–0052
	1545–0196
53.4942(a)–1	1545–0052
53.4942(a)–2	1545–0052
53.4942(a)–3	1545–0052
53.4942(b)–3	1545–0052
53.4945–1	1545–0053
53.4945–4	1545–0053
53.4945–5	1545–0053
53.4945–6	1545–0052
53.4947–1	1545–0196
53.4947–2	1545–0196
53.4948–1	1545–0052
53.4961–2	1545–0024
53.4963–1	1545–0024
53.4972–1	1545–0575
53.6001–1	1545–0052
53.6011–1	1545–0049
	1545–0052
	1545–0092
	1545–0196
53.6065–1	1545–0052
53.6071–1	1545–0049
53.6081–1	1545–0066
	1545–0148
53.6161–1	1545–0575
54.4972–1	1545–0197
54.4975–7	1545–0575
54.4977–1T	1545–0771
54.4979–1	1545–1039
54.4981A–1T	1545–0203
54.6011–1	1545–0575
54.6011–1T	1545–0575
54.6071–1T	1545–0575
55.6001–1	1545–0123
55.6011–1	1545–0999
	1545–0123
	1545–1016
55.6061–1	1545–0999
55.6071–1	1545–0999
56.4911	1545–0052
56.4911–6	1545–0052
56.4911–7	1545–0052
56.4911–9	1545–0052
56.4911–10	1545–0052
57.6011(a)–2	1545–0023
57.6302(c)–1	1545–0023
	1545–0257
103.25	1545–0183
138.1–2	1545–0023
138.1–6	1545–0123
138.4064–1	1545–0242
142.1	1545–0023
145.1–1	1545–0745
145.1–2	1545–0745
145.1–3	1545–0745
145.1–6	1545–0745
145.1–7	1545–0745
145.4–1	1545–0023
145.5–4	1545–0143
145.4051–1	1545–0745
145.4052–1	1545–0120
	1545–0745
	1545–1076
145.4061–1	1545–0745
148.1–3	1545–0014
148.1–4	1545–0230
150.4998–1	1545–0230
150.4993–1	1545–0230
150.4995–2	1545–0230
150.4995–3	1545–0023
	1545–0257
150.4995–4	1545–0023
	1545–0230
150.4995–5	1545–0230
150.4996–1	1545–0023
150.4997–1	1545–0222
150.4997–2	1545–0222
	1545–0224
150.6050C–1	1545–0222
150.6076–1	1545–0222
150.6232(c)–1	1545–0224
150.6232(c)–2	1545–0224
150.6232(c)–3	1545–0224
150.6232(c)–4	1545–0224
150.6232(c)–5	1545–0224
150.6402–1	1545–0226
154.1–1	1545–0014
	1545–0678
154.2–1	1545–0257
	1545–0685
154.3–1	1545–0023
301.6011–2	1545–0225
	1545–0350
	1545–0387
	1545–0441
	1545–0957
301.6017–1	1545–0090
301.6034–1	1545–0092
301.6035–1	1545–0123
301.6036–1	1545–0013
	1545–0773
301.6047–1	1545–0387
	1545–0957
301.6057–1	1545–0710
301.6057–2	1545–0710
301.6058–1	1545–0710
301.6059–1	1545–0710
301.6103(c)–1	1545–0280
301.6104–1	1545–0817
301.6104–2	1545–0817
301.6104–3	1545–0817

CFR part or section where identified and described	Current OMB control number
301.6104-4	1545-0017
301.6104(b)-1	1545-0056
301.6104(c)-1	1545-0056
301.6104(d)-1	1545-0056
	1545-0064
	1545-0742
301.6104(d)-1	1545-0056
301.6109-1	1545-0056
	1545-0295
	1545-0057
	1545-0057
301.6110-2	1545-0074
301.6110-5	1545-0074
301.6111-1T	1545-0056
	1545-0061
301.6112-1T	1545-0056
301.6114-1T	1545-1126
301.6223(a)-2T	1545-0760
301.6223(b)-1T	1545-0760
301.6223(b)-2T	1545-0760
301.6223(b)-3T	1545-0760
301.6227(b)-1T	1545-0760
301.6231	1545-0088
	1545-0760
301.6231-1T	1545-0760
301.6241-1T	1545-0139
301.6316-4	1545-0074
301.6316-5	1545-0074
301.6316-6	1545-0074
301.6316-7	1545-0029
301.6324A-1	1545-0015
301.6361-1	1545-0074
	1545-0024
301.6361-2	1545-0024
301.6361-3	1545-0074
301.6402-2	1545-0024
	1545-0073
	1545-0091
	1545-0132
301.6402-3	1545-0055
	1545-0073
	1545-0091
	1545-0132
301.6402-5	1545-0029
301.6404-1	1545-0024
301.6404-2	1545-0024
301.6404-2T	1545-0024
301.6404-3	1545-0024
301.6404-3T	1545-0024
301.6405-1	1545-0024
301.6501(b)	1545-0074
301.6501(c)	1545-0074
301.6501(d)-1	1545-0074
	1545-0429
301.6501(c)-2	1545-0725
301.6511	1545-0024
301.6511(d)-1	1545-0582
	1545-0024
301.6511(d)-2	1545-0582
	1545-0024
301.6511(d)-3	1545-0024
	1545-0582
301.6652-2	1545-0092
301.6656-1	1545-0794
301.6658-2	1545-0794
301.6665-1	1545-0092
301.6699-1T	1545-1056
301.6707-1T	1545-0905
	1545-0861
301.6708-1T	1545-0905
301.6712-1	1545-1126
301.6725-1T	1545-0909
301.6905-1	1545-0013
301.6905-1	1545-0074
301.7001-1	1545-0123
301.7011-1	1545-0123
301.7101-1	1545-1029
301.7207-1	1545-0092
301.7216-2	1545-0074

CFR part or section where identified and described	Current OMB control number
301.7216-2T	1545-1209
301.7425-3	1545-0864
301.7501-7	1545-0123
301.7507-6	1545-0123
301.7507-9	1545-0123
301.7513-1	1545-0429
301.7517-1	1545-0916
301.7605-1	1545-0795
301.7623-1	1545-0409
301.7654-1	1545-0903
301.7701-16	1545-0795
301.7701(b)-5	1545-0999
301.7805-1	1545-0805
301.9001-1	1545-0220
302.1-7	1545-0024
304.6402-1	1545-0823
305.7701-1	1545-0823
305.7871-1	1545-0823
464.6046-1	1545-0160
420.8-1	1545-0710
Part 502	1545-0844
Part 508	1545-0837
Part 509	1545-0846
Part 513	1545-0834
Part 514	1545-0845
Part 516	1545-0841
Part 517	1545-0849
Part 520	1545-0833
Part 521	1545-0848
601.104	1545-0023
	1545-0233
601.105	1545-0091
601.201	1545-0819
601.204	1545-0152
601.402	1545-0014
601.403	1545-0023
601.601	1545-0800
601.602	1545-0296
	1545-0287
	1545-0957
601.702	1545-0429

Dated: January 15, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-4949 Filed 3-1-91; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 5

[T.D. ATF-311; Re: T.D. ATF-306, Notice Nos. 403, 410, 583; 91F000P]

RIN: 1512-AA10

Vodka; Deferral of Compliance Date

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule defers the compliance date with respect to the citric acid limitation set forth in section 5.23(a)(3)(ii) in T.D. ATF-306 to allow for the evaluation of recently received additional information and data concerning maximum levels for the use of citric acid in vodka.

DATES: This document is effective March 4, 1991. The compliance date for section 5.23(a)(3)(ii) with respect to the citric acid limitation is December 4, 1991.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

T.D. ATF-306, (55 FR 49994, dated December 4, 1990), amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2,000 parts per million) sugar, and a trace amount (defined as 150 milligrams per liter or 150 parts per million) of citric acid in the production of vodka. T.D. ATF-306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the treasury decision.

Petition

Heublein, Inc., has petitioned ATF for reconsideration of T.D. ATF-306, based on a representation that new scientific information and data not previously available has come to their attention concerning maximum levels for the use of citric acid in vodka. Heublein's petition merits further consideration and evaluation.

Heublein stated that recent testing data indicates that there is no reliable difference in sensory perception between vodkas that contain 150 ppm citric acid and vodkas that contain 480 ppm citric acid. Because this evidence is new and has only recently become available, ATF has not had the opportunity to examine it. During the nine month period, a notice of proposed rulemaking will be issued soliciting additional comments on the appropriate levels of citric acid addition to vodka.

Notice and Public Procedure

Because this final rule merely postpones the compliance date with respect to the citric acid requirement in T.D. ATF-306 in order to examine recently acquired information submitted by the industry to ATF, and in view of the immediate need for guidance to the industry with respect to compliance with this provision in T.D. ATF-306, it is found to be impractical and contrary to the public interest to issue this rule with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it does not result in:

(a) An annual effect on the economy of $100 million or more;

(b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Disclosure

Copies of the petition, the notices, the Treasury decision, and all comments are available for public inspection during normal business hours at: ATF Reading Room, Room 6300, 650 Massachusetts Avenue NW, Washington, DC.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms.

Therefore, pursuant to the authority set forth in 27 U.S.C. 205(e), ATF is postponing the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) in T.D. ATF-306. The compliance date is December 4, 1991.

Signed: February 21, 1991.

Stephen E. Higgins,

Director.

Approved: February 27, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-5162 Filed 3-28-91; 1:48 pm]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1478-91]

Authority To Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends subpart Y, part 0, title 28 of the Code of Federal Regulations to increase the settlement and compromise authority delegated to the Assistant Attorneys General of the litigating divisions, and to incorporate existing Department of Justice guidelines requiring approval of certain settlements by the Deputy Assistant Attorney General.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: William A. Alleo, Special Counsel to the Assistant Attorney General, Civil Division, Department of Justice, Rm. 3140, 10th and Pennsylvania Avenue NW., Washington, DC 20530 (202-514-3886).

SUPPLEMENTARY INFORMATION: These amendments represent the first increase in the settlement and compromise authority delegated to the Assistant Attorneys General since 1961. During the intervening period, both the number of cases in litigation and the dollar value of those cases has increased substantially. This increase warrants a corresponding increase in settlement and compromise authority to further the efficient operation of the Department of Justice.

These amendments also incorporate existing Department of Justice guidelines requiring approval by the Deputy Attorney General of settlements prospectively limiting the discretion of an agency or department. These guidelines are designed to ensure that settlements and compromises of claims in litigation do not usurp the proper roles of the executive and judicial branches.

These amendments are exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509 and 510, 5 U.S.C. 301, and 8 U.S.C. 1103, part 0, subpart Y of title 28, Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 4241 et seq., 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. 91-513, sec. 501; E.O. 11919; E.O. 11267; E.O. 11300.

2. Section 0.160 is revised to read as follows:

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

(a) Subject to the limitations set forth in paragraph (c) of this section the Assistant Attorneys General of the litigating divisions are authorized, with respect to matters assigned to their division, to:

(1) Accept offers in compromise of claims on behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $2,000,000 or 15 percent of the original claim, whichever is greater.

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed $2,000,000; and

(3) Accept offers to compromise all nonmonetary cases.

(b) Subject to the limitations set forth in paragraph (c) of this section, the Assistant Attorney General, Tax Division, is authorized to accept offers in compromise of, or settle administratively, claims against the United States, regardless of the amount of the proposed settlement, in any case where the Joint Committee on Taxation has indicated it has no adverse criticism of the settlement.

(c) Any settlement, regardless of the amount of circumstances, must be referred to the Deputy Attorney General:

(1) When, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the monetary limits designated in paragraph (a) of this section.

(2) When the Assistant Attorney General is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by the agency or agencies involved, or for any other reason, the offer should receive the personal attention of the Deputy Attorney General.

(3) When a settlement converts into a mandatory duty the otherwise discretionary authority of an agency or department to revise, amend, or promulgate regulations.

(4) When a settlement commits a department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek a particular appropriation or budget authorization.

(5) When a settlement limits the discretion of a Secretary or agency administrator to make policy or managerial decisions committed to the Secretary or agency administrator by Congress or by the Constitution.

3. Section 0.164 is revised to read as follows:

§ 0.164 Civil claims which may be closed by Assistant Attorneys General.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to close (other than by compromise or by entry of judgment) civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed the monetary limits designated by § 0.160(a), except:

(a) When for any reason, the closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims the total gross amounts of which exceed the monetary limits designated by § 0.160(a).

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the agency or agencies involved, or for any other reason, the proposed closing should receive the personal attention of the Deputy Attorney General or the Attorney General.

4. Section 0.165 is revised to read as follows:

§ 0.165 Recommendations to the Deputy Attorney General that certain claims be closed.

In case the gross amount of the original claim asserted by the Government exceeds the monetary limits designated by § 0.160(a), or one of the exceptions enumerated in § 0.164 is involved, the Assistant Attorney General concerned shall, if in his opinion the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General for review and final action. Such report shall be in such form as the Deputy Attorney General may require.

§ 0.168 [Amended]

5. Section 0.168 is amended to add a new paragraph (d) as follows:

* * * * *

(d) Subject to the limitations set forth in § 0.160(c) and paragraph (a) of this section redelegations by the Assistant Attorneys General to United States Attorneys will include the authority to:

(1) Accept offers in compromise of claims on behalf of the United States:

(i) In all cases in which the original claim did not exceed $500,000; and,

(ii) In all cases in which the original claim was between $500,000 and $5,000,000, so long as the difference between the gross amount of the original claim and the proposed settlement does not exceed 15 percent of the original claim;

and,

(2) Accept offers in compromise of, or settle administratively, claims against the United States in all cases where the principal amount of the proposed settlement does not exceed $500,000.

Dated: February 26, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-5005 Filed 3-1-91; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

RIN 0970-AA58

Aid to Families With Dependent Children Program Income and Eligibility Verification System Targeting

AGENCY: Family Support Administration, HHS.

ACTION: Adoption of interim rule as a final rule.

SUMMARY: This rule adopts as final the interim rule published at 53 FR 52709 on December 29, 1988 which implemented changes made in the Aid to Families with Dependent Children (AFDC) program under title IV-A and the Adult Assistance programs under titles I, X, XIV, and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act by the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509). Included were provisions to:

—Rescind the requirement that a State must follow up on all information items received under the matching operations of its Income and Eligibility Verification System (IEVS).

—Permit States to allocate their resources to only follow up on those categories of information items which are cost-effective.

—Establish procedures for submitting State targeting plans for approval by the Secretary.

—Revise the timeliness standard for the completion of action from 30 to 45 days.

EFFECTIVE DATE: The interim rule was effective January 30, 1989. This final rule does not change the regulatory text of the interim rule.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Family Support Administration, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone 202-252-5116.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulations

On December 29, 1988, we published an interim rule with comments for the Aid to Families with Dependent Children and Adult Assistance programs (53 FR 52709 (1989)). This final rule responds to the comments we received.

Targeting of information items for Food Stamp recipients who do not receive AFDC or adult assistance is covered by an interim rule published February 2, 1988 by the Food and Nutrition Service (53 FR 2817 (1988)). Targeting of information items for Medicaid recipients for whom the Medicaid agency makes the Medicaid eligibility determination is covered by an interim final rule published March 2, 1989 by the Health Care Financing Administration (54 FR 8736 (1989)).

Discussion of Major Provisions; Responses to Comments

A discussion follows of the major provisions of Public Law 99-509 and the comments received after the publication of the interim rule. Twenty-five letters were received from States, agencies, and organizations. In addition, we also considered issues raised in the report "After Implementation: State Experience with the Income and Eligibility Verification System (IEVS)" issued by the American Public Welfare Association in April, 1989.

Some comments did not directly relate to the AFDC program, but offered suggestions for improving practices or procedures of other programs, such as SSA or IRS. These comments are not addressed in this rule, but have been passed on to the appropriate agency for their use.

Approval of State Follow-up Plan

The new statutory provision does not relieve States of the responsibility to request information for each individual; rather, it relieves States of the obligation to verify items of information pertinent to eligibility of all recipients. The interim rule revised § 205.56(a)(1) to allow States to choose a strategy of excluding from follow-up categories of information items which are not cost-effective.

States which intend to exclude items from follow-up must submit a State follow-up plan which describes the categories to be excluded and provides a reasonable justification explaining why follow-up would not be cost-effective. The State must include in its justification the effects of overpayments and underpayments in the Food Stamp and Medicaid programs in addition to AFDC cash assistance. A formal cost-benefit analysis is not required.

Comment: Five commenters objected to charging Quality Control (QC) errors originating from IEVS items properly excluded under an approved follow-up plan.

Response: The requirement to develop all IEVS leads as part of the QC program played an important part in the formulation of the interim rule. A formal cost-benefit analysis is not required—it is only necessary for the State to provide a reasonable justification that the proposed targeting is cost-effective. In drafting the interim rule, we considered requiring a formal analysis. However, the State would have had to prove cost-effectiveness through a detailed scientific study showing that the total cost of follow-up was greater than the savings from decreased payment deficiencies.

In the end, we were persuaded that IEVS targeting was a "self-correcting" process with Quality Control playing a vital role by providing important signals to the State on whether the allocation of staff time and other resources to IEVS is efficient. A dramatic rise in Quality Control errors for unreported income or resources signals that a State's targeting standards are too loosely drawn i.e., too many productive leads are ignored by the local agency. One consequence is that the State could face a possible loss of matching funds. On the other hand, a dramatic drop in resource errors coupled with a rise in other (non-IEVS related) errors may signal another type of problem—that the State has allocated too much staff time and resources to IEVS leads to the detriment of other promising oversight methods or corrective actions.

The linchpin to this approach is the availability of IEVS for Quality Control purposes, without which no reliable signals are transmitted to program managers. Additionally, it is important that the published error rate reflect all IEVS-related errors so that the Department can evaluate whether the State targeting plans have been approved correctly.

Comment: Several commenters complained that implementing different targeting rules for different programs wastes administrative resources. One recommended that the AFDC targeting rule should be extended to all Food Stamp households, another that the Food Stamp regulations should apply to the AFDC recipient who receives Food Stamps.

Response: A single targeting regulation published jointly by the three agencies may simplify State administration in principle, but may prove difficult in practice since it would require targeting plan approval by each of the three agencies. We chose instead to allow States additional flexibility by publishing separate (though similar) regulations. Of course, a State may develop a single targeting plan for each of its programs and request approval from all three agencies.

Comment: One commenter recommended that we waive the requirement for monitoring time frames for follow-up until a State FAMIS system can be certified.

Response: The requirement to monitor time frames was contained in the final rule implementing IEVS published February 28, 1986 (51 FR 7216). States have had ample time to implement an automated system since that time, if desired. We do not believe that any valid purpose would be served through further delay.

Comment: One commenter believes that the law precluded the Office of Family Assistance from having any approval authority over the precise parameters to be used in the State's targeting priorities.

Response: We do not agree with the comment. Section 1102 of the Social Security Act authorizes the Secretary to promulgate regulations to carry out his statutory responsibilities. Section 1137(a)(4) directs the Secretary to establish standardized procedures for targeting information for follow-up purposes to those uses which are most likely to be productive. We believe the requirements of this regulation are reasonable and necessary for carrying out this statutory directive.

Comment: One commenter suggested setting a tolerance for the IRS match—$10.00 per annum for dividends.

Response: We have no basis for concluding that establishing a nationwide tolerance for IRS information would be productive. We believe that States can best decide the most productive methods of screening IEVS leads and the level of follow-up necessary to reduce errors consistent with proven cost-effectiveness.

Follow-up of Information Items

Follow-up and Applicants

The provision of the law refers only to follow-up actions with respect to recipients. As a consequence, the interim rule did not change § 205.56(a)(1)(iii) which provides that IEVS-obtained information received during the application period must be used, to the extent possible, to make the initial determination of eligibility.

However, States may not delay a pending application solely to await IEVS information if other evidence establishes the individual's eligibility for assistance. Information requested on an applicant, but received after assistance is authorized, is considered as information regarding a recipient, and may therefore by excluded under an approved follow-up plan.

Comment: Four commenters recommended that States should be afforded the opportunity to justify targeting of IEVS applicant information.

Response: We reconsidered this issue in light of the comments received, but declined to change the current regulations. As we noted in the interim rule, the initial application interview is frequently the only in-depth interview with the family and the State's primary source of information on family income and resources. Responses are frequently inserted into the State automated case system and form the basis for later contacts with the family. Subsequent redeterminations generally focus on recent changes in the family

BEST COPY AVAILABLE

circumstances as recorded at the time of application. Consequently, it is required that every lead to possible unreported income or resources be investigated and resolved prior to authorization.

Timeframes for Action

Prior regulations at § 205.56(a)(1)(iv) required that the State either initiate a notice of case action or make an entry in the case record that no case action is necessary within 30 days of the receipt of an information item. Completion of action might be delayed beyond 30 days on up to 20 percent of the total information items received, but only if third-party verification has been timely requested and not received. In these cases, appropriate action must be completed no later than the date of the next redetermination or other case action.

The House Report accompanying Public Law 99-509 referred to this 30-day timeframe as too restrictive and suggested a 45-day standard for completion of follow-up. The interim rule revised § 205.56(a)(1)(iv) to allow a 45-day standard for follow-up, allowing completion of action to be delayed beyond this time limit on up to 20 percent of the information items selected for follow-up, but not beyond the date of the next case action or redetermination, whichever is earlier.

Comment: Six commenters recommended that the 45-day rule be revised. One commenter suggested that we allow States to follow SSA in timing follow-up actions to match redeterminations. Other commenters also suggested that we allow a 60 or 90 day follow-up period, allow each State to develop its own timeframe, or start the timeframe at the time the information is received by the local agency.

Response: We considered these comments carefully, but declined to change the requirement. The timeframe of 45 days is specifically mentioned in the conference report accompanying the legislation as the most reasonable for follow-up.

In addition, the small number of comments received shows a general acceptance that the 45-day time frame is not out of line with general administrative practices. We also note that the regulations of the Food and Nutrition Service currently allow for an independent waiver authority for operating procedures under the Food Stamp program. Nevertheless, to date FNS has received no waiver requests—an indication that the current time frame is practical.

We emphasize the States may adopt certain IEVS practices which would diminish any adverse impact on workload management. The requirement to match the entire caseload the IRS as soon as the data base is available was dropped after the first year. States may now match with the IRS at the times most favorable to their work schedules. Also, § 205.56(a)(1) now allows States to exclude from follow-up unemployment compensation information from the IRS and earnings information from SSA if followed up previously from another source.

Finally, States need not "re-invent the wheel" each year with lengthy investigations of information items which are similar to items resolved previously. As discussed in the preamble to the interim rule, follow-up is considered complete when the State annotates the case file that no case action is necessary because the information items substantially conform to the information in the case file. Further, States are allowed to compile lists or retain documentation of resolution of discrepancies from previous matches, curtailing duplicate development where possible.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. The effect of this regulatory change on the economy will be less than $100 million and will have an insignificant effect on costs of prices. Competition, employment, investment, productivity and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises. Therefore, it is not a major rule within the definition of Executive Order 12291.

Paperwork Reduction Act

The State follow-up plan requirement of this final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB has reviewed and approved these information collection requirements (OMB approval number 0970-0016).

Regulatory Flexibility Analysis

We certify that this action, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program 13.808, Public Assistance.)

List of Subjects in 45 CFR Part 205

Computer technology, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: August 5, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: December 31, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Accordingly, the interim rule amending 45 CFR part 205 which was published at 53 FR 52709 on December 29, 1988, is adopted as a final rule without changes.

[FR Doc. 91-4657 Filed 3-1-91; 8:45 am]
BILLING CODE 4150-04-M

---

45 CFR Parts 232, 234, and 235

RIN 0970-AA49

Cooperation in Identifying and Providing Information To Assist States in Pursuing Third Party Health Coverage

AGENCY: Family Support Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 12304 of the Consolidated Budget Reconciliation Act (COBRA) of 1985 which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist States in pursuing any third party who may be liable to pay for care and services available under State plans for medical assistance under title XIX, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary. The regulations are applicable to the AFDC program in all jurisdictions.

EFFECTIVE DATE: March 4, 1991. Except for § 232.48(g) which contains information collection requirements which are not effective until approved by OMB. When approval is received, HHS will publish the effective date.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Director, Division of Policy, OFA, Family Support Administration, 5th Floor, 370 L'Enfant Promenade, SW., Washington DC 20447, telephone (202) 252-5119.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulation

On May 24, 1989, a Notice of Proposed Rulemaking for the Aid to Families and Dependent Children program was published in the **Federal Register** (89 FR 22457-22462). It required each AFDC applicant or recipient to cooperate in identifying and providing information to assist States in pursuing any third party who may be liable to pay for care and services available under Medicaid.

Background

Section 12304 of COBRA, Public Law 99-272, amended section 402(a)(26) of title IV-A of the Social Security Act (the Act) by adding a new subparagraph (C) which requires each applicant or recipient to cooperate with the State in identifying and providing information to assist the States in pursuing any third party who may be liable to pay for the care and services available under the State's plan for medical assistance under title XIX of the Act. An individual may be exempted from this requirement if he or she is determined to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary which take into consideration the best interest of the individuals involved. The statute also provides that States shall not be subject to any financial penalty in the administration or enforcement of this provision as a result of any monitoring, quality control, or auditing requirements. According to the conference report, this provision is intended to exclude from the calculation of AFDC fiscal sanctions for assistance payments any errors resulting from the application of this policy. These statutory requirements are effective July 1, 1988.

Discussion of Regulation

These rules require, as a condition of eligibility for AFDC, each applicant and recipient to cooperate with the State in identifying, and in providing information to assist the State in pursuing, any third party who may be liable to pay for medical care and services. This is consistent with the Department's initiative to reduce medical costs to States and the Federal government and with the concept of Medicaid as the payor of last resort. These rules facilitate the pursuit of third-party resources and thereby assist in reducing Medicaid expenditures of States and the Federal government. When used in this provision, "third party" includes any individual, entity, or program that may be liable to pay all or part of the costs for medical care and services available under title XIX of the Act. The term may also include any employment-related or other individual or group health insurance available to or through the dependent child's parents.

We have added a new section 45 CFR 232.13 to reflect this new eligibility requirement. We have also added language to the current regulations at 45 CFR 235.70 to provide for the prompt notification by each applicant or recipient to the title XIX agency of all relevant information to assist the State title XIX agency in its pursuit of liable third parties. Once information on a third party provider has been furnished by the title IV-A agency to the title XIX agency, the title XIX agency is responsible for developing further information and pursuing the liable third party.

The statute provides that individuals who refuse to cooperate in identifying and providing information to assist the State in its pursuit of third-party liability for medical services must be removed from the assistance unit. The statute also provides that applicants and recipients may be exempted from this new provision if they are determined by the State agency to have good cause for refusing to cooperate in accordance with standards prescribed by the Secretary, which take into consideration the best interests of the individuals involved. This provision is similar in scope to current regulations at 45 CFR 232.12 which provide for such good cause determinations for refusal to cooperate in establishing paternity or obtaining support for an eligible child. Regulations at 45 CFR 232.11 on "Assignment of Rights to Support" currently include standards for making determinations of whether good cause exists for an individual's refusal to comply with child support requirements.

For the sake of consistency, we are requiring that these same good cause standards are applicable to the requirement under this provision. The existing regulations for refusing to cooperate at 45 CFR 232.40-232.49 and 235.70 have been amended, where appropriate, to extend current procedures and policies regarding good cause determinations for child support to this new eligibility requirement. Specifically, we have amended 45 CFR 232.40 (a) and (b); 232.42 (a) and (c); 232.44 (a) and (b); 232.45 (a), (b), and (c); 232.48(g), 232.49 (a), (c) and (d); 235.70 (a) and (b); and Appendix A to Part 232, to incorporate those standards for use in determining good cause claims for refusal to identify and provide information to assist in the State's pursuit of liable third parties concerning medical services.

These rules also require that the State must provide assistance to an eligible child in the form of protective payments for cases where the caretaker relative refuses to cooperate. This requirement is consistent with similar restrictions imposed in cases where individuals refused to cooperate in employment-related activities or in establishing paternity or obtaining support payments. In the latter case, Congress was concerned that continued receipt of assistance by the uncooperative adult on behalf of other family members would offset, to some degree, the penalty imposed by the State and might lead to a diversion of funds necessary for the well-being of the child.

The requirement to provide assistance in the form of protective payments has proven to be an effective method in meeting these concerns. Extension of this policy for the refusal of an individual to cooperate in identifying and providing information to assist States in pursuing third-party liability for medical services, unless the individual has good cause for refusing to cooperate, is similarly essential for the well-being of the child and is therefore justified under the authority of section 1102 of the Act, which enables the Secretary to make such rules as are necessary for the efficient administration of the program. Accordingly, we have amended 45 CFR 234.60(a) to provide that protective payments are necessary in cases where good cause is not established. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments may be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

Federal financial participation (FFP) is available for gathering third-party liability information as long as the activity is conducted as part of the administration of the title IV-A State plan. Such activities include making good cause determinations and providing assistance in the form of protective payment, as explained in proposed regulation 45 CFR 232.13(c). FFP is not available under title IV-A for activities outside the scope of the administration of the State plan for AFDC, such as for the cost of providing medical care and services.

We consider the information-gathering activities prescribed in this rule, such as interviewing clients and

contacting collateral sources, as part of the administration of the AFDC program. This is necessary because the statute now requires individual applicants or recipients to cooperate in identifying and providing information to assist States in pursuing third party liability for medical care "as a condition of eligibility for aid," unless an individual has good cause for refusing to cooperate. Moreover, the State plan must now require the IV–A agency to provide to the title XIX agency "all relevant information as prescribed by the State Medicaid agency" as set forth in regulations at 45 CFR 235.70(b)(2). Thus, the information-gathering requirement for third party liability is now part of the larger information-gathering requirement for the AFDC eligibility determination—these costs must therefore be claimed under title IV–A.

Current regulations at 45 CFR 304.23(a) deny FFP under title IV–D for activities related to the IV–A program. Only where the State IV–A agency fails to provide the title XIX agency with the information specified under 45 CFR 306.50(a) (this section will be renumbered as § 303.30 as of October 1, 1990), and the IV–D agency is able to collect the information and forward it to the title XIX agency pursuant to that section, is FFP available under the IV–D program. For example, there are situations where the AFDC applicant/recipient does not have information on third party liability which may be available through the absent parent and the IV–D agency is able to obtain the third party liability information during the provision of IV–D services. When this occurs, FFP is available under title IV–D for this activity.

This final rule continues to reflect the major provisions stated in the NPRM. We have, however, made one change to § 232.13(a) regarding the responsibility of the State IV–A Director to determine whether or not an individual has good cause for failing to cooperate in identifying and providing information to assist States in pursuing third parties liable for medical care. Although we received no comments on this provision, after further review we have decided that it is overly burdensome and unnecessarily limits State flexibility in administering the AFDC program. Accordingly, we have removed the words "Director of the State IV–A agency" from the section thereby allowing States the discretion to delegate responsibility for good cause determinations.

Additionally, in order to correspond to the original language of the Social Security Act, all references to "cooperate in the pursuit of liable third parties" have been changed to "cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical care and services." We have also clarified the point that the title XIX agency may not attempt to "collect third party information" for the purpose of pursuing third party liability when the collection of this information places an applicant or recipient at risk to physical or mental harm.

We have also incorporated several suggested changes of an editorial nature. One such modification was to change the NPRM references from "State and local agency" to "State or local agency." Another such change was referring to the "IV–D agency or title XIX agency" rather than the "IV–D agency or the Medicaid agency." We have also changed several references from the "Child Support Enforcement agency" to the "title IV–D agency."

Furthermore, in order to be consistent with the Health Care Financing Administration's regulations at 42 CFR 433.138(b), we have changed the language in § 232.13(a)(2) regarding the type of information that should be collected from the applicant or recipient.

With respect to protective payments, the references to work programs that preceded the Job Opportunities and Basic Skills Training (JOBS) Program have been removed and replaced with terminology compatible with JOBS.

Discussion of Comments

Comments were received from three State welfare agencies regarding the proposed rule on third party liability for medical services. These comments are discussed below:

Comment: A commenter questioned whether an AFDC recipient, identifying an absent parent and knowing his whereabouts, should be denied assistance if she doesn't provide information about the absent parent's health insurance coverage. Additionally, if the recipient is unwilling to contact the absent parent, must the IV–A agency attempt to secure health coverage information from him?

Response: Sections 402(a)(26) (B) and (C) of the Social Security Act require all applicants and recipients to cooperate with the State agency in identifying absent parents, unless the individual can show good cause for refusing to cooperate. This includes providing all known information about the absent parent's resources, including health insurance information. The primary responsibility for collecting this information rests with the State agency. Moreover, the State agency has flexibility in establishing the method of collection—i.e., the State agency determines, on a case-by-case basis, when it is practical for its workers to go directly to the absent parent for the required information or when it is prudent to have the applicant/recipient contact the absent parent. An applicant/recipient who fails to cooperate with the State agency in collecting absent parent information must be sanctioned if such failure is without good cause.

When collecting third party health insurance information, State agency staff must determine if the applicant/recipient has access to information about the absent parent's health insurance and whether contacting this parent can be accomplished without fear for herself or the children's safety. It would be inappropriate to sanction an individual for failure to contact the absent parent if such a contact is physically or mentally threatening to the individual or could be obtained more efficiently by State agency staff.

Comment: One commenter noted that for already overburdened caseworkers, the requirement to collect third party health coverage information from applicants and recipients diminishes the caseworkers' ability to process the case "error free."

Response: The collection of such information is required by statute and should ultimately save time and money for the State.

Comment: A commenter requested clarification as to whether an AFDC applicant or recipient would be ineligible for assistance in the month that she/he refuses or fails to cooperate with the State.

Response: An applicant or recipient is ineligible for assistance for the month he/she is determined to have failed to cooperate without good cause. However, if the State plan, in accordance with the Federal regulations at 45 CFR 233.10(b)(3), includes the provision which permits a payment to be made to an individual for the entire month if such individual was eligible on the date payment was made, ineligibility may begin the month following the month of the determination for failure to cooperate without good cause.

Comment: One commenter asked that if the State, in meeting the requirement to provide the applicant or recipient with a two-part good cause notice, would be permitted to utilize a one-part notice that contains all the elements of the two-part notice.

Response: A one-part notice is acceptable as long as it contains all the elements of the two-part good cause notice. (See 45 CFR 232.40(b)(3))

Comment: A commenter expressed concern that most IV–D and IV–A agencies have not accepted the fact that title XIX issues are now their responsibility according to statute and regulation and suggested that coordination between the agencies be encouraged.

Response: Strengthening coordination between IV–D and IV–A agencies has been a priority for the Family Support Administration for some time. We believe that this regulation will enhance the relationship and encourage interplay between the two agencies. It is in the best interest of the title IV–D, IV–A and XIX programs to ensure that any information gathered on third party liability during the eligibility interview be forwarded to the IV–D agency to avoid any duplication of effort. We will continue to promote increased interaction between IV–A and IV–D agencies.

Comment: One commenter stated that this regulation will provide incentive to AFDC recipients to cooperate in identifying liable third parties, because no meaningful sanction has been available to States in the past. Another commenter suggested that the definition of "failure to cooperate" be expanded to include refusal to utilize all available third parties. For example, an absent parent could fulfill his legal obligation to provide health coverage by use of a Health Maintenance Organization (HMO). If the HMO was within reasonable distance from a recipient's home, refusal to utilize the HMO should be construed as "failure to cooperate."

Response: Section 402(a)(26)(C) of the Social Security Act requires, as a condition of eligibility for AFDC, that each applicant or recipient must "* * * cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under title XIX * * *." Because this section is limited to "identifying" and "providing" information on third party health coverage, we do not have the authority to expand the statutory provision to include requirements on the utilization of specific health care plans, such as HMOs.

We would like to point out that the Health Care Financing Administration has already addressed this comment in a final regulation entitled "Medicaid Programs; State Plan Requirements and Other Provisions Relating to State Third Party Liability Programs." This regulation was published in the **Federal Register** on January 16, 1990 (see Vol. 55, No. 10, page 1427).

Regulatory Procedures

Executive Order 12291

These rules do not meet any of the criteria specified in Executive Order 12291 for a major regulation because the cost of implementation is expected to be insignificant.

Paperwork Reduction Act

Public reporting burden for the collection of information requirements at 45 CFR 232.48 is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection requirements of this rule were subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). A notice will be published in the **Federal Register** when OMB approves this information collection requirement.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it primarily affects State governments and individuals. Thus, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Catalogue of Federal Domestic Assistance Program 13.808, Public Assistance

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Part 234

Grant programs—social programs, Health care, Public assistance programs, Rent subsidies.

45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: August 21, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: January 24, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV–A OF THE SOCIAL SECURITY ACT

1. The authority citation for part 232 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Part 232 is amended by adding a new § 232.13 to read as follows:

§ 232.13 Cooperation in identifying and providing information to assist the State in pursuing third party liability for medical services.

(a) The State plan must provide that as a condition of eligibility, each applicant for or recipient of AFDC will be required to cooperate (unless good cause for refusing to do so is determined to exist in accordance with §§ 232.40 through 232.49) with the State in:

(1) Identifying any third party who may be liable for care and services available under the State's title XIX State plan in behalf of the applicant or recipient or in behalf of any other family member (including parents and siblings as required under § 206.10(a)(1)(vii) (A) and (B)) for whom the applicant or recipient is applying for or receiving assistance; and

(2) Providing relevant information, consistent with rules issued by the Health Care Financing Administration at 42 CFR 433.138(b), to assist the State in pursuing any such potentially liable third party resources. Such information may include, but is not limited to, the name of the health insurance policy holder, his or her relationship to the applicant or recipient, the social security number of the policy holder, and the name and address of the insurance company and policy number.

(b) The plan shall provide that if the applicant or recipient fails to cooperate as required by this section (unless good cause is determined to exist), the State or local agency shall:

(1) Deny assistance to the applicant or recipient without regard to other eligibility factors; and

(2) Provide assistance to the eligible child in the form of protective payments as described in § 234.60 of this chapter. Such assistance will be determined without regard to the needs of the applicant or recipient.

(c) Federal financial participation (FFP) is available for title IV–A

administrative costs associated with identifying and providing information about a potentially liable third party as part of the eligibility determination for the AFDC program. FFP is also available for IV–A administrative costs associated with determining good cause for failure to cooperate, and providing assistance in the form of protective payments.

3. Section 232.40 is amended by revising paragraphs (a), (b)(1), (b)(2)(i)(A), (B), and (C), and (b)(2)(ii) (C), (E) and (F) to read as follows:

§ 232.40 Claiming good cause for refusing to cooperate.

(a) *Opportunity to claim good cause.* The plan shall provide that an applicant for, or recipient of, AFDC will have the opportunity to claim good cause for refusing to cooperate as required by § 232.12 or § 232.13.

(b) * * *

(1) The plan shall provide that: (i) Prior to requiring cooperation under § 232.12 or § 232.13, the State or local agency will notify the applicant or recipient of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination;

(ii) The notice will be in writing, with a copy furnished to the applicant or recipient; and

(iii) The applicant or recipient and the caseworker will acknowledge that the applicant or recipient received the notice by signing and dating a copy of the notice, which will be placed in the case record.

(2) * * *

(i) * * *

(A) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity, securing support, and identifying and providing information to assist the State in pursuing third party liability for medical services;

(B) Advise the applicant or recipient that by law, cooperation in establishing paternity, securing support, and pursuing liability for medical services is a condition of eligibility for AFDC;

(C) Advise the applicant or recipient of the sanctions provided by §§ 232.12 and 232.13 for refusal to cooperate without good cause;

* * * * *

(ii) * * *

(C) Inform the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation, if necessary, the State or local agency will determine whether cooperation would be against the best interests of the child for whom support or third party liability for medical services would be sought;

* * * * *

(E) Inform the applicant or recipient that the State title IV–D agency and the State title XIX agency may review the State or local agency's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause; and

(F) As applicable (see § 232.49), inform the applicant or recipient that either: The State title IV–D agency will not attempt to establish paternity and collect support and the State title XIX agency may not attempt to collect third party information or pursue third parties liable for medical services in those cases where the applicant or recipient is determined to have good cause for refusing to cooperate; or the State title IV–D agency may attempt to establish paternity and collect support and the State title XIX agency may pursue liable third parties in those cases where the State or local agency determines that this can be done without risk to the applicant or recipient if done without their participation.

* * * * *

4. Section 232.41 is amended by revising paragraph (d)(2) to read as follows:

§ 232.41 Determination of good cause for refusal to cooperate.

* * * * *

(d) * * *

(2) Continued refusal to cooperate will result in imposition of the sanctions provided in § 232.12 or § 232.13.

5. Section 232.42 is amended by revising the introductory text to paragraphs (a) and (a)(1), paragraphs (a)(2) and (c)(5) to read as follows:

§ 232.42 Good cause circumstances.

(a) Circumstances under which cooperation may be "against the best interests of the child". The plan shall provide that the State or local agency will determine that cooperation in establishing paternity, securing support or identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical services available under the State's title XIX plan is against the best interests of the child only if:

(1) The applicant's or recipient's cooperation in establishing paternity, securing support, or identifying and providing information to assist the State in pursuing third parties potentially liable for medical services is reasonably anticipated to result in:

* * * * *

(2) At least one of the following circumstances exists, and the State or local agency believes that because of the existence of that circumstance proceeding to establish paternity, secure support, or to identify and provide information to assist States in pursuing third party liability for medical services would be detrimental to the child for whom support would be sought.

* * * * *

(c) * * *

(5) The extent of involvement of the child in the paternity establishment, support enforcement activity or collection of information to assist the State in the pursuit of third parties to be undertaken.

6. Section 232.44 is revised to read as follows:

§ 232.44 Participation by the State IV–D or Title XIX Agency.

The plan shall provide that:

(a) Prior to making a final determination of good cause for refusing to cooperate, the State or local agency will:

(1) Afford the IV–D agency or the title XIX agency, as appropriate, the opportunity to review and comment on the findings and basis for the proposed determination; and

(2) Consider any recommendation from the IV–D agency or the title XIX agency, as appropriate.

(b) The State or local agency will give the IV–D agency or the title XIX agency, as appropriate, the opportunity to participate in any hearing (under § 205.10 of this chapter) that results from an applicant's or recipient's appeal of any agency action under §§ 232.40 through 232.49.

7. Section 232.45 is revised to read as follows:

§ 232.45 Notice to the IV–D or Title XIX Agency.

The plan shall provide that:

(a) If the notice, required by § 235.70 of this chapter, has previously been provided to the IV–D agency or title XIX agency, as appropriate, the State or local agency will promptly report to the IV–D agency or title XIX agency, as appropriate, that good cause has been claimed;

(b) The State or local agency will promptly report to the IV–D agency or title XIX agency, as appropriate, all cases in which it has determined that there is good cause for refusal to cooperate and, if applicable, its determination whether or not child support enforcement or collection of information identified and provided to assist a State in the pursuit of third parties potentially liable for medical services may proceed without the participation of the caretaker relative; and

(c) The State or local agency will promptly report to the IV–D agency or title XIX agency, as appropriate, all cases in which it has determined that there is not good cause for refusal to cooperate.

8. Section 232.47 is amended by revising paragraph (b) to read as follows:

§ 232.47 Periodic review of good cause determination.

* * * * *

(b) If it determines that circumstances have changed such that good cause no longer exists, it will rescind its findings and proceed to enforce the requirements of § 232.12 or § 232.13 of this chapter.

9. Section 232.48 is amended by revising the introductory text of the section and paragraph (g) to read as follows:

§ 232.48 Record keeping in good cause.

The plan shall provide that the State will maintain separate records of the good cause claims under § 232.12 and the good cause claims under § 232.13 and will make it possible to submit to the Department, upon request, data concerning:

* * * * *

(g) The number of cases in which the applicant or recipient was found to have good cause for refusing to cooperate but there was a determination pursuant to § 232.49 that child support enforcement or the collection of information to assist the State in the pursuit of third parties potentially liable for medical services, may proceed without the participation of the caretaker relative; and

* * * * *

10. Section 232.49 is amended by revising paragraphs (a), (c) and (d) to read as follows:

§ 232.49 Enforcement without the caretaker's cooperation.

* * * * *

(a) If the State or local agency makes a determination that good cause exists, it will also make a determination of whether or not child support enforcement or the collection of information identified and provided to assist the State in the pursuit of any third party liable for medical services could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities did not involve their participation;

* * * * *

(c) If the IV–A agency excuses noncooperation but determines that the IV–D agency or the title XIX agency may proceed to establish paternity, enforce support, or collect information to assist the State in pursuit of liable third parties, it will notify the applicant or recipient to enable such individual to withdraw his or her application for assistance or have the case closed; and

(d) Prior to making this determination under this paragraph, the State or local agency will afford the IV–D agency or the title XIX agency an opportunity to review and comment on the findings and basis for the proposed determination and consider any recommendation from the IV–D agency or the title XIX agency.

11. In part 232, appendix A is revised to read as follows:

Appendix A to Part 232—Model Two-Part Good Cause Notice

This suggested two-part notice format meets the notice requirements of § 232.40(b)(2). The first notice should be provided prior to requiring the applicant's or recipient's cooperation. The second notice should be primarily provided if the applicant or recipient so requests or following a claim of good cause. Receipt of the notice will be acknowledged by the applicant's or recipient's and the worker's signature. The signed copy should be placed in the AFDC case record with one copy retained by the applicant or recipient.

Before being used by a State, this model should be adapted by substituting the appropriate agencies' names.

Notice of Requirement To Cooperate and Right To Claim Good Cause for Refusal To Cooperate in Identifying and Providing Information To Assist States in Pursuit of Third Parties Liable for Medical Services, and in Child Support Enforcement.

Benefits of Child Support Enforcement

Your cooperation in the child support enforcement process may be of value to you and your child because it might result in the following benefits:

- Finding the absent parent;
- Legally establishing your child's paternity;
- The possibility that support payments might be higher than your welfare grant; and
- The possibility that you and your children may obtain rights to future social security, veterans, or other government benefits.

What is Meant by Cooperation?

The law requires you to cooperate with the welfare, child support and Medicaid agencies to get any support (financial or medical) owed to you and any of the children for whom you want AFDC, unless you have good cause for not cooperating.

In cooperating with the welfare, child support and Medicaid agencies, you may be asked to do one or more of the following things:

- Name the parent of any child applying for or receiving AFDC, and give information you have to help find the parents;
- Help determine legally who the father is if your child was born out of wedlock;
- Give help to obtain money owed to you or the children receiving AFDC;
- Pay the State any money which is given directly to you by the absent parent (you will continue to get your full AFDC grant from the State); and
- Identify and provide information to assist the State in the pursuit of any third party who may be liable to pay for medical care and services.

You may be required to come to the welfare office, child support office, court or the State Medicaid agency to sign papers or give necessary information.

What is Meant by Good Cause?

You may have good cause not to cooperate in the State's efforts to collect child support and to provide information to assist the State in pursuing third party liability. You may be excused from cooperating if you believe that cooperation would not be in the best interest of your child, and if you can provide evidence to support this claim.

If You Do Not Cooperate and You Do Not Have Good Cause

- You will be ineligible for AFDC.
- Your children will still be eligible for AFDC for their own needs. Your children's benefits will go to another person, called a "protective payee."

How and When You May Claim Good Cause

- If you want to claim good cause, you must tell a worker that you think that you have good cause. You can do this at any time you believe you have good cause not to cooperate.
- If you claim "good cause" you must be given another notice. This second notice will explain the circumstances under which the Welfare Agency may find good cause, and the type of evidence or other information the Welfare Agency needs to decide your claim. You may also ask for this second notice to help you decide whether or not to claim good cause.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

(Signature of applicant/recipient)

(Date)

I have provided the applicant/recipient with a copy of this notice.

(Signature of worker)

(Date)

Second Notice of Right To Claim Good Cause for Refusal To Cooperate in Identifying and Providing Information to Assist the State in Pursuit of Third Parties Liable for Medical Services, and in Child Support Enforcement

You may claim to have good cause for refusing to cooperate if you believe that such cooperation would not be in the best interests of your child. The following are circumstances under which the Welfare Agency may determine that you have good cause for refusing to cooperate:

• Cooperation is anticipated to result in serious physical or emotional harm to the child;

• Cooperation is anticipated to result in physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately;

• The child was born after forcible rape or incest;

• Court proceedings are going on for adoption of the child; or

• You are working with an agency helping you to decide whether to place the child for adoption.

Proving Good Cause

It is your responsibility to:

• Provide the Welfare Agency with the evidence needed to determine whether you have good cause for refusing to cooperate (If your reason for claiming good cause is your fear of physical harm and it is impossible to obtain evidence, the Welfare Agency may still be able to make a good cause determination after an investigation of your claim).

• Give the necessary evidence to the agency within 20 days after claiming good cause. The Welfare Agency will give you more time only if it determines that more than 20 days are required because of the difficulty in obtaining the evidence.

The Welfare Agency may:

• Decide your claim based on the evidence which you give to the agency, or

• Decide to conduct an investigation to further verify your claim. If the Welfare Agency decides an investigation is needed, you may be required to give information, such as the absent parent's name and address, to help the investigation. The agency will not contact the absent parent without first telling you.

Note: If you are an applicant for assistance, you will not receive your share of the grant until you have given the agency the evidence needed to support your claim, and, if requested, the information needed to permit an investigation of your claim.

Examples of Acceptable Evidence

The following are examples of acceptable kinds of evidence the Welfare Agency can use in determining if good cause exists.

If you need help in getting a copy of any of the documents, ask the Welfare Agency. The Welfare Agency will give you reasonable assistance which is needed to help you obtain the necessary documents to support your claim.

• Birth certificates, or medical or law enforcement records, which indicate that the child was conceived as the result of incest or forcible rape;

• Court documents or other records which indicate that legal proceedings for adoption are pending in court;

• Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the alleged or absent parent might inflict physical or emotional harm on you or the child;

• Medical records which indicate emotional health history and present health status of you or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of you or the child;

• A written statement from a public or private agency confirming that you are being assisted in resolving the issue of whether to keep or give up the child for adoption; and

• Sworn statements from individuals, including friends, neighbors, clergymen, social workers, and medical professionals who might have knowledge of the circumstances providing the basis of your good cause claim.

Child Support Agency and Medicaid Agency Participation and Enforcement

The Child Support Enforcement Agency or the Medicaid Agency may review the welfare agency's findings and the basis for a good cause determination in your case. If you request a hearing regarding this issue of good cause for refusing to cooperate, the Child Support Enforcement Agency or the Medicaid Agency may participate in that hearing.

The Notice must include one of the following statements, as applicable depending on the State plan option chosen. See § 232.49.

Option 1. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency may attempt to establish paternity or collect support and the State Medicaid Agency may attempt to collect third party information and pursue third parties potentially liable for medical services only if the welfare agency determines that this can be done without risk to you or your child. This will not be done without first telling you.

Option 2. If you are found to have good cause for not cooperating, the Child Support Enforcement Agency will not attempt to establish paternity or collect support and, as appropriate, the State Medicaid Agency may not pursue third parties potentially liable for medical services.

I have read this notice concerning my right to claim good cause for refusing to cooperate.

_____

(Signature of applicant/recipient)

_____

(Date)

I have provided the applicant/recipient with a copy of this notice.

_____

(Signature of worker)

_____

(Date)

Part 234 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

1. The authority citation for part 234 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 234.60 is amended by revising paragraphs (a)(1) and (a)(13) to read as follows:

§ 234.60 Protective, vendor and two-party payments for dependent children.

(a) * * * (1) If a State plan for AFDC under title IV–A of the Social Security Act provides for protective, vendor and two-party payments for cases other than failure to participate in the Job Opportunities and Basic Skills Training (JOBS) Program under § 250.34(d), or failure by the caretaker relative to meet the eligibility requirements of § 232.11, 232.12, or 232.13 of this chapter. It must meet the requirements in paragraphs (a)(2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of recipients as provided in paragraph (a)(14) of this section.

• • • • •

(13) For cases in which a caretaker relative fails to meet the eligibility requirements of §§ 232.11, 232.12, or 232.13 of this chapter by failing to assign rights to support, cooperate in determining paternity, securing support, or identifying and providing information to assist the State in pursuing third party liability for medical services, the State plan must provide that only the requirements of paragraphs (a)(7) and (9)(ii) of this section will be applicable. For such cases, the entire amount of the assistance payment will be in the form of protective or vendor payments. These protective or vendor payments will be terminated, with return to money payment status, only upon compliance by the caretaker relative with the eligibility requirements of §§ 232.11, 232.12, and 232.13 of this chapter. However, if after making all reasonable efforts, the State agency is unable to locate an appropriate individual to whom protective payments can be made, the State may continue to make payments on behalf of the remaining members of the assistance unit to the sanctioned caretaker relative.

• • • • •

Part 235 of chapter II, title 45, Code of Federal Regulations is amended as set forth below:

PART 235—ADMINISTRATION OF FINANCIAL PROGRAMS

1. The authority citation for part 235 is revised to read as set forth below, and the authority citations following any section in the part are removed.

Authority: Secs. 2, 3, 402, 403, 1002, 1003, 1102, 1402, 1403, 1602, and 1603, Social Security Act as amended (42 U.S.C. 302, 303, 602, 603, 1302, 1203, 1302, and Part XXIII of Pub. L. 97–35, 1352, 1353, 1382, and 1383).

2. Section 235.70 is amended by revising the section heading and introductory text of paragraph (a) and paragraph (b)(2) to read as follows:

§ 235.70 Prompt notice to child support or Medicaid agency.

(a) A State plan under title IV–A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act and to the State title XIX agency, as appropriate, whenever:

• • • • •

(b) * * *

(2) *Prompt notice* means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. Prompt notice must also include all relevant information as prescribed by the State medicaid agency for the pursuit of liable third parties. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV–A, IV–D and XIX agencies may agree to provide notice immediately upon the filing of an application for assistance.

• • • • •

[FR Doc. 91–4658 Filed 3–1–91; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–567; RM–7468]

Radio Broadcasting Services; Marquette, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Marquette, Michigan, as that community's third FM broadcast service in response to a petition filed by Iron Mountain-Kingsford Broadcasting Company. *See* 55 FR 49400, November 28, 1990. Canadian concurrence has been obtained for this allotment at coordinates 46–33–00 and 87–23–36.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 231A at Marquette will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–567, adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 231A at Marquette.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–4954 Filed 3–1–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–463; RM–7371]

Radio Broadcasting Services; Coleraine, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241C1 to Coleraine, Minnesota, as that community's first FM broadcast station, in response to a petition filed by Lew Latto. *See* 55 FR 45621, October 30, 1990. There is a site restriction 8.6 kilometers (5.4 miles) north of the community. Canadian concurrence has been obtained for this allotment at coordinates 47–21–24 and 93–25–47.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 241C1 at Coleraine will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–463, adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 241C1, Coleraine.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–4957 Filed 3–1–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–565; RM–7536]

Radio Broadcasting Services; Deer River, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C1 for Channel 288A at Deer River, Minnesota, in response to a petition filed by Radio Ingstad Minnesota, Inc. See 55 FR 49542, November 29, 1990. We shall also modify the construction permit for Station KXGP, Channel 288A, Deer River, to specify operation on Channel 288C1. Canadian concurrence has been obtained for this allotment at coordinates 47–23–00 and 93–24–10.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–565,

adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 288A and adding Channel 288C1 at Deer River.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4955 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-528; RM-7496]

Radio Broadcasting Services; McLain, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to McLain, Mississippi, as that community's first FM broadcast service in response to a petition filed by Community Broadcasting, Inc. *See* 55 FR 47494, November 14, 1990. There is a site restriction 11.7 kilometers (7.3 miles) southeast of the community to avoid a short spacing to vacant but applied for Channel 243A, Richton, Mississippi. The coordinates for Channel 245A are 31-03-54 and 88-43-01.

EFFECTIVE DATE: April 12, 1991; the window period for filing applications for Channel 245A at McLain will open on April 15, 1991, and close on May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-528, adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 245A, McLain.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4956 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-538; RM-7508]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 233C3 for Channel 233A at Tomah, Wisconsin, in response to a petition filed by Jamie Lee Westpfahl. *See* 55 FR 48259, November 20, 1990. We shall also modify the construction permit for Station WZFR, Channel 233A, Tomah, to specify operation on Channel 233C3. The coordinates for Channel 233C3 are 43-57-19 and 90-19-20, with a site restriction 15 kilometers (9.3 miles) east of the community to avoid short spacings to the construction permit for Station WPRE(FM), Channel 232C2, Prairie du Chien, Wisconsin, and the construction permit and modification application for Station KKOO(FM), Channel 234A, Caledonia, Minnesota.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-538, adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW. suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 233A and adding Channel 233C3 at Tomah.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4958 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 42
Monday, March 4, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-34-AD]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC-8, DC-9 (includes MD-80 Series), and DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing and McDonnell Douglas airplanes, which currently requires certain operational and equipment changes and design modifications to be accomplished to maximize cargo fire detection and protection. The existing rule (AD 89-18-12 R1) was based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features did not provide adequate protection from a fire that could occur in main deck cargo areas, and could result in the loss of an airplane if an uncontrolled cargo fire occurred. This proposed action would revise certain portions of the existing rule and allow additional time to comply with certain other requirements. This proposal is prompted by additional information concerning firefighting concepts which has been received since issuance of the original AD, and by reports from operators concerning the severe economic impact caused by implementing the existing AD within the required compliance period.

DATES: Comments concerning the proposed changes to AD 89-18-12 R1, as stated in the proposed rule, must be received no later than March 25, 1991. Comments concerning the remainder of the proposed rule must be received no later than May 25, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-34-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Letcher, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2670; or Mr. Kevin Kuniyoshi, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-130L, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing dates for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Two separate closing dates for comments have been established. The first closing date, which is 30 days after issuance of this Notice, covers only comments related to those changes to AD 89-18-12 R1 as stated in the proposed rule. This short comment period has been established so that relief for affected operators may be possible from the May 3, 1991, compliance deadline of AD 89-18-12 R1. A longer comment period is being provided to allow commenters time to prepare the more extensive comments anticipated concerning the balance of the proposal.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-34-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On August 10, 1989, the FAA issued AD 89-18-12, Amendment 39-6301 (54 FR 34762, August 21, 1989), applicable to certain Boeing and McDonnell Douglas airplanes, to require (1) modification of all Class B cargo compartments to Class C cargo compartments, or (2) the use of flame penetration-resistant cargo containers equipped with smoke detection and fire extinguishing systems, or (3) use of individuals trained to fight cargo fires and certain modifications to Class B cargo compartments and associated systems. That action was prompted by an FAA evaluation of the existing fire protection features of "Combi" airplanes following the loss of a Boeing Model 747-200 "Combi" that developed a major fire in the main deck cargo compartment. That AD was issued to prevent the occurrence of an uncontrolled cargo fire that could cause systems and structural damage, leading to loss of the airplane. The FAA later issued AD 89-18-12 R1, Amendment 39-6557 (55 FR 11163, March 27, 1990), to revise the effective date of the original AD in order to allow additional time necessary to develop the design changes and firefighter training programs required by the original AD.

Since issuance of AD 89-18-12 R1, the FAA has received additional information from manufacturers, airlines, and industry that indicates that paragraphs A. and B. of the AD should be re-evaluated. More importantly, preliminary information from testing performed at the FAA Technical Center indicates that in some cases, actively fighting a fire in a cargo container may be less effective than leaving it alone

until the airplane has landed. This information, which was not available prior to the issuance of AD 89-18-12 R1, has a significant impact on the definition of equipment, procedures, and training needed to effectively fight cargo fires. Training guidelines that take this new information into account could not be provided by the FAA in time for operators to meet the May 3, 1991, compliance deadline of AD 89-18-12 R1 for implementation of the requirement for dedicated firefighters. Certain major design modifications required by paragraph B. of AD 89-18-12 R1 may also be significantly impacted by a change in firefighting procedures.

In addition to the difficulties associated with defining equipment, procedures, and training for implementation of dedicated firefighters by May 3, 1991, recent information from operators indicates that the economic impact of certain portions of AD 89-18-12 R1 may be greater than originally estimated. In particular, the implementation of the requirement for 30-minute walk-through inspections on wide-body "Combis" prior to the availability of a thermal monitoring system could necessitate the hiring of additional personnel, who would no longer be required upon installation of a thermal monitoring system when it becomes available. Thermal monitoring systems for use on narrow-body "Combis" that undergo frequent passenger/cargo mix reconfigurations are expensive and difficult to design. For operators of these airplanes, authorization to use 30-minute walk-throughs in lieu of thermal monitoring systems is more feasible economically, but is not provided for in AD 89-18-12 R1.

In light of the uncertainty concerning firefighting procedures, the harsh economic impact of implementing certain portions of AD 89-18-12 R1 within the prescribed compliance period may not be justified. For this reason, more time is appropriate to allow for the re-evaluation of firefighting equipment, procedures, and training, and the possible re-evaluation of some of the modifications currently required by paragraph B. of AD 89-18-12 R1. In addition, this delay will allow for FAA coordination with the Joint Aviation Authorities, who are currently considering similar rulemaking.

In light of this new information and on-going re-evaluation, the FAA is proposing a new AD which would supersede AD 89-18-12 R1 with a new AD that would (1) delay the requirement for implementation of the "dedicated" firefighter and associated approved firefighting procedures and training for two years; (2) delay the requirement for implementation of the 30-minute inspections for two years; and (3) allow relief from the requirement to install a thermal monitoring system, provided that 30-minute inspections are continued. This proposed rule essentially accomplishes these changes by moving the requirements for dedicated firefighters and 30-minute inspections to paragraph B., which must be complied with by May 3, 1993. These requirements were previously located in paragraph A. of AD 89-18-12 R1, and therefore had to be accomplished by May 3, 1991.

Comments are requested on all portions of the proposed rule. In addition, comments are requested on the requirements relating to firefighting equipment, procedures, and training. The request for comments is intended to encourage a broad scope of comments concerning the overall content of the proposed rule. Of particular interest are comments concerning cargo compartment liners, the use of fire resistant blankets or igloos in lieu of liners, remote compartment monitoring systems (thermal, video, improved smoke detection), fire knock-down systems, halon substitutes, extinguishant quantities, ventilation control in the cargo compartment, illumination requirements for firefighting, protective garments, firefighting equipment, and two-way communications between the firefighter and cockpit.

The FAA will also consider comments concerning the appropriateness of imposing different "levels" of requirements based on airplane size and other meaningful characteristics. In addition, comments concerning the cost and time required for research, development, and installation of systems required by the proposed rule or alternate proposals are invited. All comments should be specific, provide justification, and, where possible, offer alternatives.

Comments are requested in two phases. Comments concerning the proposed rule, as it differs from AD 89-18-12 R1, are required within a relatively short time frame to ensure issuance of a final rule for this action prior to the current May 3, 1991, compliance deadline of AD 89-18-12 R1. A longer period is allowed for comments concerning the remainder of the proposed rule, which is essentially unchanged from AD 89-18-12 R1, to allow the public adequate time to prepare comments, which are expected to be more extensive. Based on these later comments, additional rulemaking may be considered.

By using this two-phase process, the FAA intends that safety be assured in the interim by the fact that certain of the requirements of AD 89-18-12 R1, which are scheduled to go into effect as of May 3, 1991, will be effective as of that date, without interruption; the FAA has determined that those requirements are adequate to assure safety in the interim period.

There are approximately 278 Boeing Model 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 124 McDonnell Douglas Model DC-8, DC-9, and DC-10 series airplanes, of U.S. registry have been certified to operate with a Class B main deck cargo compartment. Many of these airplanes have been permanently operated in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes, presently operated by U.S. operators in the mixed cargo/passenger configuration, would be affected by this proposal.

The design alternative selected by an operator will have a significant impact on the cost of complying with this proposed AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph B.1. of this proposal. A conservative cost estimate for such a modification, based upon costs of required materials, labor, and testing, is $1,000,000 per airplane. Based on these figures, the total cost of the AD on U.S. operators is estimated to be $40,000,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6557 (55 FR 11163, March 27, 1990), AD 89-18-12 R1, with the following new airworthiness directive:

Boeing and McDonnell Douglas: Applies to Boeing Models 707, 727, 737, 747, and 757 series airplanes and McDonnell Douglas Models DC-8, DC-9, (includes MD-80 series), and DC-10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by FAR 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

A. Within one year after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes):

1. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

2. Incorporate the following systems and equipment:

a. Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

b. Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C-116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

c. Provide a minimum of 46 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

d. Provide at least two Underwriters Laboratories (UL)2A (2-1/2 gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

e. Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

f. Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

Note: In accordance with paragraph C., below, if the requirements of paragraph B.1. or B.2. of this AD are accomplished within one year after the effective date of AD 89-18-12 RI, compliance with paragraph A. of this AD is unnecessary.

B. Within three years after May 3, 1990 (the effective date of Amendment 39-6557, AD 89-18-12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph B.1., B.2., or B.3., below:

1. Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25-60), 25.857(c) and 25.858 (Amdt. 25-54).

2. Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, appendix F, part III, (Amdt. 25-60)."

3. In addition to the requirements of paragraph A.2., above, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes), to include the following:

a. Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT:

(1) For airplanes having compartments of 200 square feet or less of cargo/baggage floor area, a minimum of one individual trained to fight cargo fires must be provided. (This individual is in addition to the crew members required by the operational rules.)

(2) Prior to flight, a flight deck crewmember or the individual required by the previous paragraph B.3.a.(1) must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured.

(3) For airplanes having compartments with more than 200 square feet of cargo/baggage floor area, provide an additional person trained to fight cargo fires to work with the individual required by the previous paragraph B.3.a.(1). (This individual may be a required flight attendant.)

b. Provide a cargo compartment fire "knock down" extinguishing system that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 15 minutes.

c. Provide a smoke or fire detection system that meets the requirements of FAR 25.858 (Amdt. 25-54) and also provides an aural and visual warning to the station assigned to the individual trained to fight cargo fires. The designated station must be located adjacent to the inflight access door to the cargo compartment.

d. Provide a means from the flight deck to shut off ventilation system inflow to the cargo compartment.

e. Accomplish the requirements of paragraph B.3.e.(1) or B.3.e.(2):

(1) Provide a thermal monitoring system to the flight deck and station designated for the individual trained to fight cargo fire to advise of potentially hazardous conditions within the cargo compartment.

(2) At intervals not to exceed 30 minutes in flight and continuously after a fire has been detected and extinguished, the individual trained to fight cargo fires must conduct a visual inspection throughout the Class B cargo compartment to monitor for evidence of fire.

f. Provide a cargo compartment liner that meets the requirements of FAR 25.855, (Amdt. 25-60). The smoke/fire barrier between the occupants and cargo compartment must extend from the cargo compartment floor to the ceiling liner, or top skin of the airplane, and from the right side liner to the left side liner of the cargo compartment. The liner and barrier seals must also be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F part III (Amt. 25-60), except that currently-

installed glass fiber reinforced resin material is acceptable. In addition, provide protective covers for cockpit voice and flight data recorders, windows, wiring, and primary flight control systems (unless it can be shown that a fire could not cause jamming or loss of control), and other equipment within the compartment that is required for safe flight and landing; these covers must be constructed of materials that meet the Flame Penetration Resistance requirements of FAR 25, appendix F, part III (Amdt. 25-60).

g. Provide illumination of the cargo compartment as follows:

(1) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height.

(2) Illumination of the access pathways required by paragraph A.2.f. of this AD under visibility conditions likely to be encountered after a fire and discharge of the fire extinguishant, and prior to the decay of extinguishant concentration below 3 percent, must provide an average of 0.1 foot-candle measured at each 40-inch interval, with not less than 0.05 foot-candle minimum along a line that is within 2 inches of and parallel to the floor centered on the pathway.

h. Provide a safe means to effectively discharge portable fire extinguishers into each container or into each pallet that is covered.

i. Establish FAA-approved firefighting procedures for controlling cargo compartment fires.

j. Establish an FAA-approved training program for firefighters required by paragraphs B.3.a.(1) and B.3.a.(3) of this AD.

k. Demonstrate the following features and functions during flight tests:

(1) Fire Extinguishant Concentration, required by paragraph B.3.b. of this AD.

(2) Smoke or Fire Detection System, required by paragraph B.3.c. of this AD.

(3) Prevention of Smoke Penetration into occupied compartments. [Refer to FAR 25.857(b)2 and 25.365 (e)2.]

(4) Compartment Temperature Indication System, if required by paragraph B.3.e. of this AD.

(5) Cargo accessibility, required by paragraph A.2.f. of this AD.

(6) Firefighting procedures, required by paragraph B.3.i. of this AD.

k. Items specified in paragraphs B.3.h(5) and B.3.h(6) of this AD must be evaluated under reduced visibility conditions representative of those likely to occur with cargo fires.

1. Provide a means of two-way communication between the flight deck and the station assigned to the individual trained to fight cargo fires.

C. Compliance with the paragraphs B.1. or B.2. of this AD constitutes terminating action for the requirements of paragraph A. of this AD.

An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region (for McDonnell Douglas series airplanes).

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on February 21, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-4685 Filed 3-1-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 91

[Docket No. 26433; Notice No. 91-7]

RIN 2120-AD96

Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This notice corrects a statement in the Supplementary Information section of the above-captioned notice of proposed rulemaking previously published in the Federal Register (56 FR 8628, February 28, 1991). An incorrect closing date of March 29, 1991 was included in the first paragraph of the Supplementary Information section; the correct date for the close of the comment period is April 15, 1991, the date that was cited in the DATES caption.

FOR FURTHER INFORMATION CONTACT: Mr. William Albee, Manager, Policy and Regulatory Division (AEE 300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-3553.

Issued in Washington, DC on February 28, 1991.

Donald P. Byrne,

Assistant Chief Counsel for Regulations and Enforcement.

[FR Doc. 91-5136 Filed 2-28-91; 11:24 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Docket No. RM84-9-001]

Calculation of Cash Working Capital Allowance for Electric Utilities

Issued February 25, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed rulemaking; denial of rehearing of termination order.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is denying rehearing of its order terminating a rulemaking docket instituted by a Notice of Proposed Rulemaking issued on April 5, 1984, in Docket No. RM84-9-000. 49 FR 14,384 (April 11, 1984). The proposed rulemaking would have amended the Commission's regulations by adding a new section relating to the cash working capital allowance for electric utilities. Under the proposed regulations, the cash working capital allowance would have been zero dollars unless a party justified a different result. In denying rehearing, the Commission finds that the statistical evidence in the record of this proceeding, and the Commission's experience in other proceedings since issuance of the proposed regulation, does not support a departure from current practice on the cash working capital allowance for electric utilities.

EFFECTIVE DATE: This denial of rehearing is effective February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Bardee, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0626.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this termination order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order Denying Rehearing

Issued February 25, 1991.

In the matter of: *Before Commissioners:* Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On November 14, 1990, the Towns of Norwood, Concord and Wellesley, Massachusetts filed a request for rehearing of the Commission's order issued in this proceeding on October 15, 1990. 53 FERC ¶ 61,052 (1990).

Background

In its October 15, 1990 order, the Commission terminated a rulemaking on the cash working capital allowance for electric utilities instituted by a Notice of Proposed Rulemaking issued on April 5, 1984.[1] Under the proposed regulations, the allowance would have been zero dollars unless a fully developed and reliable lead-lag study demonstrated a significant difference between a utility's average dates for payment of certain operating expenses and receipt of revenues for services to ratepayers. The proposed regulations would have superseded the Commission's practice on cash working capital for electric utilities, summarized as follows:

> Where a fully developed and reliable lead-lag study is available in the record, we will utilize that study to determine the working capital allowance. Where a study meeting these criteria is not available we will continue to apply the 45-day convention. However, two adjustments will be made in the latter instance, provided the information is available. Fossil fuel expense has come to represent a major expense item for many utilities and, therefore a substantial component of the O&M expenses. Where this is the case, and the actual lag in the payment for fossil fuel is known, the amount thereof will be substituted as an adjustment to the results otherwise attained by the 45-day rule. Second, where an adjustment for fuel expense lag is made, a further adjustment will be performed as an add-on to the results under the formula, to recognize the increased importance to the utilities of purchased power expense.

[1] FERC Statutes and Regulations, Proposed Regulations 1982-85, ¶ 32,573 (1984) (NOPR).

In terminating the rulemaking, the Commission explained that the evidentiary basis for the proposed regulations consisted of only eight lead-lag studies, based on only five utilities, none of which were chosen as representative of the entire industry. The Commission found this evidence unreliable. The Commission decided not to codify any policy on cash working capital but instead to continue adjudicating the issue case-by-case. The Commission noted that its prior practice had prompted little litigation in the six years since issuance of the NOPR. The Commission concluded that there was not only an insufficient evidentiary basis in this proceeding, but also no cause in its experience since issuing the NOPR, for departing from its prior practice.

In their request for rehearing, the Towns raise essentially two arguments. First, the Towns argue that the 45-day rule is unsupported by any evidence, particularly since the Commission has rejected the 45-day rule for gas companies.[2] The Towns contend that the 45-day rule is conceptually flawed. They cite the Commission's statements, in rejecting the 45-day rule for gas companies and in proposing similar action for electric utilities, that: (1) computerization and other improvements in billing procedures have reduced the time necessary for billing and payment;[3] (2) rejection of the 45-day rule for gas companies was supported by the results of 27 gas company lead-lag studies;[4] and (3) the 45-day rule's failure to account for all necessary expenses may account for its failure in some cases to properly reflect working cash needs.[5]

The Towns add that their analysis of the eight electric utility lead-lag studies cited above demonstrates that: (1) The mean of the studies is not significantly different from zero, *i.e.*, that the studies support no cash working capital allowance; and (2) statistically, the mean of the studies is almost certainly not 45 days. The Towns argue that these studies constituted the totality of all lead-lag studies found fully developed and reliable by the Commission and were not shown to contain an anti-utility bias.

Second, the Towns argue that the 45-day rule unlawfully places the burden of proof for cash working capital on customers instead of on utilities seeking an allowance. The Towns argue that, if the eight electric utility lead-lag studies are deemed unreliable, the resulting lack of reliable evidence may not redound to the benefit of the utilities who bear the burden of proof. The Towns argue that the lack of litigation on this issue in recent years is due, not to the justness of the policy, but to the extensive effort a customer must expend to present a fully developed and reliable lead-lag study. The Towns argue that the Commission was established to protect consumers and that avoidance of litigation cannot justify the 45-day rule.

Discussion

For the reasons given below, the Commission will deny the Towns' request for rehearing.

The 45-day rule, as modified over the years, has been the Commission's policy since its initial adoption over 50 years ago in Interstate Power Company, 2 FPC 71, 85 (1939). In 1979, the Commission described the "many benefits" of the 45-day rule as follows:

> * * * first, it avoids imposing on utilities, and, ultimately, on their consumers, the cost of regularly performing a thorough and detailed lead-lag study. Second, the method has been found to produce reasonable results over the years without the expense of prolonged litigation. Third, it affords substantial advantages from the standpoints of administrative convenience and as an aid to the Commission in managing its large and increasing caseload.[6]

In more recent years, the Commission has continued to find that using the 45-day rule to determine an electric utility's cash working capital allowance results in just and reasonable rates.[7] In short, contrary to the Town's claim, we find that the 45-day rule continues to represent a reasonable approach in the first instance to determining a utility's cash working capital allowance.[8]

[2] *Revisions to the Filing Requirements for Changes in a Tariff, et al.* Order No. 382, 49 FR 24360, FERC Statutes & Regulations, Regulations Preambles 1982-85 ¶ 30,478 at 30,980-82 (1984).

[3] *Id.* at 30,898.

[4] *Id.* at 30,981.

[5] FERC Statutes and Regulations, Proposed Regulations 1982-85 at 32,980.

[6] 6 FERC at 61,386 (footnote omitted).

[7] *E.g.*, Niagara Mohawk Power Corporation, Opinion No. 280, 42 FERC ¶ 61,163 at 61,834 (1988); Union Electric Company, Opinion No. 286, 25 FERC ¶ 61,125 at 61,313, *reh'g denied*, Opinion No. 286-A, 27 FERC ¶ 61,386 (1984).

[8] As we explained in our October 15, 1990 order, however, while we will continue to apply the 45-day rule in the first instance, we will also continue to allow the participants to adjudicate the issue on a case-by-case basis where the participants believe it is appropriate to do so.

Any change from this approach must be supported by a reasoned analysis and justified by record evidence.[9] The record in this proceeding does not support such a change. The eight studies cited in the NOPR are not representative of the electric utility industry and thus are unreliable in assessing the cash working capital needs of that industry. The issue of whether these data are biased in favor of utilities or consumers is irrelevant because, in either case, the data are unreliable. Moreover, the Towns' analysis of the mean of the eight studies is no more probative in this rulemaking than are the studies themselves. Since the only statistical evidence in the record of this rulemaking is unreliable, the Commission has no evidentiary basis for altering its policy.

Neither the Commission's rejection of the 45-day rule for gas companies nor the 27 gas company lead-lag studies that justified that action require similar action for electric utilities. The gas and electric utility industries often require different treatment.[10] In the gas company rulemaking, the statistical evidence was deemed reliable and justified a change in policy; here, the evidence is unreliable and cannot support a change in policy. Moreover, the 27 gas company lead-lag studies cannot justify a change in policy for electric utilities. The Commission cannot assume that the cash working capital needs of the two industries are similar.

Moreover, contrary to the Towns' claim, the 45-day rule does not contravene statutory and precedential mandates on who bears the burden of proof. The statute and precedent delineate who has the burden of proof and the 45-day rule does not create an exception to their dictates.

In any section 205 proceeding under the Federal Power Act, the public utility has the burden of proving that its proposed rate increase is just and reasonable.[11] Whether or not the filing utility uses the 45-day rule in developing its proposed rate increase, the filing utility must bear the initial burden of proof and, if challenged, also must bear the burden of ultimate persuasion.[12] The filing utility in meeting its initial burden is entitled to rely on the presumption of reasonableness that attaches to any Commission precedent or policy.[13] That is, the Commission adopted the 45-day rule because, *inter alia*, the Commission determined that in the first instance the 45-day rule produces reasonable results, and, if the filing utility decides to use the 45-day rule, it is entitled to rely on the 45-day rule and on this determination when it files its proposed rate increase. However, this is not to say that, if challenged, the filing utility need do no more, because the presumption is rebuttable and the challenging party is entitled to argue that in that particular case the 45-day rule does not produce reasonable results.[14]

The Towns also argue that the Commission, in deciding to terminate its rulemaking, should not have relied upon the small amount of litigation generated by its current policy. Certainly, the avoidance of litigation is neither the sole consideration nor the primary goal in setting policy. But, the amount of litigation generated by a policy often indicates whether a policy is understandable, workable and accepted by both the regulated community and customers. Thus, the amount of litigation generated by a policy is one of a number of appropriate considerations in setting policy. Here, the lack of excessive litigation, the Commission's findings in recent years that its policy continues to produce just and reasonable rates, and the lack of evidence supporting a policy change all lead to the same result: no change is needed or justified.

Finally, the Towns argue that the lack of litigation on this issue is due to the substantial burden a customer must incur to present a fully developed and reliable lead-lag study. We acknowledge that the cost and effort needed for such studies may perhaps deter some customers from litigating the issue, but we have no probative basis from which to accurately assess the motives of why parties litigate or do not litigate this issue. In particular, we have no basis for concluding that this burden is the primary reason, or even a major reason, for the lack of litigation. Thus, we are unpersuaded by this argument.

The Commission orders: The Towns' request for rehearing is hereby denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4976 Filed 3-1-91; 8:45 am]

BILLING CODE 6717-01-M

[9] Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co., 463 U.S. 29, 42 (1983); Center for Science in the Public Interest v. Dep't of Treasury, 797 F.2d 995, 999 (D.C. Cir. 1986); St. James Hosp. v. Heckler, 760 F.2d 1460, 1472 (7th Cir.), *cert. denied*, 474 U.S. 902 (1985).

[10] Cities of Aitkin v. FERC, 704 F.2d 1254, 1257 n.4 (D.C. Cir. 1982); Arkansas Louisiana Gas Co. v. FERC, 854 F.2d 435, 439 n.8 (5th Cir. 1981); Southwestern Public Service Co., Opinion No. 339-A, 53 FERC ¶ 61,084 at 61,241 n.23, *reh'g denied*, Opinion 339-B, 53 FERC ¶ 61,406 (1990), *appeal filed*, No. 90-1513 (D.C. Cir. filed November 1, 1990).

[11] Cities of Aitkin v. FERC, 704 F.2d 1254, 1257 n.4 (D.C. Cir. 1982); Arkansas Louisiana Gas Co. v. FERC, 854 F.2d 435, 439 n.8 (5th Cir. 1991); Southwestern Public Service Co., Opinion No. 339-A, 53 FERC ¶ 61,084 at 61,241 n.23, *reh'g denied*, Opinion 339-B, 53 FERC ¶ 61,406 (1990), *appeal filed*, No. 90-1513 (D.C. Cir. filed November 1, 1990).

[11] Section 205(e) of the Federal Power Act imposes the burden of proof on a public utility for any "rate or charge sought to be increased." 16 U.S.C. § 824d(e) (1988); *accord. e.g.*, Northern States Power Company, 53 FERC ¶ 61,039 at 61,150 (1990); *see also, e.g.*, FPC v. Tennessee Gas Company, 371 U.S. 145, 152 (1962); Colorado Interstate Gas Company v. FERC, 791 F.2d 803, 807 (10th Cir. 1986), *cert. denied*, 479 U.S. 1043 (1987).

[12] As to the initial burden, see 18 CFR 35.13(e)(3) (1990); *accord, e.g., Boston Edison Company, Opinion No. 298-A, 43 FERC ¶ 61,309 at 61,857 (1988), aff'd*, 885 F.2d 962 (1st Cir. 1989). As to the burden of ultimate persuasion, *see* Southwestern Public Service Company, Opinion No. 337-A, 51 FERC ¶ 61,130 at 61,367-68 & n.29 (1990), *appeal docketed*, No. 90-1513 (D.C. Cir. June 29, 1990); Southwestern Public Service Company, 50 FERC ¶ 61,008 at 61,017 (1990); *see also* 18 CFR 2.17(e) (1990).

[13] *Cf.* Colorado Interstate Gas Company v. FERC, 904 F.2d 1456, 1459, 1460 (10th Cir. 1990); Public Service Company of New Mexico v. FERC, 832 F.2d 1201, 1208-09 (10th Cir. 1987); ANR Pipeline Company v. FERC, 771 F.2d 507, 514 (DC Cir. 1985).

[14] The challenging party has the burden of coming forward during the course of the litigation with a showing that the proposed rate increase—and the filing utility's use of the 45-day rule, in particular—is not just and reasonable. 51 FERC at 61,308; New England Pool, Opinion No. 342, 50 FERC ¶ 61,139 at 61,425 (1990); 50 FERC at 61,017; *see also* East Tennessee Natural Gas Company v. FERC, 863 F.2d 932, 937-38 (DC Cir. 1988); Sea Robin Pipeline Company v. FERC, 795 F.2d 182, 183-84, 186-87 (DC Cir. 1986); 771 F.2d at 513-14; Public Service Commission of the State of New York v. FERC, 642 F.2d 1335 1345 (DC Cir. 1980), *cert. denied*, 454 U.S. 879 (1981).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 89P-0314]

Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) will hold a public hearing on Vermont's application for exemption from preemption concerning the sale of hearing aids. In preparing a final regulation, the agency will consider the administrative record of hearing, along with comments and other information received.

DATES: Written notice of participation should be filed by March 15, 1991. The hearing will be held on April 9, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: Written notice of participation should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Bernice Noland, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 30, 1990 (55 FR 45615), FDA published a proposed rule responding to an application by the State of Vermont for exemption from Federal preemption for certain State medical device requirements.

In the same document, FDA also issued a notice of opportunity for interested persons to request an oral hearing on the proposed rule. The document explained that interested persons could request an oral hearing on or before December 31, 1990. FDA has received several requests for an oral hearing.

Accordingly, FDA announces that an oral hearing regarding the Vermont application for exemption from preemption of its medical device laws and regulations. The oral hearing will be directed by George A. Brubaker, Deputy Director, Center for Devices and Radiological Health, Office of Standards and Regulations, Food and Drug Administration.

After reviewing the comments and the notices of appearance, FDA will schedule each appearance and notify each person of the time allotted for each appearance. The procedures to govern the hearing are those applicable to a public hearing before the Commissioner of Food and Drug under part 15 (21 CFR part 15).

Interested persons who wish to participate may, on or before March 15, 1991, submit a notice of participation with the Dockets Management Branch (address above). All notices submitted should be identified with the Docket number found in brackets in the heading of this document and should contain the name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Individuals and groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 89P-0314.

The administrative record of the proposed regulation will be open for 15 days after the hearing to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch.

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

This document is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner to Food and Drug (21 CFR 5.10).

Dated: February 27, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-5021 Filed 3-1-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1496; FR-2712-P-01]

RIN 2502-AE84

Mutual Mortgage Insurance and Rehabilitation Loans—Waiver of Seven Unit Rule for Certain Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to remove the "seven-unit" requirement of 24 CFR 203.42, in certain circumstances. Generally, under § 203.42 a property cannot be insured under the Single Family Mortgage Insurance program if a mortgagor has a financial interest in more than seven other units in projects, subdivisions or other rental properties close in proximity. This amendment proposes to exempt mortgagors of single-family properties insured under the section 203(k) rehabilitation loan program in circumstances where State or local governments have targeted a specific area or neighborhood for redevelopment and have committed "substantial" efforts to this end. The purpose of this rule is to encourage and facilitate rehabilitation activity in the targeted areas.

DATES: Comment Due Date: May 3, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying on weekdays between 7:30 a.m. to 5:30 p.m. at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile (FAX) machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Docket Clerk at ((202) 708-2084). Hearing- or speech-impaired individuals may call the TDD number for the Rules Docket Clerk (202) 708-3259. (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director Single Family Development Office of Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street, SW., Washington, DC 20410-0500, (202) 708-2700. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in

the Federal Register. Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

In enacting the National Housing Act (the Act), Congress provided HUD with the authority to insure, and make commitments to insure, rehabilitation loans made by financial institutions. In section 203(k) of the Act (12 U.S.C. 1709(k)), Congress defined "rehabilitation loans" as those made for the purpose of rehabilitating existing one- to four-family structures used primarily for residential purposes. HUD promulgated 24 CFR 203.50, which made rehabilitation loans eligible for insurance under the Single Family Mortgage Insurance program.

To prevent misuse of this program by lenders who may want to circumvent the requirements of the Multifamily Mortgage Insurance program, and to preclude insurance of a concentration of rental units for one investor, § 203.42 was promulgated. Section 203.42 had the effect of severely limiting the use of the section 203(k) insurance program because it limited mortgage insurance coverage to no more than seven units per mortgagor in a particular geographic area. (This limitation is commonly referred to as the "seven unit rule.") Since its inception ten years ago, only 7,000 mortgages have been insured under section 203(k).

The seven unit rule, as applied to rehabilitation loans, can limit expansion of affordable housing and home ownership opportunities. This runs counter to HUD's objective of increasing such opportunities. For this reason, changes are required in the rule. Several lenders and developers have agreed that a successful rehabilitation program must include all or nearly all the vacant and deteriorated properties in a neighborhood. Since such an approach may include developers who have an interest in more than seven units, little is gained by applying the limitation of § 203.42 to rehabilitation loans.

This proposed rule would permit increased use of section 203(k). Last year, approximately 400 mortgages were issued under the section 203(k) program. This proposed rule could increase its use to 2,500 mortgages for fiscal year 1991. This objective would be obtained by expressly exempting rehabilitation loans from the seven unit rule, provided that the loans are to be used for the rehabilitation of property located in a specific area or neighborhood targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of the neighborhood redevelopment. The proposed rule would require the State or local government to submit a plan to HUD describing the program of neighborhood redevelopment, before HUD exempts a section 203(k) rehabilitation loan from the seven unit rule. Finally, this proposed rule would revise and update the language of § 203.42.

Other Matters

Impact on Economy. This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. Any entity, regardless of size, may benefit from this exemption.

Regulatory Agenda. This rule was listed as sequence number 1181 in the Department's Semiannual Agenda published on October 29, 1990 (55 FR 44530, 44545) under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Information Collection Requirements. The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. The Department has determined that § 203.42(b)(3) of the proposed rule contains collection of information requirements.

Description of respondents. Units of State or local government.

Description of information. The information to be provided would be a copy of the plan describing the program of redevelopment for a specific area or neighborhood targeted by the State or local government for redevelopment. The information presented in the plan would include identification of the geographic area to be redeveloped, a description of the planned redevelopment, and identification of the public and private commitments, including the nature and proportion of such commitments, that have been made in support of the redevelopment program. This information would only be required when a mortgagor is requesting waiver of the seven unit rule under the circumstances described in § 203.42(b). This information would be needed by the Department to determine whether waiver of the seven-unit rule is appropriate. The following table discloses the Department's estimated burden for the collection of information requirements of this rule.

Section of 24 CFR affected	No. of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
203.42(b)(3)	10	1	10	160	1600

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the order. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

[The Catalog of Federal Domestic Assistance Program Number is 14.108, Rehabilitation Mortgage Insurance]

List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians: lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly 24 CFR part 203 would be amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 would continue to read as follows:

Authority: Secs. 203, 211 of the National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.42 would be revised to read as follows:

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, subdivision or group of similar rental properties in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The state or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling, if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

Dated: February 22, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-4952 Filed 3-1-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-015-90]

RIN 1545-AO58

Accuracy-Related Penalty

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the accuracy-related penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial (or gross) valuation misstatement under chapter 1 of the Internal Revenue Code. The applicable tax law was amended by the Omnibus Budget Reconciliation Act of 1989. The proposed regulations would affect all taxpayers that file returns of income tax and are necessary to provide them with guidance to comply with these changes.

DATES: Written comments must be received by May 15, 1991. The Service intends to hold a public hearing on these proposed regulations during the week of June 3 through 7, 1991. Persons wishing to speak at this hearing must deliver outlines of their comments by May 15, 1991. A notice of public hearing will be published in the Federal Register in the near future.

ADDRESSES: Send comments and requests to speak at the public hearing to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-015-90), Washington, DC 20224. If desired, comments and requests to speak may be hand-delivered to the Internal Revenue Service, Attn: CC:CORP:T:R (IA-015-90), Room 4429, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gail M. Winkler of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC, 20224 (Attention: CC:IT&A:Br4) or telephone 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the office of Management; and Budget, Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington,

D.C. 20603, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6662–4(f). This information is required by the Internal Revenue Service for a taxpayer to make a proper disclosure in order to avoid imposition of certain penalties. This information will be used to carry out the internal revenue laws of the United States. The likely respondents are individuals, trusts, partnerships, corporations or other for-profit institutions or organizations, as well as not-for-profit institutions that are subject to the unrelated business income tax.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 4.79 hours.

Estimated number of respondents: 3,000,000.

Estimated frequency of responses: annually.

Background

This document contains proposed Income Tax Regulations under section 6662 of the Internal Revenue Code of 1986 (Code), which imposes an accuracy-related penalty, and under section 6664 of the Code, which provides definitions and rules for purposes of this penalty and the fraud penalty imposed by section 6663 of the Code. Section 6662 was amended, and section 6664 was added to the Code, by section 7721(a) of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2108 (OBRA 1989).

An earlier draft of these proposed regulations was made available to the public without Internal Revenue Service approval prior to filing of this document with the Federal Register. This document contains substantial revisions from the earlier draft of the proposed regulations, and taxpayers and tax practitioners should not, in any way, rely upon any provisions contained in the earlier draft, nor should any inferences be drawn from changes made between these proposed regulations and the earlier draft.

Overview

OBRA 1989 substantially revised the civil tax penalty provisions of the Internal Revenue Code, generally effective for returns due (without regard to extensions) after December 31, 1989. Section 7721 of OBRA 1989 modified and reorganized the penalties formerly contained in numerous Code sections (section 6653, negligence and fraud; section 6659, valuation overstatements; section 6659A, overstatements of pension liabilities; section 6660, estate and gift tax valuation understatements; and section 6661, substantial understatements) into two sections (section 6662, the new accuracy-related penalty; and section 6663, the fraud penalty). OBRA 1989 also added new section 6664 to the Code, which provides definitions and rules for purposes of sections 6662 and 6663.

The accuracy-related penalty enacted by OBRA 1989 may be imposed on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following types of misconduct: (i) Negligence or disregard of rules or regulations; (ii) a substantial understatement of income tax; (iii) a substantial (or gross) valuation overstatement under chapter 1; (iv) a substantial (or gross) overstatement of pension liabilities; and (v) a substantial (or gross) estate or gift tax valuation understatement. Section 11312 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388, renamed the substantial valuation overstatement component of the accuracy-related penalty the substantial valuation "misstatement" penalty and broadened this penalty to apply to certain transactions between persons described in section 482 and to certain net section 482 transfer price adjustments.

These proposed regulations provide rules only for the first three components of the accuracy-related penalty, *i.e.*, the penalties for (i) negligence or disregard of rules or regulations, (ii) a substantial understatement of income tax, and (iii) a substantial (or gross) valuation misstatement under chapter 1. In addition to not addressing the remaining two components of the accuracy-related penalty, these proposed regulations do not consider how (i) the penalty for negligence or disregard of rules or regulations applies in the context of taxes other than income taxes imposed under subtitle A of the Code, or (ii) the penalty for a substantial (or gross) valuation misstatement applies in the context of transactions between persons described in section 482 or of net section 482 transfer price adjustments. The Service will issue one or more notices of proposed rulemaking at a later date (or dates) to address these other issues. The Service will not wait until issuance of such notices, however, to begin asserting these other penalties or the negligence and substantial (or gross) valuation misstatement penalties in these other contexts.

The accuracy-related penalty is 20 percent of the portion of an underpayment that is attributable to the misconduct (*e.g.*, to negligence, a substantial understatement or a substantial valuation misstatement) listed in section 6662(b). The penalty rate is increased to 40 percent in the case of a gross valuation misstatement under chapter 1 (or a gross overstatement of pension liabilities or gross estate or gift tax valuation understatement).

There is no stacking of components of the accuracy-related penalty. Thus, the maximum accuracy-related penalty imposed on any portion of an underpayment may not exceed 20 percent (40 percent in the case of a gross valuation misstatement) even though the portion may be attributable to more than one type of misconduct. The accuracy-related penalty is not imposed on any portion of an underpayment on which the fraud penalty is imposed. The accuracy-related penalty may be imposed only in those cases in which a return of tax is filed. Both the accuracy-related penalty and the penalty imposed by section 6651 for failure to timely file a return may be imposed if a return is filed late. No accuracy-related penalty will be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy-related penalty is set forth in section 6664 of the Code.

Negligence or Disregard of Rules or Regulations

Section 1.6662–3 of the proposed regulations provides rules for the penalty for negligence or disregard of rules or regulations. This penalty applies if any portion of an underpayment of tax required to be shown on a return for a year is attributable to negligence or disregard of rules or regulations. "Negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. A taxpayer also is negligent if the taxpayer fails to keep proper books and records or to substantiate items properly. A position with respect to an item is considered to be attributable to negligence if it is frivolous or if it is not frivolous, but lacks a reasonable basis.

Negligence is strongly indicated where a taxpayer fails to include income shown on an information return, such as a Form 1099, or fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion which would seem to a reasonable and prudent person to be 'too good to be true" under the circumstances. Negligence also is strongly indicated where the returns of a partner and partnership or of an S corporation shareholder and S corporation are not consistent in the manner prescribed by sections 6222 and 6242, respectively.

"Disregard of rules or regulations" includes any careless, reckless or intentional disregard of the Code, temporary or final Treasury regulations, or revenue rulings. A disregard of rules or regulations is "careless" if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is "reckless" if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances that demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is "intentional" if the taxpayer knows of the rule or regulation that is disregarded. A taxpayer will not be considered to have disregarded a revenue ruling, however, if the position contrary to the ruling has a realistic possibility of being sustained on its merits. The realistic possibility standard is described in § 1.6694–2(b) of the preparer penalty regulations.

Pursuant to the legislative history of OBRA 1989, the proposed regulations provide that the penalty for negligence or disregard of rules or regulations will not be imposed if the taxpayer adequately discloses certain positions taken on the return. Under the proposed regulations, disclosure is adequate for purposes of the negligence or disregard penalty only if made on a properly completed and filed Form 8275, Disclosure Statement, attached to the return or to a qualified amended return. In addition, in the case of a position contrary to a rule or regulation, the statutory or regulatory provision or ruling in question must be adequately identified on the Form 8275. The disclosure rules are proposed to be effective for returns due after December 31, 1991, and, accordingly, after that date disclosure will no longer be adequate for purposes of the negligence or disregard penalty if made on the return itself, as currently permitted by Notice 90–20, 1990–1 C.B. 328. (*See*, however, § 1.6662–4(f) which permits disclosure on the return in accordance with an annual revenue procedure for purposes of the substantial understatement penalty.)

Disclosure will not prevent imposition of the negligence or disregard penalty if the position disclosed is frivolous or if the taxpayer failed to keep proper books and records or to substantiate items properly. The disclosure rules for purposes of the negligence or disregard penalty are set forth in § 1.6662–3(c)(2). The definition of a qualified amended return is set forth in § 1.6664–2(c)(3).

The proposed regulations also provide that the penalty will be imposed on any portion of an underpayment for a year to which a loss, deduction, or credit is carried that is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year). A transition rule provides that the negligence or disregard penalty will apply to any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to negligence or disregard of rules or regulations in a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989.

Substantial Understatement of Income Tax

Section 1.6662–4 of the proposed regulations provides rules for the penalty for a substantial understatement of income tax. This penalty is imposed on any portion of an underpayment that is attributable to a substantial understatement of income tax. Changes have been made to certain of the rules currently set forth in regulations under former section 6661. These changes include the following:

First, in accordance with the legislative history of section 6662, the definition of "authority" has been broadened. This expanded definition is set forth in § 1.6662–4(d)(3)(iii). "Authority" under the proposed regulations includes private letter rulings and technical advice memoranda issued after October 31, 1976, and general counsel memoranda and actions on decisions issued after March 12, 1981.[1] A special rule provides that there is substantial authority with respect to a position on a return that is due after December 31, 1982 and before January 1, 1990, if there is substantial authority for such position under either the expanded or more narrow definition of authority. If the expanded definition is used, authorities on the expanded list that are against the position, as well as those that are for the position, must be taken into account.

The proposed regulations further provide that an authority ceases to be an authority if overruled or modified, implicitly or explicitly, by an authority of the same or higher source. For example, a private letter ruling will not be considered authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling, or other administrative pronouncement published in the Internal Revenue Bulletin. In determining whether authority is substantial, an older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally will be accorded less weight than a more recent one and any such document that is more than ten years old generally will be accorded very little weight.

Second, the proposed regulations provide for only two methods of disclosure in order for items to be treated as though they were properly shown on the return for purposes of the substantial understatement penalty. The first is disclosure on a Form 8275 attached to the return (or a qualified amended return). The second is disclosure in accordance with the annual revenue procedure that permits disclosure on the return itself (or a qualified amended return) for this purpose. The disclosure rules are proposed to be effective for returns due after December 31, 1991, and, accordingly, after that date disclosure made on the return itself (other than in accordance with the annual revenue procedure), as currently permitted by Notice 90–20, will no longer be adequate. The disclosure rules are set forth in § 1.6662–4 (e) and (f). The definition of a qualified amended return is in § 1.6664–2(c)(3).

Third, the method for determining whether an understatement of tax is substantial has been modified for a year in which a carryback or carryover of a loss, deduction or credit arises (a loss or credit year). The determination of whether there is a substantial understatement for a loss or credit year is to be made by treating any understatement that is attributable to a carryback or carryover item as an

[1] Private letter rulings and technical advice memoranda were first required to be made available to the public on October 31, 1976, and general counsel memoranda and actions on decisions were first required to be made available on March 12, 1981.

BEST COPY AVAILABLE

understatement with respect to the return of the loss or credit year. The proposed regulations also provide transition rules, both in cases where the loss or credit year return falls under section 6662 but the carryback year return was due prior to the effective date of section 6662, and in cases where the loss or credit year return falls under former section 6661 but the carryover year return is due on or after the effective date of section 6662.

Substantial (or Gross) Valuation Misstatement

Section 1.6662–5 provides rules for the penalty for a substantial (or gross) valuation misstatement under chapter 1. This penalty applies if any portion of an underpayment of tax is attributable to a substantial (or gross) valuation misstatement.

There is a substantial valuation misstatement if the value or adjusted basis of property claimed on a return is 200 percent or more of the correct amount. The valuation misstatement is gross if the value or adjusted basis of property claimed on a return is 400 percent or more of the correct amount. A 20 percent penalty rate applies to any portion of an underpayment of tax that is attributable to a substantial valuation misstatement, and a 40 percent penalty rate applies to any portion of an underpayment that is attributable to a gross valuation misstatement. No penalty may be imposed for a valuation misstatement unless the portion of the underpayment that is attributable to substantial (and gross) valuation misstatements for the taxable year exceeds $5,000 ($10,000 for most corporations).

A special rule is provided in the case of carrybacks and carryovers. The penalty applies to any portion of an underpayment for a carryback or carryover year that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover arises (the loss or credit year), provided the applicable dollar limitation ($5,000 or $10,000) is satisfied for the carryback or carryover year. A transition rule makes clear that the penalty applies to any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to a substantial or gross valuation misstatement for a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1988, provided the applicable dollar limitation is met in the carryback year.

"Property" is defined by the proposed regulations for purposes of this penalty to include both tangible and intangible property. The proposed regulations provide that the determination of whether a valuation misstatement is substantial or gross is to be made on a property-by-property basis, but that the determination of whether the applicable dollar limitation is satisfied is to be made on an aggregate basis, *i.e.*, by aggregating all portions of an underpayment for a year that are attributable to a substantial or gross valuation misstatement for that year. The proposed regulations further provide that, regardless of amount, a valuation misstatement is gross if the correct value or adjusted basis of the property is zero. In the case of a pass-through entity, the determination of whether a valuation misstatement is substantial or gross is to be made at the entity level, but the dollar limitation is to be applied at the partner, shareholder, beneficiary, or residual interest holder level. The penalty applies to all taxpayers, including C corporations. The penalty also may apply in a year subsequent to the year with respect to which the original valuation misstatement is made (for example, if a taxpayer claims an inflated basis for depreciable property in the year the property is placed in service and continues to claim depreciation deductions based on the inflated basis in subsequent years), notwithstanding that the original misstatement was on a return that was due (without regard to extensions) before January 1, 1990. There is no disclosure exception to the valuation misstatement penalties.

Underpayment

Section 1.6664–2 of the proposed regulations defines the term "underpayment" solely by reference to income taxes imposed under subtitle A and solely for purposes of the accuracy-related and fraud penalties set forth in sections 6662 and 6663, respectively. Section 6664(a) defines "underpayment" as the amount by which any tax imposed exceeds the excess of (i) the sum of the amount shown as the tax by the taxpayer on his return, plus amounts not so shown previously assessed (or collected without assessment), over (ii) the amount of rebates made.

The proposed regulations define "the amount shown as the tax by the taxpayer on his return" as the tax liability reported on the return less any overstated prepayment credits claimed by the taxpayer on the return. Overstated withholding credits and estimated tax payments, therefore, will lower "the amount shown as the tax by the taxpayer on his return" and increase the amount of an underpayment. (The "amount of the tax imposed which is shown on the return" is not reduced by overstated prepayment credits in computing the amount of an understatement for purposes of the substantial understatement penalty. See § 1.6662–4(b)(4).) The proposed regulations further provide that "the amount shown as the tax by the taxpayer on his return" is increased by any amount of additional tax reported on a qualified amended return, unless the additional tax reported relates to a fraudulent position on the original return.

A qualified amended return is defined by § 1.6664–2(c)(3) for purposes of the accuracy-related penalty as an amended return or timely request for administrative adjustment under section 6227 that is filed before the Service first contacts (i) a taxpayer in connection with an examination of the taxpayer's return, (ii) any person described in section 6700 (relating to promotion of abusive tax shelters) in connection with a tax shelter with respect to which the taxpayer claimed a benefit on the return, or (iii) in the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the pass-through entity in connection with an examination of the return to which the pass-through item relates. An amended return may constitute a qualified amended return for purposes of disclosure even if it reports no additional tax liability.

The proposed regulations also provide that the phrase "amounts not so shown previously assessed" in the definition of underpayment includes only amounts assessed before the return is filed, such as termination and jeopardy assessments made prior to filing. Amounts "collected without assessment" are payments (such as withholding credits or estimated tax payments) made before a return is filed in excess of the tax liability shown on the return, provided such excess has not been refunded or credited to the taxpayer. Amounts "collected without assessment" include refunds claimed on a return that were frozen pending an examination of the return.

The term "rebate" means the amount of an abatement, credit, refund or other repayment that is made on the ground that the tax imposed is less than the excess of (i) the sum of the amount shown as the tax by the taxpayer on his return, plus amounts not so shown previously assessed (or collected without assessment), over (ii) rebates previously made.

The proposed regulations also clarify that an underpayment for a carryback year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of the carryback.

In addition, the proposed regulations clarify the definitions of underpayment and understatement by coordinating the definitions of the two terms. Although underpayment (which applies to all portions of the section 6662 accuracy-related penalty and to the section 6663 fraud penalty) and understatement (which is relevant only to the substantial understatement penalty under section 6662(d)) are somewhat similar concepts, there are important differences in the meanings of the two terms. In general, understatement focuses upon the taxpayer's statement of his liability and underpayment focuses upon the amount by which the liability was underpaid. The more significant differences are: (i) As noted above, overstated prepayment credits increase the amount of an underpayment, but have no effect on the calculation of an understatement; (ii) whether a position with respect to an item has substantial authority or is disclosed on a return is relevant to the determination of the amount of an understatement, but not to the determination of the amount of an underpayment; and (iii) the amount of an underpayment is reduced by amounts not shown on the return that have been previously assessed (or collected without assessment), but the amount of an understatement is not.

Ordering Rules

Section 1.6664–3 of the proposed regulations explains how to calculate the total amount of accuracy-related and fraud penalties imposed by sections 6662 and 6663 with respect to a return for a taxable year where (i) there is at least one adjustment on the return with respect to which no penalty has been imposed and at least one adjustment with respect to which a penalty has been imposed, or (ii) there are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates. Similar rules are provided for allocating unclaimed prepayment credits to adjustments on a return.

Reasonable Cause and Good Faith Exception

Section 1.6664–4 of the proposed regulations provides rules for the reasonable cause and good faith exception to the accuracy-related penalty. Pursuant to section 6664(c), no penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion.

The determination of whether this exception applies is to be made on a case-by-case basis by taking into account all pertinent facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess his proper tax liability.

In the case of charitable deduction property (*i.e.*, property other than money or marketable securities that is donated to charity and for which a charitable contribution deduction is claimed under section 170), the reasonable cause and good faith exception will not apply unless the value claimed on the return for the property is based on a qualified appraisal of the property by a qualified appraiser. In addition, the taxpayer must make a good faith investigation of the value of the contributed property to avail himself of this exception.

The proposed regulations do not consider how the reasonable cause exception should be applied in the context of transactions between persons described in section 482 or of net section 482 transfer price adjustments.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held during the week of June 3 through 7, 1991. A notice of the public hearing will be published in the Federal Register in the near future.

Drafting Information

The principal author of these proposed regulations is Gail M. Winkler, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654–1 Through 1.6709–1

Additions to tax, Administration and procedure, Income taxes, Penalties.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. The following new §§ 1.6662–0 through 1.6662–5 and 1.6664–0 through 1.6664–4 are added to read as follows:

§ 1.6662–0 Table of contents.

§ 1.6662–1 Overview of the accuracy-related penalty.

§ 1.6662–2 Accuracy-related penalty.

(a) In general.
(b) Amount of penalty.
(1) In general.
(2) Increase in penalty for gross valuation misstatement.
(c) No stacking of accuracy-related penalty components.
(d) Effective date.

§ 1.6662–3 Negligence or disregard of rules or regulations

(a) In general.
(b) Definitions and rules.
(1) Negligence.
(2) Disregard of rules or regulations.
(3) Frivolous.
(c) Exception for adequate disclosure.
(1) In general.
(2) Method of disclosure.
(d) Special rules in the case of carrybacks and carryovers.
(1) In general.
(2) Transition rule for carrybacks to pre-1990 years.
(3) Example.

§ 1.6662–4 Substantial understatement of income tax

(a) In general.
(b) Definitions and computational rules.
(1) Substantial.
(2) Understatement.
(3) Amount of the tax required to be shown on the return.
(4) Amount of the tax imposed which is shown on the return.
(5) Rebate.
(6) Examples.
(c) Special rules in the case of carrybacks and carryovers.
(1) Aggregation of understatements in testing for substantiality.
(2) Understatements for carryback years not reduced by amount of carrybacks.
(3) Transition rules.

(i) Carrybacks to pre-1990 years.
(ii) Carryovers to post-1989 years.
(4) Examples.
(d) Substantial authority.
(1) Effect of having substantial authority.
(2) Substantial authority standard.
(3) Determination of whether substantial authority is present.
(i) Evaluation of authorities.
(ii) Nature of analysis.
(iii) Types of authority.
(iv) Special rules.
(A) Written determinations.
(B) Taxpayer's jurisdiction.
(C) When substantial authority determined.
(v) Substantial authority for tax returns due before January 1, 1990.
(e) Disclosure of certain information.
(1) Effect of adequate disclosure.
(2) Circumstances where disclosure will not have an effect.
(f) Method of making adequate disclosure.
(1) Disclosure statement.
(2) Disclosure on return.
(3) Recurring item.
(4) Carrybacks and carryovers.
(5) Pass-through entities.
(g) Items relating to tax shelters.
(1) In general.
(2) Tax shelter.
(i) In general.
(ii) Principal purpose.
(3) Tax shelter item.
(4) Reasonable belief.
(5) Pass-through entities.

§ 1.6662–5 Substantial and cross valuation misstatements under chapter 1

(a) In general.
(b) Dollar limitation.
(c) Special rules in the case of carrybacks and carryovers.
(1) In general.
(2) Transition rule for carrybacks to pre-1990 years.
(d) Examples.
(e) Definitions.
(1) Substantial valuation misstatement.
(2) Gross valuation misstatement.
(3) Property.
(f) Multiple valuation misstatements on a return.
(1) Determination of whether valuation misstatements are substantial or gross.
(2) Application of dollar limitation.
(g) Property with a value or adjusted basis of zero.
(h) Pass-through entities.
(1) In general.
(2) Example.
(i) [Reserved]
(j) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
(k) Returns affected.

§ 1.6662–1 Overview of the accuracy-related penalty.

Section 6662 imposes an accuracy-related penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one or more of the following:

(a) Negligence or disregard of rules or regulations;

(b) Any substantial understatement of income tax;

(c) Any substantial valuation misstatement under chapter 1;

(d) Any substantial overstatement of pension liabilities; or

(e) Any substantial estate or gift tax valuation understatement.

Sections 1.6662–1 through 1.6662–5 address only the first three components of the accuracy-related penalty, *i.e.*, the penalties for negligence or disregard of rules or regulations, substantial understatements of income tax, and substantial (or gross) valuation misstatements under chapter 1. The penalties for negligence or disregard of rules or regulations and for a substantial understatement of income tax may be avoided by adequately disclosing certain information as provided in § 1.6662–3(c) and § 1.6662 4(e) and (f), respectively. The penalty for a substantial (or gross) valuation misstatement under chapter 1 may not be avoided by disclosure. No accuracy-related penalty may be imposed on any portion of an underpayment if there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. The reasonable cause and good faith exception to the accuracy related penalty is set forth in § 1.6664–4.

§ 1.6662–2 Accuracy-related penalty.

(a) *In general.* Section 6662(a) imposes an accuracy-related penalty on any portion of an underpayment of tax (as defined in section 6664(a) and § 1.6664–2) required to be shown on a return if such portion is attributable to one or more of the following types of misconduct:

(1) Negligence or disregard of rules or regulations (see § 1.6662–3);

(2) Any substantial understatement of income tax (see § 1.6662–4); or

(3) Any substantial (or gross) valuation misstatement under chapter 1 (substantial valuation misstatement or gross valuation misstatement), provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied (see § 1.6662–5). The accuracy-related penalty applies only in cases in which a return of tax is filed, except that the penalty does not apply in the case of a return prepared by the Secretary under the authority of section 6020(b). The accuracy-related penalty under section 6662 and the penalty under section 6651 for failure to timely file a return of tax may both be imposed on the same portion of an underpayment if a return is filed, but is filed late. No accuracy-related penalty may be imposed, however, on any portion of an underpayment of tax on which the fraud penalty set forth in section 6663 is imposed.

(b) *Amount of penalty*—(1) *In general.* The amount of the accuracy-related penalty is 20 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to any of the types of misconduct listed in paragraphs (a)(1) through (a)(3) of this section, except as provided in paragraph (b)(2) of this section.

(2) *Increase in penalty for gross valuation misstatement.* In the case of a gross valuation misstatement, as defined in section 6662(h)(2) and § 1.6662–5(e)(2), the amount of the accuracy-related penalty is 40 percent of the portion of an underpayment of tax required to be shown on a return that is attributable to the gross valuation misstatement, provided the applicable dollar limitation set forth in section 6662(e)(2) is satisfied.

(c) *No stacking of accuracy-related penalty components.* The maximum accuracy-related penalty imposed on a portion of an underpayment may not exceed 20 percent of such portion (40 percent of the portion attributable to a gross valuation misstatement), notwithstanding that such portion is attributable to more than one of the types of misconduct described in paragraph (a) of this section. For example, if a portion of an underpayment of tax required to be shown on a return is attributable both to negligence and a substantial understatement of income tax, the maximum accuracy-related penalty is 20 percent of such portion. Similarly, the maximum accuracy-related penalty imposed on any portion of an underpayment that is attributable both to negligence and a gross valuation misstatement is 40 percent of such portion.

(d) *Effective date.* Section 2.6662–3(c) and § 1.6662–4(e) and (f) (relating to methods of making adequate disclosure) will apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1991. Sections 1.6662–1 through 1.6662–5 apply to returns the due date for which (determined without regard to extensions of time for filing) is after December 31, 1989. To the extent the provisions of these regulations were not reflected in the statute as amended by the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), in Notice 90–20, 1990–1 C.B. 328, or in rules and regulations in effect prior to March 4, 1991 (to the extent not inconsistent with the statute as amended by OBRA 1989), these regulations will not be adversely applied to a taxpayer who took a position based upon such prior rules.

§ 1.6662–3 Negligence or disregard of rules or regulations.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to negligence or disregard of rules or regulations, there is added to the tax an amount equal to 20 percent of such portion. This penalty does not apply, however, if a position with respect to an item is not frivolous and is adequately disclosed as provided in § 2.6662–3(c), or to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. In addition, if a position with respect to an item is contrary to a revenue ruling, this penalty does not apply if the position has a realistic possibility of being sustained on its merits. See § 2.6694–2(b) of the preparer penalty regulations for a description of the realistic possibility standard.

(b) *Definitions and rules*—(1) *Negligence.* The term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return. "Negligence" also includes any failure by the taxpayer to keep proper books and records or to substantiate items properly. A position with respect to an item is attributable to negligence if it is frivolous, or is not frivolous, but lacks a reasonable basis. Negligence is strongly indicated where—

(i) A taxpayer fails to include on an income tax return an amount of income shown on an information return, as defined in section 6724(d)(1).

(ii) A taxpayer fails to make a reasonable attempt to ascertain the correctness of a deduction, credit or exclusion on a return which would seem to a reasonable and prudent person to be "too good to be true" under the circumstances.

(iii) A partner fails to comply with the requirements of section 6222, which requires that a partner treat partnership items on its return in a manner that is consistent with the treatment of such items on the partnership return (or notify the Secretary of the inconsistency).

(iv) A shareholder fails to comply with the requirements of section 6242, which requires that an S corporation shareholder treat subchapter S items on its return in a manner that is consistent with the treatment of such items on the corporation's return (or notify the Secretary of the inconsistency).

(2) *Disregard of rules or regulations.* The term "disregard" includes any careless, reckless or intentional disregard of rules or regulations. "Rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings issued by the Internal Revenue Service. A disregard of rules or regulations is "careless" if the taxpayer does not exercise reasonable diligence to determine the correctness of a return position that is contrary to the rule or regulation. A disregard is "reckless" if the taxpayer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable person would observe. A disregard is "intentional" if the taxpayer knows of the rule or regulation that is disregarded. Nevertheless, a taxpayer who takes a position contrary to a revenue ruling has not disregarded the ruling if the contrary position has a realistic possibility of being sustained on its merits.

(3) *Frivolous.* A "frivolous" position with respect to an item is one that is patently improper.

(c) *Exception for adequate disclosure*—(1) *In general.* No penalty under section 6662(b)(1) may be imposed on any portion of an underpayment that is attributable to negligence or a position contrary to a rule or regulation if the position is disclosed in accordance with the rules of paragraph (c)(2) of this section. This disclosure exception does not apply, however, in the case of a position that is frivolous or where the taxpayer fails to keep adequate books and records or to substantiate items properly.

(2) *Method of disclosure.* Disclosure is adequate for purposes of this section if made in accordance with the provisions of § 1.6662–4(f) (1), (3), (4) and (5), which permit disclosure on a properly completed and filed Form 8275. In the case of a position contrary to a rule or regulation, disclosure is sufficient only if the preceding sentence is satisfied and the statutory or regulatory provision or ruling in question is adequately identified on the Form 8275. The provisions of § 1.6662–4(f)(2), which permit disclosure in accordance with an annual revenue procedure for purposes of the substantial understatement penalty, do not apply for purposes of the penalty for negligence or disregard of rules or regulations.

(d) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for negligence or disregard of rules or regulations applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried, which portion is attributable to negligence or disregard of rules or regulations in the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year).

(2) *Transition rule for carrybacks to pre-1990 years.* A 20 percent penalty under section 6662(b)(1) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to negligence or disregard of rules or regulations in a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989.

(3) *Example.* The following example illustrates the provisions of paragraph (d) of this section. This example does not take into account the reasonable cause exception under § 1.6664–4.

Example. Corporation M is a C corporation. In 1990, M had a loss of $200,000 before taking into account a deduction of $350,000 that M claimed as an expense in careless disregard of the capitalization requirements of section 263 of the Code. M failed to make adequate disclosure of the item on Form 8275 for 1990. M reported a $550,000 loss for 1990 and carried back the loss to 1987 and 1988. M had reported taxable income of $400,000 for 1987 and $200,000 for 1988, before application of the carryback. The carryback eliminated all of M's taxable income for 1987 and $150,000 of taxable income for 1988. After disallowance of the $350,000 expense deduction and allowance of a $35,000 depreciation deduction with respect to the capitalized amount, the correct loss for 1990 was determined to be $235,000. Because there is no underpayment for 1990, the penalty for negligence or disregard of rules or regulations does not apply for 1990. However, as a result of the 1990 adjustments, the loss carried back to 1987 is reduced from $550,000 to $235,000. After application of the $235,000 carryback, M has taxable income of $165,000 for 1987 and $200,000 for 1988. This adjustment results in underpayments for 1987 and 1988 that are attributable to the disregard of rules or regulations on the 1990 return. Therefore, the 20 percent penalty rate applies to the 1987 and 1988 underpayments attributable to the disallowed carryback.

§ 1.6662–4 Substantial understatement of income tax.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 1.6664–2, of any income tax imposed under subtitle A of the Code that is required to be shown on a return is attributable to a substantial understatement of such income tax, there is added to the tax an amount equal to 20 percent of such portion. Except in the case of any item

attributable to a tax shelter (as defined in paragraph (g)(2) of this section), an understatement is reduced by the portion of the understatement that is attributable to the tax treatment of an item for which there is substantial authority, or with respect to which there is adequate disclosure. General rules for determining the amount of an understatement are set forth in paragraph (b) of this section and more specific rules in the case of carrybacks and carryovers are set forth in paragraph (c) of this section. The rules for determining when substantial authority exists are set forth in § 1.6662–4(d). The rules for determining when there is adequate disclosure are set forth in § 1.6662–4(e) and (f). This penalty does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies.

(b) *Definitions and computational rules*—(1) *Substantial.* An understatement (as defined in paragraph (b)(2) of this section) is "substantial" if it exceeds the greater of—

(i) 10 percent of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section); or

(ii) $5,000 ($10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)).

(2) *Understatement.* Except as provided in paragraph (c) of this section (relating to special rules for carrybacks and carryovers), the term "understatement" means the excess of—

(i) The amount of the tax required to be shown on the return for the taxable year (as defined in paragraph (b)(3) of this section), over

(ii) The amount of the tax imposed which is shown on the return for the taxable year (as defined in paragraph (b)(4) of this section), reduced by any rebate (as defined in paragraph (b)(5) of this section).

The definition of understatement also may be expressed as—Understatement
$= X - (Y - Z)$
where X = the amount of the tax required to be shown on the return; Y = the amount of the tax imposed which is shown on the return; and Z = any rebate.

(3) *Amount of the tax required to be shown on the return.* The "amount of the tax required to be shown on the return" for the taxable year has the same meaning as the "amount of income tax imposed" as defined in § 1.6664–2(b).

(4) *Amount of the tax imposed which is shown on the return.* The "amount of the tax imposed which is shown on the return" for the taxable year has the same meaning as the "amount shown as the tax by the taxpayer on his return," as defined in § 1.6664–2(c), except that—

(i) There is no reduction for the excess of the amount described in § 1.6664–2(c)(1)(i) over the amount described in § 1.6664–2(c)(1)(ii), and

(ii) The tax liability shown by the taxpayer on his return is recomputed as if the following items had been reported properly:

(A) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)).

(B) Items (other than tax shelter items as defined in § 1.6662–4(g)(3)) with respect to which there is adequate disclosure (as provided in § 1.6662–4 (e) and (f)).

(C) Tax shelter items (as defined in § 1.6662–4(g)(3)) for which there is substantial authority for the treatment claimed (as provided in § 1.6662–4(d)), and with respect to which the taxpayer reasonably believed that the tax treatment of the items was more likely than not the proper tax treatment (as provided in § 1.6662–4(g)(4)).

(5) *Rebate.* The term "rebate" has the meaning set forth in § 1.6664–2(e), except that—

(i) "Amounts not so shown previously assessed (or collected without assessment)" includes only amounts not so shown previously assessed (or collected without assessment) as a deficiency, and

(ii) The amount of the rebate is determined as if any items to which the rebate is attributable that are described in paragraph (b)(4) of this section had received the proper tax treatment.

(6) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section. These examples do not take into account the reasonable cause exception under § 1.6664–4:

Example (1). In 1990, individual A, a calendar year taxpayer, files a return for 1989, which shows taxable income of $16,200 and tax liability of $2,734. Subsequent adjustments on audit for 1989 increase taxable income to $51,500 and tax liability to $12,339. There was substantial authority for an item resulting in an adjustment that increases taxable income by $5,300. The item is not a tax shelter item. In computing the amount of the understatement, the amount of tax shown on A's return is determined as if the item for which there was substantial authority had been given the proper tax treatment. Thus, the amount of tax that is treated as shown on A's return is $4,176, i.e., the tax on $23,500 ($16,200 taxable income actually shown on A's return plus $5,300, the amount of the adjustment for which there was substantial authority). The amount of the understatement is $8,163, i.e., $12,339 (the amount of tax required to be shown) less $4,176 (the amount of tax treated as shown on A's return after adjustment for the item for which there was substantial authority). Because the $8,163 understatement exceeds the greater of 10 percent of the tax required to be shown on the return for the year, i.e., $1,234 ($12,339 × .10) or $5,000, A has a substantial understatement of income tax for the year.

Example 2. Individual B, a calendar year taxpayer, files a return for 1990 that fails to include income reported on an information return, Form 1099, that was furnished to B. The Service detects this omission through its document matching program and assesses $3,000 in unreported tax liability. B's return is later examined and as a result of the examination the Service makes an adjustment to B's return of $4,000 in additional tax liability. Assuming there was neither substantial authority nor adequate disclosure with respect to the items adjusted, there is an understatement of $7,000 with respect to B's return. There is also an underpayment of $7,000. (See § 1.6664–2.) The amount of the understatement is not reduced by imposition of a negligence penalty on the $3,000 portion of the underpayment that is attributable to the unreported income. However, if the Service does impose the negligence penalty on this $3,000 portion, the Service may only impose the substantial understatement penalty on the remaining $4,000 portion of the underpayment. (See § 1.6662–2(c), which prohibits stacking of accuracy-related penalty components.)

(c) *Special rules in the case of carrybacks and carryovers*—(1) *Aggregation of understatements in testing for substantiality.* In determining whether an understatement is substantial for a year in which a carryback or carryover of a loss, deduction or credit arises (a loss or credit year), any understatement for a carryback or carryover year that is attributable to a tainted carryback or carryover from the loss or credit year is treated as an understatement with respect to the return of the loss or credit year. An understatement for a carryback or carryover year is considered attributable to a tainted carryback or carryover from a loss or credit year to the extent that the carryback or carryover, as the case may be, is attributable to "tainted items," *i.e.*, in the case of items other than tax-shelter items, items for which there neither was substantial authority nor adequate disclosure, or in the case of tax shelter items, items for which there was not both substantial authority and a reasonable belief that the tax treatment was more likely than not the proper treatment. An understatement for a loss or credit year is substantial, therefore, if the understatement for that year (determined without regard to aggregation) exceeds, when aggregated with any understatement for a carryback or carryover year that is attributable to a tainted carryback or carryover from the loss or credit year, the greater of 10 percent of the tax required to be shown on the return for the loss or credit year, or $5,000 ($10,000 in the case of most corporations). Notwithstanding the aggregating of understatements in testing for substantiality, any underpayment for a carryback or carryover year that is attributable to a substantial understatement with respect to the return of the loss or credit year, is subject to penalty in the carryback or carryover year. (See § 1.6664–2 for the rules for computing an underpayment.) The determination of whether there is substantial authority for, or adequate disclosure with respect to, the tax treatment of a carryback or carryover item is made with respect to the return of the loss or credit year, rather than the return of the carryback or carryover year.

(2) *Understatements for carryback years not reduced by amount of carrybacks.* The amount of an understatement for a taxable year is not reduced on account of a carryback of a loss, deduction or credit to that year.

(3) *Transition rules*—(i) *Carrybacks to pre-1990 years.* Any understatement for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to a tainted carryback or carryover from a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989, is treated as an understatement with respect to the return of the loss or credit year. Any underpayment for such a carryback year that is attributable to an understatement for such a loss or credit year is penalized at a 20 percent rate under section 6662(b)(2).

(ii) *Carryovers to post-1989 years.* The determination of whether an understatement is substantial for a carryover year, the return for which is due (without regard to extensions) after December 31, 1989, is made without treating the understatement for such carryover year as an understatement with respect to the return of the loss or credit year, if the return for such loss or credit year is due (without regard to extensions) before January 1, 1990. Any underpayment for such a carryover year that is attributable to an understatement for such year is penalized at a 20 percent rate under section 6662(b)(2).

(4) *Examples.* The following examples illustrate the special rules of paragraph (c) of this section regarding carrybacks and carryovers. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. Corporation N, a calendar year taxpayer, is a C corporation. N was formed on January 1, 1987, and timely filed the following income tax returns:

Tax year	1987	1988	1989	1990
Taxable income	$110,000	$100,000	($200,000)	$110,000 (Before NOLCO).
Tax liability	1,500	22,250	-0-	1,500 (Before NOLCO).

During 1990, N files Form 1139, Corporation Application for Tentative Refund, to carry back the NOL generated in 1989 (NOLCB). N received refunds of $1,500 for 1987 and $22,250 for 1988.

For tax year 1990, N carries over $10,000 of the 1989 loss to offset $10,000 of income earned in 1990 and reduce taxable income to zero. N Would have reported $1,500 of tax liability for 1990 if it were not for use of the net operating loss carryover (NOLCO). N assumes there is a remaining NOLCO of $80,000 to be applied for tax year 1991.

In June 1991, the Service completes its examination of the 1989 loss year return and makes the following adjustments:

Taxable income per 1989 return	($200,000)
Adjustment: Unreported income	210,000
Corrected taxable income	10,000
Corrected tax liability	1,500

There was not substantial authority for N's treatment of the items comprising the 1989 adjustments and N did not make adequate disclosure.

The following are deemed to be understatements of tax with respect to the 1989 loss year: (1) $1,500 for tax year 1987; (2) $22,250 for tax year 1988; (3) $1,500 for tax year 1989; and (4) $1,500 for tax year 1990. These amounts are aggregated to determine if the understatement for 1989 is substantial, i.e., to determine if it exceeds the greater of (a) $150 (0 percent of the tax required to be shown on the return for taxable year 1989 (.10 X $1,500)) or (b) $10,000. The understatement for 1989 is $26,750 and, therefore, is substantial. A 20 percent penalty rate will apply in 1987, 1988, 1989 and 1990 to each underpayment in those years, since each such underpayment is attributable to the $26,750 substantial understatement for 1989.

Example 2. The facts are the same as in Example 1, except that in addition to examining the 1989 return, the Service also examines the 1988 return and makes an adjustment that results in an understatement. (This adjustment is unrelated to the adjustment on the 1988 return for the disallowance of the NOLCB from 1989.) If the understatement resulting from the adjustment is a substantial understatement under former section 6661 (determined without regard to the understatement attributable to the carryback), any underpayment attributable to the understatement is subject to the 25 percent penalty rate under former section 6661. Regardless of whether the adjustment gives rise to a substantial understatement under former section 6661, any underpayment attributable to the $22,250 understatement for 1988 resulting from the NOLCB from 1989 (see *Example 1*) is subject to the 20 percent penalty rate under section 6662.

Example 3. The facts are the same as in *Example 1*, except that in addition to examining the 1989 return, the Service examines the 1990 return. In addition to disallowing the NOLCO from 1989, another adjustment is made for an item for which there was not substantial authority or adequate disclosure:

Tax year 1990: Taxable income per return	$-0-
(1) Increase in income attributable to disallowance of NOLCO	10,000
(2) Increase in income attributable to other adjustments	5,000
Corrected taxable income	15,000
Corrected tax liability	2,250
Tax per return	-0-
Understatement	2,250
Portion of understatement attributable to (1)	1,500
Portion of understatement attributable to (2)	750

As explained in *Example 1*, the understatement resulting from adjustment (1) is treated as an understatement for tax year 1989 and is aggregated with understatements resulting from disallowance of NOLCB's from 1989 and the $1,500 understatement for 1989 to determine if there is a substantial understatement for 1989. Because the understatement resulting from adjustment (2), standing alone, is not in excess of the greater of 10 percent of the tax required to be shown on the 1990 return (.10 X $2,250 = $225), or $10,000, such understatement is not substantial and will not trigger the substantial understatement penalty for 1990.

Example 4. Corporation W, a calendar year taxpayer, is a C corporation. W was formed on January 1, 1992. W's 1991 tax return shows a net operating loss of $40,000. W applies the entire $40,000 loss carryover to its 1992 tax return, resulting in a reduction in taxable

income from $60,000 to $10,000. A subsequent examination of the 1991 tax return results in an adjustment of $70,000 for unreported income. There was not substantial authority for W's failure to report the income, and W did not make adequate disclosure with respect to the unreported income. The adjustment eliminates the 1991 net operating loss of $40,000, producing an understatement of $4,500 (the tax on corrected taxable income of $80,000). As a result of the adjustment to the 1991 return, the loss of $40,000 carried over to 1992 is disallowed, resulting in an understatement of $6,000 (the difference between the tax on $50,000 and the tax on $10,000). Both the $4,500 understatement and the $6,000 understatement are understatements with respect to 1991, and they are aggregated for purposes of determining whether there is a substantial understatement for 1991. The aggregated amount, $10,500, exceeds the greater of $10,000 or 10 percent of the tax required to be shown on the 1991 return (.10 X $4,500 = $450). Thus, any underpayment attributable to the $4,500 understatement for 1991 or the $6,000 understatement for 1992 is subject to the 20 percent penalty rate under section 6662 in each of those years.

Example 5. Individual P, a calendar year single taxpayer, files his 1988 tax return showing a net operating loss of $25,000. The loss is carried forward rather than carried back. P applies $10,000 of the loss to his 1989 tax year, reducing his taxable income to zero. The remaining $15,000 is applied to his 1990 tax return resulting in a reduction in taxable income from $35,000 to $20,000. A subsequent examination of the 1988 tax return results in an adjustment for unreported income of $45,000, thus eliminating the net operating loss of $25,000 and producing an understatement for 1988 of $3,237 (the tax on corrected taxable income of $20,000). As a result of the adjustment to the 1988 return, the loss of $10,000 carried forward to 1989 is disallowed, resulting in an understatement for 1989 of $1,904 (tax on $10,000 taxable income). Also as a result of the adjustment to the 1988 return, the loss of $15,000 carried forward to 1990 is disallowed, resulting in an understatement for 1990 of $2,254. Because none of the understatements, standing alone, exceeds $5,000 (even though, if aggregated, they would exceed $5,000), there is not a substantial understatement for 1988 under former section 6661, or for 1989 or 1990 under section 6662(d).

(d) *Substantial authority*—(1) *Effect of having substantial authority.* If there is substantial authority for the tax treatment of an item, the item is treated as if it were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to the item is not included in the understatement for that year. (For special rules relating to tax shelter items see § 1.6662–4(g).)

(2) *Substantial authority standard.* The substantial authority standard is an objective standard involving an analysis of the law and application of the law to relevant facts. The substantial authority standard is less stringent than the "more likely than not" standard (the standard that is met when there is a greater than 50-percent likelihood of the position being upheld), but more stringent than the reasonable basis standard (the standard which, if satisfied, generally will prevent imposition of the penalty under section 6662(b)(1) for negligence or disregard of rules or regulations). A return position that is arguable, but fairly unlikely to prevail in court, satisfies the reasonable basis standard, but not the substantial authority standard. The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.

(3) *Determination of whether substantial authority is present*—(i) *Evaluation of authorities.* There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment. All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists. The weight of authorities is determined in light of the pertinent facts and circumstances in the manner prescribed by paragraph (d)(3)(ii) of this section. There may be substantial authority for more than one position with respect to the same item. Because the substantial authority standard is an objective standard, the taxpayer's belief that there is substantial authority for the tax treatment of an item is not relevant in determining whether there is substantial authority for that treatment.

(ii) *Nature of analysis.* The weight accorded an authority depends on its relevance and persuasiveness, and the type of document providing the authority. For example, a case or revenue ruling having some facts in common with the tax treatment at issue is not particularly relevant if the authority is materially distinguishable on its facts, or is otherwise inapplicable to the tax treatment at issue. An authority that merely states a conclusion ordinarily is less persuasive than one that reaches its conclusion by cogently relating the applicable law to pertinent facts. The weight of an authority from which information has been deleted, such as a private letter ruling, is diminished to the extent that the deleted information may have affected the authority's conclusions. The type of document also must be considered. For example, a revenue ruling is accorded greater weight than a private letter ruling addressing the same issue. An older private letter ruling, technical advice memorandum, general counsel memorandum or action on decision generally must be accorded less weight than a more recent one. Any document described in the preceding sentences that is more than 10 years old generally is accorded very little weight. There may be substantial authority for the tax treatment of an item despite the absence of certain types of authority. Thus, a taxpayer may have substantial authority for a position that is supported only by a well-reasoned construction of the applicable statutory provision.

(iii) *Types of authority.* Except in cases described in paragraph (d)(3)(iv) of this section concerning written determinations, only the following are authority for purposes of determining whether there is substantial authority for the tax treatment of an item: applicable provisions of the Internal Revenue Code and other statutory provisions; proposed, temporary and final regulations construing such statutes; revenue rulings and revenue procedures; tax treaties and regulations thereunder, and Treasury Department and other official explanations of such treaties; Federal court cases interpreting such statutes; congressional intent as reflected in committee reports, joint explanatory statements of managers included in conference committee reports, and floor statements made prior to enactment by one of a bill's managers; General Explanations of tax legislation prepared by the Joint Committee on Taxation (the Blue Book); private letter rulings and technical advice memoranda issued after October 31, 1976; actions on decisions and general counsel memoranda issued after March 12, 1981; Internal Revenue Service information or press releases; and notices, announcements and other administrative pronouncements published by the Service in the Internal Revenue Bulletin. Conclusions reached in treatises, legal periodicals, legal opinions or opinions rendered by other tax professionals are not authority. The authorities underlying such expressions of opinion where applicable to the facts of a particular case, however, may give rise to substantial authority for the tax treatment of an item. Notwithstanding the preceding list of authorities, an authority does not continue to be an authority once it is overruled or modified, implicitly or explicitly, by an authority of the same or higher source. For example, a district court opinion on an issue is not an authority if overruled or reversed. Similarly, a private letter ruling is not authority if revoked or if inconsistent with a subsequent proposed regulation, revenue ruling or other administrative pronouncement published in the Internal Revenue Bulletin.

(iv) *Special rules*—(A) *Written determinations.* There is substantial authority for the tax treatment of an item by a taxpayer if the treatment is supported by the conclusion of a ruling or a determination letter (as defined in § 301.6110–2(d) and (e)) issued to the taxpayer, by the conclusion of a technical advice memorandum in which the taxpayer is named, or by an affirmative statement in a revenue agent's report with respect to a prior taxable year of the taxpayer ("written determinations"). The preceding sentence does not apply, however, if—

(*1*) There was a misstatement or omission of a material fact or the facts that subsequently develop are materially different from the facts on which the written determination was based, or

(*2*) The written determination was modified or revoked after the date of issuance by—

(*i*) A notice to the taxpayer to whom the written determination was issued,

(*ii*) The enactment of legislation or ratification of a tax treaty,

(*iii*) A decision of the United States Supreme Court,

(*iv*) The issuance of temporary or final regulations, or

(*v*) The issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin. See section 6404(f) for rules which require the Secretary to abate a penalty that is attributable to erroneous written advice furnished to a taxpayer by an officer or employee of the Internal Revenue Service.

(B) *Taxpayer's jurisdiction.* The applicability of court cases to the taxpayer by reason of the taxpayer's residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for the tax treatment of an item. Notwithstanding the preceding sentence, there is substantial authority for the tax treatment of an item if the treatment is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the item.

(C) *When substantial authority determined.* There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is filed or there was substantial authority on the last day of the taxable year to which the return relates.

(v) *Substantial authority for tax returns due before January 1, 1990.* There is substantial authority for the tax treatment of an item on a return that is due (Without regard to extensions) after December 31, 1982 and before January 1, 1990, if there is substantial authority for such treatment under either the provisions of paragraph (d)(3)(iii) of this section (which set forth an expanded list of authorities) Or of § 1.6662–3(b)(2) (which set forth a narrower list of authorities). Under either list of authorities, authorities both for and against the position must be taken into account.

(e) *Disclosure of certain information*—(1) *Effect of adequate disclosure.* Items for which there is adequate disclosure as provided in this paragraph (e) and in paragraph (f) of this section are treated as if such items were shown properly on the return for the taxable year in computing the amount of the tax shown on the return. Thus, for purposes of section 6662(d), the tax attributable to such items is not included in the understatement for that year.

(2) *Circumstances where disclosure will not have an effect.* The rules of paragraph (e)(1) of this section do not apply where the item or position on the return is-

(i) Frivolous (as defined in § 1.6662-3(b)(3));

(ii) Attributable to a tax shelter (as defined in section 6662(d)(2)(C)(ii) and paragraph (g)(2) of this section); or

(iii) Not properly substantiated, or the taxpayer failed to keep proper books and records with respect to the item or position.

(f) *Method of making adequate disclosure*—(1) *Disclosure statement.* Disclosure is adequate with respect to an item (or group of similar items, such as amounts paid or incurred for supplies by a taxpayer engaged in business) or a position on a return if the disclosure is made on a properly completed Form 8275 (Disclosure Statement) attached to the return or to a qualified amended return (as defined in § 1.6664–2(c)(3)) for the taxable year.

(2) *Disclosure on return.* The Commissioner may by annual revenue procedure (or otherwise) prescribe the circumstances under which disclosure of information on a return (or qualified amended return) in accordance with applicable forms and instructions is adequate. If the revenue procedure does not include an item, disclosure is adequate with respect to that item only if made on a properly completed Form 8275 attached to the return for the year or to a qualified amended return.

(3) *Recurring item.* Disclosure with respect to a recurring item, such as the basis of recovery property, must be made for each taxable year in which the item is taken into account.

(4) *Carrybacks and carryovers.* Disclosure is adequate with respect to any loss, deduction or credit that is carried to another year only if made in connection with the return (or qualified amended return) for the taxable year in which the carryback or carryover arises (the loss or credit year). Disclosure is not also required in connection with the return for the taxable year in which the carryback or carryover is taken into account.

(5) *Pass-through entities.* Disclosure in the case of items attributable to a pass-through entity (pass-through items) is made with respect to the return of the entity, except as provided in this paragraph (f)(5). Thus, disclosure in the case of pass-through items must be made on a Form 8275 attached to the return (or qualified amended return) of the entity, or on the entity's return in accordance with the revenue procedure described in paragraph (f)(2) of this section, if applicable. A taxpayer (*i.e.*, partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) also may make adequate disclosure with respect to a pass-through item, however, if the taxpayer files a properly completed Form 8275 (which includes completion of Part III, Information About Pass-Through Entity) in duplicate, one copy attached to the taxpayer's return (or qualified amended return) and the other copy filed with the Internal Revenue Service Center with which the return of the entity is required to be filed. Each Form 8275 filed by the taxpayer should relate to the pass-through items of only one entity. For purposes of this paragraph (f)(5), a pass-through entity is a partnership, S corporation (as defined in section 1361(a)(1)), estate, trust, regulated investment company (as defined in section 851(a)), real estate investment trust (as defined in section 856(a)), or real estate mortgage investment conduit (REMIC) (as defined in section 860D(a)).

(g) *Items relating to tax shelters*—(1) *In general.* Tax shelter items (as defined in paragraph (g)(3) of this section) are treated as if such items were shown properly on the return for a taxable year in computing the amount of the tax shown on the return, and thus the tax attributable to such items is not included in the understatement for the year, if—

(i) There is substantial authority (as provided in paragraph (d) of this section) for the tax treatment of that item; and

(ii) The taxpayer reasonably believed at the time the return was filed that the tax treatment of that item was more likely than not the proper treatment (see paragraph (g)(4) of this section).

Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

(2) *Tax shelter*—(i) *In general.* For purposes of section 6662(d), the term "tax shelter" means—

(A) A partnership or other entity (such as a corporation or trust),

(B) An investment plan or arrangement, or

(C) Any other plan or arrangement

if the principal purpose of the entity, plan or arrangement, based on objective evidence, is to avoid or evade Federal income tax. The principal purpose of an entity, plan or arrangement is to avoid or evade Federal income tax if that purpose exceeds any other purpose. Typical of tax shelters are transactions structured with little or no motive for the realization of economic gain, and transactions that utilize the mismatching of income and deductions, overvalued assets or assets with values subject to substantial uncertainty, certain nonrecourse financing, financing techniques that do not conform to standard commercial business practices, or the mischaracterization of the substance of the transaction. The existence of economic substance does not of itself establish that a transaction is not a tax shelter if the transaction includes other characteristics that indicate it is a tax shelter.

(ii) *Principal purpose.* The principal purpose of an entity, plan or arrangement is not to avoid or evade Federal income tax if the entity, plan or arrangement has as its purpose the claiming of exclusions from income, accelerated deductions or other tax benefits in a manner consistent with the statute and Congressional purpose. For example, an entity, plan or arrangement does not have as its principal purpose the avoidance or evasion of Federal income tax solely as a result of the following uses of tax benefits provided by the Internal Revenue Code: the purchasing or holding of an obligation bearing interest that is excluded from gross income under section 103; taking an accelerated depreciation allowance under section 168; taking the percentage depletion allowance under section 613 or section 613A; deducting intangible drilling and development costs as expenses under section 263(c); establishing a qualified retirement plan under sections 401–408; claiming the possession tax credit under section 936; or claiming tax benefits available by reason of an election under section 992 to be taxed as a domestic international sales corporation (DISC), under section 927(f)(1) to be taxed as a foreign sales corporation (FSC), or under section 1362 to be taxed as an S corporation.

(3) *Tax shelter item.* An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of a tax shelter to avoid or evade Federal income tax. Thus, if a partnership is established for the principal purpose of avoiding or evading Federal income tax by acquiring and overstating the basis of property for purposes of claiming accelerated depreciation, the depreciation with respect to the property is a tax shelter item. However, a deduction claimed in connection with a separate transaction carried on by the same partnership is not a tax shelter item if the transaction does not constitute a plan or arrangement the principal purpose of which is to avoid or evade tax.

(4) *Reasonable belief.* For purposes of section 6662(d), a taxpayer is considered reasonably to believe that the tax treatment of an item is more likely than not the proper tax treatment if—

(i) The taxpayer analyzes the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and, in reliance upon that analysis, reasonably concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service; or

(ii) The taxpayer in good faith relies on the opinion of a professional tax advisor, if the opinion is based on the tax advisor's analysis of the pertinent facts and authorities in the manner described in paragraph (d)(3)(ii) of this section and unambiguously states that the tax advisor concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged by the Internal Revenue Service.

(5) Pass-through entities. In the case of tax shelter items attributable to a pass-through entity, the actions described in paragraphs (g)(4)(i) and (g)(4)(ii) of this section, if taken by the entity, are deemed to have been taken by the taxpayer and are considered in determining whether the taxpayer reasonably believed that the tax treatment of an item was more likely than not the proper tax treatment.

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

(a) *In general.* If any portion of an underpayment, as defined in section 6664(a) and § 2.6664–2, of any income tax imposed under chapter 1 of subtitle A of the Code that is required to be shown on a return is attributable to a substantial valuation misstatement under chapter 1 (substantial valuation misstatement), there is added to the tax an amount equal to 20 percent of such portion. Section 6662(h) increases the penalty to 40 percent in the case of a gross valuation misstatement under chapter 1 (gross valuation misstatement). No penalty under section 6662(b)(3) is imposed, however, on a portion of an underpayment that is attributable to a substantial or gross valuation misstatement unless the aggregate of all portions of the underpayment attributable to substantial or gross valuation misstatements exceeds the applicable dollar limitation ($5,000 or $10,000), as provided in section 6662(e)(2) and paragraphs (b) and (f)(2) of this section. This penalty also does not apply to the extent that the reasonable cause and good faith exception to this penalty set forth in § 1.6664–4 applies. There is no disclosure exception to this penalty.

(b) *Dollar limitation.* No penalty may be imposed under section 6662(b)(3) for a taxable year unless the portion of the underpayment for that year that is attributable to substantial or gross valuation misstatements exceeds $5,000 ($10,000 in the case of a corporation other than an S corporation (as defined in section 1361(a)(1)) or a personal holding company (as defined in section 542)). This limitation is applied separately to each taxable year for which there is a substantial or gross valuation misstatement.

(c) *Special rules in the case of carrybacks and carryovers*—(1) *In general.* The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year), provided that the applicable dollar limitation set forth in section 6662(e)(2) is satisfied in the carryback or carryover year.

(2) *Transition rule for carrybacks to pre-1990 years.* The penalty under section 6662(b)(3) is imposed on any portion of an underpayment for a carryback year, the return for which is due (without regard to extensions) before January 1, 1990, that is attributable to a substantial or gross valuation misstatement for a loss or credit year, the return for which is due (without regard to extensions) after December 31, 1989, provided the underpayment for the carryback year exceeds the applicable dollar limitation ($5,000, or $10,000 for most corporations). See *Example 3* in paragraph (d) of this section.

(d) *Examples.* The following examples illustrate the provisions of paragraphs (b) and (c) of this section. These examples do not take into account the reasonable cause exception under § 1.6664–4.

Example 1. Corporation Q is a C corporation. In 1990, the first year of its existence, Q had taxable income of $200,000 without considering depreciation of a particular asset. On its calendar year 1990 return, Q overstated its basis in this asset by an amount that caused a substantial valuation misstatement. The overstated basis resulted in depreciation claimed of $350,000, which was $250,000 more than the $100,000 allowable. Thus, on its 1990 return, Q showed a loss of $150,000. In 1991, Q had taxable income of $450,000 before application of the loss carryover, and Q claimed a carryover loss deduction under section 172 of $150,000, resulting in taxable income of $300,000 for 1991. Upon audit of the 1990 return, the basis of the asset was corrected, resulting in an adjustment of $250,000. For 1990, the underpayment resulting from the $100,000 taxable income (−$150,000 + $250,000) is attributable to the valuation misstatement. Assuming the underpayment resulting from the $100,000 taxable income exceeds the $10,000 limitation, the penalty will be imposed in 1990. For 1991, the elimination of the loss carryover results in additional taxable income of $150,000. The underpayment for 1991 resulting from that adjustment is also attributable to the substantial valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $150,000 additional taxable income for 1991 exceeds the $10,000 limitation, the substantial valuation misstatement penalty also will be imposed for that year.

Example 2. Corporation T is a C corporation. In 1990, the first year of its existence, T had a loss of $3,000,000 without considering depreciation of its major asset. On its calendar year 1990 return, T overstated its basis in this asset in an amount that caused a substantial valuation misstatement. This overstatement resulted in depreciation claimed of $3,500,000, which was $2,500,000 more than the $1,000,000 allowable. Thus, on its 1990 return, T showed a loss of $6,500,000. In 1991, T had taxable income of $4,500,000 before application of the carryover loss, but claimed a carryover loss deduction under section 172 in the amount of $4,500,000, resulting in taxable income of zero for that year and leaving a $2,000,000 carryover available. Upon audit of the 1990 return the basis of the asset was corrected, resulting in an adjustment of $2,500,000.

For 1990, the underpayment is still zero (−$6,500,000 + $2,500,000 = −$4,000,000). Thus, the penalty does not apply in 1990. The loss for 1990 is reduced to $4,000,000.

For 1991, there is additional taxable income of $500,000 as a result of the reduction of the carryover loss ($4,500,000 reported income before carryover loss minus corrected carryover loss of $4,000,000 = $500,000). The underpayment for 1991 resulting from reduction of the carryover loss is attributable to the valuation misstatement on the 1990 return. Assuming the underpayment resulting from the $500,000 additional taxable income exceeds the $10,000 limitation, the substantial valuation misstatement penalty will be imposed in 1991.

Example 3. Corporation V is a C corporation. In 1990, V had a loss of $100,000 without considering depreciation of a particular asset which it had fully depreciated in earlier years. V had a depreciable basis in the asset of zero, but on its 1990 calendar year return erroneously claimed a basis in the asset of $1,250,000 and depreciation of $250,000. V reported a $350,000 loss for the year 1990, and carried back the loss to the 1987 and 1988 tax years. V had reported taxable income of $300,000 in 1987 and $200,000 in 1988, before application of the carryback. The $350,000 carryback eliminated all taxable income for 1987, and $50,000 of the taxable income for 1988. After disallowance of the $250,000 depreciation deduction for 1990, V still had a loss of $100,000. Because there is no underpayment for 1990, no valuation misstatement penalty is imposed for 1990. However, as a result of the 1990 depreciation adjustment, the carryback to 1987 is reduced from $350,000 to $100,000. After absorption of the $100,000 carryback, V has taxable income of $200,000 for 1987. This adjustment results in an underpayment for 1987 that is attributable to the valuation misstatement on the 1990 return. The valuation misstatement for 1990 is a gross valuation misstatement because the correct adjusted basis of the depreciated asset was zero. (See paragraph (e)(2) of this section.) Therefore, the 40 percent penalty rate applies to the 1987 underpayment attributable to the 1990 misstatement, provided that this underpayment exceeds $10,000. The adjustment also results in the elimination of any loss carryback to 1988 resulting in an increase in taxable income for 1988 of $50,000. Assuming the underpayment resulting from this additional $50,000 of income exceeds $10,000, the gross valuation misstatement penalty is imposed on the underpayment for 1988.

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 200 percent or more of the correct amount.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if the value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 is 400 percent or more of the correct amount.

(3) *Property.* For purposes of this section, the term "property" refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts and choses in action.

(f) *Multiple valuation misstatements on a return*—(1) *Determination of whether valuation misstatements are substantial or gross.* The determination of whether there is a substantial or gross valuation misstatement on a return is made on a property-by-property basis. Assume, for example, that property A has a value of 60 but a taxpayer claims a value of 110, and that property B has a value of 40 but the taxpayer claims a value of 100. Because the claimed and correct values are compared on a property-by-property basis, there is a substantial valuation misstatement with respect to property B, but not with respect to property A, even though the claimed values (210) are 200 percent or more of the correct values (100) when compared on an aggregate basis.

(2) *Application of dollar limitation.* For purposes of applying the dollar limitation set forth in section 6662(e)(2), the determination of the portion of an underpayment that is attributable to a substantial or gross valuation misstatement is made by aggregating all portions of the underpayment attributable to substantial or gross valuation misstatements. Assume, for example, that the value claimed for property C on a return is 250 percent of the correct value, and that the value claimed for property D on the return is 400 percent of the correct value. Because the portions of an underpayment that are attributable to a substantial or gross valuation misstatement on a return are aggregated in applying the dollar limitation, the dollar limitation is satisfied if the portion of the underpayment that is attributable to the misstatement of the value of property C, when aggregated with the portion of the underpayment that is attributable to the misstatement of the value of property D, exceeds $5,000 ($10,000 in the case of most corporations).

(g) *Property with a value or adjusted basis of zero.* The value or adjusted basis claimed on a return of any property with a correct value or adjusted basis of zero is considered to be 400 percent or more of the correct amount. There is a gross valuation

misstatement with respect to such property, therefore, and the applicable penalty rate is 40 percent.

(h) *Pass-through entities*—(1) *In general.* The determination of whether there is a substantial or gross valuation misstatement in the case of a return of a pass-through entity (as defined in § 1.6662–4(f)(5)) is made at the entity level. However, the dollar limitation ($5,000 or $10,000, as the case may be) is applied at the taxpayer level (*i.e.*, with respect to the return of the shareholder, partner, beneficiary, or holder of a residual interest in a REMIC).

(2) *Example.* The rules of paragraph (h)(1) of this section may be illustrated by the following example.

Example. Partnership P has two partners, individuals A and B. P claims a $40,000 basis in a depreciable asset which, in fact, has a basis of $15,000. The determination that there is a substantial valuation misstatement is made solely with reference to P by comparing the $40,000 basis claimed by P with P's correct basis of $15,000. However, the determination of whether the $5,000 threshold for application of the penalty has been reached is made separately for each partner. With respect to partner A, the penalty will apply if the portion of A's underpayment attributable to the passthrough of the depreciation deduction, when aggregated with any other portions of A's underpayment also attributable to substantial or gross valuation misstatements, exceeds $5,000 (assuming there is not reasonable cause for the misstatements (see § 1.6664–4(c)).

(i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(k) *Returns affected.* Except in the case of rules relating to transactions between persons described in section 482 and net section 482 transfer price adjustments, the provisions of section 6662(b)(3) apply to returns due (without regard to extensions of time to file) after December 31, 1989, notwithstanding that the original substantial or gross valuation misstatement occurred on a return that was due (without regard to extensions) before January 1, 1990. Assume, for example, that a calendar year corporation claimed a deduction on its 1990 return for depreciation of an asset with a basis of X. Also assume that it had reported the same basis for computing depreciation on its returns for the preceding 5 years and that the basis shown on the return each year was 200 percent or more of the correct basis. The corporation may be subject to a penalty for substantial valuation misstatements on its 1989 and 1990 returns, even though the original misstatement occurred prior to the effective date of sections 6662(b)(3) and (e).

§ 1.6664–0 Table of contents.

§ 1.6664–1 Accuracy-related and fraud penalties: definitions and special rules

(a) In general.
(b) Effective date.

§ 1.6664–2 Underpayment

(a) Underpayment defined.
(b) Amount of income tax imposed.
(c) Amount shown as the tax by the taxpayer on his return.
(1) Defined.
(2) Effect of qualified amended return.
(3) Qualified amended return defined.
(4) Special rule for qualified amended returns.
(d) Amounts not so shown previously assessed (or collected without assessment).
(e) Rebates.
(f) Underpayments for certain carryback years not reduced by amount of carrybacks.
(g) Examples.

§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

(a) In general.
(b) Order in which adjustments are taken into account.
(c) Manner in which unclaimed prepayment credits are allocated.
(d) Examples.

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

(a) In general.
(b) Facts and circumstances taken into account.
(1) In general.
(2) Examples.
(c) Pass-through items.
(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments. [Reserved]
(e) Valuation misstatements of charitable deduction property.
(1) In general.
(2) Definitions.
(i) Charitable deduction property.
(ii) Qualified appraisal.
(iii) Qualified appraiser.

§ 1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

(a) *In general.* Section 6664(a) defines the term "underpayment" for purposes of the accuracy-related penalty under section 6662 and the fraud penalty under section 6663. The definition of "underpayment" of income taxes imposed under subtitle A is set forth in § 1.6664–2. Ordering rules for computing the total amount of accuracy-related and fraud penalties imposed with respect to a return are set forth in § 1.6664–3. Section 6664(c) provides a reasonable cause and good faith exception to the accuracy-related penalty. Rules relating to the reasonable cause and good faith exception are set forth in § 1.6664–4.

(b) *Effective date.* Sections 1.6664–1 through 1.6664–4 apply to returns the due date of which (determined without regard to extensions of time to file) is after December 31, 1989.

§ 1.6664–2 Underpayment.

(a) *Underpayment defined.* In the case of income taxes imposed under subtitle A, an underpayment for purposes of section 6662, relating to the accuracy-related penalty, and section 6663, relating to the fraud penalty, means the amount by which any income tax imposed under this subtitle (as defined in paragraph (b) of the section) exceeds the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return (as defined in paragraph (c) of this section), plus

(ii) Amounts not so shown previously assessed (or collected without assessment) (as defined in paragraph (d) of this section), over

(2) The amount of rebates made (as defined in paragraph (e) of this section).

The definition of underpayment also may be expressed as—

Underpayment = $W - (X + Y - Z)$, where W = the amount of income tax imposed; Y = the amount shown as the tax by the taxpayer on his return; Y = amounts not so shown previously assessed (or collected without assessment); and Z = the amount of rebates made.

(b) *Amount of income tax imposed.* For purposes of paragraph (1) of this section, the "amount of income tax imposed" is the amount of tax imposed on the taxpayer under subtitle A for the taxable year, determined without regard to—

(1) The credits for tax withheld under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations);

(2) Payments of tax or estimated tax by the taxpayer;

(3) Any credit resulting from the collection of amounts assessed under section 6851 as the result of a termination assessment, or section 6861 as the result of a jeopardy assessment; and

(4) Any tax that the taxpayer is not required to assess on the return (such as the tax imposed by section 531 on the accumulated taxable income of a corporation).

(c) *Amount shown as the tax by the taxpayer on his return*—(1) *Defined.* For purposes of paragraph (a) of this section, the "amount shown as the tax by the taxpayer on his return" is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in § 1.6664–2(b) (1), (2), and (3), except that it is reduced by the excess of—

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year, over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return.* The "amount shown as the tax by the taxpayer on his return" includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined.* A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of—

(i) The time the taxpayer is first contacted by the Internal Revenue Service concerning an examination of the return;

(ii) The time any person described in section 6700(a) (relating to the penalty for promoting abusive tax shelters) is first contacted by the Internal Revenue Service concerning an examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or

(iii) In the case of a pass-through item (as defined in § 1.6662–4(f)(5)), the time the pass-through entity (as defined in § 1.6662–4(f)(5)) is first contacted by the Internal Revenue Service in connection with an examination of the return to which the pass-through item relates.

A qualified amended return includes an amended return that is filed solely to disclose information pursuant to § 1.6662–3(c)(2) or § 1.6662–4 (e) and (f) and that does not report any additional tax liability.

(4) *Special rule for qualified amended returns.* The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(d) *Amounts not so shown previously assessed (or collected without assessment).* For purposes of paragraph (a) of this section, "amounts not so shown previously assessed" means only amounts assessed before the return is filed that were not shown on the return, such as termination assessments under section 6851 and jeopardy assessments under section 6861 made prior to the filing of the return for the taxable year. For purposes of paragraph (a) of this section, the amount "collected without assessment" is the amount by which the total of the credits allowable under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), estimated tax payments, and other payments in satisfaction of tax liability made before the return is filed, exceed the tax shown on the return (provided such excess has not been refunded or allowed as a credit to the taxpayer).

(e) *Rebates.* The term "rebate" means so much of an abatement credit, refund or other repayment, as was made on the ground that the tax imposed was less than the excess of—

(1) The sum of—

(i) The amount shown as the tax by the taxpayer on his return, plus

(ii) Amounts not so shown previously assessed (or collected without assessment), over

(2) Rebates previously made.

(f) *Underpayments for certain carryback years not reduced by amount of carrybacks.* The amount of an underpayment for a taxable year that is attributable to conduct proscribed by sections 6662 or 6663 is not reduced on account of a carryback of a loss, deduction or credit to that year. Such conduct includes negligence or disregard of rules or regulations; a substantial understatement of income tax; and a substantial (or gross) valuation misstatement under chapter 1, provided that the applicable dollar limitation is satisfied for the carryback year.

(g) *Examples.* The following examples illustrate this section.

Example 1. Taxpayer's 1990 return showed a tax liability of $18,000. Taxpayer had no amounts previously assessed (or collected without assessment) and received no rebates of tax. Taxpayer claimed a credit in the amount of $23,000 for income tax withheld under section 3402, which resulted in a refund received of $5,000. It is later determined that the taxpayer should have reported additional income and that the correct tax for the taxable year is $25,500. There is an underpayment of $7,500, determined as follows:

Tax imposed under subtitle A	$25,500
Tax shown on return	18,000
Tax previously assessed (or collected without assessment)	None
Amount of rebates made	None
Balance	18,000
Underpayment	7,500

Example 2. The facts are the same as in *Example 1* except that the taxpayer failed to claim on the return a credit of $1,500 for income tax withheld. This $1,500 constitutes an amount collected without assessment as defined in paragraph (d) of this section. The underpayment is $6,000, determined as follows:

Tax imposed under subtitle A	$25,500
Tax shown on return	18,000
Tax previously assessed (or collected without assessment)	1,500
Amount of rebates made	None
Balance	19,500
Underpayment	6,000

Example 3. On Form 1040 filed for tax year 1990, taxpayer reported a tax liability of $10,000, estimated tax payments of $15,000, and received a refund of $5,000. Estimated tax payments actually made with respect to tax year 1990 were only $7,000. For purposes of determining the amount of underpayment subject to a penalty under section 6662 or section 6663, the tax shown on the return is $2,000 (reported tax liability of $10,000 reduced by the overstated estimated tax of $8,000 ($15,000—$7,000)). The underpayment is $8,000, determined as follows:

Tax imposed under subtitle A	$10,000
Tax shown on return	2,000
Tax previously assessed (or collected without assessment)	None
Amount of rebates made	None
Balance	2,000
Underpayment	8,000

§ 1.6664–3 Ordering rules for determining the total amount of penalties imposed.

(a) In general. This section provides rules for determining the order in which adjustments to a return are taken into account for the purpose of computing the total amount of penalties imposed under sections 6662 and 6663, where

(1) There is at least one adjustment with respect to which no penalty has been imposed and at least one with respect to which a penalty has been imposed, or

(2) There are at least two adjustments with respect to which penalties have been imposed and they have been imposed at different rates.

This section also provides rules for allocating unclaimed prepayment credits to adjustments to a return.

(b) *Order in which adjustments are taken into account.* In computing the portions of an underpayment subject to

penalties imposed under sections 6662 and 6663, adjustments to a return are considered made in the following order—

(1) Those with respect to which no penalties have been imposed.

(2) Those with respect to which a penalty has been imposed at a 20 percent rate (*i.e.*, a penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, or substantial valuation misstatement, under sections 6662(b)(1) through 6662(b)(3), respectively).

(3) Those with respect to which a penalty has been imposed at a 40 percent rate (*i.e.*, a penalty for a gross valuation misstatement under sections 6662 (b)(3) and (h)).

(4) Those with respect to which a penalty has been imposed at a 75 percent rate (*i.e.*, a penalty for fraud under section 6663).

(c) *Manner in which unclaimed prepayment credits are allocated.* Any income tax withholding or other payment made before a return was filed, that was neither claimed on the return nor previously allowed as a credit against the tax liability for the taxable year (an unclaimed prepayment credit), is allocated as follows—

(1) If an unclaimed prepayment credit is allocable to a particular adjustment, such credit is applied in full in determining the amount of the underpayment resulting from such adjustment.

(2) If an unclaimed prepayment credit is not allocable to a particular adjustment, such credit is applied in accordance with the ordering rules set forth in paragraph (b) of this section.

(d) *Examples.* The following examples illustrate the rules of this § 1.6664-3. These examples do not take into account the reasonable cause exception to the accuracy-related penalty under § 1.6664-4.

Example 1. A and B, husband and wife, filed a joint federal income tax return for calendar year 1989, reporting taxable income of $15,800 and a tax liability of $2,374. A and B had no amounts previously assessed (or collected without assessment) and no rebates had been made. Subsequently, the return was examined and the following adjustments and penalties were agreed to:

Adjustment #1 (No penalty imposed)	$1,000
Adjustment #2 (Substantial understatement penalty imposed)	40,000
Adjustment #3 (Civil fraud penalty imposed)	45,000
Total adjustments	$86,000

Taxable income shown on return	15,800
Taxable income as corrected	$101,800
Computation of underpayment:	
Tax imposed by subtitle A	$25,628
Tax shown on return	$2,374
Previous assessments	None
Rebates	None
Balance	$2,374
Underpayment	$23,454

Computation of the portions of the underpayment on which penalties under section 6662(b)(2) and section 6663 are imposed:

Step 1 Determine the portion, if any, of the underpayment on which no accuracy-related or fraud penalty is imposed:

Taxable income shown on return	$15,800
Adjustment #1	1,000
"Adjusted" taxable income	$16,800
Tax on "adjusted" taxable income	$2,524
Tax shown on return	2,374
Portion of underpayment on which no penalty is imposed	$150

Step 2 Determine the portion, if any, of the underpayment on which a penalty of 20 percent is imposed:

"Adjusted" taxable income from step 1	$16,800
Adjustment #2	40,000
"Adjusted" taxable income	$56,800
Tax on "adjusted" taxable income	$11,880
Tax on "adjusted" taxable income from step 1	2,524
Portion of underpayment on which 20 percent penalty is imposed	$9,356

Step 3 Determine the portion, if any, of the underpayment on which a penalty of 75 percent is imposed:

Total underpayment	$23,454
Less the sum of the portions of such underpayment determined in:	
Step 1	$150
Step 2	$9,356
Total	$9,506
Portion of underpayment on which 75 percent penalty is imposed	$13,948

Example 2. The facts are the same as in *Example 1* except that the taxpayers failed to claim on their return a credit of $1,500 for income tax withheld on unreported additional income that resulted in Adjustment #2. Because the unclaimed prepayment credit is allocable to Adjustment #2, the portion of the underpayment attributable to that adjustment is $7,856 ($9,356–$1,500). The portions of the underpayment attributable to Adjustments #1 and #3 remain the same.

Example 3. The facts are the same as in *Example 1* except that the taxpayers made a timely estimated tax payment of $1,500 for 1989 which they failed to claim (and which the Service had not previously allowed). This unclaimed prepayment credit is not allocable to any particular adjustment. Therefore, the credit is allocated first to the portion of the underpayment on which no penalty is imposed ($150). The remaining amount ($1,350) is allocated next to the 20 percent penalty portion of the underpayment ($9,356). Thus, the portion of the underpayment that is not penalized is zero ($150–$150), the portion subject to a 20 percent penalty is $8,006 ($9,356–$1,350) and the portion subject to a 75 percent penalty is unchanged at $13,948.

§ 1.6664-4 Reasonable cause and good faith exception to section 6662 penalties.

(a) *In general.* No penalty may be imposed under section 6662 with respect to any portion of an underpayment upon a showing by the taxpayer that there was reasonable cause for, and the taxpayer acted in good faith with respect to, such portion. Rules for determining whether the reasonable cause and good faith exception applies are set forth in paragraphs (b), (c), (d) and (e) of this section.

(b) *Facts and circumstances taken into account*—(1) *In General.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The most important factor is the extent of the taxpayer's effort to assess the taxpayer's proper tax liability. Circumstances that may indicate reasonable cause and good faith include an honest misunderstanding of fact or law that is reasonable in light of the experience, knowledge and education of the taxpayer. An isolated computational or transcriptional error generally is not inconsistent with reasonable cause and good faith. Reliance on an information return or on the advice of a professional (such as an appraiser, attorney or accountant) does not necessarily demonstrate reasonable cause and good faith. Similarly, reasonable cause and good faith is not necessarily indicated by reliance on facts that, unknown to the taxpayer, are incorrect. Reliance on an information return, professional advice or other facts, however, constitutes reasonable cause and good faith if, under all the circumstances, such reliance was reasonable and the taxpayer acted in good faith. For example, reliance on erroneous information (such as an error relating to the cost or adjusted basis of property, the date property was placed in service, or the amount of opening or closing inventory) inadvertently included in data compiled by the various divisions of a multidivisional corporation or in financial books and records prepared by those divisions generally indicates reasonable cause and good faith, provided the corporation employed internal controls and procedures, reasonable under the circumstances, that were designed to identify such factual errors. Reasonable cause and good faith ordinarily is not indicated by the mere fact that there is an appraisal of the value of property. Other factors to consider include the methodology and assumptions underlying the appraisal, the appraised value, the relationship between appraised value and purchase price, the circumstances under which the appraisal was obtained, and the appraiser's relationship to the taxpayer or to the activity in which the property is used. (See paragraph (e) of this section for special rules relating to appraisals for "charitable deduction property.") A taxpayer's reliance on erroneous information reported on a Form W-2, Form 1099 or other information return indicates reasonable cause and good faith, provided the taxpayer did not know or have reason to know that the information was incorrect. Generally, a taxpayer knows or has reason to know that the information on an information return is incorrect if such information is inconsistent with other information reported or otherwise furnished to the taxpayer, or with the taxpayer's knowledge of the transaction. This knowledge includes, for example, the taxpayer's knowledge of the terms of his employment relationship or of the rate of return on a payor's obligation.

(2) *Examples.* The following examples illustrate the provisions of paragraph (b) of this section.

Example 1. A, an individual calendar year taxpayer, engages B, a tax professional, to give him advice concerning the deductibility of certain state and local taxes. A provides B with full details concerning the taxes at issue. B advises A that the taxes are fully deductible. A, in preparing his own tax return, claims a deduction for the taxes. Under these facts, A is considered to have demonstrated good faith by seeking the advice of a tax professional, and to have shown reasonable cause for any underpayment attributable to the deduction claimed for the taxes. However, if A had sought advice from someone that he knew, or should have known, lacked knowledge in federal income taxation, A would not be considered to have shown reasonable cause or to have acted in good faith.

Examnle 2. C, an individual, sought advice from D, a friend who was not a tax professional, as to how C might reduce his Federal tax obligations. D advised C that, for a nominal investment in Corporation X, D had received certain tax benefits which virtually eliminated D's Federal tax liability. D also named other investors who had received similar benefits. Without further inquiry, C invested in X and claimed the benefits that he had been assured by D were due him. In this case, C did not make any good faith attempt to ascertain the correctness of what D had advised him concerning his tax matters, and is not considered to have reasonable cause for the underpayment attributable to the benefits claimed.

Example 3. E, an individual, worked for Company X doing odd jobs and filling in for other employees when necessary. E worked irregular hours and was paid by the hour. The amount of E's pay check differed from week to week. The Form W-2 furnished to E reflected wages for 1990 in the amount of $29,729. It did not, however, include compensation of $1,467 paid for some hours E worked. Relying on the Form W-2, E filed a return reporting wages of $29,729. E had no reason to know that the amount reported on the Form W-2 was incorrect. Under the circumstances, E is considered to have acted in good faith in relying on the Form W-2 and to have reasonable cause for the underpayment attributable to the unreported wages.

Example 4. H, an individual, did not enjoy preparing his tax returns and procrastinated in doing so until April 15th. On April 15th, H hurriedly gathered together his tax records and materials, prepared a return, and mailed it before midnight. The return contained numerous errors, some of which were in H's favor and some of which were not. The net result of all the adjustments, however, was an underpayment of tax by H. Under these circumstances, H is not considered to have reasonable cause for the underpayment or to have acted in good faith in attempting to file an accurate return.

(c) *Pass-through items.* In the case of an underpayment that is related to an item on the return of a pass-through entity (as defined in § 1.6662-4(f)(5)), reasonable cause and good faith by the entity generally is imputed to the taxpayer that has the underpayment. Reasonable cause and good faith is not imputed from the entity to the taxpayer, however, if there are factors which indicate that the taxpayer did not act with reasonable cause and in good faith. Correspondingly, a lack of reasonable cause or bad faith also may be imputed from the entity to the taxpayer.

(d) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* [Reserved]

(e) *Valuation misstatements of charitable deduction property*—(1) *In general.* There may be reasonable cause and good faith with respect to a portion of an underpayment that is attributable to a substantial (or gross) valuation misstatement of charitable deduction property (as defined in paragraph (e)(2)(i) of this section) only if—

(i) The claimed value of the property was based on a qualified appraisal (as defined in paragraph (e)(2)(ii) of this section) by a qualified appraiser (as defined in paragraph (e)(2)(iii) of this section), and

(ii) In addition to obtaining a qualified appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

The rules of this paragraph (e) apply regardless of whether § 1.170A–13 permits a taxpayer to claim a charitable contribution deduction for the property without obtaining a qualified appraisal. The rules of this paragraph (e) apply in addition to the generally applicable rules concerning reasonable cause and good faith.

(2) *Definitions*—(i) *Charitable deduction property.* For purposes of this paragraph (e), the term "charitable deduction property" means any property (other than money or publicly traded securities, as defined in § 1.170A–13(c)(7)(xi)) contributed by the taxpayer in a contribution for which a deduction was claimed under section 170.

(ii) *Qualified appraisal.* For purposes of this paragraph (e) the term "qualified appraisal" means a qualified appraisal as defined in § 1.170A–13(c)(3).

(iii) *Qualified appraiser.* For purposes of this paragraph (e) the term "qualified appraiser" means a qualified appraiser as defined in § 1.170A–13(c)(5).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–4806 Filed 3–1–91; 8:45am]

BILLING CODE 4830–01–M

---

26 CFR Part 1

[IA–38–90]

RIN 1545–AO62

Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to persons who prepare for compensation income tax returns and claims for refund. Changes to the applicable tax law were made by the Omnibus Budget Reconciliation Act of 1989. The regulations would provide the guidance needed to comply with the law.

DATES: Written comments must be received by May 15, 1991. The Service intends to hold a public hearing on these proposed regulations during the week of June 3 through June 7, 1991. Persons wishing to speak at this hearing must deliver outlines of their comments by May 15, 1991. A notice of public hearing will be published in the Federal Register in the near future.

ADDRESSES: Send comments to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:CORP:T:R (IA-38-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Lisa J. Byun of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202-566-5965 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6694-2(c) and § 1.6694-3(e). This information is required by the Internal Revenue Service where an income tax return preparer chooses to avail himself of the disclosure rules provided in § 1.6694-2(c) and § 1.6694-3(e).

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based upon such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 50,000 hours. The estimated average annual burden per respondent is .5 hours.

Estimated number of respondents: 100,000.

Estimated annual frequency of responses: 2.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide rules under section 6694 of the Internal Revenue Code of 1986 (Code), as revised by sections 7732 and 7737 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) (Pub. L. No. 101-239; 103 Stat. 2106).

Explanation of Provisions

OBRA 1989 made changes to section 6694 of the Code, which imposes a penalty on income tax return preparers if there is an understatement of tax liability on a return or claim for refund prepared by the preparer. The proposed regulations provide guidance with respect to these changes. As a result of the 1989 changes, it has become necessary to refine the definition of "income tax return preparer" for purposes of section 6694. As under prior law, the term is generally defined in accordance with section 7701(a)(36) and § 301.7701-15. The proposed regulations provide, however, that solely for purposes of section 6694, no more than one individual associated with a firm (for example, as a partner or employee) will be a preparer with respect to the same return or claim for refund. Thus, if an individual who signs a return or claim for refund (signing preparer) is associated with a firm, that individual, and no other individual associated with the firm will be a preparer for purposes of section 6694. If an individual (other than an individual who is associated with the same firm as the signing preparer) provides advice to the taxpayer or to another preparer in connection with a return or claim for refund (nonsigning preparer), that individual (and no other individual associated with the nonsigning preparer's firm) will be considered a preparer for purposes of section 6694. Where more than one individual associated with a firm is involved in providing advice, the individual with direct supervisory responsibility for the matter is the individual who will ordinarily be subject to the penalty as a nonsigning preparer.

This "one-preparer-per-firm" rule eliminates the administrative difficulty of attempting to apply the penalty (with its disclosure and reasonable cause and good faith exceptions) on an intra-firm basis. A corollary of this rule is that a preparer who is subject to the penalty may not rely on the advice of an individual associated with the same firm as the preparer for purposes of the reasonable cause and good faith exception to the penalty. See § 1.6694-2(d). In certain circumstances, both an individual preparer and the preparer's firm may be subject to the section 6694 penalty as under prior law. See § 1.6694-2(a) and § 1.6694-3(a).

Section 6694(a)

Prior to OBRA 1989, section 6694(a) imposed a $100 penalty on an income tax return preparer if there was an understatement of liability on a Federal income tax return or claim for refund prepared by such preparer and the understatement was due to the negligent or intentional disregard of rules or regulations by the preparer.

OBRA 1989 made the following amendments to section 6694(a): (1) Changed the standard for imposing the penalty so that the penalty is now imposed if an understatement of liability is due to a position for which there was not a realistic possibility of being sustained on its merits; (2) increased the penalty amount from $100 to $250 per return or claim for refund; (3) added a disclosure exception for positions that are not frivolous; and (4) added a reasonable cause and good faith exception.

With respect to the new standard for imposing the penalty, Notice 90-20, 1990-1 C.B. 328, provides that a position will be considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits. Section 1.6694-2(b) of the proposed regulations retains the definition of this standard set forth in Notice 90-20. The proposed regulations further provide that the analysis prescribed by § 1.6662-4(d)(3)(ii) for purposes of determining whether substantial authority is present applies for purposes of determining whether the realistic possibility standard is satisfied, and that only the authorities specified in § 1.6662-4(d)(3)(iii) are to be considered in the analysis. The proposed regulations provide examples that illustrate positions meeting the realistic possibility standard and positions not meeting the realistic possibility standard.

A preparer is not subject to penalty for a position that does not have a realistic possibility of being sustained on its merits if the position is not frivolous and is adequately disclosed. Disclosure is adequate for purposes of section 6694(a) if made on a properly completed and filed Form 8275, Disclosure Statement, attached to the return (or qualified amended return) or claim for refund, or if made in accordance with the annual revenue procedure issued for purposes of disclosure out of the substantial understatement penalty.

The proposed regulations set forth different disclosure rules for signing and nonsigning preparers. Different rules are necessary because nonsigning preparers ordinarily do not have control over the return or claim for refund. Thus, signing preparers must disclose on the return or claim for refund (*i.e.*, on a Form 8275 or in accordance with the annual revenue procedure). Nonsigning preparers, on the other hand, generally will meet the disclosure requirements if they inform the taxpayer or another preparer (orally or in writing) that disclosure is necessary, or if the position is, in fact, adequately disclosed on the return or claim for refund.

A preparer also is not subject to penalty for a position that does not have a realistic possibility of being sustained on its merits if the understatement was due to reasonable cause and the preparer acted in good faith. Section 1.6694-2(d) provides that the reasonable cause and good faith determination will be made by considering all the relevant facts and circumstances, including the following factors: (1) The nature of the error causing the understatement; (2) the frequency of errors; (3) the materiality of errors; (4) the preparer's normal office practice; and (5) the extent to which the preparer reasonably relies on the advice of, or schedules prepared by, another preparer.

Section 6694(b)

Prior to OBRA 1989, section 6694(b) imposed a $500 penalty on an income tax return preparer if there was an understatement of liability on a Federal income tax return or claim for refund and the understatement was due to a willful attempt by such preparer to understate the liability.

OBRA 1989 made the following amendments to section 6694(b): (1) Added reckless disregard of rules or regulations as a basis for imposing the section 6694(b) penalty; (2) made intentional disregard of rules or regulations (formerly under section 6694(a)) a basis for imposing the higher penalty under section 6694(b); and (3) increased the penalty amount from $500 to $1,000 per return or claim for refund. In addition, the legislative history indicates that the section 6694(b) penalty for disregarding rules or regulations should not be imposed if proper disclosure is made.

Section 1.6694-3(b) of the proposed regulations generally retains the current regulations' provisions regarding willful understatements of liability.

Section 1.6694-3(c) provides that a preparer will be considered to have recklessly or intentionally disregarded a rule or regulation if a position contrary to the rule or regulation is taken on a return or claim for refund and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. However, a preparer will not be considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation is not frivolous and is adequately disclosed. Disclosure is adequate for purposes of section 6694(b) if made on a properly completed and filed Form 8275 attached to the return (or qualified amended return) or claim, provided that the statutory or regulatory provision or ruling that is disregarded is adequately identified on the Form 8275. In the case of a position contrary to a revenue ruling, a preparer also will not be considered to have recklessly or intentionally disregarded a ruling that is not disclosed if the position contrary to the revenue ruling has a realistic possibility of being sustained on its merits.

Section 1.6694-3(e) sets forth different disclosure rules for signing and nonsigning preparers for purposes of section 6694(b).

Section 6694(c)

OBRA 1989 also revised section 6694(c)(1) expressly to permit the Internal Revenue Service to counterclaim in a refund proceeding for any portion of the section 6694 penalty that the preparer did not pay prior to commencing the proceeding. This new provision is reflected in § 1.6694-4(a)(4) of the proposed regulations.

Special Analyses

It has been determined that these proposed rules are not major rules a defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held during the week of June 3 through June 7, 1991. A notice of public hearing will be published in the Federal Register in the near future.

Drafting Information

The principal author of these proposed regulations is Lisa J. Byun, Office of the Assistant Chief Counse (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654-1 through 1.6709-1

Additions to tax, Administration and procedure, Income taxes, Penalties.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 1 of title 26 of the Code of Federal Regulations as follows.

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.6694-1 and 1.6694-2 are revised and new §§ 1.6694-0, 1.6694-3 and 1.6694-4 are added to read as follows.

§ 1.6694-0 Table of contents.

This section lists the captions that appear in the regulations under section 6694 of the Code.

§ 1.6694-1 Section 6694 penalties applicable to income tax return preparer.

(a) Overview.
(b) Income tax return preparer.
(1) In general.
(2) Signing and nonsigning preparers.
(3) Example.
(c) Understatement of liability.
(d) Abatement of penalty where taxpayer's liability not understated.
(e) Verification of information furnished by taxpayer.
(1) In general.
(2) Example.
(f) Effective date.

§ 1.6694-2 Penalty for understatement due to an unrealistic position.

(a) In general.
(b) Realistic possibility of being sustained on its merits.
(1) In general.

(2) Authorities.
(3) Examples.
(4) Written determinations.
(5) When "realistic possibility" determined.
(i) Signing preparers.
(ii) Nonsigning preparers.
(c) Exception for adequate disclosure of nonfrivolous positions.
(1) In general.
(2) Frivolous.
(3) Adequate disclosure.
(i) Signing preparers.
(ii) Nonsigning preparers.
(A) Advice to taxpayers.
(B) Advice to another preparer.
(d) Exception for reasonable cause and good faith.
(1) Nature of the error causing the understatement.
(2) Frequency of errors.
(3) Materiality of errors.
(4) Preparer's normal office practice.
(5) Reliance on advice of another preparer.
(e) Burden of proof.

§ 1.6694–3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) In general.
(b) Willful attempt to understate liability.
(c) Reckless or intentional disregard.
(d) Examples.
(e) Adequate disclosure.
(1) Signing preparers.
(2) Nonsigning preparers.
(i) Advice to taxpayers.
(ii) Advice to another preparer.
(f) Rules or regulations.
(g) Section 6694(b) penalty reduced by section 6694(a) penalty.
(h) Burden of proof.

§ 1.6694–4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) In general.
(b) Preparer must bring suit in district court to determine liability for penalty.
(c) Suspension of running of period of limitations on collection.
(d) Effective date.

§ 1.6694–1 Section 6694 penalties applicable to income tax return preparer.

(a) *Overview.* Section 6694(a) and section 6694(b) impose penalties on income tax return preparers for certain understatements of liability on a return or claim for refund. The section 6694(a) penalty is imposed for an understatement of liability with respect to tax imposed by 13 subtitle A of the Internal Revenue Code that is due to a position for which there was not a realistic possibility of being sustained on its merits. The section 6694(b) penalty is imposed for an understatement of liability with respect to tax imposed by subtitle A of the Internal Revenue Code that is due to a willful attempt to understate tax liability or that is due to reckless or intentional disregard of rules or regulations. See § 1.6694–2 for rules relating to the penalty under section 6694(a). See § 1.6694–3 for rules relating to the penalty under section 6694(b).

(b) *Income tax return preparer*—(1) *In general.* Solely for purposes of the regulations under section 6694, the term "income tax return preparer" (preparer) means any person who is an income tax return preparer within the meaning of section 7701(a)(36) and § 301.7701–15, except that no more than one individual associated with a firm (for example, as a partner or employee) is treated as a preparer with respect to the same return or claim for refund. If a signing preparer is associated with a firm, that individual, and no other individual associated with the firm is a preparer with respect to the return or claim for purposes of section 6694. If two or more individuals associated with a firm are income tax return preparers with respect to a return or claim for refund, within the meaning of section 7701(a)(36) and § 301.7701–15, and none of them is the signing preparer, only one of the individuals is a preparer (i.e., nonsigning preparer) with respect to that return or claim for purposes of section 6694. In such a case, ordinarily, the individual who is a preparer for purposes of section 6694 is the individual with direct supervisory responsibility for the matter. To the extent provided in § 1.6694–2(a) and § 1.6694–3(a), an individual and the firm with which the individual is associated may both be subject to penalty under section 6694 with respect to the same return or claim for refund.

(2) *Signing and nonsigning preparers.* A "signing preparer" is any preparer who signs a return of tax or claim for refund as a preparer. A "nonsigning preparer" is any preparer who is not a signing preparer. Examples of nonsigning preparers are preparers who provide advice (written or oral) to a taxpayer or to a preparer who is not associated with the same firm as the preparer who provides the advice.

(3) *Example.* The provisions of paragraph (b) of this section are illustrated by the following example.

Example. Attorney A provides advice to Client C concerning the proper treatment of a significant item on C's income tax return. The advice constitutes preparation of a substantial portion of the return. In preparation for providing that advice, A discusses the matter with Attorney B, who is associated with the same firm as A, but A is the attorney with direct supervisory responsibility for the matter. For purposes of the regulations under section 6694, A is a preparer with respect to C's return and is subject to penalty under section 6694 with respect to C's return. B is not a preparer with respect to C's return and, therefore, is not subject to penalty under section 6694 with respect to a position taken on C's return. This would be true even if B recommends that A advise C to take an undisclosed position that did not satisfy the realistic possibility standard. In addition, since B is not a preparer for purposes of the regulations under section 6694, A may not avoid a penalty under section 6694 with respect to C's return by claiming he relied on the advice of B. See § 1.6694–2 (d)(5).

(c) *Understatement of liability.* For purposes of the regulations under section 6694, an "understatement of liability" exists if, viewing the return or claim for refund as a whole, there is an understatement of the net amount payable with respect to any tax imposed by subtitle A of the Internal Revenue Code, or an overstatement of the net amount creditable or refundable with respect to any tax imposed by subtitle A of the Internal Revenue Code. The net amount payable in a taxable year with respect to the return for which the preparer engaged in conduct proscribed by section 6694 is not reduced by any carryback. Tax imposed by subtitle A of the Internal Revenue Code does not include additions to the tax provided by section 6654 and section 6655 (relating to underpayments of estimated tax). Except as provided in paragraph (d) of this section, the determination of whether an understatement of liability exists may be made in a proceeding involving the preparer apart from any proceeding involving the taxpayer.

(d) *Abatement of penalty where taxpayer's liability not understated.* If a penalty under section 6694(a) or section 6694(b) concerning a return or claim for refund has been assessed against one or more preparers, and if it is established at any time in a final administrative determination or a final judicial decision that there was no understatement of liability relating to the return or claim for refund, then

(1) The assessment must be abated; and

(2) If any amount of the penalty was paid, that amount must be refunded to the person or persons who so paid, as if the payment were an overpayment of tax, without consideration of any period of limitations.

(e) *Verification of information furnished by taxpayer*—(1) *In general.* For purposes of section 6694(a) and section 6694(b), the preparer generally may rely in good faith without verification upon information furnished by the taxpayer. Thus, the preparer is not required to audit, examine or review books and records, business operations, or documents or other evidence in order to verify independently the taxpayer's information. However, the preparer may not ignore the implications of information furnished to the preparer or actually known by the preparer. The preparer must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete. Additionally, some provisions of the Code or regulations require that specific facts and circumstances exist—for example, that the taxpayer maintain specific documents, before a deduction may be claimed. The preparer must make appropriate inquiries to determine the existence of facts and circumstances required by a Code section or regulation as a condition to the claiming of a deduction.

(2) *Example.* The provisions of paragraph (e) of this section are illustrated by the following example.

Example. A taxpayer, during an interview conducted by the preparer, stated that he had paid $8,500 in doctor bills and $5,000 in deductible travel and entertainment expenses during the tax year, when in fact he had paid smaller amounts. On the basis of this information, the preparer properly calculated deductions for medical expenses and for travel and entertainment expenses which resulted in an understatement of liability for tax. The preparer had no reason to believe that the medical expense and travel and entertainment expense information presented was incorrect or incomplete. The preparer did not ask for underlying documentation of the medical expenses but inquired about the existence of travel and entertainment expense records. The preparer was reasonably satisfied by the taxpayer's representations that the taxpayer had adequate records (or other sufficient corroborative evidence) for the deduction of $5,000 for travel and entertainment expenses. The preparer is not subject to a penalty under section 6694.

(f) *Effective date.* Sections 1.6694–1 through 1.6694–3 are effective for documents prepared and advice given after December 31, 1991. Section 6694 and the existing rules and regulations thereunder (to the extent not inconsistent with the statute as amended by the Omnibus Budget Reconciliation Act of 1989), and Notice 90–20, 1990–1 C.B. 328, apply to documents prepared and advice given on or before December 31, 1991. For the effective date of § 1.6694–4, see § 1.6694–4(d).

§ 1.6694–2 Penalty for understatement due to an unrealistic position.

(a) *In general.* Except as otherwise provided in this section, if any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to a position for which there was not a realistic possibility of being sustained on its merits, any person who is a preparer with respect to such return or claim for refund who knew or reasonably should have known of such position is subject to a penalty of $250 with respect to such return or claim for refund. An employer or partnership of a preparer subject to this penalty is also subject to the penalty if the employer or partnership (or one or more of its principal officers or general partners) also knew or reasonably should have known of the position.

(b) *Realistic possibility of being sustained on its merits*—(1) *In general.* A position is considered to have a realistic possibility of being sustained on its merits if a reasonable and well-informed analysis by a person knowledgeable in the tax law would lead such a person to conclude that the position has approximately a one in three, or greater, likelihood of being sustained on its merits (realistic possibility standard). In making this determination, the possibility that the position will not be challenged by the Internal Revenue Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) is not to be taken into account. The analysis prescribed by § 1.6662–4(d)(3)(ii) for purposes of determining whether substantial authority is present applies for purposes of determining whether the realistic possibility standard is satisfied.

(2) *Authorities.* The authorities considered in determining whether a position satisfies the realistic possibility standard are those authorities provided in § 1.6662–4(d)(3)(iii).

(3) *Examples.* The provisions of paragraphs (b)(1) and (b)(2) of this section are illustrated by the following examples.

Example 1. A new statute is unclear as to whether a certain transaction that a taxpayer has engaged in will result in favorable tax treatment. Prior law, however, supported the taxpayer's position. There are no regulations under the new statute and no authority other than the statutory language and committee reports. The committee reports state that the intent was not to affect adversely transactions similar to the taxpayer's transaction. The taxpayer's position satisfies the realistic possibility standard.

Example 2. A taxpayer has engaged in a transaction that is affected adversely by a new statutory provision. Prior law supported a position favorable to the taxpayer. The preparer believes that the new statute is inequitable as applied to the taxpayer's situation. The statutory language is unambiguous as it applies to the transaction (e.g., it applies to all manufacturers and the taxpayer is a manufacturer of widgets). The committee reports do not specifically address the taxpayer's situation. A position contrary to the statute does not satisfy the realistic possibility standard.

Example 3. The facts are the same as in *Example 2*, except the committee reports indicate that Congress did not intend to apply the new statutory provision to the taxpayer's transaction (e.g., to a manufacturer of widgets). Thus, there is a conflict between the general language of the statute, which appears to affect adversely the taxpayer's transaction, and a specific statement in the committee reports that transactions such as the taxpayer's are not adversely affected. Whether a return position consistent with the committee reports satisfies the realistic possibility standard can be determined only by a careful analysis of the relevant authorities.

Example 4. The instructions to an item on a tax form published by the Internal Revenue Service are incorrect and are clearly contrary to the regulations. Before the return is prepared, the Internal Revenue Service publishes an announcement acknowledging the error and providing the correct instruction. Under these facts, a position taken on a return which is consistent with the regulations satisfies the realistic possibility standard. On the other hand, a position taken on a return which is consistent with the incorrect instructions does not satisfy the realistic possibility standard. However, if the preparer relied on the incorrect instructions and was not aware of the announcement or the regulations, the reasonable cause and good faith exception may apply depending on all facts and circumstances. See § 1.6694–2(d).

Example 5. A statute is silent as to whether a taxpayer may take a certain position on the taxpayer's 1991 Federal income tax return. Three private letter rulings issued to other taxpayers in 1987 and 1988 support the taxpayer's position. However, proposed regulations issued in 1990 are clearly contrary to the taxpayer's position. After the issuance of the proposed regulations, the earlier private letter rulings cease to be authorities and are not taken into account in determining whether the taxpayer's position satisfies the realistic possibility standard. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii). The taxpayer's position may or may not satisfy the realistic possibility standard, depending on an analysis of all the relevant authorities.

Example 6. In the course of researching whether a particular position has a realistic possibility of being sustained on its merits, a preparer discovers that a taxpayer took the same position on a return several years ago and that the return was audited by the Service. The taxpayer tells the preparer that the revenue agent who conducted the audit was aware of the position and decided that the treatment on the return was correct. The revenue agent's report, however, made no mention of the position. The determination by the revenue agent is not authority for purposes of the realistic possibility standard. However, the preparer's reliance on the revenue agent's determination in the audit may qualify for the reasonable cause and good faith exception depending on all facts and circumstances. See § 1.6694–2(d). Also see § 1.6694–2(b)(4) and § 1.6662–4(d)(3)(iv)(A) regarding affirmative statements in a revenue agent's report.

Example 7. In the course of researching whether an interpretation of a phrase incorporated in the Internal Revenue Code has a realistic possibility of being sustained on its merits, a preparer discovers that identical language in the taxing statute of another jurisdiction (e.g., a state or foreign country) has been authoritatively construed by a court of that jurisdiction in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase applicable to the taxpayer's situation. The construction of the statute of the other jurisdiction is not authority for purposes of determining whether the position satisfies the realistic possibility standard. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii). However, as in the case of conclusions reached in treatises and legal periodicals, the authorities underlying the court's opinion, if relevant to the taxpayer's situation, may give a position favorable to the taxpayer a realistic possibility of being sustained on its merits. See § 1.6694–2(b)(2) and § 1.6662–4(d)(3)(iii).

Example 8. In the course of researching whether an interpretation of a statutory phrase has a realistic possibility of being sustained on its merits, a preparer discovers that identical language appearing in another place in the Internal Revenue Code has consistently been interpreted by the courts and by the Service in a manner which would be favorable to the taxpayer, if the same interpretation were applied to the phrase applicable to the taxpayer's situation. No authority has interpreted the phrase applicable to the taxpayer's situation. The interpretations of the identical language are relevant in arriving at a well reasoned construction of the language at issue, but the context in which the language arises also must be taken into account in determining whether the realistic possibility standard is satisfied.

Example 9. A new statutory provision is silent on the tax treatment of an item under the provision. However, the committee reports explaining the provision direct the Treasury to issue regulations interpreting the provision in a specified way. No regulations have been issued at the time the preparer must recommend a position on the tax treatment of the item, and no other authorities exist. The position supported by the committee reports satisfies the realistic possibility standard.

(4) *Written determinations.* To the extent a position has substantial authority with respect to the taxpayer by virtue of a "written determination" as provided in § 1.6662–4(d)(3)(iv)(A), such position will be considered to satisfy the realistic possibility standard with respect to the taxpayer's preparer for purposes of section 6694(a).

(5) *When "realistic possibility" determined.* For purposes of this section, the requirement that a position satisfy the realistic possibility standard must be satisfied on the date prescribed by paragraph (b)(5)(i) or (b)(5)(ii) of this section, whichever is applicable.

(i) *Signing preparers.* (A) In the case of a signing preparer, the relevant date is the date the preparer signs and dates the return or claim for refund.

(B) If the preparer did not date the return or claim for refund, the relevant date is the date the taxpayer signed and dated the return or claim for refund. If the taxpayer also did not date the return or claim for refund, the relevant date is the date the return or claim for refund was filed.

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, the relevant date is the date the preparer provides the advice. That date will be determined based on all the facts and circumstances.

(c) *Exception for adequate disclosure of nonfrivolous positions*—(1) *In general.* The section 6694(a) penalty may not be imposed on a preparer if the position taken is not frivolous and is adequately disclosed. For an exception to the section 6694(a) penalty for reasonable cause and good faith, see paragraph (d) of this section.

(2) *Frivolous.* For purposes of this section, a "frivolous" position with respect to an item is one that is patently improper.

(3) *Adequate disclosure*—(i) *Signing preparers.* In the case of a signing preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate only if the disclosure is made in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or on the return in accordance with an annual revenue procedure).

(ii) *Nonsigning preparers.* In the case of a nonsigning preparer, disclosure of a position that does not satisfy the realistic possibility standard is adequate if the position is disclosed in accordance with § 1.6662–4(f) (which permits disclosure on a properly completed and filed Form 8275 or on the return in accordance with an annual revenue procedure). In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (c)(3)(ii) (A) or (B) of this section, whichever is applicable.

(A) *Advice to taxpayers.* (*1*) If a nonsigning preparer provides advice to the taxpayer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that the position lacks substantial authority and, therefore, may be subject to penalty under section 6662(d) unless adequately disclosed in the manner provided in § 1.6662–4(f) (or in the case of a tax shelter item, that the position lacks substantial authority and, therefore, may be subject to penalty under section 6662(d) regardless of disclosure). If the advice with respect to the position is in writing, the statement concerning disclosure (or the statement regarding possible penalty under section 6662(d)) also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose (or the advice regarding possible penalty under section 6662(d)) also may be oral. The determination as to whether oral advice as to disclosure (or the oral advice regarding possible penalty under section 6662(d)) was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure (or the oral advice regarding possible penalty under section 6662(d)) generally is sufficient to establish that the advice was given to the taxpayer.

(*2*) In rare cases where the preparer concludes that disclosure under paragraph (c)(3)(ii)(A)(*1*) of this section is not appropriate because a position has substantial authority but the position does not satisfy the realistic possibility standard, disclosure is adequate if the preparer advises the taxpayer that the position does not have a realistic possibility of being sustained on its merits and, therefore, must be properly disclosed in order for the preparer to avoid the penalty under section 6694(a).

(B) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that does not satisfy the realistic possibility standard, disclosure of that position is adequate if the advice includes a statement that disclosure under section 6694(a) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice regarding disclosure was given to the other preparer.

(d) *Exception for reasonable cause and good faith.* The penalty under section 6694(a) will not be imposed if considering all the facts and circumstances, it is determined that the understatement was due to reasonable cause and that the preparer acted in good faith. Factors to consider include—

(1) Nature of the error causing the understatement. Whether the error resulted from a provision that was so complex, uncommon, or highly technical that a competent preparer of returns or claims of the type at issue reasonably could have made the error. The reasonable cause and good faith exception does not apply to an error that would have been apparent from a general review of the return or claim for refund by the preparer.

(2) *Frequency of errors.* Whether the understatement was the result of an isolated error (such as an inadvertent mathematical or clerical error) rather than a number of errors. Although the reasonable cause and good faith exception generally applies to an isolated error, it does not apply if the isolated error is sufficiently obvious, flagrant or material. Furthermore, the reasonable cause and good faith exception does not apply if there is a pattern of errors on a return or claim for refund even though any one error, in isolation, would have qualified for the reasonable cause and good faith exception.

(3) *Materiality of errors.* Whether the understatement was material in relation to the correct tax liability. The reasonable cause and good faith exception generally applies if the understatement is of a relatively immaterial amount. Nevertheless, even an immaterial understatement may not qualify for the reasonable cause and good faith exception if the error or errors creating the understatement are sufficiently obvious or numerous.

(4) *Preparer's normal office practice.* Whether the preparer's normal office practice indicates that the error in question would rarely occur and the normal office practice was followed in preparing the return or claim in question. In applying this normal office practice standard, due regard must be given to other facts and circumstances such as the knowledge of the preparer. Such a normal office practice must be a system for promoting accuracy and consistency in the preparation of returns or claims and generally must involve, at a minimum in the case of a signing preparer, checklists, methods for obtaining necessary information from the taxpayer, an examination of the prior year's return, and review procedures. Notwithstanding the above, the reasonable cause and good faith exception does not apply if there is a flagrant error on a return or claim for refund, a pattern of errors on a return or claim for refund, or a repetition of the same or similar errors on numerous returns or claims.

(5) *Reliance on advice of another preparer.* Whether the preparer relied on the advice of, or schedules prepared by, another preparer (advice) as defined in § 1.6694-1(b). The reasonable cause and good faith exception applies if the preparer relied in good faith on the advice of another preparer (or a person who would be considered a preparer under § 1.6694-1(b) had the advice constituted preparation of a substantial portion of the return or claim for refund) who the preparer had reason to believe was competent to render such advice. A preparer is not considered to have relied in good faith if

(i) The advice is unreasonable on its face,

(ii) The preparer knew or should have known that the other preparer was not aware of all relevant facts, or

(iii) The preparer knew or should have known (given the nature of the preparer's practice), at the time the return or claim for refund was prepared, that the advice was no longer reliable due to developments in the law since the time the advice was given.

The advice may be written or oral, but in either case the burden of establishing that the advice was received is on the preparer.

(e) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(a), the, issues on which the preparer bears the burden of proof include whether:

(1) The preparer knew or reasonably should have known that the questioned position was taken on the return,

(2) There is reasonable cause and good faith with respect to such position, and

(3) The position was disclosed adequately in accordance with paragraph (c) of this section.

§ 1.6694-3 Penalty for understatement due to willful, reckless, or intentional conduct.

(a) *In general.* If any part of an understatement of liability relating to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code is due to—

(1) A willful attempt in any manner to understate the liability for tax by a preparer of the return or claim for refund, or

(2) Any reckless or intentional disregard of rules or regulations by any such person,

such preparer is subject to a penalty of $1,000 with respect to such return or claim for refund. An employer or partnership of a preparer subject to this penalty is also subject to the penalty if the employer or partnership (or one or more of its principal officers or general partners) also participated in the willful attempt to understate liability, or participated in or knew of the reckless or intentional disregard of a rule or regulation.

(b) *Willful attempt to understate liability.* A preparer is considered to have willfully attempted to understate liability if the preparer disregards, in an attempt wrongfully to reduce the tax liability of the taxpayer, information furnished by the taxpayer or other persons. For example, if a preparer disregards information concerning certain items of taxable income furnished by the taxpayer or other persons, the preparer is subject to the penalty. Similarly, if a taxpayer states to a preparer that the taxpayer has only two dependents, and the preparer reports six dependents on the return, the preparer is subject to the penalty.

(c) *Reckless or intentional disregard.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a preparer is considered to have recklessly or intentionally disregarded a rule or regulation if the preparer takes a position on the return or claim for refund that is contrary to a rule or regulation (as defined in paragraph (f) of this section) and the preparer knows of, or is reckless in not knowing of, the rule or regulation in question. A preparer is reckless in not knowing of a rule or regulation if the preparer makes little or no effort to determine whether a rule or regulation exists, under circumstances which demonstrate a substantial deviation from the standard of conduct that a reasonable preparer would observe in the situation.

(2) A preparer is not considered to have recklessly or intentionally disregarded a rule or regulation if the position contrary to the rule or regulation is not frivolous as defined in § 1.6694–2(c)(2) and is adequately disclosed in accordance with paragraph (e) of this section.

(3) In the case of a position contrary to a revenue ruling, a preparer is not considered to have recklessly or intentionally disregarded the ruling if the position has a realistic possibility of being sustained on its merits, or if the position is not frivolous as defined in § 1.6694–2(c)(2) and is adequately disclosed in accordance with paragraph (e) of this section.

(d) *Examples.* The provisions of paragraphs (b) and (c) of this section are illustrated by the following examples.

Example 1. A taxpayer provided a preparer with detailed check registers reflecting personal and business expenses. One of the expenses was for domestic help, and this

BEST COPY AVAILABLE

expense was identified as personal on the check register. The preparer knowingly deducted the expenses of the taxpayer's domestic help as wages paid in the taxpayer's business. The preparer is subject to the penalty under section 6694(b).

Example 2. A taxpayer provided a preparer with detailed check registers to compute the taxpayer's expenses. However, the preparer knowingly overstated the expenses on the return. After adjustments by the examiner, the tax liability increased significantly. Because the preparer disregarded information provided in the check registers, the preparer is subject to the penalty under section 6694(b).

Example 3. A revenue ruling holds that certain expenses incurred in the purchase of a business must be capitalized. The Code is silent as to whether these expenses must be capitalized or may be deducted currently, but five cases from different courts hold that these particular expenses may be deducted currently. There is no other authority. Under these facts, a position taken contrary to the revenue ruling on a return or claim for refund is not a reckless or intentional disregard of a rule, since the position contrary to the revenue ruling has a realistic possibility of being sustained on its merits. Therefore, the preparer will not be subject to a penalty under section 6694(b) even though the position is not adequately disclosed.

Example 4. Final regulations provide that certain expenses incurred in the purchase of a business must be capitalized. One Tax Court case has expressly invalidated that portion of the regulations. Under these facts, a position contrary to the regulation will subject the preparer to the section 6694(b) penalty even though the position may have a realistic possibility of being sustained on its merits. The preparer, however, will not be subject to the section 6694(b) penalty if the position is properly disclosed in the manner provided in paragraph (e) of this section.

(e) *Adequate disclosure*—(1) *Signing preparers.* In the case of a signing preparer, disclosure of a position that is contrary to a rule or regulation is adequate only if the disclosure is made in accordance with §§ 1.6662–4 (f)(1), (3), (4) and (5) (which permit disclosure on a properly completed and filed Form 8275). The disclosure must adequately identify the rule or regulation being challenged. The provisions of § 1.6662–4 (f)(2) (which permit disclosure on the return in accordance with an annual revenue procedure) will not apply for purposes of this section.

(2) *Nonsigning preparers.* In the case of a nonsigning preparer, disclosure of a position that is contrary to a rule or regulation is adequate if the position is disclosed in the manner provided in paragraph (e)(1) of this section. In addition, disclosure of a position is adequate in the case of a nonsigning preparer if, with respect to that position, the preparer complies with the provisions of paragraph (e)(2) (i) or (ii) of this section, whichever is applicable.

(i) *Advice to taxpayers.* In the case of a nonsigning preparer who provides advice to the taxpayer with respect to a position that is contrary to a rule or regulation, disclosure of that position is adequate if the advice includes a statement that the position is contrary to a specified rule or regulation and, therefore, is subject to a penalty described in section 6662(c) unless adequately disclosed in the manner provided in § 1.6662–3(c)(2) (which permits disclosure on a properly completed and filed Form 8275 and which requires adequate identification of any rule or regulation being challenged). If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the taxpayer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the taxpayer.

(ii) *Advice to another preparer.* If a nonsigning preparer provides advice to another preparer with respect to a position that is contrary to a rule or regulation, disclosure of that position is considered adequate if the advice includes a statement that disclosure under section 6694(b) is required. If the advice with respect to the position is in writing, the statement concerning disclosure also must be in writing. If the advice with respect to the position is oral, advice to the preparer concerning the need to disclose also may be oral. The determination as to whether oral advice as to disclosure was in fact given is based on all facts and circumstances. Contemporaneously prepared documentation of the oral advice regarding disclosure generally is sufficient to establish that the advice was given to the other preparer.

(f) *Rules or regulations.* The term "rules or regulations" includes the provisions of the Internal Revenue Code, temporary or final Treasury regulations issued under the Code, and revenue rulings issued by the Internal Revenue Service.

(g) *Section 6694(b) penalty reduced by section 6694(a) penalty.* The amount of any penalty to which a preparer may be subject under section 6694(b) for a return or claim for refund is $1,000 reduced by any amount assessed and collected against the preparer under section 6694(a) for the same return or claim.

(h) *Burden of proof.* In any proceeding with respect to the penalty imposed by section 6694(b), the Government bears the burden of proof on the issue of whether the preparer willfully attempted to understate the liability for tax. See section 7427. The preparer bears the burden of proof on such other issues as whether:

(1) The preparer recklessly or intentionally disregarded a rule or regulation; and

(2) disclosure was adequately made in accordance with paragraph (e) of this section.

§ 1.6694–4 Extension of period of collection where preparer pays 15 percent of a penalty for understatement of taxpayer's liability and certain other procedural matters.

(a) *In general*—(1) The Internal Revenue Service will investigate the preparation by a preparer of a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code and will send a report of the examination to the preparer before the assessment of either—

(i) A penalty for understating tax liability due to a position for which there was not a realistic possibility of being sustained on its merits under section 6694(a); or

(ii) A penalty for willful understatement of liability or reckless or intentional disregard of rules or regulations under section 6694(b).

Unless the period of limitations (if any) under section 6696(d) may expire without adequate opportunity for assessment, the Internal Revenue Service will also send, before assessment of either penalty, a 30-day letter to the preparer notifying him of the proposed penalty or penalties and offering an opportunity to the preparer to request further administrative consideration and a final administrative determination by the Internal Revenue Service concerning the assessment. If the preparer then makes a timely request, assessment may not be made until the Internal Revenue Service makes a final administrative determination adverse to the preparer.

(2) If the Internal Revenue Service assesses either of the two penalties described in section 6694(a) and section 6694(b), it will send to the preparer a statement of notice and demand, separate from any notice of a tax deficiency, for payment of the amount assessed.

(3) Within 30 days after the day on which notice and demand of either of the two penalties described in section 6694(a) and section 6694(b) is made against the preparer, the preparer must either—

(i) Pay the entire amount assessed (and may file a claim for refund of the amount paid at any time not later than 3 years after the date of payment); or

(ii) Pay an amount which is not less than 15 percent of the entire amount assessed with respect to each return or claim for refund and file a claim for refund of the amount paid.

(4) If the preparer pays an amount and files a claim for refund under paragraph (a) (3) (ii) of this section, the Internal Revenue Service may not make, begin, or prosecute a levy or proceeding in court for collection of the unpaid remainder of the amount assessed until the later of—

(i) A date which is more than 30 days after the earlier of—

(A) The day on which the preparer's claim for refund is denied; or

(B) The expiration of 6 months after the day on which the preparer filed the claim for refund; and

(ii) Final resolution of any proceeding begun as provided in paragraph (b) of this section.

However, the Internal Revenue Service may counterclaim in any proceeding begun as provided in paragraph (b) of this section for the unpaid remainder of the amount assessed. Final resolution of a proceeding includes any settlement between the Internal Revenue Service and the preparer, any final determination by a court (for which the period for appeal, if any, has expired) and, generally, the types of determinations provided under section 1313(a) (relating to taxpayer deficiencies). Notwithstanding section 7421(a) (relating to suits to restrain assessment or collection), the beginning of a levy or proceeding in court by the Internal Revenue Service in contravention of this paragraph (a)(4) may be enjoined by a proceeding in the proper court.

(b) Preparer must bring suit in district court to determine liability for penalty. If, within 30 days after the earlier of—

(1) The day on which the preparer's claim for refund filed under paragraph (a)(3)(ii) of this section is denied, or

(2) The expiration of 6 months after the day on which the preparer filed the claim for refund,

the preparer fails to begin a proceeding for refund in the appropriate United States district court, the Internal Revenue Service may proceed with collection of the amount of the penalty not paid under paragraph (a)(3)(ii) of this section.

(c) *Suspension of running of period of limitations on collection.* The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court of the unpaid amount of a penalty or penalties described in section 6694(a) or section 6694(b) shall be suspended for the period during which the Internal Revenue Service, under paragraph (a)(4) of this section, may not collect the unpaid amount of the penalty or penalties by levy or a proceeding in court.

(d) *Effective date.* The provisions of this section are effective as of December 19, 1989.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 91–4805 Filed 2–28–91; 8:45 am]
BILLING CODE 4830–01–M

26 CFR Part 1

[IA–110–90]

RIN 1545–AP27

Determination of Rate of Interest—Increase in Rate of Interest Payable on Large Corporate Underpayments; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to an increase in rate of interest payable on large corporate underpayments.

DATES: The public hearing will be held on April 2, 1991, beginning at 10 a.m. Outlines of oral comments must be delivered by March 19, 1991.

ADDRESSES: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA–110–90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6621(c) of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Wednesday, December 19, 1990, (55 FR 52054).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday, March 19, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of the Internal Revenue.

Dale D. Goode,
Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–5037 Filed 3–1–91; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the reopening of the comment period for part of the Alabama formal submittal of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) which were submitted on July 16, 1990, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments relate to revegetation, siltation structures, roads, exploration,

performance bonds and other topics. These amendments are primarily in response to changes in the Federal regulations (30 CFR, chapter VII) between June 8, 1988, and August 30, 1989 (Regulation Reform Review III).

Proposed changes to the Alabama rules made in response to changes in the Federal rules were previously published in the September 6, 1990, Federal Register (55 FR 36660). Comments made in response to that announcement have been considered. However, Alabama had made additional changes which were not required by Federal rule changes and these changes were inadvertently omitted from the above Federal Register notice. These changes have been incorporated into the list of changes under "Discussion of Amendments." In addition, Alabama's new rule covering the extraction of coal incidental to the extraction of other minerals has been removed from this list since this rule is unrelated to the other changes and is covered by the previous (September 6, 1990) Federal Register announcement.

This notice sets forth the times and locations that the Alabama program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearings, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 3, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on March 29, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 280 West Valley Avenue, room 302, Homewood, Alabama 35209. Telephone: (205)731-0890.

Alabama Surface Mining Commission, First Federal Bank Building, 2nd Floor, 1811 Second Avenue, Jasper, Alabama 35501. Telephone: (205)221-4130.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr. Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 280 West Valley Avenue, Room 302, Homewood, Alabama 35209. Telephone: (205) 731-0890.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, Federal Register (47 FR 22030). Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15, and 901.30.

II. Discussion of Amendments

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Alabama on February 7, 1990, that a number of the Alabama regulations are less effective than or inconsistent with the Federal requirements as revised between June 8, 1988, and August 30, 1989.

By letter dated July 18, 1990 (Administrative Record No. AL-462), Alabama submitted to OSM a State program amendment package consisting of approximately 55 revisions to the Alabama program. These revisions address changes in the Alabama program required by the above-mentioned letter of February 7, 1990, and additional changes initiated by Alabama primarily for reasons for clarity, organization and consistency with the Federal regulations.

The Alabama Surface Mining Commission proposes the following rule-making actions:

Rule No. and Title: [Intended Action]
880-X-2A-.06 Definition [Amend]
880-X-2A-.07(1) Two Acres [Del]
880-X-2A-.07(2) Exemptions [Add]
880-X-2A-.07(3) Jurisdiction [Amend]
880-X-8B-.03 Unpermitted Reclamation [Amend]
880-X-8C-.01 Exploration [Amend]
880-X-8C-.02 Exploration [Repeal]
880-X-8C-.03 Exploration [Repeal]
880-X-8C-.04 Exploration [Amend]
880-X-8C-.06(1)(c) Mapping [Amend]
880-X-8C-.05 Exploration: General [Amend]
880-X-8C-.06 Exploration Approval [Amend]
880-X-8C-.07 Exploration Hearing [Amend]
880-X-8C-.09 Commercial Use/Sale [New Rule]
880-X-8C-.10 Information [Amend]
880-X-8F-.11 Impoundments [Amend]
880-X-8F-.17(1) Specifications [Amend]
880-X-8F-.17(2) Certifications [Add]
880-X-8F-.19 Support Facilities [New Rule]
880-X-8I-.12 Impoundments [Amend]
880-X-8I-.17(1) Specifications [Amend]
880-X-8I-.17(2) Certifications [Add]
880-X-8I-.19 Support Facilities [New Rule]
880-X-8J-.04(4)(e) Total Prime Farmland [Add]
880-X-9A-.04(2) Increments, Size and Configuration [Add]
880-X-9B-.04(2) Revegetation [Amend]
880-X-9C-.03(7) Self Bonding [Amend]
880-X-9C-.04(2) Liability Insurance [Amend]
880-X-9D-.02(4) Interest in Bonds/Access [Amend]
880-X-9E-.05(1)(b) Bond Money [Amend]
880-X-9E-.05(3) Excess Costs Collection [Add]
880-X-10B-.01 Scope [Amend]
880-X-10B-.02 Permitting Info [Amend]
880-X-10B-.06(d) Exploration: Topsoil [Amend]
880-X-10B-.07 Exploration: Permitting [Repeal]
880-X-10C-.17 Hydrologic Balance/Siltation Structures [Amend]
880-X-10C-.20 Impoundments [Amend]
880-X-10C-.62(1)(a) Alternative Sampling [Del]
880-X-10C-.67 Roads: General [Amend/Add]
880-X-10C-.68 Primary Roads [Amend/Add]
880-X-10C-.69 Roads: Drainage [Repeal]
880-X-10C-.70 Roads: Surfacing [Repeal]
880-X-10C-.71 Roads: Restoration [Repeal]
880-X-10D-.17 Hydrologic Balance/Siltation Structures [Amend]
880-X-10D-.20 Impoundments [Amend]
880-X-10D-.56(1)(a) Alternative Sampling [Del]
880-X-10D-.65 Roads: General [Amend/Add]
880-X-10D-.66 Primary Roads [Amend/Add]
880-X-10D-.67 Roads: Drainage [Repeal]
880-X-10D-.68 Roads: Surfacing [Repeal]
880-X-10D-.69 Road: Restoration [Repeal]
880-X-10G-.05(4) Tilling [Add]
880-X-11B-.02(8-9) Abandoned Sites [Add]

III. Public Comment Procedure

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Alabama satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m., March 19, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-4969 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' rules, and to meet State codification rules and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), Title 62, Mining, chapter I.

This notice sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 3, 1991. If requested, a public hearing on the propsoed amendment will be held at 1 p.m. on March 29, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 19, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, Suite 202, Springfield, Illinois 62704, telephone: (217) 492-4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, telephone: (217) 782-4970

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Pursuant to 30 CFR 732.17, OSM identified required revisions to the Illinois regulatory program by letters dated September 20, 1989 and February 7, 1990. OSM also notified Illinois of deficiencies which OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations in an Illinois program amendment approved by the Director on August 29, 1990 (55 FR 35301) and in deficiency letters dated November 2, 1990 and December 21, 1990.

In response to these notifications, Illinois by letter dated February 1, 1991 (Administrative Record No. IL-1131), submitted the following proposed changes to its program.

At 62 IAC 1700.11, a change to subsection (a) clarifies that all of the Department's regulations apply unless otherwise exempted. A revision to subsection (a)(2) adds a reference to 62 IAC 1702 making the incidental coal extraction exemption subject to the requirements of that new section. Subsection (c) was modified to clarify that 62 IAC 1815 and 1840 through 1846 apply to coal exploration operations and surface coal mining and reclamation operations regardless of whether a permit is required, except as otherwise specified in those rules. At subsections

(a)(3), (a)(4), and (c) referenced statutory and regulatory provision dates were changed to reflect the latest versions.

At 62 IAC 1701.APPENDIX A, a definition for "Road" was added, statutory citations throughout the section were amended to reflect proper citation form and correct dates, and clerical errors were corrected.

A new set of regulations at 62 IAC 1702 were proposed to implement and provide criteria, application and reporting requirements for the exemption concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total mineral tonnage mined for purposes of commercial use or sale.

At 62 IAC 1761.11(a), the phrase "any future" before the word "guidelines" was deleted; the reference "published at 47 FR 39454 (September 7, 1982) was added after the word "Act"; and a sentence "The guidelines at 47 FR 39454 do not include any subsequent editions or amendments" was added in order to incorporate by reference guidelines relating to the Wild and Scenic Rivers Act.

In proposed changes to 62 IAC 1761.11(d)(2), the approval of public road authorities would no longer be required with respect to affected areas within 100 feet of a public road; the word "and" was deleted in paragraph (A); new paragraph (B) would require the approval of public road authorities where public roads are to be relocated or closed; and existing paragraph (B) was relettered to paragraph (C).

Proposed changes to 62 IAC 1761.12(c) and (c)(1) correspond to the proposed changes to 62 IAC 1761.11(d)(2) and (d)(2)(B) discussed above. A proposed change at 62 IAC 1761.12(c)(2) clarifies who may request a public hearing and establishes a time limit in which public hearing requests shall be submitted.

At 62 IAC 1772.11(b)(5), the Department updated the reference to forms required for coal exploration activities to correspond to changes in forms reporting adopted by the Illinois Department of Mines and Minerals' Oil and Gas Division.

Illinois regulation 62 IAC 1772.14 was divided into two subsections (a) and (b). In subsection (a), the Department expanded its scope to apply to commercial use, as well as sale, of coal extracted during coal exploration operations under an exploration permit. In subsection (b), new application requirements were added for the Department's approval of an exemption from obtaining a permit for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use of coal extracted during exploration operations is for coal testing purposes only.

Changes to four sections are proposed for 62 IAC 1773, Requirements for Permits and Permit Processing. In section 1773.5, the word "or" was deleted and the word "and" was added in the phrase "of the relationships specified in subsection (a) *and* (b)." Proposed changes in section 1773.11 correct a clerical error in subsection (a) by adding the word "been" in the phrase "regardless of whether the authorization to conduct surface coal mining operations has expired or has "*been*" terminated, revoked, or suspended," and changes the date of referenced statutory provisions in subsection (b)(1)(C). Changes to section 1773.15(b)(1) clarify that the provision applies to all unabated enforcement actions and delinquent civil penalties incurred under any State program pursuant to SMCRA, not just those actions and penalties issued by Illinois or OSM; and a modification to subsection (b)(1)(B) clarifies that the rule is not limited to administrative and judicial appeal decisions of violations issued by Illinois, but also applies to administrative and judicial appeal decisions concerning violations issued by other regulatory authorities. Section 1773.17(h) was changed to clarify that the provision applies whenever a cessation order is issued, regardless of whether it is issued by the Department or by OSM by adding a reference to Federal regulation 30 CFR 843.11.

At 62 IAC 1774.13(b)(1), the Department proposed a 90-day time period to approve or disapprove insignificant permit revision applications.

At 62 IAC 1778.14, the first proposed change to subsection (c) clarifies that the reference that the reference to the Federal Surface Mining Control and Reclamation Act (SMCRA) includes all state programs approved thereunder. The second proposed change to subsection (c) clarifies that the violation reporting requirements apply only to Federal laws or regulations pertaining to air or water environmental protection, rather than every violation of a Federal law or regulation.

A typographical error was corrected at 62 IAC 1780.16(b)(3)(B) by deleting the fourth occurrence of the word "of" in the second sentence.

At 62 IAC 1780.37, which provides surface mining permit application requirements for transportation facilities, existing subsections were relettered or renumbered and three new subsections were added. Proposed new subsection (a)(5) requires drawings and specifications for proposed stream fords to be used as temporary routes. Proposed new subsection (a)(7) requires removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

New section 62 IAC 1780.39 requires each applicant for a surface coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

At 62 IAC 1784.21(a)(2), the date of the statutory reference was changed in paragraph (A), and the phrase "or other applicable State or Federal law" was added at the end of paragraph (C).

At 62 IAC 1784.24, which provides underground mining application requirements for transportation facilities, existing subsections were relettered or renumbered and three new subsections were added. Proposed new subsection (a)(5) requires drawings and specifications for proposed stream fords to be used as temporary routes. Proposed new subsection (a)(7) requires removal and reclamation plans and schedules for all roads which are not proposed for retention as part of the post-mining land use. Proposed new subsection (b) requires that primary road plans and drawings be prepared by, or under the direction of, and certified by a qualified registered professional engineer.

New section 62 IAC 1784.30 requires each applicant for an underground coal mining and reclamation operations permit to submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area.

Several changes were proposed to regulations under 62 IAC 1816 which contains permanent program performance standards for surface mining activities. At 62 IAC 1816.49, a change was made to update the referenced edition of 30 CFR 77.216 to 1990 in subsection (a)(1). The period was deleted and a comma and the word "or" added to subsection (a)(3). New subsection (a)(4) provides an alternative to the performance standards in subsection (a)(3) by specifying that compliance with the referenced U.S. Soil Conservation Service's standards satisfies the Department's performance standards for certain impoundments. Existing subsections (a)(4) through (a)(11) were renumbered (a)(5) through (a)(12). A typographical error was corrected in subsection (b)(9); the factor "soil and type" was corrected to "soil type."

At 62 IAC 1816.56, new subsections (a)(18) and (a)(19) add weather conditions to the list of data required to be maintained by operators in their records of blasting operations.

At 62 IAC 1816.84, subsection (b)(2) was rewritten to require that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event. New subsection (f) specifies that, for impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following each occurrence of that event.

At 62 IAC 1816.111 (a)(4) and (b)(1), typographical errors were corrected. In subsection (a)(4), the spelling of the word "stabilizing" was corrected; and in subsection (b)(5), the word "which" was deleted and the word "with" was added. Also in subsection (b)(5), citations to various State statutes were updated.

The Department's requirements for revegetation success standards are set forth at 62 IAC 1816.116. Proposed new subsections (a)(2)(D) and (a)(2)(E) define the extent to which rill and gully repairs can be considered nonaugmentative on cropland-capable and noncropland-capable land respectively. Existing subsection (a)(2)(D) was relettered to (a)(2)(F). Proposed changes to subsection (a)(3) eliminates the term "stocking" and requires using techniques in section 1816.117(d) for measurement of vegetative ground cover. Proposed changes to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. A proposed change at subsection (a)(3)(D) deletes the term "stocking" and substitutes for it the term "population(s)." Changes to subsection (a)(3)(E) specify that for revegetation success purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period and allows one successful year of corn production to be used as a substitute for one successful year of hay production for revegetation success purposes on high capability land. The proposed change to subsection (a)(4)(A)(iii) corrects a citation to a regulation. The proposed modification to subsection (a)(4)(D) limits the use of wheat crops for revegetation success purposes to one year. The proposed change to subsection (b)(2) changes the deadline date for reclamation activity report submittals from January 1 to February 15 of each year.

The Department's requirements for revegetation of tree and shrub vegetation are set forth at 62 IAC 1816.117. Changes at subsections (a), (a)(1), (b), (c), and (c)(6) deletes use of the term "stocking" and substitutes the term "vegetation" or "population." Also, modifications to subsection (a)(1) require that for revegetation success purposes, survival counts are to be taken during the last year of the responsibility period and that trees and shrubs shall be healthy to be considered for survival counts. Proposed changes to subsection (a)(3) specify that ground cover is not required on imperious structures such as parking lots and permanent roads, and deletes language relating to rock areas and surface water drainage ways. The proposed change to subsection (a)(4) corrects the spelling of the word "legumes." Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in Illinois. A proposed change at subsection (c)(2) corrects the spelling of the word "enumerator." Proposed new subsection (d) establishes a techniques for measuring the revegetative success of ground cover.

Illinois regulation 62 IAC 1816.150 was rewritten to establish: classification criteria for mine roads; performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with surface coal mining operations; environmental protection criteria for the design, construction and reconstruction of roads; and requirements for the location and maintenance of roads associated with surface coal mining operations.

New section 62 IAC 1816.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing.

At 62 IAC 1816.Appendix A, changes to the "Soybean Sampling Technique for Drilled or Planted Beans and to the Mixed Hay Sampling Technique" were made to correct mathematical errors in the formulas. Proposed changes to "Wheat Sampling Techniques and Oats Sampling Techniques" establish mathematical formulas for measuring row crops.

Several changes were proposed to regulations at 62 IAC 1817 which contain permanent program performance standards for underground mining activities. At 62 IAC 1817.49, the date of the citation to 30 CFR 77.216 was changed from 1988 to 1990 in subsection (a)(1). In subsection (a)(3) the period was deleted and a comma and the word "or" were added. A new subsection (a)(4) provides an alternative to the performance standards in subsection (a)(3) by specifying that compliance with referenced U. S. Soil Conservation Services' standards satisfies the Department's performance standards for certain impoundments. Existing subsections (a)(4) through (a)(11) were renumbered (a)(5) through (a)(12). A change at subsection (b)(9) corrects the factor "soil and type" to "soil type."

At 62 IAC 1817.56 new subsections (a)(18) and (a)(19) and weather conditions to the list of data required to be maintained by operators in their records of blasting operations.

At 62 IAC 1817.84, subsection (b)(2) was rewritten to require that structures meeting the Mine Safety and Health Administration's (MSHA) criteria set forth in 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour precipitation event. New subsection (f) specifies that, for an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event must be removed within the 10-day period following the design precipitation event.

At 62 IAC 1817.116, proposed new subsections (a)(2)(D) and (a)(2)(E) define the extent to which rill and gully repairs can be considered nonaugmentative. Existing subsection (a)(2)(D) was relettered to (a)(2)(E). The proposed changes to subsection (a)(3) eliminate the use of the term "stocking" and requires using techniques in section 1817.117(d) for measurement of revegetation success of ground cover. The proposed change to subsection (a)(3)(C) specifies that for revegetation success purposes, measurements may not be taken on cropland during the first year of the responsibility period. The proposed change to subsection (a)(3)(D) eliminates the term "stocking" and substitutes the term "population(s)." The proposed change to subsection (a)(3)(E) specifies that for revegetation success

purposes, measurements may not be taken on pasture and/or hayland or grazing land during the first year of the responsibility period. The proposed new last sentence of subsection (a)(3)(E) allows one successful year of corn production to be used as a substitute for one successful year of hay production for revegetation success purposes on high capability land. At subsection (b)(2), the deadline date for reclamation activity report submittals is changed from January 1 to February 15 of each year.

The Department's requirements for revegetation of tree and shrub vegetation are set forth at 62 IAC 1817.117. A proposed change at subsections (a), (a)(1), (b), (c), and (c)(6) deletes use of the term "stocking" and substitutes the terms "population" or "vegetation." Proposed changes at subsection (a)(1) require that for revegetation success purposes, survival counts are to be taken during the last year of the responsibility period and that trees and shrubs counted shall be healthy. Changes to subsection (a)(3) specify that ground cover is not required on impervious structures, and deletes language relating to rock areas and surface water drainage ways. Proposed new subsection (a)(5) defines what are considered normal husbandry and conservation practices in Illinois. Proposed new subsection (d) establishes a method of measuring vegetative ground cover.

Illinois regulation 62 IAC 1817.150 was rewritten to establish: Classification criteria for mine roads; performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with underground coal mining operations; environmental protection criteria for the design, construction and reconstruction of roads; and requirements for the location and maintenance of roads associated with underground coal mining operations.

New section 62 IAC 1817.151 establishes performance standards relating to primary road construction and reconstruction certification, safety factor, location, drainage control and surfacing.

At 62 IAC 1823.14, a proposed new subsection (g) requires that prime farmland have a planned erosion control system in certain specified instances. At 62 IAC 1823.15(b)(3), the proposed changes specify that for revegetation success purposes measurements may not be taken on prime farmland during the first year of the responsibility period and corrects a typographical error by adding the type of test referenced in (i.e., one-sided "t" test with 0.10 alpha error).

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies that applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on March 19, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "ADDRESSES". A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-4990 Filed 3-1-91; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3910-7]

Open Meeting of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA committee meetings—Negotiated Rulemaking. Committee on Clean Fuels Rules and Guidelines.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), EPA is giving notice of the first meeting of the Advisory Committee to negotiate a rule for reformulated gasoline and labeling of oxygenated gasoline as well as for developing guidelines for oxygenated fuel credit trading programs for inclusion in state implementation plans.

EPA published a "Notice of Intent to Form an Advisory Committee To Negotiate Guidelines and Proposed Regulations Implementing Clean Fuels Provisions" on February 8, 1991 (56 FR 5167). The Notice provided that EPA is considering establishing one or two advisory committees to negotiate issues under the clean fuels provisions of section 211 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. The Notice also announced that a public meeting would be held on February 21 and 22 to consider the issues raised in the notice. It also solicited comments by March 11, 1991, on the issues raised in the Notice and applications or nominations for membership on the negotiating committee.

Because of the short deadlines in the Clean Air Act Amendments of 1990 for these issues, EPA anticipates making its decision with respect to the establishment of a negotiated rulemaking committee very soon after the close of the comment period. In the event a committee is established, its first meeting will be on March 14 and 15. If a negotiated rulemaking committee is not established, a Notice to that effect will be published.

The purpose of the meeting is to discuss and ratify the organizational protocols by which the committee will operate, organize workgroups and charge them with developing information and recommendations to the committee concerning specific topics, develop the committee's specific agenda for its operations, and begin to consider the substantive issues involved.

The meeting will be open to the public without advance registration.

DATES: The meeting will be held on March 14 from 9 a.m. until 6 p.m. and on March 15 and from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001, (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Carol Mennings of EPA's Motor Vehicle Emission Laboratory, Office of Mobile Sources, (313) 668-4575, with respect to issues concerning reformulated fuels, and Alfonse Mannato of EPA's Field Operations and Support Division, Office of Mobile Sources, (202) 382-2687, with respect to issues concerning oxygenated fuels. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Chris Kirtz of EPA's Regulatory Negotiation Project, or one of the Committee's independent facilitators, Philip J. Harter at (202) 667-1033 or Alana S. Knaster at (818) 702-9526.

Dated: February 20, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning and Evaluation.

[FR Doc. 91-5016 Filed 2-27-91; 1:57 pm]

BILLING CODE 6560-50-M

---

40 CFR Part 123

[FRL-3910-5]

State of Colorado's Submission of a Substantial Program Revision to its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application, public comment period, and public hearing.

SUMMARY: The State of Colorado has submitted its Aquatic Life Biomonitoring Regulation, COLO. ADMIN. CODE title 5, chapter 1002, article 2, section 8.9.7 (5CCR1002-2) (adopted by the Colorado Water Quality Control Commission in November 1988) (hereinafter the Colorado Biomonitoring Regulation) to EPA for review as a revision to the State's authorized National Pollutant Discharge Elimination System (NPDES) program. EPA has determined that the regulation constitutes a substantial revision to Colorado's authorized NPDES program. Accordingly, EPA requests public comment and is providing notice that a public hearing on the submitted regulation will be held pursuant to 40 CFR 123.62(b) and part 25. EPA seeks public comment on whether to approve or disapprove the Colorado Biomonitoring Regulation as a revision to Colorado's authorized NPDES program.

Copies of the Colorado regulation are available for public inspection as indicated below.

DATES: Comments must be received before May 3, 1991. A public hearing has been scheduled for April 18, 1991, at the Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202, from 2 p.m. to 5 p.m. (or later as necessary) and 7 p.m. to 10 p.m. (or later as necessary).

ADDRESSES: Comments should be addressed to Robert J. Burm, U.S. EPA, Region VIII, 8WMC, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

FOR FURTHER INFORMATION CONTACT: Robert J. Burm, (303) 293-1587, at the above address.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of EPA may issue permits for the discharge of pollutants into the waters of the United States under conditions required by the CWA. Section 402(b) allows States to assume NPDES program responsibilities upon approval by EPA. On March 27, 1975, Colorado received approval to assume the NPDES program; on March 4, 1983, the State was authorized by EPA to issue general permits under the NPDES Program.

EPA has issued regulations in 40 CFR part 123 that establish the requirements for NPDES State Programs. Section 123.62 establishes procedures for revision of authorized NPDES State Programs. Under § 123.62(a), a State may initiate a program revision and must keep EPA informed of proposed modifications to its regulatory authority. In January 1990, the State of Colorado submitted its biomonitoring regulation for formal review by EPA. Under § 123.62(b)(1), a State program submittal is complete whenever the State submits such documents as EPA determines are necessary under the circumstances. In this instance, EPA has determined that the State submission is complete. Section 123.62(b)(2) requires EPA to issue public notice by publication in the Federal Register and in newspapers having Statewide coverage, and to provide a period of public comment of at least 30 days whenever the Agency determines that a program revision is substantial. EPA has determined that the biomonitoring regulation, which is described below, constitutes a substantial revision to Colorado's NPDES program. Section 123.62(b)(2) also requires EPA to hold a public hearing regarding the proposed revision "if there is significant public interest based on requests received." EPA believes based upon contacts with the State of Colorado and the public in the last two years that there is already substantial public interest in the proposed revision and accordingly has proceeded to schedule a public hearing at this time.

The Colorado Biomonitoring Regulation describes the State's requirements for conducting whole effluent toxicity testing, for establishing effluent limitations in NPDES permits to control whole effluent toxicity, for enforcing established limitations, and for eliminating the cause(s) of the whole effluent toxicity.

Following passage of the Colorado regulation, NPDES permits were drafted by Colorado containing the provisions of the new regulation. Numerous permits were subsequently formally objected to (vetoed) by EPA because they did not satisfy the minimum requirements of the CWA. Formal administrative proceedings on such permits proceed according to 40 CFR parts 123 and 124, and the permits will not be the subject of public comment and hearing under this notice.

On June 2, 1989, EPA promulgated regulations at 40 CFR 122.44(d)(1), which clarify existing requirements for developing water-quality-based effluent limitations. See 54 FR 23868. The regulations require permitting authorities to set whole effluent toxicity limitations where necessary to achieve (as described in the regulation) a numeric criterion for whole effluent toxicity or a narrative criterion within an applicable narrative water quality standard. Section 123.25(15) of the NPDES State Program regulations requires NPDES authorized States to have the legal authority to implement

the requirements of the provisions of § 122.44.

At the close of the public comment period (including the public hearing), the EPA Regional Administrator, with the concurrence of the Associate General Counsel for Water and the Director of the Office of Water Enforcement and Permits, will decide whether to approve or disapprove the Colorado Biomonitoring Regulation as a revision to the Colorado NPDES program. The decision to approve or disapprove will be based upon the requirements of the CWA and 40 CFR part 123. A public hearing to consider the Colorado Biomonitoring Regulation has been scheduled for April 19, 1991, at the Hyatt Regency, 1750 Welton Street, Denver, Colorado 80202, from 2 p.m. to 5 p.m. (or later as necessary) and from 7 p.m. to 10 p.m. (or later as necessary).

The Colorado Biomonitoring Regulation may be reviewed by the public from 8 a.m. to 4 p.m. at the EPA office in Denver, Monday to Friday (excluding holidays), at the address appearing earlier in this notice. Copies of the submittal may be obtained for a fee by contacting Robert J. Burm at the above telephone number or address.

The following are the policies and procedures which shall be observed at the public hearing: (1) Any person may submit written statements or documents for the record; (2) the Presiding Officer(s) may establish reasonable limits on the time allowed for oral statements; (3) the transcript taken at the hearing, together with copies of all submitted statements and documents shall become a part of the record of this proceeding; (4) the hearing record shall be left open until May 3, 1991, as described below, to permit any persons to submit additional written statements or to present views or evidence tending to rebut testimony which was presented at the public hearing; and (5) the Presiding Officer(s) shall have the authority to open and conclude the hearing and to maintain order.

Immediately following the public comment period, a complete hearing record will be prepared. The record will be made available for public review, and copies of the record may be obtained by the public at cost.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record. Statements should summarize any extensive written materials.

All comments or objections received as discussed above, by May 3, 1991, will be considered by EPA before taking final action on the program revision.

Please bring the foregoing to the attention of persons whom you know will be interested in this matter. All written comments and questions on the hearing should be addressed to Robert J. Burm at the above address or telephone number.

Dated: February 25, 1991.

LaJuana S. Wilcher,

Assistant Administrator for Water, Environmental Protection Agency.

Dated: February 26, 1991.

James J. Scherer,

Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 91-5020 Filed 3-1-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-32, RM-7606]

Radio Broadcasting Services; Chetek, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Chetek Broadcasters proposing the allotment of Channel 294C2 to Chetek, Wisconsin, as that community's first local service. There is a site restriction 2 kilometers (1.3 miles) east of the community to avoid a short spacing to Channel 296C2, New Richmond, Wisconsin. Canadian concurrence will be requested at coordinates 45-19-23 and 91-37-27.

DATES: Comments must be filed on or before April 19, 1991, and reply comments on or before May 6, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553, (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-32, adopted February 11, 1991, and released February 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-4959 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-30, RM-7600]

Television Broadcasting Services; Vanderbilt, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by GRK Productions, Inc., proposing the allotment of Channel 45 to Vanderbilt, Michigan, as that community's first local commercial TV service. Canadian concurrence will be requested for this allotment at coordinates 45-08-42 and 84-39-36.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Garry R. Knapp, GRK Productions, Inc., 7400 South 45 Road, Cadillac, Michigan 49601, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-30, adopted February 11, 1991, and released February 27, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5034 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-484; RM-7478]

Radio Broadcasting Services; Kalispell, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition for rule making filed by Skyline Broadcasters, Inc., to allot Channel 292A to Kalispell, Montana, as that community's fourth FM broadcast service. See 55 FR 49661, November 8, 1990. Neither the petitioner nor any other party filed an expression of interest in the channel.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-484, adopted February 11, 1991, and released February 27, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5030 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-31, RM-7535]

Radio Broadcasting Services; Kershaw, SC and Waxhaw, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Jeffrey C. Sigmon seeking the substitution of Channel 291C3 for Channel 291A at Kershaw, South Carolina, reallotment of the channel from Kershaw to Waxhaw, North Carolina, and modification of petitioner's construction permit to specify Waxhaw as the station's community of license. Channel 291C3 can be allotted to Waxhaw in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) southeast to avoid short-spacings to Station WRDX, Channel 293C, Salisbury, North Carolina, and the pending application of Station WZLI, Channel 291C1, Toccoa, Georgia (BPH-900301IE), as well as to accommodate petitioner's desired transmitter site. The coordinates for Channel 291C3 at Waxhaw are North Latitude 34-51-38 and West Longitude 80-39-03. In accordance with § 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 291C3 at Waxhaw or require the petitioner to demonstate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephen T. Yelverton, Maupin Taylor Ellis & Adams, P.A., 3201 Glenwood Avenue, Raleigh, North Carolina 27612-5008 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Lealie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-31, adopted February 11, 1991, and released February 27, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5031 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-28, RM-7584]

Radio Broadcasting Services; Abilene and Colorado City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Sure Broadcasting, Inc., licensee of Station KHXS(FM), Channel 292A, Abilene,

Texas, requesting the substitution of Channel 282C2 for Channel 282A at Abilene, and the modification of its license accordingly. To accommodate the Abilene substitution, petitioner also requests the substitution of Channel 291A for Channel 292A at Colorado City, Texas, and the modification of Station KAUM-FM's license accordingly. Both channels can be allotted in accordance with the Commission's minimum distance separation requirements at their respective transmitter sites. Site coordinates for Channel 282C2 at Abilene are 32-28-34 and 99-42-22. Site coordinates for Channel 291A at Colorado City are 32-23-15 and 100-53-33. Mexican concurrence will be requested for the Colorado City substitution.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street NW., Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-28, adopted February 11, 1991, and released February 27, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5002 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 91-29, RM-7575]

Radio Broadcasting Services; South Burlington, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Atlantic Ventures of Vermont, L.P. ("petitioner"), licensee of Station WXXX(FM), Channel 237A, South Burlington, Vermont, seeking substitution of Channel 238C3 for 237A and modification of its license accordingly. Channel 238C3 can be allotted to South Burlington in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.6 miles) southwest at the petitioner's desired site to avoid preclusive interference to Stations CBOO(FM), Channel 238A, Cornwall, Ontario, and CFLM(FM), Channel 238A, Sherbrook, Quebec, Canada. The proposed allotment will have to be specially negotiated with Canada. The coordinates for the allotment of Channel 238C3 at South Burlington, Vermont, are North Latitude 44-30-54 and West Longitude 73-13-05. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of Channel 238C3 at South Burlington or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence Bernstein, Esq., Brinig & Bernstein, 1818 N Street, NW., suite 200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-29, adopted February 11, 1991, and released February 27, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5003 Filed 3-1-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 42
Monday, March 4, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation and Committee on Rulemaking; Public Meetings

This notice of committee meetings if given pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman, (202) 254-7020, at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, of after the meeting. Minutes of the meeting will be available on request.

Committee on Regulation

Date: Wednesday, March 20, 1991.
Time: 3:15 p.m. to 6:00 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Contact: David Pritzker, (202) 254-7065.
Agenda: The committee will meet to discuss a new project concerned with procedures for making determinations in antidumping and countervailing duty cases, based on a study by Professors John H. Jackson, University of Michigan Law School and William J. Davey, University of Illinois at Urbana-Champaign.

Committee on Rulemaking

Date: Tuesday, March 5, 1991.
Time: 4:30 p.m. to 6:30 p.m.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).
Contact: Kevin Jessar, (202) 254-7020.
Agenda: The committee will meet to discuss two new projects, the first of which deals with the use of non-rule rulemaking. The consultant to this project is Professor Robert A. Anthony, George Mason University Law School. The second project deals with the National Labor Relations Board's first rulemaking. The consultant to this project is Professor Mark H. Grunewald, Washington and Lee University.

Dated: February 27, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-5099 Filed 3-1-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 22, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Revision

• Animal and Plant Health Inspection Service.
Poultry Affected by Salmonella Enteritidis
APHIA 8062, 8004, VS 20-1, SE 20-1, 20-3
Recording; On occasion
State or local governments; Farms; Federal agencies or employees; 658,739 responses; 61,147 hours
Ronald J. Day (301) 436-7737

New Collection

• Economic Research Service.
Cost of Foodborne Campylobacteriosis
One time survey
Individuals or households; 201 responses; 68 hours
Tanya Roberts (202) 219-0864

Extension

• Forest Service.
Fuelwood and Post Assessment in Selected States
Annually (but not in each state)
Individuals or households; Small businesses or organizations; 5,966 responses; 597 hours
W. Brad Smith (FTS) 777-5132

• Foreign Agricultural Service.
Certificate of Quota Eligibility
FAS-961
On occasion
Businesses or other for-profit; 600 responses; 100 hours
Cleveland Marsh (202) 475-5676

Reinstatement

• Food and Nutrition Service.
7 CFR part 250—Food Distribution Regulations
Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Biennially; other
State or local governments; Federal agencies or employees; Non-profit institutions; 29,105 responses; 54,701 hours
Diane Berger (703) 756-3660

Donald E. Hulcher

Deputy Departmental Clearance Officer.

[FR Doc. 91-5003 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

Determination; Recalculation of 1988 and 1989 Barley Deficiency Refunds

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determination.

SUMMARY: This notice sets forth determinations required by section 405 of the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act)

relating to the recalculation of 1988 and 1989 barley deficiency payments which were made by the Commodity Credit Corporation (CCC) under the 1988 and 1989 barley price support and production adjustment programs.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Nell Tucker, Agriculture Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, United States Department of Agriculture, room 6756 South Building, Washington, DC 20013, (202) 447-6108.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512-1 and Executive Order 12291 and has been classified as "nonmajor."

Notice and Determination

In has been determined that the Regulatory Flexibility Act is not applicable to the final rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051; Feed Grain Production Stabilization—10.055, as found in the catalog of Federal Domestic Assistance.

Background

Section 107C of the Agricultural Act of 1949, as amended (The 1949 Act), provides for the 1988 and 1989 wheat and feed grain programs, that CCC would make available in advance, payments equal to not less than 40 percent nor more than 50 percent of the final projected deficiency payments which were estimated to be earned by producers participating in said programs. With respect to barley, CCC has historically made advance payments based on an "all-barley" price basis, which included estimated market prices for malting barley and non-malting barley. Using this basis, 1988 barley final deficiency payments were originally estimated to be $.76 per bushel and 1989 barley final deficiency payments were originally estimated to be $.23 per bushel. Advance payments of $.304 and $.115 were issued in 1988 and 1989, respectfully. However, due primarily to severe drought conditions in major barley producing areas of the United States, the actual final deficiency payments were zero in both 1988 and 1989.

A portion of the increase in barley prices was attributable to higher malting barley prices which increased proportionately higher than non-malting barley prices. As a result of the increase in malting barley prices, plus an increase in the proportion of all-barley production being used for malting, the all-barley price was higher and deficiency payments were reduced.

In response to this occurrence, section 405 of the 1990 Act provides as follows:

> Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall calculate, the amount of the refund of any advance deficiency payment a producer of barley who participated in the 1988 or 1989 Federal barley price support program would be required to make pursuant to section 107C of the Agricultural Act of 1949 based on a formula which excludes malting barley from the market price calculations of barley used to determine the amount of refund of the advance deficiency payment required of the producer.

Accordingly, pursuant to section 405 of the 1990 Act, the following determinations have been made:

Final Determinations

1. The formula for recalculating 1988 and 1989 final barley deficiency payments which excludes malting barley from the market price calculations used to determine barley deficiency payments is as follows:

(a) For each of the 1988 and 1989 crop years respectively, compute the production with respect to which barley deficiency payments are made by multiplying the (i) Farm program payment acreage times (ii) the farm program payment yield times (iii) the producer's share of the crop and subtracting any production for which a disaster payment was made in accordance with The Disaster Assistance Act of 1988 (The 1988 Act) or The Disaster Assistance Act of 1989 (The 1989 Act), respectively.

(b) Compute the revised barley deficiency payment by multiplying the deficiency production for payment times the recalculated payment rates for the crop year which is $.22 per bushel for 1988 and $.40 per bushel for 1989.

(c) For those producers who qualified for forgiveness of unearned advance deficiency payments under either The 1988 Act of 1989 Act, the amount of payments that is forgiven for the crop year shall be recomputed, when applicable, by: (i) Dividing the originally calculated forgiveness by the original forgiveness rate, (ii) computing a revised rate that is equal to the difference between the original advance payment rate and the payment rate that is based on the average market price for feed barley, or $.664 per bushel for 1988, and (iii) multiplying the result of (i) by the result of (ii). Forgiveness is not applicable when using the recalculated rate for 1989.

(d) Compute the amount of refund, if any, that would have been made by subtracting the sum of the result of (b) plus the result of (c) from the payment advanced.

2. The totals of the recalculation for all participating barley producers are as follows:

Year	Total No. producers	Tot. original amt. due	Recalculated amt. due	Difference
1988	114,929	$76,915,221	[1] $38,338,916	$38,576,969
1989	96,885	24,864,500	[1] 1,250,447	23,614,053

[1] Includes refunds due on bushels for which disaster payments were made.

The per bushel rates used in the recalculations are as follows:

Year	1988	1989
Target Price	$2.51	$2.43
5 Month Average Market Price, Feed Barley	2.29	2.03
Difference	.22	.40
Advance Rate	.304	.115

3. It has been determined that the formula set forth above shall not be used to determine refunds for affected producers. This determination is based upon several reasons. First, since the implementation of the concept of barley deficiency payments in 1974, all producers of barley have been able to enroll in the barley program whether or not the barley that was being grown was malting barley or non-malting barley. Accordingly, all barley producers who enrolled in the 1988 and 1989 programs were treated in the same manner as in prior years. Since producers of barley which was sold for malting purposes did, in fact, obtain higher returns from the market for the barley which was marketed, it has been the position of the Department that such returns should be included in the final deficiency payment calculations. To not include such returns results in a double premium to producers who marketed malting barley. Further, to alter the final deficiency payment rate after the fact, significantly degrades the integrity of not only the barley program but all other CCC programs pursuant to which deficiency payments are calculated; producers who made decisions to enroll, or not to enroll, in these programs must be given firm announcements so that these decisions can be made without the possibility of later changes. Also, the concept of excluding high value varieties of a commodity from the calculations of the market value of that commodity carries forth major implications for other target price commodities and as such has budget implications beyond barley.

Finally, while the House-passed version of the 1990 Farm Bill gave the Secretary discretion to exclude malting barley prices from the deficiency payment calculations for 1988 or 1989 crop barley and to make refunds and the Senate-passed version made this discretionary authority mandatory, the final bill passed by both the House and the Senate made the refunding of 1988 and 1989 barley deficiency payments (based on the new formula) wholly discretionary in order to reduce the cost of the 1990 Farm Bill and to meet the budget targets required by the Budget Committees.

Signed this 26 day of February, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, CCC.

[FR Doc. 91-5040 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Appeal Exemption; Eldorado National Forest, Placerville, CA

ACTION: Notice of exemption from appeal, Placerville Ranger District, Tractor Insect Salvage, Placerville Ranger District, Eldorado National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objective is to reduce the fire hazard, to recover the value of the timber and to rehabilitate the affected area. The Placerville Ranger District Tractor Insect Salvage Environmental Assessment (EA) is currently being prepared for compartments scattered throughout the Placerville Ranger District, Eldorado National Forest, which is located east of the community of Placerville, California.

There are higher than normal levels of tree mortality occurring throughout the Eldorado National Forest as a result of four years of below normal precipitation, with a fifth drought year expected. The drought has had the greatest effect on reducing vigor and weakening natural defense mechanisms of over-stocked and over-mature stands, predisposing them to attack by bark beetles. True fir stands above 5000 feet elevation are experiencing the greatest mortality. The rapid deterioration rate of true fir requires that it be removed as soon as possible if the timber is to be utilized, its value to be recovered, and the fire hazard to be reduced.

The Forest Supervisor has determined through preliminary environmental analysis, which included public scoping, that there is good cause to expedite this project. The analysis area is approximately 84,000 acres (gross) with at least 8,400 acres visibly adversely affected at this time. Up to 50 percent or more of the trees in some stands within the analysis area are dead or dying. The Forest is proposing eight timber sales using tractor harvest systems. It is estimated that approximately 15.7 million board feet (MMBF) could be salvaged from this analysis area. It is estimated that the total volume harvested could go as high as 30 MMBF if mortality increases due to the continuing drought and bark beetle infestation. The management direction for all the compartments in this proposal is established in the Eldorado National Forest Land and Resource Management Plan, approved by the Regional Forester on January 6, 1989, which includes intensive forest management practices on commercial lands.

There is no new road construction proposed with these eight sales. Approximately 10 miles of road reconstruction may occur where necessary to protect resource values. All of the proposed sales are outside of previously identified roadless areas.

Several pair of spotted owls, ED-5, ED-23, ED-25, ED-26, ED-27, ED-38, ED-49, ED-79, ED-98, and ED-99, are located in the analysis area and are within the current Spotted Owl Habitat Area (SOHA) network on the Eldorado. Approximatley 14,600 acres of old growth exist in the analysis area. Of the 14,600 acres, approximately 475 acres of old growth may be entered under this salvage proposal.

Regional entomologists have analyzed the situation and have found no economical or practical means to control the insect epidemic at the Forest level. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses which would make the sales economically infeasible because of higher than normal harvesting costs. Through timber sales, fuel treatments can be accomplished (or deposits collected to accomplish them) to a degree that could not be funded otherwise. It is also important to harvest the dead and dying timber when there is the potential to get the highest return to the government and collect Knutsen-Vandenburg (K-V) funds to restore forest values being affected by extensive tree mortality.

The decision for the analysis area is scheduled to be issued in late February, 1991. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15-20 days for discretionary review by the Chief of the Forest Service), there would be a loss of value of the timber due to deterioration. This loss of timber value would create the potential that the sales would not sell. The total estimated value of the

standing dead mortality is $1,600,000, of which approximately $400,000 would be returned to counties from 25 percent receipt funds. In addition, the fire hazard would not be reduced if the dead timber was not removed. Further, there is significant increased public awareness of the significance of the increased insect mortality.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decisions relating to the harvest and restoration of the lands affected by drought-induced timber mortality in the Placerville Ranger District Tractor Insect Salvage analysis area on the Placerville Ranger District, Eldorado National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111 (415) 705–2648, or Jerald N. Hutchins, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA, 95667 (916) 622–5061.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational opportunities and other forest resources.

The environmental analysis for this proposal will be documented in the Placerville Ranger District Tractor Insect Salvage EA. Public participation in the analysis was solicited through a public meeting held December 5, 1990, in Placerville, California, through a news release issued also in December of 1990, and through mailings to publics owning property adjacent to the Forest, holders of special-use permits and others known to be interested in timber management on the Eldorado National Forest. Comments received were considered in the issues, range of alternatives and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Placerville Ranger District, Camino, California, and in the Forest Supervisor's Office, Placerville, California.

The analysis indicates that up to 15.7 MMBF, primarily mixed conifer and true fir, valued at up to $1,600,000 have been currently killed by the combined effects of drought and bark beetle attack. Up to 70 percent of the merchantable volume can be lost by the second year if true fir is left as standing dead. (USDA Circular 962 was used as a reference for the volume loss calculation and it describes decay rates in timber killed by fire. Pacific Southwest Research Station personnel have stated that the decay in timber killed by insects would be equivalent or greater.) Delaying harvest or not harvesting this timber could result in a loss of up to $400,000 in National Forest Receipts to Counties, as well as employment opportunities generated from harvest, milling and sale of the timber in El Dorado, Amador, Placer, and/or Alpine Counties.

Based on the analysis completed thus far, the environmental assessment will document that salvage harvesting can be conducted while protecting other resource values, such as wildlife habitat, soil productivity, watershed valued, visual quality, air quality, recreation, and public safety. No wetlands, wilderness areas, Spotted Owl Habitat Areas, or threatened or endangered species would be affected by the proposed projects. Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources funded with K–V monies. These delays would result in volume and value losses, and increase the chances of wildfire due to the large quantity of standing and down fuels. In addition, there is significant potential to increase the publics concern related to failure to harvest the insect mortality as soon as possible.

Dated: February 20, 1991.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 91–4966 Filed 3–1–91; 8:45 am]

BILLING CODE 3410–11–M

Blue/Ray Multiple Resource Management Project, Klamath National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement resource projects on the Salmon River Ranger District, Klamath National Forest, Siskiyou County, California.

DATES: Comments concerning the scope of the analysis must be received by March 25, 1991.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P. Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, Attn: Blue/Ray E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Don Garringer Natural Resource Planner or Roger Siemers, Natural Resource Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, phone (916) 467–5757.

SUPPLEMENTARY INFORMATION: Barbara Holder, Forest Supervisor, Klamath National Forest is the responsible official.

The proposed action is to help develop different management alternatives within the current direction of the Salmon River Multiple Use Plan. The following resource values will be considered for protection or improvement:

(1) Water quality (cumulative watershed effects)
(2) Fisheries and wildlife
(3) Archeology
(4) Visual quality objectives
(5) Soils and geologically sensitive areas
(6) Threatened, sensitive and endangered species
(7) Timber
(8) Economics
(9) Fuels management
(10) Recreation
(11) Cultural resources

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifyig issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.

5. Identifying potential environemntal effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting in Etna, California, at the headquarters of the Salmon River Ranger District, Klamath National Forest, at 7 p.m., March 4, 1991.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 12, 1992. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the area encompassed by the proposed Blue/Ray Multiple Resource planning project participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986 and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January 9, 1993. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: February 22, 1991.

Ken Slater,

Timber Management Officer.

[FR Doc. 91–4986 Filed 3–1–91; 8:45 am]

BILLING CODE 3410–11–M

I-Am-Up Multiple Resource Management Project, Klamath National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement resource projects on the Salmon River Ranger District, Klamath National Forest, Siskiyou County, California.

DATES: Comments concerning the scope of the analysis must be received by March 25, 1991.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P. Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, Attn: I-Am-Up E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Bill Bailey, Natural Resource Planner or Roger Siemers, Natural Resource Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, phone (916) 467–5757.

SUPPLEMENTARY INFORMATION: Barbara Holder, Forest Supervisor, Klamath National Forest is the responsible official.

The proposed action is to help develop different management alternatives within the current direction of the Salmon River Multiple Use Plan. The following resource values will be considered for protection or imporvement:

(1) Water quality (cumulative watershed effects)
(2) Fisheries and wildlife
(3) Archeology
(4) Visual quality objectives
(5) Soils and geologically sensitive areas
(6) Threatened, sensitive and endangered species
(7) Timber
(8) Economics
(9) Fuels management
(10) Recreation
(11) Cultural resources

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifyig issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting in Etna, California, at the headquarters of the Salmon River Ranger District, Klamath National Forest, at 7 p.m., March 11, 1991.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by November 12, 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the area encompassed by the proposed I-Am-Up Multiple Resource planning project participate at that time. To be most helpful, comments on the DEIS should be as specific as possible

and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviwers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by January 9, 1993. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Ken Slater,

Timber Management Officer.

[FR Doc. 91-4997 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrical Administration

Co-Mo Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact related to the construction of the proposed Lake Branch Facility to be located south of Laurie in Camden County, Missouri.

SUMMARY: Notice is hereby given that the Rural Electrification Administration, pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations (40 CFR parts 1500-1508) and the Rural Electrification Administration Environmental Policies and Procedures (7 CFR part 1794), has prepared an environmental assesment and made a finding of no significant impact with respect to the construction of the Lake Branch Facility in Camden County, Missouri. Co-Mo Electric Cooperative (P.O. Box 220, Tipton, Missouri 65081) has requested the Rural Electrification Administration's approval to construct the project in order for it to continue to adequately serve the needs of its consumer/members. The proposed Lake Branch Facility is planned as an office, warehouse and materials storage complex.

FOR INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382-8436.

SUPPLEMENTARY INFORMATION: The proposed project consists of a 4,600 square foot office building, a 13,061 square foot warehouse, a 1,400 square foot equipment building, a 3 acre fenced material yard, a transformer dock, pole racks, a fuel service island, a drive-in window, 10 office employee parking spaces and 15 customer parking spaces.

Alternatives considered were constructing the facility as proposed and no action. The Rural Electrification Administration has concluded that there is a demonstrated need for the project. Therefore its preferred alternative is approval of construction of the Lake Branch Facility as proposed.

Copies of the environmental assessment and finding of no significant impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the office of Co-Mo Electric Cooperative, Highway 5, South, Tipton, Missouri 65081.

Dated: February 22, 1991.

Approved:

John H. Arnesen,

Assistant Administrotor—Electric Rural Electrification Administration, United States of America.

[FR Doc. 91-5007 Filed 3-1-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-039]

Canned Bartlett Pears From Australia; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on canned bartlett pears from Australia. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: David Levy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1973, the Department of Treasury published an antidumping finding on canned bartlett pears from Australia (38 FR 7566). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objection should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-4992 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-002]

Chloropicrin From the People's Republic of China, Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on chloropicrin from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published an antidumping duty order on chloropicrin from the People's Republic of China (49 FR 10691). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by March 31, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-4993 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests by various parties to the proceeding, the Department of Commerce has conducted administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States, Victor Company of Japan (Victor), and the periods August 19, 1985 through February 28, 1986. The reviews indicate zero dumping margins for Victor during these periods.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

In response to the Department of Commerce's ("the Department") notices of opportunity to request administrative reviews of the antidumping finding on Japanese televisions, various parties to the proceeding requested these administrative reviews. We published notices of initiation of the antidumping duty administrative reviews on July 9, 1986 (51 FR 24883) for the fifth and sixth reviews and on April 18, 1986 (51 FR 13273) for the seventh review. As required by section 751 of the Tariff Act of 1930 (the Tariff Act), the Department has now conducted these administrative reviews. On February 11, 1991, the Department of Commerce published in the **Federal Register** (54 FR 5392) the final results of our last administrative review, covering Victor and the periods March 1, 1987 through February 28, 1990, (36 FR 4597, March 10, 1971).

Scope of the Review

Imports covered by the reviews are shipments of television receiving sets, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonzied Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter of Japanese television receivers, monochrome and color, Victor, and the periods August 19, 1985 through February 28, 1986.

United States Price

In calculating United States price (USP) the Department used exporter's sales price (ESP) as defined in section 772 of the Tariff Act. USP was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made adjustments, as

applicable, for ocean freight, marine insurance, U.S. duties, U.S. and Japanese inland freight, inland freight insurance, U.S. and Japanese brokerage fees, Japanese customs clearance fees, wharfage, export license fees, forwarding and handling charges, export selling expenses incurred in Japan, discounts, royalties, rebates, and the U.S. subsidiary's selling expenses. We accounted for taxes imposed in Japan, that were rebated or not collected by reason of the exportation of the merchandise to the United States, by multiplying the ex-factory price of the televisions sold in the United States by the tax rate and adding the result to the USP.

Foreign Market Value

In calculating foreign market value [FMV] the Department used home market prices to unrelated purchasers, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold to provide a basis for comparison. We made adjustments to the ex-factory or delivered prices for inland freight, brokerage and handling, insurance, rebates, discounts, credit, warranties, advertising, sales promotion, royalties, and differences in physical characteristics of the merchandise and packing. We deducted indirect selling expenses up to the amount of U.S. commissions to unrelated parties and U.S. indirect selling expenses. Finally, we made circumstance-of-sale adjustments for commodity tax differences, where appropriate. No other adjustments were claimed or allowed.

We used constructed value when there were no contemporaneous sales of such or similar home market models. We calculated constructed value as the sum of material and fabrication costs, general expenses, profit, and the cost of U.S. packing. Since Victor's general expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs, we used actual general expenses. Since actual profit was less than eight percent of the sum of the material costs, fabrication costs, and general expenses, we used the eight percent statutory minimum, as provided by section 773 of the Tariff Act.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Review No.	Period of review	Margin (%)
Victor	5	6/16/89-5/31/90	0
Victor	6	4/01/84-3/29/85	5
Victor	7	3/01/85-3/25/86	5

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs/written comments from parties to the proceeding may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent, based on the margin for Victor in the eleventh review, will be required for Victor. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Sharp, or Toshiba, the cash deposit will continue to be the same as the rates published in the final results of the last administrative reviews for these firms (56 FR 5392, February 11, 1991). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of covered merchandise occurred after February 28, 1990, and who is unrelated to Victor or any previously reviewed firm, a cash deposit of 35.40 percent shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome or color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-4994 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-DS-M

European Community Common Approach to Standards, Testing and Certification in 1992

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of request for public comment.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 (the "Committee") was established on February 23, 1990 to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC'92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. Federal, State, local and private sector standards activities.

The Committee has held two meetings on October 10, 1990 and January 8, 1991. As part of the Committee's mandate to advise the Secretary of Commerce on EC standards-related activities, the Committee identified several key issues in the area of standards, testing and certification which formed the basis of draft issue papers developed by Committee working groups. The issue papers will provide the basis for a final report to the Secretary later in the spring. Copies of the final two draft issue papers are now available for public review and comments will be accepted until March 22, 1991. The two issue papers discuss the appropriate role of the federal government in international standards activities and possible adjustments to be made in U.S. testing and certification practices. Copies of the papers will be available from Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377-5276.

DEADLINE FOR COMMENTS: Interested members of the public are invited to submit their comments to Charles Ludolph in the Office of European Community Affairs, Telephone (202) 377-5276; Fax (202) 377-2155. The deadline for submission of comments is March 22, 1991.

Dated: February 20, 1991.

Charles M. Ludolph,

Director, Office of European Community Affairs.

[FR Doc. 91-4991 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-DA-M

National Oceanic and Atmospheric Administration

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 1 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (FMP). This amendment defines overfishing for 17 crab stocks in the Bering Sea/Aleutian Islands area using a constant fishing mortality rate. Overfishing is defined as any rate of fishing mortality in excess of F_{max} for king and Tanner crab stocks in the Bering Sea/Aleutian Islands management area.

EFFECTIVE DATE: February 26, 1991.

ADDRESSES: Copies of the amendment and the environmental assessment may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the North Pacific Fishery Management Council (Council) on January 17, 1989. The Secretary of Commerce (Secretary) approved the FMP on June 2, 1989 (54 FR 29080; July 11, 1989). The FMP culminated 10 years of effort by the Council to address the concerns of various user groups while at the same time acknowledging more than 20 years of management of crab by the State of Alaska (State). The FMP was written as a cooperative State-Federal FMP to avoid State-Federal coordination problems. The FMP contains a general management goal and identifies seven management objectives and relevant management measures required to meet the objectives. The FMP established three categories of management measures (1) Fixed measures implemented by the State that requires an FMP amendment to be changed; (2) measures that the State may implement and amend, subject to Federal criteria specified in the FMP, and enforce against State-registered vessels in the exclusive economic zone (EEZ); and (3) measures that the State may implement and amend, without specific Federal criteria specified in the FMP, and enforce against State-registered vessels in the EEZ. Federal oversight of State management of the king and Tanner crab fisheries is provided through Secretarial review to determine if an action is consistent with the FMP, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable Federal law. Federal oversight also is provided through a review and appeals procedure for both State preseason and in-season actions and formation of a Council Crab Interim Action Committee.

A notice of availability for Amendment 1 was published in the Federal Register on November 30, 1990 (55 FR 49673), and the public was invited to comment on the amendment. Amendment 1 to the FMP establishes an overfishing definition for king and Tanner crab in the Bering Sea/Aleutian Islands area to meet the requirements of 50 CFR part 602. Overfishing is defined for each king and Tanner crab stock in the Bering Sea/Aleutian Islands area, for which sufficient data exist, as the level of commercial harvest from directed (pot) and non-directed (trawl and pot) fisheries resulting in a fishing mortality (F) value that exceeds the fishing mortality rate that would yield the maximum sustainable yield (MSY) known as F_{max}.

The amount of scientific information available for defining overfishing for the king and Tanner crab stocks in the Bering Sea/Aleutian Islands area is variable. Three different approaches were used to establish the above overfishing definition for the crab stocks based on the type of data available. The Council crab FMP team will monitor and reassess the data available for determining overfishing for the crab stocks through preparation of the Stock Assessment and Fishery Evaluation (SAFE) report or annual report as required by the FMP.

Some stocks only have available historical catch, sporadic inseason catch and effort, as well as mortality data. No population estimates are made for these stocks, so estimates for F_{max} are unavailable. Overfishing for these stocks is defined as a fishing mortality rate in excess of F_{max} where the maximum allowable fishing mortality rate is estimated to equal the natural mortality rate (M) of mature male crab. Based on the best estimates of natural mortality rate, the maximum allowable fishing mortality rate for these stocks is 0.3.

Estimates of inseason fishing mortality are difficult to calculate for stocks with limited data on sporadic catch and effort. Various methods may be used to determine fishing mortality rates on these stocks that do not have population estimates. First, the Leslie method (Leslie and Davis, 1939, Journal of Animal Ecology 8:94-113) may be used if sufficient inseason fishery performance data of catch per unit effort (CPUE) and cumulative catgch are available to estimate population abundance of legal male crab. The ratio of catch of legal male crab to the population abundance estimate of the legal male crab may be used to estimate the fishing mortality rate of legal male crab. This calculated rate then may be compared with the maximum allowable fishing mortality rate to evaluate overfishing. Second, an estimate of fishing mortality rate based on the ratio of CPUE of legal crab to CPUE of mature crab may be calculated. Data on CPUE of both legal and mature crab are available only from fisheries with onboard observers. During a short fishery, abundance of sublegal mature crab should not change and the reduction in the legal/mature ratio could be used to estimate the fishing mortality rate. A correction for natural mortality of sublegal mature crab would be necessary for long fisheries. Third, an estimate of fishing mortality rate based on proportionate change in average weekly CPUE may be calculated. Weekly average CPUE may be compared to determine if a proportionate reduction in CPUE equal to the maximum allowable fishing mortality rate (F=M) has occurred. Data on CPUE would be available only in those fisheries with onboard observers or detailed fish ticket information. For unobserved fisheries with fish ticket data, only fishing mortality on legal male crabs can be estimated. Other methods may be employed that provide increased precision and accuracy in estimating fishing mortality.

Some stocks have available historical catch, continuous inseason catch and effort, as well as mortality data. While these stocks have directed fisheries, no population estimates are made for these stock; therefore, estimates of F_{max} are unavailable. Overfishing for these stocks is defined as a fishing morality rate in excess of F_{max} where the maximum allowable fishing mortality rate for these stocks is estimated to equal the natural mortality rate of mature male crab. Based on the best estimates of natural mortality rate, the

BEST COPY AVAILABLE

maximum allowable fishing rate for these stocks is 0.3.

For stock with directed fisheries, the Leslie method may be used with inseason fishery performance data (CPUE and cumulative catch) to estimate population abundance of legal male crab. The ratio of catch of legal male crab to the population abundance estimate of legal male crab may be used to estimate the fishing mortality rate of legal male crab. This calculated rate may then be compared with the maximum allowable fishing mortality rate to evaluate overfishing. Other methods may be employed that provide increased precision and accuracy in estimating actual fishing mortality.

Some stocks have available historical catch, continuous inseason catch and effort, as well as stock assessment, stock-recruitment, growth, maturity, and mortality data. Overfishing for these stocks is defined as a fishing mortality rate in excess of F_{msy}, where the maximum allowable fishing mortality rate for these stocks cannot exceed F_{msy}, estimated as $F_{0.1}$, based on the size of first maturity for male crabs. Based on the work of Clark (Unpublished manuscript, International Pacific Halibut Commission, Seattle, Washington, 1990), it is assumed that $F_{0.1}$ is equal to or less than F_{msy}. The exploitation rates associated with $F_{0.1}$ for these stocks were estimated by standard yield-per-recruit methods to be 0.4 for king crab stocks and 0.3 for each species of Tanner crab. Guideline harvest levels are estimated annually for these stocks; therefore, the fishing mortality rate is established prior to a fishery. Current levels of exploitation were compared to fishing mortality rates that would yield MSY. Based on the analysis, NMFS does not expect that fishing mortality on these crab stocks will exceed F_{msy}.

The overfishing definition presented in Amendment 1 for the crab stocks in the Bering Sea/Aleutian Islands management area provides a set of constraints that keeps the stock population levels from falling below a point of no return and ensures the preservation of a stock's long-term reproductive capacity. Commercial fishing mortality on the crab stocks managed under the FMP should remain sufficiently low in the future so that overfishing should not occur under the current management program. Protection is achieved by preventing fishing mortality rates in excess of F_{msy}.

Public Comments

No comments were received during the comment period which ended on January 28, 1991.

Classification

The Regional Director has determined that Amendment 1 to the FMP is necessary for the conservation and management of the Bering Sea and Aleutian Islands crab fisheries, and that this amendment is consistent with the Magnuson Act and other applicable law. A copy of Amendment 1 may be obtained from the Council at the above address.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries concluded that there will be no significant impact on the environment as a result of Amendment 1 approval. A copy of the EA may be obtained from the Council at the above address.

Because this amendment requires no implementing regulations, 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of amendment approval.

This amendment does not contain collection of information requirements subject to the Paperwork Reduction Act.

The Council determined that this amendment is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies failed to comment within the statutory time period; therefore, consistency is automatically inferred.

This amendment does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 26, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-5023 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability of Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist Center for the Utilization of Federal Technology.

Department of Agriculture

SN 7-603,505
Soil Moisture Tube extraction Device
SN 7-606,919
Process for Manufacture of Non-Bleeding Maraschino Cherries
SN 7-627,470
Anionically Dyeable Smooth-Dry Crosslinked Cellulosic Material Created by Treatment of Cellulose with Reactive Swelling Agents and Nitrogen Based Compounds

Department of Health and Human Services

SN 7-264,978
Screening for Tay-Sachs Disease with Cloned DNA for Beta-hexosaminidase
SN 7-362,357
Microwave Induced Plasma Torch with Tantalum Injector Probe (As An Ion Source for Mas Spectrometry)
SN 7-502,055
A Rapid, Sensitive and Specific Test for Detecting Pathogenic Bacterium, Vibrio Vulnificus
SN 7-530,165
Cloned Human Cripto Gene and Applications Thereof (New Tumor Specific Marker for Human Colon Cancer)
SN 7-531,317
Nucleotide, Deduced Amino Acid Sequence, Isolation and Purification of Heat-Shock Cytamdial Proteins
SN 7-531,950
Monoclonal Antibodies for Identification and Preparation of raf-1 Oncoprotein
SN 7-532,327
A Protective Vaccine (For Bordetella pertussis or Bordetalla Bronchiseptica)
SN 7-535,206
DNA Segment Encoding a Natural Killer Cell Receptor
SN 7-541,032
Treatment of Mood Disorders with Functional Antagonists of the Glycine/NMDA Receptor Complex
SN 7-546,141
Labeled Resiniferatoxin, Compositions Thereof, And Methods For Using The Same
SN 7-548,714
A cDNA encoding the Rat D, Dopamine Receptor Linked to Adenylyl Cyclase Activation and Expression of the Receptor Protein in Plasmid-Transfected Cell Lines
SN 7-551,353
Cosegypol for the Treatment of Cancer (Particularly Adrenal Cancer)
SN 7-551,521
Treatment of a Microbial Infection with Drugs Containing Para-Acetamidobenzoic Acid (Treatment of Pneumocystis Carinii in AIDS and Other Immunosuppressed Patients)
SN 7-551,522
The Novel Use of Intravenous Immunoglubulin in the Treatment of Complement-Mediated Diseases
SN 7-554,837
Plasmodium Vivax and Plasmodium Knowlesi Duffy Receptor (Malaria Vaccine Candidate Based on the Duffy Binding Receptor)
SN 7-556,503
Shipping Oasis (A Spill-Proof Water Reservoir for Animals)
SN 7-571,910
Antimicrobial and Antiviral Bis-Adamantanamine Compounds
SN 7-592,489
Low-Cost Ultrasonic Nebulizer for Atomic-Spectrometry
SN 7-607,742
Test for Virulent Revertants in Attenuated Live Vaccines

[FR Doc. 91-5000 Filed 3-1-91; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 18 April 1991 at 10 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Handicapped persons should call the Commission offices (202-504-2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 22 February 1991.

Charles H. Atherton,

Secretary.

[FR Doc. 91-4999 Filed 3-1-91; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 2, 1991; Tuesday, April 9, 1991; Tuesday, April 16, 1991; Tuesday, April 23, 1991; and Tuesday, April 30, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: February 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4985 Filed 3-1-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of a Record System

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amendment of a System of Records.

SUMMARY: The Defense Logistics Agency proposes to amend a record system in its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on April 3, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (703) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51866, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37496, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09905, Mar. 28, 1988
53 FR 21521, Jun. 8, 1988
53 FR 28105, Jul. 11, 1988
53 FR 32093, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989

55 FR 21018, May 20, 1990 (DLA Address Directory)
55 FR 33294, Aug. 8, 1990
55 FR 32947, Aug. 13, 1990
55 FR 42758, Oct. 23, 1990
55 FR 53178, Dec. 27, 1991

The amended system is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record system being amended is set forth below, followed by the system notice, as amended, published in its entirety.

Dated: February 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.01 DMDC

System name:

DoD Job Opportunity Bank Service.

Changes:

* * * * *

Purposes:

Add a second paragraph "To private and public employers (including local and state employment agencies and outplacement agencies) in the employment process to use as notice of available individuals with interest in potential employment."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "None."

* * * * *

S322.01 DMDC

SYSTEM NAME:

DoD Job Opportunity Bank Service.

SYSTEM LOCATION:

W.R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940-5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Defense military and civilian personnel and their spouses, who have applied for participation in the job placement program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of name, SSN, correspondence address, branch of service, date of birth, separation status, travel availability, U.S. citizenship, occupational interests, geographic location work preferences, pay grade, rank, last unit of assignment, educational levels, dates of military or civilian service, language skills, flying status, security clearances, civilian and military occupation codes, and self reported personal comments for the purpose of providing prospective employers with a centralized system for locating potential employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, 1143, 1144, 2358 and Executive Order 9397.

PURPOSE(S):

The purpose of this system is to facilitate the transition of military and civilian Defense personnel, and their spouses, to private industry and Federal employment in the event of a downsizing of the Department of Defense.

To private and public employers (including local and state employment agencies and outplacement agencies) in the employment process to use as notice of available individuals with interest in potential employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage.

RETRIEVABILITY:

Retrieved by Social Security Number of occupational or geographic preference.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record or their authorized representative. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Records are maintained on-line for one year and then are archived as an historical data base.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Director, Defense Manpower Data Center, 1600 N. Wilson Boulevard, Suite 400, Arlington, VA 22209-2593.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determination are contained in DLA Regulation 5400.21; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, and from the subject individual via application into the program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-4964 Filed 3-1-91; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Announcement of Public Scoping Meetings, Reconfiguration Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping meetings, programmatic environmental impact statement for reconfiguration of the nuclear weapons complex.

SUMMARY: On February 11, 1991, the Department of Energy (DOE) published its Notice of Intent (NOI) to prepare the Reconfiguration Programmatic Environmental Impact Statement (PEIS), in accordance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). The PEIS will analyze reconfiguration of the DOE nuclear weapons complex. The NOI marked the start of the public scoping period for the PEIS. Through this notice DOE again invites comments on the scope of the PEIS, announces the location, date and time for public meetings to be held as part of its scoping process, and provides the rules it will follow for conducting the meetings.

DATES: To provide the public with the opportunity to provide oral comments, DOE will hold public scoping meetings on the dates announced below near all sites to be analyzed in detail in the PEIS. To ensure consideration in preparation of the PEIS, written comments must be postmarked by September 30, 1991. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for public meeting locations, and for preregistering to speak, are given below.

FOR FURTHER INFORMATION CONTACT: Written comments on the scope of the PEIS, requests for copies of DOE's related "Nuclear Weapons Complex Reconfiguration Study" (January 1991, DOE/DP-0083), requests for further information on the DOE nuclear weapons complex reconfiguration program, and requests for copies of the PEIS (when available) should be sent to: James R. Nicks, Associate Deputy Assistant Secretary for Weapons Complex Reconfiguration (Acting), DP-40, room GA-045, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1537, Attn: Reconfiguration PEIS.

For general information on the DOE NEPA review process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600.

SUPPLEMENTAL INFORMATION:

Invitation to comment. In the NOI for this PEIS, DOE invited comments on the scope of the PEIS from all interested parties, including affected Federal, State and local agencies and Indian tribes. DOE solicited comments regarding the scope of the PEIS analysis, suggestions on significant environmental issues, alternatives to be included in the PEIS, and other content.

The NOI stated that DOE proposes to reconfigure its existing nuclear weapons complex to create a smaller, less diverse, more efficient complex at the present sites, or at relocated or consolidated sites. The PEIS will analyze the environmental consequences of alternative long-term reconfiguration strategies for the DOE nuclear weapons complex, envisioned to be in place early in the 21st century ("Complex 21"), and weigh these against the consequences of maintaining the existing configuration. The PEIS also will be used to support DOE decisions regarding the configuration of its plutonium facilities in the mid-term (in about the year 2000).

Public scoping meetings. DOE will hold public scoping meetings near all sites analyzed in detail in the PEIS. The public meetings will provide an opportunity to present oral comments as well as written material. Each meeting will be held form 9 a.m. to 9:30 p.m., with breaks from 1 pm. to 2 p.m. and 5 p.m. to 6:30 p.m. If necessary, DOE may extend the evening session for up to two hours, depending on the number of persons wishing to speak.

DOE will hold public scoping meetings near each of the 13 major sites of the nuclear weapons complex, and in Washington, DC, as listed below. DOE also will hold public scoping meetings near any other site identified for consideration for relocation of the weapons complex facilities now located at the Rocky Flats Plant, and co-located facilities; the time, date and location for those meetings will be published in a later Federal Register notice (expected to be on or about July 1, 1991). Public meetings will be held at least two weeks after notice is given in the Federal Register. The meetings also will be publicized in local media and other means as appropriate.

Registration. Persons wishing to speak at the public meetings are asked to register; as an option they may preregister. Preregistration may be made by mail or telephone. Written requests may be mailed to: Robert Menard, Oak Ridge Associated Universities/EESD, P.O. Box 117, Oak Ridge, TN 37831-0117, Attn: Reconfiguration PEIS.

Telephone requests may be made by calling Mr. Menard at (615) 576-7435, or by calling the local point of contact listed below. Facsimile requests may be transmitted to Mr. Menard at (615) 576-9384. Requests should be received no later than 5 p.m. on the Friday prior to the meeting.

Elected officials wishing to speak for their constituency are asked to identify their office when registering. People who wish to speak on behalf of an organization are asked to identify the organization when registering; unless time permits otherwise, DOE asks that only one person speak for an organization at a meeting. Preregistered speakers are asked to please sign in at the meeting registration desk. A list of preregistered speakers will be available at the meeting registration desk.

In lieu of preregistration, people who wish to speak may register at the meeting, and will be handled first-come, first-serve as time permits.

Schedule of Public Scoping Meetings

Wednesday, March 20, 1991
Sandia National Laboratories
Contact: Gloria Zamora, (505) 844-3909
Meeting Location:
City of Albuquerque Convention Center,
401 Second Street NW.,
Albuquerque, New Mexico 87102,
(505) 768-4575.

Wednesday, April 3, 1991
Rocky Flats Plant
Contact: Terri Lachman, (303) 966-4671
Meeting Location:
Denver Marriott West,
1717 Denver West-Marriott Boulevard,
Golden, Colorado 80401,
(303) 279-9100.

Wednesday, April 10, 1991
Kansas City Plant
Contact: Tom Uko, (816) 997-3348
Meeting Location:
Ramada Hotel & Suites,
8787 Reeder Road,
Overland Park, Kansas 66214,
(913) 888-8440.

Wednesday, April 17, 1991
Pinellas Plant
Contact: Frank Juan, (813) 541-8333
Meeting Location:
St. Pettersburg Hilton and Towers,
333 First Street South,
St. Petersburg, Florida 33701,
(813) 894-5000.

Wednesday, May 8, 1991
Mound Plant
Contact: John Lyons, (513) 865-4493
Meeting Location:
Holiday Inn,
Dayton Mall,
7999 Prestige Plaza Drive,
Miamisburg, Ohio 45342,
(513) 434-8030.

Wednesday, May 15, 1991
Lawrence Livermore National Laboratory
Contact: Charles Meier, (415) 423-2666
Meeting Location:
Holiday Inn,
720 Las Flores,
Livermore, California 94450,
(415) 443-4950.

Wednesday, May 22, 1991
Los Alamos National Laboratory
Contact: Glenn Seay, (505) 667-4136
Meeting Location:
Hilltop House,

Trinity at Central,
Los Alamos, New Mexico 87544,
(505) 662-2441.

Wednesday, June 5, 1991
Nevada Test Site
Contact: John McGrail, (702) 295-1812
Meeting Location:
University of Nevada, Las Vegas,
Moyer Student Union,
4505 Maryland Parkway,
Las Vegas, Nevada 89154-2008,
(702) 739-3221.

Wednesday, June 12, 1991
Washington DC
Contact: Diana Webb, (202) 586-1537
Meeting Location:
Holiday Inn Capitol,
550 C Street SW.,
Washington, DC 20024,
(202) 479-4000.

Wednesday, July 10, 1991
Savannah River Site
Contact: Dennis Ryan, (803) 725-8162
Meeting Location:
The Town House,
1615 Gervais Street,
Columbia, South Carolina 29201
(803) 771-8711.

Wednesday, July 17, 1991
Idaho National Engineering Laboratory
Contact: Christopher Powers, (208) 526-9586
Meeting Location:
Shilo Inns,
780 Lindsay Boulevard,
Idaho Falls, Idaho 83402,
(208) 523-0088.

Wednesday, July 24, 1991
Pantex Plant
Contact: Tom Walton, (806) 381-3120
Meeting Location:
The Amarillo Civic Center,
401 Buchanan,
Amarillo, Texas 79186,
(806) 378-4297.

Wednesday, July 31, 1991
Hanford Site
Contact: Jeff Harvey, (509) 376-2148
Meeting Location:
Richland Federal Building Auditorium,
825 Jadwin Avenue,
Richland, Washington 99352,
(509) 376-7505.

Wednesday, August 21, 1991
Savannah River Site
Contact: Dennis Ryan, (803) 725-8162
Meeting Location:
Westin Peachtree Plaza,
210 Peachtree Street,
Atlanta, Georgia 30303,
(404) 589-7468.

Wednesday, August 28, 1991
Y-12 Plant
Contact: Robert Menard, (615) 576-7435
Meeting Location:
Oak Ridge Associated Universities,
Pollard Auditorium,
210 Badger Avenue,
Oak Ridge, Tennessee 37831-0117,
(615) 576-3968.

Rules of conduct. Agencies, organizations, and the general public are invited to present oral comments regarding the PEIS at public scoping meetings. DOE will also accept written material at the meetings. Written and oral comments will be given equal weight in the socping process.

People who wish to speak are asked to register following the procedures given above: preregistration is welcomed.

DOE will designated a presiding officer to chair each meeting. The presiding officer will establish the order of speakers and any additional procedures necessary to conduct the meetings. Registered speakers will be given equal time to present their remarks (approximately five minutes each). Depending on the number of persons requesting to speak, the presiding officer may allow more time for elected officials or speakers representing organizations.

DOE will not question speakers; however, the presiding officer may ask speakers to clarify their statements to assure that DOE fully understands the comment. Written comments also will be accepted at the scoping meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will prepare a transcript of each scoping meeting. Copies of all transcripts, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in the NOI; reading rooms are repeated here for the reader's convenience.

DOE Public Reading Rooms

California

U.S. Department of Energy,
San Francisco Operations Office,
1333 Broadway,
Oakland, California 94612,
(415) 273-4428.

Colorado

U.S. Department of Energy,
Rocky Flats Public Reading Room,
Front Range Community College Library,
3645 West 112th Avenue,
Westminster, Colorado 80030,
(303) 469-4435.

Idaho

U.S. Department of Energy,
Idaho Operations Office,
Public Reading Room,
1776 Science Center Drive,
P.O. Box 1625,
Idaho Falls, Idaho 83402,
(208) 526-1191.

Illinois

U.S. Department of Energy,
Chicago Operations Office,
9800 South Cass Avenue,
Argonne, Illinois 60439,
(708) 972-2010.

New Mexico

U.S. Department of Energy,
Albuquerque Operations Office,
Pennsylvania and 8th Streets,
P.O. Box 5400,
Kirtland Air Force Base, New Mexico 87115, (505) 845-5163.

Nevada

U.S. Department of Energy,
Nevada Operations Office,
2753 South Highland Drive,
Las Vegas, Nevada 89193,
(702) 295-1274.

South Carolina

U.S. Department of Energy Reading Room,
University of South Carolina, Aiken Campus,
Writing Center,
171 University Parkway,
Aiken, South Carolina 29801
(803) 648-6851, Extension 3262.

Tennessee

U.S. Department of Energy,
Oak Ridge Operations Office,
Freedom of Information Officer,
200 Administration Road, room G-209,
P.O. Box 2001,
Oak Ridge, Tennessee 37831,
(615) 576-8344 or 576-1216.

Washington

U.S. Department of Energy,
Richland Operations Office,
825 Jadwin Avenue, room 157,
P.O. Box 1970, Mail Stop A1-65,
Richland, Washington, 99352,
(509) 376-8583.

Washington, DC

U.S. Department of Energy,
Freedom of Information Reading Room, room 1E-190,
Forrestal Building,
1000 Independence Avenue, SW.,
Washington, DC 20585,
(202) 586-6020.

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Signed in Washington, DC this 27th day of February, 1991, for the United States Department of Energy.

Richard A. Claytor,
Assistant Secretary for Defense Programs.

[FR Doc. 91-5026 Filed 3-1-91; 8:45 am]
BILLING CODE 6450-01-M

Revision 1 to the DOE Implementation Plan for Conducting an Operational Readiness Review at the Rocky Flats Plant Prior to Resumption of Operations; Response to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of Revision 1 of a response of the Secretary of Energy (Secretary) to Recommendation 90-4 of the Defense Nuclear Facilities Safety Board, for conducting an Operational Readiness Review at the Rocky Flats Plant prior to resumption of operations. DOE hereby requests public comment on Revision 1 of the response of the Secretary to Recommendation 90-4.

DATES: Comments, data, reviews, or arguments concerning the Secretary's response are due on or before April 3, 1991.

ADDRESSES: Send comments, data, reviews, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Donald F. Knuth,
Deputy Assistant Secretary for Operations, Defense Programs.

February 15, 1991.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004

Dear Mr. Conway: In response to your letter dated December 21, 1990, I am enclosing Revision 1 to the Department of Energy's (DOE) Implementation Plan for an Operational Readiness Review (ORR) at the Rocky Flats Plant prior to resumption of plutonium production. This plan has been modified to incorporate the revisions and changes cited in your letter as necessary to satisfy the Board's criteria for an adequate and acceptable DOE implementation plan.

Your letter also notes the possible advantage of severing the link between Buildings 559 and 707 operations to enable the use of Building 559 in the clean-up activities. I concur in this view. The ORR process and subsequent resumption of plutonium handling activities at Building 559 will proceed on a schedule that is independent of the other buildings at the Rocky Flats Plant.

Sincerely,

James D. Watkins,
Admiral, U.S. Navy (Retired).

Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant

1.0 Background

This Implementation Plan has been prepared in response to the Defense Nuclear Facilities Safety Board's (DNFSB) recommendation to conduct an operational readiness review (ORR) for plutonium operations at the Rocky Flats Plant (RFP). This plan responds to the specific DNFSB recommendations concerning the nuclear safety of plutonium operations. This plan does not attempt to describe other related initiatives taken by the Department of Energy (DOE) in the areas of nuclear materials controls and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management. DOE approval to resume plutonium operation at RFP will be based upon the results of the ORRs described in this Implementation Plan and the results of or plans for these other DOE initiatives.

EG&G assumed responsibility for the safety of RFP on January 1, 1990, as the management and operations contractor to DOE. At that time, RFP was shut down for a semiannual nuclear material inventory as required by DOE Order 5633.3. However, a wide range of criticisms and concerns, which were indicative of systematic deficiencies in the conduct of past operations, had been raised by oversight groups prior to shutdown. Reviews by EG&G management confirmed that there were deficiencies in operational control. It was concluded that troublesome incidents and events could continue to occur unless the underlying issues were identified and corrective actions were taken. Based on this assessment, EG&G recommended and DOE agreed, that resumption of plutonium operations at RFP should be delayed to permit EG&G to undertake the following measures:

(1) Perform a thorough review of the status of facilities and personnel;

(2) Implement selected measures to improve the margin of safety associated with plutonium operations in the near term; and

(3) Formulate a long-term program for improvement of RFP operations.

EG&G identified specific actions as essential elements for resumption of plutonium operations. Central to the EG&G resumption strategy was the introduction of short-term measures for early and substantial improvements in the formality and discipline of operations at RFP. Further review of operations and related activities by DOE, the DNFSB, and the Advisory Committee on Nuclear Facility Safety (ACNFS) identified additional short-term measures that should be completed prior to the resumption of plutonium operations.

The DOE's normal practice after an extended outage at a nuclear complex is to conduct a comprehensive ORR before resuming operations. In keeping with this practice and consistent with a May 3, 1990, DNFSB recommendation, the Secretary of Energy notified the DNFSB on June 20,1990, that DOE would perform an ORR at RFP prior to resumption of plutonium operations.

EG&G is currently proceeding with a phased program to resume plutonium operations at RFP. Each phase of EG&G's program is intended to allow plutonium operations to be resumed in a specific building. The resumption program for each building consists of an EG&G program to upgrade the safety of operations, followed by a non-plutonium startup test program and an EG&G operational readiness review to confirm the adequacy of the upgrades to insure safety of operation at that building. At this point, EG&G will prepare a readiness to proceed memorandum to DOE. DOE will then conduct an operational readiness review.

Although this is the general sequence of events that has been developed, several practical problems will prevent this sequence from being fully serial. All equipment will have been functionally tested to the extent practicable prior to the EG&G operational readiness review. Some non-vital safety system preoperational tests will be performed throughout the review process including the period during which the DOE operational readiness review is conducted. It is intended, however, that non-plutonium startup tests (functional and preoperational) will be completed for vital safety system equipment before the EG&G readiness to proceed memorandum is sent to DOE. All non-plutonium testing will be completed and equipment dispositioned prior to the

completion of the DOE Operational Readiness Review except for equipment that cannot be tested without introducing plutonium for either safety or process degradation considerations. The status of functional and preoperational testing for each building will be evaluated and reported to the Board as a part of the detailed criteria to be submitted at least 4 weeks prior to the start of the DOE ORR.

It is also likely that some steps in the DOE operational readiness review may begin before the EG&G readiness to proceed memorandum is issued, e.g., to observe special steps in the preparations to resume operations.

Based on the results of the DOE Operational Readiness Review which will include briefings of the DNFSB and the ACNFS, and following a public hearing, the Secretary will decide whether to issue an approval to proceed memorandum. When such a memorandum has been issued by the Secretary, EG&G will undertake a graded startup test program of plutonium operations.

Both the DOE Rocky Flats Office and a designated group of experts from the DOE Operational Readiness Review Team will observe the plutonium startup tests. When the results of these tests are sufficient to demonstate that plutonium handling operations in the building are being conducted satisfactorily, the Assistant Secretary for Defense Programs will authorize a full return to normal plutonium operations.

Since the plutonium-handling buildings at RFP will be made ready for operations individually, rather than all at once, DOE will conduct a separate ORR for each building after the completion of EG&G's readiness review for that building.

2.0 Purpose

The purpose of this DOE ORR process is to verify the readiness of RFP to resume plutonium operations safely. As part of this process, DOE will conduct an ORR for each building in which plutonium operations are conducted to evaluate whether EG&G has satisfied DOE's safety objectives (contained in a document entitled "ORR Safety Objectives and Assignments" and discussed in § 5.1 below). Each ORR conducted by DOE will include the following:

- Assessment of the adequacy and correctness of operating procedures for process and utility systems;
- Assessment of the adequacy of the level of knowledge achieved during operator requalification as evidenced by review of qualification and requalification documentation, including examination questions and results; selective oral examination of operators; and observation of operator performance by members of the ORR Team;
- Examination of records of tests of safety systems and calibration of other instruments that monitor limiting conditions of operation or that satisfy operating safety requirements;
- Verification that all plant changes, including modifications of vital safety systems and plutonium processing workstations, have been reviewed for potential impact on procedures, training and requalification, and that training and requalification have been completed using the revised procedures; and
- Examination of each building's Final Safety Analysis Report (FSAR) to ensure that its description of the plant, procedures, and accident analyses is consistent with the as-built plant, including those modifications made during the outage period.

Other areas to be addressed in each ORR to assure that adequate safety is achieved and maintained include the following:

- *Configuration* of safety-related structures, systems, and components, including operational interfaces between separate buildings is consistent with assumptions made about such structures, systems, and components in the safety analysis reports. Safety-related structures, systems, and components include all vital safety systems and all other items which support safety functions;
- Management systems, organization, practices and policies;
- Self-assessment capability;
- Operating experience review program; and
- Adequacy of the graded startup test program, including planning for the plutonium handling tests to be included in the program.

3.0 Scope

In order to provide the Secretary of Energy with a partial basis for determining whether to allow EG&G to resume plutonium operations in each building, DOE Headquarters will implement an ORR for each building in which plutonium operations are conducted.

The DOE ORR will address the following for each plutonium operations building:

- The operational readiness review conducted by EG&G;
- Implementation of DOE directives and resolution of recommendations and findings made by oversight groups and review teams;
- Readiness of the plant, equipment, personnel, and administrative systems to resume plutonium processing operations; and
- Adequacy of operational support services in the areas of training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

The DOE ORR process will also include briefing DOE senior management and the DNFSB on the result of each ORR, public hearings on the ORR results for Buildings 559 and 707 (i.e., the first two buildings evaluated), and input to the Secretary of Energy's determination to resume plutonium operations for each building.

The ORR process will include consideration of the results of a related DOE initiative to review RFP compliance with DOE orders. However, initiatives such as nuclear material control and accountability; facility security; a systematic evaluation program for the design of structures, systems, and components; and long-term waste management issues are not within the scope of the ORR implementation plan. These areas will be addressed separately by the cognizant Department Headquarters program office(s) and will be addressed in the Secretary's approval to proceed memorandum. Although the adequacy of the nuclear material control and accounting program at Rocky Flats is outside the scope of this DOE operational readiness review, the ORR Team will review whether EG&G Rocky Flats is making adequate use of the detection techniques and accounting practices from that program in maintaining control of radioactive materials for purposes of public and worker safety.

4.0 Overall Approach

Each ORR will provide DOE senior management with independent, objective, building-by-building evidence of the adequacy of EG&G's preparations to resume plutonium operations safely.

The sequence of the ORR activities is discussed below.

a. *Readiness to Proceed Memorandum*—After successful completion of the readiness program and readiness review of a specific building, EG&G will issue a Readiness to Proceed memorandum requesting DOE approval for resumption of plutonium operations for that building. In this memorandum, EG&G will be required to identify all deferred items, discrepancies, and open issues related to resumption including non-vital safety system testing not yet completed.

b. *Operational Readiness Review*—After receiving the Readiness to Proceed memorandum from EG&G, DOE will initiate an ORR for the building. During each ORR, a team comprised of Technical Experts and Senior Nuclear Safety Experts will review EG&G's procedures and programs; inspect equipment, systems, and the building; audit records; interview personnel; and observe simulated operations. At the completion of each ORR, the Team Leader and the Senior Nuclear Safety Experts will prepare a report regarding the readiness to safely resume plutonium operations in the building.

c. *Operational Readiness Review Team Briefings*—Briefings on the ORR report will be presented to DOE senior management, the ACNFS, and the DNFSB, as requested. A briefing will be presented to the DNFSB prior to the resumption of plutonium operations in each building.

d. *Approval to Proceed Memorandum*—Once all resumption objectives have been met, the DOE-Headquarters Resumption Program Office will request the Secretary of Energy's approval for EG&G to resume plutonium operations associated with the Plutonium Startup Test Program by preparing an Approval to Proceed memorandum for each building. Each memorandum will be based, in part, upon the results of the ORR conducted by DOE for that building. Other DOE initiatives related to the approval to proceed are identified in Section 3.0, above.

e. *Plutonium Startup Test Program*—Following the approval of resumption of plutonium operations, EG&G will conduct a plutonium startup test program in each building. Each plutonium operation in the building is to be performed in a supervised environment prior to final approval of operator qualifications. This startup test program will simultaneously confirm the operability of equipment, the viability of procedures, and the training of operators in a production setting. A follow-up review of this plutonium startup test program will be conducted by designated Senior Nuclear Safety and Technical Experts from the ORR Team to confirm that conclusions reached in the ORR final report remain valid. A report documenting the followup review will be provided to the DNFSB and DOE internal oversight groups.

In addition to these activities, DOE will hold public hearings prior to making recommendations to the Secretary of Energy regarding the resumption of plutonium operations for Buildings 559 and 707. These buildings, an analytical laboratory and a manufacturing facility, respectively, are expected to be the first buildings EG&G makes ready for resumption of plutonium operations. The operations conducted in Buildings 559 and 707 represent many of the types of plutonium operations conducted at RFP. The public hearings will be held to provide the public with information concerning the DOE ORR and to address the public's questions and concerns.

The general process described above will be repeated for each building in which plutonium operations are conducted. However, as ORRs are conducted on each building, the scope of each ORR will be modified to reflect the results of the previous ORRs. For example, site-wide quality assurance procedures previously found to be acceptable would not have to be reviewed again for acceptability during ORRs of other buildings, but the implementation of these quality assurance procedures within each building would be reviewed in the subsequent ORRs. Consequently, the scope and the number of people assigned to ORR teams may decrease as the series of ORRs proceeds. The public will continue to be informed of the results of ORRs conducted for those buildings evaluated after Buildings 559 and 707.

5.0 Description

5.1 ORR Preparations

Each ORR will be conducted by a team of experts in engineering, science, nuclear facility safety, and plutonium processing operations. Team members will be individually chosen by the ORR Team Leader to ensure that collectively their backgrounds will include the important facets of operations to be reviewed at RFP. The experts will also be chosen to ensure that each ORR Team includes Senior Nuclear Safety Experts and Technical Specialists to cover the following functional areas, as appropriate, for each building:

- Emergency preparedness;
- Facilities, process, and fabrication engineering;
- Environmental protection and waste management;
- Fire protection;
- Industrial safety and hygiene;
- Maintenance, testing, and surveillance;
- Management, organization, and staffing;
- Operations;
- Quality assurance;
- Radiological protection and health physics;
- Nuclear safety assessment; and
- Training.

The reviews conducted by each ORR Team will be guided by a specific DOE-approved ORR safety objectives and assignments document.[1] The safety objectives contained in this document will be grouped into the following three categories:

- Plant and equipment (hardware) readiness;
- Management and personnel readiness; and
- Management programs (procedures, plans, etc.) readiness.

A set of safety objectives has been developed based on (1) essential actions to be completed prior to the phased resumption of operations, as identified by EG&G; (2) directives issued by DOE; (3) findings and recommendations of oversight groups; and (4) recommendations of review teams. These objectives are contained in the ORR safety objectives and assignments document that will be revised for each ORR and will identify the members of each ORR Team and their specific assignments.

The ORR Team will be led by a senior DOE manager and will be comprised of Senior Nuclear Safety Experts and technical experts. The Senior Nuclear Safety Experts will assist the Team Leader in determining the safety objectives for each building, defining the issues to be addressed by the technical experts, overseeing and reviewing the activities of the technical experts, and preparing a report regarding the safety of resuming plutonium operations based on the Team's findings.

Before arriving at RFP, the Team Leader and the Senior Nuclear Safety Experts will assist each technical expert in developing detailed criteria and a review approach for their assigned area of review. The criteria and review approach will provide each technical expert with a detailed basis for conducting the ORR within the context of the safety objectives set forth by the Team Leader and the Senior Nuclear Safety Experts. The Team Leader and Senior Nuclear Safety Experts will also manage the work of the Technical Experts to assure that the safety objectives are thoroughly assessed. The Team Leader may request that Team Members visit RFP for a limited time prior to the start of a building's ORR in order to facilitate preparations for that ORR.

[1] The initial version of this document is attached to this plan. Subsequent revisions will be provided to the DNFSB and DOE internal oversight groups as prepared.

The detailed criteria will be based on the combined expertise of the senior nuclear safety and technical experts, DOE orders and other requirements, the operational history of RFP and other DOE facilities, the issue management system at the RFP, and past appraisals. The review approach will identify the scope of the review and include plans for reviewing procedures and programs; inspecting equipment and facilities; auditing records; interviewing personnel; and observing operations during operational tests without plutonium. Selected reviews will also require simulated operations by EG&G to test the response of operational and support personnel to normal and off-normal events.

The detailed criteria and the review approach prepared by each Technical Expert will be reviewed by the Team Leader, the Senior Nuclear Safety Experts, and the other Technical Experts on the Team. Revisions will be made to the criteria and review approach as appropriate. After final approval by the Team Leader and the Senior Nuclear Safety Experts, the Technical Experts will use the revised criteria and review approach to perform their reviews.

A copy of the detailed criteria and review approach for each building will be provided to the DNFSB and DOE internal oversight groups.

5.2 ORR Process

After receiving and accepting EG&G's Readiness to Proceed memorandum for each building, the onsite portion of the ORR will begin. During a nominal 3-week onsite review, the ORR Team will use the inspection criteria and review approaches discussed above, and the ORR Technical Experts will assess whether the DOE safety objectives assigned to them for review have been met. The Senior Nuclear Safety Experts will actively participate in the reviews performed by the Technical Experts and assist the Team Leader in providing oversight of the ORR.

Each ORR will consist of programmatic reviews of EG&G's readiness activities to assess whether plutonium operations could be conducted safely if allowed to resume. In addition, the ORR Team will evaluate EG&G's performance in conducting ongoing activities, such as equipment operability checks and dry runs, and the simulated plutonium operations requested by the Team Leader.

To facilitate Team coordination and the exchange of information, the Team will meet each evening during the onsite review period. The results of the reviews conducted by the Senior Nuclear Safety Experts and Technical Experts will be used by the Senior Nuclear Safety Experts and the Team Leader to refine and focus the future activities of the Technical Experts. For example, the Senior Nuclear Safety Experts may identify trends or patterns that indicate the need for additional investigation. An EG&G observer and a DOE–RFO observer will attend these meetings to aid in planning and coordinating upcoming activities and in validating the facts being relied upon by the ORR Team.

During the ORR, the documentation of review findings and the assembly of objective evidence of operational readiness will be the responsibility of individual Technical Experts in accordance with specific direction given by the Team Leader and the Senior Nuclear Safety Experts. Each Technical Expert's review findings will be documented on a standard worksheet.

At the end of the onsite portion of the ORR for each building, the Technical Experts will complete their evaluation of the operational readiness of the building, and their findings will be submitted to the Team Leader and the Senior Nuclear Safety Experts. The Senior Nuclear Safety Experts will review the Technical Experts' findings and assist the Team Leader in developing a recommendation regarding the readiness to safely resume plutonium operations in that building. A report will be prepared by the Senior Nuclear Safety Experts and the Team Leader to document the results of the ORR and provide justification for the Team's recommendation. The report will also identify any open items found in the review, including those that must be resolved prior to resumption of plutonium operations.

Team members will be asked to concur in the ORR report. Any dissenting opinions will be documented and attached to the report. The ORR report will be transmitted by the Team Leader to the Deputy Assistant Secretary for Facilities.

The Resumption Program Office in the Office of Defense Programs will prepare the Approval to Proceed memorandum for each building. The ORR report will become part of the basis for recommending to the Secretary the action that should be taken on EG&G's Readiness to Proceed memorandum. After the Secretary of Energy signs an Approval to Proceed memorandum, EG&G will be allowed to resume plutonium operations by initiating the graded plutonium startup test program for that building.

The Rocky Flats Operations Office (RFO) will verify closure, as necessary, of open items. In the event the open item requires action on the part of the RFO, the closure of the item will be verified by DOE Headquarters. Either the Team Leader or the technical expert responsible for identifying the discrepancy will participate in each closure review.

6.0 Administration

6.1 Overall

This Implementation Plan is the top-level DOE document describing the activities necessary for safely resuming plutonium operations at each RFP building and serves the purpose of a management plan. The document hierarchy for the ORR is shown below.

- ORR Implementation Plan (top-level document for ORRs for all plutonium operations);
- ORR Safety Objectives and Assignments (mid-level document written for each building); and
- Criteria and Review Approaches (bottom-level document controlling the work of each Technical Expert).

6.2 Quality Assurance and Document Control

The quality assurance (QA) and document control requirements for each ORR will be identified by the ORR Team Leader, with assistance by the Senior Nuclear Safety Experts, will be issued by the ORR Team Leader, and will be implemented by all ORR Team members. The QA requirements will include Team Leader approval of the qualifications of Technical Experts, daily onsite peer review of the findings of the Technical Experts, verification of facts relied upon in preparation of ORR reports, oversight of the activities of the Technical Experts by the Senior Nuclear Safety Experts, and specification of the form of reports and the retention of records on which the Team's conclusions are based.

6.3 Responsibilities

Deputy Assistant Secretary for Facilities, Defense Programs—The Deputy Assistant Secretary for Facilities has overall responsibility for conducting the Operational Readiness Reviews at the RFP in preparation for resumption of plutonium operations. The Deputy Assistant Secretary for Facilities has appointed the Director of the Office of Engineering and Operations Support as the Team Leader for the RFP Operational Readiness Reviews.

The DOE Headquarters RFP Resumption Program Office—The DOE Headquarters RFP Resumption Program Office is responsible for coordinating DOE Headquarters resumption activities, concurring in resumption plans, and preparing the Approval to Proceed memorandum for each building. The Approval to Proceed memorandum will identify any unresolved issues and recommend actions for resolution and will address generic and specific issues. Issues raised by the Secretary, the ACNPS, or the DNFSB will be resolved or action plans to resolve the issues will be prepared, as appropriate, prior to forwarding each Approval to Proceed memorandum to the Secretary from the Assistant Secretary for Defense Programs.

EG&G—EG&G is responsible for ensuring that its phased resumption program sufficiently improves the safety of plutonium operations at the RFP Plant to allow the resumption of plutonium operations. In addition, EG&G is responsible for preparing a Readiness to Proceed memorandum for each building to notify DOE–RFO that EG&G's readiness review has been completed satisfactorily. EG&G is also responsible for supporting the activities of each DOE ORR Team. For example, EG&G shall conduct operations and tests requested by the Team Leader and ensure that EG&G is represented at daily meetings of each ORR Team and at other Team meetings as requested.

ORR Team Leader—The Team Leader is responsible for the selection of ORR Team members; DOE direction and guidance to each ORR Team in accordance with this Implementation Plan; preparation of internal ORR Team correspondence; liaison with the Manager of the Rocky Flats Operations Office and the Director of the RFP Resumption Program Office; and submission of ORR reports to the Deputy Assistant Secretary for Facilities. The Team Leader is also responsible for issuing the ORR safety objectives and assignments document at least 4 weeks before the start of each ORR.

ORR Senior Nuclear Safety Experts—The ORR Senior Nuclear Safety Experts are responsible for providing assistance to the Team Leader in the exercise of his responsibilities; providing guidance to the Technical Experts; identifying the issues to be addressed during the ORR; approving the criteria and review approaches to be used by the Technical Experts; and assisting the ORR Team Leader in writing the report for each ORR. The ORR reports will be signed by all Senior Nuclear Safety Experts and the Team Leader. Any differing opinions will be attached in writing.

ORR Technical Experts—The Technical Experts are responsible for assessing the adequacy of EG&G's readiness results by conducting reviews in selected areas important to the safe resumption of plutonium operations. The Technical Experts will assist the Team Leader and the Senior Nuclear Safety Experts in defining the scope of review in their assigned area; documenting the criteria and review approach for their assigned area, subject to approval by the Senior Nuclear Safety Experts and the Team Leader; attending Team meetings to coordinate activities with other Team members; documenting their own activities, findings, and conclusions in a manner to be specified by the Team Leader and the Senior Nuclear Safety Experts; and concurring in final ORR reports written by the Team Leader and the Senior Nuclear Safety Experts (any differing opinions will be attached to the report in writing).

Rocky Flats Operations Office Manager—The Manager of the Rocky Flats Operations Office (RFO) is responsible for coordinating DOE–RFO resumption activities, approving the EG&G RFP resumption plans, and forwarding the Site Resumption Action Memorandum for each building to the Director, RFP Resumption Program Office, under a separate cover letter signed by the DOE RFO Manager that includes any DOE RFO recommendations. The Manager of the RFO is also responsible for ensuring that the DOE RFO is represented at meetings of the ORR Team, as requested, and for verifying resolution of open items.

7.0 Deliverables and Schedule

The ORR safety objectives and assignments document will be issued at least 4 weeks prior to the start of each ORR and will be modified as necessary for each building. A copy of each Technical Expert's criteria and review approach, which are developed from the ORR safety objectives and assignments document for each building, will be approved prior to the start of ORR onsite inspections.

A report documenting the results of each ORR will be issued within 2 weeks of completion of the onsite portion of the ORR and prior to any public hearing on that ORR. The report will contain the recommendation of the ORR Team regarding the safety of resuming plutonium operations for that building.

A schedule for performing ORRs at RFP will be made available after EG&G issues a resumption schedule. The DNFSB will be informed of the ORR start date for each building when these dates have been selected.

Operational Readiness Review; Safety Objectives and Assignments for the Rocky Flats Plant

1.0 Purpose

This document provides the initial safety objectives and team member assignments for conducting the Operational Readiness Review (ORR) at the Rocky Flats Plant (RFP). The approach for conducting the ORR is described in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The specific assignments will be provided for each ORR by a revision of this document that is consistent with the Implementation Plan.

2.0 Team Composition

The individuals identified for participation in the initial ORRs are listed below. A statement of their credentials is provided in appendix A. Additional skill areas may be identified before the initial ORRs are conducted.

Team Leader
James P. Knight

Senior Safety Experts
Roger J. Mattson, Coordinator
William Kerr
James P. O'Reilly
Lawrence J. Ybarrondo

Technical Experts
Lance R. Traver, Review Coordinator
Joseph F. Tinney, Issue Resolution
H. Michael Hawkins, Emergency Preparedness
Carl R. Forsberg, Engineering (Facilities, Process, Fabrication)
Gary J. Toman, Engineering (Facilities, Process, Fabrication)
Monique V. Helfrich, Environmental Protection and Waste Management
James A. Shurick, Fire Protection
Lawrence Blackwell, Industrial Safety
Charles R. Jones, Maintenance, Testing, and Surveillance
David M. Pinkston, Maintenance, Testing, and Surveillance
Management, Organization, and Staffing *
Albert P. Baione, Management, Organization, and Staffing
Shirley J. Olinger, Management, Organization, and Staffing
Rowland E. Felt, Operations
Leonard W. Gray, Operations
Robert E. Hanvey, Operations
Matthew S. McCormick, Operations
Marvin P. Norin, Quality Assurance
Arthur J. Toy, Radiological Protection and Instrumentation
C. Leslie Brown, Safety Assessment

* Additional Technical Experts in this area are being sought.

Elizabeth Conrad, Safety Assessment
Gilbert A. Nicholson, Safety Assessment Training *
John W. Robinson, Training
Eugene F. Redden, Training

3.0 Safety Objectives and Assignments

Readiness to resume plutonium operations at Rocky Flats will be evaluated using the safety objectives set forth in sections 3.1 to 3.3. The safety objectives were developed by the ORR Team Leader and the Senior Nuclear Safety Experts based on professional judgment and experience, input from the Technical Experts aided by a week-long meeting of the Team at the Plant in June 1990, and on information contained in references listed in appendix C. Particular attention was given to the following references:

- An EG&G report, "Rocky Flats Plan for Phased Resumption of Plutonium Operations" (Reference 17);
- Directives issued by DOE (References 8, 14, and 16);
- Findings and recommendations of oversight groups (References 11, 12, and 13); and
- Recommendations of review teams (References 9, 10, and 15).

The information to be relied on by the ORR Team will be recorded and, where appropriate, references will be added to appendix C. The safety objectives of sections 3.1 through 3.3 were developed generically; they will be modified as necessary for each ORR based on the unique operating features of the building being evaluated.

Each Technical Expert will be assigned to evaluate a set of safety objectives based on their area of review. The Technical Experts will be responsible for determining whether their assigned objectives have been met in accordance with the process set forth in "Implementation Plan for an Operational Readiness Review of the Safety of Plutonium Operations at the Rocky Flats Plant." The assignments for each technical expert are listed in appendix B.

3.1 Plant and Equipment (Hardware) Readiness

The hardware objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (H.1, H.2, etc.). Under each objective, supporting objectives are identified and given a number (H.1.1, H.1.2, etc.).

H.1 The configuration of vital safety systems, including safety-related process systems and safety-related utility systems, is consistent with assumptions made about such systems in Safety Analysis Reports (SARs).

H.1.1 Vital safety systems have been correctly identified in the SARs.

H.1.2 Identification markers are installed on vital safety systems, including safety-related process systems, safety-related utility systems, and any other equipment and instrumentation used to demonstrate compliance with operational safety requirements.

H.1.3 The adequacy of labeling and drawings for vital safety systems has been verified.

H.1.4 The types, modes of operation, and locations of vital safety systems, including safety-related process systems and safety-related utility systems, identified in new procedures are physically verified.

H.2 The condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems, are confirmed.

H.2.1 Instruments, indicators, and alarms that monitor limiting conditions of operation or that satisfy operational safety requirements have been demonstrated to be capable of performing their intended functions in the required manner.

H.2.2 The maintenance backlog for vital safety systems, including safety-related process systems and safety-related utility systems, is acceptable for resumption of operations.

H.2.3 Good housekeeping is practiced in all buildings that are involved with plutonium operations.

H.2.4 Tools and equipment for proper operation and maintenance of vital safety systems, including safety-related process systems and safety-related utility systems, have been identified, calibrated, tested, and are available.

H.2.5 Ductwork is evaluated to identify and characterize plutonium buildup. There is high confidence that all lines of ductwork with more than 400 grams of plutonium have been identified.

H.2.6 Plutonium is removed, or ductwork is replaced, to the maximum extent practicable, for those lines of ductwork containing more than 400 grams of plutonium. In no case shall a residue exceeding 400 grams of plutonium remain in any one line of ductwork unless approved by the Secretary of Energy.

H.2.7 Improved prefilters have been installed in those glovebox exhaust lines identified as requiring this modification.

H.2.8 Prefilters have been installed on ventilation system bypass lines, and other changes to guard against plutonium buildup in ductwork have been made for all gloveboxes identified as requiring these modifications.

H.2.9 Operability of vital safety systems, including safety-related process systems and safety-related utility systems, is physically verified.

H.3 Facilities and equipment are available for operational support services, including training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

H.3.1 Equipment and facilities needed for operational support services are available.

H.3.2 Sampling and analysis capabilities exist to perform the monitoring and characterization activities needed for resumption of operations, including those for environmental protection and waste management.

H.3.3 Approved storage facilities exist to receive wastes and residues generated from operations within a building.

3.2 Management and Personnel Readiness

The personnel objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (P.1, P.2, etc.). Under each objective, supporting objectives are identified and given a number (P.1.1, P.1.2, etc.).

P.1 There are sufficient numbers of qualified plutonium operations personnel, supervisors, shift technical advisors, and managers to support the safe resumption of plutonium operations.

P.1.1 Plutonium operations personnel have an adequate understanding of technical fundamentals including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity.

P.1.2 Plutonium operations personnel, supervisors, and shift technical advisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.1.3 An adequate startup test program has been developed and will be used for final sign-off of operator qualification.

P.1.4 Plutonium operations personnel have been trained to adhere to procedures and operational safety requirements and to understand the importance of procedural compliance.

P.1.5 Qualification and staffing requirements have been established and met for plutonium operations personnel, supervisors, shift technical advisors, and managers.

P.1.6 The level of knowledge achieved during operator qualification is adequate to operate safely.

P.2 As a minimum one DOE person trained and qualified in plant operations will be stationed in each plutonium building during operations that involve plutonium.

P.2.1 Qualification requirements and staffing levels are established and met.

P.2.2 Training has been conducted.

P.2.3 Personnel are familiar with the buildings, equipment, operating procedures, and the identity of senior building managers.

P.3 Sufficient numbers of qualified personnel are provided for operational support services, including training, maintenance, hygiene, radiological protection and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering.

P.3.1 Operational support personnel have a requisite understanding of technical fundamentals.

P.3.2 Operational support personnel and supervisors have been trained and qualified in accordance with the latest revision of approved procedures.

P.3.3 Qualification and staffing requirements have been established and met for operational support personnel.

P.3.4 The level of knowledge achieved during qualification is adequate to support resumption of operations.

P.4 Personnel exhibit an awareness of safety and environmental protection requirements and, through their actions, demonstrate a commitment to comply with those requirements.

3.3 Management Programs (Procedures, Plans, etc.) Readiness.

The management systems objectives to be achieved prior to resumption of plutonium operations are listed and numbered below. Each objective is given a unique identifier (M.1, M.2, etc.). Under each objective, supporting objectives are identified and given a number (M.1.1, M.1.2, etc.).

M.1 There are adequate and correct procedures and safety limits for operating the process systems and the utility systems.

M.1.1 Procedures for operations, training, and maintenance reflect the current configuration (including changes made during the outage) of vital safety systems, including safety-related process systems and safety-related utility systems.

M.1.2 Operating and maintenance procedures for vital safety systems, including safety related process systems and safety-related utility systems, and building administrative procedures are consistent with approved operational safety requirements and deal with normal and abnormal events (e.g., spills).

M.1.3 Consistent with the contractor's operating philosophy, operating procedures for vital safety systems, including safety-related process systems and safety-related utility systems, contain sufficient detail to permit initiation of use of a "procedural compliance" concept at RFP.

M.1.4 Procedures produced or revised for the conduct of plutonium operations have undergone a joint walkdown verification by DOE and EG&G technical personnel.

M.1.5 The adequacy of operating procedures is demonstrated during equipment and system operability checks.

M.1.6 Operational safety requirements are established and measured to ensure that operations are conducted within the analyzed safety envelope.

M.1.7 Operational safety requirements have been developed by engineering and plutonium operations personnel.

M.1.8 A system has been established to ensure procedures are kept current and accurate, including temporary changes to procedures.

M.1.9 Safety limits are clearly stated and posted in appropriate locations.

M.1.10 The safety analysis report for each building has been reviewed and supplemented to present an adequately analyzed safety envelope for the facility.

M.2 Training and qualification programs for plutonium operations personnel have been established, documented, and implemented.

M.2.1 Contents of training and qualification programs properly account for plant and procedural changes.

M.2.2 Primers covering technical fundamentals, including chemistry, ionizing radiation, criticality, and plutonium pyrophorisity, are available.

M.2.3 Training and qualification programs, including building-specific training, job-specific training, and general employee training are available.

M.2.4 Instructor guides, examinations, lesson material, and reference documents are available and adequate to support an effective training program.

M.2.5 The training department uses post-training feedback, internal evaluations, and operating experience to modify their programs as needed.

M.2.6 An adequate startup test program has been developed and will be used to evaluate the adequacy of the training program for plutonium operations personnel.

M.3 Vital safety systems are defined, and a system to maintain control over the design and modification of plutonium facilities and vital safety-related utility systems, is established.

M.3.1 Administrative controls are provided to assure that modifications of plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, made during the outage have been analyzed, documented, and approved.

M.3.2 An adequate process has been established to assure that documentation for plutonium facilities and vital safety systems, including safety-related process systems and safety-related utility systems, is established and kept current.

M.3.3 Administrative controls are in place to assure that deactivation of alarms is accomplished in a controlled manner requiring formal review and approval.

M.3.4 One-line drawings and other documentation relied upon to demonstrate compliance with operational safety requirements are up-to-date with the current plant configuration.

M.4 A system is in place to confirm and periodically reconfirm the condition and operability of vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.1 Procedures are in place to verify the operability of alarms and instrumentation for vital safety systems, including safety-related process systems and safety-related utility systems.

M.4.2 Appropriate procedures, including monitoring requirements and operational constraints, are in place to assure that future operations will not allow the level of plutonium in any line of ductwork to exceed 400 grams.

M.4.3 Procedures are in place to assure that if the 400-gram limit for plutonium buildup in the ductwork is exceeded, or if the risks to personnel from accumulation of radioactive material in ductwork appear unacceptable, or if the level of accumulation of plutonium in ductwork presents an unreviewed public safety question, continued operation of such a ductwork system will require a full technical justification and Secretarial approval.

* Additional Technical Experts in this area are being sought.

M.4.4 Surveillance requirements, procedures, and intervals are established and implemented.

M.5 A process has been established to identify, evaluate, and resolve recommendations and findings made by oversight groups, official review teams, audit organizations, and the operating contractor.

M.5.1 A system for identifying, reviewing, and cataloging documents that describe deficiencies or recommendations is established and adequately implemented.

M.5.2 A system for prioritizing and tracking corrective actions and recommendations is established.

M.5.3 Criteria for identifying resumption issues have been developed.

M.5.4 Issues to be resolved prior to resumption of plutonium operations have been properly identified and corrective actions have been completed and verified.

M.6 A baseline compliance status review of the nine Category 1 DOE Orders has been performed and non-complying items have been addressed.

M.6.1 A process has been implemented to identify and evaluate noncompliance issues associated with the nine Category 1 DOE Orders and to determine which specific issues must be resolved prior to resumption of plutonium processing operations.

M.6.2 Noncompliance issues have been corrected or appropriately justified for use as is.

M.7 Management systems are established to assure operational support services (e.g., training, maintenance, waste management, environmental protection, industrial safety and hygiene, radiological protection, and health physics, emergency preparedness, fire protection, quality assurance, criticality safety, and engineering) are adequate for the resumption of plutonium processing.

M.7.1 Organizational responsibilities for and interfaces with operational support services have been formally identified and implemented.

M.7.2 Readiness for the resumption of plutonium operations has the concurrence of cognizant operational support services organizations.

M.7.3 An effective public information program is established, including provision for comment by the public, oversight groups, and Federal, State and local agencies.

M.7.4 An emergency preparedness program has been established and drills and exercises are conducted at appropriate intervals. Drills and exercises have demonstrated the capability to perform emergency preparedness activities.

M.7.5 An adequate maintenance program has been established.

M.7.6 An adequate quality assurance program has been established, including processes for tracking, trending, and correcting significant conditions adverse to quality.

M.7.7 Necessary environmental permits have been obtained and necessary environmental compliance agreements are in place.

M.7.8 Safety programs have been established that ensure that plant personnel are trained and can respond correctly to safety hazards.

M.7.9 Adequate reviews are conducted by operational support organizations with qualified personnel at suitable intervals to monitor safety performance.

M.7.10 A program for adequate oversight of unresolved safety question determinations has been implemented.

M.7.11 Operational support organizations have the appropriate administrative controls (e.g. schedules, plans, policies, surveillances, procedures) to ensure compliance with appropriate Federal and State regulations and good practices.

M.8 A formal program is established to develop a site-wide culture that places the highest priority on safety and protection of the environment.

M.8.1 Policies, plans, and procedures are established that can reasonably be expected to support the desired cultural changes such as placing the highest priority on safety and protection of the environment, formality and discipline of operations, and inquisitive employee attitudes.

M.8.2 A self-assessment process is in place to provide a mechanism to measure safety performance and to determine and correct the root causes of unusual occurrences.

M.8.3 Facility management personnel are made aware of safety issues and occurrences that could affect their operations, and lessons learned are applied.

M.8.4 The philosophy of openness on matters affecting safety, health, and environment is supported by an effective public information program and line management practices.

M.8.5 Management commitment to the safe operation of the facility is evident from personal involvement, interest, and knowledge.

M.9 The resume of the EG&G corporate review verfiy the readiness of hardware, personnel, and management systems to result plutonium operations.

M.10 An adequate startup test program has been developed and the non-plutonium handling portion has been adequately implemented to confirm the operability of equipment, the viability of procedures, and the training of operators. The startup test program shall also include adequate plans for graded plutonium testing to simultaneously confirm operability of equipment, the viability of procedures, and the training of operators.

M.11 Functions, assignments, responsibilities, and reporting relationships of individuals are clearly defined, understood, and effectively implemented with line management responsibility for control of safety.

M.11.1 Responsibility, authority, and accountability of each element of line management, from top-level management through shift supervisors, is clearly defined by policy and evident by practices.

M.11.2 Effective coordination and communication exist among the line organizations.

M.12 The DOE Rocky Flats Operations Office (DOE/RFO) has established oversight programs to support the resumption of plutonium processing operations.

M.12.1 The DOE/RFO organization is committed to the safe operation of the facility as evidenced by its day-to-day involvement with operations activities and its level of knowledge of plant operations.

M.12.2 DOE/RFO has the capability to verify the adequacy of EG&G's operations at RFP prior to and following resumption of operations.

M.12.3 DOE/RFO has established a formal program to foster a safety culture that places the highest priority on safety and protection of the environment.

Appendix A—Statements of Credentials

Albert P. Balone is a nuclear engineer with 11 years experience. Mr. Balone worked in the DOE Division of Naval Reactors for 10 years in nuclear facility operations and safety. The majority of this work involved the development and evaluation of refueling and radiological control programs, including evaluations of management and organizational performance. Mr. Balone led Naval Reactors Headquarters inspection teams that appraised the performance of nuclear-powered ships and nuclear ship repair facilities in their implementation of Headquarters radiological control requirements. He serves as Engineering Group Manage in SCIENTECH's Rockville, Maryland, office and participates in various safety and regulatory projects related to nuclear engineering for the NRC and DOE.

Lawrence Blackwell is a Ph.D physicist with 32 years of managment experience. He provides consulting services in nuclear facility safety, personnel, reliability programs, emergency management, specialized training, and industrial safety. In his 12 years of employment at Los Alamos National Laboratory (LANL), Dr. Blackwell held assignments in the Health, Safety, and Environment Division including Safety Director, Associate Division Leader, Fire Protection Program Manager, and Construction Project Manager, giving him a broad background in industrial safety. He was responsible for the complete revision and documentation of the LANL industrial safety program and developed the necessary training and evaluation systems to ensure implementation and compliance. Dr. Blackwell also designed and operated the LANL Emergency Operations Center and directed the Emergency Management Program.

C. Leslie Brown has 30 years experience in nuclear criticality safety. He is a Fellow Scientist with the Westinghouse Hanford Company and is currently serving as a criticality safety representative at the plutonium finishing plant. Mr. Bronw has conducted criticality experiments with fast reactor fuel and performed criticality safety analysis for commercial nuclear power plants. He has served as a process engineer at the plutonium fabrication plant and was trained in criticality safety at the Hanford Critical Mass Laboratory. He was elected a Fellow of the American Nuclear Society (ANS) in 1980 and received the Bronze George Westinghouse Signature Award for Excellence in 1988 and the ANS Criticality Safety Division Achievement Award in 1978. He has published 76 documents, 14 ANS transaction papers, and 11 journal articles on the subject of ciriticality safety.

Elizabeth A. Conrad is a chemical engineer with 9 years experience in nuclear chemical processing operations at Westinghouse Hanford Company (WHC). As a process engineer in the PUREX Plant, she provided technical shift support during the 1983 restart of the plant and served as lead engineer for neptunium recovery startup in 1985. In 1987, she was chosen as the technical team leader for the criticality safety review of chemical process operations. As a senior process engineer at the plutonium finishing plant (PEP), Ms. Conrad contributed to the successful restart of plutonium metal production after the plant was shut down for safety reasons. In 1988, she established and managed the PEP Operations Training Group instituting formal criteria for the evaluation of operator and shift management qualifications. Ms. Conrad is currently assigned as the WHC technical advisory on plutonium processing to the DOE Office of Nuclear Materials.

Rowland E. Felt is a Ph.D. chemical engineer with 28 years experience in plutonium and uranium processing at the DOE Hanford Site. His experience includes development of aqueous and pyrochemical processes for plutonium conversion and scrap recovery. Dr. Felt served as the Process Engineering Manager for the 234–5 Z Plant and served as the Separation Process Engineering Manager for the 200 Area at Hanford. His safety experience includes participating in the fire investigation at Rocky Flats in 1969, conducting plutonium fire experiments, and follow/on evaluation of plutonium release fractions associated with accident analyses. Dr. Felts recent assignment with Westinghouse Idaho Nuclear Company included the development of a flowsheet and supporting process analysis for dose reduction, waste minimization, and plant support operations for the Special Isotope Separation Program. He is currently serving as the Idaho National Engineering Laboratory representative to the Planning Support Group at the Savannah River Site.

Carl R. Forsberg has been involved in the design and construction of high explosive and nuclear material processing facilities for the past 34 years. He served in the Plant Engineering Department at the Lawrence Livermore National Laboratory for 17 years and served the Atomic Energy Commission and DOE Office of Military Applications for 12 years. Mr. Forsberg was the construction project manager during the design of the Lawrence Livermore National Laboratory plutonium facility and was the DOE Headquarters project manager for the Office of Military Applications during the latter half of construction of the Rocky Flats Plutonium Recovery and Waste Treatment Facility, Building 371/374. He retired from DOE in 1985; since then he has been provding consulting services primarily related to construction project management and facility design.

Leonard W. Gray has a Ph.D. in inorganic chemistry, and is an internationally recognized expert in actinide processing. He has 20 years experience at the Savannah River Site and 2 years experience at Lawrence Livemore National Laboratory (LLNL). Dr. Gray has authored or coauthored more than 50 publications and presentations, the majority having been written as a result of new plutonium feedstocks or problems resulting from upsets. As a process troubleshooter, he dealt with the following unit operations in plutonium processing: dissolution, feed clarification, purification (solvent extraction, cation exchange, anion exchange, and selective precipitation), isolation, and conversion to either metal or oxide. Dr. Gray is the Section Leader for the Plutonium Processing Technology Section of the Special Isotope Separation program at LLNL. He provides technical leadership in all areas of plutonium processing (aqueous and molten salt-based chemistries), equipment engineering, process automation, and process control.

Robert E. Hanvey has 35 years experience in nuclear chemical processing at the Savannah River Site (SRS) where he worked in both plutonium finishing and residue recovery operations. He has prepared safety analysis reports for plutonium processing at SRS, was a member of the DOE Operational Readiness Review team at Lawrence Livermore National Laboratory, and participated in special studies for DOE Headquarters for plutonium residue recovery. Since 1987, Mr. Hanvey has been a production planner for Westinghouse Savannah River Company at SRS. He works with representatives from other DOE Nuclear Weapons Complex Sites regarding the transfer and processing of plutonium-238. Mr. Hanvey also provides input on the future direction for process improvements and production schedules for the entire DOE Nuclear Weapons Complex.

H. Michael Hawkins has a Graduate Certificate in National Security and Emergency Mobilization; he has 18 years experience in emergency preparedness and safeguards and security with the Atomic Energy Commisson, NRC, DOE, and in the commercial nuclear industry. Mr. Hawkins has recently been involved in DOE's NMP contract as an SAIC senior scientist in support of the review and evaluation of the Emergency Management Program. These efforts include involvement with rewriting DOE Order 5000.3A, participation in the Occurrence Reporting Pilot Program at the Savannah River Site and Rocky Flats Plant, assistance to the DOE Office of Defense Programs in the order compliance review of Westinghouse and EG&G, and various activities in direct support of the DOE Office of Emergency Operations. For 8 years, Mr. Hawkins was actively involved in the NRC's Emergency Preparedness Program and was instrumental in the design, construction, and operation of the NRC Operations Center. Mr. Hawkins was the Manager of the Seabrook Nuclear Power Plant Emergency Plans and Procedures organization and was an active participant in Seabrook's Initial Federal Emergency Preparedness Exercise. His field assignment at the Comanche Peak Steam Electric Station included overall coordination and scenario development of the initial Emergency Preparedness exercise among Texas Utilities (TU) Electric, Federal (NRC and FEMA), State of Texas, and various local governments.

Monique V. Helfrich is a Senior Environmental Engineer at SAIC, she has 9 years experience in safety and environmental issues at various DOE facilities. Ms. Helfrich has an M.S. in Systems Engineering and is currently providing technical support on environment, safety, and health issues to the Assistant Secretary of Defense Programs. Ms. Helfrich was a senior environmental and systems enginneer and on-site project manager for a technical support contract to the Rocky Flats Office Waste Management Branch. This support included analysis of the responsibilities and schedules inherent in compliance agreements entered into by DOE, the Environmental Protection Agency, and the Colorado Department of Health; and evaluation of waste disposal efforts in the Pondcrete Pad Clearance and Solar Evaporation Ponds Cleanup projects.

Charles R. Jones has an M.S. in Mechanical Engineering with 24 years of experience including a 20-year career in nuclear reactor and nuclear weapon technology with the United States Navy. In the Navy, he served as a senior nuclear engineer and operator on several nuclear-powered surface ships, qualified as Chief Engineer of the USS Nimitz, CVN 68, conducted a training program for nuclear plant Chief Engineers, and participated in team inspections of nuclear power plants for the Pacific Fleet. He is an experienced engineer troubleshooter for technical problems associate with power plant machinery, procedures, operator training, plant system operations, and qualification of maintenance personnel. From 1981 to 1988, he worked in the Navy advanced weapons program on nuclear

weapons safety, security, and control matters. Since his retirement from the Navy in 1988, he was assisted in safety system inspections and system operational reliability studies for various commercial nuclear power plants. As an employee of SCIENTECH, Inc., Mr. Jones participated in the September 1989 and June 1990 Criticality Safety Assessments at Rocky Flats, the December 1989 Rocky Flats Facility Observation Team, and two Technical Safety Appraisals in the area of maintenance. He is currently providing assistance to DOE Headquarters on monitoring the progress of the Savannah River Site Reactor Safety Improvement Program (RSIP).

William Kerr is a Ph.D. electrical engineer with 47 years of experience. He has been a professor at the University of Michigan since 1953, where he served as Chairman of Nuclear Engineering for 13 years and director of Michigan Memorial-Phoenix Project from 1961 to the present time. He has been a member of the Advisory Committee on Reactor Safeguards (ACRS) of the Nuclear Regulatory Commission since 1972, having served three years as ACRS Chairman, most recently in 1987 and 1988. Dr. Kerr has consulted with Atomic Power Development Associates, Oak Ridge National Laboratory, and the Department of State and was a member of the Michigan Governor's Task Force on Nuclear Waste Disposal. He has received the Compton Award of the American Nuclear Society, Outstanding Educator in America Award, and the NRC's Meritorious Service Award.

James P. Knight has 30 years experience in mechanical and nuclear engineering. He worked for 8 years as a design engineer and analyst for spacecraft, biochemical process, and reactor equipment components. In the later part of this period, he was Chief of the Engineering Services Section for the National Bureau of Standards Reactor (NBSR) and Vice Chairman of the NBSR Hazards Committee. For 17 years, Mr. Knight served on the staff of the Atomic Energy Commission and the Nuclear Regulatory Commission in the regulation of nuclear facility safety. He managed the safety review and evaluation efforts on the mechanical, structural, materials, and geosciences areas for over 85 nuclear power plants as well as other regulated nuclear facilities. He also led numerous special evaluation teams dealing with nuclear safety issues requiring resolution at the Commission level. For the past 5 years, Mr. Knight has managed the Department of Energy headquarters programs for licensing, quality assurance, and safety appraisals. Mr. Knight is presently Director, Office of Engineering and Operations Support, Office of Defense Programs.

Matthew S. McCormick has 8 years experience in nuclear facility safety analysis, reactor operation, radiological controls, environmental compliance, procedures, and nuclear systems. He currently is a supervisory nuclear engineer at DOE Rocky Flat Operations Office. Previously, he was a Senior Nuclear Engineer with the Savannah River Restart Office and was a Nuclear Engineer with the Office of Environment, Safety, and Health. Mr. McCormick has also served as a DOE Headquarters site representative at the Savannah River Site. He was a supervisory nuclear engineer at Mare Island Naval Shipyard.

Roger J. Mattson is a Ph.D. mechanical engineer with 20 years of experience. He worked in nuclear facility design for 3 years at Sandia Laboratory, served the Atomic Energy Commission and the NRC for 17 years in the regulation of nuclear facility safety, managed radiation surveillance and emergency preparedness at the Environmental Protection Agency, assisted the U.S. Government in responding to accidents at Three Mile Island and Chernobyl, and assisted the International Atomic Energy Agency with siting standards and safety principles. For 7 years at NRC, Dr. Mattson directed the technical review of applications for construction permits and operating licenses for nuclear power plants. He has received NRC Meritorious and Distinguished Service Awards. Since 1987, he has been Vice President of SCIENTECH, Inc., where he manages offices in Rockville, Maryland, Washington, D.C., and Dallas, Texas, and consults in the areas of nuclear safety, waste management, and environmental protection. Dr. Mattson was the Team Leader for the September 1989 and June 1990 Criticality Safety Assessements at the Rocky Flats Plant.

Gilbert A. Nicholson has an M.S. in chemical engineering and 28 years experience in the radiochemical processing field. His process engineering responsibilities have ranged from shift process control engineer to team leader and coordinator for process engineering and safety support functions at the Hanford PUREX Plant. His management experience includes process engineering and control management at the PUREX Plant, and management of the Hanford Plutonium Finishing Plant. His Hanford Site safety support experience includes development of the draft Operational Safety Requirements document and Final Safety Analysis Report (FSAR) for the PUREX Plant. With SAIC, Mr. Nicholson has provided extensive technical support to the DuPont-Savannah River Site (SRS) in the preparation of a major revision to the SRS F-Canyon Safety Analysis Report and to Westinghouse Hanford Company in the preparation of major revisions to the FSAR's for the Aging Waste Facility and the B-Plant Waste Processing Facility.

Marvin P. Norin has an M.S. in mechanical engineering and 37 years of experience. He is a Senior Scientist at SAIC and has participated in various readiness inspections and safety reviews at numerous DOE facilities, including the DOE Quality Verification at Oak Ridge and a quality inspection of the High Flux Isotope Reactor. He assisted the DOE Office of Materials Production in the development of an Action Plan responding to the Tiger Team Assessment of the Feed Materials Production Center in Fernald, Ohio. Prior to joining SAIC, he worked for DOE and its predecessor agencies as Director of Regulatory Development and as Deputy Director of Safety, Quality Assurance, and Safeguards in the Nuclear Energy Program; Chief of Codes and Standards Branch; and was a systems engineer for the Fast Flux Test Facility and breeder demonstration plant design studies. He serves on the Nuclear Standards Board of the American National Standards Institute and is a former member of the Institute's Executive Standards Council. He is a member of the American Society of Mechanical Engineers.

Shirley J. Olinger has 8 years experience in nuclear facility safety analysis, technical specification and operational safety requirements, reactor operations, operational readiness reviews, radiological controls, procedures, and nuclear systems. She is a supervisory nuclear engineer at the DOE Rocky Flats Office. She was also the supervisory nuclear engineer at the Savannah River Restart Office. In these two positions, she has evaluated management and organizational performance in implementing DOE safety requirements. Prior to these positions she served as a DOE Headquarters site representative at Savannah River and as a nuclear engineer for various DOE offices. Ms. Olinger also was a supervisory nuclear engineer at the Pearl Harbor Naval Shipyard.

James P. O'Reilly is a nuclear operations management expert with 32 years of experience. Mr. O'Reilly served in the U.S. Navy nuclear power program, served in the Atomic Energy Commission and the NRC for 23 years as the Chief Reactor Inspector and Regional Administrator for Regions I and II, and managed the nuclear operations program for the Georgia Power Company as Senior Vice President. Mr. O'Reilly directly participated in the response to the Three Mile Island accident and many of the abnormal operational occurrences that have occurred at commercial nuclear power plants. He received the NRC Meritorious and Distinguished Service Awards and the Presidential Meritorious Service Award. Since early 1988, Mr. O'Reilly has been a full-time nuclear management consultant. He has provided services to problem nuclear plants, law firms, consulting firms, and the U.S. Government.

David M. Pinkston is a chemical engineer with more than 7 years experience in nuclear power plant operations and safety. He served for 5 years in the U.S. Naval Nuclear Propulsion Program where he qualified as Chief Engineer for nuclear cruise propulsion plants and gained experience in supervising reactor plant operations and maintenance. Mr. Pinkston was an operations liaison engineer at the Savannah River Site plutonium production facility, where he coordinated the design, management, and technical support needed for major projects and upgrades in the areas of plutonium processing and waste handling. Since October 1988, he has worked as a consulting engineer for SAIC providing technical support and programmatic analysis for DOE. Specific activities include review and development of operational safety requirements for various DOE facilities and development of detailed reporting criteria for a new DOE incident reporting system.

Eugene F. Redden has an M.S. in engineering management, and is a nuclear engineer with over 32 years experience with the Air Force, DOE and predecessor organizations, and the commercial nuclear power industry. His analytical, management, and consulting services have covered a broad spectrum of activities, including nuclear power plant operations, tritium processing and handling, packaging and transport of nuclear materials, disposal of nuclear waste, conduct of Operational Readiness Reviews, and the review and critique of Safety Analysis Reports. Mr. Redden has participated in Operational Readiness Reviews as a technical expert in training and operations for the Remote Mechanical C Line at Richland, the Neptunium Processing Line at Savannah River, the Fluorinel Dissolution Facility at Idaho, the Enriched Uranium Conversion Facility at Oak Ridge, the Engineered Demonstration System at Livermore, the High Flux Isotope Reactor, and the High Flux Beam Reactor. He has also participated in several DOE training initiatives, including Training Resource and Data Exchange (TRADE).

John W. Robinson has 10 years experience in performance-based training for nuclear operations, radiation protection, and industrial safety. As Manager, Fuel Dissolution Processing and Nuclear Safety Training at Westinghouse Idaho Nuclear Company, Mr. Robinson is responsible for coordination, development, and implementation of operations training for fuel processing, fuel handling, waste processing, and radiological and nuclear safety training courses for all levels of company personnel. Mr. Robinson has been involved in several DOE training initiatives, including the development of the Training Resource and Data Exchange (TRADE) Special Interest Group on Radiation Protection Training, served as coordinator and principal author of the DOE Guide to Good Practice in Radiation Protection Training; and functioned as a lead developer of the DOE Training Accreditation Program. He currently serves on the DOE TRADE Executive Committee. In October 1988, Mr. Robinson received the "Jack M. Brewer" award from DOE for individual excellence in human resource development, primarily for his efforts in training.

James A. Shurick is a fire protection and safety engineer with 41 years of experience. He worked for 20 years with Factory Insurance Association (now Insurers Risk Insurance) as a Field Inspector and Chief Engineer. Mr. Shurick served the Atomic Energy Commission and the DOE for 19 years as a fire protection design engineer and was responsible for fire protection requirements in the construction of new facilities and the modification of existing facilities. Engineering efforts included improvement to water supplies, sprinkler protection, heat and smoke detection, special protection and construction, exit requirements, and emergency lighting.

Joseph F. Tinney has a Ph.D in Engineering Sciences and 25 years of Defense Programs experience, the last 8 years as the Program Manager for SAIC's technical support services in DOE's Office of Defense Programs. Since joining SAIC, Dr. Tinney has been the Principal Investigator on projects for the Defense Nuclear Agency, the Nuclear Regulatory Commission, and the Federal Emergency Management Administration. Dr. Tinney has served on, and provided technical support for, the Plutonium Special Isotope Separation (SIS) Program Peer Review (1982), the SIS Process Readiness Review Team (1986), the New Production Reactor (NPR) Site Evaluation Team (1988), and the Technical Support Team for the Energy Research Advisory Board's NPR Technology Assessment Panel (1987–1988). Dr. Tinney worked for 12 years at the Lawrence Livermore National Laboratory. He served as the Head of the Hazards Control Department supervising 200 health, safety, and environmental personnel; served as Safety Review Team Leader for the design and construction of a new plutonium facility; served as a Senior Scientific Advisor on the Nuclear Weapons Accident Response Group and Nuclear Emergency Search Team; and served as Division Director for the Special Projects Division.

Gary J. Toman is an electrical engineer with 20 years of experience. He has 10 years experience in commercial nuclear power plant operations and a total of 14 years experience in commercial nuclear power plant licensing, maintenance, equipment qualification, quality assurance, component failure evaluation, and safety-system functional inspections. Most recently, Mr. Toman led a functional assessment of the electric power distribution system for Palo Verde Nuclear Generating Station. He has broad experience with verification of equipment operability and has developed a nondestructive test methodology for evaluating aging of installed electrical cable insulation. Mr. Toman has also contributed to the NRC's Nuclear Plant Aging Research Program in the areas of relays, circuit breakers, solenoid valves, and pressure transmitters. He evaluated reactor trip circuit breaker failures for the U.S. Nuclear Regulatory Commission at the Salem Nuclear Generating Station and the San Onofre, McGuire, North Anna, and D.C. Cook plants. He is a Principal Engineer with ERC Environmental and Energy Services Company.

Arthur J. Toy has a Ph.D. in Radiation Biophysics and has worked at Lawrence Livermore National Laboratory for 27 years. He is the Facility Manager of LLNL's Plutonium Facility, where he is responsible for assuring environmental and personnel safety for all operations in the Facility. In a previous position, as the Hazards Control Department Head/Safety Program Leader, Dr. Toy was responsible for assuring implementation of the LLNL's Safety Program. Dr. Toy also managed environmental monitoring of LLNL and local environs, environmental assessments of Laboratory construction, and Laboratory compliance with all Federal, State and local environmental regulations. He has written safety analysis reports for nuclear facilities and was the editor of the LLNL Environmental Impact Statement.

Lance E. Traver is a nuclear engineer with 7 years experience. Mr. Traver served in the U.S. Naval Nuclear Propulsion Program for 5 years where he developed an understanding of reactor operations and safety principles. He qualified as Chief Engineer and Senior Supervisor of Naval Nuclear Propulsion Plants. As an employee of SCIENTECH, Inc., he has participated in evaluating the reactor restart program for the Savannah River Site Production Reactors and has conducted root cause analyses of safety issues at both the Savannah River Site and Rocky Flats Plant. Mr. Traver provided technical support to the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plant.

Lawrence J. Ybarrondo is a Ph.D. mechanical engineer with 30 years experience. Dr. Ybarrondo worked in nuclear facility design, construction, analysis, testing, and operations at the Idaho National Engineering Laboratory. He held the position of Associate General Manager of EG&G, Idaho, and was in charge of the operations of four nuclear reactor facilities. He has served on the Board of Directors of the American Nuclear Society and on its executive committee on nuclear reactor safety. Dr. Ybarrondo assisted the U.S. Government in responding to the accidents at Three Mile Island and Chernobyl. He was the Deputy Team Leader for the September 1989 and June 1990 Criticality Safety Assessments at the Rocky Flats Plants.

Appendix B—Assignments

To be provided at a later date.

Appendix C—References

1. "Guidelines for Application of Readiness Reviews to Department of Energy Activities," January 1987.

2. "Process Operational Readiness and Operational Readiness Follow-On," DOE-76-45/39, SSDC-39, February 1987.

3. *Occupancy-Use Readiness Manual*, "Safety Considerations," ERDA-76-45-1, SSDC-1, September 1976.

4. "Events and Causal Factors Charting" (regarding management oversight and risk tree development and use), DOE-76-45/14, SSDC-14, Rev. 1, August 1978.

5. *Mort User's Manual* (for use with management oversight and risk tree analytical logic diagram), DOE-76-45/4, SSDC-4, Rev. 2, May 1983.

6. "Operational Readiness Assessment Team Inspections," NRC Inspection Procedure 93806, August 21, 1989.

7. *Guidelines for the Conduct of Operations at Nuclear Power Stations*, Guideline INPO 85-017, Rev. 01, April 1988.

8. Memorandum from Victor Stello, Jr., to R. Nelson, "Order Compliance Verification at the Rocky Flats Plant," May 3, 1990.

9. "Technical Safety Appraisal of the Rocky Flats Plant," DOE/EH-0081, January 1989.

10. "An Assessment of Criticality Safety at the Department of Energy Rocky Flats Plant," SCIE-DOE-201-89, July-September 1989.

11. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding resumption of plutonium processing operations at the Rocky Flats Plant), May 4, 1990.

12. Defense Nuclear Facilities Safety Board, "Recommendation to the Secretary of Energy" (regarding criticality safety and resumption of plutonium processing operations at the Rocky Flats Plant), June 5, 1990.

13. Advisory Committee on Nuclear Facility Safety, letters to the Secretary of

Energy regarding resumption of plutonium processing operations at Rocky Flats, dated November 30, 1988, March 28, 1990, and June 4, 1990.

14. Memorandum to Acting Assistant Secretary for Defense Programs from Secretary of Energy regarding "Resumption of Plutonium Processing at the Rocky Flats Plant," June 8, 1990.

15. "Environmental Tiger Team Assessment of the Rocky Flats Plant," June 6 to July 21, 1988.

16. Letter from Secretary of Energy to the Defense Nuclear Facilities Safety Board, "Response to May 4, 1990, Recommendation," June 20, 1990.

17. "Rocky Flats for Phased Resumption of Plutonium Operations," EG&G Rocky Flats, March 5, 1990 (including the April 19, and May 25, 1990 updates).

[FR Doc. 91-5024 Filed 3-1-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10661-000 New York]

City of Oswego, Availability of Environmental Assessment

February 25, 1991

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the constructed and proposed High Dam Project located on the Oswego River in Oswego County, near the City of Oswego, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA the Commission's staff has analyzed the potential environmental impacts of the constructed and proposed project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-4977 Filed 3-1-91; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3834-000, et al.]

Hydroelectric Applications [Maled Hydro Partners, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Surrender of license.

b. Project No.: 3824-020.

c. Date filed: December 18, 1990.

d. Applicant: Maled Hydro Partners.

e. Name of Project: Maled High Drop.

f. Location: On the Maled River in Gooding County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Kip W. Runyan, Maled Hydro Partners, 333 N. 13th Street, Boise, ID 83702, (208) 336-4254.

i. FERC Contact: Michael Spencer at (202) 219-2846.

j. Comment Date: April 11, 1991.

k. Description of Proposed Action: The proposed run-of-the-river project would have consisted of a diversion, a penstock, and a powerhouse. The Licensee seeks to surrender its license because it will be impossible to meet the deadline for start of construction.

The Licensee states that no construction has been done.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

a. Type of Application: Conduit Exemption.

b. Project No.: 10445-001.

c. Date filed: October 26, 1990.

d. Applicant: City of Utica Board of Water Supply.

e. Name of Project: Utica Water Line Hydroelectric Project.

f. Location: On the Hinckley dam on West Canada Creek, in Trenton, Oneida County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Russell LaGalbo, P.E., Principal Engineer, City of Utica, Board of Water Supply, P.O. Box 345, One Kennedy Plaza, Utica, NY 13503, (315) 792-0320.

i. FERC Contact: Mary Golato (202) 219-2804.

j. Comment Date: March 25, 1991.

k. Description of Project: The proposed project would be located on existing water supply conduits supplying water to the City of Utica through parallel 36-inch and 24-inch diameter iron pipes that run from the intake at the Hinckley dam to the Marcy reservoir. The applicant proposes to install facilities to develop the hydroelectric potential of the existing primary water supply mains between the two reservoirs. The facilities will consist of two powerhouses each containing a single in-line turbine generator, butterfly valve, and control center. One generating unit, to be installed in the upstream powerhouse, will have a rated capacity of 165 kilowatts. The other generating unit, to be installed in the downstream powerhouse, will have a rated capacity of 275 kilowatts. The Hinckley dam is owned by the State of New York. The applicant estimates that the average annual generation for the proposed project is 2,167,000 kilowatthours.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

3a. Type of Application: Major License.

b. Project No.: 10661-000.

c. Date filed: July 31, 1990.

d. Applicant: Bangor Hydroelectric Company.

e. Name of Project: Basin Mills.

f. Location: On the Penobscot and Stillwater Rivers, in Penobscot County, Maine.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Robert S. Briggs, Bangor Hydroelectric Company P.O. Box 932, Bangor, ME 04401, (207) 945-5621.

i. FERC Contact: Mary C. Golato, (202) 219-2804.

j. Comment Date: April 15, 1991.

k. Description of Project: The proposed project would consist of three developments: (1) Veazie Development; (2) Basin Mills Development; and (3) Orono Development. The existing dams are owned by the applicant. The Veazie and Orone Developments are operating under annual licenses for Projects Nos. 2403 and 2710, respectively. The license for Project No. 10661, if issued, would supersede the licenses for Projects Nos. 2403 and 2710.

(i) Veazie Development

The Veazie Development would consist of: (1) An existing 25-foot-high, 902-foot-long concrete gravity dam; (2) a reservoir with a surface areas of 390 acres, a storage capacity of 4,600 acre-feet, and a normal water surface elevation of 34.8 feet NGVD with; (3) 6.5-foot-hight hinged flashboards; (4) an existing concrete forebay; (5) two existing brick and concrete powerhouses; (a) powerhouse A is located along the west bank and contains 15 turbine-generator units for a total installed capacity of 5.4 MW; and (b) powerhouse B is located at the downstream end of the forebay and contains two trubine-generator units with a total installed capacity of 3 MW; (6) a proposed reinforced concrete powerhouse (powerhouse C) containing a trubine-generating unit of approximately 8 MW; (7) and existing tailrance; (8) a transmission line, 200 feet long; and (9) appurtenant facilities. The average annual generation would be 67 million kWh.

(ii) Basin Mills Development

The Basin Mills Development would consist of: (1) A new 18-foot-high, 1,650-foot-long concrete gravity dam; (2) a reservoir with a surface area of 325 acres, a storage capacity of 5,000 acre-feet, and normal water surface elevation of 64.0 feet NGVD; (3) a new intake gate; (4) a new concrete powerhouse containing three pit-type turbine units with a total installed capacity of 38 MW; (5) a transmission line, 200 feet long; and (6) appurtenant facilities. The average annual generation would be 163 million kWh.

(iii) Orono Development

The applicant proposes to decommission the existing facilities at the Orono Development by removing the existing penstocks and powerhouse. The applicant proposes to retain the existing 18-foot-hight, 1,174-foot-long concrete dam and flashboards and the 175-acre, 1,300 acre-foot reservoir which is at elevation 72.4 feet NGVD.

l. The Veazie and Orono Projects would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the applicant's net investment as of December 1990, the net investment for the Orono development is $941,822 and the net investment for the Veazie development is $1,109,601. The estimated severance damages for the combined developments would amount to $1,100,000.

m. Agency Comments—Agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, affected Indian tribes, and state in which the project is located, affected Indian tribes, and states are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act (Act), as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission, along with the recommendations, to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that the Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provided comments pursuant to the statutes listed above. Responses should confined to substantive issues relevant to the issuance of a license. A copy of application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, the Commission will presume that the agency has none. One copy of an agency's response must also be sent to the applicant's representatives.

Since several studies have not been completed and the results are necessary for the agencies and other commenters to have sufficient information to make informed comments and recommendations on the project, we will request comments in a future public notice after the studies are filed with the Commission. Agencies and other commenters will be allowed to submit their comments (including mandatory and recommended terms and conditions or prescriptions) on the application no later than 60 days after issuance by the Commission of this second notice.

n. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4a. Type of Application: Preliminary Permit.

b. Project No.: 11065-000.

c. Date filed: December 24, 1990.

d. Applicant: Greenfields Irrigation District.

e. Name of Project: Turnbull Drops.

f. Location: On the U.S. Bureau of Reclamation's Spring Valley Canal at the Turnbull Drop Structures in Teton County, Montana, Township 21 North, Range 4 West.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Jerry Nypen, Manager, Greenfields Irrigation District, P.O. Box 157, Fairfield, MT 59436, (406) 467-2533.

i. FERC Contact: Mr. James Hunter, (202) 219-2839.

j. Comment Date: April 30, 1991.

k. Description of Project: The proposed project would include generating facilities at each drop structure, consisting of: (1) A nine-foot-diameter, 1,100-foot-long penstock leaving the existing intake structure at the upper site and running parallel to the drop chute; (2) a powerhouse on the canal containing a generating unit rated at 4,200 kilowatts; (3) a 1.5-mile-long transmission line interconnecting with a local distribution line; and (4) a similar facility at the lower site, except that the penstock would be 2,200 feet long and the generating unit would be rated at 6,300 kilowatts. The applicant estimates the average annual energy generation to be 24 gigawatthours and the cost of the work to be performed under the permit to be $75,000.

l. Purpose of Project: Power generated would be sold to a utility, most likely the Montana Power Company.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 11066-000.

c. Date filed: December 31, 1990.

d. Applicant: Risingdale Hydroelectric Co.

e. Name of Project: Risingdale.

f. Location: On the Housatonic River in the Town of Great Barrington, Berkshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Mathew Rubin, 28 State Street, Montpelier, VT 05602, (802) 229-4886.

i. FERC Contact: Charles T. Raabe, (202) 219-2811.

j. Comment Date: April 15, 1991.

k. Description of Project: The proposed project would consist of: (1) An existing 22-foot-high, 130-foot-long concrete and timber-crib, overflow-type dam; (2) a reservoir having a surface area of 20 acres at normal water surface elevation 717 feet NGVD; (3) an existing gated intake structure having trashracks; (4) an existing 14-foot-diameter penstock; (5) a proposed powerhouse containing a generating unit having an installed capacity of 1,200-kW operated at a 21-foot head; (6) a tailrace; (7) a 350-foot-long, 13-kV transmission line; and (8) appurtenant facilities.

The applicant estimates that the average annual generation would be 5,000,000 kWh and that the cost of the studies under the permit would be $150,000. Project energy would be sold to one or more electric utilities located in Massachusetts. The existing dam is owned by Rising Paper Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 11072-000.

c. Date filed: January 8, 1991.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Boyd Dam Hydroelectric Project.

f. Location: East Branch of the Fish Creek, in the Town of Lewis, Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Steven C. Samel, P.O. Box 169, Prospect, NY 13435, (315) 866–6351.

i. FERC Contact: Mary C. Golato (tag), (202) 219–2804.

j. Comment Date: April 18, 1991.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing 85-foot-high, 515-foot-long dam; (2) an existing reservoir having a surface area of 210 acres, a storage capacity of 4,345 acre-feet, and a surface elevation of 1,280 feet NGVD; (3) a proposed 60-foot-long by 7-foot-diameter penstock; (4) a proposed powerhouse containing a horizontal turbine-generator set with a total installed capacity of approximately 2,750 kilowatts; (5) a proposed 34.5-kilovolt transmission line; and (6) appurtenant facilities. The dam is owned by the City of Rome, New York. The applicant expects that the proposed facility would generate an average annual generation of 8.5 million kilowatthours. The applicant estimates that the total cost of the proposed project would be $6 million.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7a. Type of Application: Preliminary Permit.

b. Project No.: 11078–000.

c. Date Filed: January 23, 1991.

d. Applicant: H&H Properties.

e. Name of Project: Avalon Hydroelectric Project.

f. Location: On Mayo River near Mayodan in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Tim Henderson, 1240 Springwood Church Road, Gibsonville, NC 27249, 919 449–5054.

i. FERC Contact: Michael Dees, (202) 219–2807.

j. Comment Date: April 22, 1991.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing stone masonry dam 436 feet long and 18 feet high with proposed flashboards one foot high; (2) a 12-acre reservoir with a normal surface elevation of 625.5 feet m.s.l. with flashboards installed; (3) a 60–kW hydropower unit to be installed at the dam; (4) an existing power canal 1,800 feet long and 20 to 26 feet wide; (5) an existing penstock nine feet in diameter and 180 feet long; (6) an existing powerhouse containing two hydropower units with a generating capacity of 780 kW; (7) an existing tailrace; (8) a new 12.4–kV transmission line 280 feet long; and (9) appurtenant facilities. The applicant estimates the average annual energy production to be 3.6 GWh and the cost of the work to be performed under the preliminary permit to be $15,000. The project energy would be sold to Duke Power Company. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 11079–000.

c. Date Filed: January 24, 1991.

d. Applicant: Charles C. Wood, Jr.

e. Name of Project: Old Washington Mills Hydro Project.

f. Location: On Mayo River near Mayodan in Rockingham County, North Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles C. Wood, Jr., 4010 Lagrange Drive, Greensboro, NC 27406, 919–275–7613.

i. FERC Contact: Michael Dees, (202) 219–2807.

j. Comment Date: April 22, 1991.

k. Description of Project: The proposed run-of-river project would consist of: (1) an existing stone masonry dam 460 feet long and 15 feet high with proposed flashboards one foot high; (2) an 11-acre reservoir with a normal surface elevation of 586.4 feet m.s.l. with flashboards installed; (3) a 60–kW hydropower unit to be installed at the dam; (4) an existing power canal 1,400 feet long and 25 feet wide; (5) a new powerhouse containing two hydropower units with a generating capacity of 720 kW; (6) an existing tailrace; (7) a new 12.4–kV transmission line 170 feet long; and (8) appurtenant facilities. The applicant estimates the average annual energy production to be 2.7 GWh and the cost of the work to be performed under the preliminary permit to be $15,000. The project energy would be sold to Duke Power Company. The dam is owned by the applicant.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commission requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 26, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91–4878 Filed 3–1–91; 8:45am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties $177,813.96, plus accrued interest, in crude oil overcharge funds that Corum Energy and Davis & Forbes remitted to the DOE pursuant to a Consent Order executed on January 3, 1990 and an Agreed Judgment executed on June 22, 1988, respectively. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register and should be addressed to: Office of Hearings, and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Numbers LEF–0017 (Corum Energy) and LEF–0021 (Davis & Forbes).

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Anthony W. Swisher, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018 (Tedrow), (202) 586–6602 (Swisher).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute crude oil monies that have been remitted by Corum Energy and Davis & Forbes to the DOE to settle alleged violations of the federal petroleum price and allocation regulations. The DOE is currently holding the full payment of $177,813.96 in an interest-bearing escrow account pending distribution.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 28, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

BEST COPY AVAILABLE

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Corum Energy, Davis & Forbes.

Dates of Filing: July 17, 1990, July 19, 1990.

Case Numbers: LEF-0017, LEF-0021.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

This Decision and Order considers two Petitions for the Implementation of Special Refund Procedures filed by the ERA for crude oil overcharge funds. The first petition deals with monies obtained from Corum Energy (Corum) (Case No. LEF-0017). Corum remitted $10,182.06 to the DOE pursuant to a January 3, 1990 Consent Order entered into by Corum and the DOE. This Consent Order resolved allegations that Corum committed violations of the federal petroleum price and allocation regulations during the period February 28, 1980 through January 27, 1981 (Consent Order number 6AOX0032W). The second petition concerns monies received from Davis & Forbes (D&F) (Case No. LEF-0021). D&F remitted $167,631.90 pursuant to a June 22, 1988 Agreed Judgment between D&F and the DOE settling all claims that D&F had violated the federal petroleum price and allocation regulations during the period September 1, 1973 through April 30, 1978 (Agreed Judgment number 610C00405W). Together, Corum and D&F remitted a total of $177,813.96 to the DOE. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶82,508 (1981) and *Office of Enforcement*, 8 DOE ¶82,597 (1981). We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from Corum and D&F, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (hereinafter the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order implementing the MSRP, 51 FR 29689 (August 20, 1986) (hereinafter the August 1986 Order). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (hereinafter the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of Federal crude oil price controls and to prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per-gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement, or were subsequently deposited in the escrow account, and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, *see, e.g., New York Petroleum, Inc.*, 18 DOE ¶85,435 (1988); *Shell Oil Co.*, 17 DOE ¶85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the Court issued an Opinion and Order denying the states' Motion in its entirety. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987). The Court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the Kansas District Court's decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (T.E.C.A. 1988).

II. The Proposed Refund Procedures

A. Refund Claims. We now propose to apply the procedures in the April 1987 Notice to the crude oil monies that are the subject of the present determination. As noted above, $177,813.96 in alleged crude oil violation amounts is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of the alleged crude oil violation amounts, or $35,562.79 in principal, plus accrued interest for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028, at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of crude oil price controls. *See A. Tarricone Inc.*, 15 DOE ¶ 85,495, at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. *See New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court of the District of Columbia, In re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214, at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($177,813.96) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Montain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.00000008798 per gallon for the two proceedings involved in this determination. The use of this approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program.*

As we have stated in previous Decisions, a crude oil refund applicant is required to submit only one application for crude oil overcharge funds. *See Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988, was established for all refund applications for the first pool oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989, was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *Corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc., 19 DOE ¶ 85,200, Corrected*, 19 DOE ¶ 85,236 (1989). A March 31, 1991 deadline for filing an application for refund from the third pool of funds was set in *Cibro Sales Corp., Inc.*, 20 DOE ¶ 85,036 (1990). A June 30, 1992 deadline for filing an application for refund from the fourth pool of funds was set in *Quintana Energy Corporation*, 21 DOE ¶ ——— (January 18, 1991). The volumetric refund amount from the fourth pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

B. *Payments to the States and Federal Government.* Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision or $142,251.17 in principle, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $71,125.59 into an interest-bearing subaccount for the states and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered that:

The refund amounts remitted to the Department of Energy by Corum Energy and Davis & Forbes, pursuant to the Consent Order executed on January 3, 1990 and the Agreed Judgment executed on June 22, 1988, respectively, will be distributed in accordance with the foregoing Decision.

[FR Doc. 91-5025 Filed 3-1-91; 8:45 am]

BILLING CODE 6450-01-M

* The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This balancing mechanism had the effect of evenly disbursing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3910-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that

the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 3, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks (EPA ICR #1285.03; OMB #2060–0132). This ICR requests renewal of the existing clearance.

Abstract: Manufacturers may choose to pay a monetary penalty in order to sell heavy-duty engines, heavy-duty vehicles, including light-duty trucks, which fail to conform with certain emission standards. Before selling these engines, manufacturers must perform a Production Compliance Audit to establish the amount of the penalty. Each audit includes the following information: a report from manufacturer requesting an audit, a description of test equipment and facilities, information regarding each audit conducted, a report of the test results, a failed engine or vehicle report, and a quarterly nonconformance penalty report. EPA uses this information to ensure that the Production Compliance Audits are conducted in accordance with the applicable regulation and to ensure that nonconformance penalty payments submitted to EPA are correct.

Burden Statement: The public reporting burden for this collection of information is estimated to average 144 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Manufacturers of heavy-duty engines and heavy-duty vehicles (SIC #371).

Estimated Number of Respondents: 6.

Estimated Total Annual Burden on Respondents: 908 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 1725 17th Street, NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1577.01; section 114 Request for HCFC–123 Production Data; was approved 01/30/91; OMB #2060–0215; expires 07/31/91.

EPA ICR #1128.03; Information Requirements for Secondary Lead Smelters (NSPS subpart L); was approved 01/18/91; OMB #2060–0080; expires 01/31/94.

EPA ICR #0818–04; Hazardous Waste Industry Studies; was approved 01/17/91; OMB #2050–0042; expires 01/31/94.

EPA ICR #0270–24; Public Drinking Water System Program Information; was approved 01/10/91; OMB #2040–0090; expires 12/31/93.

EPA ICR #1361.02; Final Rule to Regulate the Burning of Hazardous Waste in Boilers and Industrial Furances; was approved 01/14/91. However, there are additional burdens associated with the general permitting process that are not reflected in this ICR. This additional burden must be reflected in the OMB inventory for the ICRs associated with general permitting requirements. The approval of this ICR (2050–0073) is contingent, therefore, on the submission prior to July 1, 1991, of information correction work sheets which reflect the additional permitting requirements.

Dated: February 26, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–5015 Filed 3–1–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–280004; FRL 3877–1]

PCB State Enhancement Grant Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability and Review.

SUMMARY: The EPA's Office of Toxic Substances is announcing a financial assistance program for States entitled the "PCB State Enhancement Grant Program". The grants will be awarded under the authority of section 28 of the Toxic Substances Control Act (TSCA) for the establishment of a PCB program that includes the development of state legislation and regulations. This program is intended for States that have begun to identify waste PCBs as a hazardous waste. The PCB State Enhancement Grant Program is not being assigned a Catalog of Federal Domestic Assistance number because it is not expected to be continued beyond fiscal year 1992. The program objective is to promote state participation in the PCB disposal program. EPA believes that state enhancement, through the encouragement of state regulations for PCB disposal, is a desirable tool for risk reduction. A state presence in PCB disposal will expedite the identification and remediation of potential risks. The Agency is also announcing its plans to administer this program through its Headquarters office. This Federal Register notice informs potential applicants about the grant program and invites them to request a copy of the application kit and the companion guidance document. Subject to the availability of funds, the awards are anticipated during Federal fiscal year 1991. Eligible applicants will include the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, and the Trust Territory of the Pacific Islands. ("States" is used in this announcement to refer to all eligible applicants.) Recipients will be required to provide a match of 25 percent of the total project cost.

DATES: Applications must be received in the Grants Operations Branch by the close of business on May 15, 1991. Applications may not be considered if received after the deadline.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. E–543B, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551. State agencies wishing to apply under this program should send a letter of intent and request an application from this address. State agencies may contact this address in order to coordinate the development of their project proposal with EPA Headquarters.

ADDRESSES: Send completed applications to PCB State Enhancement Grant Program, Grants Operations Branch, Grants Administration Division (PM–216F), US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Office of Toxic Substances is interested in promoting State regulation of PCB disposal activities, and to the extent that funds become available, is offering financial assistance for this purpose. This program is designed to encourage the development of State legislation and regulations. The minimum criteria for applicants includes: (1) States in which there are existing PCB disposal and storage facilities, and (2) States that have already begun to identify waste PCBs as a hazardous waste and anticipate completion of the process by September 30, 1992. To be eligible for these grants, States must currently be engaged in the process of listing PCBs under their State hazardous waste laws or they must currently be in the process of adopting TSCA look-alike laws for PCB disposal. It is anticipated that individual grants will be awarded for no more than $50,000.

The State's Single Point of Contact (SPOC), must notify the following office in writing within 30 days after publication of this notice in the Federal Register. The SPOC notification concerns whether their States' official E.O. 12372 process will review applications under this program. The SPOC notification should be sent to the Grants Policies and Procedures Branch, Grants Administration Division (PM–216F), US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: Corinne Allison/PCB State Enhancement Grant Program.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if their applications are subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOC's should send official intergovernmental review comments on applications to the Grants Operations Branch, Grants Administration Division (PM–216F) US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, no later than 60 days after receipt of the application or other material for review.

Dated: February 25, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91–5011 Filed 3–1–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 22, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW, Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Action: Extension.

Respondents: Business or other for-profit.

Frequency of Response: Annually and Other: Corrections are reported 3 months after the annual filing.

Estimated Annual Burden: 48 responses; 15.8 hours average burden per response; 759 hours total annual burden.

Needs and Uses: The collection of § 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, and 47 U.S.C. 151–609 (1981). The collected data are essential to both the FCC and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31 pursuant to § 43.61(d).

OMB Number: 3060–0403.

Title: Certification of Completion of Construction Under part 21.

Form Number: FCC Form 494–A.

Action: Revision.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 5,000 responses; .33 hours average burden per response; 1,666 hours total annual burden.

Needs and Uses: FCC Form 494–A is used by telecommunications entities to notify the Commission that construction of the conditionally licensed facility has been completed and it is operational. The form is used to certify completion of construction in the following Part 21 services: Point-to-Point Microwave; Local Television Transmission Service; Multipoint Distribution Service; Digital Electronic Message Service; and Fixed Subsidiary Communications Authorizations. The data will be used by FCC staff to verify completion of construction and the obligations in the conditional license. Without such information, the FCC would not be able to determine whether the licensee has fulfilled the construction conditions contained in its authorization or if the licensee has automatically forfeited its authorization. If there is an automatic forfeiture, new initial applications may be filed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–4953 Filed 3–1–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 25, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB number: 3060–0107.

Title: Application for Renewal of Radio Station License and/or

Notification of Change of License Information.

Form number: FCC Form 405–A.

Action: Extension.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting.

Estimated annual burden: 2,700 responses; 1.66 hours average burden per recordkeeper; 448 hours total annual burden.

Needs and uses: The FCC Form 405–A is filed by applicants in the Private Land Mobile, Coast, Ground, and General Mobile Radio Services for renewal of an existing authorization. Commission personnel will use the data to determine eligibility for a renewal authorization and issue a radio station license. The data is also used by Compliance personnel in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–5035 Filed 3–1–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 26, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB number: 3060–0207.

Title: Sections 73.961 and 73.932, Tests of the Emergency Broadcast System and Radio Monitoring and Attention Signal Transmission Requirements.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: Recordkeeping requirement.

Estimated annual burden: 12,500 recordkeepers; 1.25 hours average burden per recordkeeper; 15,625 hours total annual burden.

Needs and uses: Sections 73.961 and 73.932, requires that all broadcast stations log transmission and receipt of the weekly EBS Test and receipt of the semi-monthly wire service test. This information is necessary in order to document station compliance with these Rules and to help to enhance station awareness and participation in the National, State and local Emergency Broadcast System (EBS). The data is used by FCC staff as part of their routine inspections of broadcast stations. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part of the transmitting or receiving station (or wire service). Furthermore, the National level EBS is solely for the use of the President, its proper operation must be assured.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–5036 Filed 3–1–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, Room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an onsite inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800–627–8200

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408–727–5525

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703–691–9100

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312–880–8900

The certification of this laboratory (Bio-Analytical Technologies, Chicago, IL) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 2183 (Jan. 22, 1991).

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5610

Center for Human Toxicology, 417 Wakara Way-Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919–549–8263

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–365–3840 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205–9998, 205–934–0985

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harris Medical Laboratory, P. O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–878–5600

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414 (outside MI)/800–328–4142 (MI only),

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., P. O. Box 4350, Woodland Hills, CA 91365, 818–718–0115/800–331–8670 (outside CA)/800–464–7061 (CA only) (name changed: formerly Abused Drug Laboratories)

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631

Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0069

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466

Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439

Methodist Medical Center, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Health Laboratories Inc., 2540 Empire Drive, Winston-Salem, NC 27103–8710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (NC only)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537

Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770

Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–792–2822

Roche Biomedical Laboratories, Inc., 1 Roche Drive, Raritan, NJ 08869, 800–631–5250

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

S.E.D. Medical Laboratories, 500 Walter NE Suite 500, Albuquerque, NM 87102, 505–848–8800

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio–Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories),

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 North Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91–5133 Filed 3–1–91; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 91F–0032]

Th. Goldschmidt A.G.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Th. Goldschmidt A.G. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins in coatings for metal substrates, polyolefin films, and paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4244) has been filed by Th. Goldschmidt A.G., Goldschmidtstrasse, 100 D–3400 Essen 1, Germany, proposing that the food additive regulations be amended to provide for the safe use of silicone acrylate resins for use in coatings for metal substrates, polyolefin films, and paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: February 25, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–4967 Filed 3–1–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Hospital Conditions of Participation; *Form Number:* HCFA–R–48; *Use:* These requirements contained in parts of the "conditions of participation" for hospitals (42 CFR part 482) are used to determine whether a hospital qualifies for a provider agreement under Medicare and Medicaid; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 6,700; *Average Hours per Response:* 9.35; *Total Estimated Burden Hours:* 62,657.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in BPO–500–F, Third Party Liability (TPL) for Medical Assistance, FFP Rates for Skilled Nursing Professional Medical Personnel and Supporting Staff, and Sources of State Share of Financing; *Form Number:* HCFA–R–78; *Use:* This regulation requires the State Medicaid agency to have a written agreement with other public agencies which perform Medicaid functions and to specify in the State plan the threshold amount for suspending TPL recovery; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 52; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 52.

3. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements in the System Performance Review (Medicaid); *Form Number:* HCFA–R–86; *Use:* The System Performance Review is used to evaluate State Medicaid Management Information Systems to determine whether or not a State system satisfies the functional requirements and statistical levels of output relating to accuracy and timeliness; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 22; *Average Hours per Response:* 2,000 (recordkeeping); *Total Estimated Burden Hours:* 44,000.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services; *Form Number:* HCFA–2082; *Use:* This data is the basis of actuarial forecasts for Medicaid services utilization and costs; of analyses and cost savings estimates required for legislative initiatives relating to Medicaid; and for responding to requests for information from HCFA components, the Department of Health and Human Services, the press and the Congress; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 430.13; *Total Estimated Burden Hours:* 21,937.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements—Physcian Certifications/Recertification in Skilled Nursing Facilities (SNFs); *Form Number:* HCFA–R–5; *Use:* These regulations require SNFs to keep records of physician certifications and recertifications of information such as the need for care and services, estimated duration of the SNF stay, and plans for home care; *Frequency:* On occasion; *Respondents:* Individuals/households, State/local governments, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Hours per Response:* Not applicable; *Total Estimated Burden Hours:* 93,857 (recordkeeping).

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospital Provider of Long Term Care Services (Swing-bed) Survey Report Form; *Form Number:* HCFA–1537C; *Use:* This survey form is an instrument used by the State agency to record data collected in order to determine compliance with individual conditions of participation and report it to the Federal Government; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

7. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements—Criteria for Medicare Coverage of Adult Liver Transplants; *Form Number:* HCFA–R–108; *Use:* Medicare participating hospitals must file an application to be approved for coverage and payment of adult liver transplants performed on Medicare beneficiaries; *Frequency:* On occasion/annually; *Respondents:* Non-profit institutions and small businesses/organizations; *Estimated Number of Responses:* 73 (reporting) and 10 (recordkeeping); *Average Hours per Response:* 100 (reporting) and 20 (recordkeeping); *Total Estimated Burden Hours:* 7,300 (reporting) and 200 (recordkeeping) for a total of 7,500.

8. *Type of Request:* New; *Title of Information Collection:* Peer Review Organization (PRO) Business Proposal Forms; *Form Number:* HCFA–718, 719(1, 3, A–H, J–K), 720, 721, 722(1, 2, 3, S, UC) and 723(1, 2, 3, S);*Use:* This data will be used to compare and monitor reported and incurred costs and for negotiating contracts with the Peer Review Organizations; *Frequency:* Every 3 years; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 20; *Average Hours per Response:* 171; *Total Estimated Burden Hours:* 3,420 (annualized burden).

9. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements Concerning Medicaid Claims Processing Assessment System (CPAS); *Form Number:* HCFA–R–91, HCFA–331, HCFA–503, and HCFA–R–83; *Use:* The CPAS is a Federally-monitored and State-administered Medicaid Quality Control Program that evaluates the accuracy of each State's claims processing and payments; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 1,034; *Total Estimated Burden Hours:* 53,194 (reporting) and 12,991 (recordkeeping) for a total of 66,185 hours.

10. *Type of Request:* Extension; *Title of Information Collection:* Requests for Medicare Payments by Municipal Health Services Program (MHSP) Clinics; *Form Numbers:* HCFA–127; 127A; *Use:* These forms are used by 15 clinics participating in the Municipal Health Services Program to bill and be reimbursed for services provided to Medicare beneficiaries; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 395,250; *Average Hours per Response:* .16; *Total Estimated Burden Hours:* 63,240.

11. *Type of Request:* New; *Title of Information Collection: Medicaid Drug Rebate Program; Form Number:* HCFA–367,(a),(b),(c); *Use:* The Omnibus Budget Reconciliation Act of 1990 requires drug manufacturers to enter into and have in effect a rebate agreement with the Federal government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 10,000; *Average Hours per Response:* 3.41; *Total Estimated Burden Hours:* 34,167. The HCFA has received emergency approval by the OMB, under OMB approval number 0938–0578. In keeping with the requirements for emergency reviews, we are attaching a copy of the forms and instructions. Additional Information or Comments: Call the Reports Clearance Officer on 301–966–2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 26, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

BILLING CODE 4120–03–M

Form Approved
OMB No. 0938-0578

MEDICAID DRUG REBATE AGREEMENT
ENCLOSURE B (PAGE 1 OF 4)
SUPPLEMENTAL DATA SHEET

LABELER CODE (as assigned by FDA)

LABELER NAME (Corporate name associated with labeler code)

LEGAL CONTACT: Person to contact for legal issues concerning the rebate agreement.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF CORPORATION

STREET ADDRESS

CITY STATE ZIP CODE

FINANCIAL CONTACT: Person responsible for financial aspects of rebate process.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF CORPORATION

STREET ADDRESS

CITY STATE ZIP CODE

NOTE: THIS SHEET TO BE RETURNED WITH SIGNED REBATE AGREEMENT. IF MORE THAN ONE LABELER CODE ATTACH ONE SHEET FOR EACH LABELER CODE.

HCFA-367a

Form Approved
OMB No. 0938-0578

MEDICAID DRUG REBATE AGREEMENT
ENCLOSURE B (PAGE 2 OF 4)
SUPPLEMENTAL DATA SHEET

LABELER CODE (as assigned by FDA)

LABELER NAME (Corporate name associated with labeler code)

TECHNICAL CONTACT: Person responsible for sending and receiving data.

NAME OF CONTACT

AREA PHONE NUMBER EXT.

NAME OF CORPORATION

STREET ADDRESS

CITY STATE ZIP CODE

NOTE: THIS SHEET TO BE RETURNED WITH SIGNED REBATE AGREEMENT. IF MORE THAN ONE LABELER CODE ATTACH ONE SHEET FOR EACH LABELER CODE.

HCFA-367a

Form Approved
OMB No. 0938-0578

MEDICAID DRUG REBATE AGREEMENT
ENCLOSURE B (PAGE 3 OF 4)
SUPPLEMENTAL DATA SHEET

LABELER CODE (as assigned by FDA)

LABELER NAME (Corporate name associated with labeler code)

FOR EACH STATE WITH WHOM THE LABELER HAS SIGNED AN EXISTING REBATE AGREEMENT:

STATE (postal code)	EFFECTIVE DATE (MMDDYY)	* ENDING DATE (MMDDYY)

Form Approved
OMB No. 0938-0578

DATE: ☐☐☐☐☐☐ (M M/D D/Y Y)

PAPER REPORTING FORMAT

MEDICAID DRUG REBATE AGREEMENT

QUARTERLY REPORT FOR QUARTER ☐ CALENDAR YEAR ☐☐

FDA ASSIGNED LABELER CODE ☐☐☐☐☐

PAGE: ☐☐ OF ☐☐

PRODUCT CODE	PACKAGE SIZE CD	DRUG CAT.	THERA. EQ.CD.	DESI IND.	AVERAGE MFG. PRICE	BEST RICE	DATE ENTERED MARKET
☐☐☐☐	☐☐	☐	☐☐	☐	☐☐☐☐☐☐.☐☐☐☐☐☐	☐☐☐☐☐☐.☐☐☐☐☐☐	☐☐☐☐☐☐

BASELINE AMP.	TERMINATION DATE	CORRECTION FLAG	UNIT TYPE	UNITS PER PACKAGE SIZE	FDA APPROVAL DATE
☐☐☐☐☐☐.☐☐☐☐☐☐	☐☐☐☐☐☐	☐	☐☐☐	☐☐☐☐☐☐☐☐.☐☐☐	☐☐☐☐☐☐

PRODUCT NAME ☐☐☐☐☐☐☐☐

HCFA Record Specification Mfr Pricing Information Telecommunications Format—Record No. 1

Field	Size	Position	Remarks
Record ID	1	1-1	Constant of "1".
Labeler code	5	2-6	NDC #1.
Product code	4	7-10	NDC #2.
Package size code	2	11-12	NDC #3.
Period covered	3	13-15	QYY.
Drug category	1	16-16	See data element definitions.
FDA Thera. EQ. CD	2	17-18	See data element definitions.
DESI Indicator	1	19-19	See data element definitions.
Drug type indicator	1	20-20	See data element definitions.
[1] Average Mfg price	11	21-31	99999V999999.
[1,2] Best price	11	32-42	99999V999999.
[2] Baseline AMP	11	43-53	99999V999999.
Termination date	6	54-59	MMDDYY.
Correction flag	1	60-60	See data element definitions.
Filler	20	61-89	

[1] Zero filled and not used for Initial Submission.
[2] Only for Single Source and Innovator Multiple Source Drugs, otherwise zero filled.

HCFA Record Specification Mfr Pricing Information Telecommunications Format—Record No. 2

Field	Size	Position	Remarks
Record ID	1	1-1	Constant of "2".
Labeler code	5	2-6	NDC #1.
Product code	4	7-10	NDC #2.
Package size code	2	11-12	NDC #3.
Unit type	3	13-15	See data element definitions.
Units per pkg size	10	16-25	9999999V999.
FDA approval date	6	26-31	MMDDYY.
Date Entered market	6	32-37	MMDDYY New item only.
Filler	43	38-80	

Record No. 3

Field	Size	Position	Remarks
Record ID	1	1-1	Constant of "3".
Labeler code	5	2-6	NDC #1.
Product code	4	7-10	NDC #2.
Package size code	2	11-12	NDC #3.
Product name	63	13-75	FDA registration name.
Filler	5	76-80	

Enclosure C—Manufacturer Data Definitions

Data Element Name: Labeler Code.
Data Definition: First segment of National Drug Code that identifies the manufacturer, labeler, relabeler, packager, repackager or distributor of the drug.
Specifications: Numeric values only, 5 digit field, right justified and 0-filled for 4-digit labeler codes.

Data Element Name: Product Code.
Data Definition: Second segment of National Drug Code.
Specifications: Numeric values only, 4 digit field, right justified, zero filled.

Data Element Name: Package Size Code.
Data Definition: Third segment of National Drug Code.
Specifications: Numeric values only, 2 digit field right justified, zero filled.

Data Element Name: Period Covered.
Data Definition: Calendar quarter and year covered by data submission.
Specifications: Numeric 3-digit field, QYY.
Valid Values for Q:
1=January 1–March 31
2=April 1–June 30
3=July 1–September 30
4=October 1–December 31
Valid Values for YY: last two digits of calendar year covered.
For Baseline Data Submission, indicate third quarter of 1990 as 390.

Data Element Name: Product Registration Name.
Data Definition: Product name as it appears on FDA registration form.
Specifications: Alpha-numeric values, 63 characters, left justified.

Data Element Name: Drug Category.
Data Definition: Classification of drug for purposes of rebate calculations.
Specifications: Alpha-numeric values, 1 character.
Valid Values:
N=Non-innovator Multiple Source
S=Single Source
I=Innovator Multiple Source

Data Element Name: DESI Drug Indicator.
Data Definition: A DESI (Drug Efficacy Study Implementation) drug is any drug that lacks substantial evidence of effectiveness and is subject by the FDA to a Notice of Opportunity for Hearing (NOH). This includes drugs which are identical, related or similar to DESI drugs.
Specifications: Numeric value, 1 digit.
Valid Values:
0=Not DESI drug
1=DESI drug

Data Element Name: Therapeutic Equivalence Explanation Code.
Data Definition: The classification as contained in the FDA publication "Approved Drug Products with Therapeutic Equivalence Evaluations"

(the FDA Orange Book) for the last day of the calendar quarter for which the rebate payment is being made.

Specifications: Alpha-numeric values, 2 character field.

Valid Values:

AA
AB
AN
AO
AP
AT
BC
BD
BE
BN
BP
BR
BS
BT
BX
NR—Not rated

Data Element Name: Unit Type.

Data Definition: Basic measurement that represents the smallest unit by which the drug can be measured. The rebate amount will be calculated per unit.

Example: For drugs that are dispensed in capsules or tablets, the Unit Type would be a capsule or tablet. The rebate amount would be calculated per capsule or tablet. For liquids, the Unit Type would be a milliliter. The rebate amount would be calculated per milliliter.

Specifications: Alpha-numeric values, 3 character field, left justified.

Valid Values:

CAP—Capsule
CC—Cubic Centimeter
TAB—Tablet
GM—Gram
MCI—Millicurie
MG—Milligram
ML—Milliliter
SQC—Square Centimeter
UCI—Microcurie
UGM—Microgram
UM—Micromolar

Data Element Name: Units Per Package Size Code.

Data Definition: Total number of units, as defined in the Unit Type field, in the package represented by the package size code, or the third segment of the NDC code.

Example 1: For a drug dispensed in a package size of 100 cc, the unit type would be a cc, and the units per package size would be 100.

Example 2: For a 17 microgram inhaler, the unit type would be a microgram and the units per package size would be 17.

Specifications: Numeric values, 10 digit field: 7 whole numbers and 3 decimal places.

Data Element Name: AMP (Average Manufacturer's Price).

Data Definition: The Average Manufacturer's Price per unit *per product code only* for the period covered. If a drug is distributed in 3 package sizes, there will still be only one AMP for the product, which will be the same for all package sizes.

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Data Element Name: Baseline AMP (Average Manufacturer's Price).

NOTE: This is only required for Single Source and Innovator Multiple Source drugs, in initial submission, and for drugs approved by the FDA after 10/01/90.

Data Definition: The Average Manufacturer's Price per unit *per product code only* for the quarter ending September 30, 1990. If a drug is distributed in 3 package sizes, there will still be only one AMP for the product, which will be the same for all package sizes.

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Zero fill for Non-innovator Multiple Source drugs.

Data Element Name: Best Price.

NOTE: This is only required for Single Source and Innovator Multiple Source drugs, in initial submission, and for drugs approved by the FDA after 10/01/90.

Data Definition: The lowest price available from the labeler to any wholesaler, retailer, nonprofit entity, or governmental entity within the United States (excluding depot prices and single award contract prices of any agency of the Federal Government).

Specifications: Numeric values, 11 digit field: five whole numbers and 6 decimal places. Compute to 7 decimal places, and round to 6 decimal places.

Zero fill for Non-innovator Multiple Source drugs.

Data Element Name: FDA Approval Date.

Data Definition: Date of FDA Approval of drug, if approved after 06/30/90, otherwise, zero fill this field.

Specifications: Numeric values, 6 digit field, MMDDYY

Data Element Name: Date Drug Entered Market.

Data Definition: First day of the first month that the drug was marketed for the entire month.

Example: If a drug is first sold on February 15, the first day of the first full month of marketing is March 1.

Specifications: Numeric values, 6 dight field, MMDDYY

Data Element Name: Drug Termination Date.

Data Definition: Date drug withdrawn from market or no longer distributed by labeler.

Specifications: Numeric values, 6 digit field, MMDDYY

Data Element Name: Drug Type Indicator.

Data Definition: Indicator to show whether this drug product can be acquired only by prescription or can be acquired Over-The-Counter (OTC). 1 = Rx, 2 = OTC.

Data Element Name: Correction Record Flag.

Data Definition: Indicator that this record corrects and replaces a record already submitted for the initial submission.

Specifications: Numeric one-digit field.

Valid Values:

0 = Origianl Record 1 = Correction Record

[FR Doc. 91-5027 Filed 3-1-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

National Institute on Aging, Meeting

Pursuant to Public Law 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of subcommittee: Neurological, Behavior and Sociology of Aging Review Subcommittee A.

Executive secretary: Dr. Maria Mannarino, Dr. Louise Hsu, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Date of meeting: March 5, 1991.

Place of meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue Bethesda, Maryland 20814.

Open: March 5, 7:30 p.m. to recess.

Dates of meeting: March 6-8, 1991.

Place of meeting: Building 31, Conference Room 6.

Closed: March 6-8, 8:30 a.m. to adjournment.

Name of committee: Neurological, Behavior and Sociology of Aging Review, Subcommittee B.

Executive secretary: Dr. Walter Spieth, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Date of meeting: March 5, 1991.

Place of meeting: Guest Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: March 5, 8 p.m. to recess.

Dates of meeting: March 6-8, 1991.

Place of meeting: Building 31, Conference Room 9.

Closed: March 6-8, 8:30 a.m. to adjournment.

Name of committee: Biological and Clinical Aging, Review Subcommittee B.

Executive secretaries: Dr. James Harwood, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496-9666.

Dates of meeting: March 11-14, 1991.

Place of meeting: Building 31, Conference Room 8.

Open: March 11—8:30 p.m. to recess.

Closed: March 12-14—6:30 a.m. to adjournment.

Name of committee: Biological and Clinical Aging, Review Subcommittee A.

Executive secretary: Dr. Daniel Eskinazi, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892.

Dates of meeting: March 13-15, 1991.

Place of meeting: Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, Washington.

Open: March 13—7:30 p.m. to recess.

Closed: March 14-15—8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health.)

Dated: February 21, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5100 Filed 3-1-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3228]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Mangement and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Default Status Report on Multifamily Housing Projects.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Mortgagees use this report to notify HUD that a project owner has defaulted and that an assignment of acquisition will result if HUD and the mortgagor do not development a plan for reinstating the loan. The report triggers HUD negotiation with the mortgagor.

Form Number: HUD-92426.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	×	Burden hours
Recordkeeping	2,000		3		.24		1,500

Total Estimated Burden Hours: 1,500.

Status: Extension.

Contact: Kirby Weldon, HUD, (202) 708-3044, Wendy Sherwin, OMB, (202) 395-6880.

Dated: February 22, 1991.

[FR Doc. 91-4999 Filed 3-1-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3221]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wndy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Deaprtment of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 26, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section 106(b) Non-profit Sponsor Assistance "Seed Money" Loan Application.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92290 is the only form used by non-profit borrower corporations participating in HUD's section 202 program for housing the elderly and handicapped to make an application for a section 106(b) "Seed Money" loan. This form enables borrowers to receive consideration for a non-interest federal loan to $50,000. The proceeds of the loan may be used to help defray the borrower's preconstruction costs of developing housing projects under section 202.

Form: HUD–92290.

Respondents: Non-Profit Institution.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD Form 92290	200		1		.5		100

Total Estimated Burden Hours: 100.

Status: Extension.

Contanct: Evelyn Berry, HUD, (202) 708–2866, Wendy Shewin, OMB, (202) 395–6880.

Dated: February 26, 1991.

[FR Doc. 91–4951 Filed 3–1–91; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–01–4320–02]

Craig, Colorado Advisory Council; Meeting

TIME AND DATE: April 3, 1991, 10 a.m.

PLACE: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

STATUS: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

MATTERS TO BE CONSIDERED:

1. Status Report on Resolutions.
2. Status of Occidental C–b.
3. Colorado Division of Wildlife's Harvest Statistics.
4. Colorado Division of Wildlife's Deer, Elk, and Antelope Program Issues.
5. Habitat Partnership Program Update.
6. Recreation 2000 Update.
7. Election of Officers.

CONTACT PERSON FOR MORE INFORMATION: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: February 20, 1991.

William J. Pulford,

District Manager.

[FR Doc. 91–4966 Filed 3–1–91; 8:45 am]

BILLING CODE 4310–JB–M

[AA–620–01–4111–2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0074), Washington, DC 20503, telephone (202) 395–7340.

Title: Oil and Gas and Geothermal Resources Leasing.

OMB Approval Number: 1004–0074.

Abstract: Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas and geothermal resources lease (Form 3000–2) and enable the Bureau of Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Numbers: 3000–2, 3200–9.

Frequency: On Occasion.

Description of Respondents: Individuals, oil and gas exploration and drilling companies.

Estimated Completion Time: 2 hours.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: (Alternate) Gerri Jenkins (202) 653–8853.

Dated: January 10, 1991.

Hillary A. Oden,

AD, Energy and Mineral Resources.

[FR Doc. 91–4998 Filed 3–1–91; 8:45 am]

BILLING CODE 4310–84–M

Minerals Management Service

Outer Continental Shelf Advisory Board; Atlantic OCS Region North, Mid, and South Atlantic Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Plenary Session Atlantic OCS Regional Technical Working Groups (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463). The Atlantic RTWG meeting will be held April 4, 1991 at the Ramada Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia. The RTWG business meeting will begin at 9 a.m. and end at 4:30 p.m. Tenatative agenda items are as follows:

- Outer Continental Shelf Natural Gas and Oil Resource Management Comprehensive Program 1992–1997 Draft Proposal.
- Miscellaneous roundtable discussion.

FOR FURTHER INFORMATION: This meeting is open to the public. Individuals wishing to make oral presentations should contact Angie Graziano of the Atlantic OCS Region at (703) 787–1118 by March 21, 1991. Written statements should be submitted by the same date to the Atlantic OCS Region, Minerals Management Service, 381 Elden Street, Suite 1109, Herndon, Virginia 22070–4817. A transcript and complete summary minutes of the meeting will be available for public inspection in the Office of the Regional Director at the above address no later than 60 days after the meeting.

Dated: February 26, 1991.

Bruce G. Weetman,

Regional Director.

[FR Doc. 91–5000 Filed 3–1–91; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Air Act; Zimmer Paper Products, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 22, 1991, a proposed Consent Decree in *United States* v. *Zimmer Paper Products, Inc.*, Civil Action No. IP88–194C was lodged with the United States District Court for the Southern District of Indiana. The proposed Consent Decree concerns emissions of volatile organic compounds from a paper-processing plant located in Indianapolis, Indiana. The proposed Consent Decree requires the defendant to achieve and maintain compliance with or to obtain exemption from the currently applicable Indiana State Implementation Plan provisions or to cease all operations at the violating line at the plant. The Consent Decree also requires payment of a civil penalty of $250,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Zimmer Paper Products, Inc.*, D.J. Ref. 90–5–2–1–1196.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, 46 East Ohio Street, 5th Floor, Indianapolis, Indiana 46204; at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044.

A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, [(202) 347–2072). In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page for reproduction cost).

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–5004 Filed 3–1–91; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–21]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATES: April 4, 1991, 8:15 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics, Exploration and Technology (OAET). The Committee, chaired by Dr. Joseph F. Shea, is comprised of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the Committee members and other participants).

TYPE OF MEETING: Open.

Agenda

April 4, 1991

8:15 a.m.—Opening Remarks.
8:30 a.m.—Welcome.
9 a.m.—Synthesis Team Report.
10:15 a.m.—Long Range Plan, Thrust Area Reports.
12 noon—Fiscal Year 92 Status, Space Technology Interdependency Group.

1 p.m.—Code R Response to the Report of the Advisory Committee on the Future of the U.S. Space Program.
2 p.m.—SSTAC/Aerospace Research and Technology Subcommittee Recommendations.
2:30 p.m.—Ad Hoc Review Team Status Update.
2:35 p.m.—OAET Response to Ad Hoc Studies.
3:05 p.m.—Ad Hoc Review Team Final Reports.
3:45 p.m.—Ad Hoc Review Team Interim Reports.
4:15 p.m.—Summary Session.
4:30 p.m.—Adjourn.

Dated: February 26, 1991.

Philip D. Waller,

Deputy Director, Management Operations Office.

[FR Doc. 91-4982 Filed 3-1-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Application for License To Export a Utilization Facility

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application No.:	Description	Value	End use	Country of destination
General Atomics—02/12/91, 02/15/91, XR158	Four (4) complete control rods.	$30,000.00	For use in TRIGA Research Reactor.	United Kingdom.

Dated this 22nd day of February 1991, at Rockville, Maryland

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-5008 Filed 3-1-91; 8:45 am]

BILLING CODE 7590-01-M

Baltimore Gas and Electric Co. (Calvert Cliffs Nuclear Power Plant, Unit 1); Exemption

[Docket No. 50-317]

I

The Baltimore Gas and Electric Company (BG&E/licensee) is the holder of Facility Operating License No. DPR-53, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 1 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Calvert County, Maryland.

II

10 CFR part 50, appendix, J, paragraph III.D.3, requires that licensees perform Type C tests during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are local leak rate tests (LLRTs) of containment isolation valves.

By letter dated January 18, 1991, the licensee requested a one-time schedule exemption from 10 CFR part 50, appendix J, paragraph III.D.3. Specifically the licensee requested a schedule exemption to extend the Type C test (LLRT) on containment isolation valve 1-CVC-515 from March 23, 1991, to June 21, 1991, which is about a three month delay extension beyond the 24-month limit specified in the regulation.

The Commission may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Section 50.12(a)(2)(iii) of 10 CFR part 50 indicates that special circumstance exist when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or significantly in excess of those incurred by others similarly situated. Section 50.12(a)(2)(v) of 10 CFR part 50 indicates that special circumstances exist when an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation.

IV

The proposed exemption will not change plant equipment, operation or procedures, and does not adversely affect either the probability or the consequences of any accident at this facility. The licensee performed maintenance on containment isolation valve 1-CVC-515 in March of 1989 which resulted in the required LLRT being performed on the valve three months earlier than the other Unit 1 containment isolation valves requiring the LLRTs in accordance with the schedule of the above cited regulation. This was initially considered acceptable based on the projected schedule for the Unit 1 spring 1991 outage and projected startup of Unit 2. However, due to area electrical power needs, the Pennsylvania-New Jersey-Maryland (PJM) Network requested that the licensee not shut down the Unit until late in March. In addition, subsequent delays in the startup of Unit 2 would result in conflicts for the licensee's plant staff to provide optimal support for the initial startup process for Unit 2 and shutdown of Unit 1. The requested extension will provide the licensee flexibility to perform its Unit 1 outage tasks while allowing for improved coordination of plant staff to support both units in a safe and efficient manner.

The proposed exemption constitutes a three-month delay in performing the Type C test (LLRT) on containment isolation valve 1-CVC-515. As noted, the extension will accommodate the current schedule for both units, allow the licensee flexibility to perform required tasks, and also allow for improved coordination of the plant staff to support activities of both units in a safe and efficient manner.

Strict compliance with the schedule required by the regulation would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adapted. The requirement to LLRT the containment isolation valves during reactor shutdown, but in no case at intervals greater than two years, presumed that the time interval was adequate to perform the required tests on all the valves during a scheduled refueling outage. As noted, the valve 1-CVC-515 LLRT was performed three months early due to required maintenance and strict compliance with the schedule requirements of the regulation would result in early plant shutdown and impact the current area energy needs. Specifically, unplanned preparation and startup of other generation capacity for the PJM Network, would be necessary. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(iii).

The licensee has made a good effort to comply with the regulations. The required LLRTs have been performed in accordance with the schedule specified in the regulations during previous planned outages. The initial planning and scheduling allowed for the 1-CVC-515 valve to be tested in the upcoming outage and returned to the same sequence as the other valves. However, the unanticipated supply requirements and schedule changes for both units have necessitated the one-time extension request. Thus, there are special circumstances present which satisfy 10 CFR 50.12(a)(2)(v).

V

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) an exemption as described in section III is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section IV. Therefore, the Commission hereby grants the following exemption:

Accordingly, the Commission hereby grants a one-time exemption, as described in section III above from 10 CFR part 50, appendix J, paragraph III.D.3, regarding the schedule for performance of LLRT on containment isolation valve 1-CVC-515 for Calvert Cliffs, Unit 1. This one-time schedule exemption extends the required test date from March 23, 1991 to June 21, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption extension would have no significant effect on the quality of the human environment (56 FR 7420).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of February 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91-5009 Filed 3-1-91; 8:45am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp., et al., (Three Mile Island Nuclear Station Unit No. 1); Exemption

I

GPU Nuclear Corporation (GPUN/licensee) and three co-owners hold Facility Operating License No. DPR-50, which authorizes operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI-1) (the facility) at power levels not in excess of 2568 megawatts thermal. This license provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission or the staff) now or hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Dauphin County, Pennsylvania.

II

The licensee requested an exemption from the Commission's regulations in its letter dated August 30, 1990. The requested exemption is from a requirement in appendix J to 10 CFR part 50 which requires that certain surveillance tests be conducted during the same refueling outage as Inservice Inspections (ISI) required by 10 CFR 50.55a.

The specific requirement is contained in section III.D.1(a) of appendix J, 10 CFR part 50, and states that "after the preoperational leakage rate test (of containment), a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shut down for the 10-year plant inservice inspections." The Type A tests are defined in section II.F of appendix J as "tests intended to measure the primary reactor containment overall integrated leakage rate * * * at periodic intervals * * *." The 10-year inservice inspection is that series of inspections performed every 10 years in accordance with section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The time and plant conditions required to perform the Type A integrated leakage rate tests (ILRTs) necessitates that they be performed during refueling outages. The time interval between ILRTs should be about 40 months (3⅓ years) based on performing three such tests during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months is typically authorized in the Technical Specifications (TSs) issued with an operating license to permit flexibility in scheduling the ILRTs. However, TMI-1 has no such limitation in the TSs.

TMI-1 has had a somewhat unique history in terms of ILRTs, partly as the result of the long shutdown period following the accident at TMI-2. For example, the ISI schedule was interrupted from early 1979 to late 1985 (78 months) during this mandated shutdown period. The first 10-year ISI interval will therefore end in April 1991. Following the preoperational ILRT in 1974, periodic ILRTs were conducted in 1977 (which failed to meet the acceptance criteria), 1978, 1981, 1984, 1986 and 1990. The past five tests met the leakage criteria. Therefore, TMI-1 has met the intent and requirements of appendix J.

Due to the time and plant conditions required to conduct it, the 10-year ISI required by 10 CFR 50.55a also must be conducted during a refueling outage. This ISI will be performed during the eighth refueling outage starting in October 1991. If the requested exemption is not granted, section III.D.1(a) of appendix J would require an additional ILRT to be performed in October 1991, about 22 months after the previous ILRT. This interval would be considerably shorter than the interval of about 40 months implied in Appendix J. More importantly, this interval would not be consistent with either the intent or the underlying purpose of the rule which requires that these Type A tests "* * * be performed at approximately equal intervals during each 10-year

BEST COPY AVAILABLE

service period." (Section III.D.1(a) of appendix J).

The licensee addressed this issue in its exemption request in which it cites from appendix J that "the purpose of the tests are to assure that (a) leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values as specified in the technical specifications * * *." The licensee asserts and the NRC staff agrees that the Type A test conducted in January 1990 met the underlying purpose of the rule in that the required overall leak-tightness of the primary containment was demonstrated. Accordingly, it is not necessary to conduct another Type A test in the forthcoming refueling outage to meet the intent of the rule. Doing another ILRT in the forthcoming refueling outage would not add significantly to the assurance that the overall leakage rate of the primary containment and its penetrations remain within the value specified in the TMI-1 TSs and would not meet the intent of the rule to conduct these tests at approximately equal (40 month) intervals as cited above.

On this basis, we find that the licensee has demonstrated that the "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *." (10 CFR 50.12(a)(2)(ii)).

Each of these two tests (i.e., the Type A test and the 10-year ISI) is independent of each other and provides assurances of different plant characteristics. The Type A tests assure the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI provides assurance of the structural integrity of the structures, systems, and components in compliance with 10 CFR 50.55a. Accordingly, there is no safety-related concern associated with their coupling in the same refueling outage.

On this basis, the NRC staff finds the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A test from the 10-year ISI will not present an undue risk to the public health and safety.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption with respect to one of the requirements of 10 CFR part 50, appendix J, section III.D.1(a):

The TMI-1 Technical Specifications may be revised to delete the requirement that the third ILRT be performed in conjunction with the 10-year inservice inspection. This Exemption does not alter the existing requirement that three ILRTs be performed during each 10-year service period.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (56 FR 2778).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 25th day of February, 1991.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5010 Filed 3-1-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Advance Notice of Plans for Revision of OMB Circular No. A-130, Management of Federal Information Resources

SUMMARY: The Office of Management and Budget (OMB) announces plans to revise OMB Circular No. A-130, Management of Federal Information Resources.

DATES: Persons who wish to comment on OMB's plans for Circular No. A-130 should submit their comments no later than May 3, 1991.

ADDRESSES: Comments should be addressed to: Information Policy Branch, Office of Information and Regulatory Affairs, room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. *Telephone:* (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has statutory responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, as amended), with respect to Federal executive agencies, to develop and implement uniform and consistent information resources management policies; to oversee the development of information management principles, standards, and guidelines and to promote their use; and to promote the application of information technology to improve the effectiveness of the use and dissemination of information.

To fulfill these responsibilities, on December 12, 1985, OMB issued OMB Circular No. A-130, Management of Federal Information Resources (50 FR 52730-52751), which provided a general policy framework for the management of Federal information resources. OMB addressed the need for additional guidance on electronic information collection issues with the publication, on August 7, 1987, of a Notice of Policy Guidance on Electronic Collection of Information (52 FR 29454-29457). On January 4, 1989, OMB published a notice entitled Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214-220) which proposed further development of the information dissemination policy found in Circular No. A-130. On June 15, 1989, OMB published a notice entitled Second Advance Notice of Further Policy Development on Dissemination of Information (54 FR 25554-25558); which, among other things, withdrew the January 1989 notice and announced plans to revise the basic information dissemination policy of Circular No. A-130.

The notice of August 1987 and the two notices in 1989 particularly addressed the management of electronic information, reflecting the fact that agency information holdings are increasingly in electronic format and that agencies are increasingly applying information technology to the management of their information resources. Since 1985, Federal agencies have introduced major new information programs, especially those involving the collection and dissemination of electronic information. Since 1985, Congress has enacted several laws bearing on the Circular, such as amendments to the Paperwork Reduction Act, the Computer Security Act of 1987 (Pub. L. 100-235), and the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503).

Also, since 1985, Congress has held hearings concerning the reauthorization of the Paperwork Reduction Act and has published two reports directly germane to the revision of OMB Circular No. A-130. The reports are:

Federal Information Resources Management Act, Report of the Committee on Governmental Affairs, U.S. Senate, Report No. 101-487, Washington, DC, October 2, 1990

Paperwork Reduction and Federal Information Resources Management Act of 1990, Report of the Committee on Government Operations, U.S. House of Representatives, Report No. 101-927, Washington, DC, October 23, 1990

In response to interest and actions on the part of Congress, the agencies, and the public, OMB has determined that Circular No. A-130 requires a thorough revision. The present notice describes OMB's plans for revising the Circular. While the entire Circular is open for review, OMB plans especially to address the issues enumerated below.

As to timing, OMB intends to proceed first with revision of information dissemination policy. Other topics will be developed concurrently, some requiring more time for completion, some less. OMB will publish all proposed revisions for public comment and anticipates issuing a series of notices during 1991 and 1992 as work on various topics is completed.

OMB intends that the revision of Circular No. A-130 should be an open process, and states its willingness to meet with interested persons who wish to comment on the revision. OMB invites comments both as to whether these are the issues most requiring revising and new formulation of policy, and as to the directions that formulation should take.

1. Information Dissemination Policy. OMB will give first priority to revising the Circular's treatment of information dissemination policy. OMB's approach will focus on the following points:

a. *General Responsibilities.* OMB will revise policy on the general responsibilities of all executive agencies to disseminate government information, elaborating on the nature and extent of the responsibilities.

b. *Management of Information Dissemination, Especially for Electronic Information.* OMB plans to develop guidance concerning the characteristics of sound information dissemination management, including the necessity for planning and for disseminating products and services that are of maximum usefulness to the public. The treatment will emphasize the special characteristics of electronic information dissemination.

c. *Adequate Notice.* "Adequate notice" refers to the requirement that agencies must give public notice before creating, terminating, or making significant changes to major information products. OMB treated the matter in the Federal Register notices of January 4 and June 15, 1989.

d. *Avoiding Monopolistic Practices.* OMB plans to supplement the Circular's treatment of practices to avoid a situation in which the government is sole supplier of information products and services.

e. *User Charges.* The Federal Register notices of January 4 and June 15, 1989, treated the subject of user charges for government information products and services. The notices proposed that user charges for these products and services should be set no higher than the cost of dissemination. OMB plans to revise the Circular consistent with these notices.

f. *The Relationship between Federal and Nonfederal Dissemination of Government Information.* OMB intends to refocus discussion concerning Federal and nonfederal roles and responsibilities with respect to government information dissemination, concentrating on the information user's perspective and the desirability of cooperation between Federal and nonfederal entities.

g. *Depository Libraries.* OMB will revise guidance regarding the depository libraries and encourage agencies to provide electronic information products to the depository libraries.

2. Development of Additional Topics. OMB recognizes that Circular No. A-130 requires fuller treatment of certain aspects of Federal information resources mangement, and plans to develop guidance especially on the following topics.

a. *Role of the States.* The States recommended through the National Governors' Association (NGA) that Circular No. A-130 be broadly rewritten to treat more adequately the role of the States in Federal information resources management. OMB agreed with the recommendation. In its notice of June 15, 1989, OMB stated its intent to work with State organizations to ensure that the role of the States is appropriately articulated. OMB has met several times with officials from NGA, the Council of State Governments, the National Conference of State Legislature, and other State organizations to advance action on this issue.

b. *Records Management.* Circular No. A-130 requires greater attention to records management and disposition as integral components in the information life cycle. These functions have become increasingly important, particularly as agencies design more major information systems for electronic collection and dissemination of information. OMB has formed an informal Interagency Working Group on Records Management to prepare draft materials on this subject for inclusion in a revised Circular.

c. *Electronic Collection of Information.* The notice of August 7, 1987, proposed guidance concerning the electronic collection of information. The great majority of comments on the notice expressed support for the policy guidance; no one voiced general opposition. OMB plans to incorporate the guidance with minor changes.

d. *Electronic Data Interchange (EDI).* EDI, the electronic transfer of commercial and regulatory information between parties, is a key part of the Federal government's strategy to reduce paperwork burden and improve financial management practices. OMB plans to provide guidance to agencies on the establishment and conduct of EDI projects.

e. *Strategic Information Resources Planning and Cost/Benefit Analysis.* Circular No. A-130 requires a detailed framework for strategic information resources management planning. OMB intends to address planning topics such as linking information technology investments to overall agency mission, preparing requirements analyses, creating policy level control and review mechanisms, establishing evaluation schemes for proposed investments, and conducting cost/benefit analyses. If warranted, this framework may be discussed in some detail in an appendix to the Circular.

3. Appendices to the Circular.—a. *Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals.* OMB will revise appendix I to incorporate procedures relating to reporting matching programs pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and will include the guidance found in OMB Bulletin 89-22, Reporting Instructions under the Computer Matching Act.

b. *Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities.* OMB will revise appendix II to reflect changes in law made by the Chief Financial Officers Act and the Budget Enforcement Act of 1990.

c. *Appendix III: Security of Federal Automated Information Systems.* OMB will revise Appendix III to incorporate matters arising from the Computer Security Act of 1987.

d. *Appendix IV: Analysis of Key Sections.* Because appendix IV presents analysis of policy statements, revisions and additions to policy statements will cause changes in the Appendix. See also below, Revision of Format.

4. Other Matters.—a. *Revision of Format.* Many persons have commented on the usefulness of appendix IV: Analysis of Key Sections in understanding Circular No. A-130. OMB plans to review the Circular's format for readability and to determine whether the materials in appendix IV properly belong in the Policy section of the Circular.

b. *Technical Corrections.* At several places Circular A–130 requires correction for technical inaccuracies.

James B. MacRae, Jr.,
Acting Administrator and Deputy Administrator for Information and Regulatory Affairs.

[FR Doc. 91–4979 Filed 3–1–91; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28909; File No. SR–CBOE–91–03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Transaction Fees for Equity Securities Products

Pursuant to section 19(b)(1)d of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 6, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE has established transaction fees for customer, market-maker and member firm proprietary trading of stocks, bonds, rights, warrants and equity hybrid products (collectively, "equity securities products") as follows: [1]

Additions italicized; deletions bracketed.

Per share (bond) transaction fee		[Per share (bond) value fee]
Customer	[$.003] *$.0025*	[$.0001]
Member Firm	$.001	[none]
Market-maker	$.0005	[none]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The CBOE is amending the transaction fees applicable to customer, market-maker and member firm proprietary accounts in equity securities products as set forth above.[2] In general, the CBOE is deleting the Per Share (Bond) Value Fee and is decreasing the Per Share (Bond) Transaction Fee for customer accounts. The Exchange has not amended the fees for member firm and market-maker proprietary transactions. The fees shall apply to all transactions effected after trading in each product begins.

Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–91–03 and should be submitted by March 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 22, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–4968 Filed 3–1–91; 8:45 am]
BILLING CODE 8010–01–M

[1] The fee will be equal to the number of shares times the Per Share (Bond) Transaction Fee.

[2] The transaction fees to be imposed on the trading of equity securities products were established in File Nos. SR–CBOE–90–34 and 91–02 which were submitted to the Commission on December 20, 1990 and January 17, 1991, respectively. See Securities Exchange Act Rel. No. 28725 (December 28, 1990), 56 FR 839 (Notice of Filing and Immediate Effectiveness of File No. SR–CBOE–90–34) and Securities Exchange Act Rel. No. 28859 (February 5, 1991), 56 FR 5716 (Notice of Filing and Immediate Effectiveness of File No. SR–CBOE–91–02).

[Rel. No. 34–28916; File No. SR–MSE–91–7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to its Member Transaction Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is heregy given that on February 7, 1991, the Midwest Stock Exhange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The MSE proposes to amend Section (c), subparagraphs (1) and (2), of the Transaction Fee Schedule of its Membership Dues and Fees by waiving all Item Charges and Value Charges for all transaction in Tape B eligible issues.[1] This fee waiver will apply only to firms sending orders in Tape B eligible securities to the floor of the MSE and will be limited in time to the period beginning with the effectiveness of this submission though December 31, 1991.[2] The MSE previously waived these fees for the time period August 31 through December 31, 1990.[3]

Note: The Current MSE Fees under this section are set forth below:

Shares/trade	Rate
(1) Item Charge:	
1—99	$.25 (per trade).
100—500	.25 (per 100 shares).
501—and over	1.25 (per trade).

Total gross dollar value/Month (in millions)	Rate (per $1,000)
(2) Value charge:	
0.0—10.0	$16.0
10.1—25.0	12.0
25.1—125.0	8.5
125.1—250.0	8.0
250.1—350.0	7.5
350.1—450.0	5.5
450.1—550.0	4.5
550.1—1,000.00	2.5
Over 1,000	1.5

In calculating the value charge (1) The valuation of the first 500 shares per trade will not be included, (2) only the first 500,000 shares will be valued on cross orders, and (3) only the first 50,000 shares will be valued on non-cross trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities to enhance the Exchange's competitive position in these issues.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the waiver of these fees does not affect the existing equitable allocation of dues, fees, and other charges among Exchange members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary of appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Recieved from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or chantes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abroage such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons makig written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–91–7 and should be submitted by March 25, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 25, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91–4969 Filed 3–1–91; 8:45 am]
BILLING CODE 8010–01–M

[1] The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), complies current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American ("Amex"), Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers, Inc. Amex listed Stocks and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Rel. No. 21583 (December 18, 1984), 50 FR 730 (January 7, 1985).

[2] The MSE originally requested that the Item and Value charges for transactions in Tape B eligible issues be waived on a permanent basis. The MSE subsequently requested that the proposed waiver of transaction fees remain in effect only through the end of 1991. See letter from Daniel J. Liberti, Associate Counsel, MSE to Elizabeth A. Pecciarelli, Attorney, Branch of Exchange Regulation, Division of Market Regulation, dated February 15, 1991.

[3] See Securities Exchange Act Rel. No. 28402 (August 21, 1990), 55 FR 37389 (September 11, 1990) (approval of File No. SR–MSE–90–14). The Commission did not receive any comments in connection with this filing.

[Rel. No. 34–28914; File Nos. SR–PSE–91–07 and SR–AMEX–91–02]

Self-Regulatory Organization; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Pacific Stock Exchange, Inc. and American Stock Exchange, Inc. Relating to the Listing of Long-Term Equity Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1991 and February 22, 1991, the Pacific Stock Exchange, Inc. ("PSE") and American

Stock Exchange, Inc. ("AMEX") (collectively "Exchanges"), respectively, filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to modify their respective rules, PSE rule 6.4(d) and AMEX rule 903, Commentary .03, to provide for the listing of long-term options that expire up to 39 months from the date of issuance for all products other than index options. Currently, the Exchanges may list long-term options having up to 24 months to expiration. The Exchanges also propose to allow long-term options to be listed with up to six different expiration months.

The text of the proposed rule changes are available at the Office of the Secretary, AMEX and PSE, and the Commission.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Exchanges currently trade long-term equity options that expire 24 months from the date of issuance. The Exchanges state that these options have generated significant investor interest and consequent trading activity. Accordingly, the Exchanges believe that the listing of long-term options that expire up to 39 months from the date of issuance would fit the requests and needs of retail investors. The two additional expiration months will allow the Exchanges to list options with two expirations between 25 and 39 months, in addition to the four potential expirations between 12 and 24 months.

The PSE proposes that new expiration months for all far-term equity options will be listed at one time, twice yearly, with the expiration month to be determined by the expiration cycle of the underlying security. The PSE also intends to open the far-term options on a day other than the Monday following the Friday on which the near-term month expires, and further intends to open all far-term equity options on one day, with the date to be chosen by the exchange. The AMEX, however, even though under its proposal would have the authority to list two expiration months between 25 and 39 months, intends to list initially only one additional expiration month for each long-term equity options at one time during a given year.

The Exchanges believe that the proposed rule changes are consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchanges be designed to promote just and equitable principles of trade, and to protect public investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes impose a burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed rule Changes Received from Members, Participants, or Others

Written comments on the proposed rule changes were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.[1]

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[2] In particular, the Commission believes that the proposed rule changes are designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and their underlying stocks and contributing to the projection of investors and the maintenance of fair and orderly markets. Specifically, by allowing investors to lock in their hedges for up to 39 months, the PSE and AMEX proposals for long-term equity options will permit investors to protect better their portfolios from adverse long-term market moves. The PSE and AMEX currently list long-term options with expirations of up to two years. These options have met with some initial enthusiasm from market investors. By extending these options out to 39 months, the Exchanges are providing an additional product for investors who desire a long-term hedge. Further, long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with off-exchange customized options or warrants.

The Commission notes that strike price interval, bid/ask differential, and continuity rules will not apply to such long term options series until the time to expiration is less than nine months. This approach is consistent with the approach currently being taken by the Exchanges with regard to thier long-term equity and index options.[3] This approach is being taken initially because of the lack of historical pricing data for long-term equity options. Strike price interval requirements and bid/ask differential rules applicable to equity options currently are based on options that expire nine months from the time they begin trading. Therefore, there currently is no basis for establishing accurate prices for long-term equity options that will expire 39 months from the time they begin trading.

The commission, however, notes that although specific bid/ask differential and continuity rules do not apply to long-term equity options over nine months to expiration, the Exchange general rules that obligate market makers to maintain a fair and orderly market will continue to apply.[4] The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchanges with the authority to make a finding of inadequate market maker performance should these market makers enter into transactions or make bids or offers (or fail to do so) in long-term equity options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to the long-term equity options when the time remaining until expiration is less than nine months.

The Commission also finds that the PSE and AMEX proposal to increase the number of expiration months from four to six is reasonable since it will permit the Exchanges to list options with two expirations between 25 and 39 months, in addition to the four potential expirations between 12 and 24 months. The Commission does not believe that increasing the number of expiration months to six will cause, by itself, a proliferation of expiration months since the Exchanges have stated that they will not list more than two expirations between 25 and 39 months. Nevertheless, the Commission requests that the Exchanges monitor the volume of additional options series listed as a result of this rule change and the effect on each Exchange's system capacity and quotation dissemination displays.

Finally, the Commission believes that the Exchanges proposals to list all three-year long-term equity options at one time is a reasonable exercise of their business judgment. The Commission also does not beleive that listing all long-term options on a date other than the Monday following the Friday on which the near-term month expires raises any significant regulatory issues.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The PSE and AMEX proposed rule changes are identical to a proposal by the Chicago Board Options Exchange, Inc. ("CBOE") to list long-term equity options that were approved on February 15, 1991.[5] Therefore, the Commission believes it is appropriate to approve the proposed rule changes on an accelerated basis so that the Exchanges can begin trading long-term equity options, which will facilitate competition between exchanges for product services to the benfit of public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule changes is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the respective principal office of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers in the caption above and should be submitted by March 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule changes (SR–PSE–91–07 and SR–AMEX–91–02) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: February 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5022 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The AMEX requested expedited review and accelerated effectiveness in its original filing with the Commission. The PSE subsequent to its original proposal requested accelerated effectiveness on February 22, 1991, pursuant to a phone conversation between Jeffrey P. Burns, Staff Attorney, Options Regulation, Division of Market Regulation, and David Semak, Vice-President Regulation, PSE.

[2] 15 U.S.C. 78f(b)(5) (1988).

[3] See Securities Exchange Act Rel. Nos. 28041 (October 16, 1990), 53 FR 40008 (order approving trading of long-term index options on the AMEX); 28514 (October 3, 1990), 55 FR 41400 (order approving trading of long-term equity options on the AMEX); 28569 (October 31, 1990), 55 FR 46882 (order approving trading of long-term index and equity options on the PSE).

[4] See AMEX rule 170 and PSE rule 5 35(f).

[5] Securities Exchange Act Rel. No. 28690 (February 15, 1991) (order approving file no. SR–CBOE–90–22, permitting the trading of three-year LEAPS).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–28912; File No. DTC–90–13]

Self-Regulatory Organizations; The Depository Trust Co.; Order Granting Temporary Extension of a Proposed Rule Change Concerning the Rush Withdrawal Transfer Service

February 25, 1991.

On December 31, 1990, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–90–13) to authorize DTC to continue, on a pilot basis, a Rush Withdrawal Transfer ("RWT") service for corporate issues settling in next-day funds that are not full Fast Automated Securities Transfer ("FAST") issues.[1] DTC is requesting the extension of the pilot program to allow DTC additional time to obtain and submit operational data concerning the proposal and to allow the Commission sufficient time to review that data.

Notice of the proposal was published in the Federal Register on January 16, 1991, to solicit comment from interested persons.[2] No comments were received. This Order extends the pilot program on a temporary basis until August 30, 1991.

The proposed rule change will allow DTC to replace its urgent Certificate on Demand ("COD") [3] withdrawal service for corporate securities issues settling in next-day funds that are ineligible for DTC's FAST program with RWT. Under RWT, DTC will endeavor to make available to participants that request the RWT service for RWT eligible issues, certificates registered in the participant's name (or other name as the participant directs), on a next-day basis. Currently, DTC fills urgents COD withdrawal requests by delivering certificates, on a next-day basis, registered in DTC's nominee name (Cede & Co.) endorsed to the participant.

DTC has operated RWT on a pilot basis for approximately 18 months. A temporary extension of the proposal will allow DTC to gain further operational experience on an ongoing basis and allow DTC time to submit data regarding the operation of the pilot program prior to filing for permanent approval of the proposal. During the temporary extension period, the Commission will continue its review of the proposal and expects DTC to file for permanent approval of the proposal by May 30, 1990.

As discussed in detail in the initial order granting temporary approval, the Commission preliminarily finds that the

[1] DTC's pilot program was initially approved on a temporary basis until December 30, 1989. *See* Securities Exchange Act Release No. 27062 (July 21, 1989), 54 FR 31600. Subsequently, the Commission extended the pilot program until March 31, 1990, and again until December 31, 1990. *See* Securities Exchange Act Release Nos. 27516 (December 7, 1989), 54 FR 52081; and 27862 (March 29, 1990), 55 FR 12761.

[2] Securities Exchange Act Release No. 28766 (January 11, 1991), 56 FR 2059.

[3] An urgent COD withdrawal is a request for immediate delivery of physical certificates. DTC fulfills such requests by removing certificates registered in DTC's nominee name from its vault and endorsing them over to the requesting participant.

proposed rule change is consistent with the requirements of section 17A of the Act as it is designed to facilitate the prompt and accurate clearance and settlement of securities transactions by allowing transfer agents to process ownership transfer on an expedited basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–90–13) be, and is hereby, extended for a temporary period until August 30, 1991.

For the Commission, by the Division of Market Regulatory, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5021 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28908; File No. SR–Amex–90–35]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Increased Annual Fee for Listed Company Equity Issues

On December 19, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to increase the annual fee imposed on Amex listed company equity issues.

The proposed rule change was noticed in Securities Exchange Act Release No. 28740 (January 3, 1991), 56 FR 1039 (January 10, 1991). No comments were received on the proposal.

The Amex proposes to increase the annual fee imposed on listed company equity issues. This annual fee, which is based on the number of outstanding shares of stock, is set forth in 17 separate categories in increments of one million shares. At the present time, the fee ranges from $4,500 for one million shares or less of shares outstanding to $12,500 for shares of stock outstanding in excess of 16 million. The Exchange proposes to increase the fee charged by $1,000 for all 17 categories of shares outstanding. The proposal, therefore, would increase the current minimum fee of $4,500 to $5,500 and increase the maximum fee from $12,500 to $13,500.

The Exchange states that the purpose of the proposed rule change is to increase the annual fee in order to keep the Exchange competitive with other equity exchanges offering similar services. The Exchange also states that its most recent proposal to increase the annual fee imposed on listed company equity issues was filed with the Commission in 1988.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[4] More specifically, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities. The Commission notes that an increase in Amex's annual listing fee was last approved in 1989,[5] and that this increase is modest on an absolute basis. Moreover, the current increases do not place an excessive allocation of Amex fees on its issuers as opposed to members and other persons using its facilities. Accordingly, the Commission believes that it is appropriate to approve the proposed rule change.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: February 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4971 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28910; File No. SR–PHLX–90–39]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Long-Term Equity and Stock Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 28, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange rule 1012, Commentary .03, and Exchange rule 1101A to provide for the listing of long-term equity and stock index options.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list extended long-term equity and stock index options. Specifically, the proposed rule change will permit the Exchange to trade extended far-term option series, defined in the proposal as equity option series that expire twelve to twenty-four months from the time that they are opened for trading, or stock index options series that expire twelve to thirty-six months from the time that they are opened for trading. When the stock index options have less than twelve months to expiration, and when the equity options have less than nine months to expiration, the series' will lose their extended far-term characterization and will be traded like any other non-extended far-term option contract. The extended far-term option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. Quotations for the extended far-term options series need not be posted until they are opened for trading.[2]

Initially, the PHLX plans to list strike price series for the extended far-term options which are at-the-money and twenty per cent in- and out- of the money.[3] The Exchange will introduce new equity options series only when there is a corresponding market move of twenty per cent. For stock index options, however, the Exchange plans to add strike price intervals following a market move of ten to fifteen percent, a policy consistent with the practices of other self-regulatory organizations.

The purpose of the proposed rule change is to provide an additional product for trading on the Exchange that will protect investors by affording them an additional means to hedge their equity portfolios against long-term market risk. Although other hedging products exist, such as financial futures and off-exchange customized derivative products, the Exchange believes that investor interest is served by providing market participants with an additional hedging instrument.

The Exchange believes that rules regarding strike price intervals, bid/ask differentials and continuity should not apply to extended far-term option series until the time to expiration is less than twelve months for stock index options,[4] or less than nine months for equity options because, at this time, no basis has been determined for establishing reasonable prices for stock index options that expire twelve or more months from the time they commence trading or equity options that expire nine months or more from the time they commence trading. The PHLX believes that proper bid/ask differentials and market continuity will be established due to specialists' and registered options traders' ("ROTs") general obligations to maintain a fair and orderly market. In addition, the Exchange intends to monitor regular trading in extended far-term options series to ascertain that markets are maintained appropriately.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange since the proposal will add liquidity to the market by allowing market participants to hedge the risks of their stock and index portfolios over a longer time period with a known and limited cost. In addition, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because it is based entirely on the existing rules of other options exhchanges.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[6] Specifically, the Commission believes that the proposed rule change is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Currently, investors use options to, among other things, hedge the risks associated with holding diversified equity portfolios. The Commission believes that by allowing investors to lock in their hedges for up to two years (three years with stock index options), the Exchange's proposal for long-term options will permit institutions to better protect their portfolios from adverse market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide institutions with an alternative to hedging portfolios with off-exchange customized derivative instruments, or short-term, non-extended exchange-traded equity or stock index options. Accordingly, the Commission believes that the proposed rule change will better serve the long-term hedging needs of institutional investors.

The Commission notes that strike price interval, bid/ask differential, and continuity rules will not apply to such long-term option series until the time to expiration is less than twelve months for stock index options and less than nine months for equity options. This approach is consistent with the approach taken by the Amex, CBOE, and PSE [7] because of the lack of historical pricing data for long-term options. Strike price interval requirements and bid/ask differential rules applicable to index and equity options currently are based on options that expire nine to twelve months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term index and equity options that will expire more than twelve and nine months, respectively, from the time they begin trading.

However, the PHLX has stated that it will monitor closely the trading in long-term index and equity options to gain experience with regard to these options, and that in one year's time it will reexamine the applicability of these rules to long-term options.[8]

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] See Securities Exchange Act Rel. No. 26520 (February 3, 1989), 54 FR 6463 (February 10, 1989) by which the Commission approved a proposed rule change to increase both the annual listing fee and the supplemental listing fee imposed on Amex listed company equity issues (File No. SR–Amex–88–32).

[4] 15 U.S.C. 78f (1988).

[5] See Securities Exchange Act Rel. No. 26520, *supra* note 3.

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1990).

[1] On February 11, 1991, the PHLX amended its proposal to provide that strike price interval, bid/ask differential and continuity rules shall not apply to long-term stock index option series until the time to expiration is less than twelve months. See letter from Murray L. Ross, Esq., Secretary, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated February 11, 1991 ("PHLX amendment letter").

[2] Pursuant to Exchange rule 1000A(a), which makes all Exchange Stock Option Rules, Exchange By-Laws and Policies of the PHLX's Board of Governors applicable to stock index options traded on the PHLX, all of the provisions relating to extended far-term stock options under Exchange rule 1012 also apply to extended far-term stock index options.

[3] See letter from Murray L. Ross, Esq., Secretary, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated January 31, 1991 ("PHLX letter").

[4] See PHLX amendment letter, *supra* note 1.

[5] See Securities Exchange Act Rel. Nos. 25041 (October 16, 1987), 52 FR 4006 (October 28, 1987) (order approving SR–Amex–87–22, providing for the trading of long-term index options on the American Stock Exchange ("Amex")), 24853 (August 27, 1987), 52 FR 33466 (September 3, 1987) (order approving SR–CBOE–87–24, providing for the trading of long-term index and equity options of the Chicago Board Options Exchange ("CBOE")), 28514 (October 3, 1990), 55 FR 41400 (October 11, 1990) (order approving SR–Amex–90–18, providing for the trading of long-term equity options on the Amex), and 28589 (October 31, 1990), 55 FR 46662 (order approving SR–PSE–90–35, providing for the listing of long-term index and equity options on the Pacific Stock Exchange ("PSE")) (collectively termed "Long-Term Options Approval Orders").

[6] 15 U.S.C. 78f(b)(5) (1982).

[7] See Long-Term Options Approval Orders, *supra* note 5.

[8] See PHLX letter, *supra* note 3.

The Commission notes that although specific bid/ask differential and price continuity rules will not apply to long-term index options that have over twelve months to expiration, or to long-term equity options that have over nine months to expiration, the PHLX's general rules that obligate PHLX specialists and ROTs to maintain fair and orderly markets will continue to apply.[9] The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or ROT performance should these specialists or ROTs enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with the maintenance of a fair and orderly market. Finally, the Commission notes that the bid/ask differential and continuity rules will apply to long-term stock index options when the time remaining until expiration is less than twelve months and to long-term equity options when the time remaining until expiration is less than nine months.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register because the PHLX's proposed rule change is identical to proposals by the Amex, CBOE, and PSE to trade long-term equity and index options, which the Commission has already approved.[10] These proposals were subject to a notice and comment period and the Commission did not receive any comments on them. Thus, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can begin trading long-term stock index and equity options. Moreover, since the Amex, CBOE, and PSE have begun trading long-term options, permitting the PHLX to begin trading long-term options will facilitate competition among the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–90–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: February 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4972 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[9] See e.g., Exchange rules 1014 and 1020.

[10] See Long-Term Options Approval Orders, *supra* note 5.

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1990).

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

February 25, 1991.

On February 11, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7–6531	ASTA	AST Research, Inc., $.01 par value.
7–6532	DELL	DELL Computer, Corp., $.01 par value.
7–6533	MCCS	MEDCO Containment Services, Inc., $.01 par value.

The above-referenced issues are being applied for as an expansion of the exchange's program in which OTC securities are being traded pursuant to a grant of UTP.

Comments

Interested persons are invited to submit, on or before March 18, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4967 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–28916; International Series Rel. No. 236; File No. SR–NASD–91–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 13, 1991 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE") for a pilot term of two years.[1] This experimental linkage permits an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half of its "pilot group" of linkage securities. NASD and ISE members that function as market makers in one or more of a subset of linkage securities that are quoted in both the NASDAQ and ISE dealer systems ("common issues") may access linkage information without paying a separate charge to receive it. Operation of the linkage in accord with the terms of the October 1987 Order was extended through February 28, 1991, with the Commission's approval of File No. SR–NASD–90–65.[2]

Pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, the NASD submits this proposed rule change to obtain Commission approval for continued operation of the NASD/ISE linkage for 6 months, *i.e.*, through August 31, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extenion of the Commission's temporary approval of the NASD/ISE linkage for 6 months through August 31, 1991. Absent an extension, the NASD's link with the ISE will terminate as of March 1, 1991. During the requested extension period, there will be no change in the linkage's operational characteristics or access terms. In sum, the NASD/ISE linkage will continue to operate in accord with the terms of the October 1987 Order.

During the proposed extension, the NASD and ISE will continue to explore various options regarding the linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage or the pursuit of other initiatives that may be more responsive to the business needs of the sponsors' constituencies. Either outcome will entail another Rule 19b–4 filing that will afford the Commission (and other interested parties) an opportunity to focus on relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage, as proposed, would be supportive of the NASD's and ISE's efforts to define system linkages capable of accommodating cross-border trading more efficiently.

Another factor likely to affect the evaluation of the NASD/ISE linkage is the introduction of NASDAQ International Service ("SERVICE"), the subject of File No. SR–NASD–90–33.[3] Essentially the SERVICE would extend the NASD's automated market-making systems to a European Session running from 3:30 to 9 a.m. (ET) on each U.S. business day. During this period, participating broker-dealers can utilize the SERVICE to quote markets in selected NASDAQ and exchange-listed securities by means of trading facilities located in the U.S. or the U.K. Given the SERVICE's potential for supporting trading in U.S.-registered securities by institutional investors (both foreign and domestic), the structure of the NASD/ISE linkage may be substantially altered. Until the SERVICE has been approved and the NASD has had an opportunity to evaluate its operation, the NASD believes that it is appropriate to maintain the NASD/ISE linkage in its present form.

The statutory bases for the NASD/ISE pilot linkage and the requested extension thereof, are contained in sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordinatioin with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commission's efforts to advance the process of internationalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/ISE pilot linkage, the Commission referenced certain competitive concerns raised by Instinet Corporation ("Instinet") through counsel.[4] In response, the NASD, after consultation with the ISE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR–NASD–87–20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR–NASD–89–44 (which resulted in the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and ISE determine to seek permanent approval of the linkage, every effort will be made to supply the Commission with the empirical data

[1] Securities Exchange Act Rel. No. 24879 (October 8, 1987), 52 FR 37884 (October 9, 1987), (the "October 1987 Order").

[2] Securities Exchange Act Rel. No. 28663 (November 30, 1990), 55 FR 50430 (December 6, 1990).

[3] See Securities Exchange Act Rel. No. 28223 (July 18, 1990), 55 FR 30338 (July 25, 1990); and Rel. No. 28705 (December 17, 1990), 55 FR 52341 (December 21, 1990).

[4] See Securities Exchange Act Rel. No. 23158 (April 21, 1986), 51 FR 15969 (April 29, 1986). See also letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, Securities and Exchange Commission, dated April 16, 1986.

needed for its deliberations on that rule 19b–4 filing.

With respect to the instant filing, the NASD believes that a six-month extension of the linkage pilot will not create any competitive burden *vis-à-vis* Instinet or any other vendor of securities market information. The linkage will continue to operate in accord with the terms of the October 1987 Order. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent rule 19b–4 filing involving permanent approval and/or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the **Federal Register**, and, in any event, by February 28, 1991, the last business day before expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in section 3 of this rule 19b–4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internationalization of securities markets through more efficient computerized systems. Assuming Commission approval of File No. SR–NASD–90–33, operation of the SERVICE may also affect discussion of the future of the NASD/ISE linkage. Under these circumstances, it would be counterproductive to allow the NASD/ISE linkage to cease operation. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of this rule change to a date no later than February 28, 1991.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and ISE to consider feasible options for enhancing the linkage of defining other automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/ISE linkage should not be terminated while these efforts are ongoing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 25, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an additional six (6) month period, inclusive of August 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: February 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4975 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–29015; File No. SR–NYSE–90–33]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Look-at-the-Book Information

I. Introduction

On July 19, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to make available to securities information vendors and "self-vending" member organizations and other financial institutions (collectively, "customers") a specified portion of the limit orders for securities included on the Exchange's Display Books.[3] Amendment No. 1, which clarified certain language in the proposal, was submitted to the Commission on December 18, 1990.[4] The information the Exchange proposes to make available would be known as Look-at-the-Book Information.[5]

The proposed rule change was noticed in Securities Exchange Act Release No. 28375 (August 24, 1990), 55 FR 35487 (August 30, 1990). The Commission received one comment letter on the proposal.[6]

II. The Proposal

The Exchange proposes to make available to its customers a specified portion of the limit orders for securities included on Display Books through its Look-at-the-Book service.[7] The NYSE currently proposes to distribute eight prices around the current market with total buy/sell limit order quantities for 50 securities. In effect, Look-at-the-Book would present one page of the Display Book. The Exchange proposes to make the Look-at-the-Book information available on a periodic basis during the trading day. Initially, the information would be made available three times per day: after the opening of trading, at midday and prior to the close of trading.[8]

The Exchange states that the Look-at-the-Book information would be made available to customers on a non-exclusive basis. The Exchange proposes to make the information available to customers in a "magazine" or "page" format through the facilities of the Securities Industry Automation Corporation ("SIAC"). Under this proposal, customers would supply their own equipment and communication lines for placement at one of the SIAC operational sites. After receiving the information, customers would be able to display Look-at-the-Book information in the same "magazine" or "page" format in which they receive it and also would be able to retransmit that information internally and to their subscribers.

The Exchange states that it would use a new system to extract Look-at-the-Book information from the Exchange's Display Book system and forward that information to customers. The Exchange also states that it would make Look-at-the-Book information available through different facilities than it currently uses for other data dissemination and communication purposes, thereby assuring that the Look-at-the-Book information facilities will not adversely affect the capacity or operation of any other Exchange system. Finally, the Exchange states that although initially it will not impose any fees for access to Look-at-the-Book information, it reserves the right to do so in the future.[9]

The Exchange states that the purpose of the proposed rule change is to foster the widespread dissemination of limit orders included on the Exchange's Display Books. The Exchange believes that by broadening the distribution of limit order information to market participants such as brokers, dealers and investors, it will improve the efficiency and effectiveness of market operations and enhance the ability of market participants to make informed investment decisions.

III. Comments Received

The Commission received one comment letter on the proposed rule change, from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc. and Morris Mendelson, Professor of Finance, the University of Pennsylvania.[10] Messrs. Peake and Mendelson recommend that the Commission hold hearings on the NYSE's proposal in order to examine the merits of the Look-at-the-Book proposal. In support of this assertion for hearings on the proposal, Messrs. Peake and Mendelson raise several arguments. First, they argue that there are a number of unanswered questions with respect to the operation and format of the proposal.[11] Second, they argue that the proposal does not allow investors to execute against the bids or offers displayed, which raises the potential for market manipulation where fictitious bids and offers may be entered just prior to the displays. Third, they argue that because the NYSE reserves the right to charge customers for their use of Look-at-the-Book, subscribers will not be able to compare the cost of Look-at-the-Book with potential benefits of the service. Finally, Messrs. Peake and Mendelson argue that the NYSE's proposal adds very little useful information for the public investor.[12]

The NYSE has responded to the issues raised by Messrs. Peake and Mendelson with respect to the operation and format of the Look-at-the-Book proposal.[13] First, Messrs. Peake and Mendelson assert that the proposal does not indicate which securities would be included in Look-at-the-Book and who would select the securities. In response, the Exchange has stated that it will include 50 securities in Look-at-the-Book. The 50 specific securities the Exchange initially intends to include in Look-at-the-Book are the 30 Dow Jones Industrial Average stocks, 10 utilities stocks from the Dow Jones Utilities Index and 10 transportation stocks from the Dow Jones Transportation Index. The Exchange has indicated that it selected these 50 securities because they are stocks that are of interest to the public. In addition, the Exchange has stated that it selected these 50 stocks, rather than all 1800 which are traded on the NYSE, so that the Exchange could study Look-at-the-Book in a controlled environment. Second, Messrs. Peake and Mendelson assert that the proposal does not specify what portion of a specialist's limit order book would be made available as a result of Look-at-the-Book. In response, the NYSE stated that it intends to distribute eight prices around the current market with total buy/sell limit order quantities for the 50 securities.

Third, Messrs. Peake and Mendelson ask why the Look-at-the-Book information will be made available three times a day rather than continually. In response, the Exchange stated that it determined to present the Display Book information after the opening, at 10 a.m., and prior to the close, at 3 p.m., because trading is most active at these two times of the day. The Exchange also decided that making Look-at-the-Book information available at the mid-point of the trading day, at 12:30 p.m., would be useful for comparison purposes and because mid-day represents a point half-way between the opening and the close of trading. The Exchange has indicated that it intends to obtain feedback from subscribers after six months as to the utility of presenting Look-at-the-Book information more frequently or continually. The Exchange also stated that the proposal will allow the Exchange to examine the effect on its systems of presenting Look-at-the-Book information three times a day for 50 stocks in order to determine what system enhancements would be necessary to disseminate Look-at-the-Book information for all 1,800 stocks traded on the NYSE on a continuous basis.

---

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The Display Book is a chronological log used by specialists to keep a record of the buy and sell orders they receive for execution at specified prices.

[4] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Commission, dated December 17, 1990 by which the NYSE clarified the specific times of day at which the NYSE will make the Look-at-the-Book information available. Amendment No. 1 specifies that the Exchange will make this information available after the opening of trading, at 10 a.m.; at midday, 12:30 p.m.; and at 3 p.m.

[5] The term "Look-at-the-Book" is a service mark of the Exchange.

[6] See letter from Junius W. Peake, Chairman, the Peake/Ryerson Consulting Group, Inc., and Morris Mendelson, Professor of Finance, University of Pennsylvania, to the Secretary, Commission, dated July 30, 1990.

[7] Currently, NYSE Rule 115 prohibits a specialist from directly or indirectly disclosing to any person, other than a Floor Official or other official of the Exchange, any information regarding the orders entrusted to the specialist, except under certain limited circumstances. For example, the specialist may disclose information contained in his or her book for the purpose of demonstrating the methods of trading to visitors to the Floor and to other market centers in order to facilitate the operation of the Intermarket Trading System. NYSE Rule 115, however, does not preclude the Exchange from making such information available. See NYSE Rule 115.

[8] See *supra* note 4.

[9] Any fees imposed by the Exchange would have to be filed with the Commission pursuant to section 19 of the Act.

[10] See *supra* note 6.

[11] Specifically, the letter asserts that the proposed rule change does not indicate: (1) Which securities will be included in Look-at-the-Book; (2) who will decide which securities are included; (3) what portion of the specialist limit order book will be made available; (4) why the information will be made available only three times a day rather than continually; (5) why the information will be displayed in page rather than digitized format; and (6) why the Exchange is not using the Consolidated Quote System ("CQS") for Look-at-the-Book.

[12] Messrs. Peake and Mendelson also raise several issues with respect to the general operation of the national market system. The Commission believes these issues are beyond the scope of the proposal submitted by the NYSE and are not germane to the Commission's analysis of the proposed rule change.

[13] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Commission, dated August 14, 1990, and telephone conversation between Donna Pellicano, NYSE, and Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, Commission, October 30, 1990.

Fourth, Messrs. Peake and Mendelson ask why the Look-at-the-Book information will be presented in page rather than in digitized format. In response, the Exchange stated that the limit order information will be presented in digital format and would consist of a unit of eight prices around the current market. The NYSE stated that it selected a set digital format in order to ensure that subscribers would not take the prices of the various limit orders out of context.

Finally, Messrs. Peake and Mendelson ask why the Exchange is not using the CQS for Look-at-the-Book. In response, the Exchange stated that it determined not to use the CQS for Look-at-the-Book because the CQS collects and disseminates current bid and offer quotations from and to all market centers in which listed stocks are traded. Through Look-at-the-Book, on the other hand, the Exchange proposes to make available a "page" containing certain limit order information which may contain not only the current bid and offer for a particular stock, but also may include other information not currently disseminated through CQS, including prices away from the market and size. The Exchange believes that it would not be appropriate to use the CQS to disseminate Look-at-the-Book information because CQS does not currently have the capacity to disseminate this information.

IV. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 1

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) [14] of the Act. Section 6(b)(5) of the Act requires, among other things, that an exchange have rules which are designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C)(iii) of the Act states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

[14] 15 U.S.C. 78f and 78k-1 (1988).

The Commission believes that the NYSE's Look-at-the-Book proposal, which will make available to brokers, dealers, and investors limit order information included on the NYSE's Display Books, should further the principles of section 6(b)(5) as well as section 11A of the Act by broadening the public dissemination of market information. Because limit orders are orders to buy or sell a security at a specific price, the orders represent potentially valuable information with respect to the conditions of the market. At the present time, Exchange specialists are prohibited from disclosing this information publicly.[15] Through Look-at-the-Book, the NYSE proposes to provide an opportunity for market participants to access limit order information for 50 securities three times per day. Look-at-the-Book would display the best buy and sell limit orders as well as the three preceding buy and sell orders, and the quantity at each price. As a result, Look-at-the-Book should promote section 6(b)(5)'s objectives and enhance the ability of market participants to make informed investment decisions. Moreover, the NYSE's concept of providing access to its Display Books is consistent with suggestions offered by various studies of the October 1987 Market Break.[16]

The Commission also believes that the proposal is consistent with section 11(b) of the Act.[17] Section 11(b), among other things, prohibits a specialist or Exchange official from disclosing information with respect to specialist orders which is not available to all members of the Exchange to any person other than an official of the Exchange, a representative of the Commission, or a specialist who may be acting for such specialist. Because Look-at-the-Book will make Display Book information available to securities information vendors, "self-vending" member organizations and other financial institutions on a non-exclusive basis, the Commission believes that the information is available to all members of the Exchange. Accordingly, the proposal is consistent with section 11(b)'s requirements.

[15] See *supra* note 7.

[16] See, *e.g.*, *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report"), at vii (January 1988). *See also* Wells Fargo Investment Advisors, *Reflections on the Stock Market Crash of October 1987* ("Wells Fargo Report") at 23 (January 25, 1987). Both the Brady Report and the Wells Fargo Report concluded that making the specialist book public could address market volatility by providing public investors with the opportunity to respond to large order imbalances.

[17] 15 U.S.C. 78k (1988).

According to the NYSE, the systems supporting the Look-at-the-Book service have adequate capacity, security and contingency protections. Moreover, according to the NYSE's representations, the implementation of the proposed rule change will have no adverse effect on the capacity or security of the Exchange's other systems (such as the Display Book).

The Commission does not agree with the recommendation of Messrs. Peake and Mendelson that it is necessary to hold hearings on the Look-at-the-Book proposal. The proposal was published in the **Federal Register** for the full statutory period under the Act [18] which gave interested persons the opportunity to express their views and arguments with respect to the proposal. In fact, the Commission received only one comment letter, from Messrs. Peake and Mendelson, as a result of the proposed rule change. As described below, the Commission believes that the NYSE has addressed the relevant questions raised in the comment letter. The Commission, therefore, finds that it has met its statutory notice requirements under section 19 of the Act [19] through publication of the proposed rule change which provided the opportunity for the submission of written views and comments by interested persons, and believes it is unnecessary to hold hearings on the proposal.

After careful consideration of Messrs. Peake and Mendelson's substantive arguments with respect to the proposal, the Commission believes that the NYSE's Look-at-the-Book proposal adequately addresses the issues raised in their comment letter. Many of the substantive issues raised by Messrs. Peake and Mendelson were addressed adequately in the NYSE's Notice of Proposed Rule Change as published in the **Federal Register**. For example, the Notice responds to the questions raised by Messrs. Peake and Mendelson regarding the number of securities and the range of prices thereof which will be included in Look-at-the-Book as well as who will select the securities. The Notice states that the NYSE will provide the limit order information for 50 securities included on the Display Books, with eight prices for the securities around the current market.[20]

The remaining issues raised by Peake and Mendelson also do not dictate against approval of the proposal.[21] The Commission believes it is reasonable for the Exchange to craft a limited, controlled design for the project to gain experience with Look-at-the-Book. Thus, the decision to disseminate information only three times a day and in page format, as well as the Exchange's plan for the other aspects of the project, are within the NYSE's discretion in designing the initial phase of Look-at-the-Book.[22]

Moreover, the Commission does not believe that the absence of an automatic execution capability against bids or offers displayed on Look-at-the-Book leads to a substantial potential for market manipulation. Indeed, by providing dissemination of more market information to the public, Look-at-the-Book should decrease the potential for market manipulation by exposing order flow to all market participants. The placement of fictitious orders on the book away from the best quoted market would appear to be an extremely ineffective means to effect manipulation. At best, such orders suggest below the market. They in no way suggest an upward or downward trend likely to influence other persons to purchase or sell the security. Thus, the entry of fictitious quotations which improve the best market or the aggressive effectuation of transactions would appear far better vehicles for manipulation than the entry of fictititous limit orders. Finally, were any manipulation attempted, the NYSE's electronic book would provide a locked in audit trail of all orders. Accordingly, any concerted entry of orders shortly before a dissemination of the book information would be easily detectable. The Commission believes that the market benefits of providing investors with information regarding order imbalances, albeit on a limited basis, far outweigh any theoretical concerns regarding the increased potential for market manipulation.

Finally, the Commission does not believe that because the NYSE reserves the right to charge its customers for Look-at-the-Book, potential customers will not be able to weigh the costs and benefits of subscribing to Look-at-the-Book. The Commission expects that any customer who subscribes to Look-at-the-Book will become aware of any benefits of the system, and would be able to weigh these against the costs of any system fees the Exchange may impose in the future. In addition, any fees imposed by the Exchange for Look-at-the-Book would have to be filed with the Commission pursuant to section 19 of the Act.[23]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The proposed rule change which was published in the **Federal Register** for the full statutory period provided that the Look-at-the-Book information would be made available three times a day.[24] The proposed amendment is simply a clarification of the three specific times of day that the Exchange proposes to make the Look-at-the-Book information available to customers.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Dated: February 25, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-4970 Filed 3-1-91; 8:45am]

BILLING CODE 8010-01-M

[18] See Securities Exchange Act Release No. 28375 (August 24, 1990), 55 FR 35487 (August 30, 1990) ("Notice of Proposed Rule Change"). See *infra* note 19.

[19] 15 U.S.C. 78s(b)(1) (1988). Section 19(b)(1) of the Act provides that the Commission, upon the filing of a proposed rule change, must publish notice thereof and give interested persons the opportunity to submit written data, views, and arguments concerning the proposed rule change.

[20] See Notice of Proposed Rule Change, *supra* note 18 (citing letter from James E. Beck, Senior Vice President and Secretary, NYSE to Mary Revell, Branch Chief, Commission, dated August 14, 1990).

[21] See *supra* note 13 and accompanying text.

[22] In light of the potential value of limit order information in indicating the depth of the market, the Commission believes that continuous updates of such information would appear desirable. Moreover, information regarding priced orders prior to the opening also appears to be beneficial to market participants and public customers. In this regard, the NYSE should submit a detailed report on its experience with the initial phase of Look-at-the-Book and its analysis regarding the costs and benefits of a continuous update system to the Commission by September 1, 1991. In addition, any increase in the number of securities included in Look-at-the-Book beyond the initial 50 securities would have to be filed with the Commission as a proposed rule change pursuant to section 19 of the Act.

[23] See *supra* note 19 for a general summary of section 19 notice requirements.

[24] See Notice of Proposed Rule Change, *supra* note 18.

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30-3(a)(12) (1988).

1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE") and the Cincinnati Stock Exchange, Inc. ("CSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock has been listed for trading on the National Association of Securities Dealers Automated Quotation System ("NASDAQ")/National Market System ("NMS") since February 7, 1989. According to the Company, the NASDAQ/NMS listing provides an adequate market for the trading of its common stock. In addition, delisting from the PSE and CSE will allow the Company to realize certain cost savings.

Any interested person may, on or before March 19, 1991, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the CSE and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-4973 Filed 3-1-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18017; International Series Rel. No. 234; 812-7684]

Thomson Fund Group; Application

February 25, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Thomson Fund Group.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) and rule 12d3-1.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in equity or convertible debt securities of foreign issuers that, in each

---

Issuer Delisting; Application to Withdraw From Listing and Registration (Provident Bancorp, Inc., Common Stock, No Par Value) File No. 1-8019

February 26, 1991.

Provident Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of

of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser ("foreign securities companies") in accordance with the conditions of the proposed amendments to rule 12d3–1.

FILING DATE: The application was filed on February 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and servicing applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1991, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One State Street Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–2023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company registered under the Act. Applicant currently offers nine series shares. Applicant is managed by Thomson Advisory Group L.P. Warburg Investment Management International Ltd. and Van Eck Associates Inc. each serves as sub-adviser to one series of applicant.

2. Applicant seeks to be able to diversify further the assets of some of its series by being permitted to invest in foreign issuers that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter, or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the Act and rule 12d3–1 thereunder to invest in securities of foreign securities companies to the extent allowed in the proposed amendments to rule 12d3–1 ("Proposed Amendments"). See Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989). Applicant's proposed acquisitions of securities issued by foreign securities companies will satisfy each of the requirements of the Proposed Amendments.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1 under the Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the rule. Subparagraph (b)(4) of rule 12d3–1 provides that "any equity security of the issuer * * * [must be] a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." "Margin security" status is, generally speaking, available only to securities traded in United States markets.[1] Accordingly, applicant seeks an exemption from the "margin security" requirement of rule 12d3–1.

2. The Proposed Amendments provide that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the Proposed Amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989).

Applicant's Condition

Applicant agrees to the following condition in connection with the relief requested: Applicant will comply with the provisions of the proposed amendments to rule 12d3–1 (Investment Company Act Release No. 17096 (August 3, 1989); 54 FR 33027 (August 11, 1989)), and as such amendments may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–4674 Filed 3–1–91; 8:45 am]

BILLING CODE 8010–01–M

[1] The staff of the Division of Investment Management notes that the Board of Governors of the Federal Reserve System recently amended Regulation T to include "foreign margin stock[s]." However, because the requirements for inclusion on the Board's "List of Foreign Margin Stocks" are generally more restrictive than the requirements for a "margin security" traded in the United States markets, securities issued by many foreign securities firms are not included in the definition of "foreign margin stocks" under Regulation T. See 12 CFR 220.2 (l) and (g)(6).

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0031.
Form Number: PD 3570.
Type of Review: Extension.
Title: Request for Reissue of United States Retirement Plan or Individual Retirement Bonds to Correct an Error in Registration.
Description: Used by bond owners to request reissue of their retirement type savings bonds to correct the registration.
Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535–0033.
Form Number: PD 3564.
Type of Review: Extension.
Title: Request for Reissue of United States Retirement Plan or Individual Retirement Bonds to Change Beneficiary or Reflect Change of Name.
Description: Used by bond owner to request reissue of retirement securities to change beneficiaries or to reflect a change in name.
Respondents: Individuals or households.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 17 hours.

OMB Number: 1535–0035.
Form Number: PD 4881.
Type of Review: Extension.
Title: Application for Payment of United States Savings Bonds/Notes and/or Related Checks in an Amount Not Exceeding $1,000 by the Survivor of a Deceased Owner Whose Estate is Not Being Administered.
Description: Used by survivors of deceased bond owners to apply for proceeds from bonds, or related checks.
Respondents: Individuals or households.
Estimated Number of Respondents: 3,965.
Estimated Burden Hours Per Response: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 991 hours.

OMB Number: 1535–0036.
Form Number: PD 2513.
Type of Review: Extension.
Title: Applicafion by Voluntary Guardian of Incompetent Owner of United States Savings Bonds/Notes.
Description: Used by voluntary guardians of incompetent bond owner(s) to establish their right to act on behalf of the incompetent in requesting payment of the bonds.
Respondents: Individuals or households.
Estimated Number of Respondents: 7,650.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,600 hours.

OMB Number: 1535–0086.
Form Number: PD 5262.
Type of Review: Extension.
Title: Reinvestment Request for Treasury Notes and Bonds
Description: This form is used to request the reinvestment of a Treasury note or bond at maturity, to cancel a reinvestment request or change a reinvestment that was previously requested.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 140,000.
Estimated Burden Hours Per Response: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 14,000 hours.
Clearance Officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW, Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–4960 Filed 3–1–91; 8:45 am]

BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review.

Date: February 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545–0367.
Form Number: IRS Forms 4804 and 4802.
Type of Review: Extension.
Title: Transmittal of Information Returns Reported Magnetically/Electronically (4804) and Transmittal of Information Reported Magnetically/Electronically (Continuation of Form 4804).
Description: 26 U.S.C. 6041 and 6042 require that all persons engaged in a trade or business and making payments taxable income must file reports of this income with IRS. In certain cases, this information must be filed on magnetic media. Forms 4804 and 4802 are used to provide a signature and balancing totals for magnetic media filers and information returns.
Respondents: State or local governments, Farms, Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 37,640.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 4804	Form 4802
Recordkeeping	18 min.	18 min.
Preparing and sending the form to IRS.	16 min.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 45,406 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–4961 Filed 3–1–91; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 26, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0284.
Form Number: IRS Form 5309.
Type of Review: Extension.
Title: Application for Determination of Employee Stock Ownership Plan.
Description: Form 5309 is used in conjunction with Form 5300 or Form 5303 when applying for a determination letter as to a deferred compensation plan's qualification status under section 409 or 4975(e)(7) of the Internal Revenue Code. The information is used to determine whether the plan qualifies.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 462.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hrs., 30 min.
Learning about the law or the form—1 hr., 23 min.
Preparing and sending the form to IRS—1 hr. 32 min.

Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 3,895 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 91-4962 Filed 3-1-91; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 42
Monday, March 4, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 3:00 p.m. on Tuesday, February 26, 1991, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum re: Legal Division Management Information System Proposal.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: February 27, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 91-5094 Filed 2-27-91; 4:40 pm]
BILLING CODE 6714-01-M

DEPARTMENT OF JUSTICE PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94-409) (5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, February 26, 1991 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815. The meeting ended at or about 10:30 a.m. The purpose of the meeting was to decide approximately 7 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Further, a portion of the meeting was for the purpose of the approval of hearing examiners pursuant to 18 U.S.C. 4204(a)(2)(A). Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, anc carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, and Victor M.F. Reyes.

In witness whereof, I made this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 27, 1991.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.
[FR Doc. 91-5165 Filed 2-28-91; 1:51 pm]
BILLING CODE 4410-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, March 20, 1991, at 10:00 a.m.

ADDRESS: The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: February 27, 1991.

M.J. Brodie,
Executive Director.
[FR Doc. 91-5182 Filed 2-28-91; 3:47 pm]
BILLING CODE 7630-01-M

OL
56
SS
42
M R
4
9 91
M I

federal register

Monday
March 4, 1991

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

Application of the Employee Polygraph Protection Act of 1988; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 801

RIN 1215-AA49

Application of the Employee Polygraph Protection Act of 1988

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised regulations under the Employee Polygraph Protection Act of 1988. These regulations provide most employees and prospective employees in the private sector with protections against lie-detector testing in both pre-employment settings and during the course of their employment, with certain limited exceptions.

EFFECTIVE DATE: April 3, 1991.

FOR FURTHER INFORMATION CONTACT: Charles E. Pugh, Assistant Administrator, Office of Policy, Planning and Review, Wage and Hour Division, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-5409. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Employee Polygraph Protection Act of 1988 ("EPPA" or "Act") was enacted on June 27, 1988. EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. The Act contains several limited exemptions which authorize polygraph tests under certain conditions, including the testing of: (1) Employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) certain prospective employees of private armored car, security alarm, and security guard firms; and (3) certain current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. Federal, State and local government employers are exempted from the Act, with respect to polygraph testing of their employees. In addition, an exemption permits testing by the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions. Employers who violate any of the Act's provisions may be assessed civil money penalties up to $10,000.

Interim final regulations, 29 CFR part 801, were published in the **Federal Register** on October 21, 1988 (53 FR 41494), with an effective date of December 27, 1988 (the effective date of the statute). The **Federal Register** notice provided for an extended comment period until February 27, 1989. A total of 65 comments were received during the comment period on the interim final regulations, from individuals, employers, polygraph examiners, trade associations, and others. Nearly 40 percent of the comments were from individual business firms and trade associations in the security services industry, or law offices and members of Congress on their behalf. Comments were received on behalf of employee interests from the American Pharmaceutical Association, the New Jersey Pharmaceutical Association, and the Service Employees International Union. Several comments were also received from employers and trade associations in the controlled substances industry. In addition, a number of inquiries from the public regarding the regulations were received during the period the interim rule has been in effect and have been included in the rulemaking record. These inquiries have been treated as comments and are summarized herein and dealt with as appropriate. The major issues raised by the commenters and others are identified below, as are the significant changes that have been made in the final regulatory text in response to the comments received. In addition to the substantive comments discussed below, many commenters submitted minor editorial suggestions, some of which have been adopted and some of which have not been adopted. Finally, a number of other minor, editorial, and housekeeping changes have been made to better organize and simplify the regulatory text.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in the interim final rule published on October 21, 1988 (53 FR 41494) were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and OMB approved the requirements for use through December 31, 1991 (OMB control number 1215-0170).

On February 21, 1990 the Supreme Court issued its decision in *Dole* v. *United Steelworkers of America* which held that information collection requirements mandating disclosure of information to third parties, specifically to parties other than the federal government, are not subject to the OMB review process which was established by regulations at 5 CFR part 1320 promulgated under the Paperwork Reduction Act. Consequently, only those portions of the EPPA regulations which require employers to maintain records remain subject to OMB review. These requirements are set forth in §§ 801.12(a)(5) and 801.30.

The Wage and Hour Division has submitted a revised version of the reporting and recordkeeping requirements to OMB. As a result of this revised estimate, the total burden hours estimate has been reduced by 102,735 hours. Public reporting burden for this collection of information, as revised, is estimated to average as follows: 1. Retention of written notice to examinee of polygraph testing—1 minute per response; 2. Retention of written notice to polygraph examiner identifying persons to be examined—1 minute per response; 3. Retention of test record by polygraph examiner—1 minute per response; 4. Retention of record by polygraph examiner of number of EPPA tests conducted daily and length of each test—⅓ minute per response; 5. Retention of test record by employer—1 minute per response; (see 29 CFR part 801.30); including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information.

Send comments regarding this burden to the Office of Information Management, U.S. Department of Labor, Room N-1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Summary of Rule

Part 801 is divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on the use of lie detectors, the posting of notices, and interpretations regarding the effects of the Act on other laws or collective bargaining agreements as provided in section 10 of EPPA. Subpart B sets forth rules regarding the statutory exemptions from the requirements of the Act. Subpart C provides the restrictions on polygraph usage under the applicable exemptions. Subpart D sets forth the recordkeeping requirements and the rules on disclosure of polygraph test information. Subpart E describes the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures

and rules of practice necessary for the administrative enforcement of the Act.

Summary of Major Comments

I. Definitions/Coverage and Related Matters

Poster Requirement (§ 801.6)

Section 4 of EPPA requires the Secretary of Labor to distribute to employers a notice describing employee rights and employer responsibilities. Employers are required to "* * * post and maintain such notice in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted." This required poster was mailed to 7.2 million employers in December 1988. A number of commenters, including five trade associations with national constituencies, expressed concern about the general poster "glut" imposed by Federal and State law or regulations. The National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Food Marketing Institute, and National Retail Merchants Association argued that the poster was unnecessary in States that prohibit the use of the polygraph or have similar notice posting requirements. The National Association of Retail Dealers of America, Inc., urged cooperation among agencies to consolidate poster requirements or, in the alternative, inform Congress of the growing problem. Two other commenters, Cone Mills Corporation and the National Training Center of Polygraph Science, suggested that employers should be excused from the requirement unless they actually use or reserve the right to use polygraph testing. Finally, the American Pharmaceutical Association felt that the content of the poster should be expanded to include a listing of examinee's rights and a toll-free or other telephone number for questions. In addition to these comments, numerous objections to the poster were received from the public after its mailing in December 1988. These concerns focused primarily on the so-called "glut" of posters and/or the need to post if there was no intention by an employer to ever use the polygraph.

The poster requirement is statutory and no authority is provided to waive the requirement by regulation. Twenty-four States and the District of Columbia have laws prohibiting or restricting the use of lie detector tests as a condition of employment or continued employment. While a number of these laws appear to prohibit lie detector tests outright, most permit "voluntary" testing. Replacing the Federal poster requirement with other notices required by State or local governments is complicated by the various differences in the respective statutes. (Under section 10 of EPPA, a more restrictive State law is not preempted by the Federal law.) Further, the costs associated with the development and distribution of a new poster as suggested are not offset by the potential benefits. Accordingly, § 801.6 is adopted in the final rule without change.

Scope of Coverage

The American Polygraph Association indicated that the scope of the Act's coverage was confusing, and suggested a clarification of § 801.3. In this regard, section 3 of the Act extends coverage to "any employer engaged in or affecting commerce or in the production of goods for commerce." Section 801.3 of the interim final rule merely repeated this statutory phrase without any amplification except "* * * unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part."

Although EPPA incorporates the definition of commerce in the Fair Labor Standards Act of 1938 (FLSA), its coverage is much broader than the FLSA, which extends only to employees and enterprises "engaged in commerce or in the production of goods for commerce." In interpreting this phrase, the Supreme Court has often repeated that the FLSA does not extend to businesses merely "affecting commerce," since "Congress did not exercise in this Act the full scope of the commerce power." (See, for example, *Walling* v. *Jacksonville Paper Co.*, 317 U.S. 564, 570-71 (1943).) Courts when reviewing other statutes, like the Age Discrimination in Employment Act, which use language similar to that in EPPA, have found that, by using the phrase "affecting commerce," Congress intended coverage to be coextensive with that of the commerce clause, or as broad as the scope of the clause. (See, for example, *Godwin* v. *Occupational Safety and Health Review Commission*, 540 F. 2d 1013, 1015 (9th Cir. 1976).) Thus, Congress intended for EPPA to have the broadest possible coverage under the commerce clause because of the use of the words "affecting commerce." A review of available legislative history supports this conclusion. Section 801.3 has been modified to make clear that virtually every private employer, without regard to the extent of interstate or intrastate activities, would be covered by the Act's provisions.

Treatment of Tests Administered by Police Authorities

The Office of the Chief Postal Inspector, U.S. Postal Service, indicated a need to clarify the term "directly or indirectly" in § 801.4 with respect to Federal criminal investigations. The Postal Inspection Service (PIS) polygraphs employees of banks, airlines, truck lines, etc. in the course of conducting investigations into criminal misconduct, such as mail loss or theft. Suspect employees are often difficult to locate away from their place of employment. According to PIS, it is a common practice in the law enforcement community to interview and, if the individual agrees, to conduct a polygraph during the employee's tour of duty. The traditional assistance on the part of employers is jeopardized, according to PIS, by the broad language in § 801.4 as employers are concerned that their cooperation will be construed as a violation of the Act's lie detector prohibitions.

The treatment of polygraph tests administered by police authorities during the course of investigations of thefts or other incidents of wrongdoing reported by employers has also been the subject of public inquiries, particularly local government police departments. One of the reasons cited in the legislative history for excluding Federal, State and local governments from the Act's provisions was an intent not to frustrate the criminal investigation process, and these comments have merit. A new paragraph (b) has been added to § 801.4 to make clear that employers are not responsible under EPPA for any test police authorities might decide to administer during the course of their investigation of any theft or other incident involving economic loss which the employer reported to such authorities. This new paragraph also clarifies the type of cooperation or assistance which may be given by an employer at the request of police authorities without incurring any liability under the Act. For example, allowing a test on the employer's premises during working time and similar types of cooperation would not be construed as being within the Act's prohibited conduct. The question also arose concerning practices in some local communities where employers reimburse police examiners for tests conducted on employees suspected by the employer of wrongdoing, and practices in some communities where police authorities request employer testing of employees before an investigation is initiated on a reported

theft. Activities within the Act's prohibitions would include all tests in which employer participation is direct, i.e., employer administers the test at the request/direction of police authorities, or indirect, i.e., employer reimburses police authorities for the costs of tests they administer. These limitations are necessary to prevent evasion of the Act's prohibitions through such actions. Additionally, a new subsection (c) makes clear that a fairly common practice of police authorities to disclose test results to employers, particularly when the test indicates deception on the part of an employee, causes the employer to violate section 3(2) of the Act, which prohibits employers from "using, accepting, or inquiring" about the results of a lie detector test.

Definition of State and Local Governments

The phrase "State or local government or political subdivision of a State or local government" is not defined in section 801.10 of the interim rule. Additional clarification is provided as a result of questions raised about the status of certain governmental entities. A new paragraph (c) interprets the term, consistent with relevant case law (*NLRB* v. *Natural Gas Util. District of Hawkins County, Tenn.* 402 U.S. 600 (1971)) to provide guidance in the determination of whether or not an entity is a "political subdivision" and, thus, within the scope of the governmental exemption.

Use of Polygraph as a Placebo

Questions were raised by public inquirers about the use of the polygraph instrument as a placebo (i.e., using lie detector equipment not for the purpose of rendering any diagnostic opinion, but as a simulated or threatened tool for persuasion), indicating a need to clarify whether or not such conduct violates the prohibitions in section 3 of the Act. During the pretest phase of an examination, the interrogation of the examinee often elicits confessions or other admissions of wrongdoing. Apparently the threat of being connected to the instrument is often effective in gaining information.

Section 3 of the Act, in general, prohibits an employer from requiring, requesting, *suggesting* (emphasis supplied) or causing, directly or indirectly, any employee or prospective employee to take a lie detector test. Threatening to use a lie detector instrument, having it in the room, or connecting the instrument to an examinee without actually using it for purposes of rendering any diagnostic opinion (placebo) gives the appearance that the instrument is available, or in fact, being used for diagnostic purposes. In the view of the Department, this indirect or simulated use of the instrument is within the broad prohibition of section 3(1) of EPPA. Placing the instrument in the room used for questioning, unconnected to the employee or prospective employee, does not alter this conclusion. The mere suggestion or threat that the instrument is to be used during the course of the interview would also be within the scope of prohibited lie detector uses.

Accordingly, a new paragraph (d) has been added to § 801.4 to make clear the Department's interpretation that such uses of a polygraph instrument are prohibited.

Handwriting Tests

The definition of the term "lie detector" specifically excludes written or oral tests commonly referred to as "honesty" or "paper and pencil" tests. Another method used to evaluate the personality profile of job applicants is "graphoanalysis" or handwriting analysis testing, and questions were raised regarding the application of the statute to such graphology tests. While the validity of graphology is a matter of public debate and skepticism, like paper and pencil tests, it is the view of the Department that such handwriting tests are not precluded by the statute. The definition of the term "lie detector" in § 801.2(d)(2) has been modified accordingly.

Voice Stress Analyzers

Questions arose as to whether interview/interrogation systems that use voice stress analysis fall within the statutory definition of "lie detector". Under such systems, an interview with a job applicant or an employee is tape recorded, and the recording is replayed through a psychological stress evaluator instrument which is locally situated or replayed across phone lines to a distant location. The prospective employee or employee may or may not know that the interview is to be tape recorded, and, in most cases, is not informed that the recording will be processed through a device for purposes of measuring stress in their responses to questions asked during the interview. The user of the system is typically provided a report which may only identify levels of stress. However, the employers or other users generally understand that the measurement of stress associated with an answer implies deception. Section 801.2(d)(1) has been revised to make clear that this type of voice stress analysis is within the scope of the term "lie detector" as defined by the Act.

Coverage of Foreign Corporations

The Department was requested to clarify by opinion the status of foreign corporations and foreign nationals under the Act. It is the Department's position that the Act is applicable to all employees of a covered employer regardless of citizenship status, that foreign corporations operating in the United States are not exempt, and that any actions relating to the administration of lie detector tests which occur within the territorial jurisdiction of the United States are subject to the Act's provisions even though the actual examinations may be administered in a foreign location, such as aboard a cruise ship outside United States territorial waters. By the same token, transfer of an employee to a location outside United States territory for the purpose of administering a polygraph test would be considered to be covered by the Act. Section 801.3 has been modified accordingly.

Scope of Employer-Employee/ Prospective Employee Relationship for Purposes of Coverage Under EPPA

Section 2(2) of EPPA defines "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee." Section 801.2(c) of the interim final rule did not amplify the statutory definition except to exclude a polygraph examiner employed for the sole purpose of conducting a polygraph test. The Act (as well as the interim final regulations) contains no definition of the term "employee."

One commenter questioned the status of independent contractors under EPPA since the term "employee" was not defined. Another commenter, the American Polygraph Association, expressed the opinion that the regulations should make clear that the term "employer" does not include "former employer." The Employment and Training Administration of the Department suggested that the regulations should explain that employee referral services, such as those provided by the Employment Service or under the Job Training Partnership Act, are outside the meaning of "employer."

In the Department's view, EPPA prohibits the use of polygraphs by employers subject to the Act unless specifically exempted; polygraph testing by persons other than an employer is not precluded by the Act. Thus, these restrictions do not apply, for example, to public agencies in the performance of

law enforcement activities, to lawyers who administer lie detector tests to clients and potential witnesses, or to fishing tournament officials who administer lie detector tests to winning contestants. Similarly, although the abuses Congress intended to correct may be present with *bona fide* independent contractors, such as truck owner-operators, the Department does not believe EPPA applies to such *bona fide* independent contractor relationships. Thus, EPPA restrictions do not apply to the testing of an individual person who is a *bona fide* independent contractor (but do apply with respect to employees of such contractor) by a person, firm, or public agency which has a contractual relationship with such person. Determinations as to whether an individual is an employee or a *bona fide* independent contractor are based on the "economic reality" test established in labor standards case law. See, e.g., *Rutherford Food Corp.* v. *McComb*, 331 U.S. 722 (1947).

The administration of tests by employment placement agencies, job recruiting firms, or vocational trade schools at the request of either the job candidates or potential employers creates another question. The Department believes that EPPA prohibits such tests (except where a statutory exemption applies) since the polygraph tests are conducted on behalf of a prospective employer (whether or not the employer actually seeks this information). New § 801.8 of the final rule makes clear that employment agencies, including State Employment Services, are employers within the meaning of the Act because they are "acting directly or indirectly in the interest of an employer" in relation to a prospective employee for the purposes of EPPA. This section also provides, however, that such entities are not liable for EPPA violations if job referrals are made to employers who perform polygraph testing of applicants and the employment agency or other entity had no reason to know of the testing.

The interim final regulations did not address the question whether former employers constitute employers under the Act with respect to the statutory prohibitions on discrimination. An examination of other anti-discriminatory laws reveals that courts have interpreted these acts broadly, prohibiting discrimination by former employers although there was no employer-employee relationship at the time the alleged discrimination occurred. Courts have considered that the term "employee" under the FLSA extends to a former employee because the word "derives meaning from the context of that statute, which 'must be read in the light of the mischief to be corrected and the end to be attained.' " *Dunlop* v. *Carriage Carpet Co.*, 548 F.2d 139, 144 (6th Cir. 1977) (quoting *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U.S. 251, 259 (1940)). Another court has analogized *Carriage Carpet* so that a former employee was protected by anti-retaliatory provisions of title VII of the Civil Rights Act of 1964. *Rutherford* v. *American Bank of Commerce*, 565 F.2d 1162, 1166 (10th Cir. 1977).

Similarly, an appellate court urged that the "plain-meaning rule should not be applied to produce a result which is actually inconsistent with the policies underlying the statute * * * [A] strict and narrow interpretation of the word 'employee' to exclude former employees would undercut the obvious remedial purposes of title VII." *Bailey* v. *USX Corporation*, 850 F.2d 1506, 1509 (11th Cir. 1988). Furthermore, the Court of Appeals for the Fifth Circuit has interpreted the term in the ADEA broadly enough to include a former employee "as long as the alleged discrimination is related to or arises out of the employment relationship." *EEOC* v. *Cosmair, Inc., L'Oreal Hair Care Division*, 821 F.2d 1085, 1088 (5th Cir. 1987).

Moreover, previous decisions issued by the Secretary of Labor have held that, under the Energy Reorganization Act (ERA), "applicants for employment and former employees are protected from discrimination by the prospective and former employers, although no employer-employee relationship existed at the time of the alleged discrimination." *Hill* v. *Tennessee Valley Authority* and *Ottney* v. *Tennessee Valley Authority*, 87–ERA–23 and 87–ERA–24 (Decision and Order of Remand by the Secretary of Labor, May 24, 1989), slip op. at 10.

The Department therefore concludes that Congress intended "employee" in EPPA to include a former employee so long as the discrimination covered by the Act is related to or derived from the employment relationship. Accordingly, Section 801.8 of the final regulations explains that the term "employer" as used in the Act includes a former employer.

Government Employer Exemption

A review of the legislative history provides insight into how Congress intended the exemptions for Federal, State and local government agencies to be interpreted. A Senate committee report on a related Senate bill (S.1904), which exempted governmental employers and individuals under contract with federal agencies involved in intelligence and counter intelligence functions, stated that "those not regulated [by S.1904] would be *public sector employees* and employees of DOD, DOE, NSA, CIA, and FBI contractors with access to classified information and subject to counter-intelligence investigations." S. Rep. No. 284, 100th Cong., 2d Sess. 50 (1987) (emphasis added).

The conference report notes that the conference agreement retains the exemptions for Federal, state, and local governments from both the House bill and the Senate amendment. This report also discusses the exemption for the Federal Government to administer lie detector tests to certain employees of private contractors engaged in intelligence and counterintelligence work. H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 12 (1988). The conferences report further states that "[s]ince the Act does not apply to State and local governments it would not impede their ability to enforce existing statutes or to enact subsequent legislation restricting the use of lie detectors with respect to *public employees*." H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 18 (1988) (emphasis added).

For these reasons, the final rule makes clear that the exclusion from the Act applies only to the Federal, State, or local government entity with respect to public employees. It does not extend to lie detector testing by or on behalf of government entities, or contractors or nongovernmental agents of a government entity, with respect to any employees in the private sector. This interpretation (as reflected in § 801.10 in the final rule), in the Department's view, is consistent with the structure of the Act and the legislative history.

II. Ongoing Investigation Exemption

Inventory Shortages

The Food Marketing Institute, National Retail Merchants Association, and National Automatic Merchandising Association argued that an atypical inventory shortage should qualify as a "specific incident" for testing purposes under the limited exemption for ongoing investigations (EPPA section 7(d)), e.g., a sudden increase to 5% in an accounting period from a normal 2% in shortages. This position was also supported by the American Polygraph Association and several polygraph examiners. The Service Employees International Union, however, noted that the rule should clearly preclude testing where losses are indicated by frequent inventory checks,

such as those occurring in the jewelry industry.

Random-type testing, or what the legislative history characterized as fishing expeditions, was specifically targeted as a prohibited act by EPPA's lie detector restrictions. The example of missing inventory, a common business problem, was used in the interim final rule to illustrate the "specific incident or activity" limitation of the exemption, and to clarify the principle that testing under the exemption was permissible for the purpose of confirming who had committed a discrete act already disclosed through investigation, but not for determining whether such an act had occurred. For the exemption to apply, the conditions of an "ongoing investigation" of a "specific incident or activity" involving "economic loss or injury to the employer's business" must all be met. Thus, to qualify for testing, specific missing inventory must be identified and there must be evidence of wrongdoing, not bookkeeping or delivery errors. A broadening of the term "specific incident or activity" to include uninvestigated shortages in cash or inventory as suggested by some commenters would not be in accord with the statutory language or legislative history.

In singling out missing inventory as an example, the interim final rule apparently implied to some commenters that missing inventory or cash could never constitute a basis for testing. While a sudden escalation of shortages in a given accounting period, by itself, would not provide a sufficient basis for testing, the testing of an employee would be permissible if a subsequent investigation into such shortages pinpointed actual missing items as a result of wrongdoing, and provided information to support the other required statutory prerequisites of "access" and "reasonable suspicion" with respect to the property that is the subject of the investigation. Section 801.12(b) has been revised to make this point more clear.

Economic Loss or Injury

Section 7(d) of the Act requires that the ongoing investigation which is the subject of the polygraph test involve "economic loss or injury to the employer's business."

The legislative history provides some guidance as to the meaning of economic loss or injury. The Senate Committee Report (S. Rep. No. 284, 100th Cong., 2nd Sess., 48) stated:

> The Committee intends the requirement in section 7(d)(1) of a specific economic loss or injury to the employer's business to be narrowly construed. But there are specific incidents, such as check-kiting, money laundering, or the misappropriation of inside or confidential information which might actually result in gain to the employer in the short term, yet are specific incidents of employees which the employer should vigorously investigate. These types of incidents meet the requisite "injury" standard even though resulting in short-term gain, and an employer may request polygraph examination for these types of specific incidents. Similarly, such instances as theft from property managed by an employer would meet the requisite standard.

The legislative history makes clear that unintentional losses stemming from a truck or workplace accident would not meet the required injury standard, but instances of "* * * theft from property managed by an employer * * *" would. Insight into the meaning of this latter phrase is gleaned from remarks of Senator Hatch during the debate on the Senate version of the legislation [S.1904, Congressional Record–S1646, March 1, 1988]:

> The committee's report makes it clear that the term economic loss or injury applies not only to instances where the employer can demonstrate a financial loss but also those instances, such as money laundering, which might result in a short-term gain to the employers. Similarly, the report makes it clear that also included under this term would be instances such as theft from property managed by an employer. This language was added to address the fact that many crimes and situations may cause only indirect economic loss or injury. For example, a repairman at an apartment building might steal repeatedly from building tenants. An artful lawyer might argue that such theft would not cause direct economic loss or injury to the employer but to the tenant and thus would not be an event subject to the act. The committee report makes it clear that such theft would be covered, thus making it possible to avoid such an unintended anomaly.

The Department has concluded, after review of the legislative history, that the economic losses or injuries can be categorized into two classes—those incidents resulting in (1) direct or (2) indirect economic harm to the employer's business. The indirect losses or injuries can be subdivided into (1) unlawful acts resulting in loss of or damage to property for which the employer is responsible, and (2) unlawful activities causing indirect harm to the employer because of the use of the employer's business operations to conduct the criminal acts.

Congressional sponsors of the security services exemption (Congresswomen Roukema and Senator Nickles) urged a construction of the term "economic loss or injury to the employer's business" which would permit the testing of current employees by security service employers when such employees are reasonably suspected of being involved in specific incidents that arise at the premises of security clients, e.g., a theft of money at a client's bank. This position was also advanced by the Committee of National Security Companies, the Independent Armored Car Operators Association, the National Armored Car Association, the National Burglar and Fire Alarm Association, and the American Polygraph Association.

Both Congresswomen Roukema and Senator Nickles noted in their comments that the House version of the legislation permitted security service employers to conduct testing of current employees in connection with specific incidents that arose after employment. They stated further that because of an understanding that private security employees would be subject to testing under the ongoing investigation exemption contained in the Senate version, specific mention of current security employees in the security services exemption seemed superfluous and was dropped by the conferees when the two exemptions were merged into the final legislation.

The apartment building example used by Senator Hatch illustrates the first type of indirect loss or injury. This can be described as theft from or harm to property managed or protected by an employer, but not belonging to the employer itself. This is also analogous to the security service situation of concern to commenters. The legislative history indicates that the economic losses or injuries can be indirect such as theft from or harm to property managed or protected by an employer, but not belonging to the employer itself.

An example of the second type of indirect economic injury is the use of an employer's property in illegal drug smuggling. As suggested by commenters, such as the Association of Floral Importers of Florida, smuggling or facilitating the import of illegal substances via an employer's airplanes or other property is comparable to the regulatory example of "money laundering" since the employer is similarly exposed to civil and criminal penalties such as damages, fines, and forfeiture. On the other hand, employee use or sale of drugs in the rest room or parking lot would not be considered use of the employer's business operations.

Section 801.12(c)(1) has been revised to clarify that theft or injury to property for which the employer exercises responsibility, for instance, the theft of property protected by a security service employer, is considered an economic loss or injury to that employer.

Section 801.12(c)(1) has also been revised to add that the use of an employer's business operations to commit a crime or offense, such as using the employer's warehouse or airplane for illegal drug smuggling, is an activity that constitutes an economic loss or injury to the employer's business under the ongoing investigation exemption.

The final rule provides that the "economic loss or injury" requirement does not include potential or threatened business losses as suggested by certain commenters (Association of Messenger Services, Inc. and Telcom Marketing, Inc.). It is clear from the legislative history that the term refers to demonstrable losses that have occurred in contrast to potential or threatened losses that might occur because of a client/customer's dissatisfaction with the conduct of an employee, i.e., a client/customer threatens to cease doing business if alleged employee misconduct like harassment, deception, or theft from an employee of the client/customer is not resolved by the service provider. It is also clear that the purpose of the ongoing investigation exemption is not to determine whether an alleged incident in fact took place.

The final rule also does not incorporate comments made by the Association of Floral Importers of Florida and others seeking approval of testing of employees for the purpose of determining involvement in illegal drug importation resulting from the traffic between Florida and "high risk" countries in Central and South America. The "specific incident or activity" limitation in § 801.12(b) does not include ongoing investigations to determine whether suspected activity, i.e., drug trafficking, is taking place. Broadening the term "specific incident or activity" to allow testing for the purpose of determining whether employees are engaged in suspected drug trafficking would be akin to the fishing expeditions which the statute specifically prohibits. An industry-type exemption similar to that which was provided for security service employers or employers registered under the Controlled Substances Act as suggested by the comments of the florist industry would require legislation by Congress and cannot be adopted by regulation.

Economic Loss Resulting From Intentional Wrongdoing

The National Association of Chain Drug Stores, Inc. and Revco D.S., Inc. objected to the phrase in § 801.12(c)(2) that the economic loss must result from intentional wrongdoing. According to these commenters, the phrase imposes a burden not supported by statutory language or legislative history. The conference report on the legislation noted that the examples of economic loss cited in the Act were illustrative and not exhaustive, but stated that certain losses such as "an unintentional economic loss stemming from a truck or workplace accident were not intended to serve as a pretext of polygraph testing". The "intentional wrongdoing" phrase was used to contrast the "unintentional" example cited in the legislative history. These comments have merit as the phrase may imply the need for employers to have knowledge that an act was intentionally committed, i.e., a state of mind, by the suspected employee before a test under the exemption can be administered. Section 801.12(c)(2) in the final rule has been modified accordingly to eliminate the "intentional wrongdoing" phrase and language more closely in line with that in the legislative history has been used.

Definition of Property

Revco D.S., Inc. suggested that the definition of "property" in § 801.12(e)(2) should also include trade secrets in that they have economic value. According to Black's Law Dictionary, a trade secret is a "plan or process, tool, mechanism, or compound known only to its owner and those of its employees to whom it is necessary to confide in." Trade secrets obviously have commercial value, and the addition of the term is consistent with the examples used to illustrate the meaning of the word "property." Accordingly, § 801.12(e)(2) has been modified to add trade secrets to the definition of property.

Definition of Reasonable Suspicion

The term "reasonable suspicion" is defined in § 801.12(f)(1) as "an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss" (emphasis added). This section also states that "access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for reasonable suspicion."

The American Polygraph Association commented that the regulatory definition of "reasonable suspicion" imposes a higher standard on the employer than that intended by Congress, which meant to follow the case of *Terry* v. *Ohio*, 392 U.S. 1 (1968). It was their position that this case only requires a police officer to have an "articulable basis" that the suspect may have been involved in a crime; and that the "reasonable suspicion" definition should require at most that the employer have an articulable basis that the employee may have been, rather than was, involved in the incident under investigation. This view was essentially shared by the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Jewelers of America, Inc., United States League of Savings Institutions, Great Western Bank, and the Texas Security Service. These commenters argued that access of a limited number of employees to the lost property was the primary basis for suspecting misconduct, and that employers should be allowed to formulate a "reasonable suspicion" based on such access. For example, an employer should be allowed to polygraph four employees with comparable access to a safe since each may have been involved in the incident under investigation. The Great Western Bank observed that sole access by one employee ought to constitute a basis for "reasonable suspicion" when all other possible explanations for the loss have been ruled out.

The American Polygraph Association also urged adoption of a position that would allow polygraph results to form a basis for "reasonable suspicion" as to other employees or other investigations. For example, where two employees had access but the employer is able to articulate a basis for reasonable suspicion only as to one employee, and that employee passes a polygraph test, it is argued that there is a basis for "reasonable suspicion" as to the only other individual with access. It was their view, also, that the results of "paper and pencil" tests should be allowed to form a basis for "reasonable suspicion." For example, where the results of tests administered to ten employees with access to lost property indicate that four may have dishonest tendencies, then there is a basis for "reasonable suspicion" as to these four.

In support of § 801.12(f) as written, the Service Employees International Union urged the Department to set up a regular system for reviewing the written statements used to justify testing.

After careful review of the legislative history, the Department has concluded that Congress did not intend the statutory phrase "was involved" to be construed as "may have been involved," nor is such a construction required by the decision of the Supreme Court in *Terry* v. *Ohio* as suggested by the American Polygraph Association. The legislative history consistently uses the words "was involved in the incident." For example, the Conference Report uses the statutory words "was involved" and also stresses that the term "reasonable suspicion" refers to some

observable, articulable basis in fact beyond the predicate loss and access required for any testing." (H.R. Conf. Report 659, 100th Cong., 2nd Sess. 12 (1988) at page 13.)

Furthermore, the statute clearly imposes the conditions of (1) loss or injury, (2) access, and (3) reasonable suspicion that an employee was involved before polygraph testing is permissible under the ongoing investigation exemption. To allow employers to formulate "reasonable suspicion" based on access alone, without any other specific and articulable suspicion, would be inconsistent with this statutory scheme and the legislative history of EPPA. Likewise, there is no basis in the legislative history or in the case law for reaching a conclusion that reasonable inferences of involvement in incidents under investigation can be drawn from the results of polygraph or "pen and pencil" tests, as suggested by the American Polygraph Association, and serious questions have been raised about the reliability of such tests. There is merit, however, to the argument which was raised by the Great Western Bank with regard to the situation where one employee has sole access to the property. An inference of involvement in such circumstances seems reasonable and within the limitations of the exemption.

Accordingly, the suggested revisions to § 801.12(f) are not adopted except for the clarification that reasonable suspicion may be formulated on the basis of sole access by one employee. With respect to the comment of the Service Employees International Union, there is no authority under the statute for monitoring the extent to which tests under the ongoing investigation exemption are administered, nor does the Department have authority to require its notification whenever one might be administered. The required notices to examinees, of course, will be reviewed during the normal course of investigations.

Requirement That Reasonable Suspicion Be Described "In Detail"

Section 801.12(a)(4) of the interim final rule set forth the requirements for the statement which must be furnished to employees before testing under the ongoing investigation exemption. The American Polygraph Association (APA) questioned the use of the words "in detail" in § 801.12(a)(4)(iii), the portion of the statement concerning an employer's basis for reasonable suspicion. The APA contends that these words are not required by the statute and have caused confusion. They argue further that the statute merely requires an employer to possess an "articulable" basis for reasonable suspicion, and suggested that the words "in detail" should be deleted.

The Act itself, in section 7(d)(4), requires the employer to execute a statement that "sets forth with particularity" the "specific incident" under investigation and "the basis for testing particular employees," and the statement must identify the "specific economic loss or injury." Section 7(d)(4)(D)(iii) expressly requires "a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation." The Conference Report on the legislation indicates that the statement must "explain" the basis of the employer's reasonable suspicion, and provides further that "* * * the term 'reasonable suspicion' refers to some observable, articulable basis in fact beyond the predicate loss and access required for any testing * * *."

When read in conjunction with its legislative history, this section of the Act clearly imposes the burden on the employer of having to "set forth with particularity * * * the basis for testing particular employees," which must include an explanation of the basis for the employer's reasonable suspicion that the employee to be tested was involved in the incident or activity being investigated. The "reasonable suspicion" must be some observable, articulable basis in fact. The words "describing in detail" were used in the regulations to make clear the Congressional intent that something more was required than a mere statement that the employee was suspected of having committed the incident under investigation (see § 801.12(g)(3)). They are synonymous with the words "articulable" and "with particularity" used in the statute and legislative history. Therefore, no changes will be made in this section as a result of the comments received.

Signature by An "Authorized Person"

Section 7(d)(4)(B) of EPPA requires the examinee statement under the ongoing investigation exemption to be signed by "a person (other than a polygraph examiner) authorized to legally bind the employer." The statutory phrase "(other than a polygraph examiner)" was not included in § 801.12(g)(4) of the interim final rule in connection with the signature required on the statement. With respect to this requirement, the American Polygraph Association noted that the regulation should make clear that only the polygraph examiner who will administer a test is precluded from signing the statement since a polygraph examiner may also be an employer. Another commenter, Meridian Bancorp, Inc., suggested that a definition of the term "an authorized person" is needed to avoid confusion.

Section 801.12(g)(4) has been revised in the final rule to make clear that a polygraph examiner is not disqualified from signing the statement when acting in the capacity of an employer, provided the examiner does not also conduct the examination. With respect to the term "authorized person," language has been added indicating that the statement may be signed by the employer, or any employee or other representative of the employer with authority to obligate the employer under law.

III. Controlled Substances Exemption

"Direct Access" and "Access"

Section 7(f) of EPPA permits qualifying employers in the controlled substances industry to administer polygraph tests to: (1) Prospective employees who would have "direct access" to the manufacture, storage, distribution, or sale of controlled substances; and (2) current employees if in connection with an ongoing investigation of drug theft or drug diversion and the employee had "access" to the person or property under investigation. Three trade associations (the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute), two drug store chains (Medicare-Glaser Corporation and Revco D.S., Inc.) and the American Polygraph Association commented on the definitions of "direct access" and "access" in the interim rules. The concerns of these commenters were essentially twofold: That the exclusion of job applicants in custodial and other maintenance positions from the types of positions considered to have "direct access" was too restrictive; and, that the exclusion of current employees without direct, occasional, or opportunistic chances to steal or divert controlled substances from the types of positions having "access" was contrary to the statute.

In the case of "direct access," the interim rule provided that a prospective employee may be polygraphed only if the position applied for has duties/responsibilities which include direct contact or an ability to affect the disposition of controlled substances, as opposed to those that may only have infrequent, random, or opportunistic access. According to the commenters, the emphasis should be on proximity and accessibility rather than on direct contact or handling, i.e., any occupation with a reasonably foreseeable opportunity to cause or assist in causing the theft of controlled substances should be deemed to have "direct access." Such a broad interpretation would permit pre-employment polygraph screening of a janitor in a drug warehouse whose duties do not include handling controlled substances but do include cleaning areas in which drugs are secured and stored, a hospital security guard who guards an area in which drugs are stored, and virtually every other position except, possibly, a receptionist or other similar support staff in a "front office" location that is separate from the storage area. Pre-employment polygraph testing of such employees is not supported by the statutory language or legislative history, and no changes have been made along these lines.

With respect to the term "access," EPPA permits polygraph testing of a current employee provided the employee had "access" to the specific person or property which is the subject of an ongoing investigation. An example of a pharmacy department within a supermarket was used in the interim final rule in § 801.13(c)(2) to illustrate the distinction between "direct access" and "access." Several commenters disagreed with the example, specifically the statement that "[c]ertain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have 'access' of any type." These commenters argued that the meat clerk, for instance, could enter the pharmacy in violation of company policy, and that polygraphing of the meat clerk should be permissible if an ongoing investigation revealed such "access." The Department agrees with this observation, and, therefore, has clarified § 801.13(c)(2) to provide that any current employee, regardless of described job duties, may be polygraphed if the employer's ongoing investigation of criminal or other misconduct discloses actual "access" to the person or property that is the subject of the investigation.

Exclusion of Common/Contract Carriers and Public Warehouses

The controlled substances exemption applies only to employers registered under the Controlled Substances Act. The preamble to the interim rule invited public comment on the matter. Other than a comment from the American Polygraph Association supporting the interpretation in the interim final rule, no other comments were received. Accordingly, the statutory interpretation contained in the interim final rule is adopted in the final rule.

Scope of An Ongoing Investigation Under the Controlled Substances Exemption

A drug store chain, Revco D.S., Inc., and related trade associations, National Association of Chain Drug Stores, Inc., and National Wholesale Druggists' Association, argued that the cross reference to § 801.12(b) in § 801.13(f)(1) incorrectly attempts to incorporate the conditions of the section 7(d) exemption for ongoing investigations in the section 7(f) exemption for controlled substances. According to these commenters, the mere existence of an inventory shortage should be sufficient to allow use of polygraph tests under the "potentially involving" language of section 7(f).

The American Pharmaceutical Association, on the other hand, urged a position that precludes mere inventory shortages as a basis for testing under the controlled substances exemption.

With regard to current employees, the controlled substances exemption differs from the ongoing investigation exemption in several important respects. Congress did not impose the "reasonable suspicion" condition on employers registered under the Controlled Substances Act, and also excluded the requirement for a statement to be given to the examinee which details the specific incident that is the subject of investigation, the examinee's access, and the employer's basis for reasonable suspicion. In addition, testing not only includes situations involving specific drug losses but was extended to even cover potential drug losses. Thus, where there is evidence of criminal or other misconduct, such as a tip that employees are planning to steal drugs, a drug store employer is permitted to polygraph all employees who have access to drugs.

The distinction between the two exemptions tends to be blurred by the cross reference to § 801.12(b). For these reasons, § 801.13(f)(1) has been revised to eliminate the cross reference, and to clarify the scope of the term "potentially involving."

IV. Security Services Exemption

Definition of "Primary Business Purpose"

The exemption in section 7(e) of EPPA for security services permits polygraph tests of certain prospective employees of "* * * any private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel," and whose function includes protection of specified facilities or assets. Section 801.14(c) of the regulations defines the term "primary business purpose" to mean that 50% or more of the employer's business receipts must be derived from providing the types of security services enumerated in the Act. Thus, a company that is not primarily engaged in providing the named security services to others but which employs its own security personnel would not qualify for the exemption.

Fisher and Phillips, Law Offices, on behalf of an air cargo employer, suggested that the regulations be refined to clearly specify the entity to which the 50% test would be applied in cases of subsidiary corporations. To avoid confusion in this regard, § 801.14(c) of the final rule has been revised to clarify that where a parent corporation includes a subsidiary corporation engaged in providing security services, the business receipts test is applied to the subsidiary corporation, not the parent corporation.

Security Systems Other Than Security Alarm Systems

Two commenters (DeWalch Technologies, Inc., and Associated Locksmiths of America) suggested that the definition of the term "security alarm systems" in § 801.14(c) should provide sufficient flexibility so as to allow for additional types of security devices, such as mechanical or electronic locking systems, to qualify for exemption. The statutory exemption for security services refers specifically to employers whose primary business purpose consists of providing "* * * personnel engaged in the design, installation, and maintenance of security alarm systems," as well as armored car personnel or other uniformed or plainclothes security personnel. While code/card/key electronic locking devices can be as sophisticated as electronic alarm systems, nothing in the Act or legislative history suggests that Congress intended that the exemption be broadened to include additional devices or systems beyond those identified in the statute. Accordingly, the final rule does not expand the security alarm definition to encompass locking-type systems as suggested by the comments.

The Definition of Facilities, Materials, or Operations

The American Polygraph Association generally concurred in the definition of facilities, materials, and operations as listed in the interim final rule. Six other commenters, three of which represented major security service constituencies, suggested changes. The statement in § 801.14(d)(2)(ii)(A) pertaining to commercial and industrial assets and operations which "are designated in writing by an appropriate Federal agency to be vital to national security interests" was of particular concern. Commenters suggested that employers would not know who is an "authorized public official" or what is an "appropriate government agency." Initially, this phrase was intended to link facilities, materials and operations to the Department of Defense (DOD) Key Assets Protection Program, which designates "assets" affecting emergency mobilization. While DOD does publish a list of so called key assets, we understand that the list is classified and unavailable to the general public. The requirement is, thus, unworkable for purposes of defining the scope of the exemption. The suggestion from one commenter that a "simpler approach would be to allow testing of prospective employees who are engaged in guarding government facilities or who guard private facilities pursuant to a requirement by a government agency that such facilities be guarded" has merit, and the regulation is modified accordingly.

The legislative history makes clear that the facilities, materials, or operations must be high priority security functions and not low priority security functions. While the inclusion of all retail establishments in the list of facilities, as suggested by one commenter, does not meet this test, there is merit in the argument that large shopping centers, such as enclosed malls, are indistinguishable from other large public events. Accordingly, a new paragraph (viii) has been added to § 801.12(d)(2) which includes such facilities within the scope of the exemption. Among other minor clarifications, examples of commercial and industrial assets and operations in § 801.14(d)(2)(ii) have been expanded to include facilities and operations protected pursuant to security requirements under the Controlled Substances Act.

Scope of the Security Services Exemption

The exemption for certain prospective employees of armored car, security alarms, and security guard employers whose function includes protection of:

(1) Facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision, or the national security of the United States including electric or nuclear power facilities, public water supplies, shipment or storage of radioactive or toxic wastes, and public transportation (section 7(e)(1)(A) of the Act); or

(2) Currency, negotiable securities, precious commodities or instruments, or proprietary information (section 7(e)(1)(B) of the Act).

The "assets" listed in item 2 above are defined in the interim final regulations as an array of "* * * assets handled by financial institutions such as banks, credit unions, savings and loan institutions, stock and commodity exchanges, brokers or security dealers * * *" or "* * * assets * * * typically handled by, protected for and transported between and among commercial and financial institutions." Under this interpretation of section 7(e)(1)(B), armored car employers would clearly be within the scope of the exemption as would employers providing security alarm or security guard services to financial institutions. Specifically excluded from the scope of the exemption would be security alarm or security guard services "* * * provided to private homes, or to businesses not primarily engaged in handling, trading, transferring, or storing currency, negotiable securities, precious commodities or instruments, or proprietary information." Because the legislative history is confusing and conflicting as to the scope of the exemption, the preamble to the interim final rule specifically invited comments on this issue.

Commenters objecting to the interpretation of section 7(e)(1)(B) included the Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, American Polygraph Association, and National Retail Merchants Association. Sen. Don Nickles and Rep. Marge Roukema (chief sponsors of the exemption), and Rep. Don Sundquist also commented. Sen. Nickles expressed concern over "* * * the extremely narrow scope of the exemption which the regulations have imposed, especially with respect to the list of assets covered by section 7(e)(1)(B) of the Act." According to Rep. Roukema, "Comments in the record make it clear that we intended to extend the exemption's coverage to any security company whose functions include the protection of the assets listed in section 7(e)(1)(B), regardless of where they are found." Commenters expressed particular concerns regarding the Department's conclusion that protection of private homes was not within the scope of the exemption. The Service Employees International Union, conversely, supported the interpretation in the interim final regulation arguing that there was no "basis in the authorizing legislation" for broadening the exemption to include security personnel servicing private homes or businesses even though such establishments may house such assets.

A review of the legislative history reveals seemingly ambiguous and, at times, contradictory intent. On the one hand, sponsors of the amendment and others making floor statements during the debate make it clear that the exemption was narrowly crafted and intended to be limited to high priority security functions and large amounts of valuable assets. On the other hand, Sen. Nickles, who introduced the amendment in the Senate, was clearly of the view that the exemption extended to protection of private homes. The conference report on H.R. 1212 merely states that "employers engaged in providing certain private security services are not prohibited from using polygraphs * * *" (H.R. Conf. Rep. No. 659, 100th Cong., 2d Sess. 13 (1988)).

After careful consideration of the statutory language, legislative history, and comments on this issue, the Department has concluded that the statute cannot be construed as broadly as the commenters suggest. Certainly the exemption cannot be construed to cover all security functions a company might perform, for there would then be no reason for the statute to be containing a limiting list of facilities and assets. Thus, the Department does not believe that the exemption was intended to extend to protection of every business or shop on the theory that all businesses handle cash. Store security systems are generally designed primarily to protect the property and inventory rather than cash, which is normally not maintained in large quantities on the premises. Similarly, if the exemption is read to include the guard or security system protecting an entire business establishment, which happens to have in its files ordinary company and financial records or customer lists, that is, information that every business maintains and that is not normally subject to special protection, the exemption would cover every security service providing protection for any business that keeps company records on their premises. Such a broad construction would render the narrow language of the exemption meaningless. Nor is the language of the exemption easily susceptible to an interpretation which includes security services to private homes, which would be unlikely to have more than incidental quantities of the listed items. Rather, security in private homes is generally afforded for personal security reasons and to protect property, as well as consumer goods such as electronic equipment and personal valuables, rather than to protect commodities. If Congress had meant the assets to be anything of value, then it would be superfluous to list separate categories.

On the other hand, there is no legislative history which directly supports limiting the scope of section 7(e)(1)(B) exclusively to armored car employers or employers providing security alarm or security guard services to financial institutions, as set forth in the interim final rule. It is difficult to reconcile such a restrictive interpretation with the language in the statute itself, which includes "precious commodities or instruments" and "proprietary information," defined by Rep. Roukema as "documents essential to the functioning of a business."

The Department has therefore revised § 801.14(e) in the final rule to include protective services for casinos, racetracks, lotteries, or other business activities where large amounts of cash are acquired from or dispensed to customers, i.e., the cash in effect constitutes the inventory or stock in trade. Businesses engaged in the sale or exchange of precious commodities such as gold, silver, or diamonds, including jewelry stores or other stores that stock such precious commodities, prior to transformation into pieces of jewelry, silverware, or other items, have also been included. The term "proprietary information" has been limited to business assets (such as trade secrets, manufacturing processes, research and development data, cost/pricing data) which are subject to specially designed protection, i.e., a security system specifically designed to protect the proprietary information. Also, this specifically designed protection test in the final rule applies to any of the listed "assets" regardless of location, including businesses and residences. For example, a security alarm company that installs a security system expressly designed to protect diamonds kept in a home vault of a diamond merchant would qualify for the exemption. The final rule broadens the scope of the exemption from the interim final rule, but does not provide a blanket exemption. The Department believes the final rule is consistent with the language and structure of the statute and the weight of the legislative history.

"Prospective Employee"

The exemptions in sections 7(e) and 7(f) of EPPA allow qualifying employers in the security services and controlled substances industries to administer polygraph tests to certain "prospective employees." The interim final regulations in § 801.14(b)(2) generally define the term "prospective employee" as an individual who is being considered for employment for the first time by an employer. However, §§ 801.13(d) (controlled substances exemption) and 801.14(b)(2) (security services exemption) allow for testing current employees who were initially hired to perform duties which do not fall within the scope of the exemptions, i.e., are not subject to testing, if they have applied for and are under consideration for re-assignment or promotion to positions with duties that do fall within the scope of the exemption. Thus, for example, an office secretary being considered for a position in a secure area of a drug warehouse may be tested. Likewise, a security guard hired for a position at a supermarket may be tested if the guard is subsequently considered for transfer or promotion to a job at a nuclear power plant.

The preamble of the interim final regulations provided the rationale for this broad interpretation: "[S]ome latitude is necessary * * * so that current employees of an employer will not be unfairly disadvantaged, with respect to non-employees, in competition for positions which may be subject to the exemption." This interpretation resulted from concern expressed by industry representatives, who also maintained that consideration should be given to the logistical problems posed by having to fill positions on short notice, i.e., there may not be a sufficient number of examiners and places available to test new applicants. They argued that pre-employment testing should therefore be permitted for a reasonable period after an applicant is initially hired. While this latter position was not adopted in the interim final rule, the preamble did invite specific comment on the issue.

Among the commenters endorsing the interpretation allowing testing of a current employee under consideration for reassignment or promotion were the Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, National Association of Chain Drug Stores, Inc., National Wholesale Druggist's Association, Food Marketing Institute, and the American Polygraph Association. Most of these commenters also urged that the Department allow testing subsequent to initial hiring, and suggested a time period in which to conduct such testing ranging from 14 days, to any time during a six-month probationary period.

The American Pharmaceutical Association, New Jersey Pharmaceutical Association, and an individual commenter argued that the term "prospective employee" should be strictly construed to mean a person who has not yet been hired.

There is no legislative history that directly addresses how Congress intended the term "prospective employee" to be interpreted. Based on the floor discussion of the legislation, it appears clear that Congress meant to distinguish prospective employees from current employees of an employer. Because statements in the record use the term interchangeably with "pre-employment" and "job applicant," this strongly suggests that, to the extent Congress considered the matter, it had a more commonly understood meaning in mind, i.e., an individual who is not yet hired. Thus, the final rule does not adopt commenters' suggestions on expanding the term "prospective employee" to include workers recently hired. Allowing post-hire testing would be inconsistent with the plain meaning of the Act and its legislative history. On the other hand, the Department is of the view that it is reasonable to construe the term "prospective employee" to include a current employee with respect to the incumbent position, who is also a "job applicant" or "prospective employee" with respect to the new position being applied for.

"Employed to Protect"

The security service exemption permits qualifying employers to administer polygraph tests to prospective employees, but not to a prospective employee "who would not be employed to protect" certain named facilities, materials, operations, or assets. The types of prospective employees within the scope of this exemption were described in §§ 801.14(g) (1)–(6) of the interim final rule. In general, these sections applied the exemption to any employee to be hired for a position that entailed the opportunity to cause or participate in a

breach of security. The American Polygraph Association (APA) indicated that the statement in § 801.14(g)(6), that any employee whose access to secured areas is "occasional" would not qualify, is confusing and inconsistent with the explanation of the types of positions for which polygraph testing would be permitted. The APA argued that it is the knowledge and ability to compromise the security of protected operations that is the determinative factor in the exemption, and not the frequency of opportunities which may be available.

This position has merit. Section 801.14(g)(6) of the interim final rule described employees who "would not be employed to protect" and therefore would not be within the purview of the exemption, such as janitors and other support-type personnel, and was intended to make clear that such personnel were excluded from the scope of the exemption even if they had "occasional" access. However, the word "occasional" implies that frequency of opportunity to breach security is a factor in determining whether an employee would not be employed to protect the listed facilities or assets for purposes of the exemption. Accordingly, to eliminate this confusion, the section has been clarified and the term "occasional" has been deleted from § 801.14(g)(4)(ii) (formerly § 801.14(g)(6)) of the final rule.

Policy considerations and public comments suggest that additional flexibility is required in the regulations, given the realities of the workplace, with respect to the Department's interpretation of the statutory language "[t]he exemption * * * shall not apply if the test is administered to a prospective employee who would not be employed to protect facilities, materials, operations, or assets * * *" According to one commenter, the exemption encompasses all job applicants who would, on an occasional, intermittent, or rotating basis, protect "facilities, operations, materials, or assets" within the scope of the exemption. This interpretation would include those applicants whose assignment to such protective duties during the course of their employment is possible but not certain.

There is no relevant legislative history bearing directly on this aspect of the exemption. The language of the statutory exemption states that it does not apply "to a prospective employee who would not be employed to protect" the named facilities, etc. The regulatory language in § 801.14(g) incorrectly construed the exemption to apply only to job applicants who "would be" employed to protect the security of qualifying facilities.

On review of this issue, the Department has concluded that, based on the plain meaning of the statutory language, the exemption should not be restricted to those persons hired specifically to protect the listed facilities or assets. On the other hand, to apply the exemption to any employee for whom there is a possibility, no matter how remote, that at some point in the course of employment the employee might protect a listed facility would render the restriction virtually meaningless. The Department has concluded that the exemption should apply to any applicant who would be likely at some time to protect covered "facilities, operations, materials, or assets," such as through rotation of work assignments or through selection from a pool of available employees, even if selection for such work is unpredictable or infrequent. Under this interpretation, the exemption would not permit the testing of prospective employees who would be unlikely to ever perform these protective functions or those who have only a remote possibility of performing the exempt work on an emergency basis. This clarification will address concerns expressed by the security industry of special logistical problems associated with the need for rapid placement of personnel in positions within the scope of the exemption, since pools of current employees already polygraphed would be available for reassignment on short notice.

Section 801.14(g) has been revised in accordance with the above discussion, to clarify the intent of the phrase "would not be employed to protect" exempt facilities.

V. Restrictions/Recordkeeping and Other Procedural Matters

Definition of Reasonable Written Notice

A number of commenters including the Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, Food Marketing Institute, and National Retail Merchants Association generally objected to the requirements in §§ 801.12(g)(2) and 801.22(c)(1)(i)(A) that the specified reasonable written notice be given "at least 48 hours" prior to testing. They argued that the 48-hour timeframe was too rigid and that more flexibility was needed. This position was also taken by several drug store chains (e.g., Medicare-Glaser Corporation and Revco D.S., Inc.) and several polygraph examiners. Certain of these commenters stated that a 48-hour notice served little purpose in the case of pre-employment testing in that it delayed the hiring process to the detriment of job applicants, and complicated hiring during times of unpredictable/emergency staffing demands. With respect to current employment testing, some commenters argued that testing on a more immediate basis was necessary in certain situations, e.g., there is little likelihood that an armored car driver responsible for custody of $1,000,000 cash found missing would report for a polygraph test 48 hours after the funds were lost. In this connection, commenters involved with controlled substances urged that they either be excluded from the requirement, or, in the alternative, be allowed to test immediately upon notification to the Drug Enforcement Agency (DEA) of a theft or loss.

The 48-hour requirement was regarded as reasonable by the American Polygraph Association, United States League of Savings Institutions, and the National Training Center of Polygraph Science. The American Pharmaceutical Association, the New Jersey Pharmaceutical Association, and the Service Employees International Union, however, urged additional notice time ranging from 72 hours to 96 hours. These commenters noted that employees do not typically have ongoing relationships with attorneys, and that additional time was needed for employees to verify employer compliance with statutory provisions.

Section 8(b)(2)(A) of the Act requires that individuals must be given "reasonable written notice" of the date, time, location and other information about a polygraph test. The reasonable notice requirement has application to both preemployment testing as allowed by the security services and controlled substances exemptions, and current employment testing as allowed by the ongoing investigation and controlled substances exemptions. There is no specific legislative history on what the Congress intended by the word "reasonable."

A minimum timeframe of 48 hours was adopted in the interim final rules in both §§ 801.12(g)(2) and 801.22(c)(1)(i)(A) based on the rationale that at least this amount of time was needed by prospective examinees to seek out counsel, consult, and determine whether or not to proceed with the planned test.

Upon weighing the various alternatives, including allowing employees or prospective employees a waiver option, it was concluded that the 48-hour time period was, in general, consistent with the statutory requirement for "reasonable written notice" and the broad legislative purpose of subjecting permitted polygraph testing to strict conditions/restrictions, including the requirement of an informed examinee. The argument that a rigid 48-hour waiting period may not accommodate job applicants whose interest often is in starting work as soon as possible and employers who are often faced with unpredictable staffing demands, however, has merit. while an absolute waiver of the 48-hour time period would nullify the statutory requirement of reasonable notice, it is believed that a 24-hour time period, if freely agreed to by the prospective employee and not a condition of employment, balances the statutory mandate with the interests of prospective employees and employers. Section 801.23(a)(1) (formerly § 801.22(c)(1)(i)(A)) is accordingly modified to allow prospective employees the option of voluntarily waiving the 48-hour time period and to proceed to a test 24 hours after receipt of the required written notice.

Several commenters noted that the "weekend days and holidays" exclusion specified in § 801.22(c)(1)(i)(A) of the interim rule was omitted from Section 801.12(g)(2) which also provides that the written notice required therein must be received by an examinee at least 48 hours before the time of the test. Section 801.12(g)(2) has been modified to correct this omission. During the course of enforcement experience under the Act, it was observed that a determination of whether or not the notice was received by the examinee 48 hours prior to the test was impossible without some documentation of the time and date of statement receipt by the employee. While some employers provided such documentation in conjunction with the notice, others did not. It is accordingly considered necessary to require such documentation and §§ 801.12(g)(2) and 801.23(a)(1) have been modified to provide for employee verification of the time and date of receipt of the notice.

Basis for Adverse Employment Actions Under Ongoing Investigation, Security Services, and Controlled Substances Exemptions.

Section 8(a)(1) of EPPA provides that the ongoing investigation exemption shall not apply if an employer takes an adverse employment action, as identified in the Act, against an employee on the basis of the results of a polygraph examination or the refusal to take such a test, "without additional supporting evidence." The "additional supporting evidence" may consist of the threshold evidence required for administering a polygraph test under this exemption.

Section 8(a)(2) of EPPA also specifies that the security service and controlled substance exemptions shall not apply if the polygraph test results or the refusal to take a polygraph test form "the sole basis" for the adverse employment action taken by the employer against an employee or prospective employee.

Section 801.20 of the interim final rule explains what may constitute the necessary additional supporting evidence, which, along with the polygraph test results or refusal to take the test, would justify an adverse employment action under the ongoing investigation exemption. Essentially, this additional supporting evidence can be the threshold evidence required for administering a polygraph test under the exemption, that is, the evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation and evidence indicating that the employee had access to the employer's property that is the subject of the investigation. Any admissions or statements made by the examinee during the polygraph test may also constitute additional supporting evidence for purposes of an adverse employment action, as provided in section 8(b)(2)(D)(ii) of EPPA.

Section 801.21 discusses other legitimate reasons that, in conjunction with the analysis of a polygraph test chart or the refusal to take the test, may be used as the basis for an adverse employment action under the security service and controlled substance exemptions. Bona fide reasons, such as prior job performance, education or work experience, as well as admissions by the employee, may serve as additional bases for employment decisions.

Sections 801.22(c)(1)(i)(C)(3) (ii) and (iii)(A) of the interim final rule provided that the written notice that must be supplied to the examinee prior to the administration of the test must contain information:

(ii) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test or based on the employee's refusal to take such a test, without additional evidence which would support such action;

(iii) (A) In connection with an ongoing investigation, that the additional evidence required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

Revco D.S., Inc., commented that the sole basis standard in section 8(a)(2) of the Act allows the employer to use the test results, or refusal to take the test, along with other factors. According to Revco, that standard is substantially different from the ongoing investigation standard, which requires additional supporting evidence. Consequently, Revco urged that § 801.22(c)(1)(i)(C)(3)(ii) (now § 801.23(a)(3)(x)) be changed to reflect the two distinct standards. Finally, Revco recommended that § 801.22 (c)(1)(i)(C)(3)(iii)(A) (now § 801.23 (a)(3)(xi)(A)) be limited to the ongoing investigation exemption under section 7(d) of the Act because the employer using the controlled substance exemption under section 7(f) of the Act need not have reasonable suspicion.

A review of the legislative history indicates that Congress considered the standards applicable to adverse actions under the security service and controlled substance exemption to be the same as those for the ongoing investigation exemption, except that the prerequisites for conducting a polygraph test under the ongoing investigation exemption may serve as the additional evidence. In the floor debates in the Senate, for example, the terms "sole basis" and "additional evidence" were used interchangeably, emphasizing that there must be additional evidence to warrant an adverse employment action so that the polygraph test is not the sole basis for the decision. Hence, the same standard exists for adverse actions under the private security and controlled substance exemptions as under the ongoing investigation exemption. It is evident from the Conference Report (H.R. Conf. Rep. No. 659) that the different statutory language arises from the merger of the Senate and House bills, rather than from application of a different standard.

Furthermore, although Revco's point is well taken that access and reasonable suspicion are not required for a polygraph test under the controlled substances exemption, it remains true that such evidence, if available, would constitute the requisite additional evidence.

The standards set forth in §§ 801.20 and 801.21 conform to the statutory

language and Congress' intent. Furthermore, § 801.22 (c)(1)(i)(C)(3)(ii) (now § 801.23 (a)(3)(x)), which requires written notice of examinee rights, although not precisely tracking the statutory language, is consistent with congressional intent. Accordingly, no changes are being made in these sections in the final rule in response to the comments received.

Restructuring/Renumbering § 801.22, "Rights of Examinee"

Section 801.22(a) through 801.22(c)(3) specifies the rights of employees under EPPA during each of the three phases of a polygraph test (pretest, actual testing, and post-test phases). The paragraph structure within this section includes some subsections requiring as many as seven levels of designation (e.g., see § 801.22 (c)(1)(i)(C)(3)(*iii*)(*B*)). The overly detailed subdivision within this section caused considerable confusion among many commenters who attempted, without success, to correctly cite particular provisions of this section. The Office of the Federal Register generally encourages agencies to avoid overly detailed subdivision by dividing complex sections into smaller, more compact sections. Therefore, § 801.22 has been divided into four separate sections (General, Pretest, Actual Test, and Post-test), and the sections have been renumbered accordingly. (In addition to the Table of Contents and appendix A, this involved revising cross-references throughout part 801.)

Degrading or Intrusive Questions

The National Association of Chain Drug Stores, Inc., National Wholesale Druggist's Association, and Food Marketing Institute objected to the prohibition against an examiner asking questions in a degrading or unnecessarily intrusive manner. The provision was characterized as subjective and unworkable. It was suggested that the prohibition refer instead to the specific lines of questioning that are barred by the statute, i.e., religious, political, racial, sexual, or union beliefs.

Section 8(b)(1)(B) of EPPA provides that the exemptions which permit employers in the private sector to administer polygraph tests shall not apply unless, throughout all phases of the test, the examinee is not asked questions in a manner designed to degrade, or needlessly intrude on, the examinee. In addition, section 8(b)(1)(C) of the Act separately provides that the examinee may not be asked any questions concerning: religious beliefs or affiliations; beliefs or opinions regarding racial matters; political beliefs or affiliations; any matter relating to sexual behavior; and beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

The types of questions permitted and the limitation on the nature of the questioning are imposed specifically by the statute. Consequently, elimination of the prohibition in question, as suggested, is precluded by the statute, and no changes have been made in the final rule with respect to this prohibition.

Prohibition Against Polygraph Test Where There is Evidence of Certain Medical Conditions

The National Association of Chain Drug Stores, Inc., and Revco D.S., Inc., suggested that § 801.22(b)(2) (now § 801.22(b)(5)) of the interim final rule be revised to provide that persons who have direct access to controlled substances should not be allowed to present a physician's statement indicating they are being treated for drug addiction and, for that reason, refuse to take a polygraph test.

Section 8(b) of EPPA sets forth the rights of an examinee which must be observed in order for the exemptions that allow polygraph testing in the private sector to apply. Section 8(b)(1)(D) expressly requires that "the examiner * * * not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase." The purpose of this statutory provision is to account for abnormal responses due to physical or psychological conditions, and in the absence of any supporting legislative history, there is no basis for distinguishing employee drug use from other types of medical/psychological reasons that might contribute to such abnormal responses during a test. Therefore, no changes have been made in this section along the lines suggested by these commenters.

Notices Which Must Be Furnished to Examinees

Employers must provide to an employee or prospective employee certain written and/or oral notices prior to administering a polygraph test pursuant to an applicable exemption. The required notices, as set forth in the interim final regulations, are as follows:

(1) A written statement which explains the specific incident being investigated and the basis for testing particular employees under the ongoing investigation exemption (§ 801.12(a)(4)), which must be received by the employee at least 48 hours prior to the examination (§ 801.12(g)(2));

(2) A written notice concerning the time and place of the exam and the examinee's right to consult with counsel (§ 801.23(a)(1), formerly § 801.22(c)(1)(i)(A)), which must be furnished to the examinee at least 48 hours prior to the examination;

(3) A written and oral notice concerning the nature and characteristics of the polygraph instrument (§ 801.23(a)(2), formerly § 801.22(c)(1)(i)(B)); and

(4) A written notice, which must be read to and signed by the examinee, setting forth legal rights and remedies of the examinee and of the employer (§ 801.23(a)(3), formerly § 801.22(c)(1)(i)(C)) with a suggested format provided in appendix A.

These notices generated considerable comment. For example, the National Association of Retail Dealers of America and the National Retail Merchants Association suggested that the notice requirements could be simplified by combining the four notices into two. They recommended that notices one and two above be combined into a single notice, that notices three and four above be combined into a single notice, and that suggested formats for each be provided by the regulations.

While each of the four separate notices identified above are required by statute, there is no reason why they cannot be combined by an employer. Because notices 1 and 2 above must be provided to the examinee 48 hours in advance of a test, combining them would make practical sense. Notice 1, however, relates only to cases of ongoing investigations, and combining it with notice 2 as a matter of course in all cases would not be appropriate. Moreover, both notices are very fact dependent and may contain varying amounts of information depending on the circumstances leading to the test. As a practical matter, notices 3 and 4 could also be consolidated or even combined with notices 1 and/or 2. Because of varying circumstances, and the need for employer flexibility, the Department has determined not to make regulatory changes that would either establish or mandate consolidation. However, any of these notices may be combined by an employer, provided that all the necessary information is supplied to the examinee and the required time limits are met.

Receipt of Written Notice.

One commenter noted that § 801.22(c)(1)(i)(A) of the interim final rule should be clarified as to whether the written notice must actually be "received by" the examinee rather than "furnished to" the examinee 48 hours before the test. The statute itself uses the words "provided to the examinee" (section 7(d)(4)) and "the prospective examinee is provided with" (section 8(b)(2)(A)). The phrase "provided to", in our view, implies actual receipt. Arguably, the language "furnished to" may be interpreted differently from "received by," since the former focuses on the employer/examiner's action and not on the employee's receipt of the notice. To avoid confusion, § 801.23(a)(1) (formerly § 801.22(c)(1)(i)(A)) is modified to specify "received by" in contrast to "furnished to."

Examinee's Right To Consult With Counsel.

Section 801.22(c)(1)(i)(A) of the interim final rule sets forth the statutory requirement that "an employee has the right to obtain and consult with legal counsel before each phase of the test." Because of the statement of Senator Hatch during Senate consideration of S. 1904 [134 Cong. Rec. S1646] and standard polygraph practice, this section also provides that "the attorney or representative may be excluded from the room where the examination is administered during the actual testing phase."

One commenter suggested that "the right to consult with counsel" needed clarification and posed various questions as follows: "May the attorney be present on the premises of the employer/examiner during the test?"; "may the attorney be excluded from the premises or immediate area of the test during all phases, pre-test and/or post test phases?"; "may the attorney object to the procedure or questions and how is the dispute to be resolved?"; and, finally, "may the employer and/or examiner have counsel present if the employee does?"

These questions for the most part are theoretical in nature. The Department understands that the only parties present during an examination are, as a matter of established polygraph practice, the examiner and the examinee. While some examining rooms are equipped with a two-way mirror, a camera, or a recorder, the statute requires that notification be given to the examinee when such devices are present. Elaboration beyond that currently provided is not considered necessary with one exception. Inherent in the right to counsel before each phase of the test is the provision of a convenient place on the premises of the employer or examiner where the examinee may consult privately with his/her attorney. Otherwise, the right to consult becomes meaningless. Section 801.23(a)(1) (formerly 801.22(c)(1)(i)(A)) has been modified accordingly.

Requirement To Inform Examinee Both Orally and in Writing of the Nature and Characteristics of the Polygraph Instrument and Examination.

The Food Marketing Institute objected to the requirement in § 801.22(c)(1)(i)(B) (now 801.23(a)(2)) of the interim final rule that the examinee must be given oral as well as written notice of the nature and characteristics of the polygraph instrument and examination. The commenter suggested that a reading of such notice was unnecessary since an examinee had the opportunity to review the written notice with counsel or an employee representative. With respect to the polygraph instrument and its characteristics, it was suggested that employers be allowed to use the same words as contained in § 801.2, which defines the term "polygraph."

The definition of "polygraph" in § 801.2(e) satisfies the notice requirement for a description of the nature and characteristics of the polygraph instrument.

The notice itself is required by statute. However, the statutory language in section 8(b)(2)(B) requires only that the examinee be informed in writing. Nevertheless, the oral notice requirement is regarded as being fully consistent with the purposes and intent of the statute that prospective examinees be fully informed as to polygraph tests and their permissible uses. Therefore, no changes have been made in this requirement.

Requirement That the Examinee Be Provided a Written Notice Detailing, Among Other Things, the Legal Rights and Remedies of the Examinee and of the Employer, and the Suggested Format of Such Notice in Appendix A.

The notice required by § 801.22(c)(1)(i)(C) of the interim final rule and the related suggested format in appendix A were the subject of considerable comment. One polygraph examiner, Edward R. Kirby & Associates, Inc., indicated confusion on the timing of the notice and whether or not it must be presented 48 hours before the actual test. Three trade associations (Food Marketing Institute, National Association of Retail Dealers of America, and National Retail Merchants Association) and the National Training Center of Polygraph Science objected to the requirement that the notice must be read to, in addition to being signed by, the examinee. The National Association of Retail Dealers of America also objected to the words "suggested format" and requested modification to make clear that use of Appendix A provides a "safe harbor" for the employer. Finally, an attorney suggested that Appendix A should include reference to the examinee's right to consult with counsel before each phase of the test.

The requirement that the notice must be read to an examinee is statutory [section 8(b)(2)(D)] and the change suggested cannot be made. The other comments, however, have merit. Section 801.23(a) (3) (formerly § 801.22(c)(1)(i)(C)) has been revised to make clear that the notice may be presented to the examinee at any point prior to the testing phase. With respect to appendix A, the final rule has been revised to delete the words "suggested format" and make clear that use of its format, if properly completed, constitutes compliance with the contents of this notice requirement. Appendix A has been revised to include a reference to the examinee's right to consult with counsel.

Examinee Notification That Admissions May Be Reported To Law Enforcement Agencies

The American Polygraph Association (APA) questioned the requirement in § 801.22(c)(1)(i)(C)(3)(iii)(B) of the interim final rule that examinees must be informed in the pre-test notice that "any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency." It was argued that such a requirement was not imposed by controlling provisions in section 8(b)(2)(D) of EPPA.

Among other things, paragraph (v) of section 8(b)(2)(D) of EPPA states that the notice shall inform the examinee of the legal rights and remedies of the employer including the rights of the employer under section 9(c)(2) of the statute. Section 9(c)(2) specifically permits an employer to disclose test results to "a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct." Contrary to APA's assertion, the notice requirement is in accord with statutory provisions, and, therefore, no changes have been made in this requirement.

The Scope of an Employer's Liability in Private Civil Actions

The American Pharmaceutical Association noted that the language in the regulations which was intended to provide notice to examinees of their legal rights and remedies under the Act

did not precisely track the statute. Section 6(c)(1) of the Act provides that an employer who violates the Act is liable "for such legal or equitable relief as may be appropriate, including, *but not limited to*, employment, reinstatement, promotion, and the payment of lost wages and benefits." The emphasized text quoted above was omitted from section 801.22(c)(1)(i)(C)(5) of the interim final rule and Appendix A—Notice to Examinee. The text has been conformed to the statutory text in § 801.23(a)(3)(xiii) (formerly § 801.22(c)(1)(i)(C)(5)) and in Appendix A.

The Timeframe for Presenting Questions to an Examinee During the Pretest Phase

The examinee's right to review all questions before the actual test is set forth in § 801.22(c)(1)(i)(C)(2)(ii) and (c)(1)(ii) of the interim final rule. One commenter noted that these sections did not identify when questions needed to be presented to the examinee during the pretest phase. Public inquiries from other polygraph examiners have also indicated confusion on the timing of questions and whether or not they must be presented 48 hours before the actual test (the timeframe for the notice of the date and place of the examination in § 801.22(c)(1)(i)(A) of the interim final rule). Based on standard polygraph procedure, it is considered impossible to provide precise phrasing of the questions 48 hours before a test. During the pretest phase of a test, the person to be examined is ordinarily interviewed by the examiner. The questions to be asked during the examination are typically finalized after this interview. The questions are then reviewed with the examinee before the examination. Section 801.23(b) (formerly § 801.22(c)(1)(ii)) has been modified accordingly to make clear that the questions to be asked during a test can be presented in writing and reviewed with the examinee any time prior to the actual testing phase.

Requirement To Give Examinee All Questions in Writing Before the Polygraph Test

The National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute suggested that the regulations be clarified to address how an examiner is to proceed when an unanticipated line of inquiry develops during the test as a result of admissions or statements made by the examinee. It was suggested that the regulations specify that the examiner may interrupt the test, present the new questions in writing to the examinee, and then proceed with the polygraph examination after the examinee has reviewed the new questions.

The questions asked during a typical examination are of two types: "relevant" questions, which pertain directly to the matter under investigation, and "technical" questions, which are used to establish a baseline against which responses relevant to the investigation may be evaluated. The suggestion is to allow an examiner to introduce a new line of so-called "relevant" questions during the course of an examination that pertain to areas of wrongdoing which may be outside the scope of the incident initially being investigated. This situation might arise, for example, when an examinee denies involvement in a theft of money from a safe which is the subject of a polygraph examination but admits to other incidents of wrongdoing about which the employer had no knowledge, such as a theft of inventory items or on-the-job drug use.

The regulations have been modified to make clear that an examiner, when an unanticipated line of inquiry develops during the test as a result of admissions or statements made by the examinee, may interrupt the test, and return to the pre-test phase to present new "relevant" questions in writing to the examinee, and then proceed with the polygraph examination after the examinee has reviewed the new questions. However, because under both the ongoing investigation exemption and the controlled substances exemption the testing of current employees is limited to an "ongoing investigation," the introduction of an unanticipated line of inquiry is permissible only to the extent that it involves the same loss or injury that was the subject of the initial ongoing investigation. Thus, allowing a redirected inquiry into possible areas of wrongdoing which are not related to the subject of the initial ongoing investigation as suggested would be contrary to the statute and cannot be adopted by regulation.

Requirement That Employer Interview Examinee on the Basis of Test Results Before Taking Adverse Employment Action

Sections 8(b)(4)(A) of the Act and § 801.22(c)(3)(i) of the interim final rules require an employer in the post-test phase to interview the examinee on the basis of the test results before any adverse employment action can be taken. A polygraph examiner noted that this requirement is particularly cumbersome in the case of tests administered to screen job applicants. This commenter suggested that the interview should be at the option of job applicants. While the requirement does have the potential of inconveniencing both employers and job applicants, a waiver by the job applicant is precluded by the unambiguous words in the statute. Accordingly, the requirement in section § 801.25(a)(1) (formerly § 801.22(c)(3)(i)) to interview an examinee before taking an adverse employment action is retained in the final rule without change.

Requirement That Employer Furnish Copy of the "Corresponding Charted Responses" to Examinee Before Any Adverse Action Can Be Taken

Sections 8(b)(4)(B) (i) and (ii) of EPPA specify that before an employer can take any adverse employment action against an examinee, that employer must, in addition to interviewing the examinee on the test results, provide the examinee with: (1) A written copy of any opinion or conclusion rendered as a result of the test; and (2) a copy of the questions asked during the test along with the *corresponding charted responses*. The interim final rule did not explain this requirement and states that the employer must "give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses."

The American Polygraph Association (APA) and several other commenters indicated that the phrase "corresponding charted responses" has caused confusion. They questioned whether this requirement refers to the examinee's answers or, alternatively, the actual graphs, which, in turn, might mean the entire chart or only those portions that relate to the alleged deceptive responses? One commenter noted that because the polygraph instrument generates some 6 inches of chart per minute, Congress intended that the examinee receive only the examiner's written report, i.e., both opinions and conclusions, and the examinee's recorded responses to the subject questions in the examiner's report. It was APA's view that the phrase refers to the examiner's *written report* which describes the examinee's responses to the questions as "charted" by the instrument, rather than the charts themselves.

The plain meaning of the statute requires a different conclusion, however, as the phrase "corresponding *charted* responses" clearly means the corresponding physiological responses on the polygraph charts. It differs from the terminology "any opinion or conclusion rendered as a result of the test." If Congress had intended to require that employers need only provide the questions and answers and the examiner's report to the examinee, then the statute could have used the phrase "and the responses thereto" rather than requiring "the corresponding charted responses." Moreover, the statute would not have differentiated between "opinions or conclusions" in paragraph (i) and "corresponding charted responses" in paragraph (ii).

While there is relatively little legislative history on the matter, the Senate Committee Report discussing S. 1904 provides some insight into what was meant by "corresponding charted responses." The Background and Need for Legislation portion of the report describes the history of the tests and states that "despite the popular perception that the machine is a 'lie-detecto. , most experts agree that it is not. In addition to the *charted responses*, most examiners base their conclusions on the conduct of the examinee, the natural inclinations of the examiner, and on statements made during the examination." (S. Rep. No. 284, 100th Cong., 2nd Sess. 42 (1988) (emphasis added).) This report thus indicates that "charts" as used in the Senate legislation (language which was eventually used in EPPA) refers to the recorded physiological changes and is synonymous with "charted responses." Furthermore, the legislative history establishes Congress' skepticism regarding the reliability of polygraph examinations, and indicates an intention to provide the examinee with every possible means of protection from unfair discrimination that may occur from inaccurate or inconclusive polygraph tests. The Department has therefore concluded that Congress intended that an employee be provided with a copy of his/her responses, as recorded on the polygraph chart, corresponding to all of the questions asked during the examination—even if fifteen or more feet in length, prior to any adverse employment action.

For these reasons, § 801.25(a)(2) (formerly 801.22(c)(3)(ii)) of the final regulations has been revised to make it clear that the term "corresponding charted responses" refers to copies of the entire examination charts.

Examiners Bond

Section 8(c)(1)(B) of EPPA and section 801.23(b)(2) of the interim final rules require an examiner to maintain either a minimum of a $50,000 bond or an equivalent amount of professional liability coverage.

Shortly after EPPA became effective, the Department received several telephone inquiries from polygraph examiners concerning the format, content, and other specifications related to the $50,000 bond referred to in the law. However, none of the commenters responding to the interim final rules addressed this issue. This may be due in large part to the fact that many examiners have discontinued operations. Those private examiners remaining in business typically ca. y liability insurance, and this may also account for the lack of interest in the bond provision.

There is no specific legislative history pertaining to the matter of bonding. The House bill, H.R. 1212, contained no licensing standards or bonding requirement. These types of provisions were, however, contained in the Senate version. According to the remarks of Senator Hatch on S. 1904, provisions on qualifications of examiners, such as training and bonding, were based in large part on the recommendations of the American Polygraph Association. While the conference agreement eliminated a requirement for the Secretary of Labor to establish licensing standards, certain of the requirements for examiners were retained, which included the $50,000 bond.

The Department has decided not to establish a uniform bond format with related administrative procedures and instructions in the text of the final rule. The lack of interest in bonds within the polygraph examiner community strongly suggests that the statutory alternative of professional liability insurance is preferred. The Department will, in the alternative, provide guidance to individual examiners who wish to obtain a $50,000 bond in lieu of liability insurance.

Five-Test and 90-Minute Test Requirements

The Committee of National Security Companies, Independent Armored Car Operators Association, National Armored Car Association, National Burglar and Fire Alarm Association, and several polygraph examiners raised concerns about the limit of five polygraph tests on any given day and the 90-minute length of tests. With respect to the 5-test requirement, there is apparent confusion in situations where (1) tests subject to the Act and tests outside the scope of the Act are administered by an examiner on the same day, and (2) only tests outside the scope of the Act are administered by an examiner on a given calendar day. One commenter also suggested that the 5-test requirement should not apply to pre-employment polygraph tests where the applicant passes the test and is diagnosed as truthful.

These commenters considered the 90-minute requirement to be unrealistic and unreasonable, particularly in those cases where the objective of the test can be achieved in less time. It was suggested that the Department recognize that some tests may be completed in less than 90 minutes, and that the regulations permit an examinee to depart from the test in such cases without placing the examiner and the employer in technical violation. One commenter suggested that a less stringent time standard be permitted for pre-employment tests of job applicants who test truthful.

Section 8(b) of the Act sets forth the rights of an examinee which must be observed in order for the exemptions that allow polygraph testing to apply. Paragraph (5) of section 8(b) expressly states that an examiner "* * * shall not conduct and complete more than 5 polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration." Based on the specific statutory language, it is considered reasonable to limit the 5-test requirement to calendar days in which a test or tests subject to the Act are given by an examiner and § 801.26(c)(2) (formerly § 801.23(c)(2)) is modified accordingly. Thus, on any given calendar day on which a test within the scope of the Act is administered, the examiner may not conduct more than a total of 5 tests, regardless of whether any of the remaining tests conducted that day were also subject to EPPA. There is, of course, no limit on tests on calendar days when all administered tests are outside the scope of the Act. The requirement that no testing period shall be less than 90 minutes in length is also construed as applying only to tests subject to the Act's provisions. The exemption provided in the interim final rule when an employee voluntarily terminates the test prior to the end of the 90-minute period is clarified to provide that such termination must be before the test is completed, and that in such event, no opinion may be rendered regarding the employee's truthfulness. Section 801.26(c)(3) (formerly § 801.23(c)(3)) has been modified to reflect this position. While a practical case can be made for a shorter timeframe in the case of job applicants found to be truthful, the statute provides no authority to prescribe less stringent requirements in the regulations.

Requirement That Records Be Kept for Three Years From Date of Test

Pederesen Enterprises, Inc., a polygraph examiner, questioned the requirement in § 801.30(a) for examiners to retain test records for three years when most State laws only require such records to be kept for periods of one to two years. The three-year requirement is imposed by statute (section 8(c)(2)(B) of EPPA) and the Department has no authority to reduce it to a shorter period. Thus, no changes have been made in the three-year retention requirement.

Examiner Records Pertaining to the Number of Tests Conducted Each Day

One commenter suggested that the recordkeeping requirements are confusing, particularly with regard to tests administered outside the scope of EPPA. The comment has merit. Examiners are required to maintain records of the number of examinations conducted each day "whether or not conducted pursuant to the Act." Since § 801.26(c)(2) (formerly § 801.23(c)(2)) has been modified to make clear that the five-test limit is not applicable in calendar days where all administered tests are outside the scope of the Act, daily records of the number of tests conducted are needed only for those days in which one or more EPPA covered tests are conducted. Section 801.30(a)(5) (formerly § 801.30(a)(4)) has been modified accordingly.

Disclosure of Information Obtained During a Polygraph Test to Personnel of the Employer

Section 9(b) of EPPA prohibits an examiner from disclosing information acquired from a polygraph test except to the (1) examinee or other person designated by the examinee; (2) the employer who requested the test; or (3) a court, governmental agency, arbitrator, or mediator pursuant to a court order. With respect to disclosure of information to an employer, the National Association of Chain Drug Stores, Inc., National Wholesale Druggists' Association, and Food Marketing Institute noted that § 801.35 needs clarification in connection with the scope of company personnel covered by the word "employer." This concern stems from the fact that a "need to know" is not limited solely to the company official who requested the test.

In view of the apparent confusion, § 801.35 has been revised to make clear that test results may be disclosed to any management personnel of the employer where the disclosure of such information is relevant to the carrying out of their job responsibilities.

Disclosure of Polygraph Test Information

Section 9(b) of EPPA prohibits an examiner from disclosing information acquired from a polygraph test except to: (1) The examinee or other person designated by the examinee; (2) the employer who requested the test; or (3) a court, governmental agency, arbitrator, or mediator pursuant to a court order. Section 801.35 of the interim final regulations restates the statutory exceptions to the general disclosure prohibition, but permits examiners to disclose test results, without identifying information, to other examiners for consultation purposes (§ 801.35(c)).

This provision is based on a practice of examiners to have other examiners verify their conclusions and/or observations. Such disclosure is considered to be a part of the examination and it is considered to be in the best interest of the examinees that this practice continue.

The statutory restrictions on disclosure were a concern to the Polygraph Examiners Board of the State of Texas. Under the Texas Polygraph Examiners Act, this Board makes routine compliance inspections of licensed polygraph examiners and their records. Section 9 of EPPA prohibits the Board from reviewing polygraph records (charts, examinee's answers to relevant questions, examiner's opinions, reports, etc.) unless they receive written permission from an examinee or obtain an order from a court of competent jurisdiction. Thirty-two states have laws with provisions for licensing operators of polygraph devices, and most licensing laws are administered by a board or similar entity. However, States other than Texas did not comment. It is not clear to what extent these licensing bodies must review the work product of examiners to assure compliance with State law.

At the request of the Texas Polygraph Examiners Board, Congressman Bartlett (R., Texas) introduced H.R. 3451 in October 1989 to amend section 9(b) of EPPA for the purpose of allowing examiners to disclose test results to inspectors of State and local governments in connection with "licensing and disciplining." However, Congress has not enacted this proposed amendment to the law.

Established case law indicates that the plain meaning of the statute must be followed unless it would cause an odd result or conflict with clearly expressed Congressional intent. The Department is of the view that the language of the statute prevents the Texas Polygraph Examiners Board or any other State and local government agency from inspecting the polygraph tests conducted by an examiner. In the absence of any legislative history suggesting a contrary view, a regulatory change to permit disclosures of the type sought by the Texas Polygraph Examiners Board would not be legally supportable. An amendment to EPPA would be the only possible means to allow such disclosures. Accordingly, § 801.35 is adopted in the final rule without change on this issue.

Administrative Proceedings

The Office of Administrative Law Judges (OALJ), U.S. Department of Labor, commented on the procedural rules concerning the assessment of civil money penalties under the Act. The OALJ suggested that the regulations be clarified to provide that decisions of an Administrative Law Judge (ALJ) are reviewed by the Secretary in the exercise of the Secretary's discretion, rather than review as a matter of right. They also suggested that § 801.69 be clarified to provide that any Notice of Intent to vacate or modify the decision must be issued within 30 days of the date of the decision.

The Department concurs with these comments and has made modifications accordingly to § 801.70 of the regulations. In addition, the Department agrees with the suggestion of the OALJ that the regulations contain a standard of review by the Secretary of findings of fact made by the ALJ. Section 801.68 has therefore been revised to provide that findings of fact may be modified or vacated only if clearly erroneous.

In addition, the Department has modified section 801.59 to provide that where service of a request for a hearing is made by mail, five days will be added to the time in which the request must be received by the Administrator. This corresponds to a recent revision in the regulations under the Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. 1853, (the model for assessment of penalties under EPPA, as prescribed in section 6(a)(3) of the Act).

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

The Department's determination that the regulation is not subject to a regulatory impact analysis is based on the following:

(a) The Congressional Budget Office estimated the cost for EPPA to be $1 million to the Federal Government and that EPPA will have no impact on State and local governments.

(b) Further, the legislative history on EPPA shows a lack of any evidence that internal theft rates are higher in States which prohibit the use of polygraph tests. Also, there are no conclusive studies which show that polygraph testing reduces employee crime.

(c) Section 7 of EPPA permits certain employers to continue to conduct polygraph testing and permits all employers to request an employee to take a test, under certain conditions, when it is administered as part of an ongoing investigation. Consequently, any economic costs due to increased theft attributable to the absence of polygraph testing will be minimized.

(d) The net employment effect of EPPA will not be significant. As employers turn to different hiring procedures and screening techniques, employment gains in the occupations associated with these alternative hiring procedures will offset any employment loss in the polygraph testing field.

Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency Is Being Considered

On June 27, 1988 the Employee Polygraph Protection Act of 1988 was enacted. This Act, effective December 27, 1988, generally prohibits employers who are engaged in or affecting interstate commerce from using any lie detector tests, with certain exemptions, either for pre-employment screening or during the course of employment. Section 5 of the Act requires the Secretary of Labor to promulgate rules and regulations as necessary to implement the Act.

(2) Objectives of and Legal Basis for Rule

These rules are issued pursuant to section 5 of the Employee Polygraph Protection Act of 1988. The objective of the rules is to enable employers and polygraph examiners to comply with the requirements of the Act, and to advise employees and job applicants of the provisions of the Act.

(3) Number of Small Entities Covered Under Rule

All private sector employers engaged in or affecting commerce or in the production of goods for commerce are subject to this final rule. Because of the term "affecting commerce," the scope of EPPA is accorded a broader meaning then that provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). Virtually all employers are covered by these regulations, and the majority of such employers would be classified as small entities. In addition, these regulations contain provisions applying to over 3,500 polygraph examiners and an undetermined number of others who administer lie detector-type tests, most of which are prohibited by the Act. It is estimated that nearly all of these examiners are either individual practitioners or associated with firms that would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The final rule contains recordkeeping requirements for employers with respect to the maintenance and preservation of records for each polygraph test administered, as well as for each polygraph examiner who administers such tests on behalf of employers.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements, nor is similar information required by any other Federal agency or statute.

(6) Differing Compliance and Recordkeeping Requirements

The language set forth in this final regulation closely adheres to the requirements imposed by the language of the Act and accompanying legislative history. The burdens imposed by these requirements on employers, and the polygraph examiners used by employers, are those imposed by statute, and those necessary to enforce the statute.

However, in developing this final rule, consideration was given to requiring a standard form for written statements which employers must provide to examinees, in certain instances, as a condition for administering polygraph tests under the several exemptions to the Act's general prohibition against using such tests. For example, an employer is required to furnish an employee with a written statement setting out the employee's rights under the law, prior to administering a polygraph test. It was concluded that employers, especially small entities, should have the flexibility to formulate and maintain such required written statements in any order or form deemed most appropriate to their needs, and that standard formats would not be required. However, to assist such employers, a sample format is set forth in the Appendix to this part, which may be relied upon as meeting the content requirements for such notice.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the recordkeeping requirements in this final rule are those imposed by statute, and those necessary to determine compliance with the Act. Employers are permitted to use any format that meets enforcement and compliance needs.

(8) Use of Other Standards

Appropriate alternative standards that would impose fewer regulatory burdens on covered employers, especially small entities, are not available.

(9) Exemption of Small Entities From Coverage of the Rule

An exemption from the requirements of the final rule for small entities is not permitted by the provisions of the Act.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 801

Employment, Investigations, Labor, Law enforcement.

Accordingly, title 29, chapter V, subchapter C, part 801 of the Code of Federal Regulations is revised as set forth below.

Signed at Washington, DC, on this 25th day of February 1991.

Lynn Martin,

Secretary of Labor.

Samual D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,
Acting Administrator, Wage and Hour Division.

Subchapter C—Other Laws

Part 801—Application of the Employee Polygraph Protection Act of 1988

Subpart A—General

Sec.
801.1 Purpose and scope.
801.2 Definitions.
801.3 Coverage.
801.4 Prohibitions on lie detector use.
801.5 Effect on other laws or agreements.
801.6 Notice of protection.
801.7 Authority of the Secretary.
801.8 Employment relationship.

Subpart B—Exemptions

801.10 Exclusion for public sector employers.
801.11 Exemption for national defense and security.
801.12 Exemption for employers conducting investigations of economic loss or injury.
801.13 Exemption for employers authorized to manufacture, distribute, or dispense controlled substances.
801.14 Exemption for employers providing security services.

Subpart C—Restrictions on Polygraph Usage Under Exemptions

801.20 Adverse employment action under ongoing investigation exemption.
801.21 Adverse employment action under security service and controlled substance exemptions.
801.22 Rights of examinee—general.
801.23 Rights of examinee—pretest phase.
801.24 Rights of examinee—actual testing phase.
801.25 Rights of examinee—post-test phase.
801.26 Qualifications of and requirements for examiners.

Subpart D—Recordkeeping and Disclosure Requirements

801.30 Records to be preserved for 3 years.
801.35 Disclosure of test information.

Subpart E—Enforcement

801.40 General.
801.41 Representation of the Secretary.
801.42 Civil money penalties—assessment.
801.43 Civil money penalties—payment and collection.

Subpart F—Administrative Proceedings

General

801.50 Applicability of procedures and rules.

Procedures Relating to Hearing

801.51 Written notice of determination required.
801.52 Contents of notice.
801.53 Request for hearing.

Rules of Practice

801.58 General.
801.59 Service and computation of time.
801.60 Commencement of proceeding.
801.61 Designation of record.
801.62 Caption of proceeding.

Referral for Hearing

801.63 Referral to Administrative Law Judge.
801.64 Notice of docketing.

Procedures Before Administrative Law Judge

801.65 Appearances; representation of the Department of Labor.
801.66 Consent findings and order.
801.67 Decision and Order of Administrative Law Judge

Modification or Vacation of Decision and Order of Administrative Law Judge

801.68 Authority of the Secretary.
801.69 Procedures for initiating review.
801.70 Implementation by the Secretary.
801.71 Filing and service.
801.72 Responsibility of the Office of Administrative Law Judges.
801.73 Final decision of the Secretary.

Record

801.74 Retention of official record.
801.75 Certification of official record.

Appendix A to Part 801—Notice to Examinee

Authority: Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009.

Subpart A—General

§ 801.1 Purpose and scope.

(a) Effective December 27, 1988, the Employee Polygraph Protection Act of 1988 (EPPA or the Act) prohibits most private employers (Federal, State, and local government employers are exempted from the Act) from using any lie detector tests either for pre-employment screening or during the course of employment. Polygraph tests, but no other types of lie detector tests, are permitted under limited circumstances subject to certain restrictions. The purpose of this part is to set forth the regulations to carry out the provisions of EPPA.

(b) The regulations in this part are divided into six subparts. Subpart A contains the provisions generally applicable to covered employers, including the requirements relating to the prohibitions on lie detector use and the posting of notices. Subpart A also sets forth interpretations regarding the effect of section 10 of the Act on other laws or collective bargaining agreements. Subpart B sets forth rules regarding the statutory exemptions from application of the Act. Subpart C sets forth the restrictions on polygraph usage under such exemptions. Subpart D sets forth the recordkeeping requirements and the rules on the disclosure of polygraph test information. Subpart E deals with the authority of the Secretary of Labor and the enforcement provisions under the Act. Subpart F contains the procedures and rules of practice necessary for the administrative enforcement of the Act.

§ 801.2 Definitions.

For purposes of this part:

(a) *Act* or *EPPA* means the Employee Polygraph Protection Act of 1988 (Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009).

(b) (1) The term *commerce* has the meaning provided in section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)). As so defined, *commerce* means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(2) The term *State* means any of the fifty States and the District of Columbia and any Territory or possession of the United States.

(c) The term *employer* means any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee. A polygraph examiner either employed for or whose services are retained for the sole purpose of administering polygraph tests ordinarily would not be deemed an *employer* with respect to the examinees.

(d) (1) The term *lie detector* means a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Voice stress analyzers, or psychological stress evaluators, include any systems that utilize voice stress analysis, whether or not an opinion on honesty or dishonesty is specifically rendered.

(2) The term *lie detector* does not include medical tests used to determine the presence or absence of controlled substances or alcohol in bodily fluids. Also not included in the definition of *lie detector* are written or oral tests commonly referred to as "honesty" or "paper and pencil" tests, machine-scored or otherwise; and graphology tests commonly referred to as handwriting tests.

(e) The term *polygraph* means an instrument that—

(1) Records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(2) Is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(f) The terms *manufacture, dispense, distribute,* and *deliver* have the meanings set forth in the Controlled Substances Act, 21 U.S.C. 812.

(g) The term *Secretary* means the Secretary of Labor or authorized representative.

(h) *Employment Standards Administration* means the agency within the Department of Labor, which includes the Wage and Hour Division.

(i) *Wage and Hour Division* means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned primary responsibility for enforcement and administration of the Act.

(j) *Administrator* means the Administrator of the Wage and Hour Division, or authorized representative.

§ 801.3 Coverage.

(a) The coverage of the Act extends to "any employer engaged in or affecting commerce or in the production of goods for commerce." (Section 3 of EPPA; 29 U.S.C. 2002.) In interpreting the phrase "affecting commerce" in other statutes, courts have found coverage to be coextensive with the full scope of the Congressional power to regulate commerce. See, for example, *Godwin* v. *Occupational Safety and Health Review Commission,* 540 F. 2d 1013, 1015 (9th Cir. 1976). Since most employers engage in one or more types of activities that would be regarded as "affecting commerce" under the principles established by a large body of court cases, virtually all employers are deemed subject to the provisions of the Act, unless otherwise exempt pursuant to section 7 (a), (b), or (c) of the Act and §§ 801.10 or 801.11 of this part.

(b) The Act also extends to all employees of covered employers regardless of the citizenship status, and to foreign corporations operating in the United States. Moreover, the provisions of the Act extend to any actions relating to the administration of lie detector, including polygraph, tests which occur within the territorial jurisdiction of the United States, e.g., the preparation of paperwork by a foreign corporation in a Miami office relating to a polygraph test that is to be administered on the high seas or in some foreign location.

§ 801.4 Prohibitions on lie detector use.

(a) Section 3 of EPPA provides that, unless otherwise exempt pursuant to section 7 of the Act and §§ 801.10 through 801.14 of this part, covered employers are prohibited from:

(1) Requiring, requesting, suggesting or causing, directly or indirectly, any employee or prospective employee to take or submit to a lie detector test;

(2) Using, accepting, or inquiring about the results of a lie detector test of any employee or prospective employee; and

(3) Discharging, disciplining, discriminating against, denying employment or promotion, or threatening any employee or prospective employee to take such action for refusal or failure to take or submit to such test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding, or for exercising any rights afforded by the Act.

(b) An employer who reports a theft or other incident involving economic loss to police or other law enforcement authorities is not engaged in conduct subject to the prohibitions under paragraph (a) of this section if, during the normal course of a subsequent investigation, such authorities deem it necessary to administer a polygraph test to an employee(s) suspected of involvement in the reported incident. Employers who cooperate with police authorities during the course of their investigations into criminal misconduct are likewise not deemed engaged in prohibitive conduct provided that such cooperation is passive in nature. For example, it is not uncommon for police authorities to request employees suspected of theft or criminal activity to submit to a polygraph test during the employee's tour of duty since, as a general rule, suspect employees are often difficult to locate away from their place of employment. Allowing a test on the employer's premises, releasing an employee during working hours to take a test at police headquarters, and other similar types of cooperation at the request of the police authorities would not be construed as "requiring, requesting, suggesting, or causing, directly or indirectly, any employee * * * to take or submit to a lie detector test." Cooperation of this type must be distinguished from actual participation in the testing of employees suspected of wrongdoing, either through the administration of a test by the employer at the request or direction of police authorities, or through employer reimbursement of tests administered by police authorities to employees. In some communities, it may be a practice of police authorities to request employer testing of employees before a police investigation is initiated on a reported incident. In other communities, police examiners are available to employers, on a cost reimbursement basis, to conduct tests on employees suspected by an employer of wrongdoing. All such conduct on the part of employers is deemed within the Act's prohibitions.

(c) The receipt by an employer of information from a polygraph test administered by police authorities pursuant to an investigation is prohibited by section 3(2) of the Act. (See paragraph (a)(2) of this section.)

(d) The simulated use of a polygraph instrument so as to lead an individual to believe that an actual test is being or may be performed (e.g., to illicit confessions or admissions of guilt) constitutes conduct prohibited by paragraph (a) of this section. Such use includes the connection of an employee or prospective employee to the instrument without any intention of a diagnostic purpose, the placement of the instrument in a room used for interrogation unconnected to the employee or prospective employee, or the mere suggestion that the instrument may be used during the course of the interview.

§ 801.5 Effect on other laws or agreements.

(a) Section 10 of EPPA provides that the Act, except for subsections (a), (b), and (c) of section 7, does not preempt any provision of a State or local law, or any provision of a collective bargaining agreement, that prohibits lie detector tests or is more restrictive with respect to the use of lie detector tests.

(b)(1) This provision applies to all aspects of the use of lie detector tests, including procedural safeguards, the use of test results, the rights and remedies provided examinees, and the rights, remedies, and responsibilities of examiners and employers.

(2) For example, if the State prohibits the use of polygraphs in all private employment, polygraph examinations could not be conducted pursuant to the limited exemptions provided in section 7 (d), (e) or (f) of the Act; a collective bargaining agreement that provides greater protection to an examinee would apply in addition to the protection provided in the Act; or more stringent licensing or bonding requirements in a State law would apply in addition to the Federal bonding requirement.

(3) On the other hand, industry exemptions and applicable restrictions thereon, provided in EPPA, would preempt less restrictive exemptions established by State law for the same industry, e.g., random testing of current employees in the drug industry not prohibited by State law but limited by this Act to tests administered in connection with ongoing investigations.

(c) EPPA does not impede the ability of State and local governments to enforce existing statutes or to enact subsequent legislation restricting the use of lie detectors with respect to public employees.

(d) Nothing in section 10 of the Act restricts or prohibits the Federal Government from administering polygraph tests to its own employees or to experts, consultants, or employees of contractors, as provided in subsections 7(b) and 7(c) of the Act, and § 801.11 of this part.

§ 801.6 Notice of protection.

Every employer subject to EPPA shall

BEST COPY AVAILABLE

post and keep posted on its premises a notice explaining the Act, as prescribed by the Secretary. Such notice must be posted in a prominent and conspicuous place in every establishment of the employer where it can readily be observed by employees and applicants for employment. Copies of such notice may be obtained from local offices of the Wage and Hour Division.

§ 801.7 Authority of the Secretary.

(a) Pursuant to section 5 of the Act, the Secretary is authorized to:

(1) Issue such rules and regulations as may be necessary or appropriate to carry out the Act;

(2) Cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the Act; and

(3) Make investigations and inspections as necessary or appropriate, through complaint or otherwise, including inspection of such records (and copying or transcription thereof), questioning of such persons, and gathering such information as deemed necessary to determine compliance with the Act or these regulations; and

(4) Require the keeping of records necessary or appropriate for the administration of the Act.

(b) Section 5 of the Act also grants the Secretary authority to issue subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in connection with any investigation or hearing under the Act. The Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any investigation or hearing provided for in the Act, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall be available to the Secretary.

(c) In case of disobedience to a subpoena, the Secretary may invoke the aid of a United States District Court which is authorized to issue an order requiring the person to obey such subpoena.

(d) Any person may report a violation of the Act or these regulations to the Secretary by advising any local office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any authorized representative of the Administrator. The office or person receiving such a report shall refer it to the appropriate office of the Wage and Hour Division, Employment Standards Administration, for the region or area in which the reported violation is alleged to have occurred.

(e) The Secretary shall conduct investigations in a manner which, to the extent practicable, protects the confidentiality of any complainant or other party who provides information to the Secretary in good faith.

(f) It is a violation of these regulations for any person to resist, oppose, impede, intimidate, or interfere with any official of the Department of Labor assigned to perform an investigation, inspection, or law enforcement function pursuant to the Act during the performance of such duties.

§ 801.8 Employment relationship.

(a) EPPA broadly defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relationship to an employee or prospective employee" (EPPA section 2(2)).

(b) EPPA restrictions apply to State Employment Services, private employment placement agencies, job recruiting firms, and vocational trade schools with respect to persons who may be referred to potential employers. Such entities are not liable for EPPA violations, however, where the referrals are made to employers for whom no reason exists to know that the latter will perform polygraph testing of job applicants or otherwise violate the provisions of EPPA.

(c) EPPA prohibitions against discrimination apply to former employees of an employer. For example, an employee may quit rather than take a lie detector test. The employer cannot discriminate or threaten to discriminate in any manner against that person (such as by providing bad references in the future) because of that person's refusal to be tested, or because that person files a complaint, institutes a proceeding, testifies in a proceeding, or exercises any right under EPPA.

Subpart B—Exemptions

§ 801.10 Exclusion for public sector employers.

(a) Section 7(a) provides an exclusion from the Act's coverage for the United States Government, any State or local government, or any political subdivision of a State or local government, acting in the capacity of an employer. This exclusion from the Act also extends to any interstate governmental agency.

(b) The term "United States Government" means any agency or instrumentality, civilian or military, of the executive, legislative, or judicial branches of the Federal Government, and includes independent agencies, wholly-owned government corporations, and nonappropriated fund instrumentalities.

(c) The term "any political subdivision of a State or local government" means any entity which is either:

(1) Created directly by a state or local government, or

(2) Administered by individuals who are responsible to public officials (i.e., appointed by an elected public official(s) and/or subject to removal procedures for public officials, or to the general electorate.

(d) This exclusion from the Act applies only to the Federal, State, and local government entity with respect to its own public employees. Except as provided in sections 7 (b) and (c) of the Act, and § 801.11 of the regulations, this exclusion does not extend to contractors or nongovernmental agents of a government entity, nor does it extend to government entities with respect to employees of a private employer with which the government entity has a contractual or other business relationship.

§ 801.11 Exemption for national defense and security.

(a) The exemptions allowing for the administration of lie detector tests in the following paragraphs (b) through (e) of this section apply only to the Federal Government; they do not allow private employers/contractors to administer such tests.

(b) Section 7(b)(1) of the Act provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any expert, consultant or employee of any contractor under contract with the Department of Defense; or with the Department of Energy, in connection with the atomic energy defense activities of such Department.

(c) Section 7(b)(2)(A) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function of the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency, to any individual employed by, assigned to, or detailed to any such agency; or any expert or consultant under contract to any such agency; or any employee of a contractor to such agency; or any individual applying for a position in any such agency; or any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency.

(d) Section 7(b)(2)(B) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any intelligence or counterintelligence function, to any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2 (a) of Executive Order 12356 (or a successor Executive Order).

(e) Section 7(c) provides that nothing in the Act shall be construed to prohibit the administration of any lie detector test by the Federal Government, in the performance of any counterintelligence function, to any employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under a contract with the Bureau.

(f) "Counterintelligence" for purposes of the above paragraphs means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, terrorist activities, or assassinations conducted for or on behalf of foreign governments, or foreign or domestic organizations or persons.

(g) Lie detector tests of persons described in the above paragraphs will be administered in accordance with applicable Department of Defense directives and regulations, or other regulations and directives governing the use of such tests by the United States Government, as applicable.

§ 801.12 Exemption for employers conducting investigations of economic loss or injury.

(a) Section 7(d) of the Act provides a limited exemption from the general prohibition on lie detector use in private employment settings for employers conducting ongoing investigations of economic loss or injury to the employer's business. An employer may request an employee, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.20, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, to submit to a polygraph test, but no other type of lie detector test, only if—

(1) The test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation or an act of unlawful industrial espionage or sabotage;

(2) The employee had access to the property that is the subject of the investigation;

(3) The employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation;

(4) The employer provides the examinee with a statement, in a language understood by the examinee, prior to the test which fully explains with particularity the specific incident or activity being investigated and the basis for testing particular employees and which contains, at a minimum:

(i) An identification with particularity of the specific economic loss or injury to the business of the employer;

(ii) A description of the employee's access to the property that is the subject of the investigation;

(iii) A description in detail of the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(iv) Signature of a person (other than a polygraph examiner) authorized to legally bind the employer; and

(5) The employer retains a copy of the statement and proof of service described in paragraph (a)(4) of this section for at least 3 years and makes it available for inspection by the Wage and Hour Division on request. (See § 801.30(a).)

(Approved by the Office of Management and Budget under control number 1225–0170)

(b) For the exemption to apply, the condition of an "ongoing investigation" must be met. As used in section 7(d) of the Act, the ongoing investigation must be of a specific incident or activity. Thus, for example, an employer may not request that an employee or employees submit to a polygraph test in an effort to determine whether or not any thefts have occurred. Such random testing by an employer is precluded by the Act. Further, because the exemption is limited to a specific incident or activity, an employer is precluded from using the exemption in situations where the so-called "ongoing investigation" is continuous. For example, the fact that items in inventory are frequently missing from a warehouse would not be a sufficient basis, standing alone, for administering a polygraph test. Even if the employer can establish that unusually high amounts of inventory are missing from the warehouse in a given month, this, in and of itself, would not be a sufficient basis to meet the specific incident requirement. On the other hand, polygraph testing in response to inventory shortages would be permitted where additional evidence is obtained through subsequent investigation of specific items missing through intentional wrongdoing, and a reasonable suspicion that the employee to be polygraphed was involved in the incident under investigation. Administering a polygraph test in circumstances where the missing inventory is merely unspecified, statistical shortages, without identification of a specific incident or activity that produced the inventory shortages and a "reasonable suspicion that the employee was involved," would amount to little more than a fishing expedition and is prohibited by the Act.

(c)(1)(i) The terms "economic loss or injury to the employer's business" include both direct and indirect economic loss or injury.

(ii) Direct loss or injury includes losses or injuries resulting from theft, embezzlement, misappropriation, industrial espionage or sabotage. These examples, cited in the Act, are intended to be illustrative and not exhaustive. Another specific incident which would constitute direct economic loss or injury is the misappropriation of confidential or trade secret information.

(iii) Indirect loss or injury includes the use of an employer's business to commit a crime, such as check-kiting or money laundering. In such cases, the ongoing investigation must be limited to criminal activity that has already occurred, and to use of the employer's business operations (and not simply the use of the premises) for such activity. For example, the use of an employer's vehicles, warehouses, computers or equipment to smuggle or facilitate the importing of illegal substances constitutes an indirect loss or injury to the employer's business operations. Conversely, the mere fact that an illegal act occurs on the employer's premises (such as a drug transaction that takes place in the employer's parking lot or rest room) does not constitute an indirect economic loss or injury to the employer.

(iv) Indirect loss or injury also includes theft or injury to property of another for which the employer exercises fiduciary, managerial or security responsibility, or where the firm has custody of the property (but not property of other firms to which the employees have access by virtue of the business relationship). For example, if a maintenance employee of the manager of an apartment building steals jewelry from a tenant's apartment, the theft results in an indirect economic loss or injury to the employer because of the manager's management responsibility with respect to the tenant's apartment. A messenger on a delivery of confidential business reports for a client

firm who steals the reports causes an indirect economic loss or injury to the messenger service because the messenger service is custodian of the client firm's reports, and therefore is responsible for their security. Similarly, the theft of property protected by a security service employer is considered an economic loss or injury to that employer.

(v) A theft or injury to a client firm does not constitute an indirect loss or injury to an employer unless that employer has custody of, or management, or security responsibility for, the property of the client that was lost or stolen or injured. For example, a cleaning contractor has no responsibility for the money at a client bank. If money is stolen from the bank by one of the cleaning contractor's employees, the cleaning contractor does not suffer an indirect loss or injury.

(vi) Indirect loss or injury does not include loss or injury which is merely threatened or potential, e.g., a threatened or potential loss of an advantageous business relationship.

(2) Economic losses or injuries which are the result of unintentional or lawful conduct would not serve as a basis for the administration of a polygraph test. Thus, apparently unintentional losses or injuries stemming from truck, car, workplace, or other similar type accidents or routine inventory or cash register shortages would not meet the economic loss or injury requirement. Any economic loss incident to lawful union or employee activity also would not satisfy this requirement. It makes no difference that an employer may be obligated to directly or indirectly incur the cost of the incident, as through payment of a "deductible" portion under an insurance policy or higher insurance premiums.

(3) It is the business of the employer which must suffer the economic loss or injury. Thus, a theft committed by one employee against another employee of the same employer would not satisfy the requirement.

(d) While nothing in the Act prohibits the use of medical tests to determine the presence of controlled substances or alcohol in bodily fluids, the section 7(d) exemption does not permit the use of a polygraph test to learn whether an employee has used drugs or alcohol, even where such possible use may have contributed to an economic loss to the employer (e.g., an accident involving a company vehicle).

(e) Section 7(d)(2) provides that, as a condition for the use of the exemption, the employee must have had access to the property that is the subject of the investigation.

(1) The word "access", as used in section 7(d)(2), refers to the opportunity which an employee had to cause, or to aid or abet in causing, the specific economic loss or injury under investigation. The term "access", thus, includes more than direct or physical contact during the course of employment. For example, as a general matter, all employees working in or with authority to enter a warehouse storage area have "access" to unsecured property in the warehouse. All employees with the combination to a safe have "access" to the property in a locked safe. Employees also have "access" who have the ability to divert possession or otherwise affect the disposition of the property that is the subject of investigation. For example, a bookkeeper in a jewelry store with access to inventory records may aid or abet a clerk who steals an expensive watch by removing the watch from the employer's inventory records. In such a situation, it is clear that the bookkeeper effectively has "access" to the property that is the subject of the investigation.

(2) As used in section 7(d)(2), "property" refers to specifically identifiable property, but also includes such things of value as security codes and computer data, and proprietary, financial or technical information, such as trade secrets, which by its availability to competitors or others would cause economic harm to the employer.

(f)(1) As used in section 7(d)(3), the term "reasonable suspicion" refers to an observable, articulable basis in fact which indicates that a particular employee was involved in, or responsible for, an economic loss. Access in the sense of possible or potential opportunity, standing alone, does not constitute a basis for "reasonable suspicion". Information from a co-worker, or an employee's behavior, demeanor, or conduct may be factors in the basis for reasonable suspicion. Likewise, inconsistencies between facts, claims, or statements that surface during an investigation can serve as a sufficient basis for reasonable suspicion. While access or opportunity, standing alone, does not constitute a basis for reasonable suspicion, the totality of circumstances surrounding the access or opportunity (such as its unauthorized or unusual nature or the fact that access was limited to a single individual) may constitute a factor in determining whether there is a reasonable suspicion.

(2) For example, in an investigation of a theft of an expensive piece of jewelry, an employee authorized to open the establishment's safe no earlier than 9 a.m., in order to place the jewelry in a window display case, is observed opening the safe at 7:30 a.m. In such a situation, the opening of the safe by the employee one and one-half hours prior to the specified time may serve as the basis for reasonable suspicion. On the other hand, in the example given, if the employer asked the employee to bring the piece of jewelry to his or her office at 7:30 a.m., and the employee then opened the safe and reported the jewelry missing, such access, standing alone, would not constitute a basis for reasonable suspicion that the employee was involved in the incident unless access to the safe was limited solely to the employee. If no one other than the employee possessed the combination to the safe, and all other possible explanations for the loss are ruled out, such as a break-in, the employer may formulate a basis for reasonable suspicion based on sole access by one employee.

(3) The employer has the burden of establishing that the specific individual or individuals to be tested are "reasonably suspected" of involvement in the specific economic loss or injury for the requirement in section 7(d)(3) to be met.

(g)(1) As discussed in paragraph (a)(4) of this section, section 7(d)(4) of the Act sets forth what information, at a minimum, must be provided to an employee if the employer wishes to claim the exemption.

(2) The statement required under paragraph (a)(4) of this section must be received by the employee at least 48 hours, excluding weekend days and holidays, prior to the time of the examination. The statement must set forth the time and date of receipt by the employee and be verified by the employee's signature. This will provide the employee with adequate pre-test notice of the specific incident or activity being investigated and afford the employee sufficient time prior to the test to obtain and consult with legal counsel or an employee representative.

(3) The statement to be provided to the employee must set forth with particularity the specific incident or activity being investigated and the basis for testing particular employees. Section 7(d)(4)(A) requires specificity beyond the mere assertion of general statements regarding economic loss, employee access, and reasonable suspicion. For example, an employer's assertion that an expensive watch was stolen, and that the employee had access to the watch and is therefore a suspect, would not meet the "with particularity" criterion. If the basis for an employer's requesting an employee (or employees) to take a polygraph test is not articulated with particularity, and reduced to writing, then the standard is not met. The identity of a co-worker or other individual providing information used to establish reasonable suspicion need not be revealed in the statement.

(4) It is further required that the statement provided to the examinee be signed by the employer, or an employee or other representative of the employer with authority to legally bind the employer. The person signing the statement must not be a polygraph examiner unless the examiner is acting solely in the capacity of an employer with respect to his or her own employees and does not conduct the examination. The standard would not be met, and the exemption would not apply if the person signing the statement is not authorized to legally bind the employer.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.20, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.13 Exemption of employers authorized to manufacture, distribute, or dispense controlled substances.

(a) Section 7(f) provides an exemption from the Act's general prohibition regarding the use of polygraph tests for employers authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812). This exemption permits the administration of polygraph tests, subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, to:

(1) A prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(2) A current employee if the following conditions are met:

(i) The test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer; and

(ii) The employee had access to the person or property that is the subject of the investigation.

(b)(1) The terms "manufacture", "distribute", "distribution", "dispense", "storage", and "sale", for the purposes of this exemption, are construed within the meaning of the Controlled Substances Act (21 U.S.C. 812 et seq.), as administered by the Drug Enforcement Administration (DEA), U.S. Department of Justice.

(2) The exemption in section 7(f) of the Act applies only to employers who are authorized by DEA to manufacture, distribute, or dispense a controlled substance. Section 202 of the Controlled Substances Act (21 U.S.C. 812) requires every person who manufactures, distributes, or dispenses any controlled substance to register with the Attorney General (i.e., with DEA). Common or contract carriers and warehouses whose possession of the controlled substance is in the usual course of their business or employment are not required to register. Since this exemption is intended to apply only to employees and prospective employees of persons or entities registered with DEA, and is not intended to apply to truck drivers employed by persons or entities who are not so registered, it has no application to employees of common or contract carriers or public warehouses. Truck drivers and warehouse employees of the persons or entities registered with DEA and authorized to manufacture, distribute, or dispense controlled substances, are within the scope of the exemption where they have direct access or access to the controlled substances, as discussed below.

(c) In order for a polygraph examination to be performed, section 7(f) of the Act requires that a prospective employee have "direct access" to the controlled substance(s) manufactured, dispensed, or distributed by the employer. Where a current employee is to be tested as a part of an ongoing investigation, section 7(f) requires that the employee have "access" to the person or property that is the subject of the investigation.

(1) A prospective employee would have "direct access" if the position being applied for has responsibilities which include contact with or which affect the disposition of a controlled substance, including participation in the process of obtaining, dispensing, or otherwise distributing a controlled substance. This includes contact or direct involvement in the manufacture, storage, testing, distribution, sale or dispensing of a controlled substance and may include, for example, packaging, repackaging, ordering, licensing, shipping, receiving, taking inventory, providing security, prescribing, and handling of a controlled substance. A prospective employee would have "direct access" if the described job duties would give such person access to the products in question, whether such employee would be in physical proximity to controlled substances or engaged in activity which would permit the employee to divert such substances to his or her possession.

(2) A current employee would have "access" within the meaning of section 7(f) if the employee had access to the specific person or property which is the subject of the on-going investigation, as discussed in § 801.12(e) of this part. Thus, to test a current employee, the employee need not have had "direct" access to the controlled substance, but may have had only infrequent, random, or opportunistic access. Such access would be sufficient to test the employee if the employee could have caused, or could have aided or abetted in causing, the loss of the specific property which is the subject of the investigation. For example, a maintenance worker in a drug warehouse, whose job duties include the cleaning of areas where the controlled substances which are the subject of the investigation were present, but whose job duties do not include the handling of controlled substances, would be deemed to have "access", but normally not "direct access", to the controlled substances. On the other hand, a drug warehouse truck loader, whose job duties include the handling of outgoing shipment orders which contain controlled substances, would have "direct access" to such controlled substances. A pharmacy department in a supermarket is another common situation which is useful in illustrating the distinction between "direct access" and "access". Store personnel receiving pharmaceutical orders, i.e., the pharmacist, pharmacy intern, and other such employees working in the pharmacy department, would ordinarily have "direct access" to controlled substances. Other store personnel whose job duties and responsibilities do not include the handling of controlled

substances but who had occasion to enter the pharmacy department where the controlled substances which are the subject of the investigation were stored, such as maintenance personnel or pharmacy cashiers, would have "access". Certain other store personnel whose job duties do not permit or require entrance into the pharmacy department for any reason, such as produce or meat clerks, checkout cashiers, or baggers, would not ordinarily have "access." However, any current employee, regardless of described job duties, may be polygraphed if the employer's investigation of criminal or other misconduct discloses that such employee in fact took action to obtain "access" to the person or property that is the subject of the investigation—e.g., by actually entering the drug storage area in violation of company rules. In the case of "direct access", the prospective employee's access to controlled substances would be as a part of the manufacturing, dispensing or distribution process, while a current employee's "access" to the controlled substances which are the subject of the investigation need only be opportunistic.

(d) The term "prospective employee", for the purposes of this section, includes a current employee who presently holds a position which does not entail direct access to controlled substances, and therefore is outside the scope of the exemption's provisions for preemployment polygraph testing, provided the employee has applied for and is being considered for transfer or promotion to another position which entails such direct access. For example, an office secretary may apply for promotion to a position in the vault or cage areas of a drug warehouse, where controlled substances are kept. In such a situation, the current employee would be deemed a "prospective employee" for the purposes of this exemption, and thus could be subject to preemployment polygraph screening, prior to such a change in position. However, any adverse action which is based in part on a polygraph test against a current employee who is considered a "prospective employee" for purposes of this section may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(e) Section 7(f) of the Act makes no specific reference to a requirement that employers provide current employees with a written statement prior to polygraph testing. Thus, employers to whom this exemption is available are not required to furnish a written statement such as that specified in section 7(d) of the Act and § 801.12(a)(4) of this part.

(f) For the section 7(f) exemption to apply, the polygraph testing of current employees must be administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer.

(1) Current employees may only be administered polygraph tests in connection with an ongoing investigation of criminal or other misconduct, relating to a specific incident or activity, or potential incident or activity. Thus, an employer is precluded from using the exemption in connection with continuing investigations or on a random basis to determine if thefts are occurring. However, unlike the exemption in section 7(d) of the Act for employers conducting ongoing investigations of economic loss or injury, the section 7(f) exemption includes ongoing investigations of misconduct involving potential drug losses. Nor does the latter exemption include the requirement for "reasonable suspicion" contained in the section 7(d) exemption. Thus, a drug store employer is permitted to polygraph all current employees who have access to a controlled substance stolen from the inventory, or where there is evidence that such a theft is planned. Polygraph testing based on an inventory shortage of the drug during a particular accounting period would not be permitted unless there is extrinsic evidence of misconduct.

(2) In addition, the test must be administered in connection with loss or injury, or potential loss or injury, to the manufacture, distribution, or dispensing of a controlled substance.

(i) Retail drugstores and wholesale drug warehouses typically carry inventory of so-called health and beauty aids, cosmetics, over-the-counter drugs, and a variety of other similar products, in addition to their product lines of controlled drugs. The noncontrolled products usually constitute the majority of such firms' sales volumes. An economic loss or injury related to such noncontrolled substances would not constitute a basis of applicability of the section 7(f) exemption. For example, an investigation into the theft of a gross of cosmetic products could not be a basis for polygraph testing under section 7(f), but the theft of a container of valium could be.

(ii) Polygraph testing, with respect to an ongoing investigation concerning products other than controlled substances might be initiated under section 7(d) of the Act and § 801.12 of this part. However, the exemption in section 7(f) of the Act and this section is limited solely to losses or injury associated with controlled substances.

(g) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see subpart E, § 801.40 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detector tests, or contain more restrictive provisions with respect to polygraph testing.

§ 801.14 Exemption for employers providing security services.

(a) Section 7(e) of the Act provides an exemption from the general prohibition against polygraph tests for certain armored car, security alarm, and security guard employers. Subject to the conditions set forth in sections 8 and 10 of the Act and §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part, section 7(e) permits the use of polygraph tests on certain prospective employees provided that such employers have as their primary business purpose the providing of armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel; and provided the employer's function includes protection of:

(1) Facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, such as—

(i) Facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) Public water supply facilities,

(iii) Shipments or storage of radioactive or other toxic waste materials, and

(iv) Public transportation; or

(2) Currency, negotiable securities, precious commodities or instruments, or proprietary information.

(b)(1) Section 7(e) permits the administration of polygraph tests only to prospective employees. However, security service employers may administer polygraph tests to current employees in connection with an ongoing investigation, subject to the conditions of section 7(d) of the Act and § 801.12 of this part.

(2) The term "prospective employee" generally refers to an individual who is not currently employed by and who is being considered for employment by an employer. However, the term "prospective employee" also includes current employees under circumstances similar to those discussed in paragraph (d) of § 801.13 of this part, i.e., if the employee was initially hired for a position which was not within the exemption provided by section 7(e) of the Act, and subsequently applies for, and is under consideration for, transfer to a position for which pre-employment testing is permitted. Thus, for example, a security guard may be hired for a job outside the scope of the exemption's provisions for pre-employment polygraph testing, such as a position at a supermarket. If subsequently this guard is under consideration for transfer or promotion to a job at a nuclear power plant, this currently-employed individual would be considered to be a "prospective employee" for purposes of this exemption, prior to such proposed transfer or promotion. However, any adverse action which is based in part on a polygraph test against a current employee who is considered to be a "prospective employee" for purposes of this exemption may be taken only with respect to the prospective position and may not affect the employee's employment in the current position.

(c) Section 7(e) applies to certain private employers whose "primary business purpose" consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel. Thus, the exemption is limited to firms primarily in the business of providing such security services, and does not apply to firms primarily in some other business who employ their own security personnel. (For example, a utility company which employs its own security personnel could not qualify.) In the case of diversified firms, the term "primary business purpose" shall mean that at least 50% of the employer's annual dollar volume of business is derived from the provision of the types of security services specifically identified in section 7(e). Where a parent corporation includes a subsidiary corporation engaged in providing security services, the annual dollar volume of business test is applied to the legal entity (or entities) which is the employer, i.e., the subsidiary corporation, not the parent corporation.

(d)(1) As used in section 7(e)(1)(A), the terms "facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States" include protection of electric or nuclear power plants, public water supply facilities, radioactive or other toxic waste shipments or storage, and public transportation. These examples are intended to be illustrative, and not exhaustive. However, the types of "facilities, materials, or operations" within the scope of the exemption are not to be construed so broadly as to include low priority or minor security interests. The "facilities, materials, or operations" in question consist only of those having a "significant impact" on public health or safety, or national security. However, the "facilities, materials, or operations" may be either privately or publicly owned.

(2) The specific "facilities, materials, or operations" contemplated by this exemption include those against which acts of sabotage, espionage, terrorism, or other hostile, destructive, or illegal acts could significantly impact on the general public's safety or health, or national security. In addition to the specific examples set forth in the Act and in paragraph (d)(1) of this section, the terms would include:

(i) Facilities, materials, and operations owned or leased by Federal, State, or local governments, including instrumentalities or interstate agencies thereof, for which an authorized public official has determined that a need for security exists, as evidenced by the establishment of security requirements utilizing private armored car, security alarm system, or uniformed or plainclothes security personnel, or a combination thereof. Examples of such facilities, materials and operations include:

(A) Government office buildings;

(B) Prisons and correction facilities;

(C) Public schools;

(D) Public libraries;

(E) Water supply;

(F) Military reservations, installations, posts, camps, arsenals, laboratories, Government-owned and contractor operated (GOCO) or Government-owned and Government-operated (GOGO) industrial plants, and other similar facilities subject to the custody, jurisdiction, or administration of any Department of Defense (DOD) component;

(ii) Commercial and industrial assets and operations which—

(A) Are protected pursuant to security requirements established in contracts with the United States or other directives by a Federal agency (such as those of defense contractors and researchers), including factories, plants, buildings, or structures used for researching, designing, testing, manufacturing, producing, processing, repairing, assembling, storing, or distributing products or components related to the national defense; or

(B) Are protected pursuant to security requirements imposed on registrants under the Controlled Substances Act; or

(C) Would pose a serious threat to public health or safety in the event of a breach of security (this would include, for example, a plant engaged in the manufacture or processing of hazardous materials or chemicals but would not include a plant engaged in the manufacture of shoes);

(iii) Public and private energy and precious mineral facilities, supplies, and reserves, including—

(A) Public or private power plants and utilities;

(B) Oil or gas refineries and storage facilities;

(C) Strategic petroleum reserves; and

(D) Major dams, such as those which provide hydroelectric power;

(iv) Major public or private transportation and communication facilities and operations, including—

(A) Airports;

(B) Train terminals, depots, and switching and control facilities;

(C) Major bridges and tunnels;

(D) Communications centers, such as receiving and transmission centers, and control centers;

(E) Transmission and receiving operations for radio, television, and satellite signals; and

(F) Network computer systems containing data important to public health and safety or national security;

(v) The Federal Reserve System and stock and commodity exchanges;

(vi) Hospitals and health research facilities;

(vii) Large public events, such as political conventions and major parades, concerts, and sporting events; and

(viii) Large enclosed shopping centers (malls).

(3) If an employer believes that "facilities, materials, or operations"

which are not listed in this subsection fall within the contemplated purview of this exemption, a request for a ruling may be filed with the Administrator. A ruling that such "facilities, materials, or operations" are included within this exemption must be obtained prior to the administration of a polygraph test or any other action prohibited by section 3 of the Act. It is not possible to exhaustively account for all "facilities, materials, or operations" which fall within the purview of section 7(e) (1) (A). While it is likely that additional entities may fall within the exemption's scope, any such "facilities, materials, or operations" must meet the "significant impact" test. Thus, "facilities, materials, or operations" which would be of vital importance during periods of war or civil emergency, or whose sabotage would greatly affect the public health or safety, could fall within the scope of the term "significant impact".

(e)(1) Section 7(e)(1)(B) of the Act extends the exemption to firms whose function includes protection of "currency, negotiable securities, precious commodities or instruments, or proprietary information". These terms collectively are construed to include assets primarily handled by financial institutions such as banks, credit unions, savings and loan institutions, stock and commodity exchanges, brokers, or security dealers.

(ii) The terms "currency, negotiable securities, precious commodities or instruments or proprietary information" refer to assets which are typically handled by, protected for and transported between and among commercial and financial institutions. Services provided by the armored car industry are thus clearly within the scope of the exemption, as are security alarm and security guard services provided to financial and similar institutions of the type referred to above. Also included are the cash assets handled by casinos, racetracks, lotteries, or other businesses where the cash constitutes the inventory or stock in trade. Similarly, security services provided to businesses engaged in the sale or exchange of precious commodities such as gold, silver, or diamonds, including jewelry stores that stock such precious commodities prior to transformation into pieces of jewelry, are also included. The term "proprietary information" generally refers to business assets such as trade secrets, manufacturing processes, research and development data, and cost/pricing data. Security alarm or guard services provided to protect the premises of private homes, or businesses not primarily engaged in handling, trading, transferring, or storing currency, negotiable securities, precious commodities or instruments, or proprietary information, on the other hand, are normally outside the scope of the exemption. This is true even though such places may physically house some such assets. However, where such security alarm or guard service is specifically designed or limited to the protection of the types of assets identified above, whether located in businesses or residences, or elsewhere, the security services provided are within the scope of the exemption. For example, a security system specially designed to protect diamonds kept in a home vault of a diamond merchant would be within the exemption. However, a security system installed generally to protect the premises of the home of the same merchant would not be within the exemption. A guard sent to a client firm to secure a restricted office in which only proprietary research data is developed and stored is within the scope of the exemption. Another guard sent to the same firm to protect the building entrance from unwanted intruders is not within the scope of the exemption even though the building contains the restricted room in which the proprietary research data is developed and stored, since the security system is not specifically designed to protect the proprietary information.

(f) An employer who falls within the scope of the exemption is one "whose function includes" protection of "facilities, materials, or operations", discussed in paragraph (d) of this section or of "currency, negotiable securities, precious commodities or instruments, or proprietary information" discussed in paragraph (e) of this section. Thus, assuming that the employer has met the "primary business purpose" test, as set forth in paragraph (c) of this section, the employer's operations then must simply "include" protection of at least one of the facilities within the scope of the exemption.

(g)(1) Section 7(e) (2) provides that the exemption shall not apply if a polygraph test is administered to a prospective employee who would not be employed to protect the "facilities, materials, operations, or assets" referred to in section 7(e) (1) of the Act, and discussed in paragraphs (d) and (e) of this section. Thus, while the exemption applies to employers whose function "includes" protection of certain facilities, employers would not be permitted to administer polygraph tests to prospective employees who are not being employed to protect such functions.

(2) The phrase "employed to protect" in section 7(e)(2) has reference to a wide spectrum of prospective employees in the security industry, and includes any job applicant who would likely protect the security of any qualifying "facilities, materials, operations, or assets."

(3) In many cases, it will be readily apparent that certain positions within security companies would, by virtue of the individual's official job duties, entail "protection". For example, armored car drivers and guards, security guards, and alarm system installers and maintenance personnel all would be employed to protect in the most direct and literal sense of the term.

(4) The scope of the exemption is not limited, however, to those security personnel having direct, physical access to the facilities being protected. Various support personnel may also, as a part of their job duties, have access to the process of providing security services due to the position's exposure to knowledge of security plans and operations, employee schedules, delivery schedules, and other such activities. Where a position entails the opportunity to cause or participate in a breach of security, an employee to be hired for the position would also be deemed to be "employed to protect" the facility.

(i) For example, in the armored car industry, the duties of personnel other than guards and drivers may include taking customer orders for currency and commodity transfers, issuing security badges to guards, coordinating routes of travel and times for pick-up and delivery, issuing access codes to customers, route planning and other sensitive responsibilities. Similarly, in the security alarm industry, several types of employees would have access to the process of providing security services, such as designers of security systems, system monitors, service technicians, and billing clerks (where they review the system design drawings to ensure proper customer billing). In the security industry, generally, administrative employees may have access to customer accounts, schedules, information relating to alarm system failures, and other security information, such as security employee absences due to illness that create "holes" in a security plan. Employees of this type are a part of the overall security services provided by the employer. Such employees possess the ability to affect, on an opportunistic basis, the security of protected operations, by virtue of the knowledge gained through their job duties.

(ii) On the other hand, there are certainly some types of employees in the security industry who "would not be employed to protect" the facilities or assets within the purview of the exemption, and who would not be in the process of providing exempt security services. For example, custodial and maintenance employees typically would not have access, either directly or indirectly as a part of their job duties, to the operations or clients of the employer. Any employee whose "access" to secured areas or to sensitive information is on a controlled basis, such as by escort, would also be outside the scope of the exemption. In cases where security service companies also provide janitorial, food and beverage, or other services unrelated to security, the exemption would clearly not extend to any employee considered for employment in such activity.

(5) The phrase "employed to protect" includes any job applicant who, if not hired specifically to protect the listed facilities or assets, would likely be so employed, as through a systematic assignment process, such as rotation of work assignments or selection from a pool of available employees, even if selection for such work is unpredictable or infrequent. A prospective employee whose job assignment to perform qualifying protective functions would be made by selection from a pool of available employees (all of whom have an equal chance of being selected), or an employee who is to be rotated through different job assignments which include some qualifying protective functions, is included within the exemption. However, if there is only a remote possibility that a prospective employee, if hired, would perform exempt protective functions, such as on an emergency basis, or if a prospective employee by reason of his or her position, qualifications, or level of experience or for other reasons, would when hired, not ordinarily be assigned to protect qualifying facilities, such an employee would be deemed to have not been hired to protect such facilities and would be excluded from the exemption.

(h) Polygraph tests administered pursuant to this exemption are subject to the limitations set forth in sections 8 and 10 of the Act, as discussed in §§ 801.21, 801.22, 801.23, 801.24, 801.25, 801.26, and 801.35 of this part. As provided in these sections, the exemption will apply only if certain requirements are met. Failure to satisfy any of the specified requirements nullifies the statutory authority for polygraph test administration and may subject the employer to the assessment of civil money penalties and other remedial actions, as provided for in section 6 of the Act (see subpart E, § 801.42 of this part). The administration of such tests is also subject to State or local laws, or collective bargaining agreements, which may either prohibit lie detectors test, or contain more restrictive provisions with respect to polygraph testing.

Subpart C—Restrictions on Polygraph Usage Under Exemptions

§ 801.20 Adverse employment action under ongoing investigation exemption.

(a) Section 8(a) (1) of the Act provides that the limited exemption in section 7(d) of the Act and § 801.12 of this part for ongoing investigations shall not apply if an employer discharges, disciplines, denies employment or promotion or otherwise discriminates in any manner against a current employee based upon the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence.

(b) "Additional supporting evidence", for purposes of section 8(a) of the Act, includes, but is not limited to, the following:

(1)(i) Evidence indicating that the employee had access to the missing or damaged property that is the subject of an ongoing investigation; and

(ii) Evidence leading to the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation; or

(2) Admissions or statements made by an employee before, during or following a polygraph examination.

(c) Analysis of a polygraph test chart or refusal to take a polygraph test may not serve as a basis for adverse employment action, even with additional supporting evidence, unless the employer observes all the requirements of sections 7(d) and 8(b) of the Act, as described in §§ 801.12, 801.22, 801.23, 801.24, and 801.25 of this part.

§ 801.21 Adverse employment action under security service and controlled substance exemptions.

(a) Section 8(a) (2) of the Act provides that the security service exemption in section 7(e) of the Act and § 801.14 of this part and the controlled substance exemption in section 7(f) of the Act and § 801.13 of this part shall not apply if an employer discharges, disciplines, denies employment or promotion, or otherwise discriminates in any manner against a current employee or prospective employee based solely on the analysis of a polygraph test chart or the refusal to take a polygraph test.

(b) Analysis of a polygraph test chart or refusal to take a polygraph test may serve as one basis for adverse employment actions of the type described in paragraph (a) of this section, provided that the adverse action was also based on another bona fide reason, with supporting evidence therefor. For example, traditional factors such as prior employment experience, education, job performance, etc. may be used as a basis for employment decisions. Employment decisions based on admissions or statements made by an employee or prospective employee before, during or following a polygraph examination may, likewise, serve as a basis for such decisions.

(c) Analysis of a polygraph test chart or the refusal to take a polygraph test may not serve as a basis for adverse employment action, even with another legitimate basis for such action, unless the employer observes all the requirements of section 7 (e) or (f) of the Act, as appropriate, and section 8(b) of the Act, as described in §§ 801.13, 801.14, 801.22, 801.23, 801.24, and 801.25 of this part.

§ 801.22 Rights of examinee—general.

(a) Pursuant to section 8(b) of the Act, the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substance exemptions in 7(e) and (f) of the Act (described in § 801.12, 801.13, and 801.14 of this part) shall not apply unless all of the requirements set forth in this section and §§ 801.23 through 801.25 of this part are met.

(b) During all phases of the polygraph testing the person being examined has the following rights:

(1) The examinee may terminate the test at any time.

(2) The examinee may not be asked any questions in a degrading or unnecessarily intrusive manner.

(3) The examinee may not be asked any questions dealing with:

(i) Religious beliefs or affiliations;

(ii) Beliefs or opinions regarding racial matters;

(iii) Political beliefs or affiliations;

(iv) Sexual preferences or behavior; or

(v) Beliefs, affiliations, opinions, or lawful activities concerning unions or labor organizations.

(4) The examinee may not be subjected to a test when there is sufficient written evidence by a physician that the examinee is suffering from any medical or psychological condition or undergoing any treatment

that might cause abnormal responses during the actual testing phase. "Sufficient written evidence" shall constitute, at a minimum, a statement by a physician specifically describing the examinee's medical or psychological condition or treatment and the basis for the physician's opinion that the condition or treatment might result in such abnormal responses.

(5) An employee or prospective employee who exercises the right to terminate the test, or who for medical reasons with sufficient supporting evidence is not administered the test, shall be subject to adverse employment action only on the same basis as one who refuses to take a polygraph test, as described in §§ 801.20 and 801.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases, which must be conducted in accordance with the rights of examinees described in §§ 801.23 through 801.25 of this part.

§ 801.23 Rights of examinee—pretest phase.

(a) The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument. During the initial pretest phase, the examinee must be:

(1) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be received by the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination, except that a prospective employee may, at the employee's option, give written consent to administration of a test anytime within 48 hours but no earlier than 24 hours after receipt of the written notice. The written notice or proof of service must set forth the time and date of receipt by the employee or prospective employee and be verified by his or her signature. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. Provision shall also be made for a convenient place on the premises where the examination will take place at which the examinee may consult privately with an attorney or an employee representative before each phase of the test. The attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(2) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(3) Provided with a written notice prior to the testing phase, in a language understood by the examinee, which shall be read to and signed by the examinee. Use of appendix A to this part, if properly completed, will constitute compliance with the contents of the notice requirement of this paragraph. If a format other than in appendix A is used, it must contain at least the following information:

(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employer have the right, with the other's knowledge, to make a recording of the entire examination;

(iv) That the examinee has the right to terminate the test at any time;

(v) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

(vi) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

(vii) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(viii) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(ix) That the test is not and cannot be required as a condition of employment;

(x) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(xi)(A) In connection with an ongoing investigation, that the additional evidence required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (a)(3)(x) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(xii) That information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(A) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(B) To the employer that requested the test;

(C) To a court, governmental agency, arbitrator, or mediator pursuant to a court order;

(D) To a U.S. Department of Labor official when specifically designated in writing by the examinee to receive such information;

(E) By the employer, to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(xiii) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to obtain compliance with the Act, and may assess civil money penalties against the employer;

(xiv) That the examinee has the right to obtain and consult with legal counsel or other representative before each phase of the test, although the legal counsel or representative may be excluded from the room where the test is administered during the actual testing phase.

(xv) That the employee's rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, agreed to and signed by the parties.

(b) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase. Such questions may be presented at any point in time prior to the testing phase.

§ 801.24 Rights of examinee—actual testing phase.

(a) The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the testing phase. An examiner may, however, recess the testing phase and return to the pre-test phase to review additional relevant questions with the examinee. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions (as distinguished from technical baseline questions) pertain to the investigation.

(b) No testing period subject to the provisions of the Act shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee of the nature and characteristics of the examination and the instruments involved, as prescribed in section 8(b)(2)(B) of the Act and § 801.23 (a)(2) of this part, and ends when the examiner completes the review of the test results with the examinee as provided in § 801.25 of this part. The ninety-minute minimum duration shall not apply if the examinee voluntarily acts to terminate the test before the completion thereof, in which event the examiner may not render an opinion regarding the employee's truthfulness.

§ 801.25 Rights of examinee—post-test phase.

(a) The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employer must:

(1) Further interview the examinee on the basis of the test results; and

(2) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses. The term "corresponding charted responses" refers to copies of the entire examination charts recording the employee's physiological responses, and not just the examiner's written report which describes the examinee's responses to the questions as "charted" by the instrument.

§ 801.26 Qualifications of and requirements for examiners.

(a) Section 8 (b) and (c) of the Act provides that the limited exemption in section 7(d) of the Act for ongoing investigations, and the security service and controlled substances exemptions in section 7 (e) and (f) of the Act, shall not apply unless the person conducting the polygraph examination meets specified qualifications and requirements.

(b) An examiner must meet the following qualifications:

(1) Have a valid current license, if required by the State in which the test is to be conducted; and

(2) Carry a minimum bond of $50,000 provided by a surety incorporated under the laws of the United States or of any State, which may under those laws guarantee the fidelity of persons holding positions of trust, or carry an equivalent amount of professional liability coverage.

(c) An examiner must also, with respect to examinees identified by the employer pursuant to § 801.30(c) of this part:

(1) Observe all rights of examinees, as set out in §§ 801.22, 801.23, 801.24, and 801.25 of this part;

(2) Administer no more than five polygraph examinations in any one calendar day on which a test or tests subject to the provisions of EPPA are administered, not counting those instances where an examinee voluntarily terminates an examination prior to the actual testing phase;

(3) Administer no polygraph examination subject to the provisions of the Act which is less than ninety minutes in duration, as described in § 801.24(b) of this part;

(4) Render any opinion or conclusion regarding truthfulness or deception in writing. Such opinion or conclusion must be based solely on the polygraph test results. The written report shall not contain any information other than admissions, information, case facts, and interpretation of the charts relevant to the stated purpose of the polygraph test and shall not include any recommendation concerning the employment of the examinee; and

(5) Maintain all opinions, reports, charts, written questions, lists, and other records relating to the test, including statements signed by examinees advising them of rights under the Act (as described in § 801.23 (a)(3) of this part) and any electronic recordings of examinations, for at least three years from the date of the administration of the test. (See § 801.30 of this part for recordkeeping requirements.)

Subpart D—Recordkeeping and Disclosure Requirements

§ 801.30 Records to be preserved for 3 years.

(a) The following records shall be kept for a minimum period of three years from the date the polygraph examination is conducted (or from the date the examination is requested if no examination is conducted):

(1) Each employer who requests an employee to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury shall retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee, as required by section 7(d)(4) of the Act and described in § 801.12 (a)(4) of this part.

(2) Each employer who administers a polygraph examination under the exemption provided by section 7(f) of the Act (described in § 801.13 of this part) in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution or dispensing of a controlled substance, shall retain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.

(3) Each employer who requests an employee or prospective employee to submit to a polygraph examination pursuant to any of the exemptions under section 7(d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14) shall retain a copy of the written statement that sets forth the time and place of the examination and the examinee's right to consult with counsel, as required by section 8 (b)(2)(A) of the Act and described in § 801.23(a)(1) of this part.

(4) Each employer shall identify in writing to the examiner persons to be

examined pursuant to any of the exemptions under section 7 (d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14 of this part), and shall retain a copy of such notice.

(5) Each employer who retains an examiner to administer examinations pursuant to any of the exemptions under section 7 (d), (e) or (f) of the Act (described in §§ 801.12, 801.13, and 801.14 of this part) shall maintain copies of all opinions, reports or other records furnished to the employer by the examiner relating to such examinations.

(6) Each examiner retained to administer examinations to persons identified by employers under paragraph (a)(4) of this section shall maintain all opinions, reports, charts, written questions, lists, and other records relating to polygraph tests of such persons. In addition, the examiner shall maintain records of the number of examinations conducted during each day in which one or more tests are conducted pursuant to the Act, and, with regard to tests administered to persons identified by their employer under paragraph (a)(4) of this section, the duration of each test period, as defined in § 801.24(b) of this part.

(b) Each employer shall keep the records required by this part safe and accessible at the place or places of employment or at one or more established central recordkeeping offices where employment records are customarily maintained. If the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(c) Each examiner shall keep the records required by this part safe and accessible at the place or places of business or at one or more established central recordkeeping offices where examination records are customarily maintained. If the records are maintained at a central recordkeeping office, other than in the place or places of business, such records shall be made available within 72 hours following notice from the Secretary or an authorized representative.

(d) All records shall be available for inspection and copying by the Secretary or an authorized representative. Information for which disclosure is restricted under section 9 of the Act and § 801.35 of this part shall be made available to the Secretary or the Secretary's representative where the examinee has designated the Secretary, in writing, to receive such information, or by order of a court of competent jurisdiction.

(Approved by the Office of Management and Budget under control number 1215-0170)

§ 801.35 Disclosure of test information.

Section 9 of the Act prohibits the unauthorized disclosure of any information obtained during a polygraph test by any person, other than the examinee, directly or indirectly, except as follows:

(a) A polygraph examiner or an employer (other than an employer exempt under section 7 (a), (b), or (c) of the Act (described in §§ 801.10 and 801.11 of this part)) may disclose information acquired from a polygraph test only to:

(1) The examinee or an individual specifically designated in writing by the examinee to receive such information;

(2) The employer that requested the polygraph test pursuant to the provisions of this Act (including management personnel of the employer where the disclosure is relevant to the carrying out of their job responsibilities);

(3) Any court, governmental agency, arbitrator, or mediator pursuant to an order from a court of competent jurisdiction requiring the production of such information;

(4) The Secretary of Labor, or the Secretary's representative, when specifically designated in writing by the examinee to receive such information.

(b) An employer may disclose information from the polygraph test at any time to an appropriate governmental agency without the need of a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

(c) A polygraph examiner may disclose test charts, without identifying information (but not other examination materials and records), to another examiner(s) for examination and analysis, provided that such disclosure is for the sole purpose of consultation and review of the initial examiner's opinion concerning the indications of truthfulness or deception. Such action would not constitute disclosure under this Part provided that the other examiner has no direct or indirect interest in the matter.

Subpart E—Enforcement

§ 801.40 General.

(a) Whenever the Secretary believes that the provisions of the Act or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including the following:

(1) Petitioning any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person, and to require compliance with the Act and this part, including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits;

(2) Assessing a civil penalty against any employer who violates any provision of the Act or this part in an amount of not more than $10,000 for each violation, in accordance with regulations set forth in this part; or

(3) Referring any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b)(1) Any employer who violates this Act shall be liable to the employee or prospective employee affected by such violation for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) An action under this subsection may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee and others similarly situated. Such action must be commenced within a period not to exceed 3 years after the date of the alleged violation. The court, in its discretion, may allow reasonable costs (including attorney's fees) to the prevailing party.

(c) The taking of any one of the actions referred to in paragraph (a) of this section shall not be a bar to the concurrent taking of any other appropriate action.

§ 801.41 Representation of the Secretary.

(a) Except as provided in section 518(a) of title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 6 of the Act, as described in § 801.40 of this part.

(b) The Solicitor of Labor, through authorized representatives, shall represent the Administrator in all administrative hearings under the provisions of section 6 of the Act and this part.

§ 801.42 Civil money penalties—assessment.

(a) A civil money penalty in an amount not to exceed $10,000 for any violation may be assessed against any employer for:

(1) Requiring, requesting, suggesting or causing an employee or prospective employee to take a lie detector test or using, accepting, referring to or inquiring about the results of any lie detector test or any employee or prospective employee, other than as provided in the Act or this part;

(2) Taking an adverse action or discriminating in any manner against any employee or prospective employee on the basis of the employee's or prospective employee's refusal to take a lie detector test, other than as provided in the Act or this part;

(3) Discriminating or retaliating against an employee or prospective employee for the exercise of any rights under the Act;

(4) Disclosing information obtained during a polygraph test, except as authorized by the Act or this part;

(5) Failing to maintain the records required by the Act or this part;

(6) Resisting, opposing, impeding, intimidating, or interfering with an official of the Department of Labor during the performance of an investigation, inspection, or other law enforcement function under the Act or this part; or

(7) Violating any other provision of the Act or this part.

(b) In determining the amount of penalty to be assessed for any violation of the Act or this part, the Administrator will consider the previous record of the employer in terms of compliance with the Act and regulations, the gravity of the violations, and other pertinent factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of investigation(s) or violation(s) of the Act or this part;

(2) The number of employees or prospective employees affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and this part;

(5) If the violations resulted from the actions or inactions of an examiner, the steps taken by the employer to ensure the examiner complied with the Act and the regulations in this part, and the extent to which the employer could reasonably have foreseen the examiner's actions or inactions;

(6) The explanation of the employer, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(7) The extent to which the employee(s) or prospective employee(s) suffered loss or damage;

(8) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act or this part.

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor". The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

Subpart F—Administrative Proceedings

General

§ 801.50 Applicability of procedures and rules.

The procedures and rules contained in this subpart prescribe the administrative process for assessment of civil money penalties for violations of the Act or of these regulations.

Procedures Relating to Hearing

§ 801.51 Written notice of determination required.

Whenever the Administrator determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination. Such notice shall be served in person or by certified mail.

§ 801.52 Contents of notice.

The notice required by § 801.51 of this part shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Administrator shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 801.53 of this part.

§ 801.53 Request for hearing.

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, US. Department of Labor, no later than thirty (30) days after the service of the notice referred to in § 801.59 of this part.

(b) The request for hearing must be received by the Administrator at the address set forth in the notice issued pursuant to § 801.52 of this part, within the time set forth in paragraph (a) of this section. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

(c) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

Rules of Practice

§ 801.58 General.

Except as provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

§ 801.59 Service and computation of time.

(a) Service of documents under this subpart shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

(d) When a request for hearing is served by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

§ 801.60 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 801.53 of this part.

§ 801.61 Designation of record.

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "EPPA".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 801.62 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In Matter of _____,
Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

Referral for Hearing

§ 801.63 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 801.53 of this part, the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 801.64 Notice of docketing.

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

Procedures Before Administrative Law Judge

§ 801.65 Appearances; representation of the Department of Labor.

The Associate Solicitor, Division of Fair Labor Standards, or Regional Solicitor shall represent the Department in any proceeding under this part.

§ 801.66 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into, in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

§ 801.67 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers, a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to § 801.53 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) If any party desires review of the decision of the Administrative Law Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with section 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or vacate the Decision and Order.

Modification or Vacation of Decision and Order of Administrative Law Judge

§ 801.68 Authority of the Secretary.

(a) The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(1) Is inconsistent with a policy or precedent established by the Department of Labor;

(2) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(3) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive; or

(4) Otherwise warrants modifying or vacating.

(b) The Secretary may modify or vacate a finding of fact only where the Secretary determines that the finding is clearly erroneous.

§ 801.69 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 801.70. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

§ 801.70 Implementation by the Secretary.

(a) Review of the Decision and Order by the Secretary shall not be a matter of right but of the sound discretion of the Secretary. At any time within 30 days after the issuance of the Decision and Order of the Administrative Law Judge the Secretary may, upon the Secretary's own motion or upon the acceptance of a party's petition, issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§ 801.71 Filing and service.

(a) Filing. All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) Number of copies. An original and two copies of all documents shall be filed.

(c) Computation of time for delivery by mail. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter, was made by mail.

(d) Manner and proof of service. A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 801.72 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, forward a copy of the complete hearing record to the Secretary.

§ 801.73 Final decision of the Secretary.

The Secretary's final Decision and Order shall be served upon all parties and the Chief Administrative Law Judge.

Record

§ 801.74 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 801.75 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a Decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

Appendix A to Part 801—Notice to Examinee

Section 8(b) of the Employee Polygraph Protection Act, and Department of Labor regulations (29 CFR 801.22, 801.23, 801.24, and 801.25) require that you be given the following information before taking a polygraph examination:

1. (a) The polygraph examination area [does] [does not] contain a two-way mirror, a camera, or other device through which you may be observed.

(b) Another device, such as those used in conversation or recording, [will] [will not] be used during the examination.

(c) Both you and the employer have the right, with the other's knowledge, to record electronically the entire examination.

2. (a) You have the right to terminate the test at any time.

(b) You have the right, and will be given the opportunity, to review all questions to be asked during the test.

(c) You may not be asked questions in a manner which degrades, or needlessly intrudes.

(d) You may not be asked any questions concerning: Religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual preference or behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations.

(e) The test may not be conducted if there is sufficient written evidence by a physician that you are suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination.

(f) You have the right to consult with legal counsel or other representative before each phase of the test, although the legal counsel or other representative may be excluded from the room where the test is administered during the actual testing phase.

3. (a) The test is not and cannot be required as a condition of employment.

(b) The employer may not discharge, dismiss discipline, deny employment or promotion, or otherwise discriminate against you based on the analysis of a polygraph test, or based on your refusal to take such a test without additional evidence which would support such action.

(c)(1) In connection with an ongoing investigation, the additional evidence required for an employer to take adverse action against you, including termination, may be (A) evidence that you had access to the property that is the subject of the investigation, together with (B) the evidence supporting the employer's reasonable suspicion that you were involved in the incident or activity under investigation.

(2) Any statement made by you before or during the test may serve as additional supporting evidence for an adverse employment action, as described in 3(b) above, and any admission of criminal conduct by you may be transmitted to an appropriate government law enforcement agency.

4. (a) Information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(1) To you or any other person specifically designated in writing by you to receive such information;

(2) To the employer that requested the test;

(3) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(4) To a U.S. Department of Labor official when specifically designated in writing by you to receive such information.

(b) Information acquired from a polygraph test may be disclosed by the employer to an appropriate governmental agency without a court order where, and only insofar as, the information disclosed is an admission of criminal conduct.

5. If any of your rights or protections under the law are violated, you have the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

6. Your rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, and agreed to and signed by the parties.

I acknowledge that I have received a copy of the above notice, and that it has been read to me.

(Date)

(Signature)

[FR Doc. 91-4790 Filed 3-1-91; 8:45 am]
BILLING CODE 4410-27-M

federal register

Monday
March 4, 1991

Part III

Department of Defense

48 CFR Part 202 et al
Department of Defense Acquisition Regulations; Miscellaneous Amendments; Interim and Final Rules

DEPARTMENT OF DEFENSE

48 CFR Parts 202, 203, 204, 217, 225, 226, 232, 245, 252, and Appendix N

[Defense Acquisition Circular (DAC) 88-17]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rules with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-17 amends the DoD FAR Supplement (DFARS) coverage on procurement integrity, statutory compensation prohibitions and reporting requirements relating to certain former DoD employees, employment of convicted felons, defense priorities and allocations system, multiyear contracting, Small Business Competitiveness Demonstration Program, Trade Agreements Act, duty-free entry, machine tools and valves, Anti-Deficiency Act, flexible progress payments, rent-free use of Government property on foreign military sales, contractor performance of plant clearance functions, and miscellaneous editorial items.

DATES: *Effective Date:* February 28, 1991, except for sections 225.000-70, 225.000-71, 225.105-70, 225.109, 225.401, 225.402, 225.407, 252.225-7001, 252.225-7005, and 252.225-7006 (Item VII, Trade Agreements Act) which were effective January 28, 1991, sections 225.603-70, 252.225-7006, and 252.225-7014 (Item VIII, Duty-Free Entry) which were effective December 19, 1990, and sections 245.401 and 245.405 (Item XIII, Rent-Free Use of Government Property on Foreign Military Sales) which were effective February 1, 1991.

Comment Date: Comments on the interim rules, sections 203.571 and 252.203-7001 (Item III, Employment of Convicted Felons), sections 225.000-70, 225.000-71, 225.105-70, 225.109, 225.401, 225.402, 225.407, 252.225-7001, 252.225-7005, and 252.225-7006 (Item VII, Trade Agreements Act), and sections 225.603-70, 252.225-7006, and 252.225-7014 (Item VIII, Duty-Free Entry) should be submitted to the address below by April 3, 1991, to be considered in formulating the final rule. In all correspondence concerning these rules, please cite DAR Case 90-310 for Item III, DAR Case 89-108 for Item VII, and DAR Case 90-047 for Item VIII.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory System, OUSD(A), ATTN: Valorie Lee (Item III), Alyce Sullivan (Items VII or VIII), c/o 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucile Hughes, telephone (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

Determinations have been made under the authority of the Secretary of Defense to issue the regulations in Items III, VII, and VIII of DAC #88-17 as interim rules. Compelling reasons exist to promulgate these interim rules without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rules.

B. Background

The DoD FAR Supplement is codified in chapter 2 title 48 of the Code of Federal Regulations.

The October 1, 1990 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-15.

DAC #88-17, Item IX. This document finalizes interim regulations which were published in the July 24, 1990, Federal Register (55 FR 30154).

DAC #88-17, Item VI. This document finalizes interim regulations which were published in the January 27, 1989, Federal Register (54 FR 4246).

C. Public Comments

DAC 88-17, Items III, VII, and VIII

These items are published as interim rules. Public comment is invited.

DAC 88-17, Items I, II, V, X, XI, XII, XIV, and XV

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-17, Items VI, IX, and XIII

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item VI was published January 27, 1989 (54 FR 4246).

Item IX was published July 24, 1990 (55 FR 30154).

Item XIII was published September 18, 1990 (55 FR 38340).

D. Regulatory Flexibility Act

DAC 88-17, Items I, II, V, X, XI, XII, XIII, XIV, and XV

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Pub. L. 98-577. However, comments from small entities concerning the affected DoD FAR Supplement Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-17, Item VI

This rule may have a significant effect on small business concerns but sufficient data is not available at this point to quantify the impact. As stated in the joint Small Business Administration (SBA)/Office of Federal Procurement Policy (OFPP), policy directive (53 FR 52889), the OFPP and SBA will prepare a regulatory flexibility analysis when adequate data is available.

DAC 88-17, Items III, VII, and VIII

These interim rules are not expected to have a significant economic impact on a substantial number of small entities because they have limited application. A Regulatory Flexibility analysis has not been prepared. However, comments received from small entities will be considered in developing the final rules.

DAC 88-17, Item IX

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Comments received in response to a notice of interim rule published July 24, 1990 (55 FR 30154) were considered in developing the final rule.

E. Paperwork Reduction Act

DAC 88-17, Items I, II, III, V, VII, IX, X, XI, XII, XIII, XIV, and XV

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-17, Item VI

The Paperwork Reduction Act applies. This rule is based on the OMB terms of clearance under OMB Control Number 9000-0390.

DAC 88-17, Item VIII

The Paperwork Reduction Act applies. This rule is based on the terms of clearance under Department of Treasury clearance 1545-0170.

List of Subjects in 48 CFR Parts 202, 203, 204, 217, 225, 226, 232, 245, and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

(Defense Acquisition Circular No. 88-17, dated February 28, 1991.)

All DoD FAR Supplement and other directive material contained in this circular is effective February 28, 1991, unless otherwise specified in the Item summary. Material effective February 28, 1991, is to be used upon receipt. Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)(4).

Defense Acquisition Circular (DAC) 17 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

Item I—Procurement Integrity

DFARS 203.104 is revised to clarify the language. These revisions are the result of public comments received on the FAR interim rule published in the Federal Register on May 11, 1989 (54 FR 20491).

Item II—Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees

DFARS 203.170-2 and the clause at 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, are revised to reflect the prohibition suspensions imposed by section 507 of the Ethics Reform Act of 1989 and section 815 of the fiscal 1991 DoD Authorization Act (Pub. L. 101-510). Section 507 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 continued the suspension from December 1, 1990 through May 31, 1991.

Item III—Employment of Convicted Felons

DFARS 203.571 and the clause at 252.203-7001, Special Prohibition on Employment, are revised, on an interim basis, to limit the 10 U.S.C. 2408 prohibition on employment of convicted felons to prime contractors and first-tier subcontractors. This interim rule implements section 812 of the fiscal 1991 DoD Authorization Act.

Item IV—Defense Priorities and Allocations System

The Defense Production Act of 1950 expired on October 20, 1990. Executive Order 12742, signed by the President on January 8, 1991, provides authority under the Selective Service Act of 1948 and several other related statutes to continue the priorities provisions and approved defense related programs under the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700). The executive order authorizes the placement of contracts and orders and the priority performance of these contracts and orders to achieve the prompt delivery of articles, products, and materials to meet national security requirements. Therefore, the procedures for rated orders in FAR subpart 12.3 and DFARS subpart 212.3 are still in effect.

Item V—Multiyear Contracting

DFARS 217.1 is amended to include additional criteria and limitations on multiyear contracting as required by Public Laws 101-165, 101-510, and 101-189. The new coverage requires that multiyear contracts (1) provide for a rate of production which is not less than the minimum economic rate, given existing tooling and facilities and (2) result in substantial savings compared to the cost of annual contracts. In addition, multiyear contracts cannot be initiated without use of a present value analysis to determine lowest cost to the Government and once approved by Congress, may not be terminated without ten-day prior notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate. The new coverage also includes other reporting and funding requirements. The coverage has been reorganized and what had been part of 217.103-70 is now in 217.103-1.

Item VI—Small Business Competitiveness Demonstration Program

Subpart 219.10 is revised and the provisions at 252.219-7012, 252.219-7013, and 252.219-7014 are deleted as this language has been added to the FAR by FAC 90-03, Item 22. This converts subpart 219.10 from an interim rule to a final rule.

Item VII—Trade Agreements Act

This item was effective January 28, 1991, upon issuance of Departmental Letter 91-001. The revisions to part 225, the clauses at 252.225-7001, Buy American Act and Balance of Payments Program, and 252.225-7006, Trade Agreements Act, and the provision at 252.225-7005, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate, are the result of a General Services Administration Board of Contract Appeals (GSBCA) ruling that FAR (hence DFARS) language is contrary to the Trade Agreements Act.

Under the current DFARS, in acquisitions subject to the Trade Agreements Act, products which have been substantially transformed in the United States but do not qualify as domestic end products under the 50 percent component test of the Buy American Act generally are ineligible for award without a waiver. The GSBCA considers this contrary to the Trade Agreements Act, which does not prohibit award for products substantially transformed in the United States. A definition for "U.S. made end products" is added at DFARS 225.000-70 and 252.225-7006 to cover products substantially transformed in the United States. However, unlike eligible end products, U.S. made end products, that do not qualify as domestic end products, are not excluded from application of the 50 percent Buy American Act or Balance of Payments Program evaluation factor, although the factor will be applied to an acquisition only when it will result in award of a domestic end product.

Item VIII-Duty-Free Entry

The U.S. Customs Service has a new paperless system, for generating duty-free certificates, that requires six elements of information in addition to that currently required by 225.603-70(c)(4)(i), 252.225-7006, and 252.225-7014. The new system is called the Customs Duty Free Management System. The six additional data items are the prime contractor's address and commercial and government entity code, the foreign supplier's address, plus the administrative contracting officer's (ACO) name, telephone number, and code.

The ACO's code is used for electronic recognition in the new system. The Defense Contract Management Area Operations (DCMAO) New York has assigned codes to all Defense Logistics Agency ACOs and, upon request, is assigning codes to other ACOs. The point of contact at DCMAO New York is Mr. William Blanchard, (212) 807-3520, AUTOVON 955-4241.

The U.S. Customs Service will only accept notifications that include the additional information. Otherwise, duty-free certificates will not be issued, and the Department of Defense will have to pay duty on supplies imported into the

United States. The revisions to 225.603-70(c)(4)(i), 252.225-7006, and 252.225-7014 were effective December 19, 1990 as a result of Departmental Letter 90-015, issued on that date.

Item IX—Machine Tools and Valves

This finalizes the interim revisions made in 225.70 by DAC #88-15, Item X, except that paragraph 225.7012(a) is revised to emphasize the prohibition on acquisition of machine tools and valves unless they are of U.S. or Canadian origin.

Item X—Foreign Machine Tools

DAC #88-15 revised the clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools. The replacement pages for DAC #88-16 inadvertently picked up the prior (JAN 1989) version of the clause. This DAC reinstates the DAC #88-15 (JUL 1990) version.

Item XI—Indemnification, Anti-Deficiency Act

FAC #90-3, Item 23, revises FAR 28.311, permitting each agency to set its own conditions for use of the clause at 52.228-7, Insurance— Liability to Third Persons. DFARS subpart 228.3 is revised to prescribe use within DoD of the FAR 52.228-7 clause and the provision at FAR 52.228-6, Insurance—Immunity from Tort Liability.

Item XII—Flexible Progress Payments

The new language introduced by DAC #88-16 for 232.502-1(S-71) had the unintended effect of authorizing use of flexible progress payments in contracts awarded and performed entirely outside the United States. The language in 232.502-1(S-71)(2) has been corrected to preclude use of flexible progress payments in such contracts.

Item XIII—Rent-Free Use of Government Property on Foreign Military Sales

This item was effective February 1, 1991 upon issuance of Departmental Letter 91-002. DFARS subpart 245.4 is revised to permit is rent-free use of U.S. Government property on foreign military sales (FMS) contracts. Section 21(e)(1)(B) of the Arms Export Control Act previously required the Department of Defense (DoD) to establish and recover appropriate charges for use of Government property used on FMS contracts. This requirement was repealed by section 9104 of the fiscal 1990 DoD Appropriations Act (Pub. L. 101-165), effective November 21, 1989.

Contracts awarded on or after November 21, 1989, may require adjustment for reimbursement to a foreign government for rental use charges assessed against it. When requested to make such an adjustment, contracting officers shall notify the cognizant program office and consult with their legal advisors to ensure that contract modifications do not exceed the amount of rental use charge contained in the affected Letter of Agreements.

Item XIV—Authorization for Contractor Performance of Plant Clearance Functions

Subsection 245.603-70 is revised to modify the requirements for authorizing a contractor to perform plant clearance functions. The requirement for Government plant clearance personnel to be stationed at the contractor's facility has been eliminated. The authorization will now require approval of the department or agency concerned.

Item XV—Editorial Revisions

(a) The list of contracting activities in 202.101(a) is revised to add the U.S. Army Special Operations Command.

(b) Paragraph (a)(2) of section 204.7004-3 is revised by adding the letter "Q."

(c) Section 225.501 is revised by removing the parenthetical reference "see 225.76" in the last sentence. (DAC #88-16 removed subpart 225.76.)

(d) Paragraph 225.7002(c) is revised by removing paragraph (7). (DAC #88-16 removed subpart 225.76.)

(e) The activity address number in Appendix N for OC-ALC/PM is revised by deleting the two-character code "TG."

1. The authority for 48 CFR parts 202, 203, 204, 217, 225, 228, 232, 245, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and FAR subpart 1.3.

Amendments to the DOD FAR Supplement

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

2. Section 202.101(a) is amended by removing under the category heading "For the Army" the word "and" after the words "U.S. Army Intelligence and Security Command;"; by removing the period and adding a semi-colon and the word "and" after the words "U.S. Army, South" and by adding at the end of the listing the words "U.S. Army Special Operations Command.".

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 203.104-1 is revised to read as follows:

203.104-1 General.

Except as provided in FAR 3. 104-9(f)(2), agencies are not authorized to grant individual deviations to this section. These deviations must be approved using the same procedures in 201.404 for class deviations.

4. Section 203.104-4 is revised to read as follows:

203.104-4 Definitions.

(c)(1) Each order under a Basic Ordering Agreement is a separate procurement subject to all requirements at FAR 3.104.

203.104-5 [Amended]

5. Section 203.104-5 is amended by revising the title to read: "Disclosure, Protection, and Marking of Proprietary and Source Selection Information."

203.104-9 [Removed]

6. Section 203.104-9 is removed.

7. Section 203.170-2 is amended by adding a new paragraph (c) to read as follows:

203.170-2 Policy.

* * * * *

(c) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) continues the suspension of 10 U.S.C. 2397b from December 1, 1990 through May 31, 1991. The clause at DFARS 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees, should continue to be inserted in solicitations and contracts. However, the provision of the clause that prohibits the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision shall not be applied during the suspension period.

203.571-1 [Amended]

8. Section 203.571-1 is amended by adding in the first sentence between the word "contractors" and the word "from" the words "and subcontractors".

203.571-2 [Amended]

9. Section 203.571-2 is amended in the definition of "Arising out of a contract with the Department of Defense" by adding in (c) between the word "or" and the word "subcontract" the words "first-tier".

203.571-3 [Amended]

10. Section 203.571-3 is amended by adding in paragraph (a) between the word "contractor" and the word "shall" the words "or subcontractor"; by adding in paragraph (b) between the word "Contractors" and the word "shall" the words "or subcontractors"; and by adding in paragraph (b) between the word "or" and the word "subcontract" the words "first-tier".

203.571-4 [Amended]

11. Section 203.571-4 is amended by adding between the word "contractor" and the word "is" the words "or first-tier subcontractor".

PART 204—ADMINISTRATIVE MATTERS

204.7004-3 [Amended]

12. Section 204.7004-3 is amended by adding in paragraph (a)(2) introductory text, between the letter "P" and the letter "S" the letter and punctuation "Q.".

204.7108-3 [Amended]

13. Section 204.7108-3(b) is amended by revising the reference "Appendix G" to read "Section G."

PART 217—SPECIAL CONTRACTING METHODS

14. Subpart 217.1 is revised to read as follows:

Subpart 217.1—Multiyear Contracting

217.102 Policy.
217.102-2 General.
217.103 Procedures.
217.103-1 General.

Subpart 217.1—Multiyear Contracting

217.102 Policy.

217.1012-2 General.

(b) The applicable program year is that shown in the DoD Six-Year Defense Program.

217.103 Procedures.

217.103-1 General.

(a) *Criteria.* (S-70) 10 U.S.C. 2306(h) and annual DoD authorization and appropriations acts have established the following additional criteria:

(i) The use of such a contract will promote the national security of the United States and will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts (10 U.S.C. 2306(h)(1)).

(ii) The contract provides for a production rate at not less than minimum economic product rates given the existing tooling and facilities (10 U.S.C. 2306(h)(9)).

(iii) The economic order quantity of the advance acquisition which precedes the multiyear acquisition is funded at least to the limits of the Government's liability (Section 9021, Pub. L. 101-165).

(b) *Limitations.* (S-70) For DoD—

(i) Public Law 90-378 (10 U.S.C. 2306(g)).

(A) DoD may enter into multiyear acquisitions for the following services, even though funds are limited by statute to obligation during the fiscal year in which the contract is executed.

(*1*) Operation, maintenance and support of facilities and installations;

(*2*) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(*3*) Specialized training requiring high quality instructor skills (e.g., training for pilots and other aircrew members or foreign language training); and

(*4*) Base services (e.g., ground maintenance, in-plane refueling, bus transportation, and refuse collection and disposal).

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond five years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(ii) Section 512 of Public Law 91-142.

(A) DoD may enter into multiyear acquisitions for supplies and services required for maintenance and operation of family housing even though funds would otherwise be available only within the fiscal year for which appropriated.

(B) This authority may be used as long as the contract—

(*1*) Does not extend beyond four years;

(*2*) Complies with FAR 17.101 through 17.105; and

(*3*) Performance years do not extend beyond the end of any fiscal year.

(iii) Award of multiyear contract for services requires a written determination by the head of the contracting activity (10 U.S.C. 1306(g)(1)) that—

(A) There will be a continuing need for the services and incidental supplies;

(B) Furnishing the services and incidental supplies will require—

(*1*) A substantial initial investment in plant or equipment;

(*2*) The upfront commitment of substantial financial resources for the assembly, training or transportation of a specialized work force; or

(*3*) Other substantial startup costs; and

(C) Using a multiyear contract will be in the best interest of the United States by encouraging effective competition and promoting economical business operations.

(iv) The appropriate Secretary must provide a 30-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate before the award of—

(A) Any multiyear contract that contains a cancellation ceiling in excess of $100 million (10 U.S.C. 2306(a)(3));

(B) Any multiyear contract that provides for economic order quantity purchases in excess of $20 million (Section 9021, Pub. L. 101-165);

(C) Any multiyear contract that includes an unfunded contingent liability in excess of $20 million (Section 9021, Pub. L. 101-165); or

(D) Any contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year (Section 9021, Pub. L. 101-165).

(v) Departments/agencies shall establish reporting procedures to meet the requirements of paragraph (b)(iv) of this subsection. Submit copies of the notifications to the Deputy Assistant Secretary of Defense (Procurement) (DASD(P)) and the Deputy Assistant Secretary of Defense (Comptroller) (Program/Budget) (OASD(C)(P/B)).

(vi) Do not initiate a multiyear contract—

(A) In excess of $500 million for any system or component thereof unless—

(*1*) Specifically provided for in a DoD appropriation act (Section 9021, Pub. L. 101-165), and

(*2*) The Secretary of Defense certifies to Congress that the current six-year defense plan fully funds the support costs associated with the multiyear program. Forward documentation to support this certification to DASD(P).

(B) Without using present value analysis to determine the lowest cost to the Government of a multiyear contract compared to annual contracts (Section 9021, Pub. L. 101-165).

(vii) Do not terminate a multiyear contract under a program approved by Congress without providing a ten-day advance notification to the Committees on Appropriations and Armed Services of the House of Representatives and the Senate (Section 9021, Pub. L. 101-165).

(viii) The Secretary of Defense may ask Congress for relief from any

BEST COPY AVAILABLE

conditions established by law for that particular procurement program (10 U.S.C. 2306(h)(11)).

(A) A request for relief from the requirement to achieve specific cost savings may be made if it appears, after negotiations with the contractors, that such savings cannot be achieved, but that substantial savings could nevertheless be achieved by using a multiyear contract.

(B) Include in such request details concerning the reasons for requesting use of a multiyear contract as well as details about the negotiated contract terms and conditions.

(C) Forward supporting documentation to DASD(P).

(ix) Departments/agencies also must comply with any other restrictions or notification requirements contained in annual authorization or appropriation acts.

(d) *Cancellation.* (1) State cancellation ceilings in the schedule as a not-to-exceed amount.

PART 225—FOREIGN ACQUISITION

15. Section 225.000–70 is amended by adding paragraph (l) to read as follows:

225.000–70 Definitions.

* * * * *

(l) *U.S. made end product* means an article that (1) is wholly the growth, product or manufacture of the United States, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

16. Section 225.000–71 is amended by revising the table in paragraph (b) to read as follows:

225.000–71 Policy.

(b) * * *

Step	If yes	
1. Is the acquisition of the product restricted by the Department of Defense (see part 208) or by the Defense Appropriations or Authorization Act (See subpart 225.70.)	The specific restrictions of the Acts must be followed	Go to step 2.
2. Is the product being offered a qualifying country end product?	Evaluate the offer as set forth in 225.74 (but see step 4).	Go to step 3.
3. Is the product being purchased covered by the Trade Agreements Act? (See subpart 225.4.)	Determine whether the product being offered is an eligible product or a U.S. made end product. If it is not, then purchase of the item may be prohibited (see 225.402).	Go to step 4.
4. Will the contract (if for more than $100,000) be awarded to a firm controlled by a terrorist nation?	Follow the guidance in 209.170	Go to step 5.
5. Apply the Buy American Act as set forth in subpart 225.1.		

17. Section 225.105–70 is amended by adding paragraph (i) to read as follows:

225.105–70 Evaluation procedures.

* * * * *

(i) Because of the component test, the definition of domestic end product for manufactured items under the Buy American Act is more restrictive than the definition for:

(1) U.S. made end product under the Trade Agreements Act (see 225.000–70);

(2) Domestically produced or manufactured products under small business set-asides and under small business-small purchase set-asides (see FAR subpart 19.5); and

(3) Products of small businesses or small disadvantaged businesses (see FAR part 19).

If an end product is a "U.S. made end product," "domestically produced end product," or the product of a small business, but is not a "domestic end product" under this subpart, it is subject to the evaluation factors for nonqualifying country end products.

18. Section 225.109 is amended by adding in paragraph (a)(S–70) at the end of the paragraph before the period the words "or unless the solicitation includes the clause at 252.225–7006, Trade Agreements Act."; and by revising paragraph (d)(S–70) to read as follows:

225.109 Solicitation provisions and contract clauses.

* * * * *

(d)(S–70) The clause at 252.225–7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225–3, Buy American Act—Supplies, and FAR 52.225–7, Balance of Payments Program, unless the solicitation is solely for machine tools (see 225.7012). The contracting officer shall insert the clause at 252.225–7001 in all solicitations and contracts (i) not utilizing small purchase procedures and (ii) for supplies and for services which require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 225.302(S–72)(1).

19. Section 225.401 is revised to read as follows:

225.401 Definitions.

(a) *Eligible product,* instead of the definition at FAR 25.401, means a designated or Caribbean Basin country end product listed at 225.403–70.

(b) *Nondesignated country end product,* as used in this part, means any end product which is not a U.S. made end product or a designated country end product.

20. Section 225.402 is amended by revising paragraph (a)(1)(i), by designating paragraph (C) as paragraph (c) and revising the introductory text of paragraph (c) to read as follows:

225.402 Policy.

(a)(1)(i) For bid evaluation purposes see 225.105–70.

* * * * *

(c) There shall be no purchase of a nondesignated country end product listed in 225.403–70 with an estimated value at or above the dollar threshold determined by the U.S.Trade Representative (see FAR 25.402(a)(1)) which is not a Caribbean Basin country end product except as follows:

* * * * *

21. Section 225.407 is revised to read as follows:

225.407 Solicitation Provision and Contract Clause.

(a)(1) The provision, Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate at 252.225–7005, shall be used in lieu of the provision at FAR 52.225–8 in all solicitations in which the Trade Agreements Act clause at 252.225–7006 is used.

(2) The clause at 252.225–7006, Trade Agreements Act, shall be used in lieu of the clause at FAR 52.225–9 and shall be inserted along with the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act.

225.501 [Amended]

22. Section 225.501 is amended by removing in the last sentence of paragraph (a) the parenthetical reference "(see 225.76)".

23. Section 225.603–70 is amended by revising paragraph (c)(4)(i) to read as follows:

225.603–70 Procedures.

* * * * *

(c) * * *

(4) * * *

(i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCMR New York in the format shown below:

TO: Commander, DCMR New York.
ATTN: Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014.

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225–10 and 252.225–7014 or 252.225–7008. Verification has been made that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted in accordance with 225.603–70(c)(3).

In accordance with 225.603–70(c)(4), the following information is provided:
Prime Contractor Name, Address, and CAGE code:
Prime Contractor Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontractor/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address number (Appendix N of the DoD FAR Supplement):
ACO Name:
ACO Telephone Number:
ACO Code:
Signature:
Title:

* * * * *

PART 228—BONDS AND INSURANCE

24. Sections 228.311 through 228.311–2 are added to read as follows:

228.311 Solicitation Provision and Contract Clause on Liability Insurance under Cost-Reimbursement Contracts.

228.311–1 Solicitation Provision.

For DoD, the contracting officer shall insert the provision at FAR 52.228–6, Insurance—Immunity From Tort Liability, in solicitations for research and development when a cost reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause at FAR 52.228–7, Insurance—Liability to Third Persons.

228.311–2 Contract Clause.

For DoD, the contracting officer shall insert the clause at FAR 52.228–7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

PART 232—CONTRACT FINANCING

25. Section 232.502–1 is amended by removing paragraph (S–71)(2)(ii)(C), by redesignating the existing paragraph (S–71)(2)(ii)(D) as (S–71(2)(ii)(C), and by revising paragraph (S–71)(2)(iii) to read as follows:

232.502–1 Use of Customary Progress Payments.

(S–71) * * *

(2) * * *

(iii) Do not use flexible progress payments for undefinitized contract actions, contracts awarded through sealed bidding, or contracts to be awarded and performed entirely outside the United States, its possessions or territories.

* * * * *

PART 245—GOVERNMENT PROPERTY

26. Section 245.401 is revised to read as follows:

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rent-free basis.

27. Section 245.405 is amended by revising paragraph (b); by removing paragraph (c); by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e); and by revising newly redesignated paragraphs (c), (d), and (e) to read as follows:

245.405 Contracts with Foreign Governments or International Organizations.

* * * * *

(b) The Use and Charges clause is applicable on direct commercial sales to foreign governments or international organizations.

(c) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(d) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. In response to these requests, approvals may be granted only by the Director, Defense Security Assistance Agency for particular sales which are consistent with paragraph (a)(2) of this section.

(e) Rental charges for use of U.S. production and research property on commercial sales transactions to the Government of Canada are waived for all commercial contracts based on an understanding wherein the Government of Canada has agreed to waive its rental charges.

28. Section 245.603–70 is amended by revising paragraph (1) to read as follows:

245.603–70 Contractor Performance of Selected Plant Clearance Duties and Responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only if:

(i) The volume of plant clearance actions warrants performance by the contractor; and

(ii) The authorization is approved by the department or agency concerned.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

29. Section 252.203–7001 is amended by revising the clause date to read "(FEB 1991)" in lieu of "(MAR 1989)"; by adding in paragraph (a) between the word "or" and the word "subcontract" the words "first-tier"; by revising paragraph (b); by adding in paragraph (c)(1) between the word "or" and the word "subcontract" the words "first-tier"; by adding in paragraph (c)(2) between the word "or" and the word "subcontract" the words "first-tier"; by removing in paragraph (f) the words and punctuation "including this paragraph (f),"; by adding in paragraph (f) between the word "all" and the word

"subcontracts" the words "first-tier" to read as follows:

252.203-7001 Special Prohibition on Employment.

* * * * *

(b) 10 U.S.C. 2408 prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity on any defense contract or first-tier subcontract, or serving in various other capacities for a defense contractor or first-tier subcontractor, for up to five (5) years from the date of conviction, as set forth in paragraph (c) of this clause. Defense contractors and first-tier subcontractors are subject to a criminal penalty of not more than $500,000 if they are convicted of knowingly employing a person under a prohibition or allowing that person to serve in violation of 10 U.S.C. 2408.

* * * * *

30. Section 252.203-7002 is amended by changing the date of the clause from "(APR 1988)" to "(FEB 1991)" and by adding a new paragraph (b)(4) to read as follows:

252.203-7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees.

(b) * * *

(4) Section 507 of the Ethics Reform Act of 1989 suspended the prohibitions of 10 U.S.C. 2397b from December 1, 1989 to November 30, 1990. Section 815 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) continues the suspension of 10 U.S.C. 2397b from December 1, 1990 through May 31, 1991. The provision of this clause that prohibits the offering of compensation to a person if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision shall not be applied during the suspension period.

* * * * *

31. Section 252.225-7001 is revised to read as follows:

252.225-7001 Buy American Act and Balance of Payments Program.

As prescribed at 225.109(d)(S-70), insert the following clause:

Buy American Act and Balance of Payments Program (JAN 1991)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products. For the purpose of this clause—

(1) "Components" means those articles, materials, and supplies directly incorporated into end products.

(2) "Qualifying country" means any country set forth in DFARS 225.7403.

(3) "Nonqualifying country end product" means an end product which is not a domestic or qualifying country end product.

(4) "Qualifying country components" means an item mined, produced, or manufactured in a qualifying country.

(5) "End products" means those articles, materials, and supplies to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(6) "Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (iii) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(7) "Qualifying country end product" means (i) an unmanufactured end product mined or produced in a qualifying country, or (ii) an end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) The Contractor agrees that there will be delivered under this contract only domestic end products unless, in its offer, it specified delivery of other end products in the provision entitled "Buy American Act and Balance of Payments Program Certificate," or in the provision entitled "Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate." An offer certifying that a qualifying country end product will be supplied requires the Contractor to supply a qualifying country end product or, at the Contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the Contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price of nonqualifying country end products must include all applicable duty. Generally, when the Buy American Act is applicable, each offer of a nonqualifying country end product shall be adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

(End of clause)

32. Section 252.225-7005 is revised to read as follows:

252.225-7005 Buy American Act—Trade Agreements Act—Balance of Payments Program Certificate.

As prescribed at 225.407(a)(1), insert the following provision:

BUY AMERICAN ACT—TRADE AGREEMENTS ACT—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 1991)

(a) The Offeror hereby certifies that each end product, except the end products listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program"), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(b) Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products and Caribbean Basin country end products over other end products. In order to obtain such preference in the evaluation, it is necessary that offerors identify and certify, below, those end products that are qualifying country end products, designated country end products, or Caribbean Basin country end products and those end products which are U.S. made end products but not domestic end products. Offerors must also identify, below, those nondesignated country end products which are not qualifying country end products or Caribbean Basin country end products.

(1) The Offeror certifies that the following supplies qualify as "U.S. made end products" as defined in the clause entitled "Trade Agreements Act," but do not meet the definition of "domestic end product" as defined in the clause entitled "Buy American Act and Balance of Payments Program.

(Insert line item no.)

(2) The Offeror certifies that the following supplies are "qualifying country end products" as defined in the clause entitled "Buy American Act and Balance of Payments Program."

(Insert line item no.)
(Insert country of origin)

(3) The Offeror certifies that the following supplies qualify as "designated country end products" as that term is defined in the clause entitled "Trade Agreements Act."

(Insert line item no.)

(Insert country of origin)

(4) The Offeror certifies that the following supplies qualify as "Caribbean Basin Country end products" as that term is defined in the clause entitled "Trade Agreements Act."

(Insert line item no.)
(Insert country of origin)

(5) Other nondesignated country end products. The offeror identifies the following supplies as nondesignated country end products which are not certified in paragraphs (b)(2) or (4) of this provision as qualifying country end products or Caribbean Basin country end products.

(Insert line item no.)

(Insert country of origin)
(End of provision)

33. Section 252.225-7006 is revised to read as follows:

252.225-7006 Trade Agreements Act.

As prescribed at 225.407(a)(2), insert the following clause:

Trade Agreements Act (JAN 1991)

(a) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.) and the Caribbean Basin Initiative as provided for in Executive Order 12260 by providing a preference to U.S. made end products and designated country end products over nondesignated country end products, except for nondesignated country end products which are qualifying country end products or Caribbean Basin end products. For the purpose of this clause—(1) "End product" means those articles, materials, and supplier to be acquired for public use under the contract. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(2) "Qualifying country end product" is defined in the clause entitled "Buy American Act and Balance of Payments Program."

(3) "Designated country" means a country or instrumentality designated under the Trade Agreements Act of 1979 and listed in section 25.401 of the Federal Acquisition Regulation (FAR).

(4) "Designated country end product" means an article that (i) is wholly the growth, product, or manufacture of the designated country, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(5) "Caribbean Basin country end product" means (i) An article that (A) is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR), or (B) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. (ii) The term excludes products which are excluded from duty-free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act under 19 U.S.C. 2703(b). These exclusions presently consist of (A) textiles and apparel articles which are subject to textile agreements; (B) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (C) tuna, prepared or preserved in any manner in airtight containers; (D) petroleum, or any product derived from petroleum; and (E) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country to which Harmonized Tariff Schedule column 2 rates of duty apply.

(6) "U.S. made end product" means an article which is (i) wholly the growth, product or manufacture of the United States, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(7) "Nondesignated country end products" means any end product which is not a U.S. made end product or a designated country end product.

(8) "United States" means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(b) The Contractor agrees that there will be delivered under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, designated country, Caribbean Basin country or other nondesignated country end products in the provision entitled Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate. Offerors may not supply a nondesignated country end product unless it is a qualifying country end product or a Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)). An offer certifying that a qualifying country end product, a designated country end product, or a Caribbean Basin country end product will be supplied requires the Contractor to supply a qualifying country end product, a designated country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(c) Offers will be evaluated in accordance with the policies and procedures of FAR part 25 and DFARS part 225.

(d) The offered price of supplies listed in paragraph (b)(1) (U.S. made but not domestic) or in paragraph (b)(5) (other nondesignated country end products) of the provision entitled "Buy American Act-Trade Agreements Act-Balance of Payments Program Certificate" must include all applicable duty. The offered price of qualifying country end products, designated country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act, should not include custom fees or duty.

(End of clause)

34. Section 252.225-7008 is amended by revising the clause date to read "(DEC 1990)" in lieu of "(NOV 1990)"; and by revising paragraph (h)(1) and paragraph (h)(4) to read as follows:

252.225-7008 Duty-Free Entry—Qualifying Country End Products and Supplies.

* * * * *

(h) * * *

(1) Prime contractor name, CAGE code, address, and prime contract number plus delivery order number if applicable;

* * * * *

(4) Foreign supplier name and address;

* * * * *

35. Section 252.225-7014 is amended by revising the clause date to read "(DEC 1990)" in lieu of "(APR 1990)" and by revising paragraph (c)(1) and paragraph (c)(4) to read as follows:

252.225-7014 Duty-Free Entry—Additional Provisions.

* * * * *

(c) * * *

(1) Prime contractor name, CAGE code, address, and prime contract number plus delivery order number, if applicable;

* * * * *

(4) Foreign supplier name and address;

* * * * *

Appendix N to Chapter 2—[Amended]

36. Appendix N to Chapter 2 is amended by removing from the *"Department of the Air Force"* the code "TG" from the code "F34601, SD, TA, TG."

Adoption of Interim Rules as Final Rules

The Interim Rule published on January 27, 1989 (54 FR 4246) as amended on December 29, 1989 (54 FR 53612) and the Interim Rule published on July 24, 1990 (55 FR 30154) are adopted as final rules with the following changes:

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.1070 through 219.1071 [Removed]

37. Sections 219.1070 through 219.1071 are removed.

38. Sections 219.1006 through 219.1007–70 are added to read as follows:

219.1006 Procedures.

(a) For reporting requirements, see 204.675.

(b) *Designated Industry Groups.* (1) When use of small business set-asides is suspended for the four designated industry groups—

(i) The procedures under 219.501 (g), and (g)(S–70) through (g)(S–73) are waived;

(ii) The exceptions at 219.502–72(b)(1), (2), and (3) do not apply, and the acquisitions shall be considered for small disadvantaged business set-asides; and

(iii) The evaluation preference at 219.7001 shall not be applied.

(2) After periodic review of DoD performance, DoD may direct reinstatement of the use of small business set-asides as necessary to meet prescribed goals. Military Departments and defense agencies shall not reinstate small business set-asides unless directed by DoD.

219.1007 Solicitation Provision.

219.1007–70 Contract Clause.

The clause at 252.219–7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns, shall not be used in acquisitions in the four designated industry groups.

PART 225—FOREIGN ACQUISITION

225.7002 [Amended]

39. Section 225.7002 is amended by removing paragraph (c)(7).

40. Section 225.7012–2 is amended by revising paragraphs (a) and (b) (1) and (2) introductory text to read as follows:

225.7012–2 Authorization Act Restrictions (FY 1990–1991).

(a) In accordance with 10 U.S.C. 2507, do not purchase machine tools or powered and nonpowered valves identified in 225.7012–1 unless they are of U.S. or Canadian origin, or unless one or more of the exceptions in paragraph (b) of this subsection applies.

(b) Exceptions.

(1) The restriction in paragraph (a) of this subsection is waived for procurements of less than $25,000 when simplified small purchase procedures are used.

(2) The Head of the Agency may waive the restriction in paragraph (a) of this subsection for other procurements on a case-by-case basis if any of the following apply:

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219–7012 through 252.219–7014 [Removed and Reserved]

41. Sections 252.219–7012 through 252.219–7014 are removed and reserved.

[FR Doc. 91–4506 Filed 3–1–91; 8:45 am]

BILLING CODE 3810–01–M

federal register

Monday
March 4, 1991

Part IV

Environmental Protection Agency

40 CFR Part 799

Multi-Substance Testing for Developmental and Reproductive Toxicity, and Neurotoxicity; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42123; FRL 3770-6]

Multi-substance Rule for the Testing of Developmental and Reproductive Toxicity; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers and processors of the 12 substances listed in this notice to conduct testing for developmental and/or reproductive toxicity.

DATES: Submit written comments on or before May 3, 1991. If persons request an opportunity to submit oral comments by April 18, 1991, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble.

ADDRESSES: Submit written comments identified by the document control number [OPTS-42123] in triplicate to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action, with any confidential business information deleted, is available for inspection at the above address from 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing a test rule under TSCA section 4 to obtain developmental and/or reproductive toxicity data for the 12 substances designated in this rule.

I. Introduction

A. Background

Section 4 of TSCA authorizes EPA to require testing of chemical substances and mixtures whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to human health or the environment, but for which existing data are inadequate to reasonably determine or predict such effects. In this rule, 12 substances which are suspected developmental and/or reproductive toxicants are being proposed for developmental and/or reproductive toxicity testing. Refer to Table 1 for a list of the substances, their testing requirements, and their available percent purities. These substances were selected for consideration under this endpoint rule because EPA believes the available data indicate that they may present an unreasonable risk of injury to human health.

The substances selected as candidates for this rule met one or more of the following criteria:

(1) EPA received a TSCA section 8(e) notice of substantial risk.

(2) Available screening level data or other data on the substances provide suggestive evidence that the substance may be toxic and more definitive data are needed to adequately assess risk.

(3) Available data on structurally related substances provide suggestive evidence that the substance may be toxic.

(4) Adequate developmental toxicity data on one mammalian species are available, but testing in an additional mammalian species is needed to adequately assess risk.

TABLE 1.—PROPOSED TESTING AND TEST STANDARDS FOR DESIGNATED SUBSTANCES

Chemical/CAS No.	Testing requirement(s)	Guideline requirement(s)	Minimum percent purity	Docket No. (OPTS)
acrylonitrile (107-13-1)	Developmental: oral	[1]798.4900	99.0	42123/42124
p-aminophenol (123-30-8)	Developmental: oral	798.4900	98.0	42123/42125
bromochloromethane (74-97-5)	Reproductive: oral	798.4700	99.0	42123/42120
carbon disulfide (75-15-0)	Developmental: inhalation	798.4350	99.9	42123/42126
	Reproductive: inhalation	798.4700	99.9	
dodecylphenol (27193-86-8)	Developmental: oral	[1]798.4900	99.5	42123/42127
2-ethylhexanol (104-76-7)	Developmental: oral	[1]798.4900	99.0	42123/42067C
hexadecanoic acid (57-10-3)	Developmental: oral	798.4900	99.0	42123/42128
o-hydroxyphenol (120-80-9)	Developmental: oral	798.4900	99.0	42123/42129
2-methylpropanoic acid (79-31-2)	Developmental: oral	798.4900	99.0	42123/42130
methyl ester octanoic acid (111-11-5)	Developmental: oral	798.4900	99.0	42123/42131
terephthalic acid (100-21-0)	Reproductive: oral	798.4700	98.0	42123/42132
2,4-toluenediamine (95-80-7)	Developmental: oral	798.4900	98.0	42123/42133
	Reproductive: oral	798.4700	98.0	

[1]Testing will be required in a mammalian species other than the rat.

B. Test Development Under TSCA

Under section 4(a) of TSCA, EPA shall, by rule, require testing of a substance to develop appropriate test data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the testing needs for these substances, EPA considered the available published and unpublished information on the toxicity, exposure, and production of these substances. From its evaluation of these data, EPA is proposing specific health effects testing for these substances under TSCA section 4(a)(1)(A) and for one substance under both section 4(a)(1)(A) and (B).

EPA will continue to evaluate the need for this type of testing of additional substances and will amend this rule as necessary to require such testing. EPA intends to identify future candidates for this rule from its chemical screening program, TSCA section 8(e) data, Premanufacture Notices, Structure Activity Relationship data, nominations from other EPA programs, and Interagency Testing Committee recommendations, among others.

In addition, elsewhere in this issue of the Federal Register, EPA is proposing another TSCA section 4 multi-substance test rule. That rule requires neurotoxicity testing of 10 substances (none of which are the same as those included in this notice). The codified portion of the proposed rule for neurotoxicity is written as an amendment to the codified portion of this rule. For future multi-substance rules, EPA plans to prepare amendments to the combined proposed section of the CFR (i.e., § 799.5050). By so doing, all multi-substance rules will be listed in a single table, and all test requirements (health, environmental, chemical fate, etc.) for a substance would be in a single location. EPA believes this will be advantageous for those subject to test rules under TSCA section 4 and will simplify and aid in their monitoring and compliance.

II. Review of Available Data

A. Production/Use/Exposure

1. *Acrylonitrile.* An estimated 2.5 billion pounds of acrylonitrile are produced annually in the United States (Ref. 1). Acrylonitrile is used in the manufacture of acrylic and monoacrylic fibers. It is also used in the manufacture of resins (Ref. 1).

EPA believes that exposure to acrylonitrile may result due to the conditions under which the large volume of this substance is manufactured, processed, and disposed. For example, according to the National Occupational Exposure Survey (NOES) (1981 through 1983), an estimated 61,500 workers at more than 1,400 plant sites may be exposed to acrylonitrile during sampling, maintenance activities, clean-up of spills, drumming, and bulk loading of the final product (Ref. 1).

In addition, worker and general population exposure may occur as a result of release and/or disposal of over 11 million pounds/year (Refs. 1 and 2). Additional information on potential exposures are discussed in References 1 and 2.

2. *p-Aminophenol.* An estimated 2000 pounds of *p*-aminophenol are produced annually in the United States, while more than 1 million pounds are imported (Ref. 3). *p*-Aminophenol is used as a dye intermediate and as an oxidative dye, particularly for dyeing feathers and fur (Ref. 3).

According to the NOES survey of 1984, an estimated 375 workers may be exposed to *p*-aminophenol (Ref. 49). In addition, *p*-aminophenol is used as a developing agent for photographic processes (Ref. 3). As such, there may be consumer exposure. An estimated 800,000 to 2.2 million consumer photohobbyists who develop their own film and prints may be exposed to *p*-aminophenol in developers (Ref. 4). EPA believes that many users will immerse both hands in developing solutions without the benefit of gloves (Ref. 13). For a more detailed explanation of typical exposure during developing, refer to Hydroquinone; Final Test Rule (50 FR 53145; December 30, 1985) (Ref. 4).

3. *Bromochloromethane.* The amount of bromochloromethane produced annually in the United States and imported is claimed as confidential business information (Ref. 5). Bromochloromethane is used as a fire extinguishing agent and explosion suppressing agent in area protection systems, and as a solvent or sink/float separation medium (Ref. 6).

More than 100 workers are potentially exposed dermally and via inhalation during the manufacture and use of bromochloromethane as an explosion suppressant in area systems (Ref. 6). General population exposure may also occur as a result of air emissions. More than 200,000 pounds of bromochloromethane are potentially released from one site through air emissions from receivers, storage, and vent scrubbers (Ref. 6). This release is estimated to result in human exposures of 75 to 4,320 mg/year (Ref. 35).

4. *Carbon disulfide.* An estimated 360 million pounds of carbon disulfide are produced annually in the United States (Ref. 5). Carbon disulfide is used in the manufacture of carbon tetrachloride, rayon, cellophane, and rubber chemicals, and is also produced as a by-product from the manufacture of carbon black (Ref. 7 and 47).

EPA believes that there may be worker exposure to this substance based on data from the NOES survey. More than 44,000 workers are potentially exposed to carbon disulfide via inhalation in a variety of occupations including janitors, chemical, health, engineering, and electronic technicians, and machine operators, among others (Ref. 47). EPA believes that exposure to the substance will result due to the conditions under which the large volume of carbon disulfide is manufactured, processed, used, and disposed.

In addition, general population exposure also exists through manufacture and disposal. According to the 1988 Toxic Release Inventory (TRI), 88 manufacturing and processing facilities reported estimated total air releases of more than 82 million pounds of carbon disulfide (Ref. 47). Over 150,000 pounds of carbon disulfide was transferred to waste water treatment (WWT) plants from industrial facilities for treatment, while more than 37,000 pounds was released directly into streams. For more information on the exposure potential of carbon disulfide, see Reference 47.

5. *Dodecylphenol.* An estimated 60.7 million pounds of dodecylphenol are produced per year (Ref. 8). Dodecylphenol is used as an intermediate in the manufacture of calcium phenate salts and alkyl phenol ethoxylates (Ref. 8).

During manufacture of dodecylphenol, calcium phenate salts, and dodecylphenol ethoxylates, more than 100 workers may be exposed to dodecylphenol during bulk transfer from tank cars to storage tanks, sampling, quality control analysis, and maintenance, among other activities (Ref. 8). Dermal exposures may range from 1,300 to 3,900 mg/day if gloves are not worn (Ref. 8).

Based on modeling data of two stream flows, releases of dodecylphenol from manufacturing through on-site WWT are estimated to result in human drinking water exposures of 0.46 to 7.5 mg/year (Ref. 9). Releases of dodecylphenol from industrial use through on-site WWT at two streamflows are estimated to result in drinking water exposures of 0.69 to 11 mg/year (Ref. 9).

Because of expected strong sorption of dodecylphenol on WWT sludges, 90 percent of the total water release is estimated to be sorbed to sludge and subsequently landfilled (Ref. 9). If this sludge went to unrestricted landfills, there could be a maximum exposure to individuals of 27 mg/year from groundwater (Ref. 9), assuming the dodecylphenol migrates from the sludge to the groundwater in one year. The extent to which this may occur is uncertain due to the strong sorption of the dodecylphenol on the sludge.

6. *2-Ethylhexanol.* An estimated 570 million pounds of 2-ethylhexanol are produced annually for intermediate uses and for merchant sale (Ref. 5). It is estimated that 11,550 to 45,000 workers are potentially exposed to 2-ethylhexanol or products containing 2-ethylhexanol (Ref. 10). EPA believes that exposure to the substance will result due to the conditions under which the large volume of 2-ethylhexanol is manufactured, processed, distributed in commerce, and used.

In addition, consumer and general population exposure also exists through disposal. 2-Ethylhexanol has been

detected in a concentration range of 3 to 5 ppb in the Delaware River, a major source of drinking water for many surrounding cities (Ref. 10). The use of 2-ethylhexanol in defoaming agents for the manufacture of paper products, and its use as a lubricant, may also contribute to environmental and general population exposure (Ref. 10). For more information on the exposure potential for 2-ethylhexanol, refer to the 2-Ethylhexanol; Proposed Test Rule (51 FR 45487; December 19, 1986).

7. *Hexadecanoic acid.* An estimated 9.4 million pounds of hexadecanoic acid are produced annually in the United States (Ref. 11). Hexadecanoic acid is produced and used in the manufacture of soaps/detergents, lube oils, waterproofing, and metallic palmitates (Ref. 11).

According to the NOES survey of 1988, National Institute for Occupational Safety and Health (NIOSH) estimates that more than 50,000 workers may be potentially exposed to hexadecanoic acid in the workplace (Ref. 28). Potential worker exposure may occur during chemical manufacture and use as an intermediate during sampling, drumming, and transferring to reactors. Workers may also be exposed during soap and lube oil processing and use. There is potential for inhalation exposure to particulates if the substance is manufactured and handled as a powder. Potential inhalation exposure could be up to 150 mg/day, while dermal exposure could be up to 3,900 mg/day (Ref. 28).

In addition, millions of consumers and tens of thousands of janitors are expected to be exposed dermally to hexadecanoic acid from its use in a wide variety of commercial and consumer products which involve skin contact (Refs. 11 and 12). Exposure estimates range from 50 mg/year for diluted floor polish to 3,700 mg/year for liquid dishwashing detergent (Ref. 11). Refer to Diethylene Glycol Butyl Ether and Diethylene Glycol Butyl Ether Acetate, Proposed Test Rule (51 FR 27880), for further information on typical exposure from cleaning products (Ref. 12).

Monitoring data revealed maximum concentrations of hexadecanoic acid in industrial effluents from 1.5 to 33,563 ppm (Ref. 11). Human drinking water exposures range from 0.02 mg/year for estimated release from manufacture of soaps and detergents to 12,033 mg/year estimated from monitoring data from the paint and ink manufacturers (Ref. 11). For further information on exposure to hexadecanoic acid, see Reference 11.

8. *o-Hydroxyphenol.* The annual production and importation volume of *o*-hydroxyphenol is approximately 10 million pounds (Ref. 5). *o*-Hydroxyphenol is used as an intermediate in the production of *t*-butyl catechol (an antioxidant), adhesives, and oxidation bases for dyeing furs. It is also formulated as a developer for black and white films (Ref. 13).

Dermal exposure to *o*-hydroxyphenol is estimated to range from 600 to 4,000 mg/day during manufacturing processes (Ref. 13). During manufacture of *t*-butyl catechol and developer, worker exposure to particulates may occur via the dermal route in transferring solid *o*-hydroxyphenol. More than 100 workers may be exposed to concentrations of 1,000 to 4,000 mg/day, while an estimated 600 workers may be exposed in packaging the liquid developer at concentrations of 100 to 600 mg/day (Ref. 13).

Because *o*-hydroxyphenol is used as a component in developers, consumer exposure may also occur. Photohobbyist exposure to *o*-hydroxyphenol is expected to be comparable to that for *p*-aminophenol as discussed in Unit II.A.2 of this preamble.

9. *2-Methylpropanoic acid.* The amount of 2-methylpropanoic acid produced annually in the United States and imported is claimed as confidential business information (Ref. 5). 2-Methylpropanoic acid is manufactured and used as an intermediate in the manufacture of varnish and ethers for solvents (Ref. 14) and in the leather industry as a tanning and deliming agent (Ref. 28). According to the NOES survey of 1988, more than 5,000 workers may be exposed in the workplace to 2-methylpropanoic acid (Ref. 34). Workers may be potentially exposed during chemical manufacture and use as an intermediate during sampling, drumming, and transfer to reactors (Ref. 28). During use in leather tanneries, worker exposure may occur during transfer of components to mixing drums, mixing, transfer to dyeing wheels, operation of dyeing wheels, and clean-up (Ref. 28). Inhalation exposure is estimated to be up to 56 mg/day, while dermal exposure is estimated to be up to 3,900 mg/day (Ref. 28).

Monitoring data revealed maximum concentrations of the substance in the effluents at 9 industrial sites ranging from 8.6 to 14,827 ppm (Ref. 14). General population exposure through drinking water may occur at a range of 0.01 to 14,348 mg/year for estimated release from manufacture of ethers and monitoring data from the organic chemical manufacturers (Ref. 14).

10. *Methyl ester octanoic acid.* The amount of methyl ester octanoic acid produced annually in the United States and imported is claimed as confidential business information (Ref. 5). Methyl ester octanoic acid is produced and used in the synthesis of dyes and ore separators (Ref. 46).

More than 350 workers are estimated to be exposed to methyl ester octanoic acid (Ref. 28). Potential worker exposure may occur during manufacturing and use as a chemical intermediate during sampling, drumming, and transfer to reactors. Exposure to vapor has been estimated to be 15 mg/day, while dermal exposure is estimated to be 3,900 mg/day (Ref. 28).

11. *Terephthalic acid.* An estimated 2.9 billion pounds of terephthalic acid are produced annually in the United States (Ref. 15). Terephthalic acid is used as an intermediate in the manufacture of polyethylene terephthalate (PET) resins. Polymer-grade terephthalic acid is used to make cookware, amorphous nylon used to make plastic autobody parts, solvent-free coating powders, hot-melt adhesives, wire enamels, motor oils and hydraulic fluids, and high performance, low temperature plasticizers; it is also used in electronic applications.

General population exposure to terephthalic acid may occur as a result of air emissions from storage vents, unloading, and transfers during manufacture and use (Ref. 15). Average releases for seven manufacturing facilities are estimated at 41,000 kg/year/site, while user facilities involved in the manufacture of plastics range from 430 to 14,000 kg/site/year based on 1987 TRI data (Ref. 15).

General population exposure may also occur as a result of water releases from disposal of filtrate and decanted liquids and during manufacturing and purification processes (Ref. 15). The average water releases from users of terephthalic acid are estimated based on the 1987 TRI data to range from 0 to 3,000 kg/year/site (Ref. 15). The largest release to a Publicly-Owned Treatment Works (POTW) is 167,000 kg/year/site from a facility which recycles PET bottles to produce fibers (Ref. 15).

In the **Federal Register** of December 10, 1990 (55 FR 50687) EPA deleted terephthalic acid from the list of toxic substances under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986. By delisting this substance, EPA is relieving facilities of their obligation to report releases of terephthalic acid that occurred during the 1990 calendar year, and thereafter. This relief applies only to reporting requirements under section 313 of EPCRA. If the proposed testing of this substance under TSCA section 4 provides EPA with evidence that terephthalic does meet the section 313 listing criteria, EPA would immediately initiate rulemaking to add terephthalic acid back to the EPCRA section 313 list.

12. *2,4-Toluenediamine.* An estimated 450 million pounds of 2,4-toluenediamine are produced annually in the United States (Ref. 16). 2,4-Toluenediamine is used as an intermediate in the production of toluene diisocyanate and in dyes used for textiles, leather, and fur (Ref. 16).

EPA believes that exposure to 2,4-toluenediamine will result due to the conditions under which the large volume of this substance is manufactured and disposed. An estimated 750 workers are potentially exposed to 2,4-toluenediamine via inhalation during routine process attention, sampling, maintenance, non-routine spills or leaks, and loading of containers to be shipped off-site, and as a result of fugitive emissions from pumps and clean up operations (Ref. 16). According to NIOSH figures, 2,4-toluenediamine levels in the workplace air may range from 0.001 to 0.415 ppm (Ref. 16).

The general population may also be exposed to 2,4-toluenediamine through plant emissions. According to data on toluene diisocyanate manufacture compiled under the Resource Conservation and Recovery Act, more than 365,000 pounds/year of 2,4-toluenediamine are released from manufacturing facilities (Refs. 16 and 17). However, this release figure is based on 1977 production volume data of 407 million pounds and would be expected to be slightly greater given the current production volume of 450 million pounds. For further information on the exposure potential of 2,4-toluenediamine, refer to References 16 and 17.

B. Health Effects

1. *Acrylonitrile.* Murray et al. (Ref. 18) examined the developmental toxicity of ingested and inhaled acrylonitrile in rats. Rats were exposed from day 6 through 15 of gestation to 10, 25, or 65 mg/kg/day by gavage or to 40 or 80 ppm for 6 hours/day via inhalation. Exposure by gavage to doses as low as 25 mg/kg resulted in a dose-related decrease in fetal body weight and increase in the incidence of delayed ossification, as well as a variety of malformations. Similar malformations were seen after inhalation of 40 ppm, which was the lowest dose tested. The lowest observed adverse effect level (LOAEL) for developmental toxicity was 25 mg/kg, and the no observed adverse effect level (NOAEL) was 10 mg/kg.

Willhite et al. (Refs. 19 and 20) gave hamsters an intraperitoneal injection of acrylonitrile on day 8 of gestation. Developmental toxicity was evident after exposure to 1.51 mmol/kg (80 mg/kg) as manifested by increased resorptions and malformations, including encephalocoele and fused or bifurcated ribs.

2. *p-Aminophenol.* Kavlock (Ref. 21) tested 27 substituted phenols using a modified Chernoff/Kavlock screening assay for developmental toxicity. Rats were administered 100, 333, 667, or 1,000 mg/kg of *p*-aminophenol by oral intubation on day 11 of gestation. Exposure to *p*-aminophenol resulted in decreased viability potencies and malformations involving the limbs, tail, and urogenital system.

3. *Bromochloromethane.* Torkelson et al. (Ref. 22), exposed groups of 10 male and 10 female guinea pigs and 2 male and 2 female rabbits to concentrations of 0, 490, or 1,010 ppm bromochloromethane 7 hours/day, 5 days/week for 79 to 82 exposures in 114 days. In the male guinea pig at 1,010 ppm, histological examination of the testes showed decreased spermatogenesis in the tubules, with fibrosis in numerous tubules and only the germinal epithelium remaining in other tubules. In the male rabbit at 1,010 ppm, histological examination showed testicular tubule changes, characterized by decreased spermatogenesis with replacement fibrosis occurring in the tubules.

4. *Carbon disulfide.* In a range finding study, pregnant rabbits were exposed via inhalation to concentrations of 100, 300, 1,000, or 3,000 ppm carbon disulfide for 6 hours/day on days 6 through 19 of gestation (Ref. 36). All animals exposed to 3,000 ppm died. Maternal and developmental toxicity were evident at 1,000 ppm; developmental toxicity was manifested as an increase in resorptions and a reduction in mean litter size.

Tabacova et al. (Ref. 23) exposed maternal (F0) rats to carbon disulfide vapor throughout gestation. Exposure to 100 and 200 mg/m³ resulted in a dose-related reduction in fetal weight and a high incidence of malformations in the first generation (F1) progeny. After reaching maturity, the F1 females were mated; these dams received no carbon disulfide exposure during pregnancy. Malformations of the same type as those found in the F1 at 100 and 200 mg/m³ were observed in second generation (F2) progeny. In a subsequent study, Tabacova et al. (Ref. 24) exposed F0 and F1 dams to carbon disulfide vapor throughout the gestation period only. Exposure of the F0 dams to concentrations of 100 and 200 mg/m³ resulted in a reduction in fetal body weight and a high incidence of malformations in the F1 progeny; malformations were not observed after exposure to 0.03 or 10 mg/m³. However, the exposure of the F1 dams to 0.03 or 10 mg/m³ during pregnancy resulted in a high incidence of malformations in the F2 pups; the malformations were of the same type as observed after exposure to higher concentrations of carbon disulfide. In addition, at the higher exposure levels, the incidence of the malformations in the F2 fetuses exceeded that in F1 fetuses by 150 percent.

In addition to the prenatal effects noted above, the studies of Tabacova et al. (Refs. 23 and 24) provided evidence of postnatal developmental toxicity. In the first study, exposure of F0 dams to 100 and 200 mg/m³ during gestation resulted in a reduction in postnatal viability and body weight in the F1 pups and behavioral changes in both the F1 and F2 (F2 pups received no supposed exposure) pups (Ref. 23). In the second study, behavioral abnormalities were observed in the F1 pups after exposure to 10 mg/m³, and in the F2 pups after exposure to 0.03 or 10 mg/m³.

A report by Cai and Bao (1981) reported increased incidences of menstrual disturbances and of pregnancy toxemia in rayon workers (Ref. 48). In the report, evidence was also presented that carbon disulfide can be secreted in mothers' milk.

Lancranjan et al. (Ref. 45) studied testicular changes in workers in a factory who had been exposed to carbon disulfide at average concentrations of 13 to 26 ppm. Disturbances of sexual dynamics were observed in 78 percent of the patients, decreased libido and erection difficulty being the most common problems. Semen analysis revealed that the workers had significantly higher frequencies of asthenospermia, hypospermia, and teratospermia.

5. *Dodecylphenol.* A developmental toxicity study was conducted in rats via gavage and established both a LOAEL of 100 mg/kg and a NOAEL of 20 mg/kg (Ref. 25). At both 100 and 300 mg/kg there was a significant increase in the incidence of delayed ossification. At 300 mg/kg, there was a significant increase in resorptions, a concomitant significant reduction in litter size and mean fetal body weight, and a significant increase in a variety of malformations.

6. *2-Ethylhexanol.* Pregnant rats were administered 2-ethylhexanol by gavage for 10 days in daily doses of 130, 650, or

1,300 mg/kg body weight/day (Ref. 26). At the highest dose level, maternal toxicity, including death, was observed. Fetotoxicity was also observed, substantiated by an increase in resorptions and a reduction in mean fetal body weight. There was also a higher frequency of fetuses exhibiting soft tissue variations, skeletal malformations, and retardations. Maternal toxicity and fetotoxicity was also observed in the 650 mg/kg body weight/day group, substantiated by a reduction in mean fetal body weight and an increase in the number of skeletal variations and retardations observed.

7. *Hexadecanoic acid.* There are no developmental toxicity studies conducted with hexadecanoic acid; however, concern for the potential developmental toxicity of hexadecanoic acid is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Twelve short chain carboxylic acids were tested in an in vitro screen using a whole rat embryo culture system; 11 of the carboxylic acids, including octanoic acid, exhibited a spectrum of malformations similar to valproic acid, a known human teratogen (Ref. 27).

8. *o-Hydroxyphenol.* Kavlock (Ref. 21) tested 27 substituted phenols using a modified Chernoff/Kavlock screening assay for developmental toxicity. Rats were administered 100, 333, 667, or 1,000 mg/kg of *p*-aminophenol by oral intubation on day 11 of gestation. Exposure to *p*-aminophenol resulted in decreased viability potencies and malformations involving the limbs, tail, and urogenital system.

9. *2-Methylpropanoic acid.* There are no developmental toxicity studies conducted with 2-methylpropanoic acid; however, concern for the potential developmental toxicity of 2-methylpropanoic acid is based upon its structural analogy to 2-ethylhexanoic acid which has been found to be developmentally toxic to rats (Ref. 42) and valproic acid, a known human teratogen (Refs. 27 and 33).

10. *Methyl ester octanoic acid.* There are no developmental toxicity studies conducted with methyl ester octanoic acid; however, concern for the potential developmental toxicity of methyl ester octanoic acid is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Twelve short chain carboxylic acids were tested in an in vitro screen using a whole rat embryo culture system; 11 of the carboxylic acids, including octanoic acid, exhibited a spectrum of malformations similar to valproic acid, a known human teratogen (Ref. 27).

11. *Terephthalic acid.* Groups of male and female Wistar and CD rats were exposed to dietary levels of 0, 0.03, 0.125, 0.5, 2.0, or 5.0 percent terephthalic acid for 90 days prior to mating (Ref. 29). Although there was no evidence of reproductive toxicity, there was evidence of postnatal developmental toxicity in both strains. At 2.0 and 5.0 percent terephthalic acid, there was decreased postnatal survival and postnatal body weight. Postnatal body weight data at lower doses was inconclusive.

12. *2,4-Toluenediamine.* There are no developmental toxicity studies conducted with 2,4-toluenediamine; however, data are available on *p*-toluenediamine sulfate. A summary of a study conducted by Hazleton Laboratories (Ref. 30) reports developmental toxicity to the rat at 80 mg/kg and the rabbit at 25 or 50 mg/kg *p*-toluenediamine sulfate. In the rat, evidence of developmental toxicity was demonstrated by increased resorptions and a significant increase in the incidence of skeletal variations. In the rabbit, an increased incidence of intrauterine deaths was demonstrated in both the mid- and high-dose groups. It is possible that maternal and/or developmental toxicity occurred at lower doses since no maternal data and only cursory summary tables of fetal data were included in the study summary.

Male Sprague-Dawley rats were fed 2,4-toluenediamine at dietary concentrations of 0, 0.01, or 0.03 percent for 10 weeks (Ref. 31). After 10 weeks, males were mated with virgin untreated females. Fifty-percent of the high-dose rats were unable to achieve fertilization. In addition, reproductive performance was impaired in the high-dose rats and possibly in the low-dose rats. The mating frequency was reduced in both groups. Microscopic abnormalities were noted in the testes of the high-dose rats, but not in the low-dose rats. Affected testes revealed focal or diffuse hypospermatogenesis.

A similar study was conducted by Thysen et al., (Ref. 32). At the end of the 10-week treatment period, rats in the high-dose group exhibited decreased weight gain. Absolute epididymal and seminal vesicle weights for the high-dose group were significantly lower than control values, but relative organ weights were not different. Total mean sperm counts were decreased in both high and low dose rats. Additionally, at the end of an 11-week recovery period, rats exposed to the high-dose exhibited significantly lower sperm counts and absolute testis and epididymal weights than the control group. Luteinizing hormone levels were higher for the high-dose group males than for the controls at both time-points. Conversely, testosterone levels were lower for this group than for the controls.

III. Findings

A. TSCA section 4(a)(1)(A)(i) and (B)(i) findings

1. *Acrylonitrile.* Under 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of acrylonitrile may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that acrylonitrile may pose developmental toxicity is based on an oral developmental toxicity study in rats by Murray et al. (Ref. 18) which establishes both a LOAEL and NOAEL. Refer to Unit II.B.1. of this preamble and Reference 18 for additional details supporting this finding.

More than 61,500 workers are potentially exposed to acrylonitrile in the workplace during sampling, maintenance activities, clean-up of spills, drumming, and bulk loading of the final product, among other activities (Ref. 1). General population exposure can be expected as a result of an estimated 11 million pounds/year of acrylonitrile released to air, land, and water (Ref. 2). Refer to Unit II.A.1. of this preamble and References 1 and 2 for additional details on exposure.

2. *p-Aminophenol.* Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of *p*-aminophenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that *p*-aminophenol may pose developmental toxicity is based upon a Chernoff/Kavlock screening assay. Data from this study suggest that *p*-aminophenol may cause developmental effects (Ref. 21). Refer to Unit II.B.2. of this preamble and Reference 21 for additional details supporting this finding.

According to the NOES survey of 1984, an estimated 375 workers may be potentially exposed to *p*-aminophenol (Ref. 49). In addition, an estimated 800,000 to 2.2 million consumers may be exposed to *p*-aminophenol when photohobbyists who develop their own film and prints use developers containing these substances (Ref. 3 and 12). Refer to References 3, 12, and 49 for further information on the exposure potential of *p*-aminophenol.

3. *Bromochloromethane.* Under section 4(a)(1)(A)(i), EPA finds that the manufacturing and disposal of bromochloromethane may present an unreasonable risk of injury to human health due to its potential to cause reproductive toxicity and the extent of exposure summarized below. The finding that bromochloromethane may pose reproductive toxicity is based on a subchronic study via the inhalation route in guinea pigs and rabbits by Torkelson et al. (Ref. 22). Male guinea pigs and rabbits experienced decreased spermatogenesis, and fibrosis in numerous tubules, among other effects. Refer to Unit II.B.3. of this preamble and Reference 22 for additional details supporting this finding.

Workers are potentially exposed dermally and via inhalation during the manufacture of bromochloromethane as an explosion suppressant in area systems (Ref. 6). General population exposure may also occur when more than 200,000 pounds/year of bromochloromethane is potentially released to air from a single manufacturing site which may result in exposures ranging from 75 to 4,320 mg/year (Refs. 6 and 35). For more details on exposure, refer to Unit II.A.3. of this preamble and References 6 and 35.

4. *Carbon disulfide.* Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, and disposal of carbon disulfide may present an unreasonable risk of injury to human health due to its potential to cause developmental and reproductive toxicity and the extent of exposure summarized below. The finding that carbon disulfide may pose developmental effects is based on studies via inhalation by Tabacova (Refs. 23 and 24). Developmental effects observed include a dose-related reduction in fetal weight and a high incidence of malformations in the F1 progeny. For more information on this study, see Unit II.B.4. of this preamble and References 23 and 24 for additional details supporting this finding.

The finding that carbon disulfide may pose reproductive toxicity is also based on the studies by Tabacova (Refs. 23 and 24) which provide evidence of postnatal developmental toxicity. A report by Cai and Bao reported increased incidences of menstrual disturbances and of pregnancy toxemia in rayon workers (Ref. 48). In addition, Lancranjan et al. observed testicular effects in workers who had been exposed to carbon disulfide (Ref. 45). For more information on these studies, see Unit II.B.4. of this preamble and Reference 23, 24, 45, and 48 for additional details supporting this finding.

More than 44,000 workers in a variety of occupations including chemical, health, and engineering technicians and janitors may be exposed via inhalation to carbon disulfide (Ref. 47). General population exposure via inhalation can be expected as a result of an estimated 82 million pounds released to the air from manufacturing facilities (Ref. 47). In addition, over 187,000 pounds of carbon disulfide were released/transferred from industrial facilities to WWT facilities and directly to water (Ref. 47). Refer to Unit II.A.4. of this preamble and Reference 47 for additional details on exposure.

5. *Dodecylphenol.* Under 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of dodecylphenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that dodecylphenol may pose developmental toxicity is based upon a TSCA section 8(e) notice (Ref. 25). This submission included a developmental toxicity study via gavage in rats. Data in this notice suggest that dodecylphenol may cause developmental toxicity. Refer to Unit II.B.5. of this preamble and Reference 25 for additional details supporting this finding.

More than 100 workers are potentially exposed to dodecylphenol at concentrations of 1,300 to 3,900 mg/day during manufacture of the substance, calcium phenate salts, and dodecylphenol ethoxylates (Ref. 8). General population exposure through drinking water may also occur as a result of releases to water from manufacturing facilities (Ref. 9). Refer to Unit II.A.5. of this preamble and References 8 and 9 for additional details on exposure.

6. *2-Ethylhexanol.* EPA is basing its developmental toxicity testing requirements for 2-ethylhexanol on the authority of both sections 4(a)(1)(A) and (B) of TSCA.

Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that 2-ethylhexanol may pose developmental toxicity is based upon a TSCA section 8(e) notice (Ref. 26). Data in this notice suggest that 2-ethylhexanol may cause developmental toxicity (Ref. 26). Refer to Unit II.B.6 of this preamble and Reference 26 for additional details supporting this finding.

An estimated 11,550 to 45,000 workers are potentially exposed to 2-ethylhexanol; in addition, consumer and general population exposure may result through use, distribution in commerce, and disposal (Ref. 10). Refer to Unit II.A.6. of this preamble and Reference 10 for more details on the exposure potential of 2-ethylhexanol.

Under section 4(a)(1)(B)(i), EPA has already found in a final test rule (52 FR 28698) that was not challenged that 2-ethylhexanol is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, use, distribution in commerce, and disposal. Refer to the 2-Ethylhexanol Proposed Test Rule (51 FR 45487) for additional discussion of the basis for EPA's exposure finding for 2-ethylhexanol (Ref. 10).

7. *Hexadecanoic acid.* Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, use, and disposal of hexadecanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that hexadecanoic acid may pose developmental toxicity is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Refer to Unit II.B.7. of this preamble and Reference 27 for details supporting this finding for developmental toxicity.

Approximately 50,000 workers are potentially exposed to hexadecanoic acid according to the 1988 NOES survey, while millions of consumers and tens of thousands of janitors are expected to be exposed dermally to a variety of commercial and consumer products which involve skin contact (Refs. 11, 28, and 34). In addition, human drinking water exposure may range from 0.02 to 12,033 mg/year as a result of release from industrial effluents (Ref. 11). Refer to Unit II.A.7. of this preamble and References 11, 12, 28, and 34 for further information on the exposure potential of hexadecanoic acid.

8. *o-Hydroxyphenol.* Under section 4(a)(1)(A)(i), EPA finds that the manufacture, processing, and use of *o*-hydroxyphenol may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that *o*-hydroxyphenol may pose developmental toxicity is based upon a

Chernoff/Kavlock screening assay. Data in this report suggests that this substance may cause developmental effects (Ref. 21). Refer to Unit II.B.8. of this preamble and Reference 21 for additional details supporting this finding.

Dermal exposure to *o*-hydroxyphenol during its manufacture is estimated to range from 600 to 4,000 mg/day (Ref. 13). During manufacture of *t*-butyl catechol and packaging of liquid developer, worker exposure may occur at concentrations of 1,000 to 4,000 mg/day in manufacturing and 100 to 800 mg/day in packaging (Ref. 13). In addition, an estimated 800,000 to 2.2 million consumers may be exposed to *o*-hydroxyphenol when photohobbyists who develop their own film and prints use developers containing these substances (Ref. 4 and 13). For more information on the exposure potential of *o*-hydroxyphenol, see Unit II.A.8. of this preamble and References 4 and 13.

9. *2-Methylpropanoic acid.* Under section 4(a)(1)(A)(i), EPA finds that the manufacturing, processing, and disposal of 2-methylpropanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that 2-methylpropanoic acid may pose developmental toxicity is based upon its structural analogy to 2-ethylhexanoic acid (Ref. 42) and valproic acid, a known human teratogen (Refs. 27 and 33). Refer to Unit II.B.9. of this preamble and References 27, 33 and 42 for details supporting this finding for developmental toxicity.

More than 5,000 workers may be exposed to 2-methylpropanoic acid in the workplace, while general population exposure through drinking water (from manufacturing and monitoring data) may occur at a range of 0.01 to 14,348 mg/year for several sites (Refs. 14, 28, and 34). Refer to Unit II.A.9. of this preamble and References 14, 28, and 34 for further information on exposure.

10. *Methyl ester octanoic acid.* Under section 4(a)(1)(A)(i), EPA finds that the manufacturing and processing of methyl ester octanoic acid may present an unreasonable risk of injury to human health due to its potential to cause developmental toxicity and the extent of exposure summarized below. The finding that methyl ester octanoic acid may pose developmental toxicity is based upon its structural analogy to octanoic acid, which has been found to be developmentally toxic in a rat embryo culture system (Ref. 27). Refer to Unit II.B.10. of this preamble and Reference 27 for details supporting this finding for developmental toxicity.

More than 350 workers may be potentially exposed to methyl ester octanoic acid in the workplace (Ref. 28). Estimated exposures range from 15 mg/day for inhalation to 3,900 mg/day for dermal contact (Ref. 28). Refer to Unit II.A.10. of this preamble and Reference 28 for further information on exposure.

11. *Terephthalic acid.* Under section 4(a)(1)(A)(i) of TSCA, EPA finds that the manufacturing, processing, and disposal of terephthalic acid may present an unreasonable risk of injury to human health due to its potential to cause reproductive toxicity and the extent of exposure summarized below. The finding that terephthalic acid may pose reproductive effects is based on a study that exposed two strains of rats to dietary concentrations of terephthalic acid for 90 days prior to mating (Ref. 29). Effects including decreased postnatal survival and body weight were observed in both rat strains. Refer to Unit II.B.11. of this preamble and Reference 29 for additional details supporting this finding.

General population exposure near plant sites can be expected through air emissions of terephthalic acid during manufacture and use, and through water releases from disposal of filtrate and decanted liquids during manufacturing and purification processes (Ref. 15). Average air releases for seven manufacturing sites are estimated at 41,000 kg/year/site, while emissions from user facilities range from 430 to 14,000 kg/site/year (Ref. 15). Water releases to a POTW from a recycling facility for PET bottles was estimated at 167,000 kg/year. Refer to Unit II.A.11. of this preamble and Reference 15 for additional details on exposure.

12. *2,4-Toluenediamine.* Under 4(a)(1)(A)(i), EPA finds that the manufacture and disposal of 2,4-toluenediamine may present an unreasonable risk of injury to human health due to its potential to cause developmental and reproductive effects and the extent of exposure summarized below. The finding that 2,4-toluenediamine may pose developmental toxicity is based upon positive data for the salt, *p*-toluenediamine sulfate (Ref. 30). Rats and rabbits administered *p*-toluenediamine sulfate by gavage exhibited an increase in resorptions and skeletal anomalies. Refer to Unit II.B.12. of this preamble and Reference 30 for additional details supporting this finding for developmental toxicity.

The finding that 2,4-toluenediamine may pose reproductive toxicity is based upon a dietary study in which rats were fed 0, 0.01, or 0.03 percent 2,4-toluenediamine (Refs. 31 and 32). In the high-dose group, several effects were observed including reduced weight gain and inability to achieve fertilization. Reproductive performance was also impaired in the high-dose group and possibly in the low-dose group. Refer to Unit II.B.12. of this preamble and References 31 and 32 for additional details supporting this finding for reproductive toxicity.

An estimated 750 workers are potentially exposed to 2,4-toluenediamine in the workplace during routine process attention, sampling, maintenance, non-routine spills or leaks, and loading of containers to be shipped, and as a result of fugitive emissions from pumps and clean up operations (Ref. 16). General population exposure can also be expected as a result of releases to water from manufacturing facilities (Ref. 16). Refer to Unit II.A.12. of this preamble and References 16 and 17 for additional details on exposure.

B. TSCA Section 4(a)(1)(A)(ii) and (B)(ii) Findings

Under section 4(a)(1)(A)(ii) and for one substance under both sections 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience from which the potential health risks from: (1) Manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol; (2) manufacturing, processing, use, and disposal of carbon disulfide and hexadecanoic acid; (3) manufacturing, processing, and disposal of acrylonitrile, dodecylphenol, 2-methylpropanoic acid, and terephthalic acid; (4) manufacturing, processing, and use of *p*-aminophenol and *o*-hydroxyphenol; (5) manufacturing and disposal of bromochloromethane and 2,4-toluenediamine; and (6) manufacturing and processing of methyl ester octanoic acid can reasonably be determined or predicted.

EPA believes that the guidelines, found at 40 CFR parts 795 through 798, represent state-of-the-art methodology and form the basis for a valid and scientifically acceptable test standard for evaluating the developmental and/or reproductive toxicity of these substances. The available studies are not acceptable to EPA because they do not conform with the guidelines, as detailed in the following Table 2.

TABLE 2.—FINDINGS UNDER TSCA SECTION 4(a)(1)(A)(ii)

Chemical	Data insufficiency under TSCA Section 4(a)(1)(A)(ii)	References
Developmental toxicity testing:		
acrylonitrile (107-13-1)	c	37
	e,k,o	38
p-aminophenol (123-30-8)	e, f	33
carbon disulfide (75-15-0)	h, j	39
dodecylphenol (27193-86-8)	c	40
2-ethylhexanal (104-76-7)	c,k	38
	c	41
hexadecanoic acid (57-10-3)	g	33
o-hydroxyphenol (120-80-9)	e, f	33
2-methylpropanoic acid (79-31-2)	g	33, 42
methyl ester octanoic acid (111-11-5)	g	33
—		
2,4-toluenediamine (95-80-7)	a	43, 44
Reproductive toxicity testing:		
Bromochloromethane (74-97-5)	d, f	33
carbon disulfide (75-15-0)	h, j, l	39
terephthalic acid (100-21-0)	d, m, k	15
2,4-toluenediamine (95-80-7)	b, d, n	43, 44

a. Inadequate dosing of animals — the maximum tolerated dose tested was not maternally toxic.

b. Inadequate analysis of effects on one or both sexes and/or only one sex tested.

c. Adequate testing of one species only.

d. Inadequate duration of test — the test was a one-generation test.

e. Inadequate exposure of animals over the critical period of organogenesis.

f. Inadequate test — the test was a screening level test.

g. Positive data exist on an analogue.

h. Inadequate data reported on a number of endpoints including fetal malformations and maternal toxicity.

i. Inadequate controls.

j. Inadequate verification of test dose.

k. Inadequate animal sample size.

l. Inadequate data reported on postnatal behavioral effects.

m. Inadequate data reported on a number of endpoints including male fertility and maternal and pup weights.

n. Inadequate data reported on continuous exposure as modeled by the *F* generations in a multi-generational study.

o. Inadequate data reported on a number of endpoints including maternal and fetal body weights, fetal sex, and internal or skeletal examination data.

C. TSCA Section 4(a)(1)(A)(iii) and (B)(iii) Findings

Under section 4(a)(1)(A)(iii) and for one substance under both sections 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing each of these substances is necessary to develop such data for developmental and/or reproductive toxicity. EPA believes the data resulting from the proposed testing will be relevant to a determination as to the following: (1) Whether manufacturing, processing, use, distribution in commerce, and disposal of 2-ethylhexanol; (2) manufacturing, processing, use, and disposal of carbon disulfide and hexadecanoic acid; (3) manufacturing, processing, and disposal of acrylonitrile, dodecylphenol, 2-methylpropanoic acid, and terephthalic acid; (4) manufacturing, processing, and use of *p*-aminophenol and *o*-hydroxyphenol; (5) manufacturing and disposal of bromochloromethane and 2,4-toluenediamine; and (6) manufacturing and processing of methyl ester octanoic acid does or does not present an unreasonable risk of injury to human health.

D. Section 4(a)(1)(B) findings

With the exception of 2-ethylhexanol for which the finding was made in a previous rulemaking, EPA has chosen not to make section 4(a)(1)(B) findings where it could have for these substances. This was done to conserve resources. EPA may choose at a later date to make such findings for any or all of these substances and does not want to imply that not doing so at this time in any way suggests that such findings could not be made or are inappropriate.

IV. Proposed Rule

A. Proposed Testing and Test Standards

On the basis of the findings provided in Unit III. of this preamble, EPA is proposing developmental and/or reproductive toxicity testing for the 12 substances included in this proposed rule (see Unit I. of this preamble). The tests would be conducted according to specific test guidelines set forth in 40 CFR part 798 and identified in Table 1. The studies are to be conducted in accordance with TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792.

To adequately assess health risk to the developing fetus, this rule proposes requiring developmental toxicity testing in at least two mammalian species. For those substances that have an adequate test in one mammalian species, testing is limited to proposing a second mammalian species. Similarly, to adequately assess health risk to reproduction, this rule proposes a standard two-generation reproductive toxicity test.

The oral route is being proposed as the route of administration except as noted. In the instance where EPA has identified positive inhalation data that

are inadequate for risk assessment and/or where exposure is primarily via inhalation, testing is being proposed via the inhalation route. Inhalation exposure shall be for 6 hours per day and 5 days per week prior to mating. Throughout the periods of mating, gestation, and lactation, animals shall be exposed for 7 days a week. Pregnant and lactating animals should not be exposed from day 20 to 21 of gestation to day 4 to 5 postnatally.

At this time, EPA is only proposing developmental and/or reproductive toxicity testing for the 12 substances included in this proposed rule. EPA may, in the future, find other data deficiencies for these substances and propose other tests.

B. Test Substances

EPA is proposing that each of the test substances be of the highest percent purity commercially available. EPA has specified relatively pure substances for testing because EPA is interested in evaluating the effects attributable to each of the substances themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives. EPA believes that the percent purities listed in Table 1 of this preamble are readily available.

C. Persons Required to Test

Because of the findings in Unit III. of this preamble, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process one or more of the named test substances, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. This period is defined in 40 CFR 791.3(h). By-product manufacturers and importers of one or more of these substances would be considered manufacturers under this rule. As explained in 40 CFR part 790, initially manufacturers but not processors of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications initially. Such manufacturers should consult the **Federal Register** of May 7, 1990 (55 FR 18881) for further details.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for these substances. EPA is interested in evaluating the effects attributable to the substances themselves and has specified relatively pure substances for testing.

D. Reporting Requirements

As required in 40 CFR 799.10, all data developed under the final rule would be conducted and reported in accordance with its TSCA GLP Standards which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(C), EPA is proposing specific reporting requirements for each of the proposed test standards as follows:

Final reports for substances which are subject to 40 CFR part 798.4900 or 798.4350 would be due 12 and 15 months, respectively, from the effective date of the final rule; interim progress reports would be due at 6–month intervals beginning 6 months from the effective date of the final rule.

Final reports for substances which are subject to 40 CFR part 798.4700 would be due 29 months from the effective date of the final rule; interim progress reports would be due at 6–month intervals beginning 6 months from the effective date of the final rule.

The effective date of the final rule will be 44 days after the date of its publication in the **Federal Register**.

According to a recent EPA report entitled "EPA Census of the Toxicological Testing Industry", laboratory availability for developmental and reproductive toxicity testing should be adequate to accommodate the testing proposed in this rule (Ref. 50). If potential test sponsors can document that the developmental and/or reproductive toxicity testing proposed in this rule needs to be staggered due to insufficient laboratory availability, thereby necessitating extending the reporting deadlines, EPA proposes the following. Each substance would be ranked according to production and importation volume as reported in the TSCA inventory. Those substances with the largest production/importation volumes would be required to be tested first, followed by those substances with the next largest volumes. If staggered testing is necessary, EPA proposes testing in this order since all of the substances are being proposed for testing due to concern for their hazard potential.

EPA would extend the reporting requirements of the lower production volume substances subject to this rule by an additional 6 months to initially accommodate any shortfall in laboratory capacity. EPA anticipates that laboratory capacity would increase, if necessary, to accommodate the demand created by future amendments to this rule.

V. Issues for Comment

1. EPA solicits additional information on the developmental or reproductive toxicity of the substances in this rule. Such information may cause EPA to alter its decision on the need for testing of one or more of these substances.

2. This proposed rule specifies TSCA test guidelines with minor modifications as the test standards. EPA is soliciting comment as to whether these test guidelines are appropriate and adequate to characterize the developmental and/or reproductive effects of substances listed in Table 1.

3. This rule would require that 10 developmental and 4 reproductive toxicity tests be run concurrently. EPA believes that adequate laboratory capacity exists for conducting this testing within the reporting deadlines. Further, EPA believes that if it were to periodically amend the rule by requiring testing of an additional 15 to 20 substances per year, laboratory facilities would still be able to meet this testing demand. EPA requests comment on laboratory availability and the reporting requirements.

4. Developmental toxicity test guidelines in 40 CFR 798.4900 specify that testing shall be performed on at least two mammalian species. EPA has regularly required two species testing in past test rules to adequately evaluate the potential risk of substances for developmental effects. EPA solicits comments on this procedure.

5. Three of the substances, 2-methylpropanoic acid, hexadecanoic acid, and methyl ester octanoic acid, are being proposed for testing on the basis of structure activity relationships and exposure potential. 2-Methylpropanoic acid is analogous to valproic acid (2-propylpentanoic acid), a known human and experimental animal developmental toxicant and 2-ethylhexanoic acid, an experimental animal developmental toxicant. These substances are all branched, short chain carboxylic acids.

Hexadecanoic acid and methyl ester octanoic acid, straight chain carboxylic acids, are analogous to octanoic acid. Octanoic acid was tested in an *in vitro* screen using a whole rat embryo culture system and exhibited a spectrum of malformations similar to valproic acid, which increases EPA's concern for this class of substances.

In addition to these structure activity relationships, these three substances are high production and/or exposure substances. Testing of these acids will help identify the characteristics of carboxylic acids such as the length of the backbone and position, length, and composition of the branching which may affect biological activity. EPA requests comment on the proposed testing for these members of the class of carboxylic acids and solicits information on alternative substances that the public may feel are more appropriate for testing.

6. Several of the substances proposed in this rule for testing via the oral route are included on the Clean Air Toxics List. For those substances, dosing via the inhalation route may be a more appropriate route of exposure. EPA solicits comment on this issue.

7. The following issues concern the criteria used to select chemicals for testing for this particular rule:

(a) Some have questioned whether, as a matter of policy, the criteria are appropriate for selecting chemicals for developmental and reproductive toxicity. EPA solicits comments on this issue.

(b) Some have questioned whether, as a matter of policy, it is appropriate to use SAR alone without additional criteria being met as the basis for testing. They have questioned whether evidence from SAR is compelling enough to justify testing given other available information. They have also questioned whether the burden/cost of tests for these substances is reasonable given the criteria of SAR and exposure potential. EPA solicits comments on this issue.

(c) Some have questioned whether, as a matter of policy, the receipt of an 8(e) notice is a sufficient basis for testing. EPA solicits comments on this issue.

VI. Economic Analysis of the Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on test sponsors as a result of the proposed testing. The economic analysis estimates the costs of conducting the proposed testing for each of the 12 substances, including both laboratory and administrative costs, and evaluates the potential for adverse economic impacts as a result of these test costs, using a comparison between a substance's annualized test costs and its annual revenues.

The estimated total costs of testing for all 12 substances are $2.6 to $2.9 million, including $1.6 to $2.3 million in laboratory costs and $660,000 to $690,000 in administrative costs. The total costs of testing for each substance are as follows: acrylonitrile, dodecylphenol and 2-ethylhexanol— $68,000 to $67,000; *p*-aminophenol, hexadecanoic acid, *o*-hydroxyphenol, and 2-methylpropanoic acid—$62,000 to $120,000; bromochloromethane and terephthalic acid—$240,000 to $357,000; 2,4-toluenediamine—$332,000 to $486,000; carbon disulfide—$573,000 to $875,000.

To evaluate the potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues. The annualized test costs, using a 7 percent cost of capital over a period of 15 years, are as follows: acrylonitrile, dodecylphenol and 2-ethylhexanol—$5,000 to $7,000; *p*-aminophenol, hexadecanoic acid, *o*-hydroxyphenol, and 2-methylpropanoic acid—$10,000 to $14,000; bromochloromethane and terephthalic acid—$26,000 to $39,000; 2,4-toluenediamine—$36,000 to $53,000; carbon disulfide—$63,000 to $96,000.

Based on the comparison between annual costs and revenues, it appears that for 11 out of the 12 substances the test costs will have no significant adverse economic impacts. The test costs for bromochloromethane may pose some potential for adverse impact. If comments are received which indicate that the impact is greater, a more comprehensive and detailed analysis will be conducted which more precisely predicts the magnitude and distribution of the expected impacts. Refer to the economic analysis contained in the public record for this rulemaking for more detail on test cost estimation and the evaluation of economic impacts.

VII. Availability of Test Facilities and Personnel

As required by section 4(b)(1) of TSCA, EPA determined that there will be available test facilities and personnel to perform the testing specified in this proposed rule. This rule would require concurrent developmental and reproductive toxicity testing of 12 substances. According to a the report entitled "EPA Census of the Toxicological Testing Industry", EPA believes that space within the laboratories is available to adequately accommodate the 10 substances proposed for developmental and the 4 substances proposed for reproductive toxicity testing (Ref. 50). EPA anticipates that laboratory capacity would increase, if necessary, to accommodate the demand created by future amendments to this rule.

VIII. Public Meeting

If requested, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Lou Hewlett, Chemical Testing Branch (202) 475–8162 by April 18, 1991. The meeting is open to the public, but active participation will be limited to EPA representatives and those who requested to comment. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public record.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or a similar designation on the face of each document or attachment in the comment which contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS–42123). In addition, each substance in the rule has a separate docket number. This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m. Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034; August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications before proposal consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries including RM1 Meeting. (July 12, 1990).

(4) Reports—published and unpublished factual materials.

(5) Data received under section 8(e) of TSCA.

B. References

(1) United States Environmental Protection Agency. (USEPA). Production exposure profile of acrylonitrile. Russell E. Farris to Frank D. Kover. Existing Chemicals Assessment Division, Washington, DC. (August 10, 1989).

(2) USEPA. Summary document on acrylonitrile. Prepared by Nancy Chiu. Chemical Screening Branch, Office of Toxic Substances, Washington, DC. (July 1990).

(3) Oak Ridge National Laboratory. Chemical hazard information profile on *p*-aminophenol. Prepared by Michael G. Ryon. (March 29, 1984).

(4) USEPA. Hydroquinone; final test rule. (50 FR 53145; December 30, 1985).

(5) USEPA. Economic Impact Analysis of the Multi-Substance Proposed Test Rule on Developmental and Reproductive Toxicity, Non-Confidential version. Washington, DC (July 1990).

(6) USEPA. Occupational exposure/environmental release analysis of bromochloromethane. Prepared by Vanessa E. Rodriguez. Economics and Technology Division, Washington, DC. (May 7, 1990).

(7) USEPA. Summary of exposure information on carbon disulfide obtained from the Toxic Release Inventory System. Prepared by Andrew Battin, Exposure Assessment Division, Washington, DC. (July 1990).

(8) USEPA. Production-exposure profile of dodecylphenol. Larry E. Longanecker to Frank D. Kover. Chemical Screening Branch, Washington, DC. (May 29, 1989).

(9) USEPA. Summary of dodecylphenol environmental exposures screening estimates. Prepared by Conrad Flessner, Jr., Exposure Assessment Division, Washington, DC. (May 18, 1990).

(10) USEPA. 2-Ethylhexanol; proposed test rule (51 FR 45487; December 19, 1986).

(11) USEPA. Exposure assessment for hexadecanoic acid. Christina Cinalli to Clare Stine. Office of Toxic Substances, Washington, DC. (July 1990).

(12) USEPA. Diethylene glycol butyl ether and diethylene glycol butyl ether acetate; proposed test rule (51 FR 27660; August 4, 1986).

(13) USEPA. Production-exposure profile for catechol (*o*-hydroxyphenol). Russell E. Farris to Frank D. Kover, Existing Chemicals Assessment Division, Washington, DC. (1989).

(14) USEPA. Exposure assessment for 2-methylpropanoic acid. Christina Cinalli to Clare Stine. Office of Toxic Substances, Washington, DC. (July 1990).

(15) USEPA. Summary fact sheet on the petition to delist terephthalic acid from section 313 list. Briefing document. Washington, DC. (February 6, 1990).

(16) USEPA. Occupational exposure and environmental release of toluenediamine. Vinay Kumar to Andrea Blaschka. Office of Toxic Substances, Washington, DC. (June 5, 1984).

(17) USEPA. Air releases during manufacture of 2,4-toluenediamine. Vinay Kumar to Joan Lefler. Exposure Assessment Branch, Washington, DC. (1984).

(18) Murray, F., B. Schwetz, K. Nitschke, J. John, J. Norris, and P. Gehring. "Teratology of acrylonitrile given to rats by gavage or by inhalation". *Food and Cosmetics Toxicology* 16:547–551. (1978).

(19) Willhite, C., V. Ferm, and R. Smith. "Teratogenic effects of aliphatic nitriles". *Teratology* 23:317–323. (1981).

(20) Willhite, C., M. Marin-Padilla, V. Ferm, and R. Smith. "Morphogenesis of axial skeletal (dyraphic) disorders induced by aliphatic nitriles". *Teratology* 23:324–333. (1981).

(21) Kavlock, Robert J. "Structure-Activity Relationships in the Developmental Toxicity of Substituted Phenols: In Vivo Effects". *Teratology* 41:43–59. (1990).

(22) Torkelson, T. R., F. Oyen, and V. K. Rowe. "The toxicity of bromochloromethane (methylene chlorobromide) as determined on laboratory animals". *American Industrial Hygiene Association Journal*. 21(4): 275–286. (1960).

(23) Tabacova, S., L. A. Hinkova, and L. Balabaeva. "Carbon disulfide teratogenicity and postnatal effects in rats". *Toxicology Letters*. 2:129–133. (1978).

(24) Tabacova, S., B. Nikiforov, and L. Balabaeva. "Carbon disulphide intrauterine sensitization". *Journal of Applied Toxicology*. 3(5):223–229. (1983).

(25) TSCA section 8(e) submission. Submitted by Monsanto Corporation. Submission No. 8EHQ–0687–0682. (June 17, 1987).

(26) TSCA section 8(e) submission. Submitted by CBI company. Submission No. 8EHQ–0390–0910 S. (May 1, 1990).

(27) Brown, N. A. and M. E. Coakley. "Valproic acid teratogenesis. II. Actions of related acids and potential antagonists and the role of coenzyme A". *Teratology*. 29(2): 20A–21A. (1984).

(28) USEPA. Intra-agency memorandum from Greg Macek to Clare Stine. Office of Toxic Substances, Washington, DC. (July 23, 1990).

(29) Chemical Industry Institute of Toxicology. A 90–day study of terephthalic acid-induced urolithiasis and reproductive performance in Wistar and CD rats. CIIT Docket #11622. The Chemical Industry Institute of Toxicology, Six Davis Drive, Post Office Box 12137, Research Triangle Park, NC 27709. (1982).

(30) Spengler, J., I. Osterburg and R. Korte. "Teratogenic evaluation of *p*-toluendiamine sulfate, Resorcinol, and *p*-aminophenol in rats and rabbits". *Teratology* 33: 31A. (1986).

(31) Thysen, B., S. Varma and E. Bloch. "Reproductive toxicity of 2,4-toluenediamine in the rat. 1. Effect on male fertility". *Journal of Toxicology and Environmental Health* 16: 753–761. (1985).

(32) Thysen, B., E. Bloch and S. Varma. "Reproductive toxicity of 2,4-toluenediamine in the rat: Spermatogenic and hormonal effects". *Journal of Toxicology and Environmental Health* 16: 763–769. (1985).

(33) USEPA. Endpoint test rule for developmental and reproductive toxicity. Intra-agency memorandum. Elaine Francis to Virginia Werling. Office of Toxic Substances, Washington, DC. (April/October 1990).

(34) Syracuse Research Corporation. Technical support document on the health and environmental effects of aliphatic monocarboxylic acids. Syracuse, New York. (September 30, 1988).

(35) USEPA. Bromochloromethane screening exposure assessment. G. Thom to Clare Stine. Office of Toxic Substances. Washington, DC. (May 18, 1990).

(36) TSCA section 8(e) submission. Submitted by Akzo Chemicals Inc. Submission No. 8EHQ–0390–0904. (March 19, 1990).

(37) USEPA. Review of acrylonitrile for Endpoint Test Rule. Intra-agency memorandum. Jennifer Seed to Virginia Werling. Office of Toxic Substances, Washington, DC. (March 30, 1990).

(38) USEPA. Comments on the developmental toxicity studies of acrylonitrile and 2-ethylhexanol. Intraagency memorandum from Jennifer Seed to Clare Stine. Office of Toxic Substances, Washington DC. (July 5, 1990).

(39) USEPA. Chemicals to be considered for the Endpoint Specific Test Rule for Developmental Toxicity. Intra-Agency memorandum. Carole A. Kimmel to Claire Stine. Office of Toxic Substances, Washington, DC. (March 5, 1990).

(40) USEPA. Data review of dodecylphenol for Endpoint Test Rule. Intra-agency memorandum. Jennifer Seed to Virginia Werling. Office of Toxic Substances, Washington DC. (April 2, 1990).

(41) USEPA. Review of Developmental Toxicity Study of 2-ethylhexanol. Intra-agency memorandum. Jennifer Seed to Virginia Werling. Office of Toxic Substances. (March 26, 1990).

(42) USEPA. Review of developmental toxicity studies on 2-ethylhexanoic acid. Intra-agency memorandum. Elaine Francis to Robert Jones. Test Rules Development Branch, Washington, DC. (August 1, 1988).

(43) USEPA. An update on data adequacy for 2,4-toluenediamine. Intra-Agency memorandum. Jennifer Seed to Virginia Werling. Office of Toxic Substances, Washington, DC. (March 1, 1990).

(44) USEPA. Review of studies on the reproductive and developmental toxicity of 2,4-toluenediamine. Intra-Agency memorandum. Marlissa Campbell to Andrea Blaschka. Office of Toxic Substances, Washington, DC. (June 21, 1988).

(45) USDHEW. Occupational exposure to carbon disulfide; Criteria for a recommended standard. III. Biological effects of exposure. (May 1977).

(46) USEPA. Exposure assessment for methyl ester octanoic acid. Christina Cinalli to Clare Stine. Office of Toxic Substances, Washington, DC. (July 1990).

(47) USEPA. Engineering report for carbon disulfide. Kathleen Franklin to Clare Stine. Chemical Testing Branch, Washington, DC. (June 4, 1990).

(48) DOL. Occupational Safety and Health Administration. Air Contaminants; Final Test Rule (54 FR 2332; January 19, 1989).

(49) USEPA. Intra-agency memorandum from Joseph B. Fernandes to Clare Stein. Office of Toxic Substances, Washington, DC. (July 11, 1990).

(50) USEPA. EPA Census of the Toxicological Testing Industry. Office of Toxic Substances, Washington, DC. (June 1990). (Draft Report).

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of US enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to vary from 100 to 4,500 hours per respondent with an average of 600 hours per respondent. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Testing laboratories, Reporting and recordkeeping requirements, and Testing.

Dated: February 25,1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, Chapter I, Subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 would continue to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By adding § 799.5050 to read as follows:

§ 799.5050 Multi-test requirements for specific chemical substances.

(a) *General testing provisions*—(1) *Identification of test substance.* Table 1 in paragraph (a)(5) of this section identifies those chemical substances that shall be tested in accordance with this section. The purity of each test substance shall be 99 percent or greater, unless otherwise specified in the "Additional testing requirements" column of Table 1 under paragraph (a)(5) of this section.

(2) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process, including persons who manufacture or process or intend to manufacture or process one or more of the substances in paragraph (a)(5) of this section as a by-product, or who import or intend to import products which contain one or more of the substances in paragraph (a)(5) of this section after the date specified in Table 1 under paragraph (a)(5) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process one or more of the substances in paragraph (a)(5) of this section only as an impurity are not subject to these requirements.

(3) *Applicability of test guidelines.* The guidelines and other test methods cited in Table 1 under paragraph (a)(5) of this section are referenced here as they exist on the effective date of the specific final rule for the individual chemical substance being listed.

(4) *Reporting requirements.* All testing requirements in this section are subject to the submission of interim progress reports every 6 months beginning 6 months after the effective date for the individual chemical substance listed under paragraph (a)(5) of this section, and the deadline for the submission of all final reports is specified in the "limitations and restrictions" column of Table 1 under paragraph (a)(5) of this section.

(5) *Designation of specific chemical substances and applicable testing requirements.* The substances identified in this paragraph by name and CAS number shall be tested in accordance with the designated testing requirements and any additional requirements and limitations specified in the following Table 1 :

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
57-10-3	hexadecanoic acid				
	Health effects testing:				
	Developmental toxicity	§ 798.4900		Reports: 12 mo.	(–/–/–)
74-97-5	bromochloromethane				
	Health effects testing:				
	Reproductive toxicity	§ 798.4700		Reports: 29 mo.	(–/–/–)
75-15-0	carbon disulfide				
	Health effects testing:				
	Developmental toxicity	§ 798.4350		Reports: 15 mo.	(–/–/–)
	Reproductive toxicity	§ 798.4700, except paragraphs (c)(4) and (5)(i)	(2)(iii), (3)(i)	Reports: 29 mo.	(–/–/–)
79-31-2	2-methylpropanoic acid				
	Health effects testing:				
	Developmental toxicity	§ 798.4900		Reports: 12 mo.	(–/–/–)
95-80-7	2,4-toluenediamine				
	Health effects testing:				
	Developmental toxicity	§ 798.4900	(4)(i)	Reports: 12 mo.	(–/–/–)
	Reproductive toxicity	§ 798.4700	(4)(i)	Reports: 29 mo.	(–/–/–)
100-21-0	terephthalic acid				
	Health effects testing:				
	Reproductive toxicity	§ 798.4700	(4)(i)	Reports: 29 mo.	(–/–/–)
104-76-7	2-Ethylhexanol				
	Health effects testing:				
	Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(–/–/–)
107-13-1	acrylonitrile				
	Health effects testing:				
	Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(–/–/–)
111-11-5	methyl ester octanoic acid				
	Health effects testing:				
	Developmental toxicity	§ 798.4900		Reports: 12 mo.	(–/–/–)
120-80-9	o-hydroxyphenol				
	Health effects testing:				
	Developmental toxicity	§ 798.4900		Reports: 12 mo.	(–/–/–)
123-30-8	p-aminophenol				
	Health effects testing:				
	Developmental toxicity	§ 798.4900	(4)(i)	Reports: 12 mo.	(–/–/–)
27193-86-8	dodecylphenol				
	Health effects testing:				
	Developmental toxicity	§ 798.4900, except paragraph (e)(1)(i)	(1)(i)	Reports: 12 mo.	(–/–/–)

(b) *Additional requirements.* For the purposes of the specific chemical substances subject to the requirements of this section, the following additional requirements apply when cited for the specific chemical substance in the "(b) Additional testing requirements" column in Table 1 under paragraph (a)(5) of this section:

(1) *Species*—(i) *Mammals.* A mammalian species other than the rat shall be used as the test species. Commonly used species include the mouse, rabbit, and hamster. If other mammalian species are used, the tester shall provide justification/reasoning for their selection. Commonly used laboratory strains shall be employed. The strain shall not have low fecundity and shall preferably be characterized for its sensitivity to developmental toxins.

(ii) The test species shall be the rat.

(2) *Duration and frequency of exposure.* (i) Animals shall be exposed for 6 hours per day for 1 day.

(ii) Animals shall be exposed for 6 hours per day, 5 days per week for a 90-day period.

(iii) The animals shall be exposed to the test substance for 6 hours per day and 5 days per week, prior to mating. Throughout the periods of mating, gestation, and lactation, animals shall be exposed for 7 days a week. Pregnant and lactating animals should not be exposed from day 20 to 21 of gestation to day 4 to 5 postnatally.

(iv) – (xix) [Reserved]

(xx) A multiple schedule shall be employed. Fixed ratio and differential reinforcement of low rate contingencies shall alternate throughout daily test sessions of at least 60 minutes duration.

(3) *Route of exposure.* (i) Animals shall be exposed via the inhalation route.

(ii) [Reserved]

(4) *Percent purity.* The percent purity for the designated substances shall be 99 percent or greater, as specified in paragraph (a)(1) of this section. However, an alternate percent purity shall be used if referenced in the "Additional testing requirements" column of Table 1 under paragraph (a)(5) of this section. The alternate percent purities are:

(i) 98 percent pure or greater.

(ii) 97 percent pure or greater.

(iii) 96 percent pure or greater.

(iv) 95 percent pure or greater.

[FR Doc. 91-5012 Filed 3-1-91; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42134; FRL 3774-7]

Multi-substance Rule for the Testing of Neurotoxicity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule, under section 4 of the Toxic Substances Control Act (TSCA), that would require manufacturers and processors of 10 substances to conduct testing for neurotoxicity. The 10 substances are related in that all are volatile solvents with high production volumes, occupational exposure, consumer exposure, and presence in and/or release to the environment. This rule proposes cognitive function and screening level tests for neurotoxicity where such data are not available for that substance. This proposed rule supports EPA's effort to require the testing of many substances for a single effect or endpoint, in this case neurotoxicity.

DATES: Submit written comments on or before May 3, 1991. If persons request an opportunity to submit oral comments by April 18, 1991, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VIII. of this preamble.

ADDRESSES: Submit written comments, identified by the docket number (OPTS-42134), in triplicate to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460. A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 am to noon, and 1 pm to 4 pm, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is proposing a test rule under section 4(a) of TSCA to obtain neurotoxicity data for 10 volatile substances that have substantial production, for which there is or may be substantial human exposure, and for which data on neurotoxicity are insufficient.

I. Introduction

A. Background

EPA has developed this multi-substance test rule to test a number of substances for a single toxicological endpoint, neurotoxicity. EPA believes that available data on the neurotoxic effects of many chemicals in commerce, to which millions of Americans are exposed, are insufficient to evaluate human health risk and has initiated this program to test them. This approach is supported by a recent study by the Office of Technology Assessment (OTA) on the health threat from neurotoxic chemicals (Ref. 1). The OTA study stated that little is known about the potentially adverse effects of thousands of chemicals on the nervous system because of inadequate research and testing. EPA intends this proposed rule to be the first in a series of rules to obtain data on neurotoxicity.

Organic solvents were targeted for the first neurotoxicity endpoint rule because as a group they are thought to be associated with neurological effects and because they contain some high exposure chemicals (Ref. 4). Each solvent in this rule has a high vapor pressure, and their widespread use in the workplace and by consumers assures that many people will have acute and/or chronic exposure. Although some neurotoxicity data is available on most of these solvents, animal testing using methods equivalent to the TSCA neurotoxicity guidelines is rare. It is anticipated that data derived from testing according to these guidelines will not only screen for certain neurotoxic effects of each solvent, but will also indicate the relative safety of the tested solvents for this endpoint.

During the development of this proposed test rule EPA considered two basic approaches to chemical selection. The first approach was to identify those chemicals that are believed to cause health effects in man or laboratory animals, based on toxicity studies and/or structural-activity relationships (SAR), and to then select those with the highest exposure potential. This is the approach EPA followed in construction of the developmental and reproductive toxicity endpoint rule published elsewhere in this issue of the **Federal Register** The second approach was to select chemicals solely on exposure potential. EPA determined that the second approach was more appropriate for selecting chemicals for the neurotoxicity test rule. For some types of test rules the first approach of basing chemical selection on available toxicity studies or SAR is preferable. In the case of an endpoint like neurotoxicity, however, EPA does not believe that reliance on available toxicity studies and SAR is the best approach for the following reasons. The existing literature and knowledge of SAR are fairly sparse on the neurotoxic effects of organic solvents. In addition, the few studies that have been identified are typically short-term or high-dose studies which, although they might support concern for more testing (as is the case for 6 of the 10 chemicals in this proposed rule), do not necessarily reflect higher potency or hazard potential than non-tested chemicals. Because of this EPA chose the second approach, i.e., selection based on exposure. By selecting those organic solvents with high exposure the limited resources available for testing would be focused on the few chemicals with widespread use and human exposure, instead of requiring EPA to consider the whole universe of organic solvents for testing.

The initial selection of specific organic solvents by EPA as candidates for testing was based on five criteria: production level greater than 10 million pounds, occupational exposure greater than 10,000 workers, consumer exposure, vapor pressure greater than 5 mmHg, and presence in or release to the environment (Ref. 2). Production data from 1986 to 1988 were considered in prioritizing the substances by production volume. Occupational exposure data were obtained from the National Occupational Exposure Survey (NOES) conducted by the National Institute for Occupational Safety and

BEST COPY AVAILABLE

Health (NIOSH) in 1981-1983. Consumer exposure was estimated by EPA based on a usage survey of products containing the substances in this rule (Refs. 5, 6, and 9). Vapor pressure values were obtained from the CHEMFATE database (Ref. 2). Environmental release data were obtained from the 1987 Toxic Release Inventory (TRI) (Ref.8) and data on presence in the environment were obtained from the Hazardous Substance Databank (Ref. 28). Production and occupational exposure data were considered simultaneously in prioritizing chemicals for testing. The resulting list was modified by eliminating chemicals with a vapor pressure less than 5mm Hg, because those chemicals have less tendency to volatilize and cause exposure by inhalation. Consumer exposure and environmental release data were the last criteria used in the selection of chemical candidates for this rule.

By this process, 14 substances were selected as candidates for the neurotoxicity test rule: acetone (CAS No. 67-64-1), n-amyl acetate (CAS No. 628-63-7), 1-butanol (LAS No. 71-36-3), n-butyl acetate (CAS No. 123-86-4), diethyl ether (CAS No. 60-29-7), ethanol (CAS No. 64-17-5), 2- ethoxyethanol (CAS No. 110-80-5), ethyl acetate (CAS No. 141-78-6), isobutyl alcohol (CAS No. 78-83-1), methyl ethyl ketone (CAS No. 78-93-3), methyl isobutyl ketone (CAS No. 108-10-1), tetrahydrofuran (CAS No. 109-99-9), toluene (CAS No. 108-88-3), and xylenes (CAS No. 1330-20-7). Of these 14 chemicals, 6 are among the top 25 chemicals emitted into the air in 1987 according to the Toxic Release Inventory (Ref. 1). After the collection and review of available neurotoxicity data on these 14 substances, 4 of them, ethanol, methyl ethyl ketone, toluene, and xylenes were found to have sufficient neurotoxicity data to justify exclusion from this proposed test rule (Ref. 3 and 34). This finding for methyl ethyl ketone, toluene, and xylenes confirms decisions in previous TSCA section 4 actions which did not require neurotoxicity testing for these four substances (47 FR 56025, December 29, 1982; 47 FR 56391, December 16, 1982; 47 FR 56392, December 16, 1982). The remaining 10 substances were found to have insufficient neurotoxicity data. This rule proposes neurotoxicity testing for these 10 substances:

Chemical name/CAS No.	Docket No.
acetone (CAS No. 67-64-1)	42134/42135
n-amyl acetate (CAS No. 628-63-7)	42134/42136
1-butanol (CAS No. 71-36-3)	42134/42137
n-butyl acetate (CAS No. 123-86-4)	42134/42138
diethyl ether (CAS No. 60-29-7)	42134/42139
2-ethoxyethanol (CAS No. 110-80-5)	42134/42140
ethyl acetate (CAS No. 141-78-6)	42134/42141
isobutyl alcohol (CAS No. 78-83-1)	42134/42142
methyl isobutyl ketone (CAS No. 108-10-1)	42134/42017B
tetrahydrofuran (CAS No. 109-99-9)	42134/42143

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall, by rule, require testing of a substance to develop appropriate test data if the Administrator makes certain findings as described in TSCA section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules which were published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

In evaluating the testing needs for these 10 substances, EPA considered the available published and unpublished information on the production volume, human exposure, environmental release, and neurotoxicity to animals and humans. From its evaluation of these data, EPA is proposing specific neurotoxicity testing for these substances under TSCA section 4(a)(1)(B). In addition, EPA considered available information on whether these substances may present an unreasonable risk of injury to health and as a consequence EPA is proposing neurotoxicity testing for six of the substances also under TSCA section 4(a)(1)(A).

EPA will continue to evaluate the need for this type of testing of additional substances and will amend this rule as necessary to require such testing. EPA intends to identify future candidates for this rule from its chemical screening program, TSCA section 8(e) data, Premanufacture Notices, Structure Activity Relationship data, nominations from other EPA programs, Interagency Testing Committee recommendations, and other relevant sources.

In addition, elsewhere in this issue of the Federal Register, EPA is proposing another TSCA section 4 multi-substance test rule. The other rule requires developmental and/or reproductive effects testing of 12 substances (none of which are the same as those included in this notice). The codified portion of the proposed rule for neurotoxicity testing is written as an amendment to the codified portion of the proposed rule for developmental and reproductive toxicity testing. For future multi-substance rules, EPA plans to prepare amendments to the combined proposed section of the CFR (i.e., § 799.5050). By so doing, these and subsequent multi-substance endpoint rules would be listed in a single table, and their test requirements (health, environmental, chemical fate, etc.) for a substance would be in a single location. EPA believes that listing the test requirements for all the multi-substance endpoint rules in one table will be advantageous for those subject to TSCA section 4 test rules and will simplify and aid in their monitoring and compliance.

II. Review of Available Data

A. Use

Organic solvents are used as solubilizers, dispersants, or diluents, and because of this have many industrial and consumer applications (Ref.4). They can be incorporated in a variety of products, including paints, varnishes, lacquers, adhesives, plastics, inks, waxes, polishes, smokeless powder, perfume, and medicine. They can also be used in extraction processes, chemical synthesis, and cleaning, degreasing, and drying operations. The following Table 1 lists some of the uses of the 10 organic solvents which are the subjects of this proposed rule.

TABLE 1.—USES OF ORGANIC SOLVENTS

Name/CAS No.	Uses[1]
acetone (67-64-1).	37%—Production of methacrylic acid and ester; 16% —production of methyl isobutyl ketone; 14% — production of bisphenol A; solvent for industrial coatings.
n-amyl acetate (628-63-7).	>50% — solvent for nitrocellulose lacquers and paints; extraction solvent in penicillin manufacture and electrostatic spray coatings for automobile and misc. uses.
1-butanol (71-36-3).	15% — direct solvent use; 7% — plasticizer; 35% — production of butyl acrylate/methacrylates; 25% in production of glycol ethers.
n-butyl acetate (123-86-4).	81% — solvent for coatings; 9% —process solvent; 10%—misc. solvent use.

TABLE 1.—USES OF ORGANIC SOLVENTS—Continued

Name/CAS No.	Uses[1]
diethyl ether (60-29-7).	50% — smokeless powder manufacture; 20% —as an engine starting fluid; 10% — extraction solvent for fats and oils; 10% —pharmaceutical and medical uses; 10% — perfume.
2-ethoxyethanol (110-80-5).	28% — Preparation of ethylene glycol monoethyl ether acetate; 7% — general solvent uses for coatings and inks; 65% —exported.
ethyl acetate (141-78-6).	64% — solvent for lacquers and enamel coatings; 15% — solvent for inks; 13% — plastics solvent; 3% —chemical synthesis.
isobutyl alcohol (78-83-1).	28% — direct solvent uses; 11% —preparation of isobutylamines; 21% — as a lube oil additive; 19% —preparation of isobutyl acetate; 8% —preparation of amino resins.
methyl isobutyl ketone (108-10-1).	75% — solvent for protective coatings; 15% — solvent extraction; 5% — solvent for adhesives and ink.

TABLE 1.—USES OF ORGANIC SOLVENTS—Continued

Name/CAS No.	Uses[1]
tetrahydrofuran (109-99-9).	77% — production of polytetrahydrofuran; 23% — solvent use (PVC cements, magnetic tape, reaction solvent).

[1] Source: "Economic Impact Evaluation of Proposed Multi-Chemical Rule for the Testing of Neurotoxicity". July 25, 1990. (Ref. 32).

B. Exposure, Production, Vapor Pressure

Organic solvents such as those included in this proposed rule have a higher potential for human exposure than many other chemicals because they are often highly volatile and are able to penetrate the skin due to their nonpolar structure. Because of their high volatility, a major route of exposure is inhalation. Once organic solvent vapors enter the lungs, they diffuse across respiratory membranes, due to their relatively small molecular weight and lipid solubility, and enter the bloodstream. These properties also permit a second major route of exposure via skin penetration. For example, two *in vitro* studies which looked at absorption through human epidermis found rates of 0.65 μmol/cm²/hr for pure 1-butanol (Ref. 36) and 0.79 mg/cm²/hr for pure 2-ethoxyethanol (Ref. 37). This demonstrated absorption plus the ubiquity of solvents and the casual approach to their use almost assure exposure by inhalation and skin contact (Ref. 4).

The potential for consumers to be exposed to solvents is high because solvents comprise a large fraction of many consumer products and are used for purposes such as cleaning and paint removal where a person is in close contact with the solvent. To estimate the potential for consumer exposure to these ten substances, EPA determined their presence in consumer products and, with a usage survey (Ref. 35), estimated the number of consumers potentially exposed to each solvent by consumer product. As shown in the following Table 2, EPA found that all 10 substances were present in consumer products.

TABLE 2.—CONSUMER EXPOSURE

Chemical/CAS No.	Presence in Consumer products(number)	Consumer usage per product(millions of consumers)[1]
acetone (67-64-1)	51	3.7 to 112
n-amyl acetate (628-63-7)	1	79.2
1-butanol (71-36-3)	2	79.2
n-butyl acetate (123-86-4)	2	64 to 112
diethyl ether (60-29-7)	1	[2]67.8
2-ethoxyethanol (110-80-5)	14	52 to 112
ethyl acetate (141-78-6)	3	64 to 112
isobutyl alcohol (78-83-1)	4	55 to 112
methyl isobutyl ketone (108-10-1)	17	7.2 to 112
tetrahydrofuran (109-99-9)	11	4.5 to 112

[1] Source: USEPA "Household Solvent Products: A National Usage Survey." EPA-OTS 560/5-87-005. 1987. (Ref. 35).
[2] Source: Versar, Inc., Springfield, VA. (Ref. 10).

The number of products in which each chemical was present ranged from 1 to 51. Based on the reported usage, the potential number of consumers exposed to a single product ranged from 3.7 to 112 million (Refs. 5, 6, 9, and 10).

Many solvents also have a high potential for acute and chronic exposure in the workplace due to their high production volumes and widespread use, as well as the high volatility and ability to penetrate the skin mentioned above. Table 3 presents data on occupational exposure taken from the National Occupational Exposure Survey (NOES), conducted by NIOSH from 1981–1983, and based on field surveys of 4490 facilities.

TABLE 3.—OCCUPATIONAL EXPOSURE, PRODUCTION, VAPOR PRESSURE

Name/CAS No.	NOES[1]	Annual production[2] (pounds)	Vapor pressure[3]
acetone (67-64-1)	1,510,107	2,456,000,000	231.5
n-amyl acetate (628-63-7)	172,440	12,029,800	9.7
1-butanol (71-36-3)	794,284	1,864,126,000	6.7
n-butyl acetate (123-86-4)	720,812	194,845,000	150.0
diethyl ether (60-29-7)	175,489	55,000,000	442.0
2-ethoxyethanol (110-80-5)	233,418	121,806,000	5.5
ethyl acetate (141-78-6)	375,905	257,348,000	93.0
isobutyl alcohol (78-83-1)	192,949	165,459,000	10.4
methyl isobutyl ketone (108-10-1)	467,763	225,312,000	16.8

TABLE 3.—OCCUPATIONAL EXPOSURE, PRODUCTION, VAPOR PRESSURE—Continued

Name/CAS No.	NOES[1]	Annual production[2] (pounds)	Vapor pressure[3]
tetrahydrofuran (109-99-9)	303,049	154,000,000	132.0

[1] National Occupational Exposure Survey, Number of occupationally exposed employees (Ref. 7).
[2] Source: Ref. 32.
[3] Vapor pressure in mmHg per CHEMFATE (Ref. 2).

Using the NOES data, the number of workers potentially exposed to each of these solvents ranges from 172,440 to 1,510,107 (Ref. 2). The annual production of the 10 solvents, as shown in Table 3, is very high, ranging from 12 million to 2.4 billion pounds (Ref. 32). Also in Table 3 are vapor pressure values ranging from 5.8 to 442. Vapor pressure values indicate volatility and the potential for exposure by inhalation.

C. Presence in and Release to the Environment

Presence in and release to the environment also contribute to the potential for chronic exposure to solvents. Nine of the solvents have been found to be present in various environmental media (ground water, surface water, drinking water, air, effluent) at survey sites throughout the United States. The following Table 4 presents the measured concentration ranges of contaminants found at some of these sites.

TABLE 4.—PRESENCE IN AND RELEASE TO THE ENVIRONMENT

Name/ CAS No.	Environmental Media[1]	Concentration Range[2] (in environmental media)	Annual Release[3]
acetone (67-64-1)	A	0.3 to 6.5 ppb	195
	DW	NQ	
	E	6 to 2501 ppb	
	SW	1 to 4 ppb	
n-amyl acetate (628-63-7)	E	28 to 31 ppm	
1-butanol (71-36-3)	A	34 to 445 ppb	36
	E	16 ppm	
	E(DS)	210 ppm	
	SW	NQ	
n-butyl acetate (123-86-4)	A	3μg/m³	
	E	10 ppb	
diethyl ether (60-29-7)	A	NQ	
	DW	NQ	
	E	10 to 100 ppb	
	GW	2.5 ppb	
	SW	1 to 10 ppb	
2-ethoxyethanol (110-80-5)			2.9
ethyl acetate (141-78-6)	DW	NQ	
	E	NQ	
	SW	1 ppb	
isobutyl alcohol (78-83-1)	A	2.5 mg/m³	
	DW	NQ	
methyl isobutyl ketone (108-10-1)	A	270 ppt	29
	A(DS)	0.5 - 13 ppm	
	E	0.2 to 105 ppm	
	GW(DS)	172 to 263 ppb	
	SW	NQ	
tetrahydrofuran (109-99-9)	E	0 to 450 ppm	
	SW	1 to 318 ppb	

[1] A = Air, DW = Drinking Water, DS = Disposal Site, E = Effluent, GW = Ground Water, SW = Surface Water.
[2] Concentration data is from Hazardous Substances Databank printout (Ref. 29). NQ = Not Quantified, but detected.
[3] 1987 Environmental Release in millions of pounds per year per the Toxics Release Inventory (Ref. 8).

A few of the survey sites are near disposal sites, but most are sites with even a greater potential for exposure to the general public.

The annual release to the environment of 4 of these solvents, as reported to EPA, ranges from 2.9 to 195 million pounds (Ref. 8). Table 4 lists release levels of these 4 solvents. It is also worthy of note that 3 of these solvents are among the Toxics Release Inventory's (TRI) top 25 chemicals emitted into the air in 1987 (Ref. 1).

D. Neurotoxicity

In general, acute exposure to organic solvents affects the central nervous system by causing the anesthetic effects of drowsiness, lack of coordination, and narcosis, which although they may have no discernable permanent effects on health, may increase the risk of accidents (Ref. 4). With longer exposure solvents may have neurotoxic effects on memory, learning, and performance which can be permanent. These effects are less well understood as is the effect of chronic, low-level exposure (Ref. 4).

Given the general neurotoxicity effects of organic solvents, EPA considers that the appropriate TSCA guidelines to screen for all aspects of neurotoxicity are the Functional Observational Battery (FOB; 40 CFR 798.6050), Motor Activity (MA; 40 CFR 798.6200), Neuropathology (NP; 40 CFR 798.6400), and the Schedule-Controlled Operant Behavior test (SCOB; 40 CFR 798.6500). EPA reviewed the available literature to determine if adequate and reliable data exist on these 10 substances for these types of neurotoxicity and neurobehavioral endpoints. EPA also reviewed existing data on these substances for other neurotoxic endpoints. A discussion of the results of this review follows:

No studies were located in the available literature regarding neurotoxicological effects in either humans or animals for three solvents: *n*-amyl-acetate, isobutyl alcohol, and tetrahydrofuran (Ref. 3).

Studies were identified for the other 7 solvents, including acetone, 1-butanol, *n*-butyl acetate, diethyl ether, 2-ethoxyethanol, ethyl acetate, and methyl isobutyl ketone but these studies did not provide adequate data to assess neurotoxic effects which could be obtained by requiring testing under the four TSCA guidelines for neurotoxicity mentioned above (Ref. 3).

1. *Acetone.* Only acute human and animal studies were identified for acetone. The study in human volunteers by Dick et al. (Ref. 11) indicated that a 4–hour exposure to 250 ppm acetone produced a small decrease in the auditory tone discrimination in both sexes and a significant change in the profile of mood states in men.

Bruckner and Peterson (Ref. 12) examined unconditioned performance and reflexes in male rats exposed to 4 doses of acetone from 12,600 to 56,600 ppm for 3 hours. A concentration-related decrease was observed in the mean score of the test battery consisting of wire maneuver, visual placing, grip strength, tail pinch, and righting reflex. Although this study evaluated the animals for the endpoints considered by the functional observational battery, only male mice were studied and only for an acute dose.

Glowa and Dews (Ref. 13) assessed the effects of 4 doses of acetone from 1,000 to 56,000 ppm which were sequentially administered at 30-minute intervals to male mice. The authors found a dose-related decrease in schedule-controlled response. This study is inadequate because it exposed the same animals to more than one substance. Also, this study does not satisfy the neurotoxicity data needs because it is an acute study and only male mice were tested (Ref. 3).

2. *1-butanol.* Only acute animal studies were identified that examined the neurotoxic properties of 1-butanol. Wallgren (Ref. 14) assessed motor coordination in rats by testing their ability to balance in a sliding plane before and after the oral administration of 4.5 g/kg of 1-butanol. Wallgren's results suggest that 1-butanol affects motor control because of the animals' significantly impaired ability to maintain their balance. Maickel and Nash (Ref. 15) examined the motor performance of male mice in a rotarod system after administration of 1-butanol at 3 dose levels from 0.5 to 2.0 g/kg. 1-Butanol was found to induce a dose-related impairment in motor performance which was suggested by the authors as due to a generalized central nervous system (CNS) depression. This study does not satisfy the information needs for motor activity because only male mice were tested and the test was not comparable to that required by the TSCA guideline (Ref. 3).

DeCeaurriz et al.(Ref. 16) exposed male mice to 4 air concentrations of 1-butanol from 470 to 985 ppm for 4 hours and evaluated them in the behavioral despair swimming test. The authors found that 1-butanol prolongs the escape-directed activity in a dose-related manner. Schulze (Ref. 17) treated rats with 1 daily injection of 39 mg/kg 1-butanol for 4 consecutive days and found a significant increase in the mean landing foot splay scores (an index of ataxia). These studies do not satisfy the neurotoxicity data needs because they are acute studies and only male mice were tested.

3. *n-butyl acetate.* Only one review by Toy (Ref. 18) was found regarding the health effects in animals of *n*-butyl acetate. No neurotoxic effects attributed to *n*-butyl acetate were evaluated in this review.

4. *Diethyl ether.* Both human and animal studies were found on the neurotoxic effects of diethyl ether. Two acute human studies looked at the sensory evoked response induced by stimulation of the ulnar nerve in 17 male volunteers. In the first study by Hosick et al. (Ref. 19), subanesthetic concentrations (1.0 to 1.5 percent, v/v in air) of diethyl ether suppressed in a dose-related manner, the late activity of sensory potentials recorded in the contralateral postRolandic area (C2P) and at a midline position 6 cm anterior to the vertex (M6A). In the second study by Clark et al. (Ref. 20), a concentration that induced anesthesia (4 percent diethyl ether) completely abolished the sensory evoked responses in C2P and M8A. Both studies were aimed at determining possible central nervous system mechanisms involved in anesthesia. While these tests provide information on the anesthetic effects on sensory systems, they do not provide a broader picture of neurotoxicity.

Essman and Jarvik (Ref. 21) studied the effect of diethyl ether on the acquisition of an avoidance response in male mice. The results showed that ether anesthesia, induced immediately after an electric shock, effectively interfered with the acquisition of an avoidance response, but if the mice were anesthetized 1 hour after the shock was given, the avoidance response was retained. A similar acute study by Wimer and Huston (Ref. 22) showed that exposure to diethyl ether at concentrations not resulting in loss of the righting reflex, significantly enhanced the performance of a previously learned task. Both studies point out the importance of the duration of the exposure (level of anesthesia achieved) in the assessment of schedule-controlled operant behavior tests. However, both studies are inadequate to provide the information on subchronic schedule-controlled operant behavior (SCOB) because the tests were not comparable to the TSCA guideline for SCOB, the exposure duration was not subchronic, and only male mice were tested.

Several studies, designed to examine the central nervous system effects of anesthetic levels of diethyl ether in animals, were identified. Concentrations of diethyl ether that produced a very deep stage of anesthesia in cats also induced epileptiform activity (Ref. 23). In rats, diethyl ether decreased spontaneous electroencephalograph (EEG) spikes recorded from the dorsal area of the hippocampus, and at anesthetic doses completely abolished this activity (Ref. 24). In rats and cats, a concentration of 8 percent (v/v in air) diethyl ether suppressed excitatory responses in the midbrain reticular formation (Ref. 25). These studies do not satisfy the neurotoxicity data needs because only anesthetic doses were used.

5. *2-ethoxyethanol.* A developmental neurotoxicity study was located which evaluated the neurotoxic effects of prenatal exposure to 2-ethoxyethanol.

B.K. Nelson et.al (Ref. 30) exposed rats to 100 ppm 2-ethoxyethanol and found statistically significant changes in the offspring in the rotorod test, the activity wheel test, and avoidance conditioning. At 200 ppm, a maternally toxic dose, even greater alterations were seen in these tests (Ref. 31). These studies do not satisfy the data needs for neurotoxicity because they only evaluate the effects of prenatal exposure to 2-ethoxyethanol.

6. *Ethyl acetate.* Only animal studies were located regarding the acute neurotoxic effects of ethyl acetate. Glowa and Dews (Ref. 13) assessed the effects of ethyl acetate on a schedule-controlled response test (the interruption of a photocell beam located behind a nose-poke hole) in male mice. The study showed that at 5 concentrations from 300 to 3,000 ppm, ethyl acetate decreased the schedule-controlled response in a dose-related manner. This study is inadequate because it exposed the same animals to more than one substance. Also, only male mice were studied and the test is not equivalent to the TSCA guideline for SCOB.

Tham et al. (Ref. 26) examined the neurological effects of intravenous injection of ethyl acetate in rats and found that it depressed the vestibulo-ocular reflex (VOR) and thereby the equilibrium system of the animals. It was suggested by the authors that the depression of the VOR was caused by an interaction of the solvent with central pathways in the reticular formation and the cerebellum. This study is not comparable to those which would be done according to the TSCA guidelines for neurotoxicity testing because the route of administration was by injection instead of the expected route of human exposure.

7. *Methyl isobutyl ketone.* A developmental toxicity study was located which reported a neurotoxic effect after exposure to methyl isobutyl ketone. In rats and mice exposed to 3,000 ppm methyl isobutyl ketone, neurotoxicity was demonstrated in the dams by partial hindlimb paralysis (Ref. 29). This study does not satisfy the neurotoxicity data needs because it did not evaluate the range of endpoints which are normally required by the TSCA guidelines.

In summary, neurotoxicity data were not identified for three solvents. The other seven solvents had no subchronic neurotoxicity data and the acute and developmental data, although adequate to raise concern for neurotoxicity, were not adequate to evaluate the effects of acute or subchronic exposure to the extent that would have been achieved if the TSCA or equivalent state-of-the-art guidelines had been followed.

III. TSCA Section 4(a) Findings

The proposed neurotoxicity testing is based on the authority of section 4(a)(1)(A) and (B) of TSCA. EPA finds that: available data indicate that 6 of the substances may present an unreasonable risk of injury to human health; all 10 substances are produced in substantial quantities; there is or may be significant or substantial human exposure to all 10 substances; there is or may be substantial environmental release of 4 of these substances; there are insufficient data and experience to determine or predict the neurotoxic effects from manufacturing, processing, use, and disposal of these substances; and testing is necessary to develop these data.

EPA is currently in the process of developing a general policy under TSCA section 4(a)(1)(B) (the "B" policy) in which it will articulate its criteria for making findings under this provision. The "B" policy is being developed in response to the April 12, 1990 decision in CMA v. EPA (Ref. 38) in which the Court of Appeals for the Fifth Circuit remanded the TSCA section 4 rule for cumene to EPA to "articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and human exposure potentially resulting to be 'substantial'." Although not mandated by the cumene decision, EPA also will be addressing the criteria for "substantial production" and "significant human exposure." EPA intends to publish the criteria for public comment, but has not yet developed such a Federal Register notice.

To avoid delay, EPA has decided to propose this neurotoxicity test rule under TSCA section 4(a)(1)(B) without waiting for the "B" policy to be completed and published in the Federal Register. The Court in CMA v. EPA (Ref. 38) made it clear that EPA need not adopt a definition applicable to all cases, but may choose to proceed on a case-by-case basis, if it rationally explains its exercise of discretion. Thus, because this proposal articulates the criteria used in making findings under TSCA section 4(a)(1)(B) for these substances, it is not necessary to wait for publication of a generic policy before proposing this test rule.

TSCA does not provide EPA with much guidance on what criteria and standards should be used in making "B" findings. The statute does not define the terms "significant" or "substantial." The policy section of TSCA, however, makes it clear that Congress considered testing of chemical substances to be an important aspect of the Act. This section provides:

> adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures.

The legislative history of TSCA also provides some guidance on what criteria are to be used in making "B" findings. The legislative history states that "[t]he conditions specified in [TSCA] section 4(a)(1)(B) reflect the Committee's recognition that there are certain situations in which testing is desirable even though there is an absence of information indicating that the substance or mixture may be harmful" (Ref. 39) and "there are certain situations in which testing should be conducted even though there is an absence of information indicating that the substance or mixture per se may be hazardous" (Ref. 40). The legislative history also provides that "EPA "is not limited to consideration of sheer volume of production or exposure at a specific point in time. The duration of exposure, the level of or intensity of exposure at various periods of time, the number of people exposed, or the extent of environmental exposure are among the considerations which may be relevant in particular circumstances" (Ref. 39). EPA believes that it is reasonable to interpret the duration of exposure and level of, or intensity of exposure as relating to "significant" human exposure, the number of people exposed as relating to "substantial" human exposure, and the extent of environmental exposure as relating to "subtantial" quantities of envrionmental release.

All 10 of the substances in this proposal are produced in quantities exceeding 12 million pounds per year. EPA is reserving discussion on what it considers to be the minimum production volume that can be considered "substantial" until it publishes its "B" policy. Nevertheless, EPA finds that 12 million pounds per year clearly is above the minimum level that can be considered "substantial." EPA believes it is reasonalbe to interpret substantial production to mean large production, and that 12 million pounds is a large amount of production. Moreover, production information reported in connection with the TSCA section 8(b) inventory of the substances in commerce shows that only 4.8 percent of the listed substances have production volumes over 10 million pounds, together accounting for over 95 percent of the total production of all substances produced in the United States (Ref. 41). EPA believes that it is reasonable to conclude that this small group of substances (i.e., the top 4.8 percent according to production volume), which account for the vast majority of all production, clearly are substances with substantial production.

EPA believes that the term "substantial" used in connection with environmental release is intended to capture substances with extensive release to the environment, which in itself would be sufficient reason to require testing in the absence of any information that the substance may be hazardous to human health or the environment. In other words, as with substantial production, release of substantial quantities means large release. The four substances for which substantial release findings are made are all released in quantities exceeding 1 million pounds per year. EPA finds that 1 million pounds of release to the environment is a sufficiently large amount of release that EPA should require testing even in the absence of any hazard information. Moreover, the Toxics Release Inventory (TRI), compiled under section 313 of the Emergency Planning and Community Right-to-Know Act (Ref. 42), shows that only 37 percent of the listed substances have releases over 1 million pounds, but account for over 99 percent of the total reported releases on the TRI by volume released. Because the TRI does not include all substances, less than 37 percent of all substances would have releases above 1 million pounds. EPA believes that it is reasonable to conclude that this small group of substances (i.e., less than 37 percent), which accounts for over 99 percent of all releases, clearly are substances with substantial releases.

EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, exposure to a large number of people. Available consumer data indicate that at least 3.7 million consumers are exposed to each of the subject substances. EPA believes that exposure to 3.7 million people is substantial exposure because where millions of people are exposed to a chemical substance, it is reasonable that EPA should have data on the potential hazards associated with the substance so that EPA can implement appropriate risk management efforts where necessary to protect the public against unreasonable risk.

Moreover, at least 172,000 workers are believed to be exposed to each of the 10 subject substances. EPA believes that exposure to 172,000 workers is substantial exposure. As a general matter EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. The Court in CMA v. EPA recognized that there could be some overlap between substantial and significant human exposure: "it is not necessarily clear that 'significant' and 'substantial' as used in clause (II) must be understood in a way that prevents any overlap in their respective meanings or requires that any factor relevant to one be necessarily irrelevant to the other" (Ref. 38, n. 17). Thus, exposure, to be considered substantial, does not have to be as widespread for workers as for consumers or the general population. EPA believes that exposure to 172,000 workers is widespread enough to necessitate testing to determine the potential hazards of the substances to evaluate whether worker protection, or other risk management efforts are necessary.

1. *The 10 substances are or will be produced in substantial quantities.* All of the substances subject to this proposed test rule are listed on the TSCA Section 8(b) Inventory. Other sources of more recent production data have been evaluated to update the TSCA inventory data (Ref. 32). EPA has reviewed these data and has found that the reported production volume of each substance (12 million to 2.4 billion pounds per year) is substantial.

2. *There is or may be substantial human exposure to each of the substances.* EPA believes there is substantial occupational exposure to each of these substances. The NOES data indicate that over 172,000 workers are exposed to each of these substances. Exposure also may be enhanced given the propensity of these substances to penetrate the skin and to have high volatility, which facilitates inhalation. Available data on skin absorption and the vapor pressures of these substances support this position. EPA also believes there is potential for substantial consumer exposure to these substances from their widespread presence in consumer products. EPA has determined that each of these substances is present in 1 to 51 consumer products and has estimated that at least 3.7 million consumers are exposed to each product. EPA finds that exposure to over 172,000 workers and 3.7 million consumers is "substantial" as that term is used in TSCA section 4(a)(1)(B).

3. *There is or may be substantial quantities of four substances released to the environment.* Four of the substances (acetone, 1-butanol, 2-ethoxyethanol, and methyl isobutyl ketone) are listed on EPA's Toxics-Release Inventory and have been reported to be released to the environment in quantities exceeding 1 million pounds per year. EPA finds that this amount of release is "substantial" as that term is used in TSCA section 4(a)(1)(B).

4. *Activities involving 6 of the substances may present an unreasonable risk of injury to human health.* In addition to the findings made under section 4(a)(1)(B)(i), for all the subject chemicals, EPA also finds under section 4(a)(1)(A)(i) that the neurotoxicity studies discussed in Unit II for acetone, 1-butanol, diethyl ether, 2-ethoxyethanol, ethyl acetate, and methyl isobutyl ketone and the worker and consumer exposure to these substances indicate that the manufacturing, processing, use, and disposal of these substances may present an unreasonable risk of injury to human health from neurotoxicity. The finding that acetone may present a risk is based on the human study which showed a decrease in auditory tone discrimination after a 4–hour exposure to 250 ppm acetone (Ref. 11) and the dose-related functional decrements observed in rats and mice after exposure to 1,000 to 56,000 ppm acetone (Refs. 12 and 13). The finding that 1-butanol may present a risk is based on its observed impairment of motor control in rats (Refs. 14 and 17) and motor performance in mice (Refs. 15 and 16). The finding that diethyl ether may present a risk is based on its interference with the acquisition of an avoidance response in mice (Ref. 21). The finding that 2-ethoxyethanol may present a risk is based on the alteration of motor performance and avoidance conditioning in the offspring of rats exposed to 100 and 200 ppm (Refs. 30 and 31). The finding that ethyl acetate may present a risk is based on the dose-related decrease in a schedule-controlled response in mice after exposure to 300 to 3,000 ppm (Ref. 13). Also, intravenous injection of ethyl acetate depressed the vestibulo-ocular reflex in rats (Ref. 26). The finding that methyl isobutyl ketone may present a risk is based on the hindlimb paralysis seen in rats and mice exposed to 3,000 ppm (Ref. 29).

5. *Insufficient data and experience.* Under section 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience to reasonably determine or predict the potential neurotoxic effects from acute and

subchronic exposures from manufacturing, processing, use, and disposal.

EPA believes that the guidelines found at 40 CFR part 798 represent state-of-the-art methodology and form the basis for a valid and scientifically acceptable test standard for evaluating the neurotoxicity of these substances. The available studies are not acceptable to EPA because they do not conform with the guidelines as detailed in the following Table 5.

TABLE 5.—DATA INSUFFICIENCY FINDINGS UNDER TSCA 4(A)(1)(A)(II) AND (B)(II)

Name/CAS No.	Data insufficiency (Notes)	References
acetone (67-64-1)	(a)	12
	(a,b,c,d)	13
n-amyl acetate (628-63-7).	(a)	
1-butanol (71-36-3)	(a,c)	15
n-butyl acetate (123-86-4).	(a)	
diethyl ether (60-29-7).	(a,c,d)	21
	(a,c,d)	22
2-ethoxyethanol (110-80-5).	(a,f)	30
	(a,d)	31
ethyl acetate (141-78-6).	(a,b,c,d)	13
isobutyl alcohol (78-83-1).	(a)	
methyl isobutyl ketone (108-10-1).	(d)	29
tetrahydrofuran (109-99-9).	(a)	

Notes:

a. Only male mice were tested; no females were tested.

b. Animals were exposed to more than one chemical.

c. Test was not equivalent to the TSCA guideline.

d. Not a subchronic test.

e. Provided data on effects to offspring only.

f. This is primarily a developmental toxicity test.

g. No study addressing neurotoxicity was found.

6. *Necessity of testing.* Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing each of these substances is necessary to develop such data for neurotoxicity. EPA believes the data resulting from the proposed testing will be relevant to a determination as to whether manufacturing, processing, use, and disposal of these substances does or does not present an unreasonable risk of injury to human health.

IV. Proposed Rule

A. Proposed Testing and Test Standards

Given the section 4(a)(1) findings for the 10 substances, EPA has the authority to require other health effects testing for which there is an insufficiency of data and for which testing is necessary. However, as a matter of policy, EPA is proposing only neurotoxicity testing for the substances included in this proposed rule at this time to focus on the deficiency in neurotoxicity data. EPA may, in the future, find other data deficiencies for these substances and propose other tests.

Functional observational battery, motor activity, neuropathology, and schedule-controlled operant behavior studies are proposed for the 10 substances. Although the schedule-controlled operant behavior test has in the past typically been required under EPA's testing policy as a second-tier test, it is proposed as a first-tier test in this rule because of EPA's desire to obtain data on the effects of solvents on learning, memory, and performance. The studies are proposed to be conducted in accordance with EPA's TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792 and the specific TSCA test guidelines as enumerated in 40 CFR part 798, as amended in this proposed rule.

EPA is proposing that these 10 substances undergo acute and subchronic testing according to the TSCA test guidelines at 40 CFR 798.6050 and 798.6200. EPA is also proposing that these 10 substances undergo subchronic testing using the TSCA test guidelines at 40 CFR 798.6400 and 798.6500. The studies should be performed in rats with inhalation as the route of administration. The duration of exposure for acute testing would be 6 hours per day for 1 day; duration of exposure for subchronic testing would be 6 hours per day for 5 days per week for 13 weeks (90 days).

EPA is proposing that the above-referenced neurotoxicity test guidelines, and any modifications to these guidelines, be the test standards for testing these substances.

B. Test Substances

EPA is proposing that the purity of the test substances be 99 percent or greater. EPA believes that the percent purities listed in Table 6 are readily available.

TABLE 6.—AVAILABLE PURITY OF TEST SUBSTANCE

Substance/CAS No.	Available percent purity
acetone (67-64-1)	99.9
n-amyl acetate (628-63-7)	99.0
1-butanol (71-36-3)	99.9
n-butyl acetate (123-86-4)	99.9
diethyl ether (60-29-7)	99.9
2-ethoxyethanol (110-80-5)	99.0
ethyl acetate (141-78-6)	99.9
isobutyl alcohol (78-83-1)	99.9
methyl isobutyl ketone (108-10-1)	99.5
tetrahydrofuran (109-99-9)	99.5

EPA has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the substances themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives.

C. Persons Required to Test

Because of the findings in Unit III, EPA is proposing that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process one or more of the named test substances, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. This period is defined in 40 CFR 791.3(h). Byproduct manufacturers and importers of one or more of these substances would be considered manufacturers under this rule. As explained in 40 CFR part 790, initially, manufacturers but not processors of one or more of these substances would be required to submit letters of intent or exemption applications. Pursuant to a recent amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications initially. Such manufacturers should consult the Federal Register of May 7, 1990 (55 FR 18881) for further details.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for these substances. EPA is interested in evaluating the effects attributable to the substances themselves and has specified relatively pure substances for testing.

D. Reporting Requirements

As required in 40 CFR 792.18, all data developed under the final rule would be conducted and reported in accordance with the TSCA GLP Standards, which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(C), EPA is proposing specific reporting requirements for each of the proposed test standards as follows. Final reports of acute testing under 40 CFR 798.6050 and 798.6200 would be due 9 months from the effective date of the final rule; interim progress reports would be due 6 months from the effective date of the final rule.

Final reports for subchronic testing under 40 CFR 798.6050, 798.6200, 798.6400, and 798.6500 would be due 21 months from the effective date of the final rule; interim progress reports would be due at 6-month intervals beginning 6 months from the effective date of the final rule.

The effective date of the final rule will be 44 days after the date of publication of the final rule in the Federal Register.

According to a recent EPA report entitled "EPA Census of the Toxicological Testing Industry", laboratory availability for neurotoxicity testing should be adequate to accommodate the testing proposed in this rule (Ref. 33). If potential test sponsors can document that the neurotoxicity testing proposed in this rule needs to be staggered due to insufficient laboratory availability, thereby necessitating extending the reporting deadlines, EPA proposes the following. The substances with a section 4(a)(1)(A) finding would be tested first and ranked according to production volume as reported in this rule. Those substances with the largest production volumes would be required to be tested first, followed by those substances with the next largest volumes. The substances with only a section 4(a)(1)(B) exposure finding would be tested next and likewise ranked according to production volume as reported in this rule.

V. Issues for Comment

1. The following issues concern the criteria used to select chemicals for testing for this particular rule:

(a) Some have questioned whether, as a matter of policy, it is appropriate to use exposure alone as a testing criterion without specific indication of the potential hazard or potency of these substances. EPA solicits comment on this issue.

(b) They have also questioned the reasonableness of the burden/cost of testing for substances with only exposure evidence but no hazard information and suggested that there should be some minimum likelihood that a neurotoxic hazard exists before testing is required. EPA solicits comment on this issue.

(c) Questions have also been raised on the chemical selection criteria and numerical cutoffs EPA used to increase the likelihood of selecting chemicals for this rule with widespread human exposure. These criteria are: (1) production level of 10 million pounds, (2) occupational exposure of 100,000 workers, (3) environmental release of 1 million pounds, (4) vapor pressure of 5 mmHg or greater, and (5) presence in consumer products. EPA solicits comment on this issue.

(d) Some have questioned the appropriateness of having different selection criteria for different testing endpoints. For example, the developmental/reproductive toxicity rule published today elsewhere in this issue of the Federal Register uses selection criteria different from those used under this rule. EPA solicits comment on this issue.

2. EPA solicits additional information on the neurotoxicity of the substances listed in this rule. Such information may cause EPA to alter its decision on the need for testing of one or more of these substances.

3. This rule would require that as many as 40 neurotoxicity tests be run concurrently. EPA believes that adequate laboratory capacity exists for conducting this testing within the reporting deadlines. Further, EPA believes that if it were to amend the rule periodically by requiring testing of an additional 15 to 20 substances per year, laboratory facilities would still be able to meet this testing demand. EPA requests comment on laboratory availability and the reporting requirements.

4. In the schedule-controlled operant behavior,test, a multiple fixed ratio/differential reinforcement of low rate (DRL) schedule is specified. Although EPA believes that a multiple schedule would be useful to insure that potential effects aren't missed, an alternative schedule may provide comparable information. For example, the fixed-interval (FI) schedule may be a reasonable substitute for the DRL and would not foster compensatory mechanisms that would mask effects as might happen with the DRL. EPA requests comments on the DRL, FI, and other multiple schedules.

5. Butyl acetate should readily hydrolyze to 1-butanol (and acetic acid) once inhaled or absorbed through the skin. As such, testing either butyl acetate or 1-butanol should provide similar toxicological results. EPA solicits comment on whether or not it should require only one of these two substances to be tested. EPA solicits comment on whether data should be required on the hydrolysis rate to determine if a separate effect from butyl acetate may occur before being hydrolyzed to 1-butanol. Comments also should be submitted on whether, if testing of only one were to be required, it should be 1-butanol which is produced at 10 times greater volume (1.8 billion vs. 194 million pounds per year) and to which an estimated 74,000 more workers are exposed, or butyl acetate, which has a greater vapor pressure and would, therefore, be more likely to provide higher exposure on an equal volume of use basis, and to which EPA estimates more consumers are exposed (64 to 176 million vs. 79 million). If only one of these substances is tested should the manufacturers of the other also be subject to the rule and share in the cost of testing since the data obtained would be used to assess the risk of both substances?

6. Ethyl acetate may readily hydrolyze to ethanol for which there exists sufficient neurotoxicity data. EPA solicits comment on whether it should accept the data on ethanol as predictive of the effects of ethyl acetate and whether data should be required on the hydrolysis rate (using a pharmacokinetics guideline comparable to those previously proposed by EPA) to determine if a separate effect from ethyl acetate may occur before being hydrolyzed to ethanol.

VI. Economic Analysis of Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on test sponsors as a result of the proposed testing (Ref. 32). The economic analysis estimates the costs of conducting the proposed testing for each of the 10 substances, including both laboratory and administrative costs, and evaluates the potential for adverse economic impacts as a result of these test costs, using a comparison between a substance's annualized test costs and its annual revenues.

The estimated total costs of testing for each of the substances are $494,188 to $875,100, including $395,350 to $700,080 in laboratory costs and $98,838 to $175,020 in administrative costs. This is based on the cost range for each test given in the following Table 7.

TABLE 7.—COST RANGE OF TSCA NEUROTOXICITY TESTS

Test	Cost Range in Dollars
Functional observational battery:	
Acute, 40 CFR 798.6050	16,500 to 23,325
Subchronic, 40 CFR 798.6050	82,013 to 170,625
Motor Activity:	
Acute, 40 CFR 798.6200	18,625 to 26,388

TABLE 7.—COST RANGE OF TSCA NEUROTOXICITY TESTS—Continued

Test	Cost Range in Dollars
Subchronic, 40 CFR 798.6200	86,275 to 162,388
Neuropathology:	
Subchronic, 40 CFR 798.6400	112,638 to 200,125
Schedule-controlled operant behavior:	
Subchronic, 40 CFR 798.6500	165,136 to 292,250

Actual test costs per substance should be lower since EPA assumed that each test would be done independently of one another and the sponsors might choose to combine the subchronic tests for a given substance which would conserve both animals and resources.

To evaluate potential economic impacts of the proposed testing, test costs are annualized and compared with annual revenues. The annualized test costs, using a 7 percent cost of capital over a period of 15 years, are $54,250 to $90,081 for each of the ten substances.

Dividing these annualized costs by the appropriate production volumes in Table 3 for each substance, and then dividing these amounts by the appropriate price per pound in the following Table 8, the percent price increase per pound due to testing was estimated.

TABLE 8.—ECONOMIC ANALYSIS

Chemical/CAS No.	Chemical Price/Pound (Dollars)	Percent Chemical Price Increase/pound
acetone (67-64-1)	0.310	0.0071 to 0.0126
n-amyl acetate (628-63-7)	0.660	0.6834 to 1.2101
1-butanol (71-36-3)	0.360	0.0077 to 0.0136
n-butyl acetate (123-86-4)	0.430	0.0646 to 0.1147
diethyl ether (60-29-7)	0.515	0.1916 to 0.2392
2-ethoxyethanol (110-80-5)	0.750	0.0564 to 0.1062
ethyl acetate (141-78-6)	0.410	0.0514 to 0.0911
isobutyl alcohol (78-83-1)	0.360	0.0863 to 0.1528
methyl isobutyl ketone (108-10-1)	0.450	0.0535 to 0.0948
tetrahydrofuran (109-99-9)	1.220	0.0289 to 0.0511

Table 8 shows that for 9 of the 10 substances, unit test costs are substantially lower than one percent of price. For these 9 substances, it appears that the costs of testing will have little significant adverse economic impact. In the case of n-amyl acetate, costs range from 0.68 to 1.21 percent of price, which is substantially higher than that of the other 9 substances (due to its lower production volume). In only the upper bound case, these costs may pose some potential for adverse impacts. If comments are received which indicate that the impacts are greater, a more comprehensive and detailed analysis will be conducted which more precisely predicts the magnitude and distribution of the expected impacts.

For a complete discussion of test cost estimation and potential for economic impact resulting from these costs, refer to the economic analysis which is contained in the public record for this rulemaking.

VII. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this proposed rule (Refs. 27 and 33).

This rule would require concurrent neurotoxicity testing of 10 substances. EPA believes that space within the laboratories is available to adequately accommodate the 10 substances proposed for neurotoxicity testing. EPA also anticipates that laboratory capacity would increase to accommodate the demand created by future amendments to this rule.

VIII. Public Meeting

If requested, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should call Mary Louise Hewlett, Chemical Testing Branch (202) 475-8162 by April 18, 1991. The meeting is open to the public, but active participation will be limited to EPA representatives and those who requested to comment. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

IX. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments should be submitted to EPA for the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment which contains CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPTS-42134). In addition, each substance in the rule has a separate docket number. This record contains the basic information considered by EPA in developing this proposal and appropriate Federal Register notices. EPA will supplement this record as necessary.

A public version of the record, from which all CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Room G-004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 am to noon, and 1 pm to 4 pm, Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034; August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(c) Notice responding to the Interagency Testing Committee's (ITC's) recommendation on methyl ethyl ketone. (47 FR 58025, December 29, 1982).

(d) Notice responding to the ITC's recommendation on toluene. (47 FR 56391, December 16, 1982).

(e) Notice responding to the ITC's recommendation on xylenes. (47 FR 56392, December 16, 1982).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications before proposal consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries including RMI meeting (July 12, 1990).

(4) Support documents consisting of:

(a) Economic impact analysis of NPRM for the substances contained in this proposed rule.

(5) Reports - published and unpublished factual materials including "Evaluation of TSCA guidelines for neurotoxicity testing." (April 14, 1987).

B. References

(1) U.S. Congress, Office of Technology Assessment. Neurotoxicity: Identifying and Controlling Poisons of the Nervous System. Chapter 1. "Summary, Policy Issues, and Options for Congressional Action". OTA-BA-436. Washington, DC. US Government Printing Office. (April 1990).

(2) Syracuse Research Corporation, Syracuse, NY. "Technical Support for Selection of Solvents for a Neurotoxicity Test Rule." Contract No. 68-D8-0117, Task 103. TR 89-218. (January 11, 1990).

(3) Syracuse Research Corporation. Syracuse, NY. "Neurotoxicity Profile of Solvents." Contract No. 68-D8-0117, Task: 07. (July 31, 1990).

(4) Casarett and Doull's Toxicology. Editors: Klaassen, C.D., Amdur, M.O. and Doull, J. Chapter 20: Toxic Effects of Solvents and Vapors. pp. 638-638. 3rd edition. (1986).

(5) United States Environmental Protection Agency (USEPA). "Consumer exposure assessment." Memorandum from Conrad Flessner, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, Office of Toxic Substances (OTS), USEPA, Washington, DC. (July 18, 1990).

(6) USEPA. "Consumer exposure assessment." Memorandum from Sidney Abel, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 17, 1990).

(7) NIOSH. National Institute for Occupational Safety and Health. National Occupational Exposure Survey (NOES). Computer printout. (March 29, 1989).

(8) USEPA. Toxics-Release Inventory. EPA 700/4-89-006. Office of Pesticides and Toxic Substances, Washington, DC. (June 1989).

(9) USEPA. "Consumer exposure assessment". Memorandum from Christina Cinalli, Exposure Assessment Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 17, 1990).

(10) Versar, Inc., Springfield, VA. "Estimates of consumer exposure to ethyl ether". Memorandum from Carl D'Ruiz, Versar, Inc., to Conrad Flessner, Exposure Assessment Branch, OTS, USEPA, Washington, DC. (September 20, 1990).

(11) Dick, R.B., Setzer, J.V., Taylor, B.J., and Shukla, R. "Neurobehavioral effects of short duration exposures to acetone and methyl ethyl ketone". *British Journal of Industrial Medicine*. 46:111-121. (1989).

(12) Bruckner, J.V. and Peterson, R.G. "Evaluation of toluene and acetone inhalant abuse. I. Pharmacology and pharmacodynamics". *Toxicology and Applied Pharmacology*. 61:27-38. (1981).

(13) Glowa, J.R. and Dews, P.B. "Behavioral toxicology of volatile organic solvents. IV. Comparison of the rate-decreasing effects of acetone, ethyl acetate, methyl ethyl ketone, toluene, and carbon disulfide on schedule-controlled behavior of mice". *Journal of the American College of Toxicology*. 6:481-488. (1987).

(14) Wallgren, H. "Relative intoxicating effects on rats of ethyl, propyl and butyl alcohols". *Acta Pharmacologica et Toxicologica*. 36:217-222. (1966).

(15) Maickel, R.P. and Nash, jr., J.F. "Differing effects of short-chain alcohols on body temperature and coordinated muscular activity in mice". *Neuropharmacology*. 24:83-89. (1985).

(16) DeCeaurriz, J., Desiles, J.P., Bonnet, P., Marignac, B., Muller, J. and Guenier, J.P. "Concentration-dependent behavioral changes in mice following short-term inhalation exposure to various industrial solvents". *Toxicology and Applied Pharmacology*. 67:383-389. (1983).

(17) Schulze, G.E. "2,4-n-Butyl ester [2,4-D ester) induced ataxia in rats: Role for n-butanol formation". *Neurotoxicology and Teratology*. 10:81-84. (1988).

(18) Tyl, R.J. "Final report on the safety assessment of ethyl acetate and butyl acetate". *Journal of the American College of Toxicology*. 2:881-705. (1989).

(19) Hosick, E.C., Clark, D.L., Adam, N., and Rosner, B.S. "Neurophysiological effects of different anesthetics in conscious man". *Journal of Applied Physiology*. 31: 892-898. (1971).

(20) Clark, D.L., Hosick, E.C., and Rosner, B.S. "Neurophysiological effects of different anesthetics in unconscious man". *Journal of Applied Physiology*. 31: 894-898. (1971).

(21) Essman, W.B., and Jarvik, M.E. "Impairment of retention for a conditioned response by ether anesthesia in mice". *Psychopharmacologia*. 2: 172-178. (1961).

(22) Wimer, R.E. and Huston, C. "Facilitation of learning performance by posttrial etherization". *Behavioral Biology*. 10: 385-389. (1974).

(23) Mori, K., Mitani, H., and Fujita, M. "Epileptogenic properties of diethyl ether on the cat central nervous system". *Electroencephalography and Clinical Neurophysiology*. 30:345-349. (1971).

(24) Suzuki, S.S. and Smith, G.K. "Spontaneous EEG spikes in the normal hippocampus. V. Effects of ether, urethane, pentobarbital, atropine, diazepam and bicuculline". *Electroencephalography and Clinical Neurophysiology*. 70: 84-95. (1988).

(25) Shimoji, K., Fujioka, H., Fukazawa, T., Hashiba, M., and Maruyama, Y. "Anesthetics and excitatory/inhibitory responses of midbrain reticular neurons". *Anesthesiology*. 61: 151-155. (1984).

(26) Tham, R., Bunnfors, L., Eriksson, B., Larsby, B., Lindgren, S., and Odkvist, M. "Vestibulo-ocular disturbances in rats exposed to organic solvents". *Acta Pharmacologica et Toxicologica*. 54: 58-63. (1984).

(27) USEPA. "Evaluation of TSCA guidelines for neurotoxicity testing." Regulatory Impacts Branch, Office of Toxic Substances, USEPA, Washington, DC. (April 14, 1987).

(28) Syracuse Research Corp., Syracuse, N.Y. Hazardous Substances Databank printout. (June 18, 1990).

(29) Tyl, R.W., France, K.A., Fisher, L.C., Pritts, I.M., Tyler, T.R., Phillips, R.D., and Moran, E.J. "Developmental Toxicity evaluation of inhaled methyl isobutyl ketone in Fischer 344 rats and CD-1 mice." *Fundamental and Applied Toxicology*. 8:310-327. (1987).

(30) Nelson, B.K., Brightwell, W.S., Setzer, J.V., Taylor, B.J., and Hornung, R.W. "Ethoxyethanol behavioral teratology in rats." *Neurotoxicology*. 2: 231-249. (1981).

(31) Nelson, B.K., Brightwell, W.S., and Setzer, J.V. "Prenatal interactions between ethanol and the industrial solvent 2-ethoxyethanol in rats: Maternal and behavioral teratogenic effects." *Neurobehavioral Toxicology and Teratology*. 4:387-394. (1982).

(32) USEPA. "Economic impact evaluation of proposed multi-chemical rule for the testing of neurotoxicity." Economics and Technology Division, OTS, USEPA, Washington, DC. (July 25, 1990).

(33) Boss, Allen Hamilton, Inc., Bethesda, MD. "EPA census of the toxicological testing industry." Prepared for the Office of Policy Analysis, OTS, USEPA, Washington, DC. (June 1990).

(34) USEPA. "Selection of chemicals for testing under neurotoxicity endpoint rule." Memorandum from Sue McMaster, Toxic Effects Branch, to Catherine Roman, Chemical Testing Branch, OTS, USEPA, Washington, DC. (July 26, 1990).

(35) USEPA. "Household Solvent Products: A National Usage Survey." EPA-OTS 560/5-87-005. (July 1987).

(36) Scheuplein, R.J. and Blank, I.H. "Mechanism of percutaneous absorption. IV. Penetration of nonelectrolytes (alcohols) from aqueous solutions and from pure liquids." *Journal of Investigative Dermatology*. 60: 286-296. (1973).

(37) Dugard, P.H., Walker, M., Mawdsley, S.J. and Scott, R.C. "Absorption of some glycol ethers through human skin *in vitro*." *Environmental Health Perspectives*. 57: 193-197. (1984).

(38) Chemical Manufacturers Association, et.al. v. Environmental Protection Agency, 899 F.2d 344 (5th Cir. 1990).

(39) H. Rept. 1341, 94th Cong. 2d Sess. (1976), at 18 reprinted in, A Legislative History of the Toxic Substances Control Act (Comm. Print 1976) ["Leg. Hist."] at 425.

(40) H. Conf. Rept. 1679, 94th Cong. 2d Sess. (1976), reprinted in, Leg. Hist. at 674.

(41) USEPA. Information Management Division, Confidential Data Branch. 1977 Chemical Commerce Information Search.

(42) Toxics Release Inventory under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11023.

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would

not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to range from 499 to 6,984 hours per response (average of 2,400 hours per response). The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Testing laboratories, Reporting and recordkeeping requirements, Testing.

Dated: February 25, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, Subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, and 2625.

2. By amending § 799.5050 by adding in CAS No. order, 10 designated substances and their approriate testing requirements to read as follows:

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	• • • • • • •				
60–29–7	diethyl ether				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
67–64–1	acetone				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
71–36–3	1-butanol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
	• • • • • • •				
78–83–1	isobutyl alcohol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
	• • • • • • •				
108–10–1	methyl isobutyl ketone				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
109–99–9	tetrahydrofuran				
	Health effects testing:				

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
110–80–5	2-ethoxyethanol				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)

. . . . . .

123–86–4	*n*-butyl acetate				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
141–78–6	ethyl acetate				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

CAS No.	Chemical name/types of testing	Basic testing requirements	(b) Additional testing requirements	Limitations and restrictions	Effective dates
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)
628–63–7	*n*-amyl acetate				
	Health effects testing:				
	Acute neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(i), (3)(i)	Reports: 9 mo.	(–/–/–)
	Subchronic neurotoxicity:				
	Functional observational battery	§ 798.6050, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Motor activity	§ 798.6200, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Neuropathology	§ 798.6400, except paragraphs (d)(1)(i), (5) and (6)	(1)(ii), (2)(ii), (3)(i)	Reports: 21 mo.	(–/–/–)
	Schedule-controlled operant behavior	§ 798.6500, except paragraphs (d)(2)(i)(A), (6), (7) and (8)(v)	(1)(ii), (2)(ii), (xx), (3)(i)	Reports: 21 mo.	(–/–/–)

. . . . . .

. . . . . .

[FR Doc. 91–5013 Filed 3–1–91; 8:45 am]
BILLING CODE 6560–50–F

Reader Aids

Federal Register
Vol. 56, No. 42
Monday, March 4, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904 1
8905-9120 4

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders

Presidential Determinations:
No. 91-20 of January 25, 1991 8681

Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991) 8681

7 CFR

46 8683
905 8684
918 8905

8 CFR

241 8906
242 8906
274 8685

9 CFR

331 ..... 8907, 8908
381 ..... 8907, 8908

12 CFR

265 8687
600 8910
601 8910
602 8910
603 8910
604 8910
606 8910
611 8910
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
960 8688

14 CFR

21 8699-8701
25 8699-8701
39 8704-8707
1209 8910

Proposed Rules:
39 ..... 8732, 8733, 8935
91 8938

18 CFR

Proposed Rules:
35 8938

21 CFR

5 8709
520 ..... 8709, 8710
556 8710
1316 8685

Proposed Rules:
808 8940

22 CFR

514 8711

24 CFR

Proposed Rules:
203 8941

26 CFR

1 8911
31 8911
602 8912

Proposed Rules:
1 8943-8967

27 CFR

5 8922

28 CFR

0 8923
8 8685

Proposed Rules:
11 8734

29 CFR

801 9046

30 CFR

Proposed Rules:
901 8967
913 8969

33 CFR

117 8712
151 8878

40 CFR

Proposed Rules:
Ch. I 8972
86 8856
123 8973
600 8856
799 8974

42 CFR

400 8832
405 8832
406 8832

45 CFR

74 8712
205 8924
232 8926
234 8926
235 8926

46 CFR

25 8878

47 CFR

73.....8933, 8934
Proposed Rules:
73.....8974–8976

48 CFR

Ch. 2, App. N.....9082
202.....9082
203.....9082
204.....9082
217.....9082
225.....9082
228.....9082
232.....9082
245.....9082
252.....9082
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR

1011.....8721
1330.....8722

50 CFR

611.....8722, 38723
620.....8722
672.....8723–8730
Proposed Rules:
656.....8736

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
*	15.00	Jan. 1, 1991
5 Parts:		
1–699	15.00	Jan. 1, 1990
700–1199	13.00	Jan. 1, 1990
1200–End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
*0–26	15.00	Jan. 1, 1991
27–45	12.00	Jan. 1, 1990
46–51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53–209	19.00	Jan. 1, 1990
210–299	25.00	Jan. 1, 1990
300–399	12.00	Jan. 1, 1990
400–699	20.00	Jan. 1, 1990
700–899	22.00	Jan. 1, 1990
900–999	29.00	Jan. 1, 1990
1000–1059	16.00	Jan. 1, 1990
1060–1119	13.00	Jan. 1, 1990
1120–1199	10.00	Jan. 1, 1990
1200–1499	18.00	Jan. 1, 1990
1500–1899	11.00	Jan. 1, 1990
1900–1939	11.00	Jan. 1, 1990
1940–1949	21.00	Jan. 1, 1990
1950–1999	24.00	Jan. 1, 1990
2000–End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1–199	20.00	Jan. 1, 1990
200–End	18.00	Jan. 1, 1990
10 Parts:		
0–50	21.00	Jan. 1, 1990
51–199	17.00	Jan. 1, 1990
200–399	13.00	[2] Jan. 1, 1987
400–499	21.00	Jan. 1, 1990
500–End	26.00	Jan. 1, 1990
11	11.00	Jan. 1, 1990
12 Parts:		
1–199	12.00	Jan. 1, 1990
200–219	12.00	Jan. 1, 1990
220–299	21.00	Jan. 1, 1990
300–499	19.00	Jan. 1, 1990
500–599	17.00	Jan. 1, 1990
600–End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1–59	25.00	Jan. 1, 1990
60–139	24.00	Jan. 1, 1990
140–199	10.00	Jan. 1, 1990
200–1199	21.00	Jan. 1, 1990
1200–End	13.00	Jan. 1, 1990
15 Parts:		
0–299	11.00	Jan. 1, 1990
300–799	22.00	Jan. 1, 1990
800–End	15.00	Jan. 1, 1990
16 Parts:		
*0–149	5.50	Jan. 1, 1991
150–999	14.00	Jan. 1, 1990
1000–End	20.00	Jan. 1, 1990
17 Parts:		
1–199	15.00	Apr. 1, 1990
200–239	16.00	Apr. 1, 1990
240–End	23.00	Apr. 1, 1990
18 Parts:		
1–149	16.00	Apr. 1, 1990
150–279	16.00	Apr. 1, 1990
280–399	14.00	Apr. 1, 1990
400–End	9.50	Apr. 1, 1990
19 Parts:		
1–199	28.00	Apr. 1, 1990
200–End	9.50	Apr. 1, 1990
20 Parts:		
1–399	14.00	Apr. 1, 1990
400–499	25.00	Apr. 1, 1990
500–End	28.00	Apr. 1, 1990
21 Parts:		
1–99	13.00	Apr. 1, 1990
100–169	15.00	Apr. 1, 1990
170–199	17.00	Apr. 1, 1990
200–299	5.50	Apr. 1, 1990
300–499	29.00	Apr. 1, 1990
500–599	21.00	Apr. 1, 1990
600–799	8.00	Apr. 1, 1990
800–1299	18.00	Apr. 1, 1990
1300–End	9.00	Apr. 1, 1990
22 Parts:		
1–299	24.00	Apr. 1, 1990
300–End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0–199	20.00	Apr. 1, 1990
200–499	30.00	Apr. 1, 1990
500–699	13.00	Apr. 1, 1990
700–1699	24.00	Apr. 1, 1990
1700–End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0–1–1.60	15.00	Apr. 1, 1990
§§ 1.61–1.169	28.00	Apr. 1, 1990
§§ 1.170–1.300	18.00	Apr. 1, 1990
§§ 1.301–1.400	17.00	Apr. 1, 1990
§§ 1.401–1.500	29.00	Apr. 1, 1990
§§ 1.501–1.640	16.00	[3] Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1990
§§ 1.851–1.907	20.00	Apr. 1, 1990
§§ 1.908–1.1000	22.00	Apr. 1, 1990
§§ 1.1001–1.1400	18.00	Apr. 1, 1990
§§ 1.1401–End	24.00	Apr. 1, 1990
2–29	21.00	Apr. 1, 1990
30–39	15.00	Apr. 1, 1990
40–49	13.00	[3] Apr. 1, 1989
50–299	16.00	[3] Apr. 1, 1989
300–499	17.00	Apr. 1, 1990
500–599	6.00	Apr. 1, 1990
600–End	6.50	Apr. 1, 1990
27 Parts:		
1–199	24.00	Apr. 1, 1990
200–End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
500–899	26.00	July 1, 1990
900–1899	12.00	July 1, 1990
1900–1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
1911–1925	9.00	[6] July 1, 1989
1926	12.00	July 1, 1990
1927–End	25.00	July 1, 1990
30 Parts:		
0–199	22.00	July 1, 1990
200–699	14.00	July 1, 1990
700–End	21.00	July 1, 1990
31 Parts:		
0–199	15.00	July 1, 1990
200–End	19.00	July 1, 1990
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	24.00	July 1, 1990
190–399	28.00	July 1, 1990
400–629	24.00	July 1, 1990
630–699	13.00	[6] July 1, 1989
700–799	17.00	July 1, 1990
800–End	19.00	July 1, 1990
33 Parts:		
1–124	16.00	July 1, 1990
125–199	18.00	July 1, 1990
200–End	20.00	July 1, 1990
34 Parts:		
1–299	23.00	July 1, 1990
300–399	14.00	July 1, 1990
400–End	27.00	July 1, 1990
35	10.00	July 1, 1990
36 Parts:		
1–199	12.00	July 1, 1990
200–End	25.00	July 1, 1990
37	15.00	July 1, 1990
38 Parts:		
0–17	24.00	July 1, 1990
18–End	21.00	July 1, 1990
39	14.00	July 1, 1990
40 Parts:		
1–51	27.00	July 1, 1990
52	28.00	July 1, 1990
53–60	31.00	July 1, 1990
61–80	13.00	July 1, 1990
81–85	11.00	July 1, 1990
86–99	26.00	July 1, 1990
100–149	27.00	July 1, 1990
150–189	23.00	July 1, 1990
190–259	13.00	July 1, 1990
260–299	22.00	July 1, 1990
300–399	11.00	July 1, 1990
400–424	23.00	July 1, 1990
425–699	23.00	[6] July 1, 1989
700–789	17.00	July 1, 1990
790–End	21.00	July 1, 1990
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	8.50	July 1, 1990
101	24.00	July 1, 1990
102–200	11.00	July 1, 1990
201–End	13.00	July 1, 1990
42 Parts:		
1–60	16.00	Oct. 1, 1990
61–399	5.50	Oct. 1, 1990
400–429	21.00	Oct. 1, 1990
430–End	25.00	Oct. 1, 1990
43 Parts:		
1–999	19.00	Oct. 1, 1990
1000–3999	26.00	Oct. 1, 1990
4000–End	12.00	Oct. 1, 1990
44	23.00	Oct. 1, 1990
45 Parts:		
1–199	17.00	Oct. 1, 1990
200–499	12.00	Oct. 1, 1990
500–1199	26.00	Oct. 1, 1990
1200–End	18.00	Oct. 1, 1990
46 Parts:		
1–40	14.00	Oct. 1, 1990
41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
90–139	12.00	Oct. 1, 1990
140–155	13.00	Oct. 1, 1990
156–165	14.00	Oct. 1, 1990
166–199	14.00	Oct. 1, 1990
200–499	20.00	Oct. 1, 1990
500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
20–39	18.00	Oct. 1, 1990
40–69	9.50	Oct. 1, 1990
70–79	18.00	Oct. 1, 1990
80–End	20.00	Oct. 1, 1990
48 Chapters:		
1 (Parts 1–51)	30.00	Oct. 1, 1990
1 (Parts 52–99)	19.00	Oct. 1, 1990
2 (Parts 201–251)	19.00	Oct. 1, 1990
2 (Parts 252–299)	15.00	Oct. 1, 1990
3–6	19.00	Oct. 1, 1990
7–14	26.00	Oct. 1, 1990
15–End	29.00	Oct. 1, 1990
49 Parts:		
1–99	14.00	Oct. 1, 1990
100–177	27.00	Oct. 1, 1990
178–199	22.00	Oct. 1, 1990
200–399	21.00	Oct. 1, 1990
400–999	26.00	Oct. 1, 1990
1000–1199	17.00	Oct. 1, 1990
1200–End	19.00	Oct. 1, 1990
50 Parts:		
1–199	20.00	Oct. 1, 1990
200–599	16.00	Oct. 1, 1990
600–End	15.00	Oct. 1, 1990
CFR Index and Findings Aids	30.00	Jan. 1, 1990
Complete 1991 CFR set	620.00	1991
Microfiche CFR Edition:		
Complete set (one-time mailing)	185.00	1988
Complete set (one-time mailing)	185.00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188.00	1991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

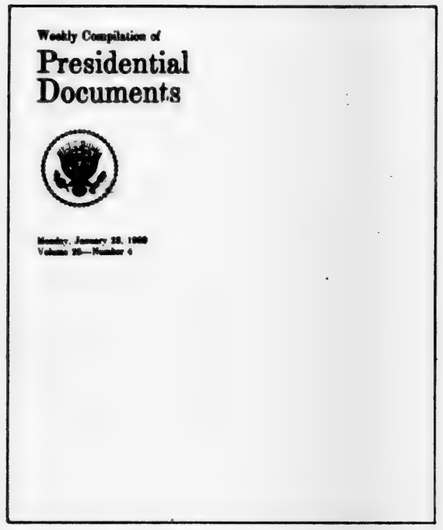
[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Order Now!

The United States Government Manual 1990/91

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy



Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 10-1-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6216

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me ____ subscriptions to PUBLIC LAWS for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2 _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

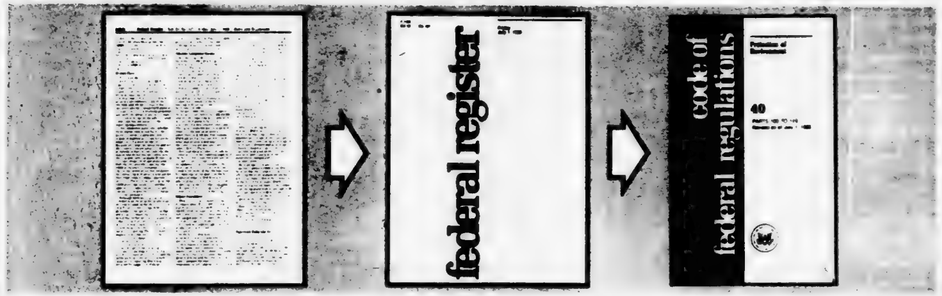
_____ *Thank you for your order!*
(Credit card expiration date)

_____
(Signature) 1/91

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current **CFR** volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*6463

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ *Thank you for your order!*
(Credit card expiration date)

_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

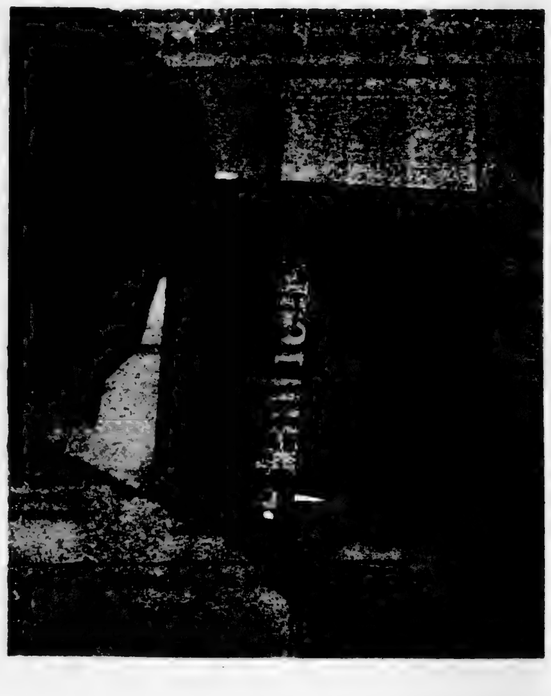
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code
* 6462

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ Federal Register: ____ One year: $195 ____ Six months: $97.50

____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)

OL
56

SS
42

IR
4

991

MI

OL
56
SS
43
MR
5
991
MI

3-5-91
Vol. 56 No. 43

federal register

Tuesday
March 5, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
43
MR
5
991
MI

3-05-91
Vol. 56 No. 43
Pages 9121-9266

federal register

Tuesday
March 5, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

Agriculture Department
See also Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service
PROPOSED RULES
Highly erodible land and wetland conservation:
Food, Agriculture, Conservation, and Trade Act; implementation, 9258

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 9201

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
March; correction, 9226

Animal and Plant Health Inspection Service
NOTICES
Meetings:
Veterinary biological products; manufacture and distribution; correction, 9251

Army Department
See Engineers Corps

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 9194

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Feed grains, rice, upland and exta long staple cotton, wheat, and related programs; (1991-1995 crops)
Correction, 9251

Consumer Product Safety Commission
PROPOSED RULES
Poison prevention packaging:
Household substances; child-resistant packaging requirements, 9161
NOTICES
Agency information collection activities under OMB review, 9199

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Robbins, Allen J., et al., 9247
Robbins, Stuart, 9247

Defense Department
See also Air Force Department; Engineers Corps
NOTICES
Meetings:
Science Board et al., 9200
Scientific Advisory Group, 9200
Privacy Act:
Systems of records, 9200

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Exempt chemical preparations, 9132

Education Department
NOTICES
Agency information collection activities under OMB review, 9203
(2 documents)
Grants and cooperative agreements; availability, etc.:
Centers for independent living program, 9204
Native Hawaiian special education program, 9204
Upward Bound program—
Math and science initiative, 9254
Upward Bound, talent search, and student support services programs, 9254

Employment and Training Administration
NOTICES
Adjustment assistance:
Airfoil Textron et al., 9234
Brockway, Inc., 9235
Craftco, Inc., 9235
Lee-Vic, 9236
Tektronix, Inc., 9236
W.R. Case & Sons Cutlery Co., 9236

Employment Standards Administration
See Wage and Hour Division

Energy Department
See also Federal Energy Regulatory Commission; Southeastern Power Administration
NOTICES
Grant and cooperative agreement awards:
Dawnbreaker, 9204

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Los Banos Creek, CA, 9201
Saginaw River Navigation Project, MI, 9202

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Volatile organic compound (VOC) emissions—
Polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) manufacturing industry; correction, 9177
Air quality implementation plans; approval and promulgation; various States:
Missouri, 9172
New Mexico, 9173
Vermont, 9175

Water pollution control:
Ocean dumping; site designations—
Atlantic Ocean offshore Charleston, SC, 9178
PROPOSED RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 9187
NOTICES
Air programs:
Ambient air monitoring reference and equivalent methods—
Lear Siegler Measurement Controls Corp., Monitor Labs Model 8841 Nitrogen Oxides Analyzer, 9216
PM10 Beta Gauge Automated Particle Sampler, etc., 9216
Toxic and hazardous substances control:
Premanufacture exemption applications, 9217

Equal Employment Opportunity Commission
PROPOSED RULES
Americans with Disabilities Act; implementation:
Reporting and recordkeeping requirements, 9185

Executive Office of the President
See Presidential Documents

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Hawaii, 9189
Illinois, 9189
Iowa, 9190
Missouri, 9190
(2 documents)
South Carolina, 9191

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 9249
(2 documents)

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Turner, J.D., et al., 9205
Environmental statements; availability, etc.:
Northwest Pipeline Corp., 9208
Natural gas certificate filings:
Colorado Interstate Gas Co. et al., 9209
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Mississippi State Oil and Gas Board, 9213
Applications, hearings, determinations, etc.:
Colorado Interstate Gas Co., 9213
Mississippi River Transmission Corp., 9214
Natural Gas Pipeline Co. of America, 9214
(2 documents)
Texas Sea Rim Pipeline, Inc., 9215

Federal Maritime Commission
NOTICES
Agreements filed, etc., 9217
(2 documents)

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Atlantic & Western Railway Co. et al., 9244

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 9249
Applications, hearings, determinations, etc.:
Crawford Bancorp, Inc., et al., 9218
Overstreet, James K., et al., 9218
Star Banc Corp. et al., 9219

Federal Trade Commission
RULES
Energy Policy and Conservation Act:
Energy cost and consumption information used in labeling and advertising of consumer appliances, 9123
NOTICES
Prohibited trade practices:
Alleghany Corp., 9219
Chain Pharmacy Association of New York State, Inc., et al., 9223
TK-7 Corp. et al., 9224

Forest Service
NOTICES
Environmental statements; availability, etc.:
Plumas National Forest, CA, 9193, 9194
(2 documents)

Health and Human Services Department
See also Alcohol, Drug Abuse, and Mental Health Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Assistant Secretary for Health, 9226

Health Care Financing Administration
NOTICES
Medicare:
Program issuances; quarterly listing; correction, 9251

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
March, 9226

Housing and Urban Development Department
RULES
Grant programs:
Comprehensive housing affordability standards, 9169

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service

Internal Revenue Service
RULES
Procedure and administration:
Disclosure of return information to Census Bureau, 9169
PROPOSED RULES
Procedure and administration:
Disclosure of return information to Census Bureau; cross-reference, 9182

International Trade Administration
NOTICES
Antidumping:
Stainless steel cooking ware from Korea, 9195
Countervailing duties:
Miniature carnations from Colombia, 9196
Pistachios, in-shell; from Iran, 9196
Roses and other cut flowers from Colombia, 9197
Short supply determinations:
Stainless steel wire rod, 9197

Interstate Commerce Commission
PROPOSED RULES
Practice and procedure:
Administrative dispute resolution procedures, including negotiated rulemaking; policy statement, 9191
NOTICES
Meetings; Sunshine Act, 9250

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Burlington Northern Railroad Co. et al., 9233
National Wrecking Co. et al., 9233
Union Research Co., Inc., et al., 9233
Westchem Agricultural Chemicals, Inc., et al., 9234
Privacy Act:
Systems of records, 9234

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration; Wage and Hour Division

Land Management Bureau
NOTICES
Alaska Native claims selection:
Chenega Corp., 9227
Realty actions; sales, leases, etc.:
Nevada, 9228
(3 documents)
Survey plat filings:
New Mexico, 9229
Withdrawal and reservation of lands:
Washington, 9229

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Pioneer Coal Sales, Inc., et al., 9237

Minerals Management Service
RULES
Royalty management:
Official correspondence; serving
Correction, 9251

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
Innovative Dynamics, 9237

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Barr, W.A., 9245
North, Phyllis, 9245

National Institutes of Health
NOTICES
Meetings:
National Center for Research Resources, 9226
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 9227
National Institute of Environmental Health Sciences, 9227

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
South Atlantic snapper grouper
Correction, 9251
PROPOSED RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish
Correction, 9251
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 9198
Pacific Fishery Management Council, 9198

National Park Service
NOTICES
Environmental statements; availability, etc.:
Big Thicket National Preserve, TX, 9230
(2 documents)
Lake Meredith National Recreation Area, TX, 9230
Meetings:
Cape Krusenstern National Monument Subsistence Resource Commission et al., 9231
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 9231
Wrangell-St. Elias National Park Subsistence Resource Commission, 9231
National Register of Historic Places:
Pending nominations, 9231, 9232
(2 documents)

National Science Foundation
NOTICES
Meetings:
Alan T. Waterman Award Committee, 9237

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
University of California Berkeley Research Reactor, 9238
Wisconsin Electric Power Co., 9238
Meetings:
Reactor Safeguards Advisory Committee, 9239
Meetings; Sunshine Act, 9250

Personnel Management Office
RULES
Voting rights program:
Arizona, 9180
PROPOSED RULES
Child support and/or alimony; garnishment orders; processing, 9181

Presidential Documents
PROCLAMATIONS
Special observances:
Peace Corps; 30th anniversary commemoration (Proc. 6254), 9121

Public Health Service
See Health Resources and Services Administration; National Institutes of Health

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 9250

Securities and Exchange Commission
RULES
Securities:
Net capital rules; prohibited withdrawal by registered broker-dealers, 9124
NOTICES
Applications, hearings, determinations, etc.:
NIPSCO Capital Markets, Inc., 9241
Templeton American Growth Trust, Inc., et al., 9239

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
InterEquity Capital Corp., 9243

Southeastern Power Administration
NOTICES
Power rates:
Kerr-Philpott System, 9215

Thrift Supervision Office
NOTICES
Conservator appointments:
First Federal Savings, F.S.B., 9247
First Northern Co-operative Bank, a Federal Savings Bank, 9247
Hollywood Federal Savings Bank, 9247
Receiver appointments:
First Federal Savings & Loan Association, 9247
First Northern Co-operative Bank, 9247
Hollywood Federal Bank, a Federal Savings Bank, 9247

Transportation Department
See also Federal Railroad Administration; National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 9243
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 9243

Treasury Department
See also Customs Service; Internal Revenue Service; Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 9246
(2 documents)

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 9248
(2 documents)

Wage and Hour Division
RULES
Child labor:
Civil money penalties for violations
Correction, 9252

Fair Labor Standards Act:
Computer related occupations; exemption from minimum wage and overtime compensation requirements
Correction, 9252
PROPOSED RULES
Records to be kept by employers; overtime compensation, 9183

Separate Parts In This Issue

Part II
Department of Education, 9254

Part III
Department of Agriculture, 9258

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6254 9121

5 CFR
Proposed Rules:
581 9181

7 CFR
Proposed Rules:
12 9258
1413 9251

16 CFR
305 9123
Proposed Rules:
1700 9181

17 CFR
240 9124

21 CFR
1308 9132

24 CFR
91 9169

26 CFR
301 9169
Proposed Rules:
301 9182

29 CFR
541 9252
579 9252
580 9252
Proposed Rules:
516 9183
778 9183
1602 9185

30 CFR
243 9251

40 CFR
52 (3 documents) 9172–9175
60 9177
228 9178
Proposed Rules:
300 9187

45 CFR
801 9180

47 CFR
Proposed Rules:
73 (6 documents) 9189–9191

49 CFR
Proposed Rules:
Ch. X 9191

50 CFR
646 9251
Proposed Rules:
672 9251
675 9251

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

Presidential Documents

Title 3—

The President

Proclamation 6254 of March 1, 1991

In Commemoration of the 30th Anniversary of the United States Peace Corps

By the President of the United States of America

A Proclamation

The generous spirit of the American people has produced in this country a great and long-standing tradition of voluntary service. During the past three decades, that tradition has been carried on with dramatic and far-reaching effect by the members of the United States Peace Corps.

Established in 1961 to reach out to foreign countries and to help meet their urgent needs for skilled manpower, the Peace Corps has brought a wealth of practical assistance to individuals and communities throughout the world. Since 1961, more than 125,000 Americans have served as Peace Corps volunteers in more than 100 countries. Peace Corps volunteers have not only helped to fill immediate and dire human needs but also helped to promote sustainable, long-term development in areas such as agriculture, business, education, urban development, health care, and the environment. They have done so by combining valuable material aid with efforts to help others gain the knowledge and skills needed to help themselves.

As Peace Corps volunteers well know, the needs of people in the world's emerging democracies and less developed nations are not simply material. In addition to the physical hunger found in some impoverished nations, there exists among many peoples an intense hunger for peace, hope, and opportunity—for genuine social and economic development that is rooted in respect for human rights and human potential. Recognizing the dignity and worth of all peoples and determined to help needy individuals help themselves, Peace Corps volunteers have served as influential emissaries of hope and goodwill. Accordingly, their generous humanitarian efforts have helped to foster mutual understanding and respect between the people of the United States and citizens of other countries.

Today the Peace Corps continues to expand its programs and activities throughout the world, including new programs in such countries as Mongolia, Poland, Hungary, Czechoslovakia, Namibia, and others.

Respected for its work around the world, the Peace Corps also conducts a number of valuable programs here at home. For example, through programs such as World Wise Schools and Peace Corps Fellows/USA, Peace Corps volunteers are helping children in every State of our Nation to learn more about the world in which we live.

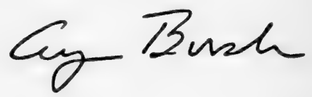
I am pleased to note that more and more Americans from all walks of life are joining in the work of the Peace Corps, whether as part of its diverse group of volunteers or through its growing partnerships with the public and private sectors. This trend is a tribute to the many past achievements of the Peace Corps, and it is a promising sign of more to come.

BEST COPY AVAILABLE

The Congress, by Senate Joint Resolution 76, has authorized and requested the President to issue a proclamation commemorating the 30th anniversary of the United States Peace Corps and commending its members for their generous service to humanity.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby urge all Americans to observe March 1, 1991—the 30th anniversary of the United States Peace Corps—with appropriate programs, ceremonies, and activities designed to honor Peace Corps volunteers, past and present, for their many contributions to our country and to the universal cause of peace and human progress.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-5319
Filed 3-1-91; 3:14 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Mar. 1, 1991, on signing Proclamation 6254, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 9).

Rules and Regulations

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for five residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This document revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on January 30 and February 11, 1991.

DATES: The revised paragraph (a) is effective March 5, 1991. The mandatory dates for using these revised DOE cost figures are detailed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035 Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[1] The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On January 30 and February 11, 1991, DOE published the most recent figures for representative average unit energy costs (56 FR 3455 and 56 FR 5455). Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1991 Submissions of Data Under § 305.8 of the Commission's Rule: The new cost figures must be used in all 1991 cost submissions.

For Labeling and Advertising of Products Covered by the Commission's Rule: Using 1991 submissions of estimated annual costs of operation based on the 1991 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1991 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register**.

Energy Usage Representations Respecting Products Covered by EPCA but not by the Commission's Rule: Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, pool heaters and space heaters) must use the 1991 representative average unit costs for energy in all representations beginning June 3, 1991.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) 1988, 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

[1] Since its promulgation, the rule has been amended twice to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987) and fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989).

TABLE 1—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1991)

Type of Energy	In common terms	As required by DOE test procedure	Dollar per million Btu [1]
Electricity	8.24¢/kWh [2,3]	$0.0824/kWh	$24.15
Natural Gas	$0.54¢/therm [4] or	$0.00000605/Btu	$6.05
	$6.23/MCF [5,6]		
No. 2 heating oil	$1.29/gallon [7]	$0.00000930/Btu	$9.30
Propane	$0.89/gallon [8]	$0.00000974/Btu	$9.74
Kerosene	$1.02/gallon [9]	$0.00000756/Btu	$7.56

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,029 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 1,136,690 Btu.
[8] For the purposes of this table, 1 gallon of Liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 136,000 Btu.

* * * * *

Donald S. Clark,
Secretary.

[FR Doc. 91-5156 Filed 3-4-91; 8:45 am]
BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-28927]

RIN 3235-AD79

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: The Securities and Exchange Commission is amending that provision of its net capital rule under the Securities Exchange Act which deals with limitations on withdrawal of equity capital. The amendments will require a registered broker-dealer to notify, in writing, the Commission and certain other described persons two business days before making withdrawals of equity capital directly or indirectly to benefit certain described persons related to the broker-dealer if those withdrawals would exceed, in any 30 day period, 30 percent of the broker-dealer's excess net capital. A broker-dealer will also be required to notify the Commission within two business days after any withdrawals, advances or loans as described above that would exceed, in any 30 day period, 20 percent of the broker-dealer's excess net capital. Withdrawals of $500,000 or less are exempt from the notification requirements of the rule amendments. In addition, the amendments will also prohibit withdrawals of equity capital, unless the broker-dealer has the prior consent of the Commission, if the effect of the withdrawals would cause the broker-dealer's net capital to be less than 25 percent of its deductions required by the net capital rule as to its readily marketable securities. Finally, the amendments would permit the Commission, by order, to prohibit withdrawals of capital from a registered broker-dealer for a period of up to twenty business days, if the withdrawals would be in an amount greater than 30 percent of the broker-dealer's excess net capital and the Commission believes such withdrawals would be detrimental to the financial integrity of the firm or would unduly jeopardize the broker-dealer's ability to pay its customer claims or other liabilities. A broker-dealer subject to an order restricting withdrawals of capital may request a post-order hearing regarding the order. Although the amendments have been substantially modified to respond to several concerns raised by the commentators, the Commission does not believe it is necessary to re-propose the amendments for comment because all the changes relate to issues that were raised for public comment.

EFFECTIVE DATE: The amendments become effective May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Michael P. Jamroz, 272-2372 or Roger G. Coffin, (202) 272-2398, Division of Market Regulation, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 15, 1990, the Commission published a release requesting comment on proposed amendments to the net capital rule which would place new limits on the withdrawal of equity capital from a broker-dealer.[1] The proposal was a response to the Commission's concerns that significant amounts of equity capital could be withdrawn from a broker-dealer between reporting periods and that the early warning levels established in the net capital rule were set too low for certain broker-dealers. Currently, the owners of registered broker-dealers may cause substantial amounts of capital to be withdrawn from the broker-dealer without notifying the Commission or its examining authority if the withdrawal does not cause the broker-dealer's net capital to decline below the levels established under the rule.

The proposal had three parts. First, the proposal would have required a broker-dealer to give two business days advance written notice to the Commission and its examining authority if the broker-dealer planned to withdraw more than the greater of $50,000 or 20 percent of its excess net capital in a 30 day period or 30 percent of its excess net capital in a 90 day period. Second, the Commission's proposal would have created an additional restriction against the withdrawal of capital when the effect of the withdrawal would have been to lower a broker-dealer's net capital below 30 percent of the firm's deductions related to its readily marketable securities if that number was greater than the broker-dealer's present early warning level. Third, the proposal would have permitted the Commission to restrict the withdrawal of capital from a specific broker-dealer for a period of up to twenty business days when the Commission believed the withdrawal would be detrimental to the financial integrity of the broker-dealer or might unduly jeopardize the firm's ability to pay its customers or creditors.

In response to the proposal, the Commission received many thoughtful comments from industry representatives. Generally, the commentators to the proposal raised a number of concerns with the proposed amendments and their effect on the ability of firms to attract capital and to finance their activities. To lessen the effect on their business activities, the commentators also suggested alterations to the proposal. The writers also commented on several technical aspects of the proposal. The Commission believes that many of the comments were appropriate and has substantially amended its original proposal. The Commission also believes, however, that the basic concerns articulated in the proposing release are valid. The Commission believes the amendments as adopted will strike an appropriate balance between the need for increased early warning protection and the ability of broker-dealers to allocate their resources efficiently.

[1] Securities Exchange Act Release No. 28347 (August 15, 1990), 55 FR 34027 (August 21, 1990).

II. The Net Capital Rule

The primary purpose of the net capital rule (Securities Exchange Act Rule 15c3-1; 17 CFR 240.15c3-1) is to protect customers and creditors of registered broker-dealers from monetary losses and delays when a broker-dealer fails. In this way, the rule acts to prevent systemic risk from the failure of a financial intermediary. The net capital rule requires registered broker-dealers to maintain sufficient liquid assets to enable firms that fall below the minimum net capital requirements set forth in the rule to liquidate in an orderly fashion without the need for a formal proceeding and at a reduced risk of customer loss.

A broker-dealer's net capital requirement is computed by deducting from net worth, among other things, the book value of illiquid assets and certain prescribed percentages from the market value of securities held in the proprietary accounts of the broker-dealer. These latter deductions are referred to as "haircuts." In the case of many firms, haircuts are substantial and require the broker-dealer to maintain significant amounts of capital (either in the form of equity capital or debt subordinated in accordance with the rule) to carry the positions in order to maintain net capital compliance.

Presently, the net capital rule requires a registered broker-dealer conducting a general securities business to maintain net capital in excess of the greater of $25,000 or 6⅔ percent of its liabilities and other obligations ("basic or aggregate indebtedness method"). If the broker-dealer makes an election under paragraph (f) of the net capital rule, it must maintain net capital in excess of the greater of $100,000 or 2 percent of its so called aggregate debit items ("alternative method"). These aggregate debit items generally may be thought of as a broker-dealer's customer-related receivables.[2]

Paragraph (e) of the net capital rule limits the withdrawal of equity capital from a registered broker-dealer by any stockholder or partner, or the making of unsecured advances or loans to any stockholder, partner or employee if the effect of such withdrawal, advance or loan would reduce the broker-dealer's net capital below certain specified levels, which are set at levels higher than the required minimums. These levels, in effect, serve as early warning levels to alert regulatory authorities that a broker-dealer is experiencing financial difficulty. The early warning levels also prevent the broker-dealer from favoring owners of the firm to the detriment of its customers or other creditors by placing restrictions on the withdrawal of equity capital. For example, the withdrawals cannot cause the broker-dealer's net capital to be less than, among other things, 120 percent of the applicable minimum dollar amount required under Rule 15c3-1. If the broker-dealer is computing its net capital requirement under the basic method, paragraph (e) prohibits the firm from making an unsecured loan, advance or withdrawal to benefit insiders if the effect thereof would cause the firm's aggregate indebtedness to exceed 1000 percent of its net capital. If the broker-dealer calculates its net capital requirement under the alternative method, it may not allow its net capital to be reduced by withdrawals, advances or unsecured loans to insiders to an amount lower than 5 percent of its aggregate debit items.

The problems unique to broker-dealers that operate within a holding company organization have come into focus in recent years and were dramatically illustrated in the failure of Drexel Burnham Lambert Group Inc. ("Drexel"), the holding company parent of the registered broker-dealer Drexel Burnham Lambert, Inc. ("DBL"). Drexel, like other large investment banking concerns, developed an organizational structure in which the registered broker-dealer DBL was one member of a number of subsidiaries and affiliates of Drexel conducting financial and securities activities, some of which were regulated by the Commission, others were regulated by other agencies or were unregulated. Many broker-dealer holding companies rely on short-term unsecured financing to fund their activities. Drexel had over $1 billion in commercial paper and other short-term borrowings outstanding which it needed to fund it day to day operations. As a result of significant losses and a decline in the rating of its commercial paper, Drexel found it difficult to renew its short-term borrowings. Drexel was then forced to look to the only liquid sources of capital in its assets—the excess net capital of DBL and an affiliated government securities dealer.

In a period of approximately three weeks, and without the knowledge of the Commission or the New York Stock Exchange Inc., (the "NYSE") DBL's designated examining authority, since no notice was required under then existing rules, approximately $220 million was transferred from the broker-dealer to the holding company in the form of short-term loans. This action occurred during a period in which the default or financial problems of a number of issuers had adversely impacted the liquidity and pricing reliability in the high-yield securities market and raised difficulties in valuing a substantial portion of DBL's portfolio of securities for the purposes of determining capital compliance. Moreover, at the time the Commission became aware of Drexel's financial dilemma, Drexel or its affiliates had more than $400 million in short-term liabilities coming due in the next two weeks and an additional $330 million scheduled to mature in the next month.

Prior to the chapter 11 bankruptcy filing by Drexel, the Commission advised Drexel and DBL of its concerns regarding the previous withdrawals of capital by Drexel from DBL and an affiliated government securities dealer. Additionally, the Division of Market Regulation and the NYSE each sent letters to Drexel and DBL which resulted in Drexel's ceasing to withdraw further capital from DBL. However, had the Commission and the NYSE not intervened when they did, Drexel could have continued to extract funds from DBL until DBL's early warning level was reached. Especially in light of Drexel's precarious financial position and the uncertainty surrounding DBL's valuation of its high-yield portfolio, this would have created the risk that the broker-dealer's customers and counterparties would have been subjected to a liquidation under the Securities Investor Protection Act.

[2] More specifically, the broker-dealer must maintain net capital in excess of its aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirement for Brokers and Dealers contained in Securities Exchange Act Rule 15c3-3 (17 CFR 240.15c3-3).

III. The Rule Amendments

A. General Comments

Several commentators questioned whether the amendments are necessary or an appropriate alternative to the effective enforcement of existing regulatory requirements. Some commentators pointed to the successful liquidation of DRL as evidence for the proposition that the Commission's financial responsibility rules already provide a satisfactory mechanism for monitoring and reacting to financial difficulties in a registered broker-dealer. Others argued that the amendments, insofar as they stem from the Drexel failure, are an overboard solution to a unique problem. The Drexel situation was distinctive, according to these commentators, because of the combination of a weak capital and financing structure at the holding company level with liquidity and pricing concerns relative to DRL's high-yield securities portfolio.

The Commission believes that, while the Drexel situation was ultimately resolved without any customer loss, it underlined the critical importance of providing the Commission with the necessary regulatory tools to prevent a repetition of similar events. In the case of Drexel, the Commission became aware of the nature and the severity of Drexel's financial problems after the staff of the Commission was informed by outside sources that a government securities dealer was prepared to inform government securities broker's brokers that the dealer would no longer trade in government securities with Drexel's government securities subsidiary. Such a step by a major securities firm relating to a primary dealer in the government securities market was highly unusual, and triggered the ensuing review by the Commission which identified the precarious financial condition of Drexel, DBL and the government securities dealer. The Commission believes the net capital rule should operate to provide assured notice of significant and sudden changes in the amount of capital that a firm has committed to supporting its operations and should contain provisions that will enable the Commission to respond to situations that arise in the future that raise similar concerns.

B. Early Warning Level Based on Haircuts

In proposing an early warning level based on 20 percent of a broker-dealer's haircuts, the Commission was concerned that the levels set in paragraph (e) of the net capital rule were not sufficient for broker-dealers conducting a dealer business. The theory underlying the alternative method of calculating net capital is that the amount of customer debits a firm has will provide an approximation of its needs for a capital base. However, a broker-dealer conducting a dealer business may have relatively few customer debits. Therefore, its net capital requirement under the alternative method may be relatively low and not related to the size or risk of its dealer business. Because the early warning levels currently contained in paragraph (e) of the net capital rule are based on minimum net capital requirements, they too may be relatively low and not related to the risks inherent in the dealer business.

While some commentators recognized that the overall risk exposure of certain broker-dealers may be accurately reflected by an early warning level based on haircuts, other commentators argued that the haircuts test would, in effect, operate as a minimum net capital requirement instead of an early warning level because it would prohibit firms from distributing capital to affiliates once the threshold is reached. They argued that such a restriction was unnecessary because the haircuts on proprietary positions required by the rule already ensure that firms primarily engaged in proprietary trading are adequately capitalized. Those commentators also argued that creating an early warning level based on 20 percent of haircuts would unduly restrict broker-dealers' ability to apportion capital as business opportunities presented themselves. For this reason, a number of commentators suggested incorporating the 20 percent test into paragraph (e)(1) calling for notification only. These commentators also argued that 20 percent of haircuts was too high and that a lower number would sufficiently address the Commission's concerns about the potential liquidation of a failing broker-dealer.

The Commission believes that the net capital rule should be structured in a manner that would limit the ability of a broker-dealer that is holding proportionately large amounts of proprietary securities positions to its equity capital from withdrawing significant amounts of capital without reducing the risk related to those positions. However, unlike a minimum net capital requirement, the amendment would allow the broker-dealer to continue operations if its net capital declines below the specified percentage of haircuts. Moreover, a firm that is at or approaching the threshold level may begin to sell off some of its positions, which will decrease the amount of its haircuts and tend to increase the amount of its net capital. Therefore, a firm wishing to make withdrawals may do so, once it has voluntarily reduced the amount of its securities positions.

The Commission has considered the arguments put forth by the commentators and has decided to lower the threshold percentage of haircuts from 20 percent to 25 percent. While the Commission acknowledges that any selection of a quantitative standard in this regard is necessarily imprecise, the Commission considers capital equal to 25 percent of haircuts to be a reasonable level at which a broker-dealer should be required to liquidate positions before withdrawing additional capital. As noted in the release proposing these amendments for comment, the Commission examined the net capital and haircut numbers of the twenty largest NYSE member firms in order to determine the appropriate percentage of haircuts to use as a restriction. However, the Commission recognizes that there may be instances where it may be appropriate to allow a broker-dealer to withdraw funds in an amount that would reduce the firm's capital below 25 percent of the firm's haircuts. Therefore, the Commission is adopting the early warning level based on 25 percent of haircuts with a modification that permits the Commission to waive this restriction. Under the provision, as modified, a broker-dealer may obtain approval of the Commission in advance of any withdrawals that would lower the firm's net capital below 25 percent of its haircuts.[5] This will, the Commission believes, afford broker-dealers the necessary flexibility to conduct their businesses, while at the same time satisfying the Commission's regulatory objectives.

It should be noted that the Commission is adopting a new paragraph (e)(4)(iv) that clarifies a question raised by the commentators and specifies that any transaction between a broker-dealer and an affiliate or insider that results in a diminution of the broker-dealer's net capital would be considered a loan or an advance and would therefore be covered by the amendments.[6] The Commission believes

[5] The Commission does not anticipate granting waivers of the haircut restriction in the ordinary course of business. This provision is intended to apply in situations where a firm has commenced or is about to liquidate its securities positions. In these cases, the Commission anticipates that it will respond quickly to a request for a waiver in order to assist the expeditious wind-up of the broker-dealer's business.

[6] The Commission realizes that there may be instances where the registered broker-dealer makes

Continued

that this clarification is necessary to cover those instances where a broker-dealer seeks to transfer funds to an affiliate by selling or otherwise transferring assets to the affiliate.

C. Notification Requirement

As proposed, the amendments to Rule 15c3–1 would have required broker-dealers to notify the Commission two days prior to any withdrawals that would exceed, in any 30 day period, the greater of $50,000 or 20 percent of excess net capital or in any 90 day period, 30 percent of excess net capital. Several commentators argued that this requirement may provide an incentive for holding companies to minimize the amount of excess net capital maintained in the broker-dealer. Inducing a holding company to reduce the amount of excess net capital it maintains in its broker-dealer subsidiary would, it was asserted, diminish the ability of the broker-dealer to remain competitive in the securities markets, particularly in equity underwritings or government securities auctions. Furthermore, these commentators expressed the concern that a restriction on the ability of a holding company to access the excess net capital of a broker-dealer subsidiary would adversely impact rating agencies' perception of holding company liquidity and therefore, the market's evaluation of such organization's credit.

The Commission wishes to emphasize that the net capital maintained in a broker-dealer should be permanent capital and not merely a temporary infusion of funds from an affiliate or other sources. For example, there are instances where a broker-dealer receives funds from an affiliate in an amount that would enable the broker-dealer to engage in a transaction that it would otherwise be prohibited from doing because of minimum net capital requirements. If the funds are transferred back to the affiliate within a relatively short period of time after the transaction, the Commission questions whether the funds transferred into the broker-dealer entity could properly be characterized as capital of the firm. Instead, the transaction could be viewed as a loan by the affiliate to the broker-dealer, with the result that the broker-dealer would have to treat the transaction as a liability. Moreover, the Commission does not believe it is appropriate for holding companies to temporarily transfer funds into their broker-dealer subsidiaries for reporting or other purposes.[5]

The Commission is, however, sensitive to the concerns raised by the commentators concerning the impact of the amendments on the ability of firms to remain competitive both in the national and international markets. Furthermore, the Commission does not wish to unnecessarily interfere with or increase the costs of obtaining capital at the holding company level. In order to address these concerns, the Commission is adopting the notification provisions of the proposal in a modified form. The Commission has decided to employ the approach suggested by some of the commentators and create two notification categories. Under the final amendments, broker-dealers will be required to provide two business days advance notice of withdrawals that exceed, in any 30 day period, 30 percent of the broker-dealer's excess net capital. Broker-dealers will be required to provide notice within two business days after withdrawals that exceed, in any 30 day period, 20 percent of the broker-dealer's excess net capital.[6] The Commission notes that the time periods specified for calculating withdrawals under paragraph (e)(1) of the amendments have been standardized at 30 days. Additionally, the proposal has been altered to allow a broker-dealer to make withdrawals that would exceed 30 percent of its excess net capital without giving the advance notice required by the amendments if its designated examining authority approves the withdrawal in advance. This latter provision is intended to apply in emergency situations and will provide a procedure whereby broker-dealers will be allowed to withdraw capital in order to take advantage of opportunities or respond to events that could not have been foreseen two business days in advance.

The amendments as proposed exempted withdrawals of capital of $50,000 or less from the notification provisions of paragraph (e) without regard to the firm's excess net capital. The Commission believes that the $50,000 exemption may generate an excessive amount of notices in instances where there is no substantial danger of systemic exposure and accordingly, has raised the number to $500,000.

Various commentators pointed out that the proposed amendments might obstruct the ability of broker-dealers to transact commodities and securities transactions with affiliates. For example, commentators indicated that there are occasions when a registered broker-dealer will enter into a securities or commodities transaction with a foreign affiliate when the amount of the transaction would be greater than 20 percent of the broker-dealer's excess net capital. Because of time-zone differences or other reasons, the broker-dealer may not receive the securities or commodities until the following day, even though it has already made payment to its affiliate for the transaction. To the extent that these transactions would be considered loans or advances, and thus fall within the purview of paragraph (e) of the net capital rule, the broker-dealer would be unable to comply with the notification requirement because it will not know of the existence or status of the transaction two business days in advance. Because these types of transactions are beyond the scope of the amendments, the Commission has decided to exclude these transactions from the rule. Therefore, the rule provides that commodities and securities transactions between a broker-dealer and an affiliate are excluded from the notification provisions, if the broker-dealer receives payment for the transaction within two business days from the date of the transaction. The Commission believes two business days will provide ample time for firms to resolve these transactions.

The commentators also suggested other refinements to the proposed amendments that the Commission has decided to implement. Specifically, a number of commentators pointed out that the Commission's proposal would require broker-dealers to calculate excess net capital on a current basis in

payments to employees or other persons affiliated with the broker-dealer. Since those payments could be considered expenses, and would thereby reduce the net worth and the net capital of the broker-dealer, they may fall within the scope of paragraph (e)(4)(iv). It should be noted that the new paragraph (e)(4)(iv) will not apply to and prevent broker-dealers' from paying such expenses incurred in the ordinary course of business.

[5] The Commission expressed its concern about the temporary nature of broker-dealer capital in its Study of Unsafe and Unsound Practices of Brokers and Dealers. *See* Study of Unsafe and Unsound Practices of Brokers and Dealers, Report and Recommendations of the Securities and Exchange Commission, H.R. Doc. No. 231, 92d Cong., 1st Sess. 84 (1971). Additionally, the Division of Market Regulation has taken the position that funds temporarily deposited into a broker-dealer entity and withdrawn within a short period of time should be regarded as a loan and considered a liability of the broker-dealer. Under paragraph (c)(2)(ii) of Rule 15c3–1, only liabilities properly subordinated under appendix (D) can be added back to net worth in determining the net capital of the broker-dealer. *See* Letter from Nelson Kibler, Assistant Director, Division of Market Regulation to John Pinto, National Association of Securities Dealers, Inc. (September 8, 1980).

[6] However, under the final amendments, in those cases where a broker-dealer intends to withdraw capital in excess of 30 percent of its excess net capital, the firm will be required to provide the Commission two notices: The first two business days before the anticipated withdrawal and the second, two business days after the withdrawal has been made.

order to determine whether a projected withdrawal would trigger the notification requirement. While broker-dealers are required to maintain compliance with the net capital rule at all times, broker-dealers with sufficient excess net capital perform on a daily basis only a general testing of positions, losses or other events that might result in a decrease of net capital from that which was previously reported. For the purposes of meeting daily net capital requirements, broker-dealers generally resolve questions in favor of maintaining additional capital, a practice the Commission encourages. Nonetheless, several commentators expressed concern that the proposed amendments would result in substantial implementation costs. These writers recommended that broker-dealers be permitted to use the amount of excess net capital and haircuts reported on the broker-dealer's most recent FOCUS report.[7] The Commission agrees with this approach and the rule as amended provides that broker-dealers may base their calculations, for the purposes of calculating the effect of a proposed withdrawal, on the amount of excess net capital and haircuts set forth in the most recently filed FOCUS report. The broker-dealer must assure itself however, that the numbers reported thereon have not materially changed.[8]

The Commission also has revised the language of the amendments in response to suggestions made by the commentators to clarify that the amount of withdrawals that should be used for comparison to the broker-dealer's excess net capital should be calculated on a net rather than on a gross basis. A broker-dealer would be entitled to offset the amount of loans, advances or withdrawals made to any of its insiders by the amount of payments received from any of those parties.

D. The Order Provision

The third amendment to the net capital rule proposed by the Commission would have given the Commission the authority, by order, to restrict the withdrawal of capital from a broker-dealer by an insider of the firm for a period of up to twenty business days when the Commission believed that the withdrawal would be detrimental to the financial integrity of the broker-dealer or would unduly jeopardize the firm's ability to pay its customers or creditors. The Commission intended this section to be an emergency provision, applicable to only the most exigent of circumstances where the continued viability of a broker-dealer appeared to be at stake. The Commission believed it needed this power, in part to respond to future scenarios that are presently impossible to predict. Notwithstanding the need for the provision, the Commission, when it proposed the amendments, recognized the potential procedural problems that may be caused by the issuance of an order restricting withdrawals of capital, and specifically requested comment on this aspect of the rule.

The commentators expressed various concerns about the Commission's powers under this paragraph. Generally, the commentators had three objections to this paragraph.

As a threshold matter, it was questioned whether the Commission has the authority under sections 23(a) and 15(c)(3) of the Securities Exchange Act to adopt a rule amendment that would authorize the Commission to issue orders restricting the withdrawal of capital from a particular broker-dealer. The Commission, however, believes that there is ample authority under the Securities Exchange Act to adopt an amendment that would enable the Commission to, in emergency situations, temporarily restrict the withdrawal of capital from a broker-dealer. Congress has given the Commission broad authority under the Securities Exchange Act to establish safeguards with respect to the financial integrity of broker-dealers. The Drexel failure illustrates the type of development in which swift, emergency remedial powers are appropriate and necessary to protect the public interest. Some commentators argued that the Commission's authority to issue adjudicative orders under section 15(b)(4) of the Securities Exchange Act implies an absence of rulemaking authority to issue orders under sections 23(a) and 15(c)(3). However, unlike adjudicative orders issued by the Commission after notice and opportunity for hearing, an order temporarily restricting the withdrawal of capital from a broker-dealer in an emergency situation is not in the nature of an enforcement or disciplinary proceeding, but rather is intended to carry out the Commission's mandate under section 15(c)(3) of the Securities Exchange Act to protect the financial responsibility of broker-dealers and the markets.

Additionally, it should be noted that the Commission has the authority to adopt a considerably more restrictive approach to equity capital withdrawals than contemplated by the amendments. The Commission could, for example, raise the current restriction on withdrawals of capital by insiders or affiliates under paragraph (e) of the net capital rule from 120 percent of the firm's minimum net capital requirement to 200 percent or higher, which would be applicable to all broker-dealers. Similarly, the Commission could restrict all withdrawals of capital by insiders or affiliates where the withdrawal exceeds 30 percent of the firm's excess net capital. The Commission believes the amendments, by authorizing temporary restrictions on capital withdrawal in emergency situations on a case-by-case basis (with the right to a post-order hearing), provides a more flexible and less burdensome means of accomplishing the Commission's regulatory objectives.[9] The Commission therefore believes that the authority conferred upon it by sections 23(a) and 15(c)(3) of the Securities Exchange Act is sufficiently broad to adopt the new paragraph (e)(3).[10]

Second, the commentators asserted that the Commission should more clearly articulate the standards under which an order could be granted. These commentators were concerned that the lack of a specifically defined set of circumstances under which the Commission could issue an order would provide the Commission with unlimited discretion. The Commission acknowledges that an unfettered ability to order restrictions on the withdrawal of capital would be undesirable. At the same time, the Commission believes that there is a need for a flexible provision that will be available when the specific early warning levels already set forth in the rule prove to be, for some reason, unsatisfactory.

Therefore, in order to balance the opposing needs for flexibility and certainty, the Commission is adopting a revised order paragraph. The Commission's ability to enter an order restricting a firm from withdrawing capital to benefit its insiders will only apply in those instances where a firm is about to make a withdrawal of capital that, along with other withdrawals during a 30 day period, exceeds 30 percent of the broker-dealer's excess net capital, and may be used only to prevent a withdrawal in excess of that 30 percent. This requirement coincides with the advance notification threshold under paragraph (e)(1) of the net capital rule. Even where this threshold is reached, the Commission must make a separate finding that the withdrawal may be detrimental to the financial integrity of the broker-dealer or may unduly jeopardize the firm's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the broker-dealer to loss. To continue to restrict withdrawals, however, additional orders will have to be issued by the Commission, each with a term of no more than twenty business days. Additionally, the power of issuing an order resides with the Commission and has not been delegated to the staff of the Commission.

The Commission believes that this standard is adequately refined in order to allow registered broker-dealers a level of certainty in their business affairs while maintaining the essential flexibility needed by the Commission to respond to future financial emergencies involving broker-dealers.

The commentators also recommended that the Commission expressly provide for a post-order hearing. The Commission is sensitive to the due process and procedural considerations of the order procedure. The Commission believes that a broker-dealer subject to an emergency order restricting the withdrawal of capital should be entitled to a hearing that would satisfy due process requirements. Accordingly, the Commission has revised the rule to provide for a post-order hearing to be held within two business days from the request for a hearing by the affected firm. In the hearing, broker-dealers will be able to present information concerning their financial condition or any other information they deem relevant to the Commission's decision. The order prohibiting the withdrawal of capital will be rescinded if the Commission determines, after the hearing, that the prohibition should not continue in effect.

IV. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 604 regarding the amendments to Rule 15c3–1. The Analysis notes that the objective of the amendments is to further the purposes of the various financial responsibility rules which provide safeguards with respect to the financial responsibility and related practices of broker-dealers. Smaller broker-dealers will generally not be affected because the new early warning level based on a percentage of haircuts will usually not be greater than their present early warning levels. Moreover, a broker-dealer may withdraw capital of up to $500,000 without triggering the notice provisions provided that the withdrawal would not pull the firm below its other early warning levels. In sum, the Analysis states that the amendments would affect the ability of broker-dealers to distribute capital to related parties. The amendments are designed to prevent insiders from withdrawing capital from the registered broker-dealer in order to benefit the parent or its ultimate owners to the detriment of the customers and creditors of the broker-dealer. A copy of the Analysis may be obtained by contacting Roger G. Coffin, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2396.

V. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78o(c)(3), 78q and 78w, the Commission is amending 240.15c3–1 of title 17 of the Code of Federal Regulations in the manner set forth below.

VI. List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

VII. Text of the Amendments

In accordance with the foregoing, title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 is amended by adding the following citation:

Authority: 15 U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted. * * * 240.15c3–1 is also issued under secs. 15(c)(3), 15 U.S.C. 78o(c)(3).

2. By revising paragraph (e) to § 240.15c3–1 as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(e)(1) *Notice provisions relating to limitations on the withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3–1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without written notice given in accordance with paragraph (e)(1)(iv) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the broker or dealer's excess net capital. A broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the broker or dealer's excess net capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its Examining Authority. Where a broker or dealer makes a withdrawal with the consent of its Examining Authority, it shall in any event comply with paragraph (e)(1)(ii) of this section; or

---

[7] Under Securities Exchange Act Rule 17a–5 (17 CFR 240.17a–5), registered broker-dealers are required to file reports containing certain financial and operational information with both their designated examining authority and the Commission. These reports are filed on the Financial and Operational Combined Uniform Single Report (commonly referred to as the FOCUS report).

[8] A broker-dealer may continue to rely on the most recently filed FOCUS report if it reasonably assures itself that the only change has been to either decrease the amount of deductions required by paragraph (c)(2)(vi), (f) and appendix A or to increase the amount of net capital.

[9] The Commission currently has the authority under the net capital rule to exercise a form of adjudication. Paragraph (b)(1) of Rule 15c3–1 contains a general exemption for certain specialists while reserving to the Commission the authority to suspend or revoke the exemption as it applies to a particular specialist upon ten days written notice if the Commission deems it appropriate in the public interest.

[10] The dissent refers to a proposed amendment to section 15(c)(3) contained in H.R. 4111, the House version of the bill that became the Securities Acts Amendments of 1975, that would have given the Commission authority "to order any broker or dealer or class thereof to restrict any of its activities[,]" and suggests that the fact that it was not enacted demonstrates that the Commission lacks authority to adopt paragraph (e)(3) of the rule. There is very little legislative history relating to the House's proposed amendments to section 15(c)(3), which are referred to in one place as "largely technical amendments", 121 Cong. Rec. 17444 (1975), and there is no explanation of the reason for the deletion of the portion of the amendments noted by the dissent. There is thus no basis for inferring that the provision was deleted because Congress did not intend for the Commission to adopt a provision such as the one considered here. *See Rastelli* v. *Warden, Metropolitan Correctional Center*, 782 F.2d 17, 24 n.3 (2d Cir. 1986) (court declined to draw any conclusion regarding Congressional intent from deletion of legislative language); *U.S.* v. *Stauffer Chemical Co.*, 684 F.2d 1174, 1184 (6th Cir. 1982) ("[T]he language of rejected alternative legislation is not entitled to great weight in construing legislation that was finally passed, since the court has no way of knowing what motivated the legislature to take such action.") Moreover, the

Continued

earlier legislative history of section 15(c)(3) indicates a particular Congressional concern with broker-dealer capital withdrawals. *See* Senate Securities Study, Senate Committee on Banking, Housing and Urban Affairs, Subcommittee on Securities, 92d Cong., 1st Sess. at 196 (Comm. Print 1973).

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the broker or dealer's excess net capital.

(iii) This paragraph (e)(1) does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a broker or dealer and an affiliate where the broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any thirty calendar day period, on a net basis, equal $500,000 or less.

(iv) Each required notice shall be effective when received by the Commission in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the broker or dealer's Examining Authority and the Commodity Futures Trading Commission if such broker or dealer is registered with that Commission.

(2) *Limitations on Withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3–1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate, if after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in appendix D (17 CFR 240.15c3–1d)) under satisfactory subordination agreements which are scheduled to occur within 180 days following such withdrawal, advance or loan if:

(i) The broker or dealer's net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a) of this section;

(ii) The broker-dealer is registered as a futures commission merchant, its net capital would be less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account);

(iii) The broker-dealer's net capital would be less than 25 percent of deductions from net worth in computing net capital required by paragraphs (c)(2)(vi), (f) and appendix A, of this section, unless the broker or dealer has the prior approval of the Commission to make such withdrawal;

(iv) The total outstanding principal amounts of satisfactory subordination agreements of the broker or dealer and any subsidiaries or affiliates consolidated pursuant to appendix C (17 CFR 240.15c3–1c) (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d) of this section;

(v) The broker or dealer is subject to the aggregate indebtedness limitations of paragraph (a) of this section, the aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital; or

(vi) The broker or dealer is subject to the alternative net capital requirement of paragraph (f) of this section, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a.

(3)(i) *Temporary Restrictions on Withdrawal of Net Capital.* The Commission may by order restrict, for a period up to twenty business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate if such withdrawal, advance or loan:

(A) When aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period exceeds 30 percent of the broker or dealer's excess net capital; and

(B) The Commission, based on the facts and information available, concludes that the withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act.

(ii) An order temporarily prohibiting the withdrawal of capital shall be rescinded if the Commission determines that the restriction on capital withdrawal should not remain in effect. The hearing will be held within two business days from the date of the request in writing by the broker or dealer.

(4)(i) *Miscellaneous provisions.* Excess net capital is that amount in excess of the amount required under paragraph (a) of this section. For the purposes of paragraphs (e)(1) and (e)(2) of this section, a broker or dealer may use the amount of excess net capital and deductions required under paragraphs (c)(2)(vi), (f) and appendix A of this section reported in its most recently required filed Form X–17A–5 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess net capital or deductions. The broker or dealer must assure itself that the excess net capital or the deductions reported on the most recently required filed Form X–17A–5 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (e)(1) and (e)(2) of this section shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances, or loans for purposes of paragraphs (e)(1) and (e)(2) of this section.

(iv) For the purpose of this paragraph (e) of this section, any transaction between a broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the broker or dealer's net capital shall be deemed to be an advance or loan of net capital.

* * * * *

February 28, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Dissenting Statement of Commissioner Fleischman

I dissent from the adoption of paragraph (e)(3) of Rule 15c3–1. Its ends are salutary and susceptible of accomplishment by properly-crafted Commission rule, but its means are no more authorized by the Exchange Act than would be a one-sentence Rule 15c3–1 stating that every broker-dealer shall maintain such net capital as the Commission prescribes for it by order.

"In some areas particular regulatory requirements, whether created by statute or regulations, may impose costs that far exceed any public benefits derived therefrom." [1] Paragraph (e)(3) creates just such a requirement. Having provided responsible early-warning levels in paragraph (e)(1) and appropriate notification procedures in paragraph (e)(2), the Commission had to decide whether, and if so how, to deal with the circumstance described in the Release as "emergency" [2] and described by the Chairman as involving "a serious question * * * as to whether [a] broker-dealer is transferring excess net capital, or whether in fact it is transferring capital that is part of net capital, not indeed, 'excess'." [3]

The costs of the Commission's decision to adopt paragraph (e)(3) in its present form are the uncertainty cost and the statutory rupture introduced by an *ad hominem* "order" procedure in implementation of (1) a statutory subsection that, like several provisions of the Exchange Act (and in direct contrast to its sister subsections),[4] prohibits broker-dealer activities "in contravention of such rules and regulations as the Commission shall prescribe" [5] for all persons similarly situated, and (2) an empowering provision that authorizes "rules and regulations" [6] but (unlike the Public Utility Holding Company Act, Trust Indenture Act, and Investment Company and Investment Advisers Acts [7]) not adjudicatory-type "orders". Specification of "rules and regulations" as the general modality of Commission action under the Exchange Act dates back to the bills first introduced into the House and Senate in 1934.[8] Where an "order" procedure was desired, as in the disciplining of exchanges,[9] that procedure was specified in each bill along with provision for judicial review at the instance of "[a]ny person aggrieved by an order * * *." [10] The Senate Banking and Currency Committee *Report*, in prescribing that "considerable latitude [be] allowed for the exercise of administrative discretion," also specifically noted that: "Of course, well defined limits must be indicated within which the authority of such administrative authority [sic] may be exercised." [11] Section 15, which had been a one-paragraph "rules and regulations" section in the original Act, was divided into three subsections in 1936, with an "order" procedure added in subsection (b) but "rules and regulations" retained in subsection (c).[12] Subsection (c) itself was divided in three by the Maloney Act in 1938, with all three paragraphs retaining "rules and regulations" [13] although the new section 15A (with which the Maloney Act is identified used "order" as the prevalent modality for Commission action. [14] The final amendments relevant here were made in 1975, when (1) specific provision to "establish minimum financial responsibility requirements for all brokers and dealers" was added to the final sentence ("Such rules and regulations shall require * * *.") of section 15(c), [15] and (2) section 23(a) was amended, *inter alia*, to state that the general rulemaking authority encompassed "prescrib[ing] greater, lesser or different requirements for different *classes*" of persons, transactions, etc., [16] and the Conference Report, in the direct context of Commission rulemaking authority concerning minimum broker-dealer capital requirements, specifically referred to that amendment using those very words. [17] Most significantly, the House considered (in 1973–74) and passed (in 1975) an amendment to section 15(c)(3) that would have given the Commission authority "to order any broker or dealer or class thereof to restrict any of its activities" upon certain findings [18]; in its official Comments to the House Subcommittee on Commerce and Finance in 1973, the Commission stated, with respect to the proposed "order" authority: "[W]e believe that this is a desirable power to have, because it would allow the Commission great flexibility to restrict individual firms on a case-by-case basis * * *," [19] but the amendment was nevertheless omitted from the Act as agreed to in conference.

The benefits of the Commission's decision to create an "order" process by adopting paragraph (e)(3) in its present form are difficult to comprehend, in view of the Chairman's own testimony before the House Subcommittee on Telecommunications and Finance in April of last year:

"[T]he issuance of a temporary cease-and-desist order would be appropriate where emergency action is necessary to ensure that a registered broker-dealer maintains sufficient net capital. For example, the financial failure of Drexel Burnham Lambert Group, Inc., although it did not result in investor losses, illustrates the type of situation in which temporary cease-and-desist authority would facilitate the Commission's ability to take prompt action for the purpose of protecting investor assets. Given the highly technical nature of the issues involved in such cases, it may be difficult or impossible to obtain emergency judicial relief in time to be effective. The Commission, as the financial regulator that monitors the operations of broker-dealers and has the most expertise in measuring the adequacy of their capital, should be empowered to take emergency action in appropriate circumstances." [20]

With the omission of a portion of the third sentence above quoted, the words of that testimony were adopted almost *in haec verba* both by the House Energy and Commerce Committee [21] and by the Senate Banking, Housing, and Urban Affairs Committee [22] in their respective reports on the bill that resulted from the Chairman's testimony. "Emergency" authority, for this very purpose, was specifically asked and given.

The Committee avidly took authorization from the House and Senate Committees (indeed, it quite apparently presented the very language of the Committee Reports) and now substitutes a spurious process for the one deliberately bestowed by the Congress and signed into law by the President. For that questionable process the Committee first asserts its plenary authority under *Chevron* [23] to construe its fundamental statutes, and then, lest some chink be left unplastered, structures the process so as to reserve to itself the capacity to thwart appellate review by rendering the initial order

---

[1] *Blueprint for Reform: The Report of the Task Group on Regulation of Financial Services* (July 1984) (the "Bush Task Force Report").

[2] Accompanying Release at III.D., first, third and fourth paragraphs.

[3] Tape recording of SEC public meeting held February 20, 1991, at tape 1.

[4] Securities Exchange Act Section 15(a)(2) "by rule or order"; Section 15(b)(1)(A) "by order"; Sections 15(b) (4), (5) and (6) "by order"; Section 15(b)(9) "by rule or order"; Section 15(c)(4) "an order". Sections 15(b)(4) (D) and (E), the general broker-dealer disciplinary provisions, provide only for discipline of a broker or dealer that has violated the "rules or regulations", not the orders, under the statutes administered by the Commission.

[5] Securities Exchange Act Section 15(c)(3).

[6] Securities Exchange Act Section 23(a).

[7] Public Utility Holding Company Act Section 20(a); Trust Indenture Act Section 315(a); Investment Company Act Section 38(a); Investment Advisers Act Section 211(a).

[8] H.R. 9323, 73rd Cong., 2d Sess., Section 23(a), and also *inter alia* Section 14, "Over-the-Counter Markets"; S. 3420, 73rd Cong., 2d Sess., Section 4(b), and also *inter alia* Section 15.

[9] H.R. 9323, 73rd Cong., 2d Sess., Section 18; S. 3420, 73rd Cong., 2d Sess., Section 19.

[10] H.R. 9323, 73rd Cong., 2d Sess., Section 24; S. 3420, 73rd Cong., 2d Sess., Section 24.

[11] Sen. Rep. 792, 73rd Cong., 2d Sess., at 5.

[12] Pub. L. 74–621, 49 Stat. 1375, Section 3 (May 27, 1936).

[13] Pub. L. 75–719, 52 Stat. 1070, Section 2 (June 25, 1938).

[14] Pub. L. 75–719, 52 Stat. 1070, Section 1 (June 25, 1938).

[15] Pub. L. 94–29, 89 Stat. 97, Section 11(3) (June 4, 1975).

[16] Pub. L. 94–29, 89 Stat. 97, Section 18 (June 4, 1975) (emphasis added).

[17] H.R. Rep. 94–229, 94th Cong., 1st Sess., at 104.

[18] Section 15(c)(3)(B), as proposed to be added to the Securities Exchange Act by H.R. 5050, Section 304, 93rd Cong., reintroduced and passed by the House as H.R. 6111, Section 204, 94th Cong., 1st Sess. (emphasis added).

[19] Hearings before the Subcommittee on Commerce and Finance of the Committee on Interstate and Foreign Commerce, House of Representatives, 93rd Cong., 1st Sess., on H.R. 8050 and H.R. 948, at 670 (Comments of the Securities and Exchange Commission on H.R. 8050 (titles II, III, and V)) (June 12, 1973).

[20] Testimony of Richard C. Breeden, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 4497, The "Penny Stock Reform Act of 1990", before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives (April 25, 1990).

[21] H.R. Rep. 101–616, 101st Cong., 2d Sess., at 28.

[22] Sen. Rep. 101–337, 101st Cong., 2d Sess., at 20

[23] *Chevron, U.S.A., Inc.v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

moot after twenty days (with or without Commission decision at hearing) only to be able to renew the proceeding at will thereafter on a "detrimental" standard. Peculiarly, the Commission turned to this alien process and adopted this provision without a single reference in the Release to the section 19(b)(1) filing (made in May of last year) [34] of the New York Stock Exchange, the self-regulatory organization that is the designated examining authority under Rule 17d-1 for most of the principal broker-dealers, proposing a notification provision, or to the rule [35] of that Exchange that was actually applied last year, under the broad scope of the membership Constitution of the Exchange, to prohibit outflow of funds.

By its adoption of the "order" procedure of paragraph (e)(3) the Commission confirms, today, that ever more regulatory authority is its goal and ever more administrative discretion is its chosen tool; that in that pursuit it will elasticize any scrap of helpful legislative wording while overriding every consistency in inhibitory statutory structure; and that it is willing to put forward the virtual minimum of due process mechanics as camouflage for the maximum of discretionary regulatory intrusion.

I recur, finally, to the Bush Task Force Report:

> "Lacking any new Congressional direction [which, as shown above, is not the Commission's circumstance], the agencies * * * must fashion an appropriate action from agency 'policy.' However, where agency actions are guided by self-defined policy rather than express provisions of law, serious burdens can be created for private [regulated] parties where they are unable to predict agency actions * * *." [36]

Applicability of rules is predictable; proceeding by "order" is *ad hoc* and uncertain, particularly on a standard as vague as "may be detrimental * * * or may unduly jeopardize * * * which may cause * * * or [may] expose * * *." The Commission's action today is self-defined agency policy at its most egregious, with increase in the Commission's authority and discretion as its unspoken justification.

[FR Doc. 91-5145 Filed 3-4-91; 8:45 am]

BILLING CODE 8010-01-M

[34] File No. SR-NYSE-90-38, Securities and Exchange Act Release No. 28063, 46 SEC Docket 573 (June 1, 1990).

[35] New York Stock Exchange Rule 325(d). My views on the proper S.E.C.-S.R.O. relationship are set forth in Fleischman, "The 'Unique Partnership' between the S.E.C. and the Self-Regulatory Organizations" (July 29, 1988).

[36] Bush Task Force Report at 30.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempt Chemical Preparations

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends § 1308.24 of title 21 of the Code of Federal Regulations. The attached list of chemical preparations and mixtures which contain controlled substances replace the list of exempt chemical preparations set forth in § 1308.24(i). This action is in response to DEA's periodic review of the exempt chemical preparation list and of applications for exemptions filed with DEA. Preparations included in the list are exempted from the application of specific provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, and from certain Drug Enforcement Administration regulations.

DATES: *Effective date:* March 5, 1991. Comments must be submitted on or before April 4, 1991.

ADDRESSES: Comments should be submitted to Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Washington, DC 20537.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Telephone (202)307-7183.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811 (g)(3)(B) to exempt from specific provisions of the Act, a compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged, it does not present any significant potential for abuse.

The Deputy Assistant Administrator of the Drug Enforcement Administration's Office of Diversion Control has received applications pursuant to § 1308.23 of title 21 of the Code of Federal Regulations requesting approval of exempt status provided for in 21 CFR 1308.24. The Deputy Assistant Administrator hereby finds that each of the following preparations and mixtures is intended for laboratory, industrial, educational, or special research purposes, is not intended for general administration to man or animal, and either (a) contains no narcotic controlled substances and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse, (b) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse, or (c) the formulation of such preparation or mixture incorporates methods of denaturing or other means so that the controlled substance cannot in practice be removed, and therefore the preparation or mixture does not present any significant potential for abuse. The Deputy Assistant Administrator further finds that exemption of the following chemical preparations and mixtures is consistent with the public health and safety as well as the needs of the researchers, chemical analysts, and suppliers of these products.

The Deputy Assistant Administrator for the Office of Diversion Control hereby certifies that these matters will have no significant impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of preparations to the list of exempt chemical preparations has the effect of exempting them from certain sections of the Controlled Substances Act of 1970 and its regulations.

It has been determined that these changes are internal matters which do not require formal OMB review.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Dated: February 21, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811 (g)(3)(B)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR part 0.100), and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR part 1308 as set forth below.

PART 1308—SCHEDULE OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.24(i), the table is revised to read as follows:

§ 1308.24 Exempt chemical preparations.

* * * * *

(i) * * *

Exempt Chemical Preparations

Supplier	Product	Form of Product	Date
Abbott Laboratories	125I Cholylglycyltyrosine Reagent Solution, No. 7816.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	ADx Benzoylecgonine Fluorescein Tracer Solution.	Bottle:3.2 ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Fluorescein Tracer Solution	Bottle:3.2ml	12/02/86
Abbott Laboratories	ADx Cannabinoids Reagent Pack (No. 9671-55)	Reagent Pack:50 tests	12/02/86
Abbott Laboratories	ADx Cocaine Metabolite Fluorescein Tracer Solution, No. 9670-T, No. 9670T0013.	Vial: 3.2ml, Kit: 100 vials	04/18/89
Abbott Laboratories	ADx Cocaine Metabolite Reagent Pack, No. 9670-55.	50 Test Unit	04/18/89
Abbott Laboratories	ADx Opiates Fluorescein Tracer Solution, No. 9673-T, No. 9673T0013.	Vial: 3.2ml, Kit: 100 vials	04/18/89
Abbott Laboratories	ADx Opiates Reagent Pack, No. 9673-55	50 Test Unit	04/18/89
Abbott Laboratories	ADx Propoxyphene Fluorescein Tracer Solutions Item No. 9675T0011.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	ADx Propoxyphene Reagent Pack Item No.9675-55.	Kit: 50 test	11/30/90
Abbott Laboratories	Amphetamine Bulk Calibrators, B-F	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/09/85
Abbott Laboratories	Amphetamine Bulk Controls, L and H	Flask: 2 liter	12/09/85
Abbott Laboratories	Amphetamine Class Bulk Calibrator B-F	Carboy: 10 liters; Flask: 6 liters, 2 liters, 1 liter, 250 ml, 200 ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Control L and H	Carboy: 10 liters; Flask: 6 liters, 2 liters, 1 liter, 250 ml, 200 ml.	03/01/88
Abbott Laboratories	Amphetamine Class Bulk Tracer: No. 94699	Carboy: 10 liters; Flask: 6 liters, 2 liters	03/01/88
Abbott Laboratories	Amphetamine Class QC Primary B-F,L,M,H No. 9667 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine Class Stock Tracer: No. 94700	Bottle: 30 ml	03/01/88
Abbott Laboratories	Amphetamine Stock Standard No. 97072, 97072 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Amphetamine Stock Standard, No. 97072	Bottle: 125ml	09/30/85
Abbott Laboratories	Amphetamine/ Metamphetamine QC Primary Bulk Control M, No. 9668-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Amphetamine/ Methamphetamine (II) QC Primary B-F,L,M,H No. 1A99 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Bulk Calibrators B-F Code No. 1A99 (B-F).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Bulk Controls (L,M,H) Code No. 1A99 (L,M,H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Calibrators B-F No. 1A99 B-F.	5 ml Vial	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Calibrators No. 1A99-01.	Kit: 6 Vials	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Controls (L,M,H) No. 1A99-L,M,H.	5 ML Vial	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine II Controls No. 1A99-10.	Kit: 3 Vials	08/26/88
Abbott Laboratories	Amphetamine/ Methamphetamine QC Primary B-F,L,M,H No. 9668 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Amphetamine/ Methamphetamine QC Primary Standard Control M, No. 9668-M.	Bottle:5 ml	11/10/87
Abbott Laboratories	Amphetamine/Methamphetamine II Bulk Controls, No. 1A99X,Y,Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Control X,Y,Z; NO. 1A99-02,03,04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II Control X,Y,Z; No. 1A99X,Y,Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Calibrator B,C,D,E,F; No. 01A99-B,C,D,E,F.	Carboy: 20L, 10L, 6L, 2L, 1L, 250ml, 200ml	07/14/89
Abbott Laboratories	Amphetamine/Methamphetamine II bulk Control L,M,H,; No. 01A99-L,M,H.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	07/14/89
Abbott Laboratories	Barbital Buffer, 0.06 M Reagent Solution No. 7824.	Plastic Bottle: 2.5ml	04/07/78
Abbott Laboratories	Barbiturate II U Control L,M,H; No. 9669 L,M,H-11.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates Bulk Calibrator B-F No. 9669 B-F	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates Bulk Control L,H No. 9669 L,H	Carboy: 9.5, 19 L	07/01/88
Abbott Laboratories	Barbiturates Bulk Controls, No. 9669X,Y,Z	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Barbiturates Control X,Y,Z; No. 9669X,Y,Z	Vial: 5ml	01/19/89

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Abbott Laboratories	Barbiturates II U Bulk Calibrators B-F; No. 9669 B-F-05.	Carboy: 20L, 19L, 10L, 9.5L, 6L, 4L, 2L, 1L, Flask: 250ml, 200ml.	10/17/89
Abbott Laboratories	Barbiturates II U Bulk Controls L,M,H; No. 9669 L,M,H - 11.	Carboy: 20L, 19L, 10L, 9.5L, 6L, 4L, 2L, 1L, Flask: 250ml, 200ml.	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B-F; No. 9669 B-F-05.	Bottle: 5 ml	10/17/89
Abbott Laboratories	Barbiturates II U Calibrators B-F; No. 9669-05	Kit: 6 vials	10/17/89
Abbott Laboratories	Barbiturates II U Controls L,M,H; No. 9661-11	Kit: 3 vials	10/17/89
Abbott Laboratories	Barbiturates II U QC Primary B-F; No. 9669 B-F-05 QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/17/89
Abbott Laboratories	Barbiturates II U QC Primary L,M,H; No. 9669 L,M,H-11 QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/17/89
Abbott Laboratories	Barbiturates QC Primary B-F,L,M,H No. 9669 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Barbiturates QC Primary Bulk Control M, No. 9669-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary Standard Control M, No. 9669-M.	Bottle:5 ml	11/10/87
Abbott Laboratories	Barbiturates QC Primary X, No. 9669X-QC	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Barbiturates Serum Bulk Calibrator B-F, No. 9679 B-F.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/03/89
Abbott Laboratories	Barbiturates Serum Bulk Control L,M,H; No. 9679 L,M,H.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B-F, No. 9679-01	Kit: 5 vials	01/03/89
Abbott Laboratories	Barbiturates Serum Calibrators B/F, No. 9679 B/F.	Bottle: 5ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L,M,H; No. 9679 L,M,H.	Bottle: 5ml	01/03/89
Abbott Laboratories	Barbiturates Serum Controls L,M,H; No. 9679-10	Kit: 3 vials	01/03/89
Abbott Laboratories	Barbiturates Serum QC Primary B-F,L,M,H; No. 9679 (B-F,L,M,H)-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	01/03/89
Abbott Laboratories	Benzodiazepine Serum QC Primary B-F,L,M,H No. 9692 (B-F,L,M,H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Bulk Calibrator No. 9674 B-F	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Calibrators, B-F No. 9674	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	04/21/88
Abbott Laboratories	Benzodiazepines Bulk Control L,H No. 9674 L,H	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	Benzodiazepines Bulk Controls, L and H No. 9674.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	04/21/88
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary Bulk Control M, No. 9674-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Benzodiazepines QC Primary, B-F,L,M,H No. 9674 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5 ml.	11/22/88
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators B-F: Code No. 9682 B-F.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/87
Abbott Laboratories	Benzodiazepines Serum Bulk Calibrators: No. 9682 B-F.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter.	05/02/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls L,M, & H: Code No. 9682 L,M, & H.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/88
Abbott Laboratories	Benzodiazepines Serum Bulk Controls: No. 9682 L, M, H.	Carboy: 20 liters, 10 liters; Flask: 6 liters, 2 liters, 1 liter, 250 ml, 200 ml.	05/02/88
Abbott Laboratories	Benzoylecgonine Stock Standard No. 97182, 97182 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml,Bottle: 950ml, 500ml, 100ml, 5ml.	11/23/88
Abbott Laboratories	Benzoylecgonine Stock Standard, No. 97182	Bottle: 125ml	11/21/85
Abbott Laboratories	CG RIA Diagnostic Kit No. 7815	Kit: 100 tests	04/07/78
Abbott Laboratories	Cannabinoids - GS Bulk Controls, No. 3697X,Y,Z	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Cannabinoids - GS Control X,Y,Z; No. 3697 - 02,03,04.	Kit: 100 vials	01/19/89
Abbott Laboratories	Cannabinoids - GS Control X,Y,Z; No. 3697X,Y,Z	Vial: 5ml	01/19/89
Abbott Laboratories	Cannabinoids Bulk Calibrators B-F	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/24/85
Abbott Laboratories	Cannabinoids Bulk Controls L,M,H	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/24/85
Abbott Laboratories	Cannabinoids Bulk Tracer (No. 94192)	Carboy: 50L, 20L, 10L, Flask: 6L, 4L, 2L, 1L	10/27/88
Abbott Laboratories	Cannabinoids QC Primary NBS, B-F, L,M,H; No. 9671-02[NBS,B-F]-QC; No. 9671-11[L,M,H]-QC.	Carboy: 19L, Flask: 4L, 2L, 500ml, 250ml, 100ml, 200ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids QC Primary NBS, B-F,L,M,H; No. 9671 (NBS, B-F,L,M,H)-QC.	Carboy: 19L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Standard (94568)	Bottle: 125 ml	06/19/87
Abbott Laboratories	Cannabinoids Stock Standard (No. 94192)	Bottle:125 ml	10/24/85

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Abbott Laboratories	Cannabinoids Stock Standard 10mcg/ml-No. 94568, 5mcg/ml-NO. 94568A, 1mcg/ml-No. 94568B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, bottle: 950ml, 500ml, 100ml, 5ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Standard; 10mcg/ml-No. 94193, 5mcg/ml-No. 94193A, 1mcg/ml-No. 94193B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, bottle: 950ml, 500ml, 100ml, 5ml.	12/27/88
Abbott Laboratories	Cannabinoids Stock Tracer (No. 94194)	Flask:5 ml	10/27/88
Abbott Laboratories	Cannabinoids-GS Bulk Calibrators B-F No. 3897 B-F.	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoid-GS Bulk Controls (L,M,H) Code No. 3897 (L,M,H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	07/28/88
Abbott Laboratories	Cannabinoids-GS Bulk Tracer Code No. 95826	10 L Carboy; 6 L, 2 L Flask	07/28/88
Abbott Laboratories	Cannabinoids-GS Calibrators B-F No. 3897 B-F	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids-GS Calibrators No. 3897-01	Kit:6 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls (L,M,H) No. 3897-L,M,H.	5 ml Vial	07/28/88
Abbott Laboratories	Cannabinoids-GS Controls No. 3897-10	Kit: 3 Vials	07/28/88
Abbott Laboratories	Cannabinoids-GS QC Primary NBS, B-F, L,M,H; No. 3897 (NBS, B-F, L,M,H)-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	12/27/88
Abbott Laboratories	Cannabinoids-GS Reagent Pack 100 Test No. 3897-20.	Kit: 100 Tests	07/28/88
Abbott Laboratories	Cannabinoids-GS Reagent Pack 100 Test, No. 3697-19.	Kit: 100 Tests	09/22/89
Abbott Laboratories	Cannabinoids-GS Tracer Code No. 3897-T	5 ml Vial	07/28/88
Abbott Laboratories	Cholylglycine Antiserum (Rabbit) Reagent Solution No. 7817.	Plastic Bottle: 20ml	04/07/78
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator B-F No. 9670 B-F.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Calibrator, B-F No. 9670.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls L,H No. 9670-L,H.	Carboy: 9.5, 19 L	07/07/88
Abbott Laboratories	Cocaine Metabolite Bulk Controls, L and H No. 9670.	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	10/28/85
Abbott Laboratories	Cocaine Metabolite Bulk Controls, No. 9670X,Y,Z.	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Cocaine Metabolite Bulk Tracer, No. 9670	Carboy: 50L, 20L, 10L, Flask: 6L, 4L, 2L, 1L	10/29/85
Abbott Laboratories	Cocaine Metabolite Control X,Y,Z; No. 9670X,Y,Z.	Vial: 5ml	01/19/89
Abbott Laboratories	Cocaine Metabolite QC Primary B-F, L, M. H, No. 9670 (B-F, L, M, H)-QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml, Bottle: 5 ml.	11/23/88
Abbott Laboratories	Cocaine Metabolite QC Primary Bulk Control M, No. 9670-M.	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary Standard Control M, No. 9670-M.	Bottle:5 ml	11/10/87
Abbott Laboratories	Cocaine Metabolite QC Primary X, No. 9670X-QC; Primary Z, No. 9670Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Cocaine Metabolite Stock Tracer, No. 9670	Vial: 5ml	10/29/85
Abbott Laboratories	Low, Medium, High Multiconstituent Stock Standards, No. 90967, 90968,90969.	Carboy: 10L, 20L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml,100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/06/89
Abbott Laboratories	Methadone Bulk Calibrators (B-F) Code No. 9676 (B-F).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88
Abbott Laboratories	Methadone Bulk Calibrators (L,M,H) Code No. 9676 (L,M,H).	20 L, 10 L Carboy; 6 L, 2 L, 1 L, 250 ml, 200 ml Flask.	09/02/88
Abbott Laboratories	Methadone Bulk Stock Standard Code No. 95952.	10 L Carboy; 6 L, 2 L, 1 L Flask	09/02/88
Abbott Laboratories	Methadone Calibrators No. 9676-01	Kit: 6 Vials	09/02/88
Abbott Laboratories	Methadone Calibrators B-F No. 9676 B-F	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls L,M,H No. 9676-L,M,H	5 ml Vial	09/02/88
Abbott Laboratories	Methadone Controls No. 9676-10	Kit: 3 Vials	09/02/88
Abbott Laboratories	Methadone Stock Standard Code No. 95720	1 L, 500 ml, 100 ml Bottle	09/02/88
Abbott Laboratories	Morphine Stock Standard, No. 97291	Vial: 125ml	10/16/85
Abbott Laboratories	Morphine Stock Standard, No.97291 A-B	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Multiconstituent Bulk Controls L,M,H (No. 9687-L,M,H).	Carboy: 20L, 10L, Flask: 10L, 6L, 4L, 2L, 1L, 250ml, 200ml.	09/03/87
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays Bulk L,M,H; No. 9687-L,M,H.	Carboy: 20L, 10L, 19L, 9.5L, 6L, 4L, 1L, Flask: 250ml, 200ml.	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays L,M,H; No. 9687-L,M,H.	Vial: 5 ml	10/06/89
Abbott Laboratories	Multiconstituent Control for Abused Drug Assays QC Primaries L,M,H; No. 9687-L,H,H-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	10/06/89
Abbott Laboratories	Multiconstituent Controls for Abused Drug Assays, No. 9687-10.	Kit: 6 vials	10/06/89
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard No. 94941.	Carboy: 10 liters; Flask: 6 liters, 2 liters, 1 liter	05/02/88

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Abbott Laboratories	Nordiazepam Serum Bulk Stock Standard: Code No.94841.	Carboy: 10 liter; Flask: 6 liter, 2 liter	12/07/87
Abbott Laboratories	Nordiazepam Serum Stock Standard No. 94841, 94841 A,B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml,500 ml,100 ml,5 ml.	11/22/88
Abbott Laboratories	Nordiazepam Serum Stock Standard: Code No. 94841.	Bottle: 125 ml	12/07/87
Abbott Laboratories	Nordiazepam Serum Stock Standard: No. 94841	Bottle: 125 ml	05/02/88
Abbott Laboratories	Nordiazepam Stock Standard No. 97757, 97757 A,B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Nordiazepam Stock Standard, No. 97757	Bottle: 125ml	04/21/86
Abbott Laboratories	Opiate Bulk Calibrators, B-F No. 9673	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/07/86
Abbott Laboratories	Opiate Bulk Controls, L and H No. 9673	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/07/86
Abbott Laboratories	Opiates Bulk Controls, No. 9673X,Y,Z	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Opiates Bulk Tracer, No. 97456	Carboy: 50L, 20L, 10L, Flask: 6L, 4L, 2L, 1L	05/07/86
Abbott Laboratories	Opiates Control X,Y,Z; No. 9673X,Y,Z	Vial: 5ml	01/19/89
Abbott Laboratories	Opiates QC Primary (B-F,L,M,H) QC No. 9673 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Opiates QC Primary Bulk Control M, No. 9673-M	Flasks: 1 liter, 250 ml, and 200 ml	11/10/87
Abbott Laboratories	Opiates QC Primary Standard Control M, No. 9673-M.	Bottle:5 ml	11/10/87
Abbott Laboratories	Opiates QC Primary X, No. 9673X-QC; Primary Y, No. 9673Y-QC; PrimaryZ, No. 9673Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Opiates Stock Tracer, No. 98718	Bottle: 30ml	05/07/86
Abbott Laboratories	Phencyclidine Bulk Calibrator, B-F No. 9672	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Control M, No. 9672	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	09/26/86
Abbott Laboratories	Phencyclidine Bulk Controls, L and H No. 9672	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86
Abbott Laboratories	Phencyclidine Bulk Controls, No. 9672X,Y,Z	Carboy: 20L, 10L, Flask: 6L, 2L, 1L, 250ml, 200ml.	01/19/89
Abbott Laboratories	Phencyclidine Control X,Y,Z; No. 9672X,Y,Z	Vial: 5ml	01/19/89
Abbott Laboratories	Phencyclidine QC Primary (B-F,L,M,H) QC No. 9672 (B-F,L,M,H) QC.	Carboy: 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 5ml.	11/22/88
Abbott Laboratories	Phencyclidine QC Primary X, No. 9672X-QC; Primary Z, No. 9672Z-QC.	Carboy: 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 5ml.	06/05/89
Abbott Laboratories	Phencyclidine Stock Standard No. 97158, 97158 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml, 5ml.	11/22/88
Abbott Laboratories	Phencyclidine Stock Standard, No. 96358	Flask: 100ml, 200ml, 250ml, 500ml, 1L, 2L, 4L, Bottle: 5ml, 100ml, 500ml, 950 ml, Carboys: 10L, 20L.	04/16/89
Abbott Laboratories	Phencyclidine Stock Standard, No. 97158	Bottle: 125ml	11/21/85
Abbott Laboratories	Phenobarbital Enzyme Inhibitor Stock	Vial: 2ml	01/20/84
Abbott Laboratories	Phenobarbital Stock Solution 1 mg/ml Code No. 94312.	Plastic Bottle:125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Solution 10 mg/ml Code No. 94313.	Plastic Bottle:125 ml	03/23/87
Abbott Laboratories	Phenobarbital Stock Standard Solution	Bottle: 1 liter	08/12/82
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09 M Barbital Buffer, No 7541.	Plastic Bottle: 300 ml, 150 ml.	09/21/77
Abbott Laboratories	Polyethylene Glycol 8000, 16% Solution in 0.09M Barbital Buffer: No. 07802.	Stainless Steel Tank: 1000 liters	03/09/88
Abbott Laboratories	Propoxyphene Bulk Calibrator B-F Item No. 9675(B-F).	Carboys or Flasks: 20L,19L,10L,9.5L,6L,4L,2L,1L,250ml,200ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Control L,M,H List No. 9675(L,M,H).	Carboys or Flasks: 20L,19L,10L,9.5L,6L,4L,2L,1L,250ml,200ml.	11/30/90
Abbott Laboratories	Propoxyphene Bulk Tracer Item No. 92003	Carboys or Flasks: 20L,19L,10L,9.5L,6L,4L,2L,1L,250ml,200ml.	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675-01	Kit: 5 vials	11/30/90
Abbott Laboratories	Propoxyphene Calibrators Item No. 9675B-F	Vial: 5ml	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675-10	Kit: 3 vials	11/30/90
Abbott Laboratories	Propoxyphene Controls Item No. 9675L,M,H	Vial: 5ml	11/30/90
Abbott Laboratories	Propoxyphene QC Primary B-F,L,M,H,Z Item No. 9675(B-F,L,M,H,Z)-QC.	Carboy:20,10L Flasks:8,4,2,1L,500,250,200,100ml Bottles:950,500,100,50,5ml Ampules:20,10,5,2ml.	11/30/90
Abbott Laboratories	Propoxyphene Stock Standard, 100 mcg/ml Item No. 92006.	Carboys:20,10L Flasks:8,4,2,1L,500,250,200,100ml Bottles:950,500,100,50,5ml Ampules:20,10,5,2ml.	11/30/90
Abbott Laboratories	Propoxyphene Stock Tracer Item No. 92001	Bottle: 12ml	11/30/90
Abbott Laboratories	Propoxyphene Tracer Item No. 9675-T	Bottles: 9.2ml, 5ml	11/30/90
Abbott Laboratories	Secobarbital Bulk Calibrator, B-F No. 9669	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	03/21/86

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Abbott Laboratories	Secobarbital Bulk Controls, L and H No. 9669	Carboy: 20L, 10L, Flask: 6L, 4L, 2L, 1L, 250ml, 200ml.	05/21/86
Abbott Laboratories	Secobarbital Stock Standard 1000mcg/ml-No. 90107, 500mcg/ml-No. 90107A, 200mcg/ml-No. 90107B.	Carboy: 20L, 10L, Flask: 4L, 2L, 1L, 500ml, 250ml, 200ml, 100ml, Bottle: 950ml, 500ml, 100ml, 5ml.	01/09/89
Abbott Laboratories	Secobarbital Stock Standard No. 97171, 97171 A,B.	Carboy:20L,10L Flask:4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950 ml, 500 ml, 100 ml, 5 ml.	11/22/88
Abbott Laboratories	Secobarbital Stock Standard, No. 97171	Bottle: 125ml	11/21/85
Abbott Laboratories	Spectrum Phenobarbital Calibrator II-VI, Nos. 9765, 9767, 9768, 9761, 9763.	Bottle: 4ml	10/03/85
Abbott Laboratories	Spectrum Phenobarbital Control, Nos. 9676, 9678, 9680. (L,M,H).	Bottle: 4ml	10/03/85
Abbott Laboratories	TDx Amphetamine Class Calibrators 9667-01	Kit containing 6 vials	03/01/88
Abbott Laboratories	TDx Amphetamine Class Calibrators B-F	Bottle: 5 ml	05/01/88
Abbott Laboratories	TDx Amphetamine Class Control L and H	Bottle: 5 ml	05/01/88
Abbott Laboratories	TDx Amphetamine Class Controls 9667-10	Kit containing 2 vials	05/01/88
Abbott Laboratories	TDx Amphetamine Class Tracer Solution, No. 9667T.	Vial: 5ml, 9.2ml	05/01/88
Abbott Laboratories	TDx Amphetamine/Methamphetamine Calibrator, No. 9666-01.	Bottles: 4ml	05/20/86
Abbott Laboratories	TDx Amphetamine/Methamphetamine Controls, No. 9666-10.	Bottles: 4ml	05/20/86
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669 B-F	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators No. 9669-01	Kit: 5 Vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Barbiturates Calibrators, B-F No. 9669	Bottle: 4 ml	10/06/86
Abbott Laboratories	TDx Barbiturates Control L,H No. 9669 L,H	5 ml Vial	07/01/88
Abbott Laboratories	TDx Barbiturates Control, L and H No. 9669	Bottle: 4ml	10/06/86
Abbott Laboratories	TDx Barbiturates Controls No. 9669-10	Kit: 2 Vials, 5 ml each	07/01/88
Abbott Laboratories	TDx Benzodiazepines Calibrator No. 9674 B-F	5 ml Vial	07/19/88
Abbott Laboratories	TDx Benzodiazepines Calibrators No. 9674-01	Kit: 5 Vials, 5 ml each	07/19/88
Abbott Laboratories	TDx Benzodiazepines Calibrators, No. 9674-01	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Controls L,H No. 9674 L,H	5 ml Vial	07/19/88
Abbott Laboratories	TDx Benzodiazepines Controls L,H No. 9674-10	Kit: 2 Vials, 5 ml each	07/19/88
Abbott Laboratories	TDx Benzodiazepines Controls, No. 9674-10	Bottles: 4ml	04/21/86
Abbott Laboratories	TDx Benzodiazepines Serum Calibrator No. 9662 B-F.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators B-F: Code No. 9662 B-F.	Bottle: 4 ml	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: Code No. 9662-01.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Calibrators: No. 9662-01.	Kit containing 6 vials	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls L,M, & H: No. 9662 L,M,H.	Bottle: 4 ml	12/07/87
Abbott Laboratories	TDx Benzodiazepines Serum Controls L,M,H: No. 9662 L,M,H.	Bottle: 4 ml	05/02/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: Code No. 9662-10.	Kit	12/07/88
Abbott Laboratories	TDx Benzodiazepines Serum Controls: No. 9662-10.	Kit containing 3 vials	05/02/88
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (9671-02)	Bottle:5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Calibrators B-F (No. 9671-01)	Bottles:5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Controls L,M, and H (9671-11).	Bottle:5 ml	06/19/87
Abbott Laboratories	TDx Cannabinoids Controls L,M,H (No. 9671-10)	Bottles:5 ml	10/24/86
Abbott Laboratories	TDx Cannabinoids Fluorescein Tracer Solution (No. 9671-T).	Bottle:5 ml	10/27/86
Abbott Laboratories	TDx Cannabinoids Reagent Pack (No. 9671-20)	100 tests	10/27/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrator B-F No. 9670 B-F.	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Calibrator, B-F No. 9670.	Bottle: 4ml	10/02/86
Abbott Laboratories	TDx Cocaine Metabolite Calibrators No. 9670-01	Kit: 5 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control L,H No. 9670 L,H.	5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Control, L and H No. 9669.	Bottle: 4ml	10/02/86
Abbott Laboratories	TDx Cocaine Metabolite Controls No. 9670-10	Kit: 2 Vials, 5 ml each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670 T0001.	Kit: 100 Vials, 5 ml Each	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Fluorescein Tracer Solution No. 9670-T.	Box: 5 ml Vial	07/07/88
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack	Reagent well: 5ml	10/02/86
Abbott Laboratories	TDx Cocaine Metabolite Reagent Pack No. 9670-20.	Kit: 100 Tests	07/07/88
Abbott Laboratories	TDx Multiconstituent Controls L,M,H (No. 9667-L,M,H).	Bottle:5 ml	09/03/87
Abbott Laboratories	TDx Opiates Calibrators B-F: No. 9673-01	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Calibrators, B-F No. 9673	5 ml Vial	05/07/86

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Abbott Laboratories	TDx Opiates Controls L and H: No. 9673 L,H	Vial: 4 ml	02/29/88
Abbott Laboratories	TDx Opiates Controls, L and H No. 9673	Vials: 5ml	05/07/86
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution No. 9673 T0001.	Box:10 Vials, 5 ml each	07/08/86
Abbott Laboratories	TDx Opiates Fluorescein Tracer Solution: No. 9673-T.	Reagent Well: 5 ml	02/29/88
Abbott Laboratories	TDx Opiates Reagent, Pack No. 9673-20, 100 tests.	Reagent Well: 5ml ; 100 tests	05/07/86
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Calibrator B-F No. 9672 B-F.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Bulk Control L,M,H No. 9672 L,M,H.	Carboy: 9.5, 19 L	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators B-F No. 9672-01	Kit: 5 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Calibrators, B-F No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phencyclidine Control M No. 9672	Bottle: 4ml	09/26/86
Abbott Laboratories	TDx Phencyclidine Controls L,M,H No. 9672 L,M,H.	5 ml Vial	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls No. 9672-10	Kit: 3 Vials, 5 ml each	07/18/88
Abbott Laboratories	TDx Phencyclidine Controls, L and H No. 9672	Bottle: 4ml	10/09/85
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 B-F.	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Bulk Calibrators No. 9500 L,M,H.	Carboy: 10 L, 20 L	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrator-0.0, 5.0, 10.0, 20.0, 40.0, and 80.0 mcg/ml.	Kit ctg: 6 vials	06/31/81
Abbott Laboratories	TDx Phenobarbital Calibrators B-F No. 9500 B-F	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Calibrators No. 9500-01	5 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500 L,M,H	5 ml Vial	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls No. 9500-10	Kit: 3 Vials, 5 ml each	06/16/88
Abbott Laboratories	TDx Phenobarbital Controls- 15.0, 30.0, 50.0 mcg/ml.	Kit ctg: 3 vials	08/31/81
Abbott Laboratories	TDx Propoxyphene Reagent Pack Item No. 9675-20.	Kit: 100 tests	11/30/90
Abbott Laboratories	TDx Systems Multiconstituent Controls for Abused Drug (No. 9687-10).	Kit: 6 Bottles	09/03/87
Abbott Laboratories	TDx or TDx/TDxFLx Propoxyphene Fluorescein Tracer Solution Item No. 9675T0001.	Box: 100 bottles or less	11/30/90
Abbott Laboratories	TDx, ADx Amphetamine Class Reagent Pack, No.9667-20, No. 9667-55.	Kit: 100 tests	03/01/88
Abbott Laboratories	TDx/TDxFLx Propoxyphene Reagent Pack Item No. 9675-80.	Kit: 100 tests	11/30/90
Abbott Laboratories	Thyroxine Binding Globulin, Thyroxine I 125	Glass Bottle: 13ml. Plastic Bottle: 250ml	04/22/76
Abbott Laboratories	TrakPak Five Drug Control 2-6 QT Nos. 92212-92216.	Carboy:20,10L Flask:6,4,2,1L, 500,250,200,100ml Bottle:950,500,100,50,5ml Ampule:20,10,5,2ml.	10/19/90
Abbott Laboratories	TrakPak Five Drug Control Stock No. 92210	Carboy:20,10L Flask:6,4,2,1L,500,250,200,100ml Bottle:950,500,100,50,5ml Ampule:20,10,5,2ml.	10/19/90
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrator B,C,D,E,F; No. 01A99-B,C,D,E,F.	Vial: 5 ml	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Calibrators, No. 01A99-01.	Kit: 6 vials	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Control L,M,H; No. 01A99-L,M,H.	Vial: 5 ml	07/14/89
Abbott Laboratories	X Systems Amphetamine/Methamphetamine II Controls, No. 01A99-10.	Kit: 3 vials	07/14/89
Abbott Laboratories	d-Amphetamine (II) Bulk Stock Standard Code No. 95847.	10 L Carboy; 6 L, 2 L, 1 L Flask	06/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard Code No. 95834.	1 L, 500 ml, 100 ml Bottle	06/26/88
Abbott Laboratories	d-Amphetamine (II) Stock Standard No. 95834, 95934 A-B.	Carboy: 20L, 10L Flask: 4L, 2L, 1L, 500 ml, 250 ml, 200 ml, 100 ml Bottle: 950ml, 500ml, 100ml,5ml.	11/22/88
Adri/Technam	3-Ortho-Carboxymethylmorphine	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid	Screw Cap Vial	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Bovine Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	5-Ethyl-5-(1-Carboxy-n-propyl) Barbituric Acid-Rabbit Serum Albumin.	Vaccine Vial: 10ml	05/03/73
Adri/Technam	Barbiturate Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Barbituric Acid Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine	Screw-cap vial:10ml	04/18/74
Adri/Technam	Benzoyl Ecgonine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/03/73
Adri/Technam	Benzoyl Ecgonine Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Benzoyl Ecgonine-BSA	Vaccine Vial	07/21/75
Adri/Technam	Benzoyl Ecgonine-RSA	Vaccine Vial	07/21/75
Adri/Technam	CMM-BSA and CMM-RSA (Carboxymethylmorphine Bovine Serum Albumin or Carboxymethylmorphine Rabbit Serum Albumin).	Vaccine Vial: 10ml	05/03/73

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Adri/Technam	Cannabuse Cannabidiol Standard	Disks: 25/package	05/09/95
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/94
Adri/Technam	Cannabuse Delta 8 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/94
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Vial: 6 ml	09/19/94
Adri/Technam	Cannabuse Delta 9 THC Carboxylic Acid Standard.	Disks: 25/package	09/19/94
Adri/Technam	Cannabuse Delta 9 THC Standard	Vial: 6 ml	09/19/94
Adri/Technam	Cannabuse Delta 9 THC Standard	Disks: 25/package	09/19/94
Adri/Technam	Drug Standards, Acid/ Neutral Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Drug Standards, Basic Mixture A and B	Disks: 25/package	11/15/85
Adri/Technam	Methadone Standard	Screw-cap vial:10ml	07/17/76
Adri/Technam	Morphine Sensitized Red Blood Cells	Vaccine Vial: 50ml	05/09/73
Adri/Technam	Morphine Standard (in distilled water)	Screw-cap vial:10ml	07/17/77
Adri/Technam	Tropinecarboxylic Acid (ecgonine)	Screw-cap Bottle:10ml	05/09/73
Alltech-Applied Science	4-Methylamfetamine	Vial: 1 ml	09/16/89
Alltech-Applied Science	6-Acetylcodeine	Vial: 1 ml	09/16/89
Alltech-Applied Science	Benzoylecgonine Tetrahydrate 7.5ug, 50ug, 250ug.	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science	Bromazepam	Vial: 1 ml	09/16/89
Alltech-Applied Science	Cyclopentobarbital	Vial: 1 ml	09/16/89
Alltech-Applied Science	GC/MS Benzoylecgonine Calibration Standards Kit.	Kit: 3 vials	02/16/90
Alltech-Applied Science	L-Amphetamine HCl	Vial: 1 ml	09/16/89
Alltech-Applied Science	MDE HCl	Vial: 1 ml	09/16/89
Alltech-Applied Science	Medazepam	Vial: 1 ml	09/16/89
Alltech-Applied Science	Methaqualone	Vial: 1 ml	09/16/89
Alltech-Applied Science	N-Ethylamphetamine	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science	N-Hydroxy-MDA	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science	Normeperidine HCl	Vial: 1 ml	09/16/89
Alltech-Applied Science	Phenmetrazine HCl	Amber Ampoule: 1ml	02/16/90
Alltech-Applied Science	Talbutal	Vial: 1 ml	09/16/89
Alltech-Applied Science	Thiopental	Vial: 1 ml	09/16/89
Alltech-Applied Science	d3-Benzoylecgonine Tetrahydrate	Amber Ampoule: 5ml	02/16/90
Alltech-Applied Science	l-Methamphetamine HCl	Vial: 1 ml	09/16/89
American Monitor Corporation	Quality I	Glass Vial: 10ml	10/09/75
American Monitor Corporation	Quality II	Glass Vial: 10ml	10/09/75
Amersham Corporation	Amerlex T-3 RIA Kit, IM 2000, IM 2001, IM 2004	Kit: 50 tests, 100 tests, 400 tests	02/16/80
Amersham Corporation	Amerlex T-4 RIA Kit, IM 2010, IM 2011, IM 2014	Kit: 50 tests, 100 tests, 400 tests	02/06/80
Amersham Corporation	Amerlex-M B-hCG Radioimmunoassay Kit IM 3091,IM 3094.	Kit: 100 tests, 400 tests	09/19/85
Amersham Corporation	Amerlex-M T3 RIA Kit, 1M.3001, 1M.3004	Kit:100 Tests 400 Tests	09/27/85
Amersham Corporation	Amerlex-M T4 RIA Kit, 1M.3011, 1M.3014	Kit:100 Tests 400 Tests	09/27/85
Amersham Corporation	Amerlite FSH Assay, Cat. Code LAN.0077, Cat. Code LAN.2077.	Glass vial: 5.8ml, 38.1ml, 240 tests, 144 tests	05/30/89
Amersham Corporation	Amerlite Rubella Antibody Assay, Cat. Code LAN.0209, Cat. Code LAN.2200.	Glass vial: 5.8ml, 38.1ml, 240 tests, 144 tests	05/30/89
Amersham Corporation	Amerlite TSH Assay, Cat. Code LAN.0001, Cat. Code LAN.2001.	Glass vial: 5.8ml, 240 tests, 144 tests	05/30/89
Amersham Corporation	Amerlite TT3 Assay: Catalog Code Lan. 0003, Lan. 1053, and Lan.2003.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Amerlite TT4 Assay: Catalog Code Lan. 0002, Lan. 1092, Lan. 2002.	Kit: 144 tests, 240 tests, 480 tests	11/24/87
Amersham Corporation	Codeine (N-methyl-C14) Hydrochloride	Customs Preparation	03/27/72
Amersham Corporation	Morphine (N-methyl-C14) Hydrocloride No. CFA-353.	Vial:0.32 to 1.89mg	03/27/72
Amersham Corporation	Phero [2-14C] barbital Catalog No. CFA 537	Vial:0.39 to 5.85mg	11/05/74
Amersham Corporation	Prolactin RIA Kit, IM 1060, 1061	Kit: 50 tests, 100 tests	03/28/80
Amersham Corporation	T-3 Uptake (MAA) Kit-IM 1020, IM 1021, IM 1024.	Kit: 50 tests, 100 tests, 400 tests	02/05/79
Amersham Corporation	[1(N)-3H] Hydromorphone TRQ 4729	Vial: 47.5-95 micrograms	07/31/87
Amersham Corporation	[1(n)-3H] Codeine, No. TRK 448	Ampule: 0.002mg to 0.015mg	02/28/74
Amersham Corporation	[1(n)-3H]Morphine, No. TRK-447	Vial: 0.002 mg to 0.015 mg	02/28/74
Amersham Corporation	[1,7,8(n)-3H]Dihydromorphine, No. TRK-450	Vial: 0.0099 mg to 0.006 mg	02/28/74
Amersham Corporation	[15, 16(n)-3H] Etorphine, Catalog No. TRK 476	Vial:3.45 to 6.9 micrograms	11/19/74
Amersham Corporation	[15,16(n)-3H] Etorphine Catalog No. TRK 476	Vial:13.8 to 27.6 micrograms	02/17/75
Amersham Corporation	[2(n)-3H] Lysergic Acid Diethylamide, No. TRK. 461.	Vial: 0.003mg to 0.04mg	05/22/74
Amersham Corporation	[2-14C] Diazepam Catalog No. CFA.591	Multidose Glass Vial: 56mm x 25mm	09/28/77
Amersham Corporation	[N-methyl-3H] Diazepam Catalog Code: TRK.572.	Multidose Glass Vial: 56mm x 25mm	09/28/77
Applied Science Laboratories	6-Monoacetylmorphine HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Allylsecbutylbarbituric Acid	Vial: 1ml	01/24/78
Applied Science Laboratories	Alphaprodine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Alphenal	Vial: 1ml	01/24/78
Applied Science Laboratories	Alprazolam	Vial: 1ml	04/16/85
Applied Science Laboratories	Amobarbital	Vial: 1ml	01/24/78
Applied Science Laboratories	Amphetamine HCL	Vial: 1ml	01/24/78

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Applied Science Laboratories	Aprobarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Barbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Barbiturates, Mixture 4	Vial: 10ml	10/04/72
Applied Science Laboratories	Benzoylecgonine Tetrahydrate	Vial: 1ml	04/16/85
Applied Science Laboratories	Benzphetamine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Butabarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Butethal	Vial: 1ml	01/24/73
Applied Science Laboratories	Cannabidiol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Cannabinol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Chloral Hydrate	Vial: 1ml	04/16/85
Applied Science Laboratories	Chlordiazepoxide HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Clonazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Clorazepate Dipotassium	Vial: 1ml	04/16/85
Applied Science Laboratories	Cocaine	Vial: 1ml	01/24/73
Applied Science Laboratories	Codeine	Vial: 1ml	01/24/73
Applied Science Laboratories	Delta-8-Tetrahydro-cannabinol	Vial: 1 ml	03/30/88
Applied Science Laboratories	Delta-9-Tetrahydrocannabinol	Vial: 1ml	04/16/85
Applied Science Laboratories	Depressants, Mixture 3	Vial: 10ml	10/04/72
Applied Science Laboratories	Dextropropoxyphene HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Diacetylmorphine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Diallylbarbituric acid	Vial: 1ml	01/24/73
Applied Science Laboratories	Diazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Diethylpropion HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Dihydrocodeine	Vial: 1ml	04/16/85
Applied Science Laboratories	Dimethyltryptamine	Vial: 1ml	04/16/85
Applied Science Laboratories	Drug Mix Four	Ampoule: 1 ml	11/03/86
Applied Science Laboratories	Drug Mix One	Ampoule: 1 ml	10/21/86
Applied Science Laboratories	Drug Mix Three	Ampoule: 1 ml	11/03/86
Applied Science Laboratories	Drug Mix Two	Ampoule: 1 ml	10/21/86
Applied Science Laboratories	Ecgonine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Ecgonine Methyl Ester HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Ethchlorvynol	Vial: 1ml	01/24/73
Applied Science Laboratories	Ethinamate	Vial: 1ml	01/24/73
Applied Science Laboratories	Ethylmorphine HCL	Vial: 1ml	01/24/73
Applied Science Laboratories	Famfluramine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Fentanyl	Vial: 1ml	04/16/85
Applied Science Laboratories	Flunitrazepam HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Glutethimide	Vial: 1ml	01/24/73
Applied Science Laboratories	Halazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Hexobarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Hydrocodone Bitartrate	Vial: 1ml	01/24/73
Applied Science Laboratories	Hydromorphone HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Levorphanol Tartrate	Vial: 1ml	04/16/85
Applied Science Laboratories	Lorazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Lysergic Acid	Vial: 1ml	04/16/85
Applied Science Laboratories	Lysergic Acid N-(methylpropyl) amide	Vial: 1ml	04/16/85
Applied Science Laboratories	Lysergic Acid diethylamide	Vial: 1ml	04/16/85
Applied Science Laboratories	MDA HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	MDMA HCl	Vial: 1 ml	03/30/88
Applied Science Laboratories	Meperidine HCL	Vial: 1ml	01/24/73
Applied Science Laboratories	Methoberbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Meprobamate	Vial: 1ml	01/24/73
Applied Science Laboratories	Mescaline	Vial: 1ml	01/24/73
Applied Science Laboratories	Methadone HCL	Vial: 1ml	01/24/73
Applied Science Laboratories	Methamphetamine HCL	Vial: 1ml	01/24/73
Applied Science Laboratories	Methaqualone HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Methohexital	Vial: 1ml	04/16/85
Applied Science Laboratories	Methylphenidate	Vial: 1ml	01/24/73
Applied Science Laboratories	Methyprylon	Vial: 1ml	04/16/85
Applied Science Laboratories	Mixture 1-Opiates	Vial: 1ml	10/04/72
Applied Science Laboratories	Mixture 2-Stimulants	Vial: 1ml	10/04/72
Applied Science Laboratories	Mixture 3-Depressants	Vial: 1ml	10/04/72
Applied Science Laboratories	Mixture 4-Barbiturates	Vial: 1ml	10/04/72
Applied Science Laboratories	Mixture 5-Kit of Representatives	Vial: 1ml	10/04/72
Applied Science Laboratories	Morphine	Vial: 1ml	01/24/73
Applied Science Laboratories	Nalorphine	Vial: 1ml	01/24/73
Applied Science Laboratories	Nitrazepam	Vial: 1 ml	03/30/88
Applied Science Laboratories	Norcodeine HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Nordiazepam	Vial: 1 ml	03/30/88
Applied Science Laboratories	Normorphine	Vial: 1ml	04/16/85
Applied Science Laboratories	Opiates, Mixture 1	Vial: 10ml	10/04/72
Applied Science Laboratories	Oxazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Oxycodone HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Oxymorphone HCL	Vial: 1ml	04/16/85
Applied Science Laboratories	Paraldehyde	Vial: 1ml	04/16/85
Applied Science Laboratories	Pemoline	Vial: 1ml	04/16/85
Applied Science Laboratories	Pentazocine	Vial: 1ml	04/16/85
Applied Science Laboratories	Pentazocine HBr	Vial: 1ml	01/24/73
Applied Science Laboratories	Pentobarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Phencyclidine HCL	Vial: 1ml	01/24/73

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Applied Science Laboratories	Phendimetrazine Bitartrate	Vial: 1ml	04/16/85
Applied Science Laboratories	Phenobarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Phentermine	Vial: 1ml	04/16/85
Applied Science Laboratories	Prazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Propylbenzoyl-ecgonine	Vial: 1 ml	03/30/88
Applied Science Laboratories	Psilocybin	Vial: 1ml	04/16/85
Applied Science Laboratories	Psilocyn	Vial: 1 ml	11/06/87
Applied Science Laboratories	Secobarbital	Vial: 1ml	01/24/73
Applied Science Laboratories	Stimulants, Mixture 2	Vial: 10ml	10/04/72
Applied Science Laboratories	Temazepam	Vial: 1ml	04/16/85
Applied Science Laboratories	Thebaine	Vial: 1ml	01/24/73
Applied Science Laboratories	Thiamylal	Vial: 1ml	01/24/73
Applied Science Laboratories	Toxi Clean Test Mix	Vial: 1 ml	03/30/88
Applied Science Laboratories	Triazolam	Vial: 1ml	04/16/85
Armed Forces Institute of Pathology	11-nor-9-carboxy-delta 8-THC in Ethanol Ampules.	Glass Ampule: 1mg/ml, 1ml, 5ml, 10ml	01/25/82
Astral Medical Systems	Barbital Buffer	Plastic bag: 12.2g/bag	05/01/85
Astral Medical Systems	Barbital Lactate Buffer	Plastic bag: 18g/bag	05/01/85
Astral Medical Systems	Isoenzyme Buffer	Plastic bag: 14g/bag	05/01/85
Astral Medical Systems	Tris-Barbital Sodium Barbital Buffer	Plastic bag: 18g/bag	05/01/85
Atochem North America, Inc.	M&T NiproTeq SB Additive	Polypropylene Containers: 5 gallons, 55 gallons	03/10/88
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot Lot B-G	Kit: 7-3 ml Vials; 3 ml Vial	06/18/88
BHP Diagnostix, Inc.	Kallestad TDM Multi-Calibrator-Pilot-Lot Phenobarbital.	3ml, 6ml, 10ml, 30ml, 50ml Vial	06/18/88
BHP Diagnostix, Inc.	Kodak Ektachem-DT Calibrator	Bottle: 6ml	01/05/85
Baxter Diagnostics Inc., Dade Division	(125I) Human TSH Tracer (Lyophilized), Catalog No. CA-2691.	Glass Vial:10 ml	09/09/86
Baxter Diagnostics Inc., Dade Division	(125I) Human TSH Tracer, Cat. No. CA-2611	Vial: 15ml	12/07/89
Baxter Diagnostics Inc., Dade Division	(125I) Human TSH Tracer, Cat. No. CA-2623	Vial: 15ml	12/07/89
Baxter Diagnostics Inc., Dade Division	Anticonvulsant Drug Controls, Levels I and II, Catalog No. CA-2419 and CA-2420.	Glass Vial:3.5 ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Assay Buffer Cat. No. CA-2742	Plastic Bottle: 150ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Bovine Chemistry Control LX Special Order Request B5107-55XX.	Bottle: 18ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc., Dade Division	Bovine Chemistry Control II.X Special Order Request B5107-65XX.	Bottle: 18 ml (Lyophilized Material)	01/29/86
Baxter Diagnostics Inc., Dade Division	Buffered Thrombin (Bovine) Catalog No. B4233-40.	Bottle: 5ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc., Dade Division	Clinical Assays GammaCoat (125I) Phenobarbital Radioimmunoassay Kits Catalog No. CA-2545, CA-2565.	Kit:50 Assays, 500 Assays	09/09/86
Baxter Diagnostics Inc., Dade Division	Clinical Assays GammaCoat (125I) Phenytoin Radioimmunoassay Kit Catalog No. CA-2537, CA-2557.	Kit:50 Assays, 500 Assays	09/09/86
Baxter Diagnostics Inc., Dade Division	Clinical Assays GammaCoat (125I) T3 Uptake Radioimmunoassay Kit Catalog No. CA-2539, CA-2539J, CA-2559, CA-2559J.	Kit:100 Assays, 100 Assays, 500 Assays, 500 Assays.	09/09/86
Baxter Diagnostics Inc., Dade Division	Clinical Assays GammaDab (125I) HS-hTSH Radioimmunoassay Kit Catalog No. CA-1573.	Kit:125 Assays, Vial: 15ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Clinical Assays GammaDab (125I) hTSH Radioimmunoassay Kit Catalog No. CA-591.	Kit:125 Assays, Vial: 15ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level I-Low	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level II-Intermediate.	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Control, Level III-High	Bottle: 9ml (Lyophilized Material)	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade Immunoassay Controls, Tri-Level	Kit: 3 bottles	04/25/86
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level I-Low B5700-2	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level II-Intermediate B5700-3	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade TDM Control Level III-High B5700-4	Glass Vial: 9ml (Lyophilized Material)	01/21/82
Baxter Diagnostics Inc., Dade Division	Dade Therapeutic Drug Monitoring (TDM) Controls (Catalog No. B5700-1).	Kit:9 Vials	03/10/87
Baxter Diagnostics Inc., Dade Division	Data-Fi Euglobulin Lysis Set Cat. No. B4233-40	Kit: 70 Tests	09/09/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Fibrin Monomer Control Catalog Nos. B4233-30 & B4233-35.	Glass Vial: 5ml (Lyophilized Material)	01/24/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Fibrinogen Determination Reagents Cat. No. B4233-15.	Kit: 50 tests	09/09/86
Baxter Diagnostics Inc., Dade Division	Data-Fi Protamine Sulfate Reagents Kit (Catalog No. B4233-30).	Kit:10 Vials	03/10/87
Baxter Diagnostics Inc., Dade Division	Data-Fi Thrombin Reagent	Bottle:9 ml (Lyophilized Material)	07/20/83
Baxter Diagnostics Inc., Dade Division	Data-Fi Thrombin Reagent	Bottle: 5ml (Lyophilized Material) Vial: 9ml Carton: 10 vials, Cat. No. 28 10 09.	05/18/81
Baxter Diagnostics Inc., Dade Division	HTSH Non-Specific Binding Reagent, Catalog No. CA-2752.	Glass Vial:3.5 ml	09/09/86
Baxter Diagnostics Inc., Dade Division	HTSH Non-Specific Binding Reagent, Catalog No. CA-2780.	Glass Vial:3.5 ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Human TSH Controls Levels I and II, Catalog No. CA-2452 and CA-2453.	Glass Vial:3.5 ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Human TSH Standards (2,5,10,20 & 50 uIU/ml) Cat. No. CA-(2886 - 2890).	Glass Bottle: 3.5ml	09/09/86
Baxter Diagnostics Inc., Dade Division	Human hTSH Blank, Cat. No. CA-2885	Vial: 15ml	12/07/89

BEST COPY AVAILABLE

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level I Chemistry Control, Assayed, Special Order Request. B5103-XXX.	Bottle:6ml (Lyophilized Material)	01/[illegible]/84
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level LX Special Order Request B5106-5X.	Bottle: 18ml (Lyophilized Material)	05/[illegible]/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level II Chemistry Control, Assayed, Special Order Request. B5103-XXX, B5113-XXX.	Bottle: 6ml (Lyophilized Material)	04/20/84
Baxter Diagnostics Inc., Dade Division	Moni-Trol Level II.X Special Order Request B5106-5X.	Bottle: 18ml (Lyophilized Material)	05/[illegible]/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level I Chemistry Control, Assayed.	Bottles: 6ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level LX Special Order Request Catalog No. B5106-75AAA Catalog No. B5106-1XAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	05/27/85
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level II Chemistry Control, Assayed.	Bottle:9ml, 6.7ml (Lyophilized Material)	07/15/83
Baxter Diagnostics Inc., Dade Division	Moni-Trol. ES Level II.X Special Order Request Catalog No. B5106-85AAA Catalog No. B5106-2IAAA.	Bottle: 18ml, 9ml (Lyophilized Material)	05/27/85
Baxter Diagnostics Inc., Dade Division	Owen's Veronal Buffer	Bottle: 18ml	05/10/71
Baxter Diagnostics Inc., Dade Division	Phenobarbital Serum Standards (1,5,10,30 & 100 ug/ml) Cat. No. CA-2360 - 2364.	Glass Bottle: 3.5ml	09/09/85
Baxter Diagnostics Inc., Dade Division	Rabbit Anti-Human TSH Serum, Cat. No. CA-2145.	Vial: 16ml	12/07/89
Baxter Diagnostics Inc., Dade Division	Rabbit Anti-Human TSH Serum, Catalog No. CA-2106.	Glass Vial:20 ml	09/09/85
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Calibrators B, C, D, E, & F	Glass Vial: 3ml	06/27/83
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Conjugate	Glass Vial: 6ml	01/25/82
Baxter Diagnostics Inc., Dade Division	Stratus Phenobarbital Fluorometric Enzyme Immunoassay Kit (Catalog No. B5706-22).	Kit:129 tests	09/16/87
Baxter Diagnostics Inc., Dade Division	Thrombin Reagent (Bovine)	Bottle: 5ml (Lyophilized Material) Vial: 5ml Carton: 10 vials, Cat.No. 28 10 12.	06/16/71
Baxter Diagnostics, Inc., Dade Division	Absorbed Plasma and Serum Reagents Kit: B4233-2.	Glass Vial: 5ml (Lyophilized Material)	09/16/71
Beckman Instruments, Inc.	Beckman B-1 Buffer	Plastic Vial: 15 g	05/22/70
Beckman Instruments, Inc.	Beckman Buffer B-2	Packet: 18.16 g	04/24/71
Beckman Instruments, Inc.	Beckman ICS Drug Calibrators A, B, C, D, and E.	Vials: 5ml	10/29/80
Beckman Instruments, Inc.	Beckman ICS Drug Control Sera	Kit containing: 6-1ml bottles	11/11/88
Beckman Instruments, Inc.	Beckman ICS Phenobarbital Conjugate	Vial: 6ml	10/29/80
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Beckman LD Buffer	Bottle: 14.3 grams	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Alkaline Phosphatase Isoenzyme Electrophoresis (Isopal) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: High Resolution Electrophoresis (HRE) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunoelectrophoresis (IEP) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Immunofixation Electrophoresis (IFE) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lactate Dehydrogenase Isoenzyme Electrophoresis (LD) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Lipoprotein Electrophoresis (LIPO) Kit.	Plastic Tray: 3.5 ml, Box: 10 trays, Kit: 10 trays	05/19/89
Beckman Instruments, Inc.	Paragon Electrophoresis System: Protein Electrophoresis (SPE-II) Kit.	Plastic Tray: 3.5ml	07/31/86
Beckman Instruments, Inc.	Paragon Electrophoresis System: Serum Protein Electrophoresis (SPE) Kit.	Plastic Tray: 3.5ml, Box: 10 trays, Kit: 10 trays	05/19/89
Becton Dickinson & Company	Barbital Buffer Solution, Catalog No. 246514	Bottle: 1 ounce	08/01/84
Becton Dickinson & Company	Human Thyroid Stimulating Hormone (hTSH) Radioimmunoassay Kit (125I)Catalog No. 258423.	Kit: 250 tubes	08/01/84
Becton Dickinson & Company	ICI Immunochemistry System, Thyroid Stimulating Hormone Catalog No. 3010.	Kit: 25 tests	05/30/87
Becton Dickinson & Company	Neonatal T4 Tracer Cat. No. 264018	Bottle: 500ml	04/02/90
Becton Dickinson & Company	Neonatal TSH Antiserum, Catalog No. 244716	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Precipitating Antiserum, Catalog No. 247849	Vial: 50 ml	08/01/84
Becton Dickinson & Company	Stirrup Trac Free T4/TSH Antiserum, No. 262641	Vial: 1 oz	02/21/86
Becton Dickinson & Company	Stirrup Trac Free T4[57 Co]/TSH[125I] Radioimmunoassay Kit, No. 262625.	Kit: 200 tubes	02/21/86
Becton Dickinson & Company	T3 Tracer Solution Catalog No. 237728	Bottle: 125ml	09/27/78
Becton Dickinson & Company	T4 Tracer Solution Catalog No. 232511	White NALGENE Polypropylene Bottle: 125 ml	02/10/78
Becton Dickinson & Company	TSH (125I) Tracer, Catalog No. 243821	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH Antiserum Catalog No. 263901	Clear Vial: 10ml	09/04/86
Becton Dickinson & Company	TSH Antiserum, Catalog No. 258431	Vial: 50 ml	08/01/84
Becton Dickinson & Company	TSH [125I] Tracer, Catalog No. 259634	Clear vial: 18ml	09/04/86
Behring Diagnostics	IEP Buffer, 793601 pH 8.2	Foil Pouch: 6.6 g	09/17/79
Behring Diagnostics	Immuno-tex II Agarose Plate, 890013, 850013	Foil Pouch: >5.35> x >5.35>	09/10/90
Bio-Rad Laboratories	Benzodiazepines/Tricyclic Antidepressants by HPLC.	Kit: 100 tests	02/06/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Bio-Rad Laboratories	Dade Urine Chemistry Control Levels I AND II	Vial: 20 ml, 50 ml	01/05/88
Bio-Rad Laboratories	Dade Urine Toxicology Control	Vial: 50 ml	01/05/88
Bio-Rad Laboratories	Internal Standard	Amber vial: 30ml Flask: 200ml-2000ml	02/06/90
Bio-Rad Laboratories	Lyphochek Therapeutic Drug Monitoring Control (TDM), Levels I, II, III.	Vial: 10ml	06/20/84
Bio-Rad Laboratories	Lypochek Immunoassay Control Levels I, II, III	Vial: 10 ml	09/24/87
Bio-Rad Laboratories	Lypochek Quantitative Urine Control Levels I and II.	Vial: 20 ml, 50 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Bovine) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Lypochek Unassayed Chemistry Control (Human) Levels I, II.	Vial: 20 ml	09/24/87
Bio-Rad Laboratories	Methadone/Methadone Metabolite Reagent Kit	400 tests	09/17/90
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-125I Tracer/Dissociating Reagent.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantaphase Thyroxine RIA-Thyroxine Immunobeads.	Plastic bottle: 60ml, 260ml	05/06/81
Bio-Rad Laboratories	Quantimune Barbital Buffer	Plastic Bottle: 1000ml, 250ml, 200ml	05/31/78
Bio-Rad Laboratories	Quantimune Radioimmunoassay T-4 Tracer, Iodine-125.	Vial: 10 ml	07/21/76
Bio-Rad Laboratories	Quantimune T-3 RIA Barbital Buffer	Bottle: 220ml	09/24/82
Bio-Rad Laboratories	Quantimune T-3 RIA Test Kit	Kit: 500 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune T-4 RIA Kit	Kit: 500 tests	07/01/77
Bio-Rad Laboratories	Quantimune T-4 RIA Test Kit	Kit: 5000 tests, 100 tests	05/31/78
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay Barbital Buffer.	Plastic Bottle with Screw cap: 1 liter	07/01/77
Bio-Rad Laboratories	Quantimune Thyroxine Radioimmunoassay T-4 125I Tracer/Dissociating Agent.	Glass Serum Vial: 10 ml	07/01/77
Bio-Rad Laboratories	REMEDI DPS Check Mix	Vial: 20ml, Flask: 1L-10L	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Combination	Vial: 20ml, Flask:250ml-6000ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard One	Vial: 20ml, Flask: 250ml-2500ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Internal Standard Two	Vial: 20ml, Flask: 250ml-5000ml	09/17/90
Bio-Rad Laboratories	REMEDI DPS Urine Calibrator	Vial: 20ml, Flask: 1L-10L	09/17/90
Bio-Rad Laboratories	Serum Calibrator 1	Amber vial: 20ml Polypropylene container: 20L	02/06/90
Bio-Rad Laboratories	Serum Calibrator 2	Amber vial: 20ml Polypropylene container: 20L	02/06/90
Bio-Rad Laboratories	T-4 Competitive Binding Reagent, Iodine-125	Bottle: 385 ml	07/21/76
Bio-Rad Laboratories	Urine Toxicology Control No. C-470-25	Amber Vial: 50ml	09/19/79
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer	Vial: 10ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250ml	07/21/76
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer Powder	Plastic bottle: 250 ml	09/06/77
Bio-Rad Laboratories, (Chemical Division)	Barbital Buffer-Dry Pack	Packages: 9.11 g., 18.21 g., 12.14 g.	05/09/74
Bio-Rad Laboratories, (Chemical Division)	Bio-Rad Electrophoresis Buffer	Bottle: 500ml	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Electrophoresis Buffer, Dry-Pack	Package:;6.15 g.	12/14/72
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer I, pH 8.6	Dry-pack:;25.6 g.	06/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer II, pH 8.6	Dry-pack:;15.61 g.	06/06/75
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III, pH 8.6	Dry-pack:;6.82 g.	01/22/76
Bio-Rad Laboratories, (Chemical Division)	Immunoelectrophoresis Barbital Buffer III-a, pH 8.6.	Dry-pack:;15.07 g.	06/06/75
Bio-Rad Laboratories, (Chemical Division)	Reagent No. 3	Bottle: 165 ml	12/14/72
Bio-Rad Laboratories, ECS Division	LYPHOCHEK Assayed Chemistry Control Serum (Human) Levels I and II.	Vials: 10 ml. each	04/13/88
Bio-Rad Laboratories, ECS Division	LYPHOCHEK Urine Toxicology Control-Law	Vials: 20 ml. each	04/13/88
Bio-Rad Laboratories, Inc.	Serum Calibrator for Benzodiazepines/Tricyclics, Contains 2.	Box: 2 vials	02/06/90
Biodiagnostic International	Liqui-Ura Toxic Control	Vial: 5ml	03/11/85
Bioscientific Corp./ECA	Agarose Barbital Buffer CSB 470182	Vial: 7 drams	11/15/90
Bioscientific Corp./ECA	Agarose Barbital Buffer ECA 470182	Vial: 12 drams; Box: 3 vials	11/15/90
Bioscientific Corp./ECA	Agarose Barbital-EDTA Buffer ECA 470180	Vial: 12 drams, Box: 3 vials	11/15/90
Bioscientific Corp./ECA	ECA Buffer ECA 0320024	Vial: 12 drams, Box: 12 vials	11/15/90
Bioscientific Corp/ECA	General Procedure Agarose Film µECA 470100	Plastic Tray 4.5>x5>, Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	LD Agarose Gel µCSB 102	Plastic Tray: 3>x5>, Kit: 10 trays	09/10/90
Bioscientific Corp/ECA	Protein Agarose Gel µPSB 103	Plastic Tray 3>x5>, Kit: 10 trays	09/10/90
Bioscientific, Corporation	ECA Buffer, Catalog No. ECA 05805	Plastic Packet: 18.0 g., 10 packets per box	07/14/77
Biosite Diagnostics	Barbiturate Conjugate	Plastic Bottles: 5,15,30 & 60 ml	11/30/90
Biosite Diagnostics	Barbiturate Derivative	Vial: 8,16,32 ml	11/30/90
Biosite Diagnostics	Benzoylecgonine Conjugate	Plastic Bottles: 5,15,30 & 60 ml	11/30/90
Biosite Diagnostics	Conjugate Beads (Bulk)	Bottles: 250ml - 1L	11/30/90
Biosite Diagnostics	Labeled Barbiturate Conjugate	Plastic Bottles: 0.5, 1,2 & 5 L	11/30/90
Biosite Diagnostics	Labeled Benzoylecgonine Conjugate	Plastic Bottles: 0.5,1,2 & 5 L	11/30/90
Biosite Diagnostics	Labeled Conjugate Mixture 1	Plastic Bottles: 5,10,20 & 50 L	11/30/90
Biosite Diagnostics	Labeled Conjugate Mixture 2	Plastic Bottles: 5,10,20 & 50 L	11/30/90
Biosite Diagnostics	Labeled Morphine Conjugate	Plastic Bottles: 0.5,1,2 & 5 L	11/30/90
Biosite Diagnostics	Labeled THC Conjugate	Plastic Bottles: 0.5,1,2 & 5 L	11/30/90
Biosite Diagnostics	Morphine Conjugate	Plastic Bottles: 5,15,30 & 60 ml	11/30/90
Biosite Diagnostics	THC Conjugate	Plastic Bottles: 5,15,30 & 60 ml	11/30/90
Biosite Diagnostics	Triage DOA Test Kit	Box: 25 pouches	11/30/90
Biosite Diagnostics	Triage Test Device	Metallic Pouch: 1 each	11/30/90
California Bionuclear Corporation	Amobarbital-2-C-14, Catalog No. 72077	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
California Bionuclear Corporation	Cocaine (methoxy-C-14) Catalog No. 72102	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	D-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72098.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	DL-Amphetamine (propyl-1-C-14) Sulfate, Catalog No. 72079.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mepedidine (N-methyl-C-14) Hydrochloride, Catalog No. 72508.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Mescaline (ontomethylene-C-14) Hydrochloride, Catalog No. 72512.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methadone (heptanone-3-C-14) Hydrochloride, Catalog No. 72516.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methamphetamine (propyl-1-C-14) Sulfate, Catalog No. 72517.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Methylphenidate (carbonyl-C-14) Hydrochloride, Catalog No. 72550.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Morphine (n-methyl-C-14) Hydrochloride, Catalog No. 72560.	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Pentobarbital-3-C-14, Catalog No. 72618	Screw Cap Vial: 50 microcuries, 0.1, 0.5, 1.0 millicuries.	01/08/75
California Bionuclear Corporation	Secobarbital-2-C-14, Catalog No. 72675	Ampule: 50 microcuries, 0.1, 0.5, and 1.0 millicuries.	01/08/75
Cambridge Medical Diagnostics, Incorporated	125I Human Parathyroid Hormone 44-68	Vial: 8ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	125I-Tetraiodothyronine	Vial: 11ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	125I-Triiodothyronine	Vial: 11ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	Donkey Anti Goat Gamma Globulin	Vial: 5ml	03/29/85
Cambridge Medical Diagnostics, Incorporated	Parathyroid Hormone (Human 1-84) Standard	5 Vials: 5ml each	09/29/85
Cambridge Medical Diagnostics, Incorporated	Parathyroid Hormone Assay Buffer	Vial: 10ml	03/29/85
Cambridge Medical Diagnostics, Incorporated	T3 AntiSerum (Rabbit)	Vial: 11ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	T3 Standard	Vial: 1ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	T4 Antiserum (Rabbit)	Vial: 11ml	09/29/85
Cambridge Medical Diagnostics, Incorporated	T4 Standard	Vial: 1ml	09/29/85
Casco Standards	1-(3-Phenylcyclohexyl)pyrrolidine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	1-Phenylcyclohexylamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	09/23/89
Casco Standards	1-[1-(2-thienyl)-cyclohexyl]-piperidine Cross-Reactant.	Cryo-vial: 1.1ml Box: 25,50,75 Plastic Cup: 125ml.	09/23/89
Casco Standards	1-[1-2(2-thienyl)-cyclohexyl]-pyrrolidine Cross-Reactant.	Cryo-vial: 1.1ml Box: 25,50,75 Plastic Cup: 125ml.	09/23/89
Casco Standards	11-OH-delta-8-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	09/21/89
Casco Standards	11-OH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic cup: 125ml.	09/21/89
Casco Standards	11-nor-delta-8-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	09/21/89
Casco Standards	11-nor-delta-9-THC-9-carboxilic acid Cross-Reactant.	Cryo-vial: 1.1ml Box: 25,50,75 vials	09/21/89
Casco Standards	8-B-11-diOH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	09/21/89
Casco Standards	8-B-OH-delta-9-THC Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Allobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	09/21/89
Casco Standards	Alphenal Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50 75 vials Plastic cup: 125ml.	03/21/90
Casco Standards	Alprazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Amobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Aprobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Barbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Benzoylecgonine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Benzphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Bromazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butalbarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25, 50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butalbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50, 75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Butethal Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cannabidiol Cross-Reactant	Cryo-Vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cannabinol Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic cup: 125ml.	03/21/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Casco Standards	Chlordiazepoxide Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Clonazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cocaine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Cyclopentobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Diazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Ecgonine HCl Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Ecgonine-methyl ester HCl hydrate Cross-Reactant.	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Fenfluramine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Flunitrazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Flurazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Halazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Hexobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Lorazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDA Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDE Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	MDMA Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Medazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Midazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Nitrazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 03/21/90.	03/21/90
Casco Standards	Nordiazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Oxazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Pentobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phencyclidine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/23/90
Casco Standards	Phenmetrazine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phenobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Phentermine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Pinazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Prazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Propylhexedrine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Secobarbital Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Talbutal Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Temazepam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	Triazolam Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	d-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	d-Methamphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	l-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Casco Standards	p-HO-Amphetamine Cross-Reactant	Cryo-vial: 1.1ml Box: 25,50,75 vials Plastic Cup: 125ml.	03/21/90
Ciba Corning Diagnostics	L-TDM III	Glass Vial: 5ml, Box: 15 Vials	09/23/89
Ciba Corning Diagnostics Corp.	Ciba Corning TDM II	Vial: 5ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM III	Vial: 5ml, 10 vials	10/22/85
Ciba Corning Diagnostics Corp.	AACC Tox	Glass Vial: 30ml	01/20/88
Ciba Corning Diagnostics Corp.	Ciba Corning ANTICONV//ASTH I, II	Kit Contains: 10ml vial, 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TDM I	Vial: 5ml, 10 vials	10/22/85

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Ciba Corning Diagnostics Corp.	Ciba Corning TDM I, II & III	Kit Contains: 5 Vials each level	10/22/85
Ciba Corning Diagnostics Corp.	Ciba Corning TOX I,II	Kit: Contains: 10ml vial, 5 Vials each level	12/16/85
Ciba Corning Diagnostics Corp.	Ciba Corning Urine II	Vial:30ml	05/22/85
Ciba Corning Diagnostics Corp.	DAU I, No. 9076	Glass vial: .25ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU II No. 9077	Glass Vial: 25ml, Box: 10 vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU III, No. 9078	Glass vial: 25ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp.	DAU IV, No. 9079	Glass Vial: 25ml, Box: 10 Vials	05/23/89
Ciba Corning Diagnostics Corp.	Immophase Ferritin Controls	Glass Vial: 3 ml	01/19/87
Ciba Corning Diagnostics Corp.	Immophase Ferritin Standards	Glass Vial: 5 ml	09/16/86
Ciba Corning Diagnostics Corp.	L-TDM I	Glass Vial: 5 ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	L-TDM I, II, III Kit	Kit: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	L-TDM II	Glass Vial: 5ml, Box: 15 Vials	05/23/89
Ciba Corning Diagnostics Corp.	LVM HI-CHEM DIL	Vial: 10ml	06/21/90
Ciba Corning Diagnostics Corp.	LVM, Product Code - 9774	Carton: 12 vials	06/21/90
Ciba Corning Diagnostics Corp.	MULTIQUAL ABN UNASY	Vial: 3ml, 10ml, Carton: 15 vials, 10 vials	04/09/89
Ciba Corning Diagnostics Corp.	MULTIQUAL NOR UNASY	Vial: 3ml, 10ml, Carton: 15 vials, 10 vials	04/09/89
Ciba Corning Diagnostics Corp.	Magic Ferritin 2000 Standard	Plastic Vial: 1 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Controls	Plastic Vial: 5 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Ferritin Standards	Polypropylene Vial: 3 ml	09/16/86
Ciba Corning Diagnostics Corp.	Magic Ferritin Zero Standard	Plastic Vial: 50 ml	01/19/87
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Bulk Lite Reagent	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Lite Reagent	Plastic Vial: 10 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite Ferritin Solid Phase	Plastic Vial: 50 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic Lite T3 Bulk Solid Phase	Plastic Vial: 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic T4 Antibody	Plastic Vial: 50 ml and 200 ml	02/16/88
Ciba Corning Diagnostics Corp.	Magic T4 Antibody	Vial: 50ml, 200ml	11/01/90
Ciba Corning Diagnostics Corp.	QCS ABN ASY	Vial: 5ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp.	QCS ABN ASY No. 9705/9705A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN ASY No. 9707/9707A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN UNASY No. 9691/9691A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS ABN UNASY No. 9717/9717A	Box: 10 vials, Vial: 10 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY	Vial: 5 ml, Kit: 5 vials	01/21/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY No. 9702/9702A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS NOR ASY No. 9704/9704A	Box: 10 vials, Vial: 5 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS Nor UNASY No. 9681/9681A	Box: 40 vials, Vial: 25 ml	12/15/89
Ciba Corning Diagnostics Corp.	QCS Nor UNASY No. 9716/9716A	Box: 10 vials, Vial 10 ml	12/15/89
Ciba Corning Diagnostics Corp.	Reagent A- Alt 14	Vial: 15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A- Alt 7	Vial:15 ml	03/24/79
Ciba Corning Diagnostics Corp.	Reagent A-Ammonia 10	Vial:10 ml	03/24/79
Ciba Corning Diagnostics Corp.	Special Barbital Buffer Set, Catalog No. 470182	Vial: 3 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal Electrophoresis Film Agarose, Catalog No. 470100.	Plates: 12 per kit	04/17/79
Ciba Corning Diagnostics Corp.	Universal PHAB Buffer Set Catalog No. 470180	Kit: 3 vials per kit	09/26/79
Ciba Corning Diagnostics corp.	Magic Lite HCG Solid Phase	Plastic vial: 50ml, Kit: 100 tests	12/09/88
Cone Biotech, Inc.	American Association of Bioanalysts, Urine Toxicology Survey.	Vial: 20ml Kit: 2 vials	05/30/90
Cone Biotech, Inc.	CAP/Cocaine Reference Material Levels II, III, and IV.	Vial: 20 ml	03/07/88
Cone Biotech, Inc.	College of American Pathologists (CAP) Reference Material for Cocaine in Urine.	Vial: 15ml Kit: 4 vials	05/30/90
Cone Biotech, Inc.	College of American Pathologists Forensic Urine Drug Testing Survey Material (AACC/CAP).	Vial: 100ml	05/30/90
Cone Biotech, Inc.	College of American Pathologists Toxicology Survey (CAP).	Vial: 50ml	05/30/90
Cone Biotech, Inc.	College of American Pathologists Urine Toxicology Survey (CAP).	Vial: 50ml	05/30/90
Cone Biotech, Inc.	QCM-UTI	Vial: 20ml	03/07/85
Cone Biotech, Inc.	RIATRAC-Three Level Ligand Assay Controls	Vials: 8ml	02/27/84
Cone Biotech, Inc.	UDM-CAP/AACC Forensic Urine Drug Testing Survey (Initial Phase).	Bottle:60 ml	06/31/87
Cone Biotech, Inc.	UDS and UDC CAP/AACC Forensic Urine Drug Testing.	Vial: 30 ml	01/06/88
Diagnostic Products Corporation	125-I Barbiturate Isotope: Cat. No. TBA2, TBAY2	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Benzoylecgonine Isotope: Cat. No. TCN2, TCNY2.	Vial: 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Benzoylecgonine Isotope (DA): Cat. No. CND2, YCND2.	Vial: 10 ml, 100 ml, 675 ml	03/01/88
Diagnostic Products Corporation	125-I Fentanyl Isotope: Cat. No. TFN2	Vial: 500 ml	03/01/88
Diagnostic Products Corporation	125-I Methadone Isotope: Cat. No. TMD2	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125-I Methaqualone Isotope: Cat. No. TMQ2	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	125-I Morphine Isotope: Cat. No. TMP2, TMPY2	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I PCP Isotope: Cat. No. TPC2, TPCY2	Vial: 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	125-I Serum Morphine Isotope: Cat. No. TSM2	Vial: 110 ml	03/01/88
Diagnostic Products Corporation	125-I THC Isotope: Cat. No. THD2, YTHD2	Vial: 20 ml, 110 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators B-F: Cat. No. APD4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Calibrators Cat. No. MAP 4-8	Vial: 5ml	07/05/90
Diagnostic Products Corporation	Amphetamine Controls, Cat. No. ACO1, ACO2	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	Amphetamine Controls: Cat. No. 5AC01, 5ACO2	Vial: 100 ml	03/01/88

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Diagnostic Products Corporation	Amphetamine Isotope: Cat. No. APD2, 5APD2, YAPD2.	Vial: 20 ml, 100 ml, 550 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparation: Cat. No. 5YAP7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Amphetamine Reference Preparations, Cat. NO. APD5, APD8.	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	Barbiturate Calibrators B-G: Cat. No. BAC4-9	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Barbiturate Reference Preparations: Cat. No. 5YBA5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (CAC) B-F: Cat. No. COC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA) B-F: Cat. No. CND4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Calibrators (DA): Cat. No. CNC4-8.	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation (DA): Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Benzoylecgonine Reference Preparation: Cat. No. 5YCN5.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	C-Terminal PTH Antiserum: Cat. No. PCD1	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Canine T3 Isotope: Cat. No. TC32	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates in Urine: Cat. No. TKBA1,TKBA5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Barbiturates Qualitative Determination in Urine: Cat. No. TKBAY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Canine T3: Cat. No. TKC31, TKC35.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Cocaine Metabolite: Cat. No. TKCN1, TKCN5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Fentanyl: Cat. No. TKFN1	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count LSD 100, 500, Cat. NO. TKLS1, TKLS5.	Kit: 8 vials, 18 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count LSD Qualitative Determination in Urine, Cat. No. TKLSY.	Kit: 8 vials	03/20/89
Diagnostic Products Corporation	Coat-A-Count Metabolite Qualitative Determinants in Urine: Cat. No. TKCNY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Methadone: Cat. No. TKMD1	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Methaqualone: Cat. No. TKMQ1	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine Qualitative Determinations in Urine: Cat. No. TKMPY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Morphine: Cat. No. TKMP1, TKMP5, TKMPX.	Kit: 100 tests, 500 tests, 1000 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen Qualitative Determinations in Urine: Cat. No. TKOSY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Opiates Screen: Cat. No. TKOS1, TKOS5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) in Urine: Cat. NO. TKCY1.	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count PCP (Phencyclidine) Qaulitatives Determinations in Urine: Cat. No. TKPCY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Coat-A-Count Serum Morphine: Cat. No. TKSM1	Kit: 100 tests	03/01/88
Diagnostic Products Corporation	Donkey Anti-Goat Gamma Globulin (PTH-Ultra): Cat. No. PTDG.	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine, Cat. No. KAPD1, KAPD5.	Kit: 6 vials	03/20/89
Diagnostic Products Corporation	Double Antibody Amphetamine, Qualitative Determinations in Urine: Cat. No. KAPDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Amphetamine: Cat. No. KAPD1, KAPD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cannabinoids (THC) in Urine: Cat. No. KTHD1, KTHD5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cannabinoids (THC) Quantitative Determinations in Urine: Cat. No. KTHDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite Qualitive Determination in Urine: Cat. No. KCNDY.	Kit: 2500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Cocaine Metabolite: Cat. No. KCND1, KCND5.	Kit: 100 tests, 500 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-C: KPCD1, KPCD2	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Double Antibody PTH-M: Cat. No. KPMD1	Kit: 70 tests	03/01/88
Diagnostic Products Corporation	Double Antibody Ultra-PTH: Cat. No. KPTD1, KPTD2.	Kit: 70 tests, 140 tests	03/01/88
Diagnostic Products Corporation	Enzyme-Labeled Amphetamine Cat. No. MEAP2, 5MEAP2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled Methamphetamine Cat. No. MEMA2, 5MEMA2.	Vial: 11ml, 60ml	09/26/90
Diagnostic Products Corporation	Enzyme-Labeled Opiates Cat. No. MEOP2, 5MEOP2.	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled PCP Cat. No. MEPC2, 5MEPC2	Vial: 20ml, 60ml	07/05/90
Diagnostic Products Corporation	Enzyme-Labeled THC Cat. No. METH 2, 5METH2.	Vial: 20ml, 60ml	07/05/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Diagnostic Products Corporation	Fentanyl Calibrators: Cat. No. FNC4-9	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Goat Anti-Rabbit Gamma Globulin/4% PEG Saline: Cat. No. 5N6.	Vial: 110 ml, 320 ml	03/01/88
Diagnostic Products Corporation	LSD Calibrators B-F, Cat. No. LSCH-8	Vial: 5 ml	03/20/89
Diagnostic Products Corporation	LSD Controls, Cat. NO. 5LCO1, 5LCO2, LSCO1, LSCO2.	Vial: 120ml, 5ml	03/20/89
Diagnostic Products Corporation	LSD Isotope, Cat. No. TLSY2, TLS2	Vial: 105 ml, 550 ml	03/20/89
Diagnostic Products Corporation	LSD Reference Preparation, Cat. No. 5YLS6	Vial: 120ml	03/20/89
Diagnostic Products Corporation	Low and High Barbiturate Urinary Controls: Cat. No. 5BCO1, 5BCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Benzoylecgonine Urinary Controls (DA): Cat. No. 5COO1, 5COO2, CNC02, CNCO3.	Vial: 3.5 ml, 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Cannabinoid Urinary Controls: Cat. No. 5TC01, 5TCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Morphine Urinary Controls: Cat. No. 5MCO1, 5MCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High Opiate Urinary Controls: Cat. No. 5OCO1, 5OCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Low and High PCP Urinary Controls: Cat. No. 5PCO1, 5PCO2.	Vial: 100 ml	03/01/88
Diagnostic Products Corporation	Methadone Calibrators: Cat. No. MDC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Methamphetamine Calibrators Cat. No. MMA-8	Vial: 5ml	09/28/90
Diagnostic Products Corporation	Methaqualone Calibrators: Cat. No. MQC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Mid-Molecule PTH Antiserum: Cat. No. PMD1	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Millenia Amphetamine Cat. No. MKAP1, MKAP5	Kit: 7 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Millenia Cannabinoids Cat. No. MK TH1, MKTH5	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Millenia Methamphetamine Cat. No. MKMA1, MKMA5.	Kit: 96 wells, 480 wells	09/28/90
Diagnostic Products Corporation	Millenia Opiates Cat. No. MKOP1, MKOP5	Kit: 6 vials, 96 Tests, 480 Tests	07/05/90
Diagnostic Products Corporation	Millenia PCP Cat. No. MKPC1, MKPC5	Kit: 6 vials, 96 tests, 480 tests	07/05/90
Diagnostic Products Corporation	Morphine Calibrators: Cat. No. MPC4-8	Vial: 3.5 ml, 10 ml	03/01/88
Diagnostic Products Corporation	Morphine Reference Preparation: Cat. No. 5YMPY7.	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Opiate Calibrators: Cat. No. OSC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Opiate Cartridges Cat. No. VOSDC	Cartridge: 5ml	07/05/90
Diagnostic Products Corporation	Opiates Calibrators Cat. No. MOP 4-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	Opiates Positive Reference Cat. No. VOSPC	Vial: 1ml	07/05/90
Diagnostic Products Corporation	Opiates Reference Preparation: Cat. No. 5YOS7	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PCP Calibrators Cat. No. MPC 3-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	PCP Calibrators: Cat. No. PCC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	PCP Reference Preparation: Cat. No. 5YPC6	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	PTH (C-Terminal) Isotope: Cat. No. PCD2	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Antiserum: Cat. No. PTD1	Vial: 5 ml	03/01/88
Diagnostic Products Corporation	PTH (Ultra) Isotope: Cat. No. PTD2	Vial 5 ml	03/01/88
Diagnostic Products Corporation	PTH-M Isotope: Cat. No. PMD2	Vial: 10 ml	03/01/88
Diagnostic Products Corporation	Serum Morphine Calibrators: Cat. No. SMC4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	Serum Morphine Controls: Cat. No. SMCO2, SMCO3.	Vail: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators B-F: Cat. No. THD4-8	Vial: 3.5 ml	03/01/88
Diagnostic Products Corporation	THC Calibrators Cat. No. MTH 4-7	Vial: 5ml	07/05/90
Diagnostic Products Corporation	THC Reference Preparation: Cat. No. 5YTH7	Vial: 120 ml	03/01/88
Diagnostic Products Corporation	Ten One Opiates Cat. No. VKSO1, VKSO4	Kit: 1 vial, 12 & 48 5ml cartridges	07/05/90
Diagnostic Products Corporation	Triiodothyronine (T3) Isotope: Cat. No. TT32	Vial: 120 ml	03/01/88
Diamedix Corporation	Barbital-Acetate Buffer, Powder 709-317	Package: 20 envelopes-10.65 g. per envelope	07/27/72
Diamedix Corporation	CEP Plate-Amebiasis Testing 40 Test No. 730-274.	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	CEP VI No. 709-339	Plate: 40mm x 80mm x 2.5mm	08/09/73
Diamedix Corporation	Counterelectrophoresis (CEP) Plates for Trichinosis Testing.	Plastic plates: 40mm x 80mm x 2.5mm	06/16/75
Diamedix Corporation	EDTA (0.014M)-GVB Buffer, 753-034	Bottle: 5ml	08/09/73
Diamedix Corporation	EDTA (0.01M)-GVB Buffer, 753-031	Bottle: 5ml	08/09/73
Diamedix Corporation	GVB(3+) Buffer 753-037	Bottle: 50ml	08/09/73
Diamedix Corporation	Glucose-GVB 1 Buffer, 753-036	Bottle: 50ml	08/09/73
Duo Research, Inc.	Drug Testing Assessment Program Quality Control Samples.	Kit: 25 bottles	12/26/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample.	Bottle: 65ml	02/27/86
Duo Research, Inc.	Drug Testing Assessment Program-Quality Control Sample Kit.	Kit: 5-65ml bottles	02/27/86
E.I. duPont de Nemours & Co., Inc.	(1) PREP Sample Preparation and Analysis Kit	Kit containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(2) PREP Buffer/Internal Standard and Liquid Chromatography Verifier.	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(2a) PREP Liquid Chromatography Verifier	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(2b) PREP Buffer/Internal Standard	Vial: 100ml (3 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3) PREP Calibrators	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3a) PREP Calibrator-Level 1	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3b) PREP Calibrator-Level 2	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3c) PREP Calibrator-Level 3	Vial: 10ml (1 vial/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(3d) PREP Calibrator-Level 4	Vial: 10ml (1 vial/box)	09/25/78

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
E.I. duPont de Nemours & Co., Inc.	(4) PREP Controls	Box containing following:	09/25/78
E.I. duPont de Nemours & Co., Inc.	(4a) PREP Control-Low Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	(4b) PREP Control-High Level	Vial: 10ml (2 vials/box)	09/25/78
E.I. duPont de Nemours & Co., Inc.	DM/TU Saturating Reagent	Plastic Bottle: 1L, 10L, 20L	02/22/89
E.I. duPont de Nemours & Co., Inc.	DuPont Drug Calibrators- Levels 1 through 5	Vial: 6ml (1 vial and 2 vials/box)	04/04/86
E.I. duPont de Nemours & Co., Inc.	DuPont Phenobarbital Assay	Vial:6 ml	10/13/86
E.I. duPont de Nemours & Co., Inc.	DuPont U Amp Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U Barb Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U Benz Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U COC Enzyme Pack Reagent	Bottle:1 liter	10/19/87
E.I. duPont de Nemours & Co., Inc.	DuPont U OPI Enzyme Pack Reagent	Bottle:1 liter	08/28/87
E.I. duPont de Nemours & Co., Inc.	DuPont U THC Enzyme Pack Reagent	Bottle: 1 Liter	01/04/88
E.I. duPont de Nemours & Co., Inc.	DuPont Urine Druge-of-Abuse Calibrator (Levels 0,1,2).	Box:6 Viels,6ml Viel	07/27/87
E.I. duPont de Nemours & Co., Inc.	DuPont Urine Druge-of-Abuse Control	Vial:6 ml	08/03/87
E.I. duPont de Nemours & Co., Inc.	DuPont aca Barbiturate Screen Analytical Test Pack.	Plastic Packs: 25 tests	12/23/84
E.I. duPont de Nemours & Co., Inc.	DuPont aca Barbiturate Screen/Benzodiazepine Screen Calibrator.	6 Vials: 3ml	02/23/84
E.I. duPont de Nemours & Co., Inc.	DuPont aca Benzodiazepine Screen Analytical Test Pack.	Plastic Packs: 25 tests	02/23/84
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 1	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 2	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 3	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 4	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Phenobarbital Calibrator- Level 5	Vial: 6ml (1 vial/box)	04/02/86
E.I. duPont de Nemours & Co., Inc.	Theophylline Calibrator Levels 1, 2 and 3	Vial: 6 ml. Box contains 2 vials each level	09/21/88
E.I. duPont de Nemours & Co., Inc.	Thyroid Rotor	Foil Pouch: 1 Rotor Shelf Carton: 10 Rotors Box: 5 Shelf Cartons(50 Rotors).	10/25/88
E.I. duPont de Nemours & Co., Inc.	Thyronine (TU) Uptake Flex	32 Test Cartridge, Carton: 7 cartridges	03/29/89
E.I. duPont de Nemours & Co., Inc.	Thyronine (TU) Uptake Flex(tm) Reagent Cartridge.	Plastic container: 2.3ml (20 tests)	04/28/86
E.I. duPont de Nemours & Co., Inc.	Urine Amphetamine (U Amp) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Barbiturate (U Barb) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Benzodiazepine (U Benz) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Cannabinoid (U THC) Test Pack	Carton: 50 tests	11/09/87
E.I. duPont de Nemours & Co., Inc.	Urine Cocaine (U COC) Test Pack	Carton:50 tests	08/27/87
E.I. duPont de Nemours & Co., Inc.	Urine Opiate (U OPI) Test Pack	Carton:50 tests	07/06/87
E.I. duPont de Nemours & Co., Inc.	aca PHNO Analytical Test Pack	Carton: 40 tests packs	08/25/77
E.I. duPont de Nemours & Co., Inc.	aca Thryonine Uptake Analytical Test Pack	Plastic Pack: 1 test	08/25/83
E.I. duPont de Nemours & Co.,Inc., Medical Products.	5-Cyclohexanyl-3,5,-Dimethyl barbituric Acid (3H(G)), Catalog No. NET-426.	Combi-Vial:250 microcuries , 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Acetaldehyde (1,2-14C) as Paraldehyde, Catalog No. NEC-158.	Pyrex Glass Breakseal Tube: 250 microcuries, 1 millicurie.	01/04/77
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Cocaine, Levo-[Benzoyl] [3.4-3H(N)] Catalog No. NET-510.	Combi-Vial: 100 microcuries, 250 microcuries	01/04/77
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Diazepam [Methyl-3H] Catalog No. NET-564	Combi-Vial: 0.250 millicuries, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Dihydromorphine [7,8-3H(N)]	Combi-Vial: 250 microcuries, 1 millicurie	01/04/77
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Dihydromorphine[N-Methyl-3H] NET-658	Combi-Vial: 0.250 millicuries, 1.0 millicurie	02/29/80
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Drug Discovery Kit, No. NED-002, NED-002A	Kit: 100 tests, 500 tests	08/08/89
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Flunitrazepam (Methyl-3H)	Combi-Vial: 5 microcuries, 14 microcuries	08/08/89
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Flunitrazepam 2.5 Micro M	Combi-Vial: 2.0 ml	08/08/89
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Flunitrazepam [Methyl-3H] NET 567	Combi-Vial: 0.250 millicuries, 1.0 millicurie	04/29/87
E.I. duPont de Nemours & Co.,Inc., Medical Products.	LSD [N-Methyl-3H] NET-638	Combi-Vial: 0.250 millicuries, 1.0 millicurie	11/06/79
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Mazindol (4'-3H) Catalog No.NET-816	Combi-Vial: 0.250 millicuries, 1.0 millicurie	05/17/84
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Methylenedioxymethamphetamine, (+)3,4-[N-methyl-3H] NET 957.	Combi-Vial:0.0250 millicuries, 0.25 millicuries, 1.0 millicuries.	08/25/75
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Methylphenidate, +/- threo[methyl-3H]NET-857	Combi-Vial: 0.250 millicuries, 1.0 millicurie	06/11/84
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Morphine [N-methyl-3H] NET-653	Combi-Vial: 0.250 millicuries, 1.0 millicurie	02/29/80
E.I. duPont de Nemours & Co.,Inc., Medical Products.	N-[1-(2-Thienyl) Cyclohexyl]-3,4-Piperidine (Piperidyl-3,4-3H)NET-886.	Combi-Vial: 0.250 millicuries, 1.0 millicurie	06/11/84
E.I. duPont de Nemours & Co.,Inc., Medical Products.	Phencyclidine [Piperidyl-3,4-3H(N)], Catalog No.NET-630.	Combi-Vial: 0.250 millicuris, 1.0 millicurie	09/06/79
E.I. duPont de Nemours & Co.,Inc., Medical Products.	d-Amphetamine Sulfate (3H(G)), Catalog No. NET-140.	Combi-Vial: 250 microcuries, 1 millicurie, and 5 millicuries.	01/04/77
E.I. duPont de Nemours and Co., Inc.	DuPont Drug Calibrator-A (levels 1-5)	Vial: 6ml, Box: 10 vials	09/28/90
EM Diagnostic Systems,Inc.	EMDS Antiepileptic Drug Calibrator Item No. 67630/95.	Box: 3 Vials, 5 ml each	06/11/86

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
EM Diagnostic Systems,Inc.	EMDS Test Packs, Phenobarbital (PHENO) Item No. 67577/95.	Carton:48 Test Packs	08/08/86
EM Diagnostic Systems,Inc.	Easytest Phenobarbital Assay Item No. 67594/83.	Cuvettes:1.8ml (40 cuvettes /carton)	08/11/86
Eastman Kodak Company	KODATROL Control I Control and Diluent Set	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/86
Eastman Kodak Company	KODATROL Control II Control and Diluent Set	1 Set: 2 amber glass vials ea. 6 ml 1 Box: 12 sets.	07/21/86
Eastman Kodak Company	Kodak EKTACHEM Specialty Calibrator	Vial:3ml	09/13/85
Eastman Kodak Company	Kodak EKTACHEM Specialty Control I	Vial:3ml	09/13/85
Eastman Kodak Company	Kodak Ektachem Specialty Control II	Glass Vial: 6 ml	11/10/87
Electro-Nucleonics Laboratories, Incorporated	VIRGO IPA Immuno-Precipitation Assay for Phenobarbital.	Kit	11/20/82
Endocrine Metabolic Center	0.1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle:2 liter	05/28/87
Endocrine Metabolic Center	1% Lysozyme-Barbital Buffer, 0.05M	Glass Bottle:2 liter	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.05M	Plastic Bottle:3000 ml	05/28/87
Endocrine Metabolic Center	Barbital Buffer, 0.1M	Plastic Bottle:3000 ml	05/28/87
Endocrine Metabolic Center	Tracer Diluent	Glass Bottle:1 or 2 liter	05/28/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Enzyme Conjugate	Ampule:1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Kit Catalog No. 216-29P.	Kit: 1 test	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid Positive Control	Ampule:1 ml	02/03/87
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid/Cocaine-Enzyme Conjugate.	Polyethylene Tube: containing ampule with 1 tablet, Kit: 1 test.	12/20/88
Environmental Diagnostics, Inc.	EZ-Screen: Cannabinoid/Cocaine-Positive Control.	Polyethylene Tube: 2.2ml, Kit: 1 test	12/20/89
Fisher Scientific	Electrophoretic Buffer No. 1 pH 8.80, Ionic Strength 0.05, Catalog No. E-1.	Packet: 12.14 g	10/27/72
Fisher Scientific	Electrophoretic Buffer No. 2, pH 8.80, Ionic Strength 0.075, Catalog No. E-2.	Packet: 18.16 g	10/27/72
Fisher Scientific	IL-Test Phenobarbital	Kit: contains 2 plastic containers of reagent 2	05/15/86
Fisher Scientific	IL-Test Phenobarbital Conjugate, Reagent 2	Plastic Container: 16 ml	03/15/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-34	Vial:10 ml	06/16/86
Fisher Scientific	Owren's Veronal Buffer, CS1094-36	Vial:25 ml	06/16/86
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human) Unassayed No. 2908.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	SeraChem Abnormal Clinical Chemistry Control Serum (Human), Assayed No. 2905.	Vial: 5ml	04/16/82
Fisher Scientific	SeraChem Normal Clinical Chemistry Control Serum (Human), Assayed No.2907.	Vial: 5ml	04/16/82
Fisher Scientific	Serachem Normal Clinical Chemistry Control Serum (Human), Unassayed No. 2906.	Vial: 5ml, 10ml	04/16/82
Fisher Scientific	TDM Cal	Kit: 7 Vials	11/25/86
Fisher Scientific	TDM Cal (8-F)	Vials: 6 ml	11/25/86
Fisher Scientific	Thera Chem TDC Therapeutic Drug Controls, Low and High Levels, 2840-58.	Kit: 6 vials	01/12/84
Fisher Scientific	TheraChem-Plus TDC Therapeutic Drug Controls, Tri-Level, No. 2545-84.	Kit: 9 vials	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level III, No. 2846-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, High Level, 2842-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Low Level I, No. 2846-31.	Vial: 5ml	03/19/86
Fisher Scientific	Therapeutic Drug Control, Low Level, 2841-31	Vial: 5ml	01/12/84
Fisher Scientific	Therapeutic Drug Control, Mid-Range Level II, No. 2547-31.	Vial: 5ml	03/19/86
Fisher Scientific	Urine Chemistry Control (Human) Level II, No. 2935-60.	Vial: 25ml	04/09/79
Fisher Scientific	Urine Toxicology Control No. 2950-61	Vial: 25ml	04/09/79
Fisher Scientific Group	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level I.	Vial: 10 ml, Box: 50 vials, Carton: 4 boxes	07/25/89
Fisher Scientific Group	SeraChem Plus Clinical Chemistry Control Sera Unassayed (Bovine) Level II.	Vial: 10 ml, Box: 50 vials, Carton: 4 boxes	07/25/89
Flow Laboratories	DGV No. 28-010	Bottle: 125 ml	04/16/73
Flow Laboratories	Human >O< DGV (Dextrose Gelatin Veronal Buffer) No. 28-060.	Glass Vial: 100 ml	10/14/76
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 0118115-0247-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	Complement Fixation Buffer Solution, pH 7.3-7.4, NDC 011815-0247-2.	Bottle:500 ml	04/05/77
GIBCO Laboratories	Dextrose-Gelatin-Veronal Buffer Solution NDC No.815-0566-1 and No.815-0566-2.	Bottle: 100 and 500 ml	07/05/73
GIBCO Laboratories	Electrophoresis Buffer Solution, pH 8.6, NDC 011815-0245-1.	Bottle: 1 liter	01/28/74
GIBCO Laboratories	I.E.P. Buffer Solution pH 8.2 NDC 011815-0848-1.	Bottle: 1 liter	01/28/74
Gelman Sciences, Inc.	Drug Control Set No 51911	Set: 9 vials of 60 ml each	04/09/72
Gelman Sciences, Inc.	Drug Standard Set, No 51910	Set: 9 vials of 2 ml each	04/09/72
Gelman Sciences, Inc.	Hi-Phore Buffer	Glass Vial: 15 g	08/11/82

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Gelman Sciences, Inc.	High Resolution Buffer-Tris Barbital Buffer No 51104.	Vial: 10 dr	12/22/71
Gumm Chem. Co.	Niflow Initial Additive	Drums: 5 Gallons	09/30/85
Gumm Chem. Co.	Niflow Maintenace Additive	Drums:5 Gallons	09/30/85
Hach Chemical Co.	pH 8.3 Buffer Powder Pillows. No.898-66	Pillow: 1 g. each	11/30/71
Helena Laboratories	CK-LD Buffer Catalog No. 5808	Packet:18.332 g. , 10 packets/box	03/26/86
Helena Laboratories	Electra B1 Buffer, Catalog No.5016	Packet:13.1g. 10 packets/ box	12/28/73
Helena Laboratories	Electra B2 Buffer , Catalog No. 5017	Packet: 18.2 g. 10 packets/ box	12/28/73
Helena Laboratories	Electra HR Buffer, Catalog No. 5805	Packet: 18.1 g. 10 packets/ box	12/28/73
Helena Laboratories	HDL Electrophoresis Buffer	Packet: 36 g.	12/18/85
Helena Laboratories	Isoamylase Cathode Buffer	Packet:9.7 g.	12/18/85
Helena Laboratories	Isoamylase Kit Catalog No. 5925	Kit: 2 Packets Cathode Buffer	01/24/86
Helena Laboratories	Owren's Veronal Buffer Cat. No. 5375	Plastic Bottle: 125 ml	09/15/88
Helena Laboratories	REP CK Isoforms-15	Plate: 5.8>x5.5>	03/09/88
Helena Laboratories	REP CK Isoforms-15 Kit: Cat. No. 3061	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK-12	Plate: 5.8>x2.18>	03/09/88
Helena Laboratories	REP CK-12 Isoenzyme Kit: Cat. No. 3071	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK-2 STAT Kit, Cat. No. 3074	Kit: 10 plates (5.8> X 0.6>)	03/30/89
Helena Laboratories	REP CK-30	Plate: 5.8>x5.5>	03/09/88
Helena Laboratories	REP CK-30 Isoenzyme Kit	Kit: 10 plates	03/09/88
Helena Laboratories	REP CK-6	Plate: 5.8>x1.25>	03/09/88
Helena Laboratories	REP CK-6 Isoenzyme Kit: Cat. No. 3072	Kit: 10 plates	03/09/88
Helena Laboratories	REP LD	Plates: 5.8>x5.5>, 5.8>x2.18>, 5.8>x1.25>	03/09/88
Helena Laboratories	REP SPE Hi Res-15 Kit, Cat. No. 3176	Kit: 10 plates (5.8> X 5.5>)	03/30/89
Helena Laboratories	REP-HDL-12 Isoenzyme Kit Cat. No. 3187	Kit: 10 Plates (5.8> X 2.18>)	09/15/88
Helena Laboratories	REP-HDL-30 Isoenzyme Kit Cat. No. 3186	Kit: 10 Plates (5.8> X 5.5>)	09/15/88
Helena Laboratories	REP-HDL-6 Isoenzyme Kit Cat. No. 3188	Kit: 10 Plates (5.8> X 1.25>)	09/15/88
Helena Laboratories	REP-Lipo-12 Kit Cat. No. 3181	Kit: 10 Plates (5.8> X 2.18>)	09/15/88
Helena Laboratories	REP-Lipo-30 Kit Cat. No. 3180	Kit: 10 Plates (5.8> X 5.5>)	09/15/88
Helena Laboratories	REP-Lipo-6 Kit Cat. No. 3182	Kit: 10 Plates (5.8> X 1.25>)	09/15/88
Helena Laboratories	REP-SP-12 Isoenzyme Kit Cat. No. 3171	Kit: 10 Plates (5.8> X 2.18>)	09/15/88
Helena Laboratories	REP-SP-30 Isoenzyme Kit Cat. No. 3170	Kit: 10 Plates (5.8> X 5.5>)	09/15/88
Helena Laboratories	REP-SP-6 Isoenzyme Kit Cat. No. 3172	Kit: 10 Plates (5.8> X 1.25>)	09/15/88
Helena Laboratories	Super Z-12XHDL Cholesterol Supply Kit Catalog No. 5470).	Kit:3 Packages buffer 36 g.	01/24/86
Helena Laboratories	TITAN GEL Alkaline Phosphatase (HR) Kit, Cat. No. 3058.	Kit: 1 bag	06/19/89
Helena Laboratories	TITAN GEL Alkaline Phosphatase Buffer	Plastic Bag: 13.1g	06/19/89
Helena Laboratories	Titan Gel High Resolution Protein Buffer	Packet:25.9 g.	04/12/83
Helena Laboratories	Titan Gel High Resolution Protein Kit Catalog No. 3040.	Kit:10 Plates (90mm X 75mm) , 2 Packages Buffer.	03/03/86
Helena Laboratories	Titan Gel High Resolution Protein Plate	Plate:(90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel IFE Buffer	Packet:25.9 g.	12/18/85
Helena Laboratories	Titan Gel IFE Plate	Plate:(90mm X 75mm)	03/05/86
Helena Laboratories	Titan Gel Immuno Fix Kit Catalog No.3046	Kit:10 Plates (90mm X 75mm), 2 Packets IFE Buffer.	01/24/86
Helena Laboratories	Titan Gel Iso Dot LDH Buffer	Packet:19.6 g.	01/07/86
Helena Laboratories	Titan Gel Iso Dot LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Iso Dot LDH Kit Catalog No.3062	Kit:10 Plates (90mm X 75mm),1 Packet Iso Dot LDH Buffer.	01/24/86
Helena Laboratories	Titan Gel LD Buffer	Packet:21.5 g	11/26/86
Helena Laboratories	Titan Gel LD Isoenzyme Diluent	Bottle:10 ml	11/26/86
Helena Laboratories	Titan Gel LDH Isoenzyme Buffer	Packet: 22.7 g.	03/07/83
Helena Laboratories	Titan Gel LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel LDH Isoenzyme Reagent	Vial:2ml, 10 vials/box	01/07/86
Helena Laboratories	Titan Gel Lipoprotein Buffer	Packet:17.3 g.	12/18/85
Helena Laboratories	Titan Gel Lipoprotein Kit Catalog No.3045	Kit:1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Lipoprotein Plate	Plate: (90 x 75 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Kit Catalog No. 3095	Kit: 10 plates (81 x 143 mm) 1 packet buffer (21.6 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot Lipo-17 Plate	Plate: (81 x 143 mm)	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Kit Catalog No. 3091	Kit: 10 plates (81 x 143 mm) 1 packet buffer (29.1 g).	01/09/87
Helena Laboratories	Titan Gel Multi-Slot SP-17 Plate	Plate: 81 x 143 mm	01/09/87
Helena Laboratories	Titan Gel Serum Protein Buffer	Packet:29.1 g.	04/12/83
Helena Laboratories	Titan Gel Serum Protein Kit Catalog No. 3041	Kit:10 Plates (90mm X 75mm), 1 Packet Buffer	01/24/86
Helena Laboratories	Titan Gel Serum Protein Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan Gel Silver Stain Buffer	Packet:25.9g	12/18/85
Helena Laboratories	Titan Gel Silver Stain Kit Catalog No.3035	Kit:10 Plates (90mm X 75mm), 2 Packets Buffer	01/24/86
Helena Laboratories	Titan Gel Silver Stain Plate	Plate:(90mm X 75mm)	03/03/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Kit Catalog No. 3053.	Kit: 10 Plates (90mm X 75mm), 1 Packet LDH Buffer, 1 Box LDH Reagent.	01/24/86
Helena Laboratories	Titan Gel-PC LDH Isoenzyme Plate	Plate:(90mm X 75mm)	12/18/85
Helena Laboratories	Titan III Agar Catalog No. 5023	Packet:5 g. (5 Packets/box)	12/28/73
Helena Laboratories	Titan IV IE Plate (large)	Package: plates, 3 by 4 in.	12/28/73
Helena Laboratories	Titan IV IE Plate (small)	Package: plates, 1 by 3 in.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit: 12 small (1 by 3 in.) IE plates,1 box B1 Buffer.	12/28/73
Helena Laboratories	Titan IV IE Plate Kit	Kit:10 large (3 by 4 in.) IE Plates, 1 box B1 Buffer.	12/28/73

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Hycor Biomedical, Inc.	Hycor AccuPINCH Cocaine Test	Bottle: 2ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Hycor AccuPINCH Morphine Test	Bottle: 2ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Hycor AccuPINCH Phencyclidine Test	Bottle: 2ml Kit: 50 tests	08/21/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator BARBITURATES Urine Calibrator- 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator DELTA-9-THCC Urine Calibrator - 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator NORDIAZEPAM Urine Calibrator - 3 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator OPIATES Urine Calibrator - 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator PHENCYCLIDINE Urine Calibrator - 4 levels.	Bottle: 10ml Kit: 4 bottles, 12 bottles	08/24/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator, Amphetamine Urine Calibrator - 4 level.	Vial: 10ml, Kit: 12 vials, Kit: 4 vials	03/29/90
Hycor Biomedical, Inc.	Sentry Drugs of Abuse Urine Calibrator, Benzoylecgonine Urine Calibrator - 4 level.	Vial: 10ml, Kit: 12 vials, Kit: 4 vials	03/29/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control High Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Low Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Mid Level	Vial: 10ml Box: 15 vials	03/01/90
Hycor Biomedical, Inc.	Sentry Ligand/Combo Control Multi-Pack	Kit: 15 vials	03/01/90
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, HIGH POSITIVE.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, LOWER THRESHOLD.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Comprehensive Urine Control, UPPER THRESHOLD.	Bottle: 30ml	02/24/89
Hycor/ICL Scientific	Drugs of Abuse Urine Control, CONFIRMATION	Box: 4-100 ml Bottles	10/21/88
Hycor/ICL Scientific	Drugs of Abuse Urine Control, SCREEN	Box: 4-30 ml Bottles	10/21/88
ICL Scientific	Therapeutic Drug Control I ,TDC I (High Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control I, II, III, Tri-Level TDC Multipack.	Glass Vials (12): 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control II, TDC II (Mid-Level)	Glass Vial: 10ml	08/14/85
ICL Scientific	Therapeutic Drug Control III, TDC III (Low Level)	Glass Vial: 10ml	08/14/85
ICN Micromedic Systems, Inc.	Immunogen: BZ-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: BZ-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: CD-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: M-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: M-B	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Immunogen: TF-A	Plastic Vial: 1.5 ml	02/29/88
ICN Micromedic Systems, Inc.	Micromedic Combostat THC/Cocaine STANDARDS-2, 3, and 4.	Amber Glass Vial: 2 ml Plastic Bottle: 100 ml	02/24/88
ICN Micromedic Systems, Inc.	Micromedic CrackPot 57Co/125I Tracer Solution	Plastic Bottle: 25 ml, 1000 ml	08/24/88
ICN Micromedic Systems, Inc.	Micromedic Morphine 125I Tracer Solution	Bottle: 80 ml, 1000 ml	02/29/88
ICN Micromedic Systems, Inc.	Micromedic Morphine Standards 2, 3 and 4	Bottle: 5 ml, 100 ml	02/29/88
Immunotech Corp.	Amphetamine Enzyme Conjugate	Bottle: 10.5ml	09/28/89
Immunotech Corp.	Amphetamine Positive Urine Calibrator	Bottle: 1ml	09/28/89
Immunotech Corp.	Amphetamine-ALK Phos Cat. No. 612; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Amphetamine-HRP Cat. No. 613; 50 units	Bottle: 10ml	03/12/90
Immunotech Corp.	Benzoylecgonine-Alk Phos Cat. 602; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Benzoylecgonine-HRP Cat. No. 604; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Cocaine Metabolite Enzyme Conjugate	Vial: 16.5ml	09/28/89
Immunotech Corp.	Cocaine Metabolite Positive Urine Calibrator	Vial: 8ml	09/28/89
Immunotech Corp.	Delta-9-tetrahydrocannabinol-ALK Phos Cat. No. 616; 50 units, 300 units.	Bottle: 10 ml	03/12/90
Immunotech Corp.	Delta-9-tetrahydrocannabinol-HRP Cat. No. 616; 50 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	ENDAB Phenobarbital Kit, Cat. No. 119	Kit: 100 tests, 4 Bottles: 1 ml ea.	09/28/89
Immunotech Corp.	Methamphetamine-ALK Phos Cat. No. 614; 50 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Methamphetamine-HRP Cat. No. 615; 50 units	Bottle: 10 ml	03/12/90
Immunotech Corp.	Micro Dau Amphetamine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Benzodiazepine Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Cocaine Metabolite Enzyme Immunoassay Test Kit.	Kit: 96 tests, Bottle: 10.5 ml, 2 ml	09/28/89
Immunotech Corp.	Micro Dau Opiates Enzyme Immunoassay Test Kit.	Kit: 96 tests	12/19/89
Immunotech Corp.	Micro Dau PCP Enzyme Immunoassay Kit Cat. No. 176.	Kit: 96 tests	07/11/90
Immunotech Corp.	Micro Dau THC Enzyme Immunoassay Test Kit Cat. No. 178.	Kit: 96 tests	07/11/90
Immunotech Corp.	Morphine Positive Urine Calibrator	Vial: 3.5 ml	12/19/89
Immunotech Corp.	Morphine-ALK Phos Cat. No. 610; 50 units, 300 units.	Bottle: 10ml	03/12/90
Immunotech Corp.	Morphine-HRP Cat. No. 611; 50 units, 300 units	Bottle: 10ml	03/12/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Immunotech Corp.	Opiates Enzyme Conjugate	Vial: 10 ml	12/19/89
Immunotech Corp.	Quinapare Enzyme Conjugate	Bottle: 10.5ml	09/28/89
Immunotech Corp.	Oxazepam Positive Urine Calibrator	Bottle: 2ml	09/28/89
Immunotech Corp.	Oxazepam-ALK Phos Cat. No. 608; 50 units	Bottle: 16ml	03/12/90
Immunotech Corp.	Oxazepam-HRP Cat No. 609; 50 units	Bottle: 16ml	03/12/90
Immunotech Corp.	PCP Enzyme Conjugate Cat. No. 375	Vial: 20ml	07/11/90
Immunotech Corp.	PCP Positive Urine Calibrator Cat. No. 418	Vial: 3ml	07/11/90
Immunotech Corp.	Phenobarbital Enzyme Conjugate	Bottle: 10.0ml	09/28/89
Immunotech Corp.	Phenobarbital Serum Standard: 5ug/ml, 10ug/ml, 30ug/ml, 80ug/ml.	4 Bottles: 1ml each	09/28/89
Immunotech Corp.	THC Enzyme Conjugate Cat. No. 372	Vial: 20ml	07/11/90
Immunotech Corp.	THC Positive Urine Calibrator Cat No. 416 50ng/ml, 417 100ng/ml.	Vial: 3ml	07/11/90
Industrial Analytical Laboratory, Inc.	11-Nor-Carboxy-Delta-9-Tetrahydrocannabinol	Ampule:1ml	09/04/85
Industrial Analytical Laboratory, Inc.	11-hydroxy-delta-9-tetrahydrocannabinol	Ampule:1 ml	02/18/87
Industrial Optical	Opti-Klean	Bottle:5 gallon	06/24/91
International BioClinical, Inc.	Innofluor Phenobarbital Calibrators 0.0, 3.0, 8.0, 20.0, 40.0, and 80.0 mcg/ml.	Bottle: 3 ml	07/09/87
International BioClinical, Inc.	Phenobarbital Stock Tracer	Vial: 5 ml	09/23/87
Janssen Pharmaceutica,Inc.	3H Alfentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc.	3H Fentanyl	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc.	3H Sufentanil	Vial: 0.5 ml	02/01/87
Janssen Pharmaceutica,Inc.	Alfentanil Radioimmunoassay Kit	Vial: 6.5 ml	05/01/87
Janssen Pharmaceutica,Inc.	Fentanyl Radioimmunoassay Kit	Kit:200 tests	05/13/85
Janssen Pharmaceutica,Inc.	Sufentanil Radioimmunoassay Kit	Kit:200 tests	05/13/85
Kallestad Diagnostics	Barbital Buffer 901	Kit:500 tests	05/13/85
Kallestad Diagnostics	IEP Buffer No. 900	Vial:	05/19/81
Kallestad Diagnostics	Immunoelectrofilm Catalog No.910	Vial:7 Dram	12/26/78
Kallestad Diagnostics	Immunoelectrofilms, Catalog No. 1013	1 Film Sealed In Cardboard Container	03/11/80
Kallestad Diagnostics	Immunoelectrophoresis Reagent Kit, Catalog No. 1012.	Styrofoam Container: 25 film	06/22/87
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit Catalog No. 823	Kit: 3 Vials	06/22/87
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Kit, Catalog No. 833	Kit:400 Determinations	12/16/85
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent Catalog No. 785.	Kit:100 tests	06/24/81
Kallestad Diagnostics	Quanticoat 125I-T3 Uptake Reagent No.834	Bottle:500ml	12/16/85
LKB Instruments,Inc.	Tris-barbiturate Buffer pH 8.6	2 Glass Bottles: 110ml	06/24/81
Lennox Company	Ecgonine Standard Solution	Packet: each 6.788 g. 20 packets/box	05/15/76
MCI Biomedical	IEP Buffer, pH 8.2, 0.04 Ionic Strength	Plastic Carboy:1 Liter	10/31/83
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl) Barbituric Acid	Package:8.510 grams	08/29/72
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Bovine Serum Albumin or Rabbit Serum Albumin.	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems	5-Ethyl-5-(1 -Carboxy-N-Propyl)Barbituric Acid Sensitized RBC.	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Barbiturate Standard	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Benzoyl Ecgonine	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Benzoylecgonine Standard	Screw Cap Vial:25mg and 100 mg	04/18/74
Materials & Technology Systems	Carboxymethyl-Morphine	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Carboxymethyl-Morphine Bovine Serum Albumin or Rabbit Serum Albumin.	Screw Cap Vial:8ml	05/03/73
Materials & Technology Systems	Carboxymethylmorphine Sensitized RBC	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Ecgonine Bovine Serum Albumin or Rabbit Serum Albumin.	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems	Ecgonine Sensitized RBC	Vaccine Vial:8ml	05/03/73
Materials & Technology Systems	Methadone Standard	Vaccine Vial:50ml	05/03/73
Materials & Technology Systems	Morphine Standard	Screwcap Vial:10ml	09/17/76
Materials & Technology Systems	Tropinecarboxylic Acid	Screw Cap Vial:10ml	07/17/73
Medi-Chem,Inc.	Barbiturate Test Set (Sodium Secobarbital Standard 10mg % w/v) Catalog No.250.	Screw Cap Vial:8ml, 10ml	05/03/73
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 1	Bottle: 120ml	02/22/74
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 2	Glass Vial: 22 X 38mm, 5ml	06/07/86
Medical Analysis Systems, Inc.	ACE II Calibrator for the DuPont aca Level 3	Glass Vial: 22 X 38mm, 5ml	06/07/86
Medical Analysis Systems, Inc.	ChemTrak Liquid Unassayed	Glass Vial: 22 X 38mm, 5ml	06/07/86
Medical Analysis Systems, Inc.	Chemistry Control Assayed, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Chemistry Control, Level 1, 2,& 3	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	DOA Liquid Drugs of Abuse Controls Level 2,3,4	Vial:15ml	04/30/85
Medical Analysis Systems, Inc.	Liquid Urine Control Level 1	Vial: 5ml, 15ml; Box: 6-5ml vials; Box: 8-5ml vials.	10/12/90
Medical Analysis Systems, Inc.	TDM Plus.XL Level I, II or III Unassayed Enhanced Liquid Drug Control.	Vial:5 ml	04/03/87
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 2.	Bottle: 5ml, Box: 6 bottles	09/05/90
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level 3.	Kit: 6 x 5ml Vials	10/06/86
Medical Analysis Systems, Inc.	chemTRAK Liquid Unassayed Therapeutic Drug Control Level I.	Kit: 6 x 5ml Vials	10/06/86
Meloy Labs,Inc.	Counterelectrophoresis Plates, G-301	Kit:5 x 5ml Vials	10/06/86
Meloy Labs,Inc.	Immunoelectrophoresis Plates, G-201	Plates:10 determinations	09/05/73
Merck and Co., Inc.	Amphetamine - d5 HCl, Cat. No. MD-3982	Plates:6 / unit	09/05/73
		Ampule: 2 or 5 ml	06/30/89

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Merck and Co., Inc.	Cocaine - d3 HCl Catalog # MD-3677	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	Codeine - d3 H2O (N-methyl-d3) No. MD-3776	2 ml, 5ml ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc.	Codeine-d3 Catalog # MD-3678	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1 Phenyl-2-aminopropane 1,1,2,3,3,3,-d6 (Amphetamine-d6)Catalog # MD-3682.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1 Phenyl-2-methylam-inopropane-1,1,2,3,3,3-d8 HCl (Methamphetamine d8) Catalog # MD-3683.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	DL-1-Phenyl-2-aminopropane-1,1,2,3,3,3-d6 HCL No. MD-3778.	2 ml, 5 ml amber ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc.	Ecgonine - d3 Methyl Ester HCl Catalog # MD3679.	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	Methamphetamine - d8 HCl, Cat. No. MD-3853	Ampule: 2 or 5 ml	06/30/89
Merck and Co., Inc.	Morphine - d3 HCl 3H20 (N-methyl-d3) No. MD-3777.	2 ml, 5 ml ampule Carton: 5 ampules	09/06/88
Merck and Co., Inc.	Morphine - d3 HCl Catalog # MD-3680	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	O-Benzoylecgonine-d3 Catalog # MD-3676	Ampule: 2 or 5 ml	06/13/88
Merck and Co., Inc.	Phen-d5-cyclidine HCl Catalog # MD-3681	Ampule: 2 or 5 ml	06/13/88
Microgenics Corporation	Bulk Calibrator Solution 80ug/ml, 40ug/ml	Carboy: 10L	11/13/90
Microgenics Corporation	In-house Phenobarbital Bulk Primary Standard 40ug/ml, 80ug/ml.	Bottle: 2L	11/13/90
Microgenics Corporation	In-house Phenobarbital Primary Standard 40ug/ml, 80ug/ml.	Micro tube: 1.5ml; Box: 100 tubes	11/13/90
Microgenics Corporation	In-house manufacturing Bulk Calibrator 10ug/ml, 20ug/ml, 40 ug/ml,60ug/ml, 80ug/ml, 90ug/ml Phenobarbital.	Bottle: 2L	11/13/90
Microgenics Corporation	In-house manufacturing Calibrator 10ug/ml, 20ug/ml, 40ug/ml, 60ug/ml80ug/ml, 90ug/ml Phenoberbital.	Vial: 3.5ml	11/13/90
Microgenics Corporation	Microgenics CEDIA Phenobarbital Assay 40ug/ml, 80ug/ml.	Vial: 3.5ml; Kit: 2 vials	11/13/90
Microgenics Corporation	Phenobarbital Stock Solution	Flask: 100ml	11/13/90
Micromedic Systems	Micromedic Neonatal T4 125I Tracer Solution	Nalgene Bottle: 4 oz.	06/25/87
Micromedic Systems	Micromedic Neonatal T4 Elution Solution	Nalgene Bottle: 2 oz.	06/25/87
Micromedic Systems	Neonatal T4 125I Tracer Solution	Vial: 30ml	05/21/80
Micromedic Systems	Neonatal T4 Buffer Solution	Bottle: 8ounce	05/21/80
Micromedic Systems	T3 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Micromedic Systems	T3 Uptake 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T3 Uptake Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Micromedic Systems	T4 RIA 125I Tracer Solution	Vial:30ml	12/14/76
Micromedic Systems	T4 RIA Buffer Solution	High Density Polyethylene Bottle:8 ounce	12/14/76
Miles Laboratories,Inc.	Ames Phenobarbital Assay,Kit Contains: Phenobarbital Standards; 10, 20, 40,& 80mcg/ml.	6.1 ml Vials	03/01/79
Miles Laboratories,Inc.	Ames Phenobarbital Controls, 15mcg/ml, 30mcg/ml, 50mcg/ml.	Vial:6.1ml	05/21/80
Miles Laboratories,Inc.	Clinitek T-3 Uptake Test,Kit Contains: (1)125I T-3 Uptake Reagent & (2) Separating Reagent.	200ml Bottles	11/10/78
Miles Laboratories,Inc.	Clinistat Calibrator Nos. 1 and 2	Vial:1ml	12/19/80
Miles Laboratories,Inc.	Clinistat Control B,C,D,and E	Vial:1ml	12/19/80
Miles Laboratories,Inc.	Seralute Total T-4 (RIA) 125I Reagent Kit, No.3304, No.3305.	Kit: 20 columns, 100 columns	03/28/77
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay Control	Vial:1ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay High Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Drug Assay Low Calibrator	Vial:0.5ml	01/17/84
Miles Laboratories,Inc.	Seralyzer ARIS Phenytoin Reagent Strips	Bottle Containing 25 and 50 Strips	05/28/86
Miles Laboratories,Inc.	T-4 Buffer	Glass Screwtop Vial: 3/4 ounce	03/28/77
Miles Laboratories,Inc.	TDA Cross-Reactivity Cocktails	Glass Vial:1ml	02/01/83
Miles Laboratories,Inc.	TEK-CHEK Special Urine Control (supplemental)	Vial: 25ml	05/01/70
Miles Laboratories,Inc.	Tetralute	Bottle:4.9 g.	07/29/70
Miles Laboratories,Inc.	Thyrolute I125, Reagent Kit, No.5250	Kit: 20 columns	12/02/74
Miles Laboratories,Inc.	Thyrolute I125, Reagent Kit, No.5252	Kit: 100 columns	12/02/74
Monobind,Inc.	Monobind T3 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind,Inc.	Monobind T3 Tracer Reagent	Wheaton Glass Container: 55ml	11/08/77
Monobind,Inc.	Monobind T4 Antibody Reagent	Test Tube w/Cap:70ml	11/08/77
Monobind,Inc.	Monobind T4 Tracer Reagent	Wheaton Glass Container 55ml	11/08/77
Monobind,Inc.	Monobind TSH Antibody Reagent	Test Tube w/Cap:10.5ml	11/08/77
Monobind,Inc.	Monobind TSH Non-Specific Buffer	Wheaton Glass:1.05ml	11/08/77
Monobind,Inc.	Monobind TSH Precipitating Reagent	Plastic Container w/Cap :105ml	11/08/77
Monobind,Inc.	Monobind TSH Tracer Reagent	Wheaton Glass Container 10.5ml	11/08/77
Monobind,Inc.	T3 Adsorbent Reagent	Glass Bottle: 110ml, 50ml Plastic Bottle: 260ml	05/15/78
Monobind,Inc.	T3 Uptake Tracer Reagent	Glass Bottle: 55ml, 30ml Plastic Bottle: 125ml	05/15/78
Monobind,Inc.	TSH Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind,Inc.	Thyroxine Radioimmunoassay Test System	Kit:100 Tests	11/08/77
Monobind,Inc.	Triiodothyronine Radioimmunoassay Test System.	Kit:100 tests	11/08/77
Monoclonal Antibodies, Inc.	Test Kit for Cocaine Metabolites in Urine	Kit:50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Opiates in Urine	Kit:50 tests	10/17/86
Monoclonal Antibodies, Inc.	Test Kit for Tetrahydrocannabinol (THC) in Urine	Kit:50 tests	10/17/86
NSI Technology Services Corp.	Alpha, alpha-dimethyl-phenethylamine	Amber Ampoule: 2ml	03/02/89

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Nuclear Diagnostics Inc.	MAAT T3 Uptake Reagent	Bottle: 105ml, 210ml; Kit: 1 bottle 210ml	11/16/90
Nuclear Diagnostics,Inc.	SPIMSEP-TBG Reagent Catalog No. 17100	Polypropylene Bottle: 105ml	12/15/77
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Antiserum Catalog No. 16100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Reagent Catalog No. 16100	Polypropylene Bottle: 105ml	07/08/77
Nuclear Diagnostics,Inc.	TETRIA P.E.G. Reagent Catalog No. 16100R	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TRIA-P.E.G. Antiserum Catalog No. 12100A	Polypropylene Bottle:55ml	03/10/78
Nuclear Diagnostics,Inc.	TRIA-P E.G. Reagent Catalog No.12100R	Polypropylene Bottle: 55ml	03/10/78
OMI International Corporation	Compound N Solution	Steel Drum:55 gallon	10/01/75
Organon Teknika Corp.	ASSURE, Levels I & II	Vial: 10 ml	06/27/80
Organon Teknika Corp.	Barbital Buffered Saline with Azide	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Bovine QAS Clinical Study	6 Vials/Kit (10ml/vial)	04/29/80
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle: 4 ounce	02/16/78
Organon Teknika Corp.	Liothyronine T3 125I	Boston Round Amber Bottle:16 ounce	01/20/76
Organon Teknika Corp.	Midwest/ Illinois/ New Jersey Quality Control Program, Level I & II.	Vial: 10 ml, 10 vials / kit	04/16/81
Organon Teknika Corp.	Modified Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Owren's Veronal Buffer for FIBRIQUIK	Bottle: 37 ml	05/07/80
Organon Teknika Corp.	PACP I & II	Kit: 30 vials/kit	03/07/80
Organon Teknika Corp.	PROFILE Anticonvulsant Levels I & II	Vial: 10 ml	11/28/80
Organon Teknika Corp.	Platelin	Vial:7.3ml	03/13/72
Organon Teknika Corp.	Platelin Plus Activator	Vial:7.3ml	03/13/72
Organon Teknika Corp.	Profile General Set	Kit Ctg: 6 vials	02/22/82
Organon Teknika Corp.	Profile General- Levels I & II	Vial:5 ml	02/22/82
Organon Teknika Corp.	Quality Assurance Serum Level I	Vial: 16.5 ml, 6 vials/ kit	08/17/79
Organon Teknika Corp.	Quality Assurance Serum Level II	Vial: 16.5 ml, 6 vials/ kit	08/17/79
Organon Teknika Corp.	Russell's Viper Venom Reagent	Vial: 7.3ml containing 48 mg of powder	07/08/74
Organon Teknika Corp.	Simplastin	Vial:4.7ml, 7.3ml, and 16.5ml	03/13/72
Organon Teknika Corp.	Simplastin-A	Vial: 7.3ml	03/13/72
Organon Teknika Corp.	T-4 125I Reagent	Boston Round Bottle: 2 ounce, amber bottle, 7 dr.	01/20/76
Organon Teknika Corp.	T-4 Antiserum (rabbit)	Boston Round Bottle: 4 ounce, clear bottle, 7 dr.	01/20/76
Organon Teknika Corp.	TETRA-TAB-RIA T4 Diagnostic Kit	Kit:40tests, 200tests	01/20/76
Organon Teknika Corp.	TETRA-TUBE RIA T4 Diagnostic Kit	Kit:100 tests, 500 tests	06/03/83
Organon Teknika Corp.	TGTR Set	Package:4 Tests per set	03/13/72
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 200 Tests	01/20/76
Organon Teknika Corp.	TRI-TAB T3 Uptake Diagnostic Kit	Kit: 40 tests	02/16/78
Organon Teknika Corp.	TRIS/Barbital Buffer	Plastic Bottle: 1L	01/05/90
Organon Teknika Corp.	Unassayed Chemistry Serum Control, Levels I & II.	Vial: 25 ml	06/27/80
Ortho Diagnostic Systems,Inc.	Activated ThromboFAX No.721000	Bottle: 3.2ml	09/21/71
Ortho Diagnostic Systems,Inc.	Ortho Activated PTT Reagent	Glass Vial:30 determination size, 100	05/23/83
Ortho Diagnostic Systems,Inc.	Ortho Plasma Coagulation Control Level I	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems,Inc.	Ortho Plasma Coagulation Control Level II	Glass Vial: 5ml	10/25/83
Ortho Diagnostic Systems,Inc.	ORTHO Owren's Buffer	Kit: 6-20 ml vials	08/26/88
PB Diagnostic Systems, Inc.	OPUS Phenobarbital Calibrators: 5,10,20,40,80ug/ml.	Vial: 2.5ml Carton: 5 vials	06/07/90
PB Diagnostic Systems, Inc.	OPUS Phenobarbital Test Modules	Plastic Test Module, Tray: 5 modules, Carton: 50 modules.	06/07/90
Pacific Hemostasis	Barbital Buffered Saline	Vial:100ml	05/24/84
Pacific Hemostasis	Barbital Buffered Saline with Heparin	Vial:90ml	05/24/84
Pacific Hemostasis	Diluting Fluid	Vial:20ml	05/24/84
Pantex	Immuno T3 Kit: (1)L-Triiodothyronine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Digoxin Kit Containing: (1)Digoxin 125I (2)1st Antiserum (3) 2nd Antiserum (4)Diluent.	Kit Containing Bottles: (1)10ml (2)20ml (3)50ml (4)5ml.	01/04/79
Pantex	Immuno-Estriol 125I Kit:2nd Antiserum	Bottle:50ml	01/04/79
Pantex	Immuno-Estriol Kit: (1)Estriol 3H RIA (2)Estriol 3H Recovery (3)1st Antiserum (4)2nd Antiserum (5)Diluent (6)Buffer (7)Standards.	Kit Containing Bottles: (1)10ml (2)5ml (3)10ml (4)20ml (5)100ml (6)50ml (7)5ml.	01/04/79
Pantex	Immuno-T4 Kit: (1)Thyroxine 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)100ml,1000ml (2)50ml (3)100ml (4)5ml (5)3ml.	01/04/79
Pantex	Immuno-Testosterone 125I Kit: (1)Testosterone 125I (2)1st Antiserum (3)2nd Antiserum (4)Diluent (5)Standards.	Kit Containing Bottles: (1)10ml (2)10ml (3)50ml (4)100ml (5)5ml.	01/04/79
Pantex	T3 Uptake Kit: L-Triiodothyronine 125I	Bottle:100ml, 1000ml	01/04/79
Perkin-Elmer Corporation	Amphetamine Polarization Fluoroimmunoassay Kit.	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Barbiturates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Cocaine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Methadone Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Morphine Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Perkin-Elmer Corporation	Opiates Polarization Fluoroimmunoassay Kit	Kit: 100 tests	12/18/86
Princeton Separations, Inc.	Panagel 1®	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel 8	Pouch: 1 slide	06/29/87
Princeton Separations, Inc.	Panagel Electrobuffer	Fiber Drum: 25 kg	06/29/87
Princeton Separations, Inc.	Panagel Electrode Buffer	Pouch: 18.3 gms	06/29/87
Princeton Separations, Inc.	Panagel LD isoenzyme Electrode Buffer	Pouch: 11.85 gms	06/29/87
Princeton Separations, Inc.	Panagel LD isoenzyme Slide	Pouch: 1 slide	06/29/87

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Quality Assurance Service Corp.	Q.A. Toxicology Blood Controls	Vial: 6ml,12ml Plastic Bottle: 60ml,90ml,250ml,625ml Glass Bottle: 6ml-100ml.	01/23/90
Quality Assurance Service Corp.	Q.A. Toxicology Serum Controls	Vial: 6ml,12ml Plastic Bottle: 60ml,90ml,250ml,625ml Glass Bottle: 6ml-100ml.	01/23/90
Quality Assurance Service Corp.	Q.A. Toxicology Urine Controls	Vial: 6ml,12ml Plastic Bottle: 60ml,90ml,250ml,625ml Glass Bottle: 6ml-100ml.	01/23/90
Quantimetrix	Quantimetrix Anticonvulsant Serum Drug Control, Liquid Level II Control No. 17-0303-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0303-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level I Control No. 17-0305-1.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Quantimetrix Antidepressant Serum Drug Control, Liquid Level II Control No. 17-0306-2.	Polyethylene Dropper Bottle: 15ml	04/16/86
Quantimetrix	Urine Druga of Abuse Control Catalog No. 12-2411-1.	Dropper Bottle: 15 ml	02/23/87
Quin-Tec, Inc.	Additive SB-1	Drum:55 gals.	05/11/87
Quin-Tec, Inc.	Quin-Tec Brightener 402	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons	10/13/81
Quin-Tec, Inc.	Quin-Tec Brightener 404	Plastic Pail: 5 gallons, Plastic Drum: 55 gallons	10/13/81
Radian Corporation	3,4-Methylenedioxy-amphetamine-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	3,4-Methylenedioxy-amphetamine-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	3,4-Methylenedioxy-methamphetamine-D5 0.1 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3,4-Methylenedioxy-methamphetamine-D5 1.0 mg/ml.	2 ml amber ampule	10/19/88
Radian Corporation	3,4-Methylenedioxyamphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	3,4-Methylenedioxymethamphetamine 0.1, 1.0 mg/ml.	Amber glass ampule: 2ml	01/12/89
Radian Corporation	6-Acetylmorphine	Ampule: 2 ml	12/04/87
Radian Corporation	6-Acetylmorphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	9-Carboxy-11-nor-Delta-9-Tetrahydrocannabinol-D3.	Ampule: 2 ml	12/04/87
Radian Corporation	9-Carboxy-11-nor-delta-9-THC 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Alprazolam 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	11/05/90
Radian Corporation	Alprazolam-D5 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	11/05/90
Radian Corporation	Amphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Amphetamine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Amphetamine-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Benzoylecgonine	Ampule: 2ml	12/04/87
Radian Corporation	Benzoylecgonine-D3	Ampule: 2ml	12/04/87
Radian Corporation	Cocaethylene 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	12/13/90
Radian Corporation	Cocaethylene-D3	Ampule: 2ml	12/13/90
Radian Corporation	Cocaine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Cocaine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Codeine	Ampule: 2 ml	03/09/88
Radian Corporation	Codeine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Delta-9-Tetrahydro-cannabinol-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Delta-9-Tetrahydrocannabinol 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Diazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Diazepam-D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Diazepam-D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Ecgonine Methyl Ester-D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Ecgonine Methyl Ester-D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone - D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone - D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydrocodone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Hydromorphone - D3 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone - D3 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Hydromorphone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Methadone - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methadone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Methamphetamine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Methamphetamine-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Methaqualone - D4 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone - D4 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Methaqualone 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Morphine	Ampule: 2 ml	03/09/88
Radian Corporation	Morphine-D3	Ampule: 2 ml	12/04/87
Radian Corporation	Nordiazepam - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Nordiazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Oxazepam - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Oxazepam 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Pentobarbital 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	09/24/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Radian Corporation	Pentobarbital-D5 0.1mg/ml, 1.0mg/ml	Ampule: 2ml	09/24/90
Radian Corporation	Phencyclidine 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Phencyclidine-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Phenobarbital 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Radian Corporation	Phenobarbital-D5	Ampule: 2 ml	12/04/87
Radian Corporation	Propoxyphene - D5 0.1 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Propoxyphene - D5 1.0 mg/ml	2 ml amber ampule	10/19/88
Radian Corporation	Propoxyphene 0.1, 1.0 mg/ml	Amber glass ampule: 2ml	01/12/89
Research Diagnostics	3H Alfentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Fentanyl	Vial: 0.5 ml	06/15/89
Research Diagnostics	3H Sufentanil	Vial: 0.5 ml	06/15/89
Research Diagnostics	Alfentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Fentanyl Analogs Reference Standards for Drug Analysis.	Amber Ampule: 1 ml, Plastic Shell: 5 ampules, Kit: 2 shells (10 ampules).	10/17/89
Research Diagnostics	Fentanyl Radioimmunoassay	Kit: 200 tests	06/15/89
Research Diagnostics	Sufentanil Radioimmunoassay	Kit: 200 tests	06/15/89
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Blood Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	11-Nor-9-carboxy-delta-9 THC Plasma Standards Kit.	Kit Containing: 18-21ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	Delta-9 THC Blood Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul	10/26/81
Research Triangle Institute	Delta-9 THC Plasma Standards Kit	Kit Containing: 16-2ml Ampuls; 1-5ml Ampul	11/02/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Blood.	Kit Containing: 26-1ml Ampuls; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of 11-Nor-9-carboxy-delta-9 THC in Plasma.	Kit Containing:24-1ml Ampule; 2-20ml Vials; 2-250ml Bottles.	10/26/81
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing:20-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	10/20/80
Research Triangle Institute	Iodine Kit for Radioimmunoassay of Delta-9 THC in Blood.	Kit Containing: 22-1ml Ampules; 2-20ml Vials; 2-250ml Bottles.	07/10/81
Research Triangle Institute	Tritium Kit for Radioimmunoassay of Delta-9 THC.	Kit Containing: 20-1ml Ampules; 2- 20ml Vials; 2-250ml Bottles.	06/27/80
Roche Diagnostic Setems, Inc.	ABUSCREEN FP for Cocaine Metabolite	Kit: 1000 tests	03/23/89
Roche Diagnostic System, Inc.	Abuscreen FP for Benzodiazepines	Kit: 1000 Tests	05/11/89
Roche Diagnostic Systems, Inc.	125I T3 (for T3 Uptake Radioassay)	Vial:15ml	07/22/81
Roche Diagnostic Systems, Inc.	ABUSCREEN 125 I-Methamphetamine Reagent	Vial: 500ml, 30ml	03/01/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP Cocaine Metabolite 75, 150, 300 or 600 ng/ml Benzoylecgonine Standard.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP Cocaine Metabolite Positive Control.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Amphetamine	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Amphetamine 250, 500, 1000 or 2000 ng/ml d-Amphetamine Standard.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Amphetamine Positive Control.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Amphetamine Tracer Reagent.	Vial: 12ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Barbiturates	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Barbiturates 50, 100, 200 or 400 ng/ml Secobarbital Standard.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Barbiturates Positive Control.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Barbiturates Tracer Reagent.	Vial: 12 ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Cannabinoids	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Cannabinoids 25, 50, 100 or 200 ng/ml Cannabinoid Standard.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Cannabinoids Positive Control.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Cannabinoids Tracer Reagent.	Vial: 12ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Cocaine Metabolite Tracer Reagent.	Vial: 12ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Methamphetamine	Kit: 1000 tests	03/09/90
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Methamphetamine 250,500,1000 or 2000ng/ml d-Methamphetamine Calibrator.	Vial: 4ml	03/09/90
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Methamphetamine Cut-off Control.	Vial: 4ml	03/09/90
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Methamphetamine Positive Control.	Vial: 4ml	03/09/90
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Methamphetamine Tracer Reagent.	Vial: 12ml	03/09/90
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Morphine	Kit: 1000 tests	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Morphine 75, 150, 300 or 600 ng/ml Morphine Standard.	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Morphine Positive Control	Vial: 4ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Morphine Tracer Reagent	Vial: 12ml	03/23/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Phencyclidine	Kit: 1000 tests	03/23/89

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Phencyclidine 5, 10, 25 or 50 ng/ml Phencyclidine Standard.	Vial: 4ml	09/29/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Phencyclidine Positive Control.	Vial: 4ml	09/29/89
Roche Diagnostic Systems, Inc.	ABUSCREEN FP for Phencyclidine Tracer Reagent.	Vial: 12ml	09/29/89
Roche Diagnostic Systems, Inc.	ABUSCREEN High Control (Methamphetamine)	Vial: 2 oz	09/01/89
Roche Diagnostic Systems, Inc.	ABUSCREEN Low Control (Methamphetamine)	Vial: 2 oz	09/01/89
Roche Diagnostic Systems, Inc.	ABUSCREEN Positive Reference Control (Methamphetamine).	Vial: 105ml, 6.6ml	09/01/89
Roche Diagnostic Systems, Inc.	ABUSCREEN Radioimmunoassay for Methamphetamine High Specificity.	Kit: 100 tests, 2500 tests	09/01/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Amphetamine Reagent	Vial:30ml, 500ml	09/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Benzoylecgonine Reagent	Vial: 30ml, 500ml	02/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Methaqualone Reagent	Vial:30ml, 500ml	09/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Morphine Reagent	Vial:30ml, 500ml	09/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Oxazepam Reagent	Vial:30ml, 500ml	09/05/87
Roche Diagnostic Systems, Inc.	Abuscreen 125I Phencyclidine Reagent	Vial:30ml, 500ml	02/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Secobarbital Reagent	Vial:30ml, 500ml	09/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I Tetrahydrocannabinol Reagent	Vial: 500ml, 30ml	09/15/89
Roche Diagnostic Systems, Inc.	Abuscreen 125I-LSD Reagent	Vial:500ml, 30ml	04/29/94
Roche Diagnostic Systems, Inc.	Abuscreen EIA Amphetamine	Kit: 100 tests	01/16/89
Roche Diagnostic Systems, Inc.	Abuscreen EIA Amphetamine Conjugate Reagent.	Vial: 90 ml	01/16/89
Roche Diagnostic Systems, Inc.	Abuscreen EIA Amphetamine Negative Control	Vial: 4 ml	01/16/89
Roche Diagnostic Systems, Inc.	Abuscreen EIA Amphetamine Positive Calibrator	Vial : 4 ml	01/16/89
Roche Diagnostic Systems, Inc.	Abuscreen EIA Amphetamine Positive Control	Vial: 4 ml	01/16/89
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Conjugate Reagent	Vial: 30 ml	10/02/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Enzyme Immunoassay Test Kit for Barbiturate Metabolites.	Kit:100 Tests	10/09/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Negative Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial: 4 ml	10/02/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Barbiturate Positive Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoid Positive Calibrator 50-1200 (in increments of 50) ng of THC derivative/ml.	Vial: 4ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoid THC Conjugate Reagent.	Vial: 30ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Enzyme Immunoassay Test Kit for Cannabinoids.	Kit: 100 Tests	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Negative Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cannabinoids Positive Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Conjugate Reagent.	Vial:30ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Benzoylecgonine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial:4ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Enzyme Immunoassay Test Kit for Benzoylecgonine.	Kit:100 tests	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Negative Control.	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Cocaine Metabolite Positive Control.	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Conjugate Reagent	Vial:30ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Enzyme Immunoassay Test Kit for Morphine and Morphine Metabolites.	Kit:100 tests	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Negative Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Positive Calibrator 50-1200 (in increments of 50) ng/ml.	Vial:4ml	09/29/86
Roche Diagnostic Systems, Inc.	Abuscreen EIA Morphine Positive Control	Vial:4 ml	04/15/87
Roche Diagnostic Systems, Inc.	Abuscreen FP for Benzodiazepines-25,50,100 or 200ng/ml Benzodiazepines Standard.	Vial: 4ml	09/11/89
Roche Diagnostic Systems, Inc.	Abuscreen FP for Benzodiazepines-Positive Control.	Vial: 4ml	09/11/89
Roche Diagnostic Systems, Inc.	Abuscreen FP for Benzodiazepines-Tracer Reagent.	Vial: 12ml	09/11/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine	Kit: 40 tests	09/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine Antibody Diluent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine Latex	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine Negative Control.	Vial: 4 ml	09/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Amphetamine Positive Control.	Vial: 4 ml	09/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturate	Kit: 40 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturate Antibody Diluent.	Vial: 7 ml	09/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturate Latex	Vial: 7 ml	09/14/88

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturates Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Barbiturates Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cannabinoids	Kit: 40 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cannabinoids Antibody Diluent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cannabinoids Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cannabinoids Positive Control.	Vial: 4 ML	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cannabinoids THC Latex	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite	Kit: 40 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite Antibody Diluent.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite Benzoylecgonine Latex.	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite Negative Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Cocaine Metabolite Positive Control.	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine	Kits: 40 tests	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine Antibody Diluent	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine Latex	Vial: 7 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine Negative Control	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK Morphine Positive Control	Vial: 4 ml	03/14/88
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK PCP Negative Control	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK PCP Positive Control	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK PCP Reagent A - Antibody Reagent.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK PCP Reagent C - Latex Reagent.	Vial: 7 ml	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen ONTRAK for PCP	Kit: 40 tests, 100 tests	11/22/89
Roche Diagnostic Systems, Inc.	Abuscreen Positive Ref. Control (Benzodiazepines) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 50) ng/ml.	Vial:5ml, 100ml	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen Positive Ref. Control(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5.0 or 10.0 ng/ml.	Vial:5ml, 100ml	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Amphetamine) 100, 500, 750, 1000, 1500,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Barbiturate) 50, 100, 200, 300, 400, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Benzoylecgonine) 100, 150, 200, 300, 400, 500, 600, 750, 1000, or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Methaqualone) 100, 300, 500, 750, 1000,or 2000 ng/ml.	Vial:6.6ml, 100 ml	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Morphine) 40, 50, 100, 150, 200, 300, 500, 600,or 1000 ng/ml..	Vial:6.6ml, 120ml.	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control (Phencyclidine) 10, 12.5, 25, 50, 75, 100, 200, or 500 ng/ml.	Vial:6.6ml, 120ml.	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Control Cannabinoid 20, 25, 50, 100, 150, 200, 300, 400, or 500 ng/ml.	Vial:6.6ml, 100 ml	02/20/84
Roche Diagnostic Systems, Inc.	Abuscreen Positive Reference Controls for Amphetamine (Single Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Positive Urine Reference Std. (Oxazepam or Desmethyldiazepam) 25, 50, 75, 100 ng/ml or 150-1000 (in increments of 100) ng/ml.	Vial:5ml, 100ml	06/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Positive Urine Reference Std.(LSD) 0.1, 0.2, 0.25, 0.3, 0.4, 0.5, 0.6, 0.7, 0.75, 0.8, 0.9, 1.0, 1.25, 1.5, 1.75, 2.0, 2.5, 5, or 10 ng/ml.	Vial:5ml, 60ml, & 100ml	01/28/86
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Amphetamine	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Amphetamine High Specificity.	Kit:100 tests, 2500 tests	09/13/85
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Barbiturates	Kit: 100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Benzodiazepines.	Kit:100 tests, 2500 tests	03/06/87
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cannabinoids	Kit: 100 Tests 2, 500 Tests	09/14/91
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Cocaine Metabolite.	Kit: 100 Tests, 2500 Tests	02/15/83

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for LSD (Lysergic Acid Diethylamide).	Kit: 100 tests, 2500 tests	09/15/88
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Methaqualone.	Kit: 100 tests, 2500 tests	09/15/88
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Morphine	Kit:100 tests, 2500 tests	02/15/83
Roche Diagnostic Systems, Inc.	Abuscreen Radioimmunoassay for Phencyclidine (PCP).	Kit:100 tests, 2500 tests	09/15/88
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Amphetamine (Multi- Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Barbiturate (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Barbiturate (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Benzodiazepines (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cannabinoids (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cannabinoids (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cocaine Metabolite (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Cocaine Metabolite (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for LSD (Lysergic Acid Diethylamide) (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Methaqualone (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Morphine (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Morphine (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Multi-Level).	Kit: 3 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Abuscreen Reference Controls for Phencyclidine (PCP) (Single-Level).	Kit: 2 Vials	10/12/87
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Latex Reagent	Vial:2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Positive Human Urine Control.	Vial:5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Amphetamine Test Kit	Kit: 20 tests, 100 tests	09/15/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Latex Reagent	Vial:2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Positive Human Urine Control.	Vial:5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Barbiturate Test Kit	Kit:20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Latex Reagent	Vial:2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Positive Human Urine Control.	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Methaqualone Test Kit	Kit:20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Latex Reagent	Vial:2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Positive Human Urine Control.	Vial: 5ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Morphine Test Kit	Kit:20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine (PCP) Test Kit	Kit:20 tests, 100 tests	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine Latex Reagent	Vial:2ml	06/27/83
Roche Diagnostic Systems, Inc.	Agglutex Phencyclidine Positive Human Urine Control.	Vial:5ml	06/27/83
Roche Diagnostic Systems, Inc.	Amerifluor Florescent Immunoassay Phenobarbital.	Kit: 100 tests	04/30/82
Roche Diagnostic Systems, Inc.	Anti-T3 Reagent 125I T3 (for T3 Radioimmunoassay).	Vial:15ml	07/22/81
Roche Diagnostic Systems, Inc.	Anti-T4 Reagent 125I T4 (for T4 Radioimmunoassay).	Vial:15ml	07/22/81
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Calibrators	Kit:8 Vials	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Calibrators B through F.	Vials:5ml	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Phenobarbital Tracer Reagent	Vial:5ml	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP Reagents for Phenobarbital	Kit:100 tests	11/13/84
Roche Diagnostic Systems, Inc.	COBAS FP TDM Controls	Kit:8 Vials	11/13/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 1, 2, 3, 4, 5, 6, 7, or 8.	Vial:10, 20, 50, or 100ml	01/25/83
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No. 9A	Vial:10ml, 20ml, 50ml,or 100ml	07/24/84
Roche Diagnostic Systems, Inc.	Immunizing Preparation No.10	Vial:10ml, 20ml, 50ml,or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparation No.10A	Vial:10ml, 20ml, 50ml, or 100ml	04/02/86
Roche Diagnostic Systems, Inc.	Immunizing Preparations No. 1A, 2A, 3A, 4A, 5A, 6A, 7A,& 8A.	Vial:10ml, 20ml, 50ml,or 100ml	07/12/83
Roche Diagnostic Systems, Inc.	NBS Reagent	Vial:2ml	07/22/81
Roche Diagnostic Systems, Inc.	TDM Controls, Levels I through III	Vials:5ml	11/13/84
Rowley Biochemical Institute,Inc.	Aldehyde Fuchsin Solution	Bottle: Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute,Inc.	Aldehyde Thionin Solution	Bottle:Pint, Quart, Gallon	02/02/84
Rowley Biochemical Institute,Inc.	Mayer's Hematoxylin Solution	Bottle:Pint, Quart, Gallon	02/02/84

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Schering Corp.	Hepatyl	Vial:9 Dram and Plate	07/19/72
Serex Inc.	Benzoylecgonine Positive Control	Bottle: 1 ml	12/16/89
Serex Inc.	Benzoylecgonine Standards	Bottle: 1 ml	12/16/89
Serex Inc.	CoMIA EIA for Cocaine Metabolite	Kit: 96 tests, 2 Bottles: 5 ml ea., Assay Plate: 96 wells.	10/17/89
Serex Inc.	Cocaine Metabolite Standards and Controls Kit	Kit: 3 bottles - 100 Assays	12/16/89
Serono Diagnostics,Inc.	rT3 Barbital Buffer	Glass Vial:125ml	10/26/84
Serono Diagnostics,Inc.	rT3-125I	Glass Vial:13ml	10/26/84
Serono Diagnostics,Inc.	rT3-Antiserum	Glass Vial:13ml	10/26/84
Sherwood Medical Company	Lancer Fibrinogen Determination,Reagent Kit Catalog No. 8680-007808.	Kit	04/17/75
Sigma Chemical Co.	(+)Deoxyephedrine-d5 HCl sD-5914	Ampule: 2ml	06/29/89
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4784	Sealed Ampule: 1ml	09/30/77
Sigma Chemical Co.	1-Tetrahydrocannabinol, Product No. T-4784	Vial: 1ml	05/11/81
Sigma Chemical Co.	11-nor-delta9-Tetrahyrocannabinol, 9-carboxylic .85 mg/ml acid, No. N-5842.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	11-nor-deltaTHC-9-Carboxylic Acid sN-8893	Ampule: 2ml	06/29/89
Sigma Chemical Co.	3,4 Methylenedioxymethamphetamine 1 mg/ml, No. M-8028.	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	3,4-Methylenedioxyamphetamine, No. M-3272	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	5,5-Diallylbarbituric Acid, Product No. D-6013	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	6-Tetrahydrocannabinol, Product No. T-4989	Vial: 1ml	05/11/81
Sigma Chemical Co.	ALT Reagent A, Stock No.57-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	ALT Reagent A, Stock No.57-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No.58-10	Vial: 30ml	06/27/79
Sigma Chemical Co.	AST Reagent A, Stock No.58-2	Vial: 10ml	06/27/79
Sigma Chemical Co.	Acid Hematoxylin Solution, No.285-2	Bottle:25ml, 100ml	05/06/73
Sigma Chemical Co.	Adenosine Phosphate Substrate, Product No. 675-1.	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Allylcyclopentylbarbituric Acid (A-7787)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Allylisobutylbarbituric Acid (A-1038)	Sealed Ampule:1ml	04/10/85
Sigma Chemical Co.	Alphaprodine Hydrochloride (A-1537)	Ampule:1ml	06/27/84
Sigma Chemical Co.	Alphenal (A-1163)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Alprazolam .25 mg/ml, No. A-5052	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Alprazolam-d5 sA-7055	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Ammonia Reagent ,Stock No. 170-10	Vial:10ml	02/17/77
Sigma Chemical Co.	Ammonia Reagent Kit:Stock No. 170-10	Kit:10 Vials	02/17/77
Sigma Chemical Co.	Ammonia Reagent Stock No. 170-10	Vial:30ml	12/13/77
Sigma Chemical Co.	Ammonia in Plasma Kit	Kit: 100 tests, 30 tests	12/13/77
Sigma Chemical Co.	Amobarbital ,Product No. A-5142	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Antibody Sensitized Sheep Erythrocytes (EA78)	Vials:2ml and 5X 2ml	04/02/86
Sigma Chemical Co.	Aprobarbital , Product No. A-7023	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Barbital Buffer ,Product No. B-6632	Polyethylene Vial:30ml	05/11/77
Sigma Chemical Co.	Barbital Buffer with Albumin Stock No. 668-3	Vial: 30ml	07/11/86
Sigma Chemical Co.	Barbital,Product No. B-5632	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Benzoylecgonine 1 mg/ml, No. B-8000	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Benzoylecgonine-d3 sB-3277	Ampule: 2ml	06/29/89
Sigma Chemical Co.	Benzphetamine Hydrochloride, Product No. B-9765.	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Bromazepam sB-8402	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Bufotenine Monooxalate,Product No. B-8757	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Butabarbital ,Product No. B-8682	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Butalbital, Product No. B-8614	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Butethal (B-7916)	Ampule:1ml	06/05/85
Sigma Chemical Co.	Cannabidiol, Product No. C-8985	Sealed Ampule:1ml	06/29/79
Sigma Chemical Co.	Cannabidiol, Product No. C-8985	Vial: 1ml	05/11/81
Sigma Chemical Co.	Cannabinol, Product No. C-8520	Sealed Ampule:1ml	06/29/79
Sigma Chemical Co.	Cannabinol, Product No. C-8520	Vial: 1ml	05/11/81
Sigma Chemical Co.	Chloral Hydrate , Product No. C-8518	Sealed Ampule:1ml	09/30/77
Sigma Chemical Co.	Chlorazepam Dipotassium Salt, (C-9531)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Chlordiazepoxide (C-4782)	Ampule:1ml	06/05/85
Sigma Chemical Co.	Chlordiazepoxide Hydrochloride Acetonitrile Drug Standard sC-8547.	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Chlordiazepoxide-d5 sC-8647	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Clobazam, No. C-8667	Glass Ampule: 2ml	06/06/89
Sigma Chemical Co.	Clonazepam, Product No. C-4404	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Cocaine Hydrochloride Product No. C-1525	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Cocaine-d3 sC-3547	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Codeine-d6 HCl sC-8672	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Codeine,Product No. C-1653	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	D-Amphetamine Sulfate, Product No. A-5278	Vial: 1ml	05/11/81
Sigma Chemical Co.	DL-Amphetamine HCL , Product No. A-5017	Sealed Ampule:1ml	06/30/77
Sigma Chemical Co.	Delorazepam sD-5799	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Desmethyldiazepam 1 mg/ml, No. D-9182	Glass Ampule: 2 ml	06/29/89
Sigma Chemical Co.	Desmethyldiazepam-d5 sD-8939	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Dextropropoxyphene Hydrochloride (D-8901)	Ampule:1ml	09/27/84
Sigma Chemical Co.	Diazepam, Product No. D-6900	Sealed Ampule:1ml	06/06/84
Sigma Chemical Co.	Diazepam-d5 sD-8984	Ampule: 2ml	06/28/90
Sigma Chemical Co.	Diethylpropion Hydrochloride, Product No. D-7274.	Sealed Ampule:1ml	09/19/83

BEST COPY AVAILABLE

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Sigma Chemical Co.	Diphenoxylate (D-0780)	Ampule:1ml	09/06/85
Sigma Chemical Co.	Drug Standard Mix 1, D-3155	Ampule:2ml	04/18/86
Sigma Chemical Co.	Drug Standard Mix 2, D-3030	Ampule:2ml	04/18/86
Sigma Chemical Co.	Ecgonine Hydrochloride 1 mg/ml, No. E-9762	Glass Ampule: 2 ml	08/29/89
Sigma Chemical Co.	Ecgonine-d3 HCl ±E-2014	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Ecgonine-d3 Methyl Ester HCl ±E-2139	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Estazolam ±E-1139	Ampule: 2ml	08/26/90
Sigma Chemical Co.	Ethinamate (E-8508)	Ampule:1ml	04/10/85
Sigma Chemical Co.	Fenfluramine Hydrochloride, Product No. F-1884	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Fenproporex Hydrochloride, No. F-7261	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Fentanyl Citrate, No. F-5886	Glass Ampule: 2 ml	08/06/89
Sigma Chemical Co.	Fentanyl-d5 Citrate ±F-2520	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Flunitrazepam No. F-8783	Vial:1 ml	08/30/87
Sigma Chemical Co.	Flurazepam Dihydrochloride Methanol Drug Standard, No. F-9134.	Ampule: 2 ml	10/20/89
Sigma Chemical Co.	Flurazepam Dihydrochloride, Product No. F-9134	Sealed Ampule:1ml	08/08/84
Sigma Chemical Co.	Gelatin Veronal Buffer (GVB2+) No. G-8514	Vial:50 ml,250ml	09/15/86
Sigma Chemical Co.	Glutethimide, Product No. G-3134	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 675-2	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Glycerophosphate Substrate, Product No. 704-1	Bottle:4 ounce	07/25/83
Sigma Chemical Co.	Heroin Hydrochloride .1 mg/ml, No. H-5144	Glass Ampule: 2 ml	08/29/89
Sigma Chemical Co.	Hexoberbital, Product No. H-2007	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Hydrocodone Bitartrate, No. H-2269	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Hydromorphone Hydrochloride No. H-7141	Vial:1 ml	08/30/87
Sigma Chemical Co.	Ibogaine HCL, Product No. I-4630	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	LDH Electrophoresis Buffer, Stock No. 705-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	LDH-P Reagent No. 125-10	Vial:30ml	05/29/73
Sigma Chemical Co.	LDH-P Reagent No. 125-100	Vial:100ml	05/29/73
Sigma Chemical Co.	Levorphanol Tartrate 1 mg/ml, No. L-0696	Glass Ampule: 2 ml	08/29/89
Sigma Chemical Co.	Lorazepam (L-0140)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Lormetazepam, No. 8145	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Lysergic Acid , Product No. L-5881	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Lysergic Acid Diethylamide ±L-8147	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Mayer's Hematoxylin Solution, No. MHS-1	Bottle:25ml, 100ml	08/06/73
Sigma Chemical Co.	Mebutamate (M-3772)	Ampule:1ml	09/05/85
Sigma Chemical Co.	Medazepam (M-7646)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Meperidine Hydrochloride (M-1020)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Mephobarbital, Product No. M-3514	Vial: 1ml	05/11/81
Sigma Chemical Co.	Meprobamate (M-0271)	Ampule:1ml	05/24/85
Sigma Chemical Co.	Mescaline HC1 , Product No. M-5153	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Methadone Hydrochloride, Product No. M-3266	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methadone-d3 ±M-4781	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Methamphetamine HC1 , Product No. M-5260	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Methaqualone Hydrochloride, Product No. M-3393.	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Methaqualone-d4 ±M-5406	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Methylphenidate Hydrochloride (M-1145)	Ampule:1ml	10/31/84
Sigma Chemical Co.	Methyprylon, Product No. M-1769	Sealed Ampule:1ml	08/08/84
Sigma Chemical Co.	Morphine Sulfate, No. M-9524	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Morphine-3-B-D Glucuronide, Product No. M-4266.	Ampule: 1ml	10/21/82
Sigma Chemical Co.	N,N-Diethyltryptamine, Product No. D-0392	Vial: 1ml	05/11/81
Sigma Chemical Co.	N,N-Dimethyltryptamine, Product No. D-6263	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Nalorphine Hydrochloride	Ampule:1ml	08/27/84
Sigma Chemical Co.	Norcodeine Hydrochloride, No. N-3017	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Normorphine HCl ±N-7393	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Noroxymorphone ±N-7018	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Oxazepam, No. O-1755	Vial:1 ml	08/30/87
Sigma Chemical Co.	Oxazepam-d5 ±O-1381	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Oxazolam, No. O-8005	Glass Ampule: 2ml	08/06/89
Sigma Chemical Co.	Oxycodone Hydrochloride, Product No. O-2628	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Paraldehyde, Product No. D-3778	Ampule: 1ml	10/21/82
Sigma Chemical Co.	Pemoline, Product No. P-3518	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Pentazocine Hydrochloride, Product No. P-7530	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Pentobarbital, Product No. P-3393	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Phencyclidine, No. P-7043	Vial:1 ml	08/30/87
Sigma Chemical Co.	Phencyclidine-d5 HCl ±P-8054	Ampule: 2ml	08/28/90
Sigma Chemical Co.	Phendimetrazine, Product No. P-3524	Vial: 1ml	05/11/81
Sigma Chemical Co.	Phenobarbital FPIA Calibrator Set Cat. No. P9051.	Kit: 6 vials	11/21/89
Sigma Chemical Co.	Phenobarbital FPIA Calibrator: A-No.P8301, B-No.P8426, C-No.P8551, D-No.P8676, E-No.P8801, F-NO.P8926.	Vial: 2.5 ml	11/21/89
Sigma Chemical Co.	Phenobarbital Prod. No.P-3643	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Phentermine Hydrochloride, Product No. P-7655	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Phenylacetone, Product No. P 2024	Vial: 1ml	05/11/81
Sigma Chemical Co.	Prazepam, No. P-7169	Vial:1 ml	08/30/87
Sigma Chemical Co.	Psilocin ±P-4054	Ampule: 2ml	08/28/90
Sigma Chemical Co.	SGOT 10 Assay Vial No. 55-10	Vial:30ml	05/29/73
Sigma Chemical Co.	SGOT Reagent No. 155-10	Vial:30ml	05/29/73

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Sigma Chemical Co.	SGOT Reagent No. 155-100	Vial:100ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-1	Vial:3ml	05/29/73
Sigma Chemical Co.	SGOT Single Assay Vial No. 55-5	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT 10 Assay Vial No. 55-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Assay Vial No. 55-5P	Vial:15ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-100P	Vial:100ml	05/29/73
Sigma Chemical Co.	SGPT Reagent No. 155-10P	Vial:30ml	05/29/73
Sigma Chemical Co.	SGPT Single Assay Vial No. 55-1P	Vial:3ml	05/29/73
Sigma Chemical Co.	Secoberbital, Product No. S-4006	Sealed Ampule:1ml	08/30/77
Sigma Chemical Co.	Temazepam, No. T-4909	Vial:1 ml	08/30/87
Sigma Chemical Co.	Thebaine, Product No. T-5270	Sealed Ampule:1ml	09/19/83
Sigma Chemical Co.	Thiamylal Sodium, Product No. T-8695	Sealed Ampule:1ml	08/06/84
Sigma Chemical Co.	Thiopental (T-1022)	Ampule:1ml	08/27/84
Sigma Chemical Co.	Triazolam ±T-7656	Ampule: 2ml	08/26/90
Sigma Chemical Co.	Trizma-Barbital Buffer, Stock No. 710-1	Amber Jar:30ml	01/04/77
Sigma Chemical Co.	Tropacocaine, Product No. T-4516	Vial: 1ml	05/11/81
Sigma Chemical Co.	d-Amphetamine-d3 Sulfate ±A-7180	Ampule: 2ml	08/28/90
Sigma Chemical Co.	d-Propexphene-d7 HCl ±P-4179	Ampule: 2ml	08/28/90
Sigma Chemical Co.	d-Propoxyphene-d7 HCl ±P-4178	Ampule: 2ml	08/28/90
Sigma Chemical Co.	delta-9-tetrahydrocannabinol-d3 ±T-8783	Ampule: 2ml	08/28/90
Sigma Chemical Co.	p-Methoxyamphetamine HCl ±M-4856	Ampule: 2ml	08/28/90
Smart Chemical Co.	Regal 1800L	Plastic Drum:55 gallon	08/12/88
SolarCare Technology Control	LSD EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Cutoff Calibrator	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Benzoylecgonine Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine Cutoff Calibrator	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Cocaine Metabolite EIA	Kit: 30 vials	06/05/90
SolarCare Technology Corporation	Cocaine Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Cocaine Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Cutoff Calibrator	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	LSD Positive Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Low Level Benzodiazepine (Triazolam) EIA	Kit: 3 vials	06/05/90
SolarCare Technology Corporation	Triazolam Cutoff Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Triazolam Negative Control	Vial: 4ml	06/05/90
SolarCare Technology Corporation	Triazolam Positive Control	Vial: 4ml	06/05/90
Supelco,Inc.	Alk Mix No. 04-9210	Vial:1ml	08/29/73
Supelco,Inc.	Amobarbital, No.04-9170	Ampule: 1ml	12/22/72
Supelco,Inc.	Amph. Mix Catalog No. 4-9205	Glass Ampule:2ml	06/06/86
Supelco,Inc.	Amphetamine No.04-9166	Ampule: 1 ml	12/22/72
Supelco,Inc.	Anticonvulsant Mixture No.1; No. 04-9202	Glass Serum Bottle:50ml	06/15/77
Supelco,Inc.	Antiepileptic Calibration Standard Kit, No.4-9259	Kit: 3 Ampules	05/21/80
Supelco,Inc.	Antiepileptic Calibration Standards, Nos.4-9256, 4-9257, 4-9258.	Glass Ampule:5ml	05/21/80
Supelco,Inc.	Aprobarbital No.04-9171	Ampule: 1ml	12/22/72
Supelco,Inc.	Barb. Mix 1,Catalog No. 4-9206	Glass Ampule:2ml	06/06/86
Supelco,Inc.	Barb. Mix 2,Catalog No. 4-9201	Glass Ampule:2ml	06/06/86
Supelco,Inc.	Barbital,Catalog No. 4-9276	Glass Ampule:10ml	06/06/86
Supelco,Inc.	Barbiturates Test Mix Catalog No. 4-9295	Ampule: 2 ml	02/25/87
Supelco,Inc.	Cannabidiol, No.04-9221	Ampule:1ml	11/27/74
Supelco,Inc.	Cannabinol, No.04-9225	Ampule:1ml	11/27/74
Supelco,Inc.	Cocaine, No.04-9186	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Codeine No.04-9181	Ampule: 1ml	12/22/72
Supelco,Inc.	Cyclobarbital No.04-9175	Ampule: 1ml	12/22/72
Supelco,Inc.	Delta-1 THC, No.04-9257	Ampule:1ml	11/27/74
Supelco,Inc.	Delta-6 THC, No.04-9256	Ampule:1ml	11/27/74
Supelco,Inc.	Dextroamphetamine, No.4-9185	Glass Ampule:1ml	05/21/80
Supelco,Inc.	Glutethimide No.04-9173	Ampule: 1ml	12/22/72
Supelco,Inc.	Heroin No.04-9182	Ampule: 1ml	12/22/72
Supelco,Inc.	Hexobarbital No.04-9177	Ampule: 1ml	12/22/72
Supelco,Inc.	Mephobarbital No.04-9178	Ampule: 1ml	12/22/72
Supelco,Inc.	Meprobamate, No.4-9184	Glass Ampule:1ml	05/21/80
Supelco,Inc.	Methadone No.04-9183	Ampule: 1ml	12/22/72
Supelco,Inc.	Methamphetamine No.04-9188	Ampule: 1ml	12/22/72
Supelco,Inc.	Methaqualone, No.04-9183	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Morphine No. 04-9180	Glass Ampule:1000mcg	03/06/78
Supelco,Inc.	Pentobarbital No. 04-9179	Glass Ampule:1000mcg	03/06/78
Supelco,Inc.	Phenobarbital No. 04-9181	Glass Ampule:1000mcg	03/06/78
Supelco,Inc.	Psilocybin, No.04-9191	1000 mcg /Glass Ampule	06/05/75
Supelco,Inc.	Secobarbital No. 04-9180	Glass Ampule:1000mcg	03/06/78
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Amphetamine Kit No. ST 904, Vial No. 904-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine & Marijuana Kit No. ST 903.	Kit: 2 vials	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Cocaine, Kit No. ST 901, Vial No. 901-P.	Vial: 4ml Kit: 1 vial	05/11/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Marijuana, Kit No. ST 902, Vial No. 902-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Opiates Kit No. ST 905, Vial No. 905-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse Urine Control (Blind Sample) Positive Phencyclidine Kit No. ST 906, Vial No. 906-P.	Vial: 4ml Kit: 1 vial	05/11/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Codeine No. 907-P.	Vial: 20ml; Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methadone NNo. 908-P.	Vial: 20ml; Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methamphetamine No. 909-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Methaqualone No. 913-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Oxazepam No. 910-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Propoxyphene No. 911-P.	Vial: 20ml, Box: 1 vial	09/13/90
Sure-Tech Diagnostic Associates, Inc.	Drugs of Abuse: Urine Controls (Blind Samples) positive Secobarbital No. 912-P.	Vial: 20ml, Box: 1 vial	09/13/90
Syva Co.	AccuLevel Phenobarbital Test Control Stock Solution.	Flask:50ml	10/31/85
Syva Co.	AccuLevel Phenobarbital Test Kit (Catalog No.10C019) Contains: (1)AccuLevel Phenobarbital Control (2)AccuLevel Reagent I.	(1)Glass Vial:6ml; (2)Glass Vial:9ml, 12 Vials per test kit.	01/24/86
Syva Co.	Advance T-3 Uptake Assay	Kit:100 tests	05/11/82
Syva Co.	Advance Thyroxin Assay	Kit:100 tests	05/11/82
Syva Co.	Antiepileptic Drug Control	Vial:10ml , Lyophilized	08/27/74
Syva Co.	EMIT Thyroxine Assay, Cat. No. 6J909	Glass Bottle: 4oz., Kit: 500 Assays	01/23/89
Syva Co.	Emit 700 Amphetamine Assay Catalog No. 3C919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Barbiturate Assay Catalog No.3D919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Benzodiazepine Assay Reagent 2	Glass Bottle: 180ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Calibrator A Catalog No. 3A919	Bottle:3ml	10/05/84
Syva Co.	Emit 700 Calibrator B Catalog No. 3A999	Bottle:3ml	10/05/84
Syva Co.	Emit 700 Cannabinoid (100) Assay Catalog No. 3M919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Cannabinoid (100) Calibrator Catalog No. 3M999.	Bottle:3ml	10/09/84
Syva Co.	Emit 700 Cannabinoid (20) Assay, Catalog No. 3M959.	Plastic Bottle: 180ml	09/15/86
Syva Co.	Emit 700 Cannabinoid 100ng Assay Calibrator	Vial: 3ml	07/31/89
Syva Co.	Emit 700 Cannabinoid 100ng Assay Control Set	Kit: 2 bottles	07/31/89
Syva Co.	Emit 700 Cannabinoid 100ng Assay, Positive Control.	Bottle: 3ml	07/31/89
Syva Co.	Emit 700 Cannabinoid 20ng Assay Calibrator	Glass Bottle: 5ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Cannabinoid 20ng Assay Control Set-Positive Control.	Glass Bottle: 5ml, Kit: 2 bottles	02/21/89
Syva Co.	Emit 700 Cannabinoid Control Set Catalog No. 3M999.	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Cocaine Metabolite Assay Catalog No. 3H919.	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Control Set A Catalog No. 3A939	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Control Set B Catalog No. 3A999	2 Bottles:3ml	10/09/84
Syva Co.	Emit 700 Methaqualone Assay Catalog No. 3Q919.	Bottle:180ml	10/19/84
Syva Co.	Emit 700 Opiate Assay Catalog No.3E919	Bottle:180ml	10/12/84
Syva Co.	Emit 700 Phencyclidine Assay Catalog No. 3J919.	Bottle:180ml	10/12/84
Syva Co.	Emit AED-No. 1 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 2 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 3 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 4 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co.	Emit AED-No. 5 Calibrator	Vial:3ml , Lyophilized	08/27/74
Syva Co.	Emit Amphetamine Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Amphetamine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Amphetamine Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Barbiturate Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Barbiturate Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Barbiturate Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Benzodiazepine Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Benzodiazepine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Cannabinoid (100) Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Syva Co.	Emit Cannabinoid (100) Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Cannabinoid Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Cocaine Metabolite Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Cocaine Metabolite Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Cocaine Metabolite Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Convenience Pack Phenobarbital Assay: Catalog No. 5D009.	Plastic Cassette: 100 tests	11/23/87
Syva Co.	Emit Convenience Pack: T-Uptake Assay (Thyroid Hormone Binding Ratio).	Kit: 100 Tests Ea. Kit-Plastic Cassette: 16 ml	05/09/88
Syva Co.	Emit Convenience Pack: Thyroxine Assay Enzyme Reagent B.	Plastic Cassette: 8ml, Kit: 100 Assays	02/22/89
Syva Co.	Emit Delta 9 Cannabinoid 100 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 20 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 400 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit Delta 9 Cannabinoid 50 ng/ml Calibrator/Control.	Vial: 3 ml	08/22/89
Syva Co.	Emit HVA Amphetamine Assay Catalog No. 3C619.	Kit: 2500 Assays	06/30/88
Syva Co.	Emit HVA Barbiturate Assay Catalog No. 3D619	Kit: 2500 Assays	06/30/88
Syva Co.	Emit HVA Calibrator Kit Catalog No. 3A619	Kit: 500 Tests Each Kit - 2 Glass Bottles 100 ml	05/10/88
Syva Co.	Emit HVA Cannabinoid 100 ng Assay Control Kit, Catalog No. 3M739.	Kit: 2 Bottles, 50 ml. ea.	07/15/88
Syva Co.	Emit HVA Cannabinoid 100 ng. Assay Calibrator Kit, Catalog No. 3M729.	Kit: 3 Bottles 50 ml. ea.	07/15/88
Syva Co.	Emit HVA Cannabinoid 100 ng. Assay Kit, Catalog No. 3M719.	Kit: 2500 Assays	07/15/88
Syva Co.	Emit HVA Cocaine Metabolite Assay Catalog No. 3H619.	Bottle: 125 ml	05/10/88
Syva Co.	Emit HVA Control Kit Catalog No. 3A629	Kit: 500 Tests Each Kit-2 Glass Bottles - 100 ml	05/10/88
Syva Co.	Emit HVA Opiate Assay Catalog No. 3B619	Bottle: 125 ml	05/10/88
Syva Co.	Emit HVA Phencyclidine Assay Catalog No. 3J619.	Bottle: 125 ml	05/19/88
Syva Co.	Emit II Barbiturate Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Calibrator A Level 1 (Cutoff)	Vial: 10ml, 50ml	06/29/90
Syva Co.	Emit II Calibrator A Level 2 (high)	Vial: 10ml, 50ml	06/29/90
Syva Co.	Emit II Cannabinoid 20ng, 50ng, 100ng Assay	Bottle: 4oz, 500ml; Kit: 100ml, 500ml	10/12/90
Syva Co.	Emit II Cocaine Metabolite Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Delta 9 Cannabinoid 20ng/ml, 50ng/ml, 100ng/ml, 200ng/ml, Calibrator/Control.	Vial: 10ml, 50ml	10/12/90
Syva Co.	Emit II Opiate Assay	Kit: 100ml, 500ml Bottle: 4oz, 500ml	06/29/90
Syva Co.	Emit II Phencyclidine Assay	Bottle: 4oz, 500ml; Kit: 100ml, 500ml	10/26/90
Syva Co.	Emit Methadone Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Methadone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Methaqualone Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Methaqualone Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Opiate Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Opiate Bulk Powder Reagent 2 Satellite	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Opiate Bulk Reagent B	Glass bottle: 1000ml	12/05/90
Syva Co.	Emit Phencyclidine Bulk Powder Reagent 2	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Phencyclidine Bulk Powder Reagent 2 Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Phencyclidine Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Syva Co.	Emit Phenobarbital Bulk Powder Reagent B	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Phenobarbital Bulk Powder Reagent B Satellite.	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Phenobarbital Enzyme Reagent B	Vial:6 ml , Lyophilized	08/27/74
Syva Co.	Emit Qst Phenobarbital Bulk Powder Reagent	Steel Drum:7 gallon	05/05/86
Syva Co.	Emit Qst Primidone Assay Catalog No. 60819	Glass Vial: 6ml, 50 Vials/Kit	11/12/85
Syva Co.	Emit Serum Barbiturate-Enzyme Reagent B	Bottle: 3ml	05/22/79
Syva Co.	Emit T-Uptake Assay	Bottle: 4 oz., 1L, Kit: 500 tests, 5000 tests	05/25/89
Syva Co.	Emit T-Uptake Assay (Thyroid Hormone Binding Ratio) Catalog No. 6J519.	Polyethylene Bottle: 4 oz.	02/29/88
Syva Co.	Emit T-Uptake Bulk Powder Reagent A	Bottle: 1000 ml	10/04/89
Syva Co.	Emit T-Uptake Bulk Powder Reagent A Satellite	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Thyroxine Assay	Glass Bottle: 8 oz., 1L, Kit: 1300 tests, 5000 tests.	05/25/89
Syva Co.	Emit Thyroxine Bulk Powder Reagent B	Bottle: 1000 ml	10/04/89
Syva Co.	Emit Thyroxine Bulk Powder Reagent B Satellite	Bottle: 4 oz.	04/20/90
Syva Co.	Emit Tox Serum Benzodiazepine Assay Kit Containing: Emit Enzyme Reagent B.	Bottle:3ml	02/01/79
Syva Co.	Emit d.a.u. Amphetamine Assay Catalog Nos. 3C019, 3C119.	Kit:100 tests, 1000 tests	09/27/84

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Syva Co.	Emit d.a.u. Amphetamine Class Low Calibrator, Cat. No. 3C179.	Glass Vial: 5ml	01/30/89
Syva Co.	Emit d.a.u. Amphetamine Class Medium Calibrator, Cat. No. 3C189.	Glass Vial: 5ml	01/30/89
Syva Co.	Emit d.a.u. Benzodiazepine Assay Catalog Nos. 9F019, 3F119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Cannabinoid 100 ng Assay, Catalog No. 3M119.	Kit: 1000 tests	09/12/86
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Calibrator	Kit: 3 vials	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Low Calibrator.	Vial: 3ml	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 100ng Assay Medium Calibrator.	Vial: 3ml	07/31/89
Syva Co.	Emit d.a.u. Cannabinoid 20ng Assay Catalog No. 3M519.	Kit:100 tests	02/10/88
Syva Co.	Emit d.a.u. Cannabinoid 20ng Enzyme Reagent B.	Vial:10ml Lyophilized Powder	02/10/88
Syva Co.	Emit d.a.u. Cannabinoid 50 ng Assay Calibrators, Low And Medium: Cat. No. 3M508.	Vial: 5 ml	06/01/88
Syva Co.	Emit d.a.u. Cannabinoid 50 ng Assay: Cat. No. 3M519.	Kit: 100 tests	06/01/88
Syva Co.	Emit d.a.u. Cannabinoid Assay Catalog No. 3M019.	Kit:100 tests	09/24/84
Syva Co.	Emit d.a.u. Cannabinoid Urine Calibrator Set	Kit:3 Vials, 3ml Each	01/03/80
Syva Co.	Emit d.a.u. Cocaine Metabolite Assay Catalog Nos. 3H019, 3H119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Low Calibrator A	Vial: 5 ml	06/30/89
Syva Co.	Emit d.a.u. Low Calibrator A	Bottle:5ml	07/20/84
Syva Co.	Emit d.a.u. Low Calibrator A, Catalog No. 3C579	5 ml vial	10/06/86
Syva Co.	Emit d.a.u. Medium Calibrator A	Vial: 5 ml	06/30/89
Syva Co.	Emit d.a.u. Medium Calibrator A, Catalog No. 3C868.	5 ml vial	10/06/86
Syva Co.	Emit d.a.u. Medium Calibrator B	Bottle:5ml	06/03/84
Syva Co.	Emit d.a.u. Methadone Assay Catalog Nos. 3E019, 3E119.	Kit:100 tests, 1000 tests	10/05/84
Syva Co.	Emit d.a.u. Monoclonal Amphetamine/Methamphetamine Assay, Catalog No3C549 100 tests, 3C559 1000 tests.	Kit: 100 tests, 1000 tests	10/06/88
Syva Co.	Emit d.a.u. Opiate Assay Catalog Nos. 3B019, 3B119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u. Phencyclidine Assay Kit Containing: (1)Emit Phencyclidine Enzyme Reagent B.	Bottle:6ml	02/01/79
Syva Co.	Emit d.a.u.Barbiturate Assay Catalog Nos. 3D019, 3D119.	Kit:100 tests, 1000 tests	09/27/84
Syva Co.	Emit d.a.u.Low Calibrator B	Bottle:5ml	06/03/84
Syva Co.	Emit d.a.u.Medium Calibrator A	Bottle:5ml	07/20/84
Syva Co.	Emit- Tox Serum Barbiturate Assay	Kit:50 tests	06/22/79
Syva Co.	Emit-Qat Phenobarbital Assay, Catalog Number 9D019.	Kit:50 Vials	01/16/84
Syva Co.	Emit-Tox Serum Calibrators;Low and Medium	Bottle:3ml	02/01/79
Syva Co.	Emit-d.a.u. Methaqualone Assay	Kit:100 tests	04/27/82
Syva Co.	Emit-et Amphetamine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-et Barbiturate Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-et Benzodiazepine Assay	Vial:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-et Cannabinoid Assay Catalog No. 3M319	Vial:6ml, 80 Vials/Kit	09/27/84
Syva Co.	Emit-et Cannabinoid Calibrator	Vial:3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-et Cannabinoid Controls	Vial:3ml, 2 vials/kit	07/10/81
Syva Co.	Emit-et Opiate Assay	Kit:3ml, 80 vials/kit	10/03/80
Syva Co.	Emit-et Phencyclidine Assay	Vial:3ml, 80 vials/kit	01/07/81
Syva Co.	Emit-et Serum Barbiturate Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-et Serum Benzodiazepine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-et Serum Calibrator	Vial:3ml	02/16/81
Syva Co.	Emit-et Serum Controls	Vial:3ml, 2 vials/kit	02/16/81
Syva Co.	Emit-et Serum Phencyclidine Assay	Vial:3ml, 80 vials/kit	02/16/81
Syva Co.	Emit-et Urine Calibrator A	Vial:1ml, 3 vials/kit	10/03/80
Syva Co.	Emit-et Urine Cocaine Metabolite Assay	Vial:3 ml, 80 Vials/Kit	03/16/82
Syva Co.	Emit-et Urine Controls A	Vial:1ml, 6 vials/kit	10/03/80
Syva Co.	Emit-et Urine Methadone Assay	Vial:3ml ,80 vials/kit	03/22/82
Syva Co.	Emit-et Urine Methaqualone Assay	Kit:80 Vials	04/27/82
Syva Co.	Emit-et Urine Methaqualone Calibrator	Vial:3ml	04/27/82
Syva Co.	Emit-et Urine Methaqualone Controls	Vial:3ml	04/27/82
Syva Co.	IL test AED Calibrator 1	Vial: 5 ml	04/06/90
Syva Co.	IL test AED Calibrator 2	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 3	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 4	Vial: 5ml	04/06/90
Syva Co.	IL test AED Calibrator 5	Vial: 5ml	04/06/90
Syva Co.	IL test Cannabinoid 100ng, 400ng calibrator	Vial: 5ml	04/06/90
Syva Co.	IL test set A calibrator	Vial: 5ml	04/06/90
Syva Co.	IL test set A control	Vial: 5ml	04/06/90
Syva Co.	IL test set B calibrator	Vial: 5ml	04/06/90

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
Syva Co.	IL test set B control	Vial: 5ml	04/06/90
Syva Laboratories	Emit Benzodiazepine Bulk Reagent B	Glass Bottle: 1000ml	12/05/90
Technicon Instruments Corporation	Technicon RA Systems Set Point	Vial: 5ml Kit: 5 vials	07/20/90
Tempil Division, Big Three Industries, Inc.	Tempilaq Striped Mylar	Plastic Sheet: 6 by 12 in. 50 sheets per envelope.	09/22/76
The Theta Corp.	Allobarbital No.FP305	Vial: 2ml	04/10/73
The Theta Corp.	Amobarbital No. FP313	Vial:2ml	04/10/73
The Theta Corp.	Amphetamine No. FP604	Vial: 2ml	04/10/73
The Theta Corp.	Anileridine No. FP203	Vial:2ml	04/10/73
The Theta Corp.	Aprobarbital No. FP306	Vial: 2ml	04/10/73
The Theta Corp.	Barbital No.FP314	Vial: 2ml	04/10/73
The Theta Corp.	Benzoylecgonine FP-1001	Vial: 2 ml	01/24/87
The Theta Corp.	Butabarbital No. FP315	Vial:2ml	04/10/73
The Theta Corp.	Butalbital No. FP307	Vial:2ml	04/10/73
The Theta Corp.	Chloral Betaine No. FP502	Vial:2ml	04/10/73
The Theta Corp.	Chloral Hydrate No. FP501	Vial:2ml	04/10/73
The Theta Corp.	Cocaine No. FP601	Vial:2ml	04/10/73
The Theta Corp.	Codeine No. FP102	Vial:2ml	04/10/73
The Theta Corp.	Cyclobarbital No. FP308	Vial:2ml	04/10/73
The Theta Corp.	Dihydrocodeine No. FP108	Vial: 2ml	04/10/73
The Theta Corp.	Diphenoxylate No. FP205	Vial:2ml	04/10/73
The Theta Corp.	Ethchlorvynol No. FP508	Vial:2ml	04/10/73
The Theta Corp.	Ethylmorphine No. FP106	Vial:2ml	04/10/73
The Theta Corp.	FP207	Vial:2ml	09/04/80
The Theta Corp.	FP210	Vial:2ml	05/15/84
The Theta Corp.	FP214	Vial:2ml	04/10/84
The Theta Corp.	FP327	Vial:2ml	04/10/84
The Theta Corp.	FP405	Vial:2ml	03/08/79
The Theta Corp.	FP411	Vial:2ml	05/15/84
The Theta Corp.	FP412	Vial:2ml	05/15/84
The Theta Corp.	FP416	Vial:2ml	05/15/84
The Theta Corp.	FP512	Vial:2ml	03/08/79
The Theta Corp.	FP513	Vial:2ml	03/08/79
The Theta Corp.	FP514	Vial:2ml	05/15/84
The Theta Corp.	FP515	Vial:2ml	03/08/79
The Theta Corp.	FP556	Vial:2ml	04/10/84
The Theta Corp.	FP601A	Vial:2ml	05/15/84
The Theta Corp.	FP607	Vial:2ml	05/15/84
The Theta Corp.	FP609	Vial:2ml	05/15/84
The Theta Corp.	Fentanyl No. FP211	Vial:2ml	04/10/73
The Theta Corp.	Glutethimide No. FP404	Vial:2ml	04/10/73
The Theta Corp.	Heptabarbital No. FP309	Vial:2ml	04/10/73
The Theta Corp.	Hexabarbital No. FP303	Vial:2ml	04/10/73
The Theta Corp.	Hydrocodone No. FP107	Vial:2ml	04/10/73
The Theta Corp.	Hydromorphone No. FP103	Vial:2ml	04/10/73
The Theta Corp.	Levorphanol No. FP208	Vial:2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-104	Vial:2ml	04/10/73
The Theta Corp.	Marker Mixture No. FPM-201	Vial:2ml	04/10/73
The Theta Corp.	Meperidine No.FP201	Vial:2ml	04/10/73
The Theta Corp.	Mephobarbital No. FP301	Vial:2ml	04/10/73
The Theta Corp.	Meprobamate No. FP402	Vial:2ml	04/10/73
The Theta Corp.	Methadone No. FP206	Vial:2ml	04/10/73
The Theta Corp.	Methamphetamine No. FP603	Vial:2ml	04/10/73
The Theta Corp.	Metharbital No. FP302	Vial:2ml	04/10/73
The Theta Corp.	Methohexital No. FP304	Vial:2ml	04/10/73
The Theta Corp.	Methylphenidate No. FP605	Vial:2ml	04/10/73
The Theta Corp.	Monthly Urine Test No. FPM-103	Vial:2ml	04/10/73
The Theta Corp.	Morphine No. FP101	Vial:2ml	04/10/73
The Theta Corp.	Oxycodone No. FP109	Vial:2ml	04/10/73
The Theta Corp.	Oxymorphone No. FP104	Vial:2ml	04/10/73
The Theta Corp.	Paraldehyde No.FP506	Vial:2ml	04/10/73
The Theta Corp.	Pentobarbital No. FP318	Vial:2ml	04/10/73
The Theta Corp.	Phenazocine No. FP213	Vial:2ml	04/10/73
The Theta Corp.	Phenmetrazine No. FP606	Vial:2ml	04/10/73
The Theta Corp.	Phenobarbital No. FP320	Vial:2ml	04/10/73
The Theta Corp.	Piminodine No. FP202	Vial:2ml	04/10/73
The Theta Corp.	Probarbital No. FP319	Vial:2ml	04/10/73
The Theta Corp.	Secobarbital No. FP310	Vial:2ml	04/10/73
The Theta Corp.	Talbutal No. FP311	Vial:2ml	04/10/73
The Theta Corp.	Test Mixture SM No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 2	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 3	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SM No. 4	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 2	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 3	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture SP No. 4	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 1	Vial:2ml	06/19/74
The Theta Corp.	Test Mixture TM No. 2	Vial:2ml	06/19/74
The Theta Corp.	Thiamylal No. FP322	Vial:2ml	04/10/73

Exempt Chemical Preparations—Continued

Supplier	Product	Form of Product	Date
The Theta Corp.	Thiopental Nb. FP321	Vial:2ml	04/10/73
The Theta Corp.	Veterbital Nb. FP312	Vial:2ml	04/10/73
The Theta Corp.	Weekly Urine Test (FDA) No. FPM-101	Vial:2ml	04/10/73
The Theta Corp.	Weekly Urine Test (States) No. FPM-102	Vial:2ml	04/10/73
Toxi-Lab, Inc.	Proficiency Sample	Plastic Bottle Containing 40 ml	06/22/82
Toxi-Lab, Inc.	Special Toxi-Discs	Plastic Vial or Bottle Containing 50 Standard Discs.	05/30/77
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-4 Catalog No. 234.	Plastic Vial Containing 50 Standard Discs	06/15/88
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-5 Catalog No. 235.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Supplemental Standard Toxi-Discs No. SD-6 Catalog No. 236.	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Control	Plastic Bottle Containing 50 ml	05/30/77
Toxi-Lab, Inc.	Toxi-Control THC	Plastic Bottle Containing 50 ml	10/06/83
Toxi-Lab, Inc.	Toxi-Disc A Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Toxi-Lab, Inc.	Toxi-Disc B Series	Plastic Vial Containing 50 Standard Discs	05/06/75
Toxi-Lab, Inc.	Toxi-Discs Library II, No 3 Catalog No. 131C	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 1 Catalog No. 131A	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 10 Catalog No. 131K	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 11, Catalog No. 131L	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 12 Catalog No. 131M	plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 2 Catalog No. 131B	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 5 Catalog No. 131E	Plastic via containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs Library II, No. 8 Catalog No. 131H	Plastic vial containing 50 standard discs	06/15/88
Toxi-Lab, Inc.	Toxi-Discs THC	Plastic Vial Containing 50 Standard Discs	10/06/83
Toxi-Lab, Inc.	Toxi-Grams	Glass Jar Containing 50 or 100 Chromatograms	06/24/80
Toxi-Lab, Inc.	Toxi-Lab Cannabinoid (THC) Screen	Kit: 50 tests	10/06/83
Tudor Laboratories, Inc.	FPIA Phenobarbital Kit - Cat. No. 105	Kit: 100 tests	11/27/89
Tudor Laboratories, Inc.	Phenobarbital Calibrator Kit Cat. No. 205	Kit: 6 vials	11/27/89
Tudor Laboratories, Inc.	Phenobarbital Calibrators B,C,D,E,F	Vial: 4.8 ml	11/27/89
Universal Reagents, Inc.	Drug Monitoring & Toxicology No. DM 90-5, DM-92.	Bottle: 10ml	10/06/89
Utah Laboratories	Toxicology Control-High Range Anticonvulsants No. 71910.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-High Range Barbiturates No. 71916.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-High Range Hypnotic Plus Acetaminophen, No. 71918.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-High Range Hypnotic Plus Salicylate, No. 71920.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-Mid Range Anticonvulsants No. 71911.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-Mid Range Barbiturates No. 71917.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-Mid Range Hypnotic Plus Acetaminopham, No. 71919.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Control-Mid Range Hypnotic Plus Salicylate, No. 71921.	Bottle:10ml	04/14/80
Utah Laboratories	Toxicology Serum Control Dried a88112	Bottle:10ml	07/20/82
Utah Laboratories	Toxicology Serum Control Dried a88113	Bottle:10ml	07/20/82
Utah Laboratories	Toxicology Serum Control Dried a88120	Bottle:10ml	07/20/82
Utah Laboratories	Toxicology Serum Control-Dried Catalog Nos. 44810, 44812, 44832, 44836, 44838, 44837, 44842, 44845, 44848, 44847, 44858.	In Bottles	05/24/76
Utah Laboratories	Toxicology Urine Control Dried a88100	Bottle:20ml	07/20/82
Utah Laboratories	Toxicology Urine Control Dried a88121	Bottle:10ml	07/20/82
Utah Laboratories	Toxicology Urine Control-Dried Catalog Nos. 44850, 44851, 44852, 44853.	Bottle:1 oz.	05/24/76
Ventrex Laboratories, Inc.	PTH Antiserum	Vial: 5ml	04/12/90
Ventrex Laboratories, Inc.	PTH Assay Buffer	Vial: 10ml	04/12/90
Ventrex Laboratories, Inc.	PTH Omega Radioimmunoassay Kit	Kit: 60 tests	04/12/90
Ventrex Laboratories, Inc.	PTH Second Antibody	Vial: 10ml	04/12/90
Ventrex Laboratories, Inc.	PTH Tracer Buffer	Vial: 5 ml	04/12/90
Wien Laboratories	Methamphetamine: HRP EIA Conjugate	Vial: 5ml, 10ml	05/25/90
Wien Laboratories,Inc.	ANS Buffer pH 8.6 Catalog No. T-5144	Plastic Bottle:100ml	05/14/75
Wien Laboratories,Inc.	Buffer Reagent pH 8.6 Catalog No. T-5095	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	Coated Charcoal Suspension No. T-5077	Bottle:4oz.	12/22/72
Wien Laboratories,Inc.	T3 Buffer Reagent Catalog No. T-5156	Plastic Vial:20ml	09/13/76
Windsor Laboratories, Inc.	Calibrators FPR Phenobarbital	Kit: 6 Vials	10/30/90
Windsor Laboratories, Inc.	Phenobarbital Fluorescence Polarization Immunoassay Kit.	Kit:100 tests	11/20/90

[FR Doc. 91-5062 Filed 3-4-91; 8:45 am]
BILLING CODE 4310-60-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

[Docket No. R-91-1697; FR-2932-C-03]

RIN 2501-AB13

Comprehensive Housing Affordability Strategies; Announcement of OMB Approval Numbers

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule and request for comments; Announcement of OMB approval number.

SUMMARY: On February 4, 1991 (56 FR 4480), the Department published in the Federal Register, an interim rule that implemented section 105, as well as sections 107 and 108, of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990). Section 105 of the Act requires that State and local governments must have Comprehensive Housing Affordability Strategies; whereas, sections 107 and 108 prescribes the citizen participation procedure for development of the housing strategies and the compliance procedures to be followed by State and local governments.

The date section of the February 4 interim rule indicated that §§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75 contained information collection requirements and would not become effective until the Office of Management and Budget (OMB) approved the requirements and until a separate notice of that fact had been published by the Department in the Federal Register.

The purpose of this document is to publish the OMB approval number for the sections listed above.

EFFECTIVE DATE: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: David Cohen, Director, Office of Urban Rehabilitation, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2685.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number listed.

List of Subjects in 24 CFR Part 91

Grant programs—housing and community development, Reporting and recordkeeping requirements, Homeless.

Text of the Amendment

Accordingly, part 91 of title 24 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 91 continues to read as follows:

Authority: Secs. 101-106, Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, 104 Stat. 4079 (42 U.S.C. 12701-12708); 42 U.S.C. 3535(d).

§§ 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75 [Amended]

2. Sections 91.15, 91.20, 91.25, 91.30, 91.35, 91.40, 91.45, 91.50, 91.55, 91.70, and 91.75 are amended by adding at the end of each section, the following statement: (Approved by the Office of Management and Budget under OMB control number 2506-0117).

Dated: February 28, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91-5148 Filed 3-4-91; 8:45 am]
BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8336]

RIN 1545-AO61

Disclosures of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the disclosure of additional items of return information to the Bureau of the Census for use in certain statistical programs. These regulations provide guidance to Internal Revenue Service personnel responsible for disclosing the information. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Proposed Rules portion of the Federal Register [IA-34-90].

EFFECTIVE DATE: The regulations contained in this document apply to disclosures and related activities on or after February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Paul W. Winkler, (202) 566-4490 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1) of the Internal Revenue Code, upon written request from the Secretary of Commerce, the Secretary of the Treasury is to furnish to the Bureau of the Census tax return information that is prescribed by Treasury regulations. Section 301.6103(j)(1)-1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing statistical needs of the Bureau of the Census for statutorily authorized statistical activities.

This document adopts temporary regulations that authorize Internal Revenue Service personnel to disclose the additional items of return information that were requested by the Secretary of Commerce. Except for § 301.6103(j)(1)-1T (b)(1) and (b)(3), the text of the temporary regulations is the same as § 301.6103(j)(1)-1 of the regulations (as it appears in the Code of Federal Regulations revised as of April 4, 1990). The changes in § 301.6103(j)(1)-1T (b)(1) and (b)(3) are discussed below.

Explanation of Provisions

The request by the Secretary of Commerce for additional items of return information indicated several areas in which changes to existing Bureau access to tax return information either would improve present statistical programs or were necessary to implement new programs.

First, to improve the statistical methodology of its company-based Plant & Equipment Expenditures Survey, the Bureau needs total asset figures from corporate and partnership returns.

Second, in preparing for the 1992 census of agriculture, the Bureau intends to narrow its mailing list and reduce the respondent reporting burden by identifying actual farm operators as opposed to owners who do not materially participate in farm operations. To achieve this objective, the Bureau needs the answers to the material participation question on Form 1040, Schedule F, and the agricultural activity code.

Several additional items of return information are required for the 1992 economic census. For this census, Congress authorized the Bureau to

expand its coverage to include the transportation, communication, utility, finance, insurance, and real estate industries. Accordingly, more items are required from returns presently described in § 301.6103(j)(1)–1(b) as well as information from other categories of business related returns. The Bureau currently may obtain the business codes which the Service requires on returns and believes that its business statistical programs could be improved if it also had access to taxpayers' written descriptions of their businesses which were the bases for Service assignment of these codes. Present regulations authorize disclosure to the Bureau of the identities of no more than 10 shareholders of a subchapter S corporation or 10 members of a partnership. In order to improve its determination of ownership composition, the Bureau needs the identities of all shareholders of such corporations and all members of partnerships. Finally, the Women's Business Ownership Act of 1988 requires the Bureau to collect data on corporations that are 51% or more owned by women, and this program is to be implemented as part of the 1992 economic census. While the Bureau presently requires tax information for this purpose with respect to individual proprietorships, partnerships, and subchapter S corporations, corresponding tax information is not available regarding larger corporations, and the Bureau needs information from Form 1120 identifying officers of these corporations for matching to Social Security Administration sex codes. Further, in order to reclassify businesses owned by women, the Bureau needs figures from K–1 schedules attached to Forms 1120S and 1065 showing the percentage stock or equity interests of shareholders and partners.

The Bureau currently uses adjusted gross income figures from individual income tax returns in its income estimates program. From a statistical standpoint, the Bureau believes that a more meaningful gauge of money income for this purpose would be a total of several special types of income reflected on these returns. Until this new measure of income can be fully utilized statistically, the Bureau would continue to use adjusted gross income.

For simplification and consistency, the term "loss" is not stated in these regulations although it is the intent of the Service to provide any negative or loss figures to the Bureau.

Special Analyses

It has been determined that these temporary regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these temporary regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Paul W. Winkler of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

Paragraph 1. The authority for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 301.6103(j)(1)–1T also issued under 26 U.S.C. 6103(j).

Par. 2. A new § 301.6103(j)(1)–1T is added following § 301.6103(j)(1)–1 to read as follows:

§ 301.6103(j)(1)–1T Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) *General rule.* Pursuant to the provisions of section 6103(j)(1) of the Internal Revenue Code and subject to the requirements of paragraph (d) of this section, officers or employees of the Internal Revenue Service will disclose return information (as defined by section 6103(b)(2) but not including return information described in section 6103(o)(2)) to officers and employees of the Department of Commerce to the extent, and for such purposes as may be, provided by paragraphs (b) and (c) of this section. Further, in the case of any disclosure of return information so provided by paragraphs (b) and (c), the tax period or accounting period to which such return information relates will also be disclosed.

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Service will disclose the following return information reflected on returns of an individual taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation:

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identity information of spouse and dependents, if reported;

(ii) District office and service center codes;

(iii) Marital status;

(iv) Number and classification of reported exemptions;

(v) Wage and salary income;

(vi) Dividend income;

(vii) Interest income;

(viii) Gross rent and royalty income;

(ix) Total of:

(A) Wages, salaries, tips, etc.,

(B) Interest income,

(C) Dividend income,

(D) Alimony received,

(E) Business income,

(F) IRA distributions,

(G) Pensions and annuities,

(H) Income from rents, royalties, partnerships, estates, trusts, etc.,

(I) Farm income,

(J) Unemployment compensation, and

(K) Total Social Security benefits;

(x) Adjusted gross income;

(xi) Type of tax return filed;

(xii) Entity code;

(xiii) Code indicators for Form 1040, Schedules A, C, D, E, F, and SE;

(xiv) Posting cycle date relative to filing; and

(xv) Social Security benefits.

(2) Officers or employees of the Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—

(i) From the business master files of the Service, the taxpayer name directory and entity records consisting of taxpayer identity information (as defined in section 6103(b)(6)) with respect to taxpayers engaged in a trade or business, the principal industrial activity code, the filing requirement code, the employment code, the service center and district and area office codes, and monthly corrections of, and additions to, such entity records;

(ii) From Form SS–4, all return information reflected on such return;

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer,

(B) Total compensation reported,

(C) Master file tax account number,

(D) Taxable period covered by such return,

(E) Employer code,

(F) Document locator number,

(G) Record code,

(H) Total number of individuals employed in the taxable period covered by the return,

(I) Total taxable wages paid for purposes of chapter 21, and

(J) Total taxable tip income reported for purposes of chapter 21; and

(iv) Form Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(3) Officers or employees of the Service will disclose the following business related return information reflected on the return of a taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs, censuses, and surveys. The "return of a taxpayer" includes, but is not limited to, Form 941; Form 900 series; Form 1040 series and Schedules C, F, and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 955; Form 1066; and other business returns, schedules and forms that the Service may issue:

(i) Taxpayer identity information (as defined in section 6103 (b) (6) of the Code) including shareholder, partner, and employer identity information;

(ii) Gross income, profits, or receipts;

(iii) Net farm profits;

(iv) Sales of livestock and produce raised;

(v) Returns and allowances;

(vi) Cost of labor, salaries, and wages;

(vii) Total assets;

(viii) Royalty income;

(ix) Interest income, including portfolio interest;

(x) Rental income, including gross rents;

(xi) Tax-exempt interest income;

(xii) Percentage of stock owned by each shareholder;

(xiii) Percentage of capital ownership of each partner;

(xiv) Agricultural activity code;

(xv) Answers to material participation questions;

(xvi) End-of-year code;

(xvii) Months actively operated;

(xviii) Principal industrial activity code, including the business description;

(xix) All information on Schedule E filed with Form 1120 series;

(xx) Total number of documents and the total amount reported on the Form 1096 transmitting Forms 1099-MISC;

(xxi) Form 941 indicator on Schedule C; and

(xxii) Consolidated return indicator.

(4) Officers or employees of the Service will disclose return information relating to a taxpayer contained in the exempt organization master files of the Service to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, economic censuses. This return information consists of taxpayer identity information (as defined in section 6103(b)(6)), activity codes, and filing requirement code, and monthly corrections of, and additions to, such return information.

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information has been disclosed as provided by section 6109(f) (1)(A) or (5) may disclose such return information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b) (2) or (3) of this section—

(i) From Form SS–4, all information reflected on such return; and

(ii) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(6)(i) Officers or employees of the Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report—

(A) From the business master files of the Service—

(*1*) Taxpayer identity information as defined in section 6103(b)(6)),

(*2*) Consolidated return and final return indicators,

(*3*) Principal industrial activity code,

(*4*) Partial year indicator,

(*5*) Annual accounting period,

(*6*) Gross receipts less returns and allowances,

(*7*) Net income or loss, and

(*8*) Total assets; and

(B) From Form SS–4—

(*1*) Month and year in which such return was executed,

(*2*) Taxpayer identity information,

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(ii) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information described in paragraph (b)(6)(i)(B) of this section with respect to a corporation has been disclosed as provided by section 6103(f)(1)(A) may disclose such return information to officers and employees of the Bureau of the Census for a purpose described in this paragraph (b)(6).

(c) *Disclosure of return information to officers and employees of the Bureau of Economic Analysis.* (1) Officers or employees of the Service will disclose to officers and employees of the Bureau of Economic Analysis for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by law, statistical analyses return information consisting of Statistics of Income transcript edit sheets containing return information reflected on returns of designated classes or categories of corporations with respect to the tax

imposed by chapter 1 and microfilmed records of return information reflected on such returns where needed for further use in connection with such conduct or preparation.

(2) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)-1, officers and employees of the Social Security Administration to whom the following return information reflected on returns of designated classes or categories of corporations has been disclosed as provided by section 6103(l)(1)(A)(5) may disclose such return information to officers and employees of the Bureau of Economic Analysis for necessary purposes described in paragraph (c)(1) of this section—

(i) From Form SS-4, principal industrial activity and geographic codes; and

(ii) From an employment tax return—

(A) Total compensation reported, and

(B) Taxable wages paid for purposes of chapter 21 to each employee.

(d) *Procedures and restrictions.* Disclosure of return information by officers or employees of the Service or the Social Security Administration as provided by paragraphs (b) and (c) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Secretary of Commerce describing—

(1) The particular return information to be disclosed,

(2) The taxable period or date to which such return information relates, and

(3) The particular purpose for which the return information is to be used, and designating by name and title the officers and employees of the Bureau of the Census or the Bureau of Economic Analysis to whom such disclosure is authorized. No such officer or employee to whom return information is disclosed pursuant to the provisions of paragraph (b) or (c) shall disclose such return information to any person, other than the taxpayer to whom such return information relates or other officers or employees of such bureau whose duties or responsibilities requires such disclosure for a purpose described in paragraph (b) or (c), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Service determines that the Bureau of the Census or the Bureau of Economic Analysis, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations or published procedures thereunder, the Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension or disclosures of return information otherwise authorized by section 6103(j)(1) and paragraph (b) or (c) of this section, until the Service determines that such requirements have been or will be satisfied.

(e) *Effective date.* Section 301.6103(j)(1)-1T applies to disclosures and related activities on or after February 28, 1991. For disclosures and related activities before February 28, 1991, see § 301.6103(j)(1)-1.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: February 14, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-4046 Filed 3-4-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3908-6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Missouri Department of Natural Resources (MDNR) has submitted amendments to rules 10 CSR 10-6.020 "Definitions" and 10 CSR 10-6.060 "Permits Required" which incorporates nitrogen oxides increments into its existing Prevention of Significant Deterioration (PSD) rules. EPA is taking final action to approve these rule amendments as a revision to the Missouri State Implementation Plan (SIP).

DATES: This action will be effective May 6, 1991 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65102; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551-7606 (FTS 276-7606).

SUPPLEMENTARY INFORMATION: On October 17, 1988, EPA revised the PSD regulations at 40 CFR 51.166 and 52.21 (see 53 FR 40656) for nitrogen oxides. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed (NO_2 increment) in an area above the baseline concentration. The baseline concentration is that concentration which exists in the baseline area at the time of the applicable minor source baseline date. The intended effect of these regulations is to require all applicants for major new stationary sources and major modifications which emit nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increment. On September 25, 1990, MDNR submitted amendments to 10 CSR 10-6.020 "Definitions" and 10 CSR 10-6.060 "Permits Required" which incorporate the October 27, 1988, NO_2 PSD revisions to 40 CFR 51.166 and 52.21. The state promulgated this rule, after proper notice and public hearing, on May 24, 1990. The state also provided a supplemental demonstration that meets the regulatory language, legal authority, and reporting requirements as detailed in the EPA guidance memorandum of August 17, 1990, entitled "Procedures and Guidance for the Incorporation of NO_2 PSD Increments Into State and Local PSD Programs."

EPA Action: EPA finds that the submittal is acceptable and is taking final action to approve revisions to Missouri rules 10 CSR 10-6.020 and 10 CSR 10-6.060 as a revision to the Missouri SIP.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 6, 1991 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 6, 199[illegible]

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR2214-2225). The Office of Management and Budget waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 until April 1991.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by May 6, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

The Agency has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide.

Dated: February 5, 1991.

William Rice,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

Subpart AA—Missouri

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding paragraph (c)(75) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(75) Plan revisions were submitted by the Missouri Department of Natural Resources on September 25, 1990, which implement EPA's October 17, 1988, PSD NO_2 requirements.

(i) Incorporation by reference

(A) Revisions to rules 10 CSR 10-6.020 "Definitions" and 10 CSR 10-6.060 "Permits Required" were adopted by the Missouri Air Conservation Commission on May 14, 1990, and became effective May 24, 1990.

(ii) Additional Information

(A) Letter from the state dated November 30, 1990, pertaining to NO_2 rules and analysis which certifies that the material was adopted by the state on May 24, 1990.

[FR Doc. 91-5018 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52]

[FRL-3908-5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County Regulation 33 for Stack Height Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves a revision to the Albuquerque/Bernalillo County, State of New Mexico Implementation Plan (SIP) which includes (1) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 33, Stack Height Requirements, as filed with the State Records and Archives Center on June 18, 1986, and as revised on March 16, 1989; and (2) The Supplement to the State of New Mexico's SIP regarding stack heights in new source review (NSR) for permits issued in Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on July 12, 1989. The Board in this Supplement committed to include specific caveat language for all affected permits issued in which dispersion credits have been an issue in the permit. AQCR 33 was submitted by the Governor of New Mexico to EPA on July 11, 1986, and April 14, 1989, and the July 12, 1989 Supplement to AQCR 33 was submitted by the Governor on August 7, 1989.

Each State was required to review its SIP for consistency with the final Federal stack height regulations. The intended effect of this action is to formally document that Albuquerque/Bernalillo County has satisfied the obligations under Section 406 of the Clean Air Act (CAA) to review its SIP with respect to the EPA's revised stack height regulations and to finalize approval of the City/County's revised regulation.

DATES: This action will be effective (May 6, 1991) unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, 5th and Marquette Street NW., P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7214, or (FTS) 255-7214.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit in *Sierra Club* v. *EPA*, 719. F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentration", "dispersion technique", "nearby" and modified some of the bases for determining good engineering practice (GEP) stack height. Pursuant to section 406(d)(2) of the CAA, all States were required to (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406 of the CAA.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

Although the EPA generally approves State's stack height rules on the grounds that they satisfy 40 CFR part 51, the EPA also provides notice that this action may be subject to modification when the EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify Albuquerque/Bernalillo County that its rule must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Albuquerque/Bernalillo County and source owners or operators.

AQCR 33 is Albuquerque's/Bernalillo County's stack height regulation supporting its permitting and new source review program. Under this program, Albuquerque/Bernalillo County will be issuing permits and establishing emission limitations that may be affected by the court-ordered reconsideration of the stack height regulations promulgated on July 8, 1985 (50 FR 27892). For this reason, the EPA has required that Albuquerque/Bernalillo County include the following caveat in all potentially affected permit approvals until the EPA completes its reconsideration of remanded portions of the regulations and promulgates any necessary revisions:

> In approving this permit, the Albuquerque Environmental Health Department has determined that the application complies with the applicable provisions of the stack height regulations as revised by the EPA on July 8, 1985 (50 FR 27892). Portions of the regulations have been remanded by a panel of the U.S. Court of Appeals for the DC Circuit in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). Consequently, this permit may be subject to modification if and when the EPA revises the regulation in response to the court decision. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

The Albuquerque/Bernalillo County Air Quality Control Board made this enforceable commitment to include this caveat in all affected permits in the July 12, 1989 Supplement to AQCR 33. This Supplement is being incorporated into the Code of Federal Regulations for the State of New Mexico as part of today's approval action. The Supplement states that AQCR 33 limits dispersion credits that applicants may claim toward any demonstration supporting the issue of an air quality construction permit, whether issued pursuant to the general permitting regulation 20, the PSD regulation 28, or the Nonattainment regulation 32. The Supplement also states that AQCR 33 will be implemented so as to examine all regulated air contaminants and the source's proposed stack height credits or any other dispersion technique proposed from the same perspective as those required pursuant to the applicable portions of 40 CFR 51.100.

Plan Review

On July 11, 1988, and on April 14, 1989, the Governor of New Mexico submitted to EPA the Albuquerque/Bernalillo County AQCR 33, Stack Height Requirements, and on August 7, 1989, the Governor submitted to EPA the July 12, 1989 Supplement to AQCR 33. The EPA reviewed AQCR 33 and the Supplement to AQCR 33 and developed an Evaluation Report. This report is available for inspection by interested parties during normal business hours at the offices listed in the addresses section of this notice. AQCR 33 will apply to all new or modified sources as required by 40 CFR 51.166. AQCR 33 also meets the requirements set out in 40 CFR 51.118(b) regarding stack height provisions as required by 40 CFR 51.164.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective May 6, 1991, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective May 6, 1991.

Final Action

The EPA is today approving (1) Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) 33, Stack Height Requirements, as filed with the State Records and Archives Center on June 16, 1988, and as revised on March 16, 1989; and (2) The Supplement to the State of New Mexico's SIP regarding stack heights in new source review (NSR) for permits issued in Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on July 12, 1989. The Board in this Supplement committed to include specific caveat language for all affected permits issued in which dispersion credits have been an issue in the permit.

The EPA has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 1991. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 19, 1991.

Robert E. Layton Jr.,
Regional Administrator (6A).

40 CFR part 52, subpart GG, is amended as follows:

PART 52—[AMENDED]

Subpart GG—New Mexico

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1620 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(45) On July 11, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan that contained Albuquerque/Bernalillo County Air Quality Control Regulation (AQCR) No. 33—Stack Height Requirements, as filed with the State Records and Archives Center on June 16, 1988. Further, on April 14, 1989, the Governor submitted revisions to AQCR 33, as filed with the State Records and Archives Center on March 16, 1989. In addition, on August 7, 1989, the Governor submitted a commitment found in the July 12, 1989 Supplement to AQCR 33 to include specific caveat language on all affected permits issued in which dispersion credits have been an issue in the permit. AQCR 33 enables Albuquerque/Bernalillo County to ensure that the degree of emission limitation required for the control of any air pollutant under its SIP is not affected by that portion of any stack height that exceeds GEP or by any other dispersion technique.

(i) Incorporation by reference

(A) Albuquerque/Bernalillo County Air Quality Control Regulation 33—Stack Height Requirements, as filed with the State Records and Archives Center on June 16, 1988, and as revised on March 16, 1989.

(ii) Additional material

(A) The Supplement to the State of New Mexico's SIP regarding stack heights in new source review (NSR) for permits issued in Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on July 12, 1989. The Board in this Supplement committed to include specific caveat language for all affected permits issued in which dispersion credits have been an issue in the permit.

[FR Doc. 91–5017 Filed 3–4–91; 8:45 am]
BILLING CODE 6560–50–M

40 CPR Part 52

[A–1–FRL–39099]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; Nitrogen Dioxide National Ambient Air Quality Standards and Prevention of Significant Deterioration Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Vermont. These revisions establish National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO_2) and incorporate Prevention of Significant Deterioration (PSD) NO_2 increments and related requirements. The intended effect of this action is to approve a program to implement the NO_2 increments in the State of Vermont in accordance with 40 CFR 51.166 and to approve the NO_2 NAAQS which were adopted in accordance with 40 CFR 50.11. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 4, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Aloi, (617) 565–3252; FTS 835–3252.

SUPPLEMENTARY INFORMATION: On December 4, 1990 (55 FR 233), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Vermont. The NPR proposed approval of ambient air quality standards for NO_2 and a program to implement the NO_2 increments to prevent the significant deterioration of air quality in the State of Vermont, which Vermont submitted for parallel-processing on September 4, 1990. EPA's NPR required Vermont to make certain changes, which are discussed below. Vermont submitted the formal SIP revision, addressing EPA's requirements on December 7, 1990 and January 10, 1991.

Background

I. NO_2 NAAQS. Pursuant to section 109 of the Clean Air Act of 1970, EPA developed and promulgated NAAQS for NO_2. Primary standards define levels of air quality which protect the public health, and secondary standards define levels which protect the public welfare from any adverse effects of a pollutant. The following NAAQS for NO_2, described in 40 CFR 50.11, were published in the Federal Register on November 25, 1971 and were last revised on June 19, 1985 (50 FR 25544).

Primary Standard: 0.053 ppm annual arithmetic mean

Secondary Standard: 0.053 ppm annual arithmetic mean

II. NO_2 Increments. On October 17, 1988 (53 FR 40656), EPA promulgated regulations under section 166 of the Clean Air Act (the Act) to prevent

significant deterioration of air quality from emissions of nitrogen oxides (NO_x). These regulations establish the maximum allowable increase in the ambient NO_2 concentration allowed above the baseline concentration in an area. These maximum allowable increases are called "increments." The increments use NO_2 as the numerical measure because NO_2 is the pollutant on which the NAAQS for NO_2 were based. In addition, NO_x emissions from stationary sources convert to NO_2 in the atmosphere.

The NO_2 increment program has a three-tiered area classification system which was established by Congress in section 163 of the Act for increments of sulfur dioxide and particulate matter. Congress designated Class I areas (including certain national parks and wilderness areas) as areas of special national concern, where the need to prevent the significant deterioration in air quality is the greatest. Therefore, the increment levels in Class I areas are the most stringent. Class II increments allow for a moderate degree of growth. Class III increments allow for higher levels of industrial growth. There are no Class III areas in the country yet. (Originally, all areas not designated as Class I were designated as Class II, unless the State submitted an area to EPA for redesignation as a Class I or III area.)

The NO_2 increments for the three types of areas are the following:

Class I: 2.5 $\mu g/m^3$ annual arithmetic mean

Class II: 25 $\mu g/m^3$ annual arithmetic mean

Class III: 50 $\mu g/m^3$ annual arithmetic mean.

Forty CFR § 51.166 sets forth the minimum federal requirements for the PSD program. State PSD programs must meet all of these requirements. The effective date of the amendments to 40 CFR § 51.166 which incorporate the NO_2 increments was October 17, 1988.

Summary of Vermont's SIP Revision

The State submitted formal revisions to the Vermont Air Pollution Control Regulations which became effective in the State on December 15, 1990. Vermont made changes to section 5-301 "Scope," section 5-309 "NO_2 Primary and Secondary Ambient Air Quality Standards," and Table 2 "PSD Increments." In addition, the State amended its New Source Review (NSR) SIP narrative entitled "State of Vermont Air Quality Implementation Plan." EPA has prepared a memorandum dated February 13, 1991 entitled "Technical Support Document—Vermont Prevention of Significant Deterioration NO_2 Increment Regulations and NO_2 National Ambient Air Quality Standards" which includes a detailed analysis of this SIP action.

EPA proposed to approve minor changes to section 5-104 "Definitions," in the NPR published on December 4, 1990 (55 FR 233). However, these changes were not submitted with the final submittal for the adoption of NO_2 NAAQS and PSD NO_2 increments. Since these changes are not related to the adoption of NO_2 NAAQS and PSD increments, they were included with the final submittal for the establishment of PM_{10} standards and will be discussed in a Federal Register notice which will be published at a later date.

Changes Since Proposed Rulemaking

EPA proposed approval of these SIP revisions on December 4, 1990 (55 FR 233) with the understanding that Vermont would make some necessary changes prior to final rulemaking. Vermont's formal SIP submittal included the changes required in the NPR. The ANR amended the reference method by which compliance with the NO_2 standards is measured to make it consistent with that stated in 40 CFR 50.11. The ANR also amended its NSR narrative to clarify the minor source and major source baseline dates for NO_2. In addition, the ANR committed to develop a NO_x emissions inventory and determine increment consumption for the transition period between February 8, 1988 and December 15, 1990, the effective date of Vermont's regulations. Finally, the ANR committed to correct an increment violation within 60 days in accordance with 40 CFR 51.166(a)(3).

Other specific requirements for the State's implementation of the NO_2 NAAQS and PSD increments and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving changes to section 5-301 "Scope," section 5-309 "NO_2 Primary and Secondary Ambient Air Quality Standards," and Table 2 "PSD Increments" of the Vermont Air Pollution Control Regulations as a revision to the Vermont SIP. In addition, EPA is approving the changes to the new source review narrative entitled "State of Vermont Air Quality Implementation Plan."

EPA has reviewed the revisions of this notice for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990, and EPA has determined that this action is approvable. The revisions were not designed to include all of the new PSD and visibility requirements of the Amendments if any, however, they strengthen the NO_2 NAAQS and PSD increment requirements in Vermont's existing SIP and conform to all of EPA's current regulations.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 5, 1991.

Paul G. Keough,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart UU—Vermont

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2370 is amended by adding paragraph (c)(20) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(20) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on December 7, 1990 and January 10, 1991.

(i) Incorporation by reference

(A) Letter dated December 7, 1990 and letter with attachments dated January 10, 1991 from the Vermont Air Pollution Control Division submitting revisions to the Vermont State Implementation Plan.

(B) Section 5-301 "Scope," section 5-309 "Nitrogen Dioxide—Primary and Secondary Ambient Air Quality Standards," and Table 2 "Prevention of Significant Deterioration (PSD) Increments," of Chapter 5 "Air Pollution Control" of Vermont's Environmental Protection Regulations effective in the State of Vermont on December 15, 1990.

(ii) Additional materials

(A) A state implementation plan narrative dated November, 1990 and entitled "State of Vermont Air Quality Implementation Plan.

(B) Nonregulatory portions of the state submittal.

3. Table 52.2381 is amended by adding the following entries to the end of the listing for "5-301" and "Table 2—PSD increments" and adding a new state citation "Section 5-309" in numerical order.

§ 52.2381 EPA-approved Vermont State regulations.

* * * * *

TABLE 52.2381—EPA-Approved Rules and Regulations

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	Section 52.2370	Comments and unapproved sections
* * *	*	*	* *	*	*
Subchapter III Ambient Air Quality Stds					
Section 5-301 Scope	12/15/90	3/5/91	[FR citation from published date]	(c)(20)	
* * *	*	*	* *	*	*
Section 5-309 Nitrogen dioxide primary/ secondary.	12/15/90	3/5/91	[FR citation from published date]	(c)(20)	
* * *	*	*	* *	*	*
Table 2—PSD Increments	12/15/90	3/5/91	[FR citation from published date]	(c)(20)	Addition of NO_2 increments for Class I, II, and III areas.
* * *	*	*	* *	*	*

[FR Doc. 91-5019 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3910-2]

New Source Performance Standards; Standards Of Performance For Polypropylene Polyethylene, Polystyrene, And Poly(ethylene Terephthalate) Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: This notice corrects errors and makes clarifications in the regulatory text of the final Standards of Performance for Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry which appeared in the Federal Register on December 11, 1990 (55 FR 51010).

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Sims Roy at (919) 541-5263, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: On December 11, 1990 (55 FR 51010), EPA promulgated regulations limiting volatile organic compound (VOC) emissions from new, modified, and reconstructed process sections at polypropylene, polyethylene, polystyrene, and poly(ethylene terephthalate) plants. A few corrections to these standards are being made by this notice.

Most of the corrections are minor editorial adjustments involving the addition of an article (i.e., a or the) and the addition or deletion of an "s" to make a word plural or singular. In addition to the minor editorial adjustments, several word changes or additions have been made for clarity or consistency.

The major corrections and changes are:

1. In Table 3, on page 51041, a reference to footnote b was left out in the column titled "Control/no control criteria." This has been inserted.

2. On page 51044, column 2, line 5, the word "less" should have been "greater" so that the complete sentence now reads:

> If the inlet stream's TOC concentration is equal to or greater than 20 weight percent, the calculated threshold emissions level is 18.2 Mg/yr.

3. On page 51051, column 1, the third line from the bottom contains an extraneous "14-day", which may confuse the meaning of the sentence. The revised sentence now reads in its entirety as follows:

> If the average concentration obtained over the 14-day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 1.8 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program.

4. The last sentence in paragraph (c)(2)(ii) of § 60.565 on page 51052, column 3, contains the phrase "of the device." This is somewhat ambiguous in its meaning and has been replaced with "across the catalyst bed." The entire sentence now reads as follows (underlined portion shows the change):

> The owner or operator also shall record all 3-hour periods of operation during which the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference *across the catalyst bed* during the most recent performance test at which compliance was demonstrated.

5. On page 51053, column 1, there are four spots at which the phrase "at which compliance was demonstrated" needs to be inserted to clarify which performance tests are to be used for establishing parameter boundaries.

Dated: February 22, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

The following corrections are being made in FRL–3752–2; Standards of Performance for New Stationary Sources; Polypropylene, Polyethylene, Polystyrene, and Poly(ethylene terephthalate) Manufacturing Industry published in the Federal Register on December 11, 1990 (55 FR 51010).

§ 60.561 [Corrected]

1. On page 51038, column 2, line 7, (§ 60.561, definition of "Continuous process") add the word "a" to the end of the line so that the line now reads "*Continuous process* means a".

§ 60.561 [Corrected]

2. On page 51038, column 3, line 54, (§ 60.561, definition of "Gas phase process") change the word "process" to "reaction", so that the line now reads "polymerization reaction is carried out in".

§ 60.561 [Corrected]

3. On page 51039, column 3, line 5, (§ 60.561, definition of "Poly(ethylene terephthalate) (PET) manufacture using dimethyl terephthalic)") add the word "form" so that the line now reads "polymerized to form PET."

§ 60.561 [Corrected]

4. On page 51040, column 2, (§ 60.561, definition of "Product finishing section") add the word "the" to the end of the 7th line, so that the line now reads "finished product that are located after the".

§ 60.562–1 [Corrected]

5. On page 51041, column 1, line 14, (§ 60.562–1(a)(1)(i)(A)) change the word "millions" to "million."

§ 60.562–1 [Corrected]

6. On page 51041, (§ 60.562–1(a)(1)(ii)) Table 3, in the column headed "Control/no control criteria", the first item associated with the 5.5 < 20 applicable TOC weight percent range is revised to read as follows: "1. If total combined uncontrolled emissions are equal to or greater than CTE [b], control."

§ 60.562–1 [Corrected]

7. Footnote a to Table 3 (§ 60.562–1(a)(1)(ii)) on page 51041 is amended by removing the word "paragraph" in the first line of the footnote.

§ 60.562–1 [Corrected]

8. On page 51044, column 2, (§ 60.562–1(a)(1)(iii) introductory text) the sentence that begins "If the inlet stream's TOC concentration * * *" is revised to read as follows: "If the inlet stream's TOC concentration is equal to or greater than 20 weight percent, the calculated threshold emissions level is 18.2 Mg/yr."

§ 60.562–1 [Corrected]

9. On page 51046, column 3, line 8, (§ 60.562–1(c) introductory text) add the word "the" after "with" and before "provisions".

§ 60.562–1 [Corrected]

10. On page 51046, column 3, (§ 60.562–1(c)(1)(i)(B)) add the word "stream" to the end of line 26 so that the line now reads "(B) Not allow the outlet gas stream".

§ 60.564 [Corrected]

11. On page 51050, column 1, line 25, (§ 60.564(e)(1)) change "emission" to "emissions".

§ 60.564 [Corrected]

12. On page 51051, column 1, (§ 60.564(j)(1)(iii)) the third line from the bottom is revised so that the line now reads "test results in which no one 14-".

§ 60.565 [Corrected]

13. On page 51051, column 3, line 53, (§ 60.565(a)(3)(i)) change "determination" to "determinations".

§ 60.565 [Corrected]

14. On page 51052, column 3, line 14 (§ 60.565(c)(2)(ii)) change "temperature difference of the device" to "temperature difference across the catalyst bed".

§ 60.565 [Corrected]

15. On page 51052, column 3, 10th line from the bottom, (§ 60.565(e)(2)) change "operations" to "operation".

§ 60.565 [Corrected]

16. In paragraph (f)(1)(i) of § 60.565 on page 51053, column 1, line 19, change "recent performance test, and" to "recent performance test at which compliance was demonstrated are exceeded, and".

§ 60.565 [Corrected]

17. In paragraph (f)(1)(ii) of § 60.565 on page 51053, column 1, line 26, change "performance test (unless monitoring of" to "performance test at which compliance was demonstrated (unless monitoring of".

§ 60.565 [Corrected]

18. In paragraph (f)(2) of § 60.565 on page 51053, column 1, line 40, change "recent performance test." to "recent performance test at which compliance was demonstrated."

§ 60.565 [Corrected]

19. In paragraph (f)(3) of § 60.565 on page 51053, column 1, line 49, change "during the most recent performance test." to "during the most recent performance test at which compliance was demonstrated."

§ 60.565 [Corrected]

20. On page 51053, column 2, line 10, (§ 60.565(h) introductory text) change "increase" to "increases".

[FR Doc. 91–4880 Filed 3–4–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 228

[FRL–3911–5]

Ocean Dumping; Site Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today modifies the designation of an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Charleston, South Carolina. This modification is the alteration of the restrictions for the Charleston Harbor Deepening Project ODMDS. This action is necessary to provide an environmentally acceptable ocean disposal site for projects other than the Charleston Harbor Deepening Project.

EFFECTIVE DATE: This modification shall become effective on April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/347–2126 or FTS 257–2126.

SUPPLEMENTARY INFORMATION:

Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that use of disposal sites may be modified.

The Charleston Harbor Deepening Project site was designated on August 3, 1987 along with the smaller Charleston ODMDS. A decision to designate a small site for permanent use at Charleston was based on projected future disposal volumes and the ease of monitoring. The larger Harbor Deepening Project site, which was the interim site, was designated for a seven-year period and restricted to use for Harbor Deepening material only. The smaller, permanent Charleston ODMDS lies within the boundaries of, and completely in the western portion of, the larger Charleston Harbor Deepening Project ODMDS. The sites are defined by the following coordinates:

Charleston Harbor Deepening Project ODMDS

32°38'06" N, 79°41'57" W;
32°40'42" N, 79°47'30" W;
32°39'04" N, 79°49'21" W;
32°36'28" N, 79°43'48" W.

Charleston ODMDS

32°40'27" N, 79°47'22" W;
32°39'04" N, 79°44'25" W;
32°38'07" N, 79°45'03" W;
32°39'30" N, 79°48'00" W.

Recent on-site investigations have revealed the presence of significant live bottom resources within and around both Charleston ODMDSs. These resources are located primarily in the western half of the smaller site and along the southern boundary of the larger site. While the effects of burial by dredged material disposal are apparent, the effects of nearby disposal (particularly of fine material) on these resources are yet to be determined. Ongoing studies are being conducted to determine whether recently disposed fine materials are impacting these resources. Until these studies are complete, further disposal of all fine material will be limited to the eastern portion of the Charleston Harbor Deepening Project ODMDS to prevent interference with these studies and to minimize further potential impacts.

The need to limit disposal of fines to the eastern half of the Charleston Harbor Deepening Project ODMDS and the restrictions on use of this area (only Harbor Deepening Project material) have effectively eliminated the only ocean disposal alternative to all other dredging projects in the Charleston area. Modification of its designation would make the Charleston Harbor Deepening Project ODMDS available for use by these other entities.

EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites (39 FR 16186 (May 7, 1974)). The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The type and nature of material that would be allowed by this action is not significantly different from that which was authorized by the Harbor Deepening Project. The Harbor Deepening Project includes not only coarse-grained new work material, but also fine-grained new work material and overlying maintenance material. The primary effects of this action are (1) increased amounts of material into this larger site, (2) increased sources of material, and (3) increased number of site users. However, these increases are basically just the relocation of materials that were targeted for ocean disposal into the smaller site. EPA believes the effects of this action do not warrant the preparation of an Environmental Impact Statement (EIS).

Once studies are complete, EPA will dedesignate the smaller Charleston ODMDS and redefine the boundaries of the Charleston Harbor Deepening Project ODMDS through further rulemaking. Such measures would remove all disposal activities from the immediate vicinity of the significant resources and reduce the potential for adverse impacts. However, taking such measures before all studies are complete is considered by EPA to be premature and ill-advised. EPA's major concern at this time is to provide an environmentally feasible ocean disposal site for all dredging parties.

Site Modification

The site modification for the Charleston Harbor Deepening Project ODMDS is the alteration of the restriction on site use. The present restriction on site use is the limitation on disposal to dredged material from the Charleston Harbor Deepening Project. EPA now changes the restriction to disposal of dredged material from the greater Charleston area and to limit, for the time being, the geographic area within which fine materials can be disposed. Fine materials are defined as those containing greater than 10% materials, by dry weight, with a grain size of less than 0.074 mm. Once the studies on the resources are complete, additional areas within the larger site may be available for disposal of certain types of dredged material.

The Proposed Rule for this action was published on November 29, 1990 (55 FR 49540 November 29, 1990). The only comments received were from the Charleston District of the U.S. Army Corps of Engineers. The District is supportive of this action. The language concerning the restrictions on this site is different from that of the Proposed Rule. This change, which was coordinated with the District, is to clarify which materials are restricted based on physical characteristics. This change does not change the intent of the restrictions.

Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material from non-Harbor Deepening projects. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: February 7, 1991.

Approved by

Patrick M. Tobin,

Deputy Regional Administrator.

In consideration of the foregoing, part 228, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by revising in paragraph (b)(26) the "Restriction." Paragraph to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(26) * * *

Restriction: Disposal shall be limited to dredged material from the Charleston

Harbor area. All dredged material, except entrance channel materials, shall be limited to that part of the site east of the line between coordinates 32°39'04"N, 79°44'25"W and 32°37'24"N, 79°45'30"W unless the materials can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074 mm) by weight and shown to be suitable for ocean disposal.

* * * * *

[FR Doc. 91-5153 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

OFFICE OF PERSONNEL MANAGEMENT

45 CFR Part 801

Voting Rights Program

AGENCY: Office of Personnel Management.

ACTION: Final rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is establishing a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

DATES: This rule is effective February 26, 1991. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before April 4, 1991.

ADDRESS: Send or deliver comments to Mary Rodriguez, Attorney, Office of Personnel Management, room 7555, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mary Rodriguez, (202) 606-1701.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Yuma County, Arizona, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on February 21, 1991, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, OPM will appoint Federal Examiners to review the qualifications of applicants to be registered to vote and Federal Observers to observe local elections.

Under section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Under section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately in view of the pending election to be held in the subject county, where Federal observers will observe the election under the authority of the Voting Rights Act of 1965, as amended.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a signficant economic impact on a substantial number of small entities because it adds one new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

List of Subjects in 45 CFR Part 801

Administrative practice and procedure, Voting rights.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 45 CFR part 801 as follows:

PART 801—VOTING RIGHTS PROGRAM

1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 1103; 7, 9, 79, Stat. 440, 411 (42 U.S.C. §§ 1973e, 1973g).

2. Appendix A to part 801 is amended by adding alphabetically the Arizona County of Yuma to read as follows:

Appendix A

* * * * *

Arizona

County, Place for filing: Beginning date.

* * * * *

Yuma; U.S. Border Station, Highway 95, International Borderline, San Luis, Arizona, 85349; (602) 627-2016; February 26, 1991.

* * * * *

[FR Doc. 91-5128 Filed 3-4-91; 8:45 am]

BILLING CODE 6325-01-M

Proposed Rules

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management proposes an amendment to the regulations in 5 CFR part 581 concerning the processing of garnishment orders for child support and/or alimony. There has been litigation in which a Federal employee obligor, relying on an OPM regulation, asserted that a garnishment action was invalid because the legal process did not expressly name the obligor's employing agency as the garnishee. *Millard* v. *United States*, 916 F.2d 1 (Fed. Cir. 1990). While the court rejected the obligor's argument, OPM proposes to clarify the regulation in question, 5 CFR 581.202(a), in order to make it absolutely clear that the Governmental entity need not be expressly named as the garnishee and thereby avoid any future litigation on this issue.

DATES: Comments should be received by April 4, 1991.

ADDRESSES: Send or deliver comments and/or designated agent information, including new WITS telephone number(s), to Jaime Ramon, General Counsel, Office of Personnel Management, room 7355, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, (202) 606-1960.

SUPPLEMENTARY INFORMATION: Governmental entities are urged to review the current list of designated agents, appendix A to part 581 (55 FR 1354, January 16, 1990), to ensure that their listing is correct. All entities that have joined the Washington Interagency Telecommunications System (WITS) will need to advise OPM of their new telephone number(s).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because their effects are limited primarily to Federal employees.

List of Subjects in 5 CFR Part 581

Alimony, Child welfare, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 581 as follows:

PART 581—PROCESSING GARNISHMENT ORDERS FOR CHILD SUPPORT AND/OR ALIMONY

1. The authority citation for part 581 continues to read as follows:

Authority: 42 U.S.C. 659, 661–662; 15 U.S.C. 1673; 5 U.S.C. 8437; E.O. 12105.

2. In § 581.202, paragraph (a) is revised to read as follows:

§ 581.202 Service of process.

(a) A party using this part shall serve legal process on the designated agent of the Governmental entity which has moneys due and payable to the obligor. Where the purpose of the legal process is to compel a Governmental entity which holds moneys which are otherwise payable to an individual, to make a payment from such moneys in order to satisfy a legal obligation of such individual to provide child support or make alimony payments, and where the legal process is clearly directed to said Governmental entity, the legal process need not expressly name the Governmental entity as the garnishee.

* * * * *

3. In § 581.306, paragraph (c) is revised to read as follows:

§ 581.306 Service of process.

* * * * *

(c) Instances where an employee obligor separates from his/her employment with a Governmental entity which is presently honoring a continuing legal process, the entity shall inform the party's representative, and the court, or other authority, that the payments are being discontinued. In cases where the obligor has a Thrift Savings Fund account, or has retired, or has separated and requested a refund of retirement contributions, or transferred, or is receiving benefits under the Federal Employee's Compensation Act, and where this information is known by the entity, the entity shall provide the party with the designated agent for the new disbursing Governmental entity.

[FR Doc. 91-5129 Filed 3-4-91; 8:45 am]

BILLING CODE 6325-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Extension of Comment Period for Proposed Rule and Request for Comment

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of comment period and request for comment.

SUMMARY: On October 5, 1990, the Commission proposed to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging (55 FR 40856). These amendments would change the child and adult test under which child-resistant packaging is evaluated. In this notice, the date by which public comments should be received on these proposed amendments is extended to July 1, 1991. An opportunity for the oral presentation of comments will be scheduled after that date.

This notice also solicits comment on a change to the adult test protocol that was suggested during the original comment period, which ended on January 3, 1991.

DATES: Written comments are due no later than July 1, 1991.

ADDRESSES: Written comments and data should be mailed to comment CPI-91, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207 or delivered to

BEST COPY AVAILABLE

room 420, 5401 Westbard Avenue, Bethesda, MD 20816.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia White, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6470.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

In the **Federal Register** of October 5, 1990, the Commission proposed to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging of certain household substances. The current regulations provide that a package design must be capable of resisting opening by 85 percent of a panel of 200 children after a five-minute test and by 80 percent of the panel after an additional five-minute test. The package must also be able to be opened and, if appropriate, properly closed within five minutes by 90 percent of a panel of 100-persons of ages from 18–45 years.

Because some persons, especially older persons, find certain types of child-resistant packaging difficult to open and resecure properly, a number of people either purposely purchase products in packages that are not child-resistant or do not properly resecure the package after opening it initially. The Commission concludes that if these difficult-to-use packages were replaced with packages that are easier to use, more people would purchase and properly use child-resistant packaging, with a reduction in the number of poisonings of children. In order to accomplish this goal, the Commission proposed to substitute a panel of 100 older adults, ages from 60–75 years, for the current panel of 18–45 year-olds. The Commission believes that substituting a panel of older adults, who as a group are less able to open child-resistant packaging, will exclude the more difficult-to-use designs that now can pass the test with the younger panel. In addition, the Commission proposed to reduce the time provided for the adults to open and, if appropriate, properly resecure the packages from five minutes to one minute. In order to allow the use of new packaging designs that are unfamiliar, the proposed one-minute opening/resecuring test would be preceded by a 30-second period that the test subject can use to become familiar with how the package operates. In the event the Commission concludes that it is not feasible to substitute a panel of 60–75 year-olds for the present panel of 18–45 year-olds, the Commission proposed to reduce the time allowed for the 18–45 year-olds to 30 seconds, preceded by a 30-second familiarization period.

Other proposed amendments are intended to simplify the current test procedures, without reducing the ability of the test to determine child-resistance. These amendments include testing for child resistance by using sequential groups of 50 children, until a statistically valid determination of whether the package is child-resistant is obtained, or until the current number of children tested, 200, is reached. Also, the Commission proposed to use 3 age groups, of 42–44, 45–48, and 49–51 months, with 30, 40, and 30 percent of the children in each age group, respectively, instead of the current 10 age groups between 42 and 51 months.

The remaining proposed amendments are intended to ensure that the test protocol produces more consistent results. These amendments are: To add a procedure for determining whether the package has been secured adequately by the adults; to limit the number of subjects that could be tested by any one tester to no more than 30 percent of the children or 35 percent of the adults; to limit the number of subjects that could be tested at any one site to 20 percent of the children and 35 percent of the adults; and to issue guidelines for standardized instructions to be used when testing.

The proposal specified that written comments would be received until January 3, 1991, and oral comments were received by the Commission on December 5, 1990. The written and oral comments included several requests that the comment period be extended for periods up to 180 days. The requests stated that the testing and evaluations needed to respond to the proposal required the additional time. Some requests also asked for a second opportunity to submit oral comments at the end of the extended period for submitting written comments.

The Commission considered these requests and granted an extension of 180 days, until July 1, 1991. After that date, a second opportunity for presenting oral comments will be scheduled.

Request for Comment

During the original comment period, a suggestion was received for a variation of the adult test that had not been discussed specifically in the proposal. In the proposal, the Commission indicated that it was considering shortening the present five-minute test time for the adult panel to one minute, but providing a 30-second period prior to the test that the test subject would use to become familiar with how to open the package. Perritt Laboratories suggested that the proposed 30-second familiarization period be extended to five minutes and that the test subject must be able to open the package during that time. The subjects who are successful in opening the package during the familiarization period would then be tested to see if they could then open and resecure the package within one minute. Subjects would have to be successful in both time periods in order for the package to pass the adult test. The commenter suggested that the longer familiarization period would allow time for test subjects to learn how to operate unfamiliar designs. The Commission preliminarily concludes that this suggestion may have merit and requests comment on it.

Dated: February 26, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-5143 Filed 3-4-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-34-90]

RIN 1545-AP42

Disclosures of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations (T.D. 8338) relating to the disclosure of additional items of return information to the Bureau of the Census for use in certain statistical programs. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by May 6, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R (IA-34-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Paul W. Winkler, (202) 566-4139 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 8336) that appear in the Rules and Regulations portion of this issue of the **Federal Register** amend part 301 of title 26 of the Code of Federal Regulations to provide rules under section 6103 of the Internal Revenue Code of 1986, relating to the disclosure of return information. This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the regulations.

Special Analyses

It has been determined that these proposed regulations are not major rules and defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Paul W. Winkler of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-4943 Filed 3-4-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 516 and 778

Records To Be Kept by Employers; Overtime Compensation

RIN 1215-AA54

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document contains proposed regulations for implementing the maximum hours exemption under the Fair Labor Standards Amendments of 1989 for certain employees who receive remedial education under specified conditions. Under the terms of the statute, employees who lack a high school diploma or whose educational attainment is below the eighth grade level can be required to spend up to ten hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal, regular rate of pay for these hours and the training must not be job-specific. Minor revisions to existing regulations on overtime compensation and recordkeeping are being proposed to conform to these provisions of the 1989 Amendments. Final regulations will be issued following review of the public comments received.

DATES: Comments are due on or before May 6, 1991.

ADDRESSES: Submit written comments (preferably in triplicate) to John R. Fraser, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Charles E. Pugh, Assistant Administrator, Office of Policy, Planning and Review, Wage and Hour Division, U.S. Department of Labor, room S-3508, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8408. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed rules contain recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511), which have been submitted to the Office of Management and Budget (OMB) for review. These requirements are not effective until OMB approval has been obtained. The changes proposed to 29 CFR part 516 would require those employers who choose to avail themselves of the remedial education exemption to maintain time records for the periods in which their employees are engaged in such activities, and payroll records reflecting payments at the employees' regular rates of pay for the time so spent. These requirements essentially restate the time and pay records customarily required under 29 CFR 516.2(a)(6)–(8) and 516.6(a)(1), and are the minimum necessary for determining compliance with the statutory provisions. The recordkeeping burden imposed by new requirements over and above the requirements already in place or those imposed by usual or customary business practices is estimated as one minute per week, per affected employee. The FLSA information collection requirements currently in effect have been approved by the Office of Management and Budget under OMB control number 1215-0017.

Public reporting and recordkeeping burdens for this new proposed collection of information are estimated to average as follows: one minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, room N-1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Employees who are subject to the overtime provisions of the Fair Labor Standards Act (FLSA) ordinarily must be paid one and one-half times their regular rate of pay for all hours worked over 40 in each workweek. The Fair

Labor Standards Amendments of 1989, Public Law 101–157 (103 Stat. 938), were enacted on November 17, 1989. These amendments changed certain provisions of the FLSA concerning coverage, various exemptions, and the tip credit, raised the minimum wage, added penalties for violations of the minimum wage and overtime compensation requirements, and added a new training wage provision. Section 7 of the amendments allows employers to provide for up to ten hours per week of remedial education to certain employees, whether voluntarily undertaken by the employee or required by the employer as a condition of employment, without compensation at the time-and-one-half overtime rate set forth in FLSA section 7(a). The applicability of this exemption is limited to only those employees who lack a high school diploma or whose reading level or basic skills are at or below the eighth grade level. Further, to qualify for the exemption, the employer-provided remedial education must be designed to provide these basic skills and may not include job-specific training. Consistent with the legislative history and intent, the regulations would also permit an employer to provide training designed to fulfill the requirements for a high school diploma (or General Educational Development certificate).

As described by its legislative history (H.R. Rept. 101–260, 101st Cong., 1st Sess., p. 25 (1989)), this exemption is intended to encourage employers to provide remedial education to employees who may lack the educational background necessary for many of today's jobs, as well as for the jobs of the future. Such an arrangement would benefit workers as well as employers, and contribute to a stronger and more competitive economy. To be of maximum benefit, the remedial education must be conducted during discrete periods of time set aside for such a program, and, to the maximum extent practicable, away from the employee's normal work station. It should also be noted that while employers are not required to pay the time-and-one-half overtime premium for hours in which the employee is engaged in remedial education activities, employees must receive compensation at their regular rate of pay for the time spent in such activities. In addition, when scheduling the provision of remedial education to individual workers they employ, employers are encouraged to adopt flexible workplace policies that will allow workers to balance their job responsibilities with the need to respond to their individual family responsibilities in ways that make work and family life compatible.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

The Department seeks information on the extent to which the exemption provided by section 7(q) of the Act will be utilized by employers. Therefore, commenters are asked to furnish any data available on the anticipated use of the exemption, including data on numbers of establishments and employees.

Regulatory Flexibility Act

The proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This conclusion is based on all information presently available to the Department. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. The proposed revisions would only affect employers who choose to avail themselves of the exemption from overtime pay for employees receiving remedial education under the terms of the Fair Labor Standards Amendments of 1989, and should not result in any significant economic impact in any case.

Summary of Rule

Pursuant to section 7(q) of the Act, an employer may require that an employee spend up to 10 hours in the aggregate in any workweek in remedial education without payment of overtime compensation provided that: (1) The employee lacks a high school diploma or educational attainment at the eighth-grade level; (2) the remedial education is designed to provide reading and other basic skills at an eighth-grade level or below, or to fulfill the requirements for a high school diploma (or General Educational Development (GED) certificate); and (3) the remedial education does not include job-specific training. Employees must be compensated at their regular rate of pay for the time spent receiving such remedial education.

A new § 516.34 if proposed to be added to 29 CFR part 516 that describes the records that must be maintained and preserved in order to demonstrate compliance with the requirements of the exemption. Employers would be required to keep records of the hours employees spend in remedial education and the amounts paid for the time so spent. A new § 778.603 is proposed to be added to subpart G of 29 CFR part 778 to explain the conditions applicable to the exemption and otherwise describe the statutory terms.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects

29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

29 CFR Part 778

Hours of work, Overtime pay, Salaries, Wages.

For the reasons set forth above, parts 516 and 778 of title 29 of the Code of Federal Regulations are proposed to be amended as set forth below.

Signed at Washington, DC, on this 26th day of February 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

1. The authority citation for Part 516 is proposed to be revised to read as follows:

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq. Section 516.34 also issued under Sec. 7, 103 Stat. 944, 29 U.S.C. 207(q).

2. A new § 516.34 is proposed to be added to read as follows:

§ 516.34 Exemption from overtime pay for time spent by certain employees receiving remedial education pursuant to section 7(q) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act for time spent receiving remedial education pursuant to section 7(q) of the Act and § 778.603 of this title, the employer shall maintain and preserve records containing all the information and data required by § 516.2 and, in addition, shall also make and preserve a record, either separately or as a notation on the payroll, showing the hours spent each workday and total hours each workweek that the employee is engaged in receiving such remedial education that does not include any job-specific training but that is designed to provide reading and other basic skills at or below the eight-grade level or to fulfill the requirements for a high school diploma (or General Educational Development certificate), and the compensation (at not less than the employee's regular rate of pay) paid each pay period for the time so engaged.

PART 778—OVERTIME COMPENSATION

3. The authority citation for part 778 is proposed to be revised to read as follows:

Authority: 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

4. A new § 778.603 is proposed to be added to read as follows:

§ 778.603 Special overtime provisions for certain employees receiving remedial education under section 7(q).

Section 7(q) of the Act, enacted as part of the 1989 Amendments, provides an exemption from the overtime pay requirements for the time spent by certain employees who are receiving remedial education. The exemption provided by section 7(q), as implemented by these regulations, allows any employer to require that an employee spend up to 10 hours in the aggregate in any workweek in remedial education without payment of overtime compensation provided that the employee lacks a high school diploma or educational attainment at the eighth-grade level; the remedial education is designed to provide reading and other basic skills at an eighth-grade level or below, or to fulfill the requirements for a high school diploma or General Educational Development (GED) certificate; and the remedial education does not include job-specific training. Employees must be compensated at their regular rate of pay for the time spent receiving such remedial education. The employer must maintain a record of the hours that an employee is engaged each workday of each workweek in receiving remedial education, and the compensation paid each pay period for the time so engaged, as described in 29 CFR 516.34. The remedial education must be conducted during discrete periods of time set aside for such a program, and, to the maximum extent practicable, away from the employee's normal work station. An employer has the burden to establish compliance with all applicable requirements of this special overtime provision as set forth in section 7(q) of the Act and in this section of the regulations. Section 7(q) is solely an exemption from the overtime provisions of section 7(a) of the Act. It is not an exemption from the requirements of any other law that regulates employment practices, including the standards that are used to select individuals for employment. An employer creating a remedial education program pursuant to section 7(q) should be mindful not to violate other applicable requirements. See, for example, title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. section 2000e *et seq.*; Executive Order 11246, as amended, 3 CFR 339 (1964–1965 Compilation, reprinted in 42 U.S.C. 2000e note; the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 *et seq.*; and the Uniform Guidelines on Employee Selection Procedures published at 41 CFR part 60–3.

[FR Doc. 91–5061 Filed 3–5–91; 8:45 am]

BILLING CODE 4510–27–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1602

Recordkeeping and Reporting Under Title VII and the ADA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing to amend its regulations at 29 CFR part 1602 on recordkeeping and reporting under title VII of the Civil Rights Act of 1964 to add recordkeeping and reporting requirements under the Americans with Disabilities Act of 1990.

DATES: Comments must be submitted on or before May 6, 1991. A public hearing concerning these proposed regulations will be held on April 16, 1991 at a place and time to be announced.

ADDRESSES: Comments should be addressed to the Office of the Executive Secretariat, EEOC, 10th Floor, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC between the hours of 9:30 a.m. and 5 p.m. Any comments should additionally be filed with the Office of Management and Budget (see "Paperwork Reduction Act" below). Copies of this notice of proposed rulemaking are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice) or (202) 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Acting Assistant Legal Counsel, or Grace C. Karmiol, General Attorney, at (202) 663–4669 (voice) or (202) 663–7028 (TDD).

SUPPLEMENTARY INFORMATION: The Americans with Disabilities Act of 1990 (ADA) authorizes the Equal Employment Opportunity Commission to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate to enforcement of the Act. Section 107(a) of the ADA incorporates section 709 of title VII. The EEOC is proposing to amend the recordkeeping and reporting regulations issued under title VII to include recordkeeping and reporting requirements under the ADA. The proposal does not require the creation of any new documents under the ADA and is proposing the same record retention requirements under the ADA that it imposes under title VII, i.e., any records created must be kept for the same period of time specified in the title VII regulations.

The EEOC proposal does not impose any reporting requirements under the ADA, but reserves the right in the future to issue reporting regulations as may be necessary to accomplish the purposes of the ADA. In addition to these proposed regulations, the Commission invites comment on whether there should be any reporting requirement under the ADA (for example, the number of employees with disabilities), what the information collected would be used for, and how to collect the information, i.e., voluntary self-identification or employer visual identification.

Persons wishing to present their views orally should notify the Commission of their desire to do so in writing no later than March 25, 1991 with a request to Frances Hart, Executive Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. The request should include a written summary of the remarks to be offered.

Regulatory Flexibility Act

The proposed rule, if promulgated in final form, is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it does not impose any additional recordkeeping or reporting requirements.

Paperwork Reduction Act

These proposed regulations contain information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act. It is estimated that the public recordkeeping burden will not increase as a result of the amendments because all employers affected by them are already required to retain these records for the same time periods under title VII. As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission is submitting to the Office of Management and Budget a request that it approve these information collection requirements. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph Lackey.

The Commission hereby publishes these proposed rules for public comment. The proposed rules appear below.

List of Subjects in 29 CFR Part 1602

Reporting and recordkeeping requirements.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR part 1602 as follows:

1. The heading for part 1602 is revised to read as follows:

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII AND THE ADA

2. The authority citation for part 1602 is revised to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 et seq.; 42 U.S.C. 12117.

3. Section 1602.1 is revised to read as follows:

§ 1602.1 Purpose and scope.

Section 709 of title VII and section 107 of the Americans with Disabilities Act (ADA) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and preserve certain records and shall furnish specified information to aid in administration and enforcement of the Acts.

4. The heading for Subpart A is revised to read as follows:

Subpart A—General

5. Move § 1602.1 under subpart A.

§§ 1602.2 through 1602.6 [Removed and reserved]

6. Sections 1602.2–1602.6 are removed and reserved.

§ 1602.11 [Amended]

7. Section 1602.11 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.12 [Amended]

8. Section 1602.12 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c)" insert "of title VII, or section 107 of the ADA".

§ 1602.14 [Amended]

9. Section 1602.14(a) is amended as follows:

(a) In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation".

(b) In the third sentence, after "under title VII" insert "or the ADA".

§ 1602.19 [Amended]

10. Section 1602.19 is amended as follows:

(a) In the first sentence, after "purpose of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.21 [Amended]

11. Section 1602.21(b) is amended as follows:

(a) In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation".

(b) In the second sentence, after "under title VII" insert "or the ADA".

§ 1602.26 [Amended]

12. Section 1602.26 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c)" insert "of title VII or section 107 of the ADA".

§ 1602.28 [Amended]

13. Section 1602.28(a) is amended as follows:

(a) In the third sentence, after "under title VII" insert "or the ADA".

§ 1602.31 [Amended]

14. Section 1602.31(a) is amended as follows:

(a) In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation".

(b) In the third sentence, after "under title VII" insert "or the ADA".

§ 1602.37 [Amended]

15. Section 1602.37 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.40 [Amended]

16. Section 1602.40(a) is amended as follows:

(a) In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation".

§ 1602.45 [Amended]

17. Section 1602.45 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

§ 1602.49 [Amended]

18. Section 1602.49(a) is amended as follows:

(a) In the first sentence, after "not necessarily limited to" insert "requests for reasonable accommodation".

§ 1602.54 [Amended]

19. Section 1602.54 is amended as follows:

(a) In the first sentence, after "purposes of title VII" insert "or the ADA".

(b) In the second sentence, after "section 709(c) of title VII" insert "or section 107 of the ADA".

[FR Doc. 91–5102 Filed 3–4–91 8:45 am]
BILLING CODE 6750–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-3911-3]

National Oil and Hazardous; Substance Contingency Plan; The National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Wedzeb Enterprises site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Wedzeb Enterprises site from the National Priorities List (NPL) and requests public comment. The NPL is appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). EPA, in consultation with the State, has determined that all appropriate response actions under CERCLA have been implemented and that no further cleanup is appropriate. Moreover, EPA and State have determined that remedial activities conducted at the site to date have been protective of public health, welfare and the environment.

DATES: Comments concerning the proposed deletion of the Wedzeb Enterprises site may be submitted on on before April 4, 1991.

ADDRESSES: Comments may be mailed to Tinka G. Hyde, Remedial Project Manager, or Beverly J. Kush, Unit Chief, U.S. EPA—5HS–11, Office of Superfund, 230 S. Dearborn St., Chicago, Illinois 60604. The comprehensive information on the site is available at your local information repository located at: the Mayor's office, 201 East Main Street, Lebanon, Indiana, 46052.

Request for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is C. Freeman (5HS–12), Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60640, (312) 886–6214.

FOR FURTHER INFORMATION CONTACT: Tinka G. Hyde, 5HS–11, Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60604, (312) 886–6296 or Karen Martin, 5PA–14, Office of Public Affairs, Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60604, (312) 886–6128.

SUPPLEMENTARY INFORMATION

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region V announces its intent to delete the Wedzeb Enterprises site from the National Priorities List (NPL), appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Superfund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

The site EPA intends to delete from the NPL is Wedzeb Enterprises, Lebanon, Indiana.

The EPA will accept comments on this proposed deletion for 30 days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

The 1990 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL. 40 CFR 300.425(e) provides that sites "may be deleted from or recategorized on the NPL where no further response is appropriate." In making this determination EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented; and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

For all remedial actions which result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow unlimited use and unrestricted exposure, it is EPA's policy that sites generally will not be deleted from the NPL until at least one five-year review has been conducted. A five-year review is generally conducted after completion of all remedial actions at a site (except operation and maintenance), including appropriate actions taken to ensure that the site remains protective of public health and the environment, and when the site meets EPA's deletion criteria as outlined above. As stated under "Basis for Intended Deletion," the selected remedy for the Wedzeb site required the removal of the contaminated sewer sediments, RI-derived waste, and soil from the site. As a result of implementing this remedy, hazardous substances, pollutants, and contaminants were removed from the site allowing for unlimited use and unrestricted exposure. Therefore, consistent with the NCP § 300.430(f)(4)(ii), five-year reviews are not necessary for this site.

Before deciding to delete a site, EPA must make a determination that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for information purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The first steps are preparing a Superfund Close-Out Report, obtaining State concurrence on the proposed deletion, and the updating of the local information repository and the Regional deletion docket. These actions have been completed. This Federal Register notice, and concurrent notice in the local newspaper in the vicinity of the

site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delist the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contract the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete this Site from the NPL.

Wedzeb Enterprises Superfund Site, Lebanon, Indiana

The Wedzeb site is a three-quarter acre site located at 320 South Ballard Street in Lebanon, Indiana, about 30 miles northwest of Indianapolis.

On May 2, 1981, one of tow warehouses located on the property was completely destroyed by a fire. The warehouse that was destroyed, located on the east side of the property, had been used as a storage facility for scrap material and used equipment or parts, including electrical capacitors and transformers containing polycholorinated biphenyls (PCBs). According to the company's inventory records, the warehouse contained at least seventy-seven tons of electrical capacitors, some of which exploded during the fire. PCBs are believed to have been released into the environment as a result of the fire, and contaminants are believed to have migrated to nearby ground surfaces. In addition, other organic compounds may have been created in the burning of PCBs, particularly dioxins and furans, and released into the environment as well.

Because of the potential threat to the health of nearby residents and to the environment, in May 1981, the Indiana State Board of Health and a U.S. EPA Technical Assistance Team collected samples of on-site soil and debris, as well as soot, waste water, and sanitary sewer sediment from near the site. Results from the Technical Assistance Team sample analysis showed concentrations of PCBs in sludge from the Lebanon Treatment Plant, as well as traces of dioxins and furans in the sediments and other soil samples from locations on and near the site.

In December 1983, the site was listed on the National Priorities List (NPL). From 1981 to 1986, the State of Indiana and U.S. EPA made repeated efforts to get the site owner and operator of the Wedzeb site to undertake cleanup actions. However, these enforcement efforts were largely unsuccessful.

Based on previous sample analyses of site debris and surface soil, U.S. EPA commenced a removal action in April 1987, to remove the contaminated debris and surface soil from the site. Debris from the eastern warehouse and contaminated soil were removed from the site and replaced with clean fill material. After September 30, 1987, the U.S. EPA conducted a Remedial Investigation/Feasibility Study (RI/FS) to determine the nature and extent of contamination at the site.

The findings of the Final RI Report showed that the previous removal actions were adequate to protect human health and the environment, and that no unacceptable risk remained at the site for groundwater, soils, and warehouse surfaces. Therefore, the ROD which was issued by U.S. EPA on June 30, 1989 called for no further action for the groundwater, soils, and warehouse surfaces at the Wedzeb Enterprises site. However, to prevent potential future releases from the contaminated sewer line connected to the Lebanon Treatment Plant, the June 1989 ROD called for remediation of the contaminated sewer line.

Additional surface soil sampling was conducted by the Indiana Department of Environmental Management (IDEM) in August and December of 1989 in the southeast corner of the Wedzeb Enterprises site. IDEM personnel found isolated low-levels of PCB contaminated surface soil. IDEM personnel collected soil samples at thirteen locations along the southeastern edge of the site to a depth of 0 to 2 inches. Seven of the thirteen samples were below the 10 ppm PCB cleanup level. The remaining six samples ranged from 10.5 ppm to 39 ppm of PCBs. Based on the IDEM analytical sample results, a decision was made to remove and dispose of the contaminated soil in the southeast corner of the site. This decision was documented in an Explanation of Significant Differences (ESD) dated August 24, 1990.

The remedial action design criteria for removal of contaminated sediment from the sanitary sewer and soil excavation was based on cleanup levels stated in the Toxic Substance Control Act (TSCA) Spill Policy Guidance for soils. The TSCA guidance level is 10 parts per million (ppm) for soils and sediment in nonrestricted areas.

Approximately 600 feet of sanitary sewer pipe from the manhole in Ballard Street, northeast of the site, to the manhole in Ryan Street between Superior Street and Pearl Street, was cleaned in April 1990. After the sanitary sewer has been cleaned and the wastewater had been removed, a television inspection of the pipe was conducted. The video taped results of the television inspection indicate that the sewer is structurally sound and clean from contamination.

A liquid sample collected from the wash water holding tank, and sediment samples collected from the bag filter were analyzed to determine the magnitude of PCB contamination. The analytical results from the liquid and sediment samples indicated no PCB contamination. Therefore, the wastewater was discharged to the sanitary sewer. The sediment and granular activated carbon were containerized and later composited with existing RI-derived waste during final remedial action activities completed in August 1990.

The final element of the remedial action was the excavation and removal of approximately 8 cubic yards of surficial soil to a depth of 3 to 6 inches in accordance with the ESD. During the soil excavation conducted in August 1990, 30 drums containing wastes generated during the RI and during the sanitary sewer remedial action were composited with the excavated soils and disposed of off-site.

The ROD and subsequent ESD for the Wedzeb Enterprises site required removal of the contaminated sewer sediments, RI-derived waste, and soil from the site. In addition, there is no equipment left on-site requiring operation and maintenance activities. Therefore, since there are no hazardous substances or equipment left at the site, there are no monitoring, operations, or maintenance requirements at the Wedzeb Enterprises site.

The community relations activities conducted during the Remedial Design/Remedial Action (RD/RA) for the Wedzeb Enterprises site included preparation of a remedial action fact sheet and public notice as well as convening an availability session. In addition, a press release was issued and an information repository was established for the ESD. The community relations activities have been ongoing since the inception of the removal action and RI and have been carried throughout the entire RD/RA process. The public reaction to U.S. EPA's activities at the site has been positive. U.S. EPA plans to continue community relations activities throughout the deletion process.

EPA, in consultation with the State of Indiana, has determined that all appropriate Fund-financed responses under CERCLA have been implemented at the Wedzeb Enterprises site and that no further cleanup is appropriate.

Dated: February 28, 1991.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 91-5184 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-45, RM-7606]

Radio Broadcasting Services; Lanai City, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ivan N. Dixon, III, proposing the substitution of Channel 284C for Channel 284A at Lanai City, Hawaii, and modification of his construction permit (BPH-890503MQ) to specify the higher class channel. Channel 284C can be allotted to Lanai City in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit with a site restriction of 6.2 kilometers (3.8 miles) southeast of the community. The coordinates are North Latitude 20-48-23 and West Longitude 156-52-01. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 2033 M Street, NW., suite 207, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-45, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division Mass Media Bureau.

[FR Doc. 91-5171 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-46, RM-7604]

Radio Broadcasting Services; Mount Sterling, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Brown County Broadcasting proposing the allotment of Channel 294B1 at Mount Sterling, Illinois, as the community's first local FM channel. Channel 294B1 can be allotted to Mount Sterling in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.4 kilometers (8.9 miles) southwest of the community, in order to avoid short-spacings to a construction permit for Station WKBQ(FM), Channel 293C1, Granite City, Illinois, and the licensed site of Station WSWT(FM), Channel 295B, Peoria, Illinois. The coordinates for this proposed allotment are North Latitude 39-57-22 and West Longitude 90-55-11.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary S. Smithwick, Smithwick & Belendiuk, P.C., 2033 M Street, NW., suite 207, Washington, DC 20036 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-46, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5172 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-42, RM-7618]

Radio Broadcasting Services; Eldon, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Rivertown Communications Company seeking the allotment of Channel 282C3 to Eldon, Iowa, as the community's first local FM service. Channel 282C3 can be allotted to Eldon in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) south to avoid a short-spacing to Station KTOF, Channel 283C1, Cedar Rapids, Iowa. The coordinates for Channel 282C3 at Eldon are North Latitude 40-51-15 and West Longitude 92-15-15.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David W. Brown, Rivertown Communications Company, P.O. Box 65, Eldon, Iowa 52554 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-42, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5173 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-43, RM-7607]

Radio Broadcasting Services; New Madrid and Portageville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by New Madrid Broadcasting Company, licensee of Station KMIS-FM, Channel 292A, Portageville, Missouri, proposing the substitution of Channel 293C2 for 292A and change of community of license for its channel at Portageville to New Madrid, Missouri, and modification of its license for Station KMIS-FM to specify Channel 293C2 at New Madrid. Coordinates for Channel 293C2 at New Madrid are the same as KMIS-FM's current transmitter site, 36-25-30 and 89-41-39.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

John J. McVeigh, Francisco R. Montero, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW. suite 800, Washington, DC 20037 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-43, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5174 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-44; RM-7619]

Radio Broadcasting Services; Warrenton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kaspar Broadcasting Company of Missouri proposing the substitution of Channel 260C3 for Channel 260A at Warrenton, Missouri, and modification of the construction permit for Station KFAV(FM). The coordinates for Channel 260C3 are 38-54-00 and 91-08-00. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 700 Thirteenth Street, NW., suite 700, Washington, DC 20005-3960 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-44, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Bureau (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5175 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-41, RM-7227]

Radio Broadcasting Services; Ridgeland and Lady's Island, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Mattox-Guest of South Carolina, Inc., licensee of Station WSHG, seeking the substitution of Channel 285C3 for Channel 285A and the modification of Station WSHG's license to specify Lady's Island as its community of license. Petitioner is requested to provide further information to demonstrate that Lady's Island is a community for allotment purposes and to address the fact that Ridgeland's sole remaining station, WCOG(AM), is presently off the air. Channel 285C3 can be allotted to Lady's Island in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.1 miles) southeast to avoid a short-spacing to Station WHCG, Channel 286A, Metter, Georgia. The coordinates for Channel 285C3 at Lady's Island are North Latitude 32-23-57 and West Longitude 80-32-03.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel, as follows: Howard J. Barr, Esq., Pepper & Corazzini, 200 Montgomery Building, 1776 K Street NW., Washington, DC 20006 (Counsel to Mattox-Guest).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-41, adopted February 19, 1991, and released February 28, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1712 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5176 Filed 3-4-91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 55 (Sub-No. 65)]

Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission Is a Party

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed policy concerning use of Administrative Dispute Resolution procedures (ADR), including Negotiated Rulemaking (Reg-neg), and request for comments.

SUMMARY: The Commission proposes a policy statement to implement two important and recently enacted amendments to the Administrative Procedure Act. These are the Administrative Dispute Resolution Act (ADR), Public Law 101-552, and the Negotiated Rulemaking Act (Reg-neg), Public Law 101-648. Both of these acts authorize and encourage administrative agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution.

Section 3(a) of ADR requires the Commission to adopt a policy statement as to how it intends to implement that statute in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing and revoking licenses or permits; (e) contract administration; (f) litigation brought by or against the agency; and (g) other agency actions. The Commission is seeking comments at this time so that the affected public may be involved in the development of procedures to implement both ADR and Reg-neg at the outset.

In connection with this effort, the Commission also intends to apply the General Services Administration (GSA) rules for implementing the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. app. 1. Those rules may be reviewed at 41 CFR part 101-6.

DATES: Comments are due by April 19, 1991.

ADDRESSES: Send an original and 10 copies of all comments to:

BEST COPY AVAILABLE

Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 55 (Sub-No. 83), Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Louis Mackall, (202) 275-7602 [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: In response to the enactment of the ADR and Reg-neg legislation, the Commission proposes to commence the process leading to a general policy to encourage the use of alternative dispute resolution procedures whenever the parties agree to them and it is practical to do so in light of its statutory mandate. These consensual, informal procedures include mediation, settlement negotiation, arbitration, and negotiated rulemaking.

The scope of these two new enactments, ADR and Reg-neg, is broad. Section 3(2) of ADR specifically requires the Commission to examine alternative means of resolving disputes concerning: (a) formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing and revoking licenses or permits; (e) contract administration; (f) litigation brought by or against the agency; and (g) other agency actions.

In enacting ADR, Congress plainly indicated that administrative proceedings have become too formal and lengthy and that alternative procedures may in some instances be faster, less contentious, and more efficient. Of course, ADR procedures are not appropriate in every case. New section 5 U.S.C. 562(b) sets forth situations in which the agency should consider not using ADR. These include precedent setting cases, those where a formal record is essential, and those bearing on significant policy questions. Within the limitations described in the statute, the Commission plans to explore extensive use of ADR. The Commission is also considering whether particular amendments to its rules of practice are required in order to implement ADR.

The Congressional purpose in the Reg-neg statute is similar to that behind ADR. Congress was concerned that traditional rulemaking procedures may discourage affected parties from meeting and communicating with each other. The result is that the parties assume extreme conflicting positions which often results in costly and time-consuming litigation. Reg-neg is intended as an alternative process to allow the agency to form committees for the development of consensus positions concerning controversial regulations and policies.

Under Reg-neg, the agency participates as a member of the negotiating group; it does not control the procedures or the result. But an agency participant may serve as a liaison with the agency to advise the group if any particular option being discussed is believed to be beyond the agency's authority or unacceptable for some other reason. Skilled neutral mediators organize the process and help it run smoothly. They chair the negotiations, and use their experience to assist the parties in building a consensus.

The statute establishes several criteria for the use of Reg-neg including: (1) There are a limited number of identifiable interests; (2) these can be adequately represented; (3) the parties are willing to negotiate in good faith; (4) the agency has the resources to undertake the process; and (5) the agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible.

Reg-neg provides that the agency establish and administer such committees under the procedures of the Federal Advisory Committee Act (FACA). The Commission proposes to apply GSA's rules concerning implementation of FACA for this purpose.

We think that Reg-neg techniques, using as they do skilled mediators, have great promise for Commission use in resolving longstanding and intransigent controversies. Congress has urged us to use this process in section 3 of the Reg-neg Act, and we intend to do so. We will develop our policy with full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by section 3a of the ADR Act.

To this end, the Commission has already designated an ADR Specialist to serve as liaison with those agencies and as coordinator of the Commission's ADR implementation. In addition, an ADR Management Committee has been established consisting of representatives of all affected bureaus and offices to facilitate implementation of the Commission's ADR program and to identify areas or proceedings that might be amendable to ADR or Reg-neg handling. Further notice of and opportunity to comment on any area or proceeding recommended for handling under either of these processes will be provided. Suggestions, with a short explanation as why a particular area or proceeding appears to be appropriate for handling under either ADR (for adjudications) or Reg-neg (for rulemaking) are being solicited from the public at this time and will be considered by the ADR Management Committee.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Decided: February 26, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5149 Filed 3-4-91; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McKenzie Timber Sale(s); Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed McKenzie Timber Sale located on the Beckwourth Ranger District, Plumas National Forest, Plumas and Sierra Counties California. The McKenzie Timber Sale is approximately 3 air miles south of the town of Clio, California in T.21N., R.13E. and T.21N., R.12E. Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. One public meeting is planned for March 13, 1991 at 6:30 pm to receive initial comments. The meeting will be held at the Graeagle Fire Station Community Hall on Highway 89 in Graeagle California. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in December 1991 and the Final Environmental Impact Statement (FEIS) will be available for review in June 1992.

DATES: Comments concerning the scope of analysis should be received in writing by June 15, 1991.

ADDRESSES: Submit written comments to Robert R. Hammond, District Ranger, PO Box 7, Blairsden, CA 96103.

FOR FURTHER INFORMATION CONTACT: Michael Martini, Project Leader, phone 916-836-2575.

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area located within Management Area 39, Haskell. The Management Prescriptions that apply within the project area include; (1) Spotted Owl Management Prescription, and (2) Visual Partial Retention Prescription. Harvest activities are proposed within each prescription type and will be guided by the Forest Plan. The proposed action would use a variety of logging systems to harvest approximately 12 million board feet of timber. A range of alternatives for this project will be considered, based on the issues and concerns identified during the scoping process, one of which would be a no action alternative (1).

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis has been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the Haskell Management Area to participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by June 1992. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: February 7, 1991.
Mary J. Coulombe,
Forest Supervisor.
[FR Doc. 91-5068 Filed 3-4-91; 8:45 am]
BILLING CODE 3410-11-M

West Slope Timber Sale(s); Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed West Slope Timber Sale(s) located on the Beckwourth Ranger District, Plumas National Forest, Plumas County, California. The West Slope Timber Sale(s) is approximately 6 air miles west of the town of Blairsden, California in T. 22N., R.11 E., Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. One public meeting is planned for March 6, 1991 at 6:30 p.m. to receive initial comment. The meeting will be held at the Graeagle Fire Station Community Hall on Highway 89 in Graeagle, California. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in March 1992 and the Final Environmental Impact Statement (FEIS) will be available for review in August 1992.

DATES: Comments concerning the scope of analysis should be received in writing by September 30, 1991.

ADDRESSES: Submit written comments to Robert R. Hammond, District Ranger, PO Box 7, Blairsden, CA 96103.

FOR FURTHER INFORMATION CONTACT: Terry Cross, Project Leader, phone 916-836-2575.

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area located within Management Area 33, Nelson Creek. The Forest Plan has designated the project area to be managed under the Timber Emphasis, Visual Partial Retention, Spotted Owl Habitat, and Minimal Management Prescriptions. Harvest activities are proposed within each prescription type and will be guided by Forest Plan direction. The proposed action would use a variety of logging systems to harvest approximately 10 to 15 million board feet of timber. A range of alternatives for this project will be considered, based on issues and concerns identified during the scoping process, including a no action alternative.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis has been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from Federal, State and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1992. At that time EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the Federal Register. It is very important that those interested in the management of the West Slope Timber Sale(s) participate at that time. To be most helpful, comments on the DEIS should be a specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by August 1992. In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: February 7, 1991.
Mary J. Coulombe,
Forest Supervisor.
[FR Doc. 91-5069 Filed 3-4-91; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: The U.S. GOES Data Collection System (DCS) Application.

Form Number: No form number assigned; OMB—0648-0157.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 9 respondents; 27 reporting hours; average hours per response—3 hours.

Needs and Uses: Respondents are those users sponsored by the government who desire use of the GOES DCS. NOAA needs a minimal amount of information from respondents in order to determine if the request meets the requirements as stated in the regulation 15 CFR 911(a)-(c).

Affected Public: State or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Building, Washington, DC 20503.

Dated: February 27, 1991.
Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.
[FR Doc. 91-5053 Filed 3-4-91; 8:45 am]
BILLING CODE 3510-CW-M

International Trade Administration

[A-580-601]

Certain Stainless Steel Cooking Ware From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea for the period January 1, 1989 through December 31, 1989. The review covers one manufacturer/exporter of this merchandise to the United States. We preliminarily determine the weighted-average dumping margin to be 2.02 percent. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1990, the Department of Commerce (the Department) published in the Federal Register a notice of "Opportunity to Request Administrative Review" (55 FR 2398) of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2139; January 20, 1987). On January 31, 1990, the petitioner, the Fair Trade Committee of the Cookware Manufacturers Association, requested an administrative review of Namil Ltd., a manufacturer/exporter, for the period January 1, 1989 through December 31, 1989. We initiated the review on February 28, 1990 (55 FR 7015). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This is the first administrative review conducted since the original investigation.

Scope of Review

Imports covered by this review are shipments of certain Korean stainless steel cooking ware. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.00. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope are stainless steel kitchen ware. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise to the United States, Namil Ltd., and the period January 1, 1989 through December 31, 1989.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the the Tariff Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on the packed, f.o.b. and c.i.f. price to unrelated purchasers in the United States. We made deductions where applicable, for handling, foreign inland freight, ocean freight, marine insurance, and associated export documentation expenses, as well as an addition to U.S. price for duty drawback.

Foreign Market Value

In calculating foreign market value, the Department used third country sales and constructed value, as provided for in section 773 of the Act, because insufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The Department used third country price in calculating foreign market value when sufficient quantities of such or similar merchandise were sold at or above the cost of production in third country market. Third country price was based on the f.o.b., c.i.f. and c&f price to unrelated purchasers in the third country. Where applicable we made adjustments for foreign inland freight, brokerage and handling, ocean freight, marine insurance, associated export documentation expenses, physical differences in the merchandise, duty drawback, and differences in credit and packing between the third country and U.S. markets. We used constructed value for Namil's third country models for which there were insufficient sales at or above the cost of production. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit and U.S. packing. In accordance with section 773(e)(1)(B), we used the statutory minima of 10 and 8 percent for general expenses and profits, respectively, because the actual amounts were less than the statutory minima.

At verification, Namil provided supporting data for the cost of materials but was unable to provide supporting data for the standard costs used in allocating the labor and factory overhead portions of the cost of production attributable to the subject merchandise. All other product-specific costs as well as the aggregate cost of production were verified. Because the company produces only the subject merchandise, the cost of materials were accurately derived, and the aggregate cost of production was traced to the company's financial statement, we consider Namil's allocation of the labor and factory overhead to be reasonable and not distortive. We used the cost of manufacturing information submitted in the response to determine which sales were above cost and the constructed value of sales below cost. Adjustments

were made to the submitted selling, general and administrative expenses in order to remove items of non-operating income and expenses unrelated to production of the subject merchandise.

Preliminary Results of Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the weighted-average margin to be:

Manufacturer/exporter	Time period	Margin (percent)
NAMIL LTD.	1/01/89-12/31/89	2.82

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin will be required for Namil Ltd. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the latest rate applicable to each of these firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments of certain stainless steel cooking ware occurred after December 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 2.82 percent shall be required. These deposit requirements are effective for all shipments of certain Korean stainless steel cooking ware entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 26, 1991.

Eric I. Garfinkel

Assistant Secretary for Import Administration.

[FR Doc. 91-5053 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-601]

Initiation of Countervailing Duty Administrative Review and Request for Termination of Suspended Investigation on Miniature Carnations From Colombia

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of countervailing duty administration review and request for termination of suspended investigation.

SUMMARY: The Department of Commerce has received a request to terminate the suspended investigation on miniature carnations. In accordance with the Commerce Regulations, we are initiating an administrative review.

EFFECTIVE DATE: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received a timely request, in accordance with §§ 355.25(a)(1) and 355.25(b)(1) of the Department's regulations (19 CFR 355.25(a)(1) and 355.25(b)(1) (1989)), for termination of the suspended investigation covering miniature carnations from Colombia.

On January 31, 1991, the Government of Colombia requested termination of the miniature carnations suspended countervailing duty investigation. Sections 355.25(a)(1) and 355.25(b)(1) of the Department's regulations permit termination of a suspended investigation if the Department determines that the government of the affected country has eliminated all subsidies on the subject merchandise by abolishing for the merchandise for a period of at least three consecutive years all programs that the Secretary has found countervailable, and there is no likelihood that the government of the affected country will in the future reinstate for the merchandise those programs or substitute other countervailable programs.

The Government of Colombia has submitted in a timely fashion a certificate stating that it has eliminated all subsidies on the subject merchandise by abolishing for the merchandise for a period of at least three consecutive years all programs that the Secretary has found countervailable. Therefore, the Department will conduct an administrative review of the countervailing duty suspension agreement on miniature carnations to determine if termination is appropriate.

Initiation of Review

In accordance with § 355.25(c)(1) of the Department's regulations, we are initiating an administrative review for the countervailing duty suspension agreement covering miniature carnations from Colombia. We intend to issue the final results of this review no later than January 31, 1992.

Interested parties must submit applications for administrative protective orders in accordance with § 335.34(b) of the Department's regulations.

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 355.22(c) and 19 CFR 355.25(c).

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5048 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-501]

In-shell Pistachios from Iran; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on in-shell pistachios from Iran. Interested parties who object to this revocation must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department of Commerce (the Department) published a countervailing duty order on in-shell pistachios from Iran (51 FR 8344). The Department has not received a request to conduct an administrative review of the countervailing duty order on in-shell pistachios from Iran for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by March 31, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: February 25, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 91-5052 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-301-603]

Initiation of Countervailing Duty; Administrative Review and Request for Termination of Suspended Investigation on Roses and Other Cut Flowers From Colombia

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of countervailing duty administrative review and request for termination of suspended investigation.

SUMMARY: The Department of Commerce has received a request to terminate the suspended investigation on roses and other cut flowers. In accordance with the Commerce Regulations, we are initiating an administrative review.

EFFECTIVE DATE: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received a timely request, in accordance with §§ 355.25(a)(1) and 355.25(b)(1) of the Department's regulations (19 CFR 355.25(a)(1) and 355.25(b)(1) (1990)), for termination of the suspended investigation covering roses and other cut flowers from Colombia.

On January 31, 1991, the Government of Colombia requested termination of the roses and other cut flowers suspended countervailing duty investigation. Sections 355.25(a)(1) and 355.25(b)(1) of the Department's regulations permit termination of a suspended investigation if the Department determines that the government of the affected country has eliminated all subsidies on the subject merchandise by abolishing for the merchandise for a period of at least three consecutive years all programs that the Secretary has found countervailable, and there is no likelihood that the government of the affected country will in the future rerinstate for the merchandise those programs or substitute other countervailable programs.

The Government of Colombia has submitted in a timely fashion a certificate stating that it has eliminated all subsidies on the subject merchandise by abolishing for the merchandise for a period of at least three consecutive years all programs that the Secretary has found countervailable. Therefore, the Department will conduct an administrative review of the countervailing duty suspension agreement on roses and other cut flowers to determine if termination is appropriate.

Initiation of Review

In accordance with § 355.25(c)(1) of the Department's regulations, we are initiating an administrative review for the countervailing duty suspension agreement covering roses and other cut flowers from Colombia. We intend to issue the final results of this review no later than January 31, 1992.

Interested parties must submit applications for administrative protective orders in accordance with § 335.34(b) of the Department's regulations.

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 355.22(c) and 19 CFR 355.25(c).

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5050 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Type 409 CB Welding Quality Stainless Steel Wire Rod

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; Certain type 409 CB welding quality stainless steel wire rod.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 1,025 metric tons of certain Type 409 CB welding quality stainless steel wire rod for April-December 1991 under Article 8 of the U.S.-EC steel arrangement and Paragraph 8 of the U.S.-Japan steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 44.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply

Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain Type 409 CB welding quality stainless steel wire rod used in the automotive industry for exhaust systems. On February 28, 1991, the Secretary received an adequate petition from the Stainless Committee of the American Wire Producers Association ("AWPA"), on behalf of three companies, requesting a short-supply allowance for 1,625 metric tons of this product for April-December 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products and Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA requested short supply for this product because domestic stainless rod producers are unable or unwilling to meet AWPA members' needs, and potential foreign suppliers have no regular export licenses available for this product.

The requested material meets the following specifications:

1. *Chemistry:*

	Range	Aim
Carbon	0.06 Max	Low
Manganese	0.45–0.75 Max	0.55–0.75
Phosphorus	0.035 Max	
Sulfur	0.026 Max	
Silicon	0.45–0.75 Max	0.55–0.75
Nickel	0.50 Max	
Chromium	11.00–12.00	
Molybdenum	0.50 Max	Low
Iron	Balance	
Copper	0.25 Max	Low
Aluminum	0.10 Max	
Columbium	10XC Min./0.60 Max	
Nitrogen	Report	

Co + Ti + V = <0.50

2. *Size:* 0.218 inch (5.5mm) Diameter
3. *Size Tolerance:* ±0.008 inch (0.20mm)
4. *Condition:* Hot-rolled, annealed and pickled rod for redraw.
5. *Tensile:* 70,000 PSI Max.
6. *Reduction:* 75% Min.
7. *Inclusions:* #3 Heavy Max.
8. *Grain Size:* Aim ASTM 4 to 7.
9. *Ovality:* 0.011 inch (0.28mm) Max.
10. *Surface:*
    Individual surface imperfections: 0.006 inch (0.152mm) max.
    Cumulative surface imperfections: 0.012 inch (0.305mm) max.
11. *Metallurgical Structure:* Tensile and Reduction—Average results on 10% sample. (Minimum 2 samples).

Section 4(b)(4)(B)(ii) of the Act and Section 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exists: (1) the raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the imposition of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than March 28, 1991.

Comments: Interested parties wishing to comment upon this review must send written comments not later than March 12, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after March 12, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction.

Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-0408 or (202) 377-0159.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5286 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Committees will hold public meetings on March 5–7, 1991, at the Ramada Inn, 70 Industrial Highway, Essington, PA (telephone: 215–521–9600). The Council will begin its meeting on March 5 at 8:30 a.m., and is scheduled to adjourn on March 7 at approximately noon. The Council's Committees will begin meeting late in the morning of March 5. At the time of publication of this notice, the Council's Squid/Mackerel/Butterfish and Law Enforcement Committees were scheduled to hold meetings.

The Council will consider a possible amendment of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan. Committee reports will be presented and other fishery matters, as deemed necessary, will be discussed. The Council also may hold a closed session (not open to the public), to discuss personnel and/or national security matters.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: February 27, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5088 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will meet on March 11–15, 1991, at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, CA. Except as noted below, the meetings are open to the public.

The Council will begin its meeting on March 12 at 8 a.m. to begin formulating management options for the 1991 ocean salmon fisheries. The Council will reconvene on March 13, at 8 a.m., with a closed session (not open to the public), to discuss litigation and personnel matters. On March 13, the Council will consider an emergency request for a total salmon bycatch limit to be placed on the 1991 whiting fishery. Recent salmon stock abundance projections for 1991 reveal that certain chinook stocks are expected to be at low levels. The Council is concerned about increased effects on chinook stocks. The salmon bycatch in the 1991 Pacific whiting fishery could increase significantly in the operations by large domestic factory trawlers. Council groundfish management issues also will be discussed. On March 14 at 10 a.m., the Council will reconvene to continue the discussion of groundfish management issues. On March 15 the Council will discuss anchovy and jack mackerel management, administrative matters, and conclude after adopting 1991 salmon management options for public review.

Salmon management issues: (1) 1991 options for public review; (2) measures to protect Sacramento River winter chinook; (3) status of the Endangered Species Act review of several Columbia River salmon stocks; (4) review of stocks which have not met escapement goals for three consecutive years; (5) status report on possible issues to be addressed in the next salmon plan amendment; and (6) the schedule of public hearings on 1991 salmon management options.

Groundfish management issues: (1) Final action on a license limitation program; (2) review of the California measure prohibiting use of gillnets to harvest rockfish; (3) status report on management of the offshore processing fleet; (4) Pacific whiting allocations between shoreside and at-sea segments of the fishery in 1991 and for the long term; (5) minimum mesh size for bottom trawls; (6) black rockfish management off Washington; (7) foreign vessel permit applications for 1991; (8) revisions to the annual groundfish management cycle; (9) alternative trawl fishery management strategies; (10) desirability and feasibility of a comprehensive observer program; and (11) Council guidance on long-term sablefish management.

Anchovy management: The Council is scheduled to take final action on an optimum yield for the reduction fishery, after reviewing U.S. Fish and Wildlife Service information on impacts on the endangered California brown pelican.

The Council also will determine the need for a jack mackerel fishery management plan.

The Council will accept public comments on issues not on its agenda on March 13, at 4 p.m.

The *Scientific and Statistical Committee* will meet on March 11 at 9 a.m., to address scientific issues on the Council's agenda, and will reconvene on March 12 at 8 a.m.

The *Salmon Advisory Subpanel* will meet on March 11 at 8 a.m., to address salmon fishery maangement issues on the Council's agenda, and will reconvene on March 12–15 at 8 a.m., or as necessary, to complete its agenda.

The *Salmon Technical Team* will meet as necessary on March 11–15 to assist the Salmon Advisory Subpanel, and to prepare impact analyses for managemnt options.

The *Ad Hoc Trawl Group* will meet on March 11 at 1 p.m., to begin discussing alternative trawl management measures.

The *Groundfish Advisory Subpanel* will meet on March 11 at 3 p.m., to discuss groundfish management items on the Council's agenda, and will reconvene on March 12 at 8 a.m.

The *Foreign Fishing Committee* will meet on March 14 at 8 a.m., to review foreign vessel permit applications.

Detailed agendas for the above meetings will be available to the public after February 28, 1991. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW., First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 27, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5089 Filed 3-4-91; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Collection of Information About Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through May 31, 1994, of a collection of information about product-related injuries.

Section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from accidents involving consumer products. The Commission uses this information to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved in or who have witnessed accidents associated with consumer products are an important source of information about deaths, injuries, and illnesses resulting from such accidents. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face interviews with accident victims or witnesses, or telephone interviews with those persons.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Follow-Up Activities for Product-Related Injuries.

Type of request: Extension of approval.

Frequency of collection: One time for each respondent.

General description of respondents: Persons who have been involved in, or who have witnessed, accidents.

Estimated number of respondents: 2,200 to be interviewed by telephone; 700 to be interviewed at the accident site.

Estimated average number of hours per respondent: 0.34 for each telephone interview; 5.0 for each on-site interview.

Estimated number of hours for all respondents: 4,248.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and

Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: February 27, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-5144 Filed 3-4-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Defense Science Board/Defense Policy Board Task Force on Chemical Weapons Policy; Meeting

SUMMARY: Notice of advisory committee meeting.

ACTION: The Joint Defense Science Board Task Force on Chemical Weapons Policy will meet in closed session on 25 March, 1991, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will evaluate chemical weapons policy and technology issues, including verification implications and intelligence priorities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1988), and that accordingly this meeting will be closed to the public.

Dated: February 25, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5134 Filed 3-4-91; 8:45 am]

BILLING CODE 3810-01-M

The Joint Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Meeting

AGENCY: Joint Strategic Target Planning Staff, Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Director of Strategic Target Planning has scheduled a meeting of the Scientific Advisory Group.

DATES: The meeting will be held on 4-5 April 1991.

ADDRESSES: The meeting will be held at Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. App II Para 10(d) (1976), as amended.

Dated: February 27, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-5125 Filed 3-4-91; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; Deletion and Amendment of Record System Notices

AGENCY: Office of the Secretary of Defense (OSD), DOD.

ACTION: Deletion and amendment of record systems notices.

SUMMARY: The Office of the Secretary of Defense proposes to delete four and amend thirteen record system notices to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The amendments consist of changing the system identification numbers to coincide with administrative office designation changes.

DATES: The proposed actions will be effective without further notice on April 4, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155. Telephone (703) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the Federal Register as follows:

50 FR 22202, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47057, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 17505, May 13, 1986
51 FR 44858, Dec. 12, 1986
52 FR 23336, Jun. 19, 1987
53 FR 15866, May 4, 1988
53 FR 27804, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17655, Apr. 26, 1989
55 FR 20189, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49485, Nov. 28, 1990

The amended systems are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems being amended are provided below.

Dated: February 27, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

System identification and name:

DMRA&L 03.0, Employer Support File (PLEDGE) (50 FR 22293, May 29, 1985).

Reason:

System is no longer required.

System identification and name:

DMRA&L 10.0, Equal Opportunity Complaint File (50 FR 22296, May 29, 1985).

Reason:

System is covered by EEOC Gov't 1, Equal Employment Opportunity Complaint Records and Appeal Records

System identification and name:

DMRA&L 19.0, Automated Career Management System (ACMS) (50 FR 22297, May 29, 1985).

Reason:

System is no longer required.

System identification and name:

JOJCS005CRIS, Command Resources Information System (CRIS) (51 FR 23573, June 30, 1986).

Reason:

System is no longer required.

AMENDMENTS

System identification and name:

From: DMRA&L 01.0, Teacher Correspondence Files to: DODDS 01.0, Teacher Correspondence Files.

System identification and name:

From: DMRA&L 02.0, Educator Application Files to: DODDS 02.0, Educator Application Files.

System identification and name:

From: DMRA&L 17.0, DoD Teacher Back Pay Project to: DODDS 17.0, DoD Teacher Back Pay Project.

System identification and name:

From: DMRA&L 21.0, DoDDS Grievance Records to: DODDS 21.0, DoDDS Grievance Records.

System identification and name:

From: DMRA&L 22.0, DoDDS Children's School Program Files to: DODDS 22.0, DoDDS Children's School Program Files.

System identification and name:

From: DMRA&L 23.0, Educator Certification/Recertification Files to: DODDS 23.0, Educator Certification/Recertification Files.

System identification and name:

From: DUSDRE 02, ODDR&E Personnel Administration Files to: DUSDA 02.0, DUSD(A) Personnel Administration Files.

System identification and name:

From: DUSDRE 04.0, Requests for Two-Year Foreign Residence Waiver Files to: DUSDA 04.0, Requests for Two-Year Foreign Residence Waiver Files.

System identification and name:

From: DMRA&L 06.0, DoD Priority Placement Program (STOPPER LIST) to: DFM&P 06.0, DoD Priority Placement Program (STOPPER LIST).

System identification and name:

From: DMRA&L 07.0, DoD Overseas Employment Program to: DFM&P 07.0, DoD Overseas Employment Program.

System identification and name:

From: DMRA&L 09.0, Defense Equal Opportunity Management Institute to: DFM&P 09.0, Defense Equal Opportunity Management Institute.

System identification and name:

From: DMRA&L 15.0, Reports of Defense-Related Employment to: DGC 15.0, Report of Defense-Related Employment.

System identification and name:

From: DMI&L 24.0, Joint Service Review Activity File to: DFM&P 24.0, Joint Service Review Activity File.

[FR Doc. 91-5126 Filed 3-4-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board Technology Strategy Cross-Matrix Panel will meet on 22 March 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

The purpose of this meeting is to review the task and develop a roadmap for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-5115 Filed 3-4-91; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the California Department of Water Resources Los Banos Grandes Facilities on Los Banos Creek in Merced County, CA

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DoD.

ACTION: Notice of intent.

SUMMARY: The California Department of Water Resources has applied for a Department of the Army permit to discharge fill materials under section 404 in to Los Banos Creek and its tributaries in Merced County, California. The proposed project would create an off stream storage reservoir with a storage capacity between 1.73 millio acre-feet (MAF) and 2.03 MAF. The reservoir would provide off stream storage of water exported from the Sacramento-San Joaqin Delta. The larger capacity reservoir would also include a State Water Project/Electric Utility facility. Principal features of the proposed project include: A main dam, three saddle dams, a pumping/generating plant with inlet/outlet works at the base if the main dam, an emergency spillway, and a conveyance channel connecting the existing Los Banos Reservoir with the new pumping/generating plant. Modifications of the Los Banos Detention Dam spillway would also be required, along with construction of a pumping/generating plant, penstock and inlet/outlet works.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Jean Elder, Corps of Engineers, Regulatory Section, 650 Capitol Mall, Sacramento, California 95814, (916) 551-2270.

The Bureau of Reclamation (BOR) filed a notice of intent to prepare a joint environmental impact statement/environmental impact report for the Los Banos Grandes Offstream Storage Project pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The notice was published in the Federal Register, Vol. 52, No. 175, Thursday, September 10, 1987, with the California Department of Water Resources, project proponent as lead agency under CEQA and the BOR Federal lead agency under NEPA. However, the Bureau is no longer a project participant and the Corps of Engineers, as a Federal permitting agency, has assumed the Federal lead agency responsibilities under NEPA. The Corps is neither a project proponent nor a project opponent.

The DWR has prepared a Department of Water Resources Los Banos Grandes Facilities Draft Environmental Impact Report, December 1990 based upon the comments received during the scoping of the project. The EIR identifies three combinations of reservoir sites as alternatives to the applicant's proposed activities. However, the applicant states that there is only one practicable alternative. The DEIR was circulated to the public for review and comment with a transmittal letter dated December 21, 1990. The end of comment period is March 31, 1991. The Corps of Engineers will issue a public notice of application for a Department of the Army permit with a comment period concurrent with that of DWR, ending March 31, 1991. The DWR has scheduled the following two public hearings concerning the project: (1) February 26, 1991, 1 p.m., Resources Building Auditorium, 1416 Ninth Street, Sacramento, California 95814; and (2) February 28, 1991 at 7 p.m., City Hall

BEST COPY AVAILABLE

Council Chambers, 520 J Street, Los Banos, California 93635.

The Corps of Engineers will not make a decision to issue, to issue with conditions, or to deny a permit for the proposed activities until a final EIS has been prepared and circulated to the public for review and comment, concluding the NEPA process. Consultation under section 106 of the Historic Preservation Act and under section 7 of the Endangered Species Act must also be concluded before a Department of the Army permit decision is made.

All interested parties are requested to review the DEIR prepared by DWR and to provide comments to the Corps of Engineers. Comments will be used by the Corps to make a decision whether to adopt the DEIR as a DEIS, to issue a revised DEIS, or to issue a supplemental DEIS. Copies of the DEIR may be obtained by contacting Jean Elder, Corps of Engineers, Sacramento, District, 650 Capitol Mall, Sacramento, California 95814, or by telephone at (916) 551-2270.

John O. Roach II

Army Liaison Officer with the Federal Register.

[FR Doc. 91-5082 Filed 3-4-91; 8:45 am]

BILLING CODE 3710-GN-M

Corps of Engineers; Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (EIS), Supplement II to the Draft Environmental Impact Statement Upper Saginaw River Diked Disposal Facility at Crow Island State Game Area, Saginaw and Bay Counties, Michigan

AGENCY: U.S. Army Corps of engineers, DOD.

ACTION: Notice of intent.

SUMMARY: A confined disposal facility (CDF) project is proposed for placement of backlog and maintenance materials to be dredged from the Saginaw River Navigation Project, Saginaw and Bay Counties, Michigan. Sediments in the Federal project area of the river contain contaminants and must be contained. The Detroit District has completed the preliminary site selection for a location to construct the CDF. Proposed disposal sites are located in Bay County, Michigan. The Crow Island State Game Area is no longer a disposal site alternative. Dikes would be constructed of impervious clay, and after use of the diked facility is ended, the CDF would be capped with clay.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Supplement II DEIS can be answered by: Mr. Thomas M. Freitag, U.S. Army Engineer District, Detroit, Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48231-1027, Commercial telephone number: 313-226-6753, FTS telephone number: 226-6753.

SUPPLEMENTARY INFORMATION: This work is proposed under section 123 of the River and Harbor Act of 1970 (Pub. L. 96-611). Plans for a CDF were outlined in a draft Environmental Impact Statement (EIS) dated November 1984 (Notice of availability; FR 49 (232), dated November 30, 1984), and later in a draft Supplement I EIS dated June 1986 (Notice of Availability, FR 51 (128); dated July 3, 1986).

Twenty-nine sites have been evaluated since the 1986 Supplement I (DEIS). Selection criteria included: suitability of material (impervious clay), nearness to the dredging, and others. Six sites were judged to be feasible. Further review is needed before a final site selection can be made. These sites are:

a. Cheboyganing Creek Combined Site; (combines sites D, H, I, and 40 acres additional); (sections 15 and 16, Portsmouth Township). Three dike configurations are presently proposed.

b. Site C is a 90 acre site on the south side of Schuerman Road about two miles east of the Saginaw River, in section 14, Portsmouth Township.

c. Site D is a 140 acre site, adjecent to east bank of Cheboygaming Creek in section 15, Portsmouth Township.

d. Site G is a 167 acre site, east of James Clements Municipal Airport between Chesapeake and Ohio Railroad tracks and Lincoln Road in section 9, Portsmouth Township.

e. Site H is a 60 acre site, adjacent to the Saginaw River at the mouth of Cheboygaming Creek in section 16, Portsmouth Township.

f. Site I is a 70 acre site, along Russell Road and south in sections 15 and 16, Portsmouth Township.

These alternatives are being further evaluated. The specific site and CDF configuration have not been determined.

If the no action alternative were considered, a CDF would not be constructed, and dredging of the Upper Saginaw River would cease. This alternative is not considered feasible, since the navigation project area would eventually shoal to a depth that would not allow ship traffic to enter the river.

The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of National Environmental Policy Act do not require scoping for supplemental DEISes. Since the first Supplement (1986), the Corps of Engineers has had continuing coordination with various State and Federal Agencies and environmental groups including: the U.S. Department of Interior, Fish and Wildlife Service, the Michigan Department of Natural Resources, the U.S. Environmental Protection Agency, and local government agencies in the project area.

Significant issues. The presence of polychlorinated biphenyls (PCBs) and dioxins in the sediments has necessitated the design of a diked facility. PCBs and dioxins are contaminants which strongly associate with silt and clay particles. The diked retention areas of the facility would be constructed to minimize return of these suspended sediments (solids) to the river and maximize retention of materials in the CDF. Once the facility is filled, impervious clay would be placed over the dredged material to seal it from the environment.

The proposed action will be reviewed for compliance with the following: Archeological and Historic Preservation Act, as amended, 16 U.S.C. 469, *et seq.*; Clean Air Act, as amended, 42 U.S.C. 1857h-7, *et seq.*; Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*; Endangered Species Act, as amended, 16 U.S.C. 1531, *et seq.*; Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661, *et seq.*; Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401, *et seq.*; National Historic Preservation Act, as amended, 16 U.S.C. 470a, *et seq.*; National Environmental Policy Act, as amended, 42 U.S.C. 4321, *et seq.*; and Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271, *et seq.* The proposed action will also be reviewed for compliance with Executive Orders and Memoranda: Flood Plain Management (E.O. 11988); Protection of Wetlands (E.O. 11990); Analysis of Impacts on Prime and Unique Farmlands (CEQ Memorandum, 11 Aug 1980); and Intergovernmental Review of Federal Programs (E.O. 12372). Also, environmental regulations of the Corps of Engineers would be considered including: 33 CFR part 230, Corps of Engineers Department of the Army: Policy and Procedures for Implementing NEPA (ER 200-2-2).

All are invited to participate in the proposed project review including affected Federal, State and local agencies, affected Indian tribes, and other interested private organizations and parties. Coordination with Federal, State and local agencies has been and will continue to be maintained through a series of meetings and mailings. During the DEIS public comment period, a public hearing will be scheduled, if necessary. It is anticipated that the draft Supplement will be available to the public in September 1991.

Richard Kanda,

Colonel, U.S. Army District Engineer.

[FR Doc. 91-5116 Filed 3-4-91; 8:45 am]

BILLING CODE 3710-GA-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 4, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: February 27, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of review: Extension
Title: Guaranteed Student Loan Tape Dump
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting burden:
Responses: 72
Burden hours: 4158
Recordkeeping burden:
Recordkeepers: 0
Burden hours: 0
Abstract: This information is collected to describe the characteristics of borrowers under the Guaranteed Student Loan (GSL) Program and to monitor borrower fraud and abuse in the programs. The Department uses this information to report to Congress.

Office of Postsecondary Education

Type of review: Reinstatement.
Title: Petition for Recognition of Accrediting Agencies
Frequency: Every five years
Affected Public:
Reporting burden:
Responses: Burden hours:
Recordkeeping burden:
Recordkeepers: 98
Burden hours: 98
Abstract: Accrediting agencies must submit this information to enable the Department to determine which applicant accrediting agencies are reliable authorities concerning the quality of education or training offered by the postsecondary educational institutions or programs within the agencies scope of operation.

[FR Doc. 91-5095 Filed 3-4-91; 8:45 am]

BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by February 28, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission of these requests to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, the information collection request is also included as an attachment to this notice.

Dated: February 27, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of review: Emergency.

Title: Criteria for Establishing State Nominating Committees under the National Science Scholars Program.

Abstract: These criteria will be used by States to establish Nominating Committees to qualify students for scholarships under the National Science Scholars Program.

Additional information: An emergency clearance is requested for the recently enacted Public Law 101–589, the Excellence in Mathematics, Science and Engineering Education Act, which was signed by the President on November 16, 1990. Under this law, the President will select scholars from the nominations made by State nominating committees. The Department of Education has developed guidance to the States regarding the composition of their nominating committees. In order for ED to make awards in FY 1991, the States must submit a list of the proposed members of their nominating committees and secure Department of Education approval for those committees.

An emergency approval will allow time for the States to establish the necessary committees, secure ED approval and announce State scholarship competitions in time to make awards before the next school year.

Frequency: One time only

Affected public: State or local Governments

Reporting burden:
Responses: 56
Burden hours: 672

Recordkeeping burden:
Recordkeepers: 0
Burden hours: 0

[FR Doc. 91–5026 Filed 3–4–91; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

[CFDA No. 84.132]

Centers for Independent Living (CIL), New Awards for Fiscal Year 1991

ACTION: Cancellation notice.

On September 17, 1990, the Secretary published in the Federal Register (55 FR 38128) an announcement of a competition for new awards for Centers for Independent Living. The purpose of the competition was to provide grants for the establishment and operation of Centers for Independent Living that provide a combination of the independent living services described in section 771(c) of the Rehabilitation Act of 1973, as amended. Subsequently, Congress enacted the Department of Education Appropriations Act, 1991, which provides "That, until October 1, 1991, the funds appropriated to carry out section 711 of the Rehabilitation Act of 1973 (29 U.S.C. 796e) shall be used to support entities currently receiving grants under the section." Therefore, the previously announced fiscal year 1991 competition has been cancelled.

Continuation application packages are being sent to the current Title VII, Part B grantees. The closing date for the continuation applications in March 11, 1991, and awards are expected to be made by the end of July 1991.

FOR FURTHER INFORMATION CONTACT: Victor Galloway, Independent Living Branch, Rehabilitation Services Administration, 330 C Street, SW., room 3316, Washington, DC 20202–2741. Telephone: (202) 732–1408 (Voice) or (202) 732–1352 (TDD).

Dated: February 26, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–5027 Filed 3–4–91; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.221]

Native Hawaiian Special Education Program; Invitations for Applications for New Awards for Fiscal Year 1991

Purpose of program: To support projects that address the special education needs of Native Hawaiian students. This program is authorized by section 4007 of Public Law 100–297 (April 28, 1988).

Eligible applicants: The State of Hawaii and Native Hawaiian organizations are eligible to apply for grants under this program.

Deadline for transmittal of applications: May 1, 1991.

Deadline for intergovernmental review: July 1, 1991.

Applications available: March 8, 1991.

Available funds: $584,000.

Project period: up to 12 months.

Estimated number of awards: 1.

Note: The Department is not bound by any estimates in this notice.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 85 and 86.

Weighting for selection criteria: The Education Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation: (§ 75.210(b)(3)). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Quality of key personnel: (§ 75.210(b)(4)). Three (3) additional points will be added for a possible total of 10 points for this criterion.

Adequacy of resources: (§ 75.210(b)(7)). Two (2) additional points will be added for a possible total of 5 points for this criterion.

FOR APPLICATIONS OR FURTHER INFORMATION CONTACT: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., [Switzer Building, room 3524–MS 2640] Washington, DC 20202. Telephone: Linda Glidewell (202) 732–1099; TDD (202) 732–6153.

Authority: 20 U.S.C. 4007 and 4009.

Dated: February 28, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–5066 Filed 3–4–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Oak Ridge Operations; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to issue on a noncompetitive basis a renewal to Dawnbreaker, Rochester, New York, to continue providing training, through individual instruction, to recipients of SBIR (Small Business Innovative Research Program) Phase II awards. The period of performance for the renewal will be one year. The estimated cost is $108,000.

PROCUREMENT REQUEST NO.: 05–91ER80669.001.

PROJECT SCOPE: This grant was awarded September 15, 1988, in response to DOE Program Solicitation No. DE–PS05–88ER80669. The grantee will continue to provide training to recipients of SBIR Phase II awards and will select a larger number of SBIR companies for training than was used in the initial grant. Assistance will be provided in preparing business plans and business opportunity presentations, and in presenting these materials to potential sponsors in a Commercialization Opportunity Forum. The objective is to have companies trained and to provide each of them with contacts of prospective value. A secondary objective is to have these same companies well enough prepared so they can pursue cooperative and other financial agreements with parties outside of the Forum. Dawnbreaker has developed an exclusive capability to perform the requisite training, both through its prior experience and through the training methods and tools developed under the initial grant. Also, the rights to intellectual property developed under this project pass to Dawnbreaker under the regulations which apply to small businesses. Eligibility for renewal of this award is, therefore, restricted to Dawnbreaker.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, SBIR Program Manager, U.S. Department of Energy, Office of Energy Research, ER–16, Washington, DC 20585, (301) 233–2917.

Issued in Oak Ridge, Tennessee, on February 25, 1991.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 91–5163 Filed 3–4–91; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL ENERGY REGULATORY COMMISSION

[Docket Nos. QF91–81–000 et al.]

J.D. Turner, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. J.D. Turner

[Docket No. QF91–81–000]

February 22, 1991.

On February 15, 1991, J.D. Turner of 1003 S. St. James Blvd., Evansville, Indiana 47714, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Gibson County, Indiana and will consist of a reciprocating engine generator set. The electric power production capacity will be 750 kW. The primary energy source will be waste in the form of methane gas extracted from an abandoned coal mine. Construction of the facility is expected to commence by September 1991.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

2. N.B. Partners, Ltd., A Limited Partnership

[Docket No. QF88–412–003]

February 25, 1991.

On February 19, 1991, N.B. Partners, Ltd., A Limited Partnership of 9171 Towne Centre Drive, suite 400, San Diego, California 92122 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Grant County, West Virginia, and consists of two circulating fluidized bed boilers and an extraction/condensing steam turbine generator. In addition the facility includes an approximately 6.7 mile 115 kV transmission line. The primary energy source is bituminous coal refuse. The original certification was issued on October 28, 1988, 45 FERC ¶ 62,074. The instant recertification is requested due to an increase in the net electric power production capacity from 79.9 MW to 80.3 MW.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric Co.

[Docket No. ER85–461–013]

February 25, 1991.

Take notice that on February 19, 1991, Kansas Gas and Electric Company (KG&E) tendered for filing its compliance filing in compliance with the Commission letter order issued on January 18, 1991.

Comment date: March 11, 1991 in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Co.

[Docket No. ER91–25–000]

February 26, 1991.

Take notice that on February 21, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its October 12, 1990 submittal of a Letter of Commitment between Tampa Electric and Seminole Electric Cooperative, Inc. (Seminole). As amended the Letter of Commitment provides for the sale by Tampa Electric to Seminole of up to 200 megawatts of capacity and energy.

Tampa Electric proposes an effective date of October 13, 1990, for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on Seminole and the Florida Public Service Commission.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Missouri Public Service, a division of UtiliCorp United Inc.

[Docket No. ER91–208–000]

February 26, 1991.

Take notice that Missouri Public Service, a division of UtiliCorp United Inc. (MPS) on February 20, 1991, tendered for filing an amendment to its January 8, 1991 change in its FERC Electric Service Tariffs for wholesale firm power service to the City of Odessa located in the state of Missouri. In response to a request from FERC staff, MPS' amendment supplements its January 8, 1991 filing by providing additional support for the treatment of reserve costs. Relying on the fact that this amendment merely provides additional data, and does not change the original rate filing, MPS is also requesting a waiver of the Commission's Regulations in order to permit the contract to become effective as of the date of the original filing, January 8, 1991.

Copies of this filing were served upon the City of Odessa whose contract would be affected thereby and upon the Public Service Commission of Missouri.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER91–265–000]

February 26, 1991.

Take notice that on February 19, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for short-term, coordination transactions involving the sale of capacity entitlements to Canal Electric Company (Canal) and Boston Edison Company (Boston Edison). The sales are pursuant to agreements under which service commenced April 1, 1989 and terminated April 30, 1989. UI proposes that the rate schedules commence and terminate on those same dates and, by its February 19, 1991 filing, gives notice of termination.

The service under the agreements is the provision of capacity entitlements and associated energy and transmission from UI's Bridgeport Harbor Station Unit 3, a coal-fired generating unit.

Copies of the filing were served upon Canal and Boston Edison and on the public utility commissions in the states in which these companies serves at retail.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. The United Illuminating Co.

[Docket No. ER91-286-000]

February 26, 1991.

Take notice that on February 19, 1991, The United Illuminating Company (UI) tendered for filing a rate schedule for a one-year, coordination transaction involving the sale of capacity entitlements to New England Power Company (NEPCO). The sale is pursuant to an agreement under which service commenced November 2, 1988 and terminated October 31, 1989. UI proposes that the rate schedule commence and terminate on those same dates and, by its February 19, 1991 filing, gives notice of termination.

The service under the agreement is the provision of capacity entitlements and associated energy and transmission from UI's portion of Millstone Unit 3, a nuclear generating unit, and from UI's Bridgeport Harbor Station Unit 3, a coal-fired generating unit.

Copies of the filing were served upon NEPCO and on the public utility commissions in the states in which NEPCO serves at retail.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Gas and Electric Co.

[Docket No. ER91-282-000]

February 26, 1991.

Take notice that Kansas Gas and Electric Company on February 19, 1991, tendered for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed KPL Letter of Intent specifies the amount of transmission capacity requirements for four Delivery Points for the period June 1, 1990 through May 31, 1992.

The KPL Letter of Intent is required by the terms of the service schedule.

Copies of this filing were served upon the Kansas Power and Light Company and the Kansas Corporation Commission.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Co.

[Docket No. ER91-276-000]

February 26, 1991.

Take notice that on February 21, 1991, Southern California Edison Company (Edison) tendered for filing the Supplemental Agreement Between Southern California Edison Company the City of Anaheim for the Integration of the Anaheim Combustion Turbine which is a Supplemental agreement to Edison Rate Schedule 246.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp Electric Operations

[Docket No. ER91-271-000]

February 26, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on February 21, 1991, tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, Exhibit A (Revision No. 14, effective September 30, 1990) to the February 25, 1970 Transmission Agreement (PacifiCorp Rate schedule FPC No. 123), between PacifiCorp and Tri-State Generation and Transmission Association, Inc. (Tri-State).

Exhibit A to the Transmission Agreement is revised annually in accordance with Article 6 (b) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Tri-State desires to have transmitted to defined Points of Delivery for a four year rolling period.

PacifiCorp respectfully requests that a waiver of the prior notice requirements 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of September 30, 1990 be assigned, this date being consistent with the provisions of article 6(b) of the Transmission Agreement.

Copies of this filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp Electric Operations

[Docket No. ER91-272-000]

February 26, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp) on February 21, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Non-firm Transmission Agreement (Agreement) between PacifiCorp Electric Operations (PacifiCorp) and Idaho Power Company (Idaho) dated January 18, 1991.

Under terms of the Agreement, PacifiCorp will provide non-firm transmission services for energy transfers on PacifiCorp's transmission system between Idaho's system and PacifiCorp's points of interconnection at Four Corners switchyard and with Nevada Power Company on the Red Butte-Harry Allen line.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of January 18, 1991 be assigned to the Agreement, this date being consistent with the effective date shown on the Agreement.

Copies of this filing were supplied to Idaho Power Company, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Idaho Public Utilities Commission.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Vermont Electric Power Co., Inc.

[Docket No. ER91-268-000]

February 26, 1991.

Take notice that Vermont Electric Power Company, Inc. (VELCO) on February 20, 1991, tendered for filing proposed changes in its FERC Tariff No. 235.

The nature of the change is as follows:

One of the Purchasers (BED), under the contract that is the subject of this filing, Rate Schedule No. 234 (the Power Purchase Agreement or the PPA), has assigned a portion of its rights to power and energy from the Vermont Yankee nuclear generating station, together with associated transmission rights, to CMEEC. The assignment is made by a contract entitled, Unit Contract; in that contract, the rights assigned are referred to as the Purchaser's Entitlement. Under the Letter Agreement filed in this matter, and insofar as it relates to the PPA, VELCO has agreed: (a) To send invoices to CMEEC for all charges, costs, expenses and liabilities related to the Purchaser's Entitlement; (b) to send a copy of each such invoice to BED; (c) to deliver the Purchaser's Entitlement to or for CMEEC so long as CMEEC has made timely payment of invoices sent to it; (d) to notify BED if CMEEC does not pay any invoice when due, or if it fails to perform any other obligation under the PPA that CMEEC has agreed to perform in exchange for the assignment of the Purchaser's Entitlement; (e) to afford BED a reasonable time to make such payment or to perform such obligation before declaring a default against BED or pursuing any remedies against it; (f) except on such grounds as VELCO could otherwise object to BED's standing, not to object to CMEEC's standing to challenge rate changes or other filings with the Federal Energy Regulatory Commission affecting the Power Contract, dated February 1, 1968, between the Vermont Yankee Nuclear Power Corporation and various other parties, the Superseding Three Party Power Agreement, dated February 1, 1990 between VELCO and others, the PPA, or the Transmission Agreement, dated as of June 1, 1981 between VELCO, BED and others provided and to the extent that any such challenge is based on rights assigned to CMEEC by BED under the PPA; and (g) subject to the same proviso and qualification, not to object to CMEEC's standing to challenge any modification to the Vermont Yankee Power Contract, the Superseding Power Contract, the PPA or the Transmission Agreement.

VELCO states that the reasons for the change are as follows:

The change arises from a contract (the Unit Contract) between BED and CMEEC, pursuant to which the former agreed, with certain reservations to assign to the latter a portion of BED's rights under the PPA, together with associated transmission rights under the Transmission Agreement. Those rights, described in the Unit Contract as the Purchaser's Entitlement, consist of the right to a percentage share of BED's rights to power and energy from the Vermont Yankee nuclear generating station and associated transmission rights. The change will accommodate the assignment by providing for sending invoices to CMEEC directly, rather than through BED, by affording BED a grace period within which to avoid default if CMEEC fails to perform, and by acknowledging CMEEC's right to exercise other rights as BED's assignee.

Copies of the filing were served upon the following:

City of Burlington Electric Light Department; Connecticut Municipal Electric Energy Cooperative; Vermont Department of Public Service; Vermont Public Service Board.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Minnesota Power & Light Co.

[Docket No. ER91-273-000]

February 26, 1991.

Take notice that on February 20, 1991, Minnesota Power & Light Company ("Minnesota Power") submitted for filing an Amendment No. 1 to the Boswell 4 Operation, Ownership and Power Sales Agreement between Minnesota Power and Wisconsin Public Power Inc. System, and a correction to certain replacement capacity and energy rates previously filed in connection with the Boswell Agreement.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Vermont Electric Power Co., Inc.

[Docket No. ER91-269-000]

February 26, 1991.

Take notice that Vermont Electric Power Company, Inc. (VELCO) on February 20, 1991, tendered for filing proposed changes in its FERC Tariff No. 235.

The nature of the change is as follows:

One of the Purchasers (BED) under the contract that is the subject of this filing, Rate Schedule No. 234 (the Transmission Agreement or the TA), has assigned a portion of its rights to power and energy from the Vermont Yankee nuclear generating station, together with associated transmission rights, to CMEEC. The assignment is made by a contract entitled, Unit Contract; in that contract, the rights assigned are referred to as the Purchaser's Entitlement. Under the Letter Agreement filed in this matter, and insofar as it relates to the TA, VELCO has agreed: (a) To send invoices to CMEEC for all charges, costs, expenses and liabilities related to the Purchaser's Entitlement; (b) to send a copy of each such invoice to BED; (c) to deliver the Purchaser's Entitlement to or for CMEEC so long as CMEEC has made timely payment of invoices sent to it; (d) to notify BED if CMEEC does not pay any invoice when due, or if it fails to perform any other obligation under the TA that CMEEC has agreed to perform in exchange for the assignment of the Purchaser's Entitlement; (e) to afford BED reasonable time to make such payment or to perform such obligation before declaring a default against BED or pursuing any remedies against it; (f) except on such grounds as VELCO could otherwise object to BED's standing, not to object to CMEEC's standing to challenge rate changes or other filings with the Federal Energy Regulatory Commission affecting the Power Contract, dated February 1, 1968, between the Vermont Yankee Nuclear Power Corporation and various other parties, the Superseding Three Party Power Agreement, dated February 1, 1990 between VELCO and others, the TA, or the Power Purchase Agreement, dated as of June 1, 1981 between VELCO, BED and others provided and to the extent that any such challenge is based on rights assigned to CMEEC by BED under the TA; and (g) subject to the same proviso and qualification, not to object to CMEEC's standing to challenge any modification to the Vermont Yankee Power Contract, the Superseding Power Contract, the TA or the Power Purchase Agreement.

VELCO states that the reasons for the change are as follows:

The change arises from a contract (the Unit Contract) between BED and CMEEC, pursuant to which the former agreed, with certain reservations, to assign to the latter a portion of BED's rights under the Power Purchase Agreement, together with associated transmission rights under the TA. Those rights, described in the Unit Contract as the Purchaser's Entitlement, consist of the right to a percentage share of BED's rights to power and energy from the Vermont Yankee nuclear generating station and associated transmission rights. The change will accommodate the assignment by providing for sending invoices to CMEEC directly, rather than through BED, by affording BED a grace period within which to avoid default if CMEEC fails to perform, and by acknowledging CMEEC's right to exercise other rights as BED's assignee.

Copies of the filing were served upon the following:

City of Burlington Electric Light Department; Connecticut Municipal Electric Energy Cooperative; Vermont Department of Public Service; Vermont Public Service Board.

Comment date: March 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-5079 Filed 3-4-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP91-780-000]

Northwest Pipeline Corp.; Schedule for Public Scoping Meetings on Environmental Issues

March 1, 1991.

On February 13, 1991, the Commission issued a notice of intent to prepare a draft environmental impact statement (DEIS) and request for comments on environmental issues for the Northwest Pipeline Expansion Project (56 FR 6643) filed in Docket No. CP91-780-000. The purpose of Northwest Pipeline Corporation's (Northwest) proposed facilities is to increase its pipeline capacity by approximately 536 million cubic feet of gas per day (MMcf/d) through the construction of approximately 625.7 miles of pipeline loop, the addition of compression totaling 148,250 horsepower, and the modification of other appurtenant facilities.

Northwest has recently filed applications for two projects which are related to Northwest Pipeline Expansion Project. The first project, filed in Docket No. CP91-1129-000, involves a proposal to construct a new 13,000-horsepower compressor station (the Ignacio Mainline Compressor Station) in La Plata County, Colorado. The new station would be used to compress gas on Northwest's mainline system. In the second application, filed in Docket No. CP91-1164-000, Northwest requests authority to provide certain gas transportation services using an existing pipeline which was constructed and available for service on January 31, 1991. An Environmental Assessment was completed for this project by the Bureau of Land Management and the Bureau of Indian Affairs in July 1990. No environmental impacts would be associated with authorizing the requested transportation services.

Although the two above-referenced filings are related to the Northwest Pipeline Expansion Project they are not dependent on the facilities which are the subject of the February 13, 1991 notice. Therefore, any environmental analyses which may be required for those projects will proceed on a separate schedule. The FERC staff intends, however, to summarize the environmental impacts of the related projects in the environmental document being prepared for the Northwest Pipeline Expansion Project.

Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) hereby announces the schedule of public scoping meetings on the above-referenced docket. The meetings will be conducted to identify the scope and significance of environmental impact associated with the proposal by Northwest. The schedule for the meetings is attached.

As referenced in the Commission's February 13, 1991 notice, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC staff regarding the range of environmental issues and concerns that need to be addressed in the impact analysis. As previously stated, Federal agencies with an interest in these proposals have formal channels for input into the analysis and are expected to coordinate with the FERC and/or the Utah State Office of the Bureau of Land Management rather than through the public meeting mechanism.

Persons who would like to make oral presentations at the meetings should contact the FERC project manager identified below to have their names placed on the speakers' list. Persons on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available at the public meeting. Priority will be given to those persons representing groups.

Further information concerning the public scoping meetings or about these proposals in general is available from either of the following individuals:

Ms. Lauren H. O'Donnell, room 7312, Office of Pipeline and Producer Regulation, Environmental Compliance and Project Analysis Branch, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone (202) 208-0874

or

Mr. J. Derwin Snell, Bureau of Land Management, Utah State Office, 324 South State, #301, Salt Lake City, UT 84145, Telephone (801) 539-4162.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information, including the environmental document, published regarding the Northwest Pipeline Expansion Project will be sent automatically to the appropriate Federal agencies. However, to reduce printing and mailing costs and related logistical problems, the information will only be distributed to those organizations, state and local agencies, and individuals who return the attached appendix to this notice within 30 days. If you have previously submitted a request to receive information, you need not do so a second time.

Lois D. Cashell,
Secretary.

ATTACHMENT

SCHEDULE OF FERC PUBLIC SCOPING MEETINGS FOR THE NORTHWEST PIPELINE EXPANSION PROJECT

Date	Time	Location
Monday, Mar. 18, 1991.	7 p.m.	911 Federal Building, Auditorium, 911 Northeast 11th Street, Portland, OR, (503) 326-2197.
Tuesday, Mar. 19, 1991.	7 p.m.	U.S. Court House, Room B 40, 250 South 4th Avenue, Pocatello, ID, (208) 236-6666.
Wednesday, Mar. 20, 1991.	7 p.m.	Green River High School, Auditorium, 300 Monroe Avenue, Green River, WY, (307) 875-3404.
Thursday, Mar. 21, 1991.	7 p.m.	Bureau of Land Management, Conference Room, 765 Horizon Drive, Grand Junction, CO, (303) 243-8552.
Monday, Mar. 25, 1991.	7 p.m.	Bureau of Land Management, Conference Room, 82 East Dogwood, Moab, UT, (801) 259-6111.
Tuesday, Mar. 26, 1991.	7 p.m.	Empire Electric Association, Cahin Denton Room, 801 North Broadway, Cortez, CO, (303) 565-4444.

APPENDIX

INFORMATION REQUEST

I wish to receive subsequent published information regarding the environmental analysis being conducted for the Northwest Pipeline Expansion Project.

Name/Agency

Address

City State Zip Code

From

Atten: Ms. Lauren H. O'Donnell, Rm. 7312, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Compliance and Project Analysis Branch, 825 North Capitol Street, NE., Washington, DC 20426.

[FR Doc. 91-5080 Filed 3-4-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-1333-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket No. CP91-1333-000]

February 25, 1991.

Take notice that on February 22, 1991, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-1333-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Oil & Gas Corporation, a producer, under the blanket certificate issued in Docket No. CP86-589, et al. pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that, pursuant to an agreement dated November 1, 1990, under its Rate Schedule TI-1, it proposes to transport up to 8,300 Mcf per day of natural gas. CIG indicates that the gas would be transported from Oklahoma, and Kansas, and would be redelivered in Colorado. CIG further indicates that it would transport 6,500 Mcf on an average day and 2,300,000 Mcf annually.

CIG advises that service under § 284.223(a) commenced November 1, 1990, as reported in Docket No. ST91-5571.

Comment date: April 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Equitrans, Inc., Colorado Interstate Gas Co., and Colorado Interstate Gas Co.

[Docket Nos. CP91-1297-000 [1], CP91-1305-000 and CP91-1306-000]

February 25, 1991.

Take notice that on February 20, 1991, Applicants filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including Applicant and the Applicant's address, identity of the shipper, the date of the transportation agreement between the Applicant and the respective shipper, the contract number of the transportation service agreement, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicant's allege that they would provide the proposed service for each shipper under an executed transportation service agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket No. Trans. Agree. (Contract No.)	Applicant	Shipper name	Peak Day [1] Avg. Annual	Points of—		Start up date, Rate schedule, Service type	Related [2] dockets
				Receipt	Delivery		
CP91-1297-000 3-12-90 (ITS-99)	Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275.	O&R Energy, Inc	20,242 3,000 120,000	PA & WV	PA & WV	1-17-91 ITS Interruptible	CP86-553-000 ST91-6839-000
CP91-1305-000 11-1-90 (13139)	Colorado Interstate Gas Co., P.O. Box 1087, Colorado Springs, CO 80944.	Williams Gas Marketing Company.	20,000 Mcf 10,000 Mcf 3,650,000 Mcf	WY & KS	OK	11-16-90 TI-1 Interruptible	CP86-589-000 ST91-5574-000
CP91-1306-000 11-1-90 (13141)	Colorado Interstate Gas Co	PSI Gas Marketing Co	25,000 Mcf 25,000 Mcf 4,500,000 Mcf	KS	KS	12-1-90 TI-1 Interruptible	CP86-589-000 ST91-5932-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP Docket corresponds to Applicant's blanket transportation certificate. The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

3. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-1296-000]

February 25, 1991.

Take notice that on February 20, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-1296-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service rendered for Amerada Hess Corporation (Amerada), a producer of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that it proposes to abandon transportation service which it performed for Amerada pursuant to an agreement dated June 22, 1987, under Rate Schedule T-5. Williston Basin further states that the transportation service was authorized by the Commission in Docket No. CP85-534-000, wherein Williston Basin was authorized to transport natural gas for Amerada from the Tioga Plant in Williams County, North Dakota, to a field tap in McKenzie County, North Dakota. Williston Basin requests abandonment authorization because the service agreement was automatically terminated effective January 1, 1991, by the terms of the agreement and Amerada is now taking service under Williston Basin's existing Rate Schedule IT-1. Williston Basin indicates that no facilities would be abandoned in connection with the abandonment of the transportation service.

Comment date: March 18, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1279-000]

February 25, 1991.

Take notice that on February 19, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP91-1279-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ford Motor Company, an end-user, under the blanket certificate issued in Docket No. CP89-2196-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that, pursuant to an agreement dated October 18, 1990, under its Rate Schedule IT, it proposes to transport up to 400,000 Mcf per day of natural gas. Great Lakes indicates that the gas would be transported from Michigan and Minnesota, and would be redelivered in Michigan. Great Lakes further indicates that it would transport 400,000 Mcf on an average day and 146,000,000 Mcf annually.

Great Lakes advises that service under § 284.223(a) commenced January 1, 1991, as reported in Docket No. ST91-8533-000.

Comment date: April 11, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. U-T Offshore System

[Docket No. CP91-1227-000]

February 20, 1991.

Take notice that on February 11, 1991, U-T Offshore System (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in the above-referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) for a certificate of public convenience and necessity authorizing construction and operation of certain facilities by U-TOS to provide an interconnection for ANR Pipeline Company at U-TOS' Johnson's Bayou Plant in Cameron Parish, Louisiana (Johnson's Bayou Plant), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U-TOS seeks authority to construct and operate an interconnect consisting of a 20-inch connecting tee, fittings and approximately 30 feet of pipe. U-TOS explains that ANR will own and U-TOS will operate a connecting line extending from the end of the proposed 30 feet of pipe to an existing ANR M&R station, pursuant to ANR's FERC blanket certificate authorization. The proposed facilities are said to be located within the fenced in portion of the U-TOS Johnson's Bayou Plant yard. U-TOS estimates the cost of the proposed facilities to be $99,210 which is to be reimbursed by ANR.

U-TOS asserts that the proposed arrangement will provide ANR with a high pressure gas source interconnection. It is stated that such arrangement would enable ANR to receive the dekatherm equivalent of up to 100 MMcf per day through U-TOS at the Johnson's Bayou Plant.

Comment date: April 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. South Georgia Natural Gas Co., and Black Marlin Pipeline Co.

[Docket Nos. CP91-1335-000, CP91-1336-000 and CP91-1342-000]

February 26, 1991.

Take notice that South Georgia Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, and Black Marlin Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP90-2125-000 and Docket No. CP89-2041-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Comment date: April 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Appendix

Docket No. (Date Filed)	Shipper name (type)	Peak day, Average day, Annual Mcf	Receipt [1] points	Delivery Points	Contract date, Rate schedule, Service type	Related Docket Start up date
CP91-1335-000 (2-22-91)	Proctor & Gamble Paper Products Co. (End-user)	3,422 3,422 1,249,030	AL	GA	1-4-91 FT Firm	ST91-67720-000 1-5-91
CP91-1336-000 (2-22-91)	City of Cordele, GA (LDC)	700 700 255,500	AL	GA	1-1-91 FT Firm	ST91-6726-000 1-1-91
CP91-1342-000 (2-25-91)	Phibro Energy Inc. (Marketer)	50,000 15,000 [2] 18,250,000	OTX	TX	12-1-90 ITS Interruptible	ST91-6585-000 1-3-91

[1] Offshore Texas is shown as OTX.
[2] Black Marlin's quantities are in MMBtu.

7. Natural Gas Pipeline Co. of America

[Docket Nos. CP91-1306-000, CP91-1309-000, CP91-1310-000, CP91-1311-000, and CP91-1312-000]

February 26, 1991.

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (Date Filed)	Shipper name (type)	Peak day, Average day, Annual MMBtu	Receipt [1] points	Delivery Points	Contract date, Rate schedule, Service type	Related Docket, Start up date
CP91-1308-000 (2-21-91)	Centran Corp. (Marketer)	30,000 15,000 5,475,500	System	LA, OLA, TX, OTX, IL, IO, OK, NM, CO	12-18-90 ITS Interruptible	ST91-64780-000 12-19-90
CP91-1309-000 (2-21-91)	Chevron USA, Inc. (Producer)	20,000 15,000 5,475,500	System	LA, OLA, TX, OTX, IL, IO, OK, NM, CO	12-21-91 ITS Interruptible	ST91-6496-00 12-22-91
CP91-1310-000 (2-21-91)	V.H.C. Gas Systems, L.P. (Marketer).	500,000 150,000 54,750,000	System	Various	11-26-90 ITS Interruptible	ST91-6495-000 12-22-90
CP91-1311-000 (2-21-91)	Vesta Energy Co. (Marketer)	30,000 10,000 3,650,000	System	LA, OLA, TX, OTX, IL, IO, OK, NM, CO	12-26-90 ITS Interruptible	ST91-6824-000 12-29-90
CP91-1312-000 (2-21-91)	PSI Gas Marketing, Inc. (Marketer).	200,000 75,000 27,375,000	System	LA, OLA, TX, OTX, OK, IO, NM, IL, AR, CO.	8-7-90 ITS Interruptible	ST91-6500-000 12-22-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

8. WestGas InterState, Inc.

[Docket No. CP91-1253-000]

February 26, 1991.

Take notice that on February 14, 1991, WestGas InterState, Inc. (WGI), 1050 17th Street, Suite 500, Denver, Colorado 80265, filed in Docket No. CP91-1253-000 an application pursuant to section 7(c) of the Natural Gas Act for an optional certificate authorizing it to own and operate 0.23 miles of 8-inch and 11.45 miles of 4-inch diameter pipeline extending north from a point' approximately two miles south of the Colorado/Wyoming border to Cheyenne, Wyoming and blanket certificates pursuant to Sections 284 and 157 of the Commission's Regulations authorizing WGI to provide open-access transportation service and the construction and operation of certain facilities and certificate amendments and abandonment under section 7 of the Natural Gas Act, respectively, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WGI proposes to own and operate 0.23 miles of 8-inch and 11.45 miles of 4-inch diameter pipeline extending north from a point approximately two miles south of the Colorado/Wyoming border to the City of Cheyenne, Wyoming. The pipeline was acquired on July 30, 1990, by WGI from the Conoco Pipe Line Company, Inc., which had acquired the pipeline in 1986 from the Husky Oil Company, Inc. The pipeline was used to transport oil and oil by-products, however, WGI has converted the pipeline to transport natural gas. WGI states that the proposed facilities were acquired in order to transport natural gas to the local distribution company which serves the City of Cheyenne, Wyoming. The natural gas would flow in a south-to-north direction from an interconnection point in Colorado with the Western Gas Supply Company, WGI's parent company. It is alleged that transportation of natural gas is proposed to commence on June 1, 1991.

As part of its application, WGI has included pro forma copies of its FERC Gas tariff, Original Volumes No. 1, which includes: (1) The applicable statement of rates, (2) Rate Schedule FT covering firm transportation service and Rate Schedule IT, related to interruptible transportation service, (3) general terms and conditions delineating the specific operating procedures to be followed by WGI and its customers, and (4) form of service agreements applicable to service provided under Rate Schedules FT and IT.

WGI contends that it is actively negotiating the terms of precedent agreements with potential shippers and intends, after receipt of an acceptable order, to conduct a 30-day open season for all uncommitted firm capacity and for interruptible service on its transportation system. WGI has assumed a 15-year project life and a 70 percent throughput level. WGI explains that its maximum and minimum rates applicable to firm and interruptible services assume a 15 percent return on equity, a 12 percent cost of debt, with an imputed capital structure of 60 percent equity and 40 percent debt. The specific rates proposed to be charged by WGI for providing transportation services through its pipeline system are as follows:

YEARS 1-15

	Rate per Dth	
	Maximum	Minimum
Rate Schedule FT		
Transportation Reservation Rate (Monthly)	$2.93291	$0.00000
Transportation Commodity Rate	$0.12243	$0.01000
Rate Schedule IT		
Transportation Commodity Rate	$0.12243	$0.01000

WGI states that the costs associated with providing firm transportation service were allocated between the reservation and commodity components through application of a modified fixed variable rate design and that the transportation commodity rate and the monthly transportation reservation rate when combined, would not exceed the maximum transportation commodity rate.

The estimated cost of the proposed facilities, including line pack, is $614,000. Due to this relatively low dollar amount, the cost of facilities would be financed 100 percent by equity. Any additional

construction and operational monies above that already infused into WGI by the sale of company stock to its parent, would be provided by short-term borrowing at an estimated rate of 12 percent. WGI submits that it is assuming the economic risk of providing open-access natural gas transportation service through the proposed pipeline in accordance with the Commission's rules, regulations, and decisions. Therefore, WGI requests that the Commission approve its request for a 15 percent return on equity. Other risks associated with this project are the small size of the pipeline and the short-term, interruptible nature of the transportation agreement that WGI has entered into. WGI contends that the limited market area in and around the City of Cheyenne makes the potential for future growth in transportation throughput exceedingly small. All of these factors support WGI's request for a 15 percent return on equity.

WGI seeks blanket certificate authorizations to provide open-access transportation service pursuant to Part 284, Subpart G of the Commission's Regulations and to own and operate certain facilities, amend existing certificate authorizations and abandon facilities and services pursuant to Part 157, Subpart F of the Commission's Regulations.

Comment date: March 19, 1991, in accordance with Standard Paragraph F at the end of the notice.

9. Conoco Inc., et al.

[Docket Nos. G-5902-001, *et al.*] [4]

February 26, 1991.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Comment date: March 18, 1991, in accordance with Standard Paragraph J at the end of this notice.

[4] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Assignment of acreage; E—Succession; F—Partial Succession]

Docket No. and Date Filed	Applicant	Purchaser and location	Description
G-5902-001, D, 2-1-91	Conoco Inc., P.O. Box 2197, Houston, TX 75252	Transcontinental Gas Pipe Line Co., Harris Field, Live Oak County, TX.	Assigned 5-1-90 to EP Operating Co.
G-13299-011, D, 1-14-91	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	ANR Pipeline Co., Laverne Field, Beaver and Harper Counties, OK.	Assigned 4-1-90 to Shell Western E&P Inc.
CI61-1772-000, D, 2-11-91	Amoco Production Co., P.O. Box 3092, Houston, TX 77253.	Lone Star Gas Co., Various Units, Bryan County, OK.	Assigned 2-1-90 to Chase Petroleum Ltd.
CI65-184-001, D, 2-20-91	Oryx Energy Co., P.O. Box 2880, Dallas, TX 75221-2880.	Texas Eastern Transmission Corp., Wharco Shilling Field, Colorado and Wharton Counties, TX.	Assigned 2-1-91 to Alan B. Clark.
CI65-539-000, D, 2-5-91	Union Oil Co. of California, P.O. Box 7600, Los Angeles, CA 90051.	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy County, NM.	Assigned 10-1-90 to Sun Operating Limited Partnership.
CI78-143-002, D, 1-29-91	Chevron U.S.A. Inc., P.O. Box 3725, Houston, TX 77253.	Pioneer Gas Products Co., Aylesworth Field, Bryan County, OK.	Assigned 4-1-90 to Grace Petroleum Corp.
CI91-40-000, (CI70-775), D, 1-16-91.	Oryx Energy Co.	Southern California Gas Co., Federal Lease OCS-P-240, Offshore CA.	Assigned 10-1-90 to Union Oil Co. of California.
CI91-41-000, (CI78-230), D, 1-17-91.	Oryx Energy Co.	Colorado Interstate Gas Co., Echo Springs Field, Carbon and Sweetwater Counties, WY.	Assigned 9-1-90 to Union Pacific Resources Co.
CI91-51-000, (CI74-544), D, 1-28-91.	Texaco Inc., P.O. Box 4700, Houston, TX 77210-4700.	KN Energy Inc., Alkali Butte Field, Fremont County, WY.	Assigned 1-1-90 to Natural Gas Processing Co.
CI91-54-000, (CI73-630), D, 2-5-91.	Union Oil Co. of California	Natural Gas Pipeline Co. of America, Indian Basin Field, Eddy, County, NM.	Assigned 10-1-90 to Sun Operating Partnership.
CI91-55-000, (CI77-270), D, 2-7-91.	Union Oil Co. of California	Natural Gas Pipeline Co. of America, La Rica (Morrow) Field, Lea County, NM.	Assigned 8-1-90 to Mark J. Mourra.
CI91-56-000, (G-17263), D, 2-11-91.	Unocal Exploration Corp., P.O. Box 7600, Los Angeles, CA 90051.	Trunkline Gas Co., Alta Loma Field, Galveston County, TX.	Assigned 8-1-88 to Wayhan Oil Co.
CI91-57-000, (CI85-340), D, 2-11-91.	Sonat Exploration Co., P.O. Box 1513, Houston, TX 77251-1513.	Natural Gas Pipeline Co. of America, Knox and S.E. Knox Fields, Grady and Stephens Counties, OK.	Assigned 8-1-90 to Hawkins Oil & Gas, Inc.
CI91-60-000, (G-5134), D, 2-20-91.	Oryx Energy Co.	United Gas Pipe Line Co., Cabeza Creek Field, Goliad County, TX.	Assigned 7-1-90 to Conoco Inc.
CI91-61-000, (CI65-164), D, 2-20-91.	Oryx Energy Co.	Texas Eastern Transmission Corp., Norris and Wharco Shilling Fields, Wharton County, TX.	Assigned 10-1-90 to Geodyne Production Co.
CI91-62-000, (CI72-414), D, 2-20-91.	Oryx Energy Co.	Florida Gas Transmission Co., Jay Field, Santa Rosa, County, FL.	Assigned 10-1-90 to Geodyne Production Co.
CI91-63-000, (G-10819), D, 2-20-91.	Oryx Energy Co.	Texas Eastern Transmission Corp., Cabeza Creek Field, Goliad County, TX.	Assigned 7-1-90 to Conoco Inc.
CI91-64-000, (CI60-218), D, 2-20-91.	Oryx Energy Co.	Arkla Energy Resources, a division of Arkla, Inc., Calhoun Field, Ouachita Parish, LA.	Assigned 10-1-89 to Headington Minerals, Inc.

10. Tenngasco Corp., Tenngasco Exchange Corp., and Tenngasco Marketing Corp. and Enserch Gas Co.

[Docket Nos. CI86-168-006 [5] and CI89-501-003]

February 26, 1991.

Take notice that on February 15, 1991, Tenngasco Corporation, Tenngasco Exchange Corporation and Tenngasco Marketing Corporation of P.O. Box 2511, Houston, Texas 77252, and on February 19, 1991, Enserch Gas Company of 301 South Harwood, suite 504-N, Dallas, Texas 75201 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI86-168-006 and CI89-501-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket No. CI86-168-006 requests extension for an unlimited term, and also requests amendment of its blanket certificate to include authorization for Tenngasco Marketing Corporation under the terms of that certificate. Applicant in Docket No. CI89-501-003 requests extension for an unlimited term.

Comment date: March 18, 1991, in accordance with Standard Paragraph J at the end of this notice.

[5] This notice does not provide for consolidation for hearing of the several matters covered herein.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell

Secretary

[FR Doc. 91-5078 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-04016T, Mississippi-3]

Mississippi State Oil and Gas Board; Notice of Determination Designating Tight Formation

February 26, 1991

Take notice that on Februjary 20, 1991, the State Oil and Gas Board of Mississippi (Mississippi) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Selma Chalk Formation in the South, Southeast, and West Fault Block segments of the Baxterville Field, in Lamar and Marion Counties, Mississippi, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination covers the west ½ of Section 1, all of Sections 2 and 11, and the west ½ of Section 12 in Township 1 North, Range 17 West, in Marion County (the West Fault Block segment), and the east ½ of Section 9, all of Sections 10, 15, and 16, the south ½ of Section 19, and all of Sections 20, 21, 22, 29, and 30 in Township 1 North, Range 16 West, in Lamar County (the Southeast and South Fault Block segments). The notice of determination also contains Mississippi's findings that the referenced portions of the Selma Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5082 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-92-000]

Colorado Interstate Gas Co.; Tariff Filing

February 26, 1991.

Take Notice that on February 19, 1991, Colorado Interstate Gas Company ("CIG") tendered for filing to be effective March 1, 1991, revised tariff sheets in its FERC Gas Tariff, Original Volumes Nos. 1 and 3.

CIG states that the purpose of this filing is to:

1. Establish simplified Interruptible Transportation Service Agreement by relocating several provisions of the pro forma Service Agreement to the Interruptible Transportation Rate Schedule;

2. Establish "Universal Receipt Point Authority" under its Interruptible Transportation Rate Schedule TI-1;

3. Clarify language to the Balancing Charge and Balancing Penalty Charge provisions of CIG's Volume No. 3 Tariff;

4. Confirm the right of a shipper to elect to prepay reservation charges related to firm transportation services; and

5. Make other miscellaneous changes.

CIG states it is also making a minor addition to Article 12 of its sales tariff (Volume No. 1) to add language which will conform the language in CIG's Volume No. 1 Tariff with its Volume No. 3 Tariff.

CIG states that copies of its filing were served on all holders of Volume Nos. 1 and 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5084 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-86-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 26, 1991.

Take notice that on February 22, 1991, Mississippi River Transmission Corporation ("MRT") tendered for filing the following tariff sheets to its FERC Tariff, Second Revised Volume No. 1:

Twentieth Revised Sheet No. 4A
Eighth Revised Sheet No. 4A.3
Third Revised Sheet No. 4A.8
Sixteenth Revised Sheet No. 76
Ninth Revised Sheet No. 77
Seventeenth Revised Sheet No. 78
Fifteenth Revised Sheet No. 79

MRT submitted the tariff sheets in response to Order Nos. 528 and 528-A in order to recover the take-or-pay costs previously allocated to MRT from United Gas Pipe Line Company ("United"). MRT requests an effective date of March 25, 1991. The Commission postponed the effective date of Order No. 528's stay for United's own take-or-pay cost recovery filings until 30 days after the Commission issues a final order on United's Base Stipulation and Agreement in Docket No. RP85-200-027, *et al.*, which is currently pending before the Commission. The Commission has also exempted from the Order No. 528 stay those costs United is flowing through from Sea Robin Pipeline Company in Docket No. RP89-147-000. MRT's tariff sheets provide for an allocation of those previously allocated take-or-pay costs to MRT's jurisdictional sales customers based on such customers' contract demands as of March 1, 1988. The methodology reflected on MRT's tariff sheets, as filed, is identical to that proposed by MRT when it first filed the D-1 methodology in March, 1988 to recover United's take-or-pay buyout and buydown costs allocated to MRT with the exception of a reallocation of a portion of the SGS customers' D-1 allocation in accordance with Order No. 528-A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5087 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-5-003]

Natural Gas Pipeline Co. of America; Changes in Tariff

February 26, 1991.

Take notice that on February 21, 1991, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the below listed tariff sheets to be effective November 1, 1990:

Substitute Original Sheet No. 119
Second Substitute Original Sheet No. 120
Original Sheet No. 121
Reserved for Future Use Sheet Nos. 122 through 200

Natural states the purpose of this filing is to comply with the Commission's January 24th and February 7th orders. The January 24th order required Natural to pass through to its sales and transportation customers by a credit on their monthly bill a pro rata share of the purchase price any retained unauthorized gas volumes.

The February 7th order requires Natural to give actual notice to shippers at the relevant receipt points where unauthorized gas was placed on Natural's system.

Natural also made two changes requested by the Commission Staff. The first was a change in the method of accounting and the second was to compute the Market Index Price applicable to gas retained in the same manner as used in Natural's Gas Inventory Demand Charge.

Natural has requested waiver of the Commission's orders and Regulations to the extent necessary to permit approval of these changes in its unauthorized gas provision of its tariff.

Natural states that a copy of the filing was mailed to Natural's jurisdictional customers, intervenors, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211. All such protests should be filed on or before March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5085 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-84-000]

Natural Gas Pipeline Co. of America; Rate Change Filing

February 26, 1991.

Take notice that on February 22, 1991, Natural Gas Pipeline Company of America (Natural) filed the below listed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1A, to be effective March 25, 1991:

Third Revised Sheet No. 33
First Revised Sheet No. 33A
First Revised Sheet No. 35.1

Natural states that the tariff revisions were submitted to provide additional flexibility and administrative savings for Natural and its shippers. The changes include: (1) establishment of a "request and confirmation" procedure by which shippers can add secondary points in excess of the existing 25 secondary point limitation without the need for a formal contract amendment and (2) the designation of an additional transfer point (Station 109) for gas transported on Natural's Iowa Line at which an FTS Agreement can be linked with another FTS Agreement.

Natural requested waiver of the Commissioner's Regulations to the extent necessary to permit the proposed tariff sheets to become effective March 25, 1991.

Natural states that a copy of this filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5086 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

[RP90-84-003]

Texas Sea Rim Pipeline, Inc.; Notice of Compliance Filing

February 26, 1991.

Take notice that on February 21, 1991, Texas Sea Rim Pipeline, Inc. ("Texas Sea Rim"), 12450 Greenspoint Drive, Houston, Texas 77060-1991, filed pursuant to the Commission's Order in this docket issued January 24, 1991, a compliance tariff filing requesting the following tariff sheets be made effective April 1, 1991:

First Volume No. 1

Third Revised Sheet No. 2A

Original Volume No. 2

Original Sheet Nos. 1-4
First Revised Sheet No. 5
Original Sheet No. 6
First Revised Sheet No. 7
Second Revised Sheet No. 8
Original Sheet Nos. 9-19
First Revised Sheet No. 20
Original Sheet No. 21
Second Revised Sheet No. 22
Original Sheet Nos. 23-100
First Revised Sheet Nos. 109 and 109(a)
Original Sheet Nos. 101-115
First Revised Sheet Nos. 116 and 117
Original Sheet Nos. 118-120
First Revised Sheet No. 121
Original Sheet Nos. 122-140

Texas Sea Rim states that copies of this compliance filing were served on Texas Sea Rim's customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211. All such protests should be filed on or before March 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5083 Filed 3-4-91; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Kerr-Philpott System, notice of public hearing and opportunity for review and comment.

SUMMARY: Southeastern proposes to replace Rate Schedules KP-1-C, JHK-2-A, JHK-3-A, and PH-1-A, currently applicable to Kerr-Philpott Projects power, and seek approval of new Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B for a 5 year period, October 1, 1991, through September 30, 1996.

Opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a hearing and to submit written comments.

Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before June 5, 1991. A public information and public comment forum will be held in South Hill, Virginia, on April 11, 1991. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. If Southeastern has not been notified by close of business on April 4, 1991, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on April 11, 1991, in the Gaston-Dogwood Room of the Holiday Inn, Atlantic Street, South Hill, Virginia 23970.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by order issued January 23, 1987, in Docket No. EF86-3041-000, confirmed and approved Wholesale Power Rate Schedules and KP-1-C, JHK-2-A, JHK-3-A, and PH-1-A applicable to Kerr-Philpott Projects' power for a period ending September 30, 1991.

Discussion

Existing rate schedules are predicated upon a July 1986 repayment study and other supporting data contained in EF86-3041-000.

A February 1991 repayment study prepared using present rates demonstrates that rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with a $1,422,000 revenue increase in each current year over the current repayment study demonstrates that all costs are paid within their repayment life.

The additional revenue represents a 13 percent increase in revenue requirements. This increase is due to an increase in Corps Operation and Maintenance Additions and Replacements, and Southeastern Marketing Expenses. Increased costs attributable to wheeling are automatically passed through by current rate schedules. The additional revenue must be derived only from the sale of capacity and energy, therefore, the increase in capacity and energy rates is about 23 percent.

Present rate schedules allow for the preference customers' wheeling charge to be the same charge that the investor-

owned utility which serves the preference customers charges Southeastern. The initial wheeling rate for preference customers of the Government served by Virginia Electric and Power Company will be $1.97 per kilowatt per month. The initial wheeling rate for preference customers served by Carolina Power and Light Company will be $1.8933 per kilowatt per month. The initial wheeling rate for preference customers served by Appalachian Power Company will be $2.07 per kilowatt per month. The proposed rate schedules state that wheeling charges will be subject to automatic future increases to pass Southeastern's increased wheeling cost from the investor-owned utility to the appropriate preference customers.

The demand charge applicable to preference customers will be $1.66 per kilowatt of monthly demand and the energy charge will be 7.67 mills per kilowatt-hour.

The referenced February 1991 system repayment study along with previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B are also available.

Issued at Elberton, Georgia, February 21, 1991.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 91-5164 Filed 3-4-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination; Lear Siegler Measurement Controls Corp.

Notice is hereby given that on February 4, 1991, the Environmental Protection Agency received an application from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112-5189, to determine if their Monitor Labs Model 8841 Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-5155 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3911-1]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation; PM_{10} Beta Gauge Automated Particle Sampler

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new equivalent method is an automated method which utilizes a measurement principle based on beta-ray attenuation. The new designated method is identified as follows:

EQPM-0391-061, "Wedding & Associates' PM $_{10}$ Beta Gauge Automated Particle Sampler", consisting of the following components:

Particle Sampling Module
PM $_{10}$ Inlet (18.9 liter/min)
Inlet Tube and Support Ring
Vacuum Pump (115 VAC/60 Hz or 220-240 VAC/50 Hz)

operated for 24-hour average measurements with glass fiber filter tape.

This method is available from Wedding & Associates, Inc., P.O. Box 1756, Fort Collins, Colorado 80522. A notice of receipt of application from this method appeared in the Federal Register, Volume 54, July 27, 1989, page 31247.

Test monitors representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 52, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., averaging time) specified in the applicable designation (see description of the method above). Users of this method should note that its equivalent method designation applies only to 24-hour average PM $_{10}$ concentration measurements. The instrument can also provide average PM $_{10}$ measurements over other, shorter averaging periods, including one-hour average. However, such shorter average concentration measurements may be less precise than the 24-hour measurements. Average measurements over periods shorter than 25 hours are not required for use in determining attainment under the air quality surveillance requirements of part 58 (although they may be useful for other purposes) and should not be reported under § 58.35 (NAMS data submittal).

Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

Part 53 requires that sellers of designated method comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the PM $_{10}$ minitor when it is delivered to the ultimate purchaser.

(2) The PM $_{10}$ monitor must not generate any unreasonable hazard to operators or to the environment.

(3) The PM $_{10}$ monitor must function within the limits of the performance specifications given in Table D-1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM $_{10}$ monitor offered for sale as an equivalent method must bear a label or sticker indicating that it has been designated as an equivalent method in accordance with part 53.

(5) An applicant who offers PM $_{10}$ monitors for sale as equivalent methods is required to maintain a list of ultimate purchasers of such monitors and to notify them within 30 days if an equivalent method designation applicable to the monitor has been cancelled or if adjustment of the monitors is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM $_{10}$ monitor previously designated as an equivalent method is not permitted to sell the monitor (as modified) as an equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the monitor (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new equivalent method determination for the monitor as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method provide assistance to the states in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Reserach Triangle Park, North Carolina 27711, Telephone (919) 541-2622.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91-5156 Filed 3-4-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59293; FRL 3882-6]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-8, March 21, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59293)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91-8

Close of Review Period. April 4, 1991.

Manufacturer. Confidential.

Chemical. (G) Sulfo esters amine salts.

Use/Production. (G) Lubricant and antistatic agent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD%) 1850 mg/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

Dated: February 26, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-5157 Filed 3-4-91 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Cobalt Line Joint Services Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-011320.

Title: Cobalt Line Joint Service Agreement.

Parties: Compagnie Des Long-Courriers, S.A. Baltic Shipping Company.

Synopsis: The proposed Agreement would establish a joint service in the trade between ports and points in Puerto Rico and ports and points in Central America (not including Mexico), Venezuela, Colombia, Islands of the Caribbean, and Europe (via Atlantic, Baltic and North Sea ports of call, and including USSR).

By Order of the Federal Maritime Commission.

Dated: February 27, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5042 Filed 3-4-91; 8:45 am]

BILLING CODE 6730-01-M

City of Los Angeles/Evergreen Marine Corp.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for

comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010825A-003.

Title: City of Los Angeles/Evergreen Marine Corporation Terminal Agreement.

Parties:

City of Los Angeles
Evergreen Marine Corporation.

Synopsis: The Agreement amends the basic crane assignment agreement to substitute Crane No. 209-17 for Crane No. 209-12, which is being repaired.

Agreement No.: 224-200478.

Title: North Carolina State Ports Authority/Mitsui O.S.K. Lines, Ltd./N.Y.K. Line/Nippon Liner System, Ltd. Terminal Agreement.

Parties:

North Carolina State Ports Authority
Mitsui O.S.K. Lines, Ltd.
N.Y.K. Line
Nippon Liner System, Ltd.

Synopsis: The Agreement sets forth container crane and stevedore fees applicable for a guaranteed 500 loaded containers of tobacco moving through the Port of Wilmington, NC before July 31, 1991.

By Order of the Federal Maritime Commission.

Dated: February 27, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5103 Filed 3-4-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Crawford Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than March 25 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Crawford Bancorp, Inc., Robinson, Illinois; to acquire Peoples Federal Building and Loan Association, Oblong, Illinois, a federally chartered stock association which is to be converted from a state chartered mutual association formerly named, Peoples Building and Loan Association of Oblong, Oblong, Illinois, and thereby operate a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted throughout Crawford County, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Community Bancshares, Inc., Lone Grove, Oklahoma; to acquire First Federal Savings and Loan Association, Chickasha, Oklahoma, through a merger with its nonoperating subsidiary, Community Savings, Ardmore, Oklahoma, which would then be converted to a branch of First Community Bank and Trust company, Lone Grove, Oklahoma, and thereby operate a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This is an OAKAR conversion.

Board of Governors of the Federal Reserve System, February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5104 Filed 3-4-91; 8:45 am]

BILLING CODE 6210-01-F

James K. Overstreet, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 25, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. James K. Overstreet, Phoenixville, Pennsylvania; to acquire 10.1 percent of the voting shares of National Penn Bancshares, Inc., Boyertown, Pennsylvania, and thereby indirectly acquire National Bank of Boyertown, Boyertown, Pennsylvania, and Sellersville Savings and Loan Association, Perkasie, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James E. Malecha, Palos Heights, Illinois, and Anthony J. Unruh, Long Grove, Illinois; to acquire 100 percent of the voting shares of Presidential Holdings, Inc., Bourbonnais, Illinois, and thereby indirectly acquire Bank of Bourbannais, Bourbannais, Illinois.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Dale M. and Allen H. Hermann, Portland, Oregon, and H. Lawrence Hull, Jr., Costa Mesa, California; to acquire 7.83 percent of the voting shares of West Coast Bancorp, Portland, Oregon, and thereby indirectly acquire The Bank of Newport, Newport, Oregon.

Board of Governors of the Federal Reserve System, February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5105 Filed 3-4-91; 8:45 am]

BILLING CODE 6210-01-F

Star Banc Corp., Kentucky, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 25, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Star Banc Corporation, Kentucky, Newport, Kentucky; to acquire 100 percent of the voting shares of Star Bank, Northern Kentucky, Covington, Kentucky.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. McIntosh Bancshares, Inc., Jackson, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of McIntosh State Bank, Jackson, Georgia.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Citizens National Bancorp, Inc., Darlington, Wisconsin; to become a bank holding company by acquiring 95 percent of the voting shares of The Citizens National Bank of Darlington, Darlington, Wisconsin.

Board of Governors of the Federal Reserve System, February 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5106 Filed 3-4-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 911 0036]

Alleghany Corp.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Alleghany Corporation to divest all rights and interest in either its own title plants and back plants or those of Westwood Equities Corporation to a Commission-approved acquirer.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ann Malester, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Alleghany Corporation, a corporation.

Agreement Containing Consent Order to Divest and to Cease and Desist

The Federal Trade Commission, having initiated an investigation into the proposed acquisition of certain voting securities owned by Westwood Equities Corporation, a subsidiary of New TC Holding Corporation, by Chicago Title and Trust Company, a subsidiary of Alleghany Corporation, hereinafter sometimes referred to as "Alleghany" or "proposed respondent", and Alleghany having been furnished a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration which, if issued by the Commission, would charge Alleghany with violations of the Clayton Act and Federal Trade Commission Act, and it now appearing that Alleghany is willing to enter into an agreement containing an order to divest certain assets and to cease and desist from certain acts:

It is hereby agreed by and between Alleghany Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Alleghany Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office at Park Avenue Plaza, New York, New York 10055.

2. Chicago Title and Trust Company, a wholly owned subsidiary of Alleghany, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office at 111 West Washington Street, Chicago, Illinois 60602.

3. Westwood Equities Corporation ("Westwood"), a subsidiary of New TC Holding Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office at 6300 Wilshire Boulevard, Los Angeles, California 90048.

4. On November 29, 1990, proposed respondent entered into an Acquisition Agreement which contemplates the acquisition of certain voting securities from Westwood.

5. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

6. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the

validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint here attached, will be placed on the public record for a period of sixty days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect, and may be altered, modified or set aside in the same manner and within the same time, provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

10. Proposed respondent has read the draft complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is hereby ordered that as used in this Order the following definitions shall apply:

A. "Alleghany" means Alleghany Corporation, its directors, officers, employees and representatives, its successors and assigns, and its subsidiaries, divisions, groups and affiliates controlled by the Alleghany, their respective directors, officers, employees and representatives, and their respective successors and assigns.

B. "Chicago Title and Trust" means Chicago Title and Trust Company, its directors, officers, employees and representataives, its successors and assigns, and its subsidiaries, divisions, groups and affiliates controlled by Chicago Title and Trust, their respective directors, officers, employees and representatives, and their respective successors and assigns.

C. "New TC" means New TC Holding Corporation, its directors, officers, employees and representatives, its successors and assigns, and its subsidiaries, divisions, groups and affiliates controlled by New TC, their respective directors, officers, employees and representatives, and their respective successors and assigns.

D. "Title plant" means a privately owned set of records regarding the ownership of and interests in real property that is maintained by obtaining information from the public records on a daily or regular basis, and is indexed, posted or otherwise organized to update data regarding specific land parcels.

E. "Back plant" means a privately owned set of records regarding the ownership of and interests in real property that is no longer being updated on a daily or regular basis

F. "Remaining Properties" means all of the rights, title and interest in the properties required to be divested in Paragraphs IIA and IIB that have not yet been divested by Alleghany.

II

It is further ordered that within twelve months from the date this Order becomes final Alleghany shall divest or shall cause to be divested, absolutely and in good faith, all of its rights, title and interest in the properties described in paragraphs IIA and IIB. Divestiture shall be made only to a buyer or buyers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the assets as ongoing, viable title plants and back plants engaged in the production and/or sale of title plant information, and to remedy the lessening of competition resulting from the acquisition as alleged in the Commission's complaint in this matter.

A. For each of the following counties, at the option of Alleghany, either New TC's title plant or Alleghany's title plant serving such county: Imperial County, California; Du Page County, Illinois; Lake County, Illinois; Will County, Illinois; Johnson County, Indiana; Lake County, Indiana; Porter County, Indiana; Benton County, Washington; and Franklin County, Washington. All user or access agreements pertaining to each divested title plant shall also be divested. At the buyer's option at the time of purchase, and at a commercially reasonable price, Alleghany shall continue to provide computer and other services provided for each divested plant by either New TC or Alleghany, for a period of up to three years from the date such title plant is divested and shall assist the buyer in transferring the computer and other services to any other provider of such services.

B. For each of the following counties, at the option of Alleghany, either New TC's back plant or Alleghany's back plant serving such county: Orange County, California; Riverside County, California; San Bernardino County, California; San Luis Obisop County, California; Santa Barbara County, California; Tulare County, California; Cook County, Illinois; Marion County, Indiana; and Davidson County, Tennessee. All user or access agreements pertaining to each divested back plant shall also be divested. At the buyer's option at the time of purchase, and at a commercially reasonable prices, Alleghany shall continue to provide services provided for each divested back plant by either New TC or Alleghany, for a period of up to three years from the date such back plant is divested and shall assist the buyer in transferring the services to any other provider of such services.

It is further ordered that: A. If Alleghany has not divested all of its rights, title and interest in the properties required to be divested in paragraphs IIA and IIB within the twelve month period, Alleghany shall consent to the appointment by the Commission of a trustee to divest all of the Remaining Properties. In the event the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, Alleghany shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Alleghany to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph IIIA of the Order, Alleghany shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to Alleghany's consent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Remaining Properties.

3. The trustee shall have twelve months from the date of appointment to accomplish the divestiture of the Remaining Properties.

4. If at the end of the trustee's twelve month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court for a court-appointed trustee.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Remaining Properties, or any other information, as the trustee may reasonably request. Alleghany shall develop such financial or other information relevant to the Remaining Properties as the trustee may reasonably request. Alleghany shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Alleghany shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or by the court for a court-appointed trustee.

6. Subject to Alleghany's absolute and unconditional obligation to divest at no minimum price and the purposes of the divestitures as stated in paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of the Remaining Properties. The divestitures shall be made in the manner set out in paragraph II; *provided, however,* That if the trustee receives bona fide offers from more than one acquiring entity or entities, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Alleghany from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Alleghany on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Alleghany, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Alleghany and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (percentage of price) that is contingent on the trustee divesting the Remaining Properties.

8. Alleghany shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order, except for cases of misfeasance, willful or wanton acts, or bad faith.

9. Within thirty days after appointment of the trustee, Alleghany shall, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, and consistent with provisions of this Order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

10. If the trustee ceases to act or fails to act diligently, the Commission may, on its own or by request of Alleghany, appoint a substitute trustee in the same manner as provided in paragraph IIIA of this Order.

11. The Commission and, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

12. The trustee shall have no obligation or authority to operate or maintain the Remaining Properties.

13. The trustee shall report in writing to Alleghany and to the Commission every sixty days concerning the trustee's efforts to accomplish the divestitures.

It is further ordered that Alleghany shall not cause or permit the wasting or deterioration of the assets and operations to be divested in accordance with paragraphs IIA and IIB of this Order in any manner that impairs the marketability of such assets and operations or impairs in any manner the viability of the assets and operations as going concerns engaged in the production and/or sale of title plant or back plant information. In this regard:

A. Alleghany shall maintain the title plants and back plants listed in paragraphs IIA and IIB to the extent and in the manner maintained by New TC and Alleghany prior to this acquisition, including but not limited to updating the records contained in the title plants on a daily or regular basis such that the title plants are as current as possible at all times.

B. Alleghany shall maintain in good faith all contracts for access to New TC's title plants and back plants and to Alleghany's title plants and back plants listed in Paragraphs IIA and IIB subject to the terms, conditions and stipulations of those contracts, and will refrain from taking any action toward terminating those contracts other than that which would be commercially reasonable to New TC and Alleghany under the terms of those agreements.

C. For each county listed in paragraph IIA, Alleghany shall, at the option of the accessors, automatically continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to New TC's title plant and all contracts for access to Alleghany's title plant in such county that expire by their terms prior to divestiture of either New TC's or Alleghany's title plant for a period lasting until the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts shall cease.

BEST COPY AVAILABLE

D. For each county listed in paragraph IIB, Alleghany shall, at the option of the accessors, automatically continue to maintain in good faith on identical terms, conditions and stipulations all contracts for access to New TC's back plant and all contracts for access to Alleghany's back plant in such county that expire by their terms prior to divestiture of either New TC's or Alleghany's back plant for a period lasting until the closing date upon which such divestiture is completed, at which time Alleghany's obligations under such contracts shall cease.

V

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not acquire, directly or indirectly, any stock, share capital, equity interest, or assets in First American Title Insurance Company, Lawyers Title Insurance Corporation, Stewart Title Guaranty Company, Commonwealth Land Title Insurance Company, Title Insurance Company of Minnesota, TRW, Inc. or any of their successors or assigns, or in any concern, corporate or non-corporate, that has any direct or indirect ownership interest in a title plant that services any county listed in paragraph IIA or in a back plant that services any county listed in paragraph IIB, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, an existing title plant that services any county listed in paragraph IIA or a back plant that services any county listed in paragraph IIB, without the prior approval of the Federal Trade Commission.

VI

It is further ordered that for a period of ten years from the date this Order becomes final, Alleghany shall not, directly or indirectly, acquire any stock, share capital, equity interest in any concern, corporate or non-corporate, that in turn has any direct or indirect ownership interest in a title plant or back plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant or back plant servicing the same area, or acquire from any concern, corporate or non-corporate, any assets (other than in the ordinary course of business) of, or ownership interest in, any existing title plant or back plant servicing any geographic area for which Alleghany at that time has any direct or indirect ownership interest in a title plant or back plant servicing the same area, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the appendix to part 803 of title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), except that for purposes of the Notification, Chicago Title and Trust, with the addition of any other subsidiary, division, group and affiliate of Alleghany engaged in, or having an interest in any other entity engaged in, the production and sale of title plant information or back plant information, shall be considered the ultimate parent entity as that term is defined in 16 CFR 801.1(a)(3). Alleghany shall provide to the Federal Trade Commission, at least thirty days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in Alleghany's possession or reasonably available to Alleghany. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Alleghany and of the firm Alleghany desires to acquire who negotiated the acquisition agreement; any management or strategic plans discussing the proposed acquisition; and all documents relating to competition for the provision of title plant or back plant services in the particular county. If, within the first waiting period, representatives of the Federal Trade Commission make a written request for additional information, Alleghany shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. 18A).

VII

It is furthered ordered that, acquisitions resulting in an interest of not more than 3% of the outstanding voting securities of publicly traded companies, solely for the purpose of investment, are not subject to paragraphs V and VI of this Order; acquisitions of voting securities of a publicly traded company shall not be subject to paragraphs V and VI of this Order solely by reason of the ownership, directly or indirectly, by such publicly traded company of less than 5% of the outstanding voting securities of one of the companies named in paragraph V.

VIII

It is further ordered that: A. Within sixty days after the Order becomes final, and every sixty days thereafter until Alleghany has fully complied with paragraphs II, III and IV of this Order, Alleghany shall file with the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order. Such compliance reports shall include, in addition to any other information that the staff of the Federal Trade Commission may reasonably request, a full description of all contacts and negotiations with potential acquirers of the title plants and back plants to be divested under this Order, the identity and address of all such potential acquirers, copies of all written communications to and from such potential acquirers, and all internal memoranda, reports and recommendations concerning divestiture.

B. On or before September 21, 1991 and annually for the next ten years, Alleghany shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with this Order.

IX

It is further ordered that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Alleghany made to its principal office, Alleghany shall permit any duly authorized representatives of the Federal Trade Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Alleghany relating to any matters contained in this Order; and

B. Upon five days notice to Alleghany and without restraint or interference from Alleghany, to interview officers or employees of Alleghany, who may have counsel present, regarding such matters.

X

It is further ordered that Alleghany shall notify the Commission at least thirty days prior to any proposed change in Alleghany such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation, dissolution or sale of subsidiaries or any other change in Alleghany that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement containing a proposed consent order from Alleghany Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Alleghany Corporation's proposed acquisition, through a wholly owned subsidiary, of the title insurance-related assets of Westwood Equities Corporation ("Westwood") constitutes a violation of section 5 of the Federal Trade Commission Act and section 7 of the Clayton Act. Both Alleghany Corporation and Westwood, through their respective subsidiaries, own and operate title plants and back plants in numerous counties nationwide. Title plants and back plants are privately owned sets of records regarding the ownership of and interests in real property. A title plant's records continue to be regularly updated, whereas the records of a back plant are no longer updated. The complaint alleges that the proposed acquisition is likely substantially to lessen competiton in the provision of title plant and back plant information in a number of counties.

The proposed consent order requires that within twelve months Alleghany divest all rights and interest in either its own title plant or Westwood's title plant in Imperial County, California; Du Page County, Illinois; Lake County, Illinois; Will County, Illinois; Johnson County, Indiana; Lake County, Indiana; Porter County, Indiana; Benton County, Washington; and Franklin County, Washington.

The proposed consent order also requires that Alleghany divest all rights and interest in either its own back plant or Westwood's back plant in Orange County, California; Riverside County, California; San Bernardino County, California; San Luis Obispo County, California; Sanata Barbara County, California; Tular County, California; Cook County, Illinois; Marion County, Indiana; and Davidson County, Tennessee.

The divestitures of title plants and back plants may be made only to parties approved by the Commission and only in a manner approved by the Commission. Alleghany must, at the buyer's option, and at a commercially reasonable price, continue to provide services to plants and back plants for a period of up to three years from divestiture and assist in transferring those services to another supplier. Alleghany is also required to take measures to prevent the wasting of the assets to be divested, including preserving and updating records as was done before the acquisition, maintaining current access agreements on the same terms, and renewing on identical terms all such agreements that expire prior to divestiture of the relevant plant. These provisions are designed to maintain the competitive vitality of the plants to be divested.

The proposed order also provides for the appointment of a trustee to carry out any required divestitures not yet accomplished by Alleghany by the time twelve months have elapsed from the date the Order becomes final.

Alleghany is prohibited by the proposed order from acquiring any interest in certain other companies that are known to have ownership interests in a significant number of title plants or back plants without prior approval of the Federal Trade Commission. Prior approval is also required by the order for Alleghany's acquisition of an entity with any ownership interest in a title plant serving any country in which the proposed order requires divestiture of a title plant, and for Alleghany's acquisition of an entity that has any ownership interest in a back plant serving any county in which the proposed order requires divestiture of a back plant. These prohibitions last for ten years from the date the proposed order becomes final.

Also for a period of ten years from the date the order becomes final, Alleghany is required to give the Federal Trade Commission notification of any acquisition of an ownership interest in a title plant or back plant which serves any county in which Alleghany already has a title plant or back plant.

Acquisitions made solely for the purpose of investment, and which result in no more than 3% of the outstanding voting securities of publicly traded companies are excepted from the prior approval and notification provisions; likewise excepted are acquisitions of publicly traded companies that own less than 5% of any of the companies named in the prior approval provision.

The Commission anticipates that the effect of the proposed order will be to resolve the competitive concerns alleged in the complaint by maintaining the oportunity for unrestrained trade in the markets for title plant information and back plant information in the relevant counties.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-5159 Filed 3-4-91; 8:45 am]

BILLING CODE 6750-01-M

Docket Nos. 9227; 9238; and 9239

Chain Pharmacy Association of New York State, Inc., et al.; Empire State Pharmaceutical Society, Inc.; and Capital Area Pharmaceutical Society, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the five consent orders prohibit, among other things, the two pharmacy chains, Melville and Rite Aid (D-9227), from entering into any agreement with other pharmacy firms to withdraw from or to refuse to enter into any third-party payer prescription drug participation agreement. For ten years, the two chains are also prohibited from communicating to another pharmacy firm their decision or intention to enter or to refuse to enter into such a participation agreement, and for eight years, from advising any pharmacy firm on whether to enter into any participation agreement.

The two trade associations, Empire State Pharmaceutical Society (D-9238) and Capital Area Pharmaceutical Society (D-9239), along with Alan Kadish, are prohibited from organizing or encouraging any agreement among pharmacy firms to refuse to enter into or to withdraw from any third-party prescription plan. The consent agreements, among other things, also prohibit the respondents, for a period of ten years, from continuing any meeting at which representatives of pharmacy firms exchange information concerning the firms, intention to enter into, refuse to enter into, or withdraw from any third-party payer prescription drug plan, and from communicating to any firm any information concerning any other pharmacy firm,s intention to enter into, refuse to enter into, or to withdraw from

any existing or proposed third-party payer prescription plan.

DATES: D-6227—Complaint issued April 19, 1990 and Orders issued February 6, 1991. D-6236—Complaint issued March 15, 1990 and Order issued February 5, 1991. D-6239—Complaint issued March 15, 1990 and Orders issued February 7, 1991.

FOR FURTHER INFORMATION CONTACT: Karen Bokat, FTC/S-3308, Washington, DC 20580. (202) 326-2912.

SUPPLEMENTARY INFORMATION: On Tuesday, October 30, 1990, there was published in the Federal Register, 55 FR 45645, a notice of five proposed consent agreements with analyses in the Matter of Chain Pharmacy Association of New York State, Inc., et al.; Empire State Pharmaceutical Society, Inc.; and Capital Area Pharmaceutical Society, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the orders.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreements, made its jurisdictional findings and entered its orders to cease and desist, as set forth in the proposed consent agreements, in disposition of these proceedings.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 91-5160 Filed 3-4-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9234]

TK-7 Corp., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Oklahoma-based corporation, that manufactures and distributes fuel additive products, and its officer, Moshe Tal, from making any representations concerning the efficacy of any fuel or engine additives, unless they possess competent and reliable scientific evidence that substantiates the representation.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lydia Parnes, FTC/H-238, Washington, DC 20580. (202) 326-3126.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 3.25(f) of the Commissions Rules of Practice [16 CFR 3.25(f)], notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commissions Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of TK-7 Corporation, a corporation, and MOSHE TAL, individually and as an officer of said corporation.

The agreement herein, by and between TK-7 Corporation, a corporation, by its duly authorized officer, and Moshe Tal, individually and as an officer of said corporation, hereafter sometimes referred to as respondents, and counsel for the Federal Trade Commission, is entered into in accordance with the Commissions Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent TK-7 Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its office and principal place of business located at 200 S.E. Third Street, in the City of Oklahoma City, State of Oklahoma.

Respondent Moshe Tal is the President of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45 *et. seq.* Respondents have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with related materials pursuant to Rule 3.25(f), will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of section 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent TK-7 Corporation, a corporation; its successors and assigns, and its officers, and Moshe Tal, individually and as an officer of the corporation, and respondents, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the production, labeling, advertising, offering for sale, sale or distribution of any fuel additive or engine additive ("additive") in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, concerning the performance or efficacy of the additive, including, but not limited to, representations

A. That the additive provides top cylinder lubrication, reduces engine friction, and extends engine life;

B. That the additive lowers engine operating temperatures;

C. That the additive protects spark plugs from fouling and prevents carbon build-up;

D. That the additive increases engine power;

E. That the additive boosts fuel octane levels; and

F. That the additive increases gasoline mileage.

Unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation; provided, however, that for purposes of this provision, to the extent such evidence consists of any test, analysis, research, study, or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if the test, analysis, research, study, or other evidence was conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered that for three (3) years from the date that the representation to which they pertain is last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All test reports, studies, surveys or other materials in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondents relied for such representation, including complaints from consumers.

III

It is further ordered that respondent TK-7 Corporation shall distribute a copy of this Order to each of its subsidiaries and divisions and to all present and future agents, representatives and employees having responsibility for advertising, production, packaging, quality control or corporate policy with respect to the subject matter of this Order; shall secure from each such person a signed and dated statement acknowledging receipt of the Order; and, shall maintain such statement for three (3) years after the end of such person's employment by respondents.

IV

It is further ordered that respondent Moshe Tal shall promptly notify the Commission of the discontinuance of his present business or employment and for a period of ten (10) years from the date of service of this Order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, each such notice to include respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V

It is further ordered that respondent TK-7 Corporation and its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change to itself, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this Order.

VI

It is further ordered that respondents and their successors and assigns shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis Of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the TK-7 Corporation and Moshe Tal, individually and as an officer of said corporation. The TK-7 Corporation, located in Oklahoma City, Oklahoma, is a manufacturer and distributor of fuel additive products known by the product name TK-7; Moshe Tal is President of the Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges the TK-7 Corporation and Moshe Tal with making the following false and unsubstantiated representations about the TK-7 products:

1. TK-7 provides top cylinder lubrication, reduces engine friction, and extends engine life;

2. TK-7 lowers engine operating temperatures;

3. TK-7 protects spark plugs from fouling and prevents carbon buildup;

4. TK-7 increases engine power;

5. TK-7 boosts fuel octane levels; and,

6. TK-7 increases gasoline mileage.

Part III of the proposed consent order would require the TK-7 Corporation to distribute a copy of the order to each of its subsidiaries and divisions and all present and future agents and employees responsible for the advertising, production, packaging, quality control, or corporate policy with respect to fuel additives or engine additives. The proposed order would require the TK-7 Corporation to obtain a signed statement from each such person acknowledging receipt of a copy of the order, and to maintain the statement for

---

[1] Copies of the Complaints and the Decision and Orders are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

three years after the end of that person's employment with the corporation.

Part IV would require Moshe Tal to promptly notify the Commission of any change in his business or employment for a period of ten years from the date of service of the order. Finally, parts V and VI of the proposed consent order would require the TK-7 Corporation and Moshe Tal to file a compliance report within sixty (60) days after service of the order, and to promptly notify the Commission of any proposed change in the corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 91-5161 Filed 3-4-91; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Delegation of Authority; Assistant Secretary for Health

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services under title XXVI of the Public Health Service Act and Sections 402 and 403, Public Law 101-381, Ryan White Comprehensive AIDS Resources Emergency Act of 1990, as amended hereafter, as follows:

- Title XXVI—HIV Health Care Services Program
- Section 402—Study Regarding Partner Notification
- Section 403—Study Regarding HIV Disease in Rural Areas

This delegation excludes the authority to promulgate regulations and to submit reports to the Congress.

This delegation is effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: February 21, 1991.
Louis W Sullivan,
Secretary.

[FR Doc. 91-5074 Filed 3-4-91 8:45 am]
BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in March

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on February 20, 1991, Volume 56, No. 34, on page 6861 that the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) AIDS Advisory Committee would meet on the National Institutes of Health Campus, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892, on March 6 and 7. The location of the meeting has been changed to the Holiday Inn, Versailles Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. The dates and hours of meeting remain the same.

Dated: February 28, 1991.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-5234 Filed 3-1-91; 11:25 am]
BILLING CODE 4160-20-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1991:

Name: National Advisory Council on Health Professions Education
Date and time: March 25-26, 1991, 9 a.m.
Place: Conference Room G and H, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.
Open on March 25, all day
Closed on March 26, all day

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration; report on status of activities and initiatives in the Bureau of Health Professions; and an update on the status of the Health Professions Legislation.

The meeting will be closed on March 26 all day for the review of applications for financial assistance for Grants for Area Health Education Centers (A2), Area Health Education Centers (A1), Health Careers Opportunity Program, Health Education Training Centers, Predoctoral Training in Family Medicine, Physician Assistants, Establishment of Departments of Family Medicine, Two-Year Programs of Schools of Medicine or Osteopathic Medicine, Centers for Excellence in Minority Health, Health Administration Graduate Program, Geriatric Education Centers, Special Projects to Schools of Public Health, AIDS Regional Education and Training Centers.

The closing is in accordance with the provisions set forth in section 552b(c)(6) title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Ms. Wilma J. Johnson, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda Items are subject to change as priorities dictate.

Dated: February 28, 1991.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 91-5177 Filed 3-4-91; 8:45 am]
BILLING CODE 4160-15-M

National Institutes of Health

National Center for Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Biomedical Research Technology Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Biomedical Research Technology Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Research Technology Review.
Date of Meeting: April 3-5, 1991.
Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.
Open: April 4—8 a.m.-9 a.m. (Approximately).
Closed:
April 3—8 a.m.—Recess.
April 4—9 a.m.—Recess.
April 5—8 a.m.—Adjournment.

Mr. James J. Doherty, Information Officer, National Center for Research Resources, 5333 Westbard Avenue, room 10A15, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Ismael Almodovar, Executive Secretary of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A14, Bethesda, Maryland 20892, (301) 496-9971 will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.371, Biomedical Research Technology, National Institutes of Health.)

Dated: February 19, 1991.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 91-5167 Filed 3-4-91; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on March 21 and 22, 1991, Guest Quarters, Calvert Room, 7335 Wisconsin Avenue, Bethesda, Maryland.

The meeting will be open to public on March 21 from 8 p.m. to 9:30 p.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available.

The meeting will be closed to the public on March 21 from 8:30 p.m. to recess and again on March 22 to adjournment in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, room 5A07, Bethesda, Maryland 20892, (301) 496-0754.

Ms. Suzanne Sangalan, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, room 4C27, Bethesda, Maryland 20892, 301-496-0803, will provide summaries of the meeting and roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: February 19, 1991.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 91-5166 Filed 3-4-91; 8:45 am]
BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting of Environmental Health Sciences Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on March 25-26, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. The meeting will be open to the public on March 25 from 9 a.m. to approximately 11:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 25, from 11:30 a.m. to adjournment on March 26, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun, Carol Shreffler or Donald McRee, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919-541-7826), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 19, 1991.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 91-5169 Filed 3-4-91; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-8460-A]

Alaska; Alaska Native Claims Selection; Chenega Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Chenega Corporation. The lands involved are in the vicinity of Chenega, Alaska.

Seward Meridian, AK (Partially Surveyed)
T. 4 N., R. 7 E.,
Secs. 11, 14 and 15;
Secs. 22, 27 and 28.

A notice of the decision will be published once a week, for four (4)

consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until April 4, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Acting Chief, Branch of KCS, Adjudication.

[FR Doc. 91-5121 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-JA-M

[NV-930-01-4212-13; N-53583]

Realty Action; Exchange of Public Lands, Clark County, NV

The following described public lands in Las Vegas, Clark County, Nevada are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada[1]

T. 21 S., R. 60 E.,
Sec. 20, E½NE¼SE¼SW¼, E½E½NW¼SE¼, SW¼NW¼SE¼, N½NW¼SW¼SE¼,
Sec. 29, E½NW¼NE¼SE¼, SE¼NW¼NE¼, E½SE¼SW¼NE¼, E½SW¼SE¼NE¼, W½SE¼SE¼NE¼.

Aggregating 60 acres (gross).

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice in the **Federal Register**, will segregate the public lands, as described in this notice, from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: February 25, 1991.

Gary Ryan,

Associate District Manager, Las Vegas, NV.

[FR Doc. 91-5063 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-01-4212-11; N-52572]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

The following described public land in Henderson, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 22 S., R. 62 E.,
Sec. 9, NW¼SE¼
Aggregating 40 acres (gross)

This parcel of land contains approximately 40 acres. The City of Henderson intends to use the land for park site. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of Las Vegas.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: February 25, 1991.

Gary Ryan,

Associate, District Manager, Las Vegas, NV.

[FR Doc. 91-5065 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-01-4212-14;N-50911]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Las Vegas, Clark county, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of P.L. 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 7: S½NE¼SE¼SW¼, N½SE¼S E¼SW¼.

Aggregating 10 acres (gross).

This parcel of land, situated in Las Vegas is being offered as a direct sale to the Las Vegas Valley Water District. This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, potassium and saleable minerals,and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the city of Las Vegas.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws.

Dated: February 25, 1991.

Gary Ryan,

Associate District Manager, Las Vegas, NV.

[FR Doc. 91-5064 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-HC-M

[NM-940-01-4730-12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

New Mexico Principal Meridian, New Mexico

T. 7 N., R. 2 E., Accepted February 13, 1991, for Group 829 NM.
T. 28 S., R. 20 W., Accepted February 13, 1991, for Group 865 NM.
T. 11 S., R. 15 E., Accepted February 20, 1991, for Group 863 NM.

A Survey within the Tierra Amarilla Grant, Accepted February 13, 1991, for Group 868 NM.

Indian Meridian, Oklahoma

T. 22 N., R. 5 E., Accepted February 13, 1991, for Group 56 OK.
T. 19 N., R. 5 E., Accepted February 13, 1991, for Group 56 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91-5122 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-FB-M

[OR-943-01-4214-11; GP1-117; WASH-04753]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a portion of the land withdrawal for recreation and administrative purposes continue of an additional 20 years and requests that the lands involved remain closed to mining.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

The Forest Service purposes that the existing land withdrawal made by Public Land Order No. 3335 dated February 24, 1964, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following identified lands and projects are involved:

Okanogan National Forest

Roads End Campground, 10 acres located in Sec. 11, T. 34 N., R. 18 E., unsurveyed, W.M., in Okanogan County, approximately 18 miles west of Winthrop.

South Creek Campground, 10 acres located in Sec. 19, T. 34 N., R. 19 E., unsurveyed, W.M., in Okanogan County, approximately 18 miles west of Winthrop.

Poplar Flat Campground, 30 acres located in Sec. 29, T. 34 N., R. 19 E., unsurveyed, W.M., in Okanogan County, approximately 16 miles west of Winthrop.

War Creek Campground, 20 acres located in Sec. 18, T. 33 N., R. 20 E., unsurveyed, W.M., in Okanogan County, approximately 13 miles west of Twisp.

Blackpine Lake Campground, 40 acres located in Sec. 36, T. 33 N., R. 20 E., unsurveyed, W.M., in Okanogan County, approximately 8 miles southwest of Twisp.

J.R. Campground, 40 acres located in Sec. 1, T. 33 N., R. 23 E., W.M., in Okanogan County, approximately 12 miles east of Twisp.

Loup Loup Ski Bowl, 81.06 acres located in Secs. 1 and 2, T. 33 N., R. 23 E., W.M., in Okanogan County, approximately 12 miles east of Twisp.

Loup Loup Campground, 60.06 acres located in Sec. 1, T. 33 N., R. 23 E., and Sec. 36, T. 34 N., R. 23 E., unsurveyed, W.M., in Okanogan County, approximately 12 miles east of Twisp.

Tiffany Campground, 10 acres located in Sec. 16, T. 37 N., R. 23 E., W.M., in Okanogan County, approximately 18 miles northeast of Twisp.

Long Swamp Campground, 20 acres located in Sec. 27, T. 39 N., R. 23 E., W.M., in Okanogan County, approximately 15 miles west of Loomis.

Kerr Campground, 10 acres located in Sec. 23, T. 36 N., R. 24 E., W.M., in Okanogan County, approximately 6 miles northwest of Conconully.

Oriole Campground, 10 acres located in Sec. 25, T. 36 N., R. 24 E., W.M., in Okanogan County, approximately 6 miles northwest of Conconully.

Cottonwood Campground, 10 acres located in Sec. 25, T. 36 N., R. 24 E., W.M., in Okanogan County, approximately 6 miles northwest of Conconully.

Salmon Meadows Campground, 20 acres located in Secs. 32 and 33, T. 37 N., R. 24 E., in Okanogan County, approximately 9 miles northwest of Conconully.

Salmon Meadows Recreational Residence Area, 20 acres located in Sec. 33, T. 37 N., R. 24 E., W.M., in Okanogan County,

approximately 9 miles northwest of Conconully.

Sugarloaf Campground, 20 acres located in Sec. 26, T. 36 N., R. 25 E., W.M., in Okanogan County, approximately 2 miles northeast of Conconully.

Crawfish Lake Campground, 20.25 acres located in Sec. 33, T. 35 N., R. 29 E., W.M., in Okanogan County, approximately 14 miles east of Riverside.

Lyman Lake Campground, 20.76 acres located in Secs. 14 and 24, T. 35 N., R. 30 E., W.M., in Okanogan County, approximately 21 miles east of Riverside.

Sweat Creek Campground, 20 acres located in Sec. 28, T. 37 N., R. 31 E., W.M., in Okanogan County, approximately 10 miles west of Republic.

Beaver Lake Campground, 20.375 acres located in Sec. 25, T. 39 N., R. 30 E., W.M., in Okanogan County, approximately 9 miles north of Wauconda.

Lost Lake Campground, 83.27 acres located in Secs. 28 and 29, T. 39 N., R. 30 E., W.M., in Okanogan County, approximately 8 miles north of Wauconda.

Early Winters Campground, 25 acres located in Sec. 20, T. 36 N., R. 19 E., unsurveyed, W.M., in Okanogan County, approximately 2 miles west of Mazama.

Rattlesnake Campground, 10 acres located in Sec. 2, T. 36 N., R. 18 E., unsurveyed, W.M., in Okanogan County, approximately 9 miles west of Mazama.

Falls Creek Campground, 14.59 acres located in Sec. 12, T. 36 N., R. 21 E., W.M., in Okanogan County, approximately 10 miles north of Winthrop.

Memorial Campground, 11.22 acres located in Sec. 35, T. 36 N., R. 21 E., unsurveyed, W.M., in Okanogan County, approximately 6 miles north of Winthrop.

Camp Four Campground, 20 acres located in Sec. 7, T. 37 N., R. 22 E., W.M., in Okanogan County, approximately 18 miles north of Winthrop.

Breviconis Recreation Residence Area, 30 acres located in Sec. 19, T. 37 N., R 22 E., unsurveyed, W.M., in Okanogan County, approximately 15 miles north of Winthrop.

Chewack Campground, 20 acres located in Sec. 30, T. 37 N., R. 22 E., unsurveyed, W.M., in Okanogan County, approximately 13 miles north of Winthrop.

Thirtymile Campground, 20 acres located in Sec. 1, T. 38 N., R. 22 E., unsurveyed, W.M., in Okanogan County, approximately 18 miles east of Loomis.

Lake Creek Campground, 10 acres located in Sec. 30, T. 38 N., R. 22 E., unsurveyed, W.M., in Okanogan County, approximately 16 miles north of Winthrop.

Rivers Bend Campground, 10 acres located in Sec. 1, T. 38 N., R. 18 E., unsurveyed, W.M., in Okanogan County, approximately 8 miles northwest of Mazama.

The withdrawal currently segregates the lands from operation of the mining Laws, but not the public land laws generally and the mineral leasing laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: February 13, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-5117 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Availability of Plan of Operations and Environmental Assessment Geophysical Exploration Inland Geophysical Services, Inc.; Big Thicket National Preserve Jefferson, Orange, and Hardin Counties, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Inland Geophysical Services, Inc., a Plan of Operations for a geophysical survey within the Beaumont Unit of Big Thicket National Preserve, located within Jefferson, Orange, and Hardin Counties Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728 and will be sent upon request.

Dated: February 13, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-5091 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment for Proposed Jetty System Maintenance Project and Operations Plan for Two Natural Gas Pipelines; Trunkline Gas Co.; Big Thicket National Preserve Jasper and Hardin Counties, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from Trunkline Gas Company a Plan of Operations for a Proposed Jetty System Maintenance Project and Operations Plan for Two Natural Gas Pipelines located within the Neches River Unit of Big Thicket National Preserve, Jasper and Hardin Counties, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Big Thicket National Preserve, 3785 Milam, Beaumont, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728 and will be sent upon request.

Dated: February 13, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-5092 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

Availability of Plan of Operations and Environmental Assessment for Directionally Drilling Gas Well State CR 4-4"B" APX Corp. Lake Meredith National Recreation Area Potter County, TX

Notice is hereby given in accordance with § 9.52(b) of title 36 of the Code of Federal Regulations that the National Park Service has received from APX Corporation a Plan of Operations for Directionally Drilling the State CR 4-4"B" Gas Well within Lake Meredith National Recreation Area, Potter County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment, for a period of 30 days from the publication date of this notice, in the Office of the Superintendent, Lake Meredith National Recreation Area, 419 East Broadway, Fritch, Texas; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, room 211, Santa Fe, New Mexico.

Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

Dated: February 13, 1991.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 91-5090 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Serivce; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: March 22, 1991.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Bristol Riverside Theatre, 120 Radcliffe Street, Bristol, PA.

FOR FURTHER INFORMATION CONTACT: Milly Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P-206, Bethlehem, PA 18018 215-861-0345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division Park and Resource Planning, 200 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91-5138 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

Cape Krusenstern National Monument Subsistence Resource Commission, et al.; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of the Northwest Alaska Areas and the Chairpersons of the Subsistence Resource Commissions (SRC) for Cape Krusenstern National Monument and Kobuk Valley National Park announce a forthcoming meeting.

The following agenda items will be discussed:

(1) Call to order.
(2) Introduction of commission members and guests.
(3) Review and approval of minutes from last meeting.
(4) Election of chairpersons.
(5) Review of SRC role and function.
(6) Subsistence court cases and legal update.
(7) Federal subsistence management program update.
(8) Hunting plan recommendations.
(9) Public and agency comments.
(10) New business.
(11) Adjournment.

DATES: The meeting will begin at 9 a.m. on Tuesday, March 12, 1991, and conclude around 5 p.m.

LOCATION: The meeting will be held at the National Guard Armory, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Ralph Tingey, Superintendent, P.O. Box 1029, Kotzebue, Alaska 99752. Phone (907) 442-3890.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul Haertel,

Acting Regional Director.

[FR Doc. 91-5139 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

Wrangell-St. Elias National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Wrangell-St. Elias National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.
(2) Election of chairperson.
(3) Old business.
a. Review SRC role and function.
b. Review December meeting minutes.
c. Hunting plan work session.
—Review recommendations and public comments.
—Redraft and prepare recommendations for submission to Secretary and Governor.
(4) New business.
a. Federal subsistence program update.
b. Park subsistence resource report (populations and seasons/bag limits).
c. Establish date for next meeting.
(5) Adjournment.

DATES: The meeting will begin at 9 a.m. on Tuesday, March 19, 1991, and conclude around 5 p.m. The meeting will convene at 9 a.m. on Wednesday, March 20, 1991, and conclude that afternoon.

LOCATION: The meeting will be held at the Caribou Restaurant Conference Room in Glennallen, Alaska.

FOR FURTHER INFORMATION CONTACT: Karen Wade, Superintendent, P.O. Box 29, Glennallen, Alaska 99588. Phone (907) 822-5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96-487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul Haertel,

Acting Regional Director.

[FR Doc. 91-5140 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 23, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC

20013-7127. Written comments should be submitted by March 20, 1991.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Poinsett County

Rivervale Inverted Siphons, Just SW of AR 135 across Little R., Rivervale, 91000339

CALIFORNIA

Los Angeles County

Tuna Club of Avalon, 100 St. Catherine Way, Catalina Island, Avalon, 91000338

Orange County

VIRGINIA (sloop), Dana Point Youth & Group Facility, W. basin, Dana Point Harbor, Dana Point, 91000337

San Luis Obispo County

Arroyo Grande 100F Hall, 128 Bridge St., Arroyo Grande, 91000344

Tuolumne County

Gamble Building and Miner's Bean Kettle, 17544 CA 120, Big Oak Flat, 91000335

LOUISIANA

Avoyelles Parish

Texas and Pacific Railroad Depot, Jct. of W. Main and Oak Sts., Bunkie, 91000345

Orleans Parish

Howard Memorial Library, 615 Orleans Ave., New Orleans, 91000343

MICHIGAN

Marquette County

Cohodas, Sam, Lodge, Off US 41 and E end of Lake Michigamme, Michigamme Township, Champion vicinity, 91000331

Granot Loma, Co. Rd. 595D on Lake Superior shore N of Thoneys Pt., Powell Township Marquette vicinity, 91000330

Wayne County

Sibley, Frederic M., Lumber Company Office Building, 6460 Kercheval Ave., Detroit, 91000329

MONTANA

Flathead County

Heller Building, 140 Main St., Kalispell, 91000332

Lewis and Clark County

Olsen House, 516 W. Park, Helena, 91000333

Missoula County

Missoula Southside Historic District, Roughly bounded by the Clark Fork R., S. Higgins Ave., S. 6th W. and Orange St., Missoula, 91000334

NEW YORK

Seneca County

Seneca Falls Village Historic District, Roughly, properties along State and Cayuga Sts. from Butler and Auburn to Canal St., including Van Cleef Lake, Seneca Falls, 91000342

NORTH CAROLINA

Forsyth County

Bethania Historic District (Boundary Increase), Roughly, area outside present district W and N along Muddy Cr., S to Reynolda Rd. and E along Walker Rd., Bethania, 91000346

Swain County

Hyatt, Abel, House, E. side NC 1168, 0.2 mi. N of jct with NC 1191, Bryson City vicinity, 91000340

TEXAS

Cooke County

Cooke County Courthouse, Public Square, bounded by California, Dixon, Main and Commerce Sts., Gainesville, 91000336

WISCONSIN

La Crosse County

Chambers—Markle Farmstead, 6104 WI 35, La Crosse, 91000341

[FR Doc. 91-5048 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 16, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by March 20, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Calaveras County

New Melones Archeological District, Address Restricted, Angels Camp vicinity, 91000327

Contra Costa County

Rodgers, Patrick, Farm, 315 Cortsen Rd., Pleasant Hill, 91000305

Fresno County

Twining Laboratories, 2527 Fresno St., Fresno, 91000306

MAINE

Cumberland County

Portland Railroad Company Substation, US 1, West Scarborough, 91000320

Franklin County

Thompson's Bridge, Over Thompson's Cr. off N. side of ME 43 at Franklin—Somerset Co. line, Allen's Mills vicinity, 91000321

Hancock County

Jesup Memorial Library [Maine Public Libraries], 34 Mt. Desert St., Bar Harbor, 91000323

Knox County

Chestnut Street Historic District, Chestnut St. from Elm to Beacon Ave. including parts of Penobscot, Pleasant and Wood Sts., and Dillingham Pt., Camden, 91000325

Lincoln County

Dodge Point Site, Address Restricted, Newcastle vicinity, 91000319

Oxford County

Main Street Historic District, Main Street from Portland St. to about Swans Falls Rd., Fryeburg, 91000324

Piscataquis County

Sangerville Town Hall, Main St., Sangerville, 91000322

NEW JERSEY

Warren County

Imlaydale Histroic District, Imlaydale Rd. and surrounding land between NJ 31 and the Musconetcong R., Washington and Lebanon Townships, Hampton vicinity, 91000306

OHIO

Cuyahoga County

Greyhound Bus Station, 1465 Chester Ave., Cleveland, 91000302

Licking County

Fuller House, 203 N. Main St., Utica, 91000304

Washington County

Hune, William, Farm, OH 26 N of Dart, Reno, 91000303

OKLAHOMA

Okmulgee County

Severs Block, 101 E. 6th St., Okmulgee, 91000311

Tillman County

Hubbard, William and Mabel Donahoo, House, 323 E. 5th St., Grandfield, 91000310

Tulsa County

McLean, B. W., House and Office, 123 E. A St., Jenks, 91000309

PENNSYLVANIA

Montgomery County

Dawesfield, 565 Lewis Ln., Whitpain Township, Ambler, 91000316

TENNESSEE

Shelby County

Campbell, Joseph A., House (Collierville MPS), 215 South St., Collierville, 91000314

Collins Chapel CME Church and Site, 676 Washington Ave., Memphis, 91000307

Dudney, Jack, House (Collierville MPA), 90 W. Poplar Ave., Collierville, 91000315

Houston, J.W., House (Collierville MPS), 259 S. Center St., Collierville, 91000313

McFerrin, John B., House (Collierville MPS), 156 W. Poplar Ave., Collierville, 91000316

Thomas, John W., House (Collierville MPS), 245 W. Poplar Ave., Collierville, 91000312

WYOMING

Crook County

McKean Archeological Site (48CK7), Address Restricted, Moorcroft vicinity, 91000326

[FR Doc. 91-5047 Filed 3-4-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent; Burlington Northern Railroad Co. et al.

Notice is hereby given that on February 22, 1991, a proposed Consent Decree in *United States* v. *Burlington Northern Railroad Company and Burlington Northern, Inc.*, Civil Action No. *CV91-32-M-CCL* was lodged with the United States District Court for the District of Montana.

The proposed consent decree requires Burlington Northern Railroad Company ("BNRR") and Burlington Northern, Inc. ("BNI") to partially implement the September 27, 1989 Record of Decision ("ROD") of the United States Environmental Protection Agency ("EPA") to address the release and threatened release of hazardous substances at the Burlington Northern (Somers Site), in the vicinity of Somers, Montana. The ROD selects bioremediation of soils and groundwater at the site as the primary remedy with deep excavation and incineration of soils selected in the event bioremediation proves impracticable. The remedial work to be conducted by BNRR and BNI under the proposed decree includes pilot studies of bioremediation of soils and groundwater at the site to determine practicability, implementation of the bioremediation component of the selected remedy in the event the pilot studies establish the practicability of bioremediation, and implementation of a wetlands restoration plan. The decree also requires BNRR and BNI to pay $1,086,091.16 toward the federal government's past costs incurred in connection with the site, and to pay all future oversight costs to be incurred by the United States at the site overseeing the implementating of work under the decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Burlington Northern Railroad Corporation and Burlington Northern, Inc.*, DOJ Ref. No. 90-11-2-412. The proposed consent decree may be examined at the office of the United States Attorney, District of Montana, Federal Building, 301 S. Park Avenue, Helena, Montana, or at the office of the Environmental Protection Agency, Region VIII, Montana Office, Federal Building, 301 S. Park Avenue, Helena, Montana. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $22.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5118 Filed 3-4-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; National Wrecking Co., et al.

In accordance with Departmental policy, notice is hereby given that on February 20, 1991, a proposed Stipulation and Order in *United States* v. *National Wrecking Co., et al.*, was lodged with the United States District Court for the Northern District of Illinois. The proposed Stipulation and Order provides for payment by defendants of $4,000 in penalties for violations of the asbestos NESHAP standards.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th Street & Pennsylvania Ave., NW., Washington, DC 20530, and should refer to *United States* v. *National Wrecking Co.*, D.J. reference #90-5-2-1-1173.

The proposed Stipulation and Order may be examined at the office of the United States Attorney, Northern District of Illinois, 1500 South, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Chicago, Illinois 60604, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Stipulation and Order may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 payable to the Treasurer of the United States.

Richard B. Stewart,

Environment and Natural Resources, Assistant Attorney General.

[FR Doc. 91-5119 Filed 3-4-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

Union Research Co., Inc., et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 25 , 1991, a proposed Consent Decree in *United States* v. *Union Research Co., Inc., et al.*, Civil No. 87-0355 B, was lodged with the United States District Court for the District of Maine resolving Counts II and III of the Complaint filed in this matter as to defendant Ethan Allen, Inc. The proposed Consent Decree concerns defendant's response to an information request sent by the United States Environmental Protection Agency, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the Resource Conservation and Recovery Act, as amended.

Under the terms of the Consent Decree, defendant will pay the United States $21,000 to settle the United States' claim (under Counts II and III of the Complaint), for injunctive relief and penalties.

The Department of Justice will receive for a period- of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Union Research Co., Inc.*, D.O.J. Ref. 90-11-2-227.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, Boston, MA. Copies of the Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044, (202 347-2072). A copy of the proposed Consent Decree may be

obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction cost) made payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5120 Filed 3-4-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Final Judgment by Consent Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on February 20, 1991, a proposed consent decree in *United States* v. *Westchem Agricultural Chemicals, Inc., Wenco, Ltd. and Thomas A. Wentz*, was lodged with the United States District Court for the District of North Dakota. The decree pertains to the Westchem Site in Minot, North Dakota. The proposed consent decree requires the settling defendants to pay the United States $280,000, plus interest, which will accrue from the date of entry of this consent decree, until total payment is made on or around April 5, 1991, in reimbursement of past response costs.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Westchem Agricultural Chemicals, Inc., et.al.* (D.N.D.) and DOJ Ref. No. 90-11-3-827. The proposed consent decree may be examined at the office of the United States Attorney, 452 U.S. Post Office & Courthouse, Third Street and Rosser Avenue, Bismarck, North Dakota; at the office of the Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado; or at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5087 Filed 3-4-91; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 47-10]

Privacy Act of 1974; Removal of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), and for reasons given below, the Immigration and Naturalization Service (INS), Department of Justice, is removing from the Department's compilation of Privacy Act issuances the following systems of records:

Application/Petition Tracking System (APTS), JUSTICE/INS-002

Top Priority Program (TPP), JUSTICE/INS-004

Case Control System, JUSTICE/INS-005

(These systems were last published on December 11, 1987 (52 FR 47253, 47255, and 47256 respectively).)

Records in the APTS system were incorporated into a new Privacy Act system of records of much broader scope entitled "Fees Application Receipt and Entry System (FARES), JUSTICE/INS-013," which was published on May 30, 1989 (53 FR 22972).

Records in the TPP system were established as temporary records and have been routinely destroyed in accordance with General Records Schedule (GRS) No. 23, item 9, i.e., one year after the individual or organization ceased to be an active subject of the TPP system. This program has not been active since 1980. To the extent that records of a similar type exist in INS official files, they may be accessed from a system entitled "Immigration and Naturalization Service (INS) Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A," which was last published on May 11, 1988 (53 FR 16797).

Records in the Case Control System are actually duplicated in the Central Index System (named above), or in a system entitled "Deportable Alien Control System (DACS), JUSTICE/INS-012," which was last published on November 26, 1990 (55 FR 49181). Therefore, it has been determined that it is no longer necessary to maintain a separate system. Accordingly, records of the Case Control System have been deleted in accordance with GRS No. 20, item 9, and no new records are being added to the system. Thus, all requests that would otherwise be made to access the Case Control System should now be made to access the Central Index and DACS systems. Instructions for accessing INS record systems are included in "JUSTICE/INS-999, Appendix: List of Principal Offices of the INS," which was last published on February 4, 1983 (48 FR 5350), and/or in the published systems of records.

The Department is also removing from its compilation of Privacy Act issuances the following Appendix:

JUSTICE/CRM-999, Appendix to Criminal Division's Systems of Records; Field Office Addresses of Organized Crime and Racketeering Sections Where Records May Be Located (last published on December 11, 1987 (52 FR 47205)).

The Organized Crime Strike Forces have been removed from the control of the Organized Crime and Racketeering Section, Criminal Division (CRM), and reassigned to the 94 U.S. Attorney (USA) offices which are identified in JUSTICE/USA-999, Appendix of United States Attorneys' Office Locations. This Appendix was last published on November 26, 1990 (55 FR 49150). Related USA strike force records may be accessed from a system of records entitled "Criminal Case Files, JUSTICE/USA-007," which was last published January 22, 1988 (53 FR 1661). Instructions for accessing USA records are contained in the published Appendix, and/or in the published systems of records.

Dated: February 12, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 91-5066 Filed 3-4-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than March 15, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 15, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

	Petitioner (union/ workers/firm)	Location	Date received	Petition No.	Articles produced
Airfoil Textron (Wkrs)	Elwood, IN	02/19/91	02/05/91	25,409	Compressor & fan blades.
Airwick Industries Corp. (Wkrs)	Carlstadt, NJ	02/19/91	02/09/91	25,410	Air freshners.
ARCO Oil & Gas Co.	Seminole, OK	02/19/91	02/01/91	25,411	Oil & gas.
Bethlehem Steel Corp., Sparrows Point Plt (Wrks)	Baltimore MD	02/19/91	02/08/91	25,412	Steelslabs, ingots.
Birnbaum & England Knitting Mills (Wkrs)	Brooklyn, NY	02/19/91	02/08/91	25,413	Sweaters.
Cambria Mills Coal Co., Inc. (Wkrs)	Coalport, PA	02/19/91	02/05/91	25,414	Coal.
Cyprus Tonopah Mining (Wrks)	Tonopah, NY	02/19/91	01/28/91	25,415	Molybdenum & copper.
Data Gen. Training & Conf. Center (Wkrs)	Woodstock, CT	02/19/91	02/05/91	25,416	Computers.
Dillo Apparel (Wkrs)	Weslaco, TX	02/19/91	02/01/91	25,417	Jeans.
Energetics Ltd (Wkrs)	Marion, MI	02/19/91	02/07/91	25,418	Oil & gas.
Energetics, Ltd (Wkrs)	Mason, MI	02/19/91	02/07/91	25,419	Oil
Estey Co. Div. of Tennsco (Wkrs)	Tinton Falls, NJ	02/19/91	02/07/91	25,420	Steel shelves.
Fisher Price Toys (Wkrs)	Brownsville, TX	02/19/91	02/04/91	25,421	Toys.
Fox Marketing (Wkrs)	Dayton, OH	02/19/91	02/05/91	25,422	Radar detectors.
Herschel Shoe Co., Div. of Athlone (Wkrs)	Littleton, NH	02/19/91	02/05/91	25,423	Shoes.
Hermance Machine Co. (IUE)	Williamsport, PA	02/19/91	02/10/91	25,424	Woodworking machines.
J-Wood Div. W.C.I.	Milroy, PA	02/19/91	02/07/91	25,425	Cabinets & Vanities
Magnesium Corp. of Amer. Rowley Pl. (Wkrs)	Salt Lake City,	02/19/91	02/08/91	25,426	Magnesium ingots.
Mainline Fashion (ILGWU)	New York, NY	02/19/91	01/31/91	25,427	Coats & suits.
Max Kahn Curtin Corp. (ACTWU)	Evergreen, AL	02/19/91	01/31/91	25,428	Draperies, bedspreads & comforters.
Midwest Aluminum (Wkrs)	Kalamzoo, MI	02/19/91	02/05/91	25,429	Aluminum.
Milton Shoe Mfg. Co. (UFCW)	Milton, PA	02/19/91	02/04/91	25,430	Footwear.
Moench Tanning Co. (Wkrs)	Gowanda, NY	02/19/91	02/05/91	25,431	Leather.
Radel Leather Div of Seton Co. (UFCW)	Newark, NJ	02/19/91	02/05/91	25,432	Leather.
RPI Inc., Lewiston Div. (Wkrs)	Lewiston, MI	02/19/91	02/08/91	25,433	Stampings & assemblies
Rubber Worker's Club, Inc. (Wkrs)	Eau Claire, WI	02/19/91	02/01/91	25,434	Maintain hall & bar for Uniroyal workers.
Rundel Products (Wkrs)	Olympia, WA	02/19/91	02/06/91	25,435	Software.
Sylvania Shoe Mfg. Corp. (Wkrs)	Mcsherrystown, PA	02/19/91	02/11/91	25,436	Shoes.
Sylvania Shoe Mfg	Greencastle, PA	02/19/91	02/11/91	25,437	Shoes.
Tandy Magnetic Media (Wkrs)	Santa Clara, CA	02/19/91	02/07/91	25,438	Video tapes.
Taylor LBR & Treating (Wkrs)	Beaverton, OR	02/19/91	01/18/91	25,439	Timbers.
U.S. Shoe Corp.-Falmouth Pl. (Wkrs)	Falmouth, KY	02/19/91	01/29/91	25,440	Footwear.
U.S. Shoe Corp.-Greenfield Pl. (Wkrs)	Greenfield, OH	02/19/91	02/04/91	25,441	Footwear.
U.S. Shoe Corp.-Harrison Pl. (Wkrs)	Harrison, OH	02/19/91	02/04/91	25,442	Footwear.
United Rubber Corp. (URCLPWA) (URW)	Eau Claire, WI	02/19/91	02/01/91	25,443	URW union office.
Universal/Unitek Inc. (Wkrs)	No. Attleboro, MA	02/19/91	02/07/91	25,444	Eye glass frames.
Vaagen Brothers Lumber Co. (Wkrs)	Iona, WA	02/19/91	02/05/91	25,445	Lumber.
Walker Manufacturing (UAW)	Heath, OH	02/19/91	02/01/91	25,446	Exhaust system.
Westpac Moulding of Texas (Wkrs)	Clifton, TX	02/19/91	02/01/91	25,447	Wood mouldings.

[TA-W-25,087]

Brockway, Inc. Montgomery, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Brockway, Incorporated, Montgomery, Alabama. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,087; Brockway, Incorporated, Montgomery, Alabama (February 20, 1990)

Signed at Washington, DC this 21st day of February, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5056 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 984]

Bernat Yarn & Craft Corp. a/k/a Craftco, Inc., Uxbridge, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 22, 1991 applicable to all workers of Bernat Yarn & Craft Corporation, Uxbridge, Massachusetts. The Certification Notice was published

in the **Federal Register** on February 5, 1991 (56 FR 4648).

New information shows the company was purchased on April 12, 1990 by Craftco, Inc. The Uxbridge facility produced the same products and employed the same workforce while under both ownerships. The Uxbridge facility under Craftco meets all the requirements for a successor-in-interest firm.

Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-24,994 is hereby issued as follows:

All workers of Bernat Yarn & Craft Corporation, also known as (a/k/a) Craftco, Inc., Uxbridge, Massachusetts who became totally or partially separated from employment on or after August 30, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 22nd day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5056 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 222]

Lee-Vic; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 26, 1990 in response to a worker petition which was filed on November 22, 1990 on behalf of workers at Lee-Vic, Brooklyn, New York.

The subject firm has closed permanently and data are not available from any source. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 25th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc.91-5057 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,702]

Tektronix, Inc.; Visual Systems Group Wilsonville, OR

In the matter of Tektronix Inc., Visual Systems Group, Wilsonville, OR and operating at various locations in the following states:

TA-W-24,702A Alabama
TA-W-24,702B Alaska
TA-W-24,702C Arizona
TA-W-24,702D California
TA-W-24,702E Colorado
TA-W-24,702F Connecticut
TA-W-24,702G Florida
TA-W-24,702H Georgia
TA-W-24,702I Illinois
TA-W-24,702J Indiana
TA-W-24,702K Maryland
TA-W-24,702L Massachusetts
TA-W-24,702M Maine
TA-W-24,702N Michigan
TA-W-24,702O Minnesota
TA-W-24,702P Missouri
TA-W-24,702Q New Jersey
TA-W-24,702R New Mexico
TA-W-24,702S New York
TA-W-24,702T North Carolina
TA-W-24,702U Ohio
TA-W-24,702V Oklahoma
TA-W-24,702W Oregon (except Wilsonville)
TA-W-24,702X Pennsylvania
TA-W-24,702Y Tennessee
TA-W-24,702Z Texas
TA-W-24,702AA Utah
TA-W-24,702AB Virginia
TA-W-24,702AC Washington
TA-W-24,702AD Washington, DC
TA-W-24,702AE Wisconsin

Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 31, 1990 applicable to all workers of the Visual Systems Group of Tektronix, Inc., Wilsonville, Oregon. The Certification Notice was published in the **Federal Register** on November 14, 1990 (55 FR 47550).

At the request of the State Agency, the Department reviewed the subject certification. The company supplied new information indicating worker separations from the Visual Systems Group of Tektronix in the subject States. The notice, therefore, is amended to properly reflect the correct worker groups.

The amended notice applicable to TA-W-24,702 is hereby issued as follows:

All workers of Tektronix, Inc., Visual Systems Group Wilsonville, Oregon and in locations in the following States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon (except Wilsonville), Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Washington, DC, and Wisconsin who became totally or partially separated from employment on or after July 21, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5054 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 660]

W.R. Case and Sons Cutlery Co., Bradford, PA; Negative Determination Regarding Application for Reconsideration

By an application dated January 8, 1991, Local # 638 of the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 14, 1990 and published in the **Federal Register** on January 8, 1991 (56 FR 710).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at Bradford produced pocket knives. The union's request identified several patterns of knives as being imported from Japan.

The Department's denial was based on the fact that the increased import criterion was not met for 1989 and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for 1990. U.S. imports of knives and related cutlery decreased absolutely and relative to domestic shipments in 1989 compared to 1988.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that most of the respondents did not import knives. Those customers importing knives had decreased import purchases during the relevant periods.

Investigation findings show that the import purchases from Japan were blades (components) for the knives identified by the union. These imported knife components accounted for a negligible portion of the company's total volume and declined during the period applicable to the petition.

The issue of components (knife blades) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of blades cannot be considered in determining import injury to workers producing knives. Therefore, in determining import injury to workers at Bradford, the Department must consider the finished article produced at Bradford—knives.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of February 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-5055 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification; Pioneer Coal Sales, Inc. et al.

The following parties have filed petitions to modify the application of mandatory safety standards under 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Pioneer Coal Sales, Inc., P.O. Box 3061, Princeton, New Jersey 08540 has filed a petition (M-91-15-C) to modify the application of 30 CFR 75.316 (ventilation system and methane and dust control plan) to its Borgman No. 10 Mine (I.D. No. 46-01484) located in Preston County, West Virginia. The petitioner proposes to establish check points and monitor regularly in lieu of ventilating or sealing abandoned areas of the mine.

2. Utah Fuel Company, P.O. Box 719, Helper, Utah 84526 has filed a petition (M-91-16-C) to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Skyline Mines (I.D. No. 42-01566 and 42-01435) located in Carbon and Emery Counties, Utah. The petitioner proposes to use high-voltage cables in by the last open crosscut and within 150 feet of pillar workings.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 4, 1991. Copies of the petitions are available for inspection at that address.

Dated: February 20, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-5059 Filed 3-4-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-22]

Intent to Grant Separate Partially Exclusive Patent Licenses

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant separate licenses.

SUMMARY: NASA hereby gives notice of intent to grant Innovative Dynamics separate Partially Exclusive, royalty-bearing, revocable licenses to practice the inventions covered in U.S. Patent No. 4,766,369 entitled "Ice Detector" which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on August 23, 1988, and in corresponding Canadian Patent Application Serial No. 567,827 for use on aircraft, commercial and private, fixed and rotary wing. The proposed licenses will be for the life of U.S. Patent No. 4,766,369, and the life of any Canadian patents issuing from said Canadian Patent Application respectively. Both licenses will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the partially exclusive licenses, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grants, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grants and then recommend to the Association General Counsel (Intellectual Property) whether to grant the respective licenses.

DATES: Comments to this notice must be received by May 6, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: February 26, 1991.

Gary L. Teach,

Deputy General Counsel.

[FR Doc. 91-5142 Filed 3-4-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.

Date: Wednesday, March 20, 1991.

Time: 9 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, DC 20550. Telephone: 202/357-7512.

Purpose of Committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: The determination made on February 22, 1991 by the Director of the National Science Foundation pursuant to the provisions of section 10(d) of Public Law 92-463.

Dated: February 27, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5100 Filed 3-4-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-224]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility License No. R-101; University of California Berkeley Research Reactor

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order terminating Facility License No. R-101 for the University of California (the licensee) Berkeley Research Reactor located in Berkeley, California, in accordance with the application dated April 16, 1990, as supplemented on July 6, 1990.

Environmental Assessment

Identification of Proposed Action

By application dated January 8, 1968 as supplemented on January 31, 1969 and April 14, 1969, the licensee requested authorization to dismantle the Berkeley Research Reactor, and dispose of its component parts in accordance with the proposed decommissioning plan to terminate Facility License No. R-101. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated September 12, 1989 (54 FR 38579), the licensee completed the dismantlement and submitted a final survey report and request to terminate the license on April 16, 1990 as supplemented on July 6, 1990. Representatives of the Oak Ridge Associated Universities, (ORAU), under contract to NRC, conducted a survey of the facility on July 16-18, 1990. The survey is documented in a ORAU report "Confirmatory Radiological Survey of the Berkeley Research Reactor Facility University of California at Berkeley, Berkeley, California," dated November 1990. Region V, in a memorandum dated November 30, 1990, found that the ORAU report findings support the data developed in the licensee's final survey report.

Need for Proposed Action

In order to release the facility for unrestricted access and use, Facility License No. R-101 must be terminated.

Environmental Impact of License Termination

The licensee indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of 5 micro R/hr above background at one meter. These measurements have been verified by the NRC. The NRC finds that since these criteria have been met, there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

Since the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility License No. R-101.

Agencies and Persons Consulted

Personnel from the Oak Ridge Associated Universities (an NRC contractor) assisted Region V in the conduct of the Termination Survey for the Berkeley Research Reactor.

Finding of No Significant Impact

The NRC has determined not to prepare an Environmental Impact Statement for the proposed action. Based on the foregoing Environmental Assessment, the NRC has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For futher details with respect to this proposed action, see the application for termination of Facility License No. R-101, dated April 16, 1990, as supplemented July 6, 1990. These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 26th day of February 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5131 Filed 3-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.45 (b)(2)(iii) to Wisconsin Electric Power Company (the licensee), for the Point Beach Nuclear Plant, Units 1 and 2, located in Manitowoc County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow a 4-month delay in the submittal of the certification of the Point Beach Nuclear Plant control room simulator. Title 10 CFR 55.45(b)(2)(iii) requires that the certification be submitted by March 26, 1991. Because of delays caused by the simulator vendor, the licensee proposes to submit the required certification by July 24, 1991.

The initial operator examinations using the simulator are scheduled for September 1991. The licensee does not anticipate any delay in administration of the simulator portion of these operator examinations.

The proposed action is in accordance with 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated December 17, 1990.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to complete the factory acceptance testing of their new plant-referenced simulator. This will permit their use of the factory acceptance testing as the testing portion of their certification process.

Environmental Impacts of the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemption will only affect the schedule for activities related to simulator certification and not otherwise alter the actions being taken to install a new plant-referenced simulator at the Point Beach Nuclear Plant.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility but would impose on the Wisconsin Electric Power Company a less efficient and more costly certification process.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Point Beach Nuclear Plant.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepared an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 17, 1990, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland, this 26th day of February 1991.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5132 Filed 3-4-91; 8:45am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Auxiliary and Secondary Systems; Meeting

The Subcommittee on Auxiliary and Secondary Systems will hold a meeting on March 22, 1991, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, March 22, 1991—8:30 a.m. until the conclusion of business.

The Subcomittee will discuss with NRC Research the status of Generic Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and Draft NUREG/CR-1421, Regulatory Analysis for Generic Issue 130, "Essential Service Water Systems Failures at Multi-Unit Sites."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the ACRS Staff Engineer, Mr. Thomas S. Rotella, P.E. (telephone 301/492-8972), between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 25, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-5127 Filed 3-4-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18016; 812-7617]

Templeton American Growth Trust, Inc., et al.; Application

February 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Templeton American Growth Trust, Inc. (the "Fund") and Templeton Funds Distributor, Inc. (the "Distributor") on behalf of themselves and all subsequent registered investment companies for which the Distributor, or a corporate affiliate of the Distributor, serves as principal underwriter and/or investment adviser.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act granting exemptions from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the imposition and waiver of a contingent deferred sales charge ("CDSC") on the terms described in the application and summarized below.

FILING DATES: The application was filed on November 1, 1990, and an amendment to the application was filed on January 11, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1991 and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 700 Central Avenue, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is an open-end diversified management investment company incorporated under the laws of the State of Maryland. The Fund's Investment Manager is Templeton, Galbraith & Hansberger (the "Investment Manager"), a corporation organized under the laws of the Cayman Islands. The Distributor, an indirect wholly-owned subsidiary of the Investment Manager and also the principal underwriter for the other Templeton Funds, will underwrite the shares of the Fund. Shares of the Fund will be offered to the public at net asset value with no sales charge.

2. The Distributor intends to pay dealers a sales commission of 4% of the sales price of the Fund's shares sold by such dealers. In addition to any sales commission paid to dealers, the Distributor also may pay a service fee to dealers who distribute shares of the

Fund. The Fund will finance its distribution expenses, in part, under a distribution plan adopted pursuant to rule 12b–1 under the 1940 Act (the "Plan"). Under the Plan, the Fund may compensate the Distributor monthly in an amount not to exceed 1.25% of the average daily net assets of the Fund.

3. The proposed CDSC is completely separate and independent from the Plan. If imposed, the CDSC will be deducted from the redemption proceeds otherwise payable to the shareholder. Amounts received by the Distributor under the Plan will not be reduced or offset by the CDSC retained by the Distributor. The purpose of the CDSC is to compensate the Distributor for the commissions advanced to dealers. The Fund's Board of Directors, in its periodic review of the Plan, will consider the effect of the CDSC. Applicants believe that the commission of the CDSC and the Plan will facilitate the Applicant's ability to sell shares of the Fund without a sales load being deducted at the time of purchase.

4. In no event will the aggregate amount of the CDSC exceed 5% of the aggregate purchase payments made by the investor. Where a CDSC is imposed, the amount of the charge will depend on the number of years since the investor made the purchase payment from which an amount is being redeemed, commencing at 5.0% during the year following the purchase payment. The CDSC will decline in increments of 1% per year until the fifth year following the purchase payment, when the contingent deferred charge will be 1%. No CDSC will be imposed for redemptions representing purchase payments made more than five years before the date of such redemptions.

5. The amount of the CDSC (if any) will be calculated by determining the date on which the purchase payment which is the source of the redemption was made, and applying the appropriate percentage to the lesser of (a) the purchase price of the shares, or (b) the net asset value of the shares at the time of redemption. No sales charge would be imposed on redemptions of amounts representing the following: (1) Increases in the value of the shareholder's account due to appreciation in net asset value per share, (2) Fund shares acquired with reinvested dividends or capital gains distributions, and (3) shares that were held longer than the period of the contingent deferred sales charge before they are redeemed. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of shares held by the investor for the longest period of time within the applicable five-year period.

6. Applicants would be able to waive the imposition of the CDSC on redemptions in connection with: (1) Distributions from a Custodian Account under section 403(b) of the Internal Revenue Code (the "Code") or an IRA due to death, disability, or attainment of age 59½; (2) a tax-free return of the excess contribution to an IRA; (3) distributions by other employee benefit plans to pay benefits; (4) distributions from a retirement plan qualified under section 401(a) of the Code due to death; (5) distributions effected pursuant to the Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than $250 or such other amount as set forth in the then current prospectus for the Fund; and (6) distributions the proceeds of which are reinvested in the Fund within ninety (90) days of the redemption.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the 1940 Act exempting the Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and rule 22c–1 thereunder, to the extent necessary or appropriate to permit the imposition and waiver of a CDSC. As here relevant, section 6(c) of the 1940 Act authorizes the Commission to conditionally or unconditionally exempt any person or transaction, or any class or classes of persons or transactions, from any provision of the 1940 Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants submit that the proposal to impose a CDSC is fair and is in the public interest and the interest of the Fund's shareholders, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The proposed CDSC permits shareholders to have the advantage of greater investment dollars working for them from the time of a purchase of Fund shares. Further, the highest rate that can be charged a shareholder is less than the full front-end sales load charged by many other investment companies. The CDSC will not apply to redemptions of shares held for the entire CDSC period after the date of purchase or to increases in the investor's account through reinvestment of dividends or capital gains distributions or increases in net asset value per share.

3. Section 2(a)(32) of the 1940 Act defines a "redeemable security" as any security, other than short-term paper, that entitles the holder to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Applicants contend that the proposed CDSC would in no way restrict a shareholder from receiving his proportionate share of the current net assets of the Fund, but would merely defer the deduction of a sales charge and make it contingent upon an event that may never occur. Section 5(a)(1) of the 1940 Act defines an "open-end company" as a management company issuing redeemable securities. While the Applicants believe, therefore, that the Fund would continue to qualify as an open-end investment company under section 5(a)(1) of the 1940 Act, they seek an exemption from section 2(a)(32) under the 1940 Act to avoid uncertainty in this regard.

4. Section 2(a)(35) of the 1940 Act, insofar as relevant, defines "sales load" as "the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer * * *." The Applicants believe that the proposed contingent deferred sales charge qualifies as a "sales load" within the meaning of section 2(a)(35) because the proposed charge is consistent with the intent of the definition of "sales load" contained in the 1940 Act.

5. Section 22(c) of the 1940 Act empowers the Commission to "make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company * * *." Rule 22c–1 under the 1940 Act, in pertinent part, prohibits a registered investment company issuing a redeemable security from redeeming any such security except at a price based on the current net asset value of such security. Applicants submit that implementation of the proposed contingent deferred sales charge does not violate section 22(c) of the 1940 Act or rule 22c–1 thereunder because the price of the shares on redemption would be based on current net asset value. However, in order to avoid any possibility that questions might be raised as to the potential applicability of section 22(c) and rule 22c–1, Applicants request an exemption from section 22(c) and rule 22c–1 to permit them to implement the proposed CDSC.

6. Rule 22d–1, in substance, permits variation or elimination of sales loads to "particular classes of investors or transactions," provided that such variation or elimination is described in the investment company's registration statement. Applicants believe that rule 22d–1 exempts the CDSC and waivers thereof from the prohibitions of section 22(d) of the 1940 Act. Nonetheless, to preclude any assertion that rule 22d–1 is unavailable, Applicants request an exemption from section 22(d) to the extent necessary to implement the CDSC and waivers thereof as described above. Applicants believe that such an order would be consistent with the policies embodied in rule 22d–1, since the Fund intends to disclose fully these charges and waivers in its prospectus.

7. Applicants submit that the proposal is consistent with every aspect of proposed rule 6c–10, which codifies the Commission's current position with respect to contingent deferred sales charges. Investment Company Act Release No. 16619 (Nov. 2, 1988).

Applicants' Condition

Applicants agree, as an express condition to the requested exemptive order, that they will comply with the provisions of proposed rule 6c–10 under the 1940 Act as currently stated and as it may be adopted and modified in the future.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5146 Filed 3–4–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18015; 812–7410]

NIPSCO Capital Markets, Inc.; Application

February 26, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: NIPSCO Capital Markets, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order exempting it from all provisions of the 1940 Act in connection with the offer and sale of Applicant's securities to raise funds for the business operations of its parent and certain subsidiaries thereof.

FILING DATE: The application was filed on October 13, 1989, and amended on June 8, 1990, December 12, 1990, and February 19, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 28, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 5825 Hohman Avenue, Hammond, Indiana 46320.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Senior Staff Attorney, (202) 272–7324, or Stephanie M. Monaco, Branch Chief, (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. NIPSCO Capital Markets, Inc. ("Applicant"), a wholly-owned subsidiary of NIPSCO Industries, Inc. ("NIPSCO"), was incorporated under Indiana law on March 10, 1989. NIPSCO is a public utility holding company incorporated under Indiana law on September 22, 1987. In addition to Applicant, NIPSCO's wholly-owned subsidiaries are Northern Indiana Public Service Company ("Northern Indiana"), NIPSCO Development Company, Inc. ("Development"), NIPSCO Fuel Company, Inc., NIPSCO Energy Services, Inc., NI–TEX, Inc. and NIPSCO Energy Trading Corp.

2. Northern Indiana is a natural gas and electric public utility operating company incorporated under Indiana law in 1912. Northern Indian has two wholly-owned subsidiaries: Shore Line Shops Inc. ("Shore Line") and NIPSCO Exploration Company, Inc. ("Exploration").

3. Northern Indiana is subject to regulation by the Indiana Utility Regulatory Commission ("IURC") as to rates, charges, service, accounts, business management, issuance of securities and in other respects. Northern Indiana is also subject to limited regulation by the Federal Energy Regulatory Commission ("FERC"). Neither NIPSCO nor any of its subsidiaries other than Northern Indiana is subject to regulation by IURC or FERC, except with respect to transactions and contracts they have with Northern Indiana.

4. Applicant was formed for the purpose of financing business operations of NIPSCO and NIPSCO's wholly-owned subsidiaries, other than Applicant, Northern Indiana (and its wholly-owned subsidiaries Shore Line and Exploration), and Development. NIPSCO's wholly-owned subsidiaries, excluding Applicant, Northern Indiana (including Shore Line and Exploration), and Development, are hereinafter referred to as the "Subsidiaries."

5. Applicant is issuing up to $100 million of its medium-term notes to a number (substantially less than 100) of institutional investors in a private placement. Applicant also has a $150 million revolving credit agreement with sixteen banks, and is currently arranging a program for the issuance from time to time of up to $75 million in commercial paper in private placement transactions.

6. Applicant represents that because its securities (other than short-term paper, as that term is defined in section 2(a)(38) of the 1940 Act) are not beneficially owned by more than 100 persons, and will not be beneficially owned by more than 100 persons as a result of the transactions described in the preceding paragraph, and because it is not making and presently does not propose to make a public offering of its securities, Applicant is not an "investment company" by virtue of the exception to the definition of that term contained in section 3(c)(1) of the 1940 Act. Applicant is requesting an exemption under section 6(c) because it may engage in future private offerings which would result in its securities (other than short-term paper, as that term is defined in section 2(a)(38) of the 1940 Act) being beneficially held by more than 100 persons. Applicant also desires the flexibility to consider making future public offerings, although it does not presently propose to make any such offering.

7. Although Applicant does not presently propose to make a public offering of its securities, if any such offering is made it will not involve Applicant's voting securities. In the case of a public offering of any of its securities not exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act"), Applicant will, prior to offering such

BEST COPY AVAILABLE

securities, file a registration statement under the 1933 Act with the SEC and not sell such securities until such registration is declared effective by the SEC. Applicant will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such securities.

8. Applicant represents that its financing activities have been structured to conform, and will continue to conform, with all of the requirements of rule 3a–5 under the 1940 Act, except that NIPSCO will not provide an unconditional guarantee of Applicant's securities. Applicant further represents that, in lieu of an unconditional guarantee, Applicant and NIPSCO have entered into, and will keep in force, a Support Agreement that is the functional equivalent of an unconditional guarantee. See Condition No. 1, *infra*. The Support Agreement provides that the holders of debt will have no resource against the stock or assets of Northern Indiana (which assets include the stock, and Northern Indiana's interests in the assets, of Shore Line and Exploration) or any interest of Applicant or NIPSCO therein. However, funds available to NIPSCO to satisfy any obligation under the Support Agreement will include dividends paid by Northern Indiana to NIPSCO. Although Applicant will not provide funds to Development, debtholders would have recourse under the Support Agreement against the stock of, and NIPSCO's interest (through its stock ownership) in the assets of, Development.

9. Applicant represents that NIPSCO has determined to enter into the Support Agreement in lieu of an unconditional guarantee because it wishes to separate entirely the financing of its unregulated activities from the IURC–regulated financing of Northern Indiana. Northern Indiana has assured the IURC that the ratepayers of its utility services will not subsidize or support the non-regulated business activities of NIPSCO and its subsidiaries. An unconditional guarantee could subject NIPSCO's stock in Northern Indiana, and under some circumstances, Northern Indiana's assets, to claims by Applicant's creditors. Applicant claims that the Support Agreement will provide Applicant's security holders with benefits substantially similar to those provided by the guarantee requirement of rule 3a–5, without subjecting NIPSCO's stock in Northern Indiana and Northern Indiana's assets to such claims.

Applicant's Legal Conclusions

1. Applicant was formed for the purpose of providing financing to NIPSCO and the Subsidiaries, and will not engage in a general program of investment. The applicant will meet all of the requirements of rule 3a–5 except for the unconditional guarantee requirement. Applicant believes that NIPSCO's execution and delivery of the Support Agreement provides a functional equivalent to an unconditional guarantee of Applicant's securities since the Support Agreement enables purchasers of such securities to proceed directly against NIPSCO in the event Applicant fails to meet its obligations, limited only so as to exclude the stock and assets of Northern Indiana (and its subsidiaries, Shore Line and Exploration). Despite this limitation, funds available to NIPSCO to satisfy any obligation under the Support Agreement will include dividends paid by Northern Indiana, as well as revenues and assets of NIPSCO itself, including its interests in subsidiaries other than Northern Indiana and Northern Indiana's subsidiaries, Shore Line and Exploration. Therefore, the Support Agreement will enable purchasers of Applicant's securities to look ultimately to NIPSCO for payment.

2. Granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to the Requested Relief

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Applicant will meet all of the requirements of Rule 3a–5 except for the unconditional guarantee requirement. In lieu of an unconditional guarantee, Applicant has entered into, and will keep in force (except as contemplated below), the Support Agreement which is and shall continue to be the functional equivalent of an unconditional guarantee. The Support Agreement provides, and will continue to provide, as follows:

(a) NIPSCO owns and shall continue to own all of the outstanding voting stock of Applicant;

(b) NIPSCO will provide to Applicant funds (as capital, or if NIPSCO and Applicant agree, as a subordinated loan) as required if Applicant is unable to make timely payment of interest, principal or premium, if any, on any debt issued by Applicant;

(c) NIPSCO will cause Applicant to have at all times a positive net worth (net assets less intangible assets, if any) as determined in accordance with generally accepted accounting principles;

(d) If Applicant fails or refuses to take timely action to enforce its rights under the Support Agreement or if Applicant defaults in the timely payment of interest, principal, or premium, any lender may proceed against NIPSCO to enforce Applicant's rights under the Support Agreement or to obtain payment of such defaulted interest, principal or payment.

2. The Support Agreement may be modified or amended in a manner that adversely affects the rights of creditors of Applicant only if such modification or amendment occurs after all debt securities theretofore issued by the Applicant are paid in full, unless all affected creditors consent in advance and in writing to such modification or amendment. No modification or amendment to the Support Agreement relating to the four provisions set forth in paragraph 1 immediately above shall be made unless (a) All creditors consent in advance and in writing to such amendment or modification, and (b) Applicant applies to the Commission for an amended order relating to such modification or amendment, and the Commission grants such amended order. The Support Agreement may be terminated only after (a) All debt securities issued by the Applicant are paid in full, and (b) Applicant applies to the Commission for an amended order relating to such termination, and the Commission grants such amended order.

3. Although Applicant does not presently intend to initiate a non-public offering of its securities which may result in its securities (other than short-term paper, as that term is defined in section 2(a) (38) of the 1940 Act) being beneficially held by more than 100 persons, or to make a public offering of its securities, if such offerings are made, they will consist of short-term, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 (the "1933 Act") or in public offerings of securities registered under the 1933 Act. No future public offering will involve voting securities of the Applicant.

4. If Applicant offers or sells securities not requiring registration under the 1933 Act, Applicant will provide each offerer with disclosure materials which will include a description of the business of NIPSCO and its subsidiaries and other data of the character customarily supplied in such offerings, or will otherwise comply with disclosure requirements of Regulation D under the 1933 Act. In the event of a subsequent offering, these materials will be appropriately updated at the time thereof (by supplementing the disclosure materials or by incorporating by reference filings under the Securities Exchange Act of 1934) to reflect material changes in the financial condition of NIPSCO and its subsidiaries, taken as a whole.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5147 Filed 3–4–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0545]

InterEquity Capital Corp.; Issuance of Small Business Investment Company License

On September 20, 1990, a notice was published in the **Federal Register** (55 FR 38772) stating that an application has been filed by InterEquity Capital Corporation, 220 Fifth Avenue, New York, New York 10001, with the Small Business Admnistration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business October 21, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0545 on December 17, 1990, to InterEquity Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 27, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91–5093 Filed 3–4–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended February 22, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket number: 47424
Date filed: February 21, 1991
Parties: Members of the International Air Transport Association
Subject: TC23/TC123 Europe to Korea Resolution 002c
Proposed effective date: Upon Governmental Approval

Docket number: 47426
Date filed: February 22, 1991
Parties: Members of the International Air Transport Association
Subject: TC1 Reso/P 0344—Areawide Resos R–1 to R–5
TC1 Reso/P 0344—Within South America Resos R–6 To R–18
TC1 Reso/P 0345—Longhaul Resos R–19 To R–59
TC1 Reso/P 0346—Caribbean Resolutions R–60 To R–70
Proposed effective date: April 1, 1991

Docket number: 47427
Date filed: February 22, 1991
Parties: Members of the International Air Transport Association
Subject: SNATC Mail Vote 488 (Romania-to-U.S. fares)
Proposed effective date: April 1, 1991

Docket number: 47428
Date filed: February 22, 1991
Parties: Members of the International Air Transport Association
Subject: Mail Vote 462 (Europe to Middle East GM fares) R–1
Intended effective date: March 1, 1991
Mail Vote 463 (Fares From Romania, except US-Europe) R–2
Intended effective date: April 1, 1991
Mail Vote 464 (Rates from Romania) R–3
Intended effective date: April 1, 1991
Mail Vote 465 (Charge for PTA Services) R–4
Intended effective date: April 1, 1991

Docket number: 47432
Date filed: February 22, 1991
Parties: Members of the International Air Transport Association
Subject:
Comp Reso/C 0461 dated February 11, 1991
Resolution 033d R–1
Comp Reso/C 0462 dated February 11, 1991
Resolution 025b R–2
Proposed effective date: March 1/April 1, 1991

Docket Number: 47433
Date filed: February 22, 1991
Parties: Members of the International Air Transport Association
Subject:
Comp Reso/P dated February 11, 1991
Resolution. 024d R–1
Proposed Effective Date: March 1, 1991

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–5113 Filed 3–4–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 22,1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47419
Date filed: February 20, 1991
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 20, 1991
Description: Application of Trans European Airways France S.A., pursuant to section 402 of the Act and subpart Q of the Regulations requests a foreign air carrier permit seeking Third and Fourth Freedom authority to engage in charter foreign air transportation of persons, property and mail between any point or points in France, its territories and possessions, and any point or points in the United States, its territories and possessions.

Docket Number: 47422
Date filed: February 20,1991
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 20, 1991
Description: Application of America West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to provide foreign air transportation between Honolulu, Hawaii and Fukuoka, Japan.

Docket Number: 47430
Date filed: February 22, 1991
Due Date for answers, Conforming Applications, or Motion to Modify Scope: March 22, 1991
Description: Application of Air Cargo Hawaii Limited Partnership d/b/a Hawaii Pacific Air, pursuant to section 401 of the Act, parts 211 and 204 of the Regulations and subpart Q of the Regulations, requests the issuance of a certificate of public convenience and necessity

authorizing scheduled air transportation of property and mail, primarily to serve the inter-island air cargo needs in the State of Hawaii. Initially, such service will link the cities of Hilo (Hawaii), Honolulu (Oahu) and Kahului (Maui), with the provision of six weekly frequencies between and among the points to be served.

Docket Number: 47132
Date filed: February 19, 1991
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 19, 1991
Description: Amendment #1 to the Application of General Air Cargo, G.A.C., C.A., for a foreign air carrier permit to expand its application with respect to non-scheduled service so as to include the following routes:

1. From Venezuela (except Maracaibo) via the Netherlands West Indies and the Dominican Republic, to New York and beyond to Canada.
2. From Venezuela (except Maracaibo) to San Juan, Puerto Rico, and New York.
3. From Venezuela via the Netherlands West Indies, Jamaica, and Cuba to Miami and Houston.
4. From Venezuela (except Maracaibo) via the Netherlands West Indies and the Dominican Republic to Washington, DC, Baltimore, and New York.
5. From Venezuela to San Juan, Puerto Rico, and beyond to Spain, France, the Netherlands, and the Federal Republic of Germany and beyond to points outside Europe.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91-5114 Filed 3-4-91; 8:45 am]
BILLING CODE 4910-62-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM-90-16) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before April 19, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Atlantic and Western Railway Company (Waiver Petiton Docket Number RSGM 90-16)

The Atlantic and Western Railway Company (ATW) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The petitioner operates on approximately 3.38 miles of track in Sanford, North Carolina. The carrier reports there have been no accidents related to glazing nor any incidents of vandalism.

New York and Lake Erie Railroad (Waiver Petition Docket Number RSGM 91-1)

The New York and Lake Erie Railroad (NYLE) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates over approximately 44 miles of track between Salamanca to Dayton, New York and from WB Junction to Gowanda, New York. The areas consists of rural countryside and small communities. The carrier reports there have been no accidents involving to glazing nor any incidents of vandalism.

St. Lawrence and Raquette River Railroad (Waiver Petition Docket Number RSGMI 91-2)

The St. Lawrence and Raquette River Railroad (SLRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The SLRR extends from Ogdensburg to Norwood and Norfolk, New York, a distance of approximately 31.2 miles. The area is rural countryside with small communities. The carrier reports there have been no glazing related accidents nor incidents involving vandalism.

Oil Creek and Titusville Lines (Waiver Petition Docket Number RSGM 91-3)

The Oil Creek and Titusville Lines (OCTL) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The OCTL operates on approximately 15.8 miles of track between Titusville and Rynd Farm, Pennsylvania. The carrier operates an average of two freight train round trips per week. During the summer an average of six passenger excursions per week are operated. There have been no reports of vandalism nor incidents concerning glazing according to the railroad

WCTU Railway Company (Waiver Petition Docket Number RSGM 91-4)

The WCTU Railway Company (WCTU) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The WCTU operates approximately 14 miles of track at White City, Oregon. They provide switching service for local industry.

Crystal City Railroad, Inc. (Waiver Petition Docket Number RSGM 91-5)

The Crystal City Railroad, Inc. (CYCY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. Total trackage of the CYCY is approximately 55 miles, however only 42 miles are presently operated. The railroad is located in a remote area of southern Texas with Crystal City being the only town. The carrier states there have been no incidents of vandalism.

Manufacturers' Junction Railway Company (Waiver Petition Docket Number RSGM 91-6)

The Manufacturers' Junction Railway Company (MJ) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The MJ provides a switching service for three industries in a two mile area in Chicago, Illinois. The railroad reports there have been no incidents of vandalism with the locomotives.

Issued in Washington, DC on February 27, 1991.

Phil Olekszyk,
Acting Associate Administrator for Safety.
[FR Doc. 91-5141 Filed 3-4-91; 8:45 am]
BILLING CODE 4910-06-M

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Mr. W.A. Barr submitted a petition dated December 15, 1990, to NHTSA alleging that fifth wheels designed and manufactured by Holland Hitch Company of Holland Michigan are defective in that they are the only design of five major fifth wheel manufacturers which can result in a "high hitch." Fifth wheels are the devices which connect heavy truck tractors and semi-trailers. On February 4, 1987, Mr. Barr submitted a similar petition to the agency's Rulemaking Office stating "the SAE Standard for the fifth wheel kingpins covering commercial trailers and semi-trailers (SAE J700b) allows false latching lockout, or 'high hitching' because the pin diameter at the bottom of the kingpin is smaller than the top." Mr. Barr stated that if a high hitch occurred, the trailer would possibly separate from the tractor during highway driving. After evaluating the petition, NHTSA concluded there was a reasonable possibility that the order requested in the petition would be issued at the conclusion of a rulemaking proceeding, and working jointly with the Federal Highway Administration published a notice in the **Federal Register** on August 18, 1988, of its decision to grant the petition. The agency requested comments on several issues concerning high hitches and contacted several fifth wheel hitch manufacturers (including Holland) about the problem.

The agency received 11 responses, including comments from all 4 major fifth wheel manufacturers and 7 large users of fifth wheels. None of the commenters supported the creation of a new Federal Motor Vehicle Safety Standard to address false latching. The agency was advised by some manufacturer representatives that it is possible to false latch most of the designs on the market. The manufacturers contended, however, that it is the responsibility of the truck driver to conduct an inspection to ensure a proper connection. Federal Motor Carrier Safety Regulation 49 CFR 392.7 requires a driver to confirm the coupling device is functioning in good order. On December 4, 1989, the agency concluded that the safety benefits of a standard for kingpin performance to eliminate high hitches was insufficient to justify promulgating such a requirement and the rulemaking was terminated.

Statistical data indicates that tractor semi-trailer separation is a very rare event. Data gathered during the Rulemaking petition showed 188,836 truck accidents, 353 of which involved coupling defects. Within the 353 coupling related mishaps, 43 involved separations which were preceded or may have been preceded by trailer separation. The data indicated that coupler separation may have been a factor in .023 percent of the truck accidents.

NHTSA contacted Holland and was informed that since 1982, it is aware of seven incidents of alleged high hitch resulting in a trailer separation accident. Of those seven incidents, three resulted in property damage only, three resulted in single deaths, and one resulted in multiple (five) deaths.

The seven incidents represent an extremely small percentage of the equipment population. Holland reported no major design changes have been incorporated in their fifth wheels, and the locking mechanism has been basically the same since 1980. The accident data furnished by Holland compared favorably with industry statistical data presented during the Rulemaking Petition.

In consideration of the available information, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

This notice sets forth the reason for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Authority: Sec. 124, Pub. L. 93-492: 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 25, 1991.

Michael B. Brownlee,
Acting Associate Administrator for Enforcement.
[FR Doc. 91-5070 Filed 3-4-91; 8:45 am]
BILLING CODE 4910-59-M

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*)

In November 1990, Ms. Phyllis North petitioned the NHTSA for a recall of the 1984 LeBaron Town and Country station wagon. Ms. North experienced a front crossmember failure in her vehicle. She stated that the front crossmember broke away from the body of her vehicle while driving resulting in a loss of control accident. She further stated that her car "* * * had no physical damage previously."

Although the petition is vague, NHTSA has addressed two questions in answering it. The first is whether her vehicle should have been included in an earlier recall by Chrysler of 1981 through 1983 vehicles to replace the crossmember of concern. The second question is whether a defect investigation should be initiated even if the 1984 LeBaron Town and Country station wagon should not have been included in the earlier Chrysler recall.

The Chrysler K-platform vehicle has a unitized body to which is attached a front suspension crossmember. This crossmember supports the engine and transaxle and has attached to it the suspension and front end steering components.

The Chrysler recall of 1981 through 1983 vehicles (Recall No. 89V052) was issued to correct a corrosion potential for the lower control arm inner support area. Many consumers located in the Northeastern United States had experienced separation of the forward pivot of the lower control arm from the effects of salt-induced corrosion. Chrysler initiated a recall of 1981 through 1983 model year vehicles to provide adequate drainage of salt-laden slush and water. Chrysler also introduced production changes for the 1984 model year to protect the metal from corrosion.

Analysis of information supplied by the petitioner, by a Chrysler dealership mechanic, and by Chrysler disclosed that the failure location on the North vehicle is different than the area covered by the recall.

The mechanic's inspection of the petitioner's vehicle disclosed that the sheet metal on the right side K-frame pedestal had been torn apart as if by one or more heavy blows to the right suspension. These blows are consistent with those from striking potholes or curbs. The pedestal on the North vehicle is located to the rear and above the area of concern in the Chrysler corrosion recall. Buffeting marks on the torn edges suggested that the vehicle had been driven for some period of time in this condition. Absence of the rigidity supplied by the pedestal caused added stress to be placed on the right rear K-frame mount. This eventually resulted in failure of the sheet metal stub frame extending from the body frame rail. The vehicle was no longer driveable when this occurred. It appears that the failure of the North vehicle was in a different location from that covered by the Chrysler recall and probably was not corrosion related.

Chrysler also stated that it has received no reports concerning corrosion of the crossmember in post-1983 model year vehicles, nor did it report failures of the type reported by Ms. North. NHTSA computer records for the 1984 model year LeBaron vehicles disclosed no similar reports.

Based on the available information, there was no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition was denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 25, 1991.

Michael B. Brownlee,

Acting Associate Administrator for Enforcement.

[FR Doc. 91-5071 Filed 3-4-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 25, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0499.
Form Number: 5305-SEP.
Type of Review: Extension.
Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.
Description: This form is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS but to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions in the SEP. The data is used to verify the deduction.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 100,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—7 minutes.
Learning about the law or the form—24 minutes.
Preparing the form—18 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 82,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-5072 Filed 3-4-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: February 27, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545-0132.
Form Number: 1120X.
Type of Review: Extension.
Title: Amended U.S. Corporation Income Tax Return.
Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120-A. The data is used to determine if the correct tax liability has been reported.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 87,302.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—11 hours, 14 minutes.
Learning about the law or the form—40 minutes.
Preparing the form—1 hour, 49 minutes.
Copying, assembling, and sending the form to IRS—15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/Reporting Burden: 940,882 hours.
OMB Number: 1545-0986.
Form Number: 1120-DF.
Type of Review: Extension.
Title: U.S. Income Tax Return for Designated Settlement Funds (Under section 468B).
Description: Form 1120-DF is used by settlement funds to report income and taxes on the earnings of the fund. The fund is established by court order and is used to pay claims by employees or former employees for death or injuries caused by on the job conditions. IRS uses Form 1120-DF to determine if income and taxes are correctly computed.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—16 hours, 18 minutes.
Learning about the law or the form 1 hour, 54 minutes.
Preparing the form—5 hours, 2 minutes.
Copying, assembling, and sending the form to IRS 46 minutes.
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 2,401 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 91-5073 Filed 3-4-91; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

(T.D. 91-18)

Revocation of Individual Broker License No. 4549, Allen J. Robbins; and Corporate Broker License No. 5390, Robbins, Inc.

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and 111.74 of the Customs Regulations, as amended (19 CFR 111.74), revoked the individual broker license no. 4549 issued to Allen J. Robbins, and the corporate broker license no. 5390 issued to Robbins, Inc. This action having been upheld by the United States Court of International Trade (Court No. 85-10-01442) is effective as of April 27, 1990.

Dated: February 26, 1991.

William J. Luebkert,

Deputy Director, Office of Trade Operations.

[FR Doc. 91-5075 Filed 3-4-91; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 91-19]

Revocation of Individual Broker License No. 5522; Stuart Robbins

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: Notice is hereby given that the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and 111.74 of the Customs Regulations, as amended (19 CFR 111.74), revoked the individual broker license no. 5522 issued to Stuart Robbins. This action having been upheld by the United States Court of International Trade (Court No. 85-9-01319); and, under appeal, by the Court of Appeals for the Federal Circuit (Appeal No. 90-1403) is effective as of January 9, 1991.

Dated: February 26, 1991.

William J. Luebkert,

Deputy Director, Office of Trade Operations.

[FR Doc. 91-5076 Filed 3-4-91; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

First Federal Savings, F.S.B., Dallas, GA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings, F.S.B., Dallas, Georgia on February 22, 1991.

Dated: February 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5109 Filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

First Northern Co-Operative Bank, a Federal Savings Bank, Keene, NH; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointerd the Resolution Trust Corporation as sole Conservator for First Northern Co-operative Bank, A Federal Savings Bank, Keene, New Hampshire, on February 20, 1991.

Dated: February 27,1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5110 Filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

Hollywood Federal Savings Bank, Hollywood, FL; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Hollywood Federal Savings Bank, Hollywood, Florida, on February 22, 1991.

Dated: February 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5111 Filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association, Dallas, Georgia; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association, Dallas, Georgia, Docket Number 6529, on February 22, 1991.

Dated: February 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5107 filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

Hollywood Federal Bank, a Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Hollywood Federal Bank, a Federal Savings Bank, Hollywood, Florida, OTS No. 2767, on February 22, 1991.

Dated: February 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5108 Filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

First Northern Co-operative Bank Keene, NH, Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Northern Co-operative Bank, Keene, New Hampshire, on February 20, 1991.

Dated: February 27, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5112 Filed 3-4-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 4, 1991.

Dated: February 26, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources, Policies and Oversight.

Existing Collection

1. Office of Security and Law Enforcement
2. VA Police Officer Pre-Employment Screening Checklist
3. VA Form 10-0120
4. The form is used to document the pre-employment screening process and special background checks for applicants seeking employment as VA police officers.
5. One time
6. State and local governments, Business or other for-profit; Federal agencies or employees
7. 1,500 responses
8. 10 minutes
9. Not applicable

[FR Doc. 91-5043 Filed 3-4-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A6, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send requests for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 4, 1991.

Dated: February 26, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources, Policies and Oversight.

New Collection

1. Veterans Benefits Administration
2. Loan Analysis
3. VA Form 26-8393
4. The form is completed representatives of the lending institution to determine the veteran-borrower's ability to qualify for a VA guaranteed loan. The information is used by VA as evidence of the lender's adherence to VA credit standards.
5. On occasion
6. Businesses or other for-profit
7. 206,000 responses
8. ⅛ hour
9. Not applicable

[FR Doc. 91-5044 Filed 3-4-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 3:07 p.m. on Thursday, February 28, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven days' notice to the public, of a memorandum regarding the Legal Division's management information system proposal.

By the same majority vote, the Board further determined that no notice earlier than February 27, 1991, of this change in the subject matter of the meeting was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding excess and supplemental 1991-92 funding.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: March 1, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-5277 Filed 3-1-91; 1:36 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:27 p.m. on Thursday, February 28, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Request for hearing on the Corporation's previous denial of an application pursuant to Section 19 of the Federal Deposit Insurance Act (name of individual and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), and (c)(9)(A)(ii)) to serve as a Director of a financial institution.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the probable failure of certain insured banks.

Recommendations regarding the liquidation of depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets;

Case No. 47,666
Auction of Owned Real Estate—Various Banks and Savings and Loans
Case No. 47,671
Freedom National Bank of New York, New York, New York
Reports of the Office of Inspector General:
Audit Report re:
The First National Bank and Trust Company of Oklahoma City
Oklahoma City, Oklahoma (Memo dated February 8, 1991)
Audit Report re:
Western Federal Savings and Loan Association
Marina Del Rey, California
Assistance Agreement
Case Number C-352c
(Memo dated January 3, 1991)
Audit Report re:
Audit of Procurement and Management of Appraisals—Addison Consolidated Office
(Memo dated January 25, 1991)
Audit Report re:
Audit of Virginia Square
Owned Equipment Rental Charges
(Memo dated January 31, 1991)
Matters relating to the Corporation's assistance agreements with insured banks.

In call the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 500-17th Street, N.W., Washington, D.C.

Dated: March 1, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-5278 Filed 3-1-91; 1:36 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, March 11, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any item carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5323 Filed 3-1-91; 8:45am]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, March 12, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTER TO BE DISCUSSED:

Finance Docket No. 28799 (Sub-No. 1), *St. Louis Southwestern Railway Company—Purchase (Portion)-William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company, Debtor.*

Docket No. AB-102 (Sub-No. 16), *Missouri-Kansas-Texas Railroad Company—Abandonment—In Pettis and Henry Counties, Missouri.*

Ex Parte No. 346 (Sub-No. 25), *Rail General Exemption Authority—Lumber or Wood Products.*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5150 Filed 2-28-91; 12:25 pm]

BILLING CODE 7035-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 4, 11, 18, and 25, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4

Thursday, March 7

10:00 a.m.
Briefing on Status of Fitness for Duty Programs (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Access Authorization Program for Nuclear Power Plants (Tentative)

Week of March 11—Tentative

Thursday, March 14

9:30 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) and Activities of the NRC in the HLW Program (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, March 15

10:00 a.m.
Briefing on Agreement State Compatibility Issues (Public Meeting)

Week of March 18—Tentative

Friday, March 22

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 25—Tentative

Thursday, March 28

10:00 a.m.
Periodic Briefing on Definitions of Releases Into Containment and Policy on the Use of the Updated TID-14844 by Existing Plants (Public Meeting

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:32 p.m. on Thursday, February 28, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of a failed thrift institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550-17th Street, NW., Washington, DC.

Dated: March 1, 1991.

Resolution Trust Coporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-5329 Filed 3-1-91; 3:52 pm]

BILLING CODE 6714-01-M

Dated: February 28, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-5304 Filed 3-1-91; 8:45 am]

BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 56, No. 43
Tuesday, March 5, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat and Related Programs

Correction

In proposed rule document 91-4881, beginning on page 8285, in the issue of February 28, 1991, make the following correction:

On page 8287, in the first column, in the first complete paragraph, in the third line, "to" should read "not".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-013]

Public Meeting; Veterinary Biologics

Correction

In notice document 91-3959 appearing on page 6832 in the issue of Wednesday, February 20, 1991, make the following correction:

In the first column, in the heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 900796-0303]

RIN 0648-AD59

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 91-1380 beginning on page 2443 in the issue of Wednesday, January 23, 1991, make the following correction:

§ 646.6 [Corrected]

On page 2449, in the first column, in § 646.6, in the heading, add "gear" after "and".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 901106-0306]

RIN 0648-AD44

Foreign Fishing; Groundfish of the Gulf of Alaska and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

Correction

In proposed rule document 91-2300 beginning on page 4029 in the issue of February 1, 1991, make the following corrections:

§ 672.20 [Corrected]

1. On page 4033, in Table 2 of § 675.20, in the 14th column, in the 6th entry, delete ".14" and in the 7th entry, add ".14".

§ 675.20 [Corrected]

2. On page 4034, in Table 3 of § 675.20, in the entry reading "Pollack", make the following changes:

a. Delete ".50" from the 11th column;
b. Add ".14" in the 14th column; and
c. Delete ".14" in the 15th column.

3. On the same page, in the same table, in the entry reading "octopus" in the 36th column, add ".85".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS-011-N]

Medicare Program; Quarterly Listing of Program Issuances and Coverage Decisions

Correction

In notice document 91-2730 beginning on page 4830 in the issue of Wednesday, February 6, 1991, make the following corrections:

1. On page 4831, in the first column, in the first paragraph under **Program Issuances**, in the eighth line "of" should read "to".

2. On page 4837, in the first column, in the second paragraph, in the first line "88151" should read "88150".

3. In the same column, in the third paragraph, in the first line, "88150" should read "88151".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 243

RIN 1010-AB37

Serving of Official Correspondence Issued By the Royalty Management Program

Correction

In rule document 91-3566 beginning on page 5946 in the issue of Thursday, February 14, 1991, make the following corrections:

§ 243.4 [Corrected]

1. On page 5950, in the first column, in § 243.4(b)(1), in the first line "*Addressee*" was misspelled; and in the eighth line, "executive" should read "executed".

2. On the same page, in the second column, in § 243.4(b)(8), in the sixth line from the bottom of the paragraph, "29OR" should read "290R".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

Correction

In rule document 91-4704 beginning on page 5250 in the issue of Wednesday, February 27, 1991, make the following corrections:

1. On page 5250, in the second column, in the final paragraph, in the fifth line "has" should read "was".

2. On page 5251, in the second column, in the first line insert "April 29, 1991" after "by".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Child Labor: Civil Money Penalties for Child Labor Violations

Correction

In rule document 91-4895 beginning on page 8678 in the issue of Thursday, February 28, 1991, the subject matter should have appeared as set forth above.

BILLING CODE 1505-01-D

federal register

Tuesday
March 5, 1991

Part II

Department of Education

Upward Bound Program: Notice Inviting Applications for the Math and Science Initiative

Special Programs for Students from Disadvantaged Backgrounds: Upward Bound, Talent Search and Student Support Services

DEPARTMENT OF EDUCATION

[CFDA NO: 84.047]

Upward Bound Program; Notice Inviting Applications for the Math and Science Initiative Under the Upward Bound Program for Fiscal Year 1991

Purpose of Program: This program provides financial assistance to fund proposals from applicants to establish regional centers. Each regional center would offer an intensified math and science curriculum along with other curricula for a six-week period during the summer of 1992 to students who are currently participating in an Upward Bound project and to other students who meet the criteria for participation in Upward Bound, without regard to 34 CFR 645.10(b). These students must have completed the 9th grade.

Deadline for Transmittal of Applications: May 1, 1991.

Applications Available: March 6, 1991.

Deadline for Intergovernmental Review: June 30, 1991.

Available Funds: $12,500,000.

Estimated Number of Awards: Up to 75.

Estimated Range of Awards: $145,000–$168,300.

Estimated Average Size of Awards: $166,666.

Project Period: 12 months.

Note: The Department is not bound by any estimates in this notice, except as otherwise provided by statute.

Application Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, and 85, and (b) the regulations governing Upward Bound in 34 CFR part 645.

Although the math and science regional centers will include some of the characteristics of a comprehensive center such as those projects funded by the National Science Foundation, they do not have the same scope nor do they serve the number of students. The Department in collaboration with the National Science Foundation will disseminate resource materials.

For Applications or Information Contact: Goldia D. Hodgdon, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (Room 3060, ROB–3), 400 Maryland Avenue SW., Washington, DC 20202–5249. Telephone number: (202) 708–4804.

Program Authority: 20 U.S.C. 1070d, 1070d–1a.

Dated: February 21, 1991.

(Catalog of Federal Domestic Assistance Number: 84.047 Upward Bound Program)

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–5135 Filed 3–4–91; 8:45 am]

BILLING CODE 4000–01–M

Special Programs for Students from Disadvantaged Backgrounds; Upward Bound, Talent Search and Student Support Services

ACTION: Combined notice of final funding priorities for fiscal year 1991.

SUMMARY: The Secretary of Education announces final funding priorities for the Upward Bound, Talent Search and Student Support Services Programs for Fiscal Year 1991.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The contact person listed under each of the programs.

SUPPLEMENTARY INFORMATION: On September 21, 1990, the Secretary published in the Federal Register at 55 FR 38926 a combined notice of proposed priorities for the Upward Bound, Talent Search and Student Support Services Programs. The public was given an opportunity to comment on the proposed priorities. An analysis of the comments can be found under each of the programs included below.

Upward Bound

The Secretary has carefully reviewed the public comments and has not made any changes to the proposed priority based on those comments. Therefore, the following final absolute priority has been established for the fiscal year 1991 grant competition under the Upward Bound program.

Under the priority, funds will be used to establish regional centers, each of which will offer an intensified math and science curriculum along with other curricula for a six-week period during the summer to students currently participating in an Upward Bound project and to other students who meet the criteria for participation in Upward Bound, without regard to 34 CFR 645.10(b). Projects must establish a cooperative relationship with other Federal and non-Federal science and mathematics teaching and learning activities, if any, in their areas, including (1) activities funded under the Eisenhower Mathematics and Science Education programs, (2) activities and programs funded by the National Science Foundation (NSF), and (3) if there are any Federal laboratories or science facilities in the area, with those facilities participating in the Secretary of Energy's initiative to relate those facilities to elementary and secondary school science teaching. Examples of cooperative relationships include student identification and recruitment, combined staff and program enrichment activities, sharing of teaching strategies and approaches, and joint evaluation of project activities.

Analysis of Comments and Changes: In response to the Secretary's invitation in the notice of proposed priorities, two parties submitted comments. An analysis of the comments follows:

Comment: A commenter stated that the recently funded regional centers are still in a pilot stage and program evaluations will not be conducted for a year or more. The commenter recommended not adding more programs until after it had been determined that the Department's goal was met and the regional centers had fulfilled their objectives.

Discussion: The Secretary recognizes that data on the effectiveness of the recently funded centers will not be available for a year or more. That is because the first centers will begin operation and serve students in the summer of 1991. To delay the funding of additional centers will decrease the opportunities for low-income and first-generation college students to participate in programs that will enhance their academic knowledge of careers related to math and the sciences. However, the Secretary is committed to the evaluation of all funded Upward Bound math and science centers, including those which may be funded under this notice.

Changes: None.

Comment: A commenter recommended that the Department provide sufficient funding to regular Upward Bound projects to upgrade their math/science components and not create new programs. The existing programs have knowledge of the students and have monitoring structures and evaluation procedures in place.

Discussion: The funding of additional centers will expand the number of funded projects, providing an intensified math and science curriculum as well as increase the number of participants. These additional centers will serve students currently enrolled in an Upward Bound program and those who are eligible but not currently enrolled in an Upward Bound program. The Secretary encourages currently funded Upward Bound projects to upgrade their math and science components as well.

Changes: None.

Comment: A commenter recommended to recruit students from other than existing Upward Bound programs; to increase the per student cost by thirty-three percent; to select eighth grade students; to request projects and organizations from which students have been recruited to pay for food, housing, stipends and transportation for the participants; and to increase resources for follow-up and evaluation of student performance. The commenter stated that the Department should encourage the Centers to include true innovation and experimentation in the math and science initiative.

Discussion: This priority includes current Upward Bound students and students who meet the criteria for participation in an Upward Bound program. The Upward Bound program regulations (34 CFR 645.3(a)(4)) define eligible project participants as individuals who have completed the eighth grade but have not entered the twelfth grade and who meet the other eligibility criteria. The regulations do permit a project to serve students who are less than 13 years of age and who have not completed the eighth grade, but only if the project documents that its target area has an unusually high secondary school attrition rate. However, these centers are required to select students who have completed at least the ninth grade. This requirement is reasonable since it will assure that students will have completed at least one of the usual mathematics and science courses required by secondary schools prior to entering a center with an intensified curriculum. The Secretary will consider expanding the range of grades from which students are chosen in the future after there is data available on the effectiveness of the program.

The proposed funding for fiscal year 1991 will provide modest increases for each center, and, hence, the per student cost will also increase. The centers will be required to provide room and board for all participants. Stipends are optional expenses and the centers will be advised not to offer stipends to the participants. The increases in the funding should provide sufficient funds for follow-up and evaluation.

All applicants will be required to include a plan or work scope that demonstrates relevant course materials for the specialized curriculum. The Secretary encourages innovative approaches to math and science instruction that are consistent with this priority.

Changes: None.

FOR FURTHER INFORMATION CONTACT: Goldia Hodgdon, Chief, Education Outreach Branch, Division of Student Services, 400 Maryland Avenue SW., (Room 3060 ROB–3) Washington, DC 20202–5249. Telephone: (202) 708–4804.

TALENT SEARCH: The Talent Search Program provides Federal financial assistance to projects designed to assist participants to continue in and graduate from secondary schools and enroll in postsecondary educational programs.

No comments were received on the proposed priority under the Talent Search program. The Secretary has not made any changes in the proposed priority. The following final absolute priority has been established for the fiscal year 1991 grant competition under the Talent Search Program.

Under the priority, funds are reserved for projects designed to attract seventh and eighth grade eligible participants in order to encourage them to complete high school and continue their education at the postsecondary level after graduation, without regard to 34 CFR 643.3(a)(5). The Secretary will not fund any projects that propose to serve only seventh and eighth graders. The Secretary will fund projects that propose to include seventh and eighth graders among the student population to be served.

FOR FURTHER INFORMATION CONTACT: Goldia Hodgdon, Chief, Education Outreach Branch, Division of Student Services, 400 Maryland Avenue SW., (Room 3060 ROB–3) Washington, DC 20202–5249. Telephone: (202) 708–4804.

STUDENT SUPPORT SERVICES: The Department has withdrawn the proposed priority for the Student Support Services program in view of the fact that the issue is currently addressed in § 646.10(a)(8) of the program regulations.

(Catalog of Federal Domestic Assistance Number: 84.047A, Upward Bound Program, 84.044A, Talent Search Program and 84.042, Student Support Services)

Dated: February 27, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91–5136 Filed 3–4–91; 8:45 am]

BILLING CODE 4000–01–M

OL
56
SS
43
MR
5
991
MI

federal register

Tuesday
March 5, 1991

Part III

Department of Agriculture

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation; Proposed Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Highly Erodible Land and Wetland Conservation

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to the regulations for administration of the highly erodible land and wetland conservation provisions of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, which are contained in 7 CFR part 12. The changes are needed to incorporate and implement amendments made to the Food Security Act of 1985 by title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624. This proposed rule sets forth proposed revisions to the terms and conditions under which persons participating in Department of Agriculture programs may be determined to be ineligible as the result of (1) planting an agricultural commodity on highly erodible land or designating highly erodible cropland for participation in a Federal program for the reduction of agricultural commodity production, (2) planting an agricultural commodity on converted wetlands, or (3) converting a wetland for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

DATES: Comments on any of the proposed amendments in this rule must be received before March 20, 1991, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to Director, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, PO Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra J. Nelson, Deputy Director, Cotton, Grain, and Rice Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, PO Box 2415, Washington, DC 20013, telephone (202) 447–3463.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under United States Department of Agriculture (the "Department" or "USDA") procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that current regulations will have an annual effect on the economy of $100 million or more. Copies of an updated regulatory impact analysis are available upon request from the previously mentioned contact.

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for Emergency review under the Paperwork Reduction Act of 1980. This emergency clearance will expire in 90 days. It has been determined that an emergency clearance is necessary in order to commence signups for USDA programs. The paperwork requirements which would be imposed by this proposed rule are minor revisions of the paperwork requirements under the current regulations. Public reporting burden for these collections is estimated to vary from 5 to 15 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0004), Washington, DC 20503. Any other comments on this rule, including the effect of the rule on private property rights, may be sent to the person identified under "FOR FURTHER INFORMATION CONTACT" for consideration in this rulemaking.

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051; Cotton Production Stabilization—10.052, Emergency Conservation Program—10.064; Emergency Loans—10.404; Farm Operating Loans—10.406; Farm Ownership Loans—10.407; Feed Grain Production Stabilization—10.055; Storage Facilities Equipment Loans—10.056; Wheat Production Stabilization—10.058; National Wool Act payments—10.059; Rice Production Stabilization—10.065; Federal Crop Insurance—10.450; Soil and Water Loans—10.416; Loans to Indian Tribes and Tribal Corporations—10.421; Watershed Protection and Flood Prevention loans and cost share payments—10.904; Great Plains Conservation Program cost share payments—10.900; Agricultural Conservation Program cost share payments—10.063; Disaster Assistance payments—10.052, 10.056, 10.065, and 10.440; Conservation Reserve Program payments—10.069; payments under the Agricultural Credit Act—10.054; and payments under the Agricultural Water Quality Incentives Program and the Environmental Easement Program authorized by the Food Security Act of 1985, as amended (the programs are not in the catalog at this time).

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment. An environmental assessment, dated June 1987, that was prepared during the promulgation of the current regulations in 7 CFR part 12 is being reviewed and changes assessed with regard to this proposed rule and subsequent final rules that will be issued to implement the amended conservation provisions of the Food Security Act of 1985.

Current Regulations

The current regulations in 7 CFR part 12 were published as a final rule on September 17, 1987 (52 FR 35194) and amended on February 11, 1988 (53 FR 3990). The regulations implement subtitles B and C of Title XII of the Food Security Act of 1985 (the FSA), 16 U.S.C. 3801 *et seq.* The intent of these provisions of the FSA is to remove the incentive that certain benefits provided by the Department might otherwise give persons to cultivate highly erodible land or to convert wetlands for the production of an agricultural commodity. Sections 1211 and 1221 of the FSA as originally enacted (16 U.S.C. 3811 and 3821) provide that any person who, in any crop year, (1) produces an agricultural commodity on a field in which highly erodible land is predominant, but without an approved conservation system, or (2) produces an agricultural commodity on any converted wetland that was converted after December 23, 1985 will be ineligible as to the crop year in which the activity occurred, for commodity price support and other payments, farm storage facility loans, disaster payments, payments for storage of Commodity Credit Corporation-owned grain, and Federal crop insurance. Also, any such person will be ineligible for loans made, insured, or guaranted under any provision of law administered by the Farmers Home Administration if it is determined that the proceeds of such loan will be used for a purpose that will contribute to excessive erosion of highly erodible lands or to the conversion of wetland for agricultural commodity production.

The current regulations set forth (1) the definitions of highly erodible land, wetland, and converted wetland; (2) the activities which would cause a producer to be ineligible for benefits; (3) the exemptions from ineligibility; (4) the respective responsibilities of each administering agency; (5) the administrative appeal rights of any person denied eligibility for benefits; and (6) other provisions. The regulations are administered by the Agricultural Stabilization and Conservation Service (ASCS), the Commodity Credit Corporation (CCC), the Farmers Home Administration (FmHA), the Federal Crop Insurance Corporation (FCIC), the Soil Conservation Service (SCS) and the Extension Service (ES).

Statutory Changes

On November 28, 1990, the FSA was amended by Title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), Public Law 101–624. Those amendments changed the highly erodible land and wetland conservation provisions of the FSA and, thus, also require changes in 7 CFR part 12 as discussed below.

Under the original highly erodible land conservation provisions of the FSA, a person can become ineligible for USDA benefits by planting an agricultural commodity on highly erodible land unless certain conservation requirements have been met. Section 1411 of the 1990 Act amends the FSA to provide that those conservation requirements will also apply to land on which highly erodible land is predominant and which is set aside, diverted, devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary of Agriculture to reduce the production of an agricultural commodity. An "agricultural commodity" for purposes of the highly erodible land and wetland conservation provisions is defined in the 1985 Act to mean any agricultural commodity planted and produced in a State by annual tilling of the soil, including tilling by one-trip planters, or sugarcane planted and produced in a State.

The 1990 Act also adds provisions to specifically include additional USDA program benefits subject to the conservation requirements of the FSA. These additional program benefits are set out in this rule. The programs include the Agricultural Conservation Program, Conservation Reserve Program, Watershed Protection and Flood Prevention Program, Great Plains Conservation Program, Agricultural Credit Act of 1978, and as recently authorized by the 1990 Act, the Agricultural Water Quality Incentives Program, and the Environmental Easement Program. This additional statutory clarification does not necessarily suggest that some of these benefits were not previously covered by USDA requirements. For example, compliance with part 12 conservation provisions has been required under the express conditions of Conservation Reserve Program contracts.

Section 1412 of the 1990 Act contains new exemptions and authority for granting relief for violations of the highly erodible land conservation provisions, including graduated sanctions for "good faith" violations. This section provides for reducing the benefits for which a person may be ineligible to an amount in the range of $500 to $5,000 if the person involved acted without the intent to violate the highly erodible land provisions and has not violated those provisions in the previous 5 years. Further, the 1990 Act permits a person who violates the highly erodible land conservation requirements to be considered to be in compliance if the violation is technical and minor in nature; if the violation is due to circumstances beyond the control of the person involved; or if the Secretary of Agriculture grants a temporary variance to handle a specific problem. The new amendments also exempt the noncommercial production of agricultural commodities on highly erodible land if such production is limited to two acres or less and is not found by the Secretary of Agriculture to be intended to circumvent the conservation requirements otherwise applicable to such land under part 12. These highly erodible land relief provisions, however, are not retroactive and do not apply to violations which occurred prior to November 28, 1990.

Under the wetland conservation provisions of the FSA, a person can lose eligibility for USDA benefits by planting an agricultural commodity on a wetland converted to crop production after December 23, 1985. This provision remains unchanged. However, section 1421 of the 1990 Act amends the FSA to add a new wetland "trigger". The new "trigger" provides that any wetland conversion occurring after November 28, 1990 for the purpose, or to have the effect, of making possible the production of an agricultural commodity may result in ineligibility for USDA program benefits, not only for the current year but for subsequent years until the wetland is restored.

With regard to relief provisions of wetland conservation violations, the 1990 Act continues the exemption for activities which are determined to have a minimal effect on wetland values. In addition, the 1990 Act provides that a person may, with prior approval by the Secretary, convert a frequently cropped wetland for the purpose, or to have the effect, of making production of an agricultural commodity possible if the wetland values, acreage, and functions are mitigated by the restoration of a converted wetland that was converted prior to December 23, 1985. To qualify, the restoration must be in advance of or concurrent with the action that would otherwise lead to the violation, on lands in or near the watershed in the same general area of the converted wetland, in accordance with a restoration plan, and the restoration must not be at federal expense. In addition, an easement to maintain the restored wetland must be granted to the United States and that easement must last as long as the converted wetland for which the mitigation occurred is in agricultural use or is otherwise not returned to its original wetland classification with equivalent functions and values. The easement will prohibit making alterations to the restored wetland that lower the restored wetland's functions and values. The 1990 Act also provides that such mitigation relief may be granted for any wetland, regardless of its prior cropping history, that was converted subsequent to December 23, 1985, but prior to November 28, 1990. This would allow a person who meets the mitigation qualifications to use such a converted wetland for crop production in the future without becoming ineligible for future USDA program benefits.

The 1990 Act also contains a graduated sanctions provision for past and future wetland conservation violations if: (1) They are deemed to be in "good faith" and found to have been committed without intent to commit a violation, and (2) the person involved has not committed a wetland conservation violation in the previous 10-year period. Relief in qualifying cases can be granted if the person involved is actively restoring the wetland under an agreement entered into with the Secretary to fully restore the wetland characteristics of the converted wetland or if the person has, as determined by the Secretary, previously restored the wetland characteristics of the converted wetland. In such "good faith" cases, the Secretary may reduce the loss of benefits to not less than $750 nor more

than $10,000, depending on the seriousness of the violation.

The 1990 Act amendments also provide that a person can regain or maintain eligibility that would otherwise be lost for future crop years (but not for past crop years) if prior to the beginning of the subsequent crop year, the person has fully restored the characteristics of the converted wetland to its prior wetland state.

The other wetland conservation and related provisions of the 1990 Act amendments include provisions regarding the delineation of wetlands and providing relief for violations caused by reliance on prior determinations.

Discussion of Changes

The following changes to part 12 are proposed to incorporate and implement the amendments to the FSA.

Section 12.1 General.

Paragraph (a) is revised to include the designation of highly erodible land for conservation use and the conversion of wetland as actions within the coverage of part 12.

Section 12.2 Definitions.

The term "conversion use" has been added to the list of defined terms of identify and implement the application of the highly erodible land conservation provisions to land that is designated to be devoted to conservation uses, or otherwise not cultivated under a program administered by the Secretary to reduce the production of an agricultural commodity.

The definition of the term "wetland" was restated to reflect clarifications in the statutory definition to indicate that three distinct criteria must be present in order for land to be classified as wetland. These criteria are: (1) A predominance of hydric soils; (2) the inundation or saturation by surface or ground water at a frequency and duration to support a prevalence of hydrophytic vegetation; and (3) a prevalence, under normal circumstances, of hydrophytic vegetation. In essence, the definition of "wetland" is not being changed, and the current exception provided under the FSA for certain wetlands in Alaska is left unchanged.

Section 12.3 Applicability.

Paragraph (b) of this section is proposed to be revised to indicate that the provisions of the 1990 Act amendments became effective on November 28, 1990 and to clarify the application of the amendments to part 12. Part 12, as amended by this rule, will apply to all actions taken after November 28, 1990 and to determinations made after or pending on that date, except to the extent that new paragraphs (b)(6) through (b)(8) of § 12.5 have retroactive application. Those paragraphs implement new provisions for relief under the wetland conservation amendments of the 1990 Act in cases of mitigation of converted wetlands through restoration, graduated sanctions for "good faith" violations, and reliance upon an erroneous wetland determination by SCS.

Section 12.4 Determination of Ineligibility.

This section is revised to include (1) the designation of highly erodible land as conservation use, and (2) the conversion of wetland, as actions that cause ineligibility and to specify the period of time for which a determination of ineligibility applies. Paragraph (a)(3) of this section sets out the new wetland "trigger." It should be noted that the conversion of wetland after November 28, 1990 to produce forage crops or pasture may "trigger" a determination of ineligibility, since such a conversion also makes the production of an agricultural commodity possible.

As to the time period of ineligibility, the revised section provides that, similar to the current provisions for the production of an agricultural commodity on highly erodible land or on converted wetland, a determination of ineligibility as the result of the designation of highly erodible land as conservation use will apply to the crop year(s) covered by the designation. However, because the conversion of a wetland does not necessarily relate to any specific crop year, the first year for which benefits will be withheld as the result of a wetland conversion will be the calendar year in which the conversion occurred. Benefits for subsequent calendar years will be withheld, unless and until the wetland is restored.

This section is also revised to include the additional programs, added by the 1990 Act amendments, in the list of USDA programs benefits to be withheld if a person has been determined to be ineligible under part 12, as previously discussed.

Section 12.5 Exemptions.

This section is recognized for clarity and revised to include the exemptions authorized by the 1990 Act amendments as discussed below. A considerable portion of the various paragraphs in this section will not be changed, but they are set out in context with the proposed revisions as a convenience to the reader.

Highly Erodible Land

All of paragraph (a) contains the exemption related to highly erodible land. Revised paragraphs (a)(1) through (a)(3) are essentially unchanged from the current regulations, except for the inclusion of the designation of highly erodible land for conservation use.

Paragraph (a)(4) is added to implement the exemption related to the noncommercial production of agricultural commodities on areas of two acres or less in situations where it is determined that such production is not intended to otherwise circumvent the highly erodible land conservation requirements of the FSA.

Paragraph (a)(5) is added to implement the graduated sanctions provision for highly erodible land which provide relief for persons, who, in "good faith", violate the highly erodible land conservation requirements. A person who qualifies under this exemption would be assessed a reduction in benefits of not less than $500 nor more than $5,000, rather than the loss of all USDA program benefits. The dollar amount of the payment reduction will be determined on a case-by-case basis considering the severity of the violation, as determined by ASCS, and the number of acres in violation, as determined by SCS. Only one grant of graduated sanction relief under these provisions is allowed in any consecutive 5-year period. Furthermore, a person who receives reduced benefits under this provision shall continue to be eligible for benefits in subsequent years if prior to such subsequent years, such person is actively applying an approved conservation plan on all highly erodible land that is covered by part 12.

Paragraph (a)(6) is added to implement the exemption for technical and minor deficiencies in applying conservation plans. This provision of the 1990 Act amendments allows SCS to continue to exercise discretion based upon expertise of the agency in determining when a person is actively applying a plan. Under the exemption, a person will not lose USDA program benefits for failure to actively apply the plan for technical and minor violations, such as not precisely achieving the required pounds of residue per acre, or due to circumstances beyond the control of the person, such as adverse weather conditions, illness, or accident. Temporary variances from a practice specified in an approved conservation plan would be allowed by SCS to deal with specific problems. These variances become modifications to the approved conservation plan.

This proposed rule also will remove current paragraph (f) from § 12.5 as this paragraph, which contains a "grandfather" exemption for the production of agricultural commodities during the 1985 crop year, is no longer needed.

Wetlands and Converted Wetlands

All of paragraph (b) contains the exemptions related to wetlands and converted wetlands. Like the exemptions in paragraph (a), the provisions of paragraph (b) are reorganized to improve clarity, to add new exemption provisions for the mitigation or restoration of certain converted wetlands, and to provide graduated sanctions for "good faith" violations of the wetland provisions.

Several changes in the existing regulations are necessary to adapt applicable existing exemptions to the new wetland "trigger". In particular, the fact that the act of conversion under the 1990 Act amendments, as opposed to the actual production of an agricultural commodity, can "trigger" a determination of ineligibility, required a determination as to whether all wetland conversions were within the coverage of the 1990 Act amendments. It has been determined, as specified in new paragraph (b)(1)(ii), that conversions for purposes that do not at the same time make possible agricultural commodity production (such conversions for fish production; production of trees, vineyards, or shrubs; building or road construction; or other similar activities) are exempt from the wetland "trigger". Likewise, the new wetland "trigger" requires an amendment to the current regulations related to wetland conversions by third parties. The current regulations, at § 12.5(d)(1)(vi), provide for attributing the wetland conversion actions of a drainage district or other similar entity to a person who is within the jurisdiction of the converting organization and is assessed for the conversion activities. This was intended to prevent circumvention of the wetland conservation provisions of the FSA, in that a person who planted on their land that was converted by the district would become ineligible for benefits; a person who did not would remain outside of the FSA. However, under the new wetland "trigger" the current wording of this paragraph could cause a person within a district's assessment jurisdiction to become ineligible for conversion activities of the district that are completely separate and unrelated to their lands or to their agricultural commodity production, if any. In order to avoid undue hardship, the paragraph would be amended by the proposed addition of a sentence to preclude the attribution if the activities of the district are beyond the control of the person and the person does not use the converted wetland for production of an agricultural commodity or a forage crop.

Under this proposed rule, new paragraph (b)(6) provides that a person will not be determined to be ineligible for future benefits as the result of the conversion of frequently cropped wetland or as the result of the production of an agricultural commodity on a converted wetland that was converted between December 23, 1985 and November 28, 1990 if the wetland characteristics of the converted wetlands are mitigated through the restoration of a converted wetland that was converted before December 23, 1985. However, several specific requirements would have to be met, including the granting of an easement to USDA for the protection of the restored wetlands.

Graduated sanctions are provided under new paragraph (b)(7) for "good faith" violations of the wetland conservation provisions. The relief available under this paragraph is similar to the highly erodible land graduated sanctions except that (1) the range of benefit reduction is $750 to $10,000; (2) the converted wetland must be restored in accordance with an restoration plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service; (3) only one violation is permitted in any 10-year period without loss of all USDA benefits.

The 1990 Act amendments also include a provision to assure that persons will not be adversely affected by incorrect wetland determinations of SCS. New paragraph (b)(8) provides that persons will not lose eligibility for USDA program benefits as the result of the production of an agricultural commodity on converted wetland or for the conversion of a wetland if such actions were taken in reliance on an incorrect determination by SCS as to the status of the land. This exemption applies to actions taken prior to the person being informed of the correct determination. Paragraph (b)(8) provides further that if the SCS error caused the person to make a substantial financial investment for the conversion of a wetland, the person will not be determined to be ineligible for actions related to that portion of the converted wetland for which the investment was expended in conversion activities.

Paragraph (f) of the current regulations, which provides a "grandfather" exemption from the highly erodible land conservation provisions for crops planted before, or in any crop year that began before December 23, 1985, is to be removed as it is no longer needed. Paragraph (g) of the current regulations, which sets forth the responsibility of persons seeking an exemption related to converted wetland, is redesignated as paragraph (b)(9) and revised to address the expansion of the wetland conservation provisions caused by the new wetland "trigger". The affected person has the burden of producing the information required for SCS to determine whether this exemption applies, as well as the traditional burden of proving that an exemption applies. Accordingly, a person should contract SCS before taking any action related to the conversion of a wetland for a determination of whether or not a violation of the FSA might occur.

Section 12.6 Administration.

This section of the regulations set out the respective responsibilities of the various USDA agencies for administration of the highly erodible land and wetland conservation provisions of the FSA. Paragraph (b) is amended to include the new responsibilities of ASCS for determining whether certain violations were made in "good faith" and determining the amount of reduction in benefits for "good faith" violations under the graduated sanctions relief. Paragraph (b)(6) in accordance with the 1990 Act is added to provide for the maintenance by ASCS of a public listing of the farms or tracts of land that have a certified determination of wetland or converted wetland status.

Paragraph (c), relating to the responsibilities of SCS, is revised to clarify existing SCS duties and to include new responsibilities added by the 1990 Act amendments. In addition, both paragraph (b) and paragraph (c) are revised where necessary to conform any cross references to other sections or paragraphs that are redesignated or otherwise changed by the proposed revisions.

Section 12.7 Certification.

This section contains the requirements for certain certifications by persons applying for USDA program benefits. The current regulations provide, in general, that the person must certify that the person will not produce an agricultural commodity or use the proceeds of a FmHA insured or guaranteed loan in a manner that violates the current regulations. Paragraphs (a)(2) and (a)(3) are amended to include the designation of

BEST COPY AVAILABLE

highly erodible land as conservation use and the conversion of wetland in the list of actions for which a person must certify compliance.

Section 12.9 Landlords and Tenants.

This section of the current regulations contains certain protections that were provided by the FSA, as originally enacted, for landlords to protect a landlord from being determined to be ineligible for USDA program benefits as the result of an action by a tenant or share cropper. The 1990 Act amendments do not affect this provision, but they do add protection for tenants who might otherwise be determined to be ineligible for failure to implement a conservation plan for highly erodible land if such failure is a result of the refusal of the landowner to allow the actions needed for compliance. If a violation occurs in this situation, the ineligibility of the tenant or renter would be limited to the farm or tract to which the violation applies, not all the land operated by the tenant or renter. In such cases, the owner and tenant or renter must show that a scheme or device to avoid compliance is not present. Also, the tenant or renter would have to have demonstrated a "good faith" effort toward compliance by developing an approved conservation plan prior to any violation to be considered for this exemption. ASCS county committees will make the exemption determination based on pertinent facts relating to the case, including information provided by SCS. In addition to the specific conditions and requirements to qualify for such protection, under new paragraph (b)(2) the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

Section 12.10 Scheme or Device.

This section of the current regulations identifies and addresses actions that are deemed to be intended to circumvent the requirements of the FSA and part 12. This proposed rule amends the current regulation by removing the qualifying phrase, "for the production of an agricultural commodity," from the end of the last sentence, as this qualification is too narrow under the 1990 Act amendments regarding the designation of the highly erodible land as conservation use and the conversion of wetlands.

Section 12.11 Action Based Upon Advice or Action of the Department.

This section would be amended by the addition of a sentence to expand the current provisions for the granting of relief in order to achieve fair and reasonable determinations of compliance in cases where ineligibility may be caused by actions taken in good faith reliance on the advice or actions of representatives of USDA. This proposed revision is intended to implement authority provided to the Secretary of Agriculture, including that in an amendment to section 328 of the Food and Agriculture Act of 1962, 7 U.S.C. 1339c, provided for in section 1132 of the 1990 Act.

Section 12.23 Conservation Plans and Conservation Systems.

This section sets out the standards and the procedures to be followed in developing and implementing conservation plans and conservation systems for compliance with the highly erodible land conservation requirements. A new paragraph (b) is added to address the amendment to the FSA by section 1412 of the 1990 Act, which provides that land enrolled in the Conservation Reserve Program (CRP) is subject to the highly erodible land conservation provisions upon expiration or termination of the CRP contract, but that the owner or operator of such land will have 2 years, or longer if appropriate, after expiration of the CRP contract to comply with any conservation practices that require construction of structural measures. This extension of time beyond the 2 year period will be based on a determination by SCS that compliance within the 2 year period is not technically or economically feasible, as specified in the 1990 Act amendment, and will be limited to one year.

A new paragraph (c) is added to describe additional information that SCS will make available to persons who are preparing a conservation plan or the revision of a plan.

Section 12.30 SCS Responsibilities Regarding Wetlands.

This section is amended to add a new paragraph regarding agreements and consultation between the SCS and the U.S. Fish and Wildlife Service on the restoration of converted wetlands, and regarding procedures for on-site wetland determinations and certification of wetland delineations, as required by the 1990 Act amendments.

Section 12.31 Wetland Identification Criteria.

A sentence is added to the end of paragraph (d) to clarify the scope of an exemption that is allowed under the FSA for the conservation of a wetland or for the production of an agricultural commodity on a converted wetland upon a determination, as described in paragraph (d), that the activity will have only minimal effects on the hydrological and biological aspects of wetlands. The new sentence provides that where the minimal effect determination is based on the restoration or other mitigation of lost wetland values, in accordance with a restoration or mitigation plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service, the exemption from ineligibility for benefits will be effective after approval of the plan and as set forth in the plan.

Section 12.33 Use of Wetland and Converted Wetland.

This section currently contains guidance on the activities that can take place with regard to wetlands and converted wetland without causing a person to become ineligible for USDA program benefits. A new sentence would be added by this proposed rule to paragraph (b) to clarify the extent to which maintenance may continue for an alteration or manipulation that affects the reach or flow of water on a wetland that was in crop production before December 23, 1985.

List of Subjects in 7 CFR Part 12

Highly erodible land, Wetland, Conservation, Price support programs, Federal crop insurance, Farmers Home Administration loans, Incorporation by reference, Loan programs, Agriculture, Environmental protection.

Accordingly, title 7, part 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

1. The authority citation for part 12 is revised to read as follows:

Authority: 16 U.S.C. 3801 *et seq.*

2. Section 12.1 is amended by revising paragraph (a) to read as follows:

§ 12.1 General.

(a) This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture and agencies and instrumentalities of the Department.

* * * * *

3. Section 12.2 is amended by adding a comma after the word "planted" in paragraph (a)(1), redesignating paragraphs (a)(7) through (a)(28) as paragraphs (a)(8) through (a)(29) respectively, adding new paragraph (a)(7), and revising newly redesignated paragraph (a)(29), to read as follows:

§ 12.2 Definitions.

(a) * * *

(7) *Conservation use* or set aside means cropland that is designated as conservation use acreage, set aside or other similar designation for the purpose of fulfilling any provisions under any acreage limitation or land diversion program administered by the Secretary of Agriculture, requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

* * * * *

(29) *Wetland,* except when such term is a part of the term *converted wetland,* means land that (i) has a predominance of hydric soils; (ii) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; (iii) and under normal circumstances does support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

* * * * *

4. Section 12.3 is amended by revising paragraph (b) as follows:

§ 12.3 Applicability.

* * * * *

(b) The provisions of this part apply to all actions taken after and to determinations made after or pending on November 28, 1990, except to the extent that § 12.5 (b)(6) through (b)(8) have retroactive application to December 23, 1985 for certain actions and determinations regarding wetlands and converted wetlands. Actions taken and determinations made prior to November 28, 1990 are subject to regulations set forth in this part as of November 27, 1990.

5. Section 12.4 is revised to read as follows:

§ 12.4 Determination of ineligibility.

(a) Except as provided in § 12.5, a person shall be ineligible for all USDA program benefits listed in paragraph (c) of this section if:

(1) The person produces an agricultural commodity on a field in which highly erodible land is predominant, or designates such a field as conservation use;

(2) The person produces an agricultural commodity on wetland that was converted after December 23, 1985; or

(3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

(b) A person determined to be ineligible under paragraph (a)(1) or (a)(2) of this section shall be ineligible for all of the USDA program benefits listed in paragraph (c) of this section for which the person otherwise would have been eligible during the crop year for which the determination applies. A person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland shall be ineligible for all of the USDA program benefits listed in paragraph (c) of this section for which the person otherwise would have been eligible during the calendar year for which the determination applies and each subsequent calendar year until the converted wetland is restored.

(c) USDA program benefits covered by a determination of ineligibility under this rule are:

(1) Any type of price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), or any other Act;

(2) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(3) Payments made under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*);

(4) A disaster payment under the Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*); or under section 132 of the Disaster Assistance Act of 1989 (16 U.S.C. 1421 *et seq.*) or any similar provisions enacted subsequent to August 14, 1989;

(5) A farm loan made, insured, or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) or any other provision of law administered by the Farmers Home Administration if the Secretary determines that the proceeds of such loan will be used for a purpose that contributes to the conversion of wetlands that would make production of an agricultural commodity possible or for a purpose that contributes to excessive erosion of highly erodible land (i.e., production of an agricultural commodity on highly erodible land without a conservation plan or conservation system as required by this part);

(6) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity acquired by the Commodity Credit Corporation;

(7) A payment made under section 8, 12, or 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h, 590(l), or 590p(b));

(8) A payment made under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202);

(9) A payment made under any contract entered into pursuant to section 1231 of the Food Security Act of 1985, as amended (16 U.S.C. 3831);

(10) A payment made under chapter 2, Agricultural Water Quality Incentives Program, or chapter 3, Environmental Easement Program, of subtitle D, Title XII of the Food Security Act of 1985, as amended; and

(11) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a).

(d) The provisions of paragraphs (a) and (b) of this section do not apply to any loan described in paragraph (c) of this section that was made prior to December 23, 1985.

(e) For the purposes of paragraph (a) of this section, a person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or to have designated such a field as conservation use, to have produced an agricultural commodity on converted wetland, or to have converted a wetland if:

(1) SCS has determined that—

(i) Highly erodible land is predominant in such field, or

(ii) All or a portion of the field is converted wetland; and

(2) ASCS has determined that the person is or was the owner or operator of the land, or entitled to share in the crops available from the land, or in the proceeds thereof; and

(3) With regard to the provisions of paragraph (a)(1) and (a)(2) of this section, ASCS has determined that the land is or was planted to an agricultural commodity or was designated as conservation use during the year for which the person is requesting benefits.

(f) Persons who wish to participate in any of the USDA programs described in paragraph (c) of this section are responsible for contacting the appropriate agency of the Department well in advance of intended participation date so that Form AD–1026 can be completed. This contact will help assure that the appropriate

determinations regarding highly erodible land or wetland, and conservation plans or conservation systems are scheduled in a timely manner. A late contact may not allow sufficient time for USDA to service the request and could result in a substantial delay in receiving a USDA determination of eligibility or ineligibility.

6. Paragraph (b)(2) of § 12.5 is removed, paragraphs (a) through (c) are redesignated as paragraphs (a)(1) through (a)(3) and revised, and new paragraphs (a)(4) through (a)(6) are added to read as follows:

§ 12.5 Exemptions.

(a) *Exemptions regarding highly erodible land—(1) Highly erodible cropland in production or in Department programs during 1981 through 1985 crop years.* During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is two years after the date the cropland on which an agricultural commodity is produced was surveyed by the SCS to determine if such land is highly erodible, no person shall be determined to be ineligible for benefits as provided in § 12.4 as the result of the production of a crop of an agricultural commodity on any highly erodible land:

(i) That was planted to an agricultural commodity in any year 1981 through 1985; or

(ii) That was set aside, diverted or otherwise not cultivated in any such crop years under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) *Compliance with a conservation plan or conservation system.* As further specified in this part, no person shall be ineligible for the program benefits described in § 12.4 as the result of production of an agricultural commodity on highly erodible land or the designation of such land as conservation use if such production of designation is in compliance with an approved conservation plan or conservation system.

(i) With respect to the production of an agricultural commodity on any land identified under paragraph (a)(1) of this section, if, as of January 1, 1990, or the date that is 2 years after the date SCS has completed a soil survey of the cropland on the tract or farm, whichever is later, a person is actively applying a conservation plan based on the local SCS field office technical guide and approved by the CD, in consultation with the local ASC committees and SCS, such person shall have until January 1, 1995, to fully comply with the plan without being determined to be ineligible for benefits under § 12.4.

(ii) A person shall not be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on highly erodible land or as the result of designation of such land as conservation use if the production of designation is:

(A) In an area within a CD, under a conservation system that has been approved by the CD after the CD determines that the conservation system is in conformity with technical standards set forth in the SCS field office technical guide for such district; or

(B) In an area not within a CD, under a conservation system that has been approved by SCS to be adequate for the production of such agricultural commodity on highly erodible land or for the designation of such land as a conservation use.

(3) *Reliance upon SCS determination for highly erodible land.* A person may be relieved from ineligibility for program benefits as the result of the production of an agricultural commodity which was produced on highly erodible land or for the designation of such land as conservation use in reliance on a determination by SCS that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted on highly erodible land, or for the designation of highly erodible land as conservation use after SCS determines that such land is highly erodible land, and the person is notified of such determinations.

(4) *Area of 2 acres or less.* No person shall be determined to be ineligible under § 12.4 for noncommercial production of agricultural commodities on an area of 2 acres or less if it is determined by ASCS that such production is not intended to circumvent the conservation requirements otherwise applicable under this part.

(5) *Graduated sanctions.* (i) After November 28, 1990, no person shall become ineligible under § 12.4 as a result of the failure of such person to actively apply a conservation plan that documents the decisions of such person with respect to location, land use, tillage systems, conservation treatment measures and schedules if ASCS determines such person has—

(A) Not violated the highly erodible land provisions of this part within the past 5 years; and

(B) Acted in good faith and without the intent to violate the provisions of this part.

(ii) A person who is determined to meet the requirements of paragraph (a)(5)(i) of this section shall be subject in lieu of the loss of all benefits specified under § 12.4(c) for such crop year, to a reduction in benefits of not less than $500 nor more than $5,000 depending upon the seriousness of the violation, as determined by ASCS. The dollar amount of the reduction will be determined by ASCS and may be based on the number of acres and the degree of erosion hazard of the area in violation, as determination by SCS or upon such other factors as ASCS deems appropriate.

(iii) Any person whose benefits are reduced in a crop year under paragraph (a)(5) of this section may be eligible for all of the benefits specified under § 12.4(c) for any following crop year if SCS determines that such person is actively applying a conservation plan according to the schedule set forth in the plan on all erodible land planted to an agricultural commodity or designated as conservation use.

(6) *Allowable variances.* (i) Notwithstanding any other provisions of this part, no person shall be determined to be ineligible for benefits as a result of the failure of such person to actively apply a conservation plan if SCS determines that—

(A) The failure is technical and minor in nature and that such violation has little effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred; or

(B) The failure is due to circumstances beyond the control of the person; or

(C) SCS grants a temporary variance from the practices specified in the plan for the purpose of handling a situation which SCS determines cannot reasonably be addressed except through such variance.

(ii) A variance granted under this paragraph shall not be counted as a violation for purposes of paragraph (5)(i)(A) of this section.

* * * * *

7. Paragraph (d) of § 12.5 is redesignated as paragraph (b), and paragraphs (d)(1) through (d)(1)(v) are redesignated as paragraphs (b)(1) through (b)(1)(iv)(C) and revised as follows:

§ 12.5 Exemptions.

* * * * *

(b) *Exemptions for wetland and converted wetland.* (1) A person shall not be determined to be ineligible for program benefits under § 12.4 as the result of the production of an agricultural commodity on converted wetland or the conversion of wetland:

(i) If the conversion of such wetland was commenced or completed before December 23, 1985; or

(ii) If the conversion is for a purpose that does not make the production of an agricultural commodity possible, such as conversions for fish production, trees, vineyards, shrubs, or building and road construction; or

(iii) If SCS has determined that the actions of the person with respect to the conversion of the wetland, or the production of an agricultural commodity on the converted wetland, individually and in connection with all other similar actions authorized by SCS in the area, would have only a minimal impact on the functional hydrological and biological aspect of wetlands; or

(iv) If the area is:

(A) An artificial lake, pond or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, cooling, rice production, or flood control; or

(B) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation; or

(C) Wetland on which the owner or operator of a farm or ranch uses normal cropping or ranching practices to produce agricultural commodities in a manner that is consistent for the area, where such production is possible as a result of natural conditions, such as drought, and is without action by the producer that destroys a natural wetland characteristic.

8. Paragraph (d)(1)(vi) of § 12.5 is redesignated as paragraph (b)(1)(iv)(D) and is amended by revising the reference to "paragraph (d)(1)(v)" in the second sentence to read "(b)(1)(iii)", and by adding a sentence at the end of the paragraph to read as follows:

§ 12.5 Exemptions.

* * * * *

(b) * * * (1)

(iv) * * *

(D) * * * Notwithstanding the provisions of the preceding sentences and as determined by ASCS to be consistent with the purposes of this part, the activities of a drainage district or other entity will not be attributed to a person to the extent that the activities of the district or entity were beyond the control of the person and the wetlands converted are not used by the person for the production of an agricultural commodity or a forage crop.

9. Paragraphs (d)(2) through (d)(5)(iv) in § 12.5 are redesignated as paragraphs (b)(2) through (b)(5)(iv), respectively, and are amended by revising the references to "(d)(3)" and "(d)(4)" wherever they appear in the redesignated paragraphs to read "(b)(3)" and "(b)(4)", respectively and by revising the reference to "§ 12.4(d)(1)(i)" in redesignated paragraph (b)(5)(i) to read "this section".

10. Paragraph (e) and (f) of § 12.5 are removed, new paragraphs (b)(6) through (b)(8) are added, and paragraph (g) is redesignated as paragraph (b)(9) to read as follows:

§ 12.5 Exemptions.

* * * * *

(b) * * *

(6) *Mitigation through restoration of another converted wetland.* (i) No person shall be determined to be ineligible under § 12.4 as the result of the conversion of a wetland that is frequently cropped (a wetland farmed more often than not, as determined from ASCS crop history data) or for the production of an agricultural commodity on a converted wetland that was converted between December 23, 1985 and November 28, 1990, if the wetland values and functions are mitigated through the restoration of a converted wetland, which was converted prior to December 23, 1985. Such mitigation will allow a person to produce agricultural commodities on the converted wetland without being ineligible for future benefit if such restoration:

(A) Is in accordance with a restoration plan approved by SCS with the agreement of the U.S. Fish and Wildlife Service, as described in § 12.30(b);

(B) Is in advance of, or concurrent with, the wetland conversion or the production of an agricultural commodity, as applicable;

(C) Is not at the expense of the federal government in either supporting the direct or indirect costs of the restoration activity or costs associated with acquiring or securing mitigation sites;

(D) Occurs on lands in or near the same hydrologic unit or watershed, and as close as practicable to the wetland for which the mitigation is required, or through the use of mitigation banks; and

(E) Is on lands for which the owner has agreed to grant an easement to USDA, recorded on public land records, for the maintenance of the restored wetland for as long as the converted wetland for which the mitigation occurred remains in agricultural use or is not returned to its original wetland classification with equivalent functions and values.

(ii) Mitigation agreements required under paragraph (b)(i)(6) of this section involving greater than a one to one acreage restoraton are applicable to SCS under § 12.12.

(7) *Graduated sanctions.* (i) A person who is determined under § 12.4 to be ineligible for benefits as the result of the production of an agricultural commodity on a wetland converted after December 23, 1985, or as the result of the conversion of a wetland after November 28, 1990, may regain eligibility for reduced benefits if—

(A) ASCS determines that the person has not otherwise violated the wetland provisions of this part in the previous 10-year period on any tract or farm owned, operated, or leased by such person, and that such person acted in good faith, without the intent to violate the wetland provisions of this part; and

(B) SCS determines that the person is actively restoring or has restored the converted wetland to the wetland conditions that existed prior to conversion according to a restoration plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service, as described in § 12.30(b).

(ii) After the requirements of paragraph (b)(7)(i) of this section are met, USDA may, in lieu of applying the ineligibility provisions of § 12.4, reduce program benefits by not less than $750 nor more than $10,000 for that crop year depending upon the seriousness of the violation, as determined by ASCS in consideration of relevant factors, such as the information available to the producer prior to the violation, previous land use patterns, the number of wetland acres affected, and the recovery time for full restoration of the wetland values.

(iii) The relief allowed by paragraph (b)(7) (i) and (ii) of this section may apply retroactively to include the restoration of portions of benefits withheld for violations of the wetland conservation provisions of this part that occurred after December 23, 1985.

(8) *Reliance upon SCS determination for wetland or converted wetland.* A person shall not be ineligible for program benefits as the result of the production of an agricultural commodity on converted wetland for the conversion of a wetland if such action was taken in reliance on an incorrect determination by SCS as to the status of such land, except that this paragraph shall not apply to the production of an agricultural commodity or to actions related to the conversion of wetland that take place after SCS informs the person of the error. If the error caused the person to make a substantial financial investment, as determined by the appropriate agency of USDA, for the

conversion of a wetland, the person may be relieved of ineligibility for actions related to that portion of the converted wetland for which the substantial financial investment was expended in conversion activities.

(9) It is the responsibility of the person seeking an exemption related to converted wetlands under this section to provide evidence, such as receipts, crop history data, drawings, plans or similar information, for purposes of determining whether the conversion or other action is exempt in accordance with this section.

§ 12.6 [Amended]

11. Section 12.6 is amended by removing, in each paragraph listed below in the left column, the reference indicated in the middle column from where it appears in the paragraph, and adding in its place the reference indicated in the right column:

Paragraph	Remove	Add
(b)(2)(i)	§ 12.4(b)	§ 12.4(e)
(b)(3)(ii)	§ 12.4(a)(13)	§ 12.2(a)(14)
(b)(3)(v)	§ 12.5(a)(2)	§ 12.4(e) and § 12.5(a)(1)
(b)(3)(vii)	§ 12.5(d) (3) or (4).	§ 12.5(b) (3) or (4)
(b)(7)(ii)	§ 12.5(d)(1)(vi)	§ 12.5(b)(iv)(D)
(c)(2)(iv)	§ 12.5(b)(3)	§ 12.5(a)(3)

12. Section 12.6 is amended by revising the word "determination" in paragraph (b)(3) to read "determinations", removing paragraph (b)(3)(vi), redesignating paragraphs (b)(3)(vii) through (b)(3)(ix) as paragraphs (b)(3)(vi) through (b)(3)(viii), respectively revising the words "Chief of the SCS" in paragraph (c)(1) to read "Deputy Chief", and by adding paragraphs (b)(3)(ix), (b)(3)(x), (b)(6), and (c)(2) (vii) through (xiv) to read as follows:

§ 12.6 Administration.

* * * * *

(b) * * *

(3) ASCS shall make the following determinations which are required to be made in accordance with this part:

* * * * *

(ix) Whether certain violations were made in good faith. County Office good faith determinations shall be reviewed by the ASCS District Director if any of the following conditions apply to the case:

(A) The wetland was officially certified by SCS,

(B) USDA met with the producer to discuss the location of the wetland,

(C) The producer was involved in a previous swampbuster violation issue, or

(D) The wetland is in an uncropped field, and conversion brought new land into production through extensive modification of vegetation and hydrology.

(x) The determination of the amount of reduction in benefits based on the seriousness of the violation, based on technical information provided by SCS and FWS.

* * * * *

(6) ASCS shall maintain in its county offices a public listing of the farms or tracts that have a certified determination of wetland or converted wetland status.

(c) * * *

(1) The provisions of this part that are applicable to SCS shall be administered under the general supervision of the Deputy Chief for Programs, and shall be carried out in the field by the state conservationist, area conservationist, and district conservationist.

(2) * * *

(vii) Whether an approved conservation plan is being actively applied on highly erodible fields in accordance with the schedule specified therein or whether a failure to apply the plan is technical and minor in nature, due to circumstances beyond the control of the person, or whether a temporary variance from the requirements of the plan should be granted.

(viii) Whether an approved conservation system is being used on a highly erodible field.

(ix) Whether the conversion of a wetland is for the purpose or has the effect of making the production of an agricultural commodity possible.

(x) Whether a converted wetland is abandoned.

(xi) Whether the planting of an agricultural commodity on a wetland is possible under natural conditions.

(xii) Whether maintenance of existing drainage of a wetland described in § 12.32(a)(3) exceeds the scope and effect of the original drainage.

(xiii) Whether a plan and schedule for the restoration of a converted wetland will be approved and whether the restoration of a converted wetland is accomplished according to the approved restoration plan and schedule.

(xiv) Whether all pertinent data relating to the determination of a violation and severity of a violation has been provided to ASCS for making graduated sanctions determinations.

* * * * *

13. Section 12.7 is amended by revising paragraphs (a)(2) and (a)(3) to read as follows:

§ 12.7 Certification.

(a) * * *

(2) The person applying for the benefits must certify in writing on Form AD–1026 that such person will not produce an agricultural commodity on highly erodible land, or designate such land as conservation use; or plant an agricultural commodity on a converted wetland; or convert a wetland such as to make possible the production of an agricultural commodity during the crop year in which the person is seeking such benefits, unless such actions are exempt, under § 12.5, from the provisions of § 12.4 of this part;

(3) The person applying for a FmHA insured or guaranteed farm loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion on highly erodible land or to conversion of wetlands for the purpose, or to have the effect, of making the production of an agricultural commodity possible; and

* * * * *

14. Section 12.9 is amended by redesignating paragraphs (a) and (b) as (a)(1) and (a)(2) respectively, revising redesignated paragraph (a)(1), revising the reference to "paragraph (a)" in redesignated paragraph (a)(2) to read "paragraph (a)(1)", adding a heading for paragraph (a) and adding a new paragraph (b) to read as follows:

§ 12.9 Landlords and tenants.

(a) *Landlord eligibility.* (1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for benefits (as determined under § 12.4) shall not cause a landlord to be ineligible for USDA program benefits accruing with respect to land other than those in which the tenant or sharecropper has an interest.

(2) * * *

(b) *Tenant or renter eligibility.* (1) The ineligibility of a tenant or renter may be limited to the program benefits listed in § 12.4(c) accruing with respect to only the farm on which the violation occurred:

(i) The tenant or renter shows that a good faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part; and

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or renter from implementing certain practices that are a part of the approved conservation plan; and

(iii) ASCS determines that the lack of compliance is not a part of a scheme or device as described in § 12.10.

(2) If relief is granted under paragraph (b)(1) of this section, the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

§ 12.10 [Amended]

15. Section 12.10 is amended by removing the phrase "for the production of an agricultural commodity" at the end of the section.

16. Section 12.11 is amended by adding a sentence at the end to read as follows:

§ 12.11 Action based upon advice or action of the Department.

* * * In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 790.

§ 12.22 [Amended]

17. Section 12.22 is amended by revising the reference to "§ 12.5(c)" in paragraph (c) to read "§ 12.5(a)(2)".

18. Section 12.23 is amended by removing the references to "§ 12.5(b)" in the first sentences of paragraphs (a) and (d), and adding in their place "§ 12.5(a)", redesignating paragraphs (b) through (e) as paragraphs (d) through (g), respectively, and by adding new paragraphs (b) and (c) to read as follows:

§ 12.23 Conservation plans and conservation systems.

* * * * *

(b) Any person who owns or operates highly erodible land that was under a Conservation Reserve Program contract as authorized by section 1231 of the Food Security Act of 1985, as amended, shall have 2 years after the expiration or termination of the contract to fully apply a conservation system if the conservation plan for such land requires the installation of structural measures for the production of an agricultural commodity. SCS officials may extend this period one additional year for circumstances beyond the control of the person.

(c) SCS, in providing assistance to a person for the preparation or revision of a conservation plan under this part, will provide such person with information concerning cost effective and applicable erosion control alternatives, crop flexibility, base adjustment or other conservation assistance options that may be available.

* * * * *

19. Section 12.30 is amended by redesignating paragraphs (a) through (e) as paragraphs (a) through (a)(4), redesignating the introductory text as paragraph (a), by removing the reference to "§ 12.5(d)(1) and (d)(2)" in redesignated paragraph (a)(3) and adding in its place "§ 12.5(b)", and by adding new paragraphs (b), (c), and (d) to read as follows:

§ 12.30 SCS responsibilities regarding wetlands.

(a) * * *

(3) Consult with the Fish and Wildlife Service on determinations of exemptions made under § 12.5(b) and on matters relating to the identification of a wetland,

* * * * *

(b) Technical determinations regarding the restoration of converted wetlands and the development of restoration plans under this part will be made through the agreement of the local representative of SCS and a representative of the U.S. Fish and Wildlife Service. If agreement cannot be reached at the local level, such determinations will be referred to the SCS state conservationist who will, in making such determinations, consult with the U.S. Fish and Wildlife Service. All determinations made by SCS state conservationists under this paragraph will be reported by the state conservationists and the representatives of the U.S. Fish and Wildlife Service to their respective national offices.

(c) SCS determinations of wetland status and any applicable exemptions granted under this part shall be delineated on a map of the farm or tract. Notification of the wetland determination, a copy of the wetland delineation and the SCS appeal procedures shall be provided to each person who completes a Form AD–1026. The wetland determination and wetland delineation shall be certified as final by the SCS official 45 days after providing the person notice, or if appeal is filed with SCS, after a final appeal decision is made by SCS.

(d) An on-site investigation of a wetland or converted wetland site will be made by SCS before any benefits are withheld and the person shall be provided an opportunity to appeal the on-site determination to SCS if the on-site determination differs from the original determination, or the person was not provided an opportunity to appeal the original determination. Such action by SCS shall be considered a review of prior determinations and official certification of the delineation. A copy of the certified final determination and the wetland delineation shall be provided to ASCS, who will record the information on the official USDA farm map and on a public list. Wetland determinations made prior to November 28, 1990 shall be considered to be final and certified if they meet the criteria of § 12.31.

20. Section 12.31 is amended by revising the reference to "§ 12.2(a)(28)" in paragraph (b)(2) to read "§ 12.2(a)(29)", revising the reference to "§ 12.5(d)(1) (ii) and (iii)" in paragraphs (c) and (c)(2) to read "§ 12.5(b)(1)(iv) (A) and (B)", revising the reference to "§ 12.5(d)" in paragraph (d) to read "§ 12.5(b)(ii)" and "§ 12.5(b)" respectively, and adding a sentence at the end of paragraph (d) to read as follows:

§ 12.31 Wetland identification criteria.

* * * * *

(d) * * * In situations where the minimal effect determination is based on the restoration or other mitigation of lost wetland values in accordance with a restoration or mitigation plan and schedule approved by SCS in agreement with the U.S. Fish and Wildlife Service, as described in § 12.30(b), the exemption provided by the determination will be effective after approval of the plan and as set forth in the plan.

21. Section 12.33 is amended by revising the reference to "§ 12.5(d)(2)(v)" in paragraph (a) to read "§ 12.5(b)(1)(ii)", and adding a sentence at the end of paragraph (b) to read as follows:

"§ 12.33 Use of wetland and converted wetland.

* * * * *

(b) * * * Furthermore, the maintenance of any alteration or manipulation that affects the reach or flow of water made to a wetland that was cropped before December 23, 1985, would not cause a person to be determined to be ineligible under this part, provided that the maintenance does not exceed the scope and effect of the original alteration or manipulation, as determined by SCS, and provided that the area is not abandoned.

22. A new § 12.34 is added to read as follows:

§ 12.34 Paperwork Reduction Act assigned number.

The information collection requirements contained in this regulation (7 CFR part 12) have been approved by the Office of Management and Budget under provisions of 44 U.S.C.

chapter 35 and have been assigned OMB Number 0560-0004.

Signed this 15th day of February 1991 in Washington, DC.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 91-5197 Filed 3-1-91; 11:13 am]

BILLING CODE 3410-05-

Reader Aids

Federal Register

Vol. 56, No. 43

Tuesday, March 5, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904 1
8905-9120 4
9121-9268 5

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders

Presidential Determinations:

No. 91-20 of January 25, 1991 8681

Executive Orders:

12163 (See Presidential Determination 91-20 of January 25, 1991) 8681

Proclamations:

6254 9121

5 CFR

Proposed Rules:

581 9181

7 CFR

46 8683
905 8684
918 8905

Proposed Rules:

12 9258
1413 9251

8 CFR

241 8906
242 8906
274 8685

9 CFR

331 ..... 8907, 8908
381 ..... 8907, 8908

12 CFR

265 8687
600 8910
601 8910
602 8910
603 8910
604 8910
606 8910
611 8910
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
960 8688

14 CFR

21 8699-8701
25 8699-8701
39 8704-8707
1209 8910

Proposed Rules:

39 ..... 8732, 8733, 8935
91 8938

16 CFR

305 9123

Proposed Rules:

1700 9181

17 CFR

240 9124

18 CFR

Proposed Rules:

35 8938

21 CFR

5 8709
520 ..... 8709, 8710
558 8710
1308 9132
1316 8685

Proposed Rules:

808 8940

22 CFR

514 8711

24 CFR

91 9169

Proposed Rules:

203 8941

26 CFR

1 8911
31 8911
301 9169
602 8912

Proposed Rules:

1 8943-8967
301 9182

27 CFR

5 8922

28 CFR

0 8923
8 8685

Proposed Rules:

11 8734

29 CFR

541 9252
579 9252
580 9252
801 9046

Proposed Rules:

516 9183
778 9183
1602 9185

30 CFR

243 9251

Proposed Rules:

901 8967

913.....8989

33 CFR

117.....8712
151.....8878

40 CFR

52.....9172–9175
60.....9177
228.....9178
Proposed Rules:
Ch. I.....8972
86.....8856
123.....8973
300.....9187
600.....8856
799.....9092, 9105

42 CFR

400.....8832
405.....8832
406.....8832

45 CFR

74.....8712
205.....8924
232.....8926
234.....8926
235.....8926
801.....9180

46 CFR

25.....8878

47 CFR

73.....8933, 8934
Proposed Rules:
73.....8974–8976, 9189–9191

48 CFR

Ch. 2, App. N.....9082
202.....9082
203.....9082
204.....9082
217.....9082
225.....9082
228.....9082
232.....9082
245.....9082
252.....9082
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR

1011.....8721
1330.....8722
Proposed Rules:
Ch. X.....9191

50 CFR

611.....8722, 38723
620.....8722
646.....9251
672.....8723–8730
Proposed Rules:
656.....8736

672.....9251
675.....9251

LIST OF PUBLIC LAWS

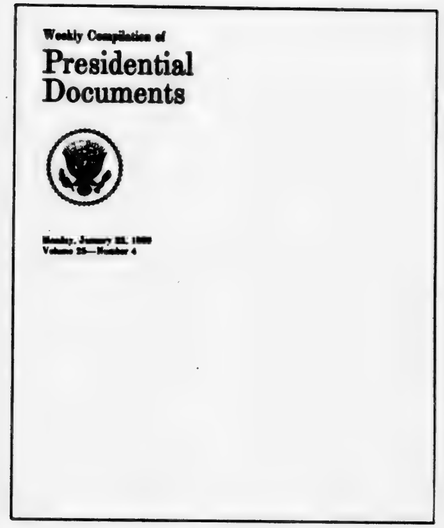
Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 21, 1991

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents Publications Order Form

Order Processing Code:
*6962

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)

Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog—Bestselling Government Books	FREE	FREE

Total for Publications

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) *Thank you for your order!*

(Signature)

Rev 1-91

VOL
56

ISS
43

MR
5

1991

UMI

OL
56
SS
44
MR
6
991
MI

3-6-91
Vol. 56 No. 44

federal register

Wednesday
March 6, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
44
IR
6
991
MI

3-06-91
Vol. 56 No. 44
Pages 9269-9580

federal register

Wednesday
March 6, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-0186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-0186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-0186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

ACTION
NOTICES
Student community services project guidelines, 9340

Administrative Conference of the United States
NOTICES
Meetings:
Judicial Review Committee (2 documents), 9344

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 9369
Housing guaranty programs:
Israel, 9369

Agricultural Marketing Service
RULES
Milk marketing orders:
Louisville-Lexington-Evansville, 9274
PROPOSED RULES
Kiwifruit grown in California, 9302
Milk marketing orders:
Carolinas, 9306

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Farmers Home Administration; Forest Service
RULES
Agricultural commodities; sales and exports financing Correction, 9273

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 9349

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Pink bollworm, 9273

Army Department
RULES
Biological Defense Safety Program, 9424

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Conservation reserve program, 9293

Coast Guard
RULES
Marine inspection and Captain of the Port zones; realignment; correction, 9288
Ports and waterways safety:
Upper Bay and Lower Bay, NY and NJ; security zone, 9289

Commerce Department
See International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Export visa requirements; certification, waivers, etc.:
Philippines, 9347

Commodity Credit Corporation
PROPOSED RULES
Conservation reserve program, 9293

Consumer Product Safety Commission
RULES
Hazardous substances:
Formal evidentiary public hearing procedures, 9276

Customs Service
PROPOSED RULES
Merchandise entry:
Bankruptcy proceedings; priority status, 9311

Defense Department
See also Air Force Department; Army Department
PROPOSED RULES
Privacy Act:, 9314
NOTICES
Agency information collection activities under OMB review, 9347
Foreign assistance determinations:
Mexico, 9348
Meetings:
Special Operations Policy Advisory Group, 9348
Privacy Act:
Systems of records, 9348, 9349 (2 documents)

Education Department
NOTICES
Meetings:
International Education Programs National Advisory Board, 9350

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
American Central Gas Companies, Inc., 9351
Broad Street Oil & Gas Co., 9352
Consolidated Edison Co. of New York, Inc., 9352

Environmental Protection Agency
RULES
Air programs:
Stratospheric ozone protection—
Chlorofluorocarbons and halons; production and consumption; amendment, 9516
Water pollution control:
State underground injection control program—
Alabama et al., 9408

PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Equipment leaks of volatile hazardous air pollutants, 9315
NOTICES
Agency information collection activities under OMB review, 9357
Meetings:
Acid Rain Advisory Committee, 9358
Pesticide registration, cancellation, etc.:
TPTH, 9358
Toxic and hazardous substances control:
Chemical testing—
Data receipt, 9359
Interagency Testing Committee—
Report, 9534

Executive Office of the President
See Presidential Documents

Farmers Home Administration
NOTICES
Organization, functions, and authority delegations:
Administrator; order of succession, 9343

Federal Deposit Insurance Corporation
PROPOSED RULES
Assessments, 9306

Federal Election Commission
RULES
Contribution and expenditure limitations and prohibitions:
Honoraria, 9275
NOTICES
Special elections; filing dates:
Massachusetts, 9359

Federal Emergency Management Agency
RULES
Preparedness:
State and local government or licensee radiological emergency plans and preparedness; services fee for support, review, and approval, 9452
NOTICES
Disaster and emergency areas:
California, 9360
Hawaii, 9360
Indiana, 9360
Meetings:
National Earthquake Hazards Reduction Program Advisory Committee, 9360
National Fire Academy Board of Visitors, 9360

Federal Energy Regulatory Commission
NOTICES
Preliminary permits surrender:
Snoqualmie River Energy, Inc., 9351

Federal Highway Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Intelligent Vehicle-Highway Society of America, 9400
Meetings:
Intelligent Vehicle-Highway Society of America, 9401

Federal Maritime Commission
NOTICES
Agency information collection activities under OMB review, 9361
Agreements filed, etc., 9361, 9362
(2 documents)

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 9405

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 9362

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Folksamerica Reinsurance Co.; correction, 9402
Republic Insurance Co., 9403

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 9462

Food and Drug Administration
PROPOSED RULES
Drug labeling:
Water-soluble gums as active ingredients in OTC drugs; warning statements; clarification, 9312
NOTICES
Human drugs:
Print size and style of labeling for over-the-counter drugs; citizen petition, 9363

Foreign Assets Control Office
NOTICES
Kuwaiti assets control, 9403

Forest Service
NOTICES
Appeal exemptions; timber sales:
Bitterroot National Forest, MT, 9343
Environmental statements; availability, etc.:
Beaverhead National Forest, MT, 9344

General Services Administration
RULES
Federal travel:
Relocation income tax allowance, 9289
NOTICES
Federal telecommunications standards:
Radio voice; analog to digital conversion by 4,800 bit/second code excited linear prediction, 9363

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Advisory committees; annual reports; availability, 9365
Grants and cooperative agreements; availability, etc.:
Emergency medical services for children; demonstration projects, 9366
Nursing education opportunities for individuals from disadvantaged backgrounds, 9367

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 9353
Special refund procedures; implementation, 9353

Housing and Urban Development Department
RULES
Fair housing:
Accessibility guidelines, 9472
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Community development work study program, 9574
Organization, functions, and authority delegations:
Deputy Secretary, 9368

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Countervailing duties:
Frozen concentrated orange juice from Brazil, 9345

International Trade Commission
NOTICES
Import investigations:
Microporous nylon membrane and products containing same, 9370

Interstate Commerce Commission
PROPOSED RULES
Motor carriers:
Contracts for transportation of property, 9339

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate Rules, 9370

Land Management Bureau
NOTICES
Meetings:
Ukiah District Advisory Council, 9369

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minority Business Development Agency
NOTICES
Business development center program applications:
Louisiana, 9345

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 9346
(2 documents)

National Science Foundation
NOTICES
Meetings:
Arctic Research Plan, second biennial revision, 9370

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Wisconsin Public Service Corp., 9371
Meetings:
Nuclear Waste Advisory Committee, 9372
Reactor Safeguards Advisory Committee, 9372
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 9373
Applications, hearings, determinations, etc.:
Detroit Edison Co., 9397

Presidential Documents
PROCLAMATIONS
Special observances:
Federal Employees Recognition Week, 9269
Vermont Bicentennial Day (Proc. 6256), 9579
ADMINISTRATIVE ORDERS
Memorandums:
Possible noncommunist resistance cooperation with the Khmer Rouge; delegation of authority (Memorandum of February 21, 1991), 9271

Public Health Service
See Food and Drug Administration; Health Resources and Services Administration

Resolution Trust Corporation
NOTICES
Coastal Barrier Improvement Act of 1990; affected property:
Nags Head Woods, NC, 9399

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 9405

Small Business Administration
NOTICES
Disaster loan areas:
New Jersey et al., 9399

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 9312

Tennessee Valley Authority
RULES
Privacy Act, 9288
NOTICES
Agency information collection activities under OMB review, 9400

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Highway Administration

Treasury Department
See also Customs Service; Fiscal Service; Foreign Assets Control Office
NOTICES
Agency information collection activities under OMB review, 9401, 9402
(2 documents)

Notes, Treasury:
L-1996 series, 9402
X-1993 series, 9402

Separate Parts in This Issue

Part II
Environmental Protection Agency, 9468

Part III
Department of Defense, Army Department, 9424

Part IV
Federal Emergency Management Agency, 9452

Part V
Department of the Interior, Fish and Wildlife Service, 9462

Part VI
Department of Housing and Urban Development, 9472

Part VII
Environmental Protection Agency, 9516

Part VIII
Environmental Protection Agency, 9534

Part IX
Department of Housing and Urban Development, 9574

Part X
The President, 9579

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6255 9269
6256 9579
Administrative Orders:
Memorandums:
February 21, 1991 9271

7 CFR
17 9273
301 9273
1046 9274
Proposed Rules:
704 9293
920 9302
1005 9306
1410 9293

11 CFR
110 9275

12 CFR
Proposed Rules:
327 9308

16 CFR
1500 9276
1502 9276

18 CFR
1301 9288

19 CFR
Proposed Rules:
141 9311

21 CFR
Proposed Rules:
201 9312

24 CFR
Ch. I 9472

30 CFR
Proposed Rules:
936 9312

32 CFR
627 9424
Proposed Rules:
299e 9314

33 CFR
3 9288
165 9289

40 CFR
82 9518
147 9408
Proposed Rules:
Ch. I 9315

41 CFR
302-11 9289

44 CFR
353 9452

49 CFR
Proposed Rules:
1053 9339

50 CFR
Proposed Rules:
20 9462

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

Presidential Documents

Title 3—

The President

Proclamation 6255 of March 1, 1991

Federal Employees Recognition Week, 1991

By the President of the United States of America

A Proclamation

The strength and effectiveness of the United States Government depends, in great part, on the knowledge, dedication, and skill of Federal employees. Whether they serve here at home or in posts abroad, employees of the Federal Government contribute substantially to the social, political, and economic stability of our Nation and to the protection of U.S. interests around the world.

Each and every American benefits daily, in numerous ways, from the work of Federal employees. It is these dedicated public servants who issue Social Security checks, ensure the safety of food and medicine, investigate possible cures for disease, promote the safety of our highways and air travel, and lead the fight against illict drug trafficking. Federal employees also provide vital support to the members of our Armed Forces and, in so doing, help to guarantee our national security and military preparedness. The recent success of Operation Desert Storm underscores our debt to the able and loyal work of Federal employees.

This week we express both our pride in public service and our appreciation for all those men and women who serve their fellow Americans as Federal employees.

The Congress, by Senate Joint Resolution 51, has designated the week beginning March 4, 1991, as "Federal Employees Recognition Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 4, 1991, as Federal Employees Recognition Week. I call upon all Americans to observe this week with appropriate ceremonies and activities, in grateful recognition of the dedicated service provided to the Nation by employees of the Federal Government.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-5436
Filed 3-4-91; 3:00 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of February 21, 1991

Delegation of Authority Regarding Report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on Possible Noncommunist Resistance (NCR) Cooperation With the Khmer Rouge

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the functions vested in me by section 562A(b)(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), relating to the submission of a report to the Speaker of the House of Representatives and the President pro tempore of the Senate regarding possible NCR cooperation with the Khmer Rouge. The authority delegated by this memorandum may be further redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, February 21, 1991.

[FR Doc. 91–5466
Filed 3–4–91; 4:09 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE
Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities; Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule; correction.

SUMMARY: The Foreign Agricultural Service (FAS) is correcting two errors in the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Cong.), which appeared in the **Federal Register** on February 1, 1991 (56 FR 3966).

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, U.S. Department of Agriculture, 14th and Independence SW., Washington, DC 20250–1000, Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) published an interim rule that amended the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), to comply with amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990 to Public Law 480 which became effective January 1, 1991. This amendment contained two errors which are discussed below and which are corrected by this notice.

In § 17.5(c)(8), as amended, the phrase "* * * selection as agent or the participant or importer" should have read "* * * selection as agent of the participant or importer."

§ 17.14, as amended, inadvertently contained two paragraphs designated "(iii)". The second paragraph "(iii)" is now designated "(iv)".

The following corrections are made in the Pub. L. 480, title I Financing Regulations published in the **Federal Register** on February 1, 1991 (56 FR 3966).

§ 17.5 [Corrected]

On page 3969, first column, § 17.5(c)(8) is corrected to read as follows:

§ 17.5 Agents of the participant or importer.

* * * * *

(c) * * *

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment or other benefit in connection with the person's selection as agent of the participant or importer.

* * * * *

§ 17.14 [Corrected]

On page 3970, second column, the amendatory language of item 7 is corrected to read as follows:

7. In § 17.14, paragraph (b)(1)(i) is revised, paragraph (b)(1)(ii) is designated as (b)(1)(iv) and new paragraphs (b)(1)(ii) and (b)(1)(iii) are added, paragraph (j)(8) is revised and paragraphs (j)(9) and (10) are added to read as follows:

* * * * *

Signed at Washington, DC on February 28, 1991.

F. Paul Dickerson,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 91–5302 Filed 3–5–91; 8:45 am]
BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91–015]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. This action removes unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective March 6, 1991. Consideration will be given only to comments received on or before May 6, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91–015. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917, and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations contained in 7 CFR 301.52 *et seq.* (referred to below as the pink bollworm regulations) quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas.

Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of the pink bollworm into noninfested areas. However, the eradication of the pink bollworm is undertaken as an objective only in places that are designated as suppressive areas. Prior to the effective date of this rule, a portion of Desha County was the only area in Arkansas designated as a suppressive area. Based on trapping surveys conducted by inspectors of Arkansas State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, an agency of the U.S. Department of Agriculture, we have determined that the pink bollworm has been eradicated from that portion of Desha County listed as a suppressive area. No evidence of pink bollworm infestations has been found in this area since October 12, 1988. We are therefore removing this area from the list of suppressive areas in § 301.52–2a. Since this area was the only remaining area in Arkansas regulated because of the pink bollworm, we are also removing Arkansas from the list of States in § 301.52(a) quarantined because of the pink bollworm.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make this rule effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area that will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.52 [Amended]

2. In § 301.52, paragraph (a), the reference to Arkansas is removed.

§ 301.52–2a [Amended]

3. In § 301.52–2a, the reference to Arkansas and all of the material for Arkansas thereunder are removed.

Done in Washington, DC, this 28th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–5102 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1046

[Docket No. AO–123–A60; DA–90–002]

Milk in the Louisville-Lexington-Evansville Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Louisville-Lexington-Evansville Federal milk marketing order. As amended, milk diverted from a city plant to other plants would be counted as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. Also, a "net shipments" concept applies to movements of milk between a country plant and a city plant in determining whether the country plant qualifies to be a pool plant. The action is based on industry proposals considered at a public hearing held March 13–14, 1990. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Louisville-Lexington-Evansville marketing area.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–8274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued February 13, 1990; published February 20, 1990 (55 FR 5852).

Recommended decision: Issued October 1, 1990; published October 4, 1990 (55 FR 40670).

Final decision: Issued January 10, 1991; published January 18, 1991 (56 FR 1950).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Louisville-Lexington-Evansville order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that: (1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that: (1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. The authority citation for 7 CFR part 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1046.7, paragraphs (a)(1), (b) and (c) are revised to read as follows:

§ 1046.7 Pool plant.

(a) A city plant which meets the following requirements:

(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13; and

* * * * *

(b) A country plant which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent, of the milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant to § 1046.13. In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfer or diversion from such city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) Except for March through July 1991 a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February shall continue to be a pool plant during each of the months of March through July, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following. A country plant that qualified as a pool plant during each of the months of September 1990 through February 1991 shall be a pool plant for the months of March through July 1991, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

Effective date: April 1, 1991.

Signed at Washington, DC, on: February 28, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–5279 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

[Notice 1991–2]

11 CFR Part 110

Honoraria: Contribution and Expenditure Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Final rule; Technical amendment.

SUMMARY: The Commission is publishing today a technical amendment to its regulations on acceptance of honoraria (11 CFR 110.12) to conform that section to the Ethics Reform Act of 1989. The Ethics Reform Act modified the Federal Election Campaign Act regarding honoraria, by changing the law to apply only to Senators and officers and employees of the Senate. Public Law 101–194 (Nov. 30, 1989). The

prior law applied to officers and employees of any branch of the Federal Government. The technical amendments to the Ethics Reform Act of 1989 also added a child of an honorarium recipient to the list of persons whose travel and subsistence expenses are exempted from the $2,000 limit. Public Law 101–280 (May 4, 1990).

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 ["FECA"], at 2 U.S.C. 441i, governs the acceptance of honoraria. The Commission's regulations implementing this section are contained in 11 CFR 110.12. Prior to the Ethics Reform Act of 1989, the Federal Election Campaign Act and the regulations implementing it provided that persons who are elected or appointed officers or employees of the Federal Government could not accept honoraria exceeding $2,000. Amounts accepted for actual travel and subsistence expenses for the person and his or her spouse or aide were excluded from the $2,000 limit. The Act and the regulations implementing it also provided that any honorarium paid by or on behalf of the officer or employee to a charitable organization was not "accepted" for the purposes of the Act.

The Ethics Reform Act of 1989 amended FECA in part by limiting the ability to accept honoraria after January 1, 1991 to Senators and officers and employees of the Senate. Public Law 101–194 (November 30, 1989). It also provided that any honorarium paid by or on behalf of a Senator or any officer or employee of the Senate to a charitable organization shall be deemed not "accepted" for the purposes of FECA. In the later technical amendments to the Ethics Reform Act, an honorarium recipient's child was added to the list of persons whose actual travel and subsistence expenses are excluded from the $2,000 limit. Public Law 101–280 (May 4, 1990).

The technical amendment published in this notice modifies the Commission's regulations governing the acceptance of honoraria at 11 CFR 110.12 (a) and (b) to bring the regulations into conformance with these amendments to the FECA. Because the amendment is merely technical, it is exempt from the notice and comment requirements of the Administrative Procedure Act (see 5 U.S.C. 553(b)(B)) and 2 U.S.C. 438(d) (relating to legislative review of Commission regulations). It is therefore made effective March 6, 1991.

List of Subjects in 11 CFR Part 110

Government employees.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that only officers and employees of the Federal Government are affected, and therefore, no small entity is affected under the final rule.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

2. Section 110.12 is amended by revising paragraphs (a), (b) introductory text, and (b) (1) and (5) to read as follows:

§ 110.12 Honoraria (2 U.S.C. 441i).

(a) No individual while a Senator or officer or employee of the Senate shall accept any hororarium of more than $2,000.

(b) For the purposes of this section, the term "honorarium" means a payment of money or anything of value received by a Senator or officer or employee of the Senate, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or child or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

(1) *Officer or employee.* The term "officer or employee" means any person appointed or elected to a position of responsibility or authority in the United States Senate, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States Senate, who accepts an honorarium for an appearance, speech, or article.

* * * * *

(5) *Accepted.* "Accepted" means that there has been actual or constructive receipt of the honorarium and that the Senator or officer or employee of the Senate exercises dominion or control over it and determines its subsequent use. However, an honorarium is not deemed accepted for the purposes of 11 CFR 110.12 if the Senator or officer or employee of the Senate pays the honorarium to a charitable organization, or if the honorarium is paid to a charitable organization on behalf of the Senator or officer or employee of the Senate. Nothing in this paragraph shall be construed as an interpretation of the relevant provisions of the Internal Revenue Code (title 26, United States Code).

* * * * *

Dated: February 28, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–5250 Filed 3–5–91; 8:45 am]

BILLING CODE 6715–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1502

Procedures for Formal Evidentiary Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: When the Commission is promulgating certain rules under the Federal Hazardous Substances Act ("FHSA") or the Poison Prevention Packaging Act ("PPPA"), the proceeding is governed by the provisions of section 701(e) through (g) of the Federal Food, Drug and Cosmetic Act ("FDCA"). Section 701(e) of the FDCA provides that, once a final rule is issued, interested persons have a period of 30 days in which to file objections to the final rule and to request a public hearing upon these objections. The Commission is finalizing procedural rules, based on those currently in use by the Food and Drug Administration ("FDA"), for conducting a formal evidentiary public hearing when such a hearing is provided for under the FHSA or the PPPA or when the Commission determines that such a hearing is in the public interest. The Commission is also withdrawing 16 CFR 1500.201, which restated the statutory requirements for such hearings.

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION:

A. Background and Introduction

(1) The FHSA and PPPA

When Congress created the Commission in 1973, the Consumer Product Safety Act ("CPSA") transferred authority to the Commission to administer four other statutes previously administered by other agencies. 15 U.S.C. 2079(a). Among those transferred statutes were the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.*, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471n *et seq.* Prior to the transfer, the FHSA and the PPPA had been administered by the Food and Drug Administration ("FDA") of the then-Department of Health, Education, and Welfare.

The FHSA provides for the opportunity for a formal public evidentiary hearing pursuant to section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. 371, in three instances: (1) when the Commission issues, amends, or repeals regulations to classify a hazardous substance intended for household use as a "banned hazardous substance" in accordance with section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(2); (2) when the Commission decides, pursuant to section 3(a) of the FHSA, to issue, amend, or repeal a regulation that declares that a substance or mixture is a hazardous substance as defined by section 2(f) (1)(A) of the FHSA, 15 U.S.C. 1262(a) (2); and (3) when the Commission elects to follow the procedures prescribed by section 701(e) of the FDCA in determining that a toy or other article intended for children presents an electrical, mechanical, or thermal hazard, 15 U.S.C. 1262(e)(1).

The PPPA provides, in section 5, that the Commission may elect to follow FDCA's section 701(e) procedures when the Commission issues, amends, or repeals a regulation that prescribes a standard under section 3 of the PPPA. 15 U.S.C. 1474(a).

(2) The Provisions of Section 701(e)–(g) of the FDCA

Once the Commission finalizes a rule under any of these provisions of the FHSA or the PPPA, the procedures of section 701(e) of the FDCA may apply. These procedures provide that when the Commission issues a final rule, interested persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. The filing of objections stays the implementation of those provisions to which objections are directed. 21 U.S.C. 371(e)(2). After the hearing, the presiding officer issues an order, based upon substantial evidence. 21 U.S.C. 371(e)(3). A person who is adversely affected by a final order on the objections may file a petition for review with the appropriate United States court of appeals. 21 U.S.C. 371(f). Section 701(g) provides for supplying the transcript of the hearing to interested parties upon request. 21 U.S.C. 371(g).

(3) Existing Rules Governing 701(e) Proceedings

At the time the FHSA and the PPPA were transfefred to the Commission, FDA had issued rules governing the procedure for 701(e) hearings. 21 CFR 2.51–2.104 (1973). Congress provided that regulations in effect at the time the FHSA and the PPPA were transferred continue in effect until they are modified, superseded, set aside, or repealed by the Commission, a court, or operation of law. 15 U.S.C. 2079(e)(2). Currently, any 701(e) type of proceeding that the Commission would conduct would be governed by the FDA's procedural rules as they existed at the time of transfer. The procedural rules finalized today would supersede the FDA regulations (21 CFR 2.51–2.104 (1973)) that were in existence at the time the FHSA was transferred to the Commission, insofar as those rules still apply to the Commission by virtue of 15 U.S.C. 2079(e)(2).

Section 1500.201 of the Commission's existing regulations essentially restates the FHSA's statutory provisions concerning 701(e) proceedings. The regulations finalized today will go beyond these existing regulations, and expand on the procedures for such hearings. The existing regulations also restate the statutory language in section 2(q)(2) of the FHSA concerning hazardous substances that present an imminent hazard. The Commission is withdrawing 16 CFR 1500.201 because these regulations will be repetitious and unnecessary with promulgation of new regulations at part 1502.

(4) The Proposed Procedures for 701(e) Hearings

On November 21, 1990, the Commission issued a notice of proposed rulemaking specifying the procedures for formal evidentiary public hearings, such as hearings required under section 701(e) of the FDCA. These proposed regulations were drawn substantially from the procedures FDA now follows in a 701(e) procedure, codified at 21 CFR part 12. The Commission received no comments in response to the notice of proposed rulemaking. The final rules issued today are identical to those proposed in the November 21, 1990 notice. The procedures will be used in connection with formal rulemaking. The Commission's rules for adjudicative proceedings set forth at 16 CFR part 1025 would not be affected by these procedures and would still apply to any adjudicative proceedings.

B. Summary of Procedures

Subpart A of the rules contains general provisions describing the scope of the procedures, the method for computation of time, the procedures for treatment of confidential information, and the address of the Commission's Office of the Secretary. The scope section provides that the procedures apply when a person has a right to an opportunity for a hearing under sections 2(q)(1) (B) or 3(a) of the FHSA and section 701(e) of the FDCA, or when the Commission elects to hold a hearing under section 3(e) of the FHSA or section 5(a) of the PPPA and section 701(e) of the FDCA. The procedures may also apply when the Commission concludes that a formal evidentiary public hearing on a matter before it is in the public interest.

Subpart B describes details concerning the initiation of proceedings to which these rules apply. Section 1502.5 explains that a person may file written objections to a final regulation to which this procedure applies on or before the 30th day of publication of the final rule. Section 1502.6 describes the form which objections and requests for a hearing must take when filed with the Office of the Secretary. Section 1502.7 provides that the Commission will publish a notice in the **Federal Register** after the time for filing objections has expired, which notice will state either that no objections have been filed, or will specify the parts of the regulation that have been stayed by the filing of proper objections. Section 1502.8 describes the situations in which the Commission will grant a request for a hearing.

Section 1502.9 provides that the Commission will promptly publish a notice in the **Federal Register** if it determines that the regulation at issue should be modified or revoked. Section 1502.10 provides that if the Commission determines to deny a request for a hearing, in whole or in part, it will publish a notice in the **Federal Register**. Section 1502.10 further specifies the required contents of such a notice, describes what constitutes the record of the Commission's denial of a hearing, and explains that denial of a request for

a hearing is reviewable in the courts. Section 1502.11 explains that a person may submit objections and waive the right to a hearing. Section 1502.12 describes the procedure by which a person with a right to request a formal hearing may waive that right and request an alternative form of hearing under 16 CFR part 1052. Section 1502.13 specifies the contents of a notice declaring that a hearing is justified, and explains that a hearing is deemed to begin on the date of publication of the notice of hearing. Section 1502.14 explains that if no objections are filed and no hearing is requested, the regulation is effective on the date specified in the regulation as promulgated, and that the Commission will publish a notice confirming that date.

Subpart C provides that a person who wishes to appear in any hearing should file a notice of participation. This subpart also describes the contents of a notice of appearance, and explains the parameters for Commission advice and communication on public participation in hearings (including *ex parte* communications).

Subpart D explains that the presiding officer will be an administrative law judge, describes the powers of the presiding officer, and explains the circumstances in which the presiding officer may withdraw from the proceeding.

Subpart E describes the hearing procedures. Section 1502.23 specifies the procedures for the filing and service of submissions. Section 1502.24 describes the procedure for submitting a petition to participate *in forma pauperis*. Section 1502.25 describes the data and information to be relied upon by the participants in the hearing. Section 1502.26 describes the procedure for direct testimony, explains when oral cross-examination will be permitted, and provides that the proponent of a substitute provision has the burden of proof in relation to the new provision. Section 1502.27 describes the activities permitted and prohibited for nonparty participants. Section 1502.28 describes acceptable conduct for participants in oral hearings and conferences. Section 1502.29 provides for notice of the time and place of a prehearing conference. Section 1502.30 describes the procedure for a prehearing conference. Section 1502.31 provides that after a hearing has commenced, a participant may move for a summary decision on any issue in the hearing, describes the circumstances in which the presiding officer will grant such a motion, and specifies the papers which should be submitted in support of, or in opposition to, such a motion. Section 1502.32 describes the contents of the administrative record of the hearing, and describes the evidence and testimony that are admissible. Section 1502.33 explains when official notice may be taken. Section 1502.34 explains the procedure for filing briefs, and the contents of briefs and arguments. Section 1502.35 describes the circumstances in which an interlocutory appeal from a ruling of the presiding officer may be made to the Commission, and the procedure for filing such an appeal. Section 1502.36 provides for the compilation of an official transcript of the hearing. Section 1502.37 describes the procedure for filing motions.

Subpart F describes the contents of the administrative record of a hearing, and provides for public availability of documents.

Subpart G provides for an initial and final decision in a hearing. Section 1502.40 requires the presiding officer to file an initial decision, describes the contents of the initial decision, and provides that the initial decision becomes the final decision of the Commission unless a participant files exceptions, or the Commission files a notice of review. Section 1502.41 provides for a participant to appeal an initial decision to the Commission by filing exceptions (within 30 days) that specifically identify alleged errors in the initial decision, and provides for the Commission to file a notice to review an initial decision. Section 1502.42 explains the powers of the Commission on appeal or review of an initial decision. Section 1502.43 provides for a participant to petition the Commission for reconsideration of part or all of its decision, or for a stay of its decision.

Subpart H provides for judicial review of the Commission's final decision, and requires a participant to first submit a petition for stay of action before requesting a court to stay the Commission's action pending judicial review.

C. Effects on Small Businesses and Other Small Entities

As required by the Regulatory Flexibility Act, the notice of proposed rulemaking examined the effect the rule would have on small entities. As stated in the notice, the Commission is not establishing new instances in which a formal evidentiary hearing would be held, but is simply specifying in greater detail the procedures that would be required when such a hearing is held.

D. Environmental Considerations

The regulation concerns only procedural rules for the conduct of a formal evidentiary public hearing. As stated in the notice of proposed rulemaking, the Commission finds that the rule has no potential for affecting the human environment. Thus, the Commission finds that no environmental assessment or environmental impact statement would be required.

List of Subjects 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and Recordkeeping requirements, Toys.

16 CFR Part 1502

Administrative practice and procedure, Consumer protection.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, as follows:

PART 1500 [AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

§ 1500.201 [Removed]

2. Section 1500. 201 is removed.

3. Part 1502 is added to read as follows:

PART 1502—PROCEDURES FOR FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.

1502.1 Scope.
1502.2 Computation of time periods.
1502.3 Confidential information.
1502.4 Office of the Secretary.

Subpart B—Initiation of Proceedings

1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.
1502.6 Filing objections and requests for a hearing on a regulation.
1502.7 Notice of filing of objections.
1502.8 Ruling on objections and requests for hearing.
1502.9 Modification or revocation of regulation or order.
1502.10 Denial of hearing in whole or in part.
1502.11 Judicial review after waiver of hearing on a regulation.
1502.12 Request for alternative form of hearing.
1502.13 Notice of hearing; stay of action.
1502.14 Effective date of a regulation when no objections are filed.

Subpart C—Appearance and Participation

1502.15 Appearance.
1502.16 Notice of participation.
1502.17 Advice on public participation in hearings.

Subpart D—Presiding Officer

1502.18 Presiding officer.
1502.19 Commencement of functions.
1502.20 Authority of presiding officer.
1502.21 Disqualification of presiding officer.
1502.22 Unavailability of presiding officer.

Subpart E—Hearing Procedures

1502.23 Filing and service of submissions.
1502.24 Petition to participation *in forma pauperis*.
1502.25 Disclosure of data and information to be relied on by the participants.
1502.26 Purpose; oral and written testimony; burden of proof.
1502.27 Participation of nonparties.
1502.28 Conduct at oral hearings or conferences.
1502.29 Time and place of prehearing conference.
1502.30 Prehearing conference procedure.
1502.31 Summary decisions.
1502.32 Receipt of evidence.
1502.33 Official notice.
1502.34 Briefs and arguments.
1502.35 Interlocutory appeal from ruling of presiding officer.
1502.36 Official transcript.
1502.37 Motions.

Subpart F—Administrative Record

1502.38 Administrative record of a hearing.
1502.39 Examination of record.

Subpart G—Initial and Final Decision

1502.40 Initial decision.
1502.41 Appeal from or review of initial decision.
1502.42 Decision by Commission on appeal or review of initial decision.
1502.43 Reconsideration and stay of Commission's action.

Subpart H—Judicial Review

1502.44 Review by the courts.
1502.45 Copies of petitions for judicial review.

Authority: 15 U.S.C. 1261(q)(1)(B), 1262(a), 1282(e), 1289(a); 15 U.S.C. 1474(a); 21 U.S.C. 371(e)–(g).

Subpart A—General Provisions

§ 1502.1 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under sections 2(q)(1)(B) or 3(a) of the Federal Hazardous Substances Act ("FHSA") and 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (15 U.S.C. §§ 1261(q)(1)(B) and 1262(a), and 21 U.S.C. 371(e));

(b) The Commission elects to hold a hearing under section 3(e)(1) of the FHSA or section 5 of the Poison Prevention Packaging Act ("PPPA") and section 701(e) of the FDCA (15 U.S.C. 1262(e)(1) and 1474(a), and 21 U.S.C. 371(e)); or

(c) The Commission concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before it in such a proceeding.

§ 1502.2 Computation of time periods.

Whenever a time period for taking action is specified by these procedures, by the presiding officer, or by the Commission, Saturdays, Sundays, and Federal holidays are included in computing time. However, if the last day for taking such action falls on a Saturday, Sunday, or Federal holiday, the action shall be timely if taken on or before the next Federal Government business day.

§ 1502.3 Confidential information.

Whenever any participant desires or is required to submit information in any proceeding under this part 1502, and the participant believes that such information consists of trade secret or other confidential business or financial information that should not be disclosed publicly, the participant may, instead of submitting such information, file a motion for a protective order containing a general description of the information desired to be withheld, together with a detailed argument supporting the claim that the information should be held in confidence.

§ 1502.4 Office of the Secretary.

(a) The mailing address of the Commission's Office of the Secretary is:

Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) The address for delivery to the Office of the Secretary is:

Office of the Secretary, Room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816.

(c) The telephone number of the Office of the Secretary is (301) 492–6800.

Subpart B—Initiation of Proceedings

§ 1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) The Federal Register notice promulgating the final regulation will describe how to submit objections and requests for hearing.

(b) On or before the 30th day after the date of publication of a final regulation in the Federal Register, a person may file written objections, with or without a request for a hearing, with the Commission. The 30-day period may not be extended, except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission or for other good cause shown, if consideration of the additional information will not delay review of the objection and request for hearing.

§ 1502.6 Filing objections and requests for a hearing on a regulation.

(a) Objections and requests for a hearing under § 1502.5(a) must be filed with the Office of the Secretary and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in § 1502.5(b).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision(s) of the regulation to which that objection is directed.

(4) Each objection on which a hearing is requested specifically requests a hearing. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 1502.8, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, unless the document is—

(A) A CPSC document that is routinely publicly available; or

(B) A recognized medical or scientific textbook or journal in the public domain.

(ii) A summary of the non-documentary testimony to be presented by any witnesses relied upon must be submitted.

(b) If an objection or request for a public hearing fails to meet the requirements of this section the Office of the General Counsel shall notify the Office of the Secretary of the deficiency. The Office of the Secretary shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 1502.5(b).

(c) If another person objects to a regulation issued in response to a petition, the petitioner may submit a written reply to the Office of the Secretary on or before the 15th day after the last day for filing objections.

§ 1502.7 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under the FHSA or the PPPA and section 701(e) of the Federal Food, Drug, and Cosmetic Act, the Commission shall publish a notice in the **Federal Register** specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 1502.10 and 1502.13.

§ 1502.8 Ruling on objections and requests for hearing.

(a) As soon as practicable, the Commission will review all objections and requests for hearing filed under § 1502.6 and determine—

(1) Whether the regulation should be modified or revoked under § 1502.9; and

(2) Whether a hearing has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commission concludes that the data and information submitted, even though accurate, are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.*, if the Commission concludes that the Commission's action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the FHSA or any regulation in 16 CFR Subchapter C explaining or particularizing the requirements of the FHSA.

(6) The requirements in other applicable regulations, and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

(c) In making the determinations specified in paragraph (a) of this section, the Commission may issue an appropriate order on the determinations without further notice or opportunity for comment from interested parties. However, the Commission, at its option, may use the procedure specified in 16 CFR part 1052 or any other applicable public procedure available to it.

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commission concludes that summary decision against the person requesting a hearing should be considered, the Commission may serve upon the person by registered mail a proposed order denying a hearing. The person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

§ 1502.9 Modification or revocation of regulation or order.

If, upon review of an objection or request for hearing, the Commission determines that the regulation should be modified or revoked, the Commission will promptly take such action by notice in the **Federal Register**. Further objections to or requests for hearing on the modification or revocation may be submitted under §§ 1502.5 and 1502.6, but no further issue may be taken with other provisions in the regulation. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§ 1502.10 Denial of hearing in whole or in part.

(a) If the Commission determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published in the **Federal Register**.

(b) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by § 1502.13, and will specify the objections and requests for hearing that have been granted and denied.

(c) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(d) The notice will confirm, modify, or stay the effective date of the regulation involved.

(e) The record of the administrative proceeding relating to denial in whole or in part of a public hearing on an objection or request for hearing consists of the following:

(1) The entire rulemaking record;

(2) The objections and requests for hearing filed by the Office of the Secretary; and

(3) The notice denying a formal evidentiary public hearing.

(f) The record specified in paragraph (e) of this section is the exclusive record for the Commission's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commission's decision denying a hearing, unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration or a petition for stay of the Commission's action. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commission with a petition to modify the final regulation.

(g) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the **Federal Register**.

(1) Before requesting a court for a stay of the Commission's action pending judicial review, a person shall first submit a petition to the Commission for a stay of action.

(2) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the **Federal Register**. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

§ 1502.11 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 1502.5(a) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 1502.6(a)(4).

(b) If a person waives the right to a hearing, the Commission will rule upon the person's objections under §§ 1502.8 through 1502.10. As a matter of discretion, the Commission may also order a hearing on the matter.

(c) If the Commission rules adversely on a person's objection, the person may petition for judicial review in a U.S. court of appeals under the appropriate statute.

(1) The record for judicial review is the record designated in § 1502.10(e).

(2) The time for filing a petition for judicial review begins on the date of publication of the Commission's ruling on the objections in the **Federal Register**.

§ 1502.12 Request for alternative form of hearing.

(a) A person with a right to request a formal hearing may waive that right and request a hearing before the Commission under 16 CFR part 1052.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commission;

(2) Must be submitted by the person in the form of a petition before publication of a notice of hearing under § 1502.13 or a denial of hearing under § 1502.10; and

(3) Must be—

(i) In lieu of a request for a formal hearing under § 1502.5; or,

(ii) If submitted with or after a request for formal hearing, accompanied by a waiver of the right to a formal hearing, conditioned on the request for the alternative form of hearing. Upon acceptance by the Commission, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing, unless the Commission determines otherwise.

(c) When more than one person requests and justifies a formal hearing under these procedures, an alternative form of hearing may be used only if all the persons concur and waive their right to request a formal hearing.

(d) The Commission will determine whether an alternative form of hearing should be used after considering the requests submitted and the appropriateness of the alternative hearing for the issues raised in the objections. The Commission's determination is binding unless, for good cause, the Commission subsequently determines otherwise.

(e) If the Commission determines that an alternative form of hearing will be used, the Commission will publish a notice in the **Federal Register** setting forth the following information:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation that has been stayed by operation of law or in the Commission's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

§ 1502.13 Notice of hearing; stay of action.

(a) If the Commission determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commission will publish a notice setting forth the following:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commission's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 1502.10.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 1502.16.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 1502.16(a).

(9) The time within which participants should submit written information and views under § 1502.25(b). Additional copies of material already submitted under § 1502.25 need not be included with any later submissions.

(10) The contents of the portions of the administrative record relevant to the issues at the hearing. Except for trade secret or other confidential information, the disclosure of which is prohibited by statute, the portions listed will be placed on public display in the Office of the Secretary before the notice is published.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commission of a decision by the presiding officer to revise the issues to include an issue on which the Commission has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 1502.14 Effective date of a regulation when no objections are filed.

(a) If no objections are filed and no hearing is requested on a regulation under § 1502.5, the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commission shall publish a confirmation of the effective date of the regulation. The **Federal Register** document confirming the effective date of the regulation may extend the time for compliance with the regulation.

Subpart C—Appearance and Participation

§ 1502.15 Appearance.

(a) A person who has filed a notice of participation under § 1502.16 may appear in person or by counsel or other representative in any hearing and, subject to § 1502.27, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the requirements regarding conduct in § 1502.28.

§ 1502.16 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 1502.13, a person desiring to participate in a hearing is to file with the Office of the Secretary a notice of participation in the following form:

(Date)

Office of the Secretary, Consumer Product Safety Commission, Room 420, 5401 Westbard Ave., Bethesda, MD. Mailing address: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Notice of Participation

(Title of Regulation)

Docket No. _____

Please enter the participation of:

(Name) _____

(Street address) _____

(City, State, and Zip Code) _____

BEST COPY AVAILABLE

(Telephone number) ———

Service on the above will be accepted by:

(Name) ———

(City, State, and Zip Code) ———

(Telephone number) ———

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of § 1502.25 of these procedures.)

(Signed) ———

(b) Any amendment to a notice of participation should be filed with the Office of the Secretary and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or for failure to comply with any requirement of this subpart, *e.g.*, disclosure of information as required by § 1502.25 or the prehearing order issued under § 1502.30. Any person whose participation is stricken may petition the Commission for interlocutory review of that decision.

§ 1502.17 Advice on public participation in hearings.

(a) All inquiries from the public about scheduling, location, and general procedures should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or telephone (301) 492–6800.

(b) Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the presiding officer.

(c) Under no circumstances will the Office of the General Counsel of CPSC directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the staff. Other members of the office, ordinarily including the General Counsel, are designated to advise the Commission on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the General Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commission to respond to inquiries from other participants in the hearing; such participants may be urging views contrary to those of the staff involved or to what may ultimately be the final conclusions of the Commission. Accordingly, members of the Office of the General Counsel, other than the attorneys responsible for representing the staff, will not answer questions about the hearing from any participant or potential participant.

(d) Participants in a hearing may communicate with the attorneys responsible for representing the staff, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Office of the Secretary.

(e) Separation of functions and *ex parte* communications will be handled as follows.

(1) An interested person may meet or correspond with any CPSC representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing on the matter. The provisions of 16 CFR part 1012 apply to such meetings.

(2) Upon publication of a notice announcing a formal evidentiary public hearing, the following rules concerning separation of functions apply:

(i) The CPSC staff members responsible for preparing evidence and participating in the hearing in the matter are, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the staff at the hearing and in any pleading or oral argument before the Commission. These representatives of the staff may not participate or advise in any decision except as witnesses or counsel in public proceedings. Except as provided herein, there shall be no other communication between representatives of the staff and representatives of the various Commissioners' offices concerning the matter prior to the decision of the Commission. The Commission may, however, designate other representatives of the staff to advise the Commission. The designation will be in writing and filed with the Office of the Secretary no later than the time specified in paragraph (f)(2) of this section for the application of separation of functions. All employees of the CPSC other than representatives of the involved staff (except for those specifically designated otherwise) may be called upon to advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(ii) The General Counsel of CPSC shall designate members of the Office of the General Counsel to advise and participate with the staff in its functions in the hearing and shall designate other members of the Office of the General Counsel to advise the offices of the Commissioners in their functions related to the hearing and the final decision. The members of the Office of the General Counsel designated to advise the staff may not participate or advise in any decision of the Commission except as counsel in public proceedings. The designation shall be in the form of a memorandum filed with the Office of the Secretary and made a part of the administrative record in the proceeding. There may be no other communication between those members of the Office of the General Counsel designated to advise the offices of the Commissioners and any other person in the Office of the General Counsel or in the involved staff with respect to the matter prior to the decision of the Commission. The General Counsel may assign different attorneys to advise either the staff or the offices of the Commissioners at any stage of the proceedings. The General Counsel will ordinarily advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(iii) The Commissioners are responsible for the agency review and final decision of the matter, with the advice and participation of anyone in CPSC other than representatives of the responsible staff and those members of the Office of the General Counsel designated to assist in the staff functions in the hearing.

(iv) Between the date that separation of functions applies and the date of the Commission's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(A) No person outside CPSC may have an *ex parte* communication with the presiding officer or any person representing the offices of the Commissioners concerning the matter in the hearing. Neither the presiding officer nor any person representing the offices of the Commissioners may have any *ex parte* communications with a person outside CPSC concerning the matter in the hearing. All communications are to be public communications, as witness or counsel under the applicable procedures.

(B) A participant in the hearing may submit a written communication concerning a proposal for settlement to the presiding officer with a request that it be transmitted to the Commission. These communications are to be in the form of pleadings, served on all other participants, and filed with the Office of the Secretary like any other pleading.

(C) A written communication contrary to this section must be immediately served on all other participants and filed with the Office of the Secretary by the presiding officer at the hearing, or by the Commissioner, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other participants and filed with the Office of the Secretary. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the Office of the Secretary.

(D) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

Subpart D—Presiding Officer

§ 1502.18 Presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105.

§ 1502.19 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 1502.20 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 1502.30(b) and to rule on the need for oral testimony and cross-examination under § 1502.26(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike or limit their testimony if they fail to respond fully to proper questions;

(h) Admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 1502.31;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any procedure in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 1502.16(e) or exclude any person from the hearing under § 1502.28, or take other reasonable disciplinary action; and

(o) Take any other action required for the fair, expeditious, and orderly conduct of the hearing.

§ 1502.21 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with § 1502.35(b).

(b) A presiding officer who is aware of grounds for disqualification, whether or not raised by a participant, shall withdraw from the proceeding.

§ 1502.22 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commission will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 1502.23 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the Office of the Secretary. Two copies shall be filed. To determine compliance with filing deadlines in a hearing, a submission is considered filed on the day of filing with or mailing to the Office of the Secretary. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) The person making a submission shall serve copies of it on the other participants.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service or by a statement that service is not required, stating the reason therefor.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 1502.3.

§ 1502.24 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commission a petition to participate *in forma pauperis*.

(b) The petition will be captioned: "Request to Participate *In Forma Pauperis*, Docket No. ———." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted; The petition must demonstrate that either:

(1) The participant is indigent and a strong public interest justifies participation, or

(2) The participant's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commission may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Office of the Secretary. The Office of the Secretary will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 1502.25 Disclosure of data and information to be relied on by the participants.

(a) Before the notice of hearing is published under § 1502.13, the Assistant General Counsel for Regulatory Affairs shall submit the following to the Office of the Secretary:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not required to be submitted.

(2) All other documentary data and information relied upon.

(3) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the Assistant General Counsel intends to introduce.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the Office of the Secretary all data and information specified in paragraph (a) (2) and (3) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete, and any documents in the participants' files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relates to the issues involved in the hearing.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material in the supplement was not reasonably known or available when the submission was made, that the relevance of the material contained in the supplement could not reasonably have been foreseen, or that admission of the material in the supplement is necessary for a fair determination of the issues involved in the hearing.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 1502.26 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) Direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(2) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(3) Witnesses shall give testimony under oath.

(c) A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

§ 1502.27 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories; or

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same right as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 1502.28 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing shall constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 1502.29 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At the prehearing conference, insofar as practicable at that time, the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination, if leave to conduct oral examination is granted on any issue.

§ 1502.30 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and should request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that reasonably could be anticipated and resolved at that time will not delay the progress of the hearing and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements

reached, actions taken, or rulings issued by the presiding officer at or as a result of the prehearing conference and may be grounds for striking the participation under § 1502.16.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Office of the Secretary under § 1502.23:

(i) Any additional information desired to supplement the submission filed under § 1502.25; the supplement may be filed if approved under § 1502.25.

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may be identified later, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference, that the relevance of the witness's views could not reasonably have been foreseen at that time, or for other good cause shown, as where a previously identified witness is unforeseeably unable to testify.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(A) The statement is available without making a request to the witness;

(B) The statement relates to the subject matter of the witness's testimony; and

(C) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions, subject to the *ex parte* limitations in § 1502.17(f).

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider, but is not limited to, the following techniques.

(i) Submission of narrative statements of position on factual issues in controversy.

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports.

(iii) Exchange of written interrogatories directed to particular witnesses.

(iv) Written requests for the production of additional documentation, data, or other relevant information.

(v) Submission of written questions to be asked by the presiding officer of a specific witness.

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting information submitted under § 1502.25 into evidence.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 1502.31 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, allow additional time to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant submitting or opposing a motion for summary decision may obtain interlocutory review by the Commission of a summary decision of the presiding officer.

§ 1502.32 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, written interrogatories and responses, and any other written material submitted in the proceeding comprise the administrative record of the hearing, and will be promptly placed on public display in the Office of the Secretary, except as ordered by the presiding officer.

(c) Written evidence, identified as such, is admissible unless a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by § 1502.25.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted

in the form of a cross-reference to the documents filed under § 1502.25.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of these procedures.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commission, without taking oral exception at the hearing. Upon review, the Commission may reopen the hearing to permit the evidence to be admitted if the Commission determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating only to trade secrets and privileged or confidential commercial or financial information. Participation in closed proceedings will be limited to the witness, the witness's counsel, and Federal Government employees.

§ 1502.33 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of CPSC as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 1502.34 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument shall refrain from disclosing specific details of written and oral testimony and documents relating to trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

§ 1502.35 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 1502.13(b), 1502.16(e), 1502.31(f), and 1502.37(d) authorizing interlocutory appeals, rulings of the presiding officer may not be appealed to the Commission before the Commission's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commission if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant or substantial harm to the public interest.

(c) When an interlocutory appeal is made to the Commission, a participant may file a brief with the Commission only if such is specifically authorized by the presiding officer or the Commission, and, if such authorization is granted, within the period the Commission directs. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period the Commission directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commission. The oral argument will be transcribed. If briefs are authorized, oral argument will be heard only at the discretion of the Commission.

§ 1502.36 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the Office of the Secretary upon receipt.

(c) Copies of the transcript may be obtained by application to the official reporter and payment of costs thereof.

(d) Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 1502.37 Motions.

(a) Except for a motion made in the course of an oral hearing before the presiding officer, a motion on any matter relating to the proceeding shall be filed under § 1502.23 and must include a draft order.

(b) A response may be filed within 10 days of service of a motion. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commission for interlocutory review.

Subpart F—Administrative Record

§ 1502.38 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed with the Office of the Secretary under §§ 1502.5 and 1502.6;

(3) The notice of hearing published under § 1502.13;

(4) All notices of participation filed under § 1502.16;

(5) All Federal Register notices pertinent to the proceeding;

(6) All submissions filed under § 1502.24, *e.g.*, the submissions required by § 1502.25, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under § 1502.30;

(8) All documents relating to any motion for summary decision under § 1502.31;

(9) All documents of which official notice is taken under § 1502.33;

(10) All pleadings filed under § 1502.34;

(11) All documents relating to any interlocutory appeal under § 1502.35;

(12) All transcripts prepared under § 1502.36; and

(13) Any other document relating to the hearing and filed with the Office of the Secretary by the presiding officer or any participant.

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in § 1502.34(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

§ 1502.39 Examination of record.

Except as provided in § 1502.3, documents in the record will be publicly available. Documents available for examination or copying will be placed on public display in the Office of the Secretary promptly upon receipt in that office.

Subpart G—Initial and Final Decision

§ 1502.40 Initial decision.

(a) The presiding officer shall prepare and file an initial decision as soon as practicable after the filing of briefs and oral argument.

(b) The initial decision shall contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation supported by substantial evidence of record and based upon the findings of fact and conclusions of law (unless the initial decision is to not issue a regulation);

(6) An effective date for the regulation (if any), together with an explanation of why the effective date is appropriate; and

(7) The periods of time for filing exceptions to the initial decision with the Office of the Secretary and for filing replies to such exceptions, in accordance with § 1502.41(a)–(c).

(c) The initial decision must refrain from disclosing specific details of trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

(d) The initial decision is to be filed with the Office of the Secretary and served upon all participants. Once the initial decision is filed with the Office of the Secretary, the presiding officer has no further jurisdiction over the matter, and any motions or requests filed with the Office of the Secretary will be decided by the Commission.

(e) The initial decision becomes the final decision of the Commission by operation of law unless a participant files exceptions with the Office of the Secretary under § 1502.41(a) or the Commission files a notice of review under § 1502.41(f).

(f) Notice that an initial decision has become the decision of the Commission without appeal to or review by the Commission will be published in the Federal Register. The Commission also may publish the decision when it is of widespread interest.

§ 1502.41 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commission by filing exceptions with the Office of the Secretary, and serving them on the other participants within the period specified in the initial decision. The period for appeal to the Commission may not exceed 30 days, unless extended by the Commission under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commission may be requested in the exceptions.

(c) Any reply to the exceptions shall be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Commission under paragraph (d) of this section.

(d) The Commission may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commission decides to hear oral argument, the participants will be informed of the date, time, and place of the argument, the amount of time allotted to each participant, and the issues to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commission may file with the Office of the Secretary, and serve on the participants, a notice of the Commission's determination to review the initial decision. The Commission may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 1502.42 Decision by Commission on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commission has all the powers given to the presiding officer with respect to the initial decision. On the Commission's own initiative or on motion, the Commission may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues at the public hearing is the same as the scope of the issues on appeal at the public hearing unless the Commission specifies otherwise.

(c) As soon as possible after the filing of briefs and the presentation of any oral argument, the Commission will issue a final decision in the proceeding, which meets the requirements established in § 1502.40 (b) and (c).

(d) The Commission may adopt the initial decision as the final decision.

(e) Notice of the Commission's decision will be published in the Federal Register. The Commission may also publish the decision when it is of widespread interest.

§ 1502.43 Reconsideration and stay of Commission's action.

Following notice or publication of the final decision, a participant may petition the Commission for reconsideration of any part or all of the decision or may petition for a stay of the decision.

Subpart H—Judicial Review

§ 1502.44 Review by the courts.

(a) The Commission's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of the Commission's action pending judicial review, a participant shall first submit a petition for a stay of action under § 1502.43.

(b) Under 28 U.S.C. 2112(a), CPSC will request consolidation of all petitions related to a particular matter.

§ 1502.45 Copies of petitions for judicial review.

The General Counsel of CPSC has been designated by the Commission as the officer on whom copies of petitions for judicial review are to be served. This

officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the Secretary of the Commission.

Dated: February 22, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-4915 Filed 3-5-91; 8:45 am]

BILLING CODE 6355-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule updates the list of published system of records notices. Section 1301.24 is amended to reflect the change of the name of the "Cooperative Training Program for Construction Craftsmen-TVA" system of records to "Upgrade Craft Training Program-TVA."

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, TVA Privacy Act Officer, (615) 751-2520.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately. (March 6, 1991).

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.

2. Section 1301.12 is amended by revising paragraph (d) to read as follows:

§ 1301.12 Definitions.

* * * * *

(d) The term "TVA system notice" means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System-TVA
Personnel Files-TVA
Upgrade Craft Training Program-TVA
Demonstration Farm Records-TVA
Discrimination Complaint Files-TVA
Employee Accident Information System-TVA
Employee Accounts Receivable-TVA
Employee Alleged Misconduct Investigatory Files-TVA
Medical Record System-TVA
Employee Statement of Employment and Financial Interests-TVA
Payroll Records-TVA
Travel History Records-TVA
Employment Applicant Files-TVA
Grievance Records-TVA
LAND BETWEEN THE LAKES® Hunter Records-TVA
LAND BETWEEN THE LAKES® Register of Law Violations-TVA
Employee Supplementary Vacancy Announcement Records-TVA
Consultant and Personal Service Contractor Records-TVA
Nuclear Quality Assurance Personnel Records-TVA
Questionnaire—Farms in Vicinity of Proposed or Licensed Nuclear Power Plant-TVA
Radiation Dosimetry Personnel Monitoring Records-TVA
Retirement System Records-TVA
Test Demonstration Farm Records-TVA
Woodland Resource Analysis Program Input Data-TVA
Electricity Use, Rate, and Service Study Records-TVA
LAND BETWEEN THE LAKES® Mailing Lists-TVA
OIG Investigative Records-TVA
Call Detail Records-TVA
Office of Nuclear Power Call Detail Records-TVA
Project/Tract Files-TVA
Building Access Security Records-TVA

* * * * *

3. Section 1301.24 is amended by revising the first sentences of paragraphs (b)(1) and (c)(1) to read as follows:

§ 1301.24 Specific exemptions.

* * * * *

(b)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," "Personnel Files-TVA," and "Nuclear Quality Assurance Personnel Records-TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

* * *

* * * * *

(c)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," and "Personnel Files-TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. * * *

* * * * *

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-5183 Filed 3-5-91; 8:45 am]

BILLING CODE 8120-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 90-063]

Realignment of Marine Inspection Zones and Captain of the Port Zones for Western Alaska and Prince William Sound, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an administrative error in a final rule that appeared in the **Federal Register** on Wednesday, December 19, 1990 (CGD 90-063), and another such error in a subsequent correction document that appeared in the **Federal Register** on Tuesday, January 22, 1991 (CGD 90-063 also).

FOR FURTHER INFORMATION CONTACT:

Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Corrections

1. In FR Document 90-29637, beginning on page 52046 in the issue of Wednesday, December 19, 1990, make the following correction:

On page 52046, in the second column, in the heading, remove "RIN 2115-AD65".

2. In FR Document 91-1372, beginning on page 2134 in the issue of Tuesday, January 22, 1991, make the following correction:

On page 2134, in the first column, in the heading, remove "RIN 2115-AD65".

Dated: February 28, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-5254 Filed 3-5-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR 165

[CGD1 91-009]

Security Zone Regulations: Upper Bay and Lower Bay of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around vessels involved in the logistical support of "Operation Desert Storm" as they transit, anchor or moor in the Upper Bay or Lower Bay of New York and New Jersey. This zone is needed to safeguard personnel and property against sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 07:01 a.m. local time on 28 February 1991. It terminates at 07:00 a.m. on 31 May 1991 unless terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: LTJG C.W. Jennings of Captain of the Port, New York (212) 668-7737.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication.

Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction to government property or loss of life.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port, New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from ongoing activities in the Upper Bay and Lower Bay of New York and New Jersey in support of "Operation Desert Storm". These activities include but are not limited to the storage, loading and transport of military cargoes and/or personnel on vessels chartered by or wholly owned by the United States.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1009 is added to read as follows:

§ 165.T1009 Security Zone: Upper Bay of New York Harbor.

(a) *Location.* The following areas are established as a Security Zone during the conditions specified:

(1) That portion of the Upper Bay of New York Harbor within the waters bound by a line drawn from the northeast corner of Global Marine Terminal, Bayonne, New Jersey thence east southeast to the Gowanus Flats Lighted Gong Buoy 27 (LLN 32295) thence south southwest to the Kill Van Kull Lighted Junction Buoy "KV" (LLN 34505) thence west northwest to Exxon Pier 7 at Constable Hook, Bayonne, New Jersey thence northerly along the shoreline to the point of origin. This zone will be active during the loading, unloading, storage, embarkation or disembarkation of military cargoes or personnel to or from vessels being operated in support of "Operation Desert Storm".

(2) The waters of the Upper Bay and Lower Bay of New York and New Jersey within 500 yards fore and aft, and 200 yards port and starboard of any vessel involved in support activities for "Operation Desert Storm" as it transits those waters.

(3) The waters of the Upper Bay and Lower Bay of New York and New Jersey within a 500 yard radius of any vessel involved in support activities for "Operation Desert Storm" as it lies at anchor in those waters.

(b) *Effective dates.* This regulation becomes effective at 07:01 a.m. local time 28 February 1991. It terminates at 07:00 a.m. on 31 May 1991 unless terminated sooner by the Captain of the Port, New York. The Captain of the Port will notify the maritime community of the periods during which the areas described in this security zone will be active by providing advance notice via a Marine Safety Information Radio Broadcast. Subsequent broadcasts will also be published for the duration of the zone.

(c) *Regulations.* In accordance with the general regulations in Section 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements. Representatives of the Captain of the Port will be on scene to enforce the areas described in this zone during their activation.

Dated: February 15, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-5255 Filed 3-5-91; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302-11

[FTR Amendment 14]

RIN 3090-AD66

Federal Travel Regulation; Relocation Income Tax Allowance

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Certain States do not allow the deduction of all or part of the moving expenses that are deductible for Federal income tax purposes. This rule implements new procedures to be used in calculating the relocation income tax (RIT) allowance payable to employees for the additional income taxes they incur when one of those States is the taxing jurisdiction. This rule also updates the examples in the RIT allowance regulation to reflect current Federal income tax rates and removes Figures 302-11(a) and 302-11(b) which are unnecessary and may cause confusion.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Clauson, Travel Management

Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: Certain States do not allow deduction of all or part of the moving expenses that are deductible for Federal income tax purposes. As a consequence, relocated Federal Government employees are incurring additional State income taxes when filing tax returns in those States. Current RIT allowance procedures do not provide for the reimbursement of these additional taxes. To rectify the inequity to Federal Government employees relocating to those States, new RIT allowance procedures have been developed to provide for the reimbursement of the additional income taxes.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302-11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 302-11 is amended as follows:

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 12747); E.O. 12466, February 27, 1984 (49 FR 7349).

2. Section 302-11.5 is amended by revising paragraphs (i) and (k), and by adding new paragraphs (o) and (p) to read as follows:

§ 302-11.5 Definitions and discussion of terms.

* * * * *

(i) *Marginal tax rate (MTR).* The tax rate (for example, 33 percent) applicable to a specific increment of income. The Federal and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices A, B, and C of this part. (See § 302-11.8(e)(3) for instructions on local marginal tax rate determinations)

* * * * *

(k) *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302-11.3.

* * * * *

(o) *State gross-up.* Payment for the estimated additional State income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302-11.3 that are deductible for Federal income tax but not for State income tax purposes.

(p) *State gross-up formula.* The formula prescribed in § 302-11.8(f)(3) to be used in determining the amount to be included in the RIT allowance to compensate an employee for the additional State income tax incurred in States that do not allow the deduction of moving expenses.

§ 302-11.7 [Amended]

3. Section 302-11.7(e)(2) is amended by removing the reference "§ 302-11.8(f)(4)" and adding in its place "§ 302-11.8(f)(5)".

4. Section 302-11.8 is amended by revising paragraphs (b)(1)(iii) and (c)(3); by removing paragraph (c)(6); by revising paragraphs (e)(1), (e)(2)(iii), (e)(4)(i) (A) through (C), and (f) (1) and (2); by redesignating paragraphs (f) (3) through (5) as paragraphs (f) (4) through (6) and adding a new paragraph (f)(3); and by removing paragraph (h) to read as follows:

§ 302-11.8 Rules and procedures for determining the RIT allowance in Year 2.

* * * * *

(b) * * *

(1) * * *

(iii) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1 (and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform Act of 1986 substantially changed the Federal tax structure making it necessary to compute a separate CMTR for Year 1 and for Year 2. (See paragraph (e) of this section.) The formula for calculating the RIT allowance to be paid in 1988 and subsequent years is shown in paragraph (f) of this section. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2

* * * * *

(c) * * *

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations, the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbusement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1989 and an additional $1,000 for temporary quarters in 1990, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1989, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1989 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1989. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1989) will be used to offset the $1,000 temporary quarters reimbursement in 1990 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1990.

* * * * *

(e) * * *

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under paragraph (d) of this section and contained in the certified statement by the employee (or employee and spouse) on the RIT allowance claim, and applying the prescribed Federal tax tables contained in appendices A and C of this part 302-11. For example, if the income level for the 1989 tax year (Year 1) was $84,100 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 33 percent for Year 1 (1989) (see appendix A of this part 302-11) and 28 percent for Year 2 (1990) (see appendix C of this part 302-11). These rates would be used regardless of how much of the $84,100 was attributable to reimbursement for the employee's relocation expenses.

Note: These marginal rates are different from the withholding tax rate used for WTA.

If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices A and C of this part are the CMTR's to be used in the RIT gross-up formula provided in § 302-11.8(f). In such cases, the provisions of paragraphs (e) (2) and (3) of this section do not apply.

(2) * * *

(iii) The prescribed State marginal tax rates generally are expressed as a percent of taxable income. However, if the applicable State marginal tax rate is stated as a percentage of the Federal income tax liability, the State tax rate must be converted to a percent of taxable income to be used in the CMTR formulas in paragraph (e)(4) of this section. This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 33 percent for Year 1 and the State tax rate is 25 percent of the Federal income tax liability, the State tax rate stated as a percent of taxable income would be 8.25 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

* * * * *

(4) * * *

(i) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X = F + (1 - F)S + (1 - F)L$

Where:
X = CMTR for Year 1
F = Federal tax rate for Year 1
S = State tax rate for Year 1
L = local tax rate for Year 1

(A) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formla may be solved as follows:

Example:
If:
F=33 percent of income
S=6 percent of income
L=3 percent of income
Then:
X=.33+(1.00−.33).06+(1.00−.33).03
X=.3903

(B) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:
If:
F=33 percent of income
S=6 percent of income
L=Zero
Then:
X=.33+(1.00−.33).06
X=.3702

(C) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:
If:
F=33 percent of income
S=Zero
L=3 percent of income
Then:
X=.33+(1.00−.33).03
X=.3501

* * * * *

(f) *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1, the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as folows:
Formula:

$$Z = \frac{X}{1-W}(R) - \frac{1-X}{1-W}(Y)$$

Where:
Z=RIT allowance payable in Year 2
X=CMTR for Year 1
W=CMTR for Year 2
R=covered taxable reimbursements
Y=total WTA's paid in Year 1

Example:
If:
X=.3903
W=.3448
R=$21,800
Y=$5,450
Then:

$$Z = \frac{.3903}{1.00-.3448}(\$21,800) - \frac{1.00-.3903}{1.00-.3448}(\$5,450)$$

Z=.5957 ($21,800)−.9306 ($5,450)
Z=$12,986.26−$5,071.77
Z=$7,914.49

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in paragraph (f)(1) of this section for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example:

If:
X=.3903
W=.3448
R=$21,800
Y=Zero
Then:

$$Z = \frac{.3903}{1.00-.3448}(\$21,800)$$

Z=.5957 ($21,800)
Z=$12,986.26

(3) Certain States do not allow the deduction of all or part of the covered moving expenses that are deductible for Federal income tax purposes. The State gross-up to cover the additional State income tax liability resulting from the covered moving expense reimbursements received in Year 1 that are deductible for Federal income tax purposes but not for State income tax purposes is calculated in Year 2 as follows:

(i) The State gross-up is calculated by substituting the amount of covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes, the Federal tax rate for Year 1, the State tax rate for Year 1, and the combined marginal tax rate for Year 2 into the State gross-up formula as follows:

Formula:

$$A = \frac{S(1-F)}{1-W}N$$

Where:
A = State gross-up
F = Federal tax rate for Year 1
S = State tax rate for Year 1
W = CMTR for Year 2
N = covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes

Example:
If:
F = .33
S = .06
W = .3448
N = $9,250
Then:

$$A = \frac{.06(1-.33)}{1-.3448}\$9,250$$

A = .0614 ($9,250)
A = $567.95

(ii) Add the State gross-up to the RIT allowance amount as calculated using the formula in paragraph (f)(1) of this section. The result is the RIT allowance adjusted for those States that do not allow moving expense deductions.
Example:

RIT allowance payable in Year 1	$7,914.49
Plus adjustment factor	+567.95
Total	8,482.44

* * * * *

§ 362-11.9 [Amended]

5. Section 302-11.9(b)(3) is amended by removing the reference "§ 302-11.8(f)(4)" and adding in its place "§ 302-11.8(f)(5)".

Figure 302-11(a)—Illustration of Calculation of Covered Taxable Reimbursements in Year 2 [Removed]

6. Figure 302-11(a) is removed.

Figure 302-11(b)—Summary of RIT Allowance Procedures [Removed]

7. Figure 302-11(b) is removed.

Dated: January 23, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-5186 Filed 3-5-91; 8:45 am]

BILLING CODE 6820-34-M

Proposed Rules

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 704 and 1410

Agricultural Resources Conservation Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agricultural, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the Food Security Act of 1985 with respect to the statutory provisions of the Conservation Reserve Program. The purpose of this proposed rule is to set forth the terms and conditions of the revised Conservation Reserve Program (CRP) for enrollment during 1991 through 1995. This proposed rule would set forth the CRP for 1991 through 1995 in a separate part (7 CFR part 1410) and the existing regulations (7 CFR part 704) will continue to be applicable to existing CRP contracts.

DATES: Comments must be received on or before March 21, 1991, in order to be assured of consideration.

ADDRESSES: Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013. Phone (202) 447-6221.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512-1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more. However, (1) no major increase in costs or prices for consumers, individual industries, State or local agencies, or geographic regions, or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets will result upon implementation of these provisions. A preliminary regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have any significant adverse impact on the quality of the human environment.

Therefore, an environmental impact statement is not needed. Draft copies of the findings of no significant impact are available upon written request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal Domestic Assistance Program to which this rule applies are: Title, Conservation Reserve Program; Number 10.069, as found in the catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in the current regulations at 7 CFR part 704 under provisions of 44 U.S.C. chapter 33 and OMB number 0560-0125 has been assigned.

The information collection requirements of the proposed rule at 7 CFR 1410 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980.

Public reporting burden for the information collections contained in these regulations are estimated to vary from 3 minutes to 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested with respect to this proposed rule and such comments shall be considered in issuing the final rule.

Discussion of Changes

Provisions for the Conservation Reserve Program (CRP) were made in the Food Security Act of 1985 ("1985 Act"). Thirty-four million acres of land were enrolled in the CRP prior to the passage of the 1990 Act. In the CRP, the Commodity Credit Corporation (CCC) has entered into 10-year voluntary contracts with the owner and operators of highly erodible and other sensitive cropland to convert land to a vegetative cover for 10 years and in return CCC makes annual rental payments and cost-share assistance for the establishment of permanent vegetative cover and other approved conservation practices.

The 1990 Act creates an umbrella program, the Environmental Conservation Acreage Reserve Program (ECARP), made up of the CRP and the Wetland Reserve Program (WRP).

It is proposed that this part be organized into three subparts. Subpart A will provide general provisions that are applicable to both CRP and WRP. Subpart B will provide regulations governing operation of CRP and subpart C will provide WRP regulations. This proposed rule contains only Subparts A and B. Subpart C will be proposed at a later date.

For ECARP, the 1990 Act sets a total enrollment target of 40-45 million acres to be achieved by the end of 1995, of which approximately 34 million acres are the existing CRP acres. Up to 1 million acres may be enrolled in the WRP. The 1990 Act reserves 1 million CRP acres for each of the years 1994 and 1995.

The 1990 Act does not change the basic nature of the CRP. However, title XIV of the 1990 Act contains a number of new or revised CRP provisions.

With respect to land eligibility, section 1432 of the 1990 Act provides that the following lands may be considered by the Secretary to be

eligible for the program: (1) Highly erodible cropland where the productivity of the land is substantially diminished or the land cannot be farmed under a conservation plan required by the conservation compliance ("sodbuster") provisions of the 1985 Act; (2) certain marginal pasture lands; (3) cropland which, if left in production, would pose a water quality threat; (4) newly created permanent grass waterways or contour grass sod strips established and maintained as part of an approved conservation plan; (5) land to be devoted to living snowfences, permanent wildlife habitat, windbreaks, shelterbelts, or filter strips, provided an easement is created for the useful life of the practice; and (6) lands that pose an off-farm environmental threat, or threat of continued degradation of productivity due to soil salinity, if such lands remain in production. It is proposed in § 1410.103 that all of the above classes of land, except marginal pasture lands, be eligible for CRP.

Section 1432 of the Act specifically provides that the Secretary may offer contracts for 10–15 years. However, for new contracts planted to hardwood trees, shelterbelts, windbreaks or wildlife corridors, the choice, within the 10–15 year range, will be made by the participant. Also for existing CRP contracts where the existing CRP cover will, with the approval of CCC, be converted to those practices, the participant may elect to extend the term of the contract to not exceed a total of 15 years. Otherwise, contracts will be 10 years in duration, as proposed in § 1410.104.

Section 1432 of the Act states that upon application of a state agency, the Secretary shall designate areas such as the Chesapeake Bay Region and other areas of special environmental sensitivity as priority areas for the CRP in which the Secretary will attempt to maximize program enrollment. Section 1410.105 is proposed to implement this provision.

In addition, the Secretary has discretionary authority, provided in section 1434 of the 1990 Act, to give priority to bids based on environmental benefit and by region to the extent that water quality, wildlife conditions, or abatement of erosion may be accomplished. Section 1410.114 proposes to implement this authority as determined necessary by CCC to meet the goals of CRP.

The 1985 and 1990 Acts provide that eligible land must be cropland in order to be entered in the program. It is proposed in § 1410.108 that beginning in 1991 proof of cropland status will require that the land be planted to an agricultural commodity in 2 of the 5 years immediately preceding 1991. An "agricultural commodity" has been defined in § 1410.3, as any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary.

The 1990 Act provides, in addition, that land shall be considered planted to an agricultural commodity during a crop year if an action of the Secretary prevented land from being planted to the commodity during the crop year. The definition of "agricultural commodity" found at § 1410.3 proposes to incorporate this provision.

The 1985 Act required that participants establish approved vegetative cover on contracted land. Section 1433 of the 1990 Act provides, in addition to vegetative cover, that water cover for the enhancement of wildlife may also be an approved cover on contracted land. The 1990 Act also provides that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes. Section 1410.112 is proposed to implement this provision.

Section 1433 of the 1990 Act requires, for the duration of new contracts, that the participant must agree that for any highly erodible land acquired after November 28, 1990 the participant may not grow an agricultural commodity on such land if it does not have a history of being planted to an agricultural commodity other than a forage crop. This restriction will limit, in some cases, the uses that new CRP participants may make of land which is not in the CRP.

Section 1410.109 would implement this provision and provides, too, and that for purposes of determining the history of agricultural commodity production, the most recent 5 year period be used.

The 1990 Act in section 1433 provides that alley-cropping on CRP land be allowed for CRP land planted to hardwood trees. This kind of cropping involves crop production between rows of trees. If this authority is exercised, the Act provides that the Secretary will permit participation through bids in which the applicant must offer to accept at least a 50 percent reduction in the CRP annual rental payment. The actual reduction in rental payment will be determined by CCC, based upon criteria, such as the percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping. Section 1410.106 proposes authority in order to implement this provision.

The 1990 Act provides that cost-shares at the maximum 50 percent allowance for cover establishment costs be continued. In addition, however, the 1990 Act prohibits a CRP cost-share if another Federal cost-share payment has been received. It also limits the total cost-share which can be made from all sources, including non-USDA sources, to not more than 100 percent of the total establishment cost. Maintenance cost-shares are also allowed in some limited instances by the 1990 Act. Section 1410.118 and 1410.119 are proposed to implement these provisions.

Other provisions in section 1434 of the 1990 Act specifically exempt CRP payments from sequester orders under the "Gramm-Rudman-Hollings Act", require CRP payments to States involved in special CRP enhancement programs be made in cash only and that such payments to States are not subject to payment limitations. Section 1410.122 is proposed in order to implement these provisions.

The 1990 Act provides for converting CRP land already in a CRP vegetative cover to other conservation uses in some instances. Such other uses include planting hardwood trees or converting prior converted wetlands back to wetland status. Cost share assistance for the new practices is limited by the 1990 Act such that the total cost-share may not exceed the amount that would have been paid for the new practice had such practice been the original practice. It is proposed in §§ 1410.107 and 1410.108 that this provision be implemented to allow for conversion of existing CRP land to other uses.

The 1990 Act provides for the continuation of the protection of bases and allotments with respect to the CRP land if the conservation practices, by agreement, are continued beyond the end of the normal contract period. Section 1436 of the 1990 Act provides that there may not be any additional payments of any kind for such contract extension, but does permit the Secretary to authorize haying and grazing of such land in the extension period, except during any consecutive 5 month period established by the State committee beginning April 1 and ending October 31. Section 1410.117 proposes that this provision be implemented for extending base history protection.

The proposed regulations provide, that in determining acceptability of offers, the Secretary may use a formula based upon a number of environmental factors to determine the sum of environmental benefits that can be obtained from the acres of land offered for participation in the program. Seven criteria were selected. They are: (1) Surface water quality; (2) ground water quality; (3) soil productivity; (4) conservation compliance; (5) tree planting; (6) 319 enrollment; and (7) conservation priority area enrollment. In analyzing the bid requests in order to determine total environmental benefits, ASCS proposes to use a system that would evaluate the seven criteria in such a manner as to not allow any one criteria to unduly affect bid acceptance. During the comment period, ASCS will accept comments on the criteria, their measurement and the weighting system.

As before, the CRP program will be operated by CCC through the Agricultural Stabilization and Conservation Service (ASCS) using ASCS's county and state offices. The remaining enrollment for the CRP will be limited in light of the 34 million acres already enrolled. In order to maximize the benefit for the monies to be expended, bid practices and the land for which bids may be solicited may vary as conditions change. The 1990 Act permits a continuous sign-up for land, to be converted to hardwood trees, but it is not anticipated at this time that there will be a continuous sign-up because of the difficulty of encouraging competing bids without a definite bid period.

Comments on the proposed rule are solicited from interested parties and will be considered for a period of 15 days after the date of publication of this proposed rule in the **Federal Register**.

The comment period has been limited to 15 days so that a CRP sign-up can be held in conjunction with the sign-up for other agricultural programs. Because delay would reduce producer options in this voluntary program and because there will be future sign-ups, it is determined that a longer sign-up would be contrary to the public interest. Any comments that are offered during the public comment period will be evaluated in the development of the final rule.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practice and procedure, Conservation, plan, Contracts, Technical assistance, Natural resources, Environmental indicators, and Easements.

Proposed Rule

Accordingly, Chapter VII of the Code of Federal Regulations is proposed to be amended as follows:

PART 704—[AMENDED]

1. The authority citation for 7 CFR part 704 is revised to read as follows:

Authority: 16 U.S.C. 3801, 3831–3844.

2. The heading of 7 CFR part 704 is revised to read as follows:

PART 704—1986–1990 CONSERVATION RESERVE PROGRAM

3. Section 704.1 is amended by adding paragraph (c) to read as follows:

§ 704.1 General description of the program.

* * * * *

(c) The provisions of this part shall only apply to contracts or bids with respect to participation in the CRP to persons who submitted bids to enter into the program prior to November 28, 1990 and whose bids were accepted by CCC prior to that date, unless otherwise agreed to by CCC.

PART 1410—[ADDED]

4. A new Part 1410 is added to read as follows:

PART 1410—1991–95 CONSERVATION RESERVE PROGRAM

Subpart A—General Provisions

Sec.

1410.1 Applicability.
1410.2 Administration.
1410.3 Definitions.
1410.4 Maximum county acreage.
1410.5 Performance based upon advice or action of the Department.
1410.6 Access to land under contract.
1410.7 Division of program payments and provisions relating to tenants and sharecroppers.
1410.8 Payment not subject to claims.
1410.9 Appeals.
1410.10 Scheme and device.
1410.11 Filing of false claims.
1410.12 Miscellaneous.

Subpart B Conservation—Reserve Program

1410.101 General description.
1410.102 Eligible persons.
1410.103 Eligible land.
1410.104 Duration of contracts.
1410.105 Conservation priority areas.
1410.106 Alley-cropping.
1410.107 Conversion to trees.
1410.108 Conversion to wetlands.
1410.109 Obligations of participant.
1410.110 Obligations of the Commodity Credit Corporation.
1410.111 Conservation Plan.
1410.112 Eligible practices.
1410.113 Signup.
1410.114 Acceptability of offers.
1410.115 CRP contract.
1410.116 Contract modifications.
1410.117 Extended base protection.
1410.118 Cost-share payments.
1410.119 Levels and rates for cost-share payments.
1410.120 Annual rental payments.
1410.121 Method of payment.
1410.122 State enhancement program payments.
1410.123 Assignments.
1410.124 Transfer of land.
1410.125 Violations.
1410.126 Executed CRP contract not in conformity with regulations.

Authority: 16 U.S.C. 3801, 3831–3844.

Subpart A—General Provisions

§ 1410.1 Applicability.

The regulations in this part govern operation of the Environmental Conservation Acreage Reserve Program (ECARP) established by title XII of the Food Security Act of 1985. The ECARP shall consist of the Conservation Reserve Program (CRP) covered under subpart B of this part and the Wetlands Reserve Program (WRP) covered under subpart C of this part. With respect to CRP, subpart B shall, unless otherwise provided for, only be applicable for contracts approved and bids for participation offered for enrollment periods after November 28, 1990. With respect to all other CRP contracts approved and bids for participation offered, the provisions of part 704 of this title shall be applicable.

§ 1410.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State committees" and "county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is

voluntary; however, without it program benefits will not be provided.

(f)(1) The land capability class, rate of erosion, erosion index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Soil Conservation Service (SCS), except that no such determination by the SCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(2) CCC shall consult with the Soil Conservation Service (SCS) for such other technical assistance in the implementation of the ECARP as is determined by CCC to be necessary.

(g) CCC shall consult with the Forest Service (FS) or the State Forestry Agency for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice.

(h) The Extension Service (ES) may be consulted with to coordinate the related information and education program as deemed appropriate by CCC concerning implementation of the CRP.

§ 1410.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year;

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan of operation approved by the local Conservation District and CCC;

Annual rental payment means the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP;

Applicant means a person who submits an offer to CCC to enter into a CRP contract;

ASCS means the Agricultural Stabilization and Conservation Service;

Bid means the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP;

Commodity Credit Corporation (CCC) shall refer to the corporation of that name which is an agency of the United States government maintained within the U.S. Department of Agriculture;

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service;

Contour grass strip means a vegetation area that follows the contour of the land that is less than 66 feet in width which is to be designated as a contour grass strip by a conservation plan required under this part;

Conservation plan means the document describing and scheduling the practices which must be established and maintained on land placed in the CRP in order to achieve the desired environmental benefits on such land. The conservation plan includes Form SCS–CPA–11 and any addenda thereto. The plan shall include requirements such as the approved vegetative cover, silvicultural treatments, weed, insect, and pest control necessary for the establishment and maintenance of vegetative cover and any other information required by the Secretary;

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in the CRP contract, except where, in addition, a cost-share payment for maintenance is specifically authorized in which case the term shall also include a maintenance cost-share payment;

CRP contract means the program contract including the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participants. Such contract shall set forth the terms and conditions for participation in the CRP pursuant to this part;

Erosion index means the factor used to determine the erodibility of a soil by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil;

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, except that croplines will be considered to separate fields only in cases where the predominantly eligible cropland and farming practices divide the land into manageable units and it is likely, as determined by CCC, that such cropline is not subject to change during the duration of the contract;

Field windbreak, shelterbelt, and living snowfence mean a vegetative barriers with a linear configuration composed of trees or shrubs which are designated as such practices in the conservation plan and which are planted for the purpose of reducing wind erosion;

Filterstrip means a strip or area of vegetation around a body of water that is 1 to 1.5 chain lengths (66 to 99 feet) in width that will remove sediment, organic matter, and other pollutants from runoff and waste water;

Highly erodible land means land which is classified by SCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator; or

(2) Being predominantly Land Capability Classes VI, VII, or VIII; or

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(A) An erodibility index equal to or greater than 8 for either wind or water erosion, and

(B) An erosion rate greater than T;

Local ASCS office means the county office of the Agricultural Stabilization and Conservation Service serving the county or combination of counties in the area in which the landowner's farm or ranch is located;

Manageable unit means a part of a field that could be farmed in a normal manner as a self-contained unit;

Participant means an owner or operator or tenant who has entered into a contract;

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees;

Practice means a conservation or water quality measure agreed to in the conservation plan to accomplish the desired program objectives.

Predominantly highly erodible field means:

(1) Except as provided in paragraph (2) of this definition, a field in which at least 66⅔ percent of the land in such field is highly erodible;

(2) A field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

Soil Loss Tolerance (T) means the maximum average annual soil loss specified as a tolerance level for a soil in the Soil Conservation Service (SCS) field office technical guide;

Technical assistance means the assistance provided in connection with the ECARP to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices;

Useful life easement means a property interest acquired by CCC pursuant to this part in connection with a CRP contract which requires the maintenance of a practice for the useful life of such practice which period shall be determined by the Deputy Administrator and shall be determined by the Deputy Administrator and shall include practices such as: living snow fences, windbreaks, shelterbelts, permanent wildlife habitat, wildlife corridors and filterstrips devoted to trees and shrubs that through their existence provide environmental benefit. All such easements as may be required shall be in favor of the United States or CCC. The granting of an easement shall be considered to meet the obligation of the contract only if the easement is superior to the rights of all other persons.

Water cover means flooding of land by water in order to develop or restore shallow water areas for wildlife enhancement;

Wellhead means the actual location of a well, as determined by CCC, for water being drawn from the ground.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the ECARP may not exceed 25 percent of the total cropland in the county unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Performance based upon advice or action of the Department.

The provisions of part 790 of this chapter, as amended, relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.6 Access to land under contract.

Any representative of the Department, or designee thereof, shall have the right of access to: (a) Land which is the subject of an application for a program under this part, (b) or land which is under contract or otherwise subject to this part and shall have the right to examine records, with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the ECARP.

§ 1410.7 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall insure that producers who would have shared in the risk of producing crops on land subject to such contract or agreement receive treatment deemed to be equitable in accordance with part 1413.150 of this chapter.

§ 1410.8 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 1410.9 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in a program under this part may obtain a review of any administrative determination rendered under this program in accordance with the administrative appeal regulations at part 780 of this title.

(b) Determinations concerning land classification, erosion rates, or water quality ratings may be reviewed in accordance with procedures established under part 614 of this title.

§ 1410.10 Scheme and device.

(a) If it is determined by CCC that a participant in a program under this part has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such participant during the applicable period may be withheld or required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land rental payments, and obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will or can obtain a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 1410.11 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the crop year in which the false information or claim was filed. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld.

§ 1410.12 Miscellaneous.

(a) Provisions dealing with controlled substance violations under part 796 of this title are applicable to payments made under this part.

(b) Except as otherwise provided in this part in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(c) Payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made under this part may be withheld to the extent provided for in part 12.

(d) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States as may be permitted by law.

Subpart B—Conservation Reserve Program.

§ 1410.101 General description.

Under the CRP, the Commodity Credit Corporation (CCC) will enter into contracts with eligible producers to convert eligible land to a conserving use for a minimum of ten-years in return for annual rental payments and cost-share assistance.

Except as otherwise provided, a participant may, in addition to any payment under this subpart, receive cost share assistance, rental payments or tax benefits from a State or subdivision of such State in return for enrolling lands in CRP.

§ 1410.102 Eligible persons.

In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner or operator or tenant of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for at least 3 years prior to the close of the applicable signup period and must provide satisfactory evidence that such person will be in control of such cropland for the full term of the CRP contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for at least 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The only ownership change in the three year period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with state law;

(3) As determined by the Deputy Administrator, the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP; or

(4) If a tenant, the tenant is a participant with an eligible owner or operator.

§ 1410.103 Eligible land.

(a) Except as otherwise provided in this section, in order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to an agricultural commodity in 2 of the 5 crop years, from 1986 through 1990;

(2) Be physically possible to be planted in a normal manner, at the time of enrollment, to an agricultural commodity;

(3) Be a predominantly highly erodible field; and

(4) If in a redefined field, be a manageable unit which meets the minimum acreage requirements, as determined by the Deputy Administrator, for the county. This requirement shall not apply for areas, as specified in the contract, to be used for alley cropping, filterstrips, contour grass strips, sod waterways, field windbreaks, shelterbelts, or living snowfences.

(b) A field or portion of a field determined to be suitable for use as a filter strip may be eligible to be placed in the CRP, even if it does not meet the requirement of paragraph (a)(3) of this section. The participant must agree to grow permanent grass, forbs, shrubs or trees on such field or portion of such field. A field or portion of a field may be considered to be suitable for use as a filter strip only if it—

(1) Otherwise meets the requirements of paragraph (a) of this section;

(2) Is located adjacent to streams having perennial flow, other waterbodies of permanent nature (such as lakes, ponds and sinkholes), or seasonal streams, excluding such areas as gullies or sod waterways;

(3) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbodies; and

(4) Is 1.0 to 1.5 chain lengths (66 to 99 feet) in width. Such width may be exceeded, to the extent necessary to meet SCS Field Office Technical Guide criteria, to accomplish the desired environmental effect.

(c) A field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by SCS, may be eligible to be placed in the CRP, even if the field does not meet the requirement of paragraph (a)(3) of this section.

(1) In order for land to be eligible for enrollment in the CRP under this paragraph, such land must otherwise meet the requirements of paragraph (a) of this section.

(2) Such land must in addition:

(i) Be expected to flood a minimum of once every 10 years; and

(ii) Have evidence of damage as a result of such scour erosion.

(3) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled if:

(i) The size of the field is 9 acres or less; or,

(ii) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(4) If the full field is not eligible for enrollment under this paragraph that portion of the field eligible for enrollment shall be that portion of the cropland between the water body and the inland limit of the scour erosion plus, as determined by the Deputy Administrator, together with additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(5) Cropland approved for enrollment under this paragraph shall be planted to an appropriate tree species approved by SCS, unless tree planting is determined to be inappropriate by SCS, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by SCS and the Deputy Administrator.

(d) Notwithstanding paragraph (a)(3) of this section, the following land may also, as determined by the Deputy Administrator, be considered eligible for the CRP under the provisions of this subpart. All other provisions of paragraph (a) of this section must be met.

(1) Land contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under the Agricultural Water Quality Incentives Program (AWQIP).

(2) Land subject to a useful life easement which is devoted to living snowfences, windbreaks, wildlife corridors, shelterbelts or filterstrips with trees or shrubs.

(3) Land that is newly-created permanent grass waterways, or contour grass sod strips created after November 28, 1990, which are established and maintained according to an approved conservation plan;

(4) Non-irrigated or irrigated cropland which produce, as determined by the Deputy Administrator, saline seeps, or which are functionally-related to such saline seeps. Any land which qualifies for the CRP under this subparagraph must be at a location where a rising water table contributes to increased levels of salinity at or near the ground surface.

(e) Federal lands, lands acquired by an agency of the Federal government, or by a quasi federal entity are ineligible for the CRP.

(f) Land otherwise eligible for the CRP shall not be eligible if the land is subject to a deed restriction prohibiting the production of agricultural commodities.

§ 1410.104 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this subpart shall be 10 years in duration.

(b) In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under the original terms of a contract subject to this subpart or for land devoted to such use under a contract modified under § 1410.107, the participant may specify the duration of the contract. Such contracts must be at least 10 years and no more than a total of 15 years in length.

§ 1410.105 Conservation priority areas.

(a) The watershed areas of the Chesapeake Bay region, Great Lakes region, and Long Island Sound Region shall be considered as conservation priority areas for CRP purposes. The Deputy Administrator may designate other areas as conservation priority areas.

(b) State water quality agencies may submit an application for designation of other areas to the Deputy Administrator through the State ASC Committee.

(c) Watersheds shall be eligible for designation as a priority area only if the watershed has actual significant adverse water quality or habitat impacts related to activities of agricultural production.

(d) Conservation priority area designations expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Secretary, if such areas no longer contain actual and significant adverse water quality or habitat impacts in association with agricultural production activities.

(e) In those areas designated as priority areas, under this section, special emphasis will be placed to maximize water quality and habitat benefits of the implementation of the CRP by promoting a significant level of enrollment of lands within such designated watersheds in the program as determined, by the Deputy Administrator, to be appropriate and consistent with the purposes of the program.

§ 1410.106 Alley-cropping.

(a) Alley-cropping on CRP land may be authorized if:

(1) The land is planted to hardwood trees;

(2) Agricultural commodities are planted in accordance with an approved conservation plan in close proximity to such hardwood trees;

(3) The owner and operator of such land, agrees to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Total annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to established technical guidelines and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.107 Conversion to trees.

An owner or operator who has entered into a contract under part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which are devoted to vegetative cover, from such cover to hardwood trees, windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract to a term not to exceed 15 years.

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must provide a conservation easement on such land to CCC for the useful life of such plantings.

(c) CCC shall pay 50 percent of the eligible cost of establishing new conservation measures authorized under this section except that the total cost share paid with respect to such contract, including a cost share paid when the original cover was established, may not exceed the amount which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program.

§ 1410.108 Conversion to wetlands.

An owner or operator who has entered into a contract under Part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland subject to such contract, which are devoted to vegetative cover, from such cover to wetlands, if:

(a) Such areas are prior converted wetlands, as determined in accordance with standards in part 12 of this title;

(b) Such owner or operator provides a permanent easement under subpart C of this part covering such areas;

(c) There is a high probability, as determined by CCC, of successful restoration of such prior converted wetland; and

(d) The restoration of such area otherwise meets the requirements of subpart C of this part.

§ 1410.109 Obligations of participant.

(a) All parties subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan which is part of such contract;

(i) The participant shall implement the conservation plan in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control; and

(ii) The participant shall establish temporary vegetative cover when required by the conservation plan or if, as determined by CCC, the permanent vegetative cover cannot be timely established;

(3) Reduce the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Crop acreage bases reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, pursuant to § 1410.117, an extension of such protection;

(4) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after

November 28, 1990 unless such land had a history in the most recent five year period of producing an agricultural commodity other than forage crops;

(5) Comply with all requirements of part 12 of this title;

(6) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time in accordance with instructions issued by CCC in response to drought or other similar emergency;

(7) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(8) Comply with noxious weed laws of the applicable State on such land;

(9) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to be a good steward of the land for the local area as determined by CCC; and

(10) Be jointly and severally responsible for compliance with such contract and the provisions of this subpart and for any refunds or payment adjustments which may be required for violation of any of the terms and conditions of the CRP contract and provisions of this subpart.

§ 1410.110 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this subpart;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit limited fall and winter grazing on CRP land where the grazing is incidental to the gleaning of crop residues on fields where contracted land is located, but only with prior approval of CCC and in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

§ 1410.111 Conservation plan.

(a) The applicant, in consultation with the SCS, shall develop the conservation plan for the land to be entered in CRP.

(b) The practices included in the conservation plan and agreed to by the participant must achieve the reduction in erosion necessary to maintain the productive capability of the soil, improvement in water quality, protection of a public well head or other environmental benefit as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan.

(d) All conservation plans shall be subject to the approval of CCC.

§ 1410.112 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to:

(1) Establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife,

(2) Meet other environmental benefits, as applicable, for the contract period, and

(3) Accomplish other purposes of the program.

(b) Water cover is an eligible practice if approved by CCC for the enhancement of wildlife, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes.

§ 1410.113 Signup.

Offers for contracts shall be submitted only during public signup periods as announced periodically by CCC, except that CCC may hold a continuous signup.

§ 1410.114 Acceptability of offers.

(a) Producers will submit bids for the amounts they are willing to accept to retire their acreage. The bids will be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits are generated for society per Federal dollar expended.

(b) In evaluating contract offers, different priorities for selection may be established from time to time, in order to accomplish the goals of the CRP, and shall be determined by CCC.

§ 1410.115 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP,

(2) The conservation plan, and

(3) Any other materials determined necessary by CCC.

(c) In order to enter into a CRP contract, the applicant must submit an offer to participate at the local ASCS office during the applicable signup period.

(1) An offer to enroll land in the CRP shall be irrevocable for a period of 30 days subsequent to the close of the applicable signup period of 30 days from such other date as specified by the Deputy Administrator.

(2) The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable, except that such irrevocable period shall not be applicable for the first signup period under this subpart.

(3) CCC may waive payment of liquidated damages as may be provided for in the contract if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant, and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator or designee is authorized to approve CRP contracts on behalf of CCC.

§ 1410.116 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately control erosion through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of erosion control.

§ 1410.117 Extended base protection.

(a) Participants may, subject to approval by CCC, request to extend the preservation of cropland base and allotment history during the final year of the contract for 5 years. Such approval may be given by CCC only if participants agree to continue for that period to abide by the terms and conditions of the contract relating to the conservation of the property:

(b) Where such an extension is approved, no additional cost share, annual rental or bonus payment shall be made that would not have been made under the original contract for its original term.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5 month period beginning on a date in the period April 1 through October 31 of any year as shall be established by the State committee. In the event of a natural disaster, however, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract, CCC may reduce or terminate the amount of cropland base and allotment history otherwise preserved under the contract or under an extension of the contract.

§ 1410.118 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this subpart, cost-share payments may be made under the CRP only for the establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department or other Federal agency.

(d) Cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) In the case of land devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract subject to this subpart or in the case of land converted to such use under § 1410.107, CCC shall pay 50 percent of appropriate costs, as determined by CCC, to the participant for maintaining such plantings, including the cost of replanting if such plantings are lost for reasons beyond the control of the participant, during not less than the 2-year nor more than the 4-year period commencing on the date of such plantings.

(g) CCC shall not make cost share payments with respect to a CRP contract under this section if any other Federal cost share assistance has been made with respect to land subject to such contract.

§ 1410.119 Levels and rates for cost-share payments.

(a) CCC will pay not more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan except that CCC shall allow cost-shares for maintenance costs to the extent required by § 1410.118(f) and CCC shall determine the period and amount of such cost-shares.

(b) The average cost of performing a practice shall be determined by CCC. Recommendations of the State and county Conservation Review Groups as provided for under parts 701.2 (a) and (f) of this title shall be considered in determining such cost. Such cost may be the average cost in a State, or a part of a county or counties.

§ 1410.120 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRF for any fiscal year shall not exceed $50,000. The regulations set forth in parts 1497 and 1498 of this chapter shall be applicable in making certain eligibility and person determinations as they apply to this part.

(d) In the case of a contract succession, annual rental payments shall be prorated between the predecessor and the successor participants based on the actual days of ownership of the property as reflected in applicable appropriately filed land records.

§ 1410.121 Method of payment.

Except as provided in § 1410.22, payments made by CCC under this part may be made in cash, in kind, in commodity certificates or in any combination of such methods of payment in accordance with part 1470 of this chapter unless otherwise specified by CCC.

§ 1410.122 State enhancement program payments.

For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payment per year a person may receive under this subpart shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such program carried out by such State, political subdivision, or agency thereof which has been approved by the Secretary.

§ 1410.123 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter, except that assignments may also be made to secure or pay pre-existing indebtedness.

§ 1410.124 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC covering such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under such contract of the previous participant;

(3) The following provisions shall be applicable if the new owner or operator becomes a successor to a CRP contract with CCC:

(i) Cost-share payments shall be made to the participant who established the practice; and

BEST COPY AVAILABLE

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.120;

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage; and

(2) Must refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair program operations and is deemed to be in the public interest.

(c) Federal agencies in acquiring property, by foreclosure or otherwise, that contains CRP contract acreage, cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.125 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this subsection:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If CCC determines such failure does not warrant termination of such contract, CCC may grant relief as CCC deems appropriate.

(c) CCC may also terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(d) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.126 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, a modification of such contract may be made by mutual agreement. If the parties to such contract cannot reach agreement with respect to such modification, the CRP contract shall be terminated and all payments paid or payable under such contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC.

Signed this 28th day of February, 1991 in Washington, DC.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-5196 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO-86-A1; FV-86-109]

Kiwifruit Grown in California; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order which cover kiwifruit grown in California and provides California kiwifruit producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order program. The proposed changes would reduce the terms of office from 2 years to 1 year for certain committee members, clarify the way in which grower membership is allocated, revise committee tenure requirements, authorize committee nominations to be conducted by mail, authorize a change in the terms of office which now begin August 1, and authorize a late payment charge on delinquent handler assessments. These changes are being proposed to improve the administration, operation and functioning of the marketing order program.

DATES: The referendum shall be conducted from March 15 through April 5, 1991. The representative period for the purpose of the referendum herein ordered is August 1, 1989, to July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020; or Gary D. Olson, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102-B, Fresno, California 93721, telephone (209) 487-5901.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued December 6, 1989, and published in the Federal Register on December 11, 1989 (54 FR 50765). Recommended Decision and Opportunity to File Written Exceptions—Issued November 23, 1990, and published in the Federal Register on November 29, 1990 (55 FR 49532).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

These proposed amendments were formulated on the record of a public hearing held at Fresno, California, on January 19, 1990, to consider the proposed amendment of the Marketing Agreement and Order No. 920, hereinafter referred to collectively as the "order," regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred as to the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Kiwifruit Administrative Committee (committee) established under the order to assist in local administration of the program.

The proposals would reduce the terms of office from 2 years to 1 year for certain committee members, clarify the way in which grower membership is allocated, revise committee tenure requirements, authorize committee nominations to be conducted by mail, authorize a change in the terms of office which now begin August 1, and authorize a late payment charge on delinquent handler assessments. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 23, 1990, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 31, 1990. No exceptions were received.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

The record indicates that there are approximately 100 handlers and 1,200 growers of California kiwifruit. While there is a variance in the size of individual growing and handling operations, the record indicates that the majority of the kiwifruit growers and 30 to 40 percent of the handlers would be classified as small businesses under the SBA's definitions.

This decision proposes amendments to the order pertaining to committee member appointments and nominations. Also proposed is adding authority to establish late payment charges on delinquent handler assessments. The record indicates that these changes would improve the administration and operation of the program to the benefit of all kiwifruit growers and handlers.

One proposal is to change the terms of office of three grower members of the committee from 2 years to 1 year. The order currently provides that the committee consist of 11 growers and 1 public member, each with an alternate. One grower is selected to represent each of the eight established geographic districts, and the three districts with the highest levels of production are each entitled to a second grower member position. All members now serve 2-year terms of office. However, a determination is made each year as to which three districts are entitled to a second grower member position, and the three additional grower member seats are allocated annually. The record supports continuing the annual allocation of grower membership so that the frequent shifts in kiwifruit volumes are promptly reflected in committee representation. Although this change could result in more frequent nominations, the costs to the committee and to the growers who participate in the nomination process would be minimal. This change would facilitate equitable allocation of committee membership. Accordingly, it would benefit all kiwifruit growers and handlers. This benefit should outweigh any additional costs relating to additional nominations.

This decision also proposes clarifying the way in which grower membership is allocated among the districts. The record indicates that the districts with the highest levels of shipments in the previous fiscal year should be allocated a second grower member position to reflect current procedures, rather than those with the greatest production during that year. The record indicates that the committee currently collects and compiles shipment data by district, which accurately reflect the relative volumes of kiwifruit grown in the various districts. This change would impose no additional costs on growers or handlers, but would merely clarify the way in which the committee currently determines grower member allocation among the districts.

This decision also proposes revising tenure requirements so that a committee member who has served for six consecutive years on the committee could then serve as an alternate member. The record indicates that this amendment would enable growers who have become knowledgeable of the marketing order and committee operations to continue participating in committee deliberations. Tenure requirements would still apply to voting member positions to promote participation by a larger number of California kiwifruit growers in administering the order. No additional costs would be imposed as a result of this change.

Currently, the order provides that nominations for grower members be conducted at grower meetings held in each of the order's eight geographic districts. The record indicates that adding authority to conduct nominations by mail would increase grower participation in the nomination process. This proposed change would also reduce the administrative costs associated with conducting nomination meetings, as well as the costs incurred by individual growers in travelling to and attending the meetings. This change should therefore have a positive impact on both large and small kiwifruit growers and handlers.

Currently, committee members serve terms of office which begin August 1. The record indicates that since complete shipment data may not be available until July or August in some years, the mail nomination process may not be completed prior to August 1. Therefore, the record supports adding authority to change the terms of office. To the extent that this change would facilitate the nomination process, it would have a positive impact on growers and handlers. No additional costs would be imposed as a result of this change.

Finally, it is being proposed that authority be added to the order to provide for the establishment of a late charge on delinquent handler assessments. This would provide handlers with an incentive to make assessment payments in a timely manner. This change would not impose additional costs on those handlers who remit their assessments on time.

Each of the proposed changes set forth in this document is designed to enhance the administration, operation and functioning of the order, and would not have a significant economic impact on the affected small entities. Further, the proposed amendments would have no significant impact on the reporting and recordkeeping requirements imposed on small businesses. Of the proposed amendments, that pertaining to mail nominations could result in additional reporting by growers. However, participation would be voluntary, and the record indicates that the cost of completing a ballot would be

substantially less than that to attend a nomination meeting. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), any reporting and recordkeeping provisions that may result from this action would be submitted to OMB for approval. The proposed amendments include authority for mail nominations. There are approximately 1,200 growers who would be affected by mail nominations, if implemented. Regulations would be promulgated to implement this provision. Accordingly, any information collection or recordkeeping requirements that may result from these amendments would be submitted to the OMB for approval and would not become effective prior to OMB approval.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 29, 1990, issue of the **Federal Register** [55 FR 49532] are hereby reaffirmed and adopted in this Decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order Regulating the Handling of Kiwifruit Grown in California" and "Marketing Agreement as Amended, Regulating the Handling of Kiwifruit Grown in California." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical to those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of kiwifruit grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit grown in California.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1989, to July 31, 1990.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721, telephone (209) 487–5901.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Signed at Washington, DC, on February 28, 1991.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California [1]

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of kiwifruit grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1990, and published in the **Federal Register** on November 29, 1990, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.21 is revised to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected; except that the term of office of the three additional grower members and their alternates selected from the three districts shipping the greatest volumes of kiwifruit in the prior fiscal period shall be for one year. The terms of office shall begin on August 1 and end on the last day of July, or such other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms or six consecutive 1-year terms on the committee or a combination thereof not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms or six consecutive 1-year terms or a combination thereof not to exceed 6 consecutive years as alternate members.

3. Section 920.22 is revised to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

4. Section 920.41 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

* * * * * *

Marketing Agreement, as Amended, Regulating the Handling of Kiwifruit Grown in California

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement amending the marketing agreement regulating the handling of kiwifruit grown in California; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby amended.

The provisions of §§ 920.1–920.70, inclusive, of the order as amended annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of kiwifruit grown in California, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 920.71 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 920.72 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 920.73 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of kiwifruit in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm Name)

By: [1] _____

(Signature)

(Mailing Address)

(Title)

(Date of Execution)

(Corporate Seal; if none, so state)

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This information is required to determine voter eligibility and vote of kiwifruit handlers. Falsification of information on this government document may result in a fine of not more than $10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

(For use by incorporated handlers)

Certificate of Resolution (Corporation only)

At a duly convened meeting of the Board of Directors of _____ held at _____ on the _____ day of _____ 1991, Resolved, That _____ shall become a party to the marketing agreement regulating the handling of kiwifruit grown in California, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, Resolved, That

(Name)

(Title)

and

(Name)

(Title)

be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, _____, Secretary of _____ do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

(Signature)

(Address of Firm)

(Corporate Seal; if none, so state)

[FR Doc. 91–5280 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–05–M

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

7 C ; Part 1006

[Docket No. AO-366-A4; DA-90-032]

Milk in the Carolina Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments To Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes to the Carolina order that would allow a handler operating more than one distributing plant to combine the receipts and dispositions of such plants for the purpose of qualifying them as pool plants. The decision is based on the record of a public hearing held November 8, 1990, at Charlotte, North Carolina. The proposed changes were submitted by a cooperative association and a dairy processor. The changes were supported by another cooperative association that also supplies the dairy processor. The changes are necessary to provide more efficient procedures for handling milk, to reflect current marketing conditions and to assure orderly marketing in the Carolina area.

DATES: Comments are due on or before March 20, 1991.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility A (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling to effect more efficient processing of certain milk products. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding: Notice of Hearing: Issued October 24, 1990; published October 30, 1990 (55 FR 45612).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Carolina marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 14th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held at Charlotte, North Carolina, on November 8, 1990, pursuant to a notice of hearing issued October 24, 1990 (55 FR 45612).

The material issue on the record of hearing relates to pool plant qualification standards for distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The provisions affecting the pool qualification of distributing plants under the Carolina Federal milk order should be amended to allow a handler who operates two or more distributing plants to consider them as a unit for the purpose of meeting the order's total Class I disposition requirement. Each plant should continue to be required to distribute at least 15 percent of the total amount of milk received at or diverted from the plant as route disposition in the marketing area.

Currently, 60 percent of the amount of milk received at or diverted from each distributing plant during the months of August through November, January and February must be disposed of as Class I milk in order for the plant to be qualified as a pool plant. The applicable percentage requirement for the months of March through July and December is 40 percent.

Southern Milk Sales, Inc. (SMS), a cooperative association, and Hunter Jersey Farms, Inc. (Hunter), a proprietary handler, proposed that the order provide for unit pooling of distributing plants. Under their proposal, the receipts and disposition of the distributing plants requested by a multi-plant handler to be considered as a unit would be combined, and the plants would be treated as a single plant for the purpose of determining whether the unit meets the total route disposition requirement for a pool distributing plant.

Several witnesses for the proponents testified in support of the proposal and a witness for Piedmont Milk Sales (Piedmont) supported the proposal. There was no testimony at the hearing or statements in briefs in opposition to the proposal.

The first witness for SMS said that SMS and Hunter, prior to September 1, 1990 (effective date for the Carolina order) estimated the Hunter plant's Class I utilization at High Point, North Carolina, for the months of September through November 1990 to be about 50 percent. The witness said that the failure to meet the 60 percent requirement would result in the plant at High Point not being a pool plant. Nonpool status, she said, would cost the SMS producers about 90 cents per hundredweight. She said that the estimated 90 cents was based on a comparison of the Class I utilization at the High Point plant of 50 percent and the marketwide Class I utilization of 82 to 85 percent. SMS, she said, with a 90-cent reduction in pay prices would not be competitive with other producers in the market.

The spokeswoman for SMS said that Hunter was able to meet the 60 percent standard for September 1990 by shifting operations between the Hunter plant at High Point and the Hunter plant at Charlotte. SMS, she said, delivered less milk to the High Point plant and more milk to the Charlotte plant and at the same time more fluid milk was processed and packaged at the High Point plant and less was processed and packaged at the Charlotte plant. The witness said that SMS incurred an additional cost of about 15 cents per hundredweight on about 500,000 pounds of milk that was delivered to the Charlotte plant rather than the High Point plant.

A witness for Hunter testified that Hunter had to incur additional transportation costs in moving some packaged fluid milk sales accounts normally associated with the Charlotte plant to the selling points associated with the High Point plant. On a combined accounting basis, he said, the Class I utilization of the two plants would be between 65 and 70 percent. He said that Hunter, because of the location of its customers, could not concentrate all of its fluid milk processing at the Charlotte plant and all of its manufacturing at the High Point plant.

The Hunter witness said that Hunter acquired the High Point plant from Borden in April 1990 and that Borden had decreased its fluid milk processing at the High Point plant because of its decision to transfer some of that volume to one of its other plants. He said that in order to keep the High Point plant operating, Hunter decreased its processing of fluid milk products (about 75,000 gallons of milk per week) at its Charlotte plant and increased its fluid milk processing at the High Point plant. He said that even with these uneconomic changes in their operations, he did not think that the High Point plant could achieve a 60 percent or better Class I utilization in the future.

The third witness testifying on behalf of SMS and Hunter said that the "unit pooling" proposal would not change any of the other pooling requirements such as the "in area" route disposition requirement. He said that the record shows that in recent months the Class I utilization at the High Point plant has dropped considerally. At the time the hearing was held to consider promulgation of the Carolina order (April 1989) these developments were not foreseen; otherwise, "unit pooling" would have been proposed.

The spokesman for the proponents stated that at the proponents' request, the Department issued a temporary revision that reduced the 60 percent distribution requirement to 50 percent for the months of October and November 1990 and January and February 1991. He said that the 60 percent requirement would again be effective for the month of August 1991.

The witness for SMS and Hunter said that the steps taken by Hunter to pool the two plants lessen the ability of Hunter to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another plant. He said that the steps taken by Hunter can also result in the disruption of the normal farm-to-market movement of milk by requiring a portion of the supply to be delivered to an alternative plant at a greater distance.

The spokesman for SMS and Hunter said that regulatory provisions should encourage orderly and efficient handling, processing and distribution of milk and milk products and that "unit pooling" is contained in other Federal orders such as the Tennessee Valley order. He said that the proposal will not adversely affect any other proprietary handler or cooperative association associated with the Carolina marketing area.

The proposed "unit pooling" proposal should be adopted. The record evidence demonstrates that inefficient steps were taken by the proponents to pool the High Point plant. The temporary revision issued by the Department for the months of October and November 1990 and January and February 1991 (60 percent to 50 percent) should enable the High Point plant to be pooled without the proponents having to resort to the inefficient steps that were taken in September. The High Point plant would only have to meet a 40 percent fluid milk dispostion requirement for the month of December and the months of March 1991 through July 1991. However, the record indicates that the problem encountered by the High Point plant is not temporary and that amendatory action is needed.

The "unit pooling" proposal will remove the need for SMS and Hunter to incur additional transportation costs with respect to the shifting of bulk milk between the two plants and also the additional transportation in moving packaged milk from the High Point plant greater distances to the sales outlets associated with the Charlotte plant.

Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of some fluid milk products in one plant and other products in another plant. With unit pooling, as herein adopted, it will be possible for a multi-plant handler to confine certain specialized operations to one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining its total operation in one plant.

Adoption of the proposed amendment will not allow the pooling of any plant that does not distribute a significant amount of fluid milk, or any distributing plant that is not primarily associated with the Carolina marketing area. To qualify for pooling as a unit, each distributing plant in the unit would still have to dispose of at least 15 percent of its receipts as route disposition in the marketing area. This requirement will ensure that each plant pooled in the unit has a significant commitment to supplying fluid milk products to the marketing area.

The witnesses' concern about the reduction in pay prices of about 90 cents to SMS producers delivering milk to the High Point plant should the plant fail to qualify for pooling is valid. A reduction in pay prices of this amount at this location could result in disruptive marketing conditions.

In order to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Carolina order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be

applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held:

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Carolina marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

PART 1005—[AMENDED]

1. The authority citation for 7 CFR Part 1005 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In 1005.7, paragraph (a)(2) is revised to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Signed at Washington, DC, on: March 1, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–5261 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA96

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is proposing to amend part 327 of its regulations ("Assessments"), 12 CFR part 327, to increase the assessment to be paid by Bank Insurance Fund ("BIF") members during the second half of calendar year 1991 and thereafter.

DATES: Written comments must be received by the FDIC not later than April 5, 1991.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alvin E. Kitchen, Associate Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550 Seventeenth St., NW., Washington, DC, 20429, (202) 625–8344.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the publication of "a rule of particular applicability relating to rates." *Id.* 601(2). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis (*id.* 603 & 604) are not applicable.

In any case, the primary purpose of the Regulatory Flexibility Act is fulfilled as a matter of course. The Act's purpose is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The Act is "designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule." See 126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299"). The Federal Deposit Insurance Act specifies how assessments are computed, and generally gears each institution's assessment to the institution's size (as measured by domestic deposits). See 12 U.S.C. 1813 & 1817. The FDIC has no authority to "tailor [assessments] to the size and nature of [banks]" in any manner other than that set forth in the Act.[1]

Accordingly, the Board hereby certifies that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

The Proposed Rule

The FDIC must assess all insured depository institutions. *Id.* 1817. The FDIC's assessment rules are set forth in part 327 of Title 12 of the Code of Federal Regulations ("Assessments").

I. Increase in the BIF Assessment Rate

The BIF assessment rate is the greater of .15 percent or such rate as the Board determines to be "appropriate * * * to increase the reserve ratio to the designated reserve ratio within a reasonable period of time." See id. 1817(b)(1)(C). When determining an appropriate rate, the Board must consider the BIF's financial condition—its expected operating expenses, case resolution expenditures, and income—and the effect of the assessment rate on the earnings and capital of BIF members. The Board may consider other appropriate factors as well.

[1] The Board believes that the adverse effects of the higher assessment rate do not fall disproportionately on smaller banks. See table 2.

The BIF assessment rate currently stands at .195 percent per annum. The Board is proposing to increase it to .23 percent per annum, effective for the second semiannual period of 1991 and thereafter.

A. Need for the Increase.

The BIF's designated reserve ratio is currently set by statute at 1.25%. *Id.* 1817(b)(1)(B). The BIF's actual reserve ratio is below that level. The ratio and the BIF's balance have both declined significantly. The ratio has fallen from 1.10 percent at year-end 1987 (when the BIF's balance stood at $18.3 billion) to .80 percent at year-end 1988 (BIF balance $4.1 billion), and then to .70 percent at year-end 1989 (BIF balance $13.2 billion). Preliminary figures indicate that the ratio was .43 percent at the end of 1990 (BIF balance $8.5 billion).[2]

Current data suggest that the BIF reserve ratio will continue to decline through the end of 1992 if the current assessment rate remains in effect throughout that period. Under the FDIC's baseline assumptions,[3] the ratio is expected to decline to .19 percent (BIF balance $3.9 billion) by the end of 1991 and to .11 percent at the end of 1992 (BIF balance $2.4 billion).[4] Under pessimistic assumptions,[5] the BIF ratio is expected to be zero at the end of 1991 and to be negative (-.27 percent; BIF balance -$5.8 billion) at the end of 1992:[6]

TABLE 1.—BANK INSURANCE FUND TRENDS AND PROJECTIONS, 1984–1992

[Dollars in Billions]

Year	No. failed banks	Failed banks assets [1]	Failed banks assets (adjust)	Baseline Estimate				Pessimistic Estimate			
				Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)	Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)
1984	80	$38.9	$38.9	$3.1	$2.0	$16.5	1.19	$3.1	$2.0	$16.5	1.19
1985	120	8.8	8.8	3.4	2.0	18.0	1.19	3.4	2.0	18.0	1.19
1986	145	7.7	8.9	3.3	3.0	18.3	1.12	3.3	3.0	18.3	1.12
1987	203	9.5	20.8	3.3	3.3	18.3	1.10	3.3	3.3	18.3	1.10
1988	221	53.9	61.6	3.4	7.6	14.1	0.80	3.4	7.6	14.1	0.80
1989	207	29.2	15.5	3.5	4.3	13.2	0.70	3.5	4.3	13.2	0.70
1990 [3]	169	15.3	39.8	3.9	8.6	8.5	0.43	3.9	8.6	8.5	0.43
				Estimates for 1991 and 1992							
1991	180–230	$65–90B		$5.4	$10.0	$3.9	0.19	$5.4	$13.9	$0.0	N/A
1992	160–210	30–70B		5.0	6.5	2.4	0.11	5.0	10.8	−5.8	−0.27

[1] Reserves are established for open banks when their failure appears likely. The adjusted figures on failed bank assets reflect either the year reserves were established or the year the bank was actually closed, whichever was earlier.
[2] Assumes that the current assessment rate (19.5 per $100 of domestic deposits) remains in effect through year-end 1992.
[3] 1990 BIF revenue and expense figures are preliminary.

Accordingly, the Board proposes to raise the BIF assessment rate for the second semiannual period of 1991 and thereafter. The BIF assessment rate is currently fixed at .195 percent. The Board proposes to raise it to .23 percent.

The increase is needed as part of an overall effort to bring the reserve ratio up to 1.25 percent within a reasonable time. The FDIC presently anticipates it will need to borrow working capital of approximately $10 billion. The increased assessment rate proposed here is expected to generate additional revenues of approximately $870 million per year and would provide the funds needed to pay the interest and amortization on that level of borrowing.

The FDIC's anticipated borrowing, and the assessment increase needed to fund it, are only interim measures. They must be seen in the context of longer-term BIF recapitalization efforts currently under development. In this regard, a number of parties have proposed plans for revising the Federal approach to supervising insured depository institutions, specifically including a program of risk-based deposit insurance.

B. Impact on Bank Capital

1. The industry as a whole. The FDIC staff estimates that increasing the assessment rate from .195 percent to .23 percent for the second semiannual period of 1991 would have a minimal impact on industry capital levels. The tangible equity capitalization of BIF members as of September 30, 1990, was approximately $224.3 billion. An assessment rate increase of .035 percentage point, effective with the second-half 1991 semiannual assessment, would raise 1991 industry assessments by an estimated $435 million, or less than .2 percent of third-quarter 1990 industry capital. On an annualized basis, the additional assessments ($870 million) [7] amount to about .39 percent of third-quarter 1990 industry capital.

FDIC staff estimates indicate that year-end 1992 tangible equity capitalization would be just under $251.8 billion if the .195 percent rate remained in place, and would drop by only about $.5 billion—to just over $251.2 billion—if the rate were raised to .23 percent.

Insurance assessments are a tax deductible operating expense for banks.

[2] During the past 4 years, 800 banks with about $140 billion in total assets have been closed or reserved for, costing the BIF $23 billion. The BIF's administrative and operating expenses over that period have exceeded $850 million. As a result, although the BIF has generated about $14 billion in revenue during this time, the BIF has declined from $18.3 billion at year-end 1986 to $8.5 billion as of year-end 1990. About $7.5 billion is comprised of cash or other liquid assets.

[3] The "baseline" forecast assumes a moderate recession of about six months duration. It does not represent a best-case scenario.

[4] Under currently expected conditions, FDIC staff projects that 180 banks will be closed in 1991, with another 160 failures in 1992. FDIC staff estimates that reserves of $10 billion will be set aside to cover total expenses and losses on $65 billion in failed-bank assets in 1991. Another $6.5 billion in reserves will be needed in 1992 to cover expenses and losses on $30 billion in failed-bank assets. If the assessment rate were to remain at .195 percent, the BIF's income would be approximately $5.4 billion in 1991 and $5.0 billion in 1992.

[5] The assumptions are "pessimistic" in that they assume the recession lasts for more than a year. They do not represent a worst-case scenario.

[6] Under these assumptions, FDIC staff projects that 230 banks would fail in 1991 and 210 banks would fail in 1992. Reserves of $13.9 billion would be needed to cover expenses and losses on $60 billion in failed-bank assets in 1991. Reserves of $10.8 billion would be needed to cover expenses and losses on $70 billion in failed-bank assets in 1992.

[7] The FDIC staff has projected the BIF assessment base to increase at an annual rate of 4.5 percent during 1991

Assuming an average tax rate of 34 percent, the after-tax cost of the assessment increase would be $574 million per year. In addition, it is reasonable to expect that some portion of the assessment increase will be passed along to bank customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. However, the FDIC staff has assumed, for the purposes of this analysis, that banks will bear the full after-tax cost of the assessment.

The impact of the indicated assessment increase upon banks' book capital is dependent upon assumptions about dividend policies and new capital issues. If banks maintain dividend levels, despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment increase, assuming no new capital issues. That is to say, if dividends are not reduced, then the increased operating costs will be reflected in lower retained earnings.[8]

For the projections presented here, it was assumed that banks' dividend rates remained unchanged from those reported in September 1990. Consequently, the total $670 million in increased after-tax assessment costs projected over the next one-and-a-half years results in a $574 million total decline in capital and a $296 million total reduction in dividends. This represents a reduction in average annual dividends for the industry of approximately $197 million or 1.4 percent of total 1989 industry dividends of $14 billion. It was further assumed that the only source of new book capital considered is additions to retained earnings.

2. Individual banks. At the end of 1989, there were 87 BIF-insured banks (assets: $18.5 billion) reporting negative equity capital. The added expense of a .195 percent assessment rate in 1989 would have exceeded the total equity capital of five more banks (assets: $12.5 billion). For another 48 banks (assets: $11.0 billion), the higher insurance premiums would have represented more than 10 percent of their equity capital.

If the assessment rate in 1989 had been .2125 [9] percent, no additional banks would have seen their equity capital eclipsed by the additional insurance fee. Another 10 banks (assets: $12.1 billion) would have had increased premiums equal to more than 10 percent of their equity capital.[10]

During 1992, the assessment increase is projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by only 6 banks (average assets: under $34 million). The number of banks with between 3 and 6 percent tangible capital is projected to increase by 9 (average assets: under $255 million). In sum, while the assessment increase lowers the book capital of most banks, the overall impact is expected to be negligible.

C. Earnings

1. Impact on the industry. The additional assessment premiums, when measured over a full year, would boost BIF members' noninterest overhead expenses by approximately .73 percent. The additional expense of the 3.5 basis point assessment rate increase, measured on an annualized basis, amounts to 3.2 percent of 1990 pre-tax net operating income and 4.6 percent of net income after taxes and nonrecurring extraordinary gains through the first three quarters. The after-tax impact would be reduced to just above 3 percent of 1990 net income, however, when State and Federal income tax provisions—which amounted to $7.5 billion through the first three quarters of 1990—are considered.[11] For comparison, the increased assessment expense comprises about 5.8 percent of full year 1989 net income, before adjusting for any tax offsets.

2. Individual banks.[12] The assessment rate stood at .063 percent during 1989. That year 1,693 BIF members (assets: $739 billion) reported full-year earnings losses totalling $10.5 billion.

If the 1991 statutory assessment rate (.195 percent) had been in effect, this group of banks would have lost an additional $469 million. Another 184 banks (assets: $94 billion) would have lost $40 million. In addition, 5,172 banks (assets: $974 billion) would have had their earnings reduced by more than 10 percent.

If the assessment rate had included the proposed increase in 1989—*i.e.*, if the assessment rate had been .2125 percent—only 23 more banks (assets: $2 billion) would have seen their net income reduced below zero by the additional insurance assessment: [13]

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1989 earnings; amounts in $ millions]

	Actual 1989 rate (0.063%)	Statutory 1991 rate (0.195%)	Proposed 1991 rate (0.2125%)
Number of banks with negative net income	1,693	1,877	1,900
Combined losses	$10,544	$11,053	$11,137
Total assets	$739,332	$832,643	$835,103

The number of banks with earnings reductions of more than 10 percent would increase by 1,645 banks (assets: $390 billion). The average reduction in earnings among this group of banks attributable to the 3.5 basis-point increase in the assessment rate in the second semiannual period (from .195 percent to .23 percent) would have been approximately 4.5 percent.

The 1,693 banks reporting net losses in 1989 included 245 banks (assets: $127 billion) that had equity capital of less than 3 percent of assets at year-end 1989. If the assessment rate had been .195 percent, four additional thinly-capitalized banks would have reported a net loss for the year, and 23 others

[8] A change in the value of a bank's book capital is not the same as a change in the bank's overall market value. Some observers have suggested that, if banks cut dividends in order to maintain internal capital generation rates, the market value of common stock will be reduced, and that banks raising capital through new stock issues will see a reduction in the proceeds from new capital issues. This argument runs counter to standard financial theory. While the market value of bank equity undoubtedly rises and falls with profits, it should be independent of dividend policy. Accordingly, the bank's ability to attract new capital should not be materially affected by assumptions about dividend policy.

[9] This is the average of the current assessment rate (.195 percent) for the first semiannual period, and the proposed assessment rate (.23 percent) for the second semiannual period.

[10] It is assumed that all increased deposit insurance costs are taken directly out of retained earnings; in practice, the impact on equity capital can be minimized by tax effects, cost pass-throughs, and lower dividend payments.

[11] The percentages of pre-tax net operating income and net income would be *expected* to increase if fourth quarter 1990 loan loss provisions exceed the quarterly amounts for the first nine months of the year.

[12] This analysis of the impact of higher assessment rates on bank earnings makes several simplifying assumptions, which have the effect of overstating the likely consequences of a rate increase. Estimated assessment payments are based on end-of-year total domestic deposits, which enlarges the assessment base; in practice, actual assessments would be somewhat lower than the amounts used here. In addition, the effect of higher insurance premiums represents a "worst-case" scenario, in which no tax effect or cost pass-through is assumed, where all higher payments are carried directly through to lower net income.

[13] The affected banks are not disproportionately small ones. Twenty of them have assets under $100 million (87%); two have assets from $100 million to $1 billion (8.7%); one affected bank has assets between $1 billion and $5 billion (4.4%); and none has assets exceeding $5 billion. By comparison, banks with assets under $100 million comprise 71% of all BIF members; $100 million-to-$1 billion banks comprise 21.5%; $1-to-$5 billion comprise 2.5%; and banks with assets over $5 billion comprise the remaining 1%.

would have had more than 10 percent of their net income absorbed by the additional assessment payments. Lifting the assessment rate a further 3.5 basis points for the second semiannual period would not have resulted in any additional under-capitalized unprofitable banks, nor would it have caused any additional banks to have earnings reduced by more than 10 percent.

II. Comment Period

The FDIC is publishing the proposed rule with a public comment period of thirty days.

List of Subjects in 12 CFR Part 327:

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 327 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 USC 1441, 1441b, 1817–19.

2. § 327.13 paragraph (c) is revised to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(C) *Assessment rate.* The annual assessment rate for each BIF member shall be:

(1) For the first semiannual period of calendar year 1991, .195 percent; and

(2) For the second semiannual period of calendar year 1991, and for subsequent semiannual periods, .23 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 28 day of February, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–5276 Filed 3–5–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

Priority Status in Bankruptcy Proceedings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to provide that to the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs. The assignment of this priority status will minimize the risk incurred by a broker or a surety in assuming liability for duties of the importer and thus encourage early payment of duties to Customs.

DATES: Comments must be received on or before May 6, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Lehman, Office of Chief Counsel (202–566–5476).

SUPPLEMENTARY INFORMATION:

Background

The Bankruptcy Code provides in 11 U.S.C. 507(a)(7) for seventh priority status in a bankruptcy proceeding for allowed unsecured claims of governmental units. Priority status of claims by Customs for duties arising out of the importation of merchandise prior to the filing of bankruptcy are specifically provided for in three instances: (1) Merchandise is entered for consumption within one year before the date of filing the petition; (2) merchandise covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; (3) merchandise entered for consumption within four years before the date of the filing of the petition, but unliquidated on that date where the failure to liquidate was due to a pending investigation or need for information. 11 U.S.C. 507(a)(7)(F). Such claims are given seventh priority along with governmental claims for taxes for income or gross receipts, property tax, withholding tax, employment tax, and excise tax generally assessed one year prior to the filing of the bankruptcy petition.

Presently, brokers or sureties which pay Customs duties on behalf of an importer which files for bankruptcy protection are relegated to the status of unsecured creditor. This proposed rule is in response to instances in which a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, leaving the broker or surety with an unsecured claim. Although the broker or surety has a contractual right for reimbursement, this claim falls well below that of other priority claims, and brokers and sureties have been unable to collect from the estate amounts paid on behalf of the importer.

In an attempt to facilitate the entry process and to encourage early payment of duties, Customs is proposing to amend the regulations. Customs is aware of the vital service provided by brokers and sureties through the prompt payment of Customs duties. In keeping with the goal of Customs to provide efficient processing of entries and collection of duties, Customs is of the opinion that the assignment of priority status will minimize the monetary risk incurred by a broker or surety in assuming liability for duties of an importer.

It is proposed to revise the Customs Regulations to provide that, to the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs. The proposed regulation would allow a broker or surety who pays a claim for duties to hold the priority status conferred by statute on Customs for unsecured claims for duties.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

Because this document does not result in a "major rule" as defined by Executive Order 12291, the regulatory analysis and review prescribed by the Executive Order is not required.

Regulatory Flexibility Act

This proposed amendment is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection; Imports.

Proposed Amendment

It is proposed to amend part 141, Customs Regulations (19 CFR part 141), as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 is revised in part to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * *

Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;

* * * * *

2. In § 141.1 paragraph (c) is revised to read as follows:

§ 141.1 Liability of importer for duties.

* * * * *

(c) *Claim against estate of importer.* The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs.

Carol Hallett,

Commissioner of Customs.

Approved: February 28, 1991

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-5256 Filed 3-5-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0200]

RIN 0905-AA06

Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; clarification.

SUMMARY: The Food and Drug Administration (FDA) is issuing a clarification of its notice of proposed rulemaking requiring a warning in the labeling of all over-the-counter (OTC) drug products containing as active ingredients water-soluble gums, including guar gum, alerting users of these products to consume adequate fluid and to avoid using such products if the person has previously experienced any difficulty in swallowing. The intent of this document is to make it clear that the addition of this proposed warning statement in product labeling is not a sufficient basis to permit the continued marketing of OTC weight control drug products containing guar gum.

DATES: Written comments by April 5, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 30, 1990 (55 FR 45782), FDA proposed to require a warning for all OTC drug products containing water-soluble gums, e.g., guar gum, as active ingredients. The required warning would state the following:

Warning: (Select one of the following, as appropriate: Take or mix) this product with at least 8 ounces (a full glass) of water or other fluid. Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have ever had difficulty in swallowing or have any throat problems. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention.

In the same issue of the **Federal Register**, the agency issued another notice of proposed rulemaking stating that certain ingredients in OTC weight control drug products are not generally recognized as safe and effective and are misbranded (55 FR 45788). In that proposal, the agency reclassified guar gum into Category II (not generally recognized as safe and effective) (55 FR 45788 at 45790 to 45791). FDA stated that data indicate a safety hazard of esophageal obstruction from the use of weight control drug products containing guar gum. The agency mentioned that it had issued a number of regulatory letters to manufacturers of weight control drug products containing guar gum and requested the manufacturers to cease distribution of such products.

In this notice the agency makes clear that the addition, in product labeling, of the proposed warning statement for water-soluble gums (55 FR 45782) does not permit marketing of OTC weight control drug products containing guar gum. FDA has taken, and will continue to take, regulatory action to remove these hazardous products from the marketplace.

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-5233 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period; withdrawal of previously proposed amendment.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment Number 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to four rules which are intended to make those rules as effective as the corresponding Federal regulations concerning termination of jurisdiction, public roadways, sedimentation pond and impoundment spillways, and certification of primary roads. The proposed revisions concerning certification of primary roads supersede the revisions proposed by Ohio in Program Amendment Number 47. Ohio is therefore withdrawing Program Amendment Number 47.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 5, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on April 1, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 21, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program; the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 17, 1989 (Administrative Record No. OH-1240), the Director of OSM notified Ohio of a number of Federal regulations promulgated between June 9, 1988 and July 30, 1989 for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment No. 43 by letter dated January 16, 1990 (Administrative Record No. OH-1265). This amendment proposed revisions to seven sections of the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment No. 43 in the February 2, 1990 **Federal Register** (55 FR 3604), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990 was not held because no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH-1354), Ohio submitted Revised Program Amendment Number 43 containing two further proposed revisions to OAC Section 1501:13-9-04. These two revisions were intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

OSM announced receipt of Revised Program Amendment No. 43 in the September 6, 1990 **Federal Register** (55 FR 36661), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 9, 1990. The public hearing scheduled for October 1, 1990 was not held because no one requested an opportunity to testify.

By letter dated December 7, 1990, Ohio submitted Program Amendment Number 47 (Ohio Administrative Record No. OH-1415). This amendment concerned the certification by surveyors of the design and construction of primary roads. OSM approved Program Amendment Number 47 in the **Federal Register** on February 26, 1991.

On January 7, 1991, OSM sent its comments to Ohio on both Program Amendment Number 43 and Revised Program Amendment 43 (Ohio Administrative Record No. OH-1430). In response to OSM's letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on February 12, 1991 (Ohio Administrative Record No. OH-1454). This revised amendment proposes further revisions to three rules which are in addition to or which replace the revisions proposed in the previous two versions of the amendment. Ohio is also deleting previously proposed changes to one other rule. All other remaining revisions previously proposed by Ohio in Program Amendment Number 43 and Revised Program Amendment Number 43 are unchanged.

The new revisions proposed in the February 12, 1991 submission of Revised Program Amendment Number 43 are discussed briefly below:

I. Termination of Jurisdiction

OAC 1501:13-1-01 paragraphs (D)(l) and (2): Ohio proposed the addition of these two paragraphs in Program Amendment Number 43. Ohio is now withdrawing these proposed paragraphs because the corresponding Federal regulations were remanded by the court as contrary to SMCRA (National *Wildlife Federation* v. *Lujan*, Nos. 88-2416, 88-3345, 883-586, 88-3835, 89-0039, 89-0136, and 89-0141 (D.D.C. August 30, 1990)).

II. Public Roadways

OAC 1501:13-1-02 paragraph (E)(1)(d): Ohio is rewriting this paragraph to specify that the term "affected area" may not include public roadways, provided that:

(1) The public roadway was in existence prior to the application for the permit;

(2) The effect on the public roadway from mining use will be minor; and

(3) The public roadway is incidentally, rather than directly, part of the mining operation.

OAC 1501:13-1-02 paragraph (YYYY): Ohio is rewriting this paragraph to specify that the term "road" may not include public roadways outside the permit area, provided that the public roadway meets the new criteria proposed in OAC 1501:13-1-02 paragraph (E)(1)(d) regarding public roadways which do not fall under the definition of "affected area."

III. Sedimentation Pond and Impoundment Spillways

OAC 1501:13–9–04 paragraphs (G)(3)(b)(iii) and (H)(1)(h)(iii): Ohio is rewriting these paragraphs to clarify that single spillways authorized by proposed OAC 1501:13–9–04 paragraphs (G)(3)(b) (i) and (ii) and (H)(l)(h) (i) and (ii) shall have open channels.

OAC 1501:13–9–04 paragraph (H)(l)(h)(iii)(b): Ohio is correcting a typographical error in this paragraph. The corrected paragraph proposes that impoundments may use earth- and grass-lined single spillways to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

IV. Certification of Primary Roads

OAC 1501:13–10–01 paragraphs (G)(1)(a) and (b): Ohio is rewriting these paragraphs to clarify that separate certifications are required for the design and construction of primary roads. Those certifications must meet the requirements of OAC 1501:13–4–05 paragraph (M) and OAC 1501:13–4–14 paragraph (L) and must be submitted in a report to the Chief of the Ohio Department of Natural Resources, Division of Reclamation. These reports must certify that the construction or reconstruction of primary roads was completed as designed and in accordance with the approved plan.

Ohio is also rewriting OAC 1501:13–10–01 paragraphs (G)(1) (a) and (b) to include provisions for the certification of primary roads by a surveyor. In Program Amendment Number 47, Ohio revised OAC 1501:13–10–01 paragraph (G)(1) to provide that the certification of the design, construction, or reconstruction of primary roads shall be by an engineer, by a surveyor, or jointly by an engineer and a surveyor to the extent such joint certification is required by State law. OSM approved Program Amendment Number 47 on February 26, 1991.

In the February 12, 1991 submission of Revised Program Amendment Number 43, Ohio reiterated the provisions for certification of roads by a surveyor in approved Program Amendment Number 47. Since the text of proposed paragraphs (G)(1) (a) and (b) in Revised Program Amendment Number 43 is different from and supersedes the language in Program Amendment Number 47, Ohio is withdrawing Program Amendment Number 47.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 pm. on March 21, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 22, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91–5179 Filed 3–5–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service

32 CFR Part 299a

[NSA Reg. No. 10–35]

Privacy Act Systems of Records—Disclosures and Amendment Procedures—Specific Exemptions, National Security Agency

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Proposed exemption rule.

SUMMARY: The National Security Agency/Central Security Service (NSA/CSS) proposes to add a specific exemption rule for a new record system subject to the Privacy Act of l974, as amended, (5 U.S.C. 552a). The proposed record system is identified as GNSA18, entitled NSA/CSS Operations Files.

DATES: Comments regarding this proposed exemption rule must be received on or before April 5, 1991, to be considered by the agency.

ADDRESSES: Forward any comments to the Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755–6000. Telephone (301) 688–8527.

SUPPLEMENTARY INFORMATION: The proposed new exempt record system will be maintained within the National Security Agency/Central Security Service. The proposed specific exemptions are required to protect the information contained therein from certain disclosures. These proposed specific exemption rules are to be added to existing NSA/CSS exemption rules found at 32 CFR 299a.10.

List of subjects in 32 CFR Part 299a.

Privacy Act.

Accordingly, NSA/CSS proposes to add a new exemption rule to 32 CFR part 299a as follows:

PART 299a—PRIVACY ACT SYSTEMS OF RECORDS—DISCLOSURES AND AMENDMENT PROCEDURES—SPECIFIC EXEMPTIONS, NATIONAL SECURITY AGENCY

1. Authority citation for 32 CFR Part 299a continues to read as follows:

Authority: 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 552, the Freedom of Information Act as amended by Public Law 93–502; Public Law 86–36, Public Law 88–290 and 18 U.S.C. 798.

2. Section 299a.10 is proposed to be amended by adding a new paragraph (b)(18) as follows:

§ 299a.10 Specific exemptions.

* * * * *

(b) Systems of records subject to specific exemptions: * * *

(18) *System Identification and Name*—GNSA18, NSA/CSS Operations Files.

Exemption—Portions of this record system may be exempted from subsections of 5 U.S.C. 552a (c)(3), (d)(1)–(5), (e)(4)(G)–(I), and (f)(1)–(5).

Authority—5 U.S.C. 552a(k) (1), (2) and (5).

Reasons—Subsection (c)(3) because there may be occasions when making an accounting available to the individual named in the record at his or her request, would reveal classified information. The release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies.

Subsection (d) because granting access and/or subsequent amendment to the record would reveal classified information. It may also alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy. The NSA/CSS may refuse to confirm or deny the existence of a particular record because to do so would reveal classified information.

Subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I). Although the NSA/CSS has published procedures whereby an individual can be notified if a particular record system contains information about themselves; how to gain access to that information; and the source of the information, there may be occasions when confirming that a record exists, granting access, or giving out the source of the information would reveal classified information.

Subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system. Also, because this record system is exempt from the individual access provisions of subsection (d).

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5268 Filed 3–5–91; 8:45 am]

BILLING CODE 3810–01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–3910–3]

National Emission Standards for Hazardous Air Pollutants; Announcement of Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agreement on negotiated regulation.

SUMMARY: This announcement summarizes the major provisions and concepts of the negotiated rule for volatile hazardous air pollutants from equipment leaks at organic chemical manufacturing facilities, and publishes verbatim the regulatory language agreed to by the negotiating committee. The purpose of this notice is to inform interested parties and potentially regulated facilities of the regulatory agreement to which the committee has concurred in principle.

On April 25, 1989 (54 FR 17944), EPA announced its intent to form an advisory committee to negotiate issues leading to a new approach for regulation of fugitive emissions of volatile organics from equipment leaks (pumps, valves, etc.) associated with chemical production process units. A meeting with interested parties was held in Washington, DC on May 15, 1989 to discuss the establishment of such a committee. On September 12, 1989, EPA announced the formation of the committee under the Federal Advisory Committee Act (54 FR 37725). The EPA formed a committee including representatives of various affected industry and trade groups, State and local air pollution agencies, and an environmental group.

The Committee met periodically over a one-year period and has successfully agreed in principle to the provisions and language of an equipment leak regulation. The Committee will continue to work on a preamble for the future proposal of the rule and will enter into a final agreement after the preamble is completed. The EPA plans to propose this rule in late 1991 as part of hazardous organic national emission standards for hazardous air pollutants (NESHAP), or NON, that will cover other emission points as well as equipment leaks at organic chemical plants.

ADDRESSES: *Docket.* A docket, number A–89–10, containing information relating to the negotiations is available for public inspection between 8:30 am. and 3:30 p.m., Monday through Friday, at Air Docket Section (LE–l3l), Waterside Mall, room Ml500, U. S. EPA, 401 M Street, SW. Washington, DC 20460. A reasonable fee may be charged for copying. Today's notice is not a rulemaking action and the Agency is not soliciting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Meyer or Mr. Rick Colyer, telephone (919) 541–5254 or 5262, respectively. The address for both is Standards Development Branch (MD–13), Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

In the early 1980's, EPA determined that fugitive emissions of volatile organic compounds (VOC) and hazardous organic compounds from equipment leaks (pumps, valves, etc.) contribute significantly to air quality problems. The EPA estimates that equipment leak emissions account for roughly one-third of total organic emissions from chemical plants. Moreover, because they are released near the ground, the impact from fugitive emissions is l0 to 40 times greater than equal releases from stacks. Recent reports completed under Section 313 of the Superfund Amendments and Reauthorization Act (SARA) included over 385,000 tons per year from fugitive sources.

Existing regulations adopted under sections 111 and 112 of e Clean Air Act and in State Implementation Plans (SIP's) have been effective in heightening awareness of the significance of equipment leaks and in stimulating control efforts. The rules basically require that equipment in place be inspected periodically for leaks with a portable hydrocarbon detector. If concentrations in excess of 10,000 parts per million (ppm) are found, the component is identified as a "leaker" and maintenance is required. This

approach is known as "leak detection and repair" (LDAR). When these rules were established, EPA estimated that emissions would be reduced by about 60 to 70 percent and that after control, leak frequencies would be approximately 5 percent.

Data gathered over the past couple of years on equipment leaks at some chemical plants indicate that lower leak frequencies can be achieved. These data, however, did not indicate how low leak frequencies could be obtained at all chemical plants. Consequently, EPA saw a need for a new approach that would establish an effective regulation that would achieve low leak frequencies at all chemical plants. It was recognized that establishing such a regulation for as broad and varied a source category as chemical production units would be difficult. The challenges included determining for all plants how to achieve low leak frequency with a simple set of rules, how to provide more flexibility in achieving low leak rates than that provided by LDAR alone, how to apply standards across the industry using data from only a part of the industry, and EPA's need to establish standards consistent with the maximum achievable control technology (MACT) requirements of the Clean Air Act Amendments of 1990 (CAAA).

Accordingly, on April 25, 1989, EPA announced its intention to establish a committee to negotiate a new approach for control of volatile organic chemical equipment leaks (54 FR 17944), and conducted an initial informational meeting on May 15, 1989 to determine among potentially interested parties whether negotiation would be a desirable approach. The participants at the initial meeting responded favorably to the concept of negotiation, and on September 12, 1989, EPA established a negotiating committee (54 FR 37725). The Committee met over a period of one year, holding nine 2-day meetings and one 1-day meeting to resolve the various issues related to developing a MACT standard for equipment leaks. The Committee members are listed in Appendix A.

The Committee considered the many factors and uncertainties associated with regulating equipment leaks at a wide variety of chemical plants and developed an acceptably balanced approach, weighing the need to be flexible, the technical uncertainties, the requirement for MACT standards, and the data limitations. At the final negotiating session, the Committee members conceptually resolved all outstanding major issues and decided to reach final agreement through a 2-step process. The Committee members would first agree to the regulatory language to be proposed. This "agreement in principle" has been reached by all Committee members and the negotiated regulatory language is contained in Appendix B. The Committee expects to sign a final agreement after a draft preamble to the regulation describing in detail the scope, application, effect, and rationale has been concurred on by the Committee. The final agreement will represent the consensus of the Committee on a regulation and preamble to be proposed by the Agency, and all Committee mmembers will agree to support the regulation as long as EPA proposes and promulgates the regulation and its preamble substantively unchanged from those that are the subject of the final agreement.

The consensus agreement reached by the Committee, as spelled out in the attached regulatory language, also serves to notify nine chemical companies of voluntary action they previously committed to taking. These companies were identified prior to these negotiations by EPA in its Air Toxics Exposure and Risk Information System (ATERIS) database as having some plants with relatively high health risk. After several meetings between representatives of these companies and EPA, the companies agreed to begin a voluntary LDAR program and timely implementation of the consensus agreement as soon as the regulatory requirements were available.

II. Summary of Negotiated Standards

The following is a general summary of the requirements and concepts of the negotiated regulation. It is not a detailed description of the provisions, nor does it contain the rationale or basis developed by the Committee for the various provisions. The reader is referred to the actual negotiated regulatory language (Appendix B) for detail of specific provisions.

The purpose of this announcement is to make interested parties and owners or operators potentially subject to these standards aware of the forthcoming regulatory requirements so that they will be better prepared when the rule is actually issued. The covered chemicals and processes are listed respectively in §§ XX.X8–1 and XX.X8–2 of the negotiated rule (Appendix B). A detailed preamble describing the rationale and basis for the regulatory requirements for equipment leaks will accompany the proposal of the rule, to be contained within a broader HON, covering not only equipment leaks, but also storage, transfer, process vents, and wastewater emissions at chemical plants. The HON is scheduled for proposal in Fall 1991, with promulgation scheduled for Fall 1992. The Agency is not now soliciting comments on the attached regulatory language. Interested persons will have an opportunity to comment when the broader regulation is proposed.

Applicability. The standards would apply to equipment in volatile hazardous air pollutant (VHAP) service 300 or more hours per year associated with any of the 453 processes listed in the negotiated regulation that make or use as a reactant one of the organic VHAPs listed in § XX.X8–1 of the regulation. They would also apply to equipment handling specific chemicals for a limited number of non-SOCMI processes listed in the negotiated rule. Petroleum refinery processes will not be covered by the attached negotiated regulation; a separate rulemaking will be conducted for those processes.

The equipment affected are valves, pumps, connectors, compressors, pressure relief devices, open-ended lines, sampling connection systems, instrumentation systems, agitators, product accumulator vessels, and closed-vent systems and control devices. "In VHAP service" means the equipment contains or contacts a fluid that is 5 percent or greater VHAP's.

The standards would also split the covered processes into 5 distinct groups to which the regulation would apply over time. The rule would apply to the first group 6 months after promulgation. Thereafter, the rule would become applicable to another group every 3 months until all the processes were covered.

Pumps and Valves. The regulation is structured similarly for pumps and valves. Standards for both would be implemented in three phases and both standards have associated quality improvement programs (QIP's). The first and second phases for both types of equipment consist of an LDAR program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) would be coupled with a base performance level (i.e., allowable percent leaking components).

As part of the base program, pumps would require monthly monitoring using an instrument and weekly visual inspection. Valves would initially require quarterly monitoring, but the length of time between monitoring could be increased if the percent leaking valves demonstrate incrementally better performance, as specified in the rule, over the base performance level.

Special provisions apply to pumps in food/medical service, pumps in polymerizing monomer service, "leakless" pumps, and unsafe- and difficult-to-monitor valves. Owners or operators can take partial credit in the calculation of percent leaking valves for valves permanently removed from the process units. Plants with less than 250 valves in VHAP service are subject only to LDAR and not the base performance level. A limited number of "nonrepairable" valves, i. e., those that cannot be repaired without a process unit shutdown, may be excluded in the calculation of percent leaking valves.

If the base performance levels for a type of equipment are not achieved, based on a rolling average of monitoring results, owners or operators must, in the case of pumps, enter into a QIP, and in the case of valves, either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

Connectors. The rule also provides for performance standards for connectors in terms of percent leaking connectors in each process unit. The negotiated standard for connectors is not phased in, i. e., the performance level applies as soon as the rule is effective for the process unit. Consistent achievement of the base performance level would result in monitoring being required less frequently. Failure to achieve the base performance level would cause the plant to remain in an annual monitoring cycle.

Special provisions would apply to existing screwed connectors that are 2 inches or less and to connectors that are inaccessible or unsafe to monitor or repair. A limited allowance for "nonrepairable" connectors would be allowed if disturbed connectors are monitored within 3 months. Credits for connectors removed from the process unit would be allowed in the calculation of percent leaking connectors (or performance level).

Other equipment. Standards for compressors, open-ended lines, pressure relief devices, sampling connection systems, and closed vent systems and control devices remain essentially unchanged from existing regulations (see 40 CFR part 61, Subpart V). Agitators must meet LDAR requirements, but have no base performance levels. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrument monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions.

Delay of repair. Under certain conditions delay of repair beyond the required 15 days may be acceptable. Examples of these situations include where (1) a piece of equipment cannot be repaired without a process unit shutdown, (2) equipment is taken out of VHAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, (4) pumps with single mechanical seals are replaced with dual mechanical seals, and (5) valve assembly supplies have been depleted from stocks.

Alternative standards. Generally, an alternative means of emission limitation may be used if an owner or operator can demonstrate emission reductions equal to or better than that required by the standards. Specific alternative standards have been written for batch processes and enclosed buildings. Batch processes can choose either to meet similar standards to those for continuous processes, with monitoring frequency prorated to time in use, or to periodically pressure test the entire system. Enclosed buildings may forego monitoring if the building is kept under a negative pressure and all emissions are routed through a closed vent system to an approved control device.

Test methods and Procedures. The standards would retain the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. Method 18 is to be used to determine organic content of a process stream. Test procedures using either a gas liquid testing or a for pressure the batch system are specified to detect for leaks.

Recordkeeping. The standards would require a readily accessible recordkeeping system. Records required include identification of equipment that would be covered by the standards, identification of equipment that is found to be leaking during a monitoring period and when it is repaired, testing associated with batch processes, design specifications of closed vent systems and control devices, test results from performance tests or testing process streams for organic content, and information required by equipment in QIP. Other recordkeeping requirements also apply, and the reader is referred to that section of the negotiated rule for more detail (see Appendix B).

Reporting. Owners and operators would be required to submit an initial report that describes the source and a summary of the equipment subject to these standards. Every six months, a report must be submitted that summarizes the results of monitoring and performance tests conducted during that period, changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP. Reports can be submitted on electronic media where acceptable to both the Administrator and the owner or operator.

Dated: February 25, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

Appendix A—List of Negotiators

Negotiator/Affiliation

Robert L. Ajax, EPA.
Alfred Bickum, International Institute for Synthetic Rubber Producers.
Bruce Bowers, Standard Chlorine.
Linda Curran, Amoco Oil.
David Doniger/Allen Hershkowitz, Natural Resources Defense Council.
David Dunn, Sterling Chemicals, Inc.
Larry Goodheart/Ellen Siegler, American Petroleum Institute.
Jack Kace, Pharmaceutical Manufacturers Association.
Thomas Kittleman, Chemical Manufacturers Association.
Robert Majewski, Northeast States for Coordinated Air Use Management.
Les Montgomery, Texas Air Control Board.
Harvel Rogers, Jefferson County (Kentucky) Air Pollution Control District.
Gustave Von Bodungen, Louisiana Department of Environmental Quality.

Facilitator

Philip J. Harter, Esq., Consultant to EPA.

Observer

Nicolas Garcia, Office of Management and Budget.

Appendix B—National Emission Standard For Equipment Leaks (Fugitive Emission Sources)

Section XX.XO Applicability and Designation of Sources

(a) The provisions of this subpart apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, product accumulator vessels, instrumentation systems, and control devices or systems required by this subpart that are intended to operate in volatile hazardous air pollutant (VHAP) service 300 hours or more during the calendar year within a process unit listed in

(1) Paragraph (b) of this section that uses as a reactant or makes as an intermediate or final product any of the chemicals listed in § XX.X8–1, or

(2) Paragraph (c) of this section.

(b) (1) The provisions of this subpart are applicable to the following process units as listed in § XX.X8–2 on and after the designated dates:

(i) Group I: (½ year after promulgation)

(ii) Group II: (¾ year after promulgation)

(iii) Group III: (1 year after promulgation)

(iv) Group IV: (1¼ years after promulgation)

(v) Group V: (1½ years after promulgation)

(2) The owner or operator of an affected process unit in a later group may elect to apply the applicability date of an earlier group.

(3) Any process unit listed in § XX.X8–2 that does not use as a reactant or make as an intermediate or final product any of the chemicals listed in § XX.X8–1 is exempt from the provisions in § XX.X2–1 through § XX.X2–13. The owner or operator shall maintain records as required in § XX.X6 (k).

(c) The provisions of this subpart apply (6 months after publication of the final rule in the **Federal Register** to the the following process units, and designated VHAPs only, as defined in § XX.X1:

(1) Styrene-butadiene rubber production (butadiene, styrene).

(2) Polybutadiene production (butadiene).

(3) Chlorine production (carbon tetrachloride).

(4) Pesticide production (carbon tetrachloride, methylene chloride, ethylene dichloride).

(5) Chlorinated hydrocarbon use (carbon tetrachloride, methylene chloride, tetrachloroethylene, chloroform, and ethylene dichloride).

(6) Pharmaceutical production (carbon tetrachloride, methylene chloride).

(7) Miscellaneous butadiene use (butadiene).

(d) While the provisions of this subpart are effective, equipment to which this subpart applies that are also subject to the provisions of

(1) 40 CFR part 60, will be required to comply only with the provisions of this subpart, except for each pump and compressor equipped with a dual mechanical seal system that is in VOC service, or

(2) 40 CFR part 61, will be required to comply only with the provisions of this subpart.

(e) The provisions of this subpart do not apply to any petroleum process unit regardless of whether the unit supplies feedstocks, that include chemicals listed in § XX.X8–1, to chemical processes that are subject to the provisions of this subpart.

Section XX.X1 Definitions

All terms used in this subpart shall have the meaning given them in the Act, in subpart A of 40 CFR part 63, and in this section as follows:

Batch Process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (e.g., connectors, reactors, valves, pumps, etc.) configured to produce a specific product or intermediate by a batch process.

Chlorinated hydrocarbon use means a process that produces one or more of the following products using chloroform, carbon tetrachloride, ethylene dichloride, methylene chloride or tetrachloroethylene: chlorinated paraffins, Hypalon®, OBPA/1,3-diisocyanate, polycarbonate, polysulfide rubber, and symmetrical tetrachloropyridiene.

Chlorine production means a process that uses carbon tetrachloride as a diluent for nitrogen trichloride or as a scrubbing liquid to recover chlorine from the liquefaction of tail gas.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed-vent system.

Closed-vent system means a system that is not open to atmosphere and that is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back into the process.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, glass, or glass-lined as described in § XX.X2–13(i).

Control device means an enclosed combustion device, vapor recovery system (including devices used for temporary recovery and ultimate disposal, such as carbon adsorption), or flare.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, product accumulator vessel, and instrumentation system in VHAP service; and any control devices or systems required by this subpart.

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere.

In food/medical service means that a piece of equipment in VHAP service contacts a process stream used to manufacture a Food and Drug Administration regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications,

(2) An exothermic reaction which is a safety hazard,

(3) The intended reaction to be slowed down or stopped, or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in VHAP service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in VHAP service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in VHAP service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the VHAPs is greater than 0.3 kilopascals (kPa) at 20°C;

(2) The total concentration of the pure VHAP constituents having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions.

(Note: Vapor pressures may be determined by the methods described in § 60.485 (e)(1).)

In liquid service means that a piece of equipment in VHAP service is not in gas/vapor service.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kPa below ambient pressure.

In VHAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight a volatile hazardous air pollutant (VHAP) as determined according to the provisions of § XX.X5(d). The provisions of § XX.X5(d) also specify how to determine that a piece of equipment is not in VHAP service.

In VOC service means, for the purposes of this subpart, that:

(1) The piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight (see 40 CFR 60.2 for the definition of volatile organic compound or VOC, and 40 CFR 60.485(d) to determine whether a piece of equipment is not in VOC service) and

(2) The piece of equipment is not in heavy liquid service as defined in 40 CFR 60.481.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquid dripping include puddling or new stains that are indicative of an existing evaporated drip.

Miscellaneous butadiene use means a process that produces one or more of the following butadiene products: tetrahydrophtalic anhydride (THPA), methylmethacrylatebutadiene styrene (MBS) resins, Captan®, Captafol®, 1,4-hexadiene, adiponitrile, dodecanedionic acid, butadienefurfural cotrimer, methylmethacrylate acrylonitrile-butadiene styrene (MABS) resins, and ethylidene norbornene.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Pesticide production means a process that uses one or more of the following chemicals as a reactant or a processing aid in the synthesis of a pesticide intermediate or product: carbon tetrachloride, ethylene dichloride, and methylene chloride.

Petroleum means the crude oil or natural gas liquids removed from the earth and oils derived from tar sands, shale, and coal.

Petroleum refining process unit means a process unit that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating oils (such as distillate and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished petroleum derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

Pharmaceutical production means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent.

Plant site means a contiguous or adjoining area under the control of a single owner or operator that contains one or more process units to which these standards apply. Plant site does not include those units to which these standards do not apply.

Polybutadiene production means a process that produces polybutadiene through the polymerization of 1,3-butadiene.

Polymerizing monomer means a molecule or compound usually containing carbon and of relatively low molecular weight and simple structure (e.g., hydrogen cyanide, acrylonitrile, styrene), which is capable of conversion to polymers, synthetic resins or elastomers by combination with itself due to heat generation caused by a pump mechanical seal surface, contamination by a seal fluid (e.g., organic peroxides or chemicals that will form organic peroxides), or a combination of both with the resultant polymer buildup causing rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. Process unit means equipment that uses or produces a VHAP or its derivatives as intermediates or final products, and is listed in § XX.X0(b) and (c). For the purpose of this regulation, process unit includes all equipment associated with the unit process operation (e.g., reactors, distillation, etc.), storage and transfer of feed material to the unit process operation and final or intermediate product from the unit process operation, and operations treating wastewater from the unit process operation.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown, is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Product accumulator vessel means any distillate receiver, bottoms receiver, surge control vessel, or product separator in VHAP service that is vented to the atmosphere either directly without first going through a pressure relief device or through a vacuum producing system. A product accumulator vessel is in VHAP service if

the liquid or the vapor in the vessel is at least 5 percent by weight VHAP.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart.

Screwed connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Semiannual means a 6-month period; the first semiannual period concludes on the last day of the last month during the 180 calendar days following initial startup for new sources; and the first semiannual period concludes on the last day of the last month during the 180 calendar days after the effective date of a specific subpart that references this subpart for existing sources unless an earlier month is designated by the owner or operator.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Startup means the setting in operation of a process unit or control device.

Styrene-butadiene rubber production means a process that produces styrene-butadiene copolymers, whether in solid (elastomer) or emulsion (latex) form.

Volatile hazardous air pollutant or *VHAP* means a substance listed in § XX.X8–1.

Section XX.X2–1 Standards: General

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § XX.X2–1 to § XX.X2–13 for each new and existing source as required in 40 CFR 61.05, except as provided in § XX.X3 and § XX.X4.

(b) Compliance with this subpart will be determined by review of records, review of performance test results, and inspection using the methods and procedures specified in § XX.X5.

(c)(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of § XX.X2–2, § XX.X2–3, § XX.X2–5, § XX.X2–6, § XX.X2–7, § XX.X2–8, § XX.X2–9, § XX.X2–11, § XX.X2–12, and § XX.X2–13 are provided in § XX.X4.

(2) If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of § XX.X2–2, § XX.X2–3, § XX.X2–5, § XX.X2–6, § XX.X2–7, § XX.X2–8, § XX.X2–9, § XX.X2–11, § XX.X2–12, and § XX.X2–13, the owner or operator shall comply with the alternative.

(d) Each piece of equipment in a process unit to which this subpart applies shall be identified such that it can be distinguished readily from equipment that is not subject to this subpart. Identification of the equipment does not require physical tagging of the equipment. For example the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

(e) Equipment that is in vacuum service is excluded from the requirements of § XX.X2–2 to § XX.X2–13 if it is identified as required in § XX.X6(b)(5).

(f) Equipment that is in VHAP service less than 300 hours per calendar year is excluded from the requirements of § XX.X2–2 to § XX.X2–13 and § XX.X4–2 if it is identified as required in § XX.X6(b)(7).

(g) The provisions for existing process units apply to process units that commenced construction or reconstruction before *[Insert date of publication of proposal rule in the* **Federal Register***]*; the provisions for new process units apply to units the construction or reconstruction of which commences on or after *[Insert date of publication of proposal rul in the* **Federal Register***]*.

Section XX.X2–2 Standards: Pumps in Light Liquid Service

(a) The provisions of this section apply to each pump that is in light liquid service.

(1) The provisions are implemented on the specified applicability dates designated in § XX.X0(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date, and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements.

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b) (1) The owner or operator of an affected process unit shall monitor each pump monthly to detect leaks by the method specified in § XX.X5(b) and shall comply with the requirements of paragraphs (a) through (d) of this section, except as provided in § XX.X2–1(c) and paragraphs (e) through (h) of this section.

(2) The instrument reading, as determined by the method as specified in § XX.X5(b), that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 ppm or greater.

(ii) For Phase II, an instrument reading of 5,000 ppm or greater.

(iii) For Phase III, an instrument reading of

(A) 5,000 ppm or greater for pumps handling polymerizing monomers,

(B) 2,000 ppm or greater for pumps in food/medical service, and

(C) 1,000 ppm or greater for all other pumps.

(3) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.

(c) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (c) (3) of this section or § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(i) Tightening of packing gland nuts.

(ii) Ensuring that the seal flush is operating at design pressure and temperature.

(3) For pumps in Phase III to which a 1,000 ppm leak definition applies, repair is not required unless an instrument reading of 2,000 ppm or greater is detected.

(d) (1) The owner or operator shall decide no later than the first monitoring period whether to calculate percent leaking pumps on a process unit basis or on a plant site basis. Once the owner or operator has decided, all subsequent percent calculations shall be made on the same basis.

(2) If, in Phase III, calculated on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or 3 pumps in a process unit (or plant site) leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § XX.X3–2.

(3) The number of pumps at a process unit (or plant site) shall be the sum of all the pumps in VHAP service, except that pumps found leaking in a continuous process unit within 1 month after startup shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = ((P_L - P_s)/(P_T - P_s)) \times 100$$

where:

$\%P_L$ = percent leaking pumps

P_L = number of pumps found leaking as determined through monthly monitoring as required in paragraphs (b) (1) and (2) of this section

P_T = Total pumps in VHAP service, including those meeting the criteria in paragraphs (e) and (f) of this section

P_s = number of pumps leaking within 1 month of startup during the current monitoring period

(e) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § XX.X2–11; or.

(iii) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(2) The barrier fluid is not in light-liquid VHAP service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(i) If there are indications of liquid dripping from the pump seal at the time of the weekly inspection, the pump shall be monitored as specified in § XX.X5(b) to determine the presence of VHAP in the barrier fluid.

(ii) If an instrument reading of 1,000 ppm or greater is measured, a leak is detected.

(5) Each sensor as described in paragraph (e) (3) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(6) (i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(6)(i) of this section, or if, based on the criteria established in paragraph (e)(6) (i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(iv) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from paragraphs (b)(1) and (2) of this section.

(g) Any pump equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § XX.X2–11 is exempt from the requirements of paragraphs (b)–(e).

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b) (3) and (e) (4) of this section, and the daily requirements of paragraph (e) (5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

Section XX.X2–3 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevent leakage of process fluid to atmosphere, except as provided in § XX.X2–1(c) and paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § XX.X2–11; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) The barrier fluid shall not be in light liquid service.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e) (1) Each sensor as required in paragraph (d) of this section shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e) (2) of this section, a leak is detected.

(g) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § XX.X2–11, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § XX. X6 (b) (2), to operate as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is demonstrated to be operating with an instrument reading of less than 500 ppm above background, as measured by the method specified in § XX.X5(c); and

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times requested by the Administrator.

Section XX.X2–4 Standards: Pressure Relief devices in Gas/vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 ppm above background except as provided in paragraph (b) of this section, as measured by the method specified in § XX.X5(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar

BEST COPY AVAILABLE

days after each pressure release, except as provided in § XX.X2–10.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § XX.X5(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § XX.X21l is exempt from the requirements of paragraphs (a) and (b) of this section.

Section XX.X2–5 Standards: Sampling Connection Systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § XX.X2–l(c).

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § XX.X2–11.

(c) *In-situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

Section XX.X2–6 Standards: Open-ended Valves or Lines

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § XX.X2–l(c).

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line or during maintenance or repair.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

Section XX.X2–7 Standards: Valves in Gas/Vapor Service and in Light Liquid Service

(a) The provisions of this section apply to valves that are either in gas service or in light liquid service.

(1) The provisions are implemented on the specified applicability dates set forth in § XX.X0(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date; and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements.

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b) The owner or operator of an affected process unit shall monitor all valves, except as provided in §§ XX.X2–l(c), and (h) and (i) of this section, at the intervals specified in paragraphs (c) and (d) of this section and shall comply with all other provisions of this section, except as provided in § XX.X2–l0, § XX.X4–l, § XX.X4–2, and § XX.X4–3.

(1) The valves shall be monitored to detect leaks by the method specified in § XX.X5(b).

(2) The instrument reading that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 ppm or greater.

(ii) For Phase II, an instrument reading of 500 ppm or greater.

(iii) For Phase III, an instrument reading of 500 ppm or greater.

(c) In Phases I and II, each valve shall be monitored quarterly.

(d) In Phase III, the owner or operator shall monitor valves for leaks at the intervals specified below:

(1) At process units with 2 percent or greater leaking valves, calculated as a rolling average of 2 consecutive periods, the owner or operator shall either:

(i) Monitor each valve once per month; or

(ii) Within the first year after the onset of Phase III, implement a quality improvement program for valves that complies with the requirements of § XX.X3–l and monitor quarterly.

(2) At process units with less than 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in the following paragraphs (3) and (4) of this section.

(3) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(4) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(e)(1) Percent leaking valves at a process unit shall be determined by the following equation:

$$\%V_L = /(V_L/(V_T + V_C)) \times 100$$

where

$\%V_L$ = percent leaking valves

V_L = number of valves found leaking excluding nonrepairables as provided in paragraph (e) (3) (i) of this section

V_T = Total valves monitored

V_C = Optional credit for removed valves = 0.67 X net number (i.e., total removed - total added) of valves in VHAP service removed from process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $V_C = 0$.

(2) For use in determining monitoring frequency, as specified in paragraph (d) of this section, the percent leaking valves shall be calculated as a rolling average of 2 consecutive monitoring periods for monthly, quarterly, or semiannual monitoring programs; and as an average of any 3 out of 4 consecutive monitoring periods for annual monitoring programs.

(3) (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (e) (3) (ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in VHAP service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in VHAP service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in VHAP service shall be included in the calculation of percent leaking valves.

(f)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) When a leak is repaired, the valve shall be monitored at least once within the first three months after its repair.

(g) First attempts at repair include, but are not limited to, the following practices where practicable:

(1) Tightening of bonnet bolts;

(2) Replacement of bonnet bolts;

(3) Tightening of packing gland nuts; and

(4) Injection of lubricant into lubricated packing.

(h) Any valve that is designated, as described in § XX.X6(i)(l), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(i) Any valve that is designated, as described in § XX.X6(i) (2), as a difficult-to-monitor valve is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface;

(2) The process unit within which the valve is located is an existing process unit; and

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(j) Any equipment located at a plant site with fewer than 250 valves in VHAP service is exempt from the requirements of paragraph (d) (1) of this section. Except as provided in paragraphs (h) and (i) of this section, the owner or operator shall monitor each valve in VHAP service for leaks once each quarter, or comply with paragraphs (d) (3) or (d) (4) of this section.

Section XX.X2–8 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § XX.X5(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method, except as provided in § XX.X2–1(c). If a potential leak in an instrumentation system is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § XX.X5(b).

(b) If an instrument reading of 10,000 ppm or greater for agitators, 1,000 ppm or greater for pumps, or 500 ppm or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

(c) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) For instrumentation systems that are not monitored by the method specified in § XX.X5(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at 44 potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(d) First attempts at repair include, but are not limited to, the best practices described under § XX.X2–7(e).

SectionXX.X2–9 Standards: Product accumulator vessels.

Each product accumulator vessel shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel to a control device as described in § XX.X2–11, except as provided in § XX.X2–1(c).

Section XX.X2–10 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in VHAP service.

(c) Delay of repair for valves, connectors, and agitators is also allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § XX.X2–11.

(d) Delay of repair for pumps is also allowed if:

(1) Repair requires replacing a single mechanical seal system with

(i) A dual mechanical seal system that meets the requirements of § XX.X2–2(e),

(ii) a pump that meets the requirements of § XX.X2–2(f), or

(iii) a closed-vent system control device that meets the requirements of § XX.X2–2(g), and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

Section XX.X2–11 Standards: Closed-vent systems and control devices.

(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this subpart shall comply with the provisions of this section, except as provided in § XX.X2–1(c).

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the organic emissions vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the organic emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C.

(d) Flares used to comply with this subpart shall comply with the requirements of § 60.18.

(e) Owners or operators of control devices that are used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

(f) (1) Closed-vent systems shall be designed for and operated with an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § XX.X5(c).

(2) Closed-vent systems shall be monitored to determine compliance with this section initially in accordance with § 61.05, annually, and at other times requested by the Administrator, except equipment components on closed vent systems meeting the descriptions in § XX.X2–7(h) and § XX.X2–13(f) through (h) shall meet the requirements of those sections.

(3) Leaks, as indicated by an instrument reading greater than 500 ppm above background and visual inspections, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(g) Whenever VHAP emissions are vented to a closed-vent system or control device used to comply with the provisions of this subpart, such system or control device shall be operating.

Section XX.X2–12 Standards: Agitators in gas/vapor service and in light liquid service.

(a)(1) Each agitator shall be monitored monthly to detect leaks by the methods specified in § XX.X5(b), except as provided in § XX.X2–1(c).

(2) Each agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the agitator, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) Any agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § XX.X2–11 is exempt from the requirements of paragraphs (a)-(c).

Section XX.X2–13 Standards: Connectors in Gas/Vapor Service and in Light Liquid Service

(a) The owner or operator of an affected process unit shall monitor all connectors in gas/vapor and light liquid service, except as provided in §§ XX.X2–1 (c), and (f) through (h) of this section, at the intervals specified in paragraph (b) of this section.

(1) The connectors shall be monitored to detect leaks by the method specified in § XX.X5(b).

(2) If an instrument reading greater than or equal to 500 ppm is measured, a leak is detected.

(b) The owner or operator shall monitor for leaks at the intervals specified below.

(1) Within the first 12 months after the specified applicability dates described in § XX.X0(b) for each group of existing process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(2) Within the first 12 months after the beginning of startup or within 12 months after (date of promulgation), whichever is later, for new process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(3) After conducting the initial survey required in paragraph (b)(1) of this section, the owner or operator shall perform all subsequent monitoring of connectors at the following frequencies, except as provided in paragraph (c)(2) of this section:

(i) Once per calendar year, if the percent leaking connectors in the process unit was 0.5 percent or greater during the last required monitoring period.

(ii) Once every two calendar years, if the percent leaking connectors was less than 0.5 percent during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The percent leaking connectors will be calculated for the total of all monitoring performed during the two-year period.

(iii) If the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5 percent leaking connectors from the 2-year monitoring period, the owner or operator may monitor the connectors 1 time every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20 percent of the connectors each year until all connectors have been monitored within 4 years.

(iv) If a process unit complying with the requirements of paragraph (b) of this section using a 4-year monitoring interval program has greater than or equal to 0.5 percent but less than 1 percent leaking connectors, the owner or operator shall increase the monitoring frequency to 1 time every 2 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(v) If a process unit complying with requirements of paragraph (b) using a 4-year monitoring interval program has 1 percent or greater leaking connectors, the owner or operator shall increase the monitoring frequency to 1 time per year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(4) After (Insert date of publication of proposed rule in the **Federal Register**), if an owner or operator eliminates a connector subject to monitoring under paragraph (b) of this section either by welding it completely around the circumference of the interface or by physically removing the connector and welding the pipe together, the owner or operator shall check the integrity of the weld by monitoring it according to the procedures in § XX.X5(b) or by testing using X-ray, acoustic monitoring, hydrotesting, or other applicable method. Welds created after (Insert date of publication of proposed rule in the **Federal Register**) but before (Insert date of publication of final rule in the **Federal Register**) shall be monitored or tested by *(Insert 3 months after date of publication of final rule in the* **Federal Register**); welds created after (Insert date of publication of final rule in the **Federal Register**) shall be monitored or tested within 3 months after being welded. If an inadequate weld is found or the connector is not welded completely around the circumference, the connector is not considered a welded connector as described in § XX.XI, and is therefore not exempt from the provisions of this subpart. Connectors welded on or after (Insert date of publication of proposed rule in the **Federal Register**) can count as connectors removed from the process and be eligible for removed connector credits as described in paragraph (i) of this section.

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks within the first 3 months after being returned to VHAP service, including those determined to be nonrepairable prior to process unit shutdown. If the followup monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section, unless it is determined to be nonrepairable, in which case it is counted as a nonrepairable for the purposes of paragraph (i)(2) of this section.

(ii) As an alternative to the requirements in paragraph (c)(1)(i) of this section, an owner or operator may choose to calculate percent leaking connectors for the monitoring periods described in paragraph (b) of this section, by setting the nonrepairable component, C_N, in the equation in paragraph (i)(2) of this section to zero for all monitoring periods.

(iii) An owner or operator may switch alternatives described in paragraph (c)(1) (i) and (ii) of this section at the end of the current monitoring period he is in, provided that he notify the Administrator as required in § XX.X7(b)(7) and begin the new alternative in annual monitoring. The initial monitoring in the new alternative shall be completed no later than 12 months after notification of the Administrator of the switch.

(2) As an alternative to the requirements of paragraph (b)(3) of this section, each screwed connector 2 inches or less installed in a process unit before (Insert date of publication of proposed rule in **Federal Register**) may:

(i) Comply with the requirements of § XX.X2–8, and

(ii) Be monitored for leaks within the first three months after being returned to VHAP service after having been opened or otherwise had the seal broken. If the followup monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section.

(d) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (g) of this section and in § XX.X2–10. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(e) If a leak is detected, the connector shall be monitored for leaks within the first three months after its repair.

(f) Any connector that is designated, as described in § XX.X6(i)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with paragraphs (a) through (e) of this section; and

(2) The owner or operator has a written plan that requires monitoring of the connector as frequent as practicable during safe to monitor periods.

(g) Any connector that is designated, as described in § XX.X6(i)(3), as an unsafe-to-repair connector is exempt from the requirements of paragraphs (a), (d), and (e) of this section if:

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (d) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit shutdown.

(h)(1) Any connector that is designated, as described in § XX.X6(i)(4) as inaccessible, or is glass or glass-lined, is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping and reporting requirements of § XX.X6 and § XX.X7. An inaccessible connector is one that is

(i) Buried,

(ii) Insulated in a manner that prevents access to the connector by a monitor probe,

(iii) Obstructed by equipment or piping that prevents access to the connector by a monitor probe, or

(iv) Unable to be reached from a 25-foot portable scaffold on the ground, and is greater than 2 meters above a support surface.

(2) If any inaccessible or glass or glass-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § XX.X2–10 and paragraph (g) of this section.

(3) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(i) For use in determining the monitoring frequency, as specified in paragraph (b) of this section, the percent leaking connectors shall be calculated as follows:

(1) For the first monitoring period, use the following equation:

$$\%\ C_L = C_L = C_L/(C_t + C_c) \times 100$$

Where:

$\%\ C_L$ = percent leaking connectors

C_L = number of connectors measured at 500 ppm or greater, by the method specified in § XX.X5(b)

C_t = total number of monitored connectors in the process unit

C_C = Optional credit for removed connectors = 0.67 × net (i.e., total removed—total added) number of connectors in VHAP service removed from the process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $C_C = 0$.

(2) For subsequent monitoring periods, use the following equation:

$$\%\ C_L = [(C_L - C_{AN})/(C_t + CC)] \times 100$$

Where:

$\%\ C_L$ = percent leaking connectors

C_L = number of connectors, including nonrepairables, measured at 500 ppm or greater, by the method specified in § XX.X5(b)

C_{AN} = number of allowable nonrepairable connectors, as determined by monitoring required in paragraphs (b)(3) and (c) of this section, not to exceed 2 percent of the total connector population, C_t

C_t = total number of monitored connectors, including nonrepairables, in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net number (i.e., total removed—total added) of connectors in VHAP service removed from the process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $C_C = 0$.

§ XX.X3–1 Quality Improvement Program (QIP) for Valves.

(a) In Phase III, to comply with the requirements in § XX.X2–7(d)(1)(ii), an owner or operator may elect to comply with one of the alternative quality improvement programs specified in paragraphs (d) and (e) of this section. The decision to use one of these alternative provisions to comply with the requirements of § XX.X2–7(d)(l)(ii) must be made during the first year of Phase III for existing process units and for new process units.

(b) An owner or operator of a process unit subject to the requirements of paragraphs (d) or (e) of this section shall comply with those requirements until the process unit has fewer than 2 percent leaking valves, calculated as a rolling average of 2 consecutive quarters as specified in § XX.X2–7(e).

(c) After the process unit has fewer than 2 percent leaking valves, the owner or operator may elect to comply with the requirements in § XX.X2–7, to continue to comply with the requirements in paragraph (e) (or (d), if appropriate) of this section, or both. If the owner or operator elects to continue the QIP, the owner or operator is exempt from the requirements for performance trials as specified in paragraph (e)(6) of this section, or further progress as specified

in paragraph (d)(4) of this section, as long as the process unit has fewer than 2 percent leaking valves. If the owner or operator elects to comply with both paragraph (e) of this section and § XX.X2–7, he may also take advantage of the lower monitoring frequencies associated with lower leak rates in § XX.X2–7. If the owner or operator elects not to continue QIP, the QIP is no longer an option if the process unit again exceeds 2 percent leaking valves, and in such case, monthly monitoring will be required.

(d) The following requirements shall be met if an owner or operator elects to use a QIP to demonstrate further progress:

(1) The owner or operator shall continue to comply with the requirements in § XX.X2–7 except each valve shall be monitored quarterly.

(2) The owner or operator shall collect the following data, and maintain records as required in § XX.X6(m), for each valve in each process unit subject to the QIP:

(i) The maximum instrument reading observed in each monitoring observation before repair, the response factor for the stream if appropriate, the instrument model number, and date of the observation.

(ii) Whether the valve is in gas or light liquid service.

(iii) If a leak is detected, the repair methods used and the instrument readings after repair.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the QIP.

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraph (d)(4)(ii) of this section.

(i) Demonstration of progress shall mean that for each quarter there is at least a 10 percent reduction in the percent leaking valves from the percent leaking valves determined for the preceding monitoring period. The percent leaking valves shall be calculated as a rolling average of 2 consecutive quarters of monitoring data. The percent reduction shall be calculated using the rolling average percent leaking valves, according to the following:

$$\%LV_R = (\%LV_{AVG2} - \%LV_{AVG1})/\%LV_{AVG2} \times 100$$

where:

$\%LV_R$ = Percent leaking valve reduction

$$\%LV_{AVG1} = (\%V_{Li} + \%V_{Li+1})/2 \text{ and}$$

$$\%LV_{AVG2} = (\%V_{Li+1} + \%V_{Li+2})/2$$

where:

$\%V_{Li}$, $\%V_{Li+1}$, $\%V_{Li+2}$ are percent leaking valves calculated for subsequent monitoring periods, i, i+1, i+2

(ii) An owner or operator who fails for 2 consecutive rolling averages to demonstrate at least a 10 percent reduction per quarter in percent leaking valves or that the overall average percent reduction based on 2 or more rolling averages is less than 10 percent per quarter shall either comply with the requirements in § XX.X2–7(d)(1) using monthly monitoring or shall comply using a QIP for technology review as specified in paragraph (e) of this section. If the owner or operator elects to comply with the requirements of paragraph (e) of this section, the schedule for performance trials and valve replacements remains as specified in paragraph (e) of this section.

(e) The following requirements shall be met if an owner or operator elects to use a QIP of technology review and improvement:

(1) The owner or operator shall comply with the requirements in § XX.X2–7 except the requirement for monthly monitoring in paragraph § XX.X2–7(d)(1)(i) does not apply.

(2) The owner or operator shall collect the data specified below, and maintain records as required in § XX.X6(m), for each valve in each process unit subject to the QIP. The data may be collected and the records may be maintained on a process unit or group of process units basis.

(i) The data shall include the following:

(A) Valve type (e.g., ball, gate, check); valve manufacturer; valve design (e.g., external stem or actuating mechanism, flanged body); materials of construction; packing material; and year installed.

(B) Service characteristics of the stream such as operating pressure, temperature, line diameter, and corrosivity.

(C) Whether the valve is in gas or light liquid service.

(D) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if adjusted, instrument model number, and date of the observation.

(E) If a leak is detected, the repair methods used and the instrument readings after repair.

(F) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the QIP.

(4) The owner or operator shall inspect all valves removed from the process unit due to leaks. The inspection shall determine which parts of the valve have failed and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (e)(2) of this section to determine the services, operating or maintenance practices, and valve designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to identify any superior performing valve technologies that are applicable to the service(s), operating conditions, or valve designs associated with poorer than average emission performance. A superior performing valve technology is one for which a group of such valves has a leak frequency of less than 2 percent for specific applications in such a process unit. A candidate superior performing valve technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 2 percent leaking valves in the process unit.

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of valves removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify valve designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the valve design and operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of Phase III. The first analysis shall be performed using a minimum of 2 quarters of data. An analysis of the data shall be done each year the process unit is in the QIP.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify superior performing valve designs or technologies that can be applied to the operating conditions and services identified as having poorer than average performance, except as provided in paragraph (e)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit the valve designs or technologies that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of valves or operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 2 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing valve technologies is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § XX.X6(m)(6)(ii).

(ii) The number of valves in the trial evaluation program shall be the lesser of 1 percent or 20 valves for programs involving single process units and the lesser of 1 percent or 50 valves for programs involving groups of process units.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing valve designs or technologies to be evaluated, the stages for evaluating the identified candidate valve designs or technologies, including the estimated time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated.

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial valves.

(iv) The performance trials shall initially be conducted for, at least, a 6-month period beginning not later than 18 months after the start of Phase III. Not later than 24 months after the start of Phase III, the owner or operator shall have identified valve designs or technologies that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (e)(6)(vi) of this section. The compilation of candidate and demonstrated superior emission performance valve designs or technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 total employees shall be exempt from trial evaluations of valves. Plant sites exempt from the trial evaluations of valves shall begin the valve replacement program at the start of the fourth year of Phase III.

(vi) An owner or operator who has conducted performance trials on all candidate superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible candidate superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgement that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator who elects to use a QIP for technology review and improvement shall prepare and implement a valve quality assurance program that details purchasing specifications and maintenance procedures for all valves in the process unit. The quality assurance program may establish any number of categories, or classes, of valves as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (e)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (e)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be reviewed and, as appropriate, updated each year as long as the process unit has 2 percent or more leaking valves.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of valves. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the valve;

(C) Include a written procedure for bench testing of valves that specifies performance criteria for acceptance of valves and specifies criteria for the precision and accuracy of the test apparatus. All valves repaired off-line after preparation of the quality assurance plan shall be bench tested for leaks. This testing may be conducted by the owner or operator of the process unit, by the vendor, or by a designated representative. The owner or operator shall install only those valves that have been documented through bench testing to be nonleaking.

(D) Require that all valves repaired on-line be tested using the method specified in § XX.X5(b) for leaks for 2 successive months, after repair.

(E) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the process unit or by a designated representative.

(F) Detail off-line valve maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished valves will meet the design specifications for the valve type and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees; and no later than the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees.

(8) Beginning at the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees and at the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees, each valve that is replaced for any reason shall be replaced with a new or modified valve that complies with the quality assurance standards for the valve category and that is identified as

superior emission performance technology. Superior emission performance technology means valves or valve technologies identified with emission performance that, combined with appropriate process, operating, and maintenance practices, will result in less than 2 percent leaking valves for specific applications in a large population, except as provided in paragraph (e)(8)(ii) of this section.

(i) The valves shall be maintained as specified in the quality assurance program.

(ii) If a superior emission performance technology cannot be identified, then valve replacement shall be with one of (if several) the lowest emission performance technologies that has been identified for the specific application.

Section XX.X3–2 Quality Improvement Program for Pumps

(a) In Phase III, if, on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or 3 pumps in a process unit (or plant site) leak, the owner or operator shall comply with the requirements of this section as specified below:

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or 3 pumps, as calculated as a 6-month-rolling average, in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § XX.X2–2.

(c) If in a subsequent monitoring period the process unit (or plant site) has greater than 10 percent of the pumps leaking or 3 pumps leaking (calculated as a 6-month-rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) The quality improvement program shall include the following:

(1) The owner or operator shall comply with the requirements in § XX.X2–2.

(2) The owner or operator shall collect the following data, and maintain records as required in § XX.X6(m), for each pump in each process unit (or plant site) subject to the QIP. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (e.g., piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (e.g., external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) The owner or operator shall inspect all pumps or pump seals which exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an interior intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using a minimum of 6 months of data. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance, except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § XX.X6(m)(6)(ii).

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or 2 pumps for programs involving single process units and the lesser of 1 percent or 5 pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be 1.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated.

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted, at least, for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgement that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has 3 leaking pumps.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative.

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees; and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace, as described in paragraphs (i) and (ii) of this paragraph, the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance which, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § XX.X2–2 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next

planned process unit shutdown, provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

Section XX.X4–1 Alternative Means of Emission Limitation: General

(a) Permission to use an alternative means of emission limitation under section 112(e)(3) of the Clean Air Act shall be governed by the following procedures:

(b) Where the standard is an equipment, design, or operational requirement:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(2) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(3) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Where the standard is a work practice:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(2) For each source for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(3) For each source for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for permission shall commit, in writing, for each source to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (c)(4) of this section.

(6) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(d) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(e)(1) Manufacturers of equipment used to control equipment leaks of a VHAP may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the VHAP achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (b), (c), and (d) of this section.

Section XX.X4–2 Alternative Means of Emission Limitation: Batch Processes

(a) As an alternative to complying with the requirements of §§ XX.X2–2 through XX.X2–10, XX.X2–12, XX.X2–13, XX.X3–1, and § XX.X3–2, an owner or operator of a batch process that operates in VHAP service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § XX.X4–1. The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks.

(b) The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart. An owner or operator who complies with the provisions of this paragraph is exempt from the monitoring provisions of § XX.X2–2, § XX.X2–7, § XX.X2–8, XX.X2–10, § XX.X2–12, § XX.X2–13, § XX.X3–1, and § XX.X3–2 of this subpart.

(1) Each time equipment is reconfigured for production of a product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before VHAP is first fed to the equipment and the equipment is placed in VHAP service. When the seal is broken between two items of equipment or when equipment is changed in a section of the batch product-process equipment train, pressure testing is required only for the new or disturbed equipment. Each batch product process that operates in VHAP service during a calendar year shall be pressure tested at least once during that calendar year.

(2) The batch product process equipment shall be tested with a gas using the procedures specified in § XX.X5(f) or with a liquid using the procedures specified in § XX.X5(g).

(3)(i) For pressure tests using a gas, a leak is detected if the rate of change in pressure is greater than 1 psig in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4)(i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before VHAP is fed to the equipment.

(ii) If a batch product-process fails the retest or the second of two consecutive pressure tests, it shall be repaired as soon as practicable, but not later than 30 calendar days after the equipment is placed in VHAP service, provided the conditions specified in paragraph (d) of this section are met.

(c) The following requirements shall be met if an owner or operator elects to monitor the equipment to detect leaks by the method specified in § XX.X5(b) to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ XX.X2–2 to XX.X2–9, §§ XX.X2–11 to XX.X2–13, XX.X3–1 and § XX.X3–2.

(2) The equipment shall be monitored for leaks by the method specified in § XX.X5(b) when the equipment is in VHAP service, in use with an acceptable surrogate volatile organic compound which is not a VHAP or is in use with any other detectable gas or vapor.

(3) The equipment shall be monitored for leaks as specified below:

(i) Each time the equipment is reconfigured for the production of a product, the reconfigured equipment shall be monitored for leaks within 30 days of being returned to VHAP service. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment.

(ii) Connectors shall be monitored in accordance with the requirements in § XX.X2–13.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in the table below by the proportion of the year the batch product-process equipment train is operating with processes that use VHAP and the monitoring frequency for continuous processes.

Batch process time in use	Equivalent continuous process monitoring frequency		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually.	Annually.
50 to <75%	Bimonthly.	Three times.	Semiannually.
75 to 100%	Monthly	Quarterly	Semiannually.

(iv) Valves may be monitored once per year and pumps and agitators may be monitored once per quarter if the time each individual item of equipment is in VHAP service is less than 2190 hours in a calendar year.

(v) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section.

(d) Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

Section XX.X4–3 Alternative Means of Emission Limitation: Enclosed-Vented Process Units

Process units enclosed in such a manner that all emissions from equipment leaks are vented through a closed-vent system to a control device meeting the requirements of § XX.X2–11 are exempt from the monitoring requirements of §§ XX.X2–2, XX.X2–7, XX.X2–8, XX.X2–12, and XX.X2–13. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

Section XX.X5 Test Methods and Procedures

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Monitoring, as required in § XX.X2, § XX.X3, and § XX.X4, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21, 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21, 40 CFR part 60.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 0.2 ppm of hydrocarbon in air); and

(ii)(A) For Phase I, a mixture of methane in air at a concentration of approximately, but less than, 10,000 ppm.

(B) For Phase II, a mixture of methane and air at a concentration of approximately, but less than, 10,000 ppm for agitators, 5,000 ppm for pumps, and 500 ppm for all other equipment, except as provided in subparagraph (b)(4)(iii) of this section.

(C) For Phase III, a mixture of methane and air at a concentration of approximately, but less than, 10,000 ppm methane for agitators, 2,000 ppm for pumps in food/medical service, 5,000 ppm for pumps in polymerizing monomer service, 1,000 ppm for all other pumps, and 500 ppm for all other equipment, except as provided in subparagraph (b)(4)(iii) of this section.

(iii) The instrument may be calibrated at a higher methane concentration up to 2,000 ppm than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. The instrument may not be calibrated at a lower methane concentration than the leak definition concentration for a specific piece of equipment.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21, 40 CFR part 60.

(6) The instrument response factors shall be considered in the following manner:

(i) The response factors used shall be the instrument response factor determined for the individual VHAP at 500 ppm. The response factors may be obtained from the available literature, the instrument manufacturer, or determined for the specific instrument and VHAP.

(ii) Chemical composition of individual process streams may be determined by sampling, engineering calculations, or process knowledge. A separate determination for each stream is not necessary if all or portions of the process unit can be shown to exhibit similar composition. The basis for all process stream composition determinations shall be documented as required in § XX.X6(b)(11).

(iii) If the response factors at 500 ppm for the VHAP's that account for 90 percent or more by weight of the process stream are all less than 3, the instrument readings may be used without adjustment for response factors.

(iv) If any of the response factors at 500 ppm for the VHAP's that account for 90 percent or more by weight of the process stream is 3 or greater, then a weighted average response factor for the VHAP in the process stream shall be calculated using the procedures specified in paragraph (b)(6)(v) of this section. If the process stream weighted average response factor is less than 3, the instrument readings may be used without adjustment for response factors. If the process stream weighted average response factor is greater than 3, the instrument readings shall be adjusted for response factors as indicated below:

(A) Adjust the instrument readings by multiplying by the response factor,

(B) Select another instrument, determine or obtain instrument response factors for the VHAP in question, and evaluate the need for adjustment as specified in paragraphs (b)(6)(iii) and (b)(6)(iv) of this section, or

(C) Calibrate the instrument with a different reference compound or mixture (i.e., one of the VHAP, a VOC other than methane, or the process stream mixture) so that the instrument has a response factor for 90 percent of the VHAP or for the process stream less than 3.

(v) The process stream average response factor shall be calculated as follows:

$$RF_{avg} = \frac{\sum_{i=1}^{n} (\%C_i)\ (RF_{ci})}{\sum_{i=1}^{n} (\%C_i)}$$

Where:

RF_{avg} = Weighted average response factor.

$\%C_i$ = Molar fraction, or volume percent if in gaseous form, of organic compound i in the process stream.

RF_{ch} = Response factor of the instrument for organic compound i at 500 ppm.

(c) When equipment is tested for compliance as required in § XX.X2–3(i), § XX.X2–4, and § XX.X2–11(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21, 40 CFR part 60.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21, 40 CFR part 60.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d)(1) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected not to exceed 5 percent by weight during the calendar year. For purposes of determining the percent VHAP content of the process fluid that is contained in or contacts equipment, Method 18 shall be used.

(2)(i) An owner or operator may use good engineering judgment rather than the procedures in paragraph (d)(1) of this section to determine that the percent VHAP content does not exceed 5 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (d)(1) of this section shall be used to resolve the disagreement.

(ii) Conversely, the owner or operator may determine that the VHAP content of the process fluid does not exceed 5 percent by weight by, for example, accounting for 98 percent of the content and showing that VHAP is less than 3 percent.

(3) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised after following the procedures in paragraph (d)(1) of this section, or by documenting that a change in the process or raw materials no longer causes the equipment to be in VHAP service.

(4) Samples used in determining the percent VHAP content shall be representative of the process fluid that is contained in or contacts the equipment.

(e) Reference methods used in determining compliance with flares are those required in § 60.18.

(f) The following procedures shall be used to pressure test batch product-process equipment using a gas (e.g., air or nitrogen) to demonstrate compliance with the requirements of § XX.X4–2(b)(3)(i).

(1) The batch product-process equipment train shall be pressurized with a gas to the operating pressure of the equipment. The equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting.

(2) Once the test pressure is obtained, the gas source shall be shut off.

(3) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop was exceeded. The pressure in the batch product-process equipment shall be measured after the gas source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta \frac{P}{t} = \frac{(P_f - P_i)}{(t_f - t_i)}$$

where:

$\Delta \frac{P}{t}$ = change in pressure, psig/hr

P_f = final pressure, psig
P_i = initial pressure, psig
$t_f - t_i$ = elapsed time, hours

(4) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of ±2.5 mm Hg in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device.

(g) The following procedures shall be used to pressure-test batch product-process equipment using a liquid to demonstrate compliance with the requirements of § XX.X4–2(b)(3)(ii).

(1) The batch product-process equipment train, or section of the train, shall be filled with the test liquid (e.g., water, alcohol). Once the equipment is filled, the liquid source shall be shut off.

(2) The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

(3) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

Section XX.X8 Recordkeeping Requirements

(a) An owner or operator of more than one process unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these process units in one recordkeeping system if the system identifies each record by process unit and the program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. All records and information required by this section shall be maintained in a manner that can be readily accessed at the plant site. This could include physically locating the records at the plant site or accessing the records from a central location by computer at the plant site.

(b) Except as provided in paragraphs (f) and (g) of this section, the following information pertaining to all equipment in each process unit subject to the requirements in § XX.X2–1 to § XX.X2–13 shall be recorded:

(1)(i) A list of identification numbers for equipment (except connectors exempt from monitoring and recordkeeping identified in § XX.X2–13 and instrumentation systems) subject to the requirements of this subpart and a site layout showing the relative location of the equipment in the process unit. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated.

(ii) A table listing the monitoring frequency and other provisions of this subpart that are being implemented for each item of equipment.

(iii) Physical tagging of the equipment to indicate that it is in VHAP service is not required. Equipment subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(2)(i) A list of identification numbers for compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 ppm above background, under the provisions of XX.X2–3(i).

(ii) The designation of this equipment as subject to the requirements of § XX.X2–3(i) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § XX.X2–4(a).

(4)(i) The dates and results of each compliance test required in § XX.X2–3(i) and XX.X2–4.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at each piece of equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Instrumentation system identification. Individual components in the instrumentation system need not be identified.

(7) A list of identification numbers for equipment in VHAP service less than 300 hours per year within a process unit subject to the provisions of this subpart under § XX.X0.

(8)(i) Identification, either by list, location (area or grouping), or tagging of connectors disturbed since the last monitoring period required in § XX.2–13(b), as described in § XX.X2–13(c).

(ii) The date and results of followup monitoring as required in § XX.X2–13(c). If identification of disturbed connectors is made by location, then all connectors within the designated location shall be monitored.

(9) A list of reconfigured equipment in batch product process units since the last monitoring period required in § XX.X4–2(c)(3)(ii)–(iv), as described in § XX.X4–2(c)(3)(i).

(10) A list of valves removed from and added to the process unit, as considered in § XX.X2–7(e)(1), and a list of connectors removed from and added to the process unit, as considered in § XX.X2–13(i)(1). This is not required unless the net credits for removed valves and connectors are expected to be used.

(11) Documentation of process stream composition as required in § XX.X5(b)(6)(ii).

(12) Identification of screwed connectors subject to the requirements of § XX.X2–13(c)(2). Identification can be by area or grouping as long as the total number within each group or area is recorded.

(13) Identification of welded connectors monitored or tested as required in § XX.X2–13(b)(4), the date of the weld, and the date of monitoring or testing.

(c) When each leak is detected as specified in § XX.X2–2, § XX.X2–3, § XX.X2–7, § XX.X2–8, § XX.X2–11, § XX.X2–12, and § XX.X2–13, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve or connector may be removed after it has been monitored as specified in § XX.X2–7(f)(3) § XX.X2–13(e), and § XX.X3–1(e)(7)(i)(D), and no leak has been detected during the followup monitoring.

(3) The identification on equipment, except on a valve or connector, may be removed after it has been repaired.

(d) When each leak is detected as specified in § XX.X2–2, § XX.X2–3, § XX.X2–7, § XX.X2–8, § XX.X2–11, § XX.X2–12, and § XX.X2–13, the following information shall be recorded and kept for 2 years:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) Maximum instrument reading measured by the method specified in § XX.X5(b) after it is successfully repaired or determined to be nonrepairable.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. If delay of repair was cause by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked before depletion and the reason for depletion.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process unit shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(8) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(9) The date of successful repair of the leak.

(e) The following information shall be recorded for each process unit subject to the requirements of § XX.X2–2 to § XX.X2–13:

(1) A schedule of monitoring for valves and for connectors.

(2) The number of leaking pumps, the total number of pumps, and the percent leaking pumps during each monitoring period.

(3) The number of leaking valves, the total number of valves, all net credits for removed valves (only if credits are taken), the number of nonrepairable valves, and the percent leaking valves during each monitoring period.

(4) The number of leaking connectors, the total number of monitored connectors, all net credits for removed connectors (only if credits are taken), the number of nonrepairable connectors, and the percent leaking connectors during each monitoring period. The number of leaking screwed connectors, the total number of monitored screwed connectors, and the percent leaking screwed connectors during each monitoring period.

(5) The dates and durations of

(i) startups and shutdowns of a process unit, and

(ii) any unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit that is not defined as a process unit shutdown. If the duration exceeds 24 hours, the calculations used in determining that emissions from clearing process material from the process unit or part of the process unit would exceed emissions from delay of repair of leaking components until the next scheduled shutdown shall be recorded. The calculation shall assume that the purged material is collected and destroyed or recovered in a control device complying with § XX.X2–11.

(f) The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this subpart is exempt from the requirements of paragraphs (b), (c), (d), (e), (i), and (m) of this section. Instead, the owner or operator shall maintain records of the following information:

(1) A list of identification numbers for each batch product process equipment train used to produce products during the calendar year and the area of the plant site where the equipment train is located.

(2) Records demonstrating the equipment is in use in a batch process during the calendar year. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit.

(3) Physical tagging of the equipment to identify that it is in VHAP service and subject to the provisions of this subpart is not required. Equipment in a batch product process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(4) The dates of each pressure test required in § XX.X4–2(b), the test pressure, and the pressure drop observed during the test.

(5) Records of any visible, audible, or olfactory evidence of fluid loss.

(g) When a batch product process equipment train does not pass 2

consecutive pressure tests, the following information shall be recorded in a log and kept for 2 years:

(1) The date of each pressure test and the date of each leak repair attempt.

(2) Repair methods applied in each attempt to repair the leak.

(3) The reason for the delay of repair.

(4) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment.

(5) The date of successful repair.

(h) The following information pertaining to the design requirements for closed-vent systems and control devices described in § XX.X2–11 shall be recorded:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) A description of the parameter or parameters monitored, as required in § XX.X2–11(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(4) Dates and durations when the closed-vent systems and control devices required in § XX.X2–2, § XX.X2–3, § XX.X2–4, § XX.X2–5, and § XX.X2–9 are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(5) Dates and durations during which the monitoring system or monitoring device is inoperative.

(6) Dates and durations of startups and shutdowns of the closed-vent systems and control devices required in § XX.X2–2, § XX.X2–3, § XX.X2–4, § XX.X2–5, and § XX.X2–9.

(i) The following information pertaining to all valves subject to the requirements of § XX.X2–7(h) and (i) and all connectors subject to the requirements of § XX.X2–13(f), (g), and (h) shall be recorded:

(1) A list of identification numbers for valves and connectors that are designated as unsafe to monitor, an explanation for each valve and connector stating why the valve or connector is unsafe to monitor, and the plan for monitoring each valve and connector.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(3) A list of identification numbers for connectors that are designated as unsafe to repair and an explanation for each connector stating why the connector is unsafe to repair.

(j) The following information shall be recorded:

(1) Design criterion required in § XX.X2–2(e)(5) and § XX.X2–3(e)(2) and an explanation of the design criterion; and

(2) Any changes to this criterion and the reasons for the changes.

(k) Information, data, and analysis used to determine that a piece of equipment or process unit is in heavy liquid service or is not in VHAP service shall be recorded. Such a determination shall include an analysis or demonstration that the feed or raw materials, products, by-products, co-products, or intermediates do not include sufficient chemicals listed in § XX.X6–1 to meet the criteria of "in VHAP service". Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(l) The date and duration of each process unit startup and shutdown shall be recorded.

(m) Each owner or operator of an affected process unit subject to the requirements of § XX.X3–1 and § XX.X3–2 shall maintain the following records for the period of the QIP for the affected process unit:

(1) For owners or operators who elect to use a reasonable further progress QIP, as specified in § XX.X3–1(d):

(i) All data required in § XX.X3–1(d)(2).

(ii) The percent leaking valves observed each quarter and the rolling average percent reduction observed in each quarter.

(iii) The beginning and ending dates while meeting the requirements of § XX.X3–1(d).

(2) For owners or operators who elect to use a technology review and improvement QIP, as specified in § XX.X3–1(e):

(i) All data required in § XX.X3–1(e)(2).

(ii) The percent leaking valves observed each quarter.

(iii) Documentation of all inspections conducted under the requirements of § XX.X3–1(e)(4) and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § XX.X3–1(e).

(3) For owners or operators subject to the requirements of the pump QIP as specified in § XX.X3–2:

(i) All data required in § XX.X3–2(d)(2).

(ii) The rolling average percent leaking pumps.

(iii) Documentation of all inspections conducted under the requirements of § XX.X3–2 (d) (4) and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § XX.X3–2(d).

(4) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(5) Records of all analyses required in § XX.X3–1(e) and § XX.X3–2(d). The records will include the following:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing valve or pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under § XX.X3–1(e) (6) (iii) and § XX.X3–2(d) (6) (iii).

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(6) All records documenting the quality assurance program for valves or pumps as specified in § XX.X3–1(e) (7) and § XX.X3–2(d)(7).

(7) Records indicating that all valves or pumps replaced or modified during the period of the QIP are in compliance with the quality assurance requirements in § XX.X3–1(e)(7) and § XX.X3–2(d)(7).

(8) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in § XX.X3–2(d)(8).

(9) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

(n) Owners and operators choosing to comply with the requirements of § XX.4–3 shall maintain the following records:

(1) Identification of the process unit(s) and the VHAPs they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

(o) The provisions of § 61.14(f) do not apply to process units subject to this subpart.

(Approved by the Office of Management and Budget under control number _____.)

Section XX.X7 Reporting Requirements

(a)(1) An owner or operator of a process unit subject to the provisions of this subpart shall submit a statement in writing so notifying the Administrator.

(2) In the case of an existing process unit or a new process unit which has an initial startup date preceding the effective date, the statement is to be submitted within 90 calendar days of the applicability dates specified in § XX.X0(b), unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new process units which did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction or reconstruction as described in § 61.07.

(4) The statement is to contain the following information for each process unit, except as provided in paragraph (b) (5) of this section:

(i) Process unit identification.

(ii) Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service.

(iii) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(iv) Planned schedule for each phase of the requirements of this subpart.

(5) The statement is to contain the following information for each process unit subject to the requirements in § XX.X4–2(b):

(i) Batch product process equipment train identification, and

(ii) Planned schedule for pressure testing the batch product process equipment train.

(b) Except as provided in paragraph (c) of this section, a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section, that includes the following information, as applicable:

(1) Process unit identification, frequency of monitoring, and specific provisions of this subpart being implemented.

(2) For each monitoring period during the semiannual reporting period,

(i) The number of valves for which leaks were detected as described in § XX.X2–7(b), the percent leakers, and the total number of valves monitored;

(ii) The number of valves for which leaks were not repaired as required in § XX.X2–7(f), identifying the number of those that are determined nonrepairable.

(iii) The number of pumps for which leaks were detected as described in § XX.X2–2(b), the percent leakers, and the total number of pumps monitored.

(iv) The number of pumps for which leaks were not repaired as required in § XX.X2–2(c).

(v) The number of compressors for which leaks were detected as described in § XX.X2–3(f).

(vi) The number of compressors for which leaks were not repaired as required in § XX.X2–3(g).

(vii) The number of connectors for which leaks were detected as described in § XX.X2–13(a), the percent of connectors leaking, and the total number of connectors monitored.

(viii) The number of screwed connectors for which leaks were detected as described in § XX.X2–13(a), the percent of screwed connectors leaking, and the total number of screwed connectors monitored.

(ix) The number of connectors for which leaks were not repaired as required in § XX.X2–13(d), identifying the number of those that are determined nonrepairable.

(x) The number of screwed connectors for which leaks were not repaired as required in § XX.X2–13(d).

(xi) The number of agitators for which leaks were detected as described in § XX.X2–12(b).

(xii) The number of agitators for which leaks were not repaired as required in § XX.X2–12(c).

(xiii) The facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible.

(3) Dates and durations of process unit, control device, or monitoring device startups or shutdowns which occurred within the semiannual reporting period.

(4) Revisions to items reported according to paragraph (a) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

Note: Compliance with the requirements of § 61.10(c) is not required for revisions documented under this paragraph.

(5) The results of all performance tests to determine compliance with § XX.X2–3(i), § XX.X2–4(a), and § XX.X2–11(f) conducted within the semiannual reporting period.

(6) The initiation of a monthly monitoring program under § XX.X2–7(d)(1)(i), or a QIP under either § XX.X3–1 or § XX.X3–2, whichever is applicable.

(7) Notification of the Administrator of a change in connector monitoring alternatives as described in § XX.X2–13(c)(1).

(c) For owners or operators electing to meet the requirements of § XX.X4–2(b), a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section. The semiannual report shall include the following information:

(1) Batch product process equipment train identification,

(2) The number of pressure tests conducted,

(3) The number of pressure tests where the equipment train failed the pressure test,

(4) The facts that explain any delay of repairs, and

(5) The results of all performance tests to determine compliance with § XX.X2–11(f).

(d) An application for approval of construction or reconstruction, § 61.05(a) and § 61.07, will not be required if

(1) The new process unit complies with the applicable standard in § XX.X2 or § XX.X4–2; and

(2) In the next semiannual report required by paragraph (b) of this section, the information in paragraph (a) (4) of this section is reported.

(e) An owner or operator of a process unit required to comply with § XX.X2–7(d) (1) shall notify the Administrator within 30 calendar days of initiating the monthly monitoring program under § XX.X2–7(d) (l) (i) or a QIP under § XX.X3–l.

(f) An owner or operator of a process unit required to comply with § XX.X2–2(d) (2) shall notify the Administrator within 30 calendar days of initiating a QIP under § XX.X3–2.

(g) If acceptable to both the Administrator and the owner or operator of the process unit, the reports may be submitted on electronic media.

(Approved by the Office of Management and Budget under control number _____.)

Section XX.X8–I List of Volatile Hazardous Air Pollutants.

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2 -Acetylaminofluorine	53963

Chemical name	CAS No.
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(ethylhexyl)phthalate (DEHP)	117817
Bis(chloromethyl) ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998
Cresols/Cresylic acid (isomers and mixture)	319773
Cresols/Cresylic acid (isomers and mixture)	95487
Cresols/Cresylic acid (isomers and mixture)	108394
Cresols/Cresylic acid (isomers and mixture)	108445
Cumene	98828
2,4-D, salts and esters	94757
DDE	3547044
Diazomethane	334883
Dibenzofurans	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene (p)	106467
3,3-Dichlorobenzidene	91941
Dichloroethyl ether (bis(2-chloroethyl)ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Diethyl aniline (N,N-Dimethylaniline)	121697
Diethyl sulfate	64675
3,3'-Dimethoxybenzidine	119904
Dimethyl aminoazobenzene	60117
3,3'-Dimethyl benzidine	119937
Dimethyl carbamoyl chloride	79447
Dimethyl formamide	68122
1,1-Dimethyl hydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	534521
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2 -Epoxybutane	106887
Ethyl acrylate	140885
Ethyl benzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylene thiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethers	0
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexamethylene-1, 6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933
Methyl hydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert butyl ether	1634044
4,4-Methylene bis(2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (MDI)	101688
4,4'-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
4-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Arociors)	1336363
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluene diamine	95807
2,4-Toluene diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixture)	1330207
xylenes (isomers and mixture)	95476
xylenes (isomers and mixture)	108383
Xylenes (isomers and mixture)	108423

Section XX.X8-2 List of Hazardous Organic Chemical Production Processes.

The provisions of this subpart apply to production processes that make the following chemicals:

CAS No.	Chemical Name
	GROUP I
121733	1-Chloro-3-nitrobenzene
67641	Acetone
75058	Acetonitrile
98862	Acetophenone
79061	Acrylamide
107131	Acrylonitrile
111693	Adiponitrile
107186	Allyl alcohol
123308	Aminophenol (p-isomer)
62533	Aniline
103333	Azobenzene
71432	Benzene
98486	Benzenedisulfonic acid
98113	Benzenesulfonic acid
92875	Benzidine
119619	Benzophenone (POM)
92524	Biphenyl
542881	Bis(Chloromethyl)Ether
108861	Bromobenzene
110634	Butanediol (1,4-isomer)
96480	Butyrolacetone
56235	Carbon tetrachloride
532274	Chloroacetophone (2-isomer)
95512	Chloroaniline (o-isomer)
108907	Chlorobenzene
25497294	Chlorodifluoromethane
67663	Chloroform
88733	Chloronitrobenzene (o-isomer)
100005	Chloronitrobenzene (p-isomer)
80159	Cumene hydroperoxide
98828	Cumene (isopropyl benzene)
110827	Cyclohexane
108930	Cyclohexanol
108941	Cyclohexanone
110838	Cyclohexene
95761	Dichloroaniline (all isomers)
106467	Dichlorobenzene (1,4-isomer) (PDB)
541731	Dichlorobenzene (m-isomer)
95501	Dichlorobenzene (o-isomer)
1331471	Dichlorobenzidine (3,3-isomer)
107062	Dichloroethane (1,2-isomer) (EDC)
111444	Dichloroethyl ether (bis(2-chloroethyl)ether)
75718	Dichlorodifluoromethane
111422	Diethanolamine
111466	Diethylene glycol
112732	Diethylene Glycol Dibutyl Ether
112367	Diethylene glycol diethyl ether (glycol ether)
111966	Diethylene glycol dimethyl ether (glycol ether)
124174	Diethylene Glycol Monobutyl Ether Acetate
124177	Diethylene glycol monobutyl ether acetate (glycol ether)
112345	Diethylene glycol monobutyl ether (glycol ether)
112152	Diethylene glycol monoethyl ether acetate (glycol ether)
111900	Diethylene glycol monoethyl ether (glycol ether)
111773	Diethylene glycol monomethyl ether (glycol ether)
77781	Dimethyl sulfate
108010	Dimethylaminoethanol (2-isomer)
25154545	Dinitrobenzenes
123911	Dioxane (1,4-Diethyleneoxide)
646060	Dioxilane
101815	Diphenyl Methane
101848	Diphenyl oxide (POM)
25265718	Dipropylene glycol
121013	Dodecylbenzene (n-isomer)
106898	Epichlorohydrin(1Chloro-2,3-epoxypropane)
141435	Ethanolamines (all isomers)
100414	Ethyl benzene
96491	Ethylene carbonate
106934	Ethylene dibromide (Dibromoethane) (EDB)
107211	Ethylene glycol
111557	Ethylene glycol diacetate
6299141	Ethylene Glycol Diethyl Ether
110714	Ethylene glycol dimethyl ether (glycol ether)
112072	Ethylene glycol monobutyl ether acetate (glycol ether)
111762	Ethylene glycol monobutyl ether (glycol ether)
11159	Ethylene glycol monoethyl ether acetate (glycol ether)
110805	Ethylene glycol monoethyl ether (glycol ether)
110496	Ethylene glycol monomethyl ether acetate (glycol ether)
109864	Ethylene glycol monomethyl ether (glycol ether)
122996	Ethylene glycol monophenyl ether (glycol ether)
2807309	Ethylene glycol monopropyl ether (glycol ether)
75218	Ethylene oxide
50000	Formaldehyde
110178	Fumaric acid
100970	Hexamethylenetetramine
123319	Hydroquinone
75310	Isopropylamine
123013	Linear alkylbenzene (linear dodecylbenzene)
110167	Maleic acid
108316	Maleic anhydride
123331	Maleic Hydrazide
6915157	Malic acid
121471	Metanilic acid
63683	Methionine
75092	Methylene Chloride (Dichloromethane)
101779	Methylene dianiline (4,4-isomer) (MDA)
98839	Methylstyrene (a-isomer)
110918	Morpholine
88744	Nitroaniline (o-isomer)
100016	Nitroaniline (p-isomer)
98953	Nitrobenzene
111660	Octene-1
9002817	Paraformaldehyde
115775	Pentaerythritol
127184	Perchloroethylene (tetrachloroethylene)
95545	Phenylenediamine (o-isomer)
106503	Phenylenediamine (p-isomer)
110850	Piperazine
57578	Propiolactone (b isomer)
79094	Propionic acid
57556	Propylene glycol
107982	Propylene Glycol Monomethyl Ether
75569	Propylene oxide
108463	Resorcinol
100425	Styrene (Vinyl Benzene)
110156	Succinic acid
110612	Succinonitrile
526830	Tartaric Acid
634902	Tetrachlorobenzene (1,2,3,5-isomer)
95943	Tetrachlorobenzene (1,2,4,5-isomer)
112607	Tetraethylene Glycol
109999	Tetrahydrofuran
108883	Toluene
102821	Trichlorobenzene (1,2,4-isomer)
79016	Trichloroethylene
75694	Trichlorofluoromethane
76131	Trichlorotrifluoroethane
95954	Trichlorophenol (2,4,5-isomer)
102716	Triethanolamine
112276	Triethylene glycol
112492	Triethylene glycol dimethyl ether (glycol ether)
112356	Triethylene Glycol Monomethyl Ether
77996	Trimethylopropane
75014	Vinyl chloride (Chloro Ethylene)
1330207	Xylenes (mixtures)
95476	Xylenes (o-isomer)
106423	Xylenes (p-isomer)
	GROUP II
75070	Acetaldehyde
107891	Acetaldol
60355	Acetamide
103844	Acetanilide
64197	Acetic acid
108247	Acetic anhydride
75365	Acetyl chloride
111411	Aminoethylethanolamine
90040	Anisidine (o-isomer)
106990	Butadiene (1,3-isomer)
123864	Butyl acetate (n-isomer)
71363	Butyl alcohol (n-isomer)
109739	Butylamine (n-isomer)
107880	Butylene glycol (1,3-isomer)
123728	Butyraldehyde (n-isomer)
107926	Butyric acid
106310	Butyric anhydride
105602	Caprolactam
558134	Carbon tetrabromide
75730	Carbon Tetrafluoride
75876	Chloral
79118	Chloroacetic acid
108429	Chloroaniline (m-isomer)
106478	Chloroaniline (p-isomer)
108430	Chlorophenol (m-isomer)
106489	Chlorophenol (p-isomer)
126998	Chloroprene (2-Chloro-1,3-Butadiene)
75729	Chlorotrifluoromethane
4170300	Crotonaldehyde
3724650	Crotonic acid
372098	Cyanoacetic acid (CN compound)
111784	Cyclooctadiene
1552121	Cyclooctadiene (1,5-isomer)
760236	Dichloro-1-butene (3,4-isomer)
540590	Dichloroethylene (1,4-isomer)
542756	Dichloropropene (1,3-isomer)
64675	Diethyl sulfate
119937	Dimethyl Benzidine (3,3-isomer)
68122	Dimethyl formamide (NN-isomer) (DMF)
57147	Dimethyl hydrazine (1,1-isomer)
120616	Dimethyl terephthalate
141786	Ethyl acetate
141979	Ethyl acetoacetate
140885	Ethyl acrylate
105395	Ethyl Chloroacetate
41892711	Ethyl sodium oxalacetate
151564	Ethylene Imine (Aziridine)
107153	Ethylenediamine
104767	Ethylhexanol (2-isomer)
103117	Ethylhexyl Acrylate (2-isomer)
75127	Formamide
64186	Formic acid
56815	Glycerol
26545737	Glycerol dichlorohydrin
25791962	Glycerol triether
56406	Glycine
107222	Glycol
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
67721	Hexachloroethane
592450	Hexadiene (1,4-isomer)
124094	Hexamethylenediamine
107313	Methyl formate
96851	Methyl Phenol Carbinol
99092	m-Nitroaniline
79469	Nitropropane
123637	Paraldehyde
79210	Peracetic Acid
108996	Picoline (b-isomer)
110894	Piperadine
110861	Pyridine
111206	Sebacic Acid
127093	Sodium acetate
3926623	Sodium chloroacetate
110441	Sorbic acid
126330	Sulfolane
100210	Terephthalic acid
79345	Tetrachloroethane (1,1,2,2-isomer)
85436	Tetrahydrophthalic anhydride
110601	Tetramethylenediamine
95807	Toluene 2,4 diamine
584849	Toluene 2,4 diisocyanate
26471625	Toluene diisocyanates (mixture)
95534	Toluidine (o-isomer)
71556	Trichloroethane (1,1,1-isomer)
79005	Trichloroethane (1,1,2-isomer) (Vinyl Trichloride)
108054	Vinyl acetate
100403	Vinylcyclohexene (4-isomer)
75354	Vinylidene chloride (1,1-Dichloroethylene)
	GROUP III
102012	Acetoacetanilide
124048	Adipic acid
1321115	Aminobenzoic acid
142041	Aniline hydrochloride

CAS No.	Chemical Name
100663	Anisole
118923	Anthranilic acid
84651	Anthraquinone (POM)
100527	Benzaldehyde
55210	Benzamide
134816	Benzil (POM)
76937	Benzilic acid (POM)
65850	Benzoic acid
119539	Benzoin (POM)
100470	Benzonitrile
98077	Benzotrichloride
98884	Benzoyl chloride
140114	Benzyl Acetate
100516	Benzyl alcohol
120514	Benzyl benzoate (POM)
100447	Benzyl chloride
98873	Benzyl dichloride
100468	Benzylamine
80057	Bisphenol A (POM)
85687	Butylbenzyl Phthalate
35913098	Chlorobenzaldehyde
118912	Chlorobenzoic acid (all isomers)
2136814	Chlorobenzotrichloride (all isomers)
1321035	Chlorobenzoyl chloride
95578	Chlorophenol (o-isomer)
108418	Chlorotoluene (m-isomer)
95498	Chlorotoluene (o-isomer)
106434	Chlorotoluene (p-isomer)
108394	Cresol (m-isomer)
1319773	Cresols Cresylic acid (mixed)
95487	Cresols (o-isomer)
106445	Cresols (p-isomer)
108918	Cyclohexylamine
1087214	Diallyl Isophthalate
27576041	Diaminobenzoic acid
120832	Dichlorophenol (2,4-isomer)
101837	Dicyclohexylamine (Cyclohexylamine)
91667	Diethylaniline (NN-isomer)
84662	Diethyl Phthalate
26761400	Diisodecyl phthalate
131113	Dimethyl Phthalate
121697	Dimethylaniline-N,N (N,N Diethylaniline)
99343	Dinitrobenzoic acid (3,5-isomer)
51285	Dinitrophenol (2,4-isomer)
121142	Dinitrotoluene (2,4-isomer) (DNT)
97392	Di-o-tolyguanidine
102089	Diphenyl thiourea (POM)
122394	Diphenylamine (POM)
27193868	Dodecylphenol
103865	Ethylaniline (N-isomer)
578541	Ethylaniline (o-isomer)
99967	Hydroxybenzoic acid (p-isomer)
121915	Isophthalic acid
25168083	Isopropylphenol
108430	m-Chlorophenol
100618	Methylaniline (n-isomer)
108872	Methylcyclohexane
1331222	Methylcyclohexanone
101688	Methylene diphenyl diisocyanate (MDI)
108383	M-Xylene
99092	Nitroaniline (m-isomer)
91236	Nitroaniside (o-isomer)
100174	Nitroaniside (p-isomer)
27178832	Nitrobenzoic acid (o-,m-, &p-isomers)
100027	Nitrophenol (4-isomer)
88755	Nitrophenol (o-isomer) (2-Nitrophenol)
1321126	Nitrotoluene
88722	Nitrotoluene (2-isomer)
99081	Nitrotoluene (3-isomer)
99990	Nitrotoluene (4-isomer)
27193288	Octylphenol
87865	Pentachlorophenol
94702	Phenetidine (o-isomer)
156434	Phenetidine (p-isomer)
108952	Phenol
77098	Phenolphthalein
98679	Phenolsulfonic acids (all isomers)
91407	Phenyl anthranilic acid
108736	Phloroglucinol
88993	Phthalic Acid
85449	Phthalic anhydride
85416	Phthalimide
91156	Phthalonitrile
98511	p-tert-Butyl Toluene
106514	Quinone
69727	Salicylic acid
532321	Sodium benzoate
139026	Sodium phenate
588590	Stilbene
121573	Sulfanilic acid
632791	Tetrabromophthalic anhydride
117088	Tetrachlorophthalic anhydride
1333079	Toluenesulfonamide
104154	Toluenesulfonic acids (all isomers)
98899	Toluenesulfonyl chloride
634935	Trichloroaniline (2,4,6-isomer)
25013154	Vinyl toluene
25321419	Xylene Sulfonic Acid
1300738	Xylidine

GROUP IV

CAS No.	Chemical Name
107028	Acrolein
79107	Acrylic acid
107051	Allyl chloride
109751	Allyl Cyanide
1762954	Ammonium Thiocyanate
27497514	Bromonaphthalene (POM)
109740	Butyronitrile
75150	Carbon disulfide
25586430	Chloronaphthalene (POM)
91178	Decahydronaphthalate
131179	Diallyl Phthalate
109897	Diethylamine
115106	Dimethyl ether-N,N
75183	Dimethyl sulfide
67685	Dimethyl sulfoxide
124403	Dimethylamine
75003	Ethyl chloride (Chloroethane)
111308	Glutaraldehyde
108694	Hexanediol (1,2,6-isomer)
78591	Isophorone
108214	Isopropyl acetate
67561	Methanol
79209	Methyl acetate
105453	Methyl acetoacetate
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
60344	Methyl Hydrazine
108112	Methyl Isobutyl carbinol
108101	Methyl Isobutyl ketone (Hexone)
624839	Methyl Isocyanate
74931	Methyl Mercaptan
80626	Methyl methacrylate
74895	Methylamine
91203	Naphthalene
85472	Naphthalene sulfonic acid (a-isomer) (POM)
120183	Naphthalene sulfonic acid (b-isomer) (POM)
90153	Naphthol (a-isomer) (POM)
135193	Naphthol (b-isomer) (POM)
88577	Nitronaphthalene (1-isomer)
594423	Perchloromethyl mercaptan
75445	Phosgene
123386	Propionaldehyde
71238	Propyl alcohol (n-isomer)
540545	Propyl chloride
107108	Propylamine
78875	Propylene dichloride (1,2-Dichloropropane)
124414	Sodium Methoxide
78002	Tetraethyl lead
119642	Tetrahydronaphthalene (Tetralin) (POM)
121448	Triethylamine
75503	Trimethylamine
933482	Trimethylcyclohexanol
2408379	Trimethylcyclohexanone

GROUP V

CAS No.	Chemical Name
105577	Acetal
75865	Acetone cyanohydrin (CN compound)
	Alkyl naphthalenes (no CAS# assigned) (POM)
75252	Bromoform
141322	Butyl acrylate (n-isomer)
78622	Butyl alcohol (s-isomer)
75650	Butyl alcohol (t-isomer)
98737	Butyl benzoic acid (p-tert-isomer)
13952846	Butylamine (s-isomer)
75649	Butylamine (t-isomer)
63252	Carbaryl
9004357	Cellulose acetate
75456	Chlorodifluoroethane
25167800	Chlorophenols
7790945	Chlorosulfonic acid
420042	Cyanamide
506774	Cyanogen chloride (CN compound)
108805	Cyanuric acid
108770	Cyanuric chloride
123422	Diacetone alcohol
137097	Diaminophenol Hydrochloride
74953	Dibromoethane
96231	Dichlorohydrin
461585	Dicyanadimide
579999	Diethylaniline (2,6-isomer)
75376	Difluoroethane
25167706	Diisobutylene
27554263	Diisooctyl phthalate
674829	Diketene
26675174	Dodecylaniline
122510	Ethyl orthoformate
95921	Ethyl oxalate
75047	Ethylamine
9004573	Ethylcellulose
105566	Ethylcyanoacetate
77474	Hexachlorocyclopentadiene
629118	Hexamethylene glycol
74908	Hydrogen Cyanide (CN Compound)
106638	Isobutyl Acrylate
115117	Isobutylene
463514	Ketene
	Linear alkyl sulfonate (no CAS# assigned)
141797	Mesityl oxide
79414	Methacrylic acid

CAS No.	Chemical Name
563473	Methallyl Chloride
96333	Methyl Acrylate
78933	Methyl ethyl ketone (2-Butanone)
1634044	Methyl Tert Butyl Ether
77758	Methylpentynol
121013	n-Dodecylbenzene
75989	Neopentanoic acid
25154523	Nonylphenol
88120	N-Vinyl-2-Pyrrolidine
25322683	Polyethylene glycol
25322694	Polypropylene glycol
27136874	Resorcylic acid
9004324	Sodium carboxymethyl cellulose
143339	Sodium Cyanide
141537	Sodium formate
98066	tert-Butylbenzene
75741	Tetramethyl lead
110189	Tetramethylethylenediamine
7756947	Triisobutylene
540841	Trimethylpentane (2,2,4-isomer)
57136	Urea
1300716	Xylenol
526750	Xylenol (2,3-isomer)
105679	Xylenol (2,4-isomer)
95874	Xylenol (2,5-isomer)
576261	Xylenol (2,6-isomer)
95658	Xylenol (3,4-isomer)
108689	Xylenol (3,5-isomer)

[FR Doc. 91-4888 Filed 3-5-91; 8:45 am]

BILLING CODE 6660-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1053

[Ex Parte No. MC-198]

Contracts for Transportation of Property

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to consider amending or repealing its regulations (1) Prescribing the nature and content of contracts of motor contract carriers, and (2) defining contract shippers. The Commission last considered changes in the contract regulations in 1980 when it deleted the requirement that carriers file copies of their contracts. The purpose of this proceeding is to reexamine the current regulations in light of industry experience since passage of the Motor Carrier Act of 1980.

DATES: Comments are due by April 5, 1991.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-198 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz (202) 275-7956 or Richard B. Felder (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The Commission is instituting this proceeding to consider amending or repealing the regulations at 49 CFR part 1053. Section 1053.1 prescribes the nature and content of contracts of motor contract carriers; § 1053.2 relieves carriers of certain valuable commodities from the requirements of § 1053.1; and § 1053.3 defines the shippers with whom a motor contract carrier may enter into contracts. The Commission is particularly interested in reexamining the requirements of § 1053.1 that contracts be in writing, be bilateral and impose specific obligations upon both carrier and shipper, cover a series of shipments during a stated period of time, and be preserved for at least 1 year after they cease to be in force. The Commission last considered changes in the contract regulations in 1980 when it deleted the requirement that carriers file copies of their contracts with the Commission.

The Commission is aware that the Motor Carrier Act of 1980 retained the distinction between motor contract carriers and motor common carriers. It is concerned, however, that its regulations supplementing the statutory definition of a motor contract carrier may no longer be appropriate in light of changes that have taken place in the motor carrier industry over the past decade. The Commission thus is soliciting public comments on the wisdom of maintaining part 1053 in its current form.

Some questions for consideration are as follows. Should the regulations be repealed in their entirety and, if so, why? What would be the effect of a repeal on the Commission's ability to fulfill its statutory obligations? Should the regulations be repealed in part? For instance, should the Commission delete the requirements that contracts be in writing and that they be retained for at least one year after they cease to be in force. On the other hand, should the regulations be amplified? For instance, current Commission regulations do not require that contract rates be stated in or be ascertainable from the contract. Should the Commission impose such a requirement? Similarly, should the Commission amend the regulations to impose a requirement that the contract state the manner in which the statutory contract carrier criteria are to be met *vis-a-vis* the contracting shipper? Should the current regulations be retained without modification? It might be the case that the industry requires only clarification from the Commission and is not experiencing any difficulties that require modification of the current regulations.

We encourage interested persons to submit comments. After considering the comments, we will determine whether to proceed and what, if any, specific rule changes to propose.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721.)

Environmental and Energy Considerations.

We preliminarily conclude that amending or repealing the regulations governing contracts of motor contract carriers would not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis.

We preliminarily conclude that amending or repealing the subject regulations would not have a significant economic impact on a substantial number of small entities. It is possible that simplification or elimination of the rules might benefit small carriers and shippers by reducing their paperwork and enabling them to streamline their operations. We specifically request comments on this issue to assist us in making an initial finding in the event we formulate specific proposals for publication in a future notice of proposed rulemaking.

List of subjects in 49 CFR Part 1053

Motor carriers.

Authority: 49 U.S.C. 10101, 10102, 10321, and 10923, and 5 U.S.C. 553.

Decided: February 20, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5286 Filed 3-5-91; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Community Service Project Guidelines

AGENCY: Action.

ACTION: Notice of final Student Community Service Project Guidelines.

SUMMARY: The following Notice sets out the final guidelines under which Student Community Service Projects will operate. This notice replaces Student Community Service Program guidelines which were published in the **Federal Register** November 10, 1987 (Vol. 52, No. 178, pages 43211–43215). These guidelines set forth the overall program philosophy, responsibilities of the sponsor, staff, volunteers, and volunteer placement sites. Further, the guidelines provide basic data on the administration of a Student Community Service Project.

DATES: These Guidelines shall take effect on April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Wheeler, ACTION, 1100 Vermont Avenue, NW., room 6100, Washington, DC 20525, 202/634–9424.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guideline, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 561 *et seq.*), may, in whole or in part, be required by the DVSA to be published in proposed form for comment.

Notice of Proposed Revisions to the Student Community Service Project Guidelines was published in the **Federal Register** on January 17, 1991 (Vol. 56, No. 12, page 1784–1787). Typesetting corrections on this article were made in the **Federal Register** January 30, 1991 (Vol. 56, No. 20, page 3523). One written comment from the public was received by the Agency. This comment referred to a typesetting error which was corrected by the **Federal Register's** January 30, 1991, publication.

ACTION has determined that these guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule. These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects will operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Community Service Program Guidelines published in the **Federal Register**, dated November 10, 1987, and instructions and technical assistance provided to grants previously awarded under title I, part B, section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4974).

II. Purpose

Student Community Service Projects are authorized under title I, part B, sections 111 and Sec. 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4971, 4974). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experiences through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve part-time and without a stipend.

Service opportunities must result in student volunteers gaining learning experience through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising, and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of students volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in part VI.

J. The grantee must ensure compliance with the restrictions outlined in part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicant's accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. The levels of funding and matching requirements are published in **Federal Register** announcements of funding availability. The grantee is required to contribute a local share each year. Final determination of the actual amount of grants awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs" as set forth in 45 CFR part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedures for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2850.2, Grants Management Handbook for Grantees, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, Grants Management Handbook for Grantees, which will be furnished to the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing a non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements specified in the Notice of Grant Award and must maintain records in accordance with generally accepted principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Project progress reports shall also be submitted to the ACTION State Office. Sponsors are required by ACTION to provide accurate and timely preparation and submission of project reports.

BEST COPY AVAILABLE

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of the project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Community Service Project Grantees

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and to communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to ACTION, Office of General Counsel, 1100 Vermont Avenue, NW., room 9200, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

Authority: 42 U.S.C. 4974.

Dated in Washington, DC on February 28, 1991.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 91-5202 Filed 3-5-91; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Authority To Act as Administrator

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: This notice provides for the executive direction of the Farmers Home Administration (FmHA).

1. When the Administrator, FmHA, is absent or unable to perform the duties of the position, the Associate Administrator, FmHA, is designated to serve as Acting Administrator, FmHA.

2. When both the Administrator and the Associate Administrator are absent or unable to perform their duties, the Deputy Administrators, FmHA, are designated to perform all functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator in the following order:

A. Deputy Administrator, Program Operations

B. Deputy Administrator, Management

3. When the Administrator, the Associate Administrator, and the Deputy Administrators are absent or unable to perform their duties, the Assistant Administrators and the Director, Planning and Analysis Staff, FmHA, are designated to perform all the functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator, FmHA, in the following order:

A. Director, Planning and Analysis Staff

B. Assistant Administrator, Housing

C. Assistant Administrator, Farmer Programs

D. Assistant Administrator, Community and Business Programs

E. Assistant Administrator, Budget, Finance and Management

This document supersedes any previous document designating an official of the FmHA to serve as Acting Administrator, FmHA.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Assistant Administrator for Human Resources, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 245-5581.

Dated: February 14, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-5282 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Exemption of Salvage Timber Sale Project from Appeal (Northern Region)

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement the Gird Point Salvage Timber Sale in the area of the Gird Point Fire on the Bitterroot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pp. 3342-3370.

EFFECTIVE DATE: Effective on issuance of the Decision Notice for Supplement No. 1 to the Gird Point Salvage Timber Sale Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Bertha C. Gillam, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840

Background

In July 1990, the Gird Point Fire burned and killed the timber on approximately 1,700 acres of the Bitterroot National Forest. In August 1990, a Forest Interdisciplinary Team (IDT) was assembled to analyze the opportunity to salvage trees that had been killed by the fire. The Forest IDT identified the need to quickly salvage the timber which was killed so the trees would remain merchantable for sawlogs. A decision to harvest timber on approximately 650 acres within Management Areas of the Bitterroot Forest Plan (September 1987) which provide for timber harvest in the management goals (Management Areas 1, 3a, and 3b) was signed by Acting Forest Supervisor Chuck Prausa on November 20, 1990. This decision was exempted from appeal (Federal Register, Vol. 55, No. 213, Friday, November 2,

1990). A decision to harvest timber on approximately 155 acres within Management Area 5 of the Bitterroot Forest Plan was signed by Acting Forest Supervisor Chuck Prause on December 7, 1990. This decision was not exempted from appeal. No appeals were received on this decision. Since the proposed action was beyond the intent of the Forest Plan, a site-specific Forest Plan amendment (Amendment No. 3) was signed on December 18, 1990, to allow salvage of fire killed timber.

The bid opening for the Gird Point Fire Salvage Timber Sale was conducted on December 18, 1990. No bids were received.

In January 1991, the District Ranger, Darby Ranger District, Bitterroot National Forest, was approached by an individual who proposed an alternative method to salvage the fire killed timber. The alternative method would use an over-snow yarding method to harvest fire killed timber in Management Areas 1, 3a, 3b, and 5, and also would not build the 1.8 miles of new road that was identified in the original decision.

Planned Actions

In January 1991, the District Ranger, Darby Ranger District, Bitterroot National Forest, proposed the salvage of fire killed timber using an over-snow yarding method in Management Areas 1, 3a, 3b, and 5. Yarding systems identified as appropriate in Management Areas 1, 3a, 3b, and 5 in the original environmental document (tractor, skyline, and helicopter) would also be allowed. No new road construction will be allowed if the purchaser uses over-snow yarding equipment in MA5.

An Interdisciplinary Team (Soil Scientist, Hydrologist, Wildlife Biologist, and Forester) began scoping in January 1991. Several of the individuals that showed interest in the original decisions were contacted. The major issues identified were:

1. What is the effect of over-snow yarding on the soil and water resources?
2. Is it appropriate to use ground-based yarding systems in Management Area 5?
3. What is the effect of over-snow yarding systems on slopes over 40 percent?
4. How can the wildlife reserve tree prescription be modified to retain the needed reserve trees while at the same time making the sale more economical to operate?

The Interdisciplinary Team evaluated the effects of the over-snow yarding proposal against the Proposed Action in the original environmental assessment. The Proposed Action in the Supplement to the Gird Point Fire Environmental Assessment would harvest fire killed timber on approximately 920 acres and produce an estimated 6 MMBF of timber. The Proposed Action is within Management Areas 1, 3a, 3b, and 5 as indicated in the Bitterroot Forest Plan, September 1987.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale and the accompanying work, the process according to 36 CFR part 217 is being followed. Under this regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice in the **Federal Register**, the Decision Notice for the Supplement to the Gird Point Salvage Sale Environmental Assessment will be signed by the Forest Supervisor, Bitterroot National Forest. Therefore, this decision will not be subject to review under 36 CFR part 217.

Dated: February 27, 1991.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 91-5244 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-11-M

Upper Ruby Cattle and Horse Allotment; Beaverhead National Forest, Sheridan Ranger District, Madison County, MT; Environmental Impact Statement, Comment Period Extension

Due to the complexity of the analysis, numerous parties have requested the comment period for the Upper Ruby Cattle and Horse Allotment Management Plan Draft Environmental Impact Statement be extended. I have extended the review period to April 15, 1991.

The Notice of Availability of a Draft Environmental Impact Statement, published by the Environmental Protection Agency in the **Federal Register** of January 18, 1991, page 2016 (56 FR 2016), is hereby amended (EIS No. 910009).

For further information contact: Ron Stellingwerf, District Ranger, Sheridan Ranger District, P.O. Box 428, Sheridan, MT 59479; telephone 406-842-5432.

Dated: February 28, 1991.

R.H. Stellingwerf,

District Ranger.

[FR Doc. 91-5384 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-11-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The meeting will be held at 10 a.m., on Wednesday, March 13, 1991, at the Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

The committee will meet to discuss draft reports on specialized courts and coordination of judicial review in administrative law prepared by Professor Harold Bruff, University of Texas School of Law.

For further information concerning this meeting, contact: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. (Telephone: 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 4, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91-5472 Filed 3-5-91; 8:45 am]

BILLING CODE 6110-01-M

Committee on Judicial Review; Cancellation Notice—March 8, 1991 Meeting

The Administrative Conference of the United States gives notice of cancellation of a meeting of the Committee on Judicial Review that was scheduled at 10 a.m., Friday, March 8, 1991, at the Administrative Conference of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.

The notice of meeting was published on February 26, 1991 at 56 FR 7633.

Dated: March 4, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91-5473 Filed 3-5-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-005]

Frozen Concentrated Orange Juice from Brazil; Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil. Interested parties who object to this termination must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 8839).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties 19 CFR 355.25(c)(4)(iii). Accordingly, as required by 19 CFR 355.25(d)(4)(i), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by March 31, 1991, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5205 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the New Orleans Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 9, 1991. Applicants should mail the completed applications

to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before April 9, 1991. Anticipated processing time of this award is 120 days.

Note: Please mail completed applications to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara.

SUPPLEMENTARY INFORMATION:

Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained through the Dallas Regional Office. A pre-bid conference will be held. Please call Ms. Guevara to be advised of date, time and place.

11.800 Minority Business Development, (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 91-5238 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Dr. James T. Harvey (P368B)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Harbor seals (*Phoca vitulina*) 550.

4. *Type of Take:* The applicant proposes to capture, blood sample, inject with tetracycline, tag with flipper and radio tags and release 100 harbor seals annually. During the tagging study and while collecting fecal samples on haul-out sites, up to 450 may be harassed.

5. *Location and Duration of Activity:* Activities will occur in February—March and August—October in Elkhorn Slough, near Monterey and near Santa Cruz. Also San Francisco south to Big Sur over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427-2289); and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources,

[FR Doc. 91-5187 Filed 3-5-91 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: DoD, Department Veterinary Pathology (P473)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Engangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

1. *Applicant:* Department of Veterinary Pathology, Armed Forces Institute of Pathology, Washington, DC 20306-6000.

2. *Type of Permit:* Scientific research and scientific purposes.

3. *Name and Number of Marine Mammals:* Unspecified.

4. *Type of Take:* The applicant requests authorization to import and re-export specimens from marine mammals of the orders Pinnipedia (except walrus) and Cetacea. The applicant will examine, catalog and archive an unspecified number of formalin-fixed samples, and blood, body fluid, and other frozen tissue samples that may be taken from individual animals. These will be received from various researchers from private, academic and governmental institutions.

5. *Location and Period of Activity:* Samples will be collected and imported on an opportunistic basis from various locations worldwide over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427-2289).

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200.

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Juneau, Alaska 99802 (907/586-7221).

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C157000, Washington 98115 (206/526-6150).

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (893-3141).

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-5188 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in the Philippines

February 28, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kin-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on March 1, 1991, shipments of cotton textile products in Category 359, other than swimwear, will require a Category 359-O visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 52 FR 11308, published on April 8, 1987.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1991.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 3, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in the Philippines.

Effective on March 1, 1991, you are directed to require a 359-O [1] visa for cotton textile products in Category 359, other than swimwear, produced or manufactured in the Philippines and exported from the Philippines on and after March 1, 1991.

Merchandise in Category 359 which has been exported from the Philippines prior to March 1, 1991 shall be permitted entry if visaed as Category 359 or 359-O.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-5201 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-DR-M

/1/ Category 359-O: all HTS numbers except 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359-S).

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, applicable form, and applicable OMB control number: Industrial Base Program Production Capacity and Crisis Production Survey; DD Form's X120 and X120-1; OMB Control Number 0704-0037

Type of request: Reinstatement.

Average burden hours minutes per response: 2.5 hours.

Responses per respondent: 1.

Number of respondents: 29,425.

Annual burden hours: 73,562.5.

Annual responses: 29,425.

Needs and uses: The DD Form X120 is used by the DoD Acquisition Activities to obtain a basic understanding of the industrial production capacity for defense items. It identifies current production by month, capability to accelerate production, and critical components required for the item. The DD Form X120-1 is used by the industrial base activities to selectively expand their understanding of the industrial production capacity for defense items and to acquire the necessary data for developing planned producer production commitments. It identifies maximum production by month, critical components, equipment, facilities, processes, and labor skills required for the item, as well as foreign sources, and requests identification of potential commercial substitutes/specifications/standards.

Affected public: Businesses or other for-profit.

Frequency: Biennial.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5267 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Foreign Operations; Determination

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this letter provides notification that during Fiscal Year 1991 the United States Government will transfer to the Government of Mexico 18,178 M-1 Carbines (to be utilized by the Mexican Navy/Marines) and 30,000 M-1 (to be utilized by the Mexican Army).

This action is required to ensure that Mexico is afforded the opportunity of rapidly obtaining M-1 Carbines at no cost. These weapons are needed to enable the military forces in Mexico to participate with local law enforcement agencies in a comprehensive national anti-narcotics enforcement program, by conducting activities within Mexico and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these carbines will be used primarily in support of anti-narcotics activities.

The Director, Defense Security Assistance Agency, Mr. Teddy G. Allen certifies that the M-1 Carbines are needed by Mexico and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5272 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on March 14, 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5286 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary, Defense (DOD).

ACTION: Proposed New Record System.

SUMMARY: The Office of the Secretary of Defense proposes to add one new record system notice to its inventory of systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The proposed new record system notice is set forth below.

DATES: The proposed new system will be effective April 5, 1991, unless comments are received which might result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, The Pentagon, Washington, DC 20301-1155. Telephone (703) 697-2501 or AUTOVON 227-2501.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47067, Nov. 14, 1985
51 FR 11607, Apr. 7, 1986
51 FR 17506, May 13, 1986
51 FR 44666, Dec. 11, 1986
52 FR 23334, Jun. 19, 1987
53 FR 15666, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17665, Apr. 25, 1990
55 FR 20180, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49405, Nov. 28, 1990

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on February 25, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 08

SYSTEM NAME:

DoD Foreign Visits System (FVS).

SYSTEM LOCATION:

Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301-2200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens acting as representatives of various foreign governments who have requested access to DoD installations, activities or Defense contractors on matters relating to mutual security and arms corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of lists of individuals cleared for access to DoD installations, activities, or Defense contractors. Information on the lists consists of name, date and place of birth, security clearance, position, and an individual identification number which may be the Social Security Number of that person.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 90-629, "The Foreign Military Sales Act," October 22, 1968 and Executive Order 9397.

PURPOSE(S):

To enhance security and provide consistent application of policy in dealings with other governments by providing end-to-end automation support to the visits process, thus improving responsiveness and the use of personnel resources by using state-of-the-art automation and communication capabilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the OSD compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer and computer-output products, including message traffic output.

RETRIEVABILITY:

Records may be retrieved by individual's name or Social Security Number, or visit ID number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards; personnel having access to this data are trained in the requirements of protecting Privacy Act information.

RETENTION AND DISPOSAL:

The records are retained for the duration of the cooperative arms or mutual security agreement or program between the U.S. government and the foreign government or international organization, or for ten years, whichever is sooner. Records will be disposed of by erasing magnetic media or burning or shredding paper copies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301-2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301-2200.

Individuals must provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, place visited, and dates of visit.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address inquiries to the Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301-2200.

Individuals must provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, place visited, and dates of visit.

CONTESTING RECORDS PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information is obtained solely from the foreign country or international organization sponsoring the individuals for whom a visit to the DoD installation, activity, or Defense contractor is being requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-5270 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Directed Energy Weapons for Delay & Denial Security Systems will meet on 26-27 March 1991, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington VA, from 8 a.m. to 5 p.m.

The purpose of this meeting is to obtain information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subpararaphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-5240 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

National Security Agency/Central Security Service

Privacy Act of 1974; New Record Systems

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: New record system notice.

SUMMARY: The National Security Agency/Central Security Service proposes to add one new record system to its existing inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 522a). The proposed new record system notice is set forth below.

DATES: The proposed action will be effective without further notice on April 5, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755-6000. Telephone (301) 688-6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service record systems notices subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

50 FR 22585, May 29, 1985 (DoD compilation, changes follow)
52 FR 36818, Oct. 1, 1987
52 FR 41758, Oct. 30, 1987
55 FR 27871, Jul. 6, 1990

The new record system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on February 25, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: March 1, 1991.

GNSA18

SYSTEM NAME:

NSA/CSS Operations Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified in foreign intelligence or counterintelligence reports and supportive materials, including individuals involved in matters of foreign intelligence interest.

information, system security, the compromise of classified information, or terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended, 50 U.S.C. Section 403(d)(3) (Pub. L. 80–253); Executive Order 12333, 3 CFR part 200 (1981); Executive Order 12356; Executive Order 9397; section 506(a), Federal Records Act of 1950 (44 U.S.C. 3101).

PURPOSE(S):

To maintain records on foreign intelligence and counterintelligence matters relating to the mission of the National Security Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To U.S. Government agencies, and in some instances foreign Government agencies or their representatives, to provide foreign intelligence, counterintelligence, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The "Blanket Routine Uses" published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

RETRIEVABILITY:

Information is retrieved by category of information contained therein, including by name, title, Social Security Number, or identification number.

SAFEGUARDS:

For paper, computer printouts, audio recordings, and microfilm—secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data is archived as a permanent record. All other records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CONTESTING RECORD PROCEDURE:

The NSA/CSS rules for contesting contents and appealing initial determinations are contained in NSA/CSS Regulation No. 10–35; 32 CFR part 299a; or may be obtained from the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this file may be exempt pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2) and (3), (c) and (e) and is published in NSA/CSS Regulation No. 10–35 and the Code of Federal Regulations at 32 CFR part 299a.

[FR Doc. 91–5269 Filed 3–5–91; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs (NABIEP). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE AND TIME: April 1, 1991—9 a.m. to 3:30 p.m.

LOCATION: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001–1527, Telephone: 202–628–2100.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Grayson, Acting Executive Director, National Advisory Board on International Education Programs, U.S. Department of Education, 7th & D Streets, SW., room 3915, Washington, DC 20202–5151, Telephone: 202–708–5650.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99–498; 20 U.S.C. 1131). The Board's mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda will include (1) A Report on the current reauthorization act; (2) reports on current issues for the Center for International Education Programs; (3) a general discussion of the Center for International Programs and new directions to pursue; (4) a report from the Center for International Education Business at the University of Maryland, by Lee Preston, the Director; and (5) Board business for FY 1991.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Education, from 8 a.m. to 4 p.m., ROB–3, 7th & D Streets, SW., room 3915, Washington, DC.

Dated: February 25, 1991.

Authority: 5 U.S.C.A. Appendix 2

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–5204 Filed 3–5–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10928–001 Washington]

Surrender of Preliminary Permit; Snoqualmie River Energy, Inc.

February 27, 1991.

Take notice that Snoqualmie River Energy, Inc., permittee for the DOT Diversion Hydroelectric Project No. 10928, to be located on the South Fork Snoqualmie River in King County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 16, 1990, and would have expired on July 31, 1993.

The permittee filed the request on February 5, 1991, and the preliminary permit for Project No. 10928 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5191 Filed 3–5–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–06–NG]

American Central Gas Companies, Inc.; Application to Export Natural Gas to Mexico

AGENCY: Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico..

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 23, 1991, of an application filed by American Central Gas Companies, Inc. (American Central) requesting blanket authorization to export from the United States to Mexico up to 200,000 MMBtu per day of natural gas over a two-year period commencing with the date of first delivery. American Central intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported gas. American Central states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 5, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy U.S. Department of Energy, room 3F–056, FE–50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: American Central, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is engaged in the gathering, processing and marketing of natural gas, and owns gathering and processing facilities in the States of Oklahoma, Texas, Louisiana and Mississippi. American Central intends to export natural gas to Mexico for spot market sales both for its own account as well as for the accounts of others. The gas to be exported will be supplied by U.S. producers, markets and pipelines. The Mexican purchasers of the gas are expected to include industrial end-users, agriculture users, electric utilities, pipelines and local distribution companies. American Central states that all export sales will result from arms-length negotiations and that prices will be determined by market conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may specify a two-year aggregate, rather than a daily volume, in order to maximize operating flexibility.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices or intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to

this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Central application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-5289 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket Nos. 90-104-NG and 90-105-NG]

Broad Street Oil & Gs Co.; Order Granting Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Broad Street Oil & Gas Co. (Broad Street) authorization to import and export natural gas from and to Canada. The order issued under FE Docket Nos. 90-104-NG and 90-105-NG authorizes Broad Street to import up to 290 Bcf and export up to 290 Bcf of natural gas from and to Canada over a two-year period commencing with the date of first delivery of imports or exports.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-5290 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-08-NG]

Consolidated Edison Co. of New York, Inc.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 28, 1991, of an application filed by Consolidated Edison Company of New York, Inc. (Con Edison), requesting blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. Con Edison intends to use existing pipeline facilities within Canada and the United States. Con Edison states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 5, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Con Edison is combination gas, electric, and steam utility company whose rates and services are fully regulated by the Public Service Commission of the State of New York. Con Edison proposes to purchase gas from a variety of Canadian suppliers on both a firm and interruptible basis at market responsive prices and terms. Con Edison states that the contractual arrangements will provide it with the flexibility of additional sources of supply for resale to its customers or for its own use.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Con Edison's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-5291 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of February 18 Through February 22, 1991

During the week of February 18 through February 22, 1991 the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 28, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Leemon Oil Co., Detroit, MI, LEE-0019 Reporting Requirements

Leemon Oil Company (Leemon) filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." If the exception request is granted, Leemon would not be required to file these forms. On February 19, 1991, the DOE issued a Proposed Decision and Order which tentatively denied Leemon's application for exception relief.

Teesdale Oil Co., Bridger, MT, Lee-0021 Reporting Requirements

Teesdale Oil Co. filed an Application for Exception, which if granted, would relieve the firm from filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On February 22, 1991, the DOE issued a Proposed Decision and Order in which it determined that Teesdale Oil did not meet the standards for exception relief, i.e. no serious hardship or gross inequity.

[FR Doc. 91-5292 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures; Proposed

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of

$105,000.00, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with John R. Adams (Adams), Case No. LEF–0020. The OHA has tentatively determined that the funds will be distributed to customers which purchased refined petroleum products from Adams during the period December 1, 1973 through May 31, 1975

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register, and they should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a prominent reference to case number LEF–0020.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $105,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, on February 28, 1990. The funds were paid by Adams towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has tentatively determined to distribute the Adams settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Adams who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section IV of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered refined petroleum products which they purchased from Adams during the December 1, 1973 through May 31, 1975, refund period. In the Proposed Decision, we listed those Adams customers who are prohibited from receiving Adams refund monies due to their possible participation in the alleged violations underlying Adams' compromise settlement.

Any settlement funds remaining after valid claims are paid in the first stage may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 27, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: John R. Adams.
Date of Filing: July 18, 1990.
Case Number: LEF–0020.

On July 18, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which John R. Adams, formerly doing business as J.R. Adams Oil Company, remitted to the DOE.[1] Adams has remitted $105,000.00 pursuant to a compromise settlement, to which $42,580.02 in interest has accrued as of January 31, 1991. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requests that the OHA establish special refund procedures to remedy the effects of Adams' alleged regulatory violations.

I. Background

Adams sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et. seq.* Adams was a "reseller-retailer" subject to the price regulations set forth at 10 CFR part 212, subpart E, between August 19, 1973 and January 27, 1981.

During the period of petroleum price controls, the ERA conducted an audit of Adams' operations to determine its compliance with the DOE regulations. The ERA's audit of Adams covered the company's sales during the period between December 1973 and May 31, 1975. As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) in 1984 alleging that Adams had not complied with the refiner price regulations in its refined product sales.[2]

On October 21, 1985, Adams entered into a consent order with the DOE resolving issues of its alleged violation of the DOE regulations between December 1973 and January 1981 (the consent order period). Without admitting any violations of these regulations, Adams agreed to remit monies to the DOE under the provisions of the consent order. On February 20, 1990, the DOE obtained a consent judgment from the U.S. District Court for the Western District of Oklahoma enforcing the 1985 consent order. On February 28, 1990, the DOE received a compromise settlement from Adams resolving issues of Adams' adherence to the 1985 consent order and the 1990 consent judgment.

Since $42,580.02 in interest has accrued, as of January 31, 1991, on the $105,000.00 remitted under the compromise settlement, a total of $147,580.02 is available for disbursement pursuant to the compromise settlement. These funds are held in an interest-bearing escrow account as the Department of the Treasury awaiting a determination of their proper disposition.

II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA may utilize in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of Subpart V and the authority of the OHA to design refund procedures may be found in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

[1] All references herein to "Adams" shall be deemed to include both John R. Adams individually and J.R. Adams Oil Company.

[2] In December 1978, John R. Adams pled guilty to an information filed in the U.S. District Court for the Western District of Oklahoma relating to his violation of the petroleum price regulations in twenty specific 1974 transactions.

We have considered the ERA's petition for the implementation of refund procedures under the Subpart V mechanism with respect to the Adams settlement monies and have determined that such refund procedures are appropriate. This Proposed Decision and Order establishes the OHA's tentative plan to distribute these funds.

III. Proposed Refund Mechanism and Refund Period.

The 1985 consent order and subsequent court actions between the DOE and Adams settled issues of Adams' alleged violation of regulations governing the pricing of refined petroleum products. These issues were based upon a 1984 PRO alleging that Adams did not properly calculate its refined product selling prices under the refiner price rule. Since no information in the enforcement record indicates that Adams participated in the refining, processing, or reselling of crude oil and Adams' alleged violations were solely attributable to refined product operations, all of the Adams settlement funds will be made available for distribution to persons who purchased Adams refined petroleum products.

We propose that applications in this refund proceeding be based solely on purchases of covered Adams petroleum products made between December 1, 1973 and May 31, 1975 (the "refund period"). This refund period represents the period of Adams' operations audited by the ERA and during which Adams' alleged regulatory violations occurred. Even though the 1985 consent order covered a duration longer than the proposed refund period, we believe that the refund period should reflect the isolated pattern of Adams' alleged violations. *Accord Cloyce K. Box*, 15 DOE ¶85,001 (1986) (*Box*) (refund period restricted to the 4⅓ months during which the alleged violations transpired.)[3]

IV. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for the Adams settlement funds. Purchasers of refined petroleum products from Adams during the refund period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be dispersed to the state governments for indirect restitution. Our experience with Subpart V refund proceedings indicates that potential claimants will consist of (1) end-users, (2) regulated entities, such as public utilities, and cooperctives, and (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

The only purchasers of Adams petroleum products during the refund period which are ineligible for refunds are those parties identified in the enforcement record as having participated with Adams in its alleged violations.[4] Since the Adams settlement monies are intended for those injured by Adams' alleged overcharges, we do not believe that it would be appropriate to compensate parties who may have themselves participated in and benefitted from the alleged overcharges covered by the Adams settlement. *See Box* at 88,002. Additionally, the stricture against "unclean hands" in the equitable subpart V refund proceedings prevents the parties described above from receiving Adams settelement funds. *Id.*

A. Claims Based on Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Adams during the December 1, 1973 through May 31, 1975, refund period. If the petroleum products were not purchased directly from Adams, the claimant must establish that they originated with Adams. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Adams' alleged overcharges. The two distinct elements generally required in such an injury showing are (1) the existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, [5] and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges. *See Vickers Energy Corp./Hutchens Oil Co. Inc.*, 11 DOE ¶85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Adams. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶85,257 (1984), *affirmed sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring burdensome expenses, and aids in the efficient evaluation of refund claims. *See, e.g., Texaco Inc.*, 20 DOE ¶85.147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent subpart V regulations at 10 C.F.R. 205.282(e). Accordingly, we propose to adopt the presumptions described below.

a. *Calculation of Refunds.* We will adopt a presumption that the alleged overcharges were dispersed equally in all of Adams' sales of regulated (covered) refined petroleum products during the refund period and, thereby, refunds will be made on a per gallon, or "volumetric," basis.[6]

In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices.

Under this volumetric method, a claimant's "allocable share" of the settlement fund is equal to the number of gallons of covered petroleum products which it purchased from Adams during the refund period multiplied by the per gallon (volumetric) refund amount.[7] In

[3] Cloyce K. Box was a business associate of John R. Adams, and the alleged underlying the *Box* special refund proceeding were substantially the same as those underlying this Decision.

[4] The companies and individuals linked to Adams' alleged violations and, thereby prohibited from receiving Adams refund monies are as follows: CLB Enterprises, Inc.—Dan Baxter; Consolidated Materials, Inc.—Boyce Box; OKC Corporation—Cloyce K. Box; OKC Trading Company—Carl Lavery; Quality Oil—Jean Parker; Stonewalk Corporation—Phil Parker.

[5] Claimants which have previously obtained refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. See *Standard Oil Co. (Indiana)/ Suburban Propane Gas Corp.*, 13 DOE ¶85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the calimant to approximate those costs banks. *See Gulf Oil Corp./ Sturdy Oil Co.*, 15 DOE ¶85,187 (1986).

[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Adams' alleged overcharges. *See, e.g., Mobil Oil Corp./The Atchison, Topeka and Santa Fe Railway Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. *See Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the Degree that a claimant makes this showing, it will receive an above-volumetric refund.

[7] The petroleum products sold by Adams which were subject to the petroleum price regulations and their respective decontrol dates are as follows: Liquid Asphalt—April 1, 1974; Residual Fuel Oil—

Continued

the present refund proceeding, we have computed the per gallon refund amount to be $0.00093.[8] Using this volumetric amount, a claimant would be eligible for a refund of $930 per one million gallons purchased. In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Adams settlement fund since the time of its deposit in the appropriate escrow account.[9]

We also propose to adopt various presumptions concerning a claimant's injury, which are listed below.

b. *End-Users* In accordance with prior subpart V refund proceedings, we propose to adopt the presumption that end-users of Adams petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Adams' alleged overcharges. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. *See TOGCO* at 88,209. Accordingly, we propose that end-users will only be required to establish their purchase volumes of covered Adams petroleum products during the refund period to make sufficient showings that they were injured by the alleged overcharges.

c. *Regulated Bodies and Cooperatives* We propose that a claimant whose prices for goods and services are regulated by a governmental body (e.g. public utilities), or an agricultural cooperative, will only need to submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will (1) pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. *See Exxon* at 88,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make detailed demonstrations of injury to receive refunds.[10]

d. *Retailers, Resellers, and Refiners*—i. *Small Claims Presumption* We propose the adoption of a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Adams petroleum products and possesses an allocable share of the settlement fund of $5,000 or less, exclusive of interest, was injured by the alleged overcharges. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Adams petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the large number of routine refund claims expected.[11]

ii. *Mid-Level Claims Presumption*—Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Adams settlement fund exceeds $5,000, exclusive of interest, may elect to receive either $5,000 or 40 percent of its allocable share, whichever is greater, also exclusive of interest.[12] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Adams' alleged overcharges. *See Total Petroleum, Inc.*, 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we determined product-specific levels of injury through detailed evaluations. *See, e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,361 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we propose to adopt, in the present refund proceeding, a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Adams petroleum products to be eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater.[13]

iii. *Spot Purchasers*—We propose to adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Adams did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 86,396–97. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Adams.[14]

B. Allocation Claims

We may also receive claims based upon Adams' alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations, 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in Supart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as *Mobil Oil Corp./Aromalene Oil Co.*, 20 DOE ¶ 85,155 (1990); *Mobil Oil Corp./Reynolds Industries, Inc.*, 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) the existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 CFR part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Adams. *See Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989), action for review pending, No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Adams. In determining the amount of any allocation refund, we will utilize any available information regarding the portion of the Adams settlement fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the consent order underlying the Adams fund was the result of a negotiated settlement of the issues identified in the enforcement action against Adams and the amount of the settlement fund is less than Adams' potential liability under that action, we will prorate allocation refunds which would otherwise be disproportionately large in relation to the settlement fund.

C. Distribution of Funds Remaining After the First Stage

We propose that any funds remaining in the Adams settlement fund after the payment of all valid first-stage claims be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–7. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to meet the claims of injured parties in Subpart V refund proceedings and make those funds available to state governments for use in four identified energy conservation programs. The Secretary has delegated these duties to the OHA, and any funds in the Adams fund that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by John R. Adams and J.R. Adams Oil Company pursuant to the February 28, 1990, compromise settlement and deposited in Consent Order No. 660H00060 shall be distributed in accordance with the foregoing Decision and Order.

[FR Doc. 91–5293 Filed 3–5–91; 8:45 am]

BILLING CODE 6450–01–M

June 1, 1979; No. 2 Fuel Oil—July 1, 1979; Jet Fuel—February 28, 1979; Motor Gasoline—January 28, 1981.

[8] We obtained the per gallon refund figure by dividing the principal portion of the Adams settlement fund ($105,000,000) by the approximate volume of refined petroleum products sold by Adams between the beginning of the refund period (December 1, 1973) and the earlier of the end of the refund period (May 31, 1975), or the date of decontrol for each relevant product ($113,000,000 gallons).

[9] As in prior cases, we propose to establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 16,129 gallons of petroleum products from Adams would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,280 at 88,130 (1988) (*Exxon*).

[10] A cooperative's purchases of Adams petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.* 19 DOE ¶ 85,718 (1989).

[11] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 5,376,344 gallons of Adams petroleum products during the refund period.

[12] Under the mid-level injury presumption, a claimant which purchased between 5,376,344 gallons and 13,440,860 gallons of Adams petroleum products would be eligible to receive a principal (exclusive of interest) refund of $5,000. A claimant purchasing more than 13,440,860 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share.

[13] A claimant who attempts to make a detailed injury showing in order to obtain 100 percent of its allocable share but, rather, provides evidence leading us to conclude that it passed through all of the alleged overcharges, or that it was injured to a lesser degree than is presumed herein, may not necessarily receive a full refund under an injury presumption. Instead, such a claimant may receive a refund reflecting the level of injury established in its application.

[14] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3911–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Nuclear Regulatory Commission Licensees (EPA ICR # 1580). This ICR requests approval for a new collection.

Abstract: The Office of Radiation Programs will survey NRC licensed facilities in June 1991, to determine whether the NRC program provides an ample margin of safety to members of the general public residing near these facilities. EPA will use the information to estimate the maximum individual radiation dose. Based on that estimate, EPA will determine whether the regulatory program established by the NRC provides an ample margin of safety to protect the public health or whether EPA must promulgate regulations establishing a standard for radionuclide emissions from NRC licensed facilities. The information to be collected from each building that handles unsealed radionuclides at the NRC facility includes: principal activities at facility, building dimensions, stack/vent parameters, types of residents and businesses at the facility, and estimates or measures of the radionuclide emissions from each stack/vent.

Burden statement: The public reporting burden for this collection of information is estimated to average 33 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Facilities licensed by the Nuclear Regulatory Commission.

Estimated number of respondents: 670.

Estimated total annual burden on respondents: 22,110.

Frequency of collection: one time.

Respondents: Facilities licensed by the Nuclear Regulatory Commission.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Dated: February 27, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-5258 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3811-7]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice to the establishment of an Acid Rain Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting from 9 a.m. to 5 p.m. on March 20, 21, and 22 at the Ramada Renaissance Hotel, Washington Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900. At its first meeting, ARAC established four subcommittees: Allowance Trading and Tracking, Permits and Technology, Emissions Monitoring, and Energy Conservation and Renewables. It is anticipated that on March 20 and for a half day on March 21, these subcommittees will meet to discuss and frame issues related to their areas of assignment. The subcommittee will meet concurrently in different rooms. Seating in those rooms will be limited and publicly available on a first come, first serve basis. It is anticipated that on the afternoon of March 21 and on March 22, the full committee will meet to hear presentations and engage in discussions on issues developed in the subcommittees.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents together with related documents prepared for previous ARAC meetings will be available in the EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

DATES OF FUTURE ARAC MEETINGS: ARAC will hold its fifth meeting on April 29, 30, and May 1, 1991. This meeting will also be held at the Ramada Renaissance Hotel in Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Concerning ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475-9400; fax, (202) 252-0092, or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: February 28, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91-5257 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30315; FRL 3876-3]

TPTH; Deletion of Uses and Directions for Use on Carrots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: This notice announces that Griffin Corporation, Hoechst Celanese, M T Chemicals Inc., and Wesley Industries Inc., the sole registrants of the technical active ingredient TPTH, have requested to amend their registrations of TPTH Technical products by deleting all uses and directions for use on carrots. Notice is hereby given of the intent of the Environmental Protection Agency to approve the proposed amendments. EPA is at this time soliciting comments on the proposed amendments.

DATES: Written comments must be submitted on or before April 5, 1991.

ADDRESSES: Send three copies of your written comments identified by the docket control number 30315, to: Public Docket and Freedom of Information Branch, Field Operations Division (H7504C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: By mail: Eric Ferls, Special Review and Reregistration Division (H7508C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location: Reregistration Branch, Crystal Station 1, WF33C5, 2800 Crystal Drive, Arlington, Virginia. By telephone, call through the Federal Information Relay Service at 1-800-877-8339. When the operator answers, ask to call Eric Ferls at (703) 308-8045.

SUPPLEMENTARY INFORMATION: TPTH is the commonly accepted name for triphenyltin hydroxide. It is a member of the organotin family and is also known as Fentin hydroxide and hydroxytriphenyltin. TPTH was first developed for agricultural use as a fungicide and miticide by the Thompson-Hayward Agriculture and Nutrition Co., since purchased by Uniroyal Inc. TPTH is available as a 96 percent active ingredient technical product for formulating TPTH end-use products. Technical TPTH is produced by Griffin Corporation, Hoechst Celanese, M T Chemicals, and Wesley Industries Inc. under the trade names TPTH Technical (96 percent), and Wesley Technical Triphenyltin Hydroxide (96 percent). TPTH is primarily used in the formulation of fungicide/miticide products for use on crop areas.

Griffin Corporation, Hoechst Celanese, M T Chemicals, and Wesley Industries, producers of the technical grade of the active ingredient TPTH have requested to amend their registrations of TPTH Technical and Wesley Technical Triphenyltin Hydroxide by deleting all uses and directions for use on carrots. EPA intends to approve the request. Since these are the sole registrants of the technical grade TPTH there will no longer be a manufacturing use product available from which to formulate any registered use products for TPTH on carrots. End-use registrants are being notified by certified mail that their generic data exemption will be revoked and they will be given the opportunity to generate data in support of this use. Should any registrant wish to put the use of carrots back on their TPTH label at a later date, the registrant must duly apply for a label amendment and the EPA must review the request and make a determination of the acceptability of the request based on the risks and benefits of such an amendment.

EPA is now soliciting comments on the proposed amendments. Interested persons are invited to submit their written comments to the address given above.

Dated: February 19, 1991.

Allan A. Abramson,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-5017 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44565; FRL 3881-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl ethyl ketoxime (MEKO) (CAS No. 96-29-7), submitted pursuant to a final test rule. Test data was also submitted on octamethylcyclotetrasiloxane (OMCTS) (CAS No. 556-67-2), pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for MEKO were submitted by the Industrial Health Foundation, Inc., pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on February 5, 1991. The submissions describe a teratology study in rats and in rabbits. Developmental toxicity testing is required by this test rule. This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and siloxanes.

Test data for OMCTS were submitted by the Silicones Health Council on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on February 13, 1991. The submissions describe the determination of the biodegradability in a sediment/soil microbial system. Chemical fate testing is required by this consent order. This chemical is used primarily as an intermediate in the production of polydimethylsiloxane.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44565). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 22, 1991.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-5259 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL ELECTION COMMISSION

[Notice 1991-1]

Filing Dates for the Massachusetts Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Massachusetts has scheduled special elections on April 30, 1991, and June 4, 1991, in the First Congressional District to fill the seat of the late Silvio Conte.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report by April 18, 1991. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on June 4, 1991, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by May 23, 1991, and a Post-General Report by July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary Election and all other political committees not filing monthly which support candidates in the Special Primary shall file a 12-day Pre-Primary Report by April 18, 1991, with coverage dates from the last report filed through April 10, 1991. Committees, other than monthly filers, which are involved in only the Special Primary, must also file a Mid-year Report due July 31, 1991, with coverage dates from April 11, 1991, through June 30, 1991.

All principal campaign committees of candidates in the special general election and all other political committees not filing monthly which support candidates in this election shall file a 12-day Pre-General election report due on May 23, 1991, with coverage dates from April 11, 1991, through May 15, 1991, and a Post-General election report due on July 5, 1991, with coverage dates from May 16, 1991 through June 24, 1991. Such committees must also file a Mid-Year report due July 31, 1991, with coverage dates from June 25, 1991 through June 30, 1991.

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTIONS

All committees involved in the Special Primary (4/30) must file:

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
Pre-primary	1/1/91-4/10/91	4/15/91	4/18/91
Mid-year	4/11/91-6/30/91	7/31/91	7/31/91
All committees involved in the special primary (4/30) and special general (6/4) must file:			
Pre-primary	1/1/91-4/10/91	4/15/91	4/18/91
Pre-general	4/11/91-5/15/91	5/20/91	5/23/91
Post-general	5/16/91-6/24/91	7/5/91	7/5/91
Mid-year	6/25/91-6/30/91	7/31/91	7/31/91

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: February 27, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-5249 Filed 3-5-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

California

[FEMA-894-DR] Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-894-DR), dated February 11, 1991, and related determinations.

DATED: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of California, dated February 11, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 11, 1991:

The counties of Stanislaus Tehama for Disaster Unemployement Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency

[FR Doc. 91-5261 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-891-DR]

Indiana: Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA-891-DR), dated January 5, 1991, and related determinations.

DATED: February 22, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

Lake County for Individual Assistance and Public Assistance; and Marshall County for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-5262 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-864-DR]

Hawaii: Disaster and Emergency Areas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is removing the time restriction imposed by the Individual and Family Grant (IFG) program for the Presidentially-declared disaster FEMA-864-DR-Hawaii. This action is necessary because the flow of lava from the Kilauea volcano continues. FEMA is extending indefinitely the time limit until the lava flow stops and to enable all grant award and administrative activities to be completed.

FOR FURTHER INFORMATION CONTACT: Sharon A. Hordesky, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 Telephone: 202-646-2778.

SUPPLEMENTARY INFORMATION: Notice is given of the decision of the Associate Director, State and Local Programs and Support Directorate, granting an indefinite extension of time for the IFG program, necessitated by the Kilauea lava flow in Hawaii. The incident period remains open, and the Kilauea lava flow continues to impact the declared disaster area and will endure for an indefinite period of time. Because of this, a determination has been made that sufficient reason exists to grant an indefinite extension to the State of Hawaii for the IFG program.

Dated: February 28, 1991.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-5263 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP); Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.), announcement is made of the following committee meeting:

Name: National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee.

Dates of Meeting: April 2-3, 1991.

Place: Marriott Suites, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

Time: April 2-9 a.m. to 5 p.m.; April 3-8 a.m. to 12 p.m.

Proposed Agenda: The Committee will be briefed on the National Earthquake Hazards Reduction Program Plan draft and will provide comment and input; the NEHRP Advisory Committee will discuss their own plan of work for addressing the major issues of NEHRP.

The meeting will be open to the public with approximately ten seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Deborah O'Rourke at 202-646-2803.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing at the Federal Emergency Management Agency, Earthquakes and Natural Hazards Programs Division, 500 "C" Street, SW., room 625, Washington, DC. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 27, 1991.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-5264 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-21-M

Board of Visitors for the National Fire Academy; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: April 21-22, 1991.

Place: National Association of State Fire Marshals (NASFM) Annual Conference, Marriott Hotel, 25 America's Cup, Newport, Rhode Island.

Time: April 21-9 a.m.-12 p.m. (Quarterly Meeting), 12 p.m.-1 p.m. (Field Survey meeting with NASFM Board of Directors), 1 p.m.-4 p.m. (Quarterly Meeting). April 22-9:45 a.m.-10 a.m. (Field Survey Meeting with NASFM Conference Participants), 10 a.m.-12 p.m. (Quarterly Meeting).

Proposed Agenda: Old Business, New Business, Field Survey Meeting.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-1123) on or before April 11, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 15, 1990.

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 91-5265 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, *et seq.*)., as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Items Submitted for OMB Review

The Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law 101-595, section 710 ("1990 Amendments") were enacted on November 16, and became effective on February 14, 1991. The 1990 Amendments require, *inter alia*, that NVOCCs post a minimum bond of $50,000 with the Commission, and that every NVOCC not domiciled in the United States appoint a resident agent for service of process. The Commission issued an Interim Rule to implement the 1990 Amendments on January 15, 1991, which was scheduled to become effective on February 14, 1991. After receiving comments from all segments of the industry citing various difficulties in complying with the Interim Rule, the Commission granted a 60-day exemption from all requirements of the 1990 Amendments. The Commission also stayed the effective date of its Interim Rule until April 15, 1991.

OMB previously granted the Commission an emergency 90-day clearance of its Interim Rule through May 1, 1991. The Commission now is resubmitting its Interim Rule provisions for OMB clearance under 5 CFR 1320.13. Clearance is sought for various implementing provisions contained in 46 CFR Parts 580, 581, and new part 583 as follows:

46 CFR Part 580

Every NVOCC must state in its tariffs the surety bond number and identity of the surety company issuing the bond. NVOCCs not domiciled in the U.S. must also identify a resident agent. Every common carrier accepting or transporting cargo shall also ascertain the identity and status of the shipper. The Commission estimates an annual respondent universe of 5242 respondents. Total estimated respondent burden for this amendment is 2786 manhours: 1,581 manhours to designate an agent and furnish bonding information; and 1,207 manhours to identify shipper status. Total cost to the Federal Government is estimated at $17,632; total cost to respondents is estimated at $212,915.

46 CFR Part 581

Shipper contract parties must certify their shipper status and that of affiliates entitled to receive service under the contract. The Commission estimates a respondent universe of 100, which is comprised of 70 carriers and 30 conferences. Annual respondent burden is estimated at 221 manhours. There is no additional estimated annual cost to the Federal Government; estimated annual cost to respondents is $2,210.

46 CFR Part 583

Every NVOCC must file a surety bond with the Commission in the amount of $50,000. NVOCCs not domiciled in the U.S. must designate and maintain resident agents, and publish such designations in tariffs. The Commission estimates an annual respondent universe of 5242 respondents. Total estimated respondent burden for this amendment is 61,610 manhours: 52,369 manhours to file initial surety bonds; 7,533 manhours to designate resident agents and publish the information in tariffs; and 1,706 manhours to file replacement bonds and designate replacement agents. Total initial cost to the Federal Government is estimated at $69,945, with an estimated annual cost of $9,187 thereafter. Total initial cost to respondents is estimated at $1,855,201, with an estimated annual cost of $47,145 thereafter.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5180 Filed 3-5-91; 8:45 am]

BILLING CODE 6730-01-M

Puerto Rico Ports Authority/Seaboard Caribbean Terminal, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that

BEST COPY AVAILABLE

document to the person filing the agreement at the address shown below.

Agreement No: 224–003963–002.

Title: Puerto Rico Ports Authority/ Seaboard Caribbean Terminal, Inc. Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority Seaboard Caribbean Terminal, Inc.

Filing Party: Mrs. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, P.R. 00936–2829.

Synopsis: The Agreement amends the parties' basic agreement to renew its term for an additional 5-year period expiring April 15, 1995. The Agreement also increases: (1) The penalty fee from $737.90 to $966.38; (2) the monthly rent for exclusive use from $6,754.02 to $9,038.79; and (3) the security guarantee from $55,000 to $80,241.35.

By order of the Federal Maritime Commission.

Dated: March 1, 1991.

Joseph C. Polking,

[FR Doc. 91–5235 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M

NYSA–ILA; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on February 26, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224–200063–008.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties: New York Shipping Association, Inc. International Longshoremen's Association, AFL–CIO.

Synopsis: The agreement amends the parties' basic agreement to provide for a reduction in the tonnage assessment paid by ocean carriers in the Port of New York and New Jersey, effective March 1, 1991.

By order of the Federal Maritime Commission.

Dated: March 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5236 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 28, 1991.

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments on this proposed revision to information collection are welcome and should be submitted on or before April 5, 1991.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340).

Request for OMB Approval to Revise the Following Report

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 002.

OMB Docket number: 7100–0032.

Frequency: Quarterly.

Reporters: U.S. branches and agencies of foreign banks.

Annual reporting hours: 43,500.

Estimated average hours per response: 18.75.

Number of respondents: 580.

Small businesses are not affected.

This information collection is mandatory (12 U.S.C. 3105(b)(2),1817(a)(1) and (3), and 3102(b)) and is given partial confidential treatment.

On a quarterly basis, all U.S. branches and agencies of foreign banks ("U.S. branches") are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies.

Most of the proposed revisions would make the reporting requirements for U.S. branches equivalent to those for U.S. commercial banks in the Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036). The proposed changes to the FFIEC 002 for June 1991 affect several existing schedules and include the addition of a new schedule that is intended to improve the ability of the three federal bank regulatory agencies to monitor the involvement of U.S. branches in, and the credit quality of, highly-leveraged transactions (HLTs), both on an individual U.S. branch and aggregate basis. Information on the new schedule would receive confidential treatment.

Other changes are proposed for the deposit insurance assessments schedule (Schedule O), which is completed only by U.S. branches whose deposits are insured by the FDIC. Items would be added to collect data on accrued interest payable on deposits. The reporting frequency for items on the amount of deposits by size of deposit and on the number of deposit accounts of more than $100,000 would be changed from annually to quarterly. In addition, a new item on the number of deposit accounts of $100,000 or less would begin to be collected annually as of June 30. These changes would increase the estimate of hours per response for the 55 insured U.S. branches by an average of thirty minutes.

A new section (Part V) would be added to the schedule for transactions with related institutions (Schedule M) to collect information on off-balance sheet transactions between the reporting U.S. branch and other related depository institutions, such as the head office of the foreign bank or other branches of the foreign bank. Similar to the treatment of information in the other four parts of Schedule M, information on this new section would receive confidential treatment.

Each of two items on the schedule for commitments and contingencies (Schedule L) has two subitems in which reporting U.S. branches are required to provide information separately on gross commitments or obligations to purchase and sell particular types of contracts. Deletion of the four subitems is proposed.

Board of Governors of the Federal Reserve System, February 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–5208 Filed 3–5–91; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service: Federal Telecommunications Standards

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED–STD). FED–STD 1016, "Telecommunications: Analog to Digital Conversion of Radio Voice by 4,800 Bit/second Code Excited Linear Prediction (CELP)" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (703) 692–2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On September 22, 1989, a notice was published in the **Federal Register** (54 FR 39066) that a proposed Federal Telecommunications Standard 1016 entitled "Telecommunications: Analog to Digital Conversion of Radio Voice by 4,800 Bit/second Code Excited Linear Prediction (CELP)" was being proposed for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305–2010.

4. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), room 6039, 7th and D Streets, SW., Washington, DC 20407; telephone (202) 708–9205.

Dated: February 14, 1991.

Thomas J. Buckholtz,

Commissioner, Information, Resources Management Service.

[FR Doc. 91–5241 Filed 3–5–91; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P–0201]

Rin 0905–AA06

Print Size and Style of Labeling for Over-the-Counter Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a citizen petition filed by Pharmacists Planning Service, Inc., requesting regulatory standards for the print (optimum size and style) of over-the-counter (OTC) drug product labeling in order to maximize readability and legibility for persons with impaired or deteriorating vision.

DATES: Comments by June 4, 1991.

ADDRESSES: Submit written requests for single copies of the citizen petition to the Division of Over-the-Counter Drug Evaluation (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on print size and style of labeling for OTC drug products to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–210), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: The Pharmacists Planning Service, Inc. (the petitioner), 200 Gate Five Rd., Sausalito, CA 94966, has petitioned FDA under the provisions of § 10.30 Citizen petition (21 CFR 10.30) to establish regulatory standards for the print (optimum size and style) of OTC drug product labeling to maximize readability and legibility.

I. Summary of Petitioner's Views

The following narrative summarizes the information and arguments presented by the petitioner in support of its proposal. The material included in the narrative does not necessarily represent the views of the agency.

The petitioner stated that there is a need to institute larger print size on the packaging of OTC drug products, and to establish standards for the optimum size and style of print to be used for the labels and other printed material packaged with OTC drug products. These standards are needed in order to maximize readability of the print for persons with deteriorating vision, and because most people (especially the elderly) are unable to read the small print that currently appears on some OTC drug product labeling.

The petitioner stated that its request was being made pursuant to California Assembly Bill (AB) 2713 for the following reasons:

(1) Medication misuse and abuse is a serious and costly problem to patients, health providers, health care insurance plans, and local, State, and Federal governments.

(2) Prescription drugs continue to be switched to OTC status along with their attendant side effects and cautions on use.

(3) OTC drugs are marketed in containers of all shapes and sizes, and the labeling bears instructions, cautions, and side effects associated with their use.

(4) Most people, particularly the elderly, are unable to read the small print, and vital information is buried with other information that is required by FDA.

The petitioner also stated that the need for this type of additional regulation to safeguard the health, welfare, and safety of the public has been documented, and that "more than 240,000 older adults were hospitalized due to adverse drug reactions, mixing OTC drugs, which are available through sources other than a qualified health professional, and through lack of medical/pharmaceutical information on the proper method of administration of these medications." The petitioner also argued that there is no economic impact involved with its citizen petition, but that there would be a "$10 billion" savings in hospital costs. (Note: The petitioner provided a copy of the original California bill AB 2713;

however, there is a more current amended version (Ref. 1) that was enacted on September 12, 1990.)

II. Current Regulatory Policy

Currently, there are no statutory or regulatory requirements that specifically address the print size and style of the labeling of OTC drug products. Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) states that

> A drug * * * shall be deemed to be misbranded * * * (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs * * * in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Implementing regulations in 21 CFR 201.15, which address the prominence of required label statements for drugs, describe a number of situations in which information on a drug product's label may lack the prominence and conspicuousness required by section 502(c) of the act. Paragraph (a)(6) of § 201.15 identifies the following reasons: "Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter." However, no further requirements appear as to the size or style of type that is to be used.

Other agency regulations discuss various print size and style requirements. For example, the statement of identity of an OTC drug product is required to be presented in boldface type on the principal display panel, in a size reasonably related to the most prominent printed matter on such panel, and in lines generally parallel to the base on which the package rests as it is designed to be displayed. (See 21 CFR 201.61(c).) In some instances, the agency has required that warnings for certain OTC drug products appear in boldface type. For example, certain warnings for OTC bronchodilator drug products in 21 CFR 341.76(c)(6)(i) and (c)(6)(ii) are required to appear in boldface type. However, none of the existing regulations specifically address print size or style that is to be used.

III. Consumer Complaints; Professional Views

Based on a syndicated article that appeared in a newspaper column entitled "Peop'e's Pharmacy" (Refs. 2 and 3), a number of consumers (Ref. 4) wrote to FDA recently and complained about the readability of OTC drug product labeling. Many individuals complained about the small print size, and some were concerned about the style and color contrast. Several consumers specifically mentioned problems with reading the small print of OTC ophthalmic drug products. Questions were also raised about the safety of small print size because poor label legibility may result in adverse drug reactions due to improper dosing. Several consumers claimed they had such an experience. Many people complained that even though with corrective lenses they have "20/20 vision" they still need a magnifying glass to read the labels. Comments about print size have been received by the agency in a number of OTC drug rulemakings (e.g., OTC skin protectant drug products (February 15, 1983; 48 FR 6820 at 6830); OTC ophthalmic drug products (March 4, 1988; 53 FR 7076 at 7079)). A professional pharmaceutical group has recognized that the visually impaired, including many elderly persons, may have trouble reading medication labels, especially on smaller packages. This group has recommended Federal legislation similar to California AB 2713 to increase the optimum size and style of print to improve the readability of OTC drug labels (Ref. 5).

IV. California Legislation

On September 12, 1990, the Governor of the State of California signed AB 2713 to amend the Health and Safety Code regarding the labeling of nonprescription drug products (Ref. 1). Section 1 of the bill states that printed materials on labels and notices packaged with nonprescription drugs may be difficult to read, presenting a potential danger to the health and safety of customers. Therefore, every effort should be made to print these materials in a manner which makes them more comprehensible. Section 2 of the bill adds the following to the State's Health and Safety Code: (1) Manufacturers of nonprescription drugs which are sold in the State of California shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense; (2) the Nonprescription Drug Manufacturers Association (NDMA) shall report on a quarterly basis to, and seek advice periodically from, the California State Department of Health Services, consumer groups, health professionals, and drug manufacturers regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information; and (3) the director of the California State Department of Health Services, shall report to the legislature on or before December 3, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information. The bill further states that these provisions shall be repealed as of January 1, 1994.

V. Nonprescription Drug Manufacturers Association Action

FDA is aware that NDMA has endorsed the California legislation, and, in recognition of label reading difficulties, has appointed a task force on labeling to: (1) Explore the many aspects of label readability and legibility, and (2) evaluate the need and opportunity to make labels more easily read and understood by the public (Ref. 6). The task force is responsible for making recommendations to the NDMA Board and Association members on options to achieve such labeling, including type-size, print, style, color, contrast, package inserts, and special larger size packages. NDMA has also issued guidelines for industry entitled "Points for Consideration in Examining Product Labels for Readability and Legibility," (Ref. 7). These guidelines have been mailed to all NDMA member companies asking that they review their product line against six criteria to see if improvements can be made in the legibility of product labeling. The six criteria are as follows:

1. *General legibility.* Read your own labels. Examine the presentation of your labeling information as would a consumer. Is it readable?

2. *Utilization of available space.* In some cases it may be possible to enlarge label type size by extending the copy into some of the existing "white space." Examine the location and placement of information. Review alternative approaches to maximizing available space allocation, including placement of directions, instructions, warnings, and precautions on more than one panel of exterior carton.

3. *Contrast and color.* Review not only the size and placement of information, but also review the utilization of color and contrast to emphasize and draw attention to labeling information. Highly contrasting copy/background colors are more legible than low contrast colors. Dark type on a light background is more legible than light-on-dark. The smaller the type, the greater the contrast should be. Consumers of all ages are more apt to read and understand label information presented in a sharp contrast.

4. *Style of print.* Examine possible variations in style of type and graphic presentation. Upper and lower case type is easier to read than all capitals. Plain block print is more legible than fancy type. Allow space between paragraphs and words. Indent, bold, and highlight information such that it will grab the attention of the consumer and focus attention on label information.

5. *Quality of print.* Size of type is not everything. The quality (sharpness) of print has a great effect on legibility. Different printing methods differ in quality, e.g., letterpress printing is usually sharper than offset. Thinner (less bold) type may appear sharper than bolder type.

6. *Package innovation possibilities.* Creative packaging can provide more space for information, allowing more flexibility in presentation of information. Think of ways that would assist a consumer in reading and understanding label information.

VI. Request for Comments

The petitioner, consumers, professional group, NDMA, and California legislation discussed above raise issues that need to be addressed before FDA can make a final decision on the feasibility of establishing a Federal regulation pertaining to print size and style of OTC drug labeling. In the past, FDA has encouraged manufacturers to include a statement on the product container label, carton, or package insert suggesting that the consumer retain the carton or package insert for complete information about the use of the product when all the required labeling does not appear on the product container label. Manufacturers are free to design ways of incorporating such labeling, e.g., by using flap, wrap-around, or fold-over labels or by redesigning cartons or containers to provide more label space with room for larger and more legible print. In an effort to determine whether further steps need to be taken and whether a consensus can be reached on the most practical manner of providing for OTC drug labeling that is easy to read, FDA is seeking public comments on the feasibility of establishing Federal regulations that deal with the print size and style of OTC drug labeling. FDA also intends to consider the recommendations of NDMA's task force. In addition, FDA is seeking public comments on whether any new labeling requirements would have a substantial economic impact because of the large number of manufacturers who might incur additional labeling expense. Therefore, in accordance with § 10.30(h)(3) (21 CFR 10.30(h)(3)), FDA is seeking public comments on the following questions before reaching any decision on the petition:

1. Are current print sizes, types, colors, contrasts, backgrounds, etc. of OTC drug labeling adequate in providing readable information for individuals with normal eyesight and for those with poor or deteriorating eyesight?

2. Should there be a mandatory minimum print size or other readability standard and, if so, what should it be? If the answer is yes, should this be established via a regulation or a guideline?

3. Should a package insert or larger carton be mandatory if a minimum print size standard is implemented, and because of package size, the manufacturer is unable to meet the specifications?

4. What impact would a Federal legibility/readability regulation have on State laws that relate to "slack-fill"?

5. What relevant data are available and what studies have been performed to determine optimum print size, background, contrast, etc. for package products?

6. What adverse effects have been documented that are associated with the inability or failure to read labels on OTC drug products?

7. Will the NDMA guidelines be effective and have a positive impact on labeling and, if so, are these guidelines adequate so that a Federal regulation or guideline is not needed?

The complete petition is on public display between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch. Requests for single copies of the petition may be submitted to the Division of OTC Drug Evaluation (address above).

Interested persons may, on or before June 4, 1991, submit to the Dockets Management Branch (HFA–305) (address above) written comments regarding this petition. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. The petition, other information discussed above, and any comments received in response to this request for comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

If, after reviewing the comments and other information available, FDA concludes that the petition has sufficient merit, the agency will propose regulations or a guideline accordingly.

VII. References

(1) Assembly Bill (AB) 2713 State of California, in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

(2) Copy of newspaper article from the "People's Pharmacy," King Features Syndicate, in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to J. and T. Graedon, the "People's Pharmacy," in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

(4) Letters from consumers to FDA, in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

(5) Comment No. C1, Docket No. 90P–0201, Dockets Management Branch.

(6) News release, Nonprescription Drug Manufacturers Association, Washington, July 23, 1990, in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

(7) Letter from J. D. Cope, Nonprescription Drug Manufacturers Association, to W. E. Gilbertson, FDA, enclosing Nonprescription Drug Manufacturers Association's "Points for Consideration in Examining Product Labels for Readability and Legibility," in OTC Vol. 24, Docket No. 90P–0201, Dockets Management Branch.

Dated: February 25, 1991.

David A. Kessler,
Commissioner of Food and Drugs

[FR Doc. 91–5232 Filed 3–5–91; 8:45 am]
BILLING CODE 4160–01–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G–619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 619–0791. Copies may be obtained from: Carol S. Gleich, Ph.D. Executive Secretary, Council on Graduate Medical

Education, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–6190

Dated: March 1, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–5301 Filed 3–5–91; 8:45 am]

BILLING CODE 4160–15–M

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) and the National Highway Traffic Safety Administration (NHTSA) announce Fiscal Year (FY) 1991 funds are available for grants under section 1910 of the Public Health Service (PHS) Act. These grants will be made to States or accredited schools of medicine to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Funds appropriated by Public Law 101–517 will be used for this purpose.

The NHTSA has participated with the HRSA in developing the program priorities announced under the EMS for children program for FY 1991. The NHTSA will also share the Federal monitoring responsibilities for EMS for children awards made during FY 1991 as well as continuing to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s).

DATES: To receive consideration, grant applications for the EMS for children should be submitted to the Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, 12300 Twinbrook Parkway, Rockville, Maryland 20852.

These applications must be received or postmarked on or before April 18, 1991. Applications will be considered as meeting this deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the review group.

A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the Director, Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, room 9–31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443–2250.

Grant applications (PHS form 5161–1, approved under OMB #0937–0189) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, 13200 Twinbrook Parkway, suite 100–A, Rockville, Maryland 20852, telephone 301 443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (section 1910 of the PHS Act, as amended), establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" for purposes of this program is defined as having the same meaning as set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4)). "Accredited" in this context has the same meaning as set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5)).

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block Grant.

There will be three topical areas of competition this year:

1. Implementation grants for the purpose of initiating or improving the capacity of a State's Emergency Medical Services program to address the particular needs of children. Budget requests for these grants should not exceed $250,000 per year. Up to five projects will be awarded.

2. Resource grant(s) to develop a means of gathering, reproducing, publicizing and distributing work products of the various grantees of the EMSC program; providing an information, consultation and technical assistance resource to States and localities to improve their EMSC capacity; and acting as a repository for data and other programmatic information. Between one and three projects will be funded. The total budget for this priority (grant or grants) should not exceed $400,000 per year.

3. Targeted issues grants on topics of importance to EMSC. These grants are intended to address specific, focused issues related to the development of an EMSC capacity including targeted systems development, evaluation, education and data collection activities. Particular attention will be given to projects addressing minority concerns. Budget requests for this activity should range between $50,000 and $125,000 per year. Up to five projects will be funded.

Under topical area 1, States (and medical schools within those States) which have not as yet received support under this program will have priority for funding. Under topical area 3, States (and medical schools within those States) which have received support under this program will have priority for funding.

These topical areas are not being proposed for public comment. A national conference of past and current EMSC grantee States (total of 20) and other recognized leaders in the EMSC field was held in Washington, DC, during November 1990. This select group of representatives was informed of the changes in the reauthorization bill for this program that had recently passed which effectively expanded the program to allow for additional types of program activities. It was from this audience that the priorities, as identified in this notice, were offered and agreed upon as the direction the EMSC program should take during FY 1991. Thus, the priorities as listed in this notice already represent substantial public input from those most involved with this issue.

By statute, the project period for EMS for Children grants is for up to two years, subject to annual evaluation by the Secretary.

Availability of Funds

Approximately $4,880,000 is available for grants for the EMS for Children program, of which $2,250,000 will be used for new and competing grants. We estimate funding approximately 10–15 new and competing grants. The remaining funds will be used for continuation support.

Eligible Applicants

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of interested entities within the State, such as local government and health and medical organizations in the private sector, in developing the proposed demonstration project. Consistent with the statutory purpose of improving maternal and child health and with particular attention to the needs of minority and disadvantaged populations, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best address applicable Healthy People 2000 objectives and otherwise promote improvements in health.

Application Evaluation Criteria

An application will be evaluated by consideration of the following factors:

1. The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in grant locale. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

2. The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

3. The soundness (in relation to the state of the art), appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

4. The soundness of the plan for evaluating progress in achieving project outcome objectives.

5. The extent of collaboration and coordination with other appropriate organizations involved in EMS, health care, and public health and safety (e.g., injury prevention activities, the State EMS agency, the State Maternal and Child Health program, highway safety, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

6. The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the grant period.

7. The extent to which the applicant proposes to employ products and expertise of EMS for Children programs in other States, especially of current and former grantees of the Federal EMSC program. Such resources include, but are not limited to, technical assistance and consultation.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 92.22.

The five separate sets of cost principles prescribed for grant recipients are: (1) OMB Circular A–87 for State and local governments; (2) OMB Circular A–21 for institutions of higher education; (3) 45 CFR part 74, appendix E for hospitals; (4) OMB Circular A–122 for nonprofit organizations; and (5) 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J—Monitoring and Reporting of Program Performance, and § 92.40 which applies to State and local governments.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicant (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number is 93.127.

Dated: February 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–5230 Filed 3–5–91; 8:45 am]

BILLING CODE 4160–17–M

Program Announcement for Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 will be accepted for grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, presently authorized by section 827, title VIII of the Public Health Service (PHS) Act, as amended by Public Law 100–607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the authorization of appropriation. The issuance of this announcement is a contingency action to ensure that should funds become available, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

The President's budget request includes $4.1 million for this program in Fiscal Year 1992. Approximately $2.5 million is needed for 17 continuation projects which have been previously recommended for funding. With the remaining $1.6 million, approximately 11 competing projects will be awarded averaging $150,000 each. The period of

Federal support should not exceed three years.

Section 827 of the Public Health Service Act authorizes grants to increase opportunities for individuals from disadvantaged backgrounds to pursue a nursing education.

Grants may be awarded to eligible applicants to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds:

1. By identifying, recruiting and selecting such individuals;

2. By facilitating the entry of such individuals into schools of nursing;

3. By providing counseling or other services designed to assist such individuals to complete successfully their nursing education;

4. By providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education;

5. By paying such stipends as the Secretary may determine for such individuals for any period of nursing education;

6. By publicizing especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools; and

7. By providing training, information or advice to the faculty of such schools with the respect to encouraging such individuals to complete the programs of nursing education with which the individuals are enrolled.

Public and nonprofit private schools of nursing and other public or nonprofit private entities are eligible for grant support.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000: (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;

2. The potential effectiveness of the proposed project in carrying out such purposes;

3. The administrative and managerial capability of the applicant to carry out the proposed project;

4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;

5. The qualifications of the project director and proposed staff;

6. The reasonableness of the proposed budget in relation to the proposed project; and

7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

These criteria were established in fiscal year 1990 after public comment.

In addition, the following mechanism may be applied in determining the funding of approved applications.

Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

The following funding priority established in FY 1990, after public comment, is being extended in FY 1992.

Funding Priority for Fiscal Year 1992

In determining the order of funding of approved applications a funding priority will be given to:

Applications from nursing schools that have a minority and low-income student enrollment of 35 percent or more, or can document a 20 percent annual increase in the number of minority and low income students matriculating into the nursing major for the past three years.

Requests for grant application materials and questions regarding business management issues and grants policy should be directed to: Grants Management Officer (D-19), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-28, Rockville, Maryland 20857, Telephone: (301) 443-5915.

Applications materials should also be mailed to the Grants Management Officer at the above address.

Should additional programmatic information be required, please contact: Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 5C-13, Rockville, Maryland 20857, Telephone: (301) 443-5783.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915-0060.

The application deadline dates for FY 1992 are May 15, 1991 and October 1, 1991. Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.178 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: February 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-5231 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-945; FR-2901-D-01]

Delegation of Concurrent Authority to the Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Concurrent Authority.

SUMMARY: Pursuant to Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development is delegating to Deputy Secretary Alfred DelliBovi, concurrently with the Secretary, the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development with the exception of the power to sue and be sued.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Jacobson, Executive Assistant to the Deputy Secretary, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10100, Washington, DC 20410. Telephone (202) 708-0759 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In the delegation of authority issued today, the Secretary is delegating to Deputy Secretary Alfred DelliBovi all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development, with the exception of the power to sue and be sued.

Accordingly, the Secretary delegates as follows:

Section A. Authority delegated.

Deputy Secretary Alfred DelliBovi is hereby authorized, concurrently with the Secretary, to exercise all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development.

Section B. Authority excepted. There is excerpted from the authority delegated under Section A the authority to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 28, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-5275 Filed 3-5-91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4410-04]

Advisory Council Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Garberville, California, March 20-22, 1991. Agenda items will include an orientation for new members, a tour of the King Range National Conservation Area, election of officers, conservation awards, and the Sacramento River Management Area. A complete agenda is available from the Ukiah BLM Office.

DATES: March 20, 2 p.m. to 5 p.m.; March 21, 8 a.m. to 5 p.m.; and March 22, 8 a.m. to 12 p.m.

ADDRESSES: March 20 and 22, Benbow Valley Restaurant, 6840 Benbow Drive, Garberville, California. March 21, Field Tour, King Range National Conservation Area.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10 a.m., Friday, March 22. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: February 22, 1991.

David Fatch,

Acting District Manager.

[FR Doc. 91-5101 Filed 3-5-91; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875-1573, MS/AS/ISS, room 1209B, SA-14, Washington, DC 20523-1413.

Date Submitted: February 26, 1991.

Submitting Agency: Agency for International Development.

OMB Number: 0412-0514.

Form Number: None.

Type of Submission: Extension.

Title: Rules and Procedures Applicable to Commodity Transactions.

Purpose: A.I.D. finances transactions under Commodity Import Programs and needs to assure that the transaction complies with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving A.I.D. funds, and banks making payments for A.I.D.

Annual Reporting Burden

Respondents: 510; annual responses: 2.5; average hours per response: .50; burden hours: 637.50.

Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 1991.

Elizabeth Baltimore,

Information Support, Services Division.

[FR Doc. 91-5239 Filed 3-5-91; 8:45 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Notice of Investment Opportunity

The Government of Israel wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development (A.I.D.) guaranteed loans, or securities representing interests therein, made under A.I.D.'s Housing Guaranty Program. These funds will be used to finance projects for housing and infrastructure in Israel for Soviet refugees. Public Law 101-302 authorizes a $400 million program specifically for the Government of Israel.

The Government of Israel would like to receive proposals from interested underwriters on an expedited basis. Any

questions should be addressed to Israel's financial advisor, Kidder, Peabody, by calling Harriet Fried at (212) 510–3449 or Steve Plust at (212) 510–3294.

To accomplish Israel's objectives, Israel's lead manager must at a minimum:

1. Perform and discuss with Israel and it financial advisor a complete quantitative analysis of the cash flows generated by the proposed structures and proposed pricing of securities;
2. Obtain any credit ratings applicable to the proposed sale transaction;
3. Complete the underwriting of all securities offered for sale on a negotiated basis;
4. Establish and maintain a post-sale trading market for the securities;
5. Coordinate all activities relating to the proposed financing plan with Israel and its financial advisor; and
6. Assist Israel in securing the services of required service providers such as trustee, accountant, printer, etc.

Selection of underwriters and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–0214, telephone: 202/663–2530.

Dated: February 27, 1991.

Michael G. Kitay,

Assistant General Counsel, Bureau for Asia and Private Enterprise, Agency for International Development.

[FR Doc. 91–5242 Filed 3–5–91; 8:45 am]

BILLING CODE 8116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–322]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Pall Corporation (Pall); Enka AG and Enka America, Inc.; Meissner Filtration Products Co., Inc., and Meissner Manufacturing Co., Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 25, 1991.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW. Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: February 25, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5251 Filed 3–5–91; 8:45 am]

BILLING CODE 7020–02–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day meeting of the Advisory Committee on Appellate Rules to consider proposed amendments to the Federal Rules of Appellate Procedure. The meeting will be open to public observation.

DATES: April 17, 1991—9a.m.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC, 20544, telephone: (202) 633–6021.

Dated: February 27, 1991.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 91–5193 Filed 3–5–91; 8:45 am]

BILLING CODE 2210–01–M

NATIONAL SCIENCE FOUNDATION

Meeting To Comment on Second Biennial Revision of the U.S. Arctic Research Plan

In accordance with the Arctic Research and Policy Act of 1984, Public Law 98–373, the National Science Foundation announces the following meeting:

Name of meeting: Second Biennial Revision of the U.S. Arctic Research Plan—Opportunity to Comment.

Date of meeting: March 21, 1991 1 p.m. to 4 p.m.

Place Anchorage Museum of History and Art, 121 West 7th Avenue, Anchorage, Alaska.

Purpose of meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the Plan (due in July 1991). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations in Alaska from March 13–29, 1991.

Anchorage, Alaska: The Alaska Resource Library, Federal Building, 222 W. 7th St., 1st Floor;

Juneau, Alaska: The Alaska State Library, State Office Building, entrance on 4th Street, Circulation Desk, 8th Floor;

Fairbanks, Alaska: The Rasmusen Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (Arctic Research Commission, Governor of Alaska, residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review, and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions.

The biennial revision to the Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas;
2. Atmosphere and Climate;
3. Land and Offshore Resources;
4. Land-Atomosphere Interactions;
5. Engineering and Technology; and
6. Social Science and Health.

Coordinated interagency efforts and supporting programs are also discussed. These include research in the western Arctic marine environments, geodynamics, and cultural and natural characteristics of the Bering region, monitoring, data and information, activities, logistics, and international activities.

Public participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments should be submitted at the public hearing or mailed to the address below by March 29, 1991.

For further information: If you would like to review a copy of the biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Staff, National Science Foundation, 1800 G Street, NW., room 620, Washington, DC 20550, or call (202) 357–7817.

Information will be available after March 13, 1991

Costs: None.

Prior to the Public Meeting a workshop will be held on Federal Arctic Research Information, March 19–21, at the Anchorage Museum of History and Art, Anchorage, Alaska.

Charles E. Myers,

Arctic Staff, Division of Polar Programs.

[FR Doc. 91–5253 Filed 3–5–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission is considering issuance of an amendment to Facility Operating License No. DPR–43, issued to Wisconsin Public Service Corporation (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would allow the licensee to increase the allowable fuel enrichment at the Kewaunee Nuclear Power Plant from the current limit of 38.5 grams of Uranium-235 per axial centimeter of fuel assembly (or 3.67 as-built weight percent) to 49.2 grams of Uranium-235 per axial centimeter (or 4.75 as-built weight percent). The proposed amendment would allow the reload of the higher enrichment fuel assemblies and the storage of such assemblies prior to and subsequent to loading in the reactor. Plant operation using the higher enriched fuel must be demonstrated to be acceptable by a cycle-specific reload safety evaluation performed prior to each fuel loading.

The proposed action is in accordance with the licensee's application for amendment dated July 5, 1990 as revised July 10, 1990.

The Need for the Proposed Action

The licensee intends to increase the fuel enrichment for the Kewaunee Nuclear Power Plant to 49.2 grams of Uranium-235 per axial centimeter of fuel assembly. This enrichment increase is necessary to obtain fuel management flexibility necessary to effectively implement the reactor vessel flux reduction program. The flux reduction program, which was developed in response to the pressurized thermal shock rule, 10 CFR 50.61, will extend the useful life of the Kewaunee reactor vessel and facilitate potential life extension and license renewal efforts. Other benefits from higher fuel enrichments include deferral of the depletion of on-site spent fuel storage capacity and reduced fuel costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would allow the reload and storage of enriched fuel of 4.75 w/o U–235. Plant operation using the higher enrichment fuel assemblies would be demonstrated to be acceptable by a cycle-specific reload safety evaluation performed prior to each fuel reloading. The use of fuel with a maximum enrichment of 4.75 w/o U–235 would not significantly increase the probability or consequences of any accidents previously analyzed. No significant changes in the types or amounts of radiological effluents during normal operation or postulated accidents that may be released offsite are incurred by the increased w/o fuel enrichment. As a result, no significant increase or cumulative occupational radiation exposure is noted.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to this proposed amendment for the Kewaunee Nuclear Power Plant.

Therefore, since the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure, the Commission concludes that this proposed action

would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR part 20. The proposed change will not result in a measurable change to the nonradiological plant effluents and therefore will not have any environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment Proposed No Significant Hazards Consideration and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 22, 1990 (55 FR 34385). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Kewaunee Nuclear Power Plant dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Fir[illegible]gs of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 5, 1990, and revision dated July 10, 1990 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 28th day of February 1991.

Dominic C. Di Ianni,

Acting Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–5248 Filed 3–5–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 29th meeting on March 20–22, 1991 room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

A. Review and comment on an NRC staff Technical Position regarding Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility.

B. Review and comment on the NRC staff's Interim Criteria for Decommissioning.

C. Meeting with the low-level waste coordinator from Massachusetts to hear about the development of the state's strategic plan for LLW disposal.

D. Meeting with the Commissioners to discuss items of mutual interest.

E. Response to a recent Staff Requirements Memorandum related to revising 10 CFR part 61 relative to attention to leaching resistance of the low-level waste form.

F. Briefing on NRC oversight and monitoring of existing low-level waste disposal facilities through the Agreement State program.

G. Briefing by Louisiana Energy Systems on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility.

H. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings at time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: February 28, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–5245 Filed 3–5–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittees on Thermal Hydraulic Phenomena and Severe Accidents; Meeting

The Subcommittees on Thermal Hydraulic Phenomena and Severe Accidents will hold a joint meeting on March 21, 1991, in the Montgomery Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, March 21, 1991—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the issue of NRC computer codes and their documentation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 28, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–5246 Filed 3–5–91; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 8, 1991 through February 22, 1991. The last biweekly notice was published on February 20, 1991 (56 FR 6867).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: February 6, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to (1) delete the reference to a specific date for 10 CFR Part 50, Appendix J, Section 4.7.A.2.a, (2) delete Table 3.7-1, "Primary Containment and Reactor Vessel Isolation Valves," and the references thereto, (3) clarify sections 4.7.A.2.b.1.a and 4.7.A.2.b.1.b by adding the words "primary containment."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deleting the specific date of 10CFR50 Appendix J does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature. It allows Primary Containment Testing to be performed in accordance with the current revision of 10CFR50 Appendix J. This change does not affect plant operation or design.

The proposed removal of Technical Specification Table 3.7-1 "Primary Containment and Reactor Isolation Valves" does not involve a significant increase in the probability or consequences of an accident previously analyzed. Relocating the table's information to other controlled documents does not affect the probability or consequences of any previously analyzed accident because no hardware changes are being proposed, and because isolation valve operability and surveillance requirements are not relaxed.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because Primary Containment Testing will continue to be conducted in accordance with the latest version of 10CFR Appendix J.

Removing Table 3.7-1 from the Technical Specifications does not involve a significant reduction in a margin of safety because operability and surveillance criteria for valves needed for containment integrity are not being relaxed.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02199

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Acting Project Director: Susan F. Shankman

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: February 6, 1991

Description of amendment request: The proposed amendment would establish a revised basis for the safety analyses of the Pilgrim Nuclear Power Station based upon the results of the Loss-of-Coolant Accident (LOCA) analysis performed using General Electric's SAFER/GESTR-LOCA Application methodology. The proposed modification substitutes the reference to the LOCA analyses report in T.S.6.9.A.4.b with the revised LOCA analyses report.

The cycle 9 reload fuel (General Electric fuel, GE8) was analyzed using the SAFER/GESTR-LOCA Application Methodology. The approval of the proposed Technical Specifications is required for plant operation with cycle 9 reload fuel following Refueling Outage No. 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This change involves no physical modification to the plant nor would require any different operator action during any operating condition. Thus, there would be no increase in the probability of occurrence of an accident previously evaluated in the PNPS safety analysis report; therefore this change does not increase the consequences of an accident previously evaluated in the safety analysis report.
2. This change involves no new equipment. It does not violate 10 CFR 50, Appendix K limits. Hence, this change does not increase the probability of occurrence of the consequences of a malfunction of equipment important to safety previously evaluated in the safety analysis report.
3. We have determined the new approved methodology for LOCA evaluations does not affect the safe operation of Pilgrim. The requirements of 10 CFR 50, Appendix K are met by the new methodology; hence the operation of Pilgrim in accordance with the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Susan Shankman, Acting

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 15, 1991

Description of amendments request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation, and Section 6.10.3, Record Retention.

Basis for proposed no significant hazards consideration determination: As required by 10-CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions. The revisions to Section 6.0 of the Technical Specifications reflect changes in the organizational reporting structure of CP&L due to the creation of the Nuclear Assessment Department (NAD). The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the Corporate Nuclear Safety Section (CNSS) as outlined in the Specifications, will not be altered by the change. Rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Auditing Unit of the Corporate Quality Assurance Department will not be altered by the change, but will reflect a reporting realignment of the individuals and organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.
2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amedment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety-related systems perform their functions. As a result of the change, the Brunswick Technical Specifications will better reflect the actual management structure at both the Brunswick Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of amendments request: January 15, 1991

Description of amendments request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation, and Section 6.10.3, Record Retention.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions.

The revisions to Section 6.0 of the Technical Specifications reflect changes in the organizational reporting structure of CP&L due to the creation of the Nuclear Assessment Department (NAD). The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the Corporate Nuclear Safety Section (CNSS) as outlined in the Specifications, will not be altered by the change. Rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Auditing Unit of the Corporate Quality Assurance Department will not be altered by the change, but will reflect a reporting realignment of the individuals and organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amedment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As a result of the change, the Brunswick Technical Specifications will better reflect the actual management structure at both the Brunswick Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 15, 1991

Description of amendment request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L's) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation; and Section 6.10.3, Record Retention. The changes also realign the evaluation of CP&L's Licensee Event Reports (LER) for potential applicability to other CP&L nuclear plants to a shared responsibility between the on-site Regulatory Compliance Unit and the Corporate Nuclear Licensing Section for the operational feedback function.

In addition to the changes related to the formation of the NAD, the position of Assistant Plant General Manager is being eliminated and is, therefore, being deleted from the list of members of the Plant Nuclear Safety committee (PNSC). Also, updating of position titles is included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions.

Section 6.0 of the Technical Specifications was revised to reflect changes in the organizational reporting structure of CP&L due to the creation of the NAD. The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the CNSS as outlined in the Specifications, will not be altered by the change; rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department will not be altered by the change; but will reflect a reporting realignment of the individuals and organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.

The position of Assistant Plant General Manager has been eliminated at SHNPP [Shearon Harris Nuclear Power Plant]. As such the proposed change deletes the Assistant Plant General Manager from the list of PNSC members provided in Technical Specification 6.5.2.2. This position provided no additional area of expertise not already covered by other PNSC members and can be eliminated without impact on the decision making capability of the PNSC and without any impact on safe operation of the plant. The meeting frequency, quorum requirements, and responsibilities of the PNSC are not affected by this proposed change to composition of the PNSC. The other title change which have been made within Section 6.5.2.2 relating to composition of the PNSC, have been made solely for the purpose of updating these position titles to reflect current position titles. These title changes have no impact on the capability of the PNSC to perform its function and have no impact on the safe operation of the plant.

Deletion of the Technical Specification requirement that CNSS (now NAD) personnel evaluate all CP&L LERs for potential applicability to other CP&L plants will not result in the elimination of the LER review activity. This activity, which is part of the Operational Experience Feedback (OEF) function, is being transferred to the on-site Regulatory Compliance Unit and the Corporate Nuclear Licensing Section in the General Office as a shared responsibility. The on-site Regulatory Compliance Unit will provide plant-specific LER review to identify issues which have potential applicability to other CP&L nuclear plants. The Nuclear Licensing Section will perform an oversight function as part of its natural generic regulatory responsibility to help assure consistent feedback to and consideration of individual plant issues at the other CP&L nuclear plants.

Deletion of the Technical Specification requirement from this section will not impact safe operation of the plant since this change is administrative in nature and does not alter the review or feedback activities. In fact, NUREG-0737 Section I.C.5 specifies that Technical Specifications are not required to implement this OEF activity.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As a result of the change, the Shearon Harris Technical Specifications will better reflect the actual management structure at both the Shearon Harris Nuclear Power Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 18, 1991, as supplemented February 4, 1991

Description of amendments request: The amendment request proposes two changes to the Administrative Controls section of the Technical Specifications. The first proposed change would change the title of the Assistant Vice President Quality Programs and Assessment to the General Manager Quality Programs and Assessment. The scope and responsibilities of the position would remain unaffected. The second proposed change is intended to clarify the Station Control Room Engineer (SCRE) to Shift Technical Advisor (STA) formal turnover.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Operating License/Technical Specification Amendment has been evaluated to determine whether or not there is a Significant Hazards Consideration based on the questions provided by 10 CFR 50.92 requirements. In addition, the evaluation was measured against the criteria used to establish safety limits, the limiting safety system settings, and the limiting conditions for operations. The results of the evaluation determined that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The changes are administrative in nature, and as such are not considered in any FSAR Chapter 15 analysis. The changes do not effect any administrative process which could impact the assumptions or results of the analyses.

The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated. The proposed changes do not result in the introduction of any new or different equipment, and they will not cause the operation of installed equipment in a new or different manner. The changes will not result in the introduction of any new procedure or process which could create a new or different kind of accident.

The proposed change does not involve a significant reduction in margin of safety. Because the changes are purely administrative in nature, no margin of safety is affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 24, 1990

Description of amendment request: The proposed amendments would revise the in-place penetration and bypass leakage requirement in Technical Specification (TS) 4.7.6.c.1, 4.7.6.f, and 4.7.6.g from less than 1% to less than 0.05%. The proposed revision places a more restrictive limit in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Operation of McGuire in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The request to change the TS requirement for in-place HEPA penetration and carbon bypass leakage from less than 1% to less than 0.05% constitutes a more restrictive requirement that will further ensure adequate filtration of the control room air as required to maintain the control room habitable during all phases of operation. Additionally, the proposed revision complies with Regulatory Guide 1.52 Revision 2 as clarified by Generic Letter 83-13. Operating under this proposed change, the VC system will continue to maintain proper temperature, cleanliness, and pressurization in the control room during plant operation, shutdown, post accident conditions, and all feasible weather conditions. There will be no hardware, system modifications, or operational changes to the VC system as a result of the proposed change. Therefore, the probability of an accident previously evaluated will not increase. By placing the more restrictive requirement on the VC system, the consequences of an accident, specifically the control room dose, will be maintained below regulatory limits.

Operation of the McGuire facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident previously evaluated. As stated above, this revision imposes a more restrictive requirement that will further ensure adequate filtration of the control room air as required to maintain the control room habitable during all phases of operation. There will be no hardware, system modifications, or operational changes to the VC system as a result of the proposed change. Therefore, no new or different accident scenarios are created.

Operation of the McGuire facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. By imposing the more restrictive requirement, the proposed revision will ensure the margin of safety provided by the 99% decontamination efficient HEPA and carbon filters will be maintained. By decreasing the allowed HEPA penetration and carbon bypass leakage from less than 1% to less than 0.05%, the designed margin of safety will be maintained, and reflected in the TS.

Based on the preceding discussion, Duke concludes that the proposed amendment request does not involve a significant hazards consideration as defined by 10 CFR 50.92.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001.

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 29, 1991

Description of amendment request: The proposed amendments revise the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specification (TS) 3.3 and 4.5.2 regarding the reactor building emergency cooling system. Specifically, the TS would be clarified by defining a reactor building cooling train in terms of equivalent cooling capacity to meet the design requirements as specified in the Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change restricts interpretation of the specification while ensuring the design basis requirements are met. The configuration required by the proposed specification are permitted by the existing specification. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature, therefore the change does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

No new configuration is allowed by this change to the nomenclature in the Specification. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature. This change serves to clarify the specification and provide further information in the Bases. The configuration required by the proposed specification is permitted by the existing specification. Any deviation from that of normal configuration will require an evaluation per 10CFR50.59 and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The purpose of this change is to define the requirements for the reactor building emergency cooling in terms of heat removal capacity rather than in terms of specific component operation. The required configurations are unaffected and the design basis is unchanged. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature. Providing clarification and references to the system design basis does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Thomas P. Gwynn, Acting Director

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 29, 1991

Description of amendment request: This proposed change to the Arkansas Nuclear One, Unit No. 2 (ANO-2) Technical Specifications (TS) would revise the Action statements associated with Limiting Condition for Operation (LCO) 3.2.1, Linear Heat Rate and LCO 3.2.4, DNBR Margin. LCOs 3.2.1 and 3.2.4 currently require core power to be maintained less than the linear heat rate (LHR) and departure from nucleate boiling ratio (DNBR) power operating limits calculated by the Core Operating Limits Supervisory System (COLSS). If COLSS is out of service, the LHR and DNBR must be maintained within a more restrictive set of limits based on the Core Protection Calculators (CPCs). With these limits not being maintained, corrective action must be initiated within 15 minutes to restore the LHR and DNBR to within the applicable set of limits (depending on whether or not COLSS is operable) within 1 hour or the plant must be in at least Hot Standby within the next 6 hours.

The proposed change adds a distinction between the Action requirements for exceeding a COLSS calculated power operating limit (an actual plant condition warranting rapid corrective action) and the Action requirements for exceeding a CPC calculated operating limit (when COLSS is out of service). When COLSS is in service, the present Action remains essentially unchanged except that the power level that must be maintained if the LHR or DNBR Limits cannot be restored will be increased to be consistent with the present TS Applicability. However, with COLSS out of service, the proposed change will replace the current 15 minute time limit for initiating corrective action with a requirement to return COLSS to service within 2 hours. The time allowed for restoration of the DNBR and LHR Limits would then increase from 1 hour to 2 hours. If the DNBR and LHR limits are not restored within the 2 hours, the proposed change would require reactor power to be reduced to less than or equal to 20% of Rated Thermal Power within the next 6 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does not involve a significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not modify the requirement to operate within the alternate LHR and DNBR limits nor does it modify the actual LHR or DNBR limits themselves. The proposed change simply makes a distinction between the Action requirements associated with exceeding a COLSS calculated power operating limit and the Action requirements associated with exceeding a CPC calculated operating limit following the loss of COLSS. In the first case (exceeding a COLSS calculated [power operating limit] POL), Entergy Operations agrees that corrective action should be initiated promptly to bring the LHR and DNBR within their respective limits and, in this case, a 15 minute time limit is appropriate. However, in the latter case (exceeding a CPC calculated operating limit following the loss of COLSS), it is clear that simply because COLSS indication is lost does not mean that the plant is operating outside the range of conditions assumed in Chapter 15 Safety Analysis and, in this case, a 15 minute time limit is not appropriate. An increase from 15 minutes to 2 hours to regain the monitoring capabilities of COLSS would not significantly increase the probability of exceeding the actual LHR or DNBR power operating limits since the increase in COLSS out-of-service time will be compensated for by increasing the monitoring frequency of the important CPC calculated parameters. Further, since the proposed change will result in maintaining steady-state conditions it will be easier for the operators to detect any abnormal occurrence that has the potential to degrade either the LHR or the DNBR.

The primary consideration in extending the COLSS out of service time limit is the remote possibility of a slow, undetectable transient that degrades the LHR and/or DNBR slowly over the 2 hour period and is then followed by an [Anticipated Operational Occurrence] AOO or an accident. The parameters normally monitored by COLSS which have the potential for degrading the LHR and DNBR if no corrective action is taken are: Reactor Coolant System (RCS) flow rate, axial and radial power distributions, core inlet temperature, core power, RCS pressure and azimuthal tilt. Of these parameters, core inlet temperature, core power, and RCS pressure are easily monitored by the plant operators using various safety-grade, redundant Control Room indications and, therefore changes in these parameters are readily apparent. Further, operating experience at ANO-2 and other [Combustion Engineering] CE nuclear steam supply systems using the same reactor coolant pumps (RCPs) as ANO-2 has shown that measurable changes in RCP [delta]Ps (which COLSS uses to calculate RCS flow) are very rare. When they do occur they involve abrupt step changes in flow which are readily apparent; hence, the probability of a slow degradation in the RCS flow rate is exceedingly small. Thus, the parameters that comparatively (although still remote) pose the highest potential for a degradation in the core thermal margin when COLSS is out of service relate to the axial and radial core power distributions and the azimuthal tilt. These parameters are discussed below.

Axial xenon oscillations are a normal consequence of the ANO-2 core design, particularly near the end of core life. As a result, ANO-2 operations personnel are instructed, per operating procedures to maintain strict control over the axial power shape in the core. Although the primary reason for axial shape control is to maintain an even fuel burnup throughout the core, it also results in maintaining the axial power shapes well within the limits assumed in the safety analysis. Typically, axial shape control practice at ANO-2 maintains the Axial Shape Index (ASI) within 0.05 ASI units of the Equilibrium Shape Index (ESI), which is normally very near 0.0.

Hypothetically, the most severe situation which could be postulated to occur, although again remote, would be if COLSS execution was lost just when the plant operators were ready to take manual action to return the ASI value to within the ESI 27 0.05 control band. Since a full xenon oscillation takes approximately 26 hours, there would be about 6 hours from the time that control action would normally be taken to the time that the ASI reached its peak value (i.e., it takes one quarter cycle for the ASI to travel from its ESI value to its peak value). Since operating procedures will be revised to require the CPC calculated LHR and DNBR to be monitored every 15 minutes (see below), any significant change in the ASI index will be apparent through a change in these CPC calculated values. Hence, due to the attention given the axial power distribution, both when COLSS is in service as well as when COLSS is out of service, it is very improbable that a change in ASI during two hours of steady-state operation with COLSS out of service could be either undetected or lead to a condition that place the reactor outside the range of initial conditions that were assumed in the safety analysis.

With regards to azimuthal tilt, there is very rarely any significant change in this parameter as long as all Control Element Assemblies (CEAs) are properly aligned. The only real contributor to a rapid increase in azimuthal tilt would be an inadvertent CEA drop; however, since the probability of a CEA drop is very low, the likelihood of this event occurring within the two hour time limit is even lower. In the unlikely event that a CEA drop did occur, the Control Element Assembly Calculators (CEACs) provide a safety-grade, redundant means of alerting the operators that corrective action is necessary. Thus, the potential for a degradation in azimuthal tilt during two hours of steady-state operation following the loss of COLSS is both highly unlikely and relatively easy to detect using instrumentation already available in the Control Room. The ANO-2 Technical Specifications currently address actions for a dropped CEA.

As previously stated, upon approval of the proposed change, plant personnel will revise operating procedures to increase the monitoring frequency of the CPC calculated values of LHR and DNBR. Currently, procedures require that immediately following the loss of COLSS and every 2 hours thereafter, plant operators record (among other things) the CPC calculated values of LHR and DNBR. Procedures will be revised to require that the monitoring frequency for LHR and DNBR be increased from once every 2 hours to once every 15 minutes. Moreover, this procedure will be revised to define a maximum allowable change in the CPC calculated LHR or DNBR such that further degradation will require the operators to take immediate action to reduce reactor power and comply with the appropriate COLSS out of service TS limits. The monitoring frequency for DNBR and LHR of once every 15 minutes will be used until either COLSS is restored to service or DNBR and LHR have been restored to within their limits, at which time the monitoring frequency will become once per 2 hours as allowed by the existing surveillance requirements. Implementation of this procedure change provides additional assurance that potential reductions in core thermal margin will be quickly detected and, should it prove necessary, result in a decrease in reactor power and subsequent compliance with the existing COLSS out of service TS limits.

Extending the time to restore the CPC calculated LHR and DNBR to within the acceptable operating range from 1 hour to 2 hours is being proposed to assure that the maneuver can be accomplished in a gradual and controlled manner thus decreasing the probability of an avoidable challenge to the Reactor Protection System (RPS). When this Action statement was originally written it was anticipated that only a relatively small power reduction would be required to bring the reactor into conformance with the CPC operating limits. This relatively small power change could be accomplished in a fairly controlled manner over the one hour time limit currently in the TS; however, due to changes in CPC and COLSS software, it is possible that the required power reductions may exceed 25% near the end of the fuel cycle. These large power reduction rates result in a rapid increase in xenon concentration and a subsequent decrease in cold leg temperature (T-cold) that may be difficult to control. At the end of an operating cycle it is possible that such an event could lead to a violation of the minimum cold leg temperature Tech Spec (LCO 3.1.1.4) and/or a CPC generated reactor trip on T-cold out-of-

range. Accordingly, given the potential for power reductions of this magnitude, it is appropriate to extend the time allowed to complete the maneuver so that it may be performed in a more gradual and controlled manner.

Changing the core power which must be maintained if the LHR and/or DNBR limits cannot be restored in the proposed 2 hours time limit from "Hot Standby" to "less than or equal to 20% of Rated Thermal Power" is consistent with the ANO-2 TS philosophy. That philosophy requires the reactor to be placed in an Operational Mode in which the LCO is no longer applicable if that LCO or its associated Action statements cannot be satisfied. Power levels of 20% and below, in combination with compliance with all other LCOs [sic] (e.g., CEA insertion Limits), ensure that sufficient LHR and DNBR margin will be available and results in a core power high enough to allow the in-core and ex-core neutron detectors to provide meaningful data to the COLSS and CPCs, respectively. This higher power level will facilitate COLSS trouble-shooting and aid in the determination of COLSS operability once COLSS execution is restored.

The proposed changes will eliminate unnecessary power reductions along with the rate at which the power reductions are accomplished. The proposed change will result in significant operational benefits while continuing to maintain a high degree of confidence that the core conditions remain well within the range of values assumed in the safety analysis. Therefore, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 3 - Does not create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not alter the current power operating limits nor does it involve any changes to COLSS or CPC software. There has been no physical change to plant systems, structures or components nor will the proposed change affect the ability of any of the safety-related equipment required to mitigate AOOs or accidents. The only significant change associated with the proposed amendment involves changes to the operating procedures used when COLSS is out-of-service. All revisions to operating procedures will be reviewed and approved by appropriate plant personnel as required by the Administrative Controls (Section 6) in the ANO-2 Technical Specifications. Thus, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Does not Involve a Significant Reduction in the Margin of Safety.

The intent of LCOs 3.2.1 and 3.2.4 is to maintain the reactor within the range of initial conditions that was assumed in the Safety Analysis. Maintaining the LHR within the specified range ensures that in the event of a LOCA, the fuel cladding temperature will not exceed the 2200° F limit imposed by 10CFR46. Maintaining the DNBR within the specified range ensures that no AOO will result in a violation of the [Specified Acceptable Fuel Design Limits] SAFDLs and that no postulated accident will result in consequences more severe than those described in Chapter 15 of the FSAR. Since there has been no change to the requirement to operate the reactor within the LHR and DNBR limits and no change to the actual LHR and DNBR limits themselves, the accident analyses described in Chapter 15 of the FSAR will not be affected and will therefore remain bounding.

The proposed change will eliminate unnecessary power reductions along with the rate at which the power reductions are accomplished. Maintaining steady-state conditions for up to two hours after the loss of COLSS while increasing the CPC LHR/DNBR monitoring frequency, provides plant personnel with a reasonable period of time to return COLSS to service while continuing to maintain a high degree of confidence that the core conditions remain well within the range of values assumed in the safety analysis. Moreover, by reducing the number of plant transients there will be a reduction in probability of an AOO and subsequent RPS actuation. Hence, operation of the facility in accordance with the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Thomas P. Gwynn, Acting Director

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 8, 1991

Description of amendment request: The request proposes amending the Technical Specifications by replacing certain values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which would contain those limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The removal of cycle-specific core operating limits from the South Texas Project Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The core operation limits, although not in the Technical Specifications, will be followed in the operation of the South Texas Project, Units 1 and 2. The proposed amendment requires exactly the same actions to be taken if a core operating limit is exceeded that the current Technical Specifications do. The cycle-specific limits in the COLR will continue to be controlled by the South Texas Project programs and procedures. Each accident analysis addressed in the South Texas Project FSAR will be examined with respect to changes in the cycle-dependent parameters, which are obtained from the use of NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10 CFR 50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods, and submitted to the NRC to allow the staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the core operating limits, and appropriate actions will be required if these limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design methodologies, and the actions to be taken if a limit is exceeded remains unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle specific limits will not involve a significant reduction in the margin of safety. Therefore, the proposed changes are administrative in nature, and do not impact the operation of the South Texas Project in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: George F. Dick, Jr., Acting

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 16, 1991 and Supplement dated February 15, 1991.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 4.7.A.3 "Containment Systems," to allow the use of the "mass point" methodology, in addition, or as an alternative to, the presently approved "total time" methodology.

Basis for proposed no significant hazards consideration determination: At the present time, TS 4.7.A.3 requires the use of ANSI N45.4-1972 (the "total time" method) for calculation of the containment leak rate. The licensee has proposed that the use of the mass point method be incorporated in TS 4.7.A.3 to be used in conjunction with, or instead of, the total time method.

It has been recognized by the professional community that the mass point method is an acceptable means for calculation of containment leakage in addition to the two other methods, point-to-point and total time which are referenced in ANSI N45.4-1972. The mass point method calculates the air mass at each point in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is proportional to the leakage rate. The mass point method has some advantages when it is compared with the other methods. In the total time method, a series of leakage rates is calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected.

The staff has determined that these two methods (mass point and total time) are acceptable methods which may be used to calculate containment leakage rates as described in 10 CFR Part 50, Appendix J, Section III.A.3(a).

Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existance of no significant hazards considerations with regard to issuance of license amendments. In this regard, the proposed change to TS 4.7.A.3 would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the TS involves a method of containment testing, has no effect on reactor operation and thus cannot effect the probability of an accident. Since the mass point methodology provides a reliable indication of containment leakage, and the TS will continue to assure that containment leakage will remain acceptably low, there will be no increase in the consequences of previously analyzed accidents involving off-site releases.
2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change to the TS, which involves an acceptable means of containment leak rate testing, will not result in a degradation of containment integrity or otherwise affect any other system important to safety. Accordingly, no new or different kind of accident will be created.
3. Involve a significant reduction in a margin of safety. Since containment integrity will continue to be maintained with use of the mass point methodology, there will be no decrease in the margin of safety for those accidents requiring containment integrity.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 15, 1990 (Reference LAR 90-12)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to allow 5 cubic feet per minute (cfm) leakage at 1.5 times the system design operating pressure through the Auxiliary Building Safeguards Air Filtration System Dampers M2A and M2B. The TS currently require no detectable leakage. TS 4.7.6.1.6.1 would be revised as follows:

(1)Allow a quantitative bypass leak rate for the Auxiliary Building Safeguards Air Filtration System Dampers M2A and M2B of a maximum of 5 cfm at 1.5 times the system design operating pressure. This damper leakage test is proposed to be performed on an 18-month refueling outage frequency.

(2)Delete the requirement to perform a surveillance of dampers M2A and M2B following any structural maintenance on the HEPA filter or charcoal adsorber housing or following painting, fire, or chemical release in any ventilation zone communicating with the system.

The damper leakage testing results presently involve an interpretation that leads to a subjective determination that no bubbles be present during the test as a result of damper leakage. These dampers are large mechanical structures (6-foot diameter butterfly valves). Attaining an absolute zero leak rate on these ventilation dampers is not a practical goal considering their design and function. A more objective standard is a quantitative leak rate limit based on analysis with consideration given to establishing a limit at which a physical problem with the dampers is indicated. A very small leak as indicated by a bubble test does not necessarily indicate a degrading condition or operability problem.

The licensee has stated that establishing a quantitative leakage rate based on conservative dose rate analysis will provide an objective basis to perform surveillance testing on the auxiliary building ventilation system (ABVS). The proposed quantitative leakage limit has also been reviewed to ensure that implementation would not adversely affect system performance between refueling outage testing. The radiological consequences analysis

BEST COPY AVAILABLE

results indicated a negligible change in control room and offsite radiation doses for the selected value of quantitative damper leakage. Upon approval of the proposed change, the licensee will leak test dampers M2A and M2B on a refueling outage frequency using the new leakage limits as established by analysis. A direct measurement test will be employed to quantitatively measure the leak rate from dampers M2A and M2B. The system leak test pressure will be lowered to 1.5 times the system design operating pressure. Presently, the system design operating pressure is approximately 8 inches water gauge, resulting in a test pressure of 12 inches water gauge. A rest pressure of 1.25 times the system operating pressure is referred to in ANSI N510 and is closer to actual operating conditions than the 30 inches water gauge (approximately 3.75 times the system design pressure) test pressure currently specified in the TS. A test pressure value is not included in the proposed TS since the system design operating pressure could change as the result of a fan replacement or a fan sheaving change out. If an actual test value was included in the TS, changes in the system design operating pressure would require a license amendment request and NRC issuance of a license amendment. The basis for the test value would still be included in the TS and any changes to the system design operating pressure would require a 10 CFR 50.59 evaluation. No design changes are required to quantitatively measure damper leakage rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The results of the analysis to support the proposed leakage change demonstrate that an unfiltered bypass damper leakage of less than or equal to 5 cfm would result in total offsite and control room dose increases of less than 0.05 percent during a LOCA and during post-LOCA recirculation. Increases of this amount are insignificant with respect to the LOCA and post-LOCA dose analysis. Damper leakage less than or equal to 5 cfm is within reasonable limits of the design of the damper and will not increase the probability of equipment failure.

Replacing the actual test pressure value in TS 4.7.6.1.b.1) with a functional requirement for the test pressure value constitutes an administrative improvement. This change will provide enhanced flexibility in accommodating changes to the actual test pressure value while providing for careful review and analysis, in accordance with 10 CFR 50.59, of any modifications of the system design operating pressure of the system. The careful review and analysis of a change and the requirement for prior Commission approval through the 10 CFR 50.59 review process provides assurance that plant safety is not adversely affected. In addition, the proposed license amendment would not alter the function or the operation of the system.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The results of the analysis to support the proposed leakage change show that an unfiltered leakage of less than or equal to 5 cfm would result in total offsite and control room dose increases in less than 0.05 percent during a LOCA and during post-LOCA recirculation. The conclusions presented in the FSAR Update on personnel doses from a DBA LOCA remain unchanged and 10 CFR 100 criteria are still met.

Also, [...] the proposed change to TS 4.7.6.1.b.1) involving the replacement of an actual test pressure with a functional requirement is administrative. The change will facilitate revisions to the test pressure value without affecting the requirements for testing the ABVS dampers. Changes to the system design operating pressure are controlled through application of the 10 CFR 50.59 process.

Therefore, the proposed changes to do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 21, 1990 (Reference LAR 90-14)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to add a new TS 3/4.7.1.6 for the Main Feedwater Regulating, Bypass and Isolation Valves and to increase the Main Feedwater Regulating Valve closure time limit from 5 to 7 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of TS 3/4.7.1.6 is administrative, constitutes an additional restriction, and clarifies the requirements for plant components.

A 7 second closure time (a 2 second increase over that presently allowed in the TS) for the Main Feedwater Regulating and Bypass Valves is assumed in the FSAR Update accident analyses as well as the containment analysis to support [removal of the Boron Injection Tank]. Based on these analyses, it is concluded that the proposed increase in the TS valve closure time does not adversely affect any of the accident analyses results.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The addition of TS 3/4.7.1.6 is administrative, constitutes an additional restriction, and clarifies the requirements for plant components. No new method of operation is introduced by the change, nor will there be a change in the method by which any safety-related system performs its function.

Increasing the Main Feedwater Regulating and Bypass Valve closure time does not require physical alteration to any plant system, or change the method by which any safety-related system performs its function.

Therefore, the proposed change do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The addition of TS 3/4.7.1.6 clarifies the requirements for plant components. The change is administrative and does not alter the margins of safety established in previous accident and transient analysis.

Increasing the Main Feedwater Regulating and Bypass Valve TS closure time from 5 to 7 seconds does not affect the conclusions of the applicable FSAR Update analyses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 4, 1990; superseded January 22, 1991

Description of amendment request: The licensee has provided additional information which clarifies documentation submitted for the proposed amendment dated April 4, 1990. The proposed amendment would delete the references to Footnote Number (9) in Technical Specification Table 4.2-2, "Minimum Test and Calibration Frequency for Core and Containment Cooling System" for the High Pressure Coolant Injection (HPCI) Subsystem Auto Isolation and for the Reactor Core Isolation Cooling (RCIC) Subsystem Auto Isolation, Items Number 5 and 7, respectively, in the table. The proposed change would result in deletion of the functional test requirements for the time delay relays and timers associated with the automatic isolation signals for the HPCI and RCIC Systems. These relays and timers were originally designed to initiate a time delay in the event of a steam line or packing leak so that the leak could be manually isolated prior to automatic isolation of the HPCI and RCIC steam supply piping. However, the relays and timer have not been calibrated nor functionally tested since initial plant startup and the feature is not incorporated into the various plant accident analyses. The time delay feature has, therefore, been defeated and the valves will shut immediately when the setpoint is reached.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to Table 4.2-2 remove the requirement for functional testing of the time delay relays and timers for the HPCI and RCIC automatic isolation signals.

The original design of the HPCI and RCIC automatic isolation signals included time delay devices for postulated steam supply line or packing leaks. Since the HPCI and RCIC steam supply piping are physically adjacent to the main steam supply piping where the steam lines penetrate the primary containment and for a portion of their route to their respective steam turbines, the steam leak detectors for both the HPCI and the RCIC systems could be activated by a leak in any of the steam lines. To prevent needless automatic isolation, time delays were incorporated into initial plant design to allow time to investigate leaks in the vicinity of the steam supply piping and effect manual isolation prior to automatic closure of the HPCI and/or RCIC steam supply valves.

The FitzPatrick Final Safety Analysis Report (FSAR) contains a discussion regarding the physical separation of the HPCI and RCIC steam lines and the location of the leak detectors. The potential for isolation of both steam lines as a result of a single steam leak was also considered. Although the time delay devices are referenced in the FSAR as a means to eliminate spurious isolations, no such time delay is assumed in the High Energy Line Break (HELB) analysis or the FSAR accident analyses. In addition, since the HPCI and RCIC systems are not required to mitigate pipe breaks outside of the primary containment, simultaneous isolation of both systems, should it occur, is within the scope of the plant design bases.

The potential consequences of either HPCI or RCIC turbine steam line break are less severe without the presence of the delay isolation. Without the delay circuitry, coolant inventory lost through a postulated leak in the HPCI or RCIC systems is reduced. Consequently, peak temperatures in the vicinity of the leak are reduced.

The proposed technical specification change to delete the surveillance requirements for the time delay devices is consistent with the present plant status, concurs with the HELB analysis, and would not result in an unanalyzed plant condition. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2.Create the possibility of a new or different kind of accident from those previously evaluated. The original design of the HPCI and RCIC systems high room temperature isolation logic, as outlined in the FSAR, included time delay devices. These devices were provided for the sole purpose of avoiding spurious isolation during normal operation and had no effect on system response during the transient or accident conditions outlined in the FSAR. However, these time delays were not incorporated into present plant accident analyses or transients described in the HELB analysis. In addition, simultaneous isolation of both the HPCI and RCIC steam supply lines during postulated pipe breaks outside primary containment does not affect safe shutdown capability. Low Pressure Coolant Injection (LPCI), in conjunction with the Automatic Depressurization System (ADS), is functionally redundant to HPCI and RCIC.

Therefore, removal of the requirement to perform surveillance tests associated with these time delay devices will not create a new or different kind of accident.

3.Involve a significant reduction in the margin of safety.

The surveillance test which would be removed from the technical specifications will not affect the margin of safety resulting from operation of the HPCI or RCIC systems since operation of the time delays was not assumed in the accident analysis described in the FSAR or in the HELB analysis. Also, the timers are not required to operate in order for the HPCI or RCIC systems to perform their desired function and were included in original system design for the sole purpose of preventing spurious isolation during normal operation.

The changes will increase the margin of safety by decreasing the amount of time that elapses between the detection

of a steam line leak and an automatic isolation signal. A high area temperature in the vicinity of the HCPI or RCIC steam lines will promptly and automatically isolate both steam supply lines. Based on operational experience, the increased probability of a spurious isolation is small. Other methods for the early detection and investigation of steam line breaks are available to operators. In the event of an accident coincident with the isolation of both steam lines, a functionally redundant system remains available to safely shut down the plant. Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: November 13, 1990 as supplemented January 15 and January 22, 1991.

Description of amendment request: The amendment would revise the license to include a new entity, North Atlantic Energy Service Company (NAESCO), as a licensee and would authorize NAESCO, as agent for the other licensees, to manage, operate, and maintain Seabrook Station. NAESCO would be a wholly owned service company subsidiary of Northeast Utilities (NU), and whose sole function would be to serve as the managing agent for Seabrook. At the Time of Effectiveness, responsibility for the management, operation, and maintenance of Seabrook would transfer to NAESCO from Public Service Company of New Hampshire (PSNH), acting through New Hampshire Yankee Division.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The technical qualifications of NHY, the NU system companies and Yankee Atomic Electric Company (YAEC) have already been approved by the NRC. There will be no changes that would adversely affect the NRC's conclusions on the technical qualifications of the Seabrook management, operating or maintenance organizations as documented in the Seabrook Safety Evaluation Report as supplemented.

Further, as a result of the proposed license amendment, there will be no physical changes to the Seabrook facility and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. Additionally, with the exception of administrative changes to reflect the role of NAESCO, the commitments in the Seabrook Quality Assurance Program, and the Seabrook Emergency Plan, Security Plan, and Training Program will be unaffected. Moreover, the license amendment will not result in any changes to NHY's regulatory commitments to the NRC.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The Seabrook design and design bases will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the licensing basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits for Seabrook are not affected by the proposed license amendment. With the exception of administrative changes to reflect the role of NAESCO, plant procedures will be unaffected. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

3. Involve a reduction in a margin of safety. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a reduction in a margin of safety.

The staff notes that the licensees contemplate that this transition will be initially accomplished by transferring to NAESCO the existing staff of NHY and all existing authority to administer contracts with respect to Seabrook. This would achieve continuity in the management of Seabrook by allowing NAESCO to initially assume the role of operator of Seabrook with the same staff and contractor support resources that the NRC has previously evaluated and approved in connection with the technical qualifications of PSNH, including the engineering and technical staff of YAEC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

In order to assure that the role of NAESCO is solely to act as the managing agent for the plant, the staff would condition the license to prohibit NAESCO from marketing or brokering power or energy from the plant. In addition, the license condition would indicate that all licensees other than NAESCO are responsible and accountable for the actions of their agent to the extent said agent's actions effect the marketing or brokering of power and energy from Seabrook Station, Unit 1.

Local Public Document Room location: Exeter Public Library, 47 Front St., Exeter, New Hampshire 03833.

Attorney for licensee: Thomas G. Dignan, Esq., John A. Ritscher, Esq., Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director:: R. Wessman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: October 2, 1990

Description of amendment request: This proposed amendment modifies Table 4.3-1, Reactor Trip System Instrumentation Surveillance Requirements, by adding a Note (5) to the Channel Functional Test that increases the test interval for Functional Unit 19, Safety Injection Input from SSPS. The proposed amendment changes the test interval from monthly to at least every 62 days on a STAGGERED TEST BASIS. This would make the test interval consistent with the interval for the remainder of the automatic actuation logic for the Reactor Protection System.

Also, Functional Unit 19 on Tables 3.3-1 and 4.3-1 would be changed from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF." This change will more accurately describe the portion of the reactor trip logic that is addressed by Functional Unit 19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The changes proposed herein for the Salem Generating Station Unit Nos. 1 and 2 Technical Specifications:

(1) do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change of Functional Unit 19 of Tables 3.3-1 and 4.3-1 from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF" does not substantively change any Technical Specification requirement. It is intended to more accurately describe the function, whose purpose is to assure that a Safety Injection signal results in a Reactor Trip. Safety Injection is an Engineered Safety Feature (ESF) function. Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) functions, which comprise the Reactor Protection System (RPS), are performed by the Solid State Protection System (SSPS).

The proposed change to the Safety Injection Input from ESF Channel Functional Test frequency (Table 4.3-1) is consistent with the present RTS/ESFAS testing requirements at Salem Generating Station. Because Functional Unit 19 is a logic function internal to SSPS, the proposed test interval of 62 days is consistent with Automatic Actuation Logic testing of RTS/ESFAS in general. The monthly test frequency presently required is more appropriate for the Functional Units that provide an identifiable input to the RPS from a process parameter (e.g., Pressurizer Pressure - High). The monthly requirement for Functional Unit 19 is based on earlier revisions of Westinghouse Standard Technical Specifications, which were more appropriate for RPS and ESFAS systems using relays instead of solid state circuits. In the relay systems, RTS and ESFAS functions were performed by separate sets of cabinets. The Safety Injection performed provided a discrete input from the ESF cabinets to the Reactor Trip function, thereby warranting monthly testing.

Testing Automatic Actuation Logic on a 62 day Staggered Test Basis has been determined to provide an acceptable level of safety. Since Functional Unit 19 is part of the logic, testing should also be required on the same frequeny as the rest of the RPS logic. Therefore, the proposed change does not involve a significant increase in the probability or consequences in an accident previously evaluated.

(2) do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any changes to RTS/ESFAS actuation logic, nor does it involve any design changes or new configurations. Therefore, the proposed change does not introduce the possibility for any new or different kind of accident.

(3) involve a significant reduction in margin of safety.

The change in the testing frequency will be consistent with the Automatic Actuation Logic testing frequency that has previously been shown to assure an acceptable mar .1 of safety with respect to RTS/ESFAS reliability. The proposed change does not involve a significant reduction in any margin of safety.

The NRC Staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: This amendment request involves Technical Specification (TS) 3/4.8.1.1, "A. C. Sources - Operating," and, specifically, Surveillance Requirement (SR) 4.8.1.1.2.g.7. This SR directs that the emergency diesel generator (EDG) be run at rated load for 24 hours while maintaining required voltage and frequency. In addition, SR 4.8.1.1.2.g.7.d requires that SR 4.8.1.1.2.g.4.b, a simulated loss of offsite power (LOOP), be performed within 5 minutes of completing the 24 hour load test. South Carolina Electric & Gas (SCE&G or the licensee) proposes to delete SR 4.8.1.1.2.g.7.d and to add a new surveillance that would require the diesel generator to be run at 4150 to 4250 KW for 1 hour before commencing the LOOP test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The requested change only involves the duration for which the full load temperature conditions are maintained prior to performing the LOOP surveillance. A change of this nature does not affect the performance, reliability, or capabilities of the EDG to fulfill its design functions. Therefore, this requested amendment has no impact on any accident previously evaluated.
2. The amendment request does not create the possiblity of a new or different kind of accident from any accident previously evaluated. The requested change only involves the duration for which the full load temperature conditions are maintained prior to performing the LOOP surveillance. The alteration of the surveillance requirements does not affect the normal operational methods, limits, or configuations with respect to the EDG. Therefore, the possibility of a malfunction or failure of any component or system which would result in a new or different kind of accident remains unaffected.
3. The amendment request does not involve a significant reduction in a margin of safety. The requested change does not alter any operational limits, practices or functions of the EDG, and the change maintains the technical basis of all of the surveillance objectives equal to that in the current surveillance requirements. Thus, neither the design nor accident analysis bases are impacted by the requested change, and therefore all safety margins remain unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed change would revise Surveillance Requirement 4.6.1.2 by allowing a one-time extension of the Integrated Leak Rate Test (ILRT) schedule. As the Technical Specifications (TS) read now, the test must be performed at intervals of no greater than 50 months. The proposed amendment would allow an extension of four months so that the ILRT will correspond with the 10-year shutdown as required by Appendix J to 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. [The proposed amendment will not] involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a one-time extension of the 40 [plus or minus] 10 month, Type A test interval as contained in Surveillance Requirement 4.6.1.2.a. The purpose of the Type A test is to ensure that leakage from the primary containment does not exceed allowable leakage rate values specified in the Tech Specs (VCSNS limit is 0.75 La which equates to 0.15 percent per day). Testing pursuant to SR 4.6.1.2.a was last satisfactorily completed on 12/88 at which time the actual measured leak rate was well below the required value of the plant's Technical Specifications. SCE&G therefore concludes that extending the surveillance interval would not cause a significant increase in the probability or consequences of an accident previously evaluated.
2. [The proposed amendment will not] create the possibility of a new or different kind of accident from any previously analyzed. No new accident scenarios are created by the proposed change because the one-time extension affects only the test frequency and does not affect the physical containment structure, the penetrations or the facility. Previous Type A test results have shown the leak rates have remained well below the 0.75 La (0.15 percent per day) limit. Because the leakage limit has not been compromised, the requested extension of the test interval will in no way create the possibility of a new or different kind of accident from any previously analyzed.
3. [The proposed amendment will not] involve a significant reduction in the margin of safety. The test data (test data has 95% upper confidence level) from the previous two Type A tests, 0.094 percent per day (Type A test performed in October 1984) and 0.1057 percent per day (Type A test performed in December 1988), levels (acceptance criteria for VCSNS Type A tests is 0.15 percent per day). Based on the previous measured leakage rates combined with the design modification and process control administrative procedures, the one-time extension of the 40 [plus or minus] 10 month, Type A, test interval would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: This amendment request involves Technical Specification (TS) 3/4.7.1, "Turbine Cycle - Safety Valves," and addresses two separate changes. First, TS 3/4.7.1.1 contains provisions that were included for use in two-loop operation. As it is unlikely that two-loop operation will be approved, South Carolina Electric & Gas (SCE&G, the licensee) has requested that these provisions be removed. Second, the amendment requests that the setpoint tolerance on the four highest-set main steam safety valves (MSSV) be increased from plus or minus one percent to plus or minus three percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The effects of the requested change was [sic] examined with respect to each event described in the RTSR [Reload Transition Safety Report] (non-LOCA [loss of coolant accident] events), the small and large break LOCA accidents, and the Steam Generator Tube Rupture Event. The examination revealed that the conclusions reached for all events described in the RTSR remained valid and the results of the FSAR [Final Safety Analysis Report] accident analyses were not impacted.
2. The amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested change does not represent a design change in that all design limits are maintained and the physical design of all systems are [sic] unaffected. Therefore, the potential for malfunction or failure of any component or system as a result of the requested change remains unaffected.
3. The amendment request does not involve a significant reduction in a margin of safety. The requested change does not affect the minimum or maximum pressures experienced by the main steam system during any licensing basis event and remains consistent with the margin of safety as described in the bases of the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Figure 3.1-3 to incorporate the more negative boron worths into Modes 3 and 4. In addition, the amendment would make an administrative revision, replacing a reference to the Peaking Factor Limits Report (PFLR) with a reference to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Shutdown Margin requirements reflect the use of a more negative boron worth as a bounding assumption in the Boron Dilution Analyses. In combination with the high flux at shutdown alarm set at twice background, the proposed change ensures that the operator will have at least 13.4 minutes from the alarm to recognize and terminate an uncontrolled dilution even before shutdown margin is lost. Thus, there will be no increase in the probability or consequences of the Boron Dilution Accident because current margin to criticality will be maintained.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature and does not, therefore, involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No safety-related equipment, safety function, or methods of plant operations will be altered as a result of the proposed change to Figure 3.1-3. Therefore, the higher boron concentrations (the end result of the higher shutdown margin requirements) that will be maintained during the portions of the fuel cycle while in Modes 3 and 4 do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature and does not in any way create the possibility of an accident which is new or different from any accident previously evaluated. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR).

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to Figure 3.1-3 revises the required shutdown margin as a function of RCS boron concentration for Modes 3 and 4 such that the operator will have at least 13.4 minutes and 13.6 minutes, respectively, from receipt of a high flux at shutdown alarm to recognize and terminate an uncontrolled dilution event before shutdown margin is lost. This will maintain the current margin to criticality, as reflected in the FSAR analysis of the Boron Dilution Event, and thus preserves the margin of safety as defined in the bases for the Shutdown Margin Technical Specification.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR). The change does not affect the margin of safety currently provided by the Technical Specifications.

Therefore, based on the above considerations, SCE&G has determined that the proposed changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed change would modify Technical Specification (TS) 4.7.7 and the associated Bases 3/4.7.7 in accordance with Generic Letter (GL) 90-09. In addition, the Reject line in figure 4.7-1, "Sampling Plan for Snubber Functional Test," and all references to it would be removed from the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. [The proposed amendment will not] involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow extension of subsequent visual surveillance intervals based on the number of unacceptable snubbers found during the previous inspection, in accordance with the guidance contained in GL 90-09. This change will not involve any change to the actual surveillance requirements. There will be no increase in the probability of failure of components and sytems [sic] that would result from extending the visual surveillance interval. Reliability is ensured by functional testing which provides a 95 percent confidence level that 90 to 100 percent of the snubbers will operate within their specified acceptance limit.

The Reject line, developed using Wald's Sequential Probability Ratio Plan, assumes that the sample is totally homogeneous, and that the failure in the total population is in the same ratio as the failures observed in a given sample. This is not correct when functionally testing snubbers in nuclear power stations. Snubbers cannot be considered a homogeneous population, since the sampling for function testing includes various configurations, different environmental conditions, different sizes, capacities and types of snubbers, and the sample is weighted to include more snubbers from severe service areas.

2. [The proposed amendment will not] create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will not make physical alterations to any plant system, structure or component, will not change the method by which a safety-related system performs its function, and will not change the way the surveillance requirement is performed. The proposed change will only allow extension of a subsequent snubber visual inspection if the number of unacceptable snubbers found during a given inspection is equal or less than [sic] the number of unacceptable snubbers given in the new SNUBBER VISUAL INSPECTION INTERVAL table. Deletion of the Reject line from Figure 4.7-1 does not contribute to any new or different kind of accident.

3. [The proposed amendment will not] involve a significant reduction in a margin of safety.

The proposed change will not alter existing surveillance requirements; therefore, the reliability, ensured through functional testing, will not be degraded. Visual examinations complement the function testing of snubbers and provide additional confidence of snubber reliability. VCNS operating experience indicates that existing maintenance programs are effective in minimizing snubber failures, as demonstrated by the low snubber failure rate experienced. During VCNS' most recent inspection, eight snubbers were found unacceptable by visual inspection out of a total population of 1127 TS snubbers. These unacceptable snubbers were subsequently tested, root cause anlyses [sic] were performed, corrective actions were taken, and were later declared acceptable [sic].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: November 30, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS's) related to the low pressure block permit setpoints that appear in the Technical Specification Section 3/4.3.2.2. The amendment request specifically proposes to increase the steam and feedwater rupture control system (SFRCS) main steam (MS) low pressure block permit setpoint from 700 psig to 750 psig and increase the steam pressure setpoint where the block permit is automatically removed from 750 psig to 800 psig.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit 1 in accordance with these changes would:

1a.) Not involve a significant increase in the probability of an accident previously evaluated because the pressure switches associated with the change do not initiate any accident previously analyzed. The pressure switches only allow a manual bypass function for the MS low pressure trip switches to be activated by the operators. Additionally, the potential for an inadvertent SFRCS MS low pressure trip during plant heatup or cooldown operations will be reduced.

1b.) Not involve a significant increase in the consequences of an accident previously evaluated because the pressure switches associated with the change do not play any mitigating role in any accident previously analyzed. The pressure switches only allow a manual bypass function for the MS low pressure trip switches to be performed by the operators during controlled evolutions during Mode 3. Additionally, the potential for an inadvertent SFRCS MS low pressure trip during plant heatup or cooldown operations will be reduced. This change does not alter the radiological consequences of the bounding main steam line break accident evaluated in the USAR.

2a.) Not create the possibility of a new kind of accident from any accident previously evaluated because the setpoint change does not alter the safety function of SFRCS or any associated systems, the revised setpoints provide the same function as before and do not introduce failure modes that are not bounded by existing analyzed events.

2b.) Not create the possibility of a different kind of accident from any accident previously evaluated because the setpoint change does not alter the safety function of SFRCS or any associated systems. The revised setpoints provide the same function as before and do not introduce failure modes that are not bounded by existing analyzed events.

3.) Not involve a significant reduction in a margin of safety because the change minimizes the possibility of an unnecessary actuation of the AFW system during plant cooldown and heat-up operations. The change in the setpoints has no impact upon the availability of SFRCS during plant power operations and does not appreciably increase the time period in Mode 3 where the SFRCS main steam low pressure trip signal is blocked.

The Commission's staff has reviewed the licensee's analyses, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Accordingly, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 31, 1991

Description of amendment request: The proposed change to the NA-1&2 TS would modify the visual snubber inspection program to be consistent with the guidance of the NRC's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990. The purpose of the visual inspection is the observation of the condition of installed snubbers to identify those that are damaged, degraded, or inoperable as caused by physical means, leakage, corrosion or environmental exposure. Functional testing is performed to assure that there is a 95% confidence level that 90% to 100% of the snubbers will operate within their specified performance limits. The visual inspection complements the functional testing and provides additional confidence in snubber operability.

The proposed change would allow the implementation of an alternate inspection schedule for visual inspections of snubbers based on the number of unacceptable snubbers found during the previous inspection, the total population or category size for each snubber type, and the previous inspection schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

...[The] proposed changes provide a visual inspection program consistant with the guidance of the NRC's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990, which will continue to provide assurance that snubber reliability will be maintained. Operation of the North Anna Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the [Updated Final Safety Analysis Report] because the snubber functional inspection program will not be changed and will continue to provide a 95% confidence level that at least 90% of the snubbers will be operable at any time. The modified visual inspection program will continue to enhance the reliability achieved by the functional testing. This confidence level (reliability) is equivalent to that provided by the existing snubber inspection requirements. Plant equipment and system operation are not being modified or changed.
2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. By maintaining the level of confidence (reliability) with the proposed snubber inspection program there is no impact on plant design or operation. Plant equipment and system operation are not being modified or changed. Therefore, no new accidents could be created from those previously analyzed in the safety analysis report.
3. Involve a significant reduction in the margin of safety. No physical plant modifications, changes in plant operations, or changes in accident analysis assumptions are being made. The proposed snubber inspection requirements will continue to provide the same level of reliability as the existing inspection requirements. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of amendment request: February 6, 1991

Description of amendment request: The Main Control Room (MCR) and Emergency Switchgear Room (ESGR) Air Conditioning (AC) System was determined to be undersized due to the unrecognized addition of incremental heat loads in these areas over an extended period of time. To allow for continued plant operation, interim modifications were completed on the MCR and ESGR AC System in 1989. These modifications provided the required cooling and met design basis assumptions. The modifications included: (1) the addition of a redundant motor on each of the four ESGR air handling units (AHUs), (2) an alternate power supply for the swing chiller, and (3) the incorporation of interim equipment operating restrictions into the Technical Specifications.

In order to return the system to two 100% redundant trains and provide operational flexibility, additional modifications (system upgrades) have to be made. The Surry Unit 1 AHUs were replaced with larger capacity units during the 1990 refueling outage. The Surry Unit 2 AHUs will be replaced with larger capacity units during the 1991 refueling outage. After the eight AHUs (four per unit) are replaced by the end of the Unit 2 refueling outage, the MCR and ESGR air conditioning system will be restored to two 100% redundant trains. Subsequent modifications to install additional chiller capacity are scheduled as non-outage work following the Unit 2 refueling outage. The schedule for installation of this additional chiller capacity has not yet been finalized, although it is the licensee's intention to initiate this activity late in 1991 or early 1992. After completion of each phase of the modification, a Technical Specification change will be necessary to reflect the current condition of the MCR and ESGR air conditioning system.

This proposed Technical Specification change provides the necessary operation restrictions and action statements required for continued interim operation. This condition will exist until the additional safety-related chiller capacity is installed. The proposed Technical Specification removes the 6-hour action statement for the Unit 2 ESGR AHUs and the 7-day action statement for the redundant motors on the Unit 2 ESGR AHUs consistent with the previous Technical Specification change made for Surry Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specification change against the criteria of 10 CFR 50.92 and has concluded that the interim modification and the Technical Specification change as proposed [do] not pose a significant hazards consideration. Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Replacement of the Unit 2 Air Handling Units with larger capacity Air Handling Units (AHU) restores the Unit 2 portion of the Main Control Room and Emergency Switchgear Room AC system to the original design capability. Therefore, those interim operating restrictions applicable to the Unit 2 AHUs are no longer necessary. There is no increase in the probability or consequences of any previously evaluated accident.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The modification returns the Unit 2 AHUs to the original design capability. Therefore, the interim operating restrictions are no longer necessary and removal of those restrictions does not create a new or different accident from those previously evaluated.
3. Involve a significant reduction in a margin of safety. The larger capacity Unit 2 AHUs restore the Main Control Room and Emergency Switchgear Room AC system to the original design condition. Therefore, eliminating the interim operating restrictions on the Unit 2 AHUs does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of amendment request: February 15, 1991

Description of amendment request: The proposed one-time Technical Specification (TS) change would extend the interval for the Surry, Unit 2 low pressure turbine blade inspection. The current TS require 100% inspection of the blades every 5 years. The proposed one-time TS change would defer inspection of the above-cited blades from the April 1991 Unit 2 refueling outage to the 1993 Unit 2 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specification change against the criteria of 10 CFR 50.92 and has concluded that the Technical Specification change as proposed does not pose a significant hazards consideration. Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Because the low pressure turbine blade inspections will be performed well within the manufacturer's recommended inspection interval there is no significant increase in the probability of a blade failure occurring that could result in a plant transient. The proposed blade inspection interval is consistent with the operational time based inspection requirements for the turbine's disks, which are a critical component for turbine missile generation. In addition, since the low pressure turbine blades are not considered a contributor to turbine missiles that could affect safety-related equipment, the extended inspection interval does not impact the probability or consequences of any previously evaluated accident.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the inspection interval for the low pressure turbine blades does not significantly increase the probability of a turbine blade failure and, therefore does not generate any additional accident precursors. Turbine missiles have been evaluated and the blade components are not considered of sufficient mass to penetrate the turbine casing and affect safety-related equipment. Therefore, a new or different accident from those previously evaluated has not been created.
3. Involve a significant reduction in a margin of safety. The low pressure turbine blades will be inspected well within the manufacturer's recommended inspection interval. Therefore, the possibility of turbine blade failure occurring that could result in a plant transient due to blade failure will not increase significantly. The low pressure turbine blades are not considered to be a source of a turbine missile that could affect safety-related equipment. Therefore, extending the inspection interval will not significantly reduce the margin of safety, (i.e., change the probability of a turbine missile damaging a safety-related piece of equipment).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 21, 1990, as supplemented February 8, 1991

Description of amendment request: The proposed Technical Specification change will increase boron concentration in the refueling water storage tank (RWST) to a range of 2300 - 2500 ppm from the current range of 2000 - 2200 ppm. In addition, the minimum boron concentration in the safety injection accumulators would be increased to 2250 ppm from the present value of 1950 ppm. These limits apply to Cycle 12 and subsequent cycles for Unit 1 and to Cycle 11 and subsequent cycles for Unit 2. The proposed change is required in order to meet the increased cycle energy requirements associated with longer cycles and higher load factors. The provisions of the proposed change must be in place prior to reloading of fuel for Unit 2, which includes the addition of eight fresh fuel assemblies, thus increasing the previously planned addition of 56 fuel assemblies to 64 assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant hazards consideration because operation of Surry Units 1 and 2 in accordance with this change would not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated because appropriate design constraints were analyzed for changes to T.S. 3.2.F, 3.2 [(Bases)], 3.3.A, 3.4.A, 3.10.A, 3.10 [(Bases)], and 5.4.C; none were found to be more limiting than those currently documented in the [Updated Final Safety Analysis Report]. Subcriticality is maintained following a [loss of coolant accident] by a combination of void formation, control rod insertion and soluble boron. The cold zero power boron critical concentration is determined such that General Design Criterion (GDC) 26 is also met. A boron dilution event at refueling and cold shutdown conditions is precluded by lockout of the primary grade water flow path. A boron dilution event leading to a complete loss of shutdown margin at intermediate or hot shutdown is precluded by the establishment of an administrative shutdown margin requirement providing a minimum available time for corrective operator action. The analysis of the boron dilution event at reactor critical and at power meets the criteria of the Standard Review Plan (SRP). Boron precipitation does not occur for low concentration solutions. The electrical equipment subject to chemical spray qualification are not adversely affected by the higher boron concentration. Finally, the results of containment spray and sump pH analyses were found to be acceptable.
2. create the possibility of a new or different kind of accident from any accident previously identified because the proposed changes to T.S. 3.2.F, 3.2 [(Bases)], 3.3.A, 3.4.A, 3.10.A, 3.10 [(Bases)], and 5.4.C, do not involve any alterations to the physical plant which would introduce any new or unique operational modes or accident precursors. Procedural changes are limited to setpoint values, timing requirements, or lockout of valves.
3. involve a significant reduction in a margin of safety. A boron dilution event at refueling and cold shutdown conditions is precluded by lockout of the primary grade water flow path. This represents an increase in the margin of safety relative to current practice. A minimum of 15 minutes from initiation of dilution to loss of shutdown margin are available for operator response to terminate an unplanned boron dilution during operating conditions other than refueling and cold shutdown. This maintains the margin of safety relative to current practice. The requirements of GDC 26 are met with the higher boron concentration. The reactivity and boron concentration uncertainties are unchanged. Finally, the refueling K-eff remains unchanged at 0.95. Therefore the margin of safety is unchanged, or is increased, by the proposed increase in the boron concentration.

Therefore, pursuant to 10 CFR 50.92, based on the above considerations, it has been determined that these changes do not involve a significant safety hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 21, 1990 (change 1), September 20, 1990, and as amended on November 20, 1990 (change 2), and October 4, 1990 (change 3).

Brief description of amendment: This amendment: (1) replaces the specific requirements of Palisades Plant Technical Specification (TS) 4.51, Integrated Leakage Rate Tests (ILRT), with a general statement that the ILRT will meet the requirements of 10 CFR 50, Appendix J, type A test or approved exemptions. Also proposed the signal TS 4.5, Containment Tests, basis to reflect that the signal to close the containment isolation vales for the component cooling lines has been changed from a safety injection signal to a containment high pressure; (2) modifies TS Table 3.6.1, Containment Penetrations and Valves, to reflect physical changes effected to the steam generator bottom and surface blowdown lines during the 1990 refueling outage; and, (3) modifies TS 5.3.1a, Primary Coolant System, to remove specific references to ASME codes and addenda that currently exist; and instead, to reference the Primary Coolant System (PCS) description contained in the Final Safety Analysis Report (FSAR) Section 4.2, Design Basis.

Date of issuance: February 11, 1991

Effective date: February 11, 1991

Amendment No.: 135

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45880); December 26, 1990 (55 FR 53087); and November 28, 1990 (55 FR 49448) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 2, 1990 and June 13, 1990 (as revised November 9 and December 7, 1990 and January 24, 1991).

Brief description of amendment: This amendment: (1) revised the description of the neutron monitoring system to reflect system upgrades performed this outage, and (2) broadens the operating band at which safety injection tank level must be maintained. Additionally, a new SIT surveillance requirement, and a revised basis section have been incorporated.

Date of issuance: February 15, 1991.

Effective date: February 15, 1991.

Amendment No.: 136

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: December 24, 1990 (55 FR 52914) and December 28, 1990 (55 FR 53374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 31, and September 19, 1990; as amended October 3, and December 20, 1990.

Brief description of amendment: This amendment allows the use of both the ANFP (Advanced Nuclear Fuels) and the XNB (Exxon Nuclear), departure from nucleate boiling correlation (DNB) for the Cycle 9 fuel reload. This amendment also includes revisions to the reactor protective system set points, limiting conditions for operation (LCO), Bases, and references, which are required for Cycle 9 power operations. These changes are a result of changes to plant equipment, fuel design, and the fuel management scheme for Cycle 9.

Date of issuance: February 20, 1991.

Effective date: February 20, 1991.

Amendment No.: 137

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45880) and December 20, 1990 (55 FR 52230) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 21, 1990

Brief description of amendment: This amendment revises Palisades Plant Technical Specification Table 2.3.1, Reactor Protective System Trip Setting Limits, to delete wording descriptive of the steam generator low water level trip limit that does not apply to the replacement steam generators.

Date of issuance: February 22, 1991

Effective date: February 22, 1991

Amendment No.: 138

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 17, 1990 (55 FR 42094) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 21, 1990

Brief description of amendments: The amendments modify the Technical Specifications to increase the surveillance interval for weighing ice condenser ice from 9 months to 18 months and to increase the required ice bed weight.

Date of issuance: February 21, 1991

Effective date: February 21, 1991

Amendment Nos.: 83 and 77

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 16, 1991 (56 FR 2051) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 21, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 19, 1990

Brief description of amendment: The amendment revises the Appendix A Technical Specifications for the reactor coolant system (RCS) heatup and cooldown limit curves. Specifically, the amendment incorporates revised Figures 3.4-2 and 3.4-3 which provide pressure-temperature (P-T) limits for the operation of the RCS during heatup, cooldown, criticality, and hydrotest. The

revised curves are applicable for operation up to 9.5 effective full-power years (EFPY), and have been developed consistent with the recommendations of Revision 2 to Regulatory Guide 1.99. In addition, the amendment revises Bases Section 3/4 4.9 to incorporate the revised methodology used to develop Figures 3.4-2 and 3.4-3.

Date of issuance: February 12, 1991
Effective date: February 12, 1991
Amendment No. 157
Facility Operating License No. DPR-66: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21989) The Commission's related evaluation of the amendment is contained in a letter to the licensee dated February 12, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.
No significant hazards consideration comments received: No
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 11, 1990
Brief description of amendment: The amendment to the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specifications (TS) revises Table 3.3-10 to provide a clarification of the minimum number of channels required to be operable from "1" to "1 per valve" for the Pressurizer Safety Valve Acoustic Position Indication and Pressurizer Safety Valve Tail Pipe Temperature.
Date of issuance: February 12, 1991
Effective date: 30 days from the date of issuance.
Amendment No.: 115
Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 891) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1989, as supplemented March 30 and August 10, 1990 (partial response)
Brief description of amendment: The amendment revised Technical Specification 3.4.9.1, including Figures 3.4-2, 3.4-3 and 3.4-4 by providing reactor coolant system heatup and cooldown pressure/temperature curves for operation up to 15 effective full power years. The application also proposed changes for the low temperature overpressure protection. These changes are still under NRC review and were not included with this amendment.
Date of issuance: February 7, 1991
Effective date: February 7, 1991
Amendment No.: 133
Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47570) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 7, 1990, as supplemented September 14 and December 13, 1990.
Brief description of amendment: The amendment modifies the Technical Specifications having cycle-specific parameter limits by replacing the values of those limits with a reference to a Core Operating Report.
Date of Issuance: February 20, 1991
Effective date: February 20, 1991
Amendment No.: 147
Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21971) The supplemental letters dated September 14 and December 13, 1990, provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 20, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: November 6, 1990
Brief description of amendment: This amendment revises Table 3.6.2c of Technical Specification 3.6.2 and associated Bases to incorporate a revised set point for isolation of the Emergency Cooling System on high steam flow. This revision is necessary to correct an error which was discovered in an equation used to calculate the current set point.
Date of issuance: February 11, 1991
Effective date: February 11, 1991
Amendment No.: 123
Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53073) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 13, 1990
Brief description of amendments: The amendments revise the Technical Specifications by adding a reference, WCAP-10924-P-A, Volume 1, Addendum 4, "Westinghouse Large-Break LOCA Best-Estimate Methodology," August 1990, to Section 6.7.A.6.b of the Technical Specifications.
Date of issuance: February 11, 1991
Effective date: February 11, 1991
Amendment Nos.: 93 and 86
Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47572) The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated February 11, 1991. No significant hazards consideration comments received: No.
Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 2, 1990
Brief description of amendment: The amendment clarifies and defines Emergency Core Cooling System requirements when the plant is in the cold shutdown condition.
Date of issuance: February 13, 1991
Effective date: February 13, 1991
Amendment No.: 168
Facility Operating License No. DPR-59: Amendment revised the Technical Specification.
Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49454) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1991
No significant hazards consideration comments received: No
Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: February 23, 1990 and supplemented by letters dated June 28, 1990 and August 8, 1990. The June 28, 1990 supplemental letter is applicable to Unit 2 only. The August 8, 1990 supplemental letter did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.
Brief description of amendment: This amendment modified the Subcooling Margin Monitor (SMM) Technical Specifications (TSs) and included TSs for the Reactor Vessel Level Instrumentation System (RVLIS) with interim requirements. The RVLIS technical specifications include a footnote terminating the applicability of the interim action statement at the end of the Salem Unit 1 10th refueling outage (Spring 1992) when RVLIS will be upgraded. In addition, Tables 3.3-11a and 3.3-11b have been combined into Table 3.3-11.
Date of issuance: February 12, 1991
Effective date: Unit 1 is effective as of the date of issuance to be implemented prior to startup from the ninth refueling outage scheduled to begin February 1991.
Amendment No. 117
Facility Operating License No. DRP-70: This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21979) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 13, 1989 and supplemented by letters dated June 28, 1990 and December 28, 1990.
Brief description of amendments: The amendments modified the Salem Unit 1 Steam Generator Surveillance Requirements to achieve consistency between the Salem 1 and Salem 2 Technical Specifications and the Westinghouse Standard Technical Specifications. The June 28, 1990 and December 28, 1990 letters did not increase the scope of the original request and did not affect the staff's original no significant hazards determination.
Date of issuance: February 13, 1991
Effective date: For Units 1 and 2, as of the date of issuance and shall be implemented within 60 days of the date of issuance.
Amendment Nos. 118 and 98
Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2444) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1991.
No significant hazards consideration comments received: No
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: December 21, 1990
Brief description of amendment: The amendment modifies maintenance and surveillance requirements associated with the installation of a second isolation valve on the Volume Control Tank.
Date of issuance: February 20, 1991
Effective date: February 20, 1991
Amendment No.: 142
Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 17, 1991 (56 FR 1629) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.
No significant hazards consideration comments received: No.
Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 14, 1990
Brief description of amendments: These amendments modify TS 3/4.7.2 regarding the minimum pressurization temperature for the San Onofre Unit No. 3 steam generators from 70° F to 90° F based on a vendor recommendation to change the reference nil ductility transition temperature. Additionally, the San Onofre Unit Nos. 2 and 3 TS 3/4.7.2 are clarified to indicate that the pressure/temperature limitation pertains only to the steam generator secondary side. Both San Onofre Unit Nos. 2 and 3 bases are revised to include a change to the reference temperature for the nil ductility transition.
Date of issuance: February 11, 1991
Effective date: February 11, 1991
Amendment Nos.: 92 and 82
Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 898) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1991.
No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of applications for amendments: January 31, March 20, May 14, 1990, and December 28, 1990 (TS 277).

Brief description of amendments: The amendments modify Section 3.9 and 4.9, Auxiliary Electrical System, of the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specifications. The changes (1) clarify Limiting Condition for Operation (LCO) 3.9.A.1, (2) more accurately describe the 7-day fuel oil requirements for the diesel generators in LCO 3.9.A.6, (3) revise the requirements for sampling the diesel generator fuel oil in Surveillance Requirement 4.9.A.1.e, and (4) update the testing of the diesel generators in SR 4.9.A.1.a.

Date of issuance: February 12, 1991
Effective date: February 12, 1991
Amendment Nos.: 181 - Unit 1, 191 - Unit 2, 153 - Unit 3
Facility Operating Licenses Nos. DPR-33, DPR-52, and DPR-68: Amendments revised the Units 1, 2, and 3 Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30313).

The letter of December 28, 1990, contained a proposal that the year of the ASTM Standard D975 (i.e., ASTM-D975-89) appear in the surveillance requirement and in the bases. This administrative change did not alter the findings or conclusions of the previously proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 7, 1990

Brief description of amendment: The amendment revised TS 3.1.3.1 and its associated Bases to add an Action Statement covering situations where more than one digital rod position indicator per bank is inoperable. This new Action Statement avoids unnecessary plant shutdowns per TS 3.0.3, yet is consistent with the overall protection afforded by related specifications.

Date of issuance: February 1, 1991
Effective date: February 1, 1991
Amendment No.: 61
Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49458) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 29, 1990

Brief description of amendment: The amendment revised Condition 2.C.(4) of Facility Operating License DPR-43 to reflect the current titles of the referenced security manuals. The amendment also revised Technical Specifications (TS) 6.5.1.2, 6.5.3.3, and 6.6.1.b to revise the required members of the Plant Operations Review Committee and revise titles due to the recent organization change. The amendment also included several revisions that update reference titles, clarify existing specifications and correct typographical errors.

Date of issuance: February 5, 1991
Effective date: February 5, 1991
Amendment No.: 89
Facility Operating License No. DPR-43. Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32334) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas Date of amendment request: August 24, 1990

Brief description of amendment: The amendment implements changes to the Technical Specifications as described in NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program." The amendment is an improvement to the existing Technical Specifications as recommended by Generic Letter 89-01 and consistent with the Commission's Policy Statement for Technical Specification Improvements.

Date of Issuance: February 19, 1991
Effective date: February 19, 1991, to implemented within 30 days of issuance
Amendment No.: 142
Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40479) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 23, 1989, as supplemented December 31, 1990.

Brief description of amendments: The amendments add valves to the NA-1&2 TS which do not need to be vented to the containment atmosphere nor drained of water during Type A (containment integrated leak rate) tests and the leakage rates measured by Type C tests on these valves need not be added to the Type A test results. Type C testing will continue and the measured leakage rates will be added to the sum of Type B and Type C tests in the usual manner. The amendments also identify valves that are associated with "water-filled" penetrations for which a Type C test penalty will not be added to the Type A tests results and add containment valves not previously listed to Table 3.6-1 for NA-1&2 and delete a valve incorrectly listed in TS Table 3.6-1 for NA-1.

Date of issuance: February 20, 1991
Effective date: February 20, 1991
Amendment Nos.: 143, 126

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32720) The December 31, 1990 letter provided additional information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: October 29, 1990, as supplemented January 18, 1991

Brief description of amendment: This amendment deletes the NA-2 License Condition 2.C.(15)(c) which required that at least once every 5 years the recirculation spray pumps inside containment be removed and inspected and the bearings be replaced, if necessary. Also, the licensee's September 14, 1979 commitment to remove and inspect the inside recirculation spray pumps inside containment for NA-1 is no longer required.

Date of issuance: February 20, 1991
Effective date: February 20, 1991
Amendment No.: 127
Facility Operating License No. NPF-7: Amendment revised the License.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53077) The January 18, 1991 letter provided additional information requested by the NRC staff and did not alter in any way the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: June 26, 1990

Brief description of amendments: These amendments delete TS 3.15, "Containment Vacuum System" and the associated bases from the Surry TS. For clarification, the time requirements for the reactor to be brought to the hot shutdown condition and the cold shutdown condition are specified in TS 3.6.B.

Date of issuance: February 7, 1991
Effective date: February 7, 1991
Amendment Nos. 152 and 149
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32333) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for

amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 5, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 8, 1991

Description of amendment request: This amendment revises Technical Specifications 4.1.1.1.1, 4.1.1.2, 3.1.3.1, 4.1.3.1.1, 4.1.3.1.2, 4.1.3.1.3, 3.1.3.3, 4.1.3.3.1, 4.1.3.3.2, 3.1.3.4, 4.1.3.5, 3.10.1.1, and 4.10.1.2. The revision consists of a footnote which excludes the applicability of the Technical Specifications to the center Control Element Assembly (CEA) for Cycle 10. Technical Specifications 3.1.3.6 and 4.1.3.6 do not specifically deal with single CEAs. However, a footnote was added to permit the exclusion of the center CEA from the determination of CEA Bank 5 position. The changes to Technical Specifications 3.2.2.1, 4.2.1.3, 4.2.2.1.3, 4.2.2.3, 3.2.3, and 4.2.3.3. consist of a footnote which permits exclusion of the center CEA from the stated full length CEA insertion limit. This amendment excludes the Unit 1 center CEA from the operability and alignment requirements of the Technical Specifications for the remainder of the Unit 1, Cycle 10, operation. The Commission was requested to handle the proposed changes on an emergency basis.

Date of issuance: February 20, 1991
Effective date: February 20, 1991
Amendment No.: 151
Facility Operating License No. DPR-53. Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 20, 1991.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for Licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: January 30, 1991, as supplemented on February 11, 1991 and February 13, 1991

Brief description of amendments: These amendments to the Technical Specifications temporarily exclude two containment pathways from the requirement to perform Type C leak testing in accordance with 10 CFR 50, Appendix J, during current operating cycles Z1C12 and Z2C12, respectively. In addition, an administrative change to indicate the deletion of Surveillance Requirement 4.10.1.A.1.b in Amendment Nos. 90 and 80 for Units 1 and 2, respectively, has been added to the Technical Specifications.

Date of Issuance: February 15, 1991
Effective date: February 15, 1991, not to exceed the next refueling outage
Amendment Nos.: 121 and 110
Facility Operating License Nos. DPR-39 and DPR-48. These amendments revise the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of these amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 15, 1991.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Richard J. Barrett

Dated at Rockville, Maryland, this 27th day of February 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-5130 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-D

[Docket No. 50-341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to Detroit Edison Company (the licensee), for operation of Fermi-2 located in Monroe County, Michigan.

The proposed amendment would eliminate the requirement for use of the Rod Sequence Control System (RSCS) and decrease the power level set point above which the Rod Worth Minimizer (RWM) system would no longer be required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change to delete the RSCS and reduce the RWM low power set point from 20% to 10% power does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated

Deleting the RSCS and changing the low power set point of the RWM has no effect on the probability of any previously evaluated accident because these systems play no role in any accident initiating mechanism. These systems act to mitigate the consequences of the rod drop accident (RDA); however, the probability of an RDA is dependent only on the control rod drive system and mechanisms themselves, and not in any way on the RSCS or RWM. Therefore, the change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of an RDA as evaluated will not be affected by this modification. The BWR Owners' Group sponsored study (NEDE-24011-P-A) of the RDA has concluded that the RSCS is unnecessary. This study was approved by the NRC in a safety evaluation (SE) dated December 27, 1987.

The RSCS duplicates the function of the RWM. So long as the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out-of-service, the proposed Technical Specifications (TS) require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the technical staff. The verification process is controlled procedurally.

In addition, to further minimize control rod movement at low power with the RWM out-of-service, the proposed TS will permit only one plant start-up per calendar year with the RWM out-of-service prior to or during the withdrawal of the first twelve control rods. The above substantiates the conclusion that there will be no increase in the consequences of an RDA as a result of eliminating the RSCS. There will also be no increase in the consequences of an RDA due to lowering the RWM set point from 20% to 10% power. The effects of an RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations showed that no significant RDA could occur above 10% power, the NRC required that the generic BWR TS be written to require operation of the RWM below 20% power in order to account for uncertainties in the analysis. Recently, more refined calculations conducted for the NRC have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during an RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the

original GE analyses. Hence, lowering the RWM set point from 20% to 10% will not result in an increase in the consequences of an RDA. The previously referenced NRC safety evaluation has concluded that this RWM set point reduction is acceptable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of an RDA. The RDA is evaluated in the UFSAR and the effect of this proposed change on the analyses is discussed in Item (1) above. Elimination of the RSCS and lowering the RWM set point will have no impact on the operation of any other system, and hence would not contribute to a malfunction in any other equipment nor create the possibility for an accident to occur which has not already been evaluated.

(3) Involve a significant reduction in a margin of safety

Elimination of the RSCS will not lower the margin of safety for the reasons discussed in Item (1) above and summarized below:

(a) An extensive NRC study has determined that the possibility of an RDA resulting in unacceptable consequences is so low as to negate the requirement for the RSCS.

(b) Recent calculations have determined that the consequences of an RDA are acceptable above 10% power.

(c) The RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM.

(d) To ensure that the RWM will be in service when required, the RWM TS will be revised to allow only one start-up per calendar year with the RWM out-of-service prior to or during the withdrawal of the first twelve control rods. If the RWM is out-of-service below 10% power, control rod movement and compliance with prescribed control rod patterns will be verified by a second licensed operator or technically qualified member of the technical staff.

There is no significant reduction in the margin of safety resulting from lowering the RWM set point from 20% to 10% power because calcuations have shown that even with the maximum single control rod position error, and most multiple error patterns, the peak fuel rod enthalpy during an RDA from these patterns would not exceed the NRC limit (280cal/gm) above 10% power.

In summary, GE has provided technical justification for the proposed changes in the Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes.

The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SE issued December 27, 1987, to J.S. Charnley of General Electric.

The proposed changes are consistent with those approved in the NRC SE and the guidelines setforth therein. Therefore, there is no significant reduction in a margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days afte the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1991, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is avialble at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Monroe County Library System, 3700 S. Custer Road, Monroe County, Michigan. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must saftisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one conention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determiantion is that the amendment involves a signficant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to L.B. Marsh: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 18, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48228.

Dated at Rockville, Maryland, this 28th day of February 1991.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Project Directorate III-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5247 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2478 & #2480]

Declaration of Disaster Loan Area; New Jersey et al

Passaic County and the contiguous counties of Bergen, Essex, Morris, and Sussex in the State of New Jersey and Orange and Rockland Counties in the State of New York constitute a disaster area as a result of damages from a fire which destroyed the Meyers Building Complex on Main Street in the City of Paterson on January 17, 1991. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on April 8, 1991 and for economic injury until the close of business on November 5, 1991 at the address listed below: Disaster Area 1 Office, Small Business Administration, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 247905 for the State of New Jersey and 248005 for the State of New York. For economic injury the numbers are 724500 for New Jersey and 724600 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 5, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91-5186 Filed 3-5-91; 8:45 am]

BILLING CODE 8025-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Nags Head Woods located in Nags Head, North Carolina is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other

transfer of the property specified herein may be mailed or faxed to the RTC until June 4, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Sharon Herron, Resolution Trust Corporation, 100 Colony Square, Suite 2100, Box 68, Atlanta, GA 30361, (404) 881–4941, Fax (404) 881–4995.

SUPPLEMENTARY INFORMATION: The property known as Nags Head Woods, located west of U.S. 158 and adjacent to Roanoke Sound on Bodie Island and in Nags Head, Dare County, North Carolina is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is located within Unit NC–02 of the Coastal Barrier Resources System. The property has been designated as a National Natural Landmark and contains 218 acres of wetlands, a 126-acre, unique maritime forest, and habitat for several North Carolina and Federally listed rare and endangered species of plants and animals.

Property size: 389.82 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before June 4, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest area:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organization" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 926 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted to Sharon Herron at the above address and in the following form:

Notice of Serious Interest

Re: Nags Head Woods

Federal Register Publication Date: _____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: February 28, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–5200 Filed 3–5–91; 8:45 am]

BILLING CODE 6714–01–M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Survey of Residential Wood Energy Consumption in the Southeastern United States.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households, farms.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 3744.

Estimated Total Annual Burden Hours: 1248.

Estimated Average Burden Hours Per Response: .33.

Need For and Use of Information: The Southeastern Regional Biomass Energy Program, managed under contract from the Department of Energy by TVA, will use the information to determine residential fuelwood consumption and acquisition characteristics in the southeastern United States.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 91–5184 Filed 3–5–91; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Establishment of Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Secretary of Transportation has determined that it is in the public interest to utilize the Intelligent Vehicle-Highway Society of America (IVHS-America) as an advisory committee in connection with the performance of duties imposed on the Department by law.

DATES: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, Federal Highway Administration, HTV–10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2197. Office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Costantino or Mr. Mark Norman, IVHS-America, 1776 Massachusetts Avenue, NW., Fifth Floor, Washington, DC 20036, (202) 857–1202.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Department of Transportation's regulation on advisory committees, 49 CFR part 95, Department of Transportation Order 1120.3A, and after consultation with the GSA, the Secretary of Transportation has determined that it is in the public interest to utilize the IVHS-America will act in an advisory capacity to the Federal Highway Administration National Highway Traffic Safety Administration, Urban Mass Transportation Administration and the Research and Special Programs Administration by providing advice and recommendations regarding their respective Intelligent Vehicle-Highway System (IVHS) program needs, objectives, plans and progress. These four administrations are the sponsors for the committee.

The IVHS-America will serve as a national forum and develop recommendations on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The committee will assure the coordination of the IVHC activities carried out by these four administrations with related activities conducted outside the Department.

The Federal Highway Administration will serve as the lead agency for the purpose of administering the committee's activities and providing the reports and recommendations developed by the committee to other Departmental elements.

The IVHS-America is a nonprofit corporation (tax-exempt under 26 U.S.C. 501(c)(3)) established (1) to promote and enhance public safety and community welfare by fostering research, development, and implementation of plans and programs to reduce motor vehicle deaths and injuries and improve mobility and (2) to promote and advance a safer, more economical, energy efficient and environmentally sound highway transportation system through research, development, and implementation of advanced technology.

The committee is authorized to establish an Executive Committee, a Coordinating Council, and working groups from the membership of IVHS-America. The IVHC-America is deemed utilized as an advisory committee when it provides consensus advice or recommendations to DOT officials on DOT policy and regulations. Components of IVHS-America are not utilized as advisory committees when they deliberate on other matters, including those relating to the administration of IVHS-America. The DOT officials will not participate in the Executive Committee of IVHS-America or its Coordinating Council when they are acting purely for internal organizational purposes. The Executive Committee shall formally transmit all recommendations of the utilized committee to the Federal Highway Administration the lead agency.

Authority: 5 U.S.C. App. 2; 23 U.S.C. 315; 49 CFR 1.48 and 95; 41 CFR 101–6; DOT Order 1120.3A

Issued on: March 1, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91–5283 Filed 3–5–91; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA announces that the Intelligent Vehicle-Highway Society of America (IVHS America) will hold its first meeting on March 17 through 20, 1991. The IVHS America will provide a forum for national discussion and recommendations on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The Charter for the utilization of IVHS America as an advisory committee within the meaning of section 3(2)(C) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, as amended (Pub. L. 92–463), was approved by the General Services Administration on February 28, 1991. This Charter will establish the Executive Committee and the Coordinating Council of IVHS America as an advisory committee under the FACA when they provide advice or recommendations to DOT officials on IVHS policies and programs.

DATES: The Coordinating Council will meet on March 17, 1991 (Sunday) from 10:30 a.m. to 1 p.m., e.t.; the Executive Committee will meet on March 20, 1991 (Wednesday) from 2 p.m. to 3:30 p.m., e.t. These two sessions are open to the public without charge under the provisions of the FACA. As initial meetings, these sessions are expected to focus on organizational issues and functions. The remainder of the IVHS meetings will consist of a series of presentations on a variety of IVHS technologies and are subject to prior registration requiring payment of registration fees.

ADDRESSES: Hyatt Regency at Reston Town Center in Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, Federal Highway Administration, HTV–10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202)366–2197, office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Constantino or Mr. Mark Norman, IVHS America, 1776 Massachusetts Avenue, NW., Fifth floor, Washington, DC 20036, (202) 857–1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 28, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91–5284 Filed 3–5–91; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0988.

Form Number: 8609 and Schedule A (Form 8609).

Type of Review: Revision.

Title: Form 8609, Low-Income Housing Credit Allocation Certification; Schedule A (Form 8609), Annual Statement.

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation for the housing credit agency. The form, along with Schedule A, is used by the owners to certify necessary information required by the law.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Response/Recordkeeping:

BEST COPY AVAILABLE

	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
Form 8609	7 hrs., 53 mins.	2 hrs., 11 mins.	2 hrs., 25 mins.
8609 (Sched. A)	5 hrs., 30 mins.	1 hr., 23 mins.	1 hr., 32 mins.
Worksheet II	1 hr., 40 mins.		2 mins.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 2,040,600 hours.
Clearance Officer: Garrick Shear (202) 535–4297; Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880; Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports, Management Officer.
[FR Doc. 91–5190 Filed 3–5–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0071.
Form Number: 2120.
Type of Review: Revision.
Title: Multiple Support Declaration.
Description: A taxpayer who pays more than 10%, but not more than 50%, of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.
Respondents: Individuals or households.
Estimated Number of Respondents: 11,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—7 minutes
Learning about the law or the form—2 minutes
Preparing the form—7 minutes
Copying, assembling, and sending the form to IRS—10 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 4,840 hours.
Clearance Officer: Garrick Shear (202) 535–4297; Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880; Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–5189 Filed 3–5–91; 8:45 am]
BILLING CODE 4830–01–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 8–91]

Treasury Notes, Series L–1996

Washington, February 22, 1991.

The Secretary announced on February 21, 1991, that the interest rate on the notes designated series L–1996, described in Department Circular—Public Debt Series—No. 8–91 dated February 14, 1991, will be 7-½ percent. Interest on the notes will be payable at the rate of 7-½ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 91–5195 Filed 3–5–91; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 7–91]

Treasury Notes, Series X–1993

Washington, February 21, 1991.

The Secretary announced on February 20, 1991, that the interest rate on the notes designated series X–1993, described in Department Circular—Public Debt Series—No. 7–91 dated February 14, 1991, will be 6-¾ percent. Interest on the notes will be payable at the rate of 6-¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 91–5194 Filed 3–5–91; 8:45 am]
BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; Folksamerica Reinsurance Co.; Correction

On February 26, 1991, 56 FR page 7894, we published a notice regarding Folksamerica Reinsurance Company in error. The correct notice follows.

A Certificate of Authority as an acceptable reinsurer on Federal bonds is hereby issued to the following Company under title 31, sections 9304 to 9308, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27372 to reflect this addition:

Folksamerica Reinsurance Company. Business Address: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION $: $5,192,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 287–3921.

Dated: February 28, 1991.

Charles F. Schwan, III,
Director, Funds Management Division.
[FR Doc. 91–5198 Filed 3–5–91; 8:45 am]
BILLING CODE 4810–35–M

[Dept. Circ. 570, 1990–Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds, Termination of Authority; Republic Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Republic Insurance Company, under the United States Code, title 31, sections 9304–9308, to qualify as acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27362, July 2, 1990.

With respect to any bonds currently in force with Republic Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: February 28, 1991.

Charles F. Schwan, III,
Director, Funds Management Division.
[FR Doc. 91–5199 Filed 3–5–91; 8:45 am]
BILLING CODE 4810–35–M

Office of Foreign Assets Control

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.
ACTION: Notice.

SUMMARY: On February 25, 1991, the Office of Foreign Assets Control ("FAC") issued licenses pursuant to the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49857 ("KACR"), to permit seven blocked Kuwaiti banks to settle obligations which arose prior to the Iraqi invasion of Kuwait on August 2, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, tel.: (202) 535–9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On February 25, 1991, FAC issued licenses to the following Kuwaiti banks:

Al Ahli Bank of Kuwait (K.S.C.)
The Bank of Kuwait & The Middle East (K.S.C.)
Burgan Bank S.A.K.
Commercial Bank of Kuwait S.A.K.
The Gulf Bank, K.S.C.
The Industrial Bank of Kuwait (K.S.C.)
Kuwait Real Estate Bank (K.S.C.)

These banks' assets that are subject to U.S. jurisdiction were blocked pursuant to Executive Order 12723 of August 2, 1990, 55 FR 31805 (August 3, 1990), as property of entities determined by FAC to be owned or controlled by the Government of Kuwait. The specific licenses issued on February 25, authorize the banks to utilize their blocked assets to settle most obligations incurred prior to August 2, 1990, and to manage their blocked assets that are subject to U.S. jurisdiction. Excluded from the general settlement authorization are obligations that are denominated in Kuwaiti dinars and claims related to deposits (except interbank deposits) held in Kuwait or Iraq. In addition, pursuant to U.S. and U.N. sanctions against Iraq and occupied Kuwait, no property may be transferred to the Government of Iraq, its agencies, instrumentalities, or controlled entities, to a person in Iraq or entity operated from Iraq, or to a person in Kuwait or entity operated from Kuwait.

The Central Bank of Kuwait, working closely with the Office of Foreign Assets Control of the United States Department of the Treasury and cooperating governments worldwide, has established procedures to satisfy the obligations of these seven Kuwaiti banks (with the exceptions noted above). The banks, as well as other assets of the Government of Kuwait located in the United States, were blocked by the President at the request of the legitimate Government of Kuwait to protect them from looting by Iraq. Their blocked status prevents any transactions with U.S. persons, including creditors of the banks, absent Treasury authorization.

The specific licenses, issued on February 25, 1991, allow each bank to take all steps necessary to settle its obligations which arose prior to August 2, 1990 (with the exceptions noted above), including, among other things, obtaining information concerning claims, arranging credit facilities, and liquidating and transferring assets. The banks are authorized to commence payment of obligations on March 18, 1991. Authorization to satisfy obligations include authorization to pay interest on obligations. The Central Bank of Kuwait has notified FAC that it believes the seven banks are fully able to satisfy all valid obligations that they have been specifically licensed to settle, but has nonetheless added its guarantee of payment in satisfaction of such obligations. The Central Bank of Kuwait has been separately licensed for FAC and is therefore able to utilize its blocked assets for this purpose, if the need should arise.

The licenses issued to the banks also authorize U.S. persons to engage in all transactions related to the settlement of the seven banks' obligations, or the management of their assets subject to U.S. jurisdiction. Claimants do not require further authorization from FAC to present their claims to the banks. Claimants may also engage in any appropriate dispute resolution proceedings, including arbitration or litigation, necessary to determining the existence of the banks' obligations without additional FAC authorization; however, the banks' assets (all of which constitute blocked property) may not be attached or be the subject of a setoff unless separately licensed.

U.S. persons may submit claims to settle outstanding obligations with the licensed Kuwaiti banks by notifying the appropriate bank official listed below:

Al Ahli Bank of Kuwait (K.S.C.): Al Ahli Bank of Kuwait, 3 Bishopsgate, London EC2N 3AB, England, Attn.: Mr. Hendrik J. Kwant, General Manager, Tel.: 011–44–71/283–1737, FAX: 011–44–71/929–4649.

The Bank of Kuwait & The Middle East (K.S.C.):

The Bank of Kuwait & The Middle East, Arab African Bank Bldg., 2nd Floor, 5 Midan El Saray El Kobra, Garden City—Cairo, Egypt, Attn.: Mr. Ali I. Shaker or Mr. M. Anis Siblini, Tel.: 011–20–2/355–1988 or 354–2390 or 354–2391, FAX: 011–20–2/354–2397.

Burgan Bank S.A.K.: Burgan Bank S.A.K., London Representative Office, 1 College Hill, London EC4R 2RA, England. Attn.: Mr. Christopher Wood, Tel.: 011–44–71/489–9843, FAX: 011–44–71/236–0409, Telex: 933045 BMBLDGN G.

Commercial Bank of Kuwait S.A.K.:

Commercial Bank of Kuwait, New York Branch, 350 Park Avenue, New York, New York 10022–6090. Attn.: Mr. Norbert M. Tiedemann, Sr., Vice, Pres. & Chief Mgr., or Mr. Mohamed F. Soliman, First Vice Pres. & Deputy Chief Mgr., Tel.: 212/207–2420, FAX: 212/935–6463.

The Gulf Bank, K.S.C.:

Money market claims: Attn.: Mr. Z.F. Sarawan, Tel.: 011–44–71/248–2843, FAX: 011–44–71/236–0314, Telex: 8811896 GULFBK G.
Travellers checks and credit cards: Attn.: Mr. J. Carlough.
Drafts, guarantees, letters of credit, and mail transfers: Attn.: Mr. H. Hafix.
Telex transfers: Attn.: Mr. A. Al Sumait.
The Gulf Bank, K.S.C., 1 College Hill, London EC4R 2RA, England, Tel.: 011–44–71/248–2843, FAX: 011–44–71/289–0404, Telex: 887688 GULFBK.

The Industrial Bank of Kuwait (K.S.C.):

c/o The United Bank of Kuwait P.L.C., 3 Lombard Street, London EC3V 9DT, England, Attn.: Mr. Tareq Zualter, Tel.: 011-44-71/626-3422, FAX: 011-44-71/929-3966, Telex: 888441, Swift Address: UBKL CB 21.

Kuwait Real Estate Bank (K.S.C.):

National Bank of Kuwait, 299 Park Avenue, New York, New York 10171, Attn.: Mr. Norman Kelly, Tel.: 212/303-9800, FAX: 212/319-8369.

Dated: February 25, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 27, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-5343 Filed 3-1-91; 11:10 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 28, 1991

TIME AND DATE: 10:00 a.m., Thursday, March 7, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *David Hatfield v. Colquest Energy, Inc.*, Docket No. SE 90-122-D. (Issues include whether Colquet's petition for interlocutory review should be granted.

It was determined by a unamimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-5361 Filed 3-4-91; 12:02 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 4, 1991.

A closed meeting will be held on Tuesday, March 5, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 5, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: February 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5362 Filed 3-4-91; 12:02 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
March 6, 1991

Part II

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Program; State-Administered Programs; Incorporation by Reference Update; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3768-5]

Underground Injection Control Program; State-Administered Programs; Incorporation by Reference Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) program, which is designed to prevent underground injection through wells that may endanger drinking water sources. The SDWA provides for States to apply for and receive approval from EPA to administer their own UIC programs, if they meet EPA's minimum requirements. Forty States and Territories have approved State-administered UIC programs but the State statutes and regulations which are incorporated by reference in the Code of Federal Regulations (CFR) as part of these approved programs have not been updated since 1984. This rule updates the State statutes and regulations which are incorporated by reference and part of the Underground Injection Control (UIC) program under the SDWA.

EFFECTIVE DATE: This regulation is effective March 6, 1991. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of March 6, 1991.

ADDRESSES: The public docket and supporting documents for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Office of Drinking Water (WH-550E), Room 1140 East Tower, 401 M Street SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Donald Olson, Office of Drinking Water (WH-550E), EPA, Washington, DC, 20460, Phone: (202) 382-5530.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency has promulgated a series of regulations under the authority of part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*). The SDWA is designed to protect the quality of drinking water in the United States and part C of the SDWA specifically mandates regulation of underground injection of fluids through wells.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for State programs to prevent well injection which may endanger drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 Code of Federal Regulations (CFR) parts 144 and 146, on May 19, 1980 (45 FR 39611), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations have been amended on several occasions since.

Section 1422 of the SDWA provides that States may apply to EPA for primary responsibility to administer the UIC program. Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, a UIC program for each State. These direct implementation (DI) programs were promulgated in four phases in 40 CFR part 147, on May 11, 1984 (49 FR 20138), November 15, 1984 (49 FR 45308), May 11, 1987 (52 FR 17680) and October 25, 1988 (53 FR 43096).

The May and November 1984 Federal Registers also described EPA's approval of State-administered UIC programs. For these State-administered programs, part 147 incorporates by reference requirements from appropriate State statutes and regulations. Such requirements were thus made a part of the UIC program under the SDWA. However, the State statutes and regulations which were incorporated by reference as part of the State-administered programs have not been updated since 1984. This rule updates these part 147 incorporation by reference materials for State-administered UIC programs. Today's rule is also recodifying parts of the UIC programs for Kansas and Wisconsin which were approved prior to 1984 but were inadvertently excluded when EPA promulgated its 1984 State program rules.

Sections 1421, 1423, and 1449 of the Safe Drinking Water Act provide that a State program approved by EPA is federally enforceable by EPA and/or citizen's suits in Federal court. The purpose of incorporating by reference the State statutes and regulations which make up the approved UIC program in a primacy State is to ensure that the public, the regulated community, and EPA can easily determine what constitutes the approved UIC program in a State.

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to State programs that have occurred since 1984 are accurately reflected in part 147. State UIC program revisions are controlled by EPA regulations at 40 CFR 145.32. Section 145.32(a) requires an authorized State to keep EPA informed of changes to its statutory or regulatory authorities. Section 145.32(b) specifies that when EPA receives a request from a State to modify its program, it shall determine whether the program revision is "substantial." If so, EPA must publish the proposed revision in the **Federal Register** and provide for public comment before approval. Non-substantial program revisions may be accomplished by a letter from the EPA Regional Administrator to the State. Since the time of initial approval of the State UIC programs, EPA has, by letter, approved a number of non-substantial revisions. Copies of these letters of approval are in the public docket for this rule. Today's rule simply revises the citations in the CFR to reflect these previously approved, non-substantial State program revisions.

Finally, today's rule will modify the language of the EPA-administered programs to reflect that the hazardous waste injection restrictions found in part 148 are part of the EPA-administered program in those States. (Part 147 already reflects the applicable Federal requirements in nonauthorized States and on Indian lands other than the part 148 requirements.) The part 148 requirements were promulgated on July 26, 1988 (53 FR 28118), and have been modified on various occasions since. As explained in the July 26, 1988 rule, States need not seek authorization to administer part 148 to maintain UIC primacy (53 FR 28120). However, States may wish to do so, assuming the State meets the requirements of both the SDWA and RCRA. See 50 FR 28728 *et seq.* (July 15, 1985) for more details. EPA will modify the codification of existing State programs in part 147 as appropriate when States receive authorization to administer part 148 requirements.

EPA believes today's rule falls under the "good cause" exemptions in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause", authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impracticable, unnecessary, or contrary to the public interest." Public comment is "unnecessary" in this case because the codification of previously approved, non-substantial revisions is merely a technical amendment which will not benefit from notice and comment procedures. A delayed effective date is "unnecessary" and "contrary to public interest" since the codification only reflects existing law. Immediate notice in the Code of Federal Regulations benefits the public by removing outdated citations.

The Agency would also like to note that in certain sections of the regulatory language below, EPA has reprinted existing language for the ease of the reader in locating the proposed changes.

II. State-by-State Description of Changes

1. Subpart B—Alabama: The Code of Alabama Sections 9-17-1 through 9-17-109 which is incorporated by reference at § 147.50(a)(1) is updated. The Rules and Regulations Governing the Conservation of Oil and Gas in Alabama which is incorporated by reference at § 147.50(a)(2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 (53 FR 28118, July 26, 1988) are added to the EPA-administered program requirements at § 147.50(a).

2. Subpart C—Alaska: An amendment to the Memorandum of Agreement between EPA Region X and the Alaska Oil and Gas Conservation Commission is codified at § 147.100(b). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.101(a).

3. Subpart D—Arizona: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.151(a).

4. Subpart E—Arkansas: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.205(a).

5. Subpart F—California: The California Public Resources Code and the California Administrative Code sections which are incorporated by reference at § 147.250(a) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.251(a).

6. Subpart G—Colorado: The State-administered 1425 program approved on April 2, 1984 (49 FR 13040) is codified at § 147.300. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.301(a).

7. Subpart H—Connecticut: The State-administered 1422 program approved on March 28, 1984 (49 FR 11179) is codified at § 147.350. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.353(a).

8. Subpart I—Delaware: The State-administered 1422 program approved on April 5, 1984 (49 FR 13525) is codified at § 147.400. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.403(a).

9. Subpart J—District of Columbia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.451(a).

10. Subpart K—Florida: The Florida Administrative Code sections which are incorporated by reference at § 147.500(a)(2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.501(a).

11. Subpart L—Georgia: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.550. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.553(a).

12. Subpart M—Hawaii: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.601(a).

13. Subpart N—Idaho: The title of § 147.651 is revised and the Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.651(a).

14. Subpart O—Illinois: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.703(a).

15. Subpart P—Indiana: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.751(a).

16. Subpart Q—Iowa: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.801(a).

17. Subpart R—Kansas: The incorporation by reference, Memorandum of Agreement, Statement of Legal Authority, and Program Description materials for the State-administered 1422 program are repromulgated at § 147.850 (a) through (e). These materials were inadvertently removed during a previous rulemaking action (49 FR 45281). The Kansas Administrative Regulations sections which are incorporated by reference at 147.850(a) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.860(a).

18. Subpart S—Kentucky: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.901(a).

19. Subpart T—Louisiana: An amendment to Statewide Order No. 29-N-1 which is incorporated by reference at § 147.950(a)(2) is added. Amendments to Statewide Order No. 29-B which is incorporated by reference at § 147.950(a)(3) are added. Amendments to the Memorandum of Agreement which are incorporated by reference at § 147.950(b)(1) are added. A new statement from the Attorney General which is incorporated by reference at § 147.950(c)(3) is added. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.951(a).

20. Subpart U—Maine: The introductory paragraph for the incorporation by reference section has been revised whereby the language "State of Maine" has replaced the language "State of Louisiana" at § 147.1000(a). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1001(a).

21. Subpart V—Maryland: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.1050. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1053(a).

22. Subpart W—Massachusetts: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1101(a).

23. Subpart X—Michigan: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1151(a).

24. Subpart Y—Minnesota: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1201(a).

25. Subpart Z—Mississippi: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the

EPA-administered program requirements at § 147.1252(a).

26. Subpart AA—Missouri: The Missouri Code of State Regulations incorporated at § 147.1300(a)(2) are revised and updated, and the Missouri Statutes are added to § 147.1300(a)(3). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1303(a).

27. Subpart BB—Montana: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1351(a).

28. Subpart CC—Nebraska: The Nebraska Revised Statutes sections are incorporated by reference at § 147.1400(a)(2). Chapter 57 of the Nebraska Revised Statutes which is codified at § 147.1400(b)(1) is updated. The sections of the Nebraska Environmental Protection Act and the title 122 Rules and Regulations for Underground Injection and Mineral Production Wells which are incorporated by reference at § 147.1401(a) (1) and (2) are updated. The sections of the Nebraska Environmental Protection Act which are codified at § 147.1401(b)(l) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1403(a).

29. Subpart DD—Nevada: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1451(a).

30. Subpart EE—New Hampshire: The introductory paragraph for 147.1500 has been revised to reflect the change in name of the State agency administering the UIC program. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1501(a).

31. Subpart FF—New Jersey: The New Jersey Statutes Annotated and New Jersey Administrative Code sections incorporated by reference at § 147.1550(a) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1551(a).

32. Subpart HH—New York: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1651(a).

33. Subpart II—North Carolina: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.1700. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1703(a).

34. Subpart JJ—North Dakota: The North Dakota Century Code, North Dakota Administrative Code sections and the Memorandum of Agreement which are incorporated by reference at § 147.1750(a) (1), (2) and (b) are updated. Chapter 43–02–03 of the North Dakota Administrative Code incorporated by reference at § 147.1750(a)(3) is added. The North Dakota Century Code and North Dakota Administrative Code sections which are incorporated by reference at § 147.1751(a) (2) and (4) are updated. Chapter 61–28 of the North Dakota Century Code which is codified at § 147.1751(b)(3) is updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1752(a).

35. Subpart KK—Ohio: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1805(a).

36. Subpart MM—Oregon: The first sentence of the introductory paragraph has been revised to reflect the addition of the 1425 program. The Oregon Administrative Rules sections incorporated by reference at § 147.1900(a)(2) are updated. The Oregon Revised Statutes and Oregon Administrative Rules sections which are codified at § 147.1900(b) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1901(a).

37. Subpart NN—Pennsylvania: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1951(a).

38. Subpart OO—Rhode Island: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2001(a).

39. Subpart PP—South Carolina: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2051(a).

40. Subpart QQ—South Dakota: The Administrative Rules of South Dakota sections which are incorporated by reference at § 147.2100(a)(2) are updated. The section title is revised and the Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2101(a).

41. Subpart RR—Tennessee: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2151(a).

42. Subpart SS—Texas: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2205(a).

43. Subpart TT—Utah: At § 147.2250, sections of the Utah Water Pollution Control Act are updated at paragraph (a) and paragraphs (b), (c) (1) and (3), (d) (3) and (e) are updated also. The Utah Administrative Code is added to § 147.2250(a)(2). Paragraph (a)(2) is renumbered to paragraph (a)(3) also at § 147.2250. Sections of the Utah Code Annotated and the Oil and Gas Conservation General Rules are added to 147.2251(a) (1) and (2). Program description materials are added at § 147.2251(d)(3). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2253(a).

44. Subpart UU—Vermont: The introductory paragraph for § 147.2300 is revised to reflect the change in the name of the State agency administering the UIC program. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2303(a).

45. Subpart VV—Virginia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at 147.2351(a). The effective date of the program on non-Indian lands is corrected at 147.2351(b) (see 53 FR 43091).

46. Subpart WW—Washington: Chapter 173–160 of the Washington Administrative Code is added at § 147.2400(a)(4). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2403(a).

47. Subpart XX—West Virginia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2453(a).

48. Subpart YY—Wisconsin: The incorporation by reference, Memorandum of Agreement, Statement of Legal Authority, and Program Description materials for the State-administered 1422 program are repromulgated at § 147.2500 (a) through (e). These materials were inadvertently removed during a previous rulemaking action (49 FR 45291). The Wisconsin Statutes Annotated and Wisconsin Administrative Code sections which are incorporated by reference at § 147.2500(a) (1) and (4) are updated.

49. Subpart ZZ—Wyoming: The Wyoming Environmental Quality Act, Wyoming Statutes sections which are incorporated by reference at §§ 147.2550 (a)(1) and (a)(5) are added to and updated, and existing § 147.2550(a)(5) is renumbered to § 147.2550(a)(6). At § 147.2550(b) paragraphs (2) and (3) are renumbered to (1) and (2) and existing paragraph (b)(1) is replaced. The Wyoming Statutes, Wyoming Administrative Procedure Act and the Department of Environmental Quality Rules of Practice and Procedure sections which are codified at § 147.2550(b) (1) and (2) are updated and (3) is added. The Wyoming Statutes Annotated which were previously under the heading of (*b*) *Other laws* are now incorporated by reference at § 147.2551 (a)(2) and paragraph (a)(1) is updated. The Memorandum of Agreement, Statement of Legal Authority, and Program Description materials codified at § 147.2551 (b), (c) and (d) are updated and the paragraphs have been reordered because former paragraph (*b*) *Other laws* has been replaced. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2553(a).

50. Subpart AAA—Guam: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2601(a).

51. Subpart BBB—Puerto Rico: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2651(a).

52. Subpart CCC—Virgin Islands: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2701(a).

53. Subpart DDD—American Samoa: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2751(a).

54. Subpart EEE—Commonwealth of the Northern Mariana Islands: The Hazardous Waste Injection Restrictions of 40 CFR Part 148 are added to the EPA-administered program requirements at § 147.2801(a).

55. Subpart FFF—Trust Territory of the Pacific Islands: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2851(a).

56. Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.3000(a).

57. Subpart III—Lands of Certain Oklahoma Indian Tribes: The Hazardous Waste Injection Restrictions of 40 CFR Part 148 are added to the EPA-administered program requirements at § 147.3100(a).

III. Regulatory Impact

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the proposed amendments to the regulations are major and therefore subject to the requirements of a Regulatory Impact Analysis. These proposed amendments do not impose any additional burden on the States or the regulated community. The proposed amendments do not have an annual effect on the economy of $100 million or more, nor do they satisfy any of the other criteria listed in section l(b) of the Executive Order. Therefore these proposed amendments do not constitute a major rulemaking. This proposal has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since limited information collection or record-keeping would be involved. This proposed rule would merely update the incorporation by reference material for which any information collection or record-keeping requirements have already been approved by OMB.

C. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any proposed rule, unless the head of the agency certifies that the rule, if promulgated, will not have significant economic impact on a substantial number of small entities. These proposed amendments to the regulations require no additional reporting or other burdens on the regulated community. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Administrative practice and procedures, Confidential business information, Incorporation by reference, Reporting and record keeping requirements, Underground injection.

Dated: January 15, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 147 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h (*et seq.*; and 42 U.S.C. 6901 *et seq.*

2. In Subpart B—Alabama:

a. By revising 147.50(a) (1) and (2) to read as follows:

§ 147.50 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) Code of Alabama Sections 9–17–1 through 9–17–109 (Cumm. Supp. 1989);

(2) State Oil and Gas Board of Alabama Administrative Code, Oil and Gas Report 1 (supplemented through May 1989), Rules and Regulations Governing the Conservation of Oil and Gas in Alabama, and Oil and Gas Statutes of Alabama with Oil and Gas Board Forms, § 400–1–2 and § 400–1–5–.04.

* * * * *

b. By revising § 147.60(a) to read as follows:

§ 147.60 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

3. In Subpart C—Alaska:

a. By revising § 147.100(b) to read as follows:

§ 147.100 State-administered program—Class II wells.

* * * * *

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10, and the Alaska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on January 29, 1986, as amended on June 21, 1988.

* * * * *

b. By revising § 147.101(a) to read as follows:

§ 147.101 EPA-administered program.

(a) *Contents.* The UIC program in the State of Alaska for Class I, III, IV, and V wells, and for all classes of wells on Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

4. In Subpart D—Arizona, by revising § 147.151(a) to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, is administered by EPA. The UIC program for Navajo Indian lands consists of the requirements contained in Subpart HHH of this part. The program for all injection activity except that on Navajo Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

5. In Subpart E—Arkansas, by revising § 147.205(a) to read as follows:

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

6. In Subpart F—California:

a. By revising § 147.250(a)(1) and (2) to read as follows:

§ 147.250 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) California Laws for Conservation of Petroleum and Gas, California Public Resources Code Div. 3, Chapt. 1, §§ 3000–3359 (1989);

(2) California Administrative Code, title 14, §§ 1710 to 1724.10 (May 28, 1988).

* * * * *

b. By revising § 147.251(a) to read as follows:

§ 147.251 EPA-administered program—Class I, III, IV and V wells and Indian lands.

(a) *Contents.* The UIC program in the State of California for Class I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

6. In Subpart G—Colorado:

a. By adding text to § 147.300 and revising the section heading to read as follows:

§ 147.300 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Colorado, except those wells on Indian Lands, is the program administered by the Colorado Oil and Gas Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on April 2, 1984 (49 FR 13040); the effective date of this program is April 2, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Colorado. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the State of Colorado Oil and Gas Conservation Commission, Department of Natural Resources, Suite 380 Logan Tower Building, 1580 Logan Street, Denver, Colorado, 80203. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20406.

(1) Colorado Revised Statutes, 1989 replacement volume, Section 34–60–101 through 34–60–123;

(2) Colorado Revised Statutes, 1989 replacement volume, Section 25–8–101 through 25–8–612;

(3) Rules and Regulations, Rules of Practice and Procedure, and Oil and Gas Conservation Act (As Amended) Department of Natural Resources, Oil and Gas Conservation Commission of the State of Colorado (revised July 1989);

(4) Oil and Gas Conservation Commission Revised Rules and Regulations in the 300, 400, 500, and 600 series, effective March 20, 1989.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the Colorado Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on March 8, 1984 and amended on August 30, 1989.

(c) *Statement of legal authority.* (1) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission", March 15, 1983;

(2) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Injection Control Program of Colorado Oil and Gas Conservation Commission", April 29, 1983;

(3) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Underground Injection Control Program of Colorado Oil and Gas Conservation Commission, Interpretation of C.R.S. 1973, 34–60–110", July 11, 1983;

(4) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission", February 17, 1984;

(5) Memorandum from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Authority to set and enforce maximum pressure for injecting fluids into Class II wells with existing permits", March 7, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto:

(1) Application and accompanying materials for approval of Colorado's UIC program for Class II wells submitted by the Director of the Colorado Oil and Gas Conservation Commission to the Regional Administrator, May 3, 1983;

(2) Supplemental amendment to Colorado's application for primacy for the UIC program for Class II wells describing the process through which the State will ensure enforceable limits for maximum injection pressure, describing the Commission's plan of administration for Class II wells, and describing Mechanical Integrity Test procedures for Class II wells, March 7, 1984;

(3) Official correspondence concerning various program issues between the Colorado Oil and Gas Conservation Commission and EPA Region VIII, for the period from March 7, 1984 to May 8, 1989.

b. By revising § 147.301(a) to read as follows:

§ 147.301 EPA-administered program—Class I, III, IV, V wells and Indian lands.

(a) *Contents.* The UIC program for Class I, III, IV and V wells on all lands in Colorado, including Indian lands, and for Class II wells on Indian lands, is administered by EPA. The program for all EPA-administered wells in Colorado other than Class II wells on the lands of the Ute Mountain Ute consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

8. In Subpart H—Connecticut:

a. By reserving §§ 147.351 and 147.352, and adding § 147.350 to read as follows:

§ 147.350 State-administered program.

The UIC program for all classes of wells in the State of Connecticut, except those wells on Indian lands, is the program administered by the Connecticut Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on March 26, 1984 (49 FR 11179); the effective date of this program is March 26, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Connecticut. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and CFR part 51. Copies may be obtained at the State of Connecticut, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, 06106. Copies may be inspected at the Environmental Protection Agency, Region I, John F. Kennedy Federal Building, room 2203, Boston, Massachusetts, 02203, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Connecticut General Statutes Annotated, title 22a (Environmental Protection), chapter 439, sections 22a–1 through 22a–27 (1985 and Cumm. Supp. 1990);

(2) Connecticut General Statutes Annotated, Title 22a (Environmental Protection), Chapter 446K (1985 and Cumm. Supp. 1990).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region I and the Connecticut Department of Environmental Protection, signed by the EPA Regional Administrator on August 9, 1983.

(c) *Statement of legal authority.* (1) Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 6, 1981;

(2) Addendum to the Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 10, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.353(a) to read as follows:

§ 147.353 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

9. In Subpart I—Delaware:

a. By reserving §§ 147.401 and 147.402 and adding § 147.400 to read as follows:

§ 147.400 State-administered program.

The UIC program for all classes of wells in the State of Delaware, except those wells on Indian lands, is the program administered by the Delaware Department of Natural Resources and Environmental Control approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 5, 1984 (49 FR 13525); the effective date of this program is May 7, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Delaware. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware, 19903. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Delaware Environmental Protection Act, (Environmental Control) 7 Delaware Code Annotated, Chapter 60, Sections 6001–6060 (Revised 1974 and Cumm. Supp. 1988);

(2) State of Delaware Regulations Governing Underground Injection Control, parts 122, 124 and 146 (Department of Natural Resources and Environmental Control), effective August 15, 1983.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Delaware Department of Natural Resources and Environmental Control, signed by the EPA Regional Administrator on March 28, 1984.

(c) *Statement of legal authority.* Statement of the Delaware Attorney General for the Underground Injection Control Program, signed by the Attorney General on January 26, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application (August 10, 1983), or as supplements thereto (October 14, 1983).

b. By revising § 147.403(a) to read as follows:

§ 147.403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

* * * * *

10. In Subpart J—District of Columbia, by revising § 147.451 (a) to read as follows:

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia, including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

11. In Subpart K—Florida:

a. By revising § 147.600(a)(2) to read as follows:

§ 147.600 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(2) Chapter 17-28, Underground Injection Control, Florida Administrative Code (April 27, 1989).

* * * * *

b. By revising § 147.601(a) to read as follows:

§ 147.601 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

12. In Subpart L—Georgia:

a. By reserving §§ 147.551 and 147.552 and adding § 147.550 to read as follows:

§ 147.550 State-administered program.

The UIC program for all classes of wells in the State of Georgia, except those wells on Indian lands, is the program administered by the Georgia Department of Natural Resources, Environmental Protection Division approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 19, 1984 (49 FR 15553); the effective date of this program is May 21, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Georgia. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, SW., Atlanta, Georgia, 30334. Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Oil and Gas and Deep Drilling Act of 1975, Official Code of Georgia Annotated (O.C.G.A.) §§ 12-4-40 through 12-4-53 (1988);

(2) Ground Water Use Act of 1972, O.C.G.A. §§ 12-5-90 through 12-5-107 (1988);

(3) Water Well Standards Act of 1985, O.C.G.A. §§ 12-5-12, through 12-5-136 (1988);

(4) Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 through 50-13-22 (Reprinted from the O.C.G.A. and 1988 Cumm. Supp.);

(5) Georgia Water Quality Control Act, O.C.G.A. §§ 12-5-20 through 12-5-53 (1988);

(6) Georgia Hazardous Waste Management Act, O.C.G.A. §§ 12-8-60 through 12-8-83 (1988);

(7) Georgia Safe Drinking Water Act of 1977, O.C.G.A. §§ 12-5-170 through 12-5-193 (1988);

(8) Rules of Georgia Department of Natural Resources, Environmental Protection Division, Water Quality Control, GA. COMP. R. & REGS. Chapter 391-3-5-.13 (Revised July 28, 1988).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region IV and the State of Georgia, signed March 1, 1984.

(c) *Statement of legal authority.* (1) Unofficial Opinion of the Georgia Attorney General, Op. Atty. Gen. 080-24, June 12, 1980;

(2) Underground Injection Control Program, Attorney General's Statement, February 4, 1982;

(3) Amended Attorney General's Statement Relating to Authority of the State of Georgia to Implement an Underground Injection Control Program, April 22, 1983;

(4) Letter to EPA Office of General Counsel from Senior Assistant Attorney General "Re: State UIC Program", July 13, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.553(a) to read as follows:

§ 147.553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

13. In Subpart M—Hawaii, by revising § 147.601(a) to read as follows:

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

14. In Subpart N—Idaho, by revising the title of § 147.651 and paragraph (a) to read as follows:

§ 147.651 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Idaho is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

15. In Subpart O—Illinois, by revising § 147.703(a) to read as follows:

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

16. In Subpart P—Indiana, by revising § 147.751(a) to read as follows:

§ 147.751 EPA-administered program—

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

17. In Subpart Q—Iowa, by revising § 147.801(a) to read as follows:

§ 147.801 EPA-administered program.

(a) *Contents.* The UIC program for the State of Iowa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

18. In Subpart R—Kansas:

a. By adding paragraphs §§ 147.850 (a) through (e) to existing text to read as follows:

§ 147.850 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Kansas. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, 66620. Copies may be inspected at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Chapter 28, Article 46, Underground Injection Control Regulations, Kansas Administrative Regulations §§ 28-46-1 through 28-46-42 (1986 and Supp. 1987);

(2) Chapter 28, Article 43, Construction, operation, monitoring and abandonment of salt solution mining wells, Kansas Administrative Regulations §§ 28-43-1 through 28-43-10 (1986);

(3) Kansas Statutes Annotated §§ 65-161, 65-164 through 65-166a, 65-171d (1980 and Cumm. Supp. 1988).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for the select sections identified in paragraph (a) of this section, are also part of the approved State-administered program: Kansas Statutes Annotated §§ 65-161 through 65-171(w), (1980 and Supp. 1983).

(c) *Memorandum of Agreement.* (1) The Memorandum of Agreement between EPA Region VII and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on July 29, 1983;

(2) Addendum No. 1 of the Memorandum of Agreement, signed by the EPA Regional Administrator on August 29, 1983.

(d) *Statement of legal authority.* (1) "Statement of Attorney General", signed by the Attorney General of the State of Kansas, November 25, 1981;

(2) "Supplemental Statement of Attorney General", signed by the Attorney General of the State of Kansas, undated (one page).

(e) *Program description.* The program description and any other materials submitted as part of the application or supplements thereto.

b. By revising § 147.860(a) to read as follows:

§ 147.860 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Kansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

19. In Subpart S—Kentucky, by revising § 147.901(a) to read as follows:

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

20. In Subpart T—Louisiana:

a. By revising the first sentence of the introductory text and paragraphs (a)(2) and (b)(1), and by adding paragraphs (a)(3) (iv), (v), (vi), (vii), and (c)(3) to § 147.950 to read as follows:

§ 147.950 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Louisiana, except those wells on Indian lands, is the program administered by the Louisiana Department of Natural Resources approved by EPA pursuant to sections 1422 and 1425 of the SDWA.

* * *

(a) * * *

(2) Underground Injection Control Program Regulations for Class I, III, IV, and V wells, Statewide Order No. 29-N-1 (February 20, 1982), as amended June 1, 1985 and January 20, 1986;

(3) * * *

(iv) Amendment to Statewide Order No. 29-B (Amendment concerning the underground injection control of saltwater disposal wells, enhanced recovery injection wells, and liquid hydrocarbon storage wells) (effective February 20, 1982);

(v) Amendment to Statewide Order No. 29-B (Amendment concerning the offsite disposal of drilling mud and saltwater) (effective May 20, 1983);

(vi) Amendment to Statewide Order No. 29-B (Amendment concerning disposal of nonhazardous oilfield waste) (March 20, 1984, effective May 20, 1984);

(vii) Amendment to Statewide Order No. 29-B (Amendment concerning the administrative approval of injectivity tests and pilot projects in order to determine the feasibility of proposed enhanced recovery projects) (June 20, 1985, effective July 1, 1985).

* * * * *

(b)(1) The Memorandum of Agreement (Class I, III, IV, and V wells) between EPA Region VI and the Louisiana Department of Natural Resources, Office of Conservation, signed by the EPA Regional Administrator on March 17, 1982 and amended by Addendum 1 and Addendum 2 on November 3, 1989;

* * * * *

(c) * * *

(3) Letter from Attorney General of Louisiana to EPA, "Re: Class I Hazardous Waste Injection Well Regulatory Program; Attorney General's Statement, October 9, 1989 (9 pages);

* * * * *

b. By revising § 147.951(a) to read as follows:

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

21. In Subpart U—Maine:

a. By revising § 147.1000(a) to read as follows:

§ 147.1000 State-administered program.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the

applicable UIC program under the SDWA for the State of Maine. This incorporation by reference was approved by the Director of the OFR on June 25, 1984.

* * * * *

b. By revising § 147.1001(a) to read as follows:

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

* * * * *

22. In Subpart V—Maryland:

a. By reserving §§ 147.1051 and 147.1052 and adding § 147.1050 to read as follows:

§ 147.1050 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Maryland, except those wells on Indian lands, is the program administered by the Maryland Department of the Environment approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 19, 1984 (49 FR 15553); the effective date of this program is June 4, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Maryland. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 07 promulgated and effective as of March 1, 1988;

(2) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 01, promulgated and effective as of March 1, 1988;

(3) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 02, promulgated and effective as of March 1, 1988;

(4) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 03, promulgated and effective as of March 1, 1988;

(5) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 04, promulgated and effective as of March 1, 1988;

(6) Code of Maryland Regulations, Title 26, Subtitle 13, Chapter 05, section .19, promulgated and effective as of August , 1, 1989;

(7) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 02, promulgated and effective as of March 1, 1988;

(8) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 04, promulgated and effective as of March 1, 1989.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Maryland Department of the Environment, as submitted on August 2, 1983, and revised on February 16, 1984.

(c) *Statement of legal authority.* Statement from the Maryland Attorney General on the Underground Injection Control Program, as submitted on August 2, 1983, and revised on February 16, 1984.

(d) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.1053(a) to read as follows:

§ 147.1053 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

23. In Subpart W—Massachusetts.

a. By revising § 147.1101(a) to read as follows:

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

24. In Subpart X—Michigan, by revising § 147.1151(a) to read as follows:

§ 147.1151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Michigan, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

25. In Subpart Y—Minnesota by revising § 147.1201(a) to read as follows:

§ 147.1201 EPA-administered program.

(a) *Contents.* The UIC program for the State of Minnesota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

26. In Subpart Z—Mississippi, by revising § 147.1252(a) to read as follows:

§ 147.1252 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

27. In Subpart AA—Missouri.

a. By revising (a)(2) and adding (a)(3) to § 147.1300 to read as follows:

§ 147.1300 State-administered program.

* * * * *

(a) * * *

(2) Missouri Code of State Regulations, title 10, division 50, chapters 1 and 2 (June 1984);

(3) Vernon's Annotated Missouri Statutes chapter 204, §§ 204.006 through 204.470 (1983 and Cumm. Supp. 1990).

* * * * *

b. By revising § 147.1303(a) to read as follows:

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Missouri is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 145, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

28. In Subpart BB—Montana, by revising § 147.1351(a) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Montana, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

29. In Subpart CC—Nebraska:

a. By revising paragraphs (a)(2) and (b)(1) of § 147.1400 to read as follows:

§ 147.1400 State-administered program—Class II wells.

* * * * *

(a) * * *

(2) Revised Statutes of Nebraska, sections 57–903 and 57–906 (Reissue 1988).

(b) * * *

(1) Chapter 57, Oil and Gas Conservation, Revised Statutes of Nebraska sections 57–901 through 57–922 (Reissue 1985).

* * * * *

b. By revising paragraphs (a) (1) and (2) and (b)(1) of § 147.1401 to read as follows:

§ 147.1401 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(1) Nebraska Environmental Protection Act, Revised Statutes of Nebraska sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987);

(2) Nebraska Department of Environmental Control, Title 122—Rules and Regulations for Underground Injection and Mineral Production Wells, Effective Date: February 16, 1982, Amended Dates: November 12, 1983, March 22, 1984; as amended by amendment approved by the Governor on January 2, 1989.

(b) * * *

(1) Nebraska Environmental Protection Act, Nebraska Revised Statutes sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987 and Cumm. Supp. 1988);

* * * * *

c. By revising § 147.1403(a) to read as follows:

§ 147.1403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nebraska is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

30. In Subpart DD—Nevada:

a. By revising § 147.1451(a) to read as follows:

§ 147.1451 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nevada is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

31. In Subpart EE—New Hampshire.

a. By revising the introductory text of § 147.1500 to read as follows:

§ 147.1500 State-administered program.

The UIC program for all classes of wells in the State of New Hampshire, except those wells on Indian lands, is the program administered by the New Hampshire Department of Environmental Services, approved by the EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on September 21, 1982 (47 FR 41561); the effective date of this program is October 21, 1982. This program consists of the following elements:

* * * * *

b. By revising § 147.1501(a) to read as follows:

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

32. In Subpart FF—New Jersey:

a. By revising paragraphs (a) (1) and (2) in § 147.1550 to read as follows:

§ 147.1550 State-administered program.

* * * * *

(a) * * *

(1) Water Pollution Control Act, New Jersey Statutes Annotated sections 58:10A–1 through 58:10A–20 (West 1982 and Supp. 1990);

(2) New Jersey Administrative Code, sections 7:14A–1.1 through 1.9 (subchapter 1), 7:14A–2.1 through 2.15 (subchapter 2), 7:14A–5.1 through 5.17, (subchapter 5) (amended March 1988).

* * * * *

b. By revising § 147.1551(a) to read as follows:

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

33. In Subpart HH—New York, by revising § 147.1651(a) to read as follows:

§ 147.1651 EPA-administered program.

(a) *Contents.* The UIC program for the State of New York, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

34. In Subpart II—North Carolina:

§§ 147.1701 and 147.1702 [Reserved]

a. By reserving §§ 147.1701 and 147.1702 and adding § 147.1700 to read as follows:

§ 147.1700 State-administered program.

The UIC program for all classes of wells in the State of North Carolina, except those wells on Indian lands, is the program administered by the North Carolina Department of Environment, Health and Natural Resources approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on April 19, 1984 (49 FR 15553); the effective date of this program is April 19, 1984.

This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Carolina. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611. Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(1) Administrative Procedure Act, N.C. GEN. STAT. 150B–1 through 150B–64 (1987 and Cumm. Supp. 1989);

(2) North Carolina Well Construction Act, N.C. GEN. STAT. §§ 87–83 through 87–99 (1989 and Cumm. Supp. 1989);

(3) Water and Air Resources, N.C. GEN. STAT. §§ 143–211 through 143–215.10 (1987 and Cumm. Supp. 1989);

(4) Solid Waste Management, N.C. GEN. STAT. §§ 130A–290 through 130A–309.03 (1989);

(5) North Carolina Drinking Water Act, N.C. GEN. STAT. §§ 130A–311 through 130A–332 (1989);

(6) Sanitary Sewage Systems, N.C. GEN. STAT. §§ 130A–333 through 130A–335 (1989).

(b) *Other laws.* The following rules and regulations, although not incorporated by reference, are also part of the approved State-administered program:

(1) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Groundwater Classification and Standards: General Considerations (September 22, 1988);

(2) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Criteria and Standards Applicable to Injection Wells (September 22, 1988).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between the State of North Carolina and EPA Region IV, signed March 1, 1984.

(d) *Statement of legal authority.* (1) Underground Injection Control Program, Attorney General's Statement (June 15, 1982);

(2) Amendment to Underground Injection Control Program, Attorney General's Statement (February 9, 1984).

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.1703(a) to read as follows:

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

35. In Subpart JJ—North Dakota:

a. By revising paragraphs (a) (1) and (2) and (b), and by adding paragraph (a)(3) to § 147.1750 to read as follows:

§ 147.1750 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) North Dakota Century Code, Chapter 38–08 (Control of Gas and Oil Resources, 1987 and Supp. 1989);

(2) North Dakota Administrative Code, Chapter 43–02–05 (Underground Injection Control, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987);

(3) North Dakota Administrative Code, Chapter 43–02–03 (General Rules, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987).

(b) The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, Oil and Gas Division, signed by the EPA Regional Administrator on June 16, 1983, as amended September 7, 1989.

* * * * *

b. By revising paragraphs (a) (2) and (4), and (b)(3) of § 147.1751 to read as follows:

§ 147.1751 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(2) North Dakota Century Code, Sections 61–28–02 and 61–28–06 (1989);

* * * * *

(4) North Dakota Administrative Code, Chapter 43–02–02 (Subsurface Mineral Exploration and Development) (August 1986), and Chapter 43–02–02.1 (Underground Injection Control Program) (March 1, 1984);

* * * * *

(b) * * *

(3) North Dakota Century Code Chapter 61–28 (Control, Prevention and Abatement of Pollution of Surface Waters) (1989);

* * * * *

c. By revising § 147.1752(a) to read as follows:

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

36. In Subpart KK—Ohio:

a. By revising § 147.1805(a) to read as follows:

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

37. In Subpart MM—Oregon:

a. By revising the first sentence of the introductory text, and paragraphs (a)(2), and (b) (1) and (2) of § 147.1900 to read as follows:

§ 147.1900 State-administered program.

The UIC program for all classes of wells in the State of Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 and section 1425 of the SDWA. * * *

(a) * * *

(2) Oregon Administrative Rules, Chapter 340, Division 44, sections 340–44–005 through 340–44–055 (October 1983); Chapter 340, Division 45, sections 340–45–005 through 340–45–075 (January 1990); Chapter 632, Division 10, sections 632–10–002 through 632–10–235 (May 1986); Chapter 632, Division 20, sections 632–20–005 through 632–20–180 (May 1984).

(b) * * *

(1) Oregon Revised Statutes, Chapter 183 (1987); 192.420, 192.500, 459.460(3), 468.005 through 468.605, and 468.780 through 468.997; Chapters 516 and 522 (1983);

(2) Oregon Administrative Rules, chapter 137, Div. 3 (July 1982); chapter 340, Div. 11 (April 1988); chapter 340, Div. 12 (March 1989); chapter 340, Div. 14 (November 1983); chapter 340, Div. 52 (November 1983); chapter 632, Div. 1 (June 1980); chapter 632, Div. 20 (January 1981).

* * * * *

b. By revising § 147.1901(a) to read as follows:

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

38. In Subpart NN—Pennsylvania, by revising § 147.1951(a) to read as follows:

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

39. In Subpart OO—Rhode Island, by revising § 147.2001(a) to read as follows:

§ 147.2001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

40. In subpart PP—South Carolina, by revising § 147.2051(a) to read as follows:

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

41. In subpart QQ—South Dakota:

a. By revising § 147.2100(a)(2) to read as follows:

§ 147.2100 State-administered program—Class II wells.

* * * * *

(a) * * *

(2) Administrative Rules of South Dakota, sections 74:10:02 through 74:10:07, 74:10:09, and 74:10:11 published by the South Dakota Code Commission, as revised through October 4, 1987.

* * * * *

b. By revising § 147.2101(a) and the section title to read as follows:

§ 147.2101 EPA-administered program—Class I, III, IV, and V wells and all wells on Indian lands.

(a) *Contents.* The UIC program for all Class I, III, IV, and V wells, including those on Indian lands, and for Class II wells on Indian lands in the state of South Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

42. In Subpart RR—Tennessee, by revising § 147.2151(a) to read as follows:

§ 147.2151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

43. In Subpart SS—Texas, by revising § 147.2205(a) to read as follows:

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

44. In Subpart TT—Utah:

a. By revising § 147.2250 read as follows:

§ 147.2250 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Utah, except those on Indian lands, is administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the FR on January 9, 1983 (47 FR 2321). The effective date of this program is February 10, 1983. Changes to Utah's regulations for Class I wells were made on May 15, 1990, in response to modification of national rules as promulgated by 53 FR 28186, July 28, 1988. Utah's rules were effective July 20, 1990. The revised rules, Program Description, Attorney General's statement, and Memorandum of Agreement were approved as a minor program modification on October 3, 1990. This program consists of the following elements as submitted to EPA:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Utah. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Utah Water Pollution Control Act, Utah Code Annotated, Title 26, Chapter 11, Sections 2, 8, and 10 (1989);

(2) Underground Injection Control Regulations; Utah Administrative Code, Section R448–7 (effective as of January 2, 1990);

(3) Underground Injection Control Program (adopted January 20, 1982 and revised effective July 20, 1990) (Officially submitted to EPA by the Executive Secretary of Utah Water Pollution Control Committee on August 16, 1990).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for selected sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Utah Pollution Control Act, Utah Code Annotated, Sections 26–11–1 through –20 (Supp. 1990);

(c)(1) The revised Memorandum of Agreement between EPA, Region VIII and the Utah Department of Health, Division of Environmental Health, signed by the Regional Administrator on October 3, 1990.

(2) Letter from Director, Utah Department of Health, Division of Environmental Health, Bureau of Water Pollution Control, to EPA Region VIII, Re: Underground Injection Control Program—Utah, March 15, 1982;

(3) Letter from the Executive Secretary of the Utah Water Pollution Control Committee to EPA Region VIII, "Re: Utah UIC Class I Well Program Changes," August 16, 1990;

(d) *Statement of legal authority.* (1) "Underground Injection Control Program—Attorney General's statement," signed by Attorney General, State of Utah, January, 1982;

(2) Letter from Assistant Attorney General of Utah to Chief, Drinking Water Branch, EPA Region VIII, June 18, 1982;

(3) Addendum to Underground Injection Control Program, Attorney General's Statement signed by Attorney General of Utah, August 10, 1990.

(e) The Program Description (revised June 19, 1990) and any other materials submitted as part of the application or supplements thereto.

b. By revising paragraph (a)(1) and by adding paragraphs (a)(2) and (d)(3) to § 147.2251 to read as follows:

§ 147.2251 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) Utah Code Annotated, 1953, section 40-6-1 through 40-6-18, as amended 1988 and Comm. Supp. 1990;

(2) The Oil and Gas Conservation General Rules, adopted under the authority of the Oil and Gas Conservation Act, 40-6-1 *et seq.*, Utah Code Annotated, as amended 1988 (revised March 1989), rules R615-1 through R615-4, and R615-8 through R615-10.

* * * * *

(d) * * *

(3) Memorandum to Director, Division of Oil, Gas and Mining from Assistant Attorney General regarding Underground Injection Control Program, January 8, 1985.

* * * * *

c. By revising § 147.2253(a) to read as follows:

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

45. In Subpart UU—Vermont:

a. By revising the introductory text of § 147.2300 to read as follows:

§ 147.2300 State-administered program.

The UIC program for all classes of wells in the State of Vermont, except those wells on Indian lands, is the program administered by the Vermont Department of Environmental Conservation, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on June 22, 1984; the effective date of this program is July 6, 1984. This program consists of the following elements:

* * * * *

b. By revising § 147.2303(a) to read as follows:

§ 147.2303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

46. In Subpart VV—Virginia, by revising § 147.2351 to read as follows:

§ 147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the remainder of Virginia is June 25, 1984. (53 FR 43091, October 25, 1988).

47. In Subpart WW—Washington:

a. By adding paragraph (a)(4) to § 147.2400 to read as follows:

§ 147.2400 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(4) Washington Administrative Code Chapter 173-160 (reprinted May 1988).

* * * * *

b. By revising § 147.2403(a) to read as follows:

§ 147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

48. In Subpart XX—West Virginia, by revising 147.2453(a) to read as follows:

§ 147.2453 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

49. In Subpart YY—Wisconsin, by adding paragraphs (a), (b), (c), (d), and (e) to the existing text of § 147.2500 to read as follows:

§ 147.2500 State-administered program.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wisconsin. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin, 53707. Copies may be inspected at the Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Wisconsin Statutes Annotated §§ 147.015, 147.02 and 147.04 (West 1974 and Supp. 1983);

(2) Chapter NR 112, Well Construction and Pump Installation, Wisconsin Administrative Code §§ NR 112.03 and 112.20 (October 1981), as amended by Natural Resources Board Order No. WQ-25-82, approved by the Natural Resources Board on August 25, 1982;

(3) Chapter NR 113, Servicing Septic Tanks, Seepage Pits, Grease Traps or Privies, Wisconsin Administrative Code §§ NR 113.07-113.08 (1979), as amended by Natural Resources Board Order No. WQ-25-82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(4) Chapter NR 181, Hazardous Waste Management, Wisconsin Administrative Code §§ NR 181.04-181.415 (1981), as amended June 1985;

(5) Chapter NR 210, Sewage Treatment Works, Wisconsin Administrative Code § 210.05 Natural Resources Board Order No. WQ-25-82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(6) Chapter NR 214, Land Application and Disposal of Liquid Industrial Wastes and By-Products, Wisconsin Administrative Code §§ 214.03 and 214.08 (1983).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Chapter 144, Water, Sewage, Refuse, Mining and Air Pollution, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(2) Chapter 147, Pollution Discharge Elimination, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(3) Chapter 162, Pure Drinking Water, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(4) Laws of 1981, Chapter 20, § 2038 (Re: heat pump injection);

(5) Wisconsin Statutes 803.09(1) (West 1977) (intervention as of right in civil actions).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Wisconsin Department of Natural Resources, signed by the Regional Administrator on December 6, 1983.

(d) *Statement of legal authority.* (1) "Attorney General's Statement," signed by Attorney General, State of Wisconsin;

(2) Letter from Assistant Attorney General, State of Wisconsin, to EPA Region, "Re: Amendments to Attorney General's Statement-UIC," June 30, 1983.

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

50. In Subpart ZZ—Wyoming:

a. By revising paragraph (a)(1); redesignating paragraph (a)(5) as (a)(6) and revising it; adding a new paragraph (a)(5); removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), revising new paragraphs (b)(1), and (b)(2) and adding new paragraph (b)(3) to § 147.2550 to read as follows:

§ 147.2550 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(1) Wyoming Environmental Quality Act, Wyoming Statutes sections 35-11-101 through 35-11-115, and 35-11-301 through 35-11-305 (1977 Republished Edition and 1989 Cumm. Supp.);

* * * * *

(5) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells (certified copy, signed August 25, 1989);

(6) Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining (effective March 26, 1981).

(b) * * *

(1) Article 9, Underground Water, Wyoming Statutes sections 41-3-901 through 41-3-938 (September 1982);

(2) Wyoming Administrative Procedure Act, Wyoming Statutes sections 9-4-101 through 9-4-115 (1988);

(3) Department of Environmental Quality Rules of Practice and Procedure (1982).

* * * * *

b. By revising § 147.2551 to read as follows:

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on November 23, 1982 (47 FR 52434); the effective date of this program is December 23, 1982. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wyoming. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Wyoming Oil and Gas Conservation Commission, Office of the State Oil and Gas Supervisor, P.O. Box 2640, 77 West First Street, Casper, Wyoming, 82602. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202-2405, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Rules and Regulations of the Wyoming Oil and Gas Conservation Commission, including Rules of Practice and Procedure, as published by the Wyoming Oil and Gas Conservation Commission, August 7, 1990;

(2) Title 30, Chapter 5, Wyoming Statutes, sections 30-5-101 through 30-5-126 (June 1983 and Wyoming Statutes Annotated, July 1990 Supp.).

(b) *Memorandum of Agreement.* (1) The initial Memorandum of Agreement between EPA, Region VIII and Wyoming Oil and Gas Conservation Commission, signed by the EPA Regional Administrator and the Oil Field Supervisor of the Commission on June 2, 1982;

(2) Amendment No. 1 to the Memorandum of Agreement, dated December 22, 1982;

(3) Amendment No. 2 to the Memorandum of Agreement, dated January 25, 1990;

(4) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to the Acting Director, Water Management Division, EPA Region VIII, "Re: Application for Primacy in the Regulation of Class II Injection Wells," March 8, 1982;

(5) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to EPA Region VIII, "Re: Regulation of Liquid Hydrocarbon Storage Wells Under the UIC Program," July 1, 1982;

(6) Memorandum of Agreement Between the Wyoming State Board of Control, State Engineer, Oil and Gas Conservation Commission, and the Department of Environmental Quality, dated October 14, 1981.

(c) *Statement of legal authority.* (1) "Statement of Legal Authority" and "State Review of Regulations and Statutes Relevant to the UIC Program-Class II Wells," signed by Special Assistant Attorney General for the State of Wyoming, as submitted with "Wyoming Oil and Gas Conservation Commission, Application for Primacy in the Regulation of Class II Injection Wells under Section 1425 of the Safe Drinking Water Act," November 1981;

BEST COPY AVAILABLE

(2) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, May 13, 1982;

(3) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, July 1, 1982.

(d) *Program Description.* The Program Description and other material submitted as part of the application or amendments thereto, including the memorandum to the National UIC Branch reporting on improvement to the Wyoming Oil and Gas 1425 program, dated April 28, 1988.

c. By revising § 147.2553(a) to read as follows:

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

51. In Subpart AAA—Guam, by revising § 147.2601(a) to read as follows:

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

52. In Subpart BBB—Puerto Rico, by revising § 147.2851(a) to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

53. In Subpart CCC—Virgin Islands, by revising § 147.2701(a) to read as follows:

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

54. In Subpart DDD—American Samoa, by revising § 147.2751 (a) to read as follows:

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

55. In Subpart EEE—Commonwealth of the Northern Mariana Islands, by revising § 147.2801(a) to read as follows:

§ 147.2801 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the Commonwealth of the Northern Mariana Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

56. In Subpart FFF—Trust Territory of the Pacific Islands, by revising § 147.2851(a) to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for Trust Territory of the Pacific Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

57. In Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes, by revising § 147.3000(a) to read as follows:

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands of the Navajo, the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico, and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

58. In Subpart III—Lands of Certain Oklahoma Indian Tribes, by revising 147.3100(a) to read as follows:

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

[FR Doc. 91-4622 Filed 3-5-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
March 6, 1991

Part III

Department of Defense

Department of the Army

32 CFR Part 627

The Biological Defense Safety Program—(Technical Safety Requirements)—DA Pamphlet 385-69; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 627

Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385–69)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army (DA) acting as executive agent for the Department of Defense announces the Technical Safety Requirements of the Army Biological Defense Safety Program contained in 32 CFR part 626 and in Department of the Army Pamphlet 385–69. This rule prescribes the technical safety requirements for the use, handling, shipment, storage and disposal of etiologic agents used in research, development, test, and evaluation (RDT&E) for the Biological Defense Program (BDP).

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: If you wish to comment or obtain further information concerning this publication contact: HQDA(DACS–SF), Mr. William Wortley, room 2C717, Pentagon, Washington, DC 20310–0200, (703) 695–7291.

SUPPLEMENTARY INFORMATION: The U.S. Army BDP, on behalf of the Department of Defense, supports RDT&E efforts to maintain and develop defensive measures and materiel to meet potential biological warfare threats. The program's objectives are to develop measures for identification, detection, treatment, protection, and decontamination of these threats. To meet the program objectives, it is necessary to use etiologic agents in the conduct of the necessary RDT&E. This document contains information on the safe use, handling, storage, shipment and disposal of etiologic agents and describes requirements based on the Centers for Disease Control Guidelines, Biosafety in Microbiological and Biomedical Laboratories, and establishes guidelines for toxins. This document was developed in coordination with the biological defense community and fully staffed and coordinated with subject matter experts, the Army Staff, and applicable major commands. Army-wide implementation of this program is authorized based on the policies and standards contained in the cited authority and references.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 627

Safety, Occupational safety and health, Biological, Defense.

Accordingly, 32 CFR part 627 is added to read as follows:

PART 627—THE BIOLOGICAL DEFENSE SAFETY PROGRAM, TECHNICAL SAFETY REQUIREMENTS (DA PAMPHLET 385–69)

Subpart A—Introduction

Sec.

627.1 Purpose.
627.2 Background.
627.3 Scope.
627.4 References.
627.5 Abbreviations and terms.

Subpart B—Administration

627.6 Safety administration.
627.7 Occupational health.
627.8 Medical records.

Subpart C—Operational Requirements

627.9 Personnel prerequisites.
627.10 Operational prerequisites.
627.11 General laboratory techniques.
627.12 Biosafety level 1.
627.13 Biosafety level 2.
627.14 Biosafety level 3.
627.15 Biosafety level 4.
627.16 Toxins.
627.17 Emergencies.
627.18 Large-scale operations.
627.19 Operations with radioactive material.

Subpart D—Personal Protective Equipment

627.20 Introduction.
627.21 Minimum laboratory attire for use of etiologic agents.
627.22 Biosafety level 1.
627.23 Biosafety level 2.
627.24 Biosafety level 3.
627.25 Biosafety level 4.
627.26 Large-scale (LS) operations.
627.27 Solutions of toxins and dry forms of toxins in closed containers.
627.28 Dry forms of toxins handled in open containers.
627.29 Situations specified in § 627.17(e).
627.30 Specific requirements for individual PPE items.

Subpart E—Decontamination and Disposal

627.31 Introduction.
627.32 Methods of decontamination.
627.33 Disposal.

Subpart F—Importation, Shipment, and Transport of Etiologic Agents

627.34 Introduction.
627.35 Administration.
627.36 Importation directives.
627.37 Shipment directives.
627.38 Transportation directives.
627.39 Additional requirements.
627.40 Sources for further information on shipment of etiologic agents.

Subpart G—Facilities

627.41 Introduction.
627.42 Biosafety level 1.
627.43 Biosafety level 2.
627.44 Biosafety level 3.
627.45 Biosafety level 4.
627.46 Large-scale facilities.
627.47 Toxins.

Subpart H—Engineering Controls

627.48 Introduction.
627.49 Class I biological safety cabinet.
627.50 Class II biological safety cabinet.
627.51 Class III biological safety cabinet.
627.52 Fume hood.
627.53 Glove box.
627.54 Ventilated balance enclosures.
627.55 Ventilated cage enclosures.
627.56 Ventilated cage areas.

Appendix A to Part 627—References

Appendix B to Part 627—Resource List for Immunoprophylaxis of Personnel at Risk

Appendix C to Part 627—Laboratory Safety Inspection Check List

Appendix D to Part 627—Packaging and Labeling Requirements for Shipment of Etiologic Agents

Appendix E to Part 627—Permits for Importation and Shipment of Etiologic Agents

Appendix F to Part 627—Glossary

Authority: 5 U.S.C. 102, 21 U.S.C. 111, 151–158; 42 U.S.C. 216; sec. 361, 58 Stat. 703 and 264; 49 U.S.C. App. 1803, 1804, 1807 and 1808; 50 U.S.C. 1431, 29 CFR part 1910, section 1450(e) and Pub. L. 101–510.

Subpart A—Introduction

§ 627.1 Purpose.

This pamphlet prescribes the technical safety requirements for the use, handling, shipment, storage and disposal of etiologic agents used in research, development, test, and evaluation (RDT&E) for the Biological Defense Program (BDP).

§ 627.2 Background.

The U.S. Army BDP, on behalf of the Department of Defense, supports RDT&E efforts to maintain and develop defensive measures and materiel to meet potential biological warfare threats. The program's objectives are to develop measures for identification, detection, treatment, protection, and decontamination of these threats. To meet the program objectives, it is necessary to use etiologic agents in the conduct of the necessary RDT&E. This pamphlet contains information on the safe use, handling, storage, shipment and disposal of etiologic agents. This pamphlet describes requirements based on the Centers for Disease Control (CDC–NIH) guidelines, Biosafety in Microbiological and Biomedical Laboratories, and establishes guidelines for toxins.

§ 627.3 Scope.

The requirements stated in this pamphlet apply to all elements of the Army to include the ARNG and the USAR and its contractors and subcontractors who use, produce, store, handle or ship etiologic agents in support of the BDP, regardless of the source of the agent(s).

§ 627.4 References.

A listing of references is contained in appendix A to part 627.

§ 627.5 Abbreviations and terms.

Abbreviations and special terms used in this pamphlet are explained in appendix F to part 627.

Subpart B—Administration

§ 627.6 Safety administration.

Each BDP institution must have a safety program that complies with AR 385–10, AR 385–69, and this pamphlet. In addition, the safety program must be designed to ensure compliance with Occupational Safety and Health Administration (OSHA) requirements for health and safety; Environmental Protection Agency (EPA) regulations designed to implement the Resource Conservation and Recovery Act (RCRA) and/or the National Environmental Policy Act (NEPA); Nuclear Regulatory Commission (NRC) requirements for safe handling of radioactive isotopes (when applicable); NIH Guidelines for Research Involving Recombinant DNA Molecules; relevant national, state and local regulations; and any requirements of applicable accrediting bodies.

(a) *Goals of a Laboratory Safety Program.* The goals of the laboratory safety program are to protect those working in the laboratory, others who may potentially be exposed to hazards in the laboratory, and the enviroment. In addition, a laboratory safety program should ensure that hazardous materials will be handled and disposed of in such a way that people, other living organisms, and the environment are protected from harm. Safety awareness must be a part of everyone's habits, and can only be achieved if all senior and responsible staff have a sincere, visible, and continuing interest in the prevention of injuries and occupational illnesses. Laboratory personnel, for their part, must accept responsibility for carrying out their work in a way that protects themselves and their fellow workers.

(b) *Responsibility for Laboratory Safety.* Responsibilities for the safety program are as stated in AR 385–69. Additionally, the program will contain the following elements:

(1) The ultimate responsibility for safety within an institution lies with the Commander or Institute Director, who, along with all personnel, must have a continuing, observable and known commitment to the safety program.

(2) An effective Institutional Safety Program requires a Safety Officer appropriately trained in relevant safety technology. This individual, besides supplying advice and recommendations, will ensure that records are kept showing that the institution's physical facilities and safety rules are internally consistent and compatible with potential risks, as well as in compliance with all applicable laws, regulations, and guidelines.

(3) The responsibility for safety in a department or other equivalent administrative unit of the institution lies with its commander. Similarly, safety responsibilities are an integral function of each level of management through the first line supervisor. The Safety Office staff must work closely with administrators and investigators to develop and implement written policies and practices that promote safe laboratory work. Collectively, this group routinely must monitor current operations and practices, see that appropriate audits are maintained, and continue to seek ways to improve the safety program.

(4) Safety is a critical job element for each member of the scientific and technical staff. Each individual working in the laboratory is responsible for performing their job in a manner consistent with safety policy and training.

(5) If laboratory goals dictate operations or substances not suited to the existing facilities or equipment, it is the responsibility of the laboratory supervisor, assisted by the Safety Officer, to advise and assist the laboratory worker in developing or obtaining adequate facilities or equipment, and designing appropriate work procedures.

(6) The responsibility for authorization of a specific operation, delineation of appropriate safety procedures, and instruction of those who will carry out the operation lies with the supervisor.

(7) Potential hazards will be identified prior to initiation of work with etiologic agents, and actions necessary to avoid accidents and illnesses will be implemented. This practice, called a job safety analysis, consists of breaking a job down into its logical steps, analyzing each for its hazard potential, and deciding the safe procedures to use. The process will be designed by a project director with input from employees, and each step with potential for exposure or other incidents must be described in writing in a Standing Operating Procedures (SOP). All such SOPs will be approved by, at a minimum, the Commander or Institute Director and the Safety Officer.

(8) The job safety analysis will include a consideration of health hazards identified in AR 40–10 and of maximum credible events as described in paragraph 2–8, AR 385–69.

(c) *Safety Plans.* Clearly defined, published safety rules and monitoring procedures for compliance must be established. These rules will be readily available, in writing, for all involved in laboratory operations. This goal may be accomplished by preparing or modifying a Facility Safety Plan, Laboratory Safety Manual, Occupational Safety and Health Program Document, or equivalent. This plan will:

(1) Be coordinated with institutional and Federal, State and local emergency services.

(2) Be practiced with the emergency groups whose services are part of that plan prior to any need for their services, so that they can become familiar with any potential problem areas that may be encountered when they are called upon for assistance.

(3) Describe the method of rapid communication (e.g., telephone, alarms, etc.) that will be used in the event of an emergency.

(4) Describe the institution's etiologic agent labeling system.

(5) Describe the institution's requirements for testing of engineering controls (e.g., biological safety cabinets and high efficiency particulate air (HEPA) filters) and essential safety equipment (e.g., autoclaves) that are used to conduct RDT&E funded by the BDP.

(6) Appoint and train personnel responsible for handling an emergency.

(7) Require that emergency telephone numbers be posted, so that emergency

service personnel know whom to contact at all times of the day or night.

(8) Describe the institution's rules that have been established and are practiced to limit access to the facilities where etiologic agents under the sponsorship of the BDRP are handled. The rules will include the following requirements:

(i) Access to BL–1 and BL–1 LS laboratories is limited or restricted at the discretion of the Commander or Institute Director when experiments are in progress.

(ii) Access to areas classified as BL–2, BL–2 LS, or where work with toxins is conducted, is limited by the Commander or Institute Director when work with etiologic agents is in progress. Individuals who are at increased risk of acquiring infection or for whom infection may be unusually hazardous are not allowed in the laboratory. Only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) enter the individual laboratory or animal rooms. The Commander or Institute Director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

(iii) Access to areas classified as BL–3 or BL–3 LS is limited as stated in 2–1.c.(8)(b) above, and is restricted to those persons whose presence in the facility or individual laboratory rooms is required for program or support purposes. Individuals under 18 years of age will not be permitted to enter the controlled area.

(iv) Access to BL–4 facilities is limited as stated in paragraph (c)(8) (ii) and (iii) of this section as well as: Access to the facility is limited by means of secure, locked doors; access is controlled by the Commander or Institute Director, Safety Officer, or other person responsible for the physical security of the facility. Before entry all persons will be advised as to the appropriate safeguards for ensuring their safety. Authorized persons must comply with these instructions and all other applicable entry and exit procedures. A logbook will be maintained for all personnel to indicate the date and time of each entry and exit. A card-key activated computer record (or other electronic entry device) may be used if it indicates the date and time of both entry and exit.

(9) Describe the system that is developed and is operational for the reporting of accidents and exposures, employee absenteeism, and for the medical surveillance of potential laboratory-associated illnesses.

(d) *Safety Meetings and Safety Committees.* In effective safety programs, everyone associated with the laboratory becomes involved. This involvement will be accomplished by ensuring maximum participation in planning and by conducting group safety meetings.

(1) A staff safety committee, consisting of the Commander or Institute Director or his designated representative, research supervisors, managers, medical personnel, employees, and the Safety Officer, will be established. The primary purpose of this group is to lead the safety effort, review mishaps, and recommend changes in policies, safety program, or equipment as needed to improve safety.

(2) Safety committees will meet at least quarterly and minutes will be prepared and maintained for at least 3 years.

(3) When work with recombinant DNA molecules is undertaken, an Institutional Biosafety Committee (IBC) for review of such work will be established and will function as stated in the NIH Guidelines for Research Involving Recombinant DNA Molecules (see reference appendix A to part 627).

(e) *Standing Operating Procedures (SOPs).* Besides the documented safety program that will be in effect, each institution will require that an SOP be established for each unique biological defense RDT&E operation. The SOPs will meet the criteria stated in AR 385–69, be reviewed and updated annually, and a copy of the SOP will be maintained in the work area. In addition, SOPs will address the following issues:

(1) The unique hazards introduced by the activity in the work area.

(2) The methods of controlling these hazards.

(3) Any unique procedures and requirements needed that are not described as universally required in the Safety Plan (e.g., signs, waste disposal, immunizations, emergency procedures, and personnel monitoring).

(4) Specialized orientation or training of personnel beyond that which is required in the Safety Plan.

(5) Ways of ensuring that the unique procedures are followed.

(6) Emergency procedures.

(f) *Safety Communications.* Safety communications alert people to newly recognized hazards, remind them of basic biological safety principles, and instill positive attitudes toward safety. A system of communication will be established to:

(1) Implement a biological safety training program for all personnel working with hazardous biological or chemical materials.

(2) Publish information addressing useful biological safety advice and accounts of laboratory accidents, along with the lessons to be learned from them.

(3) Make reference books and regulations concerning laboratory hazards, occupational health, and proper laboratory practices readily available.

(4) Assure that Material Safety Data Sheets (MSDS) for hazardous chemicals used in the laboratory are readily available to all employees.

(5) Training requirements are also found in § 627.9(b).

(g) *Safety Audits.* One of the essential elements of a good safety program is the conduct of periodic audits of the safety performance in a laboratory. Observations of individual safety practices, operability of safety equipment, and compliance with safety rules must be part of the audit.

(1) An individual and an alternate will be appointed as the individuals responsible for each laboratory or room where BDP work is conducted. He/she will be responsible on a daily basis for ensuring that the conduct of personnel within their room(s) and maintenance of the room complies with the safety program and SOPs.

(2) Supervisors will ensure that their projects comply with applicable safety requirements and will audit their areas on at least a weekly basis to ensure compliance.

(3) The Safety Officer or his/her qualified designee will inspect the Institution's BL–1, BL–2 and toxin laboratories quarterly. BL–3 and BL–4 laboratories, and those in which dry forms of highly potent toxins are handled will be inspected monthly by safety and health professionals. These inspections will be unannounced, and included coverage of general safety practices as well as features specific to a particular biosafety level.

(i) Reports of deficiencies or procedures that create a potentially life-threatening situation will be made directly to supervisory personnel and the Commander or Institute Director and actions will be taken immediately to correct the situation. The operation will not continue until such a deficiency is corrected.

(ii) Reports of deficiencies for other than life-threatening situations will be made as soon as possible to the appropriate supervisor, with copies furnished to the Commander or Institute Director. If a problem is widespread, all affected personnel will be notified.

(4) Supervisory personnel notified of safety deficiencies by the Safety Officer will ensure that the people directly concerned are contacted and that the deficiencies are remedied by corrective measures before operations are resumed.

(5) Malfunctioning equipment must be reported to the appropriate individuals, labeled to indicate that it should not be used, and repaired promptly.

(6) As a minimum, the audits conducted by the Safety Officer or his/her qualified designee will cover the items listed in appendix C to part 627.

(h) *Documentation.* Records, documenting the following items, will be maintained for 3 years:

(1) Safety audits and the corrective measures.

(2) Risk assessments for new laboratory procedures proposed.

(3) Annual reviews of established SOPs.

(4) Training.

(5) Engineering controls and protective equipment certifications and tests.

(6) Safety committee meeting minutes and recommendations.

(7) Any outside auditor comments and responses.

§ 627.7 Occupational health.

An occupational health program will be implemented per AR 40–5, chapter 5, for all employees whose employment requires that they conduct duties in a BDP etiologic agent area. Essential elements of the program will include policies for:

(a) *Medical Surveillance Examinations.* Medical examinations by a licensed medical doctor will be given prior to employment, at least every three years thereafter, and upon termination of duties requiring access to laboratories where etiologic agents are used. When full medical examinations are not given annually, health professionals will perform annual health screening. Safety and health professionals will ensure that medical examiners are made aware of all hazardous substances each employee works with at the time of the medical examination. The physician's findings will include assessment of whether an employee has any health condition that would preclude work with etiologic agents. If any of the findings obtained during the examination are outside of the normal range, the employee's supervisor and employee will be notified and counseled on the courses of action available. In addition, a safety and health audit will be conducted to identify any potential occupational causes for the abnormalities, and corrective measures will be taken if applicable.

(b) *Serum Samples.* When appropriate and considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel will be collected and stored for their biologically useful lifetime, but not longer than 40 years. Additional serum specimens will be collected periodically, based upon the agents handled, or as required by participation in a Special Immunizations Program. SOPs will be written detailing the collection procedures and periods if serum sampling is deemed necessary.

(c) *Assignment of Personnel.* Personnel assigned duties in work areas where etiologic agents are used will be evaluated to determine their suitability for their assigned tasks by the installation medical authority. Only personnel who are physically and mentally capable of working in biocontainment areas (BL–3 and BL–4) or with toxins will be assigned to these duties.

(d) *Immunization of at-risk personnel.* The guidelines for immunizations in the latest edition of the American College of Physicians' Guide for Adult Immunizations and recommendations of HHS in publication number (NIH) 88–8395 shall be followed. A resource list for available immunizations for personnel at risk is given in appendix B to part 627.

(e) *Exposures.* Spills and mishaps which result in observable, known or potential exposures to etiologic agents will be immediately reported to the supervisor, Safety Officer, the responsible medical personnel, and the Commander. Appropriate medical evaluation, surveillance, and treatment will be provided and written records of these occurrences will be maintained for 40 years. A Med-16 report will be initiated (see AR 40–400).

(f) *Quarantine.* When etiologic agents designated as BL–4 by the CDC–NIH in HHS publication no. (NIH) 88–8395, (or most recent edition) are handled, a facility for the quarantine, isolation, and medical care of personnel with potential or known laboratory-associated exposures will be available.

§ 627.8 Medical records.

Army Activities will maintain medical records in accordance with AR 40–66 and FMP 293–31 for all military and Department of Army civilian employees who work with etiologic agents under sponsorship of the BDP.

Subpart C—Operational Requirements

§ 627.9 Personnel Prerequisites.

(a) *Medical.* Prior to assignment to work with etiologic agents, personnel will be evaluated by the appropriate medical personnel with respect to their assignment and will be evaluated in the medical surveillance program as described in § 627.7.

(b) *Training.* All personnel directly or indirectly involved with containment or handling of known and potentially biohazardous material shall receive instruction that adequately prepares them for their assigned duties. Training will be given by occupationally qualified personnel as determined by the commander. This training will be documented and will include:

(1) General training:

(i) Personal hygiene related to laboratory work.

(ii) Laboratory practices.

(iii) Personal protective equipment.

(iv) Effective use of engineering controls.

(v) Packaging, transportation, and shipment of etiologic agents (when applicable).

(vi) Hazardous and infectious waste disposal, handling and minimization procedures.

(2) Training conducted specifically for the facilities that the individual will be working in, including:

(i) Procedures for the facility.

(ii) Reporting incidents and accidents.

(iii) Labeling and posting of signs.

(iv) Biohazardous waste handling, approaches to minimization of the volume of waste, decontamination, packaging, and disposal.

(v) Emergency Procedures.

(3) Additional general training required for work in facilities where viable etiologic agents are present.

(i) Aseptic technique and procedures to include hands on instruction and demonstration of proficiency.

(ii) Concept and definition of biosafety levels.

(iii) Disinfection and sterilization.

(iv) Safe use of workplace equipment, for example autoclave and centrifuge.

(v) Monitoring and auditing requirements.

(vi) Precautions for handling blood, tissues and body fluids (when applicable).

(vii) The infectivity, pathogenicity, mode(s) of transmission and medical surveillance requirements of specific agents.

(viii) Training for all new employees will include a period of supervised orientation in the facilities by a scientist or technician with specific training in the procedures and properties of the etiologic agents in use. During the training period, new laboratory personnel will be under the constant supervision of appropriately trained personnel.

(ix) Personnel who are assigned tasks in BL–2, BL–3, or BL–4 facilities will also

have specific training in handling pathogens.

(x) Personnel assigned duties in a BL-4 facility will also have specific and thorough training in handling extremely hazardous infectious agents, the primary and secondary containment functions of standard and special practices, use of personal protective equipment, containment equipment, and laboratory design characteristics.

(4) Additional general training for handline toxins will include relevant items from 3-1b. (3) plus:

(i) The availability of reference material on the hazards and safe handling of toxic substances.

(ii) The biological effects of the toxin(s) in use.

§ 627.10 Operational prerequisites.

(a) *Evaluation of the Risks.* The risk assessment of laboratory activities involving the use of etiologic agents is ultimately a subjective process. Those risks associated with the agent, as well as with any adjunct elements of the activity to be conducted, (chemicals, radioisotopes, end-products, etc) must be considered in the assessment. Selection of an appropriate biosafety level for work with a particular agent or animal study depends on the virulence, pathogenicity, biological stability, route of transmission, and communicability of the agent; the nature of the laboratory; the procedures and manipulations to be used; the quantity and concentration of the agent; and the availability of effective vaccines or therapeutic measures. The characteristics of etiologic agents, primary laboratory hazards of working with the agent, and recommended biosafety levels are described by CDC–NIH (HHS publication No. (NIH) 88–8395), the considerations for recombinant DNA molecules are described by NIH, and those for oncogenic viruses are described by NCI–NIH (sources listed below). The Commander or Institute Director shall be responsible for the assignment of work with given etiologic agents to the appropriate biosafety level. A risk assessment should take into account not only the NIH Guidelines for Research Involving Recombinant DNA Molecules, but also potential hazards associated with the organism and product of the experimentation.

(1) When established guidelines exist, these will be followed. The primary source guidelines are:

(i) HHS Publication No. (NIH) 88–8395—Biosafety in Microbiological and Biomedical Laboratories, as amended, and updates published in Morbidity and Mortality Weekly Report.

(ii) NIH—Guidelines for Research Involving Recombinant DNA Molecules (FR 51: 16958–16985 and updates).

(iii) The publication by the American Committee on Arthropod-Borne Viruses Subcommittee on Arbovirus Laboratory Safety (SALS) entitled Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates in the American Journal of Tropical Medicine and Hygiene, 29(6), 1980, pp. 1359–1381.

(iv) The DHEW Publication No. (NIH) 76–1185 by the National Cancer Institute (NCI) entitled Biological Safety Manual for Research Involving Oncogenic Viruses.

(2) When samples with unidentified viable agents are obtained, the risks will be evaluated by a knowledgeable and qualified scientist who will make recommendations to the Safety Officer, who will add recommendations for review and approval by the Commander or Institute Director. When guidelines for a specific organism are not established, in addition to these steps, the Centers for Disease Control and/or SALS will be consulted. Their recommendations will be documented and provided to the Commander or Institute Director before approval.

(b) *Selection of Facilities.* The facility requirements identified by the risk assessment will be adhered to. Any variations and compensatory measures will be approved by the IBC (when recombinant DNA molecules are involved), the Safety Officer, and the Commander or Institute Director before a request for an exception or waiver is submitted as stated in AR 385–69.

(c) *Policies and Procedures.* Policies in the form of a Laboratory Safety Manual, Regulations, Memoranda, or Standing Operating Procedures (SOPs) are required for work with etiologic agents in the BDP. Before beginning a new procedure, the policies and procedures will be reviewed to ascertain that the intended operations are described and to determine the requirements that apply to the operation. If procedures exist for the intended operation, personnel will be trained to follow them; if procedures do not exist, then a detailed SOP will be written, reviewed, and approved before beginning the operation. SOPs will conform to the requirements as stated in 2–1.e., and be signed by all personnel who are required to follow the procedures, thus acknowledging that they have read and understand the contents. All SOPs that pertain to a specific area (room, laboratory, or suite) will be available at the worksite.

§ 627.11 General laboratory techniques.

The general requirements for use of etiologic agents are composed of two sets of requirements, with the requirements for toxins being a sub-set of the requirements for handling viable etiologic agents. These requirements are as follows:

(a) *General Techniques Applicable to Etiologic Agents.* (1) A fully fastened long-sleeved laboratory coat, gown, uniform, or coveralls will be worn in laboratories or animal rooms.

(2) Eating, drinking, smoking, and application of cosmetics are not permitted in the work areas.

(3) Personnel wash their hands after they handle etiologic agents or animals, and before leaving the laboratory area.

(4) Mouth pipetting is strictly prohibited. Mechanical pipetting aids must be used.

(5) Gloves:

(i) Will be worn when manipulating etiologic agents and handling containers of etiologic agents. Gloves are not required when materials are packaged appropriately for shipment.

(ii) Will be selected based on the hazards.

(iii) Will be changed frequently (or decontaminated frequently), and will be decontaminated and/or discarded into a labeled biohazarded container after each use and immediately upon observable direct contact with an etiologic agent.

(iv) Will be removed at the work-space (workbench or hood) after handling etiologic agents to ensure that doorknobs and other surfaces are not contaminated.

(6) Good housekeeping will be maintained. This includes:

(i) Work areas free of clutter.

(ii) Work environment free of tripping hazards, with adequate access to exits, emergency equipment, controls, and such.

(iii) Benches and general work areas will be cleaned regularly using a wet sponge or similar method with disinfectant as appropriate. Methods that stir up dusts such as sweeping or use of ordinary vacuum cleaners, will not be used (except for HEPA-filtered vacuum cleaners).

(iv) Specific work areas will be cleaned and decontaminated immediately following each use of an etiologic agent (at least once a day) and after any spill of viable material.

(v) Hallways and stairways will not be used for storage.

(7) All solutions, reagents and chemicals will be labeled.

(8) All contaminated liquid or solid wastes will be inactivated before disposal.

(9) Work will be conducted over spill trays or plastic-backed absorbent paper. The paper will be removed, decontaminated or disinfected, and the general area wiped with decontaminant at the end of each work day or at the end of the experiment, whichever occurs first.

(10) Etiologic agents will be kept in closed containers when not in use. Cultures, solutions, or dried etiologic agents in glass vessels transported or incubated within a room or suite will be handled in non-breakable, leak-proof pans, trays, pails, carboys, or other secondary containers large enough to contain all the material, in case of leakage or breakage of the glass vessel. Etiologic agents removed from a room or suite for transport to another approved area within the same building will be placed in a closed unbreakable secondary container before removal from the laboratory. The secondary container will be labeled on the exterior with a biohazard symbol and identification of the contents, including the required biosafety level, the scientific name, the concentration (if applicable), and the responsible individual. The secondary containers will be wiped with suitable disinfectant before removal from the laboratory/area.

(11) Working stocks of etiologic agents will be stored in double containers. The primary and secondary containers will provide a positive seal and the secondary container will be unbreakable. The secondary container will be labeled as stated in paragraph (a)(1) of this section and with the date stored.

(12) Storage units (e.g., freezers, refrigerators, cabinets, and hoods) will be labeled with the universal biohazard sign and indicate the classes of etiologic agents contained in them. Storage units will be secured when not in use.

(13) All contaminated materials, containers, spills, and solutions will be decontaminated or disinfected by approved methods before disposal.

(14) After injection of an etiologic agent into animals, the site of injection will be swabbed with a decontaminant.

(15) Syringes.

(i) Reusable or disposable syringes will be of the fixed needle or LUER–LOK type (or equivalent) to assure that the needle cannot separate during use.

(ii) After use, non-disposable glass syringes with attached needles contaminated with etiologic agents will be submerged in a container of decontaminant. Disposable syringes will be discarded with needles attached in puncture-proof rigid containers. Needles will not be recapped after use.

(iii) Sterilized or decontaminated containers marked "SYRINGES AND/OR NEEDLES" may be disposed of in appropriate refuse containers after proper packaging and destruction of the contents.

Note: Many states, especially those on the Eastern seaboard, have implemented strict requirements for the disposal of medical wastes. For example, the State of Maryland has designated all waste from a microbiological laboratory as hazardous waste with licensing requirements for disposal. There are rigid documentation requirements for generators of 50 kg/month or more of waste, while all medical waste released for transport off-site must be manifested to a State licensed medical waste hauler with the destination specified. Additionally, in some cases, the local government (e.g., city) regulates the disposal of these wastes. These requirements will be identified and followed.

Needles/syringes may not be destroyed by clipping. A mechanical shear may be used to smash or sheer needles after or concurrently with sterilization or decontamination.

(16) Refrigerators, deep freezers, and dry ice chests should be checked, cleaned out, and defrosted periodically to remove any ampules, tubes, etc., containing etiologic agents that may have broken during storage. Rubber gloves and respiratory protection appropriate to the materials in storage are recommended during cleaning. Do not store flammable solutions in non-explosion proof refrigerators.

(b) *Additional Techniques Applicable to Work with Viable Etiologic Agents.* The major objective of these techniques is to assist in protection against laboratory acquired infections. Air sampling studies have shown that aerosols are generated from most of the manipulations of bacterial and viral cultures common to research laboratories. The generation of aerosols during routine laboratory manipulations must be considered when evaluating the individual degree of risk, keeping in mind the four main factors governing infection: dosage, virulence of the organism, route of infection (e.g., skin, eyes, mouth, lungs), and host susceptibility (e.g., state of health, natural resistance, previous infection, response to vaccines and toxoids). The requirements stated below are minimum handling requirements to prevent accidental infection created by incidental aerosols.

(1) All procedures are performed carefully to minimize the creation of aerosols.

(2) No infectious mixtures will be prepared by bubbling air through a liquid.

(3) Pipettes.

(i) No infectious material will be forcibly ejected from pipettes. Only TD (to deliver) pipettes will be used.

(ii) Pipettes used with infectious or toxic materials will be plugged with cotton except where pipettes are used exclusively in a gas-tight cabinet system.

(iii) Contaminated pipettes will be placed horizontally in a rigid container containing enough disinfectant for complete immersion. Cylinders used for vertical discard are not recommended. The container and pipettes must be autoclaved as a unit and replaced by a clean container containing fresh disinfectant.

(iv) Pipetting devices must be used. Under no circumstances is mouth pipetting permitted.

(4) Syringes.

(i) The use of syringes and needles for making dilutions of etiologic agents is not recommended.

(ii) When removing a syringe and needle from a rubber stoppered bottle containing viable etiologic agents, an alcohol soaked pledget around the stopper and needle will be used.

(iii) Excess fluid and bubbles should be expelled from syringes vertically into a cotton pledget soaked with disinfectant, or into a small bottle containing disinfectant-soaked cotton.

(iv) The site of injection of an animal will be swabbed with a disinfectant before and after injection.

(v) After use, syringes contaminated with residual infectious fluid will be submerged in a container of disinfectant in a safety cabinet prior to removal for autoclaving. To minimize accidental injection of infectious material, the removable needles should remain on such syringes until after autoclaving. When possible, syringes with attached needles should be placed in a pan separate from that holding other discarded materials.

(vi) Caps will not be placed over needles until after disinfection. During recapping, procedures to prevent personnel injuries will be used.

(5) Centrifuges and Shakers.

(i) Before centrifuging, tubes, rotors, seals and gaskets will be checked for cleanliness and integrity. In low speed clinical-type centrifuges, a germicidal solution may be added between the tube and trunnion cup to disinfect the outer surfaces of both and to provide cushion against shocks that might otherwise break the tube. Metal or plastic tubes (other than nitro-cellulose) will be used.

(ii) Decanting from centrifuge tubes will be avoided. If decanting is necessary, the outer rim will be wiped with a disinfectant after decanting so that material on the lip cannot spin off as an aerosol. Centrifuge tubes will not be filled beyond the level recommended by the manufacturer.

(iii) Broth cultures will be shaken in a manner that avoids wetting the plug or cap.

(6) Water baths in which viable etiologic agents are incubated must contain a disinfectant. For cold water baths, 70 percent propylene glycol is recommended. The disinfectant should be changed frequently.

(7) When laboratory vacuum is used to manipulate viable etiologic agents, a secondary reservoir containing disinfectant and a HEPA filter must be employed to insure that the laboratory vacuum lines do not become contaminated.

(8) Test tubes:

(i) Tubes containing viable etiologic agents should be manipulated with extreme care. Studies have shown that simple procedures, such as removing a tube cap or transferring an inoculum, can create a potentially hazardous aerosol.

(ii) Manipulation of biohazardous test tubes will be conducted in biological safety cabinets. Tubes and racks of tubes containing biohazardous material should be clearly marked. It is the responsibility of the individual employee to insure that tubes containing biohazardous material are properly sterilized prior to disposal or glassware washing. Safety test tube trays should be used in place of conventional test tube racks to minimize spillage that might arise from broken tubes. When safety test tube trays are not used, the conventional test tube racks will be placed in a tray large enough to contain any potential spill. A safety test tube tray is one having a solid bottom and sides deep enough to hold all liquids, should a test tube break.

(9) Care should be exercised when using membrane filters to obtain sterile filtrates of viable etiologic agents. Due to the fragility of the membranes and other factors, such filtrates cannot be considered noninfectious until laboratory culture or other tests have proven their sterility.

(10) The preparation, handling, and use of dry powders of viable etiologic agents in open containers presents hazards of an unusual nature. The slightest manipulation of such powders can result in the generation of aerosols containing a high concentration of etiologic agents. Therefore, work with dry powders of etiologic agents in open containers should be carried out in gas-tight biological safety cabinets.

§ 627.12 Biosafety level 1.

(a) *General.* BL–1 operations follow the general techniques described in § 627.11 (a) and (b).

(b) *Additional Laboratory Requirement.* Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory. Examples of suitable containers are metal tubs with lids or plastic bags that are sealed and then placed inside a rigid container for transport.

(c) *Additional Animal Requirements.* (1) Bedding materials from animal cages will be removed in such a manner as to minimize the creation of aerosols and disposed of in compliance with applicable institutional or local requirements.

(2) Cages are washed manually or in a cagewasher. Temperature of final rinse water will be a minimum of 180 °F.

(3) Laboratory coats, gowns, or uniforms worn in animal rooms shall not be worn in other areas.

§ 627.13 Biosafety level 2.

(a) *General.* In addition to the general microbiological techniques stated in § 627.12, BL–2 operations include the following requirements:

(1) When etiologic agents are in use, a hazard warning sign incorporating the universal biohazard symbol is posted on the access door of the work area. The hazard warning sign identifies the etiologic agent, lists the name and telephone number of the Institute Director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

(2) Animals not involved in the work being performed are not permitted in the laboratory.

(3) Special care is taken to avoid skin contamination with the etiologic agents; gloves will be worn when handling etiologic agents or infected animals.

(4) All wastes from laboratories and animal rooms are decontaminated before disposal.

(5) Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles.

(6) Spills and accidents which result in a potential exposure to etiologic agents will be reported immediately to the Biosafety officer, the project leader and the Institute Director.

(7) Biological safety cabinets (Class I or II) will be used when:

(i) Procedures with a high potential for creating infectious aerosols are conducted.

(ii) High concentrations or large volumes of etiologic agents are used.

(8) Laboratory coats, gowns, smocks, or uniforms will be removed before leaving the animal facility or laboratory area.

(b) *Additional Animal Requirements.* (1) Cages must be decontaminated, preferably by autoclaving, before they are cleaned and washed.

(2) Approved molded masks are worn by all personnel entering animal rooms housing nonhuman primates.

(3) If floor drains are provided, the drain traps will be kept filled with water or a suitable disinfectant.

§ 627.14 Biosafety level 3.

(a) *General.* In addition to the requirements stated in §§ 627.12 and 627.13, the following requirements apply:

(1) Approved molded masks or respirators with HEPA filters are worn by all personnel in rooms housing infected animals.

(2) Protective clothing worn in a laboratory or animal room will be removed before exiting the laboratory or animal room.

(3) Clothing worn in laboratories and animal areas to protect street clothing will be decontaminated before being laundered.

(b) *Additional laboratory requirements:* (1) Laboratory doors will be kept closed.

(2) All activities involving etiologic agents will be conducted in biological safety cabinets (Class I, II, or III) or other physical containment devices within the containment module. No work in open vessels is conducted outside a biological safety cabinet.

(3) The work surfaces of biological safety cabinets and other containment equipment will be decontaminated when work with etiologic agents is finished. It is recommended that plastic-backed paper toweling be used on nonperforated work surfaces within biological safety cabinets to facilitate clean-up.

(c) *Additional Animal Requirements.* (1) Cages are autoclaved before bedding is removed and before they are cleaned and washed.

(2) Gloves are removed aseptically and autoclaved with other wastes before being disposed of or reused.

(3) Boots, shoe covers, or other protective footwear and disinfectant foot baths must be available and used when indicated.

(4) Personal protective clothing and equipment and/or other physical containment devices are used for all procedures and manipulations of etiologic agents or infected animals. The risk of infectious aerosols from infected animals or their bedding shall be reduced by housing animals in partial containment caging systems as described in § 627.55.

(d) *Work with Biosafety Level 3 Etiologic Agents that Require Additional Secondary Containment.* Facilities in which work with certain viruses, for example, Rift Valley fever, yellow fever, and Venezuelan equine encephalitis, is conducted require HEPA filtration of all exhaust air prior to discharge from the laboratory. All persons working with those agents for which a vaccine is available should be immunized.

§ 627.15 Biosafety level 4.

Laboratory work at BL–4 must follow the requirements stated in §§ 627.12, 627.13 and 627.14 as well as the following:

(a) All activities are conducted in Class III biological safety cabinets or in Class I or II biological safety cabinets in conjunction with a one-piece positive pressure personnel suit ventilated by a life support system.

(b) Biological materials to be removed from the Class III cabinet or from the maximum containment laboratory in a viable or intact state must be transferred to a sealed non-breakable primary container, enclosed in a nonbreakable sealed secondary container, and removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

(c) No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperature or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

(d) Personnel may enter and leave the facility only through the clothing change and shower rooms. Personnel must shower each time they leave the facility. Personnel may use the airlocks to enter or leave the laboratory only in an emergency.

(e) Street clothing must be removed in the outer clothing change room and kept there. Complete laboratory clothing, including under-garments, pants and shirts or jumpsuits, shoes, and gloves, will be provided and must be used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When leaving the laboratory and before proceeding into the shower area, personnel must remove their laboratory clothing and store it in a locker or hamper in the inner change room.

(f) When etiologic agents or infected animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biohazard symbol must be posted on all access doors. The sign must identify the agent, list the name of the Commander or Institute Director or other responsible person(s), and indicate any special requirements for entering the area (e.g., the need for immunizations or respirators).

(g) Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

(h) Materials (e.g., animals and clothing) not related to the experiment being conducted are not permitted in the facility.

(i) Whenever possible, the use of any glass items should be avoided.

§ 627.16 Toxins.

The laboratory facilities, equipment and procedures appropriate for work with toxins of biological origin must reflect the intrinsic level of hazard posed by a particular toxin as well as the potential risks inherent in the operations performed. All toxins must be considered to pose a hazard in an aerosol form. However, most toxins exert their effects only after parenteral exposure or ingestion, and a few toxins present a dermal hazard. In general, toxins of biological origin are not intrinsically volatile. Thus, the laboratory safety precautions appropriate for handling these materials closely parallel those described for handling infectious organisms. The requirements in this section for the laboratory use of toxins of biological origin include the requirements in § 627.11(a) and the following:

(a) Vacuum lines. When vacuum lines are used with systems containing toxins, they will be protected with a HEPA filter to prevent entry of toxins into the lines (or sink drains when water aspirators are used).

(b) Preparation of concentrated stock solutions and handling closed primary containers of dry toxins. Preparation of primary containers of toxin stock solutions and manipulations of closed primary containers of dry forms of toxins will be conducted:

(1) In a chemical fume hood, a glove box, or a biological safety cabinet or equivalent containment system approved by the Safety Officer.

(2) While wearing eye protection if using an open-fronted containment system.

(3) Ensuring that gloves worn when handling toxins will be disposed of as toxin waste, with decontamination if required.

(4) With the room door closed and posted with a universal biohazard sign, or other sign indicating that toxin work is in progress. Extraneous personnel shall not be permitted in the room during operations.

(5) Ensuring that toxins removed from hoods or biological safety cabinets are double-contained during transport.

(6) After verification of hood or biological safety cabinet inward airflow is made by the user before initiating work.

(7) Within the operationally effective zone of the hood or biological safety cabinet.

(8) Ensuring that non-disposable laboratory clothing is decontaminated before release for laundering.

(9) Ensuring that all individuals who handle toxins wash their hands upon each exit from the laboratory.

(10) With two knowledgeable individuals present whenever more than an estimated human lethal dose is handled in a syringe with a needle. Each must be familiar with the applicable procedures, maintain visual contact with each other, and be ready to render assistance in the event of an accident.

(c) Manipulations with open containers of dry forms of toxins. Handling of dry forms of toxins in uncovered containers (e.g. during weighing) will be performed following the requirements stated in §§ 627.11(a), and 627.16(b) and (b) and the following:

(1) Manipulations will be conducted in a HEPA filtered chemical fume hood, glove box or biological safety cabinet. The exhaust may additionally be charcoal filtered if the material is volatile.

(2) When using an open-fronted fume hood or biological safety cabinet, protective clothing, including gloves and a disposable long-sleeved body covering (gown, laboratory coat, smock, coverall, etc) will be worn in such a manner that hands and arms are completely covered. Eye and approved respiratory protection is also required. The protective clothing will not be worn outside of the

laboratory and will be disposed of as solid toxin waste

(3) Before containers are removed from the hood, cabinet or glove box, the exterior of the closed primary container will be decontaminated and placed in a clean secondary container.

(4) When toxins are in use, the room will be posted to indicate "Toxins in Use—Authorized Personnel Only". Any special entry requirements will be posted on the entrance(s) to the room.

(5) All operations will be conducted with two knowledgeable individuals present. Each must be familiar with the applicable procedures, maintain visual contact with each other and be ready to render assistance in the event of an accident.

(6) Individuals handling toxins will wash their hands upon exit from the laboratory.

(d) Additional considerations of specific toxin properties. The following requirements are in addition to the requirements stated in the paragraphs above. Determine whether the material fits paragraph (b) or (c) of this section, and comply with the appropriate section and the following when applicable:

(1) When handling dry forms of toxins that are electrostatic.

(i) Gloves that facilitate the generation of static electricity (such as latex) will not be worn when handling dry forms of these toxins.

(ii) A glove bag within a hood or biological safety cabinet, a glove box, or a class III biological safety cabinet will be utilized when handling these materials.

(2) When handling toxins that are percutaneous hazards (irritants, necrotic to tissue or exhibit extreme toxicity by the dermal route of exposure).

(i) Gloves will be selected that are known to be impervious to the toxin and the diluent (when applicable) for the duration of the manipulations.

(ii) Disposable laboratory clothing will be worn, left in the laboratory upon exit, and disposed of as solid toxin waste.

(e) Aerosol exposures. The requirements found in paragraphs (a) and (b) of this section will be complied with plus the following:

(1) Chambers, nose-only exposure apparatus, and generation system must be placed inside a fume hood, glove box, or a Class III biological safety cabinet. Glove boxes and Class III biological safety cabinets will have HEPA filters on both inlet and outlet air ports.

(2) The atmosphere from within the exposure chamber will be HEPA filtered before release inside the hood, glove box or cabinet.

(3) All items inside the hood, glove box, or Class III biological safety cabinet will be decontaminated upon removal. Materials such as experimental samples that cannot be decontaminated directly will be placed in a closed secondary container, the exterior of which will be decontaminated and labeled appropriately. Animals will have any areas exposed to toxin wiped clean after removal from the exposure apparatus.

(4) The interior of the hood, glove box, or cabinet containing the chamber and all items will be decontaminated periodically, for example, at the end of a series of related experiments. Until decontaminated, the hood, box or cabinet will be posted to indicate that toxins are in use, and access to the equipment and apparatus restricted to necessary, authorized personnel.

§ 627.17 Emergencies.

(a) *Introduction.* All laboratories will establish specific emergency plans for their facilities. Plans will include liason through proper channels with local emergency groups and with community officials. These plans will include both the building and the individual laboratories. For the building, the plan must describe evacuation routes, facilities for medical treatment, and procedures for reporting accidents and emergencies. The plans will be reinforced by drills. Emergency groups and community officials must be informed of emergency plans in advance of any call for assistance. See AR 385–69.

(b) *General Emergency Procedures.* The following emergency procedures will be followed for laboratory accidents or incidents.

(1) Using appropriate personal protection, render assistance to persons involved, remove contaminated clothing if necessary, decontaminate affected areas, and remove them from exposure to further injury if necessary; do not move an injured person not in danger of further harm. Render immediate first aid if necessary.

(2) Warn personnel in adjacent areas of any potential hazards to their safety.

(3) In case of fire or explosion, call the fire department or community fire brigade immediately. Follow local rules for dealing with incipient fire. Portable fire extinguishers will be made available with instructions for their use. Fire fighters responding to the fire scene will be advised to wear a self-contained positive pressure breathing apparatus to protect themselves from toxic combustion by-products.

(4) Laboratories must be prepared for problems resulting from severe weather or loss of a utility service. In the event of the latter, most ventilation systems not supplied with emergency power will become inoperative. All potentially hazardous laboratory work must stop until service has been restored and appropriate action has been taken to prevent personnel exposure to etiologic agents.

(5) In a medical emergency, summon medical help immediately. Laboratories without a medical staff must have personnel trained in first aid available during working hours.

(6) For small-scale laboratory accidents, secure the laboratory, leave the area, and call for assistance.

(7) When handling mixed hazards (e.g., a substance or mixture that may be infectious and radioactive, or infectious and chemically toxic), respond with procedures addressing the greater hazard first, and then follow through with those for the lesser hazards to ensure that all appropriate steps have been taken.

(c) *Evacuation Procedures.* Building and laboratory evacuation procedures will be established and communicated to all personnel.

(1) Emergency alarm system.

(i) There will be a system to alert personnel of an emergency that requires evacuation of the laboratory or building. Laboratory personnel must be familiar with the location and operation of alarm equipment.

(ii) Isolated areas (e.g., cold, warm, or sterile rooms) will be equipped with an alarm or communication system that can be used to alert others outside to the presence of a worker inside, or to warn workers inside of the existence of an emergency that requires evacuation.

(2) Evacuation routes will be established and an outside assembly area for evacuated personnel must be designated. All individuals should be accounted for.

(3) Shut-down/Start-up procedures.

(i) Guidelines for shutting down operations during an emergency evacuation will be available in writing. Those guidelines will include procedures for handling and power failure emergency.

(ii) Written procedures will also be provided to ensure that personnel do not return to the laboratory until the emergency is ended. Those procedures must also contain start-up operations for the laboratory.

(iii) All shut-down/start-up procedures will be available to personnel and reviewed semi-annually.

(4) All aspects of the building evacuation procedure will be tested semi-annually through the use of drills.

(d) *Spills.*

(1) All areas where work with etiologic agents is performed will have designated personnel to respond to a spill and provide protective apparel, safety equipment, and materials necessary to contain and clean up a spill. Protective clothing requirements are described in § 627.30. Also, there will be supplies on hand to deal with the spill consistent with the hazard and quantities of the spilled substance.

(2) The Safety Officer will be notified immediately of all spills. The first line supervisor will ensure that proper clean-up techniques are employed.

(3) Etiologic agents.

(i) A program for responding to spills of etiologic agents will be developed and implemented. This program will contain emergency response procedures for a biological spill, which will be tailored to the potential hazard of the material being used, the associated laboratory reagents involved, the volume of material, and the location of the materials within the laboratory. Generally, the spill should be confined to a small area while minimizing aerosolization of the substance. The spill will be chemically decontaminated or neutralized, followed by a cleanup with careful disposal of the residue. If the spilled material is volatile and noninfectious, it may be allowed to evaporate but must be exhausted by a chemical hood or ventilation system.

(ii) When a mishap occurs that may generate an aerosol of etiologic agents requiring BL–2 (or higher) containment, the room must be evacuated immediately, the doors closed, and all clothing decontaminated, unless the spill occurs in a class II or class III biological safety cabinet. Sufficient time must be allowed for the droplets to settle and the aerosols to be reduced by the air changes of the ventilation system before decontaminating the area. The area will then be decontaminated to prevent exposure to the infectious agents or toxic substances. Reentry procedures to perform the decontamination will conform to § 627.17(e).

(iii) A spill of biohazardous material within a biological safety cabinet requires a special response and cleanup procedure. Cleanup will be initiated while the cabinet continues to operate, using an effective chemical decontaminating agent. Aerosol generation during decontamination, and the escape of contaminants from the cabinet, must be prevented. Caution must be exercised in the choice of decontaminant, keeping in mind that fumes from flammable organic solvents, such as alcohol, can reach dangerous concentrations within a biological safety cabinet.

(4) Combined radioactive/biological spills.

(i) Both the Radiation Protection Officer (RPO) and the Safety Officer must be notified immediately whenever there is a spill of radioactive biological material, regardless of its size. Laboratory personnel may be expected to clean up the spill. The RPO will direct the cleanup, in accordance with the Nuclear Regulatory Commission (NRC) license for the facility.

(ii) The spill will be cleaned up in a way that minimizes the generation of aerosols and spread of contamination. All items used in cleaning up the spill must be disposed of as radioactive waste.

(iii) Following cleanup, the area, affected protective clothing, and all affected equipment and supplies must be surveyed for residual radioactive contamination. All potentially affected areas and items that are not disposable will be wipe-tested to verify that unfixed radioactive contamination has been removed. If fixed contamination is found, the RPO will determine the requirements for additional cleanup.

(e) *Reentry Procedures.* This section applies when reentry is necessary to clean up a spill outside of a hood or biological safety cabinet, or to decontaminate or service engineering controls that failed or malfunctioned such that they do not provide the required containment.

(1) When agent(s) requiring BL–1 or BL–1 LS containment are involved, the clothing requirements stated in § 627.29 (a) or (b) as appropriate will be followed. Individuals will remove the required protective clothing when finished and wash their hands before proceeding to other tasks.

(2) When agent(s) requiring BL–2, BL–2 LS, or toxin procedures and containment are involved, personnel will be required to wear the clothing stated in § 627.29 (c) or (d) as appropriate. Outer protective clothing will be removed and left in the room before exiting and personnel will wash their hands before proceeding on to other activities.

(3) When agent(s) requiring BL–3, or BL–3 LS containment are involved, containers for sealing up inner protective clothing and decontaminant will be placed at the room exit before entering the room or suite. Personnel will be required to wear the clothing stated in § 627.29(e). When exiting the area after decontamination procedures, individuals will remove their outer layer of protective clothing just before exiting the room. Once outside the room the inner layer of protective clothing (e.g., coverall) will be removed and placed in the container and the inner gloves will be decontaminated before being removed and placed in the container. Personnel will proceed directly to the shower facility to take a complete shower before exiting the facility.

(4) When agents requiring BL–4 containment are involved, the following applies as appropriate to the type of BL–4 facility:

(i) When a spill requiring clean-up is in an area designed for use with personal positive pressure suits, the entry and exit procedures will be as normally required for entrance and exit from the area.

(ii) When entering a non-suit area where a spill of etiologic agent has occurred outside the containment of a Class III biological safety cabinet, personnel will wear the clothing as stated in § 627.29(f). Before entry, decontamination areas will be established. To accomplish this, two step-in decontamination pans with the appropriate disinfectant will be set up [one just inside the room (where the contamination exists) and the second immediately outside the room]. Immediately outside the room, there will also be a sealable container suitable for sealing up the suit and any air lines (if used). When exiting the room, suited individuals will place all equipment and other items in autoclaves or disinfectant, step into the disinfectant pan and wash down the exterior of their suits with appropriate disinfectant. When completed, the door to the room will be opened and the individual will step through the doorway into the second disinfectant pan. The suit will be thoroughly rinsed with disinfectant again before moving toward the exit from the facility. The suit (but not the respirator) will be placed in the provided container. The individual will proceed through another doorway before removing the respirator and placing it in a closed container for decontamination. The individual will then proceed directly to the shower area and take a full shower before exiting the area. In case they are needed, personnel will be standing by ready to render assistance. Suited individuals will be visually observed, if possible. When visual observation is not possible, a communications system is required.

(f) *Mishap Reports and Investigations.* (1) Each institution must have a defined system for reporting laboratory injuries, illnesses and mishaps, as well as for investigating them. These events will be documented and reported to the appropriate safety, supervisory and occupational health personnel. Those organizations subject to the regulations

promulgated by the Occupational Safety and Health Administration (OSHA) will follow the specific requirements for reporting injuries in the work place contained in those regulations. The requirements stated in AR 385–69, State, and local government requirements for similar reporting will be followed.

(2) Form(s) for recording mishaps will be available and completed for all laboratory mishaps. Those reports must include a description of the mishap and any factors contributing to the mishap. In addition, a description of any first aid or other health care given to the employee will be included. Responsibility for completing these forms must be clearly defined in the Facility Safety Manual. Mishaps will be reviewed periodically by the Safety Officer, the safety committee, the employee health unit, or other appropriate personnel. Individual reports or a summary must be sent, along with recommended changes in laboratory procedure or policy, to the Commander or Institute Director. Policy or procedural changes must be implemented if deemed necessary by the Commander or Institute Director.

(3) Any mishaps with etiologic agents used under sponsorship of the BDP that result in sero-conversion or a laboratory-acquired illness will be reported.

§ 627.18 Large scale operations.

(a) *Large Scale.* In addition to the requirements stated in § 627.12 the following applies to research or production activities involving viable etiologic agents in quantities greater than 10 liters:

(1) All large-scale operations will be conducted in facilities described in the appropriate part of section 627.46.

(2) Cultures will be handled in a closed system.

(3) Sample collection, the addition of materials, and the transfer of culture fluids shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

(4) A closed system or other primary containment equipment that has contained viable organisms shall not be opened for maintenance or other purposes unless it has been sterilized.

(5) Standing operating procedures (SOPs) will include a section describing and requiring a validation of the process equipment's proper function.

(6) Scientists, technicians, equipment workers, and support personnel with access to the large-scale production area when it is in operation will be included in the medical surveillance program.

(b) *Biosafety Level 2—Large Scale.* In addition to the requirements stated in §§ 627.18(a) and 627.13, the following procedures will be employed for Biosafety Level 2—Large Scale:

(1) Rotating seals and other mechnical devices directly associated with closed system used for the propagation and growth of viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventialated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

(2) A closed system used for the propagation and growth of viable organisms and other primary containment equipment used to contain operations involving viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Systems used for the propagation and growth of viable organisms shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to the use of this equipment.

(c) *Biosafety Level 3—Large Scale.* In addition to the requirements stated in §§ 627.18(b) and 627.14., the following procedures apply:

(1) Personnel entry into the controlled area shall be through the entry area specified in § 627.46(c)(1).

(2) Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jumpsuits, long sleeved laboratory coats, pants and shirts, head cover, and shoes or shoe covers. On exit from the controlled area the work clothing may be stored in a locker separate from that used for personal clothing, or discarded for laundering. Clothing shall be decontaminated before laundering.

(3) Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program support needs.

(4) Prior to entry all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

(5) The universal biohazard sign shall be posted on entry doors to the controlled area and all internal doors. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter.

(6) Equipment and materials required for the management of accidents involving viable organisms shall be available in the controlled area.

(d) *Biosafety Level 4—Large Scale.* Guidelines for these operations are not established. If these are needed, they must be established by the U.S. Army Surgeon General or the National Institutes of Health on an individual basis.

§ 627.19 Operations with radioactive material.

Operations that combine etiologic agents with radiolabeled material present unique problems. When this is the case, the following apply:

(a) *Radiation Program.* A radiation program meeting the requirements of AR 385–11 and NRC licensure that allows the particular isotope and use are required. The requirements for acquisition, handling procedures, labeling, storage, training, monitoring, and disposal will be described in an organization policy document.

(b) *Procedure Approval.* In addition to the required approvals for work with etiologic agents, the RPO will approve all SOPs involving the use of radioactive materials. Laboratory operators must be fully trained, with annual training updates as required by the existing license.

(c) *Special Situations.* (1) Special attention must be paid to the laboratory waste because it must be segregated as radioactive waste and disposed of as such after it has been decontaminated. Do not mix non-radioactive waste with radioactive waste as the disposal of radioactive waste is much more complex and expensive. When RCRA-listed chemicals are mixed with radioactive waste it becomes "mixed waste" for which there is currently no means of disposal.

(2) Activities conducted with radioisotopes should be confined to the smallest number of areas/rooms consistent with requirements.

(3) Decontamination methods specific for etiologic agents will not always remove radioactivity. Other methods, such as specialized detergents and solvents designed for this use, should be employed to remove residual radioactivity.

Subpart D—Personal Protective Equipment

§ 627.20 Introduction.

Personal protective equipment (PPE) includes clothing and equipment used to protect the laboratory worker from contact with infectious, toxic, and corrosive agents, as well as excessive heat, fire, and other physical hazards. The appropriate PPE for any activity is dependent upon the proposed operations and the potential hazards associated with them. While PPE are important items of personal protection, they are to be used with the understanding that they serve as a secondary line of protection against hazards in the workplace. Engineering controls (chapter B), combined with common sense, good laboratory techniques and adherence to SOP's, are the primary barriers to exposure. There are some situations, however, in which it is either impractical or impossible to rely exclusively on engineering controls. In these cases, PPE may form the primary barrier between personnel and the hazards or infectious materials.

§ 627.21 Minimum laboratory attire for use of etiologic agents.

Individuals required to wear PPE will be trained in their proper use. The PPE listed below are the minimum required when etiologic agents are handled at any Biosafety Level. Research with etiologic agents usually involves hazards other than those presented by the agents themselves. When selection of PPE is made, the hazards presented by these other factors must be considered regardless of the Biosafety Level used. For example, toxic chemicals are commonly used in research involving etiologic agents, the processes may expose personnel to physical hazards, such as heat or animal bites, and the decontamination process may involve the handling of toxic or corrosive materials. When the PPE required to mitigate these hazards exceeds that of the minimum requirements, the necessary PPE will be selected considering all of the hazards. Information regarding the additional appropriate PPE worn to protect against these hazards will be available from one of the following sources: Material Safety Data Sheets (MSDS), SOP for the operation, or the Safety Officer. Deviations from the standards stated in approved SOPs must be approved by the Safety Officer. All laboratory coats when worn for purposes of protection of the individual should be left in the laboratory when an individual leaves the laboratory. In each case, the minimum attire will be:

(a) *Laboratory Workers.* Street attire is permissible in the laboratory, but must include closed-toe shoes. A full-length, long sleeved, fully fastened laboratory coat, gown, or smock will be worn over the street attire in the laboratory at all times. The laboratory clothing will be removed and left in the laboratory when leaving to enter non-laboratory use areas.

(b) *Animal Caretakers.* In addition to the clothing requirements in paragraph (a) of this section, animal handlers will be provided with safety shoes or safety boots. The requirements of § 627.23(b) should also apply.

(c) *Non-human Primate Rooms.* Personnel entering rooms housing nonhumans primates will wear the clothing stated in paragraph (a) of this section and if applicable paragraph (b) of this section in addition to a molded mask or HEPA filtered respirator, latex or vinyl gloves, and eye protection.

§ 627.22 Biosafety level 1.

This level requires only the minimum attire described in § 627.21.

§ 627.23 Biosafety level 2.

This level requires the following additions to the minimum clothing specified in § 627.21:

(a) *Laboratory.* Gloves (type dependent on the application) will be worn when handling etiologic agents or containers of etiologic agents and when handling infected animals.

(b) *Animal Rooms.* (1) Protective clothing will be changed completely on a daily basis. One- or two-piece laboratory suits or solid-front gowns and wrap-around smocks are preferable. Full-length, long sleeved, fully fastened laboratory coats are allowed.

(2) Eye protection must be worn when handling non-human primates.

(3) Appropriate gloves must be worn.

(4) Molded masks or HEPA filtered respirators will be worn in rooms housing non-human primates.

§ 627.24 Biosafety level 3.

Because it is imperative that the outer clothing worn in these facilities not be worn outside the facility, color-coded clothing that is worn only in the facility is recommended to assist in precluding individuals from wearing this clothing outside the facility. The minimum clothing includes:

(a) *Laboratory.* (1) Long-sleeved, solid front, or wrap-around gowns, scrub suits, or coveralls over street attire which includes closed-toe shoes. Dedicated shoes, boots or shoe covers will be worn in the facility.

(2) Appropriate gloves.

(b) *Animal Rooms.* (1) A complete change of protective clothing on a daily basis. Long-sleeved one- or two-piece solid front uniforms, solid-front gown, wrap-around smocks, or solid front coveralls.

(2) Eye protection must be worn when handling non-human primates.

(3) Molded masks or HEPA filtered respirators will be worn in rooms housing infected animals.

(4) Shoe covers will be worn and removed before exiting the room; alternatively, disinfectant footbaths will be used for each exit from the room when infected animals are present.

§ 627.25 Biosafety level 4.

Street clothing must be removed in an outer clothing change room and kept there. Clothing worn in the facility will be removed in an inner change room and a shower taken before replacing the street clothing. Two distinct PPE requirements exist for BL–4 operations:

(a) *Class III Biological Safety Cabinet Containment.* Clothing requirements when all etiologic agents and infected animals are housed and manipulated in Class III biological safety cabinets will include:

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jump-suits, and shoes. While it is preferred that the shower include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves. The inner gloves will be donned in the change room.

(b) *Class I or II Biological Safety Cabinet Containment.* Clothing requirements for this level when etiologic agents are contained in Class I or II biological safety cabinets or equivalent partial-containment caging systems (for infected animals) (See §§ 627.55 and 627.56) include:

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jump-suits, and shoes. While it is preferred that the shower include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves will be donned in the change room.

(3) A one piece positive pressure suit described in § 627.30(g).

(4) Impervious boots fitted over the suit.

§ 627.26 Large Scale (LS) Operations.

The clothing requirements for these are the same as for the corresponding biosafety levels for laboratory operations.

§ 627.27 Solutions of toxins and dry forms of toxins in closed containers.

In addition to the minimum clothing specified in § 627.21 above, disposable gloves or gloves designed to be protective against the diluent will be worn when handling these materials.

§ 627.26 Dry forms of toxins handled in open containers.

In addition to the requirements stated in § 627.27 above, the requirements stated in § 627.16(c) apply.

§ 627.29 Situations specified in § 627.17(e).

The clothing requirements for this section are for the emergency procedures specified in § 627.17(c). When these situations occur and there is no feasible or available means to adequately mitigate the potential hazard by engineering controls, the clothing requirements exceed those required for a properly conducted laboratory operation at an equivalent Biosafety Level. The protective equipment required will be selected based upon an assessment of the potential hazards that could be encountered. As a guide, the following clothing requirements are given. The selection of PPE will be based upon the highest possible level of contamination that could exist in the room. This will be based upon what is known about the operations that were conducted in the room during and prior to the current incident. In each situation, allowance will be made for the any aerosols to dissipate or settle before entry (approximately 30 min.). The following clothing requirements apply to these situations:

(a) *Biosafety Level 1.* (1) Gloves.

(2) Outer complete covering such as a pair of coveralls.

(3) Shoe covers, provided shoes, or safety shoes or boots.

(4) Eye protection (maintenance only).

(b) *Biosafety Level 1 Large Scale.* The same as described in § 627.29(a) with the following additions:

(1) An impervious apron.

(2) Impervious boots.

(c) *Biosafety Level 2 and toxins.* (1) Gloves.

(2) Full outer covering such as a coverall.

(3) Shoe covers, provided shoes, or safety shoes or boots (maintenance).

(4) An Approved half-face or full-face respirator with HEPA filters (worn).

(5) Eye protection.

(6) An impervious apron (not required for entry only).

(d) *Biosafety Level 2 Large Scale.* The same as § 627.29(c) with the addition of impervious boots.

(e) *Biosafety Level 3 and Biosafety Level 3 Large Scale.* (1) A complete change of clothing.

(2) Gloves.

(3) An approved full-face HEPA or HEPA plus charcoal filtered respirator.

(4) An impervious apron (not required for entry only).

(5) Impervious boots.

(6) Head cover.

(f) *Biosafety Level 4.* (1) A full change of inner clothing.

(2) An inner pair of gloves.

(3) A one piece positive pressure suit as described in § 627.30(g), or a one piece suit with an approved positive pressure self contained breathing apparatus (SCBA) and/or a supplied-air respirator (SAR) (see § 627.30(f)).

(4) Appropriate gloves fitted to the suit.

(5) Impervious boots fitted over the suit.

§ 627.30 Specific requirements for individual PPE items.

(a) *Aprons.* Simple plastic or rubber aprons.

(b) *Boots.* When boots are required to be worn with an apron, the apron should cover the boot tops sufficiently so that liquids splashed on the apron will not run into the boots.

(c) *Eye and Face Protection.* Eye protection will meet or exceed the requirements of OSHA found in the Code of Federal Regulations title 29 part 1910.133 and will be worn at all times when required. Special eye wear may be required around UV light source.

(d) *Gloves.*

(1) No one glove can be expected to be satisfactory for all applications. Gloves are fabricated in a wide assortment of materials. The type of glove selected will be dependent upon the specific activity. The various activities in biocontainment facilities call for gloves to protect against etiologic agents in situations where micro-manipulations are required and excellent tactile feed-back through gloves is important, gloves for handling hot glassware and cryogenic materials, and gloves to protect against animal bites, toxic substances, chemical carcinogens, solvents, acids, and caustics. Many of these requirements call for gloves distinctly different from gloves suitable for the other hazards. As a result, the SOP for each operation should address these hazards and specify the appropriate glove required for each operation. MSDSs, manufacturer glove charts, and the Safety Officer can serve as excellent resources to determine the correct glove type needed.

(2) Before donning a pair of gloves, the gloves should be examined closely to ascertain that they are in serviceable condition. Check for rips and pin holes. Gloves should overwrap the cuff and lower sleeve of the laboratory garment.

(3) Operations in open-front biological safety cabinets should be planned so that once gloved hands have been inserted into the cabinet, the operator does not have to withdraw them from the cabinet until the work has been completed. If gloves become visibly contaminated, they will be removed and decontaminated. Additional gloves should be available so that work can continue. When wearing gloves for an extended period, they should be changed periodically or decontaminated. Individual SOPs will designate this periodicity based upon the hazards.

(4) Gloves will be removed before going from one level of containment to another (remove gloves in a safety cabinet before removing your hands from the cabinet). Care will be taken to ensure that skin is not touched with the outer surface of contaminated or potentially contaminated gloves when they are removed. Gloves will be placed in suitable decontaminant when they are removed. Disposable gloves will be placed in a covered container for decontamination/disposal.

(5) Gloves that are a part of a biological safety cabinet system will be examined initially, after each sterilization of the biological safety cabinet system, and at least annually for leaks using the soap bubble test, followed by the halo-carbon test. Gloves will be tested while still attached to the cabinet.

(6) Sterilization of non-disposable gloves either before use or before reuse is usually done with ethylene oxide or formaldehyde gas. Sterilized gloves must be aerated in flowing sterile (filtered) air at 21°C or higher for a minimum of 24 hours prior to use to prevent skin burns and irritation from residual decontaminants.

(e) *Laboratory Clothing.* Clothing will be checked by the users before it is worn, to ensure that it is free from defects that would compromise its usefulness. Laboratory clothing (except BL–1) will be decontaminated before being released for laundering by untrained or unprotected personnel. Protective laboratory clothing that requires the personnel to pull it over the head will not be used. Laboratory clothing will meet OSHA requirements found in the title 29 Code of Federal Regulations (CFR) part 1910.132.

(f) *One-Piece Suits.* One-piece suits with a respirator under the suit are not used to any great extent except in certain emergencies. The respirators used with these are supplied air by an approved positive pressure SCBA, or SAR. Respirators will be of the pressure-demand or constant flow type. The air provided will meet OSHA requirements found in the Code of Federal Regulations title 29 part CFR 1910.134.

the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G–7.1 and ANSI Z86.1–1973. When used in an area that does not have a chemical shower to decontaminate the suit, a decontamination station will be set up for this purpose. Suits maintained for emergency use will be inspected at least quarterly and respiratory equipment will be inspected monthly.

(g) *One-Piece Positive Pressure Suits.* A life-support system will be provided with alarms and emergency backup breathing tanks. The air provided will be HEPA-filtered meeting OSHA requirements found in the CFR title 29 part 1910.134, the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G–7.1 and ANSI Z86.1–1973. A HEPA-filter will be in-line between the disconnect on the suit and the breathing space in the suit. When these are used in other than an emergency situation, a chemical shower must be provided to decontaminate the surfaces of the suit as the worker leaves the containment area. Suits will be inspected before each use to check for indications of significant wear or leakage. The suits will be worn with impervious boots over the foot area of the suit and the outer gloves will be attached over the hand portion.

(h) *Respiratory Protection Equipment.* (1) Respirators and their use will be approved by the Safety Officer. The selection will be made with knowledge of the conditions of the activities and the risks involved. In general, NIOSH-approved respirators that use aerosol filters for dusts and fumes having a Threshold Limit Value (TLV) of less than 0.05 mg/m^3 have been found acceptable for use in microbiological laboratories. Alternatively, the Army M–17 or M–9 masks may be used. Air-supplied hoods are used in situations where greater respiratory protection is required without the need for body protection. One-piece suits are used when total body and respiratory protection are required.

(2) When respirators are used, a respirator protection program will be established that conforms to AR 11–34 and OSHA standards in the CFR title 29 part 1910.134. In general, the wearers will be approved to wear them by a medical authority, respirators will be fitted to individuals trained in their use and limitations, and these individuals will be responsible for the proper storage and regular inspection of their assigned respirators. Air-purifying respirators will not be worn in oxygen deficient environments.

(3) Reusable respirators that have been worn in a contaminated area will be decontaminated before reuse. At the end of each work day when a respirator has been worn in an area where it was required, personnel will wipe down their respirator with an appropriate liquid decontaminant. A damp cloth soaked in the decontaminant, with the excess liquid squeezed out, will be used for the wipe-down process, taking care to ensure that all crevices are reached. The respirator will be rinsed with clean, warm water. Visibly contaminated respirators will be decontaminated and discarded.

(4) Respirator programs will comply with AR 385–10 and AR 11–34.

(i) *Shoes.* All shoes specially issued for use in controlled access areas should be identified so that they can be segregated from other areas. Safety shoes or boots meeting OSHA requirements stated in the CFR title 29 part 1910.134 will be issued wherever heavy items or corrosive chemicals are handled. These will be sterilized appropriately after visible contamination. In certain situations (excluding BL–4 operations), it is desirable to wear disposable booties over street shoes, especially when product protection is required.

(j) *Deluge showers and eye.*

Subpart E—Decontamination and Disposal

§ 627.31 Introduction.

All material or equipment that is potentially contaminated with etiologic agents must be rendered nonhazardous before disposal. This chapter describes the acceptable physical and chemical decontamination methods and the general applicability of each. In general, all infectious materials and all contaminated equipment or apparatus will be sterilized before being washed and stored, or discarded.

§ 627.32 Methods of decontamination.

(a) *Autoclave.* The use of wet heat is the most dependable procedure for the destruction of all forms of microbial life. An autoclave employs saturated steam under a pressure of approximately 15 psi to achieve a chamber temperature of at least 121 °C for a minimum of 15 minutes. The time is measured after the temperature of the material being sterilized reaches 121 °C. Other combinations of temperature and pressure (some of which are dependent of the equipment used) can be used to accomplish sterilization provided that the efficacy of sterilization is validated as described below. The most critical factor in ensuring the reliability of this sterilization method, other than proper temperature, is the prevention of entrapment of air that is not replaced by steam. Material to be autoclaved must come in contact with steam and heat and as a result, it may be necessary to add water to a load of waste to aid in the formation and penetration of steam. Autoclaves use either a steam-activated exhaust valve that remains open during the replacement of air by live steam until the steam triggers the valve to close, or a precycle vacuum to remove air prior to steam introduction.

(b) Sterilization will be verified through the use of biological indicators (e.g., Bacillus stearothermophilus spores) at locations throughout the autoclave, to include placement in the center of test loads, when the autoclave is first put into service, and after any maintenance or repairs. The primary means of verifying routine sterilization will be through the use of chemical indicators (e.g., autoclave tape or labels) at locations throughout the autoclave. In addition each autoclave will be equipped with a means to permanently to record time and the temperature of each operational event as a means of ensuring sterilization. The type of materials being handled must be reviewed and standard conditions for sterilization of each established. As a guide, the manufacturer's manual for the autoclaves will be consulted as a starting point in establishing these conditions. Treatment conditions to achieve sterility will vary in relation to the volume of material treated, the contamination level, the moisture content and other factors that should be considered and which may be cause to lengthen the times. In each case the conditions will be established based on tests which verify that the conditions selected are effective. In addition to being effective for viable agents, autoclaving effectively inactivates most protein toxins.

(c) *Dry Heat.* Dry heat requires longer times and/or higher temperatures than wet heat. If used, the specific sterilization times and temperatures must be determined for each type of material being sterilized. In general, sterilization by dry heat can be accomplished at 160–170 °C for periods of 2–4 hours. Higher temperatures reduce the time requirements. The heat transfer properties and spatial relation or arrangement of materials in the load are critical in ensuring effective sterilization.

(d) *Liquid Disinfectants.* Liquid disinfectants may be used in surface treatment, in dip tanks, and, at sufficient concentration, as sterilants of liquid

waste for final disposal. If liquid disinfectants are used, they must have been shown to be effective against the organisms present. Important considerations include: temperature; time of contact, pH; concentration and state of dispersion; penetrability; and reactivity of organic material at the site of application. Small variations in these factors may make large differences in the effectiveness of disinfection, so complete reliance should not be placed on liquid disinfectants when the end result must be sterility. If evidence of efficacy under the proposed has not been reported previously, preliminary studies to verify the efficacy of liquid disinfectants must be conducted. Such studies may include attempts to recover and quantitate the agent in question from liquid or swab samples, or sealed patches, by animal inoculation, plaque assay, agar or broth cultivation, etc., following controlled decontamination under the same experimental conditions envisioned for the proposed studies.

(1) *Alcohol.* Ethyl or isopropyl alcohol at a concentration of 70–85% by weight will denature proteins but is slow in its germicidal action. Alcohols are effective disinfectants for lipid-containing viruses. These alcohols exhibit no activity against bacterial spores.

(2) *Phenolic Compounds.* These are effective disinfectants against vegetative bacteria, including Mycobacterium tuberculosis, fungi and lipid-containing viruses. The phenolics are not effective against bacterial spores or non-lipid-containing viruses. The concentrations used will be in accordance with the manufacturer's recommendations.

(3) *Formaldehyde Solutions.* Formaldehyde in solution at a concentration of 8 percent (formalin) is effective against vegetative bacteria, spores, and viruses. It loses considerable disinfectant activity below room temperature. Due to the toxic properties of formaldehyde, the use of formalin is restricted to surfaces or materials that are contained within appropriate engineering controls.

(4) *Quaternary Ammonium Compounds.* These cationic detergents are strongly surface-active. They lose effectiveness in the presence of proteins and are neutralized by anionic detergents, such as soap. At low concentrations, they are bacteriostatic, tuberculostatic, sporostatic, fungistatic, and algistatic. At medium concentration, they are bactericidal, fungicidal, algicidal, and virucidal against lipophilic viruses. They are not tuberculocidal, sporicidal, or virucidal against hydrophilic viruses, even at high concentrations. The manufacturer's recommended dilution will be used.

(5) *Chlorine.* Sodium hypochlorite is normally used as a base for chlorine disinfectants. Free available chlorine is the active ingredient and, at concentrations of at least 2,500 ppm (0.25 percent), is a disinfectant that is active against most microorganisms and bacterial spores. Chlorine solutions at 2.5% free available chlorine are effective against most toxins. Chlorine solutions lose strength if exposed to air, so fresh solutions must be prepared whenever the free chlorine content falls below desired minimums.

(6) *Iodine.* The characteristics of chlorine and iodine are similar. Iodophor compounds with 1,600 ppm free available iodine provide a relatively rapid inactivation of all microorganisms, including some bacterial spores. A commonly available iodophor is Wescodyne. The manufacturer of Wescodyne recommends a range of dilution from 1–3 ounces per 5 gallons of water, giving a solution containing from 25–75 ppm of free iodine. At these concentrations, available iodine may be rapidly taken up by any extraneous protein present and will not be an effective sporocide. A solution providing 1,600 ppm iodine is recommended for hand washing or for use as a sporocide.

(7) *Mercurials.* Although the mercurials exhibit good activity against viruses, they are toxic and are not recommended for general use. They have poor activity against vegetative bacteria and are totally ineffective sporicides. The dilution recommendations stated by the manufacturer will be followed.

(e) *Vapors and Gases.* Formaldehyde, ethylene oxide, peracetic acid, beta-propiolactone, methyl bromide, and glutaraldehyde have all been used successfully as space sterilants where they can be employed in closed systems and with controlled conditions of temperature and humidity. Of these, methyl bromide, beta-propiolactone, and glutaraldehyde are not recommended because of their toxic properties. Peracetic acid can readily decompose with explosive violence in a concentrated state and must be used only in a diluted state and with extreme care. Formaldehyde and ethylene oxide are both regulated by OSHA for their potential human carcinogenicity, but do have permissible exposure levels (unlike beta-propiolactone, for example) and can be used safely under controlled conditions.

(1) *Formaldehyde.* Formaldehyde gas is, in general, the chemical of choice for space disinfection. Biological safety cabinets and associated effluent air-handling systems and air filters, incubators, laboratory rooms, buildings, or other enclosed spaces can be disinfected with formaldehyde. The procedures found in appendix E of the National Sanitation Foundation Standard Number 49 will be followed for the disinfection of biological safety cabinets. Other enclosures or areas will be disinfected by following the same principles. To disinfect rooms, the generation of formaldehyde gas from heating powdered or flake paraformaldehyde is the preferred method. When area decontamination is performed, use 0.3 grams of paraformaldehyde for each cubic foot of space to be treated. The room or area must be above 70 °F, the relative humidity above 70%, and the exposure time at least two hours (overnight is preferred). After the required time for disinfection, the room must be cleared of the formaldehyde gas (a small room with nonporous surfaces and no materials or equipment in the room can be cleared of all detectable formaldehyde by aeration for one hour, while larger areas with equipment in them may take a full day). Before formaldehyde is used as a space disinfectant, the area to be treated must be surveyed to ensure that there are no open containers of any acidic solution containing chloride ion in order to prevent the possible formation of bis(chloromethyl)ether, a human carcinogen. Specific OSHA requirements for posting of rooms and equipment, personnel protection, and other requirements are found in 29 CFR 1910.1048.

(2) *Ethylene oxide.* Ethylene oxide (EtO) sterilization will only be conducted in a sterilizer designed for that purpose and designed to maintain potential exposure levels below the current OSHA standard. EtO is effective against all microorganisms, including spores, molds, pathogenic fungi, and highly resistant thermophilic bacteria. All materials to be used in contact with human skin (e.g., clothing, shoes, masks, adhesive tape) must be aerated for at least 24 hours after sterilization and prior to use. Concentrations of 500–1000 ppm are required for sterilization. Specific OSHA requirements for the use of ethylene oxide are found in 29 CFR 1910.1047.

(f) *Ultraviolet Radiation.* Ultraviolet (UV) radiation at a wave length of 253.7 nanometers is a practical method for inactivating airborne viruses, mycoplasma, bacteria, and fungi. The usefulness of UV radiation on exposed surfaces is limited by its low penetrating power. UV radiation shall only be relied upon for the sterilization of surfaces when conventional methods, such as autoclaving or the use of liquid disinfectants, would make the product unusable. An example is data sheets that must be brought out of a biocontainment facility. The UV intensity must be at least 40 microwatts/cm^2 on the surface to be treated. Single sheets of paper may be treated by exposing them to this radiation for a minimum of 15 minutes. A calibrated photoelectric UV intensity meter, capable of measuring UV radiation at a wave length of 253.7 nanometers, will be used whenever a new UV source is installed, and quarterly thereafter, to ensure the UV source is providing at least 40 microwatts/cm^2 at the work surface. Routine cleaning of bulbs to remove any accumulated dust is recommended to prolong bulb performance and assure proper energy output. Protective eye wear and clothing may be necessary when working around UV radiation.

§ 627.33 Disposal.

Inactivation is the first step in the disposal of etiologic agents or materials that are potentially contaminated with them. All contaminated or potentially contaminated materials must be effectively disinfected or sterilized by an approved procedure discussed in § 627.32. After decontamination, reusable items, such as clothing or glassware, may be washed with other non-contaminated or decontaminated items.

(a) *Combustible Items.* Combustible disposable items should be bagged and incinerated in an appropriate approved incinerator or otherwise disposed of in accordance with state and local regulations.

(b) *Non-combustible disposable items.* Items will be packaged as stated in paragraph (e) of this section and disposed of by a licensed waste hauler.

(c) *Equipment.* Equipment that cannot be autoclaved will be decontaminated by gaseous sterilization or with a suitable liquid disinfectant. Such equipment will be certified as decontaminated by the safety officer.

(d) *Wastes.* Materials generated, such as solvents, acids, chemical carcinogens, radioactive isotopes, medical waste, or dead animals must be decontaminated, packaged, and then disposed of in accordance with EPA, NRC, local, state and Federal regulations.

(e) *Mixed Waste.* When two or more hazardous materials are mixed together, the mixture will be decontaminated and disposed of in accordance with EPA, NRC, state and Federal regulations for the mixture, or for the most hazardous material.

(f) *Packaging.* Solid waste will be placed in cans, sturdy bags or boxes. Rigid, puncture-resistant, sealable containers will be used for packaging "sharps". When wet materials are packaged for disposal, the materials will be placed in a leak-proof container. Heavy waste will be placed in rigid containers ensuring that the burst strength of the container is not exceeded.

(g) *Labeling.* A method of verifying that all items prepared for disposal have been decontaminated will be established for etiologic agent wastes. Mixed waste will be labeled as appropriate to indicate the hazards that must be addressed after decontamination.

(h) *Record keeping.* Manifest will be initiated and maintained, where required, to record the disposition and transfer of waste. Applicable Federal, state, and local ordnance will be followed.

Subpart F—Importation, Shipment, and Transport of Etiologic Agents

§ 627.34 Introduction.

The Centers for Disease Control (CDC) of the Public Health Service (PHS), the United States Department of Agriculture (USDA), the Food and Drug Administration (FDA), the Department of Transportation (DOT), the United States Postal Service and the International Air Transport Association (IATA), regulate the importation, shipment, and transportation of etiologic agents. This chapter outlines the minimum administrative requirements the Commander or Institute Director are to follow and gives resources for information on the requirements for importation, packaging, labeling, and shipment of etiologic agents.

§ 627.35 Administration.

The Commander or Institute Director will establish the following controls to ensure that etiologic agents are transported with proper authorization, controls, and procedures:

(a) Institute policies will be established in writing to ensure that before etiologic agents are acquired or shipped:

(1) The Division chief responsible for the area where work with etiologic agents is to be conducted approves all acquisitions or shipments.

(2) The Safety Officer is informed in writing of the type and amount of any BL–4 or USDA-restricted etiologic agent (listed in HHS publication No. (NIH) 88–8395 or current edition) being received, and the estimated date of arrival.

(3) The recipient of all etiologic agents shipped from an institute will be documented.

(4) The Commander or Institute Director approves all acquisitions and shipments of BL–4 or USDA-restricted etiologic agents.

(5) The Commander or Institute Director approves all requests for shipments to or from foreign countries and to individuals not affiliated with an institution or agency (e.g., physicians in private practice).

(6) The Office of The Surgeon General U.S. Army or the Commander, Army Material Command (AMC) approves the initial acquisition and use of all reference stocks of etiologic agents and transfers between Army RDT&E activities in accordance with AR 70–65.

(7) There is full compliance with the regulatory requirements referenced in §§ 627.35, 627.36, 627.37 and 627.38.

(8) The following information will be kept on file for 10 years, regarding the recipient and the intended use of BL–4 and USDA-restricted animal pathogens. This information will also be kept for all shipments to or from foreign countries and to individuals not affiliated with an institution or agency (e.g., physicians in private practice).

(i) The requester's name and address.

(ii) The type and amount of the etiologic agent to be sent.

(iii) The qualifications of the recipient of the etiologic agent.

(iv) The intended use of the etiologic agent.

(v) A statement indicating that the agent is not for human use.

(b) Etiologic agents assigned to Biosafety level 1, 2, or 3 approved for shipment and properly labeled and packaged may be shipped by commercial cargo carriers.

(c) All etiologic agents assigned to BL–4 or USDA-restricted animal pathogens approved for shipment and properly packaged, will be accompanied by a designated courier, or under close supervision of a responsible party who will monitor aspects of the shipment, ensuring that required transfers have been completed and documented and final receipt has been accomplished and acknowledged.

§ 627.36 Importation directives.

Importation of etiologic agents is subject to the Public Health Service Foreign Quarantine Regulations (42 CFR, part 71, § 71.156). Permits authorizing the importation or receipt of regulated materials and specifying conditions under which the etiologic agent is

shipped, handled, and used are contained in appendix E to this part.

§ 627.37 Shipment directives.

Shipping unmarked and unidentified etiologic agents is prohibited. Etiologic agents will be packaged, labeled, and shipped according to the requirements found in the Interstate Shipment of Etiologic Agents (42 CFR, part 72) and its amendments. The USDA regulations in 9 CFR, parts 102–104, and part 122 and the FDA regulations in 21 CFR, parts 312 and 600–680 will also be followed as applicable. Packaging and labeling requirements for interstate shipment of etiologic agents are summarized and illustrated in appendix D. Permits authorizing the shipment of regulated materials and specifying conditions under which the etiologic agent is shipped, handled, and used are contained in appendix E to this part.

§ 627.38 Transportation directives.

The packaging and labeling requirements cited above must be followed for the local transport of etiologic agents and diagnostic specimens by courier or by other delivery services. Similar requirements and restrictions applicable to the transport of etiologic agents, diagnostic specimens, and biological products by all modes of transportation (i.e., air, motor, rail, and water) are imposed by the Department of Transportation (49 CFR part 173), IATA "Dangerous Goods Regulations", the Air Transport Association "Restricted Articles Tariff 6–D", the International Civil Aviation Organization (ICAO), Postal Bulletin No. 21246 "International Mail-Hazardous Materials", 39 CFR and, the Domestic Mail Manual. When shipments exceed 4 liters, the requirements found in AR 740–32 will be followed.

§ 627.39 Additional requirements.

Additional requirements for importation, shipment, and transportation of infectious agents and hazardous materials that must be followed are contained in the following directives:

(a) AR 40–12, Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.

(b) AR 70–65, Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities.

§ 627.40 Sources for further information on shipment of etiologic agents.

(a) Guide for Transportation of Hazardous Materials, Vol. 4(1). February 10, 1975. Copies are obtained from the Office of Research Grants Inquiries, NIH, Department of Health, Education, and Welfare, 5333 Westbard Avenue, Bethesda, MD 20205.

(b) The Centers for Disease Control, Office of Biosafety, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone (404) 639–3883, or FTS: 236–3883.

(c) The American Type Culture Collection (ATCC), Packaging and Shipping of Biological Materials at ATCC. Copies are obtainable from the ATCC, 12301 Parklawn Drive, Rockville, MD. 20852. Phone (301) 881–2600.

(d) National Committee for Clinical Laboratory Standards (NCCLS), Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents (H5–A2), Second edition, Vol. 5, No. 1. Copies are obtained from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.

Subpart G—Facilities

§ 727.41 Introduction.

The design of the facility is important in providing a secondary barrier to protect individuals inside and outside the facility. Because the hazards presented by various organisms and materials vary, the requirements for the facility varies accordingly. These minimum facility requirements are described below for the various biosafety levels and toxins. The biosafety levels correspond to those described in the HHS Publication *Biosafety in Microbiological and Biomedical Laboratories* (HHS No. (NIH) 88–8395), while the large scale biosafety levels were adapted from those described in the NIH *Guidelines for Research Involving Recombinant DNA Molecules*.

§ 627.42 Biosafety level 1.

(a) *Laboratories.* Each laboratory used for this level will, as a minimum, have the following features:

(1) A sink for handwashing.

(2) Work surfaces that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(3) Fly screens on any windows that can be opened.

(4) Furnishings and surfaces that are sturdy and designed to be easily cleaned.

(5) Spaces between furnishings and equipment will be accessible for cleaning.

(b) *Animal facilities.* Each room will have the following features:

(1) Designed and constructed to facilitate cleaning and housekeeping.

(2) A sink for handwashing within the facility.

(3) Fly screens on any windows that can be opened.

(4) Ventilation designed so that the direction of airflow in the animal facility is inward, with the exhausted air discharged to the outside without being recirrculated.

(5) Self-closing doors that open inward.

§ 627.43 Biosafety level 2.

(a) *Laboratories.* Each laboratory used for this level of hazard will have, in addition to the requirements stated in § 627.42(a), the following:

(1) An autoclave available.

(2) Containment equipment necessary for the operations unless the Biosafety Officer approves the use of a compensatory level of personal protective equipment.

(3) An eyewash available near the laboratory.

(b) *Animal Fccilities.* In addition to the requirements stated in § 627.42(b), facilities will include:

(1) A sink for handwashing in each room where animals are housed.

(2) An autoclave available in the building.

(3) Appropriate containment equipment unless the Biosafety Officer approves the use of a compensatory level of personal protective equipment.

§ 627.44 Biosafety level 3.

(a) *General Requirements.* Each suite used as a laboratory or in which infected animals are housed will, as a minimum, have the following features:

(1) Physical separation from areas which are open to unrestricted traffic.

(2) All entrances to each laboratory or animal room from the non-laboratory access corridors will be through two sets of doors. A change room or airlock may be incorporated between the doors.

(3) The interior surfaces of walls, floors, and ceilings will be water resistant so that they may be easily cleaned.

(4) All penetrations into the walls, floors, and ceilings should be sealed or capable of being sealed to facilitate decontamination.

(5) A foot, elbow, or automatically operated sink will be located near the exit door to each laboratory or animal room.

(6) An autoclave should be in each laboratory or animal room and will be available to the facility.

(7) A ventilation system that will:

(i) Create directional airflow that draws air into the laboratory through the entry areas.

(ii) Not recirculate laboratory air.

(iii) Discharge the exhaust air from the laboratory to the outside and will disperse the exhaust air away from occupied areas and air intakes.

(iv) Exhaust the HEPA-filtered air from Class I or II biological safety cabinets or other primary containment devices directly to the exterior of the laboratory or through the building exhaust system. Exhaust air from the cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every twelve months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (e.g., thimble unit connection) that avoids any interference with the air balance of the cabinets or the building exhaust system.

(8) All windows to the facility will be sealed shut.

(9) Appropriate biological safety cabinets and/or other specialized containment equipment will be provided.

(10) Any vacuum line in the facility will have a HEPA filter and liquid disinfectant trap.

(11) Bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(12) Furnishings that are sturdy and spaces between benches, cabinets, and equipment that are accessible for cleaning.

(13) An eyewash available in or near the laboratory.

(b) *Additional Animal Facility Requirements.* In addition to the requirements given above in §§ 627.43(b) and 627.44(a), all doors to the animal rooms will open inward and be self-closing.

§ 627.45 Biosafety level 4.

The engineering controls within the facility must provide absolute biological containment. All procedures with etiologic agents requiring this biosafety level of facilities, equipment and procedures must be conducted either in Class III biological safety cabinets, or in a facility that is designed for the use of a personal positive pressure suit as described in paragraph (b) of this section in conjunction with Class I or II biological safety cabinets.

(a) *General Requirements.* The facility will have the following features:

(1) A separate building or a clearly demarcated and isolated area within a building which incorporates positive personnel control for access.

(2) All entrances from access corridors incorporate an inner and outer change room.

(3) Inner and outer change rooms separated by a shower facility.

(4) A double-doored autoclave, fumigation chamber, or ventilated airlock for passage of all items which do not enter the facility through the change room.

(3) Interior surfaces of walls, floors, and ceilings resistant to water and chemicals to facilitate cleaning and disinfecting.

(4) Walls, floors, and ceilings of the facility constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof.

(5) All penetrations into the walls, floors, and ceilings sealed.

(6) All liquid drains in the facility connected directly to a liquid waste decontamination system.

(i) Holding tanks collecting waste from sinks, biological safety cabinets, floors, and autoclave chambers provide decontamination by heat treatment.

(ii) Holding tanks collecting waste from shower rooms and toilets provide decontamination by heat or chemical disinfectant methods.

(7) Sewer and other ventilation vents contain in-line HEPA filters.

(8) Internal facility appurtenances (e.g., light fixtures, air ducts, and utility pipes) arranged to minimize the horizontal surface area on which dust can settle.

(9) A foot, elbow, or automatically operated handwashing sink located near the exit door to each laboratory or animal room.

(10) Self-closing and lockable access doors.

(11) A ventilation system that:

(i) Is dedicated to the facility and provided fresh air meeting ASHRAE Standard 62.

(ii) Maintains a negative pressure differential and assures flow inward from areas outside of the facility toward areas of highest potential risk.

(iii) Has manometers or magnehelic gages to provide, sense, and display pressure differentials between adjacent areas maintained at different pressure levels. An alarm will sound when the pressures fall below acceptable levels.

(iv) Has the air supply and exhaust interlocked to ensure that exhaust failure or reduction will not allow the air pressure in the area to become positive to the adjacent areas.

(v) Does not recirculate exhaust air.

(vi) Is HEPA-filtered and discharged to the outside, dispersing the exhaust air away from occupied areas and air intakes. Has the HEPA filters on the exhaust located as near to the rooms as is practicable.

(vii) Has the filter chambers designed to allow in-place decontamination before the filters are removed and to facilitate certification testing.

(ix) Contains pre-filters and HEPA filters in the air supply system to protect the air supply system should air pressures become unbalanced.

(x) Exhausts the HEPA-filtered air from Class I or II biological safety cabinets directly into the laboratory or to the exterior of the building. If the HEPA-filtered exhaust from these cabinets is recirculated, the cabinets are tested and certified every 6 months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (e.g., thimble unit connection) that avoids any interference with the air balance of the cabinets or the building exhaust system.

(xi) Passes the treated exhaust air from Class III biological safety cabinets through two sets of HEPA filters in series to the exterior of the facility through the laboratory exhaust air system.

(12) Windows (if present) sealed shut and breakage resistant.

(13) Has a double-doored autoclave for decontaminating materials passing out of the facility. The autoclave door that opens to the area external to the facility is sealed to the outer wall and automatically controlled so that it can only be opened after the autoclave sterilization cycle has been completed.

(14) Has a pass-through dunk tank, fumigation chamber, or an equivalent decontamination method for materials and equipment that cannot be autoclaved.

(15) Has central vacuum systems (if present) that:

(i) Do not serve areas outside the facility.

(ii) Have an in-line HEPA filter placed as near as practicable to each use point or service cock.

(iii) Have filters designed to allow in-place decontamination and replacement.

(16) Liquid and gas service to the facility provided with protective devices that prevent backflow.

(b) *Additional Requirements for Personal Positive Pressure Suit Areas.* If personal positive pressure suits are worn in lieu of using Class III biological safety cabinets for containment, a special suit area will be provided. The suit area will provide the following, in addition to the requirements stated in paragraph (a) of this section:

(1) An exhaust system dedicated to that area that provides filtration by two

sets of HEPA filters installed in series. This system will be backed up by a duplicate filtration unit, exhaust fan, and an automatically starting emergency power source. The ventilation system will maintain the suit area under negative pressure relative to the surrounding areas.

(2) An entry area consisting of an airlock fitted with airtight doors.

(3) A chemical shower to decontaminate the surface of the personal positive pressure suit upon exit.

(4) An air supply and distribution system to support the life support system of the personal positive pressure suits.

(5) Emergency lighting and communications systems.

(6) Sealed penetrations into the internal shell of the area.

(7) A double-doored autoclave to decontaminate waste materials to be removed from the suit area.

(c) *Additional Laboratory Requirements.* In addition to those given in § 627.44, if water fountains are provided, they will be foot operated and located in the facility corridors outside the laboratory.

(d) *Additional Animal Facility Requirements.* In addition to those requirements given in § 627.44, all animal facility external doors will be self-locking.

§ 627.46 Large scale facilities.

The following requirements apply to facilities in which an individual culture of viable etiologic agents exceeds 10 liters:

(a) *Biosafety Level 1 Large Scale.* In addition to the laboratory requirements stated in § 627.42(a), the exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms.

(b) *Biosafety Level 2 Large Scale.* In addition to the requirements stated in § 627.43(a) and paragraph (a) of this section:

(1) Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiences equivalent to HEPA filters or through equivalent treatment devices.

(2) A closed system used for the propagation and growth of viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Closed systems used for the propagation and growth of viable organisms shall be tested operationally for integrity of the containment features. The containment will be rechecked following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

(c) *Biosafety Level 3 Large Scale.* The requirements stated in § 627.45 and paragraph (b) of this section apply, and all closed systems and other primary containment equipment used in handling cultures of viable organisms shall be located within a controlled area which meets the requirements of a BL-3 facility plus the following requirements:

(1) All utilities and service or process piping or wiring entering the controlled area shall be protected against contamination.

(2) A shower facility shall be provided. This facility shall be located in close proximity to the controlled area.

(3) The controlled area shall be designed to preclude release of culture fluids outside the controlled area in the event of an accidental spill or release from the closed systems or other primary containment equipment.

(4) The controlled area shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may be discharged to the outdoors after filtration or other means of effectively reducing an accidental aerosol burden, and dispersed clear of occupied buildings and air intakes.

§ 627.47 Toxins.

(a) General requirements for all facilities in which toxins are used are as follows. Such facilities will:

(1) Have a ventilation system that provides three to six air changes per hour, and that provides a directional airflow inward relative to the access halls.

(2) Have a sink for handwashing.

(3) Have an eyewash available.

(4) Have bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(5) Have furniture, furnishings, and surfaces that are sturdy and designed to be easily cleaned.

(6) Be arranged so that items are accessible for cleaning.

(7) Have a quick-drench shower available within the facility.

(8) A fume hood, biological safety cabinet, glove box, or equivalent engineering control equipped with HEPA filters and with charcoal filters if volatile materials are being used.

Subpart H—Engineering Controls

§ 627.48 Introduction.

As required by the Occupational Safety and Health Administration (OSHA) and recommended by the American Industrial Hygiene Association (AIHA) and the Centers for Disease Control (CDC), engineering controls and proper microbiological techniques are the primary means of protecting personnel who work with potentially hazardous biological materials. In situations of potentially higher hazard, these engineering controls are supplemented by personal protective clothing and equipment. Thus, the engineering controls discussed in this chapter will be the primary means of personnel and environmental protection when working with etiologic agents. Because of the importance of these engineering controls, this chapter contains not only requirements for the engineering and construction of these controls, but also requirements for the certification and continuous satisfactory performance of these controls. These will be described for each engineering control.

§ 627.49 Class I Biological Safety Cabinet.

(a) *Description.* The Class I biological safety cabinet (see Footnote [1]) is a ventilated cabinet for personnel protection only. The cabinet provides an uncirculated inward flow of air away from the operator. The exhaust is be passed through a HEPA filter. The exhaust may be discharged into the laboratory or vented out of the laboratory and dispersed away from occupied spaces or air intakes. When the exhaust is recirculated in a BL-2 or BL-3 facility, the cabinet must be tested and certified annually. In a BL-4 facilitiy, if the exhaust is recirculated, the cabinet must be tested and certified semi-annually.

[1] A line drawing of the Class I Biological Safety Cabinet is not included in this part but may be obtained from HQDA (DACS-SF), Mr. Wortley, room 2C717, Pentagon, Washington, DC 20310-0300 (703) 695-7291.

(b) *Uses.* These cabinets are used in situations where personnel protection against the micro-organisms is required; for modest quantities of volatile, toxic, or radioactive chemicals (in concentrations and quantities associated with biological systems) if vented to the outside; and when sterility is not required. They are commonly used for housing tabletop centrifuges, in the necropsy of small animals, and for changing animal bedding.

(c) *Prohibitions.* This class of cabinet is not to be used when sterility must be maintained. In addition, volatile, toxic, or radioactive materials can not be used in this class of cabinet when the exhaust air is not exhausted to the exterior.

(d) *Certifications and requirements.* (1) The inward air velocity on these cabinets will be an average of 100+/−20 linear feet per minute (lfpm). Each cabinet must be certified before use and semiannually thereafter by a face velocity test. Additionally, smoke tests will be performed annually to verify containment.

(2) The exhaust system will have a HEPA filter, which will be tested initially upon installation, after repair or replacement, and every two years thereafter (except when required more often). Filters will be certified to be 99.97 percent effective in capturing particulate matter by a leakage test using mineral oil or other appropriate aerosol dispersed as 0.3 micron droplets.

§ 627.50 Class II Biological Safety Cabinets.

All Class II biological safety cabinets (See Footnote [2]) are ventilated cabinets for personnel and product protection, having an open front with inward air flow for personnel protection.

(a) *General.* (1) All of these cabinets must conform and be certified to meet NSF Standard No. 49 revised, June 1987, for the applicable type of cabinet.

(2) After installation and before use, and annually thereafter, the cabinets will be tested in accordance with NSF Standard No. 49 (latest revision June 1987) as follows:

Primary (Required) Tests:

(i) Velocity Profile Test.

(ii) Work access opening airflow (Face Velocity) test.

(iii) HEPA filter leak test.

(iv) Cabinet integrity test (soap bubble test) for cabinets with positive pressure internal plenums.

Secondary (Optional) Tests:

(v) Vibration test.

(vi) Electrical leakage and ground circuit resistance tests.

(vii) Noise level test.

(viii) Lighting intensity test.

(ix) UV light intensity test.

(3) After repairs or alterations to the cabinetry or ventilation system that affect the cabinet, the tests listed in paragraph (a)(2) of this section will be performed for the relevant parameters.

(4) The work access opening airflow (face velocity) test, as specified in NSF Standard No. 49 (latest revision June 1987), will be performed to check that the cabinet is within specifications on an annual basis for Biosafety Levels 1 and 2 and toxin use. This test will be performed semi-annually on cabinets used for Biosafety Levels 3 and 4 as well as for work with dry forms of toxins.

(5) When the exhaust is recirculated in a BL-4 facility, the cabinet must be tested and certified semi-annually.

(b) *Class IIA Biological Safety Cabinets*—(1) *Description.* A Class IIA biological safety cabinet is one in which typically 70% of the air is recirculated within the cabinet and the exhaust passes through a HEPA filter before discharge. The exhaust may be exhausted into the room and positive-pressure contaminated ducts and plenums within the cabinet are allowed. Type A cabinets shall have a minimum calculated face velocity of 75 fpm.

(2) *Uses.* These cabinets are for working with low-to-moderate risk biological samples and for protection of the personnel against biological material while providing a sterile atmosphere in which to handle the material.

(3) *Prohibitions.* Materials that are toxic or volatile must not be used in these cabinets.

(c) *Class IIB$_1$ Biological Safety Cabinets*—(1) *Description.* A Class IIB$_1$ biological safety cabinet is one that maintains a minimum average inflow of air of 100+/−20 lfpm and in which typically 30 percent of the air is recirculated. All recirculated and exhausted air passes through two HEPA filters in series. All contaminated internal ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* When ultra-sterility is needed, these are the cabinets of choice. The double filtration achieves a clearner atmosphere. Minute quantities of volatile, toxic, or volatile radioactive materials coincidental to use in biological systems may also be used in these cabinets.

(3) *Prohibitions.* More than minute quantities of toxic, volatile, or radioactive materials must not be used in these cabinets.

(4) *Additional Certifications or Requirements:* None.

(d) *Class IIB$_2$ Biological Safety Cabinets*—(1) *Description.* A Class IIB$_2$ biological safety cabinet is one that maintains a minimum average of 100+/−20 lfpm inward flow and in which all air is exhausted directly from the cabinet through a HEPA filter without recirculation within the cabinet. All contaminated ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* These cabinets are recommended when small quantities of volatile, flammable, or toxic chemicals must be used coincidental with items requiring sterility.

(3) *Prohibitions.* While these cabinets do offer the greatest degree of safety for volatile, toxic, and flammable chemical handling in a sterile environment, they are not to be used in place of a fume hood for preparation of stock solutions of hazardous chemicals.

(e) *Class IIB$_3$ Biological Safety Cabinets*—(1) *Description.* A Class IIB$_3$ biological safety cabinet is one that meets all of the requirements of a Class IIB biological safety cabinet except that it recirculates most (typically 70 percent) of the air inside the cabinet. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* Minute amounts of non-flammable chemicals can be used coincidental with the use of low-to-moderate risk biological agents.

(3) *Prohibitions.* Flammable materials and more than minute amounts of toxic, radioactive, or volatile chemicals must not be used in these cabinets.

(4) *Additional Certifications or Requirements:* None.

§ 627.51 Class III Biological Safety Cabinets.

(a) *Description.* These cabinets (See Footnote [3]) are totally enclosed, ventilated cabinets of gas-tight construction. Operations are conducted through attached rubber gloves. The supply air is drawn into the cabinet through HEPA filters. The exhaust air is treated by double HEPA filtration, or by HEPA filtration followed by

[2] A line drawing of the Class II Biological Safety Cabinet is not included in this part but may be obtained from HQDA (DACS-SF), Mr. Wortley, room 2C717, Pentagon, Washington, DC 20310-0200 (703) 695-7291.

[3] A line drawing of the Class III Biological Safety Cabinet is not included in this part but may be obtained from HQDA(DACS-SF), Mr. Wortley, room 2C727, Pentagon, Washington, DC 20310-0200 (703) 695-7291.

incineration, and is not allowed to recirculate within the room.

(b) *Uses.* These cabinets provide the ultimate protection for personnel. These cabinets are suitable for low, moderate, and high risk etiologic agents.

(c) *Prohibitions.* More than minute amounts of flammables must not be used in these cabinets.

(d) *Certifications and Requirements.* (1) These cabinets will have a manometer or magnehelic gauge that indicates the negative pressure that is maintained inside the cabinet. The pressure inside the cabinet should be a minimum of 0.5 inches water gauge negative to the surrounding room.

(2) These cabinets will be pressure tested by the soap bubble/halogen leak test as prescribed in NSF Standard No. 49, Appendix B1 (latest revision June 1987), and certified, when the HEPA filter units are serviced.

§ 627.52 Fume hood.

Fume hoods in which etiologic agents are handled must use proven technologies to provide optimal containment. Fume hood placement, design, and capture testing requirements for use in the design of new laboratories can be found in the latest edition of Industrial Ventilation, A Manual of Recommended Practice, published by the American Conference of Governmental Industrial Hygienists.

(a) *Description.* Fume hoods are common chemical laboratory furnishings designed to capture fumes from chemicals that are used within them. Air is drawn through the opening and vented to the exterior without recirculation.

(b) *Uses.* Fume hoods provide excellent containment for handling hazardous chemicals.

(c) *Prohibitions.* Moderate risk biologicals and open containers of dry forms of toxins must not be used in a fume hood without HEPA filtration. Fume hoods should never be used when sterility is required.

(d) *Certifications and requirements.* (1) Inward air flow will be an average of 100 +/− 20 lfpm as measured at the face of the fume hood. Proper function of laboratory hoods is not only a function of face velocity. An evalution of the total operating environment is necessary.

(2) When filters are required, they will be certified by the mineral oil droplet (HEPA) or Freon (Charcoal) leak test as appropriate. Leakage through the filters will be less than 0.05 percent for Freon and 0.03% for oil droplets when initially installed.

(3) Fume hoods will be provided with indicator devices to give a warning should the ventilation system fail or if the hood face velocity falls below an average of 80 lfpm.

(4) Hood air flow will be certified when installed, when maintenance is performed on the ventilation system, and semiannually thereafter.

§ 627.53 Glove box.

(a) *Description.* A glove box is an enclosure that provides a positive barrier from liquids, solids, and chemical vapors. A glove box has viewing ports and glove ports for access. The box maintains personnel protection through solid barriers and maintenance of a negative pressure relative to its surroundings.

(b) *Uses.* Glove boxes are used when extreme containment is needed for highly toxic chemicals, especially for dry chemicals that can be swept out of containers by the airflow in hoods.

(c) *Prohibitions.* Unventilated boxes must not be used with volatile flammable materials and should not be used with volatile toxic materials unless dilution ventilation is provided.

(d) *Additional Certifications and Requirements.* (1) The glove box will be maintained at a pressure of at least 0.25 inches water gauge less than its surroundings.

(2) The pressure differential will be indicated by a manometer or magnehelic gauge. Indicator devices will display a loss of pressure below 0.25 inches water gauge.

(3) Gloves will be changed at appropriate intervals (dependent on the box contents) that will insure they provide the protection needed.

(4) Inlets that provide dilution air will be protected by HEPA filters.

§ 627.54 Ventilated balance enclosures.

(a) *Description.* A ventilated balance enclosure is a box that surrounds a balance and has a small open area for access and handling material in the front. Air is exhausted out the rear of the enclosure.

(b) *Uses.* A ventilated balance enclosure is used when containment of a balance is required for the weighing of hazardous materials that have a low vapor pressure (such as toxins). These enclosures are also used when it is desirable to utilize the balance in other than a fume hood (due to the turbulence and vibration) and when biological safety cabinets or glove boxes are inappropriate or unavailable. Dry forms of toxins may be weighed in these enclosures.

(c) *Prohibitions.* Very volatile or highly toxic volatile materials must not be handled in ventilated balance enclosures unless they are placed in closed containers in a properly functioning fume hood before being transferred to the balance enclosure.

(d) *Additional Certifications or Requirements.* (1) The flow through the openings in the enclosure will be at least 60 lfpm and must average between 60 and 80 lfpm.

(2) Containment will be certified prior to first use and annually thereafter by smoke tubes.

(3) The air flow will be certified initially and semi-annually by averaging readings taken from the face of the opening.

§ 627.55 Ventilated cage enclosures.

There are a number of cage-ventilated enclosures in which infected animals may be housed at levels corresponding to the various classes of bilogical safety cabinets. A brief description of four different types of animal ventilated cages is given below. This is not a complete description of all the different animal ventilated cages available. The proper functioning of these will be made initially, upon each connection to exhaust sources and at least annually. The inward flow rates on the partial containment systems and pressure checks on the total containment cages will be performed. Prior to selecting such equipment, an evaluation of the function and the equipment should be made, and the methods for testing and decontamation should be analyzed and documented.

(a) *Filter-top cages.* Small laboratory animal polystyrene or polycarbonate cage bottoms are fitted with a dome shaped glass fiber or polyester filter cage cover. The dome shaped filters help reduce the dissemination of aerosols, and the spread of infectious agents. Adequate ventilation around cages fitted with a dome shaped filter is essential since they may contain elevated ammonia and carbon dioxide levels, and high temperature and humidity. Ventilation recommendations in the NIH publication 86-23, 1985 Guide for the Care and Use of Laboratory Animals will be followed.

(b) *Forced ventilation cages.* This is a small HEPA-filtered animal cage connected to a centralized exhaust system. A minimum airflow of 0.03 m^3/min per cage is required. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

(c) *Cubicle-type isolation cage.* This is a partial containment unit which holds several animal cages. This unit is a negative pressure HEPA-filtered stainless steel cage. A minimum airflow of 0.3 m^3/min per cage is required for a 0.24 m^3 unit. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

(d) *Total containment cage.* This unit is a negative pressure or positive pressure HEPA-filtered stainless steel cage which has the filters incorporated into the design. It is halogen gas-leak tight and can be considered a Class III biological safety cabinet. A minimum airflow of 0.3 m^3/min per cage is required for a 0.24 m^3 unit. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

§ 627.56 Ventilated cage areas.

Ventilated cage areas are areas within a room that are solid-walled and bottomed areas for containing multiple cages housing infected animals. The containment for these areas is equivalent to the Class I biological safety cabinet. For testing purposes they will be treated the same as a Class I biological safety cabinet.

Appendix A to Part 627—References

Required Publications

Executive Order 12196
Safety and Health Programs for Federal Employees, 26 February 1980
9 CFR 102–104, 122
Animals and Animal Products
10 CFR Chapter 1
Nuclear Regulatory Commission
21 CFR 312, 600–680
Food and Drugs
29 CFR 1910
Occupational Health and Safety Administration Safety and Health Standards
39 CFR 111
Postal Service
40 CFR 1500–1506
Protection of Environment
42 CFR 71–72
Public Health Service Foreign Quarantine Regulations
49 CFR 172–173
The Department of Transportation.
AR 11–34
Army Respiratory Protection Program
AR 40–5
Medical Surveillance Program
AR 40–12
Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.
AR 40–14
Control and Recording Procedures for Exposure to Ionizing Radiation and Radioactive Materials
AR 40–66
Medical Record and Quality Assurance Administration
AR 70–65
Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities
AR 385–10
Army Safety Program
AR 385–40
Accident Reporting and Records
AR 385–BIO
Biological Defense Safety Program
AR 740–32
Responsibilities for Technical Escort of Dangerous Materials.
ASHRAE Standard 62
HHS Publication No. (NIH) 88–8395
Biosafety in Microbiological and Biomedical Laboratories
NIH Guidelines for Research involving Recombinant DNA Molecules
Federal Register 51: 7 May 1986
Postal Bulletin No. 21246
International Mail-Hazardous Materials
Dangerous Goods Regulations
International Air Transport Association (IATA), Publications Section, 2000 Peel Street, Montreal, Quebec, Canada H3A 2R4, Tel (514) 844–6311.
Guide for Adult Immunizations
Published by the American College of Physicians
Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates
The American Journal of Tropical Medicine and Hygiene, 29:1359–1381, 1980.
NSF Standard #49
National Sanitation Foundation Standard Number 49, Class II (Laminar Flow) Biohazard Cabinetry
Restricted Articles Tariff 6–D
Air Transport Association
Technical Instructions for the Safe Transport of Dangerous Goods by Air
International Civil Aviation Organization (ICAO) Intereg Group, 5724 Pulaski Road, Chicago, IL 60646, Tel. (312) 476–0900.

Additional References

ANSI Z88.1–1973
Breathing Air
Biohazards Reference Manual
American Industrial Hygiene Association, 1985
Bacterial Toxins: A Table of Lethal Amounts
Gill, D.M., Microbiological Reviews, Volume 46, Number 1; March 1982, pages 86–94.
Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639–3356
Compressed Gas Association Pamphlet G–7.1
Grade D Breathing Air
DHEW Pub. No. (NIH) 78–1165
Biological Safety Manual for Research Involving Oncogenic Viruses Guide for Transportation of Hazardous Materials, Vol. 4(1), February 10, 1975. Copies are obtained from the Office of Research Grants Inquiries, NIH, Department of Health, Education, and Welfare, 5333 Westbard Avenue, Bethesda, MD 20205.
Guidelines for Laboratory Design, Health and Safety Considerations
L. DiBerardinis, et. al., John Wiley and Sons, 1987
Guidelines for Prevention of Herpesvirus Simiae (B Virus) Infection in Monkey Handlers
Kaplan, J.E., et. al., Mortality and Morbidity Weekly Report, Volume 36, Number 41; October 23, 1987, pages 680–689.
Industrial Ventilation, A Manual of Recommended Practice, Published by the American Conference of Governmental Industrial Hygienists.
NIH publication 86–23
Guide for the Care and Use of Laboratory Animals, Packaging and Shipping of Biological Materials at ATCC
The American Type Culture Collection (ATCC), Copies are obtained from the ATCC, 12301 Parklawn Drive, Rockville, MD. 20852. Phone (301) 881–2600.
Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents
National Committee for Clinical Laboratory Standards (NCCLS), (H5–A2), Second edition, Vol. 5, No. 1. Copies are obtained from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.
The Centers for Disease Control, Office of Biosafety, 1600 Clifton Road N.E., Atlanta, Georgia 30333. Telephone (404) 639–3883, or FTS: 236–3883.

Appendix B to Part 627—Resource List for Immunoprophylaxis of Personnel at Risk

B–1.—RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK

Description of disease	Recommended product	Source for use in	Of product
Anthrax	Inactivated vaccine	Personnel working regularly with cultures, diagnostic materials, or infected animals.	USAMRIID.[1]
Botulism	Pentavalent toxoid (A,B,C,D,E) (IND).[2]	Personnel working regularly with cultures or toxin	CDC.[2]
Cholera	Inactivated vaccine	Personnel working regularly with large volumes or high concentrations of infectious materials.	Commercially available.
Diphtheria Tetanus (Adult)	Combined toxoid	All laboratory and animal care personnel irrespective of agents handled.	Commercially available.
Eastern equine encephalitis (EEE)	Inactivated vaccine (IND) [3]	Personnel who work directly and regularly with EEE in the laboratory.	USAMRIID.[1]

B–1.—RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK—Continued

Description of disease	Recommended product	Source for use in	Of product
Hepatitis A	Immune Serum Globulin [ISG (Human)].	Animal care personnel working directly with chimpanzees naturally or experimentally infected with Hepatitis A virus.	Commercially available.
Hepatitis B	Serum-derived or recombinant vaccine.	Personnel working regularly with human blood and blood components.	Commercially available.
Influenza	Inactivated vaccine	(Vaccines prepared from earlier isolate strains may be of little value to personnel working with recent isolates from humans or animals).	Commercially available.
Japanese Encephalitis	Inactivated vaccine (IND) [3]	Personnel who work directly and regularly with JE virus in the laboratory.	CDC.[4]
Measles	Live attenuated virus vaccine	Measles-susceptible personnel working with the agent or potentially infectious clinical materials.	Commercially available.
Meningococcal Meningitis	Purified polysaccharide vaccine	Personnel working regularly with large volumes or high concentrations of infectious materials (Does not protect against infection with group B meningococcus).	Commercially available.
Plague	Inactivated vaccine	Personnel working regularly with cultures or *Yersinia pestis*, or infected rodents or fleas.	Commercially available.
Poliomyelitis	Inactivated (IPV) and live attenuated (OPV) vaccines.	Polio-susceptible personnel working with the virus or entering laboratories or animal rooms where the virus is in use.	Commercially available.
Pox viruses (Vaccinia, Cowpox, or Monkey Pox viruses).	Live (lyophilized vaccinia virus)	Personnel working with orthopox viruses transmissible to humans, with animals infected with these agents, and persons entering areas where these viruses are in use.	CDC.[5]
Q Fever (Phase II) vaccine	Inactivated (IND) [3]	Personnel who have no demonstrable sensitivity to Q fever antigen and who are at high risk of exposure to infectious materials or animals.	USAMRIID.[1]
Rabies	Human diploid line cell inactivated vaccine.	Personnel working with *all strains* of rabies virus, with infected animals, or persons entering areas where these activities are conducted.	Commercially available.
Rift Valley Fever	Inactivated virus vaccine (IND) [3]	All laboratory and animal care personnel working with the agent or infected animals and all personnel entering laboratories or animal rooms when the agent is in use.	USAMRIID.[1]
Rubella	Live attenuated virus vaccine	Rubella-susceptible personnel, especially women, working with "wild" strains or in areas where these viruses are in use.	Commercially available.
Tuberculosis	Live, attenuated (BCG) bacterial vaccine.	BCG vaccine ordinarily is not used in laboratory personnel in the U.S.	Commercially available.
Tularemia	Live attenuated bacterial vaccine (IND).[2]	Personnel working regularly with cultures or infected animals or persons entering areas where the agent or infected animals are in use.	USAMRIID.[1]
Typhoid	Inactivated vaccine	Personnel who have no demonstrated sensitivity to the vaccine and who work regularly with cultures.	Commercially available.
Venezuelan equine (VEE) encephalitis.	Live attenuated (TC83) viral vaccine (IND).[2]	Personnel working with VEE and the Equine Cabassou, Everglades, Mucambo and Tonate viruses, or who enter areas where these viruses are in use.	USAMRIID.[1]
Western equine encephalitis (WEE).	Inactivated vaccine (IND) [3] with WEE virus.	Personnel who work directly and regularly in the laboratory.	USAMRIID.[1]
Yellow Fever	Liver attenuated (17D) virus vaccine.	Personnel working with virulent and avirulent strains of Yellow Fever virus.	Commercially available.

[1] For information, contact: U.S. Army Medical Materiel Development Activity, Fort Detrick, Frederick, MD 21701, telephone: (301) 663–7661.
[2] Investigational New Drug.
[3] Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639–3354.
Source: Adapted from recommendations of the PHS Immunization Practices Advisory Committee and Biosafety in Microbiological and Biomedical Laboratories.

Appendix C to Part 627—Laboratory Safety Inspection

Check List

C–1. The check list that follows is not an exhaustive list of the items that should be considered when inspecting facilities where etiologic agents are used; however, it does provide some basic guidelines that can be useful in reminding safety and non-safety professionals of the things that need to be considered in laboratories that they are responsible for. The check lists are designed to be used as follows: All areas should be inspected using the general list in C–2. Certain items are optional, such as radiation safety; if no radioactive material is present in the room, then this would not be applicable. For BL–1 facilities the list in C–2 is adequate, while BL–2, BL–3, and BL–4 facilities must use the list in C–2 together with the appropriate list in C–3 to C–5.

C–2. Basic Checklist.

a. Housekeeping

(1) Is the room free of clutter?
(2) Are all aisles from the work areas to the available exits maintained clear of obstructions?
(3) Are all safety equipment items unobstructed and ready for use?
(4) Is the room clean?

b. Fire Safety

(1) Is the fire extinguisher hung in its proper place, ready for use and unobstructed?
(2) Is there an excess of flammables located outside NFPA approved cabinetry?
(3) Are all IA flammables that are in breakable containers in pint or smaller containers?
(4) Are all IB flammables that are in breakable containers in liter or smaller containers?

c. Chemical Safety

(1) Are the chemicals stored with compatible materials?
(2) Have the chemical fume hoods been certified in the last 6 months?

(3) Are the eyewash and deluge shower unobstructed and ready for use?
(4) Is the eyewash and deluge shower tested regularly to document proper operation?
(5) Is the organic waste container maintained in a closed position?
(6) Are all reagents and solutions properly labeled?
(7) Is a spill kit within a reasonable distance from the work areas?
(8) Is appropriate protective clothing available for the chemical hazards present?
(9) Is there a written hazard communication program?
(10) Have the personnel in the laboratory been trained in the provisions and principles of the hazard communication program?
(11) Are MSDS's located where they are available to the laboratory workers?
(12) Is there a written chemical hygiene plan?

(d) Radiation Safety

(1) Are the radioactive materials stored double-contained?
(2) Is the containment for the radiation waste container adequate to preclude spread of radiation?
(3) Are all containers appropriately labeled with radiation labels?
(4) Are all entrances to the room appropriately labeled?

(e) Electrical Safety

(1) Are excess extension cords being utilized?
(2) Are there any frayed cords in the room?
(3) Are there any cords on the floor across normal traffic patterns in the room?

(f) General Laboratory Safety

(1) Are sharps discarded and destroyed in a safe manner?
(2) Are work surfaces decontaminated daily and after a spill?
(3) Is the appropriate attire worn by everyone in the room?
(4) Is there evidence that personnel eat, drink, smoke, or store items for such in the room?
(5) Was mouth pipetting observed?
(6) Are all gas cylinders secured and all cylinders that are not in use capped?
(7) Are cylinders of oxidizers stored at least 20 feet from cylinders of flammable gases in the same room?
(8) Are the cylinders clearly labeled as to the contents?
(9) Are the cylinders transported on appropriate dollies or hand trucks?
(10) Is there a written respiratory protection program where respirators are used?

(g) Etiologic Agents

(1) Are all containers of etiologic agents appropriately labeled:
(i) Are freezers, refrigerators and similar storage units labeled with the biohazard warning sign?
(ii) Are the storage and shipping containers adequate and properly labeled?
(2) Have all personnel been adequately trained in general microbiological techniques?
(3) Are laboratory doors kept closed when experiments are in progress?
(4) Are all operations conducted over plastic-backed absorbent paper or spill trays?

C–3. Biosafety Level 2 supplemental checklist.

(a) Are all floor drains filled with water or suitable disinfectant?
(b) Is the Standing Operating Procedure for an etiologic agent spill signed by all personnel who work with etiolgic agents in the room?
(c) If biological safety cabinets are used, have they been certified within the last year?
(d) Are the appropriate decontaminants available?
(e) Are all entrances to the laboratory posted with:
(1) The appropriate special provisions for entry?
(2) The universal biohazard symbol?
(3) The name and phone number of the laboratory director or other responsible person?
(f) Is entry limited and restricted?
(g) Were gloves being worn when handling infected animals or infectious or toxic materials?
(h) Is eye and respiratory protection being worn in rooms where non-human primates are present?
(i) If materials are being transported off-site for decontamination, is the containment adequate?

C–4. Biosafety Level 3 supplemental checklist.

(a) Is laboratory clothing decontaminated before being sent to the laundry?
(b) Are all windows and penetrations through the walls and ceilings sealed?
(c) If biological safety cabinets are used, have they been certified within the last year?
(d) Are the appropriate decontaminants available?
(e) Are all entrances to the facility posted with:
(1) The appropriate special provisions for entry?
(2) The universal biohazard symbol?
(3) The name and phone number of the laboratory director or other responsible person?
(f) Is entry limited and restricted?
(g) Were gloves being worn when handling infected animals or infectious or toxic materials?
(h) Is eye and respiratory protection being worn in rooms where non-human primates are present?
(i) Do the monitors indicate that the room is under negative pressure relative to all entrances?
(j) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?
(k) Is the autoclave being properly maintained and certified?
(l) Is the foot, elbow, or automatic handwash sink operating properly?
(m) Are all operations with etiologic agents being conducted inside of biological safety cabinets or other approved engineering controls?
(n) Are all infected animals housed using appropriate primary containment systems?
(o) Do all personnel who enter rooms housing infected animals wear appropriate respiratory protection?
(p) Do personnel who exit rooms having infected animals leave their protective clothing in the animal and laboratory rooms?
(q) If available, has the UV pass box output been certified within the last 3 months?

C–5. Biosafety Level 4 supplemental inspection checklist.

(a) General.
(1) Are all penetrations through the walls and ceilings sealed?
(2) Are the appropriate decontaminants available and used properly?
(3) Are all entrances to the facility posted with:
(i) The appropriate special provisions for entry?
(ii) The universal biohazard symbol?
(iii) The name and phone number of the laboratory director or other responsible person?
(4) Is access to the laboratory controlled strictly and documented?
(5) Do the monitors indicate that the room is under negative pressure relative to all entrances?
(6) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?
(7) Is the autoclave being properly maintained and certified?
(8) Is the foot, elbow, or automatic handwash sink operating properly?
(9) Do the self-closing doors to the facility operate properly?
(10) Do personnel completely exchange street clothing for laboratory clothing before entry, and shower upon exiting?
(11) Is the dunk tank disinfectant fresh and appropriate for the agents in use?
(b) Suit Areas.
(1) Are all operations with etiologic agents conducted in Class I or II biological safety cabinets?
(2) Do the procedures in place ensure that, as much as possible, the contamination remains inside the cabinets (such as ensuring that everything removed from within the cabinets, such as gloves being worn, instruments, glassware, etc., are decontaminated or properly packaged first)?
(3) Were the Class I or II cabinets in the facility certified within 6 months?
(4) Does the suit decontamination shower have adequate appropriate decontaminant available?
(5) Has the suit decontamination shower been used or tested in the last month?
(6) Is the ventilated suit air supply and emergency air supply adequate and working properly?
(7) Is the emergency alarm system working properly?
(8) Are all of the one-piece positive pressure suits available for use in serviceable condition?
(9) Are infected animals housed in appropriate primary containment systems?
(10) Is the static pressure in the suit area negative to all surrounding areas?
(c) Non-Suit Areas.
(1) Are all operations with etiologic agents conducted inside of Class III biological safety cabinets?
(2) Were the Class III biological safety cabinets certified before initiating the current operation?

(3) Are all infected animals housed in Class III cabinet containment caging systems?

Appendix D to Part 627—Packaging and Labeling Requirements for Shipment of Etiologic Agents

D–1. Packaging and Labeling of Etiologic Agents, from HHS publication No. (NIH) 88–8395.

D–2. Guidelines for the Air Shipment of Diagnostic Specimens, from the Air Transport Association of America, Cargo Services Division, 1709 New York Ave. NW., Washington, DC 20006.

Appendix E to Part 627—Permits for Importation and Shipment of Etiologic Agents

E–1. Permit Application to Import or Transport Agents or Vectors of Human Disease. Department of Health, Education, and Welfare, PHS, CDC, Office of Biosafety, Atlanta, Georgia 30333.

E–2. Permit Application to Import Controlled Material; Import or Transport Organisms or Vectors. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Building, Hyattsville, Maryland 20782.

Appendix F to Part 627—Glossary

Part I—Abbreviations

AIHA
American Industrial Hygiene Association
AMC
Army Materiel Command
AR
Army Regulation
ATCC
American Type Culture Collection
ASHRAE
American Society of Heating, Refrigerating and Air Condition Engineers, Inc.
BDP
Biological Defense Program
BL
Biosafety Level
CDC
Centers for Disease Control
CFR
Code of Federal Regulations
DA PAM
Department of Army Pamphlet
DOT
Department of Transportation
DNA
Deoxyribonucleic Acid
EPA
Environmental Protection Agency
EtO
Ethylene Oxide
FDA
Food and Drug Administration
HEPA
High Efficiency Particulate Air
HHS
Health and Human Services
IATA
International Air Transport Association
IBC
Institutional Biosafety Committee
ICAO
International Civil Aviation Organization
lfpm
Linear Feet Per Minute
m
Meter
min
Minute
MSDS
Material Safety Data Sheets
MSHA
Mine Safety and Health Administration
NCCLS
National Committee for Clinical Laboratory Standards
NCI
National Cancer Institute
NEPA
National Environmental Policy Act
NIH
National Institutes of Health
NIOSH
National Institute for Occupational Safety and Health
NRC
Nuclear Regulatory Commission
NSF
National Sanitation Foundation
OSHA
Occupational Safety and Health Administration
pH
The negative logarithm of Hydrogen Ion Concentration
PHS
Public Health Service
PPE
Personnel Protective Equipment
RCRA-Listed
Resource Conservation Recovery Act of 1976 Listed Hazardous Waste
RDT&E
Research, Development, Test, and Evaluation
RPO
Radiation Protection Officer
SALS
Subcommittee on Arbovirus Laboratory Safety
SAR
Supplied-Air Respirator
SCBA
Self Contained Breathing Apparatus
SOP
Standard Operating Procedure
TLV
Threshold Limit Value
USDA
United States Department of Agriculture
UV
Ultraviolet

Section II—Terms

Approved respiratory protection

Tested and listed as satisfactory according to standards established by a competent authority (such as NIOSH, MSHA, or host country agency) to provide respiratory protection against the particular hazard for which it is designed. For military agent protection, DA and DOD are the approval authorities. (Approval authority may be specified by law.)

Biocontainment area

An area which meets the requirements for a Biosafety Level 3 or 4 facility. The area may be an entire building or a single room within a building. See Subpart G for details.

Biological Safety Cabinets

Engineering controls designed to enable laboratory workers to handle infectious etiologic agents and to provide primary containment of any resultant aerosol. There are three major classes of cabinets (I, II, and III) and several sub-classes of class II cabinets. Each type of cabinet provides a different degree of protection to personnel and to the products handled inside them. The various classes of cabinets are described in detail in Subpart H.

Biosafety Level 1

The facilities, equipment and procedure suitable for work involving agents of no known or of minimal potential hazard to laboratory personnel and the environment.

Biosafety Level 2

The facilities, equipment and procedures applicable to clinical, diagnostic or teaching laboratories, and suitable for work involving indigenous agents of moderate potential hazard to personnel and the environment. It differs from BL–1 in that (1) laboratory personnel have specific training in handling pathogenic agents, (2) the laboratory is directed by scientists with experience in the handling of specific agents, (3) access to the laboratory is limited when work is being conducted, and (4) certain procedures in which infectious aerosols could be created are conducted in biological safety cabinets or other physical containment equipment.

Biosafety Level 3

The facilities, equipment and procedures applicable to clinical, diagnostic, research, or production facilities in which work is performed with indigenous or exotic agents where there is potential for infection by aerosol and the disease may have serious or lethal consequences. It differs from BL–2 in that (1) more extensive training in handling pathogenic and potentially lethal agents, is necessary for laboratory personnel; (2) all procedures involving the manipulation of infectious material are conducted within biological safety cabinets, other physical containment devices, or by personnel wearing appropriate personnel protective clothing and devices; (3) the laboratory has special engineering and design features, including access zones, sealed penetrations, and directional airflow; and (4) any modification of BL–3 recommendations must be made only by the Commander.

Biosafety Level 4

The facilities, equipment and procedures required for work with dangerous and exotic agents which pose a high individual risk of life-threatening disease. It differs from BL–3 in that (1) members of the laboratory staff have specific and thorough training in handling extremely hazardous infectious agents; (2) laboratory personnel understand the primary and secondary containment functions of the standard and special practices, containment equipment, and laboratory design characteristics; (3) access to the laboratory is strictly controlled by the Institute Director; (4) the facility is either in a separate building or in a controlled area within a building, which is completely isolated from all other

areas of the building; (5) a specific facility operations manual is prepared or adopted; (6) within work areas of the facility, all activities are confined to Class III biological safety cabinets or Class I or Class II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system; and (7) the maximum containment laboratory has special engineering and design features to prevent microorganisms from being disseminated to the environment.

Building

A structure that contains the requisite components necessary to support a facility that is designed according to the required Biosafety Level. The building can contain one or more facilities conforming to one or more Biosafety Level.

Confirmed Exposure

Any mishap with a BDP agent in which there was direct evidence of an actual exposure such as: a measurable rise in antibody titer to the agent, or a confirmed diagnosis of intoxication or disease.

Etiologic Agents

A viable microorganism, or its toxin which causes or may cause human disease, and includes those agents listed in 42 CFR 72.3 of the Department of Health and Human Services regulations, and any agent of biological origin that poses a degree of hazard similar to those agents.

Facility

An area within a building that provides the barriers appropriate to protect persons working in the facility and the environment external to the facility, and outside of the building.

High Efficiency Particulate Air (HEPA) Filter

A filter which removes particulate matter down to sub-micron sized particles from the air passed through it with a minimum efficiency of 99.97%. While the filters remove particulate matter with great efficiency, vapors and gases (e.g. from volatile chemicals) are passed through without restriction. HEPA filters are used as the primary means of removing infectious agents from air exhausted from engineering controls and facilities.

Human Lethal Dose

The estimated quantity of a toxin that is a minimum lethal dose for a 70 kilogram individual based upon published data or upon estimates extrapolated from animal toxicity data.

Commander or Institute Director

The commander or Institute Director of an Army activity conducting RDT&E with BDP etiologic agents, or the equivalent at a research organization under contract to the BDP.

Institution

An organization such as an Army RDT&E activity (Institute, Agency, Center, etc.,) or a contract organization such as a School of Medicine, or Research Institute that conducts RDT&E with BDP etiologic agents.

Laboratory

An individual room or rooms within a facility that provide space in which work with etiologic agents can be performed. It contains all of the appropriate engineering features and equipment required at a given Biosafety Level to protect personnel working in the lab and the environment external to the facility.

Large Scale Operations

Research or production involving viable etiologic agents in quantities greater than 10 liters of culture.

Maximum Containment Area

An area which meets the requirements for a Biosafety Level 4 facility. The area may be an entire building or a single room within the building. See chapter 7 for details.

Molded Masks

Formed masks that fit snugly around the mouth and nose and are designed to protect against non-toxic nuisance level dusts and powders. These do not require approval by NIOSH/MSHA. Masks made of gauze do not qualify.

Potential Accidental Exposure

Any accident in which there was reason to believe that anyone working with a BDRP agent may have been exposed to that agent, yet no measurable rise in antibody titer or diagnosis of intoxication or disease was made. However, the high probability existed for introduction of an agent through mucous membranes, respiratory tract, broken skin or circulatory system as a direct result of the accident, injury or incident.

Resource Conservation Recovery Act of 1976 Listed Hazardous Waste

The waste materials listed by EPA under authority of the RCRA for which the disposal is regulated by the Environmental Protection Agency. A description and listing of these wastes is located in 40 CFR part 261.

Suite

An area consisting of more than one room, and designed to be a functional unit in which entire operations can be facilitated. Suites may contain a combination of laboratories and/or animal holding rooms and associated support areas within a facility that are designed to conform to a particular Biosafety Level. There may be one or more suites within a facility.

Toxin

Toxic material of etiologic origin that has been isolated from the parent organism [4].

Kenneth L. Denton,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–4988 Filed 3–5–91; 8:45 am]
BILLING CODE 3710–08–M

[4] The publication "Bacterial Toxins: a Table of Lethal Amounts," (Gill, D.M. (1982) Microbiological Reviews, 46:86–94) contains a useful table of mammalian toxicities of numerous toxins.

OL
56
SS
44
IR
6
9 91
MI

federal register

Wednesday
March 6, 1991

Part IV

Federal Emergency Management Agency

44 CFR Part 353

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness; Final rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 353

RIN 3067-AB49

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule

SUMMARY: This rule adopts in final form part 353 of title 44 CFR, Emergency Management and Assistance, chapter 1, Federal Emergency Management Agency (FEMA), subchapter E, Preparedness. This Part establishes a fee charged to nuclear power plant licensees for services that FEMA contributes to site-specific radiological emergency preparedness activities for commercial nuclear power plants. FEMA's services contribute to the fulfillment of emergency preparedness requirements needed for the Nuclear Regulatory Commission's (NRC) licensing purposes under the Atomic Energy Act of 1954, as amended. This rule implements Title V of the Independent Offices Appropriations Act (IOAA) of 1952, 31 U.S.C. 9701, which authorizes the Federal Emergency Management Agency to recover to the fullest extent possible costs attributable to services to identifiable recipients.

EFFECTIVE DATE: This rule is effective April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Vernon Wingert, Chief, Program Development Branch, Technological Hazards Division, FEMA, Washington, DC 20472; 202-646-2872.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1989, FEMA published in the **Federal Register** (54 FR 27390-27396) a proposed rule to establish a fee system for the services provided by the agency to recipient licensees for services to support site-specific offsite radiological emergency preparedness for commercial nuclear power plants. The fees are based on site-specific costs incurred under FEMA's Radiological Emergency Preparedness (REP) Program in support of the Nuclear Regulatory Commission's (NRC) licensing process under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, *et seq.* These services are provided in support of a Memorandum of Understanding between NRC and FEMA (50 FR 15485, April 18, 1985) and regulations issued by both FEMA (44 CFR parts 350, 351 and 352) and NRC (10 CFR part 50). Emergency response plans and exercises are evaluated under joint FEMA-NRC criteria, NUREG-0654/FEMA-REP-1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee can submit a utility plan to the NRC (see 10 CFR part 50). FEMA, if requested by the NRC through the MOU, can make an assessment, finding and determination on such utility developed plans and exercises, that will be evaluated under the joint FEMA-NRC criteria.

After careful consideration, FEMA has prepared a final rule somewhat more narrow in scope than the proposed rule. The fees in this rulemaking are applicable only to services directly related to the obtaining and maintaining of an operating license. The primary differences between the proposed and final rule are the narrowing of activities eligible for reimbursement to the United States Treasury, including deletion of user fee charges for activities performed by FEMA in connection with continued review of State plans under 44 CFR part 350 once an operating license has been granted or the application has been denied or withdrawn. Licensees continue to be identified as recipients and payors of fees assessed for FEMA services due to the benefit of regulatory compliance with NRC requirements. The fee is based on Title V of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. 9701, which authorizes Federal agencies to recover to the fullest extent possible costs attributable to services to identifiable recipients.

Fee Development

A. Radiological Emergency Plans and Preparedness

Under the Radiological Emergency Preparedness (REP) Program, FEMA is responsible for processing applications for the review and approval of offsite radiological emergency plans and preparedness requested directly by a State under 44 CFR part 350 or by the NRC under the MOU (50 FR 15485, April 18, 1985) on behalf of the licensee. The REP Program also has responsibility for processing a licensee's certification when a request is made under Executive Order (E.O.) 12657 for Federal assistance and for providing such assistance, if warranted under 44 CFR part 352.

In identifying the site-specific services FEMA renders to licensees, it was determined that only those elements of the agency that provide such services benefitting licensees would be considered in the calculation of fees. These units are the Office of Natural and Technological Hazards/State and Local Programs and Support Directorate, the FEMA Regional Offices/Natural and Technological Hazards Divisions and the Office of General Counsel.

An estimate of the program's professional staff time is necessary to calculate the fee for site-specific offsite radiological emergency plans and preparedness services provided by FEMA. The costs of personnel who provide these services are included in the calculation of an average cost per work-year rate to maintain a professional employee who provides side-specific services that are billable for radiological emergency planning and preparedness activities. This rate has been developed by using: (1) The program's cost of personnel compensation (salaries) for professional REP and legal staff, (2) personnel benefits for the professional REP and legal staff, (3) administrative support (e.g., clerical salaries and benefits and printing), (4) travel and (5) overhead support (e.g., rent and utilities). This rate will be applied for site-specific services provided for licensees on a professional staff hourly rate basis of $39.00 per hour for FY 91, by FEMA staff. This rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the **Federal Register** for each fiscal year if the rate increases or decreases.

The professional staff hourly rate will be charged when any FEMA professional staff member works on a site-specific project that contributes to a licensee's compliance with the NRC's regulatory requirements. No charge will be made for work not related to a site-specific project.

Additional costs incurred by FEMA in the use of contractual services will be charged to the licensee by FEMA, at the rate and cost incurred.

Discussion of Comments on Proposed Rule

FEMA requested that comments on the proposed rule be submitted by August 28, 1989, followed by an extension to September 11, 1989. Thirty-one (31) written communications were received and placed in the Docket. These comments were received from eight (8) States, seventeen (17) utilities, two (2) utility associations, one (1) regulatory utility commissioners association, the Tennessee Valley Authority (TVA), one (1) city bar association and two (2) attorneys representing twenty-five (25) utilities and two (2) citizens.

A number of the comments were general in nature addressing FEMA's basic authority for promulgation of the regulation and the role of FEMA in the planning process. A general comment was directed to the question of the identification of the licensee as the ultimate beneficiary of FEMA's services and thus, responsible for the payment of fees. There were also a number of comments directed to specific sections of the regulation. These specific comments will be related to the applicable section discussed and the agency's response noted with supporting comments.

A. General Comments

The Role and Authority of FEMA in the Regulatory Process

Several commenters expressed the concern that FEMA's role is not that of a regulatory agency and, therefore, is not authorized to recover costs under Title V of the IOAA. However, FEMA's role as the lead agency for review and assessment of the adequacy of offsite emergency plans developed by State and local governments or licensees and their capability to implement such plans is an inherent and necessary part of the regulatory process (FEMA/NRC MOU). Pursuant to 10 CFR 50.47(a) (1) and (2), the NRC will not issue an operating license for a nuclear power plant unless a finding by FEMA is made that there exists reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. Therefore, FEMA's services convey the benefit of regulatory compliance for the licensee. Further, the IOAA does not explicitly state that only regulatory agencies may assess user fees pursuant to its authorities. It is used by many agencies, including FEMA, to charge for a number of services provided.

The authority for FEMA to assess user fees based on the IOAA was further questioned based on the assertion that FEMA's offsite preparedness activities provide benefits to the general public, as well as State and local governments, rather than to licensees. It is FEMA's intent to assess user fees only for site-specific activities which provide a direct benefit to the licensee. While there will be an offsite benefit to State and local governments in the increased level of preparedness, the ultimate benefit remains with the utility in complying with NRC licensing requirements. Indeed, the REP program and its attendant requirements and regulations would not exist were it not for the existence of commercial nuclear power plants and special safeguards necessary for protection of public health and safety. The aspect of separation of services where there is some public benefit is addressed in *Mississippi Power and Light* v. *United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979). The Court held that the NRC "is not required to segregate public and private benefits and that it may recover the full cost of providing a service to a private beneficiary, regardless of whether that service may also benefit the public."

Several commenters contended that FEMA cannot assess user fees where the licensees do not make requests directly to FEMA for its services based on the interpretations of the IOAA stating that user fee assessments must be incident to a voluntary act, i.e., at the request of the recipient. However, when utilities seek to obtain or maintain a license with the NRC, such requests are implicitly made of FEMA due to the necessity of FEMA assessments, findings and determinations in the NRC licensing process.

Some commenters asserted that in providing services incident to the FEMA/NRC MOU that FEMA's activities primarily benefit the NRC rather than the licensee. While FEMA is an integral part of the NRC's licensing process, that relationship does not change the fact that the ultimate beneficiaries of FEMA's activities are the utilities seeking to obtain and maintain an operating license. Further, concerns that user fees collected by FEMA in conjunction with NRC licensing activities will exceed the 45% limitation imposed by 42 U.S.C. 2213(b)(1)(a) are not applicable as the cited statute only limits user fee collections by the NRC.

There appears to be a general concern that FEMA's position as a fair and unbiased participant in the planning process may be jeopardized by the collection of fees and that FEMA would be compelled to concur in offsite planning activities to keep nuclear generating facilities in operation and, in turn, assess more user fees in the future. The precedent for collection of fees from licensees for services provided in support of commercial nuclear power plant licensing and other regulatory services is established in NRC regulation, 10 CFR part 170. Both in the circumstances set forth under 10 CFR part 170 and in this rule, fees collected are, in fact, remanded to the U.S. Treasury and are not available to the agency. FEMA will continue to receive appropriated funds for radiological emergency preparedness activities. Concerns were expressed that the agency will attempt to generate revenues by charging excessively for services. As FEMA will not benefit directly from the collection of fees, no incentive is present to bill for other than reasonable services provided.

Relationship to Executive Order 12657

On November 18, 1988, the President issued Executive Order 12657 (3 CFR 1988 comp. p. 611) "Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants." This Order was issued to ensure that adequate offsite radiological emergency planning and preparedness exist at commercial nuclear power plants for "decline and fail" situations, in order to satisfy the emergency planning requirements of the NRC for the issuance or retention of operating licenses.

Several comments were made with respect to the relation of this proposal to E.O. 12657. E.O. 12657 applies only to situations where a State or local government declines or fails to prepare adequate offsite radiological emergency plans or fails to participate adequately in demonstrating, testing, exercising or the using of such plans. The suggestion was made that this rulemaking should have been applied solely to the limited purpose of E.O. 12657.

While the procedures and costs established under this rule will also apply in the circumstances presented under Executive Order 12657, the establishment of fees for services within this rule has a much broader purpose. It is intended to apply to those situations where FEMA provides services that are of benefit to commercial nuclear power plant licensees in order to fulfill the broader Presidential initiative of recovering the cost of services provided by a Federal agency, as authorized under the IOAA.

Response to Section-Specific Comments

Section 353.4

Comment: A number of commenters expressed a concern that adequate accounting measures be developed to assure that procedures for the determination of costs incurred by FEMA and attributable to specific licensees provide a sufficient degree of accountability to ensure the reasonableness of fees to be assessed. Specifically, the provision of a fee ceiling or annual cap was suggested.

Discussion: FEMA's position in not establishing a ceiling on fees is

consistent with the NRC revision of fee schedules (10 CFR part 170) where the NRC fee ceiling was removed based on the concept that fees should be consistent with expenditures. Time-keeping procedures developed by the agency will track all site-specific FEMA services.

Response: No change.

Comment: FEMA site-specific cost estimates were requested to allow licensees to adequately project budget needs.

Discussion: It is estimated that the total cost recovery to the U.S. Treasury will be approximately $4 million to $6 million during the next year. The estimated fee that each licensee can expect to be charged will be based on the work performed at a specific site and will vary due to the complexity of the work accomplished.

Response: No change.

Comment: Several commenters were concerned that the proposed rule did not specify provisions for resolving disputed assessments where a licensee might question FEMA expenses.

Discussion: Disputed bills for services will be processed in accordance with FEMA Regulation, 44 CFR part 11, subpart C and procedures regarding debt collection in FEMA Manual 2610.1 (November, 1988). See § 353.7.

Response: No change.

Section 353.5

Comment: Several commenters suggested that the computation of hourly professional charges by combining the FEMA staff cost and contractual staff cost results in a duplicative charge.

Discussion: It is agreed that a more equitable system results from the computation of the hourly rate based on costs directly attributable to FEMA personnel. Contractual support will be charged separately at the rate and cost incurred.

Response: The fee schedule has been revised to implement a more equitable system of site-specific charges for FEMA and FEMA contract support services. See § 353.5.

Section 353.6

Comment: One State questioned whether the fee assessment would apply to exercises conducted for continued FEMA approval as defined in 44 CFR 350.9(c) (1) through (4).

Discussion: It is the intent of the agency for fees to apply to services required on a site-specific basis to assure that appropriate protective measures can be implemented in the event of a radiological emergency. This would include, but not be limited to the preparation, conduct and evaluation of all exercises and drills (including medical drills and remedial exercises) and review of plan revisions required by exercise-identified inadequacies.

Response: This has been clarified in the rule. See § 353.6(a).

Comment: Several commenters representing utilities expressed the concern that licensees are not the identifiable beneficiaries for certain categories of services contained in the rule because these services are not directly required for a utility's NRC license. Specifically, the recovery of fees for "formal review and approval" of State and local offsite plans developed pursuant to 44 CFR part 350 was questioned based on the position that formal part 350 approval is not required for issuance and maintenance of a nuclear power plant license.

Discussion: FEMA has accepted the view that, once an operating license has been granted or the application denied or withdrawn, continued review of State plans under 44 CFR part 350 will generally not have a direct impact on the license except insofar as it is necessary to support biennial exercises under 10 CFR part 50, appendix F. Because FEMA recognizes that there is some difficulty in distinguishing plan review activities which support such exercises from those that do not, FEMA has decided not to charge user fees for continued review of State plans under 44 CFR part 350 once an operating license has been granted or the application denied or withdrawn, except as noted in the next paragraph.

However, FEMA believes that activities that are directly related to biennial exercises of State and local plans are of benefit to the licensee because of the direct relationship between results of exercise activities and the maintenance of the license. Therefore, FEMA has decided to charge user fees for activities that are directly related to biennial exercises of State and local plans, or any other drill or exercise upon which maintenance of a license may be predicated, including but not limited to the following: Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, and post-exercise meetings and reports; review and approval of plan revisions that are exercise inadequacy-related; remedial exercise and medical drill preparation, review, conduct, participation, evaluation, meetings and reports and technical assistance that are exercise inadequacy-related.

Response: The rule has been revised to delete charges for formal reviews under 44 CFR part 350 once an operating license has been granted or the application denied or withdrawn, except as is necessary to support exercise related activities. See § 353.6.

Comment: Several commenters questioned whether it is appropriate for FEMA to charge the licensee for participation in site-specific adjudicatory proceedings, particularly where contested hearings are involved.

Discussion: FEMA recognizes that the NRC has adopted a policy of not charging user fees for contested hearings. However, FEMA views that policy as being within the NRC's discretion and not mandated by law. FEMA's participation in contested hearings related to site-specific concerns has a direct impact on receipt or retention of an operating license. FEMA, therefore, adopts a policy of imposing user fees for such participation.

Response: No change.

Comment: One commenter questioned the equity of charging a licensee for the FEMA investigation of third party allegations, particularly where the allegations are unfounded.

Discussion: The circumstances under which FEMA would be called upon to investigate a third party allegation are quite limited. FEMA does not intend to charge a user fee for such activities.

Response: The rule has been revised to make this clear. See § 353.6.

Comment: Several commenters questioned whether technical assistance to State and local governments should be an eligible cost if it is not a requirement for NRC licensing.

Discussion: There are some circumstances where technical assistance directly impacts the issuance and maintenance of a license and others where it does not. FEMA intends to impose user fees for technical assistance only where: (a) It is requested by a utility, or (b) it is requested by a State or local government in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license may be predicated.

Response: The rule has been changed to specify those circumstances under which technical assistance would be billed to the licensee. See § 353.6.

Comment: Two commenters noted that while the proposed rule specifically states that FEMA will not charge for services by another Federal agency to benefit a licensee, § 353.6(a) indicates that plan review by the Regional Assistance Committee is an eligible cost item.

Discussion: Fees for services in this rulemaking will apply only to FEMA personnel and FEMA contractors.

Response: Section 353.6(a) has been revised to remove language reflecting charges for other Federal agencies.

Comment: Charging fees for FEMA's response to an actual radiological emergency was questioned, because such a response was viewed as performing a fundamental government service not specific to the licensee, and, therefore, not properly the subject of the assessment of fees under the IOAA.

Discussion: FEMA, in response to the comments received, has determined not to include in its regulation user fees for FEMA's response to an actual radiological emergency. However, should such an event take place, FEMA will evaluate it on a case-by-case basis and reserves the option to consider and utilize whatever legal remedies may be available to secure compensation for its costs incurred in responding to a radiological emergency.

Response: Charges for this service have been deleted from § 353.6.

Regulatory Flexibility Certification

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

Environmental Assessment and Finding of No Significant Environmental Impact

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, "Environmental Considerations," that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. In support of this finding, an environmental assessment has been prepared which is available for inspection and copying for a fee in the Rules Docket. The changes made in the final rule do not require any modification to the prior "Environmental Assessment and Finding of No Significant Environmental Impact."

Regulatory Analysis

This rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions, and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no Regulatory Analysis is required.

Paper Work Reduction Act

This rule does not contain collection of information requirements and is not subject, therefore, to the Paper Work Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Federalism Executive Order

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee at the Rules Docket.

List of Subjects in 44 CFR Part 353

Nuclear power plants and reactors, Radiation protection, Intergovernmental relations and Federal assistance.

Accordingly, subchapter E chapter 1, title 44 Code of Federal Regulations is amended by adding part 353.

PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

353.1 Purpose.
353.2 Scope.
353.3 Definitions.
353.4 Payment of fees.
353.5 Average cost per FEMA professional staff-hour.
353.6 Schedule of services.
353.7 Failure to pay.

Appendix A to Part 353—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

Authority: 31 U.S.C. 9701; E.O. 12657 and E.O. 12148.

§ 353.1 Purpose.

This part sets out fees charged for site-specific radiological emergency planning and preparedness services rendered by the Federal Emergency Management Agency, as authorized by 31 U.S.C. 9701.

§ 353.2 Scope.

The regulation in this part applies to all licensees who have applied for or have received a license from the Nuclear Regulatory Commission to operate a commercial nuclear power plant.

§ 353.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the Nuclear Regulatory Commission.

(c) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance, as authorized in 44 CFR part 352 and E.O. 12657.

(d) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures; provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(e) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(f) *Governor* means the Governor of a State or his/her designee.

(g) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce and other Federal Departments and agencies as appropriate.

(h) *REP* means FEMA's Radiological Emergency Preparedness Program.

(i) *Fiscal Year* means Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(j) *Federal Radiological Preparedness Coordinating Committee* is the national level committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

§ 353.4 Payment of fees.

Fees for site-specific offsite radiological emergency plans and preparedness services and related site-specific legal services are payable upon notification by FEMA. FEMA services will be billed at 6-month intervals for all accumulated costs on a site-specific basis. Each bill will identify the costs related to services for each nuclear power plant site.

§ 353.5 Average cost per FEMA professional staff-hour.

Fees for FEMA services rendered will be calculated based upon the costs for such services using a professional staff rate per hour equivalent to the sum of the average cost to the agency of maintaining a professional staff member performing site-specific services related to the Radiological Emergency Preparedness Program, including salary, benefits, administrative support, travel and overhead. This rate will be charged when FEMA performs such services as: Development of exercise objectives and scenarios, pre-exercise logistics, exercise conduct and participation, evaluation, meetings and reports; review and approval of Plan revisions that are utility-requested or exercise inadequacy related; remedial exercise, medical drill or any other exercise or drill upon which a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports; the issuance of interim findings pursuant to the FEMA/NRC Memorandum of Understanding (MOU) (App. A of this part); review of utility plan submissions through the NRC under the MOU; utility certification submission review under 44 CFR part 352 and follow-on activities; site-specific adjudicatory proceedings and any other site-specific legal costs and technical assistance that is utility requested or exercise inadequacy related. The professional staff rate for FY 91 is $39.00 per hour. The referenced FEMA/NRC MOU is provided in this rule as appendix A. The professional staff rate for the REP Program and related legal services will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the Federal Register for each fiscal year if the rate increases or decreases.

§ 353.6 Schedule of services.

Recipients shall be charged the full cost of site-specific services based upon the appropriate professional hourly staff rate for the FEMA services described in this Section and for related contractual services which will be charged to the licensee by FEMA, at the rate and cost incurred.

(a) When a State seeks formal review and approval by FEMA of the State's radiological emergency response plan pursuant to 44 CFR part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA shall provide the services as described in 44 CFR part 350 in regard to that request and fees will be charged for such services to the licensee, which is the ultimate beneficiary of FEMA services. This provision does not apply where an operating license has been granted or the application denied or withdrawn, except as necessary to support biennial exercises and related activities. Fees will be charged for all FEMA, but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, meetings and reports.

(2) Review of plan revisions that are exercise-inadequacy related;

(3) Technical assistance that is exercise-inadequacy related;

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(b) Interim findings. Where the NRC seeks from FEMA under the FEMA/NRC MOU an interim finding of the status of radiological emergency planning and preparedness at a particular time for a nuclear power plant, FEMA shall assess a fee to the licensee for providing this service. The provision of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented.

(c) NRC utility plan submissions. Fees will be charged for all FEMA but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation and post-exercise meetings and reports.

(2) Notice and conduct of public meeting.

(3) Regional finding and determination of adequacy of plans and preparedness followed by review by FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness.

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(d) Utility certification submission review. When a licensee seeks Federal assistance within the framework of 44 CFR part 352 due to the decline or failure of a State or local government to adequately prepare an emergency plan, FEMA shall process the licensee's certification and make the determination whether a decline or fail situation exists. Fees will be charged for services rendered in making the determination. Upon the determination that a decline or fail situation does exist, any services provided or secured by FEMA consisting of assistance to the licensee, as described in 44 CFR part 352, will have a fee charged for such services.

(e) FEMA participation in site-specific NRC adjudicatory proceedings and any other site-specific legal costs. Where FEMA participates in NRC licensing proceedings and any related court actions to support FEMA findings as a result of its review and approval of offsite emergency plans and preparedness, or provides legal support for any other site specific FEMA activities comprised in this rule, fees will be charged to the licensee for such participation.

(f) Rendering technical assistance. Where FEMA is requested by a licensee to provide any technical assistance, or where a State or local government requests technical assistance in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license is predicated, FEMA will charge such assistance to the licensee for the provision of such service.

§ 353.7 Failure to pay.

In any case where there is a dispute over the FEMA bill or where FEMA finds that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11 subpart C to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

Appendix A to Part 353—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating to Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45

FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU is set out below except that an attachment is not included. This attachment concerns membership on a steering committee.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergency response plans [1] and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

II. Authorities and Responsibilities

FEMA—Executive Order 12148 charges the Director, FEMA, with the responsibility to "* * * establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2-101) and "* * * represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs." (Section 2-104.)

On December 7, 1979, the President in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources staffing levels and qualifications, and equipment adequacy). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy); or (3) plans are adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

[1] Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR part 350), and as noted in 44 CFR 350.3(f) may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

If in FEMA's view the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State and local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982 (47 FR 10758).]

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews. FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearings boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this document shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of Offsite Plans and Preparedness. NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and Evaluation of Joint Exercises. FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness

capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR Part 350. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. When there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

D. Emergency Planning and Preparedness Guidance. NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

E. Support for Document Management System. FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

F. Ongoing NRC Research and Development Programs. Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

G. Public Information, and Education Programs. FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria as appropriate in their respective jurisdictions.

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 3, 1985.

Samuel W. Speck.

Associate Director, State and Local Programs and Support.

Dated: January 25, 1991.

Wallace E. Stickney,

Director of FEMA.

[FR Doc. 91–5137 Filed 3–5–91; 8:45 am]

BILLING CODE 6718–20–M

federal register

Wednesday
March 6, 19[illegible]

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1991-1992 Hunting Regulations (Preliminary)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed 1991–92 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The taking of migratory birds is prohibited unless specifically provided for by regulation. These regulations will permit the taking of the designated species during the 1991–92 season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. These seasons provide recreational hunting opportunities to the public and aid Federal and State governments in the management of migratory game birds, and are designed to maintain harvests at levels compatible with migratory bird population and habitat conditions.

DATES: The comment period for proposed early-season regulations frameworks will end on July 22, 1991; and for late-season proposals on August 28, 1991. The public hearing for early-season regulations will be held on June 20, 1991, at 9 am. The public hearing for late-season regulations will be held on August 2, 1991, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to testify at either hearing may be mailed to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Notice of Intention To Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1991–92 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1991–92 hunting season, regulations will be proposed for certain designated members of the avian families: Anatidae (ducks, geese, brant, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and moorhens and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1991–92 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process were published in the March 14, 1990, Federal Register (55 FR 9618).

Regulatory Schedule for 1991–92

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed season frameworks are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the Federal Register. Also, additional supplemental proposals will be published for public comment in the Federal Register as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: The need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most waterfowl before late July.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1991–92 regulatory cycle relating to public hearings and Federal Register notifications are illustrated in the accompanying diagram. Dates shown relative to publication of Federal Register documents are target dates.

The proposed or final regulations section of this and subsequent documents outline hunting frameworks and guidelines that are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's Geese
8. Tundra Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico and Virgin Islands
21. Falconry
22. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining item numbers will be discontinuous and appear incomplete.

Hearings

Two public hearings pertaining to 1991–92 migratory game bird hunting regulations are scheduled. Both hearings will be conducted in accordance with 455 DM 1 of the Departmental Manual.

BEST COPY AVAILABLE

On June 22, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of migratory shore and upland game birds. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 2, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings.

Persons wishing to make a statement at these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Copies of statements should be filed with the Director before or during each hearing.

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments. Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. The Service will consider, but possibly may not respond in detail to each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various flyway councils:

DATE: March 24, 1991.

—Atlantic Flyway Council, 9:00 a.m.
—Mississippi Flyway Council, 8:30 a.m.
—Central Flyway Council, 8:30 am.
—Pacific Flyway Council, 9:00 am.
—National Flyway Council, 3:00 pm.

The Council meetings will be held at the Edmonton Convention Centre in Edmonton, Alberta, Canada.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

Prior to issuance of the 1991–92 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (18 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

A Determination of Effects approved by the Director, on February 5, 1991, concluded that the hunting frameworks being proposed for 1991–92 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1990. This analysis was updated for 1991. The 1991 FRIA update included waterfowl hunter and harvest information from the 1989–90 season. The summary of the 1991 update follows:

New information which can be compared to that appearing in the 1990 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1989 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1989–90 hunting season. The total 1989 fall flight of ducks and the fall flights in each flyway were predicted to be unchanged from those of 1988. However, because of the continued poor status of ducks, hunting regulations were developed that maintained the reduced hunting opportunity that was established in the 1988–89 season. Hunter numbers remained unchanged, but waterfowl hunters spent more days afield than in the previous year. Many non-regulatory factors influence hunter participation. This was evident during the 1989–90 hunting season, when waterfowl hunters spent 8% more days hunting and bagged 25% more ducks than in 1988–89, while season length and bag limits remained unchanged.

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES.**

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act of 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–711) and the Fish and Wildlife Improvement Act of 1978, as amended, (92 Stat. 3112; 16 U.S.C. 712).

Dated: February 6, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

Proposed 1991–92 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting migratory game birds during the 1991–92 season are proposed. Changes or possible changes, when noted, are in relation to 1990–91 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive; shooting hours, unless otherwise specified, are one-half hour before sunrise to sunset; and possession limits, unless otherwise specified, are twice the daily bag limit. Items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

1. *Ducks.* (Possible change.) Pending the availability of current information on duck populations, harvest, and habitat conditions, and the receipt of recommendations from the four Flyway Councils, specific duck framework proposals for opening and closing dates, season lengths, and bag limits are deferred. Closed seasons will be considered by the Service if they are warranted.

There are several possible changes that the Service can address in this document. These include the evaluation of framework dates for regular duck seasons, the evaluation of September duck seasons, delineation of canvasback populations and regulation criteria, review of implementation alternatives for stabilized regulations, and the "open season" for States to modify their usage of zones and splits.

A. *Framework Dates for Regular Duck Seasons:* During the 1990 regulations-development cycle, the Service was requested to consider setting framework dates on a permanent basis (i.e., no longer using framework dates to regulate duck harvest). Framework dates are uniform within a flyway and routinely have been either fixed (e.g., an exact date) or floating (e.g., the first Saturday in October). Although framework dates have been changed in response to changes in duck abundance, the dates typically have been between the first week of October and the third week of January. Generally, northern States prefer the opening date to be as early as possible in October, while southern States prefer closing dates to be as late as possible in January. These date preferences reflect the availability of ducks and weather conditions in each State. Mid-latitude States generally are not affected by different framework dates.

The Service currently uses framework dates in combination with other measures in the management of duck harvest levels. The Service agreed to review the role of framework dates in regulating harvest levels. This review will be available in draft form for comment by the Flyway Council Technical Sections during the spring of 1991.

B. *September Duck Seasons:* In 1961, the Service offered Florida, Kentucky, and Tennessee the opportunity to conduct experimental 5-day September duck seasons targeted at blue-winged teal and southern wood ducks. The daily bag limit was 4 birds, only 1 of which could be a species other than teal or wood duck. Memoranda of Agreement between the Service and individual States outlined evaluation procedures for the 1961–63 hunting seasons, which focused on assessing the impacts on wood ducks and non-target waterfowl. Although the three States completed their evaluations and submitted final reports, questions remained about the effects of these seasons and they were continued on an experimental basis. Declines in the survival rates of local wood ducks precipitated a reduction in the daily bag limit to 2 wood ducks in Kentucky and Tennessee in 1986. In 1988, all species except wood ducks were excluded from the September seasons, and the bag limit in Florida was reduced to 3, in response to concerns over the status of continental duck populations. In the June 7, 1988, **Federal Register** (53 FR 20875), the Service asked the Atlantic and Mississippi Flyway Councils to review existing wood duck harvest strategies and give consideration to their proper evaluation. In the March 14, 1990, **Federal Register** (55 FR 9622), the Service gave notice that unless arrangements could be made to initiate regional banding programs and to facilitate widespread data collection, the experimental seasons in Florida, Kentucky, and Tennessee might be modified further or suspended.

In September 1990, representatives from the Service and the Atlantic and Mississippi Flyway Technical Sections met to discuss ways to improve capabilities for monitoring and managing wood duck populations. The feasibility of implementing these improvements will be considered by the Flyway Technical Sections and Councils at their 1991 winter meetings. The Service is encouraged by this recent initiative and, therefore, does not propose to modify or discontinue the September duck seasons in Florida, Kentucky, and Tennessee in 1991. The Service believes this position is justified because the Flyway Councils and the three States involved are continuing efforts to evaluate these seasons and no adverse impacts on wood duck populations are apparent. However, continuation of these seasons beyond 1991 will be contingent upon the ability of the Flyway Councils and States to demonstrate significant progress in developing regional wood duck monitoring plans and evaluation and decision criteria for September wood duck seasons.

In the September 21, 1990, **Federal Register** (55 FR 38901), the Service published a strategy governing the use of shooting hours, which allows shooting to begin at one-half hour before sunrise during the regular duck season, or any season in which most species of ducks can be legally taken. For species-specific seasons, however, shooting hours will begin at sunrise unless States can demonstrate that the impact of pre-sunrise shooting on non-target populations is negligible. With respect to September duck seasons in Florida, Kentucky, and Tennessee, shooting hours have always begun at one-half hour before sunrise. This practice would be consistent with the Service's shooting hours strategy if most species of ducks could be legally taken. However, since 1988, September duck seasons have been limited to wood ducks only. Therefore, the three States involved will be allowed to continue pre-sunrise shooting during their September season under the condition that they conduct studies or provide information that demonstrates a negligible impact on species other than wood ducks. Unless such information is provided or studies initiated, shooting hours for the September wood duck seasons will begin at sunrise during the 1991 season.

C. *Canvasback Harvest Guidelines:* The Service announced in the harvest management strategies developed for the 1990 duck hunting season that it intended to continue using the decision criteria stated in the "1983 Environmental Assessment on Canvasback Hunting" as a basis for managing Western and Eastern Populations for that year. However, the Service recommended that Flyway Councils review the bases for the current guidelines to determine whether these criteria are still appropriate. Presently, these guidelines call for consideration of all possible actions, including season closure, in order to maintain 3-year average breeding population indices (BPI's) above specific levels.

Canvasbacks are among the least abundant of the harvested duck species and have a long history of season closures and various restrictive harvest strategies. The lack of an adequate database, particularly banding data, has limited any meaningful evaluation of hunting impacts and has hindered the development of a consistent harvest strategy for canvasbacks.

The fundamental questions prompting a review of canvasback harvest guidelines at this time include:

i. Whether existing guidelines based on specific BPI levels are the most appropriate harvest strategy for maintaining desired population levels; and, if not, what new approaches should be considered?

ii. Whether the delineation of the breeding survey area (strata 1–50) into a Western population (strata 1–12 and 26–29) and an Eastern Population (strata 13–25 and 30–50) correctly represent two distinct populations; and, if not, should harvest management by population units be continued?

The Service will work with the Flyway Councils in accomplishing the review recommended above. It is doubtful that this process can be completed for the 1991–92 season.

D. *Stabilized Regulations:* In 1988, the Service prepared a programmatic document entitled "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)". In this document, alternatives for promulgating framework regulations (i.e., opening/closing dates, season length, daily bag limits, shooting hours) were considered. The Service chose as its preferred alternative "stabilized regulations", in which frameworks would remain relatively constant for fixed periods of time, but would be subject to annual review and modification as dictated by waterfowl population status. Stabilized regulations have many advantages, including improved ability to discern the effects of regulations on populations, more efficient use of resources to achieve migratory bird objectives, and greater predictability in the regulations setting process. Therefore, the Service proposes to develop guidelines to govern the use of stabilized regulations for ducks, including: (1) Frameworks that are appropriate for various population levels, with special considerations for species of concern, and (2) criteria for changing frameworks, such as changes in breeding populations, recruitment, or harvest rates. In accordance with the Supplemental Environmental Impact Statement, the Service hereby requests assistance from the Flyway Councils, States, and other interested parties in accumulating necessary data and in developing harvest guidelines. The Service will then prepare draft guidelines for public review and comment in 1992.

E. *Zones and splits for duck seasons:* In 1988, the Service initiated reviews of several regulatory tools for managing the harvest of ducks. One of these reviews involved zones, which have been operating under a moratorium since 1985, and split seasons, which have been operating under a partial moratorium since 1986. This review revealed that it was not possible to determine the effects of zones and split seasons at the State level. The ability to examine the cumulative effect of zones and splits was somewhat better, and this assessment suggested that these regulatory tools, as used in the past, had not increased continental harvest pressure on ducks.

Nonetheless, the ability to predict the impact of additional zones and split seasons is poor, and the Service felt that some limits should be imposed. Consequently the Service, with assistance from the Flyway Councils, developed a strategy to guide the future use of these regulatory options and published this strategy in the September 21, 1990, **Federal Register** (55 FR 38901). In accordance with the implementation schedule for that strategy, 1991 will be the first of the periodic "open seasons" in which modifications to zones and split seasons can be made.

States planning to change their use of zones and split seasons under the new guidelines in 1991 should advise the Service in writing as soon as possible so that proposed changes may be reviewed prior to the July regulations meetings. Proposed changes must adhere to the guidelines in the above-mentioned **Federal Register** document.

The Service should also be notified by States wishing to take advantage of the "grandfather clause" to continue a zone/split-season configuration that does not adhere to the new guidelines, but which was developed under the Service's 1977 zoning criteria published in the May 25, 1977, **Federal Register** (42 FR 26671). States that have not fulfilled obligations for evaluation as specified in Memoranda of Agreement must complete those requirements or they will be subject to the new, more restrictive guidelines. Major changes in zone boundaries from previous years will not be permitted under the grandfather clause, although some minor modifications of an administrative nature may be allowed.

After the 1991 hunting season, modifications to zone/split-season configurations will only be permitted at 5-year intervals (i.e., 1996, 2001, etc.). However, States may abandon the use of zones or 3-way split seasons in favor of a Statewide continuous or 2-way split season at any time. Five years after any modification of zones or 3-way split seasons, States will be asked to review the effects of that modification.

2. *Sea ducks.* (No change.) A maximum open season of 107 days is proposed during the period between September 15, 1991, and January 20, 1992, with a daily bag limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, in special sea duck hunting areas (as described in the August 14, 1990, **Federal Register** at 55 FR 33270), provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. These limits may be in addition to regular duck bag limits during the regular duck season in the special sea duck hunting areas. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

3. *Mergansers.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The daily bag limit is 5 mergansers, including no more than 1 hooded merganser. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks.

4. *Canada Geese.* (No change.) The Canadian Wildlife Service, the four waterfowl Flyway Councils, State conservation agencies, and others traditionally provide population and harvest information used in setting annual regulations for geese and brant. The Midwinter Waterfowl Survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1991 will provide additional information. Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1990–91 are anticipated at this time.

With the increase in resident Canada goose flocks in many parts of the nation, the Service has endorsed the concept of special seasons to control numbers of local breeders and/or nuisance

problems. Criteria for special early seasons were addressed in the June 7, 1988, Federal Register (53 FR 20677), but the Service recognizes the need, in certain circumstances, for special late seasons. The Service herein proposes to develop guidelines, including criteria, to provide for the implementation of special late Canada goose seasons, and will solicit comments from Flyway Councils. Any criteria developed will be published for public comment before being implemented.

5. *White-fronted Geese.* (No change.) See item number 4.

6. *Brant.* (No change.) See item number 4.

7. *Snow and Ross's Geese.* (No change.) See item number 4.

8. *Tundra Swan.* (No change.) In Alaska, Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the *Atlantic Flyway.*

—The season will be experimental.
—The season may be 90 days and must occur during the white goose season, but may not extend beyond January 31.
—The States must obtain harvest and hunter participation data.
—In New Jersey, no more than 200 permits may be issued.
—In North Carolina, no more than 6,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the *Central Flyway.*

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.
—In North Dakota, no more than 1,000 permits may be issued. The season must run concurrently with the season for taking light geese.
—In South Dakota, no more than 500 permits may be issued. The season must run concurrently with the season for taking light geese.

In the *Pacific Flyway* (except Alaska).

—A 93-day season may be selected between the Saturday closest to October 1 (September 30, 1991), and the Sunday closest to January 20 (January 21, 1992). Seasons may be split into 2 segments.
—The States must obtain harvest and hunter participation data.
—In Utah, no more than 2,500 permits may be issued.
—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, or Pershing Counties.
—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, or Toole Counties.

In *Alaska.*

—The season will be experimental.
—The season must run concurrently with the duck season.
—The State must obtain harvest and hunter participation data and report the results to the Service by June 1, 1992.
—No more than 300 permits may be issued. Permits will be valid in Gam, Management Unit 22.

9. *Sandhill cranes.*

Central Flyway—Regular seasons (No change). Pending evaluation of harvest data from the 1990–91 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas outside the range of the Rocky Mountain Population of sandhill cranes, with no substantial changes in dates from the 1990–91 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1990–91 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1–November 30, 1991; except September 1, 1991–January 31, 1992, in the Hatch-Deming Zone of southwestern New Mexico.

B. Season(s) in any State or zone may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession, while hunting, a valid permit issued by the appropriate State.

E. Numbers of permits, areas open, season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

F. All hunts, except those in Arizona, Wyoming, and the Middle Rio Grande Valley of New Mexico, will be experimental.

10. *Coots.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 coots, concurrent with the regular duck season; while States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules, between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93 days.

11. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons of not more than 70 days between September 1, 1991, and January 20, 1992. Any State may split its moorhen/gallinule season into two segments without penalty. The daily bag limits may not exceed 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons to occur between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93 days. The daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

12. *Rails.* (No change.) The States included herein may select seasons between September 1, 1991, and January 20, 1992, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails.

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag limits may not exceed 10 clapper and king rails, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, SouthCarolina, North Carolina, and Virginia, the daily bag limits may not exceed 15 clapper and king rails, singly or in the aggregate of these two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails.

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

13. *Common snipe.* (No change.) The Service completed a preliminary assessment of the framework closing date for snipe. The Service believes that a closing date of February 28 will not negatively impact snipe populations because snipe, in contrast to woodcock, tend to nest in more northern areas and at a later date. In addition, there is currently no indication of a declining trend in snipe populations.

States may select hunting seasons between September 1, 1991, and February 28, 1992, not to exceed 107 days. Daily bag limits may not exceed 8 snipe. Any State may split its snipe season into two segments.

14. *Woodcock.* (Possible change.) The Service, in cooperation with the Flyway Councils, is reviewing the framework closing date, based on concern about the potential impacts of woodcock harvest during late winter and during spring migration to their breeding areas in light of the downward trend of woodcock populations in both the Eastern and Central Regions. Before 1970, the closing framework date offered by the Service for woodcock hunting seasons could be no later than January 31. In 1970, States were offered a February 15 woodcock season closing date. Starting in 1972, the Federal framework closing date was shifted to the last day in February. Subsequently, there were reports of nesting woodcock being shot during February seasons in some southern States. In 1985, the Service responded to declining breeding populations in the Eastern Region by moving the closing date to January 1 as part of a broader harvest-reduction package. The closing framework date for Central-Region States remained the last day of February. Four Central-Region States (Arkansas, Louisiana, Mississippi, and Tennessee) currently select woodcock seasons ending in February. In 1988, Pennsylvania (through the Atlantic Flyway council) asked the Service to discontinue this option. Pennsylvania felt that late-season mortality also affected the Eastern Region woodcock that winter in the southern States of the Central Region. In 1989, the Northeast Association of Fish and Wildlife Resource Agencies, the Ruffed Grouse Society, National Audubon Society, and the State of Alabama suggested that the Service restrict the option of hunting woodcock in February. In the August 14, 1990, Federal Register (55 FR 33266), the Service stated its intent to work with the Flyway Councils to develop background materials on hunting of woodcock in February. However, the Service stated that unless sufficient justification was developed to continue February woodcock hunting, the Service would propose a change.

The Service proposes changing the outside closing date for hunting woodcock to January 31 based on the following reasons: (1) Breeding occurs earlier and at higher densities in the South than was previously believed; (2) there are indications of long-term breeding population declines in both the Eastern and Central Regions; (3) hunting mortality is more likely to adversely affect the population dynamics of woodcock when it occurs immediately before or during the breeding season; (4) sportsmen express concern when woodcock flushed and shot during February seasons are found to have been nesting or contain eggs in their reproductive tracts; and (5) the impact on the population status of woodcock would be even greater if more States select February seasons.

The hunting of a few other migratory bird species is permitted during February (e.g., common snipe, snow geese). However, those situations are distinct from this proposal because those species are not declining and are not beginning their reproductive season at that time. The Service reiterates its request for any additional information that the States or Flyway councils may be able to provide. The Service proposes a framework closing date of January 31 pending any new proposals or information that may be provided.

A. *Central and Mississippi Flyways.*

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with a daily bag limit of 5 woodcock, to occur between September 1, 1991 and January 31, 1992. States may split their woodcock season without penalty.

B. *Atlantic Flyway.*

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with a daily bag limit of 3 woodcock, to occur between October 1, 1991, and January 31, 1992. States may split their woodcock season without penalty.

New Jersey may select seasons by North and South zones divided by State highway 70. The season in each zone may not exceed 35 days.

15. *Band-tailed pigeons.* (No change.)

A. *Pacific Coast States* (California, Oregon, Washington, and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey). These States may select hunting seasons not to exceed 16 consecutive days between September 15, 1991, and the Sunday closest to January 1, 1992. The daily bag and possession limits may not exceed 2 band-tailed pigeons.

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

i. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

ii. The remainder of the State.

The season in the north zone of California must close by October 6.

B. *Four-Corners States* (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1991. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1991, in the North Zone, and October 1 and November 30, 1991, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

16. *Mourning doves.* (No change.) Pending results of the call-count survey and receipt of additional information and recommendations, the Service proposes the following frameworks during the 1991–92 hunting season. Outside framework dates will be September 1, 1991, and January 15, 1992, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units are offered an option of a season length of 70 days with a daily bag limit of 12, or a season length of 60 days with a daily bag limit of 15 birds. EMU and CMU States may select hunting seasons by zone without penalty and split the season into not more than 3 segments. In the Western Management Unit (WMU), seasons in Idaho, Nevada, Oregon, Utah, and Washington may not exceed 30 consecutive days between September 1, 1991, and January 15, 1992; and seasons in Arizona and California may not exceed 60 days to be split between 2 periods, September 1–15, 1991, and November 1, 1991–January 15, 1992. The daily bag limit is 10 mourning doves.

17. *White-winged and white-tipped doves.* (Possible change.) The Service

proposes the following frameworks during the 1991–92 season: Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1991, and daily bag limits as stipulated below.

A. *Arizona* may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season (see mourning dove frameworks-WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves.

B. *Nevada*, in the counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit of mourning doves and white-winged doves may not exceed 10, singly or in the aggregate. The season length must conform to the mourning dove season (either a 60-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks-WMU above).

C. *New Mexico* may select a hunting season with daily bag limits not to exceed 12 (or 15 if the 60-day option for mourning doves is selected) white-winged and mourning doves, singly or in the aggregate of the two species. Dates, limits, and hours are to conform with those for mourning doves.

D. *Texas* may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. In that portion of the special area north and west of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In that portion of the special area south and east of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. The experimental daily bag limits are dependent on annual review of the special white-winged dove season. The Service remains concerned about the status of white-winged doves in this portion of Texas and, pending 1991 breeding population information, may consider modification of this season and other alternative actions.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1991 (September 20, 1991, in South Zone), and January 25, 1992, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and 2 may be white-tipped doves.

E. *Florida* may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1991, and January 15, 1992, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings.

16. *Migratory bird hunting seasons in Alaska.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1991–92

Outside Dates: Between September 1, 1991, and January 26, 1992 Alaska may select seasons on waterfowl, snipe, sandhill cranes, and tundra swans subject to the following limitations:

Hunting Seasons:

Ducks, geese, and brant—Not more than 107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10-except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State, there is no open hunting season for Aleutian Canada geese, cackling Canada geese, and emperor geese.

Snipe and sandhill cranes—An open season must be concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of not more than 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. These basic limits may not include more than 2 pintails daily and 6 in possession, and 2 canvasback daily and 6 in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swan—In Game Management Unit 22, an experimental open season for tundra swans may be selected subject to the following conditions:

A. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

B. The season must be concurrent with the duck season.

C. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1, 1991.

19. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, as has been done in the past, and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1991, and January 15, 1992; the length may not exceed 60 (or 70 under the alternative) days; and the daily bag limits may not exceed 15 (or 12 under the alternative) doves. Other applicable Federal regulations relating to migratory game birds shall also apply.

20. *Puerto Rico and the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1991–92

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1, 1991, and January 31, 1992, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into 2 segments.

Daily Bag Limits:

Ducks—Not to exceed 3 daily, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyrua dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica carabaea*).

Common Moorehens—Not to exceed 6 daily, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily.

Closed Areas: There is no open season for ducks, common moorhens, or snipe in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1991, and January 15, 1992, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Vieques Island—closed due to habitat destruction caused by hurricane Hugo.

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (Amazona vittata), presently listed as an endangered species under the Endangered Species Act.

Cidra municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 783, south on Highway 783 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1991–92

Ducks

Outside Dates: Between December 1, 1991, and January 31, 1992, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag Limits: Not to exceed 3 daily, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyrua dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1991, and January 15, 1992, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamose*)—red-necked pigeon, scaled pigeon.

21. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods, the combined length for the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1991 and March 10, 1992.

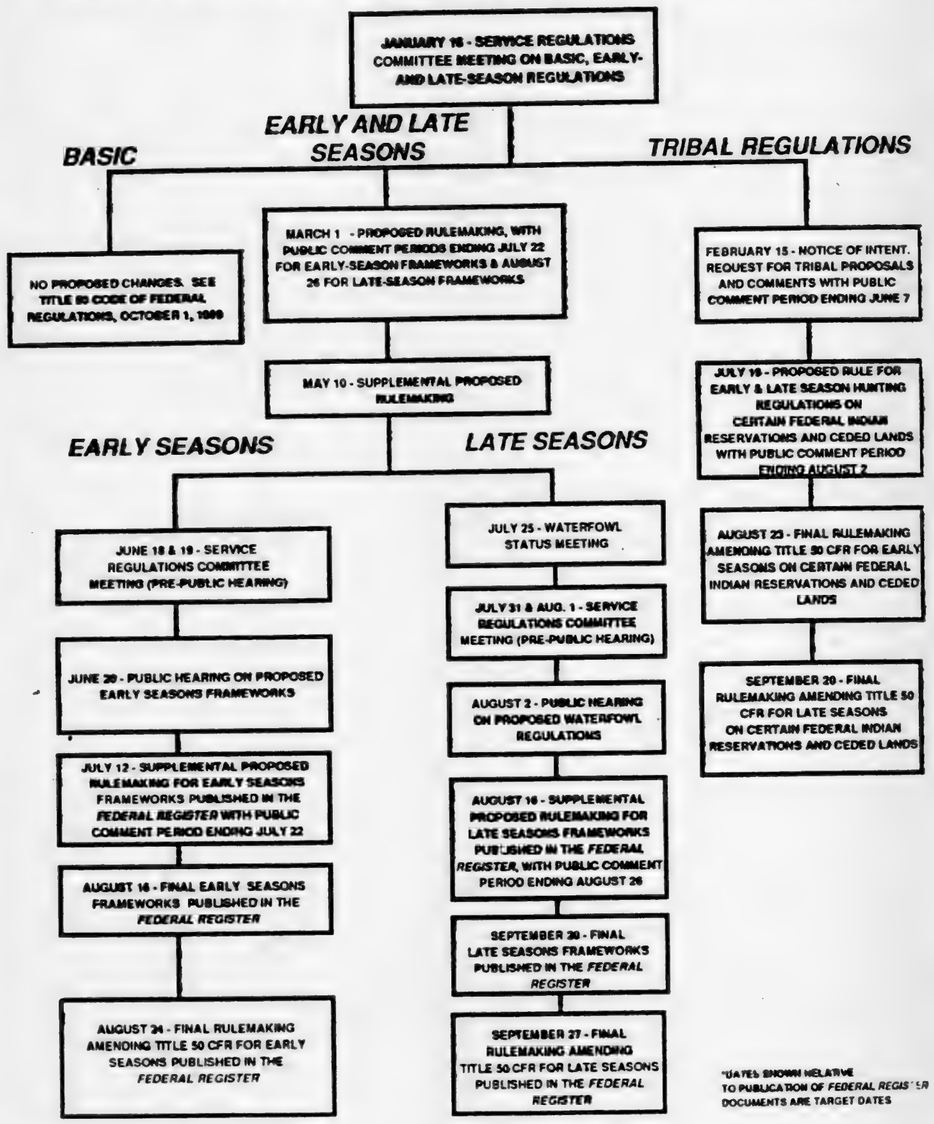
Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regular Seasons: General hunting regulations, including seasons and hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Note: The extension of this framework to include the period September 1, 1990-March 10, 1991, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and may be evaluated in cooperation with States offering such extensions after a period of several years.

BILLING CODE 4310-55-M

1991 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*



*DATES SHOWN RELATIVE TO PUBLICATION OF *FEDERAL REGISTER* DOCUMENTS ARE TARGET DATES

[FR Doc. 91-5178 Filed 3-5-91; 8:45 am]
BILLING CODE 4310-55-C

federal register

Wednesday
March 6, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Chapter I

Final Fair Housing Accessibility Guidelines

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

[Docket No. N-91-2011; FR 2665-N-06]

Final Fair Housing Accessibility Guidelines

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Final Fair Housing Accessibility Guidelines.

SUMMARY: This document presents guidelines adopted by the Department of Housing and Urban Development to provide builders and developers with technical guidance on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. Issuance of this document follows consideration of public comment received on proposed accessibility guidelines published in the **Federal Register** on June 15, 1990. The guidelines presented in this document are intended to provide technical guidance only, and are not mandatory. The guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix II to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. II). The preamble to the guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III).

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410-0500, telephone (202) 708-2618 (voice) or (202) 708-0015 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Adoption of Final Guidelines

The Department of Housing and Urban Development (Department) is adopting as its Fair Housing Accessibility Guidelines, the design and construction guidelines set forth in this notice (Guidelines). Issuance of this document follows consideration of public comments received in response to an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines, published in the **Federal Register** on August 2, 1989 (54 FR 31856), and in response to proposed accessibility guidelines published in the **Federal Register** on June 15, 1990 (55 FR 24730).

The Department is adopting as final Guidelines, the guidelines designated as Option One in the proposed guidelines published on June 15, 1990, with modifications to certain of the Option One design specifications. In developing the final Guidelines, the Department was cognizant of the need to provide technical guidance that appropriately implements the specific accessibility requirements of the Fair Housing Amendments Act of 1988, while avoiding design specifications that would impose an unreasonable burden on builders, and significantly increase the cost of new multifamily construction. The Department believes that the final Guidelines adopted by this notice (1) are consistent with the level of accessibility envisioned by Congress; (2) simplify compliance with the Fair Housing Amendments Act by providing guidance concerning what constitutes acceptable compliance with the Act; and (3) maintain the affordability of new multifamily construction by specifying reasonable design and construction methods.

The Option One design specifications substantially revised in the final Guidelines include the following:

(1) Site impracticality. The final Guidelines provide that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route regardless of terrain or unusual characteristics of the site. Every dwelling unit on a floor served by an elevator must be on an accessible route, and must be made accessible in accordance with the Act's requirements for covered dwelling units.

For covered multifamily dwellings without elevators, the final Guidelines provide two alternative tests for determining site impracticality due to terrain. The first test is an individual building test which involves a two-step process: measurement of the slope of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points; and measurement of the slope of the planned finished grade between the entrance and all vehicular or pedestrian arrival points. The second test is a site analysis test which involves an analysis of the existing natural terrain (before grading) by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval.

A site with a single building (without an elevator), having a common entrance for all units, may be analyzed only under the first test—the individual building test. All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed either under the first test or the second test. For sites for which either test is applicable (that is, all sites other than a site with a single nonelevator building having a common entrance for all units), the final Guidelines provide that regardless of which test is utilized by a builder or developer, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the Act's accessibility requirements.

(2) An accessible route into and through covered dwelling units. The final Guidelines distinguish between (i) single-story dwelling units, and (ii) multistory dwelling units in elevator buildings, and provide guidance on designing an accessible entrance into and through each of these two types of dwelling units.

(a) Single-story dwelling units. For single-story dwelling units, the final Guidelines specify the same design specification as presented in the proposed Option One guidelines, except that design features within the single-story dwelling units, such as a loft or a sunken living room, are exempt from the access specifications, subject to certain requirements. Lofts are exempt provided that all other space within the units is on an accessible route. Sunken or raised functional areas, such as a sunken living room, are also exempt from access specifications, provided that such areas do not interrupt the accessible route through the remainder of the unit. However, split-level entries or areas will need ramps or other means of providing an accessible route.

(b) Multistory dwelling units in buildings with elevators. For multistory dwelling units in buildings with elevators, the final Guidelines specify that only the story served by the building elevator must comply with the accessible features for dwelling units required by the Fair Housing Act. The other stories of the multistory dwelling units are exempt from access specifications, provided that the story of the unit that is served by the building elevator (1) is the primary entry to the unit; (2) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement 7.

(c) Thresholds at patio, deck or balcony doors. The final Guidelines provide that exterior deck, patio, or balcony surfaces should be not more than ½ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious materials such as concrete, brick or flagstone, in which case the surface should be no more than 4 inches below the floor level of the interior dwelling units, unless the local building code requires a lower drop. This provision and the following provision were included in order to minimize the possibility of interior water damage when exterior surfaces are constructed of impervious materials.

(d) Outside surface at entry door. The final Guidelines also provide that at the primary entry door to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than ½ inch below the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than ⅛ inch per foot.

(3) Usable bathrooms. The final Guidelines provide two alternative sets of specifications for making bathrooms accessible in accordance with the Act's requirements. The Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be achieved. The final Guidelines for usable bathrooms also provide that the usable bathroom specifications (either set of specifications) are applicable to powder rooms (i.e., a room with only a toilet and a sink) when the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit.

The details about, and the reasons for these modifications, and additional minor technical modifications made to certain design specifications of the Option One guidelines, are discussed more fully in the section-by-section analysis which appear later in this preamble.

Principal features of the Option One guidelines that were not changed in the final Guidelines include the following:

(1) Accessible entrance and an accessible route. The Option One guidelines for these two requirements remain unchanged in the final Guidelines.

(2) Accessible and usable public and common use areas. The Option One guidelines for public and common use areas remain unchanged in the final Guidelines.

(3) Door within individual dwelling units. The final Guidelines recommend that doors intended for user passage within individual dwelling units have a clear opening of at least 32 inches nominal width when the door is open 90 degrees.

(4) Doors to public and common use areas. The final Guidelines continued to provide that on accessible routes in public and common use areas, and for primary entry doors to covered units doors that comply with ANSI 4.13 meet the Act's requirement for "usable" doors.

(4) Thresholds at exterior doors. Subject to the exceptions for thresholds and changes in level at exterior areas constructed of impervious materials, the final Guidelines continue to specify that thresholds at exterior doors, including sliding door tracks, be no higher than ¾ inch.

(5) Reinforced walls for grab bars. The final Guidelines for bathroom wall reinforcement remains essentially unchanged from the Option One guidelines. The only change made to these guidelines has been to subject powder rooms to the reinforced wall requirement when the powder room is the only toilet facility on the accessible floor of a covered multistory dwelling unit.

The text of the final Guidelines follows the Preamble, which includes a discussion of the public comments received on the proposed guidelines, and the section-by-section analysis referenced above.

The design specification presented in the Fair Housing Accessibility Guidelines provide technical guidance to builders and developers in complying with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. The Guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Amendments Act, as implemented by 24 CFR 100.205 of the Department's Fair Housing regulations. The Guidelines are not mandatory. Additionally, the Guidelines do not prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Amendments Act. Builders and developers may choose to depart from the Guidelines, and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act.

II. Statutory and Regulatory Background

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings, or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) (Fair Housing Act or the Act) expanded coverage of title VIII (42 U.S.C. 3601-3620) to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(C) of the Act provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 (30 months after the date of enactment in accordance with certain accessibility requirements. The Act defines "covered multifamily dwellings" as "(a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units" (42 U.S.C. 3604).

The Act makes it unlawful to fail to design and construct covered multifamily dwellings so that:

(1) Public use and common use portions of the dwellings are readily accessible to and usable by persons with handicaps;

(2) All doors within such dwellings which are designed to allow passage into and within the premises are sufficiently wide to allow passage by persons in wheelchairs; and

(3) All premises within such dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The Act provides that compliance with (1) the appropriate requirements of the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1"), or (2) with the laws of a State or unit of general local government, that has incorporated into such laws the accessibility requirements of the Act, shall be deemed to satisfy the accessibility requirements of the Act. (See section 804(f)(4) and (5)(A).) The Act also provides that the Secretary of the Department of Housing and Urban

Development shall provide technical assistance to States and units of local government and other persons to implement the accessibility requirements of the Act. (See section 804(f)(5)(C).)

Congress believed that the accessibility provisions of the Act would (1) facilitate the ability of persons with handicaps to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and non-handicapped tenants; (2) be essential for equal access and to avoid future *de facto* exclusion of persons with handicaps; and (3) be easy to incorporate in housing design and construction. Congress predicted that compliance with these minimal accessibility design and construction standards would eliminate many of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities. (See H.R. Rep. No. 711, 100th Cong. 2d Sess. 27–28 (1988) ("House Report").)

The Fair Housing Act became effective on March 12, 1989. The Department implemented the Act by a final rule published January 23, 1989 (54 FR 3232), and which became effective on March 12, 1989. Section 100.205 of that rule incorporates the Act's design and construction requirements, including the requirement that multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. The final rule clarified which multifamily dwellings are subject to the Act's requirements. Section 100.205 provides, in paragraph (a), that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date, or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The Department selected the date of January 13, 1990 because it is fourteen months before March 13, 1991. Based on data contained in the Marshall Valuation Service, the Department found that fourteen months represented a reasonable median construction time for multifamily housing projects of all sizes. The Department chose the issuance of a building permit as the appropriate point in the building process because such permits are issued in writing by governmental authorities. The issuance of a building permit has the advantage of being a clear and objective standard. In addition, any project that actually achieves first occupancy before March 13, 1991 will be judged to have met this standard even if the last building permit or renewal thereof was issued after January 13, 1990 (55 FR 3251).

Section 110.205 of the final rule also incorporates the Act's provisions that compliance with the appropriate requirements of ANSI A117.1, or with State or local laws that have incorporated the Act's accessibility requirements, suffices to satisfy the accessibility requirements of the Act as codified in § 100.205. In the preamble to the final rule, the Department stated that it would provide more specific guidance on the Act's accessibility requirements in a notice of proposed guidelines that would provide a reasonable period for public comment on the guidelines.

III. Proposed Accessibility Guidelines

On August 2, 1989, the Department published in the **Federal Register** an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines (54 FR 31856). The purpose of this document was to solicit early comment from the public concerning the content of the Accessibility Guidelines, and to outline the Department's procedures for their development. To the extent practicable, the Department considered all public comments submitted in response to the August 2, 1989 advance notice in its preparation of the proposed accessibility guidelines.

On June 15, 1990, the Department published proposed Fair Housing Accessibility guidelines (55 FR 24370). The proposed guidelines presented, and requested public comment on, three options for accessible design:

(1) Option one (Option One) provided guidelines developed by the Department with the assistance of the Southern Building Code Congress International (SBCCI), and incorporated suggestions received in response to the August 2, 1989 advance notice;

(2) Option two (Option Two) offered guidelines developed by the National Association of Home Builders (NAHB) and the National Coordinating Council on Spinal Cord Injuries (NCCSCI); and

(3) Option three (Option Three) offered "adaptable accommodations" guidelines, an approach that provides for identification of certain features in dwelling units that could be made accessible to people with handicaps on a case-by-case basis.

In the June 15, 1990 notice of proposed guidelines, the Department recognized that projects then being designed, in advance of publication of the final Guidelines may not become available for occupancy until after March 13, 1991. The Department advised that efforts to comply with the proposed guidelines, Option One, in the design of projects which would be completed before issuance of the final Guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. Following publication of the June 15, 1990 notice, the Department received a number of inquiries concerning whether certain design and construction activities in connection with projects likely to be completed before issuance of final Guidelines would be considered by the Department to be in compliance with the Act.

In order to resolve these questions, the Department, on August 1, 1990, published in the **Federal Register** a supplementary notice to the proposed guidelines (55 FR 31191). In the supplementary notice, the Department advised that it only would consider efforts to comply with the proposed guidelines, Option One, as evidence of compliance with the Act. The Department stated that evidence of compliance with the Option One guidelines, under the circumstances described in the supplementary notice, would be a basis for determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred, or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings. The circumstances described in the August 1, 1990 supplementary notice that the Department found would be in compliance with the Act, were limited to:

(1) Any covered multifamily dwellings which are designed in accordance with the Option One guidelines, and for which construction is completed before publication of the final Fair Housing Accessibility Guidelines; and

(2) Any covered multifamily dwellings which have been designed in accordance with the Option One guidelines, but for which construction is not completed by the date of publication of the final Guidelines provided:

(a) Construction begins before the final Guidelines are published; or

(b) A building permit is issued less than 60 days after the final Guidelines are published.

On September 7, 1990, the Department published for public comment a Preliminary Regulatory Impact Analysis on the Department's assessment of the economic impact of the Guidelines, as implemented by each of the three design options then under consideration (55 FR 37072–37129).

IV. Public Comments and Commenters

The proposed guidelines provided a 90-day period for the submission of comments by the public, ending September 13, 1990. The Department received 562 timely comments. In addition, a substantial number of comments were received by the Department after the September 13, 1990 deadline. Although those comments were not timely filed, they were reviewed to assure that any major issues raised had been adequately addressed in comments that were received by the deadline. Each of the timely comments was read, and a list of all significant issues raised by those comments was compiled. All these issues were considered in the development of the final Guidelines.

Of the 562 comments received, approximately 200 were from disability advocacy organizations, or units of State or local government concerned with disability issues. Sixty-eight (68) additional commenters identified themselves as members of the disability community; 61 commenters identified themselves as individuals who work with members of the disability community (e.g., vocational or physical therapists or counselors), or who have family members with disabilities; and 96 commenters were members of the building industry, including architects, developers, designers, design consultants, manufacturers of home building products, and rental managers. Approximately 292 commenters supported Option One without any recommendation for change An additional 155 commenters supported Option One, but recommended changes to certain Option One design standards. Twenty-six (26) commenters supported Option Two, and 10 commenters supported Option Three. The remaining commenters submitted questions, comments and recommendations for changes on certain design features of one or more of the three options, but expressed no preference for any particular option, or, alternatively, recommended final guidelines that combine features from two or all three of the options.

The Commenters

The commenters included several national, State and local organizations and agencies, private firms, and individuals that have been involved in the development of State and local accessibility codes. These commenters offered valuable information, including copies of State and local accessibility codes, on accessibility design standards. These commenters included: the Southern Building Code Congress International (SBCCI); the U.S. Architectural and Transportation Barriers Compliances Board (ATBCB); the Building Officials & Code Administrators International, Inc. (BOCA); the State of Washington Building Code Council; the Seattle Department of Construction and Land Use; the Barrier-free Subcode Committee of the New Jersey Uniform Construction Code Advisory Board; the Department of Community Planning, Housing and Department of Arlington County, Virginia; the City of Atlanta Department of Community Development, Bureau of Buildings; and members of the Department of Architecture, the State of University of New York at Buffalo. In addition to the foregoing organizations, a number of the commenters from the building industry submitted detailed comments on the proposed guidelines.

The commenters also included a number of disability organizations, several of which prepared detailed comments on the proposed guidelines. The comments of two disability organizations also were submitted as concurring comments by many individuals and other disability advocacy organizations. These two organizations are the Disability Rights Education & Defense Fund, and the Consortium for Citizens with Disabilities (CCD). The CCD represents the following organizations: the Association for Education and Rehabilitation of the Blind and Visually Impaired, Association for Retarded Citizens of the United States, International Association of Psychological Rehabilitation Facilities, National Alliance for the Mentally Ill, National Association of Protection and Advocacy Systems, National Association of Developmental Disabilities Councils, National Association of State Mental Health Program Directors, National Council of Community Mental Health Centers, National Head Injury Foundation, National Mental Health Association, United Cerebral Palsy Associations, Inc. Both the Disability Rights Education and Defense Fund and the CCD were strongly supportive of Option One.

A coalition of 20 organizations (Coalition), representing both the building industry and the disability community, also submitted detailed comments on the proposed guidelines. The members of the Coalition include: American Institute of Architects, American Paralysis Association, American Resort and Residential Development Association, American Society of Landscape Architects, Apartment and Office Building Association, Association of Home Appliance Manufacturers, Bridge Housing Corporation, Marriott Corporation, Mortgage Bankers Association, National Apartment Association, National Assisted Housing Management Association, National Association of Home Builders (NAHB), National Association of Realtors, National Association of Senior Living Industries, National Conference of States on Building Codes and Standards, National Coordinating Council on Spinal Cord Injury (NCCSCI), National Leased Housing Association, National Multi Housing Council, National Organization on Disability, and the Paralyzed Veterans of America.

The commenters also included U.S. Representatives Don Edwards, Barney Frank and Hamilton Fish, Jr., who advised that they were the primary sponsors of the Fair Housing Act, and who expressed their support of Option One.

Comments on the Three Options

In addition to specific issues and questions raised about the design standards recommended by the proposed guidelines, a number of commenters simply submitted comments on their overall opinion of one or more of the options. Following is a summary of the opinions typically expressed on each of the options.

Option One. The Option One guidelines drew a strong reaction from commenters. Supporters stated that the Option One guidelines provided a faithful and clearly stated interpretation of the Act's intent. Opponents of Option One stated that its design standards would increase housing costs significantly—for everyone. Several commenters who supported some features of Option One were concerned that adoption of Option One in its entirety would escalate housing costs. Another frequent criticism was that Option One's design guidelines were to complex and cumbersome.

Option Two. Supporters of Option Two state that this option presented a reasonable compromise between Option One and Option Three. Supporters stated that the Option Two guidelines provided more design flexibility than the Option One guidelines, and that this flexibility would allow builders to deliver the required accessibility features at a lower cost. Opponents of Option Two stated that this option allowed builders to circumvent the Act's intent with respect to several essential accessibility features.

Option Three. Supporters of Option Three stated that Option Three presented the best method of achieving the accessibility objectives of the Act, at the lowest possible cost. Supporters stated that Option Three would contain housing costs, because design adaptation only would be made to those units which actually would be occupied by a disabled resident, and the adaptation would be tailored to the specific accessibility needs of the individual tenant. Opponents of Option Three stated that this option, with its "add-on" approach to accessibility, was contrary to the Act's intent, which, the commenter claimed, mandates accessible features at the time of construction.

Comments on the Costs of Implementation

In addition to the comments on the specific features of the three design options, one of the issues most widely commented upon was the cost of compliance with the Act's accessibility requirements, as implemented by the Guidelines. Several commenters disputed the Department's estimate of the cost of compliance, as presented in the Initial Regulatory Flexibility Analysis, published with the proposed guidelines on June 15, 1990 [55 FR 24384–24385], and in the Preliminary Regulatory Impact Analysis published on September 7, 1990 [55 FR 37072–37129]. The Department's response to these comments is discussed in the Final Regulatory Impact Analysis, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

V. Discussion of Principal Public Comment Issues, and Section-by-Section Analysis of the Final Guidelines.

The following presents a discussion of the principal issues raised by the commenters, and the Department's response to each issue. This discussion includes a section-by-section analysis of the final Guidelines that addresses many of the specific concerns raised by the commenter, and highlights the differences between the proposed Option One guidelines and the final Guidelines. Comments related to issues outside the purview of the Guidelines, but related to the Act (e.g., enforcement procedures, statutory effective date), are discussed in the final section of the preamble under the preamble heading "Discussion of Comments on Related Fair Housing Issues".

1. Discussion of General Comments on the Guidelines

ANSI Standard

Comment. Many commenters expressed their support for the ANSI Standard as the basis for the Act's Guidelines, because ANSI is a familiar and accepted accessibility standard.

Response. In developing the proposed and final Guidelines, the Department was cognizant of the need for uniformity, and of the widespread application of the ANSI Standard. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government, and most State governments. The 1986 edition of that standard was based on research funded by the Department, and became the basis for the Uniform Federal Accessibility Standards (UFAS), published in the Federal Register on August 4, 1984 [47 FR 33862]. The 1980 edition also was generally accepted by the private sector, and was recommended for use in State and local building codes by the Council of American Building Officials. Additionally, Congress, in the Fair Housing Act, specifically referenced the ANSI Standard, thereby encouraging utilization of the ANSI Standard as guidance for compliance with the Act's accessibility requirements. Accordingly, in using the ANSI Standard as a reference point for the Fair Housing Act Accessibility Guidelines, the Department is issuing Guidelines based on existing and familiar design standards, and is promoting uniformity between Federal accessibility standards, and those commonly used in the private sector. However, the ANSI Standard and the final Guidelines have differing purposes and goals, and they are by no means identical. The purpose of the Guidelines is to describe minimum standards of compliance with the specific accessibility requirements of the Act.

Comment. Two commenters suggested that the Department adopt the ANSI Standard as the guidelines for the Fair Housing Act's accessibility requirements, and not issue new guidelines.

Response. The Department has incorporated in the Guidelines those technical provisions of the ANSI Standard that are consistent with the Act's accessibility requirements. However, with respect to certain of the Act's requirements, the applicable ANSI provisions impose more stringent design standards than required by the Act. (In the preamble to the proposed rule (55 FR 3251), and again in the preamble to the proposed guidelines (55 FR 24376), the Department advised that a dwelling unit that complies fully with the ANSI Standard goes beyond what is required by the Fair Housing Act.) The Department has developed Guidelines for those requirements of the Act where departures from ANSI were appropriate.

Comment. A few commenters questioned whether the Department would revise the Guidelines to correspond to ANSI's periodic update of its standard.

Response. The ANSI Standard is reviewed at five-year intervals. As the ANSI Standard is revised in the future, the Department intends to review each version, and, if appropriate to make revisions to the Guidelines in accordance with any revisions made to the ANSI Standard. Modifications of the Guidelines, whether or not reflective of changes to the ANSI Standard, will be subject to notice and prior public comment.

Comment. A few commenters requested that the Department republish the ANSI Standard in its entirety in the final Guidelines.

Response. The American National Standards Institute (ANSI) is a private, national organization, and is not connected with the Federal Government. The Department received permission from ANSI to print the ANSI Standard in its entirety, at the time of publication of the proposed guidelines [55 FR 24404–24407], specifically for the purpose of assisting readers of the proposed guidelines in developing timely comments. In the preamble to the proposed guidelines, the Department stated that since it was printing the entire ANSI Standard, as an appendix to the proposed guidelines, the final notice of the Accessibility Guidelines would not include the complete text of the ANSI Standard [55 FR 24371]. Copies of the ANSI Standard may be purchased from the American National Standards Institute, 1430 Broadway, New York, NY 10018.

Comment. Another commenter requested that the Department confirm that any ANSI provision not cited in the final Guidelines is not necessary for compliance with the Act.

Response. In the proposed guidelines, the Department stated that: "Where the guidelines rely on sections of the ANSI Standard, the ANSI sections are cited. * * * For those guidelines that differ from the ANSI Standard, recommended specifications are provided" [55 FR 24385]. The final Guidelines include this statement, and further state that the ANSI sections not cited in the Guidelines have been determined by the Department not to be necessary for compliance with the Act's requirements.

Bias Toward Wheelchair Users

Comment. Two commenters stated that the proposed guidelines were biased toward wheelchair users, and that the Department has erroneously assumed that the elderly and the physically disabled have similar needs. The commenters stated that the physical problems suffered by the elderly often involve arthritic and back problems, which make bending and stooping difficult.

Response. The proposed guidelines, and the final Guidelines, reflect the accessibility requirements contained in the Fair Housing Act. These requirements largely are directed toward individuals with mobility impairments, particularly those who require mobility aids, such as wheelchairs, walkers, or crutches. In two of the Act's accessibility requirements, specific reference is made to wheelchair users. The emphasis of the law and the Guidelines on design and construction standards that are compatible with the needs of wheelchair users is realistic because the requirements for wheelchair access (e.g., wider doorways) are met more easily at the construction stage. (See House Report at 27.) Individuals with nonmobility impairments more easily can be accommodated by later nonstructural adaptations to dwelling units. The Fair Housing Act and the Fair Housing regulations assure the right of these individuals to make such later adaptations. (See section 804(f)(3)(A) of the Act and 24 CFR 100.203 of the regulations. See also discussion of adaptations made to units in this preamble under the heading "Costs of Adaptation" in the section entitled "Discussion of Comments on Related Fair Housing Issues".)

Compliance Problems Due to Lack of Accessibility Guidelines

Comment. A number of commenters from the building industry attributed difficulty in meeting the Act's March 13, 1991 compliance deadline, in part, to the lack of accessibility guidelines. The commenters complained about the time that it has taken the Department to publish proposed guidelines, and the additional time it has taken to publish final Guidelines.

Response. The Department acknowledges that the development and issuance of final Fair Housing Accessibility Guidelines has been a time-consuming process. However, the building industry has not been without guidance on compliance with the Act's accessibility requirements. The Fair Housing Act identifies the ANSI Standard as providing design standards that would achieve compliance with the Act's accessibility requirements. Additionally, in the preamble to both the proposed and final Fair Housing rule, and in the text of § 100.205, the Department provided examples of how certain of the Act's accessibility requirements may be met. (See 53 FR 45004–45005, 54 FR 3249–3252 (24 CFR Ch. I, Subch. A, App. I, at 583–586 (1990)), 24 CFR 100.205.)

The delay in publication of the final Guidelines has resulted, in part, because of the Department's pledge, at the time of publication of the final Fair Housing regulations, that the public would be provided an opportunity to comment on the Guidelines (54 FR 3251, 24 CFR Ch. I, Subch. A, at 585–586 (1990)). The delay in publication of the final Guidelines also is attributable in part to the Department's effort to develop Guidelines that would (1) ensure that persons with disabilities are afforded the degree of accessibility provided for in the Fair Housing Act, and (2) avoid the imposition of unreasonable requirements on builders.

Comment. Two commenters requested that interim accessibility guidelines should be adopted for projects "caught in the middle", i.e. those projects started before publication of the final Guidelines.

Response. The preamble to the June 15, 1990 proposed guidelines and the August 1, 1990 supplementary notice directly addressed this issue. In both documents, the Department recognized that projects being designed in advance of publication of the Guidelines may not become available for occupancy until after March 13, 1991. The Department advised that efforts to comply with the Option One guidelines, in the design of projects that would be completed before issuance of the final Guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. The August 1, 1990 supplementary notice restated the Department's position on compliance with the Act's requirements prior to publication of the final Guidelines, and addressed what "evidence of compliance" will mean in a complaint situation.

Conflict with Historic Preservation Design Codes

Comment. Two commenters expressed concern about a possible conflict between the Act's accessibility requirements and local historic preservation codes (including compatible design requirements). The commenters stated that their particular concerns are: (1) The conversion of warehouse and commercial space to dwelling units; and (2) new housing construction on vacant lots in historically designated neighborhoods.

Response. Existing facilities that are converted to dwelling units are not subject to the Act's accessibility requirements. Additionally, alteration, rehabilitation or repair of covered multifamily dwellings are not subject to the Act's accessibility requirements. The Act's accessibility requirements only apply to new construction. With respect to new construction in neighborhoods subject to historic codes, the Department believes that the Act's accessibility requirements should not conflict with, or preclude building designs compatible with historic preservation codes.

Conflict with Local Accessibility Codes

Comment. Several commenters inquired about the appropriate course of action to follow when confronted with a conflict between the Act's accessibility requirements and local accessibility requirements.

Response. Section 100.205(i) of the Fair Housing regulations implements section 804(f)(8) of the Act, which provides that the Act's accessibility requirements do not supplant or replace State or local laws that impose higher accessibility standards (53 FR 45005). For accessibility standards, as for other code requirements, the governing principle to follow when Federal and State (or local) codes differ is that the more stringent requirement applies.

This principle is equally applicable when multifamily dwellings are subject to more than one Federal law requiring accessibility for persons with physical disabilities. For example, a multifamily dwelling may be subject both to the Fair Housing Amendments Act and to section 504 of the Rehabilitation Act of 1973. Section 504 requires that 5% of units in a covered multifamily dwelling be fully accessible—thus imposing a stricter accessibility standard for those units than would be imposed by the Fair Housing Act. However, compliance only with the section 504 requirements would not satisfy the requirements of the Fair Housing Act. The remaining units in the covered multifamily dwelling would be required to meet the specific accessibility requirements of the Fair Housing Act.

Comment. One commenter, the Seattle Department of Construction and Land Use, presented an example of how a local accessibility code that is more

stringent with respect to some accessibility provisions may interact with the Act's accessibility requirements, where they are more stringent with respect to other provisions. The commenter pointed out that the State of Washington is very hilly, and that the State of Washington's accessibility code requires accessible buildings on sites that would be deemed impractical under the Option One guidelines. The commenter stated that the State of Washington's accessibility code may require installation of a ramp, and that the ramp may then create an accessible entrance for the ground floor, making it subject to the Act's accessibility requirements. The commenter asked that, since the project was not initially subject to the Act's requirements, whether the creation of an accessible ground floor in accordance with the State code provisions would require all units on the ground floor to be made accessible in accordance with the Fair Housing Act. (The State of Washington's accessibility code would require only a percentage of the units to be accessible.)

Response. The answer to the commenter's question is that a nonelevator building with an accessible entrance on an accessible route is required to have the ground floor units designed and constructed in compliance with the Act's accessibility requirements. This response is consistent with the principle that the stricter accessibility requirement applies.

Design Guidelines for Environmental Illness

Comment. Twenty-three (23) commenters advised the Department that many individuals are disabled because of severe allergic reactions to certain chemicals used in construction, and in construction materials. These commenters requested that the Department develop guidelines for constructing or renovating housing that are sensitive to the problems of individuals who suffer from these allergic reactions (commonly referred to as environmental illnesses). These commenters further advised that, as of February 1988, the Social Security Administration lists as a disability "Environmental Illness" (P.O.M.S. Manual No. 24515.065).

Response. The Guidelines developed by the Department are limited to providing guidance relating to the specific accessibility requirements of the Fair Housing Act. As discussed above, under the preamble heading "Bias Toward Wheelchair Users," the Act's requirements primarily are directed to providing housing that is accessible to individuals with mobility impairments. There is no statutory authority for the Department to create the type of design and construction standards suggested by the commenters.

Design Guidelines for the Hearing and Visually-Impaired

Comment. Several commenters stated that the proposed guidelines failed to provide design features for people with hearing and visual impairments. These commenters stated that visual and auditory design features must be included in the final Guidelines.

Response. As noted in the response to the preceding comment, the Department is limited to providing Guidlines for the specific accessibility requirements of the Act. The Act does not require fully accessible individual dwelling units. For individual dwelling units, the Act requires the following: Doors sufficiently wide to allow passage by handicapped persons in wheelchairs; accessible route into and through the dwelling unit; light switches; electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. To specify visual and auditory design features for individual dwelling units would be to recommend standards beyond those necessary for compliance with the Act. Such features were among those identified in Congressional statements discussing modifications that would be made by occupants.

The Act, however, requires public and common use portions of covered multifamily dwellings to be "readily accessible to and usable by handicapped persons." The more comprehensive accessibility requirement for public and common use areas of dwellings necessitates a more comprehensive accessibility standard for these areas. Accordingly, for public and common use areas, the final Guidelines recommend compliance with the appropriate provisions of the ANSI Standard. The ANSI Standard for public and common use areas specifies certain design features to accommodate people with hearing and visual impairments.

Guidelines as Minimum Requirements

Comment. A number of commenters requested that the Department categorize the final Guidelines as minimum requirements, and not as performance standards, because "recommended" guidelines are less effective in achieving the objectives of the Act. Another commenter noted that a safe harbor provision becomes a *de facto* minimum requirement, and that it should therefore be referred to as a minimum requirement.

Response. The Department has not categorized the final Guidelines as either performance standards or minimum requirements. The minimum accessibility requirements are contained in the Act. The Guidelines adopted by the Department provide one way in which a builder or developer may achieve compliance with the Act's accessibility requirements. There are other ways to achieve compliance with the Act's accessibility requirements, as for example, full compliance with ANSI A117.1. Given this fact, it would be inappropriate on the part of the Department to constrain designers by presenting the Fair Housing Accessibility Guidelines as minimum requirements. Builders and developers should be free to use any reasonable design that obtains a result consistent with the Act's requirements. Accordingly, the design specifications presented in the final Guidelines are appropriately referred to as "recommended guidelines".

It is true, however, that compliance with the Fair Housing Accessibility Guidelines will provide builders with a safe harbor. Evidence of compliance with the Fair Housing Accessibility Guidelines adopted by this notice shall be a basis for a determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings.

National Accessibility Code

Comment. Several commenters stated that there are too many accessibility codes—ANSI, UFAS, and State and local accessibility codes. These commenters requested that the Department work with the individual States to arrive at one national uniform set of accessibility guidelines.

Response. There is no statutory authority to establish one nationally uniform set of accessibility standards. The Department is in agreement with the commenters' basic theme that increased uniformity in accessibility standards is desirable. In furtherance of this objective, the Department has relied upon the ANSI Standard as the design basis for the Fair Housing Accessibility Guidelines. The Department notes that the ANSI Standard also serves as the design basis for the Uniform Federal Accessibility Standards (UFAS), the Minimum Guidelines and Requirements for Accessible Design (MGRAD) issued by the U.S. Architectural and Transportation Barriers Compliance Board, and many State and local government accessibility codes.

One Set of Design Standards

Comment. A number of commenters objected to the fact that the proposed guidelines included more than one set of design standards. The commenters stated that the final Guidelines should present only one set of design standards so as not to weaken the Act's accessibility requirements.

Response. The inclusion of options for accessibility design in the proposed guidelines was both to encourage a maximum range of public comment, and to illustrate that there may be several ways to achieve compliance with the Act's accessibility requirements. Congress made clear that compliance with the Act's accessibility standards did not require adherence to a single set of design specifications. In section 804(f)(4) of the Act, the Congress stated that compliance with the appropriate requirements of the ANSI Standard suffices to satisfy the accessibility requirements of the Act. In House Report No. 711, the Congress further stated as follows:

> However this section (section 804(f)(4)) is not intended to require that designers follow this standard exclusively, for there may be other local or State standards with which compliance is required or there may be other creative methods of meeting these standards. (House Report at 27)

Similarly, the Department's Guidelines are not the exclusive standard for compliance with the Act's accessibility requirements. Since the Department's Guidelines are a safe harbor, and not minimum requirements, builders and developers may follow alternative standards that achieve compliance with the Act's accessibility requirements. This policy is consistent with the intent of Congress, which was to encourage creativity and flexibility in meeting the requirements of the Act.

Reliance on Preamble to Guidelines

Comment. One commenter asked whether the explanatory information in the background section of the final Guidelines may be relied upon, and deemed to have the same force and effect as the Guidelines themselves.

Response. The Fair Housing Accessibility Guidelines are—as the name indicates—only guidelines, not regulations or minimum requirements. The Guidelines consist of recommended design specifications for compliance with the specific accessibility requirements of the Fair Housing Act. The final Guidelines provide builders with a safe harbor that, short of specifying all of the provisions of the ANSI Standard, illustrate acceptable methods of compliance with the Act. To the extent that the preamble to the Guidelines provide clarification on certain provisions of the Guidelines, or illustrates additional acceptable methods of compliance with the Act's requirements, the preamble may be relied upon as additional guidance. As noted in the "Summary" portion of this document, the preamble to the Guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III.).

"User Friendly" Guidelines

Comment. A number of commenters criticized the proposed guidelines for being too complicated, too ambiguous, and for requiring reference to a number of different sources. These commenters requested that the final Guidelines be clear, concise and "user friendly". One commenter requested that the final Guidelines use terms that conform to terms used by each of the three major building code organizations: the Building Officials and Code Administrators International, Inc. (BOCA); the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI).

Response. The Department recognizes that the Accessibility Guidelines include several highly technical provisions. In drafting the final Guidelines, the Department has made every effort to explain these provisions as clearly as possible, to use technical and building terms consistent with the terms used by the major building code organizations, to define terms clearly, and to provide additional explanatory information on certain of the provisions of the Guidelines.

2. Section-by-Section Analysis of Final Guidelines

The following presents a section-by-section analysis of the final Guidelines. The text of the final Guidelines is organized into five sections. The first four sections of the Guidelines provide background and explanatory information on the Guidelines. Section 1, the Introduction, describes the purpose, scope and organization of the Guidelines. Section 2 defines relevant terms used. Section 3 reprints the text of 24 CFR 100.205, which implements the Fair Housing Act's accessibility requirements, and Section 4 describes the application of the Guidelines. Section 5, the final section, presents the design specifications recommended by the Department for meeting the Act's accessibility requirements, as codified in 24 CFR 100.205. Section 5 is subdivided into seven areas, to address each of the seven areas of accessible design required by the Act.

The following section-by-section analysis discusses the comments received on each of the sections of the proposed Option One Guidelines, and the Department's response to these comments. Where no discussion of comments is provided under a section heading, no comments were received on this section.

Section 1. Introduction

Section 1, the Introduction, describes the purpose, scope and organization of the Fair Housing Accessibility Guidelines. This section also clarifies that the accessibility guidelines apply only to the design and construction requirements of 24 CFR 100.205, and do not relieve persons participating in a federal or federally-assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157). (The design provisions for those laws are found at 24 CFR Part 8 and 24 CFR Part 40, respectively.) Additionally, section 1 explains that only those sections of the ANSI Standard cited in the Guidelines are required for compliance with the accessibility requirements of the Fair Housing Act. Revisions to section 1 reflect the Department's response to the request of several commenters for further clarification on the purpose and scope of the Guidelines.

Section 2. Definitions

This section incorporates appropriate definitions from § 100.201 of the Department's Fair Housing regulations, and provides additional definitions for terms used in the Guidelines. A number of comments were received on the definitions. Clarifications were made to certain definitions, and additional terms were defined. New terms defined in the final Guidelines include: *adaptable, assistive device, ground floor, loft, multistory dwelling unit, single-story dwelling unit,* and *story.* The inclusion of new definitions reflects the comments received, and also reflects new terms introduced by changes to certain of the Option One design specifications. In several instances, the clarifications of existing definitions, or the new terms

defined, were derived from definitions of certain terms used by one or more of the major building code organizations. Comments on specific definitions are discussed either below or in that portion of the preamble under the particular section heading of the Guidelines in which these terms appear.

Accessible

Comment. A number of commenters stated that the Department used the terms "accessible" and "adaptable" interchangeably, and requested clarification of the meaning of each. The commenters noted that, under several State building codes, these terms denote different standards for compliance. The commenters requested that if the Department intends these two terms to have the same meaning, this should be clearly stated in the final Guidelines, and, if the terms have different meanings, "adaptable" should also be defined.

Response. The Department's use of the terms "adaptable" and "accessible" in the preamble to the proposed guidelines generally reflected Congress' use of the terms in the text of the Act, and in the House and Senate conference reports. However, to respond to commenters' concerns about the distinctions between these terms, the Department has included a definition of "adaptable dwelling units" to clarify the meaning of this term, within the context of the Fair Housing Act. In the final Guidelines, "adaptable dwelling units", when used with respect to covered multifamily dwellings, means dwelling units that include features of adaptable design specified in 24 CFR 100.205(c)(2)–(3).

The Fair Housing Act refers to design features that include both the minimal "accessibility" features required to be built into the unit, and the "adaptable" feature of reinforcement for bathroom walls for the future installation of grab bars. Accordingly, under the Fair Housing Act, an "adaptable dwelling unit" is one that meets the minimal accessibility requirements specified in the Act (i.e., usable doors, an accessible route, accessible environmental controls, and usable kitchens and bathrooms) and the "adaptable" structural feature of reinforced bathroom walls for later installation of grab bars.

Assistive Device

Comment. Several commenters requested that we define the phrase "assistive device."

Response. "Assistive device" means an aid, tool, or instrument used by a person with disabilities to assist in activities of daily living. Examples of assistive devices include tongs, knob turners, and oven rack pusher/pullers. A definition for "assistive device" has been included in the final Guidelines.

Bathroom

In response to the concern of several commenters, the Department has revised the definition of "bathroom" in the final Guidelines to clarify that a bathroom includes a "compartmented" bathroom. A compartmented bathroom is one in which the bathroom fixtures are distributed among interconnected rooms. The fact that bathroom facilities may be located in interconnecting rooms does not exempt this type of bathroom from the Act's accessibility requirements. This clarification, and minor editorial changes, were the only revisions made to the definition of "bathroom". Other comments on this term were as follows:

Comment. Several commenters requested that the Department reconsider its definition of "bathroom", to include powder rooms, i.e., rooms with only a toilet and sink. These commenters stated that persons with disabilities should have access to all bathrooms in their homes, not only full bathrooms. One commenter believed that, unless bathroom was redefined to include single- or two-fixture facilities, some developers will remove a bathtub or shower from a proposed second full bathroom to avoid having to make the second bathroom accessible. The commenter suggested that bathroom be redefined to include any room containing at least two of the possible bathroom fixtures (toilet, sink, bathtub or shower).

Response. In defining "bathroom" to include a water closet (toilet), lavatory (sink), and bathtub or shower, the Department has followed standard dictionary usage, as well as Congressional intent. Congressional statements emphasized that the Act's accessibility requirements were expected to have a minimal effect on the size and design of dwelling units. In a full-size bathroom, this can be achieved. To specify space for wheelchair maneuvering in a powder room would, in most cases, require enlarging the room significantly. However, a powder room would be subject to the Act's accessibility requirements if the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit. Additionally, it should be noted that doors to powder rooms (regardless of the location of the powder room), like all doors within dwelling units, are required by the Act to be wide enough for wheelchair passage. Some powder rooms may, in fact, be usable by persons in wheelchairs.

Comment. One commenter requested that the final Guidelines provide that a three-quarters bathroom (water closet, lavatory and shower) would not be subject to the accessibility requirements—specifically, the requirement for grab bar reinforcement.

Response. The Fair Housing Act requires reinforcements in bathroom walls to allow for later installation of grab bars at toilet, bathtub or shower, if provided. Accordingly, the Fair Housing regulations specifically require reinforcement in bathroom walls to allow later installation of grab bars around the shower, where showers are provided. (See 24 CFR 100.205(c)(3)(iii).)

Building

Comment. One commenter suggested that the Department use the term "structure" in lieu of "building". The commenter stated that, in the building industry, "building" is defined by exterior walls and fire walls, and that an apartment structure of four units could be subdivided into two separate buildings of two units each by inexpensive construction of a firewall. The commenter suggested that the final definition of "building" include the following language: "For the purpose of the Act, firewall separation does not define buildings."

Response. The term "building" is the term used in the Fair Housing Act. The Department uses this term in the Guidelines to be consistent with the Act. With respect to the comment on firewall separation, the Department believes that, within the context of the Fair Housing Act, the more appropriate place for the language on firewall separation is in the definition of "covered multifamily dwellings". Since many building codes in fact define "building" by exterior walls and firewalls, a definition of "building" in the Fair Housing Accessibility Guidelines that explicitly excludes firewalls as a means of identifying a building would place the Guidelines in conflict with local building codes. Accordingly, to avoid this conflict, the Department has clarified the definition of "covered multifamily dwelling" (which is discussed below) to address the issue of firewall separation.

Covered Multifamily Dwellings

The Department has revised the definition of "covered multifamily dwellings" to clarify that dwelling units within a single structure separated by firewalls do not, for purposes of these Guidelines, constitute separate buildings.

A number of questions and comments were received on what should, or should not, be considered a covered multifamily dwelling. Several of these comments requested clarification concerning "ground floor dwelling units". These comments generally concluded with a request that the Department define "ground floor" and "ground floor unit". The Department has included a definition of "ground floor" in the final Guidelines. The Department believes that this definition is sufficiently clear to identify ground floor units, and that therefore a separate definition for "ground floor unit" is unnecessary. Specific questions concerning ground floor units are discussed below under the heading "Ground Floor". Comments on other covered multifamily dwellings are as follows:

Comment. (Garden apartments) One commenter requested that the Department clarify whether single family attached dwelling units with all living space on one level (i.e. garden units) fall within the definition of covered multifamily dwellings.

Response. The Fair Housing Act and its regulations clearly define "covered multifamily dwellings" as buildings consisting of four or more dwelling units, if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Garden apartments located in an elevator building of four or more units are subject to the Act's requirements. If the garden apartment is on the ground floor of a nonelevator building consisting of four or more apartments, and if all living space is on one level, then the apartment is subject to the Act's requirements (unless the building is exempt on the basis of site impracticality).

Comment. (Townhouses) Several commenters requested clarification concerning whether townhouses are covered multifamily dwellings.

Response. In the preamble to the Fair Housing regulations, the Department addressed this issue. Using an example of a single structure consisting of five two-story townhouses, the Department stated that such a structure is *not* a covered multifamily dwelling if the building does not have an elevator, because the entire dwelling unit is not on the ground floor. Thus, the first floor of a two-story townhouse in the example is not a ground floor unit, because the entire unit is not on the ground floor. In contrast, a structure consisting of five single-story townhouses would be a covered multifamily dwelling. (See 54 FR 3244; 24 CFR Ch. I, Subch. A, App. I at 575–576 (1990).)

Comment. (Units with basements) One commenter asked whether a unit that contains a basement, which provides additional living space, would be viewed as a townhouse, and therefore exempt from the Act's accessibility requirements. The commenter stated that basements are generally designed with the top of the basement, including the basement entrance, above finished grade, and that basement space cannot be made accessible without installation of an elevator or a lengthy ramp.

Response. If the basement is part of the finished living space of a dwelling unit, then the dwelling unit will be treated as a multistory unit, and application of the Act's accessibility requirements will be determined as provided in the Guidelines for Requirement 4. If the basement space is unfinished, then it would not be considered part of the living space of the unit, and the basement would not be subject to the Act's requirements. Attic space would be treated in the same manner.

Dwelling Unit

"Dwelling unit" is defined as a single unit of residence for a household of one or more persons. The definition provides a list of examples of dwelling units in order to clarify the types of units that may be covered by the Fair Housing Act. The examples include condominiums and apartment units in apartment buildings. Several commenters submitted questions on condominiums, and one commenter requested clarification on whether vacation time-sharing units are subject to the Act's requirements. Their specific comments are as follows:

Comment. (Condominiums) A few commenters requested that condominiums be excluded from covered dwelling units because condominiums are comparable to single family homes. The commenter stated that condominiums do not compete in the rental market, but compete in the sale market with single family homes, which are exempt from the Act's requirements.

Response. The Fair Housing Act requires all covered multifamily dwellings for first occupancy after March 13, 1991 to be designed and constructed in accordance with the Act's accessibility requirements. The Act does not distinguish between dwelling units in covered multifamily dwellings that are for sale, and dwelling units that are for rent. Condominium units in covered multifamily dwellings must comply with the Act's accessibility requirements.

Comment. (Custom-designed condominium units) Two commenters stated that purchasers of condominium units often request their units to be custom designed. The commenters questioned whether custom-designed units must comply with the Act's accessibility requirements. Another commenter stated that the Department should exempt from compliance those condominium units which are pre-sold, but not yet constructed, and for which owners have expressly requested designs that are incompatible with the Act's accessibility requirements.

Response. The fact that a condominium unit is sold before the completion of construction does not exempt a developer from compliance with the Act's accessibility requirements. The Act imposes affirmative duties on builders and developers to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 in accordance with the Act's accessibility requirements. These requirements are mandatory for covered multifamily dwellings for first occupancy after March 13, 1991, regardless of the ownership status of covered individual dwelling units. Thus, to the extent that the pre-sale *or* post-sale construction included features that are covered by the Act (such as framing for doors in pre-sale "shell" construction), they should be built accordingly.

Comment. (Vacation timeshare units) One commenter questioned whether vacation timeshare units were subject to the Act's requirements. The commenter stated that a timeshare unit may be owned by 2 to 51 individuals, each of whom owns, or has the right to use, the unit for a proportionate period of time equal to his or her ownership.

Response. Vacation timeshare units are subject to the Act's accessibility requirements, when the units are otherwise subject to the accessibility requirements. "Dwelling" is defined in 24 CFR 100.20 as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof". The preamble to the final Fair Housing rule states that the definition of "dwelling" is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, *and time-*

BEST COPY AVAILABLE

sharing properties." (Emphasis added.) (See 54 FR 3238, 24 CFR Ch. I, Subch. A, App. I, at 567 (1990).) Accordingly, the fact of vacation timeshare ownership of units in a building does not affect whether the structure is subject to the Act's accessibility requirements.

Entrance

Comment. One commenter requested clarification on whether "entrance" refers to an entry door to a dwelling unit, or an entry door to the building.

Response. As used in the Guidelines, "entrance" refers to an exterior entry door. The definition of "entrance" has been revised in the final Guidelines to clarify this point, and the term "entry" is used instead of "entrance" when referring to the entry into a unit when it is interior to the building.

Ground Floor

As noted above, under the discussion of covered multifamily dwellings, several commenters requested clarification concerning "ground floor" and "ground floor dwelling unit". In response to these comments, the Department has included a definition for "ground floor" in the final Guidelines. The Department has incorporated the definition of "ground floor" found in the Fair Housing regulations (24 CFR 100.201), and has expanded this definition to address specific concerns related to implementation of the Guidelines. In the final Guidelines, "ground floor" is defined as follows:

> "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

Specific comments concerning ground floor units are as follows:

Comment. (Nonresidential ground floor units) Two commenters advised that, in many urban areas, buildings are constructed without an elevator and with no dwelling units on the ground floor. The ground floor contains either parking, retail shops, restaurants or offices. To bring these buildings into compliance with the Act, one of the commenters recommended that the Department adopt a proposal under consideration by the International Conference of Building Officials (ICBO). The commenter stated that the proposal provides that, in buildings with ground floors occupied by parking and other nonresidential uses, the lowest story containing residential units is considered the ground floor. Another commenter recommended that a building should be exempt from compliance with the Act's requirements if the ground floor is occupied by a non-residential use (including parking). The commenter stated that if an elevator is to be provided to serve the upper residential floors, then the elevator should also serve the ground floor, and access be provided to all the dwelling units.

Response. The Department believes that the definition of "ground floor unit" incorporated in the final Guidelines addresses the concerns of the commenters.

Comment. (More than one ground floor) One commenter requested guidance on treatment of nonelevator garden apartments (i.e., apartment buildings that generally are built on slopes and contain two stories in the front of the building and three stories in the back). The commenter stated that these buildings arguably may be said to have two ground floors. The commenter requested that the Department clarify that, if a building has more than one ground floor, the developer must make one ground floor accessible—but not both—and the developer may choose which floor to make accessible. Another commenter suggested that, in a garden-type apartment building, the floor served by the primary entrance, and which is located at the parking lot level, is the floor which must be made accessible.

Response. In the preamble to the final Fair Housing rule, the Department addressed the issue of buildings with more than one ground floor. (See 54 3244, 24 CFR Ch. I, Subch. A, App. I at 576 (1990).) The Department stated that if a covered building has more than one floor with a building entrance on an accessible route, then the units on each floor with an accessible building entrance must satisfy the Act's accessibility requirements. (See the discussion of townhouses in nonelevator buildings above.)

Handicap

Comment. Several commenters requested that the Department avoid use of the terms "handicap" and "handicapped persons", and replace them with the terms "disability" and "persons with disabilities".

Response. "Handicap" and "handicapped persons" are the terms used by the Fair Housing Act. These terms are used in Guidelines and regulations to be consistent with the statute.

Principle of Reasonableness and Cost

Comment. Four commenters noted that, in the preamble to the proposed guidelines, the Department indicated that the Fair Housing Accessibility Guidelines were limited by a "principle of reasonableness and cost". The commenters requested that the Department define this phrase.

Response. In the preamble to the proposed guidelines, the Department stated in relevant part as follows: "These guidelines are intended to provide a safe harbor for compliance with respect to those issues they cover. * * * Where the ANSI Standard is not applicable, the language of the statute itself is the safest guide. The degree of scoping, accessibility, and the like are of course limited by a principle of reasonableness and cost." (55 FR 24371)

In House Report No. 711, the accessibility requirements of the Fair Housing Act were referred to by the Congress as "modest" (House Report at 25), "minimal" and "basic features of adaptability" (House Report at 25). In developing the Fair Housing Accessibility Guidelines, the Department was attentive to the fact that Congress viewed the Act's accessibility requirements as reasonable, and that the Guidelines for these requirements should conform to this "reasonableness" principle—that is, that the Guidelines should provide the level of reasonable accessibility envisioned by Congress, while maintaining the affordability of new multifamily construction. The Department believes that the final Guidelines conform to this principle of reasonableness and cost.

Slope

Comment. One commenter, the Building Officials & Code Administrators International, Inc. (BOCA), requested clarification of the term, "slope". The commenter stated the definition indicates that slope is calculated based on the distance and elevation between two points. The commenter stated that this is adequate when there is a uniform and reasonably consistent change in elevation between point (i.e., one point is at the top of a hill and the other is at the bottom), but the definition does not adequately address land where a valley, gorge, or swale occurs between two points. The commenter stated that the definition also does not adequately address conditions where there is an abrupt change in the rate of slope between the points (i.e. a sharp drop off within a short distance, with the remaining distance being flat or sloped much more gradually).

Response. Slope is measured from ground level at the entrance to all arrival points within 50 feet, and is considered impractical only when it exceeds 10 percent between the entrance and all these points. Since multifamily dwellings typically have an arrival point fairly close to the building, a significant change such as a sharp drop would likely result in an impractical slope. Minor variations, such as a swale, if more than 5 percent, would be easily graded or ramped; a gorge would be bridged or filled, in any event, if it was on an entrance route.

Usable Door

Comment. One commenter stated that a clear definition of "usable door" is required.

Response. The Guidelines for Requirement 3 (usable doors) fully describe what is meant by "usable door" within the meaning of the Act.

Section 3. Fair Housing Act Design and Construction Requirements

This section reprints § 100.205 (Design and Construction Requirements) from the Department's final rule implementing the Fair Housing Act. A reprint of § 100.205 was included to provide easy reference to (1) the Act's accessibility requirements, as codified by § 100.205; and (2) the additional examples of methods of compliance with the Act's requirements that are presented in this regulation.

Section 4. Application of the Guidelines

This section states that the design specifications that comprise the final Guidelines apply to all "covered multifamily dwellings" as defined in Section 2 of the Guidelines. Section 4 also clarifies that the Guidelines, are "recommended" for designing dwellings that comply with the requirements of the Fair Housing Amendments Act of 1988.

Under the discussion of Section 4 in the proposed guidelines, the Department requested comment on the Act's application to dwelling units with design features such as a loft or sunken living room (55 FR 24377). A number of comments were received on this issue. Since the Act's application to units with such features is relevant within the context of an accessible route into and through a dwelling unit, the comments and the Department's response to these comments are discussed in section 5, under the subheading, "Guidelines for Requirement 4".

Section 5. Guidelines

The Guidelines contained in this Section 5 are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in the regulation implementing these requirements, 24 CFR 100.205. There are Guidelines for seven requirements: (1) An accessible entrance on an accessible route; (2) accessible and usable public common use areas; (3) doors usable by a person in a wheelchair; (4) accessible route into and through the covered dwelling unit; (5) light switches, electrical outlets and environmental controls in accessible locations; (6) bathroom walls reinforced for grab bars; and (7) usable kitchens and bathrooms.

For each of these seven requirements, the Department adopted the corresponding Option One guidelines, but changes were made to certain of the Option One design specifications. The following discussion describes the Guidelines for each of the seven requirements, and highlights the changes that have been made.

Guidelines for Requirement 1

The Guidelines for Requirement 1 present guidance on designing an accessible entrance on an accessible route, as required by § 100.205(a), and on determining when an accessible entrance is impractical because of terrain or unusual characteristics of the site.

The Department has adopted the Option One guidelines for Requirement 1, with substantial changes to the specifications for determining site impracticality. These changes, and the guidelines that remain unchanged for Requirement 1 are discussed below.

Site Impracticality Determinations. The Guidelines for Requirement 1 begin by presenting criteria for determining when terrain or unusual site characteristics would make an accessible entrance impractical. Section 100.205(a) recognizes that certain sites may have characteristics that make it impractical to provide an accessible route to a multifamily dwelling. This section states that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site.

Comments. The Department received many comments on the site impracticality specifications presented in the proposed guidelines (55 FR 24377–24378). The majority of the members of the disability community who commented on this issue supported the Option One guidelines, and recommended no change. However, other commenters, including a few disability organizations, members of the building industry, State and local government agencies involved in the development and enforcement of accessibility codes, and some of the major building code organizations, criticized one or more aspects of the Option One and Option Two guidelines for Requirement 1. Specific comments are noted below.

A few commenters suggested that the 10% slope criterion was too low, and easily will be met by a project site having a hilly terrain which could (and typically would) be made more level. These commenters recommended a higher slope criterion ranging anywhere from 12% to 30%. Other commenters stated that the slope criterion for the planned finished grade should not exceed 8.33%. The Congressional sponsors of the Act (U.S. Representatives Edwards, Fish, and Frank) stated that a limited exemption for slopes greater than 10% "was not contemplated by the Act"; but that they believed the Department has the discretion to develop such an exemption if it is "carefully crafted and narrowly tailored".

Several commenters stated that any evaluation of the undisturbed site should be done only on the percentage of land that is buildable. Several commenters stated that the final Guidelines should not require an evaluation of the undisturbed site between the planned entrance and the arrival points—that the only evaluation of the undisturbed site should be the initial threshold slope analysis.

There were a number of questions on arrival points, and requests that these points be more clearly defined. Several commenters presented specific examples of possible problems with the use of arrival points, as specified in the Option One guidelines. A few commenters stated that the individual building analysis should involve a measurement between the entrance and only one designated vehicular or pedestrian arrival point.

Other commenters stated that single buildings on a site should be subject to the same analysis as multiple buildings on a site.

A number of commenters criticized the Option One site impracticality analysis as being too cumbersome and confusing. A number of commenters objected to Option Two's requirement that covered multifamily dwellings with elevators must comply with the Act's accessibility requirements, regardless of site conditions or terrain.

Response. Following careful consideration of these comments, the Department has revised significantly the procedure for determining site impracticality, and its application to covered multifamily dwellings.

For covered multifamily dwellings with elevators, the final Guidelines would not exempt these dwellings from the Act's accessibility requirements. The final Guidelines provide that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route regardless of terrain or unusual characteristics of the site. Every dwelling unit on a floor served by an elevator must be on an accessible route, and must be made accessible in accordance with the Act's requirements for covered dwelling units. The Department has excluded elevator buildings from any exemption from the Act's accessibility requirements because the Department believes that the type of site work that is performed in connection with the construction of a high rise elevator building generally results in a finished grade that would make the building accessible. The Department also notes that the majority of elevator buildings are designed with a primary building entrance and a passenger drop-off area which are easily made accessible to individuals with handicaps. Additionally, many elevator buildings have large, relatively level areas adjacent to the building entrances, which are normally provided for moving vans. These factors lead the Department to conclude that site impracticality considerations should not apply to multifamily elevator buildings.

For covered multifamily dwellings without elevators, the final Guidelines provide two alternative tests for determining site impracticality due to terrain. The first test is an individual building test which involves a two-step process: measurement of the slope of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points; and measurement of the slope of the planned finished grade between the entrance and all vehicular or pedestrian arrival points. The second test is a site analysis test which involves an analysis of the topography of the existing natural terrain.

A site with a single building, having a common entrance for all units, may be analyzed only under the first test—the individual building test.

All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed either under the first test or the second test. For these sites for which either test is applicable, the final Guidelines provide that regardless of which test is utilized by a builder or developer, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the Act's accessibility requirements.

The distinctive features of the two tests for determining site impracticality due to terrain, for nonelevator multifamily dwellings, are as follows:

1. *The individual building test.*

a. This test is applicable to all sites.

b. This test eliminates the slope analysis of the entire undisturbed site that was applicable only to multiple building sites, and, concomitantly, the table that specifies the minimum percentage of adaptable units required for every multiple building site. The only analysis for site impracticality will be the individual building analysis. This analysis will be applied to each building regardless of the number of buildings on the site.

c. The individual building analysis has been modified to provide for measurement of the slopes between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance. The analysis further provides that if there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, then measurement will be made of the slope between the planned entrance and the closest vehicular or pedestrian arrival point. Additionally, the final Guidelines clarify how to measure the slope between the planned entrance and an arrival point.

d. The individual building analysis retains the evaluation of both the undisturbed site and the planned finished grade. Buildings would be exempt only if the slopes of both the original undisturbed site and the planned finished grade exceed 10 percent (1) as measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or (2) if there are no vehicular or pedestrian arrival points within that 50 foot area, as measured between the planned entrance and the closest vehicular or pedestrian arrival point.

2. *The site analysis test.*

a. This test is only applicable to sites with multiple buildings, or to sites with a single building with multiple entrances.

b. This test involves an analysis of the existing natural terrain (before grading) of the buildable area of the site by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval. The accuracy of the slope analysis is to be certified by a professional licensed engineer, landscape architect, architect or surveyor.

c. This test provides that the minimum number of ground floor units to be made accessible on a site must equal the percentage of the total buildable area (excluding floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.

The Department believes that both tests for determining site impracticality due to terrain present enforceable criteria for determining when terrain makes accessibility, as required by the Act, impractical. The Department also believes that by offering a choice of tests, the Department is providing builders and developers with greater flexibility in selecting the approach that is most appropriate, or least burdensome, for their development project, while assuring that accessible units are provided on every site. As noted earlier in this preamble, this policy is consistent with the intent of Congress which was to encourage creativity and flexibility in meeting the Act's requirements, and thus minimize the impact of these requirements on housing affordability.

With respect to determining site impracticality due to unusual characteristics of the site, the test in the final Guidelines is essentially the same as that provided in the Option One guidelines. This test has been modified to limit measurement of the finished grade elevation to that between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance.

Finally, the final Guidelines for Requirement 1 contemplate that the site tests recommended by the Guidelines will be performed, generally, on "normal" soil. The Department solicits additional public comment only on the issue of the feasibility of the site tests on areas that have difficult soil, such as areas where expansive clay or hard granite is prevalent.

Additional specific comments on the site impracticality determination are as follows:

Comment. One commenter stated that the site impracticality determination seems to suggest that only the most direct path from the pedestrian or vehicular arrival points will be used to evaluate the ability to create an accessible route of travel to the building. The commenter stated that it may be possible to use natural or finished contours of the site to provide an accessible route other than a straight-line route.

Response. To be enforceable, the Guidelines must specify where the line is drawn; otherwise it is not possible to specify what is "practical". Generally, developers provide relatively direct access from the entrance to the pedestrian and vehicular arrival points. If, in fact, the route as built was accessible, then the building would be expected to have an accessible entrance and otherwise comply with the Act.

Comment. Another commenter stated that the site impracticality determination does not take into account the many building types and unit arrangements. The commenter stated that some buildings have a common entrance with unit entrances off a common corridor, while others have individual, exterior entrances to the units. The commenter stated that if the Department is going to permit exemptions from the Act's requirements caused by terrain, the commenter did not understand why every entrance in a building containing individually-accessed apartments must comply with the Act's requirements, simply because they are in one building.

Response: The final Guidelines recognize (as did the proposed guidelines) the difference in building types. If there is a single entry point serving the entire building (or portions thereof), that entry point is considered the "entrance". If each unit has a separate exterior entrance, then each entrance is to be evaluated for the conditions at that entrance. Thus, a building with four entrances, each serving one of four units, might have only one accessible entrance, depending upon site conditions, or it might have any combination up to four.

Comment. Another commenter stated that the evaluation for unusual characteristics of the site only takes into account floodplains or high hazard coastal areas, and excludes other possible unique and unusual site characteristics.

Response. The provision for unusual characteristics of the site clearly provides that floodplains or high hazard coastal areas are only two examples of unusual site characteristics. The provision states that "unusual site characteristics" includes "sites subject to similar requirements of law or code."

Comment. A number of commenters expressed concern that the site impracticality determination of the Guidelines may conflict with local health, safety, environmental or zoning codes. A principal concern of one of the commenters was that the final Guidelines may require "massive grading" of a site in order to achieve compliance with the Act. The commenter was concerned that such grading may conflict with local laws directed at minimizing environmental damage, or with zoning codes that severely limit substantial fill activities at a site.

Response. The Department believes that the site impracticality determination adopted in these final Guidelines will not conflict with local safety, health, environmental or zoning codes. The final Guidelines provide, as did the proposed guidelines, that the site planning involves consideration of all State and local requirements to which a site is subject, such as "density constraints, tree-save or wetlands ordinances and other factors impacting development choices" (55 FR 24378), and explicitly accept the site plan that results from balancing these and other factors affecting the development. The Guidelines would not require, for example, that a site be graded in violation of a tree-save ordinance. If, however, access is required based on the final site plan, then installation of a ramp for access, rather than grading, could be necessary in some cases so as not to disturb the trees. Where access is required, the method of providing access, whether grading or a ramp, will be decided by the developer, based on local ordinances and codes, and on business or aesthetic factors. It should be noted that these nonmandatory Guidelines do not purport to preempt conflicting State or local laws. However, where a State or local law contradicts a specification in the Guidelines, a builder must seek other reasonable cost-effective means, consistent with local law, to assure the accessibility of his or her units. The accessibility requirements of the Fair Housing Act remain applicable, and State and local laws must be in accord with those requirements.

Additional Design Specifications for Requirement 1. In addition to the site impracticality determinations, the final Guidelines for Requirement 1 specify that an accessible entrance on an accessible route is practical when (1) there is an elevator connecting the parking area with any floor on which dwelling units are located, and (2) an elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point, and the planned walkway has a slope no greater than 10 percent. The Guidelines also provide that (i) an accessible entrance that complies with ANSI 4.14, and (2) an accessible route that complies with ANSI 4.3, meets with the accessibility requirements of § 100.205(a). Finally, the Guidelines provide that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers, or legal restrictions, outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route. (These design specifications are unchanged from the proposed Option One guidelines for Requirement 1.)

Comment. Several comments were received on the additional design specifications for Requirement 1. The majority of commenters supported 8.33% as the slope criterion for the finished grade between covered multifamily dwellings and a public or common use facility. A few commenters stated that vehicular access was not an acceptable alternative to pedestrian access. Other commenters stated that the 10% slope criterion for the planned walkway was inconsistent with accessibility requirements that prohibit ramps from having a slope in excess of 8.33%.

Response. With respect to access via a vehicular route, the Department's expectation is that public and common use facilities generally will be on an accessible pedestrian route. The Department, however, recognizes that there may be situations in which an accessible pedestrian route simply is not practical, because of factors beyond the control of the owner. In those situations, vehicular access may be provided. With respect to the 10% slope criterion for planned elevated walkways, this is the criterion for determining whether it is practical to provide an accessible entrance. If the site is determined to be practical, then the slope of the walkway must be reduced to 8.33%.

Guidelines for Requirement 2

The Guidelines for Requirement 2 present design standards that will make public and common use areas readily accessible to and usable by handicapped persons, as required by § 100.205(c)(1).

The Department has adopted the Option One guidelines for Requirement 2, without change. The Guidelines for Requirement 2 identify components of public and common use areas that should be made accessible, reference the section or sections of the ANSI Standard which apply in each case, and describe the appropriate application of the design specifications. In some cases, the Guidelines for Requirement 2 describe variations from the basic ANSI provision that is referenced.

The basic components of public and common use areas covered by the Guidelines include, for example: accessible route(s); protruding objects; ground and floor surface treatments; parking and passenger loading zones;

curb ramps; ramps; stairs; elevator; platform lifts; drinking fountains and water coolers; toilet rooms and bathing facilities, including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks; seating, tables or work surfaces; places of assembly; common-use spaces and facilities, including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors and the like; and laundry rooms.

Specific comments on the Guidelines for Requirement 2 are as follows:

Comment. A number of comments were received on the various components listed in the Guidelines for Requirement 2, and the accessibility specifications for these components provided by both options One and Two. A few commenters, including the Granite State Independent Living Foundation, submitted detailed comments on the design standards for the listed components of public and common use areas, and, in many cases, recommended specifications different than those provided by either Option One or Option Two.

Response. Following careful consideration of the comments submitted on the design specifications of Requirement 2, the Department has decided not to adopt any of the commenters' proposals for change. The Department believes that application of the appropriate ANSI provisions to each of the basic components of public and common use areas, in the manner specified on the Option One chart, and with the limitations and modifications noted, remains the best approach to meeting the requirements of § 100.205(c)(1) for accessible and usable public and common use areas, both because Congress clearly intended that the ANSI Standard be used where appropriate, and because it is consistent with the Department's support for uniform standards to the greatest degree possible.

Comment. Other commenters requested that the ANSI provisions applicable to certain components in public and common use areas also should be applied to these components when they are part of individual dwelling units (for example, floor surface treatments, carpeting, and work surfaces).

Response. To require such application in individual dwelling units would exceed the requirements imposed by the Fair Housing Act. The Fair Housing Act does not require individual dwelling units to be fully accessible and usable by individuals with handicaps. For individual dwelling units, the Act limits its requirements to specific features of accessible design.

Comment. A number of commenters indicated confusion concerning when the ANSI standard was applicable to stairs.

Response. Stairs are subject to the ANSI Standard only when they are located along an accessible route not served by an elevator. (Accessibility between the levels served by the stairs or steps would, under such circumstances, be provided by some other means such as a ramp or lift located with the stairs or steps.) For example, a ground floor entry might have three steps up to an elevator lobby, with a ramp located besides the steps. The steps in this case should meet the ANSI specification since they will be used by people with particular disabilities for whom steps are more usable than ramps.

In nonelevator buildings, stairs serving levels above or below the ground floor are not required to meet the ANSI standard, unless they are a part of an accessible route providing access to public or common use areas located on these levels. For example, mailboxes serving a covered multifamily dwelling in a nonelevator building might be located down three steps from the ground floor level, with a ramp located beside the steps. The steps in this case would be required to meet the ANSI specifications.

Comment. Other commenters indicated confusion concerning when handrails are required. A few commenters stated that the installation of handrails limits access to lawn areas.

Response. Handrails are required only on ramps that are on routes required to be accessible. Handrails are not required on any on-grade walks with slopes no greater than 5%. Only on those walks that exceed 5% slope, and that are parts of the required accessible route, would handrails be required. Accordingly, walks from one building containing dwelling units to another, would not be affected even if slopes exceeded 5%, because the Guidelines do not require such walks as part of the accessible route. The Department believes that the benefits provided to persons with mobility-impairments by the installation of handrails on required accessible routes outweigh any limitations on access to lawn areas.

Comment. A number of proposals for revisions were submitted on the final Guidelines for parking and passenger loading zones.

Response. The Department has not adopted any of these proposals. The Department has retained the applicable provisions of the ANSI Standard for parking space. As noted previously in the preamble, the ANSI Standard is a familiar and widely accepted standard. The Department is reluctant to introduce a new or unfamiliar standard, or to specify parking specifications that exceed the minimal accessibility standards of the Act. However, if a local parking code requires greater accessibility features (e.g. wider aisles) with respect to parking and passenger loading zones, the appropriate provisions of the local code would prevail.

Comment. A number of commenters requested that the final Guidelines for parking specify minimum vertical clearance for garage parking. other commenters suggested that the Department adopt ANSI's vertical height requirement at passenger loading zones as the minimal vertical clearance for garage parking.

Response. No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Comment. Two commenters stated that parking spaces for condominiums is problematic because the parking spaces are typically deeded in ownership to the unit owner at the time of purchase, and it becomes extremely difficult to arrange for the subsequent provision of accessible parking. one of the commenters recommended that the Guidelines specify that a condominium development have two percent accessible visitor parking, and that these visitor accessible spaces be reassigned to residents with disabilities as needed.

Response. Condominiums subject to the requirements of the Act must provide accessible spaces for two percent of covered units. One approach to the particular situation presented by the commenters would be for condominium documents to include a provision that accessible spaces may be reassigned to residents with disabilities, in exchange for nonaccessible spaces that were initially assigned to units that were later purchased by persons with disabilities.

Comment. Several commenters stated that Option One's requirement of "sufficient accessible facilities" of each type of recreational facility is too vague. The commenters preferred option Two's guidelines on recreational facilities, which provides that a minimum of 25% (or at least one of each type) of recreational facilities must be accessible.

Response. The Department decided to retain its more flexible approach to recreational facilities. The final Guidelines specify that where multiple recreational facilities are provided, accessibility is met under § 100.205(c)(1) if sufficient accessible facilities of each type are provided.

Comment. Several commenters suggested that all recreational facilities should be made accessible.

Response. To specify that all recreational facilities should be accessible would exceed the requirements of the Act. Congress stated that the Act did not require every feature and aspect of covered multifamily housing to be made accessible to individuals with handicaps. (See House Report at 26.)

Comment. Several commenters submitted detailed specifications on how various recreational facilities could be made accessible. These comments were submitted in response to the Department's request, in the proposed guidelines, for more specific guidance on making recreational facilities accessible to persons with handicaps (55 FR 24376). The Department specifically requested information about ways to provide access into pools.

Response. The Department appreciates all suggestions on recommended specifications for recreational facilities, and, in particular, for swimming pools. For the present, the Department has decided not to change the specifications for recreational facilities, including swimming pools, as provided by the Option One guidelines, since there are no generally accepted standards covering such facilities. Thus, access to the pool area of a swimming facility is expected, but not specialized features for access into the pool (e.g., hoists, or ramps into the water).

Comment. Several commenters criticized the chart in the Option One guidelines, stating that it was confusing and difficult to follow.

Response. The chart is adapted from ANSI's Table 2 pertaining to basic components for accessible sites, facilities and buildings. The ANSI chart is familiar to persons in the building industry. Accordingly, the Option One chart (and now part of the final Guidelines), which is a more limited version of ANSI's Table 2, is not a novel approach.

Guidelines for Requirement 3

The Guidelines for Requirement 3 present design standards for providing doors that will be sufficiently wide to allow passage into and within all premises by handicapped persons in wheelchairs (usable doors) as required by § 100.20(c)(2).

The Department has adopted the Option One guidelines for Requirement 3 with minor editorial changes. No changes were made to the design specifications for "usable doors".

The Guidelines provide separate guidance for (1) doors that are part of an accessible route in the public and common use areas of multifamily dwellings, including entry doors to individual dwelling units; and (2) doors within individual dwelling units.

(1) For public and common use areas and entry doors to dwelling units, doors that comply with ANSI 4.13 would meet the requirements of § 100.205(c)(2).

(2) For doors within individual dwelling units, the Department has retained, in the final Guidelines, the design specification that a door with a clear opening of at least 32 inches nominal width when the door is open 90 degrees, as measured between the face of the door and the stop, would meet the requirements of § 100.205(c)(2).

Specific comments on the design specifications presented in the Guidelines for Requirement 3 are as follows:

Minimum Clear Opening

Comment. The issue of minimum clear opening for doors was one of the most widely commented-upon design features of the guidelines. The majority of commenters representing the disability community supported the Option One specification of a minimum clear opening of 32 inches. A few commenters advocated a wider clear opening. U.S. Representatives Edwards, Frank, and Fish expressed their support for the Option One specification on minimum clearance which is consistent with the ANSI Standard.

Commenters from the building industry were almost unanimous in their opposition to a minimum clear opening of 32 inches. Several builders noted that a 32-inch clear opening requires use of 36-inch doors. These commenters stated that a standard 2'10" door (34") provides only a 31¾ inch clear opening. The commenters therefore recommended amending the Guidelines to permit a "nominal" 32 inch clear space, allowing the use of a 2'10" door, which provides a 31¾ inch clear opening. Other commenters stated that, generally, door width should provide a 32-inch clear opening, but that this width can be reduced if sufficient maneuvering space is provided at the door. These commenters supported Option Two's approach, which provided for clear width to be determined by the clear floor space available for maneuvering on both sides of the door, with the minimum width set at 29¾ inches. (See Option 2 chart and accompanying text at 55 FR 24382.)

Response. The Department considered the recommendations for both wider clear openings, and more narrow clear openings, and decided to maintain the design specification proposed in the Option One guidelines (a clear opening of at least 32 inches nominal width). The clear opening of at least 32 inches nominal width has been the accepted standard for accessibility since the issuance of the original ANSI Standard in 1961. While the Department recognizes that it may be possible to maneuver most wheelchairs through a doorway with a slightly more narrow opening, such doors do not permit ready access on the constant-use basis that is the reality of daily living within a home environment. The Department also recognizes that wider doorways may ensure easier passage for wheelchair users. However, by assuring that the minimum 36-inch hallway and 32-inch clear openings are provided, the Department believes that its recommended opening for doors should accommodate most people with disabilities. In the preamble to the proposed guidelines, the Department stated that the clear width provided by a standard 34-inch door would be acceptable under the Guidelines.

Maneuvering Space at Doors

Comment. Several commenters requested that the final Guidelines incorporate minimum maneuvering clearances at doors, as provided by the ANSI Standard. These commenters stated that maneuvering space on the latch side of the door is as important a feature as minimum door width. Other commenters stated that the maneuvering space was necessary to ensure safe egress in cases of emergency.

Response. The Department has carefully considered these comments, and has declined to adopt this approach. The Department believes that, by adhering to the standard 32-inch clear opening, it is possible to forego other accessibility requirements related to doors (e.g. door closing forces, maneuvering clearances, and hardware) without compromising the Congressional directive requiring doors to be "sufficiently wide to allow passage by handicapped persons in wheelchairs." However, as the Department noted in the preamble to the proposed guidelines, approaches to, and

maneuvering spaces at, the exterior side of the entrance door to an individual dwelling unit would be considered part of the public spaces, and therefore would be subject to the appropriate ANSI provisions. (See 55 FR 24380.)

Doors in a Series

Comment. A few commenters expressed concern that the Guidelines did not provide design specification for an entrance that consists of a series of more than one door. The commenters were concerned that, without adequate guidance, a disabled resident or tenant could be trapped between doors.

Response. Doors in a series are not typically part of an individual dwelling unit. Doors in a series generally are used in the entries to buildings, and are therefore part of public spaces. Section 4.13 of the ANSI Standard, which is applicable to doors in public and common use areas, provides design specifications for doors in a series. However, where doors in a series *are* provided as part of a dwelling unit, the Department notes that the requirements of an accessible route into and through the dwelling unit would apply.

Door Hardware

Comment. A few commenters requested that lever hardware be required on doors throughout dwelling units, not only at the entry door to the dwelling unit.

Response. For doors within individual dwelling units, the Fair Housing Act only requires that the doors be sufficiently wide to allow passage by handicapped persons in wheelchairs. Lever hardware is required for entry doors to the building and to individual dwelling units because these doors are part of the public and common use areas, and are, therefore, subject to the ANSI provisions for public and common use areas, which specify lever hardware. Installing lever hardware on doors is the type of adaptation that individual residents can make easily. The ANSI standard also recognizes this point. Under the ANSI Standard, only the entry door into an accessible dwelling unit is required to comply with the requirements for door hardware. (See ANSI section 4.13.9.)

Multiple Usable Entrances

Comment. Several commenters noted that the Guidelines do not provide more than one accessible entrance/exit, and that without a second means of egress, wheelchair users may find themselves in danger in an emergency situation.

Response. As stated previously, the Department is limited to providing Guidelines that are consistent with the accessibility requirements of the Act. The Act requires "an accessible entrance", rather than requiring all entrances to be accessible. However, the requirements for usable doors and an accessible route to exterior spaces such as balconies and decks does respond to this concern.

Guidelines for Requirement 4

The Guidelines for Requirement 4 present design specifications for providing an accessible route into and through the covered dwelling unit, as required by § 100.205(c)(3)(i).

The Department has adopted the Option One guidelines for Requirement 4 with the following changes:

First, the Department has eliminated the specification for maneuvering space if a person in a wheelchair must make a T-turn.

Second, the Department has eliminated the specification for a minimum clear headroom of 80 inches.

Third, and most significantly, the Department has revised the design specifications for "changes in level" within a dwelling unit to include separate design specifications for: (a) single-story dwelling units, including single-story dwelling units with design features such as a loft or a sunken living room; and (b) multistory dwelling units in buildings with elevators.

Fourth, the Department has revised the specifications for changes in level at exterior patios, decks or balconies in certain circumstances, to minimize water damage. For the same reason, the final Guidelines also include separate specifications for changes in level at the primary entry doors of dwelling units in certain circumstances.

Specific comments on the Guidelines for Requirement 4, and the rationale for the changes made, are discussed below.

Minimum Clear Corridor Width

A few commenters from the disability community advocated a minimum clear corridor width of 48 inches. However, the majority of commenters on this issue had no objection to the minimum clear corridor width of 36 inches. The 36-inch minimum clear corridor width, which has been retained, is consistent with the ANSI Standard.

T-turn Maneuvering Space

Comment. Several commenters stated that this design specification was unclear in two respects. First, they stated that it was unclear when it is necessary for a designer to provide space for a T-turn. The commenters stated that it was difficult to envision circumstances where a wheelchair could be pulled into a position traveling forward and then not be capable of backing out. Second, the commenters stated that the two descriptions of the T-turn provided by the Department were contradictory. The commenters stated that the preamble to the proposed guidelines provided one description of the T-turn (55 FR 24380), while Figure 2 of the guideline 4 (55 FR 24392), presented a different description of the T-turn.

Response. The Department has decided to delete the reference to the T-turn dimensions in the Guidelines for Requirement 4. The Guidelines adequately address the accessible route into and through the dwelling unit by the minimum corridor width and door width specifications, given typical apartment layouts. Should a designer find that a unique layout in a particular unit made a T-turn necessary for a wheelchair user, the specifications provided in the ANSI Standard sections referenced for public and common use areas could be used.

Minimum Clear Headroom

Comment. Several commenters from the building industry objected to the specification for a minimum clear headroom of 80 inches. The commenters stated that standard doors provide a height range from 75 to 79 inches, and that an 80-inch specification would considerably increase the cost of each door installed.

Response. The specification for minimum clear headroom of 80 inches was included in the proposed guidelines because it is a specification included in the major accessibility codes. This design specification was not expected to conflict with typical door heights. However, since the principal purpose of the requirement is to restrict obstructions such as overhanging signs in public walkways, the Department has determined that this specification is not needed for accessible routes within individual dwellings units, and has therefore deleted this standard from the final Guidelines for such routes. (The requirement, however, still applies in public and common use spaces.)

Changes in Level within a Dwelling Unit

In the preamble to the proposed guidelines, the Department advised that the Act appears to require that dwelling units with design features such as lofts or with more than one floor in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to the upper levels (55 FR 24377). The Department stated that, although it is not clear that Congress intended this result, the Department's preliminary assessment was that the statute appears

to offer little flexibility in this regard. The Department noted that several commenters, including the NAHB and the NCCSCI, suggested that units with more than one floor in elevator buildings should be required to comply with the Act's accessibility requirements only on the floor that is served by the building elevator. (This was the position taken by Option Two.) The Department solicited comments on this issue, and received a number of responses opposing the Department's interpretation.

Comment. The commenters opposing the Department's interpretation stated that the Department's interpretation would place an undue burden on developers and needlessly increase housing costs for everyone; defeat the purpose of having multilevel units, which is to provide additional space at a lower cost; eliminate multilevel designs which may be desirable to disabled residents (e.g., to provide living accommodations for live-in attendants); and "create a backlash" against the Accessibility Guidelines.

Response. Following careful consideration of these comments, and a reexamination of the Act and its legislative history, the Department has determined that its previous interpretation of the Act's application to units with changes in level (whether lofts, or additional stories in elevator buildings), which would have required installation of chair lifts or internal elevators in such units, runs contrary to the purpose and intent of the Fair Housing Act, which is to place "modest accessibility requirements on covered multifamily dwellings." (See House Report at 25.)

In House Report No. 711, the Congress repeatedly emphasized that the accessibility requirements of the Fair Housing Act were minimal basic requirements of accessibility.

> These modest requirements will be incorporated into the design of new buildings, resulting in features which do not look unusual and will not add significant additional costs. The bill does not require the installation of elevators or 'hospital-like' features, or the renovation of existing units." (House Report at 16)

> Accessibility requirements can vary across a wide range. A standard of total accessibility would require that every entrance, doorway, bathroom, parking space, and portion of buildings and grounds be accessible. Many designers and builders have interpreted the term 'accessible' to mean this type of standard. The committee does not intend to impose such a standard. Rather, the committee intends to use a standard of 'adaptable' design, a standard developed in recent years by the building industry and by advocates for handicapped individuals to provide usable housing for handicapped persons without necessarily being significantly different from conventional housing." (House Report at 26)

The Department has determined that a requirement that units with lofts or multiple stories in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to lofts or upper stories would make accessible housing under the Fair Housing Act significantly different from conventional housing, and would be inconsistent with the Act's "modest accessibility requirements". (See House Report at 25.)

The Department also has determined that a requirement that dwelling units with design features, such as sunken living rooms, must provide some means of access, such as ramps or lifts, as submitted in the proposed guidelines (55 FR 24380) is inconsistent with the Act's modest accessibility requirements. Sunken living rooms are not an uncommon design feature. To require a ramp or other means of access to such an area, at the time of construction, would reduce, perhaps significantly, the space provided by the area. The reduced space might interfere with the use and enjoyment of this area by a resident who is not disabled, or whose disability does not require access by means of a ramp or lift. The Department believes that had it maintained in the final Guidelines the access specifications for design features, such as sunken living rooms, as set forth in the proposed guidelines, the final Guidelines would have interfered unduly with a developer's choice of design, or would have eliminated a popular design choice. Accordingly, the final Guidelines provide that access is not required to design features, such as a sunken living room, provided that the area does not have the effect of interrupting the accessible route through the remainder of the unit.

The Department believes that the installation of a ramp or deck in order to make a sunken room accessible is the type of later adaptation that easily can be made by a tenant. The Department, however, does require that design features, such as a split-level entry, which is critical to providing an accessible route into and through the unit, must provide a ramp or other means of access to the accessible route.

In order to comply with the Act's requirement of an accessible route into and through covered dwelling units, the Department has revised the Guidelines for Requirement 4 to provide separate technical guidance for two types of dwelling units: (1) Single-story dwelling units, including single-story dwelling units with design features such as a loft or a sunken living room; and (2) multistory dwelling units in elevator buildings. (Definitions for "single-story dwelling unit," "loft," "multistory dwelling unit" and "story" have been included in section 2 of the final Guidelines.)

"Single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor.

"Loft" is defined as an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" is defined as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it.

"Story" is defined as that portion of a dwelling unit between the upper surface of any floor and the upper surface of the floor next above, or the roof of the unit. Within the context of dwelling units, the terms "story" and "floor" are synonymous.

For single-story dwelling units and multistory dwelling units, the Guidelines for Requirement 4 are as follows:

(1) For single-story dwelling units, the design specifications for changes in level, are the same as proposed in the Option One guidelines. Changes in level within the dwelling unit with heights between ¼ inch and ½ inch are beveled with a slope no greater than 1:2. Changes in level greater than ½ inch (excluding changes in level resulting from design features such as a loft or a sunken living room) must be ramped or must provide other means of access. For example, split-level entries must be ramped or use other means of providing and accessible route into and through the dwelling unit.

For single-story dwelling units with design features such as a loft or a raised or sunken functional area, such as a sunken living room, the Guidelines specify that: (a) access to lofts is not required, provided that all spaces other than the loft are on an accessible route; and (b) design features such as a sunken living room are also exempt from the access specifications, provided that the sunken area does not interrupt the accessible route through the remainder of the unit.

(2) In multistory dwelling units in buildings with elevators, access to the additional story, or stories, is not required, provided that the story of the unit that is served by the building elevator (a) is the primary entry to the unit; (b) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement

7. (As previously noted, multistory units in buildings without elevators are not considered ground floor units, and therefore are exempt.)

The Department believes that the foregoing revisions to the Guidelines for Requirement 4 will provide individuals with handicaps the degree of accessibility intended by the Fair Housing Act, without increasing significantly the cost of multifamily housing.

Comment. Two commenters suggested that the same adaptability requirement that is applied to bathrooms should be applied to dwelling units with more than one story, or with lofts, i.e. that stairs, and the wall along the stairs, contain the appropriate reinforcement to provide for later installation of a wheelchair lift by a disabled resident, if so desired.

Response. The only blocking or wall reinforcement required by the Fair Housing Act is the reinforcement in bathroom walls for later installation of grab bars. As noted earlier in this preamble, the Fair Housing Act does not actually require that features in covered units be "adaptable", except for bathrooms. The adaptable feature is the reinforcement in bathroom walls which allows later installation of grab bars. Accordingly, the Department believes that a specification for reinforcement of the walls along stairs would exceed the Act's requirements, because the necessary reinforcement could vary by type of lift chosen, and more appropriately would be specified and installed as part of the installation of the lift.

Thresholds at Exterior Doors/ Thresholds to Balconies or Decks

Comment. A number of commenters from the building industry objected to the provision of the Option One guidelines that specified that an exterior deck, balcony, patio, or similar surface may be no more than ¾ inch below the adjacent threshold. Several commenters stated that, in many situations, this height is unworkable for balconies and decks because of waterproofing and safety concerns. This was a particular concern among commenters from the South Florida building industry, who stated that the ¾" height is ineffective for upper floors of high rise buildings in a coastal environment and invites water control problems. Others noted that the suggestion of a wooden decking insert, or the specification of a ¾ inch maximum change in level, in general, might conflict with fire codes.

Response. In response to these concerns, and mindful that Congress did not intend the accessibility requirements of the Act to override the need to protect the physical integrity of multifamily housing, the Department has included two additional provisions for changes in level at thresholds leading to certain exterior surfaces, as a protective measure against possible water damage. The final Guidelines provide that exterior deck, patio or balcony surfaces should be no more than ½ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface should be no more than 4 inches below the floor level of the interior dwelling unit, unless the local code requires a lower drop. Additionally, the final Guidelines provide that at the primary entry doors to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than ½ inch below the floor level of the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than ⅛ inch per foot.

In response to commenters' concern that the Guidelines for an accessible route to balconies and decks may conflict with certain building codes that require higher thresholds, or balconies or decks lower than the ¾ inch specified by the Guidelines, the Department notes that the Guidelines are "recommended" design specifications, not building code "requirements". Accordingly, the Guidelines cannot preempt State or local law. However, the builder confronted with local requirements that thwart the particular means of providing accessibility suggested by the Guidelines is under a duty to take reasonable steps to provide for accessibility by other means consistent with local law constraints and considerations of cost-effectiveness, in order to provide dwelling units that meet the specific accessibility requirements of the Fair Housing Act.

Guidelines for Requirement 5

The Guidelines for Requirement 5 present design specifications for providing dwelling units that contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, as required by § 100.205(c)(2)(ii).

The Department has adopted the Option One guidelines for Requirement 5 with minor technical changes. The final Guidelines clarify that to be in an accessible location within the meaning of the Act, the maximum height for an environmental control, for which reach is over an obstruction, is 44 inches for forward approach (as was proposed in the Option One guidelines), or 48 inches for side approach, provided that the obstruction is no more than 24 inches in depth. The inclusion of this additional specification for side approach is consistent with the comparable provisions in the ANSI standard.

Specific comments on the Guidelines for Requirement 5 are as follows:

Comments. Three comments stated that lowered thermostats could pose a safety hazard for children. However, the majority of comments requested clarification as to what is meant by "other environmental controls". Several commenters from the disability community requested that circuit breakers be categorized as environmental controls. Other commenters asked whether light and fan switches on range hoods fall within the category of light switches and environmental controls.

Response. With regard to concerns about lowered thermostats, the Act specifically identifies "thermostats" as one of the controls that must be in accessible locations, and the mounting heights specified in the Guidelines are necessary for an accessible location. The only other environmental controls covered by the Guidelines for Requirement 5 would be heating, air conditioning or ventilation controls (e.g., ceiling fan controls). The Department interprets the Act's requirement of placing environmental controls in accessible locations as referring to those environmental controls that are used by residents or tenants on a daily or regular basis. Circuit breakers do not fall into this category, and therefore are not subject to accessible location specifications. Light and fan switches on range hoods are appliance controls and therefore are not covered by the Act.

Comment. Other commenters asked whether light switches and electrical outlets in the inside corners of kitchen counter areas, and floor outlets are permissible.

Response. Light switches and electrical outlets in the inside corners of kitchen counters, and floor outlets, are permissible, if they are not the only light switches and electrical outlets provided for the area.

Comment. Another commenter pointed out that some electrical outlets that are installed specifically to serve individual appliances, such as refrigerators or microwave ovens, cannot realistically be mounted in an accessible location.

Response. Electrical outlets installed to serve individual appliances, such as refrigerators or built-in microwave ovens, may be mounted in non-accessible locations. These are not the type of electrical outlets which a disabled resident or tenant would need access to on a regular or frequent basis.

Comment. One commenter stated that Figure 3 in the proposed guidelines (Figure 2 in the final Guidelines) specifies a reach requirement more stringent than the ANSI Standard.

Response. The ANSI Standard presents reach ranges for both forward and side approaches for two situations: (1) unobstructed; and (2) over an obstruction. The proposed guidelines specified only the heights for forward reach, because those heights also are usable in side approach. The diagram in Figure 2 (formerly Figure 3) showing forward reach is identical to that of Figure 5 in the ANSI Standard. The ANSI Standard also includes a figure (Figure 6) for side reach that permits higher placement. The reach range for forward approach was the only one referenced in the proposed guidelines for use in the dwelling unit, because it was considered simpler and easier to use a single specification that would work in all situations. The reach range for forward approach has been retained in the final Guidelines for situations where there is no built-in obstruction in order to assure usability when the unit was furnished. However, the final Guidelines have added the specification for side reach over a built-in obstruction that is consistent with the ANSI requirement, and that permits placement two inches higher than forward reach.

Guidelines for Requirement 6

The Guidelines for Requirement 6 present design standards for installation of reinforcement in bathroom walls to allow for later installation of grab bars around the toilet, tub, shower stall and shower seat where such facilities are provided, as required by § 100.205(c)(3)(iii).

The Department adopted the Option One guidelines for Requirement 6 with two modifications. First, the final Guidelines provide that a powder room is subject to the requirement for reinforced walls for grab bars when the powder room is the only toilet facility located on the accessible level of a covered multistory dwelling unit. Second, the final Guidelines further clarify that reinforced bathroom walls will meet the accessibility requirement of § 100.205(c)(3)(iii), if reinforced areas are provided at least at those points where grab bars will be mounted.

Specific comments on this guideline were as follows:

Comment. A number of commenters requested that the Department specify the dimensions for grab bar reinforcement, and suggested that grab bar reinforcing material run horizontally throughout the entire length of the space given for grab bars, as provided by the ANSI Standard. These commenters stated that if this type of reinforcement was required, residents could locate more easily the studs for future grab bar installation, and have flexibility in the placement of grab bars for optimal use, and safety in bathrooms. One commenter noted that many grab bars are of such a length that they require an intermediate fastener, but the proposed standard does not permit intermediate fastening. Two commenters recommended that the final Guidelines follow ANSI and UFAS Standards for requirements for mounting grab bars. One commenter recommended the installation of panels of plywood behind bathroom walls because this would provide greater flexibility in the installation of grab bars.

Response. The illustrations of grab bar wall reinforcement accompanying the Guidelines for Requirement 6 are intended only to show where reinforcement for grab bars is needed. The illustrations are not intended to prescribe how the reinforcing should be provided, or that the bathtub or shower is required to be surrounded by three walls of reinforcement. The additional language added to the Guidelines is to clarify that the Act's accessibility requirement for grab bar reinforcement is met if reinforced areas are provided, at a minimum, at those points where grab bars will be mounted. The Department recognizes that reinforcing for grab bars may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated, or by installing vertical reinforcement (in the form of double studs, for example) at the points noted on the figures accompanying the Guidelines.

Comment. Several commenters stated that the final Guidelines should incorporate Option Two's specification of reinforcement for shower seats when shower stalls are provided.

Response. The Fair Housing Act only requires reinforcement for later installation of grab bars. The Act does not cover reinforcement for shower seats; rather, it mentions shower seats (if provided) as an area where grab bar reinforcement would be needed. However, as will be discussed more fully in the following section concerning the Guidelines for Requirement 7 (Usable Bathrooms), reinforcement for shower seats would provide adaptability to increase usability of shower stalls, and is a design option available to builders and developers in designing "usable" bathrooms.

Comment. One commenter recommended that the final Guidelines incorporate Option Two's specification that prefabricated tub/shower enclosures would have to be fabricated with reinforcement for grab bar enclosures.

Response. The Department did not incorporate this specification in the final Guidelines. The Department believes that it is inappropriate to specify product design. A builder should have the flexibility to choose how reinforcement for grab bars will be provided.

Comment. Two commenters stated that half-baths should also contain grab-bar reinforcements.

Response. Half-baths are not considered "bathrooms", as this term is commonly used, and, therefore are not subject to the bathroom wall reinforcement requirement, unless a half-bath facility is the only restroom facility on the accessible level of a covered multistory dwelling unit.

Comment. One commenter requested that the final Guidelines incorporate language clearly to specify that the builder's responsibility is limited solely to wall reinforcement, and later installation is the responsibility of the resident or tenant.

Response. It is unnecessary to incorporate the suggested language in the final Guidelines. The Guidelines for Requirement 6 are solely directed to reinforcement. No guidelines are provided for the actual installation of grab bars. Accordingly, there should be no confusion on this issue.

Guidelines for Requirement 7

The Guidelines for Requirement 7 present design specifications for providing usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, as required by § 100.205(c)(3)(iv).

For usable kitchens, the Department adopted the Option One guidelines with one change. The Department has eliminated the specification that controls for ranges and cooktops be placed so that reaching across burners is not required.

For usable bathrooms, the final Guidelines provide two alternative sets of design specifications. The Fair Housing Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an

individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be accomplished. The first set of specifications also includes size dimensions for shower stalls, but only where a shower stall is the only bathing facility provided in a dwelling unit. Additionally, either set of specifications is applicable to powder rooms, where a powder room is the only restroom facility on the accessible level of a covered multistory dwelling unit.

With the exception of the inclusion of shower stall dimensions, the first set of "usable bathroom" specifications remains the same as the Option One guidelines for usable bathrooms. The second set of "usable bathroom" specifications provide somewhat greater accessibility than the first set, but would be applicable only to one bathroom in a dwelling unit that has two or more bathrooms. The second set of specifications include clear space specifications for bathrooms with in-swinging doors and for bathrooms with outswinging doors. This second set of specifications also provides that toilets must be located in a manner that permits a grab bar to be installed on one side of the fixture, and provides specifications on the installation of vanities and lavatories.

To meet the Act's requirements for usable bathrooms, the final Guidelines provide that (1) in a dwelling unit with a single bathroom, either set of specifications may be used; and (2) in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or, alternatively, at least one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. However, in multistory dwelling units, only those bathrooms on the accessible level are subject to the Act's requirements for usable bathrooms. Where a powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit, the powder room must meet either the first set of specifications or the second set of specifications. All bathrooms and powder rooms that are subject to Requirement 7, must have reinforcements for grab bars as provided in the Guidelines for Requirement 8.

In developing the final Guidelines for the usable bathrooms requirement, the Department recognized that the Option One guidelines for usable bathrooms presented the minimum specifications necessary to meet the Act's requirements. Accordingly, the Department believes that it is appropriate to provide a second set of specifications which provide somewhat different accessibility accommodations than the Option One guidelines. The Department believes that by offering two sets of specifications for usable bathrooms, the Department is providing builders and developers with more development choices in designing dwelling units that contain more than one bathroom; and it is providing individuals and families with more housing options. Builders and developers may design all bathrooms to meet the minimal specifications of the first set of specifications, or they may design only one bathroom to meet the somewhat greater accessibility specifications of the second set. Regardless of which set of usable bathroom specifications is selected by a builder or developer, all doors to bathrooms and powder rooms must meet the minimum door width specifications of Requirement 3.

The following presents a discussion of the specific comments received on usable kitchens and usable bathrooms.

Controls for Ranges and Cooktops

Comment. A few commenters stated that the Department lacks authority under the Fair Housing Act to impose design standards on appliances. The commenter stated that standards that specify certain design features for appliances in individual dwelling units exceed the scope of the Department's statutory authority. Other commenters objected to front range controls as a safety hazard for children. Commenters from the disability community were strongly supportive of this design specification.

Response. With respect to usable kitchens, the Act solely requires that kitchens have sufficient space such that an individual in a wheelchair can maneuver about. Accordingly, a specification that controls for ranges and cooktops be placed so that they can be used without reaching across burners is not consistent with the Act's requirement for usable kitchens.

In the proposed guidelines, the Option One guidelines for usable kitchens specified that controls should be located so as to be usable without reaching across burners. As the preamble to the proposed guidelines noted, many standard styles of ranges and cooktops meeting this specification (other than those with front controls) are available on the market. However, in reviewing the entire rulemaking history on the design and construction requirements, the Department has concluded that the requirements of the Fair Housing Act did not cover any appliance controls. Accordingly, this specification was not included in the final Guidelines.

Maneuvering Space, Adjustable Cabinetry, Fixtures and Plumbing

Comment. A number of commenters from the disability community stated that it was important that the Guidelines for both kitchens and bathrooms specify a five-foot turning radius; adjustable cabinetry, fixtures and plumbing; and fixture controls that comply with the appropriate provisions of the ANSI Standard.

Response. The legislative history of the Fair Housing Act clearly indicates that Congress did not envision usable kitchens and bathrooms to be designed in accordance with the specifications suggested by the commenters. In House Report No. 711, the Congress stated as follows:

> The fourth feature is that kitchens and bathrooms be usable such that an individual in a wheelchair can maneuver about the space. This provision is carefully worded to provide a living environment usable by all. Design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with disabilities without necessarily increasing the size of space. The Committee intends that such space be usable by handicapped persons, but this does not necessarily require that a turning radius be provided in every situation. This provision also does not require that fixtures, cabinetry or plumbing be of such design as to be adjustable. (House Report at 27).

Accordingly, the Department is unable to adopt any of the proposals suggested by the commenters. The Act's requirement for usable kitchens and bathrooms only specifies maneuverability for wheelchair users, and this maneuverability does not require the specifications advocated by the commenters. (See previous discussion of this issue in the preamble to the proposed Fair Housing regulations at 56 FR 44605.)

Comment. Two commenters requested clarifications concerning what is meant by "sufficient maneuvering space". One of the commenters recommended that this term be defined to include "such space as shall permit a person in a wheelchair to use the features and appliances of a room without having to leave the room to obtain an approach to an appliance, work surface, or cabinet".

Response. The Guidelines for Requirement 7 (usable kitchens and bathrooms) describe what constitutes sufficient maneuvering space in the kitchen and the bathroom. Additionally, the preamble to the proposed guidelines explicitly states that sufficient maneuvering space for kitchens does not require a wheelchair turning radius (55 FR 24361). As noted in response to the preceding comment, a wheelchair turning radius also is not required for either usable kitchens or usable bathrooms. The Guidelines for usable bathroom state that sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other assistive device to enter and close the door, use the fixtures, reopen the door and exit. This specification was not changed in the final Guidelines.

Kitchen Work Surfaces

Comment. One commenter stated that "Element 12" in the chart accompanying the Guidelines for Requirement 2 (public and common use areas) seems to require a portion of the kitchen counters to be accessible since they are work surfaces. This commenter stated that if this interpretation is correct then it should be made clear in the Guidelines.

Response. The commenter's interpretation is not correct. The chart accompanying the Guidelines for Requirement 2 is only applicable to the public and common use areas, not to individual dwelling units.

Showers

Comments. Several commenters requested that the final Guidelines provide dimensions on the appropriate width and height of showers and shower doors. Another commenter asked whether showers were required to comply with dimensions specified by the ANSI Standard.

Response. The final Guidelines for usable bathrooms (the first set of specifications) specify size dimensions for shower stalls in only one situation—when the shower stall is the only bathing facility provided in a covered dwelling unit. The Department believes that, where a shower stall is the only bathing facility provided, size specification for the shower stall is consistent with the Act's requirement for usable bathrooms. However, if a shower stall is not the only bathing facility provided in the dwelling unit, then the only specification for showers, appropriate under the Act, concerns reinforced walls in showers. (The titles under the illustrations (figures) related to showers in the final Guidelines for Requirement 6 have been revised to make it clear that the figures are specifying only the different areas required to be reinforced in showers of different sizes, not the required sizes of the shower stalls.)

In-swinging Bathroom Doors

Comment. One commenter stated that in-swinging bathroom doors generally are problematic, unless the bathroom is unusually large. The commenter noted that an in-swinging door makes it extremely difficult to enter and exit. The commenter recommended that in-swinging doors be prohibited unless there is sufficient internal bathroom space, exclusive of the swing of the door, which allows either a five foot turning radius or two mutually exclusive 30" x 48" wheelchair spaces. Another commenter stated that in-swinging bathroom doors create a serious obstacle for the wheelchair user.

Response. The Department declines to prohibit in-swinging bathroom doors. Adjusting an in-swinging door to swing out is the type of later adaptation that can be made fairly easily by a resident or tenant. Once a minimum door width is provided, a tenant who finds a bathroom not readily usable can have the door rehung as an outswinging door. Note, however, that the second set of guidelines for usable bathrooms specifies clear space for bathrooms with in-swinging doors.

Bathroom Design Illustrations

Comment. A number of commenters from the disability community stated that two of the six bathroom drawings in the preamble to the proposed guidelines (numbers 4 and 6 at 55 FR 24374–24375) did not allow for a parallel approach to the tub. These commenters requested that these drawings be removed from the final Guidelines. Other commenters stated that the Department's bathroom design illustrations at 55 FR 24374–24375 are not consistent with the Figure 8 bathroom design illustrations at 55 FR 24401.

Response. While a parallel approach to the tub would provide somewhat greater accessibility, the Department believes that to indicate, through the Guidelines, that a parallel approach to the tub is necessary to meet the Act's requirements, exceeds the Fair Housing Act's minimal design expectations for bathrooms. Accordingly, the first set of specifications for usable bathrooms does not specify a parallel approach to the tub. However, the second set of specifications provides for a clear access aisle adjacent to the tub that would permit a parallel approach to the tub. Either method would meet the Act's requirements. With respect to the comments on the bathroom design illustrations, these illustrations have been revised to make the clear floor space requirements more readily understood. The illustrations are adapted from ANSI A117.1.

Number of Accessible Bathrooms

Comment. A number of comments were received on how many bathrooms in a dwelling unit should be subject to the Act's "usable" bathroom requirement. Many commenters recommended that all full bathrooms be made accessible. Other commenters recommended that only one full bathroom be required to be made accessible. A few commenters recommended that half-baths/powder rooms also be subject to the Act's requirement.

Response. In House Report No. 711, the Congress distinguished between "total accessibility" and the level of accessibility required by the Fair Housing Act. The report referred to standards requiring every aspect or portion of buildings to be totally accessible, and pointed out that this was not the level of accessibility required by the Act. The final Guidelines for bathrooms are consistent with the Act's usable bathroom requirement, and provide the level of accessibility intended by Congress. As discussed previously in this preamble, the final Guidelines for usable bathrooms provide two sets of specifications. The second set of specifications provides somewhat greater accessibility than the first set of specifications. In view of this fact, the final Guidelines provide that in a dwelling unit with a single bathroom, the bathroom may be designed in accordance with either set of specifications—the first set or the second set. However, in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or a minimum of one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. Additionally, the final Guidelines provide that a powder room must comply with the Act's usable bathroom requirements when the powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit.

3. Discussion of Comments on Related Fair Housing Issues Compliance Deadline

Section 100.205 of the Fair Housing regulations incorporates the Act's design and construction requirements, including the requirement that

multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. Section 760.205(a) provides that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and, therefore, exempt from Act's accessibility requirements), if they are occupied by that date, or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County, or local government on or before January 13, 1990.

Comment. The Department received a number of comments on the March 13, 1991 compliance deadline, and on methods of achieving compliance. Many commenters objected to the March 13, 1991 compliance deadline on the basis that this deadline was unreasonable. Several commenters from the building industry stated that, in many cases, design plans for buildings now under construction were submitted over two years ago, and it would be very expensive to make changes to buildings near completion. Other commenters stated that it is unreasonable to impose additional requirements on a substantially completed project that unexpectedly has been delayed for occupancy beyond the March 13, 1991 effective date.

Response. Section 804(f)(3)(C) of the Fair Housing Act states that the design and construction standards will be applied to covered multifamily dwelling units for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act. The Fair Housing Act was enacted on September 13, 1988. The date that is 30 months from that date is March 13, 1991. Accordingly, the inclusion of a March 13, 1991 compliance date in § 100.205 is a codification of the Act's compliance deadline. The Department has no authority to change that date. Only Congress may extend the March 13, 1991 deadline.

The Department, however, has been attentive to the concerns of the building industry, and has addressed these concerns, to the extent that it could, in prior published documents. In the preamble to the final Fair Housing rule, the Department addressed the objections of the building industry to the Department's reliance on "actual occupancy" as the sole basis for determining "first occupancy". (See 54 FR 3251; 24 CFR Ch. I, Subch. A, App. I at 585 (1990).) Commenters to the proposed Fair Housing rule, like the commenters to the proposed guidelines, argued that coverage of the design and construction requirements must be determinable at the beginning of planning and development, and that projects delayed by unplanned and uncontrollable events (labor strikes, Acts of God, etc.) should not be subject to the Act.

In order to accommodate the "legitimate concerns on the part of the building industry" the Department expanded § 100.205 of the final rule to provide that covered multifamily dwellings would be deemed to be for first occupancy if the last building permit or renewal thereof was issued on or before January 13, 1990. A date of fourteen months before the March 13, 1991 deadline was selected because the median construction time for multifamily housing projects of all sizes was determined to be fourteen months, based on data provided by the Marshall Valuation Service.

More recently, the Department addressed similar concerns of the building industry in the preamble to the proposed accessibility guidelines. In the June 15, 1990 publication, the Department recognized that projects designed in advance of the publication of the final Guidelines, may not become available for first occupancy until after March 13, 1991. To provide some guidance, the Department stated in the June 15, 1990 notice that compliance with the Option One guidelines would be considered as evidence of compliance with the Act, in projects designed before the issuance of the final Guidelines. The Department restated its position on this issue in a supplementary notice published in the Federal Register on August 1, 1990 (55 FR 31121). The specific circumstances under which the Department would consider compliance with the Option One guidelines as compliance with the accessibility requirements of the Act were more fully addressed in the August 1, 1990 notice.

Comment. A number of commenters requested extending the date of issuance of the last building permit from January 13, 1990 to some other date, such as June 15, 1990, the date of publication of the proposed guidelines; August 1, 1990, the date of publication of the supplementary notice; or today's date, the date publication of the final Guidelines.

Response. The date of January 13, 1990 was not randomly selected by the Department. This date was selected because it was fourteen months before the compliance deadline of March 13, 1991. As previously noted in this preamble, fourteen months was found to represent a reasonable median construction time for multifamily housing projects of all sizes, based on data contained in the Marshall Valuation Service. Builders have been on notice since January 23, 1990—the publication date of the final Fair Housing rule, that undertaking construction after January 13, 1990 without adequate attention to accessibility considerations would be at the builder's risk.

Comment. One commenter requested that the applicable building permit be the "primary" building permit for a particular building. Other commenters inquired about the status of building permits that are issued in stages, or about small modifications to building plans during construction which necessitate a reissued building permit.

Response. Following publications of the proposed Fair Housing regulation, and the many comments received at that time from the building industry expressing concern that "actual occupancy" was the only standard for determining "first occupancy", the Department gave careful consideration to the steps and stages involved in the building process. On the basis of this study, the Department determined that an appropriate standard to determine "first occupancy", other than actual occupancy, would be issuance of the last building permit on or before January 13, 1990. This additional standard was added to the final Fair Housing Act regulation. The Department believes that, aside from actual occupancy, issuance of the last building permit remains the appropriate standard.

Compliance Determinations by State and Local Juriadictions

Comment. A few commenters questioned the role of States and units of local government in determining compliance with the Act's accessibility requirements. The commenters noted that (1) § 100.205(g) encourages States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the Act's accessibility requirements; but (2) § 100.205(h) provides that determinations of compliance or noncompliance by a State or a unit of general local government are not conclusive in enforcement proceedings under the Fair Housing Act. These commenters stated that, unless determinations of compliance or noncompliance by a State or unit of general local government are deemed to be conclusive, local jurisdictions will be discouraged from performing compliance reviews because they will not be able to provide a building permit applicant with a sense of finality that proposed design plans are in compliance with the Act.

Response. Sections 100.205 (g) and (h) of the Fair Housing regulations implement sections 804(f)(5) (B) and (C), and section 804(f)(6)(b) of the Fair Housing Act. The language of §§ 100.205 (g) and (h) is taken directly from these statutory provisions. The Congress, not the Department, made the decision that determinations of compliance or noncompliance with the Act by a State or unit of general local government shall not be conclusive in enforcement proceedings. The Department, however, agrees with the position taken in the statute. The Department believes that it would be inappropriate to accord particular "weight" to determinations made by a wide variety of State and local government agencies involving a new civil rights law, without first having the benefit of some experience reviewing the accuracy of the determinations made by State and local authorities under the Fair Housing Act.

Comment. Two commenters stated that local building departments, especially those in smaller urban areas and in rural areas, do not have the manpower or expert knowledge to assure a proper determination of compliance, particularly in "close call" situations. The commenters recommended that liability for any infractions exclude local building departments unless the Department is willing to provide qualified personnel from its local field office to attend staff reviews of every building permit request.

Response. The Department is reluctant to assume that State and local jurisdictions, by performing compliance reviews, will subject themselves to liability under the Fair Housing Act, particularly in light of section 804(f)(5)(C) of the Act, which encourages States and localities to make reviews for compliance with the statute; and the implicit recognition, under Section 804(f)(6)(B), that these reviews may not be correct.

Comment. With reference to a violation of the Act's requirements, several commenters questioned how violations of the Act would be determined, and what the penalty would be for a violation. The commenters asked whether a builder would be cited, and fined, for each violation per building, or for each violation per unit.

Response. If it is determined that a violation of the Act has occurred, a Federal District Court or an administrative law judge (ALJ) has the authority to award actual damages, including damages for humiliation and emotional distress; punitive damages (in court) or civil penalties (in ALJ proceedings); injunctive relief; attorneys fees (except to the United States); and any other equitable relief that may be considered appropriate. Whether a violation will be found for each violation per building, for each violation per unit, or on any other basis, is properly left to the courts and the ALJs.

Enforcement Mechanisms

In the proposed guidelines, the Department solicited public comment on effective enforcement mechanisms (55 FR 24383–24384). Specifically, the Department requested comment on the effectiveness of: annual surveys to assess the number of projects developed with accessible buildings; recordkeeping requirements; and a "second opinion" by an independent, licensed architect or engineer on the site impracticality issue. The Department stated that comments on these proposals would be considered in connection with forthcoming amendments to the Fair Housing regulation.

The Department appreciates all comments submitted on the proposed enforcement mechanisms, and the suggestions offered on other possible enforcement mechanisms, such as a preconstruction review process, certification by a licensed architect, engineer or other building professional that a project is in compliance with the Act, and certification of local accessibility codes by the Department. All these comments will be considered in connection with future amendments to the Fair Housing Act regulation.

First Occupancy

Comment. A number of commenters requested clarification of the determination of "first occupancy" after March 13, 1991. A few commenters referred to the Act's first occupancy requirement as that of "ready for occupancy" by March 13, 1991.

Response. The phrase "ready for occupancy" does not correctly describe the standard contained in the Fair Housing Act. The Act states that covered multifamily dwellings subject to the Act's accessibility requirements are those that are "for first occupancy" after March 13, 1991. The standard, "first occupancy," is based on actual occupancy of the covered multifamily dwelling, or on issuance of the last building permit, or building permit renewal, on or before January 13, 1990. Where an individual is relying on a claim that a building was actually occupied on March 13, 1991, the Department, in making a determination of reasonable cause, will consider each situation on a case-by-case basis. As long as one dwelling unit in a covered multifamily dwelling is occupied, the one occupied dwelling unit is sufficient to meet the requirements for actual occupancy. However, the question of whether the occupancy was in compliance with State and local law (e.g., pursuant to a local occupancy permit, where one is required) will be a crucial factor in determining whether first occupancy has been achieved.

Comment. Several commenters requested clarification of "first occupancy", with respect to projects involving several buildings, or projects with extended build-out terms, such as planned communities with completion dates 5 to 10 years into the future.

Response. "First occupancy" is determined on a building-by-building basis, *not* on a project-by-project basis. For a project that involves several buildings, one building in the project could be built without reference to the accessibility requirements, while a building constructed next door might have to comply with the Act's requirements. The fact that one or more buildings in a multiple building project were occupied on March 13, 1991 will not be sufficient to afford an exemption from the Act's requirements for other buildings in the same project that are developed at a later time.

Costs of Adaptation

Comment. A few commenters requested clarification on who incurs the cost of making a unit adaptable for a disabled tenant.

Response. All costs associated with incorporating the new design and construction requirements of the Fair Housing Act are borne by the builder. There are, of course, situations where a tenant may need to make modifications to the dwelling unit which are necessary to make the unit accessible for that person's particular type of disability. The tenant would incur the cost of this type of modification—whether or not the dwelling unit is part of a multifamily dwelling exempt from the Act's accessibility requirements. For dwellings subject to the statute's accessibility requirements, the tenant's costs would be limited to those modifications that were not covered by the Act's design and construction requirements. (For example, the tenant would pay for the cost of purchasing

and installing grab bars.) For dwellings not subject to the accessibility requirements, the tenant would pay the cost of all modifications necessary to meet his or her needs. (Using the grab bar example, the tenant would pay both the cost of buying and installing the grab bars and the costs associated with adding bathroom wall reinforcement.)

Section 100.203 of the Fair Housing regulations provides that discrimination includes a refusal to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by that person, if modifications are necessary to afford the person full enjoyment of the premises. In the case of a rental, the landlord may reasonably condition permission for a modification on the renter's agreeing to restore the interior of the unit to the condition that existed before its modification—reasonable wear and tear excepted. This regulatory section provides examples of reasonable modifications that a tenant may make to existing premises. The examples include bathroom wall reinforcement. In House Report No. 711, the Congress provided additional examples of reasonable modifications that could be made to existing premises by persons with disabilities:

> For example, persons who have a hearing disability could install a flashing light in order to 'see' that someone is ringing the doorbell. Elderly individuals with severe arthritis may need to replace the doorknobs with lever handles. A person in a wheelchair may need to install fold-back hinges in order to be able to go through a door or may need to build a ramp to enter the unit. Any modifications protected under this section [section 804(f)(3)(A)] must be reasonable and must be made at the expense of the individual with handicaps. (House Report at 25)

Reasonable Modification

Comment. One commenter requested clarification concerning what is meant by "reasonable modification".

Response. What constitutes "reasonable modification" is discussed to some extent in the preceding section, "Costs of Adaptation", and also was discussed extensively in the preambles to both the proposed and final Fair Housing rules. (See 53 FR 45002–45003, 54 FR 3247–3248; 24 CFR Ch. I, Subch. A, App. I at 580–583 (1990).) Additionally, examples of reasonable modifications are provided in 24 CFR 100.203(c).

Scope of Coverage

Comment. A number of comments were received on the issue of which types of dwelling units should be subject to the Act's accessibility requirements, and the number or percentage of dwelling units that must comply with the Act's requirements.

Response. The Department lacks the authority to adopt any of the proposals recommended by the commenters. The type of multifamily dwelling subject to the Fair Housing Act's accessibility requirements, and the number of individual dwelling units that must be made accessible were established by the Congress, not the Department. The Fair Housing Act defines "covered multifamily dwelling" to mean buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units." (See Section 804(f)(7) of the Act.) The Fair Housing Act requires that covered multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. The Act does not permit only a percentage of units in covered multifamily dwellings to be designed in accordance with the Act's requirements, nor does the Department have the authority so to provide by regulation.

VI. Other Matters

Codification of Guidelines. In order to assure the availability of the Guidelines, and the preamble to the Guidelines, to interested persons in the future, the Department has decided to codify both documents. The Guidelines will be codified in the 1991 edition of the Code of Federal Regulations as appendix II to the Fair Housing regulations (i.e., 24 CFR Ch. I, Subch. A, App. II), and the preamble to the Guidelines will be codified as appendix III (i.e., 24 CFR Ch. I, Subch. A, App. III).

Regulatory Impact Analysis. A Preliminary Impact Analysis was published in the **Federal Register** on September 7, 1990 (55 FR 37072–37129). A Final Regulatory Impact Analysis is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will likely have a significant beneficial impact on family formation, maintenance or well-being. Housing designed in accordance with the Guidelines will offer more housing choices for families with members who have disabilities. Housing designed in accordance with the Guidelines also may be beneficial to families that do not have members with disabilities. For example, accessible building entrances, as required by the Act and implemented by the Guidelines, may benefit parents with children in strollers, and also allow residents and visitors the convenience of using luggage or shopping carts easily. Additionally, with the aging of the population, and the increase in incidence of disability that accompanies aging, significant numbers of people will be able to remain in units designed in accordance with the Guidelines as the aging process advances. Compliance with these Guidelines may also increase the costs of developing a multifamily building, and, thus, may increase the cost of renting or purchasing homes. Such costs could negatively affect families' ability to obtain housing. However, the Department believes that the benefits provided to families by housing that is in compliance with the Fair Housing Amendments Act outweigh the possible increased costs of housing.

Executive Order 12611, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism implications. The Guidelines only are recommended design specifications, not legal requirements. Accordingly, the Guidelines do not preempt State or local laws that address the same issues covered by the Guidelines.

Dated: February 27, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

Accordingly, the Department adds the Fair Housing Accessibility Guidelines as Appendix II and the text of the preamble to these final guidelines beginning at the heading "Adoption of Final Guidelines" and ending before "VI. Other Matters" as appendix III to 24 CFR, ch. I, subchapter A to read as follows:

Appendix II to Ch. I, subchapter A—Fair Housing Accessibility Guidelines

BILLING CODE 4210-28-M

U.S. Department of Housing and Urban Development
Office of Fair Housing and Urban Development

Fair Housing Accessibility Guidelines

Design Guidelines for Accessible/Adaptable Dwellings

Issued by the Department of Housing and Urban Development

Contents

Section 1. Introduction
Authority
Purpose
Scope
Organization of Guidelines
Section 2. Definitions
Section 3. Fair Housing Act Design and Construction Requirements
Section 4. Application of the Guidelines
Section 5. Guidelines
***Requirement* 1.** Accessible building entrance on an accessible route.
***Requirement* 2.** Accessible and usable public and common use areas.
***Requirement* 3.** Usable Doors.
***Requirement* 4.** Accessible route into and through the covered unit.
***Requirement* 5.** Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
***Requirement* 6.** Reinforced walls for grab bars.
***Requirement* 7.** Usable kitchens and bathrooms.

Fair Housing Accessibility Guidelines

Section 1. Introduction

Authority

Section 804(f)(5)(C) of the Fair Housing Amendments Act of 1988 directs the Secretary of the Department of Housing and Urban Development to provide technical assistance to States, local governments, and other persons in implementing the accessibility requirements of the Fair Housing Act. These guidelines are issued under this statutory authority.

Purpose

The purpose of these guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act of 1988 (Fair Housing Act). These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

Scope

These guidelines apply only to the design and construction requirements of 24 CFR 100.205. Compliance with these guidelines do not relieve persons participating in a Federal or Federally-assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157). Accessible design requirements for Section 504 are found at 24 CFR Part 8. Accessible design requirements for the Architectural Barriers Act are found at 24 CFR Part 40.

Organization of Guidelines

The design guidelines are incorporated in Section 5 of this document. Each guideline cites the appropriate paragraph of HUD's regulation at 24 CFR 100.205; quotes from the regulation to identify the required design features, and states recommended specifications for each design feature.

Generally, these guidelines rely on the American National Standards Institute (ANSI) A117.1-1986, American National Standard for Buildings and Facilities--Providing Accessibility and Usability for Physically Handicapped People (ANSI Standard). Where the guidelines rely on sections of the ANSI Standard, the ANSI sections are cited. Only those sections of the ANSI Standard cited in the guidelines are recommended for compliance with 24 CFR 100.205. For those guidelines that differ from the ANSI Standard, recommended specifications are provided. The texts of cited ANSI sections are not reproduced in the guidelines. The complete text of the 1986 version of the ANSI A117.1 Standard may be purchased from the American National Standards Institute, 1430 Broadway, New York, NY 10018.

Section 2. Definitions

As used in these Guidelines:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard or these guidelines is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard, or Section 5, Requirement 1 of these guidelines is an "accessible route". In the circumstances described in Section 5, Requirements 1 and 2, "accessible route" may include access via a vehicular route.

"Adaptable dwelling units", when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in 24 CFR 100.205(c)(2)-(3).

"ANSI A117.1-1986" means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people.

"Assistive device" means an aid, tool, or instrument used by a person with disabilities to assist in activities of daily living. Examples of assistive devices include tongs, knob-turners, and oven-rack pusher/pullers.

"Bathroom" means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower. It does not include single-fixture facilities or those with only a water closet and lavatory. It does include a compartmented bathroom. A

compartmented bathroom is one in which the fixtures are distributed among interconnected rooms. A compartmented bathroom is considered a single unit and is subject to the Act's requirements for bathrooms.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to parking or passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 (see Section 5, Requirement 1 of these guidelines) or a comparable standard complies with the requirements of this paragraph.

"Clear" means unobstructed.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings. See Section 5, Requirement 2 of these guidelines.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" or "covered multifamily dwellings subject to the Fair Housing Amendments" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

"Dwelling unit" means a single unit of residence for a household of one or more persons. Examples of dwelling units covered by these guidelines include: condominiums; an apartment unit within an apartment building; and other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any exterior access point to a building or portion of a building used by residents for the purpose of entering. For purposes of these guidelines, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if nonhandicapped residents occasionally use that door to enter.

"Finished grade" means the ground surface of the site after all construction, levelling, grading, and development has been completed.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of these guidelines, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

As used in this definition:

(a) "Physical or mental impairment" includes:
  (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. These guidelines are designed to make units accessible or adaptable for people with physical handicaps.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:
  (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
  (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  (3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Loft" means an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" means a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Single-story dwelling unit" means a dwelling unit with all finished living space located on one floor.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

"Slope" means the relative steepness of the land between two points and is calculated as follows: The distance and elevation between the two points (e.g., an entrance and a passenger loading zone) are determined from a topographical map. The difference in elevation is divided by the distance and that fraction is multiplied by 100 to obtain a percentage slope figure. For example, if a principal entrance is ten feet from a passenger loading zone, and the principal entrance is raised one foot higher than the passenger loading zone, then the slope is $1/10 \times 100 = 10\%$.

"Story" means that portion of a dwelling unit between the upper surface of any floor and the upper surface of the floor next above, or the roof of the unit. Within the context of dwelling units, the terms "story" and "floor" are synonymous.

"Undisturbed site" means the site before any construction, levelling, grading, or development associated with the current project.

"Vehicular or pedestrian arrival points" means public or resident parking areas, public transportation stops, passenger loading zones, and public streets or sidewalks.

"Vehicular route" means a route intended for vehicular traffic, such as a street, driveway or parking lot.

BEST COPY AVAILABLE

Section 3. Fair Housing Act Design and Construction Requirements

The regulations issued by the Department at 24 CFR 100.205 state:

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Section 4. Application of the Guidelines

The design specifications (guidelines) presented in Section 5 apply to new construction of "covered multifamily dwellings", as defined in Section 2. These guidelines are recommended for designing dwellings that comply with the requirements of the Fair Housing Amendments Act of 1988.

Section 5. Guidelines

Requirement 1. Accessible building entrance on an accessible route.

Under section 100.205(a), covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site.

Guideline

(1) Building entrance. Each building on a site shall have at least one building entrance on an accessible route unless prohibited by the terrain, as provided in paragraphs (2)(a)(i) or (2)(a)(ii), or unusual characteristics of the site, as provided in paragraph (2)(b). This guideline applies both to a single building on a site and to multiple buildings on a site.

(a) Separate ground floor unit entrances. When a ground floor unit of a building has a separate entrance, each such ground floor unit shall be served by an accessible route, except for any unit where the terrain or unusual characteristics of the site prohibit the provision of an accessible route to the entrance of that unit.

(b) Multiple entrances. Only one entrance is required to be accessible to any one ground floor of a building, except in cases where an individual dwelling unit has a separate exterior entrance, or where the building contains clusters of dwelling units, with each cluster sharing a different exterior entrance. In these cases, more than one entrance may be required to be accessible, as determined by analysis of the site. In every case, the accessible entrance should be on an accessible route to the covered dwelling units it serves.

(2) Site impracticality. Covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. Covered multifamily dwellings without elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route unless terrain or unusual characteristics of the site are such that the following conditions are found to exist:

(a) Site impracticality due to terrain. There are two alternative tests for determining site impracticality due to terrain: the individual building test provided in paragraph (i), or the site analysis test provided in paragraph (ii). These tests may be used as follows.

A site with a single building having a common entrance for all units may be analyzed only as described in paragraph (i).

All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed using the methodology in either paragraph (i) or paragraph (ii). For these sites for which either test is applicable, regardless of which test is selected, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the guidelines.

(i) Individual building test. It is impractical to provide an accessible entrance served by an accessible route when the terrain of the site is such that:

(A) the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance exceed 10 percent; and

(B) the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance also exceed 10 percent.

If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope for the purposes of this paragraph (i) will be measured to the closest vehicular or pedestrian arrival point.

For purposes of these guidelines, vehicular or pedestrian arrival points include public or resident parking areas; public transportation stops; passenger loading zones; and public streets or sidewalks. To determine site impracticality, the slope would be measured at ground level from the point of the planned entrance on a straight line to (i) each vehicular or pedestrian arrival point that is within 50 feet of the planned entrance, or (ii) if there are no vehicular or pedestrian arrival points within that specified area, the vehicular or pedestrian arrival point closest to the planned entrance. In the case of sidewalks, the closest point to the entrance will be where a public sidewalk entering the site intersects with the sidewalk to the entrance. In the case of resident parking areas, the closest point to the planned entrance will be measured from the entry point to the parking area that is located closest to the planned entrance.

(ii) Site analysis test. Alternatively, for a site having multiple buildings, or a site with a single building with multiple entrances, impracticality of providing

an accessible entrance served by an accessible route can be established by the following steps:

(A) The percentage of the total buildable area of the undisturbed site with a natural grade less than 10% slope shall be calculated. The analysis of the existing slope (before grading) shall be done on a topographic survey with two foot (2') contour intervals with slope determination made between each successive interval. The accuracy of the slope analysis shall be certified by a professional licensed engineer, landscape architect, architect or surveyor.

(B) To determine the practicality of providing accessibility to planned multifamily dwellings based on the topography of the existing natural terrain, the minimum percentage of ground floor units to be made accessible should equal the percentage of the total buildable area (not including floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.

(C) In addition to the percentage established in paragraph (B), all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%

(b) Site impracticality due to unusual characteristics. Unusual characteristics include sites located in a federally-designated floodplain or coastal high-hazard area and sites subject to other similar requirements of law or code that the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation. An accessible route to a building entrance is impractical due to unusual characteristics of the site when:

(i) the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or

(ii) if there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the unusual characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and the closest vehicular or pedestrian arrival point.

(3) Exceptions to site impracticality . Regardless of site considerations described in paragraphs (1) and (2), an accessible entrance on an accessible route is practical when:

(a) There is an elevator connecting the parking area with the dwelling units on a ground floor. (In this case, those dwelling units on the ground floor served by an elevator, and at least one of each type of public and common use areas, would be subject to these guidelines.) However:

(i) Where a building elevator is provided only as a means of creating an accessible route to dwelling units on a ground floor, the building is not considered an elevator building for purposes of these guidelines; hence, only the ground floor dwelling units would be covered.

(ii) If the building elevator is provided as a means of access to dwelling units other than dwelling units on a ground floor, then the building is an elevator building which is a covered multifamily dwelling, and the elevator in that building must provide accessibility to all dwelling units in the building, regardless of the slope of the natural terrain; or

(b) An elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point and the planned walkway has a slope no greater than 10 percent.

(4) Accessible entrance. An entrance that complies with ANSI 4.14 meets section 100.205(a).

(5) Accessible route. An accessible route that complies with ANSI 4.3 would meet section 100.205(a). If the slope of the finished grade between covered multifamily dwellings and a public or common use facility (including parking) exceeds 8.33%, or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility.

Requirement 2. Accessible and usable public and common use areas.

Section 100.205(c)(1) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons.

Guideline

The following chart identifies the public and common use areas that should be made accessible, cites the appropriate section of the ANSI Standard, and describes the appropriate application of the specifications, including modifications to the referenced Standard.

Basic Components for Accessible and Usable Public and Common Use Areas or Facilities

Accessible element or space	ANSI A117.1 section	Application
1. Accessible route(s)	4.3	Within the boundary of the site: (a) From public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets or sidewalks to accessible building entrances (subject to site considerations described in section 5). (b) Connecting accessible buildings, facilities, elements and spaces that are on the same site. On-grade walks or paths between separate buildings with covered multifamily dwellings, while not required, should be accessible unless the slope of finish grade exceeds 8.33% at any point along the route. Handrails are not required on these accessible walks. (c) Connecting accessible building or facility entrances with accessible spaces and elements within the building or facility, including adaptable dwelling units. (d) Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common-use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility
2. Protruding objects	4.4	Accessible routes or maneuvering space including, but not limited to halls, corridors, passageways, or aisles.
3. Ground and floor surface treatments	4.5	Accessible routes, rooms, and spaces, including floors, walks, ramps, stairs, and curb ramps.
4. Parking and passenger-loading zones	4.6	If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units, accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings, and accessible parking at facilities (e.g., swimming pools) that serve accessible buildings.
5. Curb ramps	4.7	Accessible routes crossing curbs.
6. Ramps	4.8	Accessible routes with slopes greater than 1:20.
7. Stairs	4.9	Stairs on accessible routes connecting levels not connected by an elevator
8. Elevator	4.10	If provided.
9. Platform lift	4.11	May be used in lieu of an elevator or ramp under certain conditions.
10. Drinking fountains and water coolers	4.15	Fifty percent of fountains and coolers on each floor, or at least one, if provided in the facility or at the site
11. Toilet rooms and bathing facilities (including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks.)	4.22	Where provided in public-use and common-use facilities, at least one of each fixture provided per room.
12. Seating, tables, or work surfaces	4.30	If provided in accessible spaces, at least one of each type provided.
13. Places of assembly	4.31	If provided in the facility or at the site.
14. Common-use spaces and facilities (including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors, and the like.)	4.1 through 4.30	If provided in the facility or at the site: (a) Where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps. (b) Where practical, access to all or a portion of nature trails and jogging paths.
15. Laundry rooms	4.32.6	If provided in the facility or at the site, at least one of each type of appliance provided in each laundry area, except that laundry rooms serving covered multifamily dwellings would not be required to have front-loading washers in order to meet the requirements of § 100.205(c)(1). (Where front loading washers are not provided, management will be expected to provide assistive devices on request if necessary to permit a resident to use a top loading washer.)

Requirement 3. Usable doors.

Section 100.205(c)(2) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs.

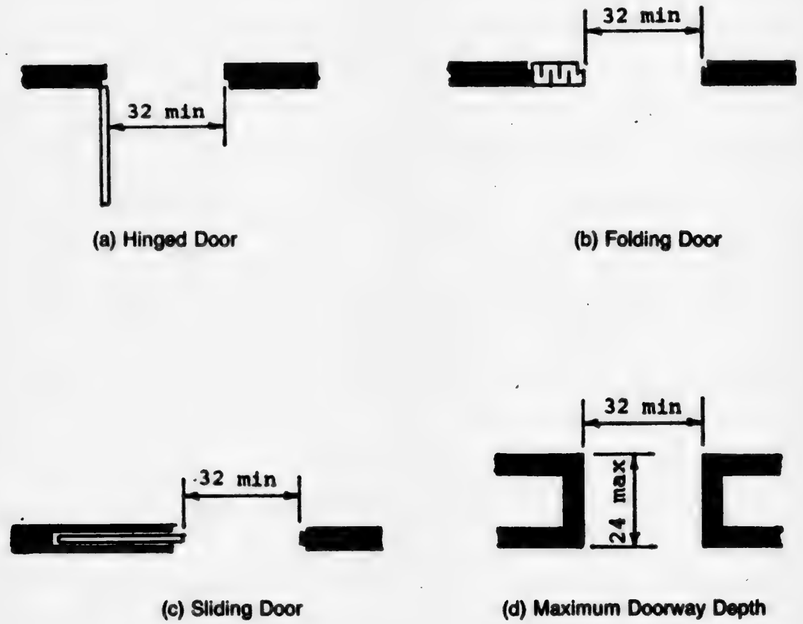
Guideline

Section 100.205(c)(2) would apply to doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units.

(1) On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI 4.13 would meet this requirement.

(2) Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet this requirement. (See Fig. 1 (a), (b), and (c).) Openings more than 24 inches in depth are not considered doorways. (See Fig. 1 (d).)

Note:
A 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening. This door can be adapted to provide a wider opening by using offset hinges, by removing lower portions of the door stop, or both. Pocket or sliding doors are acceptable doors in covered dwelling units and have the added advantage of not impinging on clear floor space in small rooms. The nominal 32-inch clear opening provided by a standard six-foot sliding patio door assembly is acceptable.



(a) Hinged Door

(b) Folding Door

(c) Sliding Door

(d) Maximum Doorway Depth

Fig. 1 Clear Doorway Width and Depth

Requirement 4. Accessible route into and through the covered dwelling unit.

Section 100.205(c)(3)(i) provides that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit.

Guideline

Accessible routes into and through dwelling units would meet section 100.205(c)(3)(i) if:

(1) A minimum clear width of 36 inches is provided.

(2) In single-story dwelling units, changes in level within the dwelling unit with heights between 1/4 inch and 1/2 inch are beveled with a slope no greater than 1:2. Except for design features, such as a loft or an area on a different level within a room (e.g., a sunken living room), changes in level greater than 1/2 inch are ramped or have other means of access. Where a single story dwelling unit has special design features, all portions of the single-story unit, except the loft or the sunken or raised area, are on an accessible route; and

(a) In single-story dwelling units with lofts, all spaces other than the loft are on an accessible route.

(b) Design features such as sunken or raised functional areas do not interrupt the accessible route through the remainder of the dwelling unit.

(3) In multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator (a) is the primary entry to the unit, (b) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible floor; and (c) contains a bathroom or powder room which complies with Requirement 7. (Note: multistory dwelling units in non-elevator buildings are not covered dwelling units because, in such cases, there is no ground floor unit.)

(4) Except as provided in paragraphs (5) and (6) below, thresholds at exterior doors, including sliding door tracks, are no higher than 3/4 inch. Thresholds and changes in level at these locations are beveled with a slope no greater than 1:2.

(5) Exterior deck, patio, or balcony surfaces are no more than 1/2 inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface is no more than 4 inches below the floor level of the interior of the dwelling unit, or lower if required by local building code.

(6) At the primary entry door to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick or flagstone, are no more than 1/2 inch below the floor level of the interior of the dwelling unit. The finished surface of this area that is located immediately outside the entry may be sloped, up to 1/8 inch per foot (12 inches), for drainage.

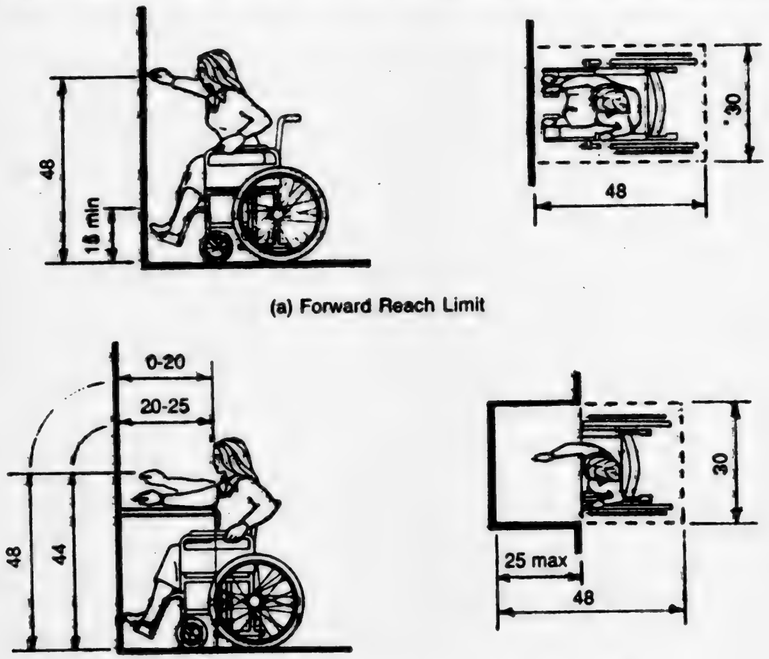
Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Section 100.205(c)(3)(ii) requires that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

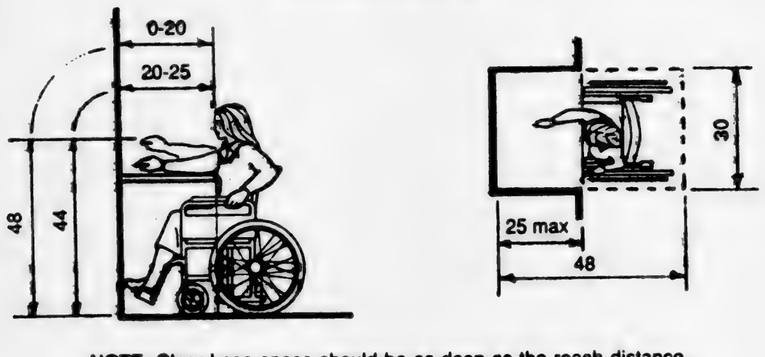
Guideline

Light switches, electrical outlets, thermostats and other environmental controls would meet section 100.205(c)(3)(ii) if operable parts of the controls are located no higher than 48 inches, and no lower than 15 inches, above the floor. If the reach is over an obstruction (for example, an overhanging shelf) between 20 and 25 inches in depth, the maximum height is reduced to 44 inches for forward approach; or 46 inches for side approach, provided the obstruction (for example, a kitchen base cabinet) is no more than 24 inches in depth. Obstructions should not extend more than 25 inches from the wall beneath a control. (See Fig. 2.)

Note
Controls or outlets that do not satisfy these specifications are acceptable provided that comparable controls or outlets (i.e., that perform the same functions) are provided within the same area and are accessible, in accordance with this guideline for Requirement 5.

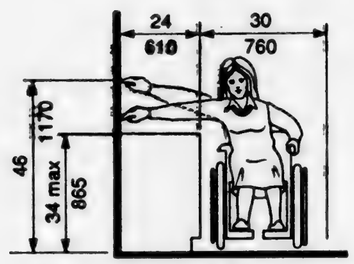


(a) Forward Reach Limit



NOTE: Clear knee space should be as deep as the reach distance.

(b) Maximum Forward Reach Over an Obstruction



(c) Maximum Side Reach Over Obstruction

Fig. 2 Reach Ranges

Requirement 6. Reinforced walls for grab bars.

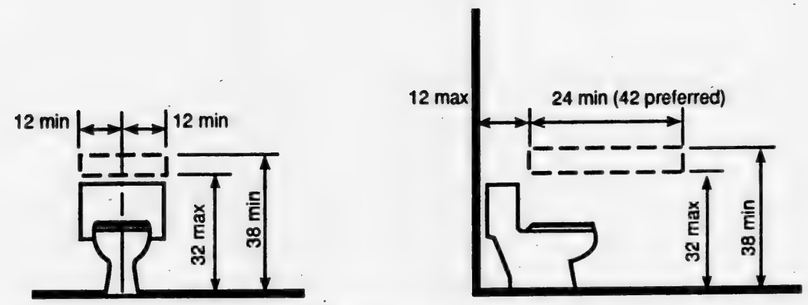
Section 100.205(c)(3)(iii) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided.

Guideline

Reinforced bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided, would meet section 100.205(c)(3)(iii) if reinforced areas are provided at least at those points where grab bars will be mounted. (For example, see Figs. 3, 4 and 5.) Where the toilet is not placed adjacent to a side wall, the bathroom would comply if provision was made for installation of floor mounted, foldaway or similar alternative grab bars. Where the powder room (a room with a toilet and sink) is the only toilet facility located on an accessible level of a multistory dwelling unit, it must comply with this requirement for reinforced walls for grab bars.

Note:
Installation of bathtubs is not limited by the illustrative figures; a tub may have shelves or benches at either end; or a tub may be installed without surrounding walls, if there is provision for alternative mounting of grab bars. For example, a sunken tub placed away from walls could have reinforced areas for installation of floor-mounted grab bars. The same principle applies to shower stalls – e.g., glass-walled stalls could be planned to allow floor-mounted grab bars to be installed later.

Reinforcement for grab bars may be provided in a variety of ways (for example, by plywood or wood blocking) so long as the necessary reinforcement is placed so as to permit later installation of appropriate grab bars.



Reinforced Areas for Installation of Grab Bars

Fig. 3 Water Closets in Adaptable Bathrooms

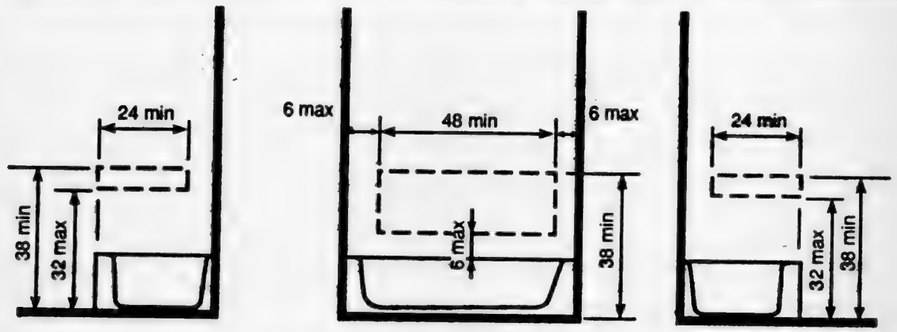


Fig. 4 Location of Grab Bar Reinforcements for Adaptable Bathtubs

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars for typical fixture configurations.

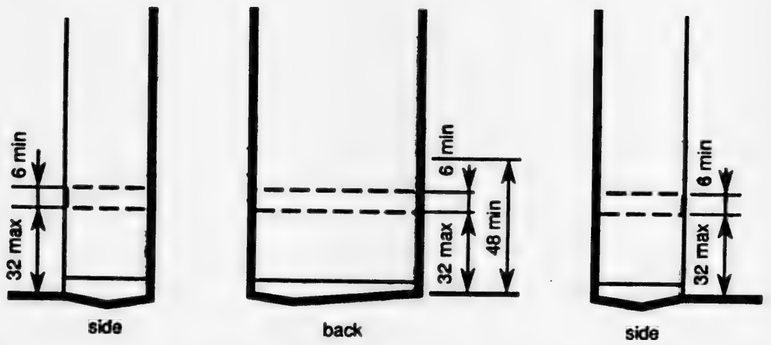


Fig. 5 Location of Grab Bar Reinforcements for Adaptable Showers

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars.

Requirement 7. Usable kitchens and bathrooms.

Section 100.205(c)(3)(iv) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Guideline

(1) Usable kitchens. Usable kitchens would meet section 100.205(c)(3)(iv) if:

(a) A clear floor space at least 30 inches by 48 inches that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and sink, and either a parallel or forward approach is provided at oven, dish washer, refrigerator/freezer or trash compactor. (See Fig. 6)

(b) Clearance between counters and all opposing base cabinets, countertops, appliances or walls is at least 40 inches.

(c) In U-shaped kitchens with sink or range or cooktop at the base of the "U", a 60-inch turning radius is provided to allow parallel approach, or base cabinets are removable at that location to allow knee space for a forward approach.

(2) Usable bathrooms. To meet the requirements of section 100.205(c)(3)(iv) either:

All bathrooms in the dwelling unit comply with the provisions of paragraph (a); or

At least one bathroom in the dwelling unit complies with the provisions of paragraph (b), and all other bathrooms and powder rooms within the dwelling unit must be on an accessible route with usable entry doors in accordance with the guidelines for Requirements 3 and 4.

However, in multistory dwelling units, only those bathrooms on the accessible level are subject to the requirements of section 100.205(c)(3)(iv). Where a powder room is the only facility provided on the accessible level of a multistory dwelling unit, the powder room must comply with provisions of paragraph (a) or paragraph (b). Powder rooms that are subject to the requirements of section 100.205(c)(3)(iv) must have reinforcements for grab bars as provided in the guideline for Requirement 6.

(a) Bathrooms that have reinforced walls for grab bars (see Requirement 6) would meet section 100.205(c)(3)(iv) if:

(i) Sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other mobility aid to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if the maneuvering space is provided. Maneuvering spaces may include any kneespace or toespace available below bathroom fixtures.

(ii) Clear floor space is provided at fixtures as shown in Fig. 7 (a), (b), (c) and (d). Clear floor space at fixtures may overlap.

(iii) If the shower stall is the only bathing facility provided in the covered dwelling unit, the shower stall measures at least 36 inches x 36 inches.

Note:
Cabinets under lavatories are acceptable provided the bathroom has space to allow a parallel approach by a person in a wheelchair; if parallel approach is not possible within the space, any cabinets provided would have to be removable to afford the necessary knee clearance for forward approach.

(b) Bathrooms that have reinforced walls for grab bars (see Requirement 6) would meet section 100.205(c)(3)(iv) if:

(i) Where the door swings into the bathroom, there is a clear space (approximately, 2' 6" by 4'0") within the room to position a wheelchair or other mobility aid clear of the path of the door as it is closed and to permit use of fixtures. This clear space can include any kneespace and toespace available below bathroom fixtures.

(ii) Where the door swings out, a clear space is provided within the bathroom for a person using a wheelchair or other mobility aid to position the wheelchair such that the person is allowed use of fixtures. There also shall be clear space to allow persons using wheelchairs to reopen the door to exit.

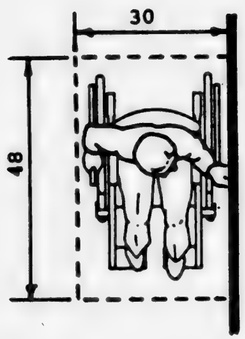
(iii) When both tub and shower fixtures are provided in the bathroom, at least one is made accessible. When two or more lavatories in a bathroom are provided, at least one is made accessible.

(iv) Toilets are located within bathrooms in a manner that permit a grab bar to be installed on one side of the fixture. In locations where toilets are adjacent to walls or bathtubs, the center line of the fixture is a minimum of 1'6" from the obstacle. The other (non-grab bar) side of the toilet fixture is a minimum of 1'3" from the finished surface of adjoining walls, vanities or from the edge of a lavatory. (See Figure 7(a).)

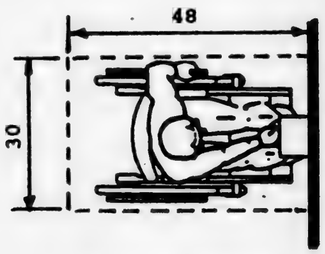
(v) Vanities and lavatories are installed with the centerline of the fixture a minimum of 1'3" horizontally from an adjoining wall or fixture. The top of the fixture rim is a maximum height of 2'10" above the finished floor. If kneespace is provided below the vanity, the bottom of the apron is at least 2'3" above the floor. If provided, full kneespace (for front approach) is at least 1'5" deep. (See Figure 7(c).)

(vi) Bathtubs and tub/showers located in the bathroom provide a clear access aisle adjacent to the lavatory that is at least 2'6" wide and extends for a length of 4'0" (measured from the head of the bathtub). (See Figure 8.)

(vii) Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2'6" wide by 4'0" should be available outside the stall. (See Figure 7(d).) If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36 x 36 or smaller, the shower stall must have reinforcing to allow for installation of an optional wall hung bench seat.

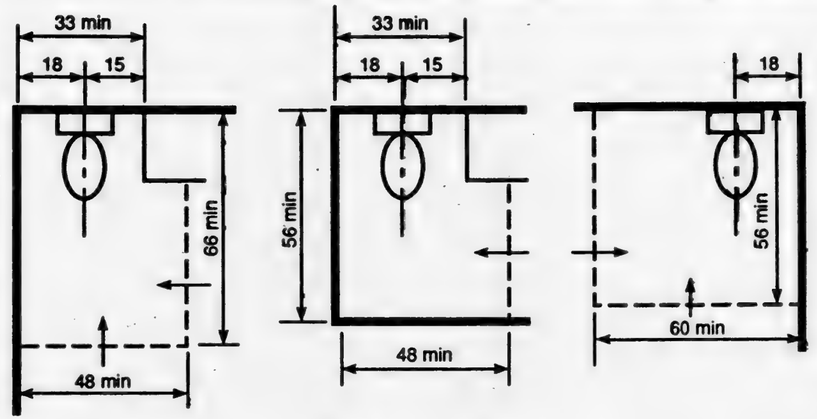


(a) Parallel Approach

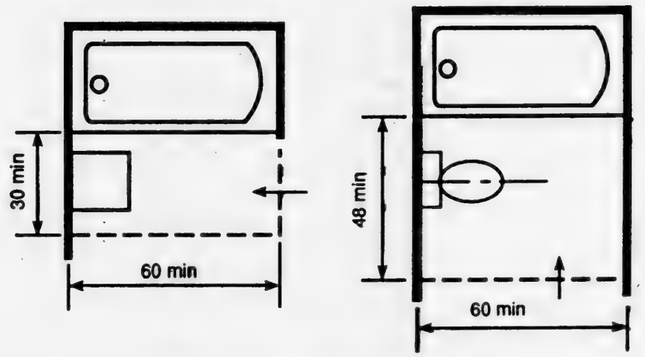


(b) Forward Approach

Fig. 6 Minimum Clear Floor Space for Wheelchairs

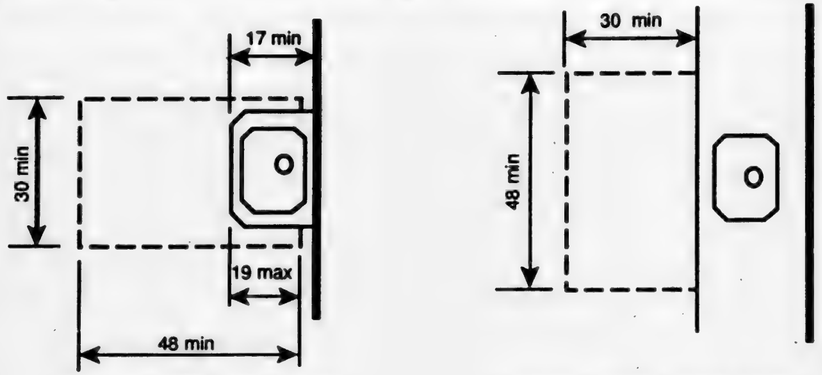


(a) Clear Floor Space for Water Closets



(b) Clear Floor Space at Bathtubs

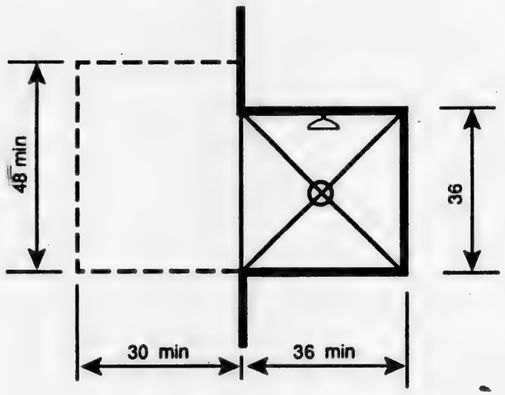
Fig. 7 Clear Floor Space for Adaptable Bathrooms



Lavatory With Knee Space

Lavatory Without Knee Space

(c) Clear Floor Space at Lavatories



(d) Clear Floor Space at Shower

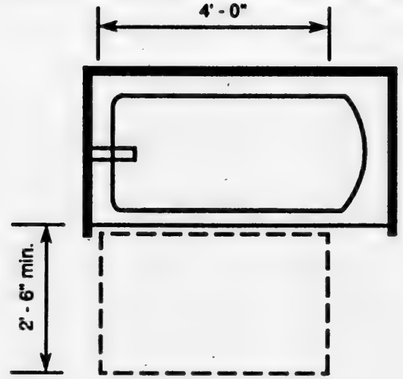


Fig. 8 Alternative Specification – Clear Floor Space at Bathtub

Appendix III to Ch. I, Subchapter A—Preamble to Final Housing Accessibility Guidelines (Published March 6, 1991).

[FR Doc. 91–5228 Filed 3–5–91; 8:45 am]

BILLING CODE 4210–28–M

BILLING CODE 4210–28–C

OL
56
SS
44
MR
6
991
MI

federal register

Wednesday
March 6, 1991

Part VII

Environmental Protection Agency

40 CFR Part 82
Protection of Stratospheric Ozone; Temporary Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3909-6]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Temporary final rule.

SUMMARY: EPA today promulgates temporary regulations to implement the 1991 limits on the production and consumption of ozone-depleting chemicals required by section 604 of the Clean Air Act (the Act) as amended by the Clean Air Act Amendments of 1990 (the Amendments), Public Law 101-549. The regulations take effect immediately and remain in effect only during 1991. They will be replaced by regulations for 1992 and subsequent years that EPA plans to propose in several months and promulgate in final form by the deadline established under section 604(c), September 15, 1991.

Today's rule revises the Agency's existing regulations [1] that implement the Montreal Protocol on Substances that Deplete the Ozone Layer, which the United States ratified in 1988. (Except to the extent revised by this rule, those regulations remain in effect.) The Protocol requires each country that ratifies the agreement to limit its production and consumption (defined as production plus imports minus exports) of chlorofluorocarbon; CFC-11, trichlorofluoromethane; CFC-12, dichlorodifluoromethane; CFC-113, trichlorotrifluoroethane; CFC-114, dichlorotetrafluoroethane; CFC-115, chloropentafluoroethane; and Halon-1211, bromochlorodifluoromethane; Halon-1301, bromotrifluoromethane; and Halon-2402, dibromotetrafluoroethane, according to a specified schedule. The Agency implemented the Protocol's reduction requirements by apportioning baseline allowances to companies based on their historical level of production and consumption of the chemicals and allocating the companies a percentage of their baseline allowances in accordance with the Protocol's schedule.

The rule promulgated today revises the regulations as needed to implement the 1991 production and consumption limits under section 604 in a manner consistent with the United States' obligations under the Protocol. Specifically, it apportions to companies baseline allowances for the chemicals not previously regulated under the Protocol but subject to reduction requirements under section 604 of the Act (i.e., CFC-13, -111, -112, -211, -212, -213, -214, -215, -216, and -217, carbon tetrachloride and methyl chloroform) based on each company's level of production and import of those chemicals in 1989. It then allocates companies 100 percent of their baseline allowances for carbon tetrachloride and methyl chloroform and 85 percent of their baseline allowances for all the regulated CFCs and Halons for 1991.

Since section 601(6) defines consumption as production plus imports minus only exports to other Protocol parties (in contrast to the Protocol which permits any exports to be subtracted from consumption until January 1, 1993), today's rule also revises the current regulations to provide that additional consumption allowances will be granted only for exports to parties. The rule further provides for the shift in control periods from July 1990 through June 1991 under the Protocol and current regulations to January through December 1991 as specified by section 604. Finally, it adds recordkeeping and reporting requirements needed to determine compliance with the limits on newly regulated chemicals and during the revised control period.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Lee at (202) 475-7497, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington DC 20460.

ADDRESSES: Information relevant to this notice is contained in Docket A-91-05 which may be viewed at the central Docket Section, South Conference room 4, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR 2, a reasonable fee may be charged for photocopying.

SUPPLEMENTARY INFORMATION:

I. Background

A. Ozone Depletion

Stratospheric ozone shields the earth's surface from dangerous ultraviolet radiation. A national and international consensus exists that CFCs and Halons deplete stratospheric ozone. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune response system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. 1987 Montreal Protocol

EPA evaluated the risks of ozone depletion and published its findings in "Assessing the Risks of Trace Gases That Can Modify the Stratosphere" (EPA, 1987). Based upon the Agency's risk assessment work, the Administrator concluded that an international approach was necessary to safeguard the ozone layer. EPA helped conduct a series of international workshops on the causes and effects of ozone depletion, and negotiate an international agreement to control ozone-depleting substances. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer.

As noted above, the Protocol requires nations who join to limit their production and consumption of specified ozone-depleting substances (controlled substances). It does not place limits on each of the substances, but instead groups the substances (e.g., the five most ozone-depleting CFCs are Group I and the Halons are Group II) and places separate limits on the total ozone depletion potential (ODP) of each group. The Protocol thus allows a nation to change the mix of controlled substances within each group that it produces and consumes, so long as the total ODP of the mix does not exceed the specified limits. The phrase "calculated level" is used to refer to this weighting of controlled substances based on their relative ODP.

As originally drafted, the Protocol called for annual production and consumption of the most ozone-depleting CFCs (i.e., CFC-11, -12, -113, -114, and -115) and Halon-1211, -1301 and -2402 to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992, respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. It also allowed for limited increases in production beyond the caps described above for the purposes of supplying developing country parties that are operating under Article 5 of the Protocol or trading allowable levels of production ("industrial rationalization") between parties. In addition, it provided that after January 1, 1993 only exports to parties would be subtracted from a party's consumption, and it banned imports of controlled substances from nations which neither join nor comply with the Protocol.

C. Implementing Regulations

EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances. The Agency assured compliance with the Protocol by creating production and consumption allowances equal to the quantity of production and consumption allowed under the Protocol. The Protocol's separate treatment of Group I and Group II controlled substances was reflected in separate allowances for each group of substances. Similarly, the Protocol's application of limits to the ODP of the groups of controlled substances ("calculated level") was carried over into the definition of allowances. Thus, allowances were specified in terms of calucalated level of a particular group of controlled substances, so that holders of allowances could select any mix of controlled substances within each group, provided that the total calculated level of the mix did not exceed the calculated levels of the allowances held.

EPA apportioned allowances to producers and importers of controlled substances based on their 1986 levels of production and imports. It then allocated the allowances according to the schedule specified in the Protocol. (For example, for the control periods during which CFC production and consumption were to be frozen, EPA allocated 100 percent of baseline allowances.) To reflect the interrelationship of the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce these chemicals (since production counted against both production and consumption limits), while importers needed only consumption allowances to import (since imports counted only against consumption).

EPA's regulations also provided that exporters could receive additional consumption allowances for controlled substances exported to any nation before January 1, 1993 or to any other Protocol party beginning January 1, 1993. Producers could receive additional production allowances for exporting controlled substances to developing country parties to the Protocol or upon the transfer of production rights from another party to the Protocol. Allowances could also be traded in accordance with the regulations.

D. London Amendments to the Protocol

Since the Protocol was signed in 1987, additional scientific evidence became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence, the parties to the Protocol at their meeting in London in 1989 decided to require a phase-out of the already regulated CFCs and Halons, and to add other ozone-depleting chemicals to the coverage of the Protocol.

Specifically, the parties adopted an adjustment to the Protocol that requires a phase-out of the already regulated CFCs and Halons by January 1, 2000. As an adjustment, the phase-out requirement is automatically binding on all the parties to the Protocol. The parties also adopted amendments requiring a phase-out of carbon tetrachloride and all other fully-halogenated CFCs by January 1, 2000, and of methyl chloroform by January 1, 2005. As amendments, these requirements will bind only those parties that ratify them.

Beyond that, the parties shifted the control periods during which control requirements apply from July of one year through June of the following year to the calendar year, beginning with the 1993 control period. They provided for an 18-month transitional control period from July 1, 1991 to December 31, 1992, during which parties would be obligated to limit their production and consumption of the already regulated CFCs and Halons to 150 percent of baseline levels. (The controls on the newly regulated chemicals do not take effect until 1993.)

The parties also passed a nonbinding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than fully halogenated CFCs, but still pose some threat to the ozone layer. The resolution calls for the use of HCFCs only where other alternatives are not feasible, with a phaseout by 2020 if feasible and no later than 2040 in any case.

E. Clean Air Act Amendments of 1990

Congress included in the Clean Air Act Amendments of 1990 requirements for controlling ozone-depleting substances more stringent than those contained in the revised Montreal Protocol. For the substances covered by the revised Protocol's control measures, title VI of the amendments calls for deeper interim reductions and, in the case of methyl chloroform, an earlier phaseout date (2002 instead of 2005). For the HCFCs, title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2030. It also includes provisions designed to further reduce emissions of all ozone-depleting substances through requirements for recycling and safe disposal, limits on use and emissions, bans on nonessential products, and mandatory labeling.

II. Today's Rule

A. Scope

Today's rule implements only the limits on production and consumption of ozone-depleting substances applicable in 1991 under section 604 of title VI. In a rulemaking soon to follow EPA will implement the limits applicable in later years. In separate rulemakings, EPA will implement the other provisions of title VI, including recycling and disposal requirements, emission and use limits, products bans and labeling.

EPA believes it is necessary to promulgate implementing regulations today for the 1991 production and consumption limits because section 604 calls for those limits to take effect January 1, 1991. As detailed below, title VI establishes a comprehensive regime for phasing out production and consumption of ozone-depleting substances to be implemented mostly through regulations. However, section 604 of the title makes the production limits self-effectuating. Procedures are consequently bound by the limits whether or not EPA promulgates implementing regulations, including baseline levels against which compliance with the limits are to be measured. At the same time, section 604 does not make the consumption limits self-effectuating, although it specifies that the consumption limits are to be subject to the same schedule as applies to the production limits. Other provisions integral to the phaseout regime also require regulations to take effect. EPA believes that implementing regulations are necessary to ensure that the 1991 limits on production and consumption are achieved. The Agency, however, has found it impossible to promulgate regulations through notice and comment rulemaking in the two-month period since enactment of the 1990 Amendments. The Agency thus finds it appropriate to promulgate implementing regulations today without providing notice and an opportunity for public comment. The regulations will be effective only during 1991, and the Agency will undertake a notice-and-comment rulemaking to implement the limits applicable in later years.

[1] The original regulations were published on August 12, 1988 at 53 FR 30566. Several minor revisions of the rule have since been issued on Feb. 9, 1989 (54 FR 6378), April 3, 1989 (54 FR 13302), July 5, 1989 (54 FR 28082), July 12, 1989 (54 FR 29337) February 13, 1990 (55 FR 5008), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

1. Title VI phaseout provisions. Title VI provides for the phase-out of ozone-depleting substances through a number of interlocking provisions. Section 602 directs EPA within 60 days of enactment of the 1990 amendments to issue two lists of ozone-depleting chemicals. One list is to include the chemicals already regulated under the Protocol and EPA's regulations (i.e., the five CFCs and three Halons), as well as the chemicals to be regulated under the revised Protocol (i.e., all other fully halogenated CFCs, carbon tetrachloride and methyl chloroform). The chemicals on that list are collectively called "class I" substances. The second list is to include all the HCFCs, referred to as "class II" substances. For each of the chemicals listed, EPA must also assign an ozone depletion potential, a chlorine or bromine loading potential, an atmospheric lifetime and, within one year of enactment, a global warming potential.

Section 604(a) makes it unlawful for any person to produce any class I substance in an annual quantity greater than the specified percentages of the quantity of the substance produced by that person in the baseline year (i.e., 1986 for the already regulated chemicals and 1989 for the newly regulated chemicals). As noted above, the provision is self-effectuating. The first control period in the reduction schedule is January through December 1991, and entails a freeze for carbon tetrachloride and methyl chloroform and a 15 percent reduction for the remaining class I substances.

Section 604(c) calls for EPA to promulgate within 10 months of enactment regulations to implement the production controls described above and to "insure" that United States consumption of the regulated chemicals is reduced on the same schedule as applies to production. As mentioned above, section 601(b) defines consumption as production plus imports minus exports to parties. Again, until EPA promulgates regulations implementing the consumption limits, those limits are not binding.

Section 607 requires EPA to promulgate within 10 months of enactment rules "providing for issuance of allowances" for production and consumption of class I and II substances and governing the transfer of allowances. The transfer rules are to require that each trade result in less overall production or consumption than would have occurred absent the trade.

Section 604(d) authorizes EPA to permit, after notice and opportunity for comment, production in excess of the limits for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Any additional production authorized under the provision must be solely for the purpose of supplying the basic domestic needs of such countries.

Section 616 requires EPA to promulgate within two years of enactment regulations authorizing trades of allowable levels of production with other parties to the Protocol. The regulations are to require, among other things, that trades do not result in more production than would have otherwise occurred.

Finally, section 614(b) addresses the relationship between the statute and the Protocol, stating that "in the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." It also provides that the title "shall not be construed, interpreted or applied to abrogate the responsibilities of the United Sates to implement fully the provisions of the Montreal Protocol."

2. Title VI phaseout versus current regulations. While the phaseout requirements established by title VI are in many ways similar to those created by EPA to implement the Montreal Protocol, they differ in several important respects. First, section 604 provides that the reduction requirements are to be accomplished over the course of the calendar year. The current regulations, however, mirror the 1987 Protocol's July-through-June control periods. Moreover, the revised Protocol retains the current control period of July 1, 1990 to June 30, 1991, and provides that the next control period will extend 18 months from July 1, 1991 to December 31, 1992.

Second, while the regulations allow exports to any country to be subtracted from consumption prior to 1993, section 601(6) defines consumption as production plus imports minus exports to parties.

Third, section 604 makes the production limits applicable to each substance separately, not to groups of substances as in the current regulations. Thus, producers cannot change the mix of chemicals they produce unless they trade between chemicals in accordance with applicable regulations.

Fourth, while section 607 provides for trading between chemicals and persons, it states that the regulations "shall insure" that any trade result in less overall production or consumption than would have otherwise occurred. Current regulations provide for trading and do not require that trading result in any additional environmental benefit.

Fifth, section 616 permits production allowances to be traded with other Protocol parties, but only to the extent that allowances being traded are not allowances that otherwise would have gone unused. Current regulations permitting international trades do not include any such condition.

Sixth, section 604(c) authorizes EPA to permit production in excess of the specified limits solely for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Moreover, any such additional production must be solely for the purposes of satisfying the basic domestic needs of the developing country that imports it. EPA's current regulations provide authorization for excess production upon proof of export to developing countries.

In the case of most of the differences just noted, the title VI provisions entail more control or reductions than their counterparts in the Protocol and current regulations. Since section 614 provides that the most stringent of the applicable provisions under the Protocol and title VI governs, the differing title VI provisions just described appear to govern. However, compliance with the limits applicable under the Protocol to the current July 1990 through June 1991 control period must still be assured.

3. Dilemma for 1991. Although title VI provides for a more stringent control regime than EPA's current regulations or even the revised Protocol, only its production limits are self-effectuating. At the same time, under section 163, the general savings clause of the 1990 amendments, EPA's current regulations remain in effect "except to the extent otherwise provided under this Act, inconsistent with any provision of this Act, or revised by the Administrator." Since the production limits of title VI are more stringent than EPA's regulations and do not require regulations to take effect, the savings clause may not save the production limit portions of EPA's regulations. The consumption limits and other aspects of EPA's regulations, however, remain in effect.

EPA believes that allowing the production limit to take effect in 1991 without implementing regulations and disassociated from the consumption limits applicable under current regulations would pose several serious problems. First, it might result in noncompliance with the Montreal Protocol. As described above, the current control period under the Protocol and EPA regulations runs from July 1990 through June 1991 and entails a freeze of the already regulated chemicals. However, the control periods under section 604(a) run from January through December. If EPA's regulatory limits on production are not saved, producers could conceivably comply with section 604(a)'s 85 percent cap on the already regulated chemicals and still exceed the Protocol's 100 percent cap for those chemicals depending on the amount they produced from July through June.

To illustrate, assume the United States' currently applicable production limit under the Protocol is 1000 units. Under the current regulations, 1000 production allowances would have been allocated and could be expended any time from July 1990 through June 1991. Under section 604(a), production is reduced to 85 percent of baseline levels or 850 units, which may be produced any time from January through December of 1991. Thus, producers could have produced up to 1000 units from July through December of 1990, and under section 604(a) could produce up to 850 units from January through June. Producers could thus distribute their production in such a way as to stay within the limits of section 604(a) but exceed the 1000 unit cap imposed by the Protocol for July 1990 through June 1991.

The Montreal Protocol's consumption limit for the current control period could also be exceeded. If the production limits of EPA's current regulations are no longer effective, the regulations provide for allocation of only consumption allowances equal to allowable consumption, or production plus imports minus exports. Under the current regulations, consumption allowances as well as production allowances must be expended to produce since production counts against the consumption limit as well as the production limit. But if the regulations governing production are no longer effective, the only remaining permissible use for the consumption limits will be to authorize imports. If the consumption allowances allocated by the current regulations are used only for imports, the United States could exceed the currently applicable 100 percent cap on consumption.

To illustrate, assume that the United States' production limit under the Protocol for the current control period is 1000 units and its consumption limit is also 1000 units. (In fact, the United States' CFR production limit is greater than its consumption limit, since in the baseline year for the CFR controls, the United States was a net exporter of those chemicals.) Under EPA's regulations, 1000 production and 1000 consumption allowances would have been allocated for the control period. Assume 500 production allowances, and thus at least 500 consumption allowances, are used by January 1, 1991. If the production provisions of EPA's rules are no longer in effect, the remaining 500 production allowances would no longer be available for production but the remaining 500 consumption allowances would still be available for imports. At the same time, producers would be permitted under section 604(a) to produce up to 85 percent of their baseline amount, or 850 units, from January through December of 1991. If, for example, the 500 consumption allowances remaining under EPA's regulations are used for imports and producers produce anything in the first half of 1991, the United States could exceed the Protocol's consumption limit because it would have already produced 500 units and imported 500 units during the control period. In terms of the consumption equation, the United States would have over 500 units of production plus 500 units of imports or more than 1000 units of consumption; only if the United States exported the amount by which it would otherwise exceed its 100-unit cap would it remain in compliance. EPA's regulations, however, would not assure that sufficient exportation took place.

There are other problems with allowing the 1991 production limits to take effect without implementing regulations. The limits are defined in terms of a percentage of the total amount of a person's production during a baseline year. However, each producer's baseline level of production would not be determined before much of the 1991 control period had passed. Section 603 provides that baseline information for class I chemicals is to be submitted to EPA with the first quarterly reports (due in about June) if it has not already been sent to EPA. In the case of the already regulated CFCs and Halons, EPA has baseline information. But for carbon tetrachloride, methyl chloroform and the other fully halogenated CFCs, it does not. For those chemicals EPA will have to verify any baseline information submitted by producers to ensure that it has not been inflated in order to increase the amount it may continue to produce under the reduction schedule. Until EPA determines what baseline amount is supported by submitted information, a producer cannot be sure what baseline applies to it. By contrast, EPA promulgated the currently applicable baselines prior to the start of the first control period under the Protocol.

Beyond that, if producers must comply with the production limits without regulations permitting trading between chemicals and persons, they will not be able to respond to changes in the market. Specifically, producers will be prohibited under section 604(a) from making a mix of CFCs and Halons different from what they produced in 1986. Yet the market has already undergone significant changes as the current regulatory regime and excise taxes on ozone-depleting substances have driven up the price of the substances. Some users of some chemicals have no preferable alternative and so have been willing to pay higher prices for those chemicals. Other users of those or other chemicals have been forced by the higher prices to conserve, recycle or shift to cheaper substitute substances or processes where possible. As a result of this market dynamic, the regulated chemicals are now made in different relative amounts then they were in 1986. If producers must comply with the limits of section 604(a) on a chemical-by-chemical basis, they will not be able to accommodate these and any other changes in the market to produce the highest value CFCs or Halons without increasing the total ozone depletion potential represented by their production.

In the same vein, if a producer cannot trade its allowances with other persons, other market inefficiencies would result. Several companies that produced the regulated substances in the baseline year no longer produce those substances. If they are unable to trade their allowances to remaining producers, needless shortages might result. Trading also permits producers to take advantage of any economic efficiencies that such trading might accomplish.

Similarly, if producers must comply with the section 604(a) limits without regulations permitting increased production for exports to developing country Protocol parties, the purpose behind the Protocol provision allowing such increases will be frustrated. The Protocol provides a 10-year grace period for developing country parties during which the otherwise applicable control requirements do not apply to them. However, the parties were concerned that with developed countries required to reduce their production, developing country parties might be forced to build their own CFC and Halon production facilities to supply their needs during the grace period. The parties decided to allow developed countries to increase their production to supply these needs rather than face the prospect of multiplying facilities for the production of chemicals that destroy stratospheric ozone.

BEST COPY AVAILABLE

Another problem mentioned earlier is that without implementing regulations the section 604(c) consumption limits do not take effect. Congress sought to have consumption controlled on the same schedule as production. Yet if regulations implementing the consumption limits are not promulgated until 10 months after enactment (i.e., September 15, 1991) as section 604(c) provides, it is not clear that EPA could impose the consumption limit applicable to 1991; importers, for example, could have already exceeded the limit in the months prior to the rules' promulgation.

4. Regulations implementing 1991 limits. EPA believes Congressional intent and the public interest can best be served by promulgating today regulations that implement the 1991 production and consumption limits of section 604. As explained above, regulations implementing the 1991 limits are needed to ensure United States compliance with the Montreal Protocol, the workability and fairness of the production limits and the achievement of the consumption reductions Congress sought to obtain during 1991.

EPA is not, however, implementing every aspect of title VI's regime for phasing out class I substances. The provisions it does implement specify in detail what controls Congress sought; for example, section 604(a) sets forth the production limits applicable to the different chemicals in 1991. The provisions it does not implement are less specific, requiring the Administrator to make discretionary judgments as to how best to implement Congress' more broadly stated objections. To implement such provisions EPA requires more time than is available prior to the start of the first control period to identify and evaluate potential options. The discretionary nature of the decisions EPA must make with regard to implementing such provisions also makes it more important that the public have prior notice and an opportunity to comment before the EPA makes its decision.

In brief, the regulations promulgated today revise EPA's current regulations by adding baselines for the newly regulated chemicals, allocating production and consumption allowances for all the regulated chemicals equal to the allowable production and consumption under section 604, and making conforming changes to the current regulations to reflect the change in the definition of consumption and the shift in control periods. Those changes are described in detail below in the section of this notice entitled "Section-by-section analysis."

Today's rule, however, does not apply the production limits of section 604 to each class I chemical. For 1991 only, it instead allocates allowances for the groups of class I chemicals specified by section 602(a). As in current regulations, the allowances are in terms of calculated level of, or the total ozone depletion potential allowable from, production of chemicals in each of the groups. EPA has taken this approach because of its related decisions not to implement title VI's trading provision for 1991.

As described above, section 617 provides for trading between chemicals as well as between persons in accordance with regulations to be promulgated by the Administrator within 10 months of enactment. It requires that the regulations "insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." It does not specify, however, the amount by which transactions should increase total reductions.

Implementing section 617 will present EPA with at least two difficult issues to resolve. First, the Agency must determine how to implement the requirement that transactions yield a net environmental benefit. Specifically, it will have to consider and decide how much environmental benefit any transaction could and should yield. Since the statute provides virtually no guidance on the issue, it will be incumbent on EPA to be searching in its own identification and assessment of possible alternatives. The Agency will also have to consider ways of structuring the requirement that will minimize potential avoidance of it.

Second, EPA will have to consider what procedures are appropriate for processing trades. Its current regulations were designed when the only trades contemplated were between persons. Since the section 604(a) production limits apply to each of the regulated chemicals, producers that want to change the mix of chemicals they make will have to undertake trades between chemicals. As noted above, market demand has already changed significantly for the individual chemicals, so EPA anticipates that producers will want to make trades between chemicals. Further, while producers may have a rough estimate of the relative amount of chemicals they will produce in a given year, changes in demand can occur at any time, and producers will likely need to make trades on an ongoing basis to respond to those changes. In short, EPA believes that significantly more trading will occur once producers are faced with chemical-specific allowances. The Agency is not certain that its present trading procedures could adequately accommodate a significant increase in transactions.

EPA is in the process of developing options for addressing the two issues discussed above, along with others raised by the requirements of section 617. However, more time and effort is needed before the Agency can decide what to propose, much less promulgate. In view of the breadth of options potentially available, there is also a greater role and need for public participation in shaping the eventual regulatory program.

Consequently, EPA is not in a position to promulgate today regulations implementing the trading requirements of section 617. Instead, it is leaving in place the current trading rules for 1991 only. Because the current rules do not address and therefore could not accommodate interpollutant trades, EPA is also not implementing the chemical-specific aspect of the production limits under section 607(a). Instead, for the already regulated chemicals, the Agency is leaving in place the current baseline apportionments, which are in terms of calculated levels of production or consumption of specific groups of chemicals. For the newly regulated chemicals the Agency is promulgating baseline apportionments which are also on a group calculated level basis. These apportionments will be effective for 1991 only.

EPA recognizes that Congress intended that each chemical be subject to the production limits and that, pursuant to trading regulations promulgated by EPA, any change in the mix of chemicals produced yield an environmental benefit. However, EPA also believes that Congress did not intend the production limits to take effect without provision for producers to change their mix of chemicals. Congress itself specified that regulations implementing the limits and the trading provision be promulgated by the same date (10 months from enactment) and the legislative history of the provisions indicates that Congress contemplated that trading would be permissible when the limits took effect. Ideally, EPA would promulgate regulations implementing the production limits of section 604(a) and the trading requirements of section 617 at the same time. But as explained earlier, the production limits take effect less than two months after the amendments' enactment; EPA simply cannot complete the work needed to devise and promulgate adequate trading rules in that amount of time. Under these circumstances, EPA believes Congressional intent is best served by promulgating rules that impose the limits of section 604(a) on the groups of chemicals specified until the Agency can issue regulations that provide for interpollutant trades.

For similar reasons, EPA is not implementing for 1991 the provisions relating to trades between Protocol parties. Section 616 authorizes trades with other parties provided that "the Administrator establishes revised production limits for the United States [where United States production rights are being transferred to another party] such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted of the substance or substances concerned * * * under the Protocol minus the production allowances transferred, (B) the maximum production level permitted * * * under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level * * * for the 3 years prior to the transfer minus the production allowances transferred." The section authorizes the United States to receive production rights from other parties so long as "the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States * * *."

Section 616(c) gives EPA two years from enactment to promulgate rules implementing the section, with good reason. The section's requirements regarding the adjustment of production allowances will entail data collection and analysis not now done, and its requirements regarding other nations' adjustment of their production limits are unparalleled in EPA's experience. In short, EPA cannot devise even an interim program for implementing the provision in the time available. At the same time, EPA believes Congress intended that international trading continue to be available rather than be foreclosed until EPA promulgates regulations implementing section 616. Therefore, the Agency finds it appropriate to retain for 1991 only the current regulatory provisions authorizing and governing international trades.

EPA is also not revising at this time its regulations authorizing additional production for the purpose of exports to developing country parties to the Protocol. Section 604(e) provides for such additional production "solely for export to, and use in, developing countr[y]" parties to the Protocol, and specifies that "[a]ny production authorized under this paragraph shall be solely for the purposes of satisfying the basic domestic needs of such countries." It is not clear what, if any, requirements this section imposes different than or in addition to its Montreal Protocol counterpart, which EPA has already implemented through regulations. To the extent its implementation requires EPA to insure appropriate use of chemicals in other countries, however, it will present another challenge unparalleled in the Agency's experience. In the few weeks before the production limits take effect, EPA cannot devise a program that involves oversight or intervention in activities undertaken in another country.

The important policy objectives underlying the Protocol provision for increased production for developing countries argue against rescinding current regulations implementing the provision until EPA promulgates regulations under section 604(e) itself. As explained earlier, the parties did not want developing countries to have to build new facilities for producing ozone-depleting substances in order to supply their relatively modest domestic needs as developing countries' production shrank. In part to obviate the need for new production facilities, they decided to permit developed countries to exceed their production caps to supply developing countries. Congress, in adopting this provision, assumedly shared the parties' concern. In light of these circumstances, EPA believes that rescinding the current regulations authorizing the additional production before promulgating replacement regulations would be inconsistent with Congressional and international policy. The Agency will thus address how the current regulations should be revised in light of section 604(e), if at all, in the upcoming rulemaking.

Overall, EPA believes that today's regulation implements the core of what Congress sought to achieve in 1991: A freeze in the production of newly regulated chemicals and a 15 percent reduction of the already regulated chemicals. If EPA did not promulgate these regulations, the reductions in ozone-depleting substances that the limits require probably would not be fully or even largely achieved. Those provisions EPA has not implemented for 1991 could have added marginally to the reductions achieved. But the Agency could not implement every provision, even on an interim basis, in the few weeks available to revise its regulations. Instead, it decided to invest its efforts in ensuring that the major reductions sought for 1991 will be accomplished. Today's rules do that.

5. Shift in Control Periods. As described earlier, the control periods under section 604(a) do not synchronize with the control periods under the current regulations implementing the 1987 Protocol. With the revised Protocol providing for calendar year control periods starting 1993, this lack of synchronization occurs only during 1990 through 1992. Though short-lived, the difference in control periods nonetheless must be reconciled if the United States is to remain in compliance with the Protocol and the production limits made effective by section 604(a) are to be met.

A preceding section of this notice explained the way in which the difference in control periods could result in noncompliance with the Protocol. To summarize, unless producers continue to be subject to the requirement that their production from July 1, 1990 through June 30, 1991 not exceed 100 percent of baseline levels, they could distribute their production in 1991 in such a way as to exceed the limit. Indeed, given that the greatest demand for CFCs occurs during the summer months, producers might produce much of their 85 percent allowance in the first half of the year, making exceedences of the 100 percent more than a mere possibility.

At the same time, section 604(a) limits 1991 production and consumption to 85 percent of baseline levels in the case of CFCs and Halons, including those covered by the current regulations. Under current regulations, additional production and consumption allowances may be obtained upon proof of export to a developing country or as a result of an international trade. Additional allowances earned in the first half of the current control period, July through December 1990, may be expended during the second half, January through June 1991. However, to the extent allowances earned in 1990 are used in 1991, the 1991 limits under section 604(a) could be exceeded.

To illustrate both problems, assume a total of 1000 production and 1000 consumption allowances have been allocated for the current July-through-June control period, which entails a freeze. From July through December, 500 of each type of allowances are expended, and 100 of each are earned as a result of exports to developing

countries. Beginning with January 1, 1991, purchases may not produce more than 65 percent of baseline levels; put in terms of allowances, they have 650 allowances to expend from January through December 1991. If they expend more than 500 of those allowances in the first six months of 1991, the Protocol's current 100 percent or 1000 allowance cap will have been exceeded. If in 1992 they expend all 650 1991 allowances *and* carry over and expend the 100 allowances they earned in the last half of 1990, they will exceed the 65 percent or 650 allowance cap under section 604(a).

To ensure that neither type of exceedance occurs, EPA believes that the current regulations must be revised in two ways. First, the current control period must end December 31, 1990 instead of June 30, 1991, and a new control period running from January 1 through December 31, 1991 must be instituted. Further, when the current control period ends, all unexpended allowances, including actual and potential production and consumption allowances, and *all* authorizations to convert potential production allowances to actual allowances must lapse. Only by starting 1991 with a clean slate can EPA ensure that the regulations do not inadvertently permit an exceedance of the 65 percent limit on CFCs and Halons under section 604(a).

Second, the regulations must prohibit both 1991 production and import from exceeding 65 percent of baseline levels and July 1, 1990 through June 30, 1991 production and import from exceeding of 100 percent of baseline levels. These twin prohibitions will address the need to comply with both section 604(a) and the Montreal Protocol. A similar approach will have to be taken to assure compliance with both the 1992 reduction requirement of section 604(a) and the July 1991 through December 1992 limit of the Montreal Protocol. EPA plans to include such a measure in its proposed regulations for 1992 and beyond.

The Agency regrets the cut off of the current control period and with it any earned but unexpended allowances. EPA officials did review Agency records to determine which companies were likely to be adversely affected by this change in the regulations, and in mid-December notified those companies of the impending change so that they could make use of their earned allowances in the remaining weeks of the year to the extent possible. The self-effectuating nature of the production limits under section 604(a), however, left no alternative; whether or not EPA cut off the current control period, producers could not have relied on allowances earned in 1992 to validate production in excess of 65 percent of their baselines. Beyond that, the interrelationship of production and consumption, as well as Congress' express intent that consumption be subject to the same control schedule as production, made similar treatment of consumption both necessary and appropriate.

It should also be noted that the unexpended allowances that lapse after December 31, 1990 are in the nature of privileges as opposed to rights. The Montreal Protocol places limits on the production and consumption of party nations. As a party, the United States is obligated to abide by these limits. EPA decided to implement the Protocol's limits by distributing the United States' allowable production and consumption among producers and importers through allowances based on their past market shares. This was not a necessary approach to implementing the Protocol, however, and EPA did consider alternative approaches, including auctioning off allowances to the highest bidder. When EPA proposed allocating allowances to past producers and importers, it noted that the allowances were actually privileges and that if circumstances warranted (for example, if the Protocol parties adopted a revised reduction schedule), the Agency would modify the amount of allowances allocated. As it happened, Congress enacted a more stringent reduction schedule, so EPA must revise the allocation of allowances accordingly.

B. Section-by-section analysis

The following is a section-by-section analysis of the changes made to the existing regulations by today's rule.

1. Authority Citation. The citation for the regulations is changed from section 157(b), which was deleted by the 1990 Amendments, to title VI of the Clean Air Act as amended by the Amendments.

2. Section 82.2—Purpose and scope. This section is revised to state the purpose of the regulations is to implement the Montreal Protocol and section 604 of the Clean Air Act.

3. Section 82.3—Effective date and savings provision. The effective date of the regulations is changed to January 1, 1991. EPA selected that date because section 604(a) specifies that the currently applicable production limit takes effect on January 1, 1991. EPA changed the effective date for the regulations as a whole because today's rule implementing section 604(a) revises virtually every section of the regulations.

Use of January 1 as a start date does result in today's rule having retroactive effect for a period of several weeks. EPA believes, however, that retroactive application of the rule will not adversely affect any member of the regulated industry. Under the previously applicable regulations, 100 percent of baseline allowances for CFCs and Halons were allocated for the period of July 1, 1990 to June 30, 1991. Now, half way through that control period, the original allocations are being rescinded, but 65 percent of baseline allowances for CFCs and Halons are being allocated for January through December of 1991. EPA's compliance monitoring records indicate that virtually all companies have used at least 15 percent of their originally allocated baseline allowances. Under today's rule companies are deemed to have held on January 1, 1991 more baseline allowances than they held under the original regulations.

EPA is aware of four companies that under the previous regulations had obtained through trading and exports allowances which under today's rule no longer exist. Since these companies were neither producers nor importers in the baseline year they have not been allocated baseline allowances by today's rule. These companies are particularly hard hit by the change in control periods necessitated by section 604. However, the retroactive aspect of today's rule does not in and of itself add to the adverse effect of the rule on these companies. EPA notified these companies in mid-December that section 604 and this rule would require that the current Montreal Protocol freeze control period end and the new Clean Air Act 15 percent reduction control period begin on January 1, 1991. The companies were thus aware that they had until the end of the year to use their allowances and that the allowances would lapse at the start of the next year.

EPA does not believe that in the few weeks between January 1 and today, any company has produced or imported in excess of the limits established by today's rule. It may be presumed that producers and importers of the regulated substances are aware of the 1990 Amendments limits on their 1991 activities. EPA has informed industry of the limits and their applicability beginning January 1, 1991 through discussions with the Agency's advisory committee on stratospheric ozone regulations and an industry trade group and through letters sent to individual companies. EPA thus believes it highly unlikely that any company will have exceeded its 65 percent or 100 percent allocation (depending on the controlled substance) for 1991 in the first few weeks of the year. In sum, the retroactive aspect of today's rule should not place any company in jeopardy of noncompliance.

Finally, EPA's records indicate that no trading of allowances under the previous regulations has taken place since January 1, 1991. Consequently, the retroactive effect of this rule should not have a particular adverse effect on any trades.

A savings provision is also added to the section to ensure that enforcement action may still be taken for violations of the regulations in effect prior to January 1, 1991.

4. Section 82.3—Definitions. Several definitions are revised to reflect changes made by title VI. In particular, the terms "import" and "production" are changed to conform to the definitions of those terms under section 601, since both terms are integral to the definition of the limits imposed under section 604. "Control period" is redefined to include only the 1991 control period under section 604 being implemented by today's rule. The definition of other terms are revised to conform to other changes in the regulations, such as changes in citations.

5. Section 82.5—Prohibitions. This section is revised so that persons are prohibited not only from producing or importing controlled substances in excess of the calculated level of production and consumption allowances they hold, but also from producing and importing during the period from July 1, 1990 through June 30, 1991 a calculated level of Group I controlled substances (i.e., the already regulated CFCs and Halons) in excess of the limits in effect for that period under the Montreal Protocol. Specifically, the latter cap is implemented by prohibiting any person from producing or importing Group I controlled substances during the first six months of 1991 in excess of the amount of unexpended allowances that person held for those substances under this part on December 31, 1990, and the amount of additional allowances that person is granted or had received in trade for those substances in the first six months of 1991. Together, the unexpended allowances held on the last day of 1990 and the additional allowances earned in the first six months of 1991 are equivalent to the amount of Group I substances that the United States may produce and import in the first six months of 1991 without exceeding the limits applicable during the Protocol's current control period.

6. Sections 82.5 and 82.6—Apportionment of baseline production and consumption allowances. The purpose of these sections is to establish each company's baseline production and consumption allowances for each group of controlled substances. For the groups of already regulated controlled substances, the baseline allowances are the same as those previously promulgated. The baseline allowances for the groups of newly regulated controlled substances have been determined by EPA and communicated to affected companies by mail. EPA publishes these allocations in the Federal Register after having completed procedural requirements pertaining to information claimed confidential.

To establish baseline allowances for the groups of newly regulated chemicals, EPA obtained information on and documentation of companies' 1989 production, import and export of these chemicals through a request issued under section 114 of the Act on November 26, 1990 (55 FR 49116). Because section 601(11) excludes from the definition of production the amount of a chemcial used and entirely consumed (except for trace quantities) in the production of another chemical, the Agency also requested companies that had consumed or transformed the regulated chemicals as feestock in the manufacture of another chemical to supply information documenting the transformation. Based on this information, the Agency calculated companies' baseline production and comsumption allowances for the groups of newly regulated chemcials specified by section 602 (i.e., Group III—the newly regulated CFCs; Group IV—carbon tetrachloride; and Group V—methyl chloroform). Baseline production allowances were calculated by excluding from the amount of the newly regulated chemicals produced in 1989 the amount of those chemicals transformed in the same year. The Agency attempted to trace every discreet amount of a chemical that had been transformed to the producer of that discreet amount of chemical and exclude that amount from the producer's baseline allowances. In some cases, however, EPA was unable to track the chemical transformed to its original producer. To account for these unassignable amounts of transformed chemicals, EPA applied a correction factor to distribute the unassignable amounts to producers of the relevant chemicals based on their respective market shares.

The Agency believes that this is a fair way of allocating transformation to the producers of these chemicals, with the larger producers receiving the larger share of the credit for documented, but unassignable, transformation. This approach is also consistent with that taken by the Agency in a previous rulemaking apportioning baseline consumption allowances. In that rulemaking, EPA decided that documented, but assignable, exports of the regualted CFCs and Halons should be allocated to producers based on their relative market share. As a result, larger producers had their consumption allowances decreased more than smaller producers.

EPA determined each company's consumption allowances by performing the comsumption equation for each company based on that company's documented production, imports and exports. For the chemicals for which the Agency is establishing baseline allowances in this rule, EPA was able, in most cases, to track all exports back to the exported chemicals' producers. However, it was also necessary to allocate unassignable exports to producers in a manner similar to the method used to allocate unassignable transformation to producers. In addition, since the Protocol as construed by the parties and EPA's rule do not count imports transformed in the manufacture of other substances against applicable consumption limits, the Agency has not counted baseline year imports transformed in the manufacture of other substances in calculating baseline consumption allowances. (*See* 55 FR 24491; June 15, 1990.)

7. Section 82.7—Grant of 1991 allowances for Groups I, II and III controlled substances. This section is revised to allocate allowances only for the 1991 control period. Persons with baseline production and consumption allowances for Group I, Group II or Group III controlled substances are allocated 65 percent of those allowances for 1991, in accordance with the limit applicable under section 604.

8. Section 82.8—Grant of 1991 allowances for Groups IV and V controlled substances. Like § 82.7, this section is also revised to allocate allowances only for the 1991 control period. Persons with baseline production and consumption allowances for Group IV or Group V controlled substances are allocated 100 percent of those allowances for 1991, in accordance with the limit applicable under section 604.

9. Section 82.9—Availability of additional production allowances. This section is revised to grant persons with baseline production allowances for any group of controlled substances potential production allowances for the same group equal to 10 percent of their baseline allowances. Potential production allowances may be

converted to production allowances upon proof of export to a developing country that is operating under Article 5 of the Protocol (§ 82.12) or on receipt of allowable production from another Protocol party (§ 82.9(b)(1)). Other revisions made to this section conform the text to changes in the definition of control period and in citations.

A further revision is made to this section to address a baseline apportionment issue raised for the first time by this rule. The revision permits a company whose total production of a controlled substance in the baseline year either was entirely transformed except for trace quantities by another company into another chemical or exported to petition the Agency for allowances sufficient to continue production of the controlled substance for use in the manufacture of the other chemical. This is a departure from the Agency's past approach to granting allowances but it is necessitated by the particular circumstances of the production and use of some controlled substances in this country.

In devising the regulatory program implementing the Montreal Protocol's control measures, EPA took a conservative approach to granting additional production and consumption allowances. To minimize the chance that the United States would exceed its production limit under the Protocol, for example, EPA provided that the conditions for obtaining additional allowances for transformation of controlled substances had to be fulfilled before EPA would grant those allowances. In other words, a producer had to expend allowances to produce the controlled substance to be transformed and that substance had to be actually transformed into another chemical before EPA would grant additional allowances to replace the original allowances expended to make the substance transformed. Section 602(11) defines production as excluding controlled substances transformed in the manufacture of another chemical. EPA has accordingly figured each company's production baseline by subtracting from its production the amount of its controlled substances that were transformed by any company. (EPA considered subtracting from the transforming companies allowances the amount of controlled substances they had transformed in the baseline year. However, in some cases the transforming companies did not produce the substance that was transformed, so they had no baseline allowances from which to subtract the amount of substance transformed.) In at least one case this approach has meant that a company has not been allocated allowances that would permit it to produce controlled substances in the future. Furthermore, in this particular case the transforming companies have none of the appropriate baseline allowances against which to subtract the controlled substance transformed. EPA thus had no option but to deny the company that produced the controlled substance transformed baseline allowances authorizing future production of the controlled substance.

Under the original regulations, without baseline allowances this company could not have produced the controlled substance even for use in the manufacture of other chemicals, upon proof of which it would have received additional [in effect, replacement] allowances. At the same time, the producers of the chemicals that require the controlled substance for their manufacture have no baseline allowances for the controlled substance of their own. EPA had decided to address this situation by making a limited exception to its policy of requiring that conditions for obtaining additional allowances be met before granting the allowances. In the case of a company that produced in the baseline year a controlled substance that was either entirely transformed by other companies or exported, EPA will grant "additional" production and consumption allowances for production of that amount of the controlled substance for which the company has a binding contract of sale that requires that the controlled substance sold be transformed in the manufacture of another chemical. This section of today's rule sets up a petition process by which a producer may obtain such allowances.

10. Section 82.10—Availability of additional consumption allowances. In keeping with the section 601(8) definition of consumption as production plus imports minus exports to parties, this section is revised to provide that additional consumption allowances are available only upon proof of exports to parties.

11. Section 82.11—Exports to parties. This section, which governs the granting of authorizations to convert potential production allowances, is revised to conform its text to the change in the definition of control period.

12. Section 82.12—Transfers of allowances. The revision to this section conforms the text to the change in the definition of control period.

13. Section 82.13—Recordkeeping and reporting. The recordkeeping and reporting requirements are made applicable to producers, importers and exporters of all controlled substances as of January 1, 1991, since all controlled substances are subject to section 604 limits. Other revisions are made to conform the text to the change in the definition of control period and to obtain any relevant transformation information for all controlled substances.

III. Statutory Authority

EPA is authorized by section 606(c) of the Act as recently amended to promulgated regulations implementing the requirements of that section. At the same time, section 614(b) provides that title VI, including section 606, "shall not be construed, interpreted or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol." To the extent that additional or different regulations are needed to ensure compliance with the Protocol, the Administrator may promulgate such regulations under section 615, which provides broad authority to take action needed to protect stratospheric ozone. United States compliance with the Protocol is essential to the protection of the ozone layer. As the Agency has stated in the past, stratospheric ozone depletion is an international problem requiring an international solution. For the Protocol to be effective, the United States must comply, not only to realize the reductions that the Protocol seeks, but to set an example for other countries and make credible the United States' ongoing efforts to persuade other countries to join. Given these statutory provisions, EPA may promulgate today's rule which implements section 604 but also provides for compliance with the Protocol.

Any regulations for the protection of stratospheric ozone are subject to the rulemaking requirements of section 307(d) of the Act as amended (see section 710 of the 1990 Amendments). In particular, section 307(d)(3) provides that in the case of any rule to which the subsection applies, notice of proposed rulemaking shall be published in the Federal Register and shall specify the period available for public comment. However, section 307(d)(1) makes the subsection inapplicable in the case of any rule or circumstance referred to in subparagraph (A) or (B) of section 553(b) of the Administrative Procedures Act as codified in title 5 of the United States Code. The circumstance referred to in subparagraph (B) is "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

EPA finds that providing notice and public procedure in the case of today's rule is impracticable and contrary to the public interest. As has been repeatedly pointed out, section 604(a) makes the production limits effective beginning January 1, 1991. Until EPA promulgates the baselines against which compliance with the limits is to be measured, regulated entities cannot be sure what is required of them, and EPA will have difficulty enforcing the requirements against them. Until EPA revises its current regulations, it cannot be sure that the regulations provide for United States compliance with the Protocol's current requirements. And until EPA promulgates implementing regulations, the consumption limits Congress sought for 1991 are not effective.

Congress recently and clearly expressed its strong interest in stringent control of ozone-depleting substances. In light of this interest, there can be little doubt that realization of title VI's 1991 limits on ozone-depleting substances is in the public interest. Further, in light of the United States' obligations under the Protocol and continued strong support of that agreement, there can be little doubt that avoidance of noncompliance with the Protocol's current limits is also in the public interest. EPA believes that today's rule is necessary to ensure compliance with both the limits applicable to 1991 under title VI and the limits applicable to the current control period under the Protocol. If the Agency had waited to promulgate the rule until it had provided notice and an opportunity to comment, the rules would probably have been issued too late to accomplish its important objectives. EPA therefore believes that it would have been impracticable and contrary to the public interest to provide notice and public procedure on this rule.

The Agency appreciates that rules promulgated after notice and opportunity for comment are better for the public's participation in their formulation. It also understands that regulation is more fairly accomplished if the public has an opportunity to participate in rulemaking. EPA has thus limited the period during which today's rule will be effective to 1991, and will propose regulations implementing the rest of the title VI phaseout regime in several months.

The Agency notes that section 307(h), which was added to the Act by section 109(p) of the Amendments, states that "it is the intent of Congress that, consistent with the policy of the Administrative Procedures Act, the Administrator in promulgating any regulation under this Act, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days * * *." EPA does not believe that this new section eliminates the exemption from notice and comment provided by section 307(d)(1) since it left that provision undisturbed. The Agency does believes, however, that the new section makes it incumbent on EPA to cosider Congress' policy directive favoring public participation before it invokes the "good cause" exemption. The Agency has done so, but still finds that the circumstances explained above make it imperative that regulations implementing the 1991 limit be promulgated in a time frame that does not allow for notice and public comment.

For the reasons given for dispensing with notice and comment, the Agency also finds good cause for making today's rule effective immediately. To the extent possible, EPA has already notified regulated and environmental community of the pending rule and of the Administrator's signing of the rule.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based industry to compete with foreign based enterprises in domestic or export markets.

EPA has determined that this temporary final rule does not meet the criterial of a major rule. The Agency estimates that industry costs for 1991, the only year to which this rule applies, will not exceed $100 million and that price increases will be minimal for CFCs. Price increases are not expected for any of the other regulated chemicals during 1991.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–601 requires that federal agencies examine the impacts on small entities. Under 5 U.S.C. 601(a), whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and Halons. The RFA concluded that of the industries affected by regulation of CFCs and Halons only some segments of the foam blowing industry were potentially at risk. In contrast to almost all the other uses of these chemicals, for the foam industry CFCs are a larger percentage of the final costs.

Different sectors of the foam industry are likely to be affected differently. Indeed, the August 12 rule discussed how several foam sectors were already moving away from CFCs. The foam food packagers have shifted out of CFC–11 and CFC–12 to HCFC–22. Similarly, the industry sector that makes flexible molded foam has moved out of CFCs with minimal disruption, while the extruded polystyrene boardstock intend to eliminate the use of CFC–12 in the near future.

In updating this analysis to examine the other foam sectors as well as those sectors using carbon tetrachloride and methyl chloroform, the Agency did re-examine the effect of increased price on several foam segments—polyurethane-sprayed and molded foam and foam insulation and boardstock. The insulating foam industry is investigating the use of HCFC–141b or a blend of HCFC–141b and HCFC–123. To the extent that these substitutes are determined to be technically and economically viable, the longer term impact on these firms will be minimized. The industry is actively pursuing these options and are currently waiting for the results of toxicity studies required in the new use of these chemicals.

Based on the analysis contained in the RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term, and that recent development of alternative blowing agents for use in these sectors indicate the competitiveness of this industry. Sectors using carbon tetrachloride and methyl chloroform are unaffected due to the small volume of these chemicals used in their applications.

C. Paperwork Reduction Act

As required by § 35.04 of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA has submitted an information collection request to the Office of Management and Budget for review.

The public reporting burden for this collection of information is estimated to average 25 hours per response for producers and 13 hours per response for importers. These estimates include time for reviewing instructions, searching existing data sources, and completing and reviewing instructions, searching existing data sources, and completing and reviewing the collection information. All recordkeeping requirements are considered to be "usual and cutomary" burden defined under 5 CFR 1320.7 and, as such, are not included in the estimate of the respondents burden.

Send comments regarding the burden estimated, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. EPA, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: February 8, 1991.

William K. Reilly,

Administrator

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For the reasons set forth in the preamble, EPA amends 40 CFR part 82 as follows:

1. The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7671c, 7671f, 7671n.

2. Section 82.1 is amended by revising paragraph (a) to read as follows:

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and section 604 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports) of certain ozone-depleting chemicals according to specified schedules. The Protocol also requires each nation that becomes a party to the agreement to impose certain restrictions on trade in ozone-depleting substances with nonparties.

* * * * *

3. Section 82.2 is revised to read as follows:

§ 82.2 Effective date and savings provision.

(a) The regulations under this part take effect January 1, 1991.

(b) The regulations under this part were effective prior to January 1, 1991 are saved for purposes of enforcing the provisions that were applicable prior to January 1, 1991.

4. Section 82.3 is amended by revising paragraphs (f), (g), (k), (m), (r) and (s) and by revising the last sentence of paragraphs (e) and (f) to read as follows:

§ 82.3 Definitions.

* * * * *

(e) *Consumption allowances* * * *. A person's consumption allowances are the total of the allowances he obtains under § 82.7 (1991 allowances for Group I, Group II and Group III controlled substances), § 82.8 (1991 allowances for Group IV and Group V controlled substances) and § 82.10 (additional consumption allowances), as may be modified under § 82.12 (transfer of allowances).

(f) *Control period* means the period from January 1, 1991 through December 31, 1991.

(g) *Controlled substance* means any substance listed in appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into five groups, Group I, Group II, Group III, Group IV, and Group V, as set forth in Appendix A to this part.

* * * * *

(k) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning or the customs laws of the United States.

* * * * *

(m) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

* * * * *

(r) *Potential production allowances* means the production allowances obtained under § 82.9(a).

(s) *Production* means the manufacture of a substance from any raw material for feedstock chemical, but such terms do not include:

(1) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(2) The reuse or recycling of a substance. Production includes spilling or venting of controlled substances equal to or in excess of one hundred pounds per event; however, each production plant is allowed two spills or ventings of less than 1,000 pounds within a given control period.

(t) *Production allowances** * *. A person's production allowances are the total of the allowances he obtains under § 82.7 (1991 allowances for Group I, Group II and Group III controlled substances), § 82.8 (1991 allowances for Group IV and Group V controlled substances), and § 82.9 (b), (c) and (d) (additional production allowances).

* * * * *

5. Section 82.4 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 82.4 Prohibitions.

(a) No person may produce, at any time in the control period, a calculated level of controlled substances in excess of the amount of unexpended production allowances held by that person under the authority of this part at that time for the control period. In no event may any person produce in the first six months of the control period a calculated level of Group I controlled substances in excess of the total of:

(1) The unexpended production allowances (including authorizations to convert potential production allowances) for Group I controlled substances that the person held under the authority of this Part on December 31, 1990; and

(2) Any additional production allowances (including authorizations to convert potential productions allowances) for Group I controlled substances that the person was granted in the first six months of the control period under §§ 82.9 (b) and (c) for the Montreal Protocol period of July 1, 1990 through June 30, 1991 and § 82.11.

Every kilogram of such excess constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in the control period, a calculated level of controlled substances in excess of the amount of unexpended consumption allowances held by that person under the authority of this Part at that time for the control period. In no event may any person produce or import in the first six months of the control period a calculated level of Group I controlled substances in excess of the total of:

(1) The unexpended consumption allowances for Group I controlled substances that the person held under the authority of this part on December 31, 1990; and

(2) Any additional consumption allowances that the person was granted under § 82.10 in the first six months of the control period.

Every kilogram of such excess constitutes a separate violation of this regulation.

* * * * *

(d) Beginning January 1, 1991, no person may import any quantity of controlled substances from any nation not listed in appendix B to this part (Parties to the Montreal Protocol), unless that nation is listed in appendix C to this part (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

6. Section 82.5 is amended by revising the introductory text and by adding paragraphs (c), (d), and (e) to read as follows:

§ 82.5 Apportionment of baseline production allowances.

Persons who in 1986 produced one or more controlled substances included in Group I or Group II or who in 1989 produced one or more controlled substances included in Group III, Group IV or Group V are apportioned calculated levels of baseline production allowances as set forth in this section. Each person's apportionment of production allowances for Group I or Group II controlled substances is equivalent to the calculated level of that person's production of Group I or Group II controlled substances in 1986. Each person's apportionment of production allowances for Group III, Group IV or Group V controlled substances is equivalent to the calculated level of that person's production of Group III, Group IV or Group V controlled substances in 1989.

* * * * *

Person	Calculated levels (kg)
(c) For Group III controlled substances:	
ATOCHEM North America	3992
E.I. DuPont de Nemours & Co	456550
Great Lakes Chemical Corp	58381
LaRoche Chemicals	29025
(d) For Group IV controlled substance: [1]	
AKZO Chemicals, Inc	14448047
Dow Chemical Company, USA	29846451
E.I. DuPont de Nemours & Co	10077
Hanlin Chemicals—WV, Inc	245368
ICI Americas, Inc	954066
Occidental Chemical Corp	745085
Vulcan Chemicals	22282806
(e) For Group V controlled substances:	
Dow Chemical Company, USA	16772249
PPG Industries, Inc	5748355
Vulcan Chemicals	8973453

[1] Additional baseline allowances may be obtained under § 82.9(e).

7. Section 82.6 is amended by revising the introductory text and by adding paragraphs (c), (d), and (e) to read as follows:

§ 82.6 Apportionment of baseline consumption allowances.

Persons who in 1986 produced, imported, or produced and imported one or more controlled substances included in Group I or Group II or who in 1989 produced, imported, or produced and imported one or more controlled substances included in Group III, Group IV or Group V are apportioned calculated levels of baseline consumption allowances as set forth in this section.

* * * * *

Person	Calculated levels (kg)
(c) For Group III controlled substances:	
ATOCHEM North America	3983
E.I. DuPont de Nemours & Co	426865
Great Lakes Chemical Corp	56254
ICI Americas, Inc	5087
LaRoche Chemicals	28960
National Refrigerants, Inc	17097
(d) For Group IV controlled substances: [1]	
Dow Chemical Company, USA	35217314
E.I. DuPont de Nemours & Co	62052
Hanlin Chemicals—WV, Inc	244869
ICI Americas, Inc	2022743
Occidental Chemical Corp	742961
(e) For Group V controlled substances:	
3V Chemical Corp	354
Actex, Inc	6030
ATOCHEM North America	7454
Dow Chemical Company, USA	12565757
IBM	203
ICI Americas, Inc	1468401
PPG Industries, Inc	4540222
Unitor Ships Service, Inc	699
Vulcan Chemicals	7099065

[1] Additional baseline allowances may be obtained under § 82.9(e).

8. Section 82.7 is revised to read as follows:

§ 82.7 Grant of 1991 production and consumption allowances for Group I, Group II and Group III controlled substances.

For the control period, every person is granted 85 percent of the baseline production and consumption allowances apportioned to him for Group I, Group II, and Group III controlled substances under §§ 82.5 and 82.6.

9. Section 82.8 is revised to read as follows:

§ 82.8 Grant of 1991 production and consumption allowances for Group IV and Group V controlled substances.

For the control period, every person is granted 100 percent of the baseline production and consumption allowances apportioned to him for Group IV and Group V controlled substances under §§ 82.5 and 82.6.

10. Section 82.9 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), redesignating paragraph (d) as (c), and redesignating paragraph (e) as (d), and adding paragraph (e). In newly redesignated (b)(2) introductory text, revise the reference "(c)(1)" to read "(b)(1)". In newly redesignated (b)(3), revise the reference "(c)(1)" to read "(b)(1)" and the reference to "(c)(2)" to read "(b)(2)". Revise paragraph (a); revise the second sentence of newly redesignated (b)(1) introductory text; revise newly redesignated (b)(1)(v); revise the second sentence of the newly redesignated (c)(1); revise newly redesignated (c)(2)(v); revise the last sentence of newly redesignated (d) introductory text, and the first sentence of (d)(3).

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) For the control period, every person apportioned baseline production allowances for one or more groups of controlled substances under § 82.5 is also granted a calculated level of potential production allowances equivalent to 10 percent of his apportionment for each group of controlled substances under § 82.5.

(b) * * *

(1) * * * For trades from a Party, the person must obtain from the principle diplomatic representative in that nation's embassy in the United States a document stating that the nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient for the Montreal Protocol periods to which the transfer applies (either July 1, 1990, through June 30, 1991, or July 1, 1990 through December 31, 1992, or both). The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

* * * * *

(v) The Montreal Protocol control period(s) (either July 2, 1990 through June 30, 1991, or July 1, 1991, through December 31, 1992, or both) to which the transfer applies.

(c) * * *

(1) * * * The person must obtain from the principle diplomatic representative in that nation's embassy in the United States a document clearly stating that the nation agrees to reduce or increase, as applicable, its allowable calculated level of production by the amount being transferred for the Montreal Protocol control period(s) to which the transfer applies (either July 1, 1990, through June 30, 1991, or July 1, 1991, through December 31, 1992 or both) and that after the transfer the nation's total allowable production will not exceed 25 kilotonnes.

(2) * * *

(v) The Montreal Protocol control period(s) (either July 1, 1990, through June 30, 1991, or July 1, 1991, through December 31, 1991, or both) to which the transfer applies.

(d) * * * A request for production allowances will be considered a request for consumption allowances under § 82.10.

* * * * *

(3) If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (d) of the this section. * * *

(e) Any person that:

(1) In a baseline year produced a controlled substance that was either entirely transformed except for trace quantities by one or more other persons into other chemicals or exported; and

(2) Reported this production to EPA as required by the final rule published on November 26, 1990, at 55 FR 49116, may petition the Administrator's designated representative for production and consumption allowances to produce that controlled substance.

The petition shall include a copy of a legally binding contract for the sale of the controlled substance to be produced by the petitioning person to another person who agrees to use the controlled substance that is the subject of the contract only and entirely for the purpose of manufacturing one or more other chemicals. The contract must include adequate guarantees that the controlled substance produced and sold under the contract is in fact entirely transformed (except for trace quantities) in the manufacture of one or more other chemicals. If the Administrator's designated representative concludes that the control is binding and includes adequate guarantees of use in the manufacture of other chemicals, that representative will issue the petitioning person the production and consumption allowances requested. The grant of allowances will be effective on the date that the notice is issued.

11. Section 82.10 is amended by removing paragraph (b); redesignating the introductory text of paragraph (a) as the introductory text of the section; redesignating paragraphs (a) (1) and (2) as paragraphs (a) and (b); redesignating paragraphs (a)(1) (i) through (ix) as paragraphs (a) (1) through (9); and revising the newly designated introductory text to the section to read as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

Any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the calculated level of controlled substances (other than recycled or used controlled substances) that the person has exported from the United States or its territories to any nation listed in appendix B to this part (Parties to the Montreal Protocol). Consumption allowances will be granted only for exports that depart the United States during the control period, and the consumption allowances granted will be valid only during the control period.

* * * * *

12. Section 82.11 is amended by revising the introductory text to read as follows:

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowance to production allowances by exporting controlled substances to nations listed in appendix E (Article 5 Parties) of this part. Authorizations to convert will be granted only for controlled substances that depart the United States or its territories during the control period, and the authorizations to convert granted will be valid only during the control period. A request for authorization under this section will be considered a request for consumption allowances under § 82.10 as well.

* * * * *

13. Section 82.12 is amended by removing paragraph (a)(6), redesignating paragraph (a)(7) as paragraph (a)(6) and revising paragraph (a)(5) to read as follows:

§ 82.12 Transfers of production and consumption allowances.

* * * * *

(a) * * *

(5) The amount of allowances or authorization being transferred; and

* * * * *

14. Section 82.13 is amended by revising paragraphs (a) introductory text, (f) introductory text, (f)(1) introductory text, (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), (g) introductory text, and (g)(2)(iii) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect beginning with the first day of the control period.

* * * * *

(f) Every person ("producer") who will produce controlled substance during the control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of March 6, 1991, every producer must provide a report to the Administrator describing the following, if he has not already done so.

* * * * *

(2) * * *

(iii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances.

(iv) Dated records of the quantity of raw materials and feed stock chemicals used at each plant for the production of controlled substances.

* * * * *

(3) * * *

(ii) The calculated levels of productior (expended allowances) for controlled substances for each plant and totaled for the control period to date.

* * * * *

(g) Importers of controlled substances must comply with the following

recordkeeping and reporting requirements.

* * * * *

(2) * * *

(iii) The calculated levels of import (expended allowances) of controlled substances for that quarter and totalled for the control period to date; and

* * * * *

[FR Doc. 91-5152 Filed 3-5-91; 8:45 am]
BILLING CODE 6560-50-M

OL
56

SS
44

R

6

991

MI

federal register

Wednesday
March 6, 1991

Part VIII

Environmental Protection Agency

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41034; FRL 3845-3]

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-seventh Report to the Administrator of EPA on November 19, 1990. As noted in this Report, which is included with this notice, the Committee revised the Priority List by adding one chemical and four chemical groups. The Committee is designating six chemicals from the IRIS group, as well as 4-vinylcyclohexene and sodium cyanide, that were previously recommended with intent-to-designate. The aldehydes chemical group is recommended with intent-to-designate. *N*-phenyl-1-naphthylamine, two chemicals from the IRIS group, the sulfone group, and a group of substantially produced chemicals in need of subchronic tests are recommended.

The ITC has not removed any chemicals from the Priority List as a result of EPA actions.

EPA invites interested persons to submit written comments on the Report. EPA is not holding a Focus Meeting for these chemicals and will proceed immediately to rulemaking. EPA is taking this action because (1) The designated chemicals have a statutory deadline and require a response by EPA within 1 year; and (2) the intent-to-designate group is unlikely to yield consensus in a timely manner because of the inability to identify interested parties on a chemical specific basis.

DATES: Written comments should be submitted by April 5, 1991.

ADDRESSES: Send written submissions bearing the document control number (OPTS-41034; FRL 3845-3) to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460.

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Twenty-seventh Report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 *et seq*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and groups in order to develop data relevant to determining the risks that such chemicals and groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's Twenty-seventh Report. The Report was received by the Administrator on November 19, 1990, and is included in this Notice. The Report adds one chemical and four groups of chemicals to the TSCA section 4(e) Priority List.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the Federal Register adding most of the substances recommended in the ITC's Twenty-seventh Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. The delay in publishing that notice is necessary because of the requirement to complete the economic analysis on four chemical groups. That notice will also add most of the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's Twenty-seventh Report notes the addition of chemicals and chemical groups to the Priority List. The current List contains two designated chemicals, two designated chemical groups, three recommended with intent-to-designate chemical groups, four recommended chemicals, and five recommended chemical groups.

Authority: 15 U.S.C. 2603.

Dated: February 28, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

The U.S. Congress created the Interagency Testing Committee in 1976 to screen, select and recommend chemical substances and mixtures for priority health effects, chemical fate, or ecological effects testing consideration. The Committee (which consists of Members from 18 U.S. Government organizations) selects and recommends chemicals or chemical groups with testing information deficiencies because they may present an unreasonable risk of injury to health or the environment, may reasonably be anticipated to enter the environment in substantial quantities or may involve significant or substantial human exposure.

The Committee also facilitates coordination of chemical testing sponsored or required by U.S. Government organizations and enhances information exchange to promote cost-effective use of U.S. Government chemical testing resources. The Committee's statutory responsibilities are defined in section 4(e) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*).

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA), chemicals or chemical groups to which the Administrator should give priority testing consideration. Under the authority of TSCA section 4(e)(1)(B) the EPA Administrator shall publish in the Federal Register the Committee's Priority List of chemicals or chemical groups and their associated testing recommendations. The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating rulemaking under TSCA section 4(a) or publishing the reason for not initiating rulemaking. The Congress directed the Committee to revise the TSCA section 4(e) Priority List at least every 6 months, and to transmit those revisions to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by designating two chemicals that were previously recommended with intent-to-designate and by adding one chemical and four chemical groups. The added chemical was nominated by the Occupational Safety and Health Administration. Two chemical groups were nominated by the EPA. The Committee's computerized, substructure-based chemical selection processes were used to identify the chemicals in the aldehyde group nominated by EPA as well as the chemicals in two chemical groups that either shared a common substructure or a common testing information deficiency. During this reporting period, the Committee considered available information on three chemicals and over thirty chemical groups. The Committee also deferred about 700 hundred chemicals from testing consideration at this time.

Chemicals or chemical groups (entries) on the Priority List are designated, recommended with intent-to-designate or recommended by the Committee. Designations were created by the U.S. Congress when they drafted TSCA. Recommendations with intent-to-designate were established by the Committee in their 17th Report (50 FR 47803; November 19, 1985). Recommendations were established by the Committee in their 11th Report (47 FR 54626; December 3, 1982). Revisions to the Priority List are presented, together with the types of testing recommended, in Table 1. The footnote letters following Table 1 acknowledge the Committee's efforts to coordinate chemical testing and to comprehensively examine ongoing testing-related activities and available information previously submitted under TSCA.

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY LIST

Group	CAS No.	Chemical	Action	Date	Recommended tests
	100-40-3	4-vinylcyclohexene[2,4]	Designated	11/90	Chemical fate: Aqueous volatilization rate. Health effects: Pharmacokinetics and oncogenicity by inhalation route of administration. Ecological effects: None.
	143-33-9	sodium cyanide[2,4,5]	Designated	11/90	Chemical fate: Soil sorption. Health effects: Under review, as cyanides. Ecological effects: Toxicity to migratory birds, plant uptake and translocation.
IRIS	79-10-7	acrylic acid[2,3]	Designated	11/90	Chemical fate: River die-away biodegradation. Health effects: Reproductive effects, developmental toxicity, mutagenicity, neurotoxicity and inhalation oncogenicity. Ecological effects: None.
IRIS	98-86-2	acetophenone[3]	Designated	11/90	Chemical fate: None Health effects: Oral and inhalation pharmacokinetics, inhalation subchronic, reproductive effects, developmental toxicity, mutagenicity, and neurotoxicity. Ecological effects: None.
IRIS	108-95-2	phenol[1,2,3,5]	Designated	11/90	Chemical fate: None. Health Effects: Oral and inhalation pharmacokinetics, inhalation subchronic, reproductive effects, and neurotoxicity. Ecological effects: None.
IRIS	121-69-7	*N,N*-dimethylaniline[2,3]	Designated	11/90	Chemical fate: Activated sludge biodegradation. Health effects: Oral and inhalation pharmacokinetics, inhalation subchronic, mutagenicity, reproductive effects, developmental toxicity, and neurotoxicity. Ecological effects. Algal toxicity, aquatic invertebrates acute and chronic toxicity, and fish chronic toxicity.
IRIS	141-78-6	ethyl acetate	Designated	11/90	Chemical fate: None. Health effects: Screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Triggering oncogenicity. Ecological effects: None.
IRIS	576-26-1	2,6-dimethylphenol	Designated	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Ecological effects: Algal toxicity, aquatic invertebrate and fish chronic toxicity.
Aldehydes			Recommended with-intent-to-designate.	11/90	Chemical fate: None. Health effects: None. Ecological effects: Algal toxicity, aquatic invertebrates acute and chronic toxicity and fish chronic toxicity.

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY LIST—Continued

Group	CAS No.	Chemical	Action	Date	Recommended tests
IRIS	51-28-5	2,4-dinitrophenol[1,2,3]	Recommended	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Oral and inhalation pharmacokinetics, dermal absorption, inhalation subchronic, reproductive effects, developmental toxicity, mutagenicity, and neurotoxicity. Ecological effects: Aquatic invertebrates and fish chronic toxicity.
IRIS	95-65-8	3,4-dimethylphenol	Recommended	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Subchronic, screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Ecological effects: Algal toxicity, aquatic invertebrates and fish chronic toxicity.
	90-30-2	*N*-phenyl-1-naphthylamine	Recommended	11/90	Chemical fate: Water solubility, octanol-water partition coefficient, vapor pressure and biodegradation. Health effects: Oncogenicity. Ecological effects: Algal toxicity, aquatic invertebrates and fish chronic toxicity.
Sulfones			Recommended	11/90	Chemical fate: Physical and chemical properties. Health effects: None. Ecological effects. None.
Substantially produced chemicals in need of subchronic tests.			Recommended	11/90	Chemical fate: None. Health effects: Subchronic toxicity. Ecological effects. None.

[1] Superfund Amendments and Reauthorization Act (SARA) section 110.
[2] Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.
[3] Clean Air Act Amendments, section 301.
[4] Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).
[5] TSCA section 8(d) Health and Safety Data Reporting Rule.

Listed below are the individual chemicals for the chemical groups in Table 1. Chemicals nos. 1 through 89 are aldehydes, chemical nos. 90 through 115 are sulfones, and chemicals nos. 116 through 150 are substantially produced chemicals in need of subchronic tests.

Chemical Name	CAS No.	Notes
1. 1-naphthalenecarboxaldehyde	66-77-3	
2. acetaldehyde	75-07-0	b
3. acetaldehyde, trichloro-	75-87-6	
4. propanal, 2-methyl-	78-84-2	b
5. 2-propenal, 2-methyl-	78-85-3	
6. benzenepropanal, 4-(1,1-dimethylethyl)-.α.-methyl-	80-54-6	
7. acetaldehyde, (1,3-dihydro-1,3,3-trimethyl-2H-indol-2-ylidene)	84-83-3	
8. benzaldehyde, 2-chloro-	89-98-5	
9. benzaldehyde, 2-hydroxy-	90-02-8	
10. benzaldehyde, 2,5-dimethoxy-	93-02-7	
11. benzeneacetaldehyde, .α.-methyl-	93-53-8	
12. benzaldehyde, 2,4-dihydroxy-	95-01-2	
13. benzaldehyde, 2-hydroxy-5-nitro-	97-51-8	
14. 2-furancarboxaldehyde	98-01-1	d
15. 2-thiophenecarboxaldehyde	98-03-3	
16. benzaldehyde, 4-(dimethylamino)-	100-10-7	
17. 3-cyclohexene-1-carboxaldehyde	100-50-5	
18. benzaldehyde	100-52-7	
19. 2-propenal, 2-methyl-3-phenyl-	101-39-3	
20. octanal, 2-(phenylmethylene)-	101-86-0	
21. benzenepropanal, .α.-methyl-4-(1-methylethyl)-	103-95-7	
22. benzeneacetaldehyde, 4-methyl-	104-09-6	
23. 2-propenal, 3-phenyl-	104-55-2	
24. benzaldehyde, 4-methyl-	104-87-0	

Chemical Name	CAS No.	Notes
25. benzaldehyde, 4-chloro-	104-88-1	
26. 6-octenal, 3,7-dimethyl-	106-23-0	
27. 2,6-octadienal, 3,7-dimethyl-, (*Z*)-	106-26-3	
28. 5-heptenal, 2,6-dimethyl-	106-72-9	
29. 2-propenal	107-02-8	a,b
30. acetaldehyde, chloro-	107-20-0	
31. ethanedial	107-22-2	
32. octanal, 7-hydroxy-3,7-dimethyl-	107-75-5	
33. undecanal, 2-methyl-	110-41-8	
34. pentanal	110-62-3	
35. pentanedial	111-30-8	
36. heptanal	111-71-7	
37. decanal	112-31-2	
38. undecanal	112-44-7	
39. 10-undecenal	112-45-8	
40 dodecanal	112-54-9	
41. benzaldehyde, 3,4-dimethoxy-	120-14-9	
42. benzaldehyde, 4-(diethylamino)-	120-21-8	
43. 1,3-benzodioxole-5-carboxaldehyde	120-57-0	
44. benzaldehyde, 3-ethoxy-4-hydroxy-	121-32-4	
45. benzaldehyde, 4-hydroxy-3-methoxy-	121-33-5	
46. heptanal, 2-(phenylmethylene)-	122-40-7	
47. benzeneacetaldehyde	122-78-1	
48. hexanal, 2-ethyl-	123-05-7	
49. benzaldehyde, 4-hydroxy-	123-08-0	
50. benzaldehyde, 4-methoxy-	123-11-5	
51. propanal	123-38-6	b
52. octanal	124-13-0	
53. nonanal	124-19-6	
54. 4a(4*H*)-dibenzofurancarboxaldehyde, 1,5a,6,9,9a,9b-hexahydro-	126-15-8	
55. benzaldehyde, 2-methoxy-	135-02-4	
56. 2,6-octadienal, 3,7-dimethyl-, (*E*)-	141-27-5	
57. 9-undecenal	143-14-6	
58. benzaldehyde, 4-(trifluoromethyl)-	455-19-6	
59. 2-hexenal	505-57-7	
60. benzaldehyde, 2-nitro-	552-89-6	
61. butanal, 3-methyl-	590-86-3	
62. propanal, 3-hydroxy-2,2-dimethyl-	597-31-9	
63. benzaldehyde, 4-(1,1-dimethylethyl)-	939-97-9	d,e
64. 2-pyridinecarboxaldehyde	1121-60-4	
65. benzaldehyde, 4-butyl-	1200-14-2	
66. 2-propenal, 3-phenyl-, monopentyl deriv.	1331-92-6	
67. benzaldehyde, methyl-	1334-78-7	
68. 3-cyclohexene-1-carboxaldehyde, 2,4,6-trimethyl-	1423-46-7	
69. 2-propenal, 3-(2-methoxyphenyl)-	1504-74-1	
70. 1-piperidinecarboxaldehyde	2591-86-8	
71. benzaldehyde, 3-bromo-	3132-99-8	
72. propanal, 3-(methylthio)-	3268-49-3	
73. octanal, 7-methoxy-3,7-dimethyl-	3613-30-7	
74. 3-cyclopentene-1-acetaldehyde, 2,2,3-trimethyl-	4501-58-0	
75. hexanal, 3,5,5—trimethyl-	5435-64-3	
76. 1,3-benzodioxole-5-carboxaldehyde, 7-methoxy-	5780-07-4	
77. 6-octenal, 3,7-dimethyl-, (*S*)-	5949-05-3	
78. octanal, 3,7-dimethyl-	5988-91-0	
79. benzaldehyde 4-ethoxy-	10031-82-0	

Chemical Name	CAS No.	Notes
80. 2-propenal, 3- 4-(1,1-dimethylethyl)phenyl -2-methyl-	13568-68-0	
81. benzaldehyde, 4-(diethylamino)-2-hydroxy-	17754-90-4	
82. hexenal, 2-ethyl-	26266-68-2	
83. 3-cyclohexene-1-carboxaldehyde, dimethyl-	27939-60-2	
84. benzaldehyde, (dimethylamino)-	28602-27-9	
85. 3-cyclohexene-1-carboxaldehyde, 4-(4-hydroxy-4-methylpentyl)-	31906-04-4	
86. 3-cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-	37677-14-8	
87. benzaldehyde, 3-phenoxy-	39515-51-0	
88. 3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methyl-3-pentenyl)-	52475-66-2	
89. 3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methylpentyl)-	66327-54-6	
90. dimethylsulfone	67-71-0	
91. sulfolene	77-79-2	
92. sulfonyl bis-(4-chlorobenzene)	80-07-9	
93. 4,4'-diaminodiphenyl sulfone	80-08-0	
94. bisphenol S	80-09-1	
95. 2-amino-4-(methylsulfonyl)phenol	98-30-6	
96. sulfolene	126-33-0	
97. diphenylsulfone	127-63-9	
98. 2,2'-sulfonyl bis-ethanol	2580-77-0	
99. 1,1'-[Methylene bis(sulfonyl)]bisethene	3278-22-6	
100. 2-[(3-aminophenyl)sulfonyl]ethanol	5246-57-1	
101. 3-[*N*-ethyl-4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]-*m*-toluidino]-propionitrile	16588-67-3	
102. 6-(methylsulfonyl)-2-benzothiazolamine	17557-67-4	
103. 2-amino-4-[(2-hydroxyethyl)sulfonyl]phenol	17601-96-6	
104. 4-phenylthiomorpholine, 1,1-dioxide	17668-68-5	
105. 4-[4-[(2,6-dichloro-4-nitrophenyl)azo]phenyl]thiomorpholine, 1,1-dioxide-	17741-62-7	
106. 3-(decyloxy)tetrahydrothiophene 1,1-dioxide	18760-44-6	
107. 1-(diiodomethyl)sulfonyl-4-methyl benzene	20018-09-1	
108. 1,1'-[oxybis(methylenesulfonyl)] bisethene	26750-50-5	
109. 2,2'-[oxybis(methylenesulfonyl)] bisethanol	36724-43-3	
110. 1,1'-[methylenebis(sulfonyl)] bis-2-chloroethane	41123-59-5	
111. 2,2'-[methylenebis(sulfonyl)] bisethanol	41123-69-7	
112. 2-[(3-nitrophenyl)sulfonyl] ethanol	41687-30-3	
113. 2-[(6-amino-2-naphthalenyl)sulfonyl] ethanol	52218-35-6	
114. 1,1'-[oxybis(methylenesulfonyl)] bis-2-chloroethane	53061-10-2	
115. 4-[[4-(phenylmethoxy)phenyl]sulfonyl] phenol	63134-33-8	
116. *p,p'*-oxybis(benzenesulfonylhydrazide)	80-51-3	
117. naphthalenedicarboxylic anhydride	81-84-5	
118. 2-ethylanthraquinone	84-51-5	
119. 7-amino-4-hydroxy-2-naphthalenesulfonic acid	87-02-5	
120. 1-naphthol	90-15-3	
121. 3-hydroxy-2-naphthoic acid	92-70-6	
122. triethylene glycol bis(2-ethylhexanoate)	94-28-0	
123. 2-(4-morpholinyldithio)-benzothiazole	95-32-9	
124. *n*-butyl methacrylate	97-88-1	c,d
125. 1,3-benzenedisulfonic acid	98-48-6	
126. 3,4-dichloronitrobenzene	99-54-7	
127. isophthaloyl chloride	99-63-8	
128. terephthaloyl chloride	100-20-9	
129. 4-ethoxynitrobenzene	100-29-8	
130. acetoacetanilide	102-01-2	
131. butyric anhydride	106-31-0	
132. isobutyl acrylate	106-63-8	c
133. diethylene glycol dimethyl ether	111-96-6	
134. carbinol acetate	112-15-2	

Chemical Name	CAS No.	Notes
135. bromamine acid	116-81-4	
136. 4-methyl-2-nitro-phenol	119-33-5	
137. 4-(acetylamino) benzenesulfonyl chloride	121-60-8	
138. 2,4-pentanedione	123-54-6	
139. propanoic anhydride	123-62-6	
140. bis(2-ethylhexyl)-2-butenedioate	142-16-5	
141. perfluorotributylamine	311-89-7	
142. perfluoro-*N*-hexane	355-42-0	
143. trichloromethanesulfenyl chloride	594-42-3	
144. 1,2-dichlorobutane	616-21-7	
145. 1,3-dicyanobenzene	626-17-5	
146. 3,4-dichlorobutene	760-23-6	
147. 2-(2-aminoethoxy)-ethanol	929-06-6	
148. quinacridone	1047-16-1	
149. ammonium carbamate	1111-78-0	
150. hexa(methoxymethyl) melamine	3089-11-0	

Notes:

a. Superfund Amendments and Reauthorization Act (SARA) section 110.
b. Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.
c. Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).
d. TSCA section 8(d) Health and Safety Data Reporting Rule.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives:

Council on Environmental Quality
  Under consideration
Department of Commerce
  Raimundo Prat
Environmental Protection Agency
  Letitia Tahan, Member
  Vincent Nabholz, Alternate
National Cancer Institute
  Susan Sieber, Member (See Note 1)
  Thomas P. Cameron, Alternate
National Institute of Environmental Health Sciences
  James K. Selkirk, Chairperson
National Institute for Occupational Safety and Health
  Robert W. Mason, Member
  Rodger L. Tatken, Alternate
National Science Foundation
  William L. Pengelly, Member (See Note 2)
  Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
  Loretta Schuman, Vice-Chairperson
  Stephen Mallinger, Alternate

Liaison Agencies and Their Representatives

Agency for Toxic Substances and Disease Registry
  Deborah Barsotti
Consumer Product Safety Commission
  Lakshmi C. Mishra
Department of Agriculture
  Richard M. Parry, Jr.
  Elise A. B. Brown
Department of Defense
  Harry Salem
  Melvin E. Anderson
Department of the Interior
  Clifford P. Rice
  Barnett A. Rattner
Department of Transportation
  James O'Steen
  George Cushmac (See Note 3)
Food and Drug Administration
  Charles J. Kokoski
  Raju Kammula
National Library of Medicine
  Vera Hudson
National Toxicology Program
  Miriam Davis (See Note 4)
  Victor A. Fung (See Note 5)
U.S. International Trade Commission
  Edward Matusik
  James Raftery
Committee Staff
  John D. Walker, Ph.D., Executive Director
  Norma S. L. Williams, Executive Assistant
Support Staff
  Alan Carpien -- Office of the General Counsel, EPA

Notes:
(1) Appointed on July 25, 1990.
(2) Appointed on August 29, 1990.
(3) Appointed on May 24, 1990.
(4) Appointed on September 18, 1990.
(5) Appointed on September 18, 1990.

The Committee acknowledges and is grateful for the assistance and support Given by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1--Introduction

1.1 *Background.* Congress created the Interagency Testing Committee under the Toxic Substances Control Act (TSCA) to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority testing consideration. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List published in the **Federal Register**.

At least every 6 months, the Committee revises the Priority List and transmits these revisions to the EPA Administrator. The Committee's testing recommendations are described in previous reports (Refs. 1 through 11).

1.2 *Committee's previous reports.* Twenty-six previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register**. In these 26 reports, the Committee has recommended testing for 91 chemicals and 28 chemical groups.

1.3 *Committee's activities during this reporting period.* Between April 26, 1990 and September 27, 1990 the Committee processed chemicals that were nominated by Member Agencies, evaluated chemicals by using the Committee's computerized, substructure-based, chemical selection processes and examined lists of ongoing activities related to reducing testing information deficiencies for commercial chemicals.

1.3.a *Nominations and selections.* Member-Agency nominations for this Report include *N*-phenyl-1-naphthylamine (Occupational Safety and Health Administration), Integrated Risk Information System (IRIS)

chemicals and aldehydes (the U.S. Environmental Protection Agency).

Nominating chemicals to the Committee offers several advantages that appear to satisfy the intentions of Congress when they created the ITC. The nominator is provided with the unique opportunity to utilize the Committee-activated networking and information exchange processes that allows the nominator to access otherwise unavailable information from Member Agencies. Committee networking is important because it allows the nominator to determine if there are unpublished studies that could satisfy the nominator's testing information deficiencies or that could provide the nominator with additional testing concerns. Information exchange is important at the Committee level because it is not limited to a single type of testing, but includes comprehensive discussions of health effects, chemical fate and ecological effects testing. It allows the nominator to save resources by analyzing only essential testing information deficiencies, while the Committee comprehensively addresses other testing information deficiencies without substantive delays in processing nominations.

Nominating chemicals to the Committee also allows the nominator to take advantage of an unusual information-collecting opportunity that only exists for Committee recommendations. For any chemical or chemical group recommended by the ITC, the EPA automatically promulgates TSCA 8(a) and 8(d) final rules. TSCA 8(a) requires that industry submit manufacturing, importation and exposure data for any chemical listed in a final section 8(a) rule. TSCA 8(d) requires that industry submit all health effects, epidemiology, medical case studies, monitoring, chemical fate and ecological effects studies for any chemical listed in a final section 8(d) rule. TSCA section 8(a) and 8(d) data are generated in 3 months through an ITC recommendation in contrast to 18 to 24 months through conventional notice and comment rulemaking. The resulting TSCA section 8 data are analyzed and a report is generated for the nominator that indicates whether any of the data submissions are likely to satisfy the nominator's testing information deficiencies.

Chemical group selections for this Report include sulfones and substantially produced chemicals in need of subchronic tests. Sulfones and substantially produced chemicals in need of subchronic tests were identified by using the Committee's computerized, substructure-based, chemical selection processes. The substantially produced chemicals in need of subchronic tests selection exemplifies a feature of these processes that is being utilized for the first time, i.e., the ability of the processes to identify a group of chemicals that have a common testing information deficiency. This cost-effective feature should allow EPA to add those identified chemicals that satisfy the TSCA section 4 statutory requirements [and for which TSCA section 8 information does not reduce the need to consider subchronic toxicity testing] to a subchronic toxicity listing rule and should provide others (e.g., NTP, OECD, etc.) with the option of selecting any of the remaining chemicals for testing.

The Committee uses their computerized processes to enhance their ability to cost-effectively screen chemicals for exposure potential or potential to persist and cause adverse health or ecological effects by: (1) Identifying chemical groups with identical substructures and similar adverse effects potentials or chemical fate characteristics, (2) identifying chemical groups with similar uses or common testing information deficiencies and (3) recommending chemical groups, with insufficient test data, for health effects, chemical fate, or ecological effects testing. The Committee continues to recommend groups of structurally- or use-related chemicals or groups with common testing information deficiencies for screening tests and to review the TSCA section 8(a) and 8(d) information that is submitted in response to recommendations. The Committee believes recommending groups of structurally- or use-related chemicals or groups of chemicals with common testing information deficiencies for screening tests and reviewing TSCA section 8(a) and 8(d) information before making subsequent testing recommendations is a cost-effective approach to satisfying chemical testing information deficiencies because it promotes a comprehensive analysis of chemicals that may produce similar effects or that may involve similar exposures. The Committee processes external nominations of structurally- or use-related chemical groups or groups with common testing information deficiencies and encourages external nominators to take advantage of the Committee's unique networking and information exchange processes and accelerated TSCA 8(a) and 8(d) information-collecting authority.

Processing and recommending Member-Agency and other nominations and computer-facilitated chemical group selections enhances information exchange that promotes cost-effective use of U.S. Government chemical testing resources, encourages harmonization of methods for chemical testing, and facilitates coordination of testing being sponsored or required by U.S. Government organizations.

1.3.b *Comprehensive information processing.* During this reporting period, several For Your Information [FYI], TSCA section 8(d) and 8(e) documents were reviewed. These documents are stored on microfiche in the TSCA Public Docket Office, Office of Toxic Substances, Environmental Protection Agency, Room G–004 NE Mall, 401 M St., SW., Washington, DC 20460. These microfiched documents are also available from the National Technical information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1–800–336–4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1–800–CIS–USER). The Committee referenced several of these documents in Chapter 2 of this report and readers are referred to the above addresses to obtain further information. Interested parties can also obtain, from the EPA address, copies of publicly-available reports, letters and published references supporting recommendations of chemicals in this report.

The Committee continues to comprehensively search available domestic and international lists of ongoing activities related to reducing testing information deficiencies on chemicals under review. Efforts to conduct these searches identified chemicals listed in other statutes, e.g., chemicals listed in Title III of the 1990 amendments of the Clean Air Act. The Committee has recommended over 50 chemicals listed in this statute, including 5 Iris chemicals for inhalation testing (acrylic acid, acetophenone, phenol, 2,4-dinitrophenol and *N,N*-dimethylaniline). The Committee continues to review information on chemicals listed in this and other relevant statutes. Efforts to conduct searches also identified chemicals for which TSCA information-gathering activities are ongoing (see Table 1 footnotes). The Committee makes the results of these searches publicly available by referencing TSCA submissions in Reports to the EPA Administrator or making tables and references of these submissions available in the public dockets supporting a Report to the EPA Administrator.

During this reporting period, the Committee considered available information on 3 chemicals and over 30 chemical groups. Chemical groups currently under consideration include alkenes, alkylamines, alkylnitros, alkylsulfonates, alkynes, anhydrides, aromatic dianhydrides, aromatic sulfhydryls, aromatic sulfonates, aryl ethers, benzothiazoles, carbamates, dialkylamines, ethanolamines, epoxides, ethylhexyl derivatives, glycol ethers, haloalkyl ethers, heterocyclics, hinderd phenols, hydrazines, inorganics, isophthalic acids, isothiocyanates, nitriles, phenylenediamines, phosphates, phosphoniums, pyrrolidinones, siloxanes, sulfenamides, thiocarbamates, thiol esters, thios, triazines, etc. The Committee designated two chemicals that were recommended with intent-to-designate in the 25th and 26th, Reports. One chemical and four chemical groups were selected for addition to the section 4(e) Priority List. Review of the remaining chemicals and chemical groups is ongoing.

1.3.c *Information dissemination.* To emphasize the Committee's efforts to promote public understanding of the ITC's functions and purposes, the Committee is listing for the first time some of the Committee-related activities that occurred during this reporting period. On June 20, 1990 the Committee's Executive Director testified before the House Subcommittee on Environment, Energy and Natural Resources. On June 29, 1990, during an information exchange symposium, the Committee's Chairperson and Executive Director presented chemical selection procedures used by the National Toxicology Program (NTP) and the ITC. On July 2 and September 7, 1990, the Executive Director briefed the Synthetic Organic Chemical Manufactures Association and the Chemical Manufactures Association, respectively, on ITC activities. On September 20, 1990, the Executive Director described the ongoing efforts to evaluate the ITC's substructure-based computerized chemical selection processes at an international workshop convened in the Netherlands.

1.3.d *Deferrals.* To promote public understanding of the total number of chemicals that the Committee processes, the Committee is listing for the first time about 700 chemicals in 4 chemical groups that are being deferred from further consideration at this time because the chemicals were not reported to the EPA or the U.S. International Trade Commission as being recently produced. Four IRIS chemicals (ammonium sulfamate, CFC–113, HMX and hydrogen sulfide) are also being deferred; the rationales for which for which are described in section 2.2.c. of this Report. Deferred and other chemicals are recycled through the Committee's computerized processes to identify chemicals whose production volumes have substantially changed. On the following list of deferrals, chemicals no 1 through 429 are aldehydes, chemicals no 430 through 525 are brominated flame retardants, chemicals no 526 through 605 are isocyanates and chemicals 606 through 686 are sulfones.

	Chemical Name	CAS No.
1.	4-pyridinecarboxaldehyde, 3-hydroxy-2-methyl-5-[(phosphonooxy)methyl]-	54–47–7
2.	propanal, 2,3-dihydroxy-, (±)-	56–82–6
3.	4-pyridinecarboxaldehyde, 3-hydroxy-5-(hydroxymethyl)-2-methyl-, hydrochloride	65–22–5
4.	hexanal	66–25–1
5.	2-furancarboxaldehyde, 5-(hydroxymethyl)-	67–47–0
6.	acetaldehyde, trifluoro-	75–90–1
7.	propanal, 2-oxo-	78–98–8
8.	acetaldehyde, dichloro-	79–02–7
9.	1*H*-pyrrole-3-carboxaldehyde, 2,5-dimethyl-1-phenyl-	83–18–1
10.	benzaldehyde, 2,6-dichloro-	83–38–5
11.	benzaldehyde, 3,4,5-trimethoxy-	86–81–7
12.	2-butenoic acid, 2,3-dichloro-4-oxo-, (*Z*)-	87–56–9
13.	3-cyclohexene-1-carboxaldehyde, 6-methyl-	89–04–1
14.	benzaldehyde, 3,5-dichloro-2-hydroxy-	90–60–8
15.	benzaldehyde, 4-[(2-chloroethyl)ethylamino]-2-methyl-	92–10–4
16.	benzaldehyde, 4-(diethylamino)-2-methyl-	92–14–8
17.	benzaldehyde, 4-[(2-chloroethyl)methylamino]-	94–31–5
18.	butanal, 2-methyl-	96–17–3
19.	butanal, 2-ethyl-	97–96–1
20.	benzaldehyde, 3-nitro-	99–61–6
21.	benzeneacetaldehyde, α, 4-dimethyl-	99–72–9
22.	benzaldehyde, 3-hydroxy-	100–83–4
23.	benzenepropanal	104–53–0
24.	undecanal, 2,6,10-trimethyl-	105–88–4
25.	butanal, 3-hydroxy-	107–89–1
26.	acetaldehyde, tribromo-	115–17–3
27.	1, 3-cyclohexadiene-1-carboxaldehyde, 2,6,6-trimethyl-	116–26–7
28.	retinal	116–31–4
29.	benzaldehyde, 4-ethoxy-3-methoxy-	120–25–2
30.	benzaldehyde, 4-(1-methylethyl)-	122–03–2
31.	pentanal, 2-methyl-	123–15–9
32.	2-butenal, (*E*)-	123–73–9
33.	tetradecanal	124–25–4
34.	benzaldehyde, 4-hydroxy-3,5-dimethoxy-	134–96–3
35.	9-undecenal, 2,6,10-trimethyl-	141–13–9
36.	7-octenal, 3,7-dimethyl-	141–26–4
37.	2, 4-hexadienal, (*E, E*)-	142–83–6
38.	benzaldehyde, 2-hydroxy-3-methoxy-	148–53–8
39.	benzaldehyde, 2-chloro-6-fluoro-	387–45–1
40.	2-cyclohexene-1-carboxaldehyde, 2,6,6-trimethyl-	432–24–6
41.	1-cyclohexene-1-carboxaldehyde, 2,6,6-trimethyl-	432–25–7
42.	benzaldehyde, 3-(trifluoromethyl)-	454–89–7
43.	benzaldehyde, 3-fluoro-	456–48–4
44.	benzaldehyde, 4-fluoro-	459–57–4
45.	2-cyclohexene-1-acetaldehyde, 2,6,6-trimethyl-	472–64–0
46.	1-cyclohexene-1-acetaldehyde, 2,6,6-trimethyl-	472–66–2
47.	retinal, 13-cis-	472–66–6

BEST COPY AVAILABLE

	Chemical Name	CAS No.
48.	benzaldehyde, 2,4,6-trimethyl-	487-68-3
49.	1*H*-indole-3-carboxaldehyde	487-89-8
50.	benzaldehyde, 3-ethoxy-2-hydroxy-	492-88-6
51.	hexanal, 2-ethyl-3-hydroxy-	496-03-7
52.	2-butenal, 2-methyl-, (*E*)-	497-03-0
53.	3-thiophenecarboxaldehyde	498-62-4
54.	3-pyridinecarboxaldehyde	500-22-1
55.	2, 6,10-dodecatrienal, 3,7,11-trimethyl-, (*E,E*)-	502-67-0
56.	retinal, 9-cis-	514-85-2
57.	benzaldehyde, 2-amino-	529-23-7
58.	benzaldehyde, 4-nitro-	555-16-8
59.	benzaldehyde, 4-amino-	556-18-3
60.	2,6-nonadienal, (*E,Z*)-	557-48-2
61.	bicyclo[3.1.1]hept-2-ene-2-carboxaldehyde, 6,6-dimethyl-	564-94-3
62.	benzaldehyde, 3-methoxy-	591-31-1
63.	benzaldehyde, 2,4,6-trihiro-	606-34-8
64.	benzaldehyde, 4-(dipropylamino)-	613-28-5
65.	benzaldehyde, 2-ethoxy-	613-69-4
66.	benzaldehyde, 2-hydroxy-5-methyl-	613-84-3
67.	2-furancarboxaldehyde, 5-methyl-	620-02-0
68.	benzaldehyde, 3-methyl-	620-23-5
69.	benzaldehyde, 3-hydroxy-4-methoxy-	621-59-0
70.	1, 4-benzenedicarboxaldehyde	623-27-8
71.	2-propenal, 3-(2-furanyl)-	623-30-3
72.	2-pentenal, 2-methyl-	623-36-9
73.	2-propynal	624-67-9
74.	hexadecanal	629-80-1
75.	propanal, 2,2-dimethyl-	630-19-3
76.	benzaldehyde, 5-chloro-2-hydroxy-	635-93-8
77.	butanedial	638-37-9
78.	9-anthracenecarboxaldehyde	642-31-9
79.	1, 2-benzenedicarboxaldehyde	643-79-8
80.	2-hexenal, 2-ethyl-	645-62-5
81.	benzaldehyde, 2-hydroxy-4-methoxy-	673-22-3
82.	1-naphthalenecarboxaldehyde, 2-hydroxy-	708-06-5
83.	2-pentenal	764-39-6
84.	2, 4-pentadienal	764-40-9
85.	2-propenal, 2-methyl-3-[4-(1-methylethyl)phenyl]-	831-97-0
86.	4-pyridinecarboxaldehyde	872-85-5
87.	benzaldehyde, 2,4-dichloro-	874-42-9
88.	2-propenal, 3-[2-furanyl]-2-methyl-	874-66-8
89.	benzaldehyde, 4-(acetyloxy)-	878-00-2
90.	benzaldehyde, 4-(acetyloxy)-3-methoxy-	881-68-5
91.	propanal, 2-chloro-2-methyl-	917-93-1
92.	1*H*-pyrrole-2-carboxaldehyde	1003-29-8
93.	benzeneacetaldehyde, 4-methoxy-α-oxo-	1076-95-5
94.	8'-apo-*β*, psi-carotenal	1107-26-2
95.	pentanal, 4-methyl-	1119-16-0
96.	2-pyridinecarboxaldehyde, 6-methyl-	1122-72-1
97.	benzaldehyde, 4-bromo-	1122-91-4
98.	benzaldehyde, 2, 5-dihydroxy-	1194-98-5
99.	1, 3-benzodioxole-5-propanal, α.-methyl-	1205-17-0
100.	propanal, phenyl-	1335-10-0
101.	hexenal	1335-39-3
102.	benzeneacetaldehyde, α-(1-methylethyl)-	1335-44-0
103.	undecenal	1337-83-3
104.	benzaldehyde, 2-chloro-4-(dimethylamino)-	1424-68-4
105.	benzaldehyde, 3-amino-	1709-44-0
106.	2-propenal, 3-(4-nitrophenyl)-	1734-79-8
107.	1*H*-Indole-3-carboxaldehyde, 1-methyl-2-phenyl-	1757-72-8
108.	benzaldehyde, 5-bromo-2-hydroxy-	1761-61-1
109.	2-propenal, 3-(4-methoxyphenyl)-	1963-36-6
110.	benzaldehyde, 3,4-diethoxy-	2029-94-9
111.	4-pentenal	2100-17-6
112.	benzaldehyde, 2,3,4-trimethoxy-	2103-57-3
113.	1-cyclohexene-1-carboxaldehyde, 4-(1-methylethenyl)-	2111-75-3
114.	acetaldehyde, phenoxy-	2120-70-9
115.	propanal, 3-hydroxy-	2134-29-4
116.	benzaldehyde, 2,3,4-trihydroxy-	2144-08-3
117.	benzaldehyde, 4-hydroxy-3, 5-dimethyl-	2233-18-3
118.	6-nonenal, (*Z*)-	2277-19-2
119.	2, 4-decadienal	2363-88-4
120.	2-octenal	2363-89-5
121.	6-octenal, 3,7-dimethyl-, (*R*)-	2385-77-5
122.	benzaldehyde, 2-hydroxy-3,5-dinitro-	2460-59-5
123.	2-nonenal	2463-53-8
124.	2-heptenal	2463-63-0
125.	2-undecenal	2463-77-6
126.	benzaldehyde, 4-ethoxy-3-hydroxy-	2539-53-9
127.	2-octenal, (*E*)-	2548-87-0
128.	pentadecanal	2765-11-9
129.	benzaldehyde, 3-bromo-4-hydroxy-5-methoxy-	2973-76-4

	Chemical Name	CAS No.
130.	2-nonenal, 2-pentyl-	2921-69-4
131.	2-butenal, 2-methyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	3155-71-3
132.	benzaldehyde, 4-(methylthio)-	3446-89-7
133.	2-pentenal, 3-methyl-	3562-19-6
134.	propanal, 3-hydroxy-2,2-bis(hydroxymethyl)-	3615-32-4
135.	2-decenal	3913-71-1
136.	1,4-piperazinedicarboxaldehyde	4164-30-6
137.	benzaldehyde, 4-(diphenylamino)-	4181-05-9
138.	2-benzofurancarboxaldehyde	4265-16-1
139.	2,4-heptadienal, (*E,E*)-	4313-03-5
140.	benzeneacetaldehyde, 4-(1-methylethyl)-	4395-92-0
141.	benzaldehyde, 4-(phenylmethoxy)-	4397-53-9
142.	benzeneacetaldehyde, α-ethylidene-	4411-89-6
143.	3-hexenal	4440-65-7
144.	benzaldehyde, 2,4,5-trimethoxy-	4460-86-0
145.	4-hexenal, (*Z*)-	4634-89-3
146.	benzaldehyde, 4-ethyl-	4748-78-1
147.	2-dodecenal	4826-62-4
148.	2,6,9,11-dodecatetrienal, 2,6,10-trimethyl-	4965-32-2
149.	benzeneacetaldehyde, α-(2-phenylethylidene)-	5061-83-4
150.	benzaldehyde, 2-hydroxy-3-nitro-	5274-70-4
151.	2-pentenal, 4-methyl-	5362-56-1
152.	benzenepropanal, 4-methyl-	5406-12-2
153.	1*H*-Indole-3-carboxaldehyde, 2-methyl-	5416-80-8
154.	benzaldehyde, 4-hydroxy-3-iodo-5-methoxy-	5438-32-8
155.	bicyclo[2.2.1]hept-5-ene-2-carbonaldehyde	5453-80-6
156.	benzaldehyde, 4-propoxy-	5736-85-6
157.	benzaldehyde, 4-butoxy-	5736-88-9
158.	benzaldehyde, 4-(pentyloxy)-	5736-91-4
159.	benzaldehyde, 4-(hexyloxy)-	5736-94-7
160.	2, 4-heptadienal	5910-85-0
161.	2, 4-nonadienal, (*E,E*)-	5910-87-2
162.	2-propenal, 3-[4-(dimethylamino)phenyl]-	6203-18-5
163.	benzaldehyde, 2,4-dihydroxy-3-methyl-	6248-20-0
164.	benzaldehyde, 3,4-dichloro-	6287-38-3
165.	benzaldehyde, 2,3-dichloro-	6334-18-5
166.	propanal, 3-(diethylamino)-2,2-dimethyl-	6348-47-1
167.	benzaldehyde, 2-chloro-5-nitro-	6361-21-3
168.	2-propenal, 2-methyl-3-[2-(1-methylethyl)phenyl]-	6502-23-4
169.	4-hexanal, 5-methyl-2-(1-methylethenyl)-, (*R*)-	6549-49-7
170.	benzaldehyde, 2-bromo-	6630-33-7
171.	undecanal, 2-ethylidene-	6728-18-7
172.	2-hexenal, (*E*)-	6728-26-3
173.	4-heptenal, (*Z*)-	6728-31-0
174.	2, 4-nonadienal	6750-03-4
175.	3-hexenal, (*Z*)-	6789-80-6
176.	benzaldehyde, 4-pentyl-	6853-57-2
177.	2-propenal, 3-(1,3-benzodioxol-5-yl)-2-methyl-	6974-47-6
178.	9,10-anthracenedicarboxaldehyde	7044-91-9
179.	2-thiophenecarbaxaldehyde, 5-chloro-	7283-96-7
180.	hexanal, 2-(phenylmethylene)-	7439-44-8
181.	acetaldehyde, [(3,7-dimethyl-6-octenyl)oxy]-	7492-67-3
182.	3-cyclohexene-1-carboxaldehyde, 4-methyl-	7560-64-7
183.	1-piperazinecarboxaldehyde	7755-92-2
184.	2-tridecenal	7774-82-5
185.	octanal, 2-methyl-	7786-29-9
186.	benzeneacetaldehyde, 2-methyl-	10166-06-2
187.	benzaldehyde, 3,5-dichloro-	10203-08-4
188.	1-naphthaleneacetaldehyde, 5,6,7,8-tetrahydro-	10454-23-8
189.	tridecanal	10486-19-8
190.	cyclohexanecarboxaldehyde, 2,2,6-trimethyl-	13155-57-2
191.	2,4-pentadienal, 5-phenyl-	13466-40-5
192.	2-thiophenecarboxaldehyde, 5-methyl-	13679-70-4
193.	5-pyrimidinecarboxaldehyde, 4-amino-6-chloro-	14160-93-1
194.	2-pentenal, 2-methyl-, (*E*)-	14250-96-5
195.	1*H*-Indole-3-carboxaldehyde, 1-methoxy-2-phenyl-	14960-63-6
196.	propanal, 3-(dimethylamino)-2,2-dimethyl-	15451-14-6
197.	propanal, 2-methyl-2-(methylthio)-	16042-21-0
198.	butanal, 3-(methylthio)-	16630-52-7
199.	2,6-nonadienal, (*E,E*)-	17587-33-6
200.	2,6,9,11-dodecatetraenal, 2,6,10-trimethyl-, (*E,E,E*)-	17989-77-2
201.	3-cyclohexene-1-carboxaldehyde, 2-(1-methylethyl)-	18126-30-9
202.	benzenepropanal, 4-(1,1-dimethylethyl)-	18127-01-0
203.	propanal, 3-hydroxy-2-(hydroxymethyl)-2-methyl-	18516-18-2
204.	2-heptenal, (*E*)-	18829-55-5
205.	2-nonenal, (*E*)-	18829-56-6
206.	decanal, 2-methyl-	19009-56-4
207.	2-butenal, 2-ethyl-	19780-25-7
208.	nonanal, 2-benzylidene-	20175-19-3
209.	2-dodecenal, (*E*)-	20407-84-5
210.	2-octenal, (*Z*)-	20664-46-4
211.	cyclohexanecarboxaldehyde, 4-(1,1-dimethylethyl)-	20691-52-5

	Chemical Name	CAS No.
212.	7-decenal, (*Z*)-	21661-97-2
213.	4-decenal, (*Z*)-	21662-09-9
214.	2,8-dodecadienal, (*E,Z*)-	21662-13-5
215.	2,4-dodecadienal, (*E,Z*)-	21662-15-7
216.	2,4-dodecadienal, (*E,E*)-	21662-16-8
217.	benzeneacetaldehyde, α-(3-methylbutylidene)-	21834-92-4
218.	benzaldehyde, 4-(2-hydroxyethoxy)-	22042-73-5
219.	1*H*-pyrazole-4-carboxaldehyde, 3,5-dimethyl-1-phenyl-	22042-79-1
220.	undecenal, 2-methylene-	22414-68-2
221.	decanal, 2-methylene-	22418-65-1
222.	8-octenal, 3,7-dimethyl-2-methylene-	22418-66-2
223.	acetaldehyde, (methylthio)-	23328-62-3
224.	5,9-undecadienal, 2,6,10-trimethyl-	24048-13-3
225.	benzaldehyde, 4-(octyloxy)-	24083-13-4
226.	benzaldehyde, 4-azido-	24173-36-2
227.	pregn-4-ene-20-carboxaldehyde, 3-oxo-	24254-01-1
228.	benzeneacetaldehyde, α-2-propenyl-	24401-36-3
229.	benzaldehyde, 2-methoxy-5-nitro-	25016-02-8
230.	2-butenal, 2-[(acetyloxy)methyl]-	25016-79-0
231.	2,4-decadienal, (*E,E*)-	25152-84-5
232.	hexenal, 2-ethylidene-	25469-08-9
233.	butenal, 4-hydroxy-	25714-71-0
234.	acetaldehyde, (3,3-dimethylcyclohexylidene)-, (*Z*)-	26532-24-1
235.	acetaldehyde, (3,3-dimethylcyclohexylidene)-, (*E*)-	26532-25-2
236.	benzeneacetaldehyde, α-(2-methylpropylidene)-	26643-91-4
237.	benzaldehyde, 4-(heptyloxy)-	27893-41-0
238.	2-pentenal, 2-ethyl-4-methyl-	28419-86-5
239.	butanal, 2-(phenylmethylene)-	28467-92-7
240.	benzaldehyde, 4-propyl-	28785-06-0
241.	indole-3-carboxaldehyde, 1,2-diphenyl-	29329-99-5
242.	3-cyclohexene-1-acetaldehyde, α, 4-dimethyl-	29548-14-9
243.	2,4-octadienal, (*E,E*)-	30361-28-5
244.	2,4-undecadienal, (*E,E*)-	30361-29-6
245.	4-decenal	30390-50-2
246.	nonadienal	30551-17-6
247.	4,7-Methano-1*H*-indenecarboxaldehyde, octahydro-	30772-79-3
248.	bicyclo[3.1.1]hept-2-ene-2-acetaldehyde, 6,6-dimethyl-	30697-75-7
249.	benzaldehyde, dichloro-	31155-09-8
250.	2-furanpropionaldehyde, β, 5-dimethyl-	31704-80-0
251.	*p*-Tolualdehyde, 4-[ethyl(2-hydroxy-3-phenoxypropyl)amino]-, carbanilate (ester)	32089-69-3
252.	3-butenal, 2-methyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	32791-31-4
253.	4,9-decadienal, 2,5,9-trimethyl-	32803-39-7
254.	1H, 5*H*-benzo[ij]quinolizine-9-carboxaldehyde, 2,3,6,7-tetrahydro-	33985-71-6
255.	benzeneacetaldehyde, α-methyl-4-(1-methylethyl)-	34291-99-1
256.	6-octenal, 3-ethenyl-3,7-dimethyl-	34687-42-8
257.	6-octenal, 3-ethyl-3,7-dimethyl-	34687-43-9
258.	2-heptenal, 2-propyl-	34860-43-5
259.	2-hexenal, 5-methyl-2-(1-methylethyl)-	35158-25-9
260.	11-Tetradecenal, (*Z*)-	35237-64-0
261.	benzaldehyde, 3-(1,1,2,2-tetrafluoroethoxy)-	35295-35-3
262.	benzaldehyde, 4-(1,1,2,2-tetrafluoroethoxy)-	35295-36-4
263.	benzaldehyde, 4-[bis[2-(benzoyloxy)ethyl]amino]-2,5-dimethoxy-	35473-23-5
264.	11-tetradecenal, (*E*)-	35746-21-5
265.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-, (1α,2α,4β)-	36208-33-0
266.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-, (1α,2α,4β)-	36208-34-1
267.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-, (1α,2β,4β)-	36208-35-2
268.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-, (1α,2β,4β)-	36208-59-0
269.	2-thiophenecarboxaldehyde, 5-ethyl-	36880-33-8
270.	dodecanal, 2-methyl-	37596-36-4
271.	3-cyclohexene-1-carboxaldehyde, 4-[2-(3,3-dimethyloxiranyl)ethyl]-	37677-09-1
272.	3-cyclohexene-1-carboxaldehyde, 3-[2-(3,3-dimethyloxiranyl)ethyl]-	37677-10-4
273.	2-propenal, 3-bicyclo[2.2.1]hept-5-en-2-yl-2-methyl-	38284-42-3
274.	3-cyclohexene-1-carboxaldehyde, 2,4-dimethyl-6-propyl-	39067-36-2
275.	bicyclo[2.2.1]hept-5-ene-2-carboxaldehyde, 3-propyl-	39067-39-5
276.	6-nonenal	39770-04-2
277.	9-decenal	39770-05-3
278.	propanal, 3-hydroxy-2-(hydroxymethyl)-	40364-80-5
279.	2,6-nonadienal, 3,7-dimethyl-	41448-29-7
280.	acetaldehyde, [(3,7-dimethyloctyl)oxy]-	41767-05-9
281.	acetaldehyde, (2-phenylethoxy)-	41847-88-5
282.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2β,5β)-	42507-55-1
283.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2β,5α)-	42507-56-2
284.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2α,5β)-	42507-57-3
285.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2α,5α)-	42507-58-4
286.	benzaldehyde, 4-[bis(4-methylphenyl)amino]-	42906-19-4
287.	2-octenal, 2-methyl-, (*E*)-	49576-57-0
288.	benzaldehyde, 4-octyl-	49763-66-8
289.	benzaldehyde, 4-hexyl-	49763-69-1
290.	benzaldehyde, 4-(1-oxopropoxy)-	50262-48-1
291.	pentanal, 5,5-dimethoxy-	50789-30-5
292.	3-cyclohexene-1-carboxaldehyde, 3-(4-hydroxy-4-methylpentyl)-	51414-25-6
293.	5-heptenal, 2,2,6-trimethyl-	52270-00-2

	Chemical Name	CAS No.
294.	3-cyclohexene-1-carboxaldehyde, 1-methyl-3-(4-methyl-3-pentenyl)-	52474-60-9
295.	3-cyclohexene-1-carboxaldehyde, 3-(4-methyl-3-pentenyl)-	52475-89-5
296.	benzaldehyde, 3-(chloromethyl)-4-methoxy-	52577-09-9
297.	cyclohexenecarboxaldehyde, 2,6,6-trimethyl-	52844-21-0
298.	2-propenal, 2-bromo-3-methoxy-	52955-40-5
299.	acetaldehyde, (octyloxy)-	53498-14-5
300.	9-tetradecenal, (*Z*)-	53939-27-8
301.	11-hexadecenal, (*Z*)-	53939-28-9
302.	benzaldehyde, ethyl-	53953-50-1
303.	5,9-undecadienal, 2,6,10-trimethyl-	54082-68-7
304.	3-cyclohexene-1-carboxaldehyde, 5-(3-hydroxy-3-methylbutyl)-3-methyl-	54221-01-1
305.	2,4-tetradecadienal	54308-03-5
306.	cyclohexenecarboxaldehyde, (4-methyl-3-pentenyl)-	54383-28-1
307.	6-octenal, 7-methyl-3-methylene-	55066-48-3
308.	acetaldehyde, 1-ethyl-1, 3-dihydro-3,3-dimethyl-5-(phenylsulfonyl)-2*H*-indol-2-ylidene-	55080-68-2
309.	3,8-octadienal, 3,7-dimethyl-	55723-58-3
310.	4-hexenal, 2-ethenyl-2,5-dimethyl-	56434-05-5
311.	9-hexadecenal, (*Z*)-	56219-04-6
312.	2,4,6-nonatrienal	56399-23-6
313.	2,8-octadienal, (*E,E*)-	56767-19-1
314.	7-hexadecenal, (*Z*)-	56797-40-1
315.	4-Isoxazolecarboxaldehyde, 2,5-dihydro-2-methyl-5-oxo-3-phenyl-	56878-25-2
316.	benzeneacetaldehyde, α-(2-furanylmethylene)-	57568-60-2
317.	4-hexenal, 5-methyl-2-(1-methylethyl)-	58101-81-4
318.	2-naphthalenecarboxaldehyde, 3-ethyl-5,6,7,8-tetrahydro-5,5,8,8-tetramethyl-	58245-85-9
319.	8-undecenal	58296-81-4
320.	benzaldehyde, 2,4,6-tripropoxy-	58470-10-3
321.	2,8-decadienal, 3,7,9-trimethyl-	58805-97-3
322.	7-nonenal, 4,8-dimethyl-	58772-83-1
323.	2,3b-methano-3b*H*-cyclopenta 1,3 cyclopropa 1,2 benzene-4-carboxaldehyde, octahydro-7,7,8,8-tetramethyl-	59056-68-6
324.	propanal, 2-bromo-3,3-dimethoxy-	59453-08-8
325.	4,7-methano-1*H*-indene-6-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, (3aα,4α,5α,7α,7aα)-	59691-23-4
326.	4,7-methano-1*H*-indene-5-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, (3aα,4α,5α,7α,7aα)-	59691-23-5
327.	3-pentenal, 5-(methylthio)-2-[(methylthio)methyl]-	59803-01-1
328.	2,6,11-dodecatrienal, 2,6-dimethyl-10-methylene-	60068-89-8
329.	2,4,8-decatrienal, 2,5,9-trimethyl-	60437-19-8
330.	8-hexadecenal, 14-methyl-, (*Z*)-	60939-53-2
331.	2-nonenal, (*Z*)-	60784-31-8
332.	2,4-tridecadienal	60936-24-5
333.	4-hexenal, 5-methyl-2-(1-methylethylidene)-, dihydro deriv.	61792-53-6
334.	2*H*-2,4a-methanonaphthalene-8-carboxaldehyde, 1,3,4,5,6,7-hexahydro-1,1,5,5-tetramethyl-, (2S)-	61826-54-8
335.	heptanal, 6-methoxy-2,6-dimethyl-	62439-41-2
336.	1H, 5*H*-benzo[ij]quinolizine-9-carboxaldehyde, 2,3,6,7-tetrahydro-8-hydroxy-	62148-39-7
337.	benzaldehyde, 2-hydroxy-5-nonyl-	63753-18-6
338.	2-tetradecenal	64461-06-6
339.	decanal, 2-ethylidene-	64825-20-3
340.	benzaldehyde, 4-[bis[2-(benzoyloxy)ethyl]amino]-	65072-25-5
341.	2-propenal, 3-(4-methoxyphenyl)-2-methyl-	65405-67-6
342.	4-decenal, (*E*)-	65405-70-1
343.	acetaldehyde, [(3,7-dimethyl-2,6-octadienyl)oxy]-, (*E*)-	65405-73-4
344.	cyclohexanebutanal, α,2,2,6-tetramethyl-	65405-84-7
345.	3-cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-1-(2-propenyl)-	66310-72-3
346.	benzenepropanal, 4-cyclopentyl-α-methyl-	66987-37-8
347.	3-cyclohexene-1-carboxaldehyde, 3,5,6-trimethyl-	67634-07-8
348.	bicyclo[2.2.2]octane-2-carboxaldehyde, 6-(1-methylethyl)-	67662-97-8
349.	3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methyl-4-pentenyl)-	67746-25-5
350.	butanal, 2-hydroxy-3-methyl-	67755-97-8
351.	2-propenal, 3-(2,2-dimethyl-6-methylenecyclohexyl)-2-methyl-	67801-13-2
352.	2-propenal, 2-methyl-3-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	67801-14-3
353.	octanal, 2-(2-furanylmethylene)-	67801-17-6
354.	2-naphthaleneacetaldehyde, 5,6,7,8-tetrahydro-	67801-18-7
355.	heptanal, 2-(2-furanylmethylene)-	67801-21-2
356.	3-cyclohexene-1-carboxaldehyde, 3,6-dimethyl-	67891-65-4
357.	benzaldehyde, 2,4,5-triethoxy-	67827-54-7
358.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 6-methyl-8-(1-methylethyl)-	67845-30-1
359.	acetaldehyde, (4-methylphenoxy)-	67845-48-9
360.	acetaldehyde, [4-(1, 1-dimethylethyl)-2-methylphenoxy]-	67845-52-5
361.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-	67890-79-3
362.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-	67920-94-8
363.	2-cyclohexene-1-carboxaldehyde, 6-[1-(1-methylethyl)-2-propenyl]-	67952-55-0
364.	propanal, 2-methyl-2-(methyldithio)-	67952-60-7
365.	3-cyclohexene-1-carboxaldehyde, 3, 5-dimethyl-	68039-48-5
366.	3-cyclohexene-1-carboxaldehyde, 2, 4-dimethyl-	68039-49-6
367.	hexanal, 3, 3, 5-trimethyl-	68039-71-4
368.	benzeneacetaldehyde, 4-ethyl-	68083-54-5
369.	benzeneacetaldehyde, 2, 4-dimethyl-	68083-55-6
370.	3-dodecenal	68083-57-8
371.	pentanal, 3-ethoxy-4-methyl-	68084-09-2
372.	cyclohexenecarboxaldehyde, dimethyl-	68084-52-6
373.	acetaldehyde, (3-hexenyloxy)-, (*Z*)-	68133-72-2
374.	3-cyclohexene-1-carboxaldehyde, 3,5-dimethyl-6-propyl-	68140-54-5
375.	3-cyclohexene-1-carboxaldehyde, 2,4, 6-trimethyl-1-(2-propenyl)-	68140-58-9

	Chemical Name	CAS No.
376.	3-cyclohexene-1-carboxaldehyde, 1-methyl-2-(1-methylethenyl)-	66140-59-0
377.	3,4-octadienal, 2-butyl-2-ethyl-5,7-dimethyl-	66140-60-3
378.	nonanal, 5-ethyl-2-methyl-	66141-14-0
379.	3-dodecenal, (Z)-	66141-15-1
380.	acetaldehyde, [(3,7-dimethyl-2,6-octadienyl)oxy]-	66213-67-6
381.	benzeneacetaldehyde, ar, α-diethyl-	66226-11-5
382.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 5(or 6)-methyl-7(or 8)-(1-methylethyl)-	66259-31-4
383.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 3,5(or 3,6)-dimethyl-7(or 8)-(1-methylethyl)-	66259-32-5
384.	hexanal, 2,3,5,5-tetramethyl-	66391-29-7
385.	acetaldehyde, (4-methoxyphenoxy)-	66426-09-5
386.	benzaldehyde, 2,4-bis(1-methylethyl)-	66459-05-0
387.	butanal, 3-(heptyloxy)-2-oxo-	66555-32-8
388.	2-butenal, 2-methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	66555-62-4
389.	3-cyclohexene-1-carboxaldehyde, dimethyl-	66737-61-1
390.	2-naphthalenecarboxaldehyde, octahydro-8,8-dimethyl-	66738-84-3
391.	2-naphthalenecarboxaldehyde, octahydro-5,5-dimethyl-	66738-96-5
392.	acetaldehyde, [2,6-bis(1,1-dimethylethyl)-4-methylphenoxy]-	66797-73-9
393.	benzeneacetaldehyde, 3,4-dimethyl-	66844-97-3
394.	4,9-decadienal, 5,9-dimethyl-	66844-96-4
395.	3-cyclohexene-1-carboxaldehyde, 4-(4-hydroxy-3,4-dimethylpentyl)-	66891-88-3
396.	acetaldehyde, (2-furanylthio)-	66922-05-4
397.	2-naphthalenecarboxaldehyde, 1,2,3,4,5,6,7,8-octahydro-5,5-dimethyl-	66891-96-8
398.	2-naphthalenecarboxaldehyde, 1,2,3,4,5,6,7,8-octahydro-8,8-dimethyl-	66891-97-9
399.	2-furancarboxaldehyde, tetrahydro-5-oxo-, (R)-	70606-00-7
400.	4,9-decadienal, 4,9-dimethyl-	71077-31-1
401.	11,13-hexadecadienal, (Z,Z)-	71317-73-2
402.	dodecanal, 11(or 12)-methyl-	71566-52-4
403.	benzaldehyde, 4-[(2,3-dihydroxypropyl)ethylamino]-2-methyl-, sulfate (1:1) (salt)	71673-10-4
404.	1,5-cyclododecadienecarboxaldehyde, trimethyl-	71735-67-0
405.	3-cyclohexene-1-carboxaldehyde, 1,2,4(or 1,3,5)-trimethyl-	71832-75-5
406.	acetaldehyde, (2,6-dimethylphenoxy)-	72102-89-7
407.	benzaldehyde, 4-(acetyloxy)-3-ethoxy-	72207-94-4
408.	2-hexenal, 4(or 5)-methyl-2-propyl-	72208-09-4
409.	heptanal, 3,5,5-trimethyl-	72333-11-0
410.	5-octenal, 2,6-dimethyl-	72845-35-3
411.	cinnamaldehyde, still bottoms	72869-33-1
412.	acetaldehyde, (decyloxy)-	72894-07-6
413.	10-undecenal, 2-ethylidene-	72894-14-5
414.	2,12-tridecadienal	72894-15-6
415.	benzeneacetaldehyde, 3-methyl-	72927-80-1
416.	acetaldehyde, [(3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-6-yl)oxy]-	72927-85-6
417.	3-cyclohexene-1-carboxaldehyde, 5-(2-hydroxy-2-methylpropylidene)-	72927-97-0
418.	4,9-decadienal, 2,4,8-trimethyl-	72928-00-8
419.	acetaldehyde, [(3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5-yl)oxy]-	72928-15-5
420.	2-cyclohexene-1-acetaldehyde, α, 2-dimethyl-5-(1-methylethenyl)-	72928-28-0
421.	undecanal, 2-methyl-2-(2-propenyl)-	72928-37-1
422.	acetaldehyde, [4-(1,1-dimethylethyl)phenoxy]-	72928-50-6
423.	3-cyclohexene-1-carboxaldehyde, 2-(2-hydroxy-2-methylpropylidene)-	72939-53-8
424.	2-cyclohexene-1-acetaldehyde, 2-methyl-5-(1-methylethenyl)-	72983-68-7
425.	2-butenal, 2,3-dimethyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	73507-49-0
426.	3-butenal, 2,3-dimethyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	73507-50-3
427.	4,7-methano-1H-indene-2-carboxaldehyde, octahydro-5-methoxy-	86803-90-9
428.	1H-indenecarboxaldehyde, 2,3,3a,4,5,6- hexahydro-1,3,3-trimethyl-	94406-15-2
429.	biphenyl, polybromo-	No CAS No.
430.	bromophenol (br1-br2, br5)	No CAS No.
431.	carbamate, bis(dibromopropyl)-	No CAS No.
432.	phosphite, bis(2,3-dibromopropyl)-	No CAS No.
433.	biphenyl, polybromo- (br6-br10)	No CAS No.
434.	phosphite,	No CAS No.
435.	toluene, tetrabromochloro-	No CAS No.
436.	brominated terphenyls	No CAS No.
437.	carbamate, dibromopropyl-	No CAS No.
438.	phosphite, alkyl bis(2,3-dibromopropyl)-	No CAS No.
439.	phosphoryl chloride, bis(dibromopropyl)-	No CAS No.
440.	1-propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7
441.	phenol, pentabromo-	608-71-9
442.	brominated terphenyls	623-27-8
443.	brominated terphenyls	626-19-7
444.	oxetane, 3,3-bis(bromomethyl)-	2402-83-7
445.	oxirane, bromoethyl-	3132-64-7
446.	brominated terphenyls	3365-02-4
447.	brominated terphenyls	3365-03-5
448.	benzene, pentabromo(2-propenyloxy)-	3555-11-1
449.	brominated terphenyls	4266-99-3
450.	brominated terphenyls	4456-49-9
451.	phenol, 2,6-dibromo-4-[1-(3-bromo-4-hydroxyphenyl)-1-methylethyl]-	6386-73-8
452.	1,2-benzenedicarboxylic acid, bis(2,3-dibromopropyl) ester	7415-86-3
453.	brominated terphenyls	10273-74-2
454.	phosphonium, 1,2-ethanediylbis[tris(2-cyanoethyl)]-, dibromide	10310-38-0
455.	oxirane, (2-bromoethyl)-	13287-42-8
456.	1,1'-biphenyl, 2,2,3,3',4,4',5,5',6,6'-decabromo-	13654-09-6
457.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, aluminum salt (3:2)	13654-74-5

	Chemical Name	CAS No.
458.	fumaric acid, bis(pentabromophenyl) ester	15106-51-7
459.	4,7-methano-1H-indene, 1,2-dibromo-4,5,6,7,8,8-hexachloro-2,3,3a,4,7,7a-hexahydro-	18300-04-4
460.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, dipotassium salt	18824-74-3
461.	brominated terphenyls	19799-37-2
462.	brominated terphenyls	20853-70-7
463.	ethanol, 2-(2,4,6-tribromophenoxy)-	23976-86-1
464.	fumaric acid, bis(2,4,6-tribromophenyl) ester	24136-34-9
465.	phenol, tribromo-	25376-38-8
466.	ethene, dibromo	25429-23-6
467.	poly[oxy(2,6-dibromo-1,4-phenylene)]	26023-27-6
468.	benzene, tribromo(2-propenyloxy)-	26762-91-4
469.	1,1'-biphenyl, nonabromo-	27753-52-2
470.	1,1'-biphenyl, ar, ar, ar, ar, ar', ar', ar', ar'-octabromo-	27858-07-7
471.	brominated terphenyls	29805-96-9
472.	phenol, bromo	32762-51-9
473.	phenol, 4,4'-(1-methylethylidene)bis 2,6-dibromo-, diacetate	33798-02-8
474.	brominated terphenyls	36719-77-4
475.	toluene, 2-chloro, tetrabromo-	39569-21-6
476.	phenol, 4,4'-sulfonylbis(2,6-dibromo)-	39635-79-5
477.	brominated terphenyls	40817-03-6
478.	phenol, dibromo-, phosphate (3:1)	49690-63-3
479.	brominated terphenyls	51211-09-7
480.	1-propanol, 2,3-dibromo, carbamate	55190-48-0
481.	brominated terphenyls	57313-42-5
482.	brominated terphenyls	57313-44-7
483.	brominated terphenyls	57313-47-0
484.	phenol, 2,3,4,6-tetrabromo-5-methyl-	58189-99-6
485.	ethanol, 2-(pentabromophenoxy)	60583-02-4
486.	carbamic acid, bis(2,3-dibromopropyl)-, ethyl ester	60726-46-3
487.	2,4,8,10-tetraoxa-3,9-diphaspiro[5.5]undecane, 3,9-bis[3-bromo-2,2-bis(bromomethyl)propoxy]-, 3,9-dioxide	61090-89-9
488.	brominated terphenyls	65449-00-5
489.	phosphoric acid, 2,2-bis(bromomethyl)-3-chloropropyl bis[2-chloro-1-(chloromethyl)ethyl] ester	66108-37-0
490.	benzene, dibromo(2-propenyloxy)-	66741-65-9
491.	diphenoxyethane, decabromo	66797-39-5
492.	phenol, 2,4,6-tribromo-, carbonate (2:1)	67990-32-3
493.	phenol, pentabromo, aluminum salt	68084-29-7
494.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, magnesium salt (1:1)	68084-31-1
495.	2-Butenedioic acid (Z)-, bis(pentabromophenyl) ester	68091-86-1
496.	benzene, pentabromo[2-(tetrabromophenoxy)ethoxy]-	68299-26-3
497.	benzene, pentabromo[2-(tetrabromochlorophenoxy)ethoxy]-	68299-27-4
498.	benzene, 1,3,5-tribromo-2-(2-bromoethoxy)-	68413-71-8
499.	benzene, brominated chlorinated	68583-99-3
500.	hexanedioic acid, bis[3-bromo-2-(bromomethyl)-2-(hydroxymethyl)propyl] ester	70776-34-0
501.	brominated terphenyls	73206-29-8
502.	brominated terphenyls	73206-30-1
503.	brominated terphenyls	73206-31-2
504.	brominated terphenyls	73206-32-3
505.	brominated terphenyls	73206-33-4
506.	brominated terphenyls	73216-03-2
507.	brominated terphenyls	75594-47-7
508.	brominated terphenyls	89961-07-9
509.	brominated terphenyls	89961-08-0
510.	brominated terphenyls	89961-09-1
511.	brominated terphenyls	89961-10-4
512.	brominated terphenyls	89961-11-5
513.	brominated terphenyls	89961-12-6
514.	brominated terphenyls	89961-13-7
515.	brominated terphenyls	95918-83-5
516.	brominated terphenyls	95918-85-7
517.	brominated terphenyls	95919-18-9
518.	brominated terphenyls	95919-20-3
519.	brominated terphenyls	95919-22-5
520.	brominated terphenyls	95919-23-6
521.	brominated terphenyls	101710-69-3
522.	brominated terphenyls	108802-71-7
523.	brominated terphenyls	122216-73-3
524.	Naphthalene, 1-isocyanato-	86-84-0
525.	benzene, 1,1'-methylenebis(4-isocyanato-3-methyl)-	139-25-3
526.	benzene, 1-isocyanato-3-methyl-	621-29-4
527.	benzene, 1-isocyanato-2-methoxy-	700-87-8
528.	sulfuryl chloride isocyanate	1189-71-5
529.	propane, 2-isocyanato-2-methyl-	1609-86-5
530.	propane, 2-isocyanato-	1795-48-8
531.	diazene, (4-isocyanatophenyl)phenyl-	1942-61-6
532.	ethane, 1-chloro-2-isocyanato-	1943-83-5
533.	hexadecane, 1-isocyanato-	1943-84-6
534.	hexane, 1-isocyanato-	2525-62-4
535.	benzene, 1,1'-methylenebis(2-isocyanato)-	2536-05-2
536.	cyclohexane, 1,4-diisocyanato-	2556-36-7
537.	benzonitrile, 4-isothiocyanato-	2719-32-6
538.	acetyl isocyanate, trichloro-	3019-71-4
539.	octane, 1-isocyanato-	3158-26-7

	Chemical Name	CAS No.
540.	Naphthalene, 1,5-diisocyanato-	3173-72-6
541.	benzene, 1-chloro-2-isocyanato-	3320-83-0
542.	benzene, 1-isocyanato-2-nitro-	3320-86-3
543.	benzene, 1-isocyanato-3-nitro-	3320-87-4
544.	benzene, 1,3-bis(isocyanatomethyl)-	3634-83-1
545.	benzene, 1,1'-oxybis(4-isocyanato)-	4128-73-8
546.	dodecane, 1-isocyanato-	4202-38-4
547.	benzene, 1,4-dichloro-2-isocyanato-	5892-62-5
548.	benzene, 1-ethoxy-2-isocyanato-	5395-71-1
549.	benzene, 1-isocyanato-4-methoxy-	5416-93-3
550.	ethanamine, 2-isocyanato-N-(2-isocyanatoethyl)-N-nitro-	7046-61-9
551.	cyclohexane, 1,4-bis(isocyanatomethyl)-	10347-54-3
552.	formamide, N-ethenyl-	13162-05-5
553.	benzene, 4-isocyanato-1-methyl-2-nitro-	13471-69-7
554.	silane, (3-isocyanatopropyl)trimethoxy-	15396-00-6
555.	isocyanic acid, (2,3,5,6-tetrachloro-p-phenylene)dimethylene ester	16325-35-5
556.	acetic acid, isocyanato-, butyl ester	17046-22-9
557.	silane, chloro(3-isocyanatopropyl)dimethyl-	17070-70-1
558.	1,3-diazetidine-2, 4-dione, 1,3-bis[4-[(4-isocyanatophenyl)methyl]-phenyl]-	17589-24-1
559.	benzenesulfonic acid, 4-isothiocyanato-, sodium salt	17614-99-6
560.	benzene, 1-isocyanato-3-methoxy-	16906-07-1
561.	isocyanic acid, (2,4-dioxo-1,3-ureidinediyl)bis(methylene(2,5,5-trimethyl-3,1-cyclohexylene)) ester	23370-66-5
562.	silane, triethoxy(2-isocyanatopropyl)-	24801-88-5
563.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,2,3-propanetriyl ester	26470-62-6
564.	benzene, 1-chloro-4-(isocyanatophenoxy)-	30087-46-8
565.	1,3-diazetidin-2-one, 1,3-bis[4-[(4-isocyanatophenyl)methyl]phenyl]-4-[[4-[(4-isocyanatophenyl)methyl]phenyl]imino]-	31107-36-5
566.	benzene, 1-ethoxy-4-isocyanato-	32459-62-4
567.	1,5-naphthalenedisulfonic acid, 3-isothiocyanato-, disodium salt	35986-63-2
568.	cyclohexane, 1,3-bis(isocyanatomethyl)-	38661-72-2
569.	benzene, 2-isocyanato-1,4-dimethyl-	40397-98-6
570.	benzonitrile, 4-isocyanato-	40465-45-0
571.	benzoic acid, 2-(formylamino)-, methyl ester	41270-80-6
572.	cyclohexane, bis(isocyanatomethyl)-	42170-25-2
573.	benzenesulfonic acid, 5-(acetylamino)-2-[2-(4-isothiocyanato-2-sulfophenyl)ethenyl]-, disodium salt	51023-76-6
574.	2-propenoic acid, 2-[[[(3-isocyanatomethylphenyl)amino]carbonyl]oxy]ethyl ester	54864-39-1
575.	carbamic acid, (3-isocyanatomethylphenyl)-, 2-ethylhexyl ester	54834-84-5
576.	urea, N,N'-bis[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-	55625-54-7
577.	carbamic acid, (3-isocyanatomethylphenyl)-, 2-ethylhexyl ester	56240-67-6
578.	carbamic acid, (3-isocyanatomethylphenyl)-, oxydi-2,-ethanediyl ester	60732-52-7
579.	spiro[isobenzofuran-1(3H)-, 9'[9H]xanthen]-3-one, 3',6'-dihydroxy-5-isothiocyanato-, hydrochloride	63469-13-6
580.	carbamic acid, 4-[(4-isocyanatocyclohexyl)methyl cyclohexyl]-, oxydi-1,2-ethanediyl ester	65087-21-6
581.	bicyclo[2.2.1]heptane-2,3-dicarboxylic acid, 5-[(2-chloro-4,1-phenylene)bis[N,N'-bis(3-isocyanatomethylphenyl)]-	65104-98-6
582.	carbamic acid, (3-isocyanatomethylphenyl)-, 1-methyl-1,3-propanediyl ester	65105-00-2
583.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,4-butanediyl ester	65105-02-4
584.	1,3, 5-triazine-2,4,6(1H,3H, 5H)-trione, 1,3,5-tris[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-	67873-91-0
585.	benzenamine, N,N-methanetetraylbis[3-isocyanato-2,4,6-tris(1-methylethyl)]-	69083-39-6
586.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,2-ethanediyl ester	69092-73-5
587.	carbamic acid, (3-isocyanatomethylphenyl)-, oxybis(1-methyl-2,1-ethanediyl) ester	69092-74-0
588.	carbamic acid, (3-isocyanatomethylphenyl)-, [[(diethoxyphosphinyl)methyl]amino]di-2,1-ethanediyl ester	69133-14-2
589.	hexanoic acid, [2-ethyl-2-[[[[[5-isocyanato-1(or 5)-(methoxycarbonyl)pentyl]amino]carbonyl]oxy]methyl]-1,3-propanediyl]	69310-46-3
590.	carbamic acid, (3-isocyanatomethylphenyl)-, 1-methyl-1,3-propanediyl ester	69385-14-3
591.	1,3-diazetidine-2,4-dione, 1,3-bis(4-isocyanato-3-methylphenyl)-	69555-56-6
592.	carbamic acid, (5-isocyanato-2-methylphenyl)-, 2-ethylhexyl ester	69636-61-4
593.	carbamic acid, [(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-, 2-ethyl-2-[[[[[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]	69975-82-6
594.	carbamic acid, (5-isocyanato-1,3,3-trimethylcyclohexyl)methyl)-, oxydi-2,1-ethanediyl ester	69975-84-8
595.	hexanoic acid, 2,6-diisocyanato-, 2-isocyanatoethyl ester	69878-16-8
596.	undecane, 1,6,11-triisocyanato-	70188-24-3
597.	urea, N-[[(aminophenyl)methyl]phenyl]-N'-(3-isocyanatomethylphenyl)-	71105-52-0
598.	urea, N-(3-isocyanatomethylphenyl)-N'-[[[4-[[[(3-isocyanatomethylphenyl)amino]carbonyl]amino]phenyl]methyl]phenyl]-	71150-76-2
599.	carbamic chloride, ethyl(5-isocyanato-2-methylphenyl)-	71832-23-2
600.	carbamic acid, [4-[(4-isocyanatophenyl)methyl]phenyl]-, oxydi-2,1-ethanediyl ester	71832-70-7
601.	carbamic acid, [(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-, 2-butoxyethyl ester	72152-95-5
602.	benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-1-methyl-	75790-84-0
603.	benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-	75790-87-3
604.	benzene, 1-chloro-4-(phenylsulfonyl)-	80-00-2
605.	benzenamine, 2-(methylsulfonyl)-4-nitro-	96-74-2
606.	benzene, 1-chloro-4-(methylsulfonyl)-2-nitro-	97-07-4
607.	benzene, 1-chloro-4-(methylsulfonyl)-	98-57-7
608.	1,4-oxathiane, 4,4-dioxide	107-61-9
609.	benzene, 1,1'-sulfonylbis(4-fluoro-3-nitro)-	312-30-1
610.	benzene, 1,1'-sulfonylbis(4-fluoro)	383-29-9
611.	methane, bis[(trifluoromethyl)sulfonyl]-	428-76-2
612.	propane, 1,1'-sulfonylbis-	598-03-6
613.	butane, 1,1'-sulfonylbis-	598-04-9
614.	benzenamine, 3,3'-sulfonylbis-	599-61-1
615.	benzene, 1,1'-sulfonylbis(4-methyl)-	599-66-6
616.	benzene, 1-methyl-4-(phenylsulfonyl)-	640-57-3
617.	thiophene, tetrahydro-3-methyl-, 1,1-dioxide	872-93-5
618.	thiophene, 2,5-dihydro-3-methyl-, 1,1-dioxide	1193-10-8
619.	benzene, 1,1'-sulfonylbis(3-nitro)-	1228-53-1
620.	benzene, 1,4-dimethyl-2-[(4-methylphenyl)sulfonyl]-	1616-96-2
621.	thiophene, 2,5-dihydro-3-(4-methyl-3-pentenyl)-, 1,1-dioxide	2083-32-1

	Chemical Name	CAS No.
622.	sulfone, 4-chloro-2-nitrophenyl methyl	2163-97-5
623.	methanol, [(4-methylphenyl)sulfonyl]-	2182-69-6
624.	methane, sulfonylbis(trichloro)-	3064-70-8
625.	thiophene, 3,3,4,4-tetrachlorotetrahydro-, 1,1-dioxide	3737-41-5
626.	benzene, 1,1'-sulfonylbis(2,4-dimethyl)-	5184-75-8
627.	phenol, 2-[(4-hydroxyphenyl)sulfonyl]-	5397-34-2
628.	3-thiophenamine, tetrahydro-, 1,1-dioxide	6338-70-1
629.	1-propanamine, 2-[2-[[4-[3-(4-chlorophenyl)-4,5-dihydro-1H-pyrazol-1-yl]phenyl]sulfonyl]ethoxy]-N,N-dimethyl-	6606-82-8
630.	ethanol, 2-[(3-amino-4-methoxyphenyl)sulfonyl]-	7425-61-2
631.	9H-thioxanthene-3,6-diamine, 10,10-dioxide	10215-25-5
632.	benzene, 1,1'-sulfonylbis(2,4,6-trinitro)-	10560-80-0
633.	benzenamine, 4,4'-[sulfonylbis(4,1-phenyleneoxy)]bis-	13080-89-2
634.	benzenamine, 2-chloro-4-(methylsulfonyl)-	13244-35-4
635.	3-benzothiazolineethanol, 4,5,6,7-tetrahydro-2-imino-α.-[p-(methylsulfonyl)phenyl]-	13581-52-7
636.	octyl disulfone	13603-70-8
637.	1H-pyrazole, 3-(4-chlorophenyl)-4,5-dihydro-1-[4-(methylsulfonyl)phenyl]-	14295-72-8
638.	phenol, 2,2'-sulfonylbis-	15038-67-2
639.	thiophene, 3,4-dibromotetrahydro-, 1,1-dioxide	15091-30-2
640.	phenol, 2,2'-sulfonylbis[4-(1,1,3,3-tetramethylbutyl)]-	15452-89-8
641.	benzene, 1-chloro-2-(methylsulfonyl)-4-nitro-	21081-74-3
642.	benzenamine, 4-(methylsulfonyl)-2-nitro-	21731-56-6
643.	1,1'-biphenyl, 4,4'-bis[(4-chlorophenyl)sulfonyl]-	22287-56-5
644.	ethanol, 2-[(4-methylphenyl)sulfonyl]-	22381-54-0
645.	aniline, 4-(ethylsulfonyl)-2-nitro-	23306-60-7
646.	propionitrile, 3-[N-(2-hydroxyethyl)-p-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]anilino]-	24170-48-7
647.	phenol, 4-[(4-aminophenyl)sulfonyl]-	25963-47-7
648.	1,3-dithiane, 1,1,3,3-tetraoxide	26413-18-3
649.	ethanol, 2-[(4-hydrazinophenyl)sulfonyl]-	26505-12-4
650.	benzene, 1,1'-sulfonylbis(3,4-dimethyl)	28361-43-5
651.	aniline, 5-chloro-2-(methylsulfonyl)-	29124-54-7
652.	benzenamine, 3,3'-[sulfonylbis(4,1-phenyleneoxy)]bis-	30203-11-3
653.	benzothiazole, 2-[(tribromomethyl)sulfonyl]-	31274-42-7
654.	thiophene, 3-(bromomethyl)-2,5-dihydro-, 1,1-dioxide	31554-48-0
655.	ethanamine, 2-[2-[[4-[3-(4,5-dichloro-2-methylphenyl)-4,5-dihydro-1H-pyrazol-1-yl]phenyl]sulfonyl]ethoxy]-N,N-dimethyl	35441-18-0
656.	benzene, 1,2-dichloro-4-(methylsulfonyl)-	38452-47-0
657.	1H-pyrazol-3-amine, 4-[[4-(ethylsulfonyl)-2-nitrophenyl]azo]-5-methyl-1-phenyl-	39658-84-5
658.	phenol, 4,4'-sulfonylbis(2,6-dibromo)-	39635-79-5
659.	2-butyn-1-ol, 4-[(tetrahydro-3-thienyl)oxy]-, S,S-dioxide	40456-26-8
660.	benzene, [bis[(trifluoromethyl)sulfonyl]methyl]-	40906-82-9
661.	ethanol, 2-[(7-amino-1-naphthalenyl)sulfonyl]-	43001-61-6
662.	benzoxazole, 2,2'-(1,4-naphthalenediyl)bis[5-(ethylsulfonyl)]-	43115-21-5
663.	benzenamine, 4,4'-[[(4-methylphenyl)sulfonyl]methylene]bis(N,N-dimethyl)-	49630-05-9
664.	benzenamine, 2,2'-[sulfonylbis(4,1-phenyleneoxy)]bis-	52338-52-0
665.	ethanol, 2-[(4-methoxy-3-nitrophenyl)sulfonyl]-	52396-83-1
666.	acetonitrile, (dodecylsulfonyl)-	52821-30-4
667.	thiophene, 3-bromo-2,3-dihydro-, 1,1-dioxide	53336-42-8
668.	3H-indole, 2,3,3-trimethyl-5-(phenylsulfonyl)-	55203-59-3
669.	2-butanone, 3-methyl-, [4-(phenylsulfonyl)phenyl]hydrazone	55203-60-6
670.	1H-benzimidazolium, 2-(6-methoxy-2-benzofuranyl)-1,3-dimethyl-5-(methylsulfonyl)-	55911-28-9
671.	benzene, 1,1'-sulfonylbis[4-(1-methylethyl)]-	57913-35-6
672.	propane, 1,3-bis(ethenylsulfonyl)-2,2-bis[(ethenylsulfonyl)methyl]-	60345-53-1
673.	1(2H)-quinolineethanol, 6-[[2-chloro-4-(methylsulfonyl)phenyl]azo]-3,4-dihydro-2,2,4,7-tetramethyl-	63134-03-2
674.	3-pyridinecarbonitrile, 5-[[2-chloro-4-(methylsulfonyl)phenyl]azo]-4-methyl-2,6-bis[[3-(2-phenoxyethoxy)propyl]amino]-	63281-10-7
675.	disulfone, dihexyl-	63450-89-1
676.	propanenitrile, 3-[ethyl[4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]phenyl]amino]-	63467-01-6
677.	ethanol, 2,2'-[[4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]phenyl]imino]bis-	63467-02-7
678.	thiophene, 4-bromo-2,3-dichlorotetrahydro-, 1,1-dioxide	65243-01-8
679.	propanenitrile, 3-[ethyl[3-methyl-4-[[2-(methylsulfonyl)-4-nitrophenyl]azo]phenyl]amino]-	67906-80-9
680.	benzenesulfonic acid, 3-[[4-[ethyl(phenylmethyl)amino]phenyl]azo]-4-[(4-methylphenyl)sulfonyl]-	68400-40-8
681.	benzenamine, 4-[(1-ethyl-2-methyl-1H-indol-3-yl)[(4-methylphenyl)sulfonyl]methyl]-N,N-dimethyl-	68912-03-8
682.	benzene, 5-chloro-2-[(4-methylphenyl)sulfonyl]-	70146-09-7
683.	1H-pyrazol-5-amine, 3-methyl-4-[[4-(methylsulfonyl)-2-nitrophenyl]azo]-1-phenyl-	70210-09-2
684.	3H-pyrazol-3-imine, 2,4-dihydro-5-methyl-4-[[4-(methylsulfonyl)-2-nitrophenyl]azo]-2-phenyl-	70528-91-5
685.	hydrazine, [4-(phenylsulfonyl)phenyl]-	70714-83-9
686.	3H-pyrazol-3-imine, 4-[[4-(ethylsulfonyl)-2-nitrophenyl]azo]-2,4-dihydro-5-methyl-2-phenyl-	70833-53-3

1.3.e *Removals.* No chemicals were removed from the Priority List as a result of EPA responses to Committee recommendations.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "*** make such revisions in the [priority] list as it determines to be necessary and *** transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by designating two chemicals (4-vinylcyclohexane and sodium cyanide) that were previously recommended with intent-to-designate and adding one chemical (*N*-phenyl-1-naphthylamine) and four chemical groups (IRIS chemicals, aldehydes, sulfones and substantially produced chemicals in need of subchronic tests). These revisions are listed in Table 1 above.

The Priority List (Table 2) includes designated, recommended with intent-to-designate and recommended chemicals and chemical groups. Individual chemicals in Priority List chemical groups are listed in Table 1 or the paragraph immediately following Table 1 of this and previous Reports with appropriate notes that minimize

ambiguities related to TSCA section 8(a) and 8(d) reporting requirements. Table 2 containing the section 4(e) priority list follows:

TABLE 2.—THE SECTION 4(E) PRIORITY LIST

Entry	Action	Date
Brominated flame retardants	designated	November 1989
4-vinylcyclohexene	designated	November 1990
sodium cyanide	designated	November 1990
IRIS chemicals	designated	November 1990
chloroalkyl phosphates	recommended with intent-to-designate	November 1988
isocyanates	recommended with intent-to-designate	May 1990
aldehydes	recommended with intent-to-designate	November 1990
imidazolium quaternary ammonium compounds	recommended	May 1988
ethoxylated quaternary ammonium compounds	recommended	May 1988
butyraldehyde	recommended	November 1988
brominated flame retardants	recommended	November 1989
brominated flame retardants	recommended	May 1990
alkyl phosphates	recommended	May 1990
IRIS chemicals	recommended	November 1990
N-phenyl-1-naphthylamine	recommended	November 1990
sulfones	recommended	November 1990
substantially produced chemicals in need of subchronic tests	recommended	November 1990

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18366–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830–44837.

(7) Twenty-second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1988, 53 FR 18186–18210.

(8) Twenty-third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 16, 1988, 53 FR 46262–46278.

(9) Twenty-fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, July 27, 1989, 54 FR 31248–31249.

(10) Twenty-fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, December 12, 1989, 54 FR 51114–51130.

(11) Twenty-sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, June 5, 1990, 55 FR 23050–23062.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is revising the Priority List by designating two chemicals that were previously recommended with intent-to-designate and adding one chemical and four chemical groups (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing information deficiencies of Member Agencies.

2.2 *Designated chemicals*—2.2.a *4-Vinylcyclohexane.* 4-Vinylcyclohexane was designated because there were no TSCA section 8(d) submissions that satisfied the National Institute for Occupational Safety and Health nominated testing information deficiencies. The rationale for the original recommendation with intent-to-designate appeared in the Committee's 25th Report (54 FR 51114, December 12, 1989).

2.2.b *Sodium cyanide.* Sodium cyanide was designated and the testing recommendations changed because discussions among the Department of Interior, the EPA and industry identified additional testing information deficiencies and because there was a general understanding that there were no TSCA section 8(d) submissions that were likely to satisfy the testing information deficiencies nominated by the Department of Interior. The rationale for the original recommendation with intent-to-designate appeared in the Committee's 26th Report (55 FR 23050, June 5, 1990).

2.2.c. *IRIS chemicals.* At the request of EPA, the Committee reviewed a subset of chemicals that are listed on the Agency's Integrated Risk Information System (IRIS). IRIS is an electronic database, prepared and maintained by EPA, that contains health risk and EPA regulatory information on chemical substances. IRIS was developed for EPA staff in response to a growing demand for consistent risk information on chemical substances for use in decisionmaking and regulatory

activities. Although IRIS was designed for EPA staff, it is also accessible to state and local environmental health agencies, private citizens, libraries and organizations through Dialcom, Inc.'s electronic mail telecommunications system. For more information contact IRIS User Support in EPA's Environmental Criteria and Assessment Office, Cincinnati, Ohio (513/569–7254 or FTS 684–7254).

The chemicals that EPA nominated to the Committee for health effects testing information deficiencies are those chemicals for which the Agency has determined that there is a lack of confidence in the available health effects data. The EPA believes that the development of reliable health effects data will increase the confidence in the data and reduce the uncertainties in the assessment of risk. EPA nominated the IRIS chemicals to the Committee to recommend testing that would provide reliable data.

The Committee-activated comprehensive networking and information exchange processes were used to facilitate communication and coordination of chemical testing as intended by Congress and suggested by industry. The Committee considered unpublished studies in Member Agency's files, and past, present and future Member Agency activities. The Committee discussed studies conducted by NTP and EPA's Health Effects Research Laboratory and Environmental Research Laboratories, studies sponsored by NIOSH, studies used by OSHA and CPSC, studies submitted under TSCA as well as studies in FDA's files. The Committee learned about ongoing international activities, about ATSDR's data research needs, about EPA's Toxics Release Inventory (TRI) information, about Health Hazard Evaluations and Hazard Evaluation and Technical Assistance Reports, walk-through surveys, etc., conducted by NIOSH, uses considered by the FDA, activities under other statutes, and so on. As part of the Committee's efforts to comprehensively consider testing information deficiencies, the Committee reviewed available information on physical/chemical properties and persistence as well as ecological effects and identified a number of chemical fate and aquatic toxicity testing information deficiencies. EPA's Neurobehavioral Toxicology Branch also reviewed these chemicals for potential neurotoxicology concerns and the Committee identified neurotoxicity testing deficiencies.

EPA nominated several IRIS chemicals to the ITC to take advantage of (1) The Committee's comprehensive networking and information exchange capabilities that conserve resources and promote cost-effective testing required or sponsored by U.S. Government organizations and (2) the opportunity to obtain recent production and exposure information and unpublished health and safety studies that are automatically required under TSCA section 8(a) and 8(d), respectively, for any Committee recommendation. For 13 IRIS chemicals, the Committee has comprehensively assessed available health effects, chemical fate and ecological effects information. As a result of these assessments, the Committee is recommending 8 chemicals for testing (see Table 1), returning 2 chemicals to the EPA because the Committee's review identified health effects data that appear to be sufficient to reduce the uncertainty associated with risk assessments (vanadium pentoxide, CAS 1314–62–1 and hydrogen sulfide, CAS 7783–06–4), returning 2 chemicals for which there are uncertainties related to testing under TSCA (HMX, CAS 2691–41–0 and ammonium sulfamate, CAS 7773–06–0), and returning 1 chemical for which domestic production is being substantially reduced (CFC–113, CAS 76–13–1). The Committee identified algal toxicity and aquatic invertebrate acute and chronic toxicity testing deficiencies for vanadium pentoxide, but is not recommending testing at this time because, in a future Report it plans to recommend such testing for an inorganic chemical group. The EPA requested that the Committee designate 6 of the 8 IRIS chemicals. Five of the IRIS chemicals that were listed in Title III of the 1990 amendments of the Clean Air Act (acetophenone, acrylic acid, *N,N*-dimethylaniline, 2,4-dinitrophenol and phenol) were recommended for inhalation testing to reduce the uncertainty associated with risk assessments that need to be developed for these chemicals. The Committee is continuing to review information on numerous IRIS chemicals, including several that are listed in the Clean Air Act.

Summary of recommended studies. Recommended studies are summarized in Table 1 above.

Acrylic Acid

Physical and Chemical Information

CAS Number: 79–10–7
Synonyms and Trade Names: Acroleic acid, 2-propenoic acid.
Empirical Formula: $C_3H_4O_2$
Molecular Weight: 72.1
Physical State at 25° C: Liquid
Description of Chemical: Corrosive liquid, acrid odor and fumes (Ref. 164, Windholz et al., 1983)
Melting Point: 13.5 (Ref. 90, Lide, 1990)
Boiling Point: 141.6 (Ref. 34, Daubert and Danner, 1985)
Vapor Pressure: 4.00 mm Hg @ 25° C (Ref. 34, Daubert and Danner, 1985)
Specific Gravity: 1.0621 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 0.161 (Ref. 128, PCGEMS, 1987)
Water Solubility at 25° C: miscible (Ref. 130, Perry and Green, 1984)
Log K_{oc}: 1.5 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 1.17×10^{-7} atm m^3 $mole^{-1}$ (Ref. 75, Hine and Mookerjee, 1975)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 1,066,834,000 lbs of acrylic acid were produced at 4 different U.S. facilities (Ref. 159, U.S. ITC, 1989). Acrylic acid has the following uses: surface coatings—25 percent; polyacrylic acid and salts (including superabsorbent polymers, detergents, water treatment and dispersants)—20 percent; textiles and nonwovens—13 percent; exports—12 percent; adhesives and sealants—9 percent; leather and polishes—4 percent; paper coating—3 percent; miscellaneous acid and ester uses (including specialty acrylates)—6 percent (Ref. 29, CMR, 1988).

B. *Evidence for exposure—Human exposure.* The National Occupational Exposure Survey (NOES) indicates that 56,512 workers (14,643 female) are potentially exposed to acrylic acid; 82 percent of this exposure is from the use of trade name products containing this compound (Ref. 120, NIOSH, 1990). Potential exposure to acrylic acid was associated with 22 different industrial classifications. OSHA's Permissible Exposure Limit (PEL) of 10 ppm 8–hour Time Weighted Average (TWA) and a skin notation are based on irritation by analogy to acetic acid (54 FR 2814–2821, January 19, 1989). OSHA concluded that these were necessary to protect workers from nasal and eye irritation, but NIOSH believed the limit should be lower based on recent studies demonstrating nasal mucosa degeneration, pulmonary function changes and skin absorption (54 FR 2821).

Environmental exposure. In a survey of 172 product/process effluents at 40 different petrochemical manufacturing sites, 28 percent of the samples contained acrylic acid at concentrations greater than 0.5 ppm (Ref. 165, Wise and Fahrenthold, 1981). According to the TRI, 632,056 lbs of acrylic acid were released to the atmosphere in 1987, while 16,128 and 6,153 lbs were released to water and land, respectively (Ref. 153, TRI, 1990). For 1988, TRI indicates that

798,567 lbs were released to air, 15,950 lbs were released to land, and 16,398 lbs were released to water (Ref. 153, TRI, 1990).

I. Chemical Fate Information

In the atmosphere, acrylic acid is expected to undergo rapid oxidation with gas phase hydroxyl radicals and ozone (Ref. 8, Atkinson, 1987; Ref. 9, Atkinson and Carter, 1984). In water, acrylic acid is not expected to significantly volatilize to the atmosphere, nor is it expected to adsorb to sediment or suspended organic matter (Ref. 100, Lyman et al., 1982). Limited screening studies suggest that acrylic acid will biodegrade under aerobic conditions (Ref. 19, BIOLOG, 1990; Ref. 127, Pahren and Bloodgood, 1961). Avialable persistence data are probably inadequate to predict the biodegradation rate of acrylic acid in the environment, because the data were not generated using test systems that simulated *in situ* biodegradation. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of acrylic acid and because there are potentially substantial environmental releases.

II. Health Effects Information

Acrylic acid was rapidly absorbed, metabolized and excreted following oral or inhalation exposure (Ref. 86, Kutzman et al., 1982).

Effects identified in a 3–month drinking water study in groups of 15 male and 15 female Fischer F–344 rats given drinking water that provided doses of 83, 250 or 750 mg acrylic acid per kg per day included decreased food and water intake, reduced body weights, and alterations in organ weights (Ref. 39, DePass et al., 1983). Reduced weight gain, lethargy and nasal irritation were observed in the high dose in groups of 4–8 Alderley Park rats of both sexes exposed by inhalation to 80 or 300 ppm acrylic acid, 6 hours per day, 5 days per week for 4 weeks (Ref. 57, Gage, 1970). More recent inhalation studies in groups of 5 male and 5 female rats and mice exposed to 25 to 223 ppm acrylic acid, 6 hours per day, 5 days per week for 2 weeks (Ref. 112, Miller et al., 1979) and in groups of 15 male and female F–344 rats and B6C3F1 mice exposed to 5 to 75 ppm acrylic acid, 6 hours per day, 5 days per week for 13 weeks (Ref. 113, Miller et al., 1979; Ref. 114, Miller et al., 1981) identified mice as more sensitive than rats to the effects of inhalation exposure (nasal irritation and degeneration of the olfactory epithelium).

The fetuses of Sprague-Dawley rats given 2 4, 4.8 or 8.0 mg per kg intraperitoneal injections of acrylic acid on days 5, 10 and 15 of gestation had a dose-related decrease in body weights and an increase in the incidence of gross and skeletal malformations (Ref. 140, Singh et al., 1972). There is probably insufficient information on the effects of treatment to characterize the developmental toxicity of acrylic acid.

Maternal effects (nasal irritation and reduced rate of body weight gain) but no fetal effects were observed in the 2 highest dose groups of Sprague-Dawley rats exposed to 40, 120 or 360 ppm acrylic acid by inhalation on gestation days 6 to 15 (Ref. 87, Klimisch and Hellwig, 1989). Decreased fertility in females, decreased numbers of live pups per litter, decreased offspring body weight, and a decreased percentage of pups weaned were observed in a one-generation reproduction study in groups of 10 male and 20 female rats that were provided acrylic acid in the drinking water at doses of 83, 250 or 750 mg per kg per day (Ref. 39, DePass et al., 1983). A 2–generation study may be necessary to characterize the reproductive effects of acrylic acid.

Acrylic acid was negative in the reverse mutation test in *Salmonella* (Ref. 97, Lijinsky and Andrews, 1980; Ref. 13, BASF, 1989), did inhibit incorporation of thymidine into DNA and uracil into RNA in *S. aureus* and *E. coli* (Ref. 60, Glombitza and Heysen, 1971) and was positive for mutagenicity and clastogenicity in L5178Y mouse lymphoma cells (Ref. 115, Moore et al., 1988). Acrylic acid was positive for chromosomal aberrations in an *in vitro* test in Chinese hamster ovary cells (Ref. 106, Microbiological Associates, 1986), but did not induce chromosomal aberrations in the bone marrow cells of rats treated by gavage for up to 5 days (Ref. 107, Microbiological Associates, 1986). *In vivo* testing may be necessary to characterize the mutagenicity of acrylic acid.

Acrylic acid was negative in 1 skin painting study in 40 male C3H/Hej mice treated with 1 percent acrylic acid in acetone thrice weekly for life (Ref. 40, DePass et al., 1984), but was weakly positive as a complete carcinogen and as a promoter in a study in which 30 female ICR/HA mice were treated with 4 mg acrylic acid in acetone thrice weekly for 1.5 years (Ref. 32, Cote et al., 1986). IARC (Ref. 79, IARC, 1987) assigned acrylic acid to Group 3; not classifiable as to its carcinogenicity to humans. The National Cancer Institute (NCI) reviewed a draft chronic study conducted by the Basic Acrylic Monomer Manufacturers Association and supports the EPA nomination and Committee recommendation for inhalation oncogenicity testing. Available data are probably insufficient to characterize the oncogenic potential of acrylic acid because they were not developed using an appropriate route of administration.

The Committee recognizes that NIOSH has Health Hazard Evaluations, Hazard Evaluation and Technical Assistance reports and walk-through survey reports for acrylics that are available from NTIS and the Committee is placing a list of these documents in the public docket. A table containing a list of FYI studies submitted to EPA is also contained in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for acrylic acid.

III. Ecological Effects Information

The Committee recognizes that acute LC_{50} values are available for fresh water fish, that growth of blue-green and green algae is inhibited at 0.15 and 18 mg/L acrylic acid, respectively and that protozoan growth is inhibited at acrylic acid concentrations ranging from 0.9 to 20 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

Acetophenone

Physical and Chemical Information

CAS Number: 98–86–2
Synonyms and Trade Names: Phenylmethylketone, hypnone, acetylbenzene
Empirical Formula: C_8H_8O
Molecular Weight: 120.2
Physical State at 25° C: Liquid
Description of Chemical: Colorless liquid with sweet, pungent, odor and taste (Ref. 136, Sax and Lewis, 1987)
Melting Point: 19.6° C (Ref. 134 , Riddick et al., 1986)
Boiling Point: 202° C (Ref. 134, Riddick et al., 1986)
Vapor Pressure: 0.397 mm Hg @ 25° C (Ref. 163, Weber et al., 1981)
Specific Gravity: 1.033 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 1.58 (Ref. 66, Hansch and Leo, 1981)
Water Solubility at 25° C: 6,130 mg/L (Ref. 69, Hasset et al., 1980)
Log Koc: 1.65 (Ref. 69, Hasset et al., 1980)
Henry's Constant: 1.09×10^{-5} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* Acetophenone is produced in substantial volumes; actual production volumes are CBI. Acetophenone is used in fragrances and flavorings, and as a solvent, chemical intermediate for pharmaceuticals and resins, polymerization catalyst, and as a photoinitiator (Ref. 27, Chemcyclopedia, 1989; Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey indicates that 39,880 workers (17,664 female) were potentially exposed to acetophenone in 18 different industrial applications (Ref. 120, NIOSH, 1990). Of these workers, 97 percent were potentially exposed during the use of trade name products containing acetophenone. Acetophenone has been detected in U.S. drinking water supplies. In a survey of 10 U.S. cities between 1969 and 1972, acetophenone was found in Philadelphia's drinking water, on 7 different occasions, at a concentration of approximately 1.0 μg/L (Ref. 84, Keith et al., 1976; Ref. 149, Suffet et al., 1980). Acetophenone was also detected in drinking water samples of Britain during 1977–79 (Ref. 53, Fielding et al., 1981).

Environmental exposure. Acetophenone was detected in 131 samples obtained from 28 industries and POTWs at a maximum concentration of 16 ppm (Ref. 138, Shackelford et al., 1983). Of 204 sites monitored in 14 heavily industrialized river basins in the U.S., acetophenone was detected in 3 of them at a concentration of 1 to 3 ppb (Ref. 51, Ewing et al., 1977). The STORET database indicates that acetophenone has been found in 1 surface water sample monitored during the 1980's (Ref. 148, STORET, 1990). Acetophenone was detected in both surface and deep water samples from the Baltic Sea, 1979–80, and thought to arise from the photooxidation of fuel oil components, suggesting that acetophenone is likely to be present in water polluted by fossil fuels (Ref. 46, Ehrhardt et al., 1982; Ref. 45, Ehrhardt, 1987). In a compilation of air monitoring data collected between 1970 and 1987, the median concentration of acetophenone in urban and source dominated sites was 0.041 and 0.094 ppb, respectively (Ref. 139, Shah and Heyerdahl, 1988).

I. Chemical Fate Information

In the atmosphere, acetophenone is expected to slowly degrade by the gas phase oxidation with photochemically produced hydroxy radicals (Ref. 8, Atkinson, 1987). Its fate in water will depend on photolytic degradation (Ref. 44, Draper and Crosby, 1983; Ref. 90, Lande et al., 1978), volatilization to the atmosphere (Ref. 102, Mackay et al., 1982), and biodegradation (Ref. 18, BIODEG, 1990; Ref. 99, Ludzack and Ettinger, 1963). The available data indicate that acetophenone will not significantly adsorb to soil (Ref. 157, U.S. EPA, 1987). The Committee is not recommending chemical fate testing at this time.

II. Health Effects Information

Available pharmacokinetic data were limited to *in vitro* (Ref. 55, Fraser et al., 1967; Ref. 92, Leibman, 1971; Ref. 90, Lande et al., 1976) and *in vivo* (Ref. 151, Thierfelder and Daiber, 1923; Ref. 152, Thierfelder and Klenk, 1924; Ref. 141, Smith et al., 1954; Ref. 85, Kiese and Lenk, 1974) metabolism studies using rabbits, rats, humans and dogs. Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of acetophenone.

Subchronic studies failed to identify adverse effects in groups of 5 male and 5 female albino rats fed diets containing acetophenone at levels of 0.003, 0.05, 0.125 or 0.2 percent for 30 days (Ref. 142, Smyth, 1946) or in groups of 10 male and 10 female Osborne-Mendel rats fed diets containing 1,000, 2,500 or 10,000 ppm acetophenone for 17 weeks (Ref. 66, Hagan et al., 1967). An inhalation study reported a specific pattern of degeneration of the olfactory bulb in groups of 4 Wistar rats continuously exposed to acetophenone vapors for 1 week to 3 months (Ref. 132, Pinching and Doving, 1974). Other parameters of toxicity were not evaluated in this study. Although respiratory irritation was indicated in a number of studies, there are probably insufficient data to characterize the subchronic inhalation toxicity of acetophenone.

Reproductive toxicity data were limited to a study that reported no effects on length of gestation or postnatal development in the offspring of rats exposed dermally at 0.48 mg/kg on days 10 to 15 of gestation (Ref. 89, Lagno and Bakhtizina, 1969). A 2–generation study may be necessary to characterize the reproductive effects of acetophenone.

Acetophenone was negative for mutagenicity in 3 strains of *Salmonella* (Ref. 47, Elliger et al., 1984). Additional testing in non-bacterial systems may be necessary to characaterize the mutagenicity of acetophenone.

Anger and Johnson (Ref. 3, 1985) suggested that acetophenone could be neurotoxic. Data were not located regarding the oncogenicity of acetophenone.

The Committee recognizes that NIOSH has a Hazard Evaluations and Technical Assistance report for acetophenone that is available from NTIS and the Committee is placing the reference for this report in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for acetophenone.

III. Ecological Effects Information

The Committee recognizes that acetophenone is acutely toxic to fathead minnows; the LC_{50} values ranged from 155 to 162 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

Phenol

Physical and Chemical Information

CAS Number: 108–95–2
Synonyms and Trade Names: Carbolic acid, hydroxybenzene, phenylic acid, benzophenol.
Empirical Formula: C_6H_6O
Molecular Weight: 94.1
Physical State at 25° C: Solid
Description of Chemical: Colorless, acicular crystals or white, crystalline mass (Ref. 164, Windholz et al., 1983)
Melting Point: 43° C (Ref. 70, Hawley, 1981)
Boiling Point: 182° C (Ref. 70, Hawley, 1981)
Vapor Pressure: 0.35 mm Hg @ 25° C (Ref. 81, Jones, 1960)
Specific Gravity: 1.071 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 1.46 (Ref. 66, Hansch and Leo, 1981)
Water Solubility at 25° C: 93,000 mg/L (Ref. 23, Callahan et al., 1979)
Log K_{oc}: 1.20 (Ref. 22, Boyd, 1982)
Henry's Constant: 3.33×10^{-7} atm m^3 $mole^{-1}$ (Ref. 56, Gaffney et al., 1987)
pK_a: 9.994 (Ref. 137, Serjeant and Dempsey, 1979)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 7 U.S. facilities produced 3,561,734,000 pounds of phenol (Ref. 159, U.S. ITC, 1989) and 13 facilities were listed as manufacturing this compound in 1989 (Ref. 145, SRI, 1989). Phenol has the following uses: phenolic resins—38 percent; synthesis of bisphenol A—23 percent; synthesis of caprolactam—17 percent; synthesis of alkylphenols—4 percent; synthesis of aniline—3 percent; miscellaneous uses—5 percent; exports—6 percent (Ref. 30, CMR, 1987). The miscellaneous uses of phenol include the synthesis of adipic acid, salicylic acid, phenolphthalein, pentachlorophenol, acetophetidine, picric acid, and pharmaceuticals, as a selective solvent for refining lubricating

oils, germicidal paints, laboratory reagent, dyes and indicators, slimicide, biocide, and as a general disinfectant (Ref. 136, Sax and Lewis, 1987). Many products containing phenol are utilized by consumers. The Committee is concerned with the potential for exposure to phenol because of its very high production volume, potential for release, and presence in commercial and consumer products.

B. *Evidence for exposure—Human exposure.* Phenol is used in a variety of commercial applications, many of which can lead to worker exposure. The NOES conducted during 1981–1983 by NIOSH estimated that 341,516 workers (108,851 female) were potentially exposed to phenol in 35 different industrial categories (Ref. 120, NIOSH, 1990). In a compilation of air monitoring data collected between 1970 and 1987, the mean concentration of phenol in suburban and urban areas was reported as 0.015 and 6.883 ppb, respectively (Ref. 139, Shah and Heyerdahl, 1988). The concentration of phenol in the air of Portland, OR, during 7 rain events in 1984 was 56 to 105 ppt, while the concentration of phenol in the rain ranged from 75 to 1,200 ppt (Ref. 93, Leuenberger et al., 1985). From 1977 to 1979, phenol was detected in 36 percent of drinking water supplies in England, which were drawn from groundwater, river water, and reservoirs (Ref. 53, Fielding et al., 1981). It has also been detected in U.S. drinking water supplies (Ref. 49, EPA, 1980; Ref. 119, Nicola et al., 1987). Phenol is used in numerous consumer products indicating a potential for exposure to the general population.

Environmental exposure. Phenol was detected in 738 samples obtained from 33 industries and publicly owned treatment works (POTWs) at a maximum concentration range of 7.5 ppb to 530 ppm (Ref. 138, Shackelford et al., 1983). Data from the STORET database indicates that phenol was found in 42.1 percent of industrial effluent samples obtained from 1980–83, at a median concentration of 10 ppb (Ref. 146, Staples et al., 1985). The STORET database also indicates that phenol was found in 13 percent of ambient surface water samples, and 9 percent of sediment samples (Ref. 146, Staples et al., 1985), and also in groundwater samples (Ref. 148, STORET, 1990). Phenol was detected in 4 percent of 86 samples obtained during the National Urban Runoff Program of 1982, at concentrations ranging from 3 to 10 ppb (Ref. 31, Cole et al., 1984). According to the TRI for 1987, 8,100,731 lbs of phenol were released to the air, 402,579 pounds were released to water, and 1,098,624 lbs were released to land (Ref. 153, TRI, 1990). For 1988, TRI indicates that 10,155,101 lbs were released to air, 262,127 lbs were released to water, and 2,162,250 lbs were released to land (Ref. 153, TRI, 1990).

I. Chemical Fate Information

In the atmosphere, phenol will undergo rapid oxidation during the daytime by the reaction with photochemically produced hydroxyl radicals and at night with nitrate radicals (Ref. 8, Atkinson, 1987). Phenol is not expected to significantly volatilize from water to the atmosphere; however, it is likely to undergo rapid biodegradation under both aerobic and anaerobic conditions (Ref. 18, BIODEG, 1990). Biodegradation of phenol is well documented in the literature; it is often the benchmark for determining the rate of biodegradation of other organic compounds. Phenol may also undergo oxidation by alkoxy radicals in sunlit waters containing humic materials (Ref. 108, Mill and Mabey, 1984). Phenol is unlikely to adsorb to soil (Ref. 78, Howard et al., 1989), although in soils with substantial metal or clay content, phenol may be strongly adsorbed in a pH dependent process (Ref. 7, Artiola-Fortuny and Fuller, 1982). The Committee is not recommending chemical fate testing at this time.

II. Health Effects Information

Phenol was readily absorbed through the gastrointestinal tract, lungs, and skin (Ref. 37, Deichmann and Keplinger, 1981) and was widely distributed in rats and rabbits (Ref. 35, Deichmann, 1944; Ref. 95, Liao and Oehme, 1981). At lethal oral doses (0.5 g/kg in rabbits), it was eliminated by oxidation to CO_2 and urinary excretion as free or conjugated phenol (Ref. 37, Deichmann and Keplinger, 1981). At low (0.01 to 50 mg/kg) doses in several species treated by oral, intravenous or intramuscular administration, elimination was largely by urinary excretion of free and conjugated phenol; the proportion of free and conjugated phenol varied with species (Ref. 37, Deichmann and Keplinger, 1981; Ref. 24, Capel et al., 1972; Ref. 104, Mehta et al., 1978; Ref. 111, Miller et al., 1976; Ref. 82, Kao et al., 1979). Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of phenol.

Subchronic exposure of 17 humans to drinking water containing phenol (10 to 40 mg per person per day) resulted in a burning sensation in the mouth, sores in the mouth, and diarrhea (Ref. 11, Baker et al., 1978). Groups of 10 male and 10 female F344 rats and B6C3F1 mice given phenol in drinking water at levels of 100, 300, 1,000, 3,000, or 10,000 ppm for 90 days exhibited decreased water consumption and weight gain at the high dose, but no histopathological effects (Ref. 116, NCI, 1980). Gavage treatment of rats with 50 or 100 mg/kg, 5 days per week for 6 months resulted in slight (unspecified) liver and kidney effects (Ref. 43, Dow Chemical Co., 1945). Decreased weight gain at the 2 highest doses was the only effect observed in rats given drinking water containing phenol at 800, 1200, 1,600, 2,000 or 14,000 ppm for 12 months (Ref. 36, Deichmann and Oesper, 1940). In a 2-year study, groups of 50 male and female B6C3F1 mice and F344 rats given drinking water containing 2,500 or 5,000 ppm phenol exhibited reduced water consumption and body weight gain but no clear evidence of compound-related histopathological alteration (Ref. 116, NCI, 1980).

In subchronic inhalation studies, increased mortality and CNS signs were reported in 12 guinea pigs and histological lesions were reported in the heart, liver, and kidneys of guinea pigs and 6 rabbits exposed to 100 to 200 mg/m^3 phenol for 7 hours per day, 5 days per week for 6 to 13 weeks; effects were not observed in 25 rats similarly exposed for 11 weeks (Ref. 35, Deichmann et al., 1944). Slightly reduced body weight gain, but no other evidence of toxicity, was observed in 50 rats and 10 monkeys, whereas increased stress test endurance was observed in 100 mice exposed by inhalation to 19 mg/m^3 phenol for 8 hours per day, 5 days per week for 90 days (Ref. 135, Sandage, 1961). A 15-day study associated behavioral effects with continuous inhalation exposure of rats to 100 mg/m^3 phenol (Ref. 33, Dalin and Kristoffersson, 1974). There are probably insufficient data to characterize the subchronic inhalation toxicity of phenol, because existing studies were not sufficiently comprehensive in scope to identify effects on the respiratory tract and thresholds for inhalation exposure.

Anger and Johnson (Ref. 3, 1985) suggested that phenol could be neurotoxic.

A standard developmental toxicity gavage study reported reduced fetal body weight in the high dose in groups of 20 to 22 CD rats treated with 30, 60 or 120 mg per kg per day on gestation days 6 to 15 and maternal mortality, decreased body weight and CNS effects and reduced fetal body weight and increased incidence of cleft palate at the high dose in CD mice treated with 70, 140 or 280 mg per kg per day on days 6 to 15 gestation (Ref. 121, NTP, 1983). Maternal weight loss at the highest dose, but no effects on fetuses or offspring were reported in a developmental toxicity screening test with a single 100, 333, 667 or 1,000 mg/kg gavage dose given to groups of 12 to 13 Sprague-Dawley rats on day 11 of gestation (Ref. 83, Kavlock, 1990).

A multi-generation drinking water study identified adverse effects on offspring growth and survival, but failed to adequately evaluate effects on reproductive function and postnatal survival in rats given drinking water containing 100 to 12,000 ppm phenol (Ref. 73, Heller and Pursell, 1938). A study designed to adequately evaluate effects on reproductive function and postnatal survival may be necessary to characterize the reproductive effects of phenol.

The Committee recognizes that NIOSH has a Hazard Evaluations and Technical Assistance Report, walk-through surveys, etc. for phenol that are available from NTIS and the Committee is placing a list of these documents in the public docket. A table containing a list of TSCA section 8(d) studies submitted to the EPA is also contained in the public docket for the 27th ITC Report. ATSDR published their priority toxicity data needs for phenol (55 FR 11566, March 28, 1990) and supports the EPA nomination and Committee recommendation for health effects testing. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for phenol.

III. Ecological Effects Information

The ecological effects of phenol have recently been reviewed by Walker (Ref. 160, Walker, 1988). The Committee is not recommending ecological effects testing at this time.

N,N-Dimethylaniline

Physical and Chemical Information

CAS Number: 121-69-7
Synonyms and Trade Names: Dimethylphenylamine, *N*-dimethylbenzeneamine, xylidene
Empirical Formula: $C_8H_{11}N$
Molecular Weight: 121.2
Physical State at 25° C: Liquid
Description of Chemical: Yellowish to brownish oily liquid (Ref. 136, Sax and Lewis, 1987)
Melting Point: 2.4° C (Ref. 134, Riddick et al., 1986)
Boiling Point: 194° C (Ref. 134, Riddick et al., 1986)
Vapor Pressure: 0.518 mm Hg @ 25° C (Ref. 163, Weber et al., 1981)
Specific Gravity: 0.956 (Ref. 136, Sax and Lewis, 1987)
Log Octanol/Water Partition Coefficient: 2.31 (Ref. 66, Hansch and Leo, 1981)
Water Solubility at 25° C: 1,450 mg/L (Ref. 26, Chao et al., 1983)
Log K_{oc}: 1.90 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 5.68×10^{-5} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)
pK_a: 5.15 (Ref. 26, Chao et al., 1983)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1979, domestic production of *N,N*-dimethylaniline was 13.7 million pounds (Ref. 158, U.S. ITC, 1980). Information on current production volumes is CBI, but production is substantial. *N,N*-Dimethylaniline is used in dyes, as a synthetic intermediate for vanillin, pharmaceuticals, and other compounds, solvent, stabilizer, and polymerization catalyst (Ref. 91, Lawrence and Marshall, 1985; Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 28,048 workers (7395 females) were potentially exposed to *N,N*-dimethylaniline in 9 different industrial classifications (Ref. 120, NIOSH, 1990). Of these workers, 39 percent were potentially exposed during the use of trade name products containing this compound.

Environmental exposure. N,N-dimethylaniline was detected in 8 samples obtained from 3 industries and POTWs at a maximum concentration of 3.1 ppm (Ref. 138, Shackelford et al., 1983). According to TRI, 129,829 lbs of *N,N*-dimethylaniline were released to the air, 17,613 pounds were released to water, and 250 lbs were released to land in 1987 (Ref. 153, TRI, 1990). For 1988, TRI indicates that 98,905 lbs were released to air, 250 lbs were released to land, and 19,967 lbs were released to water (Ref. 153, TRI, 1990). *N,N*-Dimethylaniline was detected in soil samples obtained near the bank of the Buffalo River, NY, 1979 at concentrations of 10 to 40 ppm (Ref. 118, Nelson and Hites, 1980). *N,N*-Dimethylaniline was found in the Rhine River, Germany, in 1984 (Ref. 144, Sontheimer et al., 1985) and in the Wali River, Netherlands, in 1974 at a maximum concentration of 3.6 ppb (Ref. 105, Meijers and Vanderleer, 1976). *N,N*-Dimethylaniline was qualitatively detected in water from Lake Ontario, but not Lake Erie (Ref. 64, Great Lakes Water Quality Board, 1983).

I. Chemical Fate Information

N,N-dimethylaniline is expected to undergo rapid atmospheric oxidation by reaction with photochemically produced hydroxyl radicals, ozone, and with nitrate radicals at night (Ref. 8, Atkinson et al., 1987). In water, *N,N*-dimethylaniline is expected to degrade by its reaction with singlet oxygen (Ref. 65, Haag and Hoigne, 1985), and alkoxy radicals (Ref. 108, Mill et al., 1980) in sunlit waters. Biological processes are also likely to remove *N,N*-dimethylaniline from the aquatic compartment (Ref. 18, BIODEG, 1990; Ref. 117, Niemi et al., 1987), but there are uncertainties associated with its fate in wastewater treatment facilities. It is not expected to volatilize from water to the atmosphere nor is it likely to adsorb to soil (Ref. 100, Lyman et al., 1982). Available persistence data are probably inadequate to predict the activated sludge biodegradation of *N,N*-dimethylaniline, because data were not generated using test systems that simulated *in situ* wastewater treatment. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of *N,N*-dimethylaniline and because there are potentially substantial environmental releases.

II. Health Effects Information

Data related to the pharmacokinetics of *N,N*-dimethylaniline were limited to several in vitro metabolism studies with rat and rabbit microsomal enzymes (Ref. 6, Arrhenius, 1968; Ref. 72, Heinze et al., 1970; Ref. 155, Uehleke et al., 1971; Ref. 17, Bickel et al., 1971; Ref. 166, Ziegler and Gold, 1971; Ref. 42, Devereux and Fouts, 1974; Ref. 133, Rane, 1974; Ref. 76, Hlavica and Kehl, 1974; Ref. 77, Hlavica and Kehl, 1976; Ref. 16, Beije and Arrhenius, 1978; Ref. 63, Gorrod et al., 1979; Ref. 62, Gorrod and Gooderham, 1981; Ref. 124, Ohmiya and Mehendale, 1983; Ref. 125, Olsson et al., 1983; Ref. 67, Hamill and Cooper, 1984; Ref. 123, Odenbro and Arrhenius, 1984; Ref. 126, Olsson et al., 1984; Ref. 42, Devereux et al., 1985) and *in vivo* metabolism studies in rats, rabbits and dogs (Ref. 74, Hildebrandt, 1907; Ref. 48, Elson et al., 1946; Ref. 86, Kiese and Renner, 1974). Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of *N,N*-dimethylaniline.

A 13-week gavage study (that included comprehensive histopathological examination) in groups of 10 male and 10 female F344/N

II. Health Effects Information

Ethyl acetate was readily absorbed following oral or inhalation administration to rabbits and rats, respectively, and was rapidly hydrolysed to ethanol and acetic acid (Ref. 150, Tambo, 1973; Ref. 58, Gallaher and Loomis, 1975). In a comprehensive 90–day gavage study in groups of 30 male and 30 female Sprague-Dawley rats treated with ethyl acetate in corn oil at doses of 300, 900 or 3,600 mg per kg per day, toxic effects resulting in reduced food intake and body weight, and altered organ weights were reported in high dose males; increased salivation, breathing changes and lethargy were also observed in high-dose groups (Ref. 156, U.S. EPA, 1986). Adverse effects on body weights, blood counts and urinalysis were not reported in a study in which 3 guinea pigs were intermittently exposed by inhalation to 7,206 mg ethyl acetate vapors/m^3 for about 11 weeks (Ref. 143, Smyth and Smyth, 1928).

Data were not located regarding the developmental effects or reproductive toxicity of ethyl acetate.

Ethyl acetate was negative for induction of reverse mutation in *Salmonella* when tested with (but not without) metabolic activation (Ref. 80, Ishidate et al., 1984). Positive results were observed for mitotic aneuploidy but negative results were observed for point mutations and recombination in yeast (Ref. 167, Zimmerman et al., 1985). In mammalian test systems, a positive response was reported for chromosomal aberrations in Chinese hamster fibroblasts *in vitro* (Ref. 80, Ishidate et al., 1984) and a negative response was reported for micronucleus formation in Chinese hamsters (Ref. 14, Basler, 1986). *In vivo* gene mutation testing may be necessary to characterize the mutagenicity of *N,N*-dimethylaniline.

Ethyl acetate was not a complete carcinogen when applied dermally (0.2 mL, 45 times during 23 weeks) to 8 female CD–1 mice (Ref. 98, Lindenfelser et al., 1974). Ethyl acetate at doses of 3.6 or 18 g/kg by intraperitoneal injection 3 times per week for a total of 24 injections was negative in the Strain A mouse lung tumor assay (Ref. 147, Stoner et al., 1973). The mice were sacrificed 24 weeks after the first dose.

The Committee recognizes that NIOSH has Hazard Evaluation and Technical Assistance reports, etc. for ethyl acetate that are available from NTIS and the Committee is placing these documents in the public docket. The Committee recommends screening health effects testing and triggering oncogenicity testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for ethyl acetate.

III. Ecological Effects Information

The Committee recognizes that acute LC_{50} values are available for 14 invertebrate species, 3 species of freshwater fish, freshwater algae, a salamander, and a toad. These data indicate that ethyl acetate is acutely toxic to aquatic fauna at concentrations ranging from 9 to < 1,000 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

2,6-Dimethylphenol

Physical and Chemical Information

CAS Number: 576–26–1
Synonyms and Trade Names: 2,6-Xylenol
Empirical Formula: $C_8H_{10}O$
Molecular Weight: 122.2
Physical State at 25° C: Solid
Description of Chemical: White crystalline solid (Ref. 98, Lide, 1990)
Melting Point: 49° C (Ref. 98, Lide, 1990)
Boiling Point: 212° C (Ref. 98, Lide, 1990)
Vapor Pressure: 0.15 mm Hg @ 20° C (Ref. 163, Weber et al., 1981)
Log Octanol/Water Partition Coefficient: 2.36 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 96,000 mg/L (Ref. 162, Wasik et al., 1981)
Log K_{oc}: 1.45 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 7.5×10^{-7} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)
pK_a: 10.59 (Ref. 129, Pearce and Simkins, 1968)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1977, between 2 and 20 million pounds of 2,6-dimethylphenol were produced at 6 different facilities in the United States (Ref. 154, TSCAPP, 1990). There were 2 facilities that manufactured 2,6-dimethylphenol in the U.S. in 1989 (Ref. 145, SRI, 1989). Information on current production volumes is CBI, but production is substantial. It is used primarily in the production of poly(phenylene oxide) resins (Ref. 52, Fiege, 1987). 2,6-Dimethylphenol is also used in the manufacture of tetramethylbisphenol A, 2,6-dimethylaniline, bis(4-hydroxy-2,5-dimethylphenyl)methane, dyes, pharmaceuticals and fragrances, and as a mixture with other xylenols, in disinfectants, solvents, pharmaceuticals, insecticides, fungicides, plasticizers, rubber chemicals, lubricant and gasoline additives, and wetting agents (Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure-Human exposure.* 2,6-Dimethylphenol is used in a variety of commercial applications, many of which can lead to worker exposure. The NOES survey estimated that 1,941 workers (179 females) were potentially exposed to 2,6-dimethylphenol. Of these workers, 95 percent were potentially exposed during the use of trade name products containing this compound.

Environmental exposure. 2,6-Dimethylphenol was detected in 64 samples obtained from 33 industries and POTWs at a maximum concentration of 2,895 ppm (Ref. 138, Shackelford et al., 1983). In a compilation of air monitoring data collected between 1970 and 1987, the mean concentration of 2,6-dimethylphenol in source dominated areas was reported as 0.080 ppb (Ref. 139, Shah and Heyerdahl, 1988). The mean concentration of 2,6-dimethylphenol in the air of Portland, OR, during 7 rain events in 1984 was 2.2 ppt, while the concentration of 2,6-dimethylphenol in the rain ranged from 84 to 280 ng/L (Ref. 93, Leuenberger et al., 1985). 2,6-Dimethylphenol was detected in shale oil wastewater in the range 0.75 to 1.7 μg/L (Ref. 71, Hawthorne and Sievers, 1984) and at 12 mg/L in the wastewater from the gasification of coal (Ref. 59, Giabbi et al., 1985). It was detected in groundwater samples from a wood preserving facility in Florida at a concentration of 0.90 mg/L, while the concentration of 2,6-dimethylphenol 330 m from the site was 0.29 mg/L (Ref. 61, Goerlitz et al., 1985).

I. Chemical Fate Information

Atmospheric degradation by photochemically produced hydroxyl radicals should rapidly remove 2,6-dimethylphenol in sunlight (Ref. 10, Atkinson, 1987); degradation at night should be more rapid in urban areas through the reaction with nitrate radicals (Ref. 25, Carter, 1981). Rain washout is expected to be an effective method of atmospheric removal for 2,6-dimethylphenol (Ref. 93, Leuenberger et al, 1985). Limited data are available on the fate of 2,6-dimethylphenol in water. Volatilization from water is not expected to be a significant removal process based on the Henry's Law constant (Ref. 100, Lyman et al, 1982). In humic waters, reaction with alkyl peroxy radicals should occur (Ref. 110, Mill, 1982); however, no chemical specific data are available. Screening studies suggests that 2,6-dimethylphenol biodegrades fast under aerobic conditions after acclimation (Ref. 18, BIODEG, 1990); however, data are

rats and B6C3F1 mice treated with 31.25, 62.5, 125, 250 or 500 mg/kg for 5 days per week identified the erythrocyte and the spleen as the most sensitive target organs in both species; however, a NOAEL was not reported (Ref. 1, Abdo et al., 1984; Ref. 122, NTP, 1989). Compound-related clinical signs included lethargy in rats and mice and cyanosis in rats. The only inhalation study available was a brief abstract that reported altered muscle chronaxie and evidence of hemolytic anemia in the high dose group of rats continuously exposed for 180 days to 0.04 or 0.3 mg/m^3 (Ref. 103, Markosyan, 1969). There are probably insufficient data to characterize the subchronic inhalation toxicity of *N,N*-dimethylaniline, because existing studies were not available in sufficient detail to identify effects on the respiratory tract and thresholds for inhalation exposure.

Anger and Johnson (Ref. 3, 1985) suggested that *N,N*-dimethylaniline could be neurotoxic.

A 2–year chronic toxicity-oncogenicity gavage study in groups of 50 male and 50 female F344/N rats treated with 3 or 30 mg/kg, 5 days per week and similarly sized groups of B6C3F1 mice treated with 15 or 30 mg/kg, 5 days per week identified the rat as more sensitive than the mouse to the noncarcinogenic effects of *N,N*-dimethylaniline on the erythrocyte and spleen (Ref. 122, NTP, 1989). This study also reported some evidence of carcinogenicity in male rats (sarcomas and osteosarcomas of the spleen) and equivocal evidence of carcinogenicity in female mice (squamous cell papillomas of the forestomach).

Mutagenicity data were limited to negative results for reverse mutation in four strains of *Salmonella* and positive results for forward mutation in mouse lymphoma L5178Y cells and for sister chromatid exchange and chromosomal aberrations in Chinese hamster ovary cells (Ref. 122, NTP, 1989). *In vivo* testing may be necessary to characterize the mutagenicityof *N,N*-dimethylaniline.

Data regarding reproductive and developmental toxicity were limited to a study in 50 CD–1 albino mice treated with *N,N*-dimethylaniline in corn oil at 365 mg per kg per day on gestation days 7 to 14; maternal mortality, but no effects on body weight or viability of the neonatal offspring were reported (Ref. 131, Piccirillo et al., 1988). A 2–generation study designed to adequately evaluate effects on body weight or viability of the neonatal offspring may be necessary to characterize the reproductive effects of *N,N*-dimethylaniline.

The Committee recognizes that OSHA has recently reconsidered the PEL for occupational exposure (54 FR 2654). The Committee recognizes that NIOSH has Health Hazard Evaluations and other reports for *N,N*-dimethylaniline that are available from NTIS and the Committee is placing a list of these documents in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for *N,N*-dimethylaniline.

III. Ecological Effects Information

Algal toxicity data are limited to an algal bioassay (Ref. 15, Batterton et al., 1978) and a study of energy metabolism enzymes in marine algae (Ref. 5, Armstrong et al., 1981). Acute aquatic toxicity studies are available for a ciliated protozoan and several species of fish (Ref. 4, AQUIRE, 1990). The Committee reviewed available algal and acute aquatic invertebrate toxicity data and believes these data are insufficient because no EC_{50} values were reported. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of *N,N*-dimethylaniline and because there are potentially substantial environmental releases.

Ethyl Acetate

Physical and Chemical Information

CAS Number: 141–78–6
Synonyms and Trade Names: Acetic ether, acetic ester, vinegar naphtha.
Empirical Formula: $C_4H_8O_2$
Molecular Weight: 88.1
Physical State at 25° C: Liquid
Description of Chemical: Clear, volatile, flammable liquid; characteristic fruity odor pleasant taste when diluted (Ref. 194, Windholz et al., 1983).
Melting Point: -83.6° C (Ref. 98, Lide, 1990)
Boiling Point: 77.1 (Ref. 98, Lide, 1990)
Vapor Pressure: 94.5 mm Hg @ 25° C (Ref. 2, Ambrose et al., 1961)
Specific Gravity: 0.899 (Ref. 194, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 0.73 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 88,000 mg/L (Ref. 12, Banerjee, 1984)
Log K_{oc}: 0.94 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 1.36×10^{-4} atm m^3 $mole^{-1}$ (Ref. 20, Bocek, 1978)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 254.2 million pounds of ethyl acetate are produced in the United States (Ref. 159, U.S. ITC, 1989). Ethyl acetate has the following uses: coatings—41 percent; exports—36 percent; solvent—13 percent; plastics—8 percent; chemical synthesis—2 percent (Ref. 29, CMR, 1990). Many of its solvent uses include consumer products.

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 419,180 workers (99,058 female) were potentially exposed to ethyl acetate (Ref. 120, NIOSH, 1990). Of these workers, 87 percent were potentially exposed during the use of trade name products containing this compound. Potential exposure to ethyl acetate was associated with 34 different industrial classifications (Ref. 120, NIOSH, 1990). In addition, ethyl acetate is used as a solvent in numerous consumer applications. OSHA's PEL = 400 ppm 8–hour TWA; the Committee learned that Sweden may reduce their PEL to 150 ppm, but is unaware of the basis for this potential reduction.

Environmental exposure. Ethyl acetate was detected in 66 samples obtained from 17 industries and POTWs at a maximum concentration of 7.7 ppm (Ref. 138, Shackelford et al., 1983). Of 204 sites monitored in 14 heavily industrialized river basins in the U.S., ethyl acetate was detected at a concentration of 1 ppb (Ref. 51, Ewing et al., 1977). In a compilation of air monitoring data collected between 1970 and 1987, the median concentration of ethyl acetate in urban sites was 0.733 ppb (Ref. 139, Shah and Heyerdahl, 1988). Ethyl acetate was also detected in industrialized and urban sites in Virginia and West Virginia at concentrations ranging from <0.012 to 1.9 ppb (Ref. 50, Erickson and Pellizzari, 1978). The STORET database indicates that ethyl acetate has also been detected in groundwater (Ref. 148, STORET, 1990).

I. Chemical Fate Information

In the atmosphere, ethyl acetate appears to be susceptible to removal by oxidative processes (Ref. 8, Atkinson, 1987; Ref. 28 CHEMFATE, 1990). The available data indicates that ethyl acetate's fate in water will be dominated by both rapid volatilization to the atmosphere (Ref. 100, Lyman et al., 1982) and rapid biodegradation (Ref. 18, BIODEG, 1990). Biodegradation is also likely to be a significant fate process in soil (Ref. 18, BIODEG, 1990). Ethyl acetate should not significantly adsorb to soil (Ref. 100, Lyman et al., 1982). The Committee is not recommending chemical fate testing at this time.

limited and no studies of the degradation of 2,6-dimethylphenol in environmental samples are available. Under anaerobic conditions, one screening study indicates that 2,6-dimethylphenol is not expected to biodegrade (Ref. 18, BIODEG, 1990). Aqueous photolysis rate estimates and biodegradation data are probably inadequate to determine photolysis and biodegradation rates of 2,6-dimethylphenol in the environment, because the estimates and data were not generated using test systems that simulate *in situ* processes. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 2,6-dimethylphenol and because there are potentially substantial environmental releases.

II. Health Effects Information

In 2 reports of an 8–month rat gavage study, histopathological changes in the liver, spleen and kidneys and changes in body weight, blood pressure and levels of protein sulfhydryl groups in blood serum and internal organs were observed in 53 male rats treated with 6 mg per kg per day (Ref. 169, Veldre and Janes, 1979 and Ref. 101, Maazik, 1986). Effects were not seen in rats dosed with 0.6 mg per kg per day. Increased relative liver and spleen weights, decreased body weight gain and marked atrophy and parenchymatous dystrophy of liver cells were observed in 10 male albino rats treated by gavage with 29.5 mg per kg per day for 10 weeks (Ref. 101, Maazik, 19667).

Data on the developmental toxicity or reproductive effects of 2,6-dimethylphenol were not located.

Oncogenicity data were limited to a dermal study that identified 2,6-dimethylphenol as a weak promoter in the two-stage mouse skin assay (Ref. 21, Boutwell and Bosch, 1959). In this study, 30 female Sutter mice were treated with an initial 75 µg application of dimethylbenzanthracene followed by 25 µL of 20 percent 2,6-dimethylphenol in benzene for 15 weeks. The mice were sacrificed at 23 weeks. In a second part of this study, 25 µL of 10 percent 2,6-dimethylphenol was applied twice weekly for 20 weeks to mice that had not been initiated with dimethylbenzanthracene and the mice were maintained for an additional 8 weeks. There were "minimal effects" indicating carcinogenicity.

Mutagenicity testing of 2,6-dimethylphenol was limited to a single study in which the compound was negative with and without metabolic activation in the reverse mutation test in 4 strains of *Salmonella* (Ref. 54, Florin et al., 1980). Additional testing in non-bacterial systems may be necessary to characterize the mutagenicity of 2,6-dimethylphenol.

The Committee recommends screening health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 2,6-dimethylphenol.

III. Ecological Effects Information

Acute aquatic toxicity studies are available for green algae, duckweed, daphnids, sea urchins, fathead minnows and Atlantic cod, and one chronic study is available for the fathead minnow (Ref. 4, AQUIRE, 1990). Available algal toxicity data are probably insufficient because no EC_{50} values were reported. Available fish chronic toxicity data are probably insufficient because they do not provide information on the effects of 2,6-dimethylphenol to sensitive fish life stages. The Committee recommends additional ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 2,6-dimethylphenol and because there are substantially potential environmental releases.

References

(1) Abdo, K., Wolfe, M., and Hiles, R. "Subchronic toxicity of *N,N*-dimethylaniline to F344 rats and B6C3F1 mice." *Federal Proceedings*. 43(3): 1036 (1984).

(2) Ambrose, D., Ellender, J.H., Gundry, H.A., Lee, D.A., and Townsend, R. "Thermodynamic properties of organic oxygen compounds. LI. The vapour pressures of some esters and fatty acids." *Journal of Chemical Thermodynamics*. 13: 795–802 (1981).

(3) Anger, W.K. and Johnson, B.L. "Chemicals Affecting Behavior." Neurotoxicity of Industrial and Commercial Chemicals. J.L. O'Donoghue, ed. Boca Taton, FL: CRC Press (1985).

(4) AQUIRE. Aquatic Toxicity Information Retrieval Data Base. Duluth, MN: U.S. Environmental Protection Agency, Environmental Research Laboratory (1990).

(5) Armstrong, J.R., Fehler, S.W., and Calder, J.A. "Effects of petroleum hydrocarbons on the growth and energetics of marine microalgae." *Biological Monitoring of Marine Pollutants*. pp. 449–466 (1981).

(6) Arrhenius, E. "Effects on hepatic microsomal *N*- and C-oxygenation of aromatic amines by *in vivo* corticosteroid or aminofluorene treatment, diet, or stress." *Cancer Research*. 26(20): 264–273 (1966).

(7) Articlo-Fortuny, J., and Fuller, W.H. "Adsorption of some monohydrobenzene derivatives by soils." *Soil Science*. 133: 18–26 (1982).

(8) Atkinson, R. "A structure–activity relationship for the estimation of rate constants for gas–phase reactions of OH radicals with organic compounds." *International Journal of Chemical Kinetics*. 19: 799–828 (1987).

(9) Atkinson, R., and Carter, W.P.L. "Kinetics and mechanisms of gas–phase reactions of ozone with organic compounds under atmospheric conditions." *Chemical Reviews*. 84: 437–470 (1984).

(10) Atkinson, R., Tuazon, E.C., Wallington, T.J., Aschmann, S.M., Arey, J., Winer, A.M., and Pitts, J.N. Jr. "Atmospheric chemistry of aniline, *N,N*-dimethylaniline, pyridine, 1,3,5-triazine, and nitrobenzene." *Environmental Science and Technology*. 21: 64–72 (1987).

(11) Baker, E.L., Landrigan, P.J., Bertozzi, P.E., Field, P.H., Basteyns, B.J., and Skinner, H.G. "Phenol poisoning due to contaminated drinking water." *Archives of Environmental Health*. 33: 89–94 (1978).

(12) Banerjee, S. "Solubility of organic mixtures in water." *Environmental Science and Technology*. 18: 587–591 (1984).

(13) BASF. Intercompany acrylate study group-summary of toxicological research with attachments and cover letter. Submitted by BASF Corp. to U.S. EPA under TSCA Section 8(d). Microfiche No. OTS0520805. (1989).

(14) Basler, A. "Aneuploidy-inducing chemicals in yeast evaluated by the microsucleus test." *Mutation Research*. 174: 11–13 (1986).

(15) Batterton, J., Winters, K., and Van Ballen, C. "Anilines: Selective toxicity to bluegreen algae." *Science*. 199(4333): 1068–1070 (1978).

(16) Beije, B., and Arrhenius, E. "Influence of cystein deficiency on the inhibition of hepatic microsomal detoxication by methyl mercury in two rat strains." *Chemico–Biological Interactions*. 21(2–3): 167–178 (1978).

(17) Bickel, M.H., Willi, P., and Gigon, P.L. "Species and substrate differences of liver microsomal *N*-dealkylation and *N*-oxidation of tertiary amines and *N*-dealkylation of *N*-oxides." *Xenobiotica*. 1(4–5): 533–534 (1971).

(18) BIODEG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(19) BIOLOG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(20) Bocek, K. "Relationships among activity coefficients, partition coefficients and solubilities." *Experientia*, Suppl. 23: 231–240 (1976).

(21) Boutwell, R.K., and Bosch, D.K. "The tumor–promoting action of phenol and related compounds for mouse skin." *Cancer Research*. 19: 413–424 (1959).

(22) Boyd, S.A. "Adsorption of substituted phenols by soil." *Soil Science*. 134: 337–343 (1982).

(23) Callahan, M.A., Slimak, M.W., N.W. Gabel, et al. Water related environmental fate of 129 priority pollutants. Volume 2. EPA–440/479–82SB. Washington, DC: U.S. EPA. Office of Water Planning and Standards, Office of Water and Waste Management. (1979).

(24) Capel, I.D., French, M.R., Millsburn, P., Smith, R.L., and Williams, R.T. "The fate of [^{14}C]phenol in various species." *Xenobiotica*. 2: 25–34 (1972).

(25) Carter, W.P.L.; Winer, A.M.; Pitts, J.N.Jr. Major Atmospheric Sink for Phenol and the Cresols. Reaction with Nitrate Radical. Environ Sci Tech 15: 829–31. (1981).

(26) Chao, J., Lin, C.T., and Chung, T.H. "Vapor pressure of coal chemicals." *Journal of Physical and Chemical Reference Data*. 12: 10331083 (1983).

(27) Chemcyclopedia. Kuney, J.H., Ed. Volume 8. Washington, DC: American Chemical Society. pp. 43, 276 (1989).

(28) CHEMFATE. Data Base. Syracuse, NY: Syracuse Research Corporation. (1990).

(29) CMR. "Ethyl Acetate Chemical Profile." *Chemical Marketing Reporter*. March 31, 1986 (1986).

(30) CMR. "Phenol Chemical Profile." *Chemical Marketing Reporter*. September 14, 1987 (1987).

(31) Cole, R.H., Frederick, R.E., Healy, R.P., and Rolan, R.G. "Preliminary findings of the priority pollutant monitoring project of the nationwide urban runoff program." *Journal of the Water Pollution Control Federation*. 56: 898–908 (1984).

(32) Cote, I.L., Hochwalt, A.E., Seidman, I., Budzilovich, G.N., Solomon, J.J., and Segal, A. "Acrylic acid: Skin carcinogenesis in ICR/HA mice." FYI submission by Rohm and Haas Co. to U.S. EPA. Microfiche No. OTS0000367–2. (1986).

(33) Dalin, N.M., and Kristofferson, R. "Physiological effects of sublethal concentration of inhaled phenol in the rat." *Annales Zoologici Fennici*. 11: 193–199 (1974).

(34) Daubert, T.E., and Danner, R.P. Data Compilation Tables of Properties of Pure Compounds. New York, New York: American Institute of Chemical Engineers (1985).

(35) Deichmann, W.B. "Phenol studies. V. The distribution, detoxification, and excretion of phenol in the mammalian body. *Archives of Biochemistry*. 3: 345–355 (1944).

(36) Deichmann, W.B., and Oesper, P. "Ingestion of phenol. Effects on the albino rat." *Industrial Medicine*. 9: 296 (1940).

(37) Deichmann, W.B., and M.L. Keplinger. "Phenols and phenolic compounds." In: *Patty's Industrial Hygiene and Toxicology*. Clayton, G.D., and Clayton, F.E., eds. Volume 2A, 3rd revised edition. New York, NY: John Wiley Sons. pp. 2576–2584 (1981).

(38) Deichmann, W.B., Kitzmiller, K.V., and Witherup, S. "Phenol studies. VII. Chronic phenol poisoning with special reference to the effects upon experimental animals of the inhalation of phenol vapor." *American Journal of Clinical Pathology*. 14: 273–277 (1944).

(39) DePass, L.R., Woodside, M.D., Garman, R.H., and Weil, C.S. "Subchronic and reproductive toxicology studies on acrylic acid in drnking water of the rat." *Drug and Chemical Toxicology*. 6(1): 1–20 (1983).

(40) DePass, L.R., Fowler, E.H., Meckley, D.R., and Weil, C.S. "Dermal oncogenicity bioassays of acrylic acid, ethyl acrylate, and butyl acrylate." *Journal of Toxicology and Environmental Health*. 14:115–120 (1984).

(41) Devereux, T.R., and Fouts, J.R. "N-Oxidation and demethylation of *N,N*-dimethylaniline by rabbit liver and lung microsomes. Effects of age and metals." *Chemico–Biological Interactions*. 8: 91–105 (1974).

(42) Devereux, T.R., Diliberto, J.J., and Fouts, J.R. "Cytochrome P–450 monooxygenase, epoxide hydrolase and flavin monooxygenase activities in Clara cells and alveolar type II cells isolated from rabbit." *Cellular Biology and Toxicology* 1(2): 57–65 (1985).

(43) Dow Chemical Co. "The toxicity of phenol." Biochem. Research Laboratory. Unpublished Report dated 04/12/45 (1945).

(44) Draper, W.M., and Crosby, D.G. "Photochemical generation of superoxide radical anion in water." *Journal of Agricultural Food Chemistry*. 31: 734–737 (1983).

(45) Ehrhardt, M. "Photooxidation products of fossil fuel components in the water of Hamilton Harbor, Bermuda." *Marine Chemistry*. 22: 85–94 (1987).

(46) Ehrhardt, M., Bouchertall, F., and Hopf, H. "Aromatic Ketones concentrated from Baltic Sea water." *Marine Chemistry*. 11: 449461 (1982).

(47) Elliger, C.A., Henika, P.R., and MacGregor, J.T. "Mutagenicity of flavones, chromones and acetophenones in Salmonella typhimurium: New structure–activity relationships." *Mutation Research*. 135: 77–86 (1984).

(48) Elson, L.A., Goulden, F., and Warren, F.L. "The metabolism of aromatic amines." *Biochemical Journal*. 40: 29 (1946).

(49) EPA. Ambient water quality document for phenol. EPA 440/5–80–066. U.S. Environmental Protection Agency. p. C-3 (1980).

(50) Erickson, M.D., and Pellizzari, E.D. "Analysis of organic air pollutants in the Kanawha Valley, WV and the Shenandoah Valley, VA." EPA903/9–78–007 (1978).

(51) Ewing, B.B., Chian, E.S.K., Cook, J.C., Evans, C.A., Hopke, P.K., and Perkins, E.G. "Monitoring to detect previously unrecognized pollutants in surface waters." Appendix: Organic analysis data. EPA–600/6–77–015. (1977).

(52) Fiege, H. "Cresols and xylenols." In: *Ullmann's Encyclopedia of Industrial Chemistry*. 5th edition. A8: 25–59 (1987).

(53) Fielding, M., Gibson, T.M., James, H.A., McLoughlin, K., and Steel, C.P. "Organic micropollutants in drinking water." TR–159. Medmenham, England: Water Research Centre (1981).

(54) Florin, I., Rutberg, L., Curvall, M., and Enzell, C.R. "Screening of tobacco smoke constituents for mutagenicity using the Ames test." *Toxicology*. 18: 219–232 (1980).

(55) Fraser, I.M., Peters, M.A.S., and Hardinge, M.G. "Purification and some characteristics of an alpha,beta-unsaturated ketone reductase from dog erythrocytes and human liver." *Molecular Pharmacology*. 3: 233–247 (1967).

(56) Gaffney, J.S., Streit, G.E., Spall, W.D., and Hall, J.H. "Beyond acid rain – do soluble oxidants and organic toxins interact with SO_2 and NO_x to increase ecosystem effects?" *Environmental Science and Technology*. 21: 519523 (1987).

(57) Gage, J.C. "The subacute inhalation toxicity of 109 industrial chemicals." *British Journal of Industrial Medicine*. 27: 1–18 (1970).

(58) Gallaher, E.J., and Loomis, T.A. "Metabolism of ethyl acetate in the rat. Hydrolysis to ethyl alcohol *in vitro* and *in vivo*." *Toxicology and Applied Pharmacology*. 34(2): 309–313 (1975).

(59) Giabbai, M.F., Cross, W.H., Chian, E.S.K., and Dewalle, F.B. "Characterization of major and minor pollutants in waste waters from coal gassification processes." *International Journal of Environmental Analytical Chemistry*. 20: 113–128 (1985).

(60) Glombitza, K.W., and Heyser, R. "Antimicrobial components in algae. 4. Effect of acrylic acid on respiration and macromolecular synthesis on Staphylococcus aureus and Escherichia coli." *Helgoloender Wissenschaftliche Meeresuntersuchungen*. 22(3–4): 442–453 (1971).

(61) Goerlitz, D.F., Troutman, D.E., Godsy, E.M., and Franks, B.J. "Migration of wood-preserving chemicals in contaminated groundwater in a sand aquifer at Pensacola, Florida." *Environmental Science and Technology*. 19(10): 955–961 (1985).

(62) Gorrod, J.W., and Gooderham, N.J. "The *in vitro* metabolism of *N,N*-dimethylanilnine by guinea pig and rabbit tissue preparations." *European Journal of Drug Metabolism and Pharmacokinetics*. 6(3): 195–206 (1981).

(63) Gorrod, J.W., Temple, D.J., and Beckett, A.H. "The *N*- and alpha-*C*-oxidation of *N,N*-dialkylanilines by rabbit liver microsomes *in vitro*." *Xenobiotica*. 9(1): 17–25 (1979).

(64) Great Lakes Water Quality Board. "An inventory of chemical substances identified in the Great Lakes ecosystem." Report to the Great Lakes Water Quality Board, Windsor Ontario, Canada. 1: 16 (1983).

(65) Haag, W.R., and Hoigne, J. "Degradation of compounds in water by singlet oxygen." In: *Water Chlorination: Proceedings of the Conference on Chemical Environmental Impact and Health Effects*. Jolley, R.L.L., ed. pp. 1011–1020 (1985).

(66) Hagan, E.C., Hansen, W.H., Fitzhugh, O.G., et al. "Food flavourings and compounds of related structure. II. Subacute and chronic toxicity." *Food and Cosmetics Toxicology*. 5(2): 141–157 (1967).

(67) Hamill, S., and Cooper, D.Y. "The role of cytochrome P–450 in the dual pathways of Ndemethylation of N,N-dimethylaniline by hepatic microsomes." Xenobiotica. 14(1–2): 139–149 (1984).

(68) Hanach, C., and Leo, A.J. Medchem Project. Issue Nos. 19, 26. Claremont, CA: Pomona College (1981).

(69) Hasset, R.J., Means, J.C., Banwart, W.L., and Woods, S.S. Sorption properties of sediments and energy-related pollutants. EPA–600/3–80–041. Athens, GA: U.S. EPA. p. 17 (1980).

(70) Hawley, G.G. Condensed Chemical Dictionary. 10th edition. New York, NY: Van Nostrand Reinhold Co., Inc. p. 1135 (1981).

(71) Hawthorne, S.B., and Sievers, R.E. "Emission of organic air pollutants from shale oil wastewaters." Environmental Science and Technology. 18(6): 483–490 (1984).

(72) Heinze, E., Hlavica, P., Kiese, M., and Lipowski, G. "*N*-Oxygenation of arylamines in microsomes prepared from corpora lutes of the cycle and other tissues of the pig." *Biochemical Pharmacology*. 19(3): 641–649 (1970).

(73) Heller, V.G., and Pursell, L. "Phenol-contaminated waters and their physiological action." *Journal of Pharmacol and Experimental Therapeutics*. 63: 99–107 (1938).

(74) Hildebrandt, H. "Uber das biologische verhalten von phenylalkylaminen und phenylalkylammoniumbasen." *Beitraege zur Chemischen Physiologie und Pathologie*. 9: 470–480 (1907).

(75) Hine, J., and Mookerjee, P.K. "Intrinsic hydrophilic character of organic compounds. Correlations in terms of structural contributions." *Journal of Organic Chemistry*. 40: 292–298 (1975).

(76) Hlavica, P., and Kehl, M. "Effect of carbon monoxide on the *N*-oxidation of N,Ndimethylyaniline." *Hoppe Seyler's Zeitschrift fur Physiologische Chemie*. 355(12): 1508–1514 (1974).

(77) Hlavica, P., and Kehl, M. "Comparative studies on the *N*-oxidation of aniline and N,Ndimethylaniline by rabbit liver microsomes." Zenobiotica. 6(11): 679–690 (1976).

(78) Howard, P.H. Handbook of environmental fate and exposure data for organic chemicals. Volume I. Large production and priority pollutants. Chelsea, MI: Lewis Publishers. pp. 468–476 (1989).

(79) IARC (International Agency for Research on Cancer). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42. Lyon, France. Supplment 7. p. 56. (1987).

(80) Ishidate, M., Sofuni, T., and Yoshikawa, K., et al. "Primary mutagenicity screening of food additives currently used in Japan." *Food and Chemical Toxicology*. 22: 623–636 (1984).

(81) Jones, A.H. "Sublimation-pressure data for organic compounds." *Journal of Chemical Engineering Data*. 5: 196–200 (1960).

(82) Kao, J., Bridges, J.W., and Faulkner, J.K. "Metabolism of [^{14}C]phenol by sheep, pig and rat." *Xenobiotica*. 9: 141–147 (1979).

(83) Kavlock, R.J. "Structure-activity relationships in the developmental toxicity of substituted phenols: *In vivo* effects." *Teratology*. 41: 43–59 (1990).

(84) Keith, L.H., Garrison, A.W., Allen, F.R., Carter, M.H., Floyd, T.L., Pope, J.D., and Thruston, A.D., Jr. "Identification of organic compounds in drinking water from thirteen U.S. cities." In: *Identification and Analysis of Organic Pollutants in Water*. Keith, L.H., ed. Ann Arbor Press. pp. 329–373 (1976).

(85) Kiese, M., and Lenk, W. "Hydroacetophenones. Urinary metabolites of ethylbenzene acetophenone in the rabbit." *Xenobiotica*. 4(6): 337–343 (1974).

(86) Kiese, M., and Renner, G. "Urinary metabolites of N,*N*-dimethylaniline produced by dogs." *Naunyn Schmiedebergs Archives of Pharmocology*. 283: 143–150 (1974).

(87) Klimisch, H.J., and Hellwig, J. "Prenatal toxicity of acrylic acid in rats. Department of Toxicology, BASF Aktiengesellschaft, Ludwigshafen/Rhine, FRG (1989).

(88) Kutzman, R.S., Meyer, G.J., and Wolf, A.P. "The biodistribution and metabolic fate of [^{14}C]acrylic acid in the rat after acute inhalation exposure or stomach intubation." *Journal of Toxicology and Environmental Health*. 10(6): 969–979 (1982).

(89) Lagno, Z.Y., and Babhitzina, G.Z. "The skin resorptive action of acetophenone." Tr. Ufim. Nausch–Issled. Inst. Gig. Prof. Sabol. *Air Pollution and Industrial Hygiene* 5: 90–94 (1969).

(90) Lande, S.S., Durkin, P.R., Christopher, D.H., Howard, P.H., and Saxena, J. "Investigation of selected potential environmental contaminants: ketonic solvents." EPA–560/2–76–003. Washington, DC: U.S. EPA, Office of Toxic Substances. (1976).

(91) Lawrence, F.R., and Marshall, W.J. "Aniline" In: *Ullmann's Encyclopedia of Industrial Chemistry*. 5th edition. Volume A2. Gerhartz, W., ed. Weinheim, Germany: VCH Publishers. pp. 309–310 (1985).

(92) Leibman, K.C. "Reduction of ketones in liver cytosol." *Xenobiotica*. 1(1): 97–104 (1971).

(93) Leuenberger, C., Ligocki, M.P., and Pankow, J.F. "Trace organic compounds in rain. 4. Identities, concentrations, and scavenging mechanisms for phenols in urban air and rain." *Environmental Science and Technology*. 19: 10531058 (1985).

(94) Lewis, E.J.C., and Frieden, E. "Biochemistry of amphibian metamorphosis: Effect of triiodothyronine, thyroxin, and dinitrophenol on the respiration of the tadpole." *Endocrinology*. 65: 273–282 (1959).

(95) Liao, T.F., and Oehme, F.W. "Tissue distribution and plasma protein binding of [^{14}C]phenol in rats." *Toxicology and Applied Pharmacology*. 57: 220–225 (1981).

(96) Lide, D.R. CRC Handbook of Chemistry and Physics. 71st edition. Boca Raton, FL: CRC Press. pp. 3–18, 3–27, 3–381, 3–382 (1990).

(97) Lijinsky, W., and Andrews, A.W. "Mutagenicity of vinyl compounds in Salmonella typhimurium." *Teratogenesis Carcinogenesis, and Mutagenesis*. 1(3): 259–267 (1980).

(98) Lindenfelser, L.A., Lillehoj, E.B., and Burmeister, H.R. "Aflatoxin and trichothecene toxins: Skin tumor induction and synergistic acute toxicity in white mice." *Journal of the National Cancer Institute*. 52: 113–116 (1974).

(99) Ludzack, F.J., and Ettinger, M.B. "Biodegradability of organic chemicals isolated from rivers." Purdue University Engineering Bulletin Extension Services. 115: 278–282 (1963).

(100) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw-Hill. Chapters 4, 5, 7, 15 (1982).

(101) Maazik, I.K. "Standards for dimethylphenol isomers in water bodies." Gigiena I Sanitaria. (*Hygiene and Sanitation*). 11: 2835 (1968).

(102) Mackay, D., Shiu, W.Y., Bobra, A., Billington, J., Chau, E., yuen, A., Ng, C., and Szeto, F. 1982. "Volatilization of organic pollutants from water." EPA–600/53–82–019. NTIS PB 82–230 939. Athens, GA: U.S. EPA. pp. 91–93, 125, 131, 134, and 164 (1982).

(103) Markosyan, T.M. "Comparative toxicity of monomethylaniline and dimethylaniline in chronic experimental exposure." *Chemical Abstracts*. 71: 11369u (1969).

(104) Mehta, R., Hirom, P.C., and Millburn, P. "The influence of dose on the pattern of conjugation of phenol and l–naphthol in nonhuman primates." *Xenobiotica*. 8(7): 445–452 (1978).

(105) Meijers, A.P., and Ven Der Leer, R.C. "The occurrence of organic micropollutants in the River Rhine and the River Maas in 1974." *Water Research*. 10: 597–604 (1976).

(106) Microbiological Associates. "Cytogenicity study: Chinese hamster ovary cells (CHO) *in vitro*; test article CJP–60." FYI submission by Celanese Corporation to U.S. EPA. Microfiche No. OTS0000367–4. (1986).

(107) Microbiological Associates. "Cytogenicity study: Rat bone marrow *in vivo*; test article CJP–60." FYI submission by Celanese Corporation to U.S. EPA. Microfiche No. OTS0000367–4. (1986).

(108) Mill, T., and Mabey, W. "Photochemical tranformations." In: *Environmental Exposure from Chemicals*. Volume I. Neely, W.B., and Blau, G.E., eds. Boca Raton, FL: CRC Press. pp. 175–216 (1985).

(109) Mill, T., Hendry, D.G., and Richardson, H. "Free radical oxidants in natural waters." *Science*. 207: 886–887 (1980).

(110) Mill, T. Hydrolysis and Oxidation Processes in the Environment. *Environmental and Toxicological Chemistry*. 135–41. (1982).

(111) Miller, J.J., Powell, G.M., Olavesen, A.H., and Curtis, C.G. "The toxicity of dimethoxyphenol and related compounds in the cat." *Toxicology and Applied Pharmacology*. 38: 47–57 (1976).

(112) Miller, R.R., Ayres, J.A., and Jersey, G.C. "Acrylic acid 10–day vapor inhalation study with rats and mice, final report." #79RC-1015. Toxicology and Research Laboratory, Health and Environmental Science, Dow Chemical Company, Midland, MI. (1979).

(113) Miller, R.R., Ayres, J.A., and Jersey, G.C. "Acrylic acid 90–day vapor inhalation study with rats and mice, final report." #79RC-1024. Toxicology and Research Laboratory, Health and Environmental Science, Dow Chemical Company, Midland, MI. (1979).

(114) Miller, R.R., Ayres, J.A., Jersey, G.C., and McKenna, M.J. "Inhalation toxicicty of acrylic acid." *Fundamental and Applied Toxicology*. 1(3): 271–277 (1981).

(115) Moore, M.M., Amtower, A., Doerr, C.L., Brock, K.H., and Dearfield, K.L. "Genotoxicity of acrylic acid, methyl acrylate, ethyl acrylate, methyl methacrylate, and ethyl methacrylate in L5178Y mouse lymphoma cells. *Environmental and Molecular Mutagenesis*. 11: 49–63 (1988).

(116) NCI (National Cancer Institute). Bioassasy of phenol for possible carcinogenicty in F344 rats and B6C3F1 mice. NIH Publication No. 80–1759 (1980).

(117) Niemi, G.J., Veith, G.D., Regal, R.R., and Vaishnav, D.D. "Structural features associated with degradable and persistent chemicals." *Environmental Toxicology and Chemistry*. 6: 515–527 (1987).

(118) Nelson, C.R., and Hites, R.A. "Aromatic amines in and near the Buffalo River." *Environmental Science and Technology*. 14(9): 1147–1149 (1980).

(119) Nicola, R.M., Branchflower, R., and Pierce, D. "Chemical contaminants in bottomfish." *Journal of Environmental Health*. 49(6): 342–347 (1987).

(120) NIOSH (National Institute for Occupational Safety and Health). National Occupational Exposure Survey (NOES) (1990).

(121) NTP (National Toxicology Program). Teratologic evaluation of phenol in CD rats and mice. Prepared by Research Triangle Institute, Research Triangle Park, NC. NTIDS PB83–247726. Gov. Rep. Announce. Index. 83(25): 6247 (1983).

(122) NTP (National Toxicology Program). Toxicology and carcinogenesis studies of parachloroaniline hydrochloride in F344/N rats and B6C3F1 mice. NTP Technical Report No. 351. U.S. Department of Health and Human Services, Public Health Service, National Institute of Health, Research Triangle Park, NC. (1989)

(123) Odenbro, A., and Arrhenius, E. "Effect of triethyl lead chloride on hepatic microsomal *N*-oxygenation and C-oxygenation of N,Ndimethylaniline in rats." *Toxicology and Applied Pharmacology*. 74(3): 357–363 (1984).

(124) Ohmiya, Y., and Mehendale, H.M. "*N*-Oxidation of *N,N*-dimethylaniniline in the rabbit and rat lung." *Biochemical Pharmacology*. 32(7): 1281–1285 (1983).

(125) Olsson, U., Beije, B., Wachtmeister, C.A., and Arrhenius, E. "Effects of dimethylnitrosoamine on metabolism of *N,N*-dimethylaniline by rat liver microsomes. A comparative study of treatment *in vivo* in isolated liver perfusion and in the microsomal system." *Chemico–Biological Interactions*. 45(2): 191–201 (1983).

(126) Olsson, U., Onflet, A., and Beije, B. "Dietary selenium deficiency causes decreased Noxygenation of *N,N*-dimethylaniline and increased mutagenicity of dimethylnitrosoamine in the isolated rat liver/cell culture system." *Mutation Research*. 126(1): 73–80 (1984).

(127) Pahren, H.R., and Bloodgood, D.E. "Biological oxidation of several vinyl compounds." *Water Pollution Control Federation Journal*. 33: 233–238 (1961).

(128) PCGEMS. Graphical Exposure Modeling System (GEMS). CLOGP. U.S. EPA (1987).

(129) Pearce, P.J., and Simkins, R.J.J. "Acid strengths of some substituted picric acids." *Candian Journal of Chemistry*. 46: 241–248 (1968).

(130) Perry, R.H., and Green, D. Perry's Chemical Handbook. 6th edition. New York, NY: McGraw-Hill (1984).

(131) Piccirillo, V.J., McCall, D.L., Lunchick, C., Plankenhorn, L.J., and Sexsmith, C. Screening of priority chemicals for reproductive hazards. NTIS PB 83–257600. p. 108 (1983).

(132) Pinching, A.J., and Doving, K.B. "Selective degeneration in the rat olfactory bulb following exposure to different odours." *Brain Research*. 82(2): 195–204 (1974).

(133) Rane, A. "*N*-Oxidation of a tertiary amine (*N,N*-dimethylaniline) by human fetal liver microsomes." *Clinical Pharmocology and Therapeutics*. 15(1): 32–38 (1974).

(134) Riddick, J.A., Benger, W.B., and Sakano, T.K. Organic Solvents: Physical Properties and Methods of Purification. Techniques of Chemistry Series. 4th edition. New York, NY: Wiley–Interscience. 3:355–356, 640–641 (1986).

(135) Sandage, C. "Tolerance criteria for continuous inhalation exposure to toxic materiel." *ASD Technical Report 61–519 (I)*. Kansas City, MO: Midwest Research Institute. pp. 1–29 (1961).

(136) Sax, N.I., and Lewis, R.J. Haweley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. pp. 910, 411, 421, 896–897, 1244 (1987).

(137) Serjeant, E.P. and Dempsey, B. "Ionization constants of organic acids in aqueous solution." *IUPAC Chemical Data Series No. 23*. New York, NY: Pergamon Press. pp. 160–161 (1979).

(138) Shackelford, W.M., Cline, D.M., Faas, L., and Kurth, G. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography–mass spectrometry." *Analytica Chemica Acta*. 148: 1527 [supplemental data] (1983).

(139) Shah, J.J., and Heyerdahl, E.K. National ambinet volatile organic compounds (VOCS) database update. EPA/600–3–88–010. p. 48 (1988).

(140) Singh, A.R., Lawrence, W.H., and Autian, J. "Embryonic-fetal toxicicty and teratogenic effects of a group of methacrylate esters in rats." *Journal of Dental Research*. 51(6): 1632–1638 (1972).

(141) Smith, J.N., Smithies, R.H., and Williams, R.T. "Studies in detoxication 56. The metabolism of alkylbenzenes. Stereochemical aspects of the biological hydroxylation of ethylbenzene to methylphenylcarbinol." *Biochemical Journal*. 56: 320–324 (1954).

(142) Smyth, H.F. "Acute and sub-acute toxicity of acetophenone." Report 9–42. Mellon Institute of Ind. Res. (1948).

(143) Smyth, H.F., and Smyth, H.F., Jr. "Inhalation experiments with certain lacquer solvents." *Journal of Industrial Hygiene and Toxicology*. 10: 261–271 (1928).

(144) Sontheimer, H., Brauch, H.J., and Kuhn, W. "Impact of different types of organic micropollutants present on sources of drinking water on the quality of drinking water." *Science of the Total Environment*. 47: 27–44 (1985).

(145) SRI (SRI International). Directory of Chemical Producers. Menlo Park, CA: SRI International. pp. 844–845, 1083 (1989).

(146) Staples, C., Werner, A., and Hoogheem, T. "Assessment of priority pollutant concentrations in the United States using STORET database." *Environmental Toxicology and Chemistry*. 4: 131–142 (1985).

(147) Stoner, G.D., Shimkin, M.B., Kniazeff, A.J., Weisburger, J.H., Weisburger, E.K., and Gori, G.B. "Test for carcinogenicity of food additives and chemotherapeutic agents by the pulmonary tumor response in strain A mice." *Cancer Research*. 33: 3069–3085 (1973).

(148) STORET. STORET Data Base retrieval 3/19/90. Washington, DC: U.S. EPA. (1990).

(149) Saffet, I.H, Brenner, L., and Cairo, P.R. "Gas chromatography-mass spectrometry identification of trace organics in Philadelphia, Pennsylvania, USA drinking waters during a two year period." *Water Research*. 14: 853–867 (1980).

(150) Tambo, S. "Toxicity hazards of paint thinners with particular emphasis on the metabolism and toxicity of acetate esters." *Nichidai Igoku Zasshi*. 32(3): 348–360 (1973).

(151) Thierfelder, K., and Deiber, K. "Zur kenntnis des verhaltens fettaromatischer ketone im tierkorper." *Hoppe Seyler's Zeitschrift fuer Physiologische Chemie*. 130: 380–396 (1923).

(152) Thierfelder, K., and Klenk, E. "Zur kenntnis des verhaltens des acetophenons und benzols im tierkorper." Hoppe Seyler's Zeitschrift fuer Physiologische Chemie. 141: 2932 (1924).

(153) TRI (Toxics Release Inventory). Database retrieval 3/16/90. U.S. EPA. (1990).

(154) TSCAPP. Computer print-out of nonconfidential production data from TSCA inventory. Washington, DC: OTS, CID, U.S. EPA. Online 3/15/90 (1990).

(155) Uehleke, H., Reiner, O., and Hellmer, K.H. "Perinatal development of teriary amine Noxidation and NADPH cytochrome c reduction in rat liver microsomes." *Research Communications in Chemical Pathology and Pharmocology*. 2(6): 793805 (1971).

(156) U.S. EPA. "Rat oral subchronic study with ethyl acetate." Washington, DC: Office of Solid Waste, U.S. Environmental Protection Agency (1988).

(157) U.S. EPA. Health and Environmental Effects Document for Acetophenone. Prepared for the Environmental Criteria and Assessment Office, U.S. EPA, Cincinnati, OH. (1987).

(158) U.S. ITC (U.S. International Trade Commission). Synthetic Organic Chemicals. U.S. Production and Sales, 1979. Washington, DC: U.S. Government Printing Office. Publication No. 1098. p. 43 (1980).

(159) U.S. ITC (U.S. International Trade Commission). Synthetic Organic Chemicals. U.S. Production and Sales 1988. Washington, DC. U.S. Government Printing Office. Publication No. 2219. pp. 3–12, 15–4, and 15–8 (1989).

(160) Veldre, I.A., and Jones, H.J. "Toxicological studies of shale oils, some of their components and commercial products." *Environmental Health Perspectives*. 30: 141–146 (1979).

(161) Walker, J.D. "Relative sensitivity of algae, bacteria, invertebrates, and fish to phenol: Anelysis of 234 tests conducted for more than 140 Species." *Toxicity Assessment: An International Journal*. 3:415–457 (1988).

(162) Wasik, S.P., Tewari, Y.B., Miller, M.M., and Matire, D.E. "Octanol/water partition coefficients and aqueous solubilities of organic compounds." NBSIR81–2406. Washington, DC: U.S. Department Comm. Natl. Bur. Std. (1981).

(163) Weber, R.C., Parker, P.A., and Bowser, M. Vapor Pressure Distribution of Selected Organic Chemicals. EPA–600/2–81–021. Cincinnati, OH: U.S. EPA. (1981).

(164) Windholz, M. Budavari, S., Blumetti, R.F., and Otterbein, E.S., The Merck Index. 10th edition. Rahway, New Jersey: Merck Co., Inc., pp. 19, 478–479, 545, 7043 (1983).

(165) Wise, H.E., and Fahrenhold, P.D. "Occurrence and predictability of priority pollutants in wastewaters of the organic chemicals and plastics/synthetic fibers industrial categories." American Chemical Society. 181st National Meeting, Division of Industrial Chemical Symposium on Treatability of Industrial Aqueous Effluents. (1981).

(166) Ziegler, D.M., and Gold, M.S. "Oxidative metabolism of tertiary amine drugs by human and liver tissue." *Zenobiotica*. 1: 325328 (1971).

BEST COPY AVAILABLE

(167) Zimmermann, F.K., Mayer, V.W., Scheel, L. and Resnik, M.A. "Acetone, methyl ethyl ketone, ethyl acetate, acetonitrile and other polar aprotic solvents are stgrong inducers of aneuploidy in *Soccharomyces cerevisiae*." *Mutation Research*. 149: 339–351 (1985).

2.3 *Recommended with intent-to-designate chemicals*—2.3.a *Aldehydes.* The aldehyde group was nominated to the Committee by EPA for aquatic toxicity testing. The Committee's computerized substructure-based selection processes were used to identify individual chemicals in the aldehyde group. Two aldehydes, crotonaldehyde (CAS # 4170–30–3) and butyraldehyde (CAS # 123–72–8) were previously recommended in the 22nd and 23rd reports, respectively. Two aldehydes, isobutyraldehyde (CAS # 78–84–2) and propanal (CAS # 123–38–6) are among the 53 chemicals in the Organization for Economic Cooperation and Development's (OECD) Screening Information Data Sets (SIDS) phase one voluntary testing program. Submission of reliable data or data development through the voluntary OECD SIDS program could change the Committee's testing recommendations for these two aldehydes. Two of the recommended aldehydes, acetaldehyde (CAS 75–07–0) and propanal were listed among the chemicals in Title III of the 1990 amendments of the Clean Air Act that the Committee is continuing to review. The Committee's recommendation of aldehydes is consistent with its comprehensive approach to processing Member Agency chemical groups and identifying substructure-based chemical groups in need of testing. Other chemical-group based actions include groups such as brominated flame retardants recommended in the 25th report and alkyl phosphates and isocyanates recommended in the 26th report.

The TSCA Inventory names are used in the paragraph following Table 1. These names are used to facilitate comparison with the names in the TSCA section 8(a) and 8(d) rules that EPA will prepare for chemicals recommended in this Report. Since common names of aldehydes are used in this chapter, the CAS number is listed in parentheses following the first use of a common name to facilitate identification of chemicals listed in the paragraph following Table 1.

Summary of recommended studies. Testing recommendations for the aldehydes listed in the paragraph following Table 1 are summarized in Table 1.

Physical and Chemical Information

The physical and chemical properties of the very large volume aldehydes listed in the paragraph following Table 1 are well described in the literature. The Committee, however, was unable to identify the physical and chemicals properties of environmental and health significance for all members of this group.

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release.* The Committee believes that the aldehydes listed in the paragraph following Table 1 are commercially available, and that many are produced in substantial quantities. For example, acetaldehyde, isobutyraldehyde, and propanal have current domestic production capacities exceeding 300 million pounds (Ref. 22, SRI, 1990). Actual production volumes of the other aldehydes are CBI.

Aldehydes are used primarily as synthetic intermediates, yet aldehydes are also used in significant quantities in applications that are expected to result in both human and environmental exposure. Aldehydes are used in the production of alcohols, carboxylic acids, agricultural chemicals, pharmaceuticals, disinfectants, dyes, detergents, food additives, catalysts for crosslinking polymers, and fragrance chemicals (Ref. 5, Falbe et al., 1985; Ref. 21, Sherman, 1978). Acetaldehyde, propanal, and acrolein (CAS 107–02–8) have particular importance in commercial applications.

Many members of the aldehydes listed in the paragraph following Table 1 are used in fragrances and flavors. For example, α-pentylcinnamaldehyde (CAS 122–40–7) is a popular perfume in soaps, the C_4-C_{12} saturated alkyl aldehydes are used as fragrances and toning agents (Ref. 5, Falbe et al., 1985), and 4-methylphenylacetaldehyde (CAS 99–72–9), vanillin (CAS 121–33–5), and piperonal (CAS 120–57–0) are used in flavors (Ref. 5, Falbe et al., 1985; Ref. 19, Sax and Lewis, 1987). Piperonal is used in suntan and mosquito repellents and citronellal (CAS 106–23–0) is used in insect repellents (Ref. 19, Sax and Lewis, 1987). The Committee, therefore, is concerned with the potential for release and exposure resulting from the high production volumes and numerous uses of the various members of this group.

B. *Evidence for exposure—Human exposure.* There is an extensive data base relating aldehydes to human exposure. For example, acetaldehyde, isobutyraldehyde, propanal, furfural (CAS 98–01–1), and benzaldehyde have been found in U.S. drinking water supplies (Ref. 2, Coleman et al., 1976; Ref. 9, Keith et al., 1976; Ref. 11, Krasner et al, 1989; Ref. 10, Kool et al., 1982; Ref. 12, Lucas, 1984). Benzaldehyde, nonanal, and dodecanal have been found in breath, personal air, or tap water samples (Ref. 26, Wallace et al., 1984). Acetaldehyde, isobutyraldehyde, butyraldehyde, methylbutyraldehyde (CAS 590–86–3), valeraldehyde (CAS 110–62–3), furfural, heptanal, benzaldehyde, octanal, decanal, undecanal, and dodecanal have been identified in samples of human mothers' milk (Ref. 16, Pellizzari et al., 1982).

The NOES conducted during 1981–83 by NIOSH reported that 14,054 workers were potentially exposed to acetaldehyde; 28 to trichloroacetaldehyde (CAS 75–87–6); 4113 to isobutyraldehyde; 22,173 to 4-(1,1–dimethylethyl)-α-methyl-benzenepropanal (CAS 80–54–6); 2,187 to 1,3,3-trimethyl-2-(formylmethylene)indoline (CAS 84–83–3); 4,598 to salicylaldehyde (CAS 90–02–8); 34 to 2,5-dimethoxybenzaldehyde (CAS 93-02–7); 1,557 to α-methylbenzeneacetaldehyde (93–53–8); 134,158 to furfural; 17,271 to 4-(dimethylamino)benzaldehyde (CAS 100–10–7); 30,517 to benzaldehyde; 23,972 to 2-(phenylmethylene)-octanal (CAS 101–86–0); 44,721 to α-methyl-4-(1-methylethyl)benzenepropanal (CAS 103–95–7); 62,450 to 3-phenyl-2-propenal (CAS 104–55–2); 12,494 to *p*-tolualdehyde (CAS 104–87–0); 6,573 to *p*-chlorobenzaldehyde (CAS 104–88–1); 2,162 to citronellal; 1,300 to acrolein; 42,978 to ethanedial; 10,938 to 7-hydroxy-3,7-dimethyloctanal (CAS 107–75–5); 1,863 to 2-methylundecanal (CAS 110–41–8); 1,557 to pentanal; 350,626 to pentanedial; 21,760 to heptanal; 20,732 to decanal; 1,557 to undecanal; 1,650 to 10-undecenal; 7,056 to dodecanal; 72 to veratraldehyde (CAS 120–14–9); 1,450 to 4-(diethylamino)benzaldehyde (CAS 120–21–8); 15,846 to piperonal; 18,034 to 3-ethoxy-4-hydroxybenzaldehyde (CAS 121–32–4); 65,750 to vanillin; 14,182 to 2-(phenylmethylene)heptanal (CAS 122–40–7); 868 to phenylacetaldehyde (CAS 122–78–1); 43,899 to *p*-anisaldehyde (CAS 123–11–5); 2,087 to propanal; 12,959 to octanal; 7,149 to nonanal; 3,433 to hexahydrodibenzofurancarboxaldehyde (CAS 126–15–8); 5,331 to 2-nitrobenzaldehyde (CAS 552–89–6); 1,557 to α-pentylcinnamaldehyde; and 28 to methylbenzaldehyde (CAS 1334–78–7) (Ref. 17, NIOSH, 1989).

Environmental Exposure. According to the TRI, 9,468,569 pounds of acetaldehyde were released to the environment in 1988 (Ref. 24, TRI, 1990). Corresponding releases for other members of the aldehydes group listed in TRI are as follows: propanal: 1,048,296 pounds; isobutyraldehyde: 791,996 pounds and acrolein: 103,068 pounds (Ref. 24, TRI, 1990). A compilation of published and unpublished data on the atmospheric concentration of volatile organic compounds determined between 1970 to 1987 found that acetaldehyde, benzaldehyde, 2-propenal, propanal, and methylbenzaldehyde have been detected in remote, rural, suburban, urban, source dominated, indoor, or workplace air samples (Ref. 20, Shah and Heyerdahl, 1988).

Members of the aldehyde group have been detected in various environmental samples. For example, acetaldehyde, ethanedial, acrolein, propanal, benzaldehyde, and valeraldehyde have been detected in rain and/or fog samples (Ref. 7, Grosjean and Wright, 1983; Ref. 13, Mazurek and Simoneit, 1986; Ref. 23, Steinberg and Kaplan, 1984). Isobutyraldehyde, furfural, and benzaldehyde were detected in surface water samples obtained from 204 sites in the United States near heavily industrialized areas (Ref. 4, Ewing et al., 1977). Isobutyraldehyde and propanal were listed as frequently detected organics in the U.S. National Organics Reconnaissance Survey of surface waters (Ref. 6, Fielding and Packham, 1977). Acetaldehyde, propanal, ethanedial, heptanal, octanal, nonanal, decanal, undecanal, and dodecanal have been detected in seawater samples (Ref. 8, Gschwend et al., 1982; Ref. 15, Mopper and Stahovic, 1986); although acetaldehyde, propanal, and ethanedial may arise from natural as well as industrial sources (Ref. 15, Mopper and Stahovic, 1986). Isobutyraldehyde has been detected in the Delaware River (Ref. 3, DeWalle and Chian, 1978), and benzaldehyde has been detected in samples from freshwater lakes (Ref. 14, McFall et al., 1985). Benzaldehyde and 4-(dimethylamino)benzaldehyde have been detected in soil samples taken near the Buffalo River (Ref. 16; Nelson and Hites, 1980).

I. Chemical Fate Information

Chemical fate testing for the aldehydes is not recommended at this time.

II. Health Effects Information

Health effects testing for the aldehydes is not recommended at this time.

III. Ecological Effects Information

Structure-activity relationships (SAR) are frequently used to predict the toxic potential of untested chemicals when assessing their potential for adverse ecological effects (Ref. 1, Auer et al. 1990). The Committee previously used SAR to identify the toxic potential of 2,6-di-*tert*-butylphenol in the 17th report. SARs used as part of the Committee's computerized, substructure-based chemical selection processes suggested that aldehydes could be toxic to birds, fish and mammals (Ref. 25, Walker and Brink, 1989). SARs have suggested that aldehydes could have excess toxicity (Ref. 1, Auer et al. 1990). Chemicals that could have excess toxicity are those that could be more toxic than would be predicted for neutral organics based on a narcotic mode of action. The Committee is concerned that SARs for aldehydes are only available to predict acute toxicity to fish. The Committee recommends ecological effects testing because there are potentially substantial environmental releases and because there are insufficient data to reasonably determine or predict the ecological effects of aldehydes that are submitted to the EPA as new chemicals.

References

(1) Auer, C.M., Nabholz, J.V., and Baetcke, K.P. "Mode of action and the assessment of chemical hazards in the presence of limited data: Use of structure-activity relationships (SAR) under TSCA, Section 5." *Environmental Health Perspectives* 87:183–197 (1990).

(2) Coleman, W.E., Lingg, R.D., Melton, R.G. and Kopfler, F.C. "The occurrence of volatile organics in five drinking water supplies using gas chromatography/mass spectrometry." In: *Analysis and Identification of Organic Compounds in Water*. L. Keith, Ed. Ann Arbor Science, Ann Arbor, MI. 305–327 (1976).

(3) DeWalle, F.B. and Chian, E.S.K. "Presence of trace organics in the Delaware River and their discharge by municipal and industrial sources." *Proceedings of the Industrial Waste Conference*. 32:908–919 (1978).

(4) Ewing, B.B., Chian, E.S.K., Cook, J.C., Evans, C.A., Hopke, P.K. and Perkins, E.G. "Monitoring to detect previously unrecognized pollutants in surface waters." U.S. Environmental Protection Agency, Washington, D.C. EPA–560/677–015 (1977).

(5) Falbe, J., Henkel, K.G., Dusseldorf, P.L. and Weber, Jurgen. "Aldehydes, aliphatic and araliphatic." In: *Ullmann's Encyclopedia of Industrial Chemistry*, 5th Edition. W. Gerhartz, Y.S. Yamamoto, Eds. VCH Publishers, Deerfield Beach, FL. A1:321–352 (1985).

(6) Fielding, M. and Packham, R.F. "Organic compounds in drinking water and public health." *Journal of Institutional Water and Engineering Science*. 31:353–375 (1977).

(7) Grosjean, D. and Wright, B. "Carbonyls in urban fog, ice fog, cloudwater and rainwater." *Atmospheric Environment*. 17:2093–2096 (1983).

(8) Gschwend, P.M., Zafiriou, O.C., Mantoura, R.F.C., Schwarzenbach, R.P. and Gagosian, R.B. "Volatile organic compounds at a coastal site. 1. Seasonal variations." *Environmental Science and Technology*. 16:31–38 (1982).

(9) Keith, L.H., Garrison, A.W., Allen, F.R., Carter, M.H., Floyd, T. L., Pope, J.D. and Thruston, A.D. "Identification of organic compounds in drinking water from thirteen U.S. cities." In: *Identification and Analysis of Organic Pollutants in Water*. L.H. Keith, Ed. Ann Arbor Press, Ann Arbor, MI. 329–373 (1976).

(10) Kool, H.J., Van Kreijl, C.F. and Zoetman, B.C.J. "Toxicology assessment of organic compounds in drinking water." *Critical Reviews in Environmental Control*. 12:307–357 (1982).

(11) Krasner, S.W., McGuire, M.J., Jacangelo, J.G., Patania, N.L., Reagan, K.M. and Aieta, E.M. "The occurrence of disinfection byproducts in U.S. drinking water." *Journal of the American Water Works Association*. 81:41–53 (1989).

(12) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." Health Effects Research Lab, Columbus, OH. EPA–600/184–020A. 1:133–162 (1984).

(13) Mazurek, M.A. and Simoneit, B.R.T. "Organic components in bulk and wet-only precipitation." *CRC Critical Reviews of Environmental Control*. CRC Press, Inc. Boca Rotan, FL. (1986).

(14) McFall, J.A., Antoine, S.R. and Deleon, I.R. "Organics in the water column of Lake Pontchartrain." *Chemosphere*. 14:1253–1265 (1985).

(15) Mopper,K and Stahovic, W.L. "Sources and sinks of low molecular weight organic carbonyl compounds in seawater." *Marine Chemistry*. 19:305–323 (1986).

(16) Nelson, C.R. and Hites, R.A. "Aromatic amines in and near the Buffalo River." *Environmental Science and Technology*. 14:11471149 (1980).

(17) NIOSH. Department of National Industrial and Occupational Safety and Health, National Occupational Exposure Survey (NOES). (1989).

(18) Pellizzari, E.D., Hartwell, T.D., Harris, B.S.H., Waddell, R.D., Whitaker, D.A. and Erickson, M.D. "Purgeable organic compounds in mother's milk." *Bulletin of Environmental Contamination and Toxicology*. 28:322–328 (1982).

(19) Sax N.I. and Lewis R.J.S.R. "Hawley's Condensed Chemical Dictionary, 11th ed." Van Nostrand Reinhold Co., New York, NY. pp. 922 and 1217 (1987).

(20) Shah, J.J. and Heyerdahl, E.K. "National ambient volatile organic compounds (VOCs) database update". U.S. Environmental Protection Agency, Washington, DC. EPA/600/388/010. pp. 44–73 (1988).

(21) Sherman, P.D. "Butyraldehyde." In: *Kirk-Othmer Encyclopedia of Chemical Technology*, Third Edition. John Wiley and Sons, New York, NY. 4:790–798 (1978).

(22) SRI International. "Directory of Chemical Producers." SRI International, Menlo Park, CA. (1990).

(23) Steinberg, S. and Kaplan, I.R. "The determination of low molecular weight aldehydes in rain, fog, and mist by reversed phase liquid chromatography of the 2,4-

dinitrophenylhydrazone derivatives." *International Journal of Environmental Analytical Chemistry.* 18:723–728 (1984).

(24) TRI. Computer printout of the Toxics Release Inventory. (1990).

(25) Walker, J.D., and Brink, R.H. "New cost-effective, computerized approaches to selecting chemicals for priority testing consideration." Aquatic Toxicology and Environmental Fate. G.W. Suter II and M.A. Lewis, eds. American Society for Testing and Materials, Philadelphia, PA. ASTM STP 1007. 11:507–538 (1989).

(26) Wallace, L.A., Pellizzari, E., Hartwell, T., Rosenzweig, M., Erickson, M., Sparacino, C. and Zelon, H. "Personal exposure to volatile organic compounds. I. Direct measurements in breathing-zone air, drinking water, food, and exhaled breath." *Environmental Research.* 35:293–319 (1984).

2.4 *Recommended chemicals*—2.4.a *IRIS Chemicals—Summary of recommended studies.* Recommended studies are summarized in Table 1.

2,4-Dinitrophenol

Physical and Chemical Information

CAS Number: 51-28-5
Synonyms and Trade Names: 1-hydroxy-2,4-dinitrobenzene (or 2,4-DNP)
Empirical Formula: $C_6H_4N_2O_5$
Molecular Weight: 184
Physical State at 25° C: Solid
Description of Chemical: Light yellow crystals (Ref. 62, Windholz et al., 1983)
Melting Point: 113° C (Ref. 62, Windholz et al., 1983)
Boiling Point: Sublimes (Ref. 34, Lide, 1990)
Vapor Pressure: 5.1×10^{-3} mm Hg @ 20° C (Ref. 47, Schwarzenbach et al., 1988)
Specific Gravity: 1.683 (Ref. 34, Lide, 1990)
Log Octanol/Water Partition Coefficient: 1.54 (Ref. 25, Hansch and Leo, 1981)
Water Solubility at 20° C: 2,787 mg/L (Ref. 47, Schwarzenbach et al., 1988)
Log K_{oc}: 1.75 (Ref. 36, Lyman et al., 1982)
Henry's Constant: 4.43×10^{-7} atm m^3 $mole^{-1}$ (Ref. 36, Lyman et al., 1982)
pK_a: 4.09 (Ref. 23, Gordon and Ford, 1972)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* The production volume of 2,4-dinitrophenol is CBI, but current production is substantial. 2,4-Dinitrophenol is used in the synthesis of dyes, picric acid, picaramic acid, wood preservatives, diaminophenol dihydrochloride (a photographic developer), explosives, insecticides, and as a pH indicator (Ref. 46, Sax and Lewis, 1987; Ref. 62, Windholz et al., 1983). 2,4-Dinitrophenol may also be formed in the atmosphere by the reaction of nitrate radicals with phenol or other aromatic compounds.

B. *Evidence for exposure—Human exposure.* Few data were located. ATSDR believes that 2,4-dinitrophenol may have been present in eight superfund sites. Eckel et al. (Ref. 16, 1986) reported an average concentration of 1,312 + 2,519 ppm 2,4-dinitrophenol for four hazardous waste dumpsite samples. The substantial production volume and uses in a variety of applications suggest significant occupational exposure potential.

Environmental exposure. 2,4-Dinitrophenol was detected in 21 samples obtained from 8 industries and POTWs at a maximum concentration of 10.2 ppm (Ref. 49, Shackelford et al., 1983). The STORET database indicates that 2,4-dinitrophenol was found in 2 percent of industrial effluent samples monitored between 1980 and 1983, and 0.4 percent of the ambient water samples (Ref. 52, Staples et al., 1985). According to TRI, the total release of 2,4-dinitrophenol to the air in 1987 was 32,600 lbs, while 86,500 lbs and 750 lbs were released to water and land, respectively (Ref. 55, TRI, 1990). For 1988, TRI indicates that 20,065 lbs were released to air, 98,692 lbs were released to water, and 257 lbs were released to land (Ref. 55, TRI, 1990).

I. Chemical Fate Information

2,4-Dinitrophenol is expected to rapidly degrade in the atmosphere through oxidative reactions with photochemically produced hydroxyl radicals and through the night-time reaction with nitrate radicals (Ref. 3, Atkinson 1987, Ref. 4, Atkinson et al., 1984, Ref. 5, Atkinson et al., 1987). Limited data are available on the fate of 2,4-dinitrophenol in water. Based on the Henry's Law constant, volatilization is not expected to be a significant process (Ref. 36, Lyman et al., 1982). Screening studies suggest that 2,4-dinitrophenol degrades fast under aerobic conditions after acclimation (Ref. 7, BIODEG 1990); however, data are limited. Under anaerobic conditions in flooded soils, loss is rapid and appears to be via reduction to the corresponding amine (Ref. 7, BIODEG, 1990; Ref. 29, Khoping and Wiegel, 1987). It is not clear, however, whether biodegradation or abiotic degradation is occurring or whether degradation proceeds beyond loss of the parent compound. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 2,4-dinitrophenol and because there are potentially substantial environmental releases.

II. Health Effects Information

Pharmacokinetic studies for 2,4-dinitrophenol included an intraperitoneal study in rabbits and ducklings that indicated that uptake from the peritoneal cavity was very rapid (peak serum levels were obtained in rabbits within 5 minutes of treatment) (Ref. 20, Gehring and Buerge, 1969). Pharmacokinetic studies also included *in vitro* (Ref. 42, Parker, 1962; Ref. 17, Eiseman et al., 1974) and *in vivo* (Ref. 43, Perkins, 1919; Ref. 61, Williams, 1959; Ref. 48, Senczuk et al., 1971) metabolism studies that indicated that reduction and conjugation are the major biotransformation pathways.

A review of the therapeutic use of 2,4-dinitrophenol to correct obesity in humans reported over 100 cases of cataract formation at the lower range of the recommended therapeutic dose, 2 mg per kg per day (Ref. 26, Horner, 1942). The study did not identify a NOAEL for this effect. A 6-month study in male rats fed diets containing 0.01, 0.02, 0.05 or 0.2 percent 2,4-dinitrophenol identified a threshold for weight loss in rats, but cataracts were not reported even at doses sufficient to cause severe emaciation or death (Ref. 51, Spencer et al., 1948).

Data regarding reproductive and developmental effects were limited. Female rats treated by gavage twice daily with 20 mg/kg, from 8 days before mating through lactation, delivered more stillborn per litter and more litters with higher neonatal mortality than controls (Ref. 63, Wulff et al., 1935). Pregnant mice treated by gavage (25.5 or 38.3 mg/kg) or intraperitoneal injection (7.7 or 13.6 mg/kg) during a portion of gestation were hyperexcitable and hyperthermic; embryotoxicity (not specified) was also observed (Ref. 21, Gibson, 1973).

2,4-Dinitrophenol induced mutations in *E. coli* (Ref. 15, Demerec et al., 1951) but not in *Salmonella* (Ref. 14, Deflora, 1981) and produced chromatid breaks in bone marrow cells of mice treated by intraperitoneal injection. Oncogenicity data were limited to dermal studies in which 2,4-dinitrophenol was not a complete carcinogen (Ref. 51, Spencer et al., 1948) or a tumor promoter (Ref. 8, Boutwell and Bosch, 1959; Ref. 53, Stenback and Garcia, 1975).

NIOSH supported the EPA nomination and recommended dermal absorption testing. The Committee recommends health effects testing because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 2,4-dinitrophenol.

III. Ecological Effects Information

The toxicity of 2,4-dinitrophenol has been tested in five species of algae (Ref. 27, Huang and Gloyna, 1967; Ref. 13, Dedonder and Van Sumere, 1971; Ref. 57, U.S. EPA, 1978; Ref. 10, Bringmann and Kuhn, 1978; Ref. 2, AQUIRE, 1990) and in duckweed (Ref. 50, Simon and Blackman, 1953; Ref. 2, AQUIRE, 1990). Acute toxicity has been tested in invertebrates (Ref. 6, Bernstein, 1955; Ref. 30, Kojima, 1960; Ref. 31, Kopperman et al., 1974; Ref. 9, Bringmann and Kuhn, 1977; Ref. 57, U.S. EPA, 1978; Ref. 2, AQUIRE, 1990), fish (Ref. 44, Phipps et al., n.d.; Ref. 64, Zitko et al., 1976; Ref. 57, U.S. EPA, 1978; Ref. 2, AQUIRE, 1990) and bullfrogs (Ref. 33, Lewis and Frieden, 1959). An acute oral toxicity test in birds has been reported (Ref. 45, RTECS, 1990). The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 2,4-dinitrophenol and because there are potentially substantial environmental releases.

3,4-Dimethylphenol

Physical and Chemical Information

CAS Number: 95-65-8
Synonyms and Trade Names: 3,4-Xylenol
Empirical Formula: $C_8H_{10}O$
Molecular Weight: 122.2
Physical State at 25° C: Solid
Description of Chemical: White crystalline solid (Ref. 34, Lide, 1990)
Melting Point: 67° C (Ref. 34, Lide, 1990)
Boiling Point: 225 (Ref. 34, Lide, 1990)
Vapor Pressure: 0.075 mm Hg @ 20° C (Ref. 60, Weber et al., 1981)
Specific Gravity: 0.9830 (Ref. 34, Lide, 1990)
Log Octanol/Water Partition Coefficient: 2.23 (Ref. 25, Hansch and Leo, 1981)
Water Solubility at 25° C: 50,000 mg/L (Ref. 18, Fiege and Bayer, 1967)
Log K_{oc}: 1.06 (Ref. 36, Lyman et al., 1982)
Henry's Constant: 7.56×10^{-7} atm m^3 $mole^{-1}$ (Ref. 36, Lyman et al., 1982)
pK_a: 8.42 (Ref. 39, Miller and Faust, 1973)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1977, between .21 to 2.1 million pounds of 3,4-dimethylphenol were produced in the United States (Ref. 56, TSCAPP, 1990). Information on current production volumes is CBI, but production is substantial. 3,4-Dimethylphenol, as a mixture with other xylenols, is used in disinfectants, solvents, pharmaceuticals, insecticides and fungicides, plasticizers, rubber chemicals, additives to lubricants and gasoline, and dyestuffs (Ref. 46, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 93 workers (56 females) were potentially exposed to trade name products containing 3,4-dimethylphenol (Ref. 41, NIOSH, 1990). 3,4-Dimethylphenol has been qualitatively identified in the drinking water supplies of Cincinnati, OH (Ref. 35, Lucas, 1984). The mean concentration of 3,4-dimethylphenol in the air of Portland, OR during 7 rain events in 1984 was 2.2 ppt, while the concentration of 3,4-dimethylphenol in the rain ranged from 54 to 190 ng/L (Ref. 32, Leuenberger et al., 1985). It was detected in groundwater samples from a wood preserving facility in Florida at a concentration of 2.4 mg/L, while the concentration of 3,4-dimethylphenol 330 m from the site was 0.85 mg/L (Ref. 22, Goerlitz et al., 1985). 3,4-Dimethylphenol also was detected in underground wells near a coal gasification site (Ref. 54, Stuermer et al., 1982).

Environmental exposure. 3,4-Dimethylphenol was detected in 10 samples obtained from 8 industries and POTWs at a maximum concentration of 3 ppm (Ref. 49, Shackelford et al., 1983). The concentration of 3,4-dimethylphenol in the raw effluent from a paper mill was 0.0457 mg/L (Ref. 28, Keith, 1976). It was detected in Los Angeles county effluent during 1980–81 at a concentration of 20 μg/L (Ref. 24, Gossett et al., 1983). 3,4-Dimethylphenol was also found in refinery effluent in Australia at 0.02 mg/L (Ref. 11, Cardwell et al., 1988). 3,4-Dimethylphenol was qualitatively detected in samples taken from the Saint Lawrence River (Ref. 59, Visser et al., 1977). It was also identified in the leachate of a sanitary landfill in Barcelona, Spain (Ref. 1, Albaiges et al., 1986).

I. Chemical Fate Information

Atmospheric degradation by photochemically produced hydroxyl radicals should be a rapid removal process for 3,4-dimethylphenol in sunlight (Ref. 3, Atkinson, 1987); degradation at night should be more rapid in urban areas through the reaction with nitrate radicals (Ref. 12, Carter, 1981). Also, rain washout is expected to be an effective method of atmospheric removal for 3,4-dimethylphenol (Ref. 32, Leuenberger et al., 1985). Limited data are available on the fate of 3,4-dimethylphenol in water. Volatilization from water is not expected to be a significant removal process based on the Henry's Law constant (Ref. 36, Lyman et al, 1982). In humic waters, reaction with alkyl peroxy radicals should occur (Ref. 38, Mill, 1982); however, no chemical specific data are available. Screening studies suggests that 3,4-dimethylphenol biodegrades fast under aerobic conditions without acclimation (Ref. 7, BIODEG, 1990); however, data are somewhat limited and no studies of the degradation of 3,4-dimethylphenol in environmental water samples are available. One grab sample study at high concentration (500 ppm) in soil suggests that 3,4-dimethylphenol biodegrades in soil; however, the data do not adequately predict the biodegradation of 3,4-dimethylphenol at low concentrations. Under anaerobic conditions, one screening study indicates that 3,4-dimethylphenol is not expected to biodegrade (Ref. 7, BIODEG, 1990). The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 3,4-dimethylphenol and because there are potentially substantial environmental releases.

II. Health Effects Information

Data related to the pharmacokinetics of 3,4-dimethylphenol were limited to a single study in male Wistar rats that reported recovery of 93.5 percent of the radioactivity in the urine within 24 hours of giving a single oral 35 mg/kg dose (Ref. 40, Miyamoto et al., 1969).

In two reports of an 8-month rat gavage study, histopathological changes in the liver, spleen and kidneys and changes in body weight and blood pressure were observed in 53 male rats treated with 1.4 or 14 mg per kg per day (Ref. 58, Veldre and Janes, 1979 and Ref. 37, Maazik, 1968). Increased relative liver and spleen weights, decreased body weight gain and marked atrophy and parenchymatous dystrophy of liver cells were observed in 10 male albino rats treated by gavage with 72.5 mg per kg per day for 10 weeks (Ref. 37, Maazik, 1968).

Data on the developmental toxicity or reproductive effects of 3,4-dimethylphenol were not located. Oncogenicity data were limited to a dermal study that identified 3,4-dimethylphenol as a complete carcinogen and a tumor promoter in a mouse skin assay (Ref. 8, Boutwell and Bosch, 1959). In the promotion study groups of 30 female Sutter mice were treated with an initial application of 75 μg dimethylbenzanthracene followed by 25 μL of 20 percent 3,4-dimethylphenol in benzene twice weekly for 15 weeks. The mice were sacrificed at 23 weeks. In the complete carcinogen study 25 μL of 10 percent 3,4-dimethylphenol was applied twice weekly for 20 weeks and the mice were sacrificed at 28 weeks. Mutagenicity testing of 3,4-dimethylphenol was limited to a single study in which the compound was negative with and without metabolic activation in the reverse mutation test in 4 strains of *Salmonella* (Ref. 19, Florin et al., 1980).

The Committee recommends health effects testing because there are

insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 3,4-dimethylphenol.

III. Ecological Effects Information

Some acute aquatic toxicity data are available for green algae, sea urchins, sand shrimp and fathead minnows (Ref. 2, AQUIRE, 1990). No algal EC_{50} data were available. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 3,4-dimethylphenol.

References

(1) Albalges, J., Casado, F., and Ventura, P. "Organic indicators of groundwater pollution by a sanitary landfill." *Water Resources*. 20(9): 1153–1159 (1986).

(2) AQUIRE. Aquatic Toxicity Information Retrieval Data Base. Duluth, MN: U.S. Environmental Protection Agency, Environmental Research Laboratory (1990).

(3) Atkinson, R. "A structure-activity relationship for the estimation of rate constants for gas-phase reactions of OH radicals with organic compounds." *International Journal of Chemical Kinetics*. 19: 799–828 (1987).

(4) Atkinson, R.A., Carter, W.P.L., Plum, C.N., Winer, A.M., and Pitts, J.N., Jr. "Kinetics of the gas-phase reactions of NO^3 radicals with a series of aromatics at 296 ± 2K." *International Journal of Chemical Kinetics*. 16: 887–898 (1984).

(5) Atkinson, R., Aschmann, S.M., and Winer, A.M. "Kinetics of the reactions of NO3 radicals with a series of aromatic compounds." *Environmental Science and Technology*. 21: 11231126 (1987).

(6) Bernstein, G.S. "Effect of 2,4dinitrophenol on sea urchin sperm." *Proceedings of the Society for Experimental Biology and Medicine* 09: 28 (1955).

(7) BIODEG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(8) Boutwell, R.K., and Bosch, D.K. "The tumor-promoting action of phenol and related compounds for mouse skin." *Cancer Research*. 19: 413–424 (1959).

(9) Bringmann, G., and Kuhn, R. "Limiting values for the damaging action of water pollutants or bacteria (Pseudomonas putida) and green algae (Scenedesmus quadricauda) in the cell multiplication inhibition test." *Zeitschrift fuer Wasser and Abwasser Forschung*. 10: 87–98 (1977).

(10) Bringmann, G., and Kuhn, R. "Testing of substances for their toxicicty threshold: Model organisms Microcystis (Diplocytis) and Scenedesmus quadricauda." *Mitteilungen - Internationale Vereiningung fuer Theoretische und Angewandte Limnologie*. 21: 275 (1976).

(11) Cardwell, T.J., et al. "Determination of alkyl phenols in refinery effluents by liquid chromatography using electrochemical detection." *International Journal of Environmental Analytical Chemistry*. 24: 23–36 (1986).

(12) Carter, W.P.L.; Winer, A.M.; Pitts, J.N.Jr. Major Atmospheric Sink for Phenol and the Cresols. Reaction with Nitrate Radical. *Environmental Science Technology* 15: 829–31. (1981).

(13) Dedender, A., and Van Sumere, C.F. "The Effect of phenolics and related compounds on the growth and the respiration of *Chlorella vulgaris*" *Zeutschrift fuer Pflanzenphysiologie*. 65(1): 7080 (1971).

(14) DeFlora, S. "Study of 106 organic and inorganic compounds in the *Salmonella*/microsome test." *Carcinogenesis* (London). 2(4): 283–298 (1981).

(15) Demerec, M., Bertani, G., and Flint, J. "A survey of chemicals for mutagenic action on *E. coli*" *American Naturalist*. 85: 119 (1951).

(16) Eckel, W.P., Treas, D.P., and Kovell, S.P. "Distribution and concentration of Proceedings, National Conference on Hazardous Wastes and Environmental Emergencies, Superfund, Hazardous Materials Control Research Institute, Silver Spring, MD. pp. 250–257 (1986).

(17) Eiseman, J.L., et al. "Kinetics of *in vitro* nitro reduction of 2,4-dinitrophenol by rat liver homogenates." *Toxicology and Applied Pharmacology*. 27: 140 (1974).

(18) Fiege, H. "Cresols and xylenols." In: *Ullmann's Encyclopedia of Industrial Chemistry*. 5th edition. A8: 25–59 (1987).

(19) Florin, I., Rutberg, L., Curvall, M., and Enzell, C.R. "Screening of tobacco smoke constituents for mutagenicity using the Ames test." *Toxicology*. 18: 219–232 (1980).

(20) Gehring, P.J., and Boergs, J.F. "The distribution of 2,4–dinitrophenol relative to its cataractogenic activity in ducklings and rabbits." *Toxicology and Applied Pharmacology*. 15: 574–592 (1969).

(21) Gibson, J.E. "Teratology studies in mice with 2-sec-butyl-4,6-dinitrophenol (dinoseb)." *Food and Cosmetics Toxicology*. 11: 31 (1973).

(22) Goerlitz, D.F., Troutman, D.E., Godsy, E.M., and Franks, B.J. "Migration of wood-preserving chemicals in contaminated groundwater in a sand aquifer at Pensacola, Florida." *Environmental Science and Technology*. 19(10): 955–961 (1985).

(23) Gordon, A.J., and Ford, R.A. The Chemists Companion. New York, NY: John Wiley and Sons. p. 61 (1972).

(24) Gossett, R.W., Brown, D.A., and Young, D.R. "Predicting the bioaccumulation of organic compounds in marine organisms using octanol/water partition coefficients." *Marine Pollution Bulletin*. 14(10): 387–392 (1983).

(25) Hansch, C., and Leo, A.J. Medchem Project. Issue Nos. 19, 20. Claremont, CA: Pomona College (1981).

(26) Horner, W.D. "Dinitrophenol and its relation to formation of cataract." *Archives of Ophthalmology*. 27: 1097 (1942).

(27) Huang, J., and Gloyna, E. "Effects of toxic organics on photosynthetic reoxygenation." Environmental Health Engineering Research Lab. PB 216–748. (1987).

(28) Keith, L.H. "Identification of organic compounds in subleached treated kraft paper mill wastewaters." *Environmental Science and Technology*. 10: 555–564 (1976).

(29) Khoping, G.W., and Wigel, J. "Influence of temperature on the anaerobic degradation of substituted phenols in freshwater lake sediments." *American Society for Microbiology, Abstracts of 87th Annual Meeting*. Atlanta, GA. (1987).

(30) Kojima, H.K. "The effect of DNP and NaN_3 on fertilised eggs of the sea urchin with special reference to the induction of the abnormal cleavage." *Embryologia*. 5: 71 (1960).

(31) Kopperman, H.L., et al. "Aqueous chlorination and ozonation studies. I. Structuretoxicicty correlations of phenolic compounds to Daphnia magna." *Chemico-Biological Interactions*. 9: 245 (1974).

(32) Lesenberger, C., Ligocki, M.P., and Pankow, J.F. "Trace organic compounds in rain. 4. Identities, concentraions, and scavenging mechanisms for phenols in urban air and rain." *Environmental Science and Technology*. 19: 10531058 (1985).

(33) Lewis, E.J.C., and Frieden, E. "Biochemistry of amphibian metamorphosis: Effect of triiodothyronine, thyroxin, and dinitrophenol on the respiration of the tadpole." *Endocrinology*. 65: 273 (1959).

(34) Lide, D.R. CRC Handbook of Chemistry and Physics. 71st edition. Boca Raton, FL: CRC Press. pp. 3–18, 3–27, 3–361, 3–382 (1990).

(35) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." EPA600/1–84–020C. Columbus, OH: Columbus Health Effects Research Labs. 3:50–54 (1984).

(36) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw–Hill. Chapters 4, 7, 15 (1982).

(37) Maazik, I.K. "Standards for dimethylphenol isomers in water bodies." Gigiena I Sanitaria. (*Hygiene and Sanitation*). 11: 2835 (1988).

(38) Mill, T. Hydrolysis and oxidation processes in the environment. Environmental and Toxicological Chemistry 1: 135–41. (1982).

(39) Miller, R.W., and Faust, S.D. "Sorption from aqueous solution by Organo-Clay. III. The effect of pH on sorption of various phenols." *Environmental Letters*. 4: 211–223 (1973).

(40) Miyamoto, J., Yamamoto, K., and Matsumoto, T. "Metabolism of 3,4-dimethylphenyl-*N*-methylcarbamate in white rats." *Agricultural and Biological Chemistry*. 33(7): 1060–1073 (1969).

(41) NIOSH (National Institute for Occupational Safety and Health). National Occupational Exposure Survey (NOES) (1990).

(42) Parker, V.H. "Enzymic reduction of 2,4–dinitrophenol by rat–tissue homogenates." *Biochemical Journal*. 51: 363 (1952).

(43) Perkins, R.G. "A study of the munitions intoxications in France." *Pubic Health Reports*. 34: 2335 (1919).

(44) Phippa, G.L., et al. "The acute toxicity of phenol and subetituted phenols to the fathead minnow." (manuscript) (n.d.).

(45) RTECS. Online database. (1990).

(46) Sax, N., and Lewis, R.J. Hawley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. pp. 910, 411, 421, 886–887, 1244 (1987).

(47) Schwarzenbach, R.P., et al. "Compound properties relevant for assessing the environmental partitioning of nitrophenols." *Environmental Science and Technology*. 22: 83–92 (1988).

(48) Senczuk, W., et al. "Excretion of 2,4dinitrophenol and 2-amino-4–nitrophenol." *Bromatologia i Chemia Toksykologiczna*. 6: 453460 (1971).

(49) Sheckelford, W.M., Cline, D.M., Fass, L., and Kurth, C. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography–mass spectrometry." *Analytica Chemica Acta*. 148: 1527 [supplemental data] (1983).

(50) Simon, E.W., and Blackman, G.E. "Studies in the principles of phytotoxicity. IV. The effects of the degree of nitration on the toxicicty of phenol and other substituted benzenes." *Journal of Experimental Botany*. 4: 235 (1953).

(51) Spencer, H.C., Rowe, V.K, Adams, E.M., and Irish, D.D. "Toxicological studies on laboratory animals of certain alkyl dinitrophenols used in agriculture." *Journal of Industrial Hygiene and Toxicology*. 30: 10–25 (1948).

(52) Staples, C., Weser, A., and Hoogheem, T. "Assessment of priority pollutant concentrations in the United States using STORET database." *Environmental Toxicology and Chemistry*. 4: 131–142 (1985).

(53) Steinback, F., and Garcia, H. "Studies on the modifying effect of dimethyl sulfoxide and other chemicals on experimental skin tumor induction." *Annals of the New York Academy of Sciences*. 243: 399 (1975).

(54) Stuermer, D.H., Ng, D.J., and Morris, C.J. "Organic contaminents in groundwater near an underground coal gassification site in northeastern Wyoming." *Environmental Science and Technology*. 16(9): 582–587 (1982).

(55) TRI (Toxics Release Inventory). Database retrieval 3/16/90. U.S. EPA. (1990).

(56) TSCAPP. Computer print–out of noncopfidential production data from TSCA inventory. Washington, DC: OTS, CID, U.S. EPA. Online 3/15/90 (1990).

(57) U.S. EPA. "In-depth studies on health and environmental impacts of selected water pollutants." U.S. Environmental Protection Agency. Contract No. 68–01–4646. (1978).

(58) Veldre, I.A., and Janes, H.J. "Toxicological studies of shale oils, some of their components and commercial products." *Environmental Health Perspectives*. 30: 141–148 (1979).

(59) Visser, S.A., Lamontagne, C., Zoulalian, V., and Tessier, A. "Bacteria active in the degradation of phenols in polluted waters of the St. Lawrence River." *Archives of Environmental Contamination and Toxicology*. 5(6): 655–669 (1977).

(60) Weber, R.C., Parker, P.A., and Bowser, M. Vapor Pressure Distribution of Selected Organic Chemicals. EPA–600/2–81–021. Cincinnati, OH: U.S. EPA. (1981).

(61) Williams, R.T. The metabolism and detoxication of drugs, toxic substances and other organic compounds. 2nd edition. New York, NY: John Wiley and Sons. (1959).

(62) Windholz, M. Budavari, S., Blumetti, R.F., and Otterbein, E.S., The Merck Index. 10th edition. Rahway, New Jersey: Merck Co., Inc.. pp. 19, 478–479, 585, 1063 (1983).

(63) Wulff, L.M.E., Enge, L.A., and Bravo, F. "Some effects of alpha-dinitrophenol on pregnancy in the white rat." *Proceedings of the Society for Experimental Biology and Medicine*. 32: 678 (1935).

(64) Zitko, V., et al. "Toxicity of alkyldinitrophenols to some aquatic organisms." *Bulletin of Environmental Contamination and Toxicology*. 16:508–515 (1976).

2.4.b *N*-Phenyl-1-napthylamine. *N*-phenyl-1-naphthylamine was nominated to the Committee by GSHA as an ongoing effort to identify chemicals for which Permissable Exposure Limits may be proposed.

Summary of recommended studies. Recommended studies are summarized in Table 1.

N-Phenyl-1-napthylamine

Physical and Chemical Information

CAS Number: 90–30–2
Synonyms and Trade Names: Vulkanox PAN
Empirical Formula: $C_{16}H_{13}N$
Molecular Weight: 219.28
Physical State at 25° C: Solid
Melting Point: 60–62° C (Ref. 1, Aldrich, 1988)
Boiling Point: 335° C (Ref. 16, Sax and Lewis, 1987)
Water Solubility @ 25° C: ≈10 mg/L (Ref. 4, Greenhouse, 1978)
Log Octanol/Water Partition Coefficient: 4.8 (Estimated, Ref. 11, Lyman et al., 1982)
Log Koc: 3.7 (Estimated, Ref. 11, Lyman et al., 1982)

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release.* *N*-Phenyl-1-naphthylamine is used as an antioxident in rubber, silicone oils, paraffinic oils for lubrication, anti-rust oils, paint, and plastics, and in the manufacture of dyes and other organic chemicals [Ref. 9, Kirk-Othmer, 1981, Ref. 12, Meyles et al., 1976, Ref. 10, Kirk-Othmer, 1981, Ref. 6, Kirk-Othmer, 1987, Ref. 18, Sax and Lewis, 1987, Ref. 9, Jarvholm and Lavesius, 1981, Ref. 18, Sikka et al., 1981). While actual production volumes are CBI, *N*-phenyl-1-naphthylamine is produced in substantial quantities.

B. *Evidence for exposure—Human exposure.* The NOES conducted during 1981–83 by NIOSH estimated that 98,478 workers (8,274 females) were potentially exposed to *N*-phenyl-1-naphthylamine, almost exclusively through trade name products (Ref. 13, NIOSH, 1990).

Environmental exposure. N-Phenyl-1-naphthylamine has been detected (but not quantified) in the wastewater of a chemical specialty plant as well as in the river water and sediment receiving the wastewater (Ref. 7, Jungclaus et al., 1978). In a wastewater survey conducted by the Effluent Guidelines Division of EPA, over 4,000 wastewater samples from industrial facilities and publicly owned treatment works were surveyed (Ref. 17, Shackelford et al., 1983). This survey found *N*-phenyl-1-naphthylamine in one sample from the non-ferrous metals industry at a concentration of 8.48 ppb.

I. Chemical Fate Information

N-phenyl-1-naphthylamine has been tested for biodegradation in a number of screening studies as well as in soil and freshwater grab samples (Ref. 15, Rosenberg, 1983, Ref. 18, Sikka et al., 1981). In screening studies using sewage sludge as the inoculum and *N*-phenyl-1-naphthylamine at 2 mg/L, the time to 50 percent disappearance was approximately 4.2 days. Autoclaved sewage showed less than 20 percent removal after 18 days. In lake water dosed with 2 mg/L *N*-phenyl-1-naphthylamine, no degradation was observed in the first 5 days, but approximately 30 percent disappearance was observed after 10 days. No further degradation was seen at day 18. In soil exposed to *N*-phenyl-1-naphthylamine at 1.54 mg/kg, 17 percent of *N*-phenyl-1-naphthylamine was mineralized to CO_2 after 11 days. Sterile samples of water and soil showed almost no degradation. When exposed to sunlight, distilled water solutions of *N*-phenyl-1-naphthylamine had a half-life of 5.7 days. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of *N*-phenyl-1-naphthylamine.

II. Health Effects Information

Pharmacokinetics studies in rats indicate that *N*-phenyl-1-naphthylamine is rapidly absorbed and distributed widely following gavage administration (Ref. 18, Sikka et al., 1981). The urine and the feces are the primary routes of excretion with 35 and 60 percent, respectively, of the dose eliminated by each route after 72 hours. *In vitro* metabolism with rat liver microsomes produced the mono- and dihydroxy derivatives as well as other metabolites (Ref. 18, Sikka et al., 1981).

Negative results have been reported in a reverse mutation assay in bacteria, a forward mutation assay in cultured mammalian cells, a dominant lethal assay in rodents, and unscheduled DNA synthesis in cultured cells (Ref. 2, Brusick and Matheson, 1977). NTP also reported negative results in bacterial reverse mutation assays and in a chromosomal aberration assay in cultured mammalian cells, but reported positive results in a sister chromatid

exchange assay in cultured cells (Ref. 14, NTP, 1990).

In an oncogenicity study, groups of 23 to 25 male mice were administered purified *N*-phenyl-1-naphthylamine by subcutaneous injection 3 times per week for 9 weeks (Ref. 19, Wang et al., 1984). The mice were observed after the administration of *N*-phenyl-1-naphthylamine; after the 10th month of observation a statistically significant higher incidence of total malignant tumors, lung carcinomas, and hemangiosarcomas was recorded. Technical grade *N*-phenyl-1-naphthylamine produced similar effects. Although the tumor incidence was increased, the response was not clearly dose related. In a second experiment, using a different strain of mice, unilateral nephrectomy appeared to enhance the development of renal hemangiosarcomas. In a study with insufficient detail to allow for the evaluation of the data, dogs that were orally administered *N*-phenyl-1-naphthylamine for 3.5 years had no observed increase in the incidence of bladder tumors (Ref. 3, Du Pont, 1945).

In Sweden, a cohort of 20 men and 78 women who were exposed to *N*-phenyl-1-naphthylamine in an anti-rust oil used for packing bearings were studied (Ref. 6, Jarvholm and Lavenius, 1981). The oil contained 50 percent white spirits, 16.5 percent each of mineral oil, lanolin, and zinc naphthenate, and 0.5 percent *N*-phenyl-1-naphthylamine, while the paper used as packing material for the bearings contained sodium nitrite. The authors note the potential for forming the nitrosamine of *N*-phenyl-1-naphthylamine. The workers were exposed any time between 1954 to 1957 and followed until 1976. When compared to national gender- and age-specific cancer rates, there was an increased rate of morbidity and mortality from cancer in women. There was no site specific increase in incidence of cancer, with tumors of the colon, breast, uterus, ovary, bladder, brain, and thyroid reported, along with a reticulosarcoma. This study provides inconclusive evidence that *N*-phenyl-1-naphthylamine is carcinogenic in humans, because of the small group size, the lack of increase in site-specific cancers, and confounders from exposure to multiple chemicals.

The Committee recommends health effects testing because there are insufficient data to reasonably determine or predict the health effects of *N*-phenyl-1-naphthylamine and because there are potentially substantial human exposures.

III. Ecological Effects Information

A 48-hour EC_{50} of 2.1 mg/L was reported for larval *Xenopus laevis* (South African clawed toad) (Ref. 5, Greenhouse, 1977). Concentrations of ≥ 5 mg/L caused 100 percent mortality in larval *Rana pipiens* (Leopard frog) after 48-hour's exposure (Ref. 4, Greenhouse, 1976). *N*-Phenyl-1-naphthylamine caused teratogenic effects in both *Xenopus laevis* and *Rana pipiens* (Ref. 5, Greenhouse, 1977, Ref. 4, Greenhouse, 1976). A 48-hour and 21-day static-renewal test in *Daphnia* yielded LC_{50} values of 0.68 mg/L and 0.06 mg/L, respectively (Ref. 18, Sikka et al., 1981). The no observed effect concentration was 0.13–0.36 and 0.02 mg/L for 48-hour and 21-day exposure, respectively, but reproductive effects were not examined. The 8-day LC_{50} values for bluegill and rainbow trout exposed to *N*-phenyl-1-naphthylamine under flow-through conditions were 0.48 and 0.30 mg/L, respectively. No observable effect concentrations under the same conditions were 0.24 and 0.11 mg/L for bluegill and rainbow trout, respectively. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of *N*-phenyl-1-naphthylamine.

References

(1) Aldrich. Catalog Handbook of Fine Chemicals. p. 1206 (1988).

(2) Brusik, D., and Matheson, D. "Mutagenic evaluation of 1,1-dimethylhydrazine, methylhydrazine and *N*-phenyl-alpha-naphthylamine." In: Proceedings of the 7th Annual Conference on Environmental Toxicology. 13, 14 and 15 October 1976. Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH. NTIS No. AD/A-041 973. pp. 106–129 (1977).

(3) Du Pont. "Aniline tumors of the bladder. Studies of urinary bladder tumors. Progress Report - February, 1945." TSCA Submission Section 8(d) by E.I. Du Pont De Nemours and Co. U.S. EPA/OPTS Public Files. Fiche No. OTS0215023.

(4) Greenhouse, G. "The evaluation of toxic effects of chemicals in fresh water by using frog embryos and larvae." *Environmental Pollution* 11:303–315 (1976).

(5) Greenhouse, G.A. "Toxicity of *N*-phenyl-α-naphthylamine and hydrazine to *Xenopus laevis* embryos and larvae." *Bulletin of Environmental Contamination and Toxicology* 18:503–511 (1977).

(6) Jarvholm, B., and Lavenius, B. "A cohort study on cancer among workers exposed to an antirust oil." *Scand. J. Work Environ. Health*. 7: 179–184 (1981).

(7) Jungclaus, G.A., Lopez-Avila, V., and Hites, R.A. "Organic compounds in an industrial wastewater: A case study of their environmental impact." *Environmental Science and Technology*. 12: 88–96 (1978).

(8) Kirk-Othmer. *Encyclopedia of Chemical Technology*. Volume 12. New York, NY: John Wiley & Sons. pp. 574–575 (1967).

(9) Kirk-Othmer. *Encyclopedia of Chemical Technology*. Volume 15. New York, NY: John Wiley & Sons. pp. 726–727 (1981).

(10) Kirk-Othmer. *Encyclopedia of Chemical Technology*. Volume 20. New York, NY: John Wiley & Sons. pp. 936–939 (1981).

(11) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw-Hill. Chapters 1 and 4 (1982).

(12) Meylan, W.M., Howard, P.H., and Sack, M. "Chemical market input/output analysis of selected chemical substances to assess sources of environmental contamination: Task I. Naphthylamines." Washington, DC: Office of Toxic Substances, U.S. EPA. (1976).

(13) NIOSH. National Occupational Exposure Survey (NOES). National Institute for Occupational Safety and Health. p. 302 (1990).

(14) NTP (National Toxicology Program). Results report 1–3–90. p. 108 (1990).

(15) Rosenberg, A. "Microbial metabolism of *N*-phenyl-1-naphthylamine in soil, soil suspensions, and aquatic ecosystems." *Chemosphere*. 12:1517–1523 (1983).

(16) Sax, N.I., and Lewis, R.J. Hawley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. p. 905 (1987).

(17) Shackelford, W.M., Cline, D.M., Faas, L., and Kurth, G. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography-mass spectrometry". *Analytica Chimica Acta* .146:15-27 (1983).

(18) Sikka, H.C., Pack, E.J., Sugatt, R.H., Banerjee, S., Rosenberg, A., and Simson, B.W. "Environmental fate and effects of *N*-phenyl-1-naphthylamine and its disposition and metabolism in the rat." Springfield, VA: National Technical Information Service AD A1 06780 (1981).

(19) Wang, H., Wang, D., and Dzeng, R. "Carcinogenicity of *N*-phenyl-1-naphthylamine and *N*-phenyl-2-naphthylamine in mice." *Cancer Research*. 44:3098–3100 (1984).

2.4.c. Sulfones—summary of recommended Studies. Testing recommendations for the sulfones listed in the paragraph following Table 1 are summarized in Table 1.

Sulfones

Physical and Chemical Information

Except for the melting point of bis(4-chlorophenyl)sulfone (146° C; Ref. 1, Aldrich, 1988), the log octanol/water partition coefficient (0.97; Ref. 5, Hansch and Leo, 1981) and pK_a (2.41; Ref. 10, Perrin, 1965) of 4,4'-diaminodiphenyl sulfone, the log octanol/water partition coefficient (-0.77; Ref. 5, Hansch and Leo, 1981), melting point (27° C; Ref. 1, Aldrich, 1988), boiling point (285° C; Ref. 1, Aldrich, 1988), vapor pressure (7.70×10^{-3} mm Hg; Ref. 3, Daubert and Danner, 1989) and water solubility (3.75×10^{5} mg/L; Ref. 2, Brown et al., 1975) of sulfolane, melting point (65–66° C; Ref. 1, Aldrich, 1988) of sulfolene, and melting point of biphenol *S* (248° C; Ref. 1, Aldrich, 1988), the Committee has no information on measured physical/chemical properties of the sulfones listed in the paragraph following Table 1.

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release.* The Committee believes that the sulfones listed in the paragraph following Table 1 are commercially available, and that many are produced in substantial quantities; actual volumes are CBI. In 1977, many of the chemicals were produced in quantities of 0.1 to 20 million lbs per year (Ref. 11, TSCAPP, 1990).

Sulfolane is used primarily as a solvent for the extraction of benzene, toluene, and xylene from aliphatic hydrocarbon mixtures. It is also used for the removal of acidic gases from natural gas and other gas streams, and it has extensive application as a specialty solvent (Ref. 8, MacGregor and Orle, 1983). Sulfolene is used as a specialty solvent in petroleum refining and in the manufacture of sulfolane (Ref. 8, MacGregor and Orle, 1983). The unique thermal stability and properties of the sulfones are utilized in the manufacture of specialty products. For example, bis(4-chlorophenyl)sulfone is used in the manufacture of engineering thermoplastics (Ref. 8, MacGregor and Orle, 1983).

B. *Evidence for exposure-Human exposure.* Sulfolane, diphenylsulfone, dimethylsulfone, and bis(4-chlorophenyl)sulfone have been detected (no quantitative data available) in U.S. drinking water supplies (Ref. 7, Lucas, 1984; Ref. 8, Keal et al., 1982). The NOES conducted during 1981–83 by NIOSH estimates that 6,461 workers were potentially exposed to sulfolane and 1,510 were potentially exposed to sulfolene (Ref. 9, NIOSH, 1989).

1. Chemical Fate Information

Except for data on the slow biodegradation of bis(4-chlorophenyl)sulfone in soil (Ref. 4, Guenzi and Beard, 1981), the Committee has no experimental chemical fate information on the sulfones listed in the paragraph following Table 1. Chemical fate testing is recommended because data are insufficient to reasonably determine or predict the physical/chemical properties of sulfones.

II. Health Effects Information

No health effects testing is recommended at this time. NTP's Board of Scientific Counselor's decision to defer a testing recommendation for bis(4-chlorophenyl)sulfone (referred to as *p,p'*-dichlorodiphenylsulfone by NTP) is consistent with the Committee's efforts to facilitate coordination of testing required or sponsored by U.S. Government organizations. The decision is also consistent with the Committee's procedures of reviewing production and exposure data (submitted under TSCA section 8(a)) as well as unpublished health and safety studies (submitted under TSCA section 8(d)) that are recommended for testing before designating subsequent health effects, chemical fate or ecological effects testing. These TSCA section 8 data and studies are automatically required for any ITC recommendation.

III. Ecological Effects Information

No ecological effects testing is recommended at this time.

References

(1) Aldrich. *Catalog handbook of fine chemicals*. Milwaukee, WI: Aldrich Chemical Company. pp. 98, 368, 1214 and 1410 (1988).

(2) Brown, S.L., Chan, P.Y., Jones, J.L., Liu, D.H., McCaleb, K.E., Mill, T., Sapios, K.N. and Schendel, D.E. "Research program on hazard priority ranking of manufactured chemicals." Stanford Research Institute, Menlo Park, CA. NTIS PB-263-168 (1975).

(3) Daubert, T.E. and Danner, R.P. "Physical and thermodynamic properties of pure chemicals: data compilation." Design Institute for Physical Property Data, American Institute of Chemical Engineers. New York, NY. Hemisphere Publishing Corp. Vol 4 (1989).

(4) Guenzi, W.D. and Beard, W.E. "Degradation of *p*-chlorophenyl methyl sulfide, -sulfoxide, and -sulfone in soil." *Soil Science*. 131(3):135–139 (1981).

(5) Hansch, C. and Leo, A.J. "Medchem project: Issue No. 19. Pomona College, Claremont, CA. (1981).

(6) Keal, H.J., Van Kreijl, C.F. and Zoetman, B.C.J. "Toxicology assessment of organic compounds in drinking water." *Critical Reviews in Environmental Control*. 12:307–353 (1982).

(7) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." Health Effects Research Lab, Columbus, OH. EPA-600/1-84-020A&C. 1:123–162, 3:50–54 (1984).

(8) MacGregor, W.S. and Orle, J.V. "Sulfoxides." In: Kirk-Othmer Encyclopedia of Chemical Technology, 3rd. ed. A Stannden, Ed. John Wiley and Sons, New York, NY. 22:73–74 (1983).

(9) NIOSH. Department of National Industrial and Occupational Safety and Health, National Occupational Exposure Survey (NOES). p. 302 (1989).

(10) Perrin, D.D. "Dissociation constants of organic bases in aqueous solution." IUPAC Chemical Data Series, Butterworth, London, England. (1965).

(11) TSCAPP. Computer Print-out of non-confidential production data from the TSCA Inventory, CIS, CID, U.S. Environmental Protection Agency, Washington, DC. (1990).

2.4.d. Substantially produced chemicals in need of subchronic tests—Introduction. On May 17, 1988, a list of 106 substantially produced, commercial chemicals were discussed by the Committee because they were coded for exposure and adverse effects potentials in the ITC's computerized, substructure-based chemical selection system. This computerized system allows the Committee to cost-effectively screen chemicals by identifying chemical groups with exposure potentials or with adverse effects potentials and chemicals that have common testing information deficiencies, e.g. subchronic toxicity, fish chronic toxicity, biodegradation, physical/chemical properties, etc. For chemicals produced in substantial quantities and for which there may be potential occupational exposure or environmental release or for which there may be potential adverse effects concerns and for which there appear to be basic testing information deficiencies, there should be a minimum amount of data to identify potentially problematic chemicals, e.g., a minimum amount of chemical fate, bioconcentration, bioaccumulation or ecological effects data should be available for potentially problematic chemicals (Ref. 4, Walker, 1990). The concept of obtaining minimum data to identify potentially problematic chemicals is consistent with the OECD's approach to voluntarily obtaining SIDS for high production volume chemicals.

In addition to using their system to identify chemical groups of concern, the Committee uses their computerized system and associated processes to implement Member Agency testing nominations. EPA and other Member Agencies have taken advantage of the system and associated processes to facilitate nominations, e.g., EPA nominated isocyanates that were recommended for testing in the Committee's 28th Report and aldehydes that were recommended for testing in this Report. Using the computerized system and associated processes to facilitate nominations and transform them into subsequent Committee recommendations allows the nominator to easily access Member Agency information through Committee-activated interagency networking and provides the nominator with very rapid

access to TSCA section 8 information without notice and comment rulemaking. Member Agency information networking is used to promote cost-effective use of U.S. Government chemical testing resources. The information submitted under TSCA 8(a) may provide access to production, exposure and environmental release confidential business information. Chemical fate, health effects, monitoring, epidemiology and ecological effects studies that could be submitted under TSCA 8(d) are tabulated for the nominator to facilitate identification and review of submissions that appear to be identical to testing recommendations or that appear to indicate a potential concern related to toxicity, exposure or persistence.

The May 17, 1989 ITC meeting during which the Committee discussed the 166 substantially produced chemicals was a planning meeting that was attended by industry and the Chemical Manufactures Association (CMA). After the meeting, CMA requested and received permission to make their members aware of the list of 166 substantially produced chemicals. CMA published the list of 166 substantially produced chemicals in their first issue of CHEMSTAR news with a suggestion that their members submit any unpublished data to the Committee (Ref. 1, CMA, 1989). In response to this suggestion, the Committee received a CBI submission for one chemical. The chemical for which the submission was received was one for which CMA had established a panel of representatives from member companies.

Analysis of the 166 substantially produced chemicals identified by the Committee's computerized system revealed that many chemicals did not have minimum health effects data; 51 chemicals had no subchronic toxicity data. A few of these 51 chemicals had no acute toxicity data; less than one-third of these 51 chemicals had mutagenicity data; most of these 51 chemicals had no reproductive effects, developmental toxicity, chronic toxicity, oncogenicity or neurotoxicity data. At least 22 of these 51 chemicals had NOES information indicating potential exposure to ≧ 1,000 workers; 21 of these 51 chemicals had vapor pressures ≧ 0.1 mmHg at ambient temperature indicating potential for accidental release and 9 of these 51 chemicals had octanol-water partition coefficients ≧ 1,000 indicating bioconcentration/bioaccumulation potential. At the Committee's request, the EPA's Exposure Assessment Branch estimated the persistence of these 51 chemicals as well as their potential consumer exposure. Also at the Committee's request, the EPA's Structure Activity Team reviewed available information on these 51 chemicals and expressed at least moderate concerns for the potential of these chemicals to cause adverse effects. Moderate concerns result when there is suggestive evidence in animal studies of mutagenicity, reproductive effects, developmental toxicity, chronic toxicity, oncogenicity or neurotoxicity or there is close homology (structural, functional or mechanistic) to chemicals with known toxicity. At the Committee's request, the EPA's Environmental Effects Branch also reviewed available information on these 51 chemicals and identified a number of testing information deficiencies related to aquatic toxicity. These individual evaluations and more comprehensive analyses of the Toxic Substances Control Act Test Submissions database, ITC Member Agency computer files and recently developed OECD SIDS dossiers revealed that subchronic toxicity data were available for 6 chemicals. After the individual evaluations and more comprehensive analyses, subchronic toxicity data could still not be located for 43 chemicals. An additional 8 chemicals for which no subchronic toxicity data were available are not being recommended at this time for subchronic toxicity testing, because these chemicals were recommended for other testing and the Committee wants an opportunity to review the TSCA section 8(d) health and safety study submissions and determine if they include subchronic toxicity studies, before recommending subchronic toxicity testing. The Committee is recommending 35 substantially produced chemicals only for subchronic toxicity testing at this time, because it wants an opportunity to evaluate the production and exposure information and the health and safety studies that will be submitted under TSCA sections 8(a) and 8(d), respectively. The Committee believes that after evaluation of the TSCA 8(a) and 8(d) information, they will be able to make further recommendations as to which of these 35 chemicals EPA should add to a subchronic toxicity testing listing rule and which of these chemical should be referred to others (e.g., NTP, OECD, etc.) with an option for testing. Information available to the Committee indicates that each of the 35 chemicals is substantially produced in volumes ranging from 1 million to 10 billion pounds per annum, but actual production volumes are CBI.

Summary of recommended studies. The substantially produced chemicals briefly described below and listed in the paragraph following Table 1 are recommended for subchronic toxicity testing.

p,p-Oxybis(benzenesulfonylhydrazide). A search for physical/chemical property data revealed a measured melting (decomposition) point of 160–161 degrees centigrade. It is used as a blowing agent for rubber and expanded plastics. There are considerable potential occupational exposures (NOES = 1494 workers) as well as potential inhalation/dermal consumer exposures. There are moderate concerns for potential adverse effects and it was mutagenic in *Salmonella* and caused unscheduled DNA synthesis in cultured cells.

Naphthalenedicarboxylic anhydride. A search for physical/chemical property data revealed a measured melting point of 267–269 degrees centigrade and a measured boiling point of 422 degrees centigrade. It is used as an intermediate for dyes, pigments, fluorescent whiteners and pesticides. It was in a class of anhydrides that NCI reviewed.

2-Ethylanthraquinone. A search for physical/chemical property data revealed a measured melting point of 108–111 degrees centigrade. It is used in chemical synthesis. There are potential occupational exposures (NOES = 483 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 200 mg/kg.

7-Amino-4-hydroxy-2-naphthalenesulfonic acid. A search for physical/chemical property data revealed none. It is used in one-component dry diazo copying process. There are potential occupational exposures (NOES = 737 workers) and potential dermal consumer exposures during changing of ink in copying machines. There are moderate concerns for potential adverse effects.

1-Naphthol. A search for physical/chemical property data revealed a measured melting point of 96 degrees centigrade, a measured boiling point of 288 degrees centigrade, and a measured water solubility of 866 mg/L. It is used as an intermediate for pesticides, drugs and dyes and in synthetic perfumes. There are substantial potential occupational exposures (NOES = 57,116 workers) as well as potential consumer exposures. There are moderate concerns for potential adverse effects; it was mutagenic in *Salmonella* and bacterial DNA repair assays. The LD_{50} values in guinea pigs, rabbits, cats, mice and rats were 2, 9, 134, 275, and 2,400 mg/kg, respectively.

3-Hydroxy-2-naphthoic acid. A search for physical/chemical property data revealed a measured melting point of 222–223 degrees centigrade. It is used in dyes and pigments. There are considerable potential occupational exposures (NOES = 1641 workers) and potential dermal consumer exposures. There are moderate concerns for potential adverse effects; the LD_{50} value in mice was 800 mg/kg.

Triethylene glycol bis(2-ethylhexanoate). A search for physical/chemical property data revealed a measured boiling point of 219 degrees centigrade at 5 torr. It is used as a plasticizer. There are moderate concerns for potential adverse effects; LD_{50} values in guinea pigs and rats were 21 and 31 mg/kg, respectively.

2-(4-Morpholinyldithio)-benzothiazole. A search for physical/chemical property data revealed none. It is used as an accelerator in rubber processing. There are potential occupational exposures (NOES = 174 workers) and moderate concerns for adverse effects.

N-butylacrylate. A search for physical/chemical property data revealed a measured melting point of 50 degrees centigrade, a measured boiling point of 160 degrees centigrade, and a measured vapor pressure of 2 mmHg at 20 degrees centigrade. It is used as a monomer for resins, and in solvent coatings, adhesives, oil additives, emulsions for textiles, leathers and paper finishing. There are considerable potential occupational exposures (NOES = 5,136 workers) and potential dermal consumer exposures. There are moderate concerns for potential adverse effects; lowest threshold doses of 2304 and 690 mg/kg were reported for days 5 and 15, respectively, during a rat developmental toxicity study.

m-Benzenedisulfonic acid. A search for physical/chemical property data revealed a measured melting point of 137 degrees centigrade. It is used as an intermediate in resorcinol production and as a nitration catalyst in mononitrotoluene synthesis. There are potential occupational exposures (NOES = 56 workers) and moderate concerns for adverse effects.

3,4-Dichloronitrobenzene. A search for physical/chemical property data revealed a measured melting point of 40–42 degrees centigrade, a measured boiling point of 257–258 degrees centigrade, and a measured water solubility of 0.63 mg/L. It is used as a pesticide intermediate. There are moderate concerns for potential adverse effects; it was a positive mutagen in *Salmonella* and *Drosophila*. The LD_{50} value in mice was 1,384 mg/kg.

Isophthaloyl chloride. A search for physical/chemical property data revealed a measured melting point of 43–44 degrees centigrade and a measured boiling point of 276 degrees centigrade. It is used as an intermediate for dyes, synthetic fibers, resins, films, protective coatings and laboratory reagents. There are potential occupational exposures (NOES = 46 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,200 mg/kg.

Terephthaloyl chloride. A search for physical/chemical property data revealed a measured melting point of 79–81 degrees centigrade and a measured boiling point of 259 degrees centigrade. It is used as an intermediate for plasticizers, resins and polymers. There are potential occupational exposure (NOES = 212 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,140 mg/kg.

4-Ethoxynitrobenzene. A search for physical/chemical property data revealed a measured melting point of 60 degrees centigrade and a measured boiling point of 283 degrees centigrade. It is used to manufacture dyes and intermediates. There are potential occupational exposures (NOES = 207 workers) and moderate concerns for adverse effects. It produced positive results in a *Salmonella* assay, a *Drosophila* dominant lethal assay, a bacterial DNA test and a rat cytogenetic study. The LD_{50} value in rats was 2,100 mg/kg.

Acetoacetanilide. A search for physical/chemical property data revealed a measured melting point of 85–86 degrees centigrade. It is used as a dyestuff intermediate, in organic synthesis and in rubber compounding. There are considerable potential occupational exposure (NOES = 1108 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 3,400 mg/kg.

Butyric anhydride. A search for physical/chemical property data revealed a measured melting point of -75 degrees centigrade and a measured boiling point of 200 degrees centigrade. It is used to manufacture butyrates, drugs and tanning agents. There are considerable potential occupational exposures (NOES = 4,817 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,000 mg/kg. It was in a class of anhydrides that NCI reviewed.

Isobutyl acrylate. A search for physical/chemical property data revealed a measured boiling point of 61–63 degrees centigrade, a measured water solubility of 1800 mg/L and a measured vapor pressure of 10.7 mmHg at 20 degrees centigrade. It is used in synthesis of acrylic ester polymers. There are moderate concerns for adverse effects. The LC_{50} value in rats was 2,000 ppm.

Diethylene glycol dimethylether. A search for physical/chemical property data revealed a measured melting point of -68 degrees centigrade and a measured boiling point of 162 degrees centigrade. It is used as a solvent and in reaction medium for grignard and similar syntheses. There are potential occupational exposures (NOES = 207 workers) and moderate concerns for adverse effects. It was positive in a sperm morphology test and a dominant lethal test and caused adverse reproductive and developmental effects during short-term studies. The LD_{50} value in mice was 2,978 mg/kg.

Carbinol acetate. A search for physical/chemical property data revealed a measured melting point of -25 degrees centigrade, a measured boiling point of 217 degrees centigrade and a measured vapor pressure of 0.1 mmHg at 20 degrees centigrade. It is used as a solvent for cellulose esters, gums and resins and to manufacture coatings, lacquers and printing inks. There are considerable potential occupational exposures (NOES = 7,649 workers) and moderate concerns for adverse effects and potential consumer exposures.

Bromamine acid. A search for physical/chemical property data revealed none. It is used as a dye intermediate. There are potential occupational exposures (NOES = 737 workers) and moderate concerns for adverse effects.

4-Methyl-2-nitrophenol. A search for physical/chemical property data revealed a measured melting point of 106 degrees centigrade and a measured boiling point of 234 degrees centigrade. It is used to manufacture dyes. There are moderate concerns for adverse effects. The LD_{50} value in rats was 3,360 mg/kg.

4-(Acetylamino) benzenesulfonyl chloride. A search for physical/chemical property data revealed a measured melting point of 149 degrees centigrade. It is used to manufacture sulfa drugs. There are considerable potential occupational exposures (NOES = 1,481 workers) and moderate concerns for adverse effects.

2,4-Pentanedione. A search for physical/chemical property data revealed a measured melting point of -23 degrees centigrade, a measured boiling point of 141 degrees centigrade, a measured water solubility of 125,000

mg/L and a measured vapor pressure of 1.3 mmHg at 25 degrees centigrade. It is used as a solvent for cellulose acetate, a chelating agent for metals, as a lubricant additive and in paint dryers. There are considerable potential occupational exposures (NOES = 4,841 workers) and high concerns for adverse effects. It was mutagenic in chinese hamster ovary cells. The LD_{50} value in rats was 1,600 ppm. EPA proposed a Significant New Use Rule based on reported neurotoxicity and production of a nervous system disorder that is characterized by an irreversible cerebellar syndrome in experimental animals, genotoxic effects and reported contact dermatitis and urticaria in humans (Ref. 2, EPA, 1990). In response to this proposal, Union Carbide submitted public comments and publications and reported that 2,4-pentanedione produced a "slight dominant lethal effect at the spermatid stage of spermatogenesis" and "no embryotoxicity or teratogenicity" to Fischer 344 rats (Ref. 3, Union Carbide, 1990).

Propanoic anhydride. A search for physical/chemical property data revealed a measured melting point of -45 degrees centigrade and a measured boiling point of 167–169 degrees centigrade. It is used as an esterifying agent for fats, oils, cellulose and a dehydrating medium for nitrations and sulfonations, alkyd resins, dyestuffs, and pharmaceuticals. There are potential occupational exposures (NOES = 489 workers) and moderate concerns for adverse effects. The LD_{50} value in rats was 2,360 mg/kg. It was in a class of anhydrides that NCI reviewed.

Bis(2-ethylhexyl)-2-butenedioate. A search for physical/chemical property data revealed a measured boiling point of 209 degrees centigrade. It is used in emulsions and copolymerized with vinyl acetate. There are considerable potential occupational exposures (NOES = 3,352 workers) and moderate concerns for adverse effects.

Perfluorotributylamine. A search for physical/chemical property data revealed a measured boiling point of 177 degrees centigrade. It is used in inert fluids and as a solvent. There are slight potential occupational exposures (NOES = 7 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 1,200 mg/kg.

Perfluoro-N-hexane. A search for physical/chemical property data revealed a measured melting point of -4 degrees centigrade and a measured boiling point of 57 degrees centigrade. It is used in liquid fluorocarbons.

Trichloromethanesulfenyl chloride. A search for physical/chemical property data revealed a measured boiling point of 148–149 degrees centigrade and a measured vapor pressure of 0.6 mmHg at 20 degrees centigrade. It is used in the synthesis of lubricant additives. There are considerable potential occupational exposures (NOES = 7,790 workers) and moderate concerns for adverse effects. It was a positive mutagen in a bacterial DNA assay. The LD_{50} value in rats was 8 mg/kg.

1,2-Dichlorobutane. A search for physical/chemical property data revealed a measured boiling point of 124 degrees centigrade and a measured vapor pressure of 2.7 mmHg at 25 degrees centigrade. It is used as a butadiene intermediate. There are moderate concerns for adverse effects.

1,3-Dicyanobenzene. A search for physical/chemical property data revealed a measured melting point of 160–162 degrees centigrade. It is used as an intermediate for amines, synthetic fibers, agricultural chemicals, rust inhibitors and pharmaceuticals. There are potential occupational exposures (NOES = 208 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 178 mg/kg.

3,4-Dichlorobutene. A search for physical/chemical property data revealed a measured melting point of -61 degrees centigrade, a measured boiling point of 115–117 degrees centigrade and a measured vapor pressure of 3.5 mmHg at 25 degrees centigrade. It is used as chloroprene and adiponitrile intermediates. There are moderate concerns for adverse effects. The LD_{50} value in mice was 724 mg/kg. It was positive in *Salmonella* and *in vivo* cytogenetics assays.

2-(2-Aminoethoxy)-ethanol. A search for physical/chemical property data revealed a measured melting point of -13 degrees centigrade and a measured boiling point of 221 degrees centigrade. It is used to remove acid components from gases. There are considerable potential occupational exposures (NOES = 5,579 workers) and moderate concerns for adverse effects. The LD_{50} value in rats was 5,660 mg/kg.

Quinacridone. A search for physical/chemical property data revealed none. It is used as a dye and pigment. There are substantial potential occupational exposures (NOES = 23,292 workers) and moderate concerns for adverse effects.

Ammonium carbamate. A search for physical/chemical property data revealed a measured melting point of 133–134 degrees centigrade. It is used in urea manufacture.

Hexa(methoxymethyl) melamine. A search for physical/chemical property data revealed none. It is used during leather manufacturing, rubber bonding and to produce polyester powder coatings. There are substantial potential occupational exposures (NOES = 18,033 workers). The LD_{50} value in mice was 550 mg/kg.

References

(1) CMA. Chemical Manufacturers Association. "TTC Zeroes In." *CHEMSTAR NEWS.* 1(1):4 (1988).

(2) EPA. Environmental Protection Agency. Proposed Rule. "2,4-Pentanedione; Proposed Significant New Use of a Chemical Substance." 54 FR 39546–39551, September 27, 1989.

(3) Union Carbide. "Comments of Union Carbide Chemicals and Plastics Company, Inc. on EPA's Proposed Significant New Use Rule on 2,4-Pentanedione." Environmental Protection Agency, TSCA Public Reading Room, Washington, DC (October 27, 1989).

(4) Walker, J.D. "Chemical fate, bioconcentration, and environmental effects testing: Proposed testing and decision criteria." *Toxicity Assessment: An International Journal.* 5:103–134 (1990).

[FR Doc. 91–5280 Filed 3–5–91; 8:45 am]
BILLING CODE 6560–50–F

federal register

Wednesday
March 6 1991

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development; Community Development Work Study Program; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3197- ; FR-2914-N-01]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: This Notice invites applications from institutions of higher education, area-wide planning organizations and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. The deadline for submission of applications shall be no earlier than April 22, 1991. The specific application submission date will be specified in the RFGA. Up to three million dollars is available from FY 1991 appropriations (plus any recaptured funds from FY 1989 and FY 1990 appropriations) to fund work study programs to be carried out from September, 1991 to September, 1993. Applicants may also apply for grants to fund work study programs to be carried out from September, 1992 to September, 1994. However, approvals for such applications will be conditioned on the availability of FY 1992 appropriations, and * * *.

Applicants wishing to receive grants from available FY 1992 appropriations must apply pursuant to the requirements of this Notice. HUD does not anticipate the issuance of an additional Notice for those funds.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-3176. The TDD number is (202) 708-0564. These are not toll-free numbers. Application packages (requests for grant application) may be obtained by written request from the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, (ACS-LJ) 451 Seventh Street, SW., room 5256, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management. This notice announces HUD's intention to award up to $3 million from the FY 1991 appropriation (plus any recaptured funds from FY 1989 and FY 1990 appropriations), and up to $3 million from the FY 1992 appropriation (plus any additional funds recaptured from the FY 1991 appropriation), if funds are made available by appropriations in FY 1992. Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program;

2. Institutions of higher education offering undergraduate degrees in a community development academic program if no institutions of higher education in the standard metropolitan statistical area (SMSA) or non-SMSA area in which they are located offer graduate degrees in a community development academic program;

3. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO;

4. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the SMSA or non-SMSA non-metropolitan area served by the APO are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the Request For Grant Application released pursuant to this notice.

2. The application must demonstrate that the applicant is eligible to participate;

3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP;

4. Institutions of higher education and area-wide planning organizations/States must maintain a 50 percent rate of graduation of students from previous CDWSP-funded academic programs in order to participate in the next round of CDWSP funding. Institutions of higher education and Area-Wide Planning Organizations (APO's)/States funded under the FY 1988 CDWSP funding round which did not maintain such a rate will be excluded from participating in the FY 1991 funding round. Such institutions and APO's/States are eligible to participate in the 1992 round.

D. Selection Factors for Institutions of Higher Education (110-points)

The following factors will be considered by the Department in evaluating applications received from institutions of higher education in response to the solicitation.

1. *Academic Program (53-points, as allocated below)*

Each application will be reviewed for evidence of the school's commitment to administering a CDWSP and the overall strength of its commitment to meeting the needs of minority and other economically disadvantaged individuals. This commitment will be evaluated in the following areas:

a. Relative quality of the academic program offered by the institution of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements for students; (8-points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8-points) and

(3) Qualifications of the faculty and the percentage of time they will teach in the academic area. (8-points)

b. Quality of academic supervision—Qualifications of the academic supervisor and the percentage of time they will commit to the students; (7-points)

c. Amount of resources to be committed by the institution to the academic program.

(1) Appropriateness and adequacy of the resources (facilities and equipment) that will be devoted to the academic area; (2-points)

(2) The degree to which the applicant is able to contribute funds to support the total cost of the project; (5-points) and

(3) The degree to which the applicant will utilize faculty and staff administrators on staff. (7-points)

d. Rate of graduation—Applicant's success rate in graduating students previously enrolled in the HUD CDWSP or similar work study program. (10-points)

2. Student Work Placement Assignment (9-points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3-points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3-points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3-points)

3. Seminars (4-points as allocated below)

The degree to which the proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic programs and will address career planning and permanent job placement. (4-points)

4. Placement Opportunities (13-points, as allocated below)

a. Extent to which the institution's educational program (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields; (6-points) and

b. The applicant's success in assisting graduates of the HUD CDWSP or similar work study program to find permanent employment in community development funded agencies. (7-points)

5. Program Coordination and Administration (16-points, as allocated below)

a. The applicant's ability to track and monitor the progress of the students previously enrolled in the HUD or similar work study program, including the students who drop out of the program. (4-points)

b. The degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program. (6-points)

c. The adequacy of the applicant's plan for placing students on rotating assignments in community development work placement assignments and keeping track of students during the two-year academic period and the internship. (4-points)

6. Institution's Commitment (15-points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and other economic disadvantaged students; (4-points)

b. The success of past and current efforts in preparing these students for careers in community and economic development; (6-points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3-points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for other minority economically disadvantaged students in the academic areas or the institution as a whole. (2-points)

E. Selection Factors for Area-Wide Planning Organizations/States (110-points)

The following factors will be considered by the Department in evaluating applications received from area-wide planning organizations/States in response to this NOFA. Each application must contain sufficient technical information to be reviewed for its technical merit.

1. Academic Program (53-points, as allocated below)

a. Relative quality of the academic program offered by the institutions of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements; (8-points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8-points) and

(3) Qualifications of the faculty at each college/university listed in the submission and the percentage of time they will teach in the academic area. (8-points)

b. Qualifications of the academic area supervisor at each college/university listed in the submission and the percentage of time they will commit to the students. (7-points)

c. The applicant's and institution's plan for the use of its facilities, equipment and financial resources in support of the CDWSP. (2-points)

d. The degree to which each college/university listed in the application is able to contribute funds to support the total cost of the project; (5-points)

e. The degree to which each college/university listed in the application will utilize faculty and staff administrators on staff; (7-points) and

f. The success rate of each institution at higher education applying under the applicant in graduating students previously enrolled in the HUD or similar work study program. (10-points)

2. Student Work Placement Assignment (9-points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3-points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3-points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3-points)

3. Seminars (4-points, as allocated below)

The degree to which the proposed seminars will relate to the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement. (4-points)

4. Placement Opportunities (13-points)

a. The extent to which the educational program for each college/university listed in the application (based on past

experience) leads directly and immediately to career opportunities in the community and economic development fields (6-points) and

b. The applicant's success in assisting graduates of the HUD Community Development Work Study Program (CDWSP) or similar work study program find permanent employment in community development funded agencies. (7-points)

5. Program Coordination and Administration (16-points, as allocated below)

a. The extent to which the applicant has established a committee to coordinate activities between program participants to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance; (8-points)

b. The applicant's ability to track and monitor progress of students enrolled in the program and those who drop out; (4-points) and

c. The adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and during the internship, respectively. (4-points)

6. Institution's Commitment (15-points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and other economically disadvantaged students; (4-points)

b. The success of past and current efforts of colleges/universities listed in the application in preparing these students for careers in community and economic development; (6-points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3-points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for other minority economically disadvantaged students in the academic areas or the institution as a whole. (2-points)

F. Program Policy Factors

HUD may make awards out of either rank order to achieve geographic diversity. If any of the ten HUD Regions has less than three (3) selected applicants after initial distribution, the selecting official may select out of rank order up to three (3) of the highest ranking applications in each Region. Also, HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might recommend a lower funding level than the requested amount for tuition, work stipend, books and additional support.

G. Application Procedures

HUD will provide a Request for Grant Application (RFGA) containing the information that applicants for CDWSP assistance must submit, upon written request to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., room 5256 (ACS–LJ), Washington, DC 20410. The deadline for submission of applications shall be no earlier than April 22, 1991. The specific application submission date will be specified in the RFGA. Any applications actually received by HUD after that date will be rejected. The RFGA will provide complete instructions on preparing and submitting applications.

Following the expiration of the application submission deadline, HUD will review and rank applications consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.415. If, during this process, an application is determined to contain a deficiency involving completeness, adequacy of supporting documentation, or internal consistency, HUD will notify the applicant in writing. HUD will accept submissions to correct the deficiency for a period of 14 days from the date on the HUD notification. Applications awarded a CDWSP grant from FY 1991 appropriations will be notified by approximately June 5, 1991. Notifications of approvals conditioned on FY 1992 appropriations will be made at the same time as approved applications are announced for the FY 1991 program.

H. Other Information

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2506–0104.

In accordance with 40 CFR 1506.4 of the CEQ regulations and 24 CFR part 50.20 (k) & (l) of the HUD Regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore are exempt from further environmental reviews under NEPA.

The catalog of Federal Domestic Assistance program number is 14.234.

Dated: February 25, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–5274 Filed 3–5–91; 8:45 am]
BILLING CODE 4210–29–M

federal register

Wednesday
March 6, 1991

Part X

The President

Proclamation 6256—Vermont Bicentennial Day, 1991

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

Presidential Documents

Title 3—

The President

Proclamation 6256 of March 4, 1991

Vermont Bicentennial Day, 1991

By the President of the United States of America

A Proclamation

On March 4, 1791, the Republic of Vermont became the 14th State in our Union—the first to join the original thirteen. The Vermont State motto, "Freedom and Unity," is a fitting tribute to the history of the State and to the character of its people. Long before Vermont entered the Union, its inhabitants demonstrated great devotion to those ideals, ideals on which the United States is founded.

In our Nation's War for Independence, as in every great struggle for freedom since, Vermonters made distinguished contributions. Today, Ethan Allen and his Green Mountain Boys, tenacious fighters who played decisive roles at the Battles of Bennington and Ticonderoga, are remembered among America's great Revolutionary War heroes. Their fierce love for the land and their fervent devotion to the cause of freedom and independence were shared by hundreds of other settlers from the region that became our 14th State.

Vermont's dedication to freedom was also evident in its first constitution—written in 1777, it forbade slavery and adopted universal male suffrage. Indeed, by the beginning of the Civil War, in which it played a major role, Vermont had a long-standing reputation as one of the most firmly abolitionist States. The 16 Vermont regiments dispatched to the Union Army during the Civil War represented the highest number of troops per capita of any State. Vermonters not only fought bravely for the preservation of the Union and for an end to slavery, they also made vital contributions at the pivotal Battle of Cedar Creek.

Over the years, countless other Vermonters have made outstanding contributions to our country. Distinguished natives of the Green Mountain State include the eloquent Stephen Douglas, remembered by many for his forceful arguments during the historic Lincoln-Douglas debates; the inventor, Thomas Davenport; Presidents Calvin Coolidge and Chester Arthur; and Warren R. Austin, the first United States Representative to the United Nations.

Today, Vermonters take just pride in their heritage as a State committed to the ideals of freedom and unity. That heritage goes hand in hand with a rich legacy of growth and development. Beloved by millions of visitors for its breathtaking mountains and unspoiled beauty, Vermont is also home to a number of vital industries, ranging from electronics to agricultural production.

In recognition of Vermont's contributions to the United States and in commemoration of its Bicentennial, the Congress, by Senate Joint Resolution 58, has designated March 4, 1991, as "Vermont Bicentennial Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 4, 1991, as Vermont Bicentennial Day.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-5528
Filed 3-5-91; 11:16 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904	1
8905-9120	4
9121-9268	5
9269-9580	6

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
February 21, 1991 9271
Presidential Determinations:
No. 91-20 of
January 25, 1991 8681
Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991) 8681
Proclamations:
6254 9121
6255 9269
6256 9579

5 CFR

Proposed Rules:
581 9181

7 CFR

17 9273
46 8683
301 9273
905 8684
918 8905
1046 9274
Proposed Rules:
12 9258
704 9293
920 9302
1005 9306
1410 9293
1413 9251

8 CFR

241 8906
242 8906
274 8685

9 CFR

331 ..... 8907, 8908
381 ..... 8907, 8908

11 CFR

110 9275

12 CFR

265 8687
600 8910
601 8910
602 8910
603 8910
604 8910
606 8910
611 8910
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
960 8688
Proposed Rules:
327 9308

14 CFR

21 8699-8701
25 8699-8701
39 8704-8707
1209 8910
Proposed Rules:
39 ..... 8732, 8733, 8935
91 8938

15 CFR

305 9123
1500 9276
1502 9276
Proposed Rules:
1700 9181

17 CFR

240 9124

18 CFR

1301 9288
Proposed Rules:
35 8938

19 CFR

Proposed Rules:
141 9311

21 CFR

5 8709
520 ..... 8709, 8710
556 8710
1308 9132
1316 8685
Proposed Rules:
201 9312
806 8940

22 CFR

514 8711

24 CFR

Ch. I 9472
91 9169
Proposed Rules:
203 8941

26 CFR

1 8911
31 8911
301 9169
602 8912
Proposed Rules:
1 8943-8967

BEST COPY AVAILABLE

301.....9162

27 CFR

5.....8922

28 CFR

0.....8923
8.....8895

Proposed Rules:

11.....8734

29 CFR

541.....9252
570.....9252
580.....9252
801.....9046

Proposed Rules:

516.....9183
778.....9183
1602.....9185

30 CFR

243.....9251

Proposed Rules:

901.....8967
913.....8969
935.....9312

32 CFR

627.....9424

Proposed Rules:

299a.....9314

33 CFR

3.....9268
117.....8712
151.....8878
165.....9269

40 CFR

52.....9172–9175
60.....9177
82.....9518
147.....9408
228.....9178

Proposed Rules:

Ch. I.....8972, 9315
86.....8856
123.....8973
300.....9187
600.....8856
799.....9092, 9105

41 CFR

302–11.....9269

42 CFR

400.....8832
405.....8832
406.....8832

44 CFR

353.....9452

45 CFR

74.....8712
205.....8924
232.....8926
234.....8926
235.....8926
801.....9160

46 CFR

25.....8876

47 CFR

73.....8933, 8934

Proposed Rules:

73.....8974–8976, 9189–9191

48 CFR

Ch. 2, App. N.....9082
202.....9082
203.....9082
204.....9082
217.....9082
225.....9082
228.....9082
232.....9082
245.....9082
252.....9082
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR

1011.....8721
1330.....8722

Proposed Rules:

Ch. X.....9191
1053.....9339

50 CFR

611.....8722, 38723
620.....8722
646.....9251
672.....8723–8730

Proposed Rules:

20.....9462
658.....8736
672.....9251
675.....9251

LIST OF PUBLIC LAWS

Last List February 21, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

S.J. Res. 76/Pub. L. 102–6

Commending the Peace Corps and the current and former Peace Corps volunteers on the thirtieth anniversary of the establishment of the Peace Corps. (Mar. 1, 1991; 105 Stat. 23; 2 pages) Price: $1.00

VOL
56

SS
44

MR
6

991

UMI

U·M·I

THE PAPER AND INK USED IN THE ORIGINAL MATERIAL AFFECT THE QUALITY OF THE MICRO-EDITION. THIS REPRODUCTION IS MADE FROM THE BEST COPY AVAILABLE.

VOL
56

SS
45

MR
7

991

UMI

3-7-91
Vol. 56 No. 45

federal register

Thursday
March 7, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
45
1R
7
9 91
MI

3-07-91
Vol. 56 No. 45
Pages 9661-9834

federal register

Thursday
March 7, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

Administrative Conference of the United States
PROPOSED RULES
Recommendations:
Commerce Department export controls procedures, 9656
NOTICES
Meetings:
Administration Committee, 9666

Agriculture Department
See also Animal and Plant Health Inspection Service; Commodity Credit Corporation
RULES
Program Fraud Civil Remedies Act; implementation, 9581
NOTICES
Agency information collection activities under OMB review, 9666

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Poultry affected by salmonella enteritidis
Correction, 9752

Army Department
See also Engineers Corps
NOTICES
Patent licenses, exclusive:
Gemini Laminating Corp. et al., 9690

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Energy-related analytic epidemiologic health research by HHS; management and conduct; memorandum of understanding between DOE and HHS, 9701

Coast Guard
RULES
Veterans:
Reservist education; Veterans' Benefits and Programs Improvement Act and Health-Care Authorization Act; implementation, 9627

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Oceanic and Atmospheric Administration; Patent and Trademark Office

Commodity Credit Corporation
RULES
Loan and purchase programs:
Honey price support program, 9592

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 9750
(4 documents)

Consumer Product Safety Commission
NOTICES
Meetings:
Cigarette Fire Safety Technical Advisory Group, 9688

Defense Department
See also Army Department; Engineers Corps
RULES
Veterans:
Reservist education; Veterans' Benefits and Programs Improvement Act and Health-Care Authorization Act; implementation, 9627
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors—
Novation and change-of-name agreements, 9832
Thresholds, 9832
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 9690

Defense Nuclear Facilities Safety Board
RULES
Government in Sunshine Act; implementation, 9605

Education Department
NOTICES
Agency information collection activities under OMB review, 9691
Grants and cooperative agreements; availability, etc.:
Handicapped individuals, severely; vocational rehabilitation services, special project and demonstration program, 9814, 9619
(2 documents)
Handicapped migratory agricultural and seasonal farmworker vocational rehabilitation service projects program, 9619
Vocational rehabilitation service projects for American Indians with handicaps program, 9620

Employment and Training Administration
NOTICES
Adjustment assistance:
Eaton Corp.; correction, 9739
Skillers of America et al., 9739

Energy Department
See also Federal Energy Regulatory Commission
RULES
Strategic petroleum reserve trespassing; hearing cancelled, 9611
NOTICES
Energy-related analytic epidemiologic health research by HHS; management and conduct; memorandum of understanding between DOE and HHS [Editor's Note: For a document on this subject, see entry under Centers for Disease Control], 9701
Environmental statements; availability, etc.:
Arvah B. Hopkins Station, FL; air-blown integrated gasification combined cycle power plant; construction and operation, 9691

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Upper Guadalupe River Flood Control Study, Santa Clara County, CA, 9689

Environmental Protection Agency
PROPOSED RULES
Air pollution control, new motor vehicles and engines:
Light-duty vehicles and trucks; gaseous and particulate emission regulations, 9754
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region VII, 9697
Meetings:
Manganese/MMT conference; health effects and exposure issues symposia, 9697
Water pollution control:
Public water supply supervision program—
Arizona, 9698

Equal Employment Opportunity Commission
RULES
American with Disabilities Act; implementation:
Procedural regulations, 9623
NOTICES
Agency information collection activities under OMB review, 9699

Farm Credit Administration
RULES
Farm Credit Administration Board meetings; schedule change, 9611

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 9612, 9614
(2 documents)
Canadair, Ltd., 9615
Fokker, 9618
Mitsubishi, 9616
Control zones, 9620
Transition areas, 9618
VOR Federal airways; correction, 9620
PROPOSED RULES
Airworthiness directives:
Beech, 9661
Boeing, 9659
Transition areas, 9660, 9662
(2 documents)
VOR Federal airways, 9663
NOTICES
Airport noise compatibility program:
Noise exposure map—
Boca Raton Airport, FL, 9741
Ocala Municipal Airport, FL, 9742
Meetings:
Aeronautics Radio Technical Commission, 9743
Air Traffic Procedures Advisory Committee, 9743

Federal Communications Commission
RULES
Radio services, special:
Maritime services—
North Pacific Maritime Radio Council; frequency coordinator for Puget Sound; correction, 9752

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 9750

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
French Paper Co., 9694
Meetings; Sunshine Act, 9750
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 9694, 9695
(3 documents)
Bayou Interstate Pipeline System, 9695
Colorado Interstate Gas Co.; correction, 9752
National Fuel Gas Supply Corp., 9696
Northwest Pipeline Corp., 9695, 9696
(3 documents)
Texas Gas Transmission Corp., 9697

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Hillsborough and Cheshire Counties, NH, 9744

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Norwegian Cruise Line et al., 9699
(2 documents)

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 9750
Applications, hearings, determinations, etc.:
First Heartland Bancorp et al., 9699
Fuji Bank, Ltd., 9700
Mary Jane Reardon Living Trust et al., 9700

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Klamath River Basin Conservation Area Harvest Management Strategic Plan, CA and OR, 9736
Meetings:
Klamath Fishery Management Council, 9737
Klamath River Basin Fisheries Task Force, 9737

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Bambermycin, etc., 9622
NOTICES
Animal drugs, feeds, and related products:
New drug applications—
Agri-Basics et al; approval withdrawn, 9704

Foreign-Trade Zones Board
NOTICES
Texas—
Applications, hearings, determinations, etc.:
Goodman Manufacturing Corp., heating and cooling equipment plant, 9667

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors—
Novation and change-of-name agreements, 9832

Thresholds, 9832
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 9690

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Human Development Services Office; National Institutes of Health

Health Care Financing Administration
RULES
Medicare:
Inpatient hospital prospective payment system and 1991 FY rates
Correction, 9633

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority health professions education centers of excellence, 9705

Housing and Urban Development Department
RULES
Public and Indian housing:
Housing assistance payments (Section 8)—
Applications review and funds allocation, 9622
NOTICES
Agency information collection activities under OMB review, 9708

Human Development Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start public and Indian housing child care demonstration project, 9794

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 9735

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office
RULES
Watch duty-exemption program:
Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 9621
NOTICES
Privacy Act:
Systems of records, 9734

International Trade Administration
RULES
Watch duty-exemption program:
Duty-exemption entitlement allocations in Virgin Islands, Guam, American Samoa, and Northern Mariana Islands, 9621
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from Singapore, 9661
Color picture tubes from Canada et al., 9667
Industrial belts and components and parts, cured or uncured, from West Germany, 9672
Industrial phosphoric acid from Israel, 9673
Roller chain, other than bicycle, from Japan, 9674
Countervailing duties:
Ceramic tile from Mexico, 9677
Porcelain-on-steel cookingware from Mexico, 9675
Short supply determinations:
Alloy steel plate, 9680
Continuous cast steel slabs, 9679
Large diameter double submerged arc welded steel line pipe; correction, 9752

Interstate Commerce Commission
RULES
Motor carriers:
Competitive bidding regulations; CFR Part removed, 9635
NOTICES
Rail carriers:
State intrastate rail rate authority—
Kentucky, 9738
Railroad operation, acquisition, construction, etc.:
Manufacturers' Junction Railway Co., 9738

Justice Department
NOTICES
Pollution control; consent judgments:
Bailey, Orville, et al., 9738

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Colorado, 9735
Oregon, 9735
Survey plat filings:
New Mexico, 9736

Legal Services Corporation
RULES
Legal assistance eligibility; income levels, 9634

Mine Safety and Health Administration
RULES
Metal and nonmetal mine safety and health:
Explosives; update and clarification of standards, 9626

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 9737

Minority Business Development Agency
NOTICES
Business development center program applications:
California, 9684
(2 documents)

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Contractors—
Novation and change-of name agreements, 9832
Thresholds, 9832
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities under OMB review, 9690

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 9751

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Inter-Arts Advisory Panel, 9740

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 9707
Recombinant DNA Advisory Committee, 9707
Research Grants Division Advisory Committee, 9707

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 9636
Gulf of Alaska groundfish, 9635
NOTICES
Fishery conservation and management:
Pacific Coast groundfish, 9685
Western Pacific pelagic, 9686
Permits:
Marine mammals, 9687, 9688
(3 documents)

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Patent Law Reform Advisory Commission, 9667

Postal Service
PROPOSED RULES
Nonmailability of certain household substances, pesticides, and fragrance advertising samples, 9664

Public Health Service
See Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 9744

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 9741
Organization, functions, and authority delegations:
Alternate Designated Agency Ethics Official et al., 9741

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities under OMB review, 9738

Tennessee Valley Authority
NOTICES
Environmental statements; availability, etc.:
Tennessee River and reservior system operation and planning review; record of decision; correction, 9752

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Saint Lawrence Seaway Development Corporation
RULES
Organization, functions, and authority delegations:
Commandant, Coast Guard, 9635

Treasury Department
NOTICES
Agency information collection activities under OMB review, 9745

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities, 9745

Veterans Affairs Department
RULES
Life insurance, Government and National service:
Fiduciaries; authority to conduct insurance transactions, 9626
Vocational rehabilitation and education:
Veterans education—
Reservists education, 9627
NOTICES
Meetings:
Medical Research Service Merit Review Board, 9748

Separate Parts in This Issue

Part II
Environmental Protection Agency, 9754

Part III
Department of Health and Human Services, Health Resources and Services Administration, 9794

Part IV
Department of Education, 9814

Part V
Department of Housing and Urban Development, 9822

Part VI
Department of Defense, General Services Administration and National Aeronautics and Space Administration, 9832

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

1 CFR
Proposed Rules
305 9656

7 CFR
1 9581
1434 9592

9 CFR
82 9752

10 CFR
Ch. XVII 9605
1048 9611

12 CFR
604 9611

14 CFR
39 (5 documents) 9612–9618
71 (3 documents) 9618–9620
Proposed Rules:
39 (2 documents) 9659, 9661
71 (3 documents) 9660, 9663

15 CFR
303 9621

21 CFR
510 9622
522 9622
524 9622
558 9622

24 CFR
791 9622

29 CFR
1601 9623

30 CFR
56 9626
57 9626

38 CFR
6 9626
8 9626
21 9627

39 CFR
Proposed Rules:
111 9664

40 CFR
Proposed Rules:
86 9754

42 CFR
412 9633

45 CFR
1611 9634

47 CFR
0 9752

48 CFR
Proposed Rules:
22 9632
42 9632
52 9632

49 CFR
1 9635
1010 9635

50 CFR
672 (2 documents) 9635, 9636
675 9636

Rules and Regulations

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: U.S. Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document establishes the final regulations governing the administrative process and procedures to implement the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, October 21, 1986. The regulations set forth U.S. Department of Agriculture (USDA) administrative process and procedures to recompense the Government for false, fictitious and fraudulent claims and statements arising in programs administered by USDA agencies. The regulations also provide for due process protection for all persons subject to the administrative process. A proposed rule to implement the Program Fraud Civil Remedies Act of 1986 was published in the Federal Register January 8, 1990 (55 FR 636 *et seq.*)

EFFECTIVE DATE: This final rule is effective April 8, 1991.

FOR FURTHER INFORMATION CONTACT: David C. Rector, Acting Deputy Director for Policy, Office of Finance and Management, Room 118–W, U.S. Department of Agriculture, Washington, DC 20250, Telephone No. (202) 447–8748.

SUPPLEMENTARY INFORMATION: In October 1986, Congress enacted the Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. 3802, *et seq.*, to establish a new administrative remedy against those who knowingly make false claims or statements arising in programs administered by U.S. Government agencies. The PFCRA provides for a maximum civil penalty of $5,000 for each false claim or statement and an assessment not exceeding twice the amount of any false claim. There is a jurisdictional limit of $150,000 with regard to each claim or group of related claims submitted at the same time.

The PFCRA requires Federal agencies to follow certain procedures to recover penalties and assessments against persons who file false claims or statements. The statute further provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review.

The PFCRA requires each agency to promulgate rules and regulations necessary for its implementation. To facilitate the new procedure and promote uniformity in the Government, the President's Council on Integrity and Efficiency distributed model regulations to Federal agencies. USDA, with some variations, is adopting the model regulations. One of these variations is a provision for the appointment of an Agency Fraud Claims Officer (AFCO) in each component agency of the Department. The AFCO's function will be to review the report of the Investigating Official and to make recommendations to the Reviewing Official concerning referral of allegations for adjudicative proceedings under the PFCRA. Additionally, the USDA regulations differ from the Model Regulations by setting out procedures to be followed in the event that a respondent indicates a desire to contest allegations of liability under the PFCRA by filing an answer, but declines to ask for a hearing.

The new administrative procedure will enhance the Government's ability to deter fraud in cases where in the past the costs of litigation would have exceeded the amount of recovery, thus making it uneconomical to pursue such claims. The final regulation provides the USDA with an effective remedy against a person alleged to have submitted false claims or statements while providing due process to that person. Executive Order 12291

USDA has determined that this rule is not a major rule for the purpose of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effect. Therefore, a Regulatory Impact Analysis has not been prepared. USDA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the new benefits; and has chosen the alternative approach involving the least net cost to society.

Paperwork Reduction Act of 1980

These regulations contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980, and fall within the exceptions to coverage.

Summary of Changes/Comments

As noted above, a proposed rule was published in the Federal Register January 8, 1990 (55 FR 636 *et seq.*).

Comments were received from several Federal government commenters.

One commenter suggested that the investigating official should refer cases directly to the AFCO, rather than to the reviewing official in the first instance. USDA has determined that, for purposes of centralization and accountability, referral directly to the reviewing official is more desirable and will not hinder expeditious processing. Thus, USDA will make no change in the final rule.

One commenter felt that in the final rule the Secretary should designate more than one reviewing official. The Secretary would be permitted to do so under the language of § 1.302(i) as published in the proposed regulations.

A commenter suggested that the definition of "Knows or has reason to know" should include the clarification that "no proof of specific intent to defraud is required." We agree. Section 1.302(o) has been amended in the final rule to include this language.

One commenter stated that the establishment of an AFCO in §§ 1.302(b) and 1.305 (a), (b), and (c) is inconsistent with the enabling legislation and would create another bureaucratic layer. While not specifically provided for in the PFCRA, the creation of the AFCO is not inconsistent with the legislation. USDA believes that the number and diversity of USDA programs justify the addition of an official with expertise in the program area involved.

A commenter noted that the definition of "days" in § 1.302(h) is redundant in

light of § 1.326(b). USDA believes § 1.326(b) only further clarifies § 1.302(h).

A commenter stated that the definition of "person" in § 1.302(q) was expanded beyond the scope of that contained in the legislation. USDA agrees, and has amended the definition of "person" in the final rule to omit references to states, their subdivisions, municipalities and Indian tribes.

A commenter noted that § 1.304, which concerns the amount of penalties and assessments, should follow the section on post-hearing briefs. We agree. Accordingly, § 1.304 is renumbered § 1.335, and succeeding sections have been renumbered to conform to this change. All references refer to the renumbered sections.

A commenter noted that § 1.304(c) relates to two separate matters and should be divided. We agree. Accordingly, the last sentence of § 1.304(c) is redesignated as § 1.304(d).

A commenter suggested that § 1.305(e)(6) should be deleted and § 1.307(b)(2) be amended to follow the approach of commencing a program fraud action from a position of seeking maximum provable recovery. We agree. Accordingly, we are amending § 1.305 and § 1.307 to reflect this change.

A commenter stated that § 1.306(c) should be deleted due to redundancy with § 1.303(c). We agree. Accordingly, § 1.306(c) has been deleted from the final rule.

On the basis of a commenter's concern, we are making stylistic changes in § 1.322(d)(4) for the sake of clarity.

A commenter noted §§ 1.322 (f) and (g) were duplications of §§ 1.321 (b) and (c). We agree. Accordingly, §§ 1.322 (f) and (g) are deleted.

A commenter stated the regulations should provide guidance on the scope of the protective order that the ALJ may issue. We agree. Accordingly, a new § 1.322(f) is inserted to address more clearly the commenter's concerns.

A commenter suggested regulations governing depositions and written interrogatories should provide the same protections to a party as those relating to production of documents. We agree. Accordingly, §§ 1.322(d)(2) and 1.322(d)(3) are amended to address these concerns.

A commenter expressed concern over potential confusion between the procedures employed in the use of subpoenas in § 1.322(d)(4), with regard to depositions, and §§ 1.323 (a), (b), and (c), which address subpoenas for attendance at both depositions and hearings. Thus, §§ 1.323 (a), (b), and (c) are amended to omit references to subpoenas for attendance at depositions, and § 1.323 is retitled "Subpoenas for attendance at hearing." This should make clear that the sections address different matters.

In response to the concern of one commenter that there was a potential conflict between § 1.332(h) and § 1.322, § 1.332(h) has been amended in the final rule to provide for the contingency of a protective order issued under § 1.322 that would conflict with the open record provision of § 1.332(h) as published in proposed form.

A commenter suggested that the provisions of § 1.337(f) regarding finality of the initial decision were not completely clear. Therefore, USDA has amended § 1.337(f) and added § 1.337(g) for purposes of clarification.

One commenter pointed out that § 1.338(b) as proposed may impermissibly limit the respondent's right to file an appeal to the judicial officer by requiring the respondent to wait until the expiration of the period for filing a request for reconsideration. Therefore, USDA has amended the final rule to provide that a notice of appeal may be filed at any time within 30 days of the initial decision; and, if a motion for reconsideration is filed timely, the appeal will be stayed automatically pending resolution of the motion for reconsideration. Section 1.338(d) is amended to clarify that, where a respondent has filed timely a notice of appeal, the ALJ will forward the record to the judicial officer only if the time for filing a motion for reconsideration under § 1.337 has expired.

A commenter expressed concern that §§ 1.340 (b), (c), (d), and (e) contain provisions for a stay that are inconsistent with the expeditious treatment of PFCRA administrative actions that Congress intended. USDA has determined that the availability of a stay pending judicial review under the limited circumstances described in § 1.340 is desirable in the interests of fairness and will not create a significant obstruction to carrying out the PFCRA.

A commenter stated that in order to provide increased flexibility in resolving these cases, § 1.346(a) should be revised to provide for extension of the statute of limitations by agreement of the parties. USDA feels that the present six-year statute of limitations is adequate.

One commenter expressed concern over potential misunderstanding with regard to the term "benefits." The term is defined both in § 1.302(e) and § 1.303(c)(2)(i). The definition embodied in § 1.302(e) encompasses "* * * anything of value, including but not limited to any advantage, preference, privilege, license, permit. * * *" However, in § 1.303(c)(2)(i), the term is defined, in part, as "[b]enefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977.)" The question, thus, arises as to whether "benefits under the food stamp program" includes the privilege or advantage of accepting food stamps as payment. If so interpreted, retailers charged with filing false claims might be able to limit their liability under § 1.303 to those instances where they are charged with making false statements in their applications for authorization, rather than with submitting unlawfully obtained coupons for redemption, which is the most common form of retailer fraud.

Thus, USDA is amending the proposed rule, in § 1.303(c)(2)(i), to make clear that the term "benefits," when used in connection with the food stamp program, refers solely to "food assistance" for the personal use of the individual who receives the benefits or for a member of the individual's family or household.

List of Subjects in 7 CFR Part 1

Claims, Civil fraud.

Accordingly, in title 7, Code of Federal Regulations, a new subpart K is added to subtitle A, part 1, to read as follows:

Subpart K—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986

Sec.

1.301 Basis, purpose and scope.
1.302 Definitions.
1.303 Basis for civil penalties and assessments.
1.304 Investigation.
1.305 Review by the reviewing official.
1.306 Prerequisites for issuing a complaint.
1.307 Complaint.
1.308 Service of complaint and notice of hearing.
1.309 Answer and request for hearing.
1.310 Default upon failure to file an answer.
1.311 Referral of complaint and answer to the ALJ.
1.312 Procedure where respondent does not request a hearing.
1.313 Procedure where respondent requests a hearing; notice of hearing.
1.314 Parties to the hearing.
1.315 Separation of functions.
1.316 Ex parte contacts.
1.317 Disqualification of reviewing official or ALJ.
1.318 Rights of parties.
1.319 Authority of the ALJ.
1.320 Prehearing conferences.
1.321 Disclosure of documents.
1.322 Discovery.
1.323 Subpoenas for attendance at hearing.
1.324 Fees.
1.325 Form, filing and service of papers.
1.326 Computation of time.
1.327 Motions.

Sec.
1.328 Sanctions.
1.329 The hearing and burden of proof.
1.330 Location of hearing.
1.331 Witnesses.
1.332 Evidence.
1.333 The record.
1.334 Post-hearing briefs.
1.335 Determining the amount of penalties and assessments.
1.336 Initial decision of the ALJ.
1.337 Reconsideration of initial decision.
1.338 Appeal to the Judicial Officer.
1.339 Stays ordered by the Department of Justice.
1.340 Stay pending appeal.
1.341 Judicial review.
1.342 Collection of civil penalties and assessments.
1.343 Right to administrative offset.
1.344 Deposit to Treasury of the United States.
1.345 Settlement.
1.346 Limitation.

Subpart K—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986

Authority: 31 U.S.C. 3801–3812.

§ 1.301 Basis, purpose and scope.

(a) *Basis.* This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, Sections 6101–6104, 100 Stat. 1874 (1986). This statute added 31 U.S.C. 3801–3812. Section 3809 of Title 31, United States Code, requires the Secretary to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This subpart—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Scope.* The procedures for imposing civil penalties and assessments established by this subpart are intended to enhance existing administrative enforcement efforts against fraud and to provide an additional remedy against false, fictitious, and fraudulent claims and statements in the programs administered by this Department.

§ 1.302 Definitions.

(a) *Agency* means a constituent organizational unit of the USDA.

(b) *Agency Fraud Claims Officer—[AFCO]* means an officer or employee of an agency who is designated by the head of that agency to receive the reports of the investigating official, evaluate evidence, and make a recommendation to the reviewing official with respect to the determination required under § 1.305 of this part.

(c) *ALJ* means an Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344.

(d) *Authority* means the USDA.

(e) *Benefits* means, except as otherwise defined in this subpart, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(f) *Claim* means any request, demand, or submission—

(1) Made to USDA for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from USDA or to a party to a contract with USDA—

(i) For property or services if the United States—

(a) Provided such property or services; or

(b) Provided any portion of the funds for the purchase of such property or services; or

(c) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(a) Provided any portion of the money requested or demanded; or

(b) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to USDA which has the effect of decreasing an obligation to pay or account for property, services, or money.

(g) *Complaint* means the written notice served by the reviewing official on the respondent under § 1.307 of this part.

(h) *Days* means business days for all periods referred to in these regulations of 10 days or less and calendar days for all periods referred to in these regulations in excess of 10 days.

(i) *Family* means the individual's parents, spouse, siblings, children, and grandchildren with respect to an individual making a claim or statement for benefits.

(j) *Government* means the United States Government.

(k) *Household* means a family or one or more individuals occupying a single residence.

(l) *Individual* means a natural person.

(m) *Investigating official* means the Inspector General of USDA or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(n) *Judicial officer* means an official of USDA delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g) and Reorganization Plan No. 2 of 1953, 67 Stat. 633, as amended by Public Law No. 97–325 (7 U.S.C. 2201n.), to perform the adjudicating function for the Department under § 2.35 of this title, or the Secretary if he exercises the authority so delegated.

(o) *Knows or has reason to know* means that a person, with respect to a claim or statement—

(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent to defraud is required.

(p) *Makes* means presents, submits, or causes to be made, presented, or submitted. As the context requires, "making" or "made" shall likewise include the corresponding forms of such terms.

(q) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(r) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose *pro se* appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an owner, officer, or employee of the corporation or entity.

(s) *Respondent* means any person alleged in a complaint issued under § 1.308 of this part to be liable for a civil penalty or assessment under § 1.303 of this part.

(t) *Reviewing official* means an officer or employee of USDA—

(1) Who is designated by the Secretary to make the determination required under § 1.305 of this part;

(2) Who is serving in a position for which the rate of basic pay is not less

than the minimum rate of basic pay for grade GS–16 under the General Schedule; and

(3) Who is—

(i) Not subject to supervision by, or required to report to, the investigating official; and

(ii) Not employed in the organizational unit of USDA in which the investigating official is employed.

(u) *Secretary* means the Secretary of Agriculture.

(v) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, USDA, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

(w) *USDA* means the U.S. Department of Agriculture.

§ 1.303 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, food coupons, or money constitutes a separate claim.

(3) A claim shall be considered made to the USDA, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the USDA, recipient, or party.

(4) Each claim for property, services, food coupons, or money is subject to a civil penalty regardless of whether such property, services, food coupons, or money is actually delivered or paid.

(5) If the Government has made payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the USDA when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the USDA.

(c) *Benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term *benefits* means—

(i) Benefits under the food stamp program established under the Food Stamp Act of 1977 which are intended as food assistance for the personal use of the individual who receives the benefits or for a member of the individual's family or household (as defined in section 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under the National School Lunch Act;

(iii) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary or USDA;

(iv) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family or household.

(d) *Intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *More than one person liable.* In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person may be held liable for a civil penalty under this section.

(f) *Joint and several liability.* In any case in which it is determined that more than one person is liable for making a claim under this section on which the government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

§ 1.304 Investigation.

(a) The investigating official may investigate allegations that a person is liable under § 1.303 of this part.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, the investigating officer may issue a subpoena, which shall notify the person to whom it is addressed of the authority under which it is issued and shall identify the information, documents, reports, answers, records, accounts, papers, or data sought.

(c) The investigating official may designate a person to act on his behalf to receive the documents or other materials sought by a subpoena issued under paragraph (b) of this section.

(d) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents or other materials sought have been produced, or that such documents or other materials are not available and the reasons therefore, or that such documents or other materials, suitably identified, have been withheld based upon the assertion of an identified privilege.

(e) Each agency shall develop criteria for determining which allegations that a person is liable under § 1.303 of this part are to be referred to the investigating official.

(f) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing findings and conclusions of such investigation to the reviewing official.

(g) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, nor preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official in order to avoid interference with a criminal investigation or prosecution.

(h) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 1.305 Review by the reviewing official.

(a) Upon receipt of the report of the investigating official, the reviewing official may refer the report to the appropriate agency fraud claims officer (AFCO) for a recommendation with respect to the determination required under this section.

(b) The AFCO shall evaluate the evidence and make a recommendation to the reviewing officer within 45 days of receipt of the report of the investigating official.

(c) The reviewing official is not bound by the recommendation of the AFCO, and may accept or reject it.

(d) If, based on the report of the investigating official under § 1.304(f) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under § 1.303 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1.307 of this part.

(e) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement of the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 1.303 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements;

(6) A statement that there is a reasonable prospect of collecting the amount specified in § 1.307(b)(2) of this part and the reasons supporting such statement.

§ 1.306. Prerequisites for issuing a complaint.

The reviewing official may issue a complaint under § 1.307 of this part only if:

(a) The Attorney General or an Assistant Attorney General designated by the Attorney General approves the issuance of a complaint in a written statement as provided in 31 U.S.C. 3803(b)(1);

(b) In the case of allegations of liability under § 1.303(a) of this part with respect to a claim, the reviewing official determines with respect to such claim, or a group of related claims submitted at the same time, that the amount of money or the value of property or services demanded or requested in violation of § 1.303(a) of this part does not exceed $150,000; and

(c) For the purposes of this section, a group of related claims submitted at the same time shall include only those claims arising from the same transaction (e.g., a single grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission, regardless of the amount of money or the value of property or services demanded or requested.

(d) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 1.307 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the respondent, as provided in § 1.308 of this part.

(b) The complaint shall state—

(1) The allegations of liability, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons that liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for requesting a hearing, including a specific advice of the respondent's right to request a hearing and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint may result in the imposition of the penalty and assessment sought in the complaint without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

§ 1.308 Service of complaint and notice of hearing.

(a) Service of a complaint or notice of hearing shall be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the notice was served, and the manner and date of service, shall be made by:

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment by the respondent or his representative.

§ 1.309 Answer and request for hearing.

(a) Within 30 days of the date of receipt or refusal to accept service of the complaint, the respondent may file an answer with the reviewing official.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense upon which the respondent intends to rely;

(3) Shall state the name, address, and telephone number of the person authorized to act as the respondent's representative, if any;

(4) May state any reasons why the respondent contends the penalty and assessment should be reduced or modified; and

(5) May request a hearing.

§ 1.310 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 1.309(a) of this part, the reviewing official may refer the complaint together with proof of service to the ALJ and request that the ALJ issue an order of default imposing the penalties and assessments sought in the complaint. An answer must comply in all material respects with § 1.309(b) of this part in order to be considered filed within the time prescribed in § 1.310(a) of this part.

(b) Upon the referral of the complaint under paragraph (a) of this section, the ALJ shall promptly serve on the respondent, in the manner prescribed in § 1.308 of this part, a notice that a decision will be issued under this section.

(c) If the respondent fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1.303 of this part, the ALJ shall issue a decision imposing the penalties and assessments sought in the complaint, not to exceed the maximum amount allowed under the statute.

(d) A respondent who fails to file a timely answer waives any right to a review of the penalty and assessment, unless he can demonstrate extraordinary circumstances justifying the failure to file an answer.

§ 1.311 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall send to the ALJ copies of the complaint, proof of service, and the answer.

§ 1.312 Procedure where respondent does not request a hearing.

(a) If the respondent files an answer with the reviewing official within the time period prescribed in § 1.309(a) of this part but does not request a hearing, the ALJ, upon receipt of the complaint, proof of service, and answer, shall notify the respondent that a decision will be issued under this section and shall afford the parties 30 days in which to submit documentary evidence or other relevant written information, including briefs or other written arguments. At the end of that period, the ALJ shall issue a decision based upon the pleadings and the evidence submitted, or if no evidence has been submitted, upon the pleadings. The burden of proof shall be as set forth in § 1.329 of this part.

(b) When a decision is to be issued under this section, the ALJ shall have discretion to permit, allow, limit, or otherwise control discovery to the extent set forth under §§ 1.322 thru 1.324 of this part.

§ 1.313 Procedure where respondent requests a hearing; notice of hearing.

(a) When the ALJ receives the complaint, proof of service, and an answer requesting a hearing, the ALJ shall promptly serve, in accordance with § 1.308 of this part, a notice of hearing on all parties.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative for the USDA and the representative for the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1.314 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and USDA. The proceeding shall be brought in the name of the Secretary.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private party plaintiff under the False Claims Act may participate in proceedings under this subpart to the extent authorized by the provisions of that Act.

§ 1.315 Separation of functions.

(a) Neither the investigating official, the reviewing official, nor any employee or agent of the USDA who takes part in investigating, preparing, or presenting a particular case may, in such case or in a factually related case—

(1) Conduct the hearing in such case;

(2) Participate in or advise the ALJ in the decision in such case, or participate in or advise in the review of the decision in such case by the judicial officer, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under § 1.341 of this part.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except to the extent limited by paragraph (a) of this section, the representative for USDA may be employed in any constituent agency of USDA, including the offices of either the investigating official or the reviewing official.

§ 1.316 Ex parte contacts.

Except to the extent required for the disposition of ex parte matters as authorized by law, the ALJ shall not consult or be consulted by any person or party (except employees of the ALJ's office) on any matter in issue, unless on notice and opportunity for all parties to participate.

§ 1.317 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f).

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 1.318 Rights of parties.

All parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any prehearing or post-hearing conference held by the ALJ;

(c) Agree to stipulations of fact or law, which shall be made part of the record;

(d) Conduct discovery;

(e) Make opening and closing statements at the hearing;

(f) Present evidence relevant to the issues at the hearing;

(g) Cross examine witnesses;

(h) Present oral arguments at the hearings; and

(i) Submit written briefs, proposed findings of fact, and proposed conclusions of law after the hearing.

§ 1.319 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceedings is made.

(b) The ALJ may:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of attorneys and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this subpart.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes, regulations, or legal opinions.

§ 1.320 Prehearing conferences.

(a) The ALJ may schedule a prehearing conference at a reasonable time in advance of the hearing and may schedule additional prehearing conferences as appropriate.

(b) The ALJ may conduct any prehearing conference in person or by telephone.

(c) The ALJ may use prehearing conferences to discuss the following matters:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument.

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ shall issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1.321 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1.304(f) of this part are based unless such documents are privileged under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the respondent also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1.305 of this part is not discoverable under any circumstances.

(d) The respondent may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may be filed with the ALJ following the filing of the answer pursuant to § 1.309 of this part.

§ 1.322 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production, inspection and photocopying of documents;

(2) Requests for admission of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) The ALJ shall set the schedule for discovery.

(c) Requests for production of documents and requests for admission.

(1) A party may serve requests for production of documents or requests for admission on another party.

(2) If a party served with such requests fails to respond timely, the requesting party may file a motion to compel production or deem admissions, as appropriate.

(3) A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating reasons why discovery should be limited or should not be required.

(4) Within 15 days of service of a motion to compel or to deem matter admitted or a motion for a protective order, the opposing party may file a response.

(5) The ALJ may grant a motion to compel production or deem matter admitted or may deny a motion for a protective order only if he finds that—

(i) The discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) It is not unduly costly or burdensome;

(iii) It will not unduly delay the proceeding; and

(iv) The information sought is not privileged.

(d) Depositions and written interrogatories. Depositions and written interrogatories are permitted only on the order of the ALJ.

(1) A party seeking to use depositions or written interrogatories may file a motion with the ALJ.

(2) A party and/or the potential deponent may file an opposition to the motion or a motion for a protective order within 10 days of service of the motion.

(3) The ALJ may grant a motion allowing the taking of a deposition or the use of interrogatories or may deny a motion for a protective order only if he finds that the moving party has satisfied the standards set forth in paragraph (c)(5) of this section and has shown that the information sought cannot be obtained by any other means.

(4) If the ALJ grants a motion permitting a deposition, he shall issue a subpoena, which may also require the witness to produce documents. The party seeking to depose shall serve the

subpoena in the manner prescribed in § 1.308 of this part.

(5) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(e) Costs. The costs of discovery shall be borne by the party seeking discovery.

(f) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

(g) Exchange of witness lists, statements, and exhibits. Witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 1.331(b) of this part, shall be exchanged at least 15 days in advance of the hearing, or at such other time as may be set by the ALJ. A witness whose name does not appear on the witness list shall not be permitted to testify and no exhibit not provided to the opposing party as provided above shall be admitted into evidence at the hearing absent a showing of good cause.

§ 1.323 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony at the hearing of any individual may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at such hearing.

(c) A party who desires the issuance of a subpoena shall file with the ALJ a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses whose attendance is sought to be required and describe their addresses and locations with sufficient particularity to permit such witnesses to be found. The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce. Such a request may be made ex parte.

(d) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(e) A subpoena shall be served by delivery, or by registered mail or by certified mail in the manner prescribed in § 1.308 of this part. A subpoena upon a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within five days of service or on or before the time specified in the subpoena for compliance if it is less than five days after service.

§ 1.324 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of USDA, a check for witness fees and mileage need not accompany the subpoena.

§ 1.325 Form, filing and service of papers.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the ALJ assigned to the case.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by and shall contain the address and telephone number of the representative for the party or the person on whose behalf the paper was filed.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or his representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 1.326 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is ten or fewer calendar days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

§ 1.327 Motions.

(a) Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) The ALJ may require written motions to be accompanied by supporting memorandums.

(d) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(e) The ALJ may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting a response.

(f) The ALJ shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1.328 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with a lawful order, subpoena, or procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with a subpoena or an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem admitted each item as to which an admission is requested;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request; or

(5) Request that the Attorney General petition an appropriate district court for an order to enforce a subpoena.

(d) If a party fails to prosecute or defend an action under this subpart commenced by service of a complaint, the ALJ may dismiss the action or enter an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion or other action which is not filed in a timely fashion.

§ 1.329 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under § 1.303 of this part, and if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The USDA shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.

(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1.330 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the respondent resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the respondent and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The ALJ shall issue an order to the parties designating the time and the place of the hearing.

§ 1.331 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 1.322(g) of this part.

(c) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(d) A witness may be cross-examined on any matter relevant to the proceeding without regard to the scope of his or her direct examination.

(e) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the USDA engaged in assisting the representative for USDA.

§ 1.332 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the Federal Rules of Evidence are not applicable to the hearing, except that the ALJ may in his discretion apply the Federal Rules of Evidence in order to assure production of credible evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties unless otherwise ordered by the ALJ pursuant to § 1.322 of this part.

§ 1.333 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained from the reporter by anyone at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the judicial officer.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone unless otherwise ordered by the ALJ.

§ 1.334 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ

may permit the parties to file reply briefs.

§ 1.335 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the judicial officer, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the judicial officer in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the government of the United States or of a State, directly or indirectly; and

(16) The need to deter the respondent and others from any engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the judicial officer from considering any other factors that in any given case may mitigate or aggravate the acts for which penalties and assessments are imposed.

§ 1.336 Initial decision of the ALJ.

(a) The ALJ shall issue an initial decision, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues for every claim or statement with respect to which a penalty or assessment was proposed:

(1) Whether any claim or statement identified in the complaint violates § 1.303 of this part;

(2) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors described in § 1.335 of this part.

(c) The ALJ shall serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall include with the initial decision a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file notice of appeal with the judicial officer. The ALJ may extend the time period for serving the initial decision on the parties.

(d) Unless the initial decision of the ALJ is timely appealed to the judicial officer, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1.337 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the judicial officer in accordance with § 1.338 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the judicial officer in accordance with § 1.338 of this part.

§ 1.338 Appeal to the judicial officer.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the judicial officer in accordance with this section. The judicial officer of USDA shall consider all appeals to the Secretary under this subpart and render a decision on behalf of the Secretary.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 1.337 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(c) The judicial officer may extend the initial 30-day period during which a notice of appeal may be filed for an additional 30 days if the respondent files a request for an extension within the initial 30-day period and shows good cause.

(d) If the respondent timely files a notice of appeal with the judicial officer and the time for filing motions for reconsideration under § 1.337 of this part has expired, the ALJ will forward the record of the proceeding to the judicial officer.

(e) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(f) The representative for USDA may file a brief in opposition to exceptions within 30 days of receiving the brief proposing exceptions.

(g) There is no right to appear personally before the judicial officer.

(h) There is no right to interlocutory appeal of rulings by the ALJ.

(i) The judicial officer, in reviewing the decision, shall not consider any objection that was not raised before the ALJ unless a demonstration is made that extraordinary circumstances caused the failure to raise the objection.

(j) If any party demonstrates to the satisfaction of the judicial officer that additional evidence not presented to the ALJ is material and that there were reasonable grounds for the failure to present such evidence to the ALJ, the judicial officer shall remand the matter to the ALJ for consideration of such additional evidence.

(k) The judicial officer may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ.

(l) The judicial officer shall promptly serve each party to the appeal with a copy of the decision of the judicial officer and a statement describing the respondent's right to seek judicial review.

(m) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the judicial officer serves the respondent with a copy of the judicial officer's decision, a determination that a respondent is liable under § 1.303 of this part is final and is not subject to judicial review.

§ 1.339 Stays ordered by the Department of Justice.

(a) If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the judicial officer shall stay the process immediately.

(b) If the judicial officer stays the administrative process in accordance with paragraph (a) of this section, the judicial officer may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1.340 Stay pending appeal.

(a) A decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the judicial officer.

(b) The respondent may file with the ALJ a request for stay of the effective date of a decision of the judicial officer pending judicial review. Such request shall state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of a decision of the judicial officer. The filing of such a request shall automatically stay the effective date of the decision of the judicial officer until the ALJ rules upon the request.

(c) The representative for the USDA may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the representative for the USDA fails to file such an opposition within the allotted time, or indicates that the USDA has no objection to the request, the ALJ may grant the stay without requiring respondent to give a bond or other security.

(d) The ALJ may grant a contested request where justice so requires and to the extent necessary to prevent irreparable harm but only upon the respondent's giving of a bond or other adequate security. The ALJ shall rule promptly on a contested request for stay.

(e) A decision of the ALJ denying respondent's request for a stay shall constitute final agency action.

§ 1.341 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the judicial officer imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1.342 Collection of civil penalties and assessments.

Sections 3806 and 3806(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

§ 1.343 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 1.341 or § 1.342 of this part, or any amount agreed upon in a settlement under § 1.345 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes then or later owing by the United States to the respondent.

§ 1.344 Deposit to Treasury of the United States.

All amounts collected pursuant to this subpart shall be deposited as miscellaneous receipts in the Treasury of the United States.

§ 1.345 Settlement.

(a) A respondent may make offers of compromise of settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues a decision.

(c) The judicial officer has exclusive authority to compromise or settle a case under this subpart at any time after the date on which the ALJ issues a decision, except during the pendency of any appeal under § 1.341 of this part or during the pendency of any action to collect penalties and assessments under § 1.342 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any appeal under § 1.341 of this part, or any action to recover penalties and assessments under § 1.342 of this part.

(e) The investigating official may recommend settlement terms to the reviewing official, the judicial officer, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the judicial officer, or the Attorney General, as appropriate.

(f) Any settlement must be in writing.

§ 1.346 Limitation.

The complaint referred to in § 1.307 of this part with respect to a claim or

statement must be served in the manner specified in § 1.308 of this part within 6 years after the date on which such claim or statement is made.

Done this 28th day February, 1991, at Washington, D.C.

Richard T. Crowder,

Acting Secretary of Agriculture

[FR Doc. 91-5340 Filed 3-6-91; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1434

Honey Price Support Program

AGENCY: Commodity Credit Corporation.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations at 7 CFR part 1434 with respect to the Honey Price Support Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446 et seq.), as amended (the 1949 Act). This rule is necessary in order to implement changes made by section 1001 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and section 1105 of the Omnibus Budget Reconciliation Act of 1990 (the 1990 Budget Act). Generally, the amendments made by this rule specify the manner in which honey producers may utilize the Honey Price Support Program, and the terms and conditions of the Honey Price Support Program.

DATES: Effective date: This interim rule shall become effective on March 7, 1991. Comments must be received on or before April 8, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC. Telephone (202) 447-7641.

FOR FURTHER INFORMATION CONTACT: Margaret Wright, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC. Telephone (202) 447-8451.

SUPPLEMENTARY INFORMATION: This amendment has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined that these program provisions will result in an annual effect on the economy of less than $100 million.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this notice applies is Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the Honey Price Support Program that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to the Honey Price Support program is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, and assigned number 0560-0067.

Since producers are currently extracting honey and taking actions in order to pledge such honey as collateral for CCC price support loans, it has been determined that this interim rule is effective upon publication in the **Federal Register**. Comments are requested, however, and will be taken into consideration in developing the final rule.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. This interim rule amends other rules found at 7 CFR 1434 to provide rules for administering CCC price support programs.

This rule amends § 1434.1 to provide that purchase agreements will not be offered for 1991 and subsequent crops of extracted honey.

The definition of an eligible honey producer has been revised and § 1434.3 has been amended accordingly.

This rule amends § 1434.4(b) to provide that a producer shall be considered to have divested beneficial interest in the honey if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except when such payment is made in accordance with part 1425 of this title for approved cooperative marketing associations. § 1434.4(d) has been amended to provide that producers who either redeem loan collateral with cash at a repayment rate that is less than the loan rate, or who obtain a loan deficiency payment must provide acceptable production evidence or the storage location of such commodity to CCC so that CCC may verify production through spot check. Section 1434.4(f) was added to provide that in the case of loan deficiency payments, production evidence or storage location must be provided to CCC within 12 months from the final loan availability date for the crop year after the crop year for such commodity. If the producer fails to provide acceptable production evidence or the storage location for the honey by the specified time period, § 1434.4(g) provides that the producer will be required to refund the market gain or the loan deficiency payment and charges, plus interest.

This rule amends § 1434.5 to allow persons with an interest in storing, processing, or merchandising any commodity to act as an agent for a producer if that person is delegated authority which is restricted specifically to repaying outstanding loan amounts plus interest and charges, and the delegation is on file at the county office.

Section 207 of the 1990 Act provides for offering price support to producers for each of the 1991 through 1995 crops of honey at a rate of not less than 53.8 cents per pound. Accordingly, this interim rule amends § 1434.6(b) to provide that the national average price support rate for loans will be 53.8 cents per pound for 1991 through 1995 crops of honey. Formerly price support loans matured on demand but not later than the last day of the ninth calendar month after the month in which the loan was requested. This rule further amends § 1434.6(b) to provide that price support loans mature on demand, but not later than the last day of the ninth calendar month after the month the note and security agreement is filed in accordance with § 1434.6 and approved. Section 1434.6(c)(2) was added to provide that CCC shall limit the total quantity on loans and loan deficiency payments, based on a subsequent increase in the quantity of eligible commodity during the loan availability period, to 120 percent of the original loan quantity.

This rule amends § 1434.7 to include Chinese tallow in the table honey list and Christmas berry in the nontable honey list for eligible honey.

Adulterated honey is further defined in § 1434.8(b) as adulterated if any substance including water has been substituted wholly or in part for such honey. Section 1434.8(c) has been amended to include 30 gallon steel drums having a tare weight less than 28 pounds, plastic buckets and containers, severely dented steel drums, and rusted drums as ineligible containers. Section 1434.8(e) has been added to define ineligible honey as honey containing excessive bees or bee parts, paint chips, wood chips, or other foreign matter, fermented honey, and foreign produced honey.

This interim rule amends § 1434.9(a)(1) to clarify that commercial warehouses are not eligible farm storage, and that eligible farm storage must be under the control of the producer. If commodities to be pledged as collateral for a loan are stored in leased space, a copy of the lease must be provided to CCC. The lease must authorize the producer and any person having an interest in the commodity, including CCC to enter the leased premises to inspect and examine the commodity, and permit a reasonable time for removal of the commodity upon termination of the lease. County A.S.C.S. offices may also require the lessor to execute a lien waiver that fully protects CCC's interest. Section 1434.9(c) has been added for CCC to provide a waiver of approved storage requirements if the producer agrees to forgo obtaining a loan pursuant to the loan deficiency payment provisions.

Section 1434.11(2) was added to provide that for honey delivered to CCC in settlement of a loan, CCC will pay warehouse charges for receiving the commodity, or "in charges", provided the producer has either already paid the charges or agrees that CCC will pay the charges to the receiving warehouse to the producer's account.

Section 207 of the 1949 Act sets forth the statutory authority for the Honey Price Support program for the 1991 through 1995 crops of honey. Section 207 was amended by the 1990 Budget Act to provide that:

(1) *In General*—Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey, as defined by the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602), shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment on a per pound basis in an amount equal to 1 percent of the national price support level for each such crop.

(2) *Collection*—The assessment shall be collected and remitted by the first handler of honey in a manner prescribed by the Secretary which, to the extent practicable, shall be as provided for in the Honey Research, Promotion, and Consumer Information Act.

(3) *Exemptions*—All persons who are exempt from the payment of the assessment authorized by such Act, and all imported honey, shall be exempt from the payment of the assessment required by the subsection.

(4) *Penalties*—If any person fails to collect or remit the assessment required by this subsection or fails to comply with such requirements for recordkeeping or otherwise as are required by the Secretary, the person shall be liable to the Secretary for a civil penalty up to an amount determined by multiplying—

(a) the quantity involved in the violation; by

(b) the support level for the applicable crop of honey.

Accordingly, § 1434.13(b) has been added to provide for the collection of a nonrefundable marketing assessment from loans and loan deficiency payments in an amount equal to one percent of the national average price support loan rate multiplied by the quantity of the crop.

This interim rule removes § 1434.13(d) which previously authorized a delivery charge of 1 cent per hundredweight, in addition to the service charge, to be paid by producers at the time of settlement on the quantity of honey delivered to CCC. The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) requires an assessment from honey producers and producer-packers. Accordingly, § 1434.13(e) has been added to provide the authority for CCC to collect the assessment, an amount as determined by the National Honey Board, from loan disbursements and loan deficiency payments for each producer or producer-packer that has not been made exempt by the Board. Section 1434.13(f) has been added to provide that additional fees representing amounts voted on by producers for marketing and promotional fees may be deducted from price support proceeds by CCC upon request and agreement of the applicable governing body. CCC will determine the manner in which such additional fees will be deducted from loan proceeds and the time that the fees will be paid to the governing body.

This interim rule amends § 1434.15(b) to include the tare weight for 55-gallon drums shall not be less than 38 pounds and the tare weight for 30-gallon drums shall be at least 32 pounds per drum, but not less than 26 pounds. Section 1434.15(c) (1) and (2) have been added to set forth the provisions for the total quantity of honey eligible for loans or loan deficiency payments. The total quantity eligible will be determined by the acceptable evidence of disposition of the honey and if the evidence is provided before or after the final loan availability date.

Section 207 of the 1990 Act amends the current limitations for payments that a "person," may receive and the value of honey loan forfeitures that such a "person" may forfeit to CCC, as follows:

(A) $200,000 in the 1991 crop year;

(B) $175,000 in the 1992 crop year;

(C) $150,000 in the 1993 crop year;

(D) $125,000 in each of the 1994 and subsequent crop years.

For the purposes of Section 207, the term "payments" means:

(A) any gain realized by a producer from repaying a loan for a crop of honey at a lower level than the original loan level under this section; and

(B) any loan deficiency payment received under subsection (c).

Payments and forfeiture amounts are also required, under section 207, to be attributed to the individual producer if such payments and forfeiture occur with respect to an entity, such as a corporation, trust, estate, or limited partnership in which the individual has an interest. The regulations in 7 CFR part 1497 shall provide and define the process of attribution. Section 1434.17 has been added by this rule to set forth the provisions for payment and forfeiture limitations for the 1991 through 1994 and subsequent crop years.

In the past, CCC assumed the loss if all or part of the commodities pledged as collateral for farm-stored CCC price support loans were destroyed by specified acts of nature, and the producer's negligence did not cause the loss, either directly or indirectly. This interim rule amends § 1434.20 to provide that CCC shall not assume any loss in quantity or quality of loan collateral.

This rule amends § 1434.22(f) to provide that if the county committee determines an incorrect certification and the loan is called, the producer shall have fifteen days to settle the loan. The penalties for incorrect certification have been expanded in § 1434.22. Section 1434.22(g) has been added to provide that producers who have been refused a loan on farm-stored honey may apply for a warehouse-stored honey loan. The penalties for unauthorized removal and unauthorized disposition have been expanded in § 1434.23. Additionally, with respect to unauthorized removal and unauthorized disposition,

BEST COPY AVAILABLE

inadvertent has been determined to not include the movement of mortgaged collateral off the farm, movement of mortgaged collateral from one storage structure to another on the farm, and feeding of mortgaged collateral. Section 1434.23(b) has been added to provide that producers who have been refused a loan on farm-stored honey may apply for a warehouse-stored honey loan.

This interim rule amends § 1434.24(a)(3) to include the provisions for written marketing authorization approval before release of loan collateral. Additionally, if such quantity released is not repaid by the expiration date of the marketing authorization, the loan may not be repaid at the level that is less than the loan level. Section 1434.24(e)(2) has been amended to permit producers with honey loans to request a loan repayment rate announced by CCC to be the repayment level for not more than 30 days from the date of such request. If such repayment is made after 30 days, repayment shall be the principal amount for the quantity, and charges plus interest.

This rule amends § 1434.25 to add that if the producer fails to deliver the honey by the specified date on Form CCC-691, Commodity Delivery Notice, and repays the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title. Additionally, § 1434.25 is amended to provide that if a producer fails to settle any loan within 30 days after the maturity date of the loan, or such other time period established by CCC, a claim will be established for the outstanding loan amount and charges plus accrued interest. Delivery of the commodity will still be accepted after a claim has been established, but the settlement value of the delivered commodity will be applied to the claim in accordance with part 1403 of this title.

Section 207, of the 1990 Act, provides that for each of the 1991 through 1995 crops of honey, payments shall be available to producers who, although eligible to obtain a regular price support loan, agree to forgo obtaining a loan in return for a loan deficiency payment. Such payment shall be computed by multiplying:

(A) the loan payment rate; by

(B) the quantity of honey the producer is eligible to place under loan but for which the producer forgoes obtaining the loan in return for payments under this subsection.

Section 207, of the 1990 Act, defines the loan payment rate as the amount by which:

(A) the loan level determined for the crop under this subsection (a); exceeds

(B) the level at which a loan may be repaid under subsection (b).

Accordingly, this interim rule adds § 1434.26 to provide that CCC will announce if loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year. Producers are entitled to receive a loan deficiency payment on the entire quantity of a commodity that is eligible to be pledged as collateral for a price support loan. In order to verify production, § 1434.26(e) provides that CCC will advance producers 90 percent of the loan deficiency payment when the payment is requested. If acceptable evidence of production is provided to CCC by the final loan availability date for the honey, the loan deficiency payment will be based on 100 percent of the net quantity specified on acceptable evidence of production. If production evidence is provided after the final loan availability date, CCC shall limit the increase in the loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

7 CFR part 1434 set forth the regulations which govern the 1986 through 1990 crops of honey. Although the majority of these regulations are the same as for the 1991 through 1995 crops, the provisions of this part are set forth in their entirety in order that grammatical and technical amendments can also be made in order to improve the clarity of these program regulations.

List of Subjects

Honey, loan programs—Agriculture, Price support programs.

Accordingly, 7 CFR Part 1434 is revised to read as follows:

PART 1434—HONEY

Sec.

1434.1 Applicability.
1434.2 Administration.
1434.3 Eligible producers.
1434.4 Eligibility requirements.
1434.5 Miscellaneous requirements.
1434.6 Availability, disbursement, maturity, and expiration of loans.
1434.7 Eligible honey.
1434.8 Ineligible honey and ineligible containers.
1434.9 Approved storage.
1434.10 Warehouse receipts.
1434.11 Warehouse charges.
1434.12 Liens.
1434.13 Fees, charges and interest.
1434.14 Offsets.
1434.15 Determination of quantity.
1434.16 Determination of quality.
1434.17 Payment and forfeiture limitations.
1434.18 Transfer of producer's interest prohibited.
1434.19 Insurance.
1434.20 Loss or damage.
1434.21 Personal liability of the producer.
1434.22 Quantity for loans.
1434.23 Unauthorized removal and unauthorized disposition.
1434.24 Release of the honey under loan.
1434.25 Liquidation of loans.
1434.26 Loan deficiency payments.
1434.27 Settlement.
1434.28 Foreclosure.
1434.29 Charges not to be assumed by CCC
1434.30 Handling payments and collections not exceeding $0.99.
1434.31 Death, incompetency, or disappearance.
1434.32 Definitions.
1434.33 Paperwork Reduction Act assigned numbers.

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h,4601 et seq.; 15 U.S.C. 714b and 714c.

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1991 and subsequent crops of extracted honey. These regulations set forth the terms and conditions under which price support loans shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement or the loan deficiency payment application which must be executed by a producer in order to receive a price support loan or loan deficiency payment. Purchase agreements shall not be offered for the 1991 and subsequent crops of honey.

(b) The schedule of premiums and discounts, and forms which are used in administering the price support program are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

§ 1434.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of honey shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

1434.3 Eligible producers.

(a) An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who:

(1) Extracts honey as an owner or sharecropper;

(2) Meets the eligibility requirements prescribed in 7 CFR part 12; and

(3) Shares in the risk of the bees and producing the honey.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate or a ward of an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan or loan deficiency payment documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) A cooperative marketing association which is approved by the Executive Vice President, CCC, pursuant to part 1425 of this title, may obtain price support on the eligible production of such crop of the honey or loan deficiency payment with respect to such honey on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of honey. The term "producer" as used in this subpart and on applicable price support and loan deficiency payment forms shall refer both to an eligible producer as defined in paragraphs (a), (b), and (c) of this section and to such an approved cooperative marketing association.

(e)(1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan;

or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f)(1) Two or more eligible producers may obtain a joint loan on eligible honey produced and extracted by them if such honey is commingled and stored in the same eligible containers. In such cases, producers may not, in lieu of obtaining a joint loan, obtain an individual loan on such honey.

(2) Two or more producers may obtain a joint loan if the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan documents and in the applicable regulations in this subpart.

(g) Except as provided in § 1434.10, loans on warehouse stored honey may be made to a warehouseman who tenders to CCC, in the capacity as a producer, in accordance with subsection (a) of this section, warehouse receipts issued by such warehouseman on honey where the issuance and pledge of such warehouse receipts is permitted under State law.

(h) If CCC determines that a producer knowingly pledged adulterated or imported honey as collateral to secure a price support loan or requested a loan deficiency payment for such honey, such producer shall, in addition to any other penalties or sanctions prescribed by law, be ineligible for any honey price support benefit or loan deficiency payment for 3 crop years succeeding such determination.

§ 1434.4 Eligibility requirements.

(a) In order to obtain price support and loan deficiency payments on eligible honey, a producer must request a price support loan no later than March 31 of the year following the year in which the honey was produced and extracted. March 31 is the final loan availability date.

(b)(1) To be eligible for price support, the beneficial interest in the honey must be in the producer tendering the honey as security for a loan or loan deficiency payment and must always have been in the producer or in such producer and a former producer whom the producer succeeded before such honey was extracted. However, heirs shall be eligible for price support and loan deficiency payments as producers whether such succession occurs before or after extraction of honey, if such heirs:

(i) Succeed to the beneficial interest of a deceased producer;

(ii) Assume the decedent's obligation under a loan deficiency payment or loan if such loan deficiency payment or loan has already been obtained; and

(iii) Assure continued safe storage of the farm stored honey if such honey has been pledged as collateral for a farm stored loan.

(2) A producer shall not be considered to have divested the beneficial interest in the honey if the producer enters into a contract to sell or gives an option to buy the honey if, under such contract or option, the producer retains control, risk of loss, and title to the honey subject to such agreement and retains control of the honey, and if the purchaser or intended purchaser does not pay to the producer any advance payment amount for the purchase, any promise of purchase, or any incentive payment amount determined by CCC to provide such purchaser or intended purchaser a beneficial interest in the honey except as provided in part 1425 of this title.

(i) Honey purchased by a producer shall not be eligible for price support.

(ii) If price support and loan deficiency payments are made available through an approved cooperative marketing association, the beneficial interest in the honey must always have been in the producer-members who delivered the honey to the approved cooperative or its member cooperatives. Honey so delivered to such cooperative marketing association shall not be eligible for price support if the producer-member who delivered the honey to the cooperative or its member cooperatives does not retain the right to share in the proceeds from the marketing of the honey as provided in part 1425 of this title.

(c) Any producer or cooperative in doubt as to whether the beneficial interest in the honey complies with the requirements of this section shall, before requesting price support or loan deficiency payment, make available to the county committee all pertinent information which will permit a determination with respect to the beneficial interest to be made by CCC.

(d) Before the final availability date for the crop of honey, a producer may reoffer as collateral for such a loan any honey that has been previously pledged as collateral for a price support loan, except that the quantity of honey may not be pledged as collateral for a loan if such quantity:

(1) Has been redeemed at a level which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii), and

(2) Is eligible to be pledged as collateral for a loan but for which the producer has received a loan deficiency payment in accordance with § 1434.26.

(e) Producers who redeem a quantity of honey at the lower loan repayment level in accordance with § 1434.24(e)(1)(ii) or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1434.26, (1) Shall provide CCC with:

(i) Evidence of disposition of the redeemed honey such as sales receipts or other written documentation acceptable to CCC, or

(ii) The storage location of the redeemed honey which has not been otherwise disposed of and allow CCC access to such honey.

(2) Failing to provide proof of the quantity of honey redeemed in accordance with paragraph (e)(1) of this section shall be required to repay the amount of the market gain or loan deficiency payment and charges, plus interest.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of disposition of the honey acceptable to CCC within 12 months from the final loan availability date for crop year after the crop year for such commodity.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

§ 1434.5 Miscellaneous requirements.

A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising honey which is otherwise eligible for price support or a loan deficiency payment under a program to which this subpart is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement, other price support document, or loan deficiency payment application unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or for the purpose of obtaining a loan deficiency payment, and such delegation is filed through the execution of Form ASCS–211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1434.6 Availability, disbursement, maturity, and expiration of loans.

(a) A producer must request price support and loan deficiency payments on honey stored on the farm at the county office of the county where the honey is stored. A producer shall request price support and loan deficiency payments on honey stored in an approved warehouse at the county office of the county where the warehouse is located or at the county office of the county where the producer is headquartered. An approved cooperative marketing association must request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located unless the State committee designates some other county office. In the case of an approved cooperative marketing association having operations in two or more States, requests may be made at the county office for the county in which its principal office for each such State is located.

(b) Price support loans at a national average price support rate of 53.8 cents per pound for the 1991 through 1995 crops of honey are available to producers as soon as announced by CCC but not earlier than April 1 of the year in which the honey is produced and extracted and not later than March 31 of the year following the year in which the honey is produced and extracted. However, whenever the final date of availability falls on a nonworkday for county offices, the applicable final date shall be extended to include the next workday. Price support loans mature on demand but not later than the last day of the ninth calendar month following the month in which the loan application is approved. However, when the final date of maturity falls on a nonworkday for county offices the final date shall be extended to include the next workday.

(c) Disbursement of loans will be made by county offices by checks drawn on the account of CCC or by credit to the producer's account.

(1) The loan documents shall not be presented for disbursement unless the honey subject to the note and security agreement:

(i) Is eligible to be pledged as collateral for a price support loan,

(ii) In existence,

(iii) Has been extracted, and

(iv) Is in approved storage. If all of the regulations were not met at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(2) CCC shall limit any loan disbursement or loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible honey by the final loan availability date to 120 percent of the original loan quantity, except as provided in § 1434.15(c). A producer may obtain a separate loan or loan deficiency payment before the final loan availability date for quantities in excess of 120 percent of such quantities if such quantities are an otherwise eligible commodity.

(d) The request for a loan shall not be approved until all producers having an interest in the honey sign the note and security agreement and the county committee approves such note and security agreement.

§ 1434.7 Eligible honey.

Honey must meet the requirements of this section in addition to other applicable eligibility requirements of this part in order to be eligible for a loan, for delivery under a loan or for a loan deficiency payment. Honey described in § 1434.8 is not eligible for price support.

(a) The honey must have been produced in the United States by an eligible producer during the calendar year for which price support or loan deficiency payment is requested and extracted on or before December 31 of such calendar year.

(b) Honey from the floral sources listed below and honey having similar flavor shall be eligible for price support and shall be classed as follows:

(1) Table honey means honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country. Such sources include alfalfa, bird's-foot trefoil, blackberry, brazil brush, catsclaw, Chinese tallow, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(2) Nontable honey means honey having a predominant flavor of limited acceptability for table use but which may be considered suitable for table use in areas in which it is produced. Such honeys include those with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Christmas berry, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, macadamia, mangrove, manzamta, mint, partridge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip-poplar, wild cherry, and similarly-flavored honey or blends of such honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(c) The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. All containers shall meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder. However, the container requirements provided in this paragraph (c) may be waived by CCC if a producer agrees to redeem, pursuant to the lower loan repayment provisions contained in § 1434.24(e), and pursuant to the loan deficiency payment provisions contained in § 1434.26, and within a time period specified by CCC, honey pledged by the producer for a price support loan.

(1) The 5-gallon containers must hold approximately 60 pounds of honey and shall be new, clean, sound, uncased, and free from appreciable dents and rust. The handle of each container must be firm and strong enough to permit carrying the filled container. The cover and can opening must not be damaged in any way that will prevent a tight seal. Cans which are punctured or have been punctured and resealed by soldering will not be acceptable.

(2) Steel drums must be open-end type and filled no closer than 2 inches from the top of the drums. In addition, such drums must be new or must be used drums which have been reconditioned inside and outside. They must be clean, treated inside and outside to prevent rusting, fitted with gaskets which provide a tight seal and have an inside coating suitable for honey storage.

(d) To be eligible for price support, honey must not contain in excess of 18.5 percent moisture.

§ 1434.8 Ineligible honey and ineligible containers.

(a) Honey from the following floral sources is not eligible for price support regardless of whether it meets other eligibility requirements: Andromeda, bitterweed, broomweed, cajeput (melaleuca), carrot, chinquapin, dog fennel, desert hollyhock, gumweed, mescal, onion, prickly pear, prune, queens delight, rabbit brush, snowbrush (ceanothus), snow-on-the-mountain, spurge (leafy spurge), tarweed, and similar objectionably-flavored honey or blends of honey as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS. If any blends of honey contain such ineligible honey, the lot as a whole shall be considered ineligible for price support.

(b) Honey which is adulterated is not eligible for price support. Honey shall be considered adulterated if:

(1) Any substance including water has been substituted wholly or in part for such honey;

(2) Such honey contains a poisonous or deleterious substance that may render such honey injurious to health, except that in any case in which such substance is not added to honey, such honey shall not be considered adulterated if the quantity of such substance in or on such honey does not ordinarily render it injurious to health; or

(3) Such honey is for any other reason unsound, unhealthy, unwholesome, or otherwise unfit for human or animal consumption.

(c) Honey shall not be eligible to be pledged as collateral for price support loans if such honey is stored in:

(1) 55 gallon steel drums having a tare weight less than 38 pounds, 30 gallon steel drums having a tare weight less than 26 pounds, or drums having removable liners of polyethylene or other materials,

(2) Bung-type drums, or

(3) Bulk tanks,

(4) Plastic buckets and containers,

(5) Steel drums which are severely dented as to cause damage to the lining, improper seal, or stacking capabilities, and

(6) Rusted drums with corroded areas.

(d) Honey which has been scorched, burned, or subjected to excessive heat resulting in objectionable flavor, color deterioration or carmelization shall be ineligible for price support.

(e) Honey which is ineligible to be pledged as collateral for price support loans includes, but is not limited to:

(1) Honey containing excessive bees or bee parts, paint chips, wood chips, or other foreign matter;

(2) Honey that is fermenting; and

(3) Foreign produced honey.

§ 1434.9 Approved storage.

(a) Loans will be made only on honey in approved storage as defined in this section.

(1) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage for honey pledged as collateral for a price support loan. Producers may also obtain loans on honey packed in eligible containers and stored on leased space in facilities owned by third parties in which the honey of more than one person is stored

if the honey which is to be pledged as collateral for a loan and which is stored on such leased space is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name and lot number so as to identify the honey from other honey stored in the structure. If the honey which is to be pledged as collateral for a price support loan is stored on leased space, a copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize the producer and any person having an interest in the honey, including CCC, to enter the premises to inspect and examine the honey and shall permit a reasonable time to such persons to remove the honey from the premises upon the termination of the lease. The county office may require from the lessor, a lien waiver that fully protects the interests of CCC.

(2) Approved warehouse storage or an approved warehouse shall consist of:

(i) A public warehouse for which a CCC Honey Storage Agreement is in effect and which is approved for price support purposes, or

(ii) A warehouse operated by an approved cooperative as defined in § 1434.3 (d) and licensed to store honey under the United States Warehouse Act.

(3) The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-6205, or from State and county offices.

(b) If the honey located in a storage structure is pledged as collateral that secures more than one loan, the honey must be segregated so as to preserve the identity of the honey securing each such loan. Honey securing a loan must also be segregated from any honey not pledged as collateral for a price support loan which is stored in the same structure.

(c) Approved storage requirements provided in this section may be waived by CCC if producer agrees to forgo obtaining a loan pursuant to the loan deficiency payment provisions contained in § 1434.26.

§ 1434.10 Warehouse receipts.

(a) Warehouse receipts representing honey stored in an approved warehouse to be pledged as collateral for a loan or, delivered in satisfaction of a loan, or for loan deficiency payment for honey that was stored on the farm, must meet the requirements of this section, and all other provisions of this part, and CCC program documents. For warehouse stored honey, a separate warehouse receipt must be submitted for each class, color, floral source, quality, and grade of honey tendered to CCC.

(b) Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and indicate that the honey is stored identity preserved in eligible containers. The receipts must be negotiable, must cover eligible honey actually in storage in the warehouse, and must be registered or recorded with appropriate State or local officials when required by State law.

(c) Each warehouse receipt, or extracted honey inspection and weight certificate which properly identifies the warehouse receipt must be issued in accordance with the Honey Storage Agreement or United States Warehouse Act, if applicable, and must show the following information:

(1) That the honey is stored identity preserved in containers;

(2) Number of containers;

(3) Size of containers;

(4) Gross weight;

(5) Net weight;

(6) Lot number;

(7) Average moisture for quantity represented by the receipt; and

(8) Class, color, floral source, and grade.

(d) When an extracted honey inspection and weight certificate is issued, it must show the following additional information:

(1) Warehouse receipt number;

(2) Lot number;

(3) Number and size of containers;

(4) Class, color, floral source, and grade; and

(5) Net weight.

(e) If the warehouse receipt is issued for honey which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's honey is invalid under State law, the warehouseman may offer the honey to CCC for loan if such warehouse is licensed and operating under the United States Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the honey to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(f) Each warehouse receipt representing honey stored in an approved warehouse which has a honey storage agreement with CCC shall indicate that the honey is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

§ 1434.11 Warehouse charges.

(a) Before the honey which is stored in an approved warehouse is pledged as collateral for a loan, the producer shall arrange for payment of storage, inspection, and all other charges accruing through the loan maturity date for the honey. Such charges shall include charges incident to weight and grade determinations on identity-preserved honey. CCC will not assume warehouse storage charges accruing through the loan maturity date for loans on honey acquired by CCC.

(b) For honey delivered to CCC in settlement of a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or in-charges. If the warehouse receipt delivered to CCC in settlement for of loan shows that such charges:

(1) have been paid, CCC shall issue such payment to the producer, or

(2) have not been paid, the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1434.12 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to honey pledged as collateral for price support loans. The cost of filing and recording shall be for the account of CCC.

(b) If there are any liens or encumbrances on the honey, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the honey after the loan is approved.

§ 1434.13 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county office and are shown on the note and security agreement.

(b) Effective only for each of the 1991 through 1995 crops of honey, producers and producer-packers of honey as defined in paragraphs (5) and (9), respectively, of section 3 of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) shall remit to CCC a nonrefundable marketing assessment. Such marketing assessment applicable to a crop of honey shall be computed by multiplying an amount equal to one percent of the national average price support loan rate by the loan quantity of the crop. The assessment shall be collected from the loan deficiency payments and loan proceeds for the crop of honey. However, producers exempt from the payment of the honey research and promotion fee as provided in paragraph (e) of this section are also exempt from this marketing assessment.

(c) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this title.

(d) All or a portion of the interest which accrues with respect to a loan may be waived on a price support loan for with respect to a quantity of honey which has been redeemed at a level which is less than the principal amount of the loan plus charges and interest determined in accordance with § 1434.24(e)(1)(ii).

(e) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4602) requires an assessment from honey producers and producer-packers. CCC shall collect the assessment from loan and loan deficiency payment disbursements. The amount of assessment is determined by the National Honey Board and shall be collected from each producer or producer-packer that has not been determined to be exempt from such payment by the Board. Such assessment shall not be deducted from cooperative marketing associations approved by CCC.

(f) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1434.14 Offsets.

(a) If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in parts 3 and 1403 of this title, to such indebtedness.

§ 1434.15 Determination of quantity.

(a) The estimated quantity of farm-stored honey and the quantity of warehouse-stored honey pledged as collateral for a loan shall be determined as provided in § 1434.22. Estimates of the quantity of farm-stored honey shall be made on the basis of 12 pounds for each gallon of rated capacity of the container.

(b) The quantity of honey acquired by CCC as the result of a loan forfeiture shall be determined by weighing the honey delivered under the direction of the State committee.

(1) The quantity of honey acquired in 5-gallon cans shall be determined by using a tare weight of 2.5 pounds for each can.

(2) The quantity of honey acquired in 55-gallon drums shall be determined by using a tare weight of 53 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of such drum shall not be less than 38 pounds.

(3) The quantity of honey acquired in 30-gallon drums shall be determined by using a tare weight of 32 pounds for each drum unless the producer can provide evidence of a lesser tare weight. However, the tare weight of such drum shall not be less than 26 pounds.

(4) Title to the containers shall vest in CCC.

(c) Notwithstanding any provision in this section:

(1) Loans may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey pledged as collateral for the loan if the producer is repaying the loan at the lower loan repayment rate in accordance with § 1434.24(e)(1)(ii), and the proceeds of the disbursement will be applied to the loan amount as a repayment if such repayment is made on or before the final loan availability date. If such repayment is made after the final loan availability date, CCC shall limit such increase in loan quantity to 110 percent of the mortgaged quantity of the original loan.

(2) Loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for loan deficiency payment if such disposition evidence is provided on or before the final loan availability date. If such disposition is made after the final loan availability date, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1434.16 Determination of quality.

(a)(1) Loans and loan deficiency payments on farm-stored honey will be made on the basis of the floral source and color of the honey as declared and certified by the producer on Form CCC-666 (Honey) (Farm Stored Honey Loan Certification and Worksheet) at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made. The producer is also required to declare and certify on the Farm Stored Honey Loan Certification and Worksheet the color and class (table or nontable) of the honey at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made.

(2) Loans and loan deficiency payments on warehouse-stored honey will be made on the basis of the floral source of the honey as shown on the warehouse receipt or on the extracted honey inspection and weight certificate accompanying the warehouse receipt representing such honey.

(b) When honey is delivered to CCC in eligible containers, its quality and color shall be determined by the Agricultural Marketing Service (AMS), in accordance the CCC Specifications for Unprocessed Honey on the basis of samples drawn by ASCS representatives supervising delivery. Samples shall not be drawn until the producer has designated all lots. Single containers shall not be considered as lots unless necessitated by color or floral source. The cost of quality and color determinations for a maximum of four lots shall be paid by CCC, with all other costs to be paid by the producer.

(c) Table honey which is stored in eligible containers shall, insofar as is practicable, be segregated into lots by color to conform with the color categories which are set forth in the Specifications for Unprocessed Honey.

(d) If the honey in eligible containers is not segregated so that it can be classified as table honey, the settlement rate shall be based on the support rate for nontable honey.

(e) In the case of blends of table and nontable honeys, the settlement rate shall be based on the support rate for nontable honey.

§ 1434.17 Payment and forfeiture limitations.

(a) The total amount of loan deficiency payments and marketing loan gains that a person, as defined in part 1497, may receive under this section may not exceed:

(1) $200,000 in the 1991 crop year;

(2) $175,000 in the 1992 crop year;

(3) $150,000 in the 1993 crop year; and

(4) $125,000 in each of the 1994 and subsequent crop years.

(b) The total amount of loan forfeitures which may be made in a year by a person, as defined in part 1497, shall not exceed the amounts specified in paragraph (a) of this section. Such forfeiture amounts shall be determined on the settlement value of the honey which is forfeited to CCC.

§ 1434.18 Transfer of producer's interest prohibited.

The producer shall not transfer either the remaining interest in or right to redeem honey pledged as collateral for a loan on farm stored honey nor shall anyone acquire such interest or right. Subject to the provisions of § 1434.24, a producer who wishes to liquidate all or part of a loan by contracting for the sale of the honey must obtain written approval of the county office on a form prescribed by CCC to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers or prospective purchasers at the county office.

§ 1434.19 Insurance.

CCC will not require the producer to insure the honey pledged as collateral for a farm-stored loan. However, if the producer insures such honey and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the honey involved in the loss.

§ 1434.20 Loss or damage.

The producer is responsible for any loss in quantity or quality of the honey pledged as collateral for a loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1434.21 Personal liability of the producer.

(a) The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, loan deficiency payment, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the honey by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable and loan deficiency payments shall be refunded upon demand and, aside from any additional liability under Federal criminal and civil fraud statutes, the producer shall be personally liable for the amount of the loan or loan deficiency payment and charges, any additional amount paid to the producer in connection with the honey, and all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on any such amounts. With regard to amounts due for a loan, such producers may not repay such loan at the lower loan repayment rate as prescribed in § 1434.24(a)(2)(ii). Notwithstanding the provisions of the note and security agreement, if a producer has made any such fraudulent representation with respect to or unauthorized removal or disposition of the honey pledged as collateral for a price support loan without prior written approval from CCC, the amount with which the producer will be credited for any honey delivered to or removed by CCC will be the following:

(1) In the case of loans on farm stored honey, the market value of the honey as determined by CCC as of the date of delivery to or removal by CCC, or the loan settlement value, whichever is the lower, or

(2) If the honey is sold by CCC in order to determine its market value, the sales price, less any costs sustained by CCC, or the loan settlement value, whichever is the lower. If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the honey or part thereof delivered to CCC or removed by CCC shall be the same as the settlement value for eligible honey acquired by CCC as provided in this subpart.

(b) If the amount disbursed under a loan or in settlement thereof, or a loan deficiency payment, exceeds the amount authorized under this part, the producer shall be personally liable for repayment of the amount of such excess and charges plus interest.

(c) A producer shall be personally liable for any damages resulting from honey delivered to or removed by CCC, containing mercurial compounds or other substances poisonous to humans, animals, or food commodities which are contaminated.

(d) If the amount collected from the producer in satisfaction of the loan or loan deficiency payment is less than the amount required to be remitted to CCC in accordance with the provisions of this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges plus interest.

(e) In the case of joint loans and loan deficiency payments, each producer signing the note or loan deficiency payment application shall be jointly and severally liable for any personal liability which may result due to the application of the provisions of this section.

(f) The amount with which the producer will be credited for any honey delivered to or removed by CCC in accordance with this section shall be subject to the payment limitation provisions set forth in § 1434.17.

§ 1434.22 Quantity for loans.

(a) The amount of a loan on the quantity of eligible honey packaged in eligible containers and stored identity-preserved in an approved warehouse shall be based on a percentage of the net weight specified on the warehouse receipt representing such honey which is pledged as security for the loan. Such percentage shall not exceed 90 percent of the weight so specified except as provided in accordance with § 1434.15(c).

(b) Loans on farm stored honey shall not be made on more than a percentage ("loan percentage"), as established by the State committee, which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible honey stored in approved farm storage and covered by the note and security agreement. The maximum loan percentage shall not exceed 90 percent of the measured or certified quantity, except as provided in accordance with § 1434.15(c). The loan percentages may be lowered by the county committee on an individual basis when determined to be necessary in order to provide CCC with adequate protection. The county committee shall consider:

(1) The condition or suitability of the storage structure;

(2) The condition of the honey;

(3) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the honey;

(4) Any disagreement with respect to the quantity of honey to be pledged as collateral for a loan; and

(5) Such other factors which relate to the preservation or safety of the loan collateral.

(c) Loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the note and security agreement shall cover all of the honey in the lot on which the loan is made.

(d) Transfer of loan collateral from farm storage to warehouse storage. Upon request by the producer before transfer, the county committee may approve the transfer of honey or part thereof which is pledged as collateral for a loan and which is stored on the farm to warehouse storage at any time during the loan period.

(1) Liquidation of the loan on the farm stored honey or part thereof shall be made through the deposit with CCC of warehouse receipts for the honey pledged as collateral for a loan on the warehouse stored honey and the immediate payment by the producer of the amount, including charges, by which the loan on the warehouse stored honey is less than the loan on the farm stored honey or part thereof and charges plus interest.

(2) Any amounts due the producer shall be disbursed by the county office.

(3) The maturity date of the loan on the warehouse stored honey shall be the maturity date applicable to the loan on the farm stored honey which was transferred to such loan on the warehouse stored honey.

(e) The quantity of honey pledged as collateral for a loan on honey stored on the farm or for which a loan deficiency payment is requested may be based on measurement as provided in paragraph (a) of this section, or based on the basis of the quantity of honey which an eligible producer certifies in writing on Form CCC-666 (Honey) is eligible if the honey is in approved farm storage and is otherwise available for loan purposes.

(f)(1) If the county committee determines, by measurement or otherwise, that the actual quantity pledged as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have fifteen days to settle the loan, except that the producer may request reconsideration of the loan call and provide information regarding the circumstances leading to the incorrect certification. The county committee may reinstate the producer's loan if:

(A) The circumstances are of a highly meritorious nature;

(B) The producer acted in good faith;

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity; and

(D) The producer repays the amount of any overdisbursement and charges plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further loans on farm-stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the incorrect certification was made.

(iii) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(D) The producer repays the overdisbursement and charges, plus interest for the shortage.

(2) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence or loans on farm stored honey for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny further farm-stored loans to the producer for more than one year.

(3) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1434.24(a)(2)(ii).

(g) Producers who have been refused a loan on farm stored honey may apply for a loan on warehouse stored honey.

§ 1434.23 Unauthorized removal and unauthorized disposition.

(a) Producers obtaining a honey loan shall agree not to move or dispose of the collateral pledged as security for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1434.24 of this part.

(1) Unauthorized removal is the movement without prior written consent from the county committee in accordance with § 1434.24 of any loan collateral from the storage structure in which the honey was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with § 1434.22(f). And,

(B) The county committee may refuse to approve any further loans on farm stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsequent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any further loans on farm stored honey for honey produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral under loan without prior written consent from the county committee in accordance with § 1434.24. If unauthorized disposition of a quantity of a commodity occurs, the producer and CCC agree that such unauthorized disposition will cause serious and substantial damages to CCC, including damages to CCC's price support program, and the incurring of substantial administrative and other costs. The producer and CCC further agree that it will be difficult, if not impossible, to prove the amount of such damages. Accordingly, in the event that the producer moves the loan collateral prior to receiving written approval from the county committee, the loan shall be called and liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition

occurred and shall continue until the loan is repaid.

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 6.5 percent interest.

(3) If liquidated damages are assessed in accordance with paragraph (a)(2) of this section, the county committee:

(i) On the first offense:

(A) May waive the calling of the loan and some or all of such liquidated damages if the county committee determines that:

(*1*) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(*2*) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(*3*) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense, may not waive the calling of the loan or any of the liquidated damages.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages, or required repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of mortgaged collateral off the farm,

(B) Movement of mortgaged collateral from one storage structure to another on the farm, and

(C) Feeding of mortgaged collateral.

(b) Producers who have been refused a loan on farm stored honey may apply for a loan on warehouse stored honey.

(c) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1434.24(a)(2)(ii).

(d) Upon request by the producer before the transfer, the county committee may authorize the transfer of honey pledged as collateral for a loan or part thereof for honey stored in an approved warehouse to a loan on honey stored on the farm. Quantities pledged as collateral for a loan for honey stored on the farm shall be based on a measurement by a representative of the county office before approving the loan on the honey stored on the farm. The producer must immediately repay the amount by which the loan on the honey stored on the farm is less than the loan for the honey stored in an approved warehouse and charges plus interest on the shortage. Such loans on farm-stored honey shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the loan which was transferred.

§ 1434.24 Release of the honey under loan.

(a)(1) A producer shall not move or dispose of any honey pledged as collateral for a loan until prior written approval for such removal or disposition has been received from the county committee in accordance with this section.

(2) A producer may at any time obtain a release of all or part of the honey remaining under loan by paying to CCC:

(i) The amount of the loan and any charges which had been made by CCC to the producer with respect to the quantity of the honey released, plus interest, or

(ii) An amount, without interest, which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii).

(3) When the proceeds of a sale of honey are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the county committee on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by CCC. If a producer fails to repay a loan within the time period prescribed by CCC for a loan and such commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-661-1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1434.24(e)(1)(ii).

(b) The note and security agreement shall not be released by CCC until the loan has been satisfied in full.

(c) After satisfaction of a loan, CCC shall release CCC's security interest in the honey at the producer's request. The producer shall be responsible for payment of any fee for such release if such fee can be determined.

(d) For honey stored in an approved warehouse, each partial release must cover all of the honey represented by one warehouse receipt. Subject to provisions of § 1434.5, warehouse receipts redeemed by the producer upon repayment of the loan, as provided in this paragraph (d), shall be released only to the producer or the producer's authorized agent. However, redeemed warehouse receipts may be released to persons designated in a written authorization filed with the county office by the producer or the producer's properly authorized agent and dated within 15 days prior to the date of repayment.

(e) (1) Producers of honey may repay honey price support loans at the level that is the lesser of:

(i) The loan level and charges, plus interest, determined for such crop; or

(ii) Such level as the Secretary, or a designee, determines will:

(A) Minimize the number of loan forfeitures;

(B) Not result in excessive total stocks of honey;

(C) Reduce the costs incurred by the Federal Government in storing honey; and

(D) Maintain the competiveness of honey in domestic and export markets.

(2) CCC shall determine and publicly announce the repayment levels for each crop of honey on a weekly basis. CCC may allow producers with honey loans to request that a loan repayment rate, announced by CCC, to be the repayment level for not more than 30 days from the date of such request. In such cases:

(i) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity pledged as collateral for a loan at the announced price entered on the form.

(ii) If such request is approved by CCC, the rate specified on such form shall be in effect for not more than 30 days from the date such request is made for such loan.

(iii) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with § 1434.24(a)(2)(i).

§ 1434.25 Liquidation of loans.

(a) The producer is required to:

(1) Repay the loan by payment of the amount of loan and any charges, plus interest, or an amount, without interest, which is less than the loan level determined in accordance with § 1434.24(e)(1)(ii), or

(2) Deliver the honey under loan to CCC. Deliveries shall be made in accordance with written instructions issued by the county office which shall set forth the time and place of delivery. Delivery points shall be limited to those approved by the CCC Kansas City Commodity Office. CCC will not accept delivery of any quantity of eligible honey in satisfaction of the loan indebtedness in excess of:

(i) For honey stored on the farm, the larger of:

(A) 110 percent of the quantity pledged as collateral for the loan, or

(B) A sufficient quantity of honey having a settlement value equal to the loan amount and charges, plus interest.

(ii) For honey stored in an approved warehouse, the loan quantity.

(iii) An amount having a settlement value in excess of the amounts shown in § 1434.17 for the applicable crop year.

(b) Settlement of the quantity determined shall be made as provided in § 1434.27.

(c) If the producer desires to deliver the honey to CCC, the producer must give the county committee notice in writing of such intention to do so within a reasonable time prior to the applicable maturity date. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC-691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title.

(d) If, prior to delivery to CCC, the honey in approved farm storage is going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that:

(1) The honey is going out of condition or is in danger of going out of condition;

(2) The honey cannot be satisfactorily conditioned by the producer; and

(3) Delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made subject to the provisions of §§ 1434.20 and 1434.21 on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(e) When considered necessary to protect the interest of CCC or when requested by the producer, CCC may call the loan and accept delivery of the honey prior to the loan maturity date.

(f) If the loan maturity date is accelerated upon request of the producer and the acceleration is approved by CCC, the settlement value of the honey shall be reduced by one-sixtieth of 1 cent per pound per month or fraction thereof from the earlier of:

(1) The date delivery is accomplished, or

(2) The final date for delivery as shown in the delivery instructions up to and including the original loan maturity date.

(g) If a producer fails to settle the loan in accordance with subsection (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title; and

(2) If the producer delivers the loan collateral in accordance with paragraph (a)(2) of this section after a claim is established:

(i) Determine the value of such collateral in accordance with § 1434.27,

(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the interest that was waived.

(h) Producers may not acquire honey, which was pledged as collateral for a price support loan through the exchange of commodity certificates.

§ 1434.26 Loan deficiency payments.

(a) Loan deficiency payments shall be available with respect to the 1991 through 1995 crops of honey.

(b) In order to be eligible to receive loan deficiency payments for a crop of honey, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans in accordance with this part,

(2) Agree to forego obtaining such loans, and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the level of price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1434.24.

(d) The loan deficiency payment applicable to a crop of honey shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of honey the producer is eligible to pledge as collateral for a price support loan for which a loan deficiency payment is requested.

(e) CCC will make 90 percent of the loan deficiency payment in accordance with subsection (d) of this section pending the receipt of disposition evidence in accordance with § 1434.15.

(f) Notwithstanding any provisions in this section, loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided on or before the final loan availability date for such commodity. If such production evidence is provided after the final loan availability date, CCC shall limit such increase in the loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1434.27 Settlement.

(a) Except as provided in §§ 1434.20, 1434.21, and paragraph (b) of this section, settlement with the producer for eligible honey acquired by CCC under loan will be made on the basis of the quantity, floral source, class, quality, grade, and color of such honey as provided in this section and other applicable provisions of this subpart. The settlement value of honey shall be the product of the support rate for the class, floral source, grade, and color, times the quantity acquired at the time of settlement adjusted by the applicable

discounts. The support rate per pound of honey at which settlement will be made shall be the rate determined annually and available in ASCS county offices.

(b) Settlement for eligible honey stored identity preserved in an approved warehouse and acquired by CCC shall be made on the basis of the net weight shown on the extracted honey inspection and weight certificate and the class, floral source, color, and grade shown on the inspection certificate.

(c) If ineligible honey is inadvertently accepted by CCC, the settlement value shall be the market value as of the date of delivery as determined by CCC. The provisions of § 1434.21 shall be applicable to settlement on ineligible honey where there has been a fraudulent representation on the part of the producer.

(d) If the settlement value of the honey is less than the amount due on the loan (excluding interest), or if the settlement value has been limited in accordance with § 1434.17, the amount of any deficiency and charges plus interest thereon shall be paid to CCC.

(e) If the settlement value of the honey delivered to CCC exceeds the amount due on the loan (excluding interest), such excess amount shall be paid to the producer. Any payment due the producer on a loan will be made by check drawn on the account of CCC by the county office.

(f) A producer may be required to retain and store the honey that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC. If CCC is unable to take delivery of the honey within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the honey to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for honey in effect at the delivery point where the producer delivers the honey. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery, or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

§ 1434.28 Foreclosure.

(a) If the loan indebtedness (i.e., the unpaid amount of the note, charges, and interest) is not satisfied upon maturity of the note, CCC may remove the honey from storage and assign, transfer, and deliver the honey or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine at public or private sale. Any such disposition may similarly be accomplished without the prior removal of the honey from storage. The honey may be processed before sale. CCC may become the purchaser of the whole or any part of the honey at either a public or private sale.

(b) At CCC's election, title to all or any part of the unredeemed honey securing the note as CCC may designate shall, without a sale thereof, immediately vest in CCC upon maturity and nonpayment of the producer's note. Whenever CCC acquires title to the unredeemed honey, CCC shall have no obligation to pay for any market value which such honey may have in excess of the loan indebtedness, i.e., the unpaid amount of the note and charges plus interest.

(c) If honey is removed from storage by CCC and is sold pursuant to paragraph (a) of this section at less than the principal amount due CCC on the loan (excluding interest), or, if the settlement value has been limited in accordance with § 1434.17, the producer shall be liable to CCC for the difference between the settlement value of the honey (or the proceeds from the sale of the honey, if higher) and the amount of the loan and charges plus interest.

§ 1434.29 Charges not to be assumed by CCC.

CCC will not assume any charges for insurance, storage, packaging, or processing.

§ 1434.30 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1434.31 Death, incompetency, or disappearance.

In the case of death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, payment shall be made upon proper application to the county office which made the loan to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1434.32 Definitions.

(a) As used in the regulations in this subpart and in all instructions, forms, and documents in connection therewith, the words and phrases listed in this section shall have the meaning assigned to them herein unless the context or subject matter otherwise requires.

(b) The following definitions shall be applicable to this part:

Charges. The term *charges* means all fees, costs, and expenses incident to insuring, carrying, handling, storing, conditioning, and marketing the honey and otherwise protecting the interest in the loan collateral of CCC or the producer including foreclosure costs.

Chattel mortgage. The term *chattel mortgage* means any security instrument which secures a farm stored loan.

County committee. The term *county committee* means only the committee and not its representative.

County executive director. The term *county executive director* means the person employed by the county committee to execute the policies of the county committee and to be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

Crop year. The crop year shall be the calender year.

Person. The term *person* means the individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable a State, a political subdivision of a State, or any agency thereof.

Representative of the county committee and county committee representative. The terms *representative of the county committee* and *county committee representative* mean a member of the county committee, the county executive director, or a person designated by the county executive director to act in behalf of the county executive director.

Request for price support. The term *request for price support* means a request for loan.

Settlement value. The term *settlement value* means the value at which settlement is made with the producer on the mortgaged or pledged honey, as determined under the provisions of the regulations in this part.

State committee. The term *State committee* means the persons in a State designated by the Secretary of Agriculture as the ASC State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands, the Caribbean ASCS shall, in so far as applicable, perform the functions of the State committee.

State Executive Director. The term *State Executive Director* means the person employed by the State committee to execute the policy of the State committee and to be responsible for the day-to-day operations of the State ASCS office, or the person acting in such capacity.

§ 1434.33 Paperwork Reduction Act assigned numbers. [Reserved]

Note: The information collection requirements contained in these regulations will be submitted to the Office of Management and Budget in accordance with 44 U.S.C. chapter 35 and an OMB number will be assigned.

Dated: March 1, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-5298 Filed 3-6-91; 8:45 am]

BILLING CODE 3410-05-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR CHAPTER XVII

[Docket No. RM-90-1]

Rules Implementing the Government in the Sunshine Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) is promulgating the following regulations to implement the Government in the Sunshine Act, 5 U.S.C. 552b. These regulations provide for public notice of Board meetings and for public access to Board meetings, except when the subject matter and nature of a meeting indicates that it should be closed to the public. The issuance of these regulations is undertaken in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" generally covered by the Sunshine Act. *Energy Research Foundation* v. *Defense Nuclear Facilities Safety Board ("ERF* v. DNFSB"), 917 F. 2d 581 (1990).

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION:

I. Background

The Defense Nuclear Facilities Safety Board ("Board") is comprised of five "respected experts in the field of nuclear safety" who are appointed by the President. The Board is responsible for making recommendations to the Secretary of Energy and the President regarding health and safety issues at the nation's defense nuclear facilities. On December 31, 1990 (55 FR 53626), the Board published for comment its first set of proposed regulations, those implementing the Sunshine Act.[1] The Board received a single set of comments which were filed jointly by the Energy Research Foundation and the Natural Resources Defense Council (ERF/NRDC). The Board also consulted with the Office of the Chairman, Administrative Conference of the United States (ACUS), pursuant to the requirements of the Act, 5 U.S.C. 552b(g), and received ACUS's suggestions and observations on the proposed regulations. The Board has carefully considered the ERF/NRDC comments and the ACUS suggestions and has made some modifications to the proposed rule in response.

II. Board Consideration of Comments and Suggestions

Comment. ERF/NRDC generally assert that the Board does not intend to comply with the Sunshine Act and that the proposed rules contravene that Act.

Response. The Board has complied with both the letter and the spirit of the Sunshine Act since the DC Circuit Court of Appeals issued its mandate in *ERF* v. *DNFSB* on December 14, 1990. Moreover, instead of waiting for the District Court's order on remand, the Board immediately began scheduling and conducting public meetings pursuant to the Sunshine Act; four meetings have been held so far in 1991. The Board also moved quickly to obtain the staffing, recording equipment, and other resources necessary to fully comply with the open and closed meeting requirements of the Sunshine Act. Most importantly, the Board promptly prepared proposed rules implementing both the Sunshine Act and FOIA.

The substance of specific ERF/NRDC assertions that the Board has failed to promulgate rules which comply with Sunshine Act requirements will be addressed below. The Board notes from the onset that the NPRM and these final rules fully meet the requirements of the Sunshine Act. Through promulgation of these final rules, the Board has now fully integrated the Sunshine Act's requirements with the Board's unique enabling statute (42 U.S.C. 2286, hereafter referred to as the "DNFSB Act") which imposes sensitive oversight duties upon the Board and specifies systems of interaction with the public.

Comment. ERF/NRDC assert that the Board's Exemption 3 contravenes the Sunshine Act. Comments at 2–12.

Response. The DNFSB Act specifies that the Board is to "promptly" make public its recommendations regarding the effect on the public health and safety of operation of defense nuclear facilities operated by the Department of Energy (DOE) "* * * after receipt by the Secretary of Energy [and the President in the case of recommendations relating to imminent or severe threats to health or safety] of any recommendations." 42 U.S.C. 2286d(a) (emphasis added). Recognizing the critical sensitivity of the Board's work on matters related to nuclear safety and national security, Congress specifically directed that the Secretary, and in some cases the President, be informed of the Board's recommendations before the public. Therefore, the Board's proposed rules legally included Board deliberations regarding possible recommendations among those meetings which may be closed to the public pursuant to section 552b(c)(3) of the Sunshine Act. That section allows closure of meetings which "disclose matters specifically exempted from disclosure by statute."

Throughout the Board's enabling legislation, Congress carefully specified the timing of Board and DOE actions. For example, where transmittals of documents are to be made simultaneously, Congress clearly mandated that the transmittals take place "at the same time." 42 U.S.C. 2286d(b)(2). DOE responses and implementation plans must be submitted within specified time frames. Relative to public notification on recommendations, Congress said and meant, after the Secretary or the President is notified. Moreover, Congress then specified how the information was to be made public—through public notice in the Federal Register, not open public meetings. Imposition of the open meeting requirement for all Board deliberations regarding recommendations would necessarily disclose the disposition of, and information related to, Board recommendations to the public before receipt by the Secretary of Energy or the President, thus rendering the just described enabling statute's provisions a nullity, in contravention of well-established principles of statutory construction. *See, e.g., Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979).

[1] The Board's notice for comment is hereafter referred to as the "NPRM." for Notice of Proposed Rulemaking.

ERF/NRDC's claims regarding the legality of the Board's exemption are grounded upon two erroneous legal and policy assumptions. The first is that the Sunshine Act mandates public participation with statutorily designated nuclear safety experts in the development of safety recommendations before they are submitted to the Secretary or the President. Nothing in either the Board's enabling Act or the Sunshine Act mandates such as a result. Indeed, in appropriate cases, individual Board Members, working with the staff, and sequentially with other individual Board Members, may develop draft recommendations which are approved by notational voting—all without resorting to open or closed meetings. The Sunshine Act does not require meetings, only that such meetings, when held, conform to certain rules. *AMREP* v. *FTC*, 768 F.2d 1171 (10th Cir. 1985); *Railroad Commission of Texas* v. *ICC*, 765 F.2d 221 (DC Cir. 1985).

Second, contrary to the ERF/NRDC assertions, Board invocation of closed meeting provisions to deliberate upon certain recommendations does not mean that the public is foreclosed from meaningfully contributing to the process of formulating and implementing recommendations. Congress provided specific methods other than public access to all Board meetings, for public dissemination of information regarding Board recommendations and for public input to these activities. The Board is required to publish its recommendations in the **Federal Register**, to make the recommendations available in the DOE regional reading rooms, and to invite comment on those recommendations. 42 U.S.C. 2286d(a); 2286d(g)(3). Any "comments, data, views, or arguments" submitted by the public must be furnished by the Board to the Secretary of DOE, who must also publish his response to the Board in the **Federal Register** for comment. 42 U.S.C. 2286d(b); 2286d(c).

It is the Board's view that this statutory scheme for providing information to the public, and for affording an opportunity for public comment, was intentionally adopted by Congress to accommodate the need for nonpublic formulation of the Board's recommendations. Indeed, it is clear to the Board that Congress intended the DNFSB Act's framework for public interaction, and not the Sunshine Act's closed meeting requirements, to control deliberations regarding recommendations. Nevertheless, the Board has attempted to reconcile the requirements of its enabling statute and the Sunshine Act by promulgating regulations which alert the public that the Board may invoke Exemption 3 of the Sunshine Act to conduct closed deliberations regarding recommendations.[3] Only full implementation of the Board's rules regarding Exemption 3 would preclude a "partial implied repeal" of Sunshine closed meeting requirements by the later-enacted, and more specific, public comment provisions of the DNFSB Act relating to deliberations on recommendations.[5]

ERF/NRDC cite two cases [6] which they assert are controlling for the proposition that the DNFSB Act does not establish a basis for closure of Board meetings under Sunshine Exemption 3 Comments at 8–10. Neither case involved the DNFSB Act, which is unique, and both turned upon analyses of the particular enabling statutes involved. Contrary to ERF/NRDC's assertion, the factual background and disparate enabling statutes involved in those FOIA cases provide no holding which can be generalized to the Board's responsibilities under the Sunshine Act.

Nevertheless, ERF/NRDC assert that it would be unwise as a policy matter for the Board to maintain that Exemption 3 authorizes closure of Board meetings on recommendations. Comments at 10–11. This comment is based on the mistaken premise that the Board's use of Exemption 3 is available to any agency that develops recommendations for another government official. The Board's oversight status is unique, based upon the sensitivity of the subject matters with which it deals and the limits of its enabling statute. That unique status is reflected in the Board's proposed regulations, and their promulgation does not indicate how Exemption 3 may apply to other agencies.

The regulations that the Board proposed regarding Exemption 3, and is hereby issuing in the same form, have been promulgated with the DC Circuit decision in *ERF* v. *DNFSB* in mind. While rejecting the government's argument that the Board is not an agency, and therefore not covered in any way by the Sunshine Act, the court expressly left unresolved whether the Board may properly invoke Sunshine Act exemptions set forth in 5 U.S.C. 552b(b), including Exemption 3, to close meetings or portions thereof. 917 F.2d at 582.[8]

Comment. ERF/NRDC asserts the Board's definition of meeting is excessively narrow and unaccompanied by any procedural safeguards.

Response. Board operation must be consistent with the Sunshine Act requirements for public meetings. In general, the Sunshine Act defines a "meeting" as:

> The deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations may result in the joint conduct or disposition of official agency business. 5 U.S.C. 552b(a)(2) (1988).

In *ERF* v. *DNFSB*, *supra*, the DC Circuit acknowledged that "* * * the Board deals with highly sensitive information concerning matters critical to the nation's defense and to public health and safety" and, therefore, properly took no position as to whether the Board could close certain meetings after invoking the exemptions to the open meetings requirement. 917 F.2d at 582. Moreover, in its limited decision, the Court did not address all of the possible positions the Board may take at a later date in the event that legal challenges are brought to specific Board activities governed by other statutory requirements.

An understanding of what constitutes a meeting is critical to an agency's compliance with the Sunshine Act. The Supreme Court addressed the definition of a "meeting" under the Sunshine Act in *FCC* v. *ITT World Communications*, 466 U.S. 463 (1984). A unanimous Court there determined that "meetings," for purposes of the Sunshine Act, do not include casual, general, informational, or preliminary discussions, so long as those discussions "do not effectively predetermine" final agency action. 466 U.S. at 469–73. The Court reviewed the legislative history regarding the definition of a meeting as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of agency business" (5 U.S.C. 552b(b)) and concluded that the language used was clearly intended "* * * to permit preliminary discussion among agency members." 466 U.S. at 470 n. 7.

The Board carefully tailored its definition of a meeting and its exclusions from that definition. See § 1704.2. The Board used the guidance provided by the Supreme Court in the *ITT* case, which is to date the Supreme Court's most thorough elaboration on the definition of meetings. After defining "meetings" in accordance with the statute, the proposed rules exclude certain gatherings. For example, briefings of the Board by its staff, expert consultants to the Board, DOE (including its contractors), or other persons or organizations would not be considered meetings so long as the Board did not engage in "deliberations that determine or result in the joint conduct or disposition of official Board business." A gathering of the Board for the purpose of informal preliminary discussions or exchange of views which do not effectively predetermine official action would also not constitute a meeting. Consistent with a recommendation of ACUS, the Board has established procedural safeguards in the final rule to prevent preliminary discussions and gatherings from becoming deliberative meetings.

The Board's definition of a meeting and its exclusion from the definition are consistent with the plain language of the Sunshine Act, its legislative history, Supreme Court precedent, a relevant American Bar Association resolution regarding the Sunshine Act,[9] the practices of other agencies,[7] and the Interpretive Guide to the Government in the Sunshine Act prepared by ACUS in 1978 and quoted with approval by the Supreme Court.

Comment. ERF/NRDC assert that the proposed regulations are inconsistent with the Sunshine Act regulations of the agencies referenced in the NPRM. Comments at 5–7.

Response. By stating that the Board's regulations were modeled after other agencies' regulations, the Board did not mean to imply that its rules were identical with any other set of Sunshine Act rules. Each agency is dealing with its own unique enabling statute and it is not surprising, therefore, that there is variation among agencies in the regulations they have promulgated to implement the Sunshine Act. Indeed, Congress mandated that each agency promulgate its own regulations tailored to specific statutory needs; Congress did not order that government-wide rules equally applicable for all agencies be promulgated by the Executive Branch. Nevertheless, the vast majority of the procedural and substantive requirements of the Board's rules are identical or similar to other agencies' rules under the Sunshine Act.

In drafting its proposed Sunshine regulations the Board reviewed the regulations of other agencies to get the benefit of their thinking on issues related to Sunshine Act implementation. Recognizing certain unique aspects of its statute and mission, the Board did not consider itself bound by any of these regulations. The statement in the NPRM that the proposed regulations were modeled after regulations promulgated by such agencies as the National Transportation Safety Board (NTSB), the Federal Deposit Insurance Corporation (FDIC), and the National Science Board, was not meant to indicate that the regulations of these agencies had been followed in all respects.

Contrary to ERF/NRDC's belief, there is clear precedent for the Board's proposed regulations. For example, the NTSB (49 CFR 804.3) and the FDIC (12 CFR 311.2(b)) have regulations excluding from the definition of "meeting" briefings of the members of those agencies by agency staff and, in the case of FDIC, by individuals from outside the agency. Those regulations are similar to the Board's regulation 10 CFR 1704.2(d)(3)–(4).

The same regulation of the FDIC and the regulations of the Occupational Safety and Health Review Commission (29 CFR 2203.2) exclude from the definition of "meeting" informal discussions among members of a background or preliminary nature for the purpose of clarifying issues and exposing various views. These regulations are similar to the Board's regulation in § 1704.2(d)(5).

The implication that ERF/NRDC drew from the NPRM that the Board's proposed regulation 10 CFR 1704.4(c) (Sunshine Exemption 3) was specifically modeled after other agencies' regulations is incorrect. This provision of the proposed regulations is based upon a consideration of the totality of the DNFSB statute, including certainly its provisions for public participation and comment, and the nature of the specific duties of the Board mandated by the statute.

ERF/NRDC rely heavily upon an argument that the NTSB Sunshine regulations are dissimilar from the DNFSB's proposed regulations despite the two agencies' statutes being "virtually identical" in requiring Federal Register publication of a recommendation after receipt of the recommendation by the Secretary of Transportation or of Energy. Comments at 6–7. The provision of the NTSB statute cited by ERF/NRDC (49 U.S.C.A. 1906 (1988)) has no explicit requirement that recommendations "promptly" be made available to the public in the Federal Register "after" submittal to the Secretary. It states only that the NTSB "shall make copies of each such recommendation and response thereto

---

[3] Contrary to what ERF/NRDC imply in their comments, the Board's NPRM was not an attempt to hide the fact that the Board intends to invoke Exemption 3 for certain deliberations regarding recommendations. Just the opposite is true. The Board could have promulgated Exemption 3 exactly as it appears in the Sunshine Act which allows the Board to close any meeting which would "disclose matters specifically exempted from disclosure by statute * * *." The Board did not have to indicate in its regulations that it considered the DNFSB Act provision on public availability of Board recommendations, 42 U.S.C. 2286d(a), to be a statute that specifically exempted recommendation deliberations from disclosure. The Board simply could have invoked the generic language of Exemption 3 when closing deliberations regarding recommendations in specific meeting notices. By explicitly indicating that deliberations regarding recommendations could "disclose matters specifically exempted from disclosure by statute," the Board disclosed to the public in its NPRM its intended use of Sunshine Act's Exemption 3.

The specific elaboration upon Exemption 3 in the Board's regulations should not be read to indicate that other Sunshine Act exemptions, such as Exemptions 1 (classified information would be revealed) or 9(b) (premature disclosure of information which would be likely to significantly frustrate implementation of a proposed action of the Board), may not be invoked by the Board for certain deliberations regarding recommendations. These exemptions may also provide bases for closing Board meetings. See § § 1704.4 (a), (b).

[5] This narrow issue was not before either the district court or the appeals court in *ERF* v. *DNFSB*. In spite of the Board's attempts to reconcile the Sunshine Act with DNFSB Act provisions related to deliberations on recommendations, the Board reserves the right to raise the "implied partial repeal" issue in any future litigation. Analysis of the relationship between FOIA and another statute has resulted in a holding that, with respect to access to certain documents, the provisions of FOIA were replaced by the more specific and later-enacted provisions of the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2111 note (Supp. 1988). *Ricchio* v. *Kline*, 773 F.2d 1389 (DC Circuit 1985). An analysis of the relationship between the Sunshine Act and the DNFSB Act provision governing deliberations regarding recommendations prior to transmittal to the Secretary of Energy, or the President, leads to a result similar to that reached in the Ricchio case and a line of "implied repeal" and "displacement" cases.

[6] *Public Health Citizen Research Group* v. *FDA*, 704 F.2d 1280 (DC Circuit 1983), which held that raw data submitted by medical device manufacturers was not withholdable under FOIA Exemption 3 (identical to sunshine Exemption 3) on the argument that the relevant FDA statute provided that a summary of the submittals regarding safety and effectiveness of the device was to be made publicly available by FDA after an order regarding the device had been issued; *Department of Justice* v. *Julian*, 486 U.S. 1 (1988), which held that the FOIA requires that "presentence" reports used by the Parole Commission in its deliberations must be made available to inmates up for parole, even though a relevant statute provided that the inmate was not entitled to keep a copy of the report.

[8] Although the commentators cite questioning during oral argument as support for a contrary reading of the decision, ERF/NRDC are well aware that such questioning has no precedential value whatsoever. The Board could also cite questioning from the oral argument in support of its position.

[9] Resolution and accompanying report on the Sunshine Act adopted by the ABA House of Delegates in February 1987. The resolution and report are available for inspection and copying in this rulemaking docket in the Board's Public Reading Room.

[7] Other federal agencies exclude briefings and informal preliminary discussions from the definition of a meeting. See, for example, the Sunshine Act regulations of the NTSB, 49 CFR 804.3(c) and the Federal Deposit Insurance Corporation, 12 CFR 311.2(b).

available to the public at a reasonable cost." [8]

Comment. ERF/NRDC assert that the Advisory Committee on Nuclear Facility Safety of the Department of Energy does not close meetings "* * * on the basis that its recommendations will somehow be tainted if they are discussed in public before they are sent to the Secretary of Energy." Comments at 11.

Response. The Board has never asserted that recommendations would "somehow be tainted if they are discussed in public," and ERF/NRDC know it. As discussed in detail in the Board's Annual Report to Congress, the Board has made every effort to involve the public consistent with the unique demands of the Board's enabling statute and the sensitivity of the subject matter within the Board's jurisdiction. Moreover, the ACNFS is not an agency subject to the Sunshine Act, as recognized by ERF/NRDC. It is, however, subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, and under section 10(d) of the statute, Advisory Committee meetings may be closed pursuant to Sunshine Act exemptions. In fact, the ACNFS has closed some of its meetings, or portions thereof, on the basis of Sunshine exemptions.[9] Further, while the ACNFS deals with information similar to that considered by the Board, it does not operate under its own organic enabling Act, such as the DNFSB Act. Therefore, its determinations on whether to close certain meetings does not reflect a consideration of the public access and participation provisions of the Board's statute.

Comment. ERF/NRDC request the Board to (1) Prepare transcripts and (2) publish advance notice in the **Federal Register** of "gatherings" of a quorum of the Board. Comments at 17.

Response. The definition of what is and is not a "meeting" is consistent with applicable precedent, in particular *ITT*. Accordingly, the Board perceives no reason to treat such gatherings as if they were closed meetings, as suggested by the comment. The Board will, however, take certain precautions to assure that gatherings do not become deliberations subject to the Sunshine Act's meeting requirements. See response to ACUS, *infra*.

[8] A previous requirement that NTSB reports and recommendations be noticed in the **Federal Register** was deleted. Even that provision did not specify the sequence of receipt by the Secretary and **Federal Register** publication, as does the DNFSB Act. See Public Law 100-372 (1988).

[9] 55 FR 37807 (September 12, 1990); 55 FR 19047 (May 10, 1990); 54 FR 48871 (October 31, 1989); 54 FR 659 (January 6, 1989).

Comment. ERF/NRDC object to the generality of the provision in proposed § 1704.6(b) that the one week advance notice of meetings may be waived when the Board "determines that Board business requires that such meeting be scheduled in less than seven days." Comments at 18.

Response. The language referenced is directly from the statute and is similar to language found in the regulations of virtually all agencies subject to the Sunshine Act. ERF/NRDC have established no basis for the inclusion of additional standards. The Board will not invoke this provision unless appropriate; for example, where national security requires it.

Comment. ERF/NRDC request that the Board modify proposed § 1704.9 to increase the length of time that the Board will maintain the recording or other documentation of closed Board meetings and that those documents be maintained in the Public Reading Room. Comments at 18–19.

Response. Proposed § 1704.9 did not state that transcripts or recordings of closed meetings that continue to be exempt from public disclosure would be maintained in the Public Reading Room. However, if a determination is made that a transcript or recording can be subsequently released, that transcript or recording will be maintained in the Public Reading Room. The provision in the proposed regulation that the Board maintain such recording or other record "for at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later" is drawn directly from the statute and is also found in the regulations of virtually all agencies governed by the Sunshine Act. Given the anticipated volume of records that the Board will be maintaining and the constraints of space, the Board does not choose at this time to undertake any burden for maintenance of such documents beyond that required by the statute.

Comment. ERF/NRDC request the Board to modify proposed § 1704.9 to state that it will charge members of the public only for the actual cost of duplication and not for the costs that the Board has already incurred for recording or transcribing the meeting. They further request that the regulation specify that the fee waiver provisions of FOIA shall apply to requests for copies of such documents. Comments at 19.

Response. The Board is in the process of publishing for comment its proposed regulations on FOIA, including Public Reading Room requirements. The Board will consider this comment as it develops its final FOIA regulations.

II. Response to Suggestions/ Observations of ACUS

Observation. ACUS noted that the provision that telephone polling of members not be considered a meeting (§ 1704.2, exclusion (1) from definition of "meeting") was proper provided that it was clear that deliberative discussions not take place during such polling.

Response. Section 1704.2(d)(1) has been amended to clarify that the notational voting or telephone polling that are excluded from the definition of "meeting" are limited to recording of votes.

Suggestion. ACUS suggested that some mechanism be adopted to assure that briefings and "informal preliminary discussions or exchange of views" (proposed § 1704.2, exclusions 3, 4, and 5 from definition of "meeting") do not stray impermissibly into deliberations that should be conducted in meetings.

Response. The Board's General Counsel has had extensive discussions with the Members to assure that they are aware of the distinctions between matters that can be addressed in "gatherings" and those that require a "meeting." See *FCC* v. *ITT, supra.* Thus, the Board does not anticipate that briefings or informal preliminary discussions will stray into areas requiring a meeting. Nevertheless, in accordance with a recommendation of the American Bar Association,[10] the Board is amending proposed § 1704.3 to provide that the General Counsel or his designee will attend and monitor Board briefings and informal preliminary discussions to assure that they remain within the confines of matters appropriate for "gatherings."

Observation. ACUS noted that proposed § 1704.5(d) is more restrictive than 5 U.S.C. 552b(f)(1) from which it is derived. The Act does not require that in all cases a General Counsel's certification that a meeting may be closed under the Sunshine exemptions must occur before the meeting, whereas the proposed regulation contained such a requirement. ACUS notes that there may arise situations where a meeting expected to be conducted on an open basis may need to be closed at the time of the meeting, with the certification being subsequently prepared.

Response. The Board agrees with this observation and has made an appropriate modification to § 1704.5(d). The Board does not, however, anticipate

[10] See n. 6, *supra.*

that there will be many occasions for invoking this flexibility, since the Board would normally have sufficient advance information on which to make a closure determination.

List of Subjects in 10 CFR Part 1704

Sunshine Act.

Accordingly, title 10 of the Code of Federal Regulations is amended by establishing a chapter XVII consisting of part 1704 to read as follows:

CHAPTER XVII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

PART 1704—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

1704.1 Applicability.
1704.2 Definitions.
1704.3 Open meetings requirement.
1704.4 Grounds on which meetings may be closed or information may be withheld.
1704.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.
1704.6 Procedures for public announcement of meetings.
1704.7 Changes following public announcement.
1704.8 Transcripts, recordings, or minutes of closed meetings.
1704.9 Availability and retention of transcripts, recordings, and minutes, and applicable fees.
1704.10 Severability.

Authority: 5 U.S.C. 552b; 42 U.S.C. 2286, 2286b(c).

§ 1704.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings, as defined herein, of the Members of the Defense Nuclear Facilities Safety Board (Board). The Board may waive the provisions set forth in this part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in § 1704.8 shall be governed by Board regulations pursuant to the Freedom of Information Act (5 U.S.C. 552).

§ 1704.2 Definitions.

As used in this part:

(a) *Chairman* and *Vice Chairman* mean those Members designated by the President to serve in said positions, pursuant to 42 U.S.C. 2286(c).

(b) *Defense Nuclear Facilities Safety Board* means the Board established under the National Defense Authorization Act, Fiscal Year 1989.

(c) *General Counsel* means the Board's principal legal officer, or an attorney serving as Acting General Counsel.

(d) *Meeting* means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Board business. A meeting does not include:

(1) Notation voting or similar consideration of business for the purpose of recording of votes, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to § 1704.5;

(ii) Set an agenda for a proposed meeting(s);

(iii) Call a meeting on less than seven days' notice as permitted by § 1704.6(b); or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under § 1704.7(b).

(3) A session attended by three or more Members for which the purpose is to have the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(4) A session attended by three or more Members for which the purpose is to have the Department of Energy (including its contractors) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not efectively predetermine official action.

(e) *Member* means an individual duly appointed and confirmed to the collegial body, known as "the Board."

§ 1704.3 Open meetings requirement.

(a) Any meetings of the Board, as defined in § 1704.2, shall be conducted in accordance with this part. Except as provided in § 1704.4, the Board's meetings, or portions thereof, shall be open to public observation.

(b) The General Counsel or his designee will attend and monitor briefings described in § 1704.2(d) (3)–(4) and informal preliminary discussions described in § 1704.2(d)(5) to assure that those gatherings do not proceed to the point of becoming deliberations and "meetings" within the meaning of the Sunshine Act.

(c) The General Counsel or his designee will inform the Board Members if developing discussions at a briefing or gathering should be deferred until a notice of an open or closed meeting can be published in the **Federal Register**, and a meeting conducted pursuant to the Sunshine Act and these regulations.

§ 1704.4 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by § § 1704.5, 1704.6, and 1704.7 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order. In making the determination that this exemption applies, the Board shall rely upon the classification assigned to a document by the Department of Energy or other originating agency;

(b) Relate solely to the internal personnel rules and practices of the Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

This exemption applies to Board meetings, or portions of meetings, involving deliberations regarding recommendations which, under 42 U.S.C. 2286d (a) and (g)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board, except that this subsection shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or

(j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of that Act.

§ 1704.5 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

(a) A majority of all Members may vote to close a meeting or withhold information pertaining to that meeting. A separate vote shall be taken with respect to any action under § 1704.4. A majority of the Board may act by taking a single vote with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.

(b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in § 1704.4 (e), (f), or (g). Requests, with reasons in support thereof, should be submitted to the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. On motion of any Member, the Board shall determine by recorded vote whether to grant the request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make available a written copy of such vote reflecting the vote of each Member on the question, and if a portion of a meeting is to be closed to the public a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.

(d) For every closed meeting, the General Counsel of the Board shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemption provision. If the General Counsel invokes the exemption for classified or sensitive unclassified information under § 1704.4(a), he shall rely upon the classification or designation assigned to the document containing such information by the Department of Energy or other originating agency. A copy of such certification, together with a statement setting forth the time and place of the meeting and the persons present, shall be retained by the Board as part of the transcript, recording, or minutes required by § 1704.8.

§ 1704.6 Procedures for public announcement of meetings.

(a) For each meeting, the Board shall make public announcement, at least one week before the meeting, of the:

(1) Time of the meeting;

(2) Place of the meeting;

(3) Subject matter of the meeting;

(4) Whether the meeting is to be open or closed; and

(5) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if:

(1) A majority of all Members determines by recorded vote that Board business requires that such meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

(c) Immediately following each public announcement required by this section, or by § 1704.7, the Board shall submit a notice of public announcement for publication in the **Federal Register**.

§ 1704.7 Changes following public announcement.

(a) The time or place of a meeting may be changed following the public announcement only if the Board publicly announces such change at the earliest practicable time. Members need not approve such change.

(b) The subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement if:

(1) A majority of all Members determines by recorded vote that Board business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces such change and the vote of each Member thereon at the earliest practicable time.

(c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

§ 1704.8 Transcripts, recordings, or minutes of closed meetings.

Along with the General Counsel's certification and presiding officer's statement referred to in § 1704.5(d), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The Board may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to § 1704.4(i). Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor including a description of each of the views expressed on any item and the record of any rollcall vote.

§ 1704.9 Availability and retention of transcripts, recordings, and minutes, and applicable fees.

The Board shall make promptly available to the public in the Public Reading Room the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a closed meeting, except for such item, or items, of discussion or testimony as determined by the Board to contain matters which may be withheld under the exemptive provisions of § 1704.4. Copies of the nonexempt portions of the transcript or minutes, or transcription of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. If at some later time the Board determines that there is no further justification for withholding a portion of a transcript, electronic recording, or minutes or other item of information from the public which has previously been withheld, such portion or information shall be made publicly available. The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

§ 1704.10 Severability.

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Dated: March 1, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-5237 Filed 3-6-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 1048

Trespassing On The Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve, Department of Energy.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The purpose of this notice is to announce the cancellation of the public hearing on the interim final rulemaking of January 17, 1991 (56 FR 1906), concerning trespassing on the Strategic Petroleum Reserve. The hearing was to be held on March 15, 1991, at the Department of Energy, Project Management Information Center, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123.

In the January 17, 1991 **Federal Register**, DOE published notice of an interim final rule, effective January 17, 1991, to implement section 662 of the Department of Energy Organization Act, *as amended* (42 U.S.C. 7270b). Section 662 made it a crime to violate DOE regulations relating to unauthorized: (1) Entry into or upon Strategic Petroleum Reserve facilities or other real property subject to the jurisdiction, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act; or (2) carrying, transporting, or otherwise introducing or causing to be introduced into or upon such property a dangerous weapon, explosive, or other dangerous material likely to produce substantial injury or damage to persons or property. The interim regulations: (1) Prohibit unauthorized entry and unauthorized introduction of dangerous materials; and (2) provide for the posting of notices on property subject to the regulations.

The January 17, 1991 interim rulemaking announced the time and location of the public hearing. DOE also stated that if no requests to speak at the public hearing were received by February 15, 1991, DOE would cancel the public hearing.

FOR FURTHER INFORMATION CONTACT: Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4311.

Issued in Washington, DC, on March 1, 1991.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 91-5305 Filed 3-6-91; 8:45 am]

BILLING CODE 6450-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 604

RIN 3052-AB26

Farm Credit Administration Board Meetings

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), amends 12 CFR part 604 relating to FCA Board meetings to change its regular meeting from the first Tuesday of each month to the second Thursday of each month.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Acting Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Farm Credit Administration Board (Board) amends 12 CFR 604.425 to change the date of its regular meeting from the first Tuesday of each month to the second Thursday of each month. Since holidays often fall in the first week of the month, it has often been necessary to change the regular meeting date. The Board believes that changing the regular meeting date to the second Thursday of the month will result in fewer changes of regular meeting dates and will allow for more convenient timing for staff preparation. Since § 604.425 is a rule of agency procedure not requiring notice and comment (5 U.S.C. 553 (b)(A)), the amendment is adopted as a final rule without notice and comment. The rule will become effective 30 days from publication during which either or both houses of Congress are in session.

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

1. The authority citation for part 604 continues to read as follows:

Authority: Secs. 5.9, 5.17, 12 U.S.C. 2243, 2252.

§ 604.425 [Amended]

2. Section 604.425 is amended by removing the words "first Tuesday" and adding in their place, the words "second Thursday" in paragraph (a).

Dated: February 28, 1991.
Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 91-5344 Filed 3-6-91; 8:45 am]
BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-175-AD; Amdt. 39-6921]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain Boeing Model 727 series airplanes, that currently require inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and repair, if necessary; and modifications of certain lap joints. This action requires additional inspections of certain lap joints and the modification of those lap joints. This amendment is prompted by reports of cracking in these lap joints. This condition, if not corrected, could result in rapid decompression of the airplane.

EFFECTIVE DATE: April 8, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to supersede two existing AD's [Amendment 39-6262 (54 FR 29530, July 13, 1989), AD 89-15-06, and Amendment 39-6461 (55 FR 603, January 8, 1990), AD 90-02-10] applicable to Boeing Model 727 series airplanes, to require inspection of the fuselage lap joints for cracks, corrosion, and/or delamination, and necessary repair and modification of certain lap joints, was published in the Federal Register on October 5, 1990 (55 FR 40833).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter stated that the proposed compliance time for modification of all lap splice joints other than S-4 and S-10 conflicts with that of AD 90-06-09, Amendment 39-6486 (55 FR 8370, March 7, 1990). That AD requires various structural modifications to ensure the structural integrity of the aging Model 727 fleet. The commenter requested that the FAA revise paragraph F. of the proposed rule or rewrite it to avoid any conflicts. The FAA does not concur. While it is true that there are different compliance times for the incorporation of the modifications in this rule and in AD 90-06-09, the FAA does not concur that these differing times will create any problems regarding compliance with either AD.

One commenter stated that the proposed requirements are "excessive." The commenter suggested that the rule instead require repetitive high frequency eddy current (HFEC) inspections of all lap seams with upper skin thickness less than 0.056 inch. The FAA does not concur. The FAA does not consider the reliability of such tedious inspections conducted upon a large amount of primary structure sufficient to assure the continuous airworthiness of the affected airplanes. The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem.

The commenter further stated that if cracks or corrosion are detected in a lap seam, repair should be accomplished in accordance with Figure 4 of Boeing Service Bulletin 727-53-0072. In response, the FAA notes that Figure 4 of the service bulletin specifies that the lap joint be separated and repaired if any corrosion or cracking is detected, the lap joint fay surface sealed, and all 3 rows of fasteners replaced with protruding head fasteners. This repair scheme is an optional procedure in the rule. The FAA has concluded that the mandatory repair scheme of replacing the upper row of fasteners is satisfactory; however, in accordance with paragraph G. of the rule, operators may incorporate the optional repair/modification illustrated by Figure 4.

Several commenters requested that the proposed compliance time for completion of the modification be extended. One commenter stated that the proposed compliance period may not be sufficient time to modify all of its subject units since the vendor has advised that a long lead time would be required for retrofit. Another commenter requested that a compliance time of at least 4 years after modification be adopted for those aircraft on which the S-4 and S-10 lap joint modifications have previously been accomplished. The FAA does not concur with these requests. In developing the compliance time, the FAA considered: (1) The safety implications, (2) existing AD's which may provide interim safety measures, (3) the availability of required parts, and (4) normal maintenance schedules for timely accomplishment of the modifications. Additionally, the FAA consulted operators who had previously completed the modification. In consideration of these aspects, the FAA has determined that the compliance time, as proposed, is appropriate and warranted. However, any operator who is unable to meet the modification schedule may petition the FAA for an alternate means of compliance under the provisions of paragraph I. of the final rule.

Another commenter requested that the repetitive inspection intervals be revised to agree with its current regular maintenance schedule. The commenter considered this request to be justified since the commenter had found little additional damage after accomplishing the initial inspection. The FAA does not concur with this request. The FAA currently has insufficient data to permit an extension of the repetitive inspection intervals.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 813 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,700 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,364,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action:

(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6262 (54 FR 29530, July 13, 1989), AD 89-15-06; and Amendment 39-6461 (55 FR 603, January 8, 1990), AD 90-02-10; with the following new airworthiness directive:

Boeing: Applies to Model 727 series airplanes, listed in Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid decompression of the airplane, accomplish the following:

A. Within the next 2,500 landings or 1 year after August 21, 1989 (the effective date of Amendment 39-6262, AD 89-15-06), whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 2,000 landings or 2 years; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the skin at fuselage lap joints S-4 and S-10 where the upper skin is less than 0.056 inch thick, from body station (BS) 259 to BS 1183, in accordance with paragraph A. of part I of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0072, Revision 5, dated June 1, 1989 (hereinafter referred to as "the service bulletin"). If any cracks are detected, prior to further flight, repair in accordance with part III of the Accomplishment Instructions of the service bulletin.

B. Within the next 2,500 landings or 18 months after February 12, 1990 (the effective date of Amendment 39-6461, AD 90-02-10), whichever occurs first, or prior to the accumulation of 28,000 landings, whichever occurs later, unless previously accomplished within the last 18 months; and thereafter at intervals not to exceed 4,500 landings or 3 years, whichever occurs sooner; perform a high frequency eddy current (HFEC) inspection for cracks of the fuselage skin at lap joints, S-14, S-19, S-20, and S-26 at locations where the upper skin is less than 0.056 inch thick from body station (BS) 259 to BS 1183, in accordance with paragraph A. of part I of the Accomplishment Instructions of the service bulletin. Inspection is not required adjacent to protruding head fasteners located under fairings. If any cracks are detected, repair prior to further flight, in accordance with part III of the Accomplishment Instructions of the service bulletin.

C. 1. Within the next 6 months after August 21, 1989, unless accomplished within the last 9 months, or prior to the accumulation of 28,000 landings, whichever occurs later; and thereafter at intervals not to exceed 15 months; perform a detailed external visual inspection for cracks and for corrosion of fuselage lap joints (including S-4 and S-10) between BS 259 and BS 1183, except for S-14 (between BS 360 and BS 1183) on those airplane identified in the service bulletin as Group I airplanes, in accordance with paragraphs B.1. and B.2. in part I of the Accomplishment Instructions of the service bulletin. Adequate lighting must be used for this inspection and, if necessary, inspection aids such as a mirror and 10X glass. Inspect for small cracks, bulging skin between fasteners, blistered paint, dished or popped rivet heads, loose fasteners, and delamination. Repair cracks, corrosion, and delamination in accordance with paragraph D. of this AD.

2. The repetitive inspection required by paragraph C.1. of this AD, may be conducted at intervals not to exceed 30 months in lieu of the 15 month interval for lap splices that have protruding head fasteners and are located under airplane fairings. Fasteners under the edge of the fairing also may be visually inspected at 30-month intervals, provided there is no evidence of cracking or corrosion of the lap joint from the edge of the fairing forward two frame stations for the leading edge of the fairing and aft two frame stations for the trailing edge of the fairing.

D. 1. If cracks, delamination, or corrosion are detected at lap splices, prior to further flight, perform a HFEC inspection for cracks in the affected lap joint along the complete panel length in accordance with paragraph A. or B. of this AD, except for areas under fairings as described in paragraph C.2. of this AD. Repair cracks prior to further flight, in accordance with part III of the service bulletin. If corrosion or delamination is found at any lap joint, repeat the HFEC inspection at intervals not to exceed 15 months or 3,000 landings, whichever occurs first; or repair the delamination prior to further flight, in accordance with part II of the Accomplishment Instructions of the service bulletin. Repair the corrosion in accordance with paragraph D.2. of this AD. Where a panel is interrupted by a major cutout, such as an entry door or cargo door, the panel is considered to end at the cutout.

2. If corrosion or delamination is found, prior to further flight, conduct a low frequency eddy current (LFEC) inspection, in accordance with part II of the Accomplishment Instructions of the service bulletin, of the lap joint along the complete panel length, except for areas under fairings as described in paragraph C.2. of this AD, to determine corrosion depth. If corrosion does not exceed 10% of the skin thickness, repeat the LFEC inspection at intervals not to exceed 2,000 landings or 6 months, whichever occurs first, until repaired in accordance with part II, paragraph B.2., of the Accomplishment Instructions of the service bulletin. If corrosion exceeds 10% of skin thickness, prior to further flight, repair in accordance with part II, paragraph C.1., of the Accomplishment Instructions of the service bulletin.

E. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or

2. Ensure that the fastener head is clearly visible.

F. Modify fuselage skin lap joints where the upper skin is less than 0.056 inch thick by replacing the upper row of fasteners with protruding head fasteners, in accordance with part IV of the Accomplishment Instructions of the service bulletin, in accordance with the following schedule:

Number of landings on August 21, 1989 (the effective date of Amendment 39-6262)	Modify within the next—
45,000 or more	4 years after Aug. 21, 1989.
Less than 45,000	6 years after Aug. 21, 1989, or prior to the accumulation of 28,000 landings, whichever occurs later.

1. Before oversizing holes, perform a HFEC inspection of the hole to ensure it is crack-free. If cracking is detected, prior to further flight, repair in accordance with the service bulletin.

2. If the hole was not HFEC inspected prior to fastener installation, the skin must be visually inspected in accordance with paragraph C.1. of this AD within 1 year after August 21, 1989, or 4 years after the fastener installation, whichever occurs later, and reinspected thereafter at intervals not to exceed 15 months.

3. Replacement with protruding head fasteners constitutes terminating action for the repetitive HFEC inspections required by paragraph A. or B. of this AD. The inspections required by paragraph C. of this AD are to continue.

G. Modification in accordance with Figure 4 of the service bulletin constitutes terminating action for the inspections required by paragraphs A., B., and C. of this AD for the modified area.

H. Blind fasteners installed in the lap joints are to be used as an interim repair only. The blind fasteners specified in the service bulletin have a life of 10,000 landings and all other blind fasteners have a life of 3,000 landings before they must be replaced with protruding head solid fasteners. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of the AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to August 21, 1989, must be replaced prior to the threshold specified in this paragraph or within 3,000 landings after August 21, 1989, whichever occurs later.

I. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

J. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6262, AD 89-15-06, and Amendment 39-6461, AD 90-02-10.

The amendment becomes effective April 8, 1991.

Issued in Renton, Washington, on February 21, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5404 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-152-AD; Amendment 39-6923]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires the inspection for cracks of the Section 42 frames, from Stringer (S)-6L to S-6R, body station (BS) 540 to BS 920, and repair, as necessary. This amendment is prompted by reports of multiple cracks in the Section 42 frames. This condition, if not corrected, could result in rapid depressurization of the airplane.

EFFECTIVE DATE: April 8, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires inspection for cracks of the Section 42 frames, from Stringer (S)-6L to S-6R, body station (BS) 540 to BS 920, and repair, as necessary, was published in the **Federal Register** on September 19, 1990 (55 FR 38556).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer commented that the cracks in the section 42 upper lobe frames were not a safety of flight concern but, rather, an economic concern and, therefore, no airworthiness directive was necessary. The FAA does not concur. While the structural design of the airplane is capable of supporting the cracks found to date, the incidence of cracking is high enough that the fail-safe design features of an airplane could be compromised.

The manufacturer further requested that the threshold for initial inspections be increased from the proposed 10,000 flight cycles to 12,000 flight cycles, since the results of a fatigue test have shown that the crack growth rates are very slow and are retarded by the fail-safe chords. In consideration of the data related to crack growth rates, the FAA concurs that such a change will not have a detrimental effect on safety. The rule has been revised accordingly.

The manufacturer further requested that the repeat inspection interval be increased from the proposed 2,000 flight cycles to 3,000 flight cycles; another commenter requested that it be increased to 4,000 flight cycles. The FAA concurs that the interval may be increased somewhat. Based on the high reliability of the directed inspections and slow crack growth rates, safety would not be adversely affected by such an increase. Paragraph A. of the final rule has been changed to specify repetitive inspection intervals of 3,000 flight cycles.

The Air Transport Association (ATA) of America, on behalf of its members, requested that the initial compliance period be extended from the proposed 500 landings to 1,000 landings, to allow the inspection to be performed during scheduled maintenance, since airplanes which have extensive cracking would require a significant amount of unscheduled down time to repair. The FAA does not concur. As stated in the preamble of the notice, multiple cracking has already been identified on several airplanes, all of which have accumulated more than 14,000 flight cycles. The large number of cracks being found is attributed to the fact that inspections in this area have never been required previously, either under regular maintenance procedures or by AD action. To further delay initial inspection of this area would be inappropriate, in light of the average number of accumulated flight cycles on the affected airplanes in the Model 747 fleet, and the fact that multiple site cracking is already beginning to occur. The FAA has determined that 500 flight cycles is the maximum interval of time allowable for affected airplanes to continue to operate prior to the required inspections without compromising safety. Further, airplanes would only require extensive down time for repairs if a significant number of multiple site cracking was found. Detection and repair of multiple site cracking is the objective of this rule and, therefore, the FAA has determined that no further extension is justified.

A member of the ATA requested that the repair method be expanded to include Figure 35 in the Boeing Structural Repair Manual as well as Figure 4. The FAA concurs. This additional figure more readily permits the repair of multiple cracked areas. Therefore, the final rule has been revised accordingly.

A foreign operator of Boeing Model 747 airplanes requested that the rule be revised to exclude the frames aft of body station (BS) 740. This commenter stated that the fuselage frames from BS 540 to BS 920 on airplane line numbers 001 through 045 were manufactured from 7075-T6 aluminum alloy. Starting with airplane line number 046, the fuselage frames from BS 540 to BS 740 were changed to 2024-T3 aluminum, which has a higher resistance to fatigue (these frames are not currently subject to the proposed inspections); however, the fuselage frames from BS 760 to BS 920 continue to be manufactured from 7075-T6 aluminum alloy. The commenter also stated that it had found cracking of the fuselage frames aft of BS 740 on airplane line numbers above 045 as well as below 045. The commenter requested that, since the fuselage frame structural design aft of BS 740 was identical for airplanes above and below line number 045, and no inspections were proposed for airplanes above manufacturing line number 045, then the inspections for this area should be deleted from the proposed rule; inspection of this area could be covered by the "aging airplane corrosion control program" (refer to AD 90-25-02, Amendment 39-6790 (55 FR 49268, November 27, 1990)). The FAA does not concur. In-service reports indicate cracking of the fuselage frames aft of BS 740 has occurred on airplane line numbers 001 through 045 and, therefore, the frames must be inspected for cracking. However, since the design is identical for the fuselage frames aft of BS 740 on airplanes manufactured after line number 045, and cracking may therefore occur in these airplanes as well, the FAA is currently evaluating further rulemaking to address detection of cracking in the fuselage frames from BS 760 to BS 920 for these additional airplanes.

This same operator also requested that the rule be revised to exclude flights where the pressurization was less than 1.5 or 2.0 psi. The FAA does not concur. While a few operators do extensive flight training with pressurization less than 2.0 psi, the FAA prefers to address these unique operations through the alternate means of compliance process, defined in paragraph C. of the rule, rather than further complicate the rule with several paragraphs that may be unique to an individual operator.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 45 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $128,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line numbers 001 through 045, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden cabin pressure loss, accomplish the following:

A. Within the next 500 flight cycles after the effective date of this AD, or prior to the accumulation of 12,000 total flight cycles, whichever occurs later, perform a detailed visual inspection for cracks of the section 42 fuselage frame web at the stringer cutout from body station (BS) 540 to BS 920, Stringer (S) 6L to S-6R. Repeat this inspection thereafter at intervals not to exceed 3,000 flight cycles.

B. If cracking is found as the result of the inspections required by paragraph A. of this AD, prior to further flight, repair the fuselage frame web in accordance with the Boeing 747 Structural Repair Manual (SRM), section 53-10-04, Figure 4 or Figure 35; or in manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 8, 1991.

Issued in Renton, Washington, on February 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5405 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-156-AD; Amdt. 39-6852]

Airworthiness Directives; Canadair, Ltd., Model CL-44D4 and CL440 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to all Canadair Model CL-44D4 and CL-44J series airplanes, which requires supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness. Some Canadair CL-44D4 and CL-44J series airplanes are approaching, or have exceeded, the manufacturer's original fatigue design life. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. Fatigue cracks in these areas, if not detected and repaired, could result in reduced structural integrity of these airplanes.

DATES: Effective April 8, 1991.

ADDRESSES: The applicable service information may be obtained from Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Marcof, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Canadair Model CL 44D4 and CL44J series airplanes, which requires supplemental structural inspections, and repair or replacement, as necessary, to assure continued airworthiness, was published in the **Federal Register** on October 10, 1990 (55 FR 41196).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 200 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $64,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Canadair, LTD.: Applies to all Model CL-44D4 and CL-44J series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate a revision into the FAA approved maintenance inspection program that provides for supplemental maintenance, inspections, replacement, and overhaul requirements of the significant structural items defined in Canadair Document RBD-44-100, "Supplemental Structural Inspection Program," Revision B, dated February 27, 1990. Inspection results, when a crack is detected, must be reported to Canadair.

B. Cracked structure detected during the inspection required by paragraph A. of this AD must be repaired or replaced prior to further flight, in accordance with instructions in Canadair Document RBD-44-100, "Supplemental Structural Inspection Program," Revision B, dated February 27, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be submitted directly to the Manager, New York Aircraft Certification Office, ANE-170, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, New York ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Canadair, Ltd., P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective April 8, 1991.

Issued in Renton, Washington, on February 22, 1991.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5406 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-06-AD; Amdt. 39-6922]

Airworthiness Directives; Mitsubishi Heavy Industries, Limited, Model YS-11/-11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Mitsubishi Heavy Industries (MHI) Model YS 11/-11A series airplanes, which requires changes in the Airplane Flight Manual (AFM) to limit flap positions in icing conditions on final approach to landing. This amendment is prompted by two instances of nose down pitch, when flying in icing conditions, as flaps were set to normal positions on final approach. This condition, if not corrected, could result in uncontrolled descent of the airplane.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Joe A. Brownlee, Flight Test Pilot, ANM-160L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5365.

SUPPLEMENTARY INFORMATION: Recently, during descent, a Model YS-11A-600 airplane encountered icing conditions. On final approach at 130 to 135 knots, at approximately 1,100 feet above ground level (AGL) and with the landing gear down and flaps at 20°, the pilot set the flaps to 35° in accordance with normal operating procedures. Subsequently, the airplane developed abnormal buffeting and the nose pitched down. The pilot immediately increased the engine power and decreased the flap setting to 10°. Recovery was not made until the airplane descended to approximately 200 feet AGL. The pilot maintained visual meteorological conditions and activated the deicing equipment until he landed safely at an alternate airfield. Inspection of the airplane after landing revealed ice on the ADF antenna and an accumulation of two inches of ice on areas other than the deicing boots of the horizontal stabilizer; no abnormalities were found in the airplane's deicing/anti-icing equipment, however.

Previous to this reported incident, another Model YS-11, was involved in an accident during approach to landing. A witness in the air traffic control tower stated that as the flaps were set to 35° the airplane pitched down and did not recover. The horizontal stabilizer had horn-shaped rime ice 1.5 to 1.75 inches thick attached to the entire horizontal stabilizer leading edge.

Ice accumulation on the horizontal stabilizer leading edge in combination with a flap setting of 35° could lead to uncontrolled pitch down. This condition, if not corrected, could result in uncontrolled descent of the airplane and subsequent impact with the ground.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a revision to the FAA-approved Airplane Flight Manual and the installation of a placard to limit flaps to 20° extension during approach to landing in icing conditions or in visible moisture when air temperature is below plus 5 degrees centigrade (plus 41 degrees Fahrenheit) outside air temperature.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Mitsubishi Heavy Industries, Ltd. [formerly Nihon Aeroplane Manufacturing Company (NAMC)]: Applies to all Model YS-11/-11A airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent uncontrolled nose down pitch of the airplane on landing approach accomplish the following:

A. Within 30 days after the effective date of this AD, accomplish the following:

1. Revise the Operating Limitations section of the FAA-approved Airplane Flight Manual (AFM) for the Mitsubishi Heavy Industries (MHI), Ltd. Model YS-11/-11A to include the following. This may be accomplished by inserting a copy of this AD in the AFM.

a. In the Operating Limitations Section, add a subparagraph B. to paragraph 1.10.5 *Wing-De-Icer System* to read as follows: "B. Do not extend flaps greater than 20 degrees in the presence of known icing conditions or in visible moisture below plus 5 degrees centigrade (plus 41 degrees Fahrenheit) outside air temperature (OAT)."

b. In the Normal Operating Procedures Section, after revision entitled "NAMC YS-11A Flight Manual Publication No. YS-FM-002 Transmittal Letter No. 2027, dated October 2, 1990," change subparagraph "(2) Flaps" of paragraph 3.1.10.1 *Approach and Landing in Icing Conditions or in Visible Moisture Below plus 5 Degrees C (plus 41 Degrees F) OAT* to read as follows:

"(2) Flaps Set Position.

Note: Do not extend flaps greater than 20 degrees.

Caution: If unusual pitching or yoke movement occurs while extending the flaps, immediately retract the flaps until the pitching or yoke movement stops."

2. Add a placard as near as possible to the flap handle to read as follows: "Flaps limited to 20 degrees in known icing conditions."

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO).

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment becomes effective March 19, 1991.

Issued in Renton, Washington, on February 21, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5406 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-266-AD; Amdt. 39-6924]

Airworthiness Directives; Fokker Model F-28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires a one-time visual inspection for incorrectly installed insulation sleeves and washers in the Electrical Power Center (EPC) and battery relay panel, and repair, if necessary. This amendment is prompted by reports of smoke in the flight deck due to loose contractors in the EPC. This condition, if not corrected, could result in a temperature increase in the contractor studs, smoke in the cockpit, and a potential electrical fire.

EFFECTIVE DATE: April 8, 1991.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 Mark 0100 series airplanes, which requires a one-time visual inspection for incorrectly installed insulation sleeves and washers in the Electrical Power Center (EPC) and battery relay panel, and repair, if necessary, was published in the **Federal Register** on December 17, 1990 (55 FR 50564).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,120.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to certain Model F-28 Mark 0100 series airplanes; Serial Numbers 11244 through 11256, 11258, 11260, 11263, 11266 through 11278, 11280 through 11283, and 11286; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent temperature increase in the contractor studs, smoke in the cockpit, and a potential electrical fire, accomplish the following:

A. Within 45 days after the effective date of this AD, perform an inspection of the Electrical Power Center (EPC), the Battery Relay Panel (BRP), contactors, and terminal blocks for insulation sleeve length and washer installation, in accordance with Part 1 and Part 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin F100-24-012, dated September 3, 1990.

1. If defects are found, prior to further flight, correct the sleeve length and the washer installation in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

2. If no defects are found, or if the corrections required by paragraph A.1. of this AD have been accomplished, accomplish the work completion procedures and perform the operational checks in accordance with Part 4 of the Accomplishment Instructions of the service bulletin before returning the airplane to service.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 8, 1991.

Issued in Renton, Washington, on February 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5407 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-ASO-23]

Establishment of Transition Area, Zephyrhills, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Zephyrhills, FL, Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 04 at the Zephyrhills Municipal Airport predicated on the Zephyrhills nondirectional radio beacon (NDB). This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. This additional controlled airspace will provide airspace protection for instrument flight rules (IFR) aeronautical operations. Additionally, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On November 26, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Zephyrhills, FL, Transition Area (55 FR 49073). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Zephyrhills Municipal Airport. This proposed action was deemed necessary to provide controlled airspace protection for IFR aircraft executing an NDB standard instrument approach procedure planned for Runway 04. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Subsequently, a petition was filed which sought to extend the comment period an additional 30 days. The petition was granted and the comment period was extended from January 7, 1991, to February 11, 1991. Numerous comments were received from local residents. Many commenters indicated their objections to the proposal in that they believe the establishment of a 700-ft. transition area would result in a reduction in safety of aeronautical operations.

Those comments evidence a misconception concerning the purpose and effect of a 700-ft. transition area providing controlled airspace. The transition area would neither permit nor preclude flight activity in the vicinity of the airport. Rather than compromise flight safety, its purpose is to enhance the safety of aeronautical operations by providing controlled airspace in which more stringent rules apply; i.e., increased flight visibility and increased distance from clouds required by pilots engaged in visual flight operations and designating controlled airspace in which an Air Traffic Control authorization is required before flight is conducted in instrument meteorological conditions (IMC). Additionally, the 700-ft. transition area provides controlled airspace necessary to protect aircraft flying in IMC while conducting a prescribed standard instrument approach procedure (SIAP) to the Zephyrhills Municipal Airport. The SIAP provides, for the first time, a safe means to approach the airport during periods when it would be difficult or impossible to approach and land at the airport due to prevailing weather conditions.

Nevertheless, we have carefully reviewed each comment, especially those expressing concern that safety would be compromised. As result of the comments, the Federal Aviation Administration conducted a special flight inspection of the proposed NDB SIAP to Runway 04. This additional flight inspection validated our original findings; i.e., the planned procedure meets existing criteria and was found to be safe. An objection was also received from the Hillsborough County Aviation Authority concerning the potential conflict between the instrument final approach course to Runway 04 at Zephyrhills Municipal Airport and an instrument final approach course for a new runway planned for the Vandenberg Airport. While this has no direct bearing on the airspace issue under consideration, a check with the Airport Manager at Zephyrhills Municipal Airport confirmed future plans to establish Runway 22 (in lieu of Runway 04) as the primary instrument runway, which will eliminate future potential conflicts between the future instrument approaches to both airports. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Zephyrhills transition area. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Zephyrhills Municipal Airport. This action is necessary to provide additional controlled airspace protection for IFR aircraft executing a standard instrument approach procedure recently developed to serve Runway 04 predicated on the Zephyrhills NDB. Concurrent with publication of the SIAP, the operating status of the airport will change from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Zephyrhills, FL [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Zephyrhills Municipal Airport (Lat. 28°13'35" N., Long. 82°09'30" W.); within 3 miles each side of the 235° bearing from the Zephyrhills NDB (Lat. 28°13'24" N., Long. 82°09'42" W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the NDB.

Issued in East Point, Georgia, on February 15, 1991.

Don Case,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-5410 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASO-33]

Amendment to Control Zone, Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment eliminates the arrival area extension southwest of the Owensboro-Daviess County Airport. The extension was designed to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the VOR Runway 05 standard instrument approach procedure (SIAP). This SIAP has been cancelled and the control zone extension is no longer required. Additionally, a minor correction is made to the latitude/longitude coordinate position of the Owensboro-Daviess County Airport.

EFFECTIVE DATE: 0901 UTC, May 30, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 26, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Owensboro, KY Control Zone. (55 FR 53002). The proposed action would eliminate the arrival area extension southwest of the Owensboro-Daviess County Airport since the controlled airspace was no longer necessary for protection of IFR aeronautical operations. Additionally, a minor correction would be made to the latitude/longitude coordinate position of the Owensboro-Daviess County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the description of the Owensboro, KY Control Zone by eliminating the arrival area extension southwest of the airport. Also, a minor correction is made to the latitude/longitude coordinate position of the Owensboro-Daviess County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Owensboro, KY [Amended]

Change the latitude/longitude coordinates of Owensboro-Daviess County Airport to "Lat. 37°44'26"N., long. 87°09'50"W." and eliminate the clause, "within 3 miles each side of Owensboro VOR 222° radial, extending from the 5-mile radius zone to 8.5 miles southwest of the VOR."

Issued in East Point, Georgia, on February 14, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-5409 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASW-6]

Alteration of VOR Federal Airway V-212; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects the description of VOR Federal Airway V-212 located in the vicinity of Lufkin, TX. The final rule was published in the Federal Register on February 5, 1991 (56 FR 4541). The published description was written as follows: "INT Navasota 021° and Lufkin, TX, 250° radials; Lufkin;." The description should read: "INT Navasota 019° and Lufkin, TX, 250° radials, Lufkin;." This corrects the mistake by changing the Navasota 021° radial to the 019° radial.

EFFECTIVE DATE: 0901 UTC, April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 91-2825, published on February 5, 1991, altered the description of VOR Federal Airway V-212 by adding a dogleg to the north between Navasota, TX, and Lufkin, TX (56 FR 4541). A mistake in the true radial was discovered. This action corrects that mistake by changing the radial from "INT Navasota 021°" to "INT Navasota 019°."

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 91-2825, as published in the Federal Register on February 5, 1991, is corrected as follows:

V-212 [Corrected]

By removing the words "Lufkin, TX;" and substituting the words "INT Navasota 019° and Lufkin, TX, 250° radials; Lufkin;"

Issued in Washington, DC, on February 25, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-5411 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 901226-1029]

Limit on Duty-Free Insular Watches in Calendar Year 1991

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This action amends 15 CFR part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam, and American Samoa) and the Northern Mariana Islands. The amendments establish the total quantity and territorial shares of duty-exemption for 1991; raise the maximum value of components used in the assembly of duty-free watches to $175; give partial credit for wages paid to assemble some dutiable watches exceeding the value limit; more clearly define wages to be used in the allocation formula and shipments to be used in the calculation of the production incentive certificate; delete duplicative language; and clarify appeals procedures.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: We published these revisions in proposed form on January 9, 1991 (56 FR 812) and invited comments. We received no comments.

The Departments establish for calendar year 1991 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,200,000
Guam	1,000,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	6,200,000

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 F.R. 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $10 million per year.

Paperwork Reduction Act

This rulemaking does contain information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which are currently approved by the Office of Management and Budget under control numbers 0625-0040 and 0625-0134. The amendments will not significantly increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we are amending part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: Pub. L. 97-446, 96 Stat. 2329, 2331 (19 U.S.C. 1202 note); Pub. L. 94-241, 90 Stat. 263 (48 U.S.C. 1681, note).

2. Section 303.2(a)(13) is revised to read as follows:

§ 303.2 Definitions and forms.

(a) * * *

(13) Creditable wages means all wages—up to the amount per person shown in § 303.14(a)(1)(i)—paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus any wages paid for the assembly of watches and watch movements the value of components for which exceed the limit set forth in § 303.14(b)(3) or for the repair of non-91/5 watches and watch movements, up to a total amount equal to 25 percent of the firm's other creditable wages. Wages paid for the assembly of watches and watch movements from components exceeding the value limits and for the repair of non-91/5 watches and watch movements are not creditable to the extent that such wages exceed the ratio set forth here. Also excluded are wages paid for special services rendered to the firm by accountants, lawyers, or other professional personnel, and for the assembly of non-91/5 watches and watch movements which are ineligible for other than value-limit reasons.

* * * * *

§ 303.12 [Amended]

3. Section 303.12(d) is removed.

4. Section 303.13(a) is amended by revising the first sentence to read as follows:

§ 303.13 Appeals.

(a) Any official decision or action relating to the allocation of duty-exemptions or to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. * * *

* * * * *

§ 303.14 [Amended]

5. Section 303.14 is amended as follows:

a. Paragraph (a)(1)(i) is revised;

b. Paragraph (b)(3) is amended by removing "$150" and adding "$175" in its place;

c. Paragraph (c) is revised; and

d. Paragraph (e) is amended by removing "4,700,000" and adding "4,200,000" in its place.

§ 303.14 Allocation factors and miscellaneous provisions.

(a) * * *

(1) * * *

(i) Fifty percent of the territorial share shall be allocated on the basis of the net dollar amount of economic contributions to the territory consisting of the dollar amount of creditable wages, up to a maximum of $32,000 per person, paid by each producer to territorial residents, plus the dollar amount of income taxes (excluding penalty and interest payments and deducting any income tax refunds and subsidies paid by the territorial government), and

* * * * *

(c) Calculation of the value of production incentive certificates. (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped (including non-91/5 units as provided for in § 303.2(a)(13)) multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 times a factor of 80%; plus

(iv) Incremental shipments up to 750,000 units times a factor of 65%.

(2) The Departments may make adjustments for these data in the manner set forth in section § 303.10(c)(2).

(3) Section 303.2(a)(13) provides for certain non-91/5 wages to be creditable up to 25% of other creditable wages. For purposes of subparagraph (1), above, non-91/5 units shall enter the calculation of a producer's average creditable wages only proportionally with the crediting of wages paid for their assembly. If, for example, 40% of wages paid for the assembly of non-91/5 units is disallowed, 40% of the related units will also be excluded from the calculation.

* * * * *

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 91-5399 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, 524, and 558

Animal Drugs, Feeds, and Related Products; Bambermycin, et al.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to remove those portions of the regulations reflecting approval of 20 new animal drug applications (NADA's) held by various sponsors. The firms requested withdrawal of approval of the NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the following NADA's:

NADA	Sponsor	Product
95-611	International Nutrition, Inc	Tylosin phosphate.
96-612	Dale Alley Co	Tylosin phosphate.
96-769	Blair Milling & Elevator Co	Tylosin phosphate.
100-809	Hoechst-Roussel Agri-Vet Co	T-61 Euthanasia solution.
107-003	Dale Alley Co	Hygromycin B.
108-686	International Nutrition, Inc	Hygromycin B.
108-816	International Nutrition, Inc	Tylosin/sulfamethazine.
110-470	J.H. Wake Feed Mill, Inc	Tylosin phosphate.
116-030	Lavergne Supplement Co	Tylosin phosphate.
118-875	Dale Alley Co	Pyrantel tartrate.
120-646	National Pharmaceutical Mfg Co	Selenium disulfide susp.
127-823	Lavergne Supplement Co	Hygromycin B.
127-824	Lavergne Supplement Co	Tylosin/sulfamethazine.
129-645	Dale Alley Co	Tylosin/sulfamethazine.
132-822	Dale Alley Co	Lincomycin hydrochloride.
132-863	Walnut Grove Products	Bambermycins.
132-864	Walnut Grove Products	Lincomycin.
138-486	Stutts Scientific Service, Inc	Tylosin phosphate.
140-530	Agri-Basics, ConAgri-Westfeeds	Tylosin/sulfamethazine.
140-631	Agri-Basics, ConAgri-Westfeeds	Tylosin phosphate.

The agency is amending the regulations in 21 CFR 510.600, 522.900, 524.2101, 558.95, 558.274, 558.325, 558.465, 558.625, and 558.630 to reflect withdrawal of approval of these NADA's.

Additionally, because seven of the ten sponsors listed above are no longer sponsors of any approved NADA's,

§ 510.600 is amended to remove the sponsor entries for those firms.

List of Subjects in 21 CFR

Part 510: Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 522: Animal drugs.

Part 524: Animal drugs.

Part 558: Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Agri-Basics, ConAgra-Westfeeds", "Blair Milling & Elevator Co., Inc.", "Dale Alley Co.", "Lavergne Supplement Co.", "National Pharmaceutical Mfg. Co., a Division of Barre-National, Inc.", "Stutts Scientific Service, Inc.", "J. H. Wake Feed Mill, Inc.", and in the table in paragraph (c)(2) by removing the entries for "000570", "017476", "018083", "018597", "022422", "023368", and 048696".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.900 [Amended]

4. Section 522.900 *Euthanasia solution* is amended by removing paragraph (a) and reserving it.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

5. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 524.2101 [Amended]

6. Section 524.2101 *Selenium disulfide suspension* is amended in paragraph (c) introductory text by removing "000570,".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

7. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

8. Section 558.95 *bambermycins* is amended by removing paragraph (a)(5).

§ 558.274 [Amended]

9. Section 558.274 *Hygromycin B* is amended in paragraph (a)(2) by removing ", 018083, and 043733"; in paragraph (a)(4) by removing "018083," and "022422, 043733"; and in paragraph (c)(1), entries (i) and (ii), in the sponsor column of the table, by removing "018083," "02242," and "043733,".

§ 558.325 [Amended]

10. Section 558.325 *Lincomycin* is amended by removing and reserving paragraphs (a)(2) and (a)(6).

§ 558.465 [Amended]

11. Section 558.465 *Pyrantel tartrate* is amended by removing and reserving paragraph (a)(6).

§ 558.625 [Amended]

12. Section 558.625 *Tylosin* is amended by removing and reserving paragraphs (b)(3), (b)(32), (b)(50), (b)(60), (b)(65), (b)(87), and (b)(88).

§ 558.630 [Amended]

13. Section 558.630 *Tylosin and sulfamethazine* is amended by removing and reserving paragraph (b)(9) and in paragraph (b)(10) by removing "018083," "023368," and "043733,".

Dated: February 27, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-5300 Filed 3-6-91; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046-AA43

Procedural Regulations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is revising its procedural regulations to provide for enforcement of title I of the Americans with Disabilities Act (ADA). Title I of the ADA prohibits employment discrimination based on an individual's disability. The final rule applies the current title VII procedural regulations to both Title VII and ADA charges. In connection with this change, EEOC is revising § 1601.19 of its procedural regulations to remove the procedure by which a party may request a review of a field director's determination. This review process has met all of EEOC's goals of strengthening its law enforcement capabilities, and EEOC is shifting the focus of the process and redirecting resources to other law enforcement purposes.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathleen Oram, Senior Attorney, or Lairold Street, Staff Attorney, at (202) 663-4669 (voice) or (202) 663-7026 (TDD).

Copies of this final rule are available in the following alternate formats: large print, braille, electronic computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

SUPPLEMENTARY INFORMATION: On July 26, 1990, President Bush signed into law the Americans with Disabilities Act, Public Law No. 101-336, 104 Stat. 330, 42 U.S.C. 12101 through 12213. Title I of the ADA prohibits employment discrimination based on disability. Title I will become effective as to employers of 25 or more employees on July 26, 1992. Section 107 of the ADA provides for enforcement of the employment discrimination provisions by the EEOC and incorporates the powers, remedies and procedures set forth in sections 705, 706, 707, 709, and 710 of title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-4 through 6, 8 and 9. Consequently, EEOC is amending its Title VII procedural regulations so that they will apply also to charges of employment discrimination filed under the Americans with Disabilities Act.

The EEOC also is amending its procedural regulations to replace the phrase "706 agency" with the phrase "FEP agency" everywhere it is found. The change is consistent with current title VII terminology and will further demonstrate that title VII and ADA procedures are similar. The term "706 agency" is derived from the deferral provision in section 706 of title VII. The

BEST COPY AVAILABLE

change will prevent confusion regarding the meaning of 706 agencies, as state and local fair employment practice agencies, especially with regard to charges filed under the Americans with Disabilities Act.

The Commission is making a number of changes to its procedural regulations to effectuate inclusion of the Americans with Disabilities Act. One of those changes deserves mention. EEOC is moving subpart D of the current regulations to the end of the part and redesignating it as subpart H. Subpart D, containing §§ 1601.31 through 1601.33, permits a respondent to raise, as a defense to a charge, any written interpretation or opinion of the Commission. The sections are drawn from section 713(b) of title VII, 42 U.S.C. 2000e–12(b), which was not incorporated by section 107 of the Americans with Disabilities Act and which has no counterpart in the Americans with Disabilities Act. Redesignated subpart H will apply only to charges filed under title VII.

As part of the Commission's ongoing efforts to review its law enforcement processes, and consistent with the encouragement of Congress to continue these efforts to streamline the procedures by which cases are processed, the Commission is shifting the focus of its Determinations Review Program. The Commission's review demonstrates that the program has accomplished its purpose with respect to the review of no cause determinations issued by EEOC field offices. Because of the success of the Determinations Review Program, the Commission has concluded that it should shift the focus of the program (a review program will continue to exist, but members of the Commission or agency management will initiate the reviews) and transfer these resources to other enforcement activities.

The Commission will continue to review the no cause determinations issued by field offices. Members of the Commission or agency management will initiate reviews of specific offices, specific types of closures or specific issues. In addition, the Commission will have the flexibility to, and in appropriate circumstances will, review closures other than no cause determinations.

The Commission is making this change by amending section 1601.19, which regulates how no cause determinations are issued. The regulation will provide that determinations issued by EEOC field offices will be final when issued, subject to the right of the Commission and Commission managers to reconsider those decisions in accordance with longstanding Commission procedures. This regulatory amendment will permit the Commission to transfer the resources required by the Determinations Review Program to other enforcement programs in the headquarters and field offices.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Evan J. Kemp, Jr.,

Chairman

PART 1601—[AMENDED]

Accordingly, 29 CFR part 1601 is amended as follows:

1. The authority citation for part 1601 is revised to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

2. All references to "706 agency" or "706 Agency" in part 1601 are revised to read "FEP agency."

3. Section 1601.1 is revised to read as follows:

§ 1601.1 Purpose.

The regulations set forth in this part contain the procedures established by the Equal Employment Opportunity Commission for carrying out its responsibilities in the administration and enforcement of title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990. Section 107 of the Americans with Disabilities Act incorporates the powers, remedies and procedures set forth in sections 705, 706, 707, 709 and 710 of the Civil Rights Act of 1964. Based on its experience in the enforcement of title VII and the Americans with Disabilities Act and upon its evaluation of suggestions and petitions for amendments submitted by interested persons in accordance with § 1601.31, the Commission may from time to time amend and revise these procedures.

4. Section 1601.2 is revised to read as follows:

§ 1601.2 Terms defined in Title VII of the Civil Rights Act and the Americans with Disabilities Act.

The terms *person, employer, employment agency, labor organization, employee, commerce, industry affecting commerce, State* and *religion* as used in this part shall have the meanings set forth in section 701 of title VII of the Civil Rights Act of 1964. The term "disability" shall have the meaning set forth in section 3 of the Americans with Disabilities Act of 1990.

5. Section 1601.3 is amended by revising paragraph (a) to read as follows:

§ 1601.3 Other definitions.

(a) For the purposes of this part, the term *Title VII* shall mean title VII of the Civil Rights Act of 1964; the term "ADA" shall mean the Americans with Disabilities Act of 1990; the term "Commission" shall mean the Equal Employment Opportunity Commission or any of its designated representatives; "Washington Field Office" shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term "field office" shall mean any of the Commission's District Offices, Area Offices and Local Offices, and its Washington Field Office; the term "FEP agency shall mean a State or local agency which the Commission has determined satisfies the criteria stated in section 706(c) of title VII; and the term "verified" shall mean sworn to or affirmed before a notary public, designated representative of the Commission, or other person duly authorized by law to administer oaths and take acknowledgements, or supported by an unsworn declaration in writing under penalty of perjury.

* * * * *

6. In 29 CFR part 1601 add the words "or the ADA" after the words "Title VII" in the following places:

(a) § 1601.6(a);
(b) § 1601.7(a);
(c) § 1601.10;
(d) § 1601.11(b);
(e) § 1601.13(a)(4)(i);
(f) § 1601.18(a);
(g) § 1601.21(a);
(h) § 1601.21(e)(2)(iii);
(i) § 1601.22;
(j) § 1601.24(c);
(k) § 1601.25;
(l) § 1601.28(a)(3);
(m) § 1601.79.

7. In 29 CFR part 1601 add the words "and the ADA" after the words "Title VII" in the following places:

(a) § 1601.16(a) introductory text;
(b) § 1601.17(a);
(c) § 1601.34.

§ 1601.13 [Amended]

8. Section 1601.13 is amended as follows:

(a) Paragraph (a)(3)(i) is amended by removing the words "the Act" and adding, in their place, the words "title VII," and by adding the words "or the ADA" after the words "concurrently regulated by title VII."

(b) Paragraph (a)(4)(i)(C) is amended by adding the words "of title VII" at the end of the sentence.

(c) The first sentence of paragraph (c) is amended by removing the words "and other fair employment practice agencies."

§ 1601.18 [Amended]

9. In § 1601.18, paragraph (a) is amended to add the words "or the Rehabilitation Act" after the words "section 717 of title VII."

10. Section 1601.19 is amended by removing paragraphs (b), (c) and (d), redesignating paragraph (e) as paragraph (b) and revising paragraph (a) to read as follows:

§ 1601.19 No cause determinations: Procedure and authority.

(a) Where the Commission completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a letter of determination to all parties to the charge indicating the finding. The Commission's letter of determination shall be the final determination of the Commission. The letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of receipt of the letter of determination. The Commission hereby delegates authority to the Program Director, Office of Program Operations, or upon delegation of the Directors, Field Management Programs, Office of Program Operations, and District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review, to issue a no cause letter of determination.

* * * * *

§ 1601.21 [Amended]

11. In § 1601.21, the first sentence of paragraph (d) is amended to remove the words "the Director, Determinations Review Program, Office of Program Operations or."

12. Section 1601.22 is amended to revise the first sentence to read as follows:

§ 1601.22 Confidentiality.

Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to the ADA or title VII, shall be made matters of public information by the Commission prior to the institution of any proceeding under the ADA or title VII involving such charge or information. * * *

§ 1601.24 [Amended]

13. In § 1601.24, paragraph (a) is amended to remove the words "and after the review provided for in § 1601.19."

§ 1601.26 [Amended]

14. In § 1601.26, paragraph (a) is amended to add the words "or the ADA" after the words "Commission's functions under title VII" and to add the words "or the ADA" after the words "effective enforcement of title VII."

§ 1601.28 [Amended]

15. Section 1601.28 is amended as follows:

(a) Paragraph (b)(1) introductory text is amended to remove the words "the Act" and add, in their place, the words "title VII or the ADA" and to add the words "or the ADA" after the words "compliance with title VII."

(b) Paragraph (e)(1) is amended to add the words "under title VII or the ADA" after the words "bring a civil action" and to remove the words "the Act" and add, in their place, the words "title VII or section 107 of the ADA."

§ 1601.30 [Amended]

16. Section 1601.30 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1601.30 Notices to be Posted.

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program that has an obligation under title VII or the ADA shall post and keep posted in conspicuous places upon its premises notices in an accessible format, to be prepared or approved by the Commission, describing the applicable provisions of title VII and the ADA. * * *

* * * * *

Subpart H—[Amended and Redesignated as Subpart G]

17. Subpart H is redesignated as subpart G and amended by removing the authority citation.

18. Subpart D is redesignated as subpart H and the title is revised to read as follows:

Subpart H—Title VII Interpretations and Opinions by the Commission

Subpart D—[Redesignated as Subpart E]

19. Subpart E is redesignated as Subpart D.

Subpart E—[Redesignated as Subpart F]

20. Subpart F is redesignated as Subpart E.

Subpart F—[Reserved]

21. Subpart F is reserved.

§ 1601.70 [Amended]

22. Section 1601.70 is amended as follows:

(a) Paragraph (a)(1) is amended by removing the words "sex or national origin" and adding, in their place, the words "sex, national origin or disability."

(b) Paragraphs (b) and (c) are amended by removing the words "706 designation" wherever they appear and adding, in their place, the words "FEP agency designation."

(c) Paragraph (d) is amended by removing the words "of the Act" and adding, in their place, the words "of title VII or the ADA."

§ 1601.74 [Amended]

23. In § 1601.74, footnote 7 of paragraph (a) is amended to remove the words "706 designation" and add, in their place, the words "FEP agency designation."

§ 1601.75 [Amended]

24. In § 1601.75, paragraph (a) is amended to remove the words "as provided in section 706(b) of title VII."

25. Section 1601.31 is redesignated as § 1601.91 and revised to read as follows:

§ 1601.91 Request for Title VII interpretation or opinion.

Any interested person desiring a written title VII interpretation or opinion from the Commission may make such a request. However, issuance of title VII interpretations or opinions is discretionary.

§ 1601.32 [Amended and Redesignated as § 1601.92]

26. Section 1601.32 is redesignated as § 1601.92 and amended as follows:

(a) The introductory text is amended by removing the words "2401 E Street, NW., Washington, DC 20506" and adding, in their place, the words "1801 L Street, NW., Washington, DC 20507."

(b) Paragraph (c) is amended by adding the words "title VII" after the words "reasons why the."

§ 1601.33 [Redesignated as § 1601.93]

27. Section 1601.33 is redesignated as § 1601.93.

[FR Doc. 91-5308 Filed 3-6-91; 8:45 am]
BILLING CODE 6750-06-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Delay of effective date of final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is delaying the effective date of the Agency's final rule revising its safety standards for explosives at metal and nonmetal mines. This delay will allow MSHA time to review concerns raised by the regulated public prior to implementation of the rule.

EFFECTIVE DATE: The final rule will become effective May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On January 18, 1991, MSHA published a final rule (56 FR 2070) to revise safety standards that address explosives at metal and nonmetal mines. Interested parties have raised some concerns regarding the final rule and the Agency believes that these concerns need to be reviewed and resolved prior to the rule's effective date. The effective date for the final rule was scheduled for March 19, 1991. MSHA is delaying the effective date to May 20, 1991 in order to complete its review of these concerns.

Dated: March 4, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91-5367 Filed 3-6-91; 8:45 am]
BILLING CODE 4510-43-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 6 and 8

RIN 2900-AD74

Authority of Fiduciaries To Conduct Insurance Transactions

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs is amending its regulations to clarify and enunciate the right and authority of fiduciaries to conduct insurance transactions on behalf of government life insurance policyholders and beneficiaries.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Koons, Assistant Director for Insurance, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951-5360.

SUPPLEMENTARY INFORMATION: On pages 33140 and 33141 of the Federal Register dated August 14, 1990, VA published proposed regulatory amendments to clarify and enunciate the right and authority of fiduciaries to conduct insurance transactions on behalf of government life insurance policyholders and beneficiaries. Interested parties were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed regulatory amendments.

One written comment was received during the comment period. The comment dated August 31, 1990, agrees with the proposed regulations. The commenter suggests, however, that regulations be further amended to give a fiduciary the authority to obtain the name of the insured's beneficiary and to change the beneficiary to the insured's estate without obtaining the approval of a state court.

With regard to the release of beneficiary information to fiduciaries, current procedures already allow for the release of such information to the recognized Federal fiduciary of an incompetent insured or beneficiary, as permitted by routine use number 23, Veterans and Armed Forces Personnel U.S. Government In-Force Life Insurance Records--VA (36VA00), Privacy Act Issuances, 1987 Comp., Vol. V, p. 788, 789-90. As for the suggestion that the authority of a fiduciary be expanded to include the changing of the insured's beneficiary, we do not believe this would be in the best interest of the insured.

Courts have generally held that the guardian of an incompetent insured does not have the authority to change the insured's beneficiary under a life insurance policy. 39 Am. Jur. 2d Guardian and Ward section 41 (1968); 39 C.J.S. Guardian & Ward section 23 (1976). While there are a few jurisdictions which do, under certain circumstances, permit a guardian to change a ward's beneficiary, even those jurisdictions have found the testamentary act of changing a beneficiary on a life insurance policy to be so personal a matter as to require specific court approval. See *Murray* v. *United States*, 107 F. Supp. 290 (E.D. Mich. 1950), *aff'd. per curiam*, 188 F.2d 362 (6th Cir. 1951), *cert. denied*, 342 U.S. 816 (1951); *In re Church's Estate*, 141 F. Supp. 703 (D.D.C. 1956); *Roecker* v. *U.S.*, 379 F.2d 400 (5th Cir. 1967), *cert. denied*, 389 U.S. 1005 (1967). We concur in the reasoning of those decisions. Therefore, we have not amended the proposed regulations to incorporate this suggestion.

The Secretary of Veterans Affairs hereby certifies that these final regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these final regulations are, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these final regulations will affect only certain government life insurance policyholders. They will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The Department of Veterans Affairs has also determined that these final regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. These regulations will not have a $100 million dollar annual effect on the economy, will not cause a major increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance Program number for these regulations is 64.103.

List of Subjects

38 CFR Part 6

Life insurance, Veterans.

38 CFR Part 8

Life insurance, Veterans.

Approved: February 7, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 6, United States Government Life Insurance, and part 8, National Service Life Insurance, are amended as follows:

PART 6--[AMENDED]

1. Section 6.211 and its authority citation are added to read as follows:

§ 6.211 Guardian: definition and authority.

(a) *Definition.* For the purpose of this section, the term "guardian" includes any fiduciary certified by the appropriate Veterans Services Officer under § 13.55 of this title to receive benefits in a fiduciary capacity for an insured or beneficiary.

(b) *Authority.* For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums; select or change the settlement option for beneficiaries; assign a beneficiary's interest as provided under section 753 of title 38, United States Code.

(Authority: 38 U.S.C. 744)

PART 8--[AMENDED]

2. Section 8.119 and its authority citation are added to read as follows:

§ 8.119 Guardian: definition and authority.

(a) *Definition.* For the purpose of this section, the term "guardian" includes any fiduciary certified by the appropriate Veterans Services Officer under § 13.55 of this title to receive benefits in a fiduciary capacity for an insured or beneficiary.

(b) *Authority.* For the purpose of this part, a guardian of an insured or beneficiary shall have authority to: Apply for insurance; apply for conversion of a policy or change of plan; reinstate a policy; withdraw dividends held on deposit or credit; select or change a dividend option; obtain a policy loan; cash surrender a policy; authorize a deduction from benefits or allotment from military retired pay to pay premiums; apply for and receive payment of the proceeds on a matured policy; select or change the premium payment option; apply for waiver of premiums and total disability income benefits; select or change settlement options for beneficiaries; assign a beneficiary's interest as provided under section 718 of title 38, United States Code.

(Authority: 38 U.S.C. 708)

[FR Doc. 91-5355 Filed 3-6-91; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE10

Reservists Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

AGENCY: Department of Veterans Affairs, Department of Defense and Coast Guard, Department of Transportation.

ACTION: Final regulations.

SUMMARY: The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains several provisions which affect the administration of educational assistance for members of the Selected Reserve. The effect of these provisions is to change the way in which the Department of Veterans Affairs (VA) must measure certain courses which do not lead to a standard college degree; to add a requirement that certain reservists be counseled before choosing a program of education; and make a change concerning nonduplication of Federal programs. This amendment also contains two minor changes required by the Veterans' Benefits and Program Improvement Act of 1988 pertaining to elimination of the 180 days service requirement and less than half-time training. Other amended regulations resulting from the Veterans' Benefits and Program Improvement Act of 1988 and dealing with the education programs the Department of Veterans Affairs administers will be proposed separately.

EFFECTIVE DATE: The amendments to § 21.7540(a) and § 21.7672 (b) through (f), like the provisions of law they implement, are retroactively effective on November 18, 1988. The effective date of all other amendments, like the provisions of law they implement, are retroactively effective on October 28, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 47785 through 47790 of the Federal Register of November 17, 1989, there was published a Notice of Intent to amend 38 CFR part 21 to implement various provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 and the Veterans' Benefits and Programs Improvement Act of 1988. Interested people were given 30 days to submit comments, suggestions or objections. VA, the Department of Defense and the Department of Transportation received no comments, suggestions or objections. Accordingly, the departments are making the proposal final.

The Department of Veterans Affairs, the Department of Defense, and the Department of Transportation find that good cause exists for making the amendments to §§ 21.7540(a) and 21.7672 (b) through (f), like the provisions of law they implement, retroactively effective on November 18, 1988. VA, the Department of Defense and the Department of Transportation find that good cause exists for making the remainder of the amended regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a reservist who is entitled by law to it, or in the granting of a benefit to a reservist who is not entitled to it.

The Department of Veterans Affairs, the Department of Defense and the Department of Transportation have determined that these regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse

effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation have certified that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: May 8, 1990.

Albert V. Conte,

Deputy Assistant Secretary of Reserve Affairs (Manpower and Personnel), Department of Defense.

Approved: October 3, 1990.

John N. Paige,

RADM, U.S. Coast Guard Chief, Office of Readiness and Reserve, Department of Transportation.

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

1. In § 21.7540, paragraphs (a)(4) and (a)(5) and paragraph (b) and the authority citations for paragraph (a) and paragraph (b) are revised and paragraph (c) and its authority citation are added to read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) * * *

(4) Is participating satisfactorily in the Selected Reserve; and

(5) Has not elected to have his or her service in the Selected Reserve credited toward establishing eligibility to benefits provided under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689)

(b) *Limitations on establishing eligibility.* (1) An individual must elect whether or not he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. chapter 30 or under 10 U.S.C. chapter 106 when—

(i) The individual is a reservist who is eligible for basic educational assistance provided under 38 U.S.C. 1412, and has established eligibility to that assistance partially through service in the Selected Reserve; or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. 1412 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505 followed by service in the Selected Reserve.

(2) A reservist may revoke his or her election provided he or she has not negotiated a check for benefits under either 38 U.S.C. chapter 30 or 10 U.S.C. chapter 106 after the date of the election. Once the reservist has negotiated a check under either chapter, the election is irrevocable.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L.99–576)

(c) *Dual eligibility.* An individual who has established eligibility for basic educational assistance under 38 U.S.C. chapter 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. chapter 106 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 2132(d), 2134; Pub. L. 98–525)

2. In § 21.7600, paragraphs (b) and (d) and their authority citations are revised to read as follows:

§ 21.7600 Counseling.

* * * * *

(b) *Required counseling.* (1) In any case in which the Department of Veterans Affairs has rated the reservist as being incompetent, the reservist must be counseled before selecting a program of education. The requirement that counseling be provided is met when—

(i) The reservist has had one or more personal interviews with the counselor;

(ii) The counselor and the reservist have jointly developed recommendations for selecting a program of education; and

(iii) The counselor has reviewed the recommendations with the reservist.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) The Department of Veterans Affairs will take no further action on a reservist's application for assistance under this chapter when he or she—

(i) Fails to report for counseling;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1663; Pub. L. 98–525, Pub. L. 99–576)

* * * * *

(d) *Provision of counseling.* The Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the reservist. In addition, the Department of Veterans Affairs shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the reservist's request for counseling, the reservist's initial application for benefits or any communication from the reservist or guardian indicating that the reservist wishes to change his or her program. The Department of Veterans Affairs shall take appropriate steps (including individual notification where feasible) to acquaint reservists with the availability and advantages of counseling services.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 1663; Pub. L. 98–525, Pub. L. 99–576)

3. Section 21.7603 is revised to read as follows:

§ 21.7603 Travel expenses.

The Department of Veterans Affairs will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 10 U.S.C. chapter 106 or for whom counseling is required under that chapter.

(Authority: 38 U.S.C. 111)

4. In § 21.7642, paragraph (a) and its authority citation are revised to read as follows:

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist is barred from receiving educational assistance concurrently under 10 U.S.C. Chapter 106 and any of the following provisions of law—

(1) 38 U.S.C. ch. 30;

(2) 38 U.S.C. ch. 31;
(3) 38 U.S.C. ch. 32;
(4) 38 U.S.C. ch. 34;
(5) 38 U.S.C. ch. 35;
(6) 38 U.S.C. ch. 107;
(7) Section 903 of the Department of Defense Authorization Act, 1981; or
(8) The Hostage Relief Act of 1980.

(Authority: 38 U.S.C. 1433(a), 1781(b), 1795; Pub. L. 98–525, Pub. L. 99–576)

* * * * *

§ 21.7670 [Amended]

5. In § 21.7670, paragraph (e) is removed and reserved.

6. In § 21.7672, paragraphs (a) and (b) and their authority citations are revised and paragraphs (c), (d), (e), and (f) and their authority citations are added to read as follows:

§ 21.7672 Measurement of courses not leading to a standard college degree.

(a) *Overview.* (1) Courses not leading to a standard college degree may be measured on either a clock-hour basis, or a credit-hour basis or a combination of both. Factors which the Department of Veterans Affairs must include in determining the proper basis for measurement include whether the courses are accredited; whether the course could be credited toward a standard college degree; and whether the course is offered on a standard quarter or semester-hour basis.

(2) In determining which is the correct basis for measuring a reservist's enrollment, the Department of Veterans Affairs will first examine whether credit-hour measurement is appropriate, as provided in paragraph (b) of this section or, if requested by the educational institution, paragraph (c) of this section.

(3) If it is not appropriate to measure a reservist's courses on a credit-hour basis, the Department of Veterans Affairs will use the provisions of paragraph (d) of this section to examine whether a combination of credit-hour and clock-hour measurement may be used.

(4) If it is appropriate neither to measure the reservist's enrollment on a credit-hour basis nor on a combination of credit hours and clock hours, the Department of Veterans Affairs will measure the enrollment on a clock-hour basis as described in paragraphs (e) and (f) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 99–576)

(b) *Credit-hour measurement—standard method.* (1) The Department of Veterans Affairs will measure a reservist's enrollment in a course not leading to a standard college degree on a credit-hour basis whenever all conditions listed in paragraphs (b)(1) (i) through (ii) of this section are met.

(i) The reservist is enrolled in a course which—

(A) Is offered during the school year by a fully accredited institution of higher learning in residence on a standard quarter- or semester-hour basis; and

(B) Is approved pursuant to 38 U.S.C. 1775.

(ii) A majority of the total credits required for the course is derived from unit courses or subjects offered by that institution of higher learning as part of a course, approved pursuant to 38 U.S.C. 1775, leading to a single standard college degree.

(2) When all the conditions of paragraph (b)(1) of this section are met, the Department of Veterans Affairs will—

(i) Measure the reservist's enrollment in the same manner as collegiate undergraduate courses are measured in § 21.7670 (a), (b), and (c) of this part.

(ii) Apply the provisions of—

(A) Section 21.4272(e) of this part and measure those courses as though they were undergraduate courses using the "normal method", when appropriate;

(B) Section 21.4272(f) of this part if one or more of the reservist's courses have insufficient standard class sessions; and

(C) Section 21.4272(g) of this part if one or more of the reservist's courses are offered during a nonstandard term.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 99–576)

(c) *Credit-hour measurement—alternate method.* Even though courses not leading to a standard college degree do not qualify for credit-hour measurement as provided in paragraph (b) of this section, an educational institution offering courses not leading to a standard college degree may measure those courses on a quarter- or semester-hour basis as indicated for collegiate courses in § 21.7670 of this part provided—

(1) The academic portions of the courses require outside preparation and are measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit.

(2) The laboratory portions of the courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit.

(3) The shop portion of the courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1⅓ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours; 3/4 hours for less than one-half-time courses of 6–10 clock hours; and no rest period shall be allowed for other less than one-half-time courses of 0–5 clock hours.

(4) In no event shall the courses be considered full-time training when less than 22 hours per week of attendance is required.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525)

(d) *Mixed credit-hour and clock-hour measurement.* (1) When a course not leading to a standard college degree in which the veteran is enrolled cannot qualify for credit-hour measurement under either paragraph (b) or (c) of this section, the Department of Veterans Affairs will measure the course on a combined clock-hour and credit-hour basis when the provisions of paragraphs (d)(1) (i) through (ii) of this section are met.

(i) The course in which the reservist is enrolled—

(A) Is offered by an institution of higher learning, and

(B) Does not lead to a standard college degree; and

(ii) The institution of higher learning requires as part of the reservist's program of education one or more unit subjects for which credit is granted toward a standard college degree.

(2) The Department of Veterans Affairs will apply—

(i) The provisions of § 21.7670 (a), (b), and (c) of this part and the provisions of § 21.4272 (e), (f) and (g) of this part, where appropriate, to the portion of the reservist's enrollment consisting of the unit subject or subjects described in paragraph (d)(1)(ii) of this section measured on a credit-hour basis; and

(ii) The provisions of paragraph (d) of this section to the portion of the reservist's enrollment which is being measured on a clock-hour basis.

(3) For a reservist enrolled in a school where 12 credit hours are normally full-time and where the courses which must be measured on a clock-hour basis would normally require 18 clock hours net instruction because the course is accredited and theory and class instruction predominate as provided in paragraph (f)(2) of this section, the Department of Veterans Affairs will measure enrollment as provided in the following table. Clock hours in the table include customary intervals not to exceed 10 minutes between classes. Shop practice and rest periods are excluded. Supervised instruction periods in schools' shops and the time involved in field trips and individual and group

instruction may be included in computing the clock-hour requirements. Credit hours in the table in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this part, before using the table in this paragraph, the Department of Veterans Affairs will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	(Minimum necessary clock hour enrollment—(12 credit hours and 18 clock hours are full time)			
	Full time	Three-fourth time	One-half time	Less than ½ time
1 credit hour	16 or more clock hours net instruction.	11–15 clock hours net instruction.	7–10 clock hours net instruction.	0–6 clock hours.
2 credit hours	15 clock hours net instruction.	10–14 clock hours net instruction.	6–9 clock hours net instruction.	0–5 clock hours.
3 credit hours	13 or 14 clock hours net instruction.	9–12 clock hours net instruction.	4–6 clock hours net instruction.	0–3 clock hours.
4 credit hours	12 clock hours net instruction.	7–11 clock hours net instruction.	3–5 clock hours net instruction.	0–2 clock hours.
5 credit hours	10 clock hours net instruction.	6–9 clock hours net instruction.	1–5 clock hours net instruction.	0 clock hours.
6 credit hours	9 clock hours net instruction.	4–8 clock hours net instruction.	0–3 clock hours net instruction.	Not applicable.
7 credit hours	7 clock hours net instruction.	3–6 clock hours net instruction.	0–2 clock hours net instruction.	Not applicable.
8 credit hours	6 clock hours net instruction.	1–5 clock hours net instruction.	0 clock hours net instruction.	Not applicable.
9 credit hours	4 clock hours net instruction.	0–3 clock hours net instruction.	Not applicable	Not applicable.
10 credit hour	3 clock hours net instruction.	0–2 clock hours net instruction.	Not applicable	Not applicable.
11 credit hours	1 clock hour net instruction	0 clock hours net instruction.	Not applicable	Not applicable.

(4) For a reservist enrolled in a school where 12 credit hours are normally full-time, and where the courses which must be measured on a clock-hour basis would normally require 22 clock hours net instruction because the course is accredited and shop practice predominates as provided in paragraph (f)(1) of this section, the Department of Veterans Affairs will measure enrollment as provided in the following table. Supervised study is excluded from the clock hours included in the table in this paragraph. Credit hours in the table in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which meets the definition of § 21.4200(b) of this section, before using the table in this paragraph, the Department of Veterans Affairs will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, VA will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part.

Credit hour enrollment	MINIMUM NECESSARY CLOCK HOUR ENROLLMENT—(12 credit hours and 22 clock hours are full time)			
	Full time	¾ time	½ time	Less than ½ time
1 credit hour	20 or more clock hours attendance with not more than 2¼ hours rest period allowance.	14–19 clock hours attendance with not more than 1½ hours rest period allowance.	9–13 clock hours attendance with not more than 1 hour rest period allowance.	0–8 clock hours attendance with not more than ½ hour rest period allowance.
2 credit hours	16 clock hours attendance with not more than 2 hours rest period allowance.	12–17 clock hours attendance with not more than 1⅓ hours rest period allowance.	7–11 clock hours attendance with not more than ¾ hour rest period allowance.	0–6 clock hours attendance with not more than ⅓ hour rest period allowance.
3 credit hours	16 clock hours attendance with not more than 1¾ hours rest period allowance.	11–15 clock hours attendance with not more than 1⅛ hours rest period allowance.	5–10 clock hours attendance with not more than ⅝ hour rest period allowance.	0–4 clock hours attendance with not more than ¼ hour rest period allowance.
4 credit hours	15 clock hours attendance with not more than 1¾ hours rest period allowance.	9–14 clock hours attendance with not more than 1¼ hours rest period allowance.	4–8 clock hours attendance with not more than ⅓ hour rest period allowance.	0 clock hours.
5 credit hours	13 clock hours attendance with not more than 1⅓ hours rest period allowance.	7–12 clock hours attendance with not more than 1 hour rest period allowance.	2–6 clock hours attendance with not more than ¼ hour rest period allowance.	0 clock hours.
6 credit hours	11 clock hours attendance with not more than 1¼ hours rest period allowance.	5–10 clock hours attendance with not more than ⅝ hour rest period allowance.	0–4 clock hours	Not applicable.

Credit hour enrollment	MINIMUM NECESSARY CLOCK HOUR ENROLLMENT—(12 credit hours and 22 clock hours are full time)			
	Full time	¾ time	½ time	Less than ½ time
7 credit hours	9 clock hours attendance with not more than 1 hour rest period allowance.	5–8 clock hours attendance with not more than ½ hour rest period allowance.	0–2 clock hours	Not applicable.
8 credit hours	7 clock hours attendance with not more than ⅝ hours rest period allowance.	2–6 clock hours attendance with not more than ½ hour rest period allowance.	0–1 clock hours	Not applicable
9 credit hours	5 clock hours attendance with not more than ⅓ hour rest period allowance.	0–4 clock hours	Not applicable	Not applicable.
10 credit hours	4 clock hours attendance with not more than ⅓ hour rest period allowance.	0–3 clock hours	Not applicable	Not applicable.
11 credit hours	2 clock hours attendance with not more than ¼ hour rest period allowance.	0–1 clock hour	Not applicable	Not applicable.

(5) The Department of Veterans Affairs will measure an enrollment as provided in this paragraph when the provisions of paragraph (d)(1) of this section apply to the enrollment, but neither the provisions of paragraphs (d)(3) nor (d)(4) of this section apply. This may occur when either the courses which must be measured on a clock-hour basis normally require neither 18 clock hours attendance nor 22 clock hours net instruction, or 12 credit hours are not normally full-time at the school, or both. Credit hours in this paragraph refer to credit hours pursued during a semester or quarter as defined in § 21.4200(b) of this part. If the semester or quarter is not one which is defined in § 21.4200(b) of this part, before using the procedure in this paragraph VA will convert the credit hours being pursued by the reservist to equivalent credit hours using the procedure found in § 21.4272(g) of this part. If there are insufficient class sessions to support the credit hours in which the reservist is enrolled, the Department of Veterans Affairs will use the class sessions as a basis for measurement as described in § 21.4272(f)(2) of this part. The Department of Veterans Affairs will—

(i) Divide the number of credit hours in which the reservist is enrolled by the number of credit hours normally considered full time, three-quarter time, and one-half time at the school;

(ii) Multiply the percentages determined in paragraph (d)(5)(i) of this section by the number of clock hours of attendance or net instruction, as appropriate, which paragraph (e) or (f), respectively, or this section requires for each training time;

(iii) Subtract the result determined in paragraph (d)(5)(ii) of this section from the minimum number of clock hours of attendance or net instruction, as appropriate, which paragraph (e) or (f) of this section, respectively, requires for each training time (rounding to the nearest clock hour and dropping fractions of one-half hour to the next lower clock hour). Negative numbers will be changed to zero;

(iv) Multiply the length of time (if any) provided in paragraph (f) of this section for a rest period allowance by the percentage determined in paragraph (d)(5)(i) of this section;

(v) Subtract the length of time determined in paragraph (d)(5)(iv) of this section from the length of time determined in paragraph (f) of this section for a rest period allowance (rounding to the nearest quarter-hour and dropping fractions of 7½ minutes to the next lower quarter-hour); and

(vi) Measure the enrollment on the basis of the greatest training time permitted by the number of clock hours in which the reservist is enrolled and the length of his or her rest period allowance.

(Authority: 38 U.S.C. 1788(e); Pub. L. 99–576)

(e) *Nonaccredited-clock hour measurement.* If after having examined the courses in which a reservist is enrolled the Department of Veterans Affairs concludes that the reservist's enrollment qualifies neither for credit-hour measurement as provided in paragraphs (b) and (c) of this section nor for a combination of credit-hour and clock-hour measurement as provided in paragraph (d) of this section, the Department of Veterans Affairs shall measure a nonaccredited course not leading to a standard college degree as follows. For the purposes of this paragraph clock hours and class sessions mean clock hours and class sessions per week.

(1) If shop practice is an integral part of the course—

(i) Full-time training shall be 30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study;

(ii) Three-quarter-time training shall be 22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study;

(iii) Half-time training shall be 15 through 21 clock hours attendance with not more than 1¾ hours rest period allowance and not more than 2½ hours of supervised study; and

(iv) Less than half-time training shall be 1 through 14 clock hours of attendance. For attendance of between 8 and 14 clock hours there shall be not more than ¾ hours rest period allowance and not more than 1¼ hours of supervised study. For attendance of between 1 and 7 clock hours there shall be no rest period allowance and no supervised study.

(2) Except as provided in paragraph (e)(3) of this section, if theory and classroom instruction predominates in a course—

(i) Full-time training is 25 clock hours net instruction and not more than 5 hours of supervised study;

(ii) Three-quarter-time training is 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study;

(iii) Half-time training is 12 through 17 hours net instruction and not more than 2½ hours of supervised study. In measuring net instruction for the purposes of this paragraph there will be included customary intervals not to exceed 10 minutes between classes; and

(iv) Less than half-time training is 1 through 11 clock hours net instruction. For 7 through 11 clock hours net instruction there shall be not more than 1¼ hours of supervised study. For 1 through 6 clock hours net instruction there shall be no supervised study.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98-525, Pub. L. 99-576)

(f) *Accredited courses—clock hour measurement.* If after having examined the courses in which a reservist is enrolled the Department of Veterans Affairs concludes that the reservist's enrollment qualifies neither for credit-hour measurement as provided in paragraphs (b) and (c) of this section nor for a combination of credit-hour and clock-hour measurement as provided in paragraph (d) of this section, the Department of Veterans Affairs shall measure accredited courses not leading to a standard college degree as follows:

(1) If shop practice is an integral part of the course—

(i) Full-time training shall be 22 clock hours attendance with not more than 2½ hours rest period allowance;

(ii) Three-quarter-time training shall be 16 through 21 clock hours attendance with not more than 2 hours rest period allowance;

(iii) Half-time training shall be 11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance; and

(iv) Less than half-time training shall be 1 through 10 clock hours attendance. For attendance of 6 through 10 clock hours there shall be not more than ¼ hour rest period allowance. For attendance of 1 through 5 clock hours there shall be no rest period allowance. Supervised study shall be excluded from measurement of all course to which Paragraph (f)(1) of this section applies.

(2) If theory and class instruction predominates—

(i) Full-time training is 18 clock hours net instruction;

(ii) Three-quarter-time training is 13 through 17 clock hours net instruction;

(iii) Half-time training is 9 through 12 clock hours net instruction; and

(iv) Less than half-time training is 1 through 8 clock hours net instruction. In measuring net instruction for this paragraph there will be included customary intervals not to exceed 10 minutes between classes; however, supervised study must be excluded.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub L. 98-525, Pub. L. 99-576)

7. Section 21.7673 is added to read as follows:

§ 21.7673 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where a reservist enrolls concurrently in courses offered by two schools and the standards for measurement of the courses pursued concurrently in the two schools are different, the Department of Veterans Affairs will measure the reservist's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the reservist is pursuing at the primary institution. This conversion will be accomplished as follows:

(1) If the Department of Veterans Affairs measures the course at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in § 21.7672 (b) of this part, and—

(i) The Department of Veterans Affairs measures the course in the second school on a mixed basis as provided in § 21.7672(d) of this part, the Department of Veterans Affairs will add to the credit hours the reservist is pursuing at the primary institution the credit hours attributable to any course the reservist is pursuing at the second school which the Department of Veterans Affairs could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours; or

(ii) The Department of Veterans Affairs measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If the Department of Veterans Affairs measures the course at the primary institution on a mixed basis as provided in § 21.7672(d) of this part, and—

(i) The Department of Veterans Affairs measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the reservist is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.7670 or § 21.7672 (b) or (c) of this part, as appropriate; or

(ii) The Department of Veterans Affairs measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.7670 or § 21.7672(b) or (c) of this part, as appropriate.

(3) If the Department of Veterans Affairs measures the courses pursued at the primary institution on a clock-hour basis, and—

(i) The Department of Veterans Affairs measures the courses pursued at the second school on a mixed basis, the course pursued at the second school which the Department Veterans Affairs can measure on a credit-hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the reservist's training time; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of § 21.7672(b) of this part, VA will convert the credit hours to clock hours to determine the reservist's training time.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require the Department of Veteran Affairs to convert clock hours, it will do so by—

(1) Dividing the number of credit hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require the Department of Veterans Affairs to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which the Department of Veterans Affairs considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (b)(1) of this section. The Department of Veterans Affairs will drop all fractional hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

(d) *Standards for measurement the same.* Where the standards for measurement of the courses pursued concurrently in the two schools are the same, the Department of Veterans Affairs will measure the reservist's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.7672(d) of this part must be applied to the enrollment, the Department of Veterans Affairs will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.7672(d) of this part. In applying those provisions the Department of Veterans Affairs will use the standard for full time at the primary institution.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788)

[FR Doc. 91-5354 Filed 3-6-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-723-CN]

Medicare Program; Mid-Year FY 1991 Changes to the Inpatient Hospital Prospective Payment System; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period; correction.

SUMMARY: In the January 7, 1991 issue of the Federal Register (FR Doc. 90-30619), (56 FR 568), we implemented several provisions of section 4002 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) that affected Medicare payment under the inpatient hospital prospective payment system for discharges occurring on or after January 1, 1991. This notice corrects errors made in that document.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966-4529.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the January 7, 1991 final rule with comment period (56 FR 568):

1. On page 571, in the third column, in line 11 of the second full paragraph, "October 1, 1990" is corrected to read "October 1, 1991".

§ 412.63 [Amended]

2. On page 572, in the third column, in § 412.63(i), in line one, "Applicabler" is amended to read "Applicable".

3. On page 572, in the third column, in §§ 412.63 (j)(1) and (k)(1), in line one, "point" is amended to read "points".

§ 412.73 [Amended]

4. On page 573, in the second column, in § 412.73(c)(9), beginning on line four, "determined using the methodology set forth in paragraphs (j) through (m) of § 412.63." is amended to read "the percentage increase in the market basket index for prospective payment hospitals (generally described in § 413.40(c)(3)(ii) of this subchapter)."

§ 412.106 [Amended]

5. On page 573, in the third column, in line three of § 412.106(d)(2)(v)(A) and in line two of § 412.106(d)(2)(v)(B), "October 1, 1990" is amended to read "October 1, 1991".

Table 4A [Amended]

6. Beginning on page 577, technical errors were made in the wage index values for the following urban areas. The correct wage index values are shown in the fourth column.

Page	Urban area	Published WI value	Corrected WI value
577	Atlantic City, NJ	1.0526	1.0527
577	Bradenton, FL	0.9281	0.9280
577	Bryan-College Station, TX	0.9508	0.9507
577	Chicago, IL	1.0539	1.0538
578	Dayton-Springfield, OH	0.9884	0.9883
578	Grand Rapids, MI	0.9903	0.9902
578	Greeley, CO	0.9377	0.9376
579	Longview-Marshall, TX	0.8709	0.8708
579	Muskegon, MI	0.9587	0.9586
580	Parkersburg-Marietta, WV-OH	0.8557	0.8556
580	Pittsburg, PA	1.0148	1.0147
580	Ponce, PR	0.4611	0.4610
580	Providence-Pawtucket-Woonsocket, RI	1.0639	1.0638
580	Salinas-Seaside-Monterey, CA	1.3067	1.3066
580	San Angelo, TX	0.8156	0.8155
581	San Francisco, CA	1.4588	1.4587
581	Santa Cruz, CA	1.2810	1.2809
581	Seattle, WA	1.0893	1.0892
581	Stockton, CA	1.1636	1.1635
581	Victoria, TX	0.9012	0.9011

7. On page 578, a typographical error was made in the wage index value for the following urban area. The correct wage index value is shown in the fourth column.

Page	Urban area	Published WI value	Corrected WI value
578	Fayetteville, NC	0.8372	0.8312

Table 4B [Amended]

8. On page 582, technical errors were made in the wage index values for the following nonurban areas. The correct wage index values are shown in the fourth column.

Page	Nonurban area	Published WI value	Corrected WI value
582	Kansas	0.7466	0.7465
582	New Hampshire	0.9566	0.9565

Table 4C [Amended]

9. On page 582, a typographical error and technical error, respectively, were made in the wage index values for the following countries. The correct wage index values are shown in the fourth column.

Page	County	Published WI value	Corrected WI value
582	Jefferson Co., KS	0.9295	0.9285
582	Allegan Co., MI	0.9903	0.9902

Table 4D [Amended]

10. On page 582, a typographical error was made in the wage index value for the following county. The correct wage index value is shown in the fourth column.

Page	County	Published WI value	Corrected WI value
582	Harnett Co., NC	0.9667	0.9667

11. On page 588, in the second column, in line 6 of the first full paragraph, "volumn V" is changed to read "column V".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 1, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-5678 Filed 3-7-91; 8:45 am]

BILLING CODE 4120-01-M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised appendix.

SUMMARY: The Legal Services Corporation ("Corporation") is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the official Federal Poverty Income Guidelines issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Deputy General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2571; 202-863-1823.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income. Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as set by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1991 equivalent to 125% of the current official Federal Poverty Income Guidelines as set out at 56 FR 6859-6861 are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1) 2996(a)(1), 2996f(a)(2).

2. Appendix A of part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation Poverty Guidelines*

Size of Family	All States But Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$6,275	$10,363	$9,513
2	11,100	13,888	12,763
3	13,925	17,413	16,013
4	16,750	20,938	19,263
5	19,575	24,463	22,513
6	22,400	27,988	25,763
7	25,225	31,513	29,013
8	28,050	35,038	32,263

*The figures in this table represent 125% of the poverty income level by family size as determined by the Department of Health and Human Services.

[1] For family units with more than eight members, add $2,825 for each additional member.

[2] For family units with more than eight members, add $3,525 for each additional member.

[3] For family units with more than eight members, add $3,250 for each additional member.

Dated: February 28, 1991.

Victor M. Fortuno,

Deputy General Counsel.

[FR Doc. 91-5376 Filed 3-6-91; 8:45 am]

BILLING CODE 7050-01-M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1

Office of the Secretary

[OST Docket No. 1; Amdt. 1-240]

Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, the authority contained in 46 U.S.C. 8103(b)(3) to waive citizenship requirements on vessels documented under U.S. law. The Code of Federal Regulations does not reflect this delegation, and therefore a change is necessary.

EFFECTIVE DATE: February 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lcdr J. Vallone, Maritime and International Law Division, Office of Chief Counsel (202) 267-1527, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593.

Mr. Steve Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50, (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation has delegated to the Commandant, United States Coast Guard, authority contained in 46 U.S.C. 8103(b)(3) to waive citizenship requirements on vessels documented under U.S. law. The Code of Federal Regulations does not reflect this delegation and, therefore, a change is necessary.

Since this amendment relates to Departmental organization, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register. Therefore, this final rule is effective February 27, 1991.

In accordance with the Secretary's authority, the following change is made.

List of Subjects in 49 CFR Part 1

Authority delegations, (Government agencies), Organization and functions (Government agencies)

In consideration of the foregoing, part I of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by adding a new paragraph (vv) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(vv) Carry out the functions and exercise the authority vested in the Secretary by 46 U.S.C. 8103(b)(3) to waive the citizenship requirements on vessels documented under U.S. law.

Issued on: February 27, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-5342 Filed 3-6-91; 8:45am]

BILLING CODE 4910-62-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1010

[Ex Parte No. 54 Sub-No. 1]

Removal of Obsolete Clayton Act Section 10 Competitive Bidding Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing its competitive bidding regulations from the Code of Federal Regulations. These regulations, which are now obsolete, are codified at 49 CFR part 1010.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Clayton Act section 10 (15 U.S.C. 20), the statutory basis for the Commission's part 1010 competitive bidding regulations, was recently repealed. *See* the Antitrust Amendments Act of 1990, Public Law 101-588, section 3, 104 Stat. 2879 (Nov. 16, 1990). We are therefore removing the now obsolete part 1010 regulations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1010

Maritime carriers, Motor carriers.

Decided: February 27, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble under authority 49 U.S.C. 10321, title 49, chapter X, part 1010 of the Code of Federal Regulations is removed.

[FR Doc. 91-5285 Filed 3-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-0284]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director), has determined that the interim total allowable catch (TAC) specified for pollock in the combined Western-Central Regulatory Areas of the Gulf of Alaska has been reached. Therefore, the Secretary of Commerce (Secretary) will treat pollock in the combined Western-Central Regulatory Areas as a prohibited species and will prohibit further retention of pollock in that area as of 12 noon, Alaska local time (A.l.t.), March 1, 1991 through March 31, 1991. This action is necessary to prevent the interim TAC of pollock in the combined Western-Central Regulatory Areas from being exceeded. The intent of this action is to ensure optimum use of groundfish while conserving pollock stocks.

DATES: Effective from 12 noon March 1, 1991, through March 31, 1991, A.l.t. until superceded by notice of final specifications.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific

Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as defined in § 672.20(c)(1). The interim TAC, as defined under § 672.20(c)(1)(i), for pollock in the combined Western-Central Regulatory Areas in 1991 is equal to one fourth of the total allowable catch for pollock (17,800 mt) as published in the notice of proposed quantities for 1991 initial specifications (55 FR 47897; November 16, 1990).

Under § 672.20(c)(3), if the Regional Director determines that the interim TAC for any target species or of the "other species" category in a regulatory area or district has been or will be reached, the Secretary will publish a notice in the Federal Register declaring that the species or species group is to be treated in the same manner as a prohibited species under § 672.20(e) in all or part of that area or district.

The directed fishing allowance for pollock (16,250 mt) in the combined Western-Central Regulatory Areas of the Gulf of Alaska was reached on February 15, 1991 (56 FR 6992; February 21, 1991). The remainder of the interim TAC of pollock for the amount apportioned to the combined Western-Central Regulatory Areas has been reached, and the Secretary is prohibiting further retention of pollock in that area through March 31, 1991, or until this action is superseded.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 et seq.

Dated: March 1, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5322 Filed 3-01-91; 4:00 pm]

BILLING CODE 3510-22-M

---

50 CFR Parts 672 and 675

[Docket No. 910117-1017]

RIN 0648-AD98

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) has determined that changes to the recordkeeping and reporting requirements for fisheries in the Exclusive Economic Zone (EEZ) off Alaska are needed to provide fishery managers with adequate and timely information for managing groundfish fisheries. As early as possible in 1991, the Secretary is amending existing recordkeeping and reporting requirements to (1) require groundfish processors to submit daily production reports when requested to do so by the Director, Alaska Region (Regional Director); (2) require operators of shoreside processing facilities to submit check-in and check-out notices similar to those required of at-sea processors; (3) redefine weekly reporting period, fish product weight, quarterly reporting period, reporting area, and statistical area; (4) change the submission schedule for weekly production reports; (5) revise information recorded in production logbooks; (6) consolidate reporting areas in the Shelikof district; and (7) change reporting requirements for species or species groups in the "other species" category. These amendments must be effective immediately to improve management of quota-based fisheries and provide uniform recordkeeping and reporting requirements throughout the 1991 fishing year. The intended effect of this action is to further the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Effective March 1, 1991.

Comments on the interim final rule, the collection-of-information requirements, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are invited on or before April 1, 1991.

ADDRESSES: Comments on the collection-of-information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer) and to Susan J. Salveson, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802. Copies of the EA/RIR/IRFA may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson (Fisheries Management Division, NMFS), 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) are managed by the Secretary under Fishery Management Plans (FMPs) for Bering Sea/Aleutian Islands Groundfish and the Gulf of Alaska Groundfish Fishery. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR 611.92 and 611.93 and for the U.S. fishery at 50 CFR parts 672 and 675.

The need and justification of existing recordkeeping and reporting requirements were discussed in the preamble to the proposed rule for Amendments 13 and 18 to the FMPs (54 FR 36333, September 1, 1989). Recordkeeping and reporting requirements implemented under these amendments (54 FR 50386, December 6, 1989) were subsequently revised to repeal monthly product value reporting requirements (55 FR 34933, August 27, 1990). Since the implementation of Amendments 13 and 18, NOAA has received recommendations from the groundfish industry to improve the format of Daily Fishing Logbooks and Daily Cumulative Production Logbooks required under §§ 672.5(b) and 675.5(b). NMFS management staff also has recommended changes to recordkeeping and reporting requirements that would enable a more timely and comprehensive collection of information necessary for inseason management of the groundfish fisheries.

At its December 3-7, 1990, meeting, the Council recommended that the Secretary take emergency action under section 305(c)(2)(B) of the Magnuson Act to implement changes to recordkeeping and reporting requirements that would be effective January 1, 1991. These changes must be implemented at the beginning of the 1991 fishing year to allow for the collection of information necessary to monitor several fast-paced fisheries that are expected to commence at that time.

There is an urgent need for timely information on groundfish catch and production so that NMFS may effectively monitor groundfish harvests and accurately project fishery closures to prevent the overharvest of groundfish quotas. The rapidly expanding capacity of the Alaska groundfish fleet, combined with annual or seasonal constraints on the amount of groundfish that is available to the industry has created very competitive, fast-paced fisheries for some groundfish species. Several of these fisheries will commence on January 1, 1991. Until new reporting requirements are implemented to provide more timely catch information, NMFS must estimate conservative projections for fishery closures to reduce the likelihood of exceeding groundfish quotas. Overharvest of groundfish quotas could increase the possibility of overfishing certain groundfish stocks. Conservative estimates of groundfish harvests, however, often result in premature fishery closures and increased costs to the groundfish industry.

Upon reviewing the Council's recommendations and available information, the Secretary concurs with the Council that these changes need to be implemented early in 1991 to manage the groundfish fisheries in a more timely and effective manner and prevent confusion concerning reporting and recordkeeping requirements within the fishing industry and the resulting noncompliance with these regulations. For these reasons, the Secretary promulgates the following changes to recordkeeping and reporting requirements as an interim final rule. Public comment is invited on this rule on or before April 1, 1991.

Examples of revised logbook forms and new reporting forms are presented as an appendix to this rulemaking. The changes in the recordkeeping and reporting requirements are discussed below.

New Reporting Requirements

Two new reporting requirements are implemented: (1) Groundfish processors must submit daily production reports when requested to do so by the Regional Director, and (2) operators of shoreside processing facilities must submit check-out notices similar to those required of at-sea processors. A description of these new reporting requirements and the reasons for them follow:

1. Daily Production Reports

Groundfish processors are required to submit daily production reports upon request of the Regional Director. These reports will allow NMFS to monitor groundfish harvests and quotas on a daily basis in fast-paced fisheries so that rates of harvest and projected dates of fishery closures may be determined more accurately.

Currently, catches in groundfish fisheries are monitored through weekly domestic observer reports and weekly production reports submitted by groundfish processors under §§ 672.5(c)(2) and 675.5(c)(2). Existing regulations require weekly production reports to be submitted within 1 week of the applicable weekly reporting period. Data entry, verification, and correction commonly take another week and result in a 2-week delay between the time groundfish harvests are reported and the time updated information on these harvests becomes available to management staff.

This process is usually adequate for quota management of fisheries; however, in some cases, the 2-week delay is inadequate for quota monitoring. In fast-paced fisheries, groundfish quotas or prohibited species bycatch allowances could be exceeded. Conversely, if fishing effort decreases unexpectedly, a fishery closure projected on weekly information may result in a premature fishery closure, loss of revenue, and increased operating costs to the groundfish industry.

The Regional Director's request to processors for daily production reports will be restricted to fisheries that are fast paced, have variable effort, or small quotas and large effort. In these fisheries, processors will be required to submit daily production reports for a period that is not overly burdensome, usually 1-3 weeks. Submission of daily production reports will not significantly increase the reporting burden of groundfish processors because processors are already required to maintain daily records of groundfish landings and production in their Daily Cumulative Production Logbooks (§§ 672.5(b)(3) and 675.5(b)(3)). A request to submit daily production reports will require operators of processor vessels or managers of shoreside processing facilities to transfer data already recorded in the Daily Cumulative Production Logbook onto a one-page daily production report for transmittal to the Regional Director.

The information required on the daily production reports includes processor identification information, gear type used to harvest groundfish, harvest or landing date, Federal reporting area where harvesting occurred, retained or landed species codes, product type codes, product weights, and discarded groundfish species codes and amounts.

Daily production reports are intended to augment existing reporting requirements and do not replace weekly production reports required under §§ 672.5(c)(2) and 675.5(c)(2).

2. Shoreside Processor Check-out Notices

With this interim final rule, shoreside processors are required to submit check-out notices that include processor identification information and the date the processor will cease to receive groundfish. This new reporting requirement will reduce the number of weekly production reports that shoreside processors are required to submit on an annual basis and will provide inseason managers with a more reliable accounting of groundfish landings received by shoreside processing facilities to submit weekly production reports beginning with the first week of the year when the facility receives any groundfish and to continue submitting these reports until the end of the year or until the facility ceases groundfish production for the year. Weekly production reports are required during this period even if no groundfish are received or processed.

Compliance with this regulation is unnecessarily burdensome to some shoreside processing facilities because they receive groundfish only seasonally throughout the year. No reason exists to require submission of weekly production reports when these facilities are not processing or receiving groundfish, provided that inseason managers are aware that absence of weekly reports from individual processors represents a lack of groundfish receipts and production rather than late reports or noncompliance with reporting requirements. Late or missing weekly production reports reduce NMFS' ability to monitor quotas and may result in groundfish quotas or prohibited species bycatch allowances being exceeded.

Under the interim final rule, a manager of a shoreside processing facility must notify the Regional Director of the date the facility will cease to receive groundfish for either an intermittent period or for the year, whichever is applicable. Several check-out notices could be submitted during a year to account for seasonal groundfish receipts. Managers of shoreside processing facilities are required to submit weekly production reports for any week during the period beginning with the date a facility receives groundfish and continuing until the end of the year or until the date specified in the check-out notice. If no groundfish is received or processed during a particular week and a check-out notice has not been submitted, weekly production reports are required that specify zero groundfish received or processed.

At-sea processors will still be required to submit check-in/out notices as they move from one Federal reporting area to another and to provide weekly production reports during the time they are checked into a reporting area.

Revisions to Existing Recordkeeping and Reporting Requirements

1. Definition of Weekly Reporting Period

As set forth in regulations at §§ 672.2 and 675.2, a weekly reporting period is the period from midnight Sunday morning until midnight of the following Saturday night, Alaska local time (ALT). Representatives of numerous shoreside processing facilities have reported that business records and reports normally are maintained for a Monday though Sunday week and that lack of office support staff during weekend hours reduces their ability to comply with Federal recordkeeping and reporting requirements that are based on a Sunday-through-Saturday reporting period.

The current definition of weekly reporting period was adopted from Federal regulations governing the foreign groundfish fisheries and presents no management advantage over a Monday-Sunday reporting period. In deference to the normal business practices of a large number of groundfish processor companies, NOAA promulgates regulations under this interim final rule that define weekly reporting period as that period from 0001 hours Monday morning through 2400 hours the following Sunday night, ALT.

The Secretary acknowledges that those processors that have adjusted operations to a Sunday-Saturday reporting week could be temporarily inconvenienced to accommodate the new definition. This inconvenience is expected to be brief and is offset by the positive benefits derived from enhanced compliance with reporting requirements that are closely related to the business practices of the groundfish processing industry.

2. Submission Schedule for Weekly Production Reports

Existing regulations that groundfish processors submit weekly production reports and that weekly production reports must be received by the Regional Director within one week after the end of the applicable weekly reporting period (§§ 672.5(c)(2)(iv) and 675.5(c)(2)(iv)). The submission schedule for weekly production reports is revised under this interim final rule so that these reports are received by the Regional Director within 48 hours after the end of the applicable weekly reporting period.

As previously discussed under the daily production report, a 2-week delay usually exists between the time groundfish are harvested and the time updated information on those harvests is available to management staff and the groundfish industry. This delay will be reduced if daily production reports are requested from groundfish processors; however, inseason management of most fisheries will be based on weekly production reports.

Most processing operations have the equipment to submit weekly production reports in a timely manner through Telex or facsimile machines. Receipt of weekly production reports by the Regional Director within 48 hours after the end of a weekly reporting period will allow management staff to monitor groundfish quotas more effectively and provide the industry with more timely status of harvests, available groundfish quotas, and prohibited species bycatch allowances. Industry has requested this information in a more timely manner to provide better guidance for marketing and planning decisions.

3. Revision to Information Recorded in Daily Logbooks

Regulations implementing Amendments 13 and 18 to the FMPs require groundfish catcher vessels and processors to maintain Daily Fishing Logbooks and Daily Cumulative Production Logbooks. Vessel operators and managers of shoreside processing facilities have submitted comments for improving the logbook format or the information recorded in the logbooks. The NMFS has also recommended that additional information be recorded in logbooks to improve NMFS' ability to determine vessel and processor compliance with the observer program authorized under Amendments 13 and 18 to the FMPs and implemented at §§ 672.27 and 657.25. A description of the revisions or additions to logbook requirements under the interim final rule and the reasons for each follow.

(a) Daily Fishing Logbook

Under regulations promulgated by this action, operators of vessels that have been issued a Federal groundfish permit are required to maintain Daily Fishing Logbooks for each day of a fishing trip from the day a vessel leaves an Alaskan port or enters the EEZ of Alaska until a vessel returns to port or leaves the EEZ off Alaska. Transit days or days of non-fishing activity will be recorded as such in the logbook. Current regulations are unclear as to whether days when fishing gear is not deployed should be recorded in logbooks. Amendments promulgated under this interim final rule clarify NOAA's intent that a logbook should be maintained for each day of a fishing trip.

Two new fields must also be maintained by vessel operators that will provide NMFS with the information needed to judge vessel compliance with the required level of observer coverage and to analyze other parameters of the observer program. These fields record whether an observer was onboard the vessel and, on days when catch is offloaded, the identification of the groundfish processor receiving the catch and the Alaska Department of Fish and Game (ADF&G) Fish Ticket number, if applicable.

Finally, Daily Fishing Logbook fields that record effort information are revised to accommodate common fishing practices and facilitate recording information on fishing effort and discarded fish in the logbooks. These revisions (1) allow depth information to be recorded in meters or fathoms and weight information to be recorded in metric tons or pounds, (2) allow information on gear retrieval of a haul or set to be recorded on the same logbook page as gear deployment, (3) add a logbook field to record the code for intended target species, (4) add fields to maintain cumulative discard amounts for a fishing trip, and (5) add a comment section to the logbook format to improve the use of the logbook for individual purposes of vessel operators.

(b) Daily Cumulative Production Logbook

A field is added to the Daily Cumulative Production Logbook that requires vessel operators or managers of shoreside processing facilities to record whether an observer is onboard or present. As previously mentioned, this information is necessary to monitor processor compliance with observer coverage requirements. Other revisions to information recorded in the Daily Cumulative Production Logbook (1) provide a field to distinguish discard amounts as reported by catcher vessels from discard amounts resulting from processing operations, (2) provide fields to maintain cumulative discard amounts for reach weekly reporting period, and (3) allow managers of shoreside processing facilities to report employee hours rather than number of employees involved in groundfish operations.

4. Miscellaneous changes

This interim final rule implements four additional changes to regulations that affect recordkeeping and reporting requirements.

(a) The definition for fish product weight is revised to allow the reporting of product weight in logbooks in either pounds or to at least the nearest tenth of a metric ton (0.1 mt). This change is intended to allow recording of product weight in pounds by those processors who commonly receive groundfish landings or produce groundfish products in amounts that are more practically recorded in smaller weight units.

(b) The definition of quarterly reporting period is also revised so that quarterly reporting periods begin and end at the beginning or end of weekly reporting periods. This change is necessary to monitor groundfish quotas that are apportioned on a quarterly basis and to facilitate the preparation of quarterly reports on fishing activity.

(c) Gulf of Alaska statistical area 631 is deleted and statistical area 621 is redesignated to encompass the Shelikof district statistical area. In § 672.2, the definitions of reporting area and statistical area are changed accordingly. This change reduces the Shelikof district to one reporting area instead of two. Existing regulations require that pollock harvests in the Shelikof district be reported from two reporting areas (621 and 631). Haul-by-haul effort information is now available from Daily Fishing Logbooks, and only one reporting area is needed for the Shelikof district to monitor pollock quotas established specifically for this district.

(d) Groundfish products produced from retained species within the "other species" category must be reported separately for each species or species group, rather than for the category as a whole. Current regulations require species products be reported for species or species groups for which a total allowable catch (TAC) is specified under §§ 672.20 and 675.20. A single TAC is specified for the "other species" category, although this group comprises numerous species groups.

In the BSAI, the "other species" category includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. In addition to these species, the Gulf of Alaska "other species" category also includes Atka mackerel and squid. Existing regulations do not require reported product from species within the "other species" category to be identified by species or species group. This creates a management problem because this category comprises a number of very different species, and standard product recovery rates cannot be applied to reported product amounts. Because reported product weights rather than extrapolated round weight equivalents are used to monitor and manage the TAC established for the "other species" category, the likelihood of overharvesting established quota amounts is increased. The requirement for species-specific reporting of products produced from groundfish within the "other species" category will allow the application of standard product-recovery rates against reported product, a more accurate accounting of absolute harvest levels, and improved quota management.

Examples of Forms

The forms shown in the appendix are examples of either new or revised forms that reflect changes in regulations under the interim final rule. These forms will not appear in the Code of Federal Regulations.

Regulatory Text

The regulatory text for amendments to §§ 672.5 and 675.5 includes unchanged as well as amended text so that amendments can be reviewed in their entirety and relative to existing regulations. The following text in §§ 672.5 and 675.5 has been amended:

Sections 672.5 and 675.5

Revised paragraphs: (b)(2)(i), (b)(2)(ii)(A)(*5*), (*7*), and (*8*), (b)(2)(ii)(B)(*1*) through (*8*), (b)(2)(iv), (b)(3)(ii)(A)(*4*), and (*8*) through (*10*), (b)(3)(ii)(B)(*1*)(*ii*), (*iv*), and (*v*), (b)(3)(ii)(B)(*2*)(*ii*), (*iii*), and (*iv*), (b)(4)(i)(C) and (G), (c)(1)(i), (c)(1)(ii)(A) through (C), (c)(1)(iii), (c)(2)(ii), (c)(2)(iii)(C), (E), and (I), (c)(2)(iv).

Added paragraphs: (b)(2)(ii)(A)(*9*), (b)(2)(ii)(B)(*9*), (b)(2)(ii)(C), (b)(3)(ii)(A)(*11*), (c)(3).

Removed paragraphs: (b)(3)(ii)(B)(*1*)(*vi*), (b)(3)(ii)(B)(*2*)(*v*).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim final rule must be implemented immediately and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that reasons justifying promulgation of this rule make it contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedure Act. This rule must be implemented early in 1991 to manage fast-paced fisheries that start January 1 and to avoid confusion and noncompliance in the finishing industry resulting from two sets of reporting and recordkeeping requirements during the 1991 fishing year.

This interim final rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that Order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the regular procedures of that Order for the reasons set forth in the preamble of this interim final rule.

The Alaska Region, NMFS, prepared an initial regulatory flexibility analysis (IRFA), as part of the EA/RIR/IRFA, which concludes that this interim final rule will have significant effects on a substantial number of small entities.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable which the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator has determined that this interim final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/IRFA prepared by the Alaska Region, NMFS.

Based on the EA/RIR/IRFA that NOAA prepared for this interim final rule, the Assistant Administrator concludes that no significant impact on the human environment will occur. A copy of the EA/RIR/IRFA is available from the Regional Director at the previously cited address.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request for approval to collect this information has been approved by OMB as a revision to OMB No. 0648-0213. Most of the additional burden will result from the submission of daily production reports from groundfish processors and from the submission of check-out notices by managers of shoreside processing facilities. A summary of the additional burden follows:

The additional annual burden to groundfish processors to comply with daily production reports is estimated at about 781 hours (about 10 minutes per day). The additional annual burden to shoreside processing facilities to comply with requirements for check-out notices is estimated to average about 28 hours (about 10 minutes for each check-out notice). Revisions to logbook format and/or additions to information collected in logbooks are minimal or facilitate recording of information already required. The additional burden to catcher vessel operators to record catch delivery or landing information is less than 1 minute on those days when such activity occurs.

Send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden to the NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget at the previously cited addresses.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12012.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Dated: February 28, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 672.2 is amended by revising the definitions of *Fish product weight, Quarterly reporting period or quarter, Reporting area, Statistical area,* and *Weekly reporting period* to read as follows:

§ 672.2 Definitions.

* * * * *

Fish product weight means the weight of the fish product in pounds or to at least the nearest tenth of a metric ton (0.1 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individually frozen fish. The weight of a production unit is based on the average weight of the product as determined by analyzing representative samples. The weight of the production unit does not include packaging. The weight of the production unit does include water added to the product and other additives reported to NMFS. NMFS may use the weight of the production units, with an allowance for water not to exceed 5 percent of the weight of the production unit, to determine net weight, and to calculate round-weight equivalents.

* * * * *

Quarterly reporting period or quarter means one of four successive 3-month periods during a calendar year. All quarters end at 2400 hours, Alaska local time (ALT), on the Sunday closest to the end of the appropriate calendar month and begin at 0001 hours, ALT, on the following Monday, with the exception of the first quarter, which begins at 0001 hours, ALT, January 1, and the last quarter, which ends at 2400 hours, ALT, December 31.

* * * * *

Reporting area means the relevant Gulf of Alaska statistical area and, in addition to the State waters described in the relevant statistical area, all State waters between the shore and any inshore boundary of that statistical area. With respect to any groundfish species, any groundfish species group, or any prohibited species, the relevant Gulf of Alaska statistical areas include each of the following statistical areas described below: 61, 62, 621, 63, 64, 65, and 66. A reporting area is identified by the same number used to identify the associated statistical area.

Statistical area means any one of the seven statistical areas of the EEZ in the Gulf of Alaska defined as follows:

(1) Statistical Area 61—between 170°00′ and 159°00′ W. longitudes;

(2) Statistical Area 62—between 159°00′ and 154°00′ W. longitudes;

(3) Statistical Area 621—Shelikof Strait district as defined by this paragraph under the heading "Regulatory district";

(4) Statistical Area 63—between 154°00′ and 147°00′ W. longitudes;

(5) Statistical Area 64—between 147°00′ and 140°00′ W. longitudes;

(6) Statistical Area 65—east of 137°00′ W. longitude and north of 54°30′ N. latitude;

(7) Statistical Area 66—between 140°00′ and 137°00′ W. longitudes.

* * * * *

Weekly reporting period means from 0001 hours Monday morning until 2400 hours the following Sunday night, Alaska local time (ALT).

3. Section 672.5 is amended by revising paragraphs (b)(2), (b)(3), (b)(4)(i) (C) and (G), and (c) to read as follows:

§ 672.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) *Daily Fishing Logbook.* (i) The operator of each catcher/processor and catcher vessel harvesting groundfish from any reporting area in the Gulf of Alaska must maintain onboard a Daily Fishing Logbook of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. A vessel's Daily Fishing Logbook must be maintained for each day of a fishing trip from the day a vessel leaves an Alaskan port or enters the EEZ off Alaska until a vessel returns to port or leaves the EEZ off Alaska. Daily entries are not required for those days when the fishing vessel stays in port. The operator of a catcher/processor vessel will be provided with a Daily Fishing Logbook that also functions as a daily cumulative production logbook required under paragraph (b)(3) of this section.

(ii) *Daily Fishing Logbook; contents.*

(A) The Daily Fishing Logbook must record the following effort information on a daily basis.

(*1*) The page number. This number must be consecutive beginning with page one for the first day the vessel conducted any fishing operation after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the Daily Fishing Logbook must be used for each day's fishing activity. If fishing activity is conducted with more than one gear type or in more than one reporting area during any day, a separate page in the Daily Fishing Logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The vessel's name and ADF&G vessel number.

(*4*) The reporting area where the vessel is conducting fishing activity.

(*5*) The gear type used by the vessel (pelagic trawl, nonpelagic trawl, hook and line, jig/troll, or pot gear).

(*6*) The signature of the operator of the vessel.

(*7*) Whether a NMFS certified observer is onboard the vessel.

(*8*) The size of the crew.

(*9*) Daily discarded amounts of each groundfish species or species group in pounds or to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discarded amounts of each prohibited species listed under § 672.20(e) of this part by number, except for discarded amounts of herring, which should be reported by round weight in pounds or to the nearest 0.1 mt. For vessels that offload groundfish on a daily basis, a fishing trip is defined as a day. For vessels that deliver groundfish on a less frequent schedule, a fishing trip is defined as the period between offloadings of groundfish catch. Discard information must include the following information for each fishing trip.

(*i*) The species code for each discarded species or species group.

(*ii*) The total amount of discards during a fishing trip, by species code, carried forward from the previous day and recorded in pounds or to the nearest 0.1 mt. At the beginning of each fishing trip, the discarded amount for the fishing trip is zero, and nothing shall be carried forward from the previous fishing trip.

(*iii*) Total discarded amounts for the day that occurred in harvesting operations, recorded in pounds or to the nearest 0.1 mt.

(*iv*) The updated total discarded amounts for the fishing trip, by species codes, calculated by adding the relevant daily total and the total carried forward for that fishing trip.

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed.

(*1*) The haul or set number. This number must be consecutive beginning with number one for the first haul or set of the day, fishing trip, or year, whichever is more convenient to the vessel operator. The method used to number hauls or sets must be consistent throughout the logbook.

(*2*) Begin time (to nearest minute) and position (in geographic coordinates) of haul or set. For trawl gear, record time and position when the trawl gear reaches the fishing level and begins to fish. For other gear types, record time and position when jig/troll gear or the first pot or hook-and-line gear of a set enters the water. A set is defined as a string of pots or hook-and-line gear or a group of pots that are deployed in a similar location with similar soak time.

(*3*) The average sea depth for the haul or set, recorded to the nearest fathom or meter.

(*4*) Average gear depth for the haul or set, recorded to the nearest fathom or meter.

(*5*) End date (if different from begin date), time (to nearest minute), and position of haul or set (in geographic coordinates). For trawl gear, record time and position where retrieval of trawl cable commences. For other gear types, record time and position when jig/troll gear leaves the water or when the last pot or hook-and-line gear of a set leaves the water.

(*6*) The duration of the set or trawl, recorded to the nearest minute.

(*7*) If the vessel is using longline or single pot gear, record the number of skates or pots run and the average number of hooks or pots per skate.

(*8*) The estimated total round weight of the groundfish catch in pounds or metric tons.

(*9*) The intended target species code(s).

(C) The following information must be recorded in the daily fishing log on the days that fish are offloaded to a groundfish processor:

(*1*) If delivery is to a domestic processor, the processor's name, ADF&G processor code, and ADF&G Fish Ticket number.

(*2*) If delivery is to a foreign processor vessel in a joint venture operation, record the foreign processor vessel's name.

(iii) *Maintenance of the Daily Fishing Logbook.* Entries in the Daily Fishing Logbook as to trawl or set number, time, position, and estimated catch weight must be recorded within 2 hours after completion of the applicable trawl or set. All other information required in the Daily Fishing Logbook under paragraph (b)(2)(ii) of this section must be recorded by noon of the following day.

(iv) *In all cases, upon delivery or landing; provision of discard information to processors.* Nothwithstanding other time limits, all information required under paragraph (b)(2)(ii) must be recorded in the Daily Fishing Logbook before the vessel's catch is off-loaded. The cumulative discarded amounts for a fishing trip, as defined in paragraph (b)(2)(ii)(A)(*9*) of this section, must be provided to the processor receiving the catch. The processor must record this discard information in the Daily Cumulative Production Logbook and in the weekly production report.

(v) *Quarterly submission of Daily Fishing Logbooks.* The operator of a catcher vessel or catcher/processor vessel must submit a copy of the Daily Fishing Logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the Daily Fishing Logbook for fishing activities conducted during the first quarter must be submitted by May 1 of that year; for the second quarter, by August 1 of that year; for the third quarter, by November 1 of that year; and for the fourth quarter, by February 1 of the following year.

(3) *Daily Cumulative Production Logbook.* (i) The operator of a processor vessel and the manager of a shoreside processing facility that receives or processes groundfish from any reporting area in the Gulf of Alaska must maintain on the processor vessel or within the processing facility a Daily Cumulative Production Logbook of estimated catch receipt (if applicable), species discard amounts, and retained groundfish production information as described in paragraph (b)(3)(ii) of the section. Daily entries are required for each day a processor vessel or facility receives or processes groundfish.

(ii) *Daily Cumulative Production Logbook; contents.*

(A) The Daily Cumulative Production Logbook must record the following information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the processor vessel or processing facility conducted any fishing or processing activity after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the Daily Cumulative Production Logbook must be used for each day's entries. If fish received by the processor vessel or facility during any day are harvested with more than one gear type or are harvested from more than one reporting area, a separate page in the Daily Cumulative Production Logbook must also be used for each gear type or reporting area.

(*2*) The date.

(*3*) The name of the processing vessel or facility.

(*4*) The ADF&G vessel number or the ADF&G processor code, whichever is appliable.

(*5*) The reporting area where the groundfish was harvested.

(*6*) The gear type used to harvest the groundfish received by the processing vessel or facility (pelagic trawl, non-pelagic trawl, hook and line, jig/troll, or pot gear).

(*7*) Whether a NMFS certified observer is onboard the processing vessel or present at the shoreside processing facility.

(*8*) The signature of the operator of the processing vessel or the manager of the facility.

(*9*) The number of crew on a processor vessel who are engaged for groundfish fishing, processing, or other related activities, or the number of employee hours engaged by a shoreside processing facility for groundfish processing or other related activities.

(*10*) The amounts of each groundfish species, groundfish species group, and prohibited species listed under § 672.20(e) of this part, that are discarded in related fishing or processing activity. These amounts should include discards reported to a processor by operators of catcher vessels under § 672.5(b)(2)(iv) of this part. The round weight of discarded amounts of groundfish should be recorded in pounds or to at least the nearest 0.1 mt. Discarded amounts for each prohibited species listed under § 672.20(e) of this part should be recorded by number, except for discarded amounts of herring which should be recorded by round weight in pounds or to at least the nearest 0.1 mt. Discard information must include the following information for each weekly reporting period:

(*i*) The species code for each discarded species or species group.

(*ii*) The total amount of discards during the week, by species code, carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total

discarded amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(*iii*) The total discarded amount for the day reported by operators of vessels delivering groundfish to the mothership processor and total discarded amounts for the day that occurred in processing operations.

(*iv*) The updated total discarded amounts for the week, by species codes, calculated by adding the relevant daily totals and the total carried forward for that week.

(*11*) Species product information for each day of processing activity. Product information must include the following information for any product resulting from the processing of any groundfish species or species group for which a total allowable catch (TAC) is specified under § 672.20 of this part, with one exception: species within the "other species" category must be reported by species or species group listed in Table 1 of § 672.20.

(*i*) The product by species and product type codes.

(*ii*) The daily total amount of the product produced by species and product type codes in fish product weight.

(*iii*) The weekly total amount of the product produced, by species and product type codes, in fish product weight to be carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total amount for each product is zero and nothing shall be carried forward from the previous weekly reporting period.

(*iv*) The updated weekly total amount of the product produced by species and product type codes in fish product weight calculated by adding the relevant daily total and the weekly total to be carried forward.

(B) The Daily Cumulative Production Logbook must record the following information for each catch receipt.

(*1*) For each groundfish set or codend received by a mothership processor vessel:

(*i*) The State of Alaska Fish Ticket number.

(*ii*) The time when transfer of catch or codend to the mothership is completed, recorded to the nearest hour, ALT.

(*iii*) The position of the mothership processor vessel in geographic coordinates when the set or codend is received.

(*iv*) The name and ADF&G vessel number of the catcher vessel delivering the catch or codend.

(*v*) The estimated total weight of the groundfish catch or codend in round weight, recorded in pounds or metric tons.

(*2*) For each groundfish landing received by shoreside processors from catcher vessels.

(*i*) The State of Alaska Fish Ticket number.

(*ii*) The time when the offloading of catch is completed, recorded to the nearest hour, ALT.

(*iii*) The name and ADF&G vessel number of the vessel delivering the catch.

(*iv*) The estimated total weight of the groundfish catch in round weight, recorded in pounds or metric tons.

(iii) *Maintenance of the Daily Cumulative Production Logbook.* Information concerning the catch receipt number or State of Alaska Fish Ticket number, time of receipt, the name of the delivering vessel and, for a mothership processor vessel, the position of that vessel and the estimated catch receipt weight, must be recorded in the Daily Cumulative Production Logbook within 2 hours after the set, codend, or catch is received. All other information required in the Daily Cumulative Production Logbook under paragraph (b)(3)(ii) of this section must be recorded by noon of the day following the day the catch receipt or production occurred. Information concerning product amounts must be recorded in the Daily Cumulative Production Logbook by noon of the day following the processing of the product, regardless of when the set, codend, or catch is received.

(iv) *Quarterly submission of the Daily Cumulative Production Logbook.* The operator of a processor vessel or manager of a shoreside processing facility must submit a copy of the Daily Cumulative Production Logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the Daily Cumulative Production Logbook for activities conducted during the first quarter must be submitted by May 1 of that year; for the second quarter, by August 1 of that year; for the third quarter, by November 1 of that year; and the fourth quarter, by February 1 of the following year.

(4) * * *

(i) * * *

(C) *Identification information.* When the product transfer logbook is maintained for a processor vessel, the identification information must include the vessel's name, the Federal permit number, the ADF&G vessel number and radio call sign. When the product transfer logbook is maintained for a shoreside processing facility, the identification information must include the name of the facility, the location of the facility, and the ADF&G Processor Code number.

* * * * *

(G) The fish product weight of each product transferred, including species and product-type codes, total number of production units transferred, and the estimated weight of each production unit type.

* * * * *

(c) *Other reporting requirements.* The operator or manager of any vessel or shoreside processor of the United States that harvests or processes groundfish caught from any reporting area in the Gulf of Alaska must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements.

(1) *Alaska groundfish check-in/check-out notices;* (i) *Requirement.* Before a processing vessel commences any fishing activity in or receives any groundfish from any Gulf of Alaska reporting area during any fishing year, the operator of the processing vessel must provide a check-in notice to the Regional Director. When any processing vessel completes any fishing activity or receipt of groundfish in any Gulf of Alaska reporting area during any fishing year, the operator of the processing vessel must provide a check-out notice to the Regional Director. When any shoreside processing facility completes receipt of groundfish from any Gulf of Alaska reporting area during any fishing year, the manager of the shoreside processing facility must provide a check-out notice to the Regional Director.

(ii) *Check-in/check-out notices; contents.* The notice of check-in or check-out must include the following information:

(A) The processor vessel's name, radio call sign, and, if applicable, Federal groundfish permit number; or the shoreside processor's name and ADF&G processor code number.

(B) Time and date information. If the notice concerns the commencement of fishing activity or the receipt of groundfish by a processor vessel, this information must include the time (to the nearest hour, ALT) and date of when these activities will commence. If the notice concerns the completion of fishing activities or the receipt of groundfish by a processor vessel, this information must include the time (to the nearest hour, ALT) and date when these activities ceased. If the notice concerns the completion of groundfish receipts by a shoreside processing facility, this information must include the date when this activity ceased.

(C) Processor Vessel Location. The reporting area and position in geographic coordinates where the fishing activity or receipt of groundfish is expected to occur or has occurred.

(iii) *Check-in/check-out notices; submission or method of providing notice.* The operator of a processor vessel required to provide a check-in/out notice or the manager of a shoreside processing facility required to provide a check-out notice must provide that notice through the means and in the manner prescribed by the Regional Director.

(2) *Weekly production reports.—(i) Requirements for processor vessels.* The operator of a processor vessel that conducts fishing activity in, or receives groundfish from, any Gulf of Alaska reporting area at any time during the fishing year must submit weekly production reports. Weekly production reports are required for a processor vessel for any week during the period beginning with the date specified in the check-in notice and ending after all groundfish harvested from and fish products prepared with any groundfish harvested from any Gulf of Alaska reporting area are offloaded. Weekly production reports are required during this period even if no groundfish is harvested or received or processed during a particular week, and these weekly production reports should specify zero amounts harvested, received, or produced.

(ii) *Weekly production reports; requirements for shoreside processors.* The manager of a shoreside processing facility that receives groundfish from any Gulf of Alaska reporting area must submit weekly production reports for any week during the period beginning with the first week of a fishing year that groundfish is received by the facility and continuing until the end of the year or until the date specified in a check-out notice. Weekly production reports are required during this period. If no groundfish is received or processed during a particular week, weekly production reports should specify zero for the amounts received or produced.

(iii) *Weekly production reports; contents.* The weekly production report must have a separate page for each gear type used. Each page must include the following information:

(A) The name of the person submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. If the weekly production report is submitted for a processor vessel, this information must included the name and radio call sign of that vessel. If the weekly production report is submitted for a shoreside processing facility, this information must include the name of the plant.

(C) Federal permit number or ADF&G processor code, whichever is applicable.

(D) The end date of the weekly reporting period.

(E) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, non-pelagic trawl, hook and line, jig/troll, or pot gear).

(F) The reporting area or areas from which groundfish was harvested and retained during the weekly reporting period with the reporting area or areas specified for each groundfish species or species group.

(G) The number of days when fishing activities was conducted and when fish were received.

(H) The total estimated catch weight or catch receipt for each reporting area to the nearest metric ton (mt).

(I) The fish product weight of each product produced during the weekly reporting period, including species and product-type codes, for each groundfish species or species group for which a total allowable catch is specified under § 672.20, with one exception: species within the "other species" category must be reported by the species or species group listed in Table 1 of § 672.20. All weights in the Weekly Production Report must be reported to at least the nearest 0.1 mt.

(J) The amount of each groundfish species, groundfish species group, or prohibited species listed under § 672.20(e) of this part, which is discarded in related fishing operations during the weekly reporting period.

(iv) *Weekly production reports; submission.* Weekly production reports must be submitted to the Regional Director. Weekly production reports must be received by the Regional Director within 48 hours after the end of the applicable weekly reporting period.

(3) *Daily Production Report. (i) Requirement.* Processor vessels and shoreside processing facilities that conduct fishing activity in or receive groundfish from any Gulf of Alaska reporting area must submit Daily Production Reports when requested to do so by the Regional Director.

(ii) *Daily Production Report; contents.* The Daily Production Reports must include the following information:

(A) The name of the representative submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. If the Daily Production Report is submitted for a processor vessel, this information must included the name, radio call sign, and Federal permit number of that vessel. If the daily report is submitted for a shoreside processing facility, this information must include the name and ADF&G processor code number of the plant.

(C) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, non-pelagic trawl, hook-and-line, pot, jig/troll, or other).

(D) Date(s) of groundfish harvest or receipt.

(E) For each day, the reporting area or areas from which groundfish catch or receipts were harvested, with the reporting area or areas specified for each groundfish species or species group.

(F) The fish product weight of each product produced during a day, including species and product-type codes, for each groundfish species or species group for which a total allowable catch is specified under § 672.20 of this part, with one exception: species within the "other species" category must be reported by species or species group listed in Table 1 of § 672.20.

(G) The amount of each groundfish species or species group that is discarded in related fishing operations during a day.

(iii) *Daily Production Report; submission.* Daily Production Reports must be submitted to the Regional Director through the means and in the manner prescribed by the Regional Director.

* * * * *

3a. Figure 1 to part 672 is revised to read as follows:

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

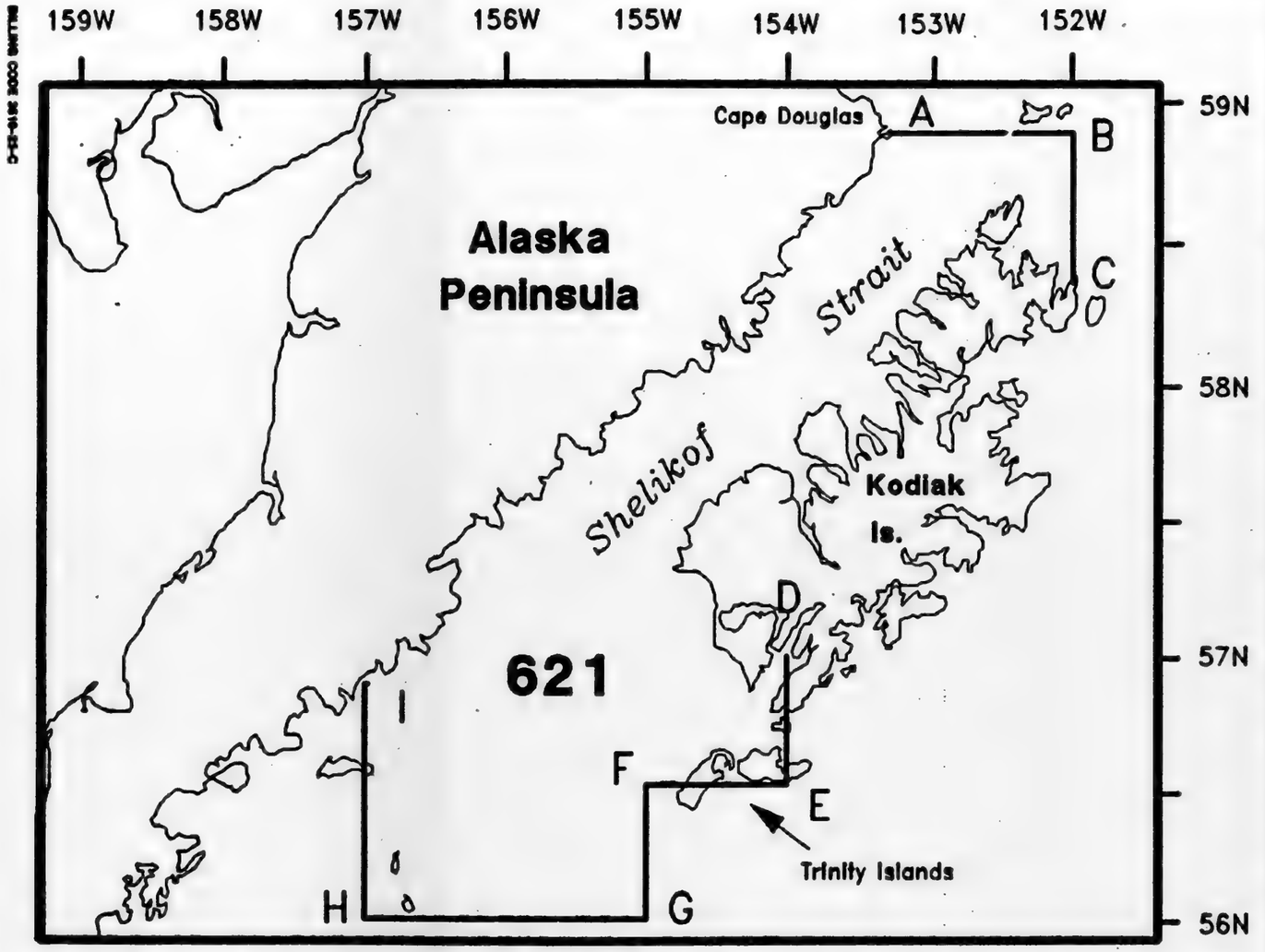


Figure 1. Boundaries of the Shelikof Strait District in the Gulf of Alaska

updated: 12/28/90

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 675.2 is amended by revising the definitions of *Fish product weight, Quarterly reporting period or quartar,* and *Weekly reporting period* to read as follows:

§ 675.2 Definitions.

* * * * *

Fish product weight means the weight of the fish product in pounds or to at least the nearest tenth of a metric ton (0.1 mt). Fish product weight is based upon the number of production units and the weight of those units. Production units include pans, cartons, blocks, trays, cans, bags, and individually frozen fish. The weight of a production unit is based on the average weight of the product as determined by analyzing representative samples. The weight of the production unit does not include packaging. The weight of the production unit does include water added to the product and other additives reported to NMFS. NMFS may use the weight of the production units, with an allowance for water not to exceed 5 percent of the weight of the production unit, to determine net weight, and to calculate round-weight equivalents.

* * * * *

Quarterly reporting period or quarter means one of four successive 3-month periods during a calendar year. All quarters end at 2400 hours, Alaska local time (ALT) on the Sunday closest to the end of the appropriate calendar month and begin at 0001 hours, ALT, on the following Monday, with the exception of the first quarter, which begins at 0001 hours, ALT, January 1, and the last quarter, which ends at 2400 hours, ALT, December 31.

* * * * *

Weekly reporting period means from 0001 hours Monday morning until 2400 hours the following Sunday night, Alaska local time (ALT).

6. Section 675.5 is amended by revising paragraphs (b)(2), (b)(3), (b)(4)(i) (C) and (G), and (c) to read as follows:

§ 675.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) *Daily Fishing Logbook.* (i) The operator of each catcher-processor and catcher vessel harvesting groundfish from any reporting area in the Bering Sea and Aleutian Islands management area must maintain onboard a Daily Fishing Logbook of the effort and catch information of the vessel as described in paragraph (b)(2)(ii) of this section. A vessel's Daily Fishing Logbook must be maintained for each day of a fishing trip from the day a vessel leaves an Alaskan port or enters the EEZ off Alaska until a vessel returns to port or leaves the EEZ off Alaska. Daily entries are not required for those days when the fishing vessel stays in port. The operator of a catcher/processor vessel will be provided with a Daily Fishing Logbook that also functions as a Daily Cumulative Production Logbook required under paragraph (b)(3) of this section.

(ii) *Daily Fishing Logbook; contents.*

(A) The Daily Fishing Logbook must record the following effort information on a daily basis.

(*1*) the page number. This number must be consecutive beginning with page one for the first day the vessel conducted any fishing operation after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the Daily Fishing Logbook must be used for each day's fishing activity. If fishing activity is conducted with more than one gear type or in more than one reporting area during any day, a separate page in the Daily Fishing Logbook also must be used for each gear type or reporting area.

(*2*) The date.

(*3*) The vessel's name and ADF&G vessel number.

(*4*) The reporting area where the vessel is conducting fishing activity.

(*5*) The gear type used by the vessel (pelagic trawl, nonpelegic trawl, hook and line, jig/troll, or pot gear).

(*6*) The signature of the operator of the vessel.

(*7*) Whether a NMFS certified observer is onboard the vessel.

(*8*) The size of the crew.

(*9*) Daily discarded amounts of each groundfish species or species group in pounds or to at least the nearest tenth of a metric ton (0.1 mt) round weight, and daily discarded amounts of each prohibited species listed under § 675.20(c) of this part by number, except for discarded amounts of herring, which should be reported by round weight in pounds or to the nearest 0.1 mt. For vessels that offload groundfish on a daily basis, a fishing trip is defined as a day. For vessels that deliver groundfish on a less frequent schedule, a fishing trip is defined as the period between offloadings of groundfish catch. Discard information must include the following information for each fishing trip.

(*i*) The species code for each discarded species or species group.

(*ii*) The total amount of discards during a fishing trip, by species code, carried forward from the previous day and recorded in pounds or to the nearest 0.1 mt. At the beginning of each fishing trip, the discarded amount of the fishing trip is zero, and nothing shall be carried forward from the previous fishing trip.

(*iii*) Total discarded amounts for the day that occurred in harvesting operations, recorded in pounds or to the nearest 0.1 mt.

(*iv*) The updated total discarded amounts for the fishing trip, by species codes, calculated by adding the relevant daily total and the total carried forward for that fishing trip.

(B) The following information must be recorded for each haul or set, as appropriate to the gear type employed.

(*1*) The haul or set number. This number must be consecutive beginning with number one for the first haul or set of the day, fishing trip, or year, whichever is more convenient to the vessel operator. The method used to number hauls or sets must be consistent throughout the logbook.

(*2*) Begin time (to nearest minute) and position (in geographic coordinates) of haul or set. For trawl gear, record time and position when the trawl gear reaches the fishing level and begins to fish. For other gear types, record time and position when jig/troll gear or the first pot or hook-and-line gear of a set enters the water. A set is defined as a string of pots or hook-and-line gear or a group of pots that are deployed in a similiar location with similar soak time.

(*3*) The average sea depth for the haul or set, recorded to the nearest fathom or meter.

(*4*) Average gear depth for the haul or set, recorded to the nearest fathom or meter.

(*5*) End date (if different from begin date), time (to nearest minute), and position of haul or set (in geographic coordinates). For trawl gear, record time and position where retrieval of trawl cable commences. For other grear types, record time and position when jig/troll gear leaves the water or when the last pot or hook-and-line gear of a set leaves the water.

(*6*) The duration of the set or trawl, recorded to the nearest minute.

(*7*) If the vessel is using longline or single pot gear, record the number of skates or pots run and the average number of hooks or pots per skate.

(*8*) The estimated total round weight of the groundfish catch in pounds or metric tons.

(*9*) The intended target species code(s).

(C) The following information must be recorded in the daily fishing log on the days that fish are offloaded to a groundfish processor:

(*1*) If delivery is to a domestic processor, the processor's name, ADF&G processor code, and ADF&G Fish Ticket number.

(*2*) If delivery is to a foreign processor vessel in a joint venture operation, record the foreign processor vessel's name.

(iii) *Maintenance of the Daily Fishing Logbook.* Entries in the Daily Fishing Logbook as to trawl or set number, time, position, and estimated catch weight must be recorded within 2 hours after completion of the applicable trawl or set. All other information required in the Daily Fishing Logbook under paragraph (b)(2)(ii) of this section must be recorded by noon of the following day.

(iv) *In all cases, upon delivery or landing; provision of discard information to processors.* Notwithstanding other time limits, all information required under paragraph (b)(2)(ii) must be recorded in the Daily Fishing Logbook before the vessel's catch is off-loaded. The cumulative discarded amounts for a fishing trip, as defined in paragraph (b)(2)(ii)(A)(*9*) of this section, must be provided to the processor receiving the catch. The processor must record this discard information in the Daily Cumulative Production Logbook and in the weekly production report.

(v) *Quarterly submission of Daily Fishing Logbooks.* The operator of a catcher vessel or catcher/processor vessel must submit a copy of the Daily Fishing Logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the Daily Fishing Logbook for fishing activities conducted during the first quarter must be submitted by May 1 of that year; for the second quarter, by August 1 of that year; for the third quarter, by November 1 of that year; and for the fourth quarter, by February 1 of the following year.

(3) *Daily Cumulative Production Logbook.* (i) The operator of a processor vessel and the manager of a shoreside processing facility that receives or processes groundfish from any reporting area in the Bering Sea and Aleutian Islands management area must maintain on the processor vessel or within the processing facility a Daily Cumulative Production Logbook of estimated catch receipt (if applicable), species discard amounts, and retained groundfish production information as described in paragraph (b)(3)(ii) of the section. Daily entires are required for each day a processor vessel or facility receives or processes groundfish.

(ii) *Daily Cumulative Production Logbook; contents.*

(A) The Daily Cumulative Production Logbook must record the following information on a daily basis:

(*1*) The page number. This number must be consecutive beginning with page one for the first day the processor vessel or processing facility conducted any fishing or processing activity after the start of the fishing year and continuing throughout the logbook for the remainder of the fishing year. A separate page in the Daily Cumulative Production Logbook must be used for each day's entries. If fish received by the processor vessel or facility during any day are harvested with more than one gear type or are harvested from more than one reporting area, a separate page in the Daily Cumulative Production Logbook must also be used for each gear type or reporting area.

(*2*) The date.

(*3*) The name of the processing vessel or facility.

(*4*) The ADF&G vessel number or the AFD&G processor code, whichever is applicable.

(*5*) The reporting area where the groundfish was harvested.

(*6*) The gear type used to harvest the groundfish received by the processing vessel or facility (pelagic trawl, non-pelagic trawl, hook and line, jig/troll, or pot gear).

(*7*) Whether a NMFS certified observer is onboard the processing vessel or present at the shoreside processing facility.

(*8*) The signature of the operator of the processing vessel or the manager of the facility.

(*9*) The number of crew on a processor vessel who are engaged for groundfish fishing, processing, or other related activities, or the number of employee hours engaged by a shoreside processing facility for groundfish processing or other related activities.

(*10*) The amounts of each groundfish species, groundfish species group, and prohibited species listed under § 675.20(c) of this part, that are discarded in related fishing or processing activity. These amounts should include discards reported to a processor by operators of catcher vessels under § 675.5(b)(2)(iv) of this part. The round weight of discarded amounts of groundfish should be recorded in pounds or to at least the nearest 0.1 mt. Discarded amounts for each prohibited species listed under § 675.20(c) of this part should be recorded by number, except for discarded amounts of herring which should be recorded by round weight in pounds or to at least the nearest 0.1 mt. Discard information must include the following information for each weekly reporting period:

(*i*) The species code for each discarded species or species group.

(*ii*) The total amount of discards during the week, by species code, carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total discarded amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

(*iii*) The total discarded amount for the day reported by operators of vessels delivering groundfish to the mothership processor and total discarded amounts for the day that occurred in processing operations.

(*iv*) The updated total discarded amounts for the week, by species codes, calculated by adding the relevant daily totals and the total carried forward for that week.

(*11*) Species production information for each day or processing activity. Product information must include the following information for any product resulting from the processing of any groundfish species or species group for which a total allowable catch (TAC) is specified under § 675.20 of this part, with one exception: species within the "other species" category must be reported by species or species group listed in Table 1 of § 675.20.

(*i*) The product by species and product type codes.

(*ii*) The daily total amount of the product produced by species and product type codes in fish product weight.

(*iii*) The weekly total amount of the product produced, by species and product type codes, in fish product weight to be carried forward from the previous day. At the beginning of each weekly reporting period, the weekly total amount for each product is zero and nothing shall be carried forward from the previous weekly reporting period.

(*iv*) The updated weekly total amount of the product produced by species and product type codes in fish product weight calculated by adding the relevant daily total and the weekly total to be carried forward.

(B) The Daily Cumulative Production Logbook must record the following information for each catch receipt.

(*1*) For each groundfish set or codend received by a mothership processor vessel:

(*i*) The State of Alaska Fish Ticket number.

(*ii*) The time when transfer of catch or codend to the mothership is completed, recorded to the nearest hour, ALT.

(*iii*) The position of the mothership processor vessel in geographic coordinates when the set or codend is received.

(*iv*) The name and ADF&G vessel number of the catcher vessel delivering the catch or codend.

(*v*) The estimated total weight of the groundfish catch or codend in round weight, recorded in pounds or metric tons.

(*2*) For each groundfish landing received by shoreside processors from catcher vessels.

(*i*) The State of Alaska Fish Ticket number.

(*ii*) The time when the offloading of catch is completed, recorded to the nearest hour, ALT.

(*iii*) The name and ADF&G vessel number of the vessel delivering the catch.

(*iv*) The estimated total weight of the groundfish catch in round weight, recorded in pounds or metric tons.

(iii) *Maintenance of the Daily Cumulative Production Logbook.* Information concerning the catch receipt number or State of Alaska Fish Ticket number, time of receipt, the name of the delivering vessel and, for a mothership processor vessel, the position of that vessel and the estimated catch receipt weight, must be recorded in the Daily Cumulative Production Logbook within 2 hours after the set, codend, or catch is received. All other information required in the Daily Cumulative Production Logbook under paragraph (b)(3)(ii) of this section must be recorded by noon of the day following the day the catch receipt or production occurred. Information concerning product amounts must be recorded in the Daily Cumulative Production Logbook by noon of the day following the processing of the product, regardless of when the set, codend, or catch is received.

(iv) *Quarterly submission of the Daily Cumulative Production Logbook.* The operator of a processor vessel or manager of a shoreside processing facility must submit a copy of the Daily Cumulative Production Logbook on a quarterly basis to the Alaska Fisheries Science Center. The copy of the Daily Cumulative Production Logbook for activities conducted during the first quarter must be submitted by May 1 of that year; for the second quarter, by August 1 of that year; for the third quarter, by November 1 of that year; and the fourth quarter, by February 1 of the following year.

(4) * * *

(i) * * *

(C) *Identification information.* When the product transfer logbook is maintained for a processor vessel, the identification information must include the vessel's name, the Federal permit number, the ADF&G vessel number and radio call sign. When the product transfer logbook is maintained for a shoreside processing facility, the identification information must include the name of the facility, the location of the facility, and the ADF&G Processor Code number.

* * * * *

(G) The fish product weight of each product transferred, including species and product-type codes, total number of production units transferred, and the estimated weight of each production unit type.

* * * * *

(c) *Other reporting requirements.* The operator or manager of any vessel or shoreside processor of the United States that harvests or processes groundfish caught from any reporting area in the Bering Sea and Aleutian Islands management area must, in addition to the requirements of paragraphs (a) and (b) of this section, comply with the following requirements.

(1) *Alaska groundfish check-in/check-out notices:* (i) *Requirement.* The operator of a processing vessel must provide a check-in notice to the Regional Director before a processing vessel commences any fishing activity in, or receives any groundfish from any reporting area in the Bering Sea and Aleutian Islands management area during any fishing year. The operator of the processing vessel must provide a check-out notice to the Regional Director when a processing vessel completes any fishing activity or ceases receipt of groundfish in any reporting area in the Bering Sea and Aleutian Islands management area during any fishing year. The manager of a shoreside processing facility must provide a check-in notice to the Regional Director before a shoreside processing facility commences receipt of groundfish from any reporting area in the Bering Sea and Aleutian Islands management area during any fishing year. The manager of the shoreside processing facility must provide a check-out notice to the Regional Director when a shoreside processing facility completes receipt of groundfish from any reporting area in the Bering Sea and Aleutian Islands management area during any fishing year.

(ii) *Check-in/check-out notices; contents.* The notice of check-in or check-out must include the following information.

(A) The processor vessel's name, radio call sign, and, if applicable, Federal groundfish permit number; or the shoreside processor's name and ADF&G processor code number.

(B) Time and date information. If the notice concerns the commencement of fishing activity or the receipt of groundfish by a processor vessel, this information must include the time (to the nearest hour, ALT) and date of when these activities will commence. If the notice concerns the completion of fishing activities or the receipt of groundfish by a processor vessel, this information must include the time (to the nearest hour, ALT) and date when these activities ceased. If the notice concerns the completion of groundfish receipts by a shoreside processing facility, this information must include the date when this activity ceased.

(C) Processor Vessel Location. The reporting area and position in geographic coordinates where the fishing activity or receipt of groundfish is expected to occur or has occurred.

(iii) *Check-in/check-out notices; submission or method of providing notice.* The operator of a processor vessel required to provide a check-in/out notice or the manager of a shoreside processing facility required to provide a check-out notice must provide that notice through the means and in the manner prescribed by the Regional Director.

(2) *Weekly production reports.*—(i) *Requirements for processor vessels.* The operator of a processor vessel that conducts fishing activity in, or receives groundfish from, any reporting area in the Bering Sea and Aleutian Islands management area at any time during the fishing year must submit weekly production reports. Weekly production reports are required for a processor vessel for any week during the period beginning with the date specified in the check-in notice and ending after all groundfish harvested from and fish products prepared with any groundfish harvested from any Gulf of Alaska reporting area are offloaded. Weekly production reports are required during this period even if no groundfish is harvested or received or processed during a particular week, and these weekly production reports should specify zero amounts harvested, received, or produced.

(ii) *Weekly production reports; requirements for shoreside processors.* The manager of a shoreside processing facility that receives groundfish from any reporting area in the Bering Sea and Aleutian Islands management area must submit weekly production reports for

any week during the period beginning with the first week of a fishing year that groundfish is received by the facility and continuing until the end of the year or until the date specified in a check-out notice. Weekly production reports are required during this period. If no groundfish is received or processed during a particular week, weekly production reports should specify zero for the amounts received or produced.

(iii) *Weekly production reports; contents.* The weekly production report must have a separate page for each gear type used. Each page must include the following information.

(A) The name of the person submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. If the weekly production report is submitted for a processor vessel, this information must include the name and radio call sign of that vessel. If the weekly production report is submitted for a shoreside processing facility, this information must include the name of the plant.

(C) Federal permit number or ADF&G processor code, whichever is applicable.

(D) The end date of the weekly reporting period.

(E) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, non-pelagic trawl, hook and line, jig/troll, or pot gear).

(F) The reporting area or areas from which groundfish was harvested and retained during the weekly reporting period with the reporting area or areas specified for each groundfish species or species group.

(G) The number of days when fishing activities was conducted and when fish were received.

(H) The total estimated catch weight or catch receipt for each reporting area to the nearest metric ton (mt).

(I) The fish product weight of each product produced during the weekly reporting period, including species and product-type codes, for each groundfish species or species group for which a total allowable catch is specified under § 675.20, with one exception: species within the "other species" category must be reported by species or species group listed in Table 1 of § 675.20.

(J) The amount of each groundfish species, groundfish species group, or prohibited species listed under § 675.20(c) that is discarded in related fishing operations during the weekly reporting period.

(iv) *Weekly production reports; submission.* Weekly production reports must be submitted to the Regional Director. Weekly production reports must be received by the Regional Director within 48 hours after the end of the applicable weekly reporting period.

(3) *Daily Production Report.* (i) *Requirement.* Processor vessels and shoreside processing facilities that conduct fishing activity in or receive groundfish from any reporting area in the Bering Sea and Aleutian Islands management area must submit Daily Production Reports when requested to do so by the Regional Director.

(ii) *Daily Production Report; contents.* The Daily Production Reports must include the following information:

(A) The name of the representative submitting the report, a telephone number for that person, and either a facsimile or telex number for that person.

(B) Identification information. It the Daily Production Report is submitted for a processor vessel, this information must include the name, radio call sign, and Federal permit number of that vessel. If the daily report is submitted for a shoreside processing facility, this information must include the name and ADF&G processor code number of the plant.

(C) The gear type used to harvest the groundfish catch or catch receipt (pelagic trawl, non-pelagic trawl, hook-and-line, pot, jig/troll, or other).

(D) Date(s) of groundfish harvest or receipt.

(E) For each day, the reporting area or areas from which groundfish catch or receipts were harvested, with the reporting area or areas specified for each groundfish species or species group.

(F) The fish product weight of each product produced during a day, including species and product-type codes, for each groundfish species or species group for which a total allowable catch is specified under § 675.20 of this part, with one exception: species within the "other species" category must be reported by species or species group listed in Table 1 of § 675.20.

(G) The amount of each groundfish species or species group that is discarded in related fishing operations during a day.

(iii) *Daily Production Report; submission.* Daily Production Reports must be submitted to the Regional Director through the means and in the manner prescribed by the Regional Director.

* * * * *

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—REVISED LOGBOOK FORMS AND NEW REPORTING FORMS

BILLING CODE 3510-22-M

CATCHER VESSEL DAILY FISHING LOG

PAGE	YEAR - MONTH - DATE	VESSEL NAME & ADF&G NO.	REPORTING AREA	GEAR TYPE	OPERATOR'S SIGNATURE	OBSERVER ONBOARD YES NO _	CREW SIZE

HAUL OR SET NO.	TIME OF GEAR DEPLOYMENT	BEGIN POSITION OF HAUL OR SET LATITUDE LONGITUDE	AVE. SEA DEPTH (Circle M or FM)	AVERAGE GEAR DEPTH (Circle M or FM)	DATE AND TIME OF GEAR RETRIEVAL	END POSITION OF HAUL OR SET LATITUDE LONGITUDE	HAUL OR SET DURATION	NO. OF SKATES OR POTS RUN	NO. OF HOOKS OR POTS PER SKATE	ESTIMATED ROUND CATCH WEIGHT (Circle lbs or mt)	INTENDED TARGET SPECIES CODE(S)	COMMENTS

DISCARDED SPECIES: For groundfish and herring, record in lbs or 0.1 mt (circle which): For halibut, salmon, king crab, and Tanner crab, record in numbers

SPECIES CODE													
BALANCE FORWARD													
DAILY TOTAL													
CUMULATIVE TOTAL FOR FISHING TRIP													

CATCH DELIVERY INFORMATION

RECORD ADF&G FISH TICKET NUMBER IF DATE REPRESENTS LANDING DATE	IF CATCH DELIVERY IS MADE TO A U.S. PROCESSOR RECORD PROCESSOR NAME AND ADF&G PROCESSOR CODE	IF CATCH DELIVERY IS TO A FOREIGN PROCESSOR, RECORD PROCESSOR NAME

NOTE: Logbook sheets must be filled out each day of a fishing trip, starting from the first day a vesse' leaves an Alaskan port or enters the EEZ off Alaska until a vessel returns to port or leaves the Alaskan EEZ. On days of no fishing activity, record date, vessel I.D., and whether or not an observer is onboard.

CATCHER/PROCESSOR DAILY CUMULATIVE PRODUCTION LOG

PAGE	YEAR - MONTH - DATE	VESSEL NAME & ADF&G NO.	REPORTING AREA	GEAR TYPE	OPERATOR'S SIGNATURE	OBSERVER ONBOARD YES NO	CREW SIZE Fishing Processing Other Total

HAUL OR SET NO.	TIME OF GEAR DEPLOYMENT	BEGIN POSITION OF HAUL OR SET LATITUDE	LONGITUDE	AVE. SEA DEPTH (Circle M or FM)	AVERAGE GEAR DEPTH (Circle M or FM)	DATE AND TIME OF GEAR RETRIEVAL	END POSITION OF HAUL OR SET LATITUDE	LONGITUDE	HAUL OR SET DURATION	NO. OF SKATES OR POTS RUN	NO. OF HOOKS OR POTS PER SKATE	ESTIMATED ROUND CATCH WEIGHT (Circle lbs or mt)	INTENDED TARGET SPECIES CODE(S)	COMMENTS

DISCARDED SPECIES: For groundfish and herring, record in lbs or 0.1 mt (circle which): For halibut, salmon, king crab, and Tanner crab, record in numbers

SPECIES CODE												
BALANCE FORWARD												
DAILY TOTAL												
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD												

RETAINED PRODUCT INFORMATION: Circle lbs or mt (to at least the nearest 0.1 mt)

SPECIES CODE/ PRODUCT TYPE CODE												
BALANCE FORWARD												
DAILY TOTAL												
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD												

NOTE: Logbook sheets must be filled out each day of a fishing trip, starting from the first day a vessel leaves an Alaskan port or enters the EEZ off Alaska until a vessel returns to port or leaves the Alaskan EEZ. On days of no fishing activity, record date, vessel I.D., and whether or not an observer is onboard.

For ancillary products, begin product type codes with 'A', e.g., A12.

SHORESIDE PROCESSING FACILITY DAILY CUMULATIVE PRODUCTION LOG

PAGE	YEAR–MON–DATE	PLANT NAME AND ADF&G PROC CODE	REPORTING AREA	GEAR TYPE	MANAGER'S SIGNATURE	OBSERVER PRESENT YES ____ NO ____	EMPLOYEE HOURS Processing: ___ Other: ___ Total: ___

ALASKA STATE FISH TICKET NO.	RECEIPT TIME	CATCHER VESSEL NAME AND ADF&G NO.	ESTIMATED CATCH RECEIPT WEIGHT (Circle lbs or mt)	COMMENTS

DISCARDED SPECIES

For groundfish and herring, record in lbs or 0.1 mt (circle which): For halibut, salmon, king crab, and Tanner crab, record in numbers

SPECIES CODE										
BALANCE FORWARD										
DAILY TOTAL REPORTED BY CATCHER VESSELS										
DAILY TOTAL IN PROCESSING OPERATIONS										
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD										

RETAINED PRODUCT INFORMATION: Circle lbs or mt (to at least the nearest 0.1 mt)

SPECIES CODE/ PRODUCT TYPE CODE										
BALANCE FORWARD										
DAILY TOTAL										
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD										

NOTE: For ancillary products, begin product type codes with 'A', e.g., A12

MOTHERSHIP PROCESSOR VESSEL DAILY CUMULATIVE PRODUCTION LOG

PAGE	YEAR-MON-DATE	VESSEL NAME AND ADF&G NO.	REPORTING AREA	GEAR TYPE	OPERATOR'S SIGNATURE	OBSERVER ONBOARD	CREW SIZE
						YES ____ NO ____	Processing: ___ Other: ___ Total:

ALASKA STATE FISH TICKET NO.	RECEIPT TIME	RECEIPT POSITION LATITUDE	RECEIPT POSITION LONGITUDE	CATCHER VESSEL NAME AND ADF&G NO.	ESTIMATED CATCH RECEIPT WEIGHT (Circle lbs or mt)	COMMENTS

DISCARDED SPECIES

For groundfish and herring, record in lbs or 0.1 mt (circle which): For halibut, salmon, king crab, and Tanner crab, record in numbers

SPECIES CODE										
BALANCE FORWARD										
DAILY TOTAL REPORTED BY CATCHER VESSELS										
DAILY TOTAL IN PROCESSING OPERATIONS										
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD										

RETAINED PRODUCT INFORMATION: Circle lbs or mt (to at least the nearest 0.1 mt)

SPECIES CODE/ PRODUCT TYPE CODE										
BALANCE FORWARD										
DAILY TOTAL										
CUMULATIVE TOTAL FOR WEEKLY REPORTING PERIOD										

NOTE: For ancillary products, begin product type code with 'A', e.g., A12

ALASKA GROUNDFISH PROCESSOR DAILY PRODUCTION REPORT	Processor Name	Call Sign	Federal Permit #:
			ADFG Processor #:

Gear Type of Harvester (circle one per page)
(1) Hook & Line (2) Pot (3) Non-pelagic Trawl (4) Pelagic Trawl (5) Jig/Troll (6) Other (specify) _____

Representative	Phone #:	FAX #:

Harvest/Landing Date	Fed Report Area	Retained Species Code	Product Type Code	Retained Product Weight Circle: MT or LBS	Discard Species Code	Discard Weight WT (0.1 mt)	Remarks

Week Ending Date _____ No. Days Received/Processed This Week _____ Page ____ of ____

ALASKA GROUNDFISH PROCESSOR WEEKLY PRODUCTION REPORT	Processor Name	Call Sign	Federal Permit #:
			ADFG Processor #:

Gear Type of Harvester (circle one)
(1) Hook & line (2) Pot (3) Non-pelagic Trawl (4) Pelagic Trawl (5) Jig/Troll (6) Other (specify) _____

Representative	Phone #:	FAX/Telex #:

Federal Reporting Area:			Federal Reporting Area:			Federal Reporting Area:		
Retained Species Code	Product Type Code	Retained Product Weight (mt)	Retained Species Code	Product Type Code	Retained Product Weight (mt)	Retained Species Code	Product Type Code	Retained Product Weight (mt)

Discard Species Code	Discard Rnd Wt (mt)	No. of PSC	Discard Species Code	Discard Rnd Wt (mt)	No. of PSC	Discard Species Code	Discard Rnd Wt (mt)	No. of PSC

OMB Control No. 0648-0213
Expiration Date: 12-31-91

NOTE: For ancillary products, begin product type code with 'A', e.g., 'A12'
Report product weight to at least nearest 0.1 mt

National Marine Fisheries Service P.O. Box 21668, Juneau AK 99802 Telex: 62296000 FAX: 907-586-7131 Phone: 907-586-7229

ALASKA GROUNDFISH
CHECK–OUT NOTICE
SHORESIDE PROCESSOR

Send to:
National Marine Fisheries Service
P.O. Box 21668, Juneau, Alaska 99802
Telex: RCA 45–377 NMFS AKR JNU
FAX: 907–586–7131
Phone: 907–586–7229

Representative	FAX/Telex No:	Phone No:
Shoreside Processor Name		
ADF&G PROCESSOR CODE	DATE	

ENTER DATE FACILITY CEASED TO RECEIVE GROUNDFISH

OMB Control No. 0648–0213
Expiration date: 12–31–91

[FR Doc. 91–5237 Filed 3–1–91; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Due Process and Judicial Review in Commerce Department Export Controls Procedures

AGENCY: Administrative Conference of the United States.

ACTION: Request for comments on proposed recommendation.

SUMMARY: The Administrative Conference's Committee on Judicial Review has under consideration a draft recommendation on administrative procedures and judicial review in Commerce Department proceedings under the Export Administration Act. Interested persons are invited to comment on the draft recommendation. Copies of the background report are available on request.

DATES: Comments should be submitted no later than March 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: 202–254–7065. Comments may also be submitted to this address.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Judicial Review has under consideration a draft recommendation on administrative procedures and judicial review in Commerce Department actions under the Export Administration Act. The proposal, which recommends elimination of the Export Administration Act's statutory exemption from the Administrative Procedure Act as well as greater openness in Commerce Department export controls proceedings, is based on a draft report by Associate Dean Howard Fenton of Pettit College of Law, Ohio Northern University. The text of the draft recommendation is printed in full below. Copies of the draft report are available from the Office of the Chairman of the Administrative Conference. The public is invited to submit comments on the draft recommendation; to receive full consideration, comments should be received at the address given above not later than March 29, 1991.

It is anticipated that a recommendation will be proposed for consideration by the Administrative Conference at its Plenary Session scheduled for June 13 and 14, 1991.

Proposed Recommendation

Due Process and Judicial Review in Commerce Department Export Controls Procedures

The Export Administration Act (EAA), 50 U.S.C.A. App. 2401–2420, authorizes the Commerce Department to restrict exports of goods and technology from the United States in the interests of national security, foreign policy considerations, and preservation of domestic access to commodities in short supply. It is the principal element in a scheme of export controls that emerged after World War II to serve three ends: reduction of the domestic impact of worldwide postwar shortages of critical goods, priority allocation of resources to rebuild Europe under the Marshall Plan, and restriction of access by Eastern Bloc nations to technology useful for military purposes. Over the years, restricting access to useful technology has become the primary goal of the EAA, although the countries toward which those restrictions are directed have changed from time to time in the light of shifting political considerations.

Under the EAA, the United States works with its allies through the Coordinating Committee on Multilateral Export Controls (CoCom) to identify a list of commodities that should be controlled as well as a list of countries that are the targets of various types of export controls. Using these lists, the Commerce Department implements a licensing scheme involving three different categories of licenses: general licenses, which permit particular classes of export transactions without specific license applications; individual validated licenses, which the agency will grant or deny based on factors including concerns about the proposed and actual use of the commodity, opposition from the Departments of Defense or State to the proposed export, classified information about the end-user, or policy determinations about the destination country; and special licenses, such as distribution licenses or project licenses, that allow particular exporters to make multiple exports of certain types without applying for individual licenses for each export. The Export Administration Act also contains provisions prohibiting participation in unsanctioned foreign boycotts and authorizes the Commerce Department to conduct rulemaking and enforcement activities, including enforcement of the antiboycott provisions.

The EAA includes a provision explicitly exempting the Department's activities from the administrative process and judicial review provisions of the Administrative Procedure Act (APA). As a result, administrative licensing decisions are final and unreviewable; agency rules implementing the EAA are also not subject to judicial review, nor to the notice and comment requirements of 5 U.S.C. 553, although Congress has expressed its intent that "to the extent practicable, all regulations imposing controls on exports * * * be issued in proposed form with meaningful opportunity for public comment before taking effect." 50 U.S.C. App. 2412(b). Enforcement decisions are less affected by the exemption, as statutory amendments in recent years have imposed the formal hearing requirements of 5 U.S.C. 556–57 on administrative enforcement proceedings and have authorized judicial review under APA standards.

Because of the broad APA exemption, the Commerce Department has implemented the EAA with relatively little judicial scrutiny and has had little incentive to provide clear and informative explanations for its actions. The EAA requires that license denials be accompanied by a written statement including, inter alia, a statement of the statutory basis for the denial; however, in practice this statutory requirement has often been met in a minimal and uninformative way. Exporters have often been frustrated in their attempts to learn the reasons for negative licensing decisions or to predict the outcome of future license applications; they have also been without recourse to challenge Commerce Department actions that may be arbitrary or contrary to statute.

The APA exemption dates back to passage of the first comprehensive export control legislation in 1949. At that time, Congress cited two reasons for the broad exemption: first, the legislation was seen as temporary, essentially an extension of emergency war measures, and second, it was closely related to foreign policy and national security concerns.

After over 40 years, the export control program gives no indication of being "temporary", albeit sunset dates in the various export control statutes have necessitated several extensions and reenactments. And the need for such a broad exemption from APA provisions based on foreign policy and national security considerations is not at all clear. Much of the business conducted by the Commerce Department under the EAA is similar to that conducted by other regulatory agencies, and the interests at stake for potential exporters are similar to those of regulated entities under other licensing schemes. The agency can expect to benefit from public input in the rulemaking process just as other agencies do. Moreover, specific exemptions to the rulemaking and formal adjudication provisions of the APA cover agencies' military and foreign affairs functions and would be available to reduce the required level of agency process when necessary.[1]

Increased availability of judicial review would help to insure that the Department complies with applicable statutory standards and maintains a reasonable level of quality control in its decisionmaking under the EAA. While the relevance of military and foreign affairs considerations will, necessarily, mean that a reviewing court will often give the Commerce Department great latitude to exercise its discretion, there are nevertheless many legal and factual issues as to which a court could exercise meaningful review under traditional APA standards without interfering with the executive branch's ability to conduct foreign policy. And other international trade and export control statutes, which presumably have foreign affairs implications, do not share the EAA's broad insulation from judicial review.

The Administrative Conference concludes, therefore, that the APA exemption is unnecessary and should be repealed. This conclusion is in accord with that of a recent National Academy of Sciences study on the export controls, which also urges repeal of the APA exemption. While the exemption repeal is the heart of this recommendation, in the opinion of the Conference, various additional actions by Congress or the Commerce Department are necessary in order to enhance the benefits of APA applicability. These are explained briefly below.

Judicial Review

Although the Conference believes that, as a general matter, judicial review of Commerce Department actions under the standards of the Administrative Procedure Act is entirely appropriate, control of exports nevertheless remains a sensitive area. Thus it is important to structure judicial review in a manner that will minimize the burdens on the conduct of foreign policy. Direct review in the court of appeals is appropriate here because of the policy considerations involved, because there are not likely to be large numbers of appeals, and because, in the case of rulemaking, the public interest will require prompt, authoritative determinations of a rule's validity. See ACUS Recommendation 75–3, *The Choice of Forum for Judicial Review of Administrative Action.*[2] Consolidation of review of all export control matters in a single court of appeals would preserve uniformity in statutory interpretation and enable the court to develop expertise in the subject matter. Because it already enjoys some expertise in international trade and technological issues and is likely, based on its experience with many types of litigation involving the federal government, to be sensitive to the government's legitimate need for discretion in implementing export controls as well as to the interests of private parties, the Court of Appeals for the Federal Circuit is the most appropriate court to undertake this responsibility.

Informal Adjudications

Under the APA, Commerce Department action on individual license applications should be treated as informal adjudication. While formal hearing proceedings are used to make decisions in some administrative licensing programs, there is no indication that such procedures are required here, and the high volume and time sensitivity of export license applications favors retention of the existing informal approach.

Another category of Commerce Department action handled informally involves requests for advice as to the proper classification of a commodity. These requests, which permit an exporter to seek guidance where it is unclear what category on the Commodity Control List an item falls within and the difference categories entail different export restrictions, may be made at the exporter's option; they are appropriately treated as informal agency adjudication under the APA.

The Commerce Department should increase exporters' access to information about the decisions it makes in these informal adjudications. Clear statements of the agency's reasons for classifying exports in particular categories or denying licenses will both help exporters to determine how to proceed and provide a record for judicial review of the Department's action. Publication of those licensing and classification decisions that may have precedential value (along with a statement of the reasons for them) will benefit both agency and exporters by bringing a greater measure of predictability to the licensing process.

A special problem arises when license denials turn on classified information. The government has a strong interest in protecting the substance and sources of such information from disclosure, but without access to the information that forms the basis for a license denial, it can be almost impossible for the exporter to evaluate whether the agency action is correct and challenge the denial on administrative or judicial review. In these cases, steps should be taken to insure that exporters (or their counsel) have the maximum feasible access to the information supporting the license denial and the agency staff claims that undisclosed classified information supports a denial are carefully scrutinized on administrative review.

The introduction of APA judicial review may have one unintended effect as it applies to these informal adjudications. Commerce Department regulations provide for secretarial review (by the Assistant Secretary for Export Administration) of classifications made in response to exporter requests. There may be cases in which the Department is not ready to make a final, judicially reviewable determination of classification at this stage, outside the context of a specific license application, yet such a determination might be treated as judicially reviewable. The agency should retain discretion to declare that its classification decision on review is tentative and does not constitute final, reviewable agency action. See *National Automatic Laundry and Cleaning Council v. Shultz*, 443 F.2d

[1] The Administrative Conference has previously recommended that the military and foreign affairs exemption from APA rulemaking requirements be restricted to apply only where there is a need for secrecy in the interest of national defense or foreign policy. ACUS Recommendation 73–5, *Elimination of the "Military or Foreign Affairs Function" Exemption from APA Rulemaking Requirements*, 1 CFR 305.73–5 (1990).

[2] 1 CFR 305.75–3 (1990).

669 (D.C. Cir. 1971). When this happens, the issue of correct classification should be preserved for administrative and judicial review in the context of any ensuing license application.

Formal Adjudications

Current statutory provisions already make enforcement proceedings under the EAA (including both export control and antiboycott enforcement proceedings) formal adjudications by specifically applying sections 556 and 557 of the APA to those proceedings. Application of the APA would leave these procedures unchanged. In order to facilitate the consolidation of judicial review in one court, however, the Administrative Conference recommends one change to these enforcement procedures: that the Commerce Department's civil penalty authority be made self-executing [3] and that *de novo* review in district court penalty collection proceedings be eliminated in favor of record review in the Court of Appeals for the Federal Circuit. This change would also have the effect of mooting a current controversy about whether the conduct of administrative enforcement proceedings tolls the five-year statute of limitations for commencement of a district court action to collect a civil penalty.

There are two situations in which the Commerce Department imposes sanctions without the benefit of formal adjudicatory procedures: the issuance of temporary denial orders, and the *ex parte* suspension of special licenses. Under the EAA, the Department may issue temporary denial orders denying exporting authority on an *ex parte* basis where necessary to prevent an imminent violation of the EAA. Special licenses may be suspended under Commerce Department regulations whenever the Office of Export Licensing believes that the terms and conditions of the licenses are not being followed.

Because these actions are taken in order to prevent imminent or continuing violations of the EAA, the Conference recognizes that the Commerce Department may need to take *ex parte* action. Nevertheless, exporters should be afforded a full opportunity to defend themselves in post-denial formal hearings. Existing procedures for temporary denial orders provide for prompt post-denial review, although without a full formal hearing; these existing procedures may offer a valuable avenue for seeking emergency relief from a denial order, but a full-scale administrative hearing should be available at the request of the party subject to the denial order. Concomitantly, judicial review of temporary denial orders, now available only under an arbitrary and capricious standard, should include substantial evidence review. As of now, *ex parte* license suspensions are reviewable only through informal secretarial review like that afforded license denials, and not at all in court; because of their impact on existing economic relationships, the Administrative Conference believes these suspensions should be followed by full formal procedures at the licensee's request.

Rulemaking

Once brought under the APA, Commerce Department rulemaking under the Export Administration Act would still be subject to the military and foreign affairs exception to notice and comment procedures; however, not every rulemaking under EAA necessarily falls within the terms of that exception. In recommending that the APA apply to export control proceedings, the recent National Academy of Sciences study proposed that section 13(b) of the EAA be retained, to reflect Congress' belief that military and foreign affairs considerations do not by any means require that every EAA rulemaking proceed without section 553 procedures; the Conference endorses this recommendation.

The Conference also recommends that foreign availability determinations, not specifically designated as rulemaking under the EAA, be so treated by the Commerce Department whenever possible. Under the act, exports that would otherwise be restricted will be permitted when the product involved is available to the end user from a foreign source. These determinations may often affect many potential exporters, rather than just one, and provision of an opportunity for public comment before making the necessary determination will enable Commerce to get a clearer picture of the relevant considerations. The Conference's recommendation, however, acknowledges that foreign availability determinations may sometimes initially arise in the context of license determinations where time is of the essence; in such cases, public comment might be solicited after the initial determination rather than before.

Accordingly, the Administrative Conference makes the following recommendations:

Recommendation

I. *Repeal of APA Exemption.* Congress should repeal section 13(a) of the Export Administration Act, which exempts functions exercised under that Act from the administrative process and judicial review provisions of the Administrative Procedure Act (5 U.S.C. §§ 551, 553–559, 701–709).

II. *Judicial Review.* Congress should amend the Export Administration Act:

(A) as necessary to make all final actions of the Department of Commerce under the Act judicially reviewable under applicable provisions of the Administrative Procedure Act;

(B) to provide for section 706 judicial review of all reviewable Commerce Department actions (including the imposition of civil penalties) under the Act in a single forum, the United States Court of Appeals for the Federal Circuit.

III. *Informal Adjudications.* Requests for proper classification of proposed exports and applications for individual licenses constitute informal adjudications under the Administrative Procedure Act.

(A) Whenever the Commerce Department denies an individual license application or responds to a classification request by placing the potential export in a category different from that proposed by the requester, it should provide a written explanation for the decision that is sufficient to permit the applicant to understand the basis on which the decision has been reached.

(B) On review of staff responses to requests for classification, the Secretary (or delegate) should have discretion to declare that a classification is tentative and does not constitute judicially reviewable final agency action. Where requests for classification have been handled in this way, exporters should be free to raise classification issues in subsequent administrative and judicial review of individual licensing decisions.

(C) Secretarial review of staff decisions on individual license applications should remain available on appeal by the applicant. Congress should repeal section 13(e) of the Export Administration Act, which provides for limited appeals of license denials through an administrative law judge hearing process.

(D) The Commerce Department should publish those decisions on requests for classification and individual license applications that have possible precedential value.

(E) When a license application has been denied, or has been the subject of negative considerations or recommendations under section 10(f)(2) of the Export Administration Act, based on classified information, the Commerce Department should adopt procedures to permit the maximum disclosure of such information consistent with national security (including, where appropriate, disclosure to the applicant or applicant's counsel under protective order). On administrative appeal of any license denial based on undisclosed classified information, the Secretary (or the Secretary's delegatee) should personally review the classified information and certify that it is properly classified and supports the action taken.

IV. *Formal Adjudications.* (A) Congress should amend the Export Administration Act to provide the right to a prompt post-denial (or post-suspension) hearing on the record, subject to the formal adjudication provisions of the Administrative Procedure Act, for parties subject to *ex parte* Commerce Department decisions to suspend or revoke special licenses such as distribution licenses, project licenses, and service supply licenses or to temporary denial orders under section 13(d) of the Export Administration Act. Congress should establish appropriate deadlines for the conduct of such hearings.

(B) The Commerce Department should, to the extent possible, limit the scope of *ex parte* license suspensions and temporary denial orders to the circumstances posing a threat of violation of the Export Administration Act.

(C) The civil penalty provisions of 50 U.S.C. App. §§ 2410 and 2412 should be made self-enforcing, subject to judicial review under 5 U.S.C. § 706 in the Court of Appeals for the Federal Circuit.

V. *Rulemaking.* (A) Although rulemaking in the Department of Commerce will be subject to the military and foreign affairs exemption of section 553 of the Administrative Procedure Act, the Conference supports the recent recommendation of the National Academy of Sciences that Congress should retain section 13(b) of the Export Administration Act. That section, which exhorts the Department to provide "meaningful opportunity for public comment" in departmental rulemakings "to the extent practicable," plainly expresses a congressional understanding that not all departmental rulemaking falls within the appropriate bounds of the military and foreign affairs exemption.[4]

(B) To the extent feasible, the Department of Commerce should treat foreign availability determinations under sections 5(f)(1) and 5(f)(2) of the Export Administration Act as rulemaking within the terms of section 553 of the Administrative Procedure Act. Where, for reasons of time or other considerations, such determinations must be made initially in the context of individual license applications, the Department should publish the determination made with an invitation for public comment respecting future such determinations.

Dated: March 4, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-5461 Filed 3-6-91; 8:45 am]

BILLING CODE 6110-01-M

[3] Cf. ACUS Recommendation 79-3, *Agency Assessment and Mitigation of Civil Money Penalties*, 1 CFR 305.79-3 (1980); ACUS Recommendation 72-6, *Civil Money Penalties as a Sanction*, 1 CFR 305.72-6 (1980).

[4] Cf. ACUS Recommendation 73-3, supra n. 1.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-144-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA, DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This action withdraws an NPRM which proposed a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would have required a one-time detailed visual and high frequency eddy current (HFEC) inspection around the fasteners attaching the skin to the stringers between body station (BS) 520 and BS 900 at stringer (S)-6 and S-14, repair, if necessary, and a reporting of cracks. Since issuance of the NPRM, the FAA has reviewed its position on this safety issue and the comments received in response to the NPRM, and has concluded that the proposed inspections are unnecessary at this time, since additional inspection results still show no evidence of cracking in the subject area. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2777. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive, applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on August 14, 1990 (55 FR 33126). The proposal would have required a one-time detailed visual and high frequency eddy current (HFEC) inspection around the fasteners attaching the skin to the stringers between body station (BS) 520 and BS 900 at stringer (S)-6 and S-14, repair if necessary, and a reporting of cracks. That action was prompted by reports from an operator who found multiple skin cracks in the fuselage skin between BS 220 and BS 520 at S-6 and S-14. These reports led to the issuance of airworthiness directive (AD) 89-23-53, Amendment 39-6524 (55 FR 7676, March 5, 1990); and AD-90-26-10, Amendment 39-6836 (55 FR 51401, December 14, 1990); which require various inspections, repairs, and modifications of this area. The fuselage skin from BS 520 to BS 900 was manufactured with an identical skin bonding process to that from BS 220 to BS 520, was constructed similarly, and was designed with similar stresses; therefore, it was assumed that skin cracking would occur there as well.

Due consideration has been given to the comments received in response to the Notice.

Both the manufacturer and the Air Transport Association (ATA) of America indicated that the proposed AD is not justified and should be withdrawn, since to date, no evidence of cracking has been found in the subject area. The manufacturer stated that it has examined the subject area on approximately 25 in-service airplanes and has found no evidence of cracking, although some skin panel disbonding was identified.

In consideration of the data provided by the commenters, and after further review of the structural design, the FAA concurs with the commenters. The FAA has determined that the inspections required by AD-84-21-02 R1, Amendment 39-6430 (55 FR 1005, January 11, 1990), will provide adequate surveillance of the subject area. That AD requires operators to incorporate a Supplemental Structural Inspection Program as part of the FAA-approved maintenance program; under this program, the subject area is inspected for cracking and, if any cracks are found, the FAA is then notified. These inspections, combined with the reporting of cracks, will provide sufficient warning should evidence of cracking occur.

In light of the discussion above, the FAA has determined that the proposed inspections are unnecessary at this time, and withdrawal of the Notice is appropriate.

Withdrawal of this Notice of Proposed Rulemaking (NPRM) constitutes only such action and does not preclude the agency from issuing another Notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule and, therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By withdrawing the Notice of Proposed Rulemaking, Docket No. 90-NM-144-AD, published in the Federal Register on August 14, 1990 (55 FR 33128).

Issued in Renton, Washington, on February 22, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5413 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 91-ASO-4]

Proposed Revision of Transition Area, Philadelphia, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Philadelphia, MS Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 36 based on the Philadelphia nondirectional radio beacon (NDB). This proposed action would add an arrival area extension south of the airport to provide controlled airspace protection for instrument flight rules (IFR) aircraft executing the planned NDB SIAP.

DATES: Comments must be received on or before: April 19, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 91-ASO-4, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Philadelphia, MS Transition Area. This action would add an arrival area extension to provide controlled airspace protection for IFR aircraft executing an NDB standard instrument approach procedure planned to serve Runway 36 at the Philadelphia Municipal Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Philadelphia, MS [Amended]

By deleting the remainder of the present description beginning with the phrase, "within 3.5 miles each side of the 001° bearing * * *" and inserting the following, "within 3.5 miles each side of the 001° and 196° bearings from the Philadelphia NDB (lat. 32°47'54"N, long. 89°07'28"W.), extending from the 6.5-mile radius area to 11.5 miles north and south of the NDB."

Issued in East Point, Georgia, on February 14, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-5415 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-CE-09-AD]

Airworthiness Directives; Beech 90, 99, and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 90, 99, and 100 series airplanes. The proposed action would require a one-time inspection of the drainage area of the rudder trim tab. There have been reports of water becoming trapped in the rudder trip tabs on the affected airplanes because of improper drainage provisions. This condition, if not detected and corrected, could cause structural damage or imbalance to the rudder. The actions specified in the proposed AD are intended to assure proper drainage of water from the rudder trim tab.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Beech Service Bulletin (SB) NO. 2365, dated January 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-09-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-09-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been reports of water becoming trapped in the rudder trim tabs of certain Beech 90 series airplanes. The freeze-thaw action of trapped water may cause debonding of the ribs and trailing edge, which could result in a loss of airfoil shape. More seriously, the rudder would be out of balance and could cause surface flutter. Each tab is designed to have a small area in the bottom edge core fill material to serve as a drain for any moisture that may enter the tab. The manufacturer has determined that some trim tabs on the affected airplanes have been manufactured that do not provide for this drainage area. Tabs of similar design exist on the Beech 99 and 100 series airplanes. Beech has issued Service Bulletin (SB) No. 2365, dated January 1991, which specifies a one-tme inspection of the drainage area of the rudder trim tab on certain Beech 90, 99, and 100 series airplanes. The FAA has determined that AD action is necessary to detect and correct trapped water in the rudder tim tab of the affected airplanes.

Since the condition described is likely to exist or develop in other Beech 90, 99, and 100 series airplanes of the same type design, the proposed AD would require a one-time inspection of the drainage area of the rudder trim tab in accordance with the instructions in Beech SB No. 2365, dated January 1991.

It is estimated that 2032 airplanes will be affected by the proposed AD, that it will take approximately 1 hour per airplane to accomplish the proposed inspection at $40 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $81,280.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 91-CE-09-AD.

Applicability: Models 65-90, 65-A90, 65-A90-1, 65-A90-2, 65-A90-3, 65-A90-4, B90, and C90 airplanes (all serial numbers (S/N)); Model C90A airplanes (S/N LJ-1063 through LJ-1244); Models E90, H90, 99, 99A, A99A, B99, C99, 100, A100, and B100 airplanes (all S/N), certificated in any category.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure proper water drainage water from the rudder trim tab and prevent the structural damage and the unbalanced condition that could occur from trapped water, accomplish the following:

(a) Inspect the rudder trim tab for proper moisture drainage provisions in accordance with the instructions in Beech Service Bulletin (SB) No. 2365, dated January 1991. If the correct drainage provisions do not exist, prior to further flight, modify the tab in accordance with the instructions in the referenced SB.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 19, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5412 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-6]

Proposed Revision of Transition Area, Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Pascagoula, MS Transition Area. This proposed action would realign the existing 700-ft. transition area on the new Jackson County Airport, located approximately six miles north of the old Jackson County Airport, which has been closed. A standard instrument approach procedure (SIAP) has been developed to serve the new airport and it is necessary that controlled airspace be provided for protection of instrument flight rules (IFR) operations. Concurrent with publication of the new SIAP the operating status of the airport will be changed from visual flight rules (VFR) to IFR.

DATES: Comments must be received on or before: April 19, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, System Management Branch, Docket No. 91-ASO-6, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Pascagoula, MS Transition Area. This action would center the existing transition area on the new Jackson County Airport located approximately six miles north of the old airport which has been closed. A standard instrument approach procedure has been developed to serve the new airport. This proposed action would provide the required controlled airspace necessary for protection for IFR aeronautical operations at the new Jackson County Airport. It approved, the operating status of the airport will be changed from visual flight rules (VFR) to IFR concurrent with publication of the SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Pascagoula, MS [Revised]

That airspace extending upward from 700 feet above the surface with a 7-mile radius of Jackson County Airport (lat. 30°27'45" N., long. 88°31'44" W.).

Issued in East Point, Georgia, on February 15, 1991.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-5414 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-2]

Proposed Establishment of VOR Federal Airway V-595; OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new Federal Airway V-595 located between Medford, OR, and Redmond, OR. The establishment of this route is necessary to provide a more direct route between Medford and Redmond, OR. This action would improve traffic flow and reduce flying time. This action would also reduce controller workload.

DATES: Comments must be received on or before April 19, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-2, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish new VOR Federal Airway V-595 located between Medford and Redmond, OR. This route would be established to improve the flow of traffic by providing a direct route between Medford and Redmond, OR. Aircraft are routinely given radar vectors by controllers between these points. This proposal would reduce pilot/controller communications. This route would also reduce fuel cost and flying time by providing a more direct route. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

BEST COPY AVAILABLE

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-585 [New]

From Medford, OR; to Redmond, OR.

Issued in Washington, DC, on February 25, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-5416 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Certain Household Substances, Pesticides, and Fragrance Advertising Samples

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its regulations to implement the Drug and Household Substance Mailing Act of 1990, Public Law No. 101-493 (October 31, 1990). Effective April 29, 1991, the Act makes nonmailable: (1) Any unsolicited matter conteining a "household substance" (as defined by section 2 of the Poison Prevention Packaging Act of 1970) which does not meet the Consumer Product Safety Commission's child-resistant packaging requirements; and (2) any fragrance advertising sample not prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to it. Included in the proposed rule are provisions reflecting the requirement that any "pesticide" (as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act) must meet comparable child-resistant packaging standards set by the Environmental Protection Agency.

DATES: Comments must be received on or before April 8, 1991.

ADDRESSES: Send written comments on the proposal to the Director, Office of Classification and Rates Administration, Marketing and Customer Service Group, room 8430, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5903. Copies of all written comments received will be available for inspection and photocopying between 9 a.m. and 4 a.m. each business day, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Earl Hohbein, (202) 268-5309.

SUPPLEMENTARY INFORMATION: The Drug and Household Substance Mailing Act of 1990 (Pub. L. 101-493, October 31, 1990) adds new subsections (f) and (g) to section 3001 of title 39, United States Code, effective 180 days after enactment—viz., on April 29, 1991. Subsection (f) declares any matter which (1) is unsolicited by the addressee, (2) contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 (2)(A)), and (3) does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission (16 CFR Part 1700), to be nonmailable matter. Subsection (g) declares that matter which contains a fragrance advertising sample is nonmailable matter, unless the sample is sealed, wrapped, treated or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample. It directs the Postal Service to adopt regulations establishing the preparation standards which such a sample must meet to avoid being considered nonmailable.

Section 1716 of title 18, United States Code, makes nonmailable any matter which may kill or injure another, or injure the mails or other property. It authorizes the Postal Service, however, to permit the mailing of any such matter which is not outwardly or of its own force dangerous or injurious to life, health, or property, under such regulations as the Postal Service shall prescribe as to preparation and packaging. Any "pesticide", as that term is defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), is subject to child-resistant packaging standards set by the Environmental Protection Agency (7 U.S.C. 136w (a)(1), (c)(3); 40 CFR part 157), which are consistent with the Consumer Product Safety Commission standards cited above. In order to serve more comprehensively the child-protection purposes of new 39 U.S.C. 3001(f), the Postal Service proposes to exercise its authority under 18 U.S.C. 1716, to make nonmailable any pesticide (as defined by 7 U.S.C. 136(u)) which does not comply with the child-resistant packaging standards established by the Environmental Protection Agency (40 CFR part 157).

The preparation standards proposed by the Postal Service pursuant to new subsection 3001(g) are the same as those recently adopted by California (section 26470, California Health and Safety Code), which the Committee on Post Office and Civil Service, House of Representatives, in its report on the Drug and Household Substance Mailing Act of 1990, indicated were to be the standards initially adopted to carry out new subsection 3001(g) (H.R. Rep. No. 101-758, 101st Cong., 2d Sess., at 2 (Sept. 28, 1990)). The Committee further indicated, however, that upon consideration of industry views, the Postal Service should adopt any alternative standards for the mailability of fragrance advertising samples it might deem appropriate. Accordingly, the Postal Service hereby specifically solicits industry comments on possible alternative standards.

Although exempt by 39 U.S.C. 410(a) from the provisions of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comment on the following proposed revision of part 124 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 124—NONMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

2. After § 124.392 add the following:

§ 124.393 Household substances (39 U.S.C. 3001(f)).

Any matter which is unsolicited by the addressee, contains a "household substance" as defined by section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471(2)(A)), and does not comply with the requirements for special child-resistant packaging established for that substance by the Consumer Product Safety Commission (16 CFR part 1700) is nonmailable.

§ 124.394 Pesticides (18 U.S.C. 1716).

Any matter which contains a "pesticide" as defined by section 2 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), and does not comply with the pertinent child-resistant packaging standards established by the Environmental Protection Agency (40 CFR Part 157) is nonmailable.

§ 124.395 Fragrance advertising samples (39 U.S.C. 3001(g)).

Any matter which is otherwise acceptable in the mails, but which contains or includes a fragrance advertising sample, is nonmailable unless the sample meets the following requirement: It must be sealed, wrapped, treated, or otherwise prepared in a manner reasonably designed to prevent individuals from being unknowingly or involuntarily exposed to the sample. A sample will be deemed to meet this requirement if it employs paper stocks with a maximum porosity of 20 Sheffield units or 172 Gurley-Hill units treated exclusively with microencapsulated oils, and is produced so that it cannot be activated except by opening a glued flap or binder, or by removing an overlying ply of paper.

§ 124.396 Certificates of compliance.

Customers offering matter for deposit in the mail, which would be nonmailable under §§ 124.393, 124.394, or 124.395 but for compliance with the specified packaging and preparation requirements, may submit an accompanying written statement certifying that the matter is packaged or prepared in accordance with the applicable standards. The certifying statement may be made on the customer's letterhead, on a bulk mailing statement, or as a notice on the exterior of each item offered for mailing.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-5305 Filed 3-6-91; 8:45 am]

BILLING CODE 7710-12-M

Notices

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Administration; Public Meeting

SUMMARY: The Administrative Conference's Committee on Administration is considering a draft recommendation and consultant report dealing with "Regulatory Cooperation with Counterpart Agencies Abroad: The FAA's Airworthiness Experience." The draft report, prepared by Professor George Bermann of Columbia University—Columbia School of Law, may provide the basis for Conference recommendations. Professor Bermann's study looks at how U.S. agency officials deal with, and implement standards developed in cooperation with, other countries' regulatory agencies and international bodies. This case study examines the Federal Aviation Administration's participation in the Europeans' efforts to set standards for airworthiness certification for civil aircraft. It is at present in preliminary form, and is being reviewed by the FAA. In addition, the author hopes to fill out the report's analytical framework with added examples of specific interactions. The proposal will be discussed at the Committee's March 7 meeting, described below. This date has been changed from March 8, as set forth in a prior notice.

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Administration of the Administrative Conference of the United States. The Committee has scheduled this meeting to discuss the draft report and possible recommendation on implementation of OSHRC's settlement judge and simplified proceedings. The draft recommendation and consultant report are available on request from the Conference.

DATES: March 7, 1991, 2 p.m.

LOCATION: Administrative Conference Library, 2120 L Street NW., suite 500.

PUBLIC PARTICIPATION: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500 (202) 254-7020.

PUBLIC PARTICIPATION: Same as above.

Dated: February 26, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-5380 Filed 3-6-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 1, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

Agricultural Marketing Service

Kiwifruit Grown in California, Marketing Order No. 920
Recordkeeping; On occasion; Monthly; Annually; Once every 6 years
Farms; Businesses or other for-profit; 1,217 responses; 691 hours
Richard Schultz (202) 245-5172

New Collection

Federal Crop Insurance Corporation

Texas Citrus Grove Inspection Report
FCI-19-C
On occasion
Individuals or households; Farms; 25,000 responses; 37,500 hours
Bonnie L. Hart (202) 245-5046

Federal Crop Insurance Corporation

High-Risk Land Exclusion Option
FCI-549
On occasion
Individuals or households; Farms; 58,480 responses; 58,480 hours
Bonnie L. Hart (202) 245-5046

New Collection

Food Safety & Inspection Service

Hazard Analysis and Critical Control Point Workshop and Pilot Plant Testing Solicitation of Participants
On occasion
Businesses or other for-profit; Small businesses or organizations; 95 responses; 24 hours
Roy Purdie, Jr. (202) 447-5372

Reinstatement

Forest Service

Timber Sale Operating Plans
On occasion
Businesses or other for-profit; Small businesses or organizations; 3,600 responses; 14,250 hours
Fred Walk (202) 475-3758

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91-5383 Filed 3-6-91; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Advisory Commission on Patent Law Reform; Selection of Advisory Commission Members

AGENCY: Patent and Trademark Office, Department of Commerce.

Pursuant to the establishment of the Advisory Commission on Patent Law Reform, the Secretary of Commerce appointed the following individuals to serve on the Commission:

Representing Industry

- Mr. Edmund Pratt, Chairman of the Board, Pfizer, Inc.
- Mr. John E. Pepper, President, Procter and Gamble.
- Mr. Keith R. McKennon, Executive Vice President, the Dow Chemical Company.
- Mr. Vincent J. Rauner, Senior Vice President, Motorola, Inc.
- Mr. Howard Figueroa, Vice President, IBM Corporation.
- Mr. Ardon B. Judd, Vice President, Dresser Industries, Inc.

Representing Academia

- Dr. Roland Schmitt, President, Rensselaer Polytechnic Institute.
- Mr. Edward L. MacCordy, President, Association of University Technology Managers.

Representing Patent Bar

- Mr. Douglas W. Wyatt, Wyatt, Gerber, Burke & Badie.
- Mr. Donald R. Dunner, Finnegan, Henderson, Farabow, Garrett & Dunner.

Representing the Antitrust Bar

- Mr. Robert P. Taylor, Pillsbury, Madison & Sutro.

Representing Small Business

- Mr. Juan A. Benitez, President, Life-Stream Diagnostics.

Representing the Public

- Mr. William Keefauver.
- Mr. Edward H. Baxter.

Harry F. Manbeck, Jr., Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, will serve as Chairperson of the Commission.

Dated February 27, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 5360 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-16-M

Foreign-Trade Zones Board

[Docket 11-91]

Foreign-Trade Zone 84—Houston, TX; Application for Subzone, Goodman Manufacturing Corp. Heating and Cooling Equipment Plant, Houston, TX (Houston Port of Entry Area)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the heating and cooling equipment manufacturing facility of Goodman Manufacturing Corporation (Goodman), located in Houston, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 19, 1991.

The Goodman plant (15 acres, 950 employees) is located at 1501 Seamist Drive, Houston, near the Port of Houston. The facility is used to manufacture and distribute a full line of residential and commercial unitary air conditioners, heat pumps, furnaces and flexible plastic duct work under the brand names of "Janitrol", "GMC" and "Goodman Quietflex." Foreign materials account for some 14 percent of the value of the finished products and include capacitors, transformers, circuit breakers, spark sensors, copper tubing, steel wire, and steel mill products such as flat rolled steel (galvanized, aluminized, alloyed, stainless). The application indicates that "foreign-privileged" status will be elected on all foreign steel mill products used in production for domestic consumption. Some of the finished equipment will be exported.

Zone procedures would exempt Goodman from Customs duty payments on the foreign components used in the production of items for export. On its domestic sales, the company would be able to choose, except with respect to foreign steel mill products, the duty rate that applies to the finished air conditioners (2.2%), heat pumps (2.9%), furnaces (3.4%), and flexible duct work (5.3%). The duty rates on foreign materials range from 1.5 to 10.1 percent. The company would also be exempt from certain state and local inventory taxes. Duty exemption would be sought on scrap steel (20% of steel used). The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, TX 77057-3012; and, Colonel Brink P. Miller, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553-1229.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 22, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2625 Federal Courthouse Bldg., 515 Rusk Street, Houston, TX 77002.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: February 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-5396 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-605, A-559-601, A-580-605, A-583-609]

Color Picture Tubes From Canada, Japan, Republic of Korea & Singapore; Negative Final Determinations of Circumvention of Antidumping Duty Orders

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of negative final determinations of circumvention of antidumping duty orders.

SUMMARY: On December 19, 1990, the Department of Commerce published negative preliminary determinations of circumvention of the antidumping duty orders on color picture tubes (CPTs) from Canada, Japan, the Republic of Korea, and Singapore. The anti-circumvention inquiries cover certain exporters of color television receivers (CTVs) from Mexico and their related and unrelated suppliers of CPTs. The

period for each inquiry is July 1, 1989, through June 30, 1990.

We gave interested parties an opportunity to comment on the preliminary negative determinations. After our analysis of the comments received and the arguments presented at the Department's hearing, we have determined that the orders on color picture tubes from Canada, Japan, the Republic of Korea, and Singapore are not being circumvented by the assembly of CPTs into CTVs in Mexico before importation into the United States.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger, Office of Antidumping Compliance, or Richard Moreland, Director, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1990, the Department of Commerce published in the **Federal Register** (55 FR 52066) preliminary negative determinations of circumvention of the antidumping duty orders on CPTs from Canada, Japan, the Republic of Korea, and Singapore. The Department has now completed these inquiries in accordance with § 781(b) of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Antidumping Duty Orders

Products covered by the antidumping duty orders are CPTs. CPTs are defined as cathode ray tubes suitable for use in the manufacture of CTVs or other color entertainment display devices intended for television viewing (Canada: 52 FR 44161, Japan: 52 FR 44171, Republic of Korea: 52 FR 44186, Singapore, 52 FR 44191). CPTs are classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50, and 8540.11.00.60. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of the Anti-Circumvention Inquiries

CPTs subject to these anti-circumvention inquiries are cathode ray tubes suitable for use in the manufacture of CTVs or other color entertainment display devices intended for television viewing. Parts or components attached to or shipped with the CPT are excluded from the scope of these inquiries. For reasons explained in the comment section of this notice, we focused upon the value of the picture tube itself in the difference in value calculations. The scope of the antidumping duty orders on CPTs from the subject countries is not affected by the scope of these anticircumvention inquiries.

The four inquiries cover the following respondents: Daewoo Corporation (Daewoo), Goldstar Company Ltd. (Goldstar), Hitachi Ltd. (Hitachi), Hitachi Electronic Devices (Singapore) Ltd. (Hitachi-Singapore), Matsushita Electric Corporation (Matsushita), Mitsubishi Electric Corporation (Mitsubishi Electric), Mitsubishi Electronics Industries Canada Inc. (Mitsubishi-Canada), Philips Consumer Electronics Company (Philips), Samsung Electron Devices Company Ltd. (Samsung), Sanyo Manufacturing Corporation (Sanyo), Sony Corporation (Sony), TECMA S.A. de C.V. (TECMA), Toshiba Corporation (Toshiba), and Zenith Electronics Corporation (Zenith).

Analysis of Comments Received

We invited interested parties to comment on the preliminary negative determinations. We received comments from Daewoo, Goldstar, Hitachi (including Hitachi-Singapore), Matsushita, Mitsubishi (including Mitsubishi-Canada), Samsung, Sanyo, Sony, and Toshiba. We received rebuttals from all parties listed above with the exception of Daewoo. We also received comments and rebuttals from the petitioners (the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, Industrial Union Department, AFL-CIO, and the United Steelworkers of America). On January 29, 1991, we held a public hearing at which interested parties presented arguments.

Comment 1: Petitioners object to the Department's methodology for determining the difference between the value of the CPT and the value of the merchandise completed or assembled in Mexico. Petitioners argue that the Department applied an appropriate measurement of CPT value in its value calculation by defining a CPT as a picture tube by itself, rather than as an "incomplete television assembly with a CPT," as defined in the CPT orders. Petitioners assert that the Department should apply the full value of the class or kind of merchandise, as defined in the CPT orders, in its difference in value calculation and find that the difference between a television assembly with a CPT and a finished CTV is "small" within the meaning of section 781(b) of the Tariff Act.

Department's Position: We disagree. The statute directs the Department to determine the difference between the value of the merchandise imported into the third country and the value of merchandise completed or assembled in that country (section 781(b)(1)(C) of the Tariff Act). A circumvention determination is based on the fact pattern that exists at the time of the inquiries. Therefore, in each inquiry and for each respondent, we calculated the difference in value based upon the actual value of the picture tube imported into Mexico and the actual value of the CTV imported into the United States during the period of inquiry.

We note that the full value of a CPT can only be the value of the picture tube itself. The references to any additional parts in the CPT orders are for definitional purposes only. These references are there to help determine whether the CPT component of the merchandise should fall within a CPT or CTV order. We have concluded that the value of the CPT should be based upon the value of the picture tube itself since only the value of the picture tube component, not any additional parts, is subject to an antidumping duty when entering the commerce of the United States.

Comment 2: Petitioners state that the Department did not explain its reasoning in determining that the difference in value percentages calculated in these proceedings did not constitute "small" within the meaning of § 781(b)(1)(C). Petitioners further point out that the Department did not establish or apply a standard or measure of "small" to make such determinations.

Department's Position: The statute directs us to determine whether the difference between the value of the merchandise imported into the third country and the value of the completed merchandise exported to the United States is small. The legislative history suggests that Congress intended the Department to have sufficient flexibility to determine what constitutes "small." The report of the Committee on Finance, U.S. Senate, states:

> [T]he Committee has not attempted to develop a precise meaning for the term "small" as used in these sections, principally in recognition that different cases present different factual situations * * *. Report of the Senate Comm. on Finance on S. 490, S. Rep. No. 71, 100th Cong., 1st Sess. (June 12, 1987).

The Department generally calculates the difference in value by dividing that difference by the value of the finished product and then evaluates whether the resulting percentage is small. In this case, the difference in value in percentage terms is clearly not small. The differences in value for all respondents ranged from 55 to 70 percent (the single non-responding company was given a best information otherwise available (BIA) difference of 55 percent based on petitioners' information). These difference in value percentages indicate that for all respondents, the non-CPT value of the CTV exceeds the value of the picture tube itself. Given the facts of this case, we cannot consider these differences in value to be "small."

Comment 3: Petitioners advance several arguments to advocate that the imported articles (CTVs) are of the same class or kind of merchandise as that covered by the CPT orders. First, petitioners claim that the Department included language in the CPT orders which would allow it to broaden or narrow the class or kind of merchandise in order to address instances of circumvention while avoiding overlap of CPT and CTV orders. Petitioners state that, as a result of the Department's efforts to avoid circumventions and prevent overlap of its orders, class or kind in this case, while still relevant, is no longer defined solely by the physical characteristics or the physical configurations of the imported article. To illustrate their contention, petitioners point to the Department's treatment of identical products, such as CPTs from Korea, which can be included in either the CPT or CTV order depending on the actual use following importation. In these inquiries, petitioners urge the Department to bypass the technical condition of the article as it crosses the U.S. border, and, in keeping with the Department's previous scope finding on Korean CTVs (i.e., that a CPT or a printed circuit board (PCB) as imported did not meet the technical definition of a CTV), determine that CPTs incorporated into CTVs in Mexico constitute CPTs from the four countries under the antidumping duty orders on CPTs.

Petitioners further contend that the legal difference between a complete CTV and an incomplete television assembly with a CPT is inconsequential. Petitioners point out, for example, that for an article to be within the finding on Japanese televisions, six major components must be included. However, if one of the major components, such as the $5 to $8 deflection yoke, were missing, petitioners argue that the resulting incomplete CTV would be defined as a CPT. Petitioners conclude that the Department should not permit such a minor distinction to determine whether a CTV and a CPT are the same class or kind of merchandise.

Petitioners next assert that the "substantive provisions" of the CPT orders control the Department's determination of class or kind. Thus, petitioners urge the Department to apply the two-pronged test set forth in each of the CPT orders. Petitioners state that the test allows the Department to include CPTs that are physically integrated with other television components (the first "prong"), so long as the CPT constitutes a "significant portion" of the cost or value of the imported items (the second "prong"). By applying the values calculated in the Department's preliminary anti-circumvention determinations, petitioners conclude that the value of the CPT ranges from 30 to 60 percent of the total value of the CTV imported into the United States. Petitioners state that this is significant by any measure.

Moreover, petitioners note that the Department previously determined for Canadian, Korean, and Singapore CPTs that " 'where the part constitutes a substantial portion of the cost or value of the article imported, the dominant article would not lose its autonomy, character, and use merely because it is imported within several other less important component parts' (Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Korea, 52 FR 44186, 44187 (November 18, 1987), Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Canada, 52 FR 44161, 44162 (November 18, 1987), and Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Singapore, 52 FR 44190, 44191 (November 18, 1987))." Petitioners conclude that the CPTs incorporated into CTVs have not lost their autonomy, character, or use. Based on this conclusion, petitioners urge that the Department not limit the two-pronged test to incomplete television assemblies in the cases for Japan, Canada, and Singapore, nor to products not covered by the CTV order as it did for Korea. Rather, the Department should include within the scope of each CPT order CPTs incorporated into complete CTVs which are not under any antidumping duty order.

Petitioners finally note that nothing in the CPT orders precludes the Department from treating CTVs from Mexico as within the same class or kind of merchandise as CPTs, given the clear pattern of circumvention that has been demonstrated.

Department's Position: We agree with petitioners that we have clarified the scope of the orders on CTVs and CPTs in order to address instances of circumvention while avoiding overlap of such orders. We have gone to great lengths to ensure the integrity of the orders on CPTs and CTVs by capturing those imported articles which would fall between the cracks of narrowly-defined CPT and CTV orders. However, the clarification of these orders does not mean that we have collapsed two separate antidumping duty orders with different applicable rates into one. The two-pronged test set forth in the CPT orders was designed to distinguish CPTs from CTVs. The Department's direct language was crafted to determine which merchandise would be subject to the two-pronged test. In the Canada, Japan, and Singapore orders, it was clearly stated that the test is applicable to "incomplete color television assemblies" in order to determine whether such assemblies should be included in either the CTV or CPT order. Complete CTVs, however, were not intended to be subject to such a test since we previously determined that "a completed CTV is not within the same class or kind of merchandise being investigated [CPTs]" (Color Picture Tubes from Korea, 52 FR 44186, November 18, 1987). This reasoning applies to the other three CPT orders as well. In short, completed color television receivers are not the imported articles envisioned by the CPT orders.

In addition, we view petitioners' next contention, that there is only a minor difference between a complete CTV and a CTV without a deflection yoke, as yet another rationale for collapsing two separate antidumping duty orders, which we cannot endorse. The determination of "small" must focus on the difference in value between the CPT and the CTV.

Finally, we do not find our 1986 scope clarification on Korean CTVs to be instructive for these CPT anti-circumvention determinations. First, we note that, in the Korean CTV scope clarification, we did not find that CPTs or PCBs are of the same class or kind of merchandise as that covered by the order on Korean CTVs. Rather, we determined that Korean CPTs, when separately imported but later combined with Korean Korean PCBs in the United States, are within the same class or kind of merchandise as CTVs. Moreover, in sustaining our decision, the Court of International Trade stated that the scope clarification "applies only to PCBs and CPTs which are subsequently assembled to form CTVs; it does not

apply to those items sold independently as PCBs and CPTs, or to those items subsequently combined with U.S. parts (*Goldstar Co. Ltd.* versus *United States*, 692 F.Supp. 1382, (CIT 1988) at 1387, *aff'd*, 873 F.2d 1427 (Fed. Cir. 1989)). Significantly, the Court stated that "[t]he present merchandise is sold on the U.S. market not as a PCB nor as a CPT, but as a color television receiver—the object of the original antidumping duty order" (emphasis in original) (Id at 1385).

By contrast, the article imported into the United States in the CPT anti-circumvention inquiries is a CTV, not a CPT. Moreover, the CTV imported from Mexico is not disassembled or reduced to a CPT as defined by the CPT orders, nor is it sold on the U.S. market as a CPT. In short, petitioners here propose inclusion of complete CTVs in the CPT orders based upon our previous inclusion of PCBs and CPTs later assembled into CTVs in the Korean CTV order. We find this logic unpersuasive.

Comment 4: Petitioners advance an alternative theory as a basis for relief in this case. In the event the Department determines that no circumvention is occurring under the anti-circumvention provision of the Tariff Act, petitioners assert that the "significant value" test established in the original CPT orders should override the difference in value calculation for determining "small" value pursuant to section 781(b). Second, petitioners contend that the Department should not be constrained by any rigid application of the class or kind of merchandise requirement in the 1988 anti-circumvention provision. Instead, petitioners urge the Department to apply the definition of class or kind established in the original CPT orders because this description should be controlling in this matter. Petitioners conclude that application of the "substantive provisions" of the CPT orders allow the Department to include in the CPT orders the imported articles subject to these inquiries.

Moreover, petitioners contend that, since the CPT orders predate passage of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act), the anti-circumvention provision cannot be used to circumscribe the terms of preexisting antidumping duty orders. Petitioners cite *Mitsubishi Electric Corporation* versus *United States*, (898 F.2d 1581) to support their contention. Petitioners point out that the court in *Mitsubishi* rejected the argument that the value-added provisions of the 1988 Act circumscribed the Department's ability to uphold its 1985 order covering "all imported subassemblies of cellular mobile telephones over $5.00 in value." In short, petitioners conclude that in these inquiries the Department's difference in value calculation cannot be used to limit the scope as defined in the original CPT orders.

Department's Position: We disagree with petitioner's interpretation of the Court's decision in the *Mitsubishi* case with regard to the inapplicability of the 1988 Act. In our view, the Court would not allow the newly enacted anti-circumvention provision to apply retroactively to a decision made in 1985. By contract, the pending anti-circumvention inquiries cover the period July 1, 1989 through June 30, 1990, and must be conducted according to the criteria and guidelines set forth in the anti-circumvention provision. Thus, the Court's decision in *Mitsubishi* has no bearing on the applicability of the anti-circumvention provision for this case.

In terms of petitioner's alternative scope clarification theory, in light of the factual circumstances of third country assembly in this case, the Department properly pursued these inquiries in the context of the anti-circumvention provision of the Tariff Act. The inquiry was initiated in response to petitioner's specific request that we conduct a scope clarification pursuant to section 781(b) of the Tariff Act. By addressing petitioner's allegations within section 781(b), we are not denying them a scope clarification; rather, we are proceeding with their request within the proper statutory framework.

Moreover, Congress has provided specific criteria to be used by the Department in determining whether circumvention is occurring. Thus, any request to include complete CTVs imported from Mexico within the scope of the antidumping duty orders on CPTs must be determined within the third country assembly section of the provisions concerning scope determinations. For a discussion of the class or kind issue raised by petitioners in this altenative theory, see our response to Comment 3.

Comment 5: Daewoo states that the Department failed to follow the procedures specified in 19 CFR 353.29(d). This section provides for the filing of comments by interested parties within 20 days after the initiation notice for a scope inquiry is published. Because the Department did not follow this regulation, respondents were unable to submit timely comments, which may have obviated the need for a time-consuming, costly, and ultimately unnecessary investigation.

Department's Position: According to 19 CFR 353.29(d)(1), the Secretary has the discretion to alter the normal time limits for the submission of comments during scope inquiries. On August 27, 1990, we published an initiation notice in the **Federal Register** which contained a schedule including opportunity for the submission of comments. The comments we received from all parties were given full consideration during the course of our analysis.

Comment 6: Daewoo and Sanyo question the Department's use of a market price validity test (MPVT) to determine whether the selling prices of CPTs between unrelated parties represented appropriate prices for comparison purposes in the inquiries. Daewoo notes that the Department's use of the MPVT assumes that sale prices of CPTs to Mexico are suspect. The company further states that the MPVT has an unclear purpose, an unclear justification, and unclear criteria under which the Department applied it in this proceeding.

Sanyo contends that, while the Department has the authority, in certain circumstances, to reject a related party sales price, no similar authority exists to reject a sales price between parties who are not related. Sanyo supports its contention that sales prices between unrelated parties should not be adjusted by noting that when the Department rejects prices between related parties it substitutes sales prices between unrelated parties since such prices are, by definition, arms' length market prices.

Department's Postition: We disagree with Sanyo's assertion that the Department has no authority to reject sales between unrelated parties. The Department routinely rejects the following types of sales between unrelated parties because they are unsuitable for use in measuring dumping: Sales below cost, sales outside the ordinary course of trade, sales not made in usual commercial quantities, and sales made in a market which fails the Department's viability test.

The application of the MPVT to sales between unrelated parties is analogous not only to the application of a transfer price validity test in related party transactions, but also to the application of a cost of production test in sales between unrelated parties in the home market. Because there is doubt in these situtations as to whether unrelated-party prices are suitable for use in the dumping calculations, they are evaluated against prices and/or costs which are considered by the Department to be valid.

The logic is the same in our application of the MPVT. The possibility of circumvention casts doubt as to whether prices between any parties subject to the inquiry are suitable for use in calculations designed to evaluate the very existence of circumvention. In order to accurately evaluate whether the non-CPT value is small, the Department must have an undistorted valuation of the product imported into the third country. Therefore, all CPT sales—those between unrelated parties as well as related parites—must be evaluated against CPT prices and/or costs determined by Departmental criteria to be valid for purposes of this inquiry.

In addition, we note that such a comparision would normally be made against the product's cost of production. In these inquiries, however, we offered two additional tests in response to requests by respondents that compiling cost information in such a short time period would be unduly burdensome. Respondents were given the choice between the standard cost test, home market sales prices to unrelated parties not involved in the case, and/or purchase prices from unrelated parties not involved in the case.

Comment 7: Daewoo notes that the Department does not allow for downward adjustments if the selling price to Mexico is higher than the MPVT price.

Department's Position: We consider such downward adjustments to be offsets of the type we have long rejected for purposes of all antidumping calculations. We are concerned with prices below fair value or foreign market value, or, as in this case, below the MPVT price. Any prices above these threshold prices do not come under the purview of the antidumping duty law.

The Department does not make downward adjustments to above cost sales prices, nor does it adjust margins downward to reflect profits made on non-dumped sales. In the same way, we have not lowered the CPT price to Mexcio in those cases where it is above the test price.

Comment 8: Various respondents indicate that they should not be included in these inquiries because they had no related party connection to Mexico. Sanyo notes that it does not manufacture CPTs anywhere in the world and therefore must purchase all CPTs it uses from unrelated suppliers. Mitsubishi Electric, Mitsubishi Canada, Hitachi-Singapore, and Toshiba indicate that they did not supply any CPTs to any related CTV assembler in Mexico during the period of inquiry. As a result, all claim that they are inappropriate subjects of the inquiries.

Sanyo and Toshiba note that the petition confined itself to a description of circumvention occuring only between related parties. Sanyo and Toshiba state that the statute and the legislative history expressly require the Department to consider whether the parties are related, and Sanyo continues by arguing that the antidumping statute does not provide for the calculation of United States price (USP) when merchandise subject to an order is sold to an unrelated third party in an intermediate country. Further, Sanyo cites previous Department determinations in support of its contention that the absence of a relationship between buyer and seller constitutes a critical fact in determining whether circumvention exists.

Although petitioners concede that the presence of unrelated parties does not support affirmative circumvention determinations, they contend that respondents established cross-patterns of sales in order to avoid affirmative circumvention determinations. Thus, petitioners conclude that the Department could impose duties on the CPTs subject to the inquiries even though the CPT manufacturer and CTV assembler may be unrelated.

Department's Position: Petitioners' central allegation regarding these inquiries is that the dumping orders on CPTs are being circumvented by several multinational corporations. Allegedly, circumvention is being accomplished by an alteration of patterns of trade and increases in the volume of CPTs shipped to Mexico. These companies may be using related parties established in Mexico for this purpose, or may be engaged in transactions with unrelated parties, which could result in the frustration of the relief conferred by the orders on CPTs. Bearing in mind the many potential routes circumvention may take, the Department concluded that its analysis of the issues raised by petitioners required an examination of transactions made between unrelated parties.

Although petitioners did not originally allege circumvention by unrelated parties, we note that petitioners later supported the Department's view that two unrelated parties can circumvent an order, stating that "CTV producers in Mexico may purchase CPTs from related CPT producers in the covered countries, as well as from unrelated CPT producers covered by the order" (see petitioners' September 10, 1990 comments, page 2).

In addition, we note that the related-party factor is among the factors to consider, and is not a threshold condition. The Conference Committee report indicates that the House, which had a considered related parties to be a threshold matter, receded to the Senate, which did not (H.R. Conf. No. 576, 100th Cong., 2d Sess. (1988), at 600). Therefore, we consider the related-party factor a key, but not determinative, variable to be examined during the course of the inquiries.

The Department has considered the related-party factor as a critical element in its evaluation of circumvention in other cases. However, not ruling out analysis of information from unrelated parties at the outset of these inquiries does not indicate that the Department ignored this factor. Given that we could not determine in advance whether the fact pattern established during the inquiries would demand a finding of circumvention by related and/or unrelated parties, we were compelled to gather information from all potentially relevant parties.

Finally, we do not believe that USP, as routinely applied for the purposes of calculations for other parts of the statute, is relevant to these inquiries. The anti-circumvention provisions of the statute indicate that the Department is to evaluate the difference between the value of the product imported into the third country and the value of the merchandise imported into the United States, rather than make a traditional dumping USP and foreign market value comparison.

Comment 9: Several respondents provide information and argument designed to establish that the CTV production facilities they established in Mexico were not simple assembly or completion operations. Many respondents note that the level of investments made in Mexico, the physical size of the facilities, the technological sophistication of the production processes, and the number of employees all indicate that the purpose of the plants is the legitimate manufacture of CTVs. In addition, the two respondents state that plans for the establishment of the Mexican operations were approved before the antidumping investigations on CPTs were filed. As a result of these facts, these respondents argue that they are not circumventing the orders and are, instead, simply following sound business practice.

Department's Position: We did not consider these factors in this case because the threshold matters and factors explicitly outlined in the statute were by themselves dispositive of whether circumvention was occurring.

Comment 10: Sanyo contends that the percentage the Department used to determine "small" is inappropriate. Sanyo argues that the appropriate calcuation of "small" for these inquiries should measure the relationship of the

non-CPT value as compared to the value of the CPT. Therefore, it is Sanyo's contention that the proper denominator for the Department's "small" percentage calculation is the CPT value, rather than the CTV value.

Department's Position: The statute requires the Department to determine whether the difference between the value of the imported merchandise (CTV) and the value of the merchandise subject to the order (CPT) is small. The purpose of the calculation in this case is to determine the non-CPT value of the CTV. As the required comparator is the value of the product imported into the United States, the appropriate denominator is the value of the CTV.

Comment 11: Respondents claim that the pattern of trade and the results of the MPVT prove that they are not curcimventing the CPT orders.

Department's Position: Pattern of trade is not a threshold condition; it is only one of several factors which the Department considers when evaluating whether circumvention is occurring. In these inquiries, the overall pattern of trade showed a sharp decline in CPT shipments to the United States from countries covered by the CPT orders, concurrent with a sharp rise in CPT shipments to Mexico and CTV shipments from Mexico to the United States. This trade pattern was similar for most companies.

The MPVT does not measure circumvention. Rather, it tests the suitability of prices to Mexico for use in the difference in value calculation. The test only marginally influences the measurement of circumvention by setting a minimum price against which the price of the imported CPT is evaluated. If necessary, we adjusted the price of the imported CPT to the test price. It is the additional value added to the CPT, not CPT shipments to Mexico at prices above the test price, that determines whether the difference in value is small.

Comment 12: Mitsubishi Electric claims that it should not be included within the inquiry because its CPTs were sold to the United States, not Mexico.

Department's Position: Mitsubishi Electric was included in the inquiry because the Department discovered that its shipments to the United States were transshipped to Mexico for incorporation into CTVs by an unrelated party. As discussed earlier, the Department concluded that an examination of all parties in the trade route from a CPT covered by an order to a complete Mexican CTV sold in the United States was required in order to fully evaluate the allegations of circumvention.

Value Calculation

Based upon our analysis of the comments received, we have amended our value calculations. In addition, we have reevaluated the BIA rate for TECMA. Instead of using the lowest available "small" percentage as provided by petitioners, regardless of CPT screen size, we used a "small" percentage for a CPT screen size which more closely approximates that actual screen size imported into Mexico by TECMA. Accordingly, the new BIA "small" percentage rate, which also was based on information provided by petitioner, is 55 percent. The adjusted differences in value for each inquiry are as follows: 55 to 60 percent for the inquiry on Canada, 55 to 70 percent for the inquiry on Japan, 55 to 65 percent for the inquiry on the Republic of Korea, and 70 percent for the inquiry on Singapore. (Since the precise figures are business proprietary, each of the stated percentages is approximated within a range of plus or minus 10 percent.)

Negative Final Determination of Circumvention

After a full examination of the comments received, we determine that no circumvention of the antidumping duty orders is occurring. These negative determinations of circumvention are in accordance with 19 U.S.C. 1677j and 19 CFR 353.29.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5400 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Federal Republic of Germany; Final Results of an Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of an antidumping duty administrative review.

SUMMARY: On January 23, 1991, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as "industrial belts"), from the Federal Republic of Germany. The review covers shipments of this merchandise by one manufacturer/exporter, Volkmann GmbH ("Volkmann"), from the Federal Republic of Germany during the period beginning February 1, 1989 and ending May 31, 1990.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1991, the Department published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on industrial belts from the Federal Republic of Germany (56 FR 2500). We gave interested parties an opportunity to comment on the preliminary results of the administrative review. We received no comments. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of industrial belts from the Federal Republic of Germany. The Department defines such merchandise as industrial belts, other than V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loop) belts, or in belting in lengths or links. Until January 1, 1989, this merchandise was classifiable under item numbers 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520 of the Tariff Schedules of the United States, Annotated ("TSUSA"). Industrial belts are now classified under item numbers 3926.90.58 3926.90.57 3926.90.59 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 of the Harmonized Tariff Schedule ("HTS"). As was the case with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Final Results of the Review

Based on our analysis, the final results, unchanged from the preliminary results, are as follows:

Manufacturer/exporter	Time period	Margin (percent)
Volkman	02/01/89-05/31/90	100.60

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require a cash deposit of estimated antidumping duties based on the above margin for Volkmann. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after May 31, 1990, and which is unrelated to the reviewed firms or any previously investigated firm, the Customs Service will require a cash deposit of 100.60 percent *ad valorem*.

We have determined that the cash deposit rate applies to all entries from the former German Democratic Republic, entered or withdrawn from warehouse for consumption on or after October 3, 1990.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations [19 CFR 353.22].

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5401 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-804]

Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce has conducted two administrative reviews of the antidumping duty order on industrial phosphoric acid from Israel. The reviews cover two manufacturers/exporters of this merchandise to the United States and the periods April 20, 1987 through July 31, 1988, and August 1, 1988 through July 31, 1989. We preliminarily determine the dumping margins for Negev Phosphates to be zero for the first review period and 1.78 percent *ad valorem* for the second review period. Based on the best information available, we preliminarily determine the dumping margin for Haifa Chemicals to be 6.82 percent *ad valorem* for both periods. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1988 and August 7, 1989, the Department of Commerce (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (53 FR 29755 and 54 FR 32364) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987) for the April 20, 1987 through July 31, 1988 review (first review) and August 1, 1988 through July 31, 1989 (second review) review periods, respectively. FMC Corporation and Monsanto Company, the petitioners, requested administrative reviews covering the first review on August 30, 1988 and for the second review on August 24, 1989. We initiated the first review on September 27, 1988 (53 FR 37618) and the second review on September 20, 1989 (54 FR 38712). The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). These are the first administrative reviews of this order.

Scope of Review

Imports covered by these reviews are shipments of industrial phosphoric acid (IPA). Through 1988, such merchandise was classifiable under item number 416.30 of the Tariff Schedules of the United States (TSUS). These products are currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover two manufacturers/exporters to the United States of the subject merchandise, Negev Phosphates and Haifa Chemicals, and the periods April 20, 1988 through July 31, 1988, and August 1, 1988 through July 31, 1989. Because Haifa did not respond to the Department's questionnaires for either review, we used best information available for this firm.

United States Price

As provided in section 772(b) of the Tariff Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price sales based on the unpacked, C&F prices to unrelated purchasers in the United States. We made deductions, where applicable, for brokerage/handling, foreign inland freight, and ocean freight.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to related and unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, and differences in packing and credit expenses.

Preliminary Results of Review

To determine Haifa's dumping margin, we used best information available which is the dumping margin established in the investigation. In the case of Negev, we compared the United States price with foreign market value. As a result, we preliminarily determine the weighted-average margins to be:

Manufacturer/exporter	Time period	Margin (percent)
Negev	4/20/87-7/31/88	0
Haifa	4/20/87-7/31/88	6.82
Negev	8/1/88-7/31/89	1.78
Haifa	8/1/88-7/31/89	6.82

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred between August 1, 1988 and July 31, 1989, and who is unrelated to any reviewed firm, no cash deposit will be required. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1989 and who is unrelated to the reviewed firms or any previously reviewed firm, a cash deposit of 1.78 percent shall be required. These deposit requirements will be effective for all shipments of Israeli phosphoric acid entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.32.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assitant Secretary for Import Administration.

[FR Doc. 91-5350 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain From Japan; Preliminary Results of the Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary results of antidumping duty administration reviews.

SUMMARY: In response to a request by the American Chain Association ("ACA"), petitioner, the Department of Commerce ("Department") has conducted administrative reviews of the antidumping finding on roller chain, other than bicycle, from Japan. The reviews cover five exporters and the 1981/1982 and 1982/1983 periods. As a result of the reviews, the Department has preliminarily found dumping margins during both periods.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Linda L. Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, a dumping finding with respect to roller chain, other than bicycle, from Japan was published in the **Federal Register**, as Treasury Decision 73-100 (38 FR 9226). On August 12, 1985, the Department published in the **Federal Register**, (50 FR 32556) a notice outlining the procedures for requesting administrative reviews of this and other findings and orders covering periods between 1981 and 1983. We received timely requests from the petitioner and/or respondents concerned with the roller chain finding and initiated reviews on July 9, 1986 (51 FR 24883). The initiation notice included Pulton Chain Company, Incorporated ("Pulton Chain"), Pulton Chain/HIC, Pulton Chain/I&OC, Kaga Kogyo/APC, and Kaga Koken and the periods from 1981 to 1983. The periods covered by this notice of preliminary results are April 1, 1981 through March 31, 1982 and April 1, 1982 through March 30, 1983 for Pulton Chain, Pulton Chain/HIC, Pulton Chain/I&OC, and Kaga Kogyo/APC, and April 1, 1982 through November 30, 1983 for Kaga Koken.

As required by section 751 of the Tariff Act of 1930, as amended ("the Act"), the Department has now conducted these administrative reviews.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated (TSUSA) to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of roller chain, other than bicycle chain, from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pins in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be either used for power transmission or as conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. In 1981, roller chain, other than bicycle, was classified under TSUSA item numbers ranging from 652.1300 through 652.3800. This product is currently classified under HTS item numbers 7315.11.00 through 7315.12.00. These HTS categories are provided for convenience and customs purposes. The written description remains dispositive.

Preliminary Results of the Review

All of the respondents in these reviews failed to respond to the Department's questionaires, or failed or declined to respond to our supplemental questionnaires and deficiency letters. Kaga Koken never responded to the Department's original questionnaire. Pulton Chairs, Pulton Chain/HIC, and Pulton Chain/I&OC provided an inadequate questionnaire response originally, and then declined to respond to the supplemental questionnaire/deficiency letter or to participate further in the reviews. Kaga Kogyo/APC also provided an inadequate questionnaire response originally, but failed to respond to the Department's supplemental questionnaire/deficiency letter following a two-week extension. For those firms that did not respond, or declined to answer supplemental questionnaires, we have used the best information available to determine margins of dumping. In this case, the best information available was the highest rate for another manufacturer under review in these periods, 15.92 percent (52 FR 18004).

As a result of our reviews, we preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Pulton Chain	04/01/81-03/31/82	15.92
	04/01/82-03/31/83	15.92
Pulton Chain/HIC	04/01/81-03/31/82	15.92
	04/01/82-03/31/83	15.92
Pulton Chain/I&OC	04/01/81-03/31/82	15.92
	04/01/82-03/31/83	15.92
Kaga Kogyo/APC	04/01/81-03/31/82	15.92
	04/01/82-03/31/83	15.92
Kaga Koken	04/01/82-11/30/83	15.92

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate enteries. The Department will issue appraisement instructions directly to the Customs Service.

Given the interval between the periods of review covered by this notice and the actual conduct of these reviews, the dumping margins determined in this preliminary notice will have no impact on the current cash deposit rates. As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Pulton Chain, Pulton Chain/HIC, Pulton Chain/I&OC, Kaga Kogyo/APC, or Kaga Koken of estimated antidumping duties based on the final rates published for each firm's most recent administrative review period. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, and who is unrelated to any previously reviewed firms, a cash deposit of estimated antidumping duties, equal to the highest non-BIA rate for any firm with shipments during the most recent period, shall be required.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. The same parties may file rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, not later than 37 days after the date of publication. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5351 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico for the period January 1, 1989 through December 31, 1989. We preliminarily determine the net subsidy to be 0.48 percent *ad valorem* for CINSA, S.A., and 1.7 percent *ad valorem* for all other firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1989, the Department of Commerce (the Department) published a notice of "Opportunity To Request Administrative Review" (54 FR 52436) for the countervailing duty order on porcelain-on-steel cookingware from Mexico. On December 22, 1989, the respondents, CINSA, S.A., and Troqueles Y Esmaltes, S.A. (TRES), subsequently renamed Acero Porcelanizado, S.A. (APSA), requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1989, on February 16, 1990 (55 FR 5640). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the **Federal Register** on February 26, 1990 (55 FR 6686).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classified under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and nine programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans

available at preferential rates to Mexican manufacturers and exporters for two purposes: pre-export financing and export financing. Export loans are also available to U.S. importers. We consider benefits from these loans to U.S. importers as benefits to the corresponding Mexican exporters.

We consider both pre-export and export FOMEX loans to be export subsidies since these loans are given at preferential rates only on merchandise destined for export. We found that the annual interest rate that financial institutions charged borrowers for peso-denominated FOMEX pre-export financing outstanding during the period of review ranged from 39.0 to 54.7 percent. The annual interest rate for dollar-denominated pre-export and export FOMEX financing ranged from 7.0 to 11.7 percent during the review period.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the review period were obtained between November 1988 and October 1989. Since interest on FOMEX export loans is pre-paid, we calculated benefits from all FOMEX export loans received during the review period.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates in Mexico after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the average difference between the I.E. effective interest rates and the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, for the years 1981 through 1984. We added this average difference to the 1988 and 1989 CPP rates. In the last administrative review, we determined that a benchmark for peso-denominated loans calculated on a quarterly basis was more appropriate than an annual average 1988 benchmark because the CPP rates published monthly in the first quarter of 1988 were substantially higher than those during the remainder of 1988. Hence, we calculated an average monthly benchmark of 4.18 percent for pre-export peso-denominated loans received in the fourth quarter of 1988. For pre-export peso loans received in 1989, we calculated an average monthly benchmark of 4.36 percent.

To determine the effective interest rate benchmark for 1989 dollar loans, we used the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which resulted in an annual average benchmark of 11.99 percent in 1989.

The two known exporters of this merchandise, as well as their U.S. importers, used this program during the review period. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to shipments to the United States. We divided each firm's FOMEX benefit by the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each firm's proposition of exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.47 percent *ad valorem* for CINSA and 1.66 percent *ad valorem* for all other firms.

(2) FONEI

The Fund of Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term at below-market rates. FONEI loans are available under various provisons having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. The studies and counsel provision provides loans to finance studies of the international competitiveness of companies. We consider these FONEI loan provisions to confer a subsidy because they restrict loan benefits to enterprises located outside Zone IIIA.

One firm had a FONEI loan for an industrial mortgage outstanding during the review period. Another firm received a loan to evaluate its international competitiveness. Both were variable-rate and peso-denominated. We treated these variable-rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmarks as for the FOMEX peso-denominated pre-export loans and compared them with the preferential interest rates in effect for each FONEI loan payment made during the review period. We divided the benefits by each firm's total sales to all markets during the review period. We then weight-averaged the resulting benefit by each firm's proportion of exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be 0.01 percent *ad valorem* for CINSA and 0.02 percent *ad valorem* for all other firms.

(3) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the Diario Oficial on May 9, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, exporters with a proven export record may receive authorization to temporarily import products to be used in the production of exports for up to five years without having to pay the import duties normally imposed on those imports. PITEX allows for the exemption of import production: raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and other machinery. The importer must post a bond or other security to guarantee the reexportation of the imports.

One firm used the PITEX program during the review period, but only to import steel which was physically incorporated in its exports of the subject merchandise. The Department does not consider the nonexcessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incoporated in the exported products (making normal allowances for waste), to confer a countervailable benefit. Duty drawback is a practice acceptable under U.S. countervailing duty law and consistent with item (i) of the Illustrative List of Export Subsidies appended to the Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreements on Tariffs and Trade (Subsidies Code). Therefore, we preliminary determine the benefit from PITEX during the review period to be zero.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of the subject merchandise did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);

(B) Guarantee and Development Fund for Medium and Small Industries (FOGAIN);

(C) Bancomext preferential financing;

(D) Import duty reductions and exemptions;

(E) Article 15 loans; and

(F) State tax incentives.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.48 percent *ad valorem* for CINSA and 1.70 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from CINSA, and to assess countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from CINSA, and to collect a cash deposit of estimated countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the schedu'ed date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure or proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case of rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 26, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5349 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-003]

Ceramic Tile From Mexico; Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has conducted administrative reviews of the countervailing duty order on ceramic tile from Mexico. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms during the period January 1, 1988 through December 31, 1988. We also preliminarily determine the total bounty or grant to be 0.40 percent *ad valorem* for all firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 1989 and May 8, 1990, the Department of Commerce (the Department) published in the Federal Register notices of "Opportunity to Request Administrative Review" (54 FR 18918 and 55 FR 19093) of the countervailing duty order on ceramic tile from Mexico. During May 1988 and May 1990, several Mexican exporters, Ceramica Regiomontana, S.A., Industrias Intercontinental, S.A., Ceramicas y Pisos de Culican, S.A., Azulejos Orion, S.A., and the Government of Mexico, requested administrative reviews covering the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989. We initiated the reviews on June 21, 1989 (54 FR 26069) and July 6, 1990 (55 FR 27950), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the Federal Register on December 10, 1990 (55 FR 50744).

Scope of Review

Imports covered by these reviews are shipments of Mexican ceramic tile, including non-mosaic, glazed, and unglazed ceramic floor and wall tile. During the 1988 review period, such merchandise was classifiable under item numbers 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated (TSUSA). During the 1989 review period, this merchandise was classifiable under item numbers 6907.10.0000, 6907.90.0000, 6908.10.0000 and 6908.90.0000 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and 10 programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Ban of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two purposes: pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export.

For the 1988 review period, we found that the annual rate financial institutions charged borrowers for peso-denominated FOMEX pre-export loans payable during the period ranged from 37.00 to 130.00 percent; the annual interest rate for dollar-denominated FOMEX export loans payable ranged from 7.20 to 9.50 percent. For the 1989 review period, the annual interest rate on peso-denominated pre-export loans

payable ranged from 34.80 to 56.70 percent; the annual interest rate on dollar-denominated pre-export loans payable ranged from 10.30 to 12.00 percent, and for dollar-denominated export loans payable ranged from 9.10 to 10.70 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity, and those that matured during the 1988 review period were obtained between November 1987 and November 1988. FOMEX pre-export loans that matured during the 1989 review period were obtained between November 1988 and October 1989. Since interest on FOMEX export loans is pre-paid, we calculated benefits for each review period based on the FOMEX export loans received in that review period.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as the basis for our benchmark, we have relied in part on the rates for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the average difference between the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1987 and 1988 CPP rates for the 1988 review period. For pre-export peso loans obtained in 1987, we calculated an annual average benchmark of 8.53 percent per month. Because the CPP rates published monthly in the first quarter of 1988 were substantially higher than those during the remainder of 1988, we determine that a benchmark for peso-denominated loans calculated on a quarterly basis is more appropriate than an annual average. Hence, we calculated a benchmark of 11.08 percent per month for pre-export peso loans received in the first quarter of 1988, and 5.88 percent, 3.99 percent and 4.18 percent for those received in the second, third and fourth quarters, respectively.

For the 1989 review period, we added the average difference between CPP, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984 to the 1988 and 1989 CPP rates. In this way, we calculated an annual average benchmark of 4.36 percent per month for pre-export peso loans obtained in 1989. For pre-export peso loans received in 1988, we used the quarterly benchmark as calculated for the 1988 review period.

To determine the effective interest rate benchmark for dollar loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 10.53 percent in 1988 and 11.99 percent in 1989.

Four exporters of this merchandise used this program during the 1988 review period and three exporters used it during the 1989 review period. Because we found that the exporters were able to tie their FOMEX loans to exports to specific countries, we measured the benefit only from FOMEX loans tied to U.S. shipments. We divided each company's FOMEX benefit by the value of its total U.S. shipments during each review period. We than weight-averaged the resulting benefits by each company's proportion of total exports of the subject merchandise to the United States, excluding exports from firms with significantly different aggregate benefits, in accordance with 19 CFR 355.20(d). On this basis, we preliminarily determine the benefit to be 0.99 percent *ad valorem* from FOMEX pre-export loans during the 1988 review period, for all companies except those with zero or *de minimis* aggregate benefits. We also preliminarily determine the benefit for all companies to be 0.38 percent *ad valorem* from FOMEX pre-export loans and 0.02 percent *ad valorem* from FOMEX export loans during the 1989 review period.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to be small- and medium-size companies in Mexico. The interest rates available under the program vary depending on whether a small- or medium-size business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-size companies in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it to be countervailable.

During the 1988 and 1989 review periods, one company had a long-term variable-rate FOGAIN loan on which interest payments were due during both review periods. Because the interest rate was variable, we treated this loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for each loan payment made during each review period. We divided the benefit from the loan by the company's total sales to all markets and then weight-averaged the resulting benefit by the company's proportion of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program during both review periods to be significantly less then 0.01 percent *ad valorem*, which is effectively zero.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of ceramic tile did not use them during the 1988 and 1989 review periods:

(A) Certificates of Fiscal Promotion (CEPROFI);
(B) Article 15 loans;
(C) State tax incentives;
(D) NDP preferential discounts;
(E) Bancomext loans;
(F) Delay of payments on loans;
(G) Delay of payments to PEMEX of fuels charges;
(H) Import duty reductions and exemptions; and
(I) FONEI.

Firms Not Receiving Benefits

We preliminarily determine that the following 11 firms received zero or *de minimis* benefits during the 1988 review period:

(1) Azulejos Decorativos Carillo.
(2) Azulejos Orion.
(3) Ceramica Santa Julia.
(4) Eduardo S. Garcia de la Pena.
(5) Internacional de Ceramica.
(6) Jesus Garza Arocha.
(7) Ladrillera Monterrey.
(8) Pisos Coloniales de Mexico, S.A.
(9) Pisos de Barro.
(10) Reynold Martinez Chapa.
(11) Toefilo Covarrubias Villareal.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant during the period January 1, 1988 through December 31, 1988 to be zero or *de minimis* for 11 firms and 1.14 percent *ad valorem* for all other firms. In addition, we preliminarily determine the total bounty or grant during the period January 1, 1989 through December 31, 1989 to be 0.40 percent *ad valorem* for all firms. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from the 11 firms listed above and to assess countervailing duties of 1.14 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988. In addition, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from all firms exported on or after January 1, 1989 and on or before December 31, 1989.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from all firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protection order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case rebuttal brief or at a hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-5346 Filed 3-6-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Continuous Cast Steel Slabs

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain continuous cast steel slabs.

SHORT-SUPPLY REVIEW NUMBER: 39.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 63,000 net tons of certain continuous cast steel slabs for the second quarter of 1991 under Article 8 of the U.S.-Brazil and U.S.-EC steel arrangements and Paragraph 8 of the U.S.-Mexico steel arrangement.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kathy McNamara or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-1390 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On January 29, 1991, the Secretary received an adequate short-supply petition from Oregon Steel mills ("OSM") requesting a short-supply allowance for 106,000 net tons of certain continuous cast steel slabs for the second quarter of 1991 under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, and Paragraph 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products and Paragraph 8 of the Arrangement Between the Government of Mexico and the Government of the United States Concerning Trade in Certain Steel Products. OSM alleges that it will experience a supply shortfall for this product in the second quarter of 1991 because it has recently obtained several 1991 contracts for large pipeline projects, which will more than double its slab requirements from 1990. OSM states that it has limitations on the quantity of this material it can supply from its Portland, Oregon facility, and that domestic producers either have no available capacity or are unable to meet OSM's specifications. OSM also states that it will be able to purchase some quantity of slabs under regular export licenses, but must obtain the remainder of the tonnage needed under a short-supply allowance. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material meets the following specifications:

Dimensions:
Gauge: 200 mm–230 mm [1]
Width: 1700 mm–1800 mm
Length: 7300 mm–7620 mm

Tolerances:
Gauge: ± 4 mm
Width: ± 10 mm
Length: ± 50 mm
Camber: 0.67% max.
Crossbow: 10 mm max.
Squareness: 90 ± 3

Chemical Composition:
C—0.07% to 0.11%
MN—1.35% to 1.55%
P—0.015% max.
S—0.007% max.[2]
Si—0.15% to 0.30%
Cb—0.025% to 0.050%
V—0.020% max.
Ti—0.005% max.
Al—0.020 to 0.050%
Cu—0.25% max.
Ni—0.15% max.
Cr—0.15% max.
Mo—0.05% max.
Sn—0.008% max.
Ca—[3]
N—0.008% max.
Al/N ratio > 4.0

ACTION: On January 29, 1991 the Secretary established an official record on this short-supply request (Case Number 39) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. A notice of this short-supply review and request for comments was published in the **Federal Register** on February 4, 1991, and all comments from interested parties concerning the review were due no later than February 11, 1991. Replies to those comments were to be filed no later than February 15, 1991.

QUESTIONNAIRES: Questionnaires were sent to 15 companies, as follows: Armco Inc. (Armco), Bethlehem Steel Co. (Bethlehem), Citisteel USA, Inc. (Citisteel), Geneva Steel Company (Geneva), Gulf States Steel (Gulf States),

[1] Oregon Steel prefers slabs ranging from 200 mm–230 mm in gauge, but can roll slabs ranging up to 260 mm.

[2] Prefer 0.002% maximum sulfur.

[3] Liquid steel to be calcium treated for inclusion shape control.

Inland Steel Industries (Inland), LTV Steel Company (LTV), Lukens Steel Company (Lukens), McLouth Steel (McLouth), National Steel Corporation (National), Rouge Steel Company (Rouge), Sharon Steel Company (Sharon), USX Corporation (USX), Wheeling-Pittsburgh Steel Corporation (Wheeling-Pittsburgh) and Weirton Steel Corporation (Weirton). Adequate questionnaire responses were received from 7 of the 15 potential suppliers. Five of the seven companies which responded to the questionnaire (Gulf States, Inland, McLouth, Rouge, and Weirton) were not able to produce slabs meeting the specifications requested. National indicated that it could supply 5,000 net tons per month of slabs which differ slightly from OSM's specifications. Bethlehem indicated it could supply at least 30,000 net tons of slabs meeting OSM's exact specifications starting in the second quarter of 1991.

ANALYSIS: National has offered to supply 5,000 net tons per month (or 15,000 net tons for the quarter) of slabs that meet OSM's specifications, with the exceptions of thickness (National can provide slabs 241 mm in thickness) and possible internal quality "allowances." OSM has requested slabs in the 200–230 mm range, but concedes it is able to roll slabs up to 280 mm in thickness. In fact, OSM has, in the past year, purchased substantial quantities of these slabs in widths exceeding 230 mm. Therefore, OSM's thickness specification is not based upon physical limitations of the mill, but represents a preference for a product which optimizes the efficiency of its production facility. Although OSM does not address the internal quality "allowances" suggested by National, OSM does state that if National would commit to deliver the same product OSM is currently purchasing, OSM would buy this amount from National and that its short-supply request could be reduced by this amount. As OSM agrees that it would purchase this quantity from National, the Secretary is deducting this quantity from OSM's reported shortfall.

Bethlehem has offered to supply at least 30,000 net tons of these slabs in the second quarter. With respect to this offer, OSM has raised questions concerning Bethlehem's ability to meet its specifications, although OSM does not identify how Bethlehem slabs might vary from its specifications. OSM has also questioned Bethlehem's willingness to supply slabs at a price that is not an aberration from prevailing domestic market prices.

With regard to specifications, Bethlehem certified in its questionnaire response that it currently produces slabs completely meeting OSM's specifications. In fact, Bethlehem produces plate that can be used to produce X–70 pipe at its own facilities. While questioning Bethlehem's ability to produce these slabs, OSM has not stated for the record how Bethlehem's slabs fail to meet OSM' specifications. In view of Bethlehem's stated ability to produce these slabs, the fact that Bethlehem can produce plate for X–70 pipe in the U.S., and OSM's failure to identify what potential specification variations might exist in Bethlehem's slabs, the Secretary must conclude that Bethlehem is capable of producing the slabs OSM requires.

With respect to price, OSM has stated that Bethlehem's price is 13 to 20 percent over the market price. In determining prevailing domestic market prices, the Secretary is directed to look at current prices in the United States market for both domestically produced and imported products, as reflected in actual purchases and sales.

The Secretary requested that OSM provide some information on how it established its estimate of the prevailing domestic market price for the requested slabs. OSM provided no information in this regard. Instead, OSM has provided a copy of correspondence dated May 24, 1990, containing a price quote. Despite the fact that OSM has in the first quarter of 1991 purchased at least a trial order of slabs from Bethlehem, OSM has not provided updated information on Bethlehem's current price. Similarly, OSM has provided no information on the price of slabs purchased from National or any other suppliers in the first quarter of 1991. Therefore, the Secretary has no basis upon which to conclude that Bethlehem's quoted price represents an aberration from prevailing domestic prices. Therefore, Bethlehem must be considered a *bona fide* supplier of these slabs for OSM, and the tonnage offered by Bethlehem deducted from OSM's expected shortfall.

Accordingly, OSM's second quarter short supply can be determined as follows:

	Net tons
Expected second quarter shortfall (at time of request)	108,000
Less additional supplies:	
National	15,000
Bethlehem	30,000
Total second quarter short supply	63,000

CONCLUSION: Pursuant to section 4(b)(4)(A) of the Act, and section 357.102 of Commerce's Short-Supply Procedures, the Secretary grants OSM's request for a short-supply allowance of 63,000 net tons of certain continuous cast steel slabs for the second quarter of 1991. This quantity represents the difference between material OSM has sought in its short-supply request for the second quarter of 1991 and acceptable material offered by domestic mills for this period.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–5403 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Determination; Certain Alloy Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain alloy steel plate.

SHORT-SUPPLY REVIEW NUMBER: 41.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 475 metric tons of certain alloy steel plate for January 1991–March 1992 under the U.S.-Japan steel arrangement.

EFFECTIVE DATE: February 22, 1991.

FOR FURTHER INFORMATION CONTACT: Marissa A. Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377–0165 or (202) 377–0159.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Secretary received an adequate petition from U.S. Metalsource, requesting a short-supply allowance for 475 metric tons of NAK 55 plate for January 1991–March 1992 under paragraph 8 of the Arrangement Between Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. U.S. Metalsource requested short supply because this product is not produced in the United States and because its Japanese supplier has insufficient available quota of this product to its needs.

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested material, meets the following specifications:

Chemical Composition, Typical

C	Mn	S	Si	Cu	Ni	Al
0.15	1.50	0.10	0.30	1.00	3.00	1.00

NAK 55 is initially air melted to restrictive clean steel standards and then Vacuum Arc Remelted to obtain the level of internal soundness and cleanliness necessary. The ingots are then hot rolled or forged to the billet, plate, or bar sizes.

Thermal Treatment

NAK 55 is solution treated and age hardened to obtain the desired mechanical properties and hardness.

Mechanical Properties, Typical

Tensile Strength—183 ksi
Yield Strength—147 ksi
Reduction of Area—38%
Elongation in 2 inches—15%
Hardness—40 HRC

Size Ranges

Thickness: 0.0625 inch to 4.00 inches
Widths: 15 inches to 35 inches

Polishability

NAK 55 can be readily polished to a uniform mirror finish.

weldability

Using prescribed welding procedure and welding rods, NAK 55 can be readily weld repaired. The welded component can then be re-aged to obtain the same properties and characteristics in the weld region as in the parent with no distortion.

On February 8, 1991, the Secretary established an official record on this short-supply request (Case Number 41) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) Commerce's Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately proceding years or(3) the requested steel product is not produced in the United States. The Secretary finds that the requested product is not produced in the United States. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures.

Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than February 22, 1991. On February 14, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than February 21, 1991. No comments were received.

Conclusion

Since the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 475 metric tons of the requested alloy steel plate for January 1991–March 1992 under the U.S.-Japan steel arrangement.

Eric I. Garfinkle,

Assistant Secretary for Import Administration.

[FR Doc. 91–5352 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–559–802]

Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From Singapore; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on antifriction bearing (other than tapered roller bearings) and parts thereof from Singapore. We preliminarily determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand and zero for all other companies for the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 3.03 percent *ad valorem* for all other companies for the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 7, 1991.

FOR FURTHER INFORMATION CONTACT: William Marsteller or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5260.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 19093) of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). On May 31, 1990, Torrington Company, the petitioner, requested an administrative review of the order. We initiated the review, covering the periods September 6, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, on July 6, 1990 (55 FR 27859). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). This is the first administrative review since the publication of the order.

Scope of Review

Imports covered by this review are shipments of antifriction bearings (other than tapered roller bearings) and parts thereof.

Such merchandise is described in detail in appendix A to this notice. The Tariff Schedules of the United States Annotated and the Harmonized Tariff Schedule item numbers listed in appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the periods September 6, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and twelve programs. Three related companies participated in the review: NMB Singapore Ltd. (NMB), Pelmec Industries

(Pte.) Ltd. (Pelmec), and Minebea Co., Ltd. Singapore Branch (MSB).

Analysis of Programs

(1) Production for Export under Part VI of the Economic Expansion Incentives Act (EEIA)

Under part VI of the EEIA, 90 percent of a qualifying company's incremental export profit above a predetermined base figure is exempt from corporate income tax. The base figure is the average of the company's export profits for the three years preceding the application for participation in the program. The base figure and ten percent of any incremental export profit are taxed at the normal corporate tax rate. If there is no export profit above the export profit base, no exemption is permitted. The exemption cannot be carried forward or back. An exporting company qualifies for the exemption if its export sales of a product (or products) are at least 100,000 Singapore dollars ($S) and a minimum of 20 percent of the value of its total sales of the product.

We verified that NMB claimed an exemption under this program on its tax return filed during the 1989 review period. We calculated the benefit to NMB under this program by obtaining the difference between what NMB paid in corporate income tax during the review period, and what it would have paid absent the exemption. We then determined the portion of the benefit attributable to NMB's exports of the subject merchandise to the United States (9.03 percent). Since NMB, Pelmec and MSB are related companies, we divided the benefit by their total value of exports of the subject merchandise to the United States to derive a single rate for the three companies (3.03 percent). We included in the value of exports MSB's and Minebea Japan's (a related Japanese trading company) net mark-up on NMB and Pelmec exports of the subject merchandise to the United States because countervailing duties are assessed on the f.o.b. invoice price of the subject merchandise entering the United States.

Sundstrand Pacific (Pte.) Ltd. (Sundstrand) was also an exporter of the subject merchandise during the review period, but did not respond to our questionnaire. Consequently, as best information available (BIA) for Sundstrand, we used the individual company benefit calculated for NMB in this review (9.03 percent) which was the highest for any company in the review period. On this basis, we preliminarily determine the benefit from this program to be 9.03 percent *ad valorem* for Sundstrand and zero for all other companies for their period September 6, 1988 through December 31, 1988, and 9.03 percent *ad valorem* for Sundstrand and 3.03 percent *ad valorem* for all other companies for the period January 1, 1989 through December 31, 1989.

(2) Monetary Authority of Singapore (MAS) Rediscount Facility

The MAS rediscounting scheme is intended to provide Singapore exporters with access to short-term financing by discounting export and pre-export bills of exchange. Companies apply for this program through approved banks. The bank discounts the exporters' bills at a rediscount rate established by the MAS, plus a maximum spread of 1.5 percent. The loans are typically for three months.

NMB, Pelmec and MSB did not use this program during the review period. However, as BIA for Sundstrand, we used the benefit of 0.06 percent *ad valorem* calculated for this program in Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore (54 FR 19127; May 3, 1989). Therefore, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem* for Sundstrand and zero for all other companies for the period September 6, 1988 through December 31, 1988, and 0.06 percent *ad valorem* for Sundstrand and zero for all other companies for the period January 1, 1989 through December 31, 1989.

(3) Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use them during the review periods:

A. Tax Incentives under the EEIA
- Part IV: Expansion of Established Enterprises
- Part VII: International Trade Incentives
- Part VIII: Foreign Loans for Productive Equipment
- Part XI: Warehousing and Servicing Incentives

B. Income Tax Act Incentives
- Double Deduction of Export Promotion Expenses—Sections 14B and 14C
- Double Deduction for Research and Development—Sections 14E
- Write-Offs of Payments for "Know-How", Patents and Manufacturing Licenses—Section 19B

C. Programs Administered by the Economic Development Board
- Capital Assistance Scheme
- Productive Development Assistance Schems
- Initiatives in New Technology Program

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand and zero for all other companies for the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 3.03 percent *ad valorem* for all other companies for the period January 1, 1989 through December 31, 1989.

Section 707 of the Tariff Act provides that the difference between the amount of a cash deposit, or the amount of any bond or security, for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is lower than the duty determined under the order, which was published in May 3, 1989. The rate in our preliminary determination (53 FR 34329; September 6, 1988) was 4.95 percent *ad valorem* for Sundstrand and 2.01 percent *ad valorem* for all other companies.

In accordance with section 705(a)(1) of the Tariff Act, the final determination in this case was extended to coincide with the final antidumping determination on the same products from Singapore. Because, pursuant to article 5, paragraph 3 of the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade (the Subsidies Code), we cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order, we terminated the suspension of liquidation of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 4, 1990. We reinstated the suspension of liquidation and required the collection of cash deposits of estimated countervailing duties for the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1989, the date of publication of the countervailing duty order.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 4.95 percent of the f.o.b. invoice price on all shipments from Sundstrand of the subject merchandise and to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption, on or after September 6, 1988 and on or before January 3, 1989. Entries or withdrawals made on or after January 4, 1989 and on or before May 2, 1989 are not subject to countervailing duties. Further, the Department will instruct the Customs Service to assess countervailing duties of 9.11 percent of the f.o.b. invoice price on all shipments from Sundstrand of the subject merchandise and 3.03 percent on all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after May 3, 1989 and exported on or before December 31, 1989.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 9.11 percent of the f.o.b. invoice price on all shipments from Sundstrand of the subject merchandise and 3.03 percent of the f.o.b. invoice price on shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. During 1988, imports of these products were classifiable under the following categories: antifriction balls (Tariff Schedules of the United States Annotated (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA items are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: antifrictional rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0450); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA items 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Spherical plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to the review; all other products entering under these TSUSA items are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) They have been heat treated, or (2) heat

BEST COPY AVAILABLE

treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[FR Doc. 91-5402 Filed 3-6-91; 8:45 am]
BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Bakersfield, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the Bakersfield, California Geographic Service Area.

The I.D. number for this project will be 09-10-91015-01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50.00 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 18, 1991. Applications must be postmarked on or before April 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is:

Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308-3516, 404/730-3300.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. March 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MBDA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 1, 1991

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-5345 Filed 3-6-91; 8:45 am]
BILLING CODE 3510-21-M

Business Development Center Applications: Santa Barbara, CA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to the availability of funds. The cost of performance for the first 12 months is $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MDBC will operate in the Santa Barbara, California Geographic Service Area.

The I.D. number for this project will be 09-10-91016-01.

The funding instrument for the MDBC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MDBC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MDBA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: (Selection Process/ Procedures as required by DAO 203-26, Grants Administration) the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MDBA will be made by the Director based on a determination of the application most likely to further the purposes of the MDBC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MDBCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MDBCs. Based on a standard rate of $50.00 per hour, MDBCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MDBC may continue to operate, after the initial competitive year, for up to 2 additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MDBA based on such factors as an MDBC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 18, 1991. Applications must be postmarked on or before April 18, 1991.

Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission is:

Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 401 West Peachtree Street NW., suite 1930, Atlanta, Georgia 30308-3516, 404/730-3300.

A pre-application conference to assist all interested applicants will be held at the following address and time:

Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, March 28, 1991 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744-3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL, "Disclosure of Lobbying Activities" (if applicable), is required.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and, procedures applicable to Federal assistance awards.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Funding Authority for MDBA Awards: Executive Order 11625.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: March 1, 1991.

Xavier Mena,

Regional Director, San Francisco Regional Office.

[FR Doc. 91-5346 Filed 3-6-91; 8:45 am]
BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA announces the approval of Amendment 5 to the Pacific Coast Groundfish Fishery Management Plan. Amendment 5 establishes an operational definition of overfishing and is intended to conform with changes in NOAA's Guidelines for Fishery Management Plans, which provide specific guidance for implementing the magnuson Fishery Conservation and Management Act (Magnuson Act). No rulemaking is involved with this action.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 213–514–6199, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on January 4, 1982; implementing regulations were published in the **Federal Register** on October 5, 1982 (47 FR 43962). Since then, the FMP has been amended four times, with implementing regulations at 50 CFR parts 611, 620, and 663.

The guidelines to the national Standards attendant to the Magunson Act (50 CFR part 602) were revised in 1989 (54 FR 30826, July 24, 1989) to require the Regional Fishery Management Councils to amend all fishery management plans to include definitions of overfishing for their respective fisheries. The definition is intended to provide an objective and measurable standard for determining whether any species or stock under management has been overfished such that corrective action must be taken to control fishing mortality.

Amendment 5 establishes a definition of overfishing that will be applied in the Pacific coast groundfish fishery off Washington, Oregon, and California, consistent with the approving criteria at 50 CFR 602.11(c)(5). The overfishing definition is an upper limit to the fishing mortality rate rather than a threshold biomass. Specifically, the Council defined overfishing as exceeding the fishing mortality rate that would reduce spawning biomass per recruit to 20 percent of its unfished level, F(20 percent). When spawning biomass is greater than that which produces the maximum sustainable yield (MSY), the overfishing rate equals the greater of F(20 percent) or the rate that would, in one year, reduce the spawning biomass to the level that produces MSY. This definition is to be used as an upper limit or constraint to fishing and not as a targeted optimal harvest policy. It is linked to the same productivity assumptions used for determining levels of acceptable biological catch (ABC). Therefore, an objective evaluation of overfishing is feasible for the predominant species and species groups in the Pacific coast groundfish fishery.

The Council submitted Amendment 5 to the Secretary on November 23, 1990. The Secretary published a Notice of Availability in the **Federal Register** (55 FR 50574, December 7, 1990) announcing a public comment period until December 26, 1991. No comments were received.

Classification

Amendment 5 has no direct regulatory impacts. Because Amendment 5 has no implementing regulations, determinations under the Regulatory Flexibility Act and Executive Order 12291 are not required. The Paperwork Reduction Act does not apply since neither an information collection nor a recordkeeping requirement is included in the amendment.

The Council determined that the amendment would be implemented in a manner that is consistent to the maximum extend practicable with the approved coastal zone managment programs of the States of Washington, Oregon, and California. Letters were sent to the three states requesting their review and comment. Only the State of Oregon responded, agreeing with the consistency determination. Therefore, concurrrence from the States of Washington and California is inferred.

Amendment 5 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

An environmental assessment prepared by the Council concluded that this amendment would not significantly affect the quality of the human environment. The Assistant Administrator for Fisheries, NOAA has made a finding of no significant impact under the National Environmental Policy Act.

The Secretary approved this Amendment on March 1, 1991, and determined it is consistent with the Magunson Act and other applicable law. Therefore, NOAA issues this notice announcing approval of Amendment 5 to the FMP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–5320 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–22–M

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of an amendment to a fishery management plan.

SUMMARY: NOAA issues this notice that amendment 1 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) has been approved. Amendment 1, which defines overfishing in compliance with national standards 1 and 2 of the Magnuson Fishery Conservation and Management Act (Magnuson Act), was submitted by the Western Pacific Fishery Management Council (Council) for Secretarial review on November 23, 1990. No rulemaking is involved with this action.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Southwest Region, (213) 514-6660, or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831.

SUPPLEMENTARY INFORMATION: A notice of availability of Amendment 1 was published in the **Federal Register** on December 10, 1990 (55 FR 50755), and comments were invited until January 28, 1991.

The guidelines to the national standards attendant to the Magnuson Act (50 CFR part 602) were revised in 1989 (54 FR 30826, July 24, 1989) to require the Regional Fishery Management Councils to amend all fishery management plans to include definitions of overfishing for their respective fisheries. The definition is intended to provide an objective and measurable standard for determining whether any species or stock under management has been overfished such that corrective action must be taken to control fishing mortality.

With regard to the pelagic management unit species of the western Pacific, the Council defined overfishing (i.e., recruitment overfishing) for bill fishes, mahimahi, and wahoo as the point where their spawning potential ratio (SPR) is equal to or less than 0.2. A pelagic shark species is considered overfished when its SPR is equal to or less than 0.35. SPR, which may be estimated in several ways depending on the quality of available statistics, is a measure of the current reproductive capacity of the stock relative to its unexploited capacity, and is inversely proportional to fishing mortality. Thus, SPR ranges from 1.0 before exploitation to 0.0 with increasing fishing mortality. Amendment 1 also revises the objectives of the FMP and definition of Optimum Yield (OY) to bring them into accord with the overfishing definition.

No comments on the amendment were received.

The definition of overfishing, and the measures to implement the definition, have been determined to meet the criteria of the national standards guidelines.

Classification

The Director, Southwest Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the pelagic fisheries and is consistent with the Magnuson Act and other applicable law.

The Council included an environmental assessment (EA) in Amendment 1. The Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant impact to the human environment resulting from this amendment.

Because the amendment requires no implementing regulations, 5 U.S.C. 553, E.O. 12291, and the Regulatory Flexibility Act do not apply.

There will be no impact on marine mammals or endangered species.

Amendment 1 does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments of Hawaii, American Samoa, and Guam and has requested concurrence with this determination. The government of American Samoa has concurred with this determination. The governments of Hawaii and Guam did not respond; therefore, concurrence is inferred.

Amendment 1 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 1, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91–5321 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–22–M

[P77#40]

Marine Mammals; Permit Modification Request; Southwest Fisheries Science Center, NMFS

Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service has requested a modification of Permit No. 707, issued on May 31, 1990 (55 FR 23268), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

The Permit authorizes the taking of up to 680 Hawaiian Monk seals (*Monachus schauinslandi*) in the following manner: 300 weaned and immature pups up to 3 years of age may be captured for weighing, measuring, and release at Kure Atoll, Laysan Island, French Frigate Shoals; five (5) recently weaned female pups may be captured in the summer of 1990 at French Frigate Shoals, relocated and released at Kure Atoll; eight (8) adult males may be captured, blood sampled, flipper tagged and released at Kure Atoll; 80 male and female nursing pups may be bleached marked at Laysan, 1990–91; and 275 juvenile and sub-adults of both sexes at any Northwest Hawaiian Islands site, and adult males at Midway only, may be flipper tagged during 1990–92. In addition, two (2) 4–5 year old females may be taken in 1990–91 from the French Frigate Shoals by live capture for permanent maintenance. Stranded seals are appropriate if they are of suitable age. One non-releasable 4-year-old female originally collected as an underdeveloped pup and temporarily maintained under Permit No. 657 would be converted to this permit.

The Permit Holder is requesting authorization to temporary bleach mark 150 of the 300 Hawaiian monk seals already authorized for take by weighing, measuring and release. It is also requested that Pearl and Hermes Reef be added to the authorized locations of take.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

The modification request and associated documents are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7451 (213/514–6196); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396 (808/955–8831).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–5391 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–22–M

[P77 No. 47]

National Marine Fisheries Service, Marine Mammals; Application for Permit; National Marine Mammal Laboratory, NMFS

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Howard Braham, Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 09115.

2. *Type of Permit:* Scientific research.

3. *Name and Number of Marine Mammals:* California sea lions (*Zalophus californianus*) 2,145.

4. *Type of Take:* The applicant proposes to take by remote mark/tag, capture, tag, handle, mark and release 2,125 California sea lions to obtain information on population status, trends, health, behavior, ecology, and feeding habits. In addition, up to 20 rehabilitated captive adult or sub-adult sea lions will be used to evaluate taste aversion agents as a possible management tool to mitigate interaction with commercial fisheries.

5. *Location and Duration of Activity:* Activities will occur at all times of year in California and during October through May in Puget Sound, Washington, over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427–2289).

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 90731 (206/526–6150).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–5392 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–22–M

[F77#48]

Marine Mammals; Application for Permit: Southwest Fisheries Science Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544) and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

1. *Applicant:* Dr. Izadore Barrett, Regional Science and Research Director, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, California 92038.

2. *Type of Permit:* Scientific Research and to Enhance the Propagation or Survival of a Species.

3. *Name and Number of Marine Mammals:* Thirty-five (35) Hawaiian monk seals (*Monachus schauinslandi*).

4. *Type of Take:* The applicant proposes to conduct an array of activities on monk seals which includes attaching radio transmitters, injecting a testosterone suppressing drug, sampling blood and attaching a time-depth recorder. Firstly, the study is intended to temporarily reduce serum testosterone levels in a portion of the adult male population at Laysan Island. By reducing testosterone in subordinate males, the applicants hope to reduce sexual behavior of seals that are denied access to females by dominant males. Secondly, the study proposes to collect information on the foraging patterns of adult male monk seals by using time-depth records.

5. *Location and Duration of Activity:* Take will occur at Laysan Island, Hawaii from March through May 1991 and 1992.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289).

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808/955–8831).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–5393 Filed 3–6–91; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Technical Advisory Group for Cigarette Fire Safety; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: The Technical Advisory Group for Cigarette Fire Safety will meet on March 21, 1991, in Washington, DC. The purpose of the meeting is to discuss recent research on cigarette ignition propensity; plans for a cigarette fire incident study; and administrative and operational plans for implementation of the Fire Safe Cigarette Act of 1990.

DATES: The meeting will be from 10 a.m. to 5 p.m. on March 21, 1991.

ADDRESSES: The meeting will be in room 729G, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Fire Safe Cigarette Act of 1990 (FSCA) (Pub. L. 101–352, 104 Stat. 405) directs the Commission, with assistance from the National Institute for Standards and Technology (NIST) and the Department of Health and Human Services to conduct research concerning the feasibility of a performance standard to address the propensity of cigarettes to act as an ignition source. The FSCA also establishes an advisory committee, the Technical Advisory Group for Cigarette Fire Safety, to advise and work with the Commission and NIST in the implementation of that act.

The Technical Advisory Group for Cigarette Fire Safety will meet on March 21, 1991, to discuss recent research on cigarette ignition propensity; plans for a cigarette fire incident study; and administrative and operational plans for implementation of the FSCA.

The meeting will be open to observation by members of the public, but only members of the Technical Advisory Group for Cigarette Fire Safety may participate in the discussion. Persons who desire to submit written statements or questions for consideration by the Technical Advisory Group, before or after the meeting, should address them to the Technical Advisory Group for Cigarette Fire Safety, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: February 28, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 5306 Filed 3–6–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement and Feasibility Report for the Upper Guadalupe River Flood Control Study, San Jose, Santa Clara County, CA

AGENCY: U.S. Army Corps of Engineers, San Francisco District, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Corps of Engineers, San Francisco District, initiated in December 1990, a feasibility study of providing flood-control measures for portions of highly unrbanized floodplain along the Guadalupe river in the City of San Jose, California. The main objecive of the study will be to investigate the flooding problems in the area referred to as the Upper Guadalupe River, which extends approximately five miles south of Interstate Highway 280 near downtown San Jose. An array of potential solutions to the flooding problems will be developed and evaluated for environmental quality and economc feasibility, which will allow a determination whether Federal participation is justified in implementing one or more of the identified solutions. The study results will be published in a feasibility report integrated with an environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Stradford is the study manager and can answer questions about the feasibility study or environmental impact statement. Mr. Stradford can be reached by telephone, FTS 484–3345 or commercial (415) 744–3345, or written to at the Environmental Branch, U.S. Army Corps of Engineers, San Francisco District, 211 Main Street, San Francisco, California 94105–1905.

SUPPLEMENTARY INFORMATION:

1. Authority and Previous Reports

a. The Chief of Engineers authorized flood-control of the Guadalupe River in 1945 as a result of preliminary investigations which were carried out under the direction of the Chief of Engineers pursuant to Section 4 of the Food Control Act of 1941.

b. During the next four decades, several reports were issued by the Corps of Engineers on the results of various flood-control investigations in the Guadalupe River basin. A 1985 feasibility report led to a federally authorized flood-control project in downtown San Jose.

c. The Upper Guadalupe River area was the focus of a reconnaissance study in 1988. A reconnaissance report was released in November 1989, which indicated that there were flood control measues lkely to be economically justified and environmentally acceptable.

2. Proposed Action and Alternative Plans

a. The proposal involves analysis of the flood problems within the study area and development of flood control alternatives that would reduce the severity of the problems or eliminate them totally. The study would ultimately result in the recommendation of a flood-control plan that is in accordance with policies and budgetary priorities applicable at the time, is in compliance with environmental laws and statutes, and has the support of the public and the non-Federal sponsor (Santa Clara Valley Water District). The preliminary flood control plans to be considered during the feasibility study are described below:

b. No Action Plan: A no action plan would result in continued periodic flood damages to residential and business properties located in the floodplain through the lack of flood control facilities along the Guadalupe River.

c. Alternative Plan A: Plan A consists of widening the existing stream channel to increase its hydraulic capacity. The channel widening, predominantly on the east side of the river, would involve excavating the upper portion of the streambank and creating a bench adjacent to the streambed. The excavated bench would probably remain unlined to provide planting areas for fish and wildlife mitigation. The channel widening would impact vehicluar bridges at five street crossings and two railroad bridges. The five vehicular bridges would be replaced, while the railroad bridges would require box culverts under the tracks. Two tributaries to the Guadalupe River would experience backwater conditions as a result of increased water-surface elevations under certain channel designs.

d. Alternative Plan B: Plan B consists of creating a bypass channel and widening of a portion of the existing stream channel to increase the river's hydraulic capacity. The high-flow bypass channel would be excavated immediately east of the existing stream channel, allowing the creation of planting areas for fish and wildlife mitigation between the two channels. The bypass channel may require gabion-lined side slopes and a rock-lined bottom, and would involve new vehicluar bridges at three street crossings and two new railroad bridges. The channel widening, located upstream of the bypass channel, would be the same as the widening design in Plan A. Two vehicular bridges would be replaced in the section of widened channel.

3. Corps of Enginers Scoping Process

The National Environmental Policy Act, as amended, requires a scoping process (40 CFR 1501.7): . . . an "early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." A public participation program is an important part of the scoping process and ensures that public needs and concerns are integrated into the environmental impact statement. Governmental agencies, public and private interest groups, and the public are invited to participate in the scoping process.

a. The Corps' Feasibility Study will include concurrently held public workshops and scoping meetings at three different locations in San Jose, California on the following dates:

(1) March 21, 1991, 7:30 p.m. at Gardner School, 502 Illinois Avenue,
(2) March 27, 1991, 7:30 p.m. at Schallenberger School, 1280 Koch Lane,
(3) April 10, 1991, 7:30 p.m. at Terrell School, 3925 Pearl Avenue.

Each of the three workshops/meetings will focus on different geographical areas along the Guadalupe River between Highway 280 and Blossom Hill Road.

b. Written comments regarding the

scope of significant issues to be addressed, or inquiries about the workshops/meetings, may be forwarded to:

U.S. Army Corps of Engineers, Environmental Branch, Attn: Richard Stradford, 211 Main Street, San Francisco, CA 94105-1905.

Written comments should be received no later than 45 days after the date that this Notice of Intent is published in the Federal Register.

c. The Corps has to date identified the following significant issues which will be analyzed in-depth during the feasibility study:

(1) Population displacement and socio-economic impacts
(2) Loss of fish and wildlife resources and habitat
(3) Effects on cultural resources
(4) Changes in water quality
(5) Modification of hydrologic conditions
(6) Discharge of fill material
(7) Removal of riparian vegetation
(8) Future recreational use.

d. Environmental review and other consultation requirements applicable to preparation of the subject environmental impact statement (EIS) include:

(1) National Environmental Policy Act, as amended
(2) Clean Air Act, as amended
(3) Clean Water Act, as amended
(4) National Historic Preservation Act, as amended
(5) Executive Order 11593—Protection and Enhancement of the Cultural Environment
(6) Fish and Wildlife Coordination Act
(7) Endangered Species Act, as amended
(8) Executive Order 11988—Flood Plain Management
(9) Wild and Scenic Rivers Act
(10) Chief of Engineers Wetland Policy
(11) Executive Order 11990—Protection of Wetlands.

Other applicable Federal statutes or regulations, as well as city, county and state plans and ordinances, will be addressed during preparation of the subject EIS.

4. Availability of Report

A draft feasibility report and environmental impact statement is currently scheduled to be completed on or before March 28, 1994. An announcement of the report availability will be mailed to parties on the study's mailing list. To be added to the mailing list, contact the study manager whose name is provided earlier in this notice. Copies of the report for public review will be available from the San Francisco District, Corps of Engineers, for 45 days following the completion date.

Stanely G. Phernambucq,
Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-5366 Filed 3-6-91; 8:45 am]
BILLING CODE 3710-FS-M

Department of the Army

Patent Licenses, Gemini; U.S. Army Troop Support Command, DOD

ACTION: Notice of prospective partially exclusive licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(i), announcement is made of prospective partially exclusive licenses of a cushioning mat for use as portable bedding.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Rosenkrans, U.S. Army Natick RD&E Center, ATTN: STRNC-AS, Kansas Street, Natick, MA 01760-5015, (508) 651-5296.

SUPPLEMENTARY INFORMATION: The cushioning mat for use as portable bedding was invented by R. Masadi (U.S. Patent Number 4,868,940, issued September 26, 1989). Rights to this invention are owned by the U.S. Government as represented by the U.S. Army Natick RD&E Center (Natick RD&E Center). Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of title 35, U.S. Code, the Department of the Army as represented by Natick RD&E Center intends to grant partially exclusive licenses on the cushioning mat for use as portable bedding to Gemini Laminating Corp., 35 Balch Street, Bldg. K, P.O. Box 398, Beverly, MA 01915, and Foam Design, Inc., P.O. Box 12178, 444 Transport Court, Lexington, KY 40581.

Pursuant to 37 CFR 404.7(a)(1)(i), any interested party may file written objections to these prospective partially exclusive license arrangements. Written objections should be directed to: Mr. Richard Donahue, Office of Chief Counsel, U.S. Army Natick RD&E Center, ATTN: STRNC-ZSL, Kansas Street, Natick, MA 01760-5035. Written objections must be filed within 60 days from the date of the publication of this notice in the Federal Register.

Kenneth L. Denton,
Alternative Army Federal Register, Liaison Officer.

[FR Doc. 91-5367 Filed 3-6-91; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Clearance No. 9000-0076]

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of OMB request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an amendment of a currently approved information collection requirement concerning 9000-0076, Novation/Change of Name Requirements.

DATES: Comments are invited on or before May 6, 1991.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, Office of Federal Acquisition Policy, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government. This amendment specifically revises FAR 42.1205(a)(3), by making the documentation currently listed in subparagraphs (iii) and (iv); i.e., total dollar value as amended and remaining unpaid balance, information that the contractor need only submit if requested by the contracting officer.

Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 1,000; *responses per respondent,* 1; *total annual responses,* 1,000; *hours per response,* .458; and *total annual burden hours,* 458. A reduction of 42 burden hours.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0076, Novation/Change of Name Requirements—an amendment concerning a proposed rule.

Dated: February 27, 1991.
Beverly Fayson,
FAR Secretariat.

[FR Doc. 91-5370 Filed 3-6-91; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 8, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: March 1, 1991.
Mary P. Liggett,
Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.
Title: Instructions for Performance Status Report—Magnet Schools Assistance Program.
Frequency: Semi-annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 108.
Burden Hours: 324.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: These reports are used to assess grantees' eligibility for continuation awards; to monitor performance, and for program planning. The Department uses this information to make grant awards.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Application for Grants Under the Library Literacy Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 600.
Burden Hours: 10,200.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational Agencies to apply for funds under the Library Literacy Program. The Department uses this information to make grant awards.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Survey Instrument for "An Analysis of Title VII State Education Agency Grant Reporting Requirement".
Frequency: One-time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 51.
Burden Hours: 68.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will assess the quality, completeness, and usefulness of data currently collected by State Educational Agencies (SEA) under title VII of the Bilingual Education Act, as amended. The Department will use this information to develop policy and requirements on future SEA reporting.

Office of Postsecondary Education

Type of Review: Extension.
Title: Lender's Application for Payment of Insurance Claim.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Non-profit institutions.
Reporting Burden:
Responses; 18,500.
Burden Hours: 2775.
Recordkeeping:
Recordkeepers: 9250.
Burden Hours: 1110.
Abstract: This form will be used by lenders to request payment of a claim under the Federal Insured Student Loan Program. The Department uses the information to match disbursement data for claim payment validation, to calculate the claim payment amount, and to provide the basis used in the collection of defaulted loans.

[FR Doc. 91-5312 Filed 3-6-91; 8:45 am]
BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed Clean Power Cogeneration, Inc., Project

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of the proposed Air-Blown Integrated Gasification Combined Cycle (IGCC) Power Plant at the Arvah B. Hopkins Station, Tallahassee, Florida, and to conduct a public scoping meeting.

SUMMARY: DOE announces its intent to prepare an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the proposed construction and operation of a project proposed by Clean Power Cogeneration, Inc. (CPC) in Florida. The proposed project involves the construction and

operation of a new coal-fired 120-megawatt electric (MWe) (1,270 tons-per-day) air-blown IGCC power plant near Tallahassee, Florida. CPC is an independent power producer which would sell the produced electricity to the City of Tallahassee.

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA guidelines (52 FR 47662, December 15, 1987). The purpose of this Notice is to invite public participation in the process that DOE will follow to comply with NEPA and to solicit public comments on the proposed scope and content of the EIS.

INVITATION TO COMMENT AND DATES: To ensure that the full range of issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by April 8, 1991. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time for the scoping meeting are provided in the section of this Notice entitled SCOPING MEETING. Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Mr. Bruce J. Buvinger at the address noted below.

ADDRESSES: Written comments or suggestions on the scope of the EIS requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Bruce J. Buvinger, Environmental Specialist D04, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, WV 26505, telephone: (304) 291–4379. Envelopes should be labeled "Scoping for CPC EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, tel. (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Background and Need for the Proposed Action

Under terms of Public Law No. 100–446, Congress provided approximately $575 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following things in common: (1) all are intended to increase the use of coal in an environmentally acceptable manner and (2) all are ready to be proven at the demonstration level.

On May 1, 1989, DOE issued Program Opportunity Notice (PON) Number DE–PS01–89FE61825 for Round III of the CCT program, soliciting proposals to conduct cost-shared projects to demonstrate innovative, energy efficient, technologies that are capable of being commercialized in the 1990s. These technologies must be capable of (1) achieving significant reductions in the emissions of sulfur dioxide and/or the oxides of nitrogen from existing facilities to minimize environmental impacts such as transboundary and interstate pollution and/or (2) providing for future energy needs in an environmentally acceptable manner. The PON provided that candidate technologies must be capable of either retrofitting or repowering existing facilities. Such existing facilities currently may be designed to use any fuel (e.g., coal, oil, gas, etc.) and may be either stationary (e.g., power plants) or mobile (e.g., transportation applications). the demonstration projects, however, can be at new facilities provided the technology is capable of retrofitting or repowering applications. In response to the solicitation, 48 proposals were received. Thirteen projects were selected by DOE for negotiation in December 1989, including the CPC Air-Blown IGCC Power Plant Project.

CPC has requested financial assistance from DOE for the design, construction, and operation of a 1,270 tons-per-day (120 MWe) air-blown IGCC demonstration plant. The proposed project site is in Leon County, Florida, at the city of Tallahassee's Arvah B. Hopkins power plant located about 7½ miles west of Tallahassee. This location would be the site also of the "Hopkins Circulating Fluidized Bed (CFB) Repowering Project" that has been proposed by the City of Tallahassee. Discussion of cumulative impacts is provided below in the section entitled Identification of Environmental Issues. The CPC demonstration project would be fueled with high-sulfur eastern bituminous coal to produce both electric power for the utility grid and steam for a nearby industrial user. Cost, environmental, and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 24-month demonstration period of operation is concluded, CPC intends to continue project operation on a commercial basis.

Proposed Action

The proposed Federal action is for DOE to provide cost-shared financial assistance to Clean Power Cogeneration, Inc., for the construction and operation of the Air-Blown IGCC Project. The objective of the project is to demonstrate the feasibility of integrating commercially available subsystems, including a gasifier, gas turbine, steam boiler/turbine, and a cleanup system, to produce power in an efficient, economical, and environmentally sound manner. The work to be performed under the Cooperative Agreement between CPC and DOE would include the design, construction, and operation of the demonstration project. The total cost of the project scope to be shared by the Government is estimated at $242 million, with DOE's share being approximately 50 percent of the total, or $121 million. The project would last approximately 60 months, including design, construction, and demonstration; CPC's goal is for construction to commence in July 1992. However, construction is not permitted to proceed until the environmental review process has been completed. Operation of the project during the anticipated 24-month demonstration period would provide the information and experience needed for future applications and commercialization of the Air-Blown IGCC technology. Once DOE's involvement is completed, CPC intends to continue operating the project on a commercial basis.

The existing 2-unit Hopkins power plant is located on a 230-acre site in Leon County, approximately 7½ miles (12 km) west of the city of Tallahassee and approximately 1 mile north of the community of Norfleet. The site is located atop a low east-west trending ridge in a area of low rolling terrain that once was shoreline sand dunes. The elevation differences in the area are small. Higher elevations tend to have sandy soil and are generally well drained, while lowland areas may be seasonally wet and/or subject to occasional flooding. The terrain supports various vegetation communities, depending on the elevation and soil type. Much of the surrounding area is forested with mature stands of deciduous and coniferous trees. The site property is bordered to the north and south by two small stream channels. the area around the site is primarily rural land, with some low density residential development approximately one mile east and south of the plant. A main branch of the seaboard Coast Line Railroad borders the site on the northeast.

The CPC IGCC Project would occupy about 10 percent of the existing 230-acre site owned by the city of Tallahassee, and would include the following facilities:

- A handling system to receive, store, crush, and convey coal.
- Lined and diked coal storage areas.
- Two fixed bed coal gasifiers.
- A combustion turbine compatible with both natural gas and low Btu coal gas.
- A steam turbine.
- A hot gas cleanup system.
- Heat recovery steam generator with oxides of nitrogen control.
- Sodium-based sulfur recovery system.
- High efficiency cyclones and a baghouse to collect particulates.
- A stack to handle exhaust gases produced by the coal combustion.
- A silo for ash storage and disposal.

Alternatives

Under its authority to Public Law No. 100–446, DOE is presented with only two alternatives: (1) to cooperatively fund the proposed project; and (2) to decline to fund it (the "no action" alternative). In the latter case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies. The facility probably would not be constructed and operated; therefore, potential environmental impacts resulting from the project would not occur.

DOE acknowledges the obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the CPC IGCC Demonstration Project.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) the "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Identification of Environmental Issues

The following issues associated with the construction and operation of the proposed CPC IGCC Project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Socioeconomics: Potential bearing on communities that might be affected by the project.

(4) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project.

(5) Solid Waste: The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(6) Biological Resources: Potential disburbance or destruction of species, including the potential effects on threatened or endangered species of flora and fauna.

(7) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(8) Cumulative Impacts: NEPA requires that the EIS evaluate the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

DOE is presently engaged in the preparation of an EIS for another proposed CCT project that would be located at the Arvah B. Hopkins site, i.e., the "Hopkins Circulating Fluidized Bed (CFB) Repowering Project" that has been proposed by the City of Tallahassee. This project was selected on June 23, 1989, as an outcome of PON Number DE–PS01–89FE60966 for Round I of the CCT program, and involves the repowering of the existing Hopkins Unit 2 nominal 250–MWe natural gas-fired or oil-fired boiler with a coal-fired atmospheric CFB boiler to provide steam to an existing turbine generator. A Notice of Intent to Prepare an EIS and Conduct a Public Scoping Meeting for the Proposed Hopkins CFB Repowering Project was published in the **Federal Register** on October 15, 1990 (55 FR 41747), and a public scoping meeting was held in Tallahassee, Florida, on October 30, 1990.

DOE's decision to proceed with either the proposed Hopkins CFB Repowering Project or the proposed Clean Power IGCC Project is independent of its decision regarding the other project, i.e., there is no interdependency or nexus in the course of development of DOE's Records of Decision for the two projects. However, because the two projects would be in close physical proximity to one another, each EIS will address the potential for cumulative impacts that could occur were both of the proposed projects to be funded by DOE as presently proposed.

Issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

NEPA and the Scoping Process

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508) and DOE's Guidelines for Compliance with the National Environmental Policy Act (52 FR 47662, December 15, 1987).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE's NEPA Guidelines require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail, or comments presented orally or in writing

at a public scoping meeting (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of an EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar subjects that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent.

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives or organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE.

The meeting is scheduled as follows:
Date: Wednesday, March 27, 1991.
Time: 7:00 p.m.
Place: Radisson Hotel, 415 North Monroe Street, Tallahassee, Florida 32301.

A complete transcript of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following location: Holland and Knight, Attorneys, Suite 600, 315 South Calhoon Street, Tallahassee, Florida 32302.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Bruce J. Buvinger, Environmental Specialist, Morgantown Energy Technology Center, at the address given in the Invitation to Comment and Dates section of this Notice.

Signed in Washington, DC, this 1st day of March 1991, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-5396 Filed 3-6-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10624-000 Michigan]

French Paper Co.; Availability of Environmental Assessment

Issued February 28, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Constructed French Paper Company Hydroelectric Project located on the St. Joseph River in Berrien County, in Niles, Michigan, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing environmental impacts of the project and has concluded that approval of the existing project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5330 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-87-000]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

February 28, 1991

Take notice that ANR Pipeline Company ("ANR"), on February 28, 1991, tendered for filing as part of its FERC Gas Tariff, Original Volume No 1, the following tariff sheet to be effective May 1, 1991.

Fortieth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement a Revised Request for Interim Waiver of Tariff and Regulations and to place into effect a Sales Demand Conversion Surcharge to recover from ANR's firm sales customers, as purchased gas costs, the transportation reservation charges that ANR is currently incurring relative to conversion from sales to transportation service on Northern Natural Gas Company, one of its interstate pipeline suppliers.

ANR states that Fortieth Revised Sheet No. 18 reflects a Sales Demand Conversion Surcharge of $0.152 to the D-1 demand rate of ANR's CD-1 and MC-1 Rate Schedules, a surcharge of $.0152 per dekatherm ("dth") to the commodity rate of Rate Schedule SGS-1, and a surcharge of $.0050 per dth to the commodity rate of Rate Schedule OS-1.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5334 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-39-004 and RP90-53-002]

ANR Pipeline Company; Report of Refunds

February 28, 1991.

Take notice that ANR Pipeline Company (ANR) on February 4, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Reports of Refunds, made pursuant to the Commission's January 3, 1991, letter order issued in Docket Nos. RP89-39-003 and RP90-53-001. The reports summarize refund amounts made to High Island Offshore System (HIOS) for service at the Grand Chenier facility under ANR's Rate Schedule X-64 for 1989 and 1990.

Any person desiring to protest said filings should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of these filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5335 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-48-000]

ANR Pipeline Co., Proposed Changes in FERC Gas Tariff

February 28, 1991.

Take notice that ANR Pipeline Company ("ANR"), on February 26, 1991, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to be effective May 1, 1991.

Thirty-Ninth Revised Sheet No. 18

ANR states that the purpose of the instant filing is to implement its Annual PGA rate adjustment pursuant to Section 15 of the General Terms and Conditions of ANR's Tariff.

Thirty-Ninth Revised Sheet No. 18 reflects an $0.3900 per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1/MC-1 Rate Schedules, an increase of $0.151 in the monthly D-1 demand rate and a reduction of $0.0135 in the D-2 demand rate applicable to the CD-1/MC-1 Rate Schedules. The instant filing further reflects a decrease in ANR's one-part rate applicable to Rate Schedule SGS-1 of $0.4158 per dth.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 Commission's Rules and Regulations. All such motions or protests should be filed on or before March 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-5337 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-37-002]

Change in FERC Gas Tariff, Northwest Pipeline Corporation

February 28, 1991.

Take notice that on February 25, 1991 Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance to be a part of its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Sixth Revised Sheet No. 10
Substitute Alternate Sixth Revised Sheet No. 10
Substitute Sixth Revised Sheet No. 11
Substitute Alternate Sixth Revised Sheet No. 11

The purpose of this filing is to repaginate the above tariff sheets to be consistent with the effective dates issued by the Commission in Docket Nos. RP91-86 and TQ91-3-37. Northwest has requested an effective date of April 1, 1991 for the tendered sheets.

Northwest states that a copy of this filing is being served on each person designated in the official service list and upon all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5339 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-86-000]

Bayou Interstate Pipeline System; Petition for Extension of Time To File New Base Tariff Rates Pursuant to 154.303(e)

February 28, 1991

Take notice that on February 25, 1991, Bayou Interstate Pipeline System (Bayou) filed a petition for a 120-day extension of time for complying with the requirements of 154.303(e) of the Commission's Regulations which

requires interstate pipelines electing PGA clauses to file for the establishment of new base tariffs 36 months after the effective date of previously approved tariff rates.

Bayou states that the request for extension of time is being sought due to a pending abandonment application in Docket No. CP90-2282-000 wherein Bayou is seeking abandonment authority for its certificated facilities and will commence to wind up all of its activities and cease to be a "natural gas company" as defined in the Natural Gas Act. If such abandonment authority is granted in the near future there would be no further requirement under 154.303(e).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5331 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-015]

National Fuel Gas Supply Corporation

February 28, 1991.

Take notice that on February 22, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 5, 1990:

Substitute Original Sheet No. 33
Alternate Substitute Sheet No. 33
Original Sheet No. 33A
Substitute Original Sheet No. 34
Substitute Original Sheet No. 41
Alternate Substitute Sheet No. 41
Original Sheet No. 41A
Substitute Original Sheet No. 43
Substitute Original Sheet No. 71
Substitute Original Sheet No. 72

National states that its filing is made in compliance with the Commission's Order Clarifying Prior Order and Denying Reconsideration of February 7, 1991, in the above-captioned proceeding. This order required National to file tariff revisions concerning the number of firm receipt points and extensions and renewals of service.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file on a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for pubic inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5336 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-86-004]

Northwest Pipeline Corporation; Proposed Change in FERC Gas Tariff

February 28, 1991.

Take notice that on February 19, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance Second Revised Sheet No. 15, to be a part of its FERC Gas Tariff, Second Revised Volume No. 1.

The propose of this filing is to repaginate the above sheet, pursuant to a conversation with FERC Staff. Northwest states that a copy of this filing is being mailed to Northwest's jurisdictional customers list and affected state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell

Secretary

[FR Doc. 91-5332 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-86-005 and TQ91-3-37-001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

February 28, 1991.

Take notice that on February 25, 1991 Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance to be a part of its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Fourth Revised Sheet No. 10
First Revised Fifth Revised Sheet No. 10
First Revised Fourth Revised Sheet No. 11
First Revised Fifth Revised Sheet No. 11
Substitute First Revised First Revised Sheet No. 13

The purpose of this filing is to repaginate the above tariff sheets to be consistent with the effective dates approved by the Commission in letter orders issued in these dockets. Northwest has requested the effective dates previously approved by the Commission.

Northwest states that a copy of this filing is being served on the parties in the above docket numbers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5333 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-192-003]

Texas Gas Transmission Corporation; Tariff Filing

February 28, 1991.

Take notice that on February 25, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 2-A:

First Revised Sheet No. 23
First Revised Sheet No. 24

These tariff sheets are being filed in compliance with Ordering Paragraph B of the Commission's January 24, 1991, "Order on Rehearing" in Docket No. RP90-192, *et al.*, whereby Texas Gas was directed to modify Section 1.4 of its FT Rate Schedule (renumbered as section 1.5 in its previous compliance filing) to remove language concerning changes in delivery points. Therefore, the instant filing removes section 1.5 in its entirety.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and all parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 7, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5338 Filed 3-6-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3912-2]

Region VII; Announcement of Action Taken Under the PSD Regulation: IA

Notice is hereby given that the Environmental Protection Agency (EPA) Region VII office has taken the following action under the federal Prevention of Significant Deterioration of air quality (PSD) regulation, 40 CFR part 52 (specifically, 40 CFR 52.21).

The following PSD permit was revised through rescission of previously-imposed requirements:

Davenport Cement Company (DCC) near Buffalo, Iowa. On March 27, 1979, the EPA issued a PSD permit for the proposed installation of a dry-process Portland cement kiln. The dry-process kiln replaced a wet-process Portland cement operation.

Paragraph 40 CFR 52.21(w) of the currently-applicable regulation allows for a rescission of a PSD permit, or of particular portions of a PSD permit, issued under an earlier version of the regulation, if the owner/operator demonstrates that the current regulation would not apply to the source or modification. The regulation was significantly revised by the EPA on August 7, 1980. The regulation that existed prior to the 1980 revision did not allow for the consideration of creditable, contemporaneous emission reductions for purposes of PSD applicability decisions. The post-1980 regulation allows for said consideration.

In conjunction with the creditable emission reduction that was achieved through the elimination of the wet-process operation, DCC has demonstrated that the kiln replacement project will not cause a significant *net* emissions increase of SO_2 from the source if the dry-process kiln is operated in compliance with special restrictions established by the Iowa Department of Natural Resources in a letter to DCC dated August 17, 1990. EPA determined that the decrease in emissions from the old kiln operations and the increase in emissions from the new kiln have approximately the same qualitative significance for public health and welfare.

The DCC has made the above-mentioned demonstration with regard to SO_2 emissions; however, DCC has not made the required demonstrations with regard to NO_x emissions. As such, the EPA rescinded only the SO_2-related provisions of the permit. All other provisions of the permit, as modified, remain in effect. Date of the Rescission Action: December 17, 1990.

Under 307(b)(1) of the Clean Air Act (the Act), judicial review of the above action is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within sixty (60) days from the date of publication of today's notice. Under 307(b) (2) of the Act, any requirements associated with the above action may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements. The above determinations do not relieve the applicable source of its responsibilities under other Federal, state, and local regulations.

For the above action, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit. A petition for review must be filed on or before May 6, 1991.

Copies of the above action and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Toxic Division, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Ms. JoAnn M. Heiman, Chief, Air Compliance Section, Air Branch, Air and Toxic Division, or Dan Rodriguez at (913) 551-7020 (FTS: 276-7020) of the EPA, Region VII, office.

Dated: February 27, 1991.

Martha R. Steincamp,

Acting Regional Administrator.

[FR Doc. 91-5387 Filed 3-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3911-6]

ECAO-RTP-0556; Manganese/MMT Conference

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: Concurrent symposia on health effects and exposure issues related to manganese and methylcyclopentadienyl manganese tricarbonyl (MMT) are to be held as part of a Manganese/MMT Conference sponsored by the U.S. Environmental Protection Agency (EPA) and the National Institute of Environmental Health Sciences (NIEHS). The Health Effects Symposium will be held at the NIEHS South Campus Auditorium and the Exposure Symposium will be held at the Governor's Inn, both of which are located in Research Triangle Park, North Carolina. Following the Symposia on the first day, groups of experts will stay on

to participate in a series of workshop sessions that will focus on identifying research needed to improve databases for manganese/MMT exposure, effects, and risk issues.

DATES: The Conference will begin on March 12, 1991. The Health Effects Symposium is to be held from approximately 8:30 a.m. to 5 p.m., with registration commencing at 8:30 a.m. at the NIEHS Auditorium. The Exposure Symposium will be conducted separately at the Governor's Inn from approximately 12:30 p.m. to 5 p.m. on March 12. Members of the public are welcome to attend these Symposia.

On subsequent days (March 13–15), invited participants will discuss manganese/MMT-related research issues in small workgroups dealing with scientific disciplines pertaining to (1) Health effects, (2) atmospheric exposure, and (3) surface/groundwater exposure and aquatic effects.

FOR FURTHER INFORMATION CONTACT: Dr. J. Michael Davis, U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, North Carolina 27711, telephone (919) 541–4162 or (FTS) 629–4162.

Members of the public wishing to attend the Manganese/MMT Health or Exposure Symposia should contact Dr. J. Michael Davis at the address noted above. Anyone wishing to observe the workgroups or make a statement before them should communicate their interests to Dr. Davis in advance of the meeting.

SUPPLEMENTARY INFORMATION: Interest has been growing within the United States regarding the possible use of methylcyclopentadienyl manganese tricarbonyl (MMT) as a fuel additive. In evaluating the potential risks and benefits of this agent, the U.S. EPA found substantial information gaps and uncertainties related to exposure parameters and the health and environmental effects of manganese and MMT. A primary purpose of the Manganese/MMT Health Effects Symposium is to help provide for the dissemination of the latest information available on the potential health effects of manganese and MMT from researchers in appropriate fields. In addition, both the Health Effects and Exposure Symposia will help highlight research issues of likely importance for a quantitative assessment of the potential risks and benefits of MMT.

Topics to be addressed in the Health Effects Symposium are expected to include neurobehavioral effects, pharmacokinetics, dietary interactions, reproductive/developmental effects, and mechanisms of manganese toxicity. The Exposure Symposium will focus especially on modeling of human exposure to manganese in the atmosphere. Also to be covered under the Exposure Symposium are modeling of surface and groundwater transport and fate of MMT and associated environmental effects.

The workshops to be held on subsequent days will have invited participants discuss specific research issues and needs within specialized scientific areas. One workgroup will be devoted to health effects research issues, with specialties of neurotoxicology, pharmacokinetics, reproductive and developmental toxicology, pulmonary toxicology, and epidemiology represented. Another workgroup will concurrently deal with issues related to modeling human exposures to manganese from MMT combustion. In addition, the environmental effects of MMT itself will be considered by a third group, primarily with regard to the effects of MMT leaks and spills on surface and groundwater. A major purpose of these workshops is to provide information to EPA, NIEHS, and other interested organizations on research needed to reduce uncertainties in quantitatively assessing the potential risks and benefits of MMT.

Dated: February 28, 1991.

Erich W. Bretthauer,

Assistant Administrator for Research Development.

[FR Doc. 91–5385 Filed 3–6–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3912–1]

Public Water Supply Supervision Program; Program Revision for the State of Arizona

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of decision and opportunity for hearing.

SUMMARY: Notice is hereby given that the State of Arizona is revising its approved State Public Water Supply Supervision Program. Arizona has adopted (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 at (52 FR 25690) and corrected on July 1, 1988 at (53 FR 25108); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 at (52 FR 41534). EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program Revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by April 8, 1991, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective April 8, 1991.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, at the following offices: Rule Development Section, Department of Environmental Quality, 2005 North Central Avenue, Phoenix, Arizona 85004; and Water Supply Section, EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

FOR FURTHER INFORMATION CONTACT: Marvin W.H. Young, EPA Region IX, at the San Francisco address given above; telephone (415) 744–1857 or (FTS) 484–1857.

Authority: Sec. 1413 of the Safe Drinking Water Act as amended [1986]; and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: February 25, 1991.

Harry Seraydarian,

Acting Regional Administrator.

[FR Doc. 91–5386 Filed 3–6–91; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before April 22, 1991. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2220, 1801 L Street NW., Washington, DC 20507; telephone: (202) 663–4279.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; telephone: (202) 395–7316.

Type of Request: New collection.

Title: Americans with Disabilities Act: Technical Assistance Questionnaire.

Form Number: EEOC form.

Frequency of Report: One time.

Type of Respondent: Private organizations.

Standard Industrial Classification (SIC) Code: N/A.

Description of Affected Public: Private organizations providing resources and services that aid employment of individuals with disabilities.

Responses: 200.

Reporting Hours: 200.

Federal Cost: $1,130.

Applicable under section 3504(h) of Public Law 96–511: Not applicable.

Number of Forms: 1.

Abstract-Needs/Users: The information obtained by EEOC from the Technical Assistance Questionnaire will be made available to the public in a Technical Assistance Manual and through technical assistance provided by the Commission. The information will assist employers in voluntarily complying with the nondiscrimination requirements of Title I of the Americans with Disabilities Act of 1990, Public Law 101–336. It will also aid individuals with disabilities in locating services, resources, and assistive technology to aid their employment opportunity.

Dated: March 3, 1991.

For the Commission.

R. Edison Elkins,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 91–5388 Filed 3–6–91; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Kloster Cruise Limited (d/b/a/ Norwegian Cruise Line and Royal Viking Line), 95 Merrick Way, Coral Gables, FL 33134.

Vessel: Westward.

Dated: March 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5310 Filed 3–6–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Kloster Cruise Limited (d/b/a Norwegian Cruise Line and Royal Viking Line), 95 Merrick Way, Coral Gables, FL 33134.

Vessel: Westward.

Dated: March 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5311 Filed 3–6–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Heartland Bancorp, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 28, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Heartland Bancorp, Sioux Center, Iowa, to become a bank holding company by acquiring 100 percent of the voting shares of Pender State Corporation, Pender, Nebraska, and thereby indirectly acquire 82.4 percent of the voting shares of Pender State Bank, Pender, Nebraska, and 94.36

percent of First Sioux Bancshares, Sioux Center, Iowa, and thereby indirectly acquire 100 percent of the voting shares of First National Bank of Sioux Center, Sioux Center, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Bank Group, Inc., Brinkley, Arkansas; to acquire 94.5 percent of the voting shares of First National Bank, Bentonville, Arkansas.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. CTB Financial Corporation, Choudrant, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Community Trust Bank, Choudrant, Louisiana.

Board of Governors of the Federal Reserve System, March 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5357 Filed 3-6-91; 8:45 am]

BILLING CODE 6210-01-F

Mary Jane Reardon Living Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 28, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Mary Jane Reardon Living Trust, Sioux Falls, South Dakota; to acquire 34.35 percent of the voting shares of First Western Corporation, Sioux Falls, South Dakota, and thereby indirectly acquire Western Bank, Sioux Falls, South Dakota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Mark Alan Workman, Lubbock, Texas; to acquire an additional 22.39 percent of the voting shares for a total of 23.53 percent; and David Don Workman, Shallowater, Texas, to acquire an additional 22.39 percent of the voting shares for a total of 23.53 percent of the voting shares of Caprock Bancshares, Inc., Shallowater, Texas, and thereby indirectly acquire First State Bank, Shallowater, Texas.

Board of Governors of the Federal Reserve System, March 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5358 Filed 3-6-91; 8:45 am]

BILLING CODE 6210-01-F

The Fuji Bank, Limited, Tokyo, Japan; Application to Engage de novo in Leasing Activities

The Fuji Bank, Limited, Tokyo, Japan ("Fuji"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo*, directly or indirectly, through its existing subsidiary, Heller Financial, Inc., Chicago, Illinois ("Heller"), in certain leasing activities involving the leasing of personal property, and/or acting as agent, broker, or advisor in leasing such property, pursuant to the Board's Regulation Y (12 CFR 225.25(b)(5)). These activities will be conducted throughout the United States and in foreign countries.

In this application, Fuji proposes to expand its leasing activities to include leasing transactions that comply with all of the conditions of Regulation Y except as set out below. Fuji is requesting the Board's prior approval to engage in leasing transactions the terms of which will allow Heller to rely for its compensation on the estimated residual value of the property at the expiration of the initial term of the lease up to 100 percent of the acquisition cost of the property ("higher residual value leasing"). Fuji has stated that it will limit such leases with estimated residual values in excess of 25 percent of acquisition cost to no more than 10 percent of Fuji's total worldwide consolidated assets. Fuji will also limit leases with estimated residual values in excess of 70 percent of acquisition cost to no more than the lesser of (i) 0.5 percent of Fuji's total worldwide consolidated assets, or (ii) 10 percent of Fuji's total consolidated shareholders' equity. Regulation Y currently limits residual value reliance to no more than 20 percent of the acquisition cost of the property to the lessor. 12 CFR 225.25(b)(5)(iv)(C).

Fuji has committed to conform Heller's leasing activities to any future Board rulemaking regarding leasing.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that higher residual value leasing is closely related to banking for purposes of section 4(c)(8). *The Dai-Ichi Kangyo Bank, Limited*, 76 Federal Reserve Bulletin 980 (1990); *Security Pacific Corporation*, 76 Federal Reserve Bulletin 462 (1990).

In determining whether an activity meets the second, or proper incident to banking test of Section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Fuji contends that Heller's conduct of the proposed activities will result in significant public benefits that will outweigh possible adverse effects. Fuji states that such public benefits will take the form of increased competition in the leasing industry and improved services to leasing customers.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 28, 1991.

Board of Governors of the Federal Reserve System, March 1, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5359 Filed 3-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

DEPARTMENT OF ENERGY

Memorandum of Understanding Between the Department of Energy and the Department of Health and Human Services

AGENCY: Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Secretary, Department of Energy (DOE) and the Secretary, Department of Health and Human Services (HHS), signed a Memorandum of Understanding (MOU), on December 24, 1990. This MOU sets forth the guidelines for coordination between DOE and HHS for the management and conduct of energy-related analytic epidemiologic health research by HHS. This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: Workers at DOE facilities; residents of communities in vicinity of DOE facilities; other persons potentially exposed to radiation; and persons exposed to potential hazards resulting from non-nuclear energy production and research. The Centers for Disease Control (CDC) has been delegated by HHS the responsibility for implementing the provisions of this MOU.

FOR FURTHER INFORMATION CONTACT: James Smith, Ph.D., Chief, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road, NE., Mailstop F-28, Atlanta, Georgia, 30333, telephone 404/488-4613.

SUPPLEMENTARY INFORMATION: The Memorandum of Understanding between the Department of Energy and the Department of Health and Human Services, signed on December 24, 1990, is set forth below.

Dated: February 28, 1991.

William L. Roper,

Director, Centers for Disease Control.

Memorandum of Understanding Between Department of Energy and Department of Health and Human Services

I. Background

The Secretary of Energy established an advisory committee to make recommendations on strengthening the Department of Energy's (DOE) epidemiologic research activities. This advisory committee—the Secretarial Panel for the Evaluation of Epidemiologic Research Activities (SPEERA)—recommended that DOE enter into a Memorandum of Understanding (MOU) with the Department of Health and Human Services (HHS) to manage and conduct analytic epidemiologic research (studies which test hypotheses). The Panel also recommended that DOE conduct descriptive epidemiologic studies, e.g., occupational health surveillance. The Secretary of Energy agreed with the Panel's recommendations and has requested that HHS enter into an MOU to implement them.

II. Purpose

This MOU sets forth the guidelines for coordination between DOE and HHS to carry out the recommendations of the SPEERA for the management and conduct of energy-related analytic epidemiologic health research by HHS.[1] This includes the authority, resources, and responsibility for the design, implementation, analysis, and scientific interpretation of analytic epidemiologic studies of the following populations: workers at DOE facilities; residents of communities in the vicinity of DOE facilities; other persons potentially exposed to radiation; and persons exposed to potential hazards resulting from non-nuclear energy production and use. This agreement is not meant to affect existing MOUs and Interagency Agreements (IA) between DOE and HHS or to preclude DOE and HHS agencies from entering into MOUs or IAs for other purposes.

III. Authorities

A. The Department of Health and Human Services/Public Health Service/Centers for Disease Control has legislative authority under section 301(a) of the Public Health Service Act (42 U.S.C. 241) and under the Occupational Safety and Health Act (29 U.S.C. 669(a)) to conduct research into the health effects of a broad range of environmental and occupational hazards and to cooperate with other appropriate authorities in the conduct of such research.

B. The DOE may enter into agreements with HHS for the management of epidemiologic research pursuant to section 103(3) and 103(11) of the Energy Reorganization Act of 1974 (42 U.S.C. 5813(3) and 5813(11)); The Economy Act of 1932 as amended (31 U.S.C. 1535); and DOE Order 1280.1, Memorandums of Understanding, of 9-20-85.

IV. DOE Responsibilities

A. Access to DOE Data Sources

DOE will provide HHS with access to data and other documents that may be pertinent to the management and conduct of analytic epidemiologic studies and programs, including data on occupational and community exposures, and environmental releases.

DOE will solicit input from HHS on the development and maintenance of the Comprehensive Epidemiologic Data Resource (CEDR) and the selection of data to include in CEDR.

DOE will allow HHS personnel, contractors, and grantees with appropriate security clearances access to all DOE and DOE-owned, contractor-operated facilities for the purpose of independently reviewing or collecting any health or environmental information or samples that HHS determines are necessary for conducting analytic epidemiologic research.

To the extent that existing regulations, Privacy Act routine uses, or agreements with its own contractors preclude disclosure of data held by DOE or its contractors to HHS, or subsequent use by HHS under section V.G., below, the DOE will amend the regulations and routine uses, and renegotiate the agreements, so as to permit such disclosure and use.

To the extent that existing agreements with other entities preclude disclosure of data held by DOE or its contractors to HHS, or subsequent use by HHS under Section V.G., below, DOE will take distinct affirmative steps to negotiate those agreements so as to permit such disclosure and use. All future agreements entered into by DOE governing data that may be useful for the studies to be conducted by HHS under this MOU will permit disclosure of that data to HHS and subsequent use under Section V.H., below.

B. Programs to be Transferred

The health research programs to be managed by HHS will include selected ongoing and future epidemiologic health studies that test hypotheses, e.g., cohort, case-control, and cross-sectional mortality and morbidity studies, including dose reconstruction and exposure assessment studies that are essential for conducting these epidemiologic studies. See Section V., below.

[1] This agreement does not apply to activities and facilities covered under Executive Order 12344 (42 U.S.C. 7158 note).

C. Classification of Documents and Security Clearances

As soon as possible following the effective date of this MOU, DOE will perform a classification review of documents and data necessary for HHS to conduct the studies and programs described herein. HHS personnel with appropriate security clearances will participate in this review which will include an examination of existing procedures for the classification of documents that will be needed to conduct analytic epidemiologic research. DOE will, wherever possible, declassify or downgrade these documents and data. DOE will expedite appropriate and when possible honor current HHS security clearances (Top Secret), so that HHS personnel may examine classified documents and enter DOE and DOE-owned, contractor-operated facilities as necessary.

D. Committee Representation

The DOE will participate in the development of the research agenda for analytic epidemiologic studies by having DOE representative(s) serve as non-voting member(s) of the HHS Advisory Committee which will provide advice to HHS in setting the research agenda and in conducting the research program.

E. Office of Management and Budget/ Congressional Submissions

For FY 1992, DOE will forward to the Office of Management and Budget (OMB) for inclusion in the President's Budget a request for resources necessary to support the conduct of the aforementioned studies and programs.

F. Official Point of Contact

DOE designates the following individual as the offical point of contact for this MOU: *Name:* Paul L. Ziemer, Ph.D., *Title:* Assistant Secretary for Environment, Safety and Health, *Address:* U.S. Department of Energy, Washington, DC 20585, *Telephone:* (202) 586–6151.

V. HHS Responsibilities

A. HHS Advisory Committee

HHS will establish an Advisory Committee to provide advice to the Secretary of HHS in setting the research agenda and in conducting the research program. Members of the Advisory Committee will consist of representatives selected by the Secretary of HHS from non-federal employees and will include research scientists, public health officials, representatives of public interest groups, and representatives of affected parties (e.g., workers, community residents). Both HHS and DOE will have nonvoting members on this Committee.

This HHS Advisory Committee will have an open channel of communication with the DOE's Advisory Committee which will be established to advise DOE's Assistant Secretary, Environment, Safety and Health, on the conduct of its environmental, health, and safety programs.

B. Committee Representation

Representative(s) of HHS will serve as non-voting member(s) of the DOE Advisory Committee which will provide direction, oversight, and evaluation to the DOE's Office of Environment, Safety and Health.

Additionally, there exist currently DOE-funded host State health agreements. For these existing and future agreements, HHS representatives will provide technical and public health assistance to the host States, including participating on the Technical Review/ Oversight Committees at the request of the host States. DHHS' role in future analytic epidemiologic studies conducted through States will be discussed by DOE with HHS prior to negotiations of their agreement with States.

C. Establishing the Research Agenda

The HHS Advisory Committee will provide evidence and recommendations to HHS on establishing the research agenda. All energy-related analytic epidemiologic health studies proposed by DOE and HHS will be submitted to the HHS Advisory Committee. The HHS Advisory Committee will take into consideration information and proposals provided by DOE and its Advisory Committee as well as information and proposals from other agencies and organizations. HHS will then establish the research agenda and develop a research plan.

HHS will provide DOE the research plan for review and comment. The HHS research plan will be revised each fiscal year to incorporate changes in the research agenda and to reflect changes in available resources.

All DOE initiated analytic epidemiologic research projects, including dose reconstruction and exposure assessment studies essential for conducting these epidemiologic studies, would be offered first to HHS for consideration. However, DOE may conduct through alternate means an analytic epidemiologic study that it referred to HHS if the HHS Advisory Committee has recommended the study but HHS has chosen not to include it in its research agenda. Funding for such will come from a DOE source separate from that funding level set aside for HHS-managed studies to be conducted under this MOU.

D. Conducting Research Activities

HHS will have sole responsibility for the design, conduct, analysis and scientific interpretation of the results for all transferred studies beginning at the time of transfer and for all future studies and programs covered under this MOU. HHS agrees to initially continue existing DOE grants and contracts. However, HHS will review all existing grants and contracts and continue, expand, or discontinue the projects based on this evaluation. This initial evaluation of current research activities and inclusion of those studies on a defined research agenda shall proceed with the advice of the HHS Advisory Committee and shall adhere to the principles specified in Section V.C. of this MOU.

HHS will decide which studies will be performed intramurally and which will move to open competition for all extramural research. HHS will develop a schedule for determining when continuing programs will be recompeted HHS has the discretion to begin new intramural or extramural research consistent with the approved research agenda and resource availability.

E. HHS Data Sources

HHS will be responsible for the management of all data collected by HHS scientists, including data obtained from DOE. HHS will have access to all DOE and DOE-owned, contractor-operated facilities for the purpose of independently reviewing or collecting any health or environmental information or samples that HHS determines are necessary for conducting the analytic epidemiologic research consistent with the approved agenda.

F. Procedures for Conducting Research

HHS will employ established HHS peer review procedures for awarding research grants and contracts. These mechanisms include open competition, peer review, a competitive system for project renewals, and quality assurance for research in progress. The National Laboratories would be eligible to compete in this process along with other applicants to the extent permitted by law and DOE policies.

Intramural research will be conducted in accordance with established mechanisms for assuring scientific peer review. After coordination with DOE, HHS will prepare and submit the necessary information collection proposals to OMB under the Paperwork Reduction Act. Representatives of

populations being studied shall be included in review panels which will be established as appropriate for studies conducted under this MOU. These panels will allow for public comment on the design and conduct of all studies. Results of the studies will be communicated directly to the Secretary of DOE and HHS and openly communicated to all interested parties. Notification of workers will be performed through existing HHS procedures and coordinated through DOE if the workers are from DOE or DOE owned, contractor-operated facilities.

G. Classification of Documents and Security Clearances

As soon as possible following the effective date of this MOU, HHS personnel with appropriate security clearances will participate in a DOE classification review of documents and data necessary for HHS to conduct the studies and programs described herein. HHS will complete all necessary paperwork for appropriate security clearances for its personnel so that they may examine classified documents and enter DOE and DOE-owned, contractor-operated facilities.

H. Use and Disclosure of Information

Establishment of Privacy Act Systems

HHS will establish the necessary Privacy Act systems of records for information provided to HHS by DOE (or will include such information in existing systems). Before integrating DOE data into a HHS system of records, HHS will consult DOE about provisions of the system notice, including the routine uses, applicable to the DOE data in the system. Before establishing a new system of records for DOE data, HHS will consult DOE about the provisions of the system notice, including the routine uses.

Disclosure of Information to the Public Generally

Information provided to HHS under this agreement that is requested by the public under the Freedom of Information Act shall be made available by HHS in accordance with the Act, 5 U.S.C. Section 552 and implementing regulations, 45 C.F.R. Part 5. In making decisions about disclosure, HHS will consult DOE about any information provided by DOE and identified in advance by DOE as warranting such consultation.

Disclosure of Personally-Identifiable Information for Research Purposes

As provided under applicable laws, HHS will not use or disclose any personally-identifiable information obtained from DOE or its contractors except for research purposes. HHS will not use information in identifiable form to make any determination about the rights, benefits, or privileges of any individual. HHS will use and disclose this information in accord with agreements under which the personally-identifiable information was obtained by DOE or its contractors provided this is consistent with applicable law. Subject to applicable law and such agreements, HHS will provide this information to DOE's Comprehensive Epidemiologic Data Resource (CEDR) data base and otherwise may disclose this information outside HHS for research to persons or entities it deems qualified, after consultation with DOE and in accord with the provisions for disclosure in HHS Privacy Act notices. HHS shall notify DOE of any efforts on the part of anyone to obtain or use personally-identifiable information for purposes other than research and shall use and take appropriate steps to prevent improper disclosure. HHS will assist DOE as necessary in renegotiating (as required by section IV.A., above) any agreements that preclude disclosure to HHS of data held by DOE or its contractors.

I. Release of Data From Completed Studies

HHS will promptly disseminate results obtained through research covered by this MOU to the populations being studied. Public access, including DOE access, to data in HHS epidemiologic studies will be governed by applicable Federal laws and HHS implementing regulations. After HHS epidemiologic studies have been completed and reported, study data will be made available to the public and to CEDR without personal identifiers subject to the provisions of Sections V.G. and V.H. above.

J. Reports to DOE

HHS will report its progress to DOE on a quarterly basis for the first year of this MOU. After the first year, DOE and HHS will evaluate the reporting needs and determine the frequency of future reporting.

K. Responsible Official

HHS designates the following individual as the official point of contact for this MOU: *Name:* William L. Roper, M.D., M.P.H., *Title:* Director, Centers for Disease Control, *Address:* 1600 Clifton Road, NE., Atlanta, GA, *Telephone:* (404) 639–3291 (FTS 236–3291).

VI. Implementation of MOU

The Secretaries of DOE and HHS will appoint a task force to oversee and assist in implementing this MOU. This task force will be appointed for one year and will report to the Secretaries at the end of its term. The task force will consist of staff from DOE and HHS.

VII. Resources

DOE will provide and transfer resources to HHS for the purpose of managing the DOE energy-related analytic epidemiologic research program. The funding and full-time equivalent (FTE) employment levels will be determined annually by agreement between designated agency official points of contact for this MOU (for DOE, see Section IV.F., for HHS, see Section V.K.) For FY 1991, funding for this program will be $14,145,000 for grants and contracts and $2,855,000 and 25 FTEs for program operations, and for FY 1992, program levels will be $14,725,000 for grants and contracts and $6,200,000 and 44 FTEs for program operations. Upon mutual agreement, resource levels may be amended at any time during the fiscal year, however in the event that HHS incurs extraordinary expenses as a result of DOE's action to amend or constrain this MOU, HHS will be entitled to reimbursement for these expenses upon demonstration that additional and extraordinary costs were necessarily incurred. A copy of the signed agreement can be used by DOE as the basis for DOE to request the allocation of FTEs to HHS to carry out the terms of this agreement.

The details of the levels of support to be furnished by DOE to HHS will be developed annually through a single interagency agreement. HHS will provide to DOE a description and justification for funding and FTE resource requirements for submission to OMB and Congress for the studies and programs described under this MOU. These submissions will be provided by HHS to DOE in a timeframe agreed upon that is consistent with DOE's budget cycle.

HHS will not accept responsibility for specific studies or undertake new programs unless the mutually agreed level of resources is sufficient to achieve the intended goals and objectives. If equipment is procured in order to provide service under this MOU, HHS will retain title to the equipment.

Any requirement for the payment or obligation of funds by DOE established

BEST COPY AVAILABLE

by the terms of this Agreement shall be subject to the availability of appropriated funds.

For the purposes of studies conducted by HHS or its grantees and contractors, HHS will prepare the necessary information collection proposals for OMB approval under the Paperwork Reduction Act. These proposals will be submitted by HHS to OMB. In the event that OMB fails to approve the information collection or allow adequate burden hours, HHS will be under no obligation to undertake or complete individual studies but will advise DOE and work with DOE to secure OMB approval which may result in necessary modification of reporting requirements.

VIII. Duration of Agreement

This agreement is effective when signed by both parties, shall initially remain in effect through FY 1995 unless amended by mutual written consent of both parties. The agreement is to be renewed annually thereafter by written mutual agreement. There is every intention to continue this agreement over the long-term.

IX. Modification or Cancellation

This agreement, or any of its specific provisions, may be revised by signature approval of both of the parties signatory hereto, or their respective designees.

Cancellation of the agreement may be accomplished only at the expiration of 90-day advanced notification by either party.

Department of Energy.

Dated: December 19, 1990.

James D. Watkins,

Admiral, U.S. Navy (ret.), Secretary.

Department of Health and Human Services.

Dated: December 24, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-5347 Filed 3-6-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Agri-Basics, Conagra-Westfeeds, et al.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 20 new animal drug applications (NADA's) based on the written requests of the various applicants.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: The holders of the four NADA's listed below have informed FDA that the drug products approved under these NADA's are no longer marketed, and have requested in writing that FDA withdraw approval of the applications. Although some sponsors did not expressly waive their opportunity for a hearing, a written voluntary withdrawal request under 21 CFR 514.115(d) is construed as a waiver of opportunity for a hearing. The NADA's are identified as follows:

NADA	Sponsor	Product
096-512	Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 62504	Tylosin phosphate (Tylan).
100-809	Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Somerville, NJ 08876	T-61 Euthanasia Solution.
118-575	Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 62504	Pyrantel tartrate (Banminth).
120-646	National Pharmaceutical Mfg. Co., a Division of Barre-National, Inc., 7205 Windsor Blvd., Baltimore, MD 21207.	Selenium disulfide suspension (K-Sheen).

The holders of the sixteen NADA's listed below have requested that FDA withdraw approval of the applications because, due to changes in the animal drug regulations, NADA approval is no longer required to manufacture these products. The NADA's are as follows:

NADA	Sponsor	Product
095-551	International Nutrition, Inc., 6664 L St., Omaha, NE 68117	Tylosin (Tylan).
099-788	Blair Milling & Elevator Co., Inc., 1000 Main St., Atchison, KS 66002	Tylosin phosphate (Booster Pax T-20).
107-003	Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 62504	Hygromycin B (Alley Worm Away).
109-688	International Nutrition, Inc., 6664 L St., Omaha, NE 68117	Hygromycin B (Hygromycin).
109-816	International Nutrition, Inc., 6664 L St., Omaha, NE 68117	Tylosin and sulfamethazine (Tylan Sulfa).
110-470	J.H. Wake Feedmill, Inc., 402-406 First Ave., West, Oskaloosa, IA 52577	Tylosin phosphate (Pig and Swine Booster Premix T-100).
116-030	Lavergne Supplement Co., 1038 Space Park South, Nashville, TN 37211	Tylosin (Tylan).
127-823	Lavergne Supplement Co., 1038 Space Park South, Nashville, TN 37211	Hygromycin B (Hytgromix 0.6)
127-824	Lavergne Supplement Co., 1038 Space Park South, Nashville, TN 37211	Tylosin and sulfamethazine (Tylan Sulfa).
129-645	Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 62504	Tylosin and sulfamethazine (Tylan Sulfa G).
132-922	Dale Alley Co., P.O. Box 444, 222 Sylvanie St., St. Joseph, MO 62504	Lincomycin hydrochloride (Linco 20).
132-983	Walnut Grove Products, Division of W. R. Grace & Co., 201 Linn St., Atlantic, IA 50022.	Bambermycin (Walnut Grove 4x4 Add Mix FL).
132-984	Walnut Grove Products, Division of W. R. Grace & Co., 201 Linn St., Atlantic, IA 50022.	Lincomycin (Walnut Grove 4x4 Add L).
139-486	Stutts Scientific Service, Inc., P.O. Box 72, Ontario, CA 91762	Tylosin phosphate (Tylan).
140-530	Agri-Basics, ConAgra-Westfeeds, 1420 Minnesota Ave., Billings, MT 59101	Tylosin and sulfamethazine.
140-531	Agri-Basics, ConAgra-Westfeeds, 1420 Minnesota Ave., Billings, MT 59101	Tylosin phosphate.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with *§ 514.115 Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of the NADA's listed above and all supplements and amendments thereto is hereby withdrawn, effective March 18, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending those portions of the regulations in 21 CFR 510.600, 522.900, 524.2101, 558.95, 558.274, 558.325, 558.485, 558.625, and 558.630 to reflect this withdrawal of approval.

Dated: February 27, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-5299 Filed 3-6-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Grants for Centers for Excellence in Minority Health Professions Education

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991 for Grants for Centers of Excellence (COE) in Minority Health Professions Education are being accepted under the authority of section 782 of the Public Health Service Act (the Act), as amended by the "Disadvantaged Minority Health Improvement Act of 1990", Public Law 101-527. Regulations at 42 CFR part 57, subpart V (54 FR 28067) govern this program. The FY 1991 grant cycle for Centers of Excellence at certain Historically Black Colleges and Universities was in process prior to enactment of Public Law 101-527 and, therefore, is not a part of this notice. Comments are invited on the proposed definitions and funding priority.

Approximately $1.5 million is available in FY 1991 for competing applications for Grants for Hispanic Centers of Excellence and $1.0 million is available for competing applications for Grants for Native American Centers of Excellence. Funds not expended for Historically Black Colleges and Universities, Hispanic and Native American Centers will be made available for competing applications for Grants for Other Minority Health Professions Education Centers of Excellence. It is expected that 6 Hispanic COE grants averaging $250,000 and 4 Native American COE grants averaging $250,000 will be supported with these funds.

Institutions may not apply for more than one Center of Excellence or for more than one discipline.

Eligibility

Section 782, as amended by Public Law 101-527, authorizes the Secretary to make grants to schools of medicine, dentistry and pharmacy for the purpose of assisting the schools in supporting programs of excellence in health professions education for Black, Hispanic and Native American individuals. To qualify as a COE, a school is required to:

1. Have a significant number of minority individuals enrolled in the school, including individuals accepted for enrollement in the school;

2. Demonstrate that it has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

3. Show that it has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals, and encouraging minority students of secondary educational institutions to attend the health professions school; and

4. Demonstrate that it has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

Also, for Hispanic Centers of Excellence, the health professions schools must agree to give priority to carrying out the duties with respect to Hispanic individuals.

For Native American Centers of Excellence, the health professions school must agree to:

1. Give priority to carrying out duties with respect to native Americans.

2. Establish a linkage with one or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans for purposes of identifying potential Native American health professions students of the institution who are interested in a health professions career and facilitating their entry into health professions schools; and

3. Make efforts to recruit Native American students, including those who have participated in the undergraduate program of the linkage school, and will assist them in completing the degree requirements of the health professions school.

To qualify as an "Other Minority Health Professions Education Center of Excellence" a health professions school (i.e., a school of medicine, dentistry, or pharmacy) must have an enrollment of underrepresented minorities above the national average for student enrollements in that health professions discipline.

Purposes

Grants for Hispanic, Native American and Other Centers of Excellence may be used by the school for the following purposes:

1. To establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

2. To establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

3. To improve the capacity of such school to train, recruit, and retain minority faculty;

4. To carry out activities to improve the information resources and curricula of the school and clinical education at the school with respect to minority health issues; and

5. To facilitate faculty and student research on health issues particularly affecting minority groups.

Applicants must address at least three of the five legislative purposes.

Healthy People 2000 Objectives

The PHS is encouraging applicants to submit proposals that address achievement of Healthy People 2000 (a recent Departmental report) objectives, as applicable. In developing your application for this program, please consider the 22 priority areas set forth in the report. A list of these priority areas will be included in the application kit.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

Training and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its training programs and Public Health Services programs which provide comprehensive primary care services to the underserved.

Statutory Requirements

Duration of Grants

Payments under grants for Centers of Excellence may not exceed 3 years, subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved.

Maintenance of Effort

A health professions school which is a public school receiving a grant will be required to maintain expenditures of non-Federal amounts for the specified activities at a level not less than the level maintained by the school for the fiscal year preceding the first fiscal year for which the school applies after fiscal year 1990 to receive a grant. Nonprofit private health professions schools that are grant recipients will be required to maintain non-Federal expenditures only to the extent of the level of non-Federal amounts available to the school for the purpose. With respect to any other Federal amounts received by a health professions school and available for carrying out activities of the type supported under the Centers of Excellence authority, a school receiving a Centers of Excellence grant will be required to expend those other Federal funds before expending the Centers of Excellence grant.

Statutory Definitions

Health professions school means schools of medicine, denistry and pharmacy, as defined in section 701(4) and as accredited in section 701(5) of the Act. For purposes of the HBCU COEs, this definition means those schools described in section 701(4) of the Act and which have received a contract under section 788B of the Act (Advanced Financial Distress Assistance) for fiscal year 1987.

Native Americans mean American Indians, Alaskan Natives, Aleuts and Native Hawaiians.

Programs of Excellence means any programs carried out by a health professions school with funding under section 782 Grants for Centers of Excellence in Minority Health Professions Education.

Proposed Definitions for Fiscal Year 1991

A significant number of minority individuals enrolled in the school means that to be eligible to apply for an Hispanic COE, a medical or dental school must have at least 25 enrolled Hispanic students, and a school of pharmacy must have at least 20 enrolled Hispanic students. To apply as a Native American COE, an eligible medical or dental school must have at least 8 enrolled Native American students and a school of pharmacy must have at least 5 enrolled Native American students. To be eligible to apply for an Other Minority Health Professions Education COE, an eligible school must have above the national average of underrepresented minorities (allopathic medicine 13%, denistry 15%, pharmacy 11%) enrolled in the school. These numbers represent the critical mass necessary for a viable program. A viable program is one in which there is a sufficient number of students to warrant a Center of Excellence level educational program. Data from relevant professional associations indicate sharp differentiation in target group numbers among schools. Stated numerical levels are just above the median for schools reporting a critical mass necessary for a viable program. The requirement that schools applying for Other Minority Health Professions Education Centers have an enrollment of underrepresented students that is above the national average for that discipline is statutory.

Effectiveness in Providing Financial Assistance will be evaluated by examining the data on scholarships and other financial aid provided to the targeted group in relation to the scholarships and financial aid provided to the total school population.

Effectiveness in Recruitment will be evaluated by examining the first-year and total enrollments of targeted students in relation to the first-year and total enrollments for the entire school.

Effectiveness in Retaining Students will be determined by retention rates for targeted group (e.g., 90 percent retention in the discipline realizing graduation from medical or dental school in 5 years and pharmacy in 4 years); and academic and non-academic support systems operative for the target group of students at the school.

Hispanic means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish origin.

Minority means an individual whose race/ethnicity is classified as American Indian or Alaskan Native, Asian or Pacific Islander, Black or Hispanic.

Underrepresented Minority means, for any given health profession, a racial or ethnic group whose percentage among the total supply of practitioners in that health profession is below that group's percentage in the total population. This definition has consistently encompassed Blacks, Hispanics, and Native Americans.

The definitions, as used, for Effectiveness, Hispanic, Minority, and Underrepresented Minority are consistent with their application in other Title VII programs.

In addition, the following mechanism may be applied in determining the funding of approved applications:

Funding Priorities—favorable adjustment of review scores when application meets specified objective criteria.

Proposed Funding Priority for Fiscal Year 1991

A priority for designating Hispanic Centers of Excellence will go to health professions schools located in the Continental United States.

In accordance with legislative history, priority will be given to health professions schools in the Continental U.S. where the vast majority of Hispanics live and are educated.

Other Consideration

HRSA hopes to achieve geographic dispersion of awards. Contingent on the outcome of the grant review process, HRSA plans to make awards in as many sections of the country as possible.

Review Criteria

The review of applications will take into consideration the following criteria.

1. The degree to which the proposed project meets the legislative intent;

2. The administrative and managerial ability of the applicant to carry out the project in a cost effective manner;

3. The adequacy of the staff and faculty to carry out the program;

4. The soundness of the budget for assuring effective utilization of grant funds, and the proportion of total program funds which come from non-Federal sources and the degree to which they are projected to increase over the grant period;

5. The technical merit of the project as determined by the following elements:

a. Delineation of specific objectives which are consistent with the legislative purposes, measurable, and outcome oriented.

b. Description of a methodology which corresponds to the objectives and provides specific details on the activities, projects, or services which will be implemented to achieve the objectives, time frames of implementing the activities, projects or services, target population, responsible staff, and facilities which will be used to accomplish the obejectives.

c. Description of a comprehensive evaluation plan inclusive of all objectives and activities and program performance indicators.

6. The number of individuals who can be expected to benefit from the project;

7. The overall impact the project will have on strengthening the school's capacity to train the targeted minority health professional and increase the supply of such minority health professionals available to serve minority populations in underserved areas; and

8. The degree to which the applicant can arrange to continue the proposed project beyond the federally-funded project period.

The proposed priority does not preclude funding of other eligible approved applications. Accordingly, entities which do not qualify for or elect to request consideration for the proposed priority are encouraged to submit applications.

Interested persons are invited to comment on the proposed definitions and funding priority. Normally, the comment period would be 60 days. However, due to the need to implement this new program in Fiscal Year 1991, this comment period has been reduced to 30 days. All comments received on or before April 8, 1991, will be considered before the final definitions and funding priority are established. No funds will be allocated or final selections made until a final notice is published stating whether the definitions and funding priority will be applied.

Written comments should be addressed to: Director, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Disadvantaged Assistance, Bureau of Health Professions, at the address above weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application material and questions regarding grants policy should be directed to: Grants Management Officer (D34), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–22, Rockville, Maryland 20857, telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8A–09, Rockville, Maryland 20857, telephone: (301) 443–2100.

To receive consideration, applications must meet the deadline of April, 8, 1991, which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commerical carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The standard application form, PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060. The Program, Grants for Center of Excellence in Minority Health Professions Education is listed at 93.157 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: March 1, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–5353 Filed 3–6–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Division of Research Grants Meeting of the Division of Research Grants Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Research Grants Advisory Committee, April 8, 1991, Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 4:30 p.m. The one-day meeting will include a discussion of the development of the electronic grant application and a draft NIH plan for managing the costs of biomedical research. Attendance by the public will be limited to space available.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–7534, will furnish a summary of the meeting and a roster of the committee members.

Dr. Samuel Joseloff, Executive Secretary of the Committee, Westwood Building, Room 449, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7441, will provide substantive program information upon request.

Dated: February 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5326 Filed 3–6–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, March 25–26, 1991, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. on March 25 to adjournment on March 26. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, room 320, Federal Building, Bethesda, Maryland 20892, (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: February 28, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–5325 Filed 3–6–91; 8:45 am]

BILLING CODE 4140–01–M

Human Gene Therapy Subcommittee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Human Gene Therapy Subcommittee (a subcommittee of the Recombinant DNA Advisory Committee) on April 5, 1991. The meeting will be held at the National Institutes of Health (NIH), Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at

approximately 9 a.m. to adjournment at approximately 5 p.m.

The meeting will be open to the public to discuss the following proposed actions under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958):

I. Addition to appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Lotze

In a letter dated September 13, 1990, Dr. Michael T. Lotze of the University of Pittsburgh School of Medicine indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

The Administration of Interleukin-2, Interleukin-4, and Tumor Infiltrating Lymphocytes to Patients with Melanoma

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990, and forwarded to the Recombinant DNA Advisory Committee on February 4, 1991, for their approval. The Recombinant DNA Advisory Committee deferred approval and sent the protocol back to the Human Gene Therapy Subcommittee for further deliberation at its next meeting on April 5, 1991.

II. Addition to appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Cornetta

In a letter dated July 25, 1990, Dr. Ken Cornetta of the University of Wisconsin/Madison indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

BMT 9049—Retroviral-Mediated Gene Transfer of Bone Marrow Cells During Autologous Bone Marrow Transplantation for Acute Leukemia: Understanding Disease Recurrence

The protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990. The protocol was deferred with the request for additional data and further consideration at the next meeting on April 5, 1991.

III. Addition to Appendix D of the "NIH Guidelines" Regarding Human Gene Transfer Protocols/Dr. Brenner

In a letter dated February 22, 1991, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital indicated his intention to submit two human gene transfer protocols to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval.

The first protocol is entitled:

A Phase I/II Trial of High-Dose Carboplatin and Etoposide With Autologous Marrow Support for Treatment of Stage D Neuroblastoma in First Remission: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse

The second protocol is entitled:

A Phase II Trial of High-Dose Carboplatin and Etoposide With Autologous Marrow Support for Treatment of Relapse/Refractory Neuroblastoma Without Apparent Bone Marrow Involvement: Use of Marker Genes to Investigate the Biology of Marrow Reconstitution and the Mechanism of Relapse

This second protocol was reviewed during the Human Gene Therapy Subcommittee meeting on November 30, 1990. The protocol was deferred with a request for additional data and further consideration at the next meeting on April 5, 1991.

IV. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Transfer Protocol/Dr. Deisseroth

In a letter dated December 20, 1990, Dr. Albert B. Deisseroth of the MD Anderson Cancer Center indicated his intention to submit a human gene transfer protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

Autologous Transplantation for Chronic Myelogenous Leukemia: Retroviral Marking to Discriminate Between Relapses Arising From Residual Systemic Disease vs. Residual Contamination of Autologous Marrow

V. Addition to Appendix D of the "NIH Guidelines" Regarding a Human Gene Therapy Protocol/Drs. Ledley and Woo

In a letter dated December 19, 1990, Drs. Fred D. Ledley and Savio L. C. Woo of the Baylor College of Medicine indicated their intention to submit a human gene therapy protocol to the Human Gene Therapy Subcommittee and the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is:

Hepatocellular Transplantation in Acute Hepatic Failure and Targeting Genetic Markers to Hepatic Cells

V. Other Matters To Be Considered by the Committee

Protocols which are approved by the Human Gene Therapy Subcommittee will be forwarded to the Recombinant DNA Advisory Committee for consideration during their May 31, 1991, meeting.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official Government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: February 28, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5324 Filed 3-6-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3223]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing.

ACTION: Mortgagee letter.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within seven days.

The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and addresses of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 22, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee letter implementing the section 235(r) Refinancing Program. The mortgagee letter sets forth the information collection requirements that include prior OMB-approved forms and forms that are peculiar to the refinancing of section 235 mortgages. The reporting burden reflects the additional burden caused by the forms that are peculiar to the refinancing of section 235 mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This mortgagee letter established the procedures and requirements under which mortgage industry and section 235 mortgagors must comply to refinance a section 235 mortgage to a section 235(r) mortgage where the mortgagor can lower the mortgage's interest rate and retain the benefits of the Federal subsidy to assist in the monthly payments of the section 235(r) mortgage.

Form Number: None.

Respondents: HUD-approved lenders, section 235 mortgagors and the general public.

Frequency of Submission: On a case-by-case basis.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting—HUD-approved lenders and section 235 mortgagors	38,000		1		.27		10,260
Annual Recordkeeping—HUD-approved lenders and section 235 mortgagors	38,000		1		1		38,000
							48,260

Total Estimated Burden Hours: 48,260.

Status: New.

Contact: Robert E. Falkenstein, Jr., HUD, (202) 708-2720. Wendy Sherwin, OMB, (202) 395-6880.

Dated: February 22, 1991.

Refinancing Section 235 Mortgages

Supporting Statement for Requests for OMB Approval Under the Paperwork Reduction Act and 5 CFR 1320

Responses to Justification Items 1 thru 15

1. Circumstances that make the collection of information necessary—Old section 235 mortgage refinancings are complex transactions that require the originating mortgagee and/or the Department of Housing and Urban Development (the Department) to perform one or more of the following tasks:

a. process and underwrite the application for section 203(b) or section 235(r) mortgage insurance,

b. process and verify the application for section 235(r) assistance and determine the mortgagors' eligibility for assistance and the amount of the assistance payments,

c. complete and execute on HUD's behalf a document to modify and subordinate its recapture mortgage to the section 203(b) Streamline or section 235(r) mortgage (if applicable), and

d. handle the miscellaneous details of the refinancing transaction, such as, terminating the old Assistance Payments Contract (APC), establishing the new assistance payments account with HUD, etc.

Processing, underwriting and servicing the section 203(b) or section 235(r) mortgage must conform to the policies and procedures as set forth in the attached mortgagee letter and **Federal Register** notice, HUD Handbook 4330.1 (Administration of Insured Home Mortgages), HUD Handbook 4155.1, Rev-3 (Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties), and 24 CFR part 203 of part 235.

The following statutes and regulations authorize the Secretary to insure mortgages where the collection of the information is needed to evaluate the applications for section 203(b) or section 235(r) mortgage insurance and section 235(r) assistance:

a. 12 USC 1701 et seq. (Short Title: "the National Housing Act") (See Attachment 1, page 2 of 2, Privacy Act Information),

b. The Debt Collection Act of 1982 (See Attachment 1, page 2 of 2, Privacy Act Information),

Note: The Debt Collection Act of 1982 requires persons applying for a federal insured or guaranteed loan to furnish his or her social security number.

c. Section 125 of the Department of Housing and Urban Development Reform Act of 1989 (the Reform Act of 1989) (See Attachment 3), and

d. 24 CFR part 203 and part 235 (See Attachment 2, 24 CFR part 235),

e. the attached Federal Register notice (notice) that sets forth the provisions of section 125 of the Reform Act of 1989 and implements the section 235(r) Refinance Program.

Note: The Reform Act of 1989 authorizes the implementation of the section 235(r) Refinance Program via a Federal Register notice.

2. The information is collected by the originating mortgagee at mortgage application and is used by the originating mortgagee to process the applications for section 203(b) or section 235(r) mortgage insurance and section 235(r) assistance. The applications are underwritten and certified by the originating mortgagee or the Department.

The information is needed for the evaluation of the applications, the Department's financial management and accounting system(s) and the Department's monitoring of the origination and servicing activities of the mortgagee.

If the information is not collected the originating mortgagee and/or the Department cannot make the proper underwriting decision and the Department's data base would be incomplete for its financial management and accounting system(s). Furthermore, the Department's efforts to monitor the origination and servicing activities of the mortgagee would be debilitated.

3. Section 235 refinancing transactions will vary on a case by case basis where the only obstacle is the practicality of automating a process that employs forms (that are uniform) but the responses have diverse variations. Thus, the process does not render itself to automation. There are no technological or legal obstacles to reduce the burden.

4. The mortgagee letter and notice have been reviewed via the "Departmental Clearance Process" (HUD–22) and were re-cleared after substantial changes were required by the Office of Policy Development and Research (PD & R). These documents have been scrutinized to avoid duplication in policies, procedures, etc. Duplication, if any, is minimal.

5. Similar information cannot be used or modified for use for the purpose(s) described in response 2 on page 2 because the information that is required for the refinance transaction is not resident to any one system or location (i.e., the information must be collected from the servicing mortgagee and the mortgagor) and the information is not up-to-date or does reflect the current status of the old section 235 mortgage account and the mortgagors' income, family composition and occupancy.

The refinance transaction requires new (up-to-date) information about the mortgagors and their old section 235 mortgage account so that the originating mortgagee and/or HUD can process and underwrite the section 203(b) or section 235(r) mortgage application and determine the mortgagors' eligibility for section 235(r) assistance and the amount of the assistance payments.

6. The mortgagee letter and notice do not involve small business or other small entities.

7. The main consequence to the refinance program and policy activities if the collection were conducted less frequently is that the originating mortgagee and the Department could not properly perform the tasks set forth in response 1 on page 1. Furthermore, the Department could not properly administer its financial management and accounting system(s) and monitor the origination and servicing activities of the mortgagee.

8. There are no special circumstances that require the collection of the information to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.

9. The Department has consulted with the Mortgage Bankers of America (MBA) and various investors of mortgages and mortgage backed securities.

All parties are in agreement that new (up-to-date) information must be obtained from the mortgagor and servicing mortgagee to properly perform the tasks set forth in Response 1 on Page 1 and to allow the Department to administer its financial management and accounting system(s) and monitor the origination and servicing activities of the mortgagees.

10. The Application for section 203(b) or section 235(r) Mortgage Insurance and the Application for section 235 Assistance are subject to the Right of Financial Privacy Act of 1978.

11. There are no questions of a sensitive nature.

12. Estimates of annualized costs to the Federal Government (The Department) and the Public are as follows:

a. Estimated Annualized Costs (EAC) to the Department — number of Cases × Burden (Percentage of an Hour) × Cost/Hour 3,800 * × .27 hours × $17.12/Hour = $17,565.12 EAC

b. Estimated Annualized Costs (EAC) to the Public — number of Cases × Burden (Percentage of an Hour) × Cost/Hour 34,200 * × .27 hours × $17.12/Hour = $158,086.08 EAC

c. Cost/Hour Calculation: The cost per hour (Cost/Hour) is based on the salary of a GS 11 (Step One) and estimated operational expenses (i.e., $29,981.00 — 2087 man hours = $14.37 per hour plus operational expenses of $2.75). The grand total is $17.12 per hour.

13. The burden of the collection of the information as set forth in the Tabulation of Annual Reporting Burden (attached) has not been empirically analyzed, but has been evaluated based on the Department's experience with the section 203(b) and section 235 Programs. (See Tabulation of Annual Reporting Burden)

14. Implementation of section 125 of the Reform Act of 1989 and a change in policy that allows the subordination of a section 235 recapture mortgage to a new section 203(b) Streamline mortgage.

15. The information collected will not be published for statistical use.

Excerpts From Pending HUD Communication to Mortgagees on Refinancing Section 235 Mortgages

What follows is an exhibit containing extensive excerpts from a draft mortgagee letter explaining the section 235 refinancing program. This exhibit is not published for effect, but only for the purpose of demonstrating the kinds of information collections that the refinancing program will require. Selected attachments to the draft mortgagee letter are also published as a part of this exhibit. Attachments that do not affect the information collection burden are omitted.

Readers are cautioned that the content of the draft mortgagee letter may be changed before its publication for effect. Its publication here is solely for illustrative purposes, so that the paperwork burden on the public can be evaluated.

* Historically, Direct Endorsement mortgages have underwritten 90 percent and the Department has underwritten 10 percent of all section 203(b) mortgages since 1987. It is assumed that these percentages will remain the same for the section 235(r) Refinance Program.

Exhibit

Mortgagee Letter 91–

To: All Approved Mortgagees

Attention: Originating and Servicing Mortgagees

Subject: Refinancing Section 235 Mortgages

The purpose of this letter is to set forth comprehensive procedures for refinancing section 235 mortgages with new mortgages insured under section 203(b) or section 235(r) of the National Housing Act.

Currently, the Department of Housing and Urban Development (HUD) is subsidizing old section 235 mortgages with interest rates as high as 17½ percent. Prior to this letter there has been no incentive for mortgagors with high interest rates to refinance their old section 235 mortgage as their share of the monthly mortgage payment is equivalent to or less than a monthly mortgage payment that would be associated with a lower interest rate. Furthermore, some mortgagors have not been able to refinance their high interest rate section 235(i) mortgage because the amount due HUD under the recapture mortgage (a second mortgage which allows HUD to recapture section 235 assistance payments made on behalf of the mortgagors) could not be paid or HUD's policy prohibiting the subordination of the recapture mortgage prevented the refinance of the old section 235(i) mortgage to a section 203(b) Streamline mortgage.

These comprehensive procedures are designed to give financial incentives to section 235 mortgagors and HUD-approved mortgagees. HUD's prime purpose is to lower the high interest rates associated with old section 235 mortgages and to save the Federal subsidy (section 235 assistance payments). Approximately 38,000 section 235 insured mortgages with interest rates of 10 percent or higher may be eligible to be refinanced.

Old 235 mortgages, where the old Assistance Payments Contract (APC) has been properly suspended or terminated (or should have been suspended or terminated—See Page 5 for details) by the old servicing mortgagee, are not eligible to be refinanced under the 235(r) Program; but, may be refinanced under section 203(b) per the Refinance Procedures on Page 28 or the Streamline Refinance Procedures on Pages 26 and 27. Mortgagors, who are eligible for the 235(r) Program, may elect to refinance under section 203(b).

The old APC is terminated on the day before the date of disbursement of the mortgage proceeds of the new section 230(b) or 235(r) mortgage. If the old 235 mortgage is refinanced with a section 203(b) mortgage, then there is no entitlement to an APC. Only when an old 235 mortgage is refinanced with a section 235(r) mortgage, where the mortgagors meet the requirements of this letter, will continuation of the assistance payments under a new APC take place. (See Paragraph K, Pages 13 through 16, for additional details).

A recapture mortgage, which is associated with an old 235(i) mortgage that is refinanced by a 235(r) or a 203(b) (Streamline) mortgage, can be subordinated to a new 235(r) or 203(b) mortgage under the requirements and procedures in this letter. (See Paragraph M on Pages 16 through 19 for additional details)

For the purpose of this letter, the following definitions will apply:

"Old 235 mortgages" refers to any 235 mortgage which is insured under Section 235(b), 235(i), or 235(j)(4) of the National Housing Act which includes "old 235(i) mortgages" and "old 235 revised recapture 10 mortgages";

Note: A 235(r) mortgage that is subsequently refinanced to a 235(r) mortgage is included in this definition.

"Old 235(i) mortgages" refers to any 234(i) mortgage that has a recapture mortgage which includes "old 235 revised recapture 10 mortgages"; and,

"Old 235 revised recapture 10 mortgages" refers to only those old 235(i) mortgages that have a recapture mortgage and an old APC with an original contract term of 10 years (all other old 235 mortgages have an APC with a term equal to the original mortgage term).

"235(r) mortgages" refers to the mortgages which refinance old 235 mortgages, old 235(i) mortgages or old 235 revised recapture 10 mortgages.

(See *Attachment 1*, 235 Mortgages, for additional information).

The 235(r) Program—

A. General—The Department of Housing and Urban Development Reform Act of 1989 (Reform Act) authorizes HUD to insure new mortgages (235(r) mortgages) under Section 235(r) of the National Housing Act that refinance old 235 mortgages. Effective with the date of this letter, HUD is implementing the 235(r) Program.

B. HUD Handbook 4330.1, Administration of Insured Home Mortgages, Chapters 10 and 11—The requirements and procedures in Handbook 4330.1, Chapters 10 and 11, apply to the 235(r) mortgages and must be followed in processing, underwriting and servicing these mortgages. Mortgagees can obtain Handbook 4330.1 by contacting the local HUD Field Office. Additional requirements and procedures are set forth in this letter.

The recertification requirements and procedures in chapter 10 of Handbook 4330.1 must be used as the "initial" certification requirements and procedures for the 235(r) mortgage. After the 235(r) mortgage has been executed by the mortgagors and the new servicing mortgagee begins servicing the mortgage, the recertification requirements and procedures must be performed by the mortgagors and the new servicing mortgagee on an annual basis, when requested by the mortgagors or when the mortgagors report any future increases in the family's income which, in total, increases the family's monthly gross income by $50.00 or more.

C. Section 235(r) Mortgage Application Processing—Section 235(r) mortgage applications can be processed by any HUD-approved (originating) mortgagee and are eligible to be processed and underwritten by Director Endorsement (DE) mortgagees and underwriters. Furthermore, DE underwriters are not subject to a "test case" requirement and Direct Endorsement approval by any HUD Field Office qualifies the mortgagee to process and underwrite these applications.

Loan correspondents, who are sponsored by a DE mortgagee, must send the mortgage applications to their sponsor for processing and underwriting. Originating mortgagees, who are not a DE mortgagee, must send the mortgage applications to the local HUD Field Office (where the property is located) for regular processing and underwriting.

Section 235(r) mortgages that are processed and underwritten by DE mortgagees and underwriter are subject to a fifty percent (50%) "Post Endorsement and Technical Review" requirement when the case binder is sent to the local HUD Field Office for endorsement. If the review reveals that the underwriter miscalculated the amount of the assistance payments and the miscalculation results in an overpayment of assistance payments then the local HUD Field Office will notify the originating mortgagee in writing and will include instructions on how to handle the overpayments. Furthermore, the local HUD Field Office will notify the Subsidy Accounting

Branch at HUD Headquarters about the overpayment.

D. Prerequisites and Conditions of the 235(r) Program—The following prerequisites must be met before the mortgagors may obtain a 235(r) mortgage tgo refinance their old 235 mortgage:

(1) the mortgagors must be currently eligible for assistance under the old APC,

(2)O the old servicing mortgagee must be receiving monthly assistance payments from HUD on the mortgagors' behalf under the old APC.

(3) the mortgagors must be occupying the property which his subject to the old 235 mortgage and must continue occupancy after the 235(r) mortgage is closed, and

(4) the mortgagors must complete and execute a form HUD–92900, Application of HUD/VA Insured Mortgage, and a new form HUD–93100, Application for Homeownership Assistance under Section 235 of the National Housing Act, detailing the family's composition, income, employment and occupancy, and sign a certification averring its accuracy.

Mortgagors, who are members of a cooperative association operating a housing project and who are eligible for and receiving assistance payments under an old APC, are not eligible to participate in the 235(r) Program.

If these prerequisites are met the originating mortgagee must complete the following conditions before HUD can guarantee insurance of a 235(r) mortgage:

(1) process (and underwrite if a DE processed case) the 235(r) applications for mortgage insurance and assistance payments in accordance with the requirements and procedures in this letter;

(2) determine from the new Form HUD–93100 and other documents that the mortgagors continue to be eligible for assistance and the amount of the assistance payments under the new APC that is associated with the 235(r) mortgage;

(3) determine that the mortgagors have sufficient income to make their share of the full monthly mortgage payment with 20 percent of adjusted monthly income (or, 28 percent, if an old 235 revised recapture 10 morigage is refinanced);

(4) determine that the refinance transaction will result in a reduction of the monthly principal and interest payments from those required on the old 235 mortgage note; otherwise, it is not eligible to be refinanced under the 235(r) Program;

The reduction is based on the difference between the Principal and Interest (P+I) payments of the old 235 mortgage at the mortgage note interest rate and the 235(r) mortgage at the 235(r) interest rate.

(5) perform a mortgage credit analysis (as described in HUD Handbook 4155.1, REV–3, Mortgage Credit Analysis for Mortgage Insurance on One-to-Four Family Properties; no appraisal is required for the 235(r) Program) when the mortgagors' share of the full monthly payment increases more than $50.00 per month under the 235(r) mortgage;

(6) assure HUD that all overpayments of assistance payments have been refunded to HUD by the old servicing mortgagee (if the overpayment of assistance payments have not been refunded the 235(r) or 203(b) mortgage application cannot be approved); and

(7) consummate (close) the refinance transaction, if it is found acceptable.

If the originating mortgagee discovers during the 235(r) mortgage application process (i.e., review of new form HUD 93100 and its supporting documentation) that the mortgagors were erroneously determined to be eligible for assistance under the old APC by the old servicing mortgagee then the originating mortgagee must reject the mortgage application since these mortgagors are not eligible for a 235(r) mortgage. The rejection must be in writing. If the mortgagors question the rejection they should be referred to the old servicing mortgagee for an explanation and a possible recertification of their eligibility under the old APC.

E. Upfront Costs of the 235(r) Mortgage and Related Issues

1. Actual Upfront Costs—Originating mortgagees must pay all the actual upfront costs associated with the 235(r) mortgage. These costs include, but are not limited to: the one percent (1%) loan origination fee, the mortgagors' prepaid interest (up to the first 10 days), discounts points, closing costs and the financial incentives paid to the mortgagors. The actual upfront costs cannot be included in the 235(r) mortgage amount.

The mortgagors must pay their prepaid expenses (escrow deposits and prepaid interest that exceeds the amount included in the actual upfront costs paid by the originating mortgagee). Originating mortgagees can offer an interest free advance equal to the present escrow balance in the old 235 mortgage to assist the mortgagors with these prepaid expenses that they will be required to pay in cash at closing. Also, the mortgagors' financial incentives (at the mortgagors' option) can be applied toward their prepaid expenses.

The cash amount that is required at closing from the mortgagors for their prepaid expenses will depend on the date of disbursement of the 235(r) mortgage proceeds and the date of the first scheduled monthly amortization payment, and on the method used by the originating mortgagee to determine the first assistance payment (initial partial assistance payment) under the new APC.

The first assistance payment is computed for the period of time beginning with the date of disbursement and ending with the last day of the month that precedes the first scheduled monthly amortization payment. *The prepaid interest that is paid by the originating mortgagee at closing cannot be used to compute the first assistance payment.*

Originating mortgagees must select one of two methods (i.e., Interest Collected at Closing or Adjusted Mortgage Payment) to determine the first assistance payment for the new APC. These methods are set forth in appendix 18 of Handbook 4330.1, Pages 18–11 thru 18–16. The method selected must be the one that is most advantageous to the mortgagors.

2. Eligible Upfront Costs—HUD allows originating mortgagees to recoup certain upfront costs associated with the 235(r) mortgage. These costs are called "eligible upfront costs" and they include: the one percent (1%) origination fee, the financial incentives paid to the mortgagors, prepaid interest at the initial interest rate (up to the first 10 days), and the lower of the actual closing costs and discount points that are associated with the 235(r) refinance transaction or the customary and reasonable closing costs and discount points for a section 203(b) mortgage at the market interest rate that is equal to the 235(r) interest rate (a market interest rate at the time of application). Eligible upfront costs cannot be included in the 235(r) mortgage amount.

3. Recovery of Eligible Upfront Costs—Originating mortgages can recover the eligible upfront costs during a (computed) period of time called the "recovery period".

The recovery period is computed by the method (Recover Method) set forth in Subparagraph G–5 on Pages 10 through 12 and cannot exceed 60 months (5 years). *A 235(r) refinance transaction with a recovery period exceeding 60 months is not eligible for mortgage insurance.*

At the 235(r) mortgage application and during the recovery period the principal and interest payments and the assistance payments (Formulae One and Formulae Two) are computed at the initial interest rate (old 235 mortgage interest rate). After the recovery period these payments are computed at the 235(r) interest rate (a market interest rate at the time of application). The difference in the P + I payments of the initial interest rate and the 235(r) interest rate is the amount that offsets the eligible upfront costs during the recovery period. Furthermore, the 235(r) assistance payments that are paid on the mortgagors' behalf by HUD during the recovery period are approximately the same as the assistance payments under the old APC.

The originating mortgagee not the investor (e.g., GNMA Investor) will be the ultimate source of the upfront costs associated with the 235(r) mortgage. The Recovery Method (i.e., Recovery Period Formula) adds 300 basis points to the 235(r) interest rate for computation of the recovery period in whole months. These basis points cover the originating mortgagee's cost of funds and risk for very early mortgagor-induced prepayment. HUD requires mortgagors to pay all the upfront cost of a subsequent 235(r) to 235(r) refinance transaction that occurs within 60 months after the date of closing of the original 235(r) mortgage (See Subparagraph Q on Page 20). Section 235 mortgages have typically prepaid at much slower rates than Section 203(b) mortgages.

Subparagraphs G–1 through G–2 on Pages 8 and 9 explain the different interest rates that affect the 235(r) mortgage payments at application, and during and after the recovery period. Subparagraph G–4 on Pages 9 and 10 explains the use of these interest rates and the new interest rate floor in computing the Section 235(r) assistance payments. Subparagraph G–5 on Pages 10 through 12 explains how to determine the recovery period. *Appendix 1* sets forth an example of determining the recovery period and the use of *Attachment 2*, Table of Recovery Periods.

4. Good Faith Estimate—The originating mortgagee at the time of the 235(r) mortgage application must issue to the mortgagors a "Good Faith Estimate" (GFE) of the estimated upfront costs as set forth in Subparagraph E–1 on Pages 5 and 6.

A copy of the GFE must be included in the case binder when it is sent to the local HUD Field Office for mortgage insurance.

5. Form HUD–1, Settlement Statement—The originating mortgagee or its agent must complete and have the mortgagors execute at closing a form HUD–1, Settlement Statement, that enumerates the actual upfront costs associated with the 235(r) refinance transaction. Furthermore, attached to the form HUD–1 must be a separate sheet of paper that enumerates each "Eligible Upfront Cost".

A copy of the form HUD–1 and attachment must be included in the case binder when it is sent to the local HUD Field Office for mortgage insurance.

F. Mortgagors' Financial Incentives—Originating mortgagees must pay the mortgagors a cash payment of $450.00 as a financial incentive to refinance to a 235(r) mortgage. Also, originating mortgagees must pay the mortgagors a "bonus" cash payment of $200.00 as an additional financial incentive when the "recovery period" does not exceed 24 months (See Subparagraph C–5 on Pages 10 through 12 for details on determining the recovery period). The financial incentives are payable to the mortgagors at closing and can be used to offset the mortgagors' prepaid expenses for the 235(r) mortgage.

Originating mortgagees must inform the mortgagors that they may need assistance from a tax advisor regarding the tax consequences of the mortgagee paying financial incentives to the mortgagors and the mortgagee pay for, or on behalf of, the mortgagors any upfront costs. The mortgagors will certify on the new form HUD–93100 that the originating mortgagee has so informed them. Mortgagees should not give tax advice unless they are professionally qualified to do so. (See Pages 20 and 21, new form HUD–93100 processing, for additional details.)

G. Interest Rates and Related Issues—Three different interest rates (initial, 235(r) and floor) affect the processing and underwriting of any 235(r) mortgage application. These interest rates are used in the computations that determine the principal and interest payments and assistance payments (Formula One and Formula Two computations) at application, and during and after the recovery period. Furthermore, 235(r) mortgages cannot be originated when the 235(r) interest rate exceeds a "maximum cap rate" and Regulation Z requires the "Annual Percentage Rate" (APR) to be computed as a composite rate.

Monthly principal and interest factors for the initial and 235(r) interest rates are found in forms FHA—2025(A, B, C and D), Supplement, Amortization, Insurance Premium and Outstanding Principal Balance Tables, and can be used to compute the periodic payments of principal and interest associated with the 235(r) mortgage. The FHA No. 2025 comes in various supplements covering ranges of interest rates. These supplements can be obtained from the local HUD Field Office. Furthermore, subparagraph G—3 on Page 9 prescribes the factors that must be used with the new interest rate floor.

1. Initial Interest Rate—The initial interest rate is defined as:

"An interest rate that is the old 235 mortgage note interest rate. It is used to compute the principal and interest payments and the assistance payments (Formula One and Formula Two computations) at application and during the recovery period. This interest rate is included in the 235(r) mortgage instruments to allow the originating mortgagee to earn additional income to recoup the eligible upfront costs associated with the 235(r) mortgage."

The prepaid interest associated with the 235(r) mortgage is computed at the initial interest rate. Up to the first 10 days of prepaid interest may be included in the eligible upfront cost and any excess prepaid interest must be paid in cash by the mortgagors at closing. Therefore, morgagors should be encouraged to close within the last 10 days of the month. Furthermore, the initial interest rate cannot be used to determine discount points that are associated with the 235(r) mortgage.

The initial interest rate must be at least 1% higher than the 235(r) interest rate on the date of the application; otherwise, the 235(r) mortgage is not eligible for mortgage insurance. The Section 235 Payoff Statement requirements on Pages 28 and 29 set forth the old 235 mortgage note rate.

2. 235(r) Interest Rate—The 235(r) interest rate is defined as:

"the 235(r) mortgage's market interest rate which is determined by the Government National Mortgage Association's (GNMA's) yield that is closest to but does not exceed par value (100) on the date of the 235(r) mortgage application."

The 235(r) interest rate is the market interest rate at which the 235(r) mortgage is closed and pooled or traded. This interest rate is subject to the fluctuations of the GNMA securities (secondary) market and the primary market plus reasonable and customary discount points.

This interest rate is included in the 235(r) mortgage instruments and is used to determine the principal and interest payments and the assistance payments (Formula One and Formula Two computations) after the recovery period.

This interest rate takes effect on the first day of the month after the last month of the recovery period and

remains in effect until the mortgage terminates. Servicing mortgagees are responsible for monitoring the date on which the 235(r) interest rate takes effect.

3. The New Interest Rate Floor—The interest rate floor that is associated with the old APC is the new interest rate floor for the new APC. The section 235 Payoff Statement requirements on Pages 28 and 29 set forth the old interest rate floor.

The factors for the old interest rate floors are found in appendix 19 of Handbook 4330.1 and cannot be used for processing, underwriting and servicing the 235(r) mortgages because these factors are based on an original 30 year term. The term of the 235(r) mortgage is based on the remaining term of the old 235 mortgage and will vary in each refinance transaction. (see Paragraph I, Page 13)

The factors in *Attachment 3*, section 235(r) Interest Rate Floor(s)—Factor Table, are computed to reflect the new interest rate floors for a variety of 235(r) mortgage terms. These factors must be used to compute Formula Two when the 235(r) mortgage is processed and underwritten and when subsequent assistance payments are recomputed by the new servicing mortgagee.

4. Formula One and Formula Two Computations that are used to Determine the Amount of the 235(r) Assistance Payments—Instructions on how to complete these computations are attached to the new Form HUD–93100. Formula One is the difference between the monthly mortgage payments at the initial interest rate or the 235(r) interest rate and the mortgagors' full share (20 or 28 percent of adjusted monthly income). Formula Two is the difference between the P + I payments at the initial interest rate or the 235(r) interest rate plus the Mortgage Insurance Premium (MIP) and the P + I payments at the new interest rate floor. The 235(r) assistance payments that are paid on behalf of the mortgagors by HUD are the lower of the Formula One or Formula Two computations. See appendix 18 of Handbook 4330.1 for examples of these computations.

The "initial interest rate" must be used in the Formula One and Formula Two computations when the new form HUD–93100 is processed with the refinance transaction and when form HUD–93101–A(s) (Certification of Family Income and Composition) are processed during the recovery period. After the recovery period all subsequent form HUD–93101–A(s) must incorporate the 235(r) interest rate in the Formula One and Formula Two computations. Please amend the instructions on form HUD–93100 and form HUD–93101–A to reflect these changes.

5. Computing the Recovery Period (Recover Method)—To determine the number of months in the recovery period for any 235(r) mortgage application three items are needed: the Eligible Upfront Costs/Payments Savings Ratio (Ratio), the 235(r) interest rate and *Attachment 2*, Table of Recovery Periods. (See *Appendix 1*, Using Steps 1 through 6 To Determine The Recovery Period in Whole Months, for an example on how to determine the recovery period).

a. *Determining the Recovery Period*—A six (6) step process must be completed as follows:

Step 1: Determine the Upfront Costs—The upfront costs in dollars is used as the numerator* in the Ratio computation (STEP 3).

*Use the "Good Faith Estimate" (GFE) to determine the estimated eligible upfront costs when processing and underwriting the 235(r) mortgage application.

*Use the attachment to form HUD–1 to determine the actual eligible upfront costs when preparing the 235(r) mortgage instruments for closing.

The originating mortgagee or its agent must recompute the recovery period on or before the date of closing so that the eligible upfront costs that are set forth on the attachment to form HUD–1 are incorporated in the computations that determines the recovery period that must be set forth in the 235(r) mortgage instruments.

Step 2: Compute the Payment Savings—The payment savings in dollars is used as the denominator in the Ratio computation (STEP 3). The payment savings are computed as follows: the old Principal and Interest payments (P + I) under the 235 mortgage *minus* the new P + I payments at the 235(r) interest rate under the 235(r) mortgage *equals* the payment savings.

Step 3: Compute the Ratio—

$$\frac{\text{Upfront Costs (STEP 1)}}{\text{Payment Savings (STEP 2)}} = \text{Ratio (Rounded up to the nearest quarter)}$$

Step 4: Find the 235(r) interest rate on the mortgage application—The 235(r) interest rate is set forth in Block 8–B, Interest Rate, on form HUD–92900.

Step 5: Find the number of whole months in the recovery period—To find the number of whole months *Attachment 2* must be used to find the intersection of the "Ratio" (row order, i.e, across) at the "235(r) interest rate" (column order, i.e., up and down).

Use of *Attachment 2*, Table of Recovery Periods—*Attachment 2* has two columns: Column 1 sets forth a variety of ratios and the remaining columns (Column 2) set forth the recovery periods in months at different 235(r) Interest Rates. The originating mortgagee must locate the "Ratio" value in the first column and then read across that row to obtain the recovery period in whole months from the column corresponding to the 235(r) interest rate.

Step 6: Determining the Beginning and Ending of the Recovery Period—The beginning of the recovery period is the date on which the first scheduled monthly amortization payment is due. The end of the recovery period is the last day of the last month.

For example:

The date of the first scheduled monthly amortization payment is March 1, 1991 and the recovery period is 11 months. The last month of the recovery period (i.e., January 31, 1992) is counted on a calendar as follows—

```
1991 J F M A Ma J Ju Au S O N D
       1 2 3 4 5 6 7 8 9 10

1991 J F M A Ma J Ju Au S O N D
       11 x . . . .  Beginning February 1, 1992 the 235(r) interest rate takes
                     effect where the scheduled monthly amortization payment due on
                     March 1st includes interest at this interest rate.
```

b. Use of the Recovery Period Formula—*Attachment 2* was computed using the following "Recovery Period Formula". The resulting table is based on solving the standard payment formula for "n" and substituting the originating mortgagee's eligible upfront costs for present value (PV), the payment savings (old P + I minus new P + I) for payment (PMT), and adding 300 basis points to the 235(r) interest rate to cover the originating mortgagee's cost of funds and risk for very early "mortgagor-induced" prepayment.

Originating mortgagees may elect to use the following formula to determine the number of whole months necessary to recoup the eligible upfront cost:

$$\text{Number of months} = -\{\ln(1 - [i * (\text{closing cost/payment savings})]\}/\ln(1+i)$$

where i = (235(r) interest rate + 300 basis points)/12.

Note: The 300 basis points allow for a risk premium and the spread of the originating mortgagee's borrowing rate over the 235(r) interest rate.

Originating mortgagees must verify their computations to the recovery period on *Attachment 2*.

6. Maximum Cap Rate for 235(r) Mortgage Applications—To prevent 235(r) refinance transactions at temporarily high market rates the 235(r) interest rate determined at application is subject to a "maximum cap rate".

A "maximum cap rate" is computed at par value (100) and is the maximum rate that the 235(r) interest rate (computed at par value (100)) can float when interest rates are increasing in the marketplace. HUD will establish the maximum cap rate. The "initial" maximum cap rate is ??.? percent. HUD will monitor the yields of mortgages in the primary and secondary markets and will periodically issue a Federal Register notice and a mortgagee letter which set forth a new maximum cap rate when conditions dictate a change.

A 235(r) refinance transaction with a 235(r) interest rate greater than the "maximum cap rate" on the date of the 235(r) mortgage application is not eligible for mortgage insurance.

7. Government National Mortgage Association (FNMA) Securities—The 235(r) mortgages may be pooled in GNMA's carrying the 235(r) interest rates, not the initial interest rates.

H. The 235(r) "Periodic" Mortgage Insurance Premiums—The 235(r) mortgage is subject to "periodic" Mortgage Insurance Premiums (MIP). The premiums are included in the mortgagors' monthly mortgage payments and escrows must be established for the payment of these premiums. The amount of the premium is computed on an annual basis at seven-tenths of one percent (.7%) and the 235(r) mortgage amount (at application) must be rounded down to the nearest $50.00 before the initial MIP factor is applied.

The factors in *Attachment 4*, section 235(r) Mortgages—Initial and Annual Mortgage Insurance Premiums Factor Table, are computed to reflect the MIP at .7 percent for a variety of 235(r) mortgage terms. These factors must be used to compute the initial MIP and the annual MIP for subsequent premium years.

The "periodic" MIP is paid to HUD under the requirements in Mortgagee Letter 8–6 (Revised), Revision to Mortgagee Remittance Requirements for Single Family Mortgage Insurance Premiums (dated July 19, 1982), and which, also, correspond to the regulations set forth in 24 CFR 203.261 through 203.268.

I. The 235(r) Mortgage Term—The term of the 235(r) mortgage cannot exceed the remaining term of the old 235 mortgage as of the date of closing the 235(r) mortgage, rounded down to the next whole year. For example, if the remaining term of the old 235 mortgage as of the date of closing is 23 years, 11 months and 3 days, the maximum new term of the 235(r) mortgage is 23 whole years. A 235(r) mortgage may have a mortgage term that is less than the maximum new term, however, the new term be in whole years. As stated previously, if the mortgagors' share of the full monthly payment increases by more than $50.00 per month under the 235(r) mortgage, a mortgage credit analysis is required.

The term of the 235(r) mortgage is used in the Formula One and Formula Two computations to determine the principal and interest payments at the initial interest rate or the 235(r) interest rate and is used in the Formula Two computation to determine the principal and interest payments at the new interest rate floor. The term of the 235(r) mortgage is also used to compute the initial MIP at application and the annual MIP for subsequent premium years. The section 235 Payoff Statement on pages 28 and 29 sets forth the remaining term of the old 235 mortgage.

J. The 235(r) Mortgage Amount—The 235(r) mortgage amount cannot exceed the sum of the following items which are due and payable under the old 235 mortgage: the unpaid principal balance (UPB) and any overpayments of assistance payments which have been properly advanced to the mortgage account as part of the UPB plus any current interest and delinquent interest not to exceed two months.

The mortgage amount must be rounded down to the nearest $50.00 before applying the principal and interest factors for the initial interest rate or 235(r) interest rate and the new interest rate floor and the 235(r) MIP factor for the initial MIP. The section 235 Payoff Statement on pages 28 and 29 sets forth the items which are used to determine the 235(r) mortgage amount.

K. The Characteristics of the New Assistance Payments Contract (New APC) and 235(r) Assistance Payments Billings—

1. The New 235(r) APC—The issuance of the Mortgage Insurance Certificate (form HUD–59100, MIC) will constitute the execution of the new 235(r) APC (new APC). The new APC will not be a separate written contract between HUD and the originating mortgagee, but rather 24 CFR Part 235, Subpart C, as modified by the notice published in the **Federal Register** on [This page to be reprinted with **Federal Register** notice dates, etc.] will constitute the new APC.

2. The New 235(r) APC's Contract Term—The contract term of the new APC commences on the date of disbursement of the 235(r) mortgage proceeds and expires at the end of the 235(r) mortgage term, or such earlier time as the new APC is terminated pursuant to 24 CFR 235.375.

An exception, as described in Paragraph K–3, below, is made for the new APC (new APC 10) which is associated with the 235(r) mortgage that refinances an old 235 revised recapture 10 mortgage.

3. The New APC 10—The new APC 10 will not be a written contract and will be represented as set forth in Paragraph K–1, above. The new contract term of the new APC 10 will commence on the date of disbursement of the 235(r) mortgage proceeds and will expire on the "expiration date" of the new contract term as set forth in the next paragraph, or such earlier time as the new APC 10 is terminated pursuant to 24 CFR 235.375.

The "expiration date" of the new APC 10 can be determined by adding 10 years to the date of the first scheduled monthly amortization payment under the old 235 revised recapture 10 mortgage. The Section 235 Payoff Statement requirements on Pages 28 and 29 set forth the date of the first scheduled monthly amortization payment under the old 235 revised recapture 10 mortgage.

Attachment 5, Acknowledgment of Mortgagor(s), must be executed by the mortgagors on the date of closing of the 235(r) mortgage (Use with 235 revised recapture 10 refinancings only). A copy of the original (old) APC which is associated with the old 235 revised recapture 10 mortgage is required to be attached to the section 235 Payoff Statement.

4. Date of the 235(r) Mortgage Proceeds Disbursement—The originating mortgagee must complete the instructions to and must execute *Attachment 6*, Mortgagee's Certificate of the Date of Disbursement of the Section 235(r) Mortgage Proceeds. The date of disbursement is the date on which the contract term of the new APC or APC 10 commences. Prior to the date of disbursement HUD is not obligated to pay any assistance payments which are associated with the new APC or APC 10.

5. Section 235(r) Assistance Payments Billings—Within 5 days after receiving the 235(r) MIC the originating mortgagee, or its agent, must send to the address below the following completed and executed documents:

a. the new (original) form HUD–93100;

b. the new form HUD–93114, Notice of Termination, for the old APC or APC 10 (obtained from the old servicing mortgagee);

c. a copy of form HUD–27050–A, Mortgage Insurance Termination-

Application for Premium/Distributive Payments, for the old 235 mortgage (obtained from the old servicing mortgagee)

d. the original *Attachment 6*, Mortgagee's Certificate of the Date of Disbursement of the Section 235(r) Mortgage Proceeds;

e. A copy of the 235(r) MIC; and

f. the original *Attachment 5*, Acknowledgment of Mortgagor(s), if a new APC 10 is involved.

These documents must be sent to: Department of Housing and Urban Development, Subsidy Accounting Branch, room 3206, Washington, DC 20410.

The originating mortgagee must obtain from the old servicing mortgagee the new form HUD–93114 for the old APC and a copy of form HUD–27050–A for the old 235 mortgage. The original form HUD–27050–A must be sent to HUD by the old servicing mortgagee (the address is inscribed on the form). The Subsidy Accounting Branch will not establish a new APC or APC 10 account without first terminating the old APC account.

The Subsidy Accounting Branch will set up a new APC or APC 10 account by the 235(r) FHA case number which will enable the Subsidy Accounting Branch to process the new servicing mortgagee's applications (bills) for assistance payments and to disburse funds to the new servicing mortgagee once the bill has been validated.

The servicing mortgagee will not be paid on the new APC or APC 10 until the account is set up by the Subsidy Accounting Branch. Once the account is established, the servicing mortgagee can request the initial 235(r) assistance payments on the next billing date which is at least 30 days after the documents in 5(a) through 5(f) have been received by Subsidy Accounting Branch. The initial amount of the 235(r) assistance payments must represent the first assistance payment (as set forth in paragraph E–1, pages 5 and 6) and any subsequent monthly assistance payments that are due and payable to the new servicing mortgagee prior to the new APC or APC 10 account being set up. Mortgagees should send these documents to the Subsidy Accounting Branch by "Return Receipt Requested" or by courier.

Applications (bills) for assistance payments must be submitted on form HUD–93102, Mortgagee's Certification and Application for Assistance or Interest Reduction Payments, in accordance with paragraph 10–23 in Handbook 4330.1.

At present HUD is not going to change form HUD–93102 to establish a block (See form HUD–93102) to allow new servicing mortgagees to separately itemize the 235(r) assistance payments for billing purposes. Instead, the new servicing mortgagee must indicate the 235(r) assistance payments under the old the type of payments applied for (e.g., 235 Revised or 235 Recaptured). For example, if the old 235 mortgage has a suffix code of 285, the new servicing mortgagee would indicate the 235(r) assistance payments under the type of payments applied for as "Assistance Payments under Section 235 Revised" and would include the 235(r) assistance payments (and adjustments) in Block 2, "235 Revised". In addition, if the 235(r) mortgage refinanced an old 235 revised recapture 10 mortgage, the new servicing mortgagee must include the amount of the APC 10 assistance payments under "235 Revised/Recapture/10" and must specify on form HUD–300 under Column 3, Explanation of Adjustments, that the case is a 235(r) mortgage.

L. The 235(r) Mortgage (or Deed of Trust) Provisions—The 235(r) mortgage (or deed of trust) provisions are set forth in Mortgagee Letter 89–23, Single Family Loan Production—Requirements for Single Family Mortgage Instruments and Mortgagee Letter 89–31, Single Family Loan Production—Implementation of Certain Provisions of the "Department of Housing and Urban Development Reform Act of 1989".

To be eligible for mortgage insurance the executed 235(r) mortgage (or deed of trust) must meet the requirements set forth in this letter and must be a first lien on the property which is held in fee simple, or on a leasehold under a lease where the term is for not less than 99 years (which is renewable) or has not less than 10 years to run beyond the maturity date of the 235(r) mortgage.

M. Recapture Mortgages—

1. Execution of a Modification and Subordination Agreement to the Recapture Mortgage (or Deed of Trust) and Execution of a New Recapture Note—Old 235(i) mortgages and old 235 revised recapture 10 mortgages where a firm commitment was issued after May 27, 1981, have a recapture mortgage (or deed of trust) and note which is a junior mortgage that allows for the recapture by HUD of section 235 assistance payments made on behalf of the mortgagor.

HUD will allow the modification and subordination of the recapture mortgage to the 235(r) mortgage where the originating mortgagee has followed the instructions set forth in *Attachment 7*, Instructions to complete the modification and subordination agreements for HUD's recapture mortgage or deed of trust.

These instructions require that the mortgagors, the originating mortgagee and HUD, or its designee, execute *Attachment 7—A*, Mortgage modification and subordination agreement, or *Attchment 7—B*, Deed of Trust modification and subordination agreement. In addition, the mortgagors must execute a new recapture note (Appendix 27, note, of HUD Handbook 4330.1) on the date of closing of the 235(r) mortgage.

The DE underwriter, who underwrites and certifies the 235(r) case which includes the subordination of the recapture mortgage, or a corporate officer of the DE mortgagee, who has the authority to legally obligate the mortgagee, is delegated by HUD the limited authority, as its authorized official (designee), to execute on HUD's behalf the modification and subordination agreement.

The local HUD Field Office's authorized official (e.g., Manager) will execute the modification and subordination agreement for those cases where a form HUD–92900.4, Firm Commitment, was issued.

The authorized officials must execute the respective agreement on or before the date of closing of the 235(r) mortgage. The originating mortgagee, or its agent, must have the respective agreement properly recorded concomitant with the recordation of the new 235(r) mortgage. The recorder's office must be instructed by the originating mortgagee, or its agent, to send the original agreement to the local HUD Field Office (Attn: Documents Officer).

The recapture mortgage will retain the same provisions (terms and conditions) with the exceptions contained in the respective modification and subordination agreement. Since the conditions requiring the payment of the recapture mortgage will not have occurred, the modified and subordinated mortgage will not be due and payable.

The recapture mortgage is, now, treated as any other existing mortgage which may be subordinated without regard to the total indebtedness against the property and can be subordinated only to the 235(r) mortgage. Other existing mortgages can be subordinated to the 235(r) mortgage and the modified and subordinated recapture mortgage.

The amount of the recapture will continue to be calculated under the procedures set forth in chapter 11 of Handbook 4330.1 and will represent the lesser of the total amount of assistance paid by HUD (less handling charges) or half of the net appreciation of the property, which is based on a contract

of sale, or an appraisal, when the property is sold, less the original purchase price of the property and reasonable costs of sale and qualified improvements.

The mortgagors must be informed of the effects of the modification and subordination of the recapture mortgage and must execute Appendix 25, Notice to Buyer, in Handbook 4330.1. The appendix's title must be changed to read "Notice to Mortgages" and the third paragraph must be amended to read as follows: "You will be required to execute a new recapture note to be secured by the recapture mortgage or deed of trust which was previously executed and is being subordinated." A copy of Appendix 25 must be furnished to the mortgagors.

Within 5 days after the closing date of the 235(r) mortgage, the originating mortgagee, or its agent, must send a copy of the modification and subordination agreement, the new recapture note and the original of the newly executed appendix 25 to the local HUD Field Office (Attn: Documents Officer). These documents are sent to the local HUD Field Office separate from the case binder. The costs of the document's preparation and recordation plus postage or other fees must be borne by the mortgagee or the mortgagor, or both.

2. A Recapture Mortgage (or Deed of Trust) can be Subordinated to a Junior Mortgage (or Deed of Trust) Held or Insured by a Government Unit—Some old 235(i) mortgages were originally processed, underwritten and executed where a government unit (Federal, State or local government agency or instrumentality) financially assisted the mortgagor in becoming a homeowner. These government units obtained or insured a second mortgage and HUD's recapture mortgage was secured as a third mortgage.

In refinance transactions where a government unit has agreed to subordinate the second mortgage to a 235(r) mortgage and retain its second lien status, HUD will allow the modification and subordination of the recapture mortgage to the 235(r) (first) mortgage and the government unit's subordinated second mortgage. The same subordination requirements and procedures as set forth in Paragraph M–1, above, apply. HUD will not authorize the subordination of the recapture mortgage to any other junior mortgage.

Attachments 7–A through 7–D cannot be used to subordinate a government unit's second mortgage. The government unit will have to use their own.

3. Originating Mortgagee's Certification of HUD's Lien Priority after Recordation of the Modification and Subordination Agreement—The originating mortgagee will certify to HUD, after the concomitant recordation of the 235(r) mortgage and the modification and subordination agreement, that HUD holds a second lien priority, or a third lien priority if the recapture mortgage is subordinated to a mortgage held by a government agency or instrumentality.

For Direct Endorsement processed cases the mortgagee must complete the Direct Endorsement certifications set forth in *Attachment 8*, 235(r) Direct Endorsement Certifications section 235 To Section 203(b) or 235(r); and, for HUD processed cases, the mortgagee must execute *Attachment 7–E*, Mortgagee's FHA Case Certification To A HUD Processed Case.

4. Assumption of a Modified and Subordinated Recapture Mortgage and Note—The recapture mortgage, which is modified and subordinated to the 235(r) mortgage, can be assumed by a future purchaser if they meet the requirements for the assumption of the insured 235(r) mortgage which are set forth in the mortgage and the requirements for assumption of the recapture mortgage as set forth in Paragraph 10–24 of Handbook 4330.1. The future purchaser will be required to execute a new recapture note when the assumption is consummated.

N. Section 235 Mortgages Directory—The Reform Act authorizes HUD, upon the request by any HUD-approved mortgagee, to disclose specific information on mortgages insured under section 235 that meet the criteria for refinance.

Mortgagees can obtain a section 235 Mortgages Directory that contains the mortgagor's name (last known), property address, FHA case number, ADP code, endorsement date, original mortgage balance and interest rate for each mortgage that may be eligible for refinancing under the 235(r) Program. The directory is organized by state, zip codes within the state and the mortgagor's name. Old 235 mortgages with interest rates of ten percent or more are contained in the directory.

Mortgagees must send a written request for the directory. The written request must include the information set forth in *Attachment 9*, 235 Mortgages Directory—Written Request, and it must be sent to the address designated on the attachment. Attached to the written request must be a money order or certified check which is payable to the U.S. Department of Housing and Urban Development for the amount required to purchase the quantity desired ($50.00 each hard copy, $150.00 each set of floppy disks or $250.00 each magnetic tape).

O. Check Lists to Assist the Originating Mortgagee, or its Agent—The application processing and documents disposition requirements set forth in this letter are arduous. To assist the originating mortgagee, or its agent, the following check lists have been developed for 235 refinancing transactions and may be used with the 235(r) Program (i.e., *Attachments 10–A thru 10–D*) and the 203(b) Refinance and Streamline Refinance procedures (i.e., *Attachments 10–B and 10–D*):

1. *Attachment 10–A*, 235(r) Application Processing—Questions and Answers/Check List, may be used during the pre- and post-application processing which takes place prior to the application being sent to the Direct Endorsement underwriter or the local HUD Field Office for underwriting.

2. *Attachment 10–B*, 235(r) or 203(b) Documents Disposition/Check List For The 235(r) Case Binder And The Origination and Servicing Files, may be used (after the 235(r) or 203(b) mortgage has been closed) to: complete the origination file, prepare for shipment those documents that are included in the case binder and are sent to the local HUD Field Office for endorsement, and establish the new servicing file.

3. *Attachment 10–C*, 235(r) Document Disposition For The New APC Account/Check List, may be used to prepare for shipment those documents that must be sent to HUD, Subsidy Accounting Branch, to establish the new APC account for the billing of 235(r) assistance payments by the new servicing mortgagee.

4. *Attachment 10–D*. Recapture Mortgage (Deed of Trust) Modification and Subordination Agreement Disposition/Check List, may be used to prepare for shipment those documents that must be sent to the local HUD Field Office (Attn: Documents Officer).

P. Section 235 Payoff Statements—Any 235 mortgage refinanced under the 235(r) Program (or, under section 203(b) per the Refinance Procedures or Streamline Refinance Procedures) must comply with the section 235 Payoff Statement requirements on Pages 28 and 29.

Q. Subsequent Section 235(r) to Section 235(r) Refinancings—To assure the originating mortgagee and investor that HUD's policy to allow the eligible upfront costs to be recouped in subsequent 235(r) refinancings does not cause early prepayments of the original 235(r) mortgage HUD is setting forth the requirement that mortgagors must pay all the upfront costs with any

subsequent 235(r) to 235(r) refinancing that occurs within 60 months of the date of closing of the original 235(r) mortgage.

235(r) Application Processing

A. The 235(r) Mortgage Application—The following forms and documents represent the 235(r) mortgage application which must be processed and completed by the originating mortgagee prior to the issuance of a 235(r) FHA case number and ADP code. After HUD has issued the 235(r) FHA case number and ADP code, the 235(r) mortgage application is submitted to the Direct Endorsement (DE) underwriter, if a DE processed case, or HUD staff underwriter, if a HUD processed case, for review and underwriting.

1. Form HUD–92900, Application for HUD/FHA Insured Mortgage—Form HUD–92900 must be completed and certified by the originating mortgagee and executed by the mortgagor. The originating mortgagee must complete the instructions attached to the form HUD–92900 and must enter the old 235 FHA case number and ADP code in the lower lefthand corner of Item 4A, Name and Address of Lender.

The application is not subject to an appraisal, a face-to-face interview, or a photo identification. *An old 235 mortgage which is no more than two payments delinquent may be refinanced under the 235(r) Program.* A credit report does not need to be obtained, unless, a mortgage credit analysis is required. This latter requirement is set forth in Paragraph D, Page 4, and Paragraph I, Page 13.

2. For HUD–93100, Application for Homeownership Assistance Under Section 235 of the National Housing Act—

a. The Originating Mortgagee must Process and Complete a New form HUD–93100—A new form HUD–93100 must be processed and completed by the originating mortgagee and executed by the mortgagor. The originating mortgagee must follow the instructions set forth in Subparagraph G–4 on Pages 9 and 10.

In addition, the originating mortgagee must enter the old 235 FHA case number and ADP code in Item D, Mortgagee's Name, Address, City, State and Zip Code, in the lower left-hand corner, and must insert the following in Block K Review and Eligibility, which becomes part of form HUD–93100:

"I (we) have been informed by the originating mortgagee that I (we) may wish to seek tax advice from a professional, who is qualified to give such advice, as to the tax consequences associated with the mortgagee paying a financial incentive to me (us) and also paying the refinancing costs for an on my (our) behalf. Furthermore, I (we) understand that seeking tax advice is a voluntary action and does not constitute a requirement in the consideration of my (our) mortgage application.

I (we) also understand that if I (we) refinance the 235(r) mortgage to another 235(r) mortgage within 60 months of the closing date that I (we) am (are) obligated to pay all the costs to refinance.

Mortgagor's Signature Date"

b. The Originating Mortgagee is to Verify the Mortgagors' Certification—The originating mortgagee must verify the mortgagors' certification in accordance with the requirements and procedures found in Paragraphs 10–4 and 10–5, 10–10 through 10–12, 10–14, 10–16, 10–21 and 10–22, and 10–29 of Handbook 4330.1.

c. Review and Execution of form HUD–93100—The Direct Endorsement (DE) underwriter (DE processed cases) or HUD staff underwriter (HUD processed cases) must review and execute form HUD–93100 and its supporting documentation (e.g., verification(s) of employment and income) when the 235(r) mortgage is underwritten.

The DE or HUD staff underwriter is the authorized official, who determines the mortgagors' eligibility for assistance and the amount of the assistance payments for the new APC. These authorized officials will execute Item K, Review and Eligibility, on form HUD–93100 when the application is approved per the requirements of this letter.

3. Verifications at Mortgage Application—

a. Requests for Verification—The originating mortgagee must obtain the verifications set forth in the next paragraph at the time of the 235(r) mortgage application and must evidence the mortgagors' social security number (SSN) in accordance with the procedures in Handbook 4155.1, REV–3, Chapter 1.

The mortgagors should authorize the originating mortgagee to obtain the various verifications by submitting a written request to their employer(s) where employment and income(s) are verified and to the old servicing mortgagee where the written request sets forth the need for the following documents: a written verification which sets forth certain statements and mortgage account information (See Paragraph 3–b, below), a copy of the old original form HUD–93100 (which was executed by HUD when the old 235 mortgage was underwritten), a copy of the old APC (if an old section 235 revised recapture 10 mortgage is being refinanced), the section 235 Payoff Statement, a copy of the original sales contract (if available) which was executed when the old 235 mortgage was underwritten and a copy of Appendix 29 which is furnished to the mortgagors.

The written request to the old servicing mortgagee by the mortgagors should, also, serve as an authorization to issue this information to the originating mortgagee and as a written notice that the mortgagors intends to prepay the old 235 mortgage.

b. Written Response by the old Servicing Mortgagee—Upon receipt of the mortgagors' written request, the old servicing mortgagee is required to respond to the mortgagors' request by issuing a written verification letter with the respective attachments as set forth in Paragraph 3(a), above, and is required to send the mortgagors a notice that is similar to Appendix 29 (Suggested Form of Mortgagee Notice to Mortgagor responding to prepayment inquiry, request for payoff or tender of prepayment in full) in Handbook 4330.1. HUD's prepayment requirements are found in Paragraph 5–3, Prepayment In Full, of Handbook 4330.1.

The written response from the old servicing mortgagee should be addressed to the originating mortgagee and must state (affirmatively or negatively) that: within the preceding 12 months the mortgagor has (or, has not) completed and executed form HUD–93101, Mortgagor's Recertification of Family Composition and Income, and the old servicing mortgagee has (or, has not) completed and executed form HUD–93101–A, Mortgagee's Certification of the Mortgagor's Recertification of Family Composition and Income, that the mortgagors are (or, are not) currently eligible for assistance and are (or, are not) receiving assistance payments under the old APC, that HUD is (or, is not) due an amount for the overpayment of assistance payments and that HUD has (or, has not) been refunded any overpayments, if applicable.

Any negative response by the old servicing mortgagee will cause the application processing to cease and must be corrected per the requirements set forth in Paragraph 4, Verification Deficiencies, below, before the application processing can continue. An exception is made for the negative response which states that the mortgagors are not eligible for and receiving assistance payments wherein the application must be rejected.

The old servicing mortgagee must verify that it has paid HUD the amount of overpayments of assistance payments indicated in the written response. This verification can be a statement set forth in the written response.

The written response must include: the old 235 FHA case number and ADP code, the last date of the mortgagor's recertification and old servicing mortgagee's certification, the amount of the monthly assistance payments which are currently paid by HUD and a certification which states that the information provided is an accurate representation of the old 235 mortgage account.

In addition to the written response the old servicing mortgagee is required to issue the section 235 Payoff Statement as set forth on Pages 28 and 29. The originating mortgagee should become familiar with these requirements.

4. Verification Deficiencies—The old servicing mortgagee may encounter problems in issuing the written response with attachments. In most cases, the problem is correctable and the old servicing mortgagee must be given the opportunity to correct the deficiency. The deficiency should be corrected within a time frame that does not exceed 30 calendar days.

a. The Mortgagors' Recertification/old Servicing Mortgagee's Certification—The old servicing mortgagee, who has not obtained the mortgagors' completed and executed form HUD–93101 within the preceding 12 months (or longer) and/or who has not completed and executed form HUD–93101–A within the preceding 12 months (or longer), must be given an opportunity to correct this servicing deficiency.

The old servicing mortgagee must correct this servicing deficiency for any of the three years that precede the last anniversary date. If any overpayments result, the old servicing mortgagee is required to immediately reply HUD any amount due under 24 CFR 235.361 and to include the total amount of the overpayments in the Section 235 Payoff Statement.

b. The old Original form HUD–93100 is not Available—The form HUD–93100 which was issued by HUD for the last mortgage assumption can substitute for the old original form HUD–93100, as long as, the old original form is not available to the old servicing mortgagee.

The old servicing mortgagee, who is not able to issue the written response because it does not have the old original form HUD–93100 or the original form HUD–93100 from the last mortgage assumption, must state in the written response that it does not have the form, but it has determined the mortgagors' income contributions percentage and/or interest rate floor (as a percentage) from the mortgage account's records. The old servicing mortgagee must certify in the written response that to the best of their knowledge these percentages are the same as those that were authorized by HUD when the old original form HUD–93100 was executed.

c. The Original Sales Contract is not Available—*The old servicing mortgagee, who does not have a copy of the original sales contract, can substitute a copy of the original form HUD–1, Settlement Statement, that was executed at the closing of the old 235 mortgage.*

If copies of the original sales contract or original form HUD–1 are not available, the old servicing mortgagee must state in the written response that it does not have a copy. A substitute copy of the original sales contract may be obtained from the mortgagors if they are the original mortgagors of the old 235 mortgage. If a copy cannot be found, a copy of the original appraisal or form HUD–92900 can be substituted.

d. The old 235 Mortgage was not properly assumed—An old servicing mortgagee that discovers that the mortgagors did not properly qualify for assumption of the old 235 mortgage per the requirements set forth in Handbook 4330.1, must be given an opportunity to correct this servicing deficiency.

The old servicing mortgagee must correct this servicing deficiency for the period of time that the mortgagors were not properly qualified. If any overpayments result, the old servicing mortgagee is required to immediately repay HUD any amount due under 24 CFR 235.361 and to include the total amount of the overpayments in the section 235 Payoff Statement.

e. The old APC was not Properly Reinstated, Suspended or Terminated—An old servicing mortgagee that discovers that the old APC was not properly reinstated, suspended or terminated, must be given an opportunity to correct this servicing deficiency.

The old servicing mortgage must correct this servicing deficiency to the date that the deficiency first occurred and must take the proper action per Handbook 4330.1. If any overpayments result, the old servicing mortgagee is required to immediately repay HUD any amount due under 24 CFR 235.361 and to include the total amount of the overpayments in the Section 235 Payoff Statement.

If the old APC should have been suspended or terminated the mortgage application must be rejected because the mortgagors are not eligible for a 235(r) mortgage.

235(r) FHA Case Numbers

As with other programs, to start case processing, the originating mortgagee must contact the local HUD Field Office for a case number. Besides the routine case information the originating mortgagee must also provide the old 235 FHA case number and ADP code. Once the old 235 FHA case number has been verified the local HUD Field Office will issue the new 235(r) FHA case number and ADP code. Originating mortgagees must enter the new 235(r) ADP code in Item 2B, section of the Act, of form HUD–92900. (See *Attachment 1*, 235 mortgages, for additional details on the 235(r) ADP codes)

235(r) Underwriting Criteria

Direct Endorsement (DE) underwriters or HUD staff underwriters must comply with the following 235(r) underwriting requirements:

A. The 235(r) mortgage application (form HUD–92900, form HUD–93100 and the verifications) must be processed and completed in accordance with the requirements and procedures set forth in this letter. Underwriters must review these documents for conformity to these requirements and procedures.

B. Underwriters must complete Items 1 through 14 and Item 15 (a) through (g) of form HUD–92900 WS, or complete the entire work sheet if a mortgage credit analysis is required, and must approve or reject the mortgage application.

C. If the case is processed by a DE mortgagee, the DE underwriter must: advise the applicant in writing of the application's acceptance or rejection, execute form HUD–93100 as the authorized official if the mortgagors meet the requirements set forth in this letter, and execute the 235(r) certification (See *Attachment 8*, 235(r) Direct Endorsement Certifications). If the 235(r) mortgage application includes the subordination of the recapture mortgage as a condition of the 235(r) mortgage approval. On or before the date of closing of the 235(r) mortgage, the authorized DE mortgagee official or the DE underwriter must execute a Mortgage Modification and Subordination Agreement (*Attachment 7–A*) or Deed Of Trust Modification and Subordination Agreement (*Attachment 7–B*).

D. If the case is processed by the local HUD Field Office, the HUD staff underwriter must: issue a Firm Commitment, form HUD–92900.4 (acceptance or rejection) and execute form HUD–93100 as the authorized

official if the mortgagors meet the requirements set forth in this letter. If a recapture mortgage modification and subordination agreement applies, the agreement (*Attachment 7–A* or *Attachment 7–B*) must be executed by the local HUD authorized official on or before the date of closing of the 235(r) mortgage.

Refinancing an Old 235 Mortgage to a New 203(b) Mortgage

A. Clarification of the (203(b)) Refinance Procedures—

Any 235 mortgage can be refinanced under the procedures set forth in HUD Handbook 4155.1, REV–3, chapter 4, section 2, Refinance. These procedures allow mortgagors to obtain a new 203(b) mortgage to refinance their old 235 mortgage and other indebtednesses (e.g., junior mortgages, such as, the HUD-held second mortgage). The new 203(b) mortgage amount must be supported by an appraisal (value) and can include: the existing principal indebtednesses, costs of refinancing (closing costs and reasonable discount points), and the costs of required repairs and improvements.

These procedures require a new appraisal, a face-to-face interview, a photo identification and a mortgage credit analysis. The maximum mortgage amount is limited by the loan-to-value ratios and by the applicable statutory limit. (See Paragraphs 2–2 and 2–4, HUD Handbook 4155.1, REV–3, chapter 2)

Section 235(i) mortgages can, also, be refinanced under these procedures where an appraisal must be obtained to establish the current value of the land and its improvements and the amount to be recaptured under the provisions of the recapture mortgage.

For clarification, the amount of recapture and any overpayments of assistance payments (which have been properly advanced to the old 235 mortgage account as part of the remaining principal due under the mortgage note) are part of the existing principal indebtedness which can be refinanced under these procedures and can be included in the new 203(b) mortgage amount if the value supports the new mortgage amount.

The recapture mortgage cannot be subordinated to the new 203(b) mortgage under these procedures. Furthermore, the APC associated with the old 235 mortgage is terminated by the old servicing mortgagee, and cannot be continued or reinstated for the new 203(b) mortgage.

Any 235 mortgage refinanced under these procedures must comply with: Handbook 4330.1, Chapter 11, Recapture of Assistance Payments (if there is a recapture mortgage), and the section 235 Payoff Statement requirements on Pages 28 and 29.

B. Amendment to the Streamline Refinance Procedures—

The refinance procedures set forth in HUD Handbook 4155.1, REV–3, chapter 4, section 3, Streamline Refinance, apply to the refinance of a section 235 mortgage to a section 203(b) mortgage. The handbook specifically prohibits the subordination of the recapture mortgage to the new 203(b) mortgage when the refinance is without an appraisal.

Effective with this letter, the Streamline Refinance Procedures with and without an appraisal are amended to allow for the subordination of the recapture mortgage to the new 203(b) mortgage.

Any 235 mortgage can now be refinanced under these procedures where the mortgagor can obtain a new 203(b) mortgage to refinance their old 235 mortgage and have the recapture mortgage subordinated.

The mortgagors are not subject to a face to face interview or a photo identification. A credit report does not have to be obtained unless a mortgage credit analysis is required. This analysis must be performed when the full monthly payment of the new 203(b) mortgage is more than $50.00 above the mortgagors' current share of the monthly payment under the old 235 mortgage.

If no appraisal is performed, the unpaid principal balance and One Time MIP (OTMIP) can be incorporated into the new 203(b) mortgage amount; or, if an appraisal is performed and sufficient value is reflected, the unpaid principal balance and the OTMIP plus the costs of refinancing (closing costs and reasonable discount points) can be incorporated into the new 203(b) mortgage amount.

Overpayments, of assistance payments that are properly advanced to the mortgage account as part of the unpaid principal balance, can be included in the new 203(b) mortgage amount and do not need to be supported by an appraisal (value).

Other existing principal indebtedness, the costs of required repairs and improvements, cash out by the mortgagor and the amount of recapture cannot be included in the new 203(b) mortgage amount even though the value supports them. Only the Refinance Procedures on page 28 will allow these items to be included in a new 203(b) mortgage amount.

When a recapture mortgage is to be subordinated to a new 203(b) mortgage which is processed under the Streamline Procedures, the subordination requirements and procedures set forth on pages 16 thru 18 (paragraphs M–1 thru M–3) of this letter must be followed with these exceptions: the mortgagors do not execute a new recapture note, the recapture mortgage (or deed of trust) is not modified, and *Attachment 7–C* or *Attachment 7–D* is substituted for *Attachment 7–A* or *Attachment 7–B*, respectively.

The APC associated with the old 235 mortgage is terminated by the old servicing mortgagee, and cannot be continued or reinstated for the new 203(b) mortgage. Any 235 mortgage refinanced under these procedures must comply with the section 235 Payoff Statement requirements on pages 28 and 29.

c. Future Assumptions of a Subordinated Recapture Mortgage (Or Deed of Trust) and Note—The recapture mortgage, which is subordinated to the 203(b) mortgage, cannot be assumed by a future purchaser and the recapture procedures set forth in chapter 11 of Handbook 4330.1 must be followed by the new servicing mortgagee when the property is sold by the mortgagors.

The recapture amount must be determined by the local HUD Field Office prior to the consummation of the contract of sale and HUD must be paid by a certified check or money order to HUD prior to the release of the recapture mortgage.

Old Servicing Mortgagees of The Old 235 Mortgages

The old servicing mortgagee is an integral part of any refinance transaction that involves any FHA-insured mortgage. HUD and originating mortgagees must rely on the old servicing mortgagee to provide information that accurately reflects the mortgage account and that documents the old servicing file.

The old servicing mortgagee must provide information which is germane to the mortgage account when requested in writing by the mortgagors and must comply with the requirements set forth in this letter.

These requirements become effective when requested in writing by the mortgagors to release a preliminary or final payoff statement for any old 235 mortgage refinanced under the requirements and procedures in this letter.

A. Section 235 Payoff Statements—The following requirements may be in addition to those standards used by the old servicing mortgagee when a payoff statement is issued.

The old servicing mortgagee must itemize on these payoff statements the following: the unpaid principal balance (the UPB that includes any overpayments of assistance payments which have been properly advanced to the mortgage account, and other advances for real estate taxes, hazard insurance, etc.), the current interest, the delinquent interest, and the grand total of these amounts which is necessary to prepay (in full) the old 235 mortgage.

Special Instructions: If the old servicing mortgagee has sent a form HUD 93102 (billing) to HUD for the assistance payment respective to the mortgage account, but has not received and credited the mortgage account, or if the old servicing mortgagee anticipates that it will submit a new form HUD 93102 (billing) during the period of time that the payoff statement is valid, the old servicing mortgagee must adjust the grand total cited in the above paragraph by the amount of those assistance payments.

The old servicing mortgagee must separately itemize the following information: the mortgage note interest rate, the escrow balances, any partial payment accepted by the old servicing mortgagee that is held in a trust account pending disposition, the original term of the mortgage, the remaining term of the mortgage, the number of delinquent payments and/or partial prepayments, the amount of overpayments which has been properly advanced to the mortgage account and is included in the remaining principal balance, the total amount of assistance payments which have been paid by HUD (beginning with the first assistance payment) and the date of the first monthly amortization payment under the mortgage (or deed of trust).

Certain attachments are required to be provided by the old servicing mortgagee, such as, a copy of the original form HUD–93100, a copy of the old APC associated with the old 235 Revised Recapture 10 mortgages, the attachments and letter described in the section on verifications at mortgage application (pages 21 through 23) and the substitute documents described in the section on verification deficiencies (pages 23 and 24).

The old servicing mortgagee must state on the payoff statement is an accurate statement of the mortgage account and must state if the amount of overpayments of assistance payments represented on the statement has or has not been repaid to HUD (a break down may be required, i.e., paid and unpaid). The servicing mortgagee must maintain a copy of the payoff statement in the old servicing file for later HUD use.

Any amount of overpayments of assistance payments must be immediately refunded to HUD by the old servicing mortgagee. Otherwise, the 235(r) or 203(b) mortgage application cannot be approved by the DE underwriter or HUD staff underwriter.

B. Responsibility and Accountability after the Prepayment or Payment in Full of the old 235 Mortgage—The old servicing mortgagee of the old 235 mortgage will be held accountable and responsible under the old contract of mortgage insurance (MIC) and the old APC for its servicing and administration of the old 235 mortgage which is paid in full because of a prepayment or by payment of the last scheduled payment required under the mortgage and note. Specifically, old servicing mortgagees must have complied with the provisions found in 24 CFR 235, subparts B and G, and Handbook 4330.1.

In those cases, where the old 235 mortgage has been paid in full, the old servicing mortgagee will retain the responsibility to refund to HUD (with interest at 7 percent per annum) any overpayments of assistance payments and handling charges which are associated with the old 235 mortgage and where the overpayments of assistance payments were the result of mortgagee's fraud, misrepresentation or failure to meet contractual obligations.

Any refunds paid to HUD which result from a payment in full of the old 235 mortgage will be credited by HUD to the total amount due from the old servicing mortgagee.

The old servicing mortgagee must maintain the old 235 mortgage records for at least three years after the payment in full and must furnish the mortgage records (when requested) during a review or audit conducted by HUD, or its agents. This requirement corresponds to 24 CFR 235.365.

C. Terminations of the Old 235 MIC and APC—The old servicing mortgagee must submit to HUD, within 15 days after the old 235 mortgage is paid in full, form HUD–27050–A, Mortgage Insurance Termination-Application for Premium/Distributive Payments, and must submit to the originating mortgagee, within 15 days after the old 235 mortgage is paid in full, a copy of form HUD–27050–A, above, and form HUD–93114, Notice of Termination, for the old APC.

The old servicing mortgagee cannot continue to apply to HUD for assistance payments when the old 235 mortgage is paid in full. The last assistance payment is the first day of the month of the payment in full. Any assistance payments or handling charges for periods after that date are overpayments and must be refunded to HUD.

Should you have any questions concerning the mortgage application processing and underwriting requirements and procedures please contact the Housing Development Division, or concerning the servicing requirements and procedures please contact the Housing Management Division, of the local HUD Field Office.

Very sincerely yours,

Arthur J. Hill

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

Documents Required by This Mortgagee Letter

Forms:

1. Form HUD–1, Settlement Statement, approved under OMB 2502–0265.
2. Form HUD–300, Monthly Summary of Assistance Payments, approved under OMB 2502–0081.
3. Form HUD–27050–A, Termination of Mortgage Insurance, approved under OMB 2502–0414.
4. Form HUD–59100, Mortgage Insurance Certificate (MIC), approved under OMB 2502–0059.
5. Form HUD–92900, Application for HUD/VA Insured Mortgages, approved under OMB 2502–0059.
6. Form HUD–92900–WS, Work Sheet, approved under OMB 2502–0059.
7. Form HUD–92004–G, Request for Verification of Employment, approved under OMB 2502–0059.
8. Form HUD–93100, Application for Homeownership Assistance Under Section 235 of the National Housing Act, approved under OMB 2502–0190.
9. Form HUD–93102, Application (Bill) of 235 Assistance Payments, approved under OMB 2502–0081.
10. Form HUD–93114, Notice of Suspension of 235 Assistance Payments, approved under OMB 2502–0094.
11. Form HUD–93114, Notice of Termination of 235 Assistance Payments, approved under OMB 2502–0094.

Appendices From HUD Handbook 4330.1, Administration of Insured Home Mortgages:

1. Appendix 25, Notice to (Buyers) Mortgagors
2. Appendix 27, Note
3. Appendix 29, Suggested Form of Mortgagee Notice to Mortgagor responding to a prepayment inquiry or request for payoff in full

Attachments: See Attachments

BILLING CODE 4210-01-M

ATTACHMENT 1
235 MORTGAGES

PROGRAM VERSION	ADP (SUFFIX) CODES ORIGINAL	235(r) ADP (SUFFIX) CODES HUD	235(r) ADP (SUFFIX) CODES DE
REVISED 235(1) PROGRAM	255 355 555	155 155 155	755 755 755
	265 365 565	165 165 165	765 765 765
	285 385 585	185 185 185	785 785 785
REVISED 235(1) PROGRAM WITH RECAPTURE	256 356 556	156 156 156	756 756 756
	266 366 566	166 166 166	766 766 766
235 REVISED/ RECAPTURE/10	246 346 546	146 146 146	746 746 746

FOOTNOTE: ORIGINAL ADP (SUFFIX) CODES = OLD 235 MORTGAGES; HUD = NEW ADP (SUFFIX) CODES FOR HUD PROCESSED 235(r) CASES; DE = NEW ADP (SUFFIX) CODES FOR DIRECT ENDORSEMENT PROCESSED 235(r) CASES; THE 235 MORTGAGES DIRECTORY CONTAINS THE ORIGINAL SECTION 235 FHA CASE NUMBERS AND ADP CODES. THE USER CAN UTILIZE THE DIRECTORY TO COMPARE THE ORIGINAL ADP (SUFFIX) CODES WITH ATTACHMENT 1 AND CAN DETERMINE THE NEW 235(r) ADP CODE.

BILLING CODE 4210-01-C

ATTACHMENT 2.—TABLE OF RECOVERY PERIODS

Column 1	Column 2				
Ratio	Recovery periods in whole months at different 235(r) interest rates (percent)				
	9.0	9.5	10.0	10.5	11.0
10.00	11	11	11	11	11
10.25	11	11	11	11	11
10.50	11	11	11	11	11
10.75	11	11	11	12	12
11.00	12	12	12	12	12
11.25	12	12	12	12	12
11.50	12	12	12	12	12
11.75	13	13	13	13	13
12.00	13	13	13	13	13
12.25	13	13	13	13	13
12.50	13	13	14	14	14
12.75	14	14	14	14	14
13.00	14	14	14	14	14
13.25	14	14	14	14	14
13.50	15	15	15	15	15
13.75	15	15	15	15	15
14.00	15	15	15	15	15
14.25	15	16	16	16	16
14.50	16	16	16	16	16
14.75	16	16	16	16	16
15.00	16	16	16	17	17
15.25	17	17	17	17	17
15.50	17	17	17	17	17
15.75	17	17	17	17	18
16.00	18	18	18	18	18
16.25	18	18	18	18	18
16.50	18	18	18	18	18
16.75	18	19	19	19	19
17.00	19	19	19	19	19
17.25	19	19	19	19	19
17.50	19	19	20	20	20
17.75	20	20	20	20	20
18.00	20	20	20	20	20
18.25	20	20	20	21	21
18.50	21	21	21	21	21
18.75	21	21	21	21	21
19.00	21	21	21	21	22
19.25	21	22	22	22	22
19.50	22	22	22	22	22
19.75	22	22	22	22	23
20.00	22	23	23	23	23
20.25	23	23	23	23	23
20.50	23	23	23	24	24
20.75	23	24	24	24	24
21.00	24	24	24	24	24
21.25	24	24	24	24	25
21.50	24	24	25	25	25
21.75	25	25	25	25	25

ATTACHMENT 2.—TABLE OF RECOVERY PERIODS—Continued

Column 1	Column 2				
Ratio	Recovery periods in whole months at different 235(r) interest rates (percent)				
	9.0	9.5	10.0	10.5	11.0
22.00	25	25	25	25	26
22.25	25	25	26	26	26
22.50	26	26	26	26	26
22.75	26	26	26	26	27
23.00	26	26	27	27	27
23.25	27	27	27	27	27
23.50	27	27	27	27	28
23.75	27	27	28	28	28
24.00	28	28	28	28	28
24.25	28	28	28	28	29
24.50	28	28	29	29	29
24.75	29	29	29	29	29
25.00	29	29	29	30	30
25.25	29	29	30	30	30
25.50	30	30	30	30	30
25.75	30	30	30	31	31
26.00	30	30	31	31	31
26.25	31	31	31	31	32
26.50	31	31	31	32	32
26.75	31	32	32	32	32
27.00	32	32	32	32	33
27.25	32	32	32	33	33
27.50	32	33	33	33	33
27.75	33	33	33	33	34
28.00	33	33	34	34	34
28.25	33	34	34	34	34
28.50	34	34	34	35	35
28.75	34	34	35	35	35
29.00	34	35	35	35	36
29.25	35	35	35	36	36
29.50	35	35	36	36	36
29.75	35	36	36	36	37
30.00	36	36	36	37	37
30.25	36	37	37	37	38
30.50	37	37	37	38	38
30.75	37	37	38	38	38
31.00	37	38	38	38	39
31.25	38	38	38	39	39
31.50	38	38	39	39	39
31.75	38	39	39	40	40
32.00	39	39	40	40	40
32.25	39	40	40	40	41
32.50	40	40	40	41	41
32.75	40	40	41	41	42
33.00	40	41	41	41	42
33.25	41	41	41	42	42
33.50	41	41	42	42	43
33.75	41	42	42	43	43

ATTACHMENT 2.—TABLE OF RECOVERY PERIODS—Continued

Column 1	Column 2				
Ratio	Recovery periods in whole months at different 235(r) interest rates (percent)				
	9.0	9.5	10.0	10.5	11.0
34.00	42	42	43	43	44
34.25	42	43	43	43	44
34.50	43	43	43	44	44
34.75	43	43	44	44	45
35.00	43	44	44	45	45
35.25	44	44	45	45	46
35.50	44	45	45	46	46
35.75	44	45	45	46	47
36.00	45	45	46	46	47
36.25	45	46	46	47	47
36.50	46	46	47	47	48
36.75	46	47	47	48	48
37.00	46	47	48	48	49
37.25	47	47	48	49	49
37.50	47	48	48	49	50
37.75	48	48	49	49	50
38.00	48	49	49	50	51
38.25	48	49	50	50	51
38.50	49	49	50	51	51
38.75	49	50	51	51	52
39.00	50	50	51	52	52
39.25	50	51	51	52	53
39.50	51	51	52	53	53
39.75	51	52	52	53	54
40.00	51	52	53	53	54
40.25	52	52	53	54	55
40.50	52	53	54	54	55
40.75	53	53	54	55	56
41.00	53	54	55	55	56
41.25	53	54	55	56	57
41.50	54	55	55	56	57
41.75	54	55	56	57	58
42.00	55	56	56	57	58
42.25	55	56	57	58	59
42.50	56	56	57	58	59
42.75	56	57	58	59	60
43.00	56	57	58	59	60
43.25	57	58	59	60	60
43.50	57	58	59	60	
43.75	58	59	60		
44.00	58	59	60		
44.25	59	60			
44.50	59	60			
44.75	60				
45.00	60				

BILLING CODE 4210-01-M

BEST COPY AVAILABLE

SECTION 235(r) INTEREST RATE FLOOR(S)- FACTOR TABLE
P & I FACTORS PER THOUSAND DOLLARS OF THE 235(r) MORTGAGE AMOUNT

NEW INTEREST RATE FLOOR	NEW MORTGAGE TERM IN YEARS FOR A 235(r) MORTGAGE																ORIGINAL TERM
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	30
1.00	8.77	8.01	7.38	6.84	6.39	5.99	5.64	5.34	5.07	4.82	4.60	4.41	4.23	4.06	3.91	3.77	3.22
4.00	10.13	9.38	8.76	8.24	7.79	7.40	7.06	6.77	6.51	6.27	6.06	5.88	5.71	5.55	5.41	5.28	4.78
4.75	10.49	9.75	9.13	8.61	8.17	7.78	7.45	7.16	6.90	6.67	6.47	6.28	6.12	5.97	5.83	5.71	5.22
5.00	10.61	9.87	9.25	8.74	8.29	7.91	7.58	7.29	7.04	6.81	6.60	6.42	6.26	6.11	5.97	5.85	5.37
5.50	10.86	10.12	9.51	8.99	8.55	8.18	7.85	7.56	7.31	7.08	6.88	6.70	6.54	6.40	6.27	6.15	5.68
6.00	11.11	10.37	9.76	9.25	8.82	8.44	8.12	7.84	7.59	7.37	7.17	6.99	6.84	6.69	6.56	6.45	6.00
6.75	11.49	10.76	10.16	9.65	9.22	8.85	8.54	8.26	8.01	7.80	7.61	7.44	7.29	7.15	7.03	6.91	6.49
7.25	11.75	11.02	10.42	9.92	9.50	9.13	8.82	8.55	8.31	8.10	7.91	7.74	7.59	7.46	7.34	7.23	6.83
8.00	12.14	11.42	10.83	10.34	9.92	9.56	9.25	8.99	8.75	8.55	8.37	8.21	8.07	7.94	7.83	7.72	7.34

FOOTNOTE: THIS FACTOR TABLE IS USED TO DETERMINE THE PRINCIPAL AND INTEREST PAYMENTS AT THE INTEREST RATE FLOOR FOR THE FORMULA TWO COMPUTATION RESPECTIVE TO THE NEW ASSISTANCE PAYMENTS CONTRACT (APC) WHICH IS ASSOCIATED WITH THE NEW 235(r) MORTGAGE. THE INTEREST RATE FLOOR AND ITS RESPECTIVE FACTOR PER THOUSAND DOLLARS MUST BE USED AT ORIGINATION AND FOR SUBSEQUENT SERVICING OF THE NEW 235(r) MORTGAGE. AT ORIGINATION, THE 235(r) MORTGAGE AMOUNT MUST BE ROUNDED DOWN TO THE NEAREST $50.00 BEFORE THE FACTOR IS APPLIED.

THIS FACTOR TABLE SHOWS THE MONTHLY INSTALLMENT FOR PRINCIPAL AND INTEREST (P & I), PER THOUSAND DOLLARS, FOR THE SECTION 235(r) INTEREST RATE FLOOR AT THE NEW MORTGAGE TERM. IN ORDER TO DETERMINE THE MONTHLY P & I PAYMENTS, DIVIDE THE MORTGAGE AMOUNT BY $1,000 AND MULTIPLY THE RESULT BY THE APPLICABLE PAYMENT FACTOR. WHEN THE RESULTING FIGURE ENDS IN 5 OR MORE MILLS, THE AMOUNT SHOULD BE INCREASED TO THE NEXT WHOLE CENT.

FOR EXAMPLE, ASSUME AN INTEREST RATE FLOOR OF 4.00%, 30-YEAR MORTGAGE WITH A MORTGAGE AMOUNT OF $11,300. THE MONTHLY P & I PAYMENT FACTOR SHOWN IS $4.78 PER THOUSAND, AND THE REQUIRED MONTHLY P & I PAYMENT AT THE INTEREST RATE FLOOR IS $54.01 CALCULATED AS FOLLOWS:

$11,300.00 DIVIDED BY $1,000.00 EQUALS 11.3 THOUSANDTHS
11.3 TIMES 4.78 PER THOUSAND DOLLARS EQUALS $54.014
$54.014 ADJUSTED TO THE NEAREST WHOLE CENT EQUALS $54.01

SCHEDULE OF FORMULA TWO INTEREST RATE FLOORS

DATE(S) OF CLOSING	ORIGINAL NOTE RATE(S)	ORIGINAL INTEREST RATE FLOOR(S)
8/9/68 - 1/4/76	ALL	1.00%
1/5/76 - 3/6/78	ALL	5.00%
3/7/78 - 3/8/81	ALL	4.00%
ON OR AFTER 3/9/81	13.50% OR BELOW	4.00%
	13.75 - 14.00%	4.75%
	14.25 - 14.50%	5.50%
	15.00%	6.00%
	15.50%	6.75%
	16.00%	7.25%
	16.50%	8.00%
	17.50%	8.00%

FOOTNOTE: THE INTEREST RATE FLOOR FOR FORMULA TWO COMPUTATIONS FOR THE NEW ASSISTANCE PAYMENTS CONTRACT (APC) WHICH IS ASSOCIATED WITH THE NEW 235(r) MORTGAGE IS THE SAME INTEREST RATE FLOOR AS THE OLD APC WHICH IS ASSOCIATED WITH THE OLD 235 MORTGAGE.. THE PREMIUM INTEREST RATE SET FORTH IN THIS LETTER (AS CHANGED FROM TIME TO TIME BY HUD) IS THE NOTE RATE FOR THE NEW 235(r) MORTGAGE NOTE.

SECTION 235(r) MORTGAGES - INITIAL AND ANNUAL MORTGAGE INSURANCE PREMIUM FACTOR TABLE
.7% MIP FACTORS PER THOUSAND DOLLARS OF THE MORTGAGE AMOUNT

INTEREST RATE	NEW MORTGAGE TERM IN YEARS FOR A 235(r) MORTGAGE															
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
9.00	6.796	6.824	6.846	6.866	6.882	6.895	6.907	6.917	6.926	6.934	6.941	6.947	6.952	6.957	6.961	6.964
9.50	6.801	6.829	6.852	6.871	6.886	6.900	6.912	6.922	6.930	6.938	6.944	6.950	6.955	6.960	6.964	6.967
10.00	6.807	6.834	6.856	6.875	6.891	6.904	6.916	6.925	6.934	6.941	6.947	6.953	6.958	6.963	6.966	6.970
10.50	6.812	6.839	6.861	6.880	6.895	6.908	6.920	6.929	6.937	6.944	6.951	6.956	6.961	6.966	6.969	6.972
11.00	6.817	6.844	6.866	6.884	6.899	6.913	6.923	6.933	6.941	6.948	6.954	6.959	6.964	6.968	6.971	6.974
11.50	6.822	6.849	6.871	6.889	6.904	6.916	6.927	6.936	6.944	6.951	6.957	6.962	6.966	6.970	6.973	6.977
12.00	6.827	6.853	6.875	6.893	6.908	6.920	6.931	6.939	6.947	6.954	6.959	6.965	6.969	6.973	6.976	6.979
12.50	6.832	6.858	6.879	6.897	6.911	6.924	6.934	6.943	6.950	6.957	6.962	6.967	6.971	6.975	6.978	6.980
13.00	6.836	6.862	6.884	6.901	6.915	6.927	6.937	6.946	6.953	6.959	6.965	6.969	6.973	6.977	6.979	6.982
13.50	6.841	6.867	6.888	6.905	6.919	6.930	6.940	6.949	6.956	6.962	6.967	6.971	6.975	6.978	6.981	6.984
14.00	6.845	6.871	6.891	6.908	6.922	6.934	6.943	6.951	6.958	6.964	6.969	6.973	6.977	6.980	6.983	6.985
14.50	6.850	6.875	6.895	6.912	6.926	6.937	6.946	6.954	6.961	6.966	6.971	6.975	6.978	6.982	6.984	6.986
15.00	6.854	6.879	6.899	6.915	6.929	6.940	6.949	6.957	6.963	6.968	6.973	6.977	6.980	6.983	6.986	6.988

FOOTNOTE: AT ORIGINATION, THE 235(r) MORTGAGE AMOUNT MUST BE ROUNDED DOWN TO THE NEAREST $50.00 BEFORE THE MIP FACTOR IS APPLIED. THE MIP FACTOR IS BASED ON A PER ANNUM BASIS. THE MIP FACTOR, WHICH IS ESTABLISHED AT THE 235(r) MORTGAGE APPLICATION, IS USED TO DETERMINE THE MIP FOR SUBSEQUENT PREMIUM YEARS.

FOOTNOTE: THESE FACTORS ARE TO BE USED TO CALCULATE THE APPROXIMATE INITIAL AND ANNUAL MORTGAGE INSURANCE PREMIUM (MIP) FOR THE 235(r) INSURED MORTGAGE. THE USE OF THESE FACTORS WILL READILY PERMIT AN ORIGINATING MORTGAGEE TO COMPUTE IN ADVANCE THE APPROXIMATE INITIAL AMOUNT OF THE FIRST YEAR'S PREMIUM AND WILL READILY PERMIT A SERVICING MORTGAGEE TO COMPUTE IN ADVANCE THE APPROXIMATE ANNUAL MIP FOR SUBSEQUENT PREMIUM YEARS, AND THUS PERMIT THE COLLECTION OF SUFFICIENT MIP TO PAY THE PREMIUM PER HUD'S REQUIREMENTS.

TO COMPUTE THE PREMIUM WHICH WILL BE DUE, DIVIDE THE MORTGAGE AMOUNT (OR, THE UNPAID PRINCIPAL BALANCE WHICH DOES NOT INCLUDE PARTIAL PREPAYMENTS OR DELINQUENT PAYMENTS) BY $1,000.00 AND MULTIPLY BY THE APPLICABLE FACTOR. THIS WILL PRODUCE THE APPROXIMATE PREMIUM WHICH WHEN DIVIDED BY 12, WILL RESULT IN THE REQUIRED MONTHLY DEPOSITS FOR MIP FOR THE FIRST PREMIUM YEAR (OR, SUBSEQUENT PREMIUM YEAR).

FOR EXAMPLE, ASSUME A 9.0%, 25-YEAR MORTGAGE WITH A MORTGAGE AMOUNT OF $12,700.00 (OR, THE UNPAID PRINCIPAL BALANCE). THE "PER THOUSAND' FACTOR FOR THE FIRST YEAR'S PREMIUM YEAR (AND, SUBSEQUENT PREMIUM YEARS) IS 6.964. IN ORDER TO DETERMINE THE MONTHLY ESCROW WHICH SHOULI BE COLLECTED, THE FOLLOWING COMPUTATIONS ARE MADE:

$12,700 DIVIDED BY $1,000.00 EQUALS 12.7 THOUSANDTHS
12.7 THOUSANDTHS TIMES 6.964 PER THOUSAND DOLLARS EQUALS $88.4428
THE APPROXIMATE BILLING EQUALS $88.44
$88.44 DIVIDED BY 12 MONTHS EQUALS $7.37 WHICH IS THE MONTHLY DEPOSIT TO ESCROW

FOOTNOTE: AT ORIGINATION, THE 235(r) MORTGAGE AMOUNT MUST BE ROUNDED DOWN TO THE NEAREST $50.00 BEFORE THE MIP FACTOR IS APPLIED. AN EXAMPLE OF A SUBSEQUENT PREMIUM YEARS IS NOT ILLUSTRATED; HOWEVER, THE COMPUTATION IS THE SAME WHERE THE UNPAID PRINCIPAL BALANCE (UPB) IS SUBSTITUTED FOR THE MORTGAGE AMOUNT AND THE UPB IS NOT ROUNDED DOWN TO THE NEAREST $50.00.

BILLING CODE 4210-61-C

Attachment 5

Page 1 of 2

Acknowledgment of Mortgagor(s)

General Instructions

The language on attachment 5, page 2, should be typed on the mortgagee's stationary, completed by the mortgagee and executed by the mortgagors. The mortgagee should witness the mortgagors' execution.

Instruction to complete attachment 4, page 2

1. *FHA Case Numbers*—Enter the old section 235 revised recapture 10 FHA case number and enter the new section 235(r) FHA case number.

2. *Item #1*, Expiration date of the new assistance payments contract—refer to the section 235 payoff statement for the date of the first scheduled monthly amortization payment which was due on the old section 235 revised recapture 10 mortgage. Add 10 years to this date. The result is the expiration date of the original 10 year term that, now, becomes the expiration date for the new assistance payments contract, enter the result in *Item #1*.

3. *Item #2*, Interest rate floor as a percentage—refer to the section 235 payoff statement and/or attachments.

The interest rate floor as a percentage can be found on the copy of the old original form HUD–93100, which was executed by HUD and is associated with the old section 235 revised recapture 10 mortgage (old mortgage), or (if applicable) the original form HUD–93100 which was executed by HUD at the last assumption of the old mortgage, or (if applicable) the servicing mortgagee's certification which sets forth the mortgagor's income contributions percentage and interest rate floor.

Enter the interest rate floor, which is found on Item G–6 of Form HUD–93100 or (if applicable) the interest rate floor certified by the servicing mortgagee, in *Item #2*.

Attachment 5

Page 2 of 2

Acknowledgment of Mortgagor(s)

Note: The language on this page should be typed on the Mortgagee's Stationery.

Old 235 FHA case number: _____

New 235(r) FHA case number: _____

By signing below, I (we) acknowledge my (our) understanding that: the assistance payments contract for the new 235(r) mortgage is for the unexpired term of the old special assistance payments contract which had an original term of ten years.

The new assistance payments contract expires on *(Item #1)* unless terminated prior to that time because I (we) become ineligible for continued assistance (pursuant to title 24 of the Code of Federal Regulations, section 235.375). Once the assistance payments contract expires, assistance payments terminate unless the Secretary HUD contracts to continue the assistance payments. The new assistance payments contract consists of 24 CFR Part 235, Subpart C, and the notice published in the **Federal Register** on (FR) [To be filled in at later date].

The amount of assistance payments made each month on my (our) behalf shall be based on the lesser of: (1) the difference between: (a) twenty-eight percent of my (our) family's adjusted monthly income: and (b) the monthly payment required under the mortgage for principal, interest, taxes, hazard insurance and mortgage insurance premium; or, (2) the difference between: (a) The monthly payment required under the mortgage for principal, interest, and mortgage insurance premium; and (b) the monthly payment which would be required for principal and interest if the mortgage bore an interest rate of *(Item #2)* percent.

_____

Mortgagor Date

_____

Mortgagor Date

_____

Mortgagee—Witness Date

Attachment 6

Mortgagee's Certification of the Date of Disbursement of the Section 235(r) Mortgage Proceeds

Usage: This mortgagee's certification is used to establish the date of disbursement of all 235(r) mortgage proceeds. The term of the new Assistance Payments Contract (APC) or new Assistance Payments Contract 10 (APC 10) commences on the date of disbursement of the 235(r) mortgage proceeds.

General Instructions: To be typed on the mortgagee's stationery and executed by an authorized mortgagee official.

"Name of Mortgagor: _____
OLD FHA Case Number: _____
New FHA Case Number: _____

We (name of company), Mortgagee at the time of closing of this mortgage and on the date of disbursement of the Section 235(r) mortgage proceeds, certify that all Section 235(r) mortgage proceeds were disbursed on (date) and that all mortgage proceeds were disbursed to the mortgagor, or to their creditors for their account and with their consent.

Furthermore, we understand that the date of disbursement is the date on which the new contract term of the new Assistance Payments Contract or new Assistance Payments Contract 10 commences."

_____

(Authorized Mortgagee Official—Signature/Date)

Attachment 7

Instructions to complete the modification and/or subordination agreements for HUD's recapture mortgage or deed of trust which is subordinated to a new 235(r) or 203(b) (streamline refinance) mortgage or deed of trust

Instructions—Overview

Modification and/or subordination of HUD's recapture mortgage or deed of trust:

1. Use of the modification and/or subordination agreements (agreement)—The mortgagee must use the appropriate sample agreement (attachment) for a recapture mortgage or deed of trust that is subordinated to a new 235(r) or 203(b) mortgage or deed of trust.

2. Attachments to be used—
   Attachment 7–A, mortgage modification and subordination agreement to be used with a new 235(r) mortgage.
   Attachment 7–B, deed of trust modification and subordination agreement to be used with a new 235(r) deed of trust.
   Attachment 7–C, mortgage subordination agreement to be used with a new 203(b) mortgage. (Streamline refinance).
   Attachment 7–D, deed of trust subordination agreement to be used with a new 203(b) mortgage. (Streamline refinance).

3. Mortgagor's execution of the agreement—The mortgagor will execute the agreement concomitant with the new 235(r) or 203(b) mortgage or deed of trust and, if applicable (235(r) program only), the new recapture note. The mortgagor will be the first party (mortgage) or the grantor (deed of trust).

4. HUD's execution of the agreement—
   a. Direct endorsement processed cases—The direct endorsement underwriter, or the authorized mortgagee official, is authorized to complete the agreement on behalf of HUD for direct endorsement processed cases. (See the mortgagee letter for additional details).
   The underwriter, or the authorized mortgagee official, will complete the agreement per the general and specific instructions which precede the respective attachments and will execute on HUD's behalf the respective agreement as the second party (mortgage) or beneficiary (deed of trust).
   b. HUD processed cases—The authorized official at the local HUD field office will execute the agreement as the second party (mortgage) or beneficiary (deed of trust) on or by the closing date of the new 235(r) or 203(b) mortgage or deed of trust.

5. Mortgagee's execution of the agreement—The mortgagee will execute the agreement as the third party (mortgage) or lender (deed of trust) where, as the holder of the new 235(r) or 203(b) mortgage or deed of trust, the mortgagee affirms the agreement which allows the new mortgage or deed of trust to have the first lien priority.

6. Trustee's executions of the agreement—If the State law requires, the trustees of the recapture deed of trust must be made parties to the respective agreement, and the trustees must, also, execute the agreement with all other parties.

7. Mortgagee's certification of HUD's lien priority—The mortgagee will certify that HUD's lien priority is a second lien priority, or a third lien priority if a unit of government subordinated a second lien priority which it has held since the original closing of the old 235 mortgage.
   a. Direct endorsement processed cases—The mortgagee will certify the above by enumerating #61, subordination of a section 235(i) recapture mortgage (or deed of trust), per the instructions set forth in *attachment 8* of the mortgagee letter and as incorporated into HUD handbook 4000.4, REV–1, appendix 4, page 12.
   b. HUD processed cases—The mortgagee will certify the above by completing *attachment 7–E*, mortgagee's certification to a HUD processed case.
   The original certification must be included in the case binder when the case is sent to the local HUD field office for endorsement. A copy must be sent to the documents officer of the local field office with a copy of the agreement. A copy must be retained in the new origination and servicing files.

8. Recordation—The originating mortgagee will be required to have the agreement properly recorded and must instruct the recorder's office to mail the recorded agreement to the local HUD field office. (See the mortgagee letter for additional details).

9. Documents distribution—See the mortgagee letter for additional instructions.

10. Conformity to State law—The *attachments 7–A thru 7–D* should be conformed to State law, if necessary, by local counsel.

New recapture note requirements:

1. Use of a new recapture note—
   a. New recapture note—The new recapture note is found in HUD handbook 4330.1, appendix 27, note, and must be used in conjunction with the general and specific instructions set forth for the respective attachments.
   b. Mortgagor's execution—When an old recapture mortgage or deed of trust is subordinated to a new 235(r) mortgage or deed of trust, the mortgagor must execute a new recapture note concomitant with the executions of the new 235(r) mortgage or deed of trust and agreement.
   c. Inscription of the FHA case numbers—On the bottom left-hand corner of the new recapture note the mortgagee must type the old and new FHA case numbers respective to the 235(r) refinance transaction. The FHA case numbers must be prefixed by the words, "old" and "new".

Attachment 7–E

Mortgagee's FHA Case Certification to a HUD Processed Case

Usage: This mortgagee's certification is used with a HUD processed case when an old HUD-held recapture mortgage or deed of trust is modified and/or subordinated to a new 235(r) or 203(b) mortgage or deed of trust.

General instructions: To be typed on the mortgagee's stationery and executed by an authorized mortgagee official.

"We (name of company), Mortgagee at the time of closing of this mortgage loan, certify that we have reviewed the outstanding commitments, legal instruments, closing statements and other documents of mortgage loan closing. Our review indicates that the mortgage loan has been closed in accordance with the statutory and regulatory requirements of the National Housing Act and HUD and that the terms of the outstanding commitments have been satisfied to the best of our knowledge and belief.

Furthermore, the requirements for the modification and/or subordination of a HUD-held recapture mortgage or deed of trust to the new Section 235(r) or Section 203(b) mortgage or deed of trust have been satisfied to the best of our knowledge and belief. We (name of company), certify that after the modification and/or subordination of the HUD-held recapture mortgage or deed of trust that HUD has a second lien, or in the case of a mortgage or deed of trust made by a unit of government which has been subordinated to the new 235(r) or 203(b) mortgage or deed of trust, HUD has a third lien."

_____

(Authorized Mortgagee Official—Signature/Date)

Attachment 8

235(r) Direct Endorsement Certifications
Section 235 to Section 203(b) or 235(r)

A. Insert the following in HUD handbook 4000.4, rev–1, appendix 3, certifications guide, page 2:

Program	Category				
	A—Purchase no 2nd	B—Refinance no 2nd	C—Purchase with 2nd	D—Refinance with 2nd	E—Purchase—borrowed down payment
235(r)		B–57 to B–58.		D–36 to D–37.	

B. Insert the following in HUD handbook 4000.4, rev–1, appendix 3, certifications guide, page 2, below guide:

Footnote: Section 235(i) mortgages which are refinanced under section 203(b), where the recapture mortgage (that is held by HUD) is subordinated to the new 203(b) mortgage, must include certification number 61.

C. Insert the following in HUD handbook 4000.4, rev–1, appendix 3, category B, page 14:

Designation	Mortgage type	Applicable certifications
B–51 to B–56.	see mortgagee letter 90–36	
	Section 235(r)—refinance transactions without subordination of a recapture mortgage	
B–57	Refinance: owner-occupant; all proceeds reinvested in the property; assistance payments will continue.	9, 58 and 59.
B–58	Refinance; owner-occupant; all proceeds reinvested in the property; assistance payments will not continue.	9, 58 and 60.

D. Insert the following in HUD handbook 4000.4, rev–1, appendix 3, category D, page 21:

Designation	mortgage type	Applicable certifications
	Section 235(r)—refinance transactions with subordination of a recapture mortgage	
D–30 to D–35.	See mortgagee letter 90–36	
D–36	Refinance; owner-occupant; all proceeds reinvested in the property; subordination of the section 235(i) recapture mortgage was required; assistance payments will continue.	9, 58, 59 and 61.
D–37	Refinance; owner-occupant; all proceeds reinvested in the property; subordination of the section 235(i) recapture mortgage was required; assistance payments will not continue.	9, 58, 60 and 61.

E. Insert the following in HUD handbook 4000.4, rev–1, appendix 4, page 12:

57. See morgagee letter 90–36

58. *Section 235(r) Refinance.* The mortgagor is the owner-occupant. The transaction was processed without an appraisal. The

mortgage being refinanced was insured by HUD under section 235 of the National Housing Act. The applicant was eligible for assistance and was receiving assistance payments under the old section 235 Assistance Payments Contract at the time of mortgage application. The applicant meets the requirements of the 235(r) Refinance Program. (Underwriter)

If a mortgage credit analysis was required: (1) the mortgagor has a general credit standing which is satisfactory per HUD mortgage credit guidelines; and, (2) the family's income is, and will be, adequate to meet an increase by more than $50.00 in the mortgagor's share of the full monthly payments required by the mortgage. (Underwriter)

The monthly payments of principal and interest on the mortgage submitted for insurance are less than the monthly payments of principal and interest on the mortgage being refinanced. (Underwriter)

The computation of the amount of assistance payments which the Secretary will pay on behalf of the mortgagor was computed in accordance with the formula contained in Chapter 10 of HUD Handbook 4330.1 and the Notice published in the Federal Register (FR _____). (Underwriter)

The mortgagors have agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350. (Underwriter)

The interest rate does not exceed the maximum interest rate on the date of the mortgage application as established by HUD for Section 235(r) mortgages. (Mortgagee)

The term "mortgage" as used in the Section 235(r) Program meets the same meaning as defined in 24 CFR 235.22(a) and the mortgage is in the form as provided for in 24 CFR 235.22 (a)(2) and as set forth in Mortgagee Letter 89–23, Single Family Loan Production—Requirements for Single Family Mortgages, and Mortgagee Letter 89–31, Single Family Loan Production—Implementation of Certain Provisions of the "Department of Housing and Urban Development Reform Act of 1989". (Mortgagee)

The mortgage shall contain complete amortization provisions satisfactory to the Secretary and an amortization period not in excess of the remaining term of the old 235 mortgage which is refinanced by the 235(r) mortgage. (Mortgagee)

No finance costs were included in the mortgage amount. The new mortgage amount does not exceed the existing indebtedness (remaining unpaid) principal balance of the old 235 mortgage) including any unpaid interest not to exceed two months and any overpayments of assistance payments due under two months and any Assistance Payments Contract. (Mortgagee)

58. *Section 235(r) Assistance Payments Contract With Assistance Payments.* For the first year and until the first anniversary date, the mortgage applicant was determined to be eligible for assistance and is to receive assistance payments under the new Assistance Payments Contract which is associated with the 235(r) mortgage. Form HUD–93100, Application for Homeownership Assistance under Section 235 of the National Housing Act, was processed in accordance with HUD's requirements and was properly executed. (Underwriter)

60. *Section 235(r) Assistance Payments Contract Without Assistance Payments.* The underwriter determined (by using the family's income contributions percentage of 20% (or, if applicable, 28%)) that the applicant ceases to qualify for assistance payments because the family's income is sufficient to pay the full monthly payment due to the reduction of the interest rate. The new Assistance Payments Contract is suspended beginning with the date of closing and until properly reinstated or terminated. Form HUD–93100, Application for Homeownership Assistance under Section 235 of the National Housing Act, was processed in accordance with HUD's requirements and was properly executed. (Underwriter)

61. *Subordination of a Section 235(i) Recapture Mortgage.* The subordination document, which subordinates the existing recapture mortgage held by HUD to the new mortgage, was properly executed, recorded and retains its original second lien status (or, third lien status, if subordinated to a subordinated junior mortgage held by a unit of government). (Mortgagee)

Attachment 6

Section 235 Mortgages Directory Written Request

Instructions to complete This Attachment:

1. Determine the amount of the remittance.

2. Attach a money order or certified check for the amount of the remittance to this attachment.

3. The money order or certified check is payable to: U.S. Department of Housing and Urban Development.

4. Clearly print or type on the money order or certified check and the envelope addressed to HUD: "235 Mortgages Directory".

5. Mail to: U.S. Department of Housing and Urban Development, Systems Management Branch, P.O. Box 23286, Washington, DC 20025–3296.

Mortgagee's name: _____
Address: _____
Address: _____
City: _____
State: _____
Zip code: _____
Contact person: _____
Area Code & telephone #: _____

Quantity desired:
Hard copies ($50.00 per copy) _____
Floppy disks ($150.00 per set) _____
Magnetic tapes ($250.00 per tape) _____
Total remittance: $ _____

Attachment 10–A

235(r) Application processing questions and answers/check list

Mortgagee's name: _____
Mortgagor's name: _____
Mortgagee's loan No. _____
Date: _____
Old FHA case No.: _____
(and ADP code)
New FHA case No.: _____
and ADP code)

USAGE: The questions and answers (Q's & A's) and the check list are designed to assist the originating mortgagee in the processing of the 235(r) mortgage application. The mortgagee letter and handbook 4330.1 are the source documents which must be referred to for specific guidance. The cited page numbers represent references to the mortgagee letter and the handbook citations are specifically indicated. (Y = Yes, N = No, ? = To be determined at underwriting)

Pre-application Q's and A's (circle one):

Item	(O)	Description
Eligibility—(See mortgagee letter, paragraph D on pages 3 thru 5)		
1.	Y/N	Is the applicant a 235 mortgagor? (See page 3)
2.	Y/N	Is the applicant the owner occupant? (See page 4)
3.	Y/N	Is the applicant, as mortgagor, eligible for assistance and receiving assistance payments under the old assistance payments contract (APC) that is associated with the old 235 mortgage? (See page 3)
4.	Y/N	Will the refinance cause a reduction in the principal and interest payments? (See page 4)
5.	Y/N	Is the applicant a member of a cooperative? (See page 4)
Note: Questions 1 thru 4 must be "yes" and question 5 must be "no" to begin processing a 235(r) mortgage application. Opposite responses would indicate that the applicant is not eligible for a 235(r) mortgage.		
Creditworthiness review—		
1.	Y/N?	Will the applicant's share of the fully monthly payment under the 235(r) mortgage increase by more than $50.00? If yes, a mortgage credit analysis is required. (See pages 4 and 13)
Subordination of the recapture mortgage or deed of trust held by HUD—		
1.	Y/N?	Is a recapture mortgage or deed of trust associated with the old 235 mortgage? (See pages 16 thru 19)

Item	(O)	Description
2.	Y/N	If yes or ?, does the applicant (mortgagor) agree to the modification and to subordination agreement provisions of the recapture mortgage or deed of trust?

Note: Execution of appendix 25 of handbook 4330.1 (as amended by the mortgagee letter) at the time of application would indicate the applicant's (mortgagor's) understanding of the modification and subordination provisions. The applicant (mortgagor) will execute a new recapture note at the closing of the 235(r) mortgage.

Attachment 10–A

Checklist for 235(r) application processing (consisting of items A, B and C, below): (√) item description

A. Form HUD–92900.1, application for HUD/VA insured mortgage, (see page 20):
_____ 1. Old 235 FHA case number and ADP code entered in the lower left-hand corner of item 4A, name and address of lender.
_____ 2. The Form was reviewed and executed by the applicant (mortgagor).
_____ 3. The Form was completed and certified by the originating mortgagee.

Note: The instructions on the form must be completed by the originating mortgagee. The application is not subject to an appraisal, a face to face interview, a photo identification or credit report, unless, a mortgage credit analysis is required.

B. Form HUD–93100, Application for homeownership assistance under section 235 of the National Housing Act, (see pages 20 and 21):
_____ 1. Enter the old 235 FHA case number and ADP code in the lower left-hand corner of Item D, mortgagee's name, address and zip code.
_____ 2. The form was reviewed and executed by the applicant (mortgagor).
_____ 3. The form was completed by the originating mortgagee.
_____ 4. If a 235 revised recapture 10 mortgage is being refinanced, *Attachment 5* (acknowledgment of mortgagor(s)) was reviewed and executed by the mortgagor, who is given a copy.
_____ 5. If a recapture mortgage or deed of trust is being modified and subordinated, appendix 25 of the handbook 4330.1, notice to mortgagor, is executed by the applicant (mortgagor) at the time of mortgage application.

Note: The instructions on the form must be completed by the originating mortgagee (See additional instructions in Mortgagee Letter, Subparagraph G–4 on Pages 9 and 10). The Direct endorsement underwriter or HUD staff underwriter will: review the form, determine the applicant's (mortgagor's) continued eligibility for assistance and the amount of the assistance payments under the new APC, and execute item K, review and eligibility.

C. Verifications at application (see pages 21 thru 24, and handbook 4330.1).
1. Mortgagor's verifications and written request:
_____ a. Verifications of income, employment, etc. (see paragraph 10–11 of handbook 4330.1, for details)
_____ b. Evidence of the applicant's (mortgagor's) social security number(s).
_____ c. The written request, which authorizes the release of information (verifications) and represents a notice to prepay of the old 235 mortgage, was sent to the old servicing mortgagee.
_____ 2. Old servicing mortgagee's verifications: letter from the old servicing mortgagee is received by the originating mortgagee and includes the required statements and certifications plus the attachments—(see next page)

Attachment 10–A

Statements—
_____ 1. Within the preceding 12 months the mortgagor has completed and executed form HUD–93101, and/or the servicing mortgagee completed and executed form HUD–93101–A.
_____ 2. The mortgagor is eligible for assistance and is receiving assistance payments under the old APC associated with the old 235 mortgage.
_____ 3. HUD is not due an amount for overpayments of overpaid assistance.
_____ 4. The old FHA case number and ADP code.
_____ 5. The last date of the mortgagor's recertification (form HUD–93101) and the mortgagee's recertification (form HUD–93101–A).
_____ 6. Current monthly assistance payments under the old APC.

Certification—
_____ 1. The letter and its attachments are an accurate representation of the old 235 mortgage account.

Attachments—
_____ 1. Copy of the old original form HUD–93100, or authorized substitute.
_____ 2. A copy of the old APC that is associated with a section 235 revised recapture 10 mortgage which is being refinanced.
_____ 3. The 235 payoff statement.
_____ 4. A copy of appendix 29 of handbook 4330.1 which was issued to the applicant (mortgagor) by the servicing mortgagee.
_____ 5. Copy of the original contact of sale, if available, for the old 235 mortgage with a recapture mortgage.
_____ 6. The section 235 payoff statement which meets HUD's requirements (see page 28 and 29):

Itemization—
_____ a. Unpaid principal balance (including advances for overpayments, taxes, hazard insurance, etc.).
_____ b. Current interest.
_____ c. Delinquent interest.
_____ d. Grand total of the prepayment.
_____ e. Adjustments for anticipated assistance payments.

Separate items—
_____ a. Mortgage note interest rate.
_____ b. Escrow balances.
_____ c. Partial payment accepted by the servicing mortgagee and held in a trust fund.
_____ d. Original mortgage term.
_____ e. Remaining term of the mortgage.
_____ f. Number of delinquent and/or partial prepayments.
_____ g. Amount of the overpayments properly advanced to the mortgage account and included in the unpaid principal balance.
_____ h. Total amount of assistance payments (beginning with the first assistance payment).
_____ i. Date of the first monthly amortization payment under the mortgage.
_____ j. A copy of the note for those section 235 revised recapture 10 mortgages.

Attachment 10–A

Certifications—

a. The servicing mortgagee's certification that the payoff statement is an accurate statement of the mortgage account.
b. The servicing mortgagee's certification that the overpayments represented on the payoff statement have or have not been paid to HUD.

Note: Any amount of overpayments of overpaid assistance must be immediately paid to HUD by the old servicing mortgagee. Otherwise, the 235(r) mortgage application cannot be approved by the HUD staff underwriter or direct endorsement underwriter.

Post-application Q's and A's (circle one):

Item	(O)	Description
General—		
1.	Y/N	Is this application better suited to a new 203(b) mortgage under the refinance or streamline refinance procedures? If yes, inform the applicant (mortgagor) of the refinancing alternatives. (see HUD handbook 4155.1, Rev–3)
2.	Y/N	After a preliminary evaluation of the application, is the applicant (mortgagor) subject to a full creditworthiness review? If yes, obtain the required documents and attach them to the application. (see pages 4 and 7)

Footnote: The originating mortgagee should obtain (and complete) the application (items A, B and C, and the Q's and A's) prior to contacting the local HUD field office for the 235(r) case number and ADP code.

Attachment 10–B

235(r) Documents Disposition/check list for the 235(r) or 203(b) case binder and the origination and servicing files

Mortgagee's name: _____
Date: _____
Mortgagor's name: _____
New FHA case number: _____
Mortgagee's loan number: _____
(and ADP code)
Date of closing: _____

Document Costs: All costs for the document's preparation, execution, duplication, distribution and postage must be borne by the originating mortgagee or the applicant (mortgagor), or both.

The 235(r) or 203(b) case binder and the new origination and servicing files

USAGE: This check list will assist the originating mortgagee, or its agent, in the proper documents disposition for the 235(r) Program or 203(b) refinancing procedures. These documents may be in addition to those documents that are required by HUD for the case binder sent to the local HUD Field Office for endorsement, and the new origination and servicing files. CB=Case Binder, O=Origination File, S=Servicing File and N/A=Not Applicable.

√			Item	Documents
CB	O	S		
			1	Form HUD–92900.1, application for VA/HUD insured mortgage CB=VA/HUD copy, 0=lender copy 4, S=copy of lender copy 4
			2	Form HUD–92900–WS, mortgage credit analysis worksheet CB=original, 0=copy, S=copy, housing information and statistical division with form HUD–92900–7=copy
			3	Form HUD–93100, application for homeownership assistance under section 235 of the national housing act, that was reviewed and executed by the underwriter for the new 235(r) mortgage. CB=93100–2, 0=93100–1, S=93100–4 (original to OFA, subsidy accounting branch)
			4	Attachment 5, acknowledgment of mortgagor(s), if an old section 235 revised recapture 10 mortgage is refinanced by the 235(r) mortgage. CB, and S=copy (original to OFA, subsidy accounting branch)
			5	If a recapture mortgage which is held by HUD is subordinated, appendix 25, notice to mortgagor, of handbook 4330.1 was reviewed and executed by the applicant (mortgagor), CD, O and S=copy (original to documents officer, local field office)

Attachment 10–B

√			Item	Documents
CB	O	S		
			6	The letter and required attachments received from the servicing mortgagee, who serviced the old 235 mortgage. The attachments include:
				a. A copy of the original form HUD–93100 (or, authorized substitute) that was executed by HUD when the old 235 mortgage was originated. CB, O and S=copy
				b. If applicable, a copy of the old original assistance payments contract associated with the old section 235 revised recapture 10 mortgage. CB, O and S=copy
				c. Section 235 payoff statement. CB=original, O and S=copy
				d. A copy of appendix 29, suggested form of mortgagee notice to mortgagor, of handbook 4330.1. CB, O and S=copy
				e. If available, a copy of the original sales contract or HUD–1 when the property was first mortgaged under section 235.
			7	If a HUD processed case, form HUD–92900.4, firm commitment. CB=original, O and S=copy
			8	If a mortgage credit analysis was required, the required and supporting documentational was used in the underwriting. CB=original, O and S=copy
			9	Direct endorsement certifications or attachment 7–E, see the mortgagee letter. (see attachment 8) CD=original, O and S=copy
	N/A	N/A	10	The good faith estimate and form HUD–1, settlement statement, sent with the case binder to the local HUD field office for insurance. CD=original, O and S=N/A
			11	Attachment 6, mortgagee's certification of the date of disbursement of the section 235(r) mortgage proceeds. CB, O and S=copy (original to OFA, subsidy accounting branch)

Attachment 10–C

235(r) Documents Disposition for the New APC Account Check List

Mortgagee's name: _____
Date: _____
Mortgagor's name: _____
New FHA case number: _____
(and ADP code)
Mortgagee's Loan Number: _____
Date of closing: _____

Documents Disposition for Establishing the New Assistance Payments Contract Account With HUD, Office of Finance and Administration, Subsidy Accounting Division.

USAGE: This check list will assist the originating mortgagee, or its agent, with the documents disposition to set up an account with the Subsidy Accounting Division, so that, HUD will be able to process the mortgagee's application (billings on Form HUD–93102s, Mortgagee's Certification and Application for Assistance or Interest Reduction Payments). These documents are sent separate from the documents sent to the local HUD Field Office for endorsement and the documents associated with a recapture mortgage.

The originating mortgagee must sent these documents as a group within 5 days after receiving Form HUD–56100, Mortgage Insurance Certificate. HUD will not be responsible for any document sent individually and will not acknowledge the account set up. Furthermore, the new servicing mortgagee cannot bill HUD for any assistance payments associated with the new Assistance Payments Contract (APC) prior to the account set up, but can request a retroactive change (initial submission of Form HUD–93102) in the assistance payments for those periods for which assistance payments are due the servicing mortgagee under the new APC (the assistance payments are eligible to begin on the date of the first monthly amortization payment under the mortgage (or, deed of trust) and note)

The following documents must sent to: U.S. Department of Housing and Urban Development, Subsidy Accounting Branch, room 3206, Washington, DC 20410.

√	Item	Documents as a group
	1	Original form HUD–93100, application for homeownership assistance under section 235 of the National Housing Act, that was reviewed and executed for by the underwriter for the new 235(r) mortgage.
	2	Copy of form HUD–59100, mortgage insurance certificate, associated with the new 235(r) mortgage.
	3	Original attachment 5, acknowledgment of mortgagor(s), if an old section revised recapture 10 mortgage is refinanced by the 235(r) mortgage.
	4	Original form HUD–93114, notice of termination, for the old 235 mortgage which was sent to the originating mortgagee, or its agent by the old servicing mortgagee.
	5	Copy of the original form HUD–27050–A, mortgage insurance termination, which terminated the old 235 mortgage insurance contract. NOTE: The original is sent to the designated address on the form.
	6	Original form HUD–93114, notice of suspension, if the mortgagor executed the 235(r) mortgage instruments and the underwriter required that the new assistance payment contract be suspended, beginning on the closing date of the 235(r) mortgage.
	7	Original attachment 6, mortgagee's certification of the date of disbursement of the section 234(r) mortgage proceeds.
	8	Original form HUD–93102, mortgagee's certification and application for assistance or interest reduction payments, for the period beginning on the date of the first monthly amortization payment under the mortgage (or, deed of trust) and note and next assistance payment due the servicing mortgagee after the account set up.

Attachment 10–D

Recapture Mortgage (Deed of Trust) Modification and Subordination Agreement Disposition/Check List

Mortgagee's name: _____
Date: _____
Mortgagor's name: _____
New FHA case number: _____
(and ADP code)
Mortgagee's loan number: _____
Date of closing: _____

Modification and Subordination Documentation Sent to the Local HUD Field Office Separate From the Case Binder

USAGE: This check list will assist the originating mortgagee, or its agent, with the documents disposition for the subordination and modification of HUD's recapture mortgage (or, deed of trust) or note that is associated with the new 235(r) mortgage. These documents are sent separate from the case binder. The mortgagee is responsible for the proper recordation of the documents. The Recorder's office must be instructed to send the recorded documents to the local HUD Field Office.

√	Item	Documents as a group
	1	The new original recapture note executed by the mortgagor at the closing of the new 235(r) mortgage.
	2	Copy of Attachment 7, modification and subordination agreement, of the recaptured mortgage (or, deed of trust) which was executed by the mortgagor and direct endorsement underwriter or designated official, or (if applicable) HUD official, at the closing of the new 235(r) mortgage and sent to the recorder's office for recordation.
	3	Copy of the original form HUD–93100, application for homeownership assistance under section 235 of the National Housing Act, that was reviewed and executed for by the direct endorsement or HUD staff underwriter for the new assistance payments contract.
	4	Copy of attachment 5, acknowledgment of mortgagor (s), if an old section 235 revised recapture 10 mortgage is refinanced by the 235(r) mortgage.
	5	Copy of the original form HUD–93114, notice of suspension, if the mortgagor executed the 235(r) mortgage instruments and the underwriter required that the new assistance payments contract be suspended, beginning on the closing date of the 235(r) mortgage.
	6	Copy of the original form HUD–93102, mortgagee's certification and application for assistance or interest reduction payments, for the period beginning on the date of the first monthly amortization payment under the mortgage (or, deed of trust) and note and next assistance payment due the servicing mortgagee after the account set up.
	7	Copy of appendix 25, notice to mortgagor, of handbook 4330.1 was reviewed and executed by the applicant (mortgagor), if a recapture mortgage which is held by HUD is modified and subordinated.
	8	The letter and required attachments received from the servicing mortgagee, who serviced the old 235 mortgage.
		a. A copy of the original form HUD–93100–4 (or, authorized substitute) that was executed by HUD when the old 235 mortgage was originated
		b.If applicable, a copy of the original special assistance payments contract associated with the old section 235 revised recapture 10 mortgage
		c. Copy of the section 235 payoff statement.
		d. A copy of appendix 29, suggested form of mortgagee notice to mortgagor mortgagor, of handbook 4330.1
		e. If available, a copy of the original sales contract of HUD–1 when the property was first mortgaged under section 235.
	9	If a HUD-processed case, form HUD–92900.4, firm commitment

Appendix 1

Using Steps 1 Through 6 to Determine the Recovery Period in Whole Months—For example:

A 17.5 percent 235 mortgage for $40,000.00 taken out in 1981 would carry a P + I payment of $586.53 and have a remaining balance after 10 years of $38,973.60. A new 235(r) mortgage refinancing the $38,973.60[1] at 10 percent would carry a P + I payment of $376.10, yielding a payment savings of $210.43 [= $586.53 − $376.10].

If eligible upfront costs total $2,144.00, the ratio would equal 10.19 [=$2,144.00/$210.43] which would be rounded up to the nearest quarter, i.e., 10.25.

Since the ratio is 10.25 and the 235(r) interest rate is 10 percent the originating mortgage would first find the ratio in column 1 and then would go to colum 2 at the 10 percent 235(r) interest rate. The intersection of the column 1 and column 2 is 11 whole months which is the number of months of the recovery period.

The recovery period begins on the date of the first scheduled monthly amortization and ends the day before the beginning of the 12th month. For example, the 235(r) mortgage is closed on January 29, 1991 and the first payment is due on March 1, 1991. The first scheduled monthly amortization is March 1, 1991 and 11 whole months would end on January 31, 1992.

[1] The 235(r) mortgage amount has not been rounded down to the nearest $50.00 for this example.

Reference: Attachment 2, Table of Recovery Periods

1991	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
			1	2	3	4	5	6	7	8	9	10

1992	Jan.	Feb.	March	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
	11											

x . . . Beginning February 1, 1992 the 235(r) interest rate takes effect where the March 1, 1992 scheduled monthly amortization payment that is due includes interest at this interest rate.

Summary: The 235(r) mortgage would carry an initial interest rate of 17.5 percent and a P + I payments of $586.53 for the first 11 months and a 235(r) interest rate of 10% and P + I payments of $376.10 for the remaining 229 months.

[FR Doc. 91-5151 Filed 3-6-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Deparrtment of the Interior proposes to revise a notice describing records maintained by the Division of Enforcement and Security Management in the Office of the Secretary. All changes being published are editorial in nature, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register** on July 15, 1988 (51 FR 25810). The revised notice titled "Security Clearance Files and Other Reference Files—Interior, Office of the Secretary—45." is published in its entirety below.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective upon publication in the **Federal Register** (March 7, 1991). Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: February 25, 1991.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

INTERIOR/OS-45

SYSTEM NAME:

Security Clearance Files and Other Reference Files—Interior, Office of the Secretary—45.

SYSTEM LOCATION:

Office of the Secretary, Division of Enforcement and Security Management, (PPS-S) U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in the Office of the Secretary. Other Departmental Offices, Bureau Heads, Bureau Security Officers, and employees in Independent Agencies, Councils, and Commissions who are provided administrative support, whose duties have been designated special sensitive, critical sensitive, noncritical sensitive, or clearance for FEMA special access program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains copies of SF-85 or SF-86 and/or SF-171 supplied by individual concerned as well as copies of letters of transmittal between Interior and the Office of Personnel Management concerning the individual's background investigation. Further, contains copy of certification of clearance status and briefing and/or debriefing certificate signed by individual as appropriate. Card file reflects summary, case number and disposition of the case file following review.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are for the identification of (a) Office of the Secretary personnel and heads of Bureaus and their respective Security Officers who have been granted a security clearance; (b) persons in a pending clearance status awaiting the results and adjudication of Office of Personnel Management investigations: and (c) persons whose clearance has been terminated in the last five years due to an administrative down-grading, transfer to other agencies, employment, or retirement. Disclosures outside the Department of the Interior may be made (1) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal state, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (5) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit; (6) to the Office of Personnel Management for matters concerned with oversight activities necessary for the Office to carry out its legally authorized Government-wide personnel management programs and functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Stored in a locked room. Access granted only to cleared personnel on official business.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with General Records Schedule No. 18, Item No. 23.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Enforcement and Security Management (PPS-S), Office of the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

Same as the above. A written and signed request stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

Same as the above. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 271.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained as well as data furnished by other Federal agencies on the person concerned.

[FR Doc. 91-5317 Filed 3-6-91; 8:45 am]

BILLING CODE 4310-RK-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reasons given below. Approval has been requested as soon as possible. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer at the phone number listed below, and to the Office of Management and Budget, Paperwork Reduction (1076-0021) Project, Washington, DC 20503, telephone (202) 395-7340.

Titles: Indian Electric Power Utilities—Colorado River, 25 CFR part 175; Flathead Indian, 25 CFR part 176; San Carlos Indian, 25 CFR part 177.

OMB Approval Number: 1076-0021.

Abstract: These irrigation and power projects provide electric power service. Projects need names and addresses of the electric power consumers, namely, households, commercial and industrial businesses, farming enterprises and municipalities in order to identify and assess the particular customer the monthly charges for receiving electric power.

Reason For Expedite Review: To comply with a statutory deadline and because of the hardship which would be imposed on Indian Electric Power Utilities Customers by failure to implement this new requirement before the end of the current quarter.

Frequency: On occasion.

Description of Respondents: Individuals, households, businesses, farms and municipalities buying electric power from these three irrigation projects.

Estimated Completion Time: ½ hour.

Annual Responses: 4,621.0.

Annual Burden Hours: 2,331.75.

Bureau clearance officer: Gail Sheridan (202) 208-2685.

Dated: October 5, 1990.

Perry Baker,

Acting Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development).

[FR Doc. 91-5363 Filed 3-6-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[CO-050-5410-10-ZCAD]

Application for Federal Minerals

AGENCY: Bureau of Land Management, Interior.

ACTION: Reality Application COC-51597, for Conveyance of Federally Owned Mineral Interests in Gilpin County, Colorado; Segregation from Mineral Entry.

SUMMARY: The following private lands have reserved Federal minerals rights for which application has been made by the surface owner, Evelyn Howard Dieker Trust, c/o Joan Selensky, Trustee, 1838 South Tennyson Street, Denver, CO 80219, under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719:

Sixth Principal Meridian, Colorado

T.2S., R.72 W.

Sec. 18, Lots 4, 7, 8, 9, 10, 11, 12, NE¼, E½ NW¼, SE¼SW¼, NW¼SE¼, and S½ SE¼.

Containing 571.77 acres.

ADDRESSES: Submit comments to District Manager, Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, Colorado 81215-2200.

FOR FURTHER INFORMATION CONTACT: Stu Parker at the above address, or phone (719) 275-0631.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the mineral interests owned by the United States in the above-described lands to the extent that they are not subject to appropriation under the public land laws, including the mining laws. This segregation shall terminate upon issuance of a patent, or two years from the date the application was filed, May 22, 1990, whichever occurs first.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 91-5364 Filed 3-6-91; 8:45 am]

BILLING CODE 4310-JB-M

[OR-120-01-4310-33; G-1-122; OR 46140]

Realty Action, Lease of Public Land; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Recreation & Public Purposes Lease in Coos County, Oregon.

SUMMARY: The following described public domain lands, have been examined and found suitable for lease to the Charleston Rural Fire District for an Emergency Operation Center under the Recreation & Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.).*

Willamette Meridian, Oregon

T. 26 S., R. 14 W.,
portion of SE¼NE¼ Sec. 3 comprising of .30 acres, more or less

The above described land is hereby segregated from appropriation under the public lands laws, including the mining laws, except as to applications under the mineral leasing laws and applications under the Recreation & Public Purposes Act, for 18 months from the date of publication of this notice in the **Federal Register**, or until publication of an opening order, or issuance of a lease.

The subject land is to be leased to the Charleston Rural Fire District. The purpose of the lease is to construct, use

and maintain a combination structure housing an Emergency Operation Center, Fire Department Administrative Office, satellite Coos County Sheriff Office, emergency equipment facility (fire truck-ambulance bays) and a 500 person capacity Community Facility Building (including kitchen facilities). The facility will provide more and improved services to the local community.

The lease would have a term of 25 years and, under the special pricing provision, the rental will be $10.00 per year. If the lease is approved, it will be subject to the following:

1. All valid existing rights documented on the official public land records at the time of issuance of lease.
2. State and local planning and zoning designations.
3. Conditions of right-of-way reservation OR 35002 to the U.S. Navy.

The land is not needed for other Federal purposes. An Environmental Assessment will be completed prior to final determination of this action. The public interest will be served by this lease.

DATES: On or before April 22, 1991 interested parties may submit comments to the District Manager, Bureau of Land Management, at the address below. Objections will be reviewed by the Oregon State Director of the Bureau of Land Management who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESS: Detailed information concerning the proposed lease, including the draft environmental analysis, is available for review at the Bureau of Land Management's Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459.

FOR FURTHER INFORMATION CONTACT: Thom Green, Coos Bay District Office (503) 756–0100.

Dated: February 28, 1991.

Cary A. Osterhaus,

Associate District Manager.

[FR Doc. 91–5423 Filed 3–6–91; 8:45 am]

BILLING CODE 4310–33–M

[NM–940–01–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10 a.m. on February 26, 1991.

New Mexico Principal Meridian, New Mexico:

T. 12 N., R. 4 E., Accepted February 22, 1991, for Group 881 NM.

A person or party who wishes to protest against the above plat may file with the State Director, Bureau of Land Management, a notice that they wish to protest the survey. A statement of reasons for a protest may be filed with the notice of protest to the State Director.

The above-listed plat represents dependent resurveys, survey and subdivision.

This plat will be in the files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: February 26, 1991.

John P. Bennett,

Chief, Cadastral Survey.

[FR Doc. 91–5385 Filed 3–6–91; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Comment period begins March 1, 1991, for the Review Draft of the Strategic Plan for Harvest Management in the Klamath River Basin Conservation Area

AGENCY: Department of the Interior.

ACTION: Notice of public meetings and release of review draft.

SUMMARY: This notice announces release, to agencies, interested groups and the general public, of a review draft of the long-term plan for management of in-river and ocean harvesting that affects Klamath and Trinity River basins anadromous fish populations. Those additional persons wishing to review the plan may obtain it from the address indicated under **FOR FURTHER INFORMATION CONTACT** or they may review it at the locations indicated under **ADDRESSES**.

Public hearings will be held on the following dates and times at the respective locations:

1. March 19, 1991, at 7 pm, at the Victorian Inn, 1709 Main St. (Hwy. 299 West), Weaverville, CA
2. March 20, 1991, at 7 pm, at the Miners Inn, 122 East Miner, Yreka, CA
3. March 26, 1991, at 7 pm, at the Red Lion Inn, 1313 N. Bayshore Drive, Coos Bay, OR
4. March 27, 1991, at 7 pm, at the Red Lion Inn, 1929 Fourth St., Eureka, CA and
5. March 28, 1991, at 7 pm, at the Tradewinds Lodge, 400 S. Main, Fort Bragg, CA

Some members of the Klamath River Fishery Management Council, an advisory committee providing guidance on harvest management for anadromous fish in the Klamath River basin, will attend the public meetings to hear comments.

DATES: The review draft will be available to the public on March 1, 1991, and comments will be accepted until April 15, 1991.

ADDRESSES: Copies of the complete plan document will be available for review at the following locations during normal business hours:

Libraries:

Siskiyou County Public Library, 719 4th Street, Yreka, CA
Trinity County Public Library, 229 Main, Weaverville, CA
Humboldt County Public Library, 421 "I" Street, Eureka, CA
Del Norte County Public Library, 190 Price Mall, Crescent City, CA
Klamath County Public Library, Klamath Falls, OR
Happy Camp Branch Library, 143 Buckhorn Road, Happy Camp, CA
Orleans Elementary School Library, Orleans, CA
Weitchpec Store, Weitchpec, CA
Humboldt State University Library, Arcata, CA
Southern Oregon State College Library, Ashland, OR and other libraries along the southern Oregon and northern California coast

Federal Offices:

U.S. Fish & Wildlife Service, Klamath River Fishery Resource Office, 1030 South Main, Yreka, CA
U.S. Fish & Wildlife Service, Trinity River Fishery Resource Office, #3 Horseshoe Square, Weaverville, CA
U.S. Fish & Wildlife Service, Coastal California Fishery Resource Office, 1125 16th Street, room 209, Arcata, CA
Six River National Forest, 500 5th Street, Eureka, CA
Gasquet Ranger District, Gasquet CA
Orleans Ranger District, Orleans, CA
Lower Trinity Ranger District, Willow Creek, CA
Mad River Ranger District, Bridgeville, CA
Klamath National Forest Headquarters, 1312 Fairlane Road, Yreka, CA
Oak Knoll Ranger District, 22541 Highway 96, Klamath River, CA
Happy Camp Ranger District, Happy Camp, CA
Salmon River Ranger District, Fort Jones, CA
Goosenest Ranger District, Orleans, CA
Klamath National Wildlife Refuge, Tulelake, CA
U.S. Fish & Wildlife Service, Regional Office, 911 NE 11th Avenue, Portland, OR

Other Government Offices:

California Department of Fish & Game, 601 Locust Street, Redding, CA
Hoopa Valley Business Council, Hoopa, CA;
Yurok Transition Team, 517 Third Street, #18, Eureka, CA
Klamath Tribal Office, Old Williamson Business Park, Hwy. 97, Chiloquin, OR and the
Karuk Tribal Office, 746 Indian Creek Road, Happy Camp, CA

Written comments may be sent to the address indicated below.

FOR FURTHER INFORMATION CONTACT: Ronald A. Iverson, U.S. Fish & Wildlife Service, Klamath River Fishery Resource Office, P.O. Box 1006, Yreka, CA 96097. Phone 916–842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). For further information on the Klamath River Basin Conservation Area Restoration Program, see 16 U.S.C. 460ss-ss8 (the "Klamath Act").

Dated: February 27, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–5373 Filed 3–6–91; 8:45 am]

BILLING CODE 4310–55–M

Meeting; Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 7 p.m. to 10 p.m. on Monday, March 11, 1991.

PLACE: The meeting will be held at the Clarion Hotel, Sausalito Room, section B, 401 East Millbrae Avenue, Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On March 11, the Task Force will meet to approve final edits and discuss the publication and distribution process for the Long-Range Plan for the Klamath River Basin Conservation Area Fishery Restoration Program.

Dated: February 27, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–5372 Filed 3–5–91; 8:45 am]

BILLING CODE 4310–55–M

Meeting, Klamath Fishery Management Council

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 12 Noon to 4:30 p.m. on Sunday, March 10, 1991.

PLACE: The meeting will be held in the Sausalito Room, Section—A, of the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On March 10, the Klamath Fishery Management Council will discuss ocean harvest rate of Klamath River Management Zone salmon stocks for the 1991 fishing season. Scenarios modeling various ocean harvest rates will be discussed. A public comment period is scheduled for 1:30 p.m. The Council convenes this meeting on the ocean harvest issue in an attempt to make a consensus recommendation to the Pacific Fisheries Management Council.

Dated: February 27, 1991.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–5374 Filed 3–6–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Alaska OCS Region: Outer Continental Shelf Advisory Board; Alaska Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Alaska Regional Technical Working Group (RTWG) committee of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 1 p.m. to 4:30 p.m., April 2, 1991, in room 601 of the Minerals Management Service (MMS), Alaska OCS Region offices at 949 East 36th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director of MMS about technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topic which will be addressed at the meeting is:

Draft Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program, 1992–1997

The Alaska RTWG meeting will be open to the public, although seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than March 26, 1991, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, room 110, Anchorage, Alaska 99508–4302, and should be accompanied by a written summary of the presentation.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska, and at

the office of OCS Advisory Board Support, MMS, Department of the Interior, 18th andC Streets NW., Washington, DC.

Dated: February 28, 1991.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 91-5371 Filed 3-6-91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information, listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information the related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1029-_____), Washington, DC 20503, telephone 202-395-7340.

Title: Areas Designated by Act of Congress, 30 CFR 761.

OMB Number: 1029-_____

Abstract: 30 CFR 761 allows coal mining companies to submit documentation that demonstrates it meets the definition of Valid Existing Rights (VER) to mine coal in an area prohibited by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM will use the information in making a VER determination.

Bureau Form Number: None.

Frequency: On Occasion.

Description of Respondents: Individual Coal Mining Companies.

Annual Responses: 5.

Annual Burden Hours: 375.

Estimated Completion Time: 75 hours.

Bureau clearance officer: Richard L. Wolfe (202) 343-5143.

Dated: December 6, 1990.

John P. Mosesso,

Chief, Division of Technical Services.

[FR Doc. 91-5375 Filed 3-6-91; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399 (Sub-No. 11)]

Intrastate Rail Rate Authority—KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Kentucky to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective April 6, 1991, and will expire April 5, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: February 27, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5381 Filed 3-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31783]

Manufacturer's Junction Railway Co.;—Lease and Operation Exemption—Missouri Pacific Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts Manufacturers' Junction Railway Company from the prior approval requirements of 49 U.S.C. 11343-11344 for the lease and operation of rail lines in Kansas. The lines are presently owned and operated by Missouri Pacific Railroad Company, a wholly owned subsidiary of Union Pacific Corporation, except for the line of the Kiowa, Hardtner and Pacific Railway Company currently leased by Missouri Pacific. The exemption is subject to employee protective conditions.

DATES: The exemption is effective on April 5, 1991. Petitions for stay must be filed by March 21, 1991. Petitions for reconsideration must be filed by April 1, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31783 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioners' representatives, Joseph D. Anthofer, Esq., 1416 Dodge Street, Omaha, NE 68179 and

Peter A. Greene, Esq., Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Decided: February 25, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald, joined by Commissioner Simmons concurred with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5287 Filed 3-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Orville Bailey and Janet Bailey*, Civil Action No. 87-3117 (D. Idaho) was lodged with the United States District Court for the District of Idaho on February 13, 1991.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, as a result of the discharge of dredged and fill material into wetlands adjacent to the North end of Priest Lake in Bonner County, Idaho. The Site of the violations is owned by the Baileys and is depicted by a map attached to the consent decree lodged with the Court. The fill materials consisted of sand and rock and were discharged into the wetlands areas by the Baileys without authorization from the U.S. Army Corps of Engineers in accordance with 33 U.S.C. 1344.

The consent decree requires the Baileys to remove all unauthorized fill material, which has been accomplished, and to restore the area to its original condition by revegetating the property in accordance with a restoration plan which is attached to the consent decree lodged with the Court. The decree further requires the Baileys to pay a civil penalty of $5,000.00 for these violatoins of the Clean Water Act.

The Department of Justice will receive until March 31, 1991, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Robert LeFevre, Esquire, room 7113, 10th St. & Constitution Avenue NW., Washington, DC 20530, and should refer to *United States* versus *Orville Bailey and Janet Bailey*, Civil Action No. 87-3117 (D. Idaho), DJ Reference No. 90-5-1-1-2959.

The consent decree may be examined at the Clerk's Office, United States District Court, 550 West Fort Street, Boise, Idaho 83724.

Richard B. Stewart,

Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91-5362 filed 3-6-91; 8:45 am]

BILLING CODE 4410-01

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,160]

Eaton Corp.—Controls Division, Freemont, OH; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice deletes the affirmative determination for workers of the subject firm producing automotive switches which was erroneously published in the Federal Register on February 21, 1991, (56 FR 7066) in FR Document 91-4092.

The subject workers were already certified under petition TA-W-23,176 which was subsequently amended by deleting the termination date. The amendment was published in the Federal Register on October 27, 1989 (54 FR 43874). Accordingly, the subject certification TA-W-25,160 is hereby revoked.

Signed in Washington, DC, this 26th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5390 Filed 3-6-91; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,013; Skillers of America, Butler, PA

TA-W-25,040; The Level Line, Inc., Lakewood, NJ

TA-W-25,223; Lenox Crystal, Mt. Pleasant, PA

TA-W-25,171; Lear Plastics Corp., Mendon, MI

TA-W-25,227; RCR Mills, Inc., Shillington, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,141; Malcolm Nicol/IGI Adhesives, Lyndhurst, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,211; Micro Marketing International, Williamsport, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,156; Bottoms USA, Auburn, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,229; Sier Bath Deck Gear Corp, North Bergen, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,267; Philips Consumer Electronic Co., Greenville, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,231; U.S. Repeating Arms Co., New Haven, CT

U.S. imports of shot guns and rifles declined in 1989 compared to 1988 in the first six months of 1990 compared to the same period in 1989.

TA-W-25,224; Mask Illusions, Inc., San Diego, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,203; International Shoe Machine Corp., Kingston, PA

Aggregate imports like or directly competitive with shoe manufacturing equipment were negligible during the period under investigation.

TA-W-25,213; Northern Chatham Bedding Co., Inc., Elizabeth, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. It was also revealed that criterion (2) was not met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,191; White Consolidated Industries, Inc., Mansfield, OH

Increased imports did not contribute importantly to worker separations at the firm for workers producing compact

washers and dryers, top load, front load and free standing and laundry centers.

Affirmative Determinations

TA-W-25,212; NCR Corp., Lake Mary, FL

A certification was issued covering all workers separated on or after November 29, 1989.

TA-W-25,276; U.S. Vanadium Corp., Hot Spring Operation, Hot Spring, AR

A certification was issued covering all workers separated on or after December 18, 1989.

TA-W-25,221; Evans Hampden Shoe Corp., Hampden, ME

A certification was issued covering all workers separated on or after December 10, 1989.

TA-W-25,217; Pioneer Industrial Products, Plant #1, Willard, OH

A certification was issued covering all workers separated on or after December 31, 1989.

TA-W-25,217A; Pioneer Industrial Products, Plant #3, Willard, OH

A certification was issued covering all workers separated on or after December 31, 1989.

TA-W-25,135; Gerber Childrenswear, Inc., Yadkinville, NC

A certification was issued covering all workers separated on or after October 30, 1989.

TA-W-25,136; Gerber Childrenswear, Inc., Salisbury, NC

A certification was issued covering all workers separated on or after October 30, 1989.

TA-W-25,137; Gerber Childrenswear, Inc., Greensboro, NC

A certification was issued covering all workers separated on or after October 30, 1989.

TA-W-25,015; Texas Oil & Gas Corp., Denver, CO

A certification was issued covering all workers separated on or after January 1, 1990.

TA-W-25,200; D.G. Apparel, Inc., Columbus, GA

A certification was issued covering all workers separated on or after December 3, 1989.

TA-W-25,204; Joanna CHF, Maplewood, NJ

A certification was issued covering all workers separated on or after December 5, 1989.

TA-W-25,220; Proctor & Gamble Manufacturing Co., Chicago Plant, Chicago, IL

A certification was issued covering all workers separated on or after November 27, 1989 and before January 1, 1991.

TA-W-25,144; NCR Corp., Cambridge, OH

A certification was issued covering all workers separated on or after September 3, 1990.

TA-W-25,191; White Consolidated Industries, Inc., Mansfield, OH

A certification was issued covering all workers producing 24" free standing dryers separated on or after August 1, 1990 and before February 1, 1991.

TA-W-25,131; Del-Met Corp, Walton, NY

A certification was issued covering all workers separated on or after November 1, 1989.

TA-W-25,168; Jonathan Michael, New York, NY

A certification was issued covering all workers separated on or after November 27, 1989.

TA-W-25,198; Chrissy Sportswear, Inc., Boston, MA

A certification was issued covering all workers separated on or after December 4, 1989.

TA-W-25,185; Serac Manufacturing, Inc., Priest River, ID

A certification was issued covering all workers separated on or after November 23, 1989.

TA-W-25,010; Royce Chemical Co., Newark, NJ

A certification was issued covering all workers separated on or after October 18, 1989.

TA-W-25,265; Aalcoa Fujikura Ltd, Houston, MS

A certification was issued covering all workers separated on or after December 17, 1989.

I hereby certify that the aforementioned determinations were issued during the month of February, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: February 20, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5380 Filed 3-6-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Overview Section) to the National Council on the Arts will be held on March 21-22, 1991, from 9:30 a.m.-5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductory remarks, the impact of the recession and budget cuts on presenting organizations funding, residency activities—the role of the presenter in the community, the application process, and the future of support for presenting organizations.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: February 22, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-5379 Filed 3-6-91; 8:45 am]

BILLING CODE 7537-01-M

DEPARTMENT OF STATE

[Public Notice 1359]

Shipping Coordinating Committee, Sub-Committee on Ocean Dumping; Meeting

The Ocean Dumping Subcommittee of the Shipping Coordinating Committee will hold an open meeting on March 19, 1991, from 1 p.m. to 3 p.m. to review the U.S. submission to Scientific Group on Dumping (SGD 14).

The meeting will be held at the Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, SW., Washington, DC 20003 in the Office of Marine and Estuarine Protection Conference Room on the 8th Floor.

For further information, please contact Mr. John Lishman or Mrs. Ellen Delaney, Office of Marine and Estuarine protection, Telephone 202/475-8448.

Participants must stop at the Guard Desk on Third Floor.

Dated: March 4, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-5514 Filed 3-6-91; 8:45 am]

BILLING CODE 4710-09-M

[Public Notice 1360]

Designation and Delegation of Authority No. 188 Concerning the Department's Ethics Program

Pursuant to the regulations of the Office of Government Ethics, 5 CFR 2638.202, I hereby designate Laura B. Sherman, Senior Ethics Attorney, as the Alternate Designated Agency Ethics Official, as well as a Deputy Designated Agency Ethics Official, for the Department of State. I delegate to her, along with the Designated Agency Ethics Official of the Department, the functional authority to coordinate and manage the Department's ethics program. This designation supersedes that of Dennis I. Foreman.

Dated: February 26, 1991.

Ivan Selin,

Under Secretary for Management.

[FR Doc. 91-5377 Filed 3-6-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Boca Raton Airport, Boca Raton, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Boca Raton Airport Authority for Boca Raton Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Boca Raton Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before August 19, 1991.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is February 20, 1991. The public comment period ends April 21, 1991.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397 (407) 663-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Boca Raton Airport are in compliance with applicable requirements of part 150, effective February 20, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 19, 1991. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act", an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Boca Raton Airport Authority submitted to the FAA on September 25, 1990 noise exposure maps, descriptions and other documentation which were produced during the Boca Raton Airport part 150 Noise Study conducted between April 1989 and September 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Boca Raton Airport Authority. The specific maps under consideration are "1996 Contours with Existing Off-Airport Land Use" and "1994 Contours with Existing Off-Airport Land Use" in the submission. The FAA has determined that these maps for the Boca Raton Airport are in compliance with applicable requirements. The determination is effective on February 20, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise

contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for February 20, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 19, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397

Mr. Nelson Rhodes, Airport Director, Boca Raton Airport Authority, 3700 Airport Road, suite 204, Boca Raton, FL 33431-8403.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida February 20, 1991.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 91-5417 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatability Program; and Request for Review; Ocala Municipal Airport, Ocala, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the revised future noise exposure map submitted by the City of Ocala, Florida for the Ocala Municipal Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Ocala Municipal Airport under part 150 in conjunction with the revised future noise exposure map and that this program will be approved or disapproved on or before August 13, 1991.

EFFECTIVE DATES: The effective date of the FAA's determination on the revised future noise exposure map and of the start of its review of the associated noise compatibility program is February 14, 1991. The public comment period ends April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397, (407) 648-6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the revised future noise exposure map submitted for the Ocala Municipal Airport is in compliance with applicable requirements of part 150, effective February 14, 1991. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before August 13, 1991. This notice also announces the availability of this program for public review and comment.

Under section 101 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Ocala, Florida submitted to the FAA on January 4, 1991 noise exposure maps, descriptions and other documentation which were produced during the Ocala Municipal Airport, Jim Taylor Field, part 150 noise compatibility study conducted between July 1987 and December 1990. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the revised future noise exposure map and related descriptions submitted by the City of Ocala, Florida. The specific map under consideration is "1994 Recommended Noise Exposure Map" in the submission. The FAA has determined that this map for the Ocala Municipal Airport is in compliance with applicable requirements. The determination is effective on February 14, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Ocala Municipal Airport, also effective on February 14, 1991. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatability programs, but that further review will be necessary prior to approval of disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 13, 1991.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.53. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, created an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397

Mr. Richard K. Lewis, Assistant City Manager/Airport Manager, P.O. Box 1270, Ocala, Florida 32678-1270.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida February 14, 1991.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 91-5418 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Adminstration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 8, at 8 a.m., through April 11, 1991, at 4:30 p.m.

ADDRESSES: The meeting will be held in the McCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Theodore H. Davies, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. 1), notice is hereby given of a meeting of the ATPAC to be held from April 8, at 8 a.m., through April 11, 1991, at 4:30 p.m., in the McCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 5, 1991. The next quarterly meeting of the FAA ATPAC is planned to be held from July 22-25, 1991, in Oshkosh, WI. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on March 1, 1991.

Theodore H. Davies,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 91-5419 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 166, User Requirements for Future Airport and Terminal Area Communications, Navigation and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the tenth meeting of Special Committee 166 to be held March 20-21, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the ninth meeting held on January 9-10, 1991, RTCA Paper No. XXX-91/SC166-XX (enclosed); (3) Reports on action items assigned at last meeting; (4) Review of report material prepared during joint working group meeting on March 19, 1991; (5) Other business; (6) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral

BEST COPY AVAILABLE

statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 1991.

Steven Zaldman,

Designated Officer.

[FR Doc. 91-5420 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Hillsborough and Cheshire Counties, New Hampshire

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FWHA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Hillsborough, Deering and Antrim, New Hampshire.

FOR FURTHER INFORMATION CONTACT: Mr. William F. O'Donnell, P.E., Area Engineer, Federal Highway Administration, 55 Pleasant Street, Concord, New Hampshire 03301, Telephone (603) 225-1606, or Mr. William Hauser, Supervisor, Environmental Services Section, New Hampshire Department of Transportation, P.O. Box 483, John O. Morton Building, Concord, New Hampshire 03302-0483, Telephone (603) 271-3226.

SUPPLEMENTARY INFORMATION: The FWHA, in cooperation with the New Hampshire Department of Transportation (NHDOT), will prepare an EIS for a proposed highway project that will bypass a section of U.S. Route 202 and New Hampshire Route 9 in Hillsborough, New Hampshire. The proposed bypass will begin on the existing alignment at the Hillsborough-Henniker town line and extend westerly approximately 4.5 miles, ending on the existing alignment of New Hampshire Route 9. The proposed bypass is envisioned as a limited access facility. The towns of Hillsborough, Deering and Antrim will be included in the study. The proposed action would relieve traffic congestion, reduce travel time, improve safety and accommodate projected increases in traffic demand.

Alternatives to be considered include: (1) Taking no action; (2) applying transportation systems management (TSM) improvements to selected locations on existing roads; (3) upgrading the existing route to add capacity, reduce travel time and/or improve safety; (4) constructing a bypass to existing U.S. Route 202 and New Hampshire Route 9; and (5) combinations of these alternatives. Various designs of grade, alignment, geometry and access will be evaluated.

An Advisory Task Force will be established with representatives of NHDOT, the Central New Hampshire Regional Planning Commission (CNHRPC), the Southwest Region Planning Commission and local officials.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have an interest in this proposal. Public information, community and Advisory Task Force meetings will be held in the study area as the project progresses in order to include public input in the planning process. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given regarding the time and location of this hearing. The DEIS will be available for review and comment by the public and interested agencies.

A federal scoping meeting will be held at 2 p.m. on April 2, 1991, at the Environmental Center of the Fox State Forest on Center Road in Hillsborough, New Hampshire, to: (1) Confirm the limits of the project study area, (2) help to establish the study framework and the impacts to be analyzed, and (3) help to define a reasonable range of alternatives to be considered. Study area resources to be analyzed include the natural environmental (farmland, forestland, wetlands, floodplains, surface water and water supply resources, wild and scenic rivers, terrestrial and aquatic resources, threatened and endangered species, public conservation lands and parklands, geology, soils, topography and hazardous wastes), the social environment (land use, population, employment, economic development and community facilities), cultural environment (historic and archeological resources) and the transportation network. Agencies to be invited to be cooperating agencies are the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (ACOE), the Soil Conservation Service (SCS), the New Hampshire State Historic Preservation Office (SHPO) and the New Hampshire Wetlands Board.

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified. Comments or questions concerning this proposed action should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Gerald L. Eller,

Division Administrator, Concord, New Hampshire.

[FR Doc. 91-5318 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-22-M

Saint Lawrence Seaway Development Corporation

Advisory Board: Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation to be held at 2 p.m., April 18, 1991, at the Corporation's Administration Headquarters, room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than April 8, 1991, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on March 1, 1991.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 91-5375 Filed 3-6-91; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 1, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0063.
Form Number: CF 5520.
Type of Review: Extension.
Title: Special Summary Steel Invoice.
Description: The importer/manufacturer completes Customs Form 5520 and the entry is reviewed by Customs personnel for accuracy. The document is transferred to the International Trade Administration of the Department of Commerce where the information is computerized and monitored for compliance with the requirements of various steel programs.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 28,600 hours.
Clearance Officer: Ralph Meyer, (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-5356 Filed 3-6-91; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Central European Educational Exchange and Training Program (CEETP)

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Bureau of Educational and Cultural Affairs announces a competitive grants program for private, non-profit organizations in support of projects that link their international exchange interests with counterpart institutions/groups in Poland, Hungary, Czechoslovakia and Romania in ways supportive of the aims of the Bureau of Educational and Cultural Affairs. All communications concerning this announcement should refer to the Central European Educational Exchange and Training Program; (CEETP).

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: This action is effective from the publication date of this notice through April 15, 1991, for projects whose activities commence after August 1, 1991.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547. The Office of Citizen Exchanges has been designated as the coordinator for this program. Only written requests for this solicitation will receive a response.

SUPPLEMENTARY INFORMATION: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program to encourage, through limited grants to non-profit institutions, increased private sector commitment to and involvement in international exchanges. USIA and USIS personnel overseas reserve the right to nominate all Central and East European participants.

The Bureau works with U.S. private sector non-profit organizations on cooperative international group projects that provide programs for local government officials, scholars, media and business leaders in the emerging democracies of Poland, Hungary, Czechoslovakia and Romania. The Bureau supports international educational exchanges, short-term courses and intensive workshops, internships, and infrastructure and linkage development in academic fields and professions including: local government, education, journalism, and business (including agri-business).

The Bureau strongly encourages the coordination of these activities with respected universities, professional associations, and major cultural, educational and political institutions in the U.S. and abroad, but particularly in the U.S. Each private sector activity must maintain a non-political character and should maintain its scholarly integrity and meet the highest professional and/or academic standards.

Proposals for projects taking place in the United States or overseas are welcome for single country or regional projects that involve Poland, Hungary, the Czech and Slovak Republic, and Romania.

The Bureau does not support proposals limited to conferences or seminars (i.e., one-to-fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only insofar as they are clearly subsidiary to a larger project in duration and scope including, but not limited to, project planning and development, internships, consultations, study tours, short courses and intensive workshops.

The participation of a respected university or scholarly organization in the Bureau's programs is decidedly advantageous. Further, the themes addressed in these exchange programs must be of long-term importance rather than focused exclusively on current events or short-term issues. In every case, a substantial rationale for the development and execution of an exchange program must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution of the overall project and its enduring impact.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; neither is funding available for bringing foreign nationals to routine professional association meetings in the United States.

Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered. USIS post consultation by applicants, prior to submission of proposals, is strongly recommended for all programs.

Objectives of the Central European Educational Exchange and Training Program (CEETP)

Overview: USIA will accord highest priority in this competition to proposals for projects that encourage the growth of

democratic institutions and political and economic pluralism in Central and Eastern Europe. The Congressional mandate on which this solicitation is based requires that these programs must be designed for exchanges with Poland, Hungary, the Czech and Slovak Republic, and Romania.

The Bureau is interested in supporting programs that will lay the groundwork for new international linkages between American and Central European professional organizations. Competing grantee applicants should not provide proposals that are overly ambitious or superficial. Rather, institutions should provide strong evidence of their ability to accomplish a few tasks exceptionally well. They should also strive to accomplish many of the structural objectives outlined below:

—The development of institutional linkages which live beyond the duration of USIA funding support;
—Coordination, in the design of these programs, with U.S. Information Agency officers overseas and with foreign government officials and private sector leaders who have direct experience in determining needs and in developing feasible approaches to respond to them;
—The identification and enhancement of Hungarian, Czech, Slovak, Polish and Romanian counterpart private sector institutions to insure logistical coordination of programs taking place in Central Europe and to increase the probability that these programs will endure.
—Maximum utilization and enhancement of indigenous institutions that can serve as magnet centers attracting leaders/professionals/teachers from other regions or countries for training purposes;
—The development of durable consortia, associations, and information networks both in the United States and in Central Europe;
—The transfer, at minimal cost, of relevant information through short courses and intensive workshops (at least one week in duration or longer) conducted in Central Europe;
—The development of contacts between prominent American and foreign scholars and officials on national, bilateral and international concerns;
—The provision of carefully crafted internships in the United States and extended learning programs (from six weeks to three months with considerable in-country cost-sharing);
—The extension of American academic expertise and professional know-how through consultations in Central Europe for periods of not less than one month;
—Focused attention not only on reaching leaders and potential leaders, but also in developing specialized materials for secondary and post-secondary teachers, and providing special training workshops for such teachers;
—The development and distribution of written and video instructional materials in Polish, Czech, Slovak, Hungarian and Romanian to complement and enhance educational and training programs;
—The development of distance learning modules through radio and television for broader dissemination of information;
—The stimulation of alternative funding sources in the United States and internationally to enhance and expand the size and scope of USIA assisted programs;
—The advancement of mutual understanding through targeted programs for Central European leaders and potential leaders in state, local and municipal government administration; economics and business development; media development and the role of a free press; and related sub-topics;
—The matching of American expertise with the needs of Central Europeans, with particular emphasis on finding those American scholars and professionals who can reach the widest possible audience through their foreign language fluency;
—The development of culturally sensitive and relevant study tours in the United States for small groups of key senior leaders in each of these disciplines so that they can relate educational enrichment and professional training programs in Central Europe to first-hand observation of theories and concepts at work in the United States.

Programmatic Recommendations: Government Administration

In each of these countries there is a preponderance of newly elected officials at all government levels. Most have little if any experience in city, regional, state or national government administration. They have not been responsible for day-to-day governance for over forty years, and, consequently, some doubt their ability to do so. This requires enhanced grass-roots communication, clear and concise packaging of information, and programs encouraging voluntary and other private sector involvement.

Program topics in municipal administration might include financial management, accounting, raising tax revenues, providing social services, environmental protection and waste management, political party organization and development, election practices and protections, etc. Follow-on internships in the United States with city, county and state governments for some of the best and most promising "students" in Central Europe would enhance their learning experience. Ideally, development of these programs should be linked with development of relevant outreach or extension program capabilities in a suitable university in the country in which the program takes place, especially in Poland, Hungary, or Czechoslovakia.

Programs may also further the development of provincial and national parliaments, their information and library systems, committee and staff structures, research capability, legislation drafting capability and other structural and procedural needs.

Short term courses and intensive workshops might be followed by carefully constructed legislative internships in the United States at the Federal and State legislature levels.

Programmatic Recommendations: Business Administration

This topic is very broad, and ranges across several disciplines. Included would be the provision of intensive courses and workshops in Central Europe on macro- and micro-economics, particularly the latter. Follow-on course work would examine such topics as accounting practices, financial management and banking, research and marketing management, entrepreneurship and small business development, industrial relations, privatization, and advertising, as relevant to each nation's unique needs. The development of new curricula and instructional materials in each language should be encouraged, with distribution of USIA-funded materials limited to Central Europe as proscribed by law.

Program design should clearly differentiate target audiences-professors and instructors of business, senior business leaders, government officials, or promising practioners. Intensive workshops and short-courses may also examine thematic areas of business development to include programs on agribusiness and family farming; service and heavy industrial sectors; high-tech industry, computers and telecommunications; and related topics.

Grantee institutions should try to maximize cost-sharing in all facets of their program design, and to stimulate U.S. private sector (foundation and corporate) support. Internships in each of these subject areas would enhance training programs in Central and Eastern Europe—but the first priority is for the sharing of information overseas. Again, it is especially desirable to develop these programs in such a way that it contributes to the development of relevant outreach and extension capability in a local university.

Programmatic Recommendations: Media Development

Programs in this topic area fall under two sub-categories: journalist training and institutional development. Short-term courses and intensive workshops in Central Europe should provide insights for journalists at all professional levels and in all sub-disciplines (business, foreign affairs, domestic politics, agriculture, the environment, the arts, etc.)

Separate training modules on media management (television, radio, magazines and newspapers) may also be of assistance as privatization and decentralization of Central European media expands. Journalism topics might include journalistic ethics, investigative reporting, and editorial writing. Media management topics might include business management techniques, desk top publishing, public relations, advertising, and public relations, among others. Programs for publishers and editors are also of interest, particularly if they include follow-on internships with prominent publishing and broadcasting companies in the United States, with those companies providing major cost-sharing. Internship programs in the United States might include a three-day orientation program on U.S. journalism practices, a 6- to 10-week internship, with a follow-on workshop comparing intern experiences, and a one-week trip to another part of the United States to examine "American journalism practices and cultural traditions."

Per diem support from host institutions during the internship component is strongly encouraged. However, for all internship programs, the non-profit grantee institution will receive funds from the corporate or government sponsor and then use those monies to provide food, lodging and pocket money for the participant. In no case could the intern receive a wage or "be hired" by the sponsoring institution.

Scope: Proposals may describe programs in one or more of the above countries but should focus almost exclusively on one of the three major topics: Government administration, business administration, or media development. A program which is too broad in scope is less likely to receive Agency support because of the immediacy of Central European needs and concerns over program superficiality.

Funding and Budget Requirements for all Submissions

The Bureau requires extensive cost-sharing for all projects. Proposals with cost sharing of less than 40 percent of the total project cost must provide exceptionally strong and convincing justification even to receive consideration, and in any event, would stand a low chance of being funded. Since USIA grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support (both in-kind and cash contributions) of proposed projects. The required format follows:

Line Item	USIA support	Cost sharing	Total
Travel, per diem, Total	$	$	$

Funding assistance is primarily limited to participant travel and per diem requirements with modest contributions not to exceed 20% of the money received from USIA to defray total administrative costs (salaries, benefits, other direct and indirect costs) incurred in the United States. Universities and other institutions applying for USIA support are encouraged to cost-share indirect costs and to pay the salaries of their faculty or professionals while they are providing instruction in Central Europe. Given the fact that USIA posts overseas are in many cases over-extended, it is necessary for the grantee applicant to provide evidence of institutional cosponsorship in Central Europe and, in some cases, on-site presence to insure the logistical success of all programs.

Organizations with less than four years' experience in conducting international exchange programs are limited to $60,000 of USIA support. In most cases, grant proposals will be considered in the range between $95,000 and $250,000 (per subject area module) in the amount requested from USIA, although USIA reserves the right to award grants for amounts outside this range. USIA anticipates funding grant activities for one year, although applications should be structured so that a one-year renewal is an option.

Additional Guidelines and Restrictions

Bureau grants are not given to support projects whose focus is limited to technical issues, or for research projects, for youth or youth-related activities (participants' age under 25), for publications funding for dissemination in the United States, for individual student exchanges, for film festivals and exhibits. Nor does this office provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the Federal Register.

Application Deadlines

The Bureau will accept proposals from the publication date of this notice through COB April 15, 1991, for projects whose activities will begin after August 1, 1991. Institutions must submit 16 copies of the final grant proposal and attachments. Proposals must fully accord with the terms of this Request for Proposals (RFP) as well as with Project Proposal Information Requirements (OMB #3116-0175). (See "Technical Requirements.") Issuance of this RPF does not constitute an award commitment on the part of the Government. The Government reserves the right to reject any or all applications received. Final award cannot be made until funds have been fully appropriated, allocated and committed through internal USIA procedures. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense.

Completed proposals should be mailed to:

The Office of the Executive Director (E/X), c/o The Central European Educational, Exchange and Training Program (CEETP): Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency—room 336, 301 4th Street SW., Washington, DC 20547.

Application requirements

For purposes of review, proposals must be identified by the country or countries of focus and the proposed thematic area of interest it is addressing.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish, how it is consistent with the purposes of the USIA grant program, and how it relates to USIA's mission—to further U.S. foreign policy objectives, explain U S.

policies and actions overseas, to present American society to citizens of other countries, to create and strengthen personal and institutional ties between the U.S. and other nations, to increase mutual understanding, and to correct misperceptions about the United States.

2. A concise description of the project and its intellectual rationale, spelling out complete program schedules and proposed itineraries, who the participants will be, where they will come from, and how they will be selected. Resumes should not exceed two pages in length and should be tailored for this specific program.

3. A statement of what follow-up activities are proposed, how impact will be measured, and what groups, beyond the direct participants, will benefit from the project and how they will benefit. These statements should not exceed a total of 25 pages. Excessive length of proposals will work against an applicant's probability of selection.

Review criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea: Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. Institution Reputation/Ability/Evaluations: Institutional grant recipients should demonstrate potential for program excellence and/or a track record of successful programs. Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel: Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. Program Planning: Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise: Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. Cross-Cultural Sensitivity/Area Expertise: Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area should be evident.

7. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the grantee institution will meet the program's objectives.

8. Multiplier Effect: Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. Sustainability: At the close of the activity, leaving behind an improved or enhanced institutional capacity overseas, and the development of enduring international linkages.

10. Cost-Effectiveness: The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

11. Cost-Sharing: Proposals should maximize cost-sharing through other private sector support as well as institution direct funding contributions.

12. Follow-on Activities: Proposals should provide a plan for continued exchange activity (without USIA support) which insures that USIA supported programs are not isolated events.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this RFP as well as with Project Proposal Information Requirements (OMB #3116-0175) as follows:

1. Bureau of Educational and Cultural Affairs Grant Application Cover Sheet (OMB #3116-0173).

2. Assurance of Compliance with U.S. Information Agency Regulations under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972 (OMB #3116-0191).

3. Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA-1279 and IA-1280.

5. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).

6. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).

7. For proposals requesting $100,000 or more in grant monies, Certification for Contracts Grants and Cooperative Agreements, Form M/KG-3.

8. For proposals requesting $100,000 or more in grant monies, Disclosure of Lobbying Activities (OMB #0348-0046).

Please Note: All application forms for this announcement may be obtained by writing to the Office of Citizen Exchanges (E/P), USIA, c/o CEETP, 301 4th Street SW., Washington, DC 20547. Inquiries from the Office of Citizen Exchanges concerning technical requirements are welcome prior to the submission of completed applications.

Additional Guidance

The Bureau offers the following additional guidance to prospective applicants:

1. The Bureau encourages multi-country projects for this solicitation *only if* they are clearly defined and possess the potential for creating and strengthening continuing linkages between foreign and U.S. institutions.

2. Proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country. In the selection of all foreign participants, USIA and USIS posts retain the right to nominate participants and to accept or deny participants recommended by the program institution. The grantee institution should provide the names of American participants to the Office of Citizen Exchanges for information purposes.

3. Bilateral programs should clearly identify the counterpart organization and provide evidence of the organization's participation.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-5307 Filed 3-6-91; 8:45 am]

BILLING CODE 8230-01-M

Merit Review Board for	Date	Time	Location
Gastroenterology	March 18, 1991	8 a.m. to 5 p.m.	Radisson.
Oncology	March 21, 1991	do	Radisson. [1]
	March 22, 1991	do	
Hematology	March 25, 1991	do	Radisson.
Alcoholism and Drug Dependence	March 28, 1991	do	Radisson.
Infectious Diseases	April 4, 1991	do	Radisson.
	April 5, 1991	do	

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Boards; Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the meetings of the following Federal Advisory Committees.

Merit Review Board for	Date	Time	Location
Respiration	April 8, 1991	do	Radisson.
Immunology	April 8, 1991	do	Radisson.
	April 9, 1991	do	
Endocrinology	April 11, 1991	do	Radisson.
	April 12, 1991	do	
Surgery	April 14, 1991	do	Radisson.
Mental Health and Behavioral Sciences	April 15, 1991	do	Radisson.
	April 16, 1991	do	
Cardiovascular Studies	April 16, 1991	do	Radisson.
	April 17, 1991	do	
Neurobiology	April 17, 1991	do	Radisson.
	April 18, 1991	do	
	April 19, 1991	do	
Nephrology	April 18, 1991	do	Radisson.
	April 19, 1991	do	
Basic Sciences	April 19, 1991	do	Radisson.
	April 22, 1991	do	

[1] Radisson Park Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial and renewal projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 233-5065 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: February 28, 1991.

By direction of the Secretary.

Lawrence M. Christman,

Executive Assistant.

[FR Doc. 91-5422 Filed 3-6-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 12, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–5546 Filed 3–5–91; 1:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, March 25, 1991.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Coffee Sugar & Cocoa Exchange for contract designation in Eurodifferential Coffee Futures
—Application of the Chicago Board of Trade for contract designation in Three-Month ECU interest Rate Options
—Application of the Commodity Exchange Inc. for contract designation in Five-Day Gold Options
—Application of the Chicago Mercantile Exchange for contract designation in Currency Cross Rate Futures and Options for Deutsche Mark/British Pound, Japanese Yen/British Pound, Swiss Franc/British Pound, Japanese Yen/Deutsche Mark, Japanese Yen/Swiss Franc, Swiss Franc/Deutsche Mark

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–5547 Filed 3–5–91; 1:19 p.m.]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Monday, March 25, 1991.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–5548 Filed 3–5–91; 1:19 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Monday, March 25, 1991.

PLACE: 2033 K St. NW., Washington, DC, 6th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–5549 Filed 3–5–91; 1:19 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–5046.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 5, 1991 10:00 a.m.
Meeting Closed to the Public.

This Meeting Has Been Cancelled.

DATE AND TIME: Tuesday, March 12, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 14, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinion 1991–01—Lyn Utrecht on behalf of Deloitte & Touche Federal PAC
Advisory Opinion 1991–04—Paul Offner, Senate employee in Office of Senator Moynihan
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–5562 Filed 3–5–91; 2:51 pm]

BILLING CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: February 26, 1991, 56 FR 7895.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 27, 1991, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added to Item CAG–1 on the Agenda scheduled for February 27, 1991:

Item No., Docket No., and Company

CAG–1—RP90–108–000, Columbia Gas Transmission Corporation
CAG–1—RP90–107–000, Columbia Gulf Transmission Company

Lois D. Cashell,

Secretary.

[FR Doc. 91–5468 Filed 3–4–91; 4:32 pm]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–5566 Filed 3–5–91; 1:23 pm]

BILLING CODE 6210–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:00 p.m., Wednesday, March 13, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Open.

BOARD BRIEFINGS

1. Economic Commentary.
2. Insurance Fund Report.
3. Update on Proposed Member Business Loans Amendment.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Proposed Amendment to Part 703, NCUA's Rules and Regulations, Investment and Deposit Authority.
4. Proposed Amendment to Parts 704 and 741, NCUA's Rules and Regulations, Corporate Credit Unions.

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1991.

PLACE Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5) and (8).
3. Administrative Actions under Sections 206, 206, and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (6), (9)(A)(ii), and (9)(B).
4. Administrative Action under Sections 207 and 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Administrative Actions under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

RECESS: 12:00 p.m.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–5571 Filed 3–5–91; 1:57 p.m.]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 90-134]

Chickens Affected by Salmonella Enteritidis

Correction

In rule document 91-2071 beginning on page 3730 in the issue of Wednesday, January 30, 1991 , make the following correction:

On page 3733, in the first column, under Section 82.32, in the second paragraph, in the sixth line from the bottom the word "found" should be inserted between "flock" and "infected".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Short-Supply Determination; Certain Large Diameter Steel Line Pipe

Correction

In notice document 91-4277 appearing on page 7343 in the issue of Friday, February 22, 1991, make the following correction:

In the second column, in the second full paragraph, in the third line from the bottom insert "and one verbal questionnaire response, one written response" between "responses" and "to".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP90-12-007 and CP89-1554-006]

Colorado Interstate Gas Co.; Tariff Filing

Correction

In notice document 91-4178 appearing on page 7367 in the issue of Friday, February 22, 1991, the docket heading should read as set forth above.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[PR Docket No. 90-205; FCC 91-25]

Frequency Coordinator for Puget Sound

Correction

In rule document 91-3872 beginning on page 6582 in the issue of Tuesday, February 19, 1991, make the following correction:

§ 0.331 [Corrected]

On page 6583, in the second column, the section heading should read as set forth above.

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Tennessee River and Reservoir System Operation and Planning Review; Record of Decision

Correction

In notice document 91-4700 appearing on page 8385 in the issue of Thursday, February 28, 1991, make the following correction:

In the first column in the *SUMMARY*, the next to last line and last line should read, "unrestricted summer drawdown until August 1 on 10 tributary reservoirs to improve recreation and associated economic development."

BILLING CODE 1505-01-D

federal register

Thursday
March 7, 1991

Part II

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3906-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Today's notice proposes new gaseous and particulate tailpipe emission standards, referred to as the Tier 1 standards, for use in certifying new light-duty vehicles and light-duty trucks. Included are new standards for currently regulated pollutants (carbon monoxide, nitrogen oxides, and particulate matter), as well as the addition of hydrocarbon standards determined on a non-methane basis. In general, the new standards are functions of vehicle class, weight class, engine cycle (diesel or Otto), fuel, and useful life. New intermediate and full useful life levels, as well as new weight classes are defined. Both petroleum and methanol-fueled vehicles are affected by the proposal. The new standards are implemented in phases, beginning with the 1994 model year.

In addition, for the first time, separate in-use tailpipe emission standards and useful life levels are proposed for light-duty vehicles and light-duty trucks. Many aspects of the Tier 1 certification standards apply to the new in-use standards as well, including a phase-in schedule beginning with the 1994 model year, new weight class definitions, and promulgation of both intermediate- and full-life standards. With minor exceptions, which are identified in the proposal, both the Tier 1 and in-use standards are mandated by the Clean Air Act Amendments of 1990, and EPA is afforded no discretion in the setting of these standards. Accompanying the Tier 1 and in-use standards are a limited number of proposals to amend the measurement techniques associated with the emission standards.

DATES: Written comments on this NPRM must be submitted on or before April 22, 1991. EPA will conduct a public hearing on this NPRM on March 26, 1991.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) for EPA consideration by addressing them as follows: EPA Air Docket LE-131, Attention: Docket No. A-90-43, U.S. Environmental Protection Agency, room M-1500, 401 M Street SW., Washington, DC 20460. The hearing will be held at 9:30 a.m. at the EPA Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan, 48105, telephone (313) 668-4200. Material relevant to this proposed rulemaking is available for inspection in Docket No. A-90-43, located at the above address on the first floor of Waterside Mall, from 8:30 a.m. to 12: noon and from 1:30 to 3:30 p.m. weekdays. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: James A. McCargar, Certification Division, U.S. Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone (313) 668-4244.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

II. Background of Proposed Rule

III. Proposed Regulations

A. Certification Standards.
B. In-Use Standards.
C. Measurement Techniques.
D. Selective Enforcement Auditing.
E. Recall.

IV. Discussion of Issues

A. Phase-In: Certification Standards.
B. Phase-In: Enforcement.
C. Otto-Cycle Particulate Measurement Option.
D. Methanol-Fueled Vehicle Standards.
E. Measurement Techniques.

V. Economic, Environmental, and Cost-Benefit Impacts

VI. Public Participation

VII. Administrative Requirements

A. Administrative Designation and Regulatory Impact Analysis.
B. Reporting and Recordkeeping Requirements.
C. Impact on Small Entities.

VIII. Statutory Authority

II. Background of Proposed Rule

On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990 (hereafter referred to as "the Amendments"). Section 203 of the Amendments added new sections 202(g) and 202(h) to the Clean Air Act ("CAA" or "the Act") which establish new tailpipe emission standards for use in certifying new light-duty vehicles and light-duty trucks, that are to be phased in beginning with the 1994 model year. Section 203(d) of the Amendments directs EPA to promulgate the new emission standards, and the measurement techniques on which the standards are based (if not promulgated prior to the date of enactment of the Amendments), within 180 days of enactment of the Amendments. Section 210 of the Amendments modified section 207(c) of the Act by establishing new tailpipe emission standards for light-duty vehicles and light-duty trucks for purposes of determining in-use compliance and liability for recall. This Notice of Proposed Rulemaking concerns the implementation of regulations of these statutory requirements. Although section 210 of the Amendments does not require EPA to promulgate regulations embodying in-use emission standards, the Agency believes that the inclusion of such standards in the regulations will be helpful to efforts by the regulated community to comply with those standards and, because of the relationship of the in-use standards to the certification standards, has decided to promulgate those regulations at the same time.

The Agency considers both the certification and in-use standards proposed herein as explicit prescriptions by Congress, and not subject to EPA discretion. Where the Agency has identified potential elements of confusion concerning the standards or their implementation schedules, clarifications are provided; these items are discussed in the Proposed Regulations section below. No consideration of alternative standards was deemed necessary or appropriate.

This proposal also addresses issues concerning the implementation and enforcement of the phase-in of the new emission standards. Those issues are discussed in section IV below.

Section 203(d) of the Amendments does not require EPA to promulgate new measurement techniques in those cases where EPA regulations currently exist for a pollutant, applicable to a given vehicle class, engine cycle, and motor fuel. However, in two cases, non-methane hydrocarbon (NMHC) measurement for all light-duty vehicles, and particulate measurement for Otto-cycle vehicles and light trucks, such regulations are not in place.

In the case of NMHC, the California Air Resources Board has promulgated regulations for use in determining compliance with standards applicable to vehicles certified for sale in California. The California procedures determine NMHC by subtracting the methane component from the total hydrocarbons in the exhaust. The methane fraction is measured by drawing off the non-methane components in a chromatographic column and analyzing the remainder with a flame ionization detector (FID); total hydrocarbons are measured exactly as in the current Federal regulations, with a separate FID.

The California NMHC techniques are currently in use by vehicle manufacturers seeking to introduce vehicles into commerce in California, and by EPA in confirmatory testing of vehicles with California certification. Thus, the hardware and associated techniques are already available, and both EPA and the manufacturers have familiarity with applying those techniques to the emissions certification of light-duty vehicles and light-duty trucks. Given these circumstances, EPA has chosen to adopt, essentially intact, these same NMHC measurement techniques.

In the second case, measurement of particulate emissions from Otto-cycle light-duty vehicles and light-duty trucks also necessitates the promulgation of measurement technique regulations. Although the authority to regulate such emissions was provided in section 202(a)(1) of the Clean Air Act, EPA has previously declined to do so because, based on the best available data, there was no basis for anticipating compliance problems from catalyst-equipped Otto-cycle vehicles. Thus, in 1980, EPA found the particulate emissions from a typical catalyst-equipped gasoline-fueled vehicle to be 0.008 g/mi, or about one fortieth the emissions of comparable diesel-fueled vehicles.[1] Final particulate regulations were adopted by EPA in that year, applicable only to diesel light-duty vehicles and light-duty trucks, beginning with the 1982 and 1985 model years. Diesel vehicles certified to the new standards were still projected to emit fifteen times the particulate of a typical catalyst-equipped gasoline vehicle.[2] [3]

While no measurement technique regulations for Otto-cycle particulate emissions have previously been necessary, related techniques have existed since 1984 for diesel-cycle light-duty vehicles and light-duty trucks, groups that are subject to the same Tier 1 particulate standards as the Otto-cycle vehicles. The diesel-cycle particulate techniques are based upon measuring the particulate mass of a proportional sample of the exhaust, collected on a filter and corrected for the total system flow. The sampling system is based upon a constant volume sampler employing either a positive displacement pump or a critical flow venturi; in either case, the systems make use of a dilution tunnel and heat exchanger. Application of the diesel particulate procedures to Otto-cycle particulate measurement is proposed, with minimal alternations.

Nevertheless, the Agency continues to believe that Otto-cycle vehicles are not likely to exceed particulate standards when tested on existing certification test fuels. On that basis, EPA has considered options for manufacturers to seek waiver of the certification testing requirement employing the new Otto-cycle particulate measurement techniques. If a waiver is granted, however, vehicles remain subject to the standard, and therefore may be confirmatory tested at EPA's option. This issue is addressed in further detail in section IV, Discussion of Issues, below.

Not surprisingly, the need to promulgate the new light-duty emission standards and measurement technique regulations has also prompted inclusion of some related conforming technical amendments, such as amended definitions and regulatory citations. Some of these changes are called out in section III, to follow.

[1] "Regulatory Analysis: Light-Duty Diesel Particulate Regulations," MSAPC, EPA, pp. 5, 37 (February 20, 1980).

[2] "Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496. (March 5, 1980).

[3] "Regulatory Analysis: Light-Duty Diesel Particulate Regulations," MSAPC, EPA, p. 17 (February 20, 1980).

III. Proposed Regulations

A. Certification Standards

The new tailpipe certification standards in today's proposal are those set forth in the Amendments. As discussed in the previous section, EPA considers that promulgation of the standards themselves is non-discretionary, but some limited interpretation of the statute has been necessary.

For convenience in structuring both the regulations and this preamble, the Agency has proposed some new terminology with this rule. For example, consistent with common usage during Congressional action on the Amendments, EPA has adopted the term "Tier 1" to refer to the light-duty certification standards chosen by Congress for implementation beginning in the 1994 model year. The Agency has also the new term "Tier 0" to apply to the light-duty tailpipe standards and associated useful life levels currently in place. Because Congress adopted a phase-in schedule for the new standards, some portions of a manufacturer's fleet in a given model year may conform to the Tier 1 standards, and the rest to the Tier 0 standards, beginning with the 1994 model year.

In overview, the set of Tier 1 standards is complex. The standards applicable to a given engine family are determined by several factors, including the vehicle type (light-duty vehicle or light-duty truck), weight, engine cycle (Otto or diesel), motor fuel, and vehicle useful life. In addition, standards are phased in; that is, minimum percentages of vehicles in a given model year must meet the Tier 1 standards, and the balance must meet the older Tier 0 standards. Given this complexity, the set of 1994 model year and later standards will only be summarized in this preamble; the proposed regulations include comprehensive tables of the standards.

The first basic division of the Tier 1 standards occurs between those applicable to light-duty vehicles, to light-duty trucks of up through 6000 lbs gross vehicle weight rating (GVWR), and to light-duty trucks of greater than 6000 lbs GVWR. Again for convenience, EPA is adopting the terms "light light-duty trucks" and "heavy light-duty trucks" to distinguish the truck categories based on GVWR.

Each of the two light truck categories is further subdivided into two groups by weight, but the weight definitions differ. The light light-duty trucks are split at 3750 lbs "loaded vehicle weight," or LVW, which maintains its current definition: Curb weight plus 300 lbs. The trucks up through 3750 lbs LVM make up a subclass called light-duty-trucks-1, or LDT1. Those greater than 3750 lbs LVW but less than or equal to 6000 lbs GVWR are the subclass light-duty-trucks-2, or LDT2.

The heavy light-duty trucks are divided at 5750 lbs "adjusted loaded vehicle weight," or ALVW. Adjusted loaded vehicle weight is the average of curb weight and GVWR; in essentially all cases, ALVW will therefore exceed LVW. The heavy light-duty trucks that are up through 5750 lbs ALVW are called light-duty-trucks-3, or LDT3. Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR (the upper bound of the light-truck category) are light-duty-trucks-4, or LDT4.[4]

[4] Section 233(s) of the Amendments (new Section 216(8) of the Act) defines "test weight" as the average of the curb weight and GVWR. The Agency has chosen to use the term "adjusted loaded vehicle weight" in place of the "test weight" term from the

Continued

Another weight-related term used in these proposed regulations is "equivalent test weight basis," or more simply, "test weight basis." This is the basis on which the equivalent test weight (ETW) is determined, for purposes of setting the chassis dynamometer. The test weight basis for the LDT1 and LDT2 subclasses is loaded vehicle weight; the test weight basis for the LDT3 and LDT4 subclasses is adjusted loaded vehicle weight. This change is reflected in the table and associated text of the proposed Section 86.129–94, "Road load power test weight and inertia weight class determination."

The Tier 1 standards are also a function of motor fuel and, occasionally, engine cycle. Thus, some standards might apply only to diesel-fueled trucks, or only to diesel-cycle light-duty vehicles.

The final significant determinant of the Tier 1 standards is vehicle useful life. Section 203 of the Amendments establishes new useful life levels both by amending section 202(d) of the Clean Air Act and by setting emission standards that apply at specific mileage intervals. In general, the Amendments prescribe both intermediate- and full-useful-life standards for each vehicle subclass. For light-duty vehicles and the light light-duty trucks, the Tier 1 standards prescribed in sections 202(g) and 202(h) are established at the intermediate useful life of five years or 50,000 miles (5/50,000), whichever occurs first, and a full useful life of ten years or 100,000 miles (10/100,000), whichever occurs first. The analogous intermediate- and full-useful-life levels for the heavy light-duty trucks are 5/50,000 and 11/120,000, respectively. Measured against the Tier 0 useful-life levels, the effect is to add a 10/100,000 useful life requirement for light-duty vehicles, a 5/50,000 requirement for all light-duty trucks, and to truncate the full-life level for light light-duty trucks, which is currently 11/120,000.

The addition of 100,000-mile useful life requirements for light-duty vehicles and the modification of some useful life levels for light-duty trucks will ultimately require modifications to EPA's procedures for demonstrating vehicle durability during certification. A rulemaking to address durability program revisions is not included in the six-month statutory deadline for promulgation of the Tier 1 emission standards themselves and the techniques for measuring pollutant levels. The options that need to be considered for changes to the durability regulations are more complex and worthy of more in-depth examination than the six-month timing of this Tier 1 proposal affords. Thus, the Agency has initiated a separate "Revised Light-Duty Durability Procedures" rulemaking on a somewhat less stringent timeline than the present NPRM, but allowing sufficient lead time for use by the manufacturers in the 1994 model year.[5]

For similar reasons, the continued availability of nonconformance penalties (NCPs) for heavy light-duty trucks certifying to Tier 1 standards will also be addressed separately. The Amendments include no requirements for NCPs for the heavy light-duty truck fleet. Determining the appropriateness of NCPs within the new statutory context, as well as considering for which standards NCPs might be offered and what penalty rates would be appropriate, is impractical within a six-month rulemaking.

The pollutants encompassed by the Tier 1 standards are hydrocarbons, carbon monoxide (CO), nitrogen oxides (NO_x), and particulate matter (PM), all measured in grams per mile (g/mi). Hydrocarbons are designated as total hydrocarbons (THC) and non-methane hydrocarbons (NMHC) for gasoline and diesel-fueled engines, and as organic material hydrocarbon equivalents (OMHCE) and organic material non-methane hydrocarbon equivalents (OMNMHCE) for methanol-fueled engines.[6]

The relevance of a given standard to an engine family depends upon the various factors cited above. New NMHC standards are established for all gasoline- and diesel-fueled light-duty vehicles and light-duty truck subclasses; numerically equivalent OMNMHCE standards are established for equivalent useful lives for methanol-fueled vehicles. In addition, the analogous Tier 0 standards for THC and OMHCE for these same vehicle groups are carried forward into Tier 1. The 50,000-mile CO standards are left intact for light-duty vehicles, but the full-life CO standards are made more stringent for all subclasses of light-duty trucks. The NO_x standards are tightened for both vehicles and light trucks. The PM standards are tightened for diesel-cycle light-duty vehicles and light-duty trucks, and applied for the first time to Otto-cycle engines.

Phase-in of the Tier 1 standards begins in the 1994 model year, when at least 40 percent of a manufacturer's actual sales of light-duty vehicles and light light-duty trucks must meet new CO, NO_x, and either NMHC or OMNMHCE standards. In the 1995 model year, the minimum requirements for these pollutants and vehicle subgroups reachs 80 percent, and the complete 100 percent phase-in occurs in the 1996 model year.

The Tier 1 particulate standard for light-duty vehicles phases in according to the same schedule as the Tier 1 NMHC, CO, and NO_x standards. For the light-duty truck particulate standard, however, the three-year phase-in schedule begins in the 1995 model year, instead of 1994.

Heavy light-duty trucks begin the phase-in of all pollutants in the 1996 model year at 50 percent of actual sales, and reach 100 percent the following year.

One final Tier 1 standard of note is the NO_x standard for diesel-fueled light-duty vehicles and LDT1s. Beginning with the 1994 model year, the intermediate useful-life NO_x standard for these vehicles is 1.0 g/mi, rising to 1.25 g/mi at full useful life. Beginning in the 2004 model year, however, the standards tighten to the levels of the gasoline-fueled light-duty vehicles and LDT1s; that is, 0.4 g/mi at the intermediate useful life, and 0.6 g/mi at full useful life.

Currently, EPA regulations do not permit the averaging for light-duty vehicles or light-duty trucks, except for PM in the case of light-duty vehicles, and PM and NO_x for light-duty trucks. These provisions will remain unaltered for vehicles certifying to the Tier 0 standards. The Tier 1 standards, however, are set forth specifically in sections 202(g) and 202(h) of the Act (added by section 203(a) of the Amendments) to apply to specified percentages of each manufacturer's sales volume, ultimately reaching 100 percent. Consistent with the statutory design of the Tier 1 standards, the Agency has not proposed averaging for any of the Tier 1 standards.

The phase-in requirements of the regulations as proposed apply to all

Amendments, in order to prevent confusion with the term "equivalent test weight," which is used interchangeably with "test weight" throughout current regulations and EPA test procedures.

[5] See 55 FR 52277 (December 21, 1990) for a Notice of Public Workshop which provides summary information of issues for this pending rulemaking.

[6] Sections 202(g) and 202(h) do not prescribe THC standards; they prescribe only NMHC standards. The legislative history of section 203 of the Amendments indicates that Congress intended total HC standards to be maintained, however, (see "Clean Air Act Amendments of 1990: Report of the Committee on Energy and Commerce, U.S. House of Representatives, on H.R. 3030", H.R. Rep. No. 101–490, 101st Cong., 2d Sess., May 17, 1990, p. 298). Consequently, EPA is carrying forward the current THC standards in the tables of Tier 1 standards. For the sake of convenience, references to the Tier 1 standards should be deemed to include the applicable THC standards even though the language of sections 202(g) and 202(h) does not encompass the THC standards.

manufacturers, including small volume manufacturers. Small volume manufacturers include independent commerical importers as defined in 40 CFR part 85, subpart P. The Agency recognizes that some such manufacturers, with a limited number of families as candidates for Tier 1 compliance, may exceed the minimum phase-in percentages by necessity in some cases. On the other hand, EPA has examined the Amendments and legislative history and finds no basis on which to propose special treatment for small volume manufacturers in meeting the Tier 1 requirements.

The Tier 1 standards proposed here are "all-altitude" standards. The one exception is THC (or OMHCE, in the methanol-fueled vehicle case). As mentioned above, the current THC and OMHCE standards are carried forward intact for vehicles certifying to the Tier 1 standards; thus the separate high- and low-altitude THC and OMHCE standards from current regulations apply to the Tier 1 vehicles as well. The so-called low-power exemptions available under the current regulations for vehicles certifying to all-altitude standards are carried forward to Tier 1 vehicles as for example in section 86.094–9(g)(2). The high-altitude provisions of current regulations remain in place for vehicles certifying to the Tier 0 standards.

B. In-Use Standards

The new tailpipe in-use standards in today's proposal, which are contained in the new subpart H, represent a change in the structure of standards applicable to certified vehicles. In the past, the standards applied in-use were the standards to which vehicles has been certified. Section 210 of the Amendments, however, modified CAA section 207(c) by establishing separate in-use standards, which sometimes differ from certification standards, for NMHC, CO and NO_x.

The in-use standards proposed here are those prescribed in section 210 of the Amendments for NMHC, CO, and NO_x. Where no separate in-use standards was prescribed in the Amendments (as for total HC and PM), the general rule currently followed is observed and the certification strandard will apply for in-use purposes as well as for certification purposes. This new structure of standards is accommodated in today's proposal by the creation of a new "subpart H.". No longer will subpart A be the only place one must look in the regulations to find standards that apply to a given vehicle. For a discussion of the phase-in schedule and how minimum percentages are determined see the discussion below entitled "Phase-in Enforcement."

The use of the terms "Tier 1" and "Tier 0" in the in-use context is consistent with their use for certification purposes, including the carryover of the THC standards from Tier 0 into Tier 1. In addition, the nature of the phase-in for in-use purposes has required a third term, Tier 1_i to indicate those "interim" in-use Tier 1 standards which are phased-in beginning in model year 1994 and phased-out by model year 1996, and have only one useful life period of 5 years/50,000 miles.

One other aspect of the in-use and certification tables of standards deserves mention. In several of the in-use tables, intermediate useful life standards that are numerically equivalent to the full-life in-use standards are provided, although these intermediate standards do not appear in the statute.[7] They are included because conformance with the full-life in-use standards implies conformance at prior mileages; providing no number in the intermediate-life table would have implied that no nonconformance liability existed at the intermediate mileage. In the parallel points of the intermediate useful-life certificate tables, the only entries are those actually specified in the statute, or those (such as THC) which carry forward from previous requirements. Full-life values are not "carried back" into the certification intermediate-life tables, lest they imply an obligation for the manufacturer to submit additional deterioration calculations or determinations of conformity at the intermediate useful-life mileage.

The basic divisions described above for the certification standards apply to the in-use standards as well. However, one additional complexity exists only in the in-use standards. Where generally the Tier 1 standards are phased-in for in-use purposes on a schedule delayed from the certification schedule by two years, the in-use standards have an earlier stage, the interim standards referred to above. These standards, which phase-in on the same schedule as the Tier 1 standards for purposes of certification, are applicable for only 5 years/50,000 miles and are slightly higher numerically than the Tier 1 standards.

As explained above, current EPA regulations which permit averaging of light-duty vehicles for particulate, and light-duty trucks for particulate and NO_x, remain unaltered for vehicles certified to the Tier 0 standards. However, no averaging of families certified to either the Tier 1_i or the Tier 1 standards is proposed.

C. Measurement Techniques

As mentioned in the Background section above, modifications to the current EPA measurement procedures in this proposal are limited to regulations that address the addition of the Tier 1 NMHC standards and the extension of PM standards to Otto-cycle vehicles and light trucks.

The NMHC measurement technique proposed by EPA is the method employed by the California Air Resources Board for certification testing of vehicles destined for sale in California.[8] The method relies on measurement of the methane fraction in the dilute exhaust sample which is otherwise gathered for measurement of THC, CO, and NO_x, according to existing Federal test procedure regulations; NMHC is determined by subtracting the methane fraction from THC. The additional equipment required includes a gas chromatograph to remove the non-methane fraction, and a flame ionization detector (FID) to measure the remaining methane. The regulations must also be adapted to include the need for methane calibration gases and calibration procedures, and insertion of NMHC into the mass emission calculations.

The Otto-cycle particulate measurement technique is accommodated by simple extensions of the diesel-cycle particulate regulations to Otto-cycle vehicles. Light-duty vehicles and light-duty trucks to be tested for particulate will therefore require a site equipped with a dilution tunnel, heat exchanger, a constant volume sample based on either a positive displacement pump or a critical flow venturi. The particulate sampling is accomplished by drawing a proportional sample of the exhaust through a filter which is then subjected to precision weighing, as in the diesel-cycle case.

D. Selective Enforcement Auditing

For purposes of Selective Enforcement Audit (SEA) testing, the Administrator is authorized to test new motor vehicles in order to determine whether vehicles being manufactured by a manufacturer do in fact conform with the regulations with respect to which a certificate of conformity was issued. Therefore,

[7] Thus, for example, the intermediate-life 0.98 g/mi diesel NO_x standard from Table H94–15 matches the full-useful life standard in Table H94–16.

[8] "California Non-Methane Hydrocarbon Test Procedures," State of California Air Resources Board (May 24, 1978, as amended May 15, 1990). Available in the public docket for review.

vehicles certified to meet Tier 1 standards are subject to such standards in an SEA.

E. Recall

Sections 86.294–6 and 86.294–9 of this proposal establish useful life periods for, respectively, light-duty vehicles and light light-duty trucks, and heavy light-duty trucks. In the event that the Administrator finds that any class or category of vehicles fails to conform to the applicable emission standards as determined by section 207(c), the manufacturer shall be required to remedy, at the manufacturer's expense, all properly maintained and used vehicles which experienced the nonconformity during their useful lives, regardless of the vehicle's age and mileage at the time of the remedy.

While the in-use useful life period is in many cases extended to 10 years/100,000 miles, no recall testing of vehicles will occur beyond 7 years/75,000 miles. Similarly, where the in-use useful life is extended to 11 years or 120,000 miles, recall testing will be limited to 7 years or 90,000 miles.

IV. Discussion of Issues

A. Phase-In: Certification Standards

Section 203(a) of the Amendments (new sections 202(g) and 202(h) of the Act) divides the light-duty fleet into three classes by vehicle type and weight. We have referred to these classes as light-duty vehicles, light light-duty trucks, and heavy light-duty trucks. Based on this division, EPA proposes to use these three classes as the principal basis for determining compliance with minimum phase-in percentages. For each class, the denominator of the compliance ratio is actual sales of "eligible vehicles" in that vehicle class. Ineligible vehicles are those sold in California or any other state that has adopted California standards under section 177 of the Clean Air Act. These vehicles are considered ineligible because they will be sold subject to the emission standards adopted and enforced by California and section 177 states. The numerator of the compliance ratio is the actual sales of all vehicles from the class that were sold outside California and the section 177 states, and that belong to engine families certified to Tier 1 standards.

The ratio thus determined must meet the minimum percentages applicable to the given model year. Where the phase-in percentages are set forth in separate tables and provisions of the Act, as is the case for the phase-in percentage for PM for light-duty vehicles and light light-duty trucks (which is set forth in section 202(g)(2) of the Act) and the phase-in percentage for the other pollutants for the same vehicle classes (which is set forth in section 202(g)(1) of the Act), the proposed regulations permit independent compliance with the two phase-in percentages. In other words, one vehicle may be used to comply with the PM phase-in percentage and another may be used to comply with the phase-in percentage for NMHC, CO, and NO_x. More than one percentage must be met for some vehicle classes in some model years, because in some cases different pollutants have different phase-in schedules. For example, a 40 percent phase-in percentage applies to LDT1 particulate standards in model year 1995, while NMHC, CO, and NO_x standards for LDT1s are at an 80 percent phase-in level in that model year (having begun their phase-in with the 1994 model year).

On this basis, a manufacturer has broad flexibility to decide which families it will certify to Tier 1 standards, within or across categories by weight subclass, engine cycle, and motor fuel. One consequence is that vehicles in the numerator of the compliance ratio may have been certified to entirely different standards. The light light-duty truck compliance ratio, for example, incudes LDT1s and LDT2s that are certified to different NMHC, CO, and NO_x standards.

While EPA believes the above approach to be consistent with the Amendments, the Agency recognizes that there may be other legitimate approaches to grouping vehicles in order to determine compliance with the minimum phase-in percentages. For example, the Amendments establish different standards for the same pollutant but for different fuels. Thus, divisions could be made on the basis of fuel type within each vehicle class, requiring the minimum percentage to be met separately by gasoline-fueled vehicles, diesel-fueled vehicles, and methanol-fueled vehicles. Similarly, groups could be designated by engine cycle, separating the Otto-cycle from the diesel-cycle vehicles for purposes of determining phase-in compliance.

Another approach would be to group vehicles such that, in cases where the Amendments set forth the standards for different pollutants in separate tables, the vehicles certified to the Tier 1 standards for pollutants from one table (e.g., the 1994 light-duty vehicle particulate standard) must be the same vehicles that are certified to the Tier 1 standards for pollutants from the other table (e.g., the 1994 light-duty vehicle standards for NMHC, CO, and NO_x). Consistent with this approach would be to group vehicles such that, in cases where more than one phase-in percentage applies, the vehicles certified to the lower phase-in percentage (e.g., 40% for the light light-duty truck particulate standard in 1995) must be a subset of the vehicles certified to the larger phase-in percentage (e.g., 80% for the light light-duty truck CO, NMHC and NO_x standards). While today's proposal does not specifically incorporate any of these approaches, EPA solicits comments on these or other possible alternatives.

B. Phase-In: Enforcement

This section provides a summary of how a manufacturer must comply with the phase-in schedules of the Tier 1 certification standards and of the interim and final in-use standards. For purposes of discussion, the Tier 1 and final in-use standards will be collectively referred to as phase-in standards. In addition, the interim in-use standards are phase-in standards in model years 1994 and 1995 and phase-out standards in model years 1996 and 1997. To ensure that each manufacturer is meeting the required percentage phase-in schedules, EPA is proposing the following enforcement mechanism.

The Act states that a manufacturer must phase-in a specified percentage of its sales volume to the required standards. To meet this requirement the Agency is proposing that as part of the application for certification, a manufacturer must specify projected sales for the particular engine family, with vehicles projected to be sold in California and section 177 jurisdictions reported separately from all other projected U.S. sales. Actual sales will be determined at the end of the model year based upon reports by the manufacturer to the Administrator. Actual sales are defined as U.S. sales by the manufacturer to an ultimate purchaser, dealer, distributor, fleet operator, or broker, etc., excluding such sales in California and section 177 jurisdictions.

Since the Act's requirements are termed in minimum percentages of phase-in vehicles, maximum percentages of phase-out vehicles are necessarily implied. The issuance of the certificate of conformity for each engine family certifying to phase-out standards will, therefore, be conditioned upon each manufacturer later having actual sales percentages in jurisdictions other than California or section 177 states at or below the limit dictated by the Act. Compliance with the certificate will be based upon the actual sales of all engine families certified by the manufacturer to meet phase-out standards.

Manufacturers who fail to achieve the required phase-in percentages may have the certificates for engine family(ies) certified to phase-out standards rendered void for families that cause the manufacturer to exceed the percentage limitations and may be subject to civil penalties pursuant to section 205 of the Clean Air Act. The Agency would, of course, have some discretion in choosing the appropriate remedies and/or penalties where violations occur. The Agency would consider mitigating such penalties should a manufacturer recall vehicles certified to phase-out standards. The Agency invites comment on how it should be determined which and how many certificates will be voided.

The Agency is concerned that some manufacturers might initially certify engine families that comply with Tier 1 standards to less stringent standards with the plan of recertifying that engine family to Tier 1 standards only if necessary to meet required phase-in percentages. While prospective recertification of engine families is permitted, commenters should bear in mind that EPA wishes to preserve the integrity of the certification process. Therefore, the Agency will not permit the splitting of engine families.

EPA is proposing the following reporting requirements for manufacturers to ensure that each is meeting the required phase-in of new standards. Manufacturers are required to maintain and provide upon request records of the actual sales volume of all vehicles certified. In order to assess the accuracy of the data, manufacturers must submit the required information for both phase-in and phase-out vehicles. Information required to be maintained includes, but is not limited to, information such as vehicle serial number, production date, shipment date, purchaser, jurisdiction of sale (California or section 177 or Federal), and bill of sale or purchase contract. Pertinent records are also subject to EPA inspection and audit, necessitating access to records by EPA personnel. Failure to provide such access could result in rendering the certificate void ab initio as well as subjecting the manufacturer to civil penalties as stated in section 205 of the Act.

In addition, manufacturers must for all engine families provide to the Agency an annual report including, but not limited to, (1) engine family and actual U.S. sales volume, reported separately for California and section 177 jurisdictions and for all other U.S. sales, detailing the number of actual sales for each engine family, and (2) an explanation along with calculations of the overall percentage of vehicles meeting their respective standards, with such percentages calculated only on vehicles sold outside California and section 177 jurisdictions. The end of year reports must be submitted within 90 days of the end of the manufacturer's model year. A manufacturer's model year may in no instance extend beyond December 31 of the calendar year which is the same as that model year. Failure to submit this report may render the certificate for the applicable engine family void ab initio and subject the manufacturer to civil penalties pursuant to section 205 of the Act. End of year reports are to be sent to: Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SE., Washington, DC 20460.

C. Otto-Cycle Particulate Measurement Option

As mentioned in section II above, EPA chose to restrict the 1980 light-duty particulate rule to diesel-fueled vehicles and trucks, given the fractional PM contribution of each gasoline vehicle relative to each diesel vehicle. A typical catalyst-equipped gasoline-fueled vehicle in 1980 was projected to contribute 0.008 g/mi PM using certification test fuel during the Federal Test Procedure. This proposal would for the first time regulate particulate matter from vehicles powered by Otto-cycle engines.

Results from ten recent EPA tests on seven 1990 and 1991 model year light-duty vehicles, again tested with certification test fuel, yielded a range of 0.003 to 0.009 g/mi PM, with a mean of 0.005 g/mi.[9] Based on such results, and engineering judgment on the combustion of gasoline fuels in a spark-ignition engine, the Agency continues to believe that current-technology Otto-cycle vehicles, operated on current certification test fuels, do not pose a PM compliance problem.

Section 86.090–23 of the current regulations provides manufacturers the option to request waivers of the requirement to provide emissions test data for certain pollutants, for certain vehicle groups where emission compliance problems are not anticipated, given current technical information. Included are idle CO, smoke, and PM emissions data for light-duty methanol diesel vehicles and light trucks, as well as CO emissions data for heavy-duty diesel engines. In lieu of new emissions data, manufacturers demonstrate compliance on "the basis of previous emission tests, development tests, or other information * * *" The Agency proposes in § 86.094–23 to extend this approach to PM emissions data requirements to the light-duty, Otto-cycle fleet. The Agency reserves the right to confirmatory test any family against the PM standard, however, and may choose to revoke the waiver option in the future if adoption of new engine designs or certification test fuel requirements suggests potential compliance problems. The Agency also reserves the right to permit a waiver at the time of certification and refuse to permit the waiver during SEA and recall enforcement testing.

D. Methanol-Fueled Vehicle Standards

In 1988, EPA promulgated emission standards for methanol-fueled vehicles of comparable stringency and benefit to those applicable to petroleum-fueled vehicles.[10] In keeping with that approach—having common emission standards for vehicles of different fuel types—and in light of the lack of any direction in section 203 of the Amendments to treat methanol-fueled vehicles differently, EPA is proposing to implement the Tier 1 standards for methanol vehicles on the same schedule as for petroleum-fueled vehicles.

In order to do this, however, standards for methanol-fueled vehicles comparable to the THC and NMHC standards for petroleum-fueled vehicles must be established. The current method for regulating hydrocarbon and oxygenated organics emitted from methanol-fueled vehicles is based on an organic material hydrocarbon equivalent (OMHCE) standard. Currently, the OMHCE standard for methanol-fueled light-duty vehicles is 0.41 grams/mile, which is numerically equivalent to the THC standard for pertroleum-fueled light-duty vehicles. The equation for calculating OMHCE is:

$$OMHC = HC_{mm} + (13.8756/32.042)\,CH3OH_{mm} + (13.8756/30.0262)\,HCHO_{mm}$$

where:

HC_{mm} = the mass of the non-methane and methane emissions
$CH3OH$ = the mass of the methanol emissions
$HCOH$ = the mass of the formaldehyde emissions
13.8756 = the molecular weight of total hydrocarbons based on a hydrogen: carbon ratio of 1.85

[9] Memo from J. Bruce Kolowich to Merry Smith, "MMT Testing Report," EPA, Office of Mobile Sources (October 29, 1990), available in the public docket for review. The mileages on the vehicles ranged between 2080 and 85,606 miles. Only one particulate filter was employed per test; thus, no bag weighting of the results was possible.

[10] "Standards for Emissions from Methanol-Fueled Motor Vehicles and Motor Vehicle Engines; Final Rule." 40 CFR 86.090–8 and 86.090–9.

32.042 = the molecular weight of methanol
30.0262 = the molecular weight of formaldehyde

For the non-methane hydrocarbon standard to apply to methanol-fueled vehicles, EPA is proposing that the NMHC standard take the consistent if somewhat cumbersome form of an Organic Material Non-Methane Hydrocarbon Equivalent (OMNMHCE) standard. The purpose of the OMNMHCE standard would be to control the organic emissions (hydrocarbons and oxygenerated organics) in the exhaust of methanol-fueled vehicles to a level that is equivalent, on a carbon basis, to that allowed from petroleum-fueled vehicles under their respective non-methane hydrocarbon standards. EPA is proposing the following equation for the calculation of OMNMHCE:

$$OMNMHCE = NMHC_{mass} + (13.8756/32.042)\ CH3OH_{mass} + (13.8756/30.0262)\ HCHO_{mass}$$

where:

$NMHC_{mass}$ = the mass of the non-methane emissions

The OMNMHCE standards would then be numerically equivalent to the Tier 1 non-methane hydrocarbon standards for petroleum-fueled vehicles. The Agency acknowledges one inconsistency in this approach: The hydrogen-to-carbon ratios are assumed to be 1.85 for both the total hydrocarbon component and the non-methane hydrocarbon component of the exhaust. The Agency believes the value to be correct for the non-methane component of the exhaust and to be consistent with the CARB method for calculation of NMHC. The Agency possesses insufficient data at this time to revise upward the hydrogen-to-carbon ratio for total hydrocarbons, as would appear appropriate; thus the value in current regulations, based upon historical data, has been retained. The Agency finds the actual impact of this inconsistency to be negligible, however, because the vehicles subject to the Tier 1 phase-in will face THC and OMHCE standards that are less stringent than their non-methane counterparts, and thus the non-methane standards will be controlling.

E. Measurement Techniques

Sections II and III of this preamble outlined the background for, and proposed changes to, current measurement technique regulations that will accommodate the addition of NMHC and Otto-cycle particulate testing. As stated previously, the Agency finds the current California NMHC and Federal diesel particulate measurement techniques to be adequate for the purposes intended by the Amendments. The Agency notes, for example, that virtually all vehicles tested at the EPA Motor Vehicle Emission Laboratory are already tested for NMHC with the California procedure, though the resulting values are not required for Federal certification.

On the other hand, the Agency remains committed to improvements in the regulated measurement techniques, particularly as the standards become more stringent, and the vehicle emission levels, lower. Toward that end, the Agency has placed in the docket a memorandum identifying areas of the procedures where suggestions from the public may prove productive.[11] Interested parties will note EPA's willingness in this memorandum to consider topics in addition to the NMHC and Otto-cycle particulate techniques which are added in this proposal. This proposal, however, does not address any measurement techniques other than those for NMHC and Otto-cycle particulates.

Two differences from the present diesel exhaust sampling system are proposed in this notice for use with Otto-cycle vehicles (not waived from PM testing under § 86.094–23). The first is the use of a conventional cold flame ionization detector (cold FID) for THC measurement. A cold FID is presently used for the measurement of THC from Otto-cycle gasoline vehicles, rather than the heated FID required of diesel THC measurement. The longer-chain hydrocarbons found in diesel exhaust tend to settle out in the sample bag before they can be measured, necessitating the use of a heated FID that separately samples the exhaust stream, but this will not be necessary for the shorter-chain hydrocarbons found in the exhaust of gasoline Otto-cycle vehicles. This proposal is based on EPA's judgment that measured THC levels will not be affected by whether a vehicle is tested for particulates.

The Agency has proposed a second minor change when generalizing the current particulate measurement techniques to Otto-cycle testing. A requirement is added to § 86.110–94 for maintenance of isokinetic sampling, that is, for operating the particulate sampling system so that the gas velocity in the particulate sample probe is the same, within a narrow tolerance, as the gas velocity in the CVS bulk stream at the probe location. The Agency believes the requirement is necessary to fulfill the theoretical principal of proportional sampling and thus the accuracy of the test result.

[11] "Particulate Measurement from Light-Duty Otto-Cycle Vehicles: Potential Improvements to Existing Light-Duty Diesel Procedures." Memorandum from Carl Ryan to Jim McCargar, EPA, Office of Mobile Sources, (January 18, 1990). Available in the public docket for review.

V. Economic, Environmental, and Cost Benefit Impacts

Because promulgation of the Tier 1 standards and the associated measurement procedures is mandated by statute, Congress has implicitly judged the economic, environmental, and cost-benefit implications of the new standards to be acceptable. The information provided in this section is based upon the analyses available to Congress as it debated and resolved the final form of the Amendments. It is provided here not as a comprehensive analysis of the economic and environmental issues, but rather as examples of the data Congress used in making its legislative judgments. In recognition of the non-discretionary nature of the rulemaking and the timeline for its promulgation, no new analysis in these areas has been undertaken by the Agency specifically in preparation for this proposal.

The principal economic impacts of the new standards will be those felt by the automobile manufacturers as they design and install new emission control components, alter existing components, or apply existing technologies to automobiles where these technologies had not been previously applied, in efforts to come into compliance with the new standards. Various relevant cost analyses have been prepared by E.H. Pechan & Associates, Inc. An Agency contract to update these analyses to incorporate the final Clean Air Act Amendment package as signed by the President is in progress. Absent the current availability of such informaiton, estimates presented in this analysis refer to analyses of the House and Senate bills contained in the previous Pechan reports.

For purposes of analysis, the principal economic impacts of the Tier 1 standards can be broken down into the following three categories: (1) Those impacts caused by the change in the hydrocarbon standard; (2) The impacts caused by the change in the nitrogen oxides (NO_x) standard; and (3), The impact of the extension of vehicle useful life from 50,000 miles to 100,000 miles. The estimated costs presented below are in addition to the baseline costs required to meet the current tailpipe standards.

The Agency estimates that the average cost per vehicle of meeting the light-duty vehicle and LDT1 NMHC standard is $37. EPA has made similar estimates of the cost required to meet the tightened NO_x standards, arriving at a figure of $115 per light-duty vehicle or LDT1. The total cost to manufacturers of complying with the light-duty vehicle and LDT1 Tier 1 standards is therefore approximately $152 per vehicle.[12] The total cost to manufacturers of complying with the LDT2 through LDT4 Tier 1 standards is projected by EPA to be somewhat lower, at $57 per truck, owing to lower costs of compliance with both the NMHC and NO_x standards.

The environmental impacts of the Tier 1 standards will not be fully appreciated until the standards are fully phased in. According to the June 15, 1990 analysis of projected costs and VOC reductions, prepared by Pechan & Associates, the national reduction of VOCs is projected to be about 8,000 tons in 1995 when compared to current policy and standards. By 2000 the projected annual VOC reduction for nonattainment areas climb to about 0.4 percent, and by 2005 the tons reduced nationally is projected to reach 160,000, a 0.6 percent reduction in nonattainment areas. Emission reduction estimates for the standards in the final statutory language are not currently available.

In their January 28, 1990 report, Pechan & Associates estimated the cost per ton of national VOC reductions in 2005—after full implementation of the NMHC phase-in—to be $3700. The $3700 figure does not incorporate discounting of either the national cost or national emissions reduction. An additional EPA analysis of cost-effectiveness on a per vehicle basis and incorporating a 10 percent discount rate yields a cost per ton of $8018.78.[13] This figure should be considered roughly comparable to the $3700 Pechan value, with the discounting calculation accounting for the numerical difference. Because the emissions reduction estimates for NO_x are not yet available, no cost effectiveness numbers associated with NO_x have been provided.

VI. Public Participation

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to provide suggestions for modification of any aspects of the proposal that they find objectionable. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket LE–131, Attention: Docket No. A–90–43 (see "ADDRESSES" above).

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person (see "FOR FURTHER INFORMATION CONTACT"), and not the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document which summarizes the key data or information should be placed in the public docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenters.

[12] "Recent CAA Cost Developments." Note from Philip A. Lorang to Richard D. Wilson and Charles L. Gray, Jr., Emission Control Technology Division, Office of Mobile Sources, USEPA (23 January 1990). Available in the public docket for review.

[13] Memo from James McCargar to Robert Maxwell. "Analysis of NMHC Cost-Effectiveness," EPA, Office of Mobile Sources (January 31, 1991). Available in the public docket for review.

VII. Administrative Requirements

A. Administrative Designation and Regulatory Impact Analysis

Under the Executive Order 12291, EPA has determined that this regulation is major. A Regulatory Impact Analysis has been prepared and is available from the address provided under "FOR FURTHER INFORMATION CONTACT."

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Reporting and Recordkeeping Requirements

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 783) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St. SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2740.

Public reporting burden for this collection of information is estimated to be 2766 hours per response annually, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St. SW. (PM–223); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that the regulations proposed today will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicle engines, a group which does not contain a substantial number of small entities. Further, small motor vehicle manufacturers typically purchase emission control components developed by larger organizations.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., I certify that this regulation does not have a significant impact on a substantial number of small entities.

VIII. Statutory Authority

The promulgation of these regulations is authorized by sections 202, 203, 206, 207(c), 208, and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 [42 U.S.C. 7521, 7522, 7525, 7541(c), 7542, and 7601(a)]. As discussed elsewhere in this proposal, the standards contained in the regulations and their effective dates are those prescribed by Congress in section 203 of the Amendments (establishing CAA sections 202(g) and 202(h)) and in section 210 of the Amendments (establishing CAA sections 207(c) (4)–(6)).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 12, 1991.

William K. Reilly

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—[AMENDED]

1. The title for part 86 is revised to read as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1a. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a)).

Subpart A—[Amended]

1b. The heading for subpart A of part 86 is revised to read as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline Fueled and Methanol-Fueled Heavy-Duty Vehicles

2. The table of contents of subpart A of part 86 is republished for the convenience of the reader to read as follows.

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled and Methanol-Fueled Heavy-Duty Vehicles

Sec.
86.004–8 Emission standards for 2004 and later model year light-duty vehicles.
86.004–9 Emission standards for 2004 and later model year light-duty trucks.
86.004–21 Application for certification.
86.004–23 Required data.
86.004–30 Certification.
86.078–3 Abbreviations.
86.078–6 Hearings on certification.
86.078–7 Maintenance of records; submittal of information; right of entry.
86.078–21 Separate certification.
86.078–32 Addition of a vehicle or engine after certification.
86.078–33 Changes to a vehicle or engine covered by certification.
86.078–36 Submission of vehicle identification numbers.
86.078–39 Submission of maintenance instructions.
86.080–12 Alternative certification procedures.
86.081–8 Emissions standards for 1981 light-duty vehicles.
86.082–2 Definitions.
86.082–8 Emission standards for 1982 and later light-duty vehicles.
86.083–14 Small-volume manufacturer certification procedures.
86.082–34 Alternative procedures for notification of additions and changes.
86.083–30 Certification.
86.084–2 Definitions.
86.084–4 Section numbering; construction.
86.084–5 General standards; increase in emissions; unsafe conditions.
86.084–14 Small-volume manufacturers certification procedures.
86.084–15 Emission standards for 1984 model year heavy passenger cars.
86.084–26 Mileage and service accumulation; emission measurements.
86.084–40 Automatic expiration of reporting and recordkeeping requirements.
86.085–1 General applicability.
86.085–2 Definitions.
86.085–8 Emission standards for 1985 and later model year light-duty vehicles.
86.085–9 Emission standards for 1985 and later model year light-duty trucks.
86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.085–11 Emission standards for 1985 and later model year diesel heavy-duty engines.
86.085–13 Alternative durability program.
86.085–20 Incomplete vehicles, classification.
86.085–21 Application for certification.
86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.
86.085–23 Required data.
86.085–24 Test vehicles and engines.
86.085–25 Maintenance.
86.085–27 Special test procedures.
86.085–28 Compliance with emission standards.
86.085–29 Testing by the Administrator.
86.085–30 Certification.
86.085–35 Labeling.
86.085–37 Production vehicles and engines.
86.085–38 Maintenance instructions.
86.087–2 Definitions.
86.087–8 Emission standards for 1987 light-duty vehicles.
86.087–9 Emission standards for 1987 and later model year light-duty trucks.
86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.087–21 Application for certification.
86.087–23 Required data.
86.087–25 Maintenance.
86.087–28 Compliance with emission standards.
86.087–29 Testing by the Administrator.
86.087–30 Certification.
86.087–35 Labeling.
86.087–38 Maintenance instructions.
86.088–2 Definitions.
86.088–9 Emission standards for 1988 and later model year light-duty trucks.
86.088–10 Emission standards for 1988 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.088–11 Emission standards for 1988 and later model year diesel heavy-duty engines.
86.088–21 Application for certification.
86.088–23 Required data.
86.088–25 Maintenance.
86.088–28 Compliance with emission standards.
86.088–29 Testing by the Administrator.
86.088–30 Certification.
86.088–35 Labeling.
86.090–1 General applicability.
86.090–2 Definitions.
86.090–3 Abbreviations.
86.090–5 General standards; increase in emissions; unsafe conditions.
86.090–8 Emission standards for 1990 and later model year light-duty vehicles.
86.090–9 Emission standards for 1990 and later model year light-duty trucks.
86.090–10 Emission standards for 1990 and later model year Otto-cycle heavy-duty engines and vehicles.
86.090–11 Emission standards for 1990 and later model year diesel heavy-duty engines and vehicles.
86.090–14 Small-volume manufacturers certification procedures.
86.090–21 Application for certification.
86.090–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.
86.090–23 Required data.
86.090–24 Test vehicles and engines.
86.090–25 Maintenance.
86.090–26 Mileage and service accumulation; emission requirements.
86.090–27 Special test procedures.
86.090–28 Compliance with emission standards.
86.090–29 Testing by the Administrator.
86.090–30 Certification.
86.090–35 Labeling.
86.091–2 Definitions.
86.091–9 Emission standards for 1991 and later model year light-duty trucks.
86.091–10 Emission standards for 1991 and later model year Otto-cycle heavy-duty engines and vehicles.
86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines and vehicles.
86.091–21 Application for certification.
86.091–23 Required data.
86.091–28 Compliance with emission standards.
86.091–29 Testing by the Administrator.
86.091–30 Certification.
86.091–35 Labeling.
86.092–1 General applicability.
86.092–2 Definitions.
86.092–14 Small-volume manufacturers certification procedures.
86.092–24 Test vehicles and engines.
86.092–26 Mileage and service accumulation; emission measurements.
86.092–35 Labeling.
86.094–2 Definitions.
86.094–3 Abbreviations.
86.094–7 Maintenance of records; submittal of information; right of entry.
86.094–8 Emission standards for 1994 and later model year light-duty vehicles.
86.094–9 Emission standards for 1994 and later model year light-duty trucks.
86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.
86.094–21 Application for certification.
86.094–23 Required data.
86.094–30 Certification.
86.094–35 Labeling.

3. A new § 86.004–8 is added to subpart A to read as follows:

§ 86.004–8 Emission standards for 2004 and later model year light-duty vehicles.

Section 86.004–8 includes only text that specifies requirements that differ from § 86.090–8. Where a paragraph in § 86.090–8 is identical and applicable to § 86.004–8, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8". Where a corresponding paragraph of § 86.004–8 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) *Standards.* (i) Exhaust emissions from 2004 and later model year light-duty vehicles shall meet all standards in Tables A04–1 and A04–2 in the rows designated with the applicable fuel type. Light-duty vehicles shall not exceed the applicable standards in Table A04–1 and shall not exceed the applicable standards in Table A04–2.

(ii)(A) Vehicles subject to the standards of paragraph (a)(1)(i) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(B) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight.

TABLE A04–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0.41	0.25			3.4	0.4	0.08
Diesel	0.41	0.25			3.4	0.4	0.08
Methanol			0.41	0.25	3.4	0.4	0.08

TABLE A04–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline		0.31			4.2	0.6	0.10
Diesel		0.31			4.2	0.6	0.10
Methanol				0.31	4.2	0.6	0.10

(b) through (i) [Reserved]. For guidance see § 86.090–8.

4. A new § 86.004–9 is added to subpart A to read as follows:

§ 86.004–9 Emission standards for 2004 and later model year light-duty trucks.

Section 86.004–9 includes only text that specifies requirements that differ from § 86.091–9. Where a paragragh in § 86.091–9 is identical and applicable to § 86.004–9, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–9". Where a corresponding paragraph of § 86.004–9 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) *Standards.* (i) *Light light-duty trucks.* (A) Exhaust emissions from 2004 and later model year light light-duty trucks shall meet all standards in Tables A04–3 and A04–4 in the rows designated with the applicable fuel type and loaded vehicle weight. Light light-duty trucks shall not exceed the applicable standards in Table A04–3 and shall not exceed the applicable standards in Table A04–4.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(i)(A) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(*2*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

BEST COPY AVAILABLE

TABLE A04-3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0-3750		0.25			3.4	0.4	0.08
Gasoline	3751-5750		0.32			4.4	0.7	0.08
Diesel	0-3750		0.25			3.4	0.4	0.08
Diesel	3751-5750		0.32			4.4		0.08
Methanol	0-3750				0.25	3.4	0.4	0.08
Methanol	3751-5750				0.32	4.4	0.7	0.08

TABLE A04-4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NO_x	PM
Gasoline	0-3750	0.80	0.31			4.2	0.6	0.10
Gasoline	3751-5750	0.80	0.40			5.5	0.97	0.10
Diesel	0-3750	0.80	0.31			4.2	0.6	0.10
Diesel	3751-5750	0.80	0.40			5.5	0.97	0.10
Methanol	0-3750			0.80	0.31	4.2	0.6	0.10
Methanol	3751-5750			0.80	0.40	5.5	0.97	0.10

[1] Full useful life is 11 years or 120,000 miles, whichever occurs first.

(ii) *Heavy light-duty trucks.* (A) Exhaust emissions from 2004 and later model year heavy light-duty trucks shall meet all standards in Tables A04-5 and A04-6 in the rows designated with the applicable fuel type and adjusted loaded vehicle weight. Heavy light-duty trucks shall not exceed the applicable standards in Table A04-5 and shall not exceed the applicable standards in Table A04-6.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(ii)(A) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(*2*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE A04-5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751-5750		0.32			4.4	0.7	
Gasoline	>5750		0.39			5.0	1.1	
Diesel	3751-5750		0.32			4.4		
Diesel	>5750		0.39			5.0		
Methanol	3751-5750				0.32	4.4	0.7	
Methanol	>5750				0.39	5.0	1.1	

TABLE A04-6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751-5750	0.80	0.46			6.4	0.99	0.10
Gasoline	>5750	0.80	0.56			7.3	1.53	0.12
Diesel	3751-5750	0.80	0.46			6.4	0.99	0.10
Diesel	>5750	0.80	0.56			7.3	1.53	0.12
Methanol	3751-5750			0.80	.046	6.4	0.99	0.10
Methanol	>5750			0.80	0.56	7.3	1.53	0.12

(iii) Exhaust emissions of carbon monoxide from 2004 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fuel diesel-cycle light-duty trucks only).

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) through (c) [Reserved]. For guidance see § 86.091-9.

(d) The HC, OMHCE and idle CO standards set forth in paragraphs (d)(1)(i)(A), (d)(1)(i)(B) and (d)(1)(ii) of this section, respectively, are applicable to all light-duty trucks.

(1) Model year 2004 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the CO, NO_x and particulate standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when tested under high altitude conditions. Such trucks shall also be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i)(A) Hydrocarbons (for petroleum-fueled Otto-cycle and diesel light-duty trucks). 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(B) Organic Material Hydrocarbon Equivalent (for methanol-fueled Otto-cycle and diesel light-duty trucks). 1.0 gram per vehicle mile (0.62 gram per vehicle kilometer).

(ii) Carbon Monoxide. 0.50 percent of exhaust gas flow at curb idle (for Otto-cycle and methanol-fueled diesel light duty trucks only).

(2) The standards set forth in paragraph (d)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(e) through (g) [Reserved]. For guidance see § 86.091-9.

5. A new § 86.004-21 is added to subpart A to read as follows:

§ 86.004-21 Application for certification.

Section 86.004-21 includes only text that specifies requirements that differ from § 86.091-21. Where a paragraph in § 86.091-21 is identical and applicable to § 86.004-21, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091-21". Where a corresponding paragraph of § 86.004-21 is not applicable, this is indicated by the statement "[Reserved]".

(a) through (b)(4) [Reserved]. For guidance see § 86.091-21.

(b)(5)(i)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.901-23(b)(1).

(B) For each light-duty truck engine family provided an optional useful life period under the provisions of paragraph (f) of this section, and for each heavy-duty engine family, a statement of the useful life.

(b)(5)(i)(C) through (b)(5)(iv) [Reserved]. For guidance see § 86.091-21.

(b)(6) [Reserved].

(b)(7) through (e) [Reserved]. For guidance see § 86.091-21.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.094-2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. For light/duty trucks, alternative useful life periods will be granted only for HC, OMHCE, and idle CO requirements.

5a. A new § 86.004-23 is added to subpart A to read as follows:

§ 86.004-23 Required data.

Section 86.004-23 includes only text that specifies requirements that differ from § 86.091-23. Where a paragraph in § 86.091-23 is identical and applicable to § 86.004-23, this is indicated by specifying the corresponding paragraph and statement "[Reserved]. For guidance see § 86.091-23". Where a corresponding paragraph of § 86.004-23 is not applicable, this is indicated by the statement "[Reserved]".

(a) through (b) [Reserved]. For guidance § 86.091-23.

(c) *Emission data.* (1) Emission data, including in the case of methanol fuel, methanol, formaldehyde and organic material hydrocarbon equivalent on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated and emission data generated for certification as required under § 86.090-26(a)(3)(i) or § 86.090-26(a)(3)(ii). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with certain applicable emission standards of § 86.004-8 or § 86.004-9. Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions or particulate emissions from methanol-fueled diesel-cycle certification vehicles, and those for particulate emissions from gasoline-fueled or methanol-fueled Otto-cycle certification vehicles.

(c) (2)) through (e) [Reserved]. For guidance see § 86.091-23.

(f) [Reserved].

(g) [Reserved].

(h) through (k) [Reserved]. For guidance see § 86.091-23.

5b. A new § 86.004-30 is added to subpart A to read as follows:

§ 86.004-30 Certification.

Section § 86.004-30 includes only text that specifies requirements that differ from § 86.091-30. Where a paragraph in § 86.091-30 is identical and applicable to § 86.004-30, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091-30". Where a corresponding paragraph of § 86.004-30 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) through (a)(3)(ii) [Reserved]. For guidance see § 86.091-30.

(a)(3)(iii) For diesel heavy-duty engines included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.091-28(a)(6) and 86.091-28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For heavy-duty engines included in the applicable NO_x averaging program, the manufacturer may at any time during production elect to change the level of any family NO_x emission limit by demonstrating compliance with the new limit as described in § 86.091-28(b)(5)(ii). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the day of issue.

(a)(4) through (a)(9) [Reserved]. For guidance see § 86.091-30.

(a)(10) For diesel heavy-duty engine families which are included in a particulate averaging program, the manufacturer's production-weighted average of the particulate emission limits of all engine families in a participating class or classes shall not exceed the applicable diesel particulate standard, or the composite particulate standard defined in § 86.085-2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR part 86. The certificate shall be void ab initio for those vehicles causing any exceedance of the particulate standard.

(11) For heavy-duty engine families which are included in a NO_x averaging program, the manufacturer's production-

weighted average of the NO_x emission limits of all such engine families shall not exceed the applicable NO_x emission standard, or the composite NO_x emission standard defined in § 86.088–2, as appropriate, at the end of the model year, as determined in accordance with 40 CFR part 86. The certificate shall be void ab initio for those vehicles causing any exceedance of the NO_x standard.

(b) through (e) [Reserved]. For guidance see § 86.091–30.

6. A new § 86–094–2 is added to subpart A to read as follows:

§ 86.094–2 Definitions.

The definitions of § 86.092–2 remain effective. The definitions listed in this section apply beginning with the 1994 model year.

Adjusted Loaded Vehicle Weight means the numerical average of vehicle curb weight and GVWR.

Equivalent test weight means the weight, within an inertia weight class, which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86.

Heavy light-duty truck means any light-duty truck rated greater than 6000 lbs GVWR.

Light-duty truck 1 means any light light-duty truck up through 3750 lbs loaded vehicle weight.

Light-duty truck 2 means any light light-duty truck greater than 3750 lbs loaded vehicle weight.

Light-duty truck 3 means any heavy light-duty truck up through 5750 lbs test weight.

Light-duty truck 4 means any heavy light-duty truck greater than 5750 lbs test weight.

Light light-duty truck means any light-duty truck rated up through 6000 lbs GVWR.

Test weight basis means the basis on which equivalent test weight is determined in accordance with §86.129–94 of subpart B.

Ultimate purchaser means the first person who in good faith purchases a new motor vehicle or new engine for purposes other than resale.

Useful life means:

(a) For light-duty vehicles, and for model year 1994 and later light light-duty trucks not subject to the Tier 0 standards of paragraph (a) of § 86.094–9, intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9.

(b) For light light-duty trucks subject to the Tier 0 standards of paragraph (a) of § 86.094–9, and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first.

(c) For an Otto-cycle heavy-duty engine family, a period of use of 8 years or 110,000 miles, whichever first occurs.

(d) For a diesel heavy-duty engine family:

(1) For light heavy-duty diesel engines, period of use of 8 years or 110,000 miles, whichever first occurs.

(2) For medium heavy-duty diesel engines, a period of use of 8 years or 185,000 miles, whichever first occurs.

(3) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs.

(e) As an option for both light-duty trucks under certain conditions and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of paragraph (f) of § 86.094–21.

(f) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles whichever first occurs, for light-duty trucks, Otto-cycle heavy-duty engines and light heavy-duty diesel engines. For all other heavy-duty diesels engines and aforementioned period is 5 years/100,000 miles, whichever first occurs. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

7. A new § 86.094–3 is added to subpart A to read as follows:

§ 86.094–3 Abbreviations.

(a) The abbreviations of § 86.090–3 remain effective. The abbreviations in this section apply beginning with the 1994 model year.

(b) The abbreviations in this section apply to this subpart, and also to subparts B, C, E, F, M, N, and P of this part, and have the following meanings:

ALVW—Adjusted Loaded Vehicle Weight
OMNMHCE—Organic Material Non-Methane Hydrocarbon Equivalent
PM—Particulate Matter
THC—Total Hydrocarbons

8. A new § 86.094–7 is added to subpart A to read as follows:

§ 86.094–7 Maintenance of records; submittal of information; right of entry.

Section 86.094–7 includes only text that specifies requirements that differ from § 86.091–7. Where a paragraph in § 86.091–7 is identical and applicable to § 86.094–7, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see §86.091–7". Where a corresponding paragraph of § 86.091–7 is not applicable, this is indicated by the statement "[Reserved]".

(a) through (d)(1)(v) [Reserved]. For guidance see § 86.091–7.

(d)(1)(vi) Any facility where any record or other document relating to the information specified in paragraph (h) of this section is located.

(d)(2) introductory text through (d)(2)(ii) [Reserved]. For guidance see § 86.091–7.

(d)(2)(iii) To inspect and make copies of any such records, designs or other documents including those records specified in paragraph (h) of this section; and

(iv) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(d)(3) through (g) [Reserved]. For guidance see § 86.091–7.

(h)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new vehicle that is certified shall establish, maintain and retain the following adequately organized and indexed records for each such vehicle:

(i) EPA engine family;

(ii) Vehicle identification number;

(iii) Jurisdiction of sale location, either California and all other jurisdictions that adopt the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990, or all other U.S. jurisdictions;

(iv) Production date;

(v) Shipment date;

(vi) Purchaser; and

(vii) Bill of sale or purchase contract.

(2) In addition, the manufacturer (or contractor for the manufacturer, if applicable) of each certified engine family shall establish, maintain and retain adequately organized records of the actual U.S. production volume for the model year for each engine family. Actual sales volume will be recorded separately for vehicles sold in California and in all other jurisdictions that adopt the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990, and all other U.S. sales.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of six years from the due date for the end-of-model year report. Records may be retained as hard copy or

reduced microfilm, ADP files, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) EPA may void ab initio a certificate of conformity for a vehicle certified to Tier 0 certification standards for which the manufacturer fails to retain the records required in this section or to provide such information to the Administration upon request.

(i) Any voiding ab initio of a certificate under paragraphs (c) and (h) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or under § 86.1014 for light-duty trucks and heavy-duty engines.

9. A new § 86.094–8 is added to subpart A to read as follows:

§ 86.094–8 Emission standards for 1994 and later model year light-duty vehicles.

Section 86.094–8 includes only text that specifies requirements that differ from § 86.090–8. Where a paragraph in § 86.090–8 is identical and applicable to § 86.094–8, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8". Where a corresponding paragraph of § 86.090–8 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) *Standards.* (i) Exhaust emissions from 1994 and later model year light-duty vehicles shall meet all standards in Tables A94–2, A94–3, A94–5 and A94–6 in the rows designated with the applicable fuel type, according to the implementation schedule in Tables A94–1 and A94–4, as follows:

(A)(*1*) A minimum of the percentage shown in Table A94–1 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–2 and shall not exceed the applicable Tier 1 standards in Table A94–3. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–2.

(*2*) A minimum of the percentage shown in Table A94–4 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–5 and shall not exceed the applicable Tier 1 standards in Table A94–6. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–5.

(B)(*1*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i)(A) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*)(*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in subpart H, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer shall state, based on projected sales at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentages for certification purposes and for in-use purposes.

(*4*) A manufacturer cannot use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

(ii) A manufacturer may elect to include all or some of its diesel-cycle light-duty vehicle engine families subject to the Tier 0 standards in the appropriate particulate averaging program (petroleum or methanol), provided that vehicles produced for sale in California or in designated high-altitude areas may be averaged only within each of these areas. Averaging is not permitted between fuel type. If the manufacturer elects to average light-duty vehicles and light-duty trucks together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks included in the average and is calculated as defined in § 86.090–2.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight.

TABLE A94–1.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NO_x

Model Year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–2.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NO_x

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	Tier 0	0.41				3.4	1.0
Gasoline	Tier 1	0.41	0.25			3.4	0.4
Diesel	Tier 0	0.41				3.4	1.0
Diesel	Tier 1	0.41	0.25			3.4	1.0
Methanol	Tier 0			0.41		3.4	1.0
Methanol	Tier 1			0.41	0.25	3.4	0.4

TABLE A94–3.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_x

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	Tier 0						
Gasoline	Tier 1		0.31			4.2	0.6
Diesel	Tier 0						
Diesel	Tier 1		0.31			4.2	1.25
Methanol	Tier 0						
Methanol	Tier 1				0.31	4.2	0.6

TABLE A94–4.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR PM

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	0.20[1]
Methanol	Tier 1	0.08

[1] Applicable only to diesel-cycle vehicles.

TABLE A94–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.10
Diesel	Tier 0	
Diesel	Tier 1	0.10
Methanol	Tier 0	
Methanol	Tier 1	0.10

(b) through (i) [Reserved]. For guidance see § 86.090–8.

10. A new § 86.094–9 is added to subpart A to read as follows:

§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.

Section 86.094–9 includes only text that specifies requirements that differ from § 86.091–9. Where a paragraph in § 86.091–9 is identical and applicable to § 86.094–9, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–9". Where a corresponding paragraph of § 86.091–9 is not applicable, this is indicated by the statement "[Reserved]".

(a) (1) *Standards* (i) *Light light-duty trucks.* Exhaust emissions from 1994 and later model year light light-duty trucks shall meet all standards in Tables A94–8, A94–9, A94–11 and A94–12 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedule in Tables A94–7 and A94–10, as follows:

(A) (*1*) A minimum of the percentage shown in Table A94–7 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–8 and shall not exceed the applicable Tier 1 standards in Table A94–9. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–9.

(*2*) A minimum of the percentage shown in Table A94–10 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–11 and shall not exceed the applicable Tier 1 standards in Table A94–12. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–12.

(B) (*1*) Sales percentages for the purposes of determining compliance with paragraph (a) (1) (i) (A) of this section shall be based on total actual U.S. sales of light light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that light light-duty trucks sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*) (*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in subpart H of this part, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer shall state, based on projected sales at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentages for certification purposes and for in-use purposes.

(*4*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE A94–7.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, AND NO_x

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–8.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	0–3750	Tier 0						
Gasoline	0–3750	Tier 1		0.25			3.4	0.4
Gasoline	3751–5750	Tier 0						
Gasoline	3751–5750	Tier 1		0.32			4.4	0.7

TABLE A94–8.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x—Continued

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Diesel	0–3750	Tier 0						
Diesel	0–3750	Tier 1		0.25			3.4	1.0
Diesel	3751–5750	Tier 0						
Diesel	3751–5750	Tier 1		0.32			4.4	
Methanol	0–3750	Tier 0						
Methanol	0–3750	Tier 1				0.25	3.4	0.4
Methanol	3751–5750	Tier 0						
Methanol	3751–5750	Tier 1				0.32	4.4	0.7

TABLE A94–9.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Fuel	LVW (lbs)	Standards	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NO_x
Gasoline	0–3750	Tier 0	0.80				10	1.2
Gasoline	0–3750	Tier 1	0.80	0.31			4.2	0.6
Gasoline	3751–5750	Tier 0	0.80				10	1.7
Gasoline	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Diesel	0–3750	Tier 0	0.80				10	1.2
Diesel	0–3750	Tier 1	0.80	0.31			4.2	1.25
Diesel	3751–5750	Tier 0	0.80				10	1.7
Diesel	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Methanol	0–3750	Tier 0			0.80		10	1.2
Methanol	0–3750	Tier 1			0.80	0.31	4.2	0.6
Methanol	3751–5750	Tier 0			0.80		10	1.7
Methanol	3751–5750	Tier 1			0.80	0.40	5.5	0.97

[1] Full useful life is 11 years or 120,000 miles, whichever occurs first.

TABLE A94–10.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Model year	Tier 1 percentage
1994	0
1995	40
1996	80
After 1996	100

TABLE A94–11.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.08
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.08
Diesel	0–3750	Tier 0	
Diesel	0–3750	Tier 1	0.08
Diesel	3751–5750	Tier 0	
Diesel	3751–5750	Tier 1	0.08
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.08
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.08

TABLE A94–12.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	03750	Tier 0	
Gasoline	03750	Tier 1	0.10
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.10
Diesel	03750	Tier 0	0.26

TABLE A94–12.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	Standards	PM
Diesel	03750	Tier 1	0.10
Diesel	3751–5750	Tier 0	0.13
Diesel	3751–5750	Tier 1	0.10
Methanol	03750	Tier 0	[1] 0.26
Methanol	03750	Tier 1	0.10
Methanol	3751–5750	Tier 0	[1] 0.13
Methanol	3751–5750	Tier 1	0.10

[1] Applicable only to diesel-cycle vehicles.

(ii) *Heavy light-duty trucks.* Exhaust emissions from 1994 and later model year heavy light-duty trucks shall meet all standards in Tables A94–14 and A94–15 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedule in Table A94–13, as follows:

(A) A minimum of the percentage shown in Table A94–13 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–14 and shall not exceed the applicable Tier 1 standards in Table A94–15. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–15.

(B)(*1*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(ii)(A) of this section shall be based on total actual U.S. sales of heavy light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that heavy light-duty trucks sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*)(*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in Subpart H of this part, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer shall state, based on projected sales at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentages for certification purposes and for in-use purposes.

(*4*) A manufacturer cannot use one set of engine families to meet its

intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

Table A94–13.—Implementation Schedule for Heavy Light-Duty Trucks for HCs, CO, NO_x and PM

Model year	Tier 1 percentage
1994	0
1995	0

Table A94–13.—Implementation Schedule for Heavy Light-Duty Trucks for HCs, CO, NO_x and PM—Continued

Model year	Tier 1 percentage
1996	50
After 1996	100

TABLE A94–14.—Intermediate Useful Life Standards (g/mi) for Heavy Light-Duty Trucks for HCs, CO, NO_x and PM

Fuel	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750	Tier 0							
Gasoline	3751–5750	Tier 1		0.32			4.4	0.7	
Gasoline	>5750	Tier 0							
Gasoline	>5750	Tier 1		0.39			5.0	1.1	
Diesel	3751–5750	Tier 0							
Diesel	3751–5750	Tier 1		0.32			4.4		
Diesel	>5750	Tier 0							
Diesel	>5750	Tier 1		0.39			5.0		
Methanol	3751–5750	Tier 0							
Methanol	3751–5750	Tier 1				0.32	4.4	0.7	
Methanol	>5750	Tier 0							
Methanol	>5750	Tier 1				0.39	5.0	1.1	

TABLE A94–15.—Full Useful Life Standards (g/mi) for Heavy Light-Duty Trucks for HCs, CO, NO_x and PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750		Tier 0	0.80				10	1.2	
Gasoline	>3750		Tier 0	0.80				10	1.7	
Gasoline		3751–5750	Tier 1	0.80	0.48			6.4	0.98	0.10
Gasoline		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Diesel	0–3750		Tier 0	0.80				10	1.2	0.26
Diesel	>3750		Tier 0	0.80				10	1.7	0.13
Diesel		3751–5750	Tier 1	0.80	0.48			6.4	0.98	0.10
Diesel		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Methanol	0–3750		Tier 0			0.80		10	1.2	[1] 0.26
Methanol	>3750		Tier 0			0.80		10	1.7	[1] 0.13
Methanol		3751–5750	Tier 1			0.80	0.48	6.4	0.98	0.10
Methanol		>5750	Tier 1			0.80	0.56	7.3	1.53	0.12

[1] Applicable only to diesel-cycle vehicles.

(iii) Exhaust emissions of carbon monoxide from 1994 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years of 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only).

(iv) (A) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the Tier C standards in the NO_x averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Petroleum-fueled and methanol-fueled engine families may not be averaged together. Otto-cycle and diesel engine families also may not be averaged together. If the manufacturer elects to participate in the NO_x averaging program, individual family NO_x emission limits may not exceed 2.3 grams per mile. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to different standards based on GVWR and loaded vehicle weight, its composite NO_x standard applies to the combined fleets of light-duty trucks of all weight categories included in the average, and is calculated as defined in § 86.088–2.

(B) A manufacturer may elect to include any diesel light-duty truck engine families subject to the Tier 0 standards in the appropriate particulate averaging program (petroleum or methanol), provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only with other light-duty trucks greater than 3750 lbs loaded vehicle weight. Averaging is not permitted between fuel types. If the manufacturer elects to average both light-duty trucks 3750 lbs loaded vehicle weight or less and light-duty vehicles together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks included in the average and is calculated as defined in § 86.088–2.

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and

calculated in accordance with those procedures. The test weight basis for light-duty trucks certified to the Tier 0 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks certified to the Tier 1 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b) through (c) [Reserved]. For guidance see § 86.091–9.

(d) The CO, NO_x and particulate standards set forth in § 86.091–9(d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv), respectively, are applicable only to vehicles certified to the Tier 0 standards of paragraphs (a)(1)(i) and (a)(1)(ii) of this section. The HC, OMHCE and idle CO standards set forth in § 86.091–9 (d)(1)(i)(A), (d)(1)(i)(B) and (d)(1)(ii)(B), respectively, are applicable to all light-duty trucks.

(d)(1) through (g) [Reserved]. For guidance see § 86.091–9.

11. A new § 86.094–21 is added to subpart A to read as follows:

§ 86.094–21 Application for certification.

Section 86.094–21 includes only text that specifies requirements that differ from § 86.091–21. Where a paragraph in § 86.091–21 is identical and applicable to § 86.094–21, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–21". Where a corresponding paragraph of § 86.091–21 is not applicable, this is indicated by the statement "[Reserved]".

(a) through (b)(1) [Reserved]. For guidance see § 86.091–21.

(b)(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested, and sufficient to determine projected compliance with the Tier 1 standards implementation schedules of § 86.094–8 and § 86.094–9. The sales data shall also include the altitude of intended sale for light-duty trucks.

(b)(3) [Reserved]. For guidance see § 86.091–21.

(b)(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.094–23(b)(2).

(b)(4)(ii) [Reserved]. For guidance see § 86.091–21.

(b)(5)(i)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.094–23(b)(1).

(B) For each light-duty truck engine family provided an optional useful life period under the provisions of paragraph (f) of this section, and for each heavy-duty engine family, a statement of the useful life.

(b)(5)(i)(C) through (b)(7) [Reserved]. For guidance see § 86.091–21.

(b)(8) For each light-duty vehicle or light-duty truck engine family, the exhaust emission standards (or family emission limits, if applicable) to which the engine family is to be certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use.

(c) through (e) [Reserved]. For guidance see § 86.091–21.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.094–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. For model year 1994 and later light duty trucks not subject to the Tier 0 standards of § 86.094–9, alternative useful life periods will be granted only for HC, OMHCE, and idle CO requirements.

12. A new § 86.094–23 is added to subpart A to read as follows:

§ 86.094–23 Required data.

Section 86.094–23 includes only text that specifies requirements that differ from § 86.091–23. Where a paragraph in § 86.091–23 is identical and applicable to § 86.094–23, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–23". Where a corresponding paragraph of § 86.091–23 is not applicable, this is indicated by the statement "[Reserved]".

(a) through (b)(1)(i) [Reserved]. For guidance see § 86.091–23.

(b)(1)(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines, and all test data that are derived from the testing described under § 86.090–21(b)(4)(iii)(A), as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.094–30 will meet the emission standards (or family emission limits, as appropriate) in § 86.094–9, § 86.091–10, or § 86.091–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.094–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.094–30 will meet the evaporative emission standards in § 86.094–8 or § 86.094–9, as appropriate, for the useful life of the vehicle.

(3) For heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.091–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.094–30 will meet the evaporative emission standards in § 86.091–10 and § 86.091–11 in actual use for the useful life of the engine. Furthermore, a statement that a description of the test procedure, as well as all data, analyses and evaluations, is available to the Administrator upon request.

(b)(4) [Reserved]. For guidance see § 86.091–23.

(c) *Emission data.* (1) Emission data, including in the case of methanol fuel, methanol, formaldehyde and organic material hydrocarbon equivalent on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated and emission data generated for certification

as required under § 86.090-26(a)(3)(i) or § 86.090-26(a)(3)(ii). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with certain applicable emission standards of § 86.094-8 or § 86.094-9. Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions or particulate emissions from methanol-fueled diesel-cycle certification vehicles, and those for particulate emissions from model year 1994 and later gasoline-fueled or methanol-fueled Otto-cycle certification vehicles that are not certified to the Tier 0 standards of paragraphs (a)(1)(i) and (a)(1)(ii) of § 86.094-9.

(c)(2) through (k) [Reserved]. For guidance see § 86.091-23.

(l) Additionally, manufacturers certifying vehicles shall submit for each engine family:

(1) In the application for certification the projected sales volume of engine families certifying to the respective standards. This application must report projected sales volumes separately for vehicles projected to be sold in California and in any other jurisdictions that adopt the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990, and all other projected U.S. sales.

(2) End-of-year reports for each engine family.

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(ii) These reports shall indicate the engine family and the actual U.S. sales volume. Actual sales volume must be reported separately for vehicles sold in California and in any other jurisdictions that adopt the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990, and all other U.S. sales.

(iii) The production sales volume for end-of-year reports shall be based on the location of the point of sale to the ultimate purchaser.

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time, may result in certificate(s) for the engine family(ies) certified to Tier 0 certification standards being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

13. A new § 86.094-30 is added to subpart A to read as follows:

§ 86.094-30 Certification.

Section 86.094-30 includes only text that specifies requirements that differ from § 86.091-30. Where a paragraph in § 86.091-30 is identical and applicable to § 86.094-30, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091-30". Where a corresponding paragraph of § 86.091-30 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) through (a)(11) [Reserved]. For guidance see § 86.091-30.

(a)(12) For all light-duty vehicles certified to standards under § 86.094-9 or to which standards under § 86.794-9 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.094-9 and § 86.794-9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094-9 and § 86.794-9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued, and the certificate may be deemed void for those engine families that caused the manufacturer to exceed the required percentages.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(13) For all light-duty trucks certified to Tier 0 standards under § 86.094-9 and to which standards under § 86.794-9 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.094-9 and § 86.794-9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094-9 and § 86.794-9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued, and the certificate may be deemed void for those engine families that caused the manufacturer to exceed the required percentages.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied or excused.

(b) through (d)(7) [Reserved]. For guidance see § 86.091-30.

(d)(8) Any voiding of the certificate under § 86.091-30(a) (10) and (11) or paragraph (a)(12) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(e) introductory text through (e)(7) [Reserved]. For guidance see § 86.091-30.

(e)(8) Any voiding of the certificate under § 86.091-30(a) (10) and (11) or paragraph (a)(13) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

14. A new § 86.094-35 is added to subpart A to read as follows:

§ 86.094-35 Labeling.

Section 86.094-35 includes only text that specifies requirements that differ from § 86.092-35. Where a paragraph in § 86.092-35 is identical and applicable to § 86.094-35, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092-35". Where a corresponding paragraph of § 86.092-35 is not applicable, this is indicated by the statement "[Reserved]".

(a) introductory text through (a)(1)(iii)(E) [Reserved]. For guidance see § 86.092-35.

(a)(1)(iii)(F) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use.

(a)(1)(iii) (G) through (a)(2)(iii)(D) [Reserved]. For guidance see § 86.092-35.

(a)(2)(iii)(E)(*1*) *Light-duty trucks.* The statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks."

(a)(2)(iii)(E)(*1*)(*i*) through (a)(2)(iii)(E)(*1*)(*ii*) [Reserved].

(a)(2)(iii)(E)(*2*) [Reserved]. For guidance see § 86.092-35.

(a)(2)(iii)(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094-21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful life period of XXX years or XXX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(a)(2)(iii)(G) through (a)(2)(iii)(I) [Reserved]. For guidance see § 86.092-35.

(a)(2)(iii)(J) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use.

(a)(2)(iii)(K) [Reserved].

(a)(2)(iii)(L) through (a)(3)(iii)(H) [Reserved]. For guidance see § 86.092-35.

(a)(3)(iii)(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.094-21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of XXX miles or XXX hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only).

(a)(3)(iii)(J) through (c)(1)(ii)(B)(*1*) [Reserved]. For guidance see § 86.092-35.

(c)(1)(ii)(B)(*2*) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094-21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of XX years or XX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(c)(1)(iii) through (d) introductory text [Reserved]. For guidance see § 86.092-35.

(d)(1) *Light-duty trucks.* The statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks when it does not exceed XX pounds in curb weight, XX pounds in gross vehicle weight rating, and XX square feet in frontal area."

(d)(1)(i) through (d)(1)(ii) [Reserved].

(d)(2) through (h) [Reserved]. For guidance see § 86.092-35.

SUBPART B—[AMENDED]

15. The table of contents of subpart B of part 86 is republished for the convenience of the reader to read as follows:

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks; Test Procedures

Sec.
86.101 General applicability.
86.102 Definitions.
86.103 Abbreviations.
86.104 Section numbering; construction.
86.105 Introduction; structure of subpart.
86.106-82 Equipment required; overview.
86.106-90 Equipment required; overview.
86.106-94 Equipment required; overview.
86.107-78 Sampling and analytical system; evaporative emissions.
86.107-90 Sampling and analytical system; evaporative emissions.
86.108-79 Dynamometer.
86.109-82 Exhaust gas sampling system; gasoline-fueled vehicles.
86.109-90 Exhaust gas sampling system; Otto-cycle vehicles.
86.109-94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emissions measurements.
86.110-82 Exhaust gas sampling system; diesel vehicles.
86.110-90 Exhaust gas sampling system; diesel vehicles.
86.110-94 Exhaust gas sampling system; diesel-cycle vehicles, and Otto-cycle vehicles requiring particulate emissions measurements.
86.111-82 Exhaust gas analytical system.
86.111-90 Exhaust gas analytical system.
86.111-94 Exhaust gas analytical system.
86.112-82 Weighing chamber (or room) and microgram balance specifications.
86.112-91 Weighing chamber (or room) and microgram balance specifications.
86.113-82 Fuel specifications.
86.113-86 Fuel specifications.
86.113-90 Fuel specifications.
86.114-79 Analytical gases.
86.114-94 Analytical gases.
86.115-78 EPA urban dynamometer driving cycles.
86.116-82 Calibrations, frequency and overview.
86.116-90 Calibrations, frequency and overview.
86.116-94 Calibrations, frequency and overview.
86.117-78 Evaporative emission enclosure calibrations.
86.117-90 Evaporative emission enclosure calibrations.
86.118-78 Dynamometer calibration.
86.119-78 CVS calibration.
86.119-90 CVS calibration.
86.120-82 Gas meter or flow instrumentation calibration; particulate measurement.
86.121-82 Hydrocarbon analyzer calibration.
86.121-90 Hydrocarbon analyzer calibration.
86.122-78 Carbon monoxide analyzer calibration.
86.123-78 Oxides of nitrogen analyzer calibration.
86.124-78 Carbon dioxide analyzer calibration.
86.125-94 Methane analyzer calibration.
86.126-78 Calibration of other equipment.
86.126-90 Calibration of other equipment.
86.127-82 Test procedures; overview.
86.127-90 Test procedures; overview.
86.127-94 Test procedures; overview.
86.128-79 Transmissions.
86.129-80 Road load power, test weight, and inertia weight class determination.
86.129-94 Road load power test weight and inertia weight class determination.
86.130-78 Test sequence; general requirements.
86.131-78 Vehicle preparation.
86.131-90 Vehicle preparation.
86.132-82 Vehicle preconditioning.
86.132-90 Vehicle preconditioning.
86.133-78 Diurnal breathing loss test.
86.133-90 Diurnal breathing loss test.
86.134-78 [Reserved]
86.135-82 Dynamometer procedure.
86.135-90 Dynamometer procedure.
86.135-94 Dynamometer procedure.
86.136-82 Engine starting and restarting.
86.136-90 Engine starting and restarting.
86.137-8 Dynamometer test run, gaseous and particulate emissions.
86.137-90 Dynamometer test run, gaseous and particulate emissions.
86.137-94 Dynamometer test run, gaseous and particulate emissions.
86.138-78 Hot-soak test.
86.138-90 Hot-soak test.
86.139-82 Diesel particulate filter handling and weighing.
86.139-90 Particulate filter handling and weighing.
86.140-82 Exhaust sample analysis.
86.140-90 Exhaust sample analysis.
86.140-94 Exhaust sample analysis.
86.141 [Reserved]
86.142-82 Records required.
86.142-90 Records required.
86.143-78 Calculations; evaporative emissions.
86.143-90 Calculations; evaporative emissions.
86.144-78 Calculations; exhaust emissions.
86.144-90 Calculations; exhaust emissions.
86.144-94 Calculations; exhaust emissions.
86.145-82 Calculations; particulate emissions.

16–20. Section 86.105 of subpart B is amended by revising paragraph (a) to read as follows:

§ 86.105 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust, particulate, and evaporative emission tests on light-duty vehicles and light-duty trucks. Subpart A of this part sets forth testing requirements and test intervals necessary to comply with EPA certification procedures. Not all emission measurement techniques described in this subpart will be necessary for all vehicles. Subpart A of this part defines the conditions under which vehicles may be exempted from

measuring methane and/or waived from measuring particulate matter.

* * * * *

21. A new § 86.106–94 is added to subpart B to read as follows:

§ 86.106–94 Equipment required; overview.

Section 86.106–94 includes only text that specifies requirements that differ from § 86.106–90. Where a paragraph in § 86.106–90 is identical and applicable to § 86.106–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.106–90." Where a corresponding paragraph of § 86.106–90 is not applicable, this is indicated by the statement "[Reserved]".

(a) introductory text through (a)(1) [Reserved]. For guidance see § 86.106–90.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are subject to testing for both gaseous and particulate exhaust emissions using the CVS concept (§ 86.109), except where exemptions or waivers are expressly provided in subpart A of these regulations. Vehicles subject to the "Tier 0" (i.e. phase-out) standards described under subpart A are exempted from testing for methane emissions. Otto-cycle vehicles subject to the "Tier 0" standards are waived from testing for particulates. For vehicles waived from the requirement for measuring particulate emissions, use of a dilution tunnel is not required (§ 86.109). The CVS must be connectd to the dilution tunnel if particulate emissions sampling is required (§ 86.110). Petroleum- and methanol-fueled diesel-cycle vehicle testing requires that a PDP–CVS or CFV with heat exchanger be used. (This equipment may be used with methanol-fueled Otto-cycle vehicles, however, particulates need not be measured for vehicles that are waived from the requirement). All gasoline-fueled and methanol-fueled vehicles are either tested for evaporative emissions or undergo a diurnal heat build. Petroleum-fueled diesel-cycle vehicles are excluded from this requirement. Equipment necessary and specifications appear in §§ 86.106 through 86.114.

(3) [Reserved]. For guidance see § 86.106–90.

(b) [Reserved].

22. A new § 86.109–94 is added to subpart B to read as follows:

§ 86.109–94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emissions measurements.

Section 86.109–94 includes only text that specifies requirements that differ from § 86.109–90. Where a paragraph in § 86.109–90 is identical and applicable to § 86.109–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.109–90."

(a)(1) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of gaseous emissions in the exhaust of either Otto-cycle light-duty vehicles or light-duty trucks which are waived from requirements for the measurement of particulate emissions. In the CVS concept of measuring mass emissions, two conditions must be satisfied: The total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned volume of sample must be collected for analysis. Mass emissions are determined from the sample concentration and total flow over the test period.

(a)(2) through (a)(4) [Reserved]. For guidance see § 86.109–90.

(a)(5) *Other systems.* Other sampling systems may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator.

(b) through (c) [Reserved]. For guidance see § 86.109–90.

23. A new § 86.110–94 is added to subpart B to read as follows:

§ 86.110–94 Exhaust gas sampling system; diesel-cycle vehicles, and Otto-cycle vehicles requiring particulate emissions measurements.

Section 86.110–94 includes only text that specifies requirements that differ from § 86.110–90. Where a paragraph in § 86.110–90 is identical and applicable to § 86.110–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.109–90."

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of either diesel-cycle or Otto-cycle light-duty vehicles and light-duty trucks. This system utilizes the CVS concept (described in § 86.109) of measuring mass emissions. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. The mass of particulate emissions is determined from a proportional mass sample collected on a filter and from the total flow over the test period. General requirements are as follows:

(1) This sampling system requires the use of a PDP–CVS or a CFV sample system with heat exchanger connected to a dilution tunnel. Figure B90–5 is a schematic drawing of the PDP system. Figure B90–6 is a schematic drawing of the CFV system.

BILLING CODE 6560-50-M

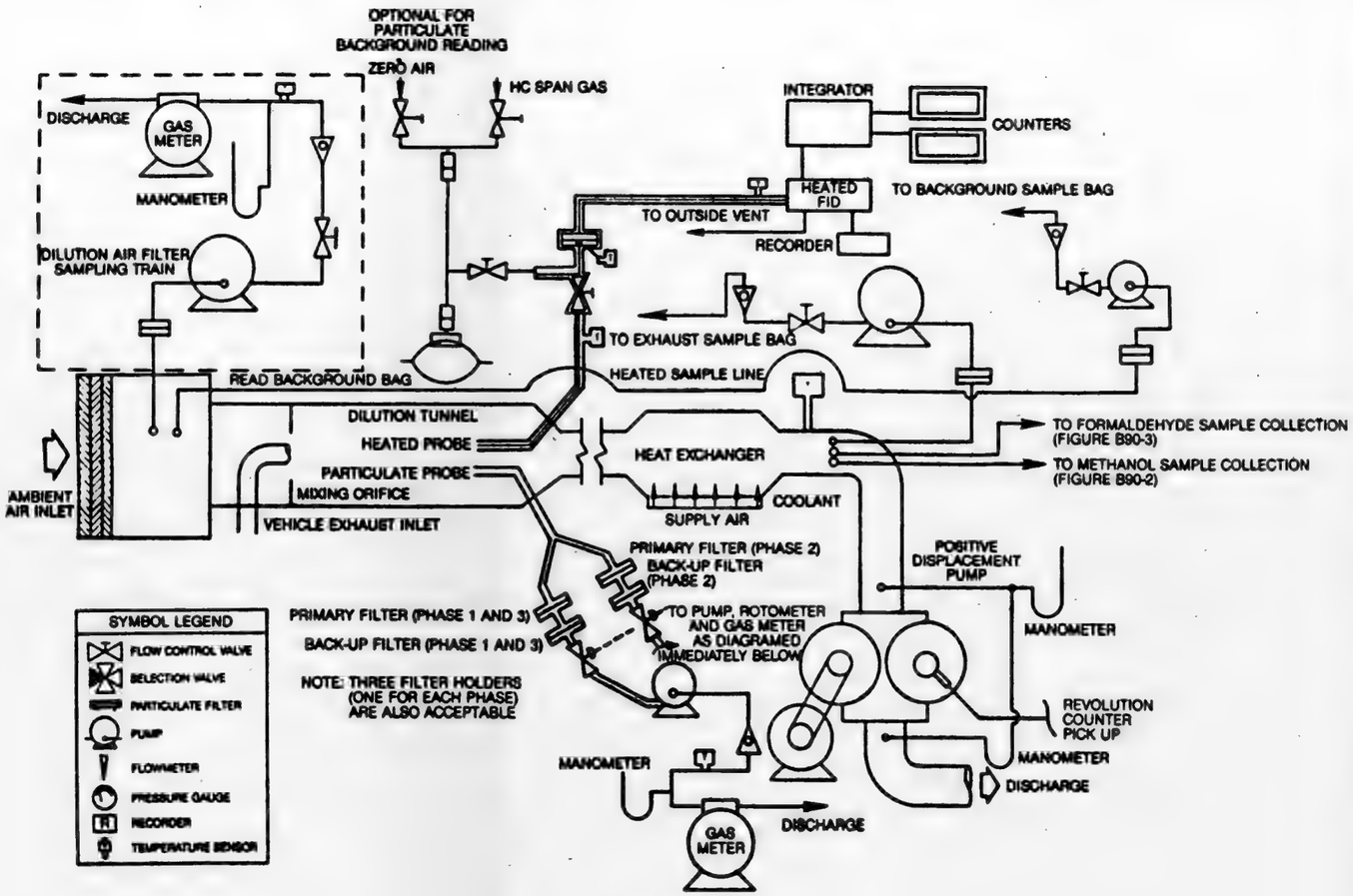


FIGURE B90-5
GASEOUS AND PARTICULATE EMISSIONS SAMPLING SYSTEM (PDP-CVS)

FIGURE B 90-6

GASEOUS AND PARTICULATE EMISSIONS SAMPLING SYSTEM (CFV-CVS)

BILLING CODE 6560-50-C

(2) Bag, continuous HFID (required for petroleum-fueled diesel-cycle and optional for methanol-fueled diesel-cycle vehicles), and particulate sampling capabilities as shown in Figure B90–5 (or Figure B94–6) are required to provide both gaseous and particulate emissions sampling capabilities from a single system.

(3) Petroleum-fueled diesel-cycle vehicles require a heated flame ionization detector (HFID) (375°±20°F (191°±11°C)) sample for total hydrocarbon (THC) analysis. The HFID sample must be taken directly from the diluted exhaust stream through a heated probe in the dilution tunnel.

(a)(4) [Reserved]. For guidance see § 86.110–90.

(a)(5) For methanol-fueled vehicles, the vehicle tailpipe-to-dilution tunnel connection shall be made by:

(i) A duct of unrestricted length maintained at 235°±15°F (113°±8°C) through heating and cooling as required; or

(ii) A short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections maintained at 235°±15°F (113°±8°C) prior to the test and during breaks in testing (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) A smooth wall duct less than five feet long with no required heating; or

(iv) By omitting the duct and performing the exhaust gas dilution function at the vehicle tailpipe exit.

(a)(6) [Reserved]. For guidance see § 86.110–90.

(a)(7) Other sampling systems may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

(b) Component description—Otto-cycle and petroleum-fueled diesel-cycle vehicles. The components necessary for Otto-cycle and petroleum-fueled diesel-cycle vehicle exhaust sampling shall meet the following requirements:

(b)(1) through (b)(6) introductory text [Reserved]. For guidance see § 86.110–90.

(b)(6)(i) Sized to permit development of turbulent flow (Reynold's No. >>4000) and complete mixing of the exhaust and dilution air between the mixing orifice and each of the two sample probes (i.e., the particulate probe and the heated THC sample probe). It is recommended that uniform mixing be demonstrated by the user.

(b)(6)(ii) through (b)(8)(i) [Reserved]. For guidance see § 86.110–90.

(b)(8)(ii) Sufficiently distant (radially) from the THC probe (when the THC probe is required) so as to be free from the influence of any wakes or eddies produced by the THC probe.

(b)(8)(iii) through (b)(11) [Reserved]. For guidance see § 86.110–90.

(b)(12) The THC probe (when the THC probe is required) shall be:

(b)(12)(i) through (b)(12)(iv) [Reserved]. For guidance see § 86.110–90.

(b)(13) It is intended that the THC probe be free from cold spots (i.e., free from spots where the probe wall temperature is less than 355°F). This will be determined by a temperature sensor located on a section of the probe wall outside of the dilution tunnel. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ±2°F (1.1°C).

(14) The dilute exhaust gas flowing in the THC sample system shall be:

(i) At 375°F±10°F (191°C±6°C) immediately before the heated filter. This will be determined by a temperature sensor located immediately upstream of the filter. The sensor shall have an accuracy and precision of ±2°F (1.1°C).

(b)(14)(ii) [Reserved]. For guidance see § 86.110–90.

(b)(15) It is intended that the dilute exhaust gas flowing in the THC sample system be between 365°F and 385°F (185°C and 197°C).

(c) *Component description—methanol-fueled diesel-cycle vehicles.* The components necessary for methanol-fueled diesel-cycle vehicle exhaust sampling shall meet the following requirements:

(c)(1) through (c)(8)(i) [Reserved]. For guidance see § 86.110–90.

(c)(8)(ii) Sufficiently distant (radially) from the THC probe so as to be free from the influence of any wakes or eddies produced by the THC probe.

(c)(8)(iii) through (c)(12) [Reserved]. For guidance see § 86.110–90.

(c)(13) It is intended that the THC probe be free from cold spots (i.e., free from cold spots where the probe wall temperature is less than 220°F). This will be determined by a temperature sensor located on a section of the probe wall outside of the dilution tunnel. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ±2°F (1.1°C).

(c)(14) through (d) [Reserved]. For guidance see § 86.110–90.

24. A new § 86.111–94 is added to subpart B to read as follows:

§ 86.111–94 Exhaust gas analytical system.

Section 86.111–94 includes only text that specifies requirements that differ from § 86.111–90. Where a paragraph in § 86.111–90 is identical and applicable to § 86.111–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.111–90."

(a) *Schematic drawings.* Figure B94–7 is a schematic drawing of the exhaust gas analytical system for samples from bag sampling systems for analysis of total hydrocarbon (THC) (hydrocarbon plus methanol in the case of methanol-fueled vehicles), methane (CH_4) (for vehicles subject to the NMHC and OMNMHCE standards), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x). The schematic diagram of the continuous THC analysis train (and for THC plus methanol for methanol-fueled diesel-cycle vehicles) is shown as part of Figure B90–5 (or Figure B90–6). Since various configurations can produce accurate results, exact conformance with either drawing is not required. Additional components such as instruments, valves, solenoids, pumps and switches may be used to provide additional information and coordinate the functions of the component systems.

BILLING CODE 6560-50-M

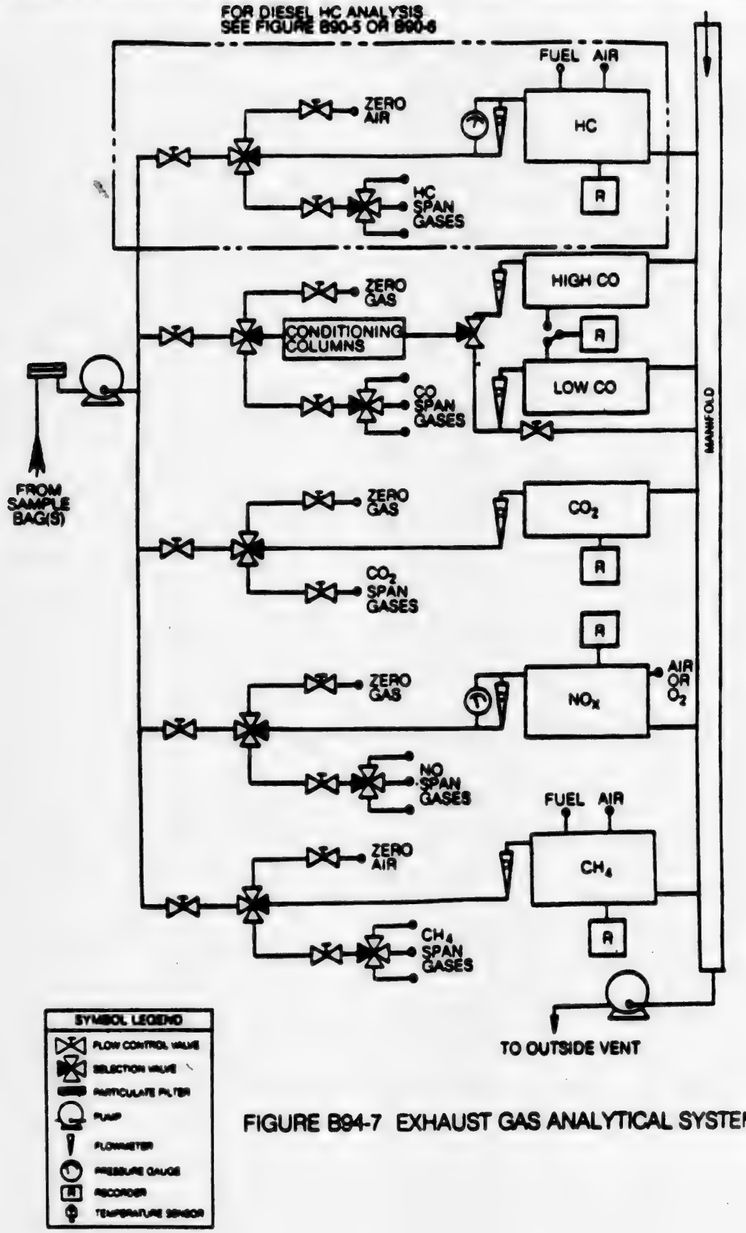


FIGURE B94-7 EXHAUST GAS ANALYTICAL SYSTEM

BILLING CODE 6560-50-C

(b) *Major component description.* The exhaust gas analytical system, Figure B94–7, consists of a flame ionization detector (FID) (heated, 235°±15°F (113°±8°C) for methanol-fueled vehicles) for the determination of THC, a methane analyzer (consisting of a gas chromatograph combined with a FID) for the determination of CH_4 (for vehicles subject to the NMHC and OMNMHCE standards, where applicable), non-dispersive infrared analyzers (NDIR) for the determination of CO and CO_2 and a chemiluminescence analyzer (CL) for the determination of NO_x. A heated flame ionization detector (HFID) is used for the continuous determination of THC from petroleum-fueled diesel-cycle vehicles (may also be used with methanol-fueled diesel-cycle vehicles), Figure B90–5 (or B90–6). The analytical system for methanol consists of a gas chromatograph (GC) equipped with a flame ionization detector. The analysis for formaldehyde is performed using high pressure liquid chromatography (HPLC) of 2,4-dinitrophenylhydrazine (DNPH) derivates using ultraviolet (UV) detection. The exhaust gas analytical system shall conform to the following requirements:

(b)(1) through (b)(2) [Reserved]. For guidance see § 86.111–91.

(b)(3) For petroleum-fueled diesel-cycle vehicles (and if selected, for methanol-fueled diesel-cycle vehicles) a continous THC sample shall be measured using a heated analyzer train as shown in Figure B90–5 (or B90–6). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter and a heated THC instrument (HFID) complete with heated pump, filter and flow control system.

(b)(3)(i) [Reserved]. For guidance see § 86.111–90.

(b)(3)(ii) The continuous THC sample system may use an "overflow" zero and span system; see § 86.140–82(b)(4). In this type of system (figures B82–3A and B82–4A), zero or span gas as introduced into the heated sample line at a flow rate that exceeds the sample flow rate to the HFID. The excess gas overflows the sample probe into the dilution tunnel. This method assures that the reference gas enters HFID in the same concentration as the injected reference gas and at the same rate as the sample exhaust gas. In addition to zero and span checks, it may also be used to calibrate the THC analyzer per § 86.121–82(b). The overflow gas flow rate into the sample line shall be greater than 125 percent of the HFID flow rate with the CVS blower operating. A lower flow rate may be used if it has been experimentally shown to produce equivalent results and current documentation is maintained. The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the dilution tunnel.

(iii) No other analyzers may draw a sample from the continuous THC sample probe, line or system, unless a common sample pump is used of all analyzers and the single sample line system design reflects good engineering practice.

(b)(3)(iv) through (b)(3)(vi) [Reserved]. For guidance see § 86.111–90.

(c) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

25. A new § 86.112–91 is added to subpart B to read as follows:

§ 86.112–91 Weighing chamber (or room) and microgram balance specifications.

Section 86.112–91 includes only text that specifies requirements that differ from § 86.112–82. Where a paragraph in § 86.112–82 is identical and applicable to § 86.112–91, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.112–82."

(a) introductory text through (a)(3) [Reserved]. For guidance see § 86.112–82.

(a)(4) It is required that two unused reference filters remain in the weighing room at all times in covered (to reduce dust contamination) but unsealed (to permit humidity exchange) petri dishes. These reference filters shall be placed in the same general area as the sample filters. These reference filters shall be weighed within 4 hours of, but preferably just prior to, the pre- and post-test sample filter weighings.

(5) If the weight of either of the reference filters changes between pre- and post-test sample filter weighings by more than +/−2.0 percent of the test average primary filter loading (recommended minimum of 0.5 milligrams) or +/−0.010 milligrams, whichever is greater, then the post-test sample filter weights are invalid. However, the post-test weighing procedure can be repeated to obtain valid weights within the time limits as specified in § 86.139.

(6) The reference filters shall be changed at least once per month, but never between pre- and post-test weighings of a given sample filter. The reference filters shall be the same size and material as the sample filters.

(b) [Reserved]. For guidance see § 86.112–82.

(c) *Other procedures and equipment.* Other procedures and equipment may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

26. A new § 86.114–94 is added to subpart B to read as follows:

§ 86.114–94 Analytical gases.

Section 86.114–94 includes only text that specifies requirements that differ from § 86.114–79. Where a paragraph in § 86.114–79 is identical and applicable to § 86.114–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.114–79."

(a) introductory text through (a)(1) [Reserved]. For guidance see § 86.114–79.

(a)(2) Gases for the THC analyzer shall be single blends of propane using air as the diluent.

(3) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

(4) Gases for NO_x analyzer shall be single blends of NO named as NO_x, with a maximum NO_2 concentration of 5 percent of the nominal value, using nitrogen as the diluent.

(5) Fuel for the evaporative emission enclosure FID and the methane analyzer shall be a blend of 40±2% hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

(6) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide and 0.1 ppm nitric oxide.

(7) "Zero grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(8) The use of precision blending devices (gas dividers) to obtain the required calibration, as defined below, is acceptable, provided that the calibration curves they produce name a calibration gas within 2 percent of its certified concentration. This verification shall be performed at between 15 and 50 percent of the full scale concentration of the range and shall be included with each gas calibration incorporating a blending device. Alternative procedures to verify the validity of the analyzer calibration curves generated using a gas divider are acceptable provided the procedures are approved in advance by the Administrator.

(b) Calibration gases shall be traceable to within 1 percent of NIST

(formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases shall be accurate to within 2 percent of true concentration, where true concentration refers to NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

27. A new § 86.116–94 is added to subpart B to read as follows:

§ 86.116–94 Calibrations, frequency and overview.

Section 86.116–94 includes only text that specifies requirements that differ from § 86.116–90. Where a paragraph in § 86.116–90 is identical and applicable to § 86.116–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.116–90."

(a) through (c) introductory text [Reserved]. For guidance see § 86.116–90.

(c)(1) Calibrate the THC analyzers (both evaporative and exhaust instruments), methane analyzer, carbon dioxide analyzer, carbon monoxide analyzer, oxides of nitrogen analyzer, methanol analyzer, and formaldehyde analyzer (certain analyzers may require more frequent calibration depending on particular equipment and uses).

(c)(2) through (d)(2) [Reserved]. For guidance see § 86.116–90.

(d)(3) Run a performance check on the dynamometer. This check may be omitted if the dynamometer has been calibrated within the preceding month.

(e) through (f) [Reserved]. For guidance see § 86.116–90.

28. Section 125–94 is added to subpart B to read as follows:

§ 86.125–94 Methane analyzer calibration.

Prior to introduction into service and monthly thereafter the methane analyzer shall be calibrated:

(a) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(b) Zero the methane analyzer with zero-grade air.

(c) Calibrate on each normally used operating range with CH_4 in air with nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

29. A new § 86.127–94 is added to subpart B to read as follows:

§ 86.127–94 Test procedures; overview.

The procedures described in this and subsequent sections are used to determine the conformity of vehicles with the standards set forth in subpart A for light-duty vehicles and light-duty trucks. Section 86.127–94 includes only text that specifies requirements that differ from § 86.127–90. Where a paragraph in § 86.127–90 is identical and applicable to § 86.127–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.127–90."

(a) introductory text [Reserved]. For guidance see § 86.127–90.

(a)(1) Gasoline exhaust THC, CO, CH_4 (for vehicles subject to the NMHC and OMNMHCE standards), NO_x, CO_2 (for petroleum-fueled vehicles), plus CH_3OH and HCHO for methanol-fueled vehicles (measurement of CH_3OH and HCHO may be obmitted for 1990 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring THC plus CH_3OH).

(2) Particulates.

(a)(3) [Reserved]. For guidance see § 86.127–90.

(b) The Otto-cycle exhaust emission test is designed to determine gaseous THC, CO, CO_2, CH_4, NO_x, and particulate mass emissions from gasoline-fueled and methanol-fueled Otto-cycle vehicles as well as methanol and formaldehyde from methanol-fueled Otto-cycle vehicles, while simulating an average trip in an urban area of 7.5 miles (12.1 kilometers). The test consists of engine startups and vehicle operation on a chassis dynamometer, through a specified driving schedule. A proportional part of the diluted exhaust is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

(c) The diesel-cycle exhaust emission test is designed to determine particulate and gaseous mass emissions during a test similar to the test in § 86.127(b). For petroleum-fueled diesel-cycle vehicles, diluted exhaust is continuously analyzed for THC using a heated sample line and analyzer; the other gaseous emissions (CH_4, CO, CO_2 and NO_x) are collected continuously for analysis as in § 86.127(b). For methanol-fueled vehicles, THC, methanol, formaldehyde, CO, CO_2, CH_4, and NO_x are collected continuously for analysis as in § 86.127(b). THC, methanol and formaldehyde are collected using heated sample lines, and a heated FID is used for THC analyses. Simultaneous with the gaseous exhaust collection and analysis, particulates from a proportional part of the diluted exhaust are collected continuously on a filter. The mass of particulate is determined by the procedure described in § 86.139. This testing requires a dilution tunnel as well as the constant volume sampler.

(d) through (e) [Reserved]. For guidance see § 86.127–90.

30. A new § 86.129–94 is added to subpart B to read as follows:

§ 86.129–94 Road load power test weight and inertia weight class determination.

Section 86.129–94 includes only text that specifies requirements that differ from § 86.129–80. Where a paragraph in § 86.129–80 is identical and applicable to § 86.129–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.129–80."

(a) Flywheels, electrical or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used.

Road load power at 5 mi/h—light-duty trucks	Test weight basis[1, 5]	Equivalent test weight (pounds)	Inertia weight class (pounds)
	Up to 1,062	1,000	1,000
	1,063 to 1,187	1,125	1,000
	1,188 to 1,312	1,250	1,250
	1,313 to 1,437	1,375	1,250
	1,438 to 1,562	1,500	1,500
	1,563 to 1,687	1,625	1,500

Road load power at 5 mi/h—light-duty trucks	Test weight basis[1, 5]	Equivalent test weight (pounds)	Inertia weight class (pounds)
	1,688 to 1,812	1,750	1,750
	1,813 to 1,937	1,875	1,750
	1,938 to 2,062	2,000	2,000
	2,063 to 2,187	2,125	2,000
	2,188 to 2,312	2,250	2,250
	2,313 to 2,437	2,375	2,250
	2,438 to 2,562	2,500	2,500
	2,563 to 2,687	2,625	2,500
	2,688 to 2,812	2,750	2,750
	2,813 to 2,937	2,875	2,750
	2,938 to 3,062	3,000	3,000
	3,063 to 3,187	3,125	3,000
	3,188 to 3,312	3,250	3,000
	3,313 to 3,437	3,375	3,500
	3,438 to 3,562	3,500	3,500
	3,563 to 3,687	3,625	3,500
	3,688 to 3,812	3,750	3,500
	3,813 to 3,937	3,875	4,000
	3,938 to 4,125	4,000	4,000
	4,126 to 4,375	4,250	4,000
	4,376 to 4,625	4,500	4,500
	4,626 to 4,875	4,750	4,500
	4,876 to 5,125	5,000	5,000
	5,126 to 5,375	5,250	5,000
	5,376 to 5,750	5,500	5,500
	5,751 to 6,250	6,000	6,000
	6,251 to 6,750	6,500	6,500
	6,751 to 7,250	7,000	7,000
	7,251 to 7,750	7,500	7,500
	7,751 to 8,250	8,000	8,000
	8,251 to 8,750	8,500	8,500
	8,751 to 9,250	9,000	9,000
	9,251 to 9,750	9,500	9,500
	9,751 to 10,000	10,000	10,000

[1] For all light-duty trucks except vans, and for heavy-duty vehicles optionally certified as light-duty trucks, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined below) rounded to the nearest ½ hp.

[5] For vans, the road power at 50 mi/h (horsepower) shall be 0.50 times B (defined below) rounded to the nearest ½ hp.

[6] B is the base vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft^2 which are anticipated to be sold on more than 33 pct of the car line. Frontal area measurements shall be computed to the nearest 10th of a square foot using a method approved in advance by the administrator.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9 of subpart A, test weight basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2 of subpart A. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.062–2 of subpart A.

[5] Light-duty vehicles over 5,770 lb loaded vehicle weight shall be tested at a 5,500 lb equivalent test weight.

(b) through (c) [Reserved]. For guidance see § 86.129–80.

31. A new § 86.135–94 is added to subpart B to read as follows:

§ 86.135–94 Dynamometer procedure.

Section 86.135–94 includes only text that specifies requirements that differ from § 86.135–90. Where a paragraph in § 86.135–90 is identical and applicable to § 86.135–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.135–90."

(a) *Overview.* The dynamometer run consists of two tests, a "cold" start test after a minimum 12-hour and a maximum 36-hour soak according to the provisions of §§86.132 and 86.133, and a "hot" start test following the "cold" start by 10 minutes. Engine startup (with all accessories turned off), operation over the UDDS, and engine shutdown make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air in the dilution tunnel as shown in Figure B90–5 and Figure B90–6. A dilution tunnel is not required for testing vehicles waived from the requirement to measure particulates. Six particulate samples are collected on filters for weighing; the first sample plus back-up is collected during the first 505 seconds of the cold start test; the second sample plus back-up is collected during the remainder of the cold start test (including shutdown); the third sample plus back-up is collected during the hot start test. Continuous proportional samples of gaseous emissions are collected for analysis during each test phase. For gasoline-fueled and methanol-fueled Otto-cycle vehicles, the composite samples collected in bags are analyzed for THC, CO, CO_2, CH_4, and NO_x. For petroleum-fueled diesel-cycle vehicles (optional for methanol-fueled diesel-cycle vehicles), THC from petroleum-fueled diesel-cycle vehicles is sampled and analyzed continuously according to the provisions of § 86.110. Parallel samples of the dilution air are similarly analyzed for THC, CO, CO_2, CH_4, and NO_x. For methanol-fueled diesel-cycle vehicles, bag samples are collected and analyzed for THC (if not sampled continuously), CO, CO_2, CH_4, and NO_x. Methanol and formaldehyde samples are taken for both exhaust emissions and dilution air (a single dilution air formaldehyde sample, covering the total test period may be collected). Parallel bag samples of dilution air are analyzed for THC, CO, CO_2, CH_4, and NO_x. Methanol and formaldehyde samples may be omitted for 1990 through 1994 model years when a FID calibrated on methanol is used.

(b) through (i) [Reserved]. For guidance see § 86.135–90.

32. A new § 86.137–94 is added to subpart B to read as follows:

§ 86.137–94 Dynamometer test run, gaseous and particulate emissions.

Section 86.137–94 includes only text that specifies requirements that differ from § 86.137–90. Where a paragraph in § 86.137–90 is identical and applicable to § 86.137–94, this is indicated by specifying the corresponding paragraph

and the statement "[Reserved]. For guidance see § 86.137–90."

(a) *General.* The vehicle shall be allowed to stand with the engine turned off for a period of not less than 12 hours or more than 36 hours before the cold start exhaust emission test. For gasoline-fueled and methanol-fueled Otto-cycle vehicles, the cold start exhaust test shall follow the diurnal breathing loss test by not more than one hour. The vehicle shall be stored prior to the emission test in such a manner that precipitation (e.g., rain or dew) does not occur on the vehicle. The complete dynamometer test consists of a cold start drive of 7.5 miles (12.1 km) and simulates a hot start drive of 7.5 miles (12.1 km). The vehicle is allowed to stand on the dynamometer during the 10 minute time period between the cold and hot start tests. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule including engine shutdown. The hot start test, similarly, consists of two periods. The first period, representing the hot start "transient" phase, terminates at the same point in driving schedule as the first period of the cold start test. The second period of the hot start test, "stabilized" phase, is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(b) introductory text through (b)(4) [Reserved]. For guidance see § 86.137–90.

(b)(5) Start the CVS (if not already on), the sample pumps (except the diesel particulate sample pump, if applicable), the temperature recorder, the vehicle cooling fan, and the heated THC analysis recorder (diesel-cycle only). (The heat exchanger of the constant volume sampler, if used, petroleum-fueled diesel-cycle THC analyzer continuous sample line and filter, methanol-fueled vehicle THC, methanol and formaldehyde sample lines, if applicable, should be preheated to their respective operating temperatures before the test begins).

(b)(6) introductory text [Reserved]. For guidance see § 86.137–90.

(b)(6)(i) For gaseous bag samples (except THC samples), the minimum flow rate is 0.17 cfm (0.08 1/sec).

(ii) For THC samples, the minimum FID (or HFID in the case of diesel-cycle and methanol-fueled Otto-cycle vehicles) flow rate is 0.066 cfm (0.031 1/sec).

(b)(6)(iii) through (b)(7) [Reserved]. For guidance see § 86.137–90.

(b)(8) Carefully install a particulate sample filter into each of the filter holders. The filters must be handled only with forceps or tongs. Rough or abrasive filter handling will result in erroneous weight determination.

(9) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the "transient" exhaust sample bag, the "transient" methanol exhaust sample, the "transient" formaldehyde exhaust sample, the "transient" dilution air sample bag, the "transient" methanol dilution air sample and the "transient" formaldehyde dilution air sample (turn on the petroleum-fueled diesel-cycle THC analyzer system integrator, mark the recorder chart, start particulate sample pump No. 1, and record both gas meter or flow measurement instrument readings, if applicable), turn the key on, and start cranking the engine.

(b)(10) through (b)(11) [Reserved]. For guidance see § 86.137–90.

(b)(12) Operate the vehicle according to the Urban Dynamometer Driving Schedule (§ 86.115).

Note: During particulate testing, adjust the flow rate through the particulate sample probe to maintain a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter or flow instrument inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate, or larger diameter filter, or both.

(b)(13) through (b)(14) [Reserved]. For guidance see § 86.137–90.

(b)(15) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and if applicable, turn off the hydrocarbon integrator No. 2, mark the hydrocarbon recorder chart, turn off the No. 2 particulate sample pump and close the valves isolating particulate filter No. 2, and position the sample selector valves to the "standby" position (and open the valves isolating particulate filter No. 1, if applicable). Record the measured roll or shaft revolutions (both gas meter or flow measurement instrumentation readings), and re-set the counter. As soon as possible, transfer the "stabilized" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. If applicable, carefully remove both pairs of particulate sample filters from their respective holders, and place each in a separate petri dish, and cover.

(b)(16) through (b)(24) [Reserved]. For guidance see § 86.137–90.

33. A new § 86.140–94 is added to subpart B to read as follows:

§ 86.140–94 Exhaust sample analysis.

Section 86–140–94 includes only text that specifies requirements that differ from § 86.140–90. Where a paragraph in § 86.140–90 is identical and applicable to § 86.140–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.140–90." The following sequence of operations shall be performed in conjunction with each series of measurements:

(a) For CO, CO_2, CH_4, NO_x, and for Otto-cycle and methanol-fueled diesel-cycle vehicle THC:

(a)(1) through (a)(4) [Reserved]. For guidance see § 86.140–90.

(a)(5) Measure THC, CO, CO_2, CH_4, and NO_x, concentrations of samples.

(a)(6) [Reserved]. For guidance see § 86.140–90.

(b) For petroleum-fueled diesel-cycle vehicle THC:

(b)(1) through (b)(4) introductory text [Reserved]. For guidance see § 86.140–90.

(b)(4)(i) Close heated valve in THC sample (see Figures B90–5 or B90–6), and allow gases to enter HFID. Extreme care should be taken not to introduce gases under high pressure.

(ii) Connect zero and span line directly to THC sample probe and introduce gases at a flow rate greater than 125 percent of the HFID flow rate with the CVS blower operating (see Figures B90–5 or B90–6). Excess flow must be allowed to exit probe inlet.

Note: In order to minimize errors, HFID flow rate and pressure during zero and span (and background bag reading) must be exactly the same as that used during testing.

(5) Continuously record (integrate electronically if desired) dilute THC emissions levels during test. Background samples are collected in sample bags and analyzed as in paragraphs (b)(4) (i) or (ii) of this section.

(6) Check zero and span as in § 86.140–90 (b)(1) through (b)(4) introductory text and (b)(4 (i) or (ii) of this section. If difference is greater than 2 percent of full scale, void test and check for THC "hangup" or electronic drift in analyzer.

(c) through (d) [Reserved]. For guidance see § 86.140–90.

(e) For CH_4 analysis:

(1) In the event that the procedure results in negative $NMHC_{mass}$ values (as may occur with high methane fractions), any negative $NMHC_{mass}$ value whose absolute value is less than 10 percent of the NMHC standard shall be rounded to zero. Negative $NMHC_{mass}$ values whose absolute value is more than 10 percent of the NMHC standard shall require sample remeasurement. If the 10 percent criterion cannot be met after remeasurement, the test will be void.

(2 Other sampling procedures may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

34. A new § 86.144–94 is added to subpart B to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

Section 86.144–94 includes only text that specifies requirements that differ from § 86.144–90. Where a paragraph in § 86.144–90 is identical and applicable to § 86.144–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.144–90." The final reported test results shall be computed by use of the following formula:

(a) For light-duty vehicles and light duty trucks:

$$Y_{mass} = 0.43\left(\frac{(Y_{ct}+Y_d)}{(D_{ct}+D_d)}\right) + 0.57\left(\frac{(Y_{ht}+Y_d)}{(D_{ht}+D_d)}\right)$$

Where:

(1) Y_{mass} = Weighted mass emissions of each pollutant, i.e., THC, CO, OMHCE, NMHC, OMNMHCE, NO_x or CO_2, in grams per vehicle mile.

(a)(2) through (b) introductory text [Reserved]. For guidance see § 86.144–90.

(b)(1) Total hydrocarbon mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times (HC_{conc}/1{,}000{,}000)$$

(b)(2) through (b)(6) [Reserved]. For guidance see § 86.144–90.

(b)(7) Organic material hydrocarbon equivalent mass:

$$OMHCE_{mass} = HC_{mass} + \frac{13.8756}{32.042}(CH_3OH_{mass}) + \frac{13.8756}{30.0262}(HCHO_{mass})$$

(8) Non-methane hydrocarbon mass:

$$NMHC_{mass} = V_{mix} \times Density_{NMHC} \times (NMHC_{conc}/1{,}000{,}000)$$

(9) Organic material non-methane hydrocarbon equivalent mass:

$$OMNMHCE_{mass} = NMHC_{mass} + \frac{13.8756}{32.042}(CH_3OH_{mass}) + \frac{13.8756}{30.0262}(HCHO_{mass})$$

(c) introductory text [Reserved]. For guidance see § 86.144–90.

(c)(1)(i) HC_{mass} = Total hydrocarbon emissions, in grams per test phase.

(ii) $Density_{HC}$ = Density of total hydrocarbon is 16.33 g/ft³ (0.5768 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) HC_{conc} = Total hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane × 3.

(c)(1)(iii)(B) [Reserved]. For guidance see § 86.144–90.

(c)(1)(iv)(A) HC_e = Total hydrocarbon concentration of the dilute exhaust sample or, for diesel-cycle (or methanol-fueled vehicles, if selected), average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated THC traces, in ppm carbon equivalent.

(c)(1)(iv)(B) [Reserved]. For guidance see § 86.144–90.

(c)(1)(v) FID HC_e = Concentration of total hydrocarbon plus methanol in dilute exhaust as measured by the FID, ppm carbon equivalent.

(c)(1) (vi) through (vii) [Reserved]. For guidance see § 86.144–90.

(c)(1)(viii)(A) HC_d = Total hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(c)(1)(viii)(B) [Reserved]. For guidance see § 86.144–90.

(c)(1)(ix) FID HC_d = Concentration of total hydrocarbon plus methanol in dilution air as measured by the FID, ppm carbon equivalent.

(c)(1)(x) through (c)(7) [Reserved]. For guidance see § 86.144–90.

(c)(8)(i) $NMHC_{conc} = HC_{conc} - CH_{4conc}$

(ii) $Density_{NMHC}$ = the density of non-methane hydrocarbon, is 16.33 g/ft³ (0.5768 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85 at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) CH_{4conc} = Methane concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent.

(B) $CH_{4conc} = CH_{4e} - CH_{4d} \times (1 - 1/DF)$

Where:

(iv) CH_{4e} = Methane exhaust bag concentration in ppm carbon equivalent.

(v) CH_{4d} = Methane concentration of the dilution air in ppm carbon equivalent.

(d) introductory text [Reserved]. For guidance see § 86.144–90.

(d)(1) For the "transient" phase of the cold start test assume the following:

V_o = 0.29344 ft³/rev; N = 10,485; R = 46.0 pct; R_a = 48.2 percent; P_B = 762 mm Hg; P_d = 22.225 mm Hg; P_i = 70 mm Hg; Tp = 570 °R; HC_w = 106.8 ppm, carbon equivalent; NO_{Xa} = 11.2 ppm; CO_{ma} = 306.6 ppm; CO_{2a} = 1.43 percent; CH_{4a} = 10.74 ppm; HC_d = 12.1 ppm; NO_{Xd} = 0.8 ppm; CO_{da} = 15.3 ppm; CO_{2d} = 0.032 percent; CH_{4d} = 2.20 ppm; D_{ct} = 3.598 miles.

Then:

(d)(1)(i) through (d)(1)(xiv) [Reserved]. For guidance see § 86.144–90.

BEST COPY AVAILABLE

(d)(1)(xv) $CH_{4_{corr}}$=10.74−2.2(1−1/9.116)=8.78 ppm.

(xvi) $NMHC_{corr}$=95.03−8.78=86.25 ppm.

(xvii) $NMHC_{mass}$=(2595) (16.33) (86.25)/1,000,000=3.655 grams per test phase.

(d)(2) introductory text through (d)(2)(v) [Reserved]. For guidance see § 86.144–90.

(d)(2)(vi) $NMHC_{mass}$=0.50 grams per test phase.

(d)(3) introductory text through (d)(3)(v) [Reserved]. For guidance see § 86.144–90.

(d)(3)(vi) $NMHC_{mass}$=0.44 grams per test phase.

(d)(4) introductory text through (d)(4)(iv) [Reserved]. For guidance see § 86.144–90.

(d)(4)(v) $NMHC_{FM}$=0.43 [(3.655+0.50)/(3.598+3.902)]+0.57(0.44+0.50)/(3.598+3.902)]=0.310 grams per vehicle mile.

(e) introductory text [Reserved]. For guidance see § 86.144–90.

(e)(1) For the "transient" phase of the cold start test assume the following:

V_s=0.29344 ft^3/rev; N=10,485; R=48.0 pct; R_a=48.2 percent; P_B=762 mm Hg; P_d22.225 mm Hg; P_t=70 mm Hg; Tp=570 °R; FID HC_a=81.6 ppm, carbon equivalent; r=0.75; C_{CH3OHR}=71 μg/ml; T_{BM}=567 °R; A_{CH3OHR}=3660; V_{BM}=1.18 ft^3; A_{gt}=4460; AV_{gt}=25.2 ml; A_{gt}=360; AV_{gt}=24.9 ml; T_{DM}=532 °R; V_{DM}=1.17 ft^3; A_{Dt}=110; AV_{Dt}=25.0 ml; A_{Dt}=10; AV_{Dt}=25.1 ml; C_{FDE}=20 μg/ml; V_{AR}=5.0 ml; Q=0.1429; T_{BP}=569 °R; V_{BE}=0.30 ft^3; C_{FDA}=1 μg/ml; V_{AA}=5.0 ml; T_{DP}=532 °R; V_{BA}=0.31 ft^3; NO_{Xa}=11.2 ppm; CO_{ma}=306.8 ppm; CO_{2a}=1.43 pct; CH_{4a}=10.74 ppm; FID HC_a=12.1 ppm; NO_{Xd}=0.8 ppm; CO_{dm}=15.3 ppm; CO_{2d}=0.032 percent; CH_{4d}=2.20 ppm; D_{ef}=3.598 miles.

Then:

(e)(1)(i) through (e)(1)(xxiii) [Reserved]. For guidance see § 86.144–90.

(e)(1)(xxiv) $CH_{4_{corr}}$=10.74−2.20(1−1/8.350)=8.80 ppm.

(xxv) $NMHC_{4_{corr}}$=29.34 ppm−8.80 ppm=20.54 ppm.

(xxvi) $NMHC_{mass}$=(2595.0) (16.33) (20.54/1,000,000)=0.870 grams per test phase.

(xxvii) $OMNMHCE_{mass}$=0.860+(13.8756/32.042) (5.43)+(13.8756/30.0262) (0.1275)=3.28 grams per test phase.

(e)(2) introductory text through (e)(2)(v) [Reserved]. For guidance see § 86.144–90.

(e)(2)(vi) OMNMHCE=0.50 grams per test phase.

(e)(3) introductory text through (e)(3)(v) [Reserved]. For guidance see § 86.144–90.

(e)(3)(vi) OMNMHCE=0.44 grams per test phase.

(e)(4) introductory text through (e)(3)(iv) [Reserved]. For guidance see § 86.144–90.

(e)(4)(v) OMNMHCE=0.43 [(3.28+0.50)/(3.598+3.902)]+0.57 [(0.44+0.55)/(3.598+3.902)]=0.292 grams as carbon equivalent per mile.

35. A new subpart H is added to part 86 to read as follows:

Subpart H—General Provisions for In-Use Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

Sec.

86.701–94 General applicability.
86.702–94 Definitions.
86.703–94 Abbreviations.
86.704–94 Section numbering; contruction.
86.705–94 through 86.707–94 [Reserved]
86.706–94
86.707–94
86.708–94 In-use emission standards for 1994 and later model year light duty vehicles.
86.708–2004 In-use emission standards for 2004 and later model year light duty vehicles.
86.709–94 In-use emission standards for 1994 and later model year light duty trucks.
86.709–2004 In-use emission standards for 2004 and later model year light duty trucks.

Subpart H—General Provisions for In-Use Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

§ 86.701–94 General applicability.

The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart.

§ 86.702–94 Definitions.

The definitions in subpart A and B of this part apply to this subpart.

§ 86.703–94 Abbreviations.

The abbreviations in subparts A and B of this part apply to this subpart.

§ 86–704–94 Section numbering; construction.

§ 86.104 of subpart B of this part applies to this subpart.

§§ 86.705–94 through 86.707–94 [Reserved]

§ 86.708–94 In-use emission standards for 1994 and later model year light duty vehicles.

Section 86.708–94 includes only text that specifies requirements that differ from § 86.090–8 of subpart A of this part. Where a paragraph in § 86.090–8 is identical and applicable to § 86.708–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8". Where a corresponding paragraph of § 86.090.8 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) *Standards* (i) In-use exhaust emissions from 1994 and later model year light-duty vehicles shall meet all standards in Tables H94–3 and H94–4 in the rows designated with the applicable fuel type, according to the implementation schedules in Tables H94–1 and H94–2, and shall meet all standards in Tables H94–6 and H94–7 in the rows designated with the applicable fuel type, according to the implementation schedules in Table H94–5, as follows:

(A)(*1*)(*i*) For model years 1994 and 1995, a minimum of the percentage shown in Table H94–1 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1_1 standards in Table H94–3. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94–3 and H94–4.

(*ii*) For model years 1996 and beyond, a minimum of the percentages shown in Table H94–2 of a manufacturer's sales of the applicable model year's light duty vehicles shall not exceed the applicable Tier 1 standards in Table H94–3 and H94–4. The remaining vehicles, if any, shall not exceed the applicable Tier 1_1 standards in Table H94–3.

(*2*) *Particulates.* For in-use exhaust emissions for 1994 and later, a minimum of the percentage shown in Table H94–5 of a manufacturer's sales of the applicable model year's light duty vehicles shall not exceed the applicable Tier 1 standards in Tables H94–6 and H94–7. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94–6 and H94–7.

(B)(*1*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*)(*i*) For 1994 and 1995 model year light-duty vehicles, the engine families which comprise the required implemented schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NO_x for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1996 and 1997 model year light-duty vehicles the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) and final in-use standards (labelled "Tier 1" in the tables of in-use standards respectively, for HCs, CO, and NO_x, for in-use purposes, shall be designated by the manufacturer at the time of Application for Certification.

(*iii*) For 1994 and 1995 model year light-duty vehicles, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for puposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labelled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufacturer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentage.

(*4*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE H94–1.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_x

Model year	Tier 1_1 percentage
1994	40
1995	80
1996	80
1997	20
After 1997	0

TABLE H94.2.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_x

Model year	Tier 1 percentage
1994	0
1995	0
1996	40
1997	80
After 1997	100

TABLE H94–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_x

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	Tier 0	0.41				3.4	1.0
Gasoline	Tier 1_1	0.41	0.32			3.4	0.4
Gasoline	Tier 1_1	0.41	0.25			3.4	0.4
Diesel	Tier 0	0.41				3.4	1.0
Diesel	Tier 1_1	0.41	0.32			3.4	1.0
Diesel	Tier 1_1	0.41	0.25			3.4	1.0
Methanol	Tier 0			0.41		3.4	1.0
Methanol	Tier 1_1			0.41	0.32	3.4	0.4
Methanol	Tier 1_1			0.41	0.25	3.4	0.4

TABLE H94 4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NO_x

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	Tier 0						
Gasoline	Tier 1		0.31			4.2	0.60
Diesel	Tier 0						
Diesel	Tier 1		0.31			4.2	1.25
Methanol	Tier 0						
Methanol	Tier 1				0.31	4.2	0.60

TABLE H94.5.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR PM

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE H94–6.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	[1] 0.20
Methanol	Tier 1	0.08

TABLE H94–7.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.10
Diesel	Tier 0	
Diesel	Tier 1	0.10
Methanol	Tier 0	
Methanol	Tier 1	0.10

[1] Applicable only to diesel-cycle vehicles.

(ii) Engine families participating in the particulate averaging program as specified in § 86.094–8(a)(1)(ii) shall be subject, for purposes of in-use compliance, to the particulate family emission limit determined for that engine family for certification purposes, in lieu of the appropriate particulate standard shown in the tables of in-use standards in this section.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight.

(b) through (i) [Reserved]. For guidance see § 86.090–8.

§ 86.709–94 In-use emission standards for 1994 and later model year light duty vehicles.

Section 86.709–94 includes only text that specifies requirements that differ from § 86.090–8 of subpart A of this part. Where a paragraph in § 86.090–8 is identical and applicable to § 86.709–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8". Where a corresponding paragraph of § 86.090–8 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1)(i) In-use exhaust emissions from 2004 and later model year light-duty vehicles shall meet all standards in Tables H04–1 and H04–2 in the rows designated with the applicable fuel type.

(ii)(A) Vehicles subject to the standards of paragraph (a)(1)(i) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(B) A manufacturer cannot use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight.

TABLE H04–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0.41	0.25			2.4	0.4	0.08
Diesel	0.41	0.25			2.4	0.4	0.08
Methanol			0.41	0.25	2.4	0.4	0.08

TABLE H04–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline		0.31			4.2	0.6	0.10
Diesel		0.31			4.2	0.6	0.10
Methanol				0.31	4.2	0.6	0.10

(b) through (i) [Reserved]. For guidance see § 86.090–8.

§ 86.709–94 In-use emission standards for 1994 and later model year light-duty trucks.

Section 86.709–94 includes only text that specifies requirements that differ from § 86.091–9 of subpart A of this part. Where a paragraph in § 86.091–9 is identical and applicable to § 86.709–94, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–9". Where a corresponding paragraph of § 86.091–9 is not applicable, this is indicated by the statement "[Reserved]".

(a)(1) *Standards* (i) *Light light-duty trucks.* In-use exhaust emissions from 1994 and later model year light light-duty trucks shall meet all standards in Tables H94–9 and H94–10 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedule in Table H94–8, and shall meet all standards in Tables H94–12 and H94–13 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedule in Table H94–11, as follows:

(A)(*1*)(*i*) For model year 1994 and 1995, a minimum of the respective percentages shown in the Tier 1_1 column of Table H94–8 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1_1 standards in Table H94–9. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94–9 and H94–10.

(*ii*) For model years 1996 and 1997, a minimum of the percentages shown in the Tier 1 percentage column of Table H94–8 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table H94–9 and H94–10, and the remaining vehicles, if any, shall not exceed the applicable Tier 1_1 standards in Tables H94–9.

(*iii*) For model year 1998 and beyond, a minimum of the percentage shown in the Tier 1 percentage column of Table H94–8 of a manufacturer's sales of the applicable model year's light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94–9 and H94–10.

(*2*) *Particulates.* For in-use exhaust emissions for 1994 and later, a minimum of the percentage shown in Table H94–11 of a manufacturer's sales of the applicable model year's light duty vehicles shall not exceed the applicable Tier 1 standards in Table H94–12 and H94–13. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94–12 and H94–13.

(B)(*1*) Sales percentages for the purposes of determining compliance with paragraphs (a)(1)(i)(A) of this section shall be based on total actual U.S. sales of light light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that light light-duty trucks sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*)(*i*) For 1994 and 1995 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NO_x, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1996 and 1997 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) and final in-use standards (labelled "Tier 1" in the tables of in-use standards) respectively, for HCs, CO, and NO_x, for in-use purposes, shall be designated by the manufacturer at the time of certification.

(*iii*) For 1995 and 1996 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labelled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufacturer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentages.

(*4*) A manufacturer cannot use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE H94–8.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_x

Model year	Tier 1_1 percentage	Tier 1 age
1994	40	0
1995	80	0
1996	60	40
1997	20	80
1998	0	100

TABLE H94–9.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_x

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	0–3750	Tier 0	0.80				10	1.2
Gasoline	0–3750	Tier 1_1	0.80	0.32			5.2	0.4
Gasoline	0–3750	Tier 1	0.80	0.25			3.4	0.4
Gasoline	3751–5750	Tier 0	0.80				10	1.7
Gasoline	3751–5750	Tier 1_1	0.80	0.41			6.7	0.7
Gasoline	3751–5750	Tier 1	0.80	0.32			4.4	0.7
Diesel	0–3750	Tier 0	0.80				10	1.2
Diesel	0–3750	Tier 1_1	0.80	0.32			5.2	1.2
Diesel	0–3750	Tier 1	0.80	0.25			3.4	1.0
Diesel	3751–5750	Tier 0	0.80				10	1.7
Diesel	3751–5750	Tier 1_1	0.80	0.41			6.7	1.7
Diesel	3751–5750	Tier 1	0.80	0.32			4.4	0.97
Methanol	0–3750	Tier 0			0.80		10	1.2
Methanol	0–3750	Tier 1_1			0.80	0.32	5.2	0.4
Methanol	0–3750	Tier 1			0.80	0.25	3.4	0.4
Methanol	3751–5750	Tier 0			0.80		10	1.7
Methanol	3751–5750	Tier 1_1			0.80	0.41	6.7	0.7
Methanol	3751–5750	Tier 1			0.80	0.32	4.4	0.7

TABLE H94–10.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCS, CO AND NO_x

Fuel	LVW (lbs)	Standards	THC[1]	NMHC	OMHCE[1]	OMNMHCE	CO	NO_x
Gasoline	0–3750	Tier 0	0.80				10	1.2
Gasoline	0–3750	Tier 1	0.80	0.31			4.2	0.60
Gasoline	3751–5750	Tier 0	0.80				10	1.7
Gasoline	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Diesel	0–3750	Tier 0	0.80				10	1.2
Diesel	0–3750	Tier 1	0.80	0.31			4.2	1.25
Diesel	3751–5750	Tier 0	0.80				10	1.7
Diesel	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Methanol	0–3750	Tier 0			0.80		10	1.2
Methanol	0–3750	Tier 1			0.80	0.31	4.2	0.60
Methanol	3751–5750	Tier 0			0.80		10	1.7
Methanol	3751–5750	Tier 1			0.80	0.40	5.5	0.97

[1] Full useful life is 11 years or 120,000 miles, whichever occurs first.

TABLE H94-11.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Model year	Tier 1 percentage
1994	0
1995	40
1996	80
After 1996	100

TABLE H94-12.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0-3750	Tier 0	
Gasoline	0-3750	Tier 1	0.08
Gasoline	3751-5750	Tier 0	
Gasoline	3751-5750	Tier 1	0.08
Diesel	0-3750	Tier 0	0.26
Diesel	0-3750	Tier 1	0.08
Diesel	3751-5750	Tier 0	0.13
Diesel	3751-5750	Tier 1	0.08
Methanol	0-3750	Tier 0	
Methanol	0-3750	Tier 1	0.08
Methanol	3751-5750	Tier 0	
Methanol	3751-5750	Tier 1	0.08

TABLE H94-13.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0-3750	Tier 0	
Gasoline	0-3750	Tier 1	0.10
Gasoline	3751-5750	Tier 0	
Gasoline	3751-5750	Tier 1	0.10
Diesel	0-3750	Tier 0	0.26
Diesel	0-3750	Tier 1	0.10
Diesel	3751-5750	Tier 0	0.13
Diesel	3751-5750	Tier 1	0.10
Methanol	0-3750	Tier 0	
Methanol	0-3750	Tier 1	0.10
Methanol	3751-5750	Tier 0	
Methanol	3751-5750	Tier 1	0.10

(ii) *Heavy light-duty trucks.* In-use exhaust emissions from 1994 and later model year heavy light-duty trucks shall meet all standards in Tables H94-15 and H94-16 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedule in Table H94-14, and shall meet all standards in Tables H94-18 and H94-19 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedules in Table H94-17, as follows:

(A) (*1*)(*i*) For model years 1994 through 1997, a minimum of the percentage shown in the Tier 1_1 column of Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1_1 standards in Table H94-15. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94-15 and H94-16.

(*ii*) For model year 1998, a minimum of the percentage shown in Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-15 and H94-16. The remaining vehicles shall not exceed the applicable Tier 1_1 standards in Table H94-15.

(*iii*) For model years 1999 and later, a minimum of the percentage shown in Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-15 and H94-16.

(*2*) *Particulates.* For in-use exhaust emissions for model year 1994 and later, a minimum of the percentage shown in Table H94-17 of a manufactuer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-18 and H94-19. The remaining vehicles, if any, shall not exceed the applicable Tier 0 Standards in Tables H94-18 and H94-19.

(B) (*1*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(ii)(A) of this section shall be based on total actual U.S. sales of heavy light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that heavy light-duty trucks sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded from the calculation.

(*2*)(*i*) For 1996 and 1997 model year heavy light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NO_x, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1996 model year heavy light-duty trucks the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labelled "Tier 1_1" in the tables of in-use standards) and final in-use standards (labelled "Tier 1" in the tables of in-use standards) for HCs, CO, and No_x, for in-use purposes, shall be designated by the manufactuer at the time of certification.

(*iii*) For 1996 model year heavy light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labelled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufactuer must state, based on projected sales at the time of Application for Certification, which families will be used to attain the required implementation schedule sales percentages.

(*4*) A manufactuer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE H 94-14.—IMPLEMENTATON SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Model year	Tier 1 percentage	Tier 1_1 percentage
1994	0 percent	0 percent.
1995	0 percent	0 percent.
1996	0 percent	50 percent.
1997	0 percent	100 percent.
1998	50 percent	50 percent.
After 1998	100 percent	0 percent.

TABLE H94-15.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	0-3670		Tier 0	0.80				10	1.2
Gasoline	>3750		Tier 0	0.80				10	1.7
Gasoline		3751-5750	Tier 1_1	0.80	0.40			5.5	0.86
Gasoline		3751-5750	Tier 1	0.80	0.32			4.4	0.7
Gasoline		>5750	Tier 1_1	0.80	0.49			6.2	1.36

TABLE H94-15.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x—Continued

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline		>5750	Tier 1	0.80	0.39			5.0	1.1
Diesel	0-3570		Tier 0	0.80				10	1.2
Diesel	>3750		Tier 0	0.80				10	1.7
Diesel	0-3750	3751-5750	Tier 1_1	0.80	0.40			5.5	1.2
Diesel	>3750	3751-5750	Tier 1_1	0.80	0.40			5.5	1.7
Diesel		3751-5750	Tier 1	0.80	0.32			4.4	0.98
Diesel	0-3750	>5750	Tier 1_1	0.80	0.49			6.2	1.2
Diesel	>3750	>5750	Tier 1_1	0.80	0.49			6.2	1.7
Diesel		>5750	Tier 1	0.80	0.39			5.0	1.53
Methanol	0-3750		Tier 0	0.80				10	1.2
Methanol	>3750		Tier 0	0.80				10	1.7
Methanol		3751-5750	Tier 1_1			0.80	0.40	5.5	0.86
Methanol		3751-5750	Tier 1			0.80	0.32	4.4	0.7
Methanol		>5750	Tier 1_1			0.80	0.49	6.2	1.36
Methanol		>5750	Tier 1			0.80	0.39	5.0	1.1

TABLE H94-16.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x
Gasoline	0-3750		Tier 0	0.80				10	1.2
Gasoline	>3750		Tier 0	0.80				10	1.7
Gasoline		3751-5750	Tier 1	0.80	0.46			6.4	0.98
Gasoline		>5750	Tier 1	0.80	0.56			7.3	1.53
Diesel	0-3750		Tier 0	0.80				10	1.2
Diesel	>3750		Tier 0	0.80				10	1.7
Diesel		3751-5750	Tier 1	0.80	0.46			6.4	0.98
Diesel		>5750	Tier 1	0.80	0.56			7.3	1.53
Methanol	0-3750		Tier 0			0.80		10	1.2
Methanol	>3750		Tier 0			0.80		10	1.7
Methanol		3751-5750	Tier 1			0.80	0.46	6.4	0.98
Methanol		>5750	Tier 1			0.80	0.56	7.3	1.53

TABLE H94-17.—IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Model year	Tier 1 percentage
1994	0
1995	0
1996	50
After 1996	100

TABLE H94-18.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasoline	0-3750		Tier 0	
Gasoline	>3750		Tier 0	
Gasoline		3751-5750	Tier 1	0.10
Gasoline		>5750	Tier 1	0.12
Diesel	0-3750		Tier 0	0.26
Diesel	>3750		Tier 0	0.13
Diesel		3751-5750	Tier 1	0.10
Diesel		>5750	Tier 1	0.12
Methanol	0-3750		Tier 0	
Methanol	>3750		Tier 0	
Methanol		3751-5750	Tier 1	0.10
Methanol		>5750	Tier 1	0.12

TABLE H94-19.—FULL USEFUL LIFE STANDARD (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasoline	0-3750		Tier 0	
Gasoline	>3750		Tier 0	

TABLE H04–19.—FULL USEFUL LIFE STANDARD (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasoline		3751–5750	Tier 1	0.10
Gasoline		>5750	Tier 1	0.12
Diesel	0–3750		Tier 0	0.26
Diesel	>3750	0	Tier 0	0.13
Diesel		3751–5750	Tier 1	0.10
Diesel		>5750	Tier 1	0.12
Methanol	0–3750		Tier 0	
Methanol	>3750		Tier 0	
Methanol		3751–5750	Tier 1	0.10
Methanol		>5750	Tier 1	0.12

(iii) Exhaust emissions of carbon monoxide from 1994 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only).

(iv)(A) Engine families participating in the applicable NO_x averaging program as specified in § 86.094–9(a)(1)(iv)(A) shall be subject, for purposes of in-use compliance, to the NO_x family emission limit determined for that engine family for certification purposes, in lieu of the appropriate NO_x standard shown in the tables of in-use standards in this section.

(B) Engine families participating in the applicable particulate averaging program as specified in § 86.094–9 (a)(1)(iv)(B) shall be subject, for purposes of in-use compliance, to the particulate family emission limit determined for that engine family for certification purposes, in lieu of the appropriate particulate standard shown in the tables of in-use standards in this section.

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, and for heavy light-duty trucks certified to the Tier 0 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks certified to the Tier 1 or Tier 1$_1$ standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) through (c) [Reserved]. For guidance see § 86.091–9.

(d) The CO, NO_x and particulate standards set forth in § 86.091–9 (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv), respectively, are applicable only to vehicles certified to the Tier 0 standards of paragraphs (a)(1)(i) and (a)(1)(ii) of this section. The HC, OMHCE and idle CO standards set forth in § 86.091–9 (d)(1)(i)(A), (d)(1)(i)(B) and (d)(1)(ii)(B), respectively, are applicable to all light-duty trucks.

(d)(1) through (g) [Reserved]. For guidance see § 86.091–9.

§ 86.709–2004 In-use emission standards for 2004 and later model year light-duty trucks.

Section 86.709–2004 includes only text that specifies requirements that differ from § 86.091–9 of subpart A of this part. Where a paragraph in § 86.091–9 is identical and applicable to § 86.709–2004, this is indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–9". Where a corresponding paragraph of § 86.091–9 is not applicable, that is indicated by the statement "[Reserved]".

(a)(1)(i)(A) *Light light-duty trucks.* In-use exhaust emissions from 2004 and later model year light light-duty trucks shall meet all standards in Tables H04–3 and H04–4 in the rows designated with the applicable fuel type and loaded vehicle weight.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(i)(A) of this section shall be all actual U.S. sales of light light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(*2*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE H04–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750		0.25			3.4	0.4	0.08
Gasoline	3751–5750		0.32			4.4	0.7	0.08
Diesel	0–3750		0.25			3.4	0.4	0.08
Diesel	3751–5750		0.32			4.4		0.08
Methanol	0–3750				0.25	3.4	0.4	0.08
Methanol	3751–5750				0.32	4.4	0.7	0.08

TABLE H 04–4.— FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NO_x	PM
Gasoline	0–3750	0.80	0.31			4.2	0.6	0.10
Gasoline	3751–5750	0.80	0.40			5.5	0.97	0.10
Diesel	0–3750	0.80	0.31			4.2	0.6	0.10
Diesel	3751–5750	0.80	0.40			5.5	0.97	0.10
Methanol	0–3750			0.80	0.31	4.2	0.6	0.10
Methanol	3751–5750			0.80	0.40	5.5	0.97	0.10

[1] Full useful life is 11 years or 120,000 miles, whichever occurs first.

(ii)(A) *Heavy light-duty trucks.* In-use exhaust emissions from 2004 and later model year heavy light-duty trucks shall meet all standards in Tables H04–5 and H04–6 in the rows designated with the applicable fuel type and adjusted load vehicle weight.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(ii)(A) of this section shall be all actual U.S. sales of heavy light-duty trucks of the applicable model year by a manufacturer to an ultimate purchaser or dealer, with the exception that vehicles sold in California, or in any other jurisdiction that adopts the California standards through the provisions of section 177 of the Clean Air Act as amended in 1990 are excluded.

(*2*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the full useful life standards.

TABLE H04–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750		0.32			4.4	0.7	0.10
Gasoline	>5750		0.39			5.0	1.1	0.12
Diesel	3751–5750		0.32			4.4		0.10
Diesel	>5750		0.39			5.0		0.12
Methanol	3751–5750				0.32	4.4	0.7	0.10
Methanol	>5750				0.39	5.0	1.1	0.12

TABLE H04–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NO_x	PM
Gasoline	3751–5750	0.80	0.46			6.4	0.98	0.10
Gasoline	>5750	0.80	0.56			7.3	1.53	0.12
Diesel	3751–5750	0.80	0.46			6.4	0.98	0.10
Diesel	>5750	0.80	0.56			7.3	1.53	0.12
Methanol	3751–5750			0.80	0.46	6.4	0.98	0.10
Methanol	>5750			0.80	0.56	7.3	1.53	0.12

(iii) Exhaust emissions of carbon monoxide from 2004 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only).

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) through (c) [Reserved]. For guidance see § 86.091–9.

(d) The HC, OMHCE and idle CO standards set forth in paragraphs (d)(1)(i)(A), (d)(1)(i)(B) and (d)(1)(ii) of this section, respectively, are applicable to all light-duty trucks.

(1) Model year 2004 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the CO, NO_x and particulate standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section when tested under high altitude conditions. Such trucks shall also be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i)(A) Hydrocarbons (for petroleum-fueled Otto-cycle and diesel light-duty trucks). 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(B) Organic Material Hydrocarbon Equivalent (for methanol-fueled Otto-cycle and diesel light-duty trucks). 1.0 gram per vehicle mile (0.62 gram per vehicle kilometer).

(ii) Carbon Monoxide. 0.50 percent of exhaust gas flow at curb idle (for Otto-cycle and methanol-fueled diesel light duty trucks only).

(2) The standards set forth in paragraph (d)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii) of this section refers to the exhaust emitted at curb idle and measured and

calculated in accordance with the procedures set forth in subpart P of this part.

(e) through (g) [Reserved]. For guidance see § 86.091–9.

[FR Doc. 91–3972 Filed 3–6–91; 8:45 am]
BILLING CODE 4830–01–M

federal register

Thursday
March 7, 1991

Part III

Department of Health and Human Services

Office of Human Development Services

Head Start Public and Indian Housing Child Care Demonstration Project; Grants and Cooperative Agreements; Availability Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. ACYF-HS 13.600-91-1]

Head Start Public and Indian Housing Child Care Demonstration Project; Grants and Cooperative Agreements; Availability

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS).

ACTION: Announcement of supplemental financial assistance to Head Start grantees to increase the availability of child care services for residents of public and Indian housing developments.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces that applications from Head Start grantees will be accepted to establish full-day child care services in or near public or Indian housing developments so that the low-income parents or guardians of children residing in public or Indian housing may seek, retain or train for employment.

DATES: The closing date for receipt of applications is May 6, 1991.

ADDRESSES: Submit applications to: Head Start Bureau/HUD Child Care Demonstration Project, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue SW., Hubert H. Humphrey Building, room 341F.2, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Clayton D. Roth, Jr., P.O. Box 1182, Head Start Bureau, Washington, DC 20201, Telephone number: (202) 245-0604.

SUPPLEMENTARY INFORMATION:

Part I General Information

A. Background

This announcement solicits applications from current Head Start grantees operating programs in or near public or Indian housing developments that wish to compete for a portion of the $4,859,000 in grant funds that are available under the Department of Housing and Urban Development's Public Housing Child Care Demonstration Program. These funds are intended for the establishment of child care facilities located in or near public or Indian housing developments so that the low-income parents or guardians of infants, preschool or school-aged children may seek, retain or train for employment.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to preschool children of low-income families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 548,470 children through a network of 1,300 grantees.

The Department of Housing and Urban Development (HUD) is making $4,859,000 available to help Head Start grantees establish full-day child care services for the residents of public or Indian housing developments. All of these funds will be awarded through a competitive process to agencies that are currently Head Start grantees.

Head Start grantees may use these demonstration funds to initiate services or to expand current service hours in one or more centers in order to provide child care in or near public or Indian housing developments. This announcement anticipates that a likely use of the HUD funds will be to provide "wrap-around" child care services. Wrap-around child care services means added hours and days of service can be provided to children already enrolled in a part-day Head Start program. In addition to providing extended child care service hours to Head Start enrollees, the HUD funds (but not Head Start funds) may be used to initiate child care services for both Head Start eligible and non-Head Start eligible children who are residents of a public or Indian housing development, including infants, older children who need before and/or after-school care, and the siblings of Head Start children. These funds may also be used for minor renovations of child care facilities located in or near public or Indian housing developments.

HUD has transferred these demonstration funds to ACYF, which will make grant awards to successful applicants. Grants will be awarded for a period of 17 months. The funds to be awarded are exempt from the non-Federal share requirement.

As current Head Start programs plan major expansions in enrollment, they should contact their local Public Housing Agency or Indian Housing Authority to discuss ways in which Head Start might better serve residents of public or Indian housing developments. These could include applying for the child care demonstration funds to be awarded under this announcement and using them along with Head Start expansion funds to locate new Head Start classrooms in or near public or Indian housing developments.

C. Statutory Authority

42 U.S.C. 9831, et seq.—The Head Start Act; as amended
31 U.S.C. 1535—The Economy Act
Public Law 100-628, 1002—Stewart B. McKinney Homeless Assistance Act, sections as amended
Public Law 100-242, § 117—Housing and Community Development Act of 1987, Public Housing Child Care Demonstration Program
Public Law 98-181, 222—The Housing and Urban Rural Recovery Act of 1983

D. Available Funds

This announcement solicits applications from Head Start grantees that wish to apply for a portion of the $4,859,000 in grant funds that are available under HUD's Public Housing Child Care Demonstration Program. Applicants must be current Head Start grantees that wish to establish or expand one or more full-day child care centers located in or near public or Indian housing developments.

Head Start grantees may decide to directly operate one or more full-day child care centers or they may establish a delegate agency arrangement with a Resident Council/Resident Management Corporation or another non-profit agency supported by the local Public Housing Agency or Indian Housing Authority which will operate one or more full-day child care centers. Head Start grantees may also consider developing cooperative agreements with nonprofit organizations which have family-based child care facilities which meet State and local licensing standards. Family-based facilities may be in the homes of one or more residents of a public or Indian housing development.

Within the framework of a competitive grant review process, consideration will be given to an equitable distribution of the grants between urban, Tribal and rural areas. The Departments of HUD and Health and Human Services (HHS) will ensure that at least several of these centers are located in rural areas.

Individual grants awarded under this announcement shall not exceed $300,000 to ensure that funds are provided to as large a number of Head Start grantees and as many public and Indian housing developments as possible. It should be noted that, while a grantee may apply for funds to establish or expand services in more than one center, no single center will be funded for more than $150,000 for the purpose of this demonstration project. The grants are intended to cover operating expenses or one-time renovation costs and will be funded for a period of 17 months.

Part II HHS and HUD Special Requirements for Joint Project

Current Head Start grantees that are interested in beginning a full-time child care program, or in expanding their service hours to a full-day child care program, and that operate programs in or near a public or Indian housing development, are encouraged to apply for these funds. Interested Head Start grantees must adhere to the following HHS/HUD requirements when developing a proposal:

(1) With respect to projects intending to establish new facilities, the Head Start grantee must consult with the appropriate Public Housing Agency (PHA) or Indian Housing Authority (IHA) and, where they exist, the Resident Council/Resident Management Corporation (RC/RMC) as to the feasibility of locating a full-day child care center for public and Indian housing residents within or near the public or Indian housing development.

If the center is to be located in a public or Indian housing development, the Head Start grantee must reach an agreement with the PHA or IHA under which the PHA or IHA will provide suitable facilities to the Head Start grantee for the provision of full-day child care services at nominal or no cost.

(2) A child care service program which serves the same age children as the proposed program must not currently be in operation in the targeted public or Indian housing developments.

(3) Funds may only be used for operating expenses and minor renovations of centers necessary to provide child care services.

(a) Operating expenses include planning and development costs, administration, leasing of equipment, maintenance, minor or routine repairs, security, utilities, furnishings, equipment and supplies, insurance, staff salaries, etc.

If grant funds are to be used for operating expenses for a full-day child care center, applications must explain how operating expenses will continue to be funded on an ongoing basis, without HUD or Head Start funds, after the conclusion of the demonstration.

(b) Minor renovations include the reconfiguration of space; installation of bathrooms or kitchens; renovations necessary to achieve compliance with physical accessibility standards for the disabled or required to meet State, Tribal or local licensing and building code standards; landscaping; painting; and lighting. Minor renovation does not include the cost associated with lead-based paint abatement.

(4) Applicants may consider generating income from the child care services provided by charging families reasonable fees for services not provided under the Head Start Program. These fees may be based on a sliding fee scale that corresponds to the parent's income.

(5) The full-day child care services program must:

(a) Hire center staff who have received appropriate training or have experience in early childhood education and, to the extent practicable, provide opportunities for the employment of residents from the public or Indian housing development area, especially elderly residents;

(b) Involve the parents of children benefiting from such program, to the extent practicable, as volunteers in the classroom; and

(c) Comply with all applicable State, Tribal and local laws, regulations and ordinances and, during the portion of the day that Head Start services are provided, comply with all Head Start Performance Standards.

Part III Specific Responsibilities of the Applicant

In carrying out the proposed full-day child care program under this announcement, applicants should:

(1) Demonstrate that there is a need for assistance. All applicants must clearly document the need for providing child care services for infants, preschool or school-aged children who reside in a public or Indian housing development. The application should demonstrate how the child care services will assist the parents or guardians of these children to seek, retain or train for employment.

(2) Indicate how they will identify families and children who are in need of full-day child care services in the public or Indian housing development.

(3) Identify which public or Indian housing development the applicant is proposing to serve and the ages of the children proposed for full-day child care. The application should also explain how it will give priority to serving children residing in the development.

(4) Demonstrate that the public or Indian housing community will benefit from the full-day child care services provided.

(5) Demonstrate the involvement of the RC/RMC, parents and other community members in the development and planning of the application.

(6) Demonstrate that the Head Start grantee, in conjunction with a RC/RMC or other non-profit organization where applicable, has the ability and experience to administer a full-day child care program.

(7) Explain how the new full-day child care services will be implemented in a timely and efficient manner. This includes explaining how eligible children and families will be recruited and assuring the availability of classroom space which meets required licensing standards. Explain how the full-day child care center will be operational within a reasonable period of time during the demonstration phase.

(8) Indicate what types of cooperative arrangements have been made with the RC/RMC or other non-profit organization and local public or Indian housing authorities or agencies which will assist the applicant in providing quality full-day child care services.

(9) Demonstrate how qualified staff (who have received appropriate training or have experience in early childhood education) will be hired and, to the extent practicable, provide opportunities for the employment of residents from the public or Indian housing development area, especially elderly residents.

(10) Provide a reasonable staffing pattern and identify all proposed staff, their proposed salary rates and the periods for which they will be employed.

(11) Explain how quality full-day child care services will continue to be provided at a reasonable cost at the end of the demonstration period.

(12) Explain what other resources in the community will help support the proposed full-day child care program, including letters of commitment.

Part IV Criteria for Review and Evaluation of the Grant Application

The following are the criteria for review and evaluation of the grant applications which the Departments of HHS and HUD will use in selecting Head Start grantees for participation in this HHS/HUD demonstration project.

1. Objectives and Need for Assistance (15 points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate

objectives of the project; and provides supporting documentation or other testimonies from concerned interests other than the applicant.

Information provided in response to part II, (2) and part III, (1) and (2) will be used to review and evaluate applicants on the above criterion.

2. Results or Benefits Expected (30 points)

The extent to which the application identifies results and benefits to be derived and describes the anticipated contribution to policy, practice, theory and/or research.

Information provided in response to part II, 5 (a) and (b) and part III, (4) will be used to review and evaluate applicants on the above criterion.

3. Approach (25 points)

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project; details how the proposed work will be accomplished and lists each organization, consultant, and other key individuals who will work on the project, along with a short description of the nature of their effort or contribution; and details a plan for employing residents of the applicant's proposed service area.

Information provided in response to part II (5)(c) and part III, (5), (6), (7), (8), (9), and (10) of this announcement will be used to review and evaluate applicants on the above criterion. Applicant should discuss the extent of involvement of RC/RMC or resident entities in program design and implementation in conjunction with PHA/IHA.

4. Geographic Location (15 points)

The extent to which the application gives a precise location of the project and area to be served by the proposed project and describes the families to be served.

Information provided in response to part II, (1) and part III, (3) of this announcement will be used to review and evaluate applicants on the above criterion.

5. Budget Appropriateness and Reasonableness (15 points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes.

Information provided in response to part II, (3) and (4) and part III, (10), (11) and (12) of this announcement will be used to review and evaluate applicants on the above criterion.

Part V Application Process

A. Availability of Forms

Eligible Head Start agencies interested in applying for funds must submit all of the required forms included at the end of this announcement.

In order to be considered for a Head Start grant under this announcement, an application must be submitted on the Standard Form 424 which has been approved by the Office of Management and Budget (OMB) under Control Number 0348–0043. A copy has been provided (see appendix B). Each application must be signed by an individual authorized to act for the Head Start grantee and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Appendix C contains certification forms regarding drug free workplace, debarment, and lobbying. Only the certification regarding lobbying must be signed and returned with the application. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions contained in the application kit.

B. Applicotion Submission

One signed original and two copies of the grant application, including all attachments, are required. The program announcement number (ACYF–HS 13.600–91–1) must be clearly identified on the application.

C. Application Consideration

Applicants will be scored against the evaluation criteria described above. The review will be conducted in Washington, DC. Reviewers will be selected from lists of public and Indian housing specialists, including National Organizations such as, National Association of Housing Redevelopment and Housing Officials (NAHRHO), Council of Large Public Housing Agencies (CLPHA), National American Indian Housing Council (NAIHC), National Association of Resident Management Corporations (NARMC) and Public Housing Agency Directors Association (PHADA), and persons knowledgeable about the Head Start program and early childhood education and development, including parents of Head Start children, Federal staff, and other experts such as university staff or staff of child development projects.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau; and the Assistant Secretary, Office of Public and Indian Housing, who, in consultation with ACYF and HUD Regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on relative need for services, applicant ranking, geographic location and funds available.

The Commissioner may elect not to fund Head Start grantees that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective full-day child care services. The Commissioner may also elect not to provide funding to Head Start grantees experiencing problems in providing quality services. The degree of community support will be considered when selecting among applicants whose rankings are similar. Projects in Tribal, rural and urban areas will be selected.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, and the total project period for which support is provided.

D. Receipt of Applications

1. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the OHDS Grants and Contracts Management Division, or

b. Sent on or before the deadline date, and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. Applications Submitted by Other Means

Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date. Hand delivered applications will be accepted at the HDS Grants and Contracts Management Division during the normal working hours of 8:30 am. to 5:00 pm., Monday through Friday.

3. Late Applications

Applications which do not meet one of these criteria are considered as late applications. The Head Start Bureau will notify each late applicant that its application will not be considered.

4. Extension of Deadline

The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the Head Start Bureau does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for HDS grant applications under OMB Control Number 0348–0043.

F. Executive Order 12372—Notification Process

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under Executive Order 12372, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these nine areas need take no action regarding Executive Order 12372. Applications for projects to be administered by Federally-recognized Indian Tribes also are exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16.

SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. The comment period for State processes will end on [insert date 120 days from publication date] to allow time for HDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., room 341F.2, Hubert H. Humphrey Building, Washington, DC 20201. OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of SPOCs for each State and territory is included at Appendix A at the end of this announcement.

G. Effective Date

Successful applications shall be funded no later than 90 days after the close of the application period as published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: January 9, 1991.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: January 28, 1991.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Appendix A.—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Tel. (205) 284–8905

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Tel. (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Tel. (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Tel. (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Tel. (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Tel. (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV 89710, Tel. (702) 687 4420, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Sante Fe, New Mexico 87503, Telephone (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Tel. (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734–0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 538–1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Tel. (206) 753–4978

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Tel. (608) 266–0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, Nos. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774–0750

BILLING CODE 4130–01–M

APPENDIX B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)
6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ – ☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BEST COPY AVAILABLE

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

APPENDIX C

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services(HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction. " provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions
(To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

[FR Doc. 91-5309 Filed 3-6-91; 8:45 am]
BILLING CODE 4130-01-C

federal register

Thursday
March 7, 1991

Part IV

Department of Education

Vocational Rehabilitation Services; Notice of Final Funding Priorities and Invitations for New Awards for Fiscal Year 1991; Notices

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration; Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps; Vocational Rehabilitation Service Program for American Indians With Handicaps

AGENCY: Department of Education.

ACTION: Combined notice of final funding priorities for fiscal year 1991.

SUMMARY: The Secretary announces final funding priorities for fiscal year 1991 for service activities to be supported under the following programs of the Rehabilitation Services Administration (RSA):

—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps
—Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps
—Vocational Rehabilitation Service Program for American Indians with Handicaps

EFFECTIVE DATE: These final priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The contact person listed after the final priorities for each of the programs.

SUPPLEMENTARY INFORMATION: On September 17, 1990, the Secretary published a notice of proposed priorities in the **Federal Register** (55 FR 38214). Based upon comments received from the public in response to these proposed priorities, some changes have been made.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 16 parties submitted comments. An analysis of the comments and of the changes in the priorities follows for each program.

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

Priority 1—Specific Learning Disabilities

Nine comments were received on this priority. Overall, these comments were supportive of the priority. However, the commenters stated that certain elements of the priority must be modified in order to achieve the intent of the priority.

Comments: Five comments were received related to the mandatory use of peer support groups in the implementation of the priority. While all of these commenters agreed with the development and use of peer support groups as one mechanism for providing support services, they questioned the requirement that peer support groups must be used to assist in providing the range of support services described in the priority.

One of the five commenters questioned the feasibility and clinical advisability of using peer support groups as an exclusive service delivery mechanism because current peer support groups generally are not skilled in providing the services to be developed by the priority. Similarly, another of the commenters stated that the range of support services described in the priority reflects new concepts that require the skills of professionals for effective implementation. This commenter also pointed out that the process of fulfilling the goals and objectives of a specific grant may run counter to the intent of a peer support group that is formed to meet the specific needs of its changing membership. One of the commenters noted that those members of peer support groups who might have the skills to assist in the provision of services often terminate their membership in those groups because they have outgrown the need for the services that the group provides. One of the commenters suggested that, instead of requiring the use of peer support groups as service providers, the priority should encourage their use for this function "when possible." Another of the five commenters stated that, by focusing only on service delivery through peer support groups, the priority falls short of meeting the broader need for development of a range of support services with a variety of providers.

Discussion: The Secretary agrees that the priority is too restrictive in requiring the use of peer support groups in the provision of all services and should have a broader focus that includes the use of peer support groups as one of a number of support services that can be used to assist in the provision of services.

Changes: The language of the priority has been modified to eliminate the requirement that peer support groups must assist in the provision of all project support services and to clarify that peer support groups may be used as one of the support service strategies to be demonstrated by the project.

Comments: One commenter suggested that the priority require projects to use representatives of peer support groups and professionals who have learning disabilities in an advisory or other functional capacity.

Discussion: The Secretary agrees that it is beneficial for persons with learning disabilities to serve in an advisory or other functional capacity to projects responding to this priority.

Changes: Language has been added to the priority to require that persons with learning disabilities be involved in the development and implementation of the project.

Comments: Two commenters expressed concern that support services were to be provided only to persons with specific learning disabilities who are enrolled in vocational training or education programs. One commenter stated that support services should be provided to persons with specific learning disabilities who are involved in employment settings in addition to the settings stated in the priority. The other commenter stated that support strategies developed and provided in educational or training settings are not transferable to the work environment for persons with specific learning disabilities.

Discussion: The Secretary agrees that persons with specific learning disabilities who are in employment situations may have a critical need for support services, including persons who have relied on support services in an educational setting, and for whom such services are not transferable to their working environment. These persons should not lose the benefits of those services upon entering employment.

Changes: The priority has been expanded to include the provision of support services to persons with specific learning disabilities who are in employment settings, including individuals who are making the transition from school to work.

Comments: Three commenters suggested that the persons to receive the support services implemented by the project be expanded beyond students with specific learning disabilities who are making the transition from school to work. One of these commenters stated that services also should be provided for persons who have been recently employed, because experience has shown that this group can reap benefits in terms of long-term employment if they are receiving support services. Another of the commenters, while agreeing that there is a need for services to assist persons with learning disabilities to make the transition from school to work, expressed the hope that projects under this priority would not be limited to serving only those in transition. The third commenter suggested that the reference in the priority to "students" be broadened to "persons."

Discussion: The Secretary notes that the priority as stated requires that support services be provided during the transition process beginning with the application for vocational rehabilitation services and continuing through the post-employment phase. The Secretary acknowledges that while persons currently involved in transition from school to work can benefit from the development of effective strategies that would support their progress through the vocational rehabilitation process, other vocational rehabilitation applicants or clients with specific learning disabilities, such as school dropouts or adults who are experiencing continuing difficulty in maintaining suitable employment, can also benefit from project services.

Changes: The language referring to transition from school to work has been deleted from the priority, and the term "students" has been replaced with the more inclusive term "persons." The phrase "transition process" has been replaced with "vocational rehabilitation process". Further, language has been added to the priority to clarify that the target population under this priority includes persons with specific learning disabilities who are applicants for or recipients of vocational rehabilitation services.

Comments: Two commenters suggested organizations other than peer support groups that would be appropriate for developing and implementing support services for persons with learning disabilities. One of these commenters suggested that the services listed in the priority could be provided by personnel in rehabilitation facilities. The other commenter suggested use of community-based independent living centers for organizing and providing the services described in the priority. This commenter stated that the liaison between community-based independent living centers, vocational training programs, and educational programs would enhance the long-term capability of a community to provide needed support services for persons with specific learning disabilities.

Discussion: The Secretary agrees that the kinds of organizations cited by the commenters would be appropriate providers of the support services described in the priority. The Secretary believes that the priority as revised now allows a variety of agencies to develop their own methodologies for providing project services. With respect to the requirement that projects promote the use of collaborative activities between facilities and other community-based resources, the Secretary believes that the term "facilities" includes rehabilitation facilities and the term "community-based resources" includes independent living centers. Thus, no further clarification is needed.

Changes: None.

Comments: One commenter stated that there appeared to be little reference in the priority to the involvement of family members, such as parents or siblings.

Discussion: The Secretary believes that the language of the priority allows the involvement of family members in the provision of support services to persons with specific learning disabilities.

Changes: None.

Comments: One commenter suggested identifying local related resources for coordinating project efforts.

Discussion: The Secretary believes that the language of the priority regarding the use of collaborative activities between facilities and other community-based resources adequately addresses this issue.

Changes: None.

Comments: One commenter suggested that the support services described in the priority should also include the provision of individual and group counseling because current research has begun to document the need for counseling services as a support service for this population.

Discussion: The Secretary agrees with the commenter that individual and group counseling may be beneficial to persons with specific learning disabilities. The Secretary believes that because the focus of the priority is on persons with specific learning disabilities who are applying for or receiving vocational rehabilitation services, counseling will be provided by the vocational rehabilitation counselor as an integral part of those services. However, the Secretary acknowledges that persons with specific learning disabilities who are applying for or receiving vocational rehabilitation services may need additional counseling services that differ in focus and content from the counseling provided by the vocational rehabilitation counselor.

Changes: The priority has been modified to indicate that other support services not specifically mentioned in the priority can be provided, if appropriate to the needs of persons with specific learning disabilities.

Comments: One commenter suggested that the population being targeted to receive support services include persons with a dual diagnosis who need support services like those described in the priority.

Discussion: The intent of the priority is to address the needs of persons who are primarily disabled by specific learning disabilities. The Secretary believes that the priority as stated does not preclude providing support services for persons with specific learning disabilities who also have other disabilities or diagnoses.

Changes: None.

Comment: One commenter wanted to know what criteria will be used to define "severe handicaps."

Discussion: The definition of "an individual with severe handicaps" in 34 CFR 369.4 of the program regulations is an individual—(1) Who has a severe physical or mental disability that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, work tolerance, or work skills) in terms of employability; (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, and end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

Changes: None.

Priority 2—Long-term Mental Illness

Three comments were received on this priority. Generally, the commenters were supportive, but made suggestions for modifications.

Comment: One commenter suggested that the long-term effects of this priority would be enhanced by involving Regional Information Exchange (RIE) projects funded by the National Institute on Disability and Rehabilitation Research (NIDRR) for the purpose of facilitating the increased collaboration between traditional rehabilitation facilities and psychosocial or other programs. According to this commenter, several RIEs have identified exemplary programs demonstrating the positive results achieved by psychosocial programs providing vocational rehabilitation services. Exchanges of information between an exemplary model and a program interested in modification would facilitate long-term changes in service delivery.

Discussion: The Secretary agrees that programs experienced in providing exemplary services are excellent resources for other programs seeking to expand or improve their services. The Secretary believes that the priority as stated does not preclude the involvement of RIE projects in implementing the priority. The Secretary believes further that the decision to involve RIE projects should be left to the discretion of applicants responding to this priority.

Changes: None.

Comment: One commenter, while supportive of a priority to encourage collaboration between psychosocial rehabilitation agencies and traditional rehabilitation facilities, took exception to the statement in the priority description that psychosocial rehabilitation agencies do not provide appropriate vocational rehabilitation services. The commenter further stated that psychosocial rehabilitation agencies have been a major source of vocational rehabilitation for persons with mental illness for many years, and have developed a great deal of knowledge and experience in implementing transitional employment, work crews, agency-run businesses, and work adjustment training programs.

Discussion: The Secretary acknowledges the important contribution that psychosocial rehabilitation agencies have made in developing, implementing, and evaluating a wide array of vocational rehabilitation services that have been very effective for persons with long-term mental illness. However, the Secretary understands that not all models of psychosocial rehabilitation incorporate vocational rehabilitation services and that not all psychosocial rehabilitation facilities have implemented the community-based employment practices developed by the field. The Secretary believes that the proposed priority offers an opportunity to facilitate the development of those services for programs interested in doing so and provides a mechanism for responding to the recommendation of the *Best Practice Study of Vocational Rehabilitation Services to Severely Mentally Ill Persons*, referenced under the priority for long-term mental illness.

Changes: The priority has been modified to acknowledge the contribution of psychosocial rehabilitation agencies to the development of effective vocational rehabilitation practices for persons with long-term mental illness.

Comments: None.

Discussion: During the process of reviewing this priority in response to other comments received, it was discovered that the notice of proposed priorities stated that traditional rehabilitation facilities lack the resources to address the "psychological" needs of individuals with long-term mental illness. The use of the term "psychological" was inadvertent; instead the term "psychosocial" should have been used.

Changes: The term "psychological" has been replaced with the term "psychosocial."

Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers With Handicaps

Comments: Two comments were received in response to this priority. One commenter emphasized the need to recognize the family unit that often participates in migratory farmwork. This respondent called for special analytical activities to determine the degree to which placement is in a setting other than migratory farmwork and the extent to which this action "separates" the individual from his or her family unit. Similarly, a second commenter indicated that the attempt to place migratory and seasonal farmworkers in non-agricultural jobs that are in fixed locations may not be a feasible goal since many migrant Mexican workers spend the winter in Mexico where their families have remained. On the other hand, this commenter considered the inclusion of medical and preventive services and addressing health issues as a part of vocational rehabilitation to be a positive aspect of the stated priority.

Discussion: The Secretary appreciates the problem cited by the two respondents; i.e., the placement of migrant workers in nonagricultural employment may require both the family and the individual worker to settle in a different location. However, the Secretary believes that, because of the danger to the health and life of individuals with disabilities who continue to engage in migratory farmwork, the movement from a migratory lifestyle to a safer and more stable lifestyle will ultimately be of greater long-term benefit to both the farmworker and the family unit.

While the priority requires projects to develop alternative employment options for this population as part of their overall program, project participants who choose to remain in migratory or seasonal farmwork can continue to receive program services.

Changes: None.

Vocational Rehabilitation Service Program for American Indians With Handicaps

Seven comments were received in response to this priority.

Comments: Four commenters from protection and advocacy organizations supported the allocation of funding to the Vocational Rehabilitation Service Programs for American Indians with Handicaps. All four commenters were supportive of the priority itself; however, two of the four expressed concern that projects that are either in their final year of funding or were previously funded under this program may not be selected for funding in fiscal year 1991. One of these commenters suggested that priority be given to applicants who have been previously funded under this program since they would have the capacity to implement a project with this focus in a shorter period of time because of their experience in offering vocational rehabilitation services to Native Americans with disabilities.

Discussion: Section 130(b)(4) of the Rehabilitation Act of 1973, as amended, provides that "in making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part." The Secretary interprets this statutory provision as requiring him to give priority consideration to any applicant that was ever funded under Part D of the Rehabilitation Act of 1973.

Changes: None.

Comments: One commenter fully supported the priority but recommended that the improvement in the professional skills of vocational staff be extended to all staff working with American Indians in vocational rehabilitation. The commenter also suggested that the training should be culturally sensitive and include linguistics issues.

Discussion: The purpose of the program is to provide vocational rehabilitation services to American Indians with handicaps living on reservations. While the program does provide for the training of project staff to the extent that the training is relevant to the purpose of the program, it does not provide for the training of staff who have no project affiliation. The Secretary believes that staff training could include training on cultural sensitivity and linguistics issues.

Changes: None.

Comments: Two commenters indicated that the priority focused too narrowly on one population of individuals in need of vocational rehabilitation services. One of the commenters cited a wide range of disabilities that affected this American Indian population as much as or to a greater extent than alcoholism and recommended that the priority be modified to emphasize service to American Indians with disabilities most prevalent in the specific geographical area to be served by the project. The second commenter expressed concern that the Vocational Rehabilitation Program for American Indians with Handicaps will become an alcohol rehabilitation program and that the kind of focus called for by the priority would force projects to concentrate on one disability and limit their ability to serve a greater variety of disability groups. This commenter also expressed the need for more training in alcohol counseling for vocational rehabilitation professionals who are serving clients with alcohol dependency.

Discussion: The Secretary appreciates the comments of the two commenters concerning the scope of this priority. However, the priority does not call for the selection of alcohol-dependent clients over all others. The intent of the priority is to ensure that the special needs of this disability group are served by requiring that projects establish, as one part of a total program, a component that addresses the needs of this group. Projects that seek funding under this priority are expected to serve all disability groups.

Changes: None.

Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary sets aside funds and gives an absolute preference to applications that respond to one of the final priorities described in this notice for fiscal year 1991. An absolute preference is one that permits the Secretary to select for funding only those applications proposing projects that meet one of these priorities.

The publication of these final priorities does not bind the United States Department of Education to fund projects in any or all of these services areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

The following final priorities represent areas in which RSA plans to support service activities through grants in three programs. Brief descriptions of these three programs follow.

The program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps is authorized by title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. Under this discretionary grant program, Federal support may be provided to States and public and other nonprofit agencies and organizations to expand or otherwise improve rehabilitation services to individuals with severe handicaps.

The Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps, authorized by title III, section 312 of the Rehabilitation Act of 1973, as amended, provides grants to State and local vocational rehabilitation agencies for vocational rehabilitation services to migratory agricultural workers with handicaps or seasonal farmworkers with handicaps.

The Vocational Rehabilitation Service Program for American Indians with Handicaps, authorized by title I, section 130 of the Rehabilitation Act of 1973, as amended, provides grants to Indian tribes and tribal consortia for vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations.

Final Priorities for the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps

Priority 1—Specific Learning Disabilities

In 1987, the Rehabilitation Services Administration awarded an evaluation contract to Berkeley Planning Associates to assess the rehabilitation efforts made by State vocational rehabilitation agencies, and identify changes needed to expand and improve the nature, scope, and quality of services, to persons with severe learning disabilities. Berkeley Planning Associates published a report in 1989 that identified a number of program areas in the vocational rehabilitation service delivery system that needed improvement. After release of the report, the Rehabilitation Services Administration established an internal workgroup to identify issues of concern pertaining to the provision of services to persons with specific learning disabilities. The recommendations of both the Berkeley Planning Associates report and the Specific Learning Disabilities Workgroup indicated that the work of State vocational rehabilitation agencies could be improved by providing services in the areas of peer support groups, self-advocacy skills, social skills training, and specialized support for persons with specific learning disabilities in vocational training, educational programs, or employment settings.

In order to improve services to persons with specific learning disabilities who are applying for or receiving vocational rehabilitation services, priority will be given to projects that propose to implement models of support services in the provision of rehabilitation services to individuals with specific learning disabilities. The project must provide a range of support services appropriate to the needs of individuals with specific learning disabilities that includes, but is not limited to, a combination of the following: use of peer support groups, self advocacy and consumer advocacy skills training, disability awareness, interpersonal and social skills development training, and specialized support for persons with learning disabilities in vocational or educational programs or employment settings. These services must be provided during the entire vocational rehabilitation process, beginning with the application for vocational rehabilitation services and continuing through the post-employment phase. The project must involve representatives of peer support groups or other individuals with learning disabilities in an advisory or functional capacity. The project must develop, after the award, strategies to promote the use of collaborative activities between facilities and other community-based resources in serving this disability population.

The project must demonstrate an appropriate approach to service delivery, the specific outcomes to be pursued and measured, and the methods to be used to evaluate the effectiveness of that approach.

Priority 2—Long-term Mental Illness

The Rehabilitation Services Administration supported a study titled *Best Practice Study of Vocational*

Rehabilitation Services to Severely Mentally Ill Persons that identified the lack of support services for persons with long-term mental illness as a significant barrier to improving their employment outcomes. The study recommended that the Rehabilitation Services Administration encourage State vocational rehabilitation agencies to use psychosocial rehabilitation facilities in an effort to reduce this barrier. Psychosocial rehabilitation agencies have made an important contribution to the rehabilitation of persons with long-term mental illness through the development of support services such as housing and monitoring of medication. Psychosocial rehabilitation agencies also have developed an array of vocational rehabilitation services that has historically been effective with persons who have long-term mental illness. However, State vocational rehabilitation agencies report that individual psychosocial rehabilitation facilities vary in their emphasis on and capacity to provide community-based vocational rehabilitation services developed by the psychosocial rehabilitation field. On the other hand, while traditional rehabilitation facilities currently serve a growing segment of individuals with long-term mental illness, they often lack the resources necessary to address the psychosocial needs of these individuals. Therefore, this priority promotes collaboration between vocational rehabilitation providers and psychosocial rehabilitation agencies as both facilities seek to develop or expand their capacities to provide effective vocational rehabilitation and other support services to persons with long-term mental illness.

In order to improve outcomes for individuals with long-term mental illness, priority will be given to projects that demonstrate a local, community-based approach to providing services to individuals with long-term mental illness. The project must develop, evaluate, and implement, after the award, strategies that provide for—(1) Increased collaboration between traditional rehabilitation facilities and psychosocial and other programs that effectively serve individuals with long-term mental illness; (2) improvement in the knowledge and skills of staff in accessing and collaborating with available community resources and facilities; and (3) a variety of support services, including vocationally focused follow-up services after job placement.

The project must demonstrate an appropriate approach to service delivery, the specific outcomes to be pursued and measured, and the methods to be used to evaluate the effectiveness of that approach.

FOR FURTHER INFORMATION CONTACT: Richard Mallia, Ph.D., Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3324 Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1400; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Final Priority for the Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers With Handicaps

RSA data do not provide an adequate or accurate measure of the impact of vocational rehabilitation services for migratory and seasonal farmworkers (MSFWs). However, from the latest report on MSFWs completed in September 1987, RSA learned that from the clients' perspective, the most important benefit of the vocational rehabilitation program is the receipt of medical services, including both physical restoration and diagnostic services. Few clients felt that increased employability s one of the major benefits of the vocational rehabilitation services they had received. Although the MSFWs who were rehabilitated expected their jobs to last longer, the evidence suggests that the long-term benefits are difficult to measure. Although rehabilitation may involve movement into a non-agricultural occupation, these jobs are usually low-skilled ones in service industries.

Field work, irrigating, cultivating, and harvesting require strenuous physical labor, repetitive motion, the use of power equipment, working in poor weather conditions, and exposure to agricultural chemicals. The very nature of these jobs puts the MSFWs with handicaps at greater risk of becoming ill or sustaining injuries.

The traditional model of vocational rehabilitation services does not focus on two important issues faced in the rehabilitation of MSFWs. These issues are: (1) The role of prevention in addressing the health aspects of farmworker disability and (2) the rehabilitation of MSFWs in nonagricultural jobs that are fixed in location. Increased program attention is needed to develop effective strategies to expand employment options for MSFWs with handicaps.

Priority will be given to those projects that develop and implement effective methods to expand MSFWs' employment options to jobs other than migratory and seasonal farmwork. Projects must develop and implement a vocational rehabilitation training model that focuses on providing skills training in high demand occupations in a fixed location. The project must develop strategies that provide a full range of services, including guidance and counseling; preventive education in addressing the health aspects of farmworker and other employment-related disabilities; vocational retraining that includes assistance in improving English language skills, as needed, as part of an integrated program; work evaluation; and individual skill or competencies development leading to alternative job placements outside of migratory and seasonal farmwork.

FOR FURTHER INFORMATION CONTACT: Edward Hofler, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3318 Switzer, Washington, DC 20202-2649. Telephone: (202) 732-1332; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Final Priority for the Vocational Rehabilitation Service Program for American Indians With Handicaps

A 1987 study of the problems and needs of American Indians with handicaps indicates that certain types of health and educationally related disabilities are disproportionately represented in the American Indian population, accounting for much of the disparity in the disability status between American Indians and other individuals. Alcoholism is a major contributor to death and disability among American Indians. American Indians are three times more likely to be hospitalized for alcohol dependency than individuals from the general population. Between the ages of 15 through 34 years, American Indians are over 11 times more likely to die due to alcoholism when compared to the death rate for all races.

Priority will be given to projects that develop a component of their overall vocational rehabilitation service program to establish appropriate linkages with alcohol treatment centers and counseling services for American Indians with alcohol dependency. Projects must include strategies that create or augment a vocational rehabilitation component that assists American Indians with alcohol dependency to obtain competitive employment. The project must develop and implement appropriate strategies that will increase cooperation with

support resources and treatment centers such as those provided through the Indian Health Service, the Bureau of Indian Affairs, other government detoxification centers, and other acute care facilities utilized in the rehabilitation process. The project must also include strategies that support improvements in the professional skills of vocational rehabilitation staff, including counselors, to enhance the overall services available to alcohol-dependent American Indians. The project must also coordinate activities among respective State agencies, Rehabilitation Continuing Education Programs, Rehabilitation Research and Training Centers, and other established rehabilitation resources that enhance the provision of vocational rehabilitation services and increase opportunities for gainful employment.

For further information contact: Edward Hofler, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer, Washington, DC, 20202-2649. Telephone: (202) 732-1332; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Intergovernmental review: The program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps and the Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

(29 U.S.C. 777a(a)(1), 777b, and 750)

(Catalog of Federal Domestic Assistance Numbers: 84.235, Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps; 84.128G, Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers with Handicaps; and 84.128H, Vocational Rehabilitation Service Program for American Indians with Handicaps)

Dated: March 1, 1991.

Ted Sanders,

Acting Secretary of Education.

[FR Doc. 91-5313 Filed 3-6-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235]

Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals With Severe Handicaps; Invitations for Applications for New Awards for Fiscal Year (FY) 1991

Purpose of program: To provide support to States and other public and nonprofit agencies and organizations to expand or otherwise improve rehabilitation services to individuals with severe handicaps.

Eligible applicants: States and public and nonprofit agencies and organizations are eligible to apply for awards under this program.

Deadline for transmittal of applications: April 30, 1991.

Deadline for intergovernmental review: July 1, 1991.

Applications available: March 15, 1991.

Available funds: $992,000.

Estimated range of awards: $80,000-150,000.

Awards are to be made in two priority categories. Specific information regarding the estimated funds and number of awards for each priority appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) the regulations for this program in 34 CFR parts 369 and 373.

The priorities in the notice of final priorities for this program, as published in this issue of the **Federal Register**, also apply.

For applications or information contact: Bruce Rose, U.S. Department of Education, 400 Maryland Avenue SW., room 3332, Switzer Building, Washington, DC 20202-2649. To request an application, call (202) 732-1351; to receive further information, call (202) 732-1325; deaf and hearing-impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Authority: 29 U.S.C. 777a(a)(1).

Dated: March 1, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

PROGRAM OF SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO INDIVIDUALS WITH SEVERE HANDICAPS

CFDA No.	Priority areas	Estimated average size of awards	Estimated number of awards
84.235A	Specific learning disabilities	$140,000	4
84.235B	Long-term mental illness	$140,000	3

[FR Doc. 91-5314 Filed 3-6-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.128G]

Vocational Rehabilitation Service Projects Program for Migratory Agricultural and Seasonal Farmworkers With Handicaps; Invitation for Applications for New Awards for Fiscal Year (FY) 1991.

Purpose of program: To provide grants to State or local vocational rehabilitation agencies for vocational rehabilitation services to migratory agricultural workers with handicaps or seasonal farmworkers with handicaps.

Eligible applicants: State vocational rehabilitation agencies or local agencies administering a vocational rehabilitation program under written agreements with State agencies are eligible to apply for awards under this program. A State agency may, if it chooses, enter into an agreement with the State vocational rehabilitation agencies of one or more other States to develop a cooperative program for the provision of vocational rehabilitation services.

Deadline for transmittal of applications: April 30, 1991.

Deadline for intergovernmental review: July 1, 1991.

Applications available: March 15, 1991.

Available funds: $142,592.

Estimated range of awards: $80,000-$85,000.

Estimated number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 375.

The priorities in the notice of final priorities for this program, as published in this issue of the Federal Register, also apply.

For applications or information contact: Bruce Ross, U.S. Department of Education, 400 Maryland Avenue SW., room 3332, Switzer Building, Washington, DC 20202-2646. To request an application, call (202) 732-1351; to receive further information, call (202) 732-1325; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Authority: 29 U.S.C. 777b.

Dated: March 1, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-5315 Filed 3-6-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.128H]

Vocational Rehabilitation Service Projects For American Indians With Handicaps; Invitations for Applications for New Awards for Fiscal Year (FY) 1991.

Purpose of program: To provide grants to governing bodies of Indian tribes and tribal consortia for vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations.

Eligible Applicants: Governing bodies of Indian tribes and consortia of those governing bodies located on Federal and State reservations are eligible to apply for awards under this program.

Deadline for transmittal of applications: April 26, 1991.

Applications available: March 11, 1991.

Available funds: $427,533.

Estimated range of awards: $50,000-$200,000.

Estimated average size of awards: $140,000.

Estimated number of awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 369 and 371.

The priorities in the notice of final priorities for this program, as published in this issue of the Federal Register, also apply.

For Applications or Information Contact: Bruce Ross, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, Switzer Building, Washington, DC. 20202-2646. To request an application, call (202) 732-1351; to receive further information, call (202) 732-1325; deaf and hearing impaired persons may call the Federal Dual Party Relay Service on 1-800-877-8339.

Authority: 29 U.S.C. 750(a).

Dated: March 1, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91-5316 Filed 3-6-91; 8:45 am]

BILLING CODE 4000-01-M

federal register

Thursday
March 7, 1991

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 791

Review of Applications for Housing Assistance and Allocation of Housing Assistance Funds; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 791

[Docket No. R-91-1294; FR-1896-F-04]

RIN 2501-AA58

Review of Applications for Housing Assistance and Allocation of Housing Assistance Funds

AGENCY: Office of the Secretary, HUD.
ACTION: Final rule.

SUMMARY: This final rule codifies at 24 CFR part 791 HUD's regulations for the allocation of housing assistance funds and their competitive distribution. The final rule contains an explicit description of the allocation formula and procedures, deletes specific requirements on allocating funds in accordance with approved housing assistance plans (HAPs), eliminates the requirement for local consultation in the allocation process, deletes repealed eligibility categories from the Headquarters Reserve Authority, prescribes competitive methods of fund distribution, and indicates related public disclosure requirements.

This final rule also consolidates local government submission requirements and HUD criteria for the review of applications for housing assistance in one location. It expressly permits the approval of applications in situations where the locality has been making a good faith effort to meet its three-year HAP goals in a proportional manner, but has been unable to do so because of insufficient financial resources from HUD or other sources.

EFFECTIVE DATE: This final rule is effective on April 8, 1991.

FOR FURTHER INFORMATION CONTACT: For the Public and Indian Housing program, Nancy S. Chisholm, Director, Office of Policy, Room 4116, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500, telephone (202) 708-0713. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-0850. For other assisted housing programs, Stephen W. Cooley, Office of Operations, room 9220, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 708-2454. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection

The information collection requirements contained in § 791.204 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980, and have been approved under OMB control numbers 2502-0441 and 2577-0129. Public reporting burden for the collection of information requirements contained in this final rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each of the collections of information in this rule.

Reg. section	Paperwork requirement	No. of hours per response	No. of respondents	Reporting hours
791.204	Local government response to applications for housing assistance			
	Section 202 Program	2	140	280
	Section 8 Certificates and Housing Vouchers	2	240	480
	Total for Office of the Assistant Secretary for Housing	2	380	760
	Public and Indian Housing Programs	1	1,850	1,850
	Combined total	1.17	2,230	2,610

Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

Part 791 describes the roles of HUD and the local governments in the allocation of assisted housing funds and in the review of applications for housing assistance under a variety of HUD programs. The principal statutory authority for part 791 is contained in section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439). Section 213(d) requires that housing assistance be allocated on the basis of a formula which takes into account the relative needs of different States, areas and communities. Relative need is to be determined based upon data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, and other objectively measurable conditions. Section 213(a) establishes procedures for assuring that, to the maximum extent practicable, housing assistance funds are used to meet the needs and goals identified in the locality's Housing Assistance Plan (HAP).

On July 3, 1990 (55 FR 23670), HUD published a proposed rule to conform with statutory changes made by the Housing and Urban-Rural Recovery Act of 1983 and to incorporate the allocation and competitive distribution provisions of the Department of Housing and Urban Development Reform Act of 1989 (the Reform Act) (Pub. L. 101-235; Dec. 15, 1989).

II. Public Comments

The Department received six public comments on the June 11, 1990, proposed rule. The commenters included two national housing associations, two cities, one State, and one housing authority. HUD has used these comments in developing the provisions of this final rule. The comments on the proposed rule are discussed below.

The District of Columbia Government (DC) proposed that the section 213 review and comment procedure be revised at § 791.202 to require that a copy of each housing assistance application be furnished to the chief executive officer of the locality. The regulation already requires that the HUD Field Office notification identify the housing program; the housing type; the number of units by bedroom size and household type; the proposed location; whether the number of units in the application, taken together with other previously approved applications,

would exceed three-year household and housing type goals in the HAP; and whether the proposed location is in a general location identified in the HAP. We believe this information is sufficient for reviewing officials to make informed judgments, including a decision whether to seek further information on the application.

The only other public comment relating to subpart B of the regulation came from the State of New Jersey Department of Community Affairs which stated its support for the relaxation in the proposed rule concerning approval of applications without regard to variations from household type goals or housing type preference.

All other public comments dealt with the allocation and distribution provisions of subpart D. The City of Phoenix, Arizona, expressed two reservations concerning the factors used to determine lower income housing need data under § 791.402. First, Phoenix urged consideration of relative housing need data as well as absolute need indicators. It suggested that a city with a high percentage of renter households living in poverty suffers a greater impact than cities with a small percentage but higher absolute numbers of renter households living in poverty. The Department believes emphasis on actual numbers of rental households living in poverty provides a more dependable need count. Scarce housing assistance funds are allocated to serve households across the country, not in any particular given community. Further, the factor in question does represent a further targeting by the Department to households living in poverty rather than those formerly considered under the formula who had incomes at 50 percent of median income.

Phoenix also expressed concern with the definition of substandard housing at § 791.402(b)(5) because it favors older cities which contain a large number of homes built prior to 1940. The Department observes that this definition is two-fold. It is tied to the number of housing units built before 1940 but which also are occupied by renter households with annual incomes at or below the poverty level. Phoenix recommended use of HAP data to record substandard housing. But communities elect self-initiated definitions of substandard housing which do not lend themselves to a formula allocation of funds. Similarly, DC suggested use of Census annual housing survey data for substandard housing, but the annual housing survey is only available for 44 out of the 338 metropolitan statistical areas in the country. While this system affords rich data, its limited availability forecloses its utility for broad, national allocational purposes.

Nevertheless, the Department is of course attentive to the need to use the most reliable and best data available. As part of our ongoing responsibility to achieve that objective, we will be analyzing the results of the 1990 Census to see how that may alter the course and improve even more the objective structure of the allocation formula.

A final comment on the formula factors was also made by DC which recommended that heavier weight be applied to renters with severely high rent payments in relation to income, analogizing such a change to the statutory requirements in the United States Housing Act of 1937 for preferences in tenant selection to those paying more than 50 percent of income for rent. That statutory preference is a tenant selection mechanism and it does not necessarily signal inconsistency with the provision of § 791.402(b)(6), to which DC referred, that identifies, among other objectively measurable conditions, "the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income." The listing is illustrative. Theoretically, a 50 percent income-for-rent category might be used, but the Department has reservations about the possible imbalance between such an allocation system and the actual use and demand arising out of other legal requirements (e.g., rental rehabilitation program needs). Again, the Department looks to 1990 Census data for further compatibility of available need indicators with a formula allocation of housing assistance resources.

A number of commenters addressed the allocation process itself. A commenter on behalf of the National Leased Housing Association (NLHA) questioned the advisability of allocating to Field Offices the budget authority under § 791.403(b)(1) for uses which the Secretary determines are incapable of geographical allocation. The commenter correctly perceived that decisions on nonallocability would probably have to be made in the Central Office. Although that is the case, the budget authority is *then* allocated to Field Offices for them to obligate.

DC recommended that § 791.403(b)(2) should be revised to incorporate expressly a cross-reference to § 791.402(e). Paragraph (e) authorizes adjustments of the housing needs percentages derived in paragraph (d), based on criteria in paragraphs (b) and (c). While its inclusion in § 791.403(b)(2) might otherwise be implied, the Department agrees with the comment. This final rule makes the cross-reference.

NLHA further recommended that the provision in § 791.403(c) for annual publication of allocations be subject to an additional requirement for timely publication which may be more frequent than annually, and that housing needs determinations and allocation decisions be made available for public review. The proposed rule followed the requirement in section 102(a)(4)(D) of the Reform Act that the Secretary publish a notice of allocation of assistance under this part "at least" annually. Should the Department determine more frequent publication is necessary and appropriate, the existing text affords that latitude. As for public review of calculations and allocation decisions, the Department believes it would be administratively burdensome to create a new structure and prefers to let interested parties rely on the availability of HUD documents as provided under the Freedom of Information Act.

With respect to the competition provisions of § 791.406, the National Association of Housing and Redevelopment Officials (NAHRO), the Housing Authority of the County of Santa Clara (Santa Clara PHA), and DC all urged more detailed description of the competitive rules to which allocated funds are subject. These comments misconceive the thrust of this rule. Section 101(c) of the Reform Act requires the application of a competitive distribution of all assistance which is fair shared. The regulation at § 791.406 constitutes the basic superstructure for carrying out that requirement. However, as the regulation states, the specific selection criteria will be promulgated in regulations or in Federal Register notices. These regulations and notices typically will be issued program-by-program in order to reflect the various need indicia, program requirements, and appropriate factors for selection under those programs.

In this context, DC questioned the approach used in FY 1990 for allocating section 8 certificates and vouchers, especially with respect to the program requirement that the number of units for which a PHA applies should not exceed the greater of 10 percent of existing vouchers/certificates or 50 units. Again, this is an issue more pertinent for public comment with respect to section 8 regulations and NOFAs. However, the Department believes it appropriate to discuss the issue here in its additional aspect regarding the establishment of

BEST COPY AVAILABLE

allocation areas. Specifically, DC questioned the inability under the proposed rule for a Field Office to reallocate funds outside a State without Assistant Secretary approval. This provision is unchanged from the existing rule, and implements reallocation provisions of section 213(d)(1) enacted in 1980. Further, DC has for many years been part of an allocation area comprising itself and the Washington metropolitan area portions of the States of Maryland and Virginia, which fall within the jurisdiction of the HUD Washington, DC, Field Office. While the Department could establish smaller allocation areas within this Field Office jurisdiction, as applied to DC such a policy would conflict with the competitive thrust of the rule at § 791.404(b)(1), which requires that each allocation area contain "at least three eligible entities [as] viable competitors for funds in the allocation area." There are not three viable competitors for section 8 vouchers/certificates in DC alone.

The final component of the regulation which drew public comment was § 791.407, which establishes in a separate section the rules regarding the Headquarters Reserve. The Headquarters Reserve was most recently amended by section 104 of the Reform Act. NLHA questioned the need for the provision in § 791.407(b) that specific instructions governing access to the Headquarters Reserve would be published in the **Federal Register**, as necessary. NLHA observes that emergencies and disasters do not lend themselves to the delay that any publication requirement would entail. But the Headquarters Reserve is available for other purposes, such as housing in support of desegregation efforts. To the extent instructions in the **Federal Register** would be necessary in that regard, the rule so provides. NLHA emphasizes instead a published listing of projects which are funded from the Reserve to promote accountability and public review. Section 102(a)(4) of the Reform Act, captioned "HUD Accountability", contains a variety of documentation decision requirements to promote these objectives, and specifically, **Federal Register** notice publication of all funding decisions made by the Department. This requirement was the subject of a separate proposed rule published on June 19, 1990, at 55 FR 25036.

The Santa Clara PHA recommended that the Headquarters Reserve be considered for funding Rental Rehabilitation Program (RRP) demands. This recommendation was accompanied by criticism of the Section 8 Certificate NOFA's emphasis on Operation Bootstrap and homeless program initiatives. The latter discussion is not immediately germane to this final rule. With respect to the Headquarters Reserve, section 104 of the Reform Act narrowly targets assistance under that program for purposes which do not include the RRP as such. This PHA also recommended use of carryover funds for RRP needs. Neither the proposed rule nor the final rule focuses on carryover as a separate funding authority. However, the preamble to the proposed rule did observe the requirements of section 8(u) of the United States Housing Act of 1937 regarding availability of certificates and vouchers for residents of rental rehabilitation projects. (55 FR 23675.) The comment noted that

> In order to make feasible the allocation of housing voucher assistance in geographic "fair shares" which incorporate the foregoing requirements for allocation of resources, projected rental rehabilitation demand for vouchers would have to be considered in the establishment of allocation areas. Once the funds were so allocated, the competition rules would prevail, but the specific selection criteria would address the above provisions and would strongly enhance a favorable competitive position consistent with the allocation policy of section 8(u)(3).

Finally, NLHA recommended inclusion of a provision permitting waiver of the regulations in appropriate circumstances. As is the case with the program regulations governing HUD's assisted housing programs at chapters VIII and IX of title 24, so too the existing rules covering part 791 are subject to § 799.101, which authorizes the Secretary, "upon determination of good cause" and subject to statutory limitations, to waive any provision of chapter VII. As NLHA further noted, any such waiver is subject to **Federal Register** publication and the other requirements of section 106 of the Reform Act.

III. Cranston-Gonzalez Act

The Department notes changes in the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625; Nov. 28, 1990; hereafter, "NAHA") which are related to part 791. In addition, NAHA amends the manner in which HAPs will operate after FY 1991. Although little substantive revision of part 791 is required, all of these changes are discussed immediately below.

Section 202 Exclusion

Section 801 of NAHA substantially revises the section 202 program of loans for the elderly. As here pertinent, section 801(b) amended section 213(a) of the Housing and Community Development Act of 1974 so as to strike the section 202 program from its coverage. As a consequence, the review and comment procedures statutorily provided in section 213 (a) and (b) no longer apply to section 202 and this rule deletes the program from their coverage. However, the Department intends to continue to apply the fair sharing formula in subpart D to section 202 and so its coverage there is retained.

Family Self-Sufficiency Program

Section 554 of NAHA added section 23 to the United States Housing Act of 1937, establishing the Family Self-Sufficiency Program under section 23. Section 23(i)(4) states that notwithstanding section 213(d), the Secretary shall reserve for allocation not less than ten percent of FY 1991 and 1992 budget authority for section 8 certificates and vouchers for families not currently receiving assistance, and for the same two fiscal years not less than ten percent of available public housing developmental assistance (excluding amounts for major reconstruction of obsolete projects). Because the effect of this treatment is to insulate such amounts from fair sharing, this rule expressly refers to Family Self-Sufficiency Program set-asides in § 570.403(b)(1), which covers budget authority needed for uses incapable of geographical allocation by the formula.

Distribution of Section 8 Certificates

Section 556 of NAHA amended the fair sharing provisions of section 213(d)(1)(A) to include a requirement that section 8 certificates be allocated in a manner that enables participating jurisdictions to carry out, to the maximum extent practicable, Comprehensive Housing Affordability Strategies (CHASes) approved in accordance with section 105 of NAHA. These participating jurisdictions are to submit recommendations to the Secretary for such allocation in accordance with procedures that the Secretary determines to be appropriate to permit allocation of such assistance to be made on the basis of timely and complete information. The 1990 statutory amendment makes clear that it is not to "be construed to prevent, alter, or otherwise affect the application of the" fair share formula.

The Department will develop appropriate procedures to solicit these recommendations. Pending development of CHASes, and receipt and action on such recommendations, and given the statutory imperative not to disturb the fair share formula, no change is made in part 791 at this time.

Resolution Trust Corporation Properties

Section 804(e) exempts projects acquired from the Resolution Trust Corporation under section 21(A)(c) of the Federal Home Loan Bank Act from the requirement in section 213(d)(1)(A) that assistance under section 202 be allocated in a manner that ensures that awards of section 202 assistance are made for projects of sufficient size to accommodate facilities for supportive services appropriate to the needs of frail, elderly residents. As indicated above, section 801 removed the section 202 program from coverage under section 213, but the Department intends to continue to fair share section 202 assistance under part 791. The incorporation of the sufficient size allocation requirement, added by the Reform Act, is found at § 791.404(b)(1). This Final Rule amends § 791.404(b)(1) to include the NAHA exception for projects acquired from the Resolution Trust Corporation.

HOPE Programs

Title IV of NAHA created three different HOPE homeownership programs: HOPE for public and Indian housing homeownership (HOPE 1); HOPE for homeownership of multifamily units (HOPE 2; and HOPE for homeownership of single family homes (HOPE 3). The provision of section 8 tenant-based assistance is pivotal in the HOPE programs. Both the HOPE 1 and HOPE 2 enabling legislation authorize the Secretary to reserve authority to provide rental assistance under section 8—in HOPE 1 to provide replacement housing, and in both HOPE 1 and 2 for nonpurchasing tenants for use in another project.

In addition, section 803 of the Cranston-Gonzalez National Affordable Housing Act establishes the HOPE for Elderly Independence Program authorizing the use of up to 1,500 incremental vouchers and certificates to be awarded under a national competition.

The proposed rule published on July 3, 1990, included in § 791.403(b)(1) the codification by section 101 of the Reform Act of HUD's practice of "taking off the top" of housing allocations any monies which cannot be geographically allocated under the fair share formula of section 213(d) of the Housing and Community Development Act of 1974, as amended. That amendment of part 791 would have limited the availability under this authority to two categories. The first category involves funding explicitly mentioned in the statute (for example, amendments of existing contracts; replacement housing in connection with the demolition or disposition of public and Indian housing). The second is "such other assistance which (i) The Secretary so determines to be incapable of geographic allocation by formula and (ii) is the subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the fiscal year in which the funds are to be allocated."

This final rule amends § 791.403(b)(1) to include among the funds incapable of geographic allocation any assistance which the Secretary determines to be necessary to carry out HOPE 1, HOPE 2, or HOPE for Elderly Independence.

While this regulatory change will make feasible the provision of necessary section 8 certificates and vouchers authorized under HOPE 1 and 2 to be reserved for these programs, it will also accommodate funding programs which are required by statute to be administered by a national competition and which are subject to part 791 fair sharing, including HOPE 1 grants themselves (because they are funded under the U.S. Housing Act of 1937, to which section 213 applies) and the section 8 assistance in HOPE for Elderly Independence, and which for any reason are not identified in line item appropriations or the Conference Report table.

Comprehensive Housing Affordability Strategies

Section 105 of NAHA requires State and local housing affordability strategies to be in place before the Secretary can provide assistance under certain programs. An interim rule implementing section 105 for the comprehensive housing affordability strategy (CHAS) under 24 CFR Part 91 was published on February 4, 1991 (56 FR 4480).

Further, section 905 of NAHA requires that communities certify that they are following a current HUD-approved CHAS in order to obtain an entitlement block grant under 24 CFR Part 570. Section 905 also expressly provides that in the alternative the certification can apply instead to a HAP approved by the Secretary "during the 180-day period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act, or during such longer period as may be prescribed by the Secretary in any case for good cause." Therefore, the CHAS will succeed the HAP as the authoritative housing planning document related to HUD assistance programs. But its effect will be deferred, since virtually all HAPs for FY 1991 were approved prior to enactment of NAHA. These HAPs will therefore run through FY 1991.

More pertinent for purposes of this regulation, nothing in NAHA regarding the CHAS bears on part 971. NAHA did not transfer the review and comment provisions under section 213 (a) and (b) of the 1974 Act from the HAP to the CHAS. So, while part 791 will eventually be modified when all HAPS have expired, there is no corresponding need to amend this regulation in terms of the CHAS.

The only provision under subpart D affected by the CHAS is section 556 discussed above and for which HUD will develop appropriate procedures.

IV. Other Changes

Another statutory change of 1990 incorporated in this rule is inclusion in section 403(b)(2) of the separate discretionary authority for minimum State allocations which is contained in section 5 of Public Law 101–494, October 31, 1990, which provided for the temporary extension of certain laws relating to housing and community development.

The review and comment period provisions of § 791.203(a) § 791.304 are revised to authorize the Chief Executive Officer to submit final comments in advance of the notification letter furnished by HUD under § 791.202 and § 791.303, respectively. Some PHAs and other applicants frequently find it advisable and more efficient to have obtained review and favorable comment by the Chief Executive Officer at the time the application is submitted. This change would expressly permit such coordination.

The proposed rule had sought public comment whether the listing of purposes incapable of geographic allocation at § 791.403(b)(1) should include replacement housing mandated statutorily for homeownership conversions of public housing projects under section 21 of the United States Housing Act of 1937 or provided for homeownership conversions under section 5(h) of the same Act. There was no public comment on this issue. The Department elects in this rule to take such possible needs into consideration, but in a way safeguarding and maximizing the fair sharing of assistance by adding a reference to such other uses that the Secretary determines are incapable of geographic allocation by formula and which are the subject of line item identification in the HUD appropriations law for the Fiscal Year, or in the table included in the

Conference Report on the HUD appropriation for the Fiscal Year in which the funds are to be allocated.

IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued on February 17, 1981. Analysis of the rule indicates that it would not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with section 605(b) of the Regulatory Flexibility Act, the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule revises existing procedures for the allocation of housing assistance funds and for local government and HUD review of applications for housing assistance, but would make no change in the economic impact of these procedures on small entities.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies contained in this rule do not have a potential significant impact on family formation, maintenance, and general well-being and, thus, are not subject to review under the Order. The rule does not affect the terms and conditions under which a family may qualify for assistance under the affected programs.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this rule do not have federalism implications and, therefore, are not subject to review under that Order. This rule would not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs.

This rule was listed as item number 1164 in the Department's Semiannual Agenda of Regulations, published on October 29, 1990 (55 FR 44530, 44542) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The programs in the Catalog of Federal Domestic Assistance which would be affected by this rule are as follows:

14.103 Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families
14.149 Rent Supplements—Rental Housing for Lower Income Families
14.156 Lower Income Housing Assistance Program (Section 8)
14.157 Housing for the Elderly or Handicapped
14.177 Housing Voucher Program
14.850 Public and Indian Housing
14.851 Low Income Housing—Homeownership Opportunities for Low Income Families

List of Subjects in 24 CFR Part 791

Grant programs: Housing and Community Development; Intergovernmental relations; Housing.

Accordingly, 24 CFR part 791 is amended as follows:

PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

1. In part 791, the authority citation continues to read as follows:

Authority: Section 213, Housing and Community Development Act of 1974, 42 U.S.C. 1439; section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Section 791.101 is revised to read as follows:

§ 791.101 Applicability and scope.

(a) This part describes the roles and responsibilities of HUD and local governments under section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1437). It applies to the allocation of budget and loan authority, and the review and approval of applications for housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437–1437q), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and with respect to subpart D only, section 202 of the Housing Act of 1959 (12 U.S.C. 1710q), except as follows:

(1) This part does not apply to programs for public housing operating subsidy, public housing modernization, or rental rehabilitation grant assistance under sections 9, 14, or 17 of the United States Housing Act of 1937; and

(2) Subpart D of this part does not apply to the allocation of budget authority for housing development grant assistance under section 17 of the U.S. Housing Act of 1937.

(b) HUD and local government reviews of applications for housing assistance shall be based upon applicable housing assistance plans (HAPs) or comparable estimates of need for non-HAP areas. The three-year goals and preferences in the HAP apply to the fiscal year in which they are initially approved and the two succeeding fiscal years.

3. In § 791.102, the definitions of "Areawide housing plan", "Areawide planning organization (APO)", "Contract authority", "FmHA", and "SMSA" are removed, and new or revised definitions of "Application for housing assistance", "Assistant Secretary", "Field Office Manager", "Housing assistance plan (HAP)", "Housing type", "Metropolitan area", and "MSA" are inserted in alphabetical order, to read as follows:

§ 791.102 Definitions.

* * * * *

Application for housing assistance. The first submission to HUD for housing assistance under one of the programs identified in § 791.101(a). For the purposes of this part, the term includes an application, a preliminary proposal, or a proposal, so long as it meets the applicable program regulations. For the public housing and State agency programs, the first application identifying a project site will be considered the application for housing assistance.

Assistant Secretary. The Assistant Secretary for Housing or the Assistant Secretary for Public and Indian Housing, as appropriate to the housing assistance under consideration.

* * * * *

Field Office Manager. The Manager of a HUD Field Office which has been delegated the responsibility of allocating housing assistance and reviewing applications for housing assistance. The term also means the Regional Administrator of a HUD Regional Office, and references to Field Offices shall also mean Regional Offices, in cases where the Regional Office performs Field Office functions in its co-location capacity or Regional Office jurisdictions are established as allocation areas for particular housing programs.

* * * * *

Housing assistance plan (HAP). A local housing assistance plan approved by HUD and meeting the requirements of 24 CFR 570.306.

Housing type. The three housing types are: new construction, rehabilitation, and existing housing.

* * * * *

Metropolitan area. See MSA.

MSA. A metropolitan statistical area established by the Office of Management and Budget. The term also includes primary metropolitan statistical areas (PMSAs), which are the component parts of larger urbanized areas designated as consolidated metropolitan statistical areas (CMSAs). Where an MSA is divided among two or more Field Offices, references to an MSA mean the portion of the MSA within the Field Office jurisdiction.

* * * * *

4. In § 791.202, paragraphs (a)(4), (b)(2), and (b)(5) are revised to read as follows:

§ 791.202 Notification of local government.

(a) * * *

(4) For a section 8 existing housing, moderate rehabilitation, or housing voucher application submitted in accordance with 24 CFR part 882 or part 887, the Field Office shall notify the chief executive officers of the localities that are identified in the application as:

(i) Primary areas from which households to be assisted under the existing housing program will be drawn, or

(ii) Primary areas in which units will be rehabilitated under the moderate rehabilitation program.

* * * * *

(b) * * *

(2) Indicate whether the number of units in the application, when taken together with other applications previously approved, would exceed the three-year household type goals and housing type preferences in the HAP.

* * * * *

(5) Indicate that, where there is no objection to the approval of the application despite an inconsistency with the approved HAP, the local government must submit the additional documentation required under § 791.204.

* * * * *

5. In § 791.203, paragraph (a) is revised to read as follows:

§ 791.203 Review and comment period.

(a) The chief executive officer shall have a 30-calendar-day comment period, beginning on the date of the notification letter described in § 791.202, to submit a written objection to the field office's approval of the application on the ground that it is inconsistent with the local government's HAP, and the reasons for the objection. The field office manager shall consider the comment period closed for that local government when the written objection or other comments pursuant to this subpart are received. In no case shall the field office be obligated to consider subsequent or revised objections unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period. As an alternative to this process, the chief executive officer may submit any comments on the application, with the application at the time it is submitted to HUD. Such early comment shall state whether such comment is intended to be the final comment, notwithstanding the 30-day period otherwise provided under this paragraph.

* * * * *

6. In § 791.204, paragraph (a), the introductory language in paragraph (b), and paragraph (b)(1) are revised and a parenthetical statement is added at the end of the section to read as follows:

§ 791.204 Local government response.

(a) *No objection.* If the local government has no objection to an application for housing assistance, the chief executive officer may provide written notification of this determination during the 30-day comment period. Where the local government determines that the application is inconsistent with the approved HAP or is likely to result in a disproportionate achievement of HAP goals, the chief executive officer shall submit the following additional documentation during the 30-day comment period:

(1) If the number of units in the application, taken together with other applications previously approved, would exceed the three-year household type goals in the HAP by no more than 20 percent, the chief executive officer shall submit a written statement indicating that:

(i) There is a need for the housing assistance being proposed;

(ii) There is no objection on the part of the local government to the approval of the application; and

(iii) Where the application is for newly constructed or substantially rehabilitated housing, there are or will be available sufficient public facilities and services in the area to serve the housing being proposed.

(2) If the number of units in the application, taken together with other applications previously approved, would exceed the three-year household type goals in the HAP by more than 20 percent, the local government shall submit a HAP amendment increasing the household type goals to include the proposed project.

(3) If the locality is in the second or third year of its HAP and the number of units in the application, taken together with other applications previously approved, would make it unlikely that the housing assistance provided during the three-year period would be proportional to the three-year household type goals in the HAP, the local government shall submit a HAP amendment in accordance with 24 CFR 570.306(e)(3)(vi).

(4) If an application for newly constructed or substantially rehabilitated units is in a location which is not within the general locations specified in the HAP, the local government shall submit a HAP amendment revising the general locations to include the proposed project.

(b) *Objection.* If the local government objects to an application for housing assistance based upon its inconsistency with the approved HAP, the chief executive officer may submit a written objection to the Field Office at any time during the 30-day comment period. The objection may be for one or more of the following reasons:

(1) The proposed number of units, when taken together with other applications previously approved, would exceed the three-year household type goals or housing type preferences in the HAP.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2502–0441 and 2577–0129.)

7. In § 791.205, paragraph (c) is revised to read as follows:

§ 791.205 HUD review of applications for housing assistance.

* * * * *

(c) *Review criteria.* The Field Office shall assure that, to the maximum extent practicable, an application for housing assistance meets the housing needs and goals identified in the approved HAP. The Field Office shall approve only those applications that are consistent with the following criteria:

(1) The Field Office may not approve an application which, taken together with other applications previously approved, would:

(i) Exceed the three-year household type goals in the HAP by no more than 20 percent, unless the chief executive officer of the local government submits a

written statement as specified in § 791.204(a)(1), and approval of the application is necessary to obtain a project of feasible size, meet an urgent or unforeseen need (*e.g.*, displacement due to a natural disaster), or use residual budget authority allocated to that allocation area;

(ii) Exceed the three-year household type goals in the HAP by more than 20 percent, unless the local government submits, and the Field Office approves, a HAP amendment increasing the household type goals to include the proposed project;

(iii) Make it unlikely that the housing assistance provided during the three-year period would be proportional to the three-year household type goals in the HAP, unless the locality is in the second or third year of its HAP and the local government submits and the Field Office approves a HAP amendment in accordance with 24 CFR 570.306(a)(3)(vi); or

(iv) Exceed the three-year housing type preferences in the HAP, if the local government has submitted a written objection in accordance with § 791.204(b).

(2) The Field Office may not approve an application for newly constructed or substantially rehabilitated units in a location that is not within the general locations specified in the HAP, unless the local government submits and the Field Office approves, a HAP amendment revising the general locations to include the proposed project. Such amendment may be limited to the specific project site.

(3) The Field Office may approve an application for assistance under 24 CFR part 886 without regard to variations from the three-year household type goals and housing type preferences in the HAP.

(4) The Field Office may approve an application for section 8 assistance without regard to variations from the three-year goals and housing type preferences in HAP, where such assistance is used as a legally necessary substitution or replacement for already assisted housing.

(5) Notwithstanding the other provisions of this subpart, where the local government is required to emphasize a particular household type because it had proportionally underserved that household type in providing assisted housing under a previous HAP, the Field Office may not approve an application which exceeds the three-year HAP goals for other household types until the requirement has been met.

§ 791.206 [Removed]

8. Section 791.206 is removed.

§ 791.207 [Redesignated as § 791.206]

9. Section 791.207 is redesignated as § 791.206.

10. In § 791.303, the introductory language in paragraph (a)(3) is revised to read as follows:

§ 791.303 Notification of local government.

* * * * *

(a) * * *

(3) For a Section 8 existing housing, moderate rehabilitation, or housing voucher application submitted in accordance with 24 CFR part 882 or part 887, the Field Office shall notify the chief executive officers of the localities that are identified in the application as:

* * * * *

11. Section 791.304 is revised to read as follows:

§ 791.304 Review and comment period.

The chief executive officer shall have a 30-calendar day comment period, beginning on the date of the notification letter described in § 791.303, to submit written comments relevant to a determination by the field office concerning the approval of an application for housing assistance. The field office shall consider the comment period closed when the written comments are received. In no case shall the field office manager be obligated to consider subsequent or revised comments unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period. As an alternative to this process, the chief executive officer may submit any comments on the application, with the application at the time it is submitted to HUD. Such early comment shall state whether such comment is intended to be the final comment, notwithstanding the 30-day period otherwise provided under this paragraph.

12. Subpart D is revised to read as follows:

Subpart D—Allocation of Budget Authority for Housing Assistance

791.401 General.
791.402 Determination of lower income housing needs.
791.403 Allocation of housing assistance.
791.404 Field Office allocation plan.
791.405 Reallocations of budget authority.
791.406 Competition.
791.407 Headquarters Reserve.

§ 791.401 General.

This subpart establishes the procedures for allocating budget authority under section 213(d) of the Act for the programs identified in § 791.101(a). It describes the allocation of budget authority by the appropriate Assistant Secretary to the Regional Administrators or directly to the Field Office Managers, by the Regional Administrators to the Field Office Managers, and by the Field Office Managers to allocation areas within their jurisdiction. References in this subpart to allocation of budget authority also apply to loan authority for the section 202 program; references to budget authority mean (as appropriate) grant authority for the Public and Indian Housing program.

§ 791.402 Determination of lower income housing needs.

(a) Before budget authority is allocated, the Assistant Secretary for Policy Development and Research shall determine the relative need for lower income housing assistance in each HUD Field Office jurisdiction. This determination shall be based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies, or from the American Housing Survey.

(b) Except for paragraph (c) of this section, the factors used to determine the relative need for assistance shall be based upon the following criteria:

(1) *Population.* The renter population;

(2) *Poverty.* The number of renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census;

(3) *Housing overcrowding.* The number of renter-occupied housing units with an occupancy ratio of 1.01 or more persons per room;

(4) *Housing vacancies.* The number of renter housing units that would be required to maintain vacancies at levels typical of balanced market conditions;

(5) *Substandard housing.* The number of housing units built before 1940 and occupied by renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census; and,

(6) *Other objectively measurable conditions.* Data indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income.

(c)(1) For the section 202 elderly program, the data used shall reflect relevant characteristics of the elderly population. The data shall use the criteria specified in paragraph (b)(1) and (6) of this section, as modified to apply specifically to the needs of the elderly population.

(2) Budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, as measured by the Bureau of Indian Affairs, and by data for non-BIA recognized groups served by the Indian housing program.

(d) Based on the criteria in paragraphs (b) and (c)(1), the Assistant Secretary for Policy Development and Research shall establish housing needs factors for each county and independent city in the Field Office jurisdiction, and shall aggregate the factors into metropolitan and nonmetropolitan totals for the Field Office. The Field Office total for each metropolitan and nonmetropolitan factor is then divided by the respective national total for that factor. The resulting housing needs ratios under paragraph (b) of this section are then weighted to provide metropolitan and nonmetropolitan housing needs percentages for each Field Office, using the following weights: Population, 20 percent; poverty, 20 percent; housing overcrowding, 10 percent; housing vacancies, 10 percent; substandard housing, 20 percent; other objectively measurable conditions, 20 percent. For the section 202 elderly program, the two criteria described in paragraph (c)(1) of this section are weighted equally.

(e) The Assistant Secretary for Policy Development and Research shall adjust the housing needs percentages derived in paragraph (d) to reflect the relative cost of providing housing among the Field Office jurisdictions.

§ 791.403 Allocation of housing assistance.

(a) The Assistant Secretary for Housing and the Assistant Secretary for Public and Indian Housing shall confer to determine how the available budget authority is to be allocated. The total budget authority available for any fiscal year shall be determined by adding any available, unreserved budget authority from prior fiscal years to any newly appropriated budget authority for each housing program. On a nationwide basis, at least 20 percent, but not more than 25 percent, of the total budget authority available for any fiscal year, which is allocated pursuant to paragraph (b)(2) of this section and any amounts which are retained pursuant to § 791.407, shall be allocated for use in nonmetropolitan areas.

(b) Budget authority available for the fiscal year, except for that retained pursuant to § 791.407, shall be allocated to the Field Offices as follows:

(1) Budget authority shall be allocated as needed for uses that the Secretary determines are incapable of geographic allocation by formula, including—

(i) Amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing, assistance in support of the property disposition and loan management functions of the Secretary,

(ii) Assistance which is the subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated,

(iii) Section 8 and public housing assistance reserved pursuant to section 23(i)(4) of the United States Housing Act of 1937, and

(iv) Assistance determined by the Secretary to be necessary in carrying out the following programs authorized by the Cranston-Gonzalez National Affordable Housing Act: the Homeownership and Opportunity Through HOPE Act under title IV and HOPE for Elderly Independence under section 803.

(2) Budget authority remaining after carrying out allocation steps outlined in paragraph (b)(1) of this section shall be allocated in accordance with the housing needs percentages calculated under § 791.402 (b), (c), (d), and (e). If the budget authority for a particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the Field Office level, authority may be allocated to the Regional Office with no requirement for suballocation. Alternatively, where the level of available program resources would permit meaningful competition at the Field Office level in some Regions and not in others, the budget authority for the given program may be so allocated among Field and Regional Offices. HUD may allocate assistance under this paragraph in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in § 791.101(a) in each fiscal year.

(c) At least annually HUD will publish a notice in the Federal Register informing the public of all allocations under § 791.403(b)(2).

§ 791.404 Field Office allocation planning.

(a) *General objective.* The allocation planning process should provide for the equitable distribution of available budget authority, consistent with the relative housing needs of each allocation area within the Field Office jurisdiction.

(b) *Establishing allocation areas.* Allocation areas, consisting of one or more counties or independent cities, shall be established by the Field Office in accordance with the following criteria:

(1) Each allocation area shall be to the smallest practicable area, but of sufficient size so that at least three eligible entities are viable competitors for funds in the allocation area, and so that all applicable statutory requirements can be met. (It is expected that in many instances individual MSAs will be established as metropolitan allocation areas.) For the section 202 program for the elderly, the allocation area must include sufficient units to promote a meaningful competition among disparate types of providers of such housing (e.g., local as well as national sponsors, minority as well as non-minority sponsors). The preceding sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act.

(2) Each allocation area shall also be of sufficient size, in terms of population and housing need, that the amount of budget authority being allocated to the area will support at least one feasible program or project.

(3) In establishing allocation areas, counties and independent cities within MSAs should not be combined with counties that are not in MSAs.

(c) *Determining the amount of budget authority.* Where the Field Office establishes more than one allocation area, it shall determine the amount of budget authority to be allocated to each allocation area, based upon a housing needs percentage which represents the needs of that area relative to the needs of the metropolitan or nonmetropolitan portion of the Field Office jurisdiction, whichever is appropriate. For each program, a composite housing needs percentage developed under § 791.402 for those counties and independent cities comprising the allocation area shall be aggregated into allocation area totals.

(d) *Planning for the allocation.* The Field Office should develop an allocation plan which reflects the amount of budget authority determined for each allocation area in paragraph (c). The plan should include a map or maps clearly showing the allocation areas within the Field Office jurisdiction. The relative share of budget authority by individual program type need not be the same for each allocation area, so long as the total amount of budget authority made available to the allocation area is not significantly reduced.

§ 791.405 Reallocations of budget authority.

(a) The Field Office shall make every reasonable effort to use the budget authority made available for each allocation area within such area. If the Field Office Manager determines that not all of the budget authority allocated for a particular allocation area is likely to be used during the fiscal year, the remaining authority may be allocated to other allocation areas where it is likely to be used during that fiscal year.

(b) If the Regional Administrator or the Assistant Secretary determines that not all of the budget authority allocated to a Field Office is likely to be used during the fiscal year, the remaining authority may be reallocated to another Field Office where it is likely to be used during that fiscal year. Only the Assistant Secretary may reallocate budget authority among Regions. The Assistant Secretary shall approve reallocations among States.

(c) Any reallocations of budget authority among allocation areas, Field Offices, or Regions shall be consistent with the assignment of budget authority for the specific program type and established set-asides.

(d) Notwithstanding the requirements of paragraphs (a) through (c) of this section, budget authority shall not be reallocated for use in another State unless the Field Office Manager, the Regional Administrator, or the Assistant Secretary has determined that other allocation areas within the same State cannot use the available authority during the fiscal year.

§ 791.406 Competition.

(a) All budget authority allocated pursuant to § 791.403(b)(2) shall be reserved and obligated pursuant to a competition. Any such competition shall be conducted pursuant to specific criteria for the selection of recipients of assistance. These criteria shall be contained in a regulation promulgated after notice and public comment or, to the extent authorized by law, a notice published in the **Federal Register**.

(b) This section shall not apply to assistance referred to in § 791.403(b)(1) and § 791.407.

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed five percent of the total amount of budget authority available under § 791.403(b)(2), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

(1) Unforeseen housing needs resulting from natural and other disasters, including hurricanes, tornadoes, storms, high water, wind driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides, mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in lower income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the Field Office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the **Federal Register**, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year under the program under § 791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to § 791.403(b)(2).

Dated: December 14, 1990.

Jack Kemp,

Secretary.

[FR Doc. 91-5252 Filed 3-6-91; 8:45 am]

BILLING CODE 4210-01-M

federal register

Thursday
March 7, 1991

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 22, 42, and 52
Federal Acquisition Regulation (FAR); Thresholds and Novation and Change-of-Name Agreements; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICE ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 90-68]

Federal Acquisition Regulation (FAR); Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council invite public comments on a proposed revision to FAR parts 22 and 52 regarding compensation for professional employees. The Councils are proposing that the current threshold in 22.1103 regarding evaluation of compensation for professional employees be raised from $250,000 to $500,000, and deleting unnecessary language at 52.222-45 and combining the coverage with the clause at 52.222-46. These revisions raise the threshold to adjust for inflation, and combining the clauses at 52.222-45 and 52.222-46 should be a helpful simplification.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 6, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405.

Please cite FAR Case 90-68 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 90-68.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the number of businesses affected are those receiving non-competitive professional services contracts between $250,000 and $500,000. The administrative impact would be in not having to provide the Government certain information for the affected procurements. However, it would appear that much of the information provided by 52.222-46 would also be required as part of an offeror's cost proposal, and therefore, the reduction in administrative effort would be minimal. Whatever impact the proposed change would have on small businesses would be beneficial. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 91-610 (FAR Case 90-68) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: February 27, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 22 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1101 [Amended]

2. Section 22.1101 is amended in the final sentence by removing the figure "$250,000" and inserting in its place "$500,000".

3. Section 22.1103 is revised to read as follows:

22.1103 Policy, procedures, and solicitation provisions.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed $500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making the award.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222-45 [Removed and reserved]

4. Section 52.222-45 is removed and reserved.

5. Section 52.222-46 is amended in the introductory paragraph by inserting a colon after the word "provision" and removing the remainder of the sentence; by removing "(APR 1984)" and inserting in its place "(FEB 1991)" in the title of the clause; and by adding paragraph (d) to read as follows:

52.222-46 Evaluation of compensation for professional employees.

* * * * *

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of 10 U.S.C. 2306a and 41 U.S.C. 254(d) and in accordance with Federal Acquisition Regulation 15.802(a).

(End of provision)

[FR Doc. 91-5368 Filed 3-6-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAR Case 90-65]

Federal Acquisition Regulation (FAR); Novation and Change-of-Name Agreements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering an amendment to novation and change-of-name agreements. The amendment would remove from the elements which need to be shown in the list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government those requirements concerning the total dollar value and remaining unpaid balance.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before May 6, 1991, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAR Case 90-65 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR Case 90-65.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed revision may be considered as less burdensome than the existing requirement. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subsection will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 91-610 (FAR Case 90-65) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Novation/Change-of-Name Requirements is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning that request will be invited through a subsequent Federal Register notice.

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: February 27, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 42 be amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.1205 is amended by revising paragraph (a)(3) to read as follows:

42.1205 Agreement to recognize contractor's change of name.

(a) * * *

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

* * * * *

[FR Doc. 91-5369 Filed 3-6-91; 8:45 am]

BILLING CODE 6820-34-M

Reader Aids

Federal Register
Vol. 56, No. 45
Thursday, March 7, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904.....1
8905-9120.....4
9121-9268.....5
9269-9580.....6
9581-9834.....7

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
Proposed Rules:
305.....9656

3 CFR
Administrative Orders:
Memorandums:
February 21, 1991.....9271
Presidential Determinations:
No. 91-20 of January 25, 1991.....8681
Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991).....8681
Proclamations:
6254.....9121
6255.....9269
6256.....9579

5 CFR
Proposed Rules:
581.....9181

7 CFR
1.....9581
17.....9273
46.....8683
301.....9273
905.....8684
918.....8905
1046.....9274
1434.....9592
Proposed Rules:
12.....9258
704.....9293
920.....9302
1005.....9306
1410.....9293
1413.....9251

8 CFR
241.....8906
242.....8906
274.....8685

9 CFR
82.....9752
331.....8907, 8908
381.....8907, 8908

10 CFR
Ch. XVII.....9605
1048.....9611

11 CFR
110.....9275

12 CFR
265.....8687
600.....8910
601.....8910
602.....8910
603.....8910
604.....9611
606.....8910
611.....8910
612.....8910
614.....8910
615.....8910
617.....8910
618.....8910
619.....8910
621.....8910
960.....8688
Proposed Rules:
327.....9308

14 CFR
21.....8699-8701
25.....8699-8701
39.....9612-9618
71.....9618-9620
1209.....8910
Proposed Rules:
39.....9659, 9661
71.....9660, 9663
39.....8732, 8733, 8935
91.....8938

15 CFR
303.....9621

16 CFR
305.....9123
1500.....9276
1502.....9276
Proposed Rules:
1700.....9181

17 CFR
240.....9124

18 CFR
1301.....9288
Proposed Rules:
35.....8938

19 CFR
Proposed Rules:
141.....9311

21 CFR
5.....8709
510.....9622
520.....8709, 8710
522.....9622
524.....9622
556.....8710
558.....9622
1308.....9132
1316.....8685

Proposed Rules:
201 9312
808 8940

22 CFR
514 8711

24 CFR
Ch. I 9472
91 9169
791 9822
Proposed Rules:
203 8941

26 CFR
1 8911
31 8911
301 9169
602 8912
Proposed Rules:
1 8943–8957
301 9182

27 CFR
5 8922

28 CFR
0 8923
8 8685
Proposed Rules:
11 8734

29 CFR
541 9252
579 9252
580 9252
801 9046
1601 9623
Proposed Rules:
516 9183
778 9183
1604 9185

30 CFR
56 9626
57 9626
243 9251
Proposed Rules:
901 8957
913 8959
935 9312

32 CFR
627 9424
Proposed Rules:
2996 9314

33 CFR
3 9288
117 8712
151 8876
165 9289

36 CFR
6 9626
8 9626
21 9627

38 CFR
Proposed Rules:
111 9064

40 CFR
Proposed Rules:
52 9172–9175
60 9177
82 9518
86 9754
147 9408
228 9178
Ch. I 8972, 8315
86 8856
123 8973
300 9187
600 8856
799 ..... 9092, 9105

41 CFR
303–11 9289

42 CFR
400 8832
405 8832
406 8832
412 9633

44 CFR
353 9452

45 CFR
74 8712
205 8924
232 8926
234 8926
235 8926
801 9180
1611 9634

46 CFR
25 8878

47 CFR
0 9752
73 ..... 8933, 8934
Proposed Rules:
73 ..... 8974–8976, 9189–9191

48 CFR
Proposed Rules:
22 9632
42 9632
52 9632
Ch. 2, App. N 9062
202 9062
203 9062
204 9062
217 9062
225 9062
228 9062
232 9062
245 9062
252 9062
1803 8718
1804 8718
1805 8718
1806 8718
1814 8718
1815 8718
1819 8718
1836 8718
1849 8718
1852 8718
1853 8718

49 CFR
1 9635
1010 9635
1011 8721
1330 8722
Proposed Rules:
Ch. X 9191
1053 9339

50 CFR
611 ..... 8722, 38723
620 8722
646 9251
672 ..... 9635, 9636
675 9636
Proposed Rules:
20 9462
658 8736
672 9251
675 9251

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 6, 1991

OL
6

SS
5

R
7

91

MI

OL
56

SS
46

IR
8

991

MI

3-8-91
Vol. 56 No. 46

federal register

Friday
March 8, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
5-6
SS
46
IR
8
91
MI

3-08-91
Vol. 56 No. 46
Pages 9635-10140

federal register

Friday
March 8, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

Agricultural Marketing Service
NOTICES
Meetings:
Tobacco Inspection Services National Advisory Committee, 9932
Tobacco inspection:
Growers' referendum, 9932

Agricultural Workers Commission
See Commission on Agricultural Workers

Agriculture Department
See Agricultural Marketing Service; Cooperative State Research Service; Federal Grain Inspection Service; Forest Service

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages;
Alcoholic Beverage Labeling Act of 1988; health warning statement; scientific information request, 10066

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
RULES
Anchorage regulations:
California, 9852
Regattas and marine parades:
American Cancer Society Great Duck Race, 9850
Augusta Invitational Rowing Regatta, 9850
Crawford Bay Crew Classic, 9851
PROPOSED RULES
Drawbridge operations:
Washington, 9916

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 9936

Commission on Agricultural Workers
NOTICES
Meetings, 9940

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 9940, 9941 (2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Brazil, 9940

Community Services Office
NOTICES
State median income estimates for four-person families (1992 FY), 9963

Cooperative State Research Service
NOTICES
Meetings:
Committee of Nine, 9932

Defense Department
RULES
Records:
Freedom of Information Act; implementation
Defense Nuclear Agency, 9841
NOTICES
Meetings:
Defense Systems Management College Board of Visitors, 9941

Defense Nuclear Facilities Safety Board
PROPOSED RULES
Freedom of Information Act; implementation, 9902

Employment and Training Administration
NOTICES
Adjustment assistance:
Albert Nipon-Leslie Fay Corp. et al., 9979
Eastman Christensen, 9978
Harvey Industries, Inc., 9978
Rome Turney Radiator Co., 9980
Wonderknit Scoreboard, 9980
Federal-State unemployment compensation program:
Extended benefit periods—
Alaska, 9980
Rhode Island, 9981

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 9981

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission; Southwestern Power Administration
RULES
Special nuclear material, Category I quantities; personnel security access program, 10068
PROPOSED RULES
Substance abuse testing procedures; personnel security access program, 10075

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Experimental program to stimulate competitive research, 9945
Special research program—
Atmospheric radiation measurement program, 9945

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 9947
Weekly receipts, 9947
Grants, State and local assistance:
Financial assistance programs—
Toxic release inventory data capabilities, 9948

Executive Office of the President
See Management and Budget Office

Family Support Administration
See Community Services Office

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 9835
Glasflugel, 9837
McDonnell Douglas, 9838
PROPOSED RULES
Airworthiness directives:
Boeing, 9907
Dornier Luftfahrt GmbH, 9909, 9910
(2 documents)
SAAB-Scania, 9911
Wytwornia Sprzetu Komunekacyjnego PZL-Mielec, 9913
VOR Federal airways, 9914
NOTICES
Organization, functions, and authority delegations:
Lancaster, CA, 10007

Federal Communications Commission
RULES
Common carrier services:
Access charges—
Local exchange carriers, 9897
Common carrier services; and radio services, special:
Channel bandwidth; 10550-10680 MHz band rechanneling, 9897
Radio services, special:
Maritime services—
Global Maritime Distress and Safety System; international distress communications change from manual ship-to-ship to automated ship-to-shore system, 9861
Private operational-fixed microwave service—
Video entertainment material distribution, 9900
Radio stations; table of assignments:
Arizona, 9898
Arkansas, 9898
Idaho, 9899
New Jersey et al., 9899
PROPOSED RULES
Radio stations; table of assignments:
Illinois, 9924
Television broadcasting:
Television broadcast signals delivered by satellite to home satellite earth, station receivers; syndicated exclusivity requirements, 9924
NOTICES
Agency information collection activities under OMB review, 9950
(2 documents)
Meetings:
Advanced Television Service Advisory Committee, 9950
Radio services, special:
Amateur services—
Transceivers capable of receiving law enforcement and other signals; declaratory ruling request, 9951
Applications, hearings, determinations, etc.:
Carey, Julie J., et al., 9953

Federal Energy Regulatory Commission
NOTICES
Natural Gas Policy Act:
Natural gas data collection system—
Revised print software, user/operations manual, and record formats; availability, 9942
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 9944
Colorado Interstate Gas Co., 9944
Northern Border Pipeline Co., 9944

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Colorado et al., 9933
Illinois, 9934
Illinois et al., 9934
Iowa, 9934

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Biometric identification system for commercial operations; minimum uniform standards, 9925

Federal Housing Finance Board
NOTICES
Conventional 1-family nonfarm mortgage loans; index rates for adjustable-rate mortgages, 9954

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Passenger vessel financial responsibility requirements, 9955

Federal Register Administrative Committee
See Federal Register Office

Federal Register Office
NOTICES
Guide to Record Retention Requirements in CFR; supplement, 10012

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Cleo L. Craig Trust et al., 9955
First National Bancorp, Inc., 9955

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 10010

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 9974
(2 documents)

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Fenbendazole, 9841
Sponsor name and address changes—
Orion Corp., FARMOS, Research and Development, Pharmaceuticals, 9840
Pacific Molasses Co., 9840
PROPOSED RULES
Human drugs:
Dental and oral health care products (OTC) for antiplaque use; safety and efficacy review, 9915
NOTICES
Human drugs:
New drug applications—
Rorer Pharmaceutical Corp. et al.; approval withdrawn, 9956
Superpharm Corp.; proposal to withdraw approval, 9957
Medical devices:
Class III devices without premarket notification (510(k)) or approved premarket approval application (PMA); compliance policy guide availability, 9960

Forest Service
NOTICES
Environmental statements; availability, etc.:
Fremont National Forest, OR, 9935
Lewis and Clark National Forest, MT, 9935
Lewis and Clark National Forest, MT; five year noxious weed control program (1986-1990), 9935

General Services Administration
RULES
Federal travel:
Travel, subsistence and related expenses; acceptance from non-Federal sources, 9878
Nondiscrimination on basis of handicap in federally conducted programs or activities, 9862

Health and Human Services Department
See also Community Services Office; Food and Drug Administration; Health Resources and Services Administration; Public Health Service
NOTICES
Agency information collection activities under OMB review, 9956

Health Resources and Services Administration
See also Public Health Service
NOTICES
National vaccine injury compensation program:
Petitions received, 9960

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 9965

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Fresh cut flowers from—
Colombia, 9937
Antidumping and countervailing duties:
Administrative review requests, 9936
Meetings:
Automotive Parts Advisory Committee, 9939

International Trade Commission
NOTICES
Import investigations:
Red tart cherries; economic and competitive factors affecting U.S. industry, 9977

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 9977
Rail carriers:
State intrastate rail rate authority—
Minnesota, 9977

Justice Department
NOTICES
Agency information collection activities under OMB review, 9977
Pollution control; consent judgments:
Corinne, UT, et al., 9978

Labor Department
See Employment and Training Administration; Employment Standards Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Glenwood Springs Resource Area et al., CO, 9971
Sleeping Giant and Sheep Creek wilderness study areas, MT, 9971
Meetings:
Prineville District Grazing Advisory Board, 9972
Spokane District Advisory Council, 9972
Opening of public lands:
Oregon, 9972
Realty actions; sales, leases, etc.:
Oregon, 9973
Withdrawal and reservation of lands:
Oregon, 9973

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 10082

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
Green Technologies, Inc., 9986
Patent licenses, revocation:
Cardinal Control Systems, Inc., et al., 9982

National Archives and Records Administration
See Federal Register Office

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Rearview mirror systems; reflectance, 9928
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 10007

National Labor Relations Board
NOTICES
Senior Executive Service:
Performance Review Board; membership, 9988

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico reef fish, 9930

National Park Service
PROPOSED RULES
Minerals management:
Alaska Mineral resource assessment program, 9917

National Science Foundation
NOTICES
Meetings:
Cultural Anthropology Advisory Panel, 9987
Mathematical Sciences Special Emphasis Panel, 9987
Research Initiation and Improvement Special Emphasis Panel, 9987

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Barnett Industrial X-Ray, 9987
Cintichem, Inc., 9987

Office of Management and Budget
See Management and Budget Office

Peace Corps
NOTICES
Agency information collection activities under OMB review, 9988

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration
NOTICES
Agency information collection activities under OMB review, 9984

Securities and Exchange Commission
NOTICES
Self-regulatory organizations:
Clearing agency registration applications—
Participants Trust Co., 10000
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 9988
Boston Stock Exchange, Inc., 9990
National Association of Securities Dealers, Inc., 9991, 9992
(2 documents)
New York Stock Exchange, Inc., 9993
Options Clearing Corp., 9995
Philadelphia Stock Exchange, Inc., 10005

Applications, hearings, determinations, etc.:
Public utility holding company filings, 10001

Small Business Administration
NOTICES
Meetings; regional advisory councils:
Tennessee, 10007

Southeastern Power Administration
NOTICES
Power rates:
Georgia-Alabama-South Carolina System of Projects, 9946

Surface Mining Reclamation and Enforcement Office
RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Civil penalties, 10060
NOTICES
Valid existing rights determinations:
Rosebud Mining Co.; Allegheny River, PA, 9974

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau

United States Information Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities, 10007

Veterans Affairs Department
RULES
Loan guaranty:
Guaranteed loans processing; credit underwriting standards and procedures; specially adapted housing, 9853

Separate Parts in This Issue

Part II
National Archives and Records Administration, Federal Register Office, 10011

Part III
Department of the Interior, Surface Mining Reclamation and Enforcement Office, 10060

Part IV
Department of Treasury, Alcohol, Tobacco and Firearms Bureau, 10066

Part V
Department of Energy 10068

Part VI
Management and Budget Office, 10082

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR
710..... 10068
Proposed Rules:
710..... 10075
1703..... 9902

14 CFR
39 (3 documents)..... 9835–9838
Proposed Rules:
39 (5 documents)..... 9907–9913
71..... 9914

21 CFR
510 (2 documents)..... 9840
520..... 9840
558..... 9841
Proposed Rules:
356..... 9915

27 CFR
Proposed Rules:
16..... 10066

30 CFR
723..... 10060
845..... 10060

32 CFR
291..... 9841

33 CFR
100 (3 documents)..... 9850, 9851
110..... 9852
Proposed Rules:
117..... 9916

36 CFR
Proposed Rules:
9..... 9917

38 CFR
36..... 9853

41 CFR
105–8..... 9862
301–1..... 9878
Ch. 304..... 9878

47 CFR
2..... 9881
21..... 9897
69..... 9897
73 (4 documents)..... 9898, 9899
80..... 9881
94 (2 documents)..... 9897, 9900
Proposed Rules:
73..... 9924
76..... 9924

49 CFR
Proposed Rules:
383..... 9925
571..... 9926

50 CFR
Proposed Rules:
641..... 9930

Rules and Regulations

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-27-AD; Amdt. 39-6928]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires repetitive penetrant inspections and proof pressure tests of the leading edge pneumatic ducts and provides for weld stress relieving as optional terminating action. This action revises the provisions of the existing rule by requiring replacement of titanium T-ducts with Inconel T-ducts and stress relieving of all other pneumatic ducts, as terminating action. This action also specifies a new proof pressure test procedure for flangeless ducts. This amendment is prompted, in part, by the discovery that the existing AD incorrectly states that the stress relieving procedure constitutes terminating action for titanium T-ducts. Additionally, the FAA has determined that, in the interest of continuing airworthiness, the terminating action must be mandatory and that a proof pressure test must be required. Cracked or ruptured ducts, if not corrected, could lead to damage to wing leading edge panels and associated problems.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-17-07, Amendment 39-5986 (53 FR 28856, August 1, 1988), applicable to certain Boeing Model 747 series airplanes, to require replacement of titanium T-ducts with Inconel T-ducts, stress relieving of all other leading edge pneumatic ducts, and proof pressure test of flangeless ducts in accordance with new procedures was published in the **Federal Register** on October 11, 1990 (55 FR 41343).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer requested that the "NOTE" in proposed paragraph A. be revised to delete the stress relieving requirement for titanium T-ducts, and require replacement of the titanium T-ducts with Inconel T-ducts as terminating action. The manufacturer commented that the note implies that the weld stress relieving procedure may be accomplished in conjunction with a penetrant inspection as terminating action for the requirement to replace titanium T-ducts with Inconel T-ducts. The FAA concurs that the note should be revised somewhat to clarify its intent. The note in paragraph A. of the final rule has been revised to clarify its applicability.

The manufacturer also requested that the proposed paragraph B.3. be revised to require additional proof pressure testing only on bent flangeless ducts. The manufacturer commented that the proposed paragraph B.3. implies that, even if the stress relieving procedure had already been accomplished in accordance with AD 88-17-07, proof pressure testing is still required for all flangeless ducts (straight and bent flangeless ducts included) in accordance with Boeing Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990. The commenter noted that proof pressure test procedures for bent flangeless ducts did not exist prior to Revision 4 of the service bulletin. The commenter further stated that although the proof pressure test procedures for straight flangeless ducts have been improved by Revision 4, previous proof pressure test procedures should be considered adequate to provide an acceptable level of safety. The FAA concurs. Paragraph B.3. of the final rule has been revised accordingly.

Two commenters requested that the FAA exempt straight flangeless ducts from the modified proof pressure test described in Revision 4 to Boeing Service Bulletin 747-36A2074. One commenter noted that a modified proof pressure test is required for straight flangeless ducts to ensure longitudinal strength. However, the commenter noted that the longitudinal strength test is not necessary for this type of duct since longitudinal stresses would be minimal under usual flight conditions. The other commenter did not provide a reason to exempt straight flangeless ducts but recommended that the lead-in modification, defined in the service bulletin and required for the modified proof pressure test, be introduced as a repair only for flangeless duct ends which were deformed by heat treatment. The FAA agrees that the proof pressure test defined by Revision 3 to the service bulletin is adequate for straight flangeless ducts. Therefore, paragraph B.3. of the final rule has been revised to exempt straight flangeless ducts which have been stress relieved in accordance with AD 88-17-07 from the additional proof pressure test requirement, as stated above. However, any future proof pressure testing of flangeless ducts should utilize the improved procedures defined in Revision 4 to the service bulletin and is required by the AD. The FAA does not concur that use of the lead-in modification described in the service bulletin to repair flangeless duct ends, which were deformed by heat treatment would independently serve as an adequate repair because this modification requires an additional proof pressure test to ensure the integrity of the new weld introduced.

One commenter requested that operators be allowed to use the radiographic and fluorescent inspections for bent flangeless ducts to detect

cracks until tooling is available to conduct the proof pressure test described in Boeing Service Bulletin 747–36A2074, Revision 4. The commenter stated that both the proof pressure test and the radiographic inspection methods would detect the presence of cracks. Another commenter requested the use of radiographic and fluorescent inspections of the bent flangeless duct as an alternate means of compliance for the initial inspection. That commenter stated that radiographic and fluorescent inspections in lieu of the proof pressure test of the bent flangeless ducts provides an effective alternative for the initial inspection. The FAA does not concur. The FAA has determined that the proof pressure test is a much more reliable method of determining duct integrity. Also, the FAA considered test tooling availability when developing the compliance times for this AD action.

One commenter recommended that ducts inspected in accordance with Revision 3 to Boeing Service Bulletin 747–36A2074 be exempt from any additional work because the radiographic/fluorescent and proof pressure tests would detect the presence of hidden/starting cracks. The FAA does not concur. The FAA has determined that inspection alone is not adequate. Therefore, the FAA is issuing this AD to require that titanium T-ducts be replaced with Inconel T-ducts and all other ducts be stress relieved.

One commenter requested that the AD be revised to require the initial inspection within a total of 7,000 flight cycles or within 1,850 flight cycles from the effective date, whichever occurs later. The commenter noted that the proposal reduced the compliance time for the initial inspection to within 5,850 total flight cycles or within the next 1,850 flight cycles from the effective date, whichever occurs later; AD 88–17–07 requires the initial inspection within 7,000 total flight cycles or 3,000 flight cycles from the effective date, whichever occurs later. The commenter noted that a reduction from 3,000 cycles to 1,850 cycles is reasonable due to the effective date; however, there is no clear reason why the total cycle is reduced from 7,000 cycles to 5,850 cycles. The FAA does not concur. The FAA stated in the Notice of Proposed Rulemaking issued on March 16, 1990 (55 FR 11028, March 26, 1990), that the compliance time for the initial inspection must be reduced for both total cycles and cycles after the effective date, based on failure history which showed that failures can occur in the range of 700 to 21,000 flight cycles.

One commenter requested that the AD applicability be revised to agree with the Boeing Service Bulletin 747–36A2074, Revision 4. The commenter noted that the service bulletin applicability for all Model 747 series airplanes, from line positions 2 through 707 (except Model 747–400 series airplanes), is not consistent with the AD applicability. The FAA concurs. The terminating action provisions of this AD have been incorporated, in production, on airplane line positions 708 and subsequent. The final rule has been revised by deleting airplane line numbers 708 and subsequent from the applicability.

The Air Transport Association (ATA) of America requested that the FAA reconsider the comments submitted in response to the NPRM issued on March 16, 1990. The FAA has reconsidered the comments submitted by the ATA and has determined that the original disposition of those comments, iterated in the Supplemental NPRM that was published in the **Federal Register** on October 11, 1990 (55 FR 41343), is still valid.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 640 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 280 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,926,400 for the initial required action.

Additionally, terminating action for T-ducts will require parts replacement at an estimated cost of $15,000 per airplane, for a total replacement part cost of $2,580,000 for the affected fleet.

Based on these figures explained above, the total cost impact of this AD on U.S. operators is estimated to be $4,506,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[AMENDED]

2. Section 39.13 is amended by superseding AD 88–17–07, Amendment 39–5986 (53 FR 28856, August 1, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line positions 2 through 707, except Model 747–400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent damage to wing panels and/or electrical wiring as a result of failure of wing leading edge ducts, accomplish the following:

A. Prior to the accumulation of 5,850 flight cycles, or within the next 1,850 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection and proof pressure test as follows:

1. For titanium T-ducts and flanged ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Alert Service Bulletin 747–36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

2. For flangeless ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Alert Service Bulletin 747–36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

Note: For both flanged and flangeless ducts specified in paragraphs A.1. and A.2. of this AD (excluding T-ducts): The duct weld stress relieving procedure specified in Items G., H., and I. of the referenced service bulletins (and required by paragraphs B.2. and B.3. of this AD) may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraphs B.2. and B.3. of this AD.

B. Prior to the accumulation of 3,000 flight cycles after accomplishment of the initial inspection required by paragraph A. of this AD, accomplish the following:

1. For titanium T-ducts: Replace titanium T-ducts with Inconel T-ducts in accordance with Boeing Service Bulletin 747–36–2059, dated June 9, 1988. Accomplishment of this replacement constitutes terminating action for the requirements of this AD.

2. For flanged ducts, except T-ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747–36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the duct weld stress relieving has already been accomplished in accordance with AD 88–17–07 prior to the effective date of this AD, it constitutes terminating action for the requirements of this paragraph for flanged ducts.

3. For flangeless ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747–36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the penetrant inspection, proof pressure test, and duct weld stress relieving have already been accomplished in accordance with AD 88–17–07 prior to the effective date of this AD, the following apply:

a. For straight flangeless ducts (L3, R3, L4, R4, L5, and R5 defined in the service bulletin): The above constitutes terminating actions for the requirements of this AD.

b. For bent flangeless ducts (L2, R2, L7, and R7 defined in the service bulletin): Conduct only a proof pressure test in accordance with Boeing Alert Service Bulletin 747–36A2074, Revision 4, dated September 13, 1990.

C. For ducts other than T-ducts: Replacement of all leading edge pneumatic ducts by kits in accordance with Boeing Alert Service Bulletin 747–36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990; or in accordance with Boeing Service Bulletin 747–36–2062, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39–5986, AD 88–17–07.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–5516 Filed 3–7–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–CE–37–AD; Amdt. 39–6920]

Airworthiness Directives; Glasflugel Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS–1 Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Glasflugel Libelle, Kestrel, and BS–1 series gliders. This action (1) supersedes AD 71–16–06 and AD 88–07–05; (2) requires replacement of all hemp core rudder cables; (3) requires repetitive inspections of the cables for fraying, wear, corrosion, twisting or other damage, and replacement if found damaged; and (4) eliminates the mandatory replacement of these cables every 500 hours time-in-service as was required by the superseded ADs. Operational experience indicates that the replacement of the cables every 500 hours TIS is not justified and should not be mandatory. The actions specified in this AD are intended to prevent failure in the rudder control system.

EFFECTIVE DATE: April 8, 1991.

ADDRESSES: Hansjorg Streifeneder Technical Note (TN) Nos. 201–28, 301–33, 401–20, and 501–4, all dated March 15, 1987, that are discussed in this AD may be obtained from Hansjorg Streifeneder, Glasflaser Flugzeug Service GmbH, Hofener Weg, D–7431 Grabenstetten, Federal Republic of Germany. This information also may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)—513.38.30, Extension 2710; or Mr. Herman Belderok, Project Officer, FAA, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to Glasflugel Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS–1 gliders was published in the **Federal Register** on October 16, 1990 (55 FR 41862). The proposed AD would (1) supersede AD 71–16–06 and AD 88–07–05; (2) require the replacement of certain hemp core rudder cables; (3) require repetitive inspections of the cables for fraying, wear, corrosion, twisting or other damage, and replacement if found damaged; and (4) eliminate the mandatory replacement of these cables every 500 hours time-in-service as was required by the superseded ADs.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received on the proposed AD or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

It is estimated that 179 gliders of U.S. registry are affected by this AD. This AD eliminates mandatory repetitive replacements of these cables on the affected gliders. Since this AD presents a decrease in the cost of compliance than was previously required, there will not be a financial impact on any small entities operating these gliders.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing AD 88-07-05, Amendment 39-5865 (53 FR 9434, March 23, 1988) and AD 71-16-06, Amendment 39-1253, and adding the following new AD:

Glasflugel: Amendment 39-6920; Docket No. 90-CE-37-AD.

Applicability: Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS-1 Gliders (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failures in the rudder control system, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, replace all DIN specification 055, 6 by 7 inch rudder cables with a diameter of 2.55 mm (.098 in.) having a hemp core, with a 7 by 7, 3/32 inch cable, manufactured in accordance with MIL-W-83420D or MIL-W-1511A, with cable connections constructed in accordance with Actions 2 of Hansjorg Streifeneder Technical Note Nos. 201-28, 301-33, 401-20, 501-4, all dated March 15, 1987.

Note: The replacement cables may have been installed pursuant to superseded AD 71-16-06, Amendment 39-1253, or superseded AD 88-07-05, Amendment 39-5865.

(b) Within the next 100 hours TIS after the replacement of the cables required in paragraph (a) of this AD or within the next 100 hours after the effective date of this AD, whichever is applicable, and thereafter at intervals not to exceed 100 hours TIS, visually inspect the rudder cables for wear, fraying, corrosion, twisting or other damage. If damaged cables are found, prior to further flight, replace the damaged cables with cables and connections as specified in paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Hansjorg Streifeneder, Glasflaser Flugzeug Service GmbH, Hofener Weg, D-7431 Grabenstetten, Federal Republic of Germany; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 71-16-06, Amendment 39-1253, and AD 88-07-05, Amendment 39-5865.

This amendment becomes effective on April 8, 1991.

Issued in Kansas City, Missouri, on February 20, 1991.

Henry A Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5515 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-NM-158-AD; Amdt. 39-6929]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series, DC-9-80 series, and MD-88 airplanes equipped with certain BFGoodrich evacuation slides, which requires installation of a new girt bar flap and firing line, and modification of the valise. This amendment is prompted by reports of incidents of in-flight inflations. This condition, if not corrected, could obstruct and hinder the emergency evacuation of the airplane, and could result in injuries to passengers and crew.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from The BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes, equipped with BFGoodrich, Aircraft Evacuation Systems (formerly Sargent Industries, Pico Division; formerly Pico, Inc.) Evacuation Slides, P/N 11331-( ), which requires installation of a new girt bar flap and firing line, and modification of the valise, was published in the **Federal Register** on September 14, 1990 (55 FR 37885).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters suggested that the proposed compliance time be changed to coincide with the next scheduled overhaul/maintenance check in order to minimize the impact of the proposed actions, and to allow BFGoodrich ample time to produce a sufficient quantity of the required materials. The FAA does not concur. The FAA has determined that a compliance time set at the next regularly scheduled maintenance check could occur at 24, 36, or as much as 48 months from the effective date of the AD, depending on the operator. Additionally, the compliance time, as proposed in this AD, represents the maximum time allowable for the affected airplanes to continue to operate prior to the required modification without compromising safety. Further, since the FAA has verified that parts availability will not be a problem and that the manufacturer will be able to produce a sufficient quantity of the necessary materials, the compliance time of 18 months, as proposed, is appropriate.

One commenter has informed the FAA that the firing line identified in BFGoodrich Service Bulletin 11331-25-226, Revision 1, dated July 16, 1990, will not work in the General Pneumatics valves, which were installed on the early P/N 11331 slides. After further review of this issue, the FAA concurs. The firing line specified in BFGoodrich Service Bulletin 11331-25-226, Revision 1, can prevent the slide from inflating. Since issuance of the Notice, the FAA has reviewed and approved BFGoodrich Service Bulletin 11331-25-226, Revision 2, dated January 4, 1991, which corrects this information. The FAA has revised the final rule to reference this revision of the service bulletin as the appropriate information source.

Two commenters stated that the labor requirements specified in the economic analysis paragraph in the preamble to the NPRM were understated. These commenters figured that the required actions would take 8 manhours per airplane, rather than the 2.65 manhours per manhour that was cited in the NPRM. The FAA partially concurs with the commenter. Further review of this issue indicates that the number of required manhours should be revised somewhat. Modification of evacuation slides with detachable girts requires no additional manhours if accomplished during normal slide maintenance; approximately 2.25 manhours are required if it is accomplished as a separate action. Modification of units with fixed girts requires an estimated 4.0 manhours if accomplished during normal slide maintenance; approximately 6.25 manhours are required if it is accomplished as a separate action. The economic analysis paragraph, below, has been revised to specify this difference in labor requirements.

Another commenter surmised that, since there has only been one incident and the exact cause of the incident has not been determined, the AD should be issued against the affected galleys to correct a design problem in the galleys. The FAA does not concur. An FAA investigation revealed six incidents in which BFGoodrich P/N 11331-( ) evacuation slides inflated during flight. Further, an analysis revealed that the firing line on the service door slide can slip out from under the girt, and subsequently, a galley cart in the vicinity can inadvertently snag the firing line and inflate the slide. The FAA has investigated the possibility of issuing an AD against the affected galleys; however, because numerous galley designs exist, some of which have not been involved in similar incidents, the specific galley cannot be identified at this time. Consequently, the FAA has determined that the most efficient way to correct the addressed unsafe condition is to require modification of the slides.

Another commenter stated that only the service door evacuation slide was involved in the incidents; therefore, the AD should not affect the main entry door slide. The FAA concurs in part. Although only the service door evacuation slide was involved in the cited incidents, both the service door and the main entry door use the same slide. The FAA has determined that since both doors use the same slide, and the slides can be interchanged, the service door and main entry door slides must be modified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described above. These changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 3,150 slides of the affected design installed on McDonnell Douglas Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes in the worldwide fleet. It is estimated that 1,600 slides installed on airplanes of U.S. registry will be affected by this AD. Modification of evacuation slides with detachable girts will require approximately 2.25 manhours per airplane to accomplish. Modification of units with fixed girts will require approximately 6.25 manhours per airplane to accomplish. The average labor cost is $40 per manhour. The cost of parts to accomplish the modification is estimated to be $350 per slide. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be either $440 or $600 per airplane, depending on the configuration of the slide.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 series airplanes, Model DC-9-80 series airplanes, and Model MD-88 airplanes; equipped with BFGoodrich, Aircraft Evacuation Systems (formerly Sargent Industries, Pico Division; formerly Pico, Inc.) evacuation slides, P/N 11331-( ); certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent obstruction or hindrance with the emergency evacuation of the airplane and possible injuries to the passengers and the crew, accomplish the following:

A. Within 18 months after the effective date of this AD, accomplish the modification of the evacuation slide in accordance with section 2, Accomplishment Instructions, of BFGoodrich Service Bulletin 11331-25-226, Revision 2, dated January 4, 1991.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5517 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for a new animal drug application (NADA) from Farmos Group, Ltd., to Orion Corp. FARMOS, Research and Development, Pharmaceuticals.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Farmos Group, Ltd., P.O. Box 425, SF-20101 Turku 10, Finland, has merged with the Orion Corp. and has submitted a supplemental application for a change of sponsor name and address. The resulting company, and new sponsor of approved NADA 140-882, is Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland. The sponsor labeler code of Farmos Group, Ltd., is being retained as the labeler code for the new company.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Farmos Group, Ltd.," and by alphabetically adding a new entry for "Orion Corp. FARMOS, Research and Development, Pharmaceuticals" and in the table in paragraph (c)(2) in the entry for "052483" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	*
Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland	052483
* * * *	*

(2) * * *

Drug labeler code	Firm name and address
*	* * * * *
052483	Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland
*	* * * * *

Dated: March 1, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine

[FR Doc. 91-5493 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from V.M.S., Inc., to Pacific Molasses Co.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: V.M.S., Inc., P.O. Box 406, Montgomery, AL 36195-6001, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 136-214 (polyoxyethylene (23) lauryl ether blocks) to Pacific Molasses Co., 333 Market Street, Suite 1000, San Francisco, CA 94105. In addition, V.M.S., Inc., is no longer the sponsor of any approved NADA. Accordingly, the agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) and 21 CFR 520.1846(b) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "V.M.S., Inc.," and in the table in paragraph (c)(2) by removing the entry for "035624".

PART 520—ORAL DOSAGE FORM; NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1846 [Amended]

2. Section 520.1846 *Polyoxyethylene (23) lauryl ether blocks* is amended in paragraph (b) by removing "035624" and inserting in its place "050112".

Dated: March 1, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-5495 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplemental NADA provides for the use of an 8 percent fenbendazole Type A medicated article for making Type C medicated swine feed for use as an anthelmintic.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Henry E. Schmaus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2853.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, P.O. Box 2500, Somerville, NJ 08876-1258, filed a supplement to NADA 131-675 which provides for use of the Safe-Guard® (fenbendazole) Type A medicated article for making Type C medicated swine feed. The Type C feed is used for the removal of large roundworms, nodular worms, small stomach worms, whipworms, and kidney worms. The supplement provides for the use of an 8 percent Type A medicated article in addition to use of the currently approved 4 and 20 percent articles. The supplemental NADA is approved as of March 8, 1991 and 21 CFR 558.258 is amended by revising paragraph (a) to reflect the approval.

Approval of this supplement did not require additional effectiveness, target animal safety, or human food safety studies.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for marketing exclusivity because new clinical or field studies were not required for the approval.

Fenbendazole is a new animal drug used in a Type A medicated article to make a Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4(e), requires an approved Form FDA 1900 for making a Type C medicated feed, as in approved NADA 131-675 and in 21 CFR 558.258, as amended by this final rule.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support this approval may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.258 is amended by revising paragraph (a) to read as follows:

§ 558.258 Fenbendazole.

(a) *Approvals.* Type A medicated articles: 4 percent (18.1 grams per pound), 8 percent (36.2 grams per pound), and 20 percent (90.7 grams per pound) fenbendazole to 012799 in § 510.600(c) of this chapter.

* * * * *

Dated: March 1, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-5497 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 291

[DNA 5400.7C]

Defense Nuclear Agency (DNA) Freedom of Information Act Program

AGENCY: Defense Nuclear Agency.

ACTION: Final rule.

SUMMARY: Defense Nuclear Agency operates its Freedom of Information Act Program in accordance with DoD Directive 5400.7 (32 CFR part 285) and DoD 5400.7-R (32 CFR part 286) which provides the policies and procedures for the Department of Defense (DoD) and the DoD Components. This rule implements the internal procedures for obtaining information from DNA under the provisions of the Freedom of Information Act 5 U.S.C. 552 and revises 32 CFR part 291.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nell M.S. Hayes, Public Affairs Office, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398, telephone (703) 325-7095.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 291

Freedom of information.

Accordingly, 32 CFR part 291 is revised to read as follows:

PART 291—DEFENSE NUCLEAR AGENCY (DNA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.
291.1 Purpose.
291.2 Applicability.
291.3 Definitions.
291.4 Policy.
291.5 Responsibilities.
291.6 Procedures.
291.7 Administrative instruction.
291.8 Exemptions.
291.9 For official use only (FOUO).

Appendix A—Freedom of Information Act Request (DNA Form 524)

Authority: 5 U.S.C. 552.
Dated: March 1, 1991.

L. M. Bynum,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.

§ 291.1 Purpose.

This part establishes policies and procedures for the DNA FOIA program.

§ 291.2 Applicability.

This part applies to Headquarters, Defense Nuclear Agency (HQ, DNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

§ 291.3 Definitions.

(a) *FOIA Request.* A written request for DNA records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA (5 U.S.C. 552), 32 CFR part 285, 286, or this part.

(b) *Agency Record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DNA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word *record:*

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DNA organization. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DNA office, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) Refer to § 291.8(b) exemptions 2, 4 and 5 for guidance on release determinations of computer software.

(4) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA. In such cases, PAO will direct the requester to the appropriate source, to obtain the record.

(d) *Initial Denial Authority (IDA).* The Deputy Director (DDIR), DNA, has the authority to withhold records requested under the FOIA for one or more of the nine categories (set forth § 291.8) of records exempt from mandatory disclosure.

(e) *Appellate Authority.* The Director, DNA.

(f) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component (Director, DNA) to reverse an IDA decision to withhold all or part of a requested record or to deny a request for a waiver or reduction of fees.

(g) *Public Interest.* Public interest is official information that sheds light on an agency's performance of its statutory duties because it falls within the statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(h) *Electronic Data.* Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. Refer to paragraphs (b)(2) and (3) of this section for a discussion of computer software.

§ 291.4 Policy.

(a) *Compliance with the FOIA.* DNA personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DNA FOIA Program and to create conditions that will promote public trust. It is DNA policy to fully and completely respond to public requests for information concerning its operations and activities, consistent with national security objectives.

(b) *Openness with the Public.* 32 CFR part 286 states that all DoD employees shall conduct DoD activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records that are not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of Procedural Obstacles.* DNA offices shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DNA records promptly. PAO shall provide assistance to requesters to help them understand and comply with procedures established by this instruction, the 32 CFR part 286 and any supplemental regulations published by DoD.

(d) *Prompt Action on Requests.* When a member of the public complies with the procedures established for obtaining DNA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt.

However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. In addition, PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the PAO.

(e) *Use of Exemptions.* It is DoD/DNA policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components may elect to make a discretionary release; however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6 and 7(C). Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public Domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available through the reading room channel to facilitate public access. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a Record.* (1) A record must exist and be in the possession of and in control of the DNA at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume agency control, and such records, or identifiable portions thereof, would be referred to the originating agency for direct response to the requester. There is no obligation to create or compile a record to satisfy a FOIA request. However, a DNA employee may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, offices should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

(h) *Description of Requested Record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that will enable the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When DNA receives a request that does not "reasonably describe" the requested record, PAO shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined in paragraph (h)(2) of this section. DNA is not obligated to act on the request until the requester responds to the specificity letter. When practical, PAO shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on DNA's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releaseable under the FOIA.

(5) The above guidelines notwithstanding, the decision of an office concerning reasonableness of description must be based on knowledge of its files. If the description enables office personnel to locate the record with reasonable effort, the description is adequate.

(i) *Reasons for not Releasing a Record.* (1) The request is transferred to another DoD component, or to another Federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and 32 CFR part 286.

(4) A record has not been described with sufficient particularity to enable DNA to locate it by conducting a reasonable search.

(5) The requester has failed reasonably to comply with procedural requirements, including payment of fees, imposed by 32 CFR part 286 or this part.

(6) The DNA determines, through knowledge of its files and reasonable search efforts, that it neither controls nor otherwise possesses the requested record.

(7) The record is subject to one or more of the nine exemptions set forth in § 291.8, and a significant and legitimate government purpose is served by withholding.

§ 291.5 Responsibilities.

(a) The Director, DNA, as appellate authority, is responsible for reviewing and making the final decision on FOIA appeals.

(b) The DDIR, as IDA, is responsible for reviewing all initial denials to FOIA requests and has sole responsibility for withholding that information.

(c) The DNA FOIA Officer, who is also the Public Affairs Officer, manages and implements the DNA FOIA program. In this regard, the Public Affairs Officer serves as the FOIA point-of-contact and liaison between DNA and the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), Directorate for Freedom of Information and Security Review (DFOI/SR). The Public Affairs Officer is responsible for:

(1) Advising OASD(PA), DFOI/SR, of any DNA denial of a request for records or appeals that may affect another DoD component.

(2) Ensuring publication of this part in the **Federal Register**.

(3) Ensuring that the Command Services Directorate publishes in the **Federal Register** a notice of where, how and by what authority DNA performs its functions.

(4) Ensuring that the Command Services Directorate, publishes an index of DNA instructions in the **Federal Register**.

(5) Coordinating all FOIA actions, except routine, interim replies indicating initial receipt of a FOIA request through the appropriate DNA offices and the DNA General Counsel (GC).

(6) Forwarding all fees collected under the FOIA to the HQ, DNA, Finance and Accounting Officer for further processing.

(7) Coordinating action on FOIA requests that involve other government organizations (e.g., when DNA is not the original classifier for a classified document) with those organizations.

(8) Ensuring FOIA briefings are presented annually for DNA personnel.

(9) Submitting an annual report to OASD(PA), DFOI/SR, in accordance with the requirements of DoD Directive 5400.11.[1]

(d) The Commander, FCDNA, is responsible for determining, based on current directives and instruction, what information in FCDNA custody may be released to FOIA requesters. (This responsibility may be delegated.) The Commander, FCDNA, is responsible for designating a representative to process FOIA requests. The Commander has the authority to release documents in response to the FOIA. When FCDNA releases information under the FOIA, it will forward a copy of the request, the response and the appropriate cost sheet to HQ, DNA, ATTN: PAO (FOIA). FCDNA will not deny requests for information under the FOIA; instead, it will forward to HQ, DNA, PAO a recommendation and justification for denying the FOIA request.

(e) The Director, AFRRI, is responsible for designating a representative to process FOIA requests and to forward them to HQ, DNA, (PAO) for coordination and preparation of a final response.

(f) The DNA GC shall coordinate on all DNA FOIA response except routine interim letters which acknowledge receipt of the FOIA request. That office shall also ensure uniformity in the legal position and interpretation by DNA of the FOIA, and coordinate with the DoD GC, as necessary.

(g) The HQ, DNA, Finance and Accounting Officer will ensure that fees collected under the FOIA are forwarded to the Finance and Accounting Office, U.S. Army, to be submitted to the Treasury of the United States.

(h) HQ, DNA, Assistant Director for Intelligence and Security, Classification Management Division (ISCM), will conduct security reviews of classified documents requested under the FOIA. ISCM will determine whether the document

(1) Contains information that meets requirements for withholding under Exemption 1 Executive Order 12356.

(2) Has information that meets requirements for withholding under Exemption 3, to include Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(3) Has information that may be declassified or sanitized. ISCM is also responsible for sanitizing DNA classified information from documents requested under the FOIA (refer to § 291.6(b)(5)). In addition, ISCM is responsible for advising the Assistant Director for Technical Information (CSTI) to notify the appropriate authorities when information has been reclassified as a result of a DNA FOIA review.

(i) HQ, DNA, CSLE will, upon request, ensure that photocopies are made of 50-page or larger documents being processed under the FOIA. (Copies are required only when documents are not available from other sources.)

(j) CSTI, Technical Library Division (TITL), will, upon notification from PAO that a document has been cleared for public release under the FOIA, retain the marked up document in its files, annotate the FOIA case number in the computerized data base and ensure that the document is made available to the public through the National Technical Information Service (NTIS).

(k) Commander, FCDNA; Director, AFRRI; and directors and chiefs of staff elements at HQ, DNA, will ensure that personnel are familiar with the procedures and contents of this part prior to acting on FOIA requests. They will also make sure that FOIA actions forwarded to their offices for processing are closely monitored to ensure accountability and that their input to PAO is provided in a timely manner and in accordance with this part. (Refer to § 291.7(b)(2)). If the office(s) cannot meet the FOIA suspense, they must request an extension. In addition, they will ensure that, upon request by PAO, appropriate technical personnel sanitize information such as unclassified technical data, that is determined to be exempt from disclosure under the FOIA. (Refer to § 291.7(b)(5)).

§ 291.6 Procedures.

(a) If HQ, DNA personnel receive a FOIA request that has not been logged and processed through PAO, they will immediately handcarry the request to PAO. TDNM and AFRRI personnel will forward all FOIA requests to HQ, DNA, Attn: PAO. FCDNA will adhere to paragraph 6d and FCDNA Supplement to DNA Instruction 5400.7C.[2]

(b) When a FOIA request is received by PAO, HQ, DNA, the following procedures apply:

(1) The request will be date stamped, reviewed to determine if it meets the requirements of 5 U.S.C. 552, logged in, assigned an action number, suspensed, and attached to a FOIA cover sheet with instructions for forwarding to the appropriate office. A copy of DD Form 2086 or DD Form 2086–1 will also be attached to the FOIA request.

(2) A copy of the request will be handcarried by PAO to the designated HQ, DNA, action office(s) or forwarded to AFRRI or FCDNA, as appropriate. The office or component providing input for the FOIA request must keep track of the request and meet the PAO suspense. The HQ, DNA input, or negative response, if there are no records available, will be handcarried to PAO. AFRRI will send the recommended response in daily distribution. FCDNA will telefax the proposed response in addition to mailing the original. All FOIA actions must include a completed DD Form 2086 or 2086–1. Each office

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies can be obtained from Defense Nuclear Agency PAO or SSAB, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

acting on FOIA requests will indicate on the form the search, review/excise and coordination time spent processing the FOIA action, and provide the number of pages copied.

(3) The DNA PAO will prepare the response to the requester and coordinate it with the offices that provided input, the GC, and if appropriate, ISCM, the IDA, the Director, DNA, OASD(PA), and outside agencies, if involved. The PAO will maintain files of all FOIA actions per DNA Instruction 5015.4B.

(4) If a request is received by a DNA office which does not have records responsive but office personnel believe another office would have the records requested, they must contact the other office to confirm the existence of the documents, forward the FOIA action to that office and notify PAO.

(5) *FOIAs involving classified information.* When ISCM or contractor security reviewers receive a classified document from PAO for processing under the FOIA, they will conduct a security review to determine if the document may be sanitized or declassified. Most DNA documents requested under the FOIA are queued on a first-come, first-served basis and shall be reviewed in that order. When security reviewers determine that part or all of the information in a classified document may be sanitized or declassified, they will ensure that the appropriate copies are ordered from the Defense Technical Information Center (DTIC). The DTIC copy will be marked up during review. Cases not placed in queue will be suspensed by PAO. They may include documents with less than 10 pages or documents under suspense from other organizations which require a DNA review. All DNA documents reviewed will be marked with a special pen that does not permit photocopying of the classified portions. Security review must include a detailed response providing the appropriate exemption(s) and justification for withholding.

When the Field Command Security Division (FCSS) receives a classified document for processing under the FOIA, they will conduct a security review to determine if the document may be sanitized or declassified. When FCSS determines that part or all of the information in a classified document may be sanitized or declassified, FCSS will make a copy which will be marked up during review. Upon completion of its review, FCSS will provide the marked up document and a sanitized version of the document to PAO. FCSS review must include a detailed response providing the appropriate exemption(s) and justification for withholding. When ISCM/FCSS completes its review, ISCM/FCSS will forward the master copy to the appropriate technical office(s) for review. That office will determine whether the remaining unclassified information is releaseable and provide its response to ISCM/FCSS. If the office recommends that part or all of the information be withheld, then it must forward a detailed response providing the appropriate exemption(s) and justification for withholding. The technical office will return documents with results of their review to ISCM. ISCM will forward the results of both reviews to PAO for further processing. If either ISCM/FCSS or the DNA office reviewing the action recommends additional review by another agency, they will provide the full name and address of that agency with a technical point-of-contact, if known. PAO will forward the action to that organization for further review. When PAO receives that organization's review determination, it will forward the results to ISCM/FCSS. After all reviews are completed, ISCM/FCSS will sanitize the document and handcarry (FCSS will forward) the sanitized as well as the marked up copy to PAO for final processing.

(6) *FOIAs involving unclassified information.* The appropriate technical office(s) will review unclassified documents for release under the FOIA. If the office(s) determines that part or all of the document should be withheld, it must provide PAO a written recommendation with the appropriate exemption(s) (§ 291.8) and detailed reasons for withholding the information. Upon PAO request, the technical office(s) will sanitize the unclassified information that is being withheld. Sanitization will be done on a photocopy of the document or on a document that has been obtained from DTIC.

§ 291.7 Administrative instruction.

(a) FOIA requesters shall clearly mark their requests as such, both on the envelope and in the body of the letter. Identification of the record desired is the responsibility of the FOIA requester. The requester must provide a description of the desired record that enables DNA to locate it with a reasonable amount of effort. The Act does not authorize "fishing expeditions." FOIA requests should be sent to the following address: Public Affairs Officer, Defense Nuclear Agency, Attention: FOIA, 6801 Telegraph Road, Alexandria, VA 22310–3398. Requester failure to comply with this section shall not be sole grounds of denial for requested information.

(b) FOIA appeals must be clearly marked as such, both on the envelope and in the body of the letter. Persons appealing DNA denial letters should include a copy of the denial letter, the case number, a statement of the relief sought and the grounds upon which it is brought. Appeals should be sent to the following address: Director, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(c) The time limitations for responding to legitimate FOIA requests are:

(1) Determinations to release, deny or transfer a record shall be made and the decision reported to the requester within 10 working days after the request is received in PAO.

(2) If additional time is needed to respond to a request, the requester will be notified within the 10-day period. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the Public Affairs Officer.

(3) If a request for a record is denied and the requester appeals the decision of the IDA, the requester should file the appeal so that it reaches DNA no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. A final determination on the appeal normally shall be made within 20 working days after receipt. If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If an appeal is denied, the Director, DNA, will notify the requester of the right to judicial review of the decision. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees.

(d) If DNA denies the requested document in whole or in part, the response must include detailed rationale for withholding information and the

BEST COPY AVAILABLE

specific exemption that applies so the requester can make a decision concerning appeal. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. Denial letters must also include the name and title of the IDA, and cite the name and address of the Director, DNA, as the appellate authority.

(e) All final responses will address the status of fees collectible under the FOIA. Fees of $15 or less will be waived, regardless of category of requester.

(f) A formal reading room for the public, as defined in 32 CFR part 286, does not exist at DNA (HQ, FCDNA or AFRRI) because of security requirements. However, the PAO will arrange for a suitable location and escort, if required, for members of the public to review DNA documents released under the FOIA. In addition, most reports released under the FOIA are sent to the National Technical Information Service (NTIS).

§ 291.8 Exemptions.

(a) *General.* Records that meet the exemption criteria listed in paragraph (b) below may be withheld from public disclosure and will not be published in the **Federal Register**, made available in a library, reading room, or provided in response to a FOIA request.

(b) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 291.4(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R.[3] Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f., apply. In addition, this exemption shall be invoked when the following situations are apparent:

(i) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DNA shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(2) *Number 2.* Those related solely to the internal personnel rules and practices of DNA. This exemption has two profiles, high b2 and low b2.

(i) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions, the release of which would allow circumvention of these records, thereby substantially hindering the effective performance of a significant function of the DNA. Examples include:

(A) Those operating rules, guidelines and manuals for DNA investigators, inspectors, auditors, or examiners that must remain privileged in order for the DNA office to fulfill a legal requirement.

(B) Personnel and other administration matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(C) Computer software meeting the standards of paragraph 291.3(b)(2)(iii), the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be clearly examined to ensure a circumvention possibility exists.

(ii) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include: Rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(3) *Number 3.* Those containing matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Public Law 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.[4]

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(vii) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(viii) Protection of Intelligence Sources and Methods, 50 U.S.C. 403 (d)(3).

(4) *Number 4.* Those containing trade secrets or commercial or financial information that DNA receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets,

[3] See footnote 1 to 291.5(c)(9).

[4] See footnote 1 to § 291.5(c)(9).

inventions, discoveries, or other proprietary data. See 32 CFR part 286h, "Release of Acquisition-Related Information."

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information, submitted with an application for a research grant, or with a report, while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with title 10, U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (refer to paragraph (b)(3)(v)).

(vii) Computer software meeting the conditions of section 4 (b)(3), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(5) *Number 5.* Except as provided in paragraphs (b)(5)(i) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of any agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)) or within or among DoD/DNA offices. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the DNA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DNA personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research, development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel as part of the preparation for anticipated administrative proceedings by DNA, or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of DNA when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(H) Computer software meeting the standards of paragraph 291.3(b)(2)(iii), which is deliberative in nature, the disclosure of which would inhibit or chill the decision-making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(I) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(ii) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with DNA, i.e., the process by which litigants obtain information from each other that is relevant to the issues in trial or hearing, then it should not be withheld from the general public even though "discovery" has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the "discovery process".

(iii) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates

for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(A) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(B) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iv) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.

(v) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(*1*) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DNA shall neither confirm nor deny the existence or nonexistence of the record being requested.

(*2*) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(*3*) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and DNA is aware of that fact.

(D) Could reasonably be expected to disclose the identity of a confidential source including a source within DNA, a state, local or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose confidential information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life, or the physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DNA when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within DNA, or a lawful national security intelligence investigation conducted by an authorized agency or office within DNA. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(v) *Exclusions.* Excluded from the previous exemptions are the following two situations applicable to the Department of Defense.

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes and the investigation or proceedings involves a possible violation or criminal law where there is reason to believe that the subject of the investigation or proceedings is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situations, the response to the requester will state that no records were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

§ 291.9 For official use only (FOUO).

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests. See DNA Instruction 5230.2A [6] for additional information regarding FOUO policy.

(a) *Prior FOUO Application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(b) *Historical Papers.* Records, such as notes, working papers, and drafts retained as historical evidence of DNA actions enjoy no special status apart from the exemptions under the FOIA.

(c) *Time to Mark Records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releaseable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(d) *Distribution Statement.* Information in a technical document that requires a distribution statement pursuant to DNA Instruction 5230.24A shall bear that statement and may be marked FOUO, as appropriate.

(e) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(f) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by DNA instructions concerning records disposal.

(g) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DNA information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act, may also result in civil and criminal sanctions against responsible persons. The DNA office that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix A to part 291—Freedom of Information Act Request (DNA Form 524)

Suspense Item—Freedom of Information Act Request

Date _____
Information Required in PAO NLT _____
FOIA Case No. _____
To: _____
Special Instructions: _____

_____

_____

_____

_____

_____

_____

Please conduct a search within your organization to determine if there is information/documents responsive to the attached FOIA request.

If you recommend withholding information from the documents requested, please refer to the FOIA exemptions listed on the reverse.

If this request is for a technical proposal, please provide the name and address for the contact person at the company which was awarded the contract and the name and office symbol to the TM.

Record time spent on this request and the number of pages copied on the enclosed DD Form 2086.

If you believe other DNA offices should be involved in processing this request, please advise PAO ASAP.

If you have any questions call PAO, 57095 or 57306. Do not place this FOIA action in distribution.

Enclosures:
DNA Form 524 (28 June 90) Previous Editions Obsolete.

Explanation of Exemptions

Freedom of Information Act (5 USC 552)

(b)(1) Applies to information which is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy. (See Executive Order 12356, DoD Regulation 5200.1–R and DNA Instruction 5400–7C.)

(b)(2) Applies to information which pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, "high" and "low." The "high" profile permits withholding of a document which, if released, would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission. The "low" profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request.

(b)(3) Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed.

(b)(4) Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company.

(b)(5) Applies to inter- and intra-agency memoranda which are deliberative in nature; this exemption is appropriate for internal documents which are part of the decision making process, and contain subjective evaluations, opinions and recommendations.

(b)(6) Applies to information release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and

[6] See footnote 2, to § 291.8(a)

(b)(7) Applies to records or information compiled for law enforcement purposes that (A) could reasonably be expected to interfere with law enforcement proceedings, (B) would deprive a person of a right to a fair trial or impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, or (F) could reasonably be expected to endanger the life or physical safety or any individual.

(8)(9) Permits the withholding of matters contained in, or related to, examination, operating or conditions reports prepared by, on behalf of, or for the use of, an agency responsible for the regulation and supervision of financial institutions.

(9)(10) Permits the withholding of geological information and data including maps, concerning wells.

[FR Doc. 91-5271 Filed 3-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 91-11]

Special Local Regulations, St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the American Cancer Society Great Duck Race. The event will be held from 11 a.m. EST to 2 p.m. EST on March 23, 1991 on the St. Johns River, Jacksonville, Florida. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 11 a.m. EST to 2 p.m. EST on March 23, 1991.

FOR FURTHER INFORMATION CONTACT: LCDR D.P. Rudolph, (804) 247-7318.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold the event was not received until December 2, 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are QM1 Culver, Marine Event Petty Officer, Coast Guard Group Mayport and LT Genelle G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

This event is held each year to raise funds for the American Cancer Society. There will be thirty thousand (30,000) rubber ducks dumped into the river by two (2) frontend loaders at the Acosta Bridge. The ducks float to the Main Street Bridge where the first three (3) are retrieved for awards; and the remaining ducks are all gathered up by the U.S. Navy with special skimmer boats.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T07-11 is added to read as follows:

§ 100.35-T07-11 American Cancer Society Great Duck Race.

(a) *Regulated Area*: A regulated area is established for the waters of the St. Johns River lying between St. Johns River Acosta Bridge and St. Johns River Main Street Bridge, Jacksonville, Florida.

(b) *Special Local Regulations*: Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(c) *Effective Date*: These regulations become effective from 11 am. EST to 2 p.m. EST on March 23, 1991.

Dated: February 28, 1991.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-5561 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD7 91-12]

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Augusta Invitational Rowing Regatta. The event will be held from 7 a.m. on March 28, 1991, until 5 p.m. on March 31, 1991, on the Savannah River at Augusta, Georgia. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 7 a.m. EST, March 28, 1991 to 5 p.m. EST, on March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Contact Cdr. A.A. Serra, (803) 724-7619.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The updated information to hold the event was not received until January 17, 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are QM1 David A. Fields, Marine Event Petty Officer, Coast Guard Group Charleston, project officer and Lt. Genelle G. Tanos, Seventh Coast Guard District Legal Office, project attorney.

Discussion of Regulations

There will be 800 participants racing 4 and 8 man racing shells on a fixed course. The event will take place on that portion of the Savannah river at Augusta, Georgia, between the U.S. Highway 1 Bridge and mile marker 197. These regulations are required to promote the safety of life and property on the navigable waters during the Augusta Invitational Rowing Regatta.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T07-12 is added as follows:

§ 100.35-T07-12 Augusta Invitational Rowing Regatta.

(a) *Regulated Area.* A regulated navigation area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. Four overhead cables will be established to delineate the racing lanes on the course, as well as floats on the surface of the river to mark the lane separations.

(b) *Special Local Regulations.* Entry into the regulated area is prohibited. After termination of the Augusta Invitational Regatta on March 31, 1991, all vessels may resume normal operation.

(c) *Effective Date.* These regulations become effective from 7 a.m. EST on March 28, 1991 to 5 p.m. EST, March 31, 1991.

Dated: March 1, 1991.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 91-5562 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-06]

Special Local Regulations for Marine Events; Crawford Bay Crew Classic; Southern Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Crawford Bay Crew Classic to be held on the Southern Branch, Elizabeth River, at Portsmouth, Virginia. The event will consist of crew shells racing in heats on a course from Mobil Oil to Portside, Portsmouth. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective for the following periods: 2 p.m. to 7 p.m. March 22, 1991. 6 a.m. to 6 p.m. March 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until January 31, 1991, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Ports Events Inc. has submitted an application to hold the Crawford Bay Crew Classic on the Southern Branch of the Elizabeth River at Portsmouth, Virginia. Crew racing shells will be racing in heats starting in the vicinity of the Mobil Oil Docks and will finish in the vicinity of Portside, Portsmouth. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Marine traffic will be allowed to transit the regulated area between races. Since the main shipping channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations: In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T05 is added to read as follows:

§ 100.35-T05 Southern Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions.* (1) *Regulated area.* The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49'11.0" North, longitude 76°17'33.0" West to latitude 36°49'11.0" North, longitude 76°17'22.0" West and bounded to the north by a line drawn from latitude 36°50'17.5" North, longitude 76°17'45.0" West to latitude 36°50'17.5" North, longitude 76°17'30.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) Special Local Regulations. (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander,

no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates.* These regulations are effective for the following periods: 2 p.m. to 7 p.m. March 22, 1991. 6 a.m. to 6 p.m. March 23, 1991.

Dated: February 28, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-5559 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 110

[CGD11-90-06]

Anchorage Regulations: San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, under the authority of 33 U.S.C. 471, is expanding the "B" Street Commercial Anchorage (33 CFR 110.210(a)(2)) and establishing an additional anchorage ground under the administrative control of COMNAVBASE San Diego reserved exclusively for the anchorage of vessels of the United States Government, for the purpose of increasing navigational safety in San Diego Harbor. This action was a result of requests from the San Diego Unified Port District and U.S. Navy. It was determined that there is an increasing number of larger commercial vessels needing to anchor in San Diego Harbor and the size of the current anchorage was not sufficient for safe navigation. Also, the Navy has been increasing its use of San Diego Harbor and requires specified anchorage areas for its operations to be conducted safely.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 Oceangate, Long Beach, CA 90822-5399, telephone (213) 499-5410.

SUPPLEMENTARY INFORMATION: On Friday, November 9, 1990, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations 55 FR 47075. Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of the anchorage regulations are Lieutenant Edward Sinclair, Project Officer, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, Lieutenant (junior grade) Edward Bass, Project Officer, U.S. Coast Guard Marine Safety Office, San Diego, CA, and Lieutenant Commander Allen Lotz, Projecting Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received concerning this rule making.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations do not change federal policy regarding the use of navigable waters for navigation purposes.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no information collection or record keeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, they will have no significant environmental impact and they are categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, CA.

(a) The anchorage grounds. (1) Special anchorage for U.S. Government vessels (NAD 83). The waters bounded by a line connecting the following points:

Latitude	*Longitude*
32°42'13.2" N	117°14'11.0" W
32°41'12.0" N	117°14'00.3" W

and thence along the shoreline to the point of beginning.

(2) Special anchorage for U.S. Government vessels (NAD 83). The waters bounded by a line connecting the following points:

Latitude	*Longitude*
32°43'25.6" N	117°12'46.1" W
32°43'26.3" N	117°12'32.0" W
32°43'08.2" N	117°12'58.0" W
32°42'57.9" N	117°12'54.6" W

and thence easterly along the northern boundary of the channel to:

32°43'06.0" N	117°11'30.5" W
32°43'27.2" N	117°11'14.0" W

and thence along the shoreline of Harbor Island to the point of beginning.

(3) "B" Street Merchant Vessel Anchorage (NAD 83). The waters bounded by a line connecting the following points:

Latitude	*Longitude*
32°43'00.8" N	117°10'26.3" W
32°43'00.8" N	117°11'23.0" W
32°43'06.0" N	117°11'30.5" W
32°43'27.2" N	117°11'14.0" W
32°43'20.2" N	117°10'53.0" W

and thence due east to the shoreline, and thence along the shoreline and pier to the point of beginning.

(b) The regulations. (1) The anchorages described in paragraphs (a)(1) and (a)(2) of this section are reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in this area except by special permission obtained in advance from the Commander, Naval Base, San Diego, CA. The administration of these anchorages is exercised by the Commander, Naval Base, San Diego, CA.

(2) The area described in paragraph (a)(3) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while awaiting a berth. The administration of this anchorage is exercised by the Port Director, San Diego Unified Port District.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not obstruct the approaches to the wharves in the harbor.

Dated: January 30, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91-5560 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AC90

Loan Guaranty: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans; Specially Adapted Housing

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: To comply with the provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, the Department of Veterans Affairs (VA) is amending its regulations (1) by making the specially adapted housing grant authorized by 38 U.S.C. 1801(b) available for acquiring a residence that has already been adapted with special features; (2) by adding to the regulations the credit standards to be used in underwriting a VA guaranteed home loan; (3) by adding to the regulations the standards and procedures to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans; and (4) by providing for a lender certification, and a process for assessing liability against a lender and an appeal process for such assessment. The regulations governing VA direct loans are also being amended to require use of the proposed credit standards regulations.

EFFECTIVE DATE: These regulations are effective April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The credit standards used in underwriting VA guaranteed home loans are currently stated in the Veterans Benefits Administration Circular 26-80-11, revised December 21, 1988. The standards for obtaining credit reports and processing guaranteed loans have also been published in administrative issues.

On February 12, 1990, VA published in the **Federal Register** on pages 4569 through 4579 proposed regulations to implement the requirements of Public Law 99-576. A total of eleven letters of comment were received on the proposed regulations. Eight were from mortgage bankers or other lenders and their representatives. Two letters were received from associations representing realtors and home builders. One letter was received from VA Regional Office personnel.

As required by Public Law 99-576, these regulatory amendments contain standards to be used by all lenders, both supervised and nonsupervised, in underwriting VA guaranteed loans and obtaining credit information. They include (1) a debt-to-income ratio, (2) minimum residual income guidelines, (3) criteria for evaluating the reliability and stability of the income of the loan applicant, and (4) standards to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans.

There are two possible ways lenders may process VA guaranteed home loans. Loans which are processed on the prior approval basis are forwarded by the lender to VA for approval of the loan prior to closing. VA underwrites the loan by reviewing the income and credit of the prospective borrower and advises the lender if VA will guarantee the loan. Loans which are processed on the automatic basis are underwritten by the lender and reported to VA after they are closed. Two types of lenders may process VA loans on the automatic basis. Supervised lenders who are subject to examination and supervision by Federal or State agencies need no special authorization to process VA loans on the automatic basis. Nonsupervised lenders who have received specific approval from VA may also process loans, on the automatic basis.

There are two primary underwriting tools that are used in determining a veteran's ability to meet living expenses including the monthly mortgage payment. They are a debt-to-income ratio and a calculation of a veteran's residual income. The ratio is a result of comparing the veteran's total anticipated monthly obligations, including housing expenses, to his or her stable monthly income. Currently, the debt-to-income ratio for VA loans is 41 percent and that is the ratio established in these regulations. Based on available statistical data, standards are provided in these regulations regarding the recommended residual income for a veteran.

As proposed, these regulations required that, in certain cases, depending upon the ratio and residual income, some loans would require specific written justification if made automatically by lenders having automatic underwriting authority. In other cases not meeting established standards the loans would have to be submitted to VA for prior approval of the loan.

All but one of the commentators expressed opposition to the requirement that VA process, on the prior-approval basis, those loans falling outside established thresholds. Mortgage lenders, their representatives and VA field personnel expressed concern about mandatory prior approval of these loans by VA for several reasons.

First, lenders felt that establishing thresholds for the mortgage underwriting process was unreasonable altogether. As one commentator stated, "underwriting is qualitative. It is inappropriate and unrealistic to use an arbitrary relationship between a credit ratio and residual income to serve as an eligibility threshold." VA does not feel that the realtionship between a potential borrower's credit ratio and residual income is by any means arbitrary, but acknowledges that underwriting is judgment-oriented and absolute eligibility thresholds for qualifying for VA-guaranteed loans would be inappropriate. At the same time, standards must be used as baselines for qualifying loans. VA's thresholds for underwriting authority are absolutes with regard to who may underwrite or what level of justification must be provided, not whether a lender must deny a loan which falls outside the threshold. The thresholds established in these regulatory amendments are indicators delineating the level of underwriting approval needed on certain loans, based upon the anticipated risk associated with each case. Those loans carrying the highest degree of risk, i.e., those loans falling outside the established thresholds, would be subjected to underwriting review by VA in addition to the lender.

Several commentators argued that mandatory VA prior approval or riskier loans would lead to increased foreclosures because lenders are generally more prudent than the Department. One lender cited statistics it compiled showing the foreclosure rate for VA-guaranteed loans closed on the automatic basis is more than 25% lower than the foreclosure rate for prior approvals. VA has not verified those statistics but we believe the commentator has oversimplified the issues involved in underwriting meritorious but risky loans. By and large the loans that come to VA for prior approval are those that do not meet the credit ratios and residual income thresholds but are yet deemed meritorious enough by lenders for VA to underwrite. Since the loans submitted for prior approval are usually the riskier ones it is not surprising that they carry a higher foreclosure rate.

A number of commentators were concerned that the prior approval requirement was not fully addressing the basic problem. Rather than penalize all VA lenders, at least two commentators suggested VA punish those lenders who contribute to the foreclosure problems by either eliminating or restricting their activities. VA does exercise its authority to restrict lending activities of imprudent lenders who choose to participate in VA's Loan Guaranty Program and rejects the notion that these underwriting standards "punish" any lenders.

A more compelling argument against the madatory prior approval requirement was expressed by several commentators, including VA Loan Guaranty field personnel. These commentators were concerned that the increased workload on field station personnel would result in processing delays of all VA-guaranteed loans. One commentator expressed serious reservations about whether requiring VA staff to underwrite marginal cases would be an efficient use of VA's available staff resources. One mortgage lender, noting its high servicing volume and low default rate, indicated that, nevertheless, over one-third of its recent VA loans would have required VA prior approval under the regulation as proposed. The letter of comment submitted by VA field personnel suggested that lenders be allowed to approve loans on the automatic basis when the debt-to-income ratio is greater than 50% and the veterans' income meets or exceeds the standard provided the lender justifies the decision.

VA is persuaded by these comments to amend the proposed regulations. As amended, these regulations would not require lenders to submit to VA for prior approval loans not falling into the established ratio and residual income guidelines. Lenders will still be required to provide specific written justification by the underwriter's supervisor on loans that do not meet the established guidelines but are considered meritorious nonetheless.

All loans in which (1) the veteran's debt-to-income ratio is 41 percent or less and the veteran does not meet the residual income standard, and (2) the veteran's debt-to-income ratio exceeds 41 percent and the residual income does not exceed the VA standard by at least 20 percent, will require justification by the underwriter's supervisor. These loans will also be subject to a detailed review by VA field personnel prior to issuance of the guaranty as well as post-audit review.

Every loan applicant should be judged on an individual basis. In addition to the ratio and residual income requirements, there are compensating factors that may impact on the approval or disapproval of a loan. These factors have been placed in the regulations in § 36.4337(b)(6).

The list is not exhaustive and the items are not in any priority order. It should be recognized that valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. For example, the fact that an applicant has sufficient assets for closing purposes, or meets the residual income guidelines are not compensating factors. Additionally, compensating factors should be relevant to the perceived marginality or weakness; i.e., significant liquid assets may compensate for a residual income shortfall whereas long-term employment would not. It would not be appropriate to apply these factors to cases involving unsatisfactory credit.

Two further comments were submitted on related aspects of the regulatory amendments. In the first of these the commentator requested that all loans submitted to VA for prior approval be exempted from designation as "no-bids". VA determines which loans are "no bids" by comparing the value of the property at foreclosure to the outstanding indebtedness less quaranty amount. If the foreclosed property is worth less than the outstanding indebtedness minus guaranty amount the loan is considered a "no-bid" and VA will pay the guaranty rather than take the property.

We fail to see how whether the loan was underwritten by a lender using the automatic process or by VA as a prior approval should affect the post-foreclosure determination of whether a loan is a "no-bid". Pursuant to Public Law 98-369, the Deficit Reduction Act of 1984, VA is required to conduct a post-foreclosure "no-bid" calculation on each loan that goes into foreclosure. The law does not allow for any distinction between automatic and prior approval loans with regard to no-bid determinations.

These regulations require lenders to certify that each loan package prepared or underwritten has been developed in accordance with 38 CFR part 36. Each lender is also required to certify that, to the best of his/her knowledge and belief, all information included in the credit package is true and accurate. A final letter of comment requested that VA release lenders from liability on a false certification if a third party outside the lender's control is responsible for the fraud or misrepresentation. It was never VA's intention to hold the lender responsible for fraud or misrepresentation of an independent third party. The lender is liable for its own fraud or misrepresentation and that of its agents. The lender would only be liable for fraud or misrepresentation by a third party if the lender was negligent in protecting against or discovering such fraud or misrepresentation. Accordingly, the lender must exercise due diligence in determining the validity of representations made by third parties.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The credit underwriting standards and procedures for obtaining credit information and processing VA guaranteed loans contained in these regulations are similar to those which are currently in effect. They have been published previously in administrative issues and released to participating lenders. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The regulatory amendments have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in section 36.4337 of these regulatory amendments have been approved by the Office of Management and Budget (OMB) under control number 2900-0521.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is made under the authority granted the Secretary by sections 210(c), 1803(c)(i), 1810(b), 1832 and 1812 of title 38, United States Code, and Public Law 99-576.

Approved: January 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 36—[AMENDED]

38 CFR part 36, Loan Guaranty, is amended as follows:

1. In § 36.4206, the section heading is revised, paragraph (b) is redesignated as paragraph (d), paragraph (a) is revised, and new paragraphs (b) and (c) are added to read as follows:

§ 36.4206 Underwriting standards, occupancy, and non-discrimination requirements.

(a) Except for refinancing loans pursuant to 38 U.S.C. 1812(a)(1)(F), no loan shall be guaranteed unless the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined by use of the standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 1812)

(b) Use of the standards in § 36.4337 of this part for underwriting manufactured home loans will be waived only in extraordinary circumstances.

(Authority: 38 U.S.C. 1812)

(c) The lender responsibilities contained in § 36.4337 of this part and the certification required and penalties to be assessed under § 36.4337A of this part against lenders making false certifications also apply to lenders originating VA guaranteed manufactured home loans under the authority of 38 U.S.C. 1812.

(Authority: 38 U.S.C. 1812)

* * * * *

§§ 36.4207 and 36.4208 [Amended]

2. In §§ 36.4207 and 36.4208 in the headings and text, remove the words "Mobile" and "mobile" wherever they appear and add, in their place, the words "Manufactured" and "manufactured", respectively.

3. An undesignated center heading and § 36.4337 are added to read as follows:

Underwriting Standards, Processing Procedures, and Lender Responsibility and Certification

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) Except for refinancing loans guaranteed pursuant to 38 U.S.C. 1810(a)(8), the standards contained in paragraph (b) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

(b) *Methods.* There are two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income. They are: debt-to-income ratio and residual income. Each is described in paragraphs (c) and (d) of this section respectively. Ordinarily, in order to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (b)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file) the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (b)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent the second level review and statement of justification is not required.

(4) In any case described by paragraphs (b)(1) and (b)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in (b)(5), of this section, justifying the approval or submission of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (c) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;
(ii) Conservative use of consumer credit;
(iii) Minimal consumer debt;
(iv) Long-term employment;
(v) Significant liquid assets;
(vi) Downpayment or the existence of equity in refinancing loans;
(vii) Little or no increase in shelter expense;
(viii) Military benefits;
(ix) Satisfactory homeownership experience;
(x) High residual income; and
(xi) Low debt-to-income ratio.

This list is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(c) *Debt-to-income-ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees,

homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; i.e., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent (unless it is larger due solely to the existence of tax free income which should be noted in the loan file) the steps cited in paragraphs (b)(1) through (b)(5) of this section apply.

(d) *Residual income.* (1) The guidelines provided in this subparagraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $69,999 and for loan amounts of $70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher than average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may required closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets; i.e., cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application allows little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (b)(1) through (b)(6) of this section. The residual income guidelines are as follows:

(i) Table of residual incomes by region (for loan amounts of $69,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For Loan Amounts of $69,999 and Below]

Family size [1]	Northeast	Midwest	South	West
1	$346	$340	$340	$379
2	569	570	570	636
3	702	687	687	765
4	791	773	773	861
5	821	803	803	894

[1] For families with more than five members, add $70 for each additional member up to a family of seven.

(ii) Table of residual incomes by region (for loan amounts of $70,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $70,000 and above]

Family size [1]	Northeast	Midwest	South	West
1	$401	$393	$393	$437
2	673	658	658	733
3	810	792	792	882
4	913	893	893	995
5	948	925	925	1,031

[1] For families with more than five members, add $75 for each additional member up to a family of seven.

(iii) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, and West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(iv) *Military adjustments:* For loan applications in which either the borrower or the spouse is an active-duty servicepersen, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.)

(2) *Income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(i) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified if the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (d)(3)(iii) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given consideration when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(ii) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus should be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income, may, if properly verified, be used to offset the payments due on debts and obligations of a relatively short term. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset short-term debts, as above. Certain military allowances, as to which likely duration cannot be determined, will also be used only to offset short-term obligations. Such allowances are: pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset short-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94-239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(iii) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B) such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681b) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(iv) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowances to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. Unless conditions of item e or f of DD Form 1747 apply, the applicant's quarters allowance cannot be considered. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their familes, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for off-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(v) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions

and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. The length of the veteran's employment in this type of occupation is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position.

(vi) *Self-employment.* When a self-employed applicant has been in the business a relatively short period of time (i.e., less than 2 years), sufficient information must be obtained to ascertain that the applicant has the training, experience and other qualifications necessary to be successful in the enterprise. For any self-employed person, verification of the amount of income is accomplished by obtaining a profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be prepared by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant. Depending on the situation, this data may be on the veteran and/or the business. When it is otherwise not possible to determine a self-employed applicant's qualification from an income standpoint, the applicant may wish to voluntarily offer to submit copies of complete income tax returns, including all schedules for the past 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earning record. Depreciation claimed as a deduction on the tax return or financial record of the business may be added in as net income. If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanations as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(vii) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(A) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(B) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(C) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the serivce. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(D) To illustrate the foregoing, it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(viii) *Employment of short duration.* The provisions of paragraph (d)(2)(vii) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(ix) *Rental-income.*

(A) *Multi-unit Subject Property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses.

(B) *Rental of Existing Home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(C) *Other Rental Property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (d)(3)(vi) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(x) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (d)(3)(xi) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W-4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(xi) *Mortgage credit certificates.*

(A) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCS's. Veterans who are recipients of MCC's may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(B) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acqaire a principal residence or as a qualified home improvement or rehabilitation loan.

(C) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $800 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30% × $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 × $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 99-369) or $167 per month ($2,000 ÷ 12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(D) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the above example, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500 ÷ 12).

(e) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Prior VA loans.* When the veteran's certificate of eligibility, or loan application, or other information available to the lender indicates use of VA guaranteed loan entitlement in connection with a prior loan, the lender to which the veteran is currently applying for an additional loan is on notice that VA loan experience with the applicant is an element to be considered. Such experience, especially if it is recent, may be so unfavorable that further credit is not warranted. Since credit experience with veterans' guaranteed or insured loans may not be reported by lenders to credit agencies, credit reports obtained in connection with the evaluation of a subsequent loan may be deficient to that extent. Therefore, lenders processing loans on an automatic basis should develop evidence through the originator or holder of the previous loan(s) on the status and experience of such loan (s). If information cannot be obtained, lenders may contact the VA regional office through which the loan(s) was obtained.

Failure to do so will subject the lender to the risk of a possible determination by VA that when all the facts and circumstances that were readily available are considered, the conclusion of the lender relative to compliance with 38 U.S.C. 1810(b)(3) ought not be recognized as reasonable and proper and that the loan should be considered ineligible for guaranty.

(3) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained consumer items on credit subsequent to the bankruptcy and has met the payments on these obligations in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risks may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discharged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy, and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(4) *Petition under Chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee or Bankruptcy Judge (Referee) approves of the new credit.

(5) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(6) *Long-term v. Short-term-debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $100 on an auto loan with a remaining balance of $500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $100 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(7) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be rated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, and lenders should be sure ratings on such accounts are obtained. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(8) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, union dues, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(9) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. From time to time the Secretary as well as the entities listed above will provide the names of the national organizations that provide credit reports meeting the requirements of the Residential Mortgage Credit Report Standards. The names of such organizations are available through VA and other participating entities. All credit reports obtained by the lender must be submitted to VA.

(f) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(g) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(h) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent, or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (h)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (h)(3) and (h)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(6) Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in these regulations.

(i) *Definitions.* (1) The definitions contained in part 42 of this chapter are applicable in this section.

(2) *Another Appropriate Amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(i) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(ii) The frequency and past pattern of such false certifications by the lender; and,

(iii) Any exculpatory or mitigating circumstances.

(3) *Complaint* includes the assessment of liability served pursuant to this subsection.

(4) *Defendant* means a lender named in the complaint.

(5) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 1814.

(j) *Procedures for certification.* (1) As a condition to VA issuance of a loan guaranty on all loans closed on or after the effective date of these regulations, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 1814 on or after the effective date of these regulations, the following certification shall accompany each loan closing or assumption package:

"The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in 38 U.S.C. chapter 37 and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief."

(2) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(j)(1) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(k) *Assessment of liability.* (1) Upon an assessment confirmed by the Chief Benefits Director, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Chief Benefits Director shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and,

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Chief Benefits Director and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(l) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(m) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 1804 and part 44 of this chapter or loss of automatic processing authority pursuant to 38 U.S.C. 1802, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 1810).

(Information collection requirements contained in § 36.4337 were approved by the Office of Management and Budget under control number 2900-0521.)

4. In § 36. 4402, the introductory text of paragraph (b) is revised to read as follows:

§ 36.4402 Eligibility.

* * * * *

(b) *Eligibility, adaptations grants.* No beneficiary shall be eligible for assistance under section 801(b) of chapter 21, for the cost of reasonably necessary adaptations to an existing structure or for the inclusion of such adaptations in proposed construction or for the purchase of a structure already including such adaptations unless it is determined pursuant to §§ 36.4401 through 36.4410 of this part that:

* * * * *

5. In § 36.4404, paragraph (b)(1) is revised to read as follows:

§ 36.4404 Computation of cost.

* * * * *

(b) * * *

(1) The actual cost, or in the case of a veteran acquiring a residence already adapted with special features, the fair market value of the adaptations, including installation costs, determined to be reasonably necessary, or

* * * * *

6. In § 36.4514, paragraph (c) and paragraphs (g)(1) through (g)(3) are revised to read as follows:

§ 36.4514 Eligibility requirements.

* * * * *

(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred and that the proposed payments on such obligation bear a proper relationship to present and anticipated income and expenses as determined by use of the credit standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 210(c))

* * * * *

(g) * * *

(1) Neither the applicant nor anyone authorized to act for the applicant, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status, or national origin;

(2) The applicant recognizes that any restrictive convenant on the property relating to race, color, religion, sex, handicap, familial status, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) The applicant understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

§ 36.4515 [Amended]

7. In § 36.4515(a) introductory text remove the word "him" where it appears and add, in its place, the words "the veteran".

[FR Doc. 91-5421 Filed 3-7-91; 8:45 am]
BILLING CODE 8320-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-8

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by General Services Administration

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This final regulation requires that the General Services Administration (GSA) operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individuals with handicaps and qualified individual with handicaps, and establishes a detailed complaint mechanism for resolving allegations of discrimination against GSA. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Myrtle K. Cook, Civil Rights Division, General Services Administration, (202) 501-1368 or (202) 501-0702 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On March 22, 1989, GSA published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by GSA. 54 FR 11750.

By July 20, 1989, close of the comment period, GSA received numerous comments, the majority of which were from organizations representing individuals with handicaps. Each comment was read and analyzed. Decisions that GSA made in response to those comments were not made on the basis of the number of commenters addressing any one point but on a consideration of the merits of the points of view expressed in the comments.

Section 504 requires that regulations that apply to the programs and activities of Federal agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been submitted. GSA will submit this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on March 8, 1991.

This rule applies to all programs and activities conducted by GSA.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by GSA.

On August 28, 1984, GSA participated in a joint publication of an NPRM issued by twenty-one agencies proposing identical standards and procedures for implementing section 504. (49 FR 34132.) Following the public comment period, however, the agency determined that the rule as proposed would be inadequate for GSA's purposes in light of the agency's unique responsibilities for the buildings in which the Federal Government is housed. On March 22, 1989, GSA published an NPRM, which addressed with specificity the manner in which GSA would carry out its statutory responsibilities as the Government's "landlord," in order to enhance the abilities of other Federal agencies to offer their programs in a manner accessible to individuals with handicaps. It also outlined proposed procedures for cooperation between GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the inaccessibility of a building under GSA's control.

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95-602, 92 Stat. 2982), the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), and Handicapped Programs Technical Amendments Act of 1988 (sec. 206(d) Pub. L. 100-630, 102 Stat. 3312), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.* (29 U.S.C. 794 (1978 amendment italicized)).

Apart from language tailored to GSA's role as the Federal landlord, the substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR part 41 (section 504 coordination regulation for federally assisted programs)). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2868, E2870 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretation of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3

CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 105–8.101 Purpose

Section 105–8.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 105–8.102 Application

The regulation applies to all programs or activities conducted by GSA. Under this section, a federally conducted program or activity is, in simple terms, anything GSA does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by GSA for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the GSA facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 105–8.103 Definitions

Assistant Attorney General. "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids. "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 105–8.160(a)(1), they may also be necessary to meet other requirements of the regulation.

One commenter suggested expanding the definition of "auxiliary aids", renaming "auxiliary aids" to read "aids for reasonable accommodation", and including the services of attendants.

The items set out in the definition are clearly intended as examples, and are not intended to constitute an exhaustive list. Thus the regulation contemplates and, in appropriate cases, requires other auxiliary aids as well. The agency believes that attendant services are generally personal in nature and that they are therefore generally not required. Therefore, there is no need to change the text of the regulation.

Complete Complaint. "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 180 day period for the agency's investigation (*see* § 105–8–170–7) begins when the agency receives a complete complaint.

Facility. The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by GSA regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by GSA. The term "facility" is used in §§ 105–8.149, 105–8.150, and 105–8.170–5.

Historic preservation programs, Historic properties, and Substantial impairment. These terms are defined in order to aid in the interpretation of §§ 105–8.150–1(b) and 105–8.150–2(b), which relate to accessibility of historic preservation programs.

Individual with handicaps. The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

Qualified individual with handicaps. The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

The first paragraph of the definition deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature.

Section 105–8.154 Program accessibility: Exceptions specifies the steps to be taken before a final determination is made as to whether a proposed action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 105–8.154 and § 105–8.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, the second paragraph adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

The third paragraph explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this subpart by § 105–8.140. Nothing in this subpart changes existing regulations applicable to employment.

Two commenters suggested that the fundamental alteration portion of § 105–8.103 Definitions—"Qualified individual with handicaps," should reference § 105 8.154. This point has been adequately addressed in the preamble.

Section 504. This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 105–8.110 Self-evaluation

The agency small conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 105–8.111 Notice

Section 105–8.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

One commenter proposed the inclusion of provisions for assurances, transition plans and specific modification requirements. Federal agencies generally require that their recipients sign assurances that they will not discriminate in their programs receiving assistance. Because there are not two entities involved here (e.g., a Federal agency and a recipient) but only one (Federal agency), assurances are not appropriate. Provisions for transition plans and modifications are addressed in §§ 105–8.110 and 105–8.150–4.

Section 105–8.130 General Prohibitions Against Discrimination

Section 105–8.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph 105–8.130(a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 105–8.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 105–8.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph 105–8.130(b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in only one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph 1058.130(b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 105–8.149 to 105–8.151) and

BEST COPY AVAILABLE

communications (§ 105–8.160) are specific applications of this principle.

Despite the mandate of subsection 105–8.130(d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, § 105–8.130(b)(1)(iv), in conjunction with § 105–8.130(d) permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities.

Paragraph 105–8.130(b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, § 105–8.130(b)(2) provides that qualified individuals with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph 105–8.130(b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph 105–8.130(b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service. Paragraph 105–8.130(b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph 105–8.130(b)(4) specifically applies the prohibition enunciated in § 105–8.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph 105–8.130(b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph 105–8.130(b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph 105–8.130(b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 105–8.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph 105–8.130(b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

One commenter suggested that paragraph 105–8.130(b)(6) extend to the programs or activities of licensees or certified entities. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities. We believe that extending section 504 to licensees or certified entities is not appropriate and, therefore, this suggestion is not adopted.

Paragraph 105–8.130(c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph 105–8.130(d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

One commenter objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. The suggested language in effect states that agencies may not "aid or perpetuate discrimination" against qualified individuals with handicaps by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap. Assistance from the agency that would provide significant support to an organization constitutes Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. Therefore, the "significant assistance" provision would be inappropriate in a regulation applying only to federally conducted programs or activities.

Section 105–8.140 Employment

Section 105–8.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F. 2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F. 2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F. 2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F. 2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F. 2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F. 2d at 262; *Prewitt*, 662 F. 2d at 304. Accordingly, § 105–8.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC

establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 105–8.170(2) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 105–8.148 Consultation With the Architectural and Transportation Barriers Compliance Board

Section 105–8.148 provides that GSA must consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out GSA's responsibilities under this subpart as they relate to architectural barriers in GSA controlled facilities that house Federal agencies.

Section 105–8.149 Program Accessibility: Discrimination Prohibited

Section 105–8.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 105–8.150 and 105–8.151.

Section 105–8.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Section 105–8.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 105–8.150–1(a)).

Paragraph (b), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph 105–8.150–2(b).

Paragraph 105–8.150–2(a) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph 105–8.150–1(b) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 105–8.150–1(b) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of a historic property.

Nevertheless, because the primary benefit of a historic preservation program is uniquely the experience of the historic property itself, § 105–8.150–2(b) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administers programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 105–8.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, in a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 105–8.150–2(b).

The special limitation on program accessibility set forth in § 105–8.150–1(b) is applicable only to programs that have preservation of historic properties as a primary purpose (*see supra* discussion of definition of "historic preservation program," § 105–8.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Subsection 105–8.150–3 and –4 establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), GSA must make any necessary structural changes in facilities it occupies as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within one year of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 105–8.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 105–8.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. However, GSA programs carried out in those buildings are subject to the program accessibility standard for existing facilities in § 105–8.150. To the extent the buildings are newly constructed or altered, that must also meet the new construction and alteration requirements of § 105–8.151. Programs carried out in those buildings by agencies other than GSA are subject to the program accessibility standards in those agencies' regulations.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where

architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings. However, in leasing space, GSA must first attempt to find space that meets all the requirements of the Uniform Federal Accessibility Standards (UFAS). If no such bid is received, other bids may be accepted. GSA's preference is for buildings complying with UFAS.

Two developments have occurred in Federal policy and practice for leasing activities. First, GSA revised its standard leasing solicitation for offers (SFO) to include GSA's preference for leased space complying with UFAS. The SFO is the document that sets forth the Government's leasing requirements and that is used by builders in developing responsive bids. Second, the ATBCB amended in 1988 its minimum guidelines and requirements, which preceded the establishment of UFAS, to establish requirements for standards for buildings leased by the Federal Government [36 CFR 1190.34 (1989)]. The minimum guidelines and requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. GSA will revise UFAS to include these leasing provisions.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 105–8.152 Program Accessibility: Assignment of Space.

This section and the next are written especially to address the following major areas: (1) GSA's authorities and responsibilities for assignment of space (§ 105–8.152); and (2) occupant agencies' transition plans are required by each agency's section 504 regulation (§ 105–8.153). These two sections are intended to deal with the interplay between GSA's responsibilities as the Federal Government's "landlord" and other agencies' section 504 obligations to make programs accessible, as well as with the interaction between GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the inaccessibility of a building under GSA's control. GSA has unique responsibilities for space owned and leased by the Federal Government, pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq. and various sections of titles 40 and 44 (1982) and the Public Buildings Act of 1959, as amended (40 U.S.C. 601–616 (1982)). For example, GSA has the authority and responsibility to perform centralized property management functions for agencies of the Federal Government. 40 U.S.C. 490. GSA is authorized to alter or otherwise arrange for alterations for occupant agencies on either a no-cost or reimbursable basis. *Id.* at sections 490(j) and 603. GSA also has exclusive statutory authority and responsibility to construct most types of new public buildings. *Id.* at section 601. GSA has interpreted and further defined these duties in its Federal Property Management Regulations, 41 CFR chapter 101, subchapter D (1986).

Section 105–8.152 is intended to ensure that assignment or reassignment of space will not result in one or more of an occupant agency's programs or activities being inaccessible to individuals with handicaps. GSA is responsible to ensure that federally owned space or space leased from nonfederal sources does not make an occupant agency's programs inaccessible. While GSA is ultimately responsible for the accessibility of the space under its control, the nature of program accessibility requires the participation of the occupant agency in decisions affecting its space. Unless the occupant agency analyzes its own programs and determines which facilities must be altered to make its programs accessible to individuals with handicaps, GSA cannot proceed in a cost-effective manner.

Prior to the assignment or reassignment of space to a Federal agency, GSA must consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps. If the agency informs GSA that use of the space will result in one or more of the agency's programs being inaccessible, GSA must take one or more of the following actions to make the programs accessible: (1) Arrange for alterations to facilities; (2) locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or (3) take any other actions that result in making the agency's programs accessible. Under this proposal, GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

Section 105–8.154, which contains exceptions to the program accessibility requirements, is applicable to this section.

Section 105–8.153 Program Accessibility: Interagency Cooperation

Over the next several years, Federal agencies are required to evaluate their own programs and develop transition plans when structural changes are necessary to achieve the goal of program accessibility. The agencies generally cannot, however, perform or contract for these changes unless authorized by GSA. In other words, those agencies that are required by their section 504 transition plan to alter GSA-controlled buildings must request that GSA approve these alterations.

Section 105–8.153 establishes a framework for GSA to effectively receive and process agencies' requests for structural changes or other actions under GSA's control. Upon receipt of an agency's transition plan, GSA must assist or advise the requesting agency in providing or arranging for the requested action within the time frames specified in the transition plan.

GSA's role in this area will, however, be more than merely reactive. GSA intends to participate with these Federal agencies in the development of their transition plans. In this capacity GSA can and should call upon its resources to ensure that an agency's decision to request an alteration is well-informed. Even before agency transition plans are completed, GSA expects to conduct a survey of buildings under its control in order to facilitate compliance with § 105–8.153. Further, GSA intends to take the lead in coordinating accessibility issues related to those buildings under GSA control with several Federal agencies as tenants. For example, if two Federal agencies occupying different floors of the same building each request that public

meeting space on their floors be made accessible, GSA should take the lead in determining with the two agencies if their accessibility needs would be met by altering and sharing one room.

Section 105–8.153 provides that GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, must participate with the occupant agency in the development of the transition plan and provide information and guidance to the occupant agency. Upon request, GSA must conduct space inspections to assist the agency in determining whether a current assignment results in one or more of the occupant agency's programs or activities being inaccessible. (§ 105–8.152(a)).

Subsection 105–8.153–2 establishes procedures for GSA to deal with an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's programs as required by the agency's section 504 transition plan.

Like § 105–8.152, § 105–8.153 covers only those buildings that are under GSA's control. It does not address the situation where GSA has delegated management responsibilities to the sole occupant of a Federal building. Nor does it specify the mechanism by which cost reimbursement between GSA and other Federal agencies will be made. Determinations as to the amount of funds needed for alterations, which agency will obtain the funds, and the time frame within which the funds will be obtained will be made on a case-by-case basis.

Section 105–8.154 Program Accessibility Exceptions

Section 105–8.154 places explicit limits in the agency's obligation to comply with the provisions concerning accessibility to GSA's program, assignment of space to other agencies, and cooperation with other agencies. It generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This section provides that in meeting the program accessibility requirements of §§ 105–8.150, .152, and .153, GSA is not required to take any action that would result in a fundamental alteration in the nature of GSA's program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 105–8.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1989); *American Public Transit Association* v. *Lewis*, (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

Section 105–8.154 and § 105–8.160(d) are also supported by the Supreme Court's Decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This section, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with §§ 105–8.150, .152, and .153 would in most cases not result in undue financial and administrative burdens on GSA. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with any of these three sections would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with GSA. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. *See* § 105–8.154. Any person who believes that he or she or any specific class of persons has been injured by the Responsible Official's decision or failure to make a decision may file a complaint under the compliance procedures established in § 105–8.170.

One commenter suggested that the total resources of the agency should be considered in determining whether or not an accommodation can be made, rather than just the funds "available for use in the funding and operation of the program or activity." Since many of the agency's funds are earmarked for specific purposes and are therefore, unavailable for use elsewhere, the entire agency budget is not an appropriate consideration.

Section 105–8.160 Communications

Section 105–8.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 105–8.160(a) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids

of their choice. This expressed choice shall be given primary consideration by the agency (§ 105–8.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 105–8.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 105–8.154). Unless not required by § 105–8.160(d) the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 105–8.154 Program accessibility: Exceptions, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 105–8.160.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a person with hearing impairments. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the applicant or participant with hearing impairments is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with vision impairments, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with persons with vision and hearing impairments involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 105–8.160(a)(1)(i)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph 105–8.160(b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph 105–8.160(c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 105–8.170 Compliance Procedures

Section 105–8.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in GSA's programs or activities. It is based on the Department of Justice's rule for its programs (28 CFR 39.170) and provides an opportunity for a hearing before an administrative law judge.

Subsection 105–8.170–1 specifies that subsections 105–8.170– through .170–13 establish the procedures for processing complaints other than employment complaints. Subsection 105–8.170–2 provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Subsection 105–8.170–3 vests in the Responsible Official the responsibility for the overall management of the section 504 compliance program. "Responsible Official" or "Official," as defined in § 105–8.103, refers to the Director of Civil Rights Division, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 105–8.170. The definition of "Official" includes other GSA Officials to whom authority has been delegated by the Official.

Paragraph 105–8.170–4 (a) and (c) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows goods cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Paragraph 105–8.170–4(b) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Administrator, the Responsible Official, or other agency Officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (paragraph 105–8.170–4(d)).

Subsection 105–8.170–5 requires the agency to send to the Architectural and Transportation Barriers Compliance Board quarterly reports of complaints alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

The Responsible Official is required to accept all complete complaints over which the agency has jurisdiction (§ 105–8.170–6(a)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 105–8.170–6(d)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of paragraph 105–8.170–4(c), but the time frames governing the Official's other obligations to process the complaint (*see e.g.*, §§ 105–8.170–7 and 105–8.170–8) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 105–8.170–7). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

Subsection 105–8.170–8 requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if

discrimination is found, and notice of the right to appeal. If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 105–8.170–9).

The regulation provides that a party may appeal the Official's letter of findings to the Special Counsel for Ethics and Civil Rights. Subsection 105–8.170–11 provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the Special Counsel for Ethics and Civil Rights, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an ALJ can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

It would be expected that an opportunity for a hearing before an ALJ would assure more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. It would also be expected that agency decisions based on a hearing record would more likely survive later judicial review.

Another person or organization would be allowed to participate as a third party or amicus curiae if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not unduly delay the outcome, and the petitioner's participation may contribute materially to the disposition of the proceedings.

Under subsection 105–8.170–12, the Special Counsel for Ethics and Civil Rights renders a final agency decision after appeal without a hearing or after a hearing. The Special Counsel directs appropriate remedial action if discrimination is found. The Special Counsel's decision will involve reviewing the entire file, including the investigative report, preliminary finding, and, if a hearing was held, the hearing record and recommended decision of the ALJ. If it is the decision of the Special Counsel to reject or modify the recommended decision of the judge, the reasons for the rejection or a modification will be put in writing and made part of the decision (§ 105–8.170–12(a)). The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter provided four suggestions concerning compliance proceedings. First, the commenter stated that GSA should obtain the expertise of ATBCB to help resolve deficiencies regarding construction or location of facilities. GSA will solicit the assistance of the ATBCB to resolve deficiencies regarding construction or assist in location of facilities under § 105–8.148. No additional provision is needed.

Second, the commenter urged that a provision should be made for judicial review at the initial complaint level in addition to the one provided at the appeal level. This issue is beyond the scope of this regulation and is for the courts to decide.

Third, the commenter suggested GSA should take actions to ensure that other regulations, forms and directives issued by GSA are superseded by the nondiscrimination requirements of this part. Upon publication of this rule, GSA will do so but a provision in this rule is unnecessary.

Fourth, the commenter suggested the rule should allow for attorney fees during the administrative proceedings and compensation to the prevailing party. Such provisions are statutory and beyond the scope of this regulation and is for the courts to decide.

Section 105–8.171 Complaints Against an Occupant Agency

Section 105–8.171 deals with complaints against an occupant agency alleging that the agency's program is inaccessible because existing facilities under GSA's control contain architectural barriers. In these cases, the occupant agency will likely require assistance from GSA in devising and implementing remedies for violations of section 504 that may be found to exist. The section provides that in such cases GSA and the occupant agency that originally received the complaint are jointly responsible for complaint resolution. In our view, early GSA involvement in the complaint process will result in a more speedy, efficient complaint resolution system. The section makes GSA jointly responsible for complaints only when an occupant agency sends a copy of a complete complaint to GSA. GSA must make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's rules when it receives a complete complaint.

List of Subjects in 41 CFR Part 105–8

Administrative practice and procedure, Buildings, Civil rights, Equal employment opportunity, Federal buildings and facilities, Government property management, Handicapped.

For reasons stated in the preamble, chapter 105 of title 41 of the Code of Federal Regulations is amended as follows:

Part 105–8 is added to read as follows:

PART 105–8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Sec.

105–8.101 Purpose.
105–8.102 Application.
105–8.103 Definitions.
105–8.104—105–8.109 [Reserved]
105–8.110 Self-evaluation.
105–8.111 Notice.
105–8.112—105–8.129 [Reserved]
105–8.130 General prohibitions against discrimination.
105–8.131—105–8.39 [Reserved]
105–8.140 Employment.
105–141—105–8.147 [Reserved]
105–8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.
105–8.149 Program accessibility: Discrimination prohibited.
105–8.150 Program accessibility: Existing facilities.
105–8.150–1 General.
105–8.150–2 Methods.
105–8.150–3 Time period for compliance.
105–8.150–4 Transition plan.
105–8.151 Program accessibility: New construction and alterations.
105–8.152 Program accessibility: Assignment of space.
105–8.153 Program accessibility: Interagency cooperation.
105–8.153–1 General.
105–8.153–2 Requests from occupant agencies.
105–8.154 Program accessibility: Exceptions.
105–8.155—105–8.159 [Reserved]
105–8.160 Communications.
105–8.161—105–8.169 [Reserved]
105–8.170 Compliance procedures.
105–8.170–1 Applicability.
105–8.170–2 Employment complaints.
105–8.170–3 Responsible Official.
105–8.170–4 Filing a complaint.
105–8.170–5 Notification to the Architectural and Transportation Barriers Compliance Board.
105–8.170–6 Acceptance of complaint.
105 8.170–7 Investigation/conciliation.
105–8.170–8 Letter of findings.
105–8.170–9 Filing an appeal.
105–8.170–10 Acceptance of appeals.
105–8.170–11 Hearing.
105–8.170–12 Decision.
105–8.170–13 Delegation.
105–8.171 Complaints against an occupant agency.

Authority: 29 U.S.C. 794.

§ 105–8.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities

Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105–8.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105–8.103 Definitions.

For purposes of this part, the term—

Agency means the General Services Administration (GSA), except when the context indicates otherwise.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation program means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105–8.140.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28); and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100–630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration of historic properties.

§§ 105–8.104—105–8.109 [Reserved]

§ 105.8.110 Self-evaluation.

(a) The agency shall, by March 9, 1992, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons consulted;

(2) A description of the areas examined and any problems identified and;

(3) A description of any modifications made or to be made.

§ 105–8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105–8.112—105–8.129 [Reserved]

§ 105–8.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licenses or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by part.

(b) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(c) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105–8.131—105–8.139 [Reserved]

§ 105–8.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 105–8.141—105–8.147 [Reserved]

§ 105–8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this part concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105–8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105–8.150 and 105–8.154, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105–8.150 Program accessibility: Existing facilities.

§ 105–8.150–1 General.

The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by

individuals with handicaps. This section does not—

(a) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(b) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property.

§ 105–8.150–2 Methods.

(a) *General.* The agency may comply with the requirements of § 105–8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs.* In meeting the requirements of § 105–8.105–1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to a historic property is not required because of §§ 105–8.105–1(b) or 105–8.154 alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of a historic property that cannot otherwise be made accessible;

(2) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(3) Adopting other innovative methods.

§ 105–8.150–3 Time period for compliance.

The agency shall comply with the obligations established under § 105–8.150 by May 7, 1991; except where structural changes in facilities are undertaken, such changes shall be made by March 8, 1994, but in any event as expeditiously as possible.

§ 105–8.150–4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 9, 1992, the transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs or activities to individuals with handicaps;

(b) Describe in detail the methods that will be used to make the facilities accessible;

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105–8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(d) Indicate the official responsible for implementation of the plan.

§ 105–8.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 105–8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105–8.153 Program accessibility: Interagency cooperation.

§ 105–8.153–1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105–8.153–2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the times frames which the actions are required to be completed.

§ 105–8.154 Program accessibility: Exceptions.

Sections 105–8.150, 105–8.152, and 105–8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105–8.155—105–8.159 [Reserved]

§ 105–8.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150.8.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 105–8.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105–8.161—105–8.169 [Reserved]

§ 105–8.170 Compliance procedures.

§ 105–8.170–1 Applicability.

Except as provided in § 105–8.170–2, §§ 105–8.170 through 105–8.170–13 apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105–8.170–2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 [29 U.S.C. S 791].

§ 105–8.170–3 Responsible Official.

The Responsible Official shall coordinate implementation of §§ 105–8.170 through 105–8.170–13.

§ 105–8.170–4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any persons who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this section, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint

shall be deemed filed on the date it is recevied by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsibile Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division (AKC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediatley.

§ 105–8.170–5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105–8.170–6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with § 105–8.170–4 and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant within 30 days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a position thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-day period as provided in § 105–8.170–4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this part.

(d) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

§ 105–8.170–7 Investigation/conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105–8.170–8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

(b) A description of a remedy for each violation found;

(c) A notice of the right of the complainant and the respondent to appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105–8.170–9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt of the letter of findings required by § 105–8.170–7.

(b) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for a hearing within the time limit specified in § 105–8.170–9(a) or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(c) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Special Counsel for Ethics and Civil Rights.

(d) If neither party files an appeal within the time prescribed in § 105–8.170–9(a) the Responsible Official shall certify, at the expiration of the time, that the letter of findings is the final agency decision on the complaint.

§ 105–8.170–10 Acceptance of appeals.

The Special Counsel shall accept and process any timely appeal. A party may appeal to the Deputy Administrator from a decision of the Special Counsel that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Special Counsel.

§ 105–8.170–11 Hearing.

(A) Upon a timely request for a hearing, the Special Counsel shall take the necessary action to obtain the services of an Administrative law judge (ALJ) to conduct the hearing. The ALJ shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date, or there are other extenuating circumstances.

(b) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The ALJ may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(c) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act). The ALJ shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(1) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notices thereof;

(2) Hold conferences to settle, simplify, or determine the issue in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Examine witnesses and direct witnesses to testify;

(5) Receive, rule on, exclude, or limit evidence;

(6) Rule on procedural items pending before him or her; and

(7) Take any action permitted to the ALJ as authorized by this part, or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

(d) Technical rules of evidence shall not apply to hearings conducted pursuant to § 105–8.170–11, but rules or principles designed to assure production of credible evidence available and to subject testimony to cross-examination shall be applied by the ALJ whenever reasonably necessary. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(e) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(1) Persons employed by the agency shall, upon request to the agency by the ALJ, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a hearing shall, at the request of the ALJ and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(3) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(4) The ALJ may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(5) The respondent shall pay the required expenses and charges for the ALJ and court reporter.

(6) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(f) The ALJ shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Special Counsel for Ethics and Civil Rights within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Special Counsel.

(g) Within 15 days after receipt of the recommended decision of the ALJ any party may file exceptions to the decision with the Speical Counsel. Thereafter, each party will have ten days to file reply exceptions with the Special Counsel.

§ 105–8.170–12 Decision.

(a) The Special Counsel shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investitive record pursuant to § 105–8.170–9(c) or after the period for filing exceptions ends, which ever is applicable. If the Special Counsel for Ethics and Civil Rights determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Special Counsel shall have 60 days from receipt of the additional information to render the decision on the appeal. The Special Counsel shall transmit his or her decision by letter to the parties. The time limits established in this paragraph may be extended with the permission of the Assistant Attorney General. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Special Counsel shall consider the recommended decision of the ALJ and render a final decision based on the entire record. The Special Counsel may also remand the hearing record to the ALJ for a fuller development of the record.

(b) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(1) The manner in which compliance with the provisions of the decision has been achieved;

(2) The reasons any action required by the final decision has not yet been taken; and

(3) The steps being taken to ensure full compliance. The Official may retain responsibility for resolving disagreements that arise between the parties over interpretation fo the final agency decision or for specific adjudicatory decisions arising out of implementation.

§ 105–8.170–13 Delegation.

The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 105–8.171 Complaints against an occupant agency.

(a) Upon notification by an occupant agency that it has received a complete complaint alleging that the agency's program is inaccessible because existing facilities under GSA's control are not accessible and usable by individuals with handicaps, GAS shall be jointly responsible with the agency for resolving the complaint and shall participate in making findings of fact and conclusions of law in prescribing and implementing appropriate remedies for each violation found.

(b) GSA shall make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's compliance procedures when it receives a complete complaint.

(c) Receipt of a copy of the complete complaint by GSA shall constitute noitification to GSA for purposes of § 105–8.171(a).

Grant B. Williams,

Director, Civil Rights Division.

[FR Doc. 91–5394 Filed 3–7–91; 8:45 am]

BILLING CODE 6820–23–M

41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3']

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule further implements legislation governing the acceptance of travel, subsistence, and related expenses from a non-Federal source. It provides central policy direction on the subject and cancels a previous interim rule (54 FR 53321) which provided temporary policy direction pending development of this rule.

DATES: This interim rule is effective March 8, 1991, and applies for travel performed on or after March 8, 1991. Comments are requested on new § 301-1.2(c) and revised part 304-1 only and must be submitted by May 7, 1991.

ADDRESSES: Send comments to the General Services Administration, Travel Management Division (FBT), Washington, DC 20406, telefax (703) 557-3094.

FOR FURTHER INFORMATION CONTACT: Lennard Loewentritt or Janet Harney, Office of General Counsel (LP), Washington, DC 20405, telephone FTS 241-1156 or commercial (202) 501-1156.

SUPPLEMENTARY INFORMATION: Section 302 of the Ethics Reform Act of 1989 (Pub. L. 101-194, approved November 30, 1989) amended title 31, United States Code, by adding a new section 1352 "Acceptance of travel and related expenses from non-Federal sources." Public Law 101-280 renumbered and amended various provisions of section 1352, now designated as section 1353, and gives the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, authority to issue implementing regulations.

On December 28, 1989, the General Services Administration (GSA) published an interim rule (54 FR 53321) which provided temporary policy direction on the subject pending the development of an expanded rule. This interim rule with request for comments implements section 1353 and cancels the previous interim rule published at 54 FR 53321. As such, it amends 41 CFR 301-1.3 to delete the interim rule's codifying language and thereby reflect its cancellation. Following receipt and reconciliation of requested comments, GSA will make any changes deemed appropriate and issue a final rule governing the acceptance of travel and related expenses from a non-Federal source. This rule implements a reporting requirement imposed by 31 U.S.C. 1353; a standard reporting form may be issued at a later date. The first agency report required under § 304-1.9 will be submitted not later than May 31, 1991, with respect to payments accepted from the date of publication of this interim rule through March 31, 1991.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 301-1, 304-1, and 304-2

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-1 is amended and chapter 304 is revised as set forth below:

PART 301-1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301-1 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; 31 U.S.C. 1353; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-1.1 is revised to read as follows:

§ 301-1.1 Authority.

This chapter is issued under the authority of 5 U.S.C. 5701-5709 and 31 U.S.C. 1353.

3. Section 301-1.2 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 301-1.2 [101]Applicability.

* * * * *

(b) This chapter 301 also applies to official travel of individuals employed intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed (WAE) basis and of individuals serving without pay or at $1 a year. These individuals are not considered to have a "permanent duty station" within the general meaning of that term; however, they may be allowed travel or transportation expenses under this chapter while traveling on official business for the Government away from their homes or regular places of business and while at places of Government employment or service. Maximum rates prescribed herein are applicable except as provided in paragraph (c) of this section or unless a higher rate is specifically authorized in an appropriation or other statute.

(c) To the extent the Government has received payment and except as provided in § 304-1.7, acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under part 304-1 are not subject to the maximum rates prescribed in this chapter 301 for reimbursable travel expenses.

4. Section 301-1.3 is amended by revising paragraph (b) to read as follows:

§ 301-1.3 General rules.

* * * * *

(b) *Reimbursable expenses.* Travel expenses which will be reimbursed are confined to those expenses essential to the transaction of official business.

* * * * *

5. Chapter 304 is revised to read as follows:

CHAPTER 304—PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Part 304-1 Acceptance of payment from a non-Federal source for travel expenses.
Part 304-2 Reductions in meeting and training allowance payments.

PART 304-1—ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Sec.
304-1.1 Authority.
304-1.2 General.
304-1.3 Policy.
304-1.4 Conditions for acceptance.
304-1.5 Payment from a conflicting non-Federal source.
304-1.6 Payment guidelines.
304-1.7 Reimbursement claims for official travel expenses.
304-1.8 Limitations and penalties.
304-1.9 Reports.

Authority: 31 U.S.C. 1353; 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304-1.1 Authority.

This part is issued under the authority of 31 U.S.C. 1353 and 5 U.S.C. 5701-5709.

§ 304-1.2 General.

(a) *Applicability.* This part applies to agency acceptance of payment from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status (and/or the accompanying spouse of such employee when applicable) at any meeting or similar function relating to the official duties of the employee. This part does not authorize personal acceptance of such payments by an employee or the accompanying spouse of an employee (see, however, § 304-1.8(a)).

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Agency. Agency* means an executive agency as defined in 5 U.S.C. 105, and includes an independent agency as well as an agency within the Executive Office of the President.

(2) *Conflicting non-Federal source.* A *conflicting non-Federal source* is any person who, or entity other than the Government of the United States which, has interests that may be substantially affected by the performance or nonperformance of the employee's duties.

(3) *Employee. Employee* means an appointed officer or employee of an agency, including an expert or consultant in the executive branch (as defined in 31 U.S.C. 1353) appointed under the authority of 5 U.S.C. 3109.

(4) *Meeting or similar function. Meeting or similar function* means a conference, seminar, speaking engagement, training course, or similar event that takes place away from the employee's official station. A meeting or similar function need not be widely attended for purposes of this definition. This term does not include events required to carry out an agency's statutory and regulatory functions, such as investigations, inspections, audits, or site visits, and does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

(5) *Non-Federal source. Non-Federal source* means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, state, local, or foreign government, or international or multinational organization.

(6) *Payment. Payment* means funds paid for travel, subsistence, and related expenses by check or similar instrument to an agency, or payment in kind.

(7) *Payment in kind. Payment in kind* means goods or services provided in lieu of funds paid to an agency by check or similar instrument for travel, subsistence, and related expenses.

(8) *Travel, subsistence, and related expenses. Travel, subsistence and related expenses* includes the same types of expenses payable under chapter 301 of this title or analogous provisions of Volume 6 of the Foreign Affairs Manual (FAM) or Volume 1 of the Joint Federal Travel Regulations (JFTR). The term also includes expenses such as conference or training fees as well as other benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor to all attendees incident to and for use at the meeting or similar function.

§ 304-1.3 Policy.

As provided in this part, an agency may accept payment from a non-Federal source (or authorize an employee to receive such payment on its behalf) with respect to attendance of the employee at a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the employing agency. An employee shall not solicit payment from a non-Federal source. However, after receipt of an invitation from a non-Federal source to attend a meeting or similar function, the agency or employee may inform the non-Federal source of this authority. An agency may accept payment under this part from a non-Federal source for an accompanying spouse when it determines that the spouse's presence at the meeting or similar function will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function. However, the accompanying spouse shall not be deemed a Government employee for any purpose other than eligibility for payment of travel, subsistence, and related expenses under this part. Agencies shall ensure that officials delegated authority to determine the propriety of accepting payments under this part are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. Acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under this part are not subject to the maximum rates prescribed in chapter 301 of this title when full payment is made by the non-Federal source for one or more types of travel expenses to be reimbursed. Payment acceptance must be in accordance with internal agency procedures.

§ 304-1.4 Conditions for acceptance.

(a) An agency may accept payment for employee and/or spousal travel from a non-Federal source when an authorized agency official determines in advance of the travel that the payment is:

(1) For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

(2) For attendance at a meeting or similar function as defined in § 304-1.2(b)(4); and

(3) From a non-Federal source that is not a conflicting non-Federal source or from a conflicting non-Federal source that has been approved under § 304-1.5

(b) Payments may be accepted from multiple sources under paragraph (a) of this section.

(c) If a meeting or similar function does not concern a subject of mutual interest to the employee's agency and the non-Federal source, acceptance of payment from the non-Federal source under paragraph (a) of this section is limited to payment in kind and to the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline.

§ 304-1.5 Payment from a conflicting non-Federal source.

The agency may accept payment from a conflicting non-Federal source if the conditions of § 304-1.4 are met and the authorized agency official (designated in accordance with § 304-1.3) determines that the agency's interest in the employee's and/or the accompanying spouse's attendance at or participation in the event outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties. In determining whether to accept payment, an agency shall consider all relevant factors, including the importance of the travel for the agency, the nature and sensitivity of any pending matter affecting the interests of the conflicting

non-Federal source, the significance of the employee's role in any such matter, the purpose of the meeting or similar function, the identity of other expected participants, and the value and character of the travel benefits offered by the conflicting non-Federal source.

§ 304–1.6 Payment guidelines.

(a) *Payment other than in kind.* Payments from a non-Federal source for an employee and/or accompanying spouse, other than payments in kind, shall be by check or similar instrument made payable to the agency. Any such payment received by the employee on behalf of the agency for his/her travel and/or that of the accompanying spouse is accepted on behalf of the agency and is to be submitted as soon as practicable for credit to the agency appropriation applicable to such expenses. Reimbursement for an employee's and/or accompanying spouse's travel expenses is not subject to the maximum rates prescribed in the applicable travel regulation (chapter 301 of this title, FAM, or JFTR) when full payment is made by the non-Federal source for one or more types of the travel expenses, provided that the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

(b) *Payment in kind.* When the acceptance of payment has been approved in advance by the authorized agency official, the employee, for his/her travel (and/or that of the accompanying spouse, when applicable), may receive payment in kind in excess of limitations (including maximum per diem rates) under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR), provided that the accommodation or other benefit is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

§ 304–1.7 Reimbursement claims for official travel expenses.

(a) The employee (and/or accompanying spouse when applicable) shall submit to the employing agency an authorized reimbursement forms all travel expense reimbursement claims, and shall itemize all expenses incurred which exceed maximum rates prescribed under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR). The employee, and/or accompanying spouse when applicable, shall be reimbursed either an amount not to exceed the maximum rate prescribed in the applicable travel regulation, or when full payment is made by the non-Federal source for one or more types of the travel expenses, the amount of that payment from the non-Federal source. However, reimbursement for expenses in excess of applicable regulatory limitations shall not in any case exceed the amount of expenses incurred.

(b) The agency may reimburse the employee (and/or accompanying spouse of such employee when applicable) for only the *types* of expenses defined in §§ 301–7.1 (b)(5) and (c) of this title or in analogous provisions of the FAM or JFTR, as applicable, for per diem allowances, transportation expenses, or other miscellaneous travel expenses.

(c) If an accepted payment covers only a portion of one or more types of the expenses incurred (e.g., $50.00 per night for lodging in a locality with an $85.00 per night maximum lodging allowance), the agency shall reimburse the employee (and/or accompanying spouse when applicable) only the amount to which he/she otherwise would be entitled under applicable regulation (chapter 301 of this title, FAM, or JFTR).

(d) If an accepted payment covers in full one or more types of expenses described in paragraph (b) of this section (e.g., payment for lodging accommodations) but does not cover all of the travel expenses incurred, the agency shall reimburse the employee (and/or accompanying spouse of such employee when applicable) for those expenses that are not covered by the payment, not to exceed applicable limitations established in chapter 301 of this title or in analogous provisions of the FAM or JFTR.

§ 304–1.8 Limitations and penalties.

(a) Except as provided in paragraphs (a) (1) through (3) of this section, this part is the only authority under which an agency may accept payment from a non-Federal source, or authorize an employee to accept such payment on behalf of the agency, in connection with the attendance of its employee (and the accompanying spouse of such employee when applicable) at a meeting or similar function. An agency may not accept under an agency gift statute or other similar authority, payment for the travel, subsistence, and related expenses of an employee or accompanying spouse incurred to attend a meeting or similar function. However, nothing in this part authorizes or prohibits an agency or employee from accepting payment as follows:

(1) When authorized under 5 U.S.C. 4111 or 5 U.S.C. 7342;

(2) When payment is otherwise authorized and an employee's travel is for a personal rather than official purpose, or for a partisan rather than official purpose and is not prohibited by the provisions of the Hatch Act (5 U.S.C. 7321 *et seq.*); or

(3) When payment is otherwise authorized and the employee's travel is for attendance at or participation in an event other than a meeting or similar function.

(b) An employee who accepts any payment in violation of this part is subject to the following:

(1) The employee may be required, in addition to any penalty provided by law and applicable regulations, to repay for deposit to the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

(2) When repayment is required under paragraph (b)(1) of this section, the employee shall not be entitled to any payment or reimbursement from the Government for such expenses.

§ 304–1.9 Reports.

(a) *Agency reports.* (1) The head of each agency (or his/her designee) shall submit to the Director of the Office of Government Ethics (OGE), 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005–3917, semiannual reports of payments, as defined in this part, which total more than $250 per event, and which have been accepted under this part with respect to the attendance at, or participation in, a meeting or similar function by an agency employee, and/or accompanying spouse of such employee when applicable. The Director of OGE shall make such reports available for public inspection and copying. These reports shall:

(i) Specify the name of the employee (and/or spouse when applicable), the position held by the employee, the name of the person or entity making the payment, the nature of the meeting or similar function, the time and place of travel, the amount and method of the payment, and the nature of the expenses;

(ii) Be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

(iii) Be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.

(2) In the case of acceptance of travel on a private or chartered aircraft, for purposes of agency reports under this section, value shall be determined by computing the total constructive cost of transportation using premium-class air fares to the extent scheduled air service is available between the relevant cities.

(b) *Employee reports.* Payments properly accepted under this part, if received by an employee, are accepted on behalf of the agency and must be submitted to the agency for credit to the agency appropriation applicable to such expenses. Therefore, receipt of such a payment by an employee for himself/herself and/or the accompanying spouse, when applicable under the authority of this part, is not required to be reported as a gift on any confidential or public financial disclosure report that the employee is required to file pursuant to law or OGE regulation. Acceptance of payment by an employee for himself/herself and/or the accompanying spouse, when applicable, that is not authorized under this part may require reporting of the payment on the employee's financial disclosure report and may subject the employee to agency disciplinary procedures.

PART 304–2—REDUCTIONS IN MEETING AND TRAINING ALLOWANCE PAYMENTS

Sec.

304–2.1 Authority.
304–2.2 Applicability.
304–2.3 Conditions for approval of contributions or payments.
304–2.4 Agency responsibilities.

Authority: 5 U.S.C. 4111(b); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304–2.1 Authority.

This part is issued under the authority of 5 U.S.C. 4111(b).

§ 304–2.2 Applicability.

Subject to the exceptions in 5 U.S.C. 4102, this part 304–2 applies to civilian officers and employees of executive agencies, including the Department of Defense; independent establishments, as defined in 5 U.S.C. 104; Government corporations, subject to 31 U.S.C. 9101 *et seq.*; the Library of Congress; the Government Printing Office; the Government of the District of Columbia; and commissioned officers of the National Oceanic and Atmospheric Administration. All such officers and employees and all such agencies, independent establishments, and departments are hereinafter referred to in this part 304–2 as "employees" or "agencies," as appropriate.

§ 304–2.3 Conditions for approval of contributions or payments.

Section 303(j) of Executive Order 11348 of April 20, 1967, and the regulations issued by the Office of Personnel Management under section 401(b) of that Order, prescribe the conditions under which agency heads may approve the acceptance by employees of contributions and awards incident to training and payments incident to attendance at meetings, under 5 U.S.C. 4111(a), from the organizations described therein. These organizations are hereinafter referred to as "donors."

§ 304–2.4 Agency responsibilities.

Agency heads shall provide adequate safeguards to ensure that the following regulations are carried out:

(a) Where an approved payment by a donor fully covers expenses incident to training in a non-Government facility, or travel, subsistence, or other expenses incident to attendance at a meeting, the agency shall not pay for such expenses or shall recover payments previously made in the manner described in paragraph (c) of this section.

(b) If an approved payment by a donor does not fully cover expenses described in paragraph (a) of this section, the agency may pay an amount considered sufficient to cover the balance of the expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 4110. If an amount in excess of such balance has been previously paid by the agency, such amount shall be recovered from the employee in the manner described in paragraph (c) of this section.

(c) Recoveries of payments, as provided in paragraph (b) of this section, shall be made in the manner prescribed by regulations of the agency concerned and shall be issued according to 5 U.S.C. 5514.

(d) No reduction in payment by an agency is required where an approved contribution or award to an employee covers types of expenses which the agency is not authorized to pay. For example, where an agency authorizes travel expenses of an employee, including per diem and transportation expenses of his/her immediate family and household goods and personal effects to a training location, no reduction in payment by the agency is required if an approved contribution or award covers subsistence expenses of the family en route and expenses incurred by the employee in establishing himself/herself and the family at the training location.

(e) Expense data shall be obtained from employees or donors in such detail as the agency head deems necessary to carry out this regulation.

Dated: February 11, 1991

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-5295 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-34-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[GEN Docket No. 90–133; FCC 91–17]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Report and Order revised the maritime channeling plans in the HF bands between 4000–27500 kHz allocated exclusively to the maritime mobile service. The revisions reflect changes to the international Radio Regulations that were adopted by the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987, (1987 Mobile WARC). The worldwide changes will take effect at 0001 hours Coordinated Universal Time (UTC) on July 1, 1991, and will affect every licensed ship and coast station that operates on HF band frequencies between 4000 kHz and 27500 kHz.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632–7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GEN Docket No. 90–133, adopted January 10, 1991, and released January 30, 1991. The complete text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: (Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036; telephone 202–452–1422.)

Summary of Report and Order

1. The Report and Order sets forth the amendments that are necessary to implement the Final Acts of the World Administrative Radio Conference for Mobile Services, 1987, (1987 Mobile

WARC) into the Commission's Rules. The changes to the International Radio Regulations revised the high frequency (HF) bands between 4000–27500 kHz that are allocated exclusively to the maritime mobile service. The changes adopted by the 1987 Mobile WARC expanded the frequency spectrum available for newer forms of maritime mobile systems.

2. The revisions reflect an increase in frequencies for digital selective calling (DSC), narrow-band direct-printing (NBDP), and voice radiotelephony (SSB), and a decrease in spectrum available for manual Morse code telegraphy. The Report and Order adopted an additional 200 duplex and 153 simplex frequencies for NBDP, tripled the number of DSC frequencies, added 35 duplex SSB frequencies for public correspondence distributed by geographic regions, and added 6 simplex SSB frequencies for private communications (i.e., one 4 MHz, one 6 MHz, two 16 MHz, and two 25 MHz for private coast stations). Coast station applications for the additional DSC, NBDP, and SSB frequencies may be filed with the Commission as of March 1, 1991, but they cannot be used until July 1, 1991, in accordance with international provisions.

3. The Report and Order further provided that public coast station applicants provide a justification of their need for additional frequencies. This justification should include a showing indicating that recent traffic usage exceeds 40 percent at peak hours. The Commission noted that the justification will foster efficient use of the frequencies. Further, this showing will prevent frequency hoarding and allow an effective means to distribute the 35 new duplex SSB frequencies for public correspondence.[1] It stated that this requirement should not be burdensome on public coast stations licensees because, as common carriers, they already maintain records on traffic for billing purposes and must file tariffs with the Commission for the communication services provided.

4. To accomplish the shift from manual to automated systems, the existing maritime frequencies were also rearranged. Consequently, at 0001 hours Coordinated Universal Time (UTC) on July 1, 1991, virtually every maritime station worldwide, coast and ship, public and private, operating on frequencies between 4000–27500 kHz must change frequencies. There are approximately 40,000 ship stations and 9,000 coast stations currently licensed in the United States to operate on HF band frequencies that must change frequencies on July 1, 1991. The Report and Order noted that one commenter indicated that modifying coast station facilities could cost hundreds of dollars. There was no opposition to the changes, however, and no alternatives were identified. Further, the HF band revisions are necessary to improve the HF terrestrial systems in anticipation of implementing the Global Maritime Distress and Safety System (GMDSS).[2] After weighing all aspects of this proceeding, the Commission concluded that the amendments represented the most reasonable and least burdensome course of action to ensure compliance with international provisions.

[1] Applicants for the new duplex channels for radiotelephony would need to include this justification for each frequency band requested. Because a record of a two month period is necessary for the justification, only one channel per frequency band may be processed at a time. Inherently, this application process will permit the assignment of the new frequencies only to those that can demonstrate a need based on traffic.

[2] GMDSS will replace the present maritime distress and safety system, which relies on ship-to-ship distress alerting using manual Morse code, with a fully automated ship-to-shore distress alerting system using satellite and digital technologies. It will provide a new standard of safety for seafarers worldwide. It will be phased in internationally from 1992 to 1999. Provisions for implementing the GMDSS into the Commission's Rules were proposed in the Notice of Proposed Rule Making, PR Docket No. 90–480, 5 FCC Rcd 6272 (1990), adopted October 12, 1990, 55 FR 46816, October 31, 1990.

5. This is the second in a series of three rule making proceedings implementing the 1987 Mobile WARC into the Commission's Rules. These amendments will bring the United States into conformance with the international Radio Regulations without delay and, therefore, their adoption is in the public interest. The Report and Order noted, however, that the U.S. Senate has not given its advice and consent to ratification of the Final Acts of the 1987 Mobile WARC. Should any provision of the Final Acts not be ratified as written, further amendments of the rules may be required.

6. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information requirement on the public. The Office of Management and Budget (OMB) has approved the collection of information contained in these rules. The collection requirement is reported in the Application for Land Radio Station License in the Maritime Service (FCC Form 503). The OMB control number for this collection of information requirement is No. 3060–0069.

7. Accordingly, *it is ordered*, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that parts 2 and 80 of the Commission's Rules ARE AMENDED as set forth below.

8. *It is further ordered* that, consistent with the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987, this Report and Order is effective at 0001 hours UTC on July 1, 1991.

9. *It is further ordered* that a copy of this Report and Order be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. *It is further ordered* that this proceeding *is terminated.*

List of Subjects

47 CFR Part 2

Frequency allocations, Radio, Treaties.

47 CFR Part 80

Coast stations, Communications equipment, Marine safety, Radio, Ship stations, Telegraph, Telephone.

Federal Communications Commission

Donna R. Searcy,

Secretary.

Amended Rules

Appendix

Parts 2 and 80 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In § 2.106, the Table of Frequency Allocations is amended by revising columns (4) and (5) for entry 4000–4438, columns (1) through (3) for entry 4063–4438, columns (1) through (5) for entry 6200–6525, columns (4) and (5) for entry 8100–8815, columns (1) through (3) for entry 8195–8815, columns (1) through (5) for entry 12230–13200, columns (1) through (6) for entry 16360–17410, and columns (1) through (5) for entries 18168–18780, 18780–18900, 19680–19800, 22000–22855, 25070–25210, and 26100–26175; further, the subsequent International Footnotes are amended by removing and reserving footnote 523, by removing the notes to footnotes 500A and 500B, revising footnotes 500, 500A, 500B, 501, 505, 517, 520, and by adding footnotes 520A, 520B, and 529A in the appropriate positions; and finally, the United States (US) Footnotes are amended by revising US296 to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1—allocation kHz	Region 2—allocation kHz	Region 3—allocation kHz	Government allocation kHz	Non-Government allocation kHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	
4000–4063	• • •		4000–4438 MARITIME MOBILE 500A 500B 520 520B	4000–4438 MARITIME MOBILE 500A 500B 520 520B	• • •	
4063–4438	MARITIME MOBILE 500A 500B 520 520A 520B 518 519		US82 US236 US296	US82 US236 US296		
•	•	•	•	•	•	
6200–6525	MARITIME MOBILE 500A 500B 520 520B 522		6200–6525 MARITIME MOBILE 500A 500B 520 520B US82 US296	6200–6525 MARITIME MOBILE 500A 500B 520 520B US82 US296	• • •	
•	•	•	•	•	•	
8100–8195	• • •		8100–8815 MARITIME MOBILE 500A 500B 520B 529A	8100–8815 MARITIME MOBILE 500A 500B 520B 529A	• • •	
8195–8815	MARITIME MOBILE 500A 500B 520B 529A 501		501 US82 US236 US296	501 US82 US236 US296		
•	•	•	•	•	•	

12230–13200	MARITIME MOBILE 500A 500B 520B 529A 532	12230–13200 MARITIME MOBILE 500A 500B 520B 529A US82 US296	12230–13200 MARITIME MOBILE 500A 500B 520B 529A US82 US296	. . .
16360–17410	MARITIME MOBILE 500A 500B 520B 529A 532	16360–17410 MARITIME MOBILE 500A 500B 520B 529A US82 US296	16360–17410 MARITIME MOBILE 500A 500B 520B 529A US82 US296	MARITIME (80)
18168–18780	FIXED Mobile except aeronautical mobile	18168–18780 FIXED Mobile	18168–18780 FIXED Mobile	. . .
18780–18900	MARITIME MOBILE 532	18780–18900 MARITIME MOBILE US82 US296	18780–18900 MARITIME MOBILE US82 US296	. . .
19680–19800	MARITIME MOBILE 520B 532	19680–19800 MARITIME MOBILE 520B	19680–19800 MARITIME MOBILE 520B	. . .
22000–22855	MARITIME MOBILE 520B 532 540	22000–22855 MARITIME MOBILE 520B US82 US296	22000–22855 MARITIME MOBILE 520B US82 US296	. . .
25070–25210	MARITIME MOBILE 544	25070–25210 MARITIME MOBILE US82 US281 US296	25070–25210 MARITIME MOBILE US82 US281 US296 NG112	. . .
26100–26175	MARITIME MOBILE 520B 544	26100–26175 MARITIME MOBILE 520B	26100–26175 MARITIME MOBILE 520B	. . .

International Footnotes

* * * * *

500 The carrier frequency 2182 kHz is an international distress and calling frequency for radiotelephony. The conditions for the use of the band 2173.5–2190.5 kHz are prescribed in Articles 37, 38, N 38, and 60.

500A The frequencies 2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article N 38.

500B The frequencies 2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12529 kHz, and 16695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article N 38.

501 The carrier frequencies 2182 kHz, 3023 kHz, 5680 kHz, 8364 kHz and the frequencies 121.5 MHz, 156.8 MHz and 243 MHz may also be used, in accordance with the procedures in force for terrestrial radiocommunication services, for search and rescue operations concerning manned space vehicles. The conditions for the use of the frequencies are prescribed in Articles 38 and N 38. The same applies to the frequencies 10003 kHz, 14993 kHz and 19993 kHz, but in each of these cases emissions must be confined in a band of ± 3 kHz about the frequency.

* * * * *

505 The carrier (reference) frequencies 3023 kHz and 5680 kHz may also be used, in accordance with Articles 38 and N 38 by stations of the maritime mobile service engaged in coordinated search and rescue operations.

* * * * *

517 The use of the band 4000–4063 kHz by the maritime mobile service is limited to ship stations using radiotelephony (see No. 4374 and Appendix 18).

* * * * *

520 The conditions for the use of the carrier frequencies 4125 kHz and 6215 kHz are prescribed in Articles 37, 38, N 38 and 60.

520A The frequency 4209.5 kHz is used exclusively for the transmission by coast stations of meteorological and navigational warnings and urgent information to ships by means of narrow-band direct-printing techniques (see Resolution 332 (Mob-87)).

520B The frequencies 4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5 kHz, 22376 kHz, and 26100.5 kHz are the international frequencies for the transmission of Maritime Safety Information (MSI) (see Resolution 333 (Mob-87) and Appendix 31).

* * * * *

529A The conditions for the use of the carrier frequency 8291 kHz, 12290 kHz, and 16420 kHz, are prescribed in Articles 38, N 38 and 60.

* * * * *

United States (US) Footnotes

* * * * *

US296 Until July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4160.6, 4166, 6238.6, 6242.6, 8326, 8341.5, 12485, 12489, 16654, 16658, 22186 and 22190 kHz. Effective July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4154.5, 4169.5, 6235.5, 6259.5, 8302.5, 8338.5, 12370.5, 12418.5, 16551.5, 16614.5, 16647.5, 16668.5, 22161.5, 22238.5, 25123.5, and 25159.5 kHz.

* * * * *

PART 80—[AMENDED]

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.355, paragraph (c)(2) is revised in its entirety to read as follows:

§ 80.355 Distress, urgency, safety, call and reply Morse code frequencies.

* * * * *

(c) * * *

(2) *Ship station frequencies.* The following table describes the calling frequencies in the 4000–27500 kHz band which are available for use by authorized ship stations equipped with crystal controlled oscillators for A1A or J2A radiotelegraphy. There are two series of frequencies for worldwide use and two series of frequencies for each geographic region. Ship stations with synthesized transmitters may operate on every full 100 Hz increment in the 0.5 kHz channel for the frequencies listed, except for 100 Hz above and below those designated for worldwide use. During normal business hours when not communicating on other frequencies, all U.S. coast radiotelegraph stations must monitor the worldwide frequencies and the initial calling frequencies for the region in which it is located. The specific frequencies which must be monitored by a coast station will vary with propagation conditions. The calling frequencies which are routinely monitored by specific coast stations can be determined by reference to the ITU publication entitled "List of Coast Stations". Initial calls by ship stations must be made on the appropriate initial calling frequency first. Calls on the worldwide frequencies may be made only after calls on the appropriate initial calling frequency are unsuccessful.

SHIP MORSE CALLING FREQUENCIES (kHz)

Region:	ITU							ITU	
Worldwide	3	4184.0	6276.0	8368.0	12552.0	16736.0	22280.5	C	25172.0
	4	4184.5	6276.5	8369.0	12553.5	16738.0	22281.0	C	25172.0
Atlantic:									
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Caribbean:									
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Gulf-Mexico:									
Initial	5	4183.0	6278.0	8367.0	12551.0	16735.0	22281.5	A	25171.5
Alternate	6	4183.5	6278.5	8367.5	12551.5	16735.5	22282.0	A	25171.5
N Pacific:									
Initial	7	4185.0	6279.0	8368.5	12552.5	16736.5	22282.5	B	25172.5
Alternate	8	4185.5	6279.5	8369.5	12553.0	16737.0	22283.0	B	25172.5
S Pacific:									
Initial	9	4186.0	6280.0	8370.0	12554.0	16737.5	22283.5	B	25172.5
Alternate	10	4186.5	6280.5	8370.5	12554.5	16738.5	22284.0	B	25172.5

* * * * *

5. Section 80.357 is amended by revising paragraph (a)(3) in its entirety, by revising the text of paragraph (b)(1) in its entirety, by revising the table numbers listed in columns entitled 16 MHz and 22 MHz of paragraph (b)(1) in their entirety, and by revising paragraph (b)(2)(ii) in its entirety to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(a) * * *

(3) *Frequencies in the 2000–27500 kHz band.* This paragraph describes the working frequencies and Channel Series in the 2000–27500 kHz band which are assignable to ship stations.

(i) Two Channel Series will be assigned for routine use to each ship station. Frequencies from any other Channel Series may be used if the frequencies in the assigned Channel Series are not adequate for communications.

SHIP MORSE WORKING FREQUENCIES (kHz)

Channel Series:							
W1	4187.0	6285.0	8342.0 8343.5	12422.0 12453.0	16619.0 16650.0 16681.0	22242.0 22273.0	25161.5
W2	4187.5	6285.5	8342.5 8344.0	12422.5 12453.5	16619.5 16650.5 16681.5	22242.5 22273.5	25162.0
W3	4188.0	6286.0	8343.0 8344.5	12423.0 12454.0	16620.0 16651.0 16682.0	22243.0 22274.0	25162.5
W4	4188.5	6286.5	8343.5 8345.0	12423.5 12454.5	16620.5 16651.5 16682.5	22243.5 22274.5	25163.0
W5	4189.0	6287.0	8344.0 8345.5	12424.0 12455.0	16621.0 16652.0 16683.0	22244.0 22275.0	25163.5
W6	4189.5	6287.5	8344.5 8346.0	12424.5 12455.5	16621.5 16652.5 16618.0	22244.5 22275.5	25164.0
W7	4190.0	6288.0	8345.0 8346.5	12425.0 12456.0	16622.0 16653.0 16619.5	22245.0 22276.0	25164.5
W8	4190.5	6288.5	8345.5 8347.0	12425.5 12456.5	16622.5 16653.5 16620.0	22245.5 22276.5	25165.0
W9	4191.0	6289.0	8346.0 8347.5	12426.0 12457.0	16623.0 16654.0 16620.5	22246.0 22277.0	25165.5
W10	4191.5	6289.5	8346.5 8348.0	12426.5 12457.5	16623.5 16654.5 16621.0	22246.5 22270.5	25166.0
W11	4192.0	6290.0	8347.0 8348.5	12427.0 12458.0	16624.0 16655.0 16621.5	22247.0 22278.0	25166.5
W12	4192.5	6290.5	8347.5 8349.0	12427.5 12458.5	16624.5 16655.5 16622.0	22247.5 22278.5	25167.0
W13	4193.0	6291.0	8348.0 8349.5	12428.0 12459.0	16625.0 16656.0 16622.5	22248.0 22279.0	25167.5
W14	4193.5	6291.5	8348.5 8350.0	12428.5 12459.5	16625.5 16656.5 16623.0	22248.5 22242.0	25168.0
W15	4194.0	6292.0	8349.0 8350.5	12429.0 12460.0	16626.0 16657.0 16623.5	22249.0 22242.5	25168.5
W16	4194.5	6292.5	8349.5 8351.0	12429.5 12460.5	16626.5 16657.5 16624.0	22249.5 22243.0	25169.0
W17	4195.0	6293.0	8350.0 8351.5	12430.0 12461.0	16627.0 16658.0 16624.5	22250.0 22243.5	25169.5
W18	4195.5	6293.5	8350.5 8352.0	12430.5 12461.5	16627.5 16658.5 16625.0	22250.5 22244.0	25170.0
W19	4196.0	6294.0	8351.0 8352.5	12431.0 12462.0	16628.0 16659.0 16625.5	22251.0 22244.5	25170.5
W20	4196.5	6294.5	8351.5 8353.0	12431.5 12462.5	16628.5 16659.5 16626.0	22251.5 22245.0	25171.0
W21	4197.0	6295.0	8352.0 8353.5	12432.0 12463.0	16629.0 16660.0 16626.5	22252.0 22245.5	25161.5
W22	4197.5	6295.5	8352.5 8354.0	12432.5 12463.5	16629.5 16660.5 16627.0	22252.5 22246.0	25162.0
W23	4198.0	6296.0	8353.0 8354.5	12433.0 12464.0	16630.0 16661.0 16627.5	22253.0 22246.5	25162.5
W24	4198.5	6296.5	8353.5 8355.0	12433.5 12464.5	16630.5 16661.5	22253.5 22247.0	25163.0

SHIP MORSE WORKING FREQUENCIES (kHz)—Continued

W26	4198.0	6297.0	8354.0 8355.5	12434.0 12465.0	16628.0 16631.0 16662.0 16628.5	22254.0 22247.5	25163.5
W25	4199.5	6297.5	8354.5 8356.0	12434.5 12466.5	16631.5 16662.5 16629.0	22254.5 22246.0	25164.0
W27	4200.0	6298.0	8355.0 8356.5	12435.0 12466.0	16632.0 16663.0 16629.5	22255.0 22248.5	25164.5
W28	4200.5	6298.5	8356.5 8357.0	12435.5 12466.5	16632.5 16663.5 16630.0	22255.5 22249.0	25165.0
W29	4201.0	6299.0	8356.0 8357.5	12436.0 12467.0	16633.0 16664.0 16630.5	22256.0 22249.5	25165.5
W30	4201.5	6299.5	8356.5 8358.0	12436.5 12467.5	16633.5 16664.5 16631.0	22256.5 22250.0	25166.0
W31	4202.0	6300.0	8357.0 8358.5	12437.0 12468.0	16634.0 16665.0 16631.5	22257.0 22250.5	25166.5
W32	4202.0	6300.0	8357.5 8359.0	12437.5 12468.5	16634.5 16665.5 16632.0	22257.5 22251.0	25167.0
W33	4201.5	6299.5	8358.0 8359.5	12438.0 12469.0	16635.0 16666.0 16632.5	22258.0 22251.5	25167.5
W34	4201.0	6299.0	8358.5 8360.0	12438.5 12469.5	16635.5 16666.5 16633.0	22258.5 22252.0	25168.0
W35	4200.5	6298.5	8359.0 8360.5	12439.0 12470.0	16636.0 16667.0 16633.5	22259.0 22252.5	25168.5
W36	4200.0	6298.0	8359.5 8361.0	12439.5 12470.5	16636.5 16667.5 16634.0	22259.5 22253.0	25169.0
W37	4199.5	6297.5	8360.0 8361.5	12440.0 12471.0	16637.0 16668.0 16634.5	22260.0 22253.5	25169.5
W38	4199.0	6297.0	8360.5 8362.0	12440.5 12471.5	16637.5 16668.5 16635.0	22260.5 22254.0	25170.0
W39	4198.5	6296.5	8361.0 8362.5	12441.0 12472.0	16638.0 16669.0 16635.5	22261.0 22254.5	25170.5
W40	4198.0	6296.0	8361.5 8363.0	12441.5 12472.5	16638.5 16669.5 16636.0	22261.5 22255.0	25171.0
W41	4197.5	6295.5	8362.0 8363.5	12442.0 12473.0	16639.0 16670.0 16636.5	22262.0 22255.5	25161.5
W42	4197.0	6295.0	8362.5 8364.0	12442.5 12473.5	16639.5 16670.5 16637.0	22262.5 22256.0	25162.0
W43	4196.5	6294.5	8363.0 8364.5	12443.0 12474.0	16640.0 16671.0 16637.5	22263.0 22256.5	25162.5
W44	4196.0	6294.0	8363.5 8365.0	12443.5 12474.5	16640.5 16671.5 16638.0	22263.5 22257.0	25163.0
W45	4195.5	6293.5	8364.0 8365.5	12444.0 12475.0	16641.0 16672.0 16638.5	22264.0 22257.5	25163.5
W46	4195.0	6293.0	8364.5 8371.0	12444.5 12475.5	16641.5 16672.5 16639.0	22264.5 22258.0	25164.0
W47	4194.5	6292.5	8365.0 8371.5	12445.0 12476.0	16642.0 16673.0 16639.5	22265.0 22258.5	25164.5
W48	4194.0	6292.0	8365.5 8372.0	12445.5 12476.5	16642.5 16673.5 16640.0	22265.5 22259.0	25165.0
W49	4193.5	6291.5	8371.0 8372.5	12446.0 12422.0	16643.0 16674.0 16640.5	22266.0 22259.5	25165.5
W50	4193.0	6291.0	8371.5 8373.0	12446.5 12422.5	16643.5 16674.5 16641.0	22266.5 22260.0	25166.0
W51	4192.5	6290.5	8372.0 8373.5	12447.0 12423.0	16644.0 16675.0 16641.5	22267.0 22260.5	25166.5

SHIP MORSE WORKING FREQUENCIES (kHz)—Continued

W52	4192.0	6290.0	8372.5 8374.0	12447.5 12423.5	16644.5 16675.5 16642.0	22267.5 22261.0	25167.0
W53	4191.5	6289.5	8373.0 8374.5	12448.0 12424.0	16645.0 16676.0 16642.5	22268.0 22261.5	25167.5
W54	4191.0	6289.0	8373.5 8375.0	12448.5 12424.5	16645.5 16676.5 16643.0	22268.5 22262.0	25168.0
W55	4190.5	6288.5	8374.0 8375.5	12449.0 12425.0	16646.0 16677.0 16643.5	22269.0 22262.5	25168.5
W56	4190.0	6288.0	8374.5 8376.0	12449.5 12425.5	16646.5 16677.5 16644.0	22269.5 22263.0	25169.0
W57	4189.5	6287.5	8375.0 8342.0	12450.0 12426.0	16647.0 16678.0 16644.5	22270.0 22263.5	25169.5
W58	4189.0	6287.0	8375.5 8342.5	12450.5 12426.5	16647.5 16678.5 16645.0	22270.5 22264.0	25170.0
W59	4188.5	6286.5	8376.0 8343.0	12451.0 12427.0	16648.0 16679.0 16645.5	22271.0 22264.5	25170.5
W60	4188.0	6286.0	8342.0 8343.5	12451.5 12427.5	16648.5 16679.5 16646.0	22271.5 22265.0	25171.0
W61	4187.5	6285.5	8342.5 8344.0	12452.0 12428.0	16649.0 16680.0 16646.5	22272.0 22265.5	25161.5
W62	4187.0	6285.0	8343.0 8344.5	12452.5 12428.5	16649.5 16680.5 16678.0	22272.5 22266.0	25162.0

(ii) If the frequencies listed in paragraph (3)(i) of this section are not adequate for communications, ship stations may use any of the non-paired narrow-band direct-printing frequencies listed in § 80.361(b) of this part for A1A or J2A radiotelegraphy.

(b) *Coast station frequencies*—(1) *Frequencies in the 100–27500 kHz band.* The following table describes the working carrier frequencies in the 100–27500 kHz band which are assignable to coast stations located in the designated geographical areas. The exclusive maritime mobile HF bands listed in the table contained in § 80.363(b) of this part are also available for assignment to public coast stations for A1A or J2A radiotelegraphy following coordination with government users.

Area	Coast Morse working frequencies (kHz)								
	100–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Central Pacific			•	•	•	•	•	17016.8	22479.0
								17026.0	22515.0
								17088.8	22557.0
									22675.5
South Pacific								17064.8	22467.0
								17088.8	22663.5
								17218.4	
Gulf of Mexico								17117.6	22467.0
								17170.4	22569.0
								17172.4	22570.5
								17206.8	22681.0
Great Lakes									
Hawaii								16978.4	22509.0
Puerto Rico									
North Atlantic								16933.2	22485.0
								16968.8	22503.0
								16973.6	22521.0
								16997.6	22366.5
								17021.6	22599.0
								17093.6	22657.0
								16904.9	
Central Atlantic									
South Atlantic								16918.8	22503.0
								17093.6	22569.0
								17160.6	22681.0
								17170.4	
								17199.2	
North Pacific								17007.2	22539.0

Area	Coast Morse working frequencies (kHz)								
	109–160 kHz	405–525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Alaska									

(2) * * *
(i) * * *
(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interference will not be caused to any coast station serving the high seas. Applicants for these frequencies must submit a substantial showing of need based on the following factors:
(A) a schedule of each currently licensed Morse working frequency and the expected use of the proposed frequencies;
(B) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and
(C) any other facts that support the need for the proposed assignment, *e.g.*, evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable.
* * * * *

6. Section 80.359 is amended by revising paragraphs (a) and (b) in their entirety to read as follows:

§ 80.359 Frequencies for digital selective calling (DSC).

(a) *General purpose calling.* The following table describes the calling frequencies for use by authorized ship and coast stations for general purpose DSC. There are three series of paried frequencies. One series is for worldwide use; the other two series are for regional use. The "Series A" designation includes coast stations along, and ship stations in, the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. The "Series B" designation includes stations in any remaining areas. Stations must initiate contact on the appropriate regional frequency depending upon the location of the called station and propagation conditions. Acknowledgement is made on the paired frequency. The worldwide frequencies may be used for international calling, if calls on the appropriate regional frequencies are unsuccessful, or the regional series does not contain the appropriate band (*e.g.*, 2 MHz). During normal working hours, all public coast stations capable of DSC operations must monitor the worldwide and regional frequencies appropriate for its location. The specific frequencies to be monitored will vary with propagation conditions.

GENERAL PURPOSE DSC

[In kHz unless otherwise noted]

Worldwide		Series A		Series B	
Ship	Coast	Ship	Coast	Ship	Coast
458.5	455.5				
2189.5	[1] 2177.0				
4208.0	4219.5	4208.5	4220.0;4209.0	4209.5	4220.5
6312.5	6331.0	6313.0	6331.5	6313.5	632.0
8415.0	8436.5	8415.5	8437.0	8416.0	8437.5
12577.5	12657.0	12578.0	12657.5	12578.5	12658.0
16805.0	16903.0	16805.5	16903.5	16806.0	16904.0
16898.5	19703.5	16899.0	19704.0	16899.5	19704.5
22374.5	22444.0	22375.0	22444.05	22375.5	22445.0
25208.5	26121.0	25209.0	26121.5	25209.5	26122.0
[2] 156.525	[2] 156.525				

[1] The frequency 2177.0 kHzs is also available to ship stations for intership calling and acknowledgement of such calls only.
[2] MHz.

(b) *Distress and safety calling.* The frequencies 2187.5 kHz, 4207.5 kHz, 6312.0 kHz, 8414.5 kHz, 12577.0 kHz, 16804.5 kHz, and 156.525 MHz may be used for DSC by coast and ship stations on a simplex basis for distress and safety purposes. The provisions and procedures for distress and safety calling are contained in CCIA Recommendation 541 as modified by § 80.103(c) of this part.
* * * * *

7. In § 80.361, paragraphs (a) and (b) are revised in their entirety and a new paragraph (c) is added to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NBDP) and data transmissions.

(a) *Paired channels.* (1) The following frequencies are available for assignment to public coast stations for narrow-band direct-printing (NBDP) and data transmissions. The paired ship frequencies are available for use by authorized ship stations for NBDP and data transmissions.

Ch. no.	Paired frequencies for NBDP and data transmissions (kHz)															
	4 MHz		6 MHz		8 MHz		12 MHz		16 MHz		16/19 MHz		22 MHz		25/26 MHz	
	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship
1	4210.5	4172.5	6314.5	6263.0			12579.5	12477.0	16807.0	16683.5	19681.0	18670.5	22376.5	22284.5	26101.0	25173.0
2	4211.0	4173.0	6315.0	6263.5	8417.0	8377.0	12580.0	12477.5	16807.5	16684.0	19681.5	18671.0	22377.0	22285.0	26101.5	25173.5
3	4211.5	4173.5	6315.5	6264.0	8417.5	8377.5	12580.5	12478.0	16808.0	16684.5	19682.0	18671.5	22377.5	22285.5	26102.0	25174.0
4	4212.0	4174.0	6316.0	6264.5	8418.0	8378.0	12581.0	12478.5	16808.5	16685.0	19682.5	18672.0	22378.0	22286.0	26102.5	25174.5
5	4212.5	4174.5	6316.5	6265.0	8418.5	8378.5	12581.5	12479.0	16809.0	16685.5	19683.0	18672.5	22378.5	22286.5	26103.0	25175.0
6	4213.0	4175.0	6317.0	6265.5	8419.0	8379.0	12582.0	1247w.5	16809.5	16686.0	19683.5	18673.0	22379.0	22287.0	26103.5	25175.5
7	4213.5	4175.5	6317.5	6266.0	8419.5	8379.5	12582.5	12480.0	16810.0	16686.5	19684.0	18673.5	22379.5	22287.5	26104.0	25176.0
8	4214.0	4176.0	6318.0	6266.5	8420.0	8380.0	12583.0	12480.5	16810.5	16687.0	19684.5	18674.0	22380.0	22288.0	26104.5	25176.5
9	4214.5	4176.5	6318.5	6267.0	8420.5	8380.5	12583.5	12481.0	16811.0	16687.5	19685.0	18674.5	22380.5	22288.5	26105.0	25177.0
10	4215.0	4177.0	6319.0	6267.5	8421.0	8381.0	12584.0	12481.5	16811.5	16688.0	19685.5	18675.0	22381.0	22289.0	26105.5	25177.5
11					8421.5	8381.5	12584.5	12482.0	16812.0	16688.5	19686.0	18675.5	22381.5	22289.5	26106.0	25178.0
12	4215.5	4178.0	6319.5	6268.5	8422.0	8382.0	12585.0	12482.5	16812.5	16689.0	19686.5	18676.0	22382.0	22290.0	26106.5	25178.5
13	4216.0	4178.5	6320.0	6269.0	8422.5	8382.5	12585.5	12483.0	16813.0	16689.5	19687.0	18676.5	22382.5	22290.5	26107.0	25178.0
14	4216.5	4179.0	6320.5	6269.5	8423.0	8383.0	12586.0	12483.5	16813.5	16690.0	19687.5	18677.0	22383.0	22291.0	26107.5	25179.5
15	4217.0	4179.5	6321.0	6270.0	8423.5	8383.5	12586.5	12484.0	16814.0	16690.5	19688.0	18677.5	22383.5	22291.5	26108.0	25180.0
16	4217.5	4180.0	6321.5	6270.5	8424.0	8384.0	12587.0	12484.5	16814.5	16691.0	19688.5	18678.0	22384.0	22292.0	26108.5	25180.5
17	4218.0	4180.5	6322.0	6271.0	8424.5	8384.5	12587.5	12485.0	16815.0	16691.5	19689.0	18678.5	22384.5	22292.5	26109.0	25181.0
18			6322.5	6271.5	8425.0	8385.0	12588.0	12485.5	16815.5	16692.0	19689.5	18679.0	22385.0	22293.0	26109.5	25181.5
19			6323.0	6272.0	8425.5	8385.5	12588.5	12486.0	16816.0	16692.5	19690.0	18679.5	22385.5	22293.5	26110.0	25182.0
20			6323.5	6272.5	8426.0	8386.0	12589.0	12486.5	16816.5	16693.0	19690.5	18680.0	22386.0	22294.0	26110.5	25182.5
21			6324.0	6273.0	8426.5	8386.5	12589.5	12487.0	16817.0	16693.5	19691.0	18680.5	22386.5	22294.5		
22			6324.5	6273.5	8427.0	8387.0	12590.0	12487.5	16817.5	16694.0	19691.5	18681.0	22387.0	22295.0		
23			6325.0	6274.0	8427.5	8387.5	12590.5	12488.0	16818.0	16694.5			22387.5	22295.5		
24			6325.5	6274.5	8428.0	8388.0	12591.0	12488.5					22388.0	22296.0		
25			6326.0	6275.0	8428.5	8388.5	12591.5	12489.0	16818.5	16695.5			22388.5	22296.5		
26			6326.5	6275.5	8429.0	8389.0	12592.0	12489.5	16819.0	16696.0			22389.0	22297.0		
27			6327.0	6281.0	8429.5	8389.5	12592.5	12490.0	16819.5	16696.5			22389.5	22297.5		
28			6327.5	6281.5	8430.0	8390.0	12593.0	12490.5	16820.0	16697.0			22390.0	22298.0		
29			6328.0	6282.0	8430.5	8390.5	12593.5	12491.0	16820.5	16697.5			22390.5	22298.5		
30					8431.0	8391.0	12594.0	12491.5	16821.0	16698.0			22391.0	22299.0		
31					8431.5	8391.5	12594.5	12492.0	16821.5	16698.5			22391.5	22299.5		
32					8432.0	8392.0	12595.0	12492.5	16822.0	16699.0			22392.0	22300.0		
33					8432.5	8392.5	12595.5	12493.0	16822.5	16699.5			22392.5	22300.5		
34					8433.0	8393.0	12596.0	12493.5	16823.0	16700.0			22393.0	22301.0		
35							12596.5	12494.0	16823.5	16700.5			22393.5	22301.5		
36							12597.0	12494.5	16824.0	16701.0			22394.0	22302.0		
37							12597.5	12495.0	16824.5	16701.5			22394.5	22302.5		
38							12598.0	12495.5	16825.0	16702.0			22395.0	22303.0		
39							12598.5	12496.0	16825.5	16702.5			22395.5	22303.5		
40							12599.0	12496.5	16826.0	16703.0			22396.0	22304.0		
41							12599.5	12497.0	16826.5	16703.5			22396.5	22304.5		
42							12600.0	12497.5	16827.0	16704.0			22397.0	22305.0		
43							12600.5	12498.0	16827.5	16704.5			22397.5	22305.5		
44							12601.0	12498.5	16828.0	16705.0			22398.0	22306.0		
45							12601.5	12499.0	16828.5	16705.5			22398.5	22306.5		
46							12602.0	12499.5	16829.0	16706.0			22399.0	22307.0		
47							12602.5	12500.0	16829.5	16706.5			22399.5	22307.5		
48							12603.0	12500.5	16830.0	16707.0			22400.0	22308.0		
49							12603.5	12501.0	16830.5	16707.5			22400.5	22308.5		
50							12604.0	12501.5	16831.0	16708.0			22401.0	22309.0		
51							12604.5	12502.0	16831.5	16708.5			22401.5	22309.5		
52							12605.0	12502.5	16832.0	16709.0			22402.0	22310.0		
53							12605.5	12508.0	16832.5	16709.5			22402.5	22310.5		
54							12606.0	12508.5	16833.0	16710.0			22403.0	22311.0		
55							12606.5	12504.0	16833.5	16710.5			22403.5	22311.5		
56							12607.0	12504.5	16834.0	16711.0			22404.0	22312.0		
57							12607.5	12505.0	16834.5	16711.5			22404.5	22312.5		
58							12608.0	12505.5	16835.0	16712.0			22405.0	22313.0		
59							12608.5	12506.0	16835.5	16712.5			22405.5	22313.5		
60							12609.0	12506.5	16836.0	16713.0			22406.0	22314.0		
61							12609.5	12507.0	16836.5	16713.5			22406.5	22314.5		
62							12610.0	12507.5	16837.0	16714.0			22407.0	22315.0		
63							12610.5	12508.0	16837.5	16714.5			22407.5	22315.5		
64							12611.0	12508.5	16838.0	16715.0			22408.0	22316.0		
65							12611.5	12509.0	16838.5	16715.5			22408.5	22316.5		
66							12612.0	12509.5	16839.0	16716.0			22409.0	22317.0		
67							12612.5	12510.0	16839.5	16716.5			22409.5	22317.5		
68							12613.0	12510.5	16400.0	16717.0			22410.0	22318.0		
69							12613.5	12511.0	16400.5	16717.5			22410.5	22316.5		
70							12614.0	12511.5	16411.0	16718.0			22411.0	22319.0		
71							12614.5	12512.0	16841.5	16718.5			22411.5	22319.5		
72							12615.0	12512.5	16842.0	16719.0			22412.0	22320.0		
73							12615.5	12513.0	16842.5	16719.5			22412.5	22320.5		
74							12616.0	12513.5	16843.0	16720.0			22413.0	22321.0		
75							12616.5	12514.0	16843.5	16720.5			22413.5	22321.5		
76							12617.0	12514.5	16844.0	16721.0			22414.0	22322.0		
77							12617.5	12515.0	16844.5	16721.5			22414.5	22322.5		
78							12618.0	12515.5	16845.0	16722.0			22415.0	22323.0		

Ch. no.	Paired frequencies for NBDP and data transmissions (kHz)															
	4 MHz		6 MHz		8 MHz		12 MHz		16 MHz		18/19 MHz		22 MHz		25/26 MHz	
	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship
79							12618.5	12516.0	16845.5	16722.5			22415.5	22323.5		
80							12619.0	12516.5	16846.0	16723.0			22416.0	22324.0		
81							12619.5	12517.0	16846.5	16723.5			22416.5	22324.5		
82							12620.0	12517.5	16847.0	16724.0			22417.0	22325.0		
83							12620.5	12518.0	16847.5	16724.5			22417.5	22325.5		
84							12621.0	12518.5	16848.0	16725.0			22418.0	22326.0		
85							12621.5	12519.0	16848.5	16725.5			22418.5	22326.5		
86							12622.0	12519.5	16849.0	16726.0			22419.0	22327.0		
87									16849.5	16726.5			22419.5	22327.5		
88							12622.5	12520.5	16850.0	16727.0			22420.0	22328.0		
89							12623.0	12521.0	16850.5	16727.5			22420.5	22328.5		
90							12623.5	12521.5	16851.0	16728.0			22421.0	22329.0		
91							12624.0	12522.0	16851.5	16728.5			22421.5	22329.5		
92							12624.5	12522.5	16852.0	16729.0			22422.0	22330.0		
93							12625.0	12523.0	16852.5	16729.5			22422.5	22330.5		
94							12625.5	12523.5	16853.0	16730.0			22423.0	22331.0		
95							12626.0	12524.0	16853.5	16730.5			22423.5	22331.5		
96							12626.5	12524.5	16854.0	16731.0			22424.0	22332.0		
97							12627.0	12525.0	16854.5	16731.5			22424.5	22332.5		
98							12627.5	12525.5	16855.0	16732.0			22425.0	22333.0		
99							12628.0	12526.0	16855.5	16732.5			22425.5	22333.5		
100							12628.5	12526.5	16856.0	16733.0			22426.0	22334.0		
101							12629.0	12527.0	16856.5	16733.5			22426.5	22334.5		
102							12629.5	12527.5	16857.0	16739.0						
103							12630.0	12528.0	16857.5	16739.5						
104							12630.5	12528.5	16858.0	16740.0						
105							12631.0	12529.0	16858.5	16740.5						
106							12631.5	12529.5	16859.0	16741.0						
107							12632.0	12530.0	16859.5	16741.5						
108									16860.0	16742.0						
109									16860.5	16742.5						
110									16861.0	16743.0						
111									16861.5	16743.5						
112									16862.0	16744.0						
113									16862.5	16744.5						
114									16863.0	16745.0						
115									16863.5	16745.5						
116									16864.0	16746.0						
117									16864.5	16746.5						
118									16865.0	16747.0						
119									16865.5	16747.5						
120									16866.0	16748.0						
121									16866.5	16748.5						
122									16867.0	16749.0						
123									16867.5	16749.5						
124									16868.0	16750.0						
125									16868.5	16750.5						
126									16869.0	16751.0						
127									16869.5	16751.5						
128									16870.0	16752.0						
129									16870.5	16752.5						
130									16871.0	16753.0						
131									16871.5	16753.5						
132									16872.0	16754.0						

(2) Applicants for these frequencies must submit a substantial showing of need based on the following factors:

(i) a schedule of each currently licensed NBDP frequency and the expected use of the proposed frequencies;

(ii) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and

(iii) any other facts that support the need for the proposed assignment, *e.g.*, evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable.

(b) *Non-paired channels.* The following frequencies are available for use by authorized ship stations for NBDP and data transmissions with public coast stations. Public coast stations may receive only on these frequencies.

NON-PAIRED NBDP CHANNELS (kHz)

Channel series:								
1	4202.5	6300.5	8396.5	12560.0	16785.0	16893.0	22352.0	25193.0
2	4203.0	6301.0	8397.0	12560.5	16785.5	16893.5	22352.5	25193.5

NON-PAIRED NBDP CHANNELS (kHz)—Continued

3	4203.5	6301.5	8397.5	12561.0	16786.0	16894.0	22353.0	25194.0
4	4204.0	6302.0	8398.0	12561.5	16786.5	16894.5	22353.5	25194.5
5	4204.5	6302.5	8398.5	12562.0	16787.0	16895.0	22354.0	25195.0
6	4205.0	6303.0	8399.0	12562.5	16787.5	16895.5	22354.5	25195.5
7	4205.5	6303.5	8399.5	12563.0	16788.0	16896.0	22355.0	25196.0
8	4206.0	6304.0	8400.0	12563.5	16788.5	16896.5	22355.5	25196.5
9	4206.5	6304.5	8400.5	12564.0	16789.0	16897.0	22356.0	25197.0
10	4207.0	6305.0	8401.0	12564.5	16789.5	16897.5	22356.5	25197.5
11		6305.5	8401.5	12565.0	16790.0	16898.0	22357.0	25198.0
12		6306.0	8402.0	12565.5	16790.5		22357.5	25198.5
13		6306.5	8402.5	12566.0	16791.0		22358.0	25199.0
14		6307.0	8403.0	12566.5	16791.5		22358.5	25199.5
15		6307.5	8403.5	12567.0	16792.0		22359.0	25200.0
16		6308.0	8404.0	12567.5	16792.5		22359.5	25200.5
17		6308.5	8404.5	12568.0	16793.0		22360.0	25201.0
18		6309.0	8405.0	12568.5	16793.5		22360.5	25201.5
19		6309.5	8405.5	12569.0	16794.0		22361.0	25202.0
20		6310.0	8406.0	12569.5	16794.5		22361.5	25202.5
21		6310.5	8406.5	12570.0	16795.0		22362.0	25203.0
22		6311.0	8407.0	12570.5	16795.5		22362.5	25203.5
23		6311.5	8407.5	12571.0	16796.0		22363.0	25204.0
24			8408.0	12571.5	16796.5		22363.5	25204.5
25			8408.5	12572.0	16797.0		22364.0	25205.0
26			8409.0	12572.5	16797.5		22364.5	25205.5
27			8409.5	12573.0	16798.0		22365.0	25206.0
28			8410.0	12573.5	16798.5		22365.5	25206.5
29			8410.5	12574.0	16799.0		22366.0	25207.0
30			8411.0	12574.5	16799.5		22366.5	25207.5
31			8411.5	12575.0	16800.0		22367.0	25208.0
32			8412.0	12575.5	16800.5		22367.5	
33			8412.5	12576.0	16801.0		22368.0	
34			8413.0	12576.5	16801.5		22368.5	
35			8413.5		16802.0		22369.0	
36			8414.0		16802.5		22369.5	
37					16803.0		22370.0	
38					16803.5		22370.5	
39					16804.0		22371.0	
40							22371.5	
41							22372.0	
42							22372.5	
43							22373.0	
44							22373.5	
45							22374.0	

(c) *Distress and calling.* The frequencies 2174.5 kHz, 4177.5 kHz, 6268.0 kHz, 8376.5 kHz, 12520.0 kHz, and 16695.0 kHz may be used for NBDP and data transmissions by coast and ship stations on a simplex basis for distress and safety purposes.

* * * * *

8. In § 80.363, paragraphs (a) and (b) are revised in their entirety to read as follows:

§ 80.363 Frequencies for facsimile.

* * * * *

(a) *Ship station frequencies.* The following frequencies are available for use by authorized ship stations for facsimile.

ASSIGNABLE SHIP FREQUENCIES FOR FACSIMILE (kHz)

2070.5	4154.5	6235.5	8362.5	12370.5	16551.5	16847.5	22161.5	25123.5
2072.5	4168.5	6258.5	8386.5	12418.5	16614.5	16866.5	22238.5	25159.5
2074.5								
2076.5								

(b) *Coast station frequencies.* The following table describes the exclusive maritime mobile HF frequency bands that are available for assignment to coast stations using 3 kHz channels for facsimile. However, any frequency in the 2000–27500 kHz bands listed in Part 2 of the Commission's Rules as available for shared use by the maritime mobile service and other radio services, except for the 4000–4063 kHz and the 8100–8195 kHz bands, is available for assignment to coast stations for facsimile. Frequency assignments are subject to coordination with government users.

FREQUENCY BANDS FOR COAST FACSIMILE (kHz)

4221.0– 4351.0	16904.5–17242.0
6332.5– 6501.0	19705.0–19755.0
8438.0– 8707.0	22445.5–22696.0
12658.5–13077.0	26122.5–26145.0

* * * * *

9. In § 80.369, paragraphs (b) and (d) are revised to read as follows:

§ 80.369 Distress, urgency, safety, call and reply frequencies.

* * * * *

(b) The frequencies 4125.0 kHz, 6215 kHz, 8291 kHz, 12290 kHz, and 16420 kHz may be used by coast and ship stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for distress and safety communications

between aircraft and maritime mobile stations.

* * * * *

(d) In the 4000–27500 kHz band, the following coast frequencies are available for assignment to public coast stations for call and reply communications. The paired ship frequencies are available for use by authorized ship stations.

CALL AND REPLY FREQUENCY PAIRS IN THE 4000–27500 KHZ

Carrier Frequencies (kHz)		
Channel No.	Ship transmit	Coast transmit
421	[1] [2] 4125	[1] 4417
606	[2] 6215	[1] 6516
821	8255	8779
1221	[3] 12290	13137
1621	[3] 16420	17302
1806	18795	19770
2221	22060	22758
2510	25097	26172

[1] The frequencies 4125 kHz, 4417 kHz, and 6516 kHz are also available on a simplex basis for private communications, see § 80.373(c) of this part.

[2] The frequencies of 4125 kHz and 6215 kHz are also available on a simplex basis to ship and coast stations for call and reply, provided that the peak envelope power does not exceed 1 kW.

[3] The frequencies 4125 kHz, 6215 kHz, 8291 kHz, 12290 kHz, and 16420 kHz are also available on a simplex basis for distress and safety traffic, see paragraph (b) of this section.

* * * * *

10. In § 80.371, paragraphs (b) and (d) are revised in their entirety to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(b) *Working frequencies in the 4000–25700 kHz band.* This paragraph describes the working carrier frequencies in the 4000–27500 kHz band.

(1) The following table specifies the carrier frequencies available for assignment to public coast stations. The paired ship frequencies are available for use by authorized ship stations.

TABLE A.—PUBLIC CORRESPONDENCE (DUPLEX CHANNELS)

[Working carrier frequency pairs in the 4000–27500 kHz band]

Region	Channel No.	Carrier frequencies (kHz)	
		Ship transmit	Coast transmit
East Coast	403	4071.0	4363.0
	410	4092.0	4384.0
	411	4095.0	4387.0
	412	4098.0	4390.0
	416	4110.0	4402.0
	417	4113.0	4405.0
	422	4128.0	4420.0
	423	4131.0	4423.0
	802	8196.0	8722.0
	805	8207.0	8731.0
	808	8216.0	8740.0
	810	8222.0	8746.0
	811	8225.0	8749.0
	814	8234.0	8758.0
	815	8237.0	8761.0
	825	8267.0	8791.0
	826	8270.0	8794.0
	831	8285.0	8809.0
	1203	12236.0	13083.0
	1206	12245.0	13092.0
	1208	12251.0	13098.0
	1209	12254.0	13101.0
	1210	12257.0	13104.0
	1211	12260.0	13107.0
	1215	12272.0	13119.0
	1222	12293.0	13140.0
	1223	12296.0	13143.0
	1228	12311.0	13158.0
	1230	12317.0	13164.0
	1601	16360.0	17242.0
	1605	16372.0	17254.0
	1609	16384.0	17266.0
	1610	16387.0	17269.0
	1611	16390.0	17272.0
	1618	16405.0	17287.0
	1620	16417.0	17299.0
	1626	16435.0	17317.0
	1631	16450.0	17332.0
	2201	22000.0	22696.0
	2205	22012.0	22708.0
	2210	22027.0	22723.0
	2215	22042.0	22738.0
	2216	22045.0	22741.0
	2222	22063.0	22759.0
	2236	22105.0	22801.0
West Coast	401	4065.0	4357.0
	416	4110.0	4402.0
	417	4113.0	4405.0
	804	8204.0	8726.0
	809	8219.0	8743.0
	814	8234.0	8758.0
	1201	12230.0	13077.0
	1202	12233.0	13080.0
	1203	12236.0	13083.0
	1229	12314.0	13161.0
	1230	12317.0	13164.0
	1602	16363.0	17245.0
	1603	16366.0	17248.0
	1624	16429.0	17311.0
	2214	22039.0	22735.0
	2223	22066.0	22762.0
	2228	22081.0	22777.0

TABLE A.—PUBLIC CORRESPONDENCE (DUPLEX CHANNELS)—Continued

[Working carrier frequency pairs in the 4000–27500 kHz band]

Region	Channel No.	Carrier frequencies (kHz)	
		Ship transmit	Coast transmit
	2236	22105.0	22801.0
Gulf Coast	404	4074.0	4366.0
	405	4077.0	4369.0
	414	4104.0	4396.0
	419	4119.0	4411.0
	824	8264.0	8788.0
	829	8279.0	8803.0
	830	8282.0	8806.0
	1212	12263.0	13110.0
	1225	12302.0	13149.0
	1226	12305.0	13152.0
	1607	16378.0	17260.0
	1632	16453.0	17335.0
	1641	16480.0	17362.0
	2227	22078.0	22774.0
	2231	22090.0	22786.0
	2237	22108.0	22804.0
Great Lakes	405	4077.0	4369.0
	409	4089.0	4381.0
	418	4116.0	4408.0
	826	8270.0	8794.0
Hawaii	418	4116.0	4408.0
	808	8216.0	8740.0
	1222	12293.0	13140.0
	1601	16360.0	17242.0
Caribbean	604	6209.0	6510.0
	605	6212.0	6513.0
	1602	16363.0	17245.0
	1603	16366.0	17248.0
	2223	22066.0	22762.0

(2) The following table specifies the additional carrier frequencies available for assignment to public coast stations for public correspondence. The paired ship frequencies are available for use by authorized ship stations. The specific frequency assignment available to public coast stations for a particular geographic area is indicated by an "x" under the appropriate column. Table B is based on the initial Appendix 25 Allotment Arrangement published by the International Frequency Registration Board (IFRB) (*see* IFRB Circular-letter No. 836, dated September 28, 1990). The allotment areas are in accordance with the "Standard Defined Areas" as identified in the Appendix 25 Planning System and indicated in the Preface to the International Frequency List (IFL) (*see* IFRB Circular-letter No. 843, dated October 31, 1990).

TABLE B.—PUBLIC CORRESPONDENCE (ADDITIONAL DUPLEX CHANNELS)

[Working carrier frequency pairs in th 4000–27500 kHz band]

Channel	Ship transmit	Coast transmit	USA–E	USA–W	USA–S	USA–C	VIR	HWA	ALS	PTR	GUM
	Carrier frequencies (kHz)										
427	4143.0	4435.0	x	x	x	x	x	x	x	—	x
428	4060.0	4351.0	x	x	x	x	x	x	x	x	x
607	6218.0	6519.0	x	x	x	x	x	x	x	x	x
836	8113.0	8713.0	x	x	x	x	x	x	x	x	x
837	8128.0	8716.0	x	x	x	x	x	x	x	x	x
1233	12326.0	13173.0	x	x	x	x	x	x	x	x	x
1234	12329.0	13176.0	—	x	x	—	—	x	x	—	x
1235	12332.0	13179.0	x	x	x	x	x	x	x	x	x
1236	12335.0	13182.0	—	x	x	—	—	x	—	—	—
1237	12338.0	13185.0	x	—	x	x	x	—	—	x	—
1642	16483.0	17365.0	x	x	x	x	x	x	x	x	x
1643	16486.0	17368.0	x	x	x	x	x	x	x	x	x
1644	16489.0	17371.0	x	x	x	x	—	x	x	—	x
1645	16492.0	17374.0	x	x	x	x	x	x	x	x	x
1646	16495.0	17377.0	—	x	—	—	—	—	—	—	—
1647	16498.0	17380.0	x	x	x	x	—	x	x	—	x
1648	16501.0	17383.0	—	x	—	x	x	x	x	x	x
1801	18780.0	19755.0	x	x	x	x	x	x	x	x	x
1802	18783.0	19758.0	x	—	x	x	x	—	—	x	—
1803	18786.0	19761.0	x	x	—	x	x	x	x	x	x
1804	18789.0	19764.0	—	x	x	—	—	x	x	—	—
1805	18792.0	19767.0	—	x	—	—	—	x	x	—	—
1807	18798.0	19773.0	x	x	x	x	x	x	x	x	x
1808	18801.0	19776.0	x	x	x	x	x	x	x	x	x
2241	22120.0	22816.0	x	x	x	x	x	x	x	x	x
2242	22123.0	22819.0	x	x	x	x	x	x	x	x	x
2243	22126.0	22822.0	x	x	x	x	x	x	x	x	—
2244	22129.0	22825.0	—	x	—	—	—	x	x	—	—
2245	22132.0	22828.0	—	x	x	—	—	x	x	—	—
2246	22135.0	22831.0	x	x	x	x	x	x	x	—	x
2247	22138.0	22834.0	x	x	x	x	x	x	x	—	x
2501	25070.0	26145.0	x	x	x	x	—	x	x	—	x
2502	25073.0	26148.0	x	x	x	x	x	x	x	x	—
2503	25076.0	26151.0	x	x	x	x	x	x	x	—	—
2504	25079.0	26154.0	x	x	x	x	x	x	x	x	x

(3) The following table specifies the non-paired carrier frequencies that are available for assignment to public coast stations for simplex operations subject to the provision of paragraph (b)(4) of this section. These frequencies are available for use by authorized ship stations for transmissions to coast stations (simplex operations). Assignments on these frequencies must accept interference. They are shared with government users and are considered "common use" frequencies under the international Radio Regulations. They cannot be notified for inclusion in the Master International Frequency Register, which provides stations with interference protection, but may be listed in the international List of Coast Stations. (*See* Radio Regulation No. 1220 and Recommendation 304.)

PUBLIC CORRESPONDENCE (SIMPLEX)

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band [1] Carrier Frequencies (kHz)]

16537	18825	22174	25100
16540	18828	22177	25103
	18831		25106

PUBLIC CORRESPONDENCE (SIMPLEX)—Continued

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band [1] Carrier Frequencies (kHz)]

	18834		25109
	18837		25112

[1] Coast stations limited to a maximum transmitter power of 1 kW (PEP).

(4) Applicants for these public coast frequencies specified in this section must submit a substantial showing of need based on the following factors:

(i) a schedule of each currently licensed working frequency in the 4000–27500 kHz band and the expected use of the proposed frequencies;

(ii) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications;

(iii) any other facts that support the need for the proposed assignment, e.g., evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable; and

(iv) for simplex frequencies listed in paragraph (b)(3) of this section, an additional showing supporting the use of simplex rather than duplex frequencies for the proposed situation.

* * * * *

(d) *Working frequencies in the Mississippi River System.* The Mississippi River System includes the Mississippi River and connecting navigable waters other than the Great Lakes. The following simplex frequencies are available for assignment to public coast stations serving the Mississippi River System for radiotelephony communications. These simplex frequencies also are available for use by authorized ship stations within communication service range, whether or not the ship is operating within the confines of the Mississippi River System.

MISSISSIPPI RIVER SYSTEM WORKING FREQUENCIES; CARRIER FREQUENCIES (kHz)

2086 [1]	4066	6209	8201	12362	16543
2782	4069	6212	8213	12365	16546
	4118	6510	8725	.....	.....
	4408	6513	8737	.....	.....

[1] Limited to a maximum transmitter output of 150 watts (PEP).

* * * * *

11. In § 80.373, paragraphs (c)(1) and (i) are revised in their entirety to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(c) *Frequencies in the 2000–27500 kHz bands for business and operational communications.* (1) The following simplex frequencies in the 2000–27500 kHz band are available for assignment to private coast stations for business and operational radiotelephone communications. These simplex frequencies also are available for use by authorized ship stations for business and operational radiotelephone communications.

BUSINESS AND OPERATIONAL FREQUENCIES IN THE 2000–27500 KHZ BAND; CARRIER FREQUENCIES (kHz)

2065.0 [1,2]	4146	8224	8294	12353	16528	16840	22159	25115
2079.0 [1,2]	4149	8227	8297	12356	16531	16843	22162	25118
2096.5 [1]	4125 [3]	8230	.....	12359	16534	.....	22165	.....
3023.0 [4]	4417 [5]	8516	.....	.....	.....	.....	22168	.....
	5680 [4]	.....	.....	.....	.....	.....	22171	.....

[1] Limited to peak envelope power of 150 watts.
[2] The frequency 4125 kHz is also available for distress and safety, and calling and reply, see § 80.369 (b) and (d) of this part.
[3] The frequencies 2065.0 kHz and 2079.0 kHz must be coordinated with Canada.
[4] The frequencies 3023.0 kHz and 5680.0 kHz are available to private coast stations licensed to state and local governments and any scene-of-action ships for the purpose of search and rescue scene-of-action coordination including communications with any scene-of-action aircraft.
[5] The frequency 6516 kHz is limited to daytime operations. The frequencies 4417 kHz and 8516 kHz are also available for calling and reply, see § 80.369(d) of this part.

* * * * *

(i) *Frequencies in the 1600–5450 kHz band for private communications in Alaska.* The following simplex frequencies are available for assignment to private fixed stations located in the State of Alaska for radiotelephony communications with ship stations. These simplex frequencies are available for use by authorized ship stations for radiotelephony communications with private fixed stations located in the State of Alaska.

PRIVATE COMMUNICATIONS IN ALASKA CARRIER FREQUENCIES (kHz)

1619.0	2382.0	2563.0
1622.0	2419.0	2566.0
1643.0	2422.0	2960.0
1646.0	2427.0	2816.0
1649.0	2430.0	3258.0
1652.0	2447.0	[1] 3261.0
1705.0	2450.0	4366.0
1708.0	2479.0	4369.0
1712.0	2482.0	4396.0
2003.0	2506.0	4402.0
2006.0	2509.0	4420.0
2115.0	2512.0	4423.0
2118.0	2535.0	5167.5
2379.0	2538.0	

[1] Ship stations must limit use of 3261.0 kHz to communications over distances which cannot be reached by the use of a frequency below 2700 kHz or above 156.000 MHz.

* * * * *

12. A new § 80.374 is added to read as follows:

§ 80.374 Special provisions for frequencies in the 4000–4063 kHz and the 8100–8195 kHz bands shared with the fixed service.

Until implementation procedures and schedules are determined by a conference of the International Telecommunications Union (ITU), the bands 4000–4063 kHz and 8100–8195 kHz are allocated on a shared primary basis between the fixed service and the maritime mobile service; see § 2.106, note US236, of the Commission's Rules. Frequency assignments in the 4000–4063 kHz and 8100–8195 kHz bands are subject to coordination with government users. Additionally, coast station assignments in the 4000–4063 kHz band deviate from international provisions. Coast station assignments in the 4000–4063 kHz band are permitted provided that harmful interference is not caused to, and must accept interference from, stations operated by other countries in accordance with the Radio Regulations (*see* Radio Regulation Nos. 342 and 517).

(a) *Application requirements.* Applicants for public coast station frequencies described in this section must submit a substantial showing of need based on the following factors:

(1) a schedule of each currently licensed 4, 6, and 8 MHz frequency and the expected use of the proposed frequencies;

(2) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and

(3) any other facts that support the need for the proposed assignment, *e.g.*, evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable.

(b) *Frequencies in the 4000–4063 kHz band.* (1) The frequencies in the 4000–4063 kHz bands are available to ship and public coast stations for:

(i) supplementary ship-to-shore duplex operations with coast stations assigned the frequencies described in § 80.371(b) of this part;

(ii) intership simplex operations and cross-band operations;

(iii) ship-to-shore or shore-to-ship simplex operations; or

(iv) duplex operations with coast stations assigned in the band 4438–4650 kHz, as described in § 80.373(d) of this part.

(2) The following table describes the channelization of carrier frequencies in the 4000–4063 kHz band.

CARRIER FREQUENCIES (kHz)

4000	4015	4030	4045
4003	4018	4033	4048
4006	4021	4036	4051
4009	4024	4039	4054
4012	4027	4042	4057

(c) *Frequencies in the 8100–8195 kHz band.* (1) The frequencies in the 8100–8195 kHz bands are available to ship and public coast stations for:

(i) supplementary ship-to-shore duplex operations with coast stations assigned the frequencies described in § 80.371(b) of this part;

(ii) intership simplex operations and cross-band operations; or

(iii) ship-to-shore or shore-to-ship simplex operations.

(2) The following table describes the channelization of carrier frequencies in the 8100–8195 kHz band.

CARRIER FREQUENCIES (kHz)

8101	8137	8167
8104	8140	8170
8107	8143	8173
8110	8146	8176
8116	8149	8179
8119	8152	8182
8122	8155	8185
8125	8158	8188
8131	8161	8191
8134	8164	

[FR Doc. 91–5303 Filed 3–7–91; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Parts 21 and 94

[CC Docket No. 90–216; FCC 91–36]

Channel Bandwidth; 10550–10680 MHz Band Rechanneling

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This rulemaking order amends §§ 21.701(d) and 94.65(i) of the Rules to provide for an increase in options for channel bandwidth for two microwave services, Common Carrier Point-to-Point Microwave Service and Private Operational-Fixed Microwave Service.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Peace, Jr., Tele: 202–634–1779.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket No. 90–216, FCC 91–36, Adopted February 4, 1991, and Released February 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 202–452–1422, Suite 246, 1919 M Street, NW., Washington, DC 20037.

Summary of Report and Order

1. This rulemaking order amends §§ 21.701(d) and 94.65(i) of the Rules to provide for two optional bandwidth channel pairs, 2.50 MHz and 3.75 MHz, in the 10550–10680 MHz frequency band. Such rechannelization will promote wider and more efficient utilization of the 10550–10680 MHz segment of the radio spectrum both in terms of the number of potential users and the type of transmissions.

Ordering Clauses

2. Authority for this Rule Making is contained in sections 1, 4(i), 303(e), (f), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 151.154(i), 303(e), 303(f), and 303(r).

3. Accordingly, *It is ordered*, That §§ 21.701(d) and 94.65(i) of the Commission's Rules and Regulations, 47 CFR 21.701(d), 94.65(i), is amended as specified below, effective thirty days from publication in the **Federal Register**. *It is further ordered* That Gen. Docket No. 90–216 *is terminated.*

List of Subjects

47 CFR Part 21

Frequencies, Radio.

47 CFR Part 94

Frequencies, Radio.

Rule Changes

Parts 21 and 94 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations) are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 21.701 is amended by adding new paragraphs (d)(3) and (4) to read as follows:

§ 21.701 Frequencies.

* * * * *

(d) * * *

(3) 3.75 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.875	10616.875
10555.625	10620.525
10559.375	10624.375
10563.125	10628.125

(4) 2.50 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10561.250	10626.250
10563.750	10628.750

* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91–5427 Filed 3–7–91; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 69

[CC Docket Nos. 78–72 and 80–286; FCC 90–422]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has reaffirmed its decision to require the local exchange carriers to implement, in most cases, a one cent originating Carrier Common Line (CCL) charge with recovery of the remaining CCL revenue requirement through the terminating charge. The Commission issued this decision in response to petitions for reconsideration seeking a zero or one-half cent originating CCL charge. The

PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.65 is amended by adding new paragraphs (i)(3) and (4) to read as follows:

§ 94.65 Frequencies.

* * * * *

(i) * * *

(3) 3.75 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.875	10616.875
10555.625	10620.525
10559.375	10624.375
10563.125	10628.125

(4) 2.50 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10561.250	10626.250
10563.750	10628.750

* * * * *

Commission determined that the parties seeking reconsideration had an opportunity to address the level of the originating CCL charge during the rulemaking process and that the prior decision represented a reasoned consideration of the advantages and disadvantages of alternative CCL rate structures. Thus, the Commission reaffirmed its rule adopting the one cent originating CCL rate structure.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau (202) 632-6363.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (FCC 90-422), adopted December 20, 1990, released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Washington, DC, 20037, (202) 452-1422.

Summary of Report and Order

1. The Commission's access charge rules initially provided for recovery of the costs allocated to the Common Carrier Line (CCL) rate element through equal per minute originating and terminating charges. In 1986, the Commission adopted temporary measures to reduce uneconomic bypass by freezing the terminating CCL charge, and requiring that cost reductions be used solely to reduce the originating charge. Although this structure was initially scheduled to expire on December 31, 1987, the Commission deferred the implementation of equalized CCL rates through March 31, 1989. At the same time, the Commission requested comment on whether bifurcated rates (i.e., unequal originating and terminating rates) should be continued and if so, how such rates should be structured.

2. Based on the comments, the Commission adopted the *Bifurcation Order* (54 FR 6292, Feb. 9, 1989) that required, as of April 1, 1989, a one cent per minute originating CCL charge, with recovery of the remaining CCL revenue requirement through the charge for terminating traffic. The Commission also required equalization of the originating and terminating charges if use of a one cent originating CCL charge would result in a terminating charge of less than one cent.

3. Four parties filed petitions for reconsideration of the Commission's *Bifurcation Order*. In this decision, the Commission denied the petitions for reconsideration and reaffirmed its decision to implement a one cent originating CCL charge with the remainder of the CCL revenue requirement recovered through the terminating charge, except when this would result in a terminating charge of less than one cent. In denying the petitions, the Commission concluded that the petitioners had an opportunity to address the level of the originating CCL charge during the rulemaking process. The Commission also concluded that the present rate structure represented a reasoned consideration of the advantages and disadvantages of alternative CCL structures.

Ordering Clauses

4. *Accordingly it is Ordered That* the petitions for reconsideration of the *Bifurcation Order are denied*, and the petitions for stay *are dismissed* as moot.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5428 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-587; RM-6602]

Radio Broadcasting Services; Bisbee and Green Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 221C2 for Channel 221A at Green Valley, Arizona, and modifies the license of Station KQYT(FM) to specify operation on the higher powered channel as requested by Nova Communications, L.P. Additionally, in order to accommodate the modification at Green Valley, Channel 222A is substituted for Channel 221A at Bisbee, Arizona, and the license issued to Sierra Pacific Broadcasting, Ltd. for Station KZMK(FM) is modified accordingly. *See* 55 FR 322, January 4, 1990. Coordinates for Channel 221C2 at Green Valley are 31-55-34 and 110-56-27. Coordinates for Channel 222A at Bisbee are 31-26-52 and 109-57-30. Since Green Valley and Bisbee are located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government was received. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-587, adopted February 14, 1991, and released March 1, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arizona, is amended by removing Channel 221A at Bisbee and adding Channel 222A, and by removing Channel 221A at Green Valley and adding Channel 221C2.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5431 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-454; RM-6839]

Radio Broadcasting Services; El Dorado, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 227C3 for Channel 227A at El Dorado, Arkansas, and modifies the permit of William J. Wynne for Station KLTW(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage area FM service. See 54 FR 43068, October 20, 1989. Coordinates used for Channel 227C3 at El Dorado are 33-07-46 and 92-50-53. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-454, adopted February 14, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 227A and adding Channel 227C3 at El Dorado.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5430 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-526; RM-7422]

Radio Broadcasting Services; Eagle, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300C2 to Eagle, Idaho, as that community's first local FM service at the request of Cynthia Anne Siragusa. *See* 55 FR 47494, November 14, 1990. Channel 300C2 can be allotted to Eagle in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43-41-42 and West Longitude 116-21-12. With this action, this proceeding is terminated.

DATES: Effective April 15, 1991; the window period for filing applications will open on April 16, 1991, and close on May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-526, adopted January 31, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 300C2, Eagle.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5429 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-328; RM-6777, RM-7047]

Radio Broadcasting Services; Belvidere, NJ, Scranton and Tannersville, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WRNJ-Daytimer, allots Channel 296A to Belvidere, New Jersey, as the community's first local FM service. In addition, the Commission substitutes Channel 295A for Channel 296A at Scranton, Pennsylvania, and modifies the license of Station WEZX to specify operation on the alternate Class A frequency. At the request of the Reiter Company, the Commission dismisses its counterproposal to allot Channel 296A to Tannersville, Pennsylvania. Channel 296A can be allotted to Belvidere in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.1 miles) north to avoid a short-spacing to Stations WKDN, Channel 295B, Camden, New Jersey, and WYCL, Channel 298B, Boyertown, Pennsylvania. The coordinates for Channel 296A at Belvidere are North Latitude 40-51-17 and West Longitude 75-04-50. Channel 295A can be allotted to Scranton in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station WEZX. The coordinates for Channel 295A at Scranton are North Latitude 41-25-41 and West Longitude 75-44-50. Canadian concurrence in the allotment of Channel 295A to Scranton has been received since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective April 15, 1991. The window period for filing applications for Channel 296A at Belvidere, New Jersey, will open on April 16, 1991, and close on May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-328, adopted February 15, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New Jersey, is amended by adding Belvidere, Channel 296A. Section 73.202(b), the FM Table of Allotments under Pennsylvania, is amended by removing Channel 296A and adding Channel 295A at Scranton.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5432 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 90-5; FCC 91-55]

Private Operational-Fixed Microwave Service; Distribution of Video Entertainment Material

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allows Operational-Fixed Microwave Service licensees to use the 6 MHz wide, point-to-point channels in the 18 GHz band to distribute video entertainment material without limiting the number of channels that may be assigned for this purpose. This action will promote competition in the video distribution marketplace by allowing alternative multichannel video providers eligible in the OFS to expand their operations and increase their market presence.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket 90-5, FCC 91-55, adopted February 13, 1991, and released February 28, 1991.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of Report and Order

1. The Commission's existing rules limit the distribution of video entertainment material on frequencies in the Operational-Fixed Microwave Service (OFS) to the point-to-multipoint frequencies in the 2500 to 2690 MHz band and frequencies above 21.2 GHz. To compete effectively with traditional cable providers, however, alternative multichannel delivery systems require access to additional microwave spectrum that will permit these entities to distribute the signals they receive via satellite to various locations. In recognition of this fact, the Commission issued the Notice 55 FR 3241 (January 31, 1990), in the instant proceeding proposing to allow OFS eligibles to use the 6 MHz wide, point-to-point frequencies in the 18 GHz band for the distribution of video entertainment material. In addition, the Commission proposed not to limit the number of channels that may be assigned at 18 GHz for this purpose.

2. After reviewing the record in this proceeding, including the comments and reply comments filed in response to the Notice, the Commission concluded that the public interest would be served by the adoption of the proposals advanced in the Notice. Specifically, the Commission noted that the proposal to permit OFS eligibles to distribute video entertainment material in the 18 GHz band, particularly when considered in conjunction with the proposal to eliminate the four-channel-per-transmitter-site limitation, will promote the public interest by encouraging competition in the video distribution marketplace. In this regard, the Commission indicated that its decision will increase the competitive potential of alternative multichannel distribution systems by responding to these operators' requests for access to spectrum that will permit them to transmit the signals they receive at an earth station at one location to other locations, or to conduct wideband transmissions between buildings, by use of a microwave link. Because of current limitations in our OFS rules, many alternative multichannel delivery systems are required to construct separate head-end facilities at each location they wish to serve. Financial constraints, zoning restrictions, terrestrial interference, satellite line-of-sight problems and building owner restrictions often preclude the installation of numerous separate head-end facilities, however, thwarting the growth of these operations and decreasing their competitive potential. The Commission stated that frequencies at 18 GHz are ideal for OFS distribution of video entertainment material from a technological standpoint because the 18 GHz band is already used for this purpose by Cable Television Relay Service (CARS) licensees.

3. The Commission also concluded that limiting OFS distribution of video entertainment material in the 18 GHz band to the 6 MHz wide, point-to-point channels is appropriate because this will foster the most efficient use of spectrum. In addition, the Commission stated, this limitation is consistent with the availability of the 6 MHz wide channels for video distribution by CARS licensees.

4. Finally, the Commission concluded that the removal of its restriction on the number of frequencies per site that an OFS licensee may use for the delivery of video entertainment material at 18 GHz is necessary to enable alternative multichannel operators to reap any tangible benefits from their access to these frequencies. Specifically, the Commission stated that permitting OFS eligibles access to 18 GHz for the distribution of video entertainment material without removing the four-channel-per-transmitter-site limitation will do virtually nothing to improve the viability of OFS eligibles competing with cable system operators capable of offering at least fifty channels. To provide meaningful competition to cable systems, alternative multichannel operators must be able to transmit as many video channels as necessary to meet subscriber demand and to vie with competitors' offerings.

Authority Citation

5. Authority for the action taken is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave service, Communications equipment, Reporting and record keeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

47 CFR part 94 is amended as follows:

1. The authority citation for part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.9 is revised in its entirety to read as follows:

§ 94.9 Permissible Communications.

(a) Except as provided in paragraph (b) of this section, stations in this radio service may transmit communications as follows:

(1) On frequencies below 21,200 MHz, licensees may transmit their own communications, including the transmission of their products and information services, to their customers except that the distribution of video entertainment material to customers shall be permitted only as indicated in § 94.61(b) and subparagraph (a)(2) of this section.

(2) In the frequency bands 6425-6525 MHz, 18, 142-18,580 MHz and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

(3) Licensees may transmit the communications of their parent corporation, or of another subsidiary of the same parent, or their own subsidiary where the party to be served is regularly engaged in any of the activities that constitute the basis for eligibility to use the frequencies assigned;

(4) Licensees may transmit the communications of other parties in accordance with § 94.17;

(5) Licensees may transmit emergency communications unrelated to their activities in accordance with § 94.11;

(6) Licensees may transmit communications on a commercial basis to eligible users, among different premises of a single eligible user, or from one eligible user to another as part of transmissions by Digital Termination Systems on the frequencies provided for this purpose;

(7) Licensees may transmit program material from one location to another, provided that the frequencies do not serve as the final RF link in the chain of distribution of the program material to broadcast stations;

(8) The facilities of closed circuit educational television systems that have been licensed to educational institutions may be utilized for the transmission of program material to noncommercial educational broadcast stations, provided that the use of the facilities exclusively for carrying such program material shall be less than 50 percent of their total use during any one year of the license period, no charge either direct or indirect shall be made for such use, and licensees shall submit reports with their applications for renewals showing the breakdown of usages in terms of primary and alternate uses during each year of the license term.

(b) Stations licensed in this radio service shall not:

(1) Render a common carrier communications service of any kind.

(2) Transmit program material for use in connection with broadcasting, except as provided in subparagraphs (a)(7) and (a)(8) of this section.

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425-6525 and 18,142-18,580 MHz and on frequencies above 21,200 MHz.

3. 47 CFR 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) Except as provided in this paragraph and paragraph (h) of this section, applicants for frequencies below 21,200 MHz are normally limited to four transmit frequencies per band per transmitter site. Applicants for frequencies above 21,200 are limited to four transmit frequencies per path per transmit location. Further, master and remote stations using frequencies listed in § 94.65(a)(1) will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs. Licensees distributing multi-channel video entertainment material on the frequencies identified in § 94.65(j)(3) are not restricted in the number of channels or the number of paths originating from any one site they may be licensed to use for this purpose.

* * * * *

4. 47 CFR 94.61(b) is amended by revising the entry for the frequency band 17700 to 18580 to read as follows:

§ 94.61 Applicability.

* * * * *

(b) * * *

Frequency Band (MHz)	
* * * * *	
17700-18580	(6) (9) (10) (23) (27)
* * * * *	

[FR Doc. 91-5433 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR PART 1703

[Docket No. RM-91-1]

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) proposes the following set of regulations to discharge its responsibilities under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The Board is also undertaking this rulemaking in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" covered by the FOIA. *Energy Research Foundation* v. *Defense Nuclear Facilities Safety Board* ("*ERF* v. *DNFSB*"), 917 F. 2d 561 (1990). The FOIA generally (1) establishes basic requirements regarding how the public may request access to agency records and regarding waiver or reduction of fees the agency would otherwise assess for the response to the records request, (2) establishes categories of records that are exempt for various reasons from public disclosure, and (3) establishes basic requirements on federal agencies regarding their processing of and responses to records requests and fee waiver or reduction requests. The Board invites comments from interested groups and members of the public on these proposed regulations.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on April 8, 1991.

ADDRESSES: Comments on the proposed regulations should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in docket No. RM-91-1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: In *ERF* v. *DNFSB* the D.C. Circuit held that the Board is an agency subject to the provisions of the FOIA and generally covered by the Government in the Sunshine Act, 5 U.S.C. 552b. This current rulemaking addresses the FOIA aspect of the court's decision. The Board has addressed the Sunshine Act aspect of the decision in previously proposed regulations (55 FR 53526, December 31, 1990).

The proposed rule complies with the requirements of the FOIA, as amended by the Freedom of Information Reform Act of 1986, Public Law 99-570, Title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, to issue implementing regulations. In particular, proposed §§ 1703.106 and 1703.107 implement the Reform Act of 1986 and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012.

Other key aspects of the proposed rule are:

(1) The Board would establish, consistent with 5 U.S.C. 552, two categories of agency records in the possession of the Board: records available through the Public Reading Room (§ 1703.103(b)) and records not available through the Public Reading Room (§ 1703.105).

(2) Procedures for requesting Public Reading Room records (§ 1703.103).

(3) Procedures for filing a FOIA request (§ 1703.105).

(4) Identification, drawn directly from 5 U.S.C. 552, of the categories of agency records in the possession of the Board that are exempt from mandatory public disclosure under the FOIA (§ 1703.104).

(5) Procedures, based directly upon 5 U.S.C. 552, for processing FOIA requests, including prescribed response times (§ 1703.106).

(6) Procedures for administrative appeal of denials of FOIA record requests or requests for fee waivers or reductions (§ 1703.109).

(7) Procedures for handling requests for classified information or Unclassified Controlled Nuclear Information (UCNI).

(8) Procedures regarding requests for privileged treatment of records, including procedures for handling of FOIA requests for such records (§ 1703.111).

It is the Board's intention to implement these regulations so as to avoid any unnecessary barriers to public access to information, while also minimizing the burden on the Board's small staff. It is also the Board's hope that persons seeking information or records from the Board will consult with the Designated FOIA Officer or other Board staff before invoking the procedures in the proposed regulations. To the extent permitted by law, the Board will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). Whatever economic impacts may result to small entities were already considered by Congress in enacting and amending the FOIA or by OMB in promulgating the Uniform Fee Schedules and Guidelines.

List of Subjects in 10 CFR Part 1703

Freedom of information.

The Proposed Regulations

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 1703 to read as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

Sec.

1703.101 Scope.
1703.102 Definitions; words denoting number, gender and tense.
1703.103 Requests for Board records available through the public reading room.
1703.104 Board records exempt from public disclosure.
1703.105 Requests for Board records not available through the Public Reading Room (FOIA requests).
1703.106 Requests for waiver or reduction of fees.
1703.107 Fees for record requests.
1703.108 Processing of FOIA requests.
1703.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.
1703.110 Requests for classified records.
1703.111 Requests for privileged treatment of documents submitted to the Board.
1703.112 Computation of time.

Authority: 5 U.S.C. 552, as amended; Executive Order 12600, 3 CFR, 1987 Comp., p. 235; 42 U.S.C. 2286, 2286b(c).

§ 1703.101 Scope.

This part contains the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1703.102 Definitions; words denoting number, gender and tense.

Agency record is a record in the possession and control of the Board that is associated with Board business. Agency records do not include records such as:

(1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-federal sources;

(2) Records solely in the possession and control of Board contractors;

(3) Personal records in the possession of Board personnel that have not been circulated, were not required by the Board to be created or retained, and may be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Board business; or

(4) Non-substantive information in the calendar or schedule books of the Chairman or Members, uncirculated except for typing or recording purposes.

Board means the Defense Nuclear Facilities Safety Board.

Chairman means the Chairman of the Board.

Designated FOIA Officer means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the Board officer responsible for authorizing or denying production of records upon requests filed pursuant to § 1703.105.

General Counsel means the chief legal officer of the Board.

General Manager means the chief administrative officer of the Board.

Member means a Member of the Board.

In determining the meaning of any provision of this part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1703.103 Requests for Board records available through the Public Reading Room.

(a) A Public Reading Room will be maintained at the Board's headquarters and will be open between 8:30 a.m. and 4:30 p.m. Mondays through Fridays, with the exception of legal holidays. Documents may be obtained in person or by written or telephonic request from the Public Reading Room by reasonably describing the records sought.

(b) The public records of the Board that are available for inspection and copying upon request in the Public Reading Room include:

(1) The Board's rules and regulations;

(2) Statements of policy adopted by the Board.

(3) Board recommendations; the Secretary of Energy's response, any final decision and implementation plans regarding Board recommendations; and interested person's comments, data, views, or arguments to the Board concerning its recommendations and the Secretary of Energy's response and final decision;

(4) Transcripts of public hearings and any Board correspondence related thereto;

(5) Board orders, decisions, notices, and other actions in a public hearing;

(6) Board correspondence, except that which is exempt from mandatory public disclosure under § 1703.104.

(7) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;

(8) Those of the Board's Administrative Directives that affect members of the public;

(9) Index of the documents identified in this section, but not including drafts thereof; and

(10) Annual report to Congress in which the Board's operations during a past fiscal year are described.

§ 1703.104 Board records exempt from public disclosure.

The following records are exempt from public disclosure:

(a)(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(2) Which are in fact properly classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such

disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 1703.105 Requests for Board records not available through the Public Reading Room (FOIA requests).

(a) Upon the request of any person, the Board shall make available for public inspection and copying any reasonably described agency record in the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this Part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of § 1703.103.

(b)(1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:

(i) The request must be in writing and must describe the records requested to enable Board personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

(ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.

(2) The request should be addressed to the Designated FOIA Officer and clearly marked "Freedom of Information Act Request." The address for such requests is: Designated FOIA Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. For purposes of calculating the time for response to the request under § 1703.106, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or his delegee.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1703.107(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

No request shall be deemed to have been received until the Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.

(c) With respect to records in the files of the Board that have been obtained from other federal agencies:

(1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request to that agency and so inform the requester, unless the originating agency agrees to direct release by the Board.

(2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board and other agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Official as well as the Designated FOIA Officer if a denial by the Board is also involved.

(d) If a request does not reasonably describe the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request. If additional information is needed from the requester to render records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purposes of calculating the time for response under § 1703.106.

§ 1703.106 Requests for waiver or reduction of fees.

(a) The Board shall collect fees for record requests made under § 1703.105 as provided in § 1703.107(b), unless a requester submits a request in writing for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel's Office. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth his appeal rights under § 1703.109.

(b) A person requesting the Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyse the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 1703.105, it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Board shall consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities.

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 1703.107 Fees for record requests.

(a) Fees for records available through the Public Reading Room.

(1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to costs of duplication of the requested records. The Board shall either duplicate the requested records or have them duplicated by a commercial contractor. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(7) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the Public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.

(2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the duplication service noted in paragraph (a), of this section, if the particular contract so permits. Copies of the contracts shall be available for public inspection in the Public Reading Room.

(3) Requests for certification of copies of official Board records must be accompanied by a fee of $5.00 per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.

(b) Fees for records not available through the Public Reading Room (FOIA requests).

(1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

Direct costs means those expenditures which the Board incurs in search, review and duplication, as applicable to different categories of requesters, to respond to requests under § 1703.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (i) or (ii) of this paragraph the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service rates.

(v) The Board, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a Freedom of Information Act request would be less than the appropriate threshold, the Board shall not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(viii) Whenever the Board estimates that duplication or search costs are likely to exceed $25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to

BEST COPY AVAILABLE

confer with the Board personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

(3) *Fees for unsuccessful search.* The Board may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure.

(4) *Advance payments.* (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or a pending request from that requester.

(iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1703.108(b) will begin only after the Board has received the fee payments.

(5) *Debt collection.* The Board shall refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.

(6) *Annual adjustment of fees.* (i) Update and publication. The Board, by its designee, the General Manager, shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The General Manager shall publish the schedule for public comment in the **Federal Register.**

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

§ 1703.108 Processing of FOIA requests.

(a) Where a request complies with § 1703.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

(1) Granting the request,

(2) Denying the request,

(3) Granting or denying it in part,

(4) Stating that the request has been referred to another agency under § 1703.105, or

(5) Informing the requester that responsive records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in § 1703.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reasons for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a request for fee waiver or reduction, the period for action under this paragraph begins to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

(c) For purposes of this section and § 1703.109, the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Board's Washington, DC offices;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to § 1703.105(d).

(d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but ask the requester to forgo such action until a determination is made.

(e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

(f) The procedure for appeal of denial of a request for Board records is set forth in § 1703.109.

§ 1703.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 20 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in § 1703.105(b)(2) and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1703.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

§ 1703.110 Requests for classified records.

The Board may at any time be in possession of classified records and Unclassified Controlled Nuclear Information (UCNI) received from the Department of Energy or other federal agencies. The Board shall refer requests under § 1703.105 for such records or information to the Department of Energy or other originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order 12356, "National Security Information," 3 CFR, 1982 Comp., p. 166 or any superseding Executive Order. The Board shall refer requests for UCNI, in a manner consistent with 42 U.S.C. 2168 and the Department of Energy's implementing regulations in 10 CFR part 1017 or any successor regulations.

§ 1703.111 Requests for privileged treatment of documents submitted to the Board.

(a) *Scope.* Any person submitting a document to the Board may request privileged treatment by claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act and should otherwise be withheld from public disclosure.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) An application, accompanied by an affidavit, requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information and addressing the factors set forth in paragraph (e) of this section;

(2) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(3) Three copies of the redacted document (*i.e.*, without the information for which privileged treatment is sought) and with a statement indicating that information has been removed for privileged treatment;

(4) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Board.

(c) *Effect of privilege claim.* (1) The Designated FOIA Officer shall place documents for which privileged treatment is sought in accordance with paragraph (b) of this section in a nonpublic file, while the request for confidential treatment is pending. By placing documents in a nonpublic file, the Board is not making a determination on any claim for privilege. The Board retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its responsibilities.

(2) The Designated FOIA Officer shall place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the redacted document described in paragraph (b)(3) of this section in a public file, while the request for privileged treatment is pending.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Designated FOIA Officer shall notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice shall be sent to the FOIA requester.

(e) *Factors to be considered by Board.* In determining whether to grant the document privileged status and to deny the request for the document the Board shall consider:

(1) Whether the information has been held in confidence by its owner;

(2) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;

(3) Whether the information was transmitted to and received by the Board in confidence;

(4) Whether the information is available in public sources; and

(5) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(f) *Notification before release.* Notice of a decision by the Designated FOIA Officer, which shall be made only after consultation with the General Counsel or General Counsel's designee, to deny a claim of privilege, in whole or in part, shall be given to any person claiming that information is privileged no less than five days before public disclosure. The notice shall briefly explain why the person's objections to disclosure were not sustained by the Board. A copy of this notice shall be sent to the FOIA requester.

(g) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Board shall notify the person who submitted documents containing such confidential commercial information of the suit.

§ 1703.112 Computation of time.

In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.

Dated: March 1, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-5328 Filed 3-7-91; 8:45 am]

BILLING CODE 9820-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-14-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require penetrant inspection and proof pressure testing of the Auxiliary Power Unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relieving of the duct assemblies. This proposal is prompted by reports of cracked or ruptured APU pneumatic ducts which have resulted in damage to adjacent structure, pneumatic ducts, and hydraulic lines. This condition, if not corrected, could lead to failure of the APU pneumatic ducting which, in turn, could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring.

DATES: Comments must be received no later than April 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-14-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91–NM–14–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been numerous reports of cracked or ruptured APU pneumatic ducting on Boeing Model 747 series airplanes. In several cases the broken ducts have caused damage to adjacent structure, pneumatic ducts, and hydraulic lines. Such duct ruptures were typically caused by cracking that initiated in and around the circumferential weld which fastens an end-flange to the duct.

Similar ruptures have occurred in the crossover pneumatic ducts and the leading edge pneumatic ducts on these airplanes. The FAA has issued AD 90–21–09, Amendment 39–6756 (55 FR 40153, October 2, 1990); AD 88–17–07, Amendment 39–5986 (53 FR 28856, August 1, 1988); and NPRM Docket 90–NM–27–AD (55 FR 41343, October 11, 1990); each of which concern requirements for mandatory inspection and stress relieving of these ducts. The FAA has now determined that inspection and stress relieving of the APU pneumatic ducts must also be required. Cracks in the APU pneumatic ducts, if not detected and corrected, could lead to failure of these ducts, which could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring and could affect passenger safety.

The FAA has reviewed and approved Boeing Service Bulletin 747–36–2061, dated November 29, 1990, which describes procedures for penetrant inspection of the APU pneumatic ducts; proof pressure testing; repair or replacement, as necessary; and stress relieving of the duct assemblies. The FAA has also reviewed and approved Boeing Service Bulletin 747–36–2092, dated June 28, 1990, which describes procedures for replacement of the APU pneumatic ducts in lieu of inspection and stress relieving.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require penetrant inspection and proof pressure testing of the APU pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relieving of the duct assemblies; in accordance with Boeing Service Bulletin 747–36–2061, previously described. This proposal would permit operators to replace all APU pneumatic ducts in lieu of accomplishing the inspection and stress relieving procedures.

There are approximately 714 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 214 airplanes of U.S. registry would be affected by this AD, that it would take approximately 724 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,197,440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line position 2 through 734, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent damage to adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring as a result of failure of Auxiliary Power Unit (APU) pneumatic ducts, accomplish the following:

A. Prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures in the APU pneumatic ducts in accordance with the Accomplishment Instructions, Items A. through G., K., O., and P. of Boeing Service Bulletin 747–36–2061, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin. The stress relieving procedure specified in Accomplishment Instructions, Items H., I., and J. of the service bulletin may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraph B. of this AD for all APU pneumatic ducts.

B. Prior to the accumulation of 7,000 flight cycles after the accomplishment of the initial inspection required by paragraph A. of this AD, conduct an additional penetrant inspection, proof pressure test, and penetrant inspection of the APU pneumatic ducts, and stress relieve the APU pneumatic duct assemblies, in accordance with the Accomplishment Instructions, Items A. through K., O., and P. of Boeing Service Bulletin 747–36–2061, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

C. Replacement of all APU pneumatic ducts in accordance with Accomplishment Instructions A., B., L. through O., and P. of Boeing Service Bulletin 747–36–2061, dated November 29, 1990; or in accordance with Boeing Service Bulletin 747–36–2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–5521 Filed 3–7–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–48–AD]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD) that would have required the replacement of certain horizontal stabilizer electric trim system relays with improved relays and the modification of the connections to these relays on certain Dornier 228 series airplanes. This revision to the proposed rule provides modification procedures for those airplanes not equipped with an autopilot and/or elevator electric trim system as well as for those that are equipped with these optional installations. The actions specified by this proposed AD are intended to prevent electrical reliability reductions and assure proper functioning of the electric trim system.

DATES: Comments must be received on or before May 6, 1991.

ADDRESSES: Dornier 228 Service Bulletin (SB) SB–228–160, dated December 18, 1989, and Dornier 228 SB No. SB–228–164, Revision 1, dated August 28, 1990, that are discussed in this AD may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D–8031 Wessling, Federal Republic of Germany; Telephone (498153)–300; Facsimile (498153)–30.29.85. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–48–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)–513.38.30; or Mr. Herman Belderok, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932, ext 2710; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–48–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain Dornier 228 series airplanes was published in the **Federal Register** on November 9, 1990 (55 FR 47070). The proposed AD would require the replacement of the horizontal stabilizer electric system relays 4CC, 5CC, 6CC, and 9CC with improved relays and modification of the relay connections on certain Dornier 228 series airplanes in accordance with Dornier Service Bulletin No. SB–228–164, Revision 1, dated August 28, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Three commenters responded. All three commented favorably upon the AD, but stated that the failures are not limited to only those airplanes equipped with optional installations of autopilot and/or elevator electric trim coupling systems. All three recommended that airplanes that are not equipped with these optional installations be modified in accordance with the instructions in Dornier SB No. SB–228–160, dated December 18, 1989. The FAA concurs and has determined that, if the affected airplanes that are not equipped with these optional installations are modified in accordance with the instructions in Dornier SB No. SB–228–160, then the chances of relay failure and uncommanded trim motion are reduced. Therefore, the proposed AD is rewritten accordingly. Since the applicability now goes beyond the scope of the original proposal, the comment period is being reopened to provide the public an opportunity to participate in the making of this amendment.

It is estimated that 43 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 5 hours per airplane to accomplish the proposed actions at $40 an hour, and that parts cost approximately $1,017 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,331.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 90-CE-48-AD.

Applicability: Model Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, Dornier 228-202, and Dornier 228-212 airplanes (serial numbers (S/N) 7005 through 7167, S/N 8002 through 8161, and 8163 through 8190), certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To retain the reliability of the horizontal stabilizer electric trim system, accomplish the following:

(a) Replace relays 4CC, 5CC, 8CC, and 9CC with improved relays and modify the electrical connections of these relays in accordance with the following:

(1) For airplanes that utilize the autopilot and/or trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB-228-164, Revision 1, dated August 28, 1990.

(2) For airplanes that do not utilize the autopilot and the trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB-228-160, dated December 18, 1989.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5519 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-CE-04-AD]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Dornier 228 series airplanes. This proposed action would require a one-time modification of the alternating current (AC) electrical power supply wiring circuitry. The existing electrical system design could cause failure of both AC inverters if one malfunctioned. The action specified in the proposed AD is intended to prevent complete loss of AC electrical power.

DATES: Comments must be received on or before May 3, 1991.

ADDRESSES: Dornier Service Bulletin (SB) No. SB-228-171, dated July 20, 1990, that is discussed in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-04-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report, summarizing each FAA-public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-04-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer (Dornier) of Dornier 228 series airplanes has informed the FAA of an unsafe condition that could occur on the affected airplanes. Dornier advises that the existing electrical system design of the 228 series airplanes can cause failure of both alternating current (AC) inverters if one malfunctioned, which would result in complete loss of AC electrical power. As a result, Dornier has issued Service Bulletin (SB) No. SB-228-171, dated July 20, 1990, which specifies a one-time modification of the AC electrical power supply wiring circuitry on certain Dornier 228 series airplanes.

Since this condition could exist or develop in other Dornier 228 series airplanes of the same type design that are certificated for operation in the United States, the FAA has determined that AD action is necessary to prevent complete loss of electrical power. The proposed AD would require a one-time modification of the AC electrical power supply wiring circuitry in accordance with Dornier SB No. SB-228-171, dated July 20, 1990.

It is estimated that 44 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 8 hours to accomplish the proposed actions at $40 an hour, and that parts cost approximately $170 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $21,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 91-CE-04-AD.

Applicability: Models Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, and Dornier 228-202 airplanes (serial numbers 7000 through 7036, and 8000 through 8050), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent complete loss of alternating current (AC) electrical power, accomplish the following:

(a) Modify the electrical AC power supply system in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 20, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5520 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-28-AD]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which currently requires repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. This action would require either the installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. Accomplishment of either of these actions would terminate the current requirement for the repetitive inspections. This proposal is prompted by continued reports of fatigue cracking in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

DATES: Comments must be received no later than April 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-28-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-28 AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 17, 1990, the FAA issued AD 90-16-02, Amendment 39-6676 (55 FR 30904, July 30, 1990), to require repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. That action was prompted by reports of fatigue cracks in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

Since issuance of that AD, SAAB has developed modifications which, when installed, will terminate the necessity for repetitive inspections. These modifications will eliminate the rib cracking and the potential for a rudder jam.

SAAB-Scania has issued Service Bulletin 340-55-023, dated October 1, 1990, which describes procedures for installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, has not classified this service bulletin as mandatory. However, the LFV has issued Swedish Airworthiness Directive (SAD) No. 1-036, which mandates inspections of the subject rib, and references Service Bulletin 340-55-023 as terminating action for the repetitive inspections.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-16-02 with a new airworthiness directive that would continue to require repetitive visual inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary (in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990).This proposal also would require eventual replacement or reinforcement and repair of the top closure rib, in accordance with the Service Bulletin 340-55-023, which would constitute terminating action for the current repetitive inspection requirements.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

It is estimated that 108 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $1,400. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6676 (55 FR 30904, July 30, 1990), AD 90-16-02, with the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, Serial Numbers 031 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 186; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inhibited airplane rudder control due to cracking in the vertical stabilizer top closure rib, accomplish the following:

A. Prior to the accumulation of 500 hours time-in-service since new or within 100 hours time-in-service after August 30, 1990 (the effective date of Amendment 39-6676, AD 90-16-02), whichever occurs later, inspect the vertical stabilizer top closure rib for evidence of cracking, in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990.

B. If no evidence of cracking is found, reinspect the vertical stabilizer top closure rib for cracking at intervals not to exceed 500 flight hours time-in-service.

C. If cracking is found, prior to further flight, stop drill the ends of the cracks, bleed, clean, and apply aluminum tape, as specified in SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990. Reinspect for additional cracking and the condition of the aluminum tape at intervals not to exceed 100 hours time-in-service.

D. Within one year after the effective date of this amendment, either replace the rib with a new thicker rib with a larger radius, or reinforce the rib and replace the attachment angle, in accordance with SAAB Service Bulletin 340-55-023, dated October 1, 1990. Accomplishment of either of these modifications constitutes terminating action for repetitive inspections required by paragraphs B. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5522 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-07-AD]

Airworthiness Directives; Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) airplanes. This proposed action would require modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses. There have been reports of these hydraulic hoses cracking. The actions specified in this proposed AD are intended to prevent failure of the electro-hydraulic control system that results in loss of flap and brake control.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: PZL-Mielec Mandatory Engineering Bulletin (MEB) No. K/02.141/90, dated April 1990 that is discussed in the proposed AD, may be obtained from PZL-Mielec, Ludowego Wojska Polkiego 3, 39-300 Mielec, Poland. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Flight Test Pilot, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 322 513-3830, Ext 2716; or Mr. Richard Yotter, Supervising Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Central Administration of Civil Aviation (CACA), which is the airworthiness authority for Poland, recently notified the FAA that an unsafe condition may exist on Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) airplanes equipped with an agricultural electro-hydraulic control system (Modification D73.701.00.1). The CACA advises that failures in the electro-hydraulic control system and associated hydraulic hoses have led to loss of flap and brake control on the affected airplanes. The manufacturer has issued MEB No. K/02.141/90, dated April 1990, which specifies modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses. The CACA classified this MEB as mandatory to assure the airworthiness of these airplanes. Under a bilateral airworthiness agreement, the above airworthiness authority has shared this information with the FAA.

The FAA has examined the findings of the CACA, reviewed all available information, and determined that AD action is necessary for products of this type design, certificated for operation in the United States. The FAA is proposing an AD that would require modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses in accordance with the instructions in MEB No. K/02.141/90, dated April 1990, on Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) airplanes that have Modification D73.701.00.1 incorporated.

It is estimated that 62 airplanes will be affected by the proposed AD, that it will take approximately 8 hours per airplane to accomplish the proposed actions at $40 an hour, and that the cost of parts to accomplish the modification is estimated to be $750 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,340.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Wytwornia Sprzetu Komunikacyjnego PZL-Mielec: Docket No. 89-CE-97-AD.

Applicability: Model M18 airplanes (serial numbers (S/N) 1Z013-21 through 1Z023-30), equipped with an agriculture equipment electro-hydraulic control system (Modification D73.701.00.1), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the electro-hydraulic control system that results in loss of flap and brake control, accomplish the following:

(a) For S/N 1Z013-21 through 1Z023-30 airplanes, upon the accumulation of 200 hours time-in-service (TIS) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, replace each flexible hose having part number (P/N) D73.7/21.00.0 or D73.7/24.00.0, with a new hose in accordance with the instructions in PZL-Mielec Mandatory Engineering Bulletin (MEB) No. K/02.141/90, dated April 1990.

(1) If hoses are replaced with either P/N D73.7/21.00.0 or D73.7/24.00.0, replace these hoses at intervals not to exceed 200 hours TIS.

(2) If hoses are replaced with P/N D73.7/25.00.0 or D73.7.25.00.0 hose, no further action is required.

(b) For S/N 1Z013-21 through 1Z022-05 airplanes, upon the accumulation of 800 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the electro-hydraulic control system in accordance with the instructions in Paragraph III, 2. of PZL-Mielec MEB No. K/02.141/90, dated April 1990.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(e) All persons affected by this AD may obtain copies of the document referred to herein upon request to PZL-Mielec, Ludowego Wojska Polskiego 3, 39-300 Mielec, Poland; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on February 19, 1991.

Henry Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5618 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AEA-18]

Proposed Alteration of VOR Federal Airway; PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of very high frequency omnidirectional radio range (VOR) Federal Airway V-10 located in the State of Pennsylvania. This alteration would extend Federal Airway V-10 from Revloc, PA, to Lancaster, PA. This action would simplify the routings, improve navigation, and make better use of the airspace in this area.

DATES: Comments must be received on or before April 22, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 90-AEA-18, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-10. This action would alter the airway by establishing an extension from Revloc, PA, to Lancaster, PA. The change to the airway is necessary due to the unreliability of the Harrisburg, PA, very high frequency omnidirectional radio range and tactical air navigational aid. The proposed change would simplify the routings, improve navigation, and make better use of the airspace in this area. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-10 [Amended]

By removing the words "Clarion, PA, 222° radials; Revloc, PA." and substituting the words "Revloc, PA, 360°T(360°M) radials; Revloc; INT Revloc 107°T(128°M) and Lancaster, PA, 266°T(286°M) radials; Lancaster."

Issued in Washington, DC, on February 26, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-5623 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0083]

Over-the Counter Dental and Oral Health Care Drug Products for Antiplaque Use; Safety and Efficacy Review; Extension of Submission Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for data and information; extension of submission period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 17, 1991, the period for submission of data and information on ingredients contained in products bearing antiplaque and antiplaque-related claims, such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." This action responds to two requests to extend the submission period for an additional 90 days.

DATES: Data and information to be submitted by June 17, 1991.

ADDRESSES: Submissions should be sent to the Division of OTC Drug Evaluation (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 18, 1990 (55 FR 38560), FDA announced a call-for-data for ingredients contained in products bearing antiplaque and antiplaque-related claims such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." The agency stated that it will review the submitted data to determine whether these products are generally recognized as safe and effective and not misbranded for their labeled uses. Those interested in supplying data and information were given until March 18, 1991. This call-for-data is part of the agency's ongoing review of over-the-counter (OTC) oral health-care drug products.

The agency has received two requests to extend the submission period for an additional 90 days. A manufacturers' association informed the agency that a number of its members would not be able to adequately respond before the submission period closes because these members must consult with and obtain the concurrence of a number of corporate officials, including a considerable number located outside the United States, prior to submitting comments and/or data. The association stated that this proceeding for OTC dental and oral health-care drug products for antiplaque use is of considerable interest and importance both to the association and to its members. Therefore, the association requested a 90-day extension of the submission period, until June 17, 1991, to allow adequate time to assemble the necessary data and information and to prepare submissions.

A manufacturer stated that it intends to submit data concerning the safety and effectiveness of several ingredients in response to the agency's announcement of a call-for-data on ingredients contained in products making antiplaque and antiplaque-related claims. The manufacturer noted that its major toothpaste research laboratory is located in the United Kingdom, and some of the data needed to establish the safety and effectiveness of these ingredients is located in different parts of the world. The manufacturer also stated that collecting information on the safety and effectiveness of these ingredients throughout the world represents an extensive logistic problem. The manufacturer added that the inherent delay in overseas communication and transportation has prolonged the preparation of these documents because documents prepared by scientists overseas cannot be readily transmitted to the United States and vice versa. In addition, the manufacturer noted that the generation of submissions

requires extensive summarization and review of available data to bring the documents up-to-date and to put the documents into the format required by the agency. The manufacturer requested, as did the manufacturer's association, that the agency grant a 90-day extension of the submission period to June 17, 1991.

FDA has carefully considered these requests and believes that additional time to allow full opportunity for informed submissions is in the public interest. An extension of the submission period will assure that the agency will have comprehensive data and information on ingredients in products bearing antiplaque claims for the Dental Products Panel to evaluate. Thus, the agency considers a 90-day extension of the data submission period to be appropriate.

Interested persons may, on or before June 17, 1991, submit to the Division of OTC Drug Evaluation (address above) submissions of data and information on ingredients contained in products bearing antiplaque and antiplaque-related claims, as described above. Eight copies of the data and information must be submitted, as discussed in the Federal Register of September 19, 1990 (55 FR 38560 at 38562).

Dated: March 4, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-5496 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 91-01]

Drawbridge Operation Regulations; Cowlitz River, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Kelso the Coast Guard is considering a change to the regulations governing the Allen Street Bridge across the Cowlitz River, mile 5.5, at Kelso, Washington, to provide that the draw need not be opened for the passage of vessels. This proposal is being made because no requests have been made to open the draw since at least 1983. This action should relieve the bridge owner of the burden of maintaining the machinery and having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before April 22, 1991.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this propsoal. The proposal regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

Existing regulations provide that the Allen Street Bridge open upon 24 hours advance notice for normal openings and two hours advance notice for emergency openings, when so requested by the Cowlitz County Department of Emergency Services. No openings have been required since at least 1983. The proposed change would provide that the bridge need not open for the passage of vessels. Since the May 18, 1980 volcanic eruption of Mount Saint Helens and its subsequent mud flow down the Cowlitz River, the channel has been severely silted-in and is passable only by small shallow draft vessels. The Cowlitz River Navigation Project has not been maintained by the Corps of Engineers since 1980. Prior to 1980, the navigation channel was maintained to river mile 4. The channel has not been maintained upstream of mile 4 for more than 25 years. Should emergency dredging be required upstream of the Allen Street Bridge, the necessary equipment would be transported overland to the work site.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and it has been determined that the propsoed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of its present silted-in condition, the waterway is not being used for commercial navigation. When the waterway is restored, either through natural flushing or dredging, low profile tugs could easily pass under the bridge. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).]

2. Section 117.1037 is revised to read as follows:

§ 117.1037 Cowlitz River.

(a) The draw of the Burlington Northern railroad bridge, mile 1.5, shall operate as follows:

(1) The draw shall open on signal if at least 24 hours notice is given.

(2) In the event of an emergency declared by the Cowlitz County Department of Emergency Services, the bridge shall be capable of opening upon two hours notice. Notification of emergencies and requests for openings during emergencies are initiated through the Cowlitz County Department of Emergency Services.

(3) The operating machinery of the draw shall be maintained in a serviceable condition and the draw shall be opened and closed at intervals frequent enough to make certain that the machinery is in proper order for satisfactory operation.

(4) During periods of fog or similar periods of reduced visibility, the drawtender, after acknowledging the signal to open, shall toll a bell continuously during the approach and passage of the vessel.

(b) The draw of the Allen Street Bridge, mile 5.5, need not open for the passage of vessels.

Dated: February 27, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 91-5503 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Alaska Mineral Resource Assessment Program

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes the adoption of regulations at 36 CFR part 9, subpart D to govern mineral resource assessment activities in Alaska units of the National Park System. These assessment activities are authorized under section 1010, the Alaska Mineral Resource Assessment Program (AMRAP), of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150. Specifically, section 1010(b) of ANILCA requires that mineral resource assessments carried out in conservation system units, which include units of the National Park System, be subject to regulations developed by the Secretary of the Interior. The purpose of the regulations is to ensure that the mineral assessments are conducted in an environmentally sound manner that protects the natural systems of the units and are compatible with the purposes for which the units are established. The mineral assessments are exclusively data collection in nature and may be conducted only by authorized Federal agencies and their contractors. These agencies are limited to Department of the Interior bureaus authorized by the Secretary to conduct mineral assessments pursuant to section 1010 of ANILCA. This rulemaking does not allow for mining in the parks.

DATES: *Written comments:* The NPS will accept written comments on the proposed rule until 5 p.m. local time on or before April 8, 1991.

The 30-day public comment period will not be extended. Due to the rapidly approaching field season, a final rule must be in place by April 15 to allow for review and permitting of planned and budgeted AMRAP work in Alaska park units. The final rule will become effective 30 days after publication in the Federal Register.

ADDRESSES: *Written comments:* Mail comments to the National Park Service, Mining and Minerals Branch, WASO 660, Attention: Sharon Kliwinski, P.O. Box 37127, Washington, DC 20013-7127; or to Alaska Regional Office, National Park Service, Attention: Judy Alderson, 2525 Gambell St., room 107, Anchorage, Alaska 99503.

Hand-deliver comments to the National Park Service, Mining and Minerals Branch, Attention: Sharon Kliwinski, room 3223, 1100 L St. NW., Washington, DC; or to Alaska Regional Office, National Park Service, Attention: Judy Alderson, 2525 Gambell St., room 206, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Sharon Kliwinski at the above address, telephone (202) or (FTS) 343-4864; or Judy Alderson at the above address, telephone (907) 257-2623.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Proposed Rule
III. Procedural Matters

I. Background

A. Overview of Alaska Mineral Resource Assessment Program (AMRAP)

The Alaska Mineral Resource Assessment Program (AMRAP) is a Congressionally mandated program authorized by section 1010(a) of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3150). Section 1010(a) requires that "the Secretary of the Interior shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the mineral resource data base of such lands." Public lands, as defined by section 102(3) of ANILCA (16 U.S.C. 3102), include all Federal lands in Alaska including those in units of the National Park System. The Secretary must consult with the State of Alaska, the Secretary of Energy and any other Federal agency on this and other mineral assessment programs and is authorized to contract with public or private entities to carry out the program. The Secretary is required to allow for access by air for mineral assessment activities. Section 1010(a) explicitly prohibits the use of core and test drilling as a mineral assessment technique that could be used on lands in units of the National Park System. This prohibition includes exploratory drilling of oil and gas test wells. AMRAP is an ongoing program and mineral assessment activities have been conducted on public lands in Alaska pursuant to AMRAP for 10 years.

Pursuant to section 1010(b) of ANILCA, activities carried out in conservation system units under subsection (a) shall be subject to regulations promulgated by the Secretary of the Interior. Such regulations must ensure that such activities are carried out in an environmentally sound manner that (1) do not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units; and (2) are compatible with the purposes for which the units are established.

Section 1011 of ANILCA requires the President to submit an annual report to Congress on all pertinent public information relating to minerals, including oil and gas, in Alaska gathered by the U.S. Geological Survey (USGS), and Bureau of Mines (BOM), and other Federal agencies.

While ANILCA section 1010(a) and section 1011 provide a Congressional mandate to the Secretary to conduct mineral resource assessment work and report the results to Congress, section 1010(b) is designed to ensure that the work is carried out in an environmentally sensitive manner. The intent of these regulations is to provide a process and guidelines for permitting access to National Park System lands for the conduct of mineral assessment work per section 1010 while at the same time ensuring that the work does not result in lasting impacts and is compatible with park purposes and values.

B. Objectives of AMRAP

AMRAP is a Federal program mandated by Congress for the collection of geologic, geochemical, geophysical, and mineral deposit data in order to

assess the oil, gas, and other mineral potential on all public lands in Alaska. The program includes the prediction and/or determination of the location, type, amount, and extent of the mineral resources on these lands. The objective of the program is to provide Congress with baseline data about the occurrence of minerals in conservation system units to aid in future legislative land status decisions.

The U.S. Geological Survey (USGS) is the primary agency responsible for AMRAP research. The goal of the USGS AMRAP is a systematic investigation of Alaska's mineral resources through four progressively more detailed levels of study. Level I studies are very broad State-wide studies; Level II studies addresse large parts of the State with resultant maps generally at a scale of 1:1,000,000; Level III studies generally produce resource assessment maps at a scale of 1:250,000 (1 inch=6 miles) and 1:125,000 (1 inch=3 miles); and Level IV studies detail specific mining districts, mineral deposits or topics related to the genesis of mineral deposits. The major effort is currently at the Level III stage with studies in progress in 26 quadrangles. Out of a total of 153 quadrangles to be studied, 25 have been completed to date.

Mineral resource assessment work conducted by the Bureau of Mines (BOM) typically involves the collection of mineral data to determine the location, type, amount and physical extent of mineral resources. Most of the work involves mapping and sampling to document the configuration and location of mines, prospects, claims and mineralized areas.

The Minerals Management Service (MMS) has no mandate to assess public lands under ANILCA, however, the agency has in the past and will probably continue to request access to park lands to conduct investigations involving sampling and taking measurements of the physical properties of rock. The results of this research are used in assessing the mineral potential and geologic characteristics of rock units underlying the Outer Continental Shelf.

Other Interior agencies, such as the Bureau of Land Management, may from time to time request access to NPS lands to conduct mineral resource assessment work necessary to meet the goals of their program missions.

AMRAP encompasses the study of all public lands in Alaska, including those managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Forest Service, and the National Park Service. AMRAP studies are coordinated so that contiguous parcels of land under management by different agencies may be studied. On private lands, permission is obtained for entry and information is shared through the publication process. Mineral resource and work plan information is communicated to the State of Alaska, and commonly promotes cooperative projects with the State, especially where State and Federal lands are contiguous.

C. Technical Aspects of Mineral Resource Assessments Under AMRAP

Most mineral resource assessments conducted under AMRAP include first time studies of areas that contain up to several million acres. Much of the work now, and for the foreseeable future, is reconnaissance in nature involving the systematic study of the mining districts and 1:250,000-scale quadrangle maps. ANILCA recognizes the logistic difficulties of working in Alaska and directs the Secretary to allow access by air for the accomplishment of AMRAP activities on public lands. AMRAP field work consists principally of: (1) Geologic mapping and hand sampling on foot traverses in combination with helicopter landings to fill in the gaps in data between traverses; (2) geochemical sampling requiring access by foot, boat, light trucks where roads exist, and supplemental helicopter landings to complete the systematic collection of stream sediments, water, soils, rocks, and occasionally small samples of vegetation; and (3) systematic geophysical surveys.

Geophysical surveys typically include instrumental measurements made on the ground simultaneously with geologic and geochemical sampling, and occasionally require the excavation with hand tools of holes a few inches deep in order to implant temporary electrodes. Geophysical sampling also may include collection of paleomagnetic specimens by use of a hand-held drill to remove small cylindrical samples.

Geologic sample collection usually is restricted to fist-sized samples although larger samples of a couple of pounds occasionally are taken for certain analytical techniques such as radiometric dating, assaying, and mineral characterization and benefication studies. The agencies conducting AMRAP activities do not use drilling, trenching, or other techniques that result in lasting environmental impacts.

Core and test drilling, including exploratory oil and gas test wells, are explicitly prohibited in park units pursuant to § 1010(a) of ANILCA.

Overflights by helicopter and small fixed-wing aircraft occasionally are required for collection of instrumental remotesensing geophysical data. Minimum flight elevations above the ground range from 400 to 1,000 feet, and flight-line spacings are from one-fourth to 20 miles or may consist of a single line only.

In a typical quadrangle, the density of stations for gathering data, including sample sites, is about 1 station per 1–10 square miles. There is often detailed work to study critical geologic localities or critical and strategic mineral deposits, but most of the work is general rather than detailed. Completion of data collection for a quadrangle or a specific site can require 3 to 4 field seasons of 30–45 days duration each. Field work generally requires teams of 5 to 10 scientists and support staff.

Field work is typically based from one or two fixed camps, and utilizes helicopters for movement within the area being studied. Field camps are relatively small, temporary, and unobtrusive. Field teams often work out of existing lodges or commercial facilities when practical and efficient. AMRAP field work depends heavily on the use of helicopters, Most Alaska study areas are so large and remote that it is oftentimes inefficient and sometimes unsafe to access the areas otherwise.

D. AMRAP Studies in Units of the National Park System

Congress established the National Park System to preserve certain natural, cultural, scenic, and recreational resources of exceptional quality and national significance for the use and enjoyment of present and future generations. Legislation and proclamations establishing individual parks may provide more specific direction about park purposes, significant resources, and appropriate uses. Within these parameters, proposals for park uses are evaluated in terms of their consistency with applicable legislation, executive orders, and regulations, as well as their actual and potential effects on park values, purposes, and resources. Special park uses may be permitted pursuant to 36 CFR 1.6 using the criteria and procedures outlined in the Special Park Uses Guideline (NPS–53).

Over the past several years, the NPS received numerous requests from the USGS, MMS, and BOM to allow entry onto park lands to conduct mineral resource assessment work. These requests include permission to conduct geologic mapping and reconnaissance, collection of mineral and rock samples, geochemical studies of streams, geophysical studies, and helicopter access and field camp support operation. In the absence of the regulations required by section 1010(b) of ANILCA to implement AMRAP in Alaska parks, the NPS permitted the mineral assessment work under the provisions of 36 CFR 1.6 and 36 CFR 2.5. The general provisions of § 1.6 were used to permit AMRAP activities when requests for those activities could not meet the requirements of § 2.5. The requirements of § 2.5 and the NPS Management Policies are very specific and limited in scope to the collection of research specimens. Under § 2.5, the NPS may allow reputable scientific or educational institutions, State and Federal agencies to collect rocks and minerals under a specimen collection permit for the purpose of research, baseline inventories, monitoring, impact analysis, group study or museum display. Such research must meet the management goals of the requesting agency, but it must also further park objectives as articulated in existing legislation and NPS planning documents. Section 2.5 was never intended to accommodate the long term program needs of the AMRAP agencies.

Additionally, section 1010(b) of ANILCA mandates that the Secretary promulgate regulations to ensure that mineral assessment activities conducted in conservation system units in Alaska are carried out in an environmentally sound manner. Such regulations therefore are the appropriate mechanism for approving AMRAP activities in parks.

E. AMRAP in Wilderness Areas

The NPS wilderness management policies are based on statutory provisions of the 1916 NPS Organic Act (16 U.S.C. 1 *et seq.*), the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) and legislation establishing individual units of the national park system.

AMRAP activities conducted in NPS wilderness areas will be carried out in accordance with the applicable NPS wilderness management plan, and the applicable provisions of the Wilderness Act so as to preserve wilderness resources and character. The Wilderness Act generally prohibits motorized equipment or mechanized transport in designated wilderness areas. Assessment activities conducted by foot or in some instances by hand-propelled watercraft may be allowed. The use of aircraft will be in accordance with the applicable wilderness management plan.

Since passage of the Wilderness Act of 1964 and the Federal Land Policy and Management Act of 1976, the USGS and the BOM have conducted mineral resource assessments and evaluations on U.S. Forest Service and Bureau of Land Management wilderness study areas. These assessments are essentially identical to those mandated on public lands in Alaska under section 1010 of ANILCA and demonstrate that such work is being carried out in an environmentally sound manner.

F. Contracting of AMRAP Activities

Under §1010, the Secretary is authorized to enter into contracts with public and private entities to carry out all or any portion of the mineral assessment program. Agencies conducting AMRAP studies periodically contract with other State or Federal agencies or private entities to perform work. The USGS rarely contracts geologic and geochemical work, but does contract some geophysical surveys and certain support functions including helicopter services and installation of camps and fuel caches. Nearly all of MMS research projects have been cooperative efforts, mostly with private industry and the State of Alaska. If MMS intends to use third party assistance in carrying out AMRAP activities in the parks in the future that assistance must be governed by a legally binding contract. All information or data of an AMRAP study recovered under contract is the property and under the control of the AMRAP agency.

II. Discussion of Proposed Rules

Authority

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150, is the primary statutory authority for the promulgation of these regulations.

The Organic Act (16 U.S.C. 1 *et seq.*, as amended) that established the NPS provides additional authority. It mandates the Service to conserve the scenery, natural and historic objects, and wildlife of park units, and to provide for public enjoyment of the units in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Section 3 of the Act authorizes the Secretary of the Interior to promulgate rules and regulations necessary for the management of the National Park System. The Organic Act further provides that authorization of activities in units of the National Park System shall be construed in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of park values and purposes unless specifically and directly provided for by Congress. The enabling legislation for the various units of the National Park System in Alaska sets out the purposes for such units.

The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) concurs and generally reinforces the resources protection mandate of the NPS Organic Act under which the NPS already operates.

Section 9.80 Purpose

The purpose of these regulations is to govern mineral assessment activities conducted pursuant to section 1010 of ANILCA in Alaska units of the National Park System. The regulations do not address the conduct of AMRAP activities on lands managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, or the U.S. Forest Service. The regulations ensure, consistent with section 1010(b) of ANILCA, that AMRAP activities are carried out in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units. Also consistent with Section 1010(b), the regulations ensure that the activities are conducted in a manner that is compatible with the purposes for which the units are established. Consistent with the NPS Organic Act, the regulations ensure that AMRAP activities are conducted in a manner that leaves park resources and values unimpaired for the enjoyment of present and future generations.

Section 9.81 Scope and Applicability

All activities conducted under the Alaska Mineral Resource Assessment Program (AMRAP) authorized by Section 1010 of ANILCA in Alaska units of the National Park System will be subject to the regulations of this subpart.

This section requires that all AMRAP activities conducted in parks meet the requirements of ANILCA, these regulations, the terms and conditions of any permit approved under this subpart, and any other applicable statutes and regulations and any amendments.

Section 9.82 Definitions

This section defines the terms used in this subpart. The term *AMRAP Activities* defines the types of mineral resource assessment techniques, methods, and related activities that may be conducted in park units under the AMRAP program. Such activities may be conducted only by authorized AMRAP agencies and their contractors and are subject to the conditions and stipulations of a permit issued by the NPS. AMRAP activities include access into, across, or through a unit of the National Park System when such access

is incidental to mineral resource assessments conducted under AMRAP.

Only mineral resource assessment method or techniques that do not result in appreciable lasting environmental impacts on park resources and values may be permitted by the NPS as AMRAP activities. These techniques may include hand sampling of geologic materials, and instrumental remote-sensing measurement. Certain geophysical techniques such as magnetic, chemical, and gravitational also may be allowed. Paleomagnetic specimens may be collected by using a hand held drill to remove small cylindrical samples.

Mineral assessment techniques and geophysical methods will be permitted only when (1) no explosives are used, (2) they are consistent with the standards set out in § 9.86 of this subpart, and (3) they are consistent with the applicable provisions of the Wilderness Act and NPS policies for wilderness management. The NPS may regulate the use of motorized equipment and aircraft in designated wilderness area. Pursuant to section 1010(a) of ANILCA, core and test drilling are explicitly prohibited in park units. This prohibition includes exploratory drilling of oil and gas wells. Under these regulations, the use of explosives is specifically prohibited as an AMRAP activity because of the nature of impacts associated with that technique.

AMRAP Agencies are defined as those agencies in the Department of the Interior that are authorized by the Secretary to perform mineral assessment work under section 1010 of ANILCA on Federal lands in Alaska. At this time, this work is primarily conducted by the USGS, BOM and MMS. The BLM may at some time in the future request access to park lands to conduct mineral assessments. Mineral assessment work is subject to the conditions and stipulations of permits issued by the NPS. An AMRAP agency may enter into a legally-binding contract with a third party for conducting work under AMRAP. Any State or Federal agency, university, or private entity contracted by an AMRAP agency to conduct AMRAP work will operate under an NPS permit issued to the AMRAP agency, and the AMRAP agency will be responsible for all contractor activities on park lands.

Section 9.83 Coordination of AMRAP Activities in National Park System Units

This section establishes the minimum criteria for coordinating AMRAP activities among AMRAP agencies and the NPS.

Section 9.83(a). Each AMRAP agency will designate a lead official who will be responsible for working and coordinating with the NPS thereby ensuring compliance with these regulations.

Section 9.83(b). AMRAP agencies will coordinate, and in consultation with the NPS Regional Director, schedule an interagency meeting to be held pursuant to (c) of this section. The interagency meeting time and location must be scheduled no later than January 1 of each year.

Section 9.83(c). This subsection establishes a coordination mechanism for AMRAP activities in Alaska parks. An annual interagency meeting consisting of representatives from the AMRAP agencies and the NPS will be held no later than January 31. The purpose of the meeting is to minimize impacts to park resources and values through a coordinated review of annual and long-term work plans of all AMRAP agencies. It should result in the elimination of duplication of assessment activities and coordination of access and logistics in Alaska parks.

Section 9.84 Application Requirements

The AMRAP agencies shall provide the NPS with such information as is necessary for the NPS to ensure that AMRAP activities are carried out in an environmentally sound manner. To the extent possible, adhering to established timeframes is essential to enable timely and efficient completion of logistical, contracting, and staffing arrangements. Normally helicopter and analytical contracts must be negotiated, advertised, or obligated well in advance of the field season to ensure availability.

Section 9.84(a). Prior to each field season but no later than March 1 of each year, each AMRAP agency shall submit to the NPS a complete application for proposed AMRAP activities to be conducted in park units. The applications will be based on each agency's work plan as developed pursuant to the annual coordination meeting held under § 9.83(c). Applications may cover proposed activities to be conducted only in the current field season or may include activities for subsequent field seasons if adequate information is available about future field work. Applications that do not meet the requirements of § 9.84(b) will be returned to the AMRAP agency for revision or additional information.

Section 9.84(b). This subsection establishes the minimum requirements for information to be submitted to the NPS for issuance of a permit for proposed AMRAP activities. The information required includes the names of the AMRAP agency organizational office(s) that will actually conduct AMRAP activities and the names AMRAP of any contractual representative that may be involved in the activities.

The application must include the purpose for conducting the AMRAP activities, maps showing the areas where the activities are proposed to be conducted, and the estimated dates on which the activities are proposed to begin and end. Project specific research design for each activity proposed will also be required such as a description of the mineral assessment techniques or methods and equipment to be used.

A description of the method to be used to access each area of proposed activities must also be provided. This subsection requires a description of support requirements necessary for the each project, including a description of base camps, gasoline storage, or any other equipment.

The application must include a discussion of the methods used to ensure that the activities are carried out in an environmentally sound manner using the best available and least impacting technology. The AMRAP agency must also describe the environmental and physical effects of AMRAP activities to allow for adequate environmental analysis. The Regional Director may require additional information on the proposed activities if such information is necessary to fully assess the nature, extent, location, or effects of the activities.

Section 9.85 Environmental Compliance

Section 9.85 assigns the responsibility for compliance with the National Environmental Policy Act for activities authorized under these regulations to the NPS. All NEPA compliance will be conducted in accordance with applicable regulations, standards, and guidance, including NPS 12: NEPA Compliance Guideline. AMRAP agencies will be responsible for providing to NPS sufficient information on proposed projects to allow NPS to conduct impact analyses.

Section 9.86 Application Review Process and Approval Standards

This section defines the process by which applications for proposed AMRAP activities will be reviewed and the standards to be applied by NPS in approving those applications.

Section 9.86(a). The NPS will review applications submitted pursuant to § 9.84 and, no later than April 15 of each year, will notify the AMRAP agency of its decision to approve or disapprove the proposed activities. Because applications must be submitted to NPS by the AMRAP agency no later than January 31, this subsection establishes a 2½ month review period for the NPS. The regulations further provide for the Regional Director to extend the review time beyond April 15 if necessary to comply with Federal and State requirements, especially consultation procedures. As discussed earlier, it is essential that NPS notify AMRAP agencies of permit approval or disapproval before the beginning of the field season to allow for staff allocation and aircraft procurement.

Section 9.86(b). The NPS Regional Director is responsible for authorizing AMRAP activities in park units. This will assure coordination and consistency among requested activities in various parks. Appropriate park superintendents will review and make recommendations on projects proposed in their parks. The Regional Director may delegate the approval of AMRAP projects to a park superintendent at his discretion.

Section 9.86(c). This subsection sets out the specific standards by which the Regional Director may approve AMRAP activities. Consistent with section 1010(b) of ANILCA, the proposed activities may not be approved if those activities will not be carried out in an environmentally sound manner, or will result in lasting impacts to the environment. Additionally, AMRAP activities may not be approved if they are incompatible with the purposes and values for which the unit was established, and/or if the activities would adversely affect the resources of the area. There may be some proposed activities where the standards for approval do not allow the Regional Director to approve the activities. Denial of a permit for AMRAP activities means the project design or other features of the proposal has not met the standards found in this subsection. Such denial does not preclude the AMRAP agency from submitting another proposal for approval, except where an area is specifically closed to the kind of proposed use.

Section 9.87 Permitting Requirements and Standards

This section sets forth specific permit standards and requirements to be applied to all approved permits.

Section 9.87(a). No AMRAP activities may be conducted in park units without a permit approved by the NPS. NPS will approve the permit in accordance with this Subpart, 36 CFR 1.6 (NPS regulatory authority to issue Special Use Permits), and other applicable regulations, guidelines, and policies, including NPS–53: Special Park Uses Guideline.

Section 9.87(b). AMRAP activities will not be permitted in areas that are restricted or closed to use by the NPS. Such areas may include wildlife breeding areas, areas of cultural or historic significance, or other types of highly sensitive areas. Helicopter or other types of aircraft access will not be allowed except in accordance with existing NPS policies and restrictions. Other types of access will be evaluated based on the areas to be accessed, seasonal conditions, and any applicable restrictions or closures.

Section 9.87(c). All areas of AMRAP activities must be abandoned in a manner that leaves that area unimpaired. Any ground or stream bed holes resulting from hand tool sampling will be filled in to eliminate all signs of disturbance. Support camp sites or other land disturbing activities associated with the mineral assessments will be reclaimed and abandoned so as to restore the area to its natural condition. If it becomes necessary for the NPS to restore an area affected by AMRAP activities, the costs for such restoration will be recoverable from the AMRAP agency.

Section 9.87(d). All data gathered as a result of AMRAP activities in park units be made available to the public and, if published, copies provided to the NPS.

Section 9.87(e). NPS may monitor ongoing AMRAP activities ensuring that those activities are conducted pursuant to these regulations and the terms and conditions of the approved permit.

Section 9.88 Permit Modification, Suspension, and Cancellation

This section sets forth the procedures and requirements for modifying, suspending, or canceling an approved permit.

Section 9.88(a). An AMRAP agency may submit a written proposal to the Regional Director to modify or amend an approved permit. Modifications may be necessary to make adjustments due to changes in weather, staffing, transportation or budget. The Regional Director must review and either approve or disapprove the modification within a reasonable timeframe so scheduling of that field season's activities can proceed.

Section 9.88(b). Under this subsection, the Regional Director may suspend, modify or cancel an AMRAP agency's permit to conduct AMRAP activities. A permit will be suspended when the Regional Director finds that there is an imminent threat to public health and safety or natural and cultural resources of the unit; or the agency or its contractors is in violation of applicable laws or the approved permit.

Section 9.88(c). This section sets the procedural requirements for dealing with suspensions, modifications and cancellations of approved permits.

Section 9.88(d). If a permit is suspended or canceled by the Regional Director, the AMRAP agency or its contractors are not relieved of the obligation to restore any location in accordance with these regulations and all other requirements of the approved permit.

Section 9.89 Appeals

Any action taken by the Regional Director pursuant to these regulations may be appealed by an AMRAP agency to the Director of the National Park Service within 30 days from the date of the initial decision made by the Regional Director. If resolution of the issue cannot be reached, the action or issue will be elevated to the Department for resolution.

III. Procedural Matters

Federal Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The subject rules apply only to Federal agencies and their contractors.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) the NPS has prepared an environmental assessment of these proposed regulations. The analysis in the EA shows that implementation of the regulations will not be a major Federal action that would have a significant effect on the quality of the human environment requiring the preparation of an environmental impact statement. The EA is on file in the following NPS offices: Mining and Minerals Branch, Land Resources Division, room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, Washington, DC 20013–7127); and the NPS Alaska Regional Office, room 206, 2525 Gambell Street, Anchorage, Alaska 99503. The EA will be available for public inspection and comment for a period running concurrently with the comment period on these regulations. All statutory requirements and Department NEPA procedures will be followed prior to release of the final rule to assure that adequate public involvement occurs and

environmental concerns are identified and addressed.

Regulatory Flexibility Act and Executive Orders 12291 and 12630

The NPS has determined and the Department of the Interior has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule has been reviewed in conformity with Executive Order 12291 and has been classified as "not major." This action does not constitute a major rule since its implementation will not result in: (i) an annual effect on the economy of $100 million or more; (ii) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographic region; or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These regulations do not require the preparation of a Takings Implication Assessment pursuant to Executive Order 12630 because the rules will not affect the use or value of private property.

Author

The principal author of this regulation is Sharon P. Kliwinski, Mining and Minerals Branch, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; telephone (202) or FTS 343-4064.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands-mineral resources, Public lands-rights-of-way.

For the reasons discussed in the preamble, 36 CFR part 9, subpart D is proposed to be added as follows:

PART 9—MINERALS MANAGEMENT

Subpart D—Alaska Mineral Resource Assessment Program

Sec.

9.80 Purpose.
9.81 Scope and applicability.
9.82 Definitions.
9.83 Coordination of AMRAP activities in National Park System units.
9.84 Application requirements.
9.85 Environmental compliance.
9.86 Application review process and approval standards.
9.87 Permitting requirements and standards.
9.88 Permit modification, suspension, and cancellation.
9.89 Appeals.

Authority: Alaska National Interest Lands Conservation Act, 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; National Park Service Organic Act of August 25, 1916, as amended, 16 U.S.C. 1, *et seq.*; the acts establishing the units of the National Park System in Alaska (16 U.S.C. 347; 16 U.S.C. 410bb; 16 U.S.C. 431); and the Wilderness Act of 1964, 16 U.S.C. 1131 *et seq.*

§ 9.80 Purpose.

These regulations govern the conduct of the mineral resource assessment activities authorized under section 1010 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101, *et seq.*, in units of the National Park System in Alaska. The regulations are designed to ensure that authorized Federal agencies and their contractors carry out mineral resource assessment activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units, or biological or ecological systems in the units; is compatible with the purposes for which the units are established; and ensures that all units are left unimpaired and preserved for the enjoyment of present and future generations.

§ 9.81 Scope and applicability.

These regulations apply to all activities conducted by authorized agencies and their contractors on public lands in units of the National Park System in Alaska under the Alaska Mineral Resource Assessment Program (AMRAP) as authorized by section 1010 of ANILCA. AMRAP activities conducted under this subpart shall be performed in accordance with ANILCA, the regulations in this subpart, the terms and conditions of an approved permit, and other applicable statutes and regulations, and amendments thereto.

§ 9.82 Definitions.

The terms used in this subpart shall have the following meaning:

(a) *AMRAP* means the Alaska Mineral Resource Assessment Program authorized by section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150.

(b) *AMRAP Activities* means any project, method, technique or other activity incidental to mineral resource assessments conducted by authorized AMRAP agencies or their contractors in units of the National Park System in Alaska pursuant to section 1010 of ANILCA under an approved permit. AMRAP activities include access into, across, or through a unit of the National Park System for the conduct of those activities. Only mineral resource assessment methods or techniques that do not result in lasting impacts on park resources and values may be permitted as AMRAP activities. Mineral resource assessment techniques may include aerial photography; remote sensing; hand-sampling of geologic materials; hand-sampling or hand-augering methods for geochemical analyses; and geophysical techniques such as magnetic, electrical, electromagnetic, chemical, radioactive, and gravitational methods. Mineral resource assessment activities may be permitted as long as (1) no explosives are used, (2) they are consistent with section 9.86 of this subpart, and (3) they are consistent with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) and National Park Service policies concerning wilderness management. Core and test drilling, including exploratory drilling of oil and gas test wells, are explicitly prohibited as AMRAP activities in units of the National Park System.

(c) *AMRAP agencies* means those agencies of the U.S. Department of the Interior that are authorized by the Secretary to perform mineral assessment activities pursuant to section 1010 of ANILCA.

(d) *Regional Director* means the Regional Director of the Alaska Regional Office of the National Park Service (NPS), or the Regional Director's designee.

§ 9.83 Coordination to AMRAP activities in National Park System units.

(a) To facilitate compliance with this subpart, each AMRAP agency will designate a coordinator who will be the central point of communications with the NPS on its AMRAP activities in Alaska. The AMRAP agency is responsible for notifying the Regional Director of such designation.

(b) By January 1 of each year, the designated coordinators for the AMRAP agencies will, in consultation with the Regional Director, schedule an interagency meeting to be held by January 31 of each year. Representatives of the AMRAP agencies and the NPS will meet to develop a mutually agreeable agenda of AMRAP projects and activities in Alaska units of the National Park System. Where practicable, AMRAP agencies will consolidate their field activities, including access and field camps, to minimize disturbance to park resources and values.

§ 9.84 Application requirements.

(a) By March 1 of each year, the designated coordinator of each AMRAP agency will forward to the Regional Director an application pursuant to § 9.84(b) for proposed AMRAP projects and activities discussed and reviewed at the annual coordination meeting held under § 9.83(b). Applications requiring additional information will be promptly returned to, or discussed with, the coordinator of the involved AMRAP agency to resolve any deficiencies.

(b) Applications will be submitted in a form and manner prescribed by the Regional Director and will contain at a minimum:

(1) The name of the AMRAP agency and responsible office and, where applicable, its designated contractual representative that will conduct the proposed activities;

(2) The name, office address and telephone numbers of the AMRAP agency persons or contractor persons who will supervise the proposed activities, and a list of all individual's names, addresses and telephone numbers who will be present at field activities.

(3) A list of any previous AMRAP activities or prior geologic and mineral assessments that have occurred in the proposed study areas;

(4) A discussion of overall project objectives, schedules and products, and how the proposed activities for the current application relate to those objectives;

(5) A description of the activities proposed for approval, including a detailed description of the collection techniques, sampling methods and equipment to be used in each area;

(6) Topographic maps identifying the specific areas in units of the National Park System where the agency proposes to conduct each AMRAP activity;

(7) The approximate dates on which the AMRAP activities for each area are proposed to be commenced and completed;

(8) A description of access means and routes for each area in which work is proposed including an estimate of the number of flights or number of vehicle trips;

(9) A description of the field support requirements proposed for locations on lands within units of the National Park System, including camp sites, fuel storage areas, and any other requirements;

(10) A discussion which documents that proposed activities will be carried out in an environmentally sound manner utilizing the least impacting technology suitable for the purposes of the project; and

(11) A description of how any disturbed areas, such as camp sites, will be reclaimed.

§ 9.85 Environmental compliance.

Each AMRAP agency is responsible for obtaining all required Federal, State, and local permits and must provide sufficient information to the NPS to ensure appropriate compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and other applicable statutes.

§ 9.86 Application review process and approval standards.

(a) The Regional Director will review applications submitted pursuant to § 9.84 and will take action on such applications by April 15 of each year. If additional review time is necessary to ensure compliance with this Subpart or with other applicable laws, Executive Orders and regulations, the Regional Director will promptly notify the AMRAP agency coordinator of the anticipated date of a final decision.

(b) The Regional Director is responsible for approving AMRAP activities in units of the National Park System in Alaska.

(c) To be approved, proposed AMRAP activities must be designed to be carried out in an environmentally sound manner, as determined in appropriate environmental documentation, that:

(1) Does not result in lasting environmental impacts that appreciably alter the natural character of the units or the integrity of the biological or ecological systems in the units; and

(2) Is compatible with the purposes and values for which the units are established; and

(3) Does not adversely affect the natural and cultural resources, visitor use, or administration of the area.

§ 9.87 Permitting requirements and standards.

(a) AMRAP activities may be conducted in units of the National Park System pursuant to a permit issued by the Regional Director in accordance with this supbart, 36 CFR 1.6, and other applicable regulations, guidelines and polices.

(b) The NPS may restrict the conduct of AMRAP activities in certain areas and during sensitive periods, such as nesting, calving and spawning seasons, to minimize impacts of fish and wildlife or to comply with existing policies or directives.

(c) All project areas affected by AMRAP activities shall be left in an unimpaired state by the AMRAP agency and its contractors. All costs borne by the NPS in cleaning or restoring an area affected by AMRAP activities will be recoverable from the AMRAP agency.

(d) Copies of all published information or written reports resulting from AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director.

(e) The NPS reserves the right, without prior notice to the AMRAP agency or its contractors, to observe or inspect AMRAP activities to determine whether such activities are being conducted pursuant to this subpart and the terms and conditions of the approved permit.

§ 9.88 Permit modification, suspension, and cancellation.

(a) A proposal to modify, supplement, or otherwise amend an approved permit shall be made by an AMRAP agency by written request to the Regional Director. The Regional Director shall review and promptly act on the proposed modification pursuant to the standards set forth in § 9.86. An AMRAP agency requesting modification of an approved permit may not undertake any of the activities proposed under the modification prior to review and action by the Regional Director.

(b) The Regional Director may suspend, modify, or cancel an AMRAP agency's permit by notifying the agency in writing, or orally in an emergency situation, when the Regional Director determines that:

(1) Changes to the permit are necessary to address conditions not previously anticipated; or

(2) There is imminent threat of serious, irreparable, or immediate harm or danger to public health and safety, or the natural and cultural resources and values of the unit; or

(3) The AMRAP agency or its contractors fails to comply with the provisions of ANILCA or of any other applicable law or regulation, the provisions and conditions of the approved permit and any modification thereto, or any written or field orders issued by the Regional Director.

(c) Suspensions, modifications or cancellations shall be effective immediately upon receipt of oral or written notice from the Regional Director. Notices issued orally shall be followed by written notice sent by certified mail within three (3) working days confirming and explaining the action. Suspensions shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Regional Director. Cancellation notices shall state the reason for cancellation and shall be sent by the Regional Director to the AMRAP agency at least fourteen (14) days in advance of the date the cancellation will become effective.

(d) Suspension or cancellation of a permit to conduct AMRAP activities shall not relieve the AMRA agency or its contractors or of the obligation to restore any location in accordance with the requirements of this subpart and to comply with all other obligations specified in this subpart and in the permit.

§ 9.89 Appeals.

Written appeals made within 30 days of a final decision by the Regional Director pursuant to this subpart shall be reviewed by the Director of the National Park Service. Resolution of any outstanding issues shall follow current Department of the Interior procedures for resolving interagency disputes.

Dated: February 21, 1991.

S. Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-5480 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-47, RM-7620]

Radio Broadcasting Services; Fairfield, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Fairfield Communications proposing the allotment of Channel 255A at Fairfield, Illinois, as the community's first local FM service. Channel 255A can be allotted to Fairfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 4 kilometers (2.5 miles) northwest of the community, in order to avoid a short-spacing to Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates are North Latitude 38-24-21 and West Longitude 88-23-54.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Philip M. Baker, 4701 Willard Avenue, Washington, DC 20815 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-47 , adopted February 19, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5435 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[Gen. Docket No. 89-89, FCC 90-431]

Home Satellite Service; Syndicated Exclusivity Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and notice of proposed rulemaking termination of proceeding.

SUMMARY: This *Report and Order* terminates the Commission's inquiry into the feasibility of imposing syndicated exclusivity rules similar to the Commission's cable rules with respect to the satellite delivery for private home viewing of syndicated programming on retransmitted broadcast station signals. In Pub. L. No. 100-667, Title II, Congress enacted an interim compulsory license for satellite carriage of syndicated programming and directed the Commission to adopt syndicated exclusivity rules applicable to the satellite retransmissions if feasible. After reviewing the record in this proceeding, the Commission finds implementation of these rules not to be feasible. Therefore, it terminates the proceeding without adopting such rules.

FOR FURTHER INFORMATION CONTACT: David Siddall, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order (Report)* in Gen. Docket No. 89-89, adopted December 31, 1990, and released February 8, 1991. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Report and Order

1. This proceeding was initiated in 1989 (See Notice of Inquiry and Notice of Proposed Rulemaking, Gen. Docket No. 89-89, 54 FR 19413, May 5, 1989), when the Commission requested comment on whether it is technically and economically feasible to apply some form of syndicated exclusivity requirements to satellite carriers or to other program distributors that sell broadcast programming retransmitted by satellite carriers in the home satellite dish market. The Commission also inquired about the feasibility of alternatives, such as purchase of national or local syndicated program rights by satellite carriers or satellite program distributors.

2. In the Satellite Home Viewer Act of 1988 (SHVA), Congress enacted an interim compulsory copyright license for satellite carriers serving the home satellite dish (HSD) market that retransmit television broadcast signals. Under the terms of this compulsory license such carriers must pay statutorily prescribed fees through 1992 or until they reach separate agreement on appropriate fees with program copyright owners. The SHVA instructs the Copyright Royalty Tribunal to initiate a process in 1991 designed to result in agreement on fees among the parties by voluntary negotiation or, if necessary, compulsory arbitration, for 1993 and 1994. The compulsory license completely expires at the end of 1994. In this manner Congress sought to encourage the establishment of, and transition to, a marketplace copyright licensing mechanism for satellite delivery of broadcast programming to the HSD market.

3. In the Report and Order, the Commission finds it technically infeasible to apply syndicated exclusivity regulation to the distribution of satellite signals to HSD owners before the end of 1994, when the interim compulsory copyright license will expire, and therefore declines to promulgate such rules. The time necessary to design, produce and sell to HSD owners new decoding equipment, as well as necessary new firmware and software, precludes substantial implementation of full syndicated exclusivity regulation before the end of 1994, when the interim compulsory copyright license for satellite carriers will expire. Having found full implementation technically infeasible during this time frame, the Commission considered but rejected mandating a more limited scheme requiring protection of only 32 or 58 geographic areas. Such rules, the Commission finds, would unfairly discriminate against unprotected stations, would afford only such limited protection that they appear to be economically infeasible, and would be substantially different from the cable syndicated exclusivity rules referenced in the SHVA.

4. Finally, the Commission concludes that the cost of preventing viewing by a relatively few authorized HSD owners for a short period of time is more than incrementally greater than the cost of cable syndicated exclusivity, and consequently, promulgation of rules for satellite carriers similar to those for cable is economically infeasible. The Commission also notes that pursuant to the SHVA, all satellite carriers and Direct Broadcast Satellite (DBS) operators will be fully liable for the copyrights to retransmitted program material after the interim compulsory copyright license expires at the end of 1994.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5441 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC-88-9]

RIN 2125-AC24

Minimum Uniform Standards for Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rule making; additional information.

SUMMARY: The FHWA is providing additional information concerning the ANPRM issued May 15, 1989, 54 FR 20875. The rulemaking, undertaken in response to Congress' enactment of the Truck and Bus Safety and Regulatory Reform Act of 1988, section 9105, sought comments on the establishment of a biometric identifier for operators of commercial motor vehicles (CMVs). The results of the pilot study which was conducted concurrently with the rulemaking, as well as the comments received in response to the ANPRM, indicate that the establishment of a biometric identifier at this time is premature and not justified. This notice summarizes the comments to the ANPRM as well as the results of the pilot study which demonstrate the significant shortcomings of the technologies investigated. When information is available to show that a biometric identifier would be beneficial to the CDL program and the technology has been developed, or can be developed, to meet appropriate functional requirements, the FHWA will continue the rulemaking process with a notice to propose standards for a biometric identifier.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Harbaugh, Standards Review Division, Office of Motor Carrier Standards (202) 366-4009, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On May 15, 1989, the FHWA published an ANPRM in the **Federal Register** (54 FR 20875) seeking public comment concerning the establishment of a biometric identifier to ensure the unique and positive identification of commercial driver's license (CDL) holders. This action was undertaken pursuant to section 9105(a) of the Truck and Bus Safety and Regulatory Reform Act of 1988 (1988 Act), (Pub.L. 100-690, 102 Stat. 4181, 4527, 49 U.S.C. App. 2706 note) which directs the Secretary of Transportation to issue, by December 31, 1990, regulations establishing, for purposes of section 12007 and 12009 of the Commercial Motor Vehicle Safety Act of 1986 (1986 Act), (Pub. L. 99-570, 100 Stat. 3201-170, 49 U.S.C. App. 2701) minimum uniform standards for a biometric identification system for operators of CMVs. Such a system would provide positive identification of drivers in the commercial driver's license information system (CDLIS) and would serve as a further constraint against drivers obtaining more than the one CDL permitted under the 1986 Act.

Currently, the CDL program uses a cluster of personal and descriptive data to uniquely identify license applicants. The specific items included in this cluster and used in the automated matching process are: driver's name, date of birth, social security number (SSN), license number and State of issuance. In addition, sex, height, weight and eye color are available to licensing officials at the counter. A variety of procedures are used within the framework of CDLIS to analyze the identifying information, including name reduction via a soundex-type equivalent, substitution of nicknames, deviations on birth dates, and deviations on SSN. These procedures, completed before the driver is issued a CDL, produce a match or matches if the driver appears to already be included in the CDLIS as a CDL holder. Such a match is then reported to the inquirer for further evaluation to properly identify the driver and assure that he or she has not been previously issued a CDL in another State.

Pursuant to the 1988 Act, the FHWA sponsored a pilot project to demonstrate and study the use of biometric identification systems for ensuring positive identification of operators of CMVs. Retinal scan and automated fingerprint identification systems (AFIS) technologies were tested within a driver licensing environment in four States. The results of the pilot demonstration project are discussed later in this document.

Discussion of Comments

Seventeen parties submitted comments to the docket of the ANPRM. Commenters included ten States, the National Transportation Safety Board (NTSB), the International Brotherhood of Teamsters (Teamsters) and the Owner-Operator Independent Drivers Association (OOIDA), American

Trucking Associations (ATA), National Industrial Transportation League (NIT League), American Automobile Association (AAA), and an individual truck driver.

The ATA and NTSB expressed strong support for the expeditious adoption of a biometric identifier. Both believe it is an essential part of the one-license concept and that the system is vulnerable to abuse without it. The ATA favors the retinal scan over the AFIS technology and wants to see biometric capability at roadside inspection sites.

The Teamsters and the OOIDA expressed equally strong opposition to the adoption of a biometric identifier, as did the individual driver. The Teamsters expressed the belief that very few drivers would try to maintain multiple licenses after 1992. The Teamsters believe, "The safety benefits of 'catching' or deterring multiple license use in this small number of drivers must be considered in view of the monetary, time, 'hassle' and privacy costs to five million commercial drivers." Based on these costs the Teamsters comments suggested that the tolerable error rate for a biometric identification system should be very near zero. The OOIDA opposes "measures that single out truck drivers to be automatically treated as criminals with no benefit to highway safety." It is also concerned about the possible use of the identifier as a device to harass drivers with frequent roadside biometric checks and the potential for false negatives at the roadside with the ensuing consequences for the drivers. Further, "* * * the number of additional drivers who hold multiple licenses that will be eliminated as a result of the biometric identifier is minuscule."

The ten States that responded generally expressed interest in the results of the pilot demonstration project and concern about the cost of a program to implement a biometric identifier. Many wanted the FHWA to provide additional time to allow all States to fully implement the current system and evaluate its effectiveness, and to more fully assess the costs and benefits of a biometric system. Most wanted to be sure that error rates were very low; the rates suggested by the various States ranged from a high of less than five percent, to lows of a general error rate of less than one in 1000, no more than one significant match problem per month, or simply an overall error rate of zero. The States that issue licenses over the counter generally were concerned about response time. Some States indicated they want a system response time within minutes for an initial enrollment of a driver, and verification within seconds of the identity of a driver who has previously been enrolled; others are willing to wait several days for enrollment. In any event, the overall sentiment expressed in comments from the States was a desire to wait until the CDL program is well underway before requiring a biometric identifier.

The AAA and the NIT League both expressed concerns about costs and interest in the pilot study. The AAA stated that the deadline was tight and that implementation should not take place until it could be achieved in an economical manner.

Biometric Studies

In 1988, The Orkand Corporation, under a contract funded by the FHWA, produced a report entitled "Functional Description for a Unique Identification System for the Commercial Driver's License Information System" that evaluated biometric identifiers. This report concluded that two biometric technologies—retinal scanning and AFIS—should be considered to identify commercial drivers. The report also recommended careful testing of biometric systems in a driver licensing environment prior to considering a full-scale implementation program.

At the direction of the FHWA, the State of California, Department of Motor Vehicles (CDMV), in conjunction with a committee of States, including Indiana, North Caroline and Texas, as well as the American Association of Motor Vehicle Administrators (AAMVA) and the FHWA, assessed the feasibility of biometric identifier technologies in the driver licensing environment. The "Feasibility Study Report," which was published in December 1988, recommended that both retinal scan and AFIS technologies be tested within a driver licensing environment to determine which technology would best satisfy the national CDL program effort and the one-license provision of the 1986 Act. The "Feasibility Study Report" also identified an initial set of functional requirements (as described below) that should be satisfied by the system design of any biometric identifier system in order to be feasible for commercial driver licensing.

As recommended in the "Feasibility Study Report," both retinal scan and AFIS technologies were tested in a pilot project directed by the CDMV and the same committee. Both technologies were assessed to determine the ability of each to meet the requirements outlined in the "Feasibility Study Report." The study, entitled "Personal Identifier Project: Final Technical Report" and published in May 1990, concluded that neither technology meets the functional requirements.

Functional Requirements and Findings

The pilot project was intended to be a demonstration of the two biometric technologies. While the project attempted to address the functional requirements set forth in the "Feasibility Study Report," certain of these could not be addressed by this project. Others were not addressed completely and will require additional analysis. The report on the pilot demonstration project has been placed in the public docket and is available for review.

The functional requirements that were addressed by the pilot together with the corresponding findings of the pilot study are as follows:

Minimal processing time: The system must capture the biometric identifier from each applicant without increasing the net transaction processing time (the actual time a customer is in a DMV office). The "Feasibility Study Report" suggested that net transaction processing time should not be increased by more than 30 seconds.

Findings: The pilot study showed that the average time required for capturing the biometric samples range from 1:13 minutes for rolled fingerprints, 2:03 minutes for retinal scan, to 2:35 minutes for live scan fingerprints. However, not all of this time would impact the total amount of time needed to process CDL applicants depending on how data capture is integrated with normal office routine.

Uniqueness: The biometric identifier must be an accurate, relatively unalterable, unique, physical characteristic that can be captured, recognized or verified and stored and that is verifiable over an indefinite period of time.

Findings: The verification of the biometric record is addressed under *Accuracy rates.*

Public acceptance: The method of capturing the biometric identifier must be unobtrusive to the applicant. The method must be socially acceptable and not endanger the health, safety, or welfare of any applicant.

Findings: A survey of persons who participated in the collection of biometric samples showed that the technology was considered acceptable by 98.48% of the participants involved in the fingerprint technology and 93.44% of the participants involved in the retinal scan technology.

Accuracy rates: The system of capturing, recognizing or verifying and storing each applicant's biometric record must have been previously tested for accuracy in an environment that proximates that of the CDLIS with an acceptable error rate. The "Feasibility Study Report" established a goal of 99.5%.

Findings: Neither technology met the goal for accuracy rates of 99.5% or better in all test categories, although the rates were better for fingerprints than retinal scan. Among the accuracy tests were those for correct issuance and correct denial during the initial enrollment of the driver, and again, correct issuance and correct denial during verification, or the renewal of the license. Accuracy rates for the two technologies are:

	AFIS (percent)	Retinal scan (percent)
Test for:		
Enrollment: Correct Issuance	98.46	96.59
Enrollment: Correct Denial	92.01	89.08
Verification: Correct Denial	100.00	100.00
Verification: Correct Issuance	92.41	84.20

Ease of operation: The system must be simple to use. Its use must be easily understood by employees and must be easy to explain to the States' applicants whether they are English or non-English speaking.

Findings: A survey of driver licensing employees operating the biometric collection instruments indicated that all methods were considered relatively easy to use.

Candidate lists: The system must be capable of accurately accomplishing proper identification without a candidate list for virtually all of the applications. The "Feasibility Study Report" suggested that 99.9% of the identifications should be without a candidate list.

Findings: A candidate list was produced for 0.20% to 2.29% of searches for two different tests for fingerprint technology and for 1.35% to 1.75% for retinal scan.

Standards for data exchange: The system must be capable of interfacing with other biometric identifier systems using the same type of biometric identifier and meeting standards of data exchange recognized by the AAMVA now or in the future for the biometric identifier captured. If the biometric identifier is an automated fingerprint, the interface must meet American National Standards Institute standards.

Findings: Although fingerprint vendors generally comply with the mandatory portions of existing standards, no two systems are compatible beyond full image level. Since there is only a single vendor of retinal scan technology there are no standards for the interchange of this information.

Response time: The system must be able to search and compare new biometric identifiers against stored records. The system must also be capable of performing verifications on previously established biometric records. The recognition process must be accomplished within an acceptable amount of elapsed time after receipt of the inquiry, and verification processes must be accomplished within a very short time from the receipt of the inquiry. The "Feasibility Study Report" suggested that these response times should be 72 hours for an initial enrollment and five seconds for verification of an identity for license renewal.

Findings: The pilot study suggested factors to be considered and noted that there would be trade-offs between response time and cost.

System capacity: During the initial enrollment process (conversion) for previously licensed commercial drivers, the biometric data base file will grow from zero records to 5 million records. Therefore, during the conversion, the system must be capable of searching and comparing the 5 million current records and the 500,000 new CDLs issued each year against this growing data base. Once the biometric records on existing commercial drivers have been captured, compared and stored, the system must be capable of annually recording, comparing, and storing 500,000 new CDL applicants' biometric records. The system must also be capable of annually verifying the biometric records on 1.25 million CDL renewal applicants, 250,000 interstate residency change applicants, 90,000 applicants seeking duplicate (replacement) licenses and the anticipated 5% a year growth in these types of applications.

Findings: This requirement was not addressed directly because the pilot study by its nature had only a limited number of drivers. However, it was noted that there are trade-offs between length of conversion period and costs. A longer conversion period would decrease, and a shorter period could greatly increase, the resources needed for conversion.

Although the following requirements were not addressed by the pilot, they are discussed here so that practical needs related to development of a biometric identification system to be used in a commercial driver licensing environment are understood. The committee of States, which developed these functional requirements, did so based on its detailed understanding of driver licensing procedures, resource requirements and day-to-day operational aspects of licensing large numbers of drivers. These requirements are as follows:

Management information: The system must have a method of capturing, storing, and reporting management information, such as the number of new biometric records accepted, the number of biometric records verified, the number of applicants the system was unable to "enroll," measurements of the quality of the information captured, system down time, the system errors by type, and average enrollment processing time on a daily, weekly and monthly basis.

Compatible with CDLIS: The system must be compatible with and capable of interfacing with the CDLIS designed pursuant to the 1986 Act.

Uninterrupted service: The system must be reliable, allowing the States to provide uninterrupted service to their applicants. Because the data capture and central matching units used in the demonstration systems were not representative of those that would be used in a full production system to identify 5 million commercial drivers, no conclusions were drawn on the ability of the two biometric systems to provide uninterrupted service.

Verification of Acceptability of Sample: Any biometric identifier capturing device must provide on-site, immediate identification of whether or not an acceptable biometric sample has been obtained, thereby guarding against the need for customers to make return visits to the local offices solely to recapture their biometric records. To do so, the quality of the captured images must be consistently good and there must be quality control at the point of data collection.

Procurement options: To encourage maximum biometric system participation by the States in a nationwide program, the system must offer sufficient flexibility in procurement options and the capture and transmission of the biometric data.

Incorporation onto a data carrier card: The verification template/minutiae must be capable of being incorporated on a data carrier card issued in the form of a driver's license.

Remote Verification: The system must have the potential for remote verification when used with a data carrier license document.

In addition, the pilot study assessed the costs that would be associated with

each of the systems. Estimated costs for operating the central systems for the initial four years are $16.9 million for the fingerprint system and $5.1 million for the retinal scan system. These cost figures are estimates based on a system design configured for a projected verification response and five million record data base.

The pilot project also provided cost estimates for data capture equipment. An automated data capture station for fingerprints is estimated to cost less than $10,000. If fingerprints are collected manually, a manually rolled print collection station costs under $200, and the card entry workstation, which is used to convert fingerprint cards, costs approximately $104,000. The cost for a retinal scan data capture unit is approximately $6,575.

In addition to these estimates of equipment costs, total system costs would include estimates of the amount of equipment needed throughout the system as well as transmission and personnel costs.

Conclusion

The pilot study clearly shows that neither of the systems meets the functional requirements set forth in the "Feasibility Study Report." Most notably, accuracy rates are lower overall than those recommended in the "Feasibility Study Report" While the accuracy rate associated with the AFIS system is better than that of the retinal scan, improvement is still necessary to meet criteria recommended by CDMV and the committee of States.

Further cost estimates also need to be obtained. Decisions concerning the type and configuration of the system may need to be made before these can be completed.

Other information, not directly related to biometric technology, also needs to be obtained. In order to determine the benefits of a biometric system, information is needed concerning the effectiveness of the current system of identifying drivers within the CDLIS, including estimates of how many drivers attempt to circumvent, and succeed in circumventing, the current system and receive more than one commercial driver's license. This information is needed before the costs and benefits of a biometric system can be determined.

It is also clear that more time is needed so that the technology has an opportunity to develop to meet the functional requirements recommended by the "Feasibility Study Report." It may also be desirable to review some of the functional requirements in light of the continuing experience with biometric technology and evolving needs of the States. Therefore, the FHWA intends to defer further rulemaking action and continue to require an identification process for drivers using the CDLIS with the required array of personal identification information. In the interim, the FHWA will complete and make available the results of several studies designed to address the effectiveness of the current identification system. We are planning a study to look more closely at the validity of social security numbers for identification that drivers are using to obtain CDLs. We are considering other studies to look specifically at the magnitude of the multiple license problem for drivers who have been issued CDLs and also to look at the array of information that is used by States and in the CDLIS to identify drivers. The results of these studies will be published and assessed in terms of the need for a biometric identifier.

Development of the biometric technologies will be closely monitored. These technologies are, at this time, developing rapidly and monitoring private sector development appears to be the appropriate course. However, at such time as needed, the FHWA will consider research, controlled testing and other appropriate measures to help determine when technology will be available to meet the needs of the States. When information is available to show that a biometric identifier would be beneficial to the CDL program and the technology has been developed, or can be developed, to meet appropriate functional requirements, the FHWA will propose standards for a biometric identifier.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety)

(Authority: Sec. 9105 of Pub. L. 100-690, 102 Stat. 4181, 4527).

Issued on: February 27, 1991.

T. D. Larson,
Administrator.

[FR Doc. 91-5455 Filed 3-7-91; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-11; Notice 1]

RIN 2127-AD81

Federal Motor Vehicle Safety Standards; Rearview Mirrors—Reflectance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from Donnelly Corporation, this notice proposes amending the requirements in Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, with respect to average reflectance levels. The proposal would clarify the intent and applicability of the provision. It would also serve to update the standard to better address current mirror designs and to remove a perceived design restriction about certain designs, thus facilitating the introduction of new mirror designs which may provide better glare protection.

DATES: Comments on this notice must be received on or before April 22, 1991.

Proposed Effective Date: The amendments would become effective 30 days after publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 91-11; Notice 1 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5307.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, is intended to reduce the number of crashes that occur because the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.

As initially promulgated, Standard No. 111's mirror construction requirements specified that the

reflectance levels for mirrors be at least 35 percent (32 FR 2413, February 3, 1967). The standard further stated that for selective position prismatic mirrors, the reflectance level in the night driving position had to be at least 4 percent. A selective position prismatic mirror contains two settings that can be mechanically tilted to provide surfaces with two different reflectance levels. The first setting provides relatively high levels of reflectance, typically of 85 to 90 percent, for day time driving; and the second setting provides reflectance levels of at least 4 percent to reduce glare from the headlamps of following vehicles during night time driving. Installation of these two-position selective position prismatic mirrors has been the principal method of enabling drivers to reduce glare during night time driving. Approximately 90 percent of vehicles are currently equipped with center-mounted interior mirrors of the selective position prismatic type.

The agency subsequently amended Standard No. 111's mirror construction requirement to specify that the "average" reflectance level of the reflective film used on any mirror must be at least 35 percent. In adopting this amendment about average reflectance, the agency explained that the amendment was intended to "make clear that the failure of any individual point or points on the reflective surface of a mirror to reflect 35 percent of a light source does not constitute a failure to comply with the standard if the average reflectance of the total points comprising the reflective surface is at least 35 percent." (41 FR 36023, August 26, 1976)

The current language of the requirement in S11 for mirror construction is as follows:

The average reflectance value of the reflective film employed by any mirror required by this standard, determined in accordance with SAE Recommended Practice J964a, August 1974, shall be at least 35 percent. If a mirror is of the selective position prismatic type, the reflectance value in the night driving position shall be at least 4 percent.

Several manufacturers, including General Motors, Chrysler, Ford, BMW, and Range Rover, have equipped vehicles with electrochromic mirrors. These mirrors electrically adjust their reflectance levels based on the amount of light striking the mirror and automatically vary the reflectivity. These manufacturers therefore have concluded that the standard is not design restrictive and does not preclude the use of electrochromic mirror technology.

However, other manufacturers have interpreted this provision as prohibiting low reflectance mirrors other than selective position prismatic ones. For instance, on June 12, 1990, Donnelly Corporation, petitioned the agency to amend S11 to permit the installation of its electrochromic mirror. Along with electrically adjusting its reflectance levels based on the amount of light striking the mirror, this mirror varies the reflectivity between the minimum of 35 percent during daytime conditions and a minimum of 4 percent during nighttime conditions. According to the petitioner, its automatically adjustable non-prismatic electrochromic mirror is not permitted to have a minimum night position less than 35 percent because S11 states the reflectance of 4 percent in the night driving position is only for selective position prismatic mirrors.

Donnelly therefore concluded that S11 should be modified to remove what it views as a design-specific requirement. It claimed that these mirrors improve vision and reduce glare during night driving. It also claimed that its mirror is the first commercially viable means for reducing glare for exterior mirrors. The petitioner further believed that when the requirement permitting selective position prismatic mirrors was issued, these were the only known glare reducing mirrors.

Based on its initial review of the petition, NHTSA granted the petition on August 30, 1990. After further review, the agency has decided to issue this notice proposing to amend 511 of Standard No. 111 to avoid express reference to selective position prismatic mirrors. The agency has tentatively determined that this amendment is necessary to clarify the intent and applicability of the provision given its apparent ambiguity. It would also serve to remove a perceived design restriction about certain mirror designs. Such an amendment is consistent with the agency's philosophy of promulgating standards that are as performance-oriented as possible, consistent with the goal of obtaining specific types of safety performance. While the prismatic mirror was the principal, perhaps only, known glare-reducing mirror technique when the standard was initially promulgated, several new technologies now offer other means for glare reduction. NHTSA believes that adoption of the proposal would facilitate the production of new mirror designs that may improve motor vehicle safety. These new technologies may provide better glare protection because they automatically adjust reflectance levels in relation to the light source. In addition, the electrochromic mirrors can be used as exterior mirrors.

Accordingly, the agency proposes to amend S11 by deleting reference to "selective position prismatic type" mirrors. In its place, S11 would refer to mirrors "capable of multiple reflectance levels." The agency welcomes comments about the need for this proposed amendment.

This notice also proposes to amend S11 to delete reference to the "reflectance value of the reflective film" because this phrase has the potential of being unnecessarily design restrictive. The agency is aware of certain mirrors which rely on a substance other than a film for their reflectance value. For instance, one electrochromic mirror uses a gelatinous electrochromic layer between two sheets of glass instead of a film. Accordingly, because language specifying a reflective film may not adequately include the technology used in all current and future mirrors, the agency has decided to propose making the requirement more general.

This notice also proposes to amend S11 by updating the reference to the Society of Automotive Engineers' (SAE) more recent Recommended Practice. While S11 of Standard No. 111 currently refers to SAE Recommended Practice J964a, August 1974, the SAE reaffirmed this Recommended Practice without substantive changes in October of 1984. To reflect this change, this notice proposes to refer to the J984 OCT84 practice.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. The agency has tentatively concluded that there would be "good cause" not to provide the full 180 day lead-in period given that this amendment would remove a restriction and facilitate the introduction of certain mirrors without imposing any mandatory requirement on manufacturers. In addition, the public interest would be served by not delaying the introduction of mirrors that may provide better performance without having any negative impact on safety. Therefore, the agency has tentatively determined that there is good cause to propose an effective date 30 days after publication of the final rule.

Regulatory Impacts

NHTSA has determined that this proposed rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of the

Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have minimal economic impacts. The proposal would permit new mirror designs by removing a design restriction instead of imposing any new requirements on mirror or vehicle manufacturers. Therefore, the agency does not anticipate any significant additional costs or any cost savings.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically would not qualify as small entities. While some manufacturers of mirrors may be small entities, the agency believes that the proposed amendment would not have a significant economic impact on them. This amendment would also affect small businesses, small organizations, and small governmental units to the extent that these entities purchase motor vehicles with new mirror designs. As the preceding discussion indicates, the agency's assessment is that this amendment would have no significant cost impact to the industry. Therefore, it would not result in a significant increase in consumer prices.

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule would not have any significant impact on the quality of the human environment.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that it would have no Federalism implication that warrants preparation of a Federalism report.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S11 would be amended to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

* * * * *

S11. Mirror Construction. The average reflectance of any mirror required by this standard shall be determined in accordance with SAE Recommended Practice J964, OCT84. All single reflectance mirrors shall have an average reflectance of at least 35 percent. If a mirror is capable of multiple reflectance levels, the reflectance in the night position or mode shall be at least 4 percent. When a multiple reflectance level mirror is in the day position or mode, or not powered, it shall provide a reflectance level of at least 35 percent.

* * * * *

Issued on: March 4, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-5475 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Availability of an amendment to a fishery management plan and a minority report, and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico Fishery Management Council has submitted Amendment 3 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before May 1, 1991.

ADDRESSES: Copies of Amendment 3 and the minority report may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609. Comments should be sent to Robert A Sadler, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 3 proposes to (1) extend the target date for rebuilding the red snapper resource from January 1, 2000, to January 1, 2007; (2) add to the management measures that may be implemented or modified via the FMP's framework procedure the setting of target dates for rebuilding overfished reef fish stocks, with an upper limit for the rebuilding periods not exceeding 1.5 times the generation time of the species under consideration; and (3) transfer speckled hind from the shallow-water to the deep-water grouper complex.

A minority report objects to the proposed upper limit for the determinations of rebuilding periods.

Proposed regulations to implement Amendment 3 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5532 Filed 3-5-91; 2:02 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-005]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: March 26, 1991.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27607.

Purpose: To review regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to hear persons who have asked to address the Committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the committee will consider an increase in the user fee to recover costs involved in the inspection and grading of tobacco sold at designated auction markets beginning with the 1991–92 selling season.

The meeting is open to the public. Persons other than members who wish to address the committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: March 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–5482 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–02–M

[TB 90–008]

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period March 11–15, 1991, for active producers of flue-cured tobacco residing in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to determine producer approval of the designation of Ocilla, Georgia, as a designated tobacco auction market and to merge it with Fitzgerald, Georgia.

DATES: The referendum will be held March 11–15, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090–6456; Telephone Number (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of Ocilla, Georgia, as a designated tobacco auction market and to merge it with Fitzgerald, Georgia.

On August 31, 1990, an application was made to the Secretary of Agriculture to designate Ocilla as a new market and to merge it with Fitzgerald. The application, filed by warehouse operators in Fitzgerald, was made pursuant to regulations promulgated under the Tobacco Inspection Act (7 CFR 29.1–29.3).

On November 2, 1990, a public hearing was held in Ocilla, Georgia, pursuant to the regulations. A review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, and the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on February 28, 1991.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of March 11–15, 1991. The purpose of the referendum is to determine whether farmers favor or oppose the designation of Ocilla as a market for the 1991 and succeeding crop years and to merge it with the currently designated market of Fitzgerald. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this designation, Ocilla will be formally designated as a new market and merged with Fitzgerald.

To be eligible to vote in the referendum a tobacco producer must be an active grower residing in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia. Any farmer who believes he or she is eligible to vote in the reference but has not received a mail ballot by March 11, 1991, should immediately contact Ernest L. Price, Director, Tobacco Division, AMS, USDA, at (202) 447–2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended, (7 U.S.C. 511d) and the regulation for such referendum set forth in 7 CFR 29.74.

Dated: March 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–5483 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date: May 15–17, 1991.

Time: 8:30 a.m.–5 p.m.

Place: USDA, Cooperative State Research Service, room 338 A&B Aerospace Building, 901 D Street, SW., Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact person for agenda and more information: Dr. Edward M. Wilson, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, DC 20250–2200, telephone: 202–401–6040.

Done at Washington, DC this 27th day of February, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91–5550 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the Denver (CO) and East Indiana (IN) Agencies and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to these specified agencies. The official agencies are Hutchings, Inc., dba Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Applications must be postmarked on or before April 8, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Denver, located at 6210 Brighton Blvd, Commerce City, CO 80022, East Indiana located at 3508 North Walnut Street, Muncie IN 47303, and Kansas located at 700 Jackson, Suite 800, Jayhawk Towers, Topeka, KS 66601–1918 were designated under the Act on September 1, 1988, as official agencies to provide official inspection services.

The designations of these official agencies terminate on August 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Denver, in the States of Colorado, Nebraska, and Wyoming, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Colorado: the entire State.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern

Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

In Wyoming: Goshen and Platte Counties.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Albin Elevator, Albin; Farmers Co-op, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs, all in Laramie County, Wyoming (located inside Wyoming Department of Agriculture's area).

Exceptions to Denver's assigned geographic area are the following locations inside Denver's area which have been and will continue to be serviced by the following official agency:

Hastings Grain Inspection, Inc.: Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

The geographic area presently assigned to East Indiana, in the States of Indiana and Ohio, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Stueben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

In Ohio: Darke County.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio (located inside Lima Grain Inspection Service, Inc.'s area).

The geographic area presently assigned to Kansas, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Kansas.

Interested parties, including Denver, East Indiana, and Kansas, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1991, and ending August 31, 1994. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91–5462 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–EN–F

Designation Renewal of the Gibson City (IL) and Indianapolis (IN) Agencies and the State of Wyoming (WY)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and the Wyoming Department of Agriculture (Wyoming) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–5454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Gibson City's, Indianapolis', and Wyoming's designations terminate on March 31, 1991, and requested applications for official agency designation to provide official services within specified geographic areas in the October 1, 1990, **Federal Register** (55 FR 39995). Applications were to be postmarked by October 31, 1990. Gibson City, Indianapolis, and Wyoming were the only applicants, and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the December 3, 1990, **Federal Register** (55 FR 49927) and requested comments on the applicants for designation. Comments were to be postmarked by January 17, 1991. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that Gibson City, Indianapolis, and Wyoming are able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective April 1, 1991, and terminating March 31, 1994, Gibson City, Indianapolis, and Wyoming are designated to provide official inspection services in their specified geographic areas, as previously described in the October 1 **Federal Register**.

Interested persons may obtain official services by contacting Gibson City at 217–784–5411, Indianapolis at 317–782–8938, and Wyoming at 307–777–7321 .

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91–5463 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–EN–F

Designation of Springfield Grain Inspection Service, Inc., in the Springfield, Illinois, Geographic Area (IL)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation of Springfield Grain Inspection Service, Inc. (Springfield), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Springfield, Illinois, geographic area.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–447–8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Glen Wallace dba Springfield Grain Inspection Department, Springfield, Illinois, had requested cancellation of his designation, effective March 31, 1991, and requested applications for official agency designation to provide official services within the specified geographic area in the October 1, 1990, **Federal Register** (55 FR 39996). Applications were to be postmarked by October 31, 1990. Springfield was the only applicant for designation and applied for the entire area.

The Service announced the applicant names in the December 3, 1990, **Federal Register** (55 FR 49927) and requested comments on the applicants for designation. Comments were to be postmarked by January 17, 1991. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that Springfield is able to provide official services in the geographic area for which the Service is designating it.

Effective April 1, 1991, and terminating March 31, 1994, Springfield is designated to provide official inspection services in its specified geographic area, as previously described in the October 1 **Federal Register**.

Interested persons may obtain official services by contacting Springfield at 217–522–5233.

AUTHORITY: Pub. L. 94–82, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91–5464 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Sioux City Inspection and Weighing Agency, Inc. (Sioux City), and A. V. Tischer and Son, Inc. (Tischer).

DATES: Comments must be postmarked on or before April 22, 1991.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. *SprintMail* users may respond to [PMARSDEN/FGIS/USDA]. *Telecopier* users may send responses to the automatic telecopier machine at 202–447–4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the January 2, 1991, **Federal Register** (56 FR 64). Applications were to be postmarked by February 1, 1991.

Sioux City applied for designation renewal in the entire area currently assigned to that agency, except for: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen Grain Inspection, Inc.'s area (Aberdeen)); Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont Grain Inspection Department, Inc.'s area (Fremont)); and Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside Tischer's area).

Tischer applied for designation renewal in the entire area currently assigned to that agency, as well as Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa. Aberdeen applied for Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota. Fremont applied for Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa. The Tischer, Aberdeen, and Fremont agencies are contiguous to the Sioux City agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91–5465 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Augur Creek Timber Sale, Fremont National Forest, Lake County, OR

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: Fremont National Forest decision to harvest timber within the Lakeview Federal Sustained Yield Unit (FSYU) will be appealable under 36 CFR part 217 at the time the decision is made. This will allow the public to address concerns related to environmental issues before the sale is advertised. Hearings will continue to be available for sales within the Lakeview FSYU, but they will be limited to questions of advantages and disadvantages of the sale relative to the stability of affected communities (36 CFR 223.117).

With this change, specific environmental issues will be addressed earlier in the process under 36 CFR part 217 so that any needed modifications can be made more efficiently. We believe this change will provide more effective public participation and result in more efficient program planning.

The **Federal Register** on July 10, 1990 (55 FR 28257) is revised to show that the decision for Augur Creek Timber Sale will be subject to appeal under 36 CFR part 217.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this revised notice of intent to Sherm A. Radtke, Fremont National Forest headquarters, 524 North G Street, Lakeview, Oregon 97630, phone (503) 947–2151.

Dated: February 27, 1991.

Gerald C. Foster,

Acting Forest Supervisor.

[FR Doc. 91–5510 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–11–M

Amendment to the Forest Five Year Noxious Weed Control Program 1986–1990; Lewis and Clark National Forest, Cascade County, MT

ACTION: Notice of amendment to forest five year noxious weed control program 1986–1990.

SUMMARY: The Lewis and Clark National Forest has approved an amendment to the July 8, 1986 Record of Decision dealing with the Lewis and Clark National Forest Five Year Noxious Weed Control Program 1986–1990. The amendment extends the coverage period through the 1991 field season, or until December 31, 1991. Prior to December 31, 1991, the Lewis and Clark National Forest will prepare a supplement to the Forest's Five Year Noxious Weed Control Program to cover the period 1992–1996.

DATES: Written appeals concerning the extension of this Record of Decision through the 1991 field season, or until December 31, 1991 must be received by April 22, 1991.

FOR FURTHER INFORMATION CONTACT: John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, PO Box 869, Great Falls, Montana 59403 (406) 791–7700.

Dated: March 4, 1991.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 91–5494 Filed 3–7–91; 8:45 am]

BILLING CODE 3410–11–M

Record of Decision for Final Environmental Impact Statement for Fina Oil and Chemical Company Exploratory Oil/Gas Well; Lewis and Clark National Forest, Glacier County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of availability—record of decision.

SUMMARY: Notice is hereby given that the Forest Service and Bureau of Land Management have issued a Record of

Decision dated February 19, 1991 that approves the Application for Permit to Drill submitted by Fina Oil and Chemical Company on their lease on the Rocky Mountain Ranger District, Lewis and Clark National Forest, Glacier County, Montana. A decision concerning the Chevron Application for Permit to Drill, also addressed in the Final Environmental Impact Statement, will be made separately.

Under the authority of the Federal Onshore Oil and Gas Leasing Reform Act, the Forest Service is responsible for approving the Surface Use Plan of Operations of the Application for Permit to Drill. Therefore, decisions relating to surface uses on National Forest System Lands should be appealed to the Forest Service pursuant to 36 CFR part 217. Two copies of the notice of appeal must be filed with Regional Forester, 200 East Broadway, P.O. Box 7669, Missoula, Montana, 59807, within 45 days from March 2, 1991, the day after a Notice of Decision was published in the Great Falls Tribune.

Decisions made by the Bureau of Land Management related to the approval of the Drilling Plan and the Hydrogen Sulfide Contingency Plan are appealable to the State Director, Montana State Office pursuant to 43 CFR 3165.3. Any adversely affected party may request administrative review before the State Director either with or without oral presentation. Such requests, including all supporting documentation shall be filed in writing within 20 business days of the date this decision is received or considered to be received to the State Director, USDI Bureau of Land Management, P.O. Box 36800, Billings, Montana, 59701-6800.

DATES: Closing date for the appeal period for this Environmental Impact Statement and Record of Decision will be 45 days following the publication of Notice of Decision in the Great Falls Tribune on Friday, March 1, 1991.

ADDRESSES: John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, Post Office Box 869, Great Falls, Montana, 59403.

FOR FURTHER INFORMATION CONTACT: Norman Yogerst, Northern Region Office, Interdisciplinary Team Leader, P.O. Box 7669, Missoula, Montana, 59807. Phone: (406) 329-3634. Copies of the Record of Decision and associated Final Environmental Impact Statement are available upon request from the Lewis and Clark National Forest, P.O. Box 869, Great Falls, Montana, 59403.

SUPPLEMENTARY INFORMATION: The decision allows Fina to build 4.5 miles of access road on National Forest Land to drill a single exploratory well to determine if geologic structures contain accumulations of oil and/or natural gas. If the well is dry, the access road and well pad will be reclaimed to as near natural conditions as possible. Should the well encounter commercial quantities of oil and/or gas, additional environmental analysis will be conducted to determine if and how production will be allowed to proceed.

The approval of the Surface Use and Operating Plan is conditioned upon Fina accepting and abiding by strict mitigation measures that will minimize the impacts of the project on other surface resources and Forest users.

Dated: March 4, 1991.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 91-5491 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Industry Classification Questionnaire.

Form Number: Agency—BE-507; OMB—0608-0032.

Type of Request: Extension of a currently approved collection.

Burden: 500 respondents; 1 response per respondent per year; 250 reporting hours.

Average Hours Per Response: ½ hour.

Needs and Uses: The survey is required in order to classify, by industry, information collected on related forms for U.S. direct investment abroad (i.e., forms BE-577, BE-133B, and BE-133C). These data are needed, by country and industry, for compiling the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, for annual estimates of the U.S. direct investment position abroad, and for semi-annual estimates of property, plant, and equipment expenditures of majority-owned foreign affiliates. They are also needed to measure the economic significance of U.S. direct investment abroad, monitor changes in such investments, analyze its effect on the U.S. and foreign economies, and based upon this assessment make informed policy decisions regarding U.S. investment abroad.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-5453 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than March 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceedings	
AUSTRALIA: Canned Bartlett Pears (A-602-039)	03/01/90-02/28/91
CANADA: Construction Castings (A-122-503)	03/01/90-02/28/91
CANADA: Certain Fresh Cut Flowers (A-122-604)	03/01/90-02/28/91
CHILE: Standard Carnations (A-337-602)	03/01/90-02/28/91
COLOMBIA: Certain Fresh Cut Flowers (A-301-602)	03/01/90-02/28/91
ECUADOR: Certain Fresh Cut Flowers (A-331-602)	03/01/90-02/28/91
FINLAND: Rayon Staple Fiber (A-405-071)	03/01/90-02/28/91
FRANCE: Brass Sheet and Strip (A-427-602)	03/01/90-02/28/91
ISRAEL: Oil Country Tubular Goods (A-508-602)	03/01/90-02/28/91
ITALY: Certain Valves and Connections of Brass, for Use in Fire Protection System (A-475-401)	03/01/90-02/28/91
ITALY: Brass Sheet and Strip (A-475-601)	03/01/90-02/28/91
JAPAN: Ferrite Cores (of the type used in consumer electronic products) (A-588-016)	03/01/90-02/28/91
JAPAN: Stainless Steel Butt-Weld Pipe Fittings (A-588-702)	03/01/90-02/28/91
JAPAN: Television Receivers, Monochrome and Color (A-588-015)	03/01/90-02/28/91
SWEDEN: Brass Sheet & Strip (A-401-601)	03/01/90-02/28/91
TAIWAN: Light-Walled Welded Rectangular Carbon Steel Tubing (A-583-803)	03/01/90-02/28/91
THAILAND: Certain Circular Welded Carbon Steel Pipes & Tubes (A-549-502)	03/01/90-02/28/91
THE PEOPLE'S REPUBLIC OF CHINA: Chloropicrin (A-570-002)	03/01/90-02/28/91
FEDERAL REPUBLIC OF GERMANY: Brass Sheet & Strip (A-428-602)	03/01/90-02/28/91
Suspended Investigations	
BRAZIL: Frozen Concentrated Orange Juice (C-351-005)	01/01/90-12/31/90
THAILAND: Certain Yarn Products (C-549-401)	01/01/90-12/31/90
Countervailing Duty Proceedings	
ARGENTINA: Leather Wearing Apparel (C-357-001)	01/01/90-12/31/90
ARGENTINA: Certain Apparel (C-357-404)	01/01/90-12/31/90
BRAZIL: Certain Castor Oil Products (C-351-029)	01/01/90-12/31/90
BRAZIL: Cotton Yarn (C-351-037)	01/01/90-12/31/90
CANADA: Standard Carnations (C-122-603)	01/01/90-12/31/90
CHILE: Standard Carnations (C-337-601)	01/01/90-12/31/90
FRANCE: Brass Sheet & Strip (C-427-603)	01/02/90-12/31/90
IRAN: In-Shell Pistachios (C-507-501)	01/01/90-12/31/90
ISRAEL: Oil Country Tubular Goods (C-508-601)	01/01/90-12/31/90
MEXICO: Certain Textile Mill Products (C-201-405)	01/01/90-12/31/90
NETHERLANDS: Standard Chrysanthemums (C-421-601)	01/01/90-12/31/90
NEW ZEALAND: Carbon Steel Wire Rod (C-614-504)	10/01/89-09/30/90
PAKISTAN: Cotton Shop Towels (C-535-001)	01/01/90-12/31/90
SOUTH AFRICA: Ferrochrome (C-791-001)	01/01/90-12/31/90
THAILAND: Certain Apparel (C-549-401)	01/01/90-12/31/90
TURKEY: Certain Welded Carbon Steel Pipe & Tube (C-489-502)	01/01/90-12/31/90

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with section 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by March 31, 1991.

If the Department does not receive by March 31, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 1, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5574 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Certain Fresh Cut Flowers From Colombia; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, three importers, and nineteen respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The review covers 38 producers and/or exporters of this merchandise to the United States and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for all other merchandise covered by the order. The review indicates the existence of dumping margins for certain firms during the review period. Reviews of 18 producers and/or exporters are being terminated following withdrawal of requests for their review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1988, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (53 FR 7383) of the antidumping duty order on certain fresh cut flowers

from Colombia for the period November 3, 1986 through February 29, 1988. In March of 1988, the petitioner, three importers and nineteen respondents requested an administrative review covering the period November 3, 1986 through February 29, 1988. We initiated the review on April 27, 1988 (53 FR 15063). Requests for review of eighteen producers and/or exporters were subsequently withdrawn. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). Through 1988, such merchandise was classifiable under item numbers 192.1700, 192.2110, 192.2120, and 192.2130 of the Tariff Schedules of the United States Annotated (TSUSA). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 38 Colombian producers and/or exporters to the United States of the subject merchandise and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for the remaining subject merchandise. We are terminating the reviews of Flores Altamira, Flores de Exportacion, Agricola Arenales, Cultivos Buenavista, Flores de Los Andes, Flores Horizonte, Inversiones Penas Blancas, Flores de La Pradera, Inversiones Targa, Cultivos Medellin, Flores La Esmeralda, Floralex, Jardines del Muna, Velez de Monchaux e Hijos, Agromonte, Claveles Colombianos, Sun Flowers, and Fantasia Flowers because these companies withdrew their requests for review on a timely basis and the petitioner did not request reviews of them.

United States Price

Pursuant to section 777A of the Tariff Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order to use actual price information which may often be available only on a monthly basis, to take account of the large volume of sales, and to accommodate the pricing practices associated with a perishable product.

In calculating United States Price (USP), the Department used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, and exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were f.o.b. Bogota and c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

Exporter's sales price, for sales made on consignment, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or indirect U.S. selling expenses of related consignees.

Foreign Market Value

Section 773(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market in the ordinary course of trade. Only two companies, Flores Generales and Pompones, reported viable home market sales. However, consistent with the final results of administrative review for the March 1, 1988 through February 28, 1989 period (Final Results of Antidumping Duty Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990), hereafter Final Results), we have preliminarily concluded that sales of export quality flowers in Colombia are not in the ordinary course of trade for domestic consumption and have, therefore, rejected these sales as the basis for foreign market value.

The cut flower industry in Colombia is primarily an export industry. Domestic sales of most companies consist exclusively of culls (non-export quality) or defective flowers, which are not such or similar merchandise to the export quality flowers under review. As evidence of the fact that the ordinary course of trade in Colombia is sales of culls or defective merchandise, we note that in this review thirty-six of the thirty-eight companies do not report domestic sales of such of similar merchandise sufficient to satisfy the viability standard described in the Final Results. Because we have determined that sales or such or similar merchandise in the home market are not in the ordinary course of trade, we have rejected the home market sales of export quality flowers reported by Flores Generales and Pompones as a basis for foreign market value. In addition, we note that cost information on carnations submitted by Flores Generales indicates that their home market sales were being made in substantial quantities over an extended period of time at prices significantly below the cost of production, clearly indicating that these sales accounted for production in excess of market demand.

Since we have rejected home market sales as the basis of foreign market value for the reasons stated above, pursuant to section 773(a) of the Tariff Act, we must compute foreign market value either by use of third country prices or by use of constructed value. The Department is rejecting third country sales as an appropriate basis for foreign market value in favor of constructed value because third country prices have been determined to be an inappropriate basis for comparison, for the reasons set forth in the Final Results.

Accordingly, in calculating foreign market value, the Department used constructed value as defined in section 773(e) of the Tariff Act for all companies. The constructed value represents the average per-flower cost for each type of flower, based on the costs incurred to produce that type of flower over the review period.

The Department used the materials, fabrication, and general expenses reported by respondents. The per-unit average constructed value was based on the quantity of export quality flowers actually sold by the grower/exporter in all markets. The non-export quality flowers (culls) which are produced in conjunction with export quality flowers are considered by-products. Therefore, revenue from the sales of culls was used as an offset against the cost of producing the export quality flowers.

Actual general expenses were used since, in all cases, they exceeded the statutory minimum of 10 percent of the cost of materials and fabrication. When both imputed credit and actual credit expenses were included in constructed value, the actual interest expense was reduced to prevent double counting.

When respondents indicated that the actual profit for merchandise of the same general class or kind could not be calculated or was less than eight percent of the sum of the cost of production and general expenses, the Department used the eight percent statutory minimum for profit. We added U.S. packing to constructed values. Adjustments to constructed value were made for credit and indirect selling expenses.

Adjustments to the respondents' data were made when certain costs necessary for the production of the flowers under review were not included or were not quantified or valued appropriately. Such adjustments included the elimination of exchange rate gains as an offset to respondents' financing expenses, the inclusion of U.S. distress sales in the total volume of flowers sold (as well as in the U.S. sales tables for the calculation of U.S. price), the elimination of U.S. distress sales value as an offset to the costs of cultivation, and an adjustment necessary to reflect actual sales quantity of export quality flowers during the review period.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margins to be:

Producer/Exporter	Margin (Percent)
Agricola el Redil	3.76
Agrodex Group	0.61
Agrodex	
Flores de Los Amigos	
Flores de Los Arrayanes	
Flores Colon	
La Comuna	
Flores de La Conejera	
Flores Dos Hectareas	
Florlinda	
Flores El Gallinero	
Los Gaques	
Inverflores	
Flores Juanambu	
Inverpalmas	
Flores El Lobo	
Flores La Maria	
Flores de Las Mercedes	
Potrero	
Flores El Puente	
Inversiones Santa Rosa	
Tibati	
El Trentino	
El Zorro	
Agrosuba Group	1.29
Agrosuba	
Flores Colombianas	
Jardine de Los Andes	
Exportaciones Bochica/Floral Ltd.	0.36
Floramerica Group	0
Floramerica	
Jardines de Colombia	
Cultivos del Caribe	
Flores Las Palmas	
Flores de Serrezuela	0.16
Flores del Cauca	1.83
Flores del Rio	0
Flores Generales	17.03
Flores La Pampa*	33.89
Las Amalias/Pomponea	1.95

* No shipments during the period of review. Rate noted is the company's rate from the fair value investigation.

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, for future entries of subject merchandise by all firms in this review except for Agricola el Redil, as well as for any future shipments of this merchandise by the remaining producers and/or exporters not covered in this review, the cash deposit will continue to be at the rates applicable to each of these firms as published in the final results of review for the March 1, 1988 through February 29, 1989 period (55 FR 20491). For Agricola El Redil, the only firm in this review that was not covered in the subsequent review, the cash deposit of estimated antidumping duties shall be based on their margin established in this review, or 3.76 percent. These deposit requirements will be effective for all shipments of Colombian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5573 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DS-M

Auto Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Closed Meeting of Auto Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATES AND LOCATION: The meeting will be held on Wednesday, April 10, 1991 from 7:30 a.m. to 12 noon at the Bismarck Hotel, 171 West Randolph Street, Chicago, Illinois 60601.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 14,

1989, pursuant to section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the act relating to open meeting and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, room 4104, Main Commerce.

Dated: March 1, 1991.

Henry Misisco,

Director,

[FR Doc. 91-5452 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION ON AGRICULTURAL WORKERS

Meeting

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of meeting.

SUMMARY: This notice announces a meeting of the Commission on Agricultural Workers. The Commission was established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304.

On March 12, Commissioners will hear a report and discussion of foreign worker programs in other countries. On Wednesday, March 13, Commissioners will hear discussion on whether and how foreign workers should be admitted to the United States.

DATES: 1:30 p.m., March 12, 1991 and 2 p.m., March 13, 1991.

ADDRESSES: Conference Room—Embassy B, Dupont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673-5348.

Dated: March 5, 1991.

Richard R. Peterson,

Acting Executive Director.

[FR Doc. 91-5558 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854):

The current limits for Categories 350 and 669-P are being increased by application of swing. Category 669-P is being increased further for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 12254, published on April 2, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 4, 1991.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1990 and extends through March 31, 1991.

Effective on March 4, 1991, you are directed to amend the March 27, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted 12-month limit [1]
Sublevels in aggregate:	
350	95,830 dozen
669-P [2]	1,420,401 kilograms

[1] The limits have not been adjusted to account for any imports exported after March 31, 1990.
[2] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-5572 Filed 3-7-91; 8:45 am]

BILLING CODE 3572-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 8, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 11 and 18, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 1180 and 1987/8) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Clamp Strap Fastener Assembly
5820-00-937-8844
Pad, Writing Paper
7530-01-124-7632
(Requirements of GSA Region 10)
Duplicate Diazo Microfiche Program
7690-00-NSH-0019
(Requirements for the Department of Health and Human Services, National Institute of Safety and Health, Cincinnati, Ohio only)
Clip, End, Strap
8315-00-753-3933

Services

Grounds Maintenance, McClellan Air Force Base, California
Parts Sorting, Red River Army Depot, Texarkana, Texas
This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-5569 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 8, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Kit, Repair
2590-01-114-7396
Skirt, Woman's
8410-01-244-0508
8410-01-224-0509
8410-01-224-0510
8410-01-224-0511
8410-01-224-0512
8410-01-224-0513
8410-01-224-0514
8410-01-224-0515
8410-01-224-0516
8410-01-224-0517
8410-01-224-0518
8410-01-224-0519
8410-01-224-0520
8410-01-224-0521
8410-01-224-0522
8410-01-224-0523
8410-01-224-0524
8410-01-224-0525
8410-01-224-0526
8410-01-224-0527
8410-01-224-0528
8410-01-224-0529
8410-01-224-0530
8410-01-224-0531
8410-01-224-0532
8410-01-224-0533
8410-01-224-0534
8410-01-224-0535
8410-01-224-0536
8410-01-224-0537
8410-01-224-0538

Services

Janitorial/Custodial, Federal Archives and Record Center, Buildings 12 and 22, Military Ocean Terminal, Bayonne, New Jersey
Janitorial/Custodial, Federal Building and USPO, 256 Warner Milne Road, Oregon City, Oregon
Janitorial/Custodial, U.S. Army Reserve Center, Orangeburg, South Carolina
Janitorial/Custodial, Federal Building, 695 South Main Street, Colville, Washington
Operation of Postal Service Center, Keesler Air Force Base, Mississippi
Operation of Base Information Transfer Center, Keesler Air Force Base, Mississippi

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-5570 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors; Meeting

AGENCY: Defense Systems Management College.

ACTION: Board of Visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 184, Fort Belvoir, Virginia, on Tuesday, March 12, 1991, from 0830 until 1600. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere on (703) 664-4235.

March 4, 1991.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5530 Filed 3-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM87-17-000]

Natural Gas Data Collection System; Revised Print Software and Revisions to the Record Formats for the FERC Form No. 2-A

Issued: March 1, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Revised Print Software and revisions to the record formats for the FERC Form No. 2-A.

SUMMARY: Both PC and mainframe versions of the revised software are not available for printing the structured data file of the FERC Form No. 2-A (Annual Report of Nonmajor Natural Gas Companies). This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 2-A in accordance with Order Nos. 493 (53 Fed. Reg. 15,025 (Apr. 27, 1988)), 493-A (53 Fed. Reg. 30,027 (Aug. 10, 1988)), and 493-B (53 Fed. Reg. 49,652 (Dec. 9, 1988)). A User/Operations Manual and a complete set of revised record formats is available on diskette and/or in hardcopy. Separate order forms are attached for requesting either the mainframe version (source code) or the PC version (executable code) of the software.

DATES: The software, User/Operations Manual, and the revised record formats are available on March 1, 1991.

ADDRESSES: Requests for the software and the documentation should be directed to:

Reference and Information Center, Federal Energy Regulatory Commission, 941 North Capitol Street NE., room 3308, Washington, DC 20426; (202) 208-1371.

FOR FURTHER INFORMATION CONTACT: Linda Ferguson at (202) 208-0706.

SUPPLEMENTARY INFORMATION: PC software (executable code) is not available to provide for printing the structured data file of the FERC Form No. 2-A when filed in accordance with the Form No. 2-A instructions and record formats previously revised on January 8, 1990 and updated today. Revisions to the record formats are listed in Appendix A. A complete directory of files found on each diskette is listed in Appendix B. The User's Manual is available in hardcopy and on diskette in WordPerfect 5.0 or ASCII format. Also a complete set of updated record formats is available in hardcopy and on diskette in WordPerfect 4.2 or ASCII format.

The print software was written in the COBOL programming language. The software can be run on an IBM-compatible PC with DOS 3.0 (or later version) and at least 640K of RAM. The software is available on a 3.5" (1.44MB) or a 5.25" (1.2MB) double-sided, high density diskette.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff encourages users to submit written comments as to the exact nature of the problem to Linda Ferguson, room 6000, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The mainframe source code for printing a hardcopy of the FERC Form No. 2-A is available on 9-track magnetic tape (1600 BPI or 6250 BPI) or 18-track cartridge (6250 BPI). There is no charge for the source code, however, all requests must be accompanied by a 9-track magnetic tape or 18-track cartridge with an external label affixed containing company name, mailing address, telephone number and a contact person FERC will initialize the requestor's tape or cartridge, and copy the source code for hard copy printing to the tape/cartridge. Please specify either IBM or ANSI Standard labels. Persons requesting the mainframe source code should fill out the attached Order Form for the FERC Form No. 2-A Hardcopy Print Source Code.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set a full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208-1397. For access at 9600 baud, dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208-2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The PC software is available from the Commission's copy contractor, LaDorn Systems Corporation ((202) 898-1151), located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Persons requesting the software should fill out the attached Order Form. The software is available without charge. However, the Commission's copy contractor has a copy fee of $6.00 per 3.5" diskette and $5.00 per 5.25" diskette. The User's Manual and the record formats are also available in hardcopy at 20 cents per page.

Lois D. Cashell,
Secretary.

Appendix A

Revisions to the FERC Form No. 2-A Record Formats and General Information

Schedule F8

1. Record 36: Statement of Income for the Year—Part 1 Substitute Schedule/Record.
   a. Item "Utility Plant Reported" at character position 12: the Comments have been changed so that Other Utility, Code 3, is now identified in item 401b.
   b. New Item 401a, "Net Utility Operating Income" character positions 217-228, the data type is numeric, and the Comments read "item 385 minus item 401".
   c. Item 401b, "Other Item Specified" was previously Item 401a, the new character positions are 229-251.
   d. Item "Footnote ID": new character positions 252-255.
2. Record 37: Statement of Income for the Year—Part 2 Substitute Schedule/Record.
   a. Item "Utility Plant Reported", character position 12, is deleted. Note! This is replaced by the Item "Filler".
   b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".
   c. Item 404, "Net Utility Operating Income", character positions 13-24: the Comments have been changed to read "item 385 minus item 401 (where Utility Plant Reported code = "4")
3. Record 38: Statement of Income for the Year—Part 3 Substitute Schedule/Record.
   a. Item "Utility Plant Reported", character position 12, is deleted. Note! This is replaced by the Item "Filler".
   b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".
4. Record 39: Statement of Income for the Year—Part 4 Substitute Schedule/Record.
   a. Item "Utility Plant Reported", character positions 12, is deleted. Note! This is replaced by the Item "Filler".
   b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".
5. Record 78: Sales for Resale-Natural Gas (Account 483)—Part 2 Substitute Schedule/Record.
   a. Item 942, "Other Item Specified": the character positions are changed to 55-99.
   b. Item "Footnote ID": the character positions are changed to 100-103.
   c. Item "Filler": the character positions are changed to 104-255.

General Information

1. The following has been added to the cover page:

This report is mandatory under the Natural Gas Act, Sections 10(a) and 16, and 18 CFR 260.2. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

2. The paragraph following III (b)(ii) has been modified to read as follows:

When submitting after the filing date for this form, send the letter or report to: Chief Accountant, Federal Energy Regulatory Commission, 825 N. Capitol St. NE, room 946, Washington, DC 20426.

Appendix B

Directory of Files for Each Diskette

Package A—Diskette #1:			
FM2A0	EXE	78752	Form 2-A Print Software.
FM2A1	EXE	126560	do
FM2A2	EXE	134208	do
FM2F4B	EXE	137072	do
FM2F5B	EXE	88400	do
FM2F5D	EXE	54288	do
FM2F6A	EXE	61936	do
FM2F6C	EXE	83680	do
FM2F6E	EXE	129616	do
FM2F6G	EXE	56688	do
FM2F7D	EXE	86192	do
Diskette #2:			
P2ASUBDR	EXE	41744	Form 2-A Print Software.
FORM2	BAT	1680	do
FORMTWO	EXE	208336	do
FUG	ASC		User/Operations Manual in ASCII.
FUG 5.1	2		User/Operations Manual in WordPerfect.
Package B—Diskette #1:			
FUG	2		User/Operations Manual in WordPerfect 5.1.
FUG	ASC		User/Operations Manual in ASCII.
Form2A	W51		Record Formats in WordPerfect 4.2.
Form2A	ASC		Record Formats in ASCII.
Notice	W51		Notice in WordPerfect 5.1.
Notice	ASC		Notice in ASCII.

Order Form

RM 87-17-000: Released—March 1, 1991
FERC FORM 2-A: PC Print Software, User's Manual Revised Record Formats

Send to: LaDorn Systems Corporation, 941 North Capitol Street, NE.—Room 3308, Washington, DC 20426, (202) 898-1151
Ordered By: _____
Company: _____
Address: _____

_____
Phone Number: (_____)_____
Diskette:
_____3.5" (1.44MB): $6.00/diskette
(specify)
_____5.25" (1.2MB): $5.00/diskette

Package	Description	Copy Fee
_____Package A	Form No. 2-A Executable PC Print Code plus the User/Operations Manual in ASCII. 2 diskettes	
_____Package B	Form No. 2-A User/Operations Manual (WordPerfect 5.1 & ASCII). Record Formats (WordPerfect 4.2 & ASCII) and the Notice (Wordperfect 5.1 & ASCII) 1 diskette.	
_____Package C	Hardcopy of Record Formats 193 pages @ 20 cents per page	
_____Package D	Hardcopy of User/Operations Manual 32 pages @ 20 cents per page	
	Postage & handling (Contact LaDorn)	
	Total copy fee	

Make check payable to LaDorn Systems Corporation.

Order Form for the FERC Form No. 2-A Hardcopy Print Source Code

USE THIS FORM TO ORDER COPIES OF THE MAINFRAME VERSION OF THE HARD COPY PRINT SOFTWARE. (issued March 1, 1991)

Mail to: Linda Ferguson, Room 6000, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 208-0706
Company Official _____
Company Name _____
_____
_____
Phone Number _____

All requests must be accompanied by a 9-track magnetic tape or 18-track cartridge with an external label affixed containing company name, address, telephone number and a contact person. Check off the appropriate items as follows:
9-track tape:_____1600 BPI or _____ 6250 BPI 18-track tape: _____

_____ANSI or _____ ISM Standard Labels

[FR Doc. 91-5467 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

[Docket No. RP91-89-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

March 1, 1991.

Take notice that on February 27, 1991, CNG Transmission Corporation (CNG) filed the following original, revised, and substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 40,
Original Sheet No. 40A
Substitute First Revised Sheet No. 41
First Revised Sheet No. 41
Third Revised Sheet No. 44
Substitute First Revised Sheet No. 45
Substitute Second Revised Sheet No. 46
Second Revised Sheet No. 47
Third Revised Sheet No. 48
Third Revised Sheet No. 49
First Revised Sheet No. 50
Second Revised Sheet No. 51
Substitute Second Revised Sheet No. 52
Original Sheet No. 52A
Second Revised Sheet No. 53
First Revised Sheet No. 97
First Revised Sheet No. 98
First Revised Sheet No. 202
Substitute First Revised Sheet No. 203
First Revised Sheet No. 204
Second Revised Sheet No. 205
Substitute First Revised Sheet No. 206
Substitute First Revised Sheet No. 207
Substitute First Revised Sheet No. 208
Substitute Second Revised Sheet No. 209
Substitute Third Revised Sheet No. 210
Substitute Second Revised Sheet No. 211
Substitute Second Revised Sheet No. 212
Substitute Original Revised Sheet No. 212A
Original Sheet No. 212B
Original Sheet No. 212C
Original Sheet No. 212D
Original Sheet No. 212E
Original Sheet No. 212F
Original Sheet No. 212G
First Revised Sheet No. 213

CNG states that the proposed effective date is March 29, 1991.

CNG states that the primary purpose of the filing is to flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5469 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-30-000 and RP90-89-000]

Colorado Interstate Gas Co.; Informal Settlement Conference

March 1, 1991.

Take notice that an informal settlement conference has been scheduled in the above-captioned proceeding to begin on March 21, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams (202) 208-0743 or John P. Reddy at (202) 208-1176.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5470 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-88-000]

Northern Border Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

March 1, 1991.

Take notice that on February 27, 1991, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Fifth Revised Sheet Number 150
Fifth Revised Sheet Number 158
Ninth Revised Sheet Number 159
Second Revised Sheet Number 160
Original Sheet Number 160A
Second Revised Sheet Number 200
First Revised Sheet Number 201
Second Revised Sheet Number 202
Second Revised Sheet Number 203
Second Revised Sheet Number 204
Second Revised Sheet Number 205
Second Revised Sheet Number 206
First Revised Sheet Number 207
Second Revised Sheet Number 208
Second Revised Sheet Number 209
Third Revised Sheet Number 210
First Revised Sheet Number 244
Original Sheet Number 244A

Northern Border states that the primary purpose of this filing is to establish backhaul transportation service for both firm and interruptible shippers on Northern Border's system. In addition, it states that a minimum charge has been established for interruptible customers and the General Terms and Conditions Section has been alphabetized incorporating terms that had previously been added, for administrative ease, to the end of that Section. Associated housekeeping changes were also made.

Northern Border states that because it is proposing to offer a new service, a 14-day open window period for anyone interested in subscribing to it will be established seven days after the Commission approves this filing.

Northern Border states that none of the changes made in this tariff filing produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border has requested that these revised tariff sheets be effective April 1, 1991. Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

FR Doc. 91-5471 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Experimental Program to Stimulate Competitive Research (EPSCoR), 91-6

AGENCY: Department of Energy, Energy Research Office.

ACTION: Notice.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE) is today amending the notice inviting grant applications, 91-6, published in the **Federal Register** at 56 FR 2516, January 23, 1991. Provisions of that earlier **Federal Register** notice which are not amended by this notice remain in effect. The amendments are being offered to clarify areas of the application and review process as well as provide information on the Experimental Program to Stimulate Competitive Research (EPSCoR) objectives and future funding opportunities.

DATES: Applications for grants under this amendment should be received the same as originally determined under Notice 91-6 which is no later than 4:30 p.m. eastern local time March 20, 1991.

ADDRESSES: Due to heightened security concerns, hand delivered applications will not be accepted. At this time, the only acceptable means of delivery will be the U.S. Mail (U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585) or Federal Express (U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874).

FOR FURTHER TECHNICAL INFORMATION: Ms. Donna J. Prokop, Education Programs Manager, Office of University and Science Education Programs, Office of Energy Research, ER-82, Department of Energy, Washington, DC 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: Because it is DOE's intent to increase the number of graduate students in energy-related research and because the terminal degree program in some important energy-related research areas is at the master's degree level, DOE has adjusted the eligibility of its DOE/EPSCoR traineeship program to allow institutions within the eligible EPSCoR states with active energy-related masters degree programs to qualify. Therefore applications for the DOE/EPSCoR traineeship awards should discuss the following matters:

(1) Masters and/or doctoral-level training and research experience through active participation in established, ongoing programs of energy research program(s) on which the traineeship request is based;

(2) The number of degrees awarded to graduate students associated with the identified energy research area(s);

(3) A summary of accomplishments;

(4) The record of masters and/or doctoral degree productivity of participating departments over the past five years, by year;

(5) The qualifications of key faculty committed to the traineeship program as measured by such elements as publications, number and type of masters and/or doctoral research projects, and number of masters and/or doctoral dissertations supervised over the last five years; and

(6) Support for energy research projects from on-campus sources.

The DOE/EPSCoR planning grant applications will be available to the traineeship review panels to help the panelists ascertain the relationship of the traineeship applications to the state planning committee's preliminary plans to develop the state's research infrastructure and human resources. The project period for the planning grant award will be for a duration of approximately one year, beginning on or about September, 1991. There are no funds requested in FY 1992 for the DOE/EPSCoR.

In addition, the DOE/EPSCoR traineeship funds may not be used for equipment and DOE expects that the traineeships will be cost-shared from other non-Federal sources.

Issued in Washington, DC on February 28, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-5578 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

Special Research Grant Program Notice 91-9; Atmospheric Radiation Measurement Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) program. The first ARM research site is projected to be operational in calendar year 1992 and may be located at a midcontinental location in the United States. The final determination of the site and of the initial complement of instruments will be made in 1991 by the DOE. This notice requests applications for grants to support: (1) The modeling and analysis of data relating to the parameterization of clouds in General Circulation Models (GCMs) and related models. The parameterizations must include the full life cycle of the cloud type being modeled. This includes process level models of clouds which can lead to improved GCMs (2) The development of advanced instrumentation for high-accuracy/precision radiometric observations.

DATES: Formal applications submitted under this notice should be received by May 15, 1991.

ADDRESSES: Formal applications should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, Mail Stop G-236, Washington, DC 20585, ATTN: Program Notice 91-9. The Federal Express delivery address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: Contact Mr. Peter W. Lunn, Atmospheric and Climate Research Division, Office of Health and Environmental Research, ER-76, Washington, DC 20585, (301) 353-4819 or FTS 233-4819.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Atmospheric and Climate Research Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM program is to improve the modeling of radiation and clouds in computer programs used to predict future climate, particularly the GCMs. This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process level models into climate models. This testbed is referred to as the Clouds and Radiation Testbed (CART).

This notice requests applications for grants to support: (1) The modeling and analysis of data relating to the

BEST COPY AVAILABLE

parameterization of the cloud formation process in General Circulation Models (GCMs), including process level models that can lead to improved models of the Earth's climate, and (2) the development of advanced instrumentation for high-precision radiometric observations, related to the goals of the ARM program.

Successful applicants for grants in support of (1) above will participate in the modeling and scientific portion of the ARM program. These applicants must demonstrate the role of their research in the improvement of General Circulation and related models and delineate the path that their results will take to make these improvements. It is anticipated that the successful applicant will be involved in one or more of three activities: (a) The development of cloud life cycle models and parameterization or the testing of these models in GCMs or process level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; and (c) the analysis of existing data, including field data and satellite data, to support model development or testing. These efforts should have as a focus the conduct of research using the CART facilities being developed for ARM. The successful applicant will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

Successful applicants for participation in the ARM advanced instrument development program, (2) above, will develop instruments to meet the long-term needs of the ARM Program for the development and deployment of improved radiometric sensors, both broad-band and spectrally resolved. Of particular interest are instruments capable of high-precision radiometric calibration. The application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength and the relevance of the resulting measurements to testing models of atmospheric radiative processes.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Atmospheric and Climate Research Division (ACRD), successful applicants will participate as Science Team members along with selected scientists from other ACRD programs that relate to the ARM program. Costs for participation in Science Team meetings and subcommittee meetings should be included in the respondent's application. Estimates should be based on two (2) trips of one week to Washington, DC, and two (2) trips of three (3) days to Chicago, IL.

It is anticipated that, subject to the availability of appropriated funds, between $1M and $2M will be available for awards for the combined activity under both categories in FY 1992. Multiple year funding of awards is expected, subject to the availability of appropriated funds. The allocation of funds between (1) and (2) above will depend on the number and quality of the applications received. Typical ACRD awards are $200K per year but range from $50K to $750K.

The technical portion of the application should not exceed twenty-five (25) double-spaced pages. Lengthy application appendices are not encouraged.

Information about development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in 10 CFR part 605. Application kits and copies of 10 CFR part 605 are available from the same offices listed under the "ADDRESSES" section of this Notice. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 353-3281 or FTS 233-3281. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC On February 27, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-5579 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Proposed Rate, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate for energy from pumping for Georgia-Alabama-South Carolina System, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes a new Wholesale Power Rate Schedule GAMF-3-A. The new rate schedule will be applicable to Southeastern energy derived from pumping at the Carters Project and sold to preference customers in Georgia, Alabama, Mississippi, and Florida.

Opportunities will be available for interested persons to review the proposed rates, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before April 24, 1991. A public information and comment forum will be held in Atlanta, Georgia, on April 9, 1991. Persons desiring to speak at the forum should notify Southeastern at least 7 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits. If Southeastern has not been notified by close of business on March 29, 1991, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum will begin at 10 a.m. on April 9, 1991, at the Holiday Inn Airport North, 1360 Virginia Avenue, Atlanta, Georgia, 30320.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

Discussion

Proposed rate schedule GAMF-3-A is designed to recover the cost of energy derived from pumping at the Carters Project. Presently pumping operations at the Carters Project are managed by Southern Company Services. The Southern Companies provide the pumping energy and receive the energy generated from the pumped water. For this service, the Southern Companies have paid an annual fee. This arrangement expires May 31, 1991. Energy from pumping is necessary to support the capacity of the Georgia-Alabama-South Carolina System. Southeastern proposes to purchase energy on the open market to support pumping operations of the Carters Project. A conversion factor of 70 percent is applied to the net quantity of pumping energy provided to determine the net quantity of energy that can be generated from pumped water. Southeastern proposes to make this energy available to the preference customers at cost, which is the cost of the energy purchased for pumping divided by 70 percent. The proposed Wholesale Power Rate Schedule GAMF-3-A will recover the associated costs relative to the Carters Pumping Arrangement. This proposed rate would be effective for the period beginning June 1, 1991, and ending September 30, 1993.

Issued at Elberton, Georgia, February 25, 1991.

John A. McAllister, Jr.

Administrator.

[FR Doc. 91-5580 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3912-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 18, 1991 Through February 22, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 3, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-K61117-CA Rating EC2, Camp Litte Green Valley Renovation, Expansion and Operation Plan Approval, San Bernardino National Forest, San Bernardino County, CA.

Summary

EPA expressed environmental concerns with the project's potential impacts to water quality, wetlands and riparian meadows and requested that the final EIS consider alternatives combining components from different alternatives. EPA also expressed concerns that of renovation work at the camp has already begun, which is not consistent with the spirit nor intent of the National Environmental Policy Act.

ERP No. D-COE-K35082-CA Rating EO2, Sunrise Douglas Residential Development Project, General Plan Amendment and Rezoning, Approval, section 404 Permit, Sacramento County, CO.

Summary

EPA recommended that the Army Corps deny the section 404 permit for the project as proposed, as it does not comply with the 404(b)(1) Guidelines. The project appears inconsistent with timely attainment of National Ambient Air Quality Standards. Induced growth will exacerbate cumulative impacts to wetlands, air quality, natural resources and public services such as drinking water supplies and sewage treatment capacity.

ERP No.D-IBR-K31015-CA Rating EC2, Sante Rosa Subregional Long-term Wastewater Treatment and Disposal Systems, Construction, Funding and section 404 Permit, Sonoma County, CA.

Summary

EPA requested that the final EIS contain additional discussion on the disposal of wastewater sludge, the potential impacts of effluent discharges on wetlands and estuarine ecosystems, the project's compliance with section 404 of the Clean Water Act and cumulative or indirect impacts.

ERP No. D-NPS-K61114-CA Rating EC2, Santa Monica Mountains National Recreation Area, Cheeseboro Canyon and Palo Comado Canyon Land Exchange, Ventura and Los Angeles Counties, CA.

Summary

EPA expressed environmental concerns with potential indirect and cumulative impacts on air quality, water quality, wildlife and the conversion of rural land to residential developments. EPA stated that the proposed action, which would enable the development of a planned community, may have significant indirect impacts on regional air and water quality and other natural resources.

Final EISs

ERP No. F-NPS-K61098-CA, Eugene O'Neill National Historic Site Development and General Management Plan, Implementation, Contra Costa County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-REA-E06017-FL, Hardee Power Station and Related Facilities, 230kV Transmission Line and Natural Gas Pipeline, Construction and Operation, Loan Guarantee, NPDES Permit, Hardee, Polk, DeSoto, Lee and Charlotte Counties, FL.

Summary

EPA continues to have concerns regarding the potential impacts of the transmission line and pipeline corridor access roads to wetlands.

Dated: March 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-5576 Filed 3-7-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3912-4]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY:

Office of federal activities, general information (202) 382-5073 or (202) 382-5075. Availability of environmental impact statements filed February 25, 1991 through March 1, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910060, DRAFT EIS, AFS, MT, East Fortine Timber Sales and Road Construction, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, Due: April 22, 1991, Contact: Thomas Pichlerz (406) 882-4451.

EIS No. 910061, FINAL EIS, FHW, MN, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I-35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN, Due: April 8, 1991, Contact: Stan Graczyk (612) 290-3233.

EIS No. 910062, FINAL EIS, BLM, MT, Sleeping Giant and Sheep Creek Wilderness Study Areas (WSAs) Recommendations, Wilderness or Nonwilderness Designation, Lewis and Clark County, MT, Due: April 8, 1991, Contact: Brad Rixford (406) 494-5059.

EIS No. 910063, FINAL EIS, FHW, TX, I-30/I-35W Interchange Improvements, Forest Park Boulevard to Riverside Drive and Hattie Street to Luella Street, Funding, Tarrant County, TX, Due: April 8, 1991, Contact: W. L. Hall, Jr. (512) 463-8585.

EIS No. 910064, THIRD FINAL SUPPLEM, FHW, MA, Central Artery/I-93 Third Harbor Tunnel/I-90 Extension, Design Modifications, Updated and Additional Information, Funding, U.S. COE section 10 and 404 Permits, U.S CGD Permits and EPA NPDES Permit, Suffolk County, MA, Due: April 8, 1991, Contact: Alexander Almeida (617) 494-2319.

EIS No. 910065, DRAFT EIS, AFS, CA, Primrose Buy Out Timber Sale, Implementation, Tahoe National Forest, Downie Ranger District, Sierra County,

CA, Due: April 22, 1991, Contact: Alan Doerr (916) 288–3231.

EIS No. 910066, DRAFT EIS, UAF, IL, Chanute Air Force Base (AFS) Disposal and Reuse, Implementation, Champaign County, IL, Due: April 22, 1991, Contact: Lt. Col. Tom Bartol (714) 382–4891.

Amended Notices

EIS No. 910009, DRAFT EIS, AFS, MT, Upper Ruby Cattle and Horse Allotment Management Plan, Centennial Divide Road No. 100 Reconstruction and Management Area Designation for portions of the Ruby River, Implementation, Beaverhead National Forest, Sheridan Ranger District, Madison and Beaverhead Counties, MT, Due: April 15, 1991, Contact: Ronald Stellingwerf (406) 683–3900. Published FR 1–18–91—Review period extended.

EIS No. 910041, FINAL EIS, USA, MS, Camp Shelby Annual Training Facilities, Construction, Implementation, Forrest, Perry, and Greene Counties, MS, Due: April 1, 1991, Contact: Col. Everett Cameron (601) 973–6229.

Published FR 2–15–91—Review period reestablished.

Dated: March 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–5575 Filed 3–7–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–400055; FRL–3880–2]

Toxic Release Inventory Data Capabilities Program; Financial Assistance Program Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: The EPA's Office of Toxic Substances is announcing the availability of $800,000 in funds for grants and cooperative agreements under the Toxic Release Inventory (TRI) Data Capabilities Program (this name has been changed from the "TRI Data Quality Assurance Program"). Funds under this program may be used to establish programs of TRI data management, analysis, use, and quality assurance which will assist the State in preventing or eliminating toxic chemical risks. Eligible applicants are the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and federally-recognized Indian tribes. ("States" is used in this announcement to refer to all eligible applicants.) Awards to all recipients except Indian tribes will be made under authority of section 28 of the Toxic Substances Control Act (TSCA). Awards to federally-recognized Indian tribes will be made under section 10 of TSCA. All recipients must provide a match of 25 percent of the total project cost.

DATES: Applicants are requested to send a letter of intent to participate to EPA by April 8, 1991. Completed applications must be received at the EPA by June 6, 1991. Applications received after June 6, 1991 will not be considered for an award.

ADDRESSES: Letters of intent to participate in this program should be submitted to: Grants Program Coordinator, Economics and Technology Division (TS–779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Completed application packages should be submitted to: Grants Operations Branch, Grants Administration Division (PM–216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: TRI Data Capabilities Program.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Economics and Technology Division (TS–779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: 202–382–3675, TDD: 202–554–0551.

SUPPLEMENTARY INFORMATION: Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986) requires manufacturing facilities meeting certain size and chemical use criteria to report annually to EPA and the States their environmental releases and transfers of more than 300 toxic chemicals and chemical categories. Chemical release and transfer information from more than 24,000 facilities for 1987 and 1988 is currently available in a data base known as the Toxic Release Inventory (TRI), which is available on-line through the National Library of Medicine's TOXNET system, as well as through other electronic and non-electronic means. The 1989 TRI data are expected to be publicly available on-line in late spring of 1990. Facility submissions of 1990 reports are due to EPA and the States on July 1, 1991.

The TRI data represent a significant source of information concerning toxic chemical releases into the environment and transfers from facility sites to other locations. Many States have already begun to use these data in the development and implementation of State toxic substance control programs. For example, States are using the TRI data to identify geographic areas, facility types, particular facilities, or particular chemicals for further investigation or control action, and to identify opportunities for waste minimization and pollution prevention within the State. This financial assistance program is designed to help States develop and enhance their ability to manage, disseminate, and use the TRI data.

In fiscal year 1990, EPA awarded $1 million in grants to 11 States for TRI data quality assurance projects. The purpose of those grants was to build at the State level the capacity to evaluate and assure the quality of facility submissions and the data base created from them, in order to improve the utility of the TRI data for State programs to identify, communicate, prevent, or control toxic chemical risks.

This year, EPA has available $800,000 to help States develop and implement programs of TRI data management, data use, data dissemination, and data quality assurance. EPA recognizes that States differ greatly in their current TRI data management and use capabilities. In order to assure that States at all levels of TRI data capability have fair access to this grant program, requests for assistance may be made under either of two categories: (1) TRI Program Start-Up Funds, or (2) TRI Program Advancement Funds. At this time, EPA estimates that approximately $250,000 will be allocated to the TRI Program Start-Up category, with $550,000 for TRI Program Advancement grants. These amounts may vary depending upon the number and quality of applications received in each category.

1. *TRI program start-up funds.* Start-up funds will be available only to those States that currently have only rudimentary or no TRI data capabilities but that are able to demonstrate a need for and an interest in the management and use of TRI data for identification and control of toxic risks within the State. EPA expects to award 6 to 8 grants or cooperative agreements of $20,000 to $50,000 in this category. The purpose of these funds is to help States develop and implement a basic program of TRI data management, data dissemination, and public access. For example, a State may receive funding to establish and maintain a State TRI data base, produce statewide or local reports of emissions, and respond to inquiries from the public, industry, State agencies, and others. Further information about project eligibility in this category will be provided in an application guidance document which will be included in the application package. Grant funds may not be used for purchase of computer hardware. However, for this category of grants only, up to $5,000 of the State's matching contribution may be used for purchase of computer hardware provided that the equipment is necessary for the project, is not available to the project without such purchase, will be used solely for the implementation of the project, and will continue to be used solely for EPCRA section 313 activities following the conclusion of the funded project.

2. *TRI program advancement funds.* TRI program advancement funds will be available to those States that have already developed moderate or substantial TRI data capabilities, but that need financial assistance to develop further components of their programs. EPA expects to award 5 to 8 grants of $75,000 to $125,000 in this category. Among the activities eligible for funding under this category are the following: using TRI data for risk screening, such as pinpointing particular facilities or geographic areas of concern; using TRI data to identify opportunities for source reduction and pollution prevention; developing and implementing technical assistance programs to aid industries in completing their TRI reporting forms, improving release estimates, and complying with the new TRI-related pollution prevention reporting requirements; developing public outreach and data dissemination programs; integrating TRI data with other environmental and permit compliance data or incorporating TRI data into other data systems such as geographic information systems; and conducting data quality assurance activities such as verifying the accuracy of facility emissions estimates. Further information about project eligibility will be provided in the application guidance document which will be included in the application package. Program advancement funds may not be used as replacement funding for a pre-existing level of effort, but rather must be used to advance an existing program beyond its current capabilities, whether through expansion of existing activities or through development of new initiatives.

Under both categories, recipients must contribute a match of 25 percent of the total cost of the project, which may be reflected in allowable direct or indirect costs. EPA asks that each State submit only one application for assistance under this program. No more than one award will be made to any one State under this program this year. State agencies or organizations wishing to submit an application should coordinate the development of their project proposal through their State EPCRA section 313 contact. States are strongly encouraged to work closely with the following EPA Regional EPCRA section 313 coordinators in the development of their proposals:

Region I: (CT, MA, ME, NH, RI, VT)
Contact: Dwight Peavey (617) 565–3230

Region II: (NY, NJ, PR, VI)
Contact: Nora Lopez (201) 906–6890

Region III: (DE, MD, PA, VA, WV, DC)
Contact: Kurt Elsner (215) 597–1260

Region IV: (AL, FL, GA, KY, MS, NC, SC, TN)
Contact: Carlton Hailey (404) 347–1033

Region V: (IL, IN, MI, MN, OH, WI)
Contact: Dennis Wesolowski (312) 353–5907

Region VI: (AR, LA, NM, OK, TX)
Contact: Carol Peters (214) 655–7244

Region VII: (IA, KS, MO, NE)
Contact: Ed Vest (913) 551–7005

Region VIII: (CO, MT, ND, SD, UT, WY)
Contact: Dianne Groh (303) 293–1735

Region IX: (AZ, CA, HI, NV, AS, GU, MP)
Contact: Greg Czajkowski (415) 744–1116

Region X: (AK, ID, OR, WA)
Contact: Philip Wong (206) 442–4016

In evaluating applications for assistance, EPA will consider the following factors: the overall quality of the project proposal, including its technical soundness, potential benefit and feasibility of implementation; the transferability of the methodology or the product to other States; the benefit to be obtained in relation to the cost of the project; the capabilities of the State in relation to the activities proposed; the need of the State for the financial assistance and the likelihood that the assistance will lead to development of a viable TRI program or significant advancement of an existing TRI program; the likelihood of the project's continuation beyond the period of federal funding; and the priority need of the State for the assistance in terms of the extent of toxic chemical manufacture, process, use, and disposal, human exposure to toxic chemicals, and potential adverse human and environmental effects due to toxic chemicals within the State.

To apply for funds, States must:

1. Submit a letter of intent to participate to the Grants Program Coordinator, Economics and Technology Division (TS–779), USEPA, 401 M St., SW., Washington, DC 20460 by April 8, 1991. An application package containing an EPA application form and additional guidance for completing the application will be sent to all States submitting a letter of intent to participate.

2. Submit a complete application package to the Grants Operations Branch, Grants Administration Division (PM–216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Applications received after June 6, 1991 will not be considered for an award.

While funding under this grant program is available only for projects which have as their primary focus the development of State TRI (EPCRA section 313) data capabilities, States should be aware of a parallel EPA grant program which will award a total of approximately $1.2 million for activities under the other sections of EPCRA. Under that program, sponsored by the Chemical Emergency Preparedness and Prevention Office within the Office of Solid Waste and Emergency Response (OSWER), States, territories, and tribes may apply for grants to enhance their EPCRA programs, particularly through assistance to Local Emergency Planning Committees. Further information about the OSWER program will publish later this month in the **Federal Register**.

The Catalog of Federal Domestic Assistance number assigned to this program is 66.705. This program is eligible for intergovernmental review under Executive Order 12372 (E.O. 12372) and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States' Single Point of Contact (SPOC) must notify the following office in writing within 30 days of this publication whether their States' official E.O. 12372 process will review applications under this program: Grants Policies and Procedures Branch, Grants Administration Division (PM–216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch listed under the ADDRESSES unit no later than 60 days

after receipt of the application or other material for review.

Dated: March 4, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-5554 Filed 3-7-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Niehardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form Number: FCC Form 405.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annually and Other: Every decade.

Estimated Annual Burden: 3,000 responses; 2.25 hours average burden per response; 6,750 hours total annual burden.

Needs and Uses: FCC Form 405 is used by all common carriers and Multipoint Distribution Service non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act of 1934 limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. Applicants granted developmental and special temporary authority are required to apply for renewal in shorter intervals—usually one year after date of grant and annually thereafter. Licensing Branches evaluate the information submitted; review the particulars and conditions of the current authorization; and take action to renew the license for a new term. If the information were not submitted, the Commission would not be able to carry out its responsibilities mandated by the Communications Act of 1934, as amended.

OMB Number: 3060-0048.

Title: Application for Consent to Transfer of Control.

Form Number: FCC Form 704.

Action: Revision.

Respondents: Business or other for-profit (including small businesses)

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 800 responses; 8 hours average burden per response; 6,400 hours total annual burden.

Needs and Uses: FCC Form 704 is required of common carrier or noncommon carrier radio station licensees to request authority to transfer control of construction permit or license as a result of sale of entity's controlling interest or merger with another entity. The data is used by FCC staff to determine if authorization sought should be granted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5436 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 28, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0127.

Title: Assignment of Authorization.

Form Number: FCC Form 1046.

Action: Revision.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 6,000 responses; 0.83 hours average burden per response; 498 hours total annual burden.

Needs and Uses: The FCC Form 1046 is filed by applicants in the Private Land Mobile, Coast, Ground, and Microwave Radio Services for assignment of an existing authorization. Commission personnel will use the data to determine if assignment of authorization submitted with application will meet the rule requirements for issuance of a station authorization. The revision to this information collection is simply a referenced rule change on the form.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5437 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-265]

Advisory Committee on Advanced Television Service

March 5, 1991.

A meeting of the Advisory Committee on Advanced Television Service will be held on:

April 1, 1991, 2 p.m., Public Broadcasting Service, 1320 Braddock Place, Sixth Floor Conference Room, Alexandria, VA.

The agenda for the meeting will consist of:

1. Introductory Remarks
2. Treasurer's Report
3. Report of the Testing Laboratories
4. Subcommittee Reports
5. Consideration of the Fourth Interim Report
6. Other Business
7. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or William H. Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5439 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 91-36; FCC 91-54]

Declaratory Ruling Request

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: On March 15, 1990, the Commission released a public notice inviting comment on a *Request for Issuance of Declaratory Ruling* filed by the American Radio Relay League, Incorporated (ARRL). ARRL requests that the Commission preempt certain state statutes and local ordinances that may effectively prohibit the mere possession of mobile transceivers used by Amateur Radio Service licensees. The Commission now seeks additional comment on this matter.

DATES: Comments should be filed by June 7, 1991. Reply comments should be filed by July 8, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the Matter of Inquiry into the Need to Preempt State and Local Laws Concerning Amateur Operator Use of Transceivers Capable of Reception Beyond the Amateur Service Frequency Allocations.

Adopted: February 13, 1991.

Released: February 28, 1991.

By the Commission:

I. Introduction

1. On November 14, 1989, the American Radio Relay League, Incorporated (ARRL) filed a *Request for Issuance of Declaratory Ruling* [1] requesting that the Commission preempt certain state statutes and local ordinances affecting transceivers [2] used by Amateur Radio Service licensees. Some of these laws are so broad as to prohibit mere ownership of such transceivers if they are capable of reception of communications on certain frequencies other than amateur service frequencies. On March 15, 1990, we released a public notice [3] inviting comment on ARRL's request. Although comments were received supporting ARRL's position, no comments were received addressing certain technical issues that are before us in this matter. Furthermore, the majority of comments addressed a broader preemption than was discussed in our public notice. We initiate this present inquiry to assist us further in considering ARRL's request.

II. Background

A. State and Local laws

2. The ARRL request discusses eleven state statutes and one local ordinance. These laws are commonly known as "scanner laws," the violation of which is typically a criminal misdemeanor, with equipment confiscation a possibility.[4] The New Jersey statute is representative of these laws:

> Any person who installs or has in any automobile, a short-wave radio receiver operative on frequencies assigned by the Federal Communications Commission for fire, police, municipal or other governmental uses, is guilty of a misdemeanor, unless a permit therefor has first been obtained from the chief of the county police, or from the chief of the police of the municipality, wherein such person resides.
>
> This section does not apply to any fire, police or other governmental official of the State or of any county or municipality thereof.[5]

This statute regulates the mere acts of installing or possessing in a vehicle certain receivers, and it includes a permit requirement for those who are not governmental officials. Also, although the New Jersey statute prohibits the capability to receive "fire, police, municipal or other governmental" channels, our review of the subject laws cited by ARRL indicates that most of the statutes at issue are more narrowly drawn to prohibit the capability to receive police channels.

3. Most of these laws are directed primarily toward frequency reception capability by equipment located in vehicles, but at least one law reaches possession of this equipment merely outside the home.[6] Some laws, however, specifically exempt amateur operators who possess equipment in motor vehicles.[7] These state and local laws appear to be aimed at promoting the health, safety, and general welfare of the citizenry.[8]

B. The ARRL Declaratory Ruling Request

4. ARRL makes two arguments in support of preemption. First, it states that the receiver sections of the majority of commercially available amateur station transceivers can be tuned slightly past the edges of the amateur service bands to facilitate adequate reception up to the end of amateur service bands. ARRL seeks a preemption ruling that would permit amateur operators to install in vehicles transceivers that are capable of this "incidental" reception.[9] Although ARRL's formal request is couched in terms of this first, technical point, the request focuses almost entirely on a second, broader issue of whether state and local authorities should be permitted, via the scanner laws, to prohibit the capability of radio reception by amateur operators on public safety and special emergency frequencies that are well outside the amateur service bands.

---

[1] The American Radio Relay League, Inc., Request for Declaratory Ruling Concerning the Possession of Radio Receivers Capable of Reception of Police or Other Public Safety Communications (Nov. 13, 1989) (hereinafter "ARRL Request").

[2] Radio equipment capable of both transmission and reception. We are concerned herein, however, only with reception capability. Transmission by amateur operators on unauthorized frequencies is prohibited.

[3] Public Notice 5 FCC Rcd 1981 (1990), 55 FR 10806 (Mar. 23, 1990). Comments were due by May 16, 1990, and reply comments by May 31, 1990.

[4] Three of the laws, however, are "aiding and abetting"-type statutes, which would prohibit the use of any radio receiver in connection with criminal activity. See ARRL Request, *supra* note 1, at 10 n.7. Such statutes do not penalize a radio owner for mere possession of a radio receiver, but instead specify that, in the context of criminal activity, the unlawful act consists of both reception and divulgence (or use) of the communication. Such statutes are not addressed by this inquiry.

[5] N.J. Stat. Ann. § 2A:127—4 (West 1985) (cited in part only). See generally note 8 infra (discussing case upholding New Jersey statute, which dates from 1930).

[6] See Ky. Rev. Stat. Ann. § 432.570 (Michie/Bobbs-Merrill 1985). Under Kentucky's statute, certain users are exempted, such as radio and television stations, sellers of the "scanner" radios, disaster and emergency personnel, and those using the weather radio service of the National Oceanic and Atmospheric Administration. Some such users need to obtain local governmental permits, others do not.

[7] See, *e.g.*, Minn. Stat. Ann § 299C.37 (West Supp. 1990); N.Y. Veh. & Traf. Law section 397 (McKinney 1986).

[8] Such was noted by a New Jersey court in upholding, on other than preemptive grounds, the constitutionality of New Jersey's law.

> [I]t seems reasonable to assume that there may have been a determination by the Legislature that if persons in automobiles could without restriction listen to fire, police or other governmental communications their high degree of mobility coupled with their possible desire to proceed to locations referred to in such communications, for reasons of curiosity or otherwise, might well result in interference with essential governmental activities. Likewise, the Legislature may have determined that if persons engaged in illegal activities were able to receive such information in their automobiles, they would become aware of their detection and their escape would be facilitated.

State v. *Smith*, 130 N.J. Super. 442, 446-47, 327 A.2d 462, 464-65 (1974).

[9] ARRL Request, *supra* note 1, at 1, 3 n.2, 5 n.3. "Most commercial amateur radio VHF and UHF transceivers * * * are incidentally capable of reception (but not transmission) on frequencies additional to those allocated to the Amateur Radio Service. These frequencies are adjacent to amateur allocations. This is true even though the equipment is primarily designed for amateur bands, and results from the intentional effort to insure proper operation of the transceiver throughout the entire amateur band in question." *Id.* at 3 n.2.

5. In regard to the broader issue, ARRL argues that amateur operators have special needs for broadscale "out-of-band" reception, and that the marketplace has long recognized these needs by offering accommodating transceivers. According to ARRL,[10] many commercially manufactured amateur service HF transceivers and the majority of such VHF and UHF transceivers have non-amateur service frequency reception capability well beyond the "incidental"—they can receive across a broad spectrum of frequencies, including the police and other public safety and special emergency frequencies here at issue. This additional capability, argues ARRL, permits amateur operators to take part in a variety of safety activities, some in conjunction with the military and, for example, the National Weather Service, that are legitimately available to amateur operators. Such activities benefit the public, especially in times of crisis, and some require the mobile use of the amateur stations.[11] ARRL states that the "vast majority" of amateur operators take part in these mobile activities, and that the widespread enforcement of laws such as New Jersey's would make illegal the possession of "essentially all" modern amateur mobile equipment.[12] [As of January 31, 1991, the Commission's licensing database indicates that there are 502,133 amateur station licensees in the United States and its territories and possessions.] ARRL states that, as a result of scanner laws, "several dozen instances of radio seizure and criminal arrest [have been] suffered by licensed amateurs in recent months." [13]

C. Comments

6. In response to our public notice on this matter, we received 45 comments, including one from ARRL, and no reply comments. All support ARRL's broader request and almost all appear to be from amateur operators. Twenty-four comments are from individuals who are aware of one or more of the subject laws and express support for ARRL's position in very general terms. Of the twenty-one remaining comments, four are from individuals who have had first-hand experience with such laws, where law enforcement warnings or confiscation have resulted from transceiver possession. Five are from individuals in law enforcement, either currently or formerly. Six are from the following associations and organizations: Association of North American Radio Clubs, Associated Public-Safety Communications Officers, Spectrum Resources, Uniden America Corporation, Personal Radio Steering Group (which requests that we extend this proceeding to cover General Mobile Radio Service licensees), and Utilities Telecommunications Council (which requests that we extend this proceeding to cover other mobile licensees that wish to receive fire and other public safety service transmissions). Although this inquiry is primarily focused on the Amateur Radio Service, we additionally take this opportunity to request comment on whether the scanner laws are affecting other licensed radio services.

7. ARRL describes an incident in which a licensed amateur operator who resided in New York was driving his vehicle through New Jersey when the New Jersey police, acting under authority of the New Jersey statute, stopped him, arrested him, and confiscated his VHF amateur service transceiver. ARRL notes that the New York licensee, as a non-resident of New Jersey, would not be eligible to obtain the operator's permit required by the New Jersey statute for receiver operation within New Jersey.[14] Another commenter, a licensed amateur operator, states that although he is a New Jersey resident, his request for a permit under the New Jersey statute has been denied by the local issuing authority on the ground that the authority issues the permits only to "emergency personnel." [15] In three other comments, amateur operators state that while traveling in vehicles in Illinois, Ohio, New Jersey, and Texas, they have been stopped by state or local police and threatened with the possibility of confiscation of their mobile amateur service transceivers.[16]

8. A few commenters state that they have found vital to their volunteer safety work the use of certain out-of-band channels used in governmentally sponsored activities such as the Civil Air Patrol's search and rescue undertakings. Another commenter explains how use of his out-of-band receiver allowed him to listen to the National Weather Service on VHF maritime channels for critical information during a flood. These commenters emphasize that there is a public service value in having their transceivers be capable of receiving these channels, which are not amateur, public safety, or special emergency services frequencies.[17]

9. As noted above, Associated Public-Safety Communications Officers, Inc. (APCO) filed a comment in support of the ARRL Request. APCO is the nation's oldest and largest public safety communications organization representing the public safety radio community. APCO states:

> Every radio amateur is not the law-abiding citizen we would prefer them to be. However, it is patently unfair to penalize the entire community for the actions of the few who utilized their equipment to circumvent the law. Amateur radio operators have, historically, been vital assets to the public safety community. They have assisted government and the public in virtually every disaster that has occurred throughout the world.
>
> There are other methods of protecting communications available to public safety, such as encryption, which is easy to procure and much less invasive of the the citizen's right (or privilege) to listen to what is being transmitted over the radio. APCO believes that, in this modern age, it is the responsibility of an agency to protect its own confidential communications through the use of technology, not by arresting innocent citizens.[18]

III. Discussion

10. We believe additional information would assist us to make a decision in this matter.[19] For example, it would be helpful to have more information on the current (and future) marketplace availability of mobile equipment meeting the restrictions of the subject laws, and on the technical and financial feasibility of modifying existing equipment to meet the laws. We especially encourage the manufacturing community, which is best suited to comment on the current state of amateur radio technology, to provide this technical information. We also desire comment from the states and municipalities that have enacted the subject laws. Specifically, we solicit comment on the following questions:

(1) Is there VHF or UHF mobile (or portable) amateur equipment now being manufactured that complies with the state and local laws in question? If so, give the purchase cost and the make amd model numbers.

(2) What percentage of existing VHF or UHF mobile amateur equipment has a reception capability (a) only on amateur service bands, (b) on the amateur bands plus a capacity just beyond the amateur bands (within 25 kHz of the band edge), and (c) on the amateur bands plus a capability on (at the least) any of the public safety or special emergency services channels? What are the above percentages when calculated only in the context of equipment that is currently being manufactured (as opposed to equipment that no longer is manufactured or is built by an amateur)? What are the purchase costs for such equipment?

(3) What percentage of amateur operators purchase and use manufactured mobile equipment?

(4) What is necessary technically for manufacturers to produce equipment that complies with the laws, and what are the associated costs?

(5) What is required technically to modify amateur equipment that is capable of receiving on police radio service channels or other public safety or special emergency services channels to eliminate such reception capability, and what is the cost associated with such a modification? Does the intercategory sharing permitted in the private land mobile services [20] and the diversity of frequency restrictions throughout the country affect the technical requirements or costs of such modifications?

(6) What specific instances have occurred where the state and local laws in question have adversely affected amateur radio operation?

(7) Is there a public interest in having amateur equipment available that can receive non-amateur frequencies, *e.g.*, an interest in providing a pool of equipment that facilitates emergency operations in states where local authorities expressly desire the assistance of amateur licensees?

(8) Given that the amateur radio equipment market is essentially world-wide, what would be the effect, if any, on the availabilty and price of amateur equipment if United States requirements were made more restrictive than those of the rest of the world? Do any other countries have restrictions on amateur radio transceiver receipt of public safety transmissions?

(9) What effect to the scanner laws have on the interstate sale of amateur service equipment and the interstate transport of equipment by amateur licensees?

IV. Procedural Matters

11. Accordingly, we adopt this *Notice of Inquiry* under the authority contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 303(r), and 403. Pursuant to applicable procedures set forth in §§ 1.415, 1.419, and 1.430 of the Commission's Rules, 47 CFR 1.415, 1.419, & 1.430, interested parties may file comments on or before June 7, 1991, and reply comments on or before July 8, 1991. Extensions of these time periods are not contemplated. We will consider all relevant and timely comments before taking final action in this proceeding. In reaching its decision, the Commission may consider information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and the fact of our reliance on such information is noted in any subsequent actions. As noted above in a footnote, comments filed pursuant to our previous public notice are deemed to be filed in response to this Notice of Inquiry as well, and therefore need not be refiled. We do not, however, discourage additional filings from the entities who filed previously.

12. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Persons who wish to participate informally may do so by submitting one copy. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5440 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

Julie J. Carey; Applications for FM Stations

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Julie J. Carey; Nashville, IN.	BPH-891011ML	91-39
B. Frank A. Rogers; Nashville, IN.	BPH-891012MI	
C. Jacqueline D. Watson; Nashville, IN.	BPH-891012MZ (Previously Returned)	
Issue heading and applicant(s) 1. Air Hazard, A 2. Comparative, A,B 3. Ultimate, A,B		
II		
A. Morgan County Industries, Incorporated; West Liberty, Kentucky.	BPH-891222MG	91-37
B. Woodford F. May West Liberty, Kentucky.	BPH-891227ME	
Issue heading and applicant(s) 1. Air Hazard, A,B 2. Comparative, A,B 3. Ultimate, A,B		
III		
A. Leon F. Petterson; Live Oak, FL.	BPH-891002MK	91-38
B. Marshall W. Rowland, Sr.; Live Oak, FL.	BPH891002MM	
C. Suwannee Broadcast, Inc.; Live Oak, FL.	BPH-891002MO	
Issue heading and applicant(s) 1. Comparative, A,B,C 2. Ultimate, A,B,C		
IV		
A. Royse Radio, Inc.; Horse Cave, KY.	BPH-891011MB	91-40
B. James B. Myers, III; Horse Cave, KY.	BPH-891012NI	
Issue heading and applicant(s) 1. Comparative, A,B 2. Ultimate, A,B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues

[10] *Id.* at 12.

[11] *See generally* House Comm. on the Judiciary, Electronic Communications Privacy Act of 1986, H.R. Rep. No. 647, 99th Cong., 2d Sess. 42.

[12] ARRL Request, *supra* note 1, at 2, 12.

[13] *Id.* at 11.

[14] Comments of the American Radio Relay League, Incorporated at 2-3 (May 14, 1990).

[15] Comment of Emery L. Brown, Jr. (Dec. 22, 1990).

[16] Comment of L.W. Bradford (May 1, 1990); Comment of Bob Casey (May 8, 1990); Comment of Todd L. Sherman (April 22, 1990).

[17] It should be noted that in the 30-50 MHz, 150-174 MHz, and 450-512 MHz bands the public safety and special emergency services channels are intermixed with frequencies allocated to non-public-safety services. Thus, eliminating the capability to receive the public safety channels would have to be done on a case-by-case, frequency-by-frequency basis. In those segments of the spectrum, there does not exist a contiguous range of frequencies that constitute a "public safety band," with upper and lower frequency limits, that could more easily be excluded.

[18] Comments of APCO at 2-3 (May 16, 1990).

[19] Comments filed pursuant to our previous public notice are deemed to be filed in response to this Notice of Inquiry as well, and therefore need not be refiled. We do not, however, discourage additional filings from the entities who filed previously.

[20] See 47 CFR 90.176. For example, a Police Radio Service licensee may be authorized to operate on frequencies allotted to the Highway Maintenance Radio Service, the Forestry-Conservation Radio Service, or any other public safety land mobile service.

whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-5577 Filed 3-7-91; 8:45am]
BILLING CODE 6712-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 91-43.5]

Index Rates for Adjustable-Rate Mortgages

AGENCY: Federal Housing Finance Board.

ACTION: Notice of substitution of indexes for adjustable-rate mortgages and request for comments.

SUMMARY: The Federal Housing Finance Board ("Finance Board") hereby gives notice and requests comments on its proposal to substitute substantially similar mortgage index rates for adjustable-rate mortgages ("ARMs") for certain nonstandard index rates currently made available in its Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans ("Monthly Interest Rate Survey" or "MIRS"). The Finance Board proposes these changes in order to improve the overall quality of the MIRS by replacing statistically unreliable data with more accurate, timely, and practical information, and to reduce the reporting burden on institutions subject to the survey by no longer collecting data of very limited economic or financial importance. The Finance Board requests public comment regarding the practical effects of implementing these proposed changes.

DATES: Comments must be received in writing by April 22, 1991.

ADDRESSES: Comments should be mailed to: Leonard H. O. Spearman, Jr., Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, where comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Senior Financial Economist, (202) 408-2845, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 402(e)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 185 (August 9, 1989), provides that the Finance Board "shall take such action as may be necessary to assure that the indexes prepared by the * * * Federal Home Loan Bank Board * * * immediately prior to the enactment of [FIRREA] and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available." Section 402(e)(4) of FIRREA provides that "[i]f any agency can no longer make available an index," it may substitute a "substantially similar" index if it determines, after notice and opportunity for comment, that (1) the new index is based upon data substantially similar to that of the original index; and (2) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

The MIRS, which was prepared by the Federal Home Loan Bank Board before the enactment of FIRREA, is now being compiled by the Finance Board pursuant to the requirement of FIRREA. A small number of mortgage lenders use the index rates proposed to be changed to calculate the interest rates on existing ARMs. ARMs based on mortgage rate indexes now comprise only a very small proportion of total new mortgages. Most new ARMs are linked to either the yield on U.S. Treasury securities or a cost-of-funds index. Furthermore, most new ARMs that are linked to a mortgage rate use the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." None of the changes proposed by the Finance Board will affect this series.

The Finance Board believes that the intent of section 402(e)(3) is to ensure that accurate, timely and reliable data continues to be made available, and to permit the substitution of substantially similar indexes where data is not sufficiently reliable. The Finance Board therefore has the authority and discretion to modify its survey methods from time to time to ensure that the public receives quality data. The Finance Board does not believe that section 402(e)(3) is intended to require the reporting of identical data simply because it was published in the past. The Finance Board has determined that the current indexes at issue are not sufficiently reliable for statistical purposes, and need to be replaced with other more reliable and timely indexes. In addition, pursuant to section 402(e)(4), the Finance Board "can no longer make available" the indexes because they are not sufficiently statistically reliable. Accordingly, the Finance Board may substitute substantially similar indexes for the indexes proposed to be changed.

The Finance Board proposes to implement four changes in the types of monthly information derived from the MIRS that it now makes available, as follows:

(1) The Finance Board proposes to substitute the data from the Federal Home Loan Mortgage Corporation's ("Freddie Mac") Primary Market Survey as the substantially similar successor index for those ARMs using the mortgage commitment rate data from the MIRS as an index. The MIRS mortgage commitment rate data is subject to a five-week reporting lag, and duplicates the similar weekly survey conducted by Freddie Mac. In addition, the data on mortgage commitment rates is not useful to lenders or borrowers because the survey does not ask to what index the ARM is linked.

(2) The Finance Board proposes to designate the MIRS's newly built homes index as the substantially similar index to succeed the combined construction/purchase loan index in the MIRS. Combined construction/purchase loans are loans typically made to small home builders, and combine a construction and permanent loan in a single transaction. These loans comprise only about five percent of the survey, and the data on such loans is statistically unreliable on a monthly basis because of the small sample size.

(3) The Finance Board proposes to designate the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the substantially similar successor index for ARMs that use a contract rate series from the Finance Board's internal 57-J and 57-K Reports. The Finance Board also proposes to designate the National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the substantially similar series for ARMs that use an effective rate series derived from the Reports. The data contained in the 57-J and 57-K Reports is statistically unreliable because of the small sample sizes. Because of the variety of data contained in the 57-J and 57-K Reports with respect to type of loan, type of property, and geographic classification, there is no perfect choice for a single successor series. However, the Finance Board believes that the two series proposed for substitution are based on more reliable data than that currently contained in the Reports and are the most readily available substitute series.

(4) The Finance Board proposes to publish the MIRS data on home loans closed for the 32 selected metropolitan areas on a quarterly instead of monthly basis (*i.e.*, to designate the quarterly series on metropolitan mortgage interest rates as the substantially similar successor to the monthly series). The data on loans closed for the selected metropolitan areas is statistically unreliable when published on a monthly basis because of the small sample size.

All of the proposed new indexes are based upon data substantially similar to that of the original indexes. The Freddie Mac Primary Market Survey data uses similar mortgage commitment rate data but is based on standardized loans and is more timely than the MIRS mortgage commitment rate index. The MIRS newly built homes index is based on a larger sample of newly built homes. The National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on national average rate data of a larger sample size than the similar regional average rate data contained in the Finance Board's internal 57-J and 57-K Reports. Similarly, the proposed National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on data similar to the effective rate series contained in the Reports but from a larger sample size. The MIRS data on loans closed for the 32 selected metropolitan areas will continue to be made available, except that it will be published on a quarterly instead of monthly basis.

Because the new indexes are based on data substantially similar to the current data in the MIRS, the Finance Board believes that they will result in interest rates substantially similar to the rates in effect at the time the original indexes become unavailable.

Dated: February 28, 1991.

J. Stephen Britt,
Executive Director, Federal Housing Finance Board.

[FR Doc. 91-5555 Filed 3-7-91; 8:45 am]
BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 19]

Passenger Vessel Financial Responsibility Requirements; Extension of Time

At the request of the Investigative Officer, the time for filing the Investigative Officer's final report is extended thirty days, to April 16, 1991. By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-5545 Filed 3-7-91; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cleo L. Craig Trust, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cleo L. Craig Trust, to acquire 16.34 percent; Cleo L. Craig Grandchildren Trust, C.L. Craig and Michael T. Craig, Trustees, to acquire 83.18 percent of the voting shares of Lawton Securities Bancshares, Inc., Lawton, Oklahoma, and thereby indirectly acquire The Security Bank and Trust Company, Lawton, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. John G. Sorenson, Jr. and Don C. Ballard, both of Salt Lake City, Utah; to acquire an additional 52.89 percent of the voting shares of Home Credit Corporation, Salt Lake City, Utah, for a total of 60.64 percent, and thereby indirectly acquire Home Credit Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 4, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-5486 Filed 3-7-91; 8:45 am]
BILLING CODE 6210-01-F

First National Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 27, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First National Bancorp, Inc., Monroe, Wisconsin; to acquire 100 percent of the voting shares of Citizens State Bank, Belleville, Wisconsin.

Board of Governors of the Federal Reserve System, March 4, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5468 Filed 3-7-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Survey of Physician Interactions with Pharmaceutical Manufacturers—NEW—This request for information on physicians' offers from drug manufacturers is needed to determine the extent and nature of promotional activities which may be in violation of the anti-kickback provisions. The information will be used by the Office of the Inspector General to develop strategies for future investigative efforts. Respondents: physicians; Annual Number of Respondents: 600; Annual Frequency of Response: one time; Average Burden per Response: 15 minutes; Total Annual Burden: 150 hours.

2. State Policies, Procedures, and Experiences in Providing Child Care Services to AFDC JOBS participants—NEW—This information will be collected from the states to provide a baseline picture of state activities related to child care services for JOBS participants. The Office of the Inspector General will use the information to assess the state activities and develop recommendations for improved program efficiencies. Respondents: State Governments; Annual Number of Respondents: 50; Annual Frequency of Response: one time; Average Burden per Response: 5.5 hours; Total Annual Burden: 275 hours.

OMB Desk Officer: Allison Herron.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 26, 1991.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91-5273 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-04-M

Food and Drug Administration

[Docket No. 91N-0047]

Rorer Pharmaceutical Corp., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 48 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8036.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
18-774	Nitrol IV (nitroglycerin for infusion)	Rorer Pharmaceutical Corp., 500 Virginia Dr., Fort Washington, PA 19034.
50-241	Prednis (prednisolone) Tablets, 5 mg	Do.
50-447	Nitrofurantoin Tablets, 100 mg (only)	Solar Pharmaceutical Co., Inc., 33 Ralph Ave., Copiague, NY 11726-0030.
50-719	Sulfisoxazole Tablets, USP	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199.
83-970	Dramamine Tablets	Richardson-Vicks Inc., One Far Mill Crossing, Shelton, CT 06484.
83-988	Reserpine 0.125 mg and Hydrochlorothiazide 50 mg Tablets	Solar Pharmaceutical Co., Inc.,
83-991	Chlor-PZ (chlorpromazine hydrochloride Tablets	Rorer Pharmaceutical Corp.
83-000	Benzedrine (amphetamine sulfate) Tablets	Smith Kline & French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.
84-326	Nitrofurantoin Capsules, 50 mg and 100 mg	Solar Pharmaceutical Co., Inc.,
85-139	Chlorpheniramine Maleate Tablets, 4 mg	Chelsea Laboratories, Inc., 666 Orlando Ave., West Hempstead, NY 11552.
85-166	Dimenhydrinate Tablets, 50 mg	Do.
85-172	Niacin Tablets, 500 mg	Do.
85-196	Phendimetrazine Tartrate Tablets, 35 mg (Yellow)	Private Formulations, Inc., 460 Plainfield Ave., Edison, NJ 08818-1904.
85-231	Pyrilamine Maleate Tablets, 25 mg	Chelsea Laboratories, Inc.
85-248	Trichlormethiazide and Reserpine Tablets, 4 mg/0.1 mg	Solar Pharmaceutical Co., Inc.,
85-339	Aminophylline Tablets, 200 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
85-864	Promethazine Hydrochloride Tablets, 50 mg	Chelsea Laboratories, Inc.
85-766	Brompheniramine Maleate Tablets, 4 mg	Do.

ANDA No.	Drug	Applicant
85-792	Sodium Secobarbital Capsules, 100 mg	Do.
85-827	Hydralazine Hydrochloride and Hydrochlorothiazide Tablets	Do.
85-840	Dexamethasone Tablets, 1.5 mg	Do.
85-841	Bethanechol Chloride Tablets, 5 mg	Do.
85-982	Trichlormethiazide Tablets, 4 mg	Do.
85-986	Promethazine Hydrochloride Tablets, 12.5 mg	Do.
86-026	Spironolactone with Hydrochlorothiazide Tablets, 25 mg/25 mg	Do.
86-178	Glycopyrrolate Tablets, 2 mg	Do.
86-281	Hexabamate II (tridihexethly chloride 25 mg and meprobamate 400 mg) Tablets.	Do.
86-823	Hydrocortisone Cream, USP, 0.5%	Pharmaceutical Associates, Inc., P.O. Box 128, Conestee, SC 29638.
86-866	Chlorpropamide Tablets, 250 mg	Chelsea Laboratories, Inc.
86-949	Chlorzoxazone Tablets, 250 mg	Do.
87-075	MD-60 (dietrizoate sodium injection, USP 50%)	Mallinckrodt, Inc., 675 McDonnell Blvd, P.O. Box 5840, St. Louis, MO 63134.
87-300	Fluonid (fluocinolone acetonide) 0.025% Gel	Herbert Laboratories, Inc., 2525 Dupont Dr., Irvine, CA 92715-0660.
87-273	Hydroxyzine Hydrochloride Injectable	Atlans, Inc., 60 Baylis Rd., Melville, NY 11747.
87-936	Arm-A-Med (isoproterenol hydrochloride), 0.062%	Armour Pharmaceutical Co., 500 Virginia Dr., Fort Washington, PA 19034.
87-958	Heparin Lock Flush Solution, USP, 10 units/mL with benzyl alcohol, 2 mL in 2 mL vial.	Solopak Laboratories, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
87-959	Heparin Lock Flush Solution, USP, 100 units/mL with benzyl alcohol, 1 mL in 2 mL vial.	Do.
88-031	Hydroflumethiazide Tablets, 50 mg	Solar Pharmaceutical Co., Inc.
88-033	Dipyridamole Tablets, 25 mg	Purepac Pharmaceutical Co.
88-315	Dipyridamole Tablets, 25 mg	UDL Laboratories, Inc., P.O. Box 10319, Rockford, IL 61131-3019.
88-528	Hydroflumethiazide Tablets, 50 mg	Chelsea Laboratories, Inc.
88-660	Diphenhydramine Hydro-chloride Elixir, 12.5 mg/5 mL	Naska Pharmacal Co., Inc., 55 Plant Ave., Hauppauge, NY 11788.
88-824	Procainamide Hydrochloride Injection 100 mg/mL	Pharmatair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
88-830	Procainamide Hydrochloride Injection, 500 mg/mL	Do.
88-862	Hydroxyzine Hydrochloride Injection, 25 mg/mL (Vials)	Do.
89-106	Hydroxyzine Hydrochloride Injection, 25 mg/mL (syringes)	Do.
89-107	Hydroxyzine Hydrochloride Injection, 50 mg/mL (syringes)	Do.
89-376	Nitrol Patch (nitroglycerin transdermal system), 5 mg/24 hr	Paco Research Corp., 1705 Oak St., Lakewood, NJ 08701.
89-445	Monoparin Injection (heparin, sodium injection, USP), 5,000 USP units/mL	Fisons Corp., Two Preston Ct., Bedford, MA 01730.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective April 8, 1991.

Dated: February 27, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-5425 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0072]

Superpharm Corp.; Proposal To Withdraw Approval of an Abbreviated New Drug Application for Ibuprofen Tablets; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) proposes to withdraw approval of abbreviated new drug application (ANDA) 70-708 held by Superpharm Corp., 1769 Fifth Ave., Bayshore, NY 11706 (Superpharm). The grounds for the proposed withdrawal are that (1) the application contains untrue statements of material fact; (2) new evidence of clinical experience not contained in the application or not available until after the application was approved, evaluated together with the evidence available when the application was approved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; and (3) based on new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

DATES: A hearing request is due on April 8, 1991; data and information in support of the hearing request are due on May 7, 1991.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 91N-0072, and submitted to the Dockets Management Branch (HFA-305), rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

I. Background

Superpharm holds ANDA 70-708 for Ibuprofen Tables 400 milligrams (mg). This product is a generic version of Upjohn's Motrin Tablets 400 mg.

To support approval of ANDA 70-708, Superpharm submitted to FDA a bioequivalence study conducted by Bio-Research Laboratories, Ltd. This study, purportedly utilizing from product Superpharm's batch 060385, demonstrated that Superpharm's Ibuprofen Tablets 400 mg were bioequivalent to Motrin Tablets 400 mg.

This showing was critical to the approval of Superpharm's product. Motrin, the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), was approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the product is safe for its intended uses and has the effects claimed for it. Superpharm's generic version of Motrin, Ibuprofen Tablets 400 mg, was approved without the submission of such studies. Instead, Superpharm's product was

approved based on a finding that Superpharm's product was bioequivalent to Motrin. The finding of bioequivalence is necessary to support the conclusion that Superphar's product will be therapeutically equivalent to Motrin.

In addition to the bioequivalence study, Superpharm submitted to the ANDA dissolution data, batch production records, and stability data, which were necessary for approval. FDA used the dissolution data to assess the comparability of Superpharm's product and Motrin Tablets and to establish an appropriate dissolution specification for future, commercial batches of Superpharm's product. The dissolution specification helps provide assurance that commercial batches of Superpharm's product remain bioequivalent to Motrin Tablets.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the Superpharm product shown to be bioequivalent to Motrin Tablets. In general, these same methods, facilities, and controls must be applied to production of commercial batches of Superpharm's product to provide assurance that the product remains bioequivalent to Motrin Tablets.

The stability data provide assurance that Superpharm's product will retain its physical and chemical characteristics and its bioequivalence throughout its labeled shelflife.

FDA discovered that there are untrue statements and discrepancies in Superpharm's ANDA concerning the manufacture and testing of batches used to support approval of ANDA 70–708. These untrue statements and discrepancies constitute new information that raises serious questions about the identity and characteristics of the batches that were used to demonstrate the bioequivalence of Superpharm's product and, thus, raises concerns about the actual bioequivalence of Superpharm's marketed product to Motrin. This new information is derived from (1) a recent inspection of Superpharm, (2) an audit of the firm by an outside contractor, and (3) meetings between FDA and Superpharm representatives. The scope and significance of the untrue statements and discrepancies call into question the reliability of all data submitted to FDA to support approval of ANDA 70–708 for Ibuprofen Tables 400 mg.

A discussion of the new information follows:

To support approval of ANDA 70–708, Superpharm submitted a copy of a batch production record for batch 060385, which was used in the bioequivalence study. Superpharm also submitted comparative in vitro dissolution data using product from batch 060385. In addition, Superpharm submitted stability data from batches 310385 and 320385 to support approval of ANDA 70–708. During an inspection of Superpharm focusing on ANDA approval of ibuprofen, FDA inspectors found two versions of a batch production record for batch 060385. One version indicates that production occurred March 8 and 9, 1985, and identifies the manufacture of a 10,000 (10M) tablet batch of orange film-coated tablets. The other version indicates that production occurred March 20 and 21, 1985, and identifies the manufacture of a 10M tablet batch of white film-coated tables. This second version of the batch record was submitted to FDA in ANDA 70–708. Current labeling describes Superpharm's Ibuprofen Tables 400 mg as follows: "White, round, standard convex tablet embossed with SP–170 on one side and 400 on the other side."

FDA's inspection of Superpharm identified discrepancies concerning both versions of batch 060385. As referenced above, discrepancies exist regarding the description, particularly the color, of the tablets used in bioavailability testing. In addition to the color discrepancies noted in the batch records, other records show further inconsistencies in the description of bath 060385. Superpharm's "Quality Control Finished Product Monograph and Report" submitted to the ANDA describes tablets from batch 060385 as "white, round film coated tablets, debossed with SP 170 on one side and 400 on the other." The firm's "Laboratory Notebook Book #8502," page 9, describes tablets from batch 060385 as "orange sugar coated round tablet embossed with SP 170." This description was changed to "white film coated round tablet embossed with SP 170." The same notebook, pages 90 and 92, describes tablets from batch 060385 as "white, oval shaped, film coated tablet, embossed with SP 171." The coating records dated March 24, 1985, indicate that Superpharm's ibuprofen 400 mg tablet was coated in a manner that resulted in a white, film-coated tablet. No coating records were found to document the coating of orange coated tablets for batch 060385. Moreover, the description of batch 060385 tablets in the ANDA as white is inconsistent with the description of the tablets in the bioavailability study report that was submitted to ANDA 70–708 to support approval of ibuprofen tablets 400 mg. Bio-Research Laboratories, Ltd., which conducted the bioavailability study, described Superpharm's ibuprofen tablets 400 mg as "Large round orange matte tablets" and as "Matte, Round, Orange, Unmarked Tablet." Upjohn's Motrin Tablets 400 mg are described as "Large round orange shiny tablets, with 'MOTRIN 400 mg' printed on one side" and as "shiny round orange tablet marked MOTRIN 400 mg."

FDA's inspection also revealed discrepancies concerning the color designation of batches 310385 and 320385, the additional stability batches. The batch records describe the tablets from these batches as orange film-coated tablets whereas the coating records describe the tablets as white. Additionally, Superpharm's Laboratory Notebook Book #8502, pages 13 and 17, describes the tablets as "Orange sugar coated round tablet embossed wtih SP 170." This designation was changed to "White film coated round tablet embossed with SP 170."

Discrepancies exist concerning the date of manufacture of batch 060385 and concerning manufacturing operations/steps used in production of the batch. The batch record submitted to FDA shows manufacture of batch 060385 on March 20 and 21, 1985. A research and development (R&D) production log shows manufacture of the batch on March 8 and 11, 1985. The referenced batch records do not show manufacture of batch 060385 on March 11, 1985, and the production log does not show manufacture of the batch on March 9, 20, and 21, 1985, as the two versions of the batch records indicate. In addition, the March 8 and 9, 1985, batch records do not show that each significant step in the manufacturing or processing of batch 060385 was supervised or checked. The R&D production log does not reference compression of the batch. Finally, no packing records or batch disposition records exist for either batch.

There are inconsistencies in the records concerning the raw materials used in the manufacture of batch 060385. The raw material inventory cards show use of ibuprofen active ingredient R–4217 in batch 060385 on March 8, 1985. However, no record exists showing additional use of this active ingredient on March 20 and 21, 1985, as indicated on batch record 060385 submitted to the ANDA. Moreover, although the two batch records for batch 060385 show use of multiple excipients, the excipient raw material inventory records corresponding to the lots of excipients identified on the batch records as being used in the manufacture of the batch do not show withdrawals of any of the raw materials for use in making the batch.

All of the discrepancies discussed above raise questions about the identity and characteristics of the batches used to perform tests necessary for approval of ANDA 70–708. Some of the discrepancies indicate that certain records were falsified, although which records were actually falsified is not clear. These discrepancies and falsifications cast doubt on the validity of all representations made by Superpharm about batches 060385, 310385, and 320385. They also raise questions about whether the product approved under the ANDA is representative of the product marketed by Superpharm.

II. Conclusions, Findings, and Proposed Action

As discussed above, ANDA 70–708 contains a number of untrue statements concerning bioequivalence, dissolution, manufacturing procedures and controls, and stability. Statements on these matters are material in that they may affect the agency's decision to approve an application.

Moreover, these untrue statements, together with the aforementioned discrepancies, constitute new information that raises significant questions about the reliability and adequacy of the data provided on the batches used in support of the approval of ANDA 70–708.

Without reliable information concerning the identity, characteristics, and manufacture of the batches used for bioequivalence, dissolution, and stability studies necessary for approval, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating acceptable stability, dissolution, and bioequivalence to the listed drug, there is a lack of evidence of safety and a lack of substantial evidence of effectiveness.

Although ANDA's may be approved without the submission of safety studies and adequate and well-controlled clinical efficacy studies, which are required under 21 U.S.C. 355(d), these approvals are supported by such studies based on the submission of information to show bioequivalence to a listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated safe and effective based on safety studies and clinical efficacy studies satisfying the substantial evidence requirement of 21 U.S.C. 355(d) or must be related through bioequivalence data to another drug that has been demonstrated safe and effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelflife, there is no basis for concluding that the safety and efficacy studies supporting the approval of the listed drug likewise support the claims of safety and efficacy on the part of the generic drug.

Accordingly, the Director of the Center for Drug Evaluation and Research finds that (1) ANDA 70–708 contains untrue statements of material fact; (2) new evidence of clinical experience, not contained in the application or not available until after the application was approved, evaluated together with the evidence available to him when the application was approved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; and (3) on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. Based on these findings, the Director proposes to withdraw approval of ANDA 70–708, Ibuprofen Tablets 400 mg.

III. Notice of Opportunity for Hearing

Notice is hereby given to the holder of the ANDA listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 355(e)), withdrawing approval of ANDA 70–708 and all amendments and supplements thereto on the grounds stated above.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before April 8, 1991, a written notice of appearance and request for hearing, and (2) on or before the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, submissions of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 (except that the requirement in 21 CFR 314.200 (d)(1) and (d)(2) that the applicant submit adequate and well-controlled clinical efficacy studies does not apply) and in 21 CFR Part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug product. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under section 301(j) of the act or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drug subject to this notice is appropriate, FDA will announce its removal from the list in the **Federal Register** notice announcing the withdrawal of approval of the drug.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: February 27, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-5424 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01

[Docket No. 90D-0427]

Direct Reference Authority for Class III Medical Devices Without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA); Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7124.30 "Direct Reference Authority for Class III Medical Devices without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA)." This CPG establishes criteria for direct reference authority, that is to issue a regulatory letter or recommend seizure, for new class III medical devices that have never been reviewed by FDA, and class III medical devices that have premarket approval but now claim an unapproved intended use.

DATES: Comments may be made at any time.

ADDRESSES: Submit written requests for single copies of CPG 7124.30 "Direct Reference Authority for Class III Medical Devices without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA)" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG 7124.30 to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Latiah, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1116.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of this CPG which sets forth criteria for issuing a regulatory letter and for recommending direct reference seizure to the Office of Regulatory Affairs, Division of Case Management and Operations (HFC-210), for devices that are in commercial distribution without a PMA. This CPG relates to new class III medical devices that have never been reviewed by FDA and class III medical devices that have a PMA but are intended for a new, unapproved use. Such devices are required to have an approved PMA.

A direct reference (device) seizure is one that bypasses review by the Center for Devices and Radiological Health. Instead, the district office recommendation is processed only by the Office of Regulatory Affairs, the Office of General Counsel, and the U.S. Attorney, in that order.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Authority: This notice is issued under 21 CFR 10.85.

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner, for Regulatory Affairs.

[FR Doc. 91-5511 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make inital decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS on September 25, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. George and Alice Ellis on behalf of Rosemary Ellis, Springfield, Tennessee, Claims Court Number 90-1250 V
2. Connie Woodward on behalf of Amanda Woodward, Huntington, West Virginia, Claims Court Number 90-1251 V
3. Judith Bergman on behalf of Laura Bergman, Clawson, Michigan, Claims Court Number 90-1252 V
4. Gloria McAfee on behalf of Elizabeth McAfee, Deceased, Macon, Georgia, Claims Court Number 90-1253 V
5. Steven and Bonnie Mulholland on behalf of Heather Mulholland, Lebanon, Pennsylvania, Claims Court Number 90-1254 V
6. Josue and Sharon Moreno on behalf of Joshua Moreno, Dallas, Texas, Claims Court Number 90-1255 V
7. Carol Fonken on behalf of Andrew D. Fonken, Watertown, South Dakota, Claims Court Number 90-1256 V
8. Sharon Burgess on behalf of Jodi Burgess, Whitehall, Michigan, Claims Court Number 90-1257 V
9. Frank and Valerie Hargett on behalf of Melissa Hargett, Longmont, Colorado, Claims Court Number 90-1258 V
10. Claud and Dorothy Adams on behalf of Carolyn Adams, Decaturville, Tennessee, Claims Court Number 90-1259 V
11. John and Terry Livingston on behalf of Kristen Livingston, San Antonio, Texas, Claims Court Number 90-1260 V
12. Tonya Bates, Memphis, Tennessee, Claims Court Number 90-1261 V
13. Susan Rosapepe, Bridgeport, Connecticut, Claims Court Number 90-1262 V
14. Jackie S. and Emily Maple on behalf of Jackie P. Maple, Marietta, Georgia, Claims Court Number 90-1263 V
15. Roberta Munson on behalf of Eric Munson, Sacramento, California, Claims Court Number 90-1264 and 90-1265 V
16. Paul and Sandra Louie on behalf of Genevieve Louie, Deceased, Livermore, California, Claims Court Number 90-1266 V
17. Sharon Waters on behalf of Sherry Irene Waters, Waycross, Georgia, Claims Court Number 90-1267 V
18. Shirley Watts on behalf of Cecelia Watts, Augusta, Georgia, Claims Court Number 90-1268 V
19. Susan Dean on behalf of Jason Dean, Baltimore, Maryland, Claims Court Number 90-1269 V
20. Mark Solak, Colden, New York, Claims Court Number 90-1270 V
21. Byrnie Hardin, Louisville, Georgia, Claims Court Number 90-1271 V
22. Darlene Rabon on behalf of Michelle Rabon, Aiken, South Carolina, Claims Court Number 90-1272 V
23. Louis Costanza on behalf of Erica Costanza, Flushing, New York, Claims Court Number 90-1273 V
24. Rita Collins on behalf of Quentin D. Shaw, Hampton, South Carolina, Claims Court Number 90-1274 V
25. Marie Jerome on behalf of Scott Jerome, Augusta, Georgia, Claims Court Number 90-1275 V
26. Teresa McArthur on behalf of James A. McArthur, II, Augusta, Georgia, Claims Court Number 90-1276 V
27. Cynthia Day on behalf of Natalie Day, Deceased, Augusta, Georgia, Claims Court Number 90-1277 V
28. Marie Milligan on behalf of Veda Milligan, Hartselle, Alabama, Claims Court Number 90-1278 V
29. Daisy Wilson on behalf of Morrow Wilson, Walterboro, South Carolina, Claims Court Number 90-1279 V
30. Linda Jacob on behalf of Henry Jacob, Augusta, Georgia, Claims Court Number 90-1280 V
31. Katheryn Vandenbulcke on behalf of Lisa Vandenbulcke, Thomson, Georgia, Claims Court Number 90-1281 V
32. Annie Leaphart on behalf of Yvette Leaphart, Deceased, Columbia, South Carolina, Claims Court Number 90-1282 V
33. Karen Matthews on behalf of Jason Lee Matthews, Florence, South Carolina, Claims Court Number 90-1283 V
34. H. Bruce Hulse on behalf of Crystal Smothers, Deceased, Goldsboro, North Carolina, Claims Court Number 90-1284 V
35. Cathy K. Jeffers on behalf of Seth Jeffers, Statesboro, Georgia, Claims Court Number 90-1285 V
36. Debra Thomas on behalf of Kaylee Rayburn, Rome, Georgia, Claims Court Number 90-1286 V
37. Sharon Freeman on behalf of William Frost, Augusta, Georgia, Claims Court Number 90-1287 V
38. Gilbert and Barbara Pleczynski on behalf of Jason Pleczynski, Cherry Hill, New Jersey, Claims Court Number 90-1288 V
39. Stephen Kreisher, Baltimore, Maryland, Claims Court Number 90-1289 V
40. Edwin and Helen Fell on behalf of Helen Fell, Bayshore, New York, Claims Court Number 90-1290 V
41. Frances Bayliss on behalf of Mallory Andrews, Culpeper, Virginia, Claims Court Number 90-1291 V
42. Loren and Karen Trunk on behalf of Barry Trunk, Princeton, Minnesota, Claims Court Number 90-1292 V
43. Morris and Stephanie Morgan on behalf of Jared Morgan, Arlington, Texas, Claims Court Number 90-1294 V
44. Alvin and Sandra Curtis on behalf of Natalie Curtis, Deceased, Ogden, Utah, Claims Court Number 90-1295 V
45. Jerry Wyman and Kimberly Herrmann on behalf of Courtney Herrmann, Indianapolis, Indiana, Claims Court Number 90-1296 V
46. Betsy Bricker on behalf of Eric Bricker, Lansing, Michigan, Claims Court Number 90-1297 V
47. Wanda Poole on behalf of Melonie Poole, Ruston, Louisiana, Claims Court Number 90-1298 V
48. Karen Peischl on behalf of Jeffrey Peischl, Emmaus, Pennsylvania, Claims Court Number 90-1299 V
49. Joan P. Fegan on behalf of Allison M. Fegan, Washington, District of Columbia, Claims Court Number 90-1300 V
50. Dean and Barbara Hubert on behalf of Kimberly Hubert, Deceased, Waukegan, Illinois, Claims Court Number 90-1301 V
51. Janet Egan on behalf of Tara Egan, Spring Lake, New Jersey, Claims Court Number 90-1302 V
52. Robert and Diane Woodard on behalf of Kerri Woodard, Toledo, Ohio, Claims Court Number 90-1303 V
53. Berta Salceda on behalf of Maria Salceda, Hayward, California, Claims Court Number 90-1304 V
54. Sandra Werner on behalf of Brian Werner, Muskegon, Michigan, Claims Court Number 90-1305 V
55. Linda Lewis on behalf of Porscha Lewis, Detroit, Michigan, Claims Court Number 90-1306 V
56. Faye Mitchell on behalf of Marcus Mitchell, Many, Louisiana, Claims Court Number 90-1307 V
57. Margy Anderson on behalf of Jacinta Anderson, Washtenaw County, Michigan, Claims Court Number 90-1308 V
58. Charlotte B. Orange on behalf of Derek Benker, Knoxville, Tennessee, Claims Court Number 90-1309 V

59. Mark and Christine Thompson on behalf of Rachel C. Thompson, Mora, Minnesota, Claims Court Number 90-1310 V
60. Troy and Nancy Sherrill on behalf of Brian Sherrill, Statesville, North Carolina, Claims Court Number 90-1311 V
61. Ilene Thomas on behalf of James Thomas, Clackamas, Oregon, Claims Court Number 90-1312 V
62. Ben and Penny Prichard on behalf of Nicole Prichard, Peoria, Illinois, Claims Court Number 90-1313 V
63. Eugene and Jane Pauly on behalf of Diane Pauly, Moline, Illinois, Claims Court Number 90-1314 V
64. Margaret Nichols on behalf of Elishama Nichols, Chicago, Illinois, Claims Court Number 90-1315 V
65. John Watson on behalf of H. Robbin Watson, Florence, South Carolina, Claims Court Number 90-1316 V
66. Steve and Susan Klover on behalf of Kellie Klover, Mason City, Iowa, Claims Court Number 90-1317 V
67. Matthew and Kathleen Braccio on behalf of Jonathan Braccio, Haddonfield, New Jersey, Claims Court Number 90-1318 V
68. Timothy and Suzanne Hurst on behalf of Kristen Hurst, Erie, Pennsylvania, Claims Court Number 90-1319 V
69. Sally Folsom, Manchester, Iowa, Claims Court Number 90-1320 V
70. Dennis and Jacqueline Engebretson on behalf of Maria Engebretson, Bagley, Minnesota, Claims Court Number 90-1321 V
71. David and Lynn Williams on behalf of Robert Williams, Eugene, Oregon, Claims Court Number 90-1322 V
72. Jacinda Holt on behalf of Antoinette Holt, Mobile, Alabama, Claims Court Number 90-1323 V
73. Richard and Cheryl Parr on behalf of Vanessa Parr, Orange, California, Claims Court Number 90-1324 V
74. Paul and Betty Taylor on behalf of Jeffrey Taylor, Mansfield, Louisiana, Claims Court Number 90-1325 V
75. Madonna Monley on behalf of Sharon Monley, Deceased, Ypsilanti, Michigan, Claims Court Number 90-1326 V
76. Seletha Mitchell on behalf of Amanda Sweet, Many, Louisiana, Claims Court Number 90-1327 V
77. John and Terri Gordon on behalf of Rhett Gordon, Bellevue, Washington, Claims Court Number 90-1328 V
78. Howard F. Kresta on behalf of Melonie Kresta, Wharton, Texas, Claims Court Number 90-1329 V
79. Dorothy Ball on behalf of Janice Ball, Pekin, Illinois, Claims Court Number 90-1330 V
80. Donald and Lucy Matthews on behalf of Danielle Matthews, Branford, Connecticut, Claims Court Number 90-1331 V
81. David Hammontree, Richmond, Indiana, Claims Court Number 90-1332 V
82. Richard and Mary Kaup on behalf of Brian Kaup, Casper, Wyoming, Claims Court Number 90-1333 V
83. John and Ruth Anne Hanlon on behalf of Michael Hanlon, Galesburg, Illinois, Claims Court Number 90-1334 V
84. John and Wilma Hulbert on behalf of Trevor Hulbert, Minneapolis, Minnesota, Claims Court Number 90-1335 V
85. Daniel and Mary Resciniti on behalf of Leo Resciniti, Binghamton, New York, Claims Court Number 90-1336 V
86. Daniel and Mary Resciniti on behalf of Anthony Resciniti, Binghamton, New York, Claims Court Number 90-1337 V
87. Susan A. Beck, South Fork, Pennsylvania, Claims Court Number 90-1338 V
88. William and Beverly Devereaux on behalf of Ryan Devereaux, St. Charles, Illinois, Claims Court Number 90-1339 V
89. Lawrence and Faith Ustonofski on behalf of Jamie Ustonofski, Hazleton, Pennsylvania, Claims Court Number 90-1340 V
90. Charles and Pepper Peterson on behalf of Marie Peterson, Deceased, West Palm Beach, Florida, Claims Court Number 90-1341 V
91. Kim and Denice Judd on behalf of Bronson K. Judd, Deceased, American Fork, Utah, Claims Court Number 90-1342 V
92. John and Winifred Lett on behalf of Diane Lett, Whittier, California, Claims Court Number 90-1343 V
93. Peter and Vickie Reitz on behalf of Derrick Reitz, Monroville, Pennsylvania, Claims Court Number 90-1344 V
94. Margaret Lary on behalf of Julia Lary, Bangor, Maine, Claims Court Number 90-1345 V
95. Tirlok Kakar on behalf of Dev Kakar, Lansing, Michigan, Claims Court Number 90-1346 V
96. Betsy Goodwin on behalf of Markus Goodwin, Columbia, Tennessee, Claims Court Number 90-1347 V
97. Sen Dipasri on behalf of Treena Dipasri, New London, Connecticut, Claims Court Number 90-1348 V
98. Jack and Janet Duncan on behalf of Robert Duncan, II, Deceased, Arlington, Texas, Claims Court Number 90-1349 V
99. Eunice Bell on behalf of Karen D. Bell, Cleveland, Tennessee, Claims Court Number 90-1350 V
100. Janie Black on behalf of Kimberly Black, Murfreesboro, Tennessee, Claims Court Number 90-1351 V
101. Maureen Pulliam on behalf of Timothy Pulliam, Lapeer, Michigan, Claims Court Number 90-1352 V
102. Clifford McKillop on behalf of Craig McKillop, Royal Oak, Michigan, Claims Court Number 90-1353 V
103. Christina Firman on behalf of Christopher Firman, Flint, Michigan, Claims Court Number 90-1354 V
104. Ardys Growette on behalf of Debra Growette, International Falls, Minnesota, Claims Court Number 90-1356 V
105. John and Shirley Larson on behalf of Mark Larson, Sioux City, South Dakota, Claims Court Number 90-1357 V
106. Robert and Yvonne Lampela on behalf of Michelle Lampela, Pontiac, Michigan, Claims Court Number 90-1358 V
107. Mary Gordon on behalf of Joni Gordon, Denver, Colorado, Claims Court Number 90-1359 V
108. Diane M. Burr on behalf of Jeremiah Burr, Hahn, West Germany, Claims Court Number 90-1360 V
109. Julia A. Chapman on behalf of Katrina Ann Chapman, Owensboro, Kentucky, Claims Court Number 90-1361 V
110. Beata B. Andersen, West Brookfield, Massachusetts, Claims Court Number 90-1362 V
111. Carmel Bossard on behalf of Lana Bossard, Rochester, New York, Claims Court Number 90-1363 V
112. Victor Vegas, Tampa, Florida, Claims Court Number 90-1364 V
113. Artemis Bucci on behalf of Leonard Bucci, Saco, Maine, Claims Court Number 90-1365 V
114. Leo Jarvis on behalf of Michael Jarvis, Springfield, Illinois, Claims Court Number 90-1366 V
115. Joy Niemiera on behalf of Kristen Niemiera, Princeton, New Jersey, Claims Court Number 90-1367 V
116. Robert E. Johnson, Vincennes, Indiana, Claims Court Number 90-1368 V
117. Marlene Pijanowski on behalf of Joel Johnson, Scott Air Force Base, Illinois, Claims Court Number 90-1369 V
118. Nicki Cooper on behalf of Ottis Jo Cooper, Frazier Park, California, Claims Court Number 90-1370 and 90-1384 V
119. Adam and Jeanette Shemezis on behalf of Paula M. Shemezis, Chicago, Illinois, Claims Court Number 90-1371 V
120. Linda C. Cobb, Urbana, Illinois, Claims Court Number 90-1372 V
121. Gerhard and Eva Schneider on behalf of Michael Schneider, Sunnyvale, California, Claims Court Number 90-1374 V
122. Carole Kelly on behalf of Stephanie Kelly, South Bend, Indiana, Claims Court Number 90-1375 V
123. Daisy Nelson on behalf of Richard Nelson, Coos Bay, Oregon, Claims Court Number 90-1376 V
124. Wendy Kranz on behalf of Lindsay Kranz, Riverside, California, Claims Court Number 90-1377 V
125. Marilyn Nation on behalf of Nicholas Nation, Louisville, Kentucky, Claims Court Number 90-1378 V
126. James Evans on behalf of Anna Evans, Jacksonville, Florida, Claims Court Number 90-1379 V
127. Allan Brough on behalf of Michelle Brough, Lodi, California, Claims Court Number 90-1380 V
128. Gustave and Gale Reininger on behalf of Anthea Reininger, Deceased, Santa Monica, California, Claims Court Number 90-1381 V
129. Leonard and Roxanne Riotto on behalf of Nicole Riotto, Bangor, Pennsylvania, Claims Court Number 90-1382 V
130. Rudolph and Rosemarie Younger on behalf of Kimberly Younger, Allentown, Pennsylvania, Claims Court Number 90-1383 V
131. Tony and Renna Dicus on behalf of Kassandra Dicus, Sioux City, Iowa, Claims Court Number 90-1385 V

132. John and Debbie Knox on behalf of Ami Knox, Alexandria, Louisiana, Claims Court Number 90-1387 V
133. Kimberly A. Gibson on behalf of Amy M. Sprague, Charleston, West Virginia, Claims Court Number 90-1388 V
134. Carol Benson-Chichester, Marietta, Ohio, Claims Court Number 90-1389 V
135. Debra Marlowe, Summersville, West Virginia, Claims Court Number 90-1390 V
136. Margaret Berry on behalf of Richard Harvey, Wichita, Kansas, Claims Court Number 90-1391 V
137. Rita S. Black, Trenton, Tennessee, Claims Court Number 90-1392 V
138. Russell and Paula Goines on behalf of John Goines, Kingwood, West Virginia, Claims Court Number 90-1393 V
139. Tina Olmstead on behalf of Kristopher Olmstead, Ft. Belvoir, Virginia, Claims Court Number 90-1394 V
140. Raymond and Linda Martin on behalf of Christine Martin, Monterey, California, Claims Court Number 90-1395 V
141. Richard and Gloria Garbutt on behalf of Lucas Garbutt, Klamath Falls, Oregon, Claims Court Number 90-1396 V
142. Paula Little on behalf of Heather Little, Howell, Michigan, Claims Court Number 90-1397 V
143. Calvin and Bonnie Walker on behalf of Sara Walker, Caldwell, Idaho, Claims Court Number 90-1398 V
144. Grant Gravitt on behalf of Katherine Gravitt, Miami Beach, Florida, Claims Court Number 90-1399 V
145. Samuel and Judith Lowry on behalf of Walter Lowry, Michigan, Indiana, Claims Court Number 90-1400 V
146. Wesley and Rebecca Groff on behalf of Mattie Groff, Deceased, Des Moines, Iowa, Claims Court Number 90-1401 V
147. Ottomar and Paula Krueger on behalf of Elizabeth Krueger, North Miami, Florida, Claims Court Number 90-1402 V
148. Anna L. Zembo Fisher, Elizabeth, New Jersey, Claims Court Number 90-1403 V
149. John and Louise Zembo on behalf of Anna Zembo, Elizabeth, New Jersey, Claims Court Number 90-1404 V
150. Gary E. Carpenter, Paducah, Kentucky, Claims Court Number 90-1405 V
151. Darlene Seau on behalf of Shawkey Seau, Bamberg, Germany, Claims Court Number 90-1406 V
152. William and Florrie Steele on behalf of Mary K. Steele, Deceased, Scranton, Pennsylvania, Claims Court Number 90-1407 V
153. Cynthia Enfield on behalf of Dwayne Weis, Austin, Minnesota, Claims Court Number 90-1408 V
154. John and Dolores Stupca on behalf of Connie A. Stupca, Gilbert, Minnesota, Claims Court Number 90-1409 V
155. Darrell and Linda Drentlaw on behalf of Jennifer Drentlaw, San Diego, California, Claims Court Number 90-1410 V
156. James and Nancy Poston on behalf of Rachel C. Poston, Columbia, South Carolina, Claims Court Number 90-1411 V
157. Rory and Maureen Strange on behalf of Calla Strange, Duluth, Minnesota, Claims Court Number 90-1412 V
158. John Sengia on behalf of Rachel Sengia, Pottstown, Pennsylvania, Claims Court Number 90-1413 V
159. Cheri Jane Melgard, Salem, Oregon, Claims Court Number 90-1414 V
160. Douglas A. Wilmsmeyer, Evansville, Indiana, Claims Court Number 90-1415 V
161. Burnadett Langford, Boston, Massachusetts, Claims Court Number 90-1416 V
162. Mark and Lisa Addlespurger on behalf of Joshua Addlespurger, Long Beach, California, Claims Court Number 90-1417 V
163. John Thompson, Sr., on behalf of John Thompson, Jr., Cheboygen, Michigan, Claims Court Number 90-1418 V
164. Eileen Caba on behalf of Celia Caba, Red Bank, New Jersey, Claims Court Number 90-1419 V
165. Steve and Terri Hearrell on behalf of Kristen Hearrell, Topeka, Kansas, Claims Court Number 90-1420 V
166. Ellen Adrian on behalf of Corey Adrian, Lancaster, Wisconsin, Claims Court Number 90-1421 V
167. Steve and Dianna Garcia on behalf of Tabatha Garcia, Odessa, Texas, Claims Court Number 90-1422 V
168. Arthur and Margaret Romano on behalf of Sean Romano, North Haven, Connecticut, Claims Court Number 90-1423 V
169. Arthur and Kathryn Ellis on behalf of Shannon Ellis, Portland, Maine, Claims Court Number 90-1424 V
170. Curtis and Anita Johnson on behalf of Kenya N. Johnson, Memphis, Tennessee, Claims Court Number 90-1425 V
171. Nancy Walker on behalf of Shannon Williams, Deceased, Manhattan Beach, California, Claims Court Number 90-1426 V
172. Lois Mack on behalf of Penny Mack, Shreveport, Louisiana, Claims Court Number 90-1427 V

Dated: March 4, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-5561 Filed 3-7-91; 8:45 am]

BILLING CODE 4150-15-M

Office of Community Services

[Program Announcement No. OCS-OEA-91-1]

State Median Income Estimates; Announcement of the Fiscal Year (FY) 1992 State Median Income Estimates for Use Under the Office of Community Services, Office of Energy Assistance

AGENCY: Office of Energy Assistance, OCS, FSA.

ACTION: Announcement of estimated state median income for Fiscal Year (FY) 1992.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the District of Columbia for FY 1992. This listing of estimated state median income concerns maximum income levels for households to which the states may make payments under the Low Income Home Energy Assistance Program (LIHEAP).

EFFECTIVE DATE: The estimates are effective as of October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Family Support Administration, Office of Community Services, Office of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW. Washington, DC 20447, telephone: (202) 401-5304.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for the period of October 1, 1991, through September 30, 1992. Section 2605(b)(2)(B)(ii) of the statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that states can use in determining a household's eligibility for LIHEAP. The purpose of this announcement is to provide estimates of state median income for use in FY 1992.

LIHEAP is currently authorized through the end of FY 1994 by provisions of title VII of the Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101-501, enacted on November 3, 1990. Under this Act, the current income eligibility provisions relating to state median income remain unchanged.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1992 were developed by the Bureau of the Census, using the most recent available income data. In developing the median income estimates for FY 1992, the Bureau of the Census used the following three sources of data: (1) The March 1990 Current Population Survey; (2) the 1980 Census of Population; and (3) 1989 per capita personal income estimates, by State, from the Bureau of Economic Analysis.

The estimating method for FY 1992 is similar to that used in previous years. Beginning with the estimating method for FY 1987, Current Population Survey sample estimates for three- and five-person families and their statistical relationships to four-person family medians are now used in addition to the

Current Population Survey sample estimates of four-person family medians already in use. For further information, contact Chuck Nelson, Chief of Income Statistics Branch, at the Bureau of the Census (301–763–8576).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1992 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: February 28, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1992 [1] [2]

States	Estimated State median income 4-person families	60 Percent of estimated State median income 4-person families
Alabama	$34,930	$20,958
Alaska	48,411	29,047
Arizona	38,347	23,008
Arkansas	31,853	19,112
California	42,813	25,688
Colorado	40,266	24,159
Connecticut	53,313	31,988
Delaware	42,790	25,674
District of Col.	40,574	24,344
Florida	37,399	22,439
Georgia	40,019	24,011
Hawaii	44,988	26,993
Idaho	33,633	20,180
Illinois	42,609	25,565
Indiana	38,201	22,921
Iowa	36,736	22,042
Kansas	37,938	22,763
Kentucky	34,390	20,634
Louisiana	34,406	20,644
Maine	38,336	23,002
Maryland	50,145	30,087
Massachusetts	51,799	31,079
Michigan	42,825	25,695
Minnesota	42,365	25,419
Mississippi	32,300	19,380
Missouri	38,478	23,087
Montana	33,882	20,329
Nebraska	37,902	22,741
Nevada	39,737	23,842
New Hampshire	47,983	28,790
New Jersey	53,229	31,937
New Mexico	31,156	18,694
New York	43,693	26,216
North Carolina	38,068	22,841
North Dakota	34,806	20,884
Ohio	41,469	24,881
Oklahoma	34,470	20,682
Oregon	38,723	23,234
Pennsylvania	40,404	24,242
Rhode Island	43,278	25,967
South Carolina	36,113	21,668
South Dakota	32,829	19,697
Tennessee	34,882	20,929
Texas	34,978	20,987
Utah	36,562	21,937
Vermont	40,397	24,238
Virginia	45,090	27,054
Washington	41,728	25,037
West Virginia	31,811	19,087
Wisconsin	40,557	24,334
Wyoming	35,620	21,372

Note: The estimated median income for 4-person families living in the United States is $40,763 for the period of October 1, 1991, through September 30, 1992.

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's dollar amount for 4-person families.

[2] Prepared by the Bureau of the Census from the March 1990 Current Population Survey, 1980 Census of Population and Housing, and 1989 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

[FR Doc. 91-5451 Filed 3-7-91; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 1, 1991. (Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. Evaluation of NIH/NASA High School Curriculum Supplement, "Human Physiology in Space: A Program for America"—0925–0360—Initial evaluation indicates the program was successful. However, limitations in the data were recognized at the time of the initial evaluation and response rates were lower than expected. A modification to include the collection of additional data to supplement earlier findings and the inclusion of a brief pre-test for students is being requested to improve the data which the sponsoring Federal Agencies will use to make a decision regarding the future of this program. *Respondents:* Individuals or households; *Number of Respondents:* 2,545; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .34 hours; *Estimated Annual Burden:* 859 hours.

2. Portable Self-Recording Flow-Meter in the Investigation of Occupational Airways Disorders—NEW—NIOSH is currently developing a portable self-recording flow meter which may offer important advantages in the investigation of occupational asthma and acutely toxic or irritating environments. This request will permit NIOSH to investigate the accuracy and reproducibility of this device in the laboratory and field settings. *Respondents:* Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Phases 1–5	170	1.77	2.33
Screener	20	.10	1

Estimated Annual Burden: 720 hours.

3. Common Reporting Requirements for Urban Indian Health Program—0917–0007—Congress has mandated that standard reporting requirements be established for Urban Indian Health Program. Data collected are used to monitor contracts, to prepare reports to Congress, and for program evaluation, program planning and to establish program performance indicators. *Respondents:* Non-profit institutions; *Number of Respondents:* 34; *Number of Responses per Respondents:* 2; *Average Burden per Response:* 9.42 hours; *Estimated Annual Burden:* 640 hours.

4. National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (45 CFR part 60)—0915–0126—Data identifying incompetent, unprofessional, and unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Correction of Errors & Omissions Sec. 60.6(a)	500	.25	1–4
Revisions to Report Actions Sec. 60.6(b)	2,825	.25	1–4
Rpting Medical Malpractice Payments 60.7(b)	1,800	.50	20–30
Licensure Actions by Boards of Medical Examiners Sec. 60.8(b)	125	.50	25–40
Adverse Actions on Clinical Privileges Sec. 60.9(a)(3)	5,000	.50	1–2
Rpting by Boards to the Nat'l Data Bank Sec. 60.9(b)	125	.083	60–80
Hearings for Hlth Care Entities Found in Non-compliance Sec. 60.9(c)	10	8	1
Hospital Requests for Info on Applicants Sec. 60.10(a)(1)	7,200	.083	15–20
Hospital Requests for Info on Current Staff Sec. 60.10(a)(2)	6,000	1.76	4–7
Disclosure to Hospitals Sec. 60.11(a)(1)	50	.083	1
Disclosure to Individuals Sec. 60.11(a)(2)	138,000	.25	1
Disclosure to Licensure Boards Sec. 60.11(a)(3)	125	.083	948
Disclosure to Non-Hospital Entities for Hiring Purposes Sec. 60.11(a)(4)	19,000	.083	4
Disclosure to Attorneys & Others Sec. 60.11(a)(5)	1,000	.25	4–5
Disclosure to Hlth Care Entities for Peer Review Sec. 60.11(a)(6)	2,500	.25	1
Disclosure of Aggregate Data to Researchers Sec. 60.11(a)(7)	100	.33	1
Procedures for Filing a Dispute Sec. 60.14(b)	800	1	1
Identification & Authorization of Agents	1,440	.25	1

Estimated Annual Burden: 152,339 hours.

5. National Longitudinal Alcohol Epidemiologic Survey (NLAES): 1991–1992 Wave 1—NEW—The National Institute on Alcohol Abuse and Alcoholism (NIAAA) needs information to address administrative and legal mandates of the Anti-Drug Abuse Act of 1988 and Year 200 Health Objectives. This longitudinal survey of non-institutionalized individuals will provide reliable national estimates of the incidence and prevalence of alcohol use disorders, their associated disabilities, and treatment utilization. *Respondents:* Individuals or households; *Number of Respondents:* 50,000; *Number of Responses per Respondents:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 50,000 hours.

OMB desk officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 4, 1991.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 91-5479 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-16]

Federal Property Suitable as Facilities To Assist Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 8, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determine as suitable.

All properties in today's Notice, with the exception of the Department of Transportation property, were published during 1990, and are being republished as part of HUD's complete resurvey of Federal landholding agencies. The properties identified in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property

BEST COPY AVAILABLE

available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouarged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; Veterans Administration: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, Room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233–5028; Dept. of Commerce: Jim McCombs, Office of Federal Property Programs, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20230; (202) 377–3580; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586–1191; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366–5601. (These are not toll-free numbers.)

Dated: March 1, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91–5341 Filed 3–7–91; 8:45 am]

BILLING CODE 4210–29–M

Suitable/Available Properties

Alaska, Suitable Land (by Agency)

Commerce

Gibson Cove
1211 Gibson Cove Road
Kodiak, AK *Co:* Kodiak Island 99615
Federal Register *notice date:* 03/08/91
Property number: 279010002
Status: Excess
Base closure: No
Comment: 7.44 acres; small rock peninsula; most recent use—windbreak for cove.

Alabama, Suitable Land (by Agency)

VA

VA Medical Center
VAMC
Tuskegee, AL *Co:* Macon 36083
Federal Register *notice date:* 03/08/91
Property number: 979010053
Status: Underutilized
Base closure: No
Comment: 40 acres; buffer to VA Medical Center; potential utilities; underdeveloped.

Colorado, Suitable Land (by Agency)

VA

VA Medical Center
Fort Lyon, CO *Co:* Bent 81038
Location: 6 miles east of Las Animas, Co. and then 1 mile south on Colorado highway 183.
Federal Register *notice date:* 03/08/91
Property number: 979010021
Status: Underutilized
Base closure: No
Comment: 163.5 acres; most recent use—potable water well and static area; no utilities; secured area with alternative access.

Idaho, Suitable Buildings (by Agency)

Energy

Storage and Training Facility
INEL DOE–ID
Idaho Falls, ID *Co:* Bonneville
Federal Register *notice date:* 03/08/91
Property number: 419040001
Status: Excess
Base closure: No
Comment: 2,072 sq. ft.; 1 story wood frame; needs major rehab; off-site use only.

Illinois, Suitable Land (by Agency)

Commerce

National Weather Service
Meteorological Observatory
Leckrone Airport
Salem, IL *Co:* Marion 62881
Federal Register *notice date:* 03/08/91
Property number: 279010006
Status: Excess
Base closure: No
Comment: 8.3 acres with weather observation buildings, portion in airport runway zone.

Louisiana, Suitable Land (by Agency)

VA

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, LA *Co:* Rapides 71301
Federal Register *notice date:* 03/08/91
Property number: 979010009
Status: Unutilized
Base closure: No
Comment: 8.27 acres; heavily wooded with natural drainage ravine across property; most recent use—recreation/buffer area.

Maryland, Suitable Land (by Agency)

VA

VA Medical Center
9600 North Point Road
Fort Howard, MD *Co:* Baltimore 21052
Federal Register *notice date:* 03/08/91
Property number: 979010020
Status: Underutilized
Base closure: No
Comment: Approximately 10 acres; wetland and periodically floods; most recent use—dump site for leaves.

Minnesota, Suitable Land (by Agency)

VA.

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice date:* 03/08/91
Property number: 979010007
Status: Underutilized
Base closure: No
Comment: 3.76 acres; potential utilities.

Missouri, Suitable Land (by Agency)

VA

Jefferson Barracks Division
VA Medical Center
I–255 and Koch Road
St. Louis, Mo *Co:* St. Louis 63125
Federal Register *notice date:* 03/08/91
Property number: 979010078
Status: Underutilized
Base closure: No
Comment: 4 acres; has sink holes and property borders ridge above Mississippi River.

North Dakota, Suitable Land (by Agency)

VA

Land
VA. Medical Center
12th St. and 9th Avenue NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010072
Status: Underutilized
Base closure: No
Comment: 20.8 acres; partially paved roads and packing lot.

Suitable Buildings (by Agency)

Bldg. 1
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010057
Status: Underutilized
Base closure: No
Comment: 9 story concrete frame; asbestos present on pipes; needs rehab.

Bldg. 2
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010058
Status: Underutilized
Base closure: No
Comment: 2572 sq. ft.; 2 story wood frame; asbestos present on pipes.

Bldg. 3
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010059
Status: Underutilized
Base closure: No
Comment: 2506 sq. ft.; 3 story wood frame; asbestos present on pipes; needs rehab.

Bldg. 4
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010060
Status: Underutilized
Base closure: No
Comment: 2520 sq. ft.; 1 story wood frame; asbestos present on pipes.

Bldg. 5
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010061
Status: Underutilized
Base closure: No
Comment: 7184 sq. ft.; 1 story wood frame; asbestos present on pipes; needs rehab.

Bldg. 6
VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND *Co:* Ward 58701
Federal Register *notice date:* 03/08/91
Property number: 979010062
Status: Underutilized
Base closure: No
Comment: 7832 sq. ft.; 2 story concrete block; asbestos present on pipes.

Bldg. 7
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010063
Status: Unutilized
Base closure: No
Comment: 3780 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—supply warehouse.

Bldg. 8
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010064
Status: Unutilized
Base closure: No
Comment: 2709 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—vehicle garage; needs rehab.

Bldg. 12
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010065
Status: Unutilized
Base closure: No
Comment: 1350 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—maintenance shop.

Bldg. 16
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010066
Status: Unutilized
Base closure: No
Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 17
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010067
Status: Unutilized
Base closure: No
Comment: 220 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 19
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010069
Status: Unutilized
Base closure: No
Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

Bldg. 20
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010070
Status: Unutilized
Base closure: No
Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 21
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Ward 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010071
Status: Underutilized
Base closure: No
Comment: 326 sq. ft.; 1 story concrete frame; limited utilities; most recent use—water plant; asbestos present on pipes.

Bldg. 18
VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND *Co:* Wardde 58701
Federal Register *Notice Date:* 03/08/91
Property number: 979010068
Status: Unutilized
Base closure: No
Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

New Mexico, Suitable Buildings (by Agency)

Interior

Old Helium Plant
Gallup, NM *Co:* McKinley 87301
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Federal Register *Notice date:* 03/08/91
Property number: 619010002
Status: Excess
Base closure: No
Comment: 7653 sq. ft.; 1 story office and warehouse space; possible asbestos; on 4.65 acres; secured area with alternate access.

Nevada, Suitable Buildings (by Agency)

GSA

IHS Health Station
Carson City, NV Co: Carson City 89701
Federal Register *Notice Date:* 03/08/91
Property Number: 579010001
Status: Excess
Base closure: No
Comment: 4882 sq. ft.; 1 story native stone; most recent use—Community Health Office; possible asbestos.
GSA No. 9–F–NV–460–C

Texas, Suitable Land (by Agency)

VA

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX *Co:* Bell 76504
Federal Register *Notice date:* 03/08/91
Property Number: 979010079
Status: Underutilized
Base closure: No
Comment: 13 acres; portion formerly landfill; portion near flamable materials; railroad crosses property; potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco, TX *Co:* McLennan 76711
Federal Register *Notice date:* 03/08/91
Property Number: 979010081
Status: Unutilized
Base closure: No
Comment: 2.3 acres; leased to Owens-Illinois Glass Plant; expiration date 10/31/90; most recent use—parking lot.

Washington, Suitable Buildings (by Agency)

Interior

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *Notice date:* 03/08/91
Property Number: 619030001
Status: Unutilized
Base closure: No
Comment: 2 story residence; no utilities; needs rehab; off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *Notice date:* 03/08/91
Property Number: 619030002
Status: Unutilized
Base closure: No
Comment: 888 sq ft.; 1 story residence; no utilities; needs rehab; off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *Notice date:* 03/08/91
Property Number: 619030003
Status: Unutilized
Base closure: No
Comment: 240 sq ft.; 1 story garage; no utilities; needs rehab; off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *Notice date:* 03/08/91
Property Number: 619030009
Status: Underutilized
Base closure: No
Comment: 300 sq ft.; 1 story shop; no utilities; needs rehab; off-site use only.

Thompson Power House
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *notice date:* 03/08/91
Property number: 619030010
Status: Unutilized
Base closure: No
Comment: 160 sq. ft.; 1 story powerhouse; no utilities; needs rehab; off-site use only.

Thompson Boathouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register *notice date:* 03/08/91
Property number: 619030011
Status: Unutilized
Base closure: No
Comment: 693 sq. ft.; 1 story boathouse; no utilities; needs rehab; off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Federal Register *notice date:* 03/08/91
Property number: 619030012
Status: Unutilized
Base closure: No
Comment: 150 sq. ft.; frame utility shed; limited utilities; off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Federal Register *notice date:* 03/08/91
Property number: 619030013
Status: Unutilized
Base closure: No
Comment: 240 sq. ft.; frame storage building; no utilities; needs rehab; off-site use only.

Bldg. 1165
Lake Crescent Ranger Station HC 62, Box 10
Carter Storage Building
Port Angeles, WA 98362
Federal Register *notice date:* 03/08/91
Property number: 619030016
Status: Unutilized
Base closure: No
Comment: 92 sq. ft.; 1 story storage building; no utilities; off-site use only.

Haas Barn
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register *notice date:* 03/08/91
Property number: 619040001
Status: Excess
Base closure: No
Comment: 1408 sq. ft.; 1 story wood fame barn; potential utilities; poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Gray Harbor 98526
Federal Register *notice date:* 03/08/91
Property number: 619040002
Status: Excess
Base closure: No
Comment: 486 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, box 76
Amanda Park, WA Co: Brays Harbor 98526
Federal Register *notice date:* 03/08/91
Property number: 619040003
Status: Excess
Base closure: No
Comment: 64 sq. ft.; wood frame shed; poor conditions; off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register *notice date:* 03/08/91
Property number: 619040006
Status: Excess
Base closure: No
Comment: 624 sq. ft.; 1 story wood frame residence; potential utilities; poor condition; off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register *notice date:* 03/08/91
Property number: 619040007
Status: Excess
Base closure: No
Comment: 4200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Wisconsin, Suitable Land (by Agency)

VA

VA Medical Center
County Highway E
Tomah, WI *Co:* Monroe 54660
Federal Register *notice date:* 03/08/91
Property number: 979010054
Status: Underutilized
Base closure: No
Comment: 12.4 acres; serves as buffer between center and private property; no utilities.

Suitable Buildings (by Agency)

Bldg. 2
VA Medical Center
County Highway E
Tomah, WI *Co:* Monroe 54660
Federal Register *notice date:* 03/08/91
Property number: 979010055
Status: Underutilized
Base closure: No
Comment: 18000 sq. ft.; 3 story masonry; needs rehab; possible asbestos; potential utilities.

Bldg. 8
VA Medical Center
County Highway E
Tomah, WI *Co:* Monroe 54660
Federal Register *notice date:* 03/08/91
Property number: 979010056
Status: Underutilized
Base closure: No
Comment: 2200 sq. ft.; 2 story wood frame; possible asbestos; potential utilities; structural deficiencies; needs rehab.

West Virginia, Suitable Land (by Agency)

VA

VA Medical Center
1540 Spring Valley Drive
Huntington, WV *Co:* Wayne 25704
Federal Register *notice date:* 03/08/91
Property number: 979010022
Status: Unutilized
Base closure: No
Comment: 72 acres; very rough terrain and wooded; potential utilities.

Wyoming, Suitable Land (by Agency)

Energy

Wind Site A
Medicine Bow, WY *Co:* Carbon 82329
Location: 3 milies south and 2 miles west of Medicine Bow
Federal Register *notice date:* 03/08/91
Property number: 419030010
Status: Excess
Base closure: No
Comment: 46.75 acres; limitation—easement restrictions.

Suitable Buildings (by Agency)

Interior

Administration Bldg.
Fontenelle Camp
Fontenelle, WY *Co:* Lincoln
Location: Approximately 24 miles southeast of La Barge, off State Road 372 and on County Road 316
Federal Register *notice date:* 03/08/91
Property number: 619030017
Status: Excess
Base closure: No
Comment: 4464 sq. ft.; 2 story brick structure with a 2880 sq. ft. wood frame addition; needs rehab; possible asbestos; off-site use only.

Residential House
Fontenelle Camp
Fontenelle, WY *Co:* Lincoln
Location: Approximately 24 miles southeast of La Barge, off State Road 372 and on County Road 316
Federal Register *notice date:* 03/08/91
Property number: 619030018
Status: Excess
Base closure: No

Comment: 1200 sq. ft.; 1 story with basement; needs rehab; possible asbestos; off-site use only.

Suitable/Unavailable Properties

Arizona, Suitable Land (by Agency)

Energy

Liberty Substation Buckeye, AZ *Co:* Maricopa 85326
Location: 3 miles south of Interstate 10 on Tuthill road
Federal Register *notice date:* 03/08/91
Property number: 4190030001
Status: Underutilized
Base closure: No
Comment: 15 acres; buffer area for substation.

California, Suitable Land (by Agency)

VA

Land,
VA. Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA *Co:* Los Angeles 90073
Federal Register *notice date:* 03/08/91
Property number: 979010077
Status: Underutilized
Base closure: No
Comment: Approximately 30 acres of 80 acre tract; 7 acre portion contaminated; portions may be environmentally protected.

Iowa, Suitable Land (by Agency)

Energy

Sioux City Substation
Hinton, IA *Co:* Plymouth 51024
Location: 1 mile south of Hinton Iowa on Highway 75.
Federal Register *notice date:* 03/08/91
Property number: 419030003
Status: Underutilized
Base closure: No
Comment: 34 acres; limitation—easement restrictions; most recent use—transmission lines corridor and buffer area.

Illinois, Suitable Land (by Agency)

VA

VA. Medical Center
3001 Green Bay Road
North Chicago, IL *Co:* Lake 60064
Federal Register *notice date:* 03/08/91
Property number: 979010062
Status: Underutilized
Base closure: No
Comment: 2.5 acres; currently being used as a construction staging area for the next 6–8 years; potential utilities.

Massachusetts, Suitable Land (by Agency)

VA

Bldg. 9H
DVA Medical Center
Perry Point
Perry Point, MA *Co:* Cecil 21902
Federal Register *notice date:* 03/08/91
Property number: 979010048
Status: Underutilized
Base closure: No
Comment: 19000 sq. ft.; 3 story reinforced concrete; basement floods; most recent use—nursing home

Maryland, Suitable Buildings (by Agency)

VA

Bldg. 8A
DVA Medical Center
Perry Point
Perry Point, MD *Co:* Cecil 21902
Federal Register *notice date:* 03/08/91
Property number: 979010047
Status: Underutilized
Base closure: No
Comment: 17000 sq. ft.; 1 story masonry; needs a roof; no utilities most recent use—storage.

Michigan, Suitable Land (by Agency)

VA

VA Medical Center
5500 Armstrong Road
Battle Creek, MI *Co:* Calhoun 49016
Federal Register *notice date:* 03/08/91
Property number: 979010015
Status: Underutilized
Base closure: No
Comment: 20 acres; used as exercise trails and storage areas; potential utilities.

Minnesota, Suitable Land (by Agency)

VA

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010005
Status: Underutilized
Base closure: No
Comment: 8.9 acres; most recent use—parking; potential utilities.

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul, MN *Co:* Hennepin 55111
Federal Register *notice date:* 03/08/91
Property number: 979010006
Status: Underutilized
Base closure: No
Comment: 2.0 acres; potential utilities; buildings occupied; residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Federal Register *notice date:* 03/08/91
Property number: 979010024
Status: Underutilized
Base closure: No
Comment: 12.1 acres; most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010031
Status: Underutilized
Base closure: No
Comment: 12 acres; possible asbestos; leased to Department of Natural Resources as a park walking trail.

Suitable Buildings (by Agency)

Bldg. 15
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010025
Status: Underutilized
Base closure: No
Comment: 15100 sq. ft.; 2 story concrete/brick frame; asbestos present in pipe insulation; most recent use—laundry.

Bldg. 16
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010026
Status: Underutilized
Base closure: No
Comment: 8000 sq. ft.; 3 story concrete/brick frame; asbestos present on pipe insulation; most recent use—boiler plant.

Bldg. 21
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010027
Status: Underutilized
Base closure: No
Comment: 3200 sq. ft.; 1 story prefab/quonset; most recent use—garage for motor vehicles.

Bldg. 48
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property number: 979010028
Status: Underutilized
Base closure: No
Comment: 200 sq. ft.; 1 story concrete/block; most recent use—incinerator/storage.

Bldg. 64
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property Number: 979010029
Status: Underutilized
Base closure: No
Comment: 380 sq. ft.; 1 story prefab; potential utilities.

Bldg. T–10
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55417
Federal Register *notice date:* 03/08/91
Property Number: 979010030
Status: Underutilized
Base closure: No
Comment: 1800 sq. ft.; 1 story prefab/quonset; potential utilities; most recent use—storage.

Bldg. 43
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN *Co:* Hennepin 55441–7
Location: 54th Street and 48th Avenue S.
Federal Register *notice date:* 03/08/91
Property Number: 979010032
Status: Underutilized
Base closure: No
Comment: 28000 sq. ft.; 8 story brick/steel frame; asbestos present on pipe insulation; most recent use—office/storage.

Bldg. 227
VA Medical Center

Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property Number: 979010033
Status: Unutilized
Base closure: No
Comment: 660 sq. ft.; 2 story wood frame and brick residence; utilities disconnected.

Bldg. 240
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property Number: 979010035
Status: Unutilized
Base closure: No
Comment: 600 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 241
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property Number: 979010037
Status: Unutilized
Base closure: No
Comment: 600 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 242
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property Number: 979010038
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 244
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property Number: 979010039
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 245
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010040
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 246
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010041
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 247
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010042
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 248
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010043
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 253
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010044
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 243
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010045
Status: Unutilized
Base closure: No
Comment: 600 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.

Bldg. 249
VA Medical Center
Fort Snelling
St. Paul, MN *Co:* Hennepin 55111
Federal Register *notice data:* 03/08/91
Property number: 979010046
Status: Unutilized
Base closure: No
Comment: 300 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.

Montana, Suitable Land (by Agency)

Energy

Miles City Substation
Miles City, MT *Co:* Custer 59301
Location: 1 mile east of Miles City
Federal Register *notice data:* 03/08/91
Property number: 419030004
Status: Underutilized
Base closure: No
Comment: 50 acres; limitation—easement restrictions subject to grazing lease; most recent use—buffer area for substation.

Custer Substation
Custer, MT *Co:* Yellowstone 59024
Location: 2 miles east of the town of Custer—east of Highway 47
Federal Register *notice data:* 03/08/91
Property number: 419030006
Status: Underutilized
Base closure: No
Comment: 18 acres; buffer area for substation.

North Dakota, Suitable Land (by Agency)

Energy

Fargo Substation
Fargo, ND *Co:* Cass 58102
Federal Register *notice data:* 03/08/91
Property number: 419030005
Status: Underutilized
Base closure: No
Comment: 25 acres; most recent use—transmission line cooridor and buffer.

Nebraska, Suitable Land (by Agency)

Energy

Grand Island Substation
Phillips, NE *Co:* Merrick 68865
Location: 5 miles east of Grand Island and 4 miles west of Phillips.
Federal Register *notice data:* 03/08/91
Property number: 419030002
Status: Underutilized
Base closure: No
Comment: 11 acres; buffer area for substation; right-of-way for transmission lines for Nebraska Public Power District.

New York, Suitable Buildings (by Agency)

VA

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia, NY *Co:* Genesee 14020
Federal Register *notice data:* 03/08/91
Property number: 979030001
Status: Underutilized
Base closure: No
Comment: Portion of 16800 sq. ft.; 3 stories; brick and masonry building; needs minor repairs.

Suitable Land (by Agency)

VA Medical Center
Fort Hill Avenue
Canandaigua, NY *Co:* Ontario 14424
Federal Register *notice data:* 03/08/91
Property number: 979010017
Status: Underutilized
Base closure: No
Comment: 27.5 acres; used for school ballfield and parking; existing utilities easements; portion leased.

Pennsylvania, Suitable Land (by Agency)

Commerce

Weather Service Forecast
192 Shafer Road
Corapolis, PA *Co:* Allegheny 15108
Federal Register *notice data:* 03/08/91
Property number: 279010008
Status: Underutilized
Base closure: No
Comment: 5 acres; limitation—future weather radar system site; potential utilities.

VA

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh, PA *Co:* Allegheny 15206
Location: Between Campania and Wiltsie Streets.
Federal Register *notice data:* 03/08/91
Property number: 979010060
Status: Underutilized
Base closure: No
Comment: 52.42 acres; heavily wooded; property includes dump areas and numerous site storm drain outfalls.

VA Medical Center
New Castle Road
Butler, PA *Co:* Butler 16001
Federal Register *notice data:* 03/08/91
Property number: 979010016
Status: Underutilized
Base closure: No
Comment: Approximately 9.29 acres; used for patient recreation; potential utilities.

Puerto Rico, Suitable Buildings (by Agency)

DOT

USCG Officer/Charge Quarters
Cap San Juan Light
Fajardo PR *Co:* Fajardo
Federal Register *notice data:* 03/08/91
Property number: 879110001
Status: Excess
Base closure: No
Comment: 1197 sq. ft.; one story concrete block on floating slab; off-site use only; environmentally protected

Washington, Suitable land (by Agency)

Commerce

NOAA Western Regional Center
7600 Sand Point Way, NE.
Seattle, WA *Co:* King 98115–0070
Federal Register *Notice date:* 03/08/91
Properity number: 279040001
Status: Unutilized
Base closure: No
Comment: 35 acres with 6000 sq. ft.; two story wood frame Bldg. #7; presence of asbestos; structurally deteriorated.

Energy

Raver Substation
(See County), WA *Co:* King
Location: Approximately 16 miles east of Kent.
Federal Register *Notice date:* 03/08/91
Property number: 419030012
Status: Unutilized
Base closure: No
Comment: 10+ acres; potential utilities; heavily treed.

[FR Doc. 91–5341 Filed 3–7–91; 8:45 am]
BILLING CODE 4310–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–91–4111–06]

Colorado; Availability of the Colorado Oil and Gas Leasing Development Final Environmental Impact Statement and Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Colorado Oil and Gas Leasing and Development Final Environmental Impact Statement and Proposed Amendment for the Glenwood Springs, Kremmling, Little Snake, Northeast, and San Juan/San Miguel Resource Management Plans. Notice of this document was made available in the EPA notice of February 8, 1991, in the Federal Register.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management has prepared the Colorado Oil and Gas Leasing and Development Final Environmental Impact Statement (EIS) and proposed amendment for the Glenwood Springs, Kremmling, Little Snake, Northeast and San Juan/San Miguel Resource Management Plans (RMPs). This proposed action, if approved, amends oil and gas leasing decisions for the 5.1 million acres of federal mineral estate within the respective planning areas. This action is being taken to comply with new guidance requiring a cumulative impact analysis prior to making oil and gas leasing and development decisions. The proposed plan amendment is protestable as provided for in 43 CFR 1610.5–2.

DATES: Protests to the proposed plan amendment must be postmarked within 30 days of the date that the Environmental Protection Agency (EPA) publishes its notice of availability of this document in the Federal Register.

ADDRESS: Protests should be sent to: Director (760), Bureau of Land Management, Premier Building, room 909, 1725 I Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Rhet, Branch of Fluid Minerals, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, telephone (303) 239–3752. Single copies of the document may also be obtained from this address.

SUPPLEMENTARY INFORMATION: The Final EIS analyzes three alternatives for oil and gas leasing and development, including the alternative of no action defined as the continuation of present management, leasing with standard terms and conditions, and the proposed action which contains the management prescriptions that local managers believe to be the best balance of past practices, and new prescriptions developed from internal and public comments.

Any person who participated in the planning process and has an interest which is or may be adversely affected by the proposed RMP amendment may protest. All protests must include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.
5. A short concise statement explaining why the State Director's decision is believed to be wrong.

No sooner than the end of the 30-day protest period, and following a consistency review by the Governor of Colorado, the proposed RMP amendment, excluding any portions under protest or found inconsistent, shall become final. Approval will be withheld on any portion of the amendment under protest until final action has been completed on such protest.

Dated: March 1, 1991.

Tom Walker,
Associate State Director for Colorado.

[FR Doc. 91–5544 Filed 3–7–91; 8:45 am]
BILLING CODE 4310–JB–M

[MT–070–4332–08]

Availability of the Final Wilderness Suitability Study and Environmental Impact Statement for the Sleeping Giant and Sheep Creek Wilderness Study Areas (WSA); MT

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Wilderness Suitability Study and Environmental Impact Statement (EIS) for the Sleeping Giant and Sheep Creek WSAs.

SUMMARY: Pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969 and sections 603(a) and 202(a) of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared a final wilderness suitability study and EIS for the Sleeping Giant and Sheep Creek WSAs. These WSAs are located near Holter Lake in Lewis and Clark County, West-central Montana. The capital city of Helena is approximately 30 miles south, while Great Falls is some 60 miles northeast. The Sleeping Giant and Sheep Creek WSAs are adjacent to one another and are separated by a powerline and an associated maintenance road. The Sleeping Giant

WSA is 6,457 acres in size and the Sheep Creek WSA contains 3,927 acres.

The EIS assesses the environmental consequences of managing the two WSAs as wilderness and nonwilderness. The proposed action recommends that the two WSAs be designated wilderness and managed in accordance with the Wilderness Act of 1964.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to President and to Congress. The final decision on wilderness designation rests with the Congress. In any case, no action on these proposals can be taken by the Secretary of Interior during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the final document are available at the following BLM offices:

Butte District Office, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, at phone 406–494–5059 or FTS 585–8059.

Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800, at phone 406–255–2936 or FTS 588–7936.

FOR FURTHER INFORMATION CONTACT: Bradley Rixford, Project Manager, Bureau of Land Management, 106 North Parkmont, P.O. Box 3388, Butte, Montana 58702, at phone 406–494–5059 or FTS 585–8059.

Dated: February 27, 1991.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91–5123 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–DN–M

[OR–050–01–4320–02–ADVB; GP1–134]

Prineville District Grazing Advisory Board; Meeting

February 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A meeting of the District Grazing Advisory Board for the Prineville District, Bureau of Land Management, will be held in the District Office conference room, 185 E. Fourth Street, Prineville, Oregon, beginning at 10 a.m. on Thursday, April 18, 1991. Discussion topics will include:

1. An overview of the Bureau's national rangeland management program, "The Range of Our Vision";
2. Accomplishments and direction of this year's allotment evaluation efforts;
3. The drought situation;
4. Central Oregon Natural Resources Coalition update;
5. Updated project status report;
6. Grazing and riparian management section of the Deschutes River Plan.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Prineville District Office, 185 E. Fourth Street (P.O. Box 550), Prineville, Oregon 97754 (Telephone (503) 447–4115).

Donald L. Smith,

Acting District Manager.

[FR Doc. 91–5445 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–130–4830–12–ADVB; GP1–133]

Spokane District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is herby given in accordance with Public Law 94–579 and 43 CFR, part 1780, that a meeting of the Spokane District Advisory Council will be held on April 25, 1991. The meeting will begin at 10 a.m., in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington. The agenda of the meeting is as follows:

1. Opening remarks and general business.
2. Spokane District Resource Management Plan (RMP) Amendment.
3. Yakima Canyon Program.
4. San Juan County.
5. Land Exchange Update.
6. Mineral Resource Issues.
7. Outlook for FY 91.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202, or telephone (509) 353–2570 by the close of business, 4:30 p.m., Friday, April 19, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office and will be made available for public inspection.

Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: March 1, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91–5446 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–01–4214–10; GP1–126; OR–44954]

Opening of National Forest Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary two-year segregative effect as to 11,675.51 acres of National Forest land included in an application for withdrawal involving the Pringle Falls Experimental Forest.

EFFECTIVE DATE: March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2–1(d), at 8:30 a.m., on March 31, 1991, the temporary two-year segregative effect of withdrawal application OR–44954 shall be terminated as to the following described lands. Such termination shall not effect the processing of the withdrawal application:

Willamette Meridian

Deschutes National Forest

T. 20 S., R. 9 E.,
- Sec. 28, SW¼;
- Sec. 29, S½;
- Sec. 30, E½SW¼ and SE¼;
- Sec. 31, E½ and E½W½;
- Sec. 32;
- Sec. 33, W½NE¼, SE¼NE¼, W½, and SE¼;
- Sec. 34, SW¼SW¼.

T. 21 S., R. 9 E.,
- Sec. 4, lots 1, 2, 3, and 4, and S½N½;
- Sec. 5, lots 1, 2, 3, and 4, and S½N½;
- Sec. 6, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
- Sec. 21 and 22;
- Sec. 23, NW¼ and S½;
- Sec. 24 to 28, inclusive;
- Sec. 32 to 36, inclusive.

The areas described aggregate 11,675.51 acres in Deschutes County.

Dated: February 22, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–5527 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–110–4212–11–35–7A; G–1–132]

Realty Action, R&PP Lease, Oregon.

SUMMARY: The following public lands in Jackson County, Oregon have been found suitable for classification as lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) Lease No. ORE 013626 was issued to Jackson County School District No. 94, Pinehurst Elementary School. Application has been made for additional uses and additional acreage to be developed for a baseball diamond and field in the following location:

Willamette Meridian

T. 40 S., R. 4 E.,
- Sec. 7, SE1/4NE1/4NW1/4.

Containing an additional 4.59 acres, more or less.

The lands are not needed for federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest.

The lease amendment (No. 1) will include the following additional uses, which are within the original 6.63 acres of lease No. ORE 013626:

32' x 48' annex and parking lot.

This amendment will also include an additional 4.59 acres to be developed as a baseball diamond and field, including fencing, bleachers, well and parking area.

The amended lease will be subject to the above-cited Recreation and Public Purposes Act, as amended and all applicable regulations issued by the Secretary of Interior. Detailed information concerning this action is available for review at the Medford District Office of the Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease amendment to the District Manager, Medford District Office, 3040 Biddle Rd., Medford, Oregon 97504. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

James P. Clason,

Associate District Manager.

[FR Doc. 91–5492 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–01–4214–10; GP1–127; OR–46536]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,972.28 acres of public lands and 307.13 acres of private lands, which will be acquired through land exchange, for protection of the Coos Bay North Spit Special Recreation Management Area. This notice closes the lands for up to 2 years from mining. The public lands will remain open to surface entry and mining unless otherwise withdrawn.

DATES: Comments and requests for a public meeting must be received by June 6, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Director, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: On February 19, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location or entry under the mining laws, subject to valid existing rights:

Willamette Meridian

Public Domain Lands

T. 25 S., R. 13 W.,
- Sec. 4, N½NW¼;
- Sec. 5, fractional NW¼NW¼;
- Sec. 6, lots 1, 2, 3, and 4, SE¼NE¼, and E½SE¼;
- Sec. 7, lots 2 through 8, inclusive, NE¼, SE¼NW¼, E½SW¼, and fractional SW¼SW¼;
- Sec. 18, lots 7 and 8, E½NW¼, fractional W½NW¼, and fractional NW¼SW¼.

T. 25 S., R. 14 W.,
- Sec. 12, lot 1;
- Sec. 13, lots 1, 2, 3, and 4, and E½SE¼;
- Sec. 23, lot 1;
- Sec. 24, lots 6 through 13, inclusive, W½NE¼, and NE¼SW¼;
- Sec. 25, lot 3;
- Sec. 26, lots 8, 9, and 10.

The areas described aggregate 1,972.28 acreas in Coos County, Oregon.

Willamette Meridian

Private Lands

T. 24 S., R. 13 W.,
- Sec. 32, E½SW¼.

T. 25 S., R. 13 W.,
- Sec. 5, SW¼NE¼;
- Sec. 8, lot 3;
- Sec. 18, lots 3 and 4, and NE¼SW¼;
- Sec. 19, lot 4.

T. 25 S., R. 14 W.,
- Sec. 24, lot 4;
- Sec. 25, lot 1.

Including any accretion of lands, the areas described aggregate 307.13 acreas in Coos County, Oregon.

The purpose of the proposed withdrawal is to protect the Coos Bay North Spit Special Recreation Management Area which is located near the cities of Coos Bay and North Bend.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director, Bureau of Land Management, at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director, Bureau of Land Management, at the address indicated above, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For the period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: February 22, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91–5526 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Receipt of Applicants for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-756126

Applicant: Robert W. Stafford, Tehachapi, CA

The applicant requests a permit to take, via Sherman live traps, Tipton kangaroo rats (*Dipodomys nitratoides nitratoides*) for biological surveying purposes in Kern and Tulane Counties, California, to determine the presence of the species within the boundaries of proposed development sites.

PRT-756523

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to import two captive-born female black lemurs (*Lemur macaco macaco*) from Zoo Mulhouse, Mulhouse, France for breeding and display purposes.

PRT-755734

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase one male Asian elephant (*Elephas maximus*) from Metro Washington Park Zoo, Portland, Oregon, for breeding purposes.

PRT-756357

Applicant: Adriatic Animal Attractions, Inc., Orlando, FL

The Applicant requests a permit to export one female white tiger and one female standard color tiger (*Panthera Tigris*) born at Ft. Walton Beach, Florida, to Prince Rainier of Monaco, for the purpose of educational display.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1991.

Karen W. Ross,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–5460 Filed 3–7–91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicant have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 745033

Applicant: Scientific Research and Consulting Service, Marina, CA

The applicant requests an amendment to his permit to add Struve Slough in Santa Cruz County, California, as a site to take (i.e. capture by drift fencing and can trapping, use of nets for larvae from any new locality for identification purposes and return to capture site) the Santa Crux long-toed salamander (*Ambystoma macrodactylum croceum*) for surveying purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 4, 1991.

Karen W. Ross,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–5459 Filed 3–7–91; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the National Wild and Scenic River Study Corridor for the Allegheny River

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces the decision of OSM on a request by Rosebud Mining Company for a determination of valid existing rights (VER) under section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM has determined that Rosebud Mining Company does not possess VER to conduct underground coal mining operations on six acres of privately owned land within a study corridor established in 1978 by Congress for the Allegheny River in Pennsylvania under the Wild and Scenic Rivers Act (WSRA). Mining by Rosebud Mining Company in the study river corridor is prohibited until the study report prepared by the United States Department of Agriculture (USDA) Forest Service is acted upon by Congress. If Congress decides to remove the designation pursuant to WSRA as the USDA study report recommends, then Rosebud is encouraged to re-apply for necessary approvals since the section 522(e)(1) prohibition would no longer apply.

ADDRESSES: Documents comprising the administrative record are available for public review and copying during regular business hours in room 246, Office of Surface Mining Reclamation and Enforcement Department of Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220. Copies of the Director's decision and of relevant notices may be obtained at the same location.

FOR FURTHER INFORMATION CONTACT: Charles H. Wolf, Office of Program Support, Eastern Service Center, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, (412) 937–2897.

SUPPLEMENTARY INFORMATION:

I. Background on VER

Section 522(e) of SMCRA, 30 U.S.C. 1272(e), prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Specifically, paragraph (e)(1) of section 522 provides that—

> After the enactment of this Act and subject to valid existing rights, no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted on any lands within the boundaries of units of the * * * Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act * * *.

The term "valid existing rights" is not defined in SMCRA. OSM's first attempt to define VER in 1979 was an effort to limit the exemption to those property rights in existence on August 3, 1977, the owners of which either had obtained all necessary permits on or before August 3, 1977, or could demonstrate that the coal for which the exemption was sought was both needed for, and immediately adjacent to, a mining operation in existence prior to August 3, 1977 (44 FR 15342).

On judicial review, the court remanded to the Secretary of the Interior that portion of the definition requiring the property owner to have obtained all permits necessary to mine. Specifically, the court indicated that "a good faith attempt to have obtained all permits before the August 3, 1977, cut-off date should suffice for meeting the all permits test." In re Permanent Surface Mining Regulation Litigation I No. 79–1144, Mem. Op. (D.D.C. February 26, 1980), 14 ERC 1063, 1091 (hereafter PSMRL I, Round I).

On June 10, 1982, OSM initiated a rulemaking to revise the definition of VER by proposing for public review and comment a "good faith/all permits" test and several other alternatives which can all be described as "mechanical" tests. As a result of public comment, OSM dropped further consideration of such mechanical tests and on September 14, 1983, promulgated a broad definition of VER which relied on a "takings standard (48 FR 41312). Under this standard a person possesses if the application of any of the prohibitions contained in section 522(e) of SMCRA would result in a taking of that persons property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the Constitution.

On judicial review, the court held that the broad takings standard represented a significant departure from the mechanical tests of the proposed rule and that a new notice and public comment period was necessary. In re Permanent Surface Mining Regulation Litigation II No. 79–1144, Mem. Op. (D.D.C. March 22, 1985) 22 ERC 1557. The court remanded the definition of VER to the Secretary of the Interior for proper notice and comment.

In response to the court order, OSM on November 20, 1986, suspended portions of the Federal rules that had adopted a "takings" test (51 FR 41955). This same notice announced that until a new definition of VER was promulgated, OSM would make VER determinations on Federal lands and on non-Federal lands within the boundaries of areas specified in section 522(e)(1) of SMCRA where operations would affect the Federal interest, using the VER definition contained in the appropriate State or Federal regulatory program. Where the State regulatory program contains a VER definition similar to OSM's 1979 "all permits' test, OSM announced that it will apply the test to include the District Court's suggestion that a good faith effort to obtain all permits would establish VER.

II. The Rosebud Mining Company Request

On April 8, 1985, Rosebud Mining Company applied to the Pennsylvania Department of Environmental Resources (DER) for a permit to conduct undeground mining operations in Perry Township, Armstrong County, Pennsylvania. The proposed operations are in the Lower Kittanning coal seam and would affect 16.5 acres of surface area and 2,135 acres of subsurface area. The application was reviewed and permit no. 03851301 was issued by the Pennsylvania DER on October 17, 1988. No mining occurred, however. Over one year and six months after obtaining the permit, Rosebud Mining Company requested on April 30, 1990 that OSM make a determination of VER to conduct underground coal mining operations on privately owned lands within the study corridor established for the Allegheny River under the WRSA (Administrative Record No. 6.11).

The proposed mine, Rosebud Mine No. 2, encompasses 2150 acres of permit area and is located between river mile markers 78 and 79, near the town of West Monterey. Only six acres of the permit area are within the one-quarter mile study corridor for the Allegheny River and potentially subject to the mining prohibition. Within these six acres, Rosebud proposed to construct an access road, water treatment ponds, and part of an employee parking lot. A representative of OSM suggested to Rosebud that it place these surface disturbances elsewhere, so that its operation would not be subject to the mining prohibition. Rosebud cited engineering concerns and chose not to relocate the ponds, road and parking lot.

OSM provided public notice of the Rosebud Mining Company request for VER with announcements published in the June 5, 1990, **Federal Register** (55 FR 22982) and in the Progress News a weekly newspaper of general circulation in Armstrong County, Pennsylvania. The public comment period closed on July 20, 1990.

OSM notified the USDA Forest Service on May 15, 1990, that it had received a request for VER from Rosebud Mining Company and requested the factual information, including supporting documentation, on when the WSRA study corridor boundaries were established and other information related to the Rosebud request (Administrative Record No. 6.16). The USDA Forest Service responded to OSM's request by letter dated June 14, 1990 (Administrative Record No. 6.27).

III. Applicable VER Standard

With respect to non-Federal lands within the boundaries of areas specified in section 522(e)(1) of SMCRA, OSM will make the VER determinations, rather than the State, because of the Federal interest at stake in a Wild and Scenic Study River corridor. See 30 CFR 740.4(a), 740.11(a) and 745.13(o). However, OSM will use the definition of VER in the approved State regulatory program. As stated in OSM's suspension notice of November 20, 1986 (51 FR 41955), OSM will approach each VER determination on a case-by-case basis and will examine the particular circumstances which surround individual determinations. In States which have an all permits test, OSM will apply the test to include the good faith modification suggested by the district court in PSMRL I, Round I.

On July 30, 1982, the Commonwealth of Pennsylvania earned approval of its permanent program submission (47 FR 33079). Pennsylvania defined the term VER, as:

> Those property rights in existence on August 3, 1977, that were created by a legally-binding conveyance, lease, deed, contract, or other document which authorizes the applicant to produce minerals by a surface mining operation; and provided further that the person proposing to conduct surface mining operations on such lands holds all current State and Federal permits necessary to conduct such operations on those lands an either held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances, and approvals required by the Department.

25 PA Code 86.1

The State's rules at 25 PA Code 86.1 clarify the above definition by stating that a party's mere expectation of the right to conduct surface mining operations or the right to conduct underground coal mining is not sufficient support to establish an applicant's claim of VER. Under these rules, interpretation of the terms of the document relied upon to establish VER shall be based upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the

parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims VER and that such document has been signed by the surface owner.

IV. Application of Pennsylvania's VER Standard

In applying the Pennsylvania VER standard, OSM reviewed evidence in the administrative record to determine if Rosebud Mining Company applied for the necessary permits prior to the time when the Allegheny River study corridor was designated and demonstrated the property right to mine the coal from the areas in question. OSM discovered that the Allegheny River study corridor was designated by Congress in 1978. Guidelines implementing the study corridor were promulgated in 1982 by the USFS. Rosebud did not apply for permits until 1985. Its permit calls for land disturbances in the study corridor, despite the pre-existing Congressional prohibition.

To prove property rights, Rosebud Mining Company submitted to OSM several coal lease agreements and deeds between either Glacial Holding, Inc. or Glacial Minerals, Inc. and individual landowners as proof of the property right to mine (Administrative Record No. 6.28). Glacial Holding, Inc. merged with Glacial Minerals, Inc. on September 30, 1984. Glacial Minerals, Inc. now holds an 80 percent interest in Rosebud Mining Company. The coal lease agreements evidence a property interest less constitutionally protected than if Rosebud owned the mineral in fee simple. However, Rosebud Mining Company's right to mine the properties in question, subject to the Congressional prohibition in the study corridor, is not disputed for the purposes of this VER analysis. In addition, Rosebud Mining Company also provided to OSM contractual statements whereby landowners acknowledge that Rosebud can enter upon and disturb the surface for the purpose of mining. Such consent is required under the definition of VER at 25 PA Code 86.1 (Administrative Record No. 6.28).

Under the definition of VER at 25 PA code 86.1, an applicant for VER must demonstrate that it holds all current State and Federal permits necessary to conduct mining operations and either held those permits on August 3, 1977, or had made by that date a complete application for permits, variances and approvals required by the Department. OSM concludes that because Rosebud Mining Company did not submit a permit application to PADER until April 8, 1985, it fails to satisfy this requirement and therefore does not possess VER as defined by Pennsylvania regulatory program. Pennsylvania rules, unlike the Federal rules at 30 CFR 761.5, do not provide for continuously created VER whereby owners of property which come under the protection of section 522(e) of SMCRA after August 3, 1977, can be found to possess VER.

OSM reviewed the history of the WSRA and the Allegheny River study to determine if there is a possibility that Rosebud Mining has VER under the concept of continuously created VER as set forth in the Federal rules. October 2, 1968, Congress passed the WSRA (Pub. L. 90-542) to protect free-flowing rivers with outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Departments of Agriculture and the Interior were given responsibility for initiating studies of rivers which the Act authorized as potential additions to the National Wild and Scenic Rivers System (NWSRS). In February 1970, the Departments of Agriculture and the Interior promulgated guidelines for evaluating wild, scenic and recreational river areas proposed for inclusion in the NWSRS. These guidelines were silent as to the area to be studied.

In 1976, Congress amended the WSRA (Pub. L. 95-625) to include the Allegheny River from Kinzua Dam to East Brady, Pennsylvania for study to determine its suitability for inclusion in the NWSRS. The USDA Forest Service was designated the lead agency for the study which was begun in the fall of 1980 following the 1970 guidelines for conducting wild and scenic river stuides.

On August 2, 1979, the President directed the Secretary of Agriculture and the Secretary of the Interior to jointly revise the 1970 guidelines for evaluating wild, scenic and recreational rivers. Accordingly, the Final Revised Guidelines for Eligibility, Classification, and Management of River Areas were promulgated on September 7, 1982 (47 FR 29454). These guidelines defined the river area for study as "an area extending at least one-quarter mile from each bank" and expressly pre-empted the 1,100-foot boundary in effect since 1960. OSM sought a legal opinion concerning whether the one-quarter mile area applied to Rosebud and when the application took effect. USDA Forest Service's opinion was that these 1982 final revised guidelines have the effect of law and are binding upon the agency. (Administrative Record No. 6.27). On October 30, 1986, Congress amended the WSRA to add language that "the boundaries of any river proposed in section 1276(a) of this title for potential addition to the NWSRS shall generally comprise that area measured within one-quarter mile from the ordinary high-water mark on each side of the river." Rosebud contends that the one-quarter mile boundary did not take effect until 1986, after it already applied for permits. OSM disagrees based upon the legal opinion of the USDA Forest Service that the boundary took effect in 1982.

V. Conclusion

OSM finds that Rosebud Mining Company did not make a good-faith attempt to obtain all necessary permits until April 8, 1985. The prohibitions of section 522(e)(1) of SMCRA took effect on the lands in 1982 when the Forest Service regulations set the boundary for the study corridor. Rosebud knew, or should have known, that its proposed surface disturbances were within the boundary, when it proposed its operation in 1985. It should have relocated its proposed ponds and parking lot outside the one-quarter mile area. OSM also disagrees with environmentalist commentors who argue that Rosebud had to have filed for permits in 1977. The area in question was not subject to the 522(e)(1) prohibitions until 1982. Based upon these conclusions and information present in the administrative record, OSM finds that Rosebud Mining Company does not possess VER to mine the six acres in question. Accordingly, their request to be granted VER is denied. However, if Congress rescinds the study corrdior designation, then the mining prohibition of section 522(e)(1) would no longer apply and the issue of VER would be moot.

VI. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988). Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper with circulation in Armstrong County, Pennsylvania.

Dated: February 26, 1991.

Harry M. Snyder,

Director.

[FR Doc. 91-5443 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-304]

Red Tart Cherries; Economic and Competitive Factors Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Cancellation of hearing.

EFFECTIVE DATE: March 5, 1991.

SUMMARY: On November 19, 1990, following receipt of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted Investigation No. 332-304, under section 332(g) of the Tariff Act of 1930, and scheduled a public hearing in connection therewith for March 12, 1991. On March 4, 1991, the Commission received notice from the only scheduled witness for the hearing that it was withdrawing its request to appear at the public hearing scheduled for March 12, 1991. Therefore, the public hearing in connection with this investigation (scheduled to be held beginning at 9:30 a.m. on March 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC), is cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202-252-1318) or David Ingersoll (202-252-1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: March 5, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-5626 Filed 3-7-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Brands, Inc., 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870-0811.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(I) ACCO World Corporation—Delaware
(II) Polyblend Corporation—Illinois
(III) Vogel Peterson Furniture Company—Delaware
(IV) Swingline Inc.—Delaware
(V) Wilson Jones Company—Delaware
(VI) Day-Timers, Inc.—Delaware
(VII) Perma Products Company—Delaware
(VIII) Sax Arts and Crafts, Inc.—Delaware
(IX) Kensington Microware Limited—Delaware
(X) MasterBrand Industries, Inc.—Delaware
(XI) Moen Incorporated—Delaware
(XII) Twentieth Century Companies, Inc.—Delaware

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5543 Filed 3-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 15)]

Intrastate Rail Rate Authority—Minnesota

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Minnesota to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective April 7, 1991 and will expire April 6, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: March 1, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5542 Filed 3-7-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

March 5, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 AND to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer AND the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Application for Posthumous Citizenship.

(2) N-644, Immigration and Naturalization Service.

(3) On occasion.

(4) Individual or households. Information is needed to implement Posthumous Citizenship for Active Duty Service Act, Public Law 101–249, to determine eligibility to request such citizenship status for decedent.

(5) 14,000 annual respondents at 1.833 hours per response.

(6) 25,662 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collection

(1) Iran Claims Program.

(2) No form number. Foreign Claims Settlement Commission.

(3) One-time.

(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Data will be used as basis for determining entitlement to awards payable by the Department of the Treasury out of Iran compensations funds for property and financial claims of US Nationals against the Iranian government arising out of the Iranian revolution.

(5) 3,100 annual respondents at 5 hours per response.

(6) 15,500 estimated annual burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Civil Liberties Act of 1988—Voluntary Information Form.

(2) CRT–55. Office of Redress Administration, Civil Rights Division.

(3) One time.

(4) Individuals or households. Under the provisions of 50 U.S.C. app. 1989b, this voluntary form may be used to locate persons of Japanese ancestry who were confined, held in custody, relocated, or otherwise deprived of liberty during WW II.

(5) 16,000 annual respondents at 0.5 hours per response.

(6) 8,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection of Information Without Any Change in the Substance or in the Method of Collection

(1) National Corrections Reporting Program.

(2) NCRP–1A, NCRP–1B, NCRP–1C. Bureau of Justice Statistics, Office of Justice Programs.

(3) Annually.

(4) State or local governments, Federal agencies or employees. The NCRP provides data on prison admissions and releases and on parole entries and exits. No other collection series provides comparable data across jurisdictions. Data used to determine trends in inmate composition, sentencing and time served. Data provided by corrections departments and the Federal Bureau of Prisons is used by the BJS, Congress, researchers, practitioners and other members of the criminal justice community.

(5) 625,000 annual respondents at 0.0020 hours per response (average manual response and ADP response).

(6) 1,250 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 91–5525 Filed 3–7–91; 8:45 am]

BILLING CODE 4410–18–M

Lodging of Consent Decree; Corinne, UT, et al.

In accordance with United States Department of Justice departmental policy 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Corinne, et al.* (D. Utah), has been lodged with the United States District Court for the District of Utah.

The proposed consent decreee concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill material into portions of the Bear River and adjacent areas in Box Elder County, Utah, which constitute "waters of the United States." The consent decree requires the defendants, City of Corinne, C.R. Clark, Robert Gilbert and Marie Trippodi, to remove the fill materials and restore and stabilize the sites to the satisfaction and specifications of the United States Army Corps of Engineers and the United States Environmental Protection Agency, and dispose of it at a site compatible with county and state ordinances, regulations and statutes. Defendants' removal of unpermitted fill & restoration of the sites is to take place by June 1, 1991. The consent decree provides that each defendant will pay civil penalities in the amount of $5,000 if defendants fail to comply by June 1, 1991 and additional penalties of $5,000 per month of noncompliance.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Brian J. Plant, P.O. Box 23986, Washington, DC 20026–3986 and should refer to *United States* v. *City of Corinne, et al.*, DJ Reference No. 90–5–1–1–3278.

The consent decree may be examined at the Clerk's Office, United States District Court for the District of Utah, United States Courthouse, room 204, 350 South Main Street, Salt Lake City, Utah 84101.

Richard B. Stewart,

Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 91–5512 Filed 3–7–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–25,133]

Eastman Christensen Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Eastman Christensen, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–25,067; Eastman Christensen, Houston, Texas (March 1, 1990)

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–5536 Filed 3–7–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,139]

Harvey Industries, Inc. a/k/a Harvey Manufacturing, Inc., a/k/a L & N Enterprises, Inc., Athens, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1991 applicable to all workers of Harvey Industries, Inc., Athens, Texas. The Certification Notice was published in the Federal Register on February 26, 1991 (56 FR 7866).

New information from the company shows that a series of name changes occurred during the coverage period but the worker group, products produced and ownership all remained the same. The worker group was called Harvey Manufacturing through March 31, 1990; from April 1, 1990 until Octoer 1, 1990 the worker group was identified as L & N Enterprises. On October 1, 1990 the worker group became Harvey Industries, Inc. The notice, therefore, is amended to properly reflect the correct worker groups.

The amended notice applicable to TA–W–25,139 is hereby issued as follows:

All workers of Harvey Industries, Inc., also known as Harvey Manufacturing, Inc., and also known as L & N Enterprises, Inc., Athens, Texas who became totally or partially separated from employment on or after November 19, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–5539 Filed 3–7–91; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Albert Nipon-Leslie Fay Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Albert Nipon—Leslie Fay Corp. (Wkrs)	Philadelphia, PA	02/25/91	02/12/91	25,448	Sportswear.
Artistic Weaving Co. (Wkrs)	Clinton, NC	02/25/91	02/13/91	25,449	Printed labels.
Bethany Mfg. Co. (Wkrs)	Garland, TX	02/25/91	01/31/91	25,450	Machine parts.
Callaway Safety Equip. Co., Inc. (Wkrs)	Kalkaska, MI	02/25/91	01/13/91	25,451	Safety equipment.
Central Sportswear (Wkrs)	Lacrosse, VA	02/25/91	02/01/91	25,452	Sportswear.
Champion Spark Plug Co. Pt. 1 (UAW)	Toledo, OH	02/25/91	12/10/90	25,453	Spark plugs.
Champion Spark Plug Co. Pt. 2 (UAW)	Detroit, MI	02/25/91	12/10/90	25,454	Spark plugs.
Chase Garden, Inc. (Wkrs)	Eugene, OR	02/25/91	02/01/91	25,455	Flowers.
Duncraft Inc. (Wkrs)	Philadelphia, PA	02/25/91	02/11/91	25,456	Clothing.
E.I. du pont de Nemours & Co. (Wkrs)	Jonesboro, AR	02/25/91	02/13/91	25,457	Test packs.
Eagle Bus mfg. (Wkrs)	Brownsville, TX	02/25/91	02/12/91	25,458	Buses.
Elkin C. Inc. (Wkrs.)	Elizabeth, NJ	02/25/91	01/21/91	25,459	Garment patterns.
General Motors Corp. (UAW)	Van Nuys, CA	02/25/91	02/14/91	25,460	Auto parts.
Granby Manufacturing (ACTWU)	Granby, MO	02/25/91	01/16/91	25,461	Jeans.
Hart & Cooley, Inc. (Wkrs)	Holland, MI	02/25/91	02/11/91	25,462	Air controls.
Hazlehurst Lingerie (Wkrs)	Hazlehurst, GA	02/25/91	02/14/91	25,463	Sleepwear.
J. Landis Shoe Co. (Wkrs)	Palmyra, PA	02/25/91	02/13/91	25,464	Footwear.
Jantzen, Inc. (Wkrs)	Vancouver, WA	02/25/91	02/11/91	25,465	Sportswear.
Laser Magnetic Storage Intl., Co. (Wkrs)	Colorado Springs, CO	02/25/91	02/10/91	25,466	Cassette tapes.
Lee Co.,—V.F. Corp.	Lebanon, MI	02/25/91	02/11/91	25,467	Jeans.
Mathies Coal Co. (UMWA)	Finleyville, PA	02/25/91	01/24/91	25,468	Coal.
MHP Machines, Inc. (Wkrs)	Buffalo, NY	02/25/91	02/15/91	25,469	Machine tools.
NCR NPD Rancho Bernardo & Calif. (Wkrs)	Columbia, SC	02/25/91	02/11/91	25,470	Computers.
NCR, NPD, USG (Wkrs)	St. Paul, MN	02/25/91	02/11/91	25,471	Computers.
NCR, NPD, USG (Wkrs)	Rancho Bernardo, CA	02/25/91	02/11/91	25,472	Computers.
Nederlander & Sons (Wkrs)	Chehalis, WA	02/25/91	02/14/91	25,473	Cedar shakes.
Obion Denton (Wkrs)	Fulton, MS	02/25/91	02/12/91	25,474	Sewing.
PAR Technology Corp. (Company)	New Hartford, NY	02/25/91	01/13/91	25,475	Microprocessors.
Riverside Seat Co. (UAW)	Riverside, MO	02/25/91	02/12/91	25,476	Auto seats.
Robvon Backing Ring, Co. (Wkrs)	Avenel, NJ	02/25/91	01/30/91	25,477	Backing rings.
Samuel Blue (Cutting Room) (ILGWU)	New York, NY	02/25/91	01/31/91	25,478	Dresses.
Sanymetal Products, Inc. (USAW)	Cleveland, OH	02/25/91	02/14/91	25,479	Toilet partitions.
Sherman Lumber Co. (Wkrs)	Sherman Station, ME	02/25/91	02/11/91	25,480	Lumber.
Tecumseh Prods., Co. (IBEW)	Somerset, KY	02/25/91	02/07/91	25,481	Compressors.
Trane Co. Div. of Amer. Standard (Wkrs)	Dunmore, PA	02/25/91	02/12/91	25,482	Air & heating products.
Trani Fashions, Inc. (Wkrs)	Jersey City, NJ	02/25/91	02/13/91	25,483	Coats & suits.
W.I. Forest Prod.-Sandpoint Div. (IWA)	Sandpoint, ID	02/25/91	02/15/91	25,484	Lumber.
Wolf Bros. (Wkrs)	New York, NY	02/25/91	02/06/91	25,485	Coats & jackets.
Woodbridge Corp. (UAW)	Riverside, MO	02/25/91	02/11/91	25,486	Foam components.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ringling Manufacturing Co. (Marietta Sportswear Mfg) (Wrks) (Re-Open).	Marietta, OK	11/05/90	11/05/90	25,050	Mens dress slacks.

[FR Doc. 91-5540 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25, 184]

Rome Turney Radiator Co., Rome, NY; Negative Determination Regarding Application for Reconsideration

By an application dated February 19, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 31, 1991 and published in the **Federal Register** on February 26, 1991 (56 FR 7066).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners provided the names of two major customers who reduced their purchases from Rome Turney and allegedly imported. Further, the petitioners stated that the Department's decision erroneously indicated that the workers produce copper tubing.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations and declines in sales or production. Failure to meet any one of these criteria would prevent the certification of the petitioning worker group.

Investigation findings show that the workers produce helical fin tubing for the air compressor industry. Sales and production of helical fin tubing decreased in 1989 compared to 1988 and increased in the first 10 months of 1990 compared to the same period in 1989.

Further, there were no production worker separations in 1989 or 1990. The three petitioners who were laid off in 1990 performed services and did not produce an article within the meaning of section 223(3) of the Act. Service workers may be certified only if their separations were caused importantly by a reduced demand for their services from a parent firm, or a firm otherwise related by ownership or control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions were not met.

The service worker separations in 1990 were the result of a company reorganization.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of February 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-5536 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24,867]

Wonderknit/Scoreboard Galax, VA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Wonderknit/Scoreboard, Galax, Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,867; Wonderknit/Scoreboard, Galax, Virginia (March 1, 1990)

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5537 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Alaska

This notice announces the beginning of a new Extended Benefit Period in the State of Alaska, effective on February 3, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on January 19, 1991, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 3, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on February 22, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-5534 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Rhode Island

This notice announces the beginning of a new Extended Benefit Period in the State of Rhode Island, effective on February 10, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on January 26, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 10, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all right under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on February 28, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-5535 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky, KY91-3 (Feb. 22, 1991).	p. 319 pp. 320-323
Massachusetts, MA91-1 (Feb. 22, 1991).	p. 421 pp. 423-437
Pennsylvania, PA91-21 (Feb. 22, 1991).	p. 1107 p. 1109

Volume II

Iowa:	
IA91-1 (Feb. 22, 1991)	p. 23 p. 27
IA91-2 (Feb. 22, 1991)	p. 29 p. 30
IA91-4 (Feb. 22, 1991)	p. 37 p. 38
IA91-5 (Feb. 22, 1991)	p. 41 pp. 42-45
IA91-13 (Feb. 22, 1991)	p. 63 p. 64
Illinois	
IL91-12 (Feb. 22, 1991)	p. 171 p. 172
IL91-13 (Feb. 22, 1991)	p. 183 p. 184
IL91-14 (Feb. 22, 1991)	p. 195 pp. 197, 202
Texas	
TX91-5 (Feb. 22, 1991)	p. 1027 p. 1028
TX91-10 (Feb. 22, 1991)	p. 1045 p. 1046
TX91-21 (Feb. 22, 1991)	p. 1071 p. 1072
TX91-43 (Feb. 22, 1991)	p. 1137 p. 1138
TX91-45 (Feb. 22, 1991)	p. 1145

Volume III

Oregon, OR91-1 (Feb. 22, 1991).	p. 371 pp. 375-378 pp. 385-386

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th Day of March 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-5599 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-23)]

Revocation of Patent Licenses

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of revocation of patent licenses.

SUMMARY: NASA, during the period of November 29, 1978 to December 8, 1986, granted 148 nonexclusive licenses for U.S. Patent No. 4,052,648 entitled "Power Factor Control System for A.C. Induction Motors." The invention covered by this patent is the basis for a NASA-proprietary technology which consists of devices which match the power consumed by an electrical motor to the load and consequently, reduces energy consumption during low-load conditions. Thirty-three of these licenses have been revoked by NASA for failure to achieve practical application of the licensed invention; for failure to maintain practical application of the licenses invention, or for failure to report their activities under the license. The licenses which have been revoked are listed in the following Table 1 in numerical order:

Table 1

NASA License No. 558, Date of License: November 29, 1979, Martin M. Dapot, Cardinal Control Systems, Inc., 481A Carlisle Drive, Herndon, VA 22070.

NASA License No. 571, Date of License: November 29, 1979, E.R. Mertz, E.R. Mertz, Inc., P.O. Box 235, Garwood, N.J. 07027.

NASA License No. 589, Date of License: December 12, 1979, James W. Kennedy, JMK, Inc., 15 Caldwell, Drive, Amherst, New Hampshire 03031.

NASA License No. 598, Date of License: December 12, 1979, James T. Record, Record Enterprises Limited, 2038 Kalanianaole Ave., Hilo, Hawaii 96720.

NASA License No. 606, Date of License: December 12, 1979, Carl E. Holmes, Carl E. Holmes, Co., Inc., 107 No. Ave. 64, Los Angeles, CA 90042.

NASA License No. 619, Date of License: January 31, 1980, Nicholas G. Muskovac, Westinghouse Electric Corporation, 110 Douglas Road, P.O. Box 819, Oldsmar, FL 34677.

NASA License No. 630, Date of License: March 5, 1980, James R. Voigt, Innovation Company, R #1 Lakeshore Dr., Cleveland, WI 53015.

NASA License No. 639, Date of License: March 27, 1980, Gerald D. Opfer, Gerald Douglas Opfer, 8724 Via Diego Ct., Lakeside, CA 92040.

NASA License No. 643, Date of License: April 16, 1980, Raymond J. McAllise, Raymond J. McAllise, 1812 Bruce St., Canal Fulton, Ohio 44614.

NASA License No. 655, Date of License: May 5, 1980, William Fullerton, IMO Industries Inc., Fincor Electronics Division, 3750 East Market Street, York, PA 17402.

NASA License No. 656, Date of License: May 6, 1980, Jack C. Chen, De Amertek Corporation, Inc., 615 Mittel Drive, Wood Dale, IL 60191.

NASA License No. 658, Date of License: May 15, 1980, Lance Kaufman, Centron Corporation, suite 101, 7345 East Acoma, Scottsdale, AZ 85280.

NASA License No. 668, Date of License: June 6, 1980, Marshall V. Ledwick, Precision Mfg. Co., Inc., 2159 Valley Street, Dayton, Ohio 45404.

NASA License No. 676, Date of License: July 25, 1980, Vincent H. Sweeney, Sprague Electric Company, 96 Marshall Street, North Adams, Massachusetts 01247-2411.

NASA License No. 679, Date of License: July 29, 1980, Allie E. Burgin, A&J Industries, Inc., P.O. Box 7049, Moore, OK 73153-1049.

NASA License No. 681, Date of License: August 6, 1980, Matthew C. Baum, AMBI-TECH Industries, Inc., 319 Knickerbocker Avenue, Hillsdale, N.J. 07642.

NASA License No. 687, Date of License: September 3, 1980, Charles Johnson, Avtek Systems, Incorporated, 398 Beach Road, Burlingame, CA 94010.

NASA License No. 711, Date of License: November 10, 1980, Arnold E. Renner, General Electric Company, room 104, 1501 Roanoke Blvd., Salem, VA 24153.

NASA License No. 712, Date of License: November 14, 1980, Ellis Waldman, Waloo Electric Company, 303 Allens Avenue, Providence, RI 02905.

NASA License No. 718, Date of License: December 11, 1980, James Rosenfield, Romac Supply Company, 7400 Bandini Blvd., Commerce, CA 90040.

NASA License No. 719, Date of License: December 11, 1980, Robert D. Barry, Introl Design Inc., 48 North Street, Lockport, NY 14094.

NASA License No. 720, Date of License: January 6, 1981, Gary K. Kench, Kangaroo Technologies Corp., 601 Gateway Blvd., suite 930, San Francisco, CA 94080.

NASA License No. 727, Date of License: February 23, 1981, Nathaniel Burks, Burks Electronics Inc., 7853 Balboa Avenue, San Diego, CA 92111.

NASA License No. 748, Date of License: May 14, 1981, Steve P. Davis, Romac Motor & Control Co., 4256 E. Elwood, Phoenix, AZ 85040.

NASA License No. 755, Date of License: June 16, 1981, Emil J. Poshadel, Controlled Systems, Inc., 1106 Chamberlain Avenue, Fairmont, West Virginia 26554.

NASA License No. 757, Date of License: June 29, 1981, C. H. Nowak, American Technology Systems, Inc. (AMTEC), 1478 Southridge Drive, Clearwater, FL 34616.

NASA License No. 766, Date of License: October 20, 1981, Ronald J. Meetin, Signetics Corporation, 811 East Arques Ave., P.O. Box 3409, Sunnyvale, CA 94088-3409.

NASA License No. 783, Date of License: April 30, 1981, Robert A. Mammano, Unitrode Corporation, 1700 East Dyer Road, suite 190, Santa Ana, CA 92705.

NASA License No. 785, Date of License: June 3, 1982, Leven H. Goree, National Communications Electronics, Inc. (NCE), P.O. Box 41735, St. Petersburg, FL 33743.

NASA License No. 801, Date of License: April 1, 1983, Steven J. Calvin, Jr., WED-CO, 510 E. 7th Street, Rolla, MO 65401.

NASA License No. 820, Date of License: August 8, 1984, R.L. Ayers, FMC Corporation, 1777 Gears Road, Box 3091, Houston, TX 77001.

NASA License No. 824, Date of License: April 28, 1985, J.A. Chiang, FCB International Co., 3274 Ettie Street, Oakland, CA 94608.

NASA License No. 825, Date of License: April 28, 1985, Marion Ringo, Ringo Engineering Services, Inc., 2234 Viola Drive, League City, TX 77573.

Forty licensees did not respond to three separate letters requesting them to report their activities under their respective license agreements and (2) informing them that failure to respond to the last letter would result in the automatic termination of their licenses. These licenses are listed in the following Table 2 in numerical order:

Table 2

NASA License No. 562, Date of License: November 29, 1979, Robert G. Richardson, Electronic Devices Manufacturing Co., P.O. Box 247, Las Cruces, NM 88001.

NASA License No. 567, Date of License: November 29, 1979, H.L. Moon, Time Mark Corporation, 11440 E. Pine Street, Tulsa, OK 74116.

NASA License No. 570, Date of License: June 6, 1980, Robert C. Harris, Harris Circuits Manufacturing Co., 2710 Colley Avenue, Norfolk, VA 23517.

NASA License No. 580, Date of License: December 12, 1979, Ray W. Beauchea, Cynex Manufacturing Corporation, 23 Sager Place, Hillside, New Jersey 07205.

NASA License No. 587, Date of License: December 12, 1979, Ronald Newman, Roseth Newman Company, 5851 Nielsen, Paradise, CA 95969.

NASA License No. 588, Date of License: December 12, 1979, James R. Green, Electronic Energy Systems, 5871 Pittsford-Palmyra Rd., Pittsford, N.Y. 14534.

NASA License No. 592, Date of License: December 12, 1979, Alan Heimlich, Sun Shine Power Inc., 4534 Fuller St., Santa Clara, CA 95054.

NASA License No. 612, Date of License: January 15, 1980, Joseph C. Kiall, K.R. Electronics, Inc., 91 Avenel Street, Avenel, N.J. 07001.

NASA License No. 616, Date of License: January 17, 1980, Leslie Reeves, Eltex, P.O. Box 7807, Atlanta, GA 30357.

NASA License No. 620, Date of License: February 1, 1980, Stephen D. Pearce, Kybernetics, 14 Malabu Drive, Highland Heights, Kentucky 41076.

NASA License No. 624, Date of License: February 14, 1980, D.A. Townsend, B&B Electric, 2828 Ford Street, Oakland, CA 94601.

NASA License No. 627, Date of License: February 28, 1980, Gerald A. Howell, PHASE IN, Rt. 5, Box 25, Philadelphia, 39350.

NASA License No. 632, Date of License: March 17, 1980, James Swaziek, J. Swaziek & Associates, 1515 N. Highland Ave., Arlington Heights, IL 60004.

NASA License No. 637, Date of License: March 27, 1980, Robert D. Lapenieks, Reuland Electric Company, 17969 East Railroad, St., Industry, CA 91744.

NASA License No. 640, Date of License: March 27, 1980, Jim Leuba, ElectroShield, Inc., P.O. Box 476, Yellow Springs, Ohio 45387.

NASA License No. 641, Date of License: March 28, 1980, Gerald H. Servos, Instrumentation and Control Systems, Inc., 520 Interstate Road, Addison, Illinios 60101.

NASA License No. 624(S), Date of License: October 6, 1980, John W.

Kiowski, Geosource, Inc., P.O. Box 36227, Houston, TX 77036.

NASA License No. 646, Date of License: April 21, 1980, Paul E.J. Nelson, Paul E.J. Nelson Electric, 4712 Coffey Lane, Minneapolis, MN 55406.

NASA License No. 657, Date of License: May 13, 1980, Stuart F. Graydon, Rebel Electronics Inc., 3172 Mobile Hwy, Montgomery, AL 36108.

NASA License No. 665, Date of License: June 3, 1980, W. David Grammer, Redgra Energy Systems, Inc., 4424 W. Pico Blvd., Los Angeles, CA 90019.

NASA License No. 674, Date of License: July 22, 1980, John Paek, PAK Manufacturing, Inc., 1651 State St., DeKalb, IL 60115.

NASA License No. 675, Date of License: July 23, 1980, James Foust, Jiro Electronics, Inc., P.O. Box 2707, Rochester, N.Y. 14625.

ASA License No. 689, Date of License: August 25, 1980, August Mirand, Protech, 6133 Carpintero Ave., Lakewood, CA 90713.

NASA License No. 699, Date of License: October 24, 1980, James L. Gaynor, Jaygay Distributors, 99 Winthrop Avenue, Elmsford, N.Y. 10523.

NASA License No. 715, Date of License: November 20, 1980, Fred A. Werkmeister, Beacho Enterprises, 7470 North 79th Street, Milwaukee, WI 53223.

NASA License No. 716, Date of License: December 3, 1980, James R. Hudson, Hudson Metals, Inc., P.O. Box 4106, 500 Green Cove Road, SE., Huntsville, AL 35802.

NASA License No. 721, Date of License: January 8, 1981, Ramesh Trivedi, SNR Corporation, P.O. Box 221, Addison, IL 60101.

NASA License No. 735, Date of License: March 25, 1981, Samuel Weisberger, Energy Conservation Systems of America, Inc., (Deleware Corp), 4606 15th Avenue, Brooklyn, N.Y. 11219.

NASA License No. 749, Date of License: May 14, 1981, Ed Fonda, E.R. Consultants, Inc., 1080 Nilda Avenue, Mt. View, CA 94040.

NASA License No. 751, Date of License: May 14, 1981, Jim Carter, Rodcar Electronic Sales, 2720 Biloxi Lane, Mesquite, Texas 75150.

NASA License No. 769, Date of License: January 28, 1982, Robert N. Wagner, North American Power Corporation, P.O. Box 13094, Fresno, CA 93794.

NASA License No. 782, Date of License: June 17, 1982, Herbert Gray, Huntsville United Research & Technology, Inc., P.O. Box 3037, Huntsville, AL 35810.

NASA License No. 787, Date of License: July 20, 1982, Howard G. Anson, BASCO Electronics Corporation, 15823 35th NE., Seattle, WA 98155.

NASA License No. 788, Date of License: August 2, 1982, T.L. Bruno, Anchor Maritime Electronics Company, 1836 N. 5th Pl., Port of Hueneme, CA 93041.

NASA License No. 790, Date of License: September 15, 1982, Joseph R. Nagy, N. B. Industries, Inc., 610 West Olney Avenue, Philadelphia, PA 19120.

NASA License No. 791, Date of License: Sept. 27, 1982, Robert Meister, CORR. IND., P.O. Box A–E, San Luis Obispo, CA 93404.

NASA License No. 800, Date of License: March 29, 1983, M. Jayaram, OMNITRONICS, Inc., 1461 Castlewood Drive, Wheaton, IL 60187.

NASA License No. 804, Date of License: June 1, 1983, Dr. Barry P. Keane, Inotec Incorporated, P.O. Box 1587, Clemson, SC 29631.

NASA License No. 815, Date of License: May 3, 1984, Leland B. Whitney, Conroy and Associates, Route #1, Box 592, Danbury, Wisconsin 54830.

NASA License No. 832, Date of License: November 3, 1986, Stephen S. Israel, Quality Solar Systems of Florida, Inc., 632 Florida Central Parkway, Longwood, Florida 32750.

NASA was unable to contact by mail 63 licensees because NASA did not have current mailing address and the U.S. Postal Service did not have a forwarding address. These licenses are listed in the following Table 3 in numerical order:

Table 3

NASA License No. 561, Date of License: November 29, 1979, Robert A. Swanson, EMSI, Inc., 7417 Bush Lake Road, Edina, MN 55435.

NASA License No. 563, Date of License: November 29, 1979, Michael R. McWilliams, M–C Products Division of Material Control, Inc., 7720 East Redfield Road, suite 2, Scottsdale, AZ 85260.

NASA License No. 565, Date of License: November 29, 1979, Enrigue E. Bianchi, Scientific Energy Company (SCENCO), P.O. Box 4640, Huntsville, AL 35802.

NASA License No. 566, Date of License: November 29, 1979, W. Hynes, Ridgeway Electronics, Inc., 36 Powhatton Street, Augusta, ME 04330.

NASA License No. 568, Date of License: November 29, 1979, Gene Collins, Energy Controls Co., P.O. Box 41423, Crosstown Station, Memphis, TN 38104.

NASA License No. 569, Date of License: November 29, 1979, Joseph C. Barbeau, United States Solar Industries, Inc., 5600 Roswell Road, NE., Suite 280, Prado North, Atlanta, GA 30342.

NASA License No. 573, Date of License: November 29, 1979, Bruce W. Buchman, Lanman Enterprises, 4606 South Lincoln Road, Macedon, NY 14502.

NASA License No. 575, Date of License: November 29, 1979, Richard L. Saunders, Jr., Southeastern Research and Development Company, P.O. Box 47061, Atlantia, GA 30362.

NASA License No. 577, Date of License: December 12, 1979, Harry C. Hopkins, Hopkins International Company, 18 South Central Avenue, Elmaford, New York 10523.

NASA License No. 579, Date of License: December 12, 1979, Steven Tsengas, EnerCon, Inc., 30048 Lakeland Blvd., Wickliffe, OH 44092.

NASA License No. 583, Date of License: December 12, 1979, Gerald J. Byrnes, Universal Electronics Systems, Inc., 525–B Pickwick Road, P.O. Box #727, Savannah, TN 38372.

NASA License No. 586, Date of License: December 12, 1979, Ken Prescher, Westomatic Manufacturing Co., P.O. Box 6337, Tampa, FL 33674.

NASA License No. 590, Date of License: December 12, 1979, Dalton L. Bacus, Advanced Assembly Services, 433 Magnolia Ave., Glendale, CA 91204.

NASA License No. 591, Date of License: December 12, 1979, Robert A. Suding, Merrimac Engineering Inc., 10 S. Island Ave., Batavia, IL 60510.

NASA License No. 600, Date of License: December 12, 1979, John H. Stokes, Energy Technology, Inc., P.O. Box Q, Las Cruces, NM 88001.

NASA License No. 601, Date of License: December 12, 1979, Robert A. Casterline, Ecolotronics, Inc., Dundee Center—Sans Souci Parkway, Hanover Township, Wilkes-Barre, PA 18702.

NASA License No. 603, Date of License: December 12, 1979, R.C. Davison, FSI, 1894 Commercenter, W. #105, San Bernardino, CA 92408.

NASA License No. 604, Date of License: December 12, 1979, Aron Levy, Technology Dynamics Inc., 91 Carver Ave., Westwood, New Jersey 07675.

NASA License No. 606, Date of License: December 12, 1979, Donald Wienke, Solid State Relays, Inc., 213 Eisenhower Lane South, Lombard, IL 60148.

NASA License No. 614, Date of License: January 15, 1980, Joseph B. Beach, Bell Audio Systems, Inc., 994 Freeway Dr. North, Columbus, Ohio 43229.

NASA License No. 615, Date of License: January 17, 1980, Steve Hodge, Control Electronics Company, Inc., 11035 Harry Hines Suite 214, Dallas, Texas 75229.

NASA License No. 621, Date of License: February 5, 1980, Paul A. Gilliland, G&G Industries, R.D. #1, Ephrat, PA 17522.

NASA License No. 626, Date of License: February 26, 1980, William E. Shaw, Industrial Electrical Controls Corporation, 7500 NE 16th Avenue, Suite #A, Vancouver, Washington 98665.

NASA License No. 628, Date of License: February 26, 1980, Robert B. Danek, Telephonic, Inc., 1330 San Pedro NE., suite 108, Albuquerque, New Mexico 87110.

NASA License No. 631, Date of License: March 11, 1980, Glenn C. Hook, Application Engineering Corporation, 850 Pratt Blvd., Elk Grove Village, IL 60007.

NASA License No. 636, Date of License: March 27, 1980, H. Edward Sulger, Jr., Dynamic Instrument Corp., 933 L.I. Motor Parkway, Hauppauge, N.Y. 11787.

NASA License No. 647, Date of License: April 21, 1980, Angel Nunez, AMEX International Corp., 2700 Broadway—suite 8, New York, New York 10025.

NASA License No. 648, Date of License: April 22, 1980, Barry H. Wiley, Tympanium Corporation, 116 Cummings Park, Woburn, Massachusetts 01801.

NASA License No. 649, Date of License: April 29, 1980, G. Ruben Jauregui, Western Pacifica International, 12028 Vose Street, North Hollywood, CA 91605.

NASA License No. 659, Date of License: May 15, 1980, Priscilla Sananman, Preferred Electric Power Systems, Inc., 11 Newton Place, Hauppauge, New York 11787.

NASA License No. 662, Date of License: May 29, 1980 Curtis Vancura, Future Tech, P.O. Box 10629, Phoenix, Arizona 85064.

NASA License No. 663, Date of License: May 29, 1980, Lawrence R. McSorley, Custom Energy Control, 404 So. 30th Street, Heath, Ohio 43055.

NASA License No. 666, Date of License: June 6, 1980, Joe Gorman, Joe Gorman Electric DBA Computer Power Co., 23731 Mariano Street, Woodland Hills, CA 91346.

NASA License No. 669, Date of License: June 24, 1980, Shalli Kumar, Autotech Corporation, 904 Westwood Avenue, Addison, IL 60101.

NASA License No. 673, Date of License: July 18, 1980, O.B. Nelson, O.B. Nelson, Inc., Box 1119, Forney, Texas 75126.

NASA License No. 677, Date of License: July 25, 1980, Howard Moskowitz, Kilo Watt-ch Dog, Inc., 150 Broadhollow Road, Melville, N.Y. 11746.

NASA License No. 678, Date of License: July 29, 1980, Joseph Emergy, Margaux Controls, Inc., 2302 Walsh Avenue, Santa Clara, CA 95050.

NASA License No. 696, Date of License: October 14, 1980, Louis E. Bridges, Jr., Innovated Systems, Inc., 4200 Gus Thomasson, #114, Mesquite, Texas 75150.

NASA License No. 697, Date of License: October 14, 1980, Gary B. Lundber, Position Control Systems, Inc., 744 So. 100 E. suite 4, Provo, Utah 84601.

NASA License No. 725, Date of License: February 6, 1981, Lawrence Kozlowski, Syracuse Electronics Corporation, P.O. Box 566, Syracuse, New York 13201.

NASA License No. 726, Date of License: February 23, 1981, Roger Shemf, Rova Products Corp., 7223 Sycamore Street, City of Commerce, CA 90040.

NASA License No. 731, Date of License: March 19, 1981, R.W. Rosen, RW Enterprises, 1455 Copley Road, Akron, Ohio 44320.

NASA License No. 732, Date of License: March 19, 1981, G.J. McCaul, Bridgeport Machines, suite B1 Benson East, Jenkintown, PA 19046.

NASA License No. 741, Date of License: April 21, 1981, Ladies and Gentlemen, Electronics Plus, 22730 Rodax Street, Canoga Park, CA 91304.

NASA License No. 742, Date of License: April 21, 1981, Alder L. Dudly, Electronic Assembly, P.O. Box 135, Medford, Mass. 02155.

NASA License No. 750, Date of License: May 14, 1981, Palmer B. Ford, Energy Masters, Incorporated, 10031 Lampson Avenue, Garden Grove, CA 92640.

NASA License No. 753, Date of License: June 16, 1981, C.R. Edmonds, Anderson-Edmonds, Inc., 2170 Commerce Avenue, Unit #C, Concord, CA 94520.

NASA License No. 758, Date of License: June 30, 1981, A. Mark Delz, AMD Electronic Services, 3815 'B' Wild Rye Trail, San Angelo, TX 76901.

NASA License No. 767, Date of License: November 4, 1981, Martin K. Mason, Electrical South, Inc., Control Products Group Div., P.O. Box 22016, Greensboro, North Carolina 27420.

NASA License No. 770, Date of License: February 3, 1982, Edward M. Demas, Electric Regulator Corporation, P.O. Box 696, Norwalk, Connecticut 06852.

NASA License No. 774, Date of License: December 28, 1982, James L. Day, Service Technology, Inc., P.O. Box 476, Gastonia, N.C. 28052

NASA License No. 776, Date of License: March 4, 1982, James A. Way, Karbo Electronics, Inc., 17431 Electronics, Inc., Morgan Hill, CA 95037.

NASA License No. 777, Date of License: March 4, 1982, James D. Evans, Haydac, Inc., 100 E. NASA Road I, Ste. 308, Webster, TX 77598.

NASA License No. 778, Date of License: March 4, 1982, George Mays, M Square and Associates, P.O. Box 7000–407, Redondo Beach, CA 90277.

NASA License No. 781, Date of License: March 26, 1982, Ron Stephenson, Conservation and Safety Control, Inc., P.O. Box 11460, Odessa, Texas 79760.

NASA License No. 793, Date of License: November 1, 1982, Mho Raeissi, Techno Engineering, P.O. Box 15193, San Diego, CA 92115.

NASA License No. 794, Date of License: November 1, 1982, P.A. Betancourt, Associated Consultants, Inc., P.O. Box 490428, Miami, FL 33149.

NASA License No. 795, Date of License: November 18, 1982, James E. Bruce, Century Nex Corporation, 1340 Main Street, Ste. E., Ramona, CA 92065.

NASA License No. 797, Date of License: March 3, 1983, Akradej Sumartra, Energy Conservation Enterprise, 12025 Foster Road, Unit 9, Norwalk, CA 90650.

NASA License No. 807, Date of License: August 23, 1983, Steven A. Schonfeld, RAP Enterprises, 1740 E. Gary Ave., suite 107, Santa Ana, CA 92705.

NASA License No. 808, Date of License: November 3, 1983, Donald E. Hirsch, Hirsch Manufacturing Company, Inc., 12227 Darby Avenue, Northridge, CA 91328.

NASA License No. 814, Date of License: March 22, 1984, Johathan Lundquist, Inc. Technologies, 384 E. State, suite C., Pleasant Grove, UT 84062.

NASA License No. 833, Date of License: December 8, 1986, Robert A. Nimmo, U.S. Guardian Motor Controls, Inc., P.O. Box 398, Whitewater, Wisconsin 53190.

The above licensees are hereby notified that their licenses are now revoked. These licensees may appeal the decision to revoke in accordance with the NASA Patent Licensing Regulations (14 CFR 1245.200 et seq.). Appeals are governed by § 1245.210 and 1245.211 of the Licensing Regulations. The text of these sections follows:

Section 1245.210 Modification and Termination of Licenses

Before modifying or terminating a license, other than by mutual agreement, NASA shall furnish the license and any sublicenses of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

BEST COPY AVAILABLE

Section 1245.211 Appeals

(a) The following parties may appeal to the NASA Administrator or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(1) A person whose application for a license has been denied;

(2) A licensee whose license has been modified or terminated, in whole or in part; or (3) A person who timely filed a written objection in response to the notice required by §§ 1245.206(a)(1)(iii)(A) or 1245.206(b)(1)(i) and who can demonstrate to the satisfaction of NASA that such person may be damaged by the Agency action.

(b) Written notice of appeal must be filed within 30 days (or such other time as may be authorized for good cause shown) after receiving notice of the adverse decision or determination; including, an adverse decision following the request for reconsideration under § 1245.206(c). The notice of appeal, along with all supporting documentation should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20546. Should the appeal raise a genuine dispute over material facts, fact-finding will be conducted by the NASA Inventions and Contributions Board. The person filing the appeal shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. The Chairperson of the Inventions and Contributions Board shall prepare written findings of fact and transmit them to the Administrator or designee. The decision on the appeal shall be made by the NASA Administrator or designee. There is no further right of administrative appeal from the decision of the Administrator or designee.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2430.

Dated: February 28, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91–5484 Filed 3–7–91; 8:45 am]

BILLING CODE 7510–01–M

[Notice 91–24]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Green Technologies, Inc., of Boulder, Colorado, an exclusive, royalty-bearing, revocable license to practice NASA's Power Factor Controller technology. This technology consists of devices which matches the power consumed by electrical motor to the loan and, consequently, reduces energy consumption during low-load conditions. The technology is protected by nine United States patents and by a number of foreign patents which correspond to the United States patents. The United States patents, in numerical order, are: U.S. Patent No. 4,052,648, entitled "Power Factor Control System for A.C. Induction Motors"; U.S. Patent No. 4,266,177, entitled "Power Factor Control System for A.C. Induction Motors"; U.S. Patent No. 4,404,511, entitled "Motor Power Factor Controller with a Reduced Voltage Starter"; U.S. Patent No. 4,417,190, entitled "Control System for an Induction Motor with Energy Recovery"; U.S. Patent No. 4,426,614, entitled "Pulsed Thyristor Trigger Control Circuit Continued"; U.S. Patent No. 4,433,276, entitled "Three-Phase Power Factor Controller"; U.S. Patent No. 4,439,718, entitled "Motor Power Control Circuit for A.C. Induction Motors"; U.S. Patent No. 4,459,528, entitled "Phase Detector for Three-Phase Power Factor Controller"; U.S. Patent No. 4,469,996, entitled "Three-Phase Power Factor Controller with Individual EMF Sensing". The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by May 7, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff (202) 453–2430.

Dated: February 26, 1991.

Edward A. Frankle

General Counsel

[FR Doc. 91–5485 Filed 3–7–91; 8:45 am]

BILLING CODE 7510–01–M

National Labor Relations Board

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1989 and ending September 30, 1990.

Name and Title

Robert E. Allen—Associate General Counsel, Advice

Harold J. Datz—Chief Counsel to Board Member

Joseph E. DeSio—Associate General Counsel, Operations Management

Frederick Freilicher—Chief Counsel to Board Member

D. Randall Frye—Acting Deputy General Counsel

John E. Higgins—Solicitor

Susan Holik—Chief Counsel to Board Member

Gloria J. Joseph—Acting Director of Administration

Joseph E. Moore—Deputy Executive Secretary

S.F. Timothy Mullen—Deputy Director of Administration

Anne G. Purcell—Chief Counsel to Board Member

W. Garrett Stack—Deputy Associate General Counsel, Operations Management

Elinor H. Stillman—Chief Counsel to the Chairman

Berton B. Subrin—Director, Office of Representation Appeals

John C. Truesdale—Executive Secretary

Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC, February 15, 1991.

By Direction of the Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 91–5447 Filed 3–7–91; 8:45 am]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Cultural Anthropology Advisory Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cultural Anthropology.

Date and time: March 21 & 22, 1991, 9 a.m.–5 p.m. each day.

Place: Hotel Lombardy, 2019 I Street, NW., suite 1111, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Stuart Plattner, Program Director, Cultural Anthropology, room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7804.

Purpose of meeting: To provide advice and recommendations concerning support for research in cultural anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–5476 Filed 3–7–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G. Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357–7363.

Dated: March 4, 1991.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Street address	Room	Times	Date(s)
Special Emphasis Panel in Institute of Advanced Study—Mathematical Sciences.	Princeton, NJ		8:30am–5:00pm	03/25/91
Agenda: Site Visit			8:30am–5:00pm	03/26/91

[FR Doc. 91–5474 Filed 3–7–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Initiation and Improvement; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research Initiation and Improvement.

Date and time: March 25, 1991: 8:30 a.m.–5:30 p.m.; March 26, 1991: 8:30 a.m.–3:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Lola E. Rogers, Acting Program Director, VPW, National Science Foundation, room 1225. Telephone: 202/357–7456.

Purpose: Proposal review and discussion.

Agenda: To evaluate and recommend for funding competitive proposals submitted for the FY 1991 VPM competition.

Dated: March 4, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–5477 Filed 3–7–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Barnett Industrial X–Ray; Establishment of Atomic Safety and Licensing Board

[Materials License No. 35–20953–01; Docket No. 30–30891–CivP; ASLBP No. 91–636–02–CivP]

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Barnett Industrial X–Ray

Materials License No. 35–20953–01

EA 90–102

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated December 31, 1990, entitled "Order Imposing Civil Monetary Penalty" (56 FR 901, January 9, 1991).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

George C. Anderson, 7719 Ridge Drive, NE., Seattle, Washington 98115

Lester S. Rubenstein, 14540 N. Chalk Creek Drive, Oro Valley, Arizona 85737.

Issued at Bethesda, Maryland, this 28th day of February, 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91–5556 Filed 3–7–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–54–OLA (Decommissioning) ASLBP No. 91–637–08–OLA]

Cintichem, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as

amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Cintichem Inc.

Research Reactor
Facility License No. R–81

This Board is being established pursuant to a notice published by the Commission on January 14, 1991 in the Federal Register (56 FR 1422) entitled, "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License." The first of the proposed orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility.

The Board is comprised of the following administrative judges:

John H Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1990).

Issued at Bethesda, Maryland, this 28th day of February 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91–5557 Filed 3–7–91; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3502 *et seq.*], this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection form may be obtained from Mr. Michael Berning, Office of Recruitment, Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Berning may be reached at 202–606–3780. Comments on this information collection should be addressed to Mr. Marshall Mills, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Request for Information Card.

Need for and use of the information: This card is a way for citizens to let Peace Corps know they wish information on the Agency and its programs.

Respondents: Citizens interested in receiving information about the Peace Corps.

Burden on the public:

a. Annual reporting burden: 2187 hours.
b. Annual recordkeeping burden: 0 hours.
c. Estimated average burden per response: 1.75 minutes.
d. Frequency of response: On occasion.
e. Estimated number of likely respondents: 75,000.

This notice is issued in Washington, DC on December 15, 1990.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91–5533 Filed 3–7–91; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–28825; International Series Release No. 236; File No. SR–AMEX–91–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Listing Warrants on the EURO TOP-100 Index

Pursuant to section 9(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C.78s(b)(1), notice is hereby given that on February 4, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commisson is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on the Euro Top-100 Index ("E100 Index" or "Index"), a board-based stock market index based on the performance of 100 leading European companies.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission,the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on foreign and domestic market indexes. The Amex is proposing to list index warrants based on the E100 Index.

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed size

[1] On February 22, 1991, the Amex amended its proposal to revise the criteria for including countries in the Index and calculating country weightings. These changes are reflected in this notice. Moreover, the Amex previously has submitted a proposal to list and trade options on the E100 Index, and the Commission currently is reviewing this Amex proposal. For additional information relating to E100 component stocks and E100 Index calculation, *see* File No. SR–Amex–90–25.

and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

E100 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the E100 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the E100 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Euro Top-100 Index

Developed and maintained by the European Options Exchange ("EOE"), E100 is a weighted index denominated in European Currency Units ("ECUs") and based on the value of the shares of 100 Europeans companies. The E100 Index was designed to measure the collective performance of the most actively traded stocks on the major European stock exchanges in the United Kingdom, France, Germany, Italy, Spain, Belgium, The Netherlands, Switzerland and Sweden.

To be eligible for inclusion in the Index, a country must be a European member of the Organization of Economic Cooperation and Development ("OECD").[2] Furthermore, a country's exchange(s) must have a total market capitalization of at least 2.5% of the aggregate market capitalization of the exchanges in all the countries in the Index.

Each country which meets these criteria is represented in the Index based on its total market capitalization adjusted to reflect its gross national product ("GNP"). A country's base weighting in the Index is 90% dependent on its market capitalization and 10% dependent on its GNP.

[2] OECD is an organization of the 24 free market democratic countries in North America, Western Europe and the Pacific, formed to promote world trade and the world economy.

As of December 31, 1989, the weightings for each country were: United Kingdom, 22%; Germany, 15%; France, 15%; Switzerland, 10%; Italy, 10%; The Netherlands, 8%; Sweden, 6%; Spain, 5% and Belgium, 4%. Additional information relating to E100 component stocks and Index calculation is contained in the Amex's proposal to trade options on the E100 (SR–Amex–90–25).

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in Rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the E100.

Surveillance Agreements

The Exchange has market surveillance agreements in effect with several of the marketplaces where Index component stocks trade. Agreements with additional countries whose stocks are included in the E100 are being sought, as is expansion of certain of the existing agreements.

The Exchange currently is a party to a broad information sharing agreement with The Securities Association in the United Kingdom ("TSA"). That agreement enables the Exchange, for purposes of carrying out its regulatory responsibilities, to obtain from the records of TSA and TSA members, information relating to securities traded on the Amex or securities underlying derivative instruments traded on the Amex. This would provide the Exchange with an effective means of surveilling the U.K. E100 component securities which currently constitute 22% of the Index.

The Exchange also has in place an agreement with the Societe des Bourses Francaises that provides for the sharing of surveillance information relating to, among other things, securities which are traded on French stock exchanges and underlie derivative instruments traded on the Amex.

Additionally, the Exchange is a party to an information sharing agreement with the Frankfurt Stock Exchange. Since that agreement focuses on the exchange of market surveillance information regarding the trading of warrants on the DAX Index, the Exchange is undertaking to discuss with the Frankfurt Stock Exchange the expansion of the existing agreement to include data for use in connection with its surveillance of the E100 German components, all of which are components of the DAX.

The Exchange is also engaging in discussions with other foreign exchanges and hopes to establish information sharing agreements with marketplaces on which other E100 components trade.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies theeof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. Al submissions should refer to the file number in the caption above and should be submitted by March 29, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 1, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc 91-5456 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28819; File No. SR-BSE-90-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Specialist Performance Evaluation Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and this order grants accelerated approval of the BSE's proposed rule change.[1]

[1] The BSE requested that the Commission grant accelerated approval to the proposal. *See* letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 8, 1991.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to renew the operation of the Exchange's Specialist Performance Evaluation Program ("SPEP") for a one-year period.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The BSE originally filed its SPEP pilot program with the Commission on September 28, 1984 (File No. SR-BSE-84-04). Because the Commission still is reviewing the Exchange's proposal, the BSE is submitting this filing to request that the current pilot program be renewed for a one-year period in order to enable the Exchange to maintain the program, pending permanent approval by the Commission.

Currently, the Exchange's specialist performance evaluation program consists of a Specialist Performance Evaluation Questionnaire ("questionnaire") which is administered every four months and is completed by floor brokers, specialists acting as floor brokers in their non-specialty stocks and certain other qualifying clerks.[3] The questionnaire currently contains 12 questions, 6 of which are weighted.[4] Each respondent is requested to grade a specialist's performance in the area addressed by each question. Further, the Exchange uses a nine point grading scale to rate specialist performance.

Specialist units whose performance falls below certain threshold levels of acceptable performance are subject to performance improvement actions. These actions are triggered in the event a specialist unit receives (1) an overall average grade below 4.5 on the questionnaire, or (2) an average grade below 4.5 for one question for two of three consecutive evaluation periods. Specialist units coming under one of these two categories are requested to meet informally with a Performance Improvement Subcommittee ("Subcommittee"). In this meeting, the Subcommittee discusses the unit's poor performance and possible measures to improve the specialist's performance during the subsequent evaluation period. The meeting is voluntary and a specialist unit may elect not to attend.

A mandatory meeting with the Market Performance Committee ("MPC") is required in the event a specialist receives an overall grade below 4.5 on the questionnaire for two of three successive evaluation periods, or if the unit receives a grade of 4.5 on one question in one out of two evaluation periods subsequent to meeting the conditions for an informal review by the Subcommittee.

The MPC may impose the following sanctions upon a unit following a mandatory hearing: (1) Withdraw Exchange approval of a member's registration as a specialist in one or more stocks, (2) Reduce the percentage of stocks that may be protected by a specialist when new specialist books are allocated (all specialists are obligated to reserve 10% of their specialty stocks for acquisition by new specialists developing a book), or (3) Suspend the specialist's trading account. BSE Rules also permit the MPC to impose any other performance improvement actions it deems appropriate to improve a unit's performance.[5]

[2] On January 30, 1990, the Commission granted accelerated approval to the BSE's proposal to renew the SPEP pilot program for a one-year period, ending on January 31, 1991 (*see* Securities Exchange Act Release No. 27686 (January 30, 1990), 55 FR 4296 (February 7, 1990)). Prior to January 30, 1990, the Commission last approved the Exchange's SPEP pilot on October 6, 1988 for a one-year period, ending on October 6, 1989 (*see* Securities Exchange Act Release No. 26162 (October 6, 1988), 53 FR 40301 (October 14, 1988)).

[3] The BSE's SPEP formerly included a second performance measure, a quotation evaluation score, which assessed the quality of quotations disseminated by specialists through the Consolidated Quotation System. The BSE eliminated quotation evaluations because the BSE believed that the measure was flawed and because the BSE intended to develop new objective performance criteria related to BEACON, the Exchange's automated order-routing and communication system, to replace quotation evaluations. In its order approving the elimination of the quotation evaluation score, the Commission stated that it expected the BSE to submit new objective measures of market making performance as soon as possible. *See* Securities Exchange Act Release No. 26162, *supra* note 2.

[4] Telephone conversation between Karen Aluise and Mary Revell, February 25, 1991.

[5] For example, questionnaire results are one of several factors considered by the Exchange in allocating stocks to specialist units. *See* Securities Exchange Act Release No. 26162, *supra* note 2 (File No. SR-BSE-87-6) for a more detailed description of the BSE's specialist performance evaluation program.

Continued

[6] 15 U.S.C. 78f(b)(5) (1988).

Statuory Basis

The basis under the Act for the proposed rule change is Section 6(b)(5),[6] in that the questionnaire results weigh heavily in stock allocation decisions and as a result specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No SR-BSE-91-01 and should be submitted by March 29, 1991.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act [7] and the rules and regulations thereunder. In this regard, the Commission notes that the extension of the pilot furthers the protection of investors and the public interest because it allows for the continued evaluation of specialist performance while the Commission considers the Exchange's request for permanent approval of the SPEP.[8]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that it is necessary to renew the pilot program's operation while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis so that the program can continue on an uninterrupted basis. The Commission believes, therefore, that accelerated effectiveness of the renewal of the pilot program for an additional one-year term is appropriate. The Commission also notes that the substance of the proposal was published in the **Federal Register** previously and no comments on the proposal were received by the Commission.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10] that the proposed rule change be, and hereby is, approved for a one year period ending on February 28, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: February 26, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5458 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78f (1988).

[8] The Commission reiterates the request stated in Securities Exchange Act Release No. 26162, *supra* note 2, that the BSE submit objective measures of market making performance to the Commission as soon as possible pursuant to Section 19(b) of the Act. The Commission also requests that the BSE submit a report to the Commission describing its experience with the pilot by April 30, 1991. The report should detail, for the four quarters in 1990, questionnaire results for all specialist units, as well as any actions taken by the Subcommittee or MPC in response to the scores. Any modifications to the current questionnaire also should be submitted to the Commission as a proposed rule change pursuant to Section 19(b) of the Act.

[9] *See* Securities Exchange Act Release No. 22993 (March 10, 1986), 50 FR 8628 (March 14, 1986).

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-28832; File No. SR-NASD-90-57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Schedule H of the By-Laws

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 30, 1990, a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 [2] thereunder to amend Schedule H of the Association's By-Laws to eliminate the current reporting thresholds of $10,000 and 50,000 shares, so that the reporting requirements of Schedule H will apply to each non-NASDAQ security traded by members. The proposed amendments also clarify which transactions in NASDAQ and listed securities are required to be reported pursuant to Schedule H. Notice of the filing and the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 28788, January 16, 1991, and by publication in the **Federal Register** (56 FR 2789, January 24, 1991)). No comment letters were received.

Schedule H of the NASD's By-Laws, which became effective on August 1, 1989, requires reporting of price and volume information for principal transactions in all "non-NASDAQ" securities if certain conditions are met. "Non-NASDAQ" security is currently defined in Subsection 1(a) of Schedule H to mean "any equity security that is neither included in the National Association of Securities Dealers Automated Quotation System nor traded on any national securities exchange."

The NASD believes the proposed amendments have become necessary due to changes that have occurred in the over-the-counter ("OTC") market since the adoption of Schedule H. Specifically, substantial trading has been effected in the OTC market in certain NASDAQ and regional exchange listed securities that are not encompassed in the regulatory reporting requirements for non-NASDAQ OTC securities as defined under Schedule H. These trades in NASDAQ and listed stocks being effected in the OTC market are also not required to be reported pursuant to Schedules D or G of the NASD By-Laws,

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

for NASDAQ securities or listed securities, respectively.[8]

Therefore, in an effort to provide the NASD's Market Surveillance Department and the Commission with more complete records on non-NASDAQ trading activity for regulatory purposes, the NASD has proposed to include these trades under the reporting requirements of Schedule H. The NASD believes the inclusion of these transactions in the reporting requirements will allow them to monitor trading and detect abuses respecting OTC transactions in such securities. Moreover, the NASD believes removal of the current price and volume thresholds will simplify calculations and reporting procedures for members active in non-NASDAQ stocks. Schedule H now requires members to aggregate daily purchases and sales of non-NASDAQ securities and report certain trading data to the NASD if the aggregated numbers exceed the current $10,000 price and 50,000 share thresholds. The NASD has informed the Commission that members have often times found this to be a cumbersome procedure.

To accomplish the above stated goals of simplifying calculations for reporting transactions in non-NASDAQ securities and producing better documentation of trading events occurring in non-NASDAQ securities, the proposed rule change will expand the definition of "non-NASDAQ security" to apply to OTC transactions in securities listed on a regional exchange which do not meet primary exchange listing requirements. Additionally, the proposed rule change will expand the definition of "non-NASDAQ security" to apply to OTC trades in NASDAQ securities by a person not registered as a NASDAQ market maker in such securities. Finally, the rule will eliminate existing volume and price threshold for reporting trades in non-NASDAQ securities.

The Commission believes the proposed rule change will effectively capture a meaningful volume of trading not currently reflected in the regulatory reporting structure and thereby enhance the NASD's ability to monitor transactions in the OTC market. Further, the Commission is of the opinion that the amendments will produce trading reports which more accurately reflect the realities of the OTC market as it exists today.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) and the rules and regulations thereunder. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Finally, the Commission believes the proposed amendments to Schedule H are consistent with the Act in that the regulatory information submitted to the NASD will be more complete, thus enhancing the NASD's ability to surveil this segment of the OTC market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5457 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[8] Schedule C only requires reporting of OTC transactions in securities listed on the NYSE or the Amex, and securities listed on regional exchanges which meet the original NYSE or Amex listing requirements. *NASD Securities Dealers Manual,* CCH ¶1917. Likewise, transaction reports on these securities are not reported under the daily reporting requirements of section 3(a) of Schedule D. *NASD Securities Dealers Manual,* CCH ¶2822.

[Release No. 34-28931; File No. SR-NASD-91-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By the National Association of Securities Dealers, Inc. Relating to Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendment to section 2 of Schedule A of the NASD's By-Laws allows the NASD to keep examination fees collected from persons who are granted examination waivers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule amendment to section 2 of Schedule A would allow the NASD to keep examination fees collected from persons who are granted examination waivers. Article VII of Schedule C of the By-Laws allows the NASD to grant waivers of qualification examinations in exceptional cases and where good cause is shown. In the past the NASD has refunded the examination fees that it has collected from persons who have received a waiver from such examination. The NASD's Membership Department calculated that it lost substantial revenues in recent years as a result of such refunds. Handling waiver requests is a time-consuming process in terms of researching and reviewing an individual's record to verify clerical errors or ancillary experience. Most of the waiver requests involve registration errors which were made by member firms who failed to properly transfer a persons registration categories when such person was changing employment to another member firm. This verification and review process involves a tremendous amount of paperwork and telephone communication with members. The NASD is therefore proposing to retain the examination fee to help offset the costs associated with the wavier review process.

(b) The NASD believes that the proposed rule change is consistent with and in furtherance of section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls, in that it allows the NASD to partially recover the substantial costs involved in the waiver review process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act rule 19b-4 in that it affects assessments and fees imposed by the Association exclusively upon its members.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 29, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5567 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28923; File No. SR-NYSE-90-44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Exchange Rule 103A—Specialist Stock Reallocation

I. Introduction

On September 25, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Exchange Rule 103A in order to add performance standards relating to the Exchange's Specialist Performance Evaluation Questionnaire ("SPEQ").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28540 (October 16, 1990), 55 FR 42796 (October 23, 1990). No comments were received on the proposal.

II. Background

Exchange Rule 103A sets forth performance standards for specialists and provides for the initiation of a formal "Performance Improvement Action" in any case where a specialist unit does not meet a performance standard specified in the Rule.[4] NYSE Rule 103A historically has contained performance standards applicable to the SPEQ for both a specialist unite's overall rating result and its results on the different functional categories under which specific questions are grouped.[5]

Effective with the first quarter 1990, the Exchange implemented the new, current SPEQ process which was approved by the Commission on February 5, 1990. [6] The former SPEQ used absolute scores to evaluate specialist performance, whereas the scoring methodology on the new SPEQ, as described below, gives specialists their overall rank among all specialist units as well as a range of ranks, which shows their comparability to other units. The proposed rule change provides specific, minimum relative performance standards so that specialists who are regularly among the lowest ranked units on a relative basis would be subject to performance improvement actions.[7]

III. Description of the Proposal

(A) Scoring Methodology

According to the Exchange, the scoring methodology for the new SPEQ produces two types of results. Specialist units are informed as to how they rank on an overall basis, and in each of the five functions (Dealer, Service, Competitiveness, Communication, and Administrative), among all specialist units. Currently, there are 44 specialist units on the Exchange. Thus, for example, a unit might receive a rank of 20 on an overall basis, and a rank of 22 on a particular function, meaning that it ranked 20 out of 44 units overall, and 22 out of 44 on that function.

Specialist units also receive a "range of ranks" on an overall basis and for each function. For example, a unit might receive an overall rank of 20, with a range of ranks from 17 to 25. This means that the unit ranked 20th out of 44 units, but its scores were roughly comparable to a unit ranked as high as 17, and as

[1] 15 U.S.C. 78s (b) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The SPEQ, which was last revised in February, 1990, (*see* note 6, *infra*), is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

[4] Under NYSE Rule 103A, a specialist's performance is measured by a combination of SPEQ sources and objective standards of performance (*e.g.*, timeliness of regular openings; promptness in seeking floor official approval of non-regulatory delayed openings; timeliness of Super-Designated Order Turnaround System turnaround performance; and responses to administrative messages).

[5] Currently, the SPEQ is comprised of 21 questions which are grouped under the following five functional categories: the Dealer Function, the Communications Function, the Administrative Function, the Service Function and the Competitiveness Function (which includes a question regarding a specialist's Intermarket Trading System performance). The Dealer, Service, and Competitiveness Function categories are each accorded a percentage weight of 30% on the SPEQ, while the Communications and Administrative Function sections have a percentage weight of 5% each.

[6] *See* Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (order approving File No. SR-NYSE-89-32).

[7] *See* Securities Exchange Act Release No. 28215 (July 17, 1990), 55 FR 30080 (notice of filing and order granting accelerated temporary approval to File No. SR-NYSE-90-34).

low as 23. The Exchange indicates that this scoring methodology allows a unit to determine whether its scores are significantly different from the scores received by other specialist units.[8]

(B) Proposed Performance Standards

The Exchange proposes that a unit be subject to the initiation of a Performance Improvement Action where its overall rank placed it in the bottom 10% of all units, and its range of ranks placed it in the bottom 15% of all units, for any quarter. For example, a unit ranked 41 or worse out of 44, with a range of ranks from 38 to 44, would have been placed in the bottom 10% in overall ranking and its range of ranks would place it in the bottom 15%, as this range indicates that the unit is not statistically significantly different from a unit rated no higher than 38 (which is in the botton 15%). Thus, a unit receiving such results would be subject to a Performance Improvement Action.

Regarding scores for particular functions, a unit would be subject to a Performance Improvement Action under NYSE Rule 103A if in any quarter the unit received an overall rank in the bottom 10%, and a range of ranks in the bottom 15%, for two or more functions. A unit also would be subject to a Performance Improvement Action if it received an overall rank in the bottom 10%, and a range of ranks in the bottom 15%, for the same function in two consecutive quarters.

According to the Exchange, when utilizing the proposed scoring methodology for the first two quarters of 1990, no unit would have been subject to a Performance Improvement Action based on its overall score. The Exchange indicates, however, that one unit did fall into the bottom 10% in its rank and the bottom 15% in its range of ranks in two functions in the first quarter. Under the new standards, therefore, the unit would have been subject to a Performance Improvement Action. Additionally, the Exchange determined that in the second quarter, two units fell into the bottom 10% in their ranks and the bottom 15% in their range of ranks for one function. If these units repeated this performance for the same function in the following quarter, they also would be subject to a Performance Improvement Action.

In addition to the proposed new performance standards, the proposal also allows the Exchange's Market Performance Committee to continue to have the authority to engage in counseling sessions with units when appropriate. Pursuant to the proposal, this Committee also will continue to impose allocation freezes (*i.e.*, periods during which a unit is not permitted to apply to be a specialist for a newly listed security) where appropriate to improve performance even if no Performance Improvement Action is mandated by the standards of NYSE rule 103A.

IV. Commission Findings

The Commission believes that specialist units play a crucial role in providing stability, liquidity and continuity to the trading of Exchange stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[9] To ensure the fulfillment of these obligations, it is important that the Exchange operate an effective oversight of specialist performance. Critical to this oversight is the specialist performance evaluation process.

Accordingly, for the reasons set forth below, the Commission finds that the NYSE's proposal to adopt new performance standards for its revised SPEQ process is consistent with sections 6 and 11 of the Act.[10] Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest. The Commission believes that the proposed rule change significantly enhances the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest.

The Commission also finds that the proposal is consistent with section 11(b) of the Act and rule 11b-1 thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system. The proposal upholds these objectives in that, by enhancing the Exchange's ability to evaluate specialist performance, it helps to promote the maintenance of fair and orderly markets.

The Commission has long favored the incorporation of relative performance standards into the specialist evaluation process so that specialists who were regularly among the lowest ranked specialist units would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance. In this regard, the Commission consistently has urged the NYSE, and other exchanges, to adopt relative performance measures into its specialist evaluation process.[11] The need for the NYSE to adopt such relative performance standards was highlighted by specialist performance on the Exchange during the 1987 market break. In the Division of Market Regulation's ("Division") report on the October 1987 Market Break, the Division examined specialist performance on the NYSE on October 19 and 20, 1987.[12] Although some NYSE specialists appeared to perform well under the adverse conditions, the Division found that specialist performance during the October 1987 Market Break varied widely.[13] The Division concluded that the wide disparity in specialist performance underscored the need for the NYSE to develop relative standards of performance for evaluating specialists.[14]

The recently approved SPEQ and the accompanying performance standards being approved herein should substantially improve the NYSE's specialist evaluation program. The Commission believes that the revised SPEQ, which utilizes a relative, as opposed to an absolute, scoring

[8] In order to determine if the scores are significantly different in a statistical sense, the Exchange employs the Mann-Whitney two-sample U-test. *See* letter from Donald Selman, NYSE, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 16, 1990.

[9] Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1990); NYSE Rule 104.

[10] 15 U.S.C. 78f and 78k (1988).

[11] *See, e.g.*, letters from Douglas Scarff, Director, Division of Market Regulation, SEC, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981 and August 18, 1982; letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to John J. Phelan, Jr., President, NYSE, dated July 30, 1986; Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17297; and Securities Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (order approving proposal by the American Stock Exchange, Inc. to adopt equities specialist performance and allocation and reallocation procedures to its specialist unit evaluation questionnaire).

[12] *See* Division of Market Regulation, *The October 1987 Market Break*, February 1988, at xvii. 4–1.

[13] The Division also examined NYSE specialist performance during the October 13 and 16, 1989 market volatility. In general, the Division found that, although NYSE specialists performed reasonably well in October, 1989, individual specialist performance varied and not all specialists performed adequately. *See* Division of Market Regulation, *Market Analysis of October 13 and 16, 1989*, December 1989, at 3–4, 33–44.

[14] *See The October 1987 Market Break*, at xvii. 4–28 to 4–29.

methodology, should ensure that specialists who are regularly among the lowest ranked units are subject to performance reviews regardless of whether their performance meets an arbitrarily determined level of unacceptable performance.[15] By providing the Exchange with a mechanism to identify and correct specialist performance that is inferior to that of the bulk of specialist units, the new relative performance standards will assist the Exchange in addressing performance weaknesses by specialist units and should be useful in motivating specialists to improve their performance. Thus, the NYSE's adoption of relative performance standards should further the maintenance of fair and orderly markets.

In addition, the Commission believes that the chosen percentiles of 10% and 15% will reflect accurately those specialist units requiring a Performance Improvement Action. As previously noted, the Exchange indicated that one out of the 46 units would have been subject to a Performance Improvement Action because it fell into the bottom 10% in its rank and the bottom 15% in its range of ranks in two functions in the first quarter of 1990. Further, the results of the SPEQ for the second and third quarters of 1990 indicate that one unit would have been subject to a Performance Improvement Action.

After careful review of the results for the first three quarters of 1990, the Commission finds that the chosen percentiles highlight adequately those units requiring performance improvement. The Commission believes that the 10% and 15% threshold figures chosen by the Exchange should continue to emphasize those units whose performance is largely inferior to the bulk of specialist units. The Commission expects, however, that the Exchange will continue to assess whether the chosen percentiles accurately reflect a unit's substandard performance, and whether the current percentiles should be raised in the future.

In conclusion, the Commission believes that the performance standards that the Exchange proposes to incorporate into rule 103A should increase substantially the effectiveness of the NYSE's specialist evaluation program. Because the specialist is instrumental in providing stability, liquidity and order to exchange markets, the proposed performance standards, by providing the Exchange with a mechanism to identify and correct specialist performance that is inferior to that of the majority of specialist units, should ensure a high level of market quality and performance in Exchange listed securities, thereby furthering the maintenance of fair and orderly markets, consistent with Sections 6 and 11 under the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [16] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Dated: February 27, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5459 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[15] *See* discussion of revised SPEQ in Securities Exchange Act Release No. 27675, *supra* note 6.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-28826; File No. SR-OCC-89-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Using the Theoretical Intermarket Margin System for Equity Options on a Temporary Basis

March 1, 1991.

On October 3, 1989, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR-OCC-89-12) to the Securities and Exchange Commission ("Commission" or "SEC")) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] relating to a new margin system for equity options. Notice of the proposal appeared in the **Federal Register** on November 1, 1989, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal on a temporary basis through May 31, 1992.

I. Introduction

The proposal would adopt new OCC Rule 601 (captioned "Margin on Positions in Stock Options"), which authorizes OCC to use its Theoretical Intermarket Margin System ("TIMS") for calculating clearing member margin on equity options.[3] This new margin system is to be known as "Equity TIMS," as distinct from "Non-Equity TIMS," which is OCC's existing margin system for non-equity options ("NOEs").[4] The proposal also would make various other changes, mainly of a technical and conforming nature, to OCC's rules.

OCC's proposed Equity TIMS margin system is designed, like its existing equity option margin system (known as the "production system"), to protect OCC against the cost of liquidating open option positions in the event of a member default or insolvency. OCC would use Equity TIMS to determine the amount of margin its members must deposit in order to maintain their option positions. OCC would collect those deposits in forms already specified in OCC's rules.[5] Equity TIMS would use options price theory (*i.e.*, an option pricing model) [6] to: (1) project the cost of liquidating a clearing member's option positions, taking into consideration (a) all short option positions and (b) all long option positions over which OCC is entitled to assert a lien,[7] in the event of an assumed "worst case" change in the price of the underlying assets; and (2) set clearing member margin requirements to cover that cost.[8] By

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 27364 (October 26, 1989), 54 FR 45275.

[3] An "equity option" is an option contract for which the underlying asset is an issue of stock. *See* D. Scott, *Wall Street Words*, 113 (1988).

[4] A NEO is an option contract for which the underlying asset is anything other than an issue of stock. NEOs include, *e.g.*, stock index options, Treasury security options, certificate of deposit options, and currency options. *See id.* at 222; OCC Rule 602A(b)(1).

[5] OCC clearing members may deposit the following assets to satisfy margin requirements: (a) cash or checks, (b) government securities, (c) letters of credit issued by a bank or trust company, and (d) common stocks that meet certain quality standards. *See* OCC Rule 604.

[6] Option pricing models apply mathematical techniques to option strategies by using a formula that expresses the value of an option as a function of: its underlying asset, its length of time until maturity, its exercise price, yields on alternative investments, risk data, and similar factors. For a short discussion of the Black-Scholes Model, one of the best known option pricing models, *see* L. McMillan, *Options as a Strategic Investment*, 408–414 (2d Ed. 1986). For the seminal article on the Cox-Rubinstein Model (a refinement of the Black-Scholes Model), which will be used by Equity TIMS, *see* J. Cox, S Ross, & M. Rubinstein, "Options Pricing: A Simplified Approach," 7 *Journal of Financial Economics* 229–263 (1979).

[7] TIMS would calculate margin requirements on the equity options in a clearing member's account as an integrated portfolio. OCC would accord as credit to option positions over which OCC could not assert a lien (for example, fully-paid long customers' options).

[8] OCC's proposed margin requirements for equity options apply only to margin for OCC's clearing members, *i.e.*, so-called "clearing margin." These clearing margin requirements do not involve either: (1) minimum margin requirements for customer accounts as set forth in Regulation T of the Board of Governors of the Federal Reserve System, 12 CFR 220, and in the rules of the securities markets (*e.g.*, New York Stock Exchange Rule 430); or (2) minimum net capital requirements for broker-dealers as set forth in Rule 15c3-1 under the Act, 17 CFR 240.15c3-1 (1989).

contrast, under OCC's existing equity option system, clearing margin on an uncovered short position [9] is calculated by multiplying the option premium by the unit of trading (ordinarily 100 shares of stock per contract) and by 1.3 (a predetermined multiplication factor).[10]

II Description of the Proposal

A. OCS's Proposed Equity Margin System

Under OCC's proposed system, OCC would organize all equity option classes [11] into "class groups." [12] All equity options would form a single "product group." [13] TIMS would treat all stock options (*i.e.*, the product group) in a clearing member's account as an integrated portfolio.[14]

The daily margin requirements would have two components: "premium margin" and "additional margin." "Premium margin" is designed to mark-to-the-market the option position, *i.e.*, to account for any change in the closing price of the option from the previous day. (In calculating premium margin, OCC uses the previous day's closing asked prices for the option series.) "Additional margin" is designed to cover the projected incremental cost of liquidating an option position in the event of an adverse change in the price of the underlying stocks.

Three types of accounts can exist for clearing margin purposes on OCC's books: (1) Firm accounts,[15] (2) market maker accounts,[16] and (3) customer accounts.[17] OCC clearing members use firm and market maker accounts to maintain their option positions for their own accounts and for the accounts of other market professionals. From OCC's perspective, the main difference between professional accounts and customer accounts is that OCC can obtain a lien (*i.e.*, a security interest) on long option positions in professional accounts, but ordinarily cannot obtain such a lien on long option positions in customer accounts. Accordingly, OCC rarely provides clearing margin credit on long positions in customer accounts.[18] Thus, the proposed system, like OCC's existing equity option and NEO systems, would calculate clearing margin differently for market professionals' (*i.e.*, firms' and market-makers') accounts than for public customers' accounts.[19]

1. Market Professionals: Firm and Market-Maker/Specialist Accounts

a. The Class Group

The first step in calculating TIMS margin is to net offsetting long and short positions in each option series within each class group.[20] The net long or short position in each series is used to calculate the appropriate margin requirement.

Second, "premium margin" is calculated for the net long or short position in each series of the class group. Premium margin, as noted, is based on the previous day's closing asked prices on option premiums.[21] Short positions will result in a margin debit (*i.e.*, a margin requirement), and long positions will result in a margin credit. The margin debits and credits within a class group are netted, providing a premium margin debit (*i.e.*, requirement) or credit for each class group.

Third, the "additional margin" is determined by using an option pricing model to compare the liquidating value of the class group at several predetermined underlying asset prices, including: (1) An amount equal to the current market value of the underlying asset plus an applicable "margin interval" representing the maximum theoretical one-day increase ("upside price"),[22] (2) An amount equal to the current market value of the underlying asset minus an applicable "margin interval" representing the maximum theoretical one-day decrease ("downside price"), and (3) An amount equal to any option exercise price falling between the upside price and the downside price.[23]

To determine the maximum one-day price movement in the underlying asset that OCC should anticipate (the "margin interval"), OCC will analyze historical price changes in the underlying asset specifically.[24] OCC's criteria for setting the "margin interval" are designed to ensure that the "additional margin" is sufficient to protect against a price movement equal to or exceeding at least 99.7% of the daily price changes in the underlying asset for the last three months or for the previous year, whichever yields the more conservative result from OCC's perspective (*i.e.*, a 99.7% confidence level). Moreover, OCC has represented that it will undertake to include data on the volatility of underlying assets over longer periods (*i.e.*, from three to ten years) and that it currently is compiling data for this purpose.[25]

To calculate the theoretical net liquidating value at the upside prices and the downside prices described above, OCC will rely on an options pricing model.[26] OCC believes that options price theory has practical applications for calculating margin requirements because it can be used to calculate the theoretical value of an option (*i.e.*, potential liquidating value) when the underlying asset value changes.[27]

Each theoretical liquidating value would be compared to the current actual liquidating value to determine the upside price and the downside price at which OCC is exposed to the greatest risk. The difference between the theoretical liquidating value and the current actual liquidating value at that upside price and that downside price are equal to the upside and downside "additional margin" requirements or credits, respectively, at the class group level.

b. The Product Group

The upside "additional margin" amounts for all class groups are summed to determine the upside "additional margin" amount for the product group. Likewise, the downside "additional margin" amounts for all class groups are summed to determine the downside "additional margin" amount for the product group. Each upside and downside "additional margin" credit for any class group is reduced by a percentage predetermined by OCC, which percentage reduction would depend on the degree of correlation OCC had observed during the previous year for the equity options product group. [28] OCC has stated that the purpose of this reduction is to compensate for any lack of correlation in price movements among the class groups.

The "additional margin" requirement for the product group is an amount equal to either the total upside variation or the total downside variation, whichever represents a margin requirement (i.e., reflecting an increase in liquidating cost or a decrease in liquidating value for the positions comprising the product group). In cases where both variations represent margin requirements, the "additional margin" requirement is the larger of the two; and where both represent margin credits, the "additional margin" requirement is zero. Unlike "premium margin," which can be either a requirement or a credit, "additional margin" is always either a margin requirement or zero (*i.e.* never a margin credit against "premium margin" requirements).[29]

The total margin requirement or credit for the product group is an amount equal to the sum of: (1) the net "premium margin" requirement (or credit, if applicable) and (2) the "additional margin" requirement. If the "premium margin" represents a margin requirement, "additional margin" will accordingly add to that requirement. If the "premium margin" is a margin credit (as would be the case for a product group predominately comprised of long positions), "additional margin" ordinarily would reduce the resulting margin credit (but never to less than zero, because, although the long positions that generated the credit might cease to be assets, they would never become liabilities.

In summary, if the positions in the equity option product group liquidate to a deficit, the total margin requirement for the product group is an amount equal to the sum of that deficit and the "additional margin" requirement for the product group. If the positions in the product group liquidate to a credit, the total margin amount for the product is an amount equal to that credit, reduced by the additional margin requirement for the product group.

Finally, under the proposal, if the total margin amount for the equity option product group is a credit, 100% of that credit (an increase from the 50% provided for under the current rules of the production equity margin system and the NEO system) could be applied against the margin requirements for NEOs in the account and vice versa.[30] If the account as a whole (equities and NEOs) shows a margin credit, there would be no margin requirement.

2. Customers' Accounts and Firm Non-Lien Accounts

OCC does not have a lien on firm non-lien accounts or long positions carried in customer accounts (*i.e.*, segregated long positions).[31] All positions in a firm non-lien account or customer account are segregated unless they comprise the long leg of a specific customer's spread and are communicated as such by the clearing member in written form.[32] OCC's proposal established slightly different procedures for margining these accounts. First, segregated long positions will not be offset against short positions in the same series of options, and they are assigned no value for margin calculation purposes. Second, in calculating product group margin, premium margin credits for class groups within the product group are reduced to zero (that is, there is no class group "premium" or "additional margin" credit).

B. OCC's Current Equity Option System

Similar to OCC's proposed equity option margin system, OCC's current equity option system differentiates between market professional accounts

---

[9] An "uncovered short position" is the position of an option contract writer who does not own the underlying stock. *See* M. Thompson, *Investment & Securities Dictionary*, 288 (1995).

[10] Clearing members can reduce margin through OCC netting of certain hedged positions. *See* OCC Rule 601; Division of Market Regulation, *The October 1987 Market Break* at 10-36 to 10-38 (February 1988).

[11] The term "class" of equity option means all option contracts of the same type (puts or calls) and style (American or European) on the same underlying stock; *e.g.*, all puts or all calls on the stock of International Business Machines ("IBM"). *See* OCC By-Laws, Art. I, sect. 1(*ll*); L. McMillan, *Options as a Strategic Investment* 468 (2d Ed. 1986).

[12] Proposed OCC Rule 801(b)(2) defines "class group" to mean all classes of equity options (puts and calls) relating to the same underlying stock.

The only difference between "class" and "class group" is that while a "class" includes only the put or the call option contracts of the same type and style on an underlying stock (*e.g.*, the puts or the calls on IBM stock), a "class group" would include both the put and call option contracts on that underlying stock (*e.g.*, the puts and calls on IBM stock). Telephone conversation between Robert B. Wilcox, Jr., Attorney, Schiff, Hardin & Waite (Counsel for OCC), and Thomas C. Etter, Jr., Attorney, Commission (November 17, 1989).

[13] By contrast, in the case of NEOs, OCC has organized class groups into several larger product groups, including each product groups as stock index options and long term Treasury options.

The term "product group" means two or more class groups whose underlying assets have been determined by OCC to exhibit sufficient price correlation to warrant the margining of options thereon on a combined basis. *See* OCC Rule 802A(b)(3).

[14] As discussed below, the term "account" for the purpose of Equity TIMS means a firm's account or a market maker's account, *i.e.*, a professional's account as distinct from a customer's account. *See also* OCC By-Laws, Art. I, section 1(*w*).

[15] OCC By-laws, Art. 1, section 1(*z*).

[16] *Id.*, section 1(*y*).

[17] *Id.*, section 1(*x*).

[18] One such circumstance involves customer spread positions. *See, infra*, text at note 32.

[19] The difference in essence, amounts to credits for long positions in non-customer accounts and results in lower margin requirements for clearing member accounts with the same positions as customer accounts.

[20] The term "series" means all option contracts of the same class with the same exercise price, expiration date, and unit of trading. *See* OCC By-Laws, Art. I, section 1(*mm*).

[21] *See* proposed OCC Rule 601(b)(4).

[22] The term "maximum theoretical one-day increase" refers to the maximum one-day price movement in the underlying asset based on OCC's historical volatility studies.

[23] *See*, in this filing, proposed OCC Rules 601(b)(7) and 601(c)(1)(C).

[24] The term "margin interval" means the maximum daily change in the "marking price" of the underlying security, upward or downward, assumed by OCC in projecting potential changes in the liquidating value (cost) of positions in options for the purpose of calculating additional clearing margin. OCC would fix the margin interval for each underlying security at such amount as it may "deem necessary or appropriate." *See* proposed OCC Rule 601(b)(8). Consistent with OCC policies set by the margin committee, OCC currently sets the margin interval to protect against 99% of the daily price changes in assets underlying option contracts during the preceding three months and one year (the "confidence interval"). OCC has represented that it will consult with the Commission prior to making any material change to its margin policy. *See* letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991. Under the proposed rule, the term "marking price" would mean: (1) the closing price of the option contract's underlying stock in its primary market on the preceding trading day; or (2) if such stock was not traded in its primary market on the preceding trading day, the highest reported asked quotation (in the case of a call option contract) or the lowest reported bid quotation (in the case of a put option contract) at the close of the trading day. *See* proposed OCC Rule 601(b)(6).

[25] *See* letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

[26] OCC has informed the Commission that it proposes to use the Cox-Rubinstein options pricing model. Cox-Rubinstein is a 1979 refinement of the Black-Scholes model, an equilibrium options pricing model that was introduced in 1973. *See* J. Cox, S. Ross & M. Rubinstein, "Option Pricing: A Simplified Approach," *Journal of Economic Finance*, Vol. 7, 229-263 (1979). *See also* J. Cox & M. Rubinstein, "A Survey of Alternative Option Pricing Models," *Option Pricing* 3-84 (ed. by Mr. Brenner, 1983); R. Jarrow & A. Rudd, "Tests of an Appropriate Option-Valuation Formula," *Id.* at 81-100.

[27] OCC states in its filing that options pricing models can be used to predict, given a set of inputs (*e.g.*, options series, strike price, time to expire, interest rate, dividends, volatility, and underlying asset price), what the option is theoretically worth at a specified price for the underlying asset.

[28] OCC would allow a credit of 30% (*i.e.* a reduction of 70%) of the margin credit of one class group against margin requirements in another class group (within the equity option product group) as provided in Interpretation and Policy .02 of proposed OCC Rule 601. If this percentage were to be modified prospectively, OCC would be required to file the modification with the Commission pursuant to section 19(b)(2) of the Act.

[29] *See*, in this filing, proposed OCC Rule 601(c)(1)(E).

[30] The proposal would permit OCC margin credits on equity option positions to offset margin requirements on NEO positions, and vice versa. *See* proposed OCC Rule 801(c)(2) captioned "Crossover Credit"; proposed OCC Rule 802(c)(3) captioned "Aggregate Margin."

Any margin credit as a result of calculating margin requirements for the equity option product group already reflects a 70% reduction in margin credits at the class group level. In light of this substantial reduction in margin credits, OCC believes a further reduction at the product group level is unnecessary.

Crossover credits, as noted, would apply only to market professional accounts. No cross-over credit would be available for customer accounts. Telephone conversation between Robert B. Wilcox, Attorney, Schiff, Harden & Waite (counsel for OCC) and Thomas C. Etter, Attorney, Commission (November 22, 1989).

[31] The term "segregated long position" means that portion of a long position in a firm non-lien account which has been segregated on the books and records of OCC. *See* OCC By-Laws, Art. I, sect. 1(kkk).

OCC has advised the Commission that as a practicable matter firm non-lien accounts are only a theoretical concept and are not actually used. Conversation between James C. Yong, Deputy General Counsel, OCC, Robert B. Wilcox, Jr., Attorney, Schiff, Harden & Waite, and Thomas C. Etter, Jr., Commission (November 17, 1989).

[32] Rules of the Commission preclude long value credits where the long positions are segregated. *See* Rule 8c-1(g) under the Act, 17 CFR 240.8c-1(g) (1990).

(firm lien accounts and market maker accounts), on the one hand, and customer accounts and firm non-lien accounts, on the other hand. Like the proposed Equity TIMS system, OCC's current equity system calculates the current liquidating value of a position ("premium margin" in the proposed TIMS system) and adds to that amount a minimum amount (referred to as "additional margin" in the TIMS system) to account for any changes in value of the position that OCC could expect during the next day.

Under the existing system, all long and short positions within the same class of options are paired, *i.e.*, long calls are paired with short calls and long puts are paired with short puts. Next the "marking prices" [33] of the paired longs in the class are added together, as are the marking prices for the paired shorts. Current liquidating value for the paired positions is the difference between those two totals. If there is an excess short value, there will be a margin requirement equal to that excess; if there is an excess long value, there will be a margin credit equal to that excess. The sum of the marking prices of the unpaired short positions (or unpaired long positions) will be equal to the margin requirement (or margin credit) for those positions. The margin required for the paired contracts is currently set at 130% of the excess short value or (in the case of professional accounts only) a credit equal to 70% of the excess long value. The margin required for the unpaired contracts is currently set at 130% of the short value or (in the case of professional accounts only) a credit equal to 70% of the long value.[34]

To arrive at total margin for the class, the margin requirements and credits for the paired contracts and unpaired contracts, determined as described above, are summed. For firm lien and market-maker/specialist accounts, class margin credits are reduced by 50% and are then used to offset margin requirements for other classes.

[33] Under the current system, as explained below, the term "marking price" means the product of (1) the index multiplier (*i.e.*, 1.3 or 130%), and (2) the highest closing asked premium quotation for the option.

[34] OCC's Rules thus permit unpaired long positions in firm non-lien and market-maker/specialist accounts to offset, to some degree, the premium margin requirement resulting from the sum of excess short positions or unpaired short positions. This reflects OCC's lien on long positions in these accounts. The 30% reduction is intended to protect OCC against possibly unfavorable price changes, including a potential decrease in the liquidating value of those long positions during the next business day. Under the proposed system, this 30% reduction is replaced by the "additional margin" concept.

III. Rationale for the Proposal

OCC states in its filing that the purpose of the filing is to permit OCC to implement two basic recommendations of its Margin Committee. First, the Committee recommended the use of a mathematical model that incorporated modern option price and portfolio theory to establish margin levels for equity options. The proposal reflects the belief that such a margin system would provide a better estimate of OCC's risk exposure than traditional methods, with less propensity either to over-margin or under-margin positions. Second, the Committee recommended the elimination of the 50% haircut for product group margin credits in professional accounts.

OCC states in its filing that it believes the proposal is consistent with the Act, particularly section 17A of the Act in that, among other things, the proposal is designed to ensure the safeguarding of securities and funds that are in the custody and control of a clearing agency and to further the prompt and accurate clearance and settlement of securities transactions.

IV. Discussion

Section 17A(3)(b)(F) of the Act provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible. That section also requires that such rules must be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. Additionally, section 17A(a) of the Act encourages the adoption of safer and more efficient clearance and settlement procedures that are less costly to investors, and it recommends using automation to help achieve these goals.

The Commission recognizes that a clearing margin system is not intended to provide a clearing agency with the maximum possible protection against the risk of member default. Such a level of protection would be counter-productive because it would reduce marketplace liquidity and cause inefficient use of capital. Moreover, it would increase the operating expenses of clearing members, while it decreased their revenues by reducing order flow. A clearing agency's margin system, however, must provide adequate protection or the margin system would put the clearing agency at an unacceptable level of risk of member default.

Following the Market Break of October 1987, OCC undertook a comprehensive analysis of how its margin operations had functioned during the Market Break. Based on that analysis, OCC concluded that during the volatile markets of October 1987, the TIMS methodology then in use for NEOs had outperformed the equity options production margin system by providing: (1) A better measure of market risk for margin purposes, meaning a better framework for risk management in a crisis; and (2) a more accurate assessment of market risk to OCC.

The proposal represents an improvement over OCC's existing margin system for equity options. Collecting an additional 30% of the premium (as is done under the current system) may not be adequate in volatile markets, when premiums may halve or double in one day. In contrast, the TIMs System will calculate projected option premiums based on potential increments in the price of stocks underlying option contracts. The proposed methodology appears to be better designed to account for potential risk than a static measure, such as exists today.[35] Moreover, the proposal will account for the value of positions, which tend to reduce OCC's liquidation risk, by calculating the value of a clearing member's option portfolio (*i.e.*, long and short positions) across a range of underlying securities prices. This can both reduce and increase clearing member margin requirements, depending on the positions involved, the relationship between those positions, and their relative price volatility.

The proposal represents an improvement over OCC's current system in several respects. As described above, the proposal will afford greater recognition to the value of offsetting positions in clearing member accounts. In addition, the proposal will enable OCC to select as the value for a long option contract an amount equal to its lowest liquidation value across a range of underlying asset values. Moreover, only 30% of the "additional margin" credit from any class group will be available to offset "additional margin" requirements for any other class group. This amounts to a 70% haircut on the value of long option positions. OCC selected the 70% "haircut" based on academic studies showing that only

[35] *See* Order approving NEO margin system, Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR-OCC-86-21]; Orders approving cross-margining, Securities Exchange Act Release Nos. 26153 (October 3, 1988), 53 FR 39567 [File No. SR-OCC-88-17]; 27236 (September 25, 1989), 54 FR 41186 [File No. SR-OCC-89-01].

about 30% of price changes in stocks are attributable to overall market factors and that stock prices have a "fairly uniform" correlation of 30%.[36]

The 70% haircut can be seen as a critical and necessary safeguard in view of the comparatively low correlation of stock prices. In light of this safeguard and in the context of diversified equity options portfolios, the Commission believes it is not imprudent for OCC to allow any resulting margin credits to offset, without further reduction, margin requirements in NEO option product groups.[37]

Nevertheless, the Commission is concerned about the potential lack of diversification of equity option holdings within clearing members' individual portfolios on which credit is being granted. In particular, it may not be appropriate to provide margin credit for long options that are not part of a diversified equity option portfolio because those long option positions may not exhibit the degree of price correlation that justifies offsets with other class groups or product groups.[38] It would seem better to deny margin credits for non-diversified long positions than to grant such credits and seek to recover the effect of such offsets through additional margin requirements later in the margin calculation process (add-ins) or after margin is collected. OCC believes that defining "diversification" in this context could be somewhat arbitrary and the cost of implementing changes to the margin methodology would be expensive relative to existing safeguards,[39] the small number of clearing members with non-diversified equity option portfolios, and the risk posed by non-diversified equity option positions (as distinguished from concentrated positions in equity options). At the Commission's request, OCC has represented that it will use its Concentration Monitoring System ("ConMon") [40] to identify and monitor clearing members whose equity option portfolios appear to lack any diversification.[41] In this regard, OCC has agreed that in addition to the current ConMon procedures and related policies now in effect: (1) OCC's ConMon analysts will review each clearing member account to evaluate the adequacy of diversification; (2) the reviews will be done on a daily basis, *i.e.*, every morning; (3) daily records will be kept of those clearing members holding less than ten class groups and of the dollar value of those clearing members' accounts; and (4) such information will be reported to the Commission on a quarterly basis as of the end of each month and the day after the expiration date.[42] Operation of the Equity TIMS System on a temporary basis and collection of this information should permit an informed decision on this issue.

At the Commission's request, OCC tested the methodologies of the existing production margin system and the proposed Equity TIMS margin system as applied to 15 selected equity options on a daily basis over a two week period. The options for this OCC study represented underlying stocks in three categories: stable (low beta), volatile (high beta), and average stability but increasingly volatile during the period in question due to market news. The results of the study showed that proposed TIMS margins were: (1) Higher than the current production margins for out-of-the-money options and at-the-money options, and (2) lower than the production margins for deep-in-the-money options.

The Commission, in reviewing these results, as well as other relevant data, notes that OCC's existing production margins are set at 130% of option premium values, whereas the TIMS margins for each option class group are based, in part, on an OCC-derived "margin interval," which itself is based on the historical volatility of the underlying stock price as measured by the stock's standard deviation. Then, the "margin interval," by the use of an options pricing model, is translated into specific margin requirements for the various option contracts on the underlying stock. Accordingly, the proposed TIMS margins, in contrast to the more rigid, premium-based production margins,[43] will vary with, among other things, the volatility history of the underlying stocks. In fact, the proposal represents an effort, using statistics and option theory, to base margins on marketplace volatility, which is to say, risk.

The Commission notes, for example, that options trading approximately at-the-money tend to have relatively large risk and reward potential, usually meaning higher price volatility than options that are deep in- or out-of-the-money.[44] The existing margin standard of 130% of premium values takes minimal account of this risk. The Commission believes that it is consistent with the Act, particularly section 17A(b)(3)(F) of the Act, for an options clearing agency to recognize and address such risks in calculating and

[36] *See* letter from James C. Yong, Deputy General Counsel, OCC, to Thomas C. Etter, Attorney, Commission, dated September 27, 1990. *See also* Interpretation and Policy .02 to proposed OCC Rule 601(c)(1)(D).

OCC has found that even stocks of companies within the same industry, such as General Motors and Ford Motor Company, do not necessarily have a high degree of price correlation due to differences in capital, staff, and products

[37] Margin credit at the product group level, between the equity option product group and an NEO product group, would be available only on a net long option position between the product groups.

[38] For example, a long option position in one class of equity options (*e.g.*, XYZ Corporation), may not provide a reasonable hedge against a short position in another equity option class (*e.g.*, ABC Corporation), let alone the S&P 500 stock index options, because an increase in the market value of XYZ Corporation stock may not bear any correlation to a price change in ABC Corporation or the S&P 500 index.

[39] OCC monitors the risks associated with its clearing members' positions and can require additional or special margin deposits from its clearing members. As a part of its surveillance programs, OCC considers quality (*e.g.*, depth and open interest in the options series, and time to expiration) and diversity of a member's options positions (long and short), and measures the potential financial exposure inherent in those positions in the event of extreme market movements. That analysis incorporates prices movements in securities underlying option contracts that exceed OCC's margin interval parameters and the resulting liquidation values are measured against the clearing member's margin deposits and net capital. As a result of that analysis, OCC may determine to place a clearing member on closer than normal surveillance and, if the member is already on closer than normal surveillance, OCC may determine to require the clearing member to make additional margin deposits or take other action to limit the potential financial exposure. The Commission believes these measures are prudent and should be effective to address the potential financial risks. Because these measures depend on active review of clearing member activities, however, the Commission notes that OCC must continue to devote adequate resources to these functions.

[40] OCC's ConMon System is the means by which OCC identifies concentrations in clearing margin portfolios and monitors the financial risk associated with clearing member option positions. If OCC's staff determines that a firm's concentrated position violates certain pre-set parameters, OCC can move the firm to higher points on its watch level and requires additional margin.

[41] For those purposes, an account with positions in more than ten equity option class groups will be deemed to be diversified.

[42] *See* letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

[43] Since it is well-known that option premiums often are small in dollar terms (*i.e.*, often as low as ⅛ or 1/16) for out-of-the-money and at-the-money options, particularly those with less than a month to expiration, it follows that production margins on such options (which are 130% of the premiums) also may be small, irrespective of the volatility of the underlying stock; and since the premiums on deep-in-the-money options tend to be relatively large (often reflecting, on approximately a dollar-for-dollar basis, the excess of such premiums over their strike prices), the production margins on such options also tend to be relatively large.

[44] *See, e.g.*, L. McMillan, *Options as a Strategic Investment, 2d ed.*, 89–94 (1986).

setting margin requirements.

No absolute certainty exists that either option margin system would provide adequate clearing margin to cover extreme price moves in underlying stocks, such as might occur in a takeover bid for a particular company or in a general market decline. Nevertheless, the Commission believes that OCC's incorporation of TIMS methodology as the central element of its equity margin system will provide OCC with more effective protection by providing a more accurate measure of the risks that clearing margin must cover. The Commission further believes that the use of Equity TIMS will reduce significantly the potential for both under- and over-margining positions, thereby facilitating more efficient use of broker-dealer capital.

The Commission previously approved OCC's use of options price theory to calulate margin requirements on NEO products and related futures positions.[45] The Commission has encouraged OCC to review its margin system safeguards, and OCC has raised its margin interval and reference confidence intervals. The Commission continues to believe that a minimum level of margin sufficient to cover reasonably anticipated market movements unrelated to news announcements is appropriate.

Recent experience indicates that the number of days in which dramatic market movements occur has increased significantly over the last few years.[46] OCC has responded to this situation by, among other things, setting its NEO margin interval at a level designed to cover 99.7% of the maximum assumed one-day price movements. The Commission believes OCC has acted in a prudent manner by taking such action and urges OCC to maintain this degree of coverage.

While the Commission believes that the methodology employed by OCC's NEO margin system is basically sound, the Commission also is concerned that the system may be overdependent on short-term analyses of historical and implied volatility. Such analyses must provide the basis for any clearing corporation margin system, but their limitations also must be acknowledged. Accordingly, the Commission believes it would be beneficial for OCC to collect additional margin to cover the financial shocks caused by sudden, drastic price movements. Specifically, while OCC monitors the volatility of the markets in an effort to anticipate such movements, the Commission believes OCC should explore ways to ensure that its margin levels are not substantially reduced as a result of a decrease in short-term (three-to-twelve months) average volatility.[47]

As noted above, OCC has represented that it will undertake to include price volatility data for equity options over longer terms in determining its margin intervals, and will report by April 30, 1992, on how this can be done. OCC also has represented that, thereafter, it will consult with Commission staff concerning the implementation of the best alternative.[48]

V. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–OCC–89–12) be, and hereby is, approved on a temporary basis through May 31, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[49]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5460 Filed 3–7–91; 8:45 am]

BILLING CODE 8010–01–M

[45] *See, supra,* note 35. OCC has had almost five years of experience with Non-Equity TIMS, a period that included the Market Break of October 1987. While the volume and technological requirements for the proposed Equity TIMS System are far larger than those required for the existing Non-Equity TIMS System, the methodologies of the two TIMS systems are similar (*e.g.*, both TIMS systems rely on margin intervals and on option price theory, in the form of a Cox-Rubinstein mathematical model, to calculate option margin positions). OCC has represented that it now has the necessary software programs and electronic hardware to support Equity TIMS under routine and peak volume conditions and that its systems possess adequate internal and external security. *See* letter from James C. Yong, Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Commission, dated August 29, 1990.

[46] For example, in the 42 years between 1940 and 1982, the Dow Jones Industrial Average ("DJIA") declined by more than six percent on only three occasions. By contrast, the DJIA has declined by more than six percent on four occasions since 1987. *See* Statement of the Honorable Robert C. Glauber, Under Secretary of the Treasury for Finance, before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives (May 24, 1990).

[47] *See* Division of Market Regulation, *Market Analysis of October 13 and 16, 1989,* at 142–62 (December 1990).

[48] *See* letter from Dan L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

[49] 17 CFR 200.3–30(a)(12).

[Release No. 34–28684; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Filing of a Request of Temporary Registration as a Clearing Agency

February 27, 1991.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), notice is hereby given that on February 25, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") an amendment to its form CA–1, requesting the Commission to extend PTC's registration as a clearing agency until March 31, 1992.[1] The Commission is publishing this notice to solicit comments on the proposed application from interested persons.

On March 28, 1989, the Commission granted the Participants Trust Company temporary registration as a clearing agency pursuant to sections 17A and 19(a)(1) of the Act, and rule 17Ab2–1 thereunder for a period of 12 months.[2] On March 28, 1990, the Commission approved PTC's proposal to amend its application requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1991.[3]

PTC provides depository facilities for mortgaged-backed securities, particularly, securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

Interested persons are invited to submit written data, views and arguments concerning the foregoing application within thirty days of the date of publication of this notice in the Federal Register. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

[1] *See* letter from John J. Scoppa, President and CEO, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated February 22, 1991.

[2] *See* Securities Exchange Act Release No. 26971 (March 28, 1989), 54 FR 13288.

[3] *See* Securities Exchange Act Release No. 27938 (March 28, 1990), 55 FR 12614.

450 Fifth Street NW., Washington, DC 20549. Reference should be made to file No. 600–25. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5461 Filed 3–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25264]

Filings Under the Public Utility Holding Company Act of 1935("Act")

March 1, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 25, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Storage Service Company, et al. (70–7728)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, and its subsidiary companies, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company and CNG Trading Company, all located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199; The Peoples Natural Gas Company, Two Gateway Center, pittsburgh, Pennsylvania 15222; Consolidated Gas Transmission Corporation and Consolidated System LNG Company, both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Producing Company and CNG Pipeline Company, both located at One Canal Place, Suite 3100, New Orleans, Louisiana 70120; West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh Pennsylvania 15244; The East Ohio Gas Company and The River Gas Company, both located at 1717 East Ninth Street, Cleveland, Ohio 44114; and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 42, 43, 45, 86, 87, 90 and 91 thereunder.

Consolidated proposes to organize a new subsidiary company, CNG Storage Service Company ("Storage"), which would provide to customers natural gas storage facilities and services, including: (i) The purchase or lease of gas to be used as base gas in storage pools; (ii) the sale or lease of gas to customers as base gas in storage pools; (iii) the purchase, lease and development, construction, operation and maintenance of gas storage pools and related facilities; (iv) the purchase or lease of gas storage capacity from third parties and the sale, lease or brokerage of gas storage capacity to customers; and (v) other activities related to the operations and functions of a full service gas storage business. Storage's customers will be limited to CNG system associate companies and their direct and indirect customers, and to those supplying gas to CNG system associate companies.

Consolidated states that the acquisition of an interest in Storage is an acquisition of an interest in a company organized to participate in activities involving the storage of natural gas within the meaning of section 2(a) of the Gas Related Activities Act of 1990, Public Law 101–572, and, as such, is deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of the integrated public utility system of the Consolidated system.

It is proposed that Storage will, from time-to-time, through December 31, 1995, obtain necessary operating funds through: (a) The sale by Storage of its authorized but unissued common stock to Consolidated, $10,000 par value; (b) open account advances made through the CNG System Money Pool ("Money Pool"), authorized by order dated June 12, 1986 (HCAR No. 24128) ("June 1986 Order"); or (c) long-term loans from Consolidated. Such funding will be in any combination of the foregoing and in such amounts that the aggregate outstanding amount obtained from Consolidated and/or the Money Pool will not at any time exceed $100 million. It is also proposed that Storage participate in the Money Pool as both a borrower and a lender, on the same terms and under the same conditions as previously authorized by the Commission in the June 1986 Order.

To the extent that Consolidated has comparable outstanding debt, open accounts advances and long-term loans to Storage will have the same effective terms and interest rates as the related borrowings of Consolidated as follows: (1) Open account advances will be made through the Money Pool, and be repayable not more than one year from the date of the first advance, and will bear interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding on the date of any advance, then the interest rate will be the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York; and (2) long-term loans will be evidenced by Storage's long-term, non-negotiable notes maturing over a period of time to be determined by the officers of Consolidated, with the interest rate based on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financings. In the event Consolidated does not issue long-term debt during the period ending on December 31, 1994, the proceeds of which are allocable to Storage, long-term borrowings rates will be based on the indicative rate for comparable debt issuances published in the Salomon Brothers Inc. Bond Market Roundup on the date nearest to the date of borrowing. Such rate will be adjusted to match Consolidated's effective cost of money if Consolidated subsequently issues long-term debt within one year.

Consolidated also proposes to indemnify obligations of Storage in an

aggregate amount not to exceed $50 million at any one time.

The Southern Company, et al. (70-7720)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public-utility subsidiary companies, Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32520, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, and Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401, and Southern Electric Generating Company ("SEGCO"), a subsidiary of Alabama and Georgia Power Company, 600 North 18th Street, Birmingham, Alabama 35291 (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration filed under sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated April 26, 1990 (HCAR No. 25077) ("1990 Order"), Southern was authorized, through March 31, 1992, to make capital contributions to Gulf in an amount not to exceed $10 million. In addition, the 1990 Order authorized the Applicants to issue and sell, from time-to-time through March 31, 1992, up to the aggregate principal amount of $500 million for Southern, $350 million for Alabama, $50 million for Gulf, $120 million for Mississippi, $40 million for Savannah and $100 million for SEGCO: (1) Short-term or term notes to banks; (2) commercial paper to dealers; and/or (3) short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes.

Southern now proposes, through March 31, 1992, to make capital contributions to Mississippi in an amount not to exceed $20 million. The proceeds from such capital contributions will be used to provide funds for Mississippi's ongoing construction program and for other corporate purposes.

In addition, the Applicants propose to increase the amount of borrowing authorized for Alabama in the 1990 Order from $350 to $450 million. The terms and conditions of the additional borrowings will be the same as stated in the 1990 Order. The borrowings will be used to provide a portion of the funds required for acquiring or constructing plants, properties, permanent improvements, extensions or additions to the property used or to be used by Alabama in its public utility business and for other corporate purposes. Alabama's cash requirements (excluding the sale of any senior securities) will result in a peaking of short-term notes in the middle of 1991, followed by a repayment of substantially all of the short-term notes by the end of 1991.

Columbus Southern Power Company et al. (70-7730)

Columbus Southern Power Company ("Columbus Southern"), 215 North Front Street, Columbus, Ohio 43215, Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44402, and Kentucky Power Company ("Kentucky Power"), 1701 Central Avenue, Ashland, Kentucky 41101, electric public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Columbus Southern, Ohio Power, and Kentucky Power ("Company") propose to issue and sell prior to December 31, 1991, unsecured promissory notes ("Notes") in aggregate principal amounts not to exceed $130 million, $50 million, and $60 million, respectively, pursuant to one or more proposed term loan agreements ("Proposed Term Loan Agreement"). The Proposed Term Loan Agreement will be with one or more commercial banks, financial institutions or other institutional investors ("Lender"). The Notes will have maturities of not less than nine months nor more than twelve years and will bear interest at either a fixed rate, a fluctuating rate, or some combination of fixed and fluctuating rates.

No compensating balances shall be maintained with, nor fees in the form of substitute interest be paid to, a Lender under the Proposed Term Loan Agreement. In the event a bank or financial institution arranges for a borrowing from a third party, however, such institution may charge each Company a placement fee, not to exceed ⅛% of the principal amount of such borrowing. The Proposed Term Loan Agreement and the Notes may, in whole or in part: (1) be assigned by the Lender, or (2) the Lender may sell participations in the Proposed Term Loan Agreement and Notes. The assignee would have the same rights and benefits under the Proposed Term Loan Agreement as the Lender. The participant, however, would not have any rights under the Proposed Term Loan Agreement, but would have rights against the Lender in respect to the agreement between the participant and the Lender. In either event, the Proposed Term Loan Agreement would provide that each Company pay the Lender the principal amount of the Notes on the last day of each calendar quarter (if the last day is not a business day, then on the next succeeding business day) in each case together with accrued interest. Each Company also would be required to reborrow, and the Lender would be required to relend, the principal amount of each Note on each repayment date, such reborrowing to occur up to the final maturity date of the Note. Each reborrowing by the Company also would reaffirm certain representations and warranties of that Company as of the date of such reborrowing.

The Proposed Term Loan Agreement may contain restrictive covenants which would prohibit the Company from, among other things, (1) creating, incurring, assuming or suffering to exist any liens on its property, with certain stated exceptions; (2) creating or incurring any indebtedness for borrowed money, other than as specified; (3) failing to maintain a specified level of capitalization; and (4) certain merger, consolidations, and dispositions of assets.

The Companies will use the proceeds from the sale of Notes, together with any other funds available to them: (1) To pay at maturity and to refund long-term debt; (2) to repay short-term debt; and (3) for other corporate purposes as permitted by law, including sinking fund payments.

The Companies will not enter into any early refunding transactions unless the estimated present value savings derived from the net difference between interest payments, on any Notes to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate, on the Notes to be issued for refunding purposes.

The Companies propose to issue the Notes either in accordance with the alternative procedures authorized by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22823) or under an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5).

Central and South West Corporation et al. (70-7828)

Central and South West Corporation ("CSW"), a registered holding company, its service company subsidiary, Central and South West Services, Inc. ("Services"), both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and five of its operating subsidiaries, Central Power and Light Company ("CP&L"), 539 North Carancahua Street, Corpus Christi, Texas 78401-2802, Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74119-1212, Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156-0001, West Texas Utilities Company ("West Texas"), 301 Cypress, Abilene, Texas 79601-5820, Transok, Inc. ("Transok"), 600 South Main, Tulsa, Oklahoma 74101 (collectively, "Subsidiaries") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder

CSW and its Subsidiaries propose to continue, through March 31, 1993, their short-term borrowing program through the use of the CSW System money pool ("Money Pool"), under the same terms and conditions as previously authorized by orders dated April 5, 1989, October 10, 1989 and May 15, 1990 (HCAR Nos. 24855, 24966 and 25090, respectively) ("Prior Orders").

The maximum short-term borrowing levels requested by CSW and its Subsidiaries are as follows, CSW—$600 million, CP&L—$200 million, PSO—$100 million, SWEPCO—$150 million, West Texas—$50 million, Services—$60 million and Transok—$120 million. The aggregate principal amount of borrowings authorized for CSW and its Subsidiaries would not exceed $600 million. The only change in the proposed maximum borrowing levels for CSW and its Subsidiaries, as authorized by the Prior Orders, is for Services to increase its authorization from $35 million to $60 million due to anticipated expenditures for telecommunications lines and equipment, computer hardware and building construction and improvements.

To provide funds for the Money Pool, CSW requests authorization to issue and sell commercial paper ("Commercial Paper"). The Commercial Paper will mature in 270 days or less and will be issued from time-to-time through March 31, 1993 to dealers in Commercial Paper or certain Financial Institutions. CSW requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) for the issuance and sale of Commercial Paper.

CSW and its Subsidiaries also request authorization to borrow money from banks, from time-to-time through March 31, 1993, to the extent that the surplus funds of CSW and the Subsidiaries are insufficient to meet the Subsidiaries' requests for short-term loans. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's commercial paper and, in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of such borrowing. The borrowings will be evidenced by promissory notes maturing no later than December 31, 1992 and will be subject to prepayment by the borrower in whole at any time or in part from time-to-time, without penalty.

Compensation arrangements under lines of credit with banks maintained by CSW and its Subsidiaries are on a balance or fee basis. In general, fees range from 1/8 to 1/5 of 1% per annum on the average unused portion of the commitment and balance arrangements require average balances of 3% of the amount of the commitment.

Additionally, CSW requests authorization, from time-to-time through March 31, 1993, to borrow funds managed by the trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

CSW and its Subsidiaries will use the proceeds of the borrowings (i) for the interim financing of the Subsidiaries' capital expenditure programs during the period and/or to provide for other working capital needs; (ii) in the case of borrowings by CSW, to loan or contribute as capital to the Subsidiaries for such purposes (subject, in the case of any capital contribution, to separate authorization by the Commission), or contribute as capital to other subsidiaries as authorized separately by the Commission; and (iii) to repay previous borrowings incurred for such purposes.

Consolidated Natural Gas Company (70-7827)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh Pennsylvania 15222-3199, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

Consolidated proposes to borrow up to $300 million, through March 31, 1994, pursuant to revolving credit agreements ("Credit Agreements") with the Chase Manhattan Bank acting for itself and as agent for certain other banks, and any loans made pursuant to the Credit Agreements will be evidenced by either a syndicated promissory note ("Syndicated Note") or money market promissory note ("Money Market Note").

Under the terms of the Credit Agreements the bank loans will be in the form of revolving credits. Commitments under the Credit Agreements will commence as of the date thereof and will have an initial term expiring on the last business day in March of 1994. However, the Credit Agreements will provide that on each anniversary date the term of the agreement will, at Consolidated's request with the approval of the banks, be extended for a period of one year. In addition, on each anniversary date the commitments of the participating banks, at Consolidated's request with the approval of the banks, may be reallocated among the banks, subject to the condition that the total commitments under the Credit Agreements will at no time exceed $300 million. The Credit Agreements will also provide that Consolidated will have the right at any time to terminate or reduce the individual commitments of the banks.

Loans made pursuant to the Credit Agreements may, at the option of Consolidated, be either syndicated by a group of the participating banks, or money market loans made by individual participating banks. Each loan will be evidenced by either a Syndicated Note or Money Market Note.

At the option of Consolidated, the interest rate for the Syndicated Note will be: (1) The higher of the Prime Rate announced by Manhattan Bank as in effect from time-to-time at its principal office in New York City or the Federal Funds Rate published by the Federal Reserve Bank of New York plus an increment of one-half of one percent; (2) the average of the London Interbank Offered Rated (LIBOR) quoted by the reference banks specified in the Credit Agreements, divided by one minus the reserve requirements for such deposits required by the Federal Reserve System, plus an increment of one-quarter of one percent; or (3) the average of the certificate of deposit rate quoted to the reference banks, divided by one minus the reserve requirements for such deposits required by the Federal Reserve System, plus an increment of three-eights of one percent, plus the rate payable to the Federal Deposit Insurance Corporation for deposit insurance. The interest rate for Money Market Notes will be such rate as the banks may bid, which bid will, at the option of Consolidated, be expressed as all-in rate or as an increment above or below the average of the LIBOR rates quoted by the reference banks divided by one minus the reserve requirements

for such deposits required by the Federal Reserve System.

A fee of one-eighth of one percent will be charged on the revolving credit commitments commencing on the effective date of the Credit Agreements.

The proceeds of Consolidated's borrowings under the Credit Agreements will be used to provide short-term financing to its subsidiary companies or for working capital requirements, as authorized by Commission order dated June 29, 1990 (HCAR, No. 25110).

Georgia Power Company (70–7832)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NW, Atlanta, Georgia 30308, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 6(b), 7 and 12(d) of the Act and Rule 50(a)(5) thereunder.

Georgia proposes to finance and/or refinance the costs of certain pollution control facilities and sewage and solid waste disposal facilities at one or more of Georgia's electric generating plants or other facilities located in various counties in Georgia from time-to-time through December 31, 1994. It is proposed that the Development Authority of each county ("Authority") will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Georgia to finance or refinance the costs of the acquisition, construction, installation and equipping of the facilities at the plant or other facility located in its county ("Project"). The aggregate principal amount of Revenue Bonds to be issued from time-to-time by the Authorities pursuant to authority granted hereunder will not exceed $750 million.

While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of refunding outstanding bonds or the cost of the Project located in its county. Present estimates indicate that approximately $100 million of the $750 million principal amount of Revenue Bonds will be for new financing of Projects, with the remainder to be available for refundings.

Georgia will not use the proceeds from the sale of the Bonds to refund outstanding pollution control bonds unless the estimated present value savings derived from the net difference between interest payments on any Revenue Bonds to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. Such discount rate is based on the estimated after-tax interest rate on the Revenue Bonds issued for refunding purposes.

Revenue Bonds will be sold by each Authority pursuant to arrangements with one or more purchasers or underwriters. The interest rate on the Revenue Bonds will be determined by the Board of Directors of the Authority and will bear either a: (1) fixed rate that may be convertible to a rate that will fluctuate in accordance with a specified prime or base rate(s) or may be determined pursuant to certain remarketing or auction procedures; or a (2) fluctuating rate that may be convertible to a fixed rate. While Georgia may not be party to the purchase or underwriting arrangements for the Revenue Bonds, such arrangements will provide that the terms of the Revenue Bonds and their sale by the Authority shall be satisfactory to Georgia.

Georgia will enter into a Loan Agreement with the Authority, relating to each issue of Revenue Bonds ("Agreement"). Under the Agreement, the Authority will loan to Georgia the proceeds of the sale of the Authority's Revenue Bonds, to be evidenced by the issuance of a non-negotiable promissory note by Georgia ("Note"). The proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Georgia to payment of the Costs of Construction, as defined in the Agreement, of the Project or to refund outstanding pollution control revenue obligations.

The Note will provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. The Agreement will provide for the assignment to the Trustee or the Authority's interest in, and of the moneys receivable by the Authority under the Agreement and the Note.

The Agreement will also obligate Georgia to pay the fees and charges of the Trustee and will provide that Georgia may at any time, so long as it is not in default, prepay the amount due under the Note, including interest, in whole or in part, in amounts sufficient to redeem or purchase the outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture will provide that the Revenue Bonds will be redeemable at any time on or after a specified date from the date of issuance: (1) In whole or in part, at the option of Georgia, and may require the payment of a premium at a specified percentage of the principal amount; and (2) in whole, at the option of Georgia and without the payment of a premium under certain extraordinary circumstances. The Revenue Bonds will mature from one to 30 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 30 years, be entitled to the benefit of a mandatory redemption sinking fund.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Georgia to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Georgia also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption at any time if the interest is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, or Georgia may be required to indemnify the bondholders against any other increases in interest, penalties or taxes.

Georgia may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amount either equal to: (1) The principal amount of the Revenue Bonds; or (2) the sum of the principal amount plus interest payments for a specified period. Collateral Bonds will mature on the maturity date of the Revenue Bonds and will be nontransferable by the Trustee. The Collateral Bonds, in the case of clause (1) above, would bear interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds and, in the case of clause (2) above, would be non-interest bearing. The obligation of Georgia to make payments with respect to the Collateral Bonds will be satisfied to the extent that payments are made under the Note sufficient to meet payments when due in respect of the related Revenue Bonds.

Upon acceleration by the Trustee of the principal amount of all related outstanding Revenue Bonds, the Trustee may demand the mandatory redemption of the related Collateral Bonds at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. Upon the optional redemption of the Revenue Bonds, in whole or in part, at any time after they have been outstanding for a specified period, it may be provided that a related principal amount of the Collateral Bonds will be redeemed at the redemption price of the Revenue Bonds.

As an alternative to or in conjunction with the issuance of the Collateral Bonds, Georgia may cause an irrevocable Letter of Credit ("LOC") of a bank ("Bank") to be delivered to the Trustee. The LOC would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Georgia would agree to pay to the Bank on demand all amounts that are drawn under the LOC, as well as certain fees and expenses.

As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, Georgia may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on any series of the Revenue Bonds. The insurance policy would extend for the term of the related Revenue Bonds, would be non-cancelable by the insurance company for any reason, and may provide for escrow payments by Georgia to indemnify the insurer. In the event that a LOC is delivered or an insurance policy is issued as alternatives to the issuance of the Collateral Bonds, or if none of the three security alternatives are exercised, Georgia may also convey to the Authority a subordinated security interest in the Project or other property of Georgia as further security for Georgia's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

Central and South West Corporation (70–7836)

Notice of Proposal to Amend Restated Certificate of Incorporation; Order Authorizing Proxy Solicitation

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered public-utility holding company, has filed an application-declaration under sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

CSW proposes to amend ("Amendment") its Restated Certificate of Incorporation, as amended, to increase the maximum number of shares of its common stock, par value $3.50 per share, ("Common Stock") it is authorized to have outstanding at one time from 150 million shares to 350 million shares. The proposed Amendment must be authorized by a vote of a majority of the holders of the outstanding shares of Common Stock entitled to vote at the annual meeting of stockholders to be held April 18, 1991 ("1991 Annual Meeting").

CSW also requests the authority to solicit proxies from its stockholders for use at the 1991 Annual Meeting with respect to the approval of the proposed Amendment. CSW has filed its proxy solicitation material and requests that the declaration, with respect to the solicitation of proxies from its stockholders in connection with the proposed Amendment, be permitted to become effective as provided in Rule 62(d) of the Act.

It appearing to the Commission that CSW's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5565 Filed 3–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28934; File No. SR–PHLX–90–39]

Self-Regulatory Organization; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Parity and Priority Rules Applicable to Foreign Currency Options Orders

On December 26, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the parity and priority rules applicable to foreign currency options orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28775 (January 14, 1991), 56 FR 2788. No comments were received on the proposal rule change.

Currently, PHLX Rules 119, 120, Commentary .12 to Rule 1014, and Options Floor Procedure Advice ("OFPA") B–6, set forth the priority and parity rules applicable to options transactions.[3] Under the existing priority and parity rules, a Registered Options Trader ("ROT") is permitted to retain priority over or have parity with an off-floor order, including a customer order, only when closing a position. Otherwise, when a ROT is establishing or increasing a position, it must always yield to orders originating off-floor.[4] The PHLX proposes to add a new paragraph (h) to its Rule 1014 in order to establish special parity and priority rules that are applicable to foreign currency options orders. Specifically, the PHLX proposes that, except for customer orders for less than 100 contracts and as otherwise noted below, all bids and offers for foreign currency options, regardless of account type (i.e., ROT, member, or customer) or size or whether representing an "opening" or "closing" transaction, shall be treated the same for purposes of determining time priority pursuant to PHLX Rule 119.[5] In order to facilitate small customer orders, however, the PHLX proposes that all foreign currency options orders on behalf of customer accounts for under 100 contracts shall have time priority over all other bids and offers regardless of account type (except specialists). Moreover, the proposed PHLX rule explicitly provides that any bid or offer

[1] 15 U.S.C. section 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Rule 119 deals with the precedence of the highest bid and Rule 120 deals with the precedence of offers at the same price.

[4] An ROT when establishing or increasing a position, however, may retain priority over or have parity with an off-floor order for the account of a member or broker dealer which is establishing or increasing a position in the trading crowd. *See* Commentary .13 to PHLX Rule 1014.

[5] For the purpose of proposed paragraph 1014(h), the PHLX defines account types as follows: (1) an ROT account is a market functions account as defined in Section 220.12 of Regulation T of the Board of Governors of the Federal Reserve Board; (2) a member account is any account of a non-market making member/participant or an associated person of such a member/participant or for which such a member/participant or any of its associated persons maintains discretionary control; and (3) customer accounts are all accounts other than ROT, member or specialist accounts.

BEST COPY AVAILABLE

for the account of member that relies on the exemption under section 11(a)(1)(G) of the Act must yield time priority to any bid or offer for the account of a customer.

Other than the exceptions noted above, the PHLX proposes to treat all foreign currency options bids and offers on a uniform basis for priority and parity purposes. Specifically, the PHLX proposal provides that once a bid or offer has established priority, then another bid or offer may not gain parity at that price during that trade session until at least 10% of the size of the previous bid or offer or 100 contracts, whichever is greater, subsequently trades in that series ("priority threshold").[6] The PHLX proposal further provides that, in the event that the priority threshold is not reached, then a person retains his priority, regardless of subsequent better bids or offers, if the bids or offers return to the level of the bid or offer with priority. A person with this priority, however, would relinquish it be either withdrawing his bid or offer or leaving the trading crowd.

The PHLX believes that its proposal is beneficial to public investors because it provides customer orders of under 100 contracts with time priority at all times over all other orders, except specialists who because of their market making responsibilities would not be subject to this requirement. Specifically, under the PHLX proposal, customer orders of under 100 contracts would receive priority over the competing orders of an ROT or member firm regardless of whether such orders represented "opening" or "closing" transactions.

Additionally, the Exchange believes that the proposal will encourage larger-sized quotations and narrower price quotations in its foreign currency options market for two reasons. First, because the proposal generally treats all orders of 100 contracts or more on an equal basis, floor traders will have the assurance that once they voice a size bid or offer then that bid or offer cannot be superseded by another bid or offer at the same price from any other market participant.[7] Second, the proposal assures that any bid or offer that establishes priority will be guaranteed trades in that series of the greater of 10% of its size or 100 contracts, whichever is greater, before anyone else can gain parity at that price.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11(a)[8] and the rules and regulations thereunder. The proposed rule change is designed to ensure that public customer foreign currency options orders for less than 100 contracts be accorded time priority over all other orders of market participants other than specialists at the same price. This will enhance the ability of small public customers orders to receive a timely execution of their orders and could promote greater individual investor participation in PHLX foreign currency options markets. Specifically, the proposal increases the ability of customer orders of less than 100 contracts to be executed promptly because such orders will now have time priority over ROT closing transactions.

The Commission also believes that the proposed rule change may encourage foreign currency options market participants to make larger and tighter markets. As noted above, under the PHLX's current priority and parity rules, when an ROT is establishing or increasing a position, it may not retain priority over or have parity with an off-floor order.[9] Thus, it is not uncommon that ROTs will voice bids or offers in the crowd and then be forced to reduce their participation in a trade or stand aside completely to let institutional investor orders participate in the trade. This is a result of the special nature of the foreign currency options market. Ordinarily, priority and parity rules of the options exchanges are designed to ensure that customer orders do not get displaced by professional orders that possess the time and place advantages inherent in membership access to the exchange floor. With foreign currency options and its underlying cash market, however, the "customers" in most instances are institutional investors who are just as sophisticated and well-informed as the market makers.[10] Thus, because of the effect of existing priority and parity rules, at the present time, ROTs in foreign currency options have less incentive to quote large, tight markets.[11] Therefore, in this context, the imposition of priority and parity rules on ROTs for orders greater than 100 contracts serves no compelling regulatory purpose.

The Commission believes that the PHLX proposal, by placing all orders of 100 contracts or better on par, will serve as an incentive to ROTs to quote tighter, larger markets because the ROTs will not be preempted by institutional orders. Specifically, a market participant who makes the best bid or offer will have his priority guaranteed until a significant number of contracts are traded before anyone else can gain parity with his bid or offer, and, if the size of his bid or offer is over 1000 contracts, then the size of his priority threshold will increase. The proclivity of ROTs to voice larger quotes and narrower spreads as a result of the proposal, in turn, should contribute to deeper and more liquid foreign currency options markets. In addition, larger and narrower quotes may attract additional individual and institutional investor foreign currency options orderflow to the Exchange.

Although the PHLX proposal generally treats all orders (except customer orders less than 100 contracts) on a uniform basis for priority and parity purposes, the Commission notes that the PHLX proposal specifically provides that any bid or offer for the account of a member which relies on the exemption under section 11(a)(1)(G) of the Act from the prohibition against Exchange members trading for their own account or associated accounts while on the floor of the PHLX must yield time priority to any bid or offer of the account of a non-member. Therefore, the Commission finds that the PHLX's proposal is consistent with Section 11(a) of the Act and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR-PHLX-90-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[6] The PHLX proposal further provides that, if bids or offers on parity have priority over other subsequently voiced bids or offers in the crowd, then the priority threshold shall be calculated on the basis of the combined sizes of the bids or offers on parity.

[7] Unless, of course, an equal bid or offer for less than 100 contracts is represented on behalf of a customer account.

[8] 15 U.S.C. sections 78f and 78k (1982).

[9] *See supra* note 4.

[10] The PHLX has conducted a study which showed that, for orders greater than 100 contracts, less than 1% of the total contract volume is represented by non-institutional accounts. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas R. Gira, Branch Chief, SEC, dated October 31, 1990.

[11] It should be noted, however, that PHLX Rule 1014(c)(ii) also constrains the size of bid/ask differentials that ROTs can create in foreign currency options.

[12] 15 U.S.C. Section 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(a)(12) (1989).

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5566 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Thursday, March 28, 1991, at Montgomery Bell State Park, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, 50 Vantage Way, suite 201, Nashville, Tennessee 37228-1500, telephone (615) 736-5850.

Dated: February 25, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-5552 Filed 3-7-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Lancaster, CA; Closing

Notice is hereby given that on or about February 22, 1991, the Flight Service Station at Lancaster, California, will be closed. Services to the general aviation public of Lancaster, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Authority: Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.

Issued in Lawndale, California, on February 25, 1991.

George Harvey,

Acting Regional Administrator, Western-Pacific Region.

[FR Doc. 91-5524 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-10-NP-NO. 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.4(a) of Standard No. 101 requires that means be provided which are capable of making the telltales and their identification visible to the driver under all driving conditions. GM determined that 9,681 of its 1990 Oldsmobile Toronado vehicles failed to comply with S5.3.4(a) of Standard No. 101. The high beam telltale on these vehicles shares its electrical ground with some of the other vehicle interior systems, one of which is the cigar lighter circuit. The application of the cigar lighter reduces current flow to the high beam telltale, causing it to dim or extinguish temporarily.

General Motors supports its petition with the following: "The telltale extinguishes only when the shared circuit is subjected to heavy electrical current flows (above 5 amps). The circuit is normally subjected to loads of this level only during the heating of the cigar lighter which draws over 5 amps. However, the specified heating time for the cigar lighter is a maximum of 20 seconds at room temperature and a maximum of 25 seconds at lower temperatures. Therefore, the high beam telltale would extinguish for a maximum of 25 seconds. Typical accessories (e.g. cellular telephones) which use the cigar lighter circuit draw much less current (approximately 2 amps) and would not dim the telltale to the point that it is not visible."

GM is not aware of field complaints indicating concern resulting from the subject condition. Warranty records were also reviewed for the vehicle population in question and no evidence of activity which might relate to the subject condition was found.

Because the telltale would extinguish only under specific circumstances and any suppression of the high beam telltale illumination level would persist only for a short period of time, GM believes that this noncompliance with FMVSS 101 is inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 8, 1991.

Authority: [15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8]

Issued on March 4, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-5444 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

U.S. Congress-Korean National Assembly Project

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces its intention to award a grant of up to $70,000 to a private not-for-profit organization to bring 12 Korean university students to the United States and to send up to 12 American university students to Korea for three to four weeks during the summer of 1991. Participants will spend part of their time working as interns in the offices of interested members of the host country's national legislature, receive briefings from government officials and other specialists, undertake research papers to study issues of bilateral concern, and participate in cultural and educational activities.

DATES: Deadline for proposals: Must be received by COB March 31, 1991. Duration: The duration of the grant will be 3–6 months. The program should take place while the Congress and the Korean National Assembly are in session. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Office of the Executive Director (E/X), ATTN Korea Project 1991, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis at the Youth Programs Division (E/VY), Office of International Visitors, room 357, 301 4th Street SW., Washington, DC 20547; telephone 202–619–6299.

SUPPLEMENTARY INFORMATION: Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose purpose is "to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

This program is designed to broaden the perspectives of select groups of Korean and American young people on the history of U.S.-Korean relations and current political, economic and security aspects of the bilateral relationship. It will also provide both groups with first-hand experience of the host country, which will enhance their understanding of relations between the two governments as well as enable them to form personal contacts.

The central focus of the program should be interaction between the exchange participants and their peers in the host country. The Americans should have the opportunity to exchange views on current bilateral issues with Korean university students and other young people. The Koreans should be given a chance to discuss current issues with fellow interns in the Congressmen's offices as well as meet with other young Americans in formal, structured situations designed by the grantee. In both cases, these should supplement orientations and lectures about the host country in which the speakers are government officials, professors, legislators or legislative staff.

Members of Congress will nominate American participants and offer internships for the Koreans in their offices. The Korean National Assembly arranges the internships in Korea, and participants spend part of each exchange week working at their internships. Supplementary programming should encourage exchange with experts and specialists, facilitate the research on academic papers and provide opportunities for travel outside the national capital.

Internships for the Americans are arranged by the Korean National Assembly. The grantee organization will need to monitor these arrangements and interact with the Koreans and possibly USIS Seoul in providing supplementary educational and cultural activities. One alternative might be to place the Americans in various private sector research institutions and other think tanks in Seoul.

In the U.S., the grantee organization is also responsible for the following: arranging appropriate supplementary programming; arranging lodging, which may be homestays, dormitories or some other group living arrangement; working with congressional staff in planning and implementing the visit to districts, which has been traditionally part of the program's travel week. Another possibility is to interact with members of the Korean-American community to learn about problems, opportunities and the issues which it faces in this country.

Application Procedures

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming exchange visitors is desirable.

Interested organizations should write or call the Youth Programs Division (address provided above) to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific information on the contents of a complete application.

Grant-funded expenditures will generally be limited to the following categories:

—International travel
—Domestic travel
—Maintenance and per diem, not to exceed government limits
—Orientation costs and materials
—Cultural enrichment allowance (not to exceed $150 per participant)
—Speaker honoraria, conference or seminar registration fees, rental of meeting facilities. (Speaker honoraria should not exceed $200 per day per speaker.)
—Administration—salaries, benefits, other direct and indirect costs

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. All proposals will also be reviewed by the Agency's Office of the General Counsel as well as other Agency offices. The Associate Director for Educational Cultural Affairs identifies and approves potential grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

a. Quality of the program plan and adherence of the proposed activity to the criteria and conditions described above;

b. Feasibility of the program plan and institutional capacity of the organization to conduct the program;

c. Track record—the Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants;

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing institutional ties;

e. Value to U.S.-Korean relations—the assessment of USIA's geographic area desk of the potential impact and significance of the proposed project in Korea;

f. Cost effectiveness—greatest returned on each grant dollar and degree of cost-sharing exhibited.

Notification

All applicants will be notified of the results of the review process on or about May 15, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: February 27, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–5529 Filed 3–7–91; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., March 18, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 19, 1991, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review new audit report.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: March 5, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-5656 Filed 3-6-91; 12:29 pm]

BILLING CODE 6760-01-M

federal register

Friday
March 8, 1991

Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1991

SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

This Supplement published by the Office of the Federal Register, updates as of January 1, 1991, the edition of the Guide published in 1989.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It tells the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The Guide published in 1989 was revised as of January 1, 1989. This Supplement updates the Guide as of January 1, 1991. The changes indicated in brackets occurred in 1990, unless otherwise noted. The publications should be used together.

The Supplement is derived from the regulations published by the various agencies in the Federal Register from January 1,1989, through December 31, 1990. It was prepared under the direction of Richard L. Claypoole. Gladys Queen Ramey was chief editor. INQUIRIES, telephone 202–523–3187. SUGGESTIONS concerning this publication may be sent to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to keep it within its intended purpose.

The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in the Code of Federal Regulations .

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of businesses.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

NOTICE

The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1991.

LIST OF AGENCIES AND CFR TITLES APPEARING IN THIS SUPPLEMENT

Title 7—Agriculture
Agriculture Department
- Agricultural Marketing Service
- Agricultural Stabilization and Conservation Service
- Animal and Plant Health Inspection Service
- Commodity Credit Corporation
- Farmers Home Administration
- Federal Crop Insurance Corporation
- Food and Nutrition Service
- Foreign Agricultural Service
- Rural Electrification Administration

Title 9—Animals and Animal Products
Agriculture Department
- Animal and Plant Health Inspection Service
- Packers and Stockyards Administration

Title 10—Energy
Energy Department
Nuclear Regulatory Commission

Title 11—Federal Elections
Federal Election Commission

Title 12—Banks and Banking
Federal Deposit Insurance Corporation
Federal Housing Finance Board
Federal Reserve System
National Credit Union Administration
Oversight Board
Resolution Trust Corporation
Treasury Department
- Thrift Supervision Office

Title 13—Business Credit and Assistance
Small Business Administration

Title 14—Aeronautics and Space
Transportation Department
- Federal Aviation Administration

Title 15—Commerce and Foreign Trade
Commerce Department
- Export Administration Bureau
- International Trade Administration
- National Oceanic and Atmospheric Administration

Title 17—Commodity and Securities Exchanges
Commodity Futures Trading Commission
Securities and Exchange Commission

Title 18—Conservation of Power and Water Resources
Energy Department
- Federal Energy Regulatory Commission

Title 19—Customs Duties
Treasury Department
- Customs Service

Title 20—Employees' Benefits
Labor Department
- Employment and Training Administration

Title 21—Food and Drugs
Health and Human Services Department
- Food and Drug Administration

Justice Department
- Drug Enforcement Administration

Title 22—Foreign Relations
International Development Cooperation Agency
- Agency for International Development

State Department

Title 24—Housing and Urban Development
Housing and Urban Development Department

Title 26—Internal Revenue
Treasury Department
- Internal Revenue Service

Title 27—Alcohol, Tobacco Products and Firearms
Treasury Department
- Alcohol, Tobacco and Firearms Bureau

Title 29—Labor
Labor Department
- Occupational Safety and Health Administration
- Pension Benefit Guaranty Corporation
- Wage and Hour Division

Title 30—Mineral Resources
Interior Department
- Minerals Management Service

Labor Department
- Mine Safety and Health Administration

Title 31—Money and Finance: Treasury
Treasury Department
- Foreign Assets Control Office
- Monetary Offices

Title 33—Navigation and Navigable Waters
Transportation Department
- Coast Guard

Title 34—Education
Education Department

Title 38—Pensions, Bonuses, and Veterans' Relief
Veterans Affairs Department

Title 40—Protection of Environment
Environmental Protection Agency

Title 42—Public Health
Health and Human Services Department
- Health Care Financing Administration
- Public Health Service

Title 43—Public Lands: Interior
Interior Department
- Office of the Secretary

Title 44—Emergency Management and Assistance
Federal Emergency Management Agency

Title 45—Public Welfare
Health and Human Services Department
- Child Support Enforcement Office
- Family Assistance Office

Title 46—Shipping
Transportation Department
- Coast Guard

Title 47—Telecommunication
Federal Communications Commission

Title 48—Federal Acquisition Regulations System
Defense Department
General Services Administration
National Aeronautics and Space Administration
Panama Canal Commission
Personnel Management Office

Title 49—Transportation
Interstate Commerce Commission
Transportation Department
- Federal Highway Administration
- Federal Railroad Administration
- Office of the Secretary
- National Highway Traffic Safety Administration
- Research and Special Programs Administration
- Urban Mass Transportation Administration

Title 50—Wildlife and Fisheries
Commerce Department
- National Oceanic and Atmospheric Administration

Interior Department
- Fish and Wildlife Service

AGRICULTURE DEPARTMENT

Food and Nutrition Service

7 CFR

225.6 State agencies participating in the summer food service program.

(a) To maintain the written records on each hearing for families wishing to appeal a denial of an application for free meals. Such records shall include the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family.

Retention period: 3 years following the conclusion of the hearing during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(b) To maintain on file documentation of site visits and reviews in accordance with 7 CFR 225.15(d)(2) and (3).

(c) To maintain all accounts and records pertaining to the Program. Such records and accounts shall be made available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place.

Retention period: 3 years after the end of the fiscal year to which records pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

225.8 Food service management companies participating in the summer food service program.

To maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this Part 225.

Retention period: 3 years from date of receipt of final payment under the contract, except that is audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved.

225.8 State agencies participating in the summer food service program for children.

(a) To maintain complete and accurate current accounting records of Program operations which will adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs.

Retention period: 3 years after the date of submission of the final Program Operations and Financial Status Report (SF–269), or beyond 3 years until resolution of any audit questions.

(b) To also retain a complete record of each review or appeal conducted as required under 7 CFR 225.13.

Retention period: 3 years following the date of the final determination on the review or appeal.

225.9 Service institutions participating in the summer food service program for children.

To maintain records to support claims for reimbursement. See also 7 CFR 225.8.

225.10 State agencies participating in the summer food service program.

To maintain records, including records of the receipt and expenditures of funds for audit and management evaluations.

Retention period: Until all issues raised by the audit and investigation have been resolved.

225.11 State agencies participating in the summer food service program.

To maintain in file all evidence relating to investigations of and actions on complaints received or irregularities noted in connection with the operation of the Program.

225.13 State agencies participating in the Summer Food Service Program for children.

To maintain records regarding each appeal review. Such records shall document compliance with applicable regulations and shall include the basis for decision.

225.15 Service institutions participating in the summer food service program.

(a) To maintain records of participation and of preparation of ordering of meals to demonstrate positive action toward meeting objective of providing only one meal per child at each meal service.

(b) To maintain accurate records which justify all costs and meals claimed.

Retention period: Records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and state agencies for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

225.16 Service institutions participating in the summer food service program for children.

(a) To maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program at camps.

(b) To maintain on file statements from a recognized medical authority recommending alternative foods for participating children who are unable, because of medical or other special dietary needs, to consumed approved meals.

225.19 Participants in the summer food service program for children. [Revised, 1988; new amendment contained no record retention requirements]

250.30 Distributing agencies, subdistributing agencies, or recipient agencies entering into contracts for the processing and labeling of donated foods.

(a) To maintain documentation in accordance with 7 CFR 250.16 when substituting donated foods with commercial foods.

(b) To retain invoices from recipient agencies when end products are sold through a discount system.

274.3 State agencies participating in the food stamp program.

To maintain and keep current a master issuance file which is a composite of issuance records of all certified food stamp households.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

274.6 State agencies participating in the food stamp program.

(a) To maintain the signed household statement of nonreceipt of authorization document or coupons in the case records.

(b) To maintain, in readily identifiable form, a record of the replacements granted to the household, the reason, the month, countable as defined in 7 CFR 274.6(b)(2)(iv). The record may be a case action sheet maintained in the case file, notations on master issuance file, if readily accessible, or a document maintained solely for this purpose.

Retention period: 3 years from the month of origination. This period may be extended at the written request of the Food and Nutrition Service.

274.7 State agencies participating in the food stamp program.

To maintain records of (a) authorization document and coupons that are undeliverable or returned; (b) specimen coupon received; and (c) to retain a copy of the request to Food and Nutrition Service for permission to destroy unusable coupons.

274.7 States participating in temporary emergency food assistance for victims of major disasters. [Removed, 1988]

274.7 States participating in temporary emergency food assistance for victims of other than major disasters. [Removed, 1988]

274.11 State agencies participating in the food stamp program.

To maintain issuance and reconciliation records which include, at a minimum, notices of change, HIR cards, inventory documents, Forms FNS–250 and substantiating documents, cashiers daily reports, receptionist daily tally sheets, master issuance files, the records for–issuance for each month, and issuance systems.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

276.2 State agencies participating in the food stamp program.

To maintain monthly records which detail the computation of reimbursement amounts reported on the Form FNS–209 for audit purposes.

Animal and Plant Health Inspection Service

7 CFR

318.13–4g Papaya irradiation processors.

To maintain records that include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

Retention period: For a period of time that exceeds the sheld life of the irradiated food product by 1 year.

Federal Crop Insurance Corporation

7 CFR

401.117 Insured under FCIC (Soybean).

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.118 Insured under FCIC (Canning and processing bean). [Added]

For each proposed unit, to maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.119 Insured under FCIC (Cotton).

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.120 Insured under FCIC (Rice).

To maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.121 Insured under FCIC (Extra long staple cotton).

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.129 Insured under FCIC (Tobacco).

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.139 Insured under FCIC (Fresh market tomato—Dollar Plan). [Added]

To maintain written, verifiable records of planted and harvested acreage and production for each optional unit.

401.140 Insured under FCIC (Pear).

To maintain written verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

401.146 Insured under FCIC (Fresh plum). [Added]

To maintain written, verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

Agricultural Stabilization and Conservation Service

7 CFR

723.313 Warehouse operators handling barley or flue–cured, dark air–cured, or Virginia sun–cured tobacco. [Added]

To make and keep records that will ensure separate accounting and reporting of each such kinds of tobacco quota and nonquota sold for auction over the warehouse floor.

Retention period: 3 years after the end of the marketing year.[1]

723.403 Auction warehouse operators handling burley and flue–cured tobacco. [Added]

To keep separate records of (a) marketing (auction or nonauction sales

[1] Or for such longer period of time as may be requested in writing by the State ASCS Executive Director or the Director.

and purchases and resale of tobacco); (b) tobacco sales bills; (c) marketing card until the producer has been paid for the sales of the tobacco or the tobacco is removed from the warehouse by the producer at which time the marketing card shall be returned to the producer; (d) suspended sale and the sum of tobacco pounds sold; and (e) other such information as specified in cited section.

Retention period: 3 years after the end of the marketing year.[1]

723.404 Dealers handling all kinds of tobacco except cigar tobacco. [Added]

To keep by kinds of tobacco, records of marketings, sales, nonauction purchases, and purchases and resales.

Retention period: 3 years after the end of the marketing year.[1]

723.411 Firms engaged in storing unprocessed tobacco. [Added]

To keep records with respect to each lot received showing the name and address of producer, dealer, warehouse operator, marketing agent, or other person for whom the tobacco is received; the date and receipt of the tobacco; the number of pounds received; the amount of any advance or loan made by such firm; the disposition of the tobacco; and the person to whom delivered and the pounds involved.

Retention period: 3 years after the end of the marketing year.[1]

723.411 Firms engaged in the business of processing tobacco. [Added]

To keep records with respect to each lot received showing the name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received; the date of receipt of tobacco; the number of pounds (green weight) received; the purpose for which tobacco was received (redrying or stemming); the amount of any advance or loan made by such person on the tobacco; the disposition of the tobacco including the net weight of the tobacco processed and the number of containers by classification (strips, stems, scrap or leaf); and the person to whom delivered and pounds involved.

Retention period: 3 years after the end of the marketing year.[1]

723.411 Truckers hauling, processing, and storing tobacco. [Added]

To keep records as will enable such trucker to furnish the State ASCS office a report with respect to each lot of tobacco received showing the name and address of the producer; the date of receipt of the tobacco; the number of pounds received; the location where received; and the name and address of the person to whom it was delivered.

Retention period: 3 years after the end of the marketing year.[1]

723.412 Persons engaged in tobacco related businesses. [Added]

To keep such records as will enable persons to make separate reports for each such business in which such persons are engaged to the same extent for each business as if the persons were engaged in no other business.

Retention period: 3 years after the end of the marketing year.[1]

723.413 Warehouse operators, processors, buyers, dealers, truckers, or persons engaged in tobacco related businesses. [Added]

To keep records on a marketing year that are required by 7 CFR Part 723, Subpart D.

Retention period: 3 years after the end of the marketing year.[1]

723.415 Warehouse operator, processors, dealers, buyers, truckers, or persons engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers. [Added]

To maintain books, papers, records, adjustment invoices, accounts, canceled checks, check registers, check stubs, correspondence, contracts, documents, warehouse bill–out invoices or daily summary journal sheet, the tissue copy of Form MQ–72–1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse. These records shall be available at one place for examination by representatives of the State ASCS executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the ASCS, Agriculture Department upon written request by the State ASCS executive director.

Retention period: 3 years after the end of the marketing year.[1]

724.95 Producers and producer-manufacturers of fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobacco. [Removed]

724.96 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco.[Removed]

724.97 Dealers handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

724.99 Cigar tobacco buyers and loan organizations. [Removed]

724.99 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

724.100 Cigar tobacco buyers and loan organizations. [Removed]

724.101 Truckers and persons redrying, prizing, or stemming fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobacco. [Removed]

724.102 Persons engaged in more than one business relating to tobacco. [Removed]

725.98 Producers of flue-cured and burley tobacco. [Removed]

725.99 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured cigar-binder, cigar-filler and binder; and flue-cured tobacco. [Removed]

725.100 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

725.103 Firms acting as marketing agents or processors for processed producer carryover tobacco. [Removed]

725.103 Firms storing processed or unprocessed producer owned tobacco. [Removed]

725.104 Firms storing processed or unprocessed producer owned tobacco. [Removed]

725.105 Truckers and firms redrying, prizing, or stemming flue-cured and burley tobacco, and storage firms. [Removed]

725.106 Persons engaged in more than one business relating to tobacco. [Removed]

725.115 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured cigar-binder, cigar-filler and binder, and flue-cured tobacco.[Removed]

726.92 Producers of fire-cured and burley tobacco. [Removed]

[1] Or for such longer period of time as may be requested in writing by the State ASCS Executive Director or the Director.

726.69 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

726.94 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

726.96 Truckers and firms redrying, prizing, or stemming flue-cured and burley tobacco, and storage firms. [Removed]

726.97 Persons engaged in more than one business relating to tobacco. [Removed]

726.100 Firms acting as marketing agents or processors for processed producer carryover tobacco. [Removed]

726.105 Firms storing processed or unprocessed producer owned tobacco. [Removed]

726.106 Firms storing processed or unprocessed producer owned tobacco. [Removed]

Agricultural Marketing Service

7 CFR

916.71 Handlers of fresh peaches grown in Georgia. [Added]

To maintain complete records which accurately show the quantity held, sold, and shipped.

Retention period: Not less than 2 years subsequent to the termination of each fiscal period.

933.69 Vidalia onion handlers. [Revised]

To maintain records of the Vidalia onions received and disposed of as may be necessary to verify reports submitted to the committee.

Retention period: At least 2 succeeding years.

982.463 Applicants (crushers, livestock feed manufacturers, and livestock feeders) purchasing substandard filberts/hazelnuts or filbert/hazelnut waste.

To maintain a record of receipts, holdings, and use of substandard filberts/hazelnuts available for examination by authorized representatives of the Board and the Department of Agriculture.

Retention period: 3 years after the end of the marketing year in which the recorded transactions are completed.

982.471 Filbert/hazelnut handlers.

(a)To maintain complete and accurate records showing the receipt, shipment, and sale of all filberts/hazelnuts handled, used or otherwise disposed of.

(b) To also maintain a current record of all filberts/hazelnuts held in inventory.

Retention period: 2 years–period as prescribed in 7 CFR 982.71

997.53 Peanut handlers. [Added]

To maintain such records of peanuts received, held and disposed of that will substantiate any required reports and will show performance.

Retention period: At least 2 years beyond the crop year of their applicability.

998.43 Peanut handlers.

To maintain records of peanuts received, held and disposed of, as will substantiate any required reports and will show performance under marketing agreement.

Retention period: At least 2 years beyond the crop year of their applicability.

1210.350 Watermelon handlers.

To maintain a record with respect to each producer for whom watermelon was handled and produced.

Retention period: 2 years beyond the fiscal period of their applicability.

1219.351 Watermelon handlers.

To maintain such books and records as are necessary to carry out the provisions of the Research and Promotion Plan and applicable regulations, including such records are are necessary to verify any required reports.

Retention period: 2 years beyond the fiscal period of their applicability.

1210.530 Watermelon handlers. [Added]

To maintain one copy of each report made to the Board on the handling and disposition of exempted watermelons and such records as are necessary to verify such reports.

Retention period: 2 years beyond the marketing year of their applicability.

1250.352 Egg handlers. [Redesignated as 1250.353]

To maintain books and records necessary to carry out the provisions of the Egg Research and Consumer Information Act and to verify required reports.

Retention period: At least 2 years beyond the fiscal period of their applicability.

Commodity Credit Corporation

7 CFR

1475.13 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program. [Redesignated, 1985; as 1475.14]

1475.14 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program.

To maintain books and records which will permit verification of all transactions with regard to delivery orders.

Retention period: At least 3 full years following deliveries against delivery orders (or to be kept longer if requested by the Commodity Credit Corporation).

Foreign Agricultural Service

7 CFR

1530.109 Licensees exporting refined sugar requesting credit in accordance with 7 CFR 1530.107(b). [Added]

To keep records on the quantity and identity of the sugar, raw value entered under subheading 1701.11.02 of the HTS; the date or inclusive dates of processing (refining); the quantity and description of the articles produced and their polarities; the quantity of sugar refined basis, exported and transferred to a manufacturer and the identity of such manufacturer; the country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: At least 5 years after a license is credited for the exportation or transfer of the refined sugar.

1530.206 Licensees exporting sugar containing products requesting credit in accordance with 7 CFR 1530.206(b). [Added]

To keep records of the date or inclusive dates of manufacture; the quantity and identity of the sugar, refined basis, transferred to the licensee; the quantity and description of the articles manufactured; the quantity of sugar, refined basis, contained in the sugar containing products exported; the country of destination, foreign consignee, date of export, port, export carrier, and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest or copies thereof; any drawback entry, including all related documents filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: 5 years after a license is credited for the exportation of the sugar containing product.

1530.208 Licensees requesting credit for valueless sugar lost in normal product manufactured, destroyed, or otherwise disposed of. [Added]

To keep records to establish the quantity of valueless sugar lost, disposed of, or destroyed.

Retention period: 5 years after a license is credited for the exportation of the sugar containing product.

1530.210 Sugar containing products manufacturers. [Revised; new amendment contained no record retention requirements]

1530.306 Licensees importing sugar and producing polyhydric alcohols requesting credit in accordance with 7 CFR 1530.306(b). [Added]

To keep records of the quantity and identity of the sugar imported by the licensee; the quantity and description of the polyhydric alcohols manufactured and the date or inclusive dates of manufacture; the quantity of sugar actually used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption; and if any polyhydric alcohols have been exported, the country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and all drawback entries, if any, including all related documents, filed by the licensee or any other person, for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: At least 5 years after a license is credited for the production of the polyhydric alcohol.

Rural Electrification Administration

7 CFR

1715.25 Borrowers of insured or guaranteed electric loans under the RE Act.

To maintain accurate records containing all investments, loans, and guarantees.

Retention period: Not specified.

1786.47 Borrowers, engineers, and construction supervisors for outside plant major construction by force account method with REA loan funds. [Added]

(a) To maintain records on all expenditures for materials, labor, transportation, and other costs of construction, in order that all costs may be fully accounted for upon completion of construction.

(b) To maintain accurate and current inventories of completed construction.

Retention period: Not specified.

1786.70 Borrowers for minor construction of telecommunications facilities using REA loan funds. [Added]

To maintain accounting and plant records sufficient to document the cost and location of all construction and to support loan fund advances and disbursements.

Retention period: Not specified.

Part 1770 REA telephone borrowers. [Added]

(a) To maintain accounts, records and memoranda in such a manner as to fully support the journal entries to which they relate. The books and records referred herein shall include records of a nontechnical nature such as minute books, stock, and membership records, reports, correspondence, and memoranda.

(b) To maintain continuing property records which detail the date of placement, location, description of property, and the original cost of property record units. The continuing property records and other underlying records of construction costs shall be maintained so that upon retirements, units or minor items without replacement when not included in the costs of retirement units, the actual cost of the plant retired can be determined.

Farmers Home Administration

7 CFR

1940.911 Persons influencing the making of an FmHA housing loans and/or grant complying with the reporting and registration requirements. [Added]

To maintain records and documentation to support information contained in Forms FmHA 1940–39 and FmHA 1940–40.

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very low-and low-income rural residents. [Removed, 1989]

Part 1944, Exhibit A to Subpart I Self-help Housing Technical Assistance Grantees. [Added]

To maintain financial records, supporting documents, statistical records, personnel records, and other records pertinent to grant agreement.

Retention period: 3 years after the termination or completion of the grant.

1948.47 Rural development grantees. [Removed, 1989]

1980.846 Grantees under the Nonprofit Corporations Loan and Grant Program. [Revised; new amendment contained no record retention requirements]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

9 CFR

2.35 Research facilities engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

To maintain Institutional Animal Care and Use Committee (IACUC) records, including minutes of the Committee meetings, records of any Committee activities and deliberations, records of proposed activities involving animals and proposed significant changes in those activities, the Committee's disposition of the proposed activity, and the Committee's reports of reviews and evaluation and any other records as specified in cited section.

Retention period: 3 years. Approved activity records–duration of the activity plus an additional 3 years after completion of the activity. All records must be available for inspection and copying by authorized APHIS or funding Federal agency representatives and must be retained pending completion of an investigation or proceeding under the Act.

2.75 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

To keep (a) records with respect to the purchase, sale, transportation, identification, and previous ownership; (b) records with respect to water quality tests for marine mammal facilities; and (c) necropsy reports and records for marine mammals that die in captivity.

Retention period: (a) 1 year or longer as may be required by any Federal, State, or local law; (b) 1 year; (c) 3 years.

2.76 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

See 2.75.

2.77 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

See 2.75.

2.78 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised, 1989; new amendment contained no record retention requirements]

2.81 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Removed, 1989]

2.132 Dealers, exhibitors, research facilities, carriers, or intermediate handlers operating private or contract animal pounds or shelters.

To maintain accurate and complete records in accordance with 9 CFR 2.75 and 2.76, unless the animals are lost or stray. If animals are lost or stray, the pound or shelter records shall provide: (a) An accurate description of the animal; (b) how, where, from whom, and when the dog or cat was obtained; (c) how long the dog or cat was held by the pound or shelter before being transferred to the dealer; and (d) the date the dog or cat was transferred to the dealer.

Retention period: Not specified.

75.4 Owners of equine infectious anemia (EIA) reactors. [Added]

To maintain records relating to animals which are or have been in the stockyard.

Retention period: 1 year from the date the animal arrives at the stockyard.

92.11 Operators of quarantine facilities for imported birds. [Revised; record retention requirements in 92.106]

92.106 Operators of quarantine facilities for imported birds. [Added]

To maintain a current daily log and identification record for each lot of birds, recording such information as the general condition of the birds each day, source of origin of the birds in the lot, total number of birds in the lot when imported, number of dead birds when lot arrived, date lot was placed into the facility, number of deaths each day in the lot during the quarantine period, necropsy results, and laboratory findings on bird that died during the quarantine date of prescribed tests and results, and other such information as specified in cited section.

Retention period: 12 months following the date of release of the bird from quarantine. Records shall be made available to APHIS personnel upon request.

92.434 Supervisory veterinarians at privately operated quarantined facilities. [Added]

To maintain a current daily log for each sheet, recording such information as the individual indentification of the sheep, source origin of the sheep in the lot, total number of sheep in the lot, total number of sheep in the lot when imported, number of dead or injured sheep when the lot arrived, the date the lot was placed into the facility, the general condition of the sheep each day, record of any medication administered to the sheep, number of deaths each day in the lot during quarantine period, and other such information as mentioned in cited section.

Retention period: 12 months following the date of the release of the sheep from quarantine. Such records shall be available to APHIS personnel upon request.

Packers and Stockyards Administration

9 CFR

203.4 Packers, live poultry dealers or handlers, stockyard owners and market agencies, and dealers subject to the provisions of the Packers and Stockyards Act.

To retain for the specified period of time the following records:

(a) Accounts, records and memoranda to fully and correctly disclose all transactions involved in business, including the true ownership of such business by stockholding or otherwise.

(b) Cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage report (including recapitulations and summaries of routes, branches, plants, etc.); buying or selling pricing instructions and price lists; correspondence, telegrams, teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda.

Retention period: (a) 2 years or longer if directed by the Administrator in writing, pending completion of any investigation or proceeding under the Act; (b) 1 year.

NUCLEAR REGULATORY COMMISSION

10 CFR

26.20 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To retain a copy of current written policy and procedures as a record.

Retention period: Until the Commission terminates each license for which the policy and procedures are superseded; superseded material must be retained for 3 years after each change.

26.29 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To maintain records (a system of files and procedures) on the protection of personal information.

Retention period: Until the Commission terminates each license for which the system was developed.

26.71 Licensees authorized to operate nuclear power industries (also each contractor and vendor implementing licensee approved program under the provision of 10 CFR 26.23); fitness-for-duty program.

(a) To retain records of inquiries conducted in accordance with 10 CFR 26.27(a) that result in the granting of unescorted access to protected areas.

Retention period: Until 5 years following examination of such access authorizations.

(b) To retain records of persons made ineligible for assignment to activities within the scope of Part 10 under the provisions of 10 CFR 26.27(b)(2), (3), (4) or (c).

Retention period: 3 years or longer or until the Commission terminates each license under which the records were created.

(c) To retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions.

Retention period: At least 5 years.

(d) To retain fitness-for-duty program performance data and analysis. Such data shall include random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by populations; and such other information as specified in cited section.

Retention period: 3 years.

26.80 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To maintain documentation of the resolution findings and corrective actions on audit of the effectiveness of the program.

Retention period: 3 years.

30.34 Nonexempt licensees manufacturing, producing, transferring, receiving, acquiring, owning, possessing, or using byproduct material. [Amended]

(a) To maintain such records as may be determined by the Commission to be necessary or appropriate to effectuate the purposes of the Atomic Energy Act of 1954, as amended, and the regulations issued thereunder.

Retention period: Unless otherwise specified by an appropriate regulation or license condition, until disposal is authorized by the Commission.

(b) To maintain results of each test of the generator eluates for molybedenum-99 breakthrough in accordance with 10 CFR 35.14(b)(4)(i) through (w).

Retention period: 3 years after the record is made.

(c) To maintain written directive made by the authorized user physician directing departures from the manufacturer's instructions in preparing radiopharmaceuticals and departures from package inserts for indication and method of administration for therapeutic use and record of the number of prescriptions dispensed under the departure in an auditable form.

Retention period: 5 years.

35.200 Licensees for certain groups of medical uses of byproduct material. [Added]

See 10 CFR 30.34.

35.300 Licensees for certain groups of medical uses of byproduct material.

See 10 CFR 30.34.

70.22 Licensees acquiring, delivering, receiving, possessing, using, transferring or receiving title to own special nuclear material.

To keep (a) such records of ownership, receipt, possession, use, and transfer of special nuclear material as may be incorporated as a condition or requirement in any license; (b) records of changes to the material control and accounting program made without prior Commission approval; (c) records of changes to the physical security plan made without prior Commission approval; (d) records of changes to licensee safeguards contingency plan made without prior Commission approval; (e) records of receipt, acquisition, or physical inventory of special nuclear material; (f) records of transfer of special nuclear material to other persons; (g) records of disposal of special nuclear material; (h) records of date and time of application of tamper-safing devices to containers or vaults; (i) material balance records for each material balance showing the quantity of element and fissile isotope in each component of the material balance; (j) a record summarizing the quantities of element and fissile isotope for ending inventory of material in process and additions and removals of material in process during material balance interval; (k) a record summarizing the quantities of element and fissile isotope in unopened receipts and ultimate products maintained under tamper-safing or in the form of sealed sources; (l) records needed to meet fundamental nuclear material controls requirements contained in 10 CFR 70.58, including (i) records which will provide information sufficient to locate special nuclear material and to close a measured material area and the total plant as specified in 10 CFR 70.51, (ii) records of results of review and audit of the nuclear material control system, and (iii) records of shipper-receiver difference evaluations, investigations, and corrective actions concerning special nuclear material received and shipped; (m) all data, information, reports, and documents generated by the measurement control program, including summary of error data utilized in limit of error calculations performed for each material balance period; and (n) records pertaining to training and qualification of personnel who perform measurement activities pursuant to 10 CFR 70.57(b)(7).

Retention period: (a) If not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (b) 5 years after date of change; (c) 3 years from date of change; (d) 3 years from date of change; (e) as long as licensee retains possession of special nuclear material and for 3 years following transfer of special nuclear material; (f) until disposal is authorized by the Commission, or for 3 years for records required by 10 CFR 70.51(e)(1)(v) to document transfers of special nuclear material between material balance areas; (g) until disposal is authorized by the Commission; (h) if not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (i) 3 years; (j) 3 years; (k) 3 years; (l) and (l)(i) if not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (l)(ii) 3 years; (l)(iii) 3 years; (m) 3 years; (n) 3 years.

72.212 Licensees possessing, operating, or storing nuclear power reactors spent fuel in casks. [Added]

(a) To maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each cask model used for storage of spent fuel, until use of the cask model is discontinued.

(b) To accurately maintain the record provided by the cask supplier for each cask that shows, in addition to the information provided by the cask vendor, the following: (1) The name and address of the cask vendor or lessor; (2) the listing of spent fuel stored in the cask; and (3) any maintenance performed on the cask.

Note: Record must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask have been conducted under an NRC-approved quality assurance program. In the event that a cask is sold, leased, loan or otherwise transferred to another registered user, record must be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is completed.

72.234 Cask vendors fabricating each casks under the NRS Certificate of Compliance. [Added]

To maintain records that include the NRC Certificate of Compliance number; the cask model number; the cask identification number; date fabrication was started; date fabrication was completed; certification that the cask was designed, fabricated, tested, and repaired in accordance with a quality assurance program accepted by NRC; certification that inspections required by 10 CFR 72.236(j) were performed and

found satisfactory; and the name and address of the cask user.

Note: The original of this record must be supplied to the cask user. A current copy of a composite record of all casks manufactured under a Certificate of Compliance, showing the above information, must be initiated and maintained by the cask vendor for each model cask. If the cask vendor permanently ceases production of casks under a Certificate of Compliance, this composite record must be sent to the Commission using instructions in 10 CFR 72.4.

ENERGY DEPARTMENT

10 CFR

430.62 Manufacturers of covered products subject to energy conversation standards.

To maintain records of the underlying test data for all certification testing. Such records should include the supporting test data associated with tests performed on and any test units to satisfy applicable requirements.

Retention period: 2 years from the date that production of the applicable model has ceased.

430.71 Manufacturers of covered products subject to energy conservation standards.

To maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce to make noncompliance basic model comply with applicable performance standards.

Retention period: Not specified.

FEDERAL ELECTION COMMISSION

11 CFR

104.10 Political committees required to report expenses allocated among candidates and activities. [Added]

To retain all documents supporting the allocation and allocated disbursement on behalf of specific federal and non-federal candidates, in accordance with 11 CFR 104.14.

Retention period: 3 years.

FEDERAL RESERVE SYSTEM

12 CFR

202.12 Federal Home Loan Bank members.

In regards to business credit applications:

(a) To maintain in original form or a copy thereof: (1) any written or recorded information concerning the adverse action and (2) any written statement submitted by the applicant alleging a violation of the Equal Opportunity Act.

(b) To retain records in accordance with the new law on credit applications involving businesses with gross revenue of $1 million or less.

Retention period: For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application.

(c) To maintain at each association "decision center" loan application registers containing at a minimum certain data specified in the regulation.

Retention period: 25 months after date that a creditor notifies an applicant of action taken on the application.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR

325.5 Management of saving associations. [Added]

To maintain written record of the quarterly review of the book value of the purchased mortgage servicing rights.

TREASURY DEPARTMENT

Thrift Supervision Office

12 CFR

571.19 Insured institutions.

To maintain records of securities in accordance with generally accepted accounting practices and to support via documentation the appropriate classification of and accounting for securities in accordance with generally accepted accounting principles. To also document investment policy and strategies.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR

724.1 Federal credit unions acting as trustees and custodians of pension plans. [Added]

To maintain individual records for each participants which show in detail all transactions relating to the funds of each participant or beneficiary.

749.1 Federal credit unions participating in the establishment and maintenance of a records preservation program. [Added]

See 12 CFR 749.2.

FEDERAL HOUSING FINANCE BOARD

12 CFR

933.16 Federal Home Loan Bank members. [Removed]

933.31 Federal Home Loan Bank members other than FDIC savings banks. [Removed]

937.7 Federal Home Loan Bank members participating in the housing opportunity allowance program.

To retain a copy of each allowance application and the originals of all other closing documents.

Retention period: Not specified.

938.8 Federal Home Loan Bank members. [Removed]

939.6 Federal Home Loan Bank members receiving Federal financial assistance from the Federal Home Loan Bank Board.

To keep such records as the Bank Board may determine to be necessary to enable it to ascertain whether the recipient is complying with the regulation.

Retention period: Not specified.

OVERSIGHT BOARD

12 CFR

1506.6 Independent contractors. [Added]

To retain sufficient information that will permit the Board to make a determination regarding organizational conflicts of interest.

Retention period: 3 years following termination of expiration of the contract and shall be made available for review upon request, except to the extent that the disclosure is prohibited by law.

RESOLUTION TRUST CORPORATION

12 CFR

1606.6 Independent contractors. [Added]

See 12 CFR 1505.6.

SMALL BUSINESS ADMINISTRATION

13 CFR

115.7 Preferred Surety Bond Program (PSB) sureties.

To maintain all information and certifications required by SBS including a contemporaneous record of the date of issuance of each bond, in its file, for inspection by SBA or its agents and for submission to SBA in connection with claims made under SBA's guarantee.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional 3 years thereafter.

115.17 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBG) program. [Removed, 1989; record retention requirements now in 115.40]

115.18 Preferred Surety Bond Program (PSB) sureties.

To maintain all documents, files, books, records, tapes, disks, and other material relevant to the surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety and other information as specified in cited section.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional three years thereafter.

115.40 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBG) program.

To maintain (a) the bond agreements; (b) all documentation submitted by the principal in applying for the bond; (c) all information gathered by the surety in reviewing the principal's application; (d) all documentation of any breach by the principal; (e) all records of any transactions for which surety makes payment pursuant to the bond, including but not limited to, copies of all claims, bills, judgments, settlement agreements, and courts or arbitration decisions, contracts and receipts; (f) all documentation relating to efforts to mitigate losses; and (g) records of any accounts to which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

Retention period: 3 years beyond the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery.

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

14 CFR

91.54 Lessees and conditional buyers of U.S. registered large civil aircraft other than a foreign air carrier or certificate holder under 14 CFR Parts 121, 123, 127, 135, or 141. [Removed, 1989]

91.173 Registered owners or operators of civil aircraft.[Revised, 1989; new amendment contained no record retention requirements; record retention requirements now in 91.417]

91.191 Operators of civil aircrafts of United States registry in Category II operation.

To keep a current copy of the approved manual at principal base of operations.

Retention period: See 14 CFR 91.417.

91.417 Registered owners or operators of civil aircraft.

To keep (a) records of maintenance, preventive and alterations, 100-hour, annual, and progressive inspections, and other required or approved inspections for each aircraft, and for each airframe, engine, propeller, rotor, and appliance of an aircraft including a description of the work performed, the date the work was completed, and signature and certificate number of the persons approving the aircraft for return to service and (b) records of total time in service of airframe; current status of life limited parts of each airframe, engine, propeller, rotor, and appliance; time since last overhaul of all items required to be overhauled on a specified time basis; identification of current inspection status of aircraft, including time since last inspection required by inspection program under which aircraft and its appliances are maintained, current status of applicable airworthiness directives, including method of compliance; and a list of current major alterations to each air frame, engine, propeller, rotor, and appliance.

Retention period: (a) Until the work is repeated or superseded by other work or for 1 year after the work is performed; (b) transferred with the aircraft at the time the aircraft is sold.

91.419 Owners or operators who sell U.S. registered aircrafts.

To maintain records specified in 14 CFR 91.417(a)(1) and (a)(2).

Part 121, SFAR No. 58 Domestic, flag, and supplemental air carriers and commercial operators of large aircraft; certificate holders and training centers holding Advanced Qualification Program (AQP) provisional approval. [Added]

To establish and maintain records in sufficient detail to establish the training, qualification, and certification of each person qualified under an AQP in accordance with the training, qualification, and certification requirements of this SFAR.

Retention period: Until Oct. 2, 1995, unless sooner.

221.260 Air carriers, foreign air carriers or tariff publishing agents.

To maintain all fares filed with the Department and all Departmental approvals, disapprovals, and other actions, as well as all Departmental notations concerning such approvals, disapprovals, or other actions, in the on-line-tariff database.

Retention period: For a period of 2 years after the fare becomes inactive.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

350.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System. [Redesignated, 1988; as 700.91]

Export Administration Bureau

15 CFR

700.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System.

To maintain accurate and complete records of any transactions covered by this regulation (OMB No. 0625-0107) or an official action in sufficient detail to permit the determination, upon examination, or whether each transaction complies with the provisions of this regulation or any official action.

Retention period: At least three years.

771.5 Exporters of certain commodities of limited value to Country Groups Q, T, and V under General License GLVF. [Added]

To keep records of all shipments made under General License GLV in accordance with the provisions of 15 CFR 787.13. These records must include sufficient information to permit the Bureau of Export Administration to verify the eligibility to each order that was shipped under General License GLV.

771.22 Exporters of commodities to be returned to the United States.

To retain all records of temporary exports to be returned to the United States as well as Customs Entry Number or any other evidence of disposition or commodities exported, i.e., freight bills or commercial invoices.

Retention period: See 15 CFR 787.13.

771.25 Exporters and importers of "A" level commodities to COCOM participation countries under General License GCT. [Added]

To maintain records of transactions in accordance with 15 CFR 787.13.

772.11 Persons applying for export license, reexport authorization or amendment request. [Added]

To maintain original copies of supporting documents in file.

Retention period: 5 years.

772.12 Persons applying for new export license to replace expiring or expired license. [Added]

If required, to retain supporting documents on file. (See 15 CFR Part 775 for documentation requirements).

Retention period: 5 years.

774.3 Persons requesting licenses for reexport authorization for commodities not yet exported and previously exported. [Added]

To retain supporting documentation in file.

Retention period: 5 years.

775.2 Persons applying for an export license. [Added]

When the country of ultimate destination is in Country Group S or V (except for the People's Republic of China) and the commodity described on the application is not a supercomputer, to maintain a Form BXA–629P, statement by ultimate consignee and pruchase in file.

Retention period: 5 years.

775.3 Persons applying for export license. [Added]

To retain international import certificate and delivery verification certificate on file.

Retention period: 5 years.

775.4 Persons applying for license to export commodities to Switzerland or Liechtenstein. [Added]

To retain on file the original copy of the Swiss Blue Import Certificate.

Retention period: 5 years.

775.5 Persons applying for a license to export commodities to Yugoslavia. [Added]

See 15 CFR 775.4.

775.7 Persons applying for license to export or reexport commodities to India. [Added]

See 15 CFR 775.4.

787.13 Export licensee–record retention. [Added]

(a) To keep records for a period of 2 years from the export from the United States; any known reexport, transshipment, or diversion, or any other termination of the transaction, whether formally in writing or by any other means. Such records may be kept longer than the mandatory two–year retention period because the statute of limitation for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is 5 years (18 U.S.C. 3282). The statute for compliance proceedings is also 5 years (28 U.S.C. 2462).

(b) Records relating to restrictive trade practice or boycott requests–3 years.

(c) The following records must be kept for 5 years:

(1) Shipper's Export Declaration covering exports made under a Project License.

(2) Swiss Blue Import Certificates, Yugoslav End–Use Certificates, and other records required for exports under a Distribution License.

(3) Swiss Blue Import Certificates, Yugoslav End–Use Certificates, and other records required for exports under the Service Supply Procedure; and

(4) Supporting documentation that must be retained in the applicants (export license) files.

National Oceanic and Atmospheric Administration

15 CFR

971.801 Licensees and permittees engaged in commercial recovery of deep seabed hard minerals.

To maintain records consistent with standard accounting principles as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

COMMODITY FUTURES TRADING COMMISSION

17 CFR

1.35 Futures commission merchants, introducing brokers, and members of contract markets. [Revised]

To maintain the required records, data, and memoranda in accordance with the requirements of 17 CFR 1.31. Such records shall include all orders (filled, unfilled, or cancelled), trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations, copier of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of its business of dealing in commodity futures, commodity options, and cash commodities.

Retention period: 5 years.[1]

31.7 Leverage transaction merchants.

See 17 CFR 31.14.

SECURITIES AND EXCHANGE COMMISSION

17 CFR

230.428 Registrants; employee benefit plans. [Added]

To maintain a file of the documents constituting a section 10(a) prospectus for Form S–8 registration statement.

Retention period: Until 5 years after documents are used as part of the section 10(a) prospectus to offer or sell securities pursuant to the plan. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

240.15a–6 Registered brokers or dealers through which transactions with the U.S. institutional investors or major U.S. institutional investors are effected.

(a) To maintain required books and records relating to the transactions, including those required by Rules 17a–3 and 17a–4 under the Act (17 CFR 240.17a–3 and 240.17a–4).

(b) To maintain written records of the information and consents required and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer.

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

18 CFR

161.3 Interstate pipelines.

To maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers.

Retention period: From Sept. 12, 1989 until Dec. 31, 1991.

250.16 Interstate pipelines with marketing affiliates. [Amended]

To maintain a log on all requests for transportation service made by

[1] After 3 years the person required to keep such books and records may at his/her option substitute photographic reproductions thereof on film, together with facilities for the projection of such film in a manner which will permit it to be readily inspected or examined. Under certain conditions, microfilm reproductions may immediately be substituted for hard copy.

affiliated marketers or in which an affiliated marketer is involved.

Retention period: From the time the information required in cited section is received until Dec. 31, 1991. The information required must be available from Sept. 12, 1988 until Dec. 31, 1992 to the Commission and the public.

277.210 Sellers and purchasers of natural gas. [Removed]

TREASURY DEPARTMENT

Customs Service

19 CFR

111.22 Licensed customs brokers. [Amended]

See 111.21.

111.23 Licensed customs brokers. [Amended]

See 111.21.

122.182 Employers who employ persons to work in security areas of airports handling international commerce. [Added]

To retain records of background investigations.

Retention period: 1 year following cessation of employment and records must be made available upon request of the district director.

143.37 Licensed custom brokers and importers. [Added]

See 19 CFR 111.21.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

629.21 Recipients, SDA grant recipients, and other subrecipients under Titles I, II, and III of the Job Training Partnership Act.

To maintain, in accordance with instructions from the Governor, documentation supporting the locally developed formula or procedure for needs-based payments, including maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

Retention period: Not specified.

629.35 Recipients, SDA grant recipients, and other subrecipients under Title I, II, and III of the Job Training Partnership Act.

(a) To maintain records of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the provision and duration of services and specific activities authorized by the Act.

(b) To also maintain records of such participant's information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

Retention period: 2 years from date of obligations of funds. Nonexpendable property–3 years after final disposition of the property. Records must be retained until litigation, audit, or claim has been resolved.

629.41 Recipients, SDA grant recipients and other subrecipients under Titles I, II, and III of the Job Training Partnership Act.

To maintain, subject to the Secretary of Labor's rights to such property, accountability for personal and real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act in accordance with State procedures and the records retention requirements of §629.35.

Retention period: 3 years from date of obligation of funds. Nonexpendable property—3 years after final disposition of the property. Records will be retained until litigation, audit or claim has been finally resolved.

637.12 States participating in Title V of the Job Training Partnership Act activities. [Added]

To maintain written procedures for establishing the eligibility of individuals for whom an incentive bonus may be claimed and for tracking the activities that they comply with all statutory requirements necessary to qualify for an incentive bonus.

Retention period: See 20 CFR 629.35.

Effective date: January 28, 1991.

637.20 States participating in Title V of the Job Training Partnership Act activities. [Added]

To maintain adequate records to support all incentive bonus payment applications. Such records shall include documentation to support individual's eligibility.

Retention period: See 20 CFR 629.35.

Effective date: January 28, 1991.

655.310 Facilities using nonimmigrant aliens as registered nurses (H–1 or H–1A). [Added]

To maintain complete supporting documentation on substantial disruption (layoffs and nursing shortages); facility's nursing position; wages; State employment security agency determination; collectively bargained wage rates; determination of pay and total compensation; facility/employer wage; timely and significant steps; or State plan; systems for salary advancement; no strike or lockout; no intention or design to influence bargaining election; and notice of filing.

Retention period: For the duration of the attestation period and for as long thereafter as the facility continues to employ an H–1A nurse hired under the attestation. The facility shall attest that the documentation will be available for public examination on a timely basis.

655.350 Facilities using nonimmigrant aliens as registered (H–1 or H–1A). [Added]

To maintain a separate file containing the attestation and required documentation. This file shall be made available to any interested parties within 72 hours upon written or oral request.

655.400 Facilities using nonimmigrant aliens as registered nurses (H–1 or H–1A). [Added]

See 20 CFR 655.350.

684.123 Center operators of Job Corps centers under Title IVB of the Job Training and Partnership Act. [Removed]

684.128 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

684.129 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

684.130 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

107.280 Manufacturers of infant formula.

To establish and maintain records on distribution of the infant formula through any establishment owned or operated by the manufacturer as may be necessary to effect and monitor recalls of the formula.

Retention period: 1 year after the expiration of the shelf life of the infant formula.

205.50 Wholesale drug distributors. [Added]

To maintain:

(a) Inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs.

Retention period: 2 years following distribution of the drugs.

(b) Written documentation of the disposition of outdated prescription drugs.

Retention period: 2 years after disposition of the outdated drugs.

291.506 Hospitals and other authorized dispensers of methadone.

To maintain clinical record for each patient showing dates, quantity, and batch or code mark of drug dispensed.

Retention period: 3 years.

291.505 Manufacturers of methadone.

To maintain signed invoices of methadone delivered to licensed practitioner.

Retention period: Not specified.

291.505 Sponsors of methadone maintenance programs.

To maintain for each patient an admission evaluation and records consisting of personal and medical history, physical examination, and such other information as necessary.

Retention period: Not specified.

606.100 Collectors and processors of whole blood (human) collected from human donors and processed for transfusion or further manufacturing. [Added]

See 21 CFR 606.151.

610.13 Manufacturers performing tests for residual moisture in biological products. [Added]

To maintain applicable records as required by 21 CFR 211.188 and 211.194.

610.16 Manufacturers of biological products. [Added]

To maintain results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms as required by 21 CFR 211.188 and 311.194.

640.2 Collectors and processors of whole blood (human) collected from human donors for transfusion to human recipients. [Added]

(a) To maintain on the premises and file with the Center for Biologics Evaluation and Research, a manual of standard procedures and methods approved by the Director of the Center for Biologics Evaluation and Research, that shall be followed by employees who collect blood.

(b) To maintain records indicating the name and qualifications of the person immediately in charge of the employees who collect blood when a physician is not present on the premises.

640.4 Collectors and processors of whole blood (human) collected from human donors for transfusion of human recipients. [Added]

See 21 CFR 640.2.

640.33 Manufacturers of plasma collected by plasmapheresis. [Added]

See 21 CFR 640.71 and 640.72.

640.53 Manufacturers of Cryoprecipitated AHF obtained from plasma collected by plasmapheresis. [Added]

See 21 CFR 640.71 and 640.72.

JUSTICE DEPARTMENT

Drug Enforcement Administration

21 CFR

1310.03 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines and encapsulating machines.

To maintain records and file reports of the transactions as specified in 21 CFR 1310.04 and 1310.05.

(a) Records on listed precursor chemical, tableting machine, and encapsulating machine–4 years after the date of transaction.

(b) Records on listed essential chemicals–2 years after transaction.

1310.04 Regulated persons engaging in regulated transactions involving listed chemical, tableting machines, and encapsulating machines.

(a) Records required to be kept for a listed precursor chemical, a tableting machine, or an encapsulating machine–4 years after the date of the transaction.

(b) Records required to be kept for a listed essential chemical– 2 years after the date of the transaction.

1310.06 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines, and encapsulating machines.

To keep records containing the following information: (a) The name and address of each party to the regulated transaction; (b) the date of the regulated transaction; (c) the name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number); (d) the method of transfer (company truck, picked up by customer, etc.); and (e) the type of identification used by the purchaser and any unique number on that identification.

Retention period: See 21 CFR 1310.03.

STATE DEPARTMENT

22 CFR

122.5 Persons required to register as manufacturers or exporters of United States Munitions List articles.

To maintain, subject to the inspection of the Secretary of State, or any persons designated by him, records on the exportation of articles enumerated in the United States Munitions List. Records shall contain all information pertinent to the transaction.

Retention period: 6 years, except that the Secretary may prescribe a longer or shorter period in individual cases if deem necessary.

AGENCY FOR INTERNATIONAL DEVELOPMENT, INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

22 CFR

201.41 Borrowers/grantees receiving commodity and commodity-related services financed by A.I.D. [Revised]

To maintain records adequate to document the arrival and disposition in the cooperating country of all commodities financed by A.I.D. and to identify the importer (or the first purchaser of transferee if the commodity is imported by the borrower/grantee.

Retention period: 3 years following the date of payment or reimbursement by A.I.D. or for such other period as A.I.D. and the borrower/grantee agree.

201.74 Banks, commodity transactions financed by A.I.D.

In addition to documents required for reimbursement, to retain in file: (a) Each letter of credit issued, confirmed, or advised, together with any extension or modification thereof; (b) pamphlet instructions received from the approved applicant; (c) each application and agreement relating to such letter of credit or instructions for payment, together with any extension or modification thereof; and (d) a detailed advice of the interest, commissions, expenses, or other items charged by it in connection with each such letter of credit or payment instructions.

Retention period: 3 years.

211.10 Foreign governments, U.S. voluntary agencies, or intergovernmental organizations, except the World Food Program and United Nations Relief and Works Agency, involved in the transfer of food commodities for use in disaster relief, economic development, and other assistance. [Revised]

To maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection, and use of commodities and pertaining to the receipt and disbursement of any monetized proceeds and program income and the operation of the program and records described in 22 CFR 211.5(i).

Retention period: For a period of 3 years from the close of the fiscal year to which they pertain, or longer. Upon request by A.I.D. for cause, such as in the case of litigation of a claim or an audit concerning such records, the cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary

24 CFR

111.109 Agencies receiving support under the Fair Housing Assistance Program.

To maintain records determined appropriate by the Assistance Secretary.

111.121 Recipients under the Fair Housing Assistance Program.

To maintain records specified by the Assistant Secretary that clearly document performance under the award. Documents relevant to a recipient's program must be made available at the recipient's office during normal working hours for public review upon request, except that documents with respect to on–going fair housing complaint investigations will be exempt from public review. The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, reports, files, and other papers of the recipients with respect to FHAP payments for surveys, audits, examinations, excerpts, and transcripts.

125.104 Recipients of funds under the Fair Housing Initiatives Program.

To maintain records determined appropriate by the Assistant Secretary.

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act. [Removed, 1989]

201.2 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.4 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.6 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.8 Lending agencies—Title 1. [Removed, 1989]

201.8 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.10 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.11 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.22 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file all documentation supporting determination of solvency of borrower and any co–maker or co–signer and relating to review of the credit of the borrower and of any co–maker and co–signer and any other information regarding credit application of the borrower.

201.23 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file, documentation of any required down payment.

201.26 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file documentation of the site–of–placement inspection results.

201.27 Lenders of Title I property improvement and manufactured home loans.

To maintain on each approved dealer a file which contains the executed dealer approval form and supporting information together with documentation of the lender's experience with Title I loans involving the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site–of–placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises.

201.50 Lenders of Title I property improvement and manufactured home loans. [Removed, 1989]

201.171 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.520 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.525 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.545 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.570 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.575 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.595 Lending agencies—Title 1. [Removed, 1989]

201.605 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.610 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.665 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

205.127 Project mortgagors under the National Housing Act. [Removed]

Office of Assistant Secretary for Community Planning and Development

24 CFR

511.15 Grantees or state recipients under the Rental Rehabilitation Grant Program. [Added]

To keep a copy of each notification, inspection, and/or lead–based paint test report.

Retention period: At least 3 years.

511.73 Grantees or state recipients under the Rental Rehabilitation Grant Program. [Added]

To maintain records as specified by HUD that clearly document performance. Such records shall include (a) records required to comply with 24 CFR 511.75; (b) data on the racial, ethnic, gender, and income level characteristics of tenants occupying units before rehabilitation; tenants moving from and (initially after rehabilitation) into projects assisted under this program; applicants for tenancy within 90 days following completion of rehabilitation assisted under this program; and owners of the

BEST COPY AVAILABLE

projects rehabilitated; and (c) data indicating the race and ethnicity of households displaced as a result of program activities; and if available, the address and census tract of the housing units to which each displaced household relocated.

Retention period: 3 years from date of final closeout of the rental rehabilitation grant.

570.490a Recipients of the community development block grants. [Added]

To maintain records in sufficient detail to demonstrate compliance with displacement, relocation, acquisition, and replacement of housing provisions.

Retention period: Not specified.

570.506 Recipients of the community development block grants. [Revised]

To establish and maintain sufficient records (a) to enable the Secretary to determine whether the recipient has met applicable requirements, i.e., records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus); the amount of CDBG funds budgeted, obligated and expended for the activity; (b) to demonstrate that each activity undertaken meets one of the criteria set forth in 24 CFR 570.208, national objective of benefitting low and moderate income persons; and other information as specified in cited section.

Retention period: Not specified.

570.506 Recipients of the community development block grants. [Revised]

To maintain records in sufficient detail to demonstrate compliance with relocation and acquisition regulations.

Retention period: Not specified.

576.87 Grantees under the Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act.

To maintain records that are necessary to document compliance with applicable regulations.

Retention period: 3 years period.

577.305 Recipients of assistance under the Transitional Housing Program.

To keep any records that HUD may require.

577.305 Recipients of assistance under the Transitional Housing Programs.

To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

578.305 Recipients of assistance under the Permanent Housing for Handicapped Homeless Persons Program.

To keep any records that HUD may require.

578.305 Recipients of the supplemental assistance for facilities to assist the homeless.

To maintain any records that HUD may require.

578.305 Recipients of the supplemental assistance for facilities to assist the homeless.

(a) To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

(b) To keep the test results and, if applicable, the certification of treatment indefinitely if a unit requires testing, or treatment of chewable surfaces based on the testing.

580.25 Local urban homesteading agencies.

To maintain adequate financial records, property disposition documents, supporting documents, statistical records and all other records pertinent to the local urban homesteading program until fee simple title has been conveyed to all homesteaders, generally a five-year period. To also maintain current and accurate data on the race and ethnicity of program beneficiaries.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

886.740 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals-Section 162 Assistance.

(a) To keep a copy of each lead-based paint surface inspection report.

Retention period: 3 years.

(b) To keep a record of the test results if a unit requires testing or treatment of chewable surfaces based on the testing, and if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated.

886.950 Borrowers: Section 202 Projects for Nonelderly Handicapped Families and Individuals-Section 162 Assistance.

To maintain records on applicants and approved eligible families which provide racial, ethnic, gender, and place of previous residency data required by HUD.

Retention period: 3 years.

886.972 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals-Section 162 Assistance.

To maintain records of the amount in a segrega.ed interest-bearing account that is attributable to each family in residence in the project.

Office of the Assistant Secretary for Public and Indian Housing

24 CFR

905.165 Indian Housing Authorities (IHAs). [Added]

To maintain documentation in its files for HUD review a copy of the determination where the provision of preference in Indian contracting, employment, and training is infeasible.

Retention period: 3 years.

905.175 Indian Housing Authorities (IHAs). [Added]

To maintain documentation of efforts in providing Indian preference. To also include as part of documentation a statement explaining the reasons for lack of Indian participation if no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations.

Retention period: Not specified.

905.204 Indian Housing Authorities (IHAs) [Removed; record retention requirements now in 905.165]

905.416 Indian Housing Authorities (IHAs). [Added]

To maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Multiple Help (MH) housing and that have been determined to meet the admission requirements in accordance with requirements prescribed by HUD.

Retention period: Not specified.

905.446 Indian Housing Authorities (IHAs). [Added]

To maintain a record of the meetings with the homebuyer, written plans of action agreed upon, and other related steps taken on termination of a Mutual Help and Occupancy Agreement (MHO).

Retention period: Not specified.

905.505 Indian Housing Authorities (IHAs). [Added]

To maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Turnkey III housing and that have been determined to meet the admission requirements. To also maintain a Turnkey III waiting list based on date of application, suitable type or size of units, and factors affecting preference or priority established by IHA's regulations.

Retention period: Not specified.

905.525 Indian Housing Authorities (IHAs). [Added]

To retain all residual receipts from the operation of the project in a replacement reserve, including payments received on account of any additional purchase price schedules applicable to the homes.

Retention period: Not specified.

905.625 Indian Housing Authorities (IHAs). [Added]

To retain copies of the signed home participation agreements in file for inspection by the HUD office.

905.715 Indian Housing Authorities (IHAs). [Added]

To maintain appropriate utility records, satisfactory to HUD so that a 36-month rolling average utility consumption per month under the rolling base period system can be determined.

Retention period: Not specified.

905.730 Indian Housing Authorities (IHAs). [Added]

To retain supporting documentation substantiating requested adjustments of base year expense level, estimated investment income, and utilities expense level.

Retention period: Not specified.

905.760 Indian Housing Authorities (IHA's). [Added]

To maintain a record of computation of actual occupancy percentage if an average is elected.

Retention period: Not specified.

905.885 Indian Housing Authorities (IHAs). [Added]

To maintain a record that documents the basis on which utility allowances and scheduled surcharges and revision thereof are established and revised. Such records shall be available for inspection by tenants. To also maintain written comments of tenants on proposed utility allowances or scheduled surcharges or revision.

Retention period: Not specified.

905.937 Indian Housing Authorities (IHAs). [Added]

To maintain records of HUD-approved project disposition or demolition sufficient for audit by HUD to determined compliance with applicable requirements of Federal law and 24 CFR part 905.

968.110 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program.

To maintain books, documents, papers, or other records that are pertinent to program activities in order to make audit examinations, excerpts, and transcripts.

968.226 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program. (CIAP).

To retain in its file for inspection by HUD the signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the application.

Office of Assistant Secretary for Housing—Federal Housing Commission

24 CFR

1710.15 Developers of multiple site divisions (fewer than 100 lots).

To maintain a copy of the written Lot Information Statement Acknowledgement.

Retention period: 3 years.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.44c-3(1) Residential energy credit. [Redesignated as 1.123-3]

To maintain records that clearly identify the energy-conserving components and renewable energy source property with respect to which a residential energy credit is claimed, and substantiate their cost to the taxpayer, any labor costs properly allocable to them paid for by the taxpayer, and the method used for allocating such labor costs.

1.163-5 Persons issuing debt obligations to foreign persons; Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1986. [Added]

To maintain the certificate. Statements by member organizations must be retained by the clearing organization in the case of certificates based on such statments.

Retention period: 4 calendar years following the year in which the certificate is received.

1.936-10T Qualified recipients and financial intermediaries investing in Qualified Caribbean Basin Countries.

To maintain all necessary books and records that are sufficient to verify that the funds were used for investment in active business assets or development projects in conformity with the terms of the loan agreement.

5h.6 Electing owners, lessors, purchasers, and all successors in interest to the electing owners or purchasers; Technical Miscellaneous Revenue Act of 1988.

(a) To retain the original election document or a copy thereof in its records.

Retention period: Until 6 years after the later of the date the last bond that is part of the issue is retired or the date such owner, purchaser or successor in interest ceases to own the facilities.

(b) To retain a copy of the election.

Retention period: Until 6 years after the date the last bond that is part of the issue is retired.

35a.3406-1 Payors to backup withhold due to notification of an incorrect taxpayer identification number.

To maintain sufficient records to determine whether the payor has received notification of two incorrect taxpayer identification numbers within a 3-year period.

48.4041-21T Sellers of diesel fuel for use as a fuel in a diesel-powered highway vehicle. [Redesignated as 48.4041-21 and amended]

To maintain supporting records with respect to the tax imposed by section 4041 (whether or not such seller incurs liability for such tax).

Retention period: For at least 3 years after the due date of the tax return for the return period to which the records relate, or the date such tax is paid, whichever is later.

48.4041-21T Qualified retailers of diesel fuel for use as a fuel in a diesel-powered highway vehicle. [Redesignated as 48.4041-21 and amended]

(a) To maintain sufficient records of sales to establish the purpose for which the liquid is sold, and the person(s) to whom sold.

(b) To maintain supporting records with respect to the tax imposed by section 4041 (whether or not the qualified retailer incurs liability for such tax) when making a valid election.

Retention period: For at least 3 years after the due date of the tax return for the return period to which the records relate, or the date such tax is paid, whichever is the later.

52.4682-2T Persons purchasing the ozone-depleting chemicals for use as a feedstock. [Added]

To retain the business records needed to document (a) the sales covered by the certificates; (b) the use as a feedstock of the ozone-depleting chemicals to which the certificate applies; and (c) the use in the manufacture of rigid foam insulation of the ozone-depleting chemicals to which the certificate applies.

Such records will be made available for inspection by Government officers.

52.4682-4T Persons holding ODCs (Ozone-depleting chemicals) that are held for sale or for use in further manufacture and that were not manufactured or imported by such persons. [Added]

To maintain records of the inventory of all ODCs held on the day which the tax is imposed. Such records must be made available for inspection and copying by internal revenue agents and officers. Records are not to be filed with IRS.

56.4911-6 Electing public charities. [Added]

To keep records of lobbying and grass roots expenditures.

301.7216-2T Tax return preparers. [Added]

To maintain record of the review including the tax return information reviewed and the identity of the persons conducting the review.

Retention period: For the period that is prescribed for the retention of permanent books of account and records under 26 CFR 1.6001-1(e).

TREASURY DEPARTMENT

Bureau of Alcohol, Tobacco and Firearms

27 CFR

19.36 Proprietors of distilled spirits plants. [Added]

To maintain a permanent record of the standard effective tax rate established for each product in accordance with 27 CFR 19.765.

19.38 Proprietors of distilled spirits plants. [Added]

To maintain an inventory reserve record as prescribed by 27 CFR 19.764.

19.582 Proprietors of distilled spirits plants. [Added]

To maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits. See also 27 CFR 19.761

19.761 Proprietors of distilled spirits plants. [Added]

To maintain record of tax determination on total proof gallons and if applicable, each effective tax rate and the proof gallons removed at each effective tax rate.

19.762 Proprietors of distilled spirits plants. [Added]

To maintain daily summary records of tax determinations. The summary records will show for each day on which tax determinations occur (a) the serial numbers of tax determination, the total proof gallons, rounded to the nearest tenth proof gallon on which tax was determined at each effective tax rate, and the total tax; or (b) the serial numbers of the records of tax determination, the total tax for each record of tax determination and the total tax.

19.763 Proprietors of distilled spirits plants. [Added]

To maintain record of average effective tax rates.

19.764 Proprietors of distilled spirits plants. [Added]

To maintain inventory reserve records for each eligible distilled spirits product to be tax determined in accordance with 27 CFR 19.38.

19.770 Proprietors of distilled spirits plants. [Amended]

To maintain transfer records.

Retention period: 3 years.

24.53 Taxpayer subject to special (occupational) tax for multiple locations and/or classes of taxes. [Added]

To retain at the taxpayer's principal place of business one copy of the list showing, by States, the name, address, and tax class of each location for which special (occupational) tax is being paid.

Retention period: See 27 CFR 24.300.

24.77 Scientific universities, colleges of learning or institutions of scientific research authorized to conduct wine experimental or research operations. [Added]

To maintain (a) approved qualifying documents and applications in the file; (b) records appropriate to the experiments to be conducted; and (c) records documenting disposition of the wine and wine spirits. Records will be made available for inspection by ATF officers.

24.96 Proprietors of bonded wineries. [Added]

To maintain records of all samples taken for analysis or testing, showing the size of each sample, the kind of wine or wine spirits, date of removal, and the name and address of where sent.

Retention period: See 27 CFR 24.300.

24.97 Proprietors of bonded wineries. [Added]

(a) To maintain records showing the size, kind of wine or wine spirits, and date and disposition of each sample retained as a laboratory sample.

(b) If a room or area is set aside for public tasting purposes, to maintain records showing the date, quantity and kind of wine transferred to the room or area for testing.

Retention period: See 27 CFR 24.300.

24.126 Proprietors of bonded wineries. [Added]

(a) To maintain records of all transfer of wine, spirits and other accountable materials.

(b) To maintain records showing the name and registry number of the incoming or outgoing proprietor, the effective date and hour of alternation, and the quantity in gallons and the percent alcohol by volume or proof of any wine, spirits, or other accountable materials transferred or received.

Retention period: See 27 CFR 24.300.

24.226 Proprietors of bonded wineries. [Added]

To maintain a copy of the transfer record, annotated to show any difference between the description of spirits and quantity received as a record of receipt.

Retention period: See 27 CFR 24.300.

24.237 Proprietors of bonded wineries. [Added]

To maintain separate record on spirits that are added to juice or concentrated fruit juice.

Retention period: See 27 CFR 24.300.

24.243 Proprietors of bonded wineries. [Added]

To maintain records required by 27 CFR 24.301 if the inert material is dissolved in water prior to addition to wine in the cellar treatment and finishing of wine.

24.249 Proprietors of bonded wineries. [Added]

To maintain records of the kind and quantity of material received and used and the volume of wine treated and the manner by which disposed in experiments with new treating material or process.

Retention period: See 27 CFR 24.300.

24.257 Proprietors of bonded wineries. [Added]

To maintain records on labeling wine containers subject to recordkeeping requirements of 27 CFR 24.315.

24.272 Proprietors of bonded wineries. [Added]

To maintain the transfer data record furnished through normal banking practices as record of tax payment when financial institution make an electronic fund transfer in the amount of the taxpayment to the Treasury Account.

Retention period: See 27 CFR 24.300.

24.281 Proprietors of bonded wineries. [Added]

To maintain one copy of the transfer record for the file when transferring wine in bond.

Retention period: See 27 CFR 24.300.

24.282 Proprietors of bonded wineries. [Added]

To maintain one copy of the shipping or delivery order in multiple transfers of wines by trucks or pipelines.

Retention period: See 27 CFR 24.300.

24.284 Proprietors of bonded wineries. [Added]

To maintain the original of the transfer record and any accompanying documents when wine is received by transfer bond.

Retention period: See 27 CFR 24.300.

24.291 Proprietors of vinegar plants. [Added]

To maintain records of all wine received and used for the manufacture of vinegar and of all vinegar produced and disposed of when wine is shipped without payment of tax.

Retention period: See 27 CFR 24.300.

24.293 Proprietors of bonded wineries. [Added]

To maintain a copy of the bill of lading covering the shipment, with the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month in which the shipment by common carrier of wine for Government use is made.

Retention period: See 27 CFR 24.300.

24.294 Proprietors of bonded wineries. [Added]

To maintain records of the volume of wine destroyed.

Retention period: See 27 CFR 24.300.

24.295 Proprietors of bonded wineries. [Added]

To maintain records covering each lot of unmerchantable taxpaid wine returned in bond in accordance with 27 CFR 24.311.

Retention period: See 27 CFR 24.300.

24.300 Proprietors of bonded wineries. [Added]

To maintain wine transaction records. Transactions records may be recorded in wine gallons or in liters.

Retention period: All prescribed returns, reports and records (including source records) will be retained by the proprietor for a period of not less than three years from the record date or the date of last entry required to be made in the record, whichever is later. However, the regional director (compliance) may require records to be kept an additional period not exceeding three years in any case where record retention is determined to be necessary.

24.301 Proprietors producing or receiving still wine in bond (including wine intended for use as distilling material or vinegar stock to which water has not yet been added). [Added and amended]

To maintain records of transactions for bulk still wine.

Retention period: See 27 CFR 24.300.

24.302 Proprietors producing or receiving sparkling wine or artificially carbonated wine in bond. [Added]

To maintain records showing the transaction date and details of production, receipt, storage, removal, and any loss incurred. Records will be maintained for each specific process used (bulk or bottle fermented, artificially carbonated), and by the specific kind of wine, e.g., grape, pear, cherry.

Retention period: See 27 CFR 24.300.

24.303 Proprietors producing beverage formula wine. [Added]

To maintain records showing by transaction date the details of production.

Retention period: See 27 CFR 24.300.

24.304 Proprietors chaptalizing (Brix adjustment) or ameliorating juice or wine, or both. [Added]

To maintain records of the operation and transaction date. Records will contain the information necessary to enable ATF officers to readily determine compliance with chaptalization and amelioration limitations.

Retention period: See 27 CFR 24.300.

24.305 Proprietors sweetening natural wine with sugar or juice (unconcentrated or concentrated). [Added]

To maintain record of sweetening by transaction date.

Retention period: See 27 CFR 24.300.

24.306 Proprietors producing or receiving wine containing excess water which will be used expressly as distilling material or vinegar stock. [Added]

To maintain records by transaction date showing the amount and kind produced, received, from whom received, removed, and to whom sent. To also keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, fruit, berry).

Retention period: See 27 CFR 24.300.

24.307 Proprietors producing nonbeverage wine or wine products. [Added]

To maintain a record by transaction date of such wine produced, received, and withdrawn.

Retention period: See 27 CFR 24.300.

24.308 Proprietors bottling, packing, or receiving bottled or packed beverage wine in bond. [Added]

(a) To maintain a record, by tax class, of the date, kind of wine, the number and size or other container filled (if not available in another record), and volume of wine bottled or packed, received in bond, returned to bond, and removed.

(b) To maintain record of fill tests and alcohol tests required by 27 CFR 24.255 for each lot of wine bottled or packed, or for each bottling or packing line operated each day, showing the date, type of test, item tested and the test results.

Retention period: See 27 CFR 24.300.

24.309 Proprietors of transferring wine in bond. [Added and amended]

To maintain transfer records showing the name, address and registry number of the proprietor; the name, address and registry number of the consignee; the shipping date; the kind of wine (class and type); the alcohol content or the tax class; the number of cases or containers larger than four liters; and other such information as specified in cited section.

Retention period: See 27 CFR 24.300.

24.310 Proprietors removing wine from bond for consumption or sale on determination of tax. [Added]

To maintain a record of wine removed at the time of removal either to taxpaid wine premises, or for direct shipment.

Retention period: See 27 CFR 24.300.

24.311 Proprietors who have taxpaid United States or foreign wine on taxpaid wine premises or on taxpaid wine bottling house premises. [Added]

To maintain records of receipt, removals, and cases or containers filled.

Retention period: See 27 CFR 24.300.

24.312 Proprietors of bonded wineries. [Added]

To maintain records of any unmerchantable taxpaid wine returned to bond.

Retention period: See 27 CFR 24.300.

24.313 Proprietors of bonded wineries. [Added]

To maintain record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period. The inventory records will include: (a) Description of wine; (b) bulk containers; (c) the total volume of cases, bottled and other similar containers; and (d) inventory summary.

Retention period: See 27 CFR 24.300.

24.314 Proprietors of bonded wineries. [Added]

To maintain label information records.

Retention period: See 27 CFR 24.300.

24.315 Proprietors producing wine. [Added]

(a) *General.* To maintain records showing the receipt and use or other disposition of basic winemaking materials received on wine premises. Where grapes (or other fruit) received on wine premises are used in producing juice to be stored for future use or for removal, the record will show the quantity used and the juice produced.

(b) *Concentrated fruit juice.* To maintain records showing the degrees Brix of the juice before and after concentration, the volume of juice before and reconstitution, the volume of reconstitution, the volume of reconsitution water used for each dilution of the concentrate, andif volatile fruit flavor was added, the kind and volume.

(c) *Volatile fruit–flavor concentrate.* To maintain records showing the volume received, the fold, the percent of alcohol by volume, any loss in transit, and the use of other disposition of the volatile fruit–flavor concentrate, and other such information as specified in cited section.

Retention period: See 27 CFR 24.300.

24.316 Proprietors receiving, storing, or using spirits. [Added]

To maintain records of receipt and use showing the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of the month and reported on the ATF 5120.17.

Retention period: See 27 CFR 24.300.

24.317 Proprietors receiving, storing, or using sugar. [Added]

(a) To maintain records showing the date of receipt, from whom received, and the kind and quantity.

(b)To retain invoices covering purchases.

(c) When sugar is used for chaptalization (Brix adjustment), amelioration or sweetening, the record will show the date, kind, and quantity used. The sugar record will also show sugar used in the production of allied products and any sugar removed from the wine premises.

Retention period: See 27 CFR 24.300.

24.318 Proprietors adding acid to correct a natural deficiency in juice or wine or to stabilize wine. [Added]

To maintain records showing date of use, the kind and quantity of acid used, the kinds and volume of juice or wine in which used, and, when used to correct natural deficiency, the fixed acid level of juice or of wine before and after the addition of acid. The record will account for all acids received and be supported by purchase invoices.

Retention period: See 27 CFR 24.300.

24.319 Proprietors using carbon dioxide in still wine. [Added]

To maintain records of the laboratory tests conducted to establish compliance with the limitations prescribed in 27 CFR 24.245.

Retention period: See 27 CFR 24.300.

24.320 Proprietors using chemicals, preservatives, or other such materials. [Added]

To maintain records of the purchase, receipt and disposition of chemicals, preservatives,or other such materials. The records will show the kinds and quantities received, the date of receipt, and the names and addresses from whom purchased. A record of use in juice or wine of any of these materials, except for filtering aids, inert fining agents, sulfur dioxide, carbon dioxide, nitrogen and oxygen, will be maintained, showing the kind, quantity, and date of use, and kind and volume of juice or wine in which used.

Retention period: See 27 CFR 24.300.

24.321 Proprietors treating juice or wine to remove excess color with activated carbon or any other decolorizing material. [Added]

To maintain records showing (a) the date the decolorizing material is added to the juice or wine; (b) the type (e.g., grape variety or kind of wine) and volume of juice or wine treated with decolorizing material; and (c) the kind and quantity of decolorizing material used to treat the juice or wine.

Retention period: See 27 CFR 24.300.

55.122 Licensed importers of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand required to be accounted for.

(b) To maintain records on importation or other acquisition of explosive materials.

(c) To maintain records on the distribution of any explosive material to another license or a permittee.

(d) To maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.123 Licensed manufacturers of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand.

(b) To keep records of manufacture or other acquisition of explosive materials.

(c) To keep records of the distribution of any explosive materials to another licensee or a permittee.

(d) To maintain records on date of use, quantity, description and size of explosive materials when manufacturers manufacture explosive materials for own use.

(e) To maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.124 Licensed dealers of explosive materials. [Amended]

(a) To keep accurate inventories which will include all explosive materials on hand.

(b) To keep records of purchase or other acquisition of explosive materials.

(c) To maintain records of the distribution of any explosive materials to another licensee or permittee.

(d) To maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.125 Licensed manufacturers—limited and permittees of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand.

(b) *Licensed manufacturers—limited.* To maintain separate records of disposition of surplus stocks of disposition of surplus stocks of explosive materials and commericaly manufactured black powder.

(c) *Permittees.* (1) To maintain records of the acquisition of explosive materials and (2) to maintain separate records of the disposition of surplus explosive materials to another permittees licensees, nonlicensees, or permittees and commercially black powder.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.127 Licensees or permittees manufacturing, importing, or distributing explosive materials. [Revised]

To maintain daily summary of magazine transactions.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

170.112 Persons liable for floor stocks tax on alcoholic beverages and imported perfumes held for sale on Jan. 1, 1991. [Added]

(a) To maintain a copy of the floor stocks tax return at the place of business covered thereby, or, in the case of a consolidated return, at the principal place of business.

(b) To maintain record of physical inventory at the place of business to which the inventory pertains.

(c) In the case of a consolidated return, to keep a copy of the record of inventory at the taxpayer's principal place of business.

Retention period: At least 3 years after the date of filing of the floor stocks tax return and shall be available for inspection by ATF officers. The regional director (compliance) may request retention for an additional 3 years if retention is determined to be necessary or advisable.

170.116 Persons liable for floor stocks tax on alcoholic beverages and imported perfumes held for sale on Jan. 1, 1991. [Added]

See 27 CFR 170.112.

170.687 Proprietors of bonded wine cellars. [Removed]

170.690 Proprietors of bonded wine cellars. [Removed]

170.691 Proprietors of bonded wine cellars. [Removed]

170.691 Proprietors producing nonbeverage wines.[Removed]

197.130 Manufacturers of nonbeverage products claiming drawbacks. [Amended]

See 197.95

231.110 Proprietors of taxpaid wine bottling houses. [Removed]

231.112 Proprietors of taxpaid wine bottling houses. [Removed]

231.113 Proprietors of taxpaid wine bottling houses. [Removed]

231.114 Proprietors of taxpaid wine bottling houses. [Removed]

240.134 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.363 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.366 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.367 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.368 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.382 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.383 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.384 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.385 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.406 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.407 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.408 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.409 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.484 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.485 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.486 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.487 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.526 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.527 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.527a Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.547 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.548 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.549 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.561 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.613 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.614 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.615 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.656 Proprietors of vinegar plants receiving wine free of tax for use in manufacturing vinegar. [Part 240 was redesignated as Part 24 and revised]

240.657 Proprietors of vinegar plants receiving wine free of tax for use in manufacturing vinegar. [Part 240 was redesignated as Part 24 and revised]

240.658 Proprietors of vinegar plants

processing wine free of tax for use in the manufacture of vinegar. [Part 240 was redesignated as Part 24 and revised]

240.731 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.732 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.732 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.741 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.743 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.746 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.753 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.801 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.804 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.836 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.892 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.900 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.901 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.902 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.903 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.904 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.906 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.910 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.911 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.912 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.914 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.915 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.916 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.917 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.918 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.919 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.920 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.922 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.923 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.924 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.924 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.925 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.1052 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

250.165 Proprietors of distilled spirits plants bringing liquors into the United States from Puerto Rico. [Added]

To retain the certificate of effective tax rate computation.

Retention period: For a period of not less than 3 years after the last tax determination which the certificate is applicable.

270.183 Manufacturers of tobacco products. [Amended]

See 270.181.

270.184 Manufacturers of tobacco products. [Amended]

See 270.181.

270.187 Manufacturers of tobacco products. [Amended]

See 270.181.

270.187a Manufacturers of tobacco products removing large cigars from the factory on or after Jan. 1, 1991. [Added]

To keep such records as are necessary to establish and verify the price for which the cigars are sold in accordance with 27 CFR 270.22a. The record shall be a continuing one of each brand and size of cigar so that the sale price on which the tax is based may be readily ascertained.

270.202 Manufacturers of tobacco products. [Amended]

To keep copies of monthly reports, Form 3068, together with copies of supplemental reports covering cigars and cigarettes of Puerto Rican manufacture.

Retention period: 3 years after close of calendar year in which the reports are filed.

275.137 Persons shipping Puerto Rican cigars, cigarettes, and cigarette papers and tubes to the United States. [Amended]

To keep certified copies of notices of release, Form 3072.

Retention period: 3 years after close of calendar year in which notices are filed.

275.181 Proprietors of custom bonded manufacturing warehouse, class 6. [Amended]

See 275.153 and 270.187a.

295.51 Manufacturers of cigarette papers and tubes. [Amended]

To keep supporting records showing appropriate entries at the time of removals of cigarette papers and tubes, without payment of tax, for use of the United States.

Retention period: 3 years after close of year in which removals are made.

296.177 Persons holding pipe tobacco for sale, including those holding pipe tobacco exempt from the $1000 floor stock tax.

To maintain inventory records of the pipe tobacco floor stocks tax liability required to be shown on the floor stocks tax return.

Retention period: As prescribed in 27 CFR 296.176.

296.178 Persons liable for floor stocks tax.

To keep a copy of the floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, or when one return is filed on behalf of a controlled group, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains.

Retention period: At least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The Regional Director (Compliance) may require an additional 3 years if retention is deemed to be necessary or desirable.

296.197 Persons (including controlled groups) liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

To make and retain a list showing the address of each place of business where cigarette subject to floor stocks tax is held; names, addresses and employer identification number; and the number and tax category of cigarettes so held at each place.

296.198 Persons liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

See 27 CFR 170.112.

296.199 Persons liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

See 27 CFR 170.112.

LABOR DEPARTMENT

Wage and Hour Division

29 CFR

504.310 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.310.

504.350 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.350.

504.400 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.350.

516.31 Employers of industrial homeworkers.

To maintain and preserve payroll or other records containing the following information and data: (a) Date on which work is given out or begun by worker, and amount of such work given our or begun; (b) date on which work is turned in by worker, and the amount of such work; (c) kind of articles worked on and operation performed; (d) piece rates paid; (e) hours worked on each lot of work turned in; (f) wages paid for each lot of work turned in; (g) name and address of each agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homeworkers or from whom it is collected by each such agent, distributor, or contractor, and (k) homeworkers handbook.

Retention period: 2 and 3 years.

517.206 Employers subject to the training wage provisions of Fair Labor Standards Amendments Act of 1989. [Added]

For second 90-day period of eligibility, to maintain the original or a copy of the training program(s), including any revisions.

Retention period: 2 years after the last day on which an individual was employed at the training wage pursuant to such training program(s).

524.10 Employers subject to Fair Labor Standards Act employing handicapped workers. [Removed, 1989]

525.13 Sheltered workshops (as defined in 29 CFR 525.2(b)). [Revised, 1989; record retention requirements now in 525.16]

525.16 Employers, referring agencies or facilities of workers employed under special minimum wage certificates.

To maintain records indicating (a) verification of the workers' disabilities; (b) evidence of the productivity of each worker with a disability gathered in a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates); (c) the prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate; (d) the production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and (e) certain records required under all of the applicable provisions of 29 CFR Part 526.

Retention period: See 29 CFR Part 516.

545.7 Employers of homeworkers in industries in Puerto Rico. [Removed]

665.6 Employers of homeworkers in industries in the Virgin Islands. [Removed]

801.30 Employers/examiners subject to the Employee Polygraph Protection Act of 1988.

(a) To retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee if an employee is requested to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury.

(b) To maintain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.

(c) To maintain all opinions, lists, and other records relating to polygraph tests of such persons. In addition, to maintain records of the number of examinations conducted each day and, with regard to tests administered to persons identified by their employer and the duration of each test period and other such records as specified in cited section.

Retention period: 3 years.

Occupational Safety and Health Administration

29 CFR

1910.66 Building owners of all powered platform installations.

To maintain certification record which contains the date the work was performed, the signature of the person who performed the work, and an identifier for the equipment or installation which was tested or inspected. Records shall be kept readily available for review by the Assistant Secretary's representatives and by the employee.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et. seq.).

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1910.1450 Employers engaged in laboratory use of hazardous chemicals. [Added]

(a) To maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that these material safety data sheets are accessible to laboratory employees.

(b) To establish and maintain for each employee an accurate record of any measurements taken to monitor employee exposures and any medical consultation and examinations including tests or written opinions required.

Retention period: In accordance with 29 CFR 1910.20.

1910.1450, Appendix A Employers engaged in laboratory use of hazardous chemicals. [Added]

To maintain records of (a) the amounts of chemicals of moderate chronic or high acute toxicity on hand, amounts used and the names of the workers involved; (b) amounts of these substances stored and used, the dates of use, and names of users; (c) accidents; (d) chemical hygiene plan that document that the facilities and precautions were compatible with current knowledge and regulations; (e) inventory and usage records for high-risk substances and medical records in accordance with state and federal requirements.

1926.550 Employers subject to crane and derrick standards.

To maintain on file the most recent certification records which include date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number or other identifier, for the crane inspected.

Retention period: Until a new certification is prepared.

1926.652 Employers subject to the excavation occupational safety and health standards.

To maintain at the jobsite one copy of the tabulated data which identifies the registered professional engineer who approved the data and at least one copy of the design.

Retention period: During the construction of the protective system and after that time the data and design may be stored off the jobsite, but a copy shall be made available to the Secretary upon request.

1926.800 Employers subject to underground construction standards.

(a) To maintain record of all air quality tests above ground at the workshop and make available these records to the Secretary upon request. The records shall include the location, date, time, substance and amount monitored.

Retention period: Until completion of the project.

(b) To maintain records of exposures to toxic substances in accordance with 29 CFR 1910.20.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR

2619.11 Pension plan administrators (with respect to plan years beginning on or after Jan. 1, 1988).

To retain certain documentation (all plan records including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(l) of the Code, by the insurer from which the insurance contracts are purchased) needed to support or to validate premium payments. Records must include but not limited to records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium that demonstrate the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code.

Retention period: For a period of 6 years after the premium due date.

LABOR DEPARTMENT

Mine Safety and Health Administration

30 CFR

25.10 Applicants authorize to use multiple-shot blasting units in coal mines. [Removed, 1988; effective Jan. 22, 1991]

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

206.253 Lessees of Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage Co., Okla.).

To maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated.

Retention period: Not specified.

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases.

See 212.51.

250.20 Lessees exploring, developing, producing, and transporting oil, gas, and sulphur in the Outer Continental Shelf. [Added]

To maintain records of inspection, testing, maintenance, and crane operator qualifications in accordance with the provisions of API RP 2D at the field office nearest the OCS facility.

Retention period: 2 years.

250.192 Lessees exploring, developing, producing, and transporting oil, gas, and sulphur in the Outer Continental Shelf.

To maintain well test data.

Retention period: 2 years.

282.29 Lessees performing operations in the Outer Continental Shelf for minerals, other than oil, gas, and sulphur.

(a) To maintain records that include logs of all strata penetrated and conditions encountered, such as minerals, water, gas,or unusual conditions, and copies of analysis of all samples analyzed.

(b) To maintain records in which will be kept an accurate account of all ore and rock mined; all mineral products sold, transferred, used, or otherwise disposed of and to whom sold or transferred, and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.29 Financial institutions; Bank Secrecy Act. [Added]

To maintain a chronological log for each calendar month for each issuance or sale of one or more bank check or draft, cashier's check, money order or traveler's check for $3,000 or more in currency.

Retention period: 5 years.

103.33 All financial institutions.

To maintain either the original or a copy of records of (a) extensions of credit exceeding $10,000, except those secured by real property; and (b) advice, request, or instruction, received or given to another financial institution or person, regarding a transaction resulting in the transfer of more than $10,000 to a person, account, or place outside the United States.

Retention period: 5 years.

103.36 Casinos subject to the Bank Secrecy Act.

To maintain a record of social security number of the person involved when funds are deposited; account is opened or credit is extended; and other such records as specified in section cited.

Retention period: 5 years.

103.38 All financial institutions.

To keep records as specified in 31 CFR Part 103.

Retention period: 5 years.

129.3 Persons subject to the portfolio investment survey regulations.

To maintain all information required by the International Investment and Trade in Services Survey Act (22 USC 3104(b)(1).

Retention period: 3 years from the date of submission of any reports or other information required pursuant to the Act, or for such shorter period as may be specified in the reporting form and/or accompanying instructions.

Office of Foreign Assets Control

31 CFR

570.601 Persons engaged in transactions subject to the Kuwaiti Assets Control regulations. [Added]

To keep full and accurate records of each such transactions in which that person engages, regardless whether such transaction is effected pursuant to license or otherwise.

Retention period: 2 years after the date of such transaction.

TRANSPORTATION DEPARTMENT

Coast Guard

33 CFR

154.740 Operators of oil transfer facilities. [Amended]

To maintain (a) letter of intent, name of person in charge of transfer, operations, equipment, tests and inspections, hose, information, facility inspection record; (b) signed copy of each declaration of inspection for facility; (c) records of all repairs made within the last three years involving any component of the facility's vapor control system; (d) records of all automatic shut downs of the facility's vapor control system within the last 3 years; and (e) plans, calculations, and specifications of the facility's vapor control system certified under 33 CFR 154.804.

Retention period: (a) Not specified; (b) 1 month from date of signature; (c)–(e) 3 years.

154.804 Operators of oil transfer facilities. [Added]

To maintain at the facility, any certifications issued, copies of plans, calculations, and specifications for the vapor control system.

EDUCATION DEPARTMENT

34 CFR

86.103 Institutions of higher education (IHE's); drug prevention program. [Added]

To maintain, at a minimum, a copy of materials distributed and any additional materials on its drug prevention program made available to students and employees; records indicating that these materials were distributed to each of the IHE's students and employees; and the results of the IHE's annual evaluation of its drug prevention program.

Retention period: 3 years after the first fiscal year in which the records were created, or until litigation, claim, negotiation, audit or other actions involving the records have been resolved.

86.204 State and local educational agencies; drug prevention program. [Added]

To maintain records on the (a) elements of its drug prevention program, including the results of its biennial review; (b) personal records, documents; and (c) any other information related to compliance with the certification.

Retention period: 3 years after the fiscal year in which the records were created or until litigation, claim, negotiation, audit, or other actions involving the records have been resolved.

200.43 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1).

To maintain annual records documenting compliance with the comparability of services requirements.

200.71 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1).

To maintain contemporaneous time distribution records reflecting the actual amount of time the employee spends on the program.

204.10 State educational agencies and other agencies receiving funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(a) To maintain records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources.

(b) To maintain other records that are needed to facilitate an effective audit of Chapter 1 project and that show compliance with Chapter 1 requirements; and

(c) To maintain evaluation data collected under Chapter 1.

Retention period: 5 years, or until all audit findings have been resolved.

VETERANS AFFAIRS DEPARTMENT

38 CFR

17.51j Privately or publicly-owned community residential care facilities.

To maintain records on each resident in a secure place. Such records must include (a) a copy of all signed agreements with the resident; (b) emergency notification procedures; and (c) a copy of the statement of needed care.

Retention period: Not specified.

36.4215 Holders of loans for manufactured homes and/or lots. [Amended]

(a) To keep records of payments received, disbursements chargeable thereto, and dates thereof.

Retention period: Until Administrator ceases to be liable for loan.

(b) To retain copies of all loan origination records on VA guaranteed loan. (Loan origination records include the loan application, including any preliminary applications, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanations for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal reports, reports on other inspections of property, and all closing papers and documents).

Retention period: For at least one year from the date of loan closing.

36.4330 Holders of loans guaranteed or insured by the Veterans Administration under chapter 37, title 38, U.S. Code. [Amended]

To keep a record of each loan showing the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof.

Retention period: Until the Administrator ceases to be liable as guarantor or insurer of the loan.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR

31.20 State and local governments receiving Federal grants and cooperative agreements. [Added]

To maintain accounting records which adequately identify the source and application of funds provided for financially–assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

Retention period: See 7 CFR 3016.2.

35.6250 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts.

(a) To maintain a recordkeeping system that consists of complete site–specific files containing documentation of costs incurred.

(b) To maintain records to comply with the requirements of 40 CFR 35.6700, 35.6705, and 35.6710 and requirements of source documentation described in 40 CFR 31.20(b)(6).

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6270 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts. [Added]

To maintain a recordkeeping system that enables site specific costs to be tracked by site, activity, and operable unit, as applicable, and provides sufficient documentation for cost recovery purposes. In addition, to comply with the requirements regarding records described in 40 CFR 31.20, 35.6700, 35.6705, and 35.6710.

35.6335 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts. [Added]

To maintain property records for CERCLA–funded property which include the contents specified in 40 CFR 35.6700.

35.6700 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts. [Revised]

To maintain an administrative record consistent with section 113 of CERCLA, the National Contingency Plan, and relevant EPA policy and guidance. In addition:

(a) To maintain project records by site, activity, and operable unit, as applicable.

(b) To maintain property, financial and procurement records.

(c) To maintain time and attendance records and supporting documentation; documentation of compliance with statutes and regulations that apply to the project; and the number of site–specific technical hours spent to complete each pre–remedial product.

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6705 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts. [Revised]

To maintain all financial and programmatic records, supporting documents, statistical records, and other records which are required by 40 CFR 35.6700, program regulations, or the cooperative agreement, or are otherwise reasonably considered as pertinent to program regulations or the cooperative agreement.

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from EPA award official before destroying any records.

35.6710 Recipients of CERCLA–funded cooperative agreements and Superfund State Contracts. [Added]

To maintain records as required by 40 CFR 35.6705. To also comply with records access requirements described in 40 CFR 31.36 (i)(10) and 31.42(e).

51.19 Owners and operators of stationary sources emitting air pollutants for which a national standard is in effect. [Removed]

51.214 Owners or operators of each source subject to continuous emission monitoring and recording requirements. [Added]

To maintain a file of all pertinent information (emission measurements, continuous monitoring system, performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems) and other reports as required by 40 CFR Part 51, Appendix P.

Retention period: 2 years following the date of collection of information.

Part 51, Appendix P Owners or operators of affected facilities subject to continuous emission monitoring and recording requirements. [Added]

To maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous monitoring system or as necessary to convert monitoring data to the units applicable standard.

Retention period: For a minimum of two years from the date of collection of such data or submission of such summaries.

52.741 Affected facilities; control strategy ozone control measures in certain counties in Illinois. [Added]

To maintain a copy of the results of the appropriate test methods and capture efficiency protocols.

Retention period: 3 years.

52.741 Owners or operators of coating operations. [Added]

To maintain each day at the facility the following records on:

(a) The name and identification number of each coating as applied on each coating line;

(b) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line; and

(c) All records necessary to calculate the daily–weighted average VOM content from the coating line in accordance with the proposal submitted and other such information as specified in cited section.

Retention period: 3 years.

52.741 Owners or operators of subject flexographic, packaging rotogravure or publication rotogravure printing lines. [Added]

To maintain each day for each coating line the following records on:

(a) The name and identification number of each coating and ink as applied on each printing line;

(b) The VOM content of each coating and ink as applied each day on each printing line;

(c) Any record showing violation of 40 CFR 52.741(h)(1)(i);

(d) Control device monitoring data;

(e) A log of operating time for the capture system, control device, monitoring equipment, and the associated printing line; and

(f) A maintenance log for the capture system, control device, and monitoring equipment detailing all routine and

nonroutine maintenance performed including dates and duration of any outages.

Retention period: 3 years.

52.741 Owners or operators of pharmaceutical manufacturing facilities. [Added]

To maintain the following records on:

(a) Air pollution control parameters;

(b) Vapor pressure of VOM being controlled;

(c) For any leak which cannot be readily repaired within one hour after detection: (1) The name of the leaking equipment; (2) the date and time the leak is detected; (3) the action taken to repair the leak; and (4) the data and time the leak is repaired;

(d) Maintenance and inspection records for emission sources; and other such information as specified in cited section.

Retention period: 2 years.

52.741 Owners or operators of paint or ink manufacturing plants. [Added]

(a) To keep at the plant records of leak when detected. Such records shall contain the date of detection and repair.

Retention period: 2 years from the date of each detection or each repair attempt.

(b) To maintain at the facility records necessary to demonstrate compliance with emission source requirements.

Retention period: 3 years.

(c) To maintain records which include (but are not limited to) the percent of water (by weight) in the paint or ink being produced and the quantity of Magie oil, glycol, and other solvents in the ink being produced.

Retention period: 3 years.

52.741 Owners or operators of non–CTG source–exempt emission sources. [Added]

To maintain the following information at the facility:

(a) Control devices monitoring data;

(b) A log of operating time for the capture system, control device, monitoring equipment and the associated emission source; and

(c) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non–routine maintenance performed including dates and duration of any outages.

Retention period: 3 years.

60.48c Owners or operators of affected facilities subject to the sulfur dioxide emission limits, fuel oil sulfur limits, or percent reduction requirements. [Added]

To keep records, as applicable, on control devices; excess emission; results of emission tests, fuel sampling and analysis results; date of construction or reconstruction; anticipated startup and actual startup; and fuel supplier certification; amounts of each fuel combusted during each day; and other such information as specified in cited section.

Retention period: 2 years following date of such records.

60.49b Owners or operators of industrial–commercial–institutional steam generating facilities.

(a) If monitoring of steam generating unit operating condition plan is approved, to maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan.

(b) To maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal–type solid waste for each calendar year.

(c) To maintain records of the nitrogen content of the oil residual combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis.

(d) To maintain records of opacity for facilities subject to the opacity standard under 40 CFR 60.43b.

(e) To maintain records on the calendar date, the average hourly nitrogen oxides emission rates measured or predicted and other information as specified in section cited for each steam generating unit operating day for facilities subject to nitrogen oxide standards under 40 CFR 60.44(b).

Retention period: 2 years following date of record.

(f) To maintain records of the following information for each steam generating unit operating day: (1) Calendar date; (2) the number of hours of operation; and (3) a record of the hourly steam load.

60.545 Owners or operators of tread end cementing operation and green tire spraying operation using water–based cements or sprays containing less than 1.0 percent by weight of VOC.

To maintain records of formulation data or the results of Method 24 analysis conducted to verify the VOC contents of the spray.

Retention period: Not specified.

60.565 Owners or operators of polypropylene, polyethylene, polystyrene, and poly–(ethylene terephthalate) manufacturing plants. [Added]

To maintain up–to–date, readily accessible records of the performance tests and other such information as specified in cited section.

Retention period: 2 years.

60.615 Owners or operators of new, modified, and reconstruction air oxidation facilities. [Added]

To keep up–to–date, readily accessible continuous records of (a) the equipment operating parameters specified to be monitored under 40 CFR 60.613(a) and (c) as well as up–to–date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance data are exceeded; (b) the flow indication specified under 40 CFR 60.613(a)(2), 60.613(b)(2), and 60.613(c)(1), and (c) records of all periods when the vent stream is diverted from the control device or has no flow rate; and other such records as specified in cited section.

60.665 Owners or operators of new, modified, and reconstituted distillation facilities. [Added]

See 40 CFR 60.615.

60.744 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates.

To maintain records of the measurements and calculations required in 40 CFR 60.743 and 60.744.

Retention period: For at least 2 years following the date of the measurements anbd calculations.

60.747 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates.

To maintain records documenting compliance by the methods described in 40 CFR 60.743(a)(1), (a)(2), (a)(4), (b), or (c).

Retention period: At least 2 years.

61.25 Owners or operators of underground uranium mines.

To maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard.

Retention period: 5 years. Records must be made available for inspection by the Administrator or his authorized representative.

61.26 Owners or operators of underground uranium mines. [Revised, 1989; record retention requirements now in 61.25]

61.123 Owners and operators of calciners and nodulizing kilns at elemental phosphorous plants. [Revised, 1989; record retention requirements now in 61.134]

61.124 Owners or operators of calciners and nodulizing kilns at elemental phosphorus plants.

See 40 CFR 61.25.

61.138 Owners or operators of coke by-product recovery plants.

(a) To maintain records pertaining to the design of control equipment installed to comply with 40 CFR 61.132 through 61.134.

(b) To maintain records pertaining to sources subject to 40 CFR 61.132 and 61.133. Such records shall contain the date of the inspection and the name of the inspector; a brief description of each visible defect in the source or control equipment and the method and date of repair of the defect; the date of attempted and actual repair and method of repair of the leak; and a brief description of any system abnormalities found during the annual maintenance inspection, the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

Retention period: 2 years following each semiannual (and other) inspection and each annual maintenance inspection.

61.142 Owners or operators of asbestos mills. [Added]

To maintain records of the results of visible emission monitoring and air cleaning device inspections.

Retention period: 2 years.

61.144 Manufacturers of operations using commercial asbestos. [Added]

See 40 CFR 61.142.

61.145 Owners or operators of asbestos demolition and renovation operations. [Added]

To keep daily temperature records during periods when wetting operations are suspended due to freezing temperature. The owner or operator must record the temperature in the area containing the facility components at thge beginning, middle, and end of each workday.

Retention period: 2 years.

61.147 Owners or operators of demolition and renovation operations-asbestos emission control. [Added]

See 40 CFR 61.142.

61.149 Owners or operators of asbestos mills. [Added]

(a) To keep records temperatures recorded at hourly intervals, during periods when wetting operations are suspended.

Retention period: At least 2 years in a form suitable for inspection.

(b) To retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site.

Retention period: 2 years.

61.150 Owners or operators of asbestos waste disposal manufacturing, fabricating, demolition, renovation, and spraying operations. [Added]

See 40 CFR 61.149.

61.154 Owners or operators of active waste disposal sites receiving asbestos-containing waste material. [Added]

(a) To maintain waste shipment records.

Retention period: 2 years.

(b) To maintain records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

Retention period: Until closure.

61.155 Owners or operators of operations that convert regulated asbestos-containing material (RACM) and asbestos-containing waste material into nonasbestos (asbestos-free) material. [Added]

To maintain on-site records of (a) the results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials; (b) results of the composite analyses required during the initial 90 days of operation; (c) results of the monthly composite analyses; (d) results of continuous monitoring and logs of process operating parameters; (e) the information on waste shipments received; and (f) for output materials where no analyses were performed to determine the presence of asbestos, records of the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

Retention period: 2 years.

61.204 Owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

See 40 CFR 61.25.

61.224 Owners and operators of all sites that are used for the disposal of uranium mill tailings.

See 40 CFR 61.25.

61.246 Owners or operators of sources intended to operate in volatile hazardous air pollutant (VHAP) service.

(a) To keep records in a log of each leak as specified in 40 CFR 61.242-2, 61.242-3, 61.242-7.

Retention period: 2 years.

(b) To maintain records, in a log, pertaining to all equipment subject to the requirements in 40 CFR 61.242-1 to 40 CFR 61.242-11 and all other records as specified in cited section.

61.255 Owners or operators of facilities byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.

See 40 CFR 61.25

61.276 Owners or operators with a storage vessel subject to the national emission standard for benezene emissions.

(a) To keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel.

Retention period: As long as the storage vessel is in operation.

(b) To keep records pertaining to closed vent system and control devices in a readily accessible location.

Retention period: 2 years.

61.306 Owners or operators of affected facilities subject to the standards for benzene waste operations and benzene transfer operations. [Added]

To maintain an up-to-date readily accessible records of data measured during the performance test, equipment operating parameters, and flare pilot flame monitoring.

Retention period: 2 years from the date the information is recorded.

61.356 Owners or operators of facilities subject to the standards for benzene waste operations. [Added]

(a) To maintain records that identify each waste stream (records shall include all test results, measurements, calculations, and other necessary documentation).

(b) To maintain documentation for each waste shipment that includes the date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(c) To maintain engineering design documentation for all control equipment that is installed on the waste

management unit, and other such information as specified in cited section.

Retention period: (a) and (b) 2 years from the date the information is recorded unless otherwise specified. (c) For the life of the control equipment.

80.27 Distributors, resellers, carriers, retailers, and wholesale purchaser-consumers of gasoline and alcohol blends volatility.

To maintain each invoice, loading ticket, bill lading, delivery ticket and other documents which accompany the shipment of such gasoline. Such documents shall be available for inspection by the Administrator or authorized representative during such period.

Retention period: 1 year.

82.13 Importers of certain chlorofluorocarbons (CFC's) and brominated compounds (halons) to reduce the risk of stratospheric ozone depletion.

To maintain records on (a) the quantity of each controlled substances imported, either alone or in mixtures; (b) the quantity of each controlled substances were imported; (c) the port of entry through which the controlled substances passed; (d) the country from which the imported controlled substances were imported; the port of exit; and other information as specified in cited section.

Retention period: 3 years.

82.13 Importers of certain chlorofluorocarbons (CFC's) and brominated compounds (halons) to reduce the risk of stratospheric ozone depletion.

To maintain (a) dated records of the quantity of each of the controlled substances produced at each facility; (b) dated records of the quantity of controlled substances used as a feedstocks in the manufacture of controlled and non-controlled substances introduced into the production process of new controlled substances at each facility; (c) dated records of the quantity of HCFC-22 and CFC-116 produced with each facility also producing controlled substances; and (d) other records as specified in cited section.

82.13 Persons requesting additional production allowances in addition to baseline production allowances or producers who purchase controlled substances used or consumed as feedstock for other substances (chlorofluorocarbons and halons). [Added]

To maintain (a) dated records of the quantity and calculated level of controlled substance used and entirely consumed in the manufactured of another chemical; (b) copies of the invoices or receipts documenting the sale from the producer or importer of the controlled substance to the person; (c) dated records of the names, commercial use and quantities of the resulting chemical(s); and (d) dated records of shipments to purchasers of the resulting chemicals.

Retention period: 3 years.

86.090-7 Manufacturers of new motor vehicles (or new motor vehicle engines) subject to the emission standards or procedures. [Added]

To maintain general and individual records consisting of:

(a) Identification and description and certification vehicles (or certification engines) for which testing is required;

(b) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine);

(c) A description of all procedures used to test each certification vehicle (or certification engine);

Note: A properly filed application for certification following the format prescribed by the EPA for the appropriate model year may be considered records.

(d) A brief history of each motor vehicle (or motor vehicle engine) used for certification;

(e) All emission tests performed (except tests performed by EPA directly), including tests results, the date and purpose of each test, and the number of miles accumulated on the vehicle or the number of hours accumulated on the engine;

(f) The date of each mileage (or service) accumulation run, listing the mileage (or the number of operating hours) accumulated.

Retention period: 6 years after issuance of all certificates of conformity. Routine emission test records-1 year after issuance of all certificates.

86.090-7 Manufacturers (or contractors for the manufacturers, if applicable) of new vehicles or engines certified under any of the averaging or banking programs. [Added]

To maintain adequately organized and indexed records containing the following:

(a) EPA engine family;

(b) Vehicle (or engine) model year and build date;

(c) Vehicle (or engine) identification number;

(d) BHP rating (heavy duty only);

(e) Purchaser and destination;

(f) Assembly plant; and other such information as specified in cited section.

Retention period: 6 years from the due date for the end-of-model year report.

86.091-7 Manufacturers of new motor vehicles (or new motor vehicle engines) subject to the emission standards or procedures. [Added]

See 40 CFR 86.090-7.

86.091-15 Manufacturers of heavy-duty engines eligible for the nitrogen and particulate averaging, trading, and banking programs. [Added]

To maintain the quarterly records required by 40 CFR 86.091-7(c)(8).

86.107-90 Manufacturers of petroleum-fueled and methanol-fuel light-duty vehicles and light-duty trucks.

(a) To maintain permanent records of results at the initiation and termination of each diurnal or hot soak in measuring hydrocarbon (hydrocarbons plus methanol as appropriate).

(b) For the methanol sample to maintain permanent records of the following: (1) The volumes of deionized water introduced into each impinger; (2) the rate and time of sample collection; (3) the volumes of each sample introduced into the gas chromatograph; (4) the flow rate of carrier gas through the carrier; and (5) the chromatogram of the analyzed sample.

86.142-90 Manufacturers of 1977 and later motor year new light-duty vehicles and new light-duty trucks subject to emission test procedures.

To maintain for each test: (a) Test number; (b) system or device tested (brief description); (c) date and time of day for each part of the test schedules; (d) instrument operated; (e) driver or operator; (f) vehicle ID number, manufacturer, model year, standard, engine family, evaporative emissions family, basic engine description; and such other information as cited in section.

86.605 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and diesel light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.606-88 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and diesele light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain equivalency documentation if using an equivalent method when measuring the temperature of the test fuel at other than

the approximate mid-volume of the fuel tank and when draining the test fuel from other than the lowest point of the tank.

Retention period: 1 year after completion of all testing in response to a test order.

86.1005-88 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.1006-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy duty or engine or light-duty trucks.

To maintain testing and auditing records as specified in section cited.

Retention period: 1 year after completion of all testing in response to a test order.

86.1006-88 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

See 40 CFR 86.606-88.

86.1006-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy-duty engines or light-duty trucks.

To maintain and make available to the EPA Administrator upon request, equivalency test documentation.

86.1242-90 Manufacturers of new gasoline-fueled and methanol-fueled heavy duty vehicles.

See 40 CFR 86.142-90.

122.21 Persons holding or applying for permits to discharge wastes pursuant to the national pollutant discharge elimination program.

To maintain records of all information resulting from monitoring activities and relating to all sludge-related application data and other such information as indicated in section cited.

Retention period: 5 years (or longer as required by 40 CFR Part 503), except for records of monitoring information—3 years.

142.14 State agencies having primary enforcement responsibilities over public water.

To maintain records of tests, measurement, analyses, decisions, and determinations performed on each public water system to determine compliance with applicable provisions of State primary drinking water regulations.

Retention period: (a) Records of turbidity measurements—for less than 1 year; (b) records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness and applicable reporting requirements—not less than 1 year; (c) records of decisions—40 years or until 1 year after the decision is reversed or revised; (d) records of any determination that a public water system supplied by a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment—40 years or until withdrawn; (e) records of analyses for contaminants other than microbiological contaminants (including total coliform, fecal coliform, and hetertrophic plate concentration, other parameters necessary to determine disinfection effectiveness (including temperature and pH measurements) and turbidity—40 years; (f) records of microbiological analyses of repeat or special samples—1 year in the form of actual laboratory reports or in an appropriate summary form; and (g) records of decisions made pursuant to the total coliform provisions of 40 CFR Part 141—5 years.

160.29 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 5 years.

160.63 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain written records of all inspection, maintenance, testing, calibrating, and/or standardizing operations. Also to maintain written records of nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 2 years.

160.81 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 160.195.

160.120 Testing facilities conducting studies that support applications for a research or marketing permits for pesticides regulated by EPA.

To maintain with the protocol records of all changes in or revisions of an approved protocol and the reasons therefore.

Retention period: In accordance with 40 CFR 160.195.

160.195 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

(a) To maintain documentation records, raw data, and specimens pertaining to a study and required to be retained.

Retention period: (1) In the case of a study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor holds any research or marketing permit to which the study is pertinent.(2) A period of at least 5 years following the date on which the results of the study are submitted to the EPA in support of an application for research marketing year. (3) In other situations (e.g. where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(b) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability land quality during storage shall be retained only as long as the quality of the preparation affords evaluation.

(c) To maintain the master schedule sheet, copies of protocols and records of quality assurance inspections in accordance with 40 CFR 160.195(b).

(d) To maintain summaries of training and experience and job description in accordance with 40 CFR 160.195(b).

259.54 Generators of medical waste, including generators of less than 50 pounds per month. [Amended]

(a) To keep a copy of each tracking form signed in accordance with 40 CFR 259.52

Retention period: For at least 3 years from the date the waste was accepted by the initial transporter.

(b) To retain a copy of all exception reports required to be submitted under 40 CFR 259.55(c).

Retention period: 3 years from when the exception report was submitted.

(c) To maintain a shipment log at the original generation point.

Retention period: For a period of 3 years from the date the waste was shipped.

(d) To maintain a shipment log at each central collection point and other such records as specified in cited section.

Retention period: For a period of 3 years from the date that regulated medical waste was accepted from each original generation point.

259.55 Generators of medical waste including generators of less than 50 pounds per month. [Added]

To maintain a copy of the exception report.

Retention period: For a period of 3 years from the due date of the report.

259.61 Generators of regulated medical waste who incinerate regulated medical waste on-site. [Added]

(a) To keep an operating log at the incineration facility.

Retention period: From June 22, 1989 to June 22, 1991.

(b) To maintain the following information for each shipment of regulated medical waste accepted:

(1) The date the waste was accepted;

(2) The name and State permit or identification number of the generator who originated the shipment. If the State does not issue permit or identification numbers, then the generators' address;

(3) The total weight of the regulated medical waste accepted from the originating generator; and

(4) The signature of the individual accepting the waste.

Retention period: Until at least June 22, 1992.

(c) To keep copies of all tracking forms if subject to the tracking form requirements.

Retention period: 3 years from the date the waste was accepted.

(d) To retain a copy of the on-site incinerator report form.

Retention period: For 3 years from the date of submission.

259.76 Transporters of medical waste.

To retain a copy of each tracking form in accordance with 40 CFR 259.77.

259.77 Transporters of regulated medical waste. [Amended]

(a) To keep a copy of the tracking form signed by the generator, the previous transporter (if applicable), and the next party, which may be one of the following: Another transporter or the owner or operator of an intermediate handling facility, or destination facility.

Retention period: For a period of 3 years from the date the waste was accepted by the next party.

(b) For regulated medical waste that is not accompanied by a generator—initiated tracking form, to retain a copy of all transporter-initiated tracking forms and consolidation logs.

Retention period: For a period of 3 years from the date the waste was accepted by the transporter.

(c) For any regulated medical waste that was received by the transporter accompanied by a tracking form and consolidated by a tracking form and consolidated or remanifested by the transporter to another tracking form, to retain (1) a copy of the generator-initiated tracking form signed by the transporter; (2) a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility and all associated consolidation logs.

Retention period: (1) 3 years from the date the waste was accepted by the transporter; and (2) 3 years from the date the waste was accepted by the intermediate handler or destination facility.

(d) To retain a copy of each transporter report required by 40 CFR 259.78.

Retention period: 3 years after the date of submission.

259.81 Owners or operators of facilities including destination and intermediate facilities receiving regulated medical waste generated in a Covered State. [Amended]

(a) To retain a copy of each tracking form in accordance with 40 CFR 259.83

(b) To retain a copy of the tracking form or shipping papers if signed in lieu of the tracking form.

Retention period: For at least 3 years from the date of acceptance of the regulated medical waste.

259.83 Owners or operators of destination facilities or intermediate handlers receiving regulated medical waste generated in a Covered State. [Amended]

(a) To maintain (1) copies of all tracking forms and logs; (2) the name and State permit or identification number of each generator who delivered waste to the destination facility or intermediate handler, if the State does not issue permit or identification numbers then the generator's address; and (3) copies of all discrepancy reports.

(b) To maintain the following information for each shipment of regulated medical waste accepted: (1) The date the waste was accepted; (2) the name and State permit or identification number of the generator who originated shipment. If the State does not issue permit or identification numbers, then the generator's address; (3) the total weight of the regulated medical waste accepted from the originating generator; and (4) the signature of the individual accepting the waste.

Retention period: 3 years from the date the waste was accepted.

259.91 Persons engaged in rail transportation of regulated medical waste generated in a Covered State.

To retain a copy of the tracking forms and rail shipping papers in accordance with 40 CFR 259.77.

261.31 Hazardous waste generators and treatment, storage, and disposal facilities. [Added]

To maintain in operating or other onsite records, documents and data sufficient to prove that the unit is an aggressive biological treatment unit and the sludges sought to be exempted from the definition of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

261.35 Hazardous waste generators. [Added]

To maintain the following records documenting the cleaning and replacement as part of the facilities operating records:

(a) The name and address of the facility;

(b) Formulations previously used and date on which their use ceased in each process at the plant;

(c) Formulations currently used in each process at the plant;

(d) The name and address of any persons who conducted the cleaning and replacement;

(e) The dates on which cleaning and replacement were accomplished;

(f) The dates of sampling and testing; and other information as specified in section cited.

262.34 Hazardous waste generators. [Added]

To maintain records on:

(a) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

264.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities. [Added]

To keep a written operating record of the facility.

Retention period: Until at least closure of the facility; monitoring data at disposal facilities: Throughout the post-closure period; records for inspections: 3 years.

264.571 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified registered professional engineer that attests to the results of the evaluation.

264.572 Owners or operators of hazardous waste treatment, storage, and disposal facilities. [Added]

(a) To maintain records sufficient to document that all treated wood is held on the pad following treatment.

(b) To maintain, as part of the operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

264.573 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain the design and operating requirements inspection certification as part of the facility operating record.

264.1035 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain (a) an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation; (b) up-to-date documentation of compliance with the process vent standards; (c) design documentation and monitoring, operating, and inspection information for each closed-vent system and control device requirement; and other information as specified in section cited.

264.1064 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain in the operating record (a) records on equipment identification number and hazardous waste management unit identification; (b) approximate locations within the facility; (c) type of equipment; (d) inspection log; (e) design documentation and monitoring, operating, and inspection information for each closed-vent system and control device requirements; and other such information as specified in section cited.

265.441 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.571.

265.443 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.572.

265.444 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.573.

265.1035 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.1035.

265.1064 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.1064.

268.7 Owners and operators of hazardous waste treatment, storage, and disposal facilities. [Amended]

To maintain on-site a copy of the notification and certification required for each waste shipment together with the tolling agreement.

Retention period: For at least 3 years after termination or expiration of the agreement. The 3-year retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activitiy or as requested by the Administrator.

302.8 Persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs). [Added]

To maintain on file at the facilities or in the case of vessels at the offices within the U.S., in either ports or calls, places of regular berthing, or the headquarters of the businesses operating the vessels, all notification supporting documents, materials and other information.

Retention period: 1 year.

501.15 Applicants for the State sludge management program.

To maintain records of all data used to complete permit applications and any supplemental information.

Retention period: 5 years from the date the application is signed or as required by 40 CFR Part 503.

501.15 Persons holding permits under the State sludge management program.

To retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the application for the permit.

Retention period: At least 5 years from the date of the sample, measurement, report or application, or longer as required by 40 CFR Part 503.

This period may be extended by request of the Director at any time.

721.17 Manufacturers, importers, and processors of chemical substances which EPA has determined are significant new uses under certain provisions of the Toxic Substances Control Act.

To maintain documentation of information contained in that person's significant new use notice.

Retention period: For a period of 5 years from the date of the submission of the significant new use notice.

721.72 Manufacturers, importers, and processors of substances; significant new use rules.

To maintain records documenting establishment and implementation of a hazard communication program. The hazard communication program will, at a minimum, describe how the requirements of this section for labels, MSDs, and other forms of warning material will be satisfied.

Retention period: 5 years from the date of creation.

721.125 Manufacturers, importers, and processors of substances; significant new use rules.

(a) To maintain records documenting the manufacture and importation volume of the substance and the corresponding dates of manufacture and import.

(b) To maintain records documenting volumes of the substance purchased in the United States by processors of the substance, names, and addresses of suppliers, and corresponding dates of purchases.

(c) To maintain records documenting establishing and implementation of a program for the use of any applicable personal protective equipment required under 40 CFR 721.63.

Retention period: 5 years from the date of their creation.

721.224 Manufacturers, importers, and processors of 2-chloro-N-methyl-N-substituted acetamide (generic name). [Added]

See 40 CFR 721.125.

721.263 Manufacturers, importers, and processors of substituted aliphatic acid halide (generic name). [Added]

See 40 CFR 721.125.

721.286 Manufacturers, importers, and processors of acrylamide, polymer with substituted alkylacrylamide salt (generic name). [Added]

See 40 CFR 721.125.

721.268 Manufacturers, importers, and processors of adipic acid, polymer with 1,4-cyclohexane-dimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (generic name). [Added]

See 40 CFR 721.125.

721.273 Manufacturers, importers, and processors of aliphatic diurethane acrylate ester. [Added]

See 40 CFR 721.125.

721.275 Manufacturers, importers, and processors of alkyldicarboxylic acids, polymers with alkanepolyol and TDI, alkanol blocked, acrylate. [Added]

See 40 CFR 721.125.

721.277 Manufacturers, importers, and processors of tert-Amyl peroxy alkylene ester (generic name). [Added]

See 40 CFR 721.125.

721.278 Manufacturers, importers, and processors of amino acrylate monomer. [Added]

See 40 CFR 721.125.

721.288 Manufacturers, importers, and processors of alkanepolyol phosphate ester (generic name). [Added]

See 40 CFR 721.125.

721.289 Manufacturers, importers, and processors of alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester. [Added]

See 40 CFR 721.125.

721.290 Manufacturers, importers, and processors of alkenoic acid, trisubstituted-phenylalkyl-disubstituted-phenyl ester. [Added]

See 40 CFR 721.125.

721.291 Manufacturers, importers, and processors of monosubstituted alkoxyaminotriazines (generic name). [Added]

See 40 CFR 721.125.

721.293 Manufacturers, importers, and processors of amide of polyamine and organic acid. [Added]

See 40 CFR 721.125.

721.295 Manufacturers, importers, and processors of reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (generic name). [Added]

See 40 CFR 721.125.

721.296 Manufacturers, importers, and processors of alkylphenoxypolyalkoxyamine (generic name). [Added]

See 40 CFR 721.125.

721.435 Manufacturers, importers, and processors of aromatic amine compound. [Added]

See 40 CFR 721.125.

721.440 Manufacturers, importers, and processors of aromatic nitro compound. [Added]

See 40 CFR 721.125.

721.445 Manufacturers, importers, and processors of sodium salt of an alkylated, sulfonated aromatic (generic name). [Added]

See 40 CFR 721.125.

721.450 Manufacturers, importers, and processors of substituted aromatic (generic). [Added]

See 40 CFR 721.125.

721.454 Manufacturers, importers, and processors of alkyl alkenoats, azobis-. [Added]

See 40 CFR 721.125.

721.467 Manufacturers, importers, and processors of benzene, substituted, alkyl acrylate derivative (generic name). [Added]

See 40 CFR 721.125.

721.523 Manufacturers, importers, and processors of brominated aromatic compound (generic name). [Added]

See 40 CFR 721.125.

721.555 Manufacturers, importers, and processors of 1, 3-benzenediamine, 4-(1,1-dimethylethyl)-or-methyl complying with the significant new use rule requirements. [Added]

In addition to the requirements of 40 CFR 721.40, to maintain the following records:

(a) Any determination that gloves are impervious to the substance;

(b) Names of persons who have attended safety meetings, the dates of such meetings, and copies of any written information provided;

(c) Copies of any MSDSs used;

(d) Names and addresses of all persons to whom the substance is sold or transferred including shipment destination address, if different, the date of each transfer, and the quantity of substance sold or transfer on such date; and other such information as specified in cited section.

Retention period: 5 years after the records are created.

721.557 Manufacturers, importers, and processors of mixture of 1, 3-benzenediamine, 2-methyl-4,6-bis (methylthio)- and 1,3- benzenediamine, 4-methyl-2,6-bis (methylthio); significant new uses; Toxic Substances Control Act.

In addition to the requirements of 40 CFR 721.17, to maintain the following records: (a) Any determination that gloves are impervious to the substance; (b) names of persons who have attended safety meetings; the dates of such meetings, and copies of any written information provided; copies of any MSDs used, names and addresses of all persons to whom the PMN substance is sold or transferred including shipment destination address if different, the date of each sale or transfer, and the quantity of substance sold or transferred on such date; copies of any labels used; and other information as specified in cited section.

Retention period: 5 years after the date the records are created.

721.564 Manufacturers, importers, and processors of substituted benzenedicarboxylic acid, poly (alkyl acrylate) derivative. [Added]

See 40 CFR 721.125.

721.567 Manufacturers, importers, and processors of disulfonic acid rosin amine salt of a benzidine derivative (generic name). [Added]

See 40 CFR 721.125.

721.580 Manufacturers, importers, and processors of alkyldioxyalkyl (substituted 1,1-dimethylethylphenyl) benzotriazole (generic name). [Added]

See 40 CFR 721.125.

721.607 Manufacturers, importers, and processors of bisphenol A, epichlorohydrin, methylenebis (substituted carbomonocycle), polyalkylene glycol, alkanol, methacrylate polymer. [Added]

See 40 CFR 721.125.

721.609 Manufacturers, importers, and processors of bisphenol A, epichlorohydrin, polyalkylenepolyol and polyisocyanate derivative. [Added]

See 40 CFR 721.125.

721.612 Manufacturers, importers, and processors of N,N'-Bis (2,(2-(3-alkyl) thiazoline) vinyl)-1,4-phenylene diamine methyl sulfate double salt (generic name). [Added]

See 40 CFR 721.125.

721.617 Manufacturers, importers, and processors of boric acid, alkyl and substituted alkyl esters (generic name). [Added]

See 40 CFR 721.125.

721.740 Manufacturers, importers, and processors of phosphorylated caprolactone, alkyloxoheteromonocycle and polyalkylene polyol alkyl ether (generic name). [Added]

See 40 CFR 721.125.

721.750 Manufacturers, importers, and processors of carprolactone, polymer with hexamethylene diisocyanate hydroxyalkyl acrylate ester, reaction products with substituted alkanoic acid and metal heteromonocycle. [Added]

See 40 CFR 721.125.

721.765 Manufacturers, importers, and processors of bis(substituted) carbomonocyclic azocarbomonocyclicol (generic name). [Added]

See 40 CFR 721.125.

721.767 Manufacturers, importers, and processors of carbamic acid, (trialkyloxy silylalkyl)-substituted acrylate ester. [Added]

See 40 CFR 721.125.

721.770 Manufacturers, importers, and processors of coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (generic name). [Added]

See 40 CFR 721.125.

721.762 Manufacturers, importers, and processors of aromatic diamines (generic name). [Added]

See 40 CFR 721.125.

721.763 Manufacturers, importers, and processors of dialkanylamide (generic name). [Added]

See 40 CFR 721.125.

721.762 Manufacturers, importers, and processors of alkylated diarylamine, sulfurized (generic name). [Added]

See 40 CFR 721.125.

721.818 Manufacturers, importers, and processors of dimer acids, polymer with polyalkylene glycol, bisphenol A–diglycidyl ether, and alkylenepolyols polyglycidyl ethers (generic name). [Added]

See 40 CFR 721.125.

721.821 Manufacturers, importers, and processors of 2,5–dimercapto–1,3,4–thiadiazole, alkyl polycarboxylate (generic name). [Added]

See 40 CFR 721.125.

721.863 Manufacturers, importers, and processors of alkylated diphenyl oxide (generic name). [Added]

See 40 CFR 721.125.

721.880 Manufacturers, importers, and processors of distillates (petroleum), C(3–6), polymers with styrene and mixed terpenes (generic name). [Added]

See 40 CFR 721.125.

721.958 Manufacturers, importers, and processors of reaction product of alkanediol and epichlorohydrin. [Added]

See 40 CFR 721.125.

721.960 Manufacturers, importers, and processors of acid modified acylated epoxide. [Added]

See 40 CFR 721.125.

721.976 Manufacturers, importers, and processors of perfluoroalkyl epoxide (generic name). [Added]

See 40 CFR 721.125.

721.977 Manufacturers, importers, and processors of modified acrylic ester (generic name). [Added]

See 40 CFR 721.125.

721.978 Manufacturers, importers, and processors of alkyl ester (generic name). [Added]

See 40 CFR 721.125.

721.979 Manufacturers, importers, and processors of substituted aminobenzoic acid ester (generic name). [Added]

See 40 CFR 721.125.

721.983 Manufacturers, importers, and processors of unsaturated amino alkyl (generic name). [Added]

See 40 CFR 721.125.

721.990 Manufacturers, importers, and processors of methacrylic ester. [Added]

See 40 CFR 721.125.

721.1006 Manufacturers, importers, and processors of vinyl epoxy ester. [Added]

See 40 CFR 721.125.

721.1027 Manufacturers, importers, and processors of aliphatic polyglycidyl ether. [Added]

See 40 CFR 721.125.

721.1032 Manufacturers, importers, and processors of perhalo alkoxy ether. [Added]

See 40 CFR 721.125.

721.1033 Manufacturers, importers, and processors of phosphorylated oxoheteromonocycle polyoxyethylene ether (generic name). [Added]

See 40 CFR 721.125.

721.1040 Manufacturers, importers, and processors of fatty acid amine salt (generic name). [Added]

See 40 CFR 721.125.

721.1045 Manufacturers, importers, and processors of trimethylolpropane fatty acid diacrylate. [Added]

See 40 CFR 721.125.

721.1060 Manufacturers, importers, and processors of formaldehyde, polymer with bisphenol A and substituted phenol (generic name). [Added]

See 40 CFR 721.125.

721.1078 Manufacturers, importers, and processors of haloalkyl substituted cyclic ethers. [Added]

See 40 CFR 721.125.

721.1082 Manufacturers, importers, and processors of substituted ethylene diamine, methyl sulfate quarterized (generic name). [Added]

See 40 CFR 721.125.

721.1125 Manufacturers, importers, and processors of substituted alkyl halide. [Added]

See 40 CFR 721.125.

721.1208 Manufacturers, importers, and processors of alkyl peroxy–2–ethyl hexanoate. [Added]

See 40 CFR 721.125.

721.1232 Manufacturers, importers, and processors of nitrophenoxyalkanoic acid substituted thiazino hydrazide (generic name). [Added]

See 40 CFR 721.125.

721.1235 Manufacturers, importers, and processors of hydrazinecarboxamide, N,N'–(methylenedi–4,1–phenylene)bis[2,2–dimethyl– [Added]

See 40 CFR 721.125.

721.1243 Manufacturers, importers, and processors of substituted hydroxylamine. [Added]

See 40 CFR 721.125.

721.1265 Manufacturers, importers, and processors of metal salts of complex inorganic oxyacids (generic name). [Added]

See 40 CFR 721.125.

721.1272 Manufacturers, importers, and processors of metalated alkylphenol copolymer (generic name). [Added]

See 40 CFR 721.125.

721.1285 Manufacturers, importers, and processors of hydroxyalkyl methacrylate, alkyl ester. [Added]

See 40 CFR 721.125.

721.1287 Manufacturers, importers, and processors of 2–(2–Hydroxy–3–tert–butyl–5–methylbenzyl)–4–methyl–6–tert–butylphenyl methacrylate. [Added]

See 40 CFR 721.125.

721.1290 Manufacturers, importers, and processors of substituted oxide alkylene polymer, metacrylate. [Added]

See 40 CFR 721.125.

721.1390 Manufacturers, importers, and processors of methylenebis (4–isocyanato benezene), polymer with polycaprolactone triol and alkoxylated alkanepolyol, hydroxyalkyl methacrylate ester. [Added]

See 40 CFR 721.125.

721.1395 Manufacturers, importers, and processors of methylenebistrisubstituted aniline (generic name). [Added]

See 40 CFR 721.125.

721.1454 Manufacturers, importers, and processors of monoacrylate. [Added]

See 40 CFR 721.125.

721.1460 Manufacturers, importers, and processors of naphthalene, 1,2,3,4–tetrahydro (1–phenylethyl) (specific name). [Added]

See 40 CFR 721.125.

721.1466 Manufacturers, importers, and processors of 2–Naphthalenecarboxamide–N–aryl–3–hydroxy4 arylazo (generic name). [Added]

See 40 CFR 721.125.

721.1470 Manufacturers, importers, and processors of nickel acrylate complex. [Added]

See 40 CFR 721.125.

721.1475 Manufacturers, importers, and processors of substituted nitrile (generic name). [Added]

See 40 CFR 721.125.

721.1477 Manufacturers, importers, and processors of disubstituted nitrobenzene (generic name). [Added]

See 40 CFR 721.125.

721.1478 Manufacturers, importers, and processors of haloniribenzoic acid, substituted (generic name). [Added]

See 40 CFR 721.125.

721.1483 Manufacturers, importers, and processors of substituted phosphate ester (generic). [Added]

See 40 CFR 721.125.

721.1488 Manufacturers, importers, and processors of Nitrothiophene–carboxylic acid, ethyl ester, bis [[[[(substituted)]amino] a lkylphenyl]azo] (generic name). [Added]

See 40 CFR 721.125.

721.1489 Manufacturers, importers, and processors of unsaturated organic compound. [Added]

See 40 CFR 721.125.

721.1490 Manufacturers, importers, and processors of 7–Oxabicyclo [4.1.0] heptane, 3–ethenyl, homopolymer, ether with 2–ethyl–2–(hydroxymethyl)–1,3–propanediol (3:1), epoxidized. [Added]

See 40 CFR 721.125.

721.1491 Manufacturers, importers, and processors of substituted dialkyl oxazolone (generic name). [Added]

See 40 CFR 721.125.

721.1495 Manufacturers, importers, and processors of 3–oxapanone, polymer with 4,4'–(1,methylethylidene) bisphenol and 2,2–[1–methylethylidene)bis(4,1–phenyleneoxymethylene) bisoxirane, graft. [Added]

See 40 CFR 721.125.

721.1500 Manufacturers, importers, and processors of reaction product of hydroxyethyl acrylate and methyl oxirane. [Added]

See 40 CFR 721.125.

721.1504 Manufacturers, importers, and processors of substituted oxirane. [Added]

See 40 CFR 721.125.

721.1535 Manufacturers, importers, and processors of phenol, 4,4–(9H–fluoren–9–ylidene)bis– [Added]

See 40 CFR 721.125.

721.1537 Manufacturers, importers, and processors of phenol, 4,4'–methylene–bis(2,6–dimethyl– [Added]

See 40 CFR 721.125.

721.1538 Manufacturers, importers, and processors of phenol, 4,4'(oxybis(2,1–ethanediylthio)bis– [Added]

See 40 CFR 721.125.

721.1540 Manufacturers, importers, and processors of Phenol, 4,4'–[methylenebis(oxy–2,1–ethanediylthio)] bis– [Added]

See 40 CFR 721.125.

721.1541 Manufacturers, importers, and processors of sulfurized alkylphenols. [Added]

See 40 CFR 721.125.

721.1542 Manufacturers, importers, and processors of trisubstituted phenol (generic name). [Added]

See 40 CFR 721.125.

721.1544 Manufacturers, importers, and processors of sulfur bridged substituted phenols (generic name). [Added]

See 40 CFR 721.125.

721.1560 Manufacturers, importers, and processors of 1,1–dimethylpropyl peroxyester (generic name). [Added]

See 40 CFR 721.125.

721.1565 Manufacturers, importers, and processors of substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name). [Added]

See 40 CFR 721.125.

721.1608 Manufacturers, importers, and processors of phosphonium salt (generic name). [Added]

See 40 CFR 721.125.

721.1611 Manufacturers, importers, and processors of phosphoric acid, 1,2–ethanediyl tetrakis(2–chloro–1–methylethyl) ester. [Added]

See 40 CFR 721.125.

721.1612 Manufacturers, importers, and processors of polymer of alkyl carbomonocycle diisocyanate with alkanepolyol polyacrylate. [Added]

See 40 CFR 721.125.

721.1616 Manufacturers, importers, and processors of polyalkanepolyol alkylamine (generic name). [Added]

See 40 CFR 721.125.

721.1617 Manufacturers, importers, and processors of polyalkylpolyalkazane, bis (substituted acrylate). [Added]

See 40 CFR 721.125.

721.1631 Manufacturers, importers, and processors of epoxidized polybutene. [Added]

See 40 CFR 721.125.

721.1632 Manufacturers, importers, and processors of polymer. [Added]

See 40 CFR 721.125.

721.1624 Manufacturers, importers, and processors of polymer of adipic acid, alkanepolyol, alkyldiisocyanatocarbomonocycle, hydroxyalkyl acrylate ester. [Added]

See 40 CFR 721.125.

721.1630 Manufacturers, importers, and processors of polymer of alkane polyol and polyalkylpolyisocyanato–carbomonocycle, acetone oxime–blocked (generic name). [Added]

See 40 CFR 721.125.

721.1632 Manufacturers, importers, and processors of alkanoic acid, butanediolk and cyclohexaneal–kanol polymer (generic name). [Added]

See 40 CFR 721.125.

721.1634 Manufacturers, importers, and processors of polymer of alkanoic acid, substituted alkylacrylate sodium salt (generic name). [Added]

See 40 CFR 721.125.

721.1638 Manufacturers, importers, and processors of polymer of substituted alkylphenol formaldehyde and phthalic anhydride, acrylate (generic name). [Added]

See 40 CFR 721.125.

721.1641 Manufacturers, importers, and processors of polymer of hydroxethyl acrylate and polyisocyanate. [Added]

See 40 CFR 721.125.

721.1645 Manufacturers, importers, and processors of polymer of maleic anhydride, benzenedicarboxylic acid and disubstituted alkylamine (generic name). [Added]

See 40 CFR 721.125.

721.1646 Manufacturers, importers, and processors of polyethylenepolyamine and alkanediol diglycidyl ether. [Added]

See 40 CFR 721.125.

721.1648 Manufacturers, importers, and processors of polymer of styrene, substituted alkyl methacrylates, 2–ethylhexyl acrylate, methacrylic acid and substituted bis(benzene). [Added]

See 40 CFR 721.125.

721.1700 Manufacturers, importers, and processors of poly(oxy–1,4–butanediyl),α–(1–oxo–2–propenyl)–ω–[(1–oxo–2–propenyl)oxy]–. [Added]

See 40 CFR 721.125.

BEST COPY AVAILABLE

721.1710 Manufacturers, importers, and processors of polyol carboxylate ester. [Added]

See 40 CFR 721.125.

721.1712 Manufacturers, importers, and processors of nitrate polyether polyol (generic name). [Added]

See 40 CFR 721.125.

721.1715 Manufacturers, importers, and processors of alkoxylated alkane polyol, polyacrylate ester. [Added]

See 40 CFR 721.125.

721.1725 Manufacturers, importers, and processors of polysubstituted polyol. [Added]

See 40 CFR 721.125.

721.1740 Manufacturers, importers, and processors of substituted acrylated alkoxylated aliphatic polyol. [Added]

See 40 CFR 721.125.

721.1760 Manufacturers, importes, and processors of alkyl (heterocyclicyl) phenylazoheteo monocyclic polyone (generic name). [Added]

See 40 CFR 721.125.

721.1763 Manufacturers, importers, and processors of alkyl (heterocyclicyl) phenylazoheteo monocyclic polyone, (alkylimidazolyl) methyl derivative (generic name). [Added]

See 40 CFR 721.125.

721.1778 Manufacturers, importers, and processors of poly(oxo-1,2-ethanediyl),α-(2-methyl-1-oxo-2-propenyl)-ω,C_{16-18}-alkyl ethers. [Added]

See 40 CFR 721.125.

721.1790 Manufacturers, importers, and processors of polyurethane. [Added]

See 40 CFR 721.125.

721.1795 Manufacturers, importers, and processors of 1,3-propanediamine, N,N'-1,2-ethanediylbis-,polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6; 6-tetramethyl-4-piperidinamine. [Added]

See 40 CFR 721.125.

721.1805 Manufacturers, importers, and processors of 2-propenoic acid, 3-(dimethylamino)-2,2-dimethyl-propyl ester. [Added]

See 40 CFR 721.125.

721.1810 Manufacturers, importers, and processors of 2-propenoic acid, 2-hydroxybutyl ester. [Added]

See 40 CFR 721.125.

721.1814 Manufacturers, importers, and processors of 2-propenoic acid, 1,(hydroxymethyl) propyl ester. [Added]

See 40 CFR 721.125.

721.1815 Manufacturers, importers, and processors of 2-propenoic acid, 7-oxabicyclo [4.1.0] hept-3-ylmethyl ester. [Added]

See 40 CFR 721.125.

721.1816 Manufacturers, importers, and processors of 2-propenoic acid, 3,3,5-trimethycyclohexyl ester. [Added]

See 40 CFR 721.125.

721.1818 Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-1,1-dimethylethyl ester. [Added]

See 40 CFR 721.125.

721.1822 Manufacturers, importers, and processors of 2-proenoic acid, 2-methyl-7-oxabicyclo [4.1.0] hept-3-ylmethyl ester. [Added]

See 40 CFR 721.125.

721.1824 Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-,3,3,5-trimethylcyclohexyl ester. [Added]

See 40 CFR 721.125.

721.1828 Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-,7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester. [Added]

See 40 CFR 721.125.

721.1887 Manufacturers, importers, and processors of epoxy resin. [Added]

See 40 CFR 721.125.

721.1889 Manufacturers, importers, and processors of resolcinol, formaldehyde substituted carbomonocycle resin. [Added]

See 40 CFR 721.125.

721.1890 Manufacturers, importers, and processors of carboxy rlyl salt (generic name). [Added]

See 40 CFR 721.125.

721.1895 Manufacturers, importers, and processors of silane, (1,1-dimethylethoxy) dimethoxy (2-methyl propyl)- [Added]

See 40 CFR 721.125.

721.2070 Manufacturers, importers, and processors of alkylene glycol terephthalate and substituted benzoate esters (generic name). [Added]

See 40 CFR 721.125.

721.2075 Manufacturers, importers, and processors of terpenes and terpenoids, limonene fraction, polymer with substituted carbopolycycles (generic name). [Added]

See 40 CFR 721.125.

721.2132 Manufacturers, importers, and processors of tetraglycidelamines (generic name). [Added]

See 40 CFR 721.125.

721.2155 Manufacturers, importers, and processors of 3,3',5,5' tetramethylbiphenyl-4,4'-diol. [Added]

See 40 CFR 721.125.

721.2180 Manufacturers, importers, and processors of substituted thiazino hydrazine salt (generic name). [Added]

See 40 CFR 721.125.

721.2188 Manufacturers, importers, and processors of 1,3,5-triazine,2,4,6-triamine, hydrobromide. [Added]

See 40 CFR 721.125.

721.2192 Manufacturers, importers, and processors of disubstituted alkyl triazines (generic name). [Added]

See 40 CFR 721.125.

721.2194 Manufacturers, importers, and processors of substituted triazine isocyanurate (generic name). [Added]

See 40 CFR 721.125.

721.2196 Manufacturers, importers, and processors of poly(substituted triazinyl) piperazine (generic name). [Added]

See 40 CFR 721.125.

721.2480 Manufacturers, importers, and processors of urea, condensate with poly [oxy (methyl-1,2ethanediyl)]-α-2-aminomethylethyl)-ω(2-aminoethylethoxy) (generic name). [Added]

See 40 CFR 721.125.

721.2490 Manufacturers, importers, and processors of urea, (hexahydro-6-methyl-2-oxopyrimidinyl)- [Added]

See 40 CFR 721.125.

721.2500 Manufacturers, importers, and processors of polyamine unreaformaldehyde condensate (specific name). [Added]

See 40 CFR 721.125.

721.2555 Manufacturers, importers, and processors of urethane acrylate. [Added]

See 40 CFR 721.125.

721.2568 Manufacturers, importers, and processors of polyaromatic urethane. [Added]

See 40 CFR 721.125.

721.2585 Manufacturers, importers, and processors of 3-alkyl-2-(2-aniline) vinyl thiazolinium salt (generic name). [Added]

See 40 CFR 721.125.

749.68 Persons distributing in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990. [Added]

To retain in one location at the headquarters of the distribution documentation showing (a) the name, address, contact, and telephone number of the cooling system owners/operations to whom the chemicals were shipped and (b) the chemicals included in the shipment, the amount of each chemical shipped, and the location(s) at which the chemical will be used.

Retention period: 2 years from the date of shipment.

760.218 Disposal facilities, generators, and commercial storers of PCB waste.

To keep a copy of each Certificate of Disposal.

Retention period: See 40 CFR 761.180.

761.180 Owners or operators of facilities used to dispose of PCBs. [Added]

To maintain annual records on disposal, storage, chemical waste landfills, incineration, high efficiency broilers, and other documentation as specified in section cited.

Retention period: 3 years; chemical waste landfill data 20 years.

761.209 Transporters of PCB waste.

To maintain a copy of the manifest signed by the generator, transporter, and the next designated transporter, if applicable, or the owner or operator of the designated commercial storage or disposal facility.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Generators of PCB waste.

To keep a copy of each manifest signed until a signed copy from the designated commercial storage or disposal facility which received the PCB waste is received.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Water (bulk shipment) transporters of PCB waste.

To retain a copy of the shipping papers for shipments of PCB waste delivered to designated commercial storage or disposal facility by water (bulk shipment).

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Initial rail transporters of PCB waste.

To maintain a copy of the manifest and the shipping paper required to accompany the PCB waste.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Final rail transporters of PCB waste.

To keep a copy of the signed manifest, or the required shipping paper if signed by the designated facility in lieu of the manifest.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

763.178 Persons producing an asbestos-containing product that is subject to a labeling requirements.

To maintain a copy of the label used in compliance.

Retention period: 3 years after the effective date of the ban on distribution in commerce for the product which the labeling requirements apply.

763.178 Persons producing an asbestos-containing product that is subject to a manufacture, importation and/or processing ban.

To maintain the results of the inventory for the banned product.

Retention period: 3 years after the effective date of the ban on manufacture, importation, and processing.

763.178 Persons whose asbestos-producing activities are subject to the manufacture, importation, processing and distribution in commerce bans.

To maintain all commercial transactions regarding the product including the date of purchases and sale and the quantities purchased or sold.

Retention period: 3 years after the effective date of the ban on distribution in commerce for a product.

792.29 Toxic substances control testing facilities.

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 10 years.

792.31 Toxic substances control testing facility management.

To document and maintain such action as raw data, records on the replacement of the study director if it becomes necessary to do so during the conduct of a study.

Retention period: 10 years.

792.33 Toxic substances control testing facilities study directors.

To maintain and verify (a) all experimental data, including observations of unanticipated responses of test systems; (b) notes on unforseen circumstances that may affect the quality and integrity of the study when they occur; and (c) documentation of the corrective action taken.

Retention period: In accordance with 40 CFR 792.195.

792.35 Toxic substances control testing facility quality assurance units.

To maintain a copy of a master schedule sheet of all studies conducted at the testing facility; copies of all protocols pertaining to all studies for which the unit is responsible; and copies of written and properly signed records of each periodic inspection.

Retention period: Indefinitely.

792.63 Toxic substances control testing facility quality assurance units.

To maintain records of all inspection, maintenance, testing, calibrating, standardizing operations, and nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 10 years.

792.81 Toxic substances control testing facilities.

To maintain a historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 792.195.

792.90 Toxic substances control testing facilities.

To maintain as raw data documentation of the analyses of feed and water used for the animals to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed or water are not present at levels above those specified in protocol and to maintain documentation of any use of pest control materials.

Retention period: In accordance with 40 CFR 792.195.

792.105 Toxic substances control testing facilities.

(a) For each batch, to maintain documentation on the indentity, strength, purity, and composition or other characteristics which will appropriately define the test or control substance.

(b) To maintain documentation on the methods, fabrication, or derivation of the test and control substances.

(c) For studies of more than 4 weeks' duration, to reserve samples from each batch of test-control substances.

Retention period: In accordance with 40 CFR 792.195.

792.186 Sponsors and toxic substances control testing facilities.

For each study, to maintain a copy of the final report and of any amendments to it.

Retention period: In accordance with 40 CFR 792.195.

792.190 Toxic substances control testing facilities.

(a) To maintain all raw date, documentation, records, protocols, specimens, and final reports generated as a result of a study.

(b) To maintain correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report.

Retention period: See 40 CFR 792.195.

792.195 Toxic substances control testing facilities–retention period.

(a) Documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the effective date of the applicable final test rule.

(b) In the case of negotiated testing agreement, documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the publication date of the acceptance of a negotiated test agreement.

(c) In the case of testing submitted under section 5, documentation records, raw data, and specimens pertaining to a study and required to be retained under 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 5 years following the date on which the results of the study are submitted to the agency.

(d) Wet specimens, samples of test, control or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water–plants, and wet specimens of blood, urine, feces, biological fluids, do not need to be retained after quality assurance verification.

(e) Master schedule sheet, copies of protocols, records of quality assurance inspections, summaries of training, experience and job description, and records and reports of the maintenance and calibration shall be retained for the length of time specified in 40 CFR 792.195(b).

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

50.103 PHS awardees and applicants institutions for dealing with and reporting possible misconduct in science.

To maintain sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted.

Retention period: For a period of at least 3 years after the termination of the inquiry and shall, upon request, be provided to authorized HHS personnel.

57.2210 Schools of nursing, medicine, and public health or nonprofit private hospitals and other public or nonprofit private entities receiving Nurse Practitioner Traineeship Programs Grants. [Revised]

(a) To maintain the signed statement of appointment as part of the trainee's report.

(b) To maintain an accurate, complete, and retrievable record on each individual who receives a traineeship.

Retention period: Until the trainee's practice commitment is fulfilled or any amount the United States is owed has been paid or waived.

57.4110 Recipients of grants for faculty Training Projects in Geriatric Medicine and Dentistry. [Added]

To retain original copy of the statement which documents the appointment of each fellow. The copy of the statment must be available for program review and financial audit and shall be provided to the fellow for his or her records.

Health Care Financing Administration

42 CFR

405.1101–405.1137 Skilled nursing facilities which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed, 1988]

405.1201–405.1230 Home health agencies which have filed agreements to participate in the health insurance for the aged and disabled program. [Redesignated, 1988; as Part 484]

433.322 State Medicaid agencies.

To maintain separate records of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

435.945 State agencies participating in Medicaid program.

To retain a record of all information items received, including those not followed up and such records shall be made available for quality control review purposes.

Part 442, Subpart F Institutions providing skilled nursing and intermediate care facility services under a State plan for medical assistance. [Removed, 1989]

483.10 Long term care facilities participating in Medicare and Medicaid.

To maintain records that assure full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

Retention period: See 42 CFR 483.75.

483.12 Long term care facilities participating in Medicare and Medicaid.

To maintain in the resident's clinical records, documentation of the transfer or discharge of the resident.

Retention period: See 42 CFR 483.75.

483.60 Long term care facilities participating in Medicare and Medicaid.

To maintain records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation.

Retention period: See 42 CFR 483.75.

483.65 Long term care facilities participating in Medicare and Medicaid.

To maintain records of incident and corrective actions related to infections

Retention period: See 42 CFR 483.75.

483.75 Long term care facilities participating in Medicare and Medicaid.

To maintain clinical records that contain (a) sufficient information to identify the resident; (b) resident's assessments; (c) the plan of care and services provided (d) the results of a preadmission screening conducted by the State; and (e) progress notes.

Retention period: The period of time required by State laws; or 5 years from the date of discharge when there is no requirement in State law; or for a minor, 3 years after a resident reaches legal age under State law.

484.10 Home health agencies; medical programs.

To maintain documentation showing compliance with patient rights requirements.

484.36 Home health agencies; medicare program.

To maintain documentation which demonstrates that the competency evaluation standards are met.

484.48 Home health agencies; medical records.

To maintain for every patient receiving home health services, clinical records containing past and current findings in accordance with accepted professional standards. In addition to the plan of care, the records contain appropriate identifying information; name of physician; drug, dietary, treatment and activity orders; signed and dated clinical and progress notes; copies of summary reports sent to the attending physician; and a discharge summary.

Retention period: 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract is sent with the patient.

493.801 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

To maintain records on handling, preparation, processing, examination and steps in the testing and reporting of results for all proficiency testing samples, including a copy of the proficiency testing program report forms used by the laboratory to record proficiency testing results.

Retention period: For a minimum of 2 years from the date of the proficiency testing event.

493.823 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Bacteriology. [Added]

To maintain documentation of all remedial action taken to correct problems associated with a proficiency testing failure.

Retention period: 2 years from the date of participation in proficiency testing event.

493.825 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Mycobacteriology. [Added]

See 42 CFR 493.823.

493.827 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Mycology. [Added]

See 42 CFR 493.823.

493.829 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Parasitology. [Added]

See 42 CFR 493.823.

493.831 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Virology. [Added]

See 42 CFR 493.823.

493.835 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Syphilis serology. [Added]

See 42 CFR 493.823.

493.837 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–General immunology. [Added]

See 42 CFR 493.823.

493.841 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Routine chemistry. [Added]

See 42 CFR 493.823.

493.843 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Endocrinology. [Added]

See 42 CFR 493.823.

493.845 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Toxicology. [Added]

See 42 CFR 493.823.

493.847 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Urinalysis. [Added]

See 42 CFR 493.823.

493.851 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Hematology. [Added]

See 42 CFR 493.823.

493.850 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–ABO group and Rho (D) group. [Added]

See 42 CFR 493.823.

493.861 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Unexpected antibody detection. [Added]

See 42 CFR 493.823.

493.863 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Compatibility testing. [Added]

See 42 CFR 493.823.

493.865 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Antibody identification. [Added]

See 42 CFR 493.823.

493.1101 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

(a) To maintain records of test requisitions and patient testing.

Retention period: At least 2 years.

(b) To maintain a legally reproduced record of each test result, including preliminary reports.

Retention period: 2 years after date of reporting. Immunohematology reports– 2 years. Pathology test reports– 10 years after the date of reporting.

493.1211 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–procedure manual. [Added]

To maintain copies of each procedure it uses and length of time the procedure was in use.

Retention period: 2 years after a procedure has been discontinued.

493.1215 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

(a) To maintain documentation for the validation of each method that verifies that the method produces test results within the laboratory's stated performance characteristics.

Retention period: Documentation of the validation must be available for the period during which the procedure is used by the laboratory or for 2 years, whichever is longer and must be available to the authorized persons ordering or receiving test results.

Documentation verifying that test systems perform according to the laboratory 's specifications must be available to the authorized persons ordering or receiving test results.

493.1221 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

To maintain records of all quality control activities and of each step in processing and testing of quality control samples to assure that the quality

control samples are tested in the same manner as patient samples.

Retention period: (a) 2 years; (b) Immunohematology quality control records– 5 years.

493.1223 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Quality control–specialities and subspecialities. [Added]

See 42 CFR 493.1221.

493.1225 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Microbiology. [Added]

See 42 CFR 493.1221.

493.1227 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Bacteriology. [Added]

See 42 CFR 493.1221.

493.1229 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Mycobacteriology. [Added]

See 42 CFR 493.1221.

493.1231 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Mycology. [Added]

See 42 CFR 493.1221.

493.1233 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Parasitology. [Added]

See 42 CFR 493.1221.

493.1235 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Virology (quality control). [Added]

To maintain records that reflect the systems used and the reactions observed.

493.1237 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Diagnostic immunology. [Added]

See 42 CFR 493.1221.

493.1239 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Syphilis serology. [Added]

See 42 CFR 493.1221.

493.1241 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–General immunology. [Added]

See 42 CFR 493.1221.

493.1243 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Chemistry. [Added]

See 42 CFR 493.1221.

493.1245 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Routine chemistry. [Added]

See 42 CFR 493.1221.

493.1247 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Endocrinology. [Added]

See 42 CFR 493.1221.

493.1251 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Urinalysis. [Added]

See 42 CFR 493.1221.

493.1253 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Hematology. [Added]

See 42 CFR 493.1221.

493.1255 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Pathology. [Added]

See 42 CFR 493.1221.

493.1257 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Quality control requirements for cytology. [Added]

(a) To maintain records of the number of slides examined by each individual during each 24 hour period and the number of hours each individual spends examining slides in the 24 hour period.

(b) To retain all normal, negative and unsatisfactory slide preparations.

Retention period 5 years from date of examination.

493.1259 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Histopathology. [Added]

To retain (a) stained slides and (b) specimen blocks.

Retention period: (a) At least 10 years from date of examination and (b) at least 2 years from date of examination.

493.1261 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Oral pathology. [Added]

See 42 CFR 493.1211, 493,1215, 493,1221, and 493.1259.

493.1263 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Radioblossasy. [Added]

See 42 CFR 493.1211, 493,1215, 493.1221, and 493.1259.

493.1265 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Histocompatibility. [Added]

To maintain records of the test results for each individual (previously tested specimen is given at least once each month to each individual performing tests as an unknown to verify ability to reporduce test results).

493.1273 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Immunohematological, collection, processing, dating periods, labeling and distribution of blood and blood products. [Added]

See 42 CFR 493.1221.

493.1285 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Facilities investigating transfusion reactions. [Added]

To document that all necessary remedial actions are taken to prevent recurrences and that all policies and procedures are reviewed to assure that they are adequate to ensure the safety of individuals being transfused within the facility.

493.1501 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Quality assurance. [Added]

To maintain records of quality assurance program, document all corrective actions taken to remedy problems identified and make records of corrective actions available to HHS or its designee.

Retention period: 2 years unless other time frames are specified or HH/S specifies a different intervals in Appendix C of the State Operations Manual (HCFA Pub. 7).

493.1601 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs–Inspection. [Added]

See 42 CFR 493.1501.

494.56 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records to show that each employee is qualified for his or her position by means of appropriate State licensure, other certification, training, and experience.

Retention period: Not specified.

494.56 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records of previous screening mammographies obtained and of current and subsequent screening performed.

Retention period: At least 60 calendar months following the date of service or longer if required by State laws. If the supplier should cease to exist before the end of the 60 month period, the records must be transferred to the woman or her primary care provider.

494.64 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records of qualified personnel assignments responsible for equipment quality assurance program specific to mammography imagery and covering all components of the x–ray system, from the x–ray generator to the image developer, to ensure consistently high–quality images with minimum patient exposure.

INTERIOR DEPARTMENT

Office of the Secretary

43 CFR

17.223 Recipients of Federal financial assistance from DOL

To keep records in a form and containing information which Department of the Interior determines may be necessary to ascertain whether compliance of the Age Discrimination Act of 1975, as amended, has been met.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR

7.933 Recipients of Federal financial assistance from FEMA. [Added]

To maintain records in a form acceptable to FEMA and containing information which FEMA determines are necessary to ascertain compliance with the Age Discrimination Act of 1975.

206.16 Persons requesting funds under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

To maintain all books, documents, papers, and records relating to any activity undertaken or funded under the Stafford Act.

220.16 States implementing temporary relocation assistance under the Superfund Program.

To maintain adequate documentation to enable analysis of the program in accordance with regulations, manuals, handbooks, and guidance.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

250.76 State IV–A agencies participating in the Job Opportunities and Basic Skills Training Program.

To maintain financial records and accounts.

Retention period: Not specified.

250.82 State IV–A agencies participating in the Job Opportunities and Basic Skills Training Program.

To maintain an individual case record for each JOB participant.

Office of Child Support Enforcement

45 CFR

303.11 Child support enforcement (IV–D) agencies.

To retain all records for cases closed.

Retention period: For a minimum of 3 years in accordance with 45 CFR Part 74, Subpart D.

TRANSPORTATION DEPARTMENT

Coast Guard

46 CFR

160.176–17 Manufacturers of inflatable lifejackets.

To keep records required by 46 CFR 159.007–13. Such records must also include (a) for each test, the serial number of the test instrument used if there is more than one available; (b) for each test and inspection, the identification of the samples used, the lot number, the approved number, and the number of lifejackets in the lot; (c) for each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot; (d) records of all materials used in production and other such information as specified in cited section.

Retention period: 120 months after preparation.

160.176–19 Inflatable lifejacket servicing facilities.

To maintain records of all completed servicing. Such records must include at least the following: (a) Date of servicing, number of lifejackets serviced, lot identification of the person conducting the servicing; (b) identity of the vessel receiving the serviced lifejackets; and (c) date of return to the vessel.

Retention period: For at least 5 years after records are made and records must be made available to any Coast Guard representative and independent laboratory inspection upon request.

272.7 Operators of operating-differential subsidized vessels. [Removed; record retention requirements now in 272.41]

272.41 Operators of operating–differential subsidized vessels. [Added]

To maintain files arranged by vessel and voyage, which shall include, at a minimum, a copy of the Region Office notice letter, a copy of the Form MA–140 with all supporting documents submitted therewith and the condition survey report.

Retention period: Not less than 3 years after completion of the audit.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

2.954 Importers or manufacturers of radio frequency equipment subject to verification.

To maintain adequate identification records to facilitate positive identification for each verified device.

Retention period: Not specified.

2.955 Manufacturers (or importers of radio frequency equipment subject to verification).

To maintain records of the original design drawings and specifications and of the procedures used for production, inspection, and testing. To also maintain a record of the measurements made on appropriate test site that demonstrates compliance with applicable records. The record shall identify the measurement procedure that was used and shall include all the data required to show compliance with the appropriate regulations, and other records as specified in cited section.

Retention period: 2 years.

2.975 Manufacturers (or importers) of radio frequency equipment subject to verification.

To maintain records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for the device to which the application applies.

Retention period: 2 years after the manufacturer of said equipment has been permanently discontinued, or until the conclusion of an investigation or proceeding if the holder of the grant of

equipment authorization is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted.

15.301 Holders of grants of certifications for perimeter protection systems operating in the frequency bands allocated to television broadcast stations.

To maintain a list of all installations and records of measurements.

Retention period: Not specified.

15.312 Holders of grants of authorization of perimeter protection systems. [Removed, 1986; record retention requirements now in 15.201]

22.117 Licensees in the public mobile radio services. [Amended]

To retain as part of the records a copy of a completed table MOB III found in FCC Form 401. Records shall be made available to the Commission upon request.

Retention period: Not specified.

95.111 Licensees of personal radio services stations transferring control of a corporation. [Added]

To keep as part of the General Mobile Radio Service Service (GMRS) system records the FCC document granting the consent for the change of control. See also 47 CFR 95.113.

97.5 Licensees of amateur radio stations.

To maintain at the station the original written authorization document or photocopy which authorizes the use in accordance with the FCC rules of all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC.

97.28 Persons administering examinations for amateur station operator licensees. [Removed, 1989]

97.36 Volunteer examiner coordinators and volunteer examiners preparing, processing or administering examinations for amateur station operator licensee. [Removed, 1986; record retention requirements now in 97.527]

97.71 Licensees of amateur radio service. [Removed, 1986; record retention requirements now in 97.311]

97.82 Licensees of amateur radio stations. [Removed, 1989]

97.83 Licensees of amateur radio stations. [Removed, 1989]

97.86 Licensees of amateur radio stations. [Removed, 1989]

97.90 Licensees of amateur radio stations. [Removed, 1986]

97.103 Licensees of amateur radio stations.

When deemed necessary by an Engineer in Charge (EIC) to assure compliance with the FCC rules, to maintain a record of station operations containing such items of information as the EIC may require in accordance with 47 CFR 0.314(x) of the FCC rules.

97.311 Licensees of amateur radio stations.

To maintain records documenting all SS emission transmissions. Such records must include sufficient information to enable the FCC using the information contained therein, to demodulate all transmissions.

Retention period: 1 year following the last entry.

97.527 Volunteer examiners and volunteer examiner coordinators preparing, processing, or administering examinations for amateur station operator licensee.

To maintain records of out-of-pocket expenses and reimbursement for each examination session.

Retention period: 3 years.

90.25 Licensees of disaster communications service radio stations. [Removed]

90.27 Licensees of disaster communications service radio stations. [Removed]

GENERAL SERVICES ADMINISTRATION

48 CFR

52.203-6 Contractors holding certificates of procurement integrity. [Added]

To maintain certifications.

Retention period: 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

52.203-8 Contractors holding certificate of procurement integrity-modification.

See 48 CFR 52.203-6.

52.215-2 Contractors having cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contracts.

(a) To maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract.

(b) To maintain books, records, documents and other data (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

Retention period: 3 years after final payment or for any shorter period as specified in 48 CFR Subpart 4.7, or for any longer period required by statute or by other clauses of the contract. If the contract is completely or partially terminated, the records relating to the work terminated shall be retained for 3 years after any resulting final termination settlement; and records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the claims shall be retained until such appeals, litigation, or claims are disposed of.

52.215-32 Contractors submitting the Certificate of Commercial Pricing. [Revised]

To maintain books, records, documents and other data relating to the pricing of commercial items.

Retention period: 3 years after final payment.

52.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended.

To maintain the following records for each employee subject to the Act: (a) Name and address and social security number; (b) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rtes of payments in lieu of fringe benefits, and total daily and weekly compensations; (c) daily and weekly hours worked by each employee; (d) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee; and other such information as specified in cited section.

Retention period: 3 years from the completion of the work. Such records shall be made available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration.

52.222-43 Contractors subject to the Fair Labor Standards Act and Service Contract Act-price adjustment (multiple year and option contracts).

To maintain any directly pertinent books, documents, papers, and records.

Retention period: Until the expiration of 3 years after final payment under the contract.

DEFENSE DEPARTMENT

48 CFR

252.208-7005 Contractors with contracts containing required sources for forging and welded shipboard anchor chain items. [Revised]

See 252.208-7000.

252.222.7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause. [Removed, 1989]

GENERAL SERVICES ADMINISTRATION

48 CFR

552.222-65 Contractors having fixed-price service contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment clause. [Removed, 1989]

552.222-66 Contractors having fixed-price contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment (multi-year and option contracts) Clause. [Removed, 1989]

552.246-72 Contractors having contracts for supplies when such contracts contain source inspection clause.

To maintain at the point for source inspection, records showing for each order received under the contract: (a) Order number; (b) date order received; (c) quantity ordered; (d) date scheduled into production; (e) batch or lot number, if applicable; (f) date inspected and/or tested; (g) date available for shipment; and (h) date shipped or date service completed; and (i) National Stock Number (NSN), or if none is provided in the contract, the applicable item number of oother contractual identification.

Retention period: At least 12 months after contract performance is completed.

552.246-73 Contractors having contracts for supplies when such contracts contain source inspection clause. [Revised, 1988; record retention requirements now in 552.246-72]

OFFICE OF PERSONNEL MANAGEMENT

48 CFR

1652.204-70 Federal employees health benefits carriers. [Added]

To retain and make available all records applicable to a contract term that support the annual statement of operations and the rate submission for the contract term.

Retention period: 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended (April 1984).

To maintain records containing the following information for each employee subject to the Act: (a) Name and address and social security number of each employee; (b) correct work classification or declassifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee; (c) number of daily and weekly hours so worked by each employee; (d) any deductions, rebates, or funds from the total daily or weekly compensation of each employee; and (e) a list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representatives.

Retention period: 3 years from the completion of the work.

1852.222-43 Contractors having contracts containing the Fair Labor Standards Act and Service Contract Act-Price Adjustment (April 1984) clause.

To maintain any directly books, documents, papers, and records.

Retention period: 3 years after final payment under the contract.

1852.245-71 Contractors having contracts containing installation—provided Government property (March 1988) clause.

To maintain records of all items of installation-provided Government property including copies of all transaction documents used to describe changes to the record. The record and transaction documentation shall be maintained in such a condition that at any stage of completion of work under the contract, the status of the property including location, utilization, consumption rate, and identification can be readily ascertained.

Retention period: Not specified.

PANAMA CANAL COMMISSION

48 CFR

3552.236-76 Contractors subject to the accident prevention (Jan. 1990) contracts clause. [Added]

To maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment.

Retention period: Not specified.

3552.236-85 Contractors subject to the record drawings (Jan. 1990) contract clause. [Added]

During the process of the work, to keep a careful and current record, on a separate set of contract drawings, of all changes and corrections from the layouts shown on the drawings.

Retention period: Not specified.

TRANSPORTATION DEPARTMENT

Office of the Secretary

49 CFR

24.9 State and local agencies participating in the uniform relocation assistance and real property acquisition Federal and federally assisted programs.

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with applicable regulations.

Retention period: For at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

37.23 Public transit agencies providing transportation for individuals with disabilities. [Added]

To retain documentation of specific good faith efforts made when purchasing or leasing used vehicles that are not

readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the vehicles were purchased. Records shall be made available on request to the UMTA Administrator.

37.83 Public transit agencies providing transportation for individuals with disabilities. [Added]

To retain documentation of the specific good faith efforts made when purchasing or leasing used rapid or light red vehicles that are not readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the vehicles were purchased. Records shall be made available on request to UMTA Administrator.

37.83 Amtrak and commuter authorities providing transportation for individuals with disabilities. [Added]

To retain documentation of the specific good faith efforts made when purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the cars were purchased. Records shall be made available on request to the UMTA or FRA Administrator, as applicable.

40.29 Drug testing laboratories.

To maintain all records pertaining to a given urine specimen. Such records shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records; performance testing; performance on certification inspection; and hard copies of computer-generated data.

Retention period: 2 years--may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. Documents for any specimen known to be under legal challenge shall be maintained for an indefinite period. Records shall be maintained in confidence.

Research and Special Programs Administration

49 CFR

107.504 Registrants engaging, manufacturing, assembling, certifying, inspecting or repairing cargo tanks or cargo tank motor vehicles.

To maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department.

Retention period: During such time the person is registered with the Department and for 2 years thereafter.

171.16 Motor carriers transporting hazardous materials.

To maintain a copy of the detailed hazardous materials incident reports.

Retention period: 2 years at the carriers' principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

172.802 Carriers transporting hazardous materials. [Added]

To maintain the basic description and technical name of the hazardous material as required by 49 CFR 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the appropriate TDG Regulations, in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification to pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

172.806 Operators of facilities where hazardous materials are received, stored, or handled during transportation.

See 49 CFR 172.802.

173.163 Manufacturers of hydrogen fluoride (hydrofluoric acid, anhydrous) cylinders. [Added]

To maintain data sheet as prescribed by 49 CFR 173.34.

178.30 Carriers transporting or storing hazardous materials. [Added]

To maintain a copy of the dangerous cargo manifest, list, or storage plan.

Retention period: 1 year.

177.806 Shippers of hazardous materials offered by or consigned to the Department of Defense. [Added]

See 49 CFR 173.7.

177.814 Owners of cargo tank motor vehicles and motor carriers.

To maintain cargo tank motor vehicle manufacturer's certificate and other records.

Retention period: See 49 CFR 180.417.

177.816 Owners of motor vehicles transporting flammable cryogenic liquid in cargo tanks. [Added]

To maintain in the driver's qualification file, a record certifying that the current required training has been provided.

Retention period: As long as the driver is employed by the carrier and for 90 days thereafter.

178.320 Manufacturers of DOT specifications cargo tank motor vehicles.

To retain the design certificate at principal place of business.

Retention period: As long as the manufacturer manufacturers DOT specification cargo tanks.

178.601 Non-bulk packaging and package manufacturers. [Added]

(a) To keep records of design qualification tests, including specific types, dates, locations, packaging specifications, test specifics (drop heights, hydrostatic pressures, etc.), results, and test operators' names or name of person responsible for testing, for each packaging, at each location where that packaging is manufactured and at each location where design qualifications tests are conducted.

Retention period: As long as the packaging is produced and for at least two years thereafter.

(b) To keep records of periodic retests, including specific types, dates, location packaging specifications, test specific (drop heights, hydrostatic pressures, etc.), results, and test operators' name or name of person responsible for testing, at each location where that packaging is manufactured and at each location where periodic tests are conducted.

Retention period: Until such tests are successfully performed again and for at least two years from the date of each test.

Note: All records of design qualification tests and periodic dretests must be made available for inspection by a representative of the Department upon request.

180.405 Owners of MC 331 cargo tanks.

To maintain at principal place of business a copy of the last exemption in effect that authorizes the transportation of ethane, refrigerated liquid, or ethane-propane mixture, refrigerated liquid, or hydrogen chloride, refrigerated liquid.

Retention period: During the period the cargo tank is in service.

180.405 Owners of DOT specification cargo tank motor vehicles.

To maintain the certificate that is withdrawn because the cargo tank is not in conformance with the applicable specification requirements.

Retention period: At least 1 year after withdrawal of the certification.

180.409 Inspectors and testers. [Revised]

To maintain a copy of the tester's qualifications with the documents required by 49 CFR 180.417(b).

180.413 Owners of cargo tanks. [Amended]

To maintain at place of business all records of repairs or modifications made to each tank.

Retention period: During the time the tank is in service and for 1 year thereafter. Copies of these records may be retained by a motor carrier, who is not the owner, at principal place of business during the period the tanks are in the carrier service.

180.417 Owners and motor carriers of cargo tanks. [Amended]

To retain a copy of the test and inspection reports.

Retention period: Until the next test inspection of the same type is successfully completed.

180.417 Motor carriers using specification cargo tanks.

To retain the certificate that determines that the cargo tank conforms with the applicable specifications.

Retention period: As long as the cargo tank is used and for 1 year thereafter.

180.417 Owners of cargo tanks.

To maintain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification.

Retention period: Throughout ownership of the cargo tank and for 1 year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photocopies of these documents for at least 1 year.

180.417 Motor carriers who are not owners of cargo tanks.

To retain a copy of the vehicle identification report at principal place of business.

Retention period: For as long as the cargo tank motor vehicle is used by that carrier and for 1 year.

195.39 States receiving full grant-in-aid for pipeline safety compliance program; one-call damage prevention program. [Added]

To maintain a record of each notice of intent to engage in an excavation activity for the minimum time set by the State or, in the absence of such time, for the time specified in the applicable State statute of limitations on tort actions.

199.7 Operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas (LNG) facilities.

To maintain and follow a written anti-drug plan that conforms to applicable requirements and the DOT Procedures.

Federal Railroad Administration

49 CFR

219.503 Railroad companies.

To retain record of pre-employment drug screening tests.

Retention period: 2 years from date of testing.

219.607 Railroad companies. [Removed, 1989; record retention requirements now in 219.713]

219.713 Railroad companies.

(a) To retain records of each test conducted that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements.

Retention period: 2 years from date of sample collection; records of negative reports- 1 year.

(b) To maintain summary records of employee records of employee alcohol and drug test results conducted and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

Retention period: 5 years.

Note: Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

225.27 Railroad companies. [Amended]

(a) To maintain logs, supplementary records, and annual summaries relating to railroad accidents.

Retention period: 5 years after end of calendar year to which they relate.

(b) To retain duplicates of all forms submitted to Federal Railroad Administration relating to railroad accidents.

Retention period: 2 years after end of calendar year to which they relate.

Federal Highway Administration

49 CFR

391.87 Motor carriers and persons operating commercial motor vehicles in interstate commerce. [Amended]

To maintain all records related to the administration and results of the drug testing program for its driver's subject to the testing requirements, including information as specified in cited section.

Retention period: 5 years except records of individual negative test results-12 months.

391.103 Motor carriers and persons operating commercial interstate motor vehicles in interstate commerce. [Added]

To maintain in the driver's qualification files information on controlled substances testing.

Retention period: Not specified.

National Highway Traffic Safety Administration

49 CFR

580.8 Dealers, distributors, and lessors of motor vehicles subject to the Truth in Mileage Act of 1986.

(a) Dealers and distributors: To maintain a photostat, carbon, or other facsimile copy of each odometer mileage statement issued and received.To also retain a photostat, carbon, or other facsimile copy of each power of attorney that they receive.

(b) Dealers and distributors who are granted a power of attorney by their transferor: To retain all powers of attorney at their primary place of business in order that is appropriate to business requirements and thatr permits systematic retrieval.

Retention period: 5 years.

(c) Lessors: To retain each odometer disclosure statement which they receive from a lessee.

Retention period: 5 years following the date they transfer ownership of the leased vehicle.

586.6 Passenger car manufacturers. [Added]

To maintain records of Vehicle Identification Number for each passenger car for which information is reported under 49 CFR 586.5(b)(2).

Retention period: Until December 31, 1997.

592.6 Registered importers of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards.

To establish and maintain organized records, correspondence, and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.

Retention period: 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity.

Urban Mass Transportation Administration

49 CFR

653.31 Recipients of Federal financial assistance from UMTA and operators for such recipients. [Suspended]

To maintain all records related to the collection process and the reports of individuals not passing a drug test.

Retention period: 5 years.

Note: Part 653 was suspended until further notice at 55 FR 2526, Jan. 25, 1990.

INTERSTATE COMMERCE COMMISSION

49 CFR

1044.2 Motor carriers or brokers; filing a designation of process agent form. [Added]

To retain one copy of Form BOC–3, Designation of Agent for Service of Process, at principal place of business.

1061.1 Motor carriers in interstate or foreign commerce. [Added]

To keep a copy of the receipt or bill of lading as prescribed in 49 CFR Part 1220.

1061.2 Motor carriers in interstate or foreign commerce. [Added]

To keep a copy of all expense bills issued for the period prescribed at 40 CFR Part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

1152.32 Railroad companies.

To maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

INTERIOR DEPARTMENT

Fish and Wildlife Service

50 CFR

21.12 State wildlife agencies, municipal parks, and public scientific or educational institutions possessing migratory birds.

To maintain accurate records showing the numbers and kinds of such birds acquired, possessed, and disposed of; the names and addresses of persons from whom received or to whom delivered, and the dates of such transactions.

Retention period: 5 years following the end of the calendar year covered by the records.

21.27 Holders of special purpose permit issued for activities related to migratory birds, their parts, nests, or eggs.

To maintain adequate records describing the conduct of the permitted activity, the number and species of migratory birds acquired and disposed of under the permit, and inventorying and identifying all migratory birds held on December 31 of each calendar year. Records shall be maintained at the address listed on the permit; shall be in, or reproducible in English; and shall be available for inspection by Service personnel during regular business hours.

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

50 CFR

229.6 Exemption Certificate holders; commercial fishing operations.

To maintain on board the fishing vessel, a daily log of fishing effort and incidental takes of marine mammals in such form as prescribed by the Assistant Administrator for Fisheries.

301.14 Operators of vessels five (5) net tons or greater engaged in halibut fishing.

To maintain an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and the total weight of halibut taken daily in each locality.

Retention period: 2 years.

301.15 Operators of vessels engaged in commercial fishing for halibut.

To maintain a record of each such purchase or receipt of halibut on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut when halibut are delivered to other than a commercial fish processor or primary fish buyer.

Retention period: 2 years from the date the fish tickets are made.

301.15 Persons purchasing or receiving halibut.

To maintain records of each such purchase or receipt on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

Retention period: 2 years from the date the fish tickets were made.

380.6 Operators of vessels having harvesting or individual permits to import Antarctic marine living resources into the United States.

To accurately maintain on board the vessel, a fishing logbook and all other reports and records requested by the permit.

Retention period: Not specified.

380.8 Owners and operators of harvesting vessel; Anarctic Marine Living Resources Convention Act of 1984.

To maintain all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

Retention period: Not specified.

630.5 Owners or operators of vessels of the United States who have been issued a permit to fish for or to land swordfish. [Revised]

To maintain daily fishing records on forms available from the Science and Research Director.

Retention period: Monthly.

651.5 Owners and operators of vessels and headboats fishing for or landing reef fish in the Gulf of Mexico EEZ or adjoining waters. [Added]

To maintain a fishing record for each trip or a portion of such trips, as specified by the Science and Research Director, on forms provided by the Science and Research Director.

652.5 Dealers who buy surf clams or ocean quahogs from Federally regulated vessels. [Revised; record retention requirements now in 652.6]

652.6 Dealers receiving surf clams and ocean quahogs for commercial purposes other than transport on land and who do not remove them from the cage. [Added]

To maintain at principal place of business records on (a) date of purchase or receipt; (b) permit number and address; (c) number of bushels by species; (d) cage tag numbers; (e) allocation permit number; (f) vessel name and permit number; (g) price per bushel by species; and (h) disposition of surf claims or ocean quahogs including permit number of recipient.

Retention period: For one year from the date of entry.

652.6 Processors receiving surf clams or ocean quahogs for commercial purposes and remove them from the cage. [Added]

To maintain at principal place of business records containing the following information: (a) Date of purchased or receipt; (b) name, permit number, and mailing address; (c) number of bushels by species; (d) cage number; (e) allocation permit number; (f) price per bushel by species; (g) size distribution; and (h) meat yield per bushel by species.

Retention period: One year.

652.6 Vessel owners or operators conducting Atlantic surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state requiring cage tags or when surrendering the Federal fishing vessel permit. [Added]

To maintain on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director showing (a) name and permit number of the vessel; (b) total amount of bushels of each species taken; (c) date(s) caught; (d) time at sea; (e) duration of fishing time; (f) locality fished; (g) crew size; (h) crew share by percentage; (i) landing port; (j) ldate sold; (k) price per bushel; (l) buyer; (m) tag numbers from cages used; (n) quantity of surf claims or ocean quahogs discarded; and (o) allocation permit number.

Retention period: For one year after the date of the last entry in the log.

672.5 Operators of domestic fishing vessels and managers of shoreside processing facilities.

To maintain timely and accurate records, reports, and logbooks in a legible manner and in English and based on Alaska Local Time (ALT).

Retention period: Original copy of all logbooks must be retained on board the vessel or within the processing facility until the end of the fishing year and for as long after the end of the fishing year as fish or fish products recorded in the logbook are retained on board that vessel or at the processing facility.

675.5 Operators of vessels and managers of shoreside processing facilities.

See 50 CFR 672.5

685.4 Operators of permitted harvesting vessels engaged in Western Pacific Region Pelagic Fisheries. [Added]

To maintain, on board the vessel, an accurate and complete daily fishing log for each entire fishing trip on forms supplied by the Regional Director. All informaiton specified on the form must be recorded within 24 hours of the completion of the fishing day. The daily fishing log will include the following information: (a) Name of vessel; (b) permit number of vessel; (c) date, time, latitude and longitude of the location at which set and the hauling of the longline are begun; (d) number of hooks set; (e) number of lightsticks used; (f) number of fish and tuna by species caught and kept per day; and other such information as specified in section cited.

Retention period: 1 year.

BILLING CODE 1505-02-T

federal register

Friday
March 8, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723 and 845

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Civil Penalty Assessment Conference Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723 and 845

RIN 1029-AB22

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Civil Penalty Assessment Conference Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is revising its Initial and Permanent Regulatory Program regulations governing the assessment of civil penalties under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act). The revision will extend by approximately 30 days the amount of time within which OSM may complete the necessary administrative actions to hold an assessment conference and by 15 days the amount of time within which a person charged with a violation may appeal an assessment conference officer's decision to the Office of Hearings and Appeals.

EFFECTIVE DATES: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Procedural Matters

I. Background

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 et seq., authorizes the Secretary of the Interior to assess civil penalties for violations of the Act. 30 CFR 723.18 of the Initial Program regulations, first promulgated on December 13, 1977 (42 FR 62702), and subsequently revised on September 4, 1980 (45 FR 58780), and February 8, 1988 (53 FR 3664), and 30 CFR 845.18 of the Permanent Program regulations first promulgated on March 13, 1979 (44 FR 15461), and subsequently revised on August 16, 1982 (47 FR 35640), and February 8, 1988 (53 FR 3664), govern the procedures for an assessment conference. When a violation of the Act occurs and a person is served with a notice of a proposed civil penalty assessment for the violation, the person may request an assessment conference during which OSM shall review the proposed assessment or reassessment and consider all relevant information on the violation and the amount of the penalty. At the conclusion of an assessment conference the proposed penalty assessment shall be affirmed, raised, lowered, or vacated by the assessment conference officer. Following the determination by the assessment conference officer, the person may pay the penalty in full or petition the DOI Office of Hearings and Appeals (OHA) for review of a civil penalty in accordance with 30 CFR 723.19 or 845.19. The amount equal to the reassessed or affirmed penalty must then be submitted to OHA (to be held in escrow) along with the petition for review. The proposed rule to revise 30 CFR 723.18(b) and 845.18(b) was published on April 4, 1990 (55 FR 12824). The comment period closed on May 21, 1990. One commenter responded. No request was received for a public hearing and none was held. OSM has adopted the revisions as proposed.

II. Discussion

A. Sections 723.18 and 845.18—Procedures for Assessment Conference

1. Description of Rules

The 1988 revisions to the Initial and Permanent Program regulations at 30 CFR 723.18(a) and 845.18(a) extended by approximately 18 days the time by which a person assessed a civil penalty may request an assessment conference. Specifically, the time was extended from "15 days from the date the proposed assessment or reassessment is mailed" to "30 days from the date the proposed assessment or reassessment is received." However, the regulations at 30 CFR 723.18(b) and 845.18(b), which required OSM to hold an assessment conference "within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later", were not altered. A consequential effect of the revisions to §§ 723.18(a) and 845.18(a) was that the amount of time available for OSM to acknowledge the request for a conference, conduct research in preparation for the conference, schedule the conference, and then hold the conference was reduced from approximately 45 days to less than 30 days. This reduction further compounded the difficulty already experienced by OSM of completing within its regulatory deadline all the steps necessary for holding assessment conferences. The preparatory steps outlined above were discussed in detail in the proposed rule at 55 FR 12625.

Final §§ 723.18(b) and 845.18(b) should provide adequate time to complete these steps by extending the amount of time allowed to hold an assessment conference by approximately 30 days. The rules specify that the 60 day period within which the conference must be held will run "from the date the assessment conference request is received or the end of the abatement period, whichever is later" rather than from the date the assessment is issued.

Since the person requesting the assessment conference is not required to prepay any proposed civil penalty assessment when the conference is requested, the extension of time will not result in any economic hardship for the person requesting the conference and will allow him or her more time to prepare for the conference.

2. Public Comments Received

The one commenter to the current rulemaking voiced three concerns about the proposed and existing assessment conference rules at 30 CFR 723.18(b) and 845.18(b). The commenter's first concern was that the rules illegally expand the time frames of section 518(c) of the Act within which an operator charged with a violation of the Act must either pay the proposed amount in full or, if formally contesting the amount of the penalty or the fact of the violation, prepay the proposed amount into an escrow account with the Secretary. The commenter quoted that portion of section 518(c) which provides:

> Upon the issuance of a notice or order charging that a violation of the Act has occurred, the Secretary shall inform the operator within *thirty days* of the proposed amount of said penalty. The person charged with the penalty shall then have *thirty days* to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account * * *.

(Emphasis added by commenter.)

The commenter cited to *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 842 (1984), and other authorities for the proposition that the plain meaning of section 518(c) precludes the assessment conference time frames specified at 30 CFR 723.18(b) and 845.18(b).

OSM disagrees with the commenter. The informal assessment procedures of 30 CFR 723.18 and 845.18, which have been in existence since 1977 and 1979, respectively, and the changes adopted today are supported by section 518(c) and the Secretary's general rulemaking authority set forth in section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2).

Two 30-day periods are specified in section 518(c) of the Act. The first, the 30-day period between the issuance of a notice of violation or cessation order and the Secretary's notification of the person issued the notice or order of the proposed penalty amount, is directory and waivable by the person requesting the assessment conference, who is part of the class that the provision is aimed at protecting. This view is consistent with court holdings that the first time frame is not jurisdictional. These holdings were based on the fact that the first sentence of section 518(c) does not expressly specify a consequence for failure to comply with its terms. *See United States* v. *Log Mountain Mining Co.*, 550 F. Supp. 611 (E.D. Tenn. 1982), *aff'd. without opinion sub nom. United States* v. *Moore*, 734 F.2d 17 (6th Cir. 1984), *cert. denied*, 469 U.S. 861 (1984), and *United States* v. *Bolton*, 761 F.2d 528 (6th Cir. 1985).[1]

When a person requests an assessment conference under the Secretary's rules, the provision in section 518(c) that the Secretary inform the operator of the amount of the proposed penalty is satisfied upon the assessment conference officer notifying the person assessed of his or her decision to affirm, raise, lower or vacate a penalty. This action provides the person who has been issued a notice of violation or cessation order with final notice of the proposed penalty. By requesting an assessment conference, the person has consented to notification of the proposed penalty amount subsequent to the assessment conference. In effect, such action constitutes a waiver of notification of the proposed penalty within 30 days of the issuance of a notice of violation or cessation order.

The theory that the service of notice of proposed assessment may constitute initial, but not necessarily final, notice is not new. It is already embodied, in part, in the provisions of 30 CFR 723.17(c), 723.19(a), 845.17(c), and 845.19(a) which recognize that, in certain circumstances, reassessment of the initial proposed penalty may occur, and that the period for seeking formal administrative review runs from such reassessment.

[1] On the other hand, the statute does provide a consequence for failure to pay or contest the amount of the penalty in a timely manner and, therefore, this requirement is jurisdictional. The changes to 30 CFR §§ 723.19 and 845.19, described later in this preamble, are a recognition of the jurisdictional nature of this latter requirement.

Since their adoption, the assessment conference procedures have added an increased element of fairness to the enforcement process by allowing the person who has been issued a notice of violation or cessation order to contest the amount of the proposed penalty prior to paying it in full or prepaying it into escrow and pursuing formal administrative review. The amendments adopted today further contribute to that fairness, without prejudice to any other person, including the commenter.

The assessment conference procedures have also contributed to upholding the constitutionality of the 518(c) prepayment provision in the face of challenges that it was violative of due process. *Graham* v. *Office of Surface Min. Reclam. & Enforc.*, 722 F.2d 1106 (3rd Cir. 1983), *Blackhawk Mining Co.* v. *Andrus*, 711 F.2d 753 (6th Cir. 1983), *B & M Coal Corp.* v. *Office of Surface Min. Reclam. & Enforc.*, 699 F.2d 361 (7th Cir. 1983). In upholding the prepayment provision, the courts took into account the statutory and administrative review procedures available to operators prior to prepayment of the proposed penalty.

The *Graham* Court noted that the basic foundation of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Graham*, 722 F.2d at 1111, citing *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965). Under the *Armstrong* standard, adequate time should be afforded both the operator and the conference officer to reasonably comply with each step of the assessment conference procedures outlined at 30 CFR 723.18 and 845.18. The preambles to the present and prior assessment conference rules provide extensive practical justification for the time frames allotted for each of these steps. The commenter's second concern was that the extensive practical justification provided by OSM over the years in support of the assessment conference time frames was "illusory". As its sole basis for this characterization, the commenter pointed to one of the several factors included in the preamble to the proposed rule for further extending the time within which a conference must be held. The commenter objected to that portion of the preamble which explained that:

> Many times the operator is not prepared to present his evidence on short notice. Operators frequently request 2 weeks advance notice of the conference date since they may have attorneys or consultants who will attend.

(55 FR 12824, April 4, 1990.)

The commenter asserted that this justification for further extending the time within which a conference must be held ignores the fact that the operator is on notice of the charge against him and that any "short notice" to the operator is solely the result of his own delay in waiting until the last minute to request a conference.

Again, OSM disagrees with the commenter. Once the request has been made and a tentative conference date been set by the conference officer, an operator needs time to prepare to present his evidence—preeminently by ensuring the attendance of his attorney or consultant. The preamble passage objected to by the commenter is consistent with scheduling difficulties that are typically encountered in firming up an assessment conference date. In addition to considerations of the operator's own availability, the schedules of attorneys and consultants who often represent other clients need to be considered. The amount of advance notice needed to ensure the attendance of all parties concerned is but one of the several factors which must legitimately be considered in prescribing reasonable assessment conference time frames. Under the final rule, extending the time within which a conference must be held to 60 days from the date the request is received allows proper case preparation and reasonable scheduling while continuing to assure the conferences will be held in an expeditious manner.

The commenter's third concern is that the assessment conference time frames at 30 CFR 723.18(b) and 845.18(b) allow an operator to delay the payments prescribed under section 518(c) and thereby lessen OSM's prospects for collection. In support of this proposition, the commenter stated that a 1984 House Report "found that delays throughout the process (from issuance of the notice of violation through formal administrative review) * * * had led to a low collection rate." H.R. Rep. No. 98-1146, 98th Cong., 1st Sess. 5-19 (1984).

The Committee was concerned about "inordinate delays" resulting primarily from the process extending for much longer periods than allowed by the assessment rules. The regulatory time frames do not cause such inordinate delays.

Although the government is concerned about the prompt payment and collection of penalties, a limited extension of the deadline for holding an assessment conference is unlikely to have any effect on the collectability of penalties. The Government must assure the adequacy of the procedural protection available to individuals prior to the deprivation of property. It must

weigh its interest in prompt payment and collection of penalties against the private interest involved and the risk of erroneous deprivation. *Graham*, 722 F.2d at 1111, citing *Mathews* v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 843 (1976). The *Graham* court considered each of these criteria in upholding the prepayment provisions of section 518(c) on the basis of the due process protection provided to the operator prior to prepayment. The time frames for informal review provided under the assessment conference procedures at 30 CFR 723.18(b) and 845.18(b) may therefore be seen as furthering, rather than thwarting, the purposes of section 518(c), as suggested by the commenter.

B. Sections 723.19(a) and 845.19(a)—Request for Hearing.

In response to the comment discussed earlier in this preamble concerning the consistency of the proposed amendments with the time frames of section 518(c) of the Act, OSM re-examined the assessment conference procedures in the context of the section 518(c) requirements. As a result of that comment and OSM's subsequent examination of the statute, OSM is amending 30 CFR 723.19(a) and 845.19(a) to extend the time for submitting a petition for a hearing and prepaying the proposed penalty into escrow from 15 days to 30 days.

As discussed earlier, in situations where an assessment conference is requested and held, the Secretary's final notification to the operator of the amount of the proposed penalty does not occur until service of the conference officer's decision either affirming or reassessing the penalty. Under section 518(c) of the Act, the person wishing to contest either the amount of the penalty or the fact of the violation has 30 days following notice of the proposed penalty amount to forward that amount to the Secretary for placement into escrow. Prior to today's amendments, however, §§ 723.19(a) and 845.19(a) provided that the person charged with the violation has only 15 days from the date of service of the conference officer's action to pay in full or seek formal administrative review.

Accordingly, the Secretary is revising §§ 723.19(a) and 845.19(a) to provide the full 30 days allowed by the statute. This change stems directly from the commenter's concern about the consistency of the Secretary's rules with the time frames set forth in the Act and OSM's subsequent recognition of the need to provide the full 30 days the statute allows to pay the penalty in full or to prepay the penalty amount into escrow and to contest the penalty or violation.

Conforming changes to the OHA rules at 43 CFR 4.1151(b) will also be required to increase from 15 to 30 days the time frame within which a petition for review must be filed following service of notice by an assessment conference officer that the conference is deemed completed.

Effect of the Rule in Federal Program States and on Indian Lands

This rule will apply, through cross-referencing, to the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 906, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. No comments were received concerning unique conditions in any of these States or on Indian lands which would require changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(l) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR part 845. The time allowed for holding an assessment conference is not prescribed in the Act; thus, the applicable standard governing the adequacy of State program provisions under 30 CFR 840.13(c) is whether the approved State programs contain procedural requirements relating to civil penalties which are consistent with (i.e., no less effective than) 30 CFR 845.18, as amended. Because OSM allows the States reasonable latitude in establishing certain procedural time frames, and because this rule merely extends one of such time frames, States do not have to adopt this change.

III. Procedural Matters.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared an environmental assessment, and has made a finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSM Administrative Record at the address previously specified (see *"ADDRESSES"*).

Author

The principal author of this rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2550 (Commercial) or 268–2550 (FTS).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR parts 723 and 845 are amended as follows:

Dated: January 22, 1991.

Dave O'Neal,

Assistant Secretary—Land and Minerals Management.

Subchapter B—Initial Program Regulations

PART 723—CIVIL PENALTIES

1. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268), unless otherwise noted; and Pub. L. 100–34.

2. Section 723.18(b)(1) is revised to read as follows:

§ 723.18 Procedures for assessment conferences.

* * * * *

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

* * * * *

3. Section 723.19(a) is revised to read as follows:

§ 723.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under section 525 of the Act and 43 CFR part 4.

* * * * *

Subchapter L—Permanent Program Inspection and Enforcement Procedures

PART 845—CIVIL PENALTIES

1. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub L. 100–34.

2. Section 845.18(b)(1) is revised to read as follows:

§ 845.18 Procedures for assessment conferences.

* * * * *

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later: *Provided,* That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

* * * * *

3. Section 845.19(a) is revised to read as follows:

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

* * * * *

[FR Doc. 91–5442 Filed 3–7–91; 8:45 am]

BILLING CODE 4310–05–M

federal register

Friday
March 8, 1991

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 16

Health Warning Statement on Labels of Alcoholic Beverages; Request for Information; Notice of Request for Information

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 16

[Notice No. 713]

RIN 1512-AA82

Health Warning Statement on Labels of Alcoholic Beverages—Request for Information (89F-406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of request for information.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice to obtain information which will enable the agency to determine whether the wording of the alcohol health warning statement should be amended. This action is being taken by ATF in order to comply with section 206 of the Alcoholic Beverage Labeling Act of 1988 (ABLA) which requires the Secretary to report to Congress available scientific information which justifies a revision in the health warning statement, together with recommendations for such amendments to the law as he determines to be appropriate and in the public interest.

DATES: Information must be received on or before July 8, 1991.

ADDRESSES: Send information to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, ATTN: Notice No. _____.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On February 14, 1990 ATF issued final regulations (T.D. ATF-294, 55 FR 5414) implementing the provisions of the Alcoholic Beverage Labeling Act of 1988, title VIII of the Anti-Drug Abuse Act of 1988 (enacted November 18, 1988). These regulations, which became effective on November 14, 1990, require that the following health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed in the United States, as well as on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The health warning statement requirement applies to alcoholic beverages bottled on or after November 18, 1989.

The final rule was preceded by a notice of proposed rulemaking (Notice No. 678, February 16, 1989; 54 FR 7184), which solicited comments on the Bureau's temporary regulations (T.D. ATF-262, February 16, 1988; 54 FR 7190). The temporary regulations apply to products bottled between November 18, 1989, and November 13, 1990.

Report to Congress

As stated in section 206 of the ABLA, 27 U.S.C. 217:

If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 36-month period following the date of enactment of this title, the Secretary [of the Treasury] finds that available scientific information would justify a change in, addition to, or deletion of the [health warning] statement, or any part thereof, * * *. The Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this title as the Secretary determines to be appropriate and in the public interest.

Prior to the issuance of the final rule on the health warning statement, ATF received correspondence from several industry members regarding section 206. These individuals requested that the Bureau withhold publication of final regulations until after the Secretary's report was submitted to Congress, in order to avoid possible additional costly label revisions. It was their understanding that section 206 required such report to be submitted to Congress no later than November 18, 1990, i.e., two years after the date of enactment of the ABLA.

However, the legislative history of the ABLA clearly shows that Congress intended that the Secretary's "investigation and consultation" should commence two years from the date of enactment. In that regard, the report of the Senate Committee on Commerce, Science, and Transportation on the Alcoholic Beverage Labeling bill (S. 2967) stated:

If the Secretary determines, as a result of investigations and consultations *beginning* 2 years after the date of enactment of this title * * *, that available scientific information would justify a change in the label required by this title, the Secretary is to report that information to the Congress. [Emphasis added] S. Rep. No. 566, 100th Cong., 2d Sess. 8 (1988).

It is ATF's understanding that the National Institute on Alcohol Abuse and Alcoholism (NIAAA) has issued several grants to measure the impact of alcohol warning labels. This action was initiated by NIAAA in response to the law's requirement for "consultation with the Surgeon General."

Request for Information

In order to comply with section 206 of the ABLA, ATF is requesting scientific information, i.e., medical research, scientific studies, reports, consumer surveys, research literature, etc., that might justify a change in, addition to, or deletion of the health warning statement, or any part thereof. Information submitted should not be limited to that completed within the last few years. Although ATF believes that such information may be more valid, the agency is seeking any pertinent information on the subject.

The Bureau is also interested in studies that are currently in progress and, if available, any interim findings. The agency would also like to be apprised of any studies currently underway which may not be completed within the 120 day comment period, along with a projected target date for completion.

Scope of Comments

The Bureau requests that comments be limited to only the issue raised in this notice and that the information submitted include official documents, published reports, etc.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: This notice is issued under the authority in 27 U.S.C. 215 and 217.

Approved: March 1, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-5448 Filed 3-7-91; 8:45 am]

BILLING CODE 4810-31-M

federal register

Friday
March 8, 1991

Part V

Department of Energy

10 CFR Part 710

Personnel Security Assurance Program: Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material; Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing a final rule for the Personnel Security Assurance Program (PSAP). The PSAP is a special access authorization program for positions: (1) That afford direct access to Category I quantities of special nuclear material (SNM) or have direct responsibility for transportation or protection of Category I quantities of SNM, (2) that are identified as nuclear material production reactor operators, or (3) that have the potential for causing unacceptable damage to national security. The rule establishes the criteria for determining eligibility for this access authorization program, which consists of: (1) Supervisory review, (2) medical assessment, (3) management evaluation, and (4) security review and clearance determination. This access authorization, called a PSAP clearance, is a security review and determination and is conducted by DOE personnel security specialists. The intent of the PSAP is to establish a more comprehensive security evaluation of individuals applying for or occupying PSAP positions, on a more frequent basis, to determine whether they meet, or continue to meet, the criteria under subpart A, § 710.11 of this part.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lynn Gebrowsky, [Personnel Security Branch, Office of Safeguards and Security, Defense Programs, Department of Energy], (301) 353–3200, or Stephen P. Smith, [Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy], (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. General

A proposed rule to amend 10 CFR part 710 by adding a new subpart creating a Personnel Security Assurance Program was published in the **Federal Register** on February 2, 1989. Comments received in response to that publication are treated here. For more background information on PSAP, see 54 FR 5376 (February 2, 1989). This final rule is an addition to the current 10 CFR part 710.

In total, DOE received fifteen written communications containing comments on the proposed rule. The due date for comments was March 6, 1989. Some comments were received after that date. Although not obligated to do so, DOE is responding to all comments received because of the small number of comments and because the comments received after the due date were largely repetitive of those received on time.

Some of the comments expressed strong support for the concept of the PSAP, because of the overall goal of the program and because one of its elements complements a broader Federal effort to combat the use of illegal drugs. DOE gratefully acknowledges such expressions of support, but emphasizes that drug testing is only one element of this vital national security initiative.

In expressing support of the PSAP, some comments suggested that the drug testing measures of the program be extended to a larger population and that the program incorporate an outreach education effort for the community at large. A broadening of the PSAP to include all DOE and DOE contractor employees under the drug testing provisions is outside the scope of the program. The PSAP is directed at a specific target population, whose members are in positions to damage national security. The Federal and contractor drug-free workplace and substance abuse policies provide standards for drug testing of DOE and DOE contractor employees. The PSAP utilizes certain elements of the drug-free workplace and substance abuse policies, so as not to create separate, conflicting, or onerous requirements. The provision of a drug abuse education and outreach program to the community at large is outside the scope of the PSAP.

Other comments expressed support for the program, but urged that its implementation be delayed until further legal guidance could be obtained, particularly with regard to the drug-testing component of the program. Since the publication of the proposed rule, the Supreme Court of the United States, on March 21, 1989, rendered decisions in the cases of *National Treasury Employees Union* v. *Von Raab* (No. 86–1879;——U.S.——; 109 S.Ct. 1384; 103 L.Ed.2d 685) and *Skinner* v. *Railway Labor Executives' Association* (No. 87–1555;——U.S.——; 109 S.Ct. 1402; 103 L.Ed.2d 639). In those cases, the Supreme Court upheld drug-testing programs instituted, respectively, by the Customs Service for certain of its employees in designated sensitive positions and by the Department of Transportation for train crews. Although there are questions remaining to be resolved in this area, it is clear from the current case law that drug-testing programs can be designed which do not infringe upon rights under the Fourth Amendment. DOE is confident that its drug-testing standards that are used in the PSAP meet the standards set thus far by the courts.

Another comment suggested that the goals of the PSAP could be met by increased physical security, designed to protect DOE installations and interests from outside threats. However, the purpose of PSAP is to counter threats that develop on the inside, within the outer security perimeter. These inside threats can be accidential and inadvertent or purposeful and intentional. A comparison of PSAP with DOE's other security measures will show that it is designed to complement, not duplicate, the other programs.

More specific and detailed comments are addressed below.

II. Comments Received and DOE Responses

A. Alcohol Standards

Several comments raised concerns about the method by which the PSAP will deal with the issue of habitual and excessive use of alcohol. A common question asked was: "Who makes the diagnosis of use of alcohol habitually to excess?" This diagnosis can be made only by a medical professional, such as a psychiatrist or other physician. The determination of whether the diagnosis represents a security concern is made by representatives of DOE Security under subpart A, which also provides the individual the opportunity to present contrary evidence.

Some comments suggested that the program was too lenient, while others suggested that it was overly stringent. The Department's position regarding habitual use of alcohol to excess is based upon many years of experience gained through the administration of the provisions established by 10 CFR part 710. So long as an individual habitually uses alcohol to excess, that individual poses a threat to national security and will not be allowed to continue in a position involving PSAP duties. However, the Department accepts the medical profession's position that this is a condition which, with proper treatment combined with total abstinence, can reach a state of remission.

Remission involves much more than merely completing an initial counseling or treatment program; it must be evidenced by a minimum period of sobriety (usually at least one year) and a medical determination. It is the position of the Department that once remission has been achieved, an individual is capable of returning to a sensitive position without adversely affecting national security. As required by the current 10 CFR part 710, as well as by this rule and other DOE directives, rehabilitation and reformation must be demonstrated; consequently, this rule makes provisions for continued monitoring even after remission has been medically determined to have taken place. It is the intent of the Department to provide each individual the maximum protection and consideration consistent with the safeguarding of vital national interests. Because this rule addresses both national security concerns and the needs of affected individuals, no revisions will be made to those portions of the rule pertaining to the use of alcohol habitually to excess.

B. Temporary Restrictions

Several questions were raised by comments concerning temporary restrictions: Particularly how and why they may be imposed, and who may impose and remove them. These questions appeared not to indicate changes in the proposed rule, but rather expressed a need to understand the policy and procedures prescribed by the rule. The following explanation is provided for that purpose.

The Department recognizes that some people experience conditions which may temporarily affect their judgment and reliability. Under these conditions individuals may find themselves unable to carry out the duties of a PSAP position. This rule provides procedures, as defined in § 710.58(g), to temporarily restrict their involvement in PSAP duties or to temporarily remove them from the PSAP position. There are a number of individuals who may make recommendations to impose temporary restrictions or to temporarily remove an individual from a PSAP position, including the affected individual, a site Occupational Medical Director, or others who may observe an incident or condition of concern. Temporary restrictions are actually imposed by supervisors or other management officials in the supervisory chain. Similarly, supervisory or managerial decision is required to rescind restrictions. The PSAP approving official is notified of all temporary restrictions. Reinstatement after removal from a PSAP position also requires concurrence by the DOE PSAP Approving Official.

C. Supervisory Conduct

Comments were received raising concerns that individuals in positions of authority, such as supervisors, medical directors, or managers might misuse their respective positions and the PSAP to harass a particular employee or group of employees. It is recognized that an individual in a position of authority might be able to misuse that authority. However, the PSAP does not convey to such people any powers they do not already possess. Corporate and government protective regulations are currently available which will keep in check those individuals who might otherwise abuse their positions. It is the position of the Department that no changes are needed in the rule to assure that all employees are afforded this protection.

A question was asked: "Who makes the determination that information concerning an employee in a PSAP position is a security concern?" Employees holding PSAP access authorizations should be knowledgeable of the type of information which represents a security concern, as defined in § 710.54. Information which may be a security concern will be reviewed and evaluated in accordance with current DOE policies and procedures by personnel assigned to the cognizant DOE personnel security function. If the information is determined to be substantially derogatory, it will be dealt with under the current provisions of 10 CFR part 710.

D. Drug-Related Issues

A request was made to include a list of the prescribed medications which might cause an employee in a PSAP position to have temporary or permanent restrictions imposed. Due to the continuously changing number of medications prescribed, it would be impossible to provide an accurate list of prescribed medications which might produce a side effect that would be a security concern. The site Occupational Medical Director is best qualified to review and make recommendations on a case-by-case basis.

As previously mentioned, the testing for use of illegal drugs engendered a variety of comments, some very supportive and others expressing concern. The intent of the PSAP is not to bar an individual forever from PSAP positions due to previous involvement with illegal drugs, but rather to identify illegal drug users and prevent their access to SNM. If an individual can demonstrate that he or she is no longer involved in any manner with illegal drugs, and is able to meet the criteria provided under DOE regulations to establish eligibility for access authorization, that individual may gain or regain the PSAP access authorization.

A comment was received suggesting that the drug testing portion of the PSAP be placed under the direction of the site Occupational Medical Director. Following extensive Departmental review, the determination was made to place drug testing under the control of management. This was done to assure that medical organizations would have more latitude and freedom in performing their other duties, and could concentrate on clinical and scientific matters without being burdened by security responsibilities. Therefore no change will be made to the rule regarding programmatic control of the drug testing portion of the PSAP.

E. Definitions

Several comments requested definition of additional terms, among them "supervisor," "management official," "site Occupational Medical Director," and "selecting official." These terms have accordingly been added to the "Definitions" section. It was pointed out that the proposed rule did not make it clear that subcontractors were included in the PSAP. The final rule has been amended to remove this ambiguity, by the addition of a definition for "contractor" which includes "subcontractor" within its scope.

F. PSAP Positions

Several comments were submitted requesting further clarification of PSAP-designated positions in terms of the criteria for inclusion in and exclusion from the program. The position requirements for inclusion are stated in § 710.55 of this part. The first two categories are quite well-defined, the third being, of necessity, open-ended. Under this third category, persons who do not have responsibility for direct access, transportation, or protection of Category I quantities of special nuclear material (SNM), or who are not nuclear material production reactor operators, may be included in the PSAP if it is determined that their positions give them the potential to cause damage to national security. This group could include supervisors of employees in categories (1) and (2), if the supervisors were in a position to influence their employees to take improper actions, such as theft or diversion of SNM. If physical or administrative controls can be established to ensure that an individual cannot have or obtain direct access to SNM, that position (whether in

category (1), (2), or (3)) may be excluded from the PSAP. All positions identified for inclusion in the PSAP, and the justifications thereof, must be submitted in writing in a PSAP implementation plan, for approval by the cognizant Operations Office Manager.

G. Contractor Functions

One comment proposed a section be added to the rule that expressly provides contractor personnel performing discretionary, as opposed to ministerial, functions, as required by today's rule, "are performing DOE functions." We consider it neither necessary nor appropriate to add such a provision to the rule. It is the Department's view that the PSAP functions performed by contractor personnel, like other contractual requirements, are governed by the terms of the contract and applicable law.

Another comment questioned the applicability of the Privacy Act of 1974 to the records required to be maintained by today's rule. It is the Department's view that contractors who participate in the PSAP are subject to the provisions of the Privacy Act to the extent they maintain systems of records established pursuant to the Privacy Act for the Department. The determination of whether PSAP records are subject to the Privacy Act will be based upon the terms of each contract.

III. Changes From Proposed Rule

Certain changes have been made to the proposed rule of February 2, 1989, in response to comments from within the Department of Energy. Most of these comments are of a nonsubstantive nature, to include corrections for spelling and grammar and minor rewriting for clarification and correctness of expression. Those changes which were of a substantive nature are enumerated below.

In § 710.57(a), and in all other appropriate instances, the term "applicant" has been amended to "applicant tentatively selected for PSAP position" or a suitable variation thereof. It is not intended that the full measures of the Personnel Security Assurance Program (PSAP) be applied to individuals in the very preliminary stages of application to a PSAP position.

In § 710.57(d), a sentence has been added to outline procedures to be utilized for the reassignment from PSAP duties of a Federal employee.

In § 710.57(e), the phrase "* * * to be a user * * *" has been changed to "* * * to have used * * *." It is not necessary to establish a pattern of drug use, as might be implied by the former phrase. The sole determination involved is the use of illegal drugs in any manner, as confirmed by the positive results of a drug test.

The last phrase of § 710.57(g) of the proposed rule was omitted from this final rule as giving overly specific procedural instructions. It is not the intent of this rule to set local administrative procedures.

In § 710.58(e), the phrase "unusual conduct" has been altered to read "observed unusual conduct." The supervisor of a PSAP-cleared individual is not expected to analyze or diagnose unusual behavior. The intent of the rule is that the supervisor observe and recognize such behavior and refer the individual to the site Occupational Medical Director. Training in the observation and recognition of unusual conduct will be provided to supervisors of PSAP-cleared individuals.

In § 710.58(h), the word "approval" was changed to "recommendation" in the last sentence to clarify the fact that the site Occupational Medical Director is not the approving official for a return to PSAP duties of a PSAP-cleared individual. The site Occupational Medical Director offers a recommendation to the appropriate management official, who makes the determination of a return to PSAP duties.

The format of § 710.59(b) was revised for clarity. It also adds the fact that the unannounced drug test is to be conducted annually and defines the affected population.

Section 710.59(c) has been added to expand upon the sentence in § 710.59(b) concerning testing for cause or reasonable suspicion.

In § 710.59(c), and in all other instances, the term "DOE Drug-Free Workplace and Substance Abuse Programs" has been changed to "DOE drug-free workplace and substance abuse policies." This was done to avoid the implication that there exists a specific DOE program with the title "DOE Drug-Free Workplace and Substance Abuse Program." The revised wording is intended to indicate that the Personnel Security Assurance Program will be consistent with those applicable DOE policies which are currently in effect at any given time.

Section 710.59(e) has been renumbered and a final phrase has been added to emphasize that contractor policy may exceed the requirements of this subpart, but may not be less stringent than those requirements.

Subsections of § 710.60 have been reordered for logical flow. In § 710.60(c), the identification of the referenced background investigation has been revised to conform with standard usage. In § 710.60(d) the listing of the annual checks required by the PSAP has been revised for clarity. The segment describing periodic reinvestigations under the PSAP has been extracted and moved to § 710.60(e). The phrase "any necessary adjudication" has been added to the sentence concerning the annual review, as adjudication would only be required in the case of derogatory information. Section 710.60(e) is a new subsection, extracted from § 710.60(d). The identification of the type of background investigation has been revised to conform with standard usage.

A final sentence was added to § 710.60(f) to acknowledge the fact that an administrative review may result from the circumstances mentioned in the first sentence of this subsection, or may arise from other causes. Any administrative review of a PSAP-cleared individual is conducted in accordance with the provisions of subpart A of 10 CFR part 710.

IV. Procedural Requirements

A. Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules to be issued are major rules as defined in the Order. DOE has reviewed this rule and has determined that it is not a major rule because implementing the additional security requirements proposed in this rule: (1) Will not have an annual effect on the economy of $100 million or more; (2) will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

Pursuant to the Executive Order 12291, this notice was submitted to the Director of the Office of Management and Budget, who has concluded his review.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that section 603 and 604 of the said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned facilities, their subcontractors, and selected DOE Federal operations, and will not affect small entities.

C. National Environmental Policy Act

There is no impact on the environment under today's rule. It is a personnel security clearance effort and deals only with a determination to grant, deny, or suspend a PSAP access authorization. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

Today's rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910–1800.

E. Federalism Effects

The principal impacts of today's rule will be on DOE employees and contractors who participate in the Department's national security and defense efforts. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 10 CFR Part 710

Access authorization, suspension, revocation, administrative practice and procedure, classified information, Government contracts, Government employees, nuclear materials access, security measures, Personnel Security Assurance Program (PSAP), PSAP position, Category I Quantities of Special Nuclear Material, PSAP access authorization.

Issued in Washington, DC, on November 21, 1990.

John C. Tuck,

Under Secretary.

In consideration of the foregoing, part 710 of Title 10 of the Code of Federal Regulations is amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949–1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 30 Stat. 1237 (42 U.S.C. 5814); sec. 105(a) 88 Stat. 1238 (42 U.S.C. 5815)

2. Sections 710.1 through 710.39 are designated as:

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

§§ 710.1–710.39 [Amended]

3. In §§ 710.1–710.39, remove the word "part" in each instance where it refers to the current part and add, in its place, the word "subpart."

Appendix A [Amended]

4. Redesignate the title of "Appendix A" as "Appendix A to subpart A."

5. Subpart B, consisting of §§ 710.50 to 710.60, is added to read as follows:

Subpart B—Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

Sec.

710.50 Purpose.
710.51 Scope.
710.52 References.
710.53 Policy.
710.54 Definitions.

Procedures

Sec.

710.55 Designations of PSAP positions.
710.56 Program process.
710.57 Supervisory review.
710.58 Medical assessment.
710.59 Management evaluation.
710.60 DOE security review and clearance determination.

Subpart B—Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

§ 710.50 Purpose.

(a) This subpart establishes the policies and procedures for implementing the Department of Energy (DOE) Personnel Security Assurance Program (PSAP) for individuals in positions.

(1) Which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM),

(2) Which are identified as nuclear material production reactor operators, or

(3) With the potential for causing unacceptable damage to national security.

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing the Personnel Security Assurance Program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, section 11, "Definitions"; section 141, "Policy"; section 143, "Department of Defense Participation"; section 145, "Restrictions"; section 161 b., "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as appendix A to subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1960, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) "Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs," of April 11, 1988, which contains requirements for conducting drug testing, is available from U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, Washington, DC 20585.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department

of Energy, Washington, DC 20585, Attention: Directives Distribution.

§ 710.53 Policy.

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. This process will reduce the potential risk of harm represented by such employees. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

Contractor means the contractor and subcontractors at all tiers.

Direct Access means access to Category I quantities of SNM which would permit an individual to remove or misuse that material in spite of any controls that have been established to prevent such unauthorized actions.

Illegal Drugs means a controlled substance included in Schedules I, II, III, IV, or V, as defined by 21 U.S.C. 802(6), the possession of which is unlawful under chapter 13 of that title. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law.

Management Official means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for PSAP positions.

Nuclear Material Production Reactor Operator means an individual certified by DOE contractor management to operate (manipulate the controls of) a DOE-owned nuclear material production reactor.

PSAP Approving Official means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of subpart A of this part.

PSAP Position means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, nuclear material production reactor operators, or with the potential to cause unacceptable damage to national security.

Security Concern means the presence of information, regarding an individual applying for or holding a PSAP position, that may be considered derogatory under the criteria in Subpart A of this part.

Selecting Official means the management official responsible for making the final employment decision regarding an individual seeking a PSAP position.

Site Occupational Medical Director means a physician responsible for the overall direction and operation of the occupational medical program at a particular site.

Supervisor means an individual who has direct oversight and responsibility for a person holding a PSAP position.

Unacceptable Damage means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that are identified as nuclear material production reactor operators.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are designated by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this subpart.

(b) The PSAP involves four (4) components: Supervisory review; medical assessment; management evaluation; and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance wit the criteria in § 710.11 of subpart A.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants tentatively selected for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF-86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant tentatively selected for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," including a completed part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being selected for a PSAP position, any tentatively selected applicant must undergo a thorough pre-employment check covering the past 10 years, which includes validation of the applicant's educational history; verification of the applicant's employment record; a credit check; a local agency criminal records check in the appropriate localities, as permitted by State or local law; and contact with all references.

(d) Each applicant tentatively selected for a PSAP position and each individual occupying a PSAP position but not a yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgements, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual, occupying a PSAP position but not yet holding a PSAP access authorization, to complete these documents shall result in reassignment from PSAP duties. An effort shall be made to reassign that individual to a position not requiring a PSAP access authorization.

For purposes of this subsection and all subsequent provisions of this rule that relate to reassignment from PSAP duties, any Federal employee will be immediately removed from PSAP duties. The affected employee's supervisor may reassign the employee or realign the employee's current duties. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.

(e) Applicants tentatively selected for PSAP positions and each individual occupying a PSAP position, but not yet holding a PSAP access authorization, shall undergo testing for the use of illegal drugs in accordance with the provisions established by the Department of Health and Human Services in "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (April 11, 1988). A determination of the use of illegal drugs, based on a drug test, shall result in termination of consideration for the PSAP access authorization. An employee who has been determined to have used illegal drugs, based on a drug test, shall be immediately reassigned from the PSAP duties and processed under the provisions of subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns, resulting from his or her review, to the appropriate management official.

(g) Annual Review. Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate information relevant to security. The supervisor shall report any security concerns, resulting from his or her review, to the appropriate management official.

(h) Recognition of Security Concerns and Unusual Conduct. In order to facilitate early recognition of an individual who represents a possible security concern, individuals who, in the judgment of the responsible supervisor, exhibit unusual conduct shall be referred to the site Occupational Medical Director, who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) Temporary Reassignment to non-PSAP Duties. Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual, with the recommendation of the site Occupational Medical Director or the PSAP Approving Official, may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-cleared employee is temporarily reassigned to non-PSAP duties, the supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) The Medical Examination. The purpose of the PSAP medical examination is to ensure that an applicant tentatively selected for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) When Performed. The medical assessment is performed initially upon applicants tentatively selected for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) Contents of Medical Assessment. The medical assessment shall include: A comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) Examination for Use of Alcohol Habitually to Excess. The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) Diagnosis. Employees in, or applicants tentatively selected for, a PSAP position shall be examined for the use of alcohol habitually to excess. Those employees diagnosed currently to use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately. A determination of the abuse of alcohol by an applicant tentatively selected for a PSAP position shall result in termination of consideration of the PSAP access authorization.

(2) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) Examination for the Cause of Reported Unusual Conduct. Upon referral of a PSAP-cleared employee by a supervisor for observed unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) Report of Occupational Medical Director. Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) Temporary Restrictions on a PSAP Position. In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report these restrictions immediately, in writing, to the appropriate management official who shall immediately notify the appropriate PSAP Approving Official. Removal of restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) Sick Leave From a PSAP Position. PSAP-cleared employees who have been on sick leave for five (5) or more consecutive work days are required to report in person to the site Occupational Medical Director before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational

Medical Director for written recommendation to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) Evaluation Components. A management evaluation based upon a careful review of the results of the supervisory review, medical assessment, and drug testing of an individual in, or an applicant tentatively selected for, a PSAP position is required before that individual can be considered for an initial or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) Drug Testing Component. Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," published by the Department of Health and Human Services (April 11, 1988). The program shall include unannounced annual drug testing and testing for occurrence or reasonable suspicion for all PSAP-cleared individuals. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) Occurrence or Reasonable Suspicion Testing Component. When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of illegal drugs. Drug testing shall be conducted in accordance with the provisions of the DOE drug-free workplace and substance abuse policies, and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," published by the Department of Health and Human Services (April 11, 1988).

(d) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of illegal drugs shall be required to undergo evaluation and testing as prescribed in DOE drug-free workplace and substance abuse policies and by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(e) Corporate Policy. Nothing in this subpart is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for the use of illegal drugs as a matter of corporate policy, so long as such policy is at least as effective as the requirements and procedures of this subpart.

§ 710.60 DOE security review and clearance determination.

(a) When Performed. The final component of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) The Criteria. The PSAP access authorization and adjudication shall be conducted in accordance with the criteria and procedures contained in relevant sections of this part.

(c) Review for Initial PSAP Access Authorization. An initial PSAP access authorization requires a special background investigation (15-year scope) completed within the last five (5) years. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information provided by management and medical sources.

(d) Annual PSAP Access Authorization Continuance. Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a National Agency Check, with credit check, a local criminal records check, where available, and a review of the individual's DOE personnel security file, to include the review of an updated SF–86, OMB Control No. 3206–007, "Questionnaire for Sensitive Positions," including completed part II. The determination to continue the PSAP access authorization shall be based upon a review and any necessary adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in relevant sections of this part.

(e) Periodic Reinvestigation. The PSAP-cleared employee shall undergo a limited background investigation (5-year scope) at least every five (5) years. The determination to continue the PSAP access authorization shall be based upon a review of security information, including the results of the limited background investigation and the information provided by management and medical sources.

(f) Processing Under 10 CFR part 710, subpart A. Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under subpart A, § 710.11 of this part. Any administrative review under the PSAP shall be conducted in accordance with the provisions and procedures in subpart A.

[FR Doc. 91–5449 Filed 3–7–91; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

10 CFR Part 710

Personnel Security Assurance Program; Substance Abuse Testing Procedures

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) has stablished the Personnel Security Assurance Program (PSAP) through the publication of the revision to 10 CFR part 710, (published elsewhere in this issue of the Federal Register),"Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." The PSAP was created in order to assure the reliability of individuals in certain positions, defined in § 710.50(a), and referred to as PSAP positions for purposes of this proposed rule. The Department now proposes to amend this rule to include a provision for testing for alcohol use in cases of occurrence or reasonable suspicion and to promulgate guidelines for DOE contractors for testing for possible use of illegal drugs and abuse of alcohol by their PSAP-cleared employees. These guidelines will constitute a baseline PSAP substance abuse testing component.

DATES: Written comments (six copies) must be received by April 8, 1991.

ADDRESSES: Written comments (six copies) are to be submitted to Director, Office of Safeguards and Security, DP–34, Department of Energy, Germantown, room E–369, Washington, DC 20545, (301) 353–5106.

FOR FURTHER INFORMATION CONTACT: Lynn Gebrowsky, Personnel Security Branch, DP–345.2, (301) 353–3200 or Stephen P. Smith, Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy, (202) 586–8618.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Reason for Amendment

In the notice of proposed rulemaking for the Personnal Security Assurance Program (54 FR 5378, February 2, 1989), the Department of Energy indicated that the procedural standards for carrying out drug testing under the PSAP would be taken from the "Contractor Drug-Free Workplace Program". However, in the ensuing months, the contractor substance abuse program has undergone certain shifts of emphasis and an expansion of scope, resulting in delay in the program's publication for public comment. In order to allow the full implementation of PSAP sooner than would be possible if the PSAP were to be tied to the contractor substance abuse program, these amendments were developed to permit full and unimpeded implementation of the PSAP. Additionally, these amendments will make reference to the Contractor Workplace Substance Abuse Program unnecessary and thus result in a convenience to the persons subject to this regulation.

B. Scope of Testing

The Department of Energy today proposes guidelines for the testing by contractors of PSAP-cleared individuals and tentatively selected applicants to PSAP positions for the use of illegal drugs. Such individuals will be subject to testing in the following circumstances: for applicants tentatively selected for PSAP positions, a test for use of illegal drugs will be accomplished prior to a final determination to place the individual in a PSAP position; for employees holding PSAP positions, testing for use of illegal drugs will be conducted annually on a random basis. Testing for use of illegal drugs or the abuse of alcohol will be conducted in the case of an "occurrence", as defined in § 710.54(m), and on the basis of "reasonable suspicion." Testing in cases of reasonable suspicion would be based on the determination of the need for such testing by two supervisory or management officials, one of whom is in the employee's supervisory chain or is the site Occupational Medical Director. Reasonable suspicion could result from direct observation of drug or alcohol use, erratic behavior, arrest or conviction for an illegal drug offense, or reliable information received from a credible source.

C. Testing for Illegal Drugs

Testing for use of illegal drugs will involve analysis of urine samples, and contractors will have to use chain of custody procedures for maintaining control and accountability from point of collection to final disposition. Testing will have to comply with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," issued by the Department of Health and Human Services (HHS), 53 FR 11970, April 11, 1988, and subsequent amendments thereto. Procedures used in the Department's Federal Drug-Free Workplace Plan may provide guidance in the preparation of contractor programs. Copies are available from the Director, Personnel Policies and Programs Division, Office of Personnel, U.S. Department of Energy, Washington, DC 20585. Each contractor will have to provide for use of testing laboratories certified by HHS under subpart C of the HHS Guidelines. Information concerning the current certification status of laboratories is available from the Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857.

D. Testing for Alcohol

Today's proposed amendments, regarding testing for the abuse of alcohol, provide only for "occurrence" and "reasonable suspicion" testing for excessive blood alcohol for individuals in PSAP positions. At the present time, the Department is not proposing random testing for alcohol abuse. The Department intends to study further the advisability of such testing.

The rule for alcohol abuse provides for testing by an evidential-grade breath alcohol analysis device to determine blood alcohol content. The testing procedure provides for testing of at least one breath sample. In cases in which a blood alcohol concentration of .04 per cent or greater is indicated, the proposed amendments would require confirmatory testing, or an actual blood test at the request of the employee being tested. In establishing this minimum cutoff level, the Department has relied on C. Moore, et al., "Use of a 0.04% BAC Cutoff Level for Alcohol Testing," in Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues,

NUREG/CR-5227, Supplement 1 (Washington, DC, U.S. Nuclear Regulatory Commission, 1989). This document is available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Albuquerque, NM 87115. It should also be noted that the testing procedure is drawn directly from the Nuclear Regulatory Commission's Fitness-for-Duty Programs rule, 54 FR 24468, of June 7, 1989.

E. Medical Review of Test Results

The contractor Personnel Security Assurance Programs would have to provide for review of test results by a "Medical Review Officer." That term is defined to mean a licensed physician approved by the Department, who receives laboratory results and evaluates those results in light of an employee's medical history and any other relevant biomedical information.

The Medical Review Officer determines whether the employee has used illegal drugs or abused alcohol. Such a determination, with respect to illegal drugs, would have to be made in accordance with the criteria in the Medical Review Officer Manual, issued by HHS (DHHS Publication No. (ADM) 88-1520). A determination, with respect to alcohol, would have to be made in accordance with the provisions of § 710.59(e)(2).

II. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether or not proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements proposed in this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291.

III. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* DOE has concluded that there is no need to prepare a regulatory flexibility analysis because, if promulgated, the rule will affect only DOE contractors whose places of performance are at Government-owned or leased sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

IV. Review Under the National Environmental Policy Act

There is no impact on the environment under this proposed rule; accordingly, neither an environmental assessment nor an environmental impact statement is required.

V. Review Under Executive Order 12612

The principal impact of this rule will be on government contractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under E.O. 12612 is required.

VI. Review Under the Paperwork Reduction Act

The proposed rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910-0600.

VII. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Comments (six copies) should be submitted to the address for the Director of the Office of Safeguards and Security which is given in the beginning of this notice. All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on the proposed final regulatory amendments.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as six copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

Because of the limited scope and effect of the PSAP and these amendments to it, DOE expects that there will be few comments received. Accordingly, no public hearings have been scheduled. However, if the comments received indicate a sufficient level of public interest, one or more hearings may be set at which interested persons may present their views orally. Such hearings will be announced by a notice in a future issue of the **Federal Register**.

List of Subjects in 10 CFR Part 710

Alcohol, Drug testing, Energy, National security, Reasonable suspicion, Special Nuclear Material, Substance abuse.

Issued in Washington, DC, on November 21, 1990.

John C. Tuck,

Under Secretary.

In consideration of the foregoing, part 710 of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, as amended, sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 Comp., p. 936, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR chap. IV; sec. 104(c), 88 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); Department of Energy Organization Act, sec. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. sections 7251, 7254, and 7256).

§ 710.50 [Amended]

2. In § 710.50, paragraph (b) is revised to read as follows:

* * * * *

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section, to include procedural guidance for testing for use of illegal drugs and abuse of alcohol. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part. Selection and evaluation procedures for DOE personnel assigned to Personnel Security Assurance Program positions shall be consistent with DOE substance abuse policies and programs.

3. Section 710.53 is revised to read as follows:

§ 710.53 Policy.

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, substance abuse, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 [Amended]

4. The following definitions are added in alphabetical order to § 710.54 to read as follows:

Blood Alcohol Concentration (BAC) is a measure of the mass of alcohol in a volume of blood, which can be measured directly from blood or derived from the concentration of alcohol in a breath specimen. It is expressed as a decimal fraction. For example, an individual with 100 mg of alcohol per 100 ml of blood has a BAC of 0.10 per cent; 40 mg of alcohol per 100 ml of blood will yield a BAC of 0.04.

Collection site person means a technician or other person trained and qualified to take urine, blood, or breath samples and to secure urine and blood samples for later laboratory analysis.

Confirmed positive test means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample for drug tests and another sample for alcohol tests. At present, for drugs, the confirmatory test must be by the gas chromatography/mass spectrometry method.

Drug certification means a written assurance signed by an individual stating that the individual will refrain from using or being involved with illegal drugs while employed in a position requiring DOE access authorization (security clearance).

Evidential-grade breath alcohol analysis device means a device which conforms to the model standards for evidential breath testing devices of the National Highway Traffic Safety Administration (49 FR 48855, December 14, 1984).

Medical Review Officer (MRO) means a licensed physician approved by the Office of Health, Assistant Secretary for Environment, Safety and Health, and acceptable to the field manager or facility manager. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

Occurrence means any deviation from the planned or expected course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has potential environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Any injury or fatality involving a Department of Energy or Department of Energy contractor employee due to an incident associated with a Department of Energy or Department of Energy contractor operation.

(2) Any incident involving a nuclear explosive under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or damage to personal property.

(3) Any accidental release of pollutants which result or could result in significant effect on the public or environment.

(4) Any accidental release of radioactive material.

Random Testing means the unscheduled, unannounced urine drug testing of randomly selected employees in PSAP positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

Reasonable suspicion means a suspicion based on an articulable belief that an employee uses illegal drugs or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 710.59(c).

Special Nuclear Material has the same meaning as in section 11.aa. of the Atomic Energy Act of 1954. (42 U.S.C. 2014).

Substance abuse means any use of illegal drugs or the abuse of alcohol. For the purpose of this part, an individual who engages in the abuse of alcohol refers to an individual in a PSAP position who enters or remains on a site owned or controlled by DOE, with a blood alcohol content of .04 or greater.

§ 710.59 [Amended]

5. Section 710.59 is amended by redesignating paragraphs (d) and (e) as (g) and (h) and revising newly designated paragraph (g); by adding new paragraphs (d), (e), and (f); and by revising paragraphs (b) and (c) to read as follows:

* * * * *

(b) Drug Testing Component. Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with § 710.59(d) of this part. The program shall include unannounced annual drug testing, and testing as a result of an occurrence or for reasonable suspicion, for all PSAP-cleared individuals. All employees in PSAP positions must be tested on a random basis. The randomness of the testing must be of such a nature as to preclude prior knowledge of the test on the part of the employee being tested. Those employees who have not undergone a random test for a given year at the time of that year's medical examination will be tested for the use of illegal drugs during the medical examination. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediatley to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) Occurrence or Reasonable Suspicion Testing Component. When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of alcohol and illegal drugs. Refusal of the employee to undergo testing may result in removal from PSAP duties and revocation of access authorization.

(1) For an occurrence requiring immediate notification or reporting, the contractor must require testing as soon as possible after the occurrence but within 24 hours. For other occurrences requiring notification to DOE, the contractor may require testing.

(2) When the behavior of an employee in a PSAP position creates the basis for reasonable suspicion of the use of illegal drugs or the abuse of alcohol, that employee must be tested for the use of illegal drugs or the abuse of alcohol if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee or is the site Occupational Medical Director, agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee used illegal drugs or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts. Such a belief may be based upon, among other things:

(i) Observable phenomena, such a direct observation of;

(A) The use of illegal drugs or alcohol;

(B) The physical symptoms of being under the influence of illegal drugs or alcohol;

(C) The use of alcohol incident to entering or remaining at a site owned or controlled by DOE;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest or conviction for a drug- or alcohol-related offense;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated; or

(v) Evidence that an employee has tampered with a drug or alcohol test.

(d) Drugs for which Testing is Performed. Testing routinely must be performed to identify the use of the following drugs or classes of drugs:

(1) Marijuana;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine; and

(5) Amphetamines.

Testing may be performed for additional drugs or classes of drugs if deemed necessary by the contractor. When testing is based on occurrence or reasonable suspicion, contractors may test for any illegal drug, as well as alcohol.

(e) Specimen collection, Handling, and Laboratory Analysis. (1) Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Contractors shall utilize chain of custody procedures for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," issued by the Department of Health and Human Services, April 11, 1988, and subsequent amendments thereto. The contractor shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" are utilized.

(2) Alcohol breath test shall be delayed at least 15 minutes if any source of mouth alcohol (e.g., breath fresheners) is present or any other substances have been ingested (e.g., through eating, drinking, or smoking) or regurgitated. The collection site person shall ensure that each breath specimen taken comes from the end, rather than the beginning, of the breath expiration. For each screening test, two breath specimens from a single machine shall be collected from each individual. The specimens shall be taken no less than two and no more than 10 minutes apart. The test results shall be considered accurate if each measurement is within plus or minus 10 percent of the average of the two measurements. If the test results are not accurate, an additional breath test shall be conducted on another evidential-grade breath analysis device. Positive results shall be confirmed by a second test performed on the same device. If the alcohol breath tests indicate that the individual is positive for a Blood Alcohol Concentration at or above the designated cutoff level, the individual may request a confirmatory blood test, at the individual's discretion. Contractors must employ at least a 0.04 percent BAC cutoff level. All vacuum tube and needle assemblies used for blood collection shall be factory-sterilized. The collection site person shall ensure that they remain properly sealed until used. Antiseptic swabbing of the skin shall be performed with a nonethanol antiseptic. Sterile procedures shall be followed when drawing blood and transferring the blood to a storage container; in addition, the container must be sterile and sealed.

(3) If the individual refuses to cooperate with the urine collection or breath analysis process (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the Medical Review Officer (MRO) and shall document the non-cooperation in the permanent record book and on the specimen custody and control form. The MRO shall report the failure to cooperate to the appropriate management official. Individuals so failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have used an illegal drug or to have abused alcohol. The provision of a blood specimen for use to confirm a positive breath test for alcohol shall be entirely voluntary, at the individual's discretion. In the absence of a voluntary blood test, the second positive breath test shall be considered a confirmed positive.

(4) The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest. In accordance with the mandatory guidelines published by HHS, this amount will be considered to be at least 60 milliliters. If there is not at least 60 milliliters of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and may be given a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide 60 milliliters of urine, the amount will be noted on the specimen custody and control form. In this case, the collection site person will notify the individual's supervisor who will, in consultation with the appropriate management official, determine the next action. This may include deciding to return the individual to PSAP duties and to reschedule the individual for testing, or to temporarily reassign the individual until a further determination can be made.

(f) Medical Review of Results of Tests for Substance Abuse. (1) Only confirmed positive tests shall be submitted for medical review by the MRO. A confirmed positive test means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample.

(i) For drugs, a confirmed positive test shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method ("GC/MS"). This procedure is described in paragraphs 2.4 (e) and (f) of the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, April 11, 1988.

(ii) For alcohol, the initial test shall be performed on an evidential-grade breath alcohol analysis device in the manner prescribed in this part, and positive results shall be confirmed by a second test, unless the individual requests a confirmatory blood test for alcohol. Each evidential-grade breath alcohol analysis device used in this program shall conform to the standards of the National Highway Traffic Safety Administration (NHTSA) and to any applicable State standards.

(2) The medical review must consider the medical history of the employee or applicant, as well as any other relevant biomedical information. If the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, consistent with legal and non-abusive drug and alcohol use, the MRO must certify that the test results do not meet the conditions for a determination of substance abuse. If no such certification can be made, the MRO must make a determination of substance abuse. Determinations of substance abuse must be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the Department of Health and Human Services [DHHS Publication No. (ADM) 88-1526].

(g) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from alcohol abuse or the use of illegal drugs must undergo evaluation and testing as prescribed by the site Occupational Medical Director or other designated official, as appropriate, and may be subject to unannounced drug and/or alcohol testing, at intervals, for a period of 12 months in order to ensure continued rehabilitation.

* * * * *

[FR Doc. 91-5450 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

OL
56
SS
46
MR
8
991
MI

federal register

Friday
March 8, 1991

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report 26 proposed rescissions, totaling $4.3 billion, and one revised deferral and one new deferral of budget authority. Including the revised and new deferrals, funds withheld in FY 1991 now total $9.3 billion.

The deferrals affect International Security Assistance programs and the Department of Agriculture. The proposed rescissions affect the Departments of Agriculture, Defense, and Housing and Urban Development.

The details of the proposed rescissions and deferrals are contained in the attached report.

Dated: February 28, 1991.

George Bush,

The White House.

BILLING CODE 3195-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Agriculture:	
	Soil Conservation Service:	
R91-1	Watershed and flood prevention operations	10,000
	Department of Defense, Military:	
	Procurement:	
R91-2	Procurement of weapons and tracked combat vehicles, Army	86,000
R91-3	Procurement of ammunition, Army	13,000
R91-4	Aircraft procurement, Navy	1,093,500
R91-5	Weapons procurement, Navy	2,600
R91-6	Shipbuilding and conversion, Navy	405,000
R91-7	Other procurement, Navy	10,000
R91-8	Procurement, Marine Corps	2,000
R91-9	Aircraft procurement, Air Force	14,200
R91-10	Missile procurement, Air Force	74,700
R91-11	Other procurement, Air Force	254,200
R91-12	Procurement, Defense agencies	65,303
R91-13	National guard and reserve equipment	289,900
	Research, Development, Test, and Evaluation:	
R91-14	Research, development, test, and evaluation, Army	60,800
R91-15	Research, development, test, and evaluation, Navy	834,500
R91-16	Research, development, test, and evaluation, Air Force	134,100
R91-17	Research, development, test, and evaluation, Defense agencies	29,300
	Military Construction:	
R91-18	Military construction, Navy	48,962
R91-19	Military construction, Air Force	91,800

CONTENTS OF SPECIAL MESSAGE
(In thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Housing and Urban Development:	
	Housing Programs:	
	Annual contributions for assisted	
R91-20	housing	500,000
R91-21	Congregate services program	9,500
R91-22	Nehemiah housing opportunity grants	39,112
	Community Planning and Development:	
R91-23	Urban development action grants	13,518
R91-24	Rental rehabilitation grants	70,000
R91-25	Urban homesteading	13,397
R91-26	Rehabilitation loan fund	144,459
	Total rescissions	4,309,851

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Service:	
D91-1B	Economic support fund	2,093,659
	Department of Agriculture:	
	Forest Service:	
D91-10	Timber salvage sales	103,684
	Total deferrals	2,197,343

R91-1

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed and flood prevention operations

Of the funds made available under this head in Public Law 101-506, $10,000,000 are rescinded.

BEST COPY AVAILABLE

Rescission Proposal No. R91-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority.....$ 185,705,000 (P.L. 101-506)
BUREAU: Soil Conservation Service	Other budgetary resources... 65,527,301
Appropriation title and symbol: Watershed and flood prevention operations 12X1072	Total budgetary resources... 251,232,301
	Amount proposed for rescission.....$ 10,000,000
OMB identification code: 12-1072-0-1-301	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This program provides for cooperation between the Federal Government and States and their political subdivisions in installing works of improvement to reduce damage from floodwater, sediment and erosion; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land. This rescission is proposed to assist in achieving the 1992 budget proposal to reduce the Federal assistance in controlling soil erosion work under Public Law 566.

ESTIMATED PROGRAM EFFECT: Approximately 10 watershed structures for which funding is being terminated were to have been completed in one year but will now be postponed.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
204,973	197,173	-7,800	-2,200	---	---	---	---

R91-?

Department of Defense - Military

Procurement

Procurement of weapons and tracked combat vehicles, Army

Of the funds made available under this head in Public Law 101-511, $77,000,000 are rescinded, and of the funds made available under this head in Public Law 101-165, $9,000,000 are rescinded.

Rescission Proposal No. R91-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 2,171,237,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 1,809,920,511
Appropriation title and symbol: Procurement of weapons and tracked combat vehicles, Army 211/32033 210/22033	Total budgetary resources... 3,981,157,511
	Amount proposed for rescission..... $ 86,000,000
OMB identification code: 21-2033-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1992 Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for procurement and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and specialized equipment and training devices. The rescission includes $64 million which would have been used to convert existing M-1 tanks to the M-1A1 configuration. The Army has no program plan for such an upgrade in view of the fact that the preferred tank is the Block III variant currently in development. In addition, $13 million of M-1 funds are excess to program requirements. Also, $9 million (FY 1990) for Bradley modifications are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The Department of the Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
1,093,819	1,092,099	-1,720	-35,690	-31,820	-9,030	-4,558	-2,322

R91-3

Department of Defense - Military

Procurement

Procurement of ammunition, Army

Of the funds made available under this head in Public Law 101-511, $13,000,000 are rescinded.

Rescission Proposal No. R91-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 1,367,181,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 40,800,000
Appropriation title and symbol: Procurement of ammunition, Army 211/32034	Total budgetary resources... 1,407,981,000
	Amount proposed for rescission..... $ 13,000,000
OMB identification code: 21-2034-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for the procurement and modification of ammunition. The Congress added $13.0 million to continue design of an HMX explosive production facility at Longhorn Army Ammunition Plant. This rescission is proposed because a new $500 million facility at Longhorn is not required by our mobilization plans. The existing facility at the Holsten Army Ammunition Plant has adequate production capacity.

ESTIMATED PROGRAM EFFECT: The Department of Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars).

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
513,425	508,134	-5,291	-741	-5,148	+1,560	-2,600	-633

R91-4

Department of Defense - Military

Procurement

Aircraft procurement, Navy

Of the funds made available under this head in Public Law 101-165, $893,500,000 are rescinded, and of the funds appropriated under this head in Public Law 100-463, $200,000,000 are rescinded.

Rescission Proposal No. R91-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... $ 3,215,111,975
Appropriation title and symbol: Aircraft procurement, Navy 170/21506 179/11506	Total budgetary resources... $ 3,215,111,975
	Amount proposed for rescission..... $ 1,093,500,000
OMB identification code: 17-1506-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1992 / Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation provides for the procurement, modification, and modernization of aircraft, equipment, spare parts, and specialized equipment. The rescission includes $200 million appropriated for the V-22 aircraft in 1989, and is consistent with the GAO conclusion (Report #91-65) that the V-22 is not sufficiently developed to enter production. $893.5 million is proposed for rescission due to the termination of the A-12 program. Due to cost overruns and significant schedule delays the A-12 program was terminated for default. The Navy will pursue development of a medium aircraft alternative to the A-6/A-12 under the AX (Aircraft Experimental) program.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
6,082,673	5,935,050	-147,623	-351,014	-346,640	-144,342	-50,301	-44,833

R91-5

Department of Defense - Military

Procurement

Weapons procurement, Navy

Of the funds made available under this head in Public Law 100-463, $2,600,000 are rescinded.

Rescission Proposal No. R91-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... $ 395,446,259
Appropriation title and symbol: Weapons procurement, Navy 179/11507	Total budgetary resources... 395,446,259
	Amount proposed for rescission..... $ 2,600,000
OMB identification code: 17-1507-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of missiles and weapons, equipment, including ordnance, spare parts, and specialized equipment. The funds proposed for rescission are for the Sparrow Missile program which was terminated with the FY 1989 procurement when the inventory objective was achieved.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
2,312,386	2,312,134	-252	-853	-993	-260	-117	-91

R91-6

Department of Defense - Military

Procurement

Shipbuilding and conversion, Navy

Of the funds made available under this head in Public Law 101-511, $405,000,000 are rescinded.

Rescission Proposal No. R91-6

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 10,148,871,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... _____
Appropriation title and symbol: Shipbuilding and conversion, Navy 171/51611	Total budgetary resources... $ 10,148,871,000
	Amount proposed for rescission..... $ 405,000,000
OMB identification code: 17-1611-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for the acquisition or conversion of Navy ships and vessels including government and contractor furnished long lead components. The $405 million being proposed for rescission was appropriated for the Service Life Extension Program for the USS Kennedy (CV-67). The FY 1992 budget includes funding in Operations and Maintenance, Navy for a complex overhaul of the USS Kennedy which eliminates the need for the Service Life Extension. Since no FY 1991 funds are required, they are available for rescission.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
509,689	489,439	-20,250	-60,750	-76,950	-76,950	-68,850	-64,800

R91-7

Department of Defense - Military

Procurement

Other procurement, Navy

Of the funds made available under this head in Public Law 101-511, $10,000,000 are rescinded.

Rescission Proposal No. R91-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 5,620,746,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 96,000,000
Appropriation title and symbol: Other procurement, Navy 171/31810	Total budgetary resources... 5,716,746,000
	Amount proposed for rescission..... $ 10,000,000
OMB identification code: 17-1810-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for the procurement and modernization of support equipment and materials not otherwise provided for. The accelerated SQR-18 towed array sonar system prototype funded in FY 1991 is no longer required since the program has been terminated.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
601,721	600,631	-1,090	-2,200	-3,640	-1,730	-780	-480

R91-8

Department of Defense - Military

Procurement

Procurement, Marine Corps

Of the funds made available under this head in Public Law 101-511, $2,000,000 are rescinded.

Rescission Proposal No. R91-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... $ 54,344,847
Appropriation title and symbol: Procurement, Marine Corps 17X1109	Total budgetary resources... 54,344,847
	Amount proposed for rescission..... $ 2,000,000
OMB identification code: 17-1109-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation provides for the procurement and modification of missiles, armament, ammunition, military equipment and spare parts. The funds proposed for rescission are for ADP equipment and are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The Marine Corps' ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
336,137	335,823	-314	-486	-530	-430	-150	-80

R91-9

Department of Defense - Military

Procurement

Aircraft procurement, Air Force

Of the funds made available under this head in Public Law 100-463, $14,200,000 are rescinded.

Rescission Proposal No. R91-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... $ 2,664,539,705
Appropriation title and symbol: Aircraft procurement, Air Force 579/13010	Total budgetary resources... 2,664,539,705
	Amount proposed for rescission..... $ 14,200,000
OMB identification code: 57-3010-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of aircraft, equipment, including ordnance, spare parts and specialized equipment. The following funds are excess to program requirements and proposed for rescission: F-16 aircraft ($9.2 million); MC-130H aircraft ($1.3 million); C-17 aircraft ($1.6 million); TR-1/U-2 aircraft ($.1 million); spares ($1 million); and other production charges ($1 million).

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
5,805,754	5,805,115	-639	-3,422	-5,268	-2,528	-1,264	-837

R91-10

Department of Defense - Military

Procurement

Missile procurement, Air Force

Of the funds made available under this head in Public Law 101-165, $500,000 are rescinded, and of the funds made available under this head in Public Law 100-463, $74,200,000 are rescinded.

Rescission Proposal No. R91-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... ____
BUREAU: Procurement	Other budgetary resources... $ 1,821,772,469
Appropriation title and symbol: Missile procurement, Air Force 570/23020 579/13020	Total budgetary resources... $ 1,821,772,469
	Amount proposed for rescission..... $ 74,700,000
OMB identification code: 17-3020-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year ☐ No-Year (Sept. 30, 1991 / Sept. 30, 1992 (expiration date))	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of missiles, spacecraft, rockets and related equipment including spare parts, ground handling equipment and training devices. Of the $74.7 million proposed for rescission, $58 million (FY 1989) results from termination of the Tacit Rainbow program. The following proposed rescissions are excess to program requirements: Maverick missile (FY 1989, $2 million; FY 1990, $.5 million); Missile Replacement Equipment ($2.2 million), Ground Launched Cruise Missile ($.6 million); Minuteman modifications ($1.2 million); Air Launched Cruise Missile ($5.5 million); spares ($2.6 million); Global Positioning System ($.2 million); and Defense support program ($1.9 million).

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
3,223,508	3,219,026	-4,482	-16,434	-24,651	-21,290	-6,648	-2,988

R91-11

Department of Defense - Military

Procurement

Other procurement, Air Force

Of the funds made available under this head in Public Law 101-511, $18,500,000 are rescinded, and of the funds made available under this head in Public Law 101-165, $113,400,000 are rescinded, and of the funds made available under this head in Public Law 100-463, $122,300,000 are rescinded.

BEST COPY AVAILABLE

Rescission Proposal No. R91-11

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 7,543,818,000 (P.L. 101-511) Other budgetary resources... 2,289,181,344 Total budgetary resources... 9,832,999,344
BUREAU: Procurement	
Appropriation title and symbol: Other procurement, Air Force 571/33080 570/23080 579/13080	Amount proposed for rescission..... $ 254,200,000
OMB identification code: 57-3080-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual Sept. 30, 1991 Sept. 30, 1992 ☒ Multi-year Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for the procurement and modification of equipment supplies, materials and spare parts. The Over-The-Horizon-Backscatter Radar program has been terminated due to high costs and limited capability compared to other means of surveillance and due to the diminished threat. The East and West Coast sectors will be placed in storage and the previously planned Alaska sectors will not be built.

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,064,090	7,020,876	-43,214	-58,974	-69,397	-47,027	-19,319	-14,743

R91-12

Department of Defense - Military

Procurement

Procurement, Defense Agencies

Of the funds made available under this head in Public Law 101-511, $60,000,000 are rescinded, and of the funds made available under this head in Public Law 101-165, $5,303,000 are rescinded.

Rescission Proposal No. R91-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 2,501,514,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 642,139,300
Appropriation title and symbol: Procurement, Defense Agencies 971/30300 970/20300	Total budgetary resources... 3,143,653,300 Amount proposed for rescission..... $65,303,000
OMB identification code: 97-0300-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1992 / Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for expenses of activities and agencies of DoD necessary for procurement, and modification of equipment, supplies, materials and spare parts. $60 million of these funds, appropriated for the Joint Wargaming Simulation program, are excess to requirements because wargaming requirements are being funded by the Army, Navy and Air Force. $5.3 million of FY 1990 funds for a classified program are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The DoD's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
1,472,728	1,449,215	-23,508	-29,385	-10,775	-784	-522	-329

R91-13

Department of Defense - Military

Procurement

National guard and reserve equipment

Of the funds made available under this head in Public Law 101-511, $281,900,000 are rescinded, and of the funds made available under this head in Public Law 100-463, $8,000,000 are rescinded.

Rescission Proposal No. R91-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 2,501,700,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 249,764,936
Appropriation title and symbol: National guard and reserve equipment 971/30350 970/20350	Total budgetary resources... 2,751,464,936
	Amount proposed for rescission..... $289,900,000
OMB identification code: 97-0350-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 Sept. 30, 1993 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for the procurement of aircraft,missles, tracked combat vehicles, ammunition, other weapons and other procurement for the reserve components of the armed forces. The $8.0 million of FY 1989 funds proposed for rescission are excess to current requirements for procurement of Small Unit Support Vehicles. The $281.9 million of FY 1991 funds proposed for rescission are for the procurement of Navy Reserve MH-53 helicopters which are no longer needed due to force structure reductions.

ESTIMATED PROGRAM EFFECT: The National Guard and Reserve's abilty to successfully accomplish their missions would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
372,563	358,068	-14,495	-89,869	-89,869	-44,935	-20,293	-27,540

R91-14

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Army

Of the funds made available under this head in Public Law 101-511, $60,800,000 are rescinded.

Rescission Proposal No. R91-14

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 5,602,671,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources... ———
Appropriation title and symbol: Research, development, test, and evaluation, Army 211/2 2040	Total budgetary resources... $5,602,671,000
	Amount proposed for rescission..... $60,800,000
OMB identification code: 21-2040-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other ———
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ———

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission result from program terminations, or are excess to program requirements: Multi-Purpose Individual Munition ($13 million); FOG-M ($40 million); Land Mine Warfare ($2.4 million); Smoke and Obscurants ($3.7 million); Nuclear Munition - ED ($1.5 million); and Nuclear Minition - AD ($.2 million).

ESTIMATED PROGRAM EFFECT: The Department of the Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
2,989,600	2,956,160	-33,440	-20,672	-4,436	-1,094	-912	-244

R91-15

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Navy

Of the funds made available under this head in Public Law 101-511, $103,300,000 are rescinded, and of the funds made available under this head in Public Law 101-165, $731,200,000 are rescinded.

Rescission Proposal No. R91-15

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... (P.L. 101-511) $ 9,021,353,000
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources... 1,198,518,821
Appropriation title and symbol: Research, development, test, and evaluation, Navy 171/21319 170/11319	Total budgetary resources... 10,219,871,821
	Amount proposed for rescission..... $ 834,500,000
OMB identification code: 17-1319-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 / Sept. 30, 1992 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission result from program terminations, or are excess to program requirements: A-12 aircraft (FY 1990, $722.2 million); CATFAE Antimine System ($5.5 million); Sea Lance ($71 million); Fleet Electronic Warfare Support Group Competition ($15 million); Surface Ship Torpedo Defense (FY 1990, $9 million); Remote Control of Mines ($1.3 million); Electro/Optical Sensor ($1 million); Directed Energy, countermeasures ($4.6 million); Aircraft Equipment Reliability/Maintainability Program ($1.4 million); Marine Corps Ground Combat ($1.5 million); and Contract Design ($2 million).

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
8,258,504	7,791,184	-467,320	-269,544	-65,090	-11,683	-13,352	-7,511

R91-16

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Air Force

Of the funds made available under this head in Public Law 101-511, $124,400,000 are rescinded, and of the funds made available under this head in Public Law 101-165, $9,700,000 are rescinded.

Rescission Proposal No. R91-16

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $11,947,015,000
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 3,399,662,809
Appropriation title and symbol: Research, development, test and evaluation, Air Force 571/23600 570/13600	Total budgetary resources... 15,346,677,809
	Amount proposed for rescission..... $ 134,100,000
OMB identification code: 57-3600-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 Sept. 30, 1992 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other ____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission are due to schedule delays, program limitations or are excess to program requirements: Short Range Attack Missile ($77.4 million); Medium Launch Vehicle ($20 million); Tacit Rainbow ($27 million), In-House Lab Independent Research (FY 1990, $.1 million), Defense Research Sciences (FY 1990, $3.8 million), and Range Improvements (FY 1990, $5.8 million).

ESTIMATED PROGRAM EFFECT: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
10,094,621	10,616,843	-77,778	-38,889	-12,069	-2,816	-2,280	-268

R91-17

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Defense Agencies

Of the funds made available under this head in Public Law 101-511, $20,000,000 are rescinded, and of the funds made available under this head in Public Law 101-511, $9,300,000 are rescinded.

Rescission Proposal No. R91-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 9,114,541,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 785,893,364
Appropriation title and symbol: Research, development, test, and evaluation, Defense Agencies 971/20400 970/10400	Total budgetary resources... 9,900,434,364 Amount proposed for rescission..... $ 29,300,000
OMB identification code: 97-0400-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 / Sept. 30, 1992 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission are due to schedule delays or are excess to program requirements: Wargaming Simulation ($15 million); Long Range Conventional Standoff Weapon ($5 million), Research Projects (FY 1990, $8 million), and Defense Support Program Office (FY 1990, $1.3 million).

ESTIMATED PROGRAM EFFECT: The DoD's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,793,467	7,778,231	-15,236	-11,281	-2,022	-557	-204	---

R91-18

Department of Defense - Military

Military Construction

Military construction, Navy

Of the funds made available under this head in Public Law 101-519, $37,990,000 are rescinded, and of the funds made available under this head in Public Law 100-447, $10,972,000 are rescinded.

Rescission Proposal No. R91-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 1,132,606,000 (P.L. 101-519)
BUREAU: Military Construction	Other budgetary resources.. 117,737,337
Appropriation title and symbol: Military construction, Navy 171/51205 179/31205	Total budgetary resources... 1,250,343,337
	Amount proposed for rescission..... $ 48,962,000
OMB identification code: 17-1205-0-1-051	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1993 Sept. 30, 1995 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, installation and equipping of temporary or permanent public works, military installations, facilities and real property for the Navy. The project ($37.99 million) that supports the TRIDENT II D-5 backfit are not required because the back-fit program has been delayed beyond 1997 and construction is no longer required for an Electronic installation site, (FY 1989, $10.972 million) that would support a Relocatability Over-The-Horizon radar project that was terminated.

ESTIMATED PROGRAM EFFECT: No adverse effects are anticipated.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
468,568	462,555	-6,022	-24,824	-10,772	-2,448	-2,203	-1,714

R91-19

Department of Defense - Military

Military Construction

Military construction, Air Force

Of the funds made available under this head in Public Law 101-519, $11,000,000 are rescinded, and of the funds made available under this head in Public Law 101-148, $63,900,000 are rescinded, and of the funds made available under this head in Public Law 109-447, $16,900,000 are rescinded.

Rescission Proposal No. R91-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... $ 949,094,000 (P.L. 101-519)
BUREAU: Military Construction	Other budgetary resources.. 1,089,029,963
Appropriation title and symbol: Military construction, Air Force 579/33300 570/43300 571/53300	Total budgetary resources... 2,038,123,963
	Amount proposed for rescission..... $ 91,800,000
OMB identification code: 17-3300-0-1-051	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual Sept. 30, 1993 Sept. 30, 1994 ☒ Multi-year Sept. 30, 1995 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, installation and equipping of temporary or permanent public works, military installations, facilities and real property for the Air Force. The facilities to support Over-The-Horizon Radar program are no longer needed because the radar program was terminated (FY 1989, $16.9 million, and FY 1991 $11 million). Facilities to support the deployment of the PEACEKEEPER missiles in the rail garrison basing mode at F.E. Warren AFB, WY result in unneeded funds (FY 1990, $63.9 million) because there are no plans to deploy the PEACEKEEPER in the rail garrison basing mode.

ESTIMATED PROGRAM EFFECT: No adverse effects are anticipated.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
845,592	848,432	-7,160	-39,740	-23,868	-11,016	-5,506	-3,213

R91-20

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Annual contributions for assisted housing

Of the funds made available under this head in Public Law 101-507, $535,000,000, together with all uncommitted balances remaining in the Nehemiah Housing Opportunity revolving fund, are rescinded: Provided, That $233,760,000 shall be inserted in lieu of $733,760,000 for the development and acquisition cost of public housing: Provided further, That no funding shall be available for assistance under the Nehemiah housing opportunity program.

Rescission Proposal No. R91-20

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 9,415,000,000 (P.L. 101-507)
BUREAU: Housing Programs	Other budgetary resources... 1,345,467,988
Appropriation title and symbol: Annual contributions for assisted housing 86X0164	Total budgetary resources... 10,760,467,988
	Amount proposed for rescission.....$ 500,000,000
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation provides funds for various subsidized housing programs. A rescission is proposed for the development and acquisition cost of public housing to offset the additional funding proposed in 1991 for the new HOPE and HOME programs. This action is taken to fulfill the budget principles adopted in the Omnibus Budget Reconciliation Act of 1990.

ESTIMATED PROGRAM EFFECT: This action would reduce the construction of new public housing from 10,000 units at a cost of $733,760,000 to 3,186 units at a cost of $233,760,000. New rental construction for low-income households is, however, an eligible funding activity under HOME.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
13,641,074	13,641,074	—	-40,000	-165,000	-135,000	-160,000	—

R91-21

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Congregate services

All of the funds made available under this head in Public Law 101-507 are rescinded.

BEST COPY AVAILABLE

Rescission Proposal No. R91-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 9,500,000 (P.L. 101-507)
BUREAU: Housing Programs	Other budgetary resources... 5,027,709
Appropriation title and symbol: Congregate services program 86X0178 861/20178 860/10178	Total budgetary resources... 14,527,709
	Amount proposed for rescission.....$ 9,500,000
OMB identification code: 86-0178-0-1-604	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 Sept. 30, 1992 (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation funds supportive services for elderly residents of public and section 202 housing. An early evaluation of the results from the initial three to five year contracts suggested that the program did not achieve its primary goal of preventing premature institutionalization. Through the HOPE initiative, the Administration is proposing an alternative approach to this program by linking housing vouchers with supportive services. The rescission proposed in this account would help fund a supplemental appropriation to start the HOPE initiative in 1991.

ESTIMATED PROGRAM EFFECT: No new contracts would be funded for this program.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,900	7,900	---	-7,148	-2,354	---	---	---

R91-22

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Nehemiah housing opportunity fund

Note: The proposed appropriation language under Annual contribution for assisted housing affects this program.

Rescission Proposal No. R91-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 35,000,000 (P.L. 101-507)
BUREAU: Housing Programs	Other budgetary resources... 32,581,569
Appropriation title and symbol: Nehemiah housing opportunity fund 86X4071	Total budgetary resources... 67,581,569
	Amount proposed for rescission.....$ 39,112,000
OMB identification code: 86-4071-0-1-604	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: The Nehemiah Housing Opportunity Fund provides grants to non-profit organizations, who in turn, make loans to eligible families to assist in the purchase of new or substantially rehabilitated units. No separate program is being proposed for 1991; however, Nehemiah-type activities are eligible under the new HOPE and HOME programs. This proposed rescission would provide savings in order to fund HOPE and HOME programs. This program was repealed, as of the start of FY 1992, in the 1990 Cranston-Gonzalez National Affordable Housing Act.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
10,839	10,839	---	---	-19,556	-19,556	---	---

R91-23

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Urban development action grants

Available funds under this head (including amounts deobligated in fiscal year 1991), except such amounts as may be necessary to comply with court orders of United States Courts which direct the Secretary of Housing and Urban Development to set aside funds for possible future approval of grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974, as amended, are rescinded.

Rescission Proposal No. R91-23

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority.....
BUREAU: Community Planning and Development	Other budgetary resources...$ 13,518,000
Appropriation title and symbol: Urban development and action grants 868/10170	Total budgetary resources... 13,518,000 Amount proposed for rescission..... $ 13,518,000
OMB identification code: 86-0170-0-1-451	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1991 (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation funds grants to distressed cities and urban counties to attempt to stimulate economic development activity. Congress has provided no monies for this program since 1988. This rescission proposes that the small amount of unobligated balances and expected recaptures of budget authority, which would be available only through the end of FY 1991, not be reutilized to fund new Urban Development Grant (UDAG) projects.

ESTIMATED PROGRAM EFFECT: No additional UDAG projects would be funded.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
210,000	210,000	—	-2,700	-3,380	-3,380	-4,058	—

R91-24

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Rental rehabilitation grants

All of the funds made available under this heading in Public Law 101-507 are rescinded.

Rescission Proposal No. R91-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 70,000,000 (P.L. 101-507)
BUREAU: Community Planning and Development	Other budgetary resources... 34,216,579
Appropriation title and symbol: Rental rehabilitation grants 869/10182 861/30182 860/20182	Total budgetary resources... 104,216,579
	Amount proposed for rescission.....$ 70,000,000
OMB identification code: 86-0182-0-1-451	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☒ Multi-year Sept. 30, 1993 (expiration date) ☐ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This appropriation funds grants for States, urban counties, and cities with populations in excess of 50,000 to help support the rehabilitation of privately owned rental housing. This proposed rescission would offset part of the cost of implementing the Congressionally-approved new HOPE and HOME programs in 1991. Rental rehabilitation is an eligible funding activity under HOME. This program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the start of 1992.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
71,911	68,411	-3,500	-21,000	-31,500	-14,000	---	---

R91-25

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Urban homesteading

All of the funds made available under this head in Public Law 101-507, together with available balances (including amounts deobligated in fiscal year 1991), are rescinded.

Rescission Proposal No. R91-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ 13,000,000 (P.L. 101-507)
BUREAU: Community Planning and Development	Other budgetary resources... 396,607
Appropriation title and symbol: Urban homesteading 86X0171	Total budgetary resources... 13,396,607
	Amount proposed for rescission.....$ 13,396,607
OMB identification code: 86-0171-0-1-451	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: In accordance with section 810 of the Housing and Community Development Act of 1974, as amended, the Secretary of HUD is authorized to transfer one-to-four unit HUD-owned properties, without payment, to units of local government for use in an urban homesteading program. In addition, the Act authorizes various agencies to transfer their unoccupied, single family properties for use in such programs. This rescission would offset partially the cost of implementing the new HOPE and HOME grant program. in 1991. The Urban Homesteading program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the end of FY 1991.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (In thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
13,766	369	-13,397	---	---	---	---	---

R91-26

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Rehabilitation loan fund

Amounts made available for commitments for loans under this head in Public Law 101-507, other than amounts necessary for operating costs and the capitalization of delinquent interest on delinquent or defaulted loans, are rescinded.

Rescission Proposal No. R91-26

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority.....
BUREAU: Community Planning and Development	Other budgetary resources...$ 166,459,477
Appropriation title and symbol: Rehabilitation loan fund 86X4036	Total budgetary resources... 166,459,477
	Amount proposed for rescission..... $ 144,459,477
OMB identification code: 86-4036-0-3-451	**Legal authority (in addition to sec. 1012):** ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year _____ (expiration date) ☒ No-Year	**Type of budget authority:** ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: This account was established under section 312 of the Housing Act of 1964 to authorize loans for the rehabilitation of residential and commercial properties. This program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the end of FY 1991. This proposed rescission would offset partially the cost of implementing the new HOPE and HOME grant programs in 1991.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
-41,645	-55,145	-13,500	-67,500	-54,000	-9,459	---	---

Deferral No. D91-1B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D91-1A transmitted to Congress on January 9, 1991.

This revision increases by $830,102 the previous deferral of $2,092,829,284 in the Economic support fund, resulting in a total deferral of $2,093,659,386. The increase results from more unobligated funds carried over from FY 1990 than previously anticipated.

Deferral No. 91-1B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 3,161,000,000 (P.L. 101-513)
BUREAU: International Security Assistance	Other budgetary resources..... * 185,609,123
Appropriation title and symbol: Economic support fund 1/ 111/21037 11X1037 * 110/11037	Total budgetary resources..... * 3,346,609,123
	Amount to be deferred: Part of year..... * $ 2,093,659,386 2/
	Entire year..... _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1991 / September 30, 1992 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund..... *	11x1037	11-1037-0-1-152	* $ 40,219,102
Economic support fund.....	111/21037	11-1037-0-1-152	1,904,121,000
Economic support fund.....	110/11037	11-1037-0-1-152	149,319,284
			* 2,093,659,386

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1990 (D90-1C).

2/ The deferred amount has been reduced to $1,896,006,536 due to subsequent releases.

* Revised from previous report.

Deferral No. 91-1C

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 117,620,000 (P.L. 94-588 & 101-512)
BUREAU: Forest Service	Other budgetary resources..... 161,572,549
Appropriation title and symbol: Timber salvage sales 12X5204	Total budgetary resources..... 279,192,549
	Amount to be deferred: Part of year..... $ _____
	Entire year..... 103,684,036
OMB identification code: 12-9922-0-2-302	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: The Timber Salvage Sales fund was established under the provisions of the National Forest Management Act of 1976 to enable immediate harvesting of dead and dying trees when required by market conditions or catastrophes. Purchasers of dead, damaged, insect-infested, or downed timber are required to make monetary deposits into this fund to cover the costs associated with this activity. The current appropriations bill provides additional authority for use of timber salvage funds, including sale preparation to replace sales inventory lost through fire and other causes.

The salvage sale program is a part of the timber sales program and has specific timber volume targets assigned. Approximately 2.84 billion board feet of new and existing salvage sales must be completed. The Forest Service is planning for a program that will require $176 million in 1991. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 91-5564 Filed 3-7-91; 8:45 am]
BILLING CODE 3195-01-C

Reader Aids

Federal Register
Vol. 56, No. 46
Friday, March 8, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904	1
8905-9120	4
9121-9268	5
9269-9580	6
9581-9834	7
9835-10140	8

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305 ... 9658

3 CFR

Administrative Orders:
Memorandums:
February 21, 1991 ... 9271
Presidential Determinations:
No. 91-20 of January 25, 1991 ... 8681
Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991) ... 8681
Proclamations:
6254 ... 9121
6255 ... 9269
6256 ... 9579; 10 CFR

Proposed Rules:
581 ... 9181

7 CFR

1 ... 9561
17 ... 9273
46 ... 8883
301 ... 9273
905 ... 8884
918 ... 8905
1046 ... 9274
1434 ... 9592

Proposed Rules:
12 ... 9256
704 ... 9293
920 ... 9302
1005 ... 9306
1410 ... 9293
1413 ... 9251

8 CFR

241 ... 8906
242 ... 8906
274 ... 8885

9 CFR

82 ... 9752
331 ... 8907, 8908
381 ... 8907, 8908

10 CFR

Ch. XVII ... 9605
710 ... 10068
1048 ... 9611

Proposed Rules:
710 ... 10075
1703 ... 9902

11 CFR

110 ... 9275

12 CFR

265 ... 8887
600 ... 8910
601 ... 8910
602 ... 8910
603 ... 8910
604 ... 9611
606 ... 8910
611 ... 8910
612 ... 8910
614 ... 8910
615 ... 8910
617 ... 8910
618 ... 8910
619 ... 8910
621 ... 8940
980 ... 8888

Proposed Rules:
327 ... 9306

14 CFR

21 ... 8699-8701
25 ... 8699-8701
39 ... 9612-9616, 9635-9638
71 ... 9618-9620
1208 ... 8910

Proposed Rules:
39 ... 8732, 8733, 8935, 9658, 9661, 9907-9913
71 ... 9660, 9663, 9914
91 ... 8938

15 CFR

303 ... 9621

16 CFR

305 ... 9123
1500 ... 9278
1502 ... 9278

Proposed Rules:
1700 ... 9181

17 CFR

240 ... 9124

18 CFR

1301 ... 9288

Proposed Rules:
35 ... 8938

19 CFR

Proposed Rules:
141 ... 9311

21 CFR

5 ... 8709
510 ... 9622, 9849
520 ... 8709, 8710, 9840
522 ... 9622
524 ... 9822
558 ... 8710

556.....9622, 9641
1308.....9132
1316.....8685
Proposed Rules:
201.....9312
356.....9915
808.....8940

22 CFR
514.....8711

24 CFR
Ch. I.....9472
91.....9169
791.....9822
Proposed Rules:
203.....8941

26 CFR
1.....8911
31.....8911
301.....9169
602.....8912
Proposed Rules:
1.....8943–8957
301.....9182

27 CFR
5.....8922
Proposed Rules:
16.....10066

28 CFR
0.....8923
8.....8685
Proposed Rules:
11.....8734

29 CFR
541.....9252
579.....9252
580.....9252
801.....9046
1601.....9823
Proposed Rules:
516.....9183
778.....9183
1602.....9185

30 CFR
56.....9626
57.....9626
243.....9251
723.....10060
845.....10060
Proposed Rules:
901.....8967
913.....8969
935.....9312

32 CFR
291.....9641
627.....9424
Proposed Rules:
299a.....9314

33 CFR
3.....9268
100.....9850, 9851
110.....9852
117.....8712
151.....8678
165.....9289
Proposed Rules:
117.....9916

36 CFR
Proposed Rules:
9.....9917

38 CFR
6.....9626
8.....9626
21.....9627
36.....9653

39 CFR
Proposed Rules:
111.....9684

40 CFR
Proposed Rules:
Ch. I.....6972, 9315
52.....9172–9175
60.....9177
82.....9518
86.....9754
147.....9408
226.....9178
86.....8856
123.....8973
300.....9187
600.....8856
799.....9092, 9105

41 CFR
105–8.....9962
301–1.....9878
302–11.....9269
Ch. 304.....9878

42 CFR
400.....8832
405.....8832
406.....8832
412.....9633

44 CFR
353.....9452

45 CFR
74.....8712
205.....8924
232.....8926
234.....8926
235.....8926
801.....9180
1611.....9634

46 CFR
25.....8878

47 CFR
0.....9752
2.....9881
21.....9897
69.....9897
73.....8933, 8934, 9898, 9899
80.....9881
94.....9897, 9900
Proposed Rules:
73.....8974–8976, 9189–9191, 9924
76.....9924

48 CFR
Proposed Rules:
Ch. 2, App. N.....9082
22.....9832
42.....9832
52.....9832
202.....9082
203.....9082
204.....9082
217.....9082
225.....9082
228.....9082
232.....9082
245.....9082
252.....9082
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR
1.....9635
1010.....9635
1011.....8721
1330.....8722
Proposed Rules:
Ch. X.....9191
383.....9925
571.....9926
1053.....9339

50 CFR
611.....8722, 38723
620.....8722
646.....9251
672.....9635, 9636
675.....9636
Proposed Rules:
20.....9462
641.....9930
658.....8736
672.....9251
675.....9251

LIST OF PUBLIC LAWS

Last List March 6, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

S.J. Res. 51/Pub. L. 102–7

To designate the week beginning March 4, 1991, as "Federal Employees Recognition Week". (Mar. 5, 1991; 105 Stat. 25; 1 page) Price: $1.00

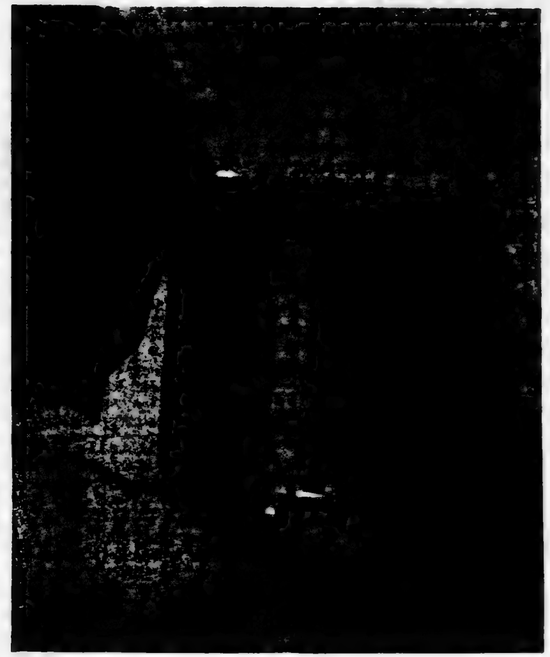
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
* 6462

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:
____ Federal Register: ____ One year: $195 ____ Six months: $97.50
____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____ (Company or personal name)
_____ (Additional address/attention line)
_____ (Street address)
_____ (City, State, ZIP Code)
(_____) _____ (Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ (Credit card expiration date)
Thank you for your order!
_____ (Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)

Would you like to know...

If any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected. $21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references. $19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Mailing to FR Subscribers:

FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6483

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date) *Thank you for your order!*

_____
(Signature) (REV. 10-1-88)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6216

Charge your order. It's easy! VISA

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

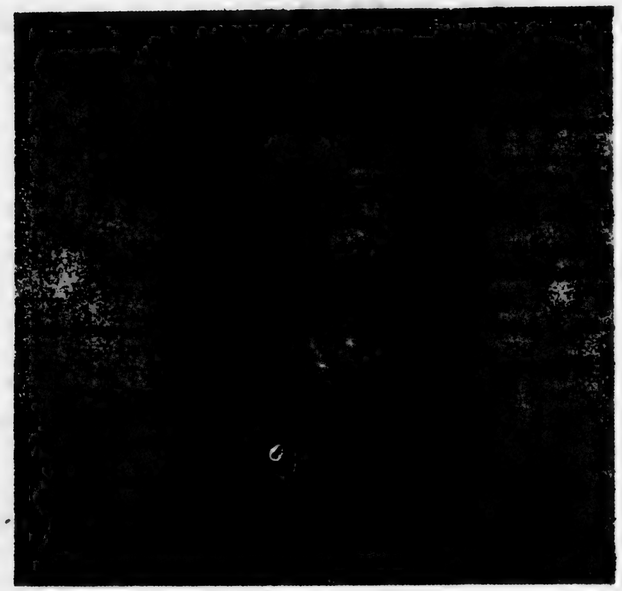
_____
(Credit card expiration date) *Thank you for your order!*

_____
(Signature) 1/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

BEST COPY AVAILABLE

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders**, there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents Publications Order Form

Order Processing Code: *6661

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature) 7/88

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

VOL
56

ISS
46

MR
8

991

UMI

OL
56
SS
47
R
11
991
MI

3-11-91
Vol. 56 No. 47

federal register

Monday
March 11, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
47
IR
11
91
MI

3-11-91
Vol. 56 No. 47
Pages 10141-10358

federal register

Monday
March 11, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Miami, FL, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-0186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-0186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-0186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1-800-347-1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

Administrative Conference of the United States
NOTICES
Meetings:
Governmental Processes Committee, 10233

Agency for Health Care Policy and Research
NOTICES
Meetings:
Clinical practice guidelines visual impairment due to cataracts in aging eye, 10274

Agricultural Marketing Service
RULES
Avocados grown in Florida, 10143
Potatoes; grade standards
Correction, 10302
PROPOSED RULES
Cranberries grown in Massachusetts et al., 10189

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Farmers Home Administration

Antitrust Division
NOTICES
National cooperative research notifications:
Petroleum Environmental Research Forum, 10284

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Utah, 10233

Commerce Department
See Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Crop oilseeds except soybeans; price support programs, 10189
Wheat, feed grains, rice, oilseeds, and farm-stored peanuts price support program, 10192

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 10298

Customs Service
NOTICES
Commercial laboratory accreditations:
Caleb Brett, U.S.A., Inc., 10297

Defense Department
See also Defense Logistics Agency; Engineers Corps
RULES
Civilian equal employment opportunity program, 10170
PROPOSED RULES
Contracting:
Productivity enhancing capital investment program, 10219
Security:
Defense industrial personnel security clearance program, 10215
NOTICES
Agency information collection activities under OMB review, 10240
Meetings:
Defense Policy Board Advisory Committee, 10240
Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission, 10240
Military Appeals Court; practice and procedure rules, proposed changes, 10240

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching programs, 10241

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Elmariah, Ahmed M., M.D., 10284
Miller, Lloyd L., M.D., 10285
Olefsky, Alan H., M.D., 10285

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Educational partnerships program, 10306
Educational research and development centers program, 10346
Meetings:
Education Statistics Advisory Council, 10242

Energy Department
See also Energy Research Office; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Western Area Power Administration
NOTICES
Conflict of interests:
Contract awards; potential organizational conflict of interest, 10243

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Merit review system; procedures, 10244

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Upper Mississippi River, MN, 10242

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Tennessee, 10171
NOTICES
Meetings:
Science Advisory Board, 10270

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Telecommunications Equipment Technical Advisory Committee, 10233

Farm Credit Administration
RULES
Farm credit system:
Organization—
Systems institutions; reorganization authorities, 10169
NOTICES
Meetings; Sunshine Act, 10300

Farm Credit System Insurance Corporation
RULES
Premiums, computation and payment
Correction, 10302

Farmers Home Administration
RULES
Program regulations:
Debt settlement, 10145

Federal Aviation Administration
PROPOSED RULES
Jet routes; correction, 10302
NOTICES
Airport noise compatibility program:
Noise exposure map—
Reno Cannon International Airport, NV, 10292
Exemption petitions; summary and disposition, 10293

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama, 10178
California, 10178
Kentucky, 10178
PROPOSED RULES
Radio services, special:
Interactive video data service, 10222
Radio stations; table of assignments:
Wisconsin, 10227
NOTICES
Agency information collection activities under OMB review, 10270
Meetings; Sunshine Act, 10300

Federal Deposit Insurance Corporation
RULES
Capital maintenance:
Minimum supervisory leverage ratios, etc., 10154

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
West Texas Utilities Co. et al., 10246
Meetings; Sunshine Act, 10298
Natural gas certificate filings:
Mississippi River Transmission Corp. et al., 10253
Natural Gas Pipeline Co. of America et al., 10248
Southern Natural Gas Co. et al.; correction, 10302
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 10258, 10262
(2 documents)
Columbia Gas Transmission Corp., 10259
Florida Gas Transmission Co., 10259
Great Lakes Gas Transmission Limited Partnership, 10263
South Georgia Natural Gas Co., 10263
Southern Natural Gas Co., 10260
Texas Gas Transmission Corp., 10260, 10261
(3 documents)
Transwestern Pipeline Co., 10262
(2 documents)
Williams Natural Gas Co., 10261

Federal Highway Administration
RULES
Engineering and traffic operations:
Handicapped parking; uniform system, 10328
Motor carrier safety standards:
Failure to comply with notices and orders; penalty schedule, 10179

Federal Maritime Commission
NOTICES
Agreements filed, etc., 10270, 10271
(3 documents)

Federal Reserve System
NOTICES
Applications, hearings; determinations, etc.:
BB&T Financial Corp., 10273
First-Citizens BancShares, Inc., 10273
Mitsui Manufacturers Bank, 10271
Sandwich Bancorp, Inc., 10273

Foreign Assets Control Office
RULES
Kuwaiti assets control, 10356

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
North Carolina—
Mallinckrodt Medical, Inc.; pharmaceutical manufacturing facility, 10234
Washington, 10233

Government Printing Office
NOTICES
Meetings:
Depository Library Council, 10274

Health and Human Services Department
See Agency for Health Care Policy and Research; Human Development Services Office; National Institutes of Health; Social Security Administration

Hearings and Appeals Office, Energy Department
NOTICES
Cases filed, 10263
Decisions and orders, 10264

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 10277–10280
(3 documents)
Environmental statements; availability, etc.:
Niagara Falls, NY, 10280

Human Development Services Office
NOTICES
Meetings:
Federal Council on Aging, 10275

Interior Department
See also Land Management Bureau; National Park Service
PROPOSED RULES
Acquisition regulations:
Conflict of interests; withdrawn, 10227

Internal Revenue Service
PROPOSED RULES
Income taxes:
Active service in combat zone; compensation, 10211

International Trade Administration
NOTICES
Antidumping:
Ball bearing, mounted or unmounted, and parts from Argentina et al., 10237
Carbon steel butt-weld pipe fittings from Taiwan, 10234
High information content flat panel displays and subassemblies from Japan, 10236
Antidumping and countervailing duties:
Administrative protective orders violation sanctions, 10234
Countervailing duties:
Ball bearings, mounted or unmounted, and parts from Turkey, 10238

International Trade Commission
NOTICES
Import investigations:
Microporous nylon membrane and products containing same; correction, 10302

Justice Department
See also Antitrust Division; Drug Enforcement Administration
PROPOSED RULES
Voting Rights Act of 1965, Section 5; administration procedures:
Preclearance requests; data submission on magnetic media, 10348
NOTICES
Pollution control; consent judgments:
Belleville, IL, 10283
General Motors Corp., 10282
Huron Dressed Beef Co., 10283
Newaygo, MI, 10283

Land Management Bureau
RULES
Forest management:
Forest products; sales—
Timber or other negative resources; trespass control, 10173
NOTICES
Realty actions; sales, leases, etc.:
Colorado, 10281
Oregon, 10281
Utah, 10282

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
Synthecon, Inc., 10286

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 10285

National Foundation on the Arts and the Humanities
RULES
Museum Services Institute:
Conservation project support and professional services grant programs, 10176
NOTICES
Meetings:
Dance Advisory Panel, 10286

National Highway Traffic Safety Administration
RULES
Engineering and traffic operations:
Handicapped parking; uniform system, 10328
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Replaceable bulb and integral beam headlamps; humidity test procedures, 10185

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 10274

National Oceanic and Atmospheric Administration
PROPOSED RULES
Tuna, Atlantic bluefin fisheries, 10227

National Park Service
NOTICES
National Register of Historic Places:
Eligibility determinations, 10282

Nuclear Regulatory Commission
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices; correction, 10302
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 10287

Personnel Management Office
RULES
Temporary appointees; health benefits, life insurance, and retirement; eligibility requirements, 10141
NOTICES
Agency information collection activities under OMB, 10289

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 10300

Presidential Documents
PROCLAMATIONS
Special observances:
Thanksgiving, For National Days of, April 5–7, 10353

Public Health Service
See National Institutes of Health

Railroad Retirement Board
RULES
Railroad Unemployment Insurance Act:
Qualified employee; and miscellaneous, CFR Part removed
Correction, 10302

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 10300
(2 documents)
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 10290
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 10289
Midwest Stock Exchange, Inc., 10289
Pacific Stock Exchange, Inc., 10290

Small Business Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Small business incubators, 10291
Meetings; regional advisory councils:
Kentucky, 10292

Social Security Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Social security disability program demonstration; case management project, 10276
Meetings:
Supplemental Security Income Modernization Project, 10277

State Department
NOTICES
Agency information collection activities under OMB review, 10292

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration

Treasury Department
See also Customs Service; Foreign Assets Control Office; Internal Revenue Service
RULES
Organization, functions, and authority delegations:
Director, Bureau of Engraving and Printing; exchange of mutilated paper currency, 10169
NOTICES
Agency information collection activities under OMB review, 10294
Organization, functions, and authority delegations:
Assistant Secretary (Economic Policy), 10294

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 10297

Veterans Affairs Department
PROPOSED RULES
Adjudication; pensions, compensation, dependency, etc.:
Institutionalized patients; pension reductions
Correction, 10303
Disabilities rating schedule:
Claims based on exposure to herbicides containing dioxin (soft-tissue sarcomas)
Correction, 10303

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland Area Projects, CO, 10267
Pick-Sloan Missouri Basin Program, 10266

Separate Parts In This Issue

Part II
Department of Education, 10306

Part III
Department of Transportation, Federal Highway Administration and National Highway Traffic Safety Administration, 10328

Part IV
Department of Education, 10346

Part V
Department of Justice, 10348

Part VI
The President, 10353

Part VII
Department of the Treasury, Foreign Assets Control Office, 10356

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6257 10353

5 CFR
213 10141
316 10141
317 10141
351 10141
831 10141
842 10141
870 10141
890 10141

7 CFR
51 10302
911 10143
915 10143
1864 10145
1903 10145
1910 10145
1944 10145
1945 10145
1951 10145
1955 10145
1956 10145
1965 10145
1980 10145
Proposed Rules:
929 10189
1421 (2 documents) 10189, 10192

12 CFR
325 10154
611 10169
1410 10302

14 CFR
Proposed Rules:
75 10302

20 CFR
302 10302

23 CFR
1235 10328

26 CFR
Proposed Rules:
1 10211

28 CFR
Proposed Rules:
51 10348

31 CFR
100 10169
570 10356

32 CFR
191 10170
Proposed Rules:
155 10215
162 10219

38 CFR
Proposed Rules:
3 (2 documents) 10303
4 10303

40 CFR
52 10171

43 CFR
5400 10173
5420 10173
5450 10173
5460 10173
9230 10173

45 CFR
1180 10176

47 CFR
73 (3 documents) 10178
Proposed Rules:
1 10222
2 10222
73 10227
95 10222

48 CFR
Proposed Rules:
1403 10227
1405 10227
1415 10227
1453 10227

49 CFR
386 10179
571 10185

50 CFR
Proposed Rules:
285 10227

Rules and Regulations

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 316, 317, 351, 831, 842, 870, and 890

Providing Benefits for Certain Temporary Appointees

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing health benefits, life insurance, and retirement to extend eligibility for coverage to employees serving under temporary appointments, when such appointments are specifically intended to lead to conversion to permanent appointments and are needed to fulfill an eligibility requirement for the conversion. The revised regulations also permit such employees to be treated as nontemporary for reduction in force purposes.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 606–0960.

SUPPLEMENTARY INFORMATION: OPM issued regulations proposing these changes on May 25, 1990 (55 FR 21552). Comments on the proposed regulations were received from four Federal agencies, all of which supported the proposed changes.

Three of the agencies suggested expanding the benefits available to all temporary appointees. All three recommended that health benefits be offered during the first year of a temporary appointment, and one recommended that the Government contribute toward the premiums on the same basis as for permanent employees. One agency also recommended making life insurance and retirement benefits available to temporary appointees, although without the Government contribution. We have not adopted these suggestions. Because such changes exceed the scope of those included in the proposed regulations, it would be inappropriate to adopt them in final regulations. Moreover, because of the greater costs involved, proposals to provide benefits to all temporary employees must be considered in light of the need to hold down personnel costs in a time of budget austerity.

The final regulations include no substantive changes from the proposed regulations, but do include some technical and editorial changes. References to part 305, which has been superseded by pay reform legislation, have been dropped. The definition of provisional appointments, which was contained in § 316.401 of the proposed regulations, has been moved to a new § 316.403 for greater clarity. The provisions relating to health benefits contained in § 890.102 have been reworded to reflect previously published changes; § 890.301 has been revised to show that temporary employees have an opportunity to enroll or change enrollment if they are converted to provisional appointments; and §§ 890.501 and 890.502 are revised to clarify that provisional appointees are not treated as temporary employees, who must pay full premiums, with r Government contribution, in accordance with the provisions of 5 U.S.C. 8906a.

With these changes, we are adopting the proposed regulations as final.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations affect only the way in which Federal agencies appoint and compensate certain employees.

List of Subjects

5 CFR Parts 213 and 317

Government employees.

5 CFR Part 316

Government employees, Veterans.

5 CFR Part 351

Administrative practice and procedure, Government employees.

5 CFR Parts 831 and 842

Administrative practice and procedure, Claims, Firefighters, Government employees, Handicapped, Law enforcement officers, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Life insurance, Retirement, Workers' compensation.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement, Claims.

Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR parts 213, 316, 317, 351, 831, 842, 870, and 890 as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.102 also issued under 5 U.S.C. 1104, Public Law 95–454, sec. 3(5); § 213.3102 also issued under 5 U.S.C. 3301, 3302 (E.O. 12364, 47 FR 22931), 3307, 8337(h) and 8457.

2. In § 213.3302, paragraph (b) is revised to read as follows:

§ 213.3302 Temporary Schedule C positions during a presidential transition, as a result of changes in department or agency heads, or at the time of a creation of a new department or agency.

* * * * *

(b) Individual appointments under this authority may be made for 120 days, with one additional extension of 120 days. These positions must be of a confidential or policy-determining character and are subject to instructions issued by OPM. Appointments made under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 351, 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

PART 316—TEMPORARY AND TERM EMPLOYMENT

3. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, and E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585.

4. § 316.401 is revised to read as follows:

§ 316.401 Purpose and duration.

(a) *Purpose.* OPM may authorize an agency to make a temporary limited appointment to meet an administrative need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period, or for provisional appointment leading to permanent appointment.

(1) Agencies may make temporary appointments as provided in § 316.402 below.

(2) Agencies may designate particular appointments as provisional appointments as provided in § 316.403 below.

(b) *Duration.* An agency may make a temporary appointment for a definite period of 1 year or less. In some cases, a time limit is specified in the applicable regulation or OPM authorization.

5. A new § 316.403 is added to read as follows:

§ 316.403 Designation of Provisional Appointments.

(a) *Conditions for designation.* An agency may designate a temporary appointment as a provisional appointment only when all of the following conditions are met:

(1) The appointment is made to fill a continuing position by a provisional appointment leading to permanent appointment when the position must be filled more quickly than would be possible under the procedures required for nontemporary appointment or when such a provisional appointment is a requirement of the applicable authority;

(2) The agency must have current budgetary and appointing authority for the nontemporary appointment (assuming satisfactory completion of the required procedures); and

(3) The agency must have a specific intention to convert the appointee to a nontemporary appointment under appropriate authority before the expiration of the temporary appointment, must state this intention in any written offer of employment and document this intention as part of the permanent record of the initial appointment in accordance with instructions issued by OPM in the Federal Personnel Manual.

(b) *Authority for provisional appointments.* Provisional appointments must be made under an authority established by law, Executive order, or regulation or granted by OPM. Appointments which may be treated as provisional appointments under this paragraph may be made under any appropriate authority, including, but not limited to:

(1) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(2), when the appointments are intended to afford eligibility for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

(2) Temporary appointments of nurses in the Department of Veterans Affairs, when the appointments are made under the provisions of section 4114 of title 38, United States Code, with the intention of converting the appointees to continuing appointments as soon as the appointees obtain required State certification or registration and/or the agency completes necessary verification of references;

(3) Identical Temporary Schedule C and New Temporary Schedule C appointments made under § 213.3302 of this chapter, when the appointees are to be converted to nontemporary Schedule C appointments upon OPM approval and completion of necessary clearances;

(4) Senior Executive Service limited term and limited emergency appointments made under § 317.601 of this chapter, when the appointees are to be converted to nontemporary appointments in the Senior Executive Service or to nontemporary Presidential appointments, upon further action, such as OPM approval, White House clearance, and/or confirmation by the Senate; and

(5) Temporary appointments of severely physically handicapped individuals, when such appointments are required to demonstrate qualifications for nontemporary appointment under § 213.3102(u) of this chapter, and when the appointees will be converted to such nontemporary appointment upon successful performance in the trial position.

PART 317—APPOINTMENT, REASSIGNMENT, TRANSFER, AND REINSTATEMENT IN THE SENIOR EXECUTIVE SERVICE

6. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3395, 3397, 3593, and 3595.

7. In § 317.602, paragraph (a) is revised to read as follows:

§ 317.602 Conditions of appointment.

(a) A limited appointment may be made only to a general position. Appointments authorized under this provision may be deemed provisional appointments for purposes of the regulations set out in parts 831, 842, 870, and 890 of this chapter if they meet the criteria set out in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 351—REDUCTION IN FORCE

8. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

9. In § 351.501, paragraph (b)(3) is revised to read as follows:

§ 351.501 Order of retention—competitive service.

* * * * *

(b) * * *

(3) Group III includes all employees serving under indefinite appointments, temporary appointments pending establishment of register, status quo appointment, and any other nonstatus nontemporary appointment, as well as appointments which meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter.

PART 831—RETIREMENT

10. The authority citation for part 831 is revised to read as follows, and the authority citations following individual sections and subparts are removed:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99–251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100–203.

11. In § 831.201, paragraph (b) is amended by removing the period at the end of paragraph (b)(4) and adding a semicolon in its place, and by adding a new paragraph (b)(5) to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(5) The appointment meets the definition of a provisional appointment contained in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

12. The authority citation for subpart A of part 842 continues to read as follows:

Authority: 5 U.S.C. 8461; § 842.105 also issued under 5 U.S.C. 8402(c)(1); § 842.106 also issued under 5 U.S.C. 8402(c)(1).

13. In § 842.105, paragraph (a)(1) is revised to read as follows:

§ 842.105 Regulatory exclusions.

(a) * * *

(1) Employees serving under appointments limited to 1 year or less, unless such appointments meet the definition of provisional appointments contained in §§ 316.401 and 316.403 of this chapter; and

* * * * *

PART 870—BASIC LIFE INSURANCE

14. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716.

15. In § 870.202, paragraph (a)(1) is revised to read as follows:

§ 870.202 Exclusions.

(a) * * *

(1) An employee serving under an appointment limited to 1 year or less, except: (i) An employee so appointed for full-time employment or part-time employment with a regular tour of duty without break in service or after a separation of 3 days or less, following service in which he/she was insured, (ii) an acting postmaster, (iii) a Presidential appointee appointed to fill an, unexpired term; and (iv) an appointee whose appointment meets the definition of provisional appointment set out in §§ 316.401 and 316.403 of this chapter.

* * * * *

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

16. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Public Law 100–654; § 890.803 also issued under sec. 303 of Public Law 99–569, 100 Stat. 3199, sec. 188 of Public Law 100–204, 101 Stat. 1331, and sec. 204 of Public Law 100–238, 101 Stat. 1744; subparts J and K also issued under titles I and II, respectively, of Public Law 100–654.

17. In § 890.102, paragraph (c)(1) is revised to read as follows:

§ 890.102 Coverage.

* * * * *

(c) * * *

(1) An employee (other than an acting postmaster, a Presidential appointee appointed to fill an unexpired term, and an appointee whose appointment meets the definition of provisional appointment set out in §§ 316.401 and 316.403 of this chapter) who is serving under an appointment limited to 1 year or less and who has not completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

* * * * *

18. In § 890.301, paragraph (bb) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(bb) *Change from a temporary appointment under 5 U.S.C. 8906a to another type of covered appointment.* A temporary employee who is eligible to enroll according to provisions of 5 U.S.C. 8906a, which require payment of the full premium with no Government contribution, and who subsequently changes to an appointment that entitles the employee to receive the Government contribution toward the premium, may enroll or change to any other plan or option within 31 days after changing to the appointment that allows the Government contribution.

19. In § 890.501, paragraph (e) is revised to read as follows:

§ 890.501 Government contributions.

* * * * *

(e) The employing office shall make a contribution for an employee for each pay period during which the enrollment continued except that certain temporary employees eligible under 5 U.S.C. 8906a must pay the full subscription charge including the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

20. In § 890.502, paragraph (b)(4) is revised to read as follows:

§ 890.502 Employee withholdings and contributions.

* * * * *

(b) * * *

(4) Employees who are eligible to enroll under 5 U.S.C. 8906a are responsible for payment of the full subscription charges including both the employee share and the Government contribution. Employees with provisional appointments under § 316.403 are not considered eligible for coverage under 5 U.S.C. 8906a for the purpose of this paragraph.

[FR Doc. 91-5695 Filed 3-8-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV-91-242FR]

Expenses and Assessment Rates for the Marketing Orders Covering Limes and Avocados Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 911 and 915 for the 1991–92 fiscal year (April 1–March 31) for each marketing order. These expenditures and assessment rates are needed by the administrative committees established under these orders to pay their expenses and collect assessments from handlers to pay those expenses. The action will enable these committees to perform their duties and these orders to operate.

EFFECTIVE DATE: April 1, 1991 through March 31, 1992 for each order.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Marketing Agreement and Marketing Order Nos. 911 (7 CFR part 911) regulating the handling of limes grown in Florida, and 915 (7 CFR part 915) regulating the handling of avocados grown in South Florida. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 18 handlers of Florida limes and 42 handlers of Florida avocados subject to regulation under these marketing orders, and about 260 lime producers and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U.S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity in bushels (55 pounds). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Florida Lime Administrative Committee (FLAC) met January 9, 1991, and unanimously recommended a 1991–92 budget with expenditures of $269,000 and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes shipped under M.O. 911. Budgeted expenditures for 1990–91 were $244,000, while the assessment rate was $0.18. FLAC assessment income for 1991–92 is estimated at $252,000, based on shipments of 1,400,000 bushels of assessable limes, and interest income estimated at $11,000. The FLAC plans to draw funds from its reserve of about $266,222 to cover the projected $6,000 deficit for 1991–92.

Major expenditure items in the FLAC budget for the 1991–92 fiscal year, compared with those budgeted for 1990–91 (in parentheses), are $157,000 ($112,000) for program administration, $102,000 ($101,500) for production research, and $10,000 ($30,000) for market development and public relations. The administration category includes expenditures for employee salaries and benefits, office operations, a financial audit, marketing order enforcement, FLAC travel, a contengency reserve, and various miscellaneous expenses. A $25,000 expenditure item in the FLAC's budget has been shifted from a proposed fund to pay inspection costs to the contingency fund. FLAC management recommended this action after being informed that expenditures to pay inspection costs are not authorized under the order, and it anticipates that the funds will be utilized for other authorized activities or placed in its reserve. Research for limes includes $25,000 for a water table study by Ghioto, Inc., $70,500 for a post-bloom drop study and $6,500 for a grove management study by the University of Florida. Market development includes a buyer tour ($2,000) and harvest festival tours ($3,000) by the Florida Department of Agriculture, and $5,000 for projects to be developed later. The research and market development projects will be submitted later, once they are recommended by the FLAC.

The Avocado Administrative Committee (AAC) met January 9, 1991, and unanimously recommended a 1991–92 budget with expenditures of $187,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under M.O. 915. Budgeted expenditures for 1990–91 were $150,500, while the assessment rate was $0.16. AAC assessment income for 1991–92 is estimated at $156,000, based on shipments of 975,000 bushels of assessable avocados, and interest income estimated at $7,000. The AAC plans to draw funds from its reserve of about $152,624 to cover the projected $24,000 deficit for 1991–92.

Major expenditure items in the AAC budget for the 1991–92 fiscal year, compared with those budgeted in 1990–91 (in parentheses), are $143,000 ($93,000) for program administration, $34,000 ($57,500) for production research, and $10,000 ($30,000) for market development and public relations. The administration category includes expenditures for employee salaries and benefits, office operations, a financial audit, marketing order enforcement, AAC travel, a contingency reserve, and various miscellaneous expenses. An $18,000 expenditure item in the AAC's budget has been shifted from a proposed fund to pay inspection costs to the contingency fund. AAC management recommended this action after being informed that expenditures to pay inspection costs are not authorized under the order, and it anticipates that the funds will be utilized for other authorized activities or placed in its reserve. Research for avocados includes $25,000 for a water table study by Ghioto, Inc., $2,500 for a tree topping and thining study and $6,500 for a grove management study by the University of Florida. Market development includes a buyer tour ($2,000) and harvest festival tours ($3,000) by the Florida Department of Agriculture, and $5,000 for projects to be developed later. The research and market development projects will be submitted later once they are recommended by the AAC.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of these orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule adds new §§ 911.230 and 915.230 under these orders. A proposed rule concerning this action was published in the **Federal Register** (56 FR 5367, February 11, 1991). Comments on the proposed rule were invited from interested persons until February 21, 1991. No comments were received.

After consideration of the information and recommendations submitted by the committees and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal year for these orders begins on April 1, 1991, and the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis; and (2) handlers are aware of this action, which was recommended by the committees at public meetings.

List of Subjects in 7 CFR Parts 911 and 915

Avocados, Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for 7 CFR parts 911 and 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 911.230 and 915.230 are added to read as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 911—LIMES GROWN IN FLORIDA

§ 911.230 Expenses and assessment rate.

Expenses of $269,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.18 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.230 Expenses and assessment rate.

Expenses of $187,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1992. Any unexpended funds from the 1990–91 fiscal year may be carried over as a reserve.

Dated: March 6, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5659 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1864, 1903, 1910, 1944, 1945, 1951, 1955, 1956, 1965, and 1980

Debt Settlement

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its debt settlement regulations. This action is taken to include debt settlement of all Housing Loans and to limit adjustment offers to 5 years except for Rural Housing (RH) loans. This action is intended to reduce the volume of settlements submitted to the Administrator and further implement the intent of the Food Security Act of 1985 and the Agricultural Credit Act of 1987.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, FmHA, room 5437, South Building, Washington, DC 20250, Telephone (202) 475–4008.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse action on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of the Revisions and the Comments Received

FmHA published a proposed rule in the **Federal Register** on July 13, 1989 (54 FR 29569) inviting comments until September 11, 1989. Seven comments on the proposed rule were received.

Section 1956.57(d)—One respondent commented that the prefatory comments to 54 FR 29570, "All security must be disposed of prior to debt settlement" was misleading since 54 FR 24571, §1956.57(d) explains that security property may be retained by the debtor in a compromise or adjustment arrangement. The Agency agrees that the prefatory comments were misleading. Section 1956.75(d) provides that security may be retained by the debtor in accordance with § 1956.66.

Section 1956.57(l)—One respondent recommended that subsection 1956.57(1), "Settlement where debtor owes more than one type of FmHA loan", be clarified to ensure a clear understanding by all parties that this does not apply to situations where a borrower has both an insured and guaranteed loan. The Agency does not feel it is necessary to change its present regulations since a guaranteed loan is a loan made by another lender and not an FmHA loan to be considered for debt settlement.

Section 1956.57(1)—One respondent recommended that § 1956.56(1), which states that a borrower cannot debt settle one loan if the borrower will remain indebted on another FmHA loan and continue as an active borrower, be changed. We do not feel a change is needed since subpart S of part 1951 of this chapter provides the authority to restructure debts including the authority to write off all or a part of the farmer program debts whereby the debtor can cash flow and continue in farming.

Section 1956.66(a)(1)—One respondent commented that 54 FR 29570, the preamble comment to this section says, "If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount, these funds will not be included as part of a compromise or adjustment offer" is confusing and should be clarified. The Agency agrees and revised § 1966.66(a)(1) to read "Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled."

Section 1956.70(b)(3) (ii) and (iii)—One respondent recommended a change in §§1956.70(b)(3)(ii) and 1956.70(b)(3)(iii) which requires on OGC opinion that a Confirmation Order or Completion Order in bankruptcy cases has discharged the obligor of liability to that part of the debt because it would overwork OGC. The Agency does not agree that it is necessary to change its proposed regulation because such opinions would not create an overload on the Office of the General Counsel.

Section 1956.85(a)(1)—One respondent recommended that 54 FR 29575 § 1956.85(a)(1) be changed so that payments would not have to accompany an application for debt settlement. FmHA Instruction 1956.85(a)(1) only indicates to the county office the proper procedure they must follow when a lump-sum payment is received. However, a change was made to

§ 1956.66 to authorize borrowers to submit applications for a compromise offer without an accompanying payment.

One respondent recommended that the debt settlement regulations for Housing loan programs be changed to drop the requirement that debts be all due and payable the same as Farmer Program loans. The Agency is adopting this comment in part. Housing loans are generally secured by a first lien on a lot and dwelling, whereas Farmer Program loans are often secured by a combination of real estate and chattel security requiring more servicing options. Therefore, FmHA is retaining the "due and payable" requirements for its secured single-family housing loans; however, it will not be required that any unsecured single-family housing loans be due and payable in order for a compromise or adjustment offer to be considered. Unsecured single-family housing loans generally represent an unsatisfied account balance remaining after the security has been liquidated.

One respondent commented that debtors should be notified of the availability of debt settlement in the following situations:

(1) All farmers who currently have FmHA debts for which the collateral has been fully liquidated.

(2) Whenever FmHA is considering liquidating a borrower's collateral.

(3) Before accepting a voluntary conveyance of security property.

Notice of the availability of compromise and adjustment debt settlements should be given at a meaningful time.

The Agency is not adopting this recommendation because the debt settlement authority is not a primary or preservation loan servicing option under 1951–S but rather an Administrative action authorizing the Agency to conclude its servicing of a borrower's account. Farmer Program borrowers are notified of the availability of debt settlement at several times. They are notified in paragraph IX of attachment 1 of subpart A to 7 CFR part 1951, subpart S, which is sent to all Farmer Program borrowers who are more than 180 days past due on their payments.

One respondent commented that FmHA should change its regulations to require a debt settlement commitment prior to voluntary conveyance of property to FmHA. A borrower may offer to convey security property in full satisfaction of his/her FmHA debt on Form FmHA 1955–1 "Offer to Convey Security." Prior to the actual voluntary conveyance the borrower's offer must be approved or rejected by the FmHA approval official, and for FP debts, by the FmHA County Committee. If this offer is accepted when a borrower actually conveys the property it is conveyed in accordance with the borrower's original offer on Form FmHA 1955–1 and the borrower is released from liability. A voluntary conveyance, if accepted, is preferable to debt settlement. Furthermore, for Farmer Program debtors § 1956.66 has been revised to permit the debtor to make an adjustment or compromise offer and retain any security for the debt until the offer is accepted. Therefore, the Agency does not accept this recommendation.

One respondent recommended that FmHA retain the language it has in the present FmHA Instruction § 1965.13(f)(2), that allows the borrower to use proceeds from the sale of real estate mortgaged to FmHA to pay additional income tax because of capital gains. The Agency does not adopt this recommendation because such releases increase the Agency's loan losses.

There were respondents who commented on various changes regarding sentence structure and word usage. The Agency did not adopt any of these changes.

The proposed change to § 1956.57(k)(2) involving a cross reference to subpart A of part 1951 of this chapter is not adopted because the proposed revision to subpart A of part 1951 of this chapter is not expected to be published until later this year.

The major changes are: (1) Security property may be retained prior to debt settlement under the conditions specified in § 1956.66; (2) If a borrower wishes to offer FmHA the present market value of security, the value must be included in the initial amount to be paid, (3) Deletes the requirement that debts be due and payable prior to debt settlement for Farmer Programs loans, but retains this requirement for secured housing debts; (4) Changes the approval authority for Single Family Housing debts; and (5) Adds debt settlement procedures for Multiple Family Housing debts.

These changes will remove part 1864 of chapter XVIII, title 7 of the CFR and incorporate all provisions of debt settlement of Housing loans into subpart B of part 1956. This incorporation will necessitate amendments to several parts of chapter XVIII, title 7, Code of Federal Regulations. These amendments will consist of conforming changes and cross references in numerous FmHA loan making and loan servicing regulations.

Subpart A of part 1965 has been amended to remove the authority authorizing the use of sale proceeds for the payment of a borrower's capital gain tax.

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), it has administratively been determined that this action will not have a significant economic impact on a substantial number of small entities.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance under numbers:

10.404 Emergency Loans
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants

Rural Housing Site Loans (10.411) and Soil and Water Loans (10.416) are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The other programs are excluded from intergovernmental consultation.

This document has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not needed.

List of subjects

7 CFR Part 1864

Loan programs—Agriculture.

7 CFR Part 1903

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR part 1910

Applications, low and moderate income housing, marital status, discrimination, sex discrimination.

7 CFR Part 1944

Home improvement, Mobile homes, Mortgages, Rural housing.

7 CFR Part 1945

Disaster assistance.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan Programs—Housing and community development, Low and moderate income housing loans—Servicing, Debt restructuring.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1956

Accounting, Loan Programs—Agriculture, rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—agricultural, Rural areas.

7 CFR Part 1980

Home improvement.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1864—[REMOVED AND RESERVED]

1. and 2. Part 1864 is removed and reserved.

PART 1903—VOLUNTARY DEBT ADJUSTMENT

3. The authority citation for part 1903 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Voluntary Debt Adjustment

§ 1903.2 [Amended]

4. Section 1903.2(b) is amended by removing the phrase "Part 1864 (FmHA Instruction 456.1) or."

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.5 [Amended]

6., 7., and 8. Section 1910.5(c)(6) is amended by removing the phrase "and part 1864 of this chapter (FmHA Instruction 456.1)."

PART 1944—HOUSING

9. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.4 [Amended]

10. Section 1944.4(c) is amended by removing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1) or"

PART 1945—EMERGENCY

11. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

§ 1945.167 [Amended]

12. Section 1945.167(j) is amended by removing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1).

PART 1951—SERVICING AND COLLECTIONS

13. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23, and 7 CFR 2.70.

Subpart A—Account Servicing Policies

§ 1951.15 [Amended]

14. Section 1951.15(e) is amended by removing the phrase "part 1864 of this chapter (FmHA Instruction 456.1) or."

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.909 [Amended]

15. Section 1951.909(a) is amended by removing the phrase "or part 1864 of this chapter (FmHA Instruction 456.1) as appropriate".

§ 1951.911 [Amended]

16. Section 1951.911(a)(5)(ii)(B) is amended by removing the phrase "and Part 1864 (FmHA Instruction 456.1)".

PART 1955—PROPERTY MANAGEMENT

17. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23, and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property.

§ 1955.18 [Amended]

18. Section 1955.18(f) is amended in the second sentence by changing the words "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B."

19. Section 1955.18(k) is amended by removing the phrase "and part 1864 of this chapter (FmHA Instruction 456.1)."

PART 1956—DEBT SETTLEMENT

20. The authority citation for part 56 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Housing

21. Subpart B of part 1956 is revised to read as follows:

Subpart B—Debt Settlement—Farmer Programs and Housing

Sec.
1956.51 Purpose.
1956.52–1956.53 [Reserved]
1956.54 Definitions.
1956.55–1956.56 [Reserved]
1956.57 General provisions.
1956.58 Approval or rejection.
1956.59–1956.65 [Reserved]
1956.66 Compromise and adjustment of nonjudgment debts.
1956.67 Debts which the debtor is able to pay in full but refuses to do so.
1956.68 Compromise or adjustment without debtor's signature.
1956.69 [Reserved]
1956.70 Cancellation.
1956.71–1956.74 [Reserved]
1956.75 Chargeoff.
1956.76–1956.84 [Reserved]
1956.85 Payments and receipts.
1956.86–1956.95 [Reserved]
1956.96 Delinquent adjustment agreements.
1956.97 [Reserved]
1956.98 Disposition of promissory notes.
1956.99 Exception authority.
1956.100 OMB control number.

Sec.
Exhibit A—Settlement of Farmer Programs Debts

Subpart B—Debt Settlement—Farmer Programs and Housing

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed the United States for Farmers Home Administration (FmHA) Farmer Programs (FP), Single-Family Housing (SFH) and Multiple-Family Housing (MFH) programs. Settlement of claims against third party converters and settlement of Non-Program (NP) loans, and Economic Opportunity (EO) loans is authorized under the Federal Claims Collection Standards, 4 CFR parts 101–105.

§ 1956.52–1956.53 [Reserved]

§ 1956.54 Definitions.

(a) *Adjustment.* The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

(b) *Cancellation.* The final discharge of a debt without any payment on it.

(c) *Chargeoff.* The writing off of a debt and termination of collection activity without release of personal liability.

(d) *Compromise.* The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

(e) *Debtor.* The borrower of funds under any of the FmHA programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan. Debtor also includes grant recipients.

(f) *Farmer programs loans.* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Special Livestock (SL), Softwood Timber (ST) loans, and/or Rural Housing Loans for farm services buildings (RHF).

(g) *Amount of debt.* The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, and subsidy to be recaptured made by the Government on behalf of the borrower.

(h) *Servicing office.* The FmHA office that is responsible for the account.

(i) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "Settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(j) *Housing programs.* All programs and claims arising under programs administered by FmHA under title V of the Housing Act of 1949.

(k) *United States Attorney.* An attorney for the United States Department of Justice.

§ 1956.55–1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Collection efforts.* When debtors are contacted in an effort to collect, the employee in charge of the account will obtain from them essential information concerning their financial condition. This should include where applicable, but not limited to, obtaining Form FmHA 1910–5, "Request for Verification of Employment," debtors providing expense verification, verifying farm program benefits (Agriculture Stabilization Conservation Service/ Commodity Credit Corporation payments), and examining country records to determine what other assets the debtor has or recently disposed of. Also, where a spouse is not a co-debtor the spouse's income will be considered in meeting family living expenses. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement, the debt settlement authorities of FmHA should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form FmHA 1956–1, "Application for Settlement of Indebtedness."

Settlement of claims against recipients of grant funds for reasons such as the use of funds for improper purposes may also be considered under this subpart.

(c) *Negotiating a settlement.* County Supervisors may approve compromises, adjustments, cancellations, or chargeoffs of SFH debts, regardless of the amount. District Directors and County Supervisors cannot approve other debt settlement actions; therefore, other than SFH debt settlements, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt should be collected in full, compromised, adjusted, canceled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Settlement offers will not be approved in any case unless there is reasonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Security may be retained by the debtor only under the conditions specified in § 1956.66 of this subpart.

(e) *Proceeds from the disposal of security prior to approval of a debt settlement offer.* A debtor is not required to have disposed of the security prior to application for debt settlement for a loan to be settled. However, if a debtor has disposed of security prior to applying for debt settlement, proceeds from the disposed security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66 of this subpart are met.

(f) *County Committee review.* The County Committee will not review proposed settlement action for Housing Program loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.* (1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of the Inspector General (OIG) under § 1962.49(a) of part 1962, subpart A of this chapter or to Office of the General Counsel (OGC) because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, the procedure outlined in paragraph (g)(3) of this section will be followed, unless, the OIG has declined to investigate the matter or, OGC has advised otherwise, or the case is in the hands of the United States Attorney.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA has no authority to agree to a settlement offer when the United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, if will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and courtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlement may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, cooperatives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA 1956–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or has received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable to obtain the signature of the other debtor(s), Form FmHA 1956–1 or Form FmHA 1956–2 (for housing loans) "Cancellation or Charge-off of FmHA Indebtedness," will be prepared by showing at the top of the form the name of the debtor requesting settlement, following by the name of the other debtor.

For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 1956–1, or 1956–2 for housing loans.

(k) *Adjustment of debts when debtors are in bankruptcy.* FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under chapter 11, chapter 12, or chapter 13 when the plan calls for part of the FmHA debt to be canceled.

(1) Plans submitted by debtors under chapters 11, 12, and 13 must be sent to the State Director who will refer them to the United States Attorney through the Regional Attorney. When the plan calls for the adjustment of a debt to FmHA, the State Director will provide the Regional Attorney with a recommendation on acceptance or rejection of the plan.

(2) The U.S. Attorney wil advise the FmHA State Director through the Regional Attorney as to approval or rejection of the debtor's reorganization plan. Upon notification of an approval, the State Director will notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt.

(l) *Settlement where debtor owes more than one type of FmHA loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another FmHA loan and who will continue as an active borrower, except single family housing (SFH) in cases in which unusual circumstances exist such as where the borrower is unable to pay in full because he/she has ceased farming but still needs the dwelling, or because his/her income is limited due to age or a permanent health problem. In such cases, the facts will be fully documented in part VIII of Form FmHA 1956–1.

§ 1956.58 Approval or rejection.

Debt settlement cases not within the approval authority of the County Supervisor will be submitted for review in accordance with Exhibit A of this subpart (available in any FmHA office).

(a) *Approval authority.* Subject to applicable provisions of this subpart, approval and rejection authority for compromise, adjustment, cancellation, or chargeoff of debts is as follows:

(1) *Farmer Programs debts.*

(i) Except as provided in paragraph (a)(1)(ii) of this section, the State Director may approve or reject proposed debt settlements when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is less than $250,000 (including principal, interest, and other charges).

(ii) The State Director may approve the cancellation of debts discharged in a chapter 7 bankruptcy in accordance with § 1956.70(b)(3) of this subpart regardless of the amount of the outstanding indebtedness.

(iii) The Administrator or designee must approve or reject settlement when the outstanding balance of the indebtedness involved in the settlement less the amount of any compromise or adjustment offer is $250,000 or more (including principal, interest, and other charges).

(2) *Single Family Housing debts.* The County Supervisor may approve, compromise, adjust, cancel or chargeoff of SFH debts regardless of amount.

(b) *Processing and approval.* The approval official will:

(1) Execute completed Form FmHA 1956–1 or Form FmHA 1956–2 when applicable, and process Form 1956–2 via

the terminal. Send the original approved Form FmHA 1956–1 to the Finance Office.

(2) Notify debtors in writing of approval of the settlement of their indebtedness in the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated.

(B) The accounts settled will be identified by reference to the accounts shown on Form FmHA 1956–1.

(ii) Cancellations under § 1956.70(a) and § 1956.70(c) of this subpart.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 of this subpart or cancelled under § 1956.70(b) of this subpart.

(c) *Requesting additional information.* Debtors requesting debt settlement must submit complete and accurate information from which a full determination of their financial condition can be made. When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the County Supervisor for SFH debts or State Director for all other housing and FP debts may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as appropriate under the circumstances. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

(d) *Rejection processing.* The County Supervisor for SFH debts or State Director for MFH and FP debts will:

(1) Insert the reasons for rejection on the Form FmHA 1956–1.

(2) Execute and retain the original form in the State Office.

(3) Return case files and copies of the form to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, is care of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected may appeal the rejection under subpart B of part 1900 of this chapter. In cases where the adverse decision maker is the County Committee, the County Supervisor will advise the debtor of appeal rights. If the debtor exercises his/her right to a meeting, the County Committee must meet with the debtor. If the meeting does not result in a resolution, the debtor may exercise his/her right to a hearing. If the hearing officer reverses the adverse County Committee decision, the case will be forwarded to the appropriate debt settlement approval official for consideration of approval.

§§ 1956.59–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts.

Nonjudgment debts which the debtor is unable to pay may be compromised or adjusted in accordance with applicable provisions of this section, and the debtor may retain the security property, if any. Application will be made on Form FmHA 1956–1 by the debtor; or if the debtor is unable to act, by another party having legal authority to act for the debtor. Collection of a lump sum offer may be deferred until the debtor is advised that the offer is approved. Upon full payment of the approved compromise or adjustment amount, FmHA will release the debtor from liability by delivering the note(s) to the debtor stamped "Satisfied by compromise or adjustment."

(a) *Farmer program debts.* The debt or any extension thereof on which compromise or adjustment is requested does not have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Nonjudgment farmer program debts may be compromised or adjusted in accordance with the following conditions:

(1) Security may be retained by the debtor if the debtor offers an amount at least equal to the current fair market value (including any crop security) less any prior lien amounts. Any remaining unsecured debt may be debt settled.

(2) Where the debtor is able to pay an amount in excess of the lump sum compromise offer, an adjustment offer must call for a lump sum payment as set out in paragraph (a)(1) of this section, plus any additional amounts the Agency determines the borrower is able to pay over a period of time not to exceed 5 years.

(3) The acceptability of a compromise or adjustment offer will be arrived at by determining and evaluating:

(i) Statement of indebtedness owed on any prior liens. Statements will be retained in the debtor's file.

(ii) Value of existing security as determined by a current appraisal made or obtained by the Agency. The appraisal will be retained in the debtor's file.

(iii) Debtor's total present income and probable sources, amount and stability of income over the next 5 years. Old age pensions, other public assistance, and veteran's disability pensions will not be considered as sources of funds for making compromise and adjustment offers.

(iv) Amount of debtor's other debts.

(v) Amount of debtor's essential family living expenses, and farm or business operation expenses necessary to continue the operation, if applicable.

(vi) Age and health when the debtor is largely depending on income from an occupation where manual labor is required.

(vii) Size of debtor's family, their ages and health.

(viii) Value of debtor's assets in relation to debts and liens of third parties. Reasonable equity in a modest nonsecurity homestead occupied by the debtor will not be considered as available for settlement. Nonsecurity property in excess of minimum family living needs which is not exempt from levy and execution should be considered in determining the debtor's ability to pay.

(b) *Housing debts (both Single-family and Multi-family).* Nonjudgment housing debts may be compromised or adjusted as follows:

(1) *Secured debt.* Secured debts may be compromised or adjusted provided:

(i) The debt is fully matured under the terms of the note or other instrument; or has been accelerated by written notice prior to the date of the settlement application.

(ii) A compromise offer must at least equal the value of the security as determined by FmHA (less any prior liens) plus any additional amount FmHA determines the debtor is able to pay based on a current financial statement.

(iii) An adjustment offer must meet the requirements of paragraph (b)(1)(ii) of this section, except payment is to be scheduled for payment over the shortest period FmHA determines is feasible based on the debtor's financial resources, but not to exceed 5 years.

(2) *Unsecured debt.* Unsecured debts considered under this subparagraph are most frequently account balances

remaining after the debtor has sold security property to another party/entity, or deeded it to FmHA, and was not released from liability. However, this subparagraph applies to any unsecured housing debt. An offer to compromise or adjust an unsecured debt must represent the maximum amount FmHA determines the borrower can pay based on a current financial statement and other information available to FmHA. An adjustment offer is to be scheduled for payment over the shortest period FmHA determines is feasible, but not to exceed 5 years.

§ 1956.67 Debts which the debtor is able to pay in full but refuses to do so.

Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form FmHA 1956–1:

(a) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(1) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(2) Inheritance prospects within 5 years.

(3) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(4) Uncertainty as to price the security or other property will bring at forced sale.

(b) The debt may be compromised or adjusted when the OGC has advised in writing that:

(1) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(2) The amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved.

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation.

(c) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigation costs of collection. Such discount will not exceed $2,000 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.68 Compromise or adjustment without debtor's signature.

Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form FmHA 1956–1 will show:

(a) The sources from which the information was obtained.

(b) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(c) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be canceled in the following instances:

(a) *With application.* The debt or any extension thereof on Farmer Programs debts *do not* have to be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Debts due the FmHA may be canceled upon application of the debtor, or if a debtor is unable to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(b) *Without application.* Debts due the FmHA may be canceled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

(1) *Deceased debtors.* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been affected but such assets have been disposed of or lost in a manner which OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be canceled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contacts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be canceled by the use of Form FmHA 1956–1 or Form FmHA 1956–2, for housing loans, with attachments as below. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance

BEST COPY AVAILABLE

with advice from OGC, the debt is not discharged.

(i) Chapter 7 Bankruptcy cases will be documented with a copy of the "Discharge of Debtor" order(s) by the court for all obligors.

(ii) For debts identified as being part of an unsecured claim under Chapter 11, the cancellation will be documented with a copy of the organization plan, copy of the order by the court confirming the plan, a copy of the order completing the plan (a similar order), and an opinion by OGC that the confirming order has discharged the obligor(s) of liability to that part of the debt.

(iii) For debts identified as being part of an unsecured claim under chapters 12 or 13, the cancellation will be documented with a copy of the reorganization plan and confirmation order, as above, a copy of the order completing the plan and closing the case, and an opinion by OGC that the completion order has discharged the obligor(s) of liability to that portion of the debt.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be canceled if it is impossible or impracticable to obtain a signed application and the requirements in paragraph (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA 1956–1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§§ 1956.71–1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 1956–1 or Form FmHA 1956–2 for housing upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA 1956–1 or Form FmHA 1956–2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is $2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit.

(3) Even though FmHA considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff will be documented with a copy of the organization plan, a copy of the court order confirming the plan, an opinion by OGC that the order confirming the plan has discharged the debtor(s) of liability on the unsecured part of the debt.

§§ 1956.76–1956.84 [Reserved]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.*

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in subpart B, C, and K of part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form FmHA 1956–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.*

(1) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances," on Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA 1956–1 in approved cases will be retained in the Finance Office.

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

(a) *Servicing office handling.* The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the employee in charge of the account regarding the further handling of the case.

(b) *State Office handling.*

(1) In those instances in which the debtor is delinquent under the terms of the debt settlement agreement and is likely to be financially unable to meet the terms of the debt settlement agreement, consideration should be given by the State Director to canceling the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. This settlement will be processed in accordance with the procedure for a new agreement.

(2) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee (for Farmer Programs loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable.

(3) When an adjustment agreement is canceled, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account. Upon receipt, the Finance Office will return the original Form FmHA 1956–1 to the State Office. The cancellation of an adjustment offer is appealable.

(c) *Disposition of payments.* If an agreement is voided, any payments received shall be retained as payments on the debt owed at the time of the compromise or adjustment offer.

§ 1956.97 [Reserved]

§ 1956.98 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of notes will be stamped "Satisfied by Approved Compromise," "Satisfied by Approved Cancellation," or "Satisfied by Completed Adjustment Offer." In such cases, the security instrument(s) will be released of record in the usual manner.

(b) Notes evidencing debts canceled without application will be placed in the debtor's case folder and disposed of pursant to FmHA Instruction 2033–A (available in any FmHA office). However, if the debtor requests the notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to Exhibit C of FmHA Instruction 2033–A (available in any FmHA office).

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest, propose alternative courses of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956–1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0118. Public reporting burden for this collection of information is estimated to vary from *15* to *20* minutes per response, with an average of *20* minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Exhibit A to Subpart B—Settlement of Farmer Programs Debts

I. *General.*

This exhibit contains the procedures for review of debt settlement/release of liability cases.

II. *Information to be submitted.*

Cases submitted will be accompanied by:

A. Form FmHA 1956–1 "Application for Settlement of Indebtedness" (when applicable).

B. Servicing office files.

C. Transmittal memorandum. The State Director will make a definite recommendation for approval or rejection and furnish any additional information pertinent to the proposed settlement.

D. A summary of the review provided for in section IV of this exhibit.

III. *State Office review.*

All debt settlement/release of liability cases, and other cases as required by the State Director, will be reviewed thoroughly by the appropriate State Office loan staff member. The State Director may also appoint a review committee, qualified by experience and training, to review and make recommendations on settlements. The Committee should:

A. Determine the supervisory assistance given and its adequacy and the performance of the debtor.

B. Determine whether all security has been accounted for properly, whether releases have been made for authorized purposes, and whether collections have been made consistent with the income of the debtor and applied properly.

C. Determine the specific reasons for the lack of progress or failure of debtor.

D. Determine whether approval of the settlement is justifed on the basis of all the facts available and the prevailing regulations.

E. Determine whether any training in loan making or servicing is needed by any of the present FmHA personnel who perform such activities.

IV. The District Director will complete Attachment 1, "Debt Settlement/Release of Liability Summary," which will be concurred with by appropriate officials and filed in the case file.

Debt Settlement/Release of Liability Summary

NAME: _____
STATE: _____
CASE NO: _____
TYPE OF SETTLEMENT: _____
FARMING ENTERPRISE: _____
COMPROMISE/ADJUSTMENT AMOUNT: —

1. Accounts being settled. See Form FmHA 1956–1 for individual detailing by loan account.
Effective date _____
Total principal _____
Total Interest _____
Total FmHA debt _____

2. _____ Voluntary conveyance with release; 1955–A, § 1955.10(f)(2). _____

Transfer with release: 1965–A, § 1965.27(f).
Cash Sale with release: 1965–A, § 1965.28(f).

	Value of security	
Prior lienholder(s)	$	$
Authorized transaction expenses (broker, taxes, etc.).	+$	
Total FmHA debt	+$	
Subtotal debt/ expenses.	$	$
Amount to be written off.	$	$

The value of security will be established by a current appraisal and any prior lienholder debts will be verified.

3. Income statement and financial statement (attachments).

Release of liability actions in #2 above will be accompanied by income and financial information by completing the first two pages (only) of Form FmHA 1956–1. Income and expense will be indicated on a projected year basis. Business income will be documented on a pro form plan basis (Forms FmHA 431–2 or 431–4). Debt settlement action will be completed according to the Form FmHA 1956–1 FMI and Administrative Notices.

4. Due and payable or accelerated by (date): 1956–B settlement actions. Acceleration is not required prior to debt settlement of FP debts.
acceleration notice _____
Exhibit F, 1955–A _____
not applicable _____
Form FmHA 455–3 _____
fully matured _____

5. Date Exhibit A with Attachment 1 and 2 of FmHA Instruction 1951–S was sent to borrower _____.

6. Bankruptcy Cancellation (1956–B, § 1956.70(b)(3) Chapter 7 ____, Chapter 11 ____, Chapter 12 ____, Chapter 13 ____, Discharge of Debtor(s) dated _____, Order confirming plan dated _____.

7. Cosigner or co-obligors: Yes ____ No ____. If yes, have all liable parties been addressed in the release of liability action or debt settlement application?

8. Describe the borrower(s) background and chances for success at the time of initial loan.

9. Was this borrower properly and adequately supervised? Give details.

10. Were Farm and Home plans realistic? Give details.

11. Were releases proper and in accordance with the Forms FmHA 431–2 and 1962–1? Note improper releases.

12. Is all FmHA security property properly accounted for? Give details.

13. Summarize borrower's performance and reasons for failure.

14. Comments. Note any deficiencies and make recommendations for approval or denial of settlement.

15. Recommended action or training to prevent losses of this nature in the future.

Prepared by: _____
District Director
Date: _____
State Director Concurrence _____
Date: _____
National Office Concurrence _____
Date: _____

Part 1965—REAL PROPERTY

22. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note—Only Cases

23. § 1965.13(f)(2) is revised to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

* * * * *

(f) * * *

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay for personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable attorney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the payee.

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

24. § 1965.65(b)(2) is amended by changing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B of Part 1956 of this chapter."

PART 1980—GENERAL

25. The authority citation for part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

§ 1980.350 [Amended]

26. § 1980.350(j)(2) is amended by changing the phrase "Part 1864 of this chapter (FmHA Instruction 456.1)" to read "Subpart B of Part 1956 of this chapter."

Dated: October 10, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–5657 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AA82

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: In 1985, the FDIC adopted minimum supervisory leverage capital ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). In 1989, the FDIC adopted minimum supervisory risk-based capital ratios of core and total capital to risk-weighted assets.

The FDIC risk-based capital policy statement indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC subsequently issued proposed amendments to the part 325 leverage capital regulation (55 FR 39288, September 26, 1990). Based on a review of the comments received in response to the proposal and on related safety and soundness consideration, and in an effort to further promote uniform capital standards among the federal banking agencies, the FDIC Board of Directors has now decided to adopt amendments to part 325 of the FDIC's regulations (12 CFR part 325).

These revisions will replace the primary and total capital definitions with a Tier 1 (core) capital definition and establish a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System) that are not anticipating or experiencing any significant growth. All other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum requirement (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth). State nonmember banks with capital below the minimum leverage capital requirement will be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC.

In addition, the previous 3 percent leverage test, which was based on primary capital and used for determining when a depository institution was in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act, is being replaced with a new 2 percent "unsafe or unsound condition" test based solely on Tier 1 capital. The revisions also add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") for determining the safety and soundness and capital adequacy of savings associations. Finally, certain portions of part 325 have been reformatted, with conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital, in order to appropriately reflect the revisions.

EFFECTIVE DATE: April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Assistant Director, Division of Supervision (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), or Claude A. Rollin, Counsel, Legal Division (202/898–3985).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under control number 3064–0075, pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The collection consists of capital plans that are required to be filed by state nonmember banks pursuant to § 325.3(c)(3) when these institutions fail to comply with the minimum leverage capital requirement set forth in § 325.3(b). Most state nonmember banks with less than the minimum leverage capital requirement have been identified as institutions that have more than normal levels of risk and already are subject to formal or informal proceedings which establish their minimum capital requirements and set forth capital plans for achieving the minimum requirements. However, it is anticipated that a relatively small number of state nonmember banks may fail the minimum leverage capital requirement set forth in § 325.3(b) but not yet be subject to formal or informal enforcement proceedings for achieving the required capital level. It is estimated that no more than five such institutions will have to file initial capital plans with the FDIC pursuant to § 325.3(c)(3). The estimated annual reporting burden for these institutions is:

Number of Respondents: 5.
Number of Responses Per Respondent: 1.
Total Annual Responses: 5.
Hours Per Response: 60.
Total Annual Burden Hours: 300.

In addition, seventeen banks in the FDIC's capital forebearance program and seven banks in the agricultural loan loss deferral program must also submit or update capital plans under OMB control number 3064–0075. The total annual reporting burden for all 29 banks submitting capital plans under OMB control number 3064–0075 is 1,300 hours (44.8 hours per bank). Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064–0075), Washington, DC 20503.

Background

The FDIC adopted in 1985 (50 FR 11136, March 19, 1985) minimum supervisory leverage ratios of capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). These minimums were contained in part 325 of the FDIC's regulations (12 CFR part 325) and set forth a minimum primary capital ratio of 5.5 percent and a minimum total capital (primary plus secondary) ratio of 6 percent. The definition of primary capital included common stockholders' equity (i.e., common stock, surplus, and undivided profits), as well as perpetual preferred stock, minority interests in consolidated subsidiaries, the allowance for loan and lease losses, net worth certificates, and limited amounts of mandatory convertible debt. Secondary capital consisted of subordinated notes and debentures and limited-life preferred stock.

The FDIC adopted in 1989 (54 FR 11509, March 21, 1989) minimum supervisory risk-based capital ratios of capital to risk-weighted assets. These minimum risk-based ratios are defined in the policy statement included as appendix A to part 325. The policy statement sets forth a minimum total capital (core plus supplementary) ratio of 8 percent that banks are generally expected to meet when the risk-based framework is fully phased in at year-end 1992, as well as an interim 7.25 percent ratio that banks are expected to meet by year-end 1990.

When fully phased-in, at least one-half of the minimum total capital requirement (i.e., 4 percent) must be comprised of Tier 1 (core) capital elements. Core capital is comprised essentially of common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries. Supplementary capital includes the allowance for loan losses (subject to certain limits), cumulative perpetual and long-term preferred stock, hybrid capital instruments such as mandatory convertible debt, and limited amounts of term subordinated debt and intermediate-term preferred stock.

The leverage and risk-based capital standards are only minimums that apply to the most sound, well-run institutions. As a result, most institutions are expected to and, in fact, do operate with capital ratios well above the minimum standards.

The FDIC subsequently issued proposed amendments to the part 325

leverage capital regulation, subject to a comment period which expired on November 13, 1990 (55 FR 39228, September 26, 1990). Based on a review of the comments received in response to the proposal and on related safety and soundness considerations, and in an effort to further promote uniform capital standards among the federal banking agencies, the FDIC Board of Directors has decided to adopt amendments to part 325 of the FDIC's regulations. In summary, these revisions will:

(1) Replace the primary and total capital definitions with a Tier 1 (core) capital definition;

(2) Eliminate the minimum 5.5 percent primary and 6 percent total capital ratio requirements for state nonmember banks and replace them with a minimum 3 percent Tier 1 leverage capital ratio requirement for the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council) that are not anticipating or experiencing any significant growth; all other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum, (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth);

(3) Provide that state nonmember banks with capital below the minimum leverage capital requirement will be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC;

(4) Replace the 3 percent leverage test, which was based on primary capital, for determining when a depository institution is in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act with a new 2 percent "unsafe or unsound condition" test based solely on Tier 1 capital;

(5) Add to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") for determining the safety and soundness and capital adequacy of savings associations; and

(6) Reformat certain portions of part 325 and make conforming adjustments to the FDIC's 1989 Statement of Policy on Risk-Based Capital and to the FDIC's 1985 Statement of Policy on Capital to appropriately reflect the revisions.

Sections I through VI of this preamble provide a detailed discussion as to the nature of these revisions and section VII summarizes the comments received in response to the September 26 proposal.

I. Leverage Standard

At the time the risk-based capital policy statement was adopted in 1989, the FDIC indicated that the risk-based capital framework did not replace or eliminate the existing part 325 leverage ratios but that, once the risk-based framework was implemented, the FDIC would consider whether the part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended. The FDIC has now decided to adopt amendments to the existing part 325 leverage standard and to retain this revised standard and use it in conjunction with the minimum risk-based capital standard.

The FDIC believes that retention of some form of leverage standard is desirable in order to maintain some constraint on a bank's overall leverage. Retention of an overall leverage constraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk and various operational risks, the assignment of a significant volume of assets to the zero percent or other low risk-weight categories under the risk-based framework could allow a bank to assume an unwarranted degree of leveraging and risk-taking without an appropriate capital cushion. Maintenance of a prudent leverage standard will help minimize and restrain such excessive growth.

However, the FDIC recognizes that different capital definitions for leverage and risk-based purposes carry the potential for confusion and perhaps an element of undue burden. As a result, the FDIC is adopting a revised leverage standard that is based on the definition of Tier 1 core capital presently used in the risk-based framework. In conjunction with this revision, the FDIC hopes to maintain an effective minimum leverage standard, using the new core capital definition that is substantially consistent with the previous 6 percent leverage standard that used a broader definition of capital.

II. Minimum Leverage Capital Requirement

The revisions to the leverage standard will result in a definition of capital (i.e., core capital) which, for most state nonmember banks, only includes common stockholders' equity, less all intangible assets other than limited amounts of mortgage servicing rights. (Most banks have only common equity capital and do not have any significant amounts of the other two Tier 1 capital elements, i.e., noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries.) This definition of capital is much narrower than the primary capital definition used in the prior leverage standard which, in addition to core capital, included all forms of perpetual preferred stock, the entire amount of the allowance for loan and lease losses, and certain amounts of mandatory convertible debt.

In view of the fact that these other primary capital elements usually did not comprise more than 1 to 2 percent of a bank's total assets, and since these elements no longer will be included in the definition of capital under the revised leverage standard, the FDIC believes that a minimum leverage standard of 4 to 5 percent, based on core capital, is substantially equivalent with the previous 5.5 percent primary capital and 6 percent total capital leverage standards. At the same time, the FDIC believes it important to adopt a revised minimum leverage standard that is substantially similar to those recently adopted for national banks and state member banks by the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

In view of this, the FDIC has decided to eliminate from the part 325 leverage regulation the definitions for primary and total capital, replace them with a single definition of Tier 1 (or core) capital, and establish a minimum leverage standard of 3 percent Tier 1 capital to total assets for the most highly rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System) that are not anticipating or experiencing any significant growth. All other state nonmember banks will need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum requirement—that is, an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly rated or that are anticipating or experiencing significant growth. Once again, it is emphasized that this requirement is only a minimum and most institutions are expected to operate with capital levels well above the minimum that are commensurate with the institutions' particular risk profiles.

Until year-end 1992, a difference will exist in the definition of Tier 1 capital under the FDIC's revised leverage standard versus the Tier 1 capital definition in the FDIC's risk-based guidelines. For risk-based capital purposes, a transition period is allowed until year-end 1992, during which time frame a limited amount of supplementary capital elements that would otherwise be included in Tier 2 capital can be included as part of Tier 1 capital. Under the revised leverage standard, no such transition or phase-in period is allowed and only those capital elements that technically meet the definition of core capital can be included as part of Tier 1 capital.

III. Unsafe or Unsound Practice and Capital Plans

The revised rule continues to provide that any state nonmember bank not in compliance with the minimum leverage capital requirement does not have adequate capital and will be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act unless the bank is in compliance with a written agreement or has submitted and is in compliance with a capital plan approved by the FDIC. (This, however, does not preclude the FDIC from taking action against any bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate.) However, the revised regulation also requires any state nonmember bank that has less than the minimum leverage capital requirement to submit to its FDIC regional director for review and approval a reasonable capital plan for achieving the minimum capital requirement, with such plan to be submitted within 60 days of the date as of which the bank fails to comply with the capital requirement.

Any FDIC-insured institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure also will be deemed to have an inadequate capital structure if it does not meet this minimum leverage capital requirement and normally will not receive approval for such an application. In addition, since FDIC now is the insurer for savings associations, the revised leverage standard also covers any applications filed by these institutions that require the FDIC to make an evaluation of the institution's capital adequacy. This could include applications for deposit insurance or for the right to exercise additional powers, as well as certain applications for mergers, acquisitions or other business combinations. This minimum leverage standard does not, however, apply in the case of remedial-type applications or notices, such as those relating to junk bond divestment plans or the rollover of brokered deposits in undercapitalized institutions.

Except in conjunction with the consideration of certain types of applications noted above, the part 325 minimum leverage capital requirement will not directly apply to savings associations for which the FDIC is not the primary regulator. Rather, savings associations are subject to the minimum tangible capital, core leverage, and risk-based capital requirements that are included in part 567 of the Office of Thrift Supervision (OTS) regulations (12 CFR part 567).

However, under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. In making this determination, the FDIC will evaluate whether the insured institution meets the minimum leverage capital standards set forth in part 325, but will also consider the extent to which the institution is in compliance with the capital requirements of its primary regulator and any related capital plans. Both the OTS and the FDIC capital rules represent minimum standards and institutions may be required to operate with capital levels well above the minimums.

IV. "Unsafe or Unsound Condition" Leverage Ratio Test

The existing part 325 regulation contains a provision indicating that any FDIC-insured bank (including any national, state member or state nonmember bank) with a ratio of primary capital to total assets of less than three percent would be deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)). The FDIC believes it is appropriate to retain an "unsafe or unsound condition" provision in the revised part 325 and that such a provision should apply to all FDIC-insured depository institutions, including savings associations. At the same time, however, since the FDIC is eliminating the primary and total capital definitions and replacing them with one based on the more narrow definition of core capital, the FDIC believes it is also appropriate to reduce the ratio used in determining an unsafe or unsound condition from 3 percent to 2 percent.

Therefore, the FDIC is amending § 325.4(c) to indicate that any insured depository institution with a Tier 1 capital to total assets ratio of less than two percent is deemed to be in an unsafe or unsound condition pursuant to section 8(a) of the FDI Act. However, § 325.4(c)(1) also indicates that an institution which has entered into and is in compliance with a written agreement with the FDIC to increase its capital and take any other action deemed necessary for the institution to be operated in a safe and sound manner will not be subject to a proceeding by the FDIC pursuant to section 8(a) solely an account of its capital ratios.

An institution with a Tier 1 leverage ratio in excess of two percent may also be operating in an unsafe or unsound condition. Thus, the FDIC is not precluded from bringing section 8(a) or other enforcement action against an institution with Tier 1 capital in excess of this amount if the circumstances deem such action to be appropriate, including those situations where the institution is experiencing adverse results or other problems with regard to asset quality, earnings, liquidity, interest rate risk, or other factors.

V. Application of Part 325 to Savings Associations

Certain provisions have been added to part 325 to reflect the fact that the FDIC, in addition to insuring savings associations, also has certain additional supervisory authorities over these institutions. These include: The authority to approve or disapprove certain applications that require the FDIC to evaluate an institution's capital structure, such as applications for deposit insurance or the right to exercise additional powers and certain applications for mergers, acquisitions or business combinations; the authority to take section 8(b) and/or 8(c) enforcement actions in accordance with section 8(t) of the FDI Act when an unsafe or unsound practice exists; and the authority to initiate section 8(a) termination of insurance proceedings when an institution is in an unsafe or unsound condition. These additional supervisory responsibilities were effectively given to the FDIC in FIRREA.

The FDIC, however, also recognizes that the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum Tier 1 (core) leverage, tangible capital and risk-based capital requirements for savings associations (see 12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the Tier 1 capital treatment for investments in subsidiaries and for certain intangible assets. In determining

whether a savings association's application should be approved, or whether an unsafe or unsound practice or condition exists, the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325, including any qualifying supervisory goodwill which, over a phase-out period, is eligible for inclusion in core capital pursuant to FIRREA and 12 CFR part 567. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) the minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements approved by the OTS, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

It is also noted that, pursuant to section 18(n) of the FDI Act (12 U.S.C. 1828(n)), the federal banking agencies (including the OTS) cannot allow any insured depository institutions to include an unidentifiable intangible asset (i.e., goodwill) in their calculation of compliance with the appropriate capital standards if such intangible asset was acquired after April 12, 1989. In addition, for part 325 purposes, mutual savings associations with "nonwithdrawable accounts" or "pledged deposits" may include these instruments as Tier 1 capital to the extent these instruments are the functional equivalent of common equity capital or noncumulative perpetual preferred stock and to the extent they are allowed to be included as core capital under the OTS capital standards.

VI. Other Revisions to Part 325

The FDIC also is reformatting certain portions of part 325 and making conforming adjustments to the FDIC's Statement of Policy on Risk-Based Capital, which was adopted in 1989 and is included as appendix A to part 325, and to the FDIC's Statement of Policy on Capital, which was initially adopted in 1985 when the original part 325 leverage standard was issued and which now is being revised and added as a new appendix B to part 325. In this regard:

(1) New definitions have been added to part 325 for Tier 1 (core) capital and for the various elements that comprise Tier 1 capital, replacing the existing definitions for primary, secondary and total capital;

(2) Definitions for mandatory convertible debt and term subordinated debt obligations have been moved from the body of the part 325 leverage regulation to the risk-based capital policy statement at appendix A, since these instruments no longer qualify as capital under the revised leverage standard but will continue to qualify as Tier 2 capital under the risk-based framework;

(3) The 1985 Statement of Policy on Capital has been updated to include references to certain of the new supervisory responsibilities for savings associations that were granted to the FDIC pursuant to FIRREA;

(4) The two interpretations previously set forth in §§ 325.101 and 325.102 will be maintained but relocated to other parts of the FDIC capital standards, with interpretation 325.101 incorporated into the risk-based capital policy statement at appendix A and interpretation 325.102 added to § 325.5(e) of the part 325 regulation; and

(5) Certain references in part 325 regarding the treatment of mortgage servicing rights have been modified. In this regard, on December 11, 1990, the FDIC Board of Directors adopted a final rule on mortgage servicing rights (55 FR 53137, December 27, 1990) that limits the amount of purchased mortgage servicing rights that state nonmember banks and savings associations can recognize for regulatory capital purposes. Any purchased servicing intangible assets above the limits will be deducted from assets and capital in determining the appropriate capital ratios, subject to certain exceptions for grandfathered purchased servicing intangibles and separately capitalized mortgage banking subsidiaries. This final rule became effective January 28, 1991, and is already incorporated into part 325. However, due to the revised leverage standard that is now being adopted by the FDIC, certain formatting changes to the recently adopted mortgage servicing rights rule, including different section numbers and references, are now necessary in order to appropriately incorporate that rule into the part 325 language for the revised leverage standard. In particular, the references regarding the regulatory capital treatment of mortgage servicing rights are being changed from § 325.5(g) to 325.5(f).

VII. Summary and Analysis of Comments Letters

The proposal for a revised leverage standard was published in the **Federal Register** on September 28, 1990 (55 FR 39288) for a 45-day comment period that expired on November 13, 1990. Fifty-one comment letters were received, including 28 from banks and bank holding companies, 10 from savings associations, seven from bank and thrift trade associations, four from banking regulators and two from attorneys representing various financial institutions.

Of the 51 respondents, 29 were in favor of the general nature of the proposed leverage capital revisions, 20 were generally opposed to the suggested revisions, and two offered comments on certain specifics of the proposal but provided no general comments on the proposed changes. With respect to the 20 commentators that were generally opposed to the proposed revisions, 12 were against the changes because they felt the suggested leverage ratio was too low and three objected to either the lack of a phase-in or transition period for the revised rule or the failure to include the allowance for loan losses in the proposed definition for leverage capital, but only five objected to the proposed rule because of their belief that the revised leverage capital requirements would be too high.

The seven trade associations that responded, including the American Bankers Association, the Independent Bankers Association of America, the Massachusetts Bankers Association, the Mortgage Bankers Association, the National Council of Savings Institutions, the New Jersey Council of Savings Institutions, and the Texas Bankers Association, generally favored the basic nature of the proposed changes, although some raised concerns over the direct linkage of an institution's CAMEL rating to its minimum leverage capital requirement, the exclusion of subordinated debt from the definition of leverage capital, or the imposition of limitations on the amount of purchased mortgage servicing rights that can be recognized for regulatory capital purposes. In addition, the Independent Bankers Association of America suggested that the minimum leverage standard should be at least as high as 4 to 4½ percent through the end of 1992 in order to allow regulators additional time to gain experience in using the risk-based framework and in developing additional components of the risk-based system, such as how to factor in interest rate risk.

With respect to comments received from banking regulators, the Conference of State Bank Supervisors suggested that the FDIC should not allow the risk-based capital framework to reduce minimum capital standards and the Kentucky Department for Financial Institutions was strongly against the proposed leverage standard, which it believed would effectively reduce minimum capital standards for depository institutions. In addition, the Office of the Comptroller of the Currency (OCC), although in general agreement with the proposed revisions, suggested certain changes (which have been made) to ensure that the specific language of the FDIC minimum leverage capital requirement is closer to that used by the OCC and the Federal Reserve System. The OCC also urged the FDIC to adequately enforce the risk-based capital framework.

The following is a discussion of the specific issues for which the FDIC requested comment in the September 26 proposal:

A. Tier 1 Definition of Capital

Most of the respondents that specifically addressed this question contended that the use of Tier 1 (or core) capital as the capital definition was an appropriate revision from the primary and secondary capital definitions currently used for the leverage standard. However, four respondents believed that all purchased mortgage servicing intangible assets should be recognized for regulatory (and Tier 1) capital purposes, another four suggested that all identifiable intangibles should be recognized, two commentators supported the inclusion of some subordinated debt in the leverage capital definition, and one respondent believed that the loan loss allowance should also be included in Tier 1 capital. On the other hand, one savings association recommended that all mortgage servicing rights should be deducted from capital. For the reasons that are addressed in detail in the FDIC's final rule on mortgage servicing rights (55 FR 53137, December 27, 1990) the FDIC will continue to deduct all intangible assets (except for limited amounts of purchased mortgage servicing rights) from capital and assets when calculating the amount of Tier 1 capital. In addition, as originally proposed, the FDIC will exclude both subordinated debt and the loan loss allowance from the definition of Tier 1 capital under the leverage standard. This treatment of subordinated debt and loan loss allowances is consistent with that adopted in 1990 by the Office of the Comptroller of the Currency and the Federal Reserve System in their revised leverage standards, and with the fully phased-in definition of Tier 1 capital under the risk-based framework that was adopted in 1989 by the federal banking agencies, including the FDIC.

B. Minimum Leverage Ratio Requirement

With respect to the adoption of a 3 percent Tier 1 capital to total assets leverage ratio for highly-rated state nonmember banks (i.e., those with a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth and a requirement that all other institutions meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent for those banks that are not highly-rated or that are anticipating or experiencing significant growth), 19 respondents suggested minimum standards that were different from those proposed.

In this regard, five commentators believed a single 3 percent minimum standard should be adopted, whereas two other respondents suggested a minimum standard of at least 4 percent. However, 12 commenters supported much higher minimum standards for Tier 1 leverage capital of from 6 to 8 percent of assets. Some of the respondents supported a sliding scale where specific capital requirements would be set for banks based on the CAMEL ratings or other measures of risk, in order to eliminate the uncertainty that would otherwise exist as to an institution's actual minimum capital requirement. However, a number of commenters were opposed to any direct tie-in between a bank's minimum capital requirement and its CAMEL rating, due to concerns about the subjective process used in determining a bank's CAMEL rating, the length of time that can exist between examinations (which potentially could render the most recent CAMEL rating obsolete based on changing conditions), and the possibility that confidential bank CAMEL ratings may at least indirectly be publicly disclosed if such ratings are used to determine minimum statutory capital requirements.

The FDIC appreciates and shares some of the concern expressed by respondents over the use of the CAMEL rating as a direct mechanism in determining minimum capital requirements. The FDIC intends to monitor closely the effect of incorporating this supervisory tool into the part 325 regulation. However, from a practical viewpoint, the FDIC does not foresee any major problems in this regard since, under the revised regulation, only banks with a composite CAMEL rating of 1 that are not anticipating or experiencing any significant growth may be afforded a lower minimum leverage capital requirement.

The revised standard will require all other institutions to retain a minimum leverage ratio of at least 100 to 200 basis points above the 3 percent minimum. As a result, most banks will be required to maintain a minimum leverage capital ratio of at least 4 to 5 percent.

In setting the minimum leverage capital requirement for most banks at "not less than 4 percent," the FDIC wishes to emphasize that (a) the revised leverage capital standard is intended to closely approximate (rather than reduce) the effective minimum under the existing 6 percent standard, after giving effect to the revised and more narrow definition of capital, and (b) the revised leverage standard represents only a "minimum" requirement and most institutions are expected to and, in fact, do operate with capital levels well above the minimum.

Thus, the FDIC is not precluded from requiring a particular institution to maintain a higher capital level based on an institution's particular risk profile. Where deemed appropriate, the FDIC may pursue such efforts through informal means, including the use of memorandums of understanding, or through formal initiatives, such as cease and desist orders. The failure to comply with any agreements or orders arising from such actions, or to meet the terms of any capital plan submitted to and approved by the FDIC, may be viewed as an unsafe or unsound practice or may give rise to an unsafe or unsound condition.

In addition, institutions are cautioned not to lower their existing capital levels or leverage additional assets solely as a result of this revision to the minimum leverage standard.

C. Unsafe or Unsound Condition

With respect to whether the proposed 2 percent Tier 1 leverage test would be an appropriate benchmark to use for determining when an insured depository institution is operating in an unsafe or unsound condition, only five respondents directly commented on this issue. Two of the respondents felt the 2 percent figure was an appropriate benchmark, two believed it was unnecessary, and the remaining respondent felt that it might reduce the FDIC's flexibility in resolving problem bank situations if the 2 percent "unsafe or unsound condition" leverage ratio test is adopted and rigidly enforced.

Ever since the FDIC initially implemented its leverage regulation back in 1985, it has applied an "unsafe or unsound" leverage test and has found it to be an effective, yet fair, supervisory tool. Prior to this current revision, the FDIC required state nonmember banks to meet a 5.5 percent minimum primary capital (and a 6 percent total capital) leverage standard and applied to all FDIC-insured banks a 3 percent "unsafe or unsound condition" leverage test.

which also was based on primary capital.

The FDIC believes it appropriate to maintain an "unsafe or unsound condition" test and that the necessary degree of flexibility is built into such a test since an insured depository institution with capital below that level will not be subject to a proceeding pursuant to section 8(a) of the FDI Act solely on account of its capital ratios if it is in compliance with a written agreement to which the FDIC is a party for increasing its capital to a level that is deemed appropriate by the FDIC. However, since the revised minimum leverage standard will be based on a more narrow definition of capital (Tier 1 capital), the FDIC has decided to lower the "unsafe or unsound condition" leverage ratio test to 2 percent.

D. Applicability of Part 325 to Savings Associations

Specific comment also was requested regarding the application of the proposed part 325 provisions to savings associations, consistent with the FDIC's added supervisory responsibilities over savings associations that arose pursuant to FIRREA. Five respondents specifically addressed this issue. Two commentators were concerned about the language in the policy statement which seemed to present uncertainties as to whether qualifying supervisory goodwill would count as capital whenever the FDIC calculates a savings association's part 325 Tier 1 capital.

The intent of the revised part 325 regulation is to recognize qualifying supervisory goodwill of a savings association to the extent that the Office of Thrift Supervision recognizes such goodwill under the OTS capital regulation (12 CFR part 567) and the FDIC has clarified the language in the final version of the appendix B policy statement to part 325 to remove this uncertainty. For savings associations, qualifying supervisory goodwill is being phased out of capital over a transition period that expires at year-end 1994.

Another respondent suggested that, since net worth certificates were previously approved by Congress as a form of regulatory capital, the revised part 325 leverage capital definition, even though based on the more narrow Tier 1 definition of capital, should continue to include net worth certificates as a capital component. However, this would be inconsistent with the manner in which the FDIC presently treats another form of regulatory capital, agricultural loan losses deferred pursuant to 12 U.S.C. 1823(j) and 12 CFR part 324, which are included in Tier 2 capital under the risk-based capital framework but excluded from the risk-based definition of Tier 1 capital. In addition, the OTS, under the part 567 capital regulation that it applies to savings associations, does not allow net worth certificates, mutual capital certificates or income capital certificates to be included in Tier 1 capital for either the leverage or risk-based standards, but only allows these regulatory capital elements to be included as Tier 2 capital in the risk-based standard.

Two commenters suggested that the FDIC part 325 capital standard should not apply at all to savings associations, but rather that savings associations should look solely to the OTS and its part 567 capital regulation. Further, one of these respondents believed that any written agreements addressing unsafe or unsound conditions arising as a result of inadequate capital levels should not need to be signed by the FDIC, but should be solely between the OTS and the savings association.

The FDIC acknowledges that, as the primary federal regulator of savings associations, the OTS has the primary supervisory responsibilities over these institutions. However, in view of the FDIC's role as the ultimate insurer of savings associations and its responsibilities under FIRREA and the Federal Deposit Insurance Act to review certain applications of savings associations and evaluate whether unsafe or unsound practices or conditions exist, the FDIC needs to consider the risk that these associations may pose to the insurance fund. As a result, the final amendments to part 325 address these statutory responsibilities. The FDIC notes that part 325 also applies to national banks and state member banks in those situations where the FDIC is requested or required to evaluate the adequacy of such a depository institution's capital structure.

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that these amendments to part 325 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation amends part 325 of title 12 of the Code of Federal Regulations to read as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 is revised to read as follows:

Authority: 12 U.S.C. 1464(t), 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 3907, 3909.

2. Sections 325.1 through 325.6 are revised to read as follows:

§ 325.1 Scope.

The provisions of this part apply to those circumstances for which the Federal Deposit Insurance Act or this chapter requires an evaluation of the adequacy of an insured depository institution's capital structure. The FDIC is required to evaluate capital before approving various applications by insured depository institutions. The FDIC also must evaluate capital, as an essential component, in determining the safety and soundness of state nonmember banks it insures and supervises and in determining whether depository institutions are in an unsafe or unsound condition. This part establishes the criteria and standards FDIC will use in calculating the minimum leverage capital requirement and in determining capital adequacy. In addition, appendix A to this part sets forth the FDIC's risk-based capital policy statement and appendix B to this part includes a statement of policy on capital adequacy that provides interpretational and definitional guidance as to how this part will be administered and enforced. This part also prescribes the maximum amount of purchased mortgage servicing rights that insured savings associations may include in calculating their tangible capital requirement. This part shall be applicable to any proceedings instituted or agreements entered into after April 10, 1991.

§ 325.2 Definitions.

(a) *Allowance for loan and lease losses* means those general valuation allowances that have been established through charges against earnings to absorb losses on loans and lease financing receivables. Allowances for loan and lease losses exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and specific reserves created against identified losses.

(b) *Assets classified loss* means:

(1) When measured as of the date of examination of an insured depository institution, those assets that have been determined by an evaluation made by a state or federal examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be a loss; or

(B) By evaluations made by the insured depository institution since its most recent examination to be a loss; and

(ii) That have not been charged off from the insured depository institution's books or collected.

(c) *Bank* means an FDIC-insured, state-chartered commercial or savings bank that is not a member of the Federal Reserve System and for which the FDIC is the appropriate federal banking agency pursuant to section 3(q) of the FDI Act (12 U.S.C. 1813(q)).

(d) *Common stockholders' equity* means the sum of common stock and related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities.

(e) *Identified losses* means:

(1) When measured as of the date of examination of an insured depository institution, those items that have been determined by an evaluation made by a state or federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowance for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, liabilities not shown on the institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages); and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or federal examiner at the most recent examination of an insured depository institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the insured depository institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the insured depository institution's books nor has the item been collected or otherwise settled.

(f) *Insured depository institution* means any depository institution (except for a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*)

(g) *Intangible assets* means those assets that are required to be reported as intangible assets in a banking institution's "Reports of Condition and Income" (Call Report) or in a savings association's "Thrift Financial Report."

(h) *Minority interests in consolidated subsidiaries* means minority interests in equity capital accounts of those subsidiaries that have been consolidated for the purpose of computing regulatory capital under this part, except that minority interests which fail to provide meaningful capital support are excluded from this definition.

(i) *Mortgage servicing rights* means those intagible assets that represent the purchased rights to perform the servicing function for a specific group of mortgage loans that are owned by others. Mortgage servicing rights must be amortized over a period not to exceed 15 years or their estimated useful life, whichever is shorter. For purposes of determining regulatory capital under this part, purchased mortgage servicing rights will be recognized only to the extent the rights meet the conditions, limitations and restrictions described in § 325.5(f).

(j) *Noncumulative perpetual preferred stock* means perpetual preferred stock (and related surplus) where the issuer has the option to waive payment of dividends and where the dividends so waived do not accumulate to future periods nor do they represent a contingent claim on the issuer. Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market and remarketable preferred stock, are excluded from this definition of noncumulative perpetual preferred stock, regardless of whether the dividends are cumulative or noncumulative.

(k) *Perpetual preferred stock* means a preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. It includes those issues of preferred stock that automatically convert into common stock at a stated date. It excludes those issues, the rate on which increases, or can increase, in such a manner that would effectively require the issuer to redeem the issue.

(l) *Savings association* means any federally-chartered savings association, any state-chartered savings association, and any corporation (other than a bank) that the Board of Directors of the FDIC and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(m) *Tier 1 capital* or *core capital* means the sum of common stockholders' equity, noncumulative perpetual preferred stock (including any related surplus), and minority interests in consolidated subsidiaries, minus all intangible assets (other than mortgage servicing rights eligible for inclusion in core capital pursuant to § 325.5(f) and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR Part 567), minus identified losses, and minus investments in securities subsidiaries subject to 12 CFR 337.4 and investments in mortgage banking subsidiaries subject to § 325.5(f)(7) of this part.

(n) *Total assets* means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Report) or, for savings associations, the consolidated total assets required to be included in the "Thrift Financial Report," as these reports may from time to time be revised, as of the most recent report date (and after making any necessary subsidiary adjustments for state nonmember banks as described in §§ 325.5(c), 325.5(d) and 325.5(f)(7) of this part), minus intangible assets (other than mortgage servicing rights eligible for inclusion in core capital pursuant to § 325.5(f) and qualifying supervisory goodwill eligible for inclusion in core capital pursuant to 12 CFR part 567), and minus assets classified loss and any other assets that are deducted in determining Tier 1 capital. For banking institutions, the average of total assets is found in the Call Report schedule of quarterly averages. For savings associations, the consolidated total assets figure is found in Schedule CSC of the Thrift Financial Report.

(o) *Written agreement* means an agreement in writing executed by authorized representatives entered into with the FDIC by an insured depository institution which is enforceable by an action under section 8(a) and/or section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (a), (b)).

§ 325.3 Minimum leverage capital requirement.

(a) *General.* Banks must maintain at least the minimum leverage capital requirement set forth in this section. The capital standards in this part are the minimum acceptable for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Thus, the FDIC is not precluded from requiring an institution to maintain a higher capital level based on the institution's particular risk profile. Where the FDIC determines that the financial history or condition, managerial resources and/or the future earnings prospects of a bank are not adequate, or where a bank has sizable off-balance sheet or funding risks, excessive interest rate risk exposure, or a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the FDIC may determine that the minimum amount of capital for that bank is greater than the minimum standards stated in this section. These same criteria will apply to any insured depository institution making an application to the FDIC that requires the FDIC to consider the adequacy of the institution's capital structure.

(b) *Minimum leverage capital requirement.* (1) The minimum leverage capital requirement for a bank (or an insured depository institution making application to the FDIC) shall consist of a ratio of Tier 1 capital to total assets of not less than 3 percent if the FDIC determines that the institution is not anticipating or experiencing significant growth and has well-diversified risk, including no undue interest rate risk exposure, excellent asset quality, high liquidity, good earnings and in general is considered a strong banking organization, rated composite 1 under the Uniform Financial Institutions Rating System (the CAMEL rating system) established by the Federal Financial Institutions Examination Council.

(2) For all but the most highly-rated institutions meeting the conditions set forth in paragraph (b)(1) of this section, the minimum leverage capital requirement for a bank (or for an insured depository institution making an application to the FDIC) shall be 3 percent plus an additional cushion of at least 100 to 200 basis points and therefore shall consist of a ratio of Tier 1 capital to total assets of not less than 4 percent.

(c) *Insured depository institutions with less than the minimum leverage capital requirement.* (1) A bank (or an insured depository institution making an application to the FDIC) operating with less than the minimum leverage capital requirement does not have adequate capital and therefore has inadequate financial resources.

(2) Any insured depository institution operating with an inadequate capital structure, and therefore inadequate financial resources, will not receive approval for an application requiring the FDIC to consider the adequacy of its capital structure or its financial resources.

(3) A bank having less than the minimum leverage capital requirement shall, within 60 days of the date as of which it fails to comply with the capital requirement, submit to its FDIC regional director for review and approval a reasonable plan describing the means and timing by which the bank shall achieve its minimum leverage capital requirement.

(4) In any merger, acquisition or other type of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum leverage capital requirement.

(d) *Exceptions.* Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital if it finds that such approval must be taken to prevent the closing of a depository institution or to facilitate the acquisition of a closed depository institution, or, when severe financial conditions exist which threaten the stability of an insured depository institution or of a significant number of depository institutions insured by the FDIC or of insured depository institutions possessing significant financial resources, such action is taken to lessen the risk to the FDIC posed by an insured depository institution under such threat of instability.

(2) The FDIC, in its discretion, may approve an application pursuant to the Federal Deposit Insurance Act where it is required to consider the adequacy of capital or the financial resources of the insured depository institution where it finds that the applicant has committed to and is in compliance with a reasonable plan to meet its minimum leverage capital requirements within a reasonable period of time.

(Approved by the Office of Management and Budget under control number 3064-0075 for use through December 31, 1993)

§ 325.4 Inadequate capital as an unsafe or unsound practice or condition.

(a) *General.* As a condition of federal deposit insurance, all insured depository institutions must remain in a safe and sound condition.

(b) *Unsafe or unsound practice.* Any bank which has less than its minimum leverage capital requirement is deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)). Except that such a bank which has entered into and is in compliance with a written agreement with the FDIC or has submitted to the FDIC and is in compliance with a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the bank to be operated so as not to be engaged in such an unsafe or unsound practice will not be deemed to be engaged in an unsafe or unsound practice pursuant to section 8(b)(1) and/or 8(c) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(1) and/or 1818(c)) on account of its capital ratios. The FDIC is not precluded from taking section 8(b)(1), section 8(c) or any other enforcement action against a bank with capital above the minimum requirement if the specific circumstances deem such action to be appropriate. Under the conditions set forth in section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)), the FDIC also may take section 8(b)(1) and/or 8(c) enforcement action against any savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure.

(c) *Unsafe or unsound condition.* Any insured depository institution with a ratio of Tier 1 capital to total assets that is less than two percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

(1) A bank with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with the FDIC (or any other insured depository institution with a ratio of Tier 1 capital to total assets of less than two percent which has entered into and is in compliance with a written agreement with its primary federal regulator and to which agreement the FDIC is a party) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate and to take such other action as may be necessary for the insured depository institution to be operated in a safe and sound manner, will not be subject to a proceeding by the FDIC pursuant to 12 U.S.C. 1818(a) on account of its capital ratios.

(2) An insured depository institution with a ratio of Tier 1 capital to total assets that is equal to or greater than two percent may be operating in an unsafe or unsound condition. The FDIC is not precluded from bringing an action pursuant to 12 U.S.C. 1818(a) where an insured depository institution has a ratio of Tier 1 capital to total assets that is equal to or greater than two percent.

§ 325.5 Miscellaneous.

(a) *Intangible assets.* Any intangible assets that were explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis will be included in capital under the terms and conditions that were approved by the FDIC, provided that the intangible asset is being amortized over a period not to exceed 15 years or its estimated useful life, whichever is shorter. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), an unidentifiable intangible asset such as goodwill, if acquired after April 12, 1989, cannot be included in calculating regulatory capital under this part.

(b) *Reservation of authority.* Notwithstanding the definition of "Tier 1 capital" in § 325.2(m) of this part and the risk-based capital definitions of Tier 1 and Tier 2 capital in appendix A to this part, the Director of the Division of Supervision may, if the Director finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of Tier 1 or Tier 2 capital, permit one or more insured depository institutions to include all or a portion of such instrument, entry, or account as Tier 1 or Tier 2 capital, permanently, or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Supervision may, if the Director finds that a particular Tier 1 or Tier 2 capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from Tier 1 or Tier 2 capital.

(c) *Securities subsidiary.* For purposes of this part, any securities subsidiary subject to 12 CFR 337.4 shall not be consolidated with its bank parent and any investment therein shall be deducted from the bank parent's Tier 1 capital and total assets.

(d) *Depository institution subsidiary.* Any domestic depository institution subsidiary that is not consolidated in the "Reports of Condition and Income" (Call Report) of its insured parent bank shall be consolidated with the insured parent bank for purposes of this part. The financial statements of the subsidiary that are to be used for this consolidation must be prepared in the same manner as the "Reports of Condition and Income" (Call Report). A domestic depository institution subsidiary of a savings association shall be consolidated for purposes of this part if such consolidation also is required pursuant to the capital requirements of the association's primary federal regulator.

(e) *Restrictions relating to capital components.* To qualify as Tier 1 capital under this part or Tier 1 or Tier 2 capital under appendix A to this part, a capital instrument must not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices. A condition, covenant, term, restriction, or provision is inconsistent with safe and sound banking practices if it:

(1) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(2) Results in significantly higher dividends or interest payments in the event of deterioration in the financial condition of the issuer;

(3) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; or

(4) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

Other conditions and covenants that are not expressly listed in paragraphs (e)(1) through (e)(4) of this section also may be inconsistent with safe and sound banking practices.

(f) *Treatment of purchased mortgage servicing rights.* For purposes of determining regulatory capital under this part, purchased mortgage servicing rights will be deducted from assets and from equity capital to the extent that the rights do not meet the conditions, limitations and restrictions described in this section.

(1) *Annual and quarterly market valuations.* An independent market valuation of purchased mortgage servicing rights shall be performed at least annually. The annual independent market valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. The valuation shall be based on an analysis of the current fair market value of the purchased servicing intangibles, determined by applying an appropriate market discount rate to the net servicing cash flows. This annual independent market valuation may be based on a review and analysis by an independent mortgage servicing valuation expert of the reasonableness of the internal calculations and assumptions used by the institution to determine fair market value. In addition to the annual independent market valuation, the institution shall calculate an estimated fair market value for the purchased mortgage servicing rights at least quarterly.

(2) *Quarterly determination of book value.* Purchased mortgage servicing rights shall be carried at a book value that does not exceed the discounted amount of estimated future net servicing income of the rights. Management of the institution shall review the carrying value at least quarterly, maintain a written record of its review, and adjust the book value as necessary. If unanticipated prepayments occur, a writedown of the book value of the purchased mortgage servicing rights should be made to the extent that the discounted amount of future net servicing income is less than the asset's carrying amount. The evaluation of future net servicing income shall be performed on a discounted approach if the institution wishes to allow its purchased mortgage servicing rights to be recognized for regulatory capital purposes under this part.

(3) *Mortgage servicing rights limitation.* For purposes of calculating regulatory capital under this part (but not for financial statement purposes), the balance sheet asset for purchased mortgage servicing rights will be reduced to an amount equal to the lesser of:

(i) 90 percent of the fair market value of the purchased mortgage servicing rights, determined in accordance with paragraph (f)(1) of this section; or

(ii) 90 percent of the original purchase price paid for the mortgage servicing rights; or

(iii) 100 percent of the remaining unamortized book value of the servicing rights, determined in accordance with paragraph (f)(2) of this section.

(4) *Core capital limitation.* The maximum allowable amount of a state nonmember bank's purchased mortgage

servicing rights will be limited to the lesser of:

(i) 50 percent of the amount of core capital that exists before the deduction of any disallowed purchased mortgage servicing rights; or

(ii) The amount of purchased mortgage servicing rights determined in accordance with paragraph (f)(3) of this section.

(5) *Tangible capital limitation for savings associations.* The maximum allowable amount of purchased mortgage servicing rights for purposes of calculating a savings association's tangible capital under the capital regulation issued by the Office of Thrift Supervision (12 CFR part 567) shall not exceed the lesser of:

(i) 100 percent of the amount of tangible capital that exists before the deduction of any disallowed purchased mortgage servicing rights; or

(ii) The amount of purchased mortgage servicing rights determined in accordance with paragraph (f)(3) of this section.

This tangible capital limitation is established pursuant to section 5(t)(4)(C) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(t).

(6) *Grandfathering.* Notwithstanding the core capital and tangible capital limitations described in paragraphs (f)(4) and (f)(5) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights existed on or before February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the institution's primary federal regulator, provided that the book value of these purchased mortgage servicing rights is amortized in accordance with generally accepted accounting principles and in accordance with paragraph (f)(2) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (f)(4) and (f)(5) of this section. To the extent that grandfathered purchased mortgage servicing rights exist, the allowable amount of nongrandfathered purchased mortgage servicing rights will be reduced accordingly.

(7) *Exemption for certain mortgage banking subsidiaries.* Purchased mortgage servicing rights held by subsidiaries that would otherwise be consolidated for regulatory capital purposes will not be subject to the deductions and limitations described in this section provided the subsidiary is a separately capitalized subsidiary that is engaged in mortgage banking activities. For purposes of this part, a mortgage banking subsidiary may be deemed to be a separately capitalized subsidiary provided that:

(i) The parent institution's investment in, and extensions of credit to, the subsidiary are deducted from equity capital when calculating regulatory capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c–1; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank or savings association, the subsidiary is an organization separate and apart from any bank or savings association, and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association nor insured by the FDIC.

This exemption will not apply if the institution's primary federal regulator determines that the mortgage banking subsidiary's transactions with its parent institution are not conducted on an arms-length basis. Whenever this exemption applies, the assets and liabilities of the mortgage banking subsidiary of a state nonmember bank need not be consolidated for purposes of calculating regulatory capital under this part, provided that all investments in, and extensions of credit to, the subsidiary are deducted from assets and equity capital when calculating regulatory capital under this part. The mortgage banking subsidiary of a savings association may qualify as a separately capitalized subsidiary for purposes of this part, even if the assets and liabilities of the subsidiary are required to be consolidated under the capital standards of the association's primary federal regulator, provided that an amount equal to the association's investments in, and extensions of credit to, the subsidiary are deducted from equity capital when calculating the amount of the association's tangible capital.

(8) *Case-by-case exemption.* A savings association that is in the process of establishing a separately capitalized mortgage banking subsidiary or affiliate and that is deemed by its primary federal regulator to be well-run and in a sound condition may receive a temporary exemption from the tangible capital limitation specified in paragraph (f)(5) of this section, provided that the FDIC Director of the Division of Supervision concurs with the granting of the case-by-case exemption. In order to continue to qualify for this temporary case-by-case exemption, the association must remain in compliance with all the terms set forth by its primary federal regulator as conditions for granting the exemption. The expiration date for any case-by-case exemption that is granted shall not extend beyond December 31, 1991.

§ 325.6 Issuance of directives.

(a) *General.* A directive is a final order issued to a bank that fails to maintain capital at or above the minimum leverage capital requirement as set forth in §§ 325.3 and 325.4. A directive issued pursuant to this section, including a plan submitted under a directive, is enforceable in the same manner and to the same extent as a final cease-and-desist order issued under 12 U.S.C. 1818(b).

(b) *Issuance of directives.* If a bank is operating with less than the minimum leverage capital requirement established by this regulation, the Board of Directors, or its designee(s), may issue and serve upon any insured state nonmember bank a directive requiring the bank to restore its capital to the minimum leverage capital requirement within a specified time period. The directive may require the bank to submit to the appropriate FDIC regional director, or other specified official, for review and approval, a plan describing the means and timing by which the bank shall achieve the minimum leverage capital requirement. After the FDIC has approved the plan, the bank may be required under the terms of the directive to adhere to and monitor compliance with the plan. The directive may be issued during the course of an examination of the bank, or at any other time that the FDIC deems appropriate, if the bank is found to be operating with less than the minimum leverage capital requirement.

(c) *Notice and opportunity to respond to issuance of a directive.* (1) If the FDIC makes an initial determination that a directive should be issued to a bank pursuant to paragraph (b) of this section, the FDIC, through the appropriate designated official(s), shall serve written notification upon the bank of its intent to issue a directive. The notice shall include the current Tier 1 leverage capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum leverage capital requirement and any other relevant information concerning the decision to issue a directive. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum leverage capital requirement may be included in the notice.

(2) Within 14 days of receipt of notification, the bank may file with the appropriate designated FDIC official(s) a written response, explaining why the directive should not be issued, seeking modification of its terms, or other appropriate relief. The bank's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum leverage capital requirement.

(3) After considering the bank's response, the appropriate designated FDIC official(s) shall serve upon the bank a written determination addressing the bank's response and setting forth the FDIC's findings and conclusions in support of any decision to issue or not to issue a directive. The directive may be issued as originally proposed or in modified form. The directive may order the bank to:

(i) Achieve the minimum leverage capital requirement established by this regulation by a certain date;

(ii) Submit for approval and adhere to a plan for achieving the minimum leverage capital requirement;

(iii) Take other action as is necessary to achieve the minimum leverage capital requirement; or

(iv) A combination of the above actions.

If a directive is to be issued, it may be served upon the bank along with the final determination.

(4) Any bank, upon a change in circumstances, may request the FDIC to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the minimum leverage capital requirement. The directive and plan continue in effect while such request is pending before the FDIC.

(5) All papers filed with the FDIC must be postmarked or received by the appropriate designated FDIC official(s) within the prescribed time limit for filing.

(6) Failure by the bank to file a written response to notification of intent to issue a directive within the specified time period shall constitute consent to the issuance of such directive.

(d) *Enforcement of a directive.* (1) Whenever a bank fails to follow the directive or to submit or adhere to its capital adequacy plan, the FDIC may seek enforcement of the directive in the appropriate United States district court, pursuant to 12 U.S.C. 3907(b)(2)(B)(ii), in the same manner and to the same extent as if the directive were a final cease-and-desist order. In addition to enforcement of the directive, the FDIC may seek assessment of civil money penalties for violation of the directive against any bank, any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, pursuant to 12 U.S.C. 3909(d).

(2) The directive may be issued separately, in conjunction with, or in addition to, any other enforcement mechanisms available to the FDIC, including cease-and-desist orders, orders of correction, the approval or denial of applications, or any other actions authorized by law. In addition to addressing a bank's minimum leverage capital requirement, the capital directive may also address minimum risk-based capital requirements that are to be maintained and calculated in accordance with appendix A to this part.

§§ 325.101, 325.102 [Removed]

3. Sections 325.101 and 325.102 are removed.

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

4. The last sentence of the last paragraph in section I.A.1 of appendix A to part 325 is revised to read as follows:

* * * * * *

I. * * *

A. * * *

1. * * * Mortgage servicing rights that do not meet the conditions, limitations and restrictions described in 12 CFR 325.5(f) will not be recognized for risk-based capital purposes.

* * * * * *

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

5. The second paragraph of section I.A.2.(c)(4) of appendix A to part 325 is revised to read as follows:

* * * * * *

I. * * *

A. * * *

2. * * *

(c) * * *

(4) * * *

Mandatory convertible debt securities, which are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments, will qualify as hybrid capital instruments provided the maturity of these instruments is 12 years or less and the instruments meet the criteria set forth below for "term subordinated debt." There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

* * * * * *

Appendix A to Part 325—Statement of Policy on Risk-Based Capital [Amended]

(6) The last sentence of the first paragraph of section I.A.2.(d) of appendix A to part 325 is revised and three new sentences are added as concluding text at the end of the first paragraph of section I.A.2.(d) to read as follows:

* * * * * *

I. * * *

A. * * *

2. * * *

(d) * * * For state nonmember banks, a "term subordinated debt" instrument is an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least five years; or

(ii) In the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least five years; provided that the Director of the Division of Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if the Director has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph I.A.2.(d)(2) shall not apply to mandatory convertible debt obligations or issues;

(3) States expressly that the obligation:

(i) Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors; and

(ii) Is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior written consent of the FDIC or other primary federal regulator; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

Subordinated debt obligations issued prior to December 2, 1987 that satisfied the definition of the term "subordinated note and debenture" that was in effect prior to that date also will be deemed to be term subordinated debt for risk-based capital purposes. An optional redemption ("call") provision in a subordinated debt instrument that is exercisable by the issuing bank in less than five years will not be deemed to constitute a maturity of less than five years, provided that the obligation otherwise has a stated contractual maturity of at least five years; the call is exercisable solely at the

discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and the call is exercisable only with the express prior written consent of the FDIC under 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation. Optional redemption provisions will be accorded similar treatment when determining the perpetual nature and/or maturity of preferred stock and other capital instruments.

* * * * *

7. The existing Statement of Policy on Capital (50 FR 11189, March 15, 1985) is amended and added as a new appendix B to part 325 to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

Part 325 of the Federal Deposit Insurance Corporation rules and regulations (12 CFR part 325) sets forth minimum leverage capital requirements for fundamentally sound, well-managed banks having no material or significant financial weaknesses. It also defines capital and sets forth sanctions which will be used against banks which are in violation of the part 325 regulation. This statement of policy on capital adequacy provides some interpretational and definitional guidance as to how this part 325 regulation will be administered and enforced by the FDIC. This statement of policy also addresses certain aspects of the FDIC's minimum risk-based capital guidelines that are set forth in appendix A to part 325.

I. Enforcement of Minimum Capital Requirements

Section 325.3(b)(1) specifies that FDIC-supervised, state-chartered nonmember commercial and savings banks (or other insured depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) must maintain a minimum leverage ratio of Tier 1 (or core) capital to total assets of at least 3 percent; however, this minimum only applies to the most highly-rated banks (i.e., those with a composite CAMEL rating of 1 under the Uniform Financial Institutions Rating System established by the Federal Financial Institutions Examination Council) that are not anticipating or experiencing any significant growth. All other state nonmember banks would need to meet a minimum leverage ratio that is at least 100 to 200 basis points above this minimum. That is, in accordance with § 325.3(b)(2), an absolute minimum leverage ratio of not less than 4 percent must be maintained by those banks that are not highly-rated or that are anticipating or experiencing significant growth.

In addition to the minimum leverage capital standards, section III of appendix A to part 325 indicates that state nonmember banks generally are expected to maintain a minimum risk-based capital ratio of qualifying total capital to risk-weighted assets of 8 percent by December 31, 1992 (and at least 7.25 percent by December 31, 1990), with at least one-half of that total capital amount consisting of Tier 1 capital.

State nonmember banks (hereinafter referred to as "banks") operating with leverage capital ratios below the minimums set forth in Part 325 will be deemed to have inadequate capital and will be in violation of the part 325 regulation. Furthermore, banks operating with risk-based capital ratios below the minimums set forth in appendix A to part 325 generally will be deemed to have inadequate capital. Banks failing to meet the minimum leverage and/or risk-based capital ratios normally can expect to have any application submitted to the FDIC denied (if such application requires the FDIC to evaluate the adequacy of the institution's capital structure) and also can expect to be subject to the use of capital directives or other formal enforcement action by the FDIC to increase capital.

Capital adequacy in banks which have capital ratios at or above the minimums will be assessed and enforced based on the following factors (these same criteria will apply to any insured depository institutions making applications to the FDIC and to any other circumstances in which the FDIC is requested or required to evaluate the adequacy of a depository institution's capital structure):

A. Banks Which Are Fundamentally Sound and Well-Managed

The minimum leverage capital ratios set forth in § 325.3(b)(2) and the minimum risk-based capital ratios set forth in section III of appendix A to part 325 generally will be viewed as the minimum acceptable capital standards for banks whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. While the FDIC will make this determination in each bank based upon its own condition and specific circumstances, this definition will generally apply to those banks evidencing a level of risk which is no greater than that normally associated with a Composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Banks meeting this definition which are in compliance with the minimum leverage and risk-based capital ratio standards will not generally be required by the FDIC to raise new capital from external sources.

The FDIC does, however, encourage such banks to maintain capital well above the minimums, particularly those institutions that are anticipating or experiencing significant growth, and will carefully evaluate their earnings and growth trends, dividend policies, capital planning procedures and other factors important to the continuous maintenance of adequate capital. Adverse trends or deficiencies in these areas will be subject to criticism at regular examinations and may be an important factor in the FDIC's action on applications submitted by such banks. In addition, the FDIC's consideration of capital adequacy in banks making applications to the FDIC will also fully examine the expected impact of those applications on the bank's ability to maintain its capital adequacy. In all cases, banks should maintain capital commensurate with the level and nature of risks, including the volume and severity of adversely classified assets, to which they are exposed.

B. All Other Banks

Banks not meeting the definition set forth in I.A. of this appendix, that is, banks evidencing a level of risk which is at least as great as that normally associated with a Composite rating of 3, 4, or 5 under the Uniform Financial Institutions Rating System, will be required to maintain capital higher than the minimum regulatory requirement and at a level deemed appropriate in relation to the degree of risk within the institution. These higher capital levels will normally be addressed through memorandums of understanding between the FDIC and the bank or, in cases of more pronounced risk, through the use of formal enforcement actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

C. Capital Requirements of Primary Regulator

Notwithstanding I.A. and B. of this appendix, all banks (or other depository institutions making applications to the FDIC that require the FDIC to consider the adequacy of the institutions' capital structure) will be expected to meet any capital requirements established by their primary state or federal regulator which exceed the minimum capital requirement set forth in the FDIC's part 325 regulation. In addition, the FDIC will, when establishing capital requirements higher than the minimum set forth in the regulation, consult with an institution's primary state or federal regulator.

II. Capital Plans

Section 325.4(b) specifies that any bank which has less than its minimum leverage capital requirement is deemed to be engaging in an unsafe or unsound banking practice unless it has submitted, and is in compliance with, a plan approved by the FDIC to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate.

A bank having less than the minimum leverage capital requirement is required to submit a reasonable plan to the FDIC within 60 days of the date as of which it fails to comply with the capital requirement (§ 325.3(c)(3)). The amount of time allowed to achieve the minimum leverage capital requirement will be evaluated by the FDIC on a case-by-case basis and will depend on a number of factors, including the viability of the bank and whether it is fundamentally sound and well-managed.

Banks evidencing more than normal levels of risk will normally have their minimum capital requirements established in a formal or informal enforcement proceeding. The time frames for meeting these requirements will be set forth in such actions and will generally require some immediate action on the bank's part to meet its minimum capital requirement. The reasonableness of capital plans submitted by depository institutions in connection with applications as provided for in § 325.3(d)(2) will be determined in conjunction with the FDIC's consideration of the application.

III. Written Agreements

Section 325.4(c) provides that any insured depository institution with a Tier 1 capital to total assets (leverage) ratio of less than 2 percent must enter into and be in compliance with a written agreement with the FDIC (or with its primary federal regulator with FDIC as a party to the agreement) to increase its Tier 1 leverage capital ratio to such level as the FDIC deems appropriate or may be subject to a section 8(a) termination of insurance action by the FDIC. Except in the very rarest of circumstances, the FDIC will require that such agreements contemplate immediate efforts by the depository institution to acquire the required capital.

A bank which has issued net worth certificates to the FDIC or received approval from the FDIC to defer agricultural loan losses will be considered to be in compliance with this written agreement requirement for so long as it is in compliance with the FDIC requirements set forth in the net worth certificate program and/or agricultrual loan loss deferral program, provided that both its board and the FDIC agree that the net worth certificate or agricutural loan loss deferral agreements they enter into or have entered into are written agreements as defined in the part 325 regulation. In addition, a savings association with qualifying supervisory goodwill that is being recognized as Tier 1 capital by the association's primary federal regulator will be allowed to recognize this intangible asset for purposes of calculating core capital under part 325.

The guidance in this section III is not intended to preclude the FDIC from taking section 8(a) or other enforcement action against any institution, regardless of its capital level, if the specific circumstances deem such action to be appropriate.

IV. Capital Components

Section 325.2 sets forth the definition of Tier 1 capital for the leverage standard as well as the definitions for the various instruments and accounts which are included therein. Although nonvoting common stock, noncumulative perpetual preferred stock, and minority interests in consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests. The following provides some additional guidance with respect to some of the items that affect the calculation of Tier 1 capital.

A. Intangible Assets

The FDIC permits state nonmember banks to record intangible assets on their books and to report the value of assets in the Consolidated Reports of Condition and Income ("Call Report"). As noted in the instructions for preparation of the Consolidated Reports of Condition and Income (published by the Federal Financial Institutions Examination Council), intangible assets may arise from business combinations accounted for under the purchase method in accordance with Accounting Principles Board Opinion No. 16, as amended, and acquisitions of portions or segments of another institution's business, such as branch offices, mortgage servicing portfolios, and credit card portfolios.

Intangible assets created from such transactions may be booked in accordance with generally accepted accounting principles with one exception. For the purpose of reporting such assets on Call Reports, banks reporting to the FDIC shall amortize such assets over their estimated useful lives or a period not in excess of 15 years, whichever is shorter.

Notwithstanding the authority to report all intangible assets in the Consolidated Reports of Condition and Income, § 325.2(m) of the regulation specifies that mortgage servicing rights are the only intangible assets which will be allowed as Tier 1 capital.[1] The portion of equity capital represented by other types of intangible assets will be deducted from equity capital and assets in the computation of a bank's Tier 1 capital. Certain of these intangible assets may, however, be recognized for regulatory capital purposes if explicitly approved by the Director of the Division of Supervision as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in regulatory capital under the terms and conditions that are specifically approved by the FDIC.[2]

In certain instances banks may have investments in unconsolidated subsidiaries or joint ventures that have large volumes of intangible assets. In such instances the bank's consolidated statements will reflect an investment in a tangible asset even though such investment will, in fact, be represented by a large volume of intangible assets. In any such situation where this is material, the bank's investment in the unconsolidated subsidiary will be divided into a tangible and an intangible portion based on the percentage of intangible assets to total assets in the subsidiary. The intangible portion of the investment will be treated as if it were an intangible asset on the bank's books in the calculation of Tier 1 capital. However, intangible assets in the form of purchased mortgage servicing rights, including purchased servicing intangibles held by mortgage banking subsidiaries, are subject to the specific criteria set forth in § 325.5(f).

B. Perpetual Preferred Stock

Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Also, pursuant to section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)), a state nonmember bank cannot, without the prior consent of the FDIC, reduce the amount or retire any part of its perferred stock. (This prior consent is also required for the reduction or retirement of any part of a state nonmember bank's common stock or capital notes and debentures.)

Noncumulative perpetual preferred stock is generally included in Tier 1 capital. Nonetheless, it is possible for banks to issue preferred stock with a dividend rate which escalates to such a high rate that the terms become so onerous as to effectively force the bank to call the issue (for example, an issue with a low initial rate that is scheduled to escalate to much higher rates in subsequent periods). Preferred stock issues with such onerous terms have much the same characteristics as limited life preferred stock in that the bank would be effectively forced to redeem the issue to avoid performance of the onerous terms. Such instruments may be disallowed as Tier 1 capital and, for risk-based capital purposes, would be included in Tier 2 capital only to the extent that the instruments fall within the limitations applicable to intermeidate-term preferred stock. Banks which are contemplating issues bearing terms which may be so characterized are encouraged to submit them to the appropriate FDIC regional office for review prior to issuance. Nothing herein shall prohibit banks from issuing floating rate preferred stock issues where the rate is constant in relation to some outside market or index rate. However, noncumulative floating rate instruments where the rate paid is based in some part on the current credit standing of the bank, and all cumulative preferred stock instruments, are excluded from Tier 1 capital. These instruments are included in Tier 2 capital for risk-based capital purposes in accordance with the limitations set forth in appendix A to part 325.

The FDIC will also require that issues of perpetual preferred stock be consistent with safe and sound banking practices. Issues which would unduly enrich insiders or which contain dividend rates or other terms which are inconsistent with safe and sound banking practices will likely be the subject of appropriate supervisory response from the FDIC. Banks contemplating preferred stock issues which may pose safety and soundness concerns are encouraged to submit such issues to the appropriate FDIC regional office for review prior to sale. Pursuant to § 325.5(e), capital instruments that contain or that are subject to any conditions, covenants, terms, restrictions or provisions that are

---

[1] Although intangible assets in the form of purchased mortgage servicing rights are generally recognized for regulatory capital purposes, the — — deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts. In this regard, purchased mortgage servicing rights will be recognized for regulatory capital purposes only to the extent the rights meet the conditions, limitations and restrictions described in § 325.5(f).

[2] This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

inconsistent with safe and sound banking practices will not qualify as capital under part 325.

C. Other Instruments or Transactions Which Fail to Provide Capital Support

Section 325.5(b) specifies that any capital component or balance sheet entry or account which has characteristics or terms that diminish its contribution to an insured depository institution's ability to absorb losses shall be deducted from capital. An example involves certain types of minority interests in consolidated subsidiaries. Minority interests in consolidated subsidiaries have been included in capital based on the fact that they provide capital support to the risk in the consolidated subsidiaries. Certain transactions have been structured where a bank forms a subsidiary by transferring essentially risk-free or low-risk assets to the subsidiary in exchange for common stock of the subsidiary. The subsidiary then sells preferred stock to third parties.

The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, represents an essentially risk-free or low-risk investment for the preferred stockholders. This type of minority interest fails to provide any meaningful capital support to the consolidated entity inasmuch as it has a preferred claim on the essentially risk-free or low-risk assets of the subsidiary. In addition, certain minority interests are not substantially equivalent to permanent equity in that the interests must be paid off on specified future dates, or at the option of the holders of the minority interests, or contain other provisions or features that limit the ability of the minority interests to effectively absorb losses. Capital instruments or transactions of this nature which fail to absorb losses or provide meaningful capital support will be deducted from Tier 1 capital.

D. Mandatory Convertible Debt

Mandatory convertible debt securities are subordinated debt instruments that require the issuer to convert such instruments into common or perpetual preferred stock by a date at or before the maturity of the debt instruments. The maturity of these instruments must be 12 years or less and the instruments must also meet the other criteria set forth in appendix A to part 325. Mandatory convertible debt is excluded from Tier 1 capital but, for risk-based capital purposes, is included in Tier 2 capital as a "hybrid capital instrument."

So-called "equity commitment notes," which merely require a bank to sell common or perpetual preferred stock during the life of the subordinated debt obligation, are specifically excluded from the definition of mandatory convertible debt securities and are only included in Tier 2 capital under the risk-based capital framework to the extent that they satisfy the requirements and limitations for "term subordinated debt" set forth in appendix A to part 325.

V. Analysis of Consolidated Companies

In determining a bank's compliance with its minimum capital requirements the FDIC will, with three exceptions, generally utilize the bank's consolidated statements as defined in the instructions for the preparation of Consolidated Reports of Condition and Income.

The first exception relates to securities subsidiaries of state nonmember banks which are subject to § 337.4 of the FDIC's rules and regulations (12 CFR 337.4). Any subsidiary subject to this section must be a bona fide subsidiary which is adequately capitalized. In addition, § 337.4(b)(3) requires that any insured state nonmember bank's investment in such a subsidiary shall not be counted towards the bank's capital. In those instances where the securities subsidiary is consolidated in the bank's Consolidated Report of Condition it will be necessary, for the purpose of calculating the bank's Tier 1 capital, to adjust the Consolidated Report of Condition in such a manner as to reflect the bank's investment in the securities subsidiary on the equity method. In this case, and in those cases where the securities subsidiary has not been consolidated, the investment in the subsidiary will then be deducted from the bank's capital and assets prior to calculation of the bank's Tier 1 capital ratio. The second exception deals with mortgage banking subsidiaries established pursuant to § 325.5(f)(7) which, although generally consolidated for Call Report purposes, may be treated as separately capitalized subsidiaries for regulatory capital purposes. (Where deemed appropriate, the FDIC may also consider deducting investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries and mortgage banking subsidiaries, based on the general characteristics or functional nature of the subsidiaries.)

The third exception relates to the treatment of subsidiaries of insured banks that are domestic depository institutions such as commercial banks, savings banks, or savings associations. These subsidiaries are not consolidated on a line-by-line basis with the insured bank parent in the bank parent's Consolidated Reports of Condition and Income. Rather, the instructions for these reports provide that bank investments in such depository institution subsidiaries are to be reported on an unconsolidated basis in accordance with the equity method. Since the FDIC believes that the minimum capital requirements should apply to a bank's depository activities in their entirety, regardless of the form that the organization's corporate structure takes, it will be necessary, for the purpose of calculating the bank's Tier 1 leverage and total risk-based capital ratios, to adjust a bank parent's Consolidated Report of Condition to consolidate its domestic depository institution subsidiaries on a line-by-line basis. The financial statements of the subsidiary that are used for this consolidation must be prepared in the same manner as the Consolidated Report of Condition.

The FDIC will, in determining the capital adequacy of a bank which is a member of a bank holding company or chain banking group, consider the degree of leverage and risks undertaken by the parent company or other affiliates. Where the level of risk in a holding company system is no more than normal and the consolidated company is adequately capitalized at all appropriate levels, the FDIC generally will not require additional capital in subsidiary banks under its supervision over and above that which would be required for the subsidiary bank on its own merit. In cases where a holding company or other affiliated banks (or other companies) evidence more than a normal degree of risk (either by virtue of the quality of their assets, the nature of the activities conducted, or other factors) or where the affiliated organizations are inadequately capitalized, the FDIC will consider the potential impact of the additional risk or excess leverage upon an individual bank to determine if such factors will likely result in excessive requirements for dividends, management fees, or other support to the holding company or affiliated organizations which would be detrimental to the bank. Where the excessive risk or leverage in such organizations is determined to be potentially detrimental to the bank's condition or its ability to maintain adequate capital, the FDIC may initiate appropriate supervisory action to limit the bank's ability to support its weaker affiliates and/or require higher than minimum capital ratios in the bank.

VI. Applicability of Part 325 to Savings Associations

Section 325.3(c) indicates that, where the FDIC is required to evaluate the adequacy of any depository institution's (including any savings association's) capital structure in conjunction with an application filed by the institution, the FDIC will not approve the application if the depository institution does not meet the minimum leverage capital requirement set forth in § 325.3(b).

Also, § 325.4(b) states that, under certain conditions specified in section 8(t) of the Federal Deposit Insurance Act, the FDIC may take section 8(b)(1) and/or 8(c) enforcement action against a savings association that is deemed to be engaged in an unsafe or unsound practice on account of its inadequate capital structure. Section 325.4(c) further specifies that any insured depository institution with a Tier 1 leverage ratio (as defined in part 325) of less than 2 percent is deemed to be operating in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act.

In addition, the Office of Thrift Supervision (OTS), as the primary federal regulator of savings associations, has established minimum core capital leverage, tangible capital and risk-based capital requirements for savings associations (12 CFR part 567). In this regard, certain differences exist between the methods used by the OTS to calculate a savings association's capital and the methods set forth by the FDIC in part 325. These differences include, among others, the core capital treatment for investments in subsidiaries and for certain intangible assets.

In determining whether a savings association's application should be approved pursuant to § 325.3(c), or whether an unsafe or unsound practice or condition exists pursuant to §§ 325.4(b) and 325.4(c), the FDIC will consider the extent of the savings association's capital as determined in accordance with part 325. However, the FDIC will also consider the extent to which a savings association is in compliance with (a) the minimum capital requirements set forth by the OTS, (b) any related capital plans for meeting the minimum capital requirements approved by the OTS, and/or (c) any other criteria deemed by the FDIC as appropriate based on the association's specific circumstances.

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of February 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-5343 Filed 3-8-91; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under part 611 on January 30, 1991 (56 FR 3397). The final regulations amend 12 CFR part 611 to establish a procedure under which a small Farm Credit association may terminate its Farm Credit charter by becoming chartered as a financial institution under other Federal or State authority pursuant to § 7.10 of the Farm Credit Act of 1971, as amended. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is March 11, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert S. Child, Senior Credit Specialist, Office of Examination, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4444, or

Rebecca S. Orlich, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4402 TDD (703) 883-4020, TDD (703) 883-4444.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: March 6, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5685 Filed 3-8-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Monetary Offices

31 CFR Part 100

[T.D. BEP-1]

Exchange of Paper Currency and Coin

AGENCY: Monetary Offices, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations in 31 CFR part 100 to change the responsibility for the exchange of mutilated paper currency from the Commissioner, Financial Management Service (FMS) (formerly the Bureau of Government Financial Operations), Department of the Treasury, to the Director, Bureau of Engraving and Printing (BEP), Department of the Treasury. Treasury Order number 135-01 transferred the functions relating to the redemption and destruction of currency from FMS to BEP.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, Manager, Administrative Services Division, Bureau of Engraving and Printing, Washington, DC 20228; telephone (202) 447-0162.

SUPPLEMENTARY INFORMATION: By virtue of the Department of the Treasury Order number 135-01, dated October 17, 1983 and amended November 7, 1988, the Currency Operations Division of the Bureau of Government Financial Operations was transferred to the Bureau of Engraving and Printing, together with its functions relating to the redemption and destruction of currency. With the transfer of the Currency Operations Division to BEP, the component was subsequently renamed the Office of Currency Standards (OCS).

The OCS has two primary missions:

(1) It administers, evaluates and coordinates programs involving the cancellation, verification, and destruction of unfit currency with the Federal Reserve System; and

(2) It provides a service to the general public by receiving and processing, for redemption, U.S. currency that represents a claim against the Department of the Treasury.

With respect to the latter mission, the OCS adjudicates and redeems lawfully held paper currency of the United States which has been mutilated. Mutilated currency is currency which has been damaged or its condition is such that its value is questionable. This office redeems mutilated currency at face value if clearly more than one-half of the original whole note remains.

Title 31 U.S.C. 5118(b) and Department of the Treasury Circular 55 Revised, gives the Director, BEP, overall responsibility for the operation of the redemption of mutilated currency, and his/her judgment shall be final. No relief will be granted for lawfully held paper currency of the United States which has been totally destroyed. During calendar year 1989, the OCS received for adjudication from Federal Reserve banks, foreign countries, other financial institutions and the general public 30,235 mutilated currency claims. These claims were valued at $37,116,745.

The changes made by this Treasury decision in subparts B and D of 31 CFR part 100 involve:

(1) Deleting reference to the Commissioner of the Bureau of Government Financial Operations wherever it appears and replacing it with the Director of the Bureau of Engraving and Printing;

(2) Deleting the address of the Bureau of Government Financial Operations and replacing it with the address of the Bureau of Engraving and Printing; and

(3) Updating the addresses of the Federal Reserve banks and branches.

Executive Order 12291

Because this rule relates to agency organization and management, it is not subject to E.O. 12291 pursuant to section 1(a)(3) thereof.

Administrative Procedures Act

Because this Treasury decision relates to agency management and is procedural in nature, notice and public procedure, and a delayed effective date are inapplicable pursuant to 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply because no additional requirement to collect information is proposed. There is no collection of information associated with this final rule.

Drafting Information

The principal authors of this Treasury decision are Edward J. Sheehan and Horace A. Fields, Administrative Services Division, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 100

Currency, Federal reserve system.

Authority and Issuance

31 CFR part 100 is amended as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

1. The authority citation for part 100 continues to read as follows:

Authority: Sec. 1, 49 Stat. 938; 31 U.S.C. 773a.

§ 100.5 [Amended]

2. Section 100.5(a) introductory text is amended by removing the words "Commissioner, Bureau of Government Financial Operations" and by replacing them with "Director, Bureau of Engraving and Printing" and by removing the word "Commissioner's" in the last sentence and by replacing it with "Director's".

§ 100.7 [Amended]

3. Section 100.7(d) is amended by removing the words "The Commissioner of the Bureau of Government Financial Operations" and by replacing it with "The Director of the Bureau of Engraving and Printing".

§ 100.9 [Amended]

4. Section 100.9 is amended by removing the words "Government Financial Operations, room 132, Treasury Annex No. 1, DCS/BEPA, Washington, DC 20226," and replacing them with "Engraving and Printing, OCS, room 344A, Post Office Box 37048, Washington, DC 20013".

5. Section 100.17 is amended by revising the locations for the following Federal Reserve banks and branches to read as follows:

§ 100.17 Location of Federal Reserve banks and branches.

* * * * *

Philadelphia—Ten Independence Mall (P.O. Box 66), Philadelphia, PA 19105

* * * * *

Charlotte Branch—530 East Trade Street (P.O. Box 30248), Charlotte, NC 28230

* * * * *

Birmingham Branch—1801 Fifth Avenue, North (P.O. Box 830447), Birmingham, AL 35283–0447

Jacksonville Branch—800 Water Street (P.O. Box 929), Jacksonville, FL 32231–0044

* * * * *

Oklahoma City Branch—226 Dean A. McGee Street (P.O. Box 25129), Oklahoma City, OK 73125

Omaha Branch—2201 Farnam Street (P.O. Box 3958), Omaha, NB 68103

* * * * *

Los Angeles Branch—950 South Grand Avenue (Terminal Annex, P.O. Box 2077), Los Angeles, CA 90051

* * * * *

Signed:

L. Paul Blackmer, Jr.,

Acting Director.

Approved:

Catalina V. Villalpando,

Treasurer of the United States.

Approved:

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–5624 Filed 3–8–91; 8:45 am]

BILLING CODE 4810–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

[DoD Directive 1440.1]

The DoD Civilian Equal Employment Opportunity (EEO) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to reflect revisions to make mandatory all of the equal employment opportunity Special Emphasis Programs (SEPs). Presently, this part requires only the Hispanic Employment Program, the Federal Women's Program, and the Handicapped Individuals as SEPs. This amendment will expand the DoD concept to include the Asian/Pacific Islander Employment, the American Indian/Alaskan Native Employment Program, and the Black Employment Program. This amendment will also codify what the Military Services and the majority of the Defense Agencies have already done. It also updates the availability of DoD issuances that are mentioned in this part.

DATES: Effective date: March 11, 1991. Written comments must be received on or before April 1, 1991.

ADDRESSES: Forward comments to Director, Equal Employment Opportunity, Room 3A272, The Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Mr. C. Haughton, telephone (202) 695–0105.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 191

Aged, Civil rights, Equal employment opportunity, Government employees, Handicapped, Religious discrimination, Sex discrimination.

Accordingly, 32 CFR part 191 is amended as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.2 [Amended]

2. Footnote 1 § 191.2(c) is revised to read as follows: Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

§ 191.1 [Amended]

3. Paragraph 191.1(c) is amended by removing the words "as well as, at the discretion of responsible officials, SEPs for the additional groups covered by the Federal Equal Opportunity Recruitment Program (i.e., the Asian/Pacific Islander Employment Program, the Black Employment Program, and the American Indian/Alaskan Native Employment Program)" and adding the words "the Asian/Pacific Islander Employment Program (AEP), the American Indian/Alaskan Native Employment Program (AIEP), and the Black Employment Program (BEP)."

Section 191.5 is amended by revising paragraphs (a)(9) and (b)(5) as follows:

§ 191.5 Responsibilities.

* * * * *

(a) * * *

(9) Establish DoD SEPs for the FWP, HEP, HIP, AEP, AIEP, and BEP.

* * * * *

(b) * * *

(5) Establish DoD SEPs, for the FWP, HEP, HIP, AEP, AIEP, and BEP at Headquarters level and at all field activities levels unless exemptions are granted to field activities. Authority to grant exceptions to field activities of DoD Components is delegated to the Component Heads who, in turn, may redelegate this authority.

* * * * *

Dated: March 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5665 Filed 3–8–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–084; FRL–3865–5]

Approval and Promulgation of Implementation Plans Metropolitan-Davidson County; Approval of Revisions to the Volatile Organic Compound (VOC) Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the Metropolitan-Davidson County portion of Tennessee's State Implementation Plan (SIP). These revisions were submitted to EPA on February 16, 1990, in response to the May 1988, SIP call to areas in Tennessee which were not achieving the National Ambient Air Quality Standards (NAAQS) for ozone. The revisions being approved today correct some of the deficiencies within the Metropolitan-Davidson County portion of the Tennessee SIP, and are contained within the Metropolitan Health Department Division of Air Pollution Control's Regulation No. 7. Details regarding each revision being approved today are discussed in the Supplementary Information section of this notice.

Additionally, EPA expects Metropolitan-Davidson County to correct the remaining deficiencies identified in the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County. These remaining deficiencies are also identified in the Supplementary Information section of this notice.

EFFECTIVE DATES: This action will be effective May 10, 1991, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to Vickie Boothe of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Bureau of Environment, Division of Air Pollution Control, 701 Broadway, Nashville, Tennessee 37219–5403.

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, 311–23rd Avenue, North Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Vickie Boothe of the EPA Region IV Air Programs Branch at (404) 347–2864 or FTS 257–2864 and at the above address.

SUPPLEMENTARY INFORMATION: On May 26, 1988, EPA notified the Governor of Tennessee that areas of the State have failed to attain the NAAQS for ozone. Since the Clean Air Act attainment date of December 31, 1987, had passed, the Tennessee SIP was declared substantially inadequate to achieve the NAAQS for ozone. EPA requested that Tennessee respond to the SIP call in two phases, the response for Phase I was due approximately one year following issuance of the SIP call and Phase II was to be completed following issuance of final EPA policy program requirements for ozone and CO nonattainment areas and/or reauthorization of the Clean Air Act (CAA). One of the Phase I requirements called for correction of EPA identified deviations in the volatile organic compound (VOC) regulations within the Tennessee SIP.

On February 14, 1990, the Tennessee Air Pollution Control Board adopted revisions to the Metropolitan-Davidson County portion of the Tennessee SIP's VOC regulations. On February 16, 1990, the Tennessee Air Pollution Control Board submitted to EPA, the adopted amendments to the Metropolitan-Davidson County VOC regulations. Tennessee requested that the revisions be adopted as part of the federally-approved SIP. EPA is today approving the following revisions.

I. In section 7–1: "Definitions", several definitions were revised to be consistent with current Agency policy. The changes are as follows:

(1) The definition for "coating" has been replaced by one that defines coatings as a decorative, functional, or protective thin layer applied to a surface. This definition is numbered as 7–1(c).

(2) The definition of "Coating line" has been revised to include one or more apparatus or operations which include a coating applicator, flash-off area, and/or oven wherein a surface coating is applied, dried, or cured. This definition is numbered as 7–1(e).

(3) The definition of "Stationary Source" has been replaced with one that means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act. This definition is numbered as 7–1(gg).

(4) The definition of a "volatile organic compound" (VOC) has been replaced with one that eliminates the use of a vapor pressure cutoff and lists all exempt VOC compounds. It is numbered 7–1(11).

II. In section 7–2: "Prohibited Act", Paragraph (b) has been revised to require that an alternative plan shall only become effective after approval by the United States Environmental Protection Agency.

III. Section 7–3: "Petition For Alternative Controls" has been revised as follows:

If the owner or operator of any stationary source of volatile organic compound can demonstrate that compliance with the provisions of this regulation would be technologically infeasible, he may petition the Director to allow the use of alternative operational (such as improved transfer efficiency, bubbling or cross-line averaging) and/or equipment controls, which results in the same or greater net reduction on VOC emissions as provided by this Regulation. Equivalency calculations for coating are required to be performed in units of lbs. VOC/gallon solids rather than lbs. VOC/gallon coating when bubbling, cross-line averaging, or achieving compliance with add-on control equipment. Compliance with the emission limit under this Section is on a twenty-four (24) hour average. An alternative operational and/or equipment control shall only become effective after approval by the United States Environmental Protection Agency. These alternative operational and/or equipment controls shall be a condition on any permit issued for said stationary source. Such a permit or order may contain an alternate test method and/or averaging time.

IV. Section 7–22: "Compliance Schedules" has been deleted as a housekeeping measure because it contained time tables with dates that have passed.

V. Since section 7–22 has been deleted, all references to this section have been removed from individual regulations. Additionally, since alternative compliance plans must be submitted to EPA as SIP revisions, the

BEST COPY AVAILABLE

phrase, "or an equivalent method approved by the "Director", has been deleted from the following regulations:

Section 7-5 "Emission Standards For Coil Coating"
Section 7-6 "Emission Standards For Paper Coating"
Section 7-7 "Emission Standards For Fabric and Vinyl Coating"
Section 7-8 "Emission Standards For Metal Furniture Coating"
Section 7-9 "Emission Standards For Surface Coating of Large Appliances"
Section 7-10 "Bulk Gasoline Terminals"
Section 7-14 "Solvent Metal Cleaning"
Section 7-16 "Emission Standards for Surface Coating of Miscellaneous Metal Parts and Products"
Section 7-17 "Manufacture of Pneumatic Rubber Tires"
Section 7-18 "Graphic Arts—Rotogravure and Flexography"
Section 7-19 "Perchloroethylene Dry Cleaning"
Section 7-20 "Emission Standards for Surface Coating of Aerospace Assembly and Component"

VI. The term "vapor control" has been added to section 7-13 (e)(2) and (e)(3) to clarify what is meant by "an equivalent system" for the "Gasoline Dispensing Facility, Stage I" regulation.

VII. In section 7-23 "Special Provisions For New Volatile Organic Compound Sources and Modifications" the term "facilities" has been replaced with the term "stationary sources" in paragraphs (2)(b) and (2)(c). These paragraphs define facility applicability based on potential emissions for the application of LAER and BACT.

VIII. Section 7-24 "Test Methods and Procedures" has been revised to require that VOC emissions be determined using the appropriate test methods contained in 40 CFR, part 60, appendix A, "Reference Methods". This regulation revision also requires that alternative test methods be submitted to EPA for approval.

IX. EPA's May 1988 SIP call cited the lack of recordkeeping as a deficiency in Tennessee's SIP. To address this deficiency, section 7-25, "Record Keeping and Reporting Requirements" has been submitted as follows:

(a) The following data must be maintained on site and made available for inspection upon request:
(1) Coating formulation and analytical data,
(2) Coating consumption data,
(3) Capture and control equipment performance data,
(4) Spray applicator transfer efficiency data,
(5) Process information needed to demonstrate compliance with any applicable section of this Regulation.

Additionally, EPA expects Metropolitan-Davidson County to correct the deficiencies identified in the SIP call letter for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County. The following deviations need to be corrected:

(1) Section 7-2 defines the RACT applicability level as 1000 tons/year.

(2) In section 7-3, Petition for Alternative Controls, the words "as applied" should be added to the term "VOC/gallon solids" as a clarification.

(3) The term "vapor-tight" should be defined in section 7-13.

(4) "Once-in/always-in" is missing from the applicability section of the individual rules.

(5) Section 7-25, "Recordkeeping and Reporting Requirements": Because the existing SIP does not contain any recordkeeping provisions, EPA is approving section 7-25, "Recordkeeping and Reporting Requirements". However, the Tennessee Department of Health and Environment (TDHE) was notified that to be fully consistent with EPA guidance, additional requirements must be included that would contain: applicable units of compliance (e.g., lbs/gallons); applicable time periods for data entries; and a clear, separate provision that requires records to be kept. TDHE has agreed to submit the additional recordkeeping provisions as a revision to the SIP as expeditiously as practical.

These deficiencies must be corrected before EPA can fully approve the State's ozone SIP. The SIP call letters cited above originally required that final rules to correct these deficiencies be submitted to EPA by September 30, 1989. If Metropolitan-Davidson County fails to correct these deficiencies by 9 months from this notice date, unless a different date is required consistent with the Clean Air Act Amendments, EPA may disapprove the Nashville-Davidson County's portion of the State's ozone SIP and may propose to promulgate Federal rules which would correct these deficiencies.

Final Action

EPA is today approving the revisions to the Metropolitan-Davidson County portion of the Tennessee SIP (Regulation No. 7—Regulation for Control of Volatile Organic Compounds) listed above.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).)

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implemention plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 13, 1990.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2220 is amended by adding paragraph (c)(103) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(103) A revision to the Metropolitan-Davidson County portion of Tennessee's SIP, Regulation No. 7—Regulation for Control of Volatile Organic Compounds was submitted on February 16, 1990.

(i) Incorporation by reference.

(A) Regulation No. 7—Regulation for the Control of Volatile Organic Compounds, except Section 7-22, effective February 14, 1990.

(ii) Other material.

(A) Letter of February 16, 1990 from the Tennessee Department of Health and Environment.

3. Section 52.2225 is added to read as follows:

§ 52.2225 VOC rule deficiency correction.

(a) The revisions to sections 7-1, 7-2, 7-3, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-13, 7-14, 7-16, 7-17, 7-18, 7-19, 7-20, 7-22, 7-23, 7-24, and 7-25 of the Tennessee Regulations are approved. The State submitted these regulations to EPA for approval on February 16, 1990. These sections were intended to correct deficiencies cited in a letter calling for the State to revise its SIP for ozone from Greer Tidwell, the EPA Regional Administrator, to Governor McWherter on May 26, 1988, and clarified in a letter from Winston Smith, EPA Region IV Air Division Director, to Paul Bontrager, Director of the Air Pollution Control Division of the Metropolitan Health Department for Nashville-Davidson County.

Deficiencies in the following aspects of the Tennessee Regulations, however, have not been corrected:

(1) Section 7-2 defines the RACT applicability level as 1000 tons/year.

(2) In Section 7-3, Petition for Alternative Controls, the words "as applied" should be added to the term "VOC/gallon solids" as a clarification.

(3) The term "vapor-tight" should be defined in section 7-13.

(4) "Once-in/always-in" is missing from the applicability section of the individual rules.

(5) Section 7-25, "Recordkeeping and Reporting Requirements" should be revised to include additional requirements that would contain: units of compliance consistent with the performance requirements; applicable time periods for data entries; and a clear, separate provision that requires records to be kept.

(b) The above deficiencies must be corrected according to the letters mentioned above, the proposed post-1987 ozone policy (52 FR 45044), and other EPA guidance relating to the deficiencies before the SIP for ozone can be fully approved.

[FR Doc. 91-5671 Filed 3-8-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5420, 5450, 5460, and 9230

[AA-230-00-4311-02; Circular No. 2633]

RIN 1004-AB48

Sales of Forest Products; General; Preparation for Sale; Award of Contract; Sales Administration; Trespass

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rule amends provisions of the existing regulations in 43 CFR part 5400—Sales of Forest Products; General, part 5420—Preparation for Sale, part 5450—Award of Contract, part 5460—Sales Administration, and part 9230—Trespass. The final rule provides for more effective control of the trespass of timber or other vegetative resources. It provides minimum standards for management and protection of timber and other vegetative resources, and for penalties, which may be supplemented by State law, for trespass. The final rule provides guidance concerning the sale of timber products and other vegetative resources. Further explanation of contract and permit content, requirements, stipulations, and penalties are addressed. In addition, definitions are added for several terms used in the rule.

EFFECTIVE DATE: April 10, 1991.

ADDRESSES: Inquiries and suggestions should be sent to: Director (230), Bureau of Land Management, room 901, Premier Building, 1725 I Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653-8864.

SUPPLEMENTARY INFORMATION: This rule was published as a proposed rulemaking on November 28, 1989 (54 FR 48917). One comment letter was received from an industry association and two from Federal agencies. All were considered in the decisionmaking process on the final rule.

One comment from an office of the Bureau of Land Management (BLM) suggested adding a section listing specifically the acts that would be treated as trespass and prohibited, and a section spelling out the penalties for trespass. It has been determined that it would be appropriate to add these sections. However, in order to allow the public an opportunity to review them, they will be published in a separate proposed rule.

One comment generally supported BLM's efforts to strengthen its trespass regulations, but offered a number of suggestions.

One suggestion was that since BLM and Forest Service timber are generally sold in the same market, liquidated damages for trespass of Federal timber should be the same. However, considering the increasing problem of timber trespass, there is a need for adequate penalties for unauthorized cutting as a deterrent to such cutting. The Forest Service regulations do not contain adequate penalties, especially in cases where criminal intent cannot be proved.

One comment suggested that the penalty for nonwillful trespass should be equal to fair market value, deposits, and administrative costs. It was further stated that if the trespass could be prevented through better sale layout—delineation of sale boundaries—or through better instructions by the contract administrator, then the BLM must recognize and accept some liability. The BLM makes every effort to ensure that sale layout is done in such a manner that timber sold under the contract is clearly designated, and also that the contract has provisions for its modification in cases where it is necessary to cut timber that was not designated in the original layout or where unavoidable damage to reserved timber occurs in the normal course of logging. The purchaser also has the responsibility to adhere to the contract and to seek further clarification if he is

in doubt as to whether timber is designated or not. There have been very few cases where a trespass has been committed because of poor sale layout or because of lack of clear instructions to the purchaser. Without some penalty for nonwillful trespass, an unscrupulous operator could "nonwillfully" obtain additional timber and, if he got caught, would only have to pay the value of the timber taken. In effect, he would be getting a contract modification for his benefit and convenience, without following the modification procedure. The suggestion was not adopted in the final rule.

Another comment stated that the Forest Service regulations provide that, for willful trespass, liquidated damages are set at double the stumpage value plus whatever deposits to reclamation and other funds would be required under a contract for the timber that was the subject of the trepass. It was suggested that BLM bring its proposal into line with the regulations of the Forest Service. However, the BLM has set its damages at a level that is consistent with State law in many of the States in which public lands lie.

The BLM needs a substantial penalty for willful trespass as a deterrent against such trespass. The provision in this rule is similar to the current regulations in States that provide for treble damages for willful trespass. This provision will allow for more severe penalties in States that do not have adequate penalties at the present time. The suggestion in the comment was not adopted.

Another comment stated that all trespass would require some type of appraisal in order to establish fair market value. It suggested that this regulation should articulate how such appraisal will be made. It also suggested that where timber trespass occurred on a timber sale, that the current contract rates be used as the fair market value. The recommendation that the rule articulate how appraisals will be made was partially adopted by including a definition of fair market value in the final rule. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354. The suggestion that current contract prices be treated as fair market value was not adopted because the contract prices do not always reflect the fair market value at the time of the trespass, especially on 3-year contracts.

Another comment concurred with and supported the amendment adding § 5450.1(c), which makes it clear when a contract award is effective, and requires that terms and conditions both reflect the contractor's ability to perform and provide for mitigation of environmental degradation.

One comment recommended removing the phrase "or reflective of an honest mistake" from the definition of nonwillful in § 5400.0–5. This phrase was included in similar definitions in 43 CFR part 2920 and has resulted in the U.S. Attorney declining to prosecute using criminal remedies. Even those persons who may have committed a willful act by definition could still raise an "honest mistake" defense and cloud the issues. This suggestion was adopted.

One comment recommended revising the definition of public lands to conform to the Federal Land Policy and Management Act, 43 U.S.C. 1702(e): "Any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." This recommendation was adopted in the final rule.

Editorial changes have been made in the definition section for purposes of clarity and accuracy. The definition of "permit" was amended in the final rule by substituting the word "permittee" for the word "purchaser" to fit situations where free use permits are issued. The definition of "purchaser" was amended in the final rule by adding the phrase "or other vegetative resources" at the end of the definition to conform to the policy and regulatory provisions found in §§ 5402.0–6, 5462.1, and elsewhere in the rule.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. Additionally, as required by Executive Order 12630, the Department has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5420

Forest and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5450

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 9230

Penalties, Public lands.

Under the authorities cited below, parts 5400, 5420, 5450, and 5460 of group 5000, subchapter E, and part 9230 of group 9200, subchapter I, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

Dated: January 24, 1991.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

PART 5400—[AMENDED]

1. The authority citation for part 5400 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367, 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq., 43 U.S.C. 315, 1181a, 16 U.S.C. 607a, and 43 U.S.C. 1701 et seq.

2. Section 5400.0–3 is amended by adding paragraph (e) to read as follows:

§ 5400.0–3 [Amended]

* * * * *

(e) Authority to enforce the provisions of this title is contained in the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.).

3. Section 5400.0–5 is amended by removing the lettered paragraph designations while retaining the numbered subparagraph designations, reordering the paragraphs in alphabetical order of the terms defined, italicizing the defined terms at the beginning of each definition paragraph, by revising the definitions of "public lands" and "other vegetative resources," and by adding the following paragraphs in alphabetical order, to read as follows:

§ 5400.0–5 Definitions.

Affiliate means a business entity including but not limited to an individual, partnership, corporation, or association, which controls or is controlled by a purchaser, or, along with a purchaser, is controlled by a third business entity.

* * * * *

Commercial use means use intended for resale, barter, or trade, or for profit.

* * * * *

Fair Market value means the price forest products will return when offered for competitive sale on the open market. Determination of fair market value will be made in accordance with procedures in BLM Manual 9354.

* * * * *

Incidental use means personal use of other vegetative resources on the site where they are obtained, or, if they are transported to a secondary location, personal use of the resources within a reasonable period of time by the person obtaining them.

* * * * *

Nonwillful means an action which is inadvertent, mitigated in character by the belief that the conduct is reasonable or legal.

* * * * *

Other vegetative resources means all vegetative material that is not normally measured in board feet, but can be sold or removed from public lands by means of the issuance of a contract or permit.

Permit means authorization in writing by the authorized officer or other person authorized by the United States Government, and is a contract between the permittee and the United States.

Personal use means use other than for sale, barter, trade, or obtaining a profit.

Product value means the stumpage value of timber or the fair market value of other vegetative resources.

Public lands means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.

Purchaser means a business entity including, but not limited to, an individual, partnership, corporation, or association that buys Federal timber or other vegetative resources.

* * * * *

Trespass means the severance, removal, or unlawful use of timber or other vegetative resources without the consent (authorization) of the Federal Government, or failure to comply with contract or permit requirements that causes direct injury or damage to timber or other vegetative resources, or undue environmental degradation.

Trespasser means any person, partnership, association, or corporation responsible for committing a trespass.

Willful means a knowing act or omission that constitutes the voluntary or conscious performance of a prohibited act or indifference to or reckless disregard for the law.

§ 5401.0–6 [Amended]

4. Section 5401.0–6 is amended by inserting the phrase "or other vegetative resources" after the word "timber" in the fourth (last) sentence of paragraph (a).

5. Section 5402.0–6 is amended by revising paragraph (c)(2) to read as follows:

§ 5402.0–6 Policy.

* * * * *

(c) * * *

(2) The contract is for the disposal of timber or other vegetative resources, for which it is impracticable to obtain competition.

PART 5420—[AMENDED]

6. The authority citation for part 5420 is revised to read as follows:

Authority: 61 Stat. 681, as amended, 69 Stat. 367; Sec. 5, 50 Stat. 875; 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

§ 5424.0–5 [Removed]

7. Section 5424.0–5 is removed.

8. Section 5424.0–6 is revised to read as follows:

§ 5425.0–6 Policy.

(a) All timber sales shall be made on contract or permit forms approved by the Director, BLM.

(b) Other than for incidental use, the severance and/or removal of any vegetative resource for personal or commercial use requires a written contract or permit issued by the authorized officer or other person authorized by the United States. All contracts or permits shall contain the following:

(1) The name of the purchaser or his/her authorized representative with complete mailing address.

(2) The specific vegetative resources authorized for removal and their respective quantities and values.

(3) The specific location from which the vegetative resources are to be removed.

(4) The term for which the contract or permit is valid.

(5) Contract or permit conditions and stipulations.

(6) Signature of purchaser or authorized representative.

(c) The authorized officer may include additional provisions in the contract or permit to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and the protection of improvements, watersheds, recreational values, and the prevention of pollution or other environmental degradation.

(d) The contract or permit from and any additional provisions shall be made available for inspection by prospective bidders during the advertising period. When sales are negotiated, all additional provisions shall be made part of the contract or permit.

(e) Except for such specific quantities of grades and species of unprocessed timber determined to be surplus to domestic lumber and plywood manufacturing needs, each timber sale contract shall include provisions that prohibit:

(1) The export of any unprocessed timber harvested from the area under contract; and

(2) The use of any timber of sawing or peeler grades, sold pursuant to the contract, as a substitute for timber from private lands which is exported or sold for export by the purchaser, an affiliate of the purchaser, or any other parties.

PART 5450—[AMENDED]

9. The authority citation is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

10. Section 5450.1 is amended by adding paragraph (c) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(c) Award of contracts or permits on negotiated sales occurs upon the execution of the contract or permit. Terms and conditions shall reflect the contractor's ability to perform, and shall require prevention or mitigation of environmental degradation associated with the removal of the timber or other vegetative resource.

PART 5460—[AMENDED]

11. The authority citation for part 5460 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 et seq.

12. Part 5460 is amended by adding new subpart 5642 to read as follows:

Subpart 5462—Contract and Permit Requirements

§ 5462.1 Contract and permit compliance.

(a) The following minimum requirements shall be met in order to assure contract or permit compliance:

(1) Contracts or permits shall be executed by authorized purchasers or their formally designated representatives.

(2) For other than lump sum sales, only the specific timber or other vegetative resource designated for removal, in their respective quantities, shall be removed.

(3) Timber or other vegetative resources shall be removed only from designated locations or areas.

(4) Transportation of timber or other vegetative resources shall be in accordance with contract or permit requirements and shall include appropriate load or product tagging if required.

(5) Contract or permit stipulations and specification shall be adhered to.

(6) Payments shall be made in accordance with subpart 5461 of this title.

(b) All contract and permit provisions and special provisions shall be adhered to unless the contract is modified in accordance with part 5470 of this title.

PART 9230—[AMENDED]

13. The authority citation for part 9230 is revised to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701; et seq.; 18 U.S.C. 1851–1858.

SUBPART 9239—[AMENDED]

§ 9239.0–7 [Amended]

14. Sections 9239.0–7 is amended by inserting after the word "timber" in the first sentence the phrase "or other vegetative resources."

§ 9239.0–8 [Amended]

15. Section 9239.0–8 is amended by inserting in the first sentence between the word "timber" and the comma immediately following it the phrase "or other vegetative resources."

§ 9239.1 [Amended]

16. Section 9239.1 is amended by revising the heading to read: "Timber and other vegetative resources."

17. Section 9239.1–1 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (d)(1), (2), and (3), respectively, by revising the section heading, and by adding new paragraphs (a) through (c) and an introductory text for paragraph (d) to read as follows:

§ 9239.1–1 Unauthorized cutting and/or removal.

(a) All of the definitions in § 5400.0–5 of this title apply to this section.

(b) Authorization by contract or permit for other than incidental use shall be obtained prior to the cutting and/or removal of any vegetative resources. Severance or removal of timber or other vegetative resources without a contract or permit, or the use of an invalid contract or permit, constitutes a trespass and is a violation of regulation subject to criminal penalties.

(c) Failure to comply with any of the requirements and/or stipulations of a contract or permit may, if determined to be detrimental to the public interest by the authorized officer, result in the cancellation of the contract or permit. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance. Cancellation shall be mandatory in cases of:

(1) Intentional falsification of information;

(2) Unauthorized activity; or

(3) Activity by unauthorized person or entity.

(d) Permittees under part 5510 are subject to the following prohibitions:

* * * * *

18. Section 9239.1–2 is amended by redesignating the existing text as paragraph (b), by revising the heading, and adding new paragraph (a) to read as follows:

§ 9239.1–2 Penalty for unauthorized cutting and/or removal.

(a) In accordance with §§ 9239.0–7, 9239.0–8, and 9239.1–1 of this title, violators of the terms and conditions of a contract or permit, or persons who cut or remove timber or other vegetative resources without a contract or permit, are in trespass and may be prosecuted under title 18 of the United States Code or under State criminal law.

* * * * *

19. Section 9239.1–3 is revised to read as follows:

§ 9239.1–3 Measure of damages.

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trespass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

[FR Doc. 91–5635 Filed 3–8–91; 8:45 am]

BILLING CODE 4310–84–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Conservation Project Support Program and Professional Services Program Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final rule.

SUMMARY: The Institute of Museum Services issues an amendment to its regulations governing awards in excess of the normal $25,000 ceiling amount for the conservation grant program. 45 CFR 1180.20. Section 1180.20(f)(1) authorizes the Director to make awards in excess of $25,000 in exceptional circumstances. This amendment authorizes the Institute to set annually a maximum award level for the Conservation Project Support grants awarded under the exceptional circumstances provision of 1180.20(f)(1).

IMS makes a technical amendment to the regulations for the Professional Services Program to remove the limitation that financial assistance for a project may not be provided for longer than one year. This amendment conforms the regulations to a change in the Museum Services Act made by Public Law 101–512, which eliminates the one-year restriction for these projects.

DATES: These regulations are effective March 11, 1991.

ADDRESSES: Institute of Museum Services, room 510, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director, (202) 786–0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act"), title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was most recently amended in 1990. Public Law 101–512. The purpose of the Act is stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act * * * to assist museums in * * * modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage * * *.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Need for the Amendments

Conservation Project Support

The Institute's regulations contain provisions regarding the Institute's conservation grant program, which has been conducted since fiscal year 1984. The conservation grant program is designed to provide matching grants for projects to carry out conservation activities in museums, as more fully set forth in § 1180.20 of the regulations. IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. For fiscal year 1987 and succeeding years, the Institute, with the policy direction of the National Museum Services Board, established an exceptional project category under the program. IMS established this category in order to encourage museums to apply for projects that would benefit a broad category of museums or that would have broad applicability for conservation care beyond the individual museum applicant. 45 CFR 1180.20(f)(1).

Under current regulations, applications to carry out exceptional projects under the IMS conservation grant program are not governed by the normal ceiling of $25,000. An applicant for such a project may request any amount of grant funds. A match of at least one-to-one for the Federal funds must be provided by the applicant museum if it receives an award.

A notice of proposed rulemaking was published in the **Federal Register** on October 11, 1990 (55 FR 41360). Comments were invited for a period of 30 days. IMS received eleven comments.

Eight commenters supported establishing the authority to set maximum awards for the exceptional project category within the Conservation Project Support grant programs on an annual basis. These eight concurred with the position reflected in the proposed rule that setting a maximum amount would allow IMS to distribute scarce funds to a greater number of applicants.

Two commenters stated that establishing a maximum amount would discourage projects that would potentially have a great benefit to a large number of museums and should be able to receive higher amounts. Another commenter thought that it was unnecessary to set limits because of the small number of museums requesting large amounts.

IMS, again with the policy direction of the National Museum Services Board, has carefully considered the comments of commenters who believed that the proposed regulation should not be made final and has concluded, consistent with the preponderance of the comments, that the proposed regulation should become final. The regulation, as set forth below, will provide needed flexibility in the administration of the program, will permit the Institute to set a ceiling on exceptional project grants based on the volume of Conservation Project Support applications, and will provide useful guidance to applicants for exceptional projects, as noted by the commenters who supported the proposed regulation. In addition, it will permit the Institute to ensure that the award of exceptional project grants does not unduly constrain the recognition of the conservation needs of small museums.

At the same time, IMS is not convinced that the proposed regulation would have an adverse effect on the submission of applications for exceptional project grants, as some commenters fear. IMS agrees with the thrust of a number of comments that applicants for exceptional projects seek funding from a variety of sources, so that the establishment of a ceiling on IMS funds should not preclude the implementation of promising larger scale projects.

Moreover, the regulation does not require IMS to set any particular ceiling at all. Under these circumstances, IMS believes that the rule will support an ongoing conservation program to meet the needs of individual museums.

IMS has determined to make the proposed regulation final in the form set forth below. The amendment establishes by regulation a process for limiting the amount of IMS funds that can be awarded annually to any one applicant to carry out an exceptional project under the conservation program in accordance with the above-described policy determination of the Board.

IMS, with the policy direction of the Board, has also determined that pursuant to the new rule, for fiscal year 1991 for the Conservation Project Support program, IMS will award exceptional project grants in an amount not to exceed $75,000. This determination has been based upon an assessment of the factors described above as they apply to the current fiscal year.

Professional Services Program

The Institute's regulations contain a prohibition against a project period for activities support under the Professional Services Program (PSP) to extend beyond one year. 1180.77(1) This regulation was established so that the PSP regulations would be compatible with the language of 206(b) of the Museum Services Act which contained the one-year limitation. With the reauthorization of the Institute of Museum Services and its programs in Public Law 101–512, the Museum Services Act no longer contains the one-year restriction. See Public Law 101–512, section 203(b) (1990). The restriction is removed from IMS regulations in order to conform the regulations to the current authorizing statute for the program.

Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the entities affected, because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

This regulation does not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 45 CFR Part 1180

Museums, National boards.

(Catalog of Federal Domestic Assistance No. 45.301 Museum Services Program)

Linda Bell,

Acting Director, Institute of Museum Services.

The Institute of Museum Services amends subchapter E of chapter IX of title 45 of the Code of Federal Regulations as set forth below:

PART 1180—[AMENDED]

1. Section 1180.20(f)(1) is revised to read as set forth below.

§ 1180.20 Guidelines and standards for conservation projects.

* * * * *

(f) *Limits for Federal funding.* (1) IMS normally makes a conservation grant which obligates no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstance warrant, the Director, consistent with the policy direction of the Board, may award a conservation grant which obligates an amount in excess of $25,000 in Federal funds. IMS may establish a maximum award level for exceptional project grants for a particular fiscal year through information made available in guidelines or other material distributed to all applicants.

* * * * *

§ 1180.77 [Amended]

2. Section 1180.77 is amended by removing paragraph (l) and redesignating paragraph (m) as paragraph (l).

[FR Doc. 91-5640 Filed 3-8-91; 8:45 am]

BILLING CODE 7035-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-469; RM-7426]

Radio Broadcasting Services; Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C3 for Channel 288A at Tuscaloosa, Alabama, and modifies the license of New South Radio, Inc., for Station WACT-FM, as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage area FM service. See 55 FR 45623, October 30, 1990. Coordinates used for Channel 288C3 at Tuscaloosa are 33-20-00 and 87-25-30. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-469, adopted February 28, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 288A and adding Channel 288C3 at Tuscaloosa.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Divisioin, Mass Media Bureau.

[FR Doc. 91-5698 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-440; RM 7452]

Radio Broadcasting Services; Central Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C3 for Channel 257A at Central Valley, California, and modifies the license of Quality Broadcasters of California, L.P., for Station KNNN(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage area FM service. *See* 55 FR 42029, October 17, 1990. Coordinates used for Channel 257C3 at Central Valley are 40-33-46 and 122-27-07. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-440, adopted February 28, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 257A and adding Channel 257C3 at Central Valley.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5699 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-577; RM-7507]

Radio Broadcasting Services; Georgetown, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 277A for Channel 276A at Georgetown, Kentucky, and modifies the license of Station WTKT(FM) to specify operation on the alternate Class A channel, at the request of Kentucky Radio Limited Partners. See 55 FR 49924, December 3, 1990. Channel 277A can be allotted to Georgetown in compliance with the Commission's minimum distance separation requirements at Station WTKT's currently licensed site, with a site restriction of 10.6 kilometers (6.7 miles) south of the community. The coordinates for Channel 277A at Georgetown are North Latitude 38-08-57 and West Longitude 84-31-19. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-577, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 276A and adding Channel 277A at Georgetown.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5702 Filed 3-8-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 386

[FHWA Docket No. 90-5]

RIN 2125-AC36

Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings; Penalties for Failure To Comply With Notices and Orders Issued Under the Authority of 49 U.S.C. 521(b)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This action implements section 213(b) of the Motor Carrier Safety Act of 1984 by adding a penalty schedule to 49 CFR part 386 applicable to failure to comply with notices and orders issued under the authority of section 521(b) of title 49, United States Code. These penalties apply in addition to other civil forfeiture assessments for violations of the Federal Motor Carrier Safety Regulations (FMCSR) charged in Notices of Claim or Notices of Investigation. This action also makes some conforming amendments to the Rules of Practice for Motor Carrier and Hazardous Materials Proceedings contained in part 386 to permit the use of these rules in adjudicating the assessment of the new penalties.

EFFECTIVE DATE: This final rule is effective April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Paul L. Brennan, Office of the Chief Counsel, (202) 366-0834, or Mr. Sam Rea, Office of Motor Carrier Safety Field Operations, (202) 366-1795, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA issued a notice on March 27, 1990 (55 FR 11,224) proposing to amend part 386 of title 49, Code of Federal Regulations, by adding a penalty schedule for violations of notices and orders authorized in 49 U.S.C. 521(b) and by making other conforming amendments to the Rules of Practice for Motor Carrier and Hazardous Materials Proceedings.

The Motor Carrier Safety Act of 1984 (Pub. L. 98-554, October 30, 1984, 98 Stat. 2832) (MCSA) amended section 521(b) of title 49, United States Code, by substantially changing the civil and criminal penalties that may be charged for violations of motor carrier safety regulations issued under the authority of MCSA and 49 U.S.C. 3102. The section was further amended in the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, 100 Stat. 3207-184) to provide for penalties for violations of regulations issued under that authority. The March 27, 1990 notice of proposed rulemaking enumerated the five categories of civil penalties for safety violations with corresponding maximum amounts for each category now authorized by section 521(b). That section also established criminal penalties for knowing and willful violations of the same regulations.

Paragraph (7) of section 521(b), also added in the 1984 MCSA, authorized the issuance of notices and orders, and specifically directed the Secretary to establish additional penalties for their violation:

"The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection."

Notices and Orders

In the March 27 notice of proposed rulemaking, the FHWA identified the following four types of notices or orders authorized or required by section 521(b):

- Notice to Abate
- Notice to Post
- Final Orders
- Out-of-Service Orders

Each of these notices and orders were discussed separately in the NPRM together with the penalties proposed.

The FHWA further proposed to provide for procedural due process in the assessment and collection of these penalties by using the existing Rules of Practice for Motor Carrier and Hazardous Materials Proceedings in part 386 for that purpose. Amendments to part 386 are necessary to accommodate this process and were accordingly proposed in the NPRM.

Comments

The FHWA received a total of eleven responses to the NPRM, but six were from associative entities representing a fair cross-section of the motor carrier industry. They included the American Trucking Associations (ATA), the Americar Bus Association (ABA), the National Private Truck Council (NPTC), the International Brotherhood of Teamsters (IBT), the Transportation Lawyers Association (TLA), and the Regular Common Carrier Conference (which endorsed the comments of the TLA). Also commenting were three trucking companies and two individuals with long industry experience. The comments were generally supportive of the FHWA's efforts to enhance enforcement of the safety regulations, but the two individual commenters and two of the trucking companies expressed concern that too much emphasis is placed on punishment rather than on positive encouragement and education to bring about voluntary compliance.

The FHWA is aware that a satisfactory level of compliance with the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Regulations (HMR) depends to a very large extent on the voluntary cooperation of carriers and drivers in the industry. The FHWA also recognizes that in enacting the Motor Carrier Safety Act of 1984 (MCSA), Congress was sending a strong signal that it was not satisfied with reliance on voluntary compliance. This position has been made even more apparent in subsequent oversight hearings and legislative reports.

Voluntary compliance and stepped up enforcement may very well be sufficient to improve the safety practice of those carriers who violate the safety regulations through misunderstanding, shortsightedness, negligence or simple convenience. There are still carriers and drivers, however, who will not comply voluntarily and who continue to engage in unsafe practices even after they have been prosecuted for safety violations, i.e., those who treat penalties as a cost of doing business without regard for safety consequences, or those who simply ignore the regulations because they believe the chances of getting caught are negligible and the consequences tolerable. In issuing this rule, the FHWA is carrying out the express intent of Congress in the MCSA to compel compliance by these recalcitrant and persistent violators of the safety regulations.

These penalties will be an effective supplement to FHWA's motor carrier safety enforcement policy, which is to impose progressively higher penalties against repeat violators leading to operational shut down in appropriate cases.

a. Notice to Abate

Summary of comments. The area of most concern to the commenters is the Notice to Abate and the effect of failure to comply therewith. Some believe the FHWA may have exceeded its authority by fixing penalties for accumulated noncompliance at levels higher than the maximum set by Congress in section 213 of the MCSA (49 U.S.C. 521[b]). For instance, the American Bus Association agrees with FHWA's position that it has the power to set a penalty where none has been established by Congress, but the ABA contends that penalties for failing to abate violations of the FMCSR are limited to levels fixed by Congress in the MCSA for the violations of the FMCSR themselves. Similarly, the TLA suggests that penalties for failing to abate violations must be "capped" at the maximum allowable for the underlying violation. The TLA also believes that to fix an abatement penalty at three times the statutory fine (e.g., that proposed for paperwork violations) for the violations left unabated is punitive rather than designed to "induce compliance," as required by section 521(b)(7). The TLA further points out the need for specificity in abatement notices, without which due process problems inevitably arise. The TLA and the NPTC also believe the rule should contain a provision for consideration of good faith efforts to abate.

FHWA Response. The FHWA reiterates its position expressed in the NPRM that in section 521(b)(7), Congress authorized the establishment of a penalty schedule for violations of notices and orders issued under section 521(b). The FHWA continues to believe that the requirement for fixing a reasonable time for abatement contemplated that there would be an additional penalty imposed under section 521(b) for failing to comply. The requirement to comply with a notice or order is seperate, apart and in addition to the requirement to comply with the safety regulations themselves. Consequently, the failure to comply with such a notice or order in itself constitutes a violation, which is distinct from violations of the FMCSR, and for which no specific penalty is presently prescribed in section 521(b).

Nevertheless, the FHWA recognizes the problems inherent in both the comprehension of a distinct schedule of penalties for failing to abate violations for which another statutory schedule of penalties applies and in the level of enforcement effort required to follow up on abatement notices. Therefore, in this final rule, the notice to abate will be treated in two separate categories, the more serious of which will overlap to some extent into the area of Out-of-Service Orders.

Abatement of safety violations may require several things on the part of the offending carrier. In routine cases of noncompliance, abatement will merely require that the carrier cease violating the regulations. In other instances, the noncompliance may be more ingrained and some practices may have to be curtailed to root out the cause of the violations. For example, an audit of a carrier's records discloses an inordinate amount of hours of service violations by drivers on particular runs. Investigation reveals that it is nearly impossible for drivers to complete that run within the allowable driving time or on-duty time. As the carrier shows no intention to make any changes in the run, abatement of the violations may require a direction to the carrier to cease scheduling drivers on that run. In this instance, the abatement notice is more akin to an out-of-service order, and the abatement violation, failure to cease the scheduling of drivers as directed, is clearly distinct from the underlying hours of service violations.

Conversely, abatement of safety violations may require affirmative steps to be taken by the carrier to assure compliance with the regulations. For example, roadside inspection reports may indicate that a carrier's equipment is being poorly maintained, and a subsequent audit reveals that the carrier has no effective system for assuring that routine maintenance is performed. An abatement notice may direct the carrier to retain a mechanic or to designate someone with responsibility for scheduling and verifying maintenance operations. It may also require reports to be prepared and additional records to be maintained, which can be reviewed at a later date to determine whether there was compliance with the abatement notice. Failure to take the steps as directed in the abatement notice would result in a violation of that notice.

Notice of claim abatement. In routine cases, therefore, claim letters (notices of claim) will contain abatement notices directing the respondent named in the notice to abate the violations for which penalties have been assessed in the claim. The notice of claim may defer the payment of part of an assessed penalty or even refrain from any assessment of a penalty on the condition that the violations are timely abated. The abatement notice in the claim letter will provide a reasonable time for abatement and advise that failure to abate as directed will require immediate payment of the deferred portion of the payment or will be considered an aggravating factor in any future claim for the same or similar violations.

Notice of investigation abatement. In other cases, where more will be required to assure compliance than mere avoidance of cited violations, a proceeding will be initiated by Notice of Investigation (NOI). This proceeding will assess penalties for cited violations and order specific actions within prescribed time frames to be taken by the carrier to avoid future noncompliance. The NOI will provide the respondent carrier with the opportunity to contest both the penalties assessed and the terms of the included compliance order (notice of abatement). It is contemplated that many such proceedings will result in the negotiation of consent orders. Compare 49 U.S.C. 506 (1983). Such negotiations should provide ample opportunity for consideration of good faith efforts and how they might affect the level of penalty.

b. Penalties

Summary of comments. Several commenters believe, as noted above, that the penalties for violations of abatement notices were limited to the maximum amount fixed by Congress on the underlying violations. The International Brotherhood of Teamsters, on the other hand, thinks the FHWA made a good case for progressively higher penalties, but sees no logic in placing a cap on such penalties. The IBT recognizes the problem of using scarce resources to perform the follow-up reviews, and finds it unlikely that FHWA would be back during the time that penalties for failure to comply with abatement notices were still accumulating. Therefore, the cap would be meaningless because the maximum would almost always be reached before a follow-up review was conducted. The IBT also questions FHWA's will to impose the high monetary penalties that would naturally attach to failures to abate in those areas where no maximum is proposed.

The American Trucking Associations believes the penalties proposed for violations of out-of-service orders are not in line with those proposed by a committee of the Commercial Motor Vehicle Safety Alliance (and subsequently adopted by CVSA at its October, 1990 meeting) in its efforts to devise uniform sanctions for motor carrier safety violations for use by States operating under the Motor Carrier Safety Assistance Program MCSAP). In the interest of uniformity, therefore, the ATA suggested that FHWA's penalties be adjusted accordingly.

FHWA Response. As noted above, the FHWA interprets section 521(b)(7) as authorizing a new category of penalties separate and apart from those provided in paragraph (2) of section 521(b), but agrees with the commenters that the imposition of progressively higher penalties for failing to abate already cited violations is not practical. Consequently, the proposal for gradually increasing per diem penalties for violations of recordkeeping requirements is being dropped from the final rule in favor of the alternative discussed above. In other words, failure to comply with a notice to abate may result in a higher payment or may negate any mitigating factors which ordinarily would cause the penalties to be set at lower than the maximum levels on subsequent violations. The order (compliance or consent) resulting from the NOI proceeding, which directs certain actions to be curtailed to abate violations, will set the specific penalty for violation of each term of the order. These violations are considered "serious patterns of safety violations" and hence the penalties assessed will be in the same range as statutorily prescribed.

Citation and assessment of penalties for violations of safety regulations, coupled with direction to correct the violations by taking actions specified in the notice, eliminates the argument of isolated instances in the face of continued transgressions. Therefore, penalties will be in the ranges set for patterns of safety violations provided in section 521(b)(2)(A), i.e., up to $1,000 per day to a maximum of $10,000. This is consistent with those commenters who suggested that the penalties for failing to abate bear some relationship to the penalties set by Congress in the 1984 act.

Accordingly, the final rule makes no distinctions among failing to abate the various types of violations (e.g., patterns of safety violations, substantial health and safety violations, and commercial drivers license violations). The final rule also contains a specific reference to the consideration of good faith efforts in the assessment of penalties for failure to abate.

With respect to the penalties for violations of out-of-service orders, the FHWA believes its proposal was fairly consistent with the penalties adopted by the CVSA; however, some adjustments are made in the final rule in the interest of uniformity. It must be understood that the penalty schedule adopted by the CVSA is merely a recommendation to the member states and is, at present, a long way from being universally accepted. The "uniform sanctions" adopted by the CVSA, moreover, apply almost exclusively to roadside enforcement, where, in many jurisdictions, it is only the driver against whom fines may be imposed. The penalties adopted by FHWA in this final rule contemplate enforcement against carriers as well, through evidence obtained during investigations or audits at a carrier's place of business, for requiring or permitting drivers to operate after they or their vehicles have been placed out-of-service. Furthermore, there is no corresponding violation in the CVSA scheme of things to a violation of an administrative shut down order, which under the FHWA proposal, carries the heaviest penalty.

The FHWA intends to demonstrate in this rule its full agreement with the CVSA that violations of out-of-service orders on the roadside constitute imminent hazards warranting heavy penalties against those responsible for willfully exposing the public to such grave risks to highway safety. The FHWA will continue to work with the CVSA and the individual States through the Motor Carrier Safety Assistance Program to adopt and vigorously enforce these penalties.

c. Other Comments

The International Brotherhood of Teamsters offers some interesting comments on the relative levels of penalties assessed against drivers and carriers for violations of out-of-service orders, indicating that the NPRM did not adequately account for motivation, culpability and practicality. The IBT agrees that a 10:1 ratio in the level of penalties for carriers as opposed to drivers for violation of driver out-of-service orders is appropriate, and recommends that the same ratio apply to violations of vehicle out-of-service orders. In the latter case, the IBT believes the proposed penalty of $2,000 is too high for a driver and too low for a carrier. Similarly, the IBT finds fault with FHWA's reasoning that false certification of repairs was the same as no certification. The IBT correctly observes that if FHWA could establish false certification, then the appropriate presumption should be that the repairs were not made and the out-of-service order was willfully violated, jeopardizing both the unwitting driver and the public.

The ATA makes a somewhat different observation about certifications, believing that it is often the failure of the driver to deliver the out-of-service inspection report to the employing carrier that is the cause of no certification of repairs being returned. Both the IBT and the ATA observe problems in the way the proposal dealt with owner-operators. The ATA observes that the problem of failing to account for out-of-service inspection reports was particularly acute for carriers utilizing owner-operators, while the IBT finds fault in the part of the proposed penalty schedule that treats owner-operators the same as drivers. The Teamsters recommend that FHWA make an effort to address the problem of defining the scope of the term "independent owner-operator," citing a recent National Transportation Safety Board report finding that the term is not so easily defined as it might seem.

In the area of definitions, the TLA and the NPTC recommend that FHWA better define the term "immediate destination" as it is used in connection with permissible activity by a carrier after it has been ordered to shut down all or part of its operations.

Finally, the TLA makes two other points which need clarification in the final rule. First, the time within which to comply with a notice to abate should not begin to run until contested violations have been resolved. Second, the revision of the reply procedure in § 386.14 appears to have reduced a respondent's options with respect to seeking to negotiate a settlement of the claim while preserving the right to a hearing.

FHWA Response. The FHWA agrees with the IBT comments about the relative level of penalties for violations of out-of-service orders and, as noted in the response to the ATA comments under "Penalties" above, the levels have been adjusted accordingly in the final rule. The FHWA also agrees with the IBT's observation about the effect of falsification of repair certification, and that has been treated as presumption of violation of an out-of-service order in the final rule. With respect to the treatment of owner-operators, the final rule has made an adjustment which distinguishes between owner-operators who are under lease to carrier and therefore treated as "employees" in the Federal Motor Carrier Safety Regulations, and those operating under their own authority or in their own interests. The final rule also contains a definition of "immediate destination" as used in section 386(b)(2) referring to what is required to comply with an order to cease all or part of a carrier's operations. The proposed conforming amendments to the procedural rules in part 386 have also been revised to clarify the points raised by the TLA regarding abatement of contested violations and a respondent's option to negotiate a settlement without losing the right to a hearing.

d. Remaining Issues

The only comments received on the penalties proposed for failing to comply with Notices to Post and Final Orders are favorable and they are being included in the final rule as proposed in the NPRM.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The proposals contained in this document would not result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. A regulatory evaluation is not required because of the ministerial nature of this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Civil forfeiture, Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties.

Issued on: March 1, 1991.

T.D. Larson,

Administrator.

The FHWA hereby amends 49 CFR chapter III, part 386, as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for part 386 is revised to read as follows:

Authority: Title XII of Public Law 99-570, 100 Stat. 3207-170 (49 U.S.C. App. 2701 *et seq.*); Title II of Public Law 98-554, 98 Stat. 2829 (49 U.S.C. App. 2501 *et seq.*); Public Law 97-449; 96 Stat. 2413 (49 U.S.C. 104(c)(2), 501 *et seq.*, 3101 *et seq.*); Public Law 93-633, 88 Stat. 2156 (49 U.S.C. App. 1801 *et seq.*); Public Law 97-261, 96 Stat. 1121 (49 U.S.C. 10927, note); Public Law 98-296, 94 Stat. 820 (49 U.S.C. 10927, note); 49 CFR 1.45, 1.48.

2. Section 386.2 is amended by revising the definition of "Associate Administrator" and by adding in alphabetical order, three new definitions, as follows:

§ 386.2 Definitions.

Abate or abatement means to discontinue regulatory violations by refraining from or taking actions identified in a notice to correct noncompliance.

* * * * *

Associate Administrator means the Associate Administrator for Motor Carriers of the Federal Highway Administration or his/her authorized delegate.

* * * * *

Compliance Order means a written direction to a respondent under this part requiring the performance of certain acts which, based upon the findings in the proceeding, are considered necessary to bring respondent into compliance with the regulations found to have been violated.

Consent Order means a compliance order which has been agreed to by respondent in the settlement of a civil forfeiture proceeding.

* * * * *

3. Section 386.11 is amended by revising paragraphs (b) introductory text, (b)(2), (c) heading and introductory text, and (c)(3) and by adding paragraph (c)(4) to read as follows:

§ 386.11 Commencement of proceedings.

* * * * *

(b) *Civil forfeitures.* These proceedings are commenced by the issuance of a Claim Letter or a Notice of Investigation.

* * * * *

(2) In addition to the information required by paragraph (b)(1) of this section, the letter may contain such other matters as the FHWA deems appropriate, including a notice to abate.

* * * * *

(c) *Notice of investigation.* This is a notice to respondent that FHWA has discovered violations of the Federal Motor Carrier Safety regulations or Hazardous Materials Regulations under circumstances which may require a compliance order and/or monetary penalty. The proposed form of the compliance order will be included in the notice. The Associate Administrator may issue a Notice of Investigation in his or her own discretion or upon a complaint filed pursuant to § 386.12.

* * * * *

(3) A Claim Letter may be combined with a Notice of Investigation in a single proceeding. In such proceeding, the 30-day reply period in paragraph (c)(1) of this section shall apply.

(4) A notice to abate contained in a Claim Letter or Notice of Investigation shall specify what must be done by the respondent, a reasonable time within which abatement must be achieved, and that failure to abate subjects the respondent to additional penalties as prescribed in subpart G of this part.

4. Section 386.14 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(3), (c), and (e) and by adding new a paragraph (f) to read as follows:

§ 386.14 Replies and request for hearing: Civil forfeiture proceedings.

(a) *Time for reply.* The respondent must reply within 15 days after a Claim Letter is served, or 30 days after a Notice of Investigation is received.

(b) * * *

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent wishes to negotiate the terms of payment or settlement of the amount claimed, or the terms and conditions of the order; and

* * * * *

(c) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed, or if no hearing is requested under paragraph (b)(2) of this section, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation.

Evidence must be served in the form specified in § 386.49.

* * * * *

(e) *Failure to reply or request a hearing.* If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Associate Administrator may, on motion of any party, issue a final order in the proceeding.

(f) *Non-compliance with final order.* Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

§ 386.15 [Removed and Reserved]

5. Section 386.15 is removed and reserved.

6. Section 386.16 is amended by revising paragraphs (c)(1) introductory text, (c)(1)(v), and by adding paragraph (c)(1)(vi), and by removing the word "and" after the semicolon in paragraph (c)(1)(iv) to read as follows:

§ 386.16 Action on petitions or replies.

* * * * *

(c) *Settlement of civil forfeitures.* (1) When negotiations produce an agreement as to the amount or terms of payment of a civil penalty or the terms and conditions of an order, a settlement agreement shall be drawn and signed by the respondent and the Associate Administrator. Such settlement agreement must contain the following:

* * * * *

(v) A statement that the agreement is not binding on the agency until executed by the Associate Administrator; and

(vi) A statement that failure to pay in accordance with the terms of the agreement which has been adopted as a Final Order will result in the loss of any reductions in penalties for claims found to be valid, and the original amount claimed will be due immediately.

* * * * *

§§ 386.21 and 386.22 [Redesignated as §§ 386.22 and 386.23]

7. Subpart C of part 386 is amended by revising the subpart heading; by redesignating §§ 386.21 and 386.22 as §§ 386.22 and 386.23, respectively; by adding a new § 386.21; and by revising paragraphs (a) introductory text and (b) in newly designated § 386.23 as follows:

Subpart C—Compliance and Consent Orders

§ 386.21 Compliance order.

(a) When a respondent contests a Notice of Investigation or fails to reply to such notice, the final order disposing of the proceeding may contain a compliance order.

(b) A compliance order shall be executed by the Associate Administrator and shall contain the following:

(1) A statement of jurisdictional facts;

(2) Findings of facts, or reference thereto in an accompanying decision, as determined by a hearing officer or by the Associate Administrator upon respondent's failure to reply to the notice, which establish the violations charged;

(3) A specific direction to the respondent to comply with the regulations violated within time limits provided;

(4) Other directions to the respondent to take reasonable measures, in the time and manner specified, to assure future compliance;

(5) A statement of the consequences for failure to meet the terms of the order;

(6) Provision that the Notice of Investigation and the final decision of the hearing officer or Associate Administrator may be used to construe the terms of the order; and

(7) A statement that the order constitutes final agency action, subject to review as provided in 49 U.S.C. 521(b)(8) for violations of regulations issued under the authority of 49 U.S.C. 3102, the Motor Carrier Safety Act of 1984 or 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986; or as provided in 5 U.S.C. 701 *et seq.*, for violations of regulations issued under the authority of 49 U.S.C. App. 1804 (hazardous materials proceedings) or 49 U.S.C. 10947 note (financial responsibility proceedings).

(c) *Notice of Imminent Hazard.* A compliance order may also contain notice that further violations of the same regulations may constitute an imminent hazard subjecting respondent to an order under subpart F of this part.

§ 386.23 Content of consent order.

(a) Every agreement filed with the Associate Administrator under § 386.22 must contain:

* * * * *

(b) A consent order may also contain any of the provisions enumerated in § 386.21—Compliance Order.

Subpart F—Injunctions and Imminent Hazards

8. Section 386.72 is amended by adding a sentence at the end of paragraph (b)(2) and by adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 386.72 Imminent hazard.

* * * * *

(b) * * *

(2) * * * An order to an employer to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out of service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(3) For purposes of this section the term "immediate destination" is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(4) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer or driver to penalties prescribed in subpart G of this part.

9. Part 386 is amended by adding a new subpart G, to read as follows:

Subpart G—Penalties

Sec. 386.81 General.
Sec. 386.82 Civil penalties for violations of notices and orders.

Subpart G—Penalties

§ 386.81 General.

(a) The maximum amounts of civil penalties that can be imposed for regulatory violations subject to the civil forfeiture proceedings in this Part are set in the statutes authorizing the regulations. The determination of the actual civil penalties assessed in each proceeding is based on those defined limits and consideration of information available at the time the claim is made concerning the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In adjudicating the claims and notices under the administrative procedures herein, additional information may be developed regarding those factors that may affect the final amount of the claim.

(b) When assessing penalties for violations of notices and orders or settling claims based on these assessments, consideration will be given to good faith efforts to achieve compliance with the terms of the notices and orders.

§ 386.82 Civil penalties for violations of notices and orders.

(a) Additional civil penalties are chargeable for violations of notices and orders which are issued under civil forfeiture proceedings pursuant to 49 U.S.C. 521(b). These notices and orders are as follows:

(1) Notice to abate—§ 386.11 (b)(2) and (c)(1)(iv);

(2) Notice to post—§ 386.11(b)(3);

(3) Final order—§ 386.14(f); and

(4) Out-of-service order—§ 386.72(b)(3).

(b) A schedule of these additional penalties is provided in the appendix A to this part. All the penalties are maximums, and discretion will be retained to meet special circumstances by setting penalties for violations of notices and orders, in some cases, at less than the maximum.

(c) Claims for penalties provided in this section and in the appendix A to this part shall be made through the civil forfeiture proceedings contained in this part. The issues to be decided in such proceedings will be limited to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part.

10. Part 386 is amended by adding an appendix to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

I. Notice to Abate

a. *Violation*—failure to cease violations of the regulations in the time prescribed in the notice.

(The time within which to comply with a notice to abate shall not begin to run with respect to contested violations, i.e., where there are material issues in dispute under § 386.14, until such time as the violation has been established.)

Penalty—reinstatement of any deferred assessment or payment of a penalty or portion thereof.

b. *Violation*—failure to comply with specific actions prescribed in a notice of investigation, compliance order or consent order, other than cessation of violations of the regulations, which were determined to be essential to abatement of future violations.

Penalty—$1,000 per violation per day.
Maximum—$10,000.

II. Notice to Post

Violation—Failure to post notice of violation (i.e., notice of investigation) as prescribed.

Penalty—$500 (A separate violation may be charged each time a failure to post as ordered is discovered.)

III. Final Order

Violation—Failure to comply with final agency order, i.e., failure to pay the penalty assessed therein after notice and opportunity for hearing within time prescribed in the order.

Penalty—Automatic waiver of any reduction in the original claim found to be valid, and immediate restoration to the full amount assessed in the Claim Letter or Notice of Investigation.

IV. Out-of-Service Order

a. *Violation*—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to $1,000 per violation.

(For purposes of this violation, the term "driver" means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. *Violation*—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to $10,000 per violation.

(This violation applies to motor carriers, including an independent contractor who is not a "driver," as defined under paragraph IVa above.)

c. *Violation*—Operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

Penalty—$1,000 each time the vehicle is so operated.

(This violation applies to drivers as defined in IVa above.)

d. *Violation*—Requiring or permitting the operation of a commercial motor vehicle placed out of service before the required repairs are made.

Penalty—Up to $10,000 each time the vehicle is so operated after notice of the defect is received.

(This violation applies to motor carriers, including an independent owner-operator who is not a "driver," as defined in IVa above.)

e. *Violation*—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to $500 per violation.

f. *Violation*—Knowingly falsifies written certification of correction required by the out-of-service order.

Penalty—Considered the same as the violations described in paragraphs IVc and IVd above, and subject to the same penalties.

Note: Falsification of certification may also result in criminal prosecution under 18 U.S.C. 1001.

g. *Violation*—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations, i.e., failure to cease operations as ordered.

Penalty—Up to $10,000 per day the operation continues after the effective date and time of the order to cease.

[FR Doc. 91-5594 Filed 3-8-91; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 30]

RIN 2127-AD18

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the humidity test procedures for replaceable bulb and integral beam headlamps specified in paragraph S8.7 of Motor Vehicle Safety Standard No. 108. The requirements remain unchanged, except that a photometric test is no longer required following completion of the humidity test. The purpose of the rule is to improve the repeatability of the humidity test. It accomplishes this by specifying the test fixture to be used, the position of the lamp in the test chamber, and the velocity of the air flow during the humidity test. This completes rulemaking pursuant to grants of petitions for rulemaking submitted by Hella K.G., Robert Bosch, and Koito Mfg. Co.

DATE: The effective date of the amendment is September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION:

Background

On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment (49 CFR 571.108) to permit headlamps other than sealed beam units (48 FR 24690). One of the tests specified for headlamps with replaceable bulbs concerned resistance to humidity (now paragraph S8.7 of Standard No. 108). Shortly after the issuance of those amendments, some parties expressed concerns about that test. This rulemaking action responds to those concerns.

Hella Petition

On July 11, 1983, Hella KG of the Federal Republic of Germany petitioned for reconsideration of the amendments. Because the agency did not receive the petition until more than 30 days following publication of the amendment in the **Federal Register**, NHTSA treated it as a petition for rulemaking pursuant to 49 CFR part 552, in accordance with the provision in its regulations on petitions for reconsideration regarding timeliness, 49 CFR 553.35(a). The portion of the petition relevant to this rulemaking action concerned the appropriateness of the humidity test procedures for vented headlamps. Specifically, Hella viewed the test as inappropriate, and stated that modified dust and moisture requirements should be substituted for it. While the agency did not agree, it was concerned about the effect of the test on vented headlamps. NHTSA believed that venting of headlamps affected the performance of lamps with plastic lenses in Standard No. 108's internal heat test, and thus might be desirable for some headlamp system designs. The agency wished to be able to distinguish inferior venting systems from superior ones. Therefore, NHTSA granted this aspect of the Hella petition, insofar as it related to a closer study of tests for ventilated headlamp systems, and initiated research on this subject.

Bosch Petition

On October 21, 1985, Robert Bosch GmbH, a headlamp manufacturer in Stuttgart, Germany, petitioned for a modification in the humidity test for replaceable bulb headlamps. In its view, the test did not fully account for actual operating conditions typical of vented headlamps. As a result of the heat generated in the test, the air in the interior of the lamp expands, with pressure compensation occurring through the ventilation openings. When the lamp cools, air enters the headlamp interior carrying moisture which is deposited in the interior of the headlamp. If there is no flow of air within the humidity test box, the 1-hour soak period is insufficient "to establish a well-balanced proportion between the humidity inside the headlamp and the outside conditions". Accordingly, Bosch argued that for judging compliance of vented headlamps "it is necessary that there is a flow of air inside the test box during the soak period". It believed that a flow of between 3 and 6 feet per second (2 to 4 m.p.h.) would be sufficient, when directed to the headlamp from the front.

NHTSA granted both the Hella and Bosch petitions on March 18, 1987 (52 FR 8482). Shortly thereafter, on April 30, 1987, Koito Manufacturing Co. Ltd., a headlamp manufacturer in Japan, filed its own supporting petition for rulemaking to amend the humidity test. This petition was granted on July 14, 1989.

Koito Petition

Koito submitted test data on humidity and dust tests for many designs of vented headlamps. It found that if vents to eliminate water accumulation are too large, dust intrudes into the headlamps. Conversely, if the vents are too small, the lamps do not pass the humidity test. From the Koito test data, it appeared that headlamps could be designed to pass a humidity test with axial flow of air over the headlamp of between 2 m.p.h. and 4 m.p.h., the values recommended by Bosch, although without supporting data at that time. Koito's data indicate that by modifying the existing humidity test procedure to specify air flow velocity, the repeatability of the humidity test is improved.

Proposed Changes in Test Procedures

As NHTSA stated in March 1987, it had initiated its own test program on humidity testing, and submitted a copy of its test work to Docket 81-11; Notice 22. It had verified that moisture in lamps affects photometric performance. This test work led to further test programs to eliminate instances of inconsistent test results. On the basis of these tests, NHTSA developed the changes that it proposed in the humidity test in a notice published on November 27, 1989 (54 FR 48776).

The first change proposed was to the initial high-humidity "soak period". Currently, a 5-day high-humidity conditioning period is specified for headlamps before the low-humidity (dry-box) test is conducted. The high-humidity test consists of 20 on-off cycles during each of which the headlamp is energized for 1 hour and de-energized for 5 hours. NHTSA's research has demonstrated that headlamps cool off within 2 hours, so 3 hours of unproductive "off time" can be eliminated from each cycle without affecting the test results. Accordingly, it proposed that the high-humidity soak period consist of 24 cycles of 3 hours each, with the headlamps activated for 1 hour and deactivated for 2 hours. The specification of 24 consecutive cycles allows the test to start and end at the same time of day.

The agency had also tentatively concluded that repeatability would be improved by specification of a special

test fixture for the humidity test. This fixture is simple and inexpensive. It would consist of a horizontal flat steel plate, at least ¼ inch thick, to which 3 threaded steel rods of ¼ inch diameter are mounted (at variable locations, depending on the headlamp). The headlamp would be affixed to the fixture by clamps. The clamps would be located behind the headlamp and out of the air stream. The plate would be as wide as the headlamp, and long enough to extend from the forwardmost edge of the headlamp past the rear of the headlamp sufficiently far to allow mounting to the three vertical mounting rods. Steel rods would be necessary to assure adequate strength since the headlamp may be cantilever mounted. Threaded rods would be necessary to screw into the mounting plate and allow easy attachment of horizontal clamps by thumb screw to the ¼-inch mounting rods.

However, Standard No. 108 presently requires that a photometric test be conducted following the humidity test, in addition to a visual inspection for water. In some cases, headlamps might have aim stability problems if attached to this fixture during a photometric test. If a choice must be made, the agency noted that it would prefer to drop the photometric test because it tentatively concluded that a special fixture is critical to running a repeatable air flow test to evaluate headlamp venting, and that a sufficient criterion of failure would be presence of moisture in the headlamp.

In the proposed test procedure, detailed requirements were specified for air flow uniformity, air velocity, the position of the lamp in the air flow test chamber, and humidity tolerance. The test and fixture would assure that undue turbulence is not present in the air flow test. The air flow uniformity should be plus or minus 10 percent of the average of velocities measured over the test grid 4 inches from the duct outlet over a 4-inch square grid at the plane of the front edge of the lamp. The velocities would be measured at 6 discrete points around the periphery of the lens, and the average velocity should be 330 ft/min +0–20 ft/min, which is an equivalent of 3.75 m.p.h. The fixtured lamp should be centered in the test chamber with at least 3 inches clearance on all sides between the lamp (exclusive of the fixture), and any part of the chamber, and located with the forwardmost edge of the lamp at least 4 inches from the air entry point. To enhance repeatability, the tolerances on humidity after the soak period would be reduced from the present 20 to 40 percent, to 30 to 40 percent. A test report showing fixtures and details of the set-up for the humidity test was placed under Notice 22 in Docket No. 81–11. The existing requirements for passing the humidity test remained unchanged in the proposal.

Comments to the Proposal

Six comments were received in response to the proposal. Three were from motor vehicle manufacturers, Ford Motor Company, General Motors Corporation, and Chrysler Corporation. The others were vehicle lighting equipment manufacturers, Koito, Hella, and Ichikoh. The commenters raised issues with respect to six topics.

A. Photometric Tests Following the Humidity and Air Flow Tests

Section S7.4(i)(8) currently specifies the performance requirements to be met by a humidity test conducted in accordance with S8.7. Following completion of the test, the inside of the headlamp is to show no evidence of delamination or moisture, fogging or condensation visible without magnification, and the headlamp must then meet the photometric requirements that apply to its headlamp type. Although retention of the photometric test was generally supported by the vehicle manufacturers (albeit with qualifications such as the need to ensure compatibility of the test stand for photometric testing), Koito commented that the photometric test was unnecessary. NHTSA has reevaluated the requirement, and concurs with Koito's comment. The agency has observed the practical problem of conducting a photometric test when test point readings are constantly changing as droplets of moisture run down the lens and moisture evaporates from the lens and reflector. These effects cause the procedure to be non-repeatable since the coalescing and evaporation alter the readings. Given these effects, and the fact that a lamp will meet the humidity test requirement if there is no visible moisture in it, there is no need to demonstrate also its subsequent photometric performance. Additional loss of repeatability occurs when the lamp, attached to the humidity test fixture, is aimed using a mechanical or spot aimer attached to the lamp. The aimer causes torque to be applied to the lamp, causing it to deflect, with resulting missaim when the aimer is removed. Additionally, the lamp may deflect, causing further missaim, when it is mounted on a goniometer and positioned to measure test points because the once-vertical support rods are no longer vertical and may deflect.

On these last two issues, commenters concurred that the humidity test fixture may not be compatible with mounting the headlamp on a goniometer where exact positioning and stability of the headlamp is essential to proper photometric testing. Also, test results would differ between photometry tests done immediately after the humidity test, and those conducted after a sequence in which the headlamp was removed from the humidity test fixture, mounted on another fixture, aimed, and photometered, because of the motion, time, and additional effects of air flow during this sequence of events. Given the great likelihood of such variability, this is not a viable option even though suggested by some commenters.

Ford suggested that NHTSA develop a new fixture, suitable for both tests, or, alternatively, increase the time between the humidity air flow test and photometric test. However, such development would considerably delay implementing the revision that the industry has sought. Ford's suggested alternative, as noted previously, would increase the likelihood of a less repeatable procedure.

Therefore, NHTSA is amending Standard No. 108 to remove photometric compliance as a requirement for passage of the humidity test, leaving the sole criterion whether or not moisture is present.

B. Test Mounting Fixture

Under the proposal, the sole material specified for the mounting fixture was steel. Both GM and Chrysler considered this to be too restrictive. NHTSA concurs since aluminum could provide the requisite rigidity. Therefore, the final rule allows the optional use of aluminum. If aluminum is used, a mounting rod with a diameter larger than the ¼ inch may be required. The final rule requires it to be ½ inch.

Koito requested a clarification on how the headlamp is attached to the test fixture. In its test, NHTSA used thumb screw (chemistry laboratory type) rod clamps less than 2 inches in length in any direction. However, NHTSA does not believe that a particular method of attachment should be required. The choice of the method of attachment is left to the manufacturer or test laboratory.

C. Humidity Exposure Test

NHTSA proposed that the headlamp be subjected to 24 consecutive 3-hour test cycles, a reduction from the present requirement of 20 consecutive 6-hour cycles. GM requested a reduction to 5 consecutive 3-hour cycles, saying that it had run a series of tests using 5 and 20 cycles and finding consistent results between the two. If moisture was present at the end of 5 cycles, it was also present at the end of 20, and vice versa. Ichikoh believed that 20 cycles would be sufficient, saying that more humidity is absorbed in a 24-cycle regime than in a 20-cycle one. Chrysler concurred with NHTSA's proposed 24-cycle program. NHTSA believes that the performance of headlamps is directly related to the design of the headlamp's venting system, and that its proposal meets the requirements for safety. NHTSA has not conducted tests to either GM's or Ichikoh's different cycles and thus has no data to correlate with data from performing the 24-cycle plan. The agency is adopting the requirement for 24 consecutive 3-hour cycles as proposed because it is unable to determine whether other cycles recommended by commenters have the same consequences.

Under proposed S8.7(b), the relative humidity during the test would be not less than 90 percent. Hella argued that it would be more realistic to specify the range in terms of a nominal value with a two-sided tolerance: 90 +/−2 percent, which would be appropriate for most test chambers. NHTSA chose 90 percent as the minimum required for motor vehicle safety, and is adopting it as proposed, rather than the 88 to 92 percent range recommended by Hella.

D. Air Flow Exposure Test

Under the original and proposed rule, the headlamp is not energized when tested. Hella commented that vent function would be aided by switching the headlamp on and off during the air flow test. NHTSA declines to adopt this suggestion. The lamp must be designed so that it does not become fogged in the first place, or, if fogged, that the vents clear the lamp when it is unlit. Activating the lamp facilities passing the test and thus does not represent a worst case scenario.

Currently, the range of relative humidity of the test chamber is 20 to 40 percent. Under the proposal, the range would be 30 to 40 percent. GM asked that the current requirement be maintained, as it was not aware of any basis for tightening the tolerance. The basis for NHTSA's proposal is a desire to eliminate differences in test results observed on the same headlamp in repeated testing. Reducing the humidity tolerance from 20 to 10 percent should result in more consistent test results. Therefore, it is adopting the range as proposed.

In proposed S8.7(e), the air flow velocity is 310 to 330 feet per minute measured with the test headlamp in place in the chamber. GM would eliminate any specification, commenting that empty chamber air velocity measurements alone are appropriate. Ford concurs with this comment. Ichikoh argued that the proposed air flow tolerance was too strict.

In response to Ford and GM, NHTSA has found that the effects of the size of a cross section of the chamber and the size of the headlamp will cause changes in air flow from the flow measured in an empty chamber. While these changes may not be noticeable in very large chambers (such as GM and Ford may have), they will exist in smaller ones, and for repeatability of the test, it is necessary to measure the flow with the headlamp in place. However, NHTSA is willing to provide a measure of relief by adopting an air flow specification of 300 to 330 feet per minute. This will reduce the necessity for recalibration of air flow for lamps of similar size and shape, thereby reducing time and expense.

According to the proposal, when the mounted headlamp assembly is placed in the air flow chamber, "the orientation of the assembly with respect to the air flow shall be identical to that of its position on any vehicle for which the headlamp is intended." Ford raised an objection, stating that the precise adjustment of the lamp cannot be made on the humidity test fixture, and that it would be impracticable to position the lamp in the chamber identically to its position on the vehicle. Ford recommended the term "design operating position" as a substitute. The agency has considered this comment. In the final rule, the headlamp assembly will be "oriented in its design operating position," the phrase used by the SAE in its standard on lamp testing, J575 JUL83. Although the essential intent of the language proposed and of the language adopted is the same, *i.e.*, to orient the lamp as it would normally flow through the air when mounted on its vehicle, the SAE phraseology is familiar to the industry, and NHTSA accedes to Ford's request.

E. Use of Two Chambers

The humidity test requires a humidifying chamber and an air flow chamber. Hella argued that one chamber would suffice. For reasons of practicality and repeatability, the agency has decided not to adopt Hella's suggestion. Standard size temperature humidity chambers are not available in the United States that allow enough length for the axial air flow test. Only specially built chambers can be used for both tests, but in general test laboratories do not have them. If a single chamber is used, the headlamp would have to be removed from the chamber and reinstalled in order to duplicate the routine when two chambers are used. If a choice is allowed between use of one and two chambers, the repeatability of the humidity test could be affected.

Under the proposal, within three minutes of the completion of the humidity test, the headlamp assembly is to be removed and wrapped in a thermal blanket. Ford suggested that the removal time be reduced to two minutes, and the use of a thermal blanket eliminated. The agency has not adopted the suggestion for the reduction of time. The two test chambers may not be located closely enough to effect a transfer within two minutes (as NHTSA found in one test laboratory in trying out Ford's suggestion). NHTSA has eliminated the use of a thermal blanket, and substituted the use of an insulated box with foam packing material.

F. Retention of Existing Test

Chrysler believes that the agency should retain the existing humidity test if it determines that the air flow requirement during humidity testing and the concluding photometric tests are incompatible, because of the objectivity of the photometric requirements. Since the agency is deleting the requirement for photometric tests, the issue of compatibility does not arise.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures. NHTSA has considered the economic impacts of this rule and has made a determination that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. The rule modifies in minor respects an existing test procedure for an optional type of headlamp. The components of the special test fixture are a steel or aluminum plate, three rods, and clamps. Test laboratories are generally equipped with steel plates and clamps. The cost of procuring three steel rods and boring holes in a plate should be minimal. These minimal costs could be offset by the slight reduction in costs associated with reducing the humidity soak test period from 5 days to 3 days, and the deletion of the post-humidity test photometric test. Once the test fixture is assembled, it will have an indefinite life, with no further costs incurred. Therefore, preparation of a full regulatory evaluation is not required.

National Environmental Policy Act. NHTSA has analyzed this rule for the purpose of the National Environmental Policy Act. The rule will have no effect on the human environment since it retains an existing test procedure.

Regulatory Flexibility Act. The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. The parties affected by the rule, i.e., manufacturers of motor vehicles and headlamps, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

Executive Order 12612 (Federalism). This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been established that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571 [AMENDED]

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Amended]

2. Section S7.4(i)(6) is amended by removing the comma and text following the word "magnification" and inserting a period in lieu thereof.

§ 571.108 [Amended]

3. Section S8.7 is revised to read as follows:

S8.7 *Humidity.* (a) The test fixture consists of a horizontal steel plate to which three threaded steel or aluminum rods of ¼ inch diameter are screwed vertically behind the headlamp. The headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 2 inches laterally of a vent inlet or outlet.

(b) The mounted headlamp assembly is oriented in its design operating position, and is placed in a controlled environment at a temperature of 100+7−0 degrees F (38+4−0 degrees C) with a relative humidity of not less than 90 percent. All drain holes, breathing devices, and other openings are in their normal operation positions for all phases of the humidity test. The headlamp shall be subjected to 24 consecutive 3-hour test cycles. In each cycle, it shall be energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal, it shall flash at 90 flashes per minute with a 75+/−2 percent current "on-time."

(c) Within 3 minutes after the completion of the 24th cycle, the air flow test will begin. The following shall occur: the mounted assembly shall be removed, placed in an insulating box and covered with foam material so that there is no visible air space around the assembly; the box shall be closed, taken to the air flow test chamber, and placed within it. Inside the chamber, the assembly with respect to the air flow, shall be oriented in its design operating position. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 3 inches clearance on all sides, and at least 4 inches to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 3 inches are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 73+7−0 degrees F (23+4−0 degrees C) with a relative humidity of 30+10−0 percent. The headlamp is not energized.

(d) Before the test specified in paragraph (e) of this section, the uniformity of the air flow in the empty test chamber at a plane 4 inches downstream of the air entry duct shall have been measured over a 4-inch square grid. The uniformity of air flow at each grid point is +/−10 percent of the average air flow specified in paragraph (e) of this section.

(e) The mounted assembly in the chamber shall be exposed, for one hour, to an average air flow of 330+0−30 ft/min. as measured with an air velocity measuring probe having an accuracy of +/−3 percent in the 330 ft/min range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: At the center of the lens, construct a horizontal plane. The first two points are located in the plane, 1 inch outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, one inch above the top edge of the lens, and one inch below the bottom edge of the lens.

(f) After one hour, the headlamp is removed and inspected for moisture.

Issued on: March 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-5623 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AO-341-A5; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Reopening of the Period to File Written Exceptions to Recommended Decision on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of the period to file written exceptions to the recommended decision.

SUMMARY: Notice is hereby given that the time period for filing written exceptions to the recommended decision on proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is reopened until March 15, 1991.

ADDRESSES: Interested persons are invited to submit written exceptions in triplicate to the Hearing Clerk, U.S. Department of Agriculture, room 1079–S, Washington, DC 20050–9200. All written exceptions will be available for public inspection at the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–6139.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the January 4, 1990, issue of the Federal Register (55 FR 295). Recommended Decision—Issued on January 15, 1991, and published in the January 18, 1991, issue of the Federal Register (56 FR 1938).

A Recommended Decision and Opportunity to File Written Exceptions to proposed amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York was issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The deadline for the submission of written exceptions to the recommended decision was February 19, 1991.

The U.S. Department of Agriculture (USDA) has received a request that the USDA provide more time for interested persons to analyze the recommended decision and file exceptions.

Reopening the period in which written exceptions may be filed will provide interested persons more time to review the recommended decision and submit written exceptions thereto. Accordingly, the period in which to file written exceptions is reopened until March 15, 1991. This notice is issued pursuant to the Act and the applicable rules of practice governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recording requirements.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: March 5, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-5658 Filed 3-8-91; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations at 7 CFR part 1421 with respect to the price support program which is conducted by the CCC in accordance with The Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made to section 205 by the Food, Agriculture, Conservation and Trade Act of 1990 (the 1990 Act). The amendment proposed by this rule specifies the CCC price support loan standards for 1991 and subsequent crop oilseeds, except soybeans.

DATES: Comments must be received on or before March 28, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Commodity Operations Division (CMO), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Agricultural Marketing Specialist, CMO, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, Telephone (202) 447–6500.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been determined that these program provisions will result in an annual effect on the economy of less than $100 million.

The title and number of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies is 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the oilseed CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local

officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices, provide interim financing and assistance to producers in the orderly marketing of eligible commodities. Pursuant to a separate proposed rule, the terms and conditions of the 1991–1995 price support program for oilseeds have been set forth except for issues involving quality standards for minor oilseeds.

Accordingly, this proposed rule would implement CCC price support loan standards for the 1991–1995 crops of minor oilseeds.

This proposed rule would amend § 1421.5(b) to specify that: (1) the determination of class, subclass, grade, grading factors, and other quality factors, (a) with respect to flaxseed and sunflower seed shall be based upon the Official United States Standards for Grain, (b) with respect to canola, mustard seed, rapeseed, and safflower shall be based on standards implemented by this proposed rule; (2) when a quantity of oilseed is determined by weight, quantities of farm-stored oilseeds shall be in whole units of 100 pounds of the respective oilseed, except soybeans.

This proposed rule would amend § 1421.9 to (1) add the entries required on warehouse receipts tendered for price support with respect to oilseeds, except soybeans; and (2) show that if canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed are dried or blended to reduce the moisture content, the quantity shall reflect a minimum shrinkage of 1.1 times the percentage difference between the moisture content of the commodity received and 8.0 percent.

This proposed rule would amend § 1421.18 to add the grade and grading requirements with respect to oilseeds, except soybeans. The schedule of CCC loan premiums and discounts related to the grade and grading factors will be available soon in State and county Agricultural Stabilization and Conservation Service offices.

This proposed rule would amend § 1421.22 to provide that if (1) canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed does not meet the general eligibility requirements and grade requirements as set forth in § 1421.5 and § 1421.18, such commodities shall be deemed ineligible for price support, and (2) the producer refuses to repay the loan indebtedness and CCC must foreclose by accepting delivery of the commodity, the settlement value shall be the lower of (i) the market price on the date of delivery, as determined by CCC, or (ii) the applicable basic support rate.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 which is proposed to be revised elsewhere in this issue would be further amended as follows:

1. The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, and 1445e, 15 U.S.C. 714b and 714c.

2. Section 1421.5 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), and (b)(4)(x) to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b) * * *

(2) * * *

(i) With respect to barley, corn, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seed, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of canola, mustard seed, rapeseed, and safflower seed, shall be based on standards established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC. The standards which are used in administering the price support program for the oilseeds in this subparagraph are available in State and county ASCS offices.

* * * * *

(4) * * *

(x) Quantities of farm-stored canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed shall be in whole units of 100 pounds of the respective commodity. However, for the determination of test weight:

(A) A bushel of canola shall be 50 pounds of canola free of dockage.

(B) A bushel of flaxseed shall be 56 pounds of flaxseed free of dockage.

(C) A bushel of mustard seed shall be 54 pounds of mustard seed free of dockage.

(D) A bushel of rapeseed shall be 50 pounds of rapeseed free of dockage.

(E) A bushel of safflower seed shall be 40 pounds of safflower seed free of dockage.

(F) A bushel of sunflower seed shall be 28 pounds of sunflower seed free of dockage.

* * * * *

3. Section 1421.9 is amended by revising paragraph (f)(2)(x) and adding paragraphs (f)(2)(xi) through (xv), and revising paragraphs (g)(2)(i) and (g)(2)(iii) and adding paragraph (g)(2)(iv) to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(f) * * *

(2) * * *

(x) Canola:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign Material;

(G) Garlic bulbs;

(H) Glucosinolate;

(I) Percentage of:

(*1*) Heat damage;

(*2*) Distinctly green seeds;

(*3*) Total damage;

(*4*) Stones;

(*5*) Ergot;

(*6*) Sclerotinia bodies;

(*7*) Insect excreta;

(*8*) Total conspicuous admixtures;

(*9*) Inconspicuous admixture; and

(*10*) Erucic acid.

(xi) Flaxseed:

(A) Gross weight and net weight in hundredweight;

(B) Grade;

(C) Test Weight;

(D) Oil Content;

(E) Moisture;

(F) Dockage;

(G) Foreign material;

(H) Heat damage;

(I) Total damage; and

(J) Any other grading factor when such factor (not test weight) determines the grade.

(xii) Mustard Seed:

(A) Gross weight and net weight in hundredweight;

(B) Subclass;

(C) Test Weight;

(D) Moisture;

(E) Dockage;

(F) Percentage of:

(*1*) Subclass purity;

(*2*) Heat damage;

(*3*) Distinctly green seeds;

(*4*) Total damage;

(*5*) Within the subclass yellow mustard, for foreign material other than dockage including, cockle, yellow wild mustard, and rapeseed;

(*6*) Within the subclass brown or oriental mustard, for foreign material other than dockage including, cockle, wild mustard and rapeseed;

(*7*) Other weed seed;

(*8*) Other foreign material;

(*9*) Sclerotinia bodies;

(*10*) Ergot;

(*11*) Stones;

(G) Number of:

(*1*) Rodent pellets;

(*2*) Bird droppings;

(*3*) Other animal filth;

(*4*) Pieces of glass; and

(*5*) Fertilizer pellets.

(xiii) Rapeseed:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign material;

(G) Percentage of:

(*1*) Heat damage;

(*2*) Distinctly green seeds;

(*3*) Total damage;

(*4*) Stones;

(*5*) Ergot;

(*6*) Sclerotinia bodies;

(*7*) Insect excreta;

(*8*) Total conspicuous admixtures;

(*9*) Inconspicuous admixtures; and

(*10*) Erucic acid.

(xiv) Safflower Seed:

(A) Gross weight and net weight in hundredweight;

(B) Test Weight;

(C) Oil Content;

(D) Moisture;

(E) Dockage;

(F) Foreign material;

(G) Percentage of:

(*1*) Heat damage;

(*2*) Total damage;

(*3*) Other grains;

(*4*) Free fatty acid; and

(H) WIJS Iodine value.

(xv) Sunflower seed:

(A) Gross weight and net weight in hundredweight;

(B) Grade;

(C) Test weight;

(D) Oil Content;

(E) Moisture;

(F) Dockage;

(G) Foreign material;

(H) Percentage of:

(*1*) Dehulled seed;

(*2*) Heat damage;

(*3*) Total damage;

(I) Any other grading factor when such factor (not test weight) determines the grade.

* * * * *

(g) * * *

(2) * * *

(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iv) of this section.

* * * * *

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending.

(iv) For commodities dried or blended in accordance with paragraph (g)(2)(iii) of this section, such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage:

(A) For the following commodities, 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(*1*) Barley: 14.5 percent.

(*2*) Corn: 15.5 percent.

(*3*) Oats: 14.0 percent.

(*4*) Rye: 14.0 percent.

(*5*) Grain sorghum: 14.0 percent.

(*6*) Soybeans: 14.0 percent.

(*7*) Wheat: 13.5 percent.

(*8*) Rice: 14.0 percent.

(B) For canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed, 1.1 times the percentage difference between the moisture content of the commodity received and 8.0 percent.

* * * * *

4. Section 1421.18 is amended by adding paragraphs ((b)(10) through (b)(15) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(10)(i) Canola must contain not less than 38 percent oil content;

(ii) The canola must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The canola must not contain less than 50 pounds per bushel;

(iv) The canola must not grade "Musty"; "Sour"; "Heating";

(v) The canola must not exceed the following percentages:

(A) For heat damage; 0.5 percent;

(B) For distinctly green seeds; 6.0 percent;

(C) For total damage; 10.0 percent;

(D) For mixtures of foreign material:

(*1*) For stones; 0.05 percent;

(*2*) For ergot; 0.05 percent;

(*3*) For sclerotinia bodies; 0.2 percent;

(*4*) For insect excreta; 0.2 percent;

(*5*) For total conspicuous admixtures; 1.5 percent;

(*6*) For inconspicuous admixture; 5.0 percent;

(E) For erucic acid; 2.0 percent;

(vi) The canola gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material;

(vii) The glucosinolate content in canola must not exceed 30 micro moles per gram; and

(viii) The canola must not contain in excess of 30.0 garlic bulbs per 1000 grams.

(11)(i) Flaxseed must grade No. 1 or better except that: (ii) The flaxseed must contain not less than 38 percent oil content;

(iii) The flaxseed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iv) The flaxseed must not grade "Frosted"; Green"; "Shriveled"; "Underdeveloped"; "Moldy"; "Sprouted"; Stones; and

(v) The flaxseed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

(12)(i) Mustard seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(ii) Mustard seed must not grade "Musty"; "Sour"; "COFO";

(iii) The mustard seed must not contain less than 54 pounds per bushel;

(iv) The mustard seed subclass must not be less than 99.8 percent in purity;

(v) The mustard seed must not exceed the following percentages:

(A) For heat damage; 0.1 percent;

(B) For distinctly green seeds; 1.5 percent;

(C) For total damage; 1.5 percent;

(D) Within the subclass yellow mustard, for foreign material other than dockage including cockle, yellow wild mustard, and rapeseed; 0.1 percent;

(E) Within the subclass brown or oriental mustard, for foreign material other than dockage including cockle, wild mustard, and rapeseed; 0.1 percent;

(F) For other weed seed; 0.3 percent;

(G) For other foreign material; 0.1 percent;

(H) For sclerotinia bodies; 0.1 percent;

(I) For ergot; 0.05 percent;

(J) For stones; 0.05 percent;

BEST COPY AVAILABLE

(vi) The mustard seed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material;

(vii) The mustard seed must not contain more than two rodent pellets, bird droppings or an equivalent quantity of other animal filth or broken glass per 1,000 grams cut from the sample as a whole (including the dockage); and

(viii) The mustard seed must not contain more than two fertilizer pellets in a dockage free sample.

(13)(i) Rapeseed must contain not less than 38 percent oil content;

(ii) The rapeseed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The rapeseed must not contain less than 50 pounds per bushel;

(iv) The rapeseed must not grade "Musty"; "Sour"; "Heating";

(v) The rapeseed must not exceed the following percentages:

(A) For heat damage; 0.5 percent;

(B) For distinctly green seeds; 6.0 percent;

(C) For total damage; 10.0 percent;

(D) For stones; 0.05 percent;

(E) For ergot; 0.05 percent;

(F) For sclerotinia bodies; 0.2 percent;

(G) For insect excreta; 0.2 percent;

(H) For total conspicuous admixtures; 1.5 percent;

(I) For inconspicuous admixtures; 5.0 percent;

(vi) The rapeseed must not contain less than 45 percent erucic acid; and

(vii) The rapeseed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

(14)(i) Safflower seed must contain not less than 38 percent oil content;

(ii) The safflower must contain not less than 40 pounds per bushel;

(iii) The safflower seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iv) The safflower seed must not grade "Treated"; "Sour"; "Musty"; "COFO"; "Toxic seeds"; "Stones";

(v) The safflower seed must not exceed the following percentages:

(A) For heat damage; 0.1 percent;

(B) For total damage; 3.0 percent;

(C) For other grain; 3.0 percent;

(D) For free fatty acid; 4.0 percent;

(E) For dockage; 6.0 percent;

(vi) The safflower gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material; and

(vi) The safflower seed must not contain less than 140 or more than 148 WIJS iodine value.

(15)(i) Sunflower seed must grade No. 1 or better except that:

(ii) The sunflower seed must contain not less than 35 percent oil content;

(iii) The sunflower seed must not grade "Infested" or have moisture in excess of 8.0 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iv) The sunflower seed gross weight must be adjusted downward to reflect dockage and for the presence of any foreign material.

5. Section 1421.22 is amended by adding paragraph (c)(5) to read as follows:

§ 1421.22 Settlement.

* * * * *

(c) * * *

(5)(i) With respect to canola, flaxseed, mustard seed, rapeseed, safflower seed, and sunflower seed, if the grade and quality of such commodities do not meet the general eligiblity requirements and grade requirements as set forth in § 1421.5 and § 1421.18, such commodities shall be deemed ineligible for price support.

(ii) If the producer refuses to repay the loan indebtedness and CCC must foreclose by accepting delivery of the commodity, the settlement value shall be the lower of the market price on the date of delivery, as determined by CCC, or the applicable basic support rate.

Signed at Washington, DC on March 1, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-5628 Filed 3-8-91; 8:45 am]

BILLING CODE 3410-05-M

---

7 CFR Part 1421

Grain and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations at 7 CFR part 1421 with respect to the price support program for wheat, feed grains, rice, oilseeds, and farm-stored peanuts which is conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement the changes made to sections 101B, 105B, 107B, 205, and 404 by the Food Agriculture, Conservation and Trade Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1990 (1990 Budget Act). Generally, the amendments proposed by this rule specify the manner in which producers may participate in CCC price support programs for wheat, feed grains, rice, oilseeds (including soybeans) and farm-stored peanuts and the terms and conditions of CCC price support programs for wheat, feed grains, rice, oilseeds, and farm-stored peanuts.

DATES: Comments must be received on or before March 26, 1991 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harold Connor, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013, Telephone (202) 447-8223 .

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "non-major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue or Federal Domestic Assistance, to which this notice applies is Commodity Loans and Purchases, 10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of these determinations.

It has been determined by environmental evaluations for the

wheat, feed grain, rice, oilseed, and farm-stored peanuts CCC price support programs that these programs will have no significant impact on the quality of the human environment.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to price support programs for wheat, feed grain, rice, oilseeds, and farm-stored peanuts is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, assigned number 0560-0087.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices, provide interim financing and assistance to producers in the orderly marketing of eligible commodities. This proposed rule would amend other regulations found at 7 CFR part 1421 to provide rules for administering CCC price support programs. The major revisions which are proposed or made are as follows:

This proposed rule would amend § 1421.4(i) to allow persons with an interest in storing, processing, or merchandising any commodity to act as an agent for a producer if that person is delegated authority which is restricted specifically to repaying outstanding loan amounts plus interest and charges, and the delegation is on file at the county office.

This proposed rule would amend § 1421.5 to clarify that ground ear corn may not be pledged as collateral for CCC price support loans. Producers may continue to obtain loans on ear corn that has not been ground.

This proposed rule would amend § 1421.5 with respect to marketing cooperatives to provide that commodities for which the beneficial interest has always been in the producer-member are eligible for price support from CCC through the marketing cooperative provided all other eligibility requirements are met.

This proposed rule would amend § 1421.5(c) to provide that a producer shall be considered to have divested beneficial interest in a commodity if the purchaser or intended purchaser pays the producer any advance payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except when such payment is made in accordance with part 1425 of this title for approved cooperative marketing associations.

This proposed rule would amend § 1421.5(e) to provide that producers who either redeem loan collateral with cash at a repayment rate that is less than the loan rate, or who obtain a loan deficiency payment must provide acceptable production evidence or the storage location of such commodity to CCC so that CCC may verify production through random spot checks. Section 1421.5(f) is proposed to be added to provide that in the case of loan deficiency payments, production evidence or storage location must be provided to CCC within 12 months after the final loan availability date for the crop year after the crop year in which the applicable commodity was produced. If the producers fails to provide acceptable production evidence or storage location within 12 months after the final loan availability date for the commodity, § 1421.5(g) would provide that the producer will be required to refund the market gain or loan deficiency payment and charges, plus interest.

Section 1421.5(i) is proposed to be added to provide that CCC shall limit the total quantity on loans, purchase agreements, and loan deficiency payments, based on a subsequent increase in the quantity of eligible commodity during the loan availability period, to 120 percent of the original quantity. Producers may obtain separate loans for quantities in excess of 120 percent of the original loan quantity if the excess is otherwise eligible.

Formerly price support loans matured on demand but not later than the last day of the ninth calendar month after the month in which the loan was requested. This proposed rule would amend § 1421.6(a), for all commodities except peanuts, to provide that loans mature on demand, but not later than the last day of the ninth calendar month after the month the note and security agreement is filed in accordance with § 1421.5 and approved by CCC. Accordingly, except for peanuts loans, the maturity date for all loans, including loans on repledged collateral, will be determined only after the loan is approved.

This proposed rule would amend § 1421.6 to provide that 1991 and subsequent year wheat, corn, grain sorghum, barley, and oat loans may be extended by CCC beyond the specified maturity date only to afford producers an opportunity to participate in the farmer-owned reserve program. Additionally, § 1421.6 is amended to provide that if a producer fails to settle any loan within 30 days after the maturity date of the loan, or such other time period established by CCC, a claim will be estblished for the outstanding loan amount and charges plus accrued interest. Delivery of the commodity will still be accepted after a claim has been established, but the settlement value of the delivered commodity will be applied to the claim in accordance with part 1403 of this title.

This proposed rule would amend § 1421.7(d) to provide that warehouse-stored loans and purchases are made at the basic county loan rate for the county in which the commodity is stored, adjusted for weed control law discounts, if applicable, and the schedule of premiums and discounts established on the basis of quality factors set forth on warehouse receipts. Additional loan disbursements, commonly referred to as "transportation assistance", would no longer be made by CCC.

This proposed rule would amend § 1421.8(a) to clarify that commercial warehouses are not eligible farm storage, and that eligible farm storage facilities must be under control of the producer. If commodities to be pledged as collateral for a loan are stored in leased space, a copy of the lease must be provided to CCC.

The lease must authorize the producer and any person having an interest in the commodity, including CCC to enter the leased premises to inspect and examine the commodity, and permit a reasonable time for removal of the commodity upon termination of the lease. County offices may also require the lessor to execute a lien waiver that fully protects CCC's interest.

Section 1421.10(c) would be added to provide that for commodities delivered to CCC in settlement of a loan, CCC will pay warehouse charges for receiving the commodity, or "in charges", provided the producer has either already paid the charges or agrees that CCC will pay the charges to the receiving warehouse to the producer's account.

Section 108B of the 1949 Act, as amended by section 1105 of the Budget Act of 1990, provides that CCC shall deduct a non-refundable marketing assessment from peanut loans equal to one half of one percent of the average support rate for peanuts multiplied times the quantity of peanuts for which the loan is made. This proposed rule would amend § 1421.12(d) to provide for the

marketing assessment to be deducted from peanut loans.

Section 1421.12(e) is proposed to be added to provide that an assessment equal to one-half of one percent of the loan principal amount shall be deducted by CCC from the proceeds for each soybean loan. Section 1421.12(f) would be added to provide that additional fees representing amounts voted on by producers for marketing and promotional fees may be deducted from price support proceeds by CCC upon request and agreement of the applicable governing body. CCC will determine the manner in which such additional fees will be deducted from loan proceeds and the time that the fees will be paid to the governing body.

In the past, CCC assumed the loss if all or part of the commodities pledged as collateral for farm-stored CCC price support loans were destroyed by specified acts of nature, and the producer's negligence did not cause the loss, either directly or indirectly. This proposed rule would amend § 1421.15 to provide that CCC shall not assume any loss in quantity or quality of loan collateral.

Section 1421.17(c) would be amended to provide that when collateral for an outstanding farm-stored loan is transferred to warehouse storage, the loan quantity for the warehouse-stored loan cannot exceed 120 percent of the farm-stored loan quantity if the transfer is completed during the loan availability period and cannot exceed 110 percent of the farm-stored loan quantity if the transfer is completed after the loan availability period.

This proposed rule would add § 1421.17(c)(iii) to provide that for loans extended in accordance with §§ 1421.200 through 1421.210, are transferred from farm storage to warehouse storage, the quantity for warehouse storage shall be limited to the quantity approved on the reserve agreement.

This proposed rule would amend § 1421.17(g) to provide definitions for unauthorized removal and unauthorized disposition of farm-stored loan collateral, an explanation of what will not be considered inadvertent acts, and the actions that CCC will take when commodities are removed or disposed of without authorization. § 1421.17(h) would be clarified to provide that producers who have been refused farm-stored loans because of unauthorized removal or unauthorized disposition offenses may apply for warehouse-stored loans.

Section 1421.18(b) would be amended for barley pledged as collateral for price support loans or offered under purchase agreements to remove the quality designation of "bleached" from the grading standards, and to remove the quality designation of "light", and to add the quality designation of "ergoty" to the grading standards that will make rye ineligible for CCC price support. This proposed rule would also amend § 1421.18(b), for wheat, by providing that wheat having 32 or more insect damaged kernels per 100 grams is ineligible for price support and that wheat must not be "unclassed".

This proposed rule would remove § 1421.19(e) which previously authorized producers to acquire commodities that were otherwise ineligible for price support and surrender such commodities to CCC in lieu of delivering the commodity pledged as collateral for a farm-stored loan.

Section 1421.24 would be amended to remove provisions authorizing producers to request a determination of protein content for farm-stored wheat in order that the basic farm-stored rate be adjusted to reflect the protein content. Basic farm-stored wheat loan rates will no longer be adjusted to reflect protein content. Settlement of matured farm-stored wheat loans will continue to be based on the protein content of wheat at the time of delivery.

The quantity of rice eligible for loan deficiency payment is equal to the quantity of rice eligible for loan. Section 101B of the 1949 Act provides:

(2) *Computation*—A payment under this subsection shall be computed by multiplying—

(A) the loan payment rate; by

(B) the quantity of rice the producer is eligible to place under loan (or obtain a purchase agreement) but for which the producer forgoes obtaining the loan or agreement in return for payments under this subsection.

Accordingly, this proposed rule would add § 1421.25 (a) to provide for making loan deficiency payments on rice.

For feeds grains, recourse loans are mandated for high moisture commodities. Section 404 of the 1990 Act provides:

(a) *Recourse Loans*—Notwithstanding any other provision of law, effective for the 1991 through 1995 crops of feed grains, the Secretary of Agriculture shall make available recourse loans as determined by the Secretary, as provided in this section, to producers on a farm who—

(1) normally harvest all or a portion of their crop of feed grains in a high moisture state (hereafter defined as a feed grain having a moisture content in excess of Commodity Credit Corporation standards for loans made by the Secretary under paragraphs (1) and (6) of section 105B of the Agricultural Act of 1949 (as added by section 401 of this Act).

Accordingly, § 1421.31 would authorize recourse loans for high moisture barley, corn, and grain sorghum, and provides conditions for making recourse loans.

This proposed rule would also implement a price support program for producers of oilseeds.

Sections 205 of the 1990 Act provides:

(a) *Definition of Oilseeds*—As used in this section, the term "oilseeds" means soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and such other oilseeds as the Secretary may determine.

(b) *In General*—The Secretary shall support the price of oilseeds through nonrecourse loans to producers on a farm for oilseeds produced on the farm in each of the 1991 through 1995 marketing years as provided in this section.

Accordingly, § 1421.1 would be amended to provide that price support loans and loan deficiency payments will be available on oilseeds. Purchase agreements will not be available on oilseeds. This proposed rule would also amend § 1421.3(d) to define oilseeds.

The respective final availability dates by which producers must execute note and security agreements, loan deficiency payment applications, or purchase agreements for wheat, feed grains, peanuts, rice, and soybeans are included in § 1421.5. This proposed rule would amend § 1421.5(a) to establish the final dates by which producers must execute note and security agreements, and loan deficiency payment applications for oilseeds. For canola, flaxseed, and rapeseed the date is March 31 of the year following the year in which the applicable crop is normally harvested. For mustard seed, safflower, and sunflower seed the date is May 31 of the year following the year in which the applicable crop is normally harvested.

Section 205 of the 1990 Act provides:

(d) *Marketing Loan Provisions*—The Secretary shall permit a producer to repay a loan made under this section for a crop—

(A) At a level that is the lesser of—

(i) The loan level determined for the crop; or

(ii) The prevailing world market price for the applicable oilseed (adjusted to United States quality and location), as determined by the Secretary; or

(B) such other level (not in excess of the loan level determined for the crop) that the Secretary determines will—

(i) minimize potential loan forfeitures;

(ii) minimize the accumulation of oilseed stocks by the Federal Government;

(iii) minimize the cost incurred by the Federal Government in storing oilseeds; and

(iv) allow oilseeds produced in the United States to be marketed freely and competitively, both domestically and internationally.

(e) *Loan Deficiency Payment*—

(1) *In General*—The Secretary shall, for each of the 1991 through 1995 crops of oilseeds, make payments available to producers who, although eligible to obtain a loan under subsection (b), agree to forgo obtaining the loan in return for payments under this subsection.

Accordingly, loans for oilseeds may be repaid at a level that does not exceed the loan rate. Discretionary authority may be exercised in order to establish the repayment rate for oilseeds. This proposed rule would add § 1421.25(b) to provide the provisions which would be used to determine oilseed loan repayment levels, the timing of oilseed repayment rate announcements, and provisions for locking in an oilseed loan repayment rate. Oilseed producers who, although eligible to obtain a loan, agree to forgo obtaining an oilseed loan may request a loan deficiency payment on the applicable oilseed. This proposed rule would add § 1421.29 to provide that CCC will announce whether loan deficiency payments will be made available to producers for a specific crop for a crop year. Producers are entitled to receive loan deficiency payment on the entire quantity of a commodity that is eligible to be pledged as collateral for a price support loan. In order to verify production, § 1421.29(e) would provide that CCC will advance producers 90 percent of the loan deficiency payment when the payment is requested. If acceptable evidence of production is provided to CCC by the final loan availability date for the applicable commodity, the loan deficiency payment will be based on 100 percent of the net quantity specified on acceptable evidence of production.

Section 205 of the 1949 Act, as amended by the Budget Act of 1990, provides that producers who obtain oilseed loan or, in lieu of obtaining an oilseed loan, obtain a loan deficiency payment on an oilseed, must pay a non-refundable loan origination fee to CCC. The loan origination fee shall be equal to 2 percent of the loan amount. In the case of loan deficiency payments, the producer must pay an amount equal to the loan origination fee the producer would have been required to pay if the producer had obtained a loan. This proposed rule would amend § 1421.12(c) to provide for the nonrefundable loan origination fee to be deducted from the applicable loan proceeds or the loan deficiency amount.

Standards for class, grade, grading factors, and other quality factors are currently not available, in all cases, for oilseeds other than soybeans. This proposed rule would amend § 1421.5 to provide that CCC shall establish and announce such standards to be used for oilseeds other than soybeans for CCC price support purposes.

Warehouse-stored oilseeds will have requirements comparable to those for other warehouse-stored commodities. Because official grading standards are not currently available for all minor oilseeds, § 1421.9(f) would be amended to provide that CCC will determine and announce factors to be used to determine the quality of warehouse-stored oilseeds, except soybeans.

This proposed rule would add §§ 1421.320 through 1421.325 to provide the terms and condition under which CCC shall make payments in the form of commodity certificates, to producers who enter into a Rice Marketing Agreement with CCC. Payments are made when CCC determines that the adjusted world price for a class of rice is below the then-current loan repayment rate for that class of rice. Section 1421.322 would provide that only rice that is or would have been eligible for loan is eligible for rice marketing certificate payments.

List of Subjects in 7 CFR Part 1421

Grains, loan programs/agriculture, Price support programs, Warehouses.

Accordingly, 7 CFR part 1421 is amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. The subpart consisting of §§ 1421.1 through 1421.32 and the subpart heading are revised and a new § 1421.33 is added and reserved and the subpart consisting of §§ 1421.320 through 1421.325 is revised as follows:

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

Sec.

1421.1 Applicability.
1421.2 Administration.
1421.3 Definitions.
1421.4 Eligible producers.
1421.5 General eligibility requirements.
1421.6 Maturity and expiration dates.
1421.7 Adjustment of basic support rates.
1421.8 Approved storage.
1421.9 Warehouse receipts.
1421.10 Warehouse charges.
1421.11 Liens.
1421.12 Fees, charges, and interest.
1421.13 Insurance on farm-stored loans.
1421.14 Offsets.
1421.15 Loss or damage to the commodity.
1421.16 Personal liability of the producers.
1421.17 Farm-stored commodities.
1421.18 Warehouse-stored loans.
1421.19 Liquidation of Loans.
1421.20 Release of the commodity pledged as collateral for a loan.
1421.21 Purchase agreements.
1421.22 Settlement.
1421.23 Foreclosure.
1421.24 Protein determinations.
1421.25 Market price repayments.
1421.26 Transfer of farm-stored loan to warehouse-stored association loan.
1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.
1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.
1421.29 Loan deficiency payments.
1421.30 Death, incompetency, or disappearance.
1421.31 Recourse loans.
1421.32 Handling payments and collections not exceeding $9.99.
1421.33 [Reserved]

* * * * *

Subpart—Rice Marketing Certificate Program

Sec.

1421.320 General provisions.
1421.321 Eligible persons.
1421.322 Eligible rice.
1421.323 Rice marketing certificate agreement.
1421.324 Commodity certificates.
1421.325 Payment rate.

* * * * *

Subpart—Price Support Regulations for the 1991 and subsequent crops of Wheat, Feed Grains, Rice, Oilseeds (Canola, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts

§ 1421.1 Applicability.

(a) The regulations of this subpart are applicable to the 1991 and subsequent crops of barley, corn, grain sorghum, oats, peanuts, rice, rye, soybeans, wheat, and oilseeds as set forth in § 1421.3. These regulations set forth the terms and conditions under which price support loans and purchase agreements shall be entered into and loan deficiency payments made by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement, loan deficiency payment application, and the purchase agreement which must be executed by a producer in order to receive price support. With respect to warehouse-stored loans for peanuts,

such loans shall be made in accordance with part 1446 of this title.

(b) Basic county price support rates, the schedule of premiums and discounts, and forms which are used in administering the price support program for a crop of a commodity are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). The forms for use in connection with the programs in this section shall be prescribed by CCC.

(c) (1) Price support loans and purchase agreements shall be available as provided in this Part with regard to barley, corn, grain sorghum, oats, rye, and wheat produced in the United States.

(2) Price support loans, loan deficiency payments, and purchase agreements shall be available only with respect to rice produced in the continental United States.

(3) Farm-stored price support loans and purchase agreements shall be available only with respect to farmer stock peanuts, as defined in part 1446 of this title, which are produced in the United States and which are also of a type specified in part 729 of this title.

(4) Price support loans and loan deficiency payments shall be available as provided in this Part with respect to oilseeds produced in the United States.

(d) Price support loans, loan deficiency payments, and purchase agreements shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1421.2 Administration.

(a) The price support and loan deficiency payment program which is applicable to a crop of a commodity shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans, loan deficiency payment applications, and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1421.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 719 and 1413 of this title shall also be applicable.

Basic support rate means the price support rate established by CCC for a commodity before any adjustment for premiums and discounts.

Charges means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the commodity tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such commodity.

Loan deficiency quantity means the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity means the quantity on which the price support loan was disbursed shown on the note and security agreement.

Purchase quantity means the eligible quantity designated on Form CCC-614, Purchase Agreement for purchase by CCC.

Oilseeds means any crop of soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, and other oilseeds as determined and announced by CCC.

§ 1421.4 Eligible producers.

(a) *Producer.* An eligible producer of a crop of a commodity shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity) which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper, or in the case of rice, furnishes land, labor, water, or equipment for a share of the rice crop;

(2) Meets the requirements of this part; and

(3) Meets the requirements of parts 12, 718, 1413, and 1446 of this title.

(b) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust estate shall be considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the production of the receiver, executor, administrator, guardian, or trustee shall be considered to be the production of the person or estate represented by the executor or administrator. Loan, loan deficiency payment, or purchase agreement documents executed by any such person will be accepted by CCC only if they are legally valid and such person has the authority to sign the applicable documents.

(c) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible to receive price support or loan deficiency payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable price support documents are signed by the guardian;

(3) Any note signed by the minor is cosigned by a person determined by the county committee to be financially responsible; or

(4) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(d) *Joint loans.* (1) Two or more producers may obtain a single joint loan with respect to commodities which are stored in the same farm storage facility. Two or more producers may obtain individual loans with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers if such other producers execute Form CCC-665 which provides that such producers shall obtain the permission of a representative of the county committee prior to removal of any quantity of the commodity from the storage facility. All producers who store a commodity in a farm storage facility in which commodities which have been pledged as collateral for a loan shall be liable for any damage incurred by CCC with respect to the deterioration or unauthorized removal or disposition of such commodities in accordance with § 1421.17.

(2) Two or more producers may obtain a single joint loan with respect to commodities which are stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers.

(3) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the commodity pledged as collateral for the loan. In addition, such producer may not amend the note and security agreement with respect to the producer's claimed share in such commodities, or loan proceeds, after execution of the note and security agreement by CCC.

(e) *Denial of farm-stored loans.* (1) The county committee may deny a producer price support on farm-stored commodities if the producer has:

(i) Been convicted of a criminal act, or has made a misrepresentation, with respect to:

(A) Acquiring a farm-stored loan or

(B) In the maintenance of the commodity pledged as security for a farm-stored loan; or

(ii) Failed to protect adequately the interests of CCC in the commodity pledged as security for a farm-stored loan.

(2) In such cases, the producer shall be ineligible for subsequent farm-stored loans unless the county committee determines that the producer will adequately protect CCC's interest in the commodity which would be pledged as collateral for such a loan. A producer who is denied a farm-stored loan will be eligible to pledge a commodity as collateral for a warehouse-stored loan.

(f) *Warehouse-stored loans to warehousemen.* Except as provided in § 1421.746, warehouse-stored loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on a commodity produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts is valid under State law.

(g) *Approved cooperative.* A cooperative marketing association which has been approved in accordance with part 1425 of this title may obtain price support on the eligible production of such commodity or loan deficiency payment with respect to such commodity on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of a commodity. For purposes of this subpart and on applicable price support and loan deficiency payment forms, the term "producer" includes an approved cooperative marketing association.

(h) *Peanut producer.* With respect to peanuts tendered to CCC for price support, a producer must also meet the provisions of part 1446 of this title. Prior to obtaining a farm-stored loan with respect to additional peanuts, a producer must register as a handler in accordance with part 729 of this title.

(i) *Restrictions in use of agents.* A producer shall not delegate to any person (or the person's representative) who has any interest in storing, processing, or merchandising any commodity which is otherwise eligible for price support or a loan deficiency payment under a program to which this section is applicable authority to exercise on the behalf of the producer any of the producer's rights or privileges under such program, including the authority to execute any note and security agreement or other price support document, unless the person (or the person's representative) to whom authority is delegated, is serving in the capacity of a farm manager for the producer or unless the authority delegated is restricted specifically for the purpose of repaying the loan amount and charges plus interest or, for the purpose of obtaining loan deficiency payments, and such delegation is filed through the execution of Form ASCS-211, Power of Attorney, or other form as approved by CCC, with the county office and accepted by CCC.

§ 1421.5 General eligibility requirements.

(a) *Requesting price support and loan deficiency payments.* A producer must, unless otherwise authorized by CCC, request price support and a loan deficiency payment at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located. In order to receive price support or loan deficiency payments for a crop of a commodity, a producer must execute a note and security agreement, loan deficiency payment application, or purchase agreement on or before:

(1) January 31 of the year following the year in which the crop of peanuts is normally harvested for additional peanuts pledged as collateral for a farm-stored loan;

(2) March 31 of the year following the year in which the following crops are normally harvested: Quota peanuts pledged as collateral for a farm-stored loan; barley; canola; flaxseed; oats; rapeseed; rye; and wheat;

(3) April 30 of the year following the year in which the crop of peanuts is harvested for quota peanuts tendered for purchase; and

(4) May 31 of the year following the year in which the following crops are normally harvested: Corn; grain sorghum; mustard seed; rice; safflower; soybeans; and sunflower seed.

(b) *Quality and quantity.* (1) Commodities must be tendered to CCC by an eligible producer and must be eligible, in existence, and in approved storage at the time of disbursement of loan, loan deficiency payment, or purchase agreement proceeds. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals. Wheat must not contain more than two rodent pellets or comparable amounts of other filth per 1,000 grams of wheat.

(2) The determination of class, grade, grading factors, milling yields, and other quality factors, including the determination of type, quality, and quantity for peanuts:

(i) With respect to barley, corn, grain sorghum, oats, soybeans, rice, rye, and wheat, shall be based upon the Official Grain Standards of the United States and the Official Rice Standards of the

United States as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(ii) With respect to a crop of oilseeds, except soybeans, shall be based on standards established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination shall not be paid by CCC.

(iii) With respect to peanuts, shall be determined at the time of delivery to CCC by a Federal-State Inspector authorized or licensed by the Secretary.

(3) Corn pledged as collateral for a farm-stored loan may be ear or shelled corn, but may not be ground ear corn. If the collateral is ear corn, the producer must:

(i) Before delivery to CCC, shell such corn without cost to CCC; and

(ii) Before removal of the commodity for shelling, have the approval of CCC in accordance with § 1421.20. Corn pledged as collateral for a warehouse-stored loan or tendered in accordance with a purchase agreement must be shelled corn.

(4) When a quantity of a commodity is determined by weight, the following shall apply:

(i) A bushel of barley shall be 48 pounds of barley free of dockage:

(ii) A bushel of corn shall be 56 pounds of corn free of dockage;

(iii) A bushel of oats shall be 32 pounds of oats;

(iv) Quantities of peanuts shall be in tons and tenths of a ton;

(v) Quantities of farm-stored rice shall be in whole units of 100 pounds of rice;

(vi) A bushel of rye shall be 56 pounds of rye free of dockage;

(vii) A bushel of soybeans shall be 60 pounds of soybeans that contain no more than one percent foreign material;

(viii) A bushel of grain sorghum shall be 56 pounds of grain sorghum free of dockage;

(ix) A bushel of wheat shall be 60 pounds of wheat free of dockage; and

(x) For oilseeds, the basis for the determination of quantity by weight shall be determined and announced by CCC.

(5) With respect to farm-stored loans, purchase agreements, and loan deficiency payments, all determinations of weight and quality, except as otherwise agreed to by CCC, shall be determined at the time of delivery of the commodity to CCC or at the time the loan deficiency payment application is filed.

(c) *Beneficial interest.* (1) To be eligible to receive price support, a producer must have the beneficial interest in the commodity which is tendered to CCC for a loan, loan deficiency payment, or purchase. The producer must always have had the beneficial interest in the commodity unless, before the commodity was harvested, the producer and a former producer whom the producer tendering the commodity to CCC has succeeded had such an interest in the commodity. Heirs who succeed to the beneficial interest of a deceased producer or who assume the decedent's obligations under an existing loan, loan deficiency payment, or purchase agreement shall be eligible to receive price support whether succession to the commodity occurs before or after harvest so long as the heir otherwise complies with the provisions of this Part.

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer enters into a contract to sell or gives an option to buy the commodity if, under the contract or option the producer retains control, risk of loss and title to the commodity subject to such agreement and retains control of the production of the commodity, and if the purchaser or intended purchaser does not pay to the producer any advance payment amount for the purchase, any promise of purchase, or any incentive payment amount determined by CCC to provide such purchaser or intended purchaser a beneficial interest in the commodity except as provided in part 1425 of this title. Commodities obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with part 1425 of this title, the beneficial interest in the commodity must always have been in the producer-member who delivered the commodity to the cooperative or its member cooperatives, except as otherwise provided in this subsection. Commodities delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the commodity does not retain the right to share in the proceeds from the marketing of the commodity as provided in part 1425 of this title.

(d) *Redeemed loan collateral.* (1) A producer may, before the final date for obtaining a price support loan for a commodity, reoffer as collateral for such a loan any commodity that had been previously pledged as collateral for a price support loan, except with respect to:

(i) Commodities which have been acquired in accordance with part 1470 of this title,

(ii) Commodities which have been redeemed at a rate which is less than the original price support level in accordance with § 1421.25, and

(iii) Commodities for which a payment has been made in accordance with § 1421.29.

(2) With respect to loans transferred in accordance with § 1421.17 (c) and (d), the subsequent loan shall have the same maturity date as the original loan.

(e) Producers who redeem loan collateral at the lower loan repayment level in accordance with § 1421.25 or, in lieu of receiving price support receive a loan deficiency payment in accordance with § 1421.29, shall provide CCC with:

(1) Evidence of production of the collateral such as sales receipts or other written documentation acceptable to CCC, or

(2) The storage location of the collateral which has not been otherwise disposed of and allow CCC access to such collateral.

(f) Producers who receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC within 12 months from the final loan availability date for crop year after the crop year for such commodity. Production evidence shall include but is not limited to:

(1) Evidence of sales,

(2) Load summary sheets, and

(3) Warehouse receipts from approved or unapproved warehouses.

(g) If the producer fails to provide acceptable evidence of production as required in paragraph (e)(1) of this section, such producer shall be required to repay the market gain or loan deficiency payment and charges, plus interest.

(h) The loan documents shall not be presented for disbursement unless the commodity subject to the note and security agreement is an eligible commodity, in existence, and is in approved storage. If the commodity was not either an eligible commodity, in existence, or in approved storage at the time of disbursement, the total amount disbursed under the loan and charges plus interest shall be refunded promptly by the producer.

(i) CCC shall limit the total loan quantity for a loan disbursement, purchase quantity for a purchase agreement disbursement, or loan deficiency quantity for a loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 120 percent of the original quantity of such loan, purchase agreement, or loan deficiency payment application. A producer may obtain a separate loan, loan deficiency payment, or purchase agreement before the final loan availability date for quantities in excess of 120 percent of such quantity if such quantities are an otherwise eligible commodity.

§ 1421.6 Maturity and expiration dates.

(a) *Loans.* (1) All loans shall mature on demand by CCC and with respect to:

(i) All commodities except peanuts and loan collateral transferred in accordance with § 1421.17 (c) and (d), no later than the last day of the ninth calendar month following the month in which the note and security agreement is filed in accordance with § 1421.5(a) and approved; and

(ii) Peanuts, April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the loan maturity date by providing the producer notice of such acceleration at least 15 days in advance of the accelerated maturity date.

(3) The request for a loan shall not be approved until all producers having an interest in the collateral sign the note and security agreement and CCC approves such note and security agreement.

(b) *Purchase agreements.*

(1) With respect to all eligible commodities except peanuts, purchase agreements expire on the last day of the ninth calendar month following the month in which the purchase agreement is approved. With respect to peanuts, purchase agreements expire on April 30 of the year following the year the commodity is normally harvested.

(2) CCC may at any time accelerate the expiration date of the purchase agreement by providing the producer notice of such acceleration at least 15 days in advance of the accelerated expiration date.

(c) 1991 and subsequent year wheat, corn, grain sorghum, barley and oat loans may only be extended by CCC beyond the maturity date specified in paragraph (a) of this section as CCC determines necessary for allowing producers an opportunity to participate in the farmer owned reserve program conducted in accordance with §§ 1421.200 through 1421.216. In such cases only, CCC may extend a price support loan:

(1) For wheat to the last day in February following the year in which the crop is normally harvested, and (2) For corn, grain sorghum, barley, and oats, to May 31 following the year in which the crop is normally harvested.

(d) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim for the loan amount and charges plus interest shall be established. CCC shall:

(1) Inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with Part 1403 of this title, and

(2) If the producer delivers the loan collateral in accordance with § 1421.22 after a claim is established:

(i) Determine the value of such collateral in accordance with § 1421.22,

(ii) Waive interest on the loan amount which accrued prior to the establishment of the claim with respect to the settlement value of the quantity delivered from the date such loan proceeds were disbursed through the loan maturity date. Interest which accrues after the establishment of the claim shall not be waived, and

(iii) Reduce the outstanding claim amount arising from the loan by the amount of the settlement value of the quantity delivered plus the amount of interest that was waived.

§ 1421.7 Adjustment of basic support rates.

(a) *General.* Basic support rates for a commodity may be established on a State, regional, or county basis and may be adjusted by CCC to reflect quality and location applicable to the commodity and as otherwise provided in this section.

(b) Weed control laws. If CCC determines that State, district, or county weed control laws affect the value of a commodity, the basic support rate shall be reduced to reflect the reduction in value of the commodity unless the producer or storing warehouseman furnishes a certification from the appropriate weed control official that the commodity complies with weed control laws. The storing warehouseman must also agree to hold CCC harmless for any loss or penalty which arises from the violation of such laws. The certification by the warehouseman shall be in substantially the following form:

Certification

This is to certify that the commodity evidenced by warehouse receipt No. XX issued to XX is not subject to seizure or other action under weed control laws or regulations in effect at the point of storage. It is further certified and agreed that if such commodity is acquired by CCC in settlement of a loan or purchase agreement, the undersigned will save CCC from loss or penalty under weed control laws or regulations in effect at the point the commodity was stored under the above warehouse receipt. (Signature) XXXX

(c) *Basic support rates for farm-stored loans.*

(1) With respect to all commodities except peanuts, farm-stored loans shall be disbursed at the basic county support rate for the county where the commodity is stored adjusted for weed control law discounts.

(2) With respect to quota and additional peanuts, farm-stored loans shall be disbursed at the basic support rates established by CCC for such peanuts.

(d) *Basic support rates for warehouse-stored loans and purchases.*

(1) With respect to all commodities except peanuts, warehouse-stored loans and purchase agreement payments shall be disbursed on the basis of the basic county support rate for the county where the commodity is stored adjusted for:

(i) Weed control law discounts; and

(ii) The schedule of premiums and discounts established for the commodity on the basis of quality factors set forth on warehouse receipts or supplemental certificates and for other quality factors, as determined and announced by CCC.

(2) With respect to quota and additional peanuts, payments made in accordance with a purchase agreement shall be at the basic support rate established by CCC for such peanuts.

(3) With respect to commodities moved from one warehouse to another in accordance with the terms and conditions prescribed by CCC on Form CCC–699, Reconcentration Agreement and Trust Receipt, the support rate will be adjusted to reflect the new storage location.

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public or commercial warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements. If the commodity which is to be pledged as collateral for a price support loan is stored on leased space:

(1) A copy of the lease shall be obtained by the county office before a loan is made. The lease shall authorize

the producer and any person having an interest in the commodity, including CCC, to enter the premises to inspect and examine the commodity and shall permit a reasonable time to such persons to remove the commodity from the premises upon the termination of the lease, and

(2) The county office may require from the lessor, a lien waiver that fully protects the interest of CCC.

(b) *Warehouse Storage.* Approved warehouse storage shall consist of:

(1) A public warehouse for which a CCC storage agreement for the commodity is in effect and which is approved by CCC for price support purposes. Such a warehouse is referred to in this subpart as an "approved warehouse". The names of approved warehouses may be obtained from the Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205, or from State and county offices.

(2) A warehouse operated by an approved cooperative as defined in part 1425 of this chapter and licensed to store the commodity under the United States Warehouse Act.

(c) The approved storage requirements provided in this section may be waived by CCC if the producer agrees to redeem the loan collateral pursuant to the lower loan repayment provisions contained in § 1421.25 or, requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

§ 1421.9 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC with respect to a loan, loan deficiency payment, or purchase agreement must meet the provisions of this section and all other provisions of this part, and CCC program documents.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit: Provided, however, That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.20(c).

(c) *Where warehouseman is also owner.* If the receipt is issued for a commodity which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman' s commodity is invalid, the warehouseman may offer the commodity to CCC for loan or purchase if such warehouse is licensed and operating under the U.S. Warehouse Act. In such States, if the warehouseman is not licensed and operating under the U.S. Warehouse Act, the warehouseman may deliver the commodity to CCC for purchase if the warehouse receipt is issued in the name of CCC.

(d) *Insurance.* Each warehouse receipt or accompanying supplemental certificate representing a commodity stored in an approved warehouse which has a storage agreement with CCC shall indicate that the commodity is insured in accordance with such agreement. The cost of such insurance shall not be for the account of CCC.

(e) *Separate receipt.* A separate warehouse receipt must be submitted for each grade and class of any commodity tendered to CCC and, with respect to rice, such receipt must also state the milling yield of the rice.

(f) *Entries.* (1) Each warehouse receipt, or a supplemental certificate (in duplicate) which properly identifies the warehouse receipt, must be issued in accordance with the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, or the U.S. Warehouse Act for warehouses licensed under U.S. Warehouse Act, as applicable, and must indicate:

(i) The name and location of the storing warehouse;

(ii) The warehouse code assigned by CCC;

(iii) The warehouse receipt number;

(iv) The date the receipt was issued;

(v) The date the commodity was deposited or received;

(vi) The date to which storage has been paid or the storage start date;

(vii) Whether the commodity was received by rail, truck or barge;

(viii) The amount per bushel, pound, or hundredweight of prepaid in or out charges;

(ix) The signature of the warehouse operator or the authorized agent; and

(x) For warehouses operating under a merged warehouse code agreement (KCFL–614), the location and county to which the producer delivered the commodity.

(2) In addition to the information specified in paragraph (f)(1) of this section, the following information must be provided with respect to the specified commodity:

(i) Barley:

(A) Gross weight in pounds and net bushels;

(B) Class and subclass;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ii) Corn:

(A) Kind of Corn;

(B) Gross weight in pounds, and net bushels;

(C) Class;

(D) Grade (including special grades);

(E) Test weight;

(F) Moisture;

(G) Broken corn and foreign material; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(iii) Oats:

(A) Net weight and bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture; and

(E) Any other grading factor when such factor (not test weight) determines the grade.

(iv) Peanuts: Any information required of a warehouseman in accordance with part 1446 of this title.

(v) Rice:

(A) Grade;

(B) Net weight and net hundredweight;

(C) Class;

(D) Grading factors, including color, smut, and heat damage;

(E) Milling yield;

(F) Moisture; and

(G) If the rice is stored commingled.

(vi) Rye:

(A) Gross weight and net bushels;

(B) Grade (including special grades);

(C) Test weight;

(D) Moisture;

(E) Dockage; and

(F) Any other grading factor when such factor (not test weight) determines the grade.

(vii) Grain sorghum:

(A) Gross weight in pounds and net weight in hundredweight;

(B) Class;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(viii) Soybeans:

(A) Net weight and bushels;

(B) Gross weight and bushels;

(C) Grade (including special grades);

(D) Test weight;

(E) Moisture;

(F) Percentage of foreign material; and

(G) Any other grading factor when such factor (not test weight) determines the grade.

(ix) Wheat:

(A) Gross weight and net bushels;

(B) Class and Subclass;

(C) Grade;

(D) Test weight;

(E) Moisture;

(F) Dockage;

(G) Protein content; and

(H) Any other grading factor when such factor (not test weight) determines the grade.

(x) For oilseeds, except soybeans, the factors that shall be used to determine the quality of the commodity as determined and announced by CCC.

(g) *Warehouse receipts showing "Infested", excess moisture, or both.* If a warehouse receipt indicates that the commodity tendered for price support grades "Infested" or contains excess moisture, or both, the receipt must be accompanied by a supplemental certificate as provided in § 1421.18 in order for the commodity to receive price support. The grade, grading factors, and quantity to be delivered must be shown on the certificate as follows:

(1) When the warehouse receipt shows "Infested" and the commodity has been conditioned to correct the "Infested" condition, the supplemental certificate must show the same grade without the "Infested" designation and the same grading factors and quantity as shown on the warehouse receipt.

(2)(i) When the warehouse receipt shows that the commodity contained excess moisture and the commodity has been dried or blended, the supplemental certificate must show the grade, grading factors, and quantity after drying or blending of the commodity. Such entries shall reflect a drying or blending shrinkage as provided in paragraph (g)(2)(iii) of this section.

(ii) When a supplemental certificate is issued in accordance with paragraphs (g)(1) and (2)(i) of this section, the grade, grading factors and the quantity shown on such certificate shall supersede the entries for such items on the warehouse receipt.

(iii) If the commodity has been dried or blended to reduce the moisture content, the quantity specified on the warehouse receipt or the supplemental certificate shall represent the quantity after drying or blending. Such quantity shall reflect a minimum shrinkage in the receiving weight excluding dockage of 1.2 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:

(A) Barley: 14.5 percent;

(B) Corn: 15.5 percent;

(C) Grain sorghum: 14.0 percent;

(D) Oats: 14.0 percent;

(E) Oilseeds, except soybeans, the maximum acceptable moisture level will be determined and announced by CCC;

(F) Rice: 14.0 percent;

(G) Rye: 14.0 percent;

(H) Soybeans: 14.0 percent; and

(I) Wheat: 13.5 percent;

(h) *Liens.* (1) If, in accordance with paragraph (g) of this section, a supplemental certificate is issued in connection with a warehouse receipt, such certificate must state that no lien for processing will be asserted by the warehouseman against CCC or any subsequent holder of such receipt.

(2) Warehouse receipts and the commodities represented by such receipts which are stored in an approved warehouse which is operating in accordance with a Uniform Grain Storage Agreement ("UGSA") or a Uniform Rice Storage Agreement ("URSA") may be subject to a lien for warehouse charges only to the extent provided in § 1421.10. In no event shall a warehouseman be entitled to satisfy such a lien by sale of the commodities when CCC is the holder of such receipt.

(i) *Freight certificate requirements.* Warehouse receipts representing commodities which have been shipped by rail and/or by barge, must be accompanied by supplemental certificates completed in accordance with paragraph (f) of this section.

§ 1421.10 Warehouse charges.

(a) *Approved handling and storage rates.* CCC-approved handling and storage rates that may be deducted from loan and purchase proceeds are available in State and county offices. Such deductions shall be based upon the entries on the warehouse receipt or supplemental certificate, but in no 'case shall be higher than the CCC approved rate. No storage deduction shall be made if written evidence acceptable to CCC is submitted that:

(1) Storage charges through the maturity or expiration date have been prepaid; or

(2) The producer has arranged with the warehouseman for the payment of storage charges through the maturity or expiration date and the warehouseman enters an endorsement in substantially the following form on the warehouse receipt:

Warehouse storage charges accrued or to accrue prior to the acquisition by CCC of the commodity represented by this warehouse receipt have been paid or otherwise provided for through the applicable maturity or expiration date and a lien for such charges will not be asserted by the warehouseman against CCC or against any subsequent holder of the warehouse receipt.

(b) *Storage costs.* The beginning date to be used for computing storage deductions on the commodity stored in an approved warehouse shall be the later of the following:

(1) The date the commodity was received or deposited in the warehouse;

(2) The date the storage charges start; or

(3) The day following the date through which storage charges have been paid.

(c) *Receiving charges.* For commodities delivered to CCC in settlement for a loan, CCC shall pay to the producer the warehouse charges for receiving the commodity, or incharges. If the warehouse receipt delivered to CCC in settlement for a loan shows that such charges:

(1) have been paid, CCC shall issue such payment to the producer, or

(2) have not been paid. the producer agrees to assign such payment to the warehouse and CCC shall issue such payment to the warehouse for the producer's account.

§ 1421.11 Liens.

(a) The county office shall file or record, as required by State law, all security agreements which are issued with respect to commodities pledged as collateral for price support loans. The cost of filing and recording shall be for the account of CCC.

(b) If there are any liens or encumbrances on the commodity, waiver that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan or purchase proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

§ 1421.12 Fees, charges, and interest.

(a) *Loan service fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees are available in State and county offices and are shown on the note and security agreement.

(b) *Interest.* Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this title. All or a portion of such interest may be waived with respect to a quantity of commodity which has been redeemed in accordance with § 1421.25 at a level which is less than the

principal amount of the loan plus charges and interest.

(c) For each crop of oilseeds, the producer must pay a nonrefundable loan origination fee to CCC which shall be deducted from the loan proceeds and shall be at a rate equal to two percent of the loan level for the crop multiplied by the quantity of such crop for which the loan is made. In addition, for each crop of oilseeds on which a loan deficiency payment is made in accordance with § 1421.29, the producer must pay a nonrefundable amount equal to the loan origination fee in accordance with this subsection, that such producer would have been required to pay for the quantity on which the payment is made had such quantity been pledged as collateral for a price support loan. CCC shall deduct such amount from the loan deficiency payment amount.

(d) For each crop of peanuts, the producer must pay a nonrefundable marketing assessment to CCC which shall be deducted from the loan proceeds and shall equal one-half of one percent of the average support rate multiplied times the quantity of peanuts for which the loan is made.

(e) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301), shall remit to CCC an assessment which shall be deducted from the loan proceeds for a crop of soybeans, and shall be at a rate equal to one-half of one percent of the principal amount of the loan.

(f) Additional fees representing amounts voted on by producers for marketing or promotional fees may be deducted from price support proceeds by CCC as requested and agreed to by the governing body of such marketing or promotional fee and CCC. Deduction of such fees from amounts due producers and the payment of such fees to such governing body shall be made by CCC in a manner and at such time as determined by CCC.

§ 1421.13 Insurance on farm-stored loans.

CCC does not require the producer to insure the commodity placed under a farm-stored loan, however, if the producer insures such commodity and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the producer's equity in the commodity involved in the loss.

§ 1421.14 Offsets.

(a) *Facility and drying equipment loans.* If any installment(s) on any loan made by CCC on farm storage facilities or drying equipment are due and payable under the provisions of the note evidencing such loan out of any amount due the producer under the regulations in this subpart, the amount due the producer, after deduction of applicable fees and charges and amounts due prior lienholders, shall be applied to satisfy the amounts due and payable on such installment(s).

(b) *Producers listed on county claim control record.* If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart, after deduction of amounts due and payable on farm storage facilities or drying equipment and other amounts provided in paragraph (a) of this section, shall be applied as provided in part 13 and part 1403 of this title, to such indebtedness.

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm-stored loan or identity preserved warehouse-stored loan, or for any loss in quality of the commodity pledged as collateral for a modified commingled warehouse-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral.

§ 1421.16 Personal liability of the producers.

(a) *Fraud related to loans, purchase agreements, and loan deficiency payments, and unauthorized disposition or removal of loan collateral.* (1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan, purchase agreement, or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan, purchase agreement, or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan, purchase agreement, or loan deficiency payment;

(C) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts, and

(E) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts or by repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25.

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of such collateral delivered to or removed by CCC shall be determined by CCC on the following basis:

(i) With respect to farm-stored loans, the lower of:

(A) The market value of the commodity, as determined by CCC, as of the date of delivery to, or removal by, CCC; or

(B) The loan settlement value of the commodity.

(ii) With respect to warehouse-stored loans, the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(iii) Notwithstanding the provisions of paragraphs (a)(2)(i) and (ii) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the value of the commodity shall be the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) *Fraud relating to purchases.* (1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest on such amounts. The payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be the lowest of the following, as determined by CCC:

(i) The market value of the commodity, as determined by CCC, at the close of the market on the date of delivery to CCC;

(ii) The sales price of the commodity less any costs incurred by CCC if the commodity is sold by CCC in order to determine the market value of the commodity; or

(iii) The basic support rate applicable to the commodity.

(c) *Poisonous substances and contamination.* A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(d) *Overdisbursement.* If the amount disbursed under a loan or purchase agreement, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess and charges, plus interest.

(e) *Undercollection.* If the amount collected from the producer in satisfaction of the loan is less than the amount required in accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(f) *Joint loans.* In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

§ 1421.17 Farm-stored commodities.

(a) The quantity of a commodity which shall be used to determine the amount of a farm-stored loan shall not exceed a percentage (hereinafter called the "loan percentage"), as established by the State committee which shall not exceed a percentage established by CCC, of the certified or measured quantity of the eligible commodity stored in approved farm storage and covered by the note and security agreement. The quantity of a commodity pledged as security for a farm-storage loan shall be measured or certified in accordance with paragraph (e) of this section. Farm-stored loans may be made on less than the maximum quantity eligible for loan at the producer's request. If the loan quantity is reduced by the State committee, the county committee, or by request of the producer, the note and security agreement shall cover all of the commodity in a bin, crib, or lot on which the loan is made.

(1) With respect to additional peanuts, loans shall be made on 100 percent of the estimated quantity pledged as collateral for a farm-stored loan.

(2) With respect to all other commodities, the State committee may establish a loan percentage, which does not exceed a percentage established by CCC, each year for each commodity on a Statewide basis or for specified areas within the State. Before the establishment of a loan percentage, the State committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be below the maximum loan percentage in order to provide CCC with adequate protection. Loan percentages previously determined shall be lowered if warranted by changed conditions in the State or areas within a State, but new loan percentages shall apply only to new loans and not to outstanding loans. The factors to be considered by the State committee in determining loan percentages shall include but are not limited to:

(i) General crop conditions;

(ii) Factors affecting quality peculiar to an area within the State; and

(iii) Climatic conditions affecting storability.

(3) The loan percentages established by the State committee may be reduced by the county committee on an individual farm or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the county committee in reducing the loan percentages shall include but not be limited to:

(i) The condition or suitability of the storage structure;

(ii) The condition of the commodity; and

(iii) The hazardous location of the storage structure, such as a location which exposes the structure to danger of flood, fire, and theft by a person not entrusted with possession of the commodity.

(iv) Any disagreement with respect to the quantity of the commodity to be pledged as collateral for a loan; and

(v) Such other factors which relate to the preservation or safety of the loan collateral.

(b) *Commingling eligible and ineligible commodity.* If an eligible quantity of a commodity except peanuts, has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless:

(1) The producer before commingling has received prior approval from the county office to commingle the commodity as evidenced by an approved form CCC–687–1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county office at the producer's expense, before commingling; or

(2) The producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production and purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county office at the producer's expense, before commingling. Peanuts pledged as collateral for a loan must be stored separately from peanuts produced on any other farm and handled in such a manner that only the actual peanuts produced on the farm and on no other farm will be delivered to CCC.

(c) *Transfer from farm-stored loans to warehouse-stored loans.* Upon request by the producer before transfer, the county committee may approve the transfer of a commodity or part thereof which is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period. In the case of emergency transfers, the producer must make the request in writing describing the emergency.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed:

(i) 120 percent of the loan quantity for the farm-stored loan for transfers completed before the final loan availability date; or

(ii) 110 percent of the loan quantity for the farm-stored loan for transfers completed after the final loan availability date.

(2) Any amounts due the producer shall be disbursed by the county office. The maturity date of the warehouse-stored loan shall be the maturity date applicable to the farm-stored loan which was transferred.

(3) For loans extended in accordance with §§ 1421.200 through 1421.216, CCC shall limit the quantity for a warehouse-stored loan to the quantity approved on

the farmer owned reserve agreement loan.

(d) *Transfer from warehouse-stored loan to farm-stored loan.* Upon request by the producer before the transfer, the county committee may authorize the transfer of a warehouse-stored loan or part thereof to a farm-stored loan. Quantities pledged as collateral for a farm-stored loan shall be based on a measurement by a representative of the county office before approving the farm-stored loan. The producer must immediately repay the amount by which the farm-stored loan is less than the warehouse-stored loan and charges plus interest on the shortage. Such farm-stored loans shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the warehouse-stored loan which was transferred.

(e) *Producer certification.* The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC-666 is eligible to be pledged as collateral and is otherwise available for loan purposes.

(f) *Producer incorrect certification.*

(1) If the county committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan based on certification by the producer is less than the loan quantity, the county committee shall call the loan.

(i) The producer shall have 15 days to settle the loan; however, the producer may request reconsideration of the call and provide information regarding the circumstances leading to the incorrect certification. The county committee may approve the producer's request if:

(A) The circumstances are of a highly meritorious nature,

(B) The producer acted in good faith,

(C) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(D) The producer repays the overdisbursement and charges, plus interest.

(ii) If the loan is called, the county committee may refuse to approve any further farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made.

(2) If the county committee determines, by measurement or otherwise, that the actual quantity for a loan deficiency payment based on certification by the producer is less than the quantity eligible for such payment, the county committee may refuse to approve any further loan deficiency payment without evidence of production acceptable to CCC, on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. However, the producer may request reconsideration of the refusal and provide information regarding the circumstances leading to the incorrect certification. In such cases, the county committee may approve the producer's request if:

(i) The circumstances are of a highly meritorious nature,

(ii) The producer acted in good faith,

(iii) The producer did not knowingly provide an incorrect certification and made a reasonable attempt to determine the quantity and,

(iv) The producer repays the overdisbursement and charges, plus interest for the shortage.

(3) If the producer has incorrectly certified quantities for a loan or a loan deficiency payment on more than one occasion, the county committee shall call the loan or loans involved and approve no further loan deficiency payment without acceptable production evidence or farm-stored loans for the producer on any commodity through the end of the next crop year after the crop year in which the incorrect certification was made. If the county committee feels the seriousness of the matter so justifies, they may deny loan deficiency payments without acceptable production evidence or farm-stored loans to the producer for more than one year. They may also refer the case to the State committee which may request OIG to make an investigation.

(4) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(g) *Unauthorized removal and unauthorized disposition.* Producers obtaining a loan for a crop of a commodity shall agree not to move or dispose of the commodity pledged as collateral for such loan without obtaining prior written approval for such action from the county committee in accordance with § 1421.20.

(1) Unauthorized removal is the movement of any loan collateral from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written consent from the county committee in accordance with § 1421.20. In such cases:

(i) On the first offense:

(A) If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan in accordance with paragraph (f)(1) of this section, and

(B) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(ii) On the second and subsequent offense, the county committee shall:

(A) Call the loan, and

(B) Not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized removal occurred.

(2) Unauthorized disposition is the conversion of collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20. In such cases, the regulations concerning penalties in paragraph (g)(3) of this section shall be applicable.

(3) If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any other amount and applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. In such cases:

(i) If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of:

(A) The day following the latest inspection of the collateral by a representative of the county committee, or

(B) The day following disbursement of the loan.

(ii) In agreeing to the note and security agreement, the producer agrees that the conversion of the collateral pledged as collateral for a loan without prior written consent from the county committee in accordance with § 1421.20 will cause serious and substantial damages to CCC, including damages to

CCC's price support programs and the incurring of substantial administrative and other costs. The producer and CCC agree that it will be difficult if not impossible, to prove the amount of such damages. Accordingly, in such case, the producer shall pay to CCC liquidated damages computed by multiplying the loan principal which represents the quantity so disposed at the rate of 8.5 percent per annum for the period specified in this subparagraph (3).

(iii) The county committee may refuse to approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(4) If liquidated damages are assessed in accordance with paragraph (g)(3) of this section, the county committee:

(i) On the first offense:

(A) May waive some or all of such liquidated damages if the county committee determines that:

(*1*) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity,

(*2*) The violation did not result in harm or damage to the right or interest of any person or government agency, and

(*3*) The producer repays the loan and charges plus interest with respect to the quantity of the collateral which has been disposed.

(B) In such cases, shall furnish a copy of its determination to the Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

(ii) On the second and subsequent offense,

(A) Shall not waive liquidated damages, and

(B) Shall not approve any loan deficiency payment without acceptable production evidence and any farm-stored loans for any commodity produced by the producer through the end of the next crop year after the crop year in which the unauthorized disposition occurred.

(iii) Shall not consider the following acts as inadvertent acts, unless prior written approval is obtained from CCC, for the purposes of determining if some or all of the liquidated damages or require repayments and charges plus interest or other administrative actions may be waived:

(A) Movement of loan collateral off the farm.

(B) Movement of loan collateral from one storage structure to another on the farm, and

(3) Feeding of loan collateral.

(h) If the loan is called in accordance with this subsection, the producer may not repay the loan at the lower loan repayment rate in accordance with § 1421.25.

(i) Producers who have been refused a farm-stored loan may apply for a warehouse-stored loan.

§ 1421.18 Warehouse-stored loans.

(a) *Quantity for loan.* The quantity of a commodity which may be pledged as collateral for a loan shall be the quantity of an eligible commodity delivered to, or acquired by, CCC at an approved warehouse. Such quantity shall be the net weight specified on the warehouse receipt or supplemental certificate.

(b) *Grade requirements.*

(1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(ii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Ergoty.

(C) Smutty.

(3)(i) Corn must grade No. 3 or better; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better;

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; "Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light Garlicky"; "Ergoty"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Grain sorghum must grade No. 4 and

(ii) The grain sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat must not grade "Ergoty", or "Treated"; and

(iv) The wheat must not grade "Infested," have 32 or more insect damaged kernels per 100 grams, or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(v) The wheat must not be "unclassed."

§ 1421.19 Liquidation of loans.

(a) *General.* If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan, or other eligible commodities of the same class and kind, in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of the larger of:

(1) 110 percent of the loan quantity; or

(2) A sufficient quantity having a settlement value equal to the loan amount and charges plus interest.

(b) *Delivery by the producer.* If the producer desires to deliver eligible commodities to CCC in satisfaction of the loan, the producer must notify CCC of such intention before the loan maturity date by giving written notice to the county office which disbursed the proceeds for such loan. If the producer fails to deliver such commodities to CCC by the date specified on Form CCC–691, Commodity Delivery Notice, and the producer subsequently redeems the commodity pledged as collateral for the loan before delivery is completed, interest shall continue to be assessed on such amount in accordance with part 1405 of this title.

(c) *Commodity going out of condition.* If, either before or after maturity, the commodity is going out of condition or is in danger of going out of condition, the producer shall so notify the county office and confirm such notice in writing. If the county committee determines that the commodity is going out of condition or is in danger of going out of condition and the commodity cannot be satisfactorily conditioned by the producer and delivery cannot be accepted within a reasonable length of time, the county committee shall arrange for an inspection and grade and quality determination. When delivery is completed, settlement shall be made on the basis of such grade and quality determination or on the basis of the grade and quality determination made at the time of delivery, whichever is higher, for the quantity actually delivered.

(d) *Delivery before maturity date.* If the producer loses control of the storage structure, or if there is insect infestation that cannot be controlled, danger of flood, or damage to the storage structure making it unsafe to continue storage of the commodity on the farm, the commodity may be delivered before the maturity date of the loan upon prior approval of the county committee in accordance with paragraph (a) of this section. Settlement will be made with the producer as provided in § 1421.22.

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) *Obtaining release—farm-stored loan.* A producer shall not move or dispose any commodity which is pledged as collateral for a loan until prior written approval for such removal or disposition has been provided by the county committee in accordance with this section. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

(1) The principal amount of the loan which is outstanding and charges plus interest, or

(2) if CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. The producer may request and CCC may approve removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer before removal. When the proceeds of the sale of the commodity are needed to repay all or a part of a farm-stored loan, the producer must request and obtain prior written approval of the county office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–661–1, Marketing Authorization, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25 (a)(1)(i) or (b)(1)(i).

(b) *Release of farm-stored note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

(c) *Obtaining release, warehouse-stored loans.* (1) The producer may arrange with the county office for the release of all or part of the commodity which is pledged as collateral for a warehouse-stored loan at or prior to the maturity of such loan by, with respect to the quantity of the commodity to be released, paying to CCC:

(i) The principal amount of the loan and charges plus interest, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25 Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.4(i), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC–699, Reconcentration Agreement and Trust Receipt, by the producer and warehouseman, CCC may during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse-stored loan. Any such approval shall be subject to the terms and conditions set forth in Form CCC–699, Reconcentration Agreement and Trust Receipt.

(3) A producer may, before the new warehouse receipt is delivered to CCC, pay to CCC:

(i) The principal amount of the loan and charges plus interest and applicable charges, or

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25.

(d) *Release of warehouse-stored note and security agreement.* The note and security agreement shall not be released until the loan has been satisfied in full.

§ 1421.21 Purchase agreements.

(a) *Quantity eligible for purchase.* An eligible producer may sell to CCC any or all of the producer's eligible commodity which is not pledged as collateral for a price support loan. A producer who has executed a price support purchase agreement may execute a price support loan with respect to the same quantity of such commodities prior to the final loan availability date. In such event, the loan shall have a maturity date which is the last day of the ninth calendar month following the month in which the loan application is approved CCC will not accept delivery of any quantity in excess of 110 percent of the quantity stated in the purchase agreement.

Settlement of the quantity not in excess of 110 percent of the quantity stated in the purchase agreement shall be made in accordance with § 1421.22.

(b) *Delivery period.* (1) In the case of an eligible commodity not in an approved warehouse, the producer must make delivery of the commodity the producer desires to sell to CCC within the period of time after the expiration date of the purchase agreement as specified in delivery instructions issued by the county office.

(2) In the case of eligible commodities stored in an approved warehouse, the producer must submit to the county office, not earlier than 15 days before the expiration date of the purchase agreement nor later than the day after such date, warehouse receipts for the quantity of the commodity the producer elects to sell to CCC. Notwithstanding any of the provisions of this section, in the case of an eligible farm-stored commodity covered by an approved purchase agreement the county committee may, on request of the producer, authorize early delivery of the commodity if the producer loses control of the storage structure or if there is insect infestation that cannot be controlled, danger of flood or damage to the storage structure, making it unsafe to continue storage of the commodity on the farm.

§ 1421.22 Settlement.

(a) *General.* The settlement of loans and purchase agreements shall be made by CCC on the basis of the quality and quantity of the commodity delivered to CCC by the producer.

(b) *Commodities stored in approved warehouses.* Settlements made by CCC with respect to eligible commodities which are acquired by CCC and which are stored in an approved warehouse shall be made on the basis of the entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(c) *Commodities stored in facilities other than approved warehouses.* (1) All eligible commodities which are stored in other than approved warehouses shall be delivered to CCC in accordance with instructions issued by CCC. Settlement for such commodities shall be made on the basis of entries set forth in the applicable warehouse receipt, supplemental certificate, and other accompanying documents.

(2) With respect to all commodities except peanuts, which are delivered from other than an approved warehouse, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the commodity at the producer's customary delivery point, as determined by CCC.

(3)(i) With respect to peanuts, settlement values for quota and additional peanuts shall be determined and announced annually by CCC. Settlement shall be made by CCC on the amount computed on the basis of net weight and quality of such peanuts with an allowance of 4 percent for Virginia type peanuts and an allowance of 3.5 percent for other types of peanuts in order to compensate producers for shrinkage during storage on peanuts delivered on or after January 31 of the year following the year in which the crop was produced less discounts of:

(A) $2 per ton, net weight, for each full 1 percent of foreign material in excess of 10 percent; and

(B) $10 per ton, net weight, for peanuts containing more than 10 percent moisture.

(ii) No allowance for shrinkage shall be made for storage with respect to peanuts delivered before February 1 of the year following the year in which the crop was produced.

(iii) If a producer delivers peanuts from a farm to CCC in a quantity that would exceed the farm poundage quota when added to the peanuts marketed, and considered marketed from the farm as quota peanuts, the additional peanut support rate shall be used with respect to such peanuts if CCC determines that the producer made an inadvertent error in determining the quantity of peanuts pledged as collateral as quota peanuts. If CCC determines that such error was not inadvertent, price support shall not be made available with respect to such quantity and marketing quota penalties shall be assessed in accordance with part 729 of this title.

(iv) The support rate for additional peanuts shall be used for all peanuts which do not grade "Segregation 1" at the time of delivery to CCC if the producer does not elect to settle such additional peanuts as quota peanuts. If the producer elects to settle such peanuts as quota peanuts, the quantity shall not exceed the lesser of:

(A) The difference between the production of Segregation 1 peanuts on the farm and the farm poundage quota; or

(B) The amount of the undermarketings of quota peanuts as shown on the farm marketing card.

(4) With respect to rice acquired by CCC at a location other than an approved warehouse, settlement shall be made on the basis of the class, grade, and quality entries set forth in the Federal-State inspection certificate and on the basis of the quantity set forth in the weight certificates. If rice is pledged as collateral for a farm-stored loan in an area where a location differential is in effect and such rice is delivered to CCC in an area where a differential is not applicable, settlement shall be made by CCC on the basis of the basic support rate which is in effect for the area in which delivery is made.

§ 1421.23 Foreclosure.

(a) *Removal from storage.* If the loan indebtedness (i.e., the amount of the note, interest, and charges) is not satisfied upon maturity, CCC may remove the commodity from storage, and assign, transfer, and deliver the commodity or documents evidencing title thereto at such time, in such manner, and upon such terms as CCC may determine, at public or private sale. Any such disposition may similarly be effected without removing the commodity from storage. The commodity may be processed before sale and CCC may become the purchaser of the whole or any part of the commodity at either a public or private sale.

(b) *When CCC takes title to commodity.* Upon maturity and nonpayment of the producer's note, title to the unredeemed collateral securing the note shall, at CCC's election, immediately vest in CCC without a sale thereof. When CCC acquires title to the unredeemed collateral, CCC shall have no obligation to pay for any market value which such collateral may have in excess of the loan indebtedness, i.e., the unpaid amount of the note and charges plus interest.

(c) *Commodity sold at less than amount due on loan.* If a farm-stored commodity removed by CCC from storage is sold at less than the amount due on the loan (excluding interest) the producer shall pay to CCC the difference between the amount due on the loan and the higher of the sales proceeds or the settlement value of the commodity removed by CCC and charges plus interest on such difference. The amount of the deficiency may be set off against any payment which would otherwise be due the producer under any other agricultural program administered by the Secretary of Agriculture or any other payments which are due or may become due the producer from CCC or any other agency of the United States.

§ 1421.24 Protein determinations.

(a) *Protein content determinations for warehouse-stored wheat.* With respect to Hard Red Winter and Hard Red Spring wheat tendered to CCC which is stored in an approved warehouse,

producers must obtain official protein content determinations or, if determined acceptable by CCC, protein content determinations arrived at by mutual agreement between the producer and the warehouseman. Costs of such determinations shall not be paid by CCC.

(b) *Protein content determinations for farm-stored wheat.* With respect to farmstored wheat, the basic support rate shall not be adjusted to reflect the protein content.

§ 1421.25 Market price repayments.

(a) Rice market repayments.

(1) A producer may repay a loan for a crop of rice at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for a crop; or

(ii) The higher of:

(A) The loan level determined for such crop multiplied by 70 percent for the 1991 and subsequent years crops; or

(B) The prevailing world market price, as determined by CCC.

(2) The prevailing world market price for a class of rice shall be dete'"mined by the CCC based upon a review of prices at which rice is being sold in world markets and a weighting of such prices through the use of information such as changes in supply and demand of rice, tender offers, credit concessions, barter sales, government-to-government sales, special processing costs for coatings or premixes, and other relevant price indicators, and shall be expressed in U.S. equivalent values f.o.b. vessel, U.S. port of export, per hundredweight as follows:

(i) U.S. grade No. 2,4 percent broken kernels, long grain milled rice;

(ii) U.S. grade No. 2,4 percent broken kernels, medium grain milled rice; and

(iii) U.S. grade No. 2,4 percent broken kernels, short grain milled rice.

(3) Export transactions involving rice and all other related market information will be monitored on a continuous basis for the purposes of paragraph (a)(2) of this section. Relevant information may be obtained for this purpose from U.S. Department of Agriculture field reports, international organizations, public or private research entities, international rice brokers, and any other source of reliable information.

(4) The prevailing world market price for a class of rice adjusted to U.S. quality and location (hereinafter referred to as the "adjusted world price" (AWP)), which is determined in accordance with paragraph (a)(5) of this section, shall be applicable to the provisions in this section.

(5) The AWP for each class of rice shall equal the prevailing world market price for a class of rice (U.S. equivalent value) as determined in accordance with paragraphs (a)(2) and (3) of this section and adjusted to U.S. quality and location as follows:

(i) The prevailing world market price for a class of rice shall be adjusted to reflect an f.o.b. mill position by deducting from such calculated price an amount which is equal to the estimated national average costs associated with:

(A) The use of bags for the export of U.S. rice, and

(B) The transfer of such rice from a mill location to fob. vessel at the U.S. port of export with such costs including, but not limited to, freight, unloading, wharfage, insurance, inspection, fumigation, stevedoring, interest, banking changes, storage, and administrative costs.

(ii) The price determined in accordance with paragraph (a)(5)(i) of this section shall be adjusted to reflect the market value of the total quantity of whole kernels contained in such milled rice by deducting the value of broken kernels contained therein, with such value of the broken kernels to be determined by multiplying the quantity of such broken kernels (4% per hundredweight) by the market value of such broken kernels. The market value of broken kernels shall be based upon the estimated domestic market values of all sizes of broken kernels.

(iii) The price determined in accordance with (a)(5)(ii) of this section shall be adjusted to reflect the per pound market value of whole kernels by dividing the price by the quantity of whole milled kernels contained in the milled rice (96% per hundredweight).

(iv) The price determined in accordance with paragraph (a)(5)(iii) of this section shall be adjusted to reflect the market value of whole kernels contained in 100 pounds of rough rice by multiplying such price by the estimated national average quantity of whole kernel rice by class obtained from milling 100 pounds of rough rice.

(v) The price determined in accordance with paragraph (a)(5)(iv) of this section shall be adjusted to reflect the total market value of rough rice by:

(A) Adding to such price:

(*1*) The market value of bran contained in the rough rice, computed by multiplying the domestic unit market value of bran by the estimated national average quantity of bran produced in milling 100 pounds of rice; and

(*2*) The market value of broken kernels contained in the rough rice, computed by multiplying the estimated domestic market values of all sizes of broken kernels by the estimated national average quantity of broken kernels produced min milling 100 pounds of rice;

(B) deducting from such price an estimated cost of milling rough rice; and

(C) deducting from such price an estimated cost of transporting rough rice from farm to mill locations.

(vi) The price determined in accordance with paragraph (a)(5)(v) of this section shall be adjusted to a whole kernel loan rate basis by deducting the estimated domestic market value of the total quantity of broken kernels contained in such rice and dividing the resulting value by the estimated national average quantity of milled whole kernels produced in milling 100 pounds of rice.

(6) The AWP for each class for rice, loan rate basis, shall be determined by CCC and shall be announced, to the extent practicable, on or after 3 p.m. Eastern time each Tuesday continuing through the last Tuesday of July 1996, but may be announced more or less frequently, as determined by CCC. In the event that Tuesday is a non-workday, the determination will be announced the next workday, on or after 3 p.m. Eastern time. The announced prices will be effective upon announcement and will remain effective until the next world price is announced.

(7) As a condition of permitting a producer to repay such a loan, CCC may require the producer to purchase CCC commodity certificates equal in value to an amount that does not exceed one-half the difference between the loan level and charges, plus interest, and the loan repayment amount.

(b) *Oilseeds market repayments.* For 1991 through 1995 crops of oilseeds, a producer may repay a loan at a level that is the lesser of:

(1) The loan level and charges, plus interest determined for such crop; or

(2) Such other level determined by CCC, not to be in excess of the loan level for such crop that will minimize potential loan forfeitures, accumulation of oilseed stocks by CCC, and the cost incurred by CCC in storing oilseeds, and to allow oilseeds produced in the United States to be marketed freely and competitively.

(c)(1) CCC may, in lieu of the repayment level determined in accordance with paragraph (b)(2) of this subsection, allow producers to repay a loan at the adjusted world price of the oilseed.

(2) The adjusted world price (AWP) for soybeans will be determined as follows:

(i) The prevailing world price for soybeans will be established at least weekly based upon the prior week's Thursday fob. quotes in U. S. dollars for soybeans in the major export markets, as determined by CCC, weighted against the total value of soybeans shipped from these markets using the prior 4-week average of weekly shipments.

(ii) If no price quotations are available for the prior Thursday, the prevailing world price will be based upon the most recent price information available.

(iii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality as appropriate.

(iv) The AWP for soybeans will be determined at least weekly and will be announced by CCC as soon as possible after 3 pm. Eastern time each Thursday. In the event that Thursday is not a workday, the determination will be announced the next workday after 3 p.m. Eastern time.

(3) The adjusted world price (AWP) for flaxseed will be determined as follows:

(i) The prevailing world price for flaxseed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC converted to U.S. dollars per metric ton. If price quotations are not available for one or more days in the 30 day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality as appropriate.

(iii) The adjusted world price for flaxseed will be determined at least monthly and will be announced by CCC as soon as possible after 3 pm. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the price determination will be announced the next workday after 3 p.m. Eastern time.

(4) The adjusted world price (AWP) for sunflower seed will be determined as follows:

(i) The prevailing world price for sunflower seed will be established at least monthly based on a monthly average of the major f.o.b. export market prices, as determined by CCC, for the month prior to the announcement. If no price quotations are available during the period, the prevailing world price will be based upon the previous monthly average available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight costs, other costs, and quality, as appropriate.

(iii) The AWP for sunflower seed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the AWP will be announced the following workday after 3 p.m. Eastern time.

(5) The adjusted world price (AWP) for canola will be determined as follows:

(i) The prevailing world price for canola will be established at least monthly based on a monthly average of the major f.o.b. export markets, as determined by CCC. If price quotations are not available for one or more days in the 30-day period ending the Friday prior to announcement, the available quotation during the period will be used.

(ii) The AWP will be the prevailing world price adjusted to U.S. location and exchange rate, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for canola will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the AWP will be announced the following workday after 3 p.m.

(6) The adjusted world price (AWP) for rapeseed will be determined as follows:

(i) The prevailing world price for rapeseed will be established at least monthly based upon a representative average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based on the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs and quality as appropriate.

(iii) The AWP for rapeseed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the price determination will be announced the following workday after 3 p.m. Eastern time.

(7) The adjusted world price for mustard seed will be determined as follows:

(i) The prevailing world price for mustard seed will be established at least monthly based upon a monthly average of available market prices, as determined by CCC, such as contract prices and f.o.b. spot market prices. If no price quotations are available for one or more days in the 30-day period ending the Friday prior to the announcement, the available quotations during the period will be used. If no price quotations are available during the 30-day period, the prevailing world price will be based upon the previous 30-day period available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location, reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for mustard seed will be determined at least monthly and will be announced by CCC as soon as possible after 3 p.m. Eastern time, the third Thursday of each month. In the event that Thursday is not a workday, the determination will be announced the next workday after 3 p.m. Eastern time.

(8) The adjusted world price for safflower seed will be determined as follows:

(i) The prevailing world price for safflower seed will be established at least monthly based upon a representative average of available U.S. contract prices, as determined by CCC, weighted by acreage. The prevailing world price will be based upon the most recent price information available.

(ii) The AWP will be the prevailing world price adjusted to U.S. location reflecting freight, other costs, and quality, as appropriate.

(iii) The AWP for safflower seed will be determined at least monthly and will be announced by the CCC as soon as possible after 3 p.m. Eastern time the third Thursday of the month. In the event that Thursday is not a workday, the AWP will be announced the next workday after 3 p.m. Eastern time.

(d) CCC may allow producers with rice or oilseed loans to request to lock in a loan repayment rate which has been announced by CCC in accordance with paragraphs (a) and (b) of this section, for not more than 30 days from the date of such request. In such cases:

(1) The producer shall file, on a form prescribed by CCC, an agreement to redeem all or a portion of the loan quantity for a loan at the announced price entered on the form,

(2) If such request is approved by CCC, the rate specified on such form shall be in effect for such producer for not more than 30 days from the date such request is made for such loan, and

(3) If the producer fails to redeem the specified loan quantity within the 30-day period, CCC will require the producer to redeem the loan quantity at not less than the loan level determined for such crop in accordance with paragraphs (a)(1)(i) or (b)(1)(i) of this section, as applicable for the crop.

(e) CCC shall determine and publicly announce the repayment levels for each crop of a commodity as follows:

(1) On a weekly basis for rice and oilseeds, except soybeans, and

(2) On a daily basis for soybeans.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a producer is limited in accordance with the regulations at part 1497 of this title.

§ 1421.26 Transfer of farm-stored loan to warehouse-stored association loan.

Producers may deliver peanuts under a farm-stored loan to the association and obtain loan advances on such peanuts with the prior approval of the county office anytime on or before January 31 following the calendar year in which the crop was grown. Association advances shall be payable jointly to the producer and the CCC and shall be used to settle the farm-stored loan.

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) *General.* Producer-handlers may, at any time before loan maturity, forfeit their additional peanuts to CCC and immediately repurchase such peanuts from CCC by paying the amount necessary under the following sales policies:

(1) For unrestricted use, at 105 percent of the quota loan rate, if purchased before December 31 of the calendar year in which the crop was grown, and at 107 percent of the quota loan rate, if purchased after December 31 of the calendar year in which the crop was grown.

(2) For edible export, at the sales price determined and announced by CCC.

(3) For crushing (either domestic or export), at the additional support level.

(b) *Purchases on or before January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Loans will be settled at the county office, and amounts collected in excess of that necessary to settle loans will be remitted to the association for the respective area. The association will credit such amounts to the appropriate price support loan pool. The producer should be listed as a participant in the loan pool for the purpose of determining and distributing net gains from the loan pool.

(c) *Purchases after January 31 following the calendar year in which the crop was grown.* The county committee shall determine the sale price under the appropriate sales policy specified in paragraph (a) of this section. Any amount collected in excess of the loan indebtedness shall accrue to CCC.

§ 1421.28 Required producer-handler records and supervision of farm-stored additional peanuts pledged as collateral for a loan or purchased by a producer-handler from loan.

(a) *Required records.*—(1) *Inspected peanuts.* Each producer-handler shall maintain records as required in 7 CFR part 1446 for all additional peanuts which are purchased and sold for which an ASCS–1007, Inspection Certificate and Sales Memorandum, is issued.

(2) *Peanuts which are not inspected.* The following records shall be maintained for all peanuts purchased from CCC which are not inspected. Each producer-handler shall maintain records which show all sales and other disposals of peanuts. Such records shall show date of sale, quantity, type, and to whom sold. Records shall be maintained in such a manner which will enable the county office to readily reconcile quantities sold with all peanuts produced by the producer. All records shall be maintained for a period of three years following the end of the marketing year in which the peanuts were produced.

(b) *Supervision of farm-stored peanuts.*—(1) *Pledged as collateral for a loan.* The county office shall inspect and account for all additional peanuts pledged as collateral for a loan as determined necessary by the county committee.

(2) *Additional peanuts purchased for use as seed and not inspected.* The county office shall supervise the disposition of all additional peanuts purchased for use as seed and not inspected. The identical peanuts pledged as collateral for a loan must be disposed of and the producer must account for all peanuts which were under additional loan. The producer-handler shall request a county office representative to supervise the disposition of the peanuts and shall give the county office at least 3 working days notice of the date of such disposition. The county office shall determine the extent to which supervision is needed.

(3) *Additional peanuts on which ASCS–1007 is issued.* The producer-handler shall be subject to all provisions in Part 1446 relating to the disposition of additional peanuts.

(c) *Costs of supervision.* The producer-handler shall pay all costs of supervision, as determined by the county committee for county office supervision when county office supervision is completed, and or determined by the association for peanuts supervised by association representatives when association supervision is completed.

(d) *Penalties.* The producer-handler is subject to penalties as provided in § 1446.59 with respect to any peanuts purchased in accordance with § 1421.27.

§ 1421.29 Loan deficiency payments.

(a) CCC will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop, the producer of such commodity must:

(1) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with this part;

(2) Agree to forego obtaining such loans or purchases; and

(3) Otherwise comply with all program requirements.

(c) The loan deficiency payment rate for a crop shall be the amount by which the price support loan level for the crop exceeds the level at which CCC has announced that producers may repay their price support loans in accordance with § 1421.25.

(d) The loan deficiency payment applicable to such crop shall be computed by multiplying the loan deficiency payment rate, as determined in accordance with paragraph (c) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan for which the loan deficiency payment is requested.

(e) The total amount of loan deficiency payment a producer may receive is limited in accordance with the regulations at part 1497 of this chapter.

(f) CCC will make 90 percent of the loan deficiency payment in accordance with paragraph (d) of this section. Notwithstanding any provisions in this section, a loan deficiency payment may be based on 100 percent of the net quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided on or before the final loan availability date for such commodity. If such production evidence is provided after the final loan availability date, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

§ 1421.30 Death, incompetency, or disappearance.

In case of the death, incompetency, or disappearance of any producer who is entitled to the payment of any sum in settlement of a loan, loan deficiency payment, or a purchase agreement, payment shall, upon proper application to the county office which made the loan, loan deficiency payment, or purchase agreement, be made to the persons who would be entitled to such producer's payment under the regulations contained in part 707 of this title—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1421.31 Recourse loans.

(a) CCC may make recourse loans including loans on high moisture corn, grain sorghum, and barley, available to eligible producers. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(b) CCC shall make recourse loans available to eligible producers of high moisture barley, corn, and grain sorghum. Repayment or settlement of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

§ 1421.32 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the producer will be paid only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1421.33 [Reserved]

Subpart—Rice Marketing Certificate Program

Authority: 7 U.S.C. 1441–2; 15 U.S.C. 714b and 714c.

§ 1421.320 General provisions.

(a) This subpart sets out the terms and conditions under which the Commodity Credit Corporation (CCC) shall make payments, in the form of commodity certificates, to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC to participate in the rice marketing certificate program.

(b) If, beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for a class of rice determined in accordance with § 1421.25(a)(1)(ii) of this title is below the current loan repayment rate for that class of rice determined in accordance with § 1421.25 of this part, then CCC, in order to make domestically-produced rice competitive in world markets and to maintain and expand exports of domestically produced rice, shall make payments available to eligible persons in accordance with the provisions of this subpart.

(c) Such payments shall be based upon the quantity of eligible rice which an eligible person has:

(1) Redeemed from a price support loan with cash or;

(2) With respect to eligible rice which has not been and will not be pledged as collateral for a price support loan, sold as evidenced by documentation acceptable to CCC.

§ 1421.321 Eligible persons.

For the purposes of this subpart, the following persons shall be considered to be eligible to enter into a Rice Marketing Certificate Agreement with CCC and to receive payment in accordance with this subpart:

(a) Producers of eligible rice, and

(b) Cooperative Marketing Associations which acquire the eligible rice production of their members and which have been approved in accordance with § 1425 of this title to obtain price support from CCC on behalf of their members.

§ 1421.322 Eligible rice.

For the purposes of this subpart, eligible rice is 1991 and subsequent crop rice (Oryza Sativa L.), unmilled and unprocessed, which consists of 50 percent or more of paddy kernels of rice and which is eligible to be pledged as collateral for price support loan as provided in this title, and with respect to which a payment in accordance with the provisions of this subpart has not been made available.

§ 1421.323 Rice marketing certificate agreement.

(a) Payments in accordance with this subpart shall be made available to eligible persons who have entered into a Rice Marketing Certificate Agreement with CCC and who have complied with the terms and conditions set forth in this subpart and the Rice Marketing Certificate Agreement.

(b) Rice Marketing Certificate Agreements may be obtained from local county Agricultural Stabilization and Conservation Service offices.

§ 1421.324 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates in accordance with part 1470 of this title.

§ 1421.325 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for the class of rice and the loan repayment level as specified in the rice Marketing Certificate Agreement in accordance with § 1421.25 of this title.

Signed at Washington, DC on March 1, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–5624 Filed 3–8–91; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PART 1

[EE–4–91]

RIN 1545–AP53

Combat Zone Compensation of Members of the Armed Forces

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to whether compensation received for active service in the Armed Forces of the United States in a combat zone is excludable from the recipient's gross income under section 112 of the Internal Revenue Code. The proposed regulations reflect various statutory changes enacted since the publication of existing regulations on this exclusion. These proposed regulations provide guidance to personnel departments of the Armed Forces and help service members determine their income tax liability for compensation received for service in a combat zone.

DATES: Written comments and requests for a public hearing must be received by May 10,1991.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–4–91), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Gregory J. Stull at (202) 566–4747 (not a toll-free number).

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under section 112 of the Internal Revenue Code of 1986 (Code), which provides an exclusion from gross income for compensation paid to members of the Armed Forces of the United States for service in a combat zone ("combat zone compensation exclusion"). These proposed regulations reflect the statutory changes made by sections 2(a) and 6(b) of Public Law 93–597, 88 Stat. 1950, and section 3(b) of Public Law 94–569, 90 Stat. 2699 (both amending §§ 112 and 2201 of the Code), and section 905 of Public Law 96–94, 97 Stat. 614, 636 (amending 37 U.S.C. 310). Many of these changes expanded the combat zone compensation exclusion by eliminating certain limits on its availability. These proposed regulations provide updated guidance on the exclusion so that members of the Armed Forces may fully understand its expanded benefits.

Explanation of Provisions

Section 112 of the Code excludes from gross income certain compensation received by members of the Armed Forces of the United States for active duty in a "combat zone." This exclusion applies to compensation received for the period of active service in the combat zone. It also applies to compensation received for the period in which the service member is hospitalized as a result of wounds, disease, or injury incurred while serving in the combat zone.

An area in which the Armed Forces of the United States are engaging or have engaged in combat is a "combat zone" for purposes of section 112 only if the President of the United States designates the area as a combat zone by Executive Order. Under § 1.112–1(j) of the existing regulations, members of the Armed Forces who perform military service in an area outside a combat zone specified by Executive Order are also deemed to serve in the combat zone for purposes of the exclusion under section 112 if their service is in direct support of the military operations in the combat zone and qualifies them for special pay authorized under section 310 of title 37 of the United States Code (37 U.S.C. 310).

Before October 1, 1963, special pay under 37 U.S.C. 310 was referred to as "hostile fire pay" because it could be authorized only if service members were subject to hostile fire or explosion of hostile mines. Effective October 1, 1963, 37 U.S.C. 310 was amended to add 37 U.S.C. 310(a)(4), which provides that special pay can also be authorized for certain service members who are on duty in a foreign area in which they are subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. The Department of Defense refers to special pay under 37 U.S.C. 310 (whether due to either hostile fire or imminent danger) as special pay for duty subject to hostile fire or imminent danger.

The existing Income Tax Regulations under section 112 of the Code do not reflect the amendment of 37 U.S.C. 310 providing for imminent danger pay. Paragraphs (e) and (f) of § 1.112–1 of the proposed regulations (updating paragraphs (j) and (k) of the existing regulations) clarify that special pay received under the imminent danger provision of 37 U.S.C. 310(a)(4) is treated in the same manner for purposes of section 112 as special pay received under the hostile fire provisions of 37 U.S.C. 310(a) (1) through (3). As a result, members of the Armed Forces who perform military service outside a combat zone are nevertheless deemed to serve in the combat zone during the period in which they perform service qualifying them for pay under any provision of 37 U.S.C. 310, including the imminent danger provision of 37 U.S.C. 310(a)(4), if the service is in direct support of military operations in the combat zone. The proposed regulations provide an example illustrating this provision.

Prior to July 1, 1973, the combat zone compensation exclusion only applied to compensation received for service in a combat zone "during an induction period" (generally, any period during which individuals could be inducted into the Armed Forces for training and service). This limitation was removed from section 112 by section 2(a) of Public Law 93–597. The proposed regulations reflect the elimination of the phrase "during the induction period" throughout § 1.112–1.

Section 1.112–1(a)(4) of the proposed regulations clarifies that the exclusion under section 112 applies only to combat zone compensation received from the Armed Forces of the United States, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government who are in missing status as a result of the Vietnam conflict). Payments by other employers (whether private enterprises or governmental entities) cannot be excluded from income under section 112.

In addition to these changes, these regulations contain other proposed amendments to the existing regulations that are designed to make the regulations clearer and better organized.

Effective date

The regulations are proposed to be effective January 16, 1991.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably nine copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Gregory J. Stull of the Office of the Assistant Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Deductions, Exemptions, Income taxes, Taxable income.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.112–1 is revised to read as follows:

§ 1.112–1 Combat zone compensation of members of the Armed Forces.

(a) *Combat zone compensation exclusion*—(1) *Amount excluded.* In addition to the exemptions and credits otherwise applicable, section 112 excludes from gross income the following compensation of members of the Armed Forces:

(i) *Enlisted personnel.* Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which the member served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone.

(ii) *Commissioned officers.* Compensation not exceeding the "monthly dollar limit" received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which the officer served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone. The "monthly dollar limit" is the monthly amount excludable from the officer's income under section 112(b) as amended. Beginning in 1986, the monthly dollar limit for periods of active service after 1985 became $500. As of March 11, 1991, the monthly dollar limit continues to be $500.

(2) *Time Limits on exclusion during hospitalization.* Compensation received for service for any month of hospitalization that begins more than 2 years after the date specified by the President in an Executive Order as the date of the termination of combatant activities in the combat zone cannot be excluded under section 112. Furthermore, compensation received while hospitalized after January 1978 for wounds, disease, or injury incurred in the Vietnam combat zone designated by Executive Order 11216 cannot be excluded under section 112.

(3) *Special terms.* A commissioned warrant officer is not a "commissioned officer" under section 112(b) and is entitled to the exclusion allowed to enlisted personnel under section 112(a). The term "compensation", for the purpose of section 112, does not include pensions and retirement pay. The term "Armed Forces of the United States" is defined (and members of the Armed Forces are described) in section 7701(a)(15).

(4) *Military compensation only.* Only compensation paid by the Armed Forces of the United States to members of the Armed Forces can be excluded under section 112. Compensation paid by other employers (whether private enterprises or governmental entities) to members of the Armed Forces cannot be excluded under section 112 even if the payment is made to supplement the member's military compensation or is labeled by the employer as compensation for active service in the Armed Forces of the United States. Compensation paid to civilian employees of the federal government, including civilian employees of the Armed Forces, cannot be excluded under section 112, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government in missing status due to the Vietnam conflict).

(b) *Service in combat zone*—(1) *Active Service.* The exclusion under section 112 applies only if active service is performed in a combat zone. A member of the Armed Forces is in active service if the member is actually serving in the Armed Forces of the United States. Periods during which a member of the Armed Forces is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service. A member of the Armed Forces in active service in a combat zone who becomes a prisoner of war or missing in action in the combat zone is deemed, for the purpose of section 112, to continue in active service in the combat zone for the period for which the member is treated as a prisoner of war or as missing in action for military pay purposes.

(2) *Combat zone status.* Except as provided in paragraphs (e) and (f) of this § 1.112–1, service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive Order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have been engaged in combat, and only if it is performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in that zone and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in that zone.

(3) *Partial month service.* If a member of the Armed Forces serves in a combat zone for any part of a month, the member is entitled to the exclusion for that month to the same extent as if the member has served in that zone for the entire month. If a member of the Armed Forces is hospitalized for a part of a month as a result of wounds, disease, or injury incurred while serving in that zone, the member is entitled to the exclusion for the entire month.

(4) *Payment time and place.* The time and place of payment are irrelevant in considering whether compensation is excludable under section 112. Thus, compensation can be excluded under section 112 whether or not it is received outside a combat zone or while the recipient is hospitalized or in a year different from that in which the service was rendered for which the compensation is paid. Compensation received by a member of the Armed Forces for services rendered while in active service can be excluded under section 112 even though payment is received subsequent to discharge or release from active service. Compensation credited to a deceased member's account for a period subsequent to the established date of the member's death and received by the member's estate can be excluded from the gross income of the estate under section 112 to the same extent that it would have been excluded from the gross income of the member had the member lived and received the compensation.

(c) *Hospitalization*—(1) *Presumption of combat zone injury.* If an individual is hospitalized for wound, disease, or injury while serving in a combat zone, the wound, disease, or injury will be presumed to have been incurred while serving in a combat zone, unless the contrary clearly appears. In certain cases, however, a wound, disease, or injury may have been incurred while serving in a combat zone even though the individual was not hospitalized for it while so serving. In exceptional cases, a wound, disease, or injury will not have been incurred while serving in a combat zone even though the individual was hospitalized for it while so serving.

(2) *Length of hospitalization.* An individual is hospitalized only until the date the individual is discharged from the hospital.

(3) *Examples of combat zone injury.*

Example (1). An individual is hospitalized for a disease in the combat zone where the individual has been serving for three weeks. The incubation period of the disease is two to four weeks. The disease is incurred while serving in the combat zone.

Example (2). The facts are the same as in *Example 1* except that the incubation period of the disease is one year. The disease is not incurred while serving in the combat zone.

Example (3). A member of the Air Force, stationed outside the combat zone, is shot while participating in aerial combat over the combat zone, but is not hospitalized until returning to the home base. The injury is incurred while serving in a combat zone.

Example (4). An individual is hospitalized for a disease three weeks after having departed from a combat zone. The incubation period of the disease is two to four weeks. The disease is incurred while serving in a combat zone.

(d) *Married members.* The exclusion under section 112 applies without regard to the marital status of the recipient of the compensation. If both spouses meet the requirements of the statute, then each spouse is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community property State, any exclusion from gross income under section 112 operates before apportionment of the gross income of the spouses under community property law. For example, a husband and wife are domiciled in a community property State and the member spouse is entitled, as a commissioned officer, to the benefit of the exclusion under section 112(b) of $500 for each month. The member receives $7,899 as compensation for active service for 3 months in a combat zone. Of that amount, $1,500 is excluded from gross income under section 112(b) and $6,399 is taken into account in determining the gross income of both spouses.

(e) *Service in area outside combat zone*—(1) *Combat zone treatment.* For purposes of section 112, a member of the Armed Forces who performs military service in an area outside the area designated by Executive Order as a combat zone is deemed to serve in that combat zone while the member's service is in direct support of military operations in that zone and qualifies the member for the special pay for duty subject to hostile fire or imminent danger authorized under section 310 of title 37 of the United States Code, as amended (37 U.S.C. 310) ("hostile fire/imminent danger pay").

(2) *Examples of combat zone treatment.* The examples below are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example (1). B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. B performs military service in Nearby Country in direct support of the military operations in the combat zone from June 1 through June 8 that qualifies B for hostile fire/imminent danger pay. B does not return to the combat zone during June. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

Example (2). B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. On June 1, B is wounded while performing military service in Nearby Country in direct support of the military operations in the combat zone that qualifies B for hostile fire/imminent danger pay. On June 2, B is transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. B is deemed to have incurred the wounds while serving in the combat zone on June 1. Accordingly, B is entitled to the exclusion under section 112 for June through October.

Example (3). B is stationed in Nearby Country for the entire month of June as a member of a ground crew servicing combat aircraft operating in the combat zone. B's service in Nearby Country during June does not qualify B for hostile fire/imminent danger pay. Accordingly, B is not deemed to serve in the combat zone during June and is not entitled to the exclusion under section 112 for that month.

Example (4). B is assigned to an air unit stationed in Nearby Country for the entire month of June. In June, members of air units of the Armed Forces stationed in Nearby Country fly combat and supply missions into and over Destination Country in direct support of military operations in the combat zone. B flies combat missions over Destination Country from Nearby Country from June 1 through June 8. B's service qualifies B for hostile fire/imminent danger pay. Accordingly, B is deemed to serve in the combat zone during June and is entitled to the exclusion under section 112. The result would be the same if B were to fly supply missions into Destination Country from Nearby Country in direct support of operations in the combat zone qualifying B for hostile fire/imminent danger pay.

Example (5). Assigned to an air unit stationed in Nearby Country, B was killed in June when B's plane crashed on returning to the airbase in Nearby Country. B was performing military service in direct support of the military operations in the combat zone at the time of B's death. B's service also qualified B for hostile fire/imminent danger pay. B is deemed to have died while serving in the combat zone or to have died as a result of wounds, disease or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds). The result would be the same if B's mission had been a supply mission instead of a combat mission.

Example (6). In June, B was killed as a result of an off-duty automobile accident while leaving the airbase in Nearby Country shortly after returning from a mission over Destination Country. At the time of B's death, B was not performing military duty qualifying B for hostile fire/imminent danger pay. B is not deemed to have died while serving in the combat zone or to have died as the result of wounds, disease or injury incurred while serving in the combat zone. Accordingly, B does not qualify for the benefits of section 692(a), section 692(b), or section 2201.

Example (7). B performs military service in Nearby Country from June 1 through June 8 in direct support of the military operations in the combat zone. Nearby Country is designated as an area in which members of the Armed Forces qualify for hostile fire/imminent danger pay due to imminent danger, even though members in Nearby Country are not subject to hostile fire. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

(f) *Nonqualifying presence in combat zone*—(1) *Inapplicability of exclusion.* The following members of the Armed Forces are not deemed to serve in a combat zone within the meaning of section 112(a)(1) or section 112(b)(1) or to be hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone within the meaning of section 112(a)(2) or section 112(b)(2)—

(i) Members present in a combat zone while on leave from a duty station located outside a combat zone;

(ii) Members who pass over or through a combat zone during the course of a trip between two points both of which lie outside a combat zone; or

(iii) Members present in a combat zone solely for their own personal convenience.

(2) *Exceptions for temporary duty or special pay.* Paragraph (f)(1) of this § 1.112–1 does not apply to members of the Armed Forces who—

(i) Are assigned on official temporary duty to a combat zone (including official temporary duty to the airspace of a combat zone); or

(ii) Qualify for hostile fire/imminent danger pay.

(3) *Examples of nonqualifying presence and its exceptions.* The examples below are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example (1). B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. On June 1, B voluntarily visits a city within the combat zone while on leave. B is not deemed to serve in a combat zone since B is present in a combat zone while on leave from a duty station located outside a combat zone.

Example (2). B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. During June, B takes authorized leave and elects to spend the leave period by visiting a city in the combat zone. While on leave in the combat zone, B is subject to hostile fire qualifying B for hostile fire/imminent danger pay. Although B is present in the combat zone while on leave from a duty station outside the combat zone, B qualifies for the exclusion under section 112 because B qualifies for hostile fire/imminent danger pay while in the combat zone.

Example (3). B is a member of the Armed Forces assigned to a ground unit stationed in the combat zone. During June, B takes authorized leave and elects to spend the leave period in the combat zone. B is not on leave from a duty station located outside a combat zone, nor is B present in a combat zone solely for B's own personal convenience. Accordingly, B's combat zone tax benefits continue while B is on leave in the combat zone.

Example (4). B is assigned as a navigator to an air unit stationed in Nearby Country. On June 4, during the course of a flight between B's home base in Nearby Country and another base in Destination Country, the aircraft on which B serves as a navigator flies over the combat zone. B is not on official temporary duty to the airspace of the combat zone and does not qualify for hostile fire/imminent danger pay as a result of the flight. Accordingly, B is not deemed to serve in a combat zone since B passes over the combat zone during the course of a trip between two points both of which lie outside the combat zone without either being on official temporary duty to the combat zone or qualifying for hostile fire/imminent danger pay.

Example (5). B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. B enters the combat zone on a 3-day pass. B is not on official temporary duty and does not qualify for hostile fire/imminent danger pay while present in the combat zone. Accordingly, B is not deemed to serve in a combat zone since B is present in the combat zone solely for B's own personal convenience.

Example (6). B, stationed in Nearby Country, is a military courier assigned on official temporary duty to deliver military pouches in the combat zone and in Destination Country. On June 1, B arrives in the combat zone from Nearby Country, and on June 2, B departs for Destination Country. Although B passes through the combat zone during the course of a trip between two points outside the combat zone, B is nevertheless deemed to serve in a combat zone while in the combat zone because B is assigned to the combat zone on official temporary duty.

Example (7). B is a member of an Armed Forces ground unit stationed in Nearby Country. On June 1, B took authorized leave and elected to spend the leave period by visiting a city in the combat zone. On June 2, while on leave in the combat zone, B was wounded by hostile fire qualifying B for hostile fire/imminent danger pay. On June 3, B was transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. Although B was present in the combat zone while on leave from a duty station outside the combat zone, B is deemed to have incurred the wounds while serving in the combat zone on June 2, because B qualified for hostile fire/imminent danger pay while in the combat zone. Accordingly, B is entitled to the exclusion under section 112 for June through October.

Example (8). The facts are the same as in *Example (7)* except that B dies on September 1 as a result of the wounds incurred in the combat zone. B is deemed to have died as a result of wounds, disease or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–5584 Filed 3–8–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR 155

[DoD Directive 5220.6]

Defense Industrial Personnel Security Clearance Program

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This document updates policy, criteria, and procedures of the Defense Industrial Personnel Security Clearance Review Program.

DATES: Comments are requested by April 10, 1991.

ADDRESSES: Send comments to: Directorate for Industrial Security Clearance Review, P.O. Box 3656, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Leon J. Schechter, telephone, (703) 696–4598.

SUPPLEMENTARY INFORMATION: The reissuance incorporates adjudication policies set forth in DoD 5200.2–R, "DoD Personnel Security Program", January 1987 (32 CFR part 154), reinstates reversal authority for Appeal Board, amends reimbursement procedures; provides for adverse action upon issuance of Administrative Judge decision rather than upon appellate decisions; provides for open hearings; and various other changes such as role of Director. All comments will be available for examination upon request. The prior publication of this rule may be found on 32 CFR part 155. This action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; result in a major increase in the cost or prices for consumers, industries, state or local governments; or adversely effect competition, employment, investment, or innovation. The rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no Regulatory Flexibility Analysis was prepared.

List of Subjects in 32 CFR Part 155

Administrative practice and procedure, Business and industry, Classified information.

Accordingly, 32 CFR part 155 is revised to read as follows:

PART 155—DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE PROGRAM

Sec.

155.1 Purpose.
155.2 Applicability and scope.
155.3 Definitions.
155.4 Policy.
155.5 Responsibilities.
155.6 Procedures.

Appendix A to Part 155—Additional Procedural Guidance

Authority: E.O. 10865, 3 CFR, 1959—1963 Comp., p. 398.

§ 155.1 Purpose.

This part updates the policy, criteria, and procedures of the Defense Industrial Personnel Security Clearance Review Program implementing E.O. 10865.

§ 155.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman, Joint Chiefs of Staff and Joint Staff; the Inspector General of the Department of Defense (IG, DoD); and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) By mutual agreement, also extends to other Federal Agencies that include:

(1) Department of Agriculture.
(2) Department of Commerce.
(3) Department of Interior.
(4) Department of Justice.
(5) Department of Labor.
(6) Department of State.
(7) Department of Transportation.
(8) Department of Treasury.
(9) Environmental Protection Agency.

(10) Federal Emergency Management Agency.
(11) Federal Reserve System.
(12) General Accounting Office.
(13) General Services Administration.
(14) National Aeronautics and Space Administration.
(15) National Science Foundation.
(16) Small Business Administration.
(17) United States Arms Control and Disarmament Agency.
(18) United States International Trade Commission.
(19) United States Trade Representative.
(20) United States Information Agency.

(c) Applies to cases that the Defense Industrial Security Clearance Office (DISCO) forwards to the Directorate for Industrial Security Clearance Review (DISCR) for action under this part to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(d) Provides a program that may be extended to other security cases at the direction of the Deputy Under Secretary of Defense for Security Policy (DUSD(SP)).

(e) Does not apply to cases in which:

(1) A security clearance is withdrawn because the applicant no longer has a need for access to classified information;

(2) An interim security clearance is withdrawn by the DISCO during an investigation; or

(3) A security clearance is withdrawn for administrative reasons that are without prejudice as to a later determination of whether the grant or continuance of the applicant's security clearance would be clearly consistent with the national interest.

(f) Does not apply to cases for access to sensitive compartmented information or a special access program.

§ 155.3 Definitions.

(a) *Applicant.* Any U.S. citizen who holds or requires a security clearance or any immigrant alien who holds or requires a limited access authorization for access to classified information needed in connection with his or her employment in the private sector; any U.S. citizen who is a direct-hire employee or selectee for a position with the North Atlantic Treaty Organization (NATO) and who holds or requires NATO certificates of security clearance or security assurances for access to U.S. or foreign classified information; or any U.S. citizen nominated by the Red Cross or United Service Organizations (USO) for assignment with the Military Services overseas. The term "applicant" does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such Agencies in response to a request from NATO.

(b) *Clearance Decision.* A decision made in accordance with this part concerning whether it is clearly consistent with the national interest to grant an applicant a security clearance for access to Confidential, Secret or Top Secret information. A favorable clearance decision establishes eligibility of the applicant to be granted a security clearance for access at the level governed by the documented need for such access, and the type of investigation specified for that level in 32 CFR part 154. An unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance.

§ 155.4 Policy.

It is DoD policy that:

(a) All proceedings provided for by this part shall be conducted in a fair and impartial manner.

(b) A clearance decision reflects the basis for an ultimate finding as to whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(c) Except as otherwise provided for by E.O. 10865 or this part, a final unfavorable clearance decision shall not be made without first providing the applicant with:

(1) Notice of specific reasons for the proposed action.

(2) An opportunity to respond to the reasons.

(3) Notice of the right to a hearing and the opportunity to cross-examine persons providing information adverse to the applicant.

(4) Opportunity to be represented by counsel or personal representative.

(5) Written notice of final clearance decisions.

(6) Notice of appeal procedures.

(d) Actions pursuant to this part shall cease upon termination of the applicant's need for access to classified information except in those cases in which:

(1) A hearing has already commenced;

(2) A clearance decision has been issued; or

(3) The applicant's security clearance was suspended and the applicant provided a written request that the case continue.

§ 155.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall:

(1) Establish investigative policy and adjudicative standards and oversee their application.

(2) Coordinate with the GC, DoD, on policy affecting clearance determinations.

(3) Issue clarifying guidance and instructions as needed.

(4) Designate the DUSD(SP), as appropriate, to implement paragraphs (a) (1) through (3) of this section.

(b) The General Counsel, Department of Defense (GC, DoD) shall:

(1) Establish guidance and provide oversight as to legal sufficiency of procedures and standards established by this Directive.

(2) Establish the organization and composition of the DISCR.

(3) Designate a civilian attorney to be the Director, DISCR.

(4) Issue clarifying guidance and instructions as needed.

(5) Administer the program established by this Directive.

(6) Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Designate attorneys to be Department Counsels assigned to the DISCR to represent the Government's interest in cases and related matters within the applicability and scope of this part.

(8) Designate attorneys to be Administrative Judges assigned to the DISCR.

(9) Designate attorneys to be Administrative Judge members of the DISCR Appeal Board.

(10) Provide for supervision of attorneys and other personnel assigned or attached to the DISCR.

(11) Develop and implement policy established or coordinated with the GC, DoD, in accordance with this part.

(12) Establish and maintain qualitative and quantitative standards for all work by DISCR employees arising within the applicability and scope of this part.

(13) Ensure that the Administrative Judges and Appeal Board members have the requisite independence to render fair and impartial decisions consistent with DoD policy.

(14) Provide training, clarify policy, or initiate personnel actions, as appropriate, to ensure that all DISCR decisions are made in accordance with policy, procedures, and standards established by this part.

(15) Provide for maintenance and control of all DISCR records.

(16) Take actions as provided for in § 155.6(b) and the additional procedural guidance in the Appendix to this part.

(17) Establish and maintain procedures for timely assignment and completion of cases.

(18) Issue guidance and instructions, as needed, to fulfill the foregoing responsibilities.

(19) Designate the Director, DISCR, to implement paragraphs (b) (5) through (18) of this section under general guidance of the GC, DOD.

(c) The Heads of DoD Components shall provide (from resources available to the designated DoD Component) financing, personnel, personnel spaces, office facilities, and related administrative support required by the DISCR.

(d) The Director, Defense Investigative Service (DIS), shall ensure that cases within the scope and applicability of this part are referred promptly to the DISCR, as required, and that clearance decisions by the DISCR are acted upon without delay.

§ 155.6 Procedures.

(a) Applicants shall be investigated in accordance with the standards in 32 CFR part 154.

(b) An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DISCR to reach a clearance decision and to otherwise comply with the procedures authorized by this part. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant and material information or otherwise cooperate at any stage in the investigation or adjudicative process may prevent the DISCR from making a clearance decision. If an applicant fails or refuses to:

(1) Provide relevant and material information or to authorize others to provide such information,

(2) Proceed in a timely or orderly fashion in accordance with this part, or

(3) Follow directions of an Administrative Judge or the Appeal Board, the Director, DISCR, or designee, may revoke any security clearance held by the applicant and discontinue case processing. Requests for resumption of case processing and reinstatement of a security clearance may be approved by the Director, DISCR, only upon a showing of good cause. If the request is denied, in whole or in part, the decision is final and bars reapplication for a security clearance for 1 year from the date of the revocation.

(c) Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in § 154.7 including as appropriate:

(1) Nature and seriousness of the conduct and surrounding circumstances.

(2) Frequency and recency of the conduct.

(3) Age of the applicant.

(4) Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

(5) Absence or presence of rehabilitation.

(6) Probability that the circumstances or conduct will continue or recur in the future.

(d) Whenever there is a reasonable basis for concluding that an applicant's continued access to classified information poses an imminent threat to the national interest, any security clearance held by the applicant may be suspended by the DUSD (SP), with the concurrence of the GC, DoD, pending a final clearance decision. This suspension may be rescinded by the same authorities upon presentation of additional information that conclusively demonstrates that an imminent threat to the national interest no longer exists.

(e) Nothing contained in this part shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another Department or Agency to deny or revoke a security clearance when the security of the nation so requires. Such a determination shall be conclusive. This authority may be exercised only when it has been determined that the hearing procedures and other provisions of this part cannot be invoked consistent with the national security.

(f) Additional procedural guidance is set forth in the Appendix A to this part.

Appendix A to Part 155—Additional Procedural Guidance

1. When the DISCO cannot affirmatively find that it is clearly consistent with the national interest to grant or continue a security clearance for an applicant, the case shall be promptly referred to the DISCR.

2. Upon referral, the DISCR shall make a prompt determination whether to grant or continue a security clearance, issue a statement of reasons (SOR) as to why it is not clearly consistent with the national interest to do so, or take interim actions, including but not limited to:

a. Direct further investigation.

b. Propound written interrogatories to the applicant or other persons with relevant information.

c. Require the applicant to undergo a medical evaluation by a DoD Psychiatric Consultant.

d. Interview the applicant.

3. An unfavorable clearance decision shall not be made unless the applicant has been provided with a written SOR that shall be as detailed and comprehensive as the national security permits. A letter of instruction with the SOR shall explain that the applicant or Department Counsel may request a hearing. It shall also explain the adverse consequences for failure to respond to the SOR within the prescribed timeframe.

4. The applicant must submit a detailed written answer to the SOR under oath or affirmation that shall admit or deny each listed allegation. A general denial or other similar answer is insufficient. To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer. The answer must be received by the DISCR within 20 days from receipt of the SOR. Requests for an extension of time to file an answer may be submitted to the Director, DISCR, or designee, who in turn may grant the extension only upon a showing of good cause.

5. If the applicant does not file a timely and responsive answer to the SOR, the Director, DISCR, or designee, may discontinue processing the case, deny issuance of the requested security clearance, and direct the DISCO to revoke any security clearance held by the applicant.

6. Should review of the applicant's answer to the SOR indicate that allegations are unfounded, or evidence is insufficient for further processing, the Chief Department Counsel shall take such action as appropriate under the circumstances, including but not limited to withdrawal of the SOR and transmittal to the Director for notification of DISCO for appropriate action.

7. If a hearing is requested by the applicant or Department Counsel, the case will be assigned to an Administrative Judge for a clearance decision based on the hearing record. Following issuance of a notice of hearing by the Administrative Judge, or designee, the applicant shall appear in person with or without counsel or a personal representative at a time and place designated by the notice of hearing. The applicant shall be notified at least 15 days in advance of the time and place of the hearing, which generally shall be held at a location in the United States within a metropolitan area near the applicant's place of employment or residence. A continuance may be granted by the Administrative Judge only for good cause. Hearings may be held outside of the United States in NATO cases, or in other cases upon a finding of good cause by the Director, DISCR, or designee.

8. If the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing within 20 days of receipt of the applicant's answer, the case will be assigned to an Administrative Judge for a clearance decision based on the written record. Department Counsel shall provide the applicant with a copy of all relevant and material information that could be adduced

at a hearing. The applicant shall have 30 days from receipt of the information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.

9. The Administrative Judge may require a prehearing conference.

10. The Administrative Judge may rule on questions pertaining to procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner.

11. Discovery by the applicant is limited to non-privileged documents and material subject to control by the DISCR. Discovery by Department Counsel after issuance of an SOR may be granted by the Administrative Judge only upon a showing of good cause.

12. A hearing shall be open except when the applicant requests that it be closed, or when the Administrative Judge determines that there is a need to protect classified information or there is other good cause for keeping the proceeding closed.

13. Department Counsel and the applicant shall serve each other with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge.

14. Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.

15. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted or proven by Department Counsel, and has the ultimate burden of persuasion as to his or her security worthiness.

16. Witnesses shall be subject to cross-examination.

17. The SOR may be amended at the hearing by the Administrative Judge on his or her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause.

18. The Administrative Judge hearing the case shall notify the applicant and all witnesses testifying that 18 U.S.C. 1001 is applicable.

19. The Federal Rules of Evidence shall serve as a guide. Relevant and material evidence may be received subject to rebuttal, and technical rules of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record.

20. Official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Agency head concerned, to safeguard classified information within industry pursuant to E.O. 10865. An ROI may be received with an authenticating witness provided it is otherwise permitted by the Federal Rules of Evidence.

21. Records that cannot be inspected by the applicant because they are classified may be received and considered by the Administrative Judge, provided the GC, DoD:

a. Made a preliminary determination that such evidence appears to be relevant and material; and

b. Determined that failure to receive and consider such evidence would be substantially harmful to the national security.

22. A written or oral statement adverse to the applicant on a controverted issue may be received and considered by the Administrative Judge without affording an opportunity to cross-examine the person making the statement orally, or in writing when justified by the circumstances, only in either of the following circumstances:

a. If the head of the Department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his or her identity would be substantially harmful to the national interest; or

b. If the GC, DoD, has determined the statement concerned appears to be relevant, material, and reliable; failure to receive and consider the statement would be substantially harmful to the national security; and the person who furnished the information cannot appear to testify due to the following:

(1) Death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or

(2) Some other cause determined by the Secretary of Defense, or when appropriate by the Agency head, to be good and sufficient.

23. Whenever evidence is received under item 21 or 22, above, the applicant shall be furnished with as comprehensive and detailed a summary of the information as the national security permits. The Administrative Judge and Appeal Board may make a clearance decision either favorable or unfavorable to the applicant based on such evidence, but any final determination adverse to the applicant shall be made only by the Secretary of Defense or the Agency head, based on a personal review of the case record.

24. A verbatim transcript shall be made of the hearing. The applicant shall be furnished one copy of the transcript, less the exhibits, without cost.

25. The Administrative Judge shall make a written clearance decision in a timely manner setting forth pertinent findings of fact, policies, and conclusions as to the allegations in the SOR, and whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. The applicant and Department Counsel shall each be provided a copy of the clearance decision. In cases in which evidence is received under items 21 and 22, above, the Administrative Judge's written clearance decision may require deletions in the interest of national security.

26. If the Administrative Judge determines that it is not clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the Director, DISCR, or designee, shall expeditiously notify the DISCO, which shall in turn notify the applicant's employer of the denial or revocation of the applicant's security clearance. The letter forwarding the Administrative Judge's clearance decision to the applicant shall advise the applicant that these actions are being taken, and that the applicant may appeal the Administrative Judge's clearance decision.

27. If the Administrative Judge decides that it is clearly consistent with the national interest for the applicant to be granted, or to retain a security clearance, the DISCO shall be so notified by the Director, DISCR, or designee, when the clearance decision becomes final.

28. The applicant or Department Counsel may appeal the Administrative Judge's clearance decision by filing a written notice of appeal with the Director, DISCR, or designee, within 20 days after the date of the Administrative Judge's clearance decision. A notice of appeal received after 20 days from the date of the clearance decision shall not be accepted by the Director, DISCR, or designee, except for good cause. The notice of appeal merely signifies the intention to file an appeal. A notice of cross appeal may be filed within 10 days of receipt of the notice of appeal.

29. Upon receipt of a notice of appeal, the Appeal Board shall be provided the case record. No new evidence shall be received or considered by the Appeal Board.

30. After filing a timely notice of appeal, a written appeal brief must be received by the Appeal Board within 60 days from the date of the Administrative Judge's clearance decision. The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any alleged error. A written reply brief, if any, must be filed within 30 days from receipt of the appeal brief. A copy of any brief filed must be served upon the applicant or Department Counsel, as appropriate.

31. Requests for a reasonable extension of time for submission of briefs may be submitted to the Chair of the Appeal Board, or designee. A copy of any request for extension of time must be served on the opposing party at the time of submission. The Chair of the Appeal Board, or designee, shall be responsible for controlling the Appeal Board's docket, and has authority to enter default orders in appropriate cases and to vacate such default orders upon a showing of good cause.

32. The Appeal Board shall address the material issues raised by the parties to determine whether harmful error occurred. Its scope of review shall be to determine whether or not:

a. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge;

b. The Administrative Judge adhered to the procedures required by E.O. 10865 and this part;

c. The Administrative Judge's rulings and conclusions are arbitrary, capricious, or contrary to law.

33. The Appeal Board shall issue a written clearance decision addressing the material issues raised on appeal. The Appeal Board shall have authority to:

a. Affirm the decision of the Administrative Judge; or

b. Remand the case to an Administrative Judge to correct identified error. If the case is remanded, the Appeal Board shall specify the action to be taken on remand; or

c. Reverse the decision of the Administrative Judge if correction of identified error mandates such action.

34. A copy of the Appeal Board's written clearance decision shall be provided to both parties. In cases in which evidence was received under items 21 and 22, above, the Appeal Board's clearance decision may require deletions in the interest of national security.

35. Upon remand, the case file shall be assigned to an Administrative Judge for correction of error(s) in accordance with the Appeal Board's clearance decision. The assigned Administrative Judge shall make a new clearance decision in the case after correcting the error(s) identified by the Appeal Board. The Administrative Judge's clearance decision after remand shall be provided to both parties. The clearance decision after remand may be appealed pursuant to items 28–35, above.

36. A clearance decision shall be considered final when:

a. A security clearance is granted or continued pursuant to item 2., above;

b. No timely notice of appeal is filed;

c. No timely appeal brief is filed after a notice of appeal has been filed;

d. The appeal has been withdrawn;

e. When the Appeal Board affirms or reverses an Administrative Judge's determination; or

f. When a decision has been made by the Secretary of Defense or Agency head pursuant to item 23, above.

The Director, DISCR, or designee, shall notify the DISCO of all final clearance decisions.

37. An applicant whose security clearance has been finally denied or revoked by the DISCR is barred from reapplication for one year from the date of the initial unfavorable clearance decision.

38. A reapplication for a security must be made initially by the applicant's employer to the DISCO and is subject to the same processing requirements as those for a new security clearance application. The applicant is thereafter responsible for providing the Director, DISCR, with a copy of any adverse clearance decision together with evidence that circumstances or conditions previously found against the applicant have been rectified or sufficiently mitigated to warrant reconsideration.

39. If the Director, DISCR, determines that reconsideration is warranted, the case shall be subject to all provisions of this part for making a clearance decision.

40. If the Director, DISCR, determines that reconsideration is not warranted, the DISCR shall notify the applicant of this decision. Such a decision is final and bars further reapplication for an additional 1 year period from the date of the decision rejecting the reapplication.

41. Nothing in this part is intended to give an applicant reapplying for a security clearance any greater rights than those applicable to any other applicant under this part.

42. An applicant may petition for reimbursement of loss of earnings resulting from the suspension, revocation, or denial of his security clearance. The petition for reimbursement must include as an attachment the clearance decision granting the security clearance and documentation supporting the reimbursement claim. The Director, DISCR, or designee, may in his or her discretion require additional information from the petitioner.

43. Claims for reimbursement must be filed with the Director, DISCR, or designee, within 1 year after the date the security clearance is granted. Department Counsel generally shall file a response within 60 days after receipt of applicant's petition for reimbursement.

44. Reimbursement is authorized only if the applicant demonstrates by clear and convincing evidence to the Director, DISCR, that all of the following conditions are met:

a. The suspension, denial, or revocation was the primary cause of the claimed pecuniary loss; and

b. The suspension, denial, or revocation was due to gross negligence of the Department of Defense at the time the action was taken, and not in any way by the applicant's failure or refusal to cooperate.

45. The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or denial and the applicant's interim earnings, and further shall be subject to reasonable efforts on the part of the applicant to mitigate any loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failures to act. Reimbursement is not authorized for loss of merit raises and general increases, loss of employment opportunities, counsel's fees, or other costs relating to proceedings pursuant to this Directive.

46. Approval of claims by the Director, DISCR, shall be forwarded to the Agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any further claim against the United States or any Federal Agency, or any of its officers or employees.

47. Clearance decisions issued by Administrative Judges and the Appeal Board shall be indexed and made available in redacted form to the public.

Dated: February 18, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-4298 Filed 3-8-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 162

[DoD Instruction 5010.38]

Productivity Enhancing Capital Investment

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Productivity Enhancing Capital Investment (PECI) Program allows Department of Defense (DoD) Military Services and Defense Agencies to compete annually for $175 millions dollars in funds designed to improve quality and productivity and apply proven technological advancements. This part, "Productivity Enhancing Capital Investment", updates PECI Program policy, criteria, responsibilities, procedures, guidance for the PECI process and authorizes publications and maintenance of PECI handbook and revises 32 CFR part 162. Contractors may provide activities with information that support innovative application of technology or productivity investments at Government owned, contractor operated (GOCO) facilities.

DATES: Comments must be received by April 10, 1991.

ADDRESSES: Forward comments to: Defense Productivity Program Office, Two Skyline Place, room 1404, 5203 Leesburg Pike, Falls Church, VA 22041-3466.

FOR FURTHER INFORMATION CONTACT: Lee A. Wexel, (703) 756-2346.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 162

Armed Forces; Government procurement.

Accordingly, title 32, chapter I, subchapter E is proposed to be amended to add part 162 to read as follows:

PART 162—PRODUCTIVITY ENHANCING CAPITAL INVESTMENT

Sec.

162.1 Purpose.
162.2 Applicability and scope.
162.3 Definitions.
162.4 Policy.
162.5 Responsibilities.
162.6 Procedures.
162.7 Information requirements.

Appendix A to Part 162—Reporting Procedures

Authority: 10 U.S.C. 136; E.O. 12637, 3 CFR, 1988 Comp., P. 586.

§ 162.1 Purpose.

(a) This part updates policy, criteria, responsibilities, procedures, and guidance for the Productivity Enhancing Capital Investment (PECI) processes.

(b) This part provides the authority to publish and maintain the Department of Defense (DoD) "Productivity Enhancing Capital Investment (PECI) Handbook," DoD 5010.36–H [1], in the DoD Directive System.

§ 162.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Joint Staff, the Defense Agencies, and the Department of Defense (DoD) Field Activities (hereafter referred to collectively as "DoD Components").

(b) This part encompasses the acquisition of equipment and facilities to improve the productivity, quality, and processes of DoD Components. This includes major facilities, equipment or process modernization, as well as efforts to improve the performance of individual jobs, tasks, procedures, operations, and processes.

(c) This part encompasses productivity enhancing investments at appropriated and industrially funded activities. For industrially funded activities, projects may participate in the PECI program on an exception basis; primarily this includes facilities, multi-function projects, prototypes, demonstrations, and cross-service initiatives. Investment at Government-owned, contractor-operated (GOCO) facilities are limited to those for which the Department of Defense has responsibility to provide equipment or facilities and from which productivity benefits can be recovered within existing contractual provisions.

§ 162.3 Definitions.

(a) *Capital investment.* The acquisition, installation, transportation, and other costs needed to place equipment or facilities in operation meeting DoD capitalization requirements.

(b) *Economic life.* The period of time over which the benefits to be gained from a project may reasonably be expected to accrue to the Department of Defense (see DoD Instruction 7041.3 [2].

(c) *Internal Rate of Return (IRR).* The discount rate that equates the present value of the future cash inflows with the present value costs of an investment.

(d) *Life-cycle savings.* The estimated cumulated budgetary savings expected over the life of the project.

(e) *Net present value of investment.* The difference between the present value benefit and the present value cost at a given discount rate.

(f) *Off-the-shelf.* Equipment that is readily available through government or commercial sources or that can be fabricated through combination or modification of existing equipment.

(g) *Pay back period.* The number of years (to one decimal place) required for the (un-discounted) cumulative cash inflow to have the same value as the investment cost.

(h) *Productivity.* The efficiency with which resources are used to provide a government service or product at specified levels of quality and timeliness.

(i) *Productivity enhancement.* A decrease in the unit cost of products and services delivered with equal or better levels of quality and timeliness. (syn: Productivity Improvement)

(j) *Productivity Enhancing Capital Investment (PECI).* Equipment or facility funding that will improve government service, products, quality, or timeliness. PECI projects are funded using PIF, PEIF, and CSI methods. PIF, PEIF, and CSI funding methods are defined as:

(1) *Component-Sponsored Investment (CSI).* Funding provided by DoD Component programs and included in appropriations in response to DoD Component-initiated budget requests for specific items. To qualify for CSI financing, projects must meet DoD Component requirements.

(2) *Productivity Investment Fund (PIF).* Funding provided through OSD program and budget guidance to finance competitively selected PECIs. To qualify for PIF financing, projects must cost over $150,000 and amortize within 4 years of the operational date.

(3) *Productivity Enhancing Incentive Fund (PEIF).* Funding provided by the DoD Component that is established to provide timely financing for fast pay back PECI opportunities. To qualify for PEIF financing, projects are expected to have a pay back period of 2 years or less and must meet the criteria established in this Instruction.

(k) *PECI, benefits.* Benefits resulting from PECIs are classified as budgetary savings or as cost avoidance:

(1) *Budgetary savings.* Benefits that can be precisely measured, quantified, and placed under management control at time of realization. Budgetary savings can be reflected as specific reductions in the budget, after they have been achieved. Examples include costs for manpower authorizations/funded work year reductions, reduced or eliminated operating costs (utilities, travel, repair), and reduced or eliminated parts and contracts. Budget savings are used in calculating IRR, 5 Year/7 Year/Life Cycle RIO, and RIMS.

(2) *Cost-avoidance.* Benefits from actions that obviate the requirements for an increase in future levels of manpower or costs that would be necessary if present management practices were continued. The effect of cost-avoidance savings is the achievement of a higher level of readiness at level staffing cost or the absorption of a growing work load at the same level of staffing or cost. The effect of cost-avoidance savings may also be stated as value of output, quality, or timeliness. Cost-avoidance benefits are restricted to a 5-year budget estimate period. Cost avoidance is used in calculating the IRR which includes equivalent manpower and manyear dollar values.

(l) *Post Investment Assessment* (PIA). A PIA is conducted by DoD Components to establish accountability and provide information to improve future investment strategies.

(m) *Quality.* The new management philosophy of Total Quality Management that focuses on continuous improvements in customer satisfaction, processes that eliminate waste, and changes that reduce overall unit cost of DoD Component outputs.

(n) *Return on Investment (ROI).* The ratio of total un-discounted net savings to the investment cost. (syn: Savings to Investment Ratio (SIR))

(o) *Return on Investment in Manpower Savings (RIMS).* The ratio of the number of manpower authorizations (or funded manyears) to the investment costs. Equivalent manhours or manyears, as well as a reduction in requirements without authorizations, are not included in this calculation.

§ 162.4 Policy.

It is DoD policy that:

(a) The PECI program shall be an integral part of DoD Component investment planning and of the Defense Planning, Programming, and Budgeting System (PPBS). PECI planning shall include OSD-sponsored Productivity Investment Fund (PIF), Productivity Enhancing Incentive Fund (PEIF), and Component-Sponsored Investments (CSIs). PECI is a major DoD strategy to achieve productivity goals stated in Executive Order 12637.

(b) PECI projects will be selected to improve productivity and quality, or to reduce unit cost of outputs in defense operations. PECI projects shall be evaluated and approved for funding based on recognized principles of economic analysis such as economic life, return on investment (ROI), return on investment in manpower spaces (RIMS), and internal rate of return (IRR). Each PECI project shall be subject to all restrictions established by public law, DoD policy, and other regulatory constraints.

(c) DoD personnel at all levels shall be encouraged to seek out and identify opportunities for quality and productivity improvements. These efforts shall be supported by using PECI as a means to finance the improvements. DoD Component-sponsored PECI shall provide incentives for program participation at all levels.

(d) Individuals or groups who successfully identify PECI opportunities that result in significant savings or improvments in quality or productivity or who aggressively promote PECI initiatives within their organizations should be recognized through the "DoD Incentive Awards Program", DoD Instruction 5120.16,[3] the Secretary of Defense Productivity Excellence Awards Program, performance appraisal, or other appropriate means. Policy on sharing projected savings as an incentive will be established before proposals are submitted for FY 94 funding.

(e) Funds provided for PIF projects may not be reprogrammed for other purposes outside of PIF without prior approval of the ASD(FM&P). DoD Components shall monitor obligation rates to ensure PIF projects are funded in a timely manner. If project funding cannot be obligated within the specified fiscal year(s), the DoD Component must either reprogram funds to alternate PIF projects approved by the ASD(FM&P) or return funds to the OSD Comptroller if alternate projects are not available. PIF projects shall be monitored periodically to ensure timely implementation and to validate savings through the amortization period. PECIs are subject to audit in accordance with the policies established in DoD Instruction 7600.2 [4].

§ 162.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel (ASD(FM&P)) shall:

(1) Develop policies and programming guidance for the overall DoD PECI program.

(2) Maintain oversight of the PECI program to ensure implementation of this part. This includes total process control and coordination of PIF actions to identify, select and approve, reprogram, and disapprove projects through fiscal year 1993. Starting fiscal year 1994, ASD(FM&P) shall retain central oversight of a decentralized PECI program.

(3) Evaluate program results and training requirements and provide additional guidance, as necessary.

(4) Develop, maintain, and publish a DoD handbook on "Productivity Enhancing Capital Investment".

(5) Coordinate PECI efforts with the DoD Components on matters that affect their particular areas of responsibility.

(6) In coordination with the Office of the Defense Comptroller, recommend for approval to the Secretary of Defense or Deputy Secretary of Defense funding for PIF proposals.

(7) Use the Defense Productivity Program Office (DPPO) to:

(i) Provide technical guidance and support for PECI efforts;

(ii) Monitor and evaluate DoD Component PECI efforts; and

(iii) Review all PECI projects to be financed through the OSD-sponsored portion of the PIF and provide selection recommendations.

(b) The Office of the Comptroller of the Department of Defense shall:

(1) Issue guidance and procedures for PECI financing and for PECI identification in DoD budget requests.

(2) Ensure compliance with DoD Directive 7750.5 [5].

(c) The Inspector General (IG), Department of Defense, shall provide policy and guidance for the audit of PECI and incorporate the requirement for audit into audit planning and program documents.

(d) The DoD Components shall:

(1) Develop and sustain a formal PECI program that:

(i) Emphasizes and encourages the improvement of day-to-day operations through PECI funding.

(ii) Provides motivation and opportunities for personnel at all levels to participate in the identification, documentation, and implementation of PECI proposals.

(iii) Includes a balanced approach consisting of PIF, PEIP, and CSI efforts.

(iv) Reviews submitted projects, broadens project applicability when reasonable, applies off-the-shelf technology, and integrates capital investment planning into the PPBS.

(2) Designate an official to be the central point of contact who shall oversee and monitor the PECI program.

(3) Establish procedures ensuring that the policies contained in this part are adhered to.

§ 162.6 Procedures.

The following procedures shall be followed by DoD Components in the identification, documentation, selection, and financing of PECI projects:

(a) Document each PECI project to the degree needed to ensure that it is:

(1) A desirable action in consonance with the DoD Component's long-range planning and programming objectives, quality objectives, and customer/user satisfaction.

(2) Needed to improve and perform valid operations, functions, or services (as established by assigned missions and taskings) that cannot be performed as effectively or economically by the use of existing facilities, methods, processes, procedures, or by contract.

(3) Justification on the basis of a valid economic analysis performed in accordance with DoD Instruction 7041.3, and

(4) Reviewed prior to submission for approval and funding (PIF projects), to assure that justifications are valid, reasonable, and complete; that the correct appropriation(s) (i.e. Other Procurement (OP)), Operations and Maintenance (O&M), Military Construction (MILCON), and Research, Development, Test and Evaluation (RDT&E)) have been determined and indicated in the proposal; and that the projected benefits have been accurately categorized as budgetary and or cost avoidance.

(b) Include resources for PEIF/CSI in programming documents and budget submissions. The level of funding will be established in consonance with quality and productivity plans and goals established in accordance with DoD Directive 5010.31.[6]

(c) Use guidelines for project documentation, pre-investment analysis, financing, and post-investment accountability of PECI projects, provided in the DoD handbook on Productivity Enhancing Capital Investments.

(d) Submit to DPPO proposed PIF projects, no later than July 15th of each year. Projects submitted to DPPO for evaluation shall be loaded on floppy disk using the program provided. DoD Components should submit concise project descriptions and justifications that can be used to support the ranking and decision making process.

(e) Classify PECI projects for financing and aggregated reporting as:

(1) *Productivity Investment Fund (PIF) projects.* PIF projects are PECI projects that have been competitively selected by OSD from candidate proposals submitted by DoD Components and financed through traditional budget appropriation processes from funds set

---

[1] Copies of this document will be available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] Copies of this document are available at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[3] See footnote 2 to § 162.3(b).

[4] See footnote 2 to § 162.3(b).

[5] See footnote 2 § 162.3(b).

[6] See footnote 2 § 162.3(b).

aside by OSD for this purpose. PIF projects must cost over $150,000 and amortize within 4 years from the date they become operational. Both equipment and facilities investments which conform to public law or DoD policies governing their qualification may be included. Projects may include a function at several activities or locations and be Service-wide or Agency-wide.

(2) *Productivity Enhancing Incentive Fund (PEIF) projects.* PEIF projects are financed from DoD Component accounts established in annual appropriations and are expected to amortize within 2 years of the date they become operational. Funding for PEIF projects will be included in DoD Component annual appropriations as a single amount to cover projects as they are proposed throughout the budget year. The cost of a PEIF project cannot exceed $150,000 or cost limitations established by OSD (whichever is greater) and are limited to facility modification and acquisition of "off-the shelf" equipment requiring little or no modification before use. Justification for these projects will be based on the potential to improve quality and productivity which is realized through improvements in operating methods, quality, processes, or procedures.

(3) *Component-Sponsored Investment (CSI).* CSI projects are investments financed from DoD Component accounts that may have longer amortization periods than PEIF and may have different DoD Component cost or benefit criteria than those specified for OSD-sponsored (PIF) projects. CSI projects will be identified and included in the DoD Component's annual budget. Specific criteria shall be developed by the sponsoring DoD Component and promulgated after review and approval by the ASD (FM&P).

§ 162.7 Information requirements.

(a) DoD Components shall submit to the ASD (FM&P), by December 15th, a status report on all PECI programs. As outlined in appendix A to this part, this report requires information for the 4 operational years or the pay back period, whichever is less. DoD Components shall maintain the data at a central point in order to support reporting requirements.

(b) The Summary Report, "PECI Program Status," is assigned Report Control Symbol FM&P (A) 1561 in accordance with DoD Directive 7750.5.

Appendix A to Part 162—Reporting Procedures

A. General

PECI reporting requirements provide OSD with information required to manage funds, provide program accountability, and satisfy Congressional concerns on program management.

B. Information Requirements

1. *Productivity investment fund.* Each DoD Component that has a funded PIF project must annually report six facts about each PIF project. Each funded project is reported for the amortization period or 4 years from implementation, whichever is less. The six facts are shown on the attached blank example and partially filled sample spreadsheets. Explanation or required information is provided in the following:

a. *Project identification.* Column A lists an 11-digit code for each project approved for funding, i.e. A92BAxxxxxx is a (A) Army project, (92) 92 is the fiscal year, (B) B represents a PIF project, (A) A represents a Funded PIF Project, and (xxxxxx) xxxxxx is a DoD Component selected code. A funded project should be reported until amortized or for 4 years from operational implementation, whichever is less.

b. *Total funds provided.* Column B lists the amount of investment provided to the funded project.

c. *Total amount obligated.* Column C lists the cumulative amount of capital actually obligated against a project.

d. *Actual savings through FY 19XX.* Column D lists the cumulative actual savings generated for each project. This actual savings figure is the sum of actual budgetary savings realized and cost avoidance savings that were measured and converted to budgetary savings. If an audit resulted in a change to reported actual savings, attach a copy of the audit results to the report.

e. *Annual manyears saved.* Column E lists the actual funded manyears of work or funded positions reduced through project implementation.

f. *New projected life-cycle savings/total life-cycle savings.* In column F, if a PIF project is significantly exceeding or missing the last life-cycle savings estimate, provide a new projected estimate. If an audit generated a change in projected life-cycle savings, attach a copy of audit results to the report. In column F, for PEIF and CSI provide a cumulative projected estimate of Life-Cycle savings for all projects.

2. *Productivity investment fund summary.* This is a summary of the information contained in columns A–E.

3. *Productivity enhancing incentive fund.* Provide summarized information for columns B, C, D, and E. Also provide the total number of projects funded through the productivity enhancing incentive fund in column A. Post Investment Assessments or brief descriptions of results that demonstrate the DoD Component's program may be attached to the report.

4. *Component-sponsored investment.* Provide summarized information for columns B, C, D, and E. Also provide the total number of projects funded through Component-Sponsored Investments in column A. Post Investment Assessments or brief descriptions of results that demonstrate the DoD Component's program may be attached to the report.

Dated: March 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–5540 Filed 3–8–91; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 95

[GEN Docket 91–2; FCC 91–16]

Interactive Video Data Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, the Commission proposes to amend parts 1, 2, and 95 of its Rules to establish an interactive video data service (IVDS) in the 218–218.5 MHz band. An IVDS system would allow viewers to respond to queries associated with television programming, order products and services and offer downloading of educational and other information. This action responds to a petition filed by TV Answer, Inc. who have developed an IVDS system under a Commission experimental authorization.

DATES: Comments must be submitted on or before June 10, 1991 and reply comments on or before July 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, Frequency Allocation Branch, Office of Engineering and Technology, (202) 653–8106; or, William Cross, Personal Radio Branch, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in General Docket No. 91–2, FCC 91–16, adopted January 10, 1991, and released March 4, 1991.

The full text of Commission decisions are available for inspection and copying during regular business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0126.

Title: Application for Private Land Mobile and General Mobile Radio Services (FCC 574)—Proposed program change.

Action: New collection.

Respondents: Individuals, businesses (including small business), and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 100 responses; 300 hours total; 3 hours per response.

Needs and Uses: Rules require that applicants submit the necessary data for evaluation for a new or modified station authorization, and to ensure spectrum efficiency by requiring applicants to provide system plans and construction progress reports.

Summary of Notice of Proposed Rule Making

1. By this action the Commission proposes to amend parts 1, 2, and 95 of its Rules to establish a new interactive video data service (IVDS). This action responds to a Petition for Rule Making (RM–6196) filed by TV Answer, Inc. (TV Answer) requesting that the Commission allocate 500 kHz of spectrum in the 216–220 MHz band for an interactive viewer response system that it had developed under a Commission experimental authorization. An IVDS system would allow real-time viewer response to queries associated with television programming, such as polls, or ordering products and services, as well as offer downloading of educational and other information.

2. Many commenters responded to TV Answer's proposal. The majority of parties were supportive of the TV Answer proposal. However, several broadcasting interests were concerned that TV Answer's system would have the potential to interfere with TV channel 13 operations in the adjacent 210–216 MHz band. In response to these concerns, TV Answer refined its system to operate with multiple local base stations in a cellular arrangement. This will allow lower effective radiated powers (ERP) and will facilitate frequency reuse. In addition, in TV Answer's latest proposal, the output power of the in-home transmitting unit is automatically limited by its parent base station to the minimum necessary for communication.

3. Based on its analysis of TV Answer's system, the Commission believes that reallocating the 218–218.5 MHz band for IVDS would serve the public interest. The Commission believes that IVDS has the potential to provide an interactive capability, such as that enjoyed by personal computer users who subscribe to interactive services, to all television viewing households. Although the proposed spectrum is currently allocated to the Group D ship station channels of the Automated Maritime Telecommunications System (AMTS), these channels are unused due to restrictions on AMTS necessary to protect TV channel 13. The Commission believes that with appropriate limitations on ERP and antenna heights of IVDS base stations, the service can operate successfully without causing harmful interference to TV channel 13 operations. Further, it is proposed that an IVDS licensee investigate and resolve any interference to TV channel 13 operations, or discontinue operation of offending IVDS units.

4. The Commission is proposing to amend part 95 of its rules to provide services rules for IVDS. Our proposals are based on an IVDS system using the TV Answer architecture. We wish to make it clear however, that we are proposing to allocate spectrum for a specific type of service and not for a particular manufacturer's system or technology.

5. This proceeding suggests a proposal which may have an impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3502, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval of the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 10, 1991, and reply comments on or before July 10, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

Ordering Clause

9. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended. 47 USC 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 1

Reporting and recordkeeping requirements.

47 CFR Part 2

Communications equipment; Radio.

47 CFR Part 95

Communications equipment; Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

10. Parts 1, 2 and 95 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303; implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.926(a)(1) is revised to read as follows:

§ 1.926 Application for renewal of license.

(a) * * *

(1) Renewal of station or system authorization in the Private Land Mobile Radio Services (part 90 of this chapter), the General Mobile Radio Service (part 95, subpart A of this chapter), and Interactive Video and Data Services (part 95, subpart F of this chapter) shall be submitted on FCC Form 574–R when the licensee has received that form in the mail from the Commission. If the licensee has not received the Commission-generated Form 574–R within sixty (60) days of expiration, application for renewal of station or system license shall be submitted on FCC Form 405–A.

* * * * *

3. Section 1.951(c) is revised to read as follows:

§ 1.951 How applications are distributed.

* * * * *

(c) Special Services Branch. Aviation, Ground, Marine coast, Aircraft. Ship, General Radio, Interactive Video and Data.

* * * * *

4. Section 1.952(b) is amended by adding a category under the heading "Personal Radio Services" to read as follows:

§ 1.952 How file numbers are assigned.

* * * * *

(b) * * *

CV-Interactive Video and Data Service.

* * * * *

5. Section 1.972(a)(1) is amended by adding "Part 95—Personal Radio Services" at the end of the list and paragraph (c) is revised to read as follows:

§ 1.972 Grants by random selection.

(a) * * *

(1) * * * Part 95—Personal Radio Services.

* * * * *

(c) If there are mutually exclusive applications for an initial license for stations subject to part 80 or part 87 of this chapter, or if there are more applications for an initial license in part 90, part 94 or part 95, subpart F of this chapter, than can be accommodated on available frequencies, the Commission may process the applications pursuant to a system of random selection. Each such random selection shall be conducted pursuant to an order issued by the Private Radio Bureau and under the direction of the Chief of the Bureau.

* * * * *

6. Section 1.1102 is amended by adding numerically a new private radio service to the schedule of charges to read as follows:

§ 1.1102 Schedule of charges for private radio services.

Action	FCC form no.	Fee amount	Fee type code	Address
* * * * *				
14. Interactive Video and Data Stations:				
a. New Modification and/or Renewal (per system).	FCC 574			FCC, Attn: IVDS P.O. Box ____, Pittsburgh, PA 15251.
b. Assignment (per system)	FCC 703			FCC, Attn: IVDS Gettysburg, PA 17326.
c. Renewal of License	FCC 574R, FCC405A			FCC, IVDS, P.O. Box ____ Pittsburgh, PA 15251.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising in columns 4, 5 and 6 the entry 216–220 MHz band and adding the text of footnote US317 to the list of footnotes at the end of the table to read as follows:

§ 2.106 Table of Frequency Allocations.

United States table		FCC use designator
Government allocation (MHz)	Non-Government allocation (MHz)	Rule parts
(4)	(5)	(6)
* * * * *		
216–220	216–220	
Maritime Mobile	Maritime Mobile	Maritime (80).
Aeronautical Mobile, Fixed, Land Mobile Radiolocation 627.	Aeronautical Mobile, Fixed, Land Mobile 627	Private Land Mobile (90), Personal Radio Services (95).
US210 US229 US274 US317 G2	US210 US229 US274 US317 NG121	
* * * * *		

United States (US) Footnotes

* * * * * *

US317 The band 218.0–218.5 MHz is also allocated on a primary basis to the interactive video and data service.

* * * * * *

PART 95—PERSONAL RADIO SERVICES

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Part 95 is amended by adding subpart F to read as follows:

Subpart F—Interactive Video and Data Service (IVDS)

General Provisions

Sec.
95.801 Scope.
95.803 IVDS system description.
95.805 Permissible Communications

System License Requirements

95.811 License required.
95.813 License eligibility.
95.815 License application.
95.817 Application for renewal of license.
95.819 License not transferable.
95.821 Application for assignment of license.

System Requirements

95.831 Construction requirements.
95.833 Station Identification.
95.835 Station inspection.
95.837 Operation in the National Radio Quiet Zone.
95.839 Operation near a Commission monitoring facility.

Technical Standards

95.851 Type Acceptance.
95.853 Frequency segments.
95.855 Interference prevention.
95.857 Transmitter effective radiated power limitation.
95.859 Authorized emission types.
95.861 Emission standards.
95.863 Frequency tolerance.
95.865 Antennas.

General Provisons

§ 95.801 Scope.

The Interactive Video and Data Service (IVDS) is a real-time, response service to obtain personal video and data responses from television viewers and for use in conducting educational programming and polls, downloading data, and ordering services, products, and pay-per-view programming.

§ 95.803 IVDS system description.

Each IVDS system is comprised of a number of interconnected cells. Each cell contains one cell transmitter base station (CTS) and multiple in-home response transmitter units (RTUs). Each RTU is situated in the residence of a subscriber located in the cell.

§ 95.805 Permissible Communications.

Unless othewise directed or conditioned in the applicable instrument of authorization, an IVDS system may be used for point-to-multipoint (CTS to RTUs) and multipoint-to point (RTUs to CTS) transmissions of video and digital information exchanges consistent with the scope of the IVDS.

System License Requirements

§ 95.811 License required.

Before any station transmits on any frequency segment authorized in the IVDS from any geographical location within the territorial limits of any area where radio services are regulated by the FCC, the responsible party must obtain a license form the FCC for an IVDS system. The written authorization that permits operation of an IVDS system is an IVDS system license (FCC Form 574) (issued to the licensee. The term of the license is five years.

§ 95.813 License eligibility.

An entity is eligible to apply for an IVDS system license if:

(a) The entity is an individual who is not a representative of a foreign government;

(b) The entity is a partnership and no partner is a representative of a foreign government;

(c) The entity is a corporation organized under the laws of the United States of America.

(d) The entity is not a current licensee of an IVDS system in the system area for which the entity is applying.

(e) The entity has not had an IVDS license in the service area proposed in the application canceled for failure to meet the construction requirements specified in § 95.831 of this part.

§ 95.815 License application.

(a) Each application for an IVDS system license must be made on FCC Form 574. The application must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 360 _____, Pittsburgh, PA 15251–_____. Applications shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; or by an officer or duly authorized employee, if the applicant is a corporation.

(b) A separate application form must be filed for each IVDS system. Each IVDS system application must specify the system service area in terms of a set of coordinates, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) or city being served. (See appendix B to subpart A of this part.)

(c) Each applicant must submit as part of the application a detailed plan indicating how the frequency segment requested will be utilized including the number and location of CTUs and how the proposed system will provide service to at least 50 percent of the area within the protected service area. In particular, the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughout capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

(d) When mutually exclusive applications subject to section 309(b) of the Communications Act are filed or when there are more such applications for initial licenses that can be accommodated on available frequencies, the applications will be designated for random selection (See § 1.972 of this chapter). An application which is substantially amended, (as defined by § 1.962(c) of this chapter), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment. Mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA) for applications requiring the fees set forth at part 1, subpart G of this chapter in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed applications (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission.

§ 95.817 Application for renewal of license.

Renewal of systems authorizations in the Interactive Video and Data Service shall be submitted on FCC Form 574–R when the licensee has received that form in the mail from the Commission. If the licensee has not received the Commission-generated Form 574–R within sixty days of expiration, application for renewal of station or system license shall be submitted on FCC Form 405–A. All applications must be submitted to the Federal Communications Commission, Interactive Video and Data Service, P.O. Box 360 _____, Pittsburgh, PA 15251–_____

§ 95.819 License not transferable.

The licensee must not transfer, assign, sell or give the license for an IVDS system to any other entity except in accordance with the provisions of § 95.821 of this part. If the licensee sells or gives away the IVDS system equipment, the new owner must obtain a new licensee before using it.

§ 95.821 Application for assignment of license.

If the licensee of an IVDS system is a corporation, and there is a change in control of the corporation, the licensee must request consent for the change of control from the Commission on Form 703. The licensee shall mail the request to: Federal Communications Commission, Attention: IVDS, Gettysburg, Pennsylvania 17326. The document granting such consent must be kept as part of the IVDS system license.

System Requirements

§ 95.831 Construction requirements.

Each IVDS system licensee must construct at least 10 percent of the proposed CTSs within one year of licensing and at least 60 percent of the proposed CTSs within five years of licensing or the license cancels automatically and must be returned to the Commission. The licensee shall file a progress report at the conclusion of each benchmark period to inform the Commission of the status of the system and shall address the report to: Federal Communications Commission, Special Services Branch, 1270 Fairview Road, Gettysburg, PA 17325–7245.

§ 95.833 Station identification.

RTUs and CTSs are not required to transmit a station identification announcement.

§ 95.835 Station inspection.

If an authorized Commission representative requests to inspect any station in an IVDS system, the licensee must make the station available.

§ 95.837 Operation in the National Radio Quiet Zone.

Before establishing an IVDS system in any area within the National Radio Quiet Zone (see § 95.41 of this part) or before changing frequency segment, transmitter power, antenna height or directivity, or the coverage area of an existing IVDS system within any area within the National Radio Quiet Zone, the licensee must give written notification thereof to the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, WV 24944.

(a) The notification must include the geographical coordinates of the station antenna, antenna ground elevation above mean sea level, antenna center of radiation above ground level, antenna directivity, proposed frequency, type of emission, and transmitter power.

(b) If an objection to the proposed operation is received by the Commission from the National Radio Astronomy Observatory at Green Bank Pocahontas County, WV, for itself or on behalf of the Naval Research Laboratory at Sugar Grove, Pendleton County, WV, within 20 days from the date of notification, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 95.839 Operation near a Commission monitoring facility.

An IVDS system operating within 1.6 km (1 mile) of a Commission monitoring facility must protect that facility from harmful interference. Failure to do so could result in imposition of operating restrictions upon the operation of the system by the Engineer-in-Charge of the facility. (Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.)

Technical Standards

§ 95.851 Type acceptance.

Each CTS and each RTU in an IVDS system must comply with these technical standards. Every CTS and RTU must be type-accepted for use in the IVDS in accordance with subpart J of part 2 of this chapter.

§ 95.853 Frequency segments.

(a) Each CTS and each RTU in the same IVDS system shall transmit in the same assigned frequency segment.

(b) Frequency segment A is 218.0–218.250 MHz. Frequency segment B is 218.251–218.500 MHz.

(c) Each frequency segment will be protected solely on the basis of geographical separation. The minimum separation between assignments on the same frequency segment will be 128.8 km (80 miles) except where licensees agree that a lesser distance is sufficient.

(d) No licensee will be authorized an additional segment to operate within its service area.

(e) No license will be authorized for an IVDS system when the service area includes territory north of Line A and east of Line C (See § 1.955 of this chapter).

§ 95.855 Interference prevention.

(a) Each licensee of an IVDS system suffering or causing harmful interference must cooperate and resolve the problem by mutally satisfactory arrangements. If the licensee is unable to do so, the FCC may impose restrictions including specifying the transmitter power, antenna height, or area of hours of operation of the stations concerned.

(b) The use of any frequency at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of segment channel specified for IVDS may be restricted as to specified geographical areas, maximum power, or other operating conditions.

(c) The licensee of each IVDS system shall inform all households within a Grade B TV channel 13 viewing area of the potential for interference from an IVDS system.

(d) The licensee of each IVDS system shall provide and install free of charge an interference reduction device, such as a 218.25 MHz notch filter, to each household within a television channel 13 station Grade B contour that experiences interference due to the IVDS system, and requests such a device.

(e) The licensee of each IVDS system shall investigate and eliminate any interferences to TV channel 13 broadcasting and reception, from its system, within 30 days of the time it is notified in writing, by either an affected television station, an affected viewer, or the Commission, of an interference complaint. Should the IVDS licensee fail to eliminate the interference within the 30 day period, the IVDS units causing the interferences shall discontinue operation.

§ 95.857 Transmitter effective radiated power limitation.

(a) The effective radiated power of each CTS and RTU shall be limited to the minimum necessary for successful intercommunication. No CTS or RTU may transmit with an effective radiated power (ERP) exceeding 20 watts.

(b) For an IVDS system located in a TV channel 13 viewing area, the maximum ERP shall be limited as follows:

TV Channel 13 service area	Maximum CTS ERP
City Grade	20 watts
Grade A	7 watts
Grade B	1 watt
Grade B+2 miles	1 watt
Grade B+3 miles	3 watts
Grade B+4 miles	10 watts
Grade B+5 miles	20 watts

§ 95.859 Authorized emission types.

Transmissions by a CTS and a RTU shall be limited to emission type V1D.

§ 95.861 Emission standards.

All emissions shall be attenuated in accordance with the following schedule.

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 50 percent up to and including 150 percent of the authorized bandwidth: At least 25 dB;

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 150 percent up to and including 250 percent of the authorized bandwidth: At least 35 dB; and

(a) On any frequency removed from the midpoint of the assigned frequency segment by more than 250 percent of the authorized bandwidth: At least 43 plus 10 log (base 10) (mean power in watts) dB.

§ 95.863 Frequency tolerance.

Each CTS and RTU shall maintain a frequency tolerance of 0.0005 percent of the center frequency of the segment in which it is transmitting.

§ 95.865 Antennas.

(a) No CTS antenna shall be elevated higher than necessary to assure adequate service. No CTS antenna structure, including the radiating elements, tower, supports and all appurtenances, may exceed a maximum Height Above Average Terrain (HAAT), as defined in § 90.309 of this chapter, of 36.6m (129 feet) within an area defined by a boundary line 16 km (10 miles) outside of the Grade B contour of a TV channel 13 station. When an antenna is located beyond 10 miles from a TV channel 13 Grade B contour, the HAAT shall not exceed 152.5m (500 feet).

(b) Each RTU antenna shall be an intergal part of the RTU.

[FR Doc. 91-5434 Filed 3-8-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-49, RM-7599]

Radio Broadcasting Services; Sheboygan Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by WKTS, Inc., proposing the allotment of Channel 229A to Sheboygan Falls, Wisconsin, as that community's first local service. The coordinates for Channel 229A are 43–43–30 and 87–47–04. There is a site restriction 2.1 kilometers (1.3 miles) east of the community.

DATES: Comments must be filed on or before Apirl 29, 1991, and reply comments on or before May 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows.

Marshall E. Harris, President, WKTS, Inc., P.O. Box 1045, Sheboygan, Wisconsin 53081, (Petitioner).

Larry G. Fuss, Contemporary Communications, P.O. Box 159, Fayetteville, Georgia 30214, (Consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–49, adopted February 26, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, and *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5703 Filed 3-8-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

48 CFR Parts 1403, 1405, 1415 and 1453

RIN 1090—AA15

Procurement Ethics

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Department is withdrawing a proposed rule implementing the procurement integrity provisions of section 27 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 423) and providing guidance on avoiding conflicts of interest. The rule was published in the **Federal Register** on September 14, 1989, (54 FR 37959, September 14, 1989).

FOR FURTHER INFORMATION CONTACT: Dean Titcomb, Chief, Acquisition and Assistance Division, Office of Acquisition and Property Management, U.S. Department of the Interior, Mail Stop 5512, 1849 C Street, NW., Washington, DC, 20240, or call on (202) 208–3433.

SUPPLEMENTARY INFORMATION: Public Law 100–679, the OFPP Act Amendments of 1988, dated November 17, 1988, included provisions on procurement integrity in section 27 which were subsequently implemented in Federal Acquisition Circular (FAC) 84–47. The Department's proposed rule provided internal procedures which supplemented the FAR coverage and also included guidance for procurement officials on avoiding conflicts of interest. Although most of the guidance was provided for Departmental employees, it did incorporate agency-authorized exceptions to Departmental standards of conduct in 43 CFR 20.735–7 and 20.735.8. The rule had the potential of affecting the general public and, consequently, it was proposed as a codified rule.

Subsequently, FAC 84–60 replaced the coverage in FAC 84–47 to incorporate amendments to the public law. FAC 84–60 provided a revised, very specific definition of "gratuity or other thing of value" which does not recognize agency regulations on standards of conduct for procurement officials during the conduct of a procurement. Because this FAR coverage sets a governmentwide threshold for acceptance of gratuities by a procurement official at $10, the Departmental rule was revised to eliminate all references to agency-authorized exceptions. Thus, the need for codification has been eliminated and Departmental implementation of the FAR coverage on procurement integrity may be issued as an uncodified rule.

Dated: February 27, 1991.

John Schrote,

Acting Assistant Secretary—Policy, Management and Budget.

[FR Doc. 91-5638 Filed 3-8-91; 8:45 am]
BILLING CODE 4310-RF-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 910102-0002]

RIN 0648-AD01

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to: (1) Require specified amounts of other species to be landed as a condition for landing an incidental bycatch of Atlantic bluefin tuna in the southern longline fishery; (2) prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except by vessels permitted in the Incidental Catch category; (3) reduce the daily catch limit in the Angling category from four to one young school, school, or medium tuna per day; and (4) make other technical revisions to the regulations. This action is necessary to prevent a directed fishery for Atlantic bluefin tuna in the Gulf of Mexico and tc prevent the angling sector from exceeding its annual quota. The intent of this action is to ensure that the United States fulfills its International Commission for the Conservation of Atlantic Tunas (ICCAT) obligations.

DATES: Comments on this proposed rule must be received on or before April 25, 1991.

ADDRESSES: Comments on the proposed rule should be sent to, and copies of the environmental assessment are available from, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, Atlantic Bluefin Tuna Policy Analyst, Plan Administration Branch, NMFS Northeast Regional Office, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations that govern the Atlantic bluefin tuna fishery, at 50 CFR part 285, are authorized under the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* The ATCA directs the Secretary of Commerce to promulgate such regulations as may be necessary to carry out the recommendations of ICCAT.

The current regulations governing the domestic fishery were designed to ensure compliance with the recommendations adopted by ICCAT. Developments within the U.S. fishery, however, have reduced the effectiveness of these regulations and thus brought into question U.S. compliance with its international obligations.

Gulf of Mexico Longline Fishery

The United States first promulgated regulations for the Atlantic bluefin tuna fishery in 1975 with the passage of the ATCA. These regulations implemented the two standing recommendations of ICCAT: (1) Establish a minimum size limit; and (2) establish a limit on the level of fishing mortality. To comply with the second recommendation, the United States established fishing seasons, quota categories delineated according to gear type, and reporting requirements. This management regime did not specifically include or exclude longline vessels because longlines were used to target swordfish and yellowfin tuna, and, at that time, only small numbers of Atlantic bluefin tuna were landed incidental to those fisheries. It was not until several years after the establishment of domestic quotas, and until the price per pound for Atlantic bluefin tuna increased, that longline fishermen began to land significant amounts of giant bluefin tuna.

The longline fishery for Atlantic bluefin tuna has been problematic since at least 1980. In a final rule dated January 26, 1981 (46 FR 8012), NMFS discouraged a directed longline fishery for Atlantic bluefin tuna by instituting an incidental catch limit of two fish per trip in the area south of 36° N. latitude (which includes the Gulf of Mexico), and 2 percent by weight of all other fish on board per trip in the area north of that latitude. The intent of the incidental catch measure was to preclude catch increases and remain in compliance with the ICCAT recommendation to limit fishing mortality. The reason for the disparity in the northern and southern incidental catch limits was that the 2 percent by weight limit was thought to be unenforceable in southern ports due to the lack of weighing facilities in many areas where bluefin were landed.

In 1981, the continuing decline of the Atlantic bluefin tuna resource prompted ICCAT to recommend that fishing on the Western Atlantic stock be limited to the amount of catch necessary for scientific monitoring. In early 1982, Japan, Canada, and the United States agreed to set the scientific monitoring quota at 1160 metric tons (mt) and to prohibit directed fishing on the spawning stock in the Gulf of Mexico (Gulf). At that time, the only vessels fishing directly on bluefin tuna in the Gulf were Japanese tuna longliners. U.S. swordfish longliners were landing a small amount of bluefin as bycatch. With catch restrictions already in place for U.S. longliners, NMFS believed that the only revision necessary to implement the ICCAT recommendation concerning the Gulf was a general notification in the preamble of the implementing rule (47 FR 25350; June 11, 1982) stating that directed fishing for bluefin tuna in the Gulf of Mexico is prohibited. Japanese longline vessels subsequently departed the Gulf.

The very restrictive nature of the scientific monitoring quota led the United States to place stringent allocations on the various components of the fishery, including placing an annual cap on the total allowable incidental harvest by domestic longliners. This incidental longline quota currently stands at 131.5 mt per year and is intended to account for the incidental catch of bluefin tuna associated with the swordfish and yellowfin tuna longline fisheries.

During the past several years, however, the price of Atlantic bluefin tuna has escalated to as much as $20 per pound or higher. Accordingly, fish landed may be worth several thousand dollars. This has encouraged the development of a directed fishery in the Gulf. The present incidental catch limit of two giant bluefin per trip no longer serves as an effective restriction, particularly when vessels can make several trips in a matter of days.

NMFS is proposing two measures to preclude directed fishing for Atlantic bluefin tuna in the Gulf. The first measure would prohibit retention of Atlantic bluefin tuna by longline vessels permitted in the Incidental Catch category while fishing in the area south of 36° N. latitude, that land less than 2,500 lbs (1,134 kg) of yellowfin tuna, swordfish, and shark. Longline vessels that land 2,500 lbs (1,134 kg) or more of these species for a given trip will be authorized to land one bluefin tuna for the same trip. NMFS believes that requiring threshold amounts of other species to be landed ensures that bluefin tuna are harvested incidental to other fisheries.

The second measure proposed would prohibit retention of Atlantic bluefin tuna harvested from the Gulf of Mexico, except for vessels permitted in the Incidental Catch category. This measure precludes a directed fishery by vessels permitted in other categories in the event that there remains some unused amount of quota at year's end when bluefin begin to concentrate on the Gulf spawning grounds.

NMFS considered several alternatives that would achieve the objective to preclude directed fishing in the Gulf of Mexico. They are as follows: (1) Delay the opening of the Incidental Catch category until June 1, by which time most of the spawning stock has departed the Gulf; (2) prohibit all retention of Atlantic bluefin tuna from the Gulf of Mexico, except by vessels permitted in the Incidental Rod and Reel category; (3) reduce the allowable bycatch limit from two to one bluefin per vessel per trip; (4) allow bycatch based on a percentage of the directed catch; and (5) close a certain portion of the Gulf to all longlining during the spawning season. Options (1) and (2) would have achieved the objective but would also have precluded any retention of legitimate bycatch. Option (3) was rejected because it is likely that a directed fishery could be prosecuted on a one fish per trip basis, given the proximity of the fishing grounds to the landing ports. The fourth option, to base bycatch on a percentage of the catch, was rejected for the same reason it was rejected in the 1981 rulemaking, *i.e.*, the lack of weighing facilities in some areas would make enforcement difficult. Instead of a percentage of catch, a threshold catch of directed species is used because the majority of trips legitimately directed at other species already easily meet or exceed the threshold, making accurate weighing unnecessary in most cases. The final option, to close specific spawning areas, was considered problematic because the location of the areas varies from year to year.

NMFS believes the two measures proposed in this rulemaking will effectively implement the ICCAT recommendation prohibiting a directed fishery for bluefin tuna in the Gulf of Mexico spawning area, without precluding a legitimate bycatch allowance to vessels fishing for other species in this area. These prohibitions carry out NMFS's obligation to comply with the ICCAT recommendation by ensuring the available incidental catch quota is not used in a manner contrary to international agreement. These measures do not change the 131.5 mt incidental quota allocated to longline vessels or any other allocations.

Angling Category Quota

The second issue addressed by this rulemaking concerns the overharvest of the Angling category quota that has occurred during each of the past 6 years. The total amount of young school (less than 66 cm), school (66 cm or greater, but less than 145 cm), and medium (145 cm or greater, but less than 195 cm) Atlantic bluefin tuna that may be harvested in the regulatory area by anglers is 128.1 mt. This quota allocation falls within the ICCAT recommendation, which limits the U.S harvest of bluefin measuring less than 120 cm to approximately 208 mt (15% of the total allocation).

The intended purpose of the Angling category is to preserve the recreational angling sector of the fishery and provide data on the smaller size classes to scientists for monitoring the condition of the stock. The current daily catch allowance is four fish per angler, one of which may be a medium, with a cap of four mediums per vessel. Since 1984, however, this quota has been exceeded by an average of 146 mt each year.

This sector of the fishery is difficult to monitor due to the large number of persons angling for small bluefin tuna over a widespread area of the Atlantic coast. Most of the small fish caught by anglers are not sold and, therefore, catches are not reported to NMFS under the dealer logbook system. NMFS currently conducts a port canvass and telephone survey from which recreational catch estimates are calculated. These data, however, are not available on a timely basis. (Final tabulations are not completed until 8 to 12 months after the fishery has ended for the year). The lack of timely catch data impedes attempts to close the fishery at the proper time, resulting in quota overages.

NMFS intends to address this problem by modifying the allowable daily catch to a level that would reduce the probability of exceeding the quota. The proposed modification would reduce the present daily catch allowance in the Angling category from four to one fish per angler. The vessel cap of four mediums per vessel per day for vessels with four or more anglers on board remains in effect.

NMFS considered other alternatives to restrict the harvest from this category. Prohibiting sale of small fish by recreational anglers was considered but rejected on the basis that it would impose a significant administrative burden on NMFS to devise a permitting program to classify commercial and recreational anglers.

NMFS also considered reducing the daily catch allowance to two (instead of one) per angler per day. This was rejected because NMFS's analysis shows that, given current fishing patterns, the appropriate daily catch allowance should be less than one per angler. NMFS is proposing a one-fish limit based on the likelihood that fishing patterns will change. For instance, with the reduction in the daily catch allowance to one, fishermen will be likely to change fishing practices to target medium fish. This would have the effect of reducing the number of individual fish harvested and would benefit the stock. Second, the availability of school fish to the inshore fishery is largely dependent on water temperature and weather patterns. It is expected that there will be some years, as there have been, when fish are not accessible and catches may be low.

NMFS believes that the proposed reduction in the daily catch allowance will be sufficient to comply with the size restriction recommended by ICCAT. NMFS estimates that an average of 214 mt of bluefin tuna measuring less than 120 cm were landed by rod and reel fishermen annually during the period 1985 to 1989. NMFS's analysis shows that the measure proposed in this rulemaking would reduce the rod and reel catch of small fish by 8 percent. Nine percent applied to the average catch estimate would result in a catch of 195 mt, which allows for some incidental catch by other gears before the 208 mt ICCAT limit is reached.

Technical Modifications

NMFS has identified a number of provisions currently contained in the regulations that require modification to improve enforceability and administration of the management program. The proposed modifications are described below.

A definition of the term "fishing record" would be added to mean all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase or sale. This would clarify the regulation to allow the inspection of more than the normal fishing logbook. This change would facilitate enforcement of the existing regulations.

The definition of "Regional Director" would be modified to reflect the current address.

Section 285.3(b) would be amended by adding the words "possessed or landed" after the words "taken or retained" to give this prohibition a broader application. Paragraph (f) of § 285.3 would be amended to require tuna to be landed in whole or eviscerated form only. A definition of "eviscerated" would also be added. Currently, fishermen are allowed to remove the head. The lack of a uniform heading practice results in measurements that may not accurately reflect the overall length of the fish, which is important information for fishery management purposes. The gills and entrails could be removed. In addition, revised § 285.3(f) would prohibit any person from possessing a giant or medium Atlantic bluefin tuna in any form other than whole or eviscerated, unless such tuna is being prepared for immediate packing into a sealed container for commercial shipment or transport. Tuna of this size are normally packed with ice in a large wooden box sealed with a lid. Giant or medium Atlantic bluefin tuna purchased by a dealer operating from a truck would have to be transported to the dealer's place of business in whole or eviscerated form. Any giant or medium Atlantic bluefin tuna would have to remain in this form until the fish is packed and sealed for shipment.

Section 285.3(g) would be added to enhance enforcement of prohibitions on imported regulated species, as that term is used in the regulations, that were harvested contrary to another country's regulations.

Section 285.21(c) would be modified to allow the Regional Director to change a vessel's permit category after May 15 if that vessel has been inactive in the fishery or in instances where an error was made during the application procedure. A vessel that has never landed an Atlantic bluefin tuna would be considered inactive in the fishery. The intent of the present regulation, which does not allow permit category changes after May 15, is to prevent vessels from fishing from two quota

categories in the same year. The proposed change would provide some administrative latitude without altering the intent or effectiveness of this section.

Section 285.21(e) would be amended by adding the phrase "or on any other date specified by the Regional Director." This change would allow the Regional Director to purge the Atlantic bluefin tuna permit file, which currently contains over 30,000 records. Many of the vessels holding these permits are presumed to be inactive. The size of the permit file adds to administrative costs, such as mailing and computer costs. Requiring fishermen to reapply, at a date to be specified by the Regional Director, would decrease these costs; the date is not specified in this proposed rule because a short-term reassignment of resources to the Northeast Regional Permit Office must be arranged prior to implementation.

Section 285.23(g) would be revised by removing the phrase "in the Gulf of Mexico." The intent of § 285.23(g) is to allow the incidental harvest of bluefin caught in traditional rod and reel fisheries. Historical fisheries engaged in by U.S. fishermen, such as those in the Bahamas, Cayman Islands, etc., were inadvertently excluded. This would be corrected by removing the geographical distinction.

Section 285.25(c) would be revised to reflect the current telephone number for purse seine vessel and gear inspection.

Section 285.26 would be revised to reflect the requirement that bluefin tuna remain in whole or eviscerated form until it is prepared for immediate packaging or shipping.

Section 285.28(a) would be revised to clarify the requirement that all dealers who purchase or receive bluefin tuna must obtain a permit. This clarification would enhance enforcement of the quota monitoring system.

Sections 285.29 (a) and (b) would be revised to require lengths to be measured and recorded with the head and tail on (whole fork length). Paragraph (b) would be revised to clarify the current requirement in the regulation that dealers must include imported Atlantic bluefin tuna on their weekly report form. Paragraph (e) of § 285.29 would be revised to include the current phone number to be called for the inspection of a buyboat.

Section 285.30 would be revised to remove the requirement that the metal tag be affixed to the outside of a container holding a medium or giant Atlantic bluefin tuna. Some of these fish are cut into pieces before they are exported. Therefore, it is impossible for the tag to accompany each boxed piece. A new requirement would be added that tag numbers must be written on any documents accompanying bluefin tuna shipments. The requirement that the tag number be marked on the outside of these containers would remain unchanged. Section 285.30 would also be revised to reflect current phone numbers and to allow the Regional Director to designate a person other than a NMFS agent to tag a medium or giant tuna.

In § 285.31(a), paragraphs (1), (2), and (5) would be revised by adding the words "possess or land" after the words "Fish for." This would broaden the application of these sections to facilitate enforcement. Paragraphs (31), (32), and (33) would be added to prohibit interfering with or obstructing investigations or enforcement actions pertaining to this part.

Classification

An environmental assessment was prepared to accompany implementation of the ICCAT recommendations in 1982. This proposed rule would not alter the scope, intent, or impact of those regulations; thus no new environmental assessment was prepared. You may obtain a copy of the 1982 environmental assessment from the Regional Director (see ADDRESSES).

The Assistant Administrator for Fisheries, NMFS, has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. All of the vessels operating in the Atlantic bluefin tuna fishery are considered small entities.

The proposed measures would not reduce the total amount of bluefin tuna allocated for harvest by U.S. fishermen and are not expected to result in under-harvesting of any of the quotas established for bluefin tuna. Income previously derived from the fishery for Atlantic bluefin tuna in the Gulf of Mexico would be redirected to vessels that legitimately land bluefin incidental to other species. This is consistent with the original intent of the rule. Reduction in the daily catch allowance of the Angling category should not significantly affect anglers economically because this category is primarily of a recreational nature and because smaller sized fish are of comparatively little value. The opportunity to participate in a recreational fishing activity, and its benefits, are preserved.

This proposed rule contains two collection-of-information requirements subject to the Paperwork Reduction Act. The first is an expansion of the dealer permitting requirement to approximately ten additional importers of bluefin tuna (OMB #0648-0239). The second would require annual renewal of fishing permits for an estimated 10,000 permit holders (OMB #0648-0202). The reporting burden for the dealer reports is estimated to average 2 minutes per report. The fishing permits would require a maximum of 30 minutes per permit. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information to the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-3799, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20235, Attention: Desk Officer for NOAA. Requests to collect this information have been submitted to the Office of Management and Budget for approval.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 4, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is proposed to be amended as follows:

PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for 50 CFR part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. Section 285.2 is amended by adding, in alphabetical order, definitions of "eviscerated" and "fishing record," and by revising paragraph (a) of the definition of "Regional Director," to read as follows:

§ 285.2 Definitions.

* * * * *

Eviscerated means removal of the gills and internal organs only.

* * * * *

Fishing record means all records of navigation and operations, as well as all records of catching, harvesting, transporting, landing, purchase, or sale.

* * * * *

Regional Director means

(a) For purposes of Atlantic bluefin tuna, the Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-3799; and

* * * * *

3. Section 285.3 is amended by revising paragraphs (b) and (f) and by adding a new paragraph (g) to read as follows:

§ 285.3 Prohibitions.

* * * * *

(b) For any person to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that took the fish.

* * * * *

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than whole or eviscerated, or to possess giant or medium Atlantic bluefin tuna in forms other than whole or eviscerated unless such tuna has been prepared for immediate packing in a sealed container for shipment or transport for commercial purposes.

(g) For any person subject to the jurisdiction of the United States to land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

4. Section 285.21 is amended by revising paragraphs (c) and (e) to read as follows:

§ 285.21 Vessel Permits.

* * * * *

(c) *Application procedure.* A vessel owner applying for an Atlantic bluefin tuna permit under this section must submit a completed permit application signed by the owner on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The application must include the name and address of the vessel owner, the name of the vessel, the port where the vessel is docked, the official State registration or U.S. Coast Guard documentation number, the tonnage if known, the length of the vessel, the area to be fished and the category of the permit. Except for purse seine vessels, an owner may change the category of the vessel's permit by notifying the Regional Director in writing before May 15. After May 15, the vessel's permit category may not be changed for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless the vessel never had recorded landings of Atlantic bluefin tuna, or there is sufficient evidence for the Regional Director to determine that an error involving contradictory information was made on the permit application.

* * * * *

(e) *Duration.* A permit issued under this section remains valid until it is suspended or revoked, or expires. Except with respect to purse seine permits, a permit issued under this section expires when the owner or name of the vessel changes, or on any other date specified by the Regional Director by notice published in the Federal Register at least 30 days in advance.

* * * * *

5. Section 285.23 is amended by revising paragraphs (f)(1) and (g) to read as follows:

§ 285.23 Incidental catch.

* * * * *

(f) * * *

(1) One fish per vessel per trip landed south of 36.00° N. latitude, provided that at least 2,500 lbs of yellowfin tuna, swordfish, and shark are landed from the same trip.

* * * * *

(g) *Rod and reel.* Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and retain, annually, one giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing, the landing of any giant Atlantic bluefin tuna and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose.

6. Section 285.24 is amended by revising paragraph (c) to read as follows:

§ 285.24 Catch limits.

* * * * *

(c) Persons angling in the regulatory area may catch and retain no more than one Atlantic bluefin tuna other than giant Atlantic bluefin tuna each day, provided that no more than four medium Atlantic bluefin tuna per day may be caught and retained per vessel for vessels having four or more anglers aboard. Persons angling in the regulatory area may possess Atlantic bluefin tuna in an amount not to exceed a single day's catch as allowed by the daily catch limit.

* * * * *

7. Section 285.25 is amended by revising paragraph (c) to read as follows:

§ 285.25 Purse seine vessel requirements.

* * * * *

(c) *Inspection.* Any owner or operator of a purse seine vessel with a permit issued under § 285.21(b) must request an inspection of the vessel and fishing gear by an enforcement agent of NMFS before commencing any fishing trip and before offloading any Atlantic bluefin tuna. The vessel owner or operator must request such inspection at least 24 hours before commencement of a fishing trip or offloading by calling 508-563-5721 or 508-281-9261. Purse seine vessel owners or operators must have each medium and giant Atlantic bluefin tuna in their catch weighed (round weight), measured, and the information recorded on the appropriate forms at the time of offloading and prior to transporting said tuna from the area of offloading.

* * * * *

8. Section 285.26 is amended by revising the text preceding the table to read as follows:

§ 285.26 Size classes.

For any Atlantic bluefin tuna found with the head removed in preparation for immediate packing or shipping, it is deemed for purposes of this subpart, that the tuna, when caught, fell into a size class in accordance with the following table. For this purpose, all measurements must be taken in a straight line along the middle of the lateral surface from the forward-most part of the beheaded fish to the fork of the tail. The fork length measurement will be the sole criterion for determining the size class of an individual Atlantic

BEST COPY AVAILABLE

bluefin tuna. Approximate round weights are given for illustrative purposes only.

* * * * *

9. Section 285.28 is amended by revising paragraph (a) to read as follows:

§ 285.28 Dealer permits.

(a) *General.* Any person purchasing, receiving, possessing, importing, or exporting Atlantic bluefin tuna must have a valid permit required under this section. If such purchase or receipt is made from a buy-boat, the buy-boat must have a valid permit under paragraph (l) of this section.

* * * * *

10. Section 285.29 is amended by revising paragraphs (a), (b), and (e), and by adding an GMB control number to read as follows:

§ 285.29 Dealer recordkeeping and reporting.

* * * * *

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each medium or giant Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the whole fork length, gear used, and area where caught.

(b) Must submit to the Regional Director a weekly report on forms supplied by NMFS, within 2 days after the end of each reporting week in which Atlantic bluefin tuna were purchased or received. Each report must specify accurately and completely: the number of tuna purchased or received, including imported tuna; location where each tuna was caught; the disposition of the tuna (names, addresses and, where applicable, country of destination); the source of the tuna (names and addresses); dates purchased or received; metal tag numbers (where applicable); round or dressed weight and whole fork length (by individual tuna); and any other information requested by the Regional Director. Also, dealers using buy-boats, in addition to the information required above, must include the precise time and date when each tuna was received aboard the buy-boat.

* * * * *

(e) Each operator of a buy-boat, in addition to the above, must notify the Regional Director of any intended offloading, and must request a vessel inspection at least 6 hours before such offloading by calling 508–281–9261 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, local time, or at all other times during the day and weekends by calling 508–992–7711. In making the request for inspection, the owner or operator of the buy-boat, or a designated representative, must provide his/her name, the buy-boat's name and permit number, the number of tuna received, and the location and anticipated time of landing in port.

(Approved by the Office of Management and Budget under OMB control number 0648–0202)

11. Section 285.30 is amended by revising paragraphs (c)(2) and (d) to read as follows:

§ 285.30 Metal tags.

* * * * *

(c) * * *

(2) Any person who catches a medium or giant Atlantic bluefin tuna and does not transfer it to a permitted dealer must contact the nearest NMFS enforcement office at the time of landing such Atlantic bluefin tuna and make the tuna available for inspection and attachment of a metal tag. The offices to contact are: Portland, Maine (207–780–3241); Otis Air Force Base, Massachusetts (508–563–5721); Brielle, New Jersey (201–528–3315); Atlantic Beach, North Carolina (919–247–4549); Brunswick, Georgia (912–265–0106); Miami, Florida (305–361–4224); St. Thomas, U.S. Virgin Islands (809–774–5226); San Juan, Puerto Rico (809–782–8686); St. Petersburg, Florida (813–893–3145); St. Joe, Florida (904–227–1879); or Corpus Christi, Texas (512–888–3362). The Regional Director may designate a person other than a NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A metal tag affixed to any medium or giant Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipments of bluefin tuna for domestic commercial use or for export.

* * * * *

12. Section 285.31 is amended by revising paragraphs (a)(1), (a)(2), (a)(5), (a)(10), and (a)(15), and by adding paragraphs (a)(30), (a)(31), (a)(32), and (a)(33), to read as follows:

§ 285.31 Prohibitions.

(a) * * *

(1) Fish for, catch, possess, or land Atlantic bluefin tuna without a valid permit required under § 285.21 and carried onboard the vessel;

(2) Fish for, catch, possess, or land Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 285.20, except under the provisions of § 285.27;

* * * * *

(5) Fish for, catch, possess, or land Atlantic bluefin tuna in excess of any allocation made under § 285.25(d);

* * * * *

(10) Land any Atlantic bluefin tuna in forms other than round (whole) or other than eviscerated;

* * * * *

(15) Sell, offer for sale, or transfer to any person for a commercial purpose any giant Atlantic bluefin tuna caught incidentally with rod and reel gear under § 285.23(g);

* * * * *

(30) Fish for, catch, possess or land Atlantic bluefin tuna from the Gulf of Mexico except under § 285.23 (g);

(31) Assault, resist, oppose, impede, intimidate, or interfere with any authorized officer in the conduct of any search, inspection, or seizure made in connection with enforcement of this part;

(32) Interfere with, obstruct, delay, or prevent by any means a lawful investigation or search by an authorized officer in the process of enforcing this part;

(33) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

[FR Doc. 91–5531 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States. The meeting will be held at 9:30 a.m., on Friday, March 15, 1991, at the Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

The committee will meet to discuss a study concerning evaluation of the procedures of the national child vaccine injury compensation program. The study is being conducted by Professor Wendy K. Mariner of Boston University School of Public Health and Medicine.

For further information concerning this meeting, contact: David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC. (Telephone: 202–254–7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 6, 1991.

Michael W. Bowers,
Deputy Research Director.

[FR Doc. 91–5709 Filed 3–8–91; 8:45 am]

BILLING CODE 6110–01–M

CIVIL RIGHTS COMMISSION

Agenda Public Meeting; Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7 p.m. and adjourn at 9 p.m. on March 25, 1991, at the Holiday Inn, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to discuss program planning and future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert E. Riggs or Philip Montez, Director of the Western Regional Division, (213) 894–3437, TDD (213) 894–0508. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, February 27, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 91–5636 Filed 3–8–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Meeting Cancellation

This document cancels the following meeting: **Federal Register** citation of previous announcement: p. 6372, February 15, 1991. Previously announced time of meeting: 9:30 a.m., March 14 1991.

Dated: March 6, 1991.

Betty Ferrell,
Director, Technical Advisory Committee Unit.

[FR Doc 91–5666 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–DT

Foreign Trade Zones Board

[Order No. 514]

Designation of New Grantee for Foreign-Trade Zone 86, Tacoma, WA; Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

The Board, having considered the matter, hereby orders:

After consideration of the request with supporting documents (Docket 44–90, filed 12/28/90) of the Puget Sound Foreign-Trade Zone Association (PSFTZA), grantee of Foreign-Trade Zone 86, Tacoma, Washington, for reissuance of the grant of authority for said zone to the Port of Tacoma, a Washington State municipal corporation, which has accepted such reissuance subject to approval of the Foreign-Trade Zones Board, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the request and recognizes the Port of Tacoma as the new grantee of Foreign-Trade Zone 86, Tacoma, Washington.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Signed at Washington, DC, this 4th day of March, 1991.

Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. De Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–5668 Filed 3–8–91; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 12–91]

Foreign-Trade Zone 93—Raleigh/Durham, NC; Application for Subzone; Mallinckrodt Medical, Inc., Pharmaceutical Manufacturing Facility, Wake County, NC

An application has been submitted to

the Foreign-Trade Zones Board (the Board) by The Triangle J Council of Governments, grantee of FTZ 93, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Mallinckrodt Medical, Inc. (MMI), a subsidiary of IMCERA Group, Inc., located in Wake County (Raleigh area), North Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 27, 1991.

The MMI site (28 acres, 128 employees) is located at 8800 Durant Road, some nine miles northeast of Raleigh's business district in Wake County, North Carolina. The facility is used for the production of diagnostic pharmaceutical products (imaging agents, HTS Heading 3006) for use in radiology, cardiology, anesthesiology and nuclear medicine. The finished products include the "Hexabrix", "Conray", "Optiray", and "MD" brands of contrast media, which are sold mainly to hospitals and clinics. Foreign-sourced items will account for, on average, 20–30 percent of the finished products' value and include the following chemicals: ioxaglic acid, iothalmic acid, meglumine USP, diatrizoic acid, tromethamine USP, and iocetamic acid.

Zone procedures would exempt MMI from Customs duty payments on the foreign material used in the production of items for export. On its domestic sales, the company would be able to choose the duty rate (8.9%) that applies to the finished imaging agents. The duty rates on foreign-sourced item range from 7.9 to 13.5 percent. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director for Inspection and Control, U.S. Customs Service, Southeast Region, 909 S.E. First Avenue, Miami, Florida 33131–2505; and, Lt. Colonel Thomas C. Suermann, District Engineer, U.S. Army Engineer District Wilmington, P.O. Box 1890, Wilmington, NC 28402–1890.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before April 30, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, suite 432, 251 N. Main Street, Winston-Salem, NC 27101

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 5, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91–5697 Filed 3–6–91; 8:45 am]
BILLING CODE 3510–DS–M

International Trade Administration

Sanctions for Violations of an Administrative Protective Order

AGENCY: Import administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of status of investigations into charges of violation of administrative protective orders in antidumping and countervailing duty proceedings.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–6816.

SUPPLEMENTARY INFORMATION: The International Trade Administration, U.S. Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on recent findings that the provisions of ITA APO's have been violated.

The investigations consisted of cases where counsel released to their clients, which did not have access to proprietary information under APO, proprietary versions of submissions which contained another party's proprietary information. In all cases, the APO violations were found to be inadvertent and no significant harm was caused to the submitter of the information by the disclosures.

In each of the cases, the individuals involved were (1) issued private reprimands which warned that future violations by them or others associated with their firms would be treated more severely; (2) were required to attend a training session on proper procedures for protecting proprietary data; and (3) were required to review the ITA regulations and public reports of APO violations published in the Federal Register and submit a report which provides suggestions for improving APO procedures. In addition, the firms with which these individuals were associated at the time of the violations were required to hold in-house seminars on APO procedures providing practical guidance on how to avoid APO problems.

Serious harm can result from inadvertent or other disclosures of proprietary information obtained under APO. ITA will continue to investigate vigorously allegations that the provisions of APO's have not faithfully been observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or debarment from practice before the ITA.

This notice is published pursuant to 19 C.F.R. 354.15(e) [1990].

Dated: February 19, 1991.

Roger W. Wallace,
Deputy Under Secretary for International Trade.

[FR Doc. 91–5699 Filed 3–8–91; 8:45 am]
BILLING CODE 3510–DS–M

[A–583–805]

Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the U.S. Butt-Weld Pipe Fittings Committee and its individual members, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Taiwan. The review covers shipments of this merchandise to the United States from two exporters during the period December 1, 1987 through November 30, 1988. As a result of this review, the Department has preliminarily determined that dumping margins exist with respect to the two exporters. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. and Constitution Ave. NW., Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45152) an antidumping duty order on certain carbon steel butt-weld pipe fittings from Taiwan. On November 29, 1988, we published in the **Federal Register** (53 FR 48004) a notice of opportunity to request an administrative review of this order. On December 29, 1988 the U.S. Butt-Weld Fittings Committee requested an administrative review of this order. We published a notice of initiation on January 31, 1989 (54 FR 4671). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

This review covers shipments made by two exporters of carbon steel butt-weld pipe fittings from Taiwan to the United States. The exporters covered by this review are C.M. Pipe Fitting Mfg. Co., Ltd. ("C.M.") and Rigid Industries Co., Ltd. ("Rigid").

Scope of the Review

Imports covered by this review are shipments of carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting.

Until January 1, 1989, this merchandise was classifiable under item number 610.8800 of the TSUSA. Since that date, these products have been classifiable under HTS item number 7307.93.3000. As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

Fair Value Comparisons

To determine whether sales in the United States of carbon steel butt-weld pipe fittings from Taiwan were made at less than fair value, we compared the United States price with the foreign market value. Since Rigid had no home-market sales, and C.M. did not have a viable home-market, we compared each company's U.S. sales to their largest third-country market, which in both cases was Canada.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., duty-paid, packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered or ex-factory packed prices to unrelated purchasers in Canada. We made deductions to foreign market value, as appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges. In order to adjust for differences in packing between the two markets, we deducted the packing costs for Canada and added U.S. packing costs. Adjustments were made for differences between Canadian and U.S. commission sales. Neither C.M. nor Rigid claimed any difference of merchandise adjustments. Where there was no identical product in the third country with which to compare a product sold in the U.S. market, the Department selected the most similar product for fair value comparisons and made no adjustment for differences in the physical characteristics of the merchandise.

Petitioners alleged that sales in the third-country market were made at prices below the cost of producing the merchandise. We verified the cost-of-production information used in determining whether sales were made at less than the cost of production (COP), in accordance with section 776(b) of the Act.

C.M.

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of C.M.'s cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by C.M. in our analysis, except in the following instances where the costs were not appropriately quantified or valued.

We adjusted material costs for all four products under review, *i.e.*, caps, elbows, reducers, and tees, to reflect the material unit cost and actual yield experienced by the company after deduction of the revenue earned from scrap sales. Company-wide direct labor and factory overhead allocations to each cost center were inappropriate because they were based on a calculation involving 1984 machine time standards. Because C.M. only produces the type of products under review, we used, as best information available, the total machine time used for total production during 1988 by each cost center in allocating direct labor and factory overhead costs to the cost centers. Additionally, we adjusted total factory overhead by deducting the cost of packing materials, because these costs were also included in the submission as packing costs. We adjusted selling, general and administrative cost (SG&A) expense by reclassifying certain G&A expenses that were previously misclassified as selling expenses. Because C.M. did not report its interest expenses, we included net interest expense as reported in the company's accounting records, as best information available. All of C.M.'s sales in the third-country were found to have been above the cost of production.

Rigid

For purposes of determining whether third-country sales were above the cost of production, we calculated the COP on the basis of Rigid's cost of materials, labor, factory overhead, and general expenses. We relied upon the COP data submitted by Rigid in our analysis, except in the following instances where

the costs were not appropriately quantified or valued.

We adjusted the allocation of direct labor and factory overhead costs for caps to reflect actual production quantities. Due to clerical errors, standard machine times were incorrectly recorded on factory documents for certain models in the elbow, reducer, and tee cost centers. Therefore, within each cost center, we adjusted the allocation of direct labor and factory overhead costs to each model to agree with the appropriate machine time standards. Because Rigid did not report its interest expense, we included net interest expense as reported in the company's accounting records, as best information available.

We found that 20 percent of Rigid's sales of the subject merchandise in the third-country were at prices below the cost of production, within the meaning of section 773(b) of the Act. We disregarded these sales, and used the remaining 80 percent to determine foreign market value.

Verification

We verified the cost-of-production information used in determining whether sales were made at less that cost of production (COP), in accordance with section 776(b) of the Act. We used standard verification procedures including on-site inspection of the manufacturers' operations and examination of accounting record and other documents containing relevant information.

Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margins exist:

Manufacturer/Producer/Exporter	Margin (percent)
C.M.	5.31
Rigid	6.89

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries upon completion of this administrative review.

Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service upon completion of this administrative review.

Further, as provided by section 751(a)(1) of the Tariff Act, the Customs Service shall require upon publication of our final results, a cash deposit of estimated antidumping duties based on the above margins for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for those firms. For any future entries of his merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after November 30, 1988, and who is unrelated to the reviewed firms or any previously investigated firm, the Customs Service will require a cash deposit of 6.31 percent *ad valorem*.

These deposit requirements are effective for all shipments of carbon steel butt-weld pipe fittings from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first weekday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations 19 CFR 353.22.

Authority: Dated: March 4, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5684 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-817]

Postponement of Final Antidumping Duty Determination: High Information Content Flat Panel Displays and Subassemblies Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received request from Toshiba Corporation, a respondent in the antidumping duty investigation, to postpone the final determination, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Based on this request, we are postponing our final determination as to whether sales of high information content flat panel displays and subassemblies thereof (FPDs) from Japan have been made at less than fair value until not later than July 8, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, DC 20230, at (202) 377-5288.

SUPPLEMENTARY INFORMATION: On February 26, 1991, Toshiba Corporation, a respondent that accounts for a significant proportion of exports of the subject merchandise, requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act.

Accordingly, we are postponing the date of the final determination until not later than July 8, 1991. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than May 30, 1991, and rebuttal briefs no later than June 6, 1991. In accordance with 19 CFR 353.38(b) of the Department's regulations, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on June 10, 1991, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the Federal Register. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: March 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5683 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-806, A-423-802, A-351-806, A-122-811, A-562-803, A-437-801, A-201-804, A-570-812; A-455-801, A-580-808, A-469-801, A-583-813, A-489-803, A-479-802]

Initiation of Antidumping Duty Investigations: Ball Bearings, Mounted or Unmounted, and Parts Thereof From Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating antidumping duty investigations to determine whether imports of ball bearings, mounted or unmounted, and parts thereof (ball bearings) from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China (PRC), Poland, the Republic of Korea (ROK), Spain, Taiwan, Turkey and Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, the International Trade Commission (ITC) will make its preliminary determinations on or before April 1, 1991. If these determinations are affirmative, we will make our preliminary determinations on or before July 23, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1769 or 377-4087, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 13, 1991, we received a petition filed in proper form by The Torrington Company on behalf of the domestic ball bearings industry. Supplements to the petition were received on February 20 and 26, 1991. In compliance with the filing requirements of 19 CFR 353.12, petitioner alleges that ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia, are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to these investigations. If any interested party, as described under paragrpahs (C), (D), (E), or (F) of Section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

For all countries subject to these investigations, petitioner's estimate of U.S. price is based on prices obtained by petitioner's own market intelligence, or from U.S. importer price lists. The petitioner made deductions, where appropriate, for importer markups, international movement charges, and customs duties. Petitioner incorrectly calculated the importer's markup by basing it on the gross price, rather than the importer's price, of U.S. prices for ball bearings from Brazil, Hungary, the PRC, Poland and Yugoslavia. Consequently, we recalculated the U.S. price from those countries. In addition, we corrected other mathematical errors in the U.S. price calculations for Brazilian comparisons.

For Argentina, Austria, Brazil, Mexico, ROK, Spain, Taiwan and Turkey, petitioner's estimate of foreign market value (FMV) is based on home market prices obtained from price lists and/or petitioner's market intelligence. Petitioner deducted discounts, distributor markups and commissions, where appropriate, based on its market intelligence. For Mexico, petitioner also made a circumstance of sale adjustment for credit expenses; no adjustment was made for the other countries as the petitioner stated it could not obtain information on credit terms for those countries.

For Hong Kong and Yugoslavia, petitioner's estimate of FMV is based on constructed value (CV), as it could not obtain home market prices for ball bearings from these countries. Petitioner estimated FMV for Canada on a CV basis as well. Petitioner calculated CV based on tis costs for materials and labor, adjusted for estimated differences in each country. Overhead was calculated based on actual costs incurred in Canada for Canadian comparisons, and on costs incurred in Portugal for Hong Kong and Yugoslevian comparisons, as petitioner could not obtain actual overhead costs incurred in those countries. The petitioner also added the actual general expenses for Canada, and the statutory ten percent of material and fabrication costs as general expenses for Hong Kong and Yugoslavia. For all three countries, petitioner added the statutory eight percent of material, fabrication and general expenses for profit. In each case, petitioner added an amount for U.S. packing.

For comparisons involving Canada, we excluded the expense for scrap material in the CV calculation as it was not adequately supported in the petition, and revised the factory overhead and general expenses based on data in the petition. Although petitioner alleged that Canadian home market sales are being made at below the cost of production, we have not initiated a cost investigation because the allegation was not adequately supported in the petition.

For comparisons involving Hong Kong, we recalculated the material cost for retainers as the adjustment in excess of the petitioner's cost was not adequately supproted in the petition. For comparisons involving Yugoslavia, we recalculated certain packing costs that were not adequately supported in the petition.

Petitioner alleges that Hungary, Poland and the PRC are non-market economy countries within the meaning of section 773(c) of the Act. Accordingly, FMV for these countries is a market valuation of the factors of production, based on estimated costs in the "surrogate" market economy countries of Portugal (for Hungary), Mexico (for Poland), and India (for the PRC), in accordance with section 773(c)(1). Petitioner adjusted its unit labor and materials costs to reflect labor and material prices in each surrogate country. Overhead was based on actual costs incurred in Portugal for Hungarian and Polish comparisons, and in India for PRC comparisons. Petitioner used Portuguese overhead costs in the Polish FMV calculation as it could not obtain actual overhead costs incurred in Mexico. The petitioner also added the actual general expenses for the Indian cost in PRC comparisons, and the statutory ten percent of material and fabrication costs as general expenses for Portuguese and Mexican costs in Hungarian and Polish comparisons. For all three countries, petitioner added the statutory eight percent of material, fabrication and general expenses for profit. In each case, petitioner added an amount for U.S. packing.

For comparisons involving Hungary and the PRC, we recalculated the material cost for retainers as the adjustment in excess of the petitioner's cost was not adequately supported in the petition. For comparisons involving Hungary, we recalculated certain packing costs that were not adequately supported in the petition. For comparisons involving Poland, we excluded the expense for scrap material in the FMV calculation as it was not adequately supported in the petition.

Based on the comparisons of the prices presented by the petitioner, and adjusted as described above, the alleged dumping margins for each country are as follows:

Country	Alleged margins
Argentina	14.56 to 22.44 percent.
Austria	11.80 to 42.52 percent.
Brazil	2.70 to 41.45 percent.
Canada	7.22 to 22.20 percent.
Hong Kong	78.31 to 222/41 percent.
Hungary	22.08 to 166.80 percent.
Mexico	39.24 to 66.88 percent.
PRC	12.95 to 284.62 percent.
Poland	53.97 to 172.50 percent.
ROK	7.41 to 149.78 percent.
Spain	5.90 to 36.04 percent.
Taiwan	4.76 to 107.56 percent.
Turkey	10.20 to 329.70 percent.
Yugoslavia	2.70 to 35.22 percent.

Initiation of Investigations

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of ball bearings form the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally, we will make our preliminary determinations by July 31, 1991.

Scope of Investigation

The products covered in these investigations include all ground antifriction bearings and parts thereof, finished or unfinished, which employ balls as the rolling element, whether or not housed or combined. Imports of these products are classified under the following categories: Antifriction balls and other parts of ball bearings, ball bearings with integral shafts, other ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Wheel hub units which employ balls as the rolling element are included in these investigations. Finished but unground or semiground balls are not included in the scope of these investigations. Unfinished parts (inner race, outer race, balls, etc.) are included in these investigations if they have been heat treated, or heat treatment is not required to be performed on the part. Unfinished parts which will be subject to heat treatment after importation are not included in these investigations.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 6909.19.50, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.99.50. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 1, 1991, whether there is a reasonable indication that imports of ball bearings from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the PRC, Poland, the ROK, Spain, Taiwan, Turkey and Yugoslavia are materially injuring, or threaten material injury to, a U.S. industry. If its determinations are negative, the investigations will be terminated. Otherwise, the Department will make its preliinary determinations on or before July 23, 1991.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: March 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5689 Filed 3-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-485-804]

Initiation of Countervailing Duty Investigation: Ball Bearings, Mounted or Unmounted, and Parts Thereof, From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Turkey of ball bearings, mounted or unmounted, and parts thereof ("ball bearings"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of ball bearings from Turkey are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before May 9, 1991.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3534 or (202) 377-0114.

SUPPLEMENTARY INFORMATION:

The Petition

On February 13, 1991, we received a petition in proper form from The Torrington Company, filed on behalf of the U.S. industry producing ball bearings. In compliance with the filing requirements of § 355.12 of the Department's Regulations (19 CFR 355.12) (1990), the petition alleges that manufacturers, producers or exporters of ball bearings in Turkey receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation and the ITC is required to determine whether imports of ball bearings from Turkey materially injure, or threaten material injury to, the U.S. industry.

Petitioner stated that it has standing to file the petition because it is an interested party as defined under section 771(9)(C) of the Act and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the petition on ball bearings from Turkey and has found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether Turkish manufacturers, producers or exporters of ball bearings receive subsidies. However, we are not initiating an investigation on one program that did not meet the requirements under section 702(b). If our investigation proceeds normally, we will make our preliminary determination on or before May 9, 1991.

Scope of Investigation

The products covered in this investigation include all ground antifriction bearings and parts thereof, finished or unfinished, which employ balls as the rolling element, whether or not housed or combined. Imports of these products are classified under the following categories: Antifriction balls and other parts of ball bearings, ball bearings with integral shafts, other ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Wheel hub units which employ balls as the rolling element are included in this investigation. Finished but unground or semiground balls are not included in the scope of this investigation. Unfinished parts (inner race, outer race, balls, etc.) are included in this investigation if they have been heat treated, or heat treatment is not required to be performed on the part. Unfinished parts which will be subject to heat treatment after importation are not included in this investigation.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 6909.19.50, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.99.50. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Turkey which allegedly confer subsidies on manufacturers, producers or exporters of ball bearings. We are initiating an investigation of the following programs:

- Subvention and Price Stabilization Fund
- Tax Deductions on Export Revenue
- Marketing Premium
- Freight Subsidies
- Energy Subsidies
- Preferential Export Credits
- Stamp Duty Exemption on Export Transactions
- Exemption from Taxes, Duties and Charges on Credits Pursuant to Export Commitment
- Double Deduction of Value-Added Tax (VAT) on Imported Inputs

We are not initiating an investigation on the export insurance program described below because the petitioner did not fulfill the requirements of section 702(b) of the Act.

Export Insurance

Petitioner alleges that because the Eximbank of Turkey provides export financing at preferential rates, it is likely that it also provides export insurance to Turkish exporters at preferential rates. Petitioner neither alleges nor provides, however, specific evidence which would indicate that the premium rates charged by the Turkish Eximbank for export insurance are inadequate to cover the long-term operating costs of the program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 1, 1991, whether there is a reasonable indication that imports of ball bearings materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Dated: March 5, 1991.
Marjorie A. Charlton,
Acting Assistant Secretary for Import Administration.
[FR Doc. 91-5660 Filed 3-8-91; 8:45 am]
BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

TITLE, APPLICABLE FORM, AND APPLICABLE OMB CONTROL NUMBER: Industrial Base Program Industrial Facility Survey; DD Form X120-2; OMB Control Number 0704-0045.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 2 hours.

Responses per Respondent: 1.

Number of Respondents: 2,050.

Annual Burden Hours: 4,100.

Annual Responses: 2,050.

Needs and Uses: The DD Form X120-2 is used by the DoD industrial planners to record production capabilities and physical properties of privately owned facilities. The data obtained is used to plan for effective utilization of the plant during mobilization.

Affected Public: Businesses or other for-profit.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: March 5, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-5659 Filed 3-8-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 2 April 1991 from 1100 until 1700 and 3-4 April 1991 from 0900 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense, and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. app. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: March 6, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-5666 Filed 3-8-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Research and Development Laboratories Consolidation and Conversion Advisory Commission; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold its first meeting on March 28th and 29th, 1991, in the Washington, DC area. The meeting will convene at noon on the 28th and adjourn at 3 p.m. on the 29th. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating, converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

This notice of the first meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

FOR FURTHER INFORMATION CONCERNING THIS MEETING, CONTACT: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, suite 317, Falls Church, VA 22041, phone (703) 756-8969.

Dated: March 6, 1991.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-5667 Filed 3-8-91; 8:45 am]
BILLING CODE 3810-01-M

Military Appeals Court; Practice and Procedure Rules, Proposed Changes

AGENCY: U.S. Court of Military Appeals.

ACTION: Notice of Proposed Change to Rule 8(a) of the Rules of Practice and Procedure of the United States Court of Military Appeals.

SUMMARY: This notice announces the following proposed change (italicized) to Rule 8(a) (Parties) of the Rules of Practice and Procedure, United States Court of Military Appeals:

Rule 8: Parties

(a) The title of any case filed with the Court shall contain the name, military rank and service number of an accused and, where appropriate, the official military or civilian title of any named party who is an agent or officer of the United States acting in such official capacity. *In the case of an appeal taken by the United States under Article 62, UCMJ, 10 U.S.C. 862, the appeal shall be docketed under the same title given to the action in the court-martial with the accused and the United States denominated as the sole parties therein.*

DATES: Comments on the proposed change must be received by May 10, 1991.

ADDRESSES: Forward comments to Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442-0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, telephone (202) 272-1448.

Dated: March 6, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-5668 Filed 3-8-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: The DoD, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The purpose of the match is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

DATES: This proposed action will become effective April 10, 1991, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202-2884. Telephone (703) 614-3027.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and OPM have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies to identify individuals of the Reserve Forces who are also employed in civilian positions of the Federal Government, who might need to be terminated from their reserve status because they fill critical positions and cannot be mobilized.

The parties to this agreement have determined that a computer matching program is the most efficient, effective and expeditious method of obtaining and processing the information needed to determine whether employees are both reservists and civilian employees holding critical positions and not able to be mobilized. The principal alternative to using a computer matching program for identifying such employees would be a manual comparison of all records of Reserve Forces with the records of all civilian employees serving in critical positions.

This match is intended to allow full mobilization without hindering civilian or military tasking due to dual status.

Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Secretary, Data Integrity Board, Workforce Information, room 7494, Office of Personnel Management, Washington, DC 20415.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) and an advance copy of this notice was submitted on February 27, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985). This matching program is subject to review by OMB and Congress and shall not become effective until that review period has elasped.

Dated: March 5, 1991.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program between the Office of Personnel Management and the Department of Defense for screening of ready reserve

A. *Participating agencies*: Participants in this computer matching progam are: Office of Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match*: The purpose of the matching agreement is to identify individuals of the Reserve Forces who are also employed by the Federal Government in a civilian position. Reservists who occupy critical civilian positions cannot be mobilized and may have their reserve status terminated if necessary.

DoD has responsibility for ensuring that members of Reserve Forces who are also civilian employees of the Federal government do not occupy critical civilian positions which could prevent their mobilization in an emergency. If a reservist does have such dual status, he/she may have to terminate either his reserve status or civilian position.

Based on experience, OPM and DMDC expect a computer matching program is the most effective and expedient way to identify individuals who are serving both in the Reserve Forces and a critical civilian position. No dollar savings are anticipated by the DoD as a result of this match. The match is intended to allow full mobilization

without hindering civilian or military tasking due to dual status.

C. *Authority for conducting the match*: Executive Order 11190, Providing for the Screening of the Ready Reserve of the Armed Services, contains the legal authority for conducting the matching program.

D. *Records to be matched*: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. This match will involve the Central Personnel Data File (CPDF) portion of the OPM/GOVT–1, General Personnel Records, system published at 55 FR 3638 (February 5, 1990). The disclosure from the OPM/GOVT–1 system of records will be made in accordance with routine use"hh". The CPDF contains information on approximately 2.2 million current non-Postal Federal civilian employees.

2. The DoD system of records is S322.10 DLA–LZ, Defense Manpower Data Center Base, published at 55 FR 42756 (October 23, 1990). The DMDC files contain information on 5 million active, retired, reserve military and civilian employees.

E. *Description of Computer Matching Program*: DMDC will compare information from the CPDF file with selected reserve files.

The CPDF extract to be provided by OPM contains the name, Social Security Number, date of birth, sex, annual salary rate (but not actual earnings), occupational series, service computation date of basic active service, veteran's preference, retirement plan, position occupied, work schedule (full time, part time, intermittent), agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier.

The data elements to be used from the DMDC files are Social Security Number, name, service, employment category and address.

Records matching on the Social Security Number will be sent to the applicable employing agency which will screen the initial data and verify that the matched data is consistent with the employing agency's files. The employing agency will verify the match results by reviewing the information in the acutal case file before an adverse action is taken.

Each individual identified as serving in the Reserve Forces and occupying a critical civilian position will be afforded all applicable due process standards including, but not limited to, being given an opportunity to contest the findings and proposed actions.

F. *Inclusive dates of the matching program*: This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching progam becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and may be repeated annually. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elasped as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries*: Director, Defense Privacy Office, 400 Army Navy Drive, room 205, Arlington, VA 22202–2884. Telephone (703) 614–3027.

[FR Doc. 91–5668 Filed 3–8–91; 8:45 am]
BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Environmental Statements: Upper Mississippi, MN

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: The St. Paul District, Corps of Engineers, proposes modifications to the channel maintenance practices on the Upper Mississippi River to improve efficiency of channel maintenance, reduce projects costs, and minimize environmental impacts.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Gary Palesh, Environmental Resources Branch, St. Paul District, Corps of Engineers, 1421 U.S. Post Office and Custom House, St. Paul, Minnesota 55101–1479, (612) 220–0386.

SUPPLEMENTARY INFORMATION: The St. Paul District maintains a 9-foot navigation channel on the Upper Mississippi River from the head of navigation in Minneapolis, Minnesota, to Guttenberg, Iowa. The proposed action includes modified dredging practices to reduce costs and environmental effect, channel structure modifications to reduce dredging volumes, and long-term dredged material placement sites.

In addition to the No Action alternative, the following alternatives will be addressed:

a. Alternative dredging practices; e.g., dredging equipment, dredging depths, and channel modifications.

b. Alternative dredged material placement sites.

The scoping process for the DEIS will involve the distribution of a scoping letter. No formal scoping meeting is scheduled at this time.

Public involvement is expected to include public notices, public meetings during the DEIS review process, and newsletters. The participation of affected Federal, State, and local agencies, Indian tribes, and other private organizations and parties is invited in the scoping, planning and review of the DEIS. Significant issues identified to date that would be analyzed in depth in the DEIS include:

a. Dredging alternatives and channel modifications to reduce dredging requirements.

b. Disposal of dredged material at placement sites to minimize adverse environmental effects.

The DEIS is currently scheduled to be made available to the public in October 1991.

Kenneth L. Denton,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–5639 Filed 3–8–91; 8:45 am]
BILLING CODE 3710–CY–M

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Change in agenda.

SUMMARY: This notice amends the notice of meeting of the Advisory Council on Education Statistics, published February 13, 1991, (56 FR 5809). The change is to add a session on the publication and data release policies for the National Assessment of Educational Progress on March 14 at 9 a.m. This session will replace the Commissioner's report, previously scheduled for that time. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIME: March 14, 1991, 9 a.m.–4:45 p.m. and March 15, 1991, 9 a.m.–Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326 Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Carrol B. Kindel, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400e, Washington, DC 20208–5574, telephone: (202) 219–1329.

Christopher T. Cross,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–5694 Filed 3–8–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Contract Award; Consultec Scientific, Inc.

AGENCY: Department of Energy.

ACTION: Notice of potential organizational conflict of interest after contract award.

SUMMARY: In accordance with Department of Energy (DOE) Acquisition Regulations relating to organizational conflicts of interest, 48 CFR 909.570, DOE gives public notice that a contract has been awarded, recognizing the existence of potential organizational conflicts of interest, because it has been determined to be in the best interest of the United States and the services required under this contract cannot otherwise be obtained.

FOR FURTHER INFORMATION CONTACT: Mr. F. Don Freeburn, Office of Energy Research, room F–330, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353–3156.

Findings, Mitigation, and Determination

Under section 19 of the Federal Nonnuclear Energy Research and Development Act, Public Law 93–577, and section 33 of the Federal Energy Act of 1974, Public Law 93–275, the Department of Energy is subject to strict requirements intended to avoid organizational conflicts of interest in the award and performance of contracts for technical and management support services. An organizational conflict of interest (OCI) is considered to exist when a contractor "has past, present, or currently planned interests, that, either directly or indirectly, through a client relationship, relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage." DOE Acquisition Regulation, 48 CFR 909.570–3. Pursuant to these statutory provisions, a contract may not be awarded unless the Secretary or his designee has made a determination that it is unlikely that an OCI would exist, or that a conflict has been avoided after inclusion of appropriate conditions in the contract. If an OCI is determined to exist and cannot be avoided, the contract may be awarded only if the Secretary or his designee determines that award would be in the best interest of the United States and includes appropriate provisions in the contract to mitigate the OCI.

Based on the following findings and determination, the contract described below has been awarded, after taking into account the existence of an OCI, because the contract is determined to be in the best interest of the United States, pursuant to the authority of DOE Acquisition Regulation 48 CFR 909.570 and this is a situation where the work or services cannot otherwise be obtained. Any comments should be provided within 5 days after publication of this notice.

Findings

1. The Office of Energy Research is established as a component of the Department of Energy (DOE) by section 209 of Public Law 95–91 (Department of Energy Organization Act). The statutory functions stated in that Act which define the role of the Office, and of the Director of Energy Research, include, among other responsibilities, the following items:

(1) Monitoring the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs; and

(2) Carrying out such additional duties assigned to the Office by the Secretary relating to basic and applied research activities including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 203 of this Act, as the Secretary considers advantageous.

The Director, Office of Energy Research, functions in essence as a science and technology advisor to the Office of the Secretary with additional responsibilities consistent with the intent of the statute and is the principal advisor to the Secretary on matters relating to physical research programs of the Department, utilization of multipurpose laboratories, cross-discipline research and development projects, and is assigned management responsibilities for major outlay programs in Basic Energy Sciences, High Energy and Nuclear Physics, Fusion Energy, and Health and Environmental Research.

2. Therefore, a competitive procurement (DE–RP01–89ER30156, Assessment of the Research Needs for Fossil Energy Diotechnology) was initiated in August 1989 to solicit support services to accomplish a specific Statement of Work.

Biotechnology can be broadly defined as the use of living organisms, or their components, to provide goods or services. While biotechnology has been practiced for centuries, its application to fossil energy resources has only been more recently investigated. During the last decade, researchers in the United States and abroad began to examine more closely how microorganisms might be purposely applied to produce additional and better fuel forms and chemicals from fossil fuel resources such as coal, petroleum, and natural gas. Examples of applications include microbial coal desulfurization and enhanced oil recovery

Researchers in fossil energy biotechnology have communicated the results of their research through papers and reports at dedicated workshops, contractors' meetings and conferences sponsored by such organizations as the Department of Energy's Office of Fossil Energy, the Electric Power Research Institute, and the 196th American Chemical Society National Meeting. Potential research areas and directions for fossil energy biotechnology have been identified and discussed by attendees, although not necessarily with agreement. These discussions have not included the larger research community of microbiologists, biochemists, and fossil energy researchers and technologists who are not familiar with the present status and directions of fossil energy biotechnology research.

Therefore, an independent reseach assessment is needed, to be performed primarily by prominent experts from this latter community, to identify new and novel applications of biotechnology for the use or conversion of domestic fossil energy resources to fuels and chemicals. The assessment will identify and describe the most promising developments, applications, and opportunities in biotechnology with potential applications to domestic fossil energy resources. In addition, the assessment will identify the major deficiencies, limits, unknowns and problems in the current technology base

and the most promising research directions and opportunities.

3. Based on a comprehensive evaluation of its technical and cost proposals, Consultec Scientific, Inc., has been determined to possess the required staffing experience for performing the Statement of Work.

4. Consultec Scientific, Inc., submitted the necessary OCI information as part of the required proposal package. The Consultec Scientific, Inc. statement certified that no OCI existed regarding the proposed work.

5. Consultec Scientific, Inc., has identified staff members with expertise in scientific and technical areas directly relating to fossil energy biotechnology. These individuals will serve as the project manager and principal investigator for the effort. To adequately and competently address the full scope of the assessment's subject area of research needs for fossil energy biotechnology at sufficient technical depth in all major topical areas, the contractor will convene a group of experts on the scientific and technical areas of the subject. Consultec Scientific, Inc., proposes to use a number of expert panelists in its efforts to perform the needs assessment and to engage in individual consulting agreements with each of them. Consultec Scientific, Inc., submitted OCI information for the firm, its primary staff members assigned to the project, and proposed experts and consultants.

6. Based on an evaluation of the facts contained in the OCI information submitted by the Consultec Scientific, Inc. staff members and the consulting experts, the Department of Energy believes that there is a minor conflict of interest under 48 CFR 909.570. As these Consultec Scientific, Inc., staff members and most of the consultants are experts in their respective fields of the technology being researched, each would potentially stand to benefit if their particular field were ultimately recommended by the prime contractor as an appropriate area for priority research. The potential benefit would be manifest in such a situation in terms of future opportunities for the Consultec Scientific, Inc., staff member or consultant to be awarded research contracts because he or she is a leading expert in that area. Therefore, the recommendations of such experts have the potential to be biased in favor of their own particular area of expertise.

Mitigation

The Department of Energy believes that the actual potential for conflict of interest is minor. Consultec Scientific, Inc., as the prime contractor, has selected a panel of experts to include representatives from each of the relevant areas of research applicable to fossil energy biotechnology. This balance in the panel should effectively level out potential bias toward any particular area. Further, the contract has been drafted to include numerous precautions that will detect bias and further mitigate the likelihood of bias and its potential impact. The contract requires:

(a) Attendance by the DOE Contracting Officer's Technical Representative at all meetings of the contractor and his experts;

(b) Cross review of all findings both within the group of experts and by a final, separate group of peer reviewers;

(c) Submission of monthly progress reports which will include notification by the contractor of any efforts he has made to mitigate conflict or potential conflict of interest; and

(d) Inclusion in the contract of the organizational conflict of interest special clause entitled "Organizational Conflicts of Interest" (48 CFR 952.209-72).

Determination

In light of the above Findings and Mitigations and in accordance with 48 CFR 909.570, contract award is considered to be in the best interest of the United States and the services required under this contract cannot otherwise be obtained.

Dated: March 5, 1991.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91-5879 Filed 3-8-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Merit Review System

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Office of Energy Research (ER) today proposes a number of changes to its Merit Review System, published in the Federal Register on May 9, 1990, to reflect desired policy and procedural changes. The changes include: (1) clarifying the number of qualified reviewers required for merit review, (2) deleting the requirement for a waiver to accept a competitive application or proposal with fewer than three qualified reviewers in favor of an explanation of the circumstances, and (3) specifying that the merit review of on-going programs may consist either of a review of the renewal application/proposal or an on-site or off-site review of the technical or scientific progress. The Energy Research Merit Review System is being republished in its entirety with these revisions.

EFFECTIVE DATE: Effective March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Zich, Director, Acquisition and Assistance Management Division (ER-64), Office of Energy Research, Department of Energy, Washington, DC 20585, (301) 353-5544.

SUPPLEMENTARY INFORMATION: An amendment to the DOE Financial Assistance Rules (54 FR 41943, October 13, 1989) requires program offices to establish and publish an objective merit review system for research and to ensure its satisfactory functioning. This notice publishes ER's Merit Review System as follows:

I. DOE Office of Energy Research Merit Review System

A. Consistent with 10 CFR 600.16(a)(1), the Office of Energy Research (ER) is publishing its Merit Review System (MRS) for research grant applications received pursuant to 10 CFR Part 605, which was published in the Federal Register on March 19, 1990 (55 FR 10035) and which may be supplemented from time to time by notice of grant availability. In addition, this ER MRS also is used for acquisition research proposals submitted pursuant to the ER Research Opportunity Announcement (ROA) which was published in the Federal Register on November 8, 1988 (53 FR 45234) and which may be amended or superseded from time to time. The solicitation documents discussed above may include information on how ER expects to review and select meritorious research applications and proposals. Reviews related to specific solicitations, Source Evaluation Boards and unsolicited applications/proposals will be conducted in accordance with DOE assistance or acquisition regulations as the case may be.

B. *Basic Review Standards.* 1. New applications/proposals will be received by the Division of Acquisition and Assistance Management and assigned to an ER project manager (officer) who will initially screen the document(s) to assure that they meet the following standards before they are subjected to detailed evaluation utilizing merit review.

a. *Sufficient technical/scientific content and merit.* Those applications/proposals judged to be so inadequate that detailed evaluation is not warranted will be returned to the sender.

b. *Completeness.* Those applications/proposals not meeting the requirements of the ER Special Research Grants Program Rule (10 CFR Part 605) or an ER Research Opportunity Announcement may be returned to the sender to be corrected or modified/supplemented by the sender. Until the application/proposal meets the above requirements, it generally will not be given detailed evaluation.

c. *Program Policy and Priorities.* Applications/proposals must be relevant to ER's missions and be of sufficient interest to warrant funding. In addition, sufficient funds must be available.

d. *No Unnecessary Duplication or Overlap.* Applications/proposals offering to perform research already being supported by DOE or other Federal agencies generally will not be subjected to formal merit review unless there is a cogent programmatic reason to do so.

2. *Determination to Return Application/Proposal.* The determination to return an application/proposal will be prepared by the ER project manager and will be approved at least one level higher than that of the project manager.

3. *Evaluation Criteria.* Applications/proposals meeting the standards in B.1. above, will be subjected to formal merit review and will be evaluated against the evaluation criteria set forth in 10 CFR Part 605.

4. *Additional Reviewers.*

a. The ER project manager will review applications/proposals for technical/scientific merit and program policy factors. In addition, he or she will submit applications/proposals to, generally, at least three qualified reviewers for evaluation in addition to anyone having direct line authority over the project manager, including the selection official, for formal merit review. Instructions to reviewers will include a reasonable length of time for responding to ER's request for a merit review. In those instances where three or more reviews are not obtained, the project manager must provide a written explanation of the situation. This explanation shall be included in a selection statement if the application/proposal is being selected for funding. If the application/proposal is being declined, this explanation shall be placed in the declined file. In the event that the project manager is a reviewer and is also the selection official, the decision shall be approved by the Director, Office of Energy Research, or a designee. If no reviews are provided to ER by the selected qualified reviewers, any award must be justified on a non-competitive basis.

b. Such additional reviewers may be Federal employees, including those from ER that are neither the selecting official nor those in a direct line of supervision above the project manager, or non-Federal employees. Additional reviewers will not include former employees of the project manager's immediate office, or anyone having line authority over that immediate office, within the past one year.

c. All reviewers serve as advisors to the selecting official and their recommendations are not binding. All significant adverse recommendations will be addressed in writing by the project manager to the selecting official and retained in the official file.

d. In selecting additional reviewers in accordance with this section B.4, such additional reviewers shall not include anyone who, on behalf of the Federal Government, performed or is likely to perform any of the following duties for any of the applications/proposals:

(1) Providing substantial technical assistance to the applicant/proposer;

(2) Approving/disapproving or having any decisionmaking role regarding the application/proposal;

(3) Serving as the project manager or otherwise monitoring or evaluating the recipient's programmatic performance;

(4) Serving as the Contracting Officer or performing business management functions for the project; or

(5) Auditing the recipient of the project.

e. Anyone in ER who has line authority over a person who is ineligible to serve as an additional reviewer because of the above limitations also is ineligible to serve as an additional reviewer.

f. It occasionally may be necessary, after the fact, to change project manager designation, thereby resulting in an individual who participated as an additional reviewer in the evaluation of an application/proposal being appointed as the project manager. This is not a violation of the policy of objective merit review, provided the assignment was not expected when the review was conducted.

C. *Comparative Review.* In order to enhance the validity of the evaluation, applications/proposals may be evaluated in comparison to each other.

D. *Methods of Reviewing On-going Programs.* Generally, ER will conduct a merit review before every renewal unless, based upon a review by program staff and one of the criteria listed below, a written determination is made that a project need not be reviewed at each renewal. The project manager shall prepare the determination prior to the date a renewal would become effective and the determination will be subject to the concurrence of the ER Division of Acquisition and Assistance Management and the approval of the Selecting Official. In no situation will a grant or contract be renewed for more than six (6) years without a merit review. The criteria to be used as a basis for such a determination are as follows:

(1) Instances involving annual award;

(2) The nature of the project requires additional time for performance; or

(3) Instances where a final period of support is being authorized to provide reasonable time and funds sufficient to bring the project to an orderly close.

Merit reviews of ongoing programs include:

(1) A review of the renewal proposal generally by at least three qualified reviewers who meet the requirements of I.B.4. above and who document their findings and provide them to the ER program official; or

(2) An on-site or off-site review of the scientific or technical program attended generally by at least three qualified reviewers who meet the requirements of I.B.4., above, and who evaluate the program and provide their documented findings to the ER program official.

In those instances where a merit review is not conducted prior to a renewal award, the renewal award is considered to be noncompetitive and must meet the requirements of 10 CFR 600.7(b)(2).

E. *Types of Review Groups.* ER utilizes various types of review mechanisms to accomplish a merit review; however, within each mechanism the reviewer is selected based upon his/her expertise and professional qualifications as they relate to the field(s) of research contained in the application/proposal. Each reviewer chosen to participate will be provided with a copy of the application/proposal, the ER evaluation criteria from 10 CFR Part 605.10, and other programmatic information needed to conduct the review. Based upon his/her review of these documents, the reviewer is expected to provide the ER project manager with a written analysis based on the pertinent evaluation criteria and other program information for each application/proposal. The types of review mechanisms used by ER and the situations they are used in are as follows:

1. Field Readers.

a. Merit review of applications/proposals may be obtained by using

field readers to whom applications/proposals are sent for review and comment. Field readers also may be used as an adjunct to review committees when, for example, the type of expertise needed or the volume of applications/proposals to be reviewed requires such auxiliary capacity.

b. Appropriate action should be taken by ER project managers to ensure that field readers clearly understand the process, their role, and the criteria upon which the applications/proposals are to be evaluated.

c. For those situations in which a standing committee is determined to be the appropriate review mechanism, but a group of field readers must be used instead, it should function as nearly like a committee as possible. For example, if all members of the standing committee were to evaluate all of the applications/proposals under review, then all field readers must receive all of the applications/proposals to be reviewed even though they are in geographically separate locations and all field readers should be instructed to follow the procedures established for evaluating the applications/proposals.

2. Standing Committees.

a. The determination whether it is appropriate to establish and use a standing committee(s) shall be made only by ER. Standing committees are normally appropriate when required by legislation or when the following conditions prevail:

(1) A number of applications/proposals on specific topics sufficient to justify the use of a standing committee(s) is received by the program on a regular basis in accordance with a predetermined review schedule;

(2) There is a sufficient number of persons with the required expertise who are willing and able to (a) accept appointments, (b) serve over reasonably protracted periods of time, and (c) convene at regularly scheduled intervals or at the call of the chairperson; and

(3) The legislative authority for the particular program(s) involved extends for more than one year.

b. Persons outside the cognizant program office shall constitute at least half the reviewers on such committees unless a deviation from this requirement has been approved under 10 CFR 600.16(g).

3. Ad Hoc Committees.

a. Ad hoc review committees may not exceed one year in duration and are appropriately used when use of a standing committee is not feasible or when one of the following conditions prevails:

(1) An on-site or off-site review of the scientific or technical program is being conducted.

(2) A small number of applications/proposals is received on an intermittent basis, or applications/proposals are received throughout an open solicitation period, generally for a period up to about one year.

(3) The program is one of limited duration, usually less than one year;

(4) The applications/proposals to be reviewed have been solicited to meet a specific program objective and cannot appropriately be reviewed by a standing committee because of subject matter, time constraints, or other limitations;

(5) The volume of applications/proposals received necessitates convening an additional committee(s) of available reviewers; or

(6) It is determined that the applications/proposals submitted have special review requirements, e.g., construction of a facility, the complexity of subject matter cuts across the areas of expertise of two or more standing committees, or the subject matter is of a special, nonrecurring nature.

b. Ad hoc committees may not be used for reviewing applications/proposals for any program for which a standing committee has been established (except for paragraph E.3.a.(4) of this section) unless a deviation is approved under 10 CFR 600.16(g).

F. *Review Summary.* Upon request, applicants/proposers will be provided with a written summary of the evaluation of their application/proposal.

G. *Reviewers With Interests in Application/Proposal Being Reviewed.* Reviewers must compy with the requirements of 10 CFR 1010.101(a) and 1010.302(a)(1) concerning conflict of interest. A committee or group of field readers which includes as reviewers any individuals who cannot meet these requirements or the program's review procedures, with regard to a particular application/proposal being reviewed, e.g., officials mentioned in paragraphs B.2 and 4., shall operate as follows:

1. These individuals or officials may not review, discuss, and/or make a recommendation on an application(s)/proposal(s) in which they have a conflict of interest.

2. In the case of a review committee, the committee member must absent himself or herself from the committee meeting during the review and discussion of the application(s)/proposal(s) in which he/she has a conflict of interest.

H. *Deviations.* 1. In any instance in which ER's Merit Review System is not to be used to review an application/proposal, group of applications/proposals, or class of applications/proposals, written prior approval for utilization of a different procedure, which itself must, to the extent possible, conform to the provisions of this section pertaining to merit review, must be obtained from the ER Director of Acquisition and Assistance Management.

2. If the deviation sought applies to a class of applications/proposals and constitutes a deviation from the requirements of 10 CFR 600.16, approval for deviation must be obtained in accordance with 10 CFR 600.4. If such request for deviation is approved, all details of the review procedure utilized and the proceedings and determination must be fully documented.

II. ER Selection Process

Selection of applications/proposals for award will be based upon the findings of the technical evaluations, the importance and relevance of the proposed research to ER's mission, and funding availability. Cost reasonableness and realism also will be considered to the extent appropriate. Adverse recommendations also will be considered and all the above will be addressed and documented in a written selection statement for the selection official.

Issued in Washington, DC on February 22, 1991.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91-5680 Filed 3-8-91; 8:45am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-275-000, et al.]

West Texas Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

February 28, 1991.

Take notice that the following filings have been made with the Commission.

1. West Texas Utilities Company

[Docket No. ER91-275-000]

Take notice that on February 22, 1991, West Texas Utilities Company (WTU) tendered for filing an Amendment, dated February 6, 1991, to the Transmission Service Agreement, dated April 25, 1990, between WTU and Brazos Electric Power Cooperative of Texas, Inc. (Brazoe).

The Transmission Service Agreement, accepted for filing by Commission order of August 8, 1990, provides that neither party may assign the Transmission Service Agreement without the prior written consent of the other party. The Amendment permits Brazos to assign, transfer, mortgage or pledge the Agreement under certain limited circumstances to create a security interest in the United States acting through the Rural Electrification Administration (REA).

WTU requests waiver of the notice requirement in order that the Amendment may become effective as of January 1, 1990, the effective date of the underlying Transmission Service Agreement.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power and Light Company

[Docket No. ER91-188-000]

Take notice that on February 22, 1991, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to various agreements between WP&L and Citizens Power and Light Corporation.

WP&L requests expedited consideration of the filing and an effective date of May 1, 1990. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Central Power and Light Company

[Docket No. ER91-282-000]

Take notice that on February 22, 1991, Central Power and Light Company (CPL) tendered for filing an Amendment, dated February 4, 1991, to the Transmission Service Agreement, dated April 25, 1990, between CPL and Brazos Electric Power Cooperative of Texas, Inc. (Brazos).

The Transmission Service Agreement, accepted for filing by Commission order of August 8, 1990, provides that neither party may assign the Transmission Service Agreement without the prior written consent of the other party. The Amendment permits Brazos to assign, transfer, mortgage or pledge the Agreement under certain limited circumstances to create a security interest in the United States acting through the Rural Electrification Administration (REA).

CPL requests waiver of the notice requirement in order that the Amendment may become effective as of January 1, 1990, the effective date of the underlying Transmission Service Agreement.

Copies of the filing were served upon Brazos and the Public Utility Commission of Texas.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. San Diego Gas & Electric Company

[Docket No. ER91-276-000]

Take notice that on February 25, 1991, San Diego Gas & Electric Company (SDG&E) tendered for filing a change of rates for transmission service as embodied in the following SDG&E Agreements with Southern California Edison Company (Edison), which reflects an increase in the rate of return authorized by the California Public Utilities Commission (CPUC) from 10.66% for 1990 to 10.91%, effective January 1, 1991.

1. Short Term Firm Transmission Service Agreement, Rate Schedule FERC 58;

2. Interruptible Transmission Service Agreement, Rate Schedule FERC 59; and

3. Firm Transmission Service Agreement, Rate Schedule FERC 60.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of January 1, 1991.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: March 15, 1991, in accordance with Standard Paragraph E end of this notice.

5. Florida Power & Light Company

[Docket No. ER91-277-000]

Take notice that Florida Power & Light Company (FPL), on February 25, 1991, tendered for filing a document entitled Joint Ownership Party Allocation Agreement between Florida Power & Light Company and Jacksonville Electric Authority (Agreement).

FPL states that the Agreement establishes limits on the parties' rights to import power at the Florida Southern Interface using the Joint Ownership Party's Individual Base Import Allocation and Individual Supplemental Import Allocation, by allocating these Allocations between the parties. FPL requests the waiver of § 35.3 of the Commission's Regulations be granted and that the Agreement be made effective on April 1, 1991. FPL states a copy of the filing was served on Jacksonville Electric Authority.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91-278-000]

Take notice that on February 26, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Revised Exhibit B dated October 1, 1990 to the May 29, 1961 Transmission Agreement [PacifiCorp Rate Schedule FERC No. 213], between PacifiCorp, Deseret Generation & Transmission Co-operative (Deseret), and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with Article 12 (ii) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

PacifiCorp respectfuly requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of October 1, 1990 be assigned, this date being consistent with the provisions of Article (12 (ii) of the Transmission Agreement.

Copies of this filing were supplied to Deseret, Bridger Valley and the Wyoming Public Service Commission.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pennsylvania Power & Light Company

[Docket No. ER91-158-000]

Take notice that on February 6, 1991, Pennsylvania Power & Light Company (PP&L) tendered for filing the first supplement to the Power Supply Agreement (Agreement), dated December 13, 1990, between PP&L and the Borough of Blakely (Blakely), which was filed in the above referenced proceeding on December 17, 1990, entitled "Charges for Blakely Alternate Supply" (First Supplement). The First Supplement clarifies the basis on which Blakely will be charged by PP&L for the alternate supply of electric service to be provided to Blakely under the Agreement.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of January 1, 1991.

PP&L states that a copy of its filing was served on the Borough of Blakely and the Pennsylvania Public Utility Commission.

Comment date: March 15, 1991 in accordance with Standard Paragraph E at the end of this notice.

8. El Paso Electric Company

[Docket No. ES91-16-000]

Take notice that on February 25, 1991, El Paso Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act for authority to issue and sell up to $50 million principal amount of new First Mortgage Bonds and up to $25 million principal amount of new Second Mortgage Bonds in April 1991. Also, Applicant requested authorization to exempt the issuance of Bonds from compliance with competitive bidding and certain negotiated placement requirements.

Comment date: March 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-5606 Filed 3-8-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP91-1315-000, et al.]

Natural Gas Pipeline Co. of America, et al. Natural Gas Certificate Filings

March 1, 1991.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Co. of America

[Docket No. CP91-1315-000]

Take notice that on February 22, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-1315-000 an application pursuant to section 7(c) of the Natural Gas Act to construct and operate compressor facilities at its North Lansing storage field (North Lansing) in Harrison and Greg Counties, Texas and to increase the certificated capacity and peak day withdrawal rate of North Lansing to enable it to provide a firm storage service of Mid-Con Marketing Corp. (MidCon), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that MidCon has requested firm storage service from Natural and would pay the cost of the facilities required to provide the requested service. MidCon would execute a firm storage service contract for a term of five years, it is stated. Natural states that it would provide the service under its Rate Schedule FSS. Natural asserts that it would not seek to include the cost of the facilities in its cost-of-service.

In order to provide the storage service for MidCon, Natural proposes to construct and operate one 3,000 horsepower and one 6,000 horsepower compressor unit to provide a total of 30,000 compressor horsepower for the injection of gas into North Lansing. Natural estiamtes the cost of the proposed facilities would be $12,114,000 which will be financed from funds on Natural. Natural states that it would be reimbursed for the costs of the facilities by MidCon.

Natural also requests that the certificated capacity of North Lansing be increased from 144,000,000 Mcf to 156,000,000 Mcf and that the certificated peak day withdrawal volume be increased from 740,000 Mcf per day to 950,000 Mcf per day. Natural states that current geological data indicates that the proposed increase in capacity can be achieved and that the proposed increase in the daily withdrawal rate can be accomplished with the increase in storage capacity and the nine injection/withdrawal wells authorized in Docket No. CP89-2061-000 (52 FERC ¶ 61,190) (1990)).

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP91-1293-000]

Take notice that on February 20, 1991, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-1293-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing El Paso to increase the maximum allowable operating pressure (MAOP) of certain facilities located in the Permian Basin, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that it is continually reviewing its system in order to maximize the effectiveness and efficiency of its overall operations. As a result of the review of the operation of its facilities in the Permian Basin area, El Paso states that it has determined that additional efficiencies in throughput can be obtained to facilitate either the receipt and/or delivery of additional gas on its system as well as permitting increased receipt and delivery flexibility between other pipeline companies. El Paso therefore proposes to increase the MAOP of approximately 171.64 miles of pipeline segments on its interstate pipeline system, identified as follows:

Goldsmith Project

1. Uprate approximately 25.6 miles of 16-inch pipeline (Goldsmith line), 25.6 miles of 20-inch pipeline (Goldsmith 1st loop line) and 25.6 miles of 20-inch pipeline (Goldsmith 2nd loop line) which lines originate at Phillips 66 Natural Gas Company's (Phillips) Goldsmith plant in Ector County, Texas and terminate at a point on El Paso's mainline in Winkler County, Texas. El Paso proposes to increase the MAOP form 580 to 936 p.s.i.g. which would increase throughput from the Phillips' plant by 85 MMcf per day.

2. Uprate approximately 3.10 miles of 30-inch pipeline originating in Lea County, New Mexico, extending to El Paso's Keystone mainline compressor station in Winkler County, Texas. El Paso proposes to increase the MAOP from 580 to 936 p.s.i.g.

3. Uprate approxiamtely 0.46 mile of 12¾-inch pipeline which begins and ends in Winkler County, Texas, terminating at the Sid Richardson Carbon & Gasoline Company's (Sid Richardson) Keystone plant. El Paso states that even though no increase in volumes will result from increasing the MAOP of this line from 580 to 936 p.s.i.g., the increase is necessary to match the MAOP of the Goldsmith lines.

El Paso states that the increased operating pressure and concomitant increased throughput is necessary to accommodate additional gas from present and anticipated interconnections with other pipelines, processing plants, and compressor stations.

Gomez Project

Uprate approximately 12.0 miles of 24-inch pipeline (Gomez Field loop line) commencing at El Paso's Waha plant in Reeves County, Texas and terminating in the Gomez Field in Pecos County, Texas. El Paso proposes to increase the MAOP from 1110 to 1123 p.s.i.g. El Paso states that the increase in MAOP would permit it to transport additional volumes of natural gas presently available to El Paso from the Mobil Coyanosa Field and other nearby sources, would permit El Paso to transport up to 200 MMcf per day to the Waha plant utilizing the Gomez Field loop line and would also permit El Paso to lower the pressure loss between the 24-inch Puckett to Waha line when natural gas from the Mobile Oil Corporation Coyanosa plant is not being delivered into El Paso's pipeline system.

Ozona Plant Line Project

Uprate approximately 17.35 miles of 8⅝-inch pipeline commencing at El Paso's Sutton County line in Crockett County, Texas and terminating at Shell Wester E & P, Inc.'s (Shell) Ozona plant in Crockett County, Texas. El Paso proposes to increase the MAOP from 797 to 1318 p.s.i.g. which would increase the deliverability of this line from approximately 13 MMcf to 78 MMcf per day. El Paso states that the increase in deliverability is based upon the desire of Valero Hydrocarbons, L.P. and other parties for additional transportation through the Ozona line. El Paso states that it would also install a pressure limiter monitor system, under § 2.55(a) of the Commission's Regulations, at the terminal to provide pressure protection for El Paso's 20-inch Sutton County line which operates at the lower MAOP of 815 p.s.i.g.

Dumas Line Project

Uprate approximately 25.30 miles of 30-inch pipeline commencing at El Paso's Plains compressor station in Yoakum County, Texas to an intersection with its existing 20-inch Goldsmith-Dumas line in Gaines County, Texas. El Paso proposes to increase the MAOP from 580 to 624 p.s.i.g. which is estimated to increase throughput from 384 to 400 MMcf per day and would provide added flexibility and efficiency to its pipeline system.

Upton County Line Project

Uprate approximately 36.63 miles of 20-inch pipeline originating where El Paso's McElroy Crane line intersects with its Upton County line in Crane County, Texas and terminating at El Paso's Benedum plant in Upton County, Texas. El Paso proposes to increase the MAOP from 780 to 936 p.s.i.g. which is estimated to increase throughput from 191 to 262 MMcf per day and would provide added flexibility efficiency to its pipeline system. El Paso states that it would also install, under § 2.55(a) of the Commission's Regulations, a pressure limiter operator valve at the junction of the 20-inch and 24-inch segments of the Upton County line to protect the 780 p.s.i.g. MAOP of the downstream 24-inch line.

As part of this proposal, El Paso asserts that it will be required to replace any segment of pipeline that does not satisfy the applicable strength and safety specifications under the higher pressure testing. Although it does not anticipate replacing any pipeline, El Paso requests such authorization as may be necessary from the Commission to permit these replacements. El Paso states that since all construction is anticipated to take place on its existing rights-of-way, the environmental impact associated with the uprate and any replacement will be negligible and does not constitute a significant environmental undertaking. El Paso states that the estimated cost of uprating the facilities, including an estimated cost of replacing facilities where necessary, is $2,002,280 which will be financed from internally generated funds.

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of the notice.

3. Amerada Hess Corp.

[Docket No. CP91-1314-000]

Take notice that on February 21, 1991, Amerada Hess Corporation (AHC), 218 West Sixth Street, Tulsa, Oklahoma 74119, filed on behalf of its wholly-owned subsidiary Tioga Gas Plant, Inc. (TGP), in Docket No. CP91-1314-000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the expansion of certain integrated gathering facilities and service will be engaged in production or gathering of natural gas and thus exempt from the Commission's rate and certificate jurisdiction under the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

AHC states that it is primarily engaged in the exploration, development, production and refining of hydrocarbons, including natural gas. The facilities in question are located, or to be located, in the Tioga Fields in North Dakota. It is stated that the Tioga gathering system is owned by TGP, and the system collects production from over 550 wells through approximately 800 miles of pipeline with diameters ranging from 2 to 30 inches. AHC states that the pipes spread across the production area in a web-like manner, and as a result, gas frequently flows north, south, east, and west within the space of four square miles.

According to AHC, there are low pressure wells producing gas as low as 7 p.s.i.g. and high pressure wells, producing gas up to 1250 p.s.i.g. connected to the system. In order to permit the low pressure gas to flow into the system with higher pressure gas, the Tioga gathering system also includes compression facilities at nine sites totaling 25,170 horsepower (hp). At present, AHC states that almost all production from the fields is processed at TGP's Tioga Gas Processing Plant before being tendered for sale to or transportation by Williston Basin Interstate Pipeline Company (WBI), or returned for lease fuel of gas lift purposes.

It is stated that the expansion of the Tioga gathering network would be located parallel to existing gathering facility rights of way until approximately 4.4 miles upstream of the projected point of interconnection with the proposed expansion of Northern Border Pipeline Company (Northern Border) in Docket No. CP91-867-000.

AHC states that volumes of gas flowing into the proposed facilities will: include gas received directly from individual wells; include well production not of pipeline quality; be used in part to perform functions integrally involved in the production of hydrocarbons; be interconnected with existing gathering facilities at several points stretching over the length of the proposed facilities; require additional compression, as well as, ultimately, treatment in amine and dehydration units, before such gas can be introduced into an interstate pipeline; and be utilized as lease fuel.

AHC states that the gathering system expansion, when fully operational, will consist of approximately 9 miles of 3-inch pipeline, 16.5 miles of 4-inch pipeline, 6.5 miles of 5-inch pipeline, 15 miles of 6-inch pipeline, 7 miles of 8-inch pipeline, and 60.5 miles of 10-inch pipeline. In addition, it is stated that the proposed facilities will be integrally involved in the operation of existing gathering lines.

It is stated that the expansion will provide gas lift volumes necessary for the production of crude oil as well as

provide for lease fuel throughout almost its entire length. Moreover, it is stated that the expansion alleviates the need to separately replace existing gathering facilities, will reduce the level of maintenance otherwise necessary and will increase production of crude oil from existing wells and allow wells previously disconnected wells to be reconnected.

AHC avers that the proposed facilities will also allow the reactivation of facilities in the Hawkeye Field that were abandoned because of gas previously available for gas lift was not economical. However, it is stated that the proposed facilities will furnish gas at a cost, a volume and a quality suitable for use as gas lift. Consequently, AHC submits that 22 miles of currently unutilized line in the Hawkeye Field will be reactivated. Additionally, AHC states that approximately 10 uneconomical Hawkeye Field wells can be reconnected due to available gas lift volumes, thereby increasing domestic crude oil production by approximately 200 barrels per day (bbl/d). Thus, AHC believes that between the Hawkeye wells to be reconnected and the impact upon presently connected wells, the system expansion could increase secure domestic crude oil production by more than 1000 bbl/d.

It is stated that the system expansion also will utilize gathering equipment already in place, and operation of the expanded system depends on compression at its southern end which would permit introduction of volumes of gas into Northern Border's mainline at a prescribed pressure of 1400 p.s.i.g. AHC states that the Cherry Creek Field compressor previously utilized for field compression will be overhauled in place to provide 700 hp of compression consistent with Northern Border's requirements. Further, the gathering system expansion is also designed to accommodate a second compressor at the southern end, which may commence operation as soon as a year after the expansion is constructed in order to assure that the volumes of gas can meet Northern Border's pressure specifications.

As part of the system expansion, AHC states that the three existing compressors will be removed and two new compressors will be installed to serve both the existing Tioga gas lift lines and the proposed facility. Nothwithstanding such compression totaling 2100 hp), AHC states that at no point on the gathering system will pressure meet the standards prescribed for shippers on Northern Border's expanded mainline transmission system.

AHC states that application of the Farmland Industries, Inc. (Farmland) primary function test to the subject facilities shows that they are engaged in production and gathering. It is stated that the gathering system expansion is in the midst of and consistent with a web-like pattern that is commonly associated with gathering lines and the expansion is totally within the producing area. Moreover, AHC submits that wells are located along most of the gathering system expansion, and as reserves are developed, additional wells will feed into the system in these areas. It is further stated that only 4.4 miles of the gathering system expansion will be downstream of the last point of interconnection with existing gathering facilities, which is well within the Commission's standards for gathering. AHC also states that the length and diameter of the gathering system expansion are also consistent with gathering status.

Comment date: March 22, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP91-1355-000]

Take notice that on February 26, 1991, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91-1355-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service of Virginia Electric Power Company, a distributor, under the blanket certificate issued in Docket No. CP86-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans states that, pursuant to an agreement dated June 29, 1990, under its Rate Schedule ITS, it proposes to transport up to 11,727 MMBtu per day equivalent of natural gas. Equitrans indicates that the gas would be transported from Pennsylvania and West Virginia, and would be redelivered in Pennsylvania and West Virginia. Equitrans further indicates that it would transport 11,727 MMBtu on an average day and 727,074 MMBtu annually.

Equitrans advises that service under § 284.223(a) commenced January 8, 1991, as reported in Docket No. ST91-6946-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Algonquin Gas Transmission Co.

[Docket No. CP91-1222-000]

Take notice that on February 11, 1991, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-1222-000, as supplemented on February 22, 1991, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Tennessee Corporation under the certificate issued in Docket No. CP89-948-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Notice of the instant proposal was issued on February 13, 1991. By its supplement filed on February 22, 1991, Algonquin has changed (corrected) the quantities to reflect that the peak and average quantities would be 1,000,000 MMBtu per day and that the corresponding annual quantity would be 365,000,000 MMBtu.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket Nos. CP91-1348-000, CP91-1349-000 and CP91-1350-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket Start Up Date
CP91-1348-000 (2-25-91)	EnMark Gas Corp. (Intrastate)	46,350 46,350 16,917,750	LA, TX	MS, LA, TX	10-1-88 ITS Interruptible	ST91-06693 1-7-91
CP91-1349-000 (2-25-91)	Dahl Gas Pipeline Corp. (Intrastate)	103,000 103,000 37,595,000	LA, TX, OK	LA, TX, MS	2-23-88 ITS Interruptible	ST91-06692 1-7-91
CP91-1350-000 2-25-91)	Bishop Pipeline Corp. (Intrastate)	41,200 41,200 15,038,000	TX, LA, MS	LA, TX, MS, AL, LA.	1-26-87 ITS Interruptible	ST91-06662 1-16-91

7. Colorado Interstate Gas Co.

[Docket No. CP91-1313-000]

Take notice that on February 21, 1991, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP91-1313-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company, a marketer, under the blanket certificate issued in Docket No. CP86-589, et al. pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that, pursuant to an agreement dated November 10, 1990, under its Rate Schedule TI-1, it proposes to transport up to 10,000 Mcf per day of natural gas. CIG indicates that the gas would be transported form Rvarious, and would be redelivered in Weld County, Colorado. CIG further indicates that it would transport 10,000 Mcf on an average day and 3,650,000 Mcf annually.

CIG advises that service under Section 284.223(a) commenced December 29, 1990, as reported in Docket No. ST91-6423-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Florida Gas Transmission Co.

[Docket No. CP91-1307-000]

Take notice that on February 21, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1307-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Ft Pierce utilities Authority, an end user, under the blanket certificate issued in Docket No. CP89-555-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT states that, pursuant to an agreement dated February 23, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 25,000 MMBtu per day equivalent of natural gas. FGT indicates that the gas would be transported form Rvarious, and would be redelivered in Dvarious. FGT further indicates that it would transport 18,750 MMBtu on an average day and 9,125,000 MMBtu annually.

FGT advises that service under § 284.223(a) commenced February 1, 1991, as reported in Docket No. ST91-6930-000.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Florida Gas Transmission Co.

[Docket Nos. CP91-1352-000, CP91-1353-000 and CP91-1354-000]

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-555-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1352-000 (02-25-91)	Ft Pierce Utilities Authority (End User)	14,000 10,500 5,110,000	Various	Various	02-23-90 ITS-1 Interruptible	ST91-6929-000 02-02-91
CP91-1353-000 (02-25-91)	Tranco Energy Marketing Company (Marketer).	40,000 30,500 14,600,000	Various	Various	01-22-91 ITS-1 Interruptible	ST91-7025-000 01-29-91

BEST COPY AVAILABLE

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1354-000 (02-26-91)	Reedy Creek Improvement (End-user)	2,586 1,940 943,726	Various	Orange County, Fla.	12-01-90 ITS-1 Interruptible	ST91-6980-000 02-06-91

18. United Gas Pipe Line Co.

[Docket Nos. CP91-1376-000, CP91-1377-000 and CP91-1378-000]

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transaction, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Appendix

Docket Number (Date Filed)	Shipper Name (Type)	Peak Day, Average Day, Annual MMBtu	Receipt Points [1]	Delivery Points	Contract Date, Rate Schedule, Service Type	Related Docket, Start Up Date
CP91-1376-000 (2-27-91)	Laser Marketing Co. (Marketer)	618,000 618,000 225,570,000	Various	Various	10-1-88 ITS Interruptible	ST91-7031 1-28-91
CP91-1377-000 (2-27-91)	Graham Energy Marketing Corp. (Marketer)	123,600 123,600 45,114,000	Various	Various	11-1-88 ITS Interruptible	ST91-7009 1-25-91
CP91-1378-000 (2-27-91)	Bishop Pipeline Corp. (Intrastate)	41,200 41,200 5,038,000	Various	Various	1-25-87 ITS Interruptible	ST91-7007 1-31-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

11. Natural Gas Pipeline Co. of America

[Docket No. CP91-1294-000]

Take notice that on February 20, 1991, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91-1294-000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction and operation of facilities required to receive and transport up to 600.5 MMcf/d of additional volumes along Natural's Amarillo mainline east of its compressor station 109 (C.S. 109), as well as certain related delivery facilities. Such application is filed as an alternative to that part of Northern Border Pipeline Company's (Northern Border) application at Docket No. CP91-967-000 proposing the construction of a new 231-mile 30-inch pipeline along with from two to four compressor stations between Harper, Iowa (where C.S. 108 is located) and Tuscola, Illinois.

The facilities for which Natural is requesting authority are divided into two separate cases: (a) The Base Case which assumes delivery of the total 600.5 MMcf/d to ANR Pipeline Company (ANR) plus new delivery facilities proposed to be constructed near Joliet, Illinois; and, (b) the Alternative Case which assumes delivery of the total 600.5 MMcf/d to Panhandle Eastern Pipeline Corporation (Panhandle) through the use of delivery facilities proposed to be constructed near Tuscula, Illinois. Both cases utilize the same facilities to receive and transport gas eastward from Natural's existing C.S. 109 at Harper, Iowa.

The facilities proposed to be constructed are described as follows:

I. Receipt and Transport Facilities Common to Both Cases:
- 114.39 miles of 36-inch pipeline loops.
- 8,000 additional horsepower at existing C.S. 109.
- 8,000 additional horsepower at existing C.S. 110.

II. Base Case Delivery Facilities:
- 1 8-inch tap and dual 12-inch taps on Natural's Amarillo Mainline in Kendall County, Illinois.
- Proposed Compressor Station 115 in Kendall County, Illinois, with 13,800 horsepower.
- A triple 16-inch meter station in Kendall County, Illinois.

III. Alternative Case Delivery Facilities:
- 7,200 additional horsepower at C.S. 111 in Piatt County, Illinois.
- 15 miles of 30-inch pipeline in Piatt, Moultrie and Douglas Counties, Illinois (Tuscola Lateral).
- A quadruple 12-inch meter station in Douglas County, Illinois.

The estimated cost of facilities is $95,964,000 for facilities common to both cases, $24,692,000 for the base case deliveries and $21,768,000 for the Alternative Case Delivery facilities. The cost of facilities required will be financed from funds on hand.

Natural will utilize its effective rates pursuant to Rate Schedules ITS and FTS for transportation service performed by means of the facilities proposed in this application.

The Commission advises all interested parties that Staff is holding a Technical Conference with respect to Northern Border Docket No. CP91-967-000 on March 14, 1991, at 10 a.m. Issues related to this application may be discussed at that conference.

Comment date: March 22, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Florida Gas Transmission Co.

[Docket Nos. CP91-1343-000, CP91-1344-000, CP91-1345-000, CP91-1346-000 and CP91-1347-000]

Take notice that on February 25, 1991, Florida Gas Transmission Company (Applicant), 1400 Smith Street, Houston, Texas 77002, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transaction, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No.[1] (date filed)	Shipper name	Peak day,[2] average day, annual	Receipt points [3]	Delivery point	Start up date, rate schedule, service type	Related docket, contract date
CP91-1343-000-(2-25-91)	City of Leesburg	7,200 5,400 2,628,000	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6934-000 2-23-90.
CP91-1344-000-(2-25-91)	Orlando Utilities Commission.	157,947 118,460 57,650,655	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6933-000 2-23-90.
CP91-1345-000-(2-25-91)	City of Vero Beach, Florida.	25,000 18,750 9,125,000	TX, LA, MS, AL, FL, OTX, OLA.	FL	2-02-91, ITS-1, Interruptible.	ST91-6928-000 2-23-90.
CP91-1346-000-(2-25-91)	Citizens Gas Supply Corporation.	800,000 600,000 292,000,000	TX, LA, MS, AL, FL, OTX, OLA.	TX, LA, MS, AL, FL, OLA.	2-02-91, ITS-1, Interruptible.	ST91-6932-000 2-23-90.
CP91-1347-000-(2-25-91)	Enron Gas Processing Company.	150,000 112,500 54,750,000	TX, LA, MS, AL, FL, OLA, OTX.	TX, LA, MS, OLA, AL, OTX.	2-02-91, ITS-1, Interruptible.	ST91-6935-000 2-23-90.

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and offshore Texas are shown as OLA and OTX, respectively.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-5805 Filed 3-8-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-1052-000, et al.]

Mississippi River Transmission Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation

[Docket No. CP91-1052-000]

February 27, 1991.

Take notice that on January 29, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1052-000 an application pursuant to section 7(b) of the Natural

Gas Act for permission and approval to abandon firm gas sales service performed by MRT for Olin Corporation (Olin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MRT proposes to abandon the firm gas sales service that MRT provided to Olin pursuant to an Industrial Fuel Contract dated May 19, 1976, (agreement). MRT states that the agreement, with an initial term ending July 31, 1978, provides for Olin a maximum daily volume of 10,000 Mcf under a one-part (volumetric) rate. After initiating efforts to renegotiate the agreement in April, 1989, MRT served Olin with written notice, on November 2, 1989, that MRT was terminating the agreement effective May 1, 1990, it is indicated. MRT states that since the effective date of the termination, Olin has purchased gas from MRT on only one day and that since Olin has not agreed to a new sales contract, MRT is unable to charge any demand or reservation fees to compensate MRT for standing ready to meet its certificate obligation to provide firm sales service.

MRT also states that in spite of protracted negotiations since April, 1989, MRT and Olin have been unable to reach an agreement on a new sales contract.

Further, MRT states that pursuant to § 284.10 of the Commission's Regulations, Olin has elected to convert a total of 3,000 MMBtu of its firm sales service to firm transportation service. Because MRT is uncertain whether the Commission would permit automatic abandonment of converted firm sales volumes, MRT requests specific authorization to abandon the firm sales associated with Olin's conversion, as well as its other firm sales obligations to Olin. No facilities are to be abandoned, it is stated.

Comment date: March 20, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. South Georgia Natural Gas Company

[Docket No. CP91-1334-000]

February 27, 1991.

Take notice that on February 22, 1991, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1334-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of twelve shippers under its blanket certificate issued in Docket No. CP90-2125-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by South Georgia and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
City of Adel, Georgia (LDC)	317 317 115,705	Alabama	Georgia	1-1-91, FT, Firm	ST91-6727-000, 1-1-91.
City of Americus, Georgia (LDC)	1,500 1,500 547,500	Alabama	Georgia	1-1-91, FT, Firm	ST91-6719-000, 1-1-91.
City of Ashburn, Georgia (LDC)	250 250 91,250	Alabama	Georgia	1-1-91, FT, Firm	ST91-6718-000, 1-1-91.
City of Bainbridge, Georgia (LDC)	825 825 301,125	Alabama	Georgia	1-1-91, FT, Firm	ST91-6729-000, 1-1-91.
City of Blakely, Georgia (LDC)	350 350 127,750	Alabama	Georgia	1-1-91, FT, Firm	ST91-6730-000, 1-1-91.
City of Cairo, Georgia (LDC)	750 750 273,750	Alabama	Georgia	1-1-91, FT, Firm	ST91-6728-000, 1-1-91.
City of Camilla, Georgia (LDC)	470 470 171,550	Alabama	Georgia	1-1-91, FT, Firm	ST91-6716-000, 1-1-91.
City of Fitzgerald, Georgia (LDC)	972 354,780	Alabama	Georgia	1-1-91, FT, Firm	ST91-6721-000, 1-1-91.
City of Moultrie, Georgia (LDC)	1,400 1,400 511,000	Alabama	Georgia	1-1-91, FT, Firm	ST91-6717-000, 1-1-91.
City of Quitman, Georgia (LDC)	606 606 221,190	Alabama	Georgia	1-1-91, FT, Firm	ST91-6724-000, 1-1-91.
City of Thomasville, Georgia (LDC)	1,500 1,500 547,500	Alabama	Georgia	1-1-91, FT, Firm	ST91-6732-000, 1-1-91.
City of Vienna, Georgia (LDC)	304 304 110,960	Alabama	Georgia	1-1-91, FT, Firm	ST91-6725-000, 1-1-91.

3. South Georgia Natural Gas Company

[Docket No. CP91-1337-000]

February 27, 1991.

Take notice that on February 22, 1991, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1337-000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of three shippers under its blanket certificate issued in Docket No. CP90-2125-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by South Georgia and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
Town of Havana, Florida (LDC)	300 300 109,500	Alabama	Florida	1-1-91, FT, Firm	ST91-6722-000, 1-1-91.
City of Jasper, Florida (LDC)	280 280 102,200	Alabama	Florida	1-2-91, FT, Firm	ST91-6712-000, 1-3-91.
City of Quincy, Florida (LDC)	1,050 1,050 383,250	Alabama	Florida	1-1-91, FT, Firm	ST91-6723-000, 1-1-91.

4. United Gas Pipe Line Company

[Docket No. CP91-1331-000, Docket No. CP91-1332-000]

February 27, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket no. [1] date filed)	Applicant	Shipper name	Peak day [2], Avg. annual	Points of Receipt	Points of Delivery	Start up date, rate, schedule	Related dockets
CP91-1331-000 2/22/91	United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478.	Mobil Natural Gas Inc.	51,500 51,500 18,797,500	Offshore LA, TX	LA, MS, AL, KS	ITS, Interruptible 1/16/91.	CP88-6-000, ST91-6880-000.
CP91-1332-000 2/22/91	United Gas Pipe Line Company P.O. Box 1478 Houston, TX 77251-1478.	Midcon Marketing Corporation.	150,174 150,174 54,813,510	LA	FL,MS	FTS, Firm 1/30/91	CP88-6-000, ST91-6803-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Viking Gas Transmission Company

[Docket No. CP91-1316-000, Docket No. CP91-1317-000, Docket No. CP91-1318-000]

February 27, 1991.

Take notice that Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP90-273-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

[4] These prior notice requests are not consolidated.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual dt	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-1316-000 (2-22-91)	Unigas Energy, Inc. (Marketer).	75,000 75,000 27,375,000	WI, MN, ND	WI, MN, ND	12-19-90, IT-2, Interruptible.	ST91-6958, 2-5-91.
CP91-1317-000 (2-22-91)	Hadson Gas Systems, Inc. (Marketer).	200,000 200,000 73,000,000	WI, MN, ND	WI, MN, ND	11-15-90, IT-2, Interruptible.	ST91-6967, 1-25-91.
CP91-1318-000 (2-22-91)	Kaztex Energy Management, Inc. (Marketer).	25,000 25,000 9,125,000	WI, MN, ND	WI, MN, ND	12-18-90, IT-2, Interruptible.	ST91-6922, 1-12-91.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP91-1326-000, Docket No. CP91-1327-000, Docket No. CP91-1328-000, Docket No. CP91-1329-000, Docket No. CP91-1330-000]

February 27, 1991.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket start up date
CP91-1326-000 (2-22-91)	Interline Natural Gas, Inc. (Marketer).	3,000 3,000 1,095,000	WY	WY	1-7-91, PT, Interruptible.	ST91-6748, 1-22-91.
CP91-1327-000 (2-22-91)	Amgas, Inc. (Marketer)	100 50 18,250	CO, IL, KS, MI, OH, OK, TX, WY.	IL	12-13-91, PT, Interruptible.	ST91-6746, 1-4-91.
CP91-1328-000 (2-22-91)	Manville Sales Corporation (End-user).	12,000 12,000 4,380,000	CO, IL, KS, MI, OH, OK, TX, WY.	OH	4-30-90, PT, Interruptible.	ST91-6747, 1-15-91.
CP91-1329-000 (2-22-91)	Amgas, Inc. (Marketer)	150 75 27,375	CO, IL, KS, MI, OH, OK, TX, WY.	IL	12-13-90, PT, Interruptible.	ST91-6745, 1-4-91.
CP91-1330-000 (2-22-91)	Martin Exploration Management Company (Producer).	30,000 17,000 6,205,000	CO	KS	7-20-90, PT, Interruptible.	ST91-6791, 1-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Mississippi River Transmission Corporation

[Docket No. CP91-1351-000]

February 27, 1991.

Take notice that on February 25, 1991, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP91-1351-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing, a marketer, under the blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT states that, pursuant to an agreement dated February 4, 1991, under its Rate Schedule ITS, it proposes to transport up to 250,000 MMBtu per day equivalent of natural gas. MRT indicates that the gas would be transported from Arkansas, Louisiana, Texas, and Illinois, and would be redelivered in Louisiana. MRT further indicates that it would transport 250,000 MMBtu on an average day and 91,250,000 MMBtu annually.

MRT advised that service under § 284.223(a) commenced November 1, 1990, as reported in Docket No. ST91-4994.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Natural Gas Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Florida Gas Transmission Company, Northern Natural Gas Company, Florida Gas Transmission Company, Columbia Gulf Transmission Company

[Docket No. CP91-1319-000, Docket No. CP91-1320-000, Docket No. CP91-1321-000, Docket No. CP91-1322-000, Docket No. CP91-1323-000, Docket No. CP91-1324-000, Docket No. CP91-1325-000]

February 27, 1991.

Take notice that on February 22, 1991, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. [2]	Applicant	Shipper name	Peak day [1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets [2]
CP91-1319-000	Northern Natural Gas Company, 1400 Smith St., Houston, TX 77251-1188.	Amoco Energy Trading Corporation.	25,000 18,750 9,125,0000	OK, IA, TX, SD, NM, MN, WI, NE, KS.	KS, SD, TX, MN, OK, NE, WI, MI, IA.	1-29-91, IT-1	CP86-435-000 ST91-6895-000
CP91-1320-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	City of Sunrise, Florida.	15,000 11,250 5,475,000	TX, FL, LA, AL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6831-00
CP91-1321-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Consolidated Minerals, Inc..	7,349 5,512 2,682,385	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6827-000
CP91-1322-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Georgia-Pacific Corporation.	25,323 18,992 9,242,895	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6826-000
CP91-1323-000	Northern Natural Gas Company, 1400 Smith St, Houston, TX 77251-1188.	Enron Gas Marketing, Inc.	500,000 375,000 182,500,000	OK, IA, TX, SD, KS, MN, NM, NE, WI.	KS, MN, TX, NE, WI, MI, IA, OK, SD.	1-22-91, IT-1	CP86-435-000 ST91-6788-000
CP91-1324-000	Florida Gas Transmission Company, 1400 Smith St., Houston, TX 77002.	Florida Power and Light Co..	662,898 497,174 241,957,770	TX, AL, LA, FL, MS, Off TX, Off LA.	FL	2-01-91, ITS-1	CP89-555-000 ST91-6925-000
CP91-1325-000	Columbia Gas Transmission Company, P.O. Box 683, Houston, TX 77001.	Polaris Pipeline Co.	45,000 15,000 5,475,000	Off LA, LA	LA, TN, MS	1-10-91, ITS-1, ITS-2.	CP86-239-000 ST91-6945-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Arkla Energy Marketing Company LIDO-Atlantic Trading Company

[Docket Nos. CI89-377-005 and CI89-378-005, Docket No. CI89-312-002][7]

February 28, 1991.

Take notice that On February 22, 1991, LIDO-Atlantic Trading Company of 1801 California Street, suite 3600, Denver, Colorado 80202, and on February 25, 1991, Arkla Energy Marketing Company of 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI89-377-004, CI89-378-004 and CI89-312-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket Nos. CI89-377-005 and CI89-378-005 requests extension for an unlimited term, and also requests amendment of its blanket certificate to include authorization to make sales for resale of gas purchased under any existing or subsequently approved interstate natural gas pipeline blanket certificate authorizing interruptible sales of surplus system supply. Applicant in Docket No. CI89-312-002 requests that the Commission extend its blanket certificate.

Comment date: March 20, 1991, in accordance with standard Paragraph J at the end of this notice.

10. LaSER Marketing Company Columbia Gas Development Corp.

[Docket No. CI85-673-006, Docket No. CI89-332-002][8]

February 28, 1991.

Take notice that on February 26, 1991, LaSER Marketing Company of P.O. Box 3327, Houston Texas 77253 and Columbia Gas Development Corporation of P.O. Box 1350, Houston, Texas 77056 (Applicants), each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend their blanket limited-term certificates with pregranted abandonment previously issued by the Commission in Docket Nos. CI85-673-007 and CI89-332-001 for terms expiring March 31, 1991 to extend the term of such authorizations, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Applicant in Docket No. CI85-673-006 requests extension for a three-year term, and also requests amendment of its blanket certificate to include authorization to make sales for resale of imported gas and liquified natural gas. Applicant in Docket No. CI89-332-002 requests extension for an unlimited term.

Comment date: March 20, 1991, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with refernce to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5607 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[RP91-103-000]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee") on February 28, 1991, tendered for filing various revisions to its FERC Gas Tariff, First Revised Volume No. 1 with a proposed effective date of April 1, 1991.

Alabama-Tennessee states that alternative proposals have been made to revise certain provisions of its tariff which would enable it to flowthrough the recovery of take-or-pay settlement costs allocated to it by its upstream supplier, Tennessee Gas Pipeline Company, in compliance with the Commission's directives in Order Nos. 528 and 528-A.

Alabama-Tennessee states that copies of the filing have been mailed to Alabama-Tennessee's jurisdictional customer, interested public bodies and all persons on the Commission's official service list in the captioned docket.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make a protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inpsection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5613 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-21-000 and TM91-8-21-000]

Columbia Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1991.

Tenth Revised Sheet No. 26
Tenth Revised Sheet No. 26A
Tenth Revised Sheet No. 26B
Tenth Revised Sheet No. 26C
First Revised Sheet No. 26D
Ninth Revised Sheet No. 103

Columbia states that the sales rates set forth on Tenth Revised Sheet No. 26 reflect an overall decrease of 4.39¢ per Dth in the Commodity rate, and a decrease of $.482 per Dth in the Demand rate. In addition, the transportation rates set forth on Tenth Revised Sheet No. 26C reflect a decrease in the Fuel Charge component of .13¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) Unrecovered Purchased Gas Cost Surcharges to be effective during the 12-month period commencing May 1, 1991;

(3) Current Transportation Cost Rate Adjustments;

(4) Unrecovered Transportation Cost Surcharges;

(5) A surcharge adjustment to provide for the recovery, over the 12-month period commencing May 1, 1991, of carrying charges related to take-or-pay reimbursements paid by Columbia to Panhandle Eastern Pipe Line Company (Panhandle) pursuant to the terms of a Commission approved settlement in Docket No. RP83-5-000; and

(6) A Transportation Fuel Charge Adjustment.

Columbia states that copies of this filing were served upon Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5614 Filed 3-8-91; 8:45am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-34-000]

Florida Gas Transmission Company; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective May 1, 1991.

FERC Gas Tariff, Second Revised Volume No. 1

Primary Tariff Sheets

Fifteenth Revised Sheet No. 8
Fourth Revised Sheet No. 160
First Revised Sheet No. 228
Second Revised Sheet No. 232
First Revised Sheet No. 527
First Revised Sheet No. 530
First Revised Sheet No. 531
First Revised Sheet No. 532
First Revised Sheet No. 533
First Revised Sheet No. 534
First Revised Sheet No. 535
First Revised Sheet No. 536
First Revised Sheet No. 537
First Revised Sheet No. 538
First Revised Sheet No. 539
First Revised Sheet No. 540
Original Sheet No. 540A

Alternate Tariff Sheet

Alternate Fifteenth Revised Sheet No. 8

Pursuant to Section 154.305 of the Commission's Regulations and section 15 of the General Terms and Conditions of FGT's Gas Tariff, FGT submits the above-referenced tariff sheets as part of FGT's annual PGA filing to be effective May 1, 1991.

FGT states that the current adjustment reflects FGT's projected cost of gas for the period May 1, 1991 through July 31, 1991. FGT anticipates a decrease from the $2.7530 per MMBtu saturated reflected in FGT's last scheduled filing in Docket No. TQ91-3-34 effective February 1, 1991 to $2.1807 per MMBtu saturated in the instant filing.

FGT also requests the Commission grant permanent waiver of § 154.305(b)(1) of its Regulations to permit FGT to recover producer demand charges on an "as-billed" basis. Alternatively, FGT requests demand charges on an "as-billed" basis. Alternatively, FGT requests waiver of § 154.305(b)(1) of the Regulations to permit FGT to recover on an as-billed basis, producer demand charges under a specific gas purchase contract for the life of the underlying contract. In support of these requests for waiver, FGT has filed a separate "Petition for Waiver". In the event the Commission denies such request, FGT has also submitted an alternate tariff sheet which reflects the reclassification of producer demand payments to the commodity component of the sales rates in conformance with the current regulations.

FGT states that the Surcharge Adjustments set forth on both the primary and alternate tariff sheets reflect the amortization of costs accumulated during the period January 1-December 31, 1990. FGT requests a waiver of the Commission's Regulations to permit FGT to transfer the commodity portion December 31, 1990 ending balance in Account 191 to FGT's current deferral period which commenced January 1, 1991 and to continue computing carrying charges pursuant to § 154.305(h). In the event the Commission grants such waiver, FGT further seeks permission to refile the tariff sheets to remove the Surcharge Adjustment.

FGT also states that it has filed certain schedules in accordance with FERC Form No. 542-PGA (Revised). FGT

---

[7] This notice does not provide for consolidation for hearing of the several matters covered herein.

[8] This notice does not provide for consolidation for hearing of the several matters covered herein.

has submitted a nine-track magnetic tape containing such schedules.

FGT further states that it has also filed certain other tariff sheets to reflect changes in the receipt point listing set forth in Rate Schedule PTS-1, the Index of Entitlements and the Index of Requirements.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5615 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1364-000 and CP91-1365-000]

Southern Natural Gas Co. Application

March 4, 1991.

Take notice that on February 26, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35203, filed in Docket Nos. CP91-1364-000 and CP91-1365-000 applications with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a portion of its firm sales to Mississippi Valley Gas Company (Mississippi Valley) and United Cities Gas Company (United Cities) respectively, all as more fully set forth in the applications which are open to public inspection.

In Docket No. CP91-1364-000, Southern states that it and Mississippi Valley executed a new service agreement dated October 1, 1990 (Agreement) for the sale and purchase of natural gas in quantities of up to 73,064 Mcf per day which amount is less than the past amount Southern was obligated to serve Mississippi. As a result, Southern hereby requests authority to abandon 10,000 Mcf per day of firm sales service relinquished by Mississippi Valley, effective October 1, 1990, Southern explains.

In Docket No. CP91-1365-000, Southern states that it and United Cities executed a new service agreement dated January 2, 1991 (Agreement) for the sale and purchase of natural gas in quantities of up to 51,809 Mcf per day which amount is less than the contract demand which was converted to firm transportation. As a result, Southern hereby requests authority to abandon 10,000 Mcf per day of firm sales relinquished by United Cities, effective January 1, 1991, Southern explains.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 25, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5621 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-101-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991.

Fifth Revised Sheet No. 14D
Fifth Revised Sheet No. 14E
Fifth Revised Sheet No. 14F
Fifth Revised Sheet No. 14G
Second Revised Sheet No. 124
First Revised Sheet No. 125
Original Sheet No. 125A
Original Sheet No. 125B.

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by Tennessee Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP91-23-000, *et al.* A portion of these charges were previously subject to a fixed charge flowthrough recovery mechanism authorized in Texas Gas' Docket No. RP88-236-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions and each person listed on the official service list previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5609 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-102-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991.

First Revised Sheet No. 14H
First Revised Sheet No. 14I
First Revised Sheet No. 14J
First Revised Sheet No. 14K
First Revised Sheet No. 128
Original Sheet No. 129
Original Sheet No. 130
Original Sheet No. 131

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by United Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP89-147-000, *et al.* These charges were previously subject to a fixed charge flow-through recovery mechanism authorized in Texas Gas' Docket No. RP90-64-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions and each person listed on the official service previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5610 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-100-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 with the proposed effective date of April 1, 1991:

Eighth Revised Sheet No. 14
First Revised Sheet No. 14A
First Revised Sheet No. 14B
First Revised Sheet No. 14C
First Revised Sheet No. 122
First Revised Sheet No. 123
Original Sheet No. 123A
Original Sheet No. 123B

Texas Gas states that the purpose of this filing is to submit a new cost allocation methodology and recovery mechanism pursuant to Commission Order Nos. 528 and 528-A to replace the cost allocation methodology previously used by Texas Gas to allocate and recover the take-or-pay fixed charges billed to Texas Gas by United Gas Pipeline Company pursuant to that company's direct bill mechanism authorized in Docket Nos. RP88-27-000, *et al.* These charges were previously subject to a fixed charge flow-through recovery mechanism authorized in Texas Gas' Docket No. RP88-177-000, *et al.*

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions and each person listed on the official service list previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5611 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-107-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Williams Natural Gas Company (WNG) on February 28, 1991 tendered for filing First Revised Sheet Nos. 8-8C, 257, and 259-264 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective March 31, 1991.

WNG states that the above referenced tariff sheets are being submitted to implement a revised methodology for allocating the fixed charge portion of WNG's buyout and buydown costs pursuant to Commission Order Nos. 528 and 528-A. Specifically, WNG seeks to revise the allocation percentages applicable to the fixed charges which WNG renders to its firm sales customers.

WNG has also included additional take-or-pay settlement costs totaling $8.2 million, of which WNG proposes to absorb 25%, recover 50% through a volumetric surcharge on all throughput, and recover 25% through direct billing.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5612 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-104-000]

Transwestern Pipeline Co.; Proposed Change in FERC Gas Tariff

March 4, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its F.E.R.C. Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1991:

Effective April 1, 1991:

1st Revised Sheet No. 5C
1st Revised Sheet No. 5D
2nd Revised Sheet No. 5D(i)
1st Revised Sheet No. 5D(ii)
4th Revised Sheet No. 87
5th Revised Sheet No. 88
5th Revised Sheet No. 89
5th Revised Sheet No. 90
4th Revised Sheet No. 90A

Transwestern states that it is filing the above-referenced tariff sheets in order to modify its take-or-pay, buy-out, and buy-down merchanism ("TCR" mechanism), specifically to revise its allocation methodology under its mechanism for direct billing a portion of its Transition Costs (the "TCR Fee"). Such reallocation, Transwestern states, is necessary for compliance with the Commission's Order Nos. 528 and 528-A. Transwestern states that such reallocation is based upon each customer's contract demand quantity under all firm rate schedules as of the date of the original TCR filing, with each small customer's allocation based on its actual annual volumes for the twelve-month period ending August 31, 1988, and with the allocation being reduced by fifty percent (50%) in compliance with Order No. 528-A (the difference being reallocated to remaining customers).

Transwestern states that it has obtained the agreement of Southern California Gas Company and the Public Utilities Commission of the State of California to make this filing.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective April 1, 1991.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5616 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-105-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 4, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 1991:

Effective April 1, 1991

63rd Revised Sheet No. 5
1st Revised Sheet No. 5D(iii)
Original Sheet No. 5E(ii)
47th Revised Sheet No. 6
5th Revised Sheet No. 87
6th Revised Sheet No. 88 -
6th Revised Sheet No. 89
6th Revised Sheet No. 90
5th Revised Sheet No. 90A
Original Sheet No. 91

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay, buy-out and buy-down mechanism ("TCR") in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs ("Transition Costs"), consistent with Order Nos. 528 and 528-A. Transwestern has paid a total of $10,977,543.28 in Transition Costs ("TCR Amount Five") and is revising certain tariff sheets and requesting authority thereby to begin recovery of a portion of such amounts. Transwestern has elected to absorb twenty-five percent (25%) of such costs, directly bill another twenty-five percent (25%), and recover the remaining fifty percent (50%) through a volumetric surcharge. These Transition Costs include: (1) Amounts paid pursuant to a producer settlement following an arbitration award and (2) amounts paid which qualify for TCR recovery under Transwestern's Litigation Exception, for which two amounts (1) and (2) recovery has not yet been sought by Transwestern in any previous filings, as well as (3) amounts paid, plus carrying costs, under producer pricing settlements for which Transwestern originally filed to recover under its Purchased Gas Adjustment tariff provisions. Such Transition Costs (with the exception of the Litigation Exception amounts) were paid by Transwestern prior to both its acceptance (on June 30, 1989) of a certficate authorizing, and the implementation (on October 1, 1989) of, its Gas Inventory Charge ("GIC").

Transwestern states that it has obtained the agreement of Southern California Gas Company and the Public Utilities Commission of the State of California to make this filing, with the sole exception of the amount paid under the above-noted producer settlement following an arbitration award.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective April 1, 1991.

Transwestern states that copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 of the Commission' Rules of Practice and Procedure. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the propceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5617 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Adjustment

March 4, 1991.

Take notice that on February 28, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Twenty Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective April 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5618 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-4-51-001, TQ91-6-51-000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

March 4, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes") on February 28, 1991 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1:
First Revised Volume No. 1
Substitute Thirty-Fourth Revised Sheet No. 57(i)
Substitute Thirty-Fourth Revised Sheet No. 57(ii)
Substitute Twentieth Revised Sheet No. 57(v)
Item 2:
First Revised Volume No. 1
Fifth Thirty-Fifth Revised Sheet No. 57(i)
Fifth Thirty-Fifth Revised Sheet No. 57(ii)
Twenty-First Revised Sheet No. 57(v)

The tariff sheets in Item 1 were filed to reflect the appropriate current purchased gas cost adjustment for Great Lakes' quarterly PGA for the period February 1, 1991 through April 30, 1991.

The tariff sheets in Item 2 were filed to reflect revised current PGA rates for the months of February 1, 1991 through April 30, 1991. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas TransCanada Pipeline Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements so as to permit the tariff sheets in Item 1 and Item 2 to become effective February 1, 1991, as described, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5619 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-8-000]

South Georgia Natural Gas Co.; Proposed Changes To FERC Gas Tariff

March 4, 1991.

Take notice that on February 28, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing Seventy-First Revised Sheet No. 4 and Eighth Revised Sheet No. 43 to its FERC Gas Tariff, First Revised Volume No. 1. These tariff sheets are being filed pursuant to the Purchased Gas Cost Adjustment (PGA) provision set out in Section 14 of South Georgia's FERC Gas Tariff with a proposed effective date of April 1, 1991.

South Georgia states that Seventy-First Revised Sheet No. 4 reflects a revised Current Adjustment computed in accordance with § 154.305(c) of the Federal Energy Regulatory Commission's (Commission) Regulations. The Current Adjustment, which is proposed to be in effect from April 1, 1991, through June 30, 1991, reflects a decrease in jurisdictional revenues of approximately $1,450,000 which is attributable to a decrease in the demand component of $8.06 per Mcf and a decrease in the commodity component of $.256 per MMBtu from South Georgia's quarterly PGA filing in Docket No. TQ91-3-8-000. Eighth Revised Sheet No. 43, Index of Purchasers, reflects the maximum daily quantity level submitted by the City of Jasper, Florida, after a conversion from firm sales service to firm transportation service in accordance with § 84.10 of the Commission's Regulations.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional purchasers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before March 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5620 Filed 3-8-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed, Week of January 25 Through February 1, 1991

During the week of January 25 through February 1, 1991, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions

inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 5, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 25 through February 1, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 30, 1991	Texaco/College Square Texaco, Hardin, KY	RR321-49	Request for modification/rescission in the Texaco refund proceeding. If granted: The Jan. 4, 1991 Decision and Order (Case Nos. FF321-10614 & RF321-11869) would be modified regarding the firm's Application for Refund submitted in the Texaco Inc. special refund proceeding.
January 31, 1991	BB Fuels, Inc., Ventura, CA	LEE-0022	Exception to the Reporting Requirements. If granted: BB Fuels, Inc., would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of January 25 through February 1, 1991]

Received	Name of firm	Case No.
12/27/90	Caveman Oil & Fuel, Inc.	RF315-10115
12/27/90	Allis-Chalmers Corporation	RF315-10116
01/25/91 thru 2/1/91	Crude oil refund applications received	RF272-86293 thru RF272-86396
1/25/91 thru 2/1/91	Gulf Oil Refund applications received	RF300-15382 thru RF300-15486
1/25/91 thru 2/1/91	Texaco Oil Refund applications received	RF321-13016 thru RF321-13152
01/28/91	S & W Oil Company	RF315-10124
01/29/91	Diamond Oil Company	RF329-2
01/29/91	Cool Fuel, Incorporated	RF329-3
01/30/91	Odessa L.P.G. Transport, Inc.	RF326-224

[FR Doc. 91-5661 Filed 3-8-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 18 through February 22, 1991

During the week of February 18 through February 22, 1991 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Lowry Coalition, 2/21/91, LFA-0095

The Lowry Coalition filed an Appeal from a determination issued by the Albuquerque Operations Office of a Freedom of Information Request. The applicant had sought records concerning the deposit of hazardous waste into the Lowry Landfill. In its determination, the Operations Office identified and released to the Coalition, 49 documents pertaining to 18,280 gallons of waste from DOE's Rocky Flats facility that had been deposited in the landfill. The Coalition argued that additional documents must exist. In support of this position, the Coalition cited a document issued by the EPA which alleges that Rockwell International, a prior operator of the Rocky Flats facility, had deposited over 200,000 gallons of waste in the Landfill. Under these circumstances, the DOE found that the matter should be remanded for an additional search for responsive documents. Accordingly, the Appeal was granted.

Refund Applications

American Home Products Corp., Wyeth Laboratories, Inc., 2/20/91, RF272-656, RD272-656, RF272-29776 and RD272-29776

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to American Home Products Corporation (AHPC), a pharmaceutical and food company that used the petroleum products in its business operations. A consortium of states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicants' refund claim. The DOE found that the states' filings only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to AHPC is $89,984. In addition, because AHPC included the gallonage claim of its subsidiary, Wyeth Laboratories, the DOE dismissed a separate Application for Refund which had been filed by Wyeth, and a related states' Motion for Discovery.

Bradford Dyeing Association, Inc., 2/19/91, RF272-5346 and RD272-5346

The DOE issued a Decision and Order concerning an Application for Refund filed by a textile finishing firm in the subpart V crude oil proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, textile firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, determing that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $16,035.

City of Springfield, 2/19/91, RF272-81828

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City of Springfield (Springfield) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Springfield filed on behalf of all of its municipal buildings and vehicles. Phillip P. Kalodner, counsel for utilities, transporters and manufacturers filed objections to this Application. The DOE found Mr. Kalodner's objections to Springfield's eligibility unconvincing and granted the city a refund of $22,130.

City of Virginia Beach, 2/22/91, RC272-115

The DOE issued a Decision and Order concerning an Application for Refund that the City of Virginia Beach (Virginia Beach) filed in the subpart V crude oil special refund proceeding being disbursed by the DOE under 10 CFR part 205. The DOE determined that the initial refund granted was incorrect. The correct refund amount should have been $12,099. This Supplemental Order rescinded the prior Decision and Order, Case No. RF272-58282.

Cooper Tire & Rubber Co., 2/22/91, RF272-10651 and RD272-10651

Cooper Tire & Rubber Company (Cooper) is a manufacturer of tires and rubber. It filed an Application for Refund as an end user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application filed by Cooper, provided evidence concerning the tire and rubber industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Cooper had been able to pass on the crude oil overcharges to its customers. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Cooper were injured by crude oil overcharges. Humana was unable to pass through its alleged overcharges. The DOE granted Cooper Tire & Rubber Company a refund of $24,516 based on its approved purchases of petroleum products and denied the Motion for Discovery filed by the States.

Exxon Corp. Blue Star Exxon, 2/21/91, RF307-210 amd RF307-7183

The Office of Hearings and Appeals of the Department of Energy issued a Decision and Order finalizing a Proposed Decision and Order (PDO) concerning two Applications for Refund that were filed by Blue Star Exxon and its owner, Robert E. Lee in the Exxon refund proceeding. In the final Decision and Order, the DOE determined that both applications should be denied because Mr. Lee had not shown that he owned the stations during the price control period or that he was otherwise entitled to receive a refund for purchases made by Blue Star during that period.

H.P. Hood, Inc., 2/20/91, RF272-70478, RD272-70478

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to H.P. Hood (Hood) based on its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products to manufacture and distribute food products. The applicant was an end-user of the refined petroleum products and was therefore presumed injured. A consortium of 32 states and two territories (the States) filed a statement of Objection and a Motion for Discovery with respect to Hood's Application. The DOE found that the states' filing was insufficient to rebut the presumption of injury. Therefore, Hood's Application for Refund was granted and the State's Motion for Discovery was denied. The refund granted to Hood was $19,584.

J.H. Rudolph & Co., 2/22/91, RF272-344, RD272-344

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to J.H. Rudolph & Co., a road construction company that used the petroleum products in its business operations. A consortium of states and two territories filed a "Statement of Objections" and "Motion for Discovery" with respect to the applicant's refund claim. The DOE found that the states' filings did not refer to whether the applicant was able to pass through crude oil overcharges, but only made generalized statements regarding whether increased fuel costs could be passed through. The DOE concluded that these arguments were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to J.H. Rudolph & Co. is $113,213.

Rance B. Patterson, 2/21/91, RF272-30026

The DOE issued a Decision and Order concerning an Application for Refund filed by a tractor-trailer operator in the subpart V crude oil proceeding. The applicant was unable to provide the OHA with specific figures detailing the amount of his petroleum purchases. Since the applicant had failed to provide any evidence to establish that he had purchased petroleum products during the crude oil price control period, the OHA determined that his application should be denied.

Rissler & McMurry Co., et al., 2/22/91, RF272-6737, et al., and RD272-6737, et al.

Rissler and McMurry Company and nine other road construction and heavy equipment firms filed Applications for Refund as end-users of refined petroleum products in the subpart V crude oil special refund proceeding. A groups of states and two territories of the United States (the States) filed objections to the Applications, including material concerning the construction industry (in some cases, the road construction industry) as a whole. In eight of the cases, the States also filed Motions for Discovery. After considering that material, the DOE determined that the States had failed to produce convincing evidence to show that any of the Applicants had been able to pass on any crude oil overcharges to their customers. The DOE also found that the States' submissions failed to address the individual situations of the Applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users, such as these Applicants, were injured by crude oil overcharges. The DOE granted refunds that totalled $224,256, based on a total of 280,319,848 gallons of approved purchases. The DOE denied the Motions for Discovery filed by the States.

Shell Oil Co./Flanders Valley Shell, Inc., 2/22/91, RF315-8752 and RF315-9133.

The DOE issued a Decision and Order concerning competing applications for refund submitted by Dorothy M.

Krumpfer (RF315–8752) and Elisabeth K. Joy (RF315–9133), respectively the former wife and widow of Warren W. Krumpfer, deceased owner of Flanders Valley Shell, Inc. During the refund period, Dorothy and Warren Krumpfer equally divided all of the corporate stock. In 1986, the Krumpfers entered into a divorce, pursuant to which all of Mrs. Krumpfer's stock and interest in Flanders Valley was transferred to Mr. Krumpfer. We held that with this transaction, Mrs. Krumpfer transferred her right to a refund. Her application was therefore denied. Mr. Krumpfer died in 1989, having never sold any of the corporation's stock. Upon his death, all of Mr. Krumpfer's interest in Flanders Valley, including the right to a refund, was transferred to Ms. Joy, his surviving spouse. Ms. Joy received a refund of $1,339 ($999 principal and $340 interest).

Texaco Inc./R&L Texaco, 2/22/91, RF321–13253.

On October 1, 1990, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by R&L Texaco, a retailer of Texaco products. That refund was based upon R&L's claim that it operated the retail outlet from September 1971 to November 1977, and the volume of purchases at that location between March 1973 and November 1977. Subsequently, another applicant filed an application for refund for the same retail location for the period beginning October 26, 1976, and submitted documentary evidence to support its claim. Accordingly, the DOE found that R&L should repay with interest, that portion of its refund attributable to purchases after October 26, 1976. The total repayment ordered was $204 ($167 principal and $37 interest).

Valley Asphalt Corp., Meyer Construction Co., 2/22/91, RF272–25379, RD272–25379, RF272–26482, and RD272–26482.

Valley Asphalt Corp. and Meyer Construction Co. each filed an application for refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. Both firms were involved in road construction and the manufacture of asphalt pavement products. Each firm demonstrated the volume of its claim by consulting invoices, financial statements, and asphalt plant production records or by making reasonable estimates. A group of state governments filed statements of objection to the firms' claims, and provided econometric evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that either firm had been able to pass on the crude oil overcharges to its customers, and found that the States' econometric evidence failed to properly address the individual situations of the Applicants. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Valley Asphalt Corp. and Meyer Construction Co. were injured by crude oil overcharges. The DOE granted Valley Asphalt Corp. a refund of $85,097 based on its approved purchases of 106,370,703 gallons of petroleum products, and granted Meyer Construction Co. a refund of $35,645 based on its purchases of 44,556,822 gallons. The States' related Motions for Discovery were denied.

Virginia Fibre Corp., 2/22/91, RF272–42090

Virginia Fibre Corporation is involved in the paper production industry. Virginia filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, and provided evidence concerning the paper industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that Virginia had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Virginia were injured by crude oil overcharges. The DOE granted Virginia a refund of $68,505, based on its approved purchases of 85,631,225 gallons of petroleum products.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
American Jet Aviation	RR272–82	02/21/91
Atlantic Richfield Co./ Tennessee Valley Authority.	RF304–4039	02/22/91
Canada Leasing Corp. *et al.*	RF272–62967	02/20/91
City of Thomasville Municipal Airport.	RF272–70487	02/22/91
Exxon Corporation/ Eastern Air Lines, Inc.	RF307–5099	02/20/91
Gulf Oil Corp./B & W Gulf *et al.*	RF300–11701	02/21/91
Gulf Oil Corp./ Eckerdt, Inc. *et al.*	RF300–11190	02/22/91
Gulf Oil Corp./Hilltop Auto Laundry *et al.*	RF300–11315	02/20/91
Gulf Oil Corp./ Human's Gulf *et al.*	RF300–11742	02/22/91
Loomis Armored, Inc.	RF272–71660	02/22/91
Murphy Oil Corp./ Wallace Spur Station *et al.*	RF309–582	02/21/91
Petroleum Carriers, Inc. *et al.*	RF272–72820	02/20/91
Texaco Inc./Bela's Texaco Inc. *et al.*	RF321–802	02/22/91
Texaco Inc./Bob's Texaco *et al.*	RF321–2200	02/21/91
Texaco Inc./Bud's Texaco *et al.*	RF321–1880	02/21/91
Texaco Inc./City of Buffalo.	RF321–13654	02/21/91
Texaco Inc./ Freeman's Texaco *et al.*	RF321–256	02/21/91
Texaco Inc./Jim's Texaco.	RF321–1106	02/21/91
James H. Carlisle	RF321–7963	
James H. Carlisle	RF321–7964	
Texaco Inc./Simon's Texaco *et al.*	RF321–500	02/21/91
Tri County Asphalt Corporation.	RF272–114	02/21/91

Dismissals

The following submissions were dismissed:

Name and Case No.

Apache Powder Company; RF272–50421
Atascadero Unified; RF272–81480
Axtell Cooperative Grain Co.; RF272–84718
Big T Distributing Corp.; RF321–12782
Brewer Schools; RF272–85928
Campus Arco of Eugene; RF304–11314
Daniels McKown Oil Co.; RF300–12218
Flagg Fertilizer; RF321–4770
Gallia County, Ohio; RF273–86094
Gulf Air, Inc.; RF273–80414
J.F. Cleckley & Company; RF272–54186
J.F. Cleckley & Company; RD272–54186
Jack P. Tyke Gulf Service; RF300–11413
Jack P. Tyke Gulf Service; RF300–11412
Johnson-Bates Drilling Company; RF320–0002
Lakeville Community School District; RF272–78561
Lydall, Inc.; RF272–78574
Miami County Engineer's Office; RF272–85938
Milford-Whitinsville Regional Hospital; RF272–85955
New Hampton Community School District; RF272–81201
Orange-Ulster Boces; RF272–79853
Pan Am Equities, Inc.; RF272–52767
Pittsford Town School District; RF272–85620
Ron's Texaco; RF321–12631

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 5, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–5682 Filed 3–8–91; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Proposed Firm Power Rate Adjustment—Loveland Area Projects: Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Firm Power Rate Adjustment—Loveland Area Projects: Pick-Sloan Missouri Basin Program—Western Division and Fryingpan-Arkansas Project.

SUMMARY: The final Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program—Western Division (Criteria) was published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the Pick-Sloan Missouri Basin Program—Western Division (P–SMBP–WD) and Fryingpan-Arkansas Project (Fry-Ark), commonly referred to as the Loveland Area Projects (LAP), and called for the establishment of a blended rate for LAP firm power sales.

The fiscal year (FY) 1990 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program and the Fry-Ark show that existing power rates are not adequate to meet repayment requirements. To meet those requirements, the rates for the firm power are proposed to be increased in two steps. The first step will be based upon the FY 1990 PRS for P–SMBP and Fry-Ark. The second step will be based upon a FY 1991 PRS for the P–SMBP and FY 1990 PRS for Fry-Ark. The composite rate for firm power is proposed to increase in FY 1992 by 2.4 mills/kilowatthour (kWh). The composite rate for firm power is proposed to increase in FY 1993 by .89 mills/kWh. The chart below summarizes the proposed rate adjustments.

FIRM POWER RATE

Class of power	Existing rate October 1, 1990	Proposed rates	
		October 1, 1991	October 1, 1992
Firm capacity ($/kW-month)	$2.15	$2.46	$2.56
Firm energy (mills/kWh)	8.39	9.59	10.03
Composite	16.77	19.17	20.06

FURTHER INFORMATION: Brochures explaining the background for the LAP firm power rate will be distributed to all LAP customers and other interested parties. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following completion of the consultation and comment period and review of public comments, the Western Area Power Administration (Western) will develop the proposed rates and submit them to the Deputy Secretary of the Department of Energy (DOE) to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission (FERC). It is anticipated that the first step of the rates will be placed in effect on the first day of the first full billing period beginning on or after October 1, 1991, and the second on the first day of the first full billing period beginning on or after October 1, 1992.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in Western's Loveland Area Office.

Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, Telephone: (303) 490–7201.

DATES: The consultation and comment period will begin on March 11, 1991, and will end not less than 90 days later or on June 1, 1991, whichever is the later.

The public information forum, during which Western will explain the need for the proposed LAP firm power rate and answer questions, will be held on March 25, 1991, at 10 a.m. at the Holiday Inn, 10 East 120th Avenue, Northglenn, Colorado.

The public comment forum during which comments for the record concerning the proposed rate increase will be accepted and will be held on April 16, 1991, at 10 a.m. at the Holiday Inn, 10 East 120th Avenue, Northglenn, Colorado.

Individuals planning to speak at either forum are requested to send their name and organization affiliation to the Loveland Area Office address noted above so that they are received by April 9, 1991. Other individuals will be allowed to comment after the individuals requesting time have spoken.

SUPPLEMENTARY INFORMATION: Power rates for the LAP are established pursuant to the DOE Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887; and the other acts specifically applicable to the project system involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) The authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis

to the Deputy Secretary of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835). Power rate adjustments for the LAP firm power rate are conducted consistent with 10 CFR part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality regulations (40 CFR part 1500–1508), and DOE guidelines published in the Federal Register on December 15, 1987 (52 FR 47662), Western will evaluate the proposed rate adjustments and prepare the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, to publish a proposed rule, Western is required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for the LAP firm power relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of this Act. Since the rate for LAP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on Paperwork Burdens of the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to the Federal Register notice for the interested public to participate in the development of the LAP firm power rate. There is no requirement that members of the public participating in the development of the rate supply information about themselves to the Government. It follows that the LAP firm power rate is exempt from the Paperwork Reduction Act.

Determination under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, March 1, 1991.

William H. Clagett,
Administrator.

[FR Doc. 91–5663 Filed 3–8–91; 8:45 am]

BILLING CODE 6450–01–M

Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed power rate adjustment—Pick-Sloan Missouri Basin program.

SUMMARY: The fiscal year (FY) 1990 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program (P–SMBP) shows that existing power rates are not adequate to meet repayment requirements. To meet those requirements the composite rate for firm power is proposed to be increased in FY 1992 by 1.39 mills/kilowatthour (kWh). A FY 1991 PRS which incorporates certain assumed values has also been completed and indicates the need for an additional increase in the composite rate of 0.91 mills/kWh in FY 1993. The Western Area Power Administration (Western) is proposing to seek approval of a two-step rate adjustment. The first step will be based on the FY 1990 PRS and the second step will be based on a FY 1991 PRS.

The Eastern Division (ED) and Western Division (WD) of the P–SMBP will each adjust their respective revenues to meet the required increases. The rate to provide revenue for the combined P–SMBP–WD and Fryingpan-Arkansas Project (Fry-Ark) is designated as the Loveland Area Projects (LAP) rate. The LAP rate will include the P–SMBP–WD revenue requirement combined with the revenue requirement for the Fry-Ark, and a blended rate will be designed.

The proposed rate increase reflects: (1) Changes of the future projections of operation and maintenance expenses, (2) increased deficits, and (3) the inclusion of purchased power expenses and reduced surplus sales revenues for 5 future years to reflect continuing drought conditions.

Eastern Division

The Eastern Division proposed rate adjustment would, over 2 years, increase the overall capacity charge for firm power service by $0.49/kilowatt-month (kW-month) and increase the overall energy charge by 1.52 mills/kWh. There is no change proposed to the existing 3.38 mills/kWh additional charge for firm energy in excess of 60 percent monthly load factor because the regional cost of energy has remained relatively stable over the past several years, and is expected to increase only slightly in the near future. Over 2 years, the proposed rate adjustment would also increase the peaking capacity charge by $2.94/kW-season and any energy associated with peaking power deliveries by 1.52 mills/kWh. The table below summarizes the proposed changes in rates.

P–SMBP–ED

[Rate Changes]

Class of power	Existing rate (FY 1991)	Proposed rate (FY 1992)	Proposed rate (FY 1993)
Firm Power Service:			
Firm capacity (kW)	$2.25/kW-month	$2.57/kW-month	$2.74/kW-month.
Firm energy (kWh)	5.57 mills/kWh	6.49 mills/kWh	7.09 mills/kWh.
Composite mills/kWh	9.86	11.25	12.16.
Additional charge for firm energy in excess of 60-percent monthly load factor.	3.38 mills/kWh	3.38 mills/kWh	3.38 mills/kWh.

P–SMBP–ED—Continued

[Rate Changes]

Class of power	Existing rate (FY 1991)	Proposed rate (FY 1992)	Proposed rate (FY 1993)
Firm Peaking:			
Power Service:			
Peaking Capacity (kW)	$13.50/kW-season	$15.42/kW-season	$16.44/kW-season.
Peaking energy (kWh)	6.57 mills/kWh	6.49 mills/kWh	7.09 mills/kWh.

Western Division

A separate rate adjustment to the LAP rate will be processed by Western's Loveland Area Office which will include the revenue requirements for the Western Division shown below:

	(FY 1992)	(FY 1993)
P–SMBP Western Division:		
Existing Revenue Requirement	$23,271,480	$26,101,520
Additional Revenue Requirement	$2,830,040	$1,852,760
New P–SMBP–Western Division Revenue Requirement	$26,101,520	$27,954,280
Fryingpan-Arkansas Project:		
Fryingpan-Arkansas Revenue Requirements	$13,933,200	$13,933,200
Total LAP Revenue Requirements	$40,034,720	$41,887,480

FURTHER INFORMATION: A brochure explaining the need for a rate increase will be distributed to all P–SMBP customers and other interested parties shortly after publication of this notice. Public information and public comment forums will be held in accordance with procedures for public participation in general rate adjustments (10 CFR part 903). Following completion of the consultation and comment period and review of public comments, Western will develop the proposed rates and submit them to the Deputy Secretary of Energy to be placed in effect on an interim basis pending final approval by the Federal Energy Regulatory Commission (FERC). It is anticipated that the first step of the rates will be placed in effect on the first day of the first full billing period beginning on or after October 1, 1991, and the second on the first day of the first full billing period beginning on or after October 1, 1992.

Data, studies, reports, and other documents used in developing the proposed rates are available for inspection and/or copying in Western's Billings Area Office. Written comments and requests for information may also be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, Telephone: (406) 657–6532.

DATES: The consultation and comment period will begin March 1, 1991 and will end not less than 90 days later or on June 1, 1991, whichever is the later.

Public information forums, during which Western will explain the need for —the proposed rate increase and answer questions, will be held at the following places and times:

March 25, 1991—9 a.m.—Sheraton Hotel, Billings, MT
March 25, 1991—2 p.m.—Holiday Inn, Northglenn, CO
March 26, 1991—8 a.m.—Holiday Inn Airport, Sioux Falls, SD
March 26, 1991—1:30 p.m.—Holiday Inn, Fargo, ND

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following places and times:

April 16, 1991—9 a.m.—Holiday Inn, Northglenn, CO
April 17, 1991—2 p.m.—Ramkota Inn Airport, Sioux Falls, SD

Individuals planning to speak at either the March or April forums are requested to send their names and organization affiliation to the Billings Area Office address noted above 1 week before each meeting so a speaker list can be prepared. Other individuals will be allowed to comment after the individuals requesting time have spoken.

SUPPLEMENTARY INFORMATION: Power rates for the P–SMBP are established pursuant to the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887; and other acts specifically applicable to the project system involved.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, the Secretary of Energy delegated: (1) The authority, on a nonexclusive basis, to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Deputy Secretary of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 CFR 7835). Power rate adjustments for the P–SMBP firm power rate are conducted consistent with 10 CFR part 903.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE guidelines published in the Federal

Register on December 15, 1987 (52 FR 47662), Western will evaluate the proposed rate adjustment and prepared the appropriate documentation of NEPA compliance.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, to publish a proposed rule, Western is required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P–SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Since the rate for P–SMBP power is of limited applicability and is being set in accordance, Western believes that no flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided pursuant to this **Federal Register** notice for the interested public to participate in the development of the P–SMBP rate. There is no requirement that members of the public participating in the development of the P–SMBP rate supply information about themselves to the Government. It follows that the P–SMBP rates are exempt from the Papework Reduction Act.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, March 1, 1991.

William H. Clagett,
Administrator.

[FR Doc. 91–5694 Filed 3–8–91; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3912–7]

Science Advisory Board; Drinking Water Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on April 4–5, 1991 at the Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015. This meeting will start at 8:30 a.m. on April 4th and will adjourn no later than 1 p.m. April 5th.

The main purpose of this meeting will be to review health criteria documents for cyanogen chloride, chlorinated acids, alcohols, aldehydes, and ketones.

Documentation for this meeting is available from the Office of Drinking Water, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC, 20460 by March 22, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: March 4, 1991.

Donald G. Barnes,
Director, Science Advisory Board.

[FR Doc. 91–5670 Filed 3–8–91; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 5, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0395.

Title: Automated Reporting and Management Information Systems (ARMIS), Sections 43.21 and 43.22.

Report Number: FCC Report 43–04.

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly and annually.

Estimated Annual Burden: 1,050 responses; 313 hours average burden per response; 328,650 hours total annual burden.

Needs and Uses: The ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions and to enhance the Commission's ability to quantify the effects of alternative policy proposals. ARMIS is needed to administer our accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return. It collects financial and operating data from the Tier 1 and those Class A local exchange carriers with annual revenues over $100 million.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 91–5704 Filed 3–8–91; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Martime Commission, 1100 L Street NW, room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 224–010898–005.

Title: Maryland Port Administration/Moller Steamship Line, Inc. (Maersk) Terminal Agreement.

Parties: Maryland Port Administration, Moller Steamship Line, Inc. (Maersk).

Synopsis: The Agreement provides that the term of the basic agreement will continue on a month to month basis for 60 days beginning March 1, 1991, pending final negotiations of a long term lease.

Dated: March 5, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91–5633 Filed 3–8–91; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–058.

Title: Asia North America Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment would permit the parties to withdraw an independent action rate or service item on 48 hours' notice if the Agreement adopts a common rate or service item applicable to the same shipment which results in a lower cost to the shipper or consignee than the independent action.

Agreement No.: 232–011321.

Title: Maersk/Sea-Land Pacific Agreement.

Parties: A.P. Moller-Maersk Line, Sea-Land Service, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space from one another and to agree upon sailing schedules, service frequency, ports to be served, port rotation, operation of feeder services and the type and size of vessels to be operated in the trade between the United States and the Far East in the Japan/Malaysia range.

By Order of the Federal Maritime Commission.

Dated: March 5, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91–5591 Filed 3–8–91; 8:45 am]
BILLING CODE 6730–01–M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on March 1, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5.

Agreement No.: 224–200271–001.

Title: International Longshoremen's Association Assessment Agreement.

Parties: International Longshoremen's Association, AFL–CIO (ILA), Carriers Container Council, Inc. (Carrier).

Synopsis: The agreement amends the Carrier—ILA Container Freight Station Trust Fund basic assessment agreement to reflect the promotion of employment opportunities by the development of apprenticeship and training programs for ILA employees, to which the parties may agree in collective bargaining.

By Order of the Federal Maritime Commission.

Dated: March 5, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 91–5632 Filed 3–8–91; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Mitsui Manufacturers Bank, Los Angeles, CA; Public Meeting

Background

On December 14, 1990, the Board of Governors of the Federal Reserve System ordered a public meeting on the issues regarding the record of performance of Mitsui Manufacturers Bank, Los Angeles, California ("MMB"), under the Community Reinvestment Act ("CRA"). This public meeting was ordered in connection with an application by MMB's parent company, The Mitsui Taiyo Kobe Bank, Limited, Tokyo, Japan ("Mitsui Taiyo Kobe"), under section 3 of the Bank Holding Company Act ("BHC Act") to convert Taiyo Kobe Bank and Trust Company, New York, New York ("TKBTC" and the "TKBTC Application"), from a nonbank trust company back into a bank pursuant to the interstate banking laws of New York and California. In its prior approval of Mitsui Taiyo Kobe's application to acquire TKBTC as a nonbank trust company, the Board noted that MMB had not implemented in all respects the type of CRA program outlined in the Joint Agency Policy Statement regarding the CRA, 54 FR 13,742 (1989) ("Agency CRA Statement"), and that there were significant issues raised regarding the adequacy of MMB's CRA performance. *The Mitsui Bank, Limited*, 76 Federal Reserve Bulletin 381, 384 - 85 (1990) ("*Mitsui Bank*").

In *Mitsui Bank*, the Board stated its intent to hold a public meeting on MMB's CRA performance unless the record developed over several months in the Board's view resolved the issues regarding MMB's CRA performance. After considering the record in this application, the Board concluded that a public meeting was appropriate and approved the order for a public meeting in *Mitsui Manufacturers Bank*, 77 Federal Reserve Bulletin 109 (1991) ("Public Meeting Order").

The Public Meeting Order specified that all persons wishing to give testimony at the public meeting should file certain information with the Board not later than January 15, 1991. On the basis of these requests, and taking into account the interests of the persons requesting to appear, the Public Meeting Order directed the Presiding Officer to schedule a date for the public meeting, to choose an appropriate location in California for the public meeting, and to schedule times for persons wishing to testify at the public meeting. The Presiding Officer was also given the authority and discretion to conduct the public meeting and to prescribe all procedures incidental thereto to ensure that the public meeting proceeds in a fair and orderly manner.

Public Meeting Date and Scheduling

After considering these requests, the Presiding Officer has determined that the public meeting on the CRA issues raised in the TKBTC Application will be held on March 21, 1991, at the Robert Pitts Westminster Neighborhood Center, 1827 E. 103rd Street, Los Angeles, California, 90002, beginning at 9:00 a.m

BEST COPY AVAILABLE

Attached to this notice is an agenda scheduling persons and groups who have indicated that they wish to give testimony. Copies of testimony may, but need not, be filed with the Presiding Officer before a person's presentation. To the extent available, translators will be provided to persons wishing to present their views in a language other than English if they so request to the Presiding Officer no later than March 1, 1991.

All persons testifying and persons not testifying at the public meeting may file written submissions with the Board through April 8, 1991. Persons not listed in the attached agenda may be permitted to give testimony at the public meeting in the discretion of the Presiding Officer if time permits at the conclusion of the schedule of witnesses.

Purpose and Procedures

The purpose of the public meeting is to receive additional information regarding the record of performance of MMB under the CRA. The CRA requires the appropriate federal financial supervisory agency to "assess [an] institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of [the] institution." 12 U.S.C. 2903. The Board, as a federal financial supervisory agency, is required to take this record into account in its evaluation of an application under section 3 of the BHC Act.

In this regard, the Agency CRA Statement provides guidance regarding the types of policies and procedures that the federal financial supervisory agencies believe that financial institutions should have in place in order to fulfill their responsibilities under the CRA. In addition, the Agency CRA Statement provides guidance regarding the procedures that these agencies will use during the application process to review an institution's CRA compliance and performance. The Agency CRA Statement also suggests that decisions by agencies to allow financial institutions to expand will be made pursuant to an analysis of that institution's overall CRA performance, and will be based on the actual record of performance of the institution. In considering the TKBTC Application, the Board will take into account the information developed in this public meeting, the examinations of MMB's record by the Federal Deposit Insurance Corporation, MMB's primary supervisor, and the Board's own analysis of the record.

The Public Meeting Order specified that the public meeting is to be convened under the Board's policy statement regarding informal meetings in § 262.25(d) of the Board's Rules. This policy statement provides that the purpose of a public meeting is to elicit information, to clarify factual issues related to an application, and to provide testimony. 12 CFR 262.25(d). In contrast to a formal administrative hearing, the rules for taking evidence in an administrative proceeding will not apply to this public meeting. In conducting the public meeting, the Presiding Officer will have the authority and discretion to ensure that the meeting proceeds in a fair and orderly manner. Individuals or groups may be represented by counsel. The public meeting will be transcribed and information regarding procedures for obtaining a copy of the transcript will be announced at the public meeting. Persons desiring a transcript may also write to the Presiding Officer regarding its cost and availability.

Testimony at the public meeting will be presented to a panel consisting of the Presiding Officer, Griffith L. Garwood, Director of the Division of Consumer and Community Affairs, Federal Reserve Board; Shawn McNulty, Program Manager, Compliance, Division of Consumer and Community Affairs, Federal Reserve Board; Robert deV. Frierson, Legal Division, Federal Reserve Board; and W. Gordon Smith, Vice President, Federal Reserve Bank of San Francisco. These panel members may question witnesses, but no cross examination of witnesses will be permitted.

Questions may be submitted in advance to the Presiding Officer for consideration by the panel members. These questions will be forwarded to the participant possessing the requested information. Participants receiving these questions may supply the requested information to the Presiding Officer to the extent relevant to the public meeting. Any information supplied before the meeting will be available to any person upon request.

Persons testifying at the public meeting should address, to the extent possible, the following issues:

(i) the activities conducted by MMB to ascertain the credit needs of its communities, including the extent of its efforts to communicate with members of its communities regarding the credit services being provided by MMB;

(ii) the extent of participation by MMB's board of directors in formulating policies and reviewing MMB's performance with respect to the purposes of the CRA;

(iii) the extent of MMB's marketing and special credit-related programs to make members of its communities aware of the credit services offered by MMB;

(iv) the types of credit MMB makes available to its communities, including the extent of MMB's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its communities, including analyses of data under the Home Disclosure Mortgage Act, or the purchase of any such loans originated in its communities;

(v) the extent of MMB's participation in governmentally-insured, -guaranteed, or -subsidized loan programs for housing, small businesses, or small farms;

(vi) the delineation of MMB's service areas, including low- and moderate-income areas, and analyses of MMB's geographic distribution of credit extensions, credit applications, and credit denials;

(vii) the record of MMB concerning the opening and closing of branches and providing services at branches;

(viii) the extent of MMB's participation, including investments, in local community development and redevelopment projects or programs;

(ix) an operational description of MMB's current CRA program, including personnel, and a description of training and any special skills possessed by MMB's CRA personnel and loan officers; and

(x) any evidence of prohibited discriminatory credit practices by MMB.

The Board noted in *Mitsui Bank* that MMB had undertaken a review of its CRA program to meet the credit needs of its communities and had committed to make certain revisions in that plan. MMB's progress in meeting these commitments would be a relevant consideration for participants appearing at the public meeting. Accordingly, a description of MMB's current CRA program, which may omit confidential business plans, should be submitted to the Presiding Officer by March 11, 1991. This material will be supplied to any person upon request to the Presiding Officer.

By order of the Presiding Officer, effective February 20, 1991.

Griffith L. Garwood,

Presiding Officer.

Agenda

Mitsui Public Meeting

9:00 - 9:30—Mitsui Manufacturers Bank
9:30 - 10:30—Panel One
- The Greenlining Coalition
- The New York Community Reinvestment Alliance

10:30 - 10:45—Break
10:45 - 11:45—Panel Two
- Center for Community Change
- Communities for Accountable Reinvestment
- Consumers Union/California Reinvestment Committee
- Ward Economic Development Corporation

11:45 - 11:45—Panel Three
- Los Angeles City Council Member Adams Avenue Business Association
- City-County Reinvestment Task Force
- Civic Center Barrio Housing Corporation
- Normal Heights Community Development Corporation

1:00 - 2:00—Lunch
2:00 - 3:15—Panel Four
- Black Employees Association (Los Angeles)
- City of West Hollywood
- Esperanza Community Housing Corporation
- Fair Housing Congress of Southern California
- Fair Housing Program (Riverside)

3:15 - 3:30—Break
3:30 - 4:45—Panel Five
- S.C.L.C. of Greater Los Angeles
- Coalition for Economic Survival
- Concerned Citizens of South Central Los Angeles
- Little Tokyo Service Center
- West Hollywood Community Housing Corporation

02/20/91 - Revised

[FR Doc. 91-4561 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

BB&T Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire Albemarle Savings and Loan Association, Elizabeth City, North Carolina, and thereby engage in traditional deposit taking and loan making activities of a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5629 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

First-Citizens BancShares, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 1, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First-Citizens BancShares, Inc., Raleigh, North Carolina; to engage *de novo* through its subsidiary, First Federal Savings Bank, Hendersonville, North Carolina, in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5630 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

Sandwich Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to

become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 1, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Sandwich Bancorp, Inc., Sandwich, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of The Sandwich Co-Operative Bank, Sandwich, Massachusetts.

Board of Governors of the Federal Reserve System, March 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5631 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet April 17–19, 1991, at the 57 Park Plaza Hotel in Boston, MA. Reservations: (617) 482–1800.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SL), Washington, DC 20401. Telephone (202) 275–1125.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: March 4, 1991.

Robert W. Houk,

Public Printer.

[FR Doc. 91-5677 Filed 3-8-91; 8:45 am]

BILLING CODE 1520-09-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting of the Developmental Therapeutics Contracts Review Committee

Pursuant to Public Law 96-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, March 14–15, 1991, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on March 14 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 14 from 9:30 a.m. to recess and on March 15 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301-496-5708, will provide a summary of meeting and a roster of committee members upon request.

Dr. Susan E. Feinman, Executive Secretary, Developmental Therapeutics Contracts Review Committee, 5333 Westbard Avenue, room 809, Bethesda, Maryland 20892, Tel. 301-496-0944, will furnish substantive program information.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5711 Filed 3-8-91; 8:45 am]

BILLING CODE 4140-01-M

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Visual Impairment Due to Cataracts in the Aging Eye

A public meeting will be held on clinical practice guidelines for Visual Impairment Due to Cataracts in the Aging Eye. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material in the August 28, 1990 **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

The public meeting to address guidelines for Visual Impairment Due to Cataracts in the Aging Eye will be held on April 8, as follows:

April 8, 1991, Noon to 3 p.m.
Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on Decembeer 19, 1989, added a new Title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6) which established the Agency for Health Care Policy and Research (the Agency) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within the Agency, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Section 912 of the Act (42 U.S.C. 299b-1) directs the Forum to arrange for the development and periodic review and updating of:

Clinically relevant guidelines that may be used by physicians, educators and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act also provides for the development of initial guidelines standards, performance measures, and review criteria that:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or
2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;
2. Reduce clinically significant variations among providers in making diagnoses and providing treatments, or reduce significant variations in the outcomes of health care services or procedures; and
3. Reduce variations in the services and procedures utilized for diagnosis and treatment (and potentially produce savings in health care expenditures).

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b-12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics have been selected for initial guideline development:

1. Visual Impairment due to Cataract in the Aging Eye,
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia,
3. Urinary Incontinence in the Adult,
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores,
5. Delivery of Comprehensive Care in Sickle Cell Disease,
6. Management of Acute Post-Operative Pain,
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

To meet the requirement for assuring the development of guidelines, the Forum has arranged for panels of experts in the above-listed topics and consumers who will develop the specific guidelines. Panel responsibilities include assessment of the available scientific evidence and clinical consensus and determination of the scope of the guideline.

Thus far, public meetings of panels to solicit information and comments from interested parties have been held with reespect to benign prostatic hyperplasia, depression, pain management, pressure sores, and urinary incontinence.

Arrangements for April 8 Public Meeting on Visual Impairment Due to Cataracts in the Aging Eye

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. The Office of the Forum for Quality and Effectiveness in Health Care is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend must register with the Forum at the address set out below by March 22 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information should also submit copies of these to the Forum by March 22. If more requests to make oral statements are received than can be accommodated between Noon and 3 p.m. on April 8, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Lawrence E. Williams, Acting Director, Forum for Quality and Effectiveness in Health Care,
Agency for Health Care Policy and Research,
Parklawn Building, rm 18A46,
5600 Fishers Lane,
Rockville, MD 20857,
phone 301-443-6754,
fax 301-443-0007.

Dated: March 5, 1991.

J. Jarrett Clinton,

Assistant Surgeon General, Acting Administrator.

[FR Doc. 91-5627 Filed 3-8-91; 8:45 am]

BILLING CODE 4160-90-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9 a.m. and ends at 4:30 p.m. on Thursday, March 21, 1991, begins at 9 a.m. and ends at 4:30 p.m. on Friday, March 22, 1991.

Place: On Thursday, March 21, and Friday, March 22, from 9 a.m. to 4:30 p.m., in the Gemini Conference Room of the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Meeting is open to the public.

Contact person: Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC 20201 (202) 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. app. 1, sec. 10, 1976) that the Council will hold its third meeting for FY 91 on March 21 and 22, 1991, from 9 a.m. to 4:30 p.m. respectively at the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

The agenda will include: The Council's regular business meeting during the morning session on March 21 from 9 a.m. to 12 noon. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will be devoted to work sessions of the Council's Committee on Mental Health and the Elderly, and Task Force on the National Eldercare Campaign.

On Friday, March 22, 9 to 12 noon, the morning session will be devoted to reports of the two committees and discussion of future activities. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will focus on the development of meeting topics and agenda for the remainder of calendar year 1991.

Dated: March 4, 1991.

Ingrid C. Arvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 91-5862 Filed 3-8-91; 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Social Security Disability Program Demonstration; SSA Case Management Project

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security (the Commissioner) announces the Social Security Disability Program Case Management Project (the Project). The Project will test ways to increase opportunities for Social Security Disability Insurance (SSDI) beneficiaries and for applicants for and recipients of Supplemental Security Income (SSI) payments based on disability or blindness to receive the services they need to return to work or work for the first time. The Project (known as Project NetWork) will demonstrate a method of case management service delivery that is new to the Social Security Administration (SSA). It will focus on vocational assessment, rehabilitation, and placement into competitive employment. Certain provisions of the Social Security Act (the Act) and of the implementing regulations will be waived to conduct the Project. The Project will be conducted under the authority of section 505(a) of Public Law 96–265 (the Social Security Disability Amendments of 1980), as amended, and section 1110(b) of the Act. We are publishing this notice to comply with 20 CFR 404.1599(e) and 20 CFR 416.250(e) which provide for publication of a notice in the **Federal Register** before placing certain demonstration projects in operation.

FOR FURTHER INFORMATION CONTACT: Jack Baumel, Social Security Administration, Office of Disability, 560 Altmeyer, 6401 Security Boulevard, Baltimore, Maryland 21235, Phone (301) 965–9634.

SUPPLEMENTARY INFORMATION:

Background

The project will be conducted under section 505(a) of Public Law 96–265, as amended, and section 1110(b) of the Act which provide authority to waive certain provisions of the Act to carry out certain experiments and demonstration projects. Section 505(a) of Public Law 96–265, as amended by Public Law 99–272, section 12101, and by Public Law 101–239, section 10103, directs the Secretary of Health and Human Services (the Secretary) to develop and carry out experiments and demonstration projects designed to (1) encourage disabled beneficiaries to return to work and (2) accrue trust fund savings or otherwise promote the objectives or facilitate the administration of title II of the Act. Section 505(a)(3) of Public Law 96–265, as amended, authorizes the Secretary to waive compliance with the benefit requirements of titles II and XVIII of the Act insofar as necessary to carry out these experiments and demonstration projects. In addition, section 1110(b) of the Act authorizes the Secretary to waive any of the requirements, conditions, or limitations of title XVI of the Act to carry out experimental, pilot or demonstration projects which are likely to assist in promoting the objectives or facilitate the administration of the SSI program.

For purposes of the Project, we are waiving sections 222(a) and 1615(a) of the Act, which require that SSDI beneficiaries and disabled or blind SSI recipients be referred to State vocational rehabilitation (VR) agencies. The waiver of these provisions will permit SSA to make direct referrals of beneficiaries and recipients to private or public VR organizations other than the State VR agencies.

In addition, we are waiving sections 225(b)(1) and 1631(a)(6)(A) of the Act which permit the continuation of SSDI benefit payments and SSI payments based on disability or blindness, respectively, to certain individuals who medically recover if they are participating in an approved VR program under an appropriate State VR plan. Specifically, section 225(b) and 1631(a)(6) provide for continuation of benefit payments despite an individual's medical recovery if the individual is participating in an approved VR program under a State plan, and the Commissioner determines that continuation or completion of the program will increase the likelihood that the individual may be permanently removed from the disability rolls. The waiver of sections 225(b)(1) and 1631(a)(6)(A) will permit the application of these benefit continuation provisions for a period of up to 24 months to individuals enrolled in the Project who medically recover while participating in a rehabilitation program under the Project. This waiver will only be needed until November 1, 1991, due to a provision of the Omnibus Budget Reconciliation Act of 1990 under which SSDI and SSI beneficiaries who medically recover while participating in an approved non-State VR program are extended the same benefit continuation rights as those who medically recover while participating in a State VR program.

Section 222(c) of the Act provides a "period of trial work" of 9 months' duration which offers title II disability beneficiaries the opportunity to test their ability to work without losing benefits; the 9 months need not be consecutive. Section 222(c)(4)(A) of the Act and the implementing regulations at 20 CFR 404.1592(a) require that any month in which beneficiary renders "services" must be counted in determining his or her 9-month TWP. Under the demonstration project, for title II disability beneficiaries who are entitled to a TWP of 9 months' duration or less, the requirement in section 222(c)(4)(A) of the Act and 20 CFR 404.1592(a) will be waived for the purpose of excluding work activity and earnings resulting from an individual's employment for up to 12 months while he or she is a project participant in counting a title II disability beneficiary's TWP months.

Section 5112 of the Omnibus Budget Reconciliation Act of 1990, effective January 1, 1992, provides that a disabled beneficiary will have exhausted his or her TWP if services were performed in any 9 months within a rolling period of 60 consecutive months. Once this occurs, the TWP is closed for that period of disability. This section also repeals the preexisting provision that precluded a TWP in subsequent periods of disability.

Section 223(d)(4) of the Act requires the Secretary to prescribe by regulations criteria for determining when services performed by an individual or earnings from services demonstrate an individual's ability to engage in SGA for purposes of the disability program under title II of the Act. The criteria for determining whether an individual is engaged in SGA are set forth in 20 CFR 404.1571–404.1576. For purposes of the demonstration project, section 223(d)(4) of the Act and 20 CFR 404.1571–404.1576 will be waived insofar as necessary to exclude a title II disability beneficiary's work activity, and earnings from employment while a project participant, from consideration in determining whether the beneficiary is engaged in SGA for purposes of determining continuing entitlement to benefits based on disability under section 202 (d), (e) and (f) and section 223 of the Act and continuing entitlement to benefit payments under section 223(e) of the Act.

Lastly, work activity for disabled or blind SSI recipients who participate in the project will not occasion a continuing disability or blindness review. Therefore, it is necessary to waive section 1619(a)(2) of the Act, which requires a determination with regard to whether an individual continues to have a disabling impairment, no later than 12 months after the first month, for which an SSI recipient qualifies for a benefit under the section 1619(a) provision. For an individual who first qualifies for section 1619(b) status after being in regular SSI benefit status (section 1611), the requirement of a determination as to whether he or she continues to be blind or disabled will also be waived. In addition, it is necessary to waive for a 12-month period the application of section 1631(j)(2) of the Act to participants in the project. Section 1631(j)(2) requires the performance of continuing disability reviews for certain individuals with significant earned income who have been or are eligible for a section 1619 status.

We are publishing this notice to comply with 20 CFR 404.1599(e) and 20 CFR 416.250(e), which provide for publication of a notice in the **Federal Register** before placing certain demonstration projects in operation.

Overall Objectives

SSA wishes to encourage its disabled or blind beneficiaries and recipients in returning to competitive employment. SSA's focus is on significantly improved integration and use of VR and other employment program resources providing for more employment opportunities; better mechanisms for identifying and referring candidates for rehabilitation and other employment services; more effective incentives for rehabilitation and employment; increased access to employment service systems and networks; and more effective and efficient employment intervention for beneficiaries.

Description of the Project

The project will last for 30 months, including a 6-month pilot phase, and will provide intensive case management to SSDI beneficiaries and/or applicants for or recipients of SSI payments based on disability or blindness who are serviced by certain SSA field offices in the Dallas-Ft. Worth metropolitan area. The Project will demonstrate a new method of service delivery that (1) creates a new field case management function to ensure access to appropriate rehabilitation and employment services; (2) actively promotes the use of work incentives through aggressive marketing and outreach activities; and (3) encourages SSA applicants and beneficiaries to receive services from all sources including other public and private providers.

Authority: Sec. 505(a) of Public Law 96–265 (the Social Security Disability Amendments of 1980), as amended by sec. 12101 of Public Law 99–272 and sec. 10103 of Public Law 101–239; and sec. 1110(b) of the Social Security Act.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance; 13.807-Supplemental Security Income.

Dated: February 28, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91–5655 Filed 3–8–91; 8:45 am]

BILLING CODE 4190-29-M

Supplemental Security Income Modernization Project; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

The Social Security Administration (SSA) announces a meeting of the Supplemental Security Income (SSI) Modernization Project (the Project). This notice also describes the proposed agenda, purpose, and structure of the Project.

DATES: April 24–25, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building, room 703A, 200 Independence Av., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: SSI Modernization Project Staff, room 300, Altmeyer Bldg., 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3571.

SUPPLEMENTARY INFORMATION: SSA is undertaking a comprehensive examination of the SSI program, reviewing its fundamental structure and purpose. The SSI program has been in operation for over 17 years. The purpose of the Project is to determine if the SSI program is meeting and will continue to meet the needs of the population it is intended to serve in an efficient and caring manner, recognizing the constraints in the current fiscal climate.

The first phase of this Project is intended to create a dialogue that provides a full examination of how well the SSI program serves the needy aged, blind, and disabled.

To begin this dialogue, the Commissioner has involved 24 people who are experts in the SSI program and/or related public policy areas. The experts include a wide range of representatives of the aged, blind, and disabled from private and nonprofit organizations and Federal and State government as well as former SSA staff. Like members of the public attending this meeting, the experts will be able to express their individual views and concerns about the SSI program. Dr. Arthur S. Flemming, former Secretary of Health, Education and Welfare, will chair the meeting. The purpose of this initial dialogue is to exchange ideas and existing information about the program. This exchange will facilitate the sharing of ideas among attendees' constituencies, including advocacy groups, state and local government and academicians. The outcome will be a more informed public that has an interest in bringing individually produced innovative ideas for change in the SSI program to the Modernization Project.

This is the eigtht in a series of meetings to be held throughout the country. Each of these meetings will also be open to the public to the extent that space is available. All meetings will be announced in the **Federal Register**. If you are interested in the Project but cannot attend the meeting on April 24–25, 1991, please call the Project Staff at (301) 965–3571 so we may notify you of future meetings.

We welcome written comments that identify programs and recommend improvements concerning any SSI programmatic or procedural issue. Written comments should be submitted to the Project Staff.

A summary of the meeting will be available at no charge. The transcript of the meeting will be available at cost. Summaries and transcripts may be ordered from the Project Staff. The transcript and all written submissions will become part of the record of these meetings.

Dated: March 1, 1991.

Peter Spencer,

Director, SSI Modernization Project Staff.

[FR Doc. 91–5593 Filed 3–8–91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–91–3225]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 27, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Insurance of Adjustable Rate Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is part of a disclosure statement lenders must furnish to borrowers to state that the interest rate on the mortgage may change, to identify the index used and the frequency of adjustments, and to provide a hypothetical payment schedule showing increases over the first five years.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Application	20,000		1		.07		1,400

Total Estimated Burden Hours: 1,400.

Status: Extension.

Contact: Dorothy Kelley, HUD, (202) 708–2876; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

Proposal: Survey of New Mobile Home Placements.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: The mobile home placement data is collected from dealers and is needed to monitor trends in this type of low-cost housing. HUD uses the statistics produced to formulate policy, draft legislation, and evaluate programs.

Form Number: C–MH–9A, and C–MH–9B.

Respondents: Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Questionnaire	4,000		2		0.5		4,000

Total Estimated Burden Hours: 4,000.

Status: Extension.

Contact: Connie Casey, HUD, (202) 708–1060; David Fondelier, Census, (301) 763–5731; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

Proposal: Pre-Foreclosure Sale Demonstration Program.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Defaulting mortgagors with stagnant or declining property values can qualify to sell their homes at current fair market value to third-party buyers. HUD pays the shortfall between proceed and mortgage indebtedness to the mortgagee via the claims process. Mortgagor avoids foreclosure; HUD saves foreclosure, maintenance and marketing cost.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Applicants	13,043		1.027		.268		8,268

Total Estimated Burden Hours: 8,959.

Status: Extension.

Contact: Joseph Bates, HUD, (202) 708–3680; Wendy Sherwin, OMB, (202) 395–6880.

Dated: February 27, 1991.

[FR Doc. 91–5652 Filed 3–6–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3226]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed froms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 1, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 et. seq., authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses NCBCS forms 301 and 302 to calculate and collect monitoring inspection fees for manufacturing housing units.

Form Number: NCSBCS forms 301 and 302.

Respondents: Businesses or other for-profit.

Frequency of submission: Monthly and on occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Recordkeeping	262		48		47		5,910

Total Estimated Burden Hours: 5,910.

Status: Extension.

Contact: Patricia McDuffie, HUD, (202) 708–0584; Wendy Sherwin, OMB, (202) 395–6880.

Dated: March 1, 1991.

Proposal: Request for Approval of Escrow Funds.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The form is used by the mortgagor to request release of funds from the Escrow Agreement for offsite facilities, construction changes, or construction costs not paid at final endorsement. HUD needs the information to analyze the requested amounts and to authorize approval.

Form Number: HUD–92464.

Responsents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information collection	12,000		1		1.5		18,000

Total Estimated Burden Hours: 18,000.

Status: Reinstatement.

Contact: Kerry J. Mulholland, (202) 708–1223; Wendy Sherwin, OMB, (202) 395–6880.

Dated March 1, 1991.

[FR Doc. 91–5654 Filed 3–6–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N-90-3227]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paper work Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Sherwin, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 4, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Manufactured Home Construction and Safety Act Reporting Requirements.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Housing Construction and Safety Standards Act authorized HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. The standards require pertinent information in the form of lables and notices to be placed in each manufactured home. HUD needs this information to make sure manufacturers are complying with the standards.

Form Number: None.

Respondents: Individuals or Households, State or local governments, and businesses or other for-profit.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
SAA Reports	34		12		1		408
IPIA Reports	16		12		1		192
Consumer Information Cards	240,000		1		.48		115,200
State Plans	2		1		160		320
Consumer Manuals	240,000		1		.08		19,300
Labels and Notices	240,000		1		.30		72,000
Recordkeeping	240,000		1		.16		38,400

Total Estimated Burden Hours: 245,820.

Status: Reinstatement.

Contact: Donald R. Fairman, HUD, (202) 708-0718; Wendy Sherwin, OMB, (202) 395-6880.

Dated March 4, 1991.

[FR Doc. 91-5653 Filed 3-8-91; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I-91-159]

Draft Environmental Impact Statement: East Falls, Niagara Falls, NY Redevelopment Project/ Manufacturers MegaMall

The Department of Housing and Urban Development gives notice that the City of Niagara Falls, NY has prepared a Draft Environmental Impact Statement (EIS) for the East Falls Redevelopment Project/Manufacturers MegaMall as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies, and private organizations are invited to comment on the Draft Environmental Impact Statement concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited are comments on the draft EIS and the major issues identified in the appendix.

Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This notice shall be effective until May 1, 1991.

Dated: March 1, 1991.

Richard H. Broun,

Director, Office of Environment and Energy.

Appendix

A Draft Environmental Impact Statement has been completed and accepted for the proposed action described below. Comments on the Draft EIS are requested and will be accepted by the contact person until May 1, 1991. A public hearing on the Draft EIS will be held on March 27, 1991 at 7 p.m. at Niagara Falls, City Hall, 745 Main St., Niagara Falls, New York. The purpose of the hearing is to solicit comments from the public on the Draft EIS and particularly on the Environmental Impact Issues identified below.

Title of Action: East Falls Street Redevelopment Project/Manufacturers MegaMall.

Description of Action: This Draft Environmental Impact Statement examines the social, economic and environmental impacts on the City of Niagara Falls and its environs of a proposed amendment of the East Falls Street Redevelopment Project. This project is located in a portion of Niagara Falls generally bounded by Niagara Street, Portage Road, Buffalo Avenue and Quay Street/8th Street. Within this approximately 135 acre areas, a redevelopment effort including acquisition of 516 properties, relocation of 348 house holds and 44 business/non-residential uses and the demolition of 250 structures is proposed. Re-use of the area is the Manufacturers MegaMall and out parcel development for approximately 1,450,000 square feet of commercial retail space including the re-use of three existing buildings, a 150 room hotel and supporting amenities.

Location: City of Niagara Falls, Niagara County, New York.

Potential Environmental Impacts: The project will create additional traffic and consequent roadway congestion and associated air pollution and noise, loss of 348 units of occupied housing, increased water runoff, loss of structures of historic or architectural interest, displacement of 44 businesses, demolition of 250 primary structures with related increased noise and dust levels, and other related impacts revealed in the EIS.

Copies of the Draft EIS may be obtained from:

Contact Person: David Brooks.

Address: City Hall, 745 Main Street, Niagara Falls, NY 14302.

Phone No.: (716) 286-4460.

[FR Doc. 91-5675 Filed 3-8-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-070-00-4212-13; C-50854]

Realty Action—Exchange; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of public lands in Moffat County, Colorado, as preliminarily suitable for disposal out of Federal ownership by exchange.

SUMMARY: Pursuant to sections 205, 206, 209, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Little Snake Resource Area, has identified lands administered by the Bureau of Land Management, including federal surface and federal subsurface estates, within the following-described areas as preliminarily suitable for exchange. This action is in response to a land exchange proposal developed between the Bureau of Land Management and the Visintainer Sheep Company.

Sixth Principal Meridian, Colorado

T. 9 N., R. 89 W.,
Sections 17, 18, 19, 20, 21, 28, 29, and 30
T. 8 N., R. 90 W.,
Sections 6, 7, 8, 9, 10, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, and 36
T. 8 N., R. 91 W.,
Sections 1, 2, 3, 4, 10, and 11
T. 9 N., R. 91 W.,
Sections 5, 6, 7, 8, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, and 35
T. 10 N., R. 91 W.,
Sections 28, 29, 30, 31, and 32
T. 8 N., R. 92 W.,
Section 3: Lots 5, 6, 11, and 12
T. 9 N., R. 92 W.,
Sections 11, 12, 13, 14, 22, 23, 25, 26, 27, 34, and 35
T. 8 N., R. 93 W.,
Sections 4, 5, 6, 7, and 8
T. 8 N., R. 94 W.,
Sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 16, 17, 28, 29, 30, 31, and 32
T. 10 N., R. 94 W.,
Section 31: S½SE¼
Section 32: SW¼SW¼
T. 8 N., R. 95 W.,
Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and 32
T. 9 N., R. 95 W.,
Section 35: SE¼

The lands being considered for exchange within the above-described areas contain approximately 14,324 acres of federal surface/subsurface and 38,974 acres of federal subsurface. The publication of this notice in the **Federal Register** will segregate the federal lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the **Federal Register** of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and the land use decision, a Notice of Realty Action shall be published to specify the selected public lands and the offered private lands proposed for exchange.

FOR FURTHER INFORMATION: Additional information concerning the lands proposed for exchange is available for review in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625 and the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Dated: March 1, 1991.

William J. Pulford,

District Manager, Craig District.

[FR Doc. 91-5637 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-JB-M

[OR-015-4212-14; G-1-123; OR 46818]

Oregon: Realty Action; Direct Sale of Public Land in Lake County

The following land is suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value of $17,920.00. The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**:

T.28S., R.15E, W.M., Oregon
Section 29: E1/2
Containing 320.00 acres.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

The land is being offered to Sam Dinsdale of Fort Rock, Oregon, using direct sale procedures authorized under 43 CFR 2711.3-3. Direct sale is appropriate in this case as the designated purchaser is an adjoining landowner who uses the subject

property in conjunction with his existing farm/ranch operation.

The terms, conditions and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.
2. All oil/gas and geothermal resources will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.
3. Patent will be issued subject to all valid existing rights and reservations of record.
4. The sale will be subject to:
   a. Such rights for public road purposes as Lake County, Oregon, or its successor in interest may have pursuant to right-of-way OR 41684. Act of October 21, 1976, 43 U.S.C. 1761.
   b. Such rights for electric power transmission line purposes as Midstate Electric Coop, Inc., or its successors in interest may have pursuant to rights-of-way OR 37311 and OR 43668. Act of October 21, 1976, 43 U.S.C. 171.

If the land identified in this notice is not sold to the designated purchaser within 90 days of offering the sale will automatically terminate and the land withdrawn from the market.

Detailed information concerning the sale, including the reservations, sale procedures, conditions, planning and environmental documents, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 26, 1991.

Judy E. Nelson,

District Manager.

[FR Doc. 91-5649 Filed 3-8-91; 8:45 am]

BILLING CODE 4310-84-M

[UT-020-4212-13; U-66672]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; U-66672; Exchange of Public and Private Lands in Tooele County, Utah.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Salt Lake Meridian, Utah

Description	Acres
T. 2 S., R. 8 W	
Sec. 31: All	639.92
T. 2 S., R. 9 W	
Sec. 33: E½	320.00
Sec. 34, 35: All	1,280.00
T. 3 S., R. 8 W	
Sec. 6–7, 18–19: All	2,560.66
Sec. 30: N½	320.76
T. 3 S., R. 9 W., SLM, UT	
Sec. 1, 3: All	1,280.00
Sec. 4: E½	320.00
Sec. 9: E½	320.00
Sec. 10–15: All	2,560.00
Sec. 16: E½	320.00
Sec. 21: E½	320.00
Sec. 22–24: All	1,920.00
Sec. 25: N½	320.00
Sec. 26: N½	320.00
Sec. 27: N½	320.00
Sec. 28: NE¼	160.00

The area described contains 13,281.54 acres total in Tooele County, Utah. There are to be no lands excepted from those described above.

The legal description and acreage of the above public lands may change following the publishing of a new survey plat. However, the exterior boundary locations of the subject lands will not change.

In exchange for these lands, the United States will acquire state lands within the State of Utah of equal value.

SUPPLEMENTARY INFORMATION: Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws. The land will remain open to mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first. Following an appraisal, full equalization of value will be achieved by acreage adjustment or by a payment to the United States by the State of Utah in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions.

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1980 (43 U.S.C. 945).
2. Those rights for water transmission purposes granted to Skull Valley Company, its successors or assigns, serial No. U–31320, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: Jim Stobaugh, BLM Salt Lake District, Pony Express Resource Area, 2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 977–4300, for information relating to this exchange.

DATE: For a period up to and including April 25, 1991, interested parties may submit comments to the District Manager, Salt Lake District Office, Bureau of Land Management at the above address.

Dated: March 4, 1991.

Deane H. Zeller,

District Manager.

[FR Doc. 91–5627 Filed 3–8–91; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

National Register of Historic Places; Brandy Station Battlefield and Related Locations

ACTION: Determination of Eligibility.

On February 28, 1991, the Keeper of the National Register of Historic Places determined that the following property is eligible for listing on the National Register of Historic Places: Brandy Station Battlefield and Related Locations, located in Culpeper County, Virginia. This property is composed of three discontiguous areas centered on Kelly's Ford, Stevensburg, and an area northeast of Brandy Station.

Carol D. Shull,

Chief, Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 91–5625 Filed 3–8–91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; General Motors Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 6, 1991 a proposed Consent Decree in *United States* v. *General Motors Corp.*, Civil Action No. C87–860Y, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree concerns the General Motors Corp.'s manufacturing facility located in Lordstown, Ohio. The proposed Consent Decree requires defendants General Motors Corp. to reduce its emissions of Volatile Organic Contaminants at its Lordstown facility in compliance with the Clean Air Act, 42 U.S.C. 7401, *et seq.* Furthermore, the consent decree also requires General Motors Corp. to pay the United States a civil penalty of $1,500,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Motors Corp.*, D.J. Ref. 90–5–2–1–1071.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–5604 Filed 3–8–91; 8:45am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Belleville, IL

In accordance with Departmental policy, 28 CFR 50.7, notice is here given that on February 25, 1991, a proposed Consent Decree in *United States and the State of Illinois* v. *City of Belleville, Illinois* was lodged with the United States District Court for the Southern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against defendant Belleville for violations of the Clean Water Act at its wastewater treatment plant #1 in Belleville, Illinois.

The consent decree requires Belleville to upgrade its combined sewer overflow systems, to complete implementation of its pretreatment program, and to pay a civil penalty of $130,000 for past violations of the Clean Water Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *City of Belleville, Illinois*, D.J. Ref. 90–5–1–1–3218

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Illinois, 750 Missouri Avenue, East St. Louis, Illinois, or at the Region V office of the United States Environmental Protection Agency, Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.85 (six cents per page reproduction cost) payable to the Treasury of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–5644 Filed 3–8–91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Huron Dressed Beef Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 22, 1991 a proposed consent decree in *United States* v. *Huron Dressed Beef Company*, Civil Action No. 91–4029 was lodged with the United States District Court for the District of South Dakota. The action was brought under sections 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987, 33 U.S.C. 1319(b) and (d), for unpermitted discharges of wastewater effluent from defendant's Huron, South Dakota beef processing facility.

The proposed consent decree requires the defendant to pay civil penalties in the amount of $125,000.00. In addition, the consent decree requires the defendant to undertake remedial measures at the facility to control unpermitted wastewater discharges, unless facility operations change or shut-down.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Dressed Beef Company*, DOJ Ref. No. 90–5–1–1–3477.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, District of South Dakota, 135 Federal Building & U.S. Courthouse, 400 S. Phillips Avenue, Sioux Falls, South Dakota 57102 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, (202) 347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–5642 Filed 3–8–91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act, Newaygo, MI

In accordance with Departmental policy as set forth in 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Newaygo, Michigan*, Civil Action No. 1:90–CV–1078, has been lodged with the United States District Court for the Western District of Michigan on February 22, 1991. The proposed consent decree resolves a civil action brought by the United States alleging that the City of Newaygo (City) has failed to treat adequately the discharges from its wastewater treatment plant, in violation of its National Pollutant Discharge

Elimination System (NPDES) permit and the Clean Water Act. The proposed consent decree requires the City to adhere to an enforceable schedule for achieving compliance with its NPDES permit and the Clean Water Act, and to pay a civil penalty for its past non-compliance. The State of Michigan is a party to this action pursuant to statutory requirement.

The United States Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC, 20044, and should refer to *United States* v. *City of Newaygo, Michigan*, DJ 90 [illegible]-1-1-3612.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Michigan, Federal Building, room 399, 110 Michigan NW., Grand Rapids, Michigan, 49503, and at the Region V office of the Environmental Protection Agency, 230 S. Dearborn, Chicago, Illinois, 60604. A copy of the proposed consent decree and attachments can be obtained in person or by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5643 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Petroleum Environmental Research Forum

Notice is hereby given that, on February 7, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants of Petroleum Environmental Research Forum ("PERF") Project No. 87-05, titled "Microbiological Degradation of Petroleum Oily Sludges", have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of seven parties to the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the PERF advised that BP America, Inc.; Coastal Oil Company; Exxon Research and Engineering; Murphy Oil USA, Inc.; Phillips Petroleum; Texaco Refining and Marketing, Inc.; and Unocal Science and Technology Division have become parties to the Project.

No other changes have been made in either the membership or planned activity of the group research project.

On December 30, 1988, a notice was published in the **Federal Register**, Vol. 53, No. 251, page 53079, describing Project No. 87-05 and identifying the participants of this Project. The objective of this Project is to conduct research and development toward establishing a commercially feasible process for the microbiological degradation of petroleum oily sludges.

Information regarding this Project may be obtained from Chevron Corporation, P.O. Box 7141, San Francisco, California 94120-7141.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5645 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 90-45]

Ahmed M. Elmariah, M.D.; Revocation of Registration

On January 23, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ahmed M. Elmariah, M.D. (Respondent) of 1018 Harrison Avenue, Panama City, Florida 32401, proposing to revoke his DEA certificate of Registration, AE7267392, and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action was Respondent's lack of authorization to handle controlled substances in the State of Florida.

Respondent, proceeding *pro se*, requested a hearing on the issue raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On July 10, 1990, the Government filed a motion for summary disposition on the ground that Respondent was no longer authorized to practice medicine in the State of Florida, and, consequently, was no longer authorized to handle controlled substances in that state. With the motion, Government counsel attached a copy of the Florida Department of Professional Regulation, Board of Medicine, final order revoking Respondent's medical license in that state. Respondent responded by requesting an extension of time in which to address the merits of the motion, stating that he was disabled. Respondent was granted a twenty-one day extension of time in which to file a response to the motion for summary disposition; however, the only documents filed by the Respondent were in the form of a Motion for Rehearing and to Alter or Amend. No documents were filed to address the issue of whether the Respondent was licensed to handle controlled substances in the State of Florida. On September 14, 1990, in her Opinion and Recommended Decision, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and that any pending applications for renewal be denied, based upon his lack of state authorization to handle controlled substances. On October 30, 1990, the administrative law judge transmitted the record to the Administrator. After a careful review of the entire record in this matter, the Administrator adopts the administrative law judge's opinion and recommended decision.

The Administrator finds that on December 21, 1989, the Florida Department of Professional Regulation, Board of Medicine, revoked Respondent's license to practice medicine. Therefore, Respondent is no longer authorized to handle controlled substances in the State of Florida.

The Administrator and his predecessors have consistently held that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled sustances. See, *Edward L. McIver, M.D.*, 53 FR 16477 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 86-54, 51 FR 41168 (1986); *Dale D. Shahan, D.D.S.*, Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein. Due to the fact that nothing in the record contradicts the Government's evidence that Respondent's Florida medical license has been revoked, the Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Florida. Without the appropriate state authority to handle controlled substances, Respondent is not currently entitled to possess a DEA Certificate of Registration.

In cases such as this, where a Respondent is not authorized to handle controlled substances in the state in which he conducts his practice, a motion for summary disposition is properly entertained and must be granted. It is well settled that when no question of fact exists, or when the material facts are agreed, a plenary adversary administrative proceeding is not required, even though the statute prescribes a hearing. In such situations, the rationale is that Congress did not intend for the Agency to perform the meaningless task of conducting a hearing when no issues remain in dispute. See, *United States* v. *Consolidated Mines and Smelting Company, Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B.* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.*, Docket No. 77-29, 43 FR 11873 (1978).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) hereby orders that DEA Certificate of Registration, AE7267392, previously issued to Ahmed M. Elmariah, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied. This order is effective April 10, 1991.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91-5596 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-09-M

Lloyd L. Miller, M.D.; Revocation of Registration

On March 16, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lloyd L. Miller, M.D., P.O. Box 293, Southfield, Michigan 48037, proposing to revoke his DEA Certificate of Registration, AM2980856, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Miller's felony conviction on May 17, 1988, in the United States District Court for the Eastern District of Michigan for distribution of Percodan by prescription in violation of 21 U.S.C. 841(a)(1).

The Order to Show Cause was sent to Dr. Miller by registered mail and was returned to DEA unclaimed with a notation that Dr. Miller had moved and left no forwarding address. DEA Investigators made numerous attempts to locate Dr. Miller. The Order to Show Cause was again forwarded by registered mail, return receipt requested, to a new location, 32 Archway Cresant, Weston, Ontario, Canada. The return receipt indicates that the Order to Show Cause was received on June 13, 1990. More than thirty days have elapsed since its receipt and Dr. Miller has neither requested a hearing nor submitted a written statement on the issue raised in the Order to Show Cause. In accordance with 21 CFR 1301.54(d) and 1301.54(e), the Administrator concludes that Dr. Miller has waived his opportunity for a hearing in this matter and enters his final order based upon the information contained in the DEA investigative file.

The Administrator finds that on or about October 23, 1987, in the Eastern District of Michigan, Dr. Miller unlawfully prescribed three hundred dosage units of Percodan, a Schedule II controlled substance, to an individual for no legitimate medical reason and in violation of 21 U.S.C. 841(a)(1) and 21 CFR 1306.04(a). Dr. Miller pled guilty in the United States District Court for the Eastern District of Michigan, on February 23, 1988, to one count of distribution of Percodan by prescription in violation of 21 U.S.C. 841(a)(1), a felony offense relating to controlled substances.

The Administrator also finds that on October 6, 1989, the Michigan Department of Licensing, Board of Medicine, revoked Dr. Miller's license to practice medicine. On February 9, 1989, the Department of Health and Human Services excluded Dr. Miller from participation in the Medicare program and any state health care program, for a period of five years. Each of these actions constitutes a separate ground for revocation of a DEA registration. 21 U.S.C. 824(a)(3) and 824(a)(5).

Based upon his felony conviction relating to controlled substances, the Administrator concludes that a lawful basis exists for the revocation of Dr. Miller's registration, and for the denial of any pending applications for renewal. 21 U.S.C. 824(a)(2). No evidence of explanation or mitigating circumstances has been offered on behalf of Dr. Miller. Therefore, the Administrator concludes that Dr. Miller's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), orders that DEA Certificate of Registration, AM2980856, previously issued to Lloyd L. Miller, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of Dr. Miller's registration be, and they hereby are, denied. This order is effective March 11, 1991.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator.

[FR Doc. 91-5597 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-51]

Alan H. Olefsky, M.D., Plantation, FL; Hearing

Notice is hereby given that on June 7, 1990, the Drug Enforcement Administration, Department of Justice, issued to Alan H. Olefsky, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, B01163257, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on March 21, 1991, commencing at 9:30 a.m., at the U.S. District Court, 219 South Dearborn Street, Courtroom Number 1669, Chicago, Illinois.

Dated: March 4, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-5598 Filed 3-8-91; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly

of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before April 25, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Health and Human Services, Centers for Disease Control, Center for Infectious Diseases (N1–442–91–5). Specimen Handling and Testing Database (electronic data, input forms and printouts).

2. United States Information Agency, Bureau of Educational and Cultural Affairs (N1–306–89–10). Routine and facilitative records of the Office of Cultural Centers and Resources.

3. Department of Justice, Federal Bureau of Investigation (N1–65–91–7). Posters which do not document the primary mission of the FBI and/or are acquired from outside sources.

4. Federal Maritime Commission (N1–358–91–1). Revisions of comprehensive records schedule.

5. Tennessee Valley Authority, Medical Services (N1–142–90–13). Routine administrative and facilitative records created by the agency's Live Well employee fitness program.

6. Tennessee Valley Authority, Chief Financial Officer (N1–142–91–1). Plant journal vouchers used in posting activities to the general, plant and depreciation ledger systems.

Dated: March 1, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–5678 Filed 3–8–91; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91–25)]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Synthecon, Inc., of Friendswood, Texas, an exclusive, royalty-bearing, revocable license to practice the inventions described in U.S. Patent Application Serial No. 07/213,556, filed June 30, 1988, entitled "Bioreactor Cell Culture Vessel," which is assigned to NASA, and U.S. Patent No. 4,988,623, entitled "Rotating Bio-Reactor Cell Culture Apparatus," which issued to the United States of America, as represented by the Administrator of the National Aeronautics and Space Administration, on January 29, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Council (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by May 10, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2490.

Dated: March 1, 1991.

Edward A. Frankle,

General Counsel.

[FR Doc. 91–5647 Filed 3–8–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings: Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on March 27–28, 1991 from 9 a.m.–6 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington DC 20506.

Portions of this meeting will be open to the public on March 27 from 11:15 a.m.–6 p.m. and March 28 from 9 a.m.–6 p.m. The topics will be an overview of Arts Endowment and Dance Program activities, field issues, Dance Program budget, and FY 93 guidelines.

The remaining portion of this meeting on March 27 from 9 a.m.–11:15 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for fiscal assistance under

the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or protions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433

February 28, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–5646 Filed 3–8–91; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–328]

Tennessee Valley Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–79 issued to the Tennessee Valley Authority (the licensee) for operation of Sequoyah Nuclear Plant, Unit 2, which is located in Hamilton County, Tennessee.

The proposed amendment, in the licensee's letter dated February 14, 1991, would modify section 3/4.5.1.1, Cold Leg Injection Accumulators, of the Sequoyah Nuclear Plant, Unit 2, Technical Specifications (TSs). The change would reduce the required boron concentration for one of the four cold leg injection accumulators from between 2,400 and 2,700 parts per million (ppm) boron to between 1,900 and 2,700 ppm boron. This would reduce the frequency at which the Unit 2 cold leg accumulator No. 3 is being removed from service for periodic draindowns and refills. This periodic evolution has been necessary as a result of a continuing small reactor coolant inleakage into the accumulator on the order of 0.1 to 0.2 gallon per minute. The licensee requested an expedited review so that this relief may be implemented as soon as possible. The change would be only for the current Unit 2 Cycle 5 operation. Unit 2 is scheduled to shut down for the Unit 2 Cycle 5 refueling outage in early October 1991.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission's proposed determination is based on the licensee's evaluation of the proposed amendment against the criteria in 10 CFR 50.92(c). The licensee concluded in its application that the proposed amendment did not represent a significant hazards consideration because the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The change of boron concentration requirements for a cold leg injection accumulator (CLA) cannot increase the probability of an accident because the CLA only provides accident mitigation functions and the boron concentration of a CLA cannot initiate any design basis accident. The consequences of an accident will not be increased as demonstrated in Westinghouse Electric Corporation's Safety Evaluation Check List (SECL) 90–631. This SECL evaluates all affected design basis accidents and varifies the acceptability of having one CLA at 1,900 parts per million (ppm) boron concentration with respect to the safety analysis. Additionally, if no changes were implemented, the CLA availability for accident mitigation would be reduced and thereby increase the possibility that the consequences of an accident could be increased. Therefore, this change will reduce the possibility that the consequences of an accident will be increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed. CALA boron concentration changes cannot create any accident. The CLA boron concentration requirements in the TS are for accident mitigation purposes only and therefore would not contribute to the creation of any accident previously analyzed or not.

3. Involve a significant reduction in a margin of safety. The decrease from 2,400- to 1,900-ppm boron concentration for one CLA does not impact any margin of safety. This boron reduction is acceptable because extra conservatism exists in the present CLA boron concentration TS requirements. The changes to increase the minimum CLA boron concentration to 2,400 ppm employed the strategy to select the highest possible boron concentration to bound SQN Cycle 5 design changes and accommodate future fuel reloads. This provides CLA boron concentrations well above that required for the margin of safety. This decrease in CLA boron concentration reduces the available margin of the 180-ppm, mixed mean sump boron concentration to maintain the core subcritical by approximately 5 ppm. Therefore, additional conservation exists in CLA boron concentration that will allow the reduction to 1,900-ppm boron without affecting the required margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's determination. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may be also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 10, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing on an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the content at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until he expiration of the 30-day notice period. However, should circumstances change during the notice period such that future to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide an opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Frederick J. Hebdon, Director, Project Directorate II-4: (petitioners name and telephone number), (date petition was mailed), (plant name), and (publication data and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the General Counsel, Tennessee Valley Authority, 400 West Summit Drive, E11 B33, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 14, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 50th day of March 1991.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Project Manager, Project Directorate II-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5676 Filed 3-8-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance for SF3104 and SF3104B

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accrodance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the clearance of an information collection. SF3104, Application for Death Benefits, provides several types of death benefits payable upon the death of Federal employees, former employees and annuitants covered by the Federal Empolyee's Retirement System (FERS). SF3104A (attached to SF3104), request information from the survivor which is used by OPM to determine entitlement to a survivor annuity supplement (supplementary annuity). SF3104B is used by the deceased empolyee's former employing agency in death-in Service cases, to supply the survivor's application for death benefits (SF3104). The number of respondents for SF3104 is 2,442 and we estimate it takes 60 minutes to fill out the form. The annual burden is 2,442 hours. The number of respondents for SF3104B is 1,484 and we estimate it takes 60 minutes to fill out the form. The annual burden is 1,484 hours. The total burden is 3,926.

For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be recieved on or before April 10, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW., room 6410, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ronald Rabbu (202) 606-0623.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91-5696 Filed 3-8-91; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

International Gam Technology
Common Stock, $.005 Par Value (File No. 7-6600)
Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6601)
Luxottica Group, SPA
American Depository Receipt (File No. 7-6602)
Oregon Steel Mills, Inc.
Common Stock, $.01 Par Value (File No. 7-6603)
Unifi, Inc.
Common Stock, $.10 Par Value (File No. 7-6604)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5601 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

American Exploration Company
Common Stock, $.05 Par Value (File No. 7-6605)
Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6606)
Martech USA, Inc.
Common Stock, $.01 Par Value (File No. 7-6607)
Parker & Parsley Petroleum Company
Common Stock, $.01 Par Value (File No. 7-6608)
Visx, Incorporated
Common Stock, $.01 Par Value (File No. 7-6609)
Western Energy Management, Inc.
Common Stock, $.01 Par Value (File No. 7-6610)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments

concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5603 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 5, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Liz Claiborne, Inc.
Common Stock, $1.00 Par Value (File No. 7-6611)
Martech USA, Inc.
Common Stock, $.01 Par Value (File No. 7-6612)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5602 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28837; File No. SR-PHLX-90-04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Foreign Currency Option Quote Spread Parameters

On July 31, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend Exchange rule 1014(c)(ii) and Floor Procedure Advice F-6 in order to revise the quote spread parameters in effect during all trading segments for option contracts on the British pound, German mark, Swiss franc, Australian dollar, European Currency Unit ("ECU"), and Japanese yen.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 28383 (August 28, 1990), 55 FR 36375. No comments were received on the proposed rule change.[3]

Under the proposal, Exchange rule 1014(c)(ii) will be amended to narrow the Exchange's maximum quote spread parameters for options on the British pound by (i) Reducing, from $.0020 to $.0015, the maximum difference between the bid and the offer for option contracts where the bid is $.0250 or less; (ii) reducing, from $.0040 to $.0025, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0250 but does not exceed $.0750; and (iii) reducing, from $.0060 to .0035, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0750. In addition to narrowing the quote spread parameters, the proposal revises the contract bid price in each of the three categories, so that the first category will include option contracts for which the bid is $.0250 or less, rather than $.0200 or less; the second category will include option contracts where the bid is greater than $.0250, rather than $.0200, but does not exceed $.0750, rather than $.0800; and the third category will include contracts where the bid exceeds $.0750 rather than $.0800.

For option contracts on the German mark and the Swiss franc, Exchange rule 1014(c)(ii) is amended to narrow the Exchange's maximum quote spread parameters by (i) Reducing, from $.0090 to $.0006, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0040 but does not exceed $.0160; and (ii) reducing, from $.0012 to $.0008, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0160.

For option contracts on the Australian dollar and the ECU, Exchange rule 1014(c)(ii), as amended, will broaden the Echange's maximum quote spread parameters by (i) Increasing, from $.0004 to $.0005 the maximum difference between the bid and the offer for option contracts where the bid is $.0050 or less; (ii) increasing, from $.0008 to $.0010 the maximum difference between the bid and the offer for option contracts where the bid exceeds $.0050 but does not exceed $.0200; and (iii) increasing, from $.0012 to $.0015 the difference between the bid and the offer for option contracts where the bid exceeds $.0200. In addition to broadening the quote spread parameters, the proposal will change the contract bid price in each of the three categories so that the first category will include option contracts where the bid is $.0050 or less, rather than $.0040 or less; the second category will include option contracts where the bid exceeds $.0050, rather than $.0040, but does not exceed $.0200, rather than $.0160; and the third category will include option contracts where the bid exceeds $.0200 rather than $.0160. The Exchange believes that it is appropriate to widen its quote spread parameters for ECU and Australian dollar options so that they correspond to the levels in the over-the-counter ("OTC") market for options. In addition, the PHLX notes that trading volume on the Exchange in Australian dollar and ECU options has been significantly less than the volume in more actively traded currencies, including the German mark and the Swiss franc.

For option contracts on the French franc, Exchange rule 1014(c)(ii), as amended, will narrow the Exchange's maximum quote spread parameters by (i) reducing, from $.0002 to $.00015, the maximum difference between the bid and the offer for option contracts where the bid is $.00250 or less; (ii) reducing, from $.00040 to $.00025, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.00250 but does not exceed $.00750; and (iii) reducing, from $.00060 to $.00035 the maximum difference between the bid and the offer for option contracts where the bid exceeds $.00750. In addition to narrowing the quote spread parameters, the proposal will change the contract bid price in each of the three categories, so that the first category will include option contracts where the bid is $.00250 or less, rather than $.0020 or less; the second category will include option contracts where the bid exceeds $.00250, instead of $.0020, but does not exceed $.00750, rather than $.0060; and the third category will include option contracts where the bid exceeds $.00750 rather than $.0080.

For option contracts on the Japanese yen, Exchange rule 1014(c)(ii), as amended, will narrow the Exchange's quote spread parameters by (i) Reducing, from $.000008 to $.000006, the maximum difference between the bid and the offer for option contracts where the bid is greater than $.000040 but does not exceed $.000160; and (ii) reducing, from $.000012 to $.000008, the maximum difference between the bid and the offer for option contracts where the bid exceeds $.000160.

The proposal makes corresponding changes in option quote parameters listed in PHLX Floor Procedure Advice F-6.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] Specifically, the Commission finds that the narrowing of the quote spread parameters for options on the British pound, German mark, Swiss franc, French franc and Japanese yen is consistent with section 6(b)(5) in that it will promote just and equitable principles of trade and the public interest by helping the PHLX to provide a more efficient and competitive market for foreign currency options. The Commission believes that narrowing the maximum allowable bid-ask differential will result in improved price continuity and tighter, more liquid markets.

In addition, the Commission believes that, due to the unique characteristics of the foreign currency options market, it is acceptable for the Exchange to widen its quote spread parameters for ECU and Australian dollar options to mirror quote spreads typically experienced in the OTC market for ECU and Australian dollar options. The foreign currency options market in the United States is overwhelmingly institutional and is spread among three locations: the PHLX, the futures exchanges, and the OTC market. Of the three, the OTC market is perhaps the largest. Unlike the market for options on stocks, for foreign currency options the OTC market provides a constant competitive market that, in some respects, is the primary market.

Currently, in comparison to the OTC foreign currency options market, which imposes no market making obligations, the PHLX subjects its foreign currency options market makers to stricter and more burdensome requirements for, among other things, quote spread parameters. The imposition on PHLX market makers of qoute spread parameters narrower than those typically experienced in the OTC market may, in turn, constrain market making support and participation on the Exchange because PHLX market makers are placed at a competitive disadvantage vis-a-vis OTC market participants. With the latitude to set quote spread that match the OTC market, PHLX market markers may be more apt to compete with the OTC market and trade in these options, thereby enhancing market depth and liquidity.

In sum, the benefits to investors to be derived through a more viable Exchange market in these options outweighs the costs to investors imposed by wider maximum quote spread parameters.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-PHLX-90-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5604 Filed 3-8-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Incubators; Solicitation of Proposals

AGENCY: Small Business Administration.

ACTION: Notice of solicitation of proposals.

SUMMARY: Section 308 of Public Law 101-574, the Small Business Administration Reauthorization and Amendment Act of 1990, enacted November 15, 1990, states "the sense of Congress that small business incubators can play a constructive role in rural development". The law requests that the National Association of Development Companies, Certified Development Companies (CDCs) authorized under title V of the Small Business Investment Act of 1958, 15 U.S.C. 661 *et. seq.*, and other interested parties develop proposals under which CDCs "located in rural areas could establish, operate or otherwise cooperate with small business incubators for startup small business". Proposals should include recommendations regarding needed Federal assistance, both monetary and legislative.

DATES: Proposals must be submitted by May 15, 1991.

ADDRESSES: One copy of the proposal should be mailed to each of the following:

The U.S. Small Business Administration, 409 3rd St. SW., 8th floor, Washington, DC 20416, Attn: Office of Economic Development.
United States Senate, Senate Committee on Small Business, Washington, DC 20510.
United States House of Representatives, House Committee on Small Business, Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Economic Development, (202) 205-6485.

SUPPLEMENTARY INFORMATION: This is a solicitation for ideas and comments only. No funds are currently appropriated, nor is there any guarantee that they will be available at any future date. Responses to this solicitation will however provide a foundation for evaluating and planning future support(s) which may be offered for rural small business incubators. Proposals should be kept brief and to the point.

Respondents should describe their experience in operating an incubator or provide analysis based on research. Comments are solicited regarding local perceptions—pro or con—about the need for, and desirability of incubators, including both those with fixed facilities or those without walls.

Comments are also solicited with respect to types and levels of financial assistance required or anticipated to be

[1] 15 U.S.C. 78s(b)(1) (1982).
[2] 17 CFR 240.19b-4 (1990).
[3] By letter dated October 3, 1990, the Exchange requested that the Commission delay consideration of its proposal pending Commission action on another PHLX proposed rule change, File No. SR-PHLX-90-36, dealing with priority and parity rules governing foreign currency options. See letter from Philip Lin, Law Clerk, PHLX, to Thomas R. Gira, Branch Chief, Options Regulation, SEC, dated October 3, 1990.
[4] 15 U.S.C. 78f(b)(5) (1982).
[5] 15 U.S.C. 78s(b)(2) (1982).
[6] 17 CFR 200.30-3(a)(12) (1990).

BEST COPY AVAILABLE

required for (a) incubator facility fixed assets, (b) incubator facility operations and administrative support for sponsoring organizations, and (c) equity, quasi-equity or loan funds to assist incubator tenants. Comments should also be provided with respect to existing or probable cooperative relationships with other local economic development entities including Small Business Development Centers and state agencies.

The above is provided as an example of information desired, but should not limit the creativity of respondents.

Authority: Section 308 of Pub. L. 100-574.

Charles R. Hartzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91-5663 Filed 3-8-91; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville will hold a public meeting from 9:30 a.m. to 3 p.m. on Thursday, March 28, 1991, at the University of Louisville, Shelby Campus, Founders Union Building, room 211, Shelbyville Road, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William Federhofer, District Director, U.S. Small Business Administration, 600 Dr. Martin Luther King, Jr. Place, room 188, Louisville, Kentucky 40202-2254, telephone (502) 582-5971.

Dated: March 5, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-5662 Filed 3-8-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1356]

Bureau of Diplomatic Security; Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: The Comprehensive Anti-Apartheid Act of 1986 (CAAA) (Pub. L. 99-440), provides that no U.S. Government department or agency may intercede with any foreign government or foreign national regarding the export marketing activities of any U.S. national employing more than 25 persons in South Africa that is not implementing the fair labor principles specified in the CAAA. The CAAA and regulations issued by the Secretary of State (22 CFR parts 60-65, § 62.1) require U.S. nationals meeting certain criteria to register with the Department of State. The form being reviewed enables affected U.S. nationals to comply with the law. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.
Originating office—Bureau of African Affairs.
Title of information collection—South Africa and Fair Labor Standards Application for Registration.
Frequency—On occasion.
Form No.—DSP-95.
Respondents—U.S. individuals and firms operating in South Africa.
Estimated number of respondents—10.
Average hours per response—1 hour.
Total estimated burden hours—15.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: February 27, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 91-5646 Filed 3-8-91; 8:45 am]

BILLING CODE 4710-62-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Noise Exposure Maps for Reno Cannon International Airport, Reno, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Washoe County Airport Authority for Reno Cannon International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is February 22, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone: 415/876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Reno Cannon International Airport are in compliance with applicable requirements of part 150, effective February 22, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Washoe County Airport Authority. The specific maps under consideration are the 1989 and 1994 Noise Exposure Maps located after page I-8 in the submission. The FAA has determined that these maps for Reno Cannon International Airport are in compliance with applicable requirements. This determination is effective on February 22, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.
Federal Aviation Administration, Western-Pacific Region, Airports Division, room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.
Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303.
Mr. Robert C. White, Executive Director, Airport Authority of Washoe County, Box 12490, Reno, Nevada 89510.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on February 22, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 91-5661 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-91-10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must indentify the petition docket number involved and must be received on or before March 31, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10) Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 28, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 23465.
Petitioner: Everts Air Fuel, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) [old § 91.31(a)].
Description of Relief Sought: To extend Exemption No. 4296, as amended, which allows the operation of Douglas DC-6 cargo-only aircraft, N151 and N251CE, at a 5 percent increase of zero fuel weight and landing weight.

Docket No.: 26443.
Petitioner: Alaska Air Carriers Association.
Sections of the FAR Affected: 14 CFR 135.129.
Description of Relief Sought: To allow petitioner's members to operate aircraft having 19 seats or fewer without meeting the requirements of the exit row seating regulation.

Docket No.: 26462.
Petitioner: Department of the Treasury, U.S. Customs Service.
Sections of the FAR Affected: 14 CFR 91.13.
Description of Relief Sought: To allow petitioner to operate in a manner necessary to conduct law enforcement stops of suspect aircraft.

Docket No.: 26475.
Petitioner: Flets Field Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow trained crewmembers and line service personnel to remove and reinstall cabin seats and stretchers in petitioner's Cessna 441 Conquest airplane when certificated mechanics are not available.

Docket No.: 26478.
Petitioner: Department of the Air Force, Director of Operations of the Headquarters Tactical Air Command.
Sections of the FAR Affected: 14 CFR 91.209.
Description of Relief Sought: To allow petitioner to conduct counternarcotics training without external lighting in certain Air Traffic Control Assigned Airspace.

Dispositions of Petitions

Docket No.: 25830.
Petitioner: Eastern Metro Express.
Sections of the FAR Affected: 14 CFR 135.225.
Description of Relief Sought/Disposition: To extend Exemption No. 5054, which allows petitioner's pilots to take off under instrument flight rules without complying with applicable instrument procedures and minimums at Myrtle Beach Air Force Base.

Grant, February 14, 1991, Exemption No. 5054A

Docket No.: 26359.

Petitioner: Federal Express Corporation.

Sections of the FAR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

Description of Relief Sought/ Disposition: To allow petitioner to comply with the alternate airport and fuel requirements contained in the Federal Aviation Regulations for domestic air carriers.

Partial Grant, December 27, 1990, Exemption No. 5264

[FR Doc. 91-5650 Filed 3-8-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1051.

Form Number: None.

Type of Review: Extension.

Title: Definition of Functional Currency.

Description: The regulation, in providing rules for determining the functional currency of a foreign entity, permits an election to use the United States dollar as functional currency in situations where the entity is operating in a hyperinflationary country. This election is permitted by regulatory authority provided in section 987(b)(3) and is needed to reflect accurately the amount of income earned by these entities. Without the election, much of the income would represent inflationary amounts.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 700.

Estimated Burden Hours Per Response: 1 hour, 15 minutes.

Frequency of Response: One time election.

Estimated Total Reporting Burden: 1,025 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-5600 Filed 3-8-91; 8:45 am]

BILLING CODE 4830-01-M

[No. 27-05]

Organization and Functions of the Office of the Assistant Secretary (Economic Policy)

Date: March 4, 1991.

1. Purpose. This directive describes the organization and functions of the Office of the Assistant Secretary (Economic Policy).

2. The Assistant Secretary (Economic Policy) reports through the Under Secretary for Finance and Deputy Secretary to the Secretary. The incumbent is responsible for the following functions.

a. Develops and maintains an ecomomic research capability that is consistent with the Department's policy and responsibilities.

b. Provides the Secretary, the Deputy Secretary, and the Under Secretary for Finance with substantive advice and recommendations on the economic policy actions that fall within their spheres of responsibility or interest.

c. Conducts research in those areas of economic activity necessary to provide a continuous appraisal of the current state and future course of the United States economy.

d. Analyzes and evaluates, in-depth, the economic consequences of developments, and of alternative policy and legislative proposals, in a wide range of economic and national security areas.

e. Carries out the Department's statutory and traditional responsibilities for the collection, maintenance and analysis of information from the Department's international financial reporting systems, including the Department's functions under 31 U.S.C. 5315 and the International Investment and Trade in Services Survey Act, Public Law 94-472 (1976), as amended.

f. Provides the Department with the capability to carry out sophisticated quantitative analysis of international financial information.

3. Organization Structure. The Assistant Secretary (Economic Policy) supervises the Deputy Assistant Secretary (Policy Analysis), the Deputy Assistant Secretary (Policy Coordination), the Director, Office of Data Management, and the Director, Office of Foreign Investment Studies. The Office of Policy Analysis reports to the Deputy Assistant Secretary (Policy Analysis). The Office of Financial Analysis and the Office of Economic Analysis report to the Deputy Assistant Secretary (Policy Coordination).

4. The Deputy Assistant Secretary (Policy Analysis) is responsible for the following functions.

a. Acts for the Assistant Secretary in that official's absence, as assigned.

b. Plans, monitors, and evaluates research efforts, including establishing and achieving time and quality targets.

c. Advises on the policy requirements for research, and on the policy implications of research results.

d. Directs and closely supervises research efforts conducted by the Office of Policy Analysis.

(1) The Office of Policy Analysis is responsible for the following functions.

(a) Conducts in-depth economic evaluations and analyses of developments and issues that affect specific areas of the United States economy, i.e., labor, prices, social security, fiscal policy, regulatory reform, and energy. The results are used for:

1. Formulating Treasury positions on legislative or administrative proposals;

2. Continually appraising current developments in each area;

3. Providing sector inputs to macroeconomic forecasts; and

4. Providing research and policy analysis relating to the economic and budgetary conditions of regions, States and localities, including evaluation of trends in the State and local sector of the economy, with particular reference to the impacts of Federal grant, tax and budget policies and other Federalism issues.

(b) Analyzes the effects on the U.S. economy (output, prices, Federal budget, and financial markets) of energy development and programs.

(c) Monitors and assesses the economic effects of changing energy technologies.

(d) Evalutes the effects of Government programs in developing new technologies, or in modifying the use of older technologies.

(e) Analyzes and evaluates national security issues, as assigned.

5. The Deputy Assistant Secretary (Policy Coordination) is responsible for the following functions.

a. Acts for the Assistant Secretary in that official's absence as assigned.

b. Plans, monitors, and evaluates research efforts, including establishing and achieving time and quality targets.

c. Advises on the policy requirements for research, and on the policy implications of research results.

d. Directs and closely supervises research efforts conducted by the Office of Financial Analysis and the Office of Economic Analysis. These two subordinate offices have the following specific functions.

(1) The Office of Financial Analysis is responsible for the following functions.

(a) Maintains a continuously updated appraisal of the current state of the economy and the significance of monetary and financial developments.

(b) Projects important macroeconomic variables such as Gross National Product, the unemployment rate and the inflation rate in order to provide staff support for the Treasury in its interagency economic forecasting activities.

(c) Monitors Federal Reserve policy and reports on its significance for the economy.

(d) Provides a continuing flow of economic and financial inflation designed to keep the Secretary and other senior policy officials fully informed on current developments and adapts the form of presentation, as appropriate to meet the needs of the Secretary.

(e) Prepares information memoranda on the economy for the Secretary, in advance of his regular weekly meetings with the Chairman of the Federal Reserve System and for other occasions, such as meetings of the Quadriad, which is comprised of the Department of the Treasury, the Federal Reserve Board, the Office of Management and Budget, and the Council of Economic Advisers;

(f) Provides economic briefing information on the U.S. domestic economy to support the activities of senior Treasury officials in their appearances at domestic and international meetings and provides staff support for congressional testimony by the Assistant Secretary (Economic Policy) and others, and represents the Treasury at interagency meetings concerned with the domestic economy.

(g) Conducts special intensive studies of selected features of economic and financial developments upon request or upon the initiative of the office.

(2) The Office of Economic Analysis is responsible for the following functions.

(a) Undertakes research studies, either self-initiated or at the request of the Assistant Secretary or the Deputy Assistant Secretary; such studies have a substantial policy-relevant orientation, and take the form of research papers, action or briefing memoranda.

(b) Serves on Treasury or interagency task forces at the request of the Assistant Secretary on issues related to the office's area of responsibility.

(c) Applies econometric and statistical techniques to the analysis of economic policy issues; the analysis addresses a wide range of topics and utilizes the developed expertise of the office in both microeconomic and macroeconomic analysis; projects can be either short-term or long-term with the major unifying characteristics being the econometric content and policy relevance.

(d) Provides independent assessment of major developments and issues in monetary policy for the Assistant Secretary, taking into account economic and financial conditions domestically and abroad.

(e) Maintains professional contact with other sectors of Government (e.g., Council of Economic Advisers, Congress, Federal Reserve Board and regional Federal Reserve Banks), universities and private-sector institutions.

(f) Surveys and appraises professional literature, as a means of monitoring current developments, maintaining knowledge of recent research and ideas, and anticipating new issues which will be of concern and importance to the Assistant Secretary or Deputy Assistant Secretary.

6. THE OFFICE OF DATA MANAGMENT is responsible for the following functions.

a. Collects and analyzes data, and prepares reports on foreign currency transactions required by statute or otherwise needed by the Department.

b. Manages the Department's regular data collection program for portfolio investment. Complies, analyzes and prepares for publication statistics on U.S. portfolio capital flows and other information related to international investment as required by law or traditional practice.

c. Analyzes and reports on U.S. portfolio investment abroad.

d. Collects, analyzes and prepares reports on statistics of foreign indebtedness to and contingent liabilities of the U.S. Government.

e. Prepares reports and submissions, based on reporting systems maintained by the office and related information, to other U.S. Government agencies and international organizations for the purposes of supporting national and international financial databases.

f. Designs and implements, in light of Department and Government requirements, computerized reporting and information systems on international financial data, and represents the Department in discussions of the design of international financial data bases.

g. Conducts such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment as determined by the Assistant Secretary. Provides capability for sophisticated computer based analysis of data systems.

7. The Office of Foreign Investment Studies is responsible for the following functions.

a. Conducts comprehensive benchmark surveys of foreign portfolio investment in the United States at least once every five years, which function includes:

(1) Determining the magitude and aggregate value of foreign portfolio investment in the United States;

(2) Determining the form of investments, types of investors, nationality of investors, and diversification of holdings, by econqmic sector;

(3) Submitting reports to the Congress, detailing and analyzing the findings of the surveys; and

(4) Providing reports and analyses based on the survey data to other Government agencies.

b. Conducts other surveys and studies related to foreign portfolio investment in the United States and provides reports and analyses to the Congress and other U.S. Government agencies, as appropriate.

8. The Assistant Secretary (Economic Policy) is authorized to reassign funcitons, programs and associated positions and resources among the subordinate offices as deemed necessary, consistent with existing administrative rules, regulations and procedures.

9. Cancellation. Treasury Directive 27-05, "Organization and Functions of the Office of the Assistant Secretary (Economic Policy)," dated November 16, 1989, is superseded.

10. Office of Primary Interest. Office of the Assistant Secretary (Economic Policy).

Sidney L. Jones,

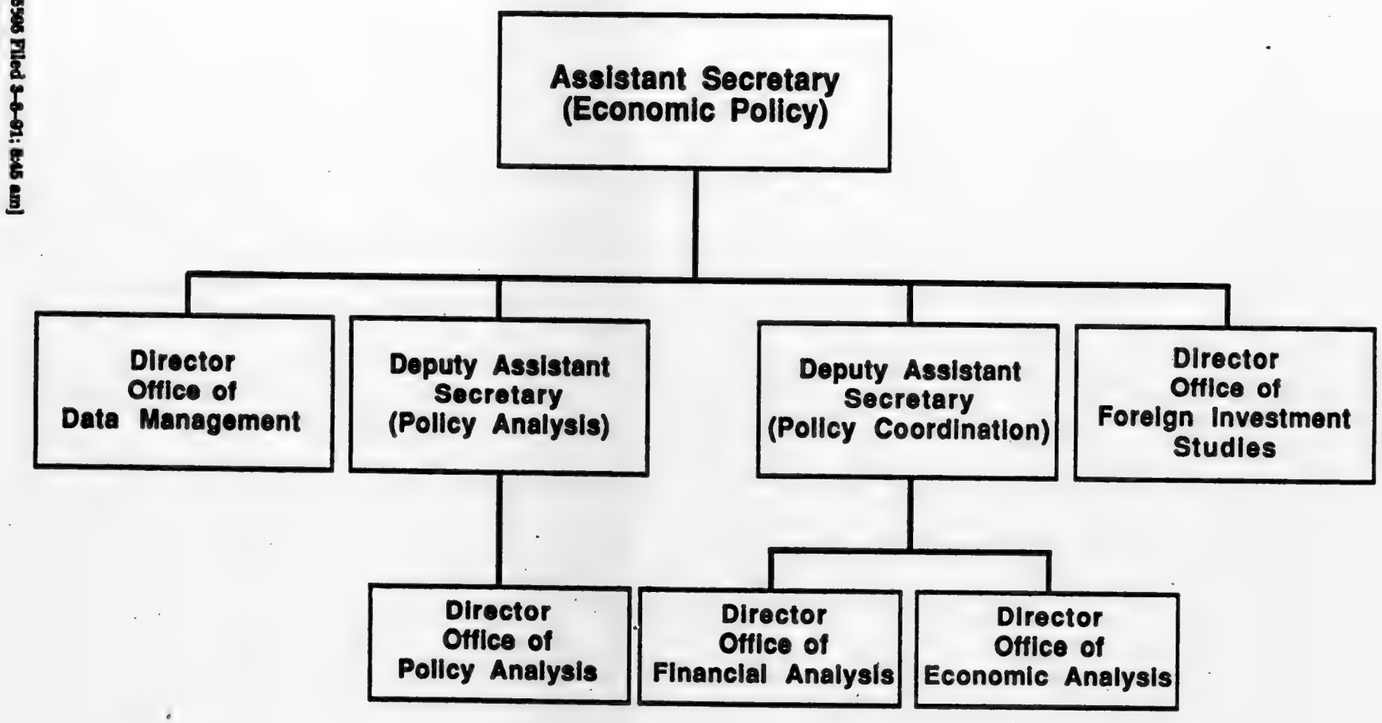
Assistant Secretary (Economic Policy).

BILLING CODE 4810-25-M

TD 27-05
03-04-91

ATTACHMENT

Office of Economic Policy



Department of the Treasury

Assistant Secretary
(Economic Policy)

March 4, 1991
Date

[FR Doc. 91-5906 Filed 3-8-91; 8:45 am]
BILLING CODE 4810-25-C

U.S. Customs Service

Extension of Analyses for which Caleb Brett, U.S.A. Inc., A Customs Accredited Commercial Laboratory, Has Been Accredited To Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of additional analyses for which Caleb Brett, U.S.A., Inc., a Customs accredited commercial laboratory, has been accredited to perform.

SUMMARY: Caleb Brett, U.S.A., Inc., of Houston, Texas a Customs accredited commercial laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its commercial laboratory accreditation to include the following analyses: Reid Vapor Pressure, Saybolt Universal Viscosity, sediment by extraction, percent by weight sulfur of petroleum products, percent by weight lead in gasoline, xylene isomer content of mixed xylenes and percent composition by weight of benzene, toluene and xylene.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses for certain products from Customs accredited commercial laboratories. Caleb Brett, U.S.A., Inc., which holds Customs accreditation in certain laboratory analyses, has applied to Customs to extend its accreditation to the performance of the additional analyses named above in its laboratories. Review of Caleb Brett, U.S.A., Inc., qualifications shows that the extension is warranted and, accordingly, has been granted. The extension, however, is limited to the analytical capabilities of each site.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229 (202-566-2446).

Dated: March 6, 1991.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91-5669 Filed 3-8-91; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

SUBJECT: U.S. Advisory Commission on Public Diplomacy Meeting.

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on March 13, 1991 in room 800, 301 4th Street, SW., Washington, DC from 11 a.m. to 12:15 p.m.

There will be a panel discussion with USIA's Europe Public Affairs Officers in Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Yugoslavia, Bulgaria, Poland, and Mr. Csaba Chikes, Deputy Director, USSR, Eastern & Southern Europe.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 4, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91-5641 Filed 3-8-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, March 13, 1991

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Voluntary Standards/International Affairs Activities.

The staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the first quarter of fiscal year 1991.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: March 7, 1991.

Sadye E. Dunn,

Secretary.

[FR Doc. 91-5615 Filed 3-7-91; 2:19 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

March 6, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: March 13, 1991, 2:00 p.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 933rd Meeting—March 8, 1991, Regular Meeting (2:00 p.m.)

CAH-1.
Project No. 4720-019, City of Farmington, New Mexico

CAH-2.
Project No. 2801-012, Mary C. Heather and Joseph A. Guerrieri

CAH-3.
Project No. 6879-001, Southeastern Hydro-Power, Inc.

CAH-4.
Project No. 7941-003, Enviro Hydro, Inc.

CAH-5.
Omitted

CAH-6.
Docket No. UL89-11-001, Metropolitan District Commission of Boston

Consent Agenda—Electric

CAE-1.
Docket Nos. ER91-221-000 and ER90-54-001, People's Electric Cooperative

CAE-2.
Docket No. ER91-215-000, Commonwealth Atlantic Limited Partnership

CAE-3.
Docket No. ER91-38-000, PacifiCorp Electric Operations and Arizona Public Service Company

CAE-4.
Docket No. QF86-917-001, American Ref-Fuel Company of Bergen County

CAE-5.
Docket No. QF91-6-001, Georgetown Cogeneration, L.P.

CAE-6.
Docket Nos. QF86-202-003 and QF86-203-003, GEO East Mesa Limited Partnership (GEM 1 Facility, GEM 2 Facility)

CAE-7.
Docket No. ER90-482-001, West Texas Utilities Company

CAE-8.
Docket Nos. ER82-487-007 and ER83-301-001, Southern California Edison Company

CAE-9.
Docket No. ES91-4-001, Consumers Power Company

CAE-10.
Docket No. EL90-48-000, City of New Orleans Louisiana v. Entergy Corporation, Arkansas Power and Light Company, New Orleans Public Service, Inc., Louisiana Power and Light Company, Mississippi Power and Light Company and System Energy Resources, Inc.

CAE-11.
Docket No. ES91-15-000, Gulf States Utilities Company

Consent Agenda—Oil and Gas

CAG-1.
Omitted

CAG-2.
Docket No. RP91-4-001, Texas Eastern Transmission Corporation

CAG-3.
Docket No. RP91-91-000, El Paso Natural Gas Company

CAG-4.
Docket No. RP91-86-000, Florida Gas Transmission Company

CAG-5.
Docket No. RP91-96-000, Bayou Interstate Pipeline System

CAG-6.
Docket Nos. RP90-153-001 and 003, El Paso Natural Gas Company

CAG-7.
Docket No. TQ91-4-11-000, United Gas Pipe Line Company

CAG-8.
Docket No. TA91-1-40-000, Raton Gas Transmission Company

CAG-9.
Docket Nos. TA88-3-15-000 and TA89-1-15-000, Mid Louisiana Gas Company

CAG-10.
Docket Nos. TQ90-4-49-000 and RP90-113-000, Williston Basin Interstae Company.

CAG-11.
Docket No. GT91-19-000, Williston Basin Interstate Pipeline Company

CAG-12.
Docket Nos. GT90-34-001, 002 and 003, Midwestern Gas Transmission Company

CAG-13.
Docket Nos. GT90-24-000 and 001, High Island Offshore System

CAG-14.
Docket Nos. RP87-62-010 and RP86-148-007, Pacific Gas Transmission Company

CAG-15.
Docket No. RP90-72-002, Carnegie Natural Gas Company

CAG-16.
Docket Nos. RP91-52-001 and RP91-53-001, Panhandle Eastern Pipe Line Company

CAG-17.
Docket No. RP91-54-001, Trunkline Gas Company

CAG-18.
Docket No. RP91-56-002, Williston Basin Interstate Pipeline Company

CAG-19.
Docket Nos. RP90-109-000, 005, PR87-62-000, 011, TQ91-1-86-000,003, TM91-1-86-003, Pacific Gas Transmission Company

CAG-20.
Docket Nos. TQ91-3-20-002 and TM91-3-20-002, Algonquin Gas Transmission Company

CAG-21.
Docket No. RP91-51-001, CNG Transmission Corporation

CAG-22.
Docket Nos. RP86-169-019, RP86-105-020 and RP87-25-008, ANR Pipeline Company

CAG-23.
Docket Nos. RP90-2-008 and 010, Williston Basin Interstate Pipeline Company

CAG-24.
Docket No. TQ91-2-17-001, Texas Eastern Transmission Corporation

CAG-25.
Docket No. PR91-2-000, Rhone-Poulence Pipeline Company

CAG-26.
Docket No. RM91-8-000, Qualifying Certain Tight Formation Gas for Tax Credit

CAG-27.
Docket No. GP88-27-002, Quintana Petroleum Corporation

CAG-28.
Docket No. GP88-28-002, Northern Pump Company, Danner No. A-1 Well

CAG-29.
Docket No. GP90-12-000, Colorado Interstate Gas Company

CAG-30.
Docket Nos. CP88-480-003 and CP90-1-001, Pacific Gas Transmission Company

CAG-31.
Docket Nos. CP90-1372-001, CP90-1373-001, CP90-1374-001 and CP90-1375-001, Altamont Gas Transmission Company

CAG-32.
Docket No. CP89-2174-001, Arkla Energy Resources a Division of Arkla, Inc.

CAG-33.
Docket Nos. CP87-57-010, 000, 011, CP87-166-008, CP87-316-006, CP87-386-006 and CP87-406-004, Florida Gas Transmission Company

CAG-34.
Docket No. CP91-568-000, Southern Natural Gas Company

CAG-35.
Docket No. CP91-507-000, Transwestern Pipeline Company

CAG-36.
Docket No. CP90-2095-000, Williams Natural Gas Company

CAG-37.
Docket No. CP90-1760-000, Texas Eastern Transmission Corporation and Texas Gas Transmission Corporation

CAG-38.
Docket No. CP89-877-000, El Paso Natural Gas Company

CAG-39.
Docket Nos. CP89-7-012 and CP89-710-004, Transcontinental Gas Pipe Line Corporation

CAG-40.
Docket Nos. CP91-928-000, CP91-1305-000 and CP91-1333-000, Colorado Interstate Gas Company

CAG-41.
Docket No. CP91-1203-000, ANR Pipeline Company

CAG-42.
Docket No. CP91-1213-000, Algonquin Gas Transmission Company

CAG-43.
Docket No. CP91-1218-000, Trunkline Gas Company

CAG-44.
Docket No. CP91-1273-000, United Gas Pipe Line Company

CAG-45.
Docket No. CP91-1366-000, Colorado Interstate Gas Company

CAG-46.
Docket No. CP91-1351-000, Mississippi River Transmission Corporation

CAG-47.
Docket No. CP91-705-000, City of Gainesville, Florida v. Florida Gas Transmission Company

CAG-48.
Docket Nos. CP89-1525-000 and 001, Northwest Pipeline Corporation
Docket No. CP88-833-000, Washington Natural Gas Company

Hydro Agenda

H-1.
Project No. 618-023, Alabama Power Company. Order on motion for extension of time and request for stay.

Electric Agenda

E-1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
(A) Docket No. CP91-446-000, Panhandle Eastern Pipe Line Company. Order on certificate application for GIC.
(B) Docket Nos. CP89-1281-007, 008 and TA90-1-28-002, Natural Gas Pipeline Company of America. Order on rehearing.

PR-2.
Docket No. RP89-185-005, Panhandle Eastern Pipe Line Company. Order on rehearing.

PR-3 through PR-43.
Omitted

PR-44.
Docket Nos. RP89-48-000, CP89-1126-000, RP89-222-000, 001, RP89-254-000, CP88-133-000, 001 and CP89-886-000, Transwestern Pipeline Company. Order on contested settlements and related request to amend blanket certificate.

III. Pipeline Certificate Matters

PC-1.
Docket No. CP88-194-003, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket No. CP89-7-003, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-195-004, PennEast Gas Services Company. Order on requests for rehearing.

PC-2.
Docket Nos. CP88-180-009 and 014, Texas Eastern Transmission Corporation
Docket No. CP88-185-003, Algonquin Gas Transmission Company. Order on requests for rehearing.

PC-3.
Docket Nos. CP87-131-005 and CP87-132-009, Tennessee Gas Pipeline Company. Order on request for rehearing.

PC-4.
Docket Nos. CP87-5-015, CP87-312-007, CP87-313-003, CP87-314-003, CP88-197-004 and CP88-388-004, CNG Transmission Corporation
Docket Nos. CP87-312-007 and 008, Texas Eastern Transmission Corporation
Docket No. CP87-554-011, Algonquin Gas Transmission Company. Order on request for rehearing.

PC-5.
Docket Nos. CP88-129-004 and CP88-163-002, Columbia Gas Transmission Corporation
Docket No. CP89-656-002, Algonquin Gas Transmission Company. Order o request for rehearing.

PC-6.
Docket Nos. CP87-5-005, CP87-92-005, CP88-197-003 and CP88-388-003, Texas Eastern Transmission Corporation and CNG Transmission Corporation
Docket Nos. CP87-312-005, CP87-313-002, CP87-314-002, CP88-128-003 and CP88-197-003, CNG Transmission Corporation
Docket No. CP87-554-002, Algonquin Gas Transmission Company
Docket No. CP89-6-002, Transcontinental Gas Pipe Line Corporation. Order on requests for rehearing.

PC-7.
Docket No. CP89-637-003, ANR Pipeline Company
Docket No. CP89-635-002, Columbia Gas Transmission Corporation
Docket No. CP89-661-002, Algonquin Gas Transmission Company. Order on requests for rehearing.

PC-8.
Docket No. CP88-171-002, Tennessee Gas Pipeline Company
Docket Nos. CP88-94-003 and CP88-194-005, National Fuel Gas Supply Corporation
Docket No. CP88-92-002, Transcontinental Gas Pipe Line Corporation
Docket No. CP88-195-006, PennEast Gas Services Corporation, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP87-131-003 and CP87-132-004, Tennessee Gas Pipeline Company. Order on requests for rehearing.

PC-9.
Docket Nos. CP86-171-004 and 006, Tennessee Gas Pipeline Company
Docket No. CP89-712-001, CNG Transmission Corporation
Docket Nos. CP88-194-001 and CP88-94-004, National Fuel Gas Supply Corporation
Docket Nos. CP89-7-008, 009, CP88-92-003 and 004, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88-195-007 and 008, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation.
Docket No. CP89-711-001, Texas Eastern Transmission Corporation
Docket No. CP88-187-003, Algonquin Gas Transmission Corporation
Docket Nos. CP89-2205-002 and CP89-710-001, Transcontinental Gas Pipe Line Corporation
Docket No. CP89-892-001, Great Lakes Transmission Company
Docket Nos. CP87-131—004 and 007, Tennessee Gas Pipeline Company. Order on requests for rehearing.

PC-10.

Docket No. CP90-187-001, Oklahoma-Arkansas Pipeline Company. Order on request of rehearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5582 Filed 3-7-91; 4:02 pm]

BILLING CODE 6717-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY:

Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on March 6, 1991, from 1:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD 703 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board was closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matters considered at the meeting were:

Closed Session*

- Pending Litigation Action; and
- Competition Study.

*Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(9) and (10).

Dated: March 7, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-5851 Filed 3-7-91; 3:53 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, March 14, 1991

March 7, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, March 14, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—*Title:* AT&T's Petition to Amend Carrier Selection Rules: Unauthorized Switching of Customers' Long Distance Service (RM-7245). *Summary:* The Commission will consider AT&T's petition to amend carrier selection rules to require written customer authorization for changes in a customer's long distance service.

2—Common Carrier—*Title:* Policies and Rules Concerning Interstate 900 Telecommunications Services. *Summary:* The Commission will consider whether to adopt a *Notice of Proposed Rule Making* regarding the provision of interstate 900 services.

3—Mass Media—*Title:* Evaluation of the Syndication and Financial Interest Rules (MM Docket No. 90-162). *Summary:* The Commission will consider whether to revise its Network Television Syndication and Financial Interest Rules.

4—Private Radio—*Title:* Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Services (PR Docket No. 89-552, RM-6896). *Summary:* The Commission will consider whether to adopt rules based upon narrowband technology for private land mobile use in the 220-222 MHz band.

5—Chief Engineer and Common Carrier—*Title:* An Inquiry Relating to Preparation for the International Telecommunication Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (GEN Docket No. 89-554). *Summary:* The Commission will consider whether to adopt a *Supplemental Notice of Inquiry* in this proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: March 7, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5816 Filed 3-7-91; 2:20 pm]

BILLING CODE 6712-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 10:00 a.m. on March 13, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Reconsideration of Docket No. R90-1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91-5788 Filed 3-7-91; 12:01 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting.

Notice is hereby given, pursuant to the provision of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 11, 1991.

A closed meeting will be held on Tuesday, March 12, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b (c)(4), (8), (9)(A) and (10) and 17 CFR 200.402 (a)(4), (8), (9)(i), and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Lochner, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 12, 1991, at 2:30 p.m., will be:

Settlement of injunctive action.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Gray at (202) 272-2300.

Dated: March 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5795 Filed 3-7-91; 12:16 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 9405 March 6, 1991].

STATUS: Closed.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 28, 1991.

CHANGE IN THE MEETING: Deletion:

The following item was not considered at a closed meeting on Tuesday, March 5, 1991 at 2:30 p.m.

Opinion.

Commissioner Lochner, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: March 6, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5796 Filed 3-7-91; 12:16 pm]

BILLING CODE 8010-01-M

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number (AMS-FV-89-201)]

Potatoes; Grade Standards

Correction

In rule document 91-4361, beginning on page 7553, in the issue of Monday, February 25, 1991, make the following correction:

§ 51.1566 [Corrected]

On page 7554, in § 51.1565, in Table IV, in the first column, in the third line "Sport," should read "Spot,".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.CP91-1187-000, et al.]

Southern Natural Gas Co. et al.; Natural Gas Certificate Filings

Correction

In notice document 91-4176 beginning on page 7358 in the issue of Friday, February 22, 1991, make the following correction:

On page 7360, in the second column, under entry number 7., in the first line of Docket lines, the second entry shoud read "CI87-433-004".

BILLING CODE 1505-01-D

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

Correction

In rule document 91-2091 beginning on page 3196 in the issue of Tuesday, January 29, 1991, make the following corrections:

1. On page 3199, in Section 1410.3(a):

a. In the first column, in the third paragraph, in the second line "association" should read "associations".

b. In the 3d column, in the 1st full paragraph, in the 11th line from the bottom "funding" should read "funded".

2. On page 3201, in the third column, in the eighth line from the top of the page "or" should read "on".

§ 1410.2 [Corrected]

3. On page 3202, in the second column, in § 1410.2(g)(1), the third paragraph designated "(ii)" should have read "(iii)".

§ 1410.4 [Corrected]

4. On page 3203, in the first column, in § 1410.4(a), in the third line "premiums" should read "premium".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-322]

Certain Microporous Nylon Membrane and Products Containing Same; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

Correction

In notice document 91-5251 appearing on page 9370 in the issue of Wednesday, March 6, 1991,, make the following correction:

In the middle column in ths heading to the document the subject was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

Correction

In notice document 91-2674, beginning on page 4859, in the issue of Wednesday, February 6, 1991, make the following correction:

On page 4876, in the 2d column, in the 12th line from the bottom, "27" should read "±".

BILLING CODE 1505-01-D

Railroad Retirement Board

20 CFR Parts 302 and 348

RIN 3220-AA71

Qualified Employee; Miscellaneous

Corrections

In rule document 91-4017, beginning on page 6966, in the issue of Thursday, February 21, 1991, make the following corrections:

On page 6967, in the 1st column:

a. In the 1st line, "amount is computed" should read "amount computed".

b. In the 40th line, "railroad" should read "railway".

c. In the 45th line, "inquiry" should read "injury".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 90-AEA-13]

Proposed Alteration of Jet Routes J-42 and J-225

Correction

In proposed rule document 91-3159, beginning on page 5378, in the issue of Monday, February 11, 1991, make the following correction:

On page 5379, in the second column, in the sixth line from the bottom, "**[AMENDED]**" should read "**[REVISED]**".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE92

Reduction Because of Hospitalization

Correction

In proposed rule document 91-4292 beginning on page 7630, in the issue of Monday, February 25, 1991, make the following corrections:

1. On page 7630, in the third column, in the sixth line from the top of the page "or" should read "of".

§ 3.551 [Corrected]

2. On page 7631, in the first column, in § 3.551(d)(2), in the first line insert "neither" between "having" and "spouse".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AE09

Claims Based on Exposure to Herbicides Containing Dioxin (Soft-Tissue Sarcomas)

Correction

In proposed rule document 91-4293 beginning on page 7632 in the issue of Monday, February 25, 1991, make the following correction:

On page 7632, in the 3d column, in the 3d full paragraph, in the 12th and 13th lines the words "herbicides, we propose to remove the restrictions limiting the regulation to" were repeated. The 14th and 15th lines should be removed.

BILLING CODE 1505-01-D

OL
56
SS
47
R
1
991
MI

federal register

Monday
March 11, 1991

Part II

Department of Education

Educational Partnerships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

DEPARTMENT OF EDUCATION

(CFDA No.: 84.226)

Educational Partnerships Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To encourage the creation of alliances between public elementary and secondary schools or institutions of higher education and the private sector in order to:

(1) Apply the resources of the private and nonprofit sectors of the community to the needs of the elementary and secondary schools or the institutions of higher education in that community to encourage excellence in education;

(2) Encourage businesses to work with educationally disadvantaged students and with gifted students;

(3) Apply the resources of communities for the improvement of elementary and secondary education or higher education; and

(4) Enrich the career awareness of secondary or postsecondary school students and provide exposure to the work of the private sector.

Deadline for Transmittal of Applications: 5/10 /91.

Deadline for Intergovernmental Review: 7/11/91.

Available Funds: $897,000.

Estimated Range of Awards: $100,000—$400,000 for the first year of the project.

Estimated Average Size of Awards: $224,000.

Estimated Number of Awards: 4.

NOTE: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months. Applicants may plan to begin project activities in August of 1991.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (nonprocurement and Government-wide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

Description of Program

The Educational Partnerships Program is authorized by the Educational Partnerships Act of 1988, title VI, subtitle A, chapter 5 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) (20 U.S.C. 5031-5039).

Eligible Applicants

Only eligible partnerships may receive grants under this program. An eligible partnership must include a local educational agency or an institution of higher education, or both, and one or more or any combination of the following:

(1) Business concerns;
(2) Community-based organizations;
(3) Nonprofit private organizations;
(4) Museums;
(5) Libraries;
(6) Educational television or radio stations;
(7) State agencies.

A consortium of eligible partnerships may apply for a grant.

Private elementary and secondary schools may participate as members of an eligible partnership, providing services to a local educational agency or institution of higher education. However, private schools may not receive services under this program.

Any member of the eligible partnership may serve as the applicant and fiscal agent for the project.

Definitions

"Elementary school" has the same meaning given that term under section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

"Institution of higher education" has the same meaning given that term by section 481(a)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1088(a)(1)).

"Secondary school" has the same meaning given that term under section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

Authorized Activities

An eligible partnership may use funds received under this program for one or more of the following activities:

(1) Model cooperative projects designed to apply the resources of the private and nonprofit sectors of the community to the elementary and secondary schools of the local educational agency or institutions of higher education in that community;

(2) Projects designed to encourage business concerns and other participants in the eligible partnership to work with educationally disadvantaged students or gifted students, or both, in elementary or secondary schools or institutions of higher education in the community;

(3) Projects designed to apply the resources of the community to the elementary or secondary schools or institutions of higher education in that community to improve the education of students in such schools;

(4) Projects designed to address the special educational needs of gifted and talented children in the elementary and secondary schools of the local educational agency which are conducted with the support of the private sector;

(5) Projects designed to enrich the career awareness of secondary or post-secondary students through exposure to officers and employers of business concerns and other agencies and organizations participating in the eligible partnership;

(6) Projects for statewide activities designed to carry out the purpose of this program including the development of model State statutes for the support of cooperative arrangements between the private and nonprofit sectors and local educational agencies or institutions of higher education within the State;

(7) Special training projects for staff designed to develop skills necessary to facilitate cooperative arrangements between the private and nonprofit sectors and local educational agencies or institutions of higher education, or both;

(8) Academic, internship projects, including where possible academic credit, involving activities designed to carry out the purpose of this program, as described in the "Purpose of Program" section of this notice; and

(9) Projects encouraging personnel assigned from business concerns and other participants in the eligible partnership to do tutorial and volunteer work in elementary and secondary schools or institutions of higher education.

Funding Requirements

The Federal share for each year of an assisted project shall be as follows:

(1) 90% for the first year;
(2) 75% for the second year;
(3) 50% for the third year; and
(4) 33⅓% for the fourth year.

Each eligible partnership must provide the remainder of the funds from non-Federal sources. The matching funds for the project may be in cash or in-kind support, fairly evaluated.

Funding Restriction

In determining which applications shall be funded, the Secretary will consider the total amount of funds requested in applications from any State, so that not more than a total of $1,000,000 will be awarded to a project or projects in any State.

Continuation of Project Activities

An applicant must provide an assurance that it will take such steps as may be available to ensure that successful project activities will be continued after Federal funding ends.

Dissemination of Information

An applicant must provide an assurance that it will disseminate information about project activities, and may budget up to 1% of the funds received for this purpose.

State Educational Agency Approval

The Secretary does not approve an application if the State Educational Agency (SEA) for the State in which the applicant is located determines that the proposed project is inconsistent with State plans for elementary and secondary education.

During the application process, the Secretary will provide an opportunity for SEAs to determine whether or not applications from their States that address elementary or secondary education are consistent with State plans for elementary and secondary education.

This requirement is in addition to the requirements of Executive Order 12372 which is another opportunity for State level review. The requirements of the Executive Order are explained elsewhere in this notice.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria—(1) Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the Educational Partnerships Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the Educational Partnerships Act of 1988.

Note: The purposes of the Educational Partnerships Act of 1988 are listed in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Educational Partnerships Act of 1988, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.228, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline, date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.228) Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center Attention: (CFDA #84.228) Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Lois N. Weinberg, U.S. Department of Education, 555 New Jersey Ave. NW., Washington, DC 20208–5644. Telephone: 202–219–2116. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 5031–5039.

Dated: March 5, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

BILLING CODE 4000-01-M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. DEPARTMENT OF EDUCATION

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 2 8

TITLE: EDUCATIONAL PARTNERSHIPS PROGRAM

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date / Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

VOL
56
ISS
47
MR
11
1991
UMI

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BEST COPY AVAILABLE

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR PART III - APPLICATION NARRATIVE

Before preparing the application narrative, an applicant should read carefully the description of the program and the evaluation criteria the Secretary uses to evaluate applications. This information is included in this application notice. The narrative should describe each function or activity for which funds are being requested, and should:

1. Begin with an abstract, that is, a summary of the proposed project.

2. Describe the "eligible partnership" that is applying for this project. Identify each member of the partnership. State which member of the partnership would serve as the fiscal agent for this grant, if the project is approved for funding.

3. Include as attachments to the narrative a description of the partnership arrangement, and letters of commitment and partnership agreements.

4. Specify which one or more of the "Authorized Activities" described earlier in this notice will be addressed by the proposed project.

5. Describe the proposed project in light of each of the selection criteria, in the order in which these criteria are listed in this notice.

6. In the Budget section, show all project costs, including both personnel and other costs to be supported through the Federal grant and those to be supported through the matching funds or in-kind support.

7. Specify the financial support and describe any in-kind support that will be provided by the eligible partnership in the Budget section.

8. Provide estimates of the Federal funds that will be requested, and the matching funds that will be provided, for the second, third and fourth years of the project.

9. Describe what steps the partnership will take to ensure that project activities will be continued after Federal funding ends.

10. Describe plans to disseminate information about project activities, using not more than 1% of the grant funds for this purpose.

11. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 45 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length.

NOTE TO APPLICANTS

Included in this notice are various assurance forms, which must be submitted as part of the application. The member of the eligible partnership serving as applicant should submit a complete set of forms. If an application is selected for funding, each member of the eligible partnership will then be required to submit a complete set of assurance forms.

EDUCATIONAL PARTNERSHIPS

ASSURANCES

The eligible partnership hereby assures and certifies as follows:

(1) The eligible partnership will pay the non-Federal share of the activities for which assistance is sought from non-Federal sources.

(2) The eligible partnership will take such steps as may be available to it to continue the activities for which the eligible partnership is making application after the period for which assistance is sought.

(3) The eligible partnership will disseminate information on the model program for which assistance is sought, using not more than one percent of the grant in any fiscal year.

_____

Signature of Authorized Representative

_____

Name of Authorized Representative

Title_____

Agency or Organization_____

Date_____

ESTIMATED PUBLIC REPORTING BURDEN

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850 -0648, Washington, D.C. 20503.

(Information collection approved under OMB control number 1850-0648. Expiration date: March 31, 1992)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services (including address if different from No. 10a) *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):	13. Type of Payment (check all that apply):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply):	
☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

Authorized for Local Reproduction
Standard Form - LLL-A

BILLING CODE 4000-01-C

[FR Doc. 91-5608 Filed 3-8-91; 8:45 am]

federal register

Monday
March 11, 1991

Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 1235

Uniform System for Handicapped Parking; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 1235

[FHWA Docket No. 89-18]

RIN 2125-AC39

Uniform System for Handicapped Parking

AGENCIES: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes a uniform system for parking for persons with disabilities. It is the result of Public Law 100-641 passed by Congress on November 9, 1988, and has been developed through the regulatory negotiation process. Its purpose is to provide guidelines to States for the establishment of a uniform system for handicapped parking to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

DATES: This regulation is effective on April 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Harry B. Skinner, FHWA, Office of Traffic Operations (202) 366-2166, or Mr. E. William Fox, NHTSA, Office of Chief Counsel, (202) 366-1834, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On November 9, 1988, the Congress enacted Public Law 100-641 which authorizes DOT to issue regulations for a uniform system for handicapped parking and which is the subject of this final rule. This authority was delegated to the FHWA and the NHTSA which decided to conduct the rulemaking through regulatory negotiation. Regulatory Negotiation (RN) is a procedure recommended by the Administrative Conference of the United States (Recommendation 82-4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982) for handling certain regulatory actions. RN is carried out by an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C. app. 2. The purpose of RN is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest.

Accordingly, a Notice of Intent to form an Advisory Committee for Regulatory Negotiation was published in the Federal Register on June 12, 1989 (54 FR 24906). Based on the response to this notice it was determined that an advisory committee on this subject was necessary and in the public interest. The charter for this committee, its membership, and first meeting date were published in the Federal Register on October 3, 1989 (54 FR 40770).

The advisory committee met for six sessions—October 18-19, 1989, October 30-November 1, 1989, November 29-December 1, 1989, January 10-12, 1990, May 9-11, 1990, and September 11, 1990. Minutes of these meetings are available in FHWA Docket No. 89-18 located at the Department of Transportation, room 4232, 400 Seventh Street SW., Washington, DC 20590. The FHWA and the NHTSA have participated fully in the deliberations of the Committee.

On March 23, 1990, the FHWA and the NHTSA published a Notice of Proposed Rulemaking (NPRM) which adopted the Committee's recommended rule and adopted the rationale for each of the provisions as contained in the Committee report.

Comments received on this NPRM were reviewed by the Committee. Changes were negotiated by the Committee in the same manner as the NPRM. The Committee submitted a recommended final rule to the FHWA and the NHTSA in a Final Report.

The FHWA and the NHTSA have adopted the Committee's recommended rule as this Final Rule and it is set forth below with the section numbers of the Code of Federal Regulations which are added. In addition, we have adopted the rationale for each of the provisions and the responses to comments on the NPRM as contained in the Committee report. Rather than repeat these explanations, we have attached the Committee report to the preamble as an appendix.

After reviewing the details of this final rule, it has been determined that this rule more appropriately fits the Code of Federal Regulations (CFR), Chapter II—National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation than Chapter I—Federal Highway Administration, Department of Transportation. This decision is based on the fact that this regulation was jointly developed by the NHTSA and the FHWA and will be jointly administered by these agencies. Therefore, the CFR numbering of the rule will be 23 CFR 1235.1 through 1235.8 rather than 23 CFR 655.801 through 655.808 as used in the Notice of Proposed Rulemaking published on March 23, 1990, in 55 FR 10966 and in the Committee's Final Report.

During the review of the report, two editorial changes were made to the language of the Committee's Final Rule Report. The only purpose of these changes was to clarify the intended language. Specifically, at several locations, reference to the purpose of the rule included the phrase, "* * * enhance the safety of persons with disabilities * * *". A review of the minutes of the meetings of the Committee clearly indicates that the Committee members were concerned with access as well as safety. When used at locations other than in the Final Rule Report, this phrase is replaced with, "* * * enhance access and the safety of persons with disabilities." Also, in referring to the design of a placard, the report used two terms, "hooked" and "hanger-style." When used in the final rule at locations other than in the Final Rule Report, the term, "hanger-style" has been used.

Discussion of Proposal

The purpose of this regulation is to set guidelines for States to use in establishing a uniform parking system to enhance access and the safety of persons with disabilities which limit or impair the ability to walk. States are not precluded from going beyond the threshold requirements specified in this regulation. Nevertheless, we note that the rationale we adopted, as explained in the appendix to the preamble, indicates those sections of the guidelines which are deemed to be minimum requirements, and those which are deemed to be the outside limits for the design and implementation of a safe and effective uniform parking system for persons with disabilities.

This regulation addresses six specific subjects. First, terms necessary to implement the regulation are defined for the purposes of this regulation. The section provides definitions for:

- The International Symbol of Access.
- Persons with disabilities which limit or impair the ability to walk.
- A special license plate.
- A removable windshield placard.
- A temporary removable windshield placard.

Second, the regulation sets out the conditions under which a State shall issue a special license plate and the fee which can be charged for that plate. Third, the regulation sets out conditions for the issuance and periodic renewal of a removable windshield placard and its use. The regulation covers permanent and temporary placards.

Fourth, the regulation limits the means of identifying a vehicle being used by a person with a disability to the display of a special license plate or removable windshield placard. Fifth, the regulation sets out the limiting conditions for the design, construction, and designation of parking spaces reserved for persons with disabilities. Sixth, the regulation requires that States recognize special license plates and removable windshield placards issued by issuing authorities of other States and countries.

Discussion of Comments Received

The discussion of the comments received is contained in the Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee which is included as an appendix to the preamble.

Regulatory Impact

The FHWA and the NHTSA have determined that this document does not contain a major rule under Executive Order 12291; it does contain, however, a significant proposal under the Department's Regulatory Policies and Procedures because of the Federalism implications affecting the relationship between the States and the Federal Government. The expected impact of the changes requested is so minimal that a full regulatory evaluation is not warranted. Comments submitted by the States indicate that costs will be minimal if the system is phased in over time. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This final rule has Federalism implications affecting the relationship between the States and the Federal Government. It has been assessed in light of the principles, criteria, and requirements as outlined in E.O. 12612.

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and handicapped parking permits. These methods have contributed to the problems that persons with disabilities face whenever they use their cars for interstate travel. For this reason, Congress directed the agencies to determine methods most effective for combatting the problem, through implementation of section 3 of Public Law 100-641.

E.O. 12612 requires consultation with appropriate officials and organizations representing the States with respect to both the development of national standards and the preemption of State law. We have consulted with the States to implement Public Law 100-641. The American Association of Motor Vehicle Administrators, the National Association of Governor's Highway Safety Representatives, and the National Governors Association were members of the Committee. We have examined comments submitted by these organizations and by their members.

This rule is a guideline and is consistent with the statutory mandate. It allows the States the maximum administrative discretion possible in establishing a uniform system.

Environmental Assessment

This rule has also been analyzed for the purposes of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 1235

Handicapped, Highway safety, Intergovernmental relations, Parking.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

In consideration of the foregoing, the FHWA and NHTSA hereby add part 1235 to chapter II of title 23, Code of Federal Regulations (CFR), as set forth below.

Issued on: March 1, 1991.

T.D. Larson,

Administrator, Federal Highway Administration.

Jerry R. Curry,

Administrator, National Highway Traffic Safety Administration.

The Federal Highway Administration and the National Highway Traffic Safety Administration are adding part 1235 to title 23, CFR, chapter II, subchapter B, to read as follows:

PART 1235—UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES

Sec.
1235.1 Purpose.
1235.2 Definitions.
1235.3 Special license plates.
1235.4 Removable windshield placards.
1235.5 Temporary removable windshield placards.
1235.6 Parking.
1235.7 Parking space design, construction and designation.
1235.8 Reciprocity.

Appendix A—Sample Removable Windshield Placard

Appendix B—Sample Temporary Removable Windshield Placard

Authority: Pub. L. 100-641, 102 Stat. 3335 (1988); 23 U.S.C. 101(a), 104, 105, 109(d), 114(a), 135, 217, 307, 315, and 402(a); 23 CFR 1.32 and 1204.4; and 49 CFR 1.48(b).

§ 1235.1 Purpose.

The purpose of this part is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance access and the safety of persons with disabilities which limit or impair the ability to walk.

§ 1235.2 Definitions.

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest; or

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or

(4) Use portable oxygen; or

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hanger-style placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

§ 1235.3 Special license plates.

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

§ 1235.4 Removable windshield placards.

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

§ 1235.5 Temporary removable windshield placards.

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 1235.2(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

§ 1235.6 Parking.

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

§ 1235.7 Parking space design, construction, and designation.

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) Ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk;

(2) Ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes; and

(3) Ensure uniform sign standards which comply with those prescribed by the "Manual on Uniform Traffic Control Devices for Streets and Highways" (23 CFR part 655, subpart F) to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

§ 1235.8 Reciprocity.

The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

BILLING CODE 4910-22-M

Appendix A to Part 1235—Sample Removable Windshield Placard



COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

BEST COPY AVAILABLE

Appendix B to Part 1235—Sample Temporary Removable Windshield Placard



COLORS
SYMBOL & LEGEND—WHITE
BACKGROUND—RED

BILLING CODE 4910-22-C

Note: This appendix to the preamble will not appear in the Code of Federal Regulations.

Appendix to the Preamble Committee Report

Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee "A Uniform Parking System for Persons with Disabilities"

September 1990

Dedication

R. Dennis Smurr
February 24, 1943–December 7, 1989.

To R. Dennis Smurr, Associate Advocacy Director, Paralyzed Veterans of America, who dreamed of a better parking system for persons with disabilities. Without his enthusiastic and tireless efforts over a period of six years, a section on parking would never have been added to a bill concerning the naming of a Federal building. Without his efforts, this Committee might not have been formed. We are happy to have worked and laughed with him.

Final Report of the Handicapped Parking Regulatory Negotiation Advisory Committee

Table of Contents

Foreword
The Problem
The Federal Statute
Purpose
Definitions
Special License Plates
Removable Windshield Placards
Temporary Removable Windshield Placards
Parking
Parking Space Design, Construction and Designation
Reciprocity
Recommended Final Rule
Section 655.801—Purpose
Section 655.802—Definitions
Section 655.803—Special License Plates
Section 655.804—Removable Windshield Placards
Section 655.805—Temporary Removable Windshield Placards
Section 655.806—Parking
Section 655.807—Parking Space Design, Construction, and Designation
Section 655.808—Reciprocity
Appendix A
Appendix B
Appendix C
Implementation
Education and Outreach Program
Supplemental Recommendations
Conclusion

Foreword

Public Law 100-641 directs the Secretary of Transportation to issue regulations which establish a uniform system for handicapped parking and which encourage adoption of the system by the States. This authority has been delegated to the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). To identify the major issues, gauge the importance to parties, and develop workable regulations, the FHWA and the NHTSA chartered the Handicapped Parking Regulatory Negotiation Advisory Committee (the Committee) to write a report and a recommended Notice of Proposed Rulemaking (NPRM), to review comments submitted on the NPRM, and to write a report and a recommended final rule.

The following organizations were appointed as members of the Committee:

American Association of Motor Vehicle Administrators (AAMVA)
Mr. David H. Hugel
American Public Transit Association (APTA)
Mr. Ronald L. Habegger
Arthritis Foundation
Mr. Robert C. Hollenbach
Dignity for the Disabled, Inc.
Mr. Denny R. Wood
Disabled American Veterans (DAV)
Mr. Ronald W. Drach
Federal Highway Administration
Ms. Judith S. Kaleta
National Association of Governors' Highway Safety Representatives (NAGHSR)
Mr. Dennis R. Atkins
National Committee on Uniform Traffic Laws and Ordinances (NCUTLO)
Mr. Robert Reeder
National Governors' Association (NGA)
Mr. Glenn D. Turner
National Highway Traffic Safety Administration
Mr. Sam E. Luebbert
National Sheriffs' Association (NSA)
Mr. Charles B. Meeks
New York State Office of Advocate for the Disabled (NYSOAD)
Mr. Robert J. Boehlert
Paralyzed Veterans of America (PVA)
Ms. Alyse B. Steinborn
United States Architectural and Transportation Barriers and Compliance Board (ATBCB)
Ms. Marsha K. Mazz

AAMVA is an association of State and provincial officials responsible for the administration and enforcement of motor vehicle and traffic laws in the United States and Canada.

APTA is an international organization representing the public transit industry. APTA members include almost 400 bus and rail transit systems which carry over ninety-five percent of those persons using public transit in the United States today. APTA members also include approximately 500 other members who serve the transit industry including government agencies, academic institutions, consulting firms, manufacturers, and other suppliers of services and products to the transit industry in domestic and international markets.

ATBCB was established by section 502 of the Rehabilitation Act of 1973 and has among its functions to promote the elimination of architectural, transportation, communication, and attitudinal barriers affecting persons with disabilities.

The Arthritis Foundation is committed to the issues that affect people with disabilities because arthritis is one of the leading causes of disability. Through its volunteers and staff, the Foundation addresses these concerns on local, state and national levels.

Dignity for the Disabled, Inc., is a Florida based, nonprofit organization composed of twenty-five members representing persons with disabilities.

DAV is a nonprofit organization chartered by Congress with more than 1.1 million members. DAV is the largest organization representing disabled veterans and probably the largest organization of disabled people in the country.

NAGHSR represents the highway safety offices of the States, territories and the District of Columbia. Its goal is to work on behalf of the States to reduce death and morbidity on our nation's highways.

NGA, founded in 1908, is the instrument through which the nation's governors collectively influence the development and implementation of national policy and apply creative leadership to State issues.

NSA represents 2,096 sheriffs in the United States and has 26,600 members.

NCUTLO is an independent, nonprofit association comprised of more than 140 representatives of Federal, State, and local governmental units.

NYSOAD is a cabinet-level agency of New York Government. The Office has not only served as a technical resource to the State legislature and the Department of Motor Vehicles on issues involving special parking privileges for people with disabilities, but has also successfully advocated for the liberalization of New York's statute on reciprocity for out-of-state vehicles accorded special parking privileges.

PVA is a veteran's service organization chartered by Congress and has more than 14,000 members in 33 chapters and 14 subchapters located throughout the United States. For more than 40 years, PVA has been a strong advocate for restoring the rights and opportunities of individuals with physical disabilities.

The Committee submitted a report and recommended NPRM to the FHWA and the NHTSA in February 1990. That report and the agencies' NPRM were published in the Federal Register on March 23, 1990. 55 FR 10968 (1990).

This final report is based on the initial report and comments to the rulemaking docket, Docket No. 89-18, and a series of meetings which the Committee held in Washington, D.C. The Committee operated by the general consensus of those persons and interests present at the meetings. With the exception of NCUTLO, which was unable to attend, each Committee member participated in the deliberations of the committee through appointed representatives and alternates, and drafted provisions for the review of other members. This report is an embodiment of those agreements reached by the Committee.

The purpose of this report is to provide a recommended final rule to the FHWA and the NHTSA that sets guidelines for the States in establishing a uniform parking system to enhance the safety of persons with disabilities which limit or impair the ability to walk. As such, while the States are not precluded from going beyond the threshold requirements specified in the guidelines, the Committee has indicated in this report those sections of the guidelines which are deemed to be minimum requirements and those which are deemed to be outside limits for the design and implementation of a safe and effective uniform parking system for persons with disabilities.

The recommended rule contained in this report is not a panacea. This rule is only a starting point. It allows the FHWA and the NHTSA to implement Public Law 100-641 without exceeding their statutory authority, and the Committee urges the agencies to issue a final rule which adopts the Committee's recommendations. Therefore, the purpose of this report is also to provide supplemental recommendations which would enhance a uniform parking system for persons with disabilities.

The Committee encourages all who read this report to do what they can to help eliminate the problems that persons with disabilities face when travelling, from home to the grocery store or across the country.

The Problem

The States employ various methods to identify vehicles used to transport persons with disabilities, including special license plates and "handicapped parking permits." These methods have contributed to the problems that persons with disabilities face whenever travelling by car. Persons with disabilities who can validly park in a parking space reserved for persons with disabilities in their home State are often ticketed by law enforcement personnel outside of their State who do not recognize the designation on the license plate or permit, in spite of reciprocity agreements.

When traveling by airplane, some persons with disabilities must decide whether to park their car in the spaces reserved for persons with disabilities at the airport of their departure, or to park in other spaces in order to take their permit with them to use in rental cars at their destinations. With only one permit, they cannot do both.

Persons, with license plates and permits which belong to someone else, park in spaces reserved for persons with disabilities resulting in a shortage of these spaces for those persons who truly need them.

Finally, persons who do not have disabilities which limit or impair the ability to walk have been issued license plates and permits which allow them to park in parking spaces reserved for persons with disabilities. This, too, results in a shortage of spaces for those persons who truly need them.

The Federal Statute

To help address the problems that persons with disabilities face when travelling, Congress enacted Public Law 100-641. This statute directs the Secretary of Transportation to establish a uniform system for handicapped parking which enhances the safety of persons with disabilities which limit or impair the ability to walk, and which encourages adoption by the States. The Secretary has delegated this authority to the FHWA and the NHTSA.

The law provides that the uniform system for handicapped parking:

(1) Adopts the International Symbol of Access (ISA) (as adopted by Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk;

(2) Provides for the issuance of license plates which display the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(3) Provides for the issuance of removable windshield placards, which display the ISA, to persons with disabilities which limit or impair the ability to walk, under criteria to be determined by the States;

(4) Provides that the fees charged for the licensing or registration of a vehicle used to transport persons with disabilities do not exceed the fees charged for licensing or registration of other similar vehicles operated in the State; and

(5) For purposes of easy access parking, recognizes license plates and placards which display the ISA which have been issued by other States and countries.

Purpose

The Committee recommended, and the FHWA and the NHTSA proposed, a section in the NPRM that set forth the purpose of the regulation. This section stated that the purpose of the regulation is to provide minimum guidelines to the States for the establishment of a uniform system for handicapped parking to enhance the safety of persons with disabilities that limit or impair the ability to walk.

A concerned citizen asked that the agencies reconsider the purpose section. He stated that the safety of persons with disabilities is not addressed in any significant way, because the purpose section did not discuss "permissible grade, protection from moving traffic, visibility, surface treatment, lighting, etc." He also stated that the intent of the rule seems to be the identification of persons or vehicles for special parking privileges.

The Committee has reviewed the purpose section in light of the comment, and has determined that the rule does promote safety. By imposing restrictions and limitations on to whom special license plates and removable windshield placards are issued, in a way that encourages enforcement, the rule ensures the safety of persons with disabilities by increasing the likelihood that parking spaces reserved for persons with disabilities are available. Furthermore, it ensures safety by not requiring the names or addresses of persons with disabilities to appear on the placard. Therefore, the Committee recommends that the agencies adopt § 655.801, as proposed.

Definitions

To clarify each of the terms used in the regulation, the Committee recommended, and the agencies proposed, a definitional section. The following terms were defined: "International Symbol of Access (ISA)", "persons with disabilities which limit or impair the ability to walk", "special license plate" and "removable windshield placard".

a. International Symbol of Access

In Public Law 100-641, the ISA was defined as the symbol adopted by Rehabilitation International in 1969. No comments were received on the definition of ISA. Therefore, the Committee recommends that the definition be adopted as proposed. The Committee also recommends that the figure itself be included in the final rule.

b. Persons With Disabilities Which Limit or Impair the Ability to Walk

The Committee recommended, and the FHWA and the NHTSA proposed, a definition of "persons with disabilities which limit or impair the ability to walk." The Committee believes that a definition is essential to meet the Congressional intent to establish a uniform system and because of the widespread abuse of parking spaces reserved for persons with disabilities. A definition is necessary to give guidance to the States, and to ensure that special license plates, removable windshield placards, and temporary removable windshield placards are available at least to those individuals with the disabling conditions listed in the definition. Several organizations and individuals submitted comments on the definition of "persons with disabilities which limit or impair the ability to walk". The Oregon Department of Transportation, Motor Vehicles Division, (Oregon) mentioned that the proposed definition is narrower and more specific than Oregon's current definition, but stated that this difference should not pose major problems.

Other commenters questioned what disabilities should permit a person to meet the definition. One private citizen commented that it appears that some people without a "mobility handicap" can get a permit. He noted two examples: persons missing an arm and someone who has a hearing impairment. The Michigan Department of Labor, Commission on Handicapped Concerns, (Michigan) stated that State law allows for the issuance of special license plates and placards to persons who are blind. Michigan noted that "a range of mobility skills levels exist for people who are blind * * * But for those individuals without adequate mobility skill, the option of parking near a building or sidewalk rather than being forced to traverse a noisy and dangerous parking lot becomes a necessity." Since the purpose of the rule is to enhance the safety of persons with disabilities, Michigan asserted that it would be unjust to exclude persons who are blind from the definition. Furthermore, Michigan noted that the issuance of permits to persons who are blind comprises only a very small percentage of total permits issued in the State. Issuance of permits to persons with visual impairments is not perceived as contributing to the abuse problem. Similarly, the Idaho Transportation Department (Idaho) stated that the Idaho law "accepts blindness under its definition of handicapped for plates and placards." Idaho commented that maneuverability is an issue, and that being nearer to a building removes hazards from extended walking. Idaho summed up its concerns by asserting, "We consider this courtesy to the blind to also be a safety precaution."

The Committee discussed whether the definition should include blindness as a disability that limits or impairs a persons ability to walk. The Committee reviewed a resolution passed by the National Federation of the Blind (NFB). The resolution, Resolution 85-22, finds that blindness, in and of itself, is not a mobility impairment and that the problems blind persons face with respect to mobility cannot be remedied by making handicapped parking spaces available to them. Furthermore, the resolution states that the NFB opposes the use of a parking space designated for persons with disabilities by blind persons who do not truly need a space.

For these reasons, the Committee recommends that the definition contained in the final rule should not include blindness as a disability that limits or impairs the ability to walk. However, the Committee notes that this definition sets only a minimum requirement. The States are not precluded from going beyond this threshold, and adding visual impairments as a disability which limits or impairs the ability to walk.

c. Special License Plate

The Committee recommended, and the NPRM included, a definition of "special license plate"—a license plate that displays the ISA. Corning's Independent Living Center noted the general concern that vehicles with special license plates often become targets for vandals.

The definition of special license plate is consistent with Public Law 100-641 which states that the ISA shall be the only recognized symbol for the identification of vehicles used to transport persons with disabilities that limit or impair the ability to walk. In light of the statutory mandate, the Committee recommends that the definition be adopted as proposed.

d. Removable Windshield Placard

The Committee recommended, and the FHWA and the NHTSA proposed, a definition of "removable windshield placard". As required by Public Law 100-641, the definition proposed to require that the ISA be displayed on the placard. In addition, the definition proposed that the ISA should be three inches in height, centered on the placard, and blue or white on a contrasting blue or white background, and be on both sides of the placard. The proposed definition would require that the placard contain an identification number, an expiration date, and the seal or other identification of the issuing authority.

The Committee has reviewed the definition of removable windshield placard and the definition of ISA adopted by Rehabilitation International in 1969 at the Eleventh World Congress on Rehabilitation of the Disabled. As determined by that organization, the ISA shall be white on blue, unless there are compelling reasons to use other colors. Based on this information, the Committee urges the FHWA and the NHTSA to adopt a definition of removable windshield placard that requires the ISA to be white on a blue shield.

Several organizations submitted comments on the proposed definition of "removable windshield placards". The Idaho Department of Transportation (Idaho) explained that the 1990 Idaho Legislature removed the expiration date from the State placard program due to the concerns of persons with permanent disabilities. At the other extreme, the Michigan Paralyzed Veterans Association (MPVA) thought that the expiration date is an excellent idea, and suggested enlarging it to aid enforcement personnel.

The Committee urges the FHWA and the NHTSA to include an expiration date for removable windshield placards. An expiration date aids in purging the system of placards which are no longer needed, for example, when a person moves from one State to another. Furthermore, the Committee notes that the expiration date is a document expiration date; submission of another physician's certification is not required.

Other commenters suggested that additional information be included on the removal windshield placards. The Waterbury Parking Authority, Waterbury, Connecticut (Waterbury) stated that when the name of the person to whom the placard is issued is on the placard, enforcement personnel are better able to determine if the permit is being abused. The City of West Palm Beach, Florida, suggested that abuses could be minimized if the "transporting and permanent disability identifications be registered to the vehicle and that the vehicle type and tag number be prominently displayed on the identification." MPVA suggested that a bar code similar to the Universal Pricing Code be added to the placard to deter counterfeiting and aid enforcement, and

encouraged the lamination of placards. MossRehab Driving School for Disabled (MossRehab) and the Virginia Department for Rights of the Disabled (Virginia) agreed with the statement in the Committee Report that "an object hanging from the rearview mirror when the vehicle is in motion creates a safety hazard", 55 FR 10993 (1990). MossRehab suggested that the removable windshield placard include a statement that the placard should only be used when the vehicle is parked. Virginia suggested that the issuing authority provide the applicant with a written warning at the time of issuance that the placard should be removed by those persons physically able to do so while the vehicle is on the streets and highways.

The Committee notes that States are not precluded from including additional information on the placard. However, the Committee cautions against including names and addresses on the placards because this information could infringe on the safety and privacy of persons with disabilities. Identification related to the vehicle and license plate may also hinder mobility by limiting a person to a single vehicle. Furthermore, the enforcement argument in support of including names and addresses assumes that enforcement personnel would witness the violation. The Committee finds that such enforcement action is the exception rather than the rule, and that the major problem is the use of parking spaces designated for persons with disabilities by persons who do not have removable windshield placards or special license plates.

The use of a bar code, and the means to read the code, assumes a central issuing authority. These placards will be issued by the States, and in some instances, by several offices within the States. To impose this requirement would not aid enforcement or reciprocity and would impose additional costs on state and local jurisdictions. The Committee does not find that lamination alone would deter counterfeiting. Finally, the Committee believes that persons with disabilities should be informed of the safety hazard that is caused by driving with the removable windshield placard hanging on the rearview mirror. Whether the warning is on the placard itself or on other material distributed by the States does not contribute to the uniform system necessary to ensure access. Therefore, the Committee urges the agencies to reject these suggestions and to leave the decisions concerning additional information on the placard to the administrative discretion of the States. However, the Committee encourages the States to keep abreast of developing technology which could deter abuse, and enhance a uniform system of parking for persons with disabilities.

e. Temporary Removable Windshield Placard

To clarify the difference between a removable windshield placard and a temporary removable windshield placard, the Committee recommends that the FHWA and the NHTSA define "temporary removable windshield placard". While the term was not defined in the NPRM, temporary removable windshield placards were distinguished from removable windshield placards in § 655.805 by the word "temporary" overprinted on the placard.

The California State University—Long Beach Parking Administration (CSULB) noted that a color coding rather than overprinting would aid enforcement. In addition, the State of New Hampshire Department of Safety (NHDOS), and the Michigan Department of State, Bureau of Driver and Vehicle Records (MDOS), suggested that temporary removable windshield placards be distinguished by color. The State of New York, Department of Motor Vehicles, noted that it currently issues temporary permits that are red and white as opposed to its permanent permits which are blue and white. On the other hand, the Maryland Department of Transportation, Motor Vehicle Administration (MdDOT) suggested that a sticker be used to identify the temporary placard, so that only one type of placard would need to be ordered.

The Committee reviewed the proposed requirement, and determined that the overprinting could interfere with the information on the placard. Therefore, the Committee agrees with the CSULB, NHDOS, and MDOS, and recommends that "temporary removable windshield placard" be defined to include the same information as the removable windshield placard; however, the ISA would be white on a red shield, rather than white on a blue shield. The Committee believes that this color differential of the ISA is necessary to remind holders of these placards of their temporary nature and to alert law enforcement personnel to closely examine the expiration date. In light of cost data submitted by the State of New York, Department of Motor Vehicles, that 150,000 plastic hanger-style permits, cost less than 4½ cents each, the Committee does not find the requirement of two types of placards unduly burdensome.

To assist the States in designing removable windshield placards and temporary removable windshield placards that meet the requirement of the rule, the Committee recommends that the FHWA and the NHTSA include, as an appendix to the final rule, a sample of each placard.

Special License Plates

Public Law 100-641 states that a uniform system for handicapped parking is one which provides for the issuance of license plates displaying the ISA for vehicles used to transport persons with disabilities which limit or impair the ability to walk. Consistent with the statute, the Committee recommended and 655.803 of the NPRM proposed to require the States to issue special license plates for the vehicle which is registered in the name of a person with a disability which limits or impairs the ability to walk, and that the initial application be accompanied by the certification of a licensed physician that the applicant meets the regulatory definition of persons with disabilities which limit or impair the ability to walk.

A private citizen correctly noted that although the proposed regulation would require a physician's certification with the initial application, it was silent with regard to recertification, and that the proposed rule did not contain a "grandfather" clause that would permit people who currently have special license plates or removable windshield placards to continue to be issued replacements even though they do not meet the definition of persons with disabilities which limit or impair the ability to walk.

The Committee intended that the renewal of special license plates need not be accompanied by a recertification. Furthermore, eligibility should be determined in light of the guidelines. In implementing these minimum guidelines, States are encouraged to establish state systems that develop mechanisms to review and, where appropriate, recall removable windshield placards and other permits which were issued without an expiration date and which do not comply with these guidelines.

The Committee recommended and § 655.803(a) proposed that the issuance of special license plates shall not preclude the issuance of one removable windshield placard.

The Oregon Department of Transportation, Motor Vehicle Division (Oregon), argued that the States should not be required to issue more than one placard to a person. Oregon asserted that the "extra placard substantially increases the risk of abuse." Oregon questioned the significance and extent of the problem, and noted that the need for an extra placard was not mentioned during extensive legislative hearings on Oregon's new law.

The Committee believes that one placard is sufficient to provide easy access. A person who has chosen to obtain special license plates for his or her own car would still be able to travel in another car using the one placard. The Committee deems this requirement to be an outside limit. Issuing more than one placard when a person already has special license plates could result in abuse.

In addition to the issuance of special license plates to persons with disabilities, the Committee recommended, and the agencies proposed in § 655.803(b), that States be required to issue special license plates for a vehicle which is registered in the name of a person when a household member has a disability which limits or impairs the ability to walk. The number or sets of special license plates issued to an applicant would not exceed the number of household members who meet the regulatory definition of persons with disabilities which limit or impair the ability to walk. In addition, this section would require the States to issue special license plates for a vehicle which is registered in the name of an organization.

Several commenters disagreed with the proposal to issue special license plates to persons other than those with disabilities which limit or impair the ability to walk. MossRehab argues that allowing family members who transport a disabled member of their family to have such a license plate leads to abuses, since in most instances, they will not be transporting a family member with a disability. The Washington Governor's Committee on Disability Issues and Employment (Washington) also stated that issuing a special license plate to a family member will increase the potential for abuses of parking spaces designated for persons with disabilities, and asserted that the potential for abuse outweighs the inconvenience family members might suffer. Idaho noted that the program of issuing special license plates to organizations "would open up one more avenue for potential abuse".

The New York State Office of Advocate for the Disabled (NYSOAD) urged the Committee to permit the issuance of special license plates to only those vehicles which are registered in the name of persons with disabilities, and not when a household member has a disability which limits or impairs the ability to walk. NYSOAD noted that this was a reasonable interpretation of Public Law 100-641 and that the objective of the law, to ensure mobility of persons with disabilities, would be achieved by the use of removable windshield placards. Furthermore, NYSOAD raised the concerns of abuse of special license plates and removable windshield placards. "The primary responsibility to guard against misuse rests with the individual to whom a removable windshield placard has been issued or with the individual having ownership or control over a vehicle to which a special license plate has been issued. To require issuance of a special license plate to a vehicle upon the basis of an individual's disability when that individual may neither own nor control the vehicle, and still expect that the individual with the disability will be responsible for the appropriate use of the vehicle, is problematic."

The Committee's initial recommendation was based on the premise of fundamental fairness, to provide a range of options to persons with disabilities and to ensure mobility. However, based on these comments and the overall concern about abuse raised by the commenters, the Committee recommends that § 655.803(b) be deleted. The Committee notes that if individuals use a vehicle primarily to transport a family member with a disability which limits or impair the ability to walk, they may wish to consider registering the vehicle in the name of the person with a disability.

The Committee recommended, and the agencies proposed in § 655.803(d), a requirement that the fees charged for the issuance of a special license plate shall not exceed the fees charged for a license plate for the same class vehicle. If a State issues a vanity license plate that also displays the ISA, this requirement would allow the State to charge the applicant at the rate set for other vanity plates.

This position is consistent with Public Law 100-641, which states that a uniform system for handicapped parking is one that provides that the fees charged for the licensing or registering of the vehicle used to transport persons with disabilities do not exceed fees charged for licensing or registration of other similar vehicles operated in the State. "Licensing" and "registration", for purposes of this rulemaking, mean the issuance of license plates. No comments were submitted. Therefore, the Committee recommends that the agencies adopt § 655.803(d) as proposed.

Removable Windshield Placards

As noted above, Public Law 100-641 states that a uniform system for handicapped parking provides for the issuance of removable windshield placards. Therefore, the Committee recommended, and the agencies proposed, a section on this subject. The NPRM adopted the Committee's recommendations.

In § 655.804(a), the NPRM proposed to require that each State system provide for the issuance and periodic renewal of removable windshield placards upon application of a person with a disability which limits or impairs the ability to walk. In addition, the NPRM proposed to require that each State mandate the issuing authorities to issue one additional placard to applicants who do not have special license plates, upon the request of the applicant for an additional placard.

Several commenters were opposed to issuing one additional placard. A Council Member, City Council of Laurel, Maryland strongly opposed the issuance of additional and temporary placards. Michigan stated that rather than issuing an additional placard to persons with disabilities, in Michigan, travelers only have a license plate and one permit. Michigan has "never heard complaints of the nature described in the NPRM." Oregon asserted that States should not be required to issue more than one placard to a person. The State of Illinois, Office of the Secretary of State, (Illinois) noted that windshield placards are especially subject to abuse because they can be moved from one vehicle to another. To deter abuse, Illinois suggested that additional placards be issued upon request "and approval".

While the Committee recognizes that the issuance of a placard could increase the potential for abuse, the Committee believes that the benefit to persons with disabilities outweighs this concern. The issuance of a removable windshield placard in addition to special license plates addresses the problem persons with disabilities face when travelling by airplane or rail and parking in a parking space reserved for persons with disabilities at the airport or train station. They would have an additional placard to use at their destination. The Committee believes that one additional placard is sufficient to provide easy access to persons with disabilities which limit or impair the ability to walk, and deems this requirement to be an outside limit. Issuing more than one additional placard could result in abuse.

The Committee did not intend that an additional removable windshield placard be routinely issued. The states may develop procedures to provide the additional placards. The Committee believes that periodic renewal will

eliminate potential abuse by family members and others who continue to utilize the placard after the death of the person with a disability to whom the placard was issued, or when a person with a disability moves to another jurisdiction. The Committee cautions the States against a renewal system that places a burden on applicants for placards that is substantially greater than that placed upon persons with disabilities which limit or impair the ability to walk who opt for special license plates. Therefore, the Committee recommends that § 655.804(a) be adopted as proposed.

The Committee also recommended, and the agencies proposed, that each State system require that the removable windshield placard be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror when the vehicle is parked in a parking space reserved for persons with disabilities. (The Committee notes that placards are to be displayed only when the vehicle is parked, and recognizes that an object hanging from the rearview mirror when the vehicle is in motion creates a safety hazard.) When a vehicle does not have a rearview mirror, the Committee recommends that the placard be displayed on the dashboard.

Several commenters urged the FHWA and the NHTSA to permit removable windshield placards to be displayed either by hanging it from the front windshield rearview mirror or by placing it on the dashboard. The Westside Center for Independent Living, Inc. (WCIL) noted that hanging a placard from a rearview mirror is not always an option for someone who has limited use of arms, hands, and/or fingers. Failing "to see the need to propose rules which promote easy law enforcement by law enforcement personnel", the United Cerebral Palsy Associations (UCPA) believes that the regulation should promote the ease of compliance by persons with severe disabilities and suggested that the agencies allow flexibility in displaying the placard. The Michigan Department of State, Bureau of Driver and Vehicle Records, (MDOS) also questioned the benefit of a placard that hangs from the front windshield rearview mirror. MDOS argued that a placard that requires law enforcement personnel to leave their vehicle to verify validity will help stem abuse of expired or fraudulent permits.

Based on discussions with representatives of the law enforcement community, the Committee believes that the requirement that placards be hung from the rearview mirror would help enforcement personnel to easily recognize whether a vehicle is legally parked, and would result in better enforcement. The Committee also believes that the burdens placed upon persons with limited hand movement and reach could be minimized if the issuing authorities carefully consider the design and manufacture of the placards. For example, a placard made of cardboard (approximately 15 point) or a plastic could be manipulated more easily than a placard made of typing paper (20 pound bond). Therefore, the Committee recommends that the FHWA and the NHTSA adopt § 655.804(c).

The Committee considered whether the State system should require the installation of a device from which to hang the placard. However, the Committee believes that this would be burdensome to persons utilizing placards, especially if traveling in a vehicle which they do not own. Furthermore, the Committee believes that since the number of vehicles which lack rearview mirrors is minimal, enforcement would not be impeded.

Temporary Removable Windshield Placards

The Committee recommended, and the agencies proposed to require, that the State system provide for the issuance of temporary placards, for a period not to exceed six months. By limiting eligibility, this provision would ensure that parking spaces reserved for persons with disabilities are available only to those persons who truly need them.

The Committee also recommended, and the NPRM proposed to require, that the applicant submit a certification by a licensed physician that he or she is a person with a disability which limits or impairs the ability to walk as defined in the regulation. The certification shall also include the period of time that the physician determines the person will have the disability, not to exceed six months.

In recommending the establishment of a maximum validation period of six months, the Committee did not intend to preclude a person whose disability extends beyond that period, but is nevertheless temporary, from subsequently applying for another temporary placard. These persons are required to submit a new application and certification for the placard in accordance with § 655.806.

In order to distinguish between temporary and other placards, for enforcement purposes, the Committee recommended, and the agencies proposed, that the word "TEMPORARY" be overprinted on these placards. As cited above, in light of the comments submitted, the Committee now recommends that the ISA or the temporary removable windshield placard be white on a red shield.

Although it may be helpful to require that persons who have been issued temporary placards return them to the issuing authority upon expiration, the Committee believes that this may be unduly burdensome to issuing authorities who would then need to monitor the return of the placards and take action if the placards were not returned. In addition, a provision that required the return of the placards could also be burdensome on the persons to whom they were issued. Therefore, the Committee does not recommend a provision that would address the return of expired placards. Nevertheless, the Committee encourages issuing authorities to determine whether the use of expired placards is a problem within their jurisdiction and take appropriate action to control the unauthorized use of expired placards.

Parking

Public Law 100-641 states that a uniform system for handicapped parking adopts the ISA as the only recognized symbol for the identification of vehicles used to transport persons with disabilities which limit or impair the ability to walk. Consistent with this provision, the Committee recommended and the agencies proposed, that the special license plates and removable windshield placards be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities. This does not prohibit the States from using the designations "HP" (Handicapped Person), "DP" (Disabled Person), or "DV" (Disabled Veteran), in addition to the ISA.

Parking Space Design, Construction, and Designation

Consistent with the Congressional mandate that a uniform system for handicapped parking should enhance the safety of persons with disabilities, the Committee recommended and the FHWA and the NHTSA proposed a section concerning parking space design and construction. This section proposed to require that the States establish design and construction standards that ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. In addition, it proposed to require that these standards also ensure the safety of persons with disabilities who use these spaces and their accompanying accessible routes. To allow the States maximum administrative discretion, the section proposed that these standards be set under criteria to be determined by the States.

Several commenters discussed the need to include specification for identifying a parking space reserved for persons with disabilities through the use of uniform signs and/or permanent markings. The Committee considered a number of alternative methods and concluded that since there was a provision in The Manual on Uniform Traffic Control Devices for identifying parking spaces reserved for persons with disabilities and since there was a need to include such a specification in the rule, reference should be made to the method of identification included in the Manual on Uniform Traffic Control Devices.

Other commenters suggested the need for specific dimensions which would be required for the development or maintenance of a parking space reserved for use by persons with disabilities. After extensive deliberation of the details of such a provision the committee reached the consensus that the needs of those with disabilities would be best served if each state were required to set its own standard dimensions. It was agreed to retain the provisions of NPRM § 655.807 with the addition of the designation provision discussed in the previous paragraph.

In recommending this addition, it is not the Committee's intention to invalidate enforcement of parking provisions currently in effect pursuant to State or local law where signs do not comply with this requirement, particularly with regard to enforcement on private property.

Reciprocity

Public Law 100-641 states that a uniform system for handicapped parking recognizes licenses and placards displaying the ISA which have been issued by other States and countries. Consistent with this provision, the Committee recommended and the agencies proposed, a section on reciprocity, to ensure that States, cities, counties, municipalities, and independent parking authorities recognize all special license plates and removable windshield placards that are issued. Several commenters declared their support of the provision. No comments were adverse. Therefore, the Committee recommends that § 655.806 be adopted as proposed.

Recommended Final Rule

For the foregoing reasons, the Committee recommends that the FHWA and the NHTSA issue a final rule which reads as follows:

Uniform System for Parking for Persons with Disabilities

Section 655.801—Purpose

The purpose of this regulation is to provide guidelines to States for the establishment of a uniform system for handicapped parking for persons with disabilities to enhance the safety of persons with disabilities which limit or impair the ability to walk.

Section 655.802 Definitions

Terms used in this part are defined as follows:

(a) *International Symbol of Access* means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(b) *Persons with disabilities which limit or impair the ability to walk* means persons who, as determined by a licensed physician:

(1) Cannot walk two hundred feet without stopping to rest;

(2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

(3) Are restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(4) Use portable oxygen;

(5) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or

(6) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

(c) *Special license plate* means a license plate that displays the International Symbol of Access:

(1) In a color that contrasts to the background, and

(2) In the same size as the letters and/or numbers on the plate.

(d) *Removable windshield placard* means a two-sided, hooked placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

(e) *Temporary removable windshield placard* means a two-sided, hooked placard which includes on each side:

(1) The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a red shield;

(2) An identification number;

(3) A date of expiration; and

(4) The seal or other identification of the issuing authority.

Section 655.803 Special License Plates

(a) Upon application of a person with a disability which limits or impairs the ability to walk, each State shall issue special license plates for the vehicle which is registered in the applicant's name. The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The issuance of a special license plate shall not preclude the issuance of a removable windshield placard.

(b) Upon application of an organization, each State shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk. The application shall include a certification by the applicant, under criteria to be determined by the State, that the vehicle is primarily used to transport persons with disabilities which limit or impair the ability to walk.

(c) The fee for the issuance of a special license plate shall not exceed the fee charged for a similar license plate for the same class vehicle.

Section 655.804 Removable Windshield Placards

(a) The State system shall provide for the issuance and periodic renewal of a removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority shall, upon request, issue one additional placard to applicants who do not have special license plates.

(b) The initial application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk.

(c) The State system shall require that the removable windshield placard is displayed in such a manner that it may

be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

Section 655.805 Temporary Removable Windshield Placards

(a) The State system shall provide for the issuance of a temporary removable windshield placard, upon the application of a person with a disability which limits or impairs the ability to walk. The State system shall require that the issuing authority issue, upon request, one additional temporary removable windshield placard to applicants.

(b) The State system shall require that the application shall be accompanied by the certification of a licensed physician that the applicant meets the § 655.802(b) definition of persons with disabilities which limit or impair the ability to walk. The certification shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

(c) The State system shall require that the temporary removable windshield placard is displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities. When there is no rearview mirror, the placard shall be displayed on the dashboard.

(d) The State system shall require that the temporary removable windshield placard shall be valid for a period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance.

Section 655.806 Parking

Special license plates, removable windshield placards, or temporary removable windshield placards displaying the International Symbol of Access shall be the only recognized means of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Section 655.807 Parking Space Design, Construction, and Designation

(a) Each State shall establish design, construction, and designation standards for parking spaces reserved for persons with disabilities, under criteria to be determined by the State. These standards shall:

(1) ensure that parking spaces are accessible to, and usable by, persons with disabilities which limit or impair the ability to walk; and

(2) ensure the safety of persons with disabilities which limit or impair the ability to walk who use these spaces and their accompanying accessible routes.

(3) ensure uniform sign standards which comply with those prescribed by the Manual on Uniform Traffic Control Devices to designate parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

(b) The design, construction, and alteration of parking spaces reserved for persons with disabilities for which Federal funds participate must meet the Uniform Federal Accessibility Standards.

Section 655.808—Reciprocity

The State system shall recognize removable windshield placards, temporary removable windshield placards and special license plates which have been issued by issuing authorities of other States and countries, for the purpose of identifying vehicles permitted to utilize parking spaces reserved for persons with disabilities which limit or impair the ability to walk.

Appendix A

The following is a sample removable windshield placard:

BILLING CODE 4910-22-M



COLORS
SYMBOL & LEGEND — WHITE
BACKGROUND — BLUE

Appendix B

The following is a sample temporary removable windshield placard:



COLORS
SYMBOL & LEGEND—WHITE
BACKGROUND—RED

Appendix C

The Report of the Handicapped Parking Regulatory Negotiation Advisory Committee reads as follows. (The full text of the report is available from the Federal Highway Administration, Mr. Harry B. Skinner, Chief, Traffic Control Systems Division, Washington, DC 20590, telephone: (202) 366-2185.)

Implementation

The Committee strongly urges the States to begin implementation of a uniform system for handicapped parking upon the issuance of a final rule by the FHWA and the NHTSA. The Committee recognizes that legislative sessions and budgetary constraints may prohibit some States from immediately implementing all the provisions of the final rule. While the Committee does not expect all States to issue conforming license plates and placards immediately, the Committee asks the States to move in that direction. The Committee recommends that the States review State statutes and/or regulations to determine if legislative or regulatory action is required, and take action to ensure the adoption of new laws and regulations. In implementing these minimum guidelines, States are encouraged to develop mechanisms to review and, where appropriate, recall, removable windshield placards issued without an expiration date which do not comply with these guidelines.

Education and Outreach Program

The Committee believes that the FHWA and the NHTSA, the States, enforcement organizations and persons with disabilities, need to conduct an aggressive education and outreach effort to alert the public of the need for the availability of parking spaces reserved for persons with disabilities. The following groups should be targeted as part of this program: (1) The general public; (2) persons with disabilities and advocates; (3) municipal officials; (4) civic and business organizations; (5) legislators; (6) law enforcement; (7) parking providers; and (8) physicians.

The general public needs to be made aware of the reasons for parking spaces reserved for persons with disabilities. They need to realize the safety risks and burdens they place on persons with disabilities when they merely "use the space to run into the store." To deter abuse of parking spaces reserved for persons with disabilities, the general public must believe that they will be ticketed and penalized for their actions.

Persons with disabilities and advocates need to be made aware of Public Law 100-641 and the regulation promulgated by the FHWA and the NHTSA. Because of the safety hazard that could result if they drive with the placard hanging from the rearview mirror, persons with disabilities must be informed that the removable windshield placard is only required to be displayed when the vehicle is parked. In addition, they need to be made aware that the parking spaces reserved for persons with disabilities are designed for their use, to allow easy access when driving their own vehicle or when they are transported by someone else. Parking spaces reserved for persons with disabilities should not be used by family members or others when they are not accompanied by the person with a disability. The Committee firmly believes that the disability community must police itself to prevent abuse to the maximum extent possible.

Municipal officials responsible for the designation of on-street parking places must be made aware of the need for the establishment of adequate spaces to allow persons with disabilities which limit or impair the ability to walk to participate in activities in the community.

Business and civic organizations, whose members are responsible for the designation of off-street parking places in shopping centers, parking garages and lots, business establishments, places of employment, and other private properties should be made aware of the economic and tax benefits and other incentives which can result when their establishments are made more accessible to, and usable by, persons with disabilities which limit or impair the ability to walk. Furthermore, business and civic organizations must be made aware that accessibility is not limited to the provision of spaces, but includes the removal of impediments to accessible routes, such as garbage canisters and snow piles at curb cuts.

State and local legislators should be made aware of the need to review State and local legislation to address Public Law 100-641, the regulation promulgated by the FHWA and the NHTSA, and other issues raised in this report.

Law enforcement needs to be made aware of the extent of its obligation to enforce parking violations. Law enforcement must adopt policies to encourage personnel to ticket violators of parking spaces reserved for persons with disabilities. Judges and others responsible for the adjudication of parking violations should be made aware of the need for stringent application of appropriate penalties. In addition, law enforcement and adjudicatory personnel should be trained in the State system and reciprocity agreements.

Parking providers, including hospitals, universities and other operators of public or private parking facilities, should be made aware that once access is permitted to their facilities, they must recognize special license plates, removable windshield placards, and temporary removable windshield placards.

Finally, it is essential that physicians asked to certify eligibility for special license plates, removable windshield placards, and temporary removable windshield placards be made aware of State eligibility requirements and encouraged to stringently adhere to these requirements in certifying eligibility. The American Medical Association, State and local medical organizations, and entities responsible for licensing physicians should assist in promoting physician education in, and compliance with, State eligibility requirements.

Supplemental Recommendations

During the discussions of the Committee, many issues were raised that are important to a better parking system for persons with disabilities, but that do not specifically fall within the scope of Public Law 100-641 or the authority of the FHWA and the NHTSA. Nevertheless, in good conscience, the Committee could not ignore these issues. Therefore, the Committee encourages States to adopt legislation or regulations or otherwise change their procedures to ensure the integrity of a uniform parking system for persons with disabilities.

The Committee believes that a uniform parking system for persons with disabilities can be enhanced by State systems that utilize a central authority as the only issuing authority for both special license plates and removable windshield placards. This could assist law enforcement in combatting abuse by providing a system to allow them to quickly determine to whom the placard or plate is issued if the central authority also establishes a computerized data base. A data base will also assist inventory control.

The Committee believes that a uniform system for parking for persons with disabilities would also be enhanced by allowing persons with disabilities equal access to parking. Disabilities which limit or impair the ability to walk prevent persons from safely getting from one point to another as quickly and as efficiently as persons without such disabilities, and actually may prevent a person from conducting a transaction in the time allotted on a parking meter. Furthermore, some persons with disabilities are unable to

reach the parking meters. Others have limited hand movement and cannot insert the coins and/or otherwise operate the meter.

The Committee strongly urges the States to ensure equal access to parking. States should undertake an evaluation of the feasibility of adopting a system of parking for persons with disabilities which would permit them to park in metered spaces, which have not been designated as parking spaces reserved for persons with disabilities, without cost and without time limits. The Committee notes that some jurisdictions currently have this type of system. States should also consider technological advancements in metered parking that would ensure equal access. In addition, the Committee urges the States to permit the designation of reserved parking spaces for persons with disabilities on the roadway in front of their homes.

A uniform parking system for persons with disabilities could also be enhanced by stronger enforcement. The Committee encourages the States to adopt fines or penalties which are not less than the fines or penalties for other serious parking violations. Fines or penalties established for violations of parking spaces reserved for persons with disabilities should consider that these fines and penalties are part of an overall system of enforcement of all parking violations. The Committee also encourages the States to adopt Section 11-1003(a)(k) of the *Uniform Vehicle Code* which makes handicapped parking violations enforceable on private property used by the public. The Committee also encourages the allocation of additional resources for enforcement and/or the exploration of alternatives to traditional law enforcement, such as the citizen enforcement programs established in a number of States and localities. The Committee believes that such action would discourage persons from illegally parking in parking spaces reserved for persons with disabilities.

Finally, the Committee believes that a uniform parking system for persons with disabilities can be enhanced by penalties for false or fraudulent statements on applications and renewals. The Committee is concerned that physicians might sometimes certify a person's eligibility for special license plates, removable windshield placards, and temporary removable windshield placards, without the opportunity to review the criteria adopted by the issuing authority. In addition, the Committee is concerned that some individuals falsify their own applications.

Conclusion

The Handicapped Parking Regulatory Negotiation Advisory Committee has taken its charge seriously. Members of the Committee did not always agree, but always attempted to understand each other's interests and concerns. The Committee worked diligently to present the FHWA and the NHTSA with a recommended NPRM and final rule that implement Public Law 100-641 in a manner that helps to alleviate the problems that persons with disabilities face in travelling, without imposing unnecessary burdens. When appropriate, the Committee has given the States wide latitude in establishing a system that meets the guidelines. For example, the Committee believes that the States should be permitted to exercise administrative discretion in determining the size, renewal period, and fees for removable windshield placards. Therefore, the Committee urges the FHWA and the NHTSA to issue a final rule that adopts the recommended final rule contained in this report and to publish this report in the **Federal Register** as an appendix to that final rule so that persons will fully understand the problems that persons with disabilities face and the rationale for the final rule.

Finally, the Committee urges the States, the enforcement community, and all who read this report to implement the recommendations to alleviate the problems that persons with disabilities face when travelling by car.

[FR Doc. 91-5454 Filed 3-8-91; 8:45 am]
BILLING CODE 4910-62-M

federal register

Monday
March 11, 1991

Part IV

Department of Education

The Educational Research and Development Centers Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1991

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117G]

The Educational Research and Development Centers Program; Notice Inviting Applications for a New Award for Fiscal Year (FY) 1991

PURPOSE OF PROGRAM: To support research and development centers to conduct research and related activities.

ELIGIBLE APPLICANTS: The following are eligible for a new award under this program: Institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: June 14, 1991.

APPLICATIONS AVAILABLE: March 18, 1991.

AVAILABLE FUNDS: This Center will be awarded as a cooperative agreement. In fiscal year 1991, $900,000 is available for the Center on Dissemination and Knowledge Utilization for the first year of funding. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 2 through 5 are estimates depending upon the availability of funds and needs as reflected in the approved application.

First Year Funding—$.9 Million
Second Year Funding—$1.0 Million
Third Year Funding—$1.5 Million
Fourth Year Funding—$1.5 Million
Fifth Year Funding—$1.6 Million
Five Year Total—$6.3 Million

ESTIMATED NUMBER OF AWARDS: 1.

Note: The Department is not bound by any estimates in this notice.

PROJECT PERIOD: Up to 60 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 706 and 708.

SUPPLEMENTARY INFORMATION: The Secretary published a notice in the Federal Register on March 8, 1990 (55 FR 8876) inviting applications for new awards for the Educational Research and Development Centers Program. One of the centers to be funded under that competition was the Center on Dissemination and Knowledge Utilization. The quality of applications received for that Center was not sufficient to warrant funding and no award was made.

The individual mission statement describing the activities the Secretary is particularly interested in supporting under the Center on Dissemination and Knowledge Utilization will be found in the application package. However, the mission statement does not contain binding rules for the center competition. This mission statement is not identical to the one contained in the application package for CFDA Number: 84.117G and 84.117Q issued March 9, 1990.

PRIORITY: Under 34 CFR 75.105(c)(3) and 34 CFR 706.3(b), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only an application that meets this absolute priority.

Research on Dissemination and Knowledge Utilization

(Dissemination and knowledge utilization in education (34 CFR 706.3(b)(11))

Selection Criteria: In evaluating applications for grants under this program competition, the Secretary uses the selection criteria in 34 CFR 706.11.

The program regulations in 34 CFR 706.20 (b) and (d) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition the 10 points are added to plan of operation (34 CFR 706.11(c)), for a possible total of 25 points.

FOR APPLICATIONS OR ADDITIONAL INFORMATION CONTACT: Mr. Ned Chalker, U.S. Department of Education, OERI, Office of Research, room 610, 555 New Jersey Avenue, NW., Washington, DC 20208–5573. Telephone: (202) 219–2079. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: March 4, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–5622 Filed 3–8–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
March 11, 1991

Part V

Department of Justice

Office of the Attorney General

28 CFR Part 51

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Provision of Data by Magnetic Media; Proposed Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1490-91]

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Provision of Data by Magnetic Media

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Attorney General finds it necessary to revise the Procedures for the Administration of section 5 of the Voting Rights Act, 28 CFR part 51. The revisions will allow submitting authorities to provide certain data on magnetic media in support of their preclearance request. These revisions are prompted by the need for governmental units to prepare and adopt redistricting plans on the basis of the 1990 census and by the computerization of the redistricting process. By enabling submitting authorities to provide data on magnetic media and by providing uniform procedures for such provision, the revisions will facilitate improved efficiency both for submitting authorities and for the Department of Justice.

DATES: Comments must be received by April 10, 1991.

ADDRESSES: Comments may be mailed to Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128; delivered or sent by a carrier other than the U.S. Postal Service to Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street NW., room 716, Washington, DC 20001; or telefaxed to 202-307-3961.

FOR FURTHER INFORMATION CONTACT: Robert S. Berman, 202-307-3100, or David H. Hunter, 202-307-2898, Attorneys, Voting Section, Civil Rights Division, Department of Justice.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions to obtain "preclearance" from either the United States District Court for the District of Columbia or from the Attorney General of the United States before implementing any new standard, practice, or procedure that affects voting. The purpose of this preclearance is to prevent the implementation of discriminatory voting changes.

The release of the 1990 Census data in the Topically Integrated Geographic Encoding and Reference (TIGER) format combined with the increased accessibility of computer-assisted redistricting systems indicates that many submitting authorities either possess, or in the near future will possess, the capability of providing on magnetic media significant amounts of the data used by the Attorney General in reaching a determination on whether the submitted change has the proscribed discriminatory purpose or effect. The Department of Justice intends to analyze demographic data provided in a table of equivalencies indicating the census geography to district assignment and election-related data such as precinct election returns and voter registration information when such data are provided on magnetic media. These amendments to the Procedures focus solely on the technical aspects of the transmittal of these supporting data and make no substantive revisions.

The overriding principle of these revisions is to establish a generic format for those data that can be produced by virtually any automated data processing equipment. Section 51.20 has been revised to define the various forms of magnetic media and the descriptive material (record layout, file description, etc.) that may be provided to the Attorney General. It should be noted that new § 51.20(b) provides that data provided on magnetic media need not be duplicated on hard copy unless requested by the Attorney General.

All the demographic data provided on magnetic media are based on the unique census block identifier established by the Bureau of the Census's PL94-171 file. Data provided in conjunction with a redistricting will be contained in a table of equivalencies that indicates the assignment of each census block to a particular district. Section 51.28(a)(5) sets forth the format for the table of equivalencies. The revisions propose that any number of plans may be submitted in a single table of equivalencies, thereby alleviating the necessity of repeating the list of census blocks within a jurisdiction. The proposed modifications do not alter the requirement that paper maps of the redistricting plan(s) be provided.

Section 51.28(d)(7) allows election-related data to be provided on magnetic media. Since it is likely that such data will not be related easily to census geographic units it may be identified by county, if necessary, and by precinct. In view of the varying formats in which jurisdictions maintain election data, a detailed record layout will be necessary.

Submitting authorities providing data on magnetic media will be expected, under § 51.28(h), to provide the general public with meaningful access to such data. Meaningful access would include not only providing an opportunity to view the data but also providing appropriate assistance so that interested persons and groups may make meaningful use of the data.

Finally, §§ 51.50(a) and 51.50(d), which set forth the manner in which the Attorney General maintains records concerning submissions, are revised to provide for the retention of computer readable data.

Under the definition of section 1(b) of E.O. 12291, 3 CFR 127 (1981 Compilation), this amendment does not constitute a major rule. Accordingly, a regulatory impact analysis, pursuant to section 3 of E.O. 12291, has not been prepared. Pursuant to section 3(c)(3) of E.O. 12291, this amendment was submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. Issuance of this amendment does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR part 61. Because this amendment is excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The collection of information requirements contained in the section 5 Procedures have been submitted to and approved by the Director of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h) (1) and 5 CFR 1320.13. See § 51.28(g).

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Reporting and recordkeeping requirements, Voting rights.

Accordingly, 28 CFR part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

2. Section 51.20 is amended by designating the existing text as paragraph (a) and by adding new paragraphs (b) through (e) to read as follows:

§ 51.20 Form of submissions.

* * * * *

(b) The Attorney General will accept certain machine readable data in the following forms of magnetic media: 3½" MS-DOS formatted diskettes; 5¼" MS-DOS formatted floppy disks; ¼" cartridge tape; 8mm cartridge tape; nine-track tape (1600/6250 BPI). Unless requested by the Attorney General, data provided on magnetic media need not be provided in hard copy.

(c) All magnetic media shall be clearly labelled with the following information:

(1) Submitting authority.

(2) Name, address, title, and telephone number of contact person.

(3) Date of submission cover letter.

(4) Statement identifying the voting change(s) involved in the submission.

The label shall be affixed to each magnetic medium and the information included on the label shall also be contained in a documentation file on the magnetic medium. The information identified above shall be formatted in a standard American Standard Code for Information Interchange (ASCII), 80 byte text file with carriage return and line feed separating each record; the carriage return and line feed shall be counted in the 80 byte count.

(d) Each magnetic medium (floppy disk, tape, or cartridge) provided must be accompanied by a printed description of its contents, including an identification by name and/or location of each data file that is contained on the medium, a detailed record layout for each such file, a record count for each such file and a full description of the magnetic medium format.

(e) All data files shall be provided in a fixed record-length format using alphanumeric ASCII values. The first 50 records of each such file shall be printed on hard copy and shall be attached to the printed description of the file. Proprietary and/or commercial software system data files (e.g., SAS, SPSS, dBase, Lotus 1-2-3) and data files containing compressed data or binary data fields will not be accepted. Nine-track tapes shall be clearly marked with printed labels to indicate the tape density, the record count, the record length and block size of each file on the tape, the operating system command that created the tape, and whether the tape is IBM standard-labelled.

3. Section 51.28 is amended by adding new paragraphs (a)(4), (a)(5), and (d)(7), by redesignating paragraph (h) as paragraph (i), and by adding a new paragraph (h) to read as follows:

§ 51.28 Supplemental contents.

* * * * *

(a) * * *

(4) Demographic data provided on magnetic media shall be based upon the Bureau of the Census Public Law 94-171 file unique block identity code of state, county, tract and block.

(5) Demographic data on magnetic media which are provided in conjunction with a redistricting shall be contained in a table of equivalencies giving the census block to district assignments in the following format:

(i) Each census block record will be followed by one or more additional fields which shall indicate the district assignment for the census block in one or more plans.

(ii) All district assignments shall be four digits, alphanumeric and right justified.

(iii) The file structure shall be as follows:

Field	PL 94-171 Reference Name	Length	Data Type
State	STATEFP	2	Num.
County	CNTY	3	Num.
Tract	TRACT/BNA	6	Num.
Block	BLCK	4	Alpha/Num.
Plan 1 District	User supplied	4	Alpha/Num.
Plan 2 District	User supplied	4	Alpha/Num.
Plan 3 District, etc.			
Plan n District	User supplied	4	Alpha/Num.

(iv) In addition to the information identified in § 51.20 (c) through (e), the documentation file accompanying the block level equivalency file shall contain the following information:

(A) The total number of fields.

(B) The total number of plans.

(C) For each plan field, an identification of the plan (*e.g.*, state senate, congressional, county board, city council, school board) and its status or nature (*e.g.*, plan currently in effect, adopted plan, alternative plan and sponsors).

(D) The number of districts in each plan field.

(E) Whether the plan field contains a complete or partial plan.

(F) Any additional information the jurisdiction deems relevant such as bill number, date of adoption, etc.

* * * * *

(d) * * *

(7) Election related data containing any of the information described above which are provided on magnetic media shall conform to the requirements of § 51.20 (b) through (e). Election related data that cannot accurately be presented in terms of census blocks may be identified by county and by precinct.

* * * * *

(h) *Availability of computerized submissions.* With respect to submissions in which data on magnetic media are provided, copies of public notices that announce that the submitting authority will provide the general public with meaningful access to such data, including not only the provision of an opportunity to view the data but also the provision of appropriate assistance to enable interested persons and groups to make meaningful use of the data.

* * * * *

6. Section 51.50 is amended by revising paragraph (a) and the first sentence of paragraph (d) to read as follows:

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, data provided on magnetic media, notations concerning conferences with the submitting authority or any interested individual or group, and copies of letters from the Attorney General concerning the submission.

* * * * *

(d) The contents of the files in paper, computer readable, or microfiche form described in paragraphs (a) through (c) of this section shall be available for

inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, DC. * * *

Dated: March 4, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-5513 Filed 3-6-91; 8:45 am]

BILLING CODE 4410-01-M

federal register

Monday
March 11, 1991

Part VI

The President

Proclamation 6257—For National Days of Thanksgiving, April 5-7, 1991

BEST COPY AVAILABLE

Federal Register
Vol. 56, No. 47
Monday, March 11, 1991

Presidential Documents

Title 3—

The President

Proclamation 6257 of March 7, 1991

For National Days of Thanksgiving, April 5–7, 1991

By the President of the United States of America

A Proclamation

As the Psalmist wrote, "O give thanks to the Lord for He is gracious, for His mercy endures for ever." Almighty God has answered the prayers of millions of people with the liberation of Kuwait and the end of offensive operations in the Persian Gulf region. As we prepare to welcome home our courageous service men and women and join in the joyful celebrations of the Kuwaiti people, it is fitting that we give thanks to our Heavenly Father, our help and shield, for His mercy and protection.

Asking Him to judge not our worthiness but our need and protection, and knowing that the Lord gives victory "not by might, nor by power," we prayed for a swift and decisive victory and for the safety of our troops. Clearly, the United States and our coalition partners have been blessed with both. We thank the Lord for His favor, and we are profoundly grateful for the relatively low number of allied casualties, a fact described by the commanding general as "miraculous." Nevertheless, because each and every human life is precious, because the massive scale of Operation Desert Storm must never diminish the loss of even one service member, we also remember and pray for all those who made the ultimate sacrifice in this conflict. May the Lord welcome all who have fallen into the glory of Heaven, and may He strengthen and console their families in their hour of need. May it also please our Heavenly Father to grant a full recovery to those military personnel wounded in action.

We also give thanks for the remarkable unity of our people throughout this conflict—a unity marked by heartfelt and generous support for our troops in the field and, in the American tradition, respect for the rights of those who dissent. May our Nation emerge from this conflict stronger and more united, to face as one united people the challenges and opportunities before us.

As we unite in thanksgiving to Almighty God, let us pray in a special way for the innocent men, women, and children—wherever they may be—who have suffered as a result of the conflict in the Gulf. Recalling the words of President Wilson shortly after World War I, let us seek forgiveness for any "errors of act or purpose" and pray for God's help and guidance on the way that lies ahead. May the resolution of remaining questions and concerns, especially the return of all prisoners of war and the freeing of those who are detained, be as timely and as certain as this victory in battle.

Finally, seeing before us the promise of a safer, more peaceful world—one marked by respect for the rule of law—let us offer all these entreaties in a spirit of faith, humility, and gratitude, seeking reconciliation with all peoples. In so doing, we recall the timeless prayer found in Scripture:

Thine, O Lord, is the greatness, and the power, and the glory . . . for all that is in the heaven and in the earth is Thine . . . and Thou reignest over all . . . in Thine hand is power and might; and in Thine hand it is to make great, and to give strength unto all. Now therefore, our God, we thank Thee and praise Thy glorious Name.

As the Psalmist wrote, "Come behold the works of the Lord . . . He makes wars to cease to the end of the earth."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 5–7, 1991, as National Days of Thanksgiving. I ask that Americans gather in homes and places of worship to give thanks to Almighty God for the liberation of Kuwait, for the blessings of peace and liberty, for our troops, our families, and our Nation. In addition, I direct that the flag of the United States be flown on all government buildings, I urge all Americans to display the flag, and I ask that bells across the country be set ringing at 3:00 p.m. (eastern daylight savings time) on April 7, 1991, in celebration of the liberation of Kuwait and the end of hostilities in the Persian Gulf.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-5896
Filed 3-8-91; 11:05 am]
Billing code 3195-01-M

federal register

Monday
March 11, 1991

Part VII

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 570
Kuwaiti Assets Control Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of The Treasury.

ACTION: Final Rule, amendments.

SUMMARY: This rule amends the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49856 (November 30, 1990), as amended at 56 FR 5351 (February 11, 1991) (the "KACR"), to authorize certain trade, transportation, travel, and transfer transactions with respect to Kuwait, in light of the liberation of Kuwait from Iraqi occupation.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, Tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 535–6449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC.

SUPPLEMENTARY INFORMATION: The KACR were originally published on November 30, 1990, to implement the sanctions imposed by the President in Executive Orders 12723 and 12725. With the suspension of hostilities and the withdrawal of Iraqi forces from Kuwait, the United Nations Security Council ("UNSC") on March 2, 1991, adopted Resolution 686, in part requesting UN member states to "take all appropriate action to cooperate with the government and people of Kuwait in the reconstruction of their country," and recalling paragraph 9 of UNSC Resolution 661, which authorized assistance to the legitimate Government of Kuwait. The President of the Security Council has recognized "the importance of taking all actions possible to facilitate Kuwait's reconstruction and reintegration into the international economic system." In light of this UN action, and at the request of the Government of Kuwait, the Office of Foreign Assets Control of the Treasury Department ("FAC") is amending the KACR to permit trade and commerce with, and travel to Kuwait.

The transactions authorized by this amendment are those prohibited pursuant to section 2 of Executive Order 12725, corresponding to UN sanctions adopted with respect to Iraq and occupied Kuwait in UNSC Resolution 661 of August 6, 1990. At this time, the assets of the Government of Kuwait, its agencies, instrumentalities, and controlled entities, including the Central Bank of Kuwait, blocked since August 2, 1990, pursuant to section 1 of Executive Orders 12723 and 12725 and section 570.201 of the KACR, are not being unblocked except as already authorized by existing FAC licenses. Further unblocking will be undertaken in cooperation with the Government of Kuwait.

Because the KACR involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed ruelmaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 570

Exports, Imports, Kuwait.

For the reasons set forth in the preamble, 31 CFR part 570 is amended as follows:

PART 570—KUWAITI ASSETS CONTROL REGULATIONS

1. The authority citation for part 570 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 8, 1990); E.O. 12723, 55 FR 31805 (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 570.522 is added to Subpart E to read as follows:

§ 570.522 Authorization of certain new transactions with respect to Kuwait.

(a) Notwithstanding the provisions of subpart B of this part, transactions otherwise prohibited by §§ 570.204, 570.205, 570.206, 570.207, 570.208, and 570.209 are hereby authorized on or after March 8, 1991, provided that no such transaction results in a debit to a blocked account unless such debit is independently authorized by or pursuant to this part.

(b) Notwithstanding the provisions of §§ 570.201 and 570.210, commitments and transfers to the Government of Kuwait or a person in Kuwait otherwise prohibited by § 570.210 are hereby authorized to be made on or after March 8, 1991, provided that no such commitment or transfer results in a debit to a blocked account unless such debit is independently authorized by or pursuant to this part.

(c) The authorizations contained in this section do not eliminate the need to comply with regulatory requirements not administered by the Office of Foreign Assets Control, including export and reexport controls administered by other federal agencies.

Dated: March 7, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 7, 1991.

John. P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91–5918 Filed 3–8–91; 12:06 pm]

BILLING CODE 4810–25–M

Reader Aids

Federal Register

Vol. 56, No. 47

Monday, March 11, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information 523–5227
Public inspection desk 523–5215
Corrections to published documents 523–5237
Document drafting information 523–5237
Machine readable documents 523–3447

Code of Federal Regulations

Index, finding aids & general information 523–5227
Printing schedules 523–3419

Laws

Public Laws Update Service (numbers, dates, etc.) 523–6641
Additional information 523–5230

Presidential Documents

Executive orders and proclamations 523–5230
Public Papers of the Presidents 523–5230
Weekly Compilation of Presidential Documents 523–5230

The United States Government Manual

General information 523–5230

Other Services

Data base and machine readable specifications 523–3408
Guide to Record Retention Requirements 523–3187
Legal staff 523–4534
Library 523–5240
Privacy Act Compilation 523–3187
Public Laws Update Service (PLUS) 523–6641
TDD for the hearing impaired 523–5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681–8904 1
8905–9120 4
9121–9268 5
9269–9580 6
9581–9834 7
9835–10140 8
10141–10356 11

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proposed Rules:
385 9868

5 CFR

Administrative Orders:
Memorandums:
February 21, 1991 9271
Presidential Determinations:
No. 91–20 of January 25, 1991 8681
Executive Orders:
12163 (See Presidential Determination 91–20 of January 25, 1991) 8681
Proclamations:
6254 9121
6255 9269
6256 9579
6257 10353

5 CFR

213 10141
316 10141
317 10141
351 10141
831 10141
842 10141
870 10141
890 10141
Proposed Rules:
581 9184

7 CFR

1 9581
17 9273
46 9683
54 10302
301 9275
905 8684
911 10143
915 10143
918 8905
1046 9276
1434 9592
1864 10145
1903 10145
1910 10145
1944 10145
1945 10145
1951 10145
1955 10145
1956 10145
1965 10145
1980 10145
Proposed Rules:
12 9238
704 9283
920 9302
929 10159
1005 9306
1410 9293
1413 9251
1421 ..... 10159, 10192

8 CFR

241 8906
242 8906
274 8906

9 CFR

82 9752
331 ..... 8907, 8908
381 ..... 8907, 8908

10 CFR

Ch. XVII 9805
730 10888
1046 9811
Proposed Rules:
766 10075
1703 8992

11 CFR

100 9275

12 CFR

265 9667
325 10154
600 8910
601 8910
602 8910
603 8910
604 9511
605 8910
611 ..... 8910, 10189
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
909 8688
1410 10302
Proposed Rules:
327 9366

14 CFR

21 8699–8701
25 8699–8701
39 ..... 9612–9618, 9835–9838
71 9618–9620
1209 8910
Proposed Rules:
39 ..... 8732, 8733, 8935, 9659, 9661, 9907–9913
71 ..... 9660, 9663, 9914
75 10302
91 8938

15 CFR
303 9621

16 CFR
305 9123
1500 9276
1502 9276
Proposed Rules:
1700 9181

17 CFR
240 9124

18 CFR
1301 9266
Proposed Rules:
35 8938

19 CFR
Proposed Rules:
141 9311

20 CFR
302 10302

21 CFR
5 8709
510 ..... 9622, 9640
520 ..... 8709, 8710, 9640
522 9622
524 9622
556 8710
558 ..... 9622, 9641
1308 9132
1316 8685
Proposed Rules:
201 9312
356 9915
606 8940

22 CFR
514 8711

23 CFR
1235 10326

24 CFR
Ch. I 9472
91 9169
791 9622
Proposed Rules:
203 8941

26 CFR
1 8911
31 8911
301 9169
602 8912
Proposed Rules:
1 ..... 8943–8967, 10211
301 9182

27 CFR
5 8922
Proposed Rules:
16 10066

28 CFR
0 8923
8 8685
Proposed Rules:
11 8734
51 10348

29 CFR
541 9252
579 9252
580 9252
801 9046
1601 9623
Proposed Rules:
516 9183
778 9183
1602 9185

30 CFR
56 9626
57 9626
243 9251
723 10060
845 10060
Proposed Rules:
901 8967
913 8969
935 9312

31 CFR
100 10169
570 10356

32 CFR
191 10170
291 9841
627 9424
Proposed Rules:
155 10215
162 10219
299a 9314

33 CFR
3 9268
100 ..... 9650, 9651
110 9652
117 8712
151 8878
165 9269
Proposed Rules:
117 9916

36 CFR
Proposed Rules:
9 9917

38 CFR
6 9626
8 9626
21 9627
36 9653
Proposed Rules:
3 10303
4 10303

39 CFR
Proposed Rules:
111 9664

40 CFR
52 ..... 9172–9175, 10171
60 9177
82 9518
147 9408
228 9176
Proposed Rules:
Ch. I 8972, 9315
86 ..... 8966, 9754
123 8973
300 9187
600 8856
799 ..... 9092, 9105

41 CFR
105–8 9662
301–1 9678
302–11 9289
Ch. 304 9675

42 CFR
400 8832
405 8832
406 8832
412 9633

43 CFR
5400 10173
5420 10173
5450 10173
5460 10173
9230 10173

44 CFR
353 9452

45 CFR
74 8712
205 8924
232 8926
234 8926
235 8926
801 9180
1611 9634
1180 10176

46 CFR
25 8878

47 CFR
0 9752
2 9881
21 9897
69 9897
73 ..... 8933, 8934, 9698, 9899, 10178
80 9681
94 ..... 9897, 9900
Proposed Rules:
1 10222
2 10222
73 ..... 8974–8976, 9189–9191, 9924, 10227
76 9924
95 10222

48 CFR
Proposed Rules:
Ch. 2, App. N 9082
22 9832
42 9832
52 9832
202 9082
203 9082
204 9082
217 9082
225 9082
228 9082
232 9082
245 9082
252 9082
1403 10227
1406 10227
1415 10227
1453 10227
1803 8718
1804 8718
1805 8718
1806 8718
1814 8718
1815 8718
1819 8718
1836 8718
1849 8718
1852 8718
1853 8718

49 CFR
1 9635
386 10179
571 10185
1010 9635
1011 8721
1330 8722
Proposed Rules:
Ch. X 9191
383 9925
571 9926
1053 9339

50 CFR
611 ..... 8722, 38723
620 8722
646 9251
672 ..... 9635, 9636
675 9636
Proposed Rules:
20 9462
285 10227
641 9930
658 8736
672 9251
675 9251

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 8, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1989 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1990
4	15.00	Jan. 1, 1991
5 Parts:		
*1–699	17.00	Jan. 1, 1991
700–1199	13.00	Jan. 1, 1990
1200–End, 6 (6 Reserved)	17.00	Jan. 1, 1990
7 Parts:		
0–26	15.00	Jan. 1, 1991
27–45	12.00	Jan. 1, 1990
46–51	17.00	Jan. 1, 1990
*52	24.00	Jan. 1, 1991
53–209	19.00	Jan. 1, 1990
210–299	25.00	Jan. 1, 1990
300–399	12.00	Jan. 1, 1990
400–699	20.00	Jan. 1, 1990
700–899	22.00	Jan. 1, 1990
900–999	29.00	Jan. 1, 1990
1000–1059	16.00	Jan. 1, 1990
*1060–1119	12.00	Jan. 1, 1991
1120–1199	10.00	Jan. 1, 1990
1200–1499	18.00	Jan. 1, 1990
1500–1899	11.00	Jan. 1, 1990
1900–1939	11.00	Jan. 1, 1990
*1940–1949	22.00	Jan. 1, 1991
1950–1999	24.00	Jan. 1, 1990
2000–End	9.50	Jan. 1, 1990
8	14.00	Jan. 1, 1990
9 Parts:		
1–199	20.00	Jan. 1, 1990
200–End	18.00	Jan. 1, 1990
10 Parts:		
0–50	21.00	Jan. 1, 1990
51–199	17.00	Jan. 1, 1990
200–399	13.00	[2] Jan. 1, 1987
400–499	21.00	Jan. 1, 1990
500–End	26.00	Jan. 1, 1990
11	21.00	Jan. 1, 1990
12 Parts:		
1–299	12.00	Jan. 1, 1990
300–219	12.00	Jan. 1, 1990
220–299	21.00	Jan. 1, 1990
300–499	19.00	Jan. 1, 1990
500–599	17.00	Jan. 1, 1990
600–End	17.00	Jan. 1, 1990
13	25.00	Jan. 1, 1990
14 Parts:		
1–59	25.00	Jan. 1, 1990
60–139	24.00	Jan. 1, 1990
140–199	10.00	Jan. 1, 1990
200–1199	21.00	Jan. 1, 1990
*1200–End	13.00	Jan. 1, 1991
15 Parts:		
0–299	11.00	Jan. 1, 1990
300–799	22.00	Jan. 1, 1990
800–End	15.00	Jan. 1, 1990
16 Parts:		
0–149	5.50	Jan. 1, 1991
150–999	14.00	Jan. 1, 1990
1000–End	20.00	Jan. 1, 1990
17 Parts:		
1–199	15.00	Apr. 1, 1990
200–239	16.00	Apr. 1, 1990
240–End	23.00	Apr. 1, 1990
18 Parts:		
1–149	16.00	Apr. 1, 1990
150–279	16.00	Apr. 1, 1990
280–399	14.00	Apr. 1, 1990
400–End	9.50	Apr. 1, 1990
19 Parts:		
1–199	28.00	Apr. 1, 1990
200–End	9.50	Apr. 1, 1990
20 Parts:		
1–399	14.00	Apr. 1, 1990
400–499	25.00	Apr. 1, 1990
500–End	28.00	Apr. 1, 1990
21 Parts:		
1–99	13.00	Apr. 1, 1990
100–169	15.00	Apr. 1, 1990
170–199	17.00	Apr. 1, 1990
200–299	5.50	Apr. 1, 1990
300–499	29.00	Apr. 1, 1990
500–599	21.00	Apr. 1, 1990
600–799	6.00	Apr. 1, 1990
800–1299	18.00	Apr. 1, 1990
1300–End	9.00	Apr. 1, 1990
22 Parts:		
1–299	24.00	Apr. 1, 1990
300–End	18.00	Apr. 1, 1990
23	17.00	Apr. 1, 1990
24 Parts:		
0–199	20.00	Apr. 1, 1990
200–499	20.00	Apr. 1, 1990
500–699	13.00	Apr. 1, 1990
700–1699	24.00	Apr. 1, 1990
1700–End	13.00	Apr. 1, 1990
25	25.00	Apr. 1, 1990
26 Parts:		
§§ 1.0–1–1.60	15.00	Apr. 1, 1990
§§ 1.61–1.169	28.00	Apr. 1, 1990
§§ 1.170–1.300	18.00	Apr. 1, 1990
§§ 1.301–1.400	17.00	Apr. 1, 1990
§§ 1.401–1.500	29.00	Apr. 1, 1990
§§ 1.501–1.640	16.00	[3] Apr. 1, 1990
§§ 1.641–1.850	19.00	Apr. 1, 1990
§§ 1.851–1.907	20.00	Apr. 1, 1990
§§ 1.908–1.1000	22.00	Apr. 1, 1990
§§ 1.1001–1.1400	18.00	Apr. 1, 1990
§§ 1.1401–End	24.00	Apr. 1, 1990
2–29	21.00	Apr. 1, 1990
30–39	15.00	Apr. 1, 1990
40–49	13.00	[4] Apr. 1, 1989
50–299	16.00	[5] Apr. 1, 1989
300–499	17.00	Apr. 1, 1990
500–599	6.00	Apr. 1, 1990
600–End	6.50	Apr. 1, 1990
27 Parts:		
1–199	24.00	Apr. 1, 1990
200–End	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

Title	Price	Revision Date
29 Parts:		
0–99	18.00	July 1, 1990
100–499	8.00	July 1, 1990
500–899	26.00	July 1, 1990
900–1899	12.00	July 1, 1990
1900–1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990
1911–1925	9.00	[4] July 1, 1989
1926	12.00	July 1, 1990
1927–End	25.00	July 1, 1990
30 Parts:		
0–199	22.00	July 1, 1990
200–699	14.00	July 1, 1990
700–End	21.00	July 1, 1990
31 Parts:		
0–199	15.00	July 1, 1990
200–End	19.00	July 1, 1990
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	24.00	July 1, 1990
190–399	28.00	July 1, 1990
400–629	24.00	July 1, 1990
630–699	13.00	[4] July 1, 1989
700–799	17.00	July 1, 1990
800–End	19.00	July 1, 1990
33 Parts:		
1–124	16.00	July 1, 1990
125–199	18.00	July 1, 1990
200–End	20.00	July 1, 1990
34 Parts:		
1–299	23.00	July 1, 1990
300–399	14.00	July 1, 1990
400–End	27.00	July 1, 1990
35	10.00	July 1, 1990
36 Parts:		
1–199	12.00	July 1, 1990
200–End	25.00	July 1, 1990
37	15.00	July 1, 1990
38 Parts:		
0–17	24.00	July 1, 1990
18–End	21.00	July 1, 1990
39	14.00	July 1, 1990
40 Parts:		
1–51	27.00	July 1, 1990
52	28.00	July 1, 1990
53–60	31.00	July 1, 1990
61–80	13.00	July 1, 1990
81–85	11.00	July 1, 1990
86–99	26.00	July 1, 1990
100–149	27.00	July 1, 1990
150–189	23.00	July 1, 1990
190–259	13.00	July 1, 1990
260–299	22.00	July 1, 1990
300–399	11.00	July 1, 1990
400–424	23.00	July 1, 1990
425–699	23.00	[4] July 1, 1989
700–789	17.00	July 1, 1990
790–End	21.00	July 1, 1990
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	8.50	July 1, 1990
101	24.00	July 1, 1990
102–200	11.00	July 1, 1990
201–End	13.00	July 1, 1990
42 Parts:		
1–60	16.00	Oct. 1, 1990
61–399	5.50	Oct. 1, 1990
400–429	21.00	Oct. 1, 1990
430–End	25.00	Oct. 1, 1990
43 Parts:		
1–999	19.00	Oct. 1, 1990
1000–3999	26.00	Oct. 1, 1990
4000–End	12.00	Oct. 1, 1990
44	23.00	Oct. 1, 1990
45 Parts:		
1–199	17.00	Oct. 1, 1990
200–499	12.00	Oct. 1, 1990
500–1199	26.00	Oct. 1, 1990
1200–End	18.00	Oct. 1, 1990
46 Parts:		
1–40	14.00	Oct. 1, 1990
41–69	14.00	Oct. 1, 1990
70–89	8.00	Oct. 1, 1990
90–139	12.00	Oct. 1, 1990
140–155	13.00	Oct. 1, 1990
156–165	14.00	Oct. 1, 1990
166–199	14.00	Oct. 1, 1990
200–499	20.00	Oct. 1, 1990
500–End	11.00	Oct. 1, 1990
47 Parts:		
0–19	19.00	Oct. 1, 1990
20–39	18.00	Oct. 1, 1990
40–69	9.50	Oct. 1, 1990
70–79	18.00	Oct. 1, 1990
80–End	20.00	Oct. 1, 1990
48 Chapters:		
1 (Parts 1–51)	30.00	Oct. 1, 1990
1 (Parts 52–99)	19.00	Oct. 1, 1990
2 (Parts 201–251)	19.00	Oct. 1, 1990
2 (Parts 252–299)	15.00	Oct. 1, 1990
3–6	19.00	Oct. 1, 1990
7–14	26.00	Oct. 1, 1990
15–End	29.00	Oct. 1, 1990
49 Parts:		
1–99	14.00	Oct. 1, 1990
100–177	27.00	Oct. 1, 1990
178–199	22.00	Oct. 1, 1990
200–399	21.00	Oct. 1, 1990
400–999	26.00	Oct. 1, 1990
1000–1199	17.00	Oct. 1, 1990
1200–End	19.00	Oct. 1, 1990
50 Parts:		
1–199	20.00	Oct. 1, 1990
200–599	16.00	Oct. 1, 1990
600–End	15.00	Oct. 1, 1990
CFR Index and Findings Aids	30.00	Jan. 1, 1990
Complete 1991 CFR set	620.00	1991
Microfiche CFR Edition:		
Complete set (one-time mailing)	185.00	1988
Complete set (one-time mailing)	185.00	1989
Subscription (mailed as issued)	188.00	1990
Subscription (mailed as issued)	188.00	1991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 30, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*6962

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)
Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog—Bestselling Government Books	FREE	FREE

Total for Publications

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 1-91

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

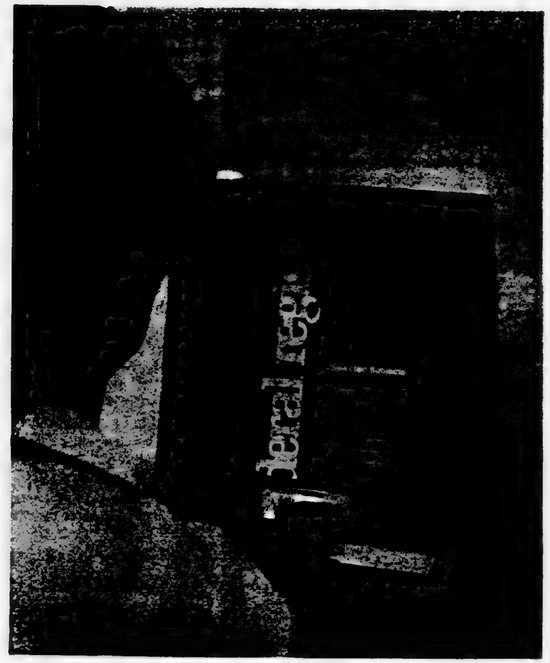
Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188



Superintendent of Documents Subscriptions Order Form

Order Processing Code:
* 6462

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ Federal Register: ____ One year: $195 ____ Six months: $97.50

____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

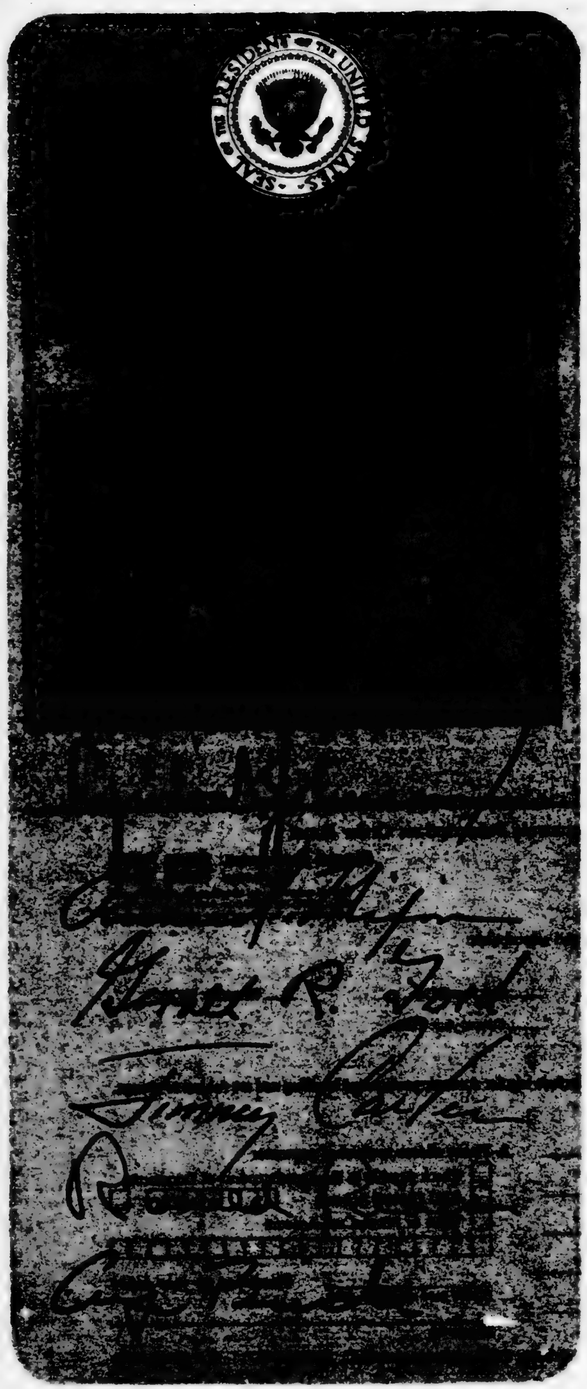
3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)



Public Papers of the Presidents of the United States

Annual volumes containing the public messages and statements, news conferences, and other selected papers released by the White House.

Volumes for the following years are available; other volumes not listed are out of print.

Jimmy Carter

1978–81 (Book II) $22.00

1980–81 (Book III) $24.00

Ronald Reagan

1981 ..... $25.00

1982 (Book II) $25.00

1983 (Book I) $31.00

1983 (Book II) $32.00

1984 (Book I) $36.00

1984 (Book II) $36.00

1985 (Book I) $34.00

1985 (Book II) $36.00

1986 (Book I) $37.00

1986 (Book II) $35.00

1987 (Book I) $33.00

1987 (Book II) $35.00

1988 (Book I) $38.00

George Bush

1989 (Book I) $38.00

1989 (Book II) $40.00

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325.

(Rev. 3-91)

VOL
56

ISS
47

MR
11

19 91

UMI

OL
56
SS
48
MR
12
991
MI

3-12-91
Vol. 56 No. 48

federal register

Tuesday
March 12, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56

SS
48

IR
2

991

MI

3-12-91
Vol. 56 No. 48
Pages 10357-10502

federal register

Tuesday
March 12, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Miami, FL, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

Agricultural Marketing Service
RULES
Nectarines and pears, plums, and peaches grown in California; and onions grown in Idaho and Oregon; correction, 10359
PROPOSED RULES
Dairy products; grading, inspection, and standards:
Fee increases, 10382

Agriculture Department
See Agricultural Marketing Service; Cooperative State Research Service; Forest Service

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
April and May, 10439

Antitrust Division
NOTICES
National cooperative research notifications:
National Center for Manufacturing Sciences, Inc., 10444
Regents of University of California at Berkeley, 10444

Army Department
NOTICES
Inventions, Government owned; availability for licensing, 10418

Children, National Commission
See National Commission on Children

Coast Guard
NOTICES
Meetings:
Towing Safety Advisory Committee, 10455

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Commission on Minority Business Development
NOTICES
Hearings, 10417

Conservation and Renewable Energy Office
NOTICES
Meetings:
Metal Casting Industrial Advisory Board, 10419

Consumer Product Safety Commission
NOTICES
Agency information collection activities under OMB review, 10418

Cooperative State Research Service
NOTICES
Meetings:
Food and Agricultural Sciences Joint Council, 10407

Defense Department
See also Army Department
PROPOSED RULES
Acquisition regulations:
Hazard warning labels; supplement, 10405

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Legal profession training for disadvantaged individuals, 10418

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Fernald, OH; Feed Materials Production Center; Storm water runoff, 10419

Environmental Protection Agency
NOTICES
Clean Air Act:
Acid rain provisions; guidance availability, 10427

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Messerschmitt-Bolkow-Blohm, 10361
Control zones and transition areas, 10364
Transition areas, 10362, 10364
(3 documents)
PROPOSED RULES
Airports; passenger facility charges, 10462
Rulemaking petitions; summary and disposition, 10383
Transition areas, 10384
NOTICES
Environmental statements; availability, etc.:
Tulsa International Airport, OK, 10456
Exemption petitions; summary and disposition, 10456

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 10381
Kentucky, 10381
NOTICES
Agency information collection activities under OMB review, 10428
Public safety radio communications plans:
Florida, 10428
Rulemaking proceedings; petitions filed, granted, denied, etc., 10429

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Carnegie Natural Gas Co., 10420

Colorado Interstate Gas Co., 10422
East Tennessee Natural Gas Co., 10423
El Paso Natural Gas Co., 10420
(2 documents)
Florida Gas Transmission Co., 10423
Granite State Gas Transmission, Inc., 10423
Great Lakes Gas Transmission Limited Partnership, 10424
National Fuel Gas Supply Corp., 10424
North Penn Gas Co., 10421
Northern Natural Gas Co. division, 10421
Northwest Pipeline Corp., 10424
(2 documents)
Paiute Pipeline Co., 10425
Panhandle Eastern Pipe Line Co., 10422
Ringwood Gathering Co., 10425
Tennessee Gas Pipeline Co., 10425
Texas Eastern Transmission Corp., 10422
Texas Gas Transmission Corp., 10426
Transwestern Pipeline Co., 10426
United Gas Pipe Line Co., 10426
West Texas Gas, Inc., 10427
Williams Natural Gas Co., 10427

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Alexandria, VA, 10457

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 10459

Federal Reserve System
NOTICES
Federal Reserve Bank services; fee schedules and pricing principles:
Check collection; proposed enhancements, 10429
Applications, hearings, determinations, etc.:
Cleo L. Craig Trust et al., 10438
Johnson International, Inc., 10438
Rainier, James T., et al., 10438

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois, 10409

Forest Service
NOTICES
Technology transfer agreements:
ESPRO Inc.; gypsy moth nucleopolyhedrosis virus (GYPCHEK), 10407

General Services Administration
RULES
Federal travel:
Relocation income tax allowance tax tables, 10378
NOTICES
Agency information collection activities under OMB review, 10438

Health and Human Services Department
See Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health

Health Care Financing Administration
NOTICES
Meetings:
Social Security Advisory Council, 10439

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
April, 10440

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Historically black colleges and universities program, 10496
Organization, functions, and authority delegations:
Assistant Secretary for Housing–Federal Housing Commissioner, 10492
Housing-Federal Housing Administration Comptroller, 10493

Interior Department
See Land Management Bureau; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
State income taxes; allocation and apportionment of deductions, 10365
PROPOSED RULES
Income taxes:
Charitable contributions; allocation, 10395
Interest expenses; allocation and apportionment, 10397
NOTICES
Art Advisory Panel; closed meetings; report availability, 10457
Electronic Tax Filing Systems National Conferences and Exhibitions; trade shows, 10458

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Melamine from Japan, 10414
Countervailing duties:
Leather wearing apparel from Argentina, 10410
Live swine from Canada, 10410
Portland hydraulic cement and cement clinker from Mexico, 10415
Short supply determinations:
Steel plate, 10416
Applications, hearings, determinations, etc.:
William Patterson College of New Jersey et al., 10416

International Trade Commission
NOTICES
Meetings; Sunshine Act, 10459
(4 documents)

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 10443

Justice Department
See also Antitrust Division

NOTICES
Pollution control; consent judgments:
Euclid, OH, et al., 10443
Sinclair Oil Corp. et al., 10443

Labor Department
See Mine Safety and Health Administration; Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
New Mexico, 10380
NOTICES
Agency information collection activities under OMB review 10442
Alaska Native claims selection:
St. George Tanaq Corp., 10442
Coal leases, exploration licenses, etc.:
Colorado, 10442

Mine Safety and Health Administration
PROPOSED RULES
Electric motor assemblies; explosion-proof; approval requirements, 10464

National Commission on Children
NOTICES
Hearings, 10445

National Institutes of Health
NOTICES
Meetings:
Genome Research Review Committee, 10440
National Cancer Institute, 10440
National Heart, Lung, and Blood Institute, 10441
(2 documents)
Recombinant DNA Advisory Committee, 10441

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 10417

National Science Foundation
NOTICES
Meetings:
Archaeometry Advisory Panel, 10445
Engineering Advisory Committee, 10445
Research Initiation and Improvement Special Emphasis Panel, 10445
Scientific, Technological, and International Affairs Advisory Committee, 10445
Meetings; Sunshine Act, 10460

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 10460

Nuclear Regulatory Commission
RULES
Practice rules:
Domestic licensing proceedings—
Assistance to prospective petitioners, 10359
NOTICES
Agency information collection activities under OMB review, 10446
Meetings; Sunshine Act, 10460
Applications, hearings, determinations, etc.:
University of—
Missouri-Rolla 10446

Occupational Safety and Health Administration
RULES
Safety and health standards:
Formaldehyde; occupational exposure, 10377

Office of United States Trade Representative
See Trade Representative Office of United States

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 10460

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Power plan amendments:
Northwest conservation and electric power plan, 10447

Presidential Documents
PROCLAMATIONS
Special observances:
School Breakfast Week, National, 1991 (Proc. 6258), 10537
EXECUTIVE ORDERS
Euratom; U.S. nuclear cooperation (EO 12753), 10501

Public Health Service
See Health Resources and Services Administration; National Institutes of Health

Railroad Retirement Board
PROPOSED RULES
Railroad Retirement Act:
Annuity eligibility, 10385

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 10448
Boston Stock Exchange, Inc., 10449
Applications, hearings, determinations, etc.:
Chase Manhattan Bank, N.A., 10451
National Home Life Assurance Co. et al., 10452

Small Business Administration
RULES
Business loans:
Export revolving line of credit and international trade loans, 10361
Small business size standards:
Nonmanufacturer rule; waivers—
Secure interactive graphics systems computer workstations, White Sands Missile Range, 10360
NOTICES
Agency information collection activities under OMB review, 10453

State Department
NOTICES
Passport travel restrictions, U. S.; Kuwait, 10454

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Abandoned mine reclamation fund:
Fee collection coal production reporting, reclamation fees, basis for coal weight determination, 10404

Trade Representative, Office of United States
NOTICES
United States-Canada Free-Trade Agreement:
Accelerated tariff elimination provision implementation, 10454

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Highway Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 10455
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 10455
Hearings, etc.—
Japan charter authorization proceeding, 10455

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 10462

Part III
Department of Labor, Mine Safety and Health Administration, 10464

Part IV
Department of Housing and Urban Development, 10492

Part V
Department of Housing and Urban Development, 10496

Part VI
The President, 10499

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6258 10357
Executive Orders:
12193 (See EO 12753) 10501
12295 (See EO 12753) 10501
12351 (See EO 12753) 10501
12409 (See EO 12753) 10501
12463 (See EO 12753) 10501
12506 (See EO 12753) 10501
12554 (See EO 12753) 10501
12587 (See EO 12753) 10501
12629 (See EO 12753) 10501
12670 (See EO 12753) 10501
12706 (See EO 12753) 10501
12753 10501

7 CFR
916 10359
917 10359
958 10359
Proposed Rules:
58 10382

10 CFR
2 10359

13 CFR
121 10360
122 10361

14 CFR
39 10361
71 (4 documents) 10362–10364
Proposed Rules:
Ch. I 10383
71 10384
158 10462

20 CFR
Proposed Rules:
216 10385

26 CFR
1 19365
602 10365
Proposed Rules:
1 (2 documents) 10395–10397

29 CFR
1910 10377

30 CFR
Proposed Rules:
7 10464
18 10464
870 10404

41 CFR
301–10 10378
302–11 10378

43 CFR
Public Land Orders:
6838 10380

47 CFR
73 (2 documents) 10381

48 CFR
Proposed Rules:
223 10405
252 10405

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

Presidential Documents

Title 3—

The President

Proclamation 6258 of March 8, 1991

National School Breakfast Week, 1991

By the President of the United States of America

A Proclamation

For more than two decades, the School Breakfast Program has helped to promote the health and well-being of our Nation's schoolchildren. By helping to ensure that youngsters enter the classroom with the energy and stamina needed to be eager and attentive students, this important child nutrition program has also contributed to the success of America's educational system.

The School Breakfast Program began in 1966 as a pilot project that provided funding for meals for schoolchildren in low-income areas and in areas where children had to travel long distances to school. In 1975, the Program was permanently established, and funding was made available to all schools. Today approximately four million children in more than 38,000 schools receive nutritious morning meals through the School Breakfast Program.

Parents and educators across the country endorse the School Breakfast Program because they believe that it improves youngsters' ability to learn. For the same reason, States have sought to expand the Program in their schools, and some mandate participation.

Federal officials are proud to work with State leaders, educators, food service professionals, parents, and others in making the School Breakfast Program available to our children. Their cooperative efforts are a wonderful example of a successful partnership between Federal and State governments and local communities. They also play an important role in meeting our first National Education Goal: ensuring that, by the year 2000, all children in America start school ready to learn.

In recognition of the School Breakfast Program, the Congress, by House Joint Resolution 98, has designated the week of March 4 through March 10, 1991, as "National School Breakfast Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of March 4 through March 10, 1991, as National School Breakfast Week. I urge all Americans to observe this week in honor of those individuals at the Federal, State, and local levels whose efforts contribute so much to the success of this valuable program.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-5971
Filed 3-8-91; 2:23 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916, 917, and 958

[Docket Nos. FV-90-119 and FV-90-165]

Nectarines and Fresh Pears, Plums, and Peaches Grown in California; and Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Corrections

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rules; corrections.

SUMMARY: This document corrects paragraph references in two final rules which appeared in the June 15, 1990 (55 FR 24215), and September 6, 1990 (55 FR 36600) issues of the Federal Register. The corrections are needed to facilitate the accurate printing of parts 917 and 958 in the 1991 issue of the Code of Federal Regulations.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3919 or 447–2431.

SUPPLEMENTARY INFORMATION: The first document to be corrected was issued under Marketing Agreement and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines, pears, peaches, and plums grown in California. The rule was published in the Federal Register on June 15, 1990, at page 24215. At page 24223 of that final rule, item number 17, paragraph (a)(1)(v) is incorrectly referenced in the amendatory text and the provisions of § 917.460. That reference should be changed to (a)(3)(v).

The second document to be corrected was issued under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. That final rule was published in the Federal Register on September 6, 1990, at page 36600. On page 36601 of that document, all references to paragraph (e)(2) should be changed to (f)(2), and all references to paragraph (g) should be changed to paragraph (h). These paragraphs are in § 958.328.

Thus, the following corrections are hereby made:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. In the June 15, 1990, issue of the Federal Register, on page 24233, third column, item number 17, the references to paragraph (a)(1)(v) of § 917.460 should be changed to paragraph (a)(3)(v) of § 917.460. As corrected, item number 17 should read as follows:

17. Paragraph (a)(3)(v) of § 917.460 is amended by adding the words ", or the committee manager's designee," to follow the words "Plum Commodity Committee Manager". As revised, the first four sentences of § 917.460(a)(3)(v) read as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

2. In the September 6, 1990, issue of the Federal Register, on page 36601, third column, amendatory statement 2, the reference to paragraphs (e)(2) and (g) should be changed to (f)(2) and (h), respectively, and in § 958.328, the paragraphs designated (e)(2) and (g) should be designated (f)(2) and (h).

Dated: March 6, 1991.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5689 Filed 3–11–91; 8:45 am]
BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AD84

Assistance to Prospective Petitioners

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning its procedures for filing a petition for rulemaking with the NRC. The final rule is necessary to clarify the type of assistance that may be provided to a prospective petitioner.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7211.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act (5 U.S.C. 553(e)) requires that each agency give an interested person the right to petition the agency to issue, amend, or repeal a rule. Nuclear Regulatory Commission (NRC) regulations, stated in 10 CFR 2.802, implement this provision.

Paragraph (b) of § 2.802 establishes procedures by which a member of the public may contact the NRC before filing a petition for rulemaking with the agency. The NRC believes that this type of contact may be helpful in describing the procedure and process for filing and responding to a petition for rulemaking, clarifying an existing NRC regulation and the basis for that regulation, and assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner. These amendments to 10 CFR 2.802 are necessary to clarify the type of assistance that may be provided to a prospective petitioner.

Because these amendments deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the Federal Register. Good cause exists to dispense

with the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing with a matter of agency conduct, the type of assistance that may be provided to a prospective petitioner.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 2.802, paragraph (b) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Regulatory Publications Branch. A prospective petitioner may also telephone the Regulatory Publications Branch on (301) 492–7086 or toll free on (800) 368–5642.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

* * * * *

Dated at Rockville, Maryland, this 26th day of February, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–5709 Filed 3–11–91; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule for Secure Interactive Graphics Systems Computer Workstations at White Sands Missile Range

AGENCY: Small Business Administration.

ACTION: Notice of issue of a waiver of the "Nonmanufacturer Rule".

SUMMARY: This notice advises the public that the Small Business Administration (SBA) has granted a waiver of the Nonmanufacturer Rule for secure interactive graphics systems computer workstations at the White Sands Missile Range for contract DAAD07–90–C–0172. The bais for this wavier is that the Administrator has accepted the contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required of an offeror on this procurement. The effect of a waiver is to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer or processor on this procurement through the SBA 8(a) program.

EFFECTIVE DATE: The waiver was effective by the Administrator's signature on February 22, 1991.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 653–6588.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing policy that recipients of contracts set aside for small business or SBA 8(a) Program shall provide the products of small business manufacturers or processors. The requirement to provide the products of a small business in contracts set aside for small business or for 8(a) contracts is already in SBA regulations. The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). This requirement is commonly referred to as the "Nonmanufacturer Rule".

This waiver was granted pursuant to authority of section 210 of Public Law 101–574, which allows the Administrator of the SBA to issue a waiver for an individual solicitation after reviewing a determination of the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period of performance) required of an offeror by the solicitation. The Administrator accepted the contracting officer's determination that no small business manufacturers or processors could reasonably be expected to satisfy the software and hardware compatibility requirements within the time available at a reasonable price.

This wavier of the Nonmanufacturer Rule establishes for this procurement only that an otherwise qualified small business dealer may supply the product of any domestic manufacturer on this contract awarded through the SBA 8(a) Program.

Dated: February 22, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91–5811 Filed 3–11–91; 8:45 am]

BILLING CODE 8025–01–M

13 CFR Part 122

Business Loans, Export Revolving Line of Credit and International Trade Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: The Small Business Administration Reauthorization and Amendments Act of 1990, enacted on November 15, 1990 as Public Law 101–574 (104 Stat. 2814) (1990 legislation), deletes pre-export financing from the export revolding line of credit (ERLC) program, and allows such ERLC loans to extend for three years instead of 18 months. By this deletion, the statute has been broadened to now provide that ERLC loans are available for export purposes generally including, but not limited to, the development of foreign markets. With respect to international trade loans, it removes the requirement that lenders must sell such loans within 180 days. This final rule implement the statutory changes.

EFFECTIVE DATE: March 12, 1991. Comments may be submitted on or before May 13, 1991.

ADDRESSES: Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Assistant Administrator for Financial Assistance. Telephone (202) 205–6490.

SUPPLEMENTARY INFORMATION: Before the 1990 legislation, SBA could guarantee an ERLC loan for pre-export financing and the ERLC loan could be made for no longer than 18 months. The 1990 legislation eliminates the statutory reference to use of proceeds for pre-export activities. By this deletion the statute has been broadened to now provide that ERLC loans are available for export purposes generally including, but not limited to, the development of foreign markets. The 1990 legislation also changes the 18 month maximum maturity for ERLC loans to three years. This final rule reflects these statutory changes.

The SBA is permitted presently to guarantee international trade loans to finance the acquisition, construction, renovation, modernization, improvement or expansion of facilities. Prior to the 1990 legislation, the lender had to sell such loans in the secondary market within 180 days of the date when full disbursement was completed. The 1990 legislation eliminates this requirement to sell within 180 days and this final rule implements the statutory change.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities because ERLC and international trade loans guaranteed by SBA are few in number. For example, in fiscal year 1990, 49 ERLC loans were made with SBA guaranteeing approximately $6,000,000, and 9 international trade loans were made with SBA guarantees of approximately $5,000,000. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the changes are not likely to result in an annual effect on the economy of $100 million or more.

This rule does not impose additional reporting recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chpater 35. This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

There is an administrative need to promulgate this rule in final form without public notice and comment because it implements effective provisions of law, but SBA will review and consider comments received.

List of Subjects in 13 CFR Part 122

Exports, Loan programs-business, small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 122, chapter I, title 13, Code of Federal Regulations as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.54–1 is revised to read as follows:

§ 122.54–1 Policy.

The Act authorizes a revolving line of credit for export purposes generally including, but not limited to, the development of foreign markets. No such loan shall be made for a period which exceeds three years.

3. Section 122.54–3 is amended by revising the first sentence to read as follows:

§ 122.54–3 Use of proceeds.

Proceeds of an ERLC loan can be used for export purposes in general including, but not limited to, the development of foreign markets.

* * * * *

§ 122.57–5 [Removed]

4. Section 122.57–5 removed.

(Catalog of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: February 4, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91–5551 Filed 3–11–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–ASW–45; Amdt. 39–6901]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BK–117 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal of fuel return lines, inspection of fuel supply tank vent outlet ports, modification and retrofit of electrical bonding jumpers on the landing gear, and the installation of electrostatic dischargers on MBB Model BK–117 series helicopters. The AD is needed to prevent uncontrolled fuel vapor ignition and fire which could result in the loss of the helicopter.

DATES: Effective Date: April 9, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 1991.

ADDRESSES: The applicable service bulletins may be obtained from MBB, P.O. Box 80 11 40, 8000 Munich 80, West Germany, or may be examined in the Regional Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. John Swihart, FAA, Rotorcraft Standards Staff, Fort Worth, TX 76193–0110, 817–624–5120.

SUPPLEMENTARY INFORMATION: The FAA recently received a summary of several reports of fuel vapor ignition on certain MBB Model BK–117 series helicopters which could result in an explosion, fire, and subsequent loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, and AD is being issued which requires the removal of fuel return lines, inspection of fuel supply tank vent outlet ports, modification and retrofit of electrical bonding jumpers on

the landing gear, and the installation of electrostatic dischargers on MBB Model BK-117 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39–[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Messerschmitt-Bolkow-Blohm(MBB): Amendment 39-6901. Docket No. 90-ASW-45.

Applicability: All MBB Model BK-117 series helicopters, certificated in any category with the following serial numbers (S/N):

S/N's 7001 up to and including 7261 (Ref. ASB-MBB-BK 117-60-104 dtd. August 11, 1989);

S/N's 7001 up to and including 7341 (Ref. ASB-MBB-BK 117-60-105 dtd. May 23, 1990);

S/N's 7001 up to and including 7215 (Ref. ASB-MBB-BK 117-60-107 dtd. December 12, 1989);

S/N's 7001 up to and including 7215 (Ref. ASB-MBB-BK 117-60-108 dtd. December 22, 1989).

Compliance: Required within the next 50 hours' time in service or within 28 days after the effective date of this AD, whichever comes first.

To prevent uncontrolled fuel vapor ignition which could result in an explosion, fire, and the subsequent loss of the helicopter, accomplish the following:

(a) Modify and retrofit the bonding jumpers on the landing gear in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-60-104, dated August 11, 1989.

(b) Install electrostatic dischargers and modify the fuel vent outlet parts in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-60-105, dated May 23, 1990, with the following changes to Figure 2, page 10 of 12:

(1) The Note 4 dimension is changed from 145-155 mm to 125 mm.

(2) The P/N 117-161001.03 bracket shown in View A must be rotated 180°.

(3) The added washer, P/N LN 9016-06L (Item 15), must be relocated to the top of the bolt, between the cable terminal and the bolt head, instead of as shown.

(4) In addition, conduct a control freedom check; i.e. collective down, cyclic full forward, aft, left, and right and repeat with collective full-up to assure there is no tension in the cables at any control position.

Note: These four changes are intended to allow enough slack for blade folding and to keep the grip bolt from contacting the sleeve, thus allowing full pitch angle change without straining the jumper.

(c) Remove, without replacing, the fuel return lines in accordance with MBB Alert Service Bulletin, ASB-MBB-BK 117-60-107, dated December 12, 1989.

(d) Inspect fuel supply tank vent outlet ports in accordance with MBB Service Bulletin SB-MBB-BK 117-60-108 dated December 22, 1989, to assure that they are not closed by paint.

(e) An alternate method of compliance with this AD or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Federal Aviation Administration, Fort Worth, Texas 76193-0110, telephone (817) 624-5110.

(f) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspections required by the AD may be accomplished.

The procedures shall be done in accordance with the following service bulletins: ASB-MBB-BK 117-60-104, dated August 11, 1989; ASB-MBB-BK 117-60-105, dated May 23, 1990; ASB-MBB-BK 117-60-107, dated December 12, 1989; and ASB-MBB-BK 117-60-108, dated December 22, 1989, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MBB, P.O. Box 80 11 40, 8000 Munich 80, West Germany. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., room 8301, Washington, DC.

Amendment 39-6901 becomes effective April 9, 1991.

Issued in Fort Worth, Texas, on February 5, 1991.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-5777 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AGL-23]

Alteration to Transition Area; Bellaire, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Bellaire, MI, transition area by reducing the existing transition are radius. While evaluating the airspace necessary for accommodating a new Microwave Landing System (MLS) Runway 02 instrument approach procedure to Antrim County Airport, Bellaire, MI, the FAA determined that a reduction in the existing transition area radius was in order. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

EFFECTIVE DATE: 0901 U.T.C. May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION: .

History

On Tuesday, January 8, 1991, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter a transition area airspace near Bellaire, MI (56 FR 663). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Bellaire, MI. While evaluating the airspace necessary to accommodate a new MLS Runway 02 instrument approach procedure transition area radius was in order. The modification to the existing airspace will consist of reducing the existing Bellaire, MI, transition area radius from an 11-mile radius to a 5-mile radius.

The development of the new MLS Runway 02 procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for the procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Bellaire, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Antrim County Airport (lat. 44°59'19"N., long. 85°11'54"W.); and within 3 miles each side of the 198° bearing from the airport extending from the 5-mile radius to 14 miles south of the airport and within 4.75 miles each side of the Traverse City, MI, VORTAC 037 radial, extending from the 5-mile radius to 27 miles southwest of the airport, excluding that portion which overlies the Traverse City, MI, transition area.

Issued in Des Plaines, Illinois, on February 27, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-5782 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-ASO-30]

Establishment of Transition Area, Elizabethtown, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Elizabethtown, NC Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Elizabethtown Airport predicated on the Elizabethtown nondirectional radio beacon (NDB). This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the airport. The additional controlled airspace is required for protection of instrument flight rules (IFR) aeronautical operations. Also, the operating status of the airport will change from visual flight rules (VFR) to IFR concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 u.t.c., August 22, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On January 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Elizabethtown, NC Transition Area (56 FR 973). This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Elizabethtown Airport. An instrument approach procedure has been developed to serve the airport and the additional controlled airspace would be required for protection of IFR aeronautical operations. Also, the operating status of the airport would be changed from VFR to IFR concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes the Elizabethtown, NC Transition Area. This action lowers the base of controlled airspace from 1200 to 700 feet above the surface in vicinity of the Elizabethtown Airport. This action is necessary in order to provide controlled airspace protection for IFR aircraft executing a recently developed instrument approach procedure to the airport. The operating status of the airport will change from VFR to IFR concurrent with publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Elizabethtown, NC [New]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Elizabethtown Airport (lat. 34°36'15"N., long. 78°35'15"W.).

Issued in East Point, Georgia, on February 25, 1991.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 91-5776 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-AGL-20]

Alteration to Transition Area; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Minot, ND, transition area to accommodate a revised VOR Runway 08 Standard Instrument Approach Procedure (SIAP) to Minot International Airport, Minot, ND, and update the latitude/longitude coordinates for the airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 26, 1990, the Federal Aviation Administration (FAA) proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter a transition area airspace near Minot, ND (55 FR 53003). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the designated transition area airspace near Minot, ND. The transition area is being modified to accommodate a revised VOR Runway 08 SIAP to Minot International Airport, Minot, ND, and to update the coordinates for the airport. The modification to the existing airspace will consist of a 7-mile width each side of the Minot VORTAC 258° radial extending from the existing 10-mile radius area to 17.5 miles west of the VORTAC.

The revised instrument approach procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700 foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule when promulgated, will not have a significant economic impact on a substantial number of small entities enter the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Minot, ND [Revised]

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Minot AFB (lat. 48°24'55"N., long. 101°21'25"W.); within a 10-mile radius of Minot International Airport (lat. 48°15'34"N., long. 101°16'51"W.); within 7 miles each side of the Minot VORTAC 258 radial extending from the 10-mile radius area to 17.5 miles west of the VORTAC; and within 4 miles each side of the Minot VORTAC 138 radial extending from the 10-mile radius area to 15.5 miles southeast of the VORTAC; and within 5 miles each side of the Minot VORTAC 097 radial, extending from the 10-mile radius area to 12 miles east of the VORTAC; that airspace extending upward from 1,200 feet above the surface within a 54-mile radius of Minot AFB excluding the area north of lat. 49°00'00"N.

Issued in Des Plaines, Illinois, on February 27, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-5781 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 90-ASO-36]

Revision of Control Zone and Transition Area, Beaufort, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Beaufort, SC Control Zone and Transition Area. Arrival area extensions are added to the control zone southwest and northwest of the airport. The extensions provide controlled airspace protection for instrument flight rules (IFR) aircraft executing standard instrument approach procedures (SIAPs) to Runways 5 and 14 at Beaufort Marine Corps Air Station (MCAS). The transition area is revised to eliminate the arrival area extension northeast of the airport. Additionally, minor corrections are made in the latitude/longitude coordinate position of Beaufort MCAS and Beaufort County Airports.

EFFECTIVE DATE: 0901 u.t.c., August 22, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 18, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Beaufort, SC Control Zone and Transition Area (55 FR 51925). Arrival area extensions would be added to the control zone southwest and northwest of Beaufort MCAS Airport. The transition area would be revised to eliminate the arrival area extension northeast of MCAS Beaufort. Additionally, minor corrections were proposed in the latitude/longitude coordinate positions of Beaufort MCAS and Beaufort County Airports (55 FR 51925). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes this amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Beaufort, SC, Control Zone and Transitional Area. Arrival area extensions are added to the control zone to provide additional controlled airspace protection for IFR aircraft executing standard instrument approaches to runways 5 and 14 at MCAS Beaufort. An arrival area extension is eliminated from the transition area northeast of MCAS Beaufort. Additionally, minor corrections are made in the latitude/longitude coordinates positions of Beaufort MCAS and Beaufort County Airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Beaufort, SC [Revised]

Within a 5-mile radius of Beaufort MCAS (lat. 32°28'36"N., long. 80°43'24"W.); within 2 miles each side of Beaufort TACAN (lat. 32°28'44"N., long. 80°43'03"W.) 036°, 229° and 302° radials extending from the 5-mile radius zone to 7 miles NE, SW, and NW of the TACAN.

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Beaufort, SC [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Beaufort MCAS (lat. 32°28'36"N., long. 80°43'24"W.); within a 6-mile radius of Beaufort County Airport (lat. 32°24'43"N., long. 80°38'05"W.); excluding that portion that coincides with the Hilton Head Island, SC Transition Area.

Issued in East Point, Georgia, on February 25, 1991.

Don Cass,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-5779 Filed 3-11-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8337]

RIN 1545-AM08

Allocation and Apportionment of Deduction for State Income Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the allocation and apportionment of deductions for state income taxes in computing taxable income from source inside and outside the United States. These regulations are issued under the authority contained in section 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1976, except as follows:

§ 1.861-8(e)(6)(ii) (other than § 1.861-8(e)(6)(ii)(D)).	Taxable years beginning on or after January 1, 1958.
§ 1.861-8(g), the language preceding the examples.	Taxable years beginning on or after January 1, 1968.
§ 1.861-8(g), *Examples 25* through *32*.	Taxable years beginning on or after January 1, 1968.
§ 1.861-8(e)(6)(ii)(D).....	Taxable years ending after March 12, 1991.
§ 1.861-8(g), *Example 33*.	Taxable years ending after March 12, 1991.

FOR FURTHER INFORMATION CONTACT: David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL-112-88) (202-566-6645, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public comment pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1224.

Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20024.

The collections of information in these regulations are in §§ 1.861-8(e)(6)(ii)(C)(2), and 1.861-8(e)(6)(ii)(D). The information in § 1.861-8(e)(6)(ii)(C)(2) is required by the Service to serve as disclosure of the relevant facts affecting the treatment of the allocation and apportionment of the deduction for state income taxes. This information will be used to monitor compliance with the regulations. The information in § 1.861-8(e)(6)(ii)(D) is required by the Internal Revenue Service to enable taxpayers to make an election to use safe harbor methods of allocating and apportioning the deduction for state income taxes. This information will be used to monitor compliance with the terms of the safe harbor methods. The likely respondents are businesses or other for profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of income. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1000 hours.

The estimated annual burden per respondent varies from thirty minutes to one hour and thirty minutes, with an estimated average of one hour.

Estimated number of respondents: 1000.

Estimated annual frequency of responses: Annually.

Background

On December 12, 1988, the **Federal Register** published a notice of proposed rulemaking by cross-reference to temporary regulations (53 FR 49893 [INTL-41-88, 1989-1 C.B. 1025]) and temporary regulations (53 FR 49873 [T.D. 8236, 1989-1 C.B. 228]) amending the Income Tax Regulations (26 CFR part 1) under sections 861(b) 862(b), and 863(a) of the Internal Revenue Code of 1986. The notice restated and clarified the general principles applicable to the allocation and apportionment of the deduction for state, local and foreign income, war profits and excess profits taxes (herein "state income taxes"), and provided five specific examples of an appropriate method for the allocation and apportionment of the deduction for state income taxes.

Written comments responding to the notice were received. A public hearing was held on May 19, 1989. After consideration of all comments regarding the notice, that notice is adopted by this Treasury Decision. The significant points raised by the comments and the revisions are discussed below.

Explanation of provisions

Section 1.861-8

Section 1.861-8(e)(6)(i): As adopted by this document, paragraph (e)(6)(i) of § 1.861-8 retains the rule of paragraph (e)(6)(i) of the prior final regulation that the deduction for state income taxes is definitely related, and thus allocable, to the gross income with respect to which those taxes are imposed. This rule is based upon the basic principle, stated in paragraph (a)(2) of § 1.861-8, that a deduction is to be allocated and, if necessary, apportioned based upon the factual relationship of the deduction to gross income.

In response to comments, the regulations have been revised to state more clearly that certain examples in the regulations do not provide exclusive methods of allocating and apportioning the deduction for state income taxes. In addition, the regulations provide two safe harbor methods that taxpayers may elect to use for purposes of allocating and apportioning the deduction for state income taxes.

Several commentators have argued that the deduction for state franchise taxes computed by reference to state taxable income should be allocated to a class of gross income consisting solely of income from sources within the United States. These commentators reason that, because a state franchise tax is technically a tax imposed upon a corporation's activity in that state, the tax is necessarily an expense related to income from sources within the United States.

This argument was rejected for two reasons. First, as discussed below, activities in a state may generate income from sources within or without the United States, or from both sources. Second, state franchise taxes measured by taxable income and state income taxes bear the same factual relationship to income. For example, one state imposes a franchise tax measured by the state's definition of taxable income on corporations doing business in that state, and an income tax imposed at the same rate on the same definition of taxable income on corporations that are not doing business in the state, but that derive income from sources within the state. A state franchise tax should not be allocated and apportioned differently than an income tax computed in an identical manner by the same state. The final regulations continue to reflect the view that a state franchise tax measured by state taxable income, like a state income tax, has a definite factual relationship to the income on which it is imposed, and continue to apply the general rule of paragraph (e)(6)(i) of § 1.861-8 to the deduction for such state franchise taxes.

Other commentators have asserted that the states are not constitutionally permitted to tax income from sources outside the state, and thus have reasoned that the deduction for state income taxes must be allocated solely to income from sources within the United States. The argument of these commentators was rejected because it reflects a misinterpretation of the decisions of the U.S. Supreme Court. The Court has explained that income apportioned by a state to business activities in that state under the unitary business theory of taxation may have more than one geographical source, and is not to be equated with the income sourced in that state in the geographical sense. Moreover, the Court has indicated that states may tax income that is considered to be from foreign sources under the principles of the Internal Revenue Code, provided the income has the appropriate nexus to activities performed in the state. *Mobil Oil Corp.* v. *Commissioner of Taxes*, 445 U.S. 425, 437-440 (1980).

Other commentators assert that a state income tax should be considered an additional cost of doing business, and should be allocated by reference to the income that is considered under federal income tax principles to be derived from that business, without regard to whether the state imposes its income tax on income determined using

federal income tax principles. This argument was rejected because an allocation and apportionment of state income tax on this basis would ignore the direct factual relationship between a state income tax and the income upon which the state actually imposes the tax. The factual relationship of a state income tax to income computed under state law concepts is demonstrated by the fact that the amount of a state income tax increases or decreases in direct relation to the amount of income taxable by the state. A state income tax that is not based upon income determined under federal income tax principles has no such factual relationship to income based upon federal income tax principles.

Other commentators similarly argue that the determination of the income upon which a state income tax is imposed, for purposes of applying paragraph (e)(6)(i) of this section, should be made by reference to federal income tax principles, rather than by reference to state law. These commentators argue that the use of federal income tax principles in determining the income upon which state income taxes are imposed would yield consistency by ignoring differing state definitions of taxable income. These commentators would allocate and apportion state income tax to foreign source income under § 1.861-8 only when the taxpayer's activities in the state are considered to have generated income that is foreign source income under federal income tax principles.

This argument was rejected for several reasons. First, as discussed above, this argument ignores the direct factual relationship between a state income tax and the income upon which the state actually imposes that tax. As discussed above, this factual relationship is demonstrated by the fact that the amount of state income tax changes in direct relation to the amount of income taxable by the state. A state income tax has no such factual relationship to a hypothetical amount of state taxable income calculated on the basis of federal income tax principles which the commentators suggest as the alternative. The U.S. Supreme Court, in *Container Corp.* v. *Franchise Tax Board*, 463 U.S. 159, 184-197 (1983), ruled that a state is not constitutionally required to use federal income tax principles in determining the amount of income attributable to activities in the state.

The methodology suggested by these commentators was also rejected because, contrary to the assertion of those commentators, it would not necessarily be simpler than the approach taken in the proposed regulations. For example, the suggested methodology would require a taxpayer doing business through branches in several states to make a hypothetical determination under federal income tax principles of the amount of income earned from activities in each individual state, without regard to operations in any other state. The proposed regulations, under which each state's determination of taxable income attributable to activities in that state may be presumed valid, would be much simpler to apply in this case.

Numerous comments have been received regarding the application of the proposed regulations to deductions for income taxes imposed by states which have adopted a unitary business theory of income taxation. A state which has adopted a unitary business theory first determines the scope of the unitary business of which a taxpayer corporation's activities in the state form a part. The total income of that unitary business is then apportioned between the taxing state and the rest of the world by means of a formula which takes into account objective measures ("factors") of the taxpayer corporation's activities within and without the taxing state. The most widely used apportionment formula gives equal weight to the proportions of total payroll, property, and sales which are located in the taxing state.

The unitary business theory of state income taxation contrasts with the "arm's length" approach of federal income tax law (and the income tax laws of several states), under which an individual corporation is treated for most purposes as an independent entity dealing at arm's length with affiliated corporations. Under an arm's length approach, a corporation is subject to taxation only with respect to the income reflected on its own books, assuming that such income has been determined on the basis of arm's length principles. (Formulary apportionment may also be used in the context of an arm's length approach by applying an apportionment formula to the total taxable income of a single corporation and considering factors attributable solely to that corporation.)

Commentators have argued that, in the case of a deduction for an income tax imposed by a state which has adopted the unitary business theory, the proposed regulations improperly allocate and apportion the deduction to income other than that of the taxpayer corporation. These commentators appear to reason that the unitary business theory results in the imposition of state tax in part upon the taxable income of corporations other than the corporation paying the tax and, therefore, that the proposed regulations' reliance on a state's definition of taxable income will result in such cases in the allocation of a deduction for state income tax paid by one corporation in part to income attributable to other corporations.

This argument was rejected because it fails to recognize that the unitary business theory takes into account the income, assets, and other factors of a group of affiliated corporations (*i.e.*, those comprising a unitary business) solely for purposes of determining the amount of taxable income that is properly attributable to the corporation or corporations over which a state has taxing jurisdiction. The application of formulary apportionment under a unitary business theory is simply one method of allocating the income of a multinational enterprise among its component parts (the "arm's length" approach being another such method). *Container Corp.* v. *Franchise Tax Board*, *supra*, at 188. A state which employs a unitary business theory imposes tax only upon taxable income which is attributed to a corporation over which it has taxing jurisdiction. It is, therefore, appropriate to allocate and apportion a deduction for state income taxes paid by such corporations on the basis of their state taxable income.

Finally, two commentators have argued that the proposed regulations are inconsistent with the pre-existing regulations under section 1502 of the Code relating to the computation of the consolidated foreign tax credit. These commentators assert that §§ 1.1502-4 and 1.1502-12 of the regulations require a corporation to allocate and apportion its deductions based upon income as determined under federal income tax principles. They argue that the proposed regulations are inconsistent because the proposed regulations can require the deduction for a state income tax to be allocated and apportioned based upon an amount of state taxable income determined under the unitary business theory of taxation. Implicit in this argument is the notion that the unitary business theory may result in the taxation of the income of corporations other than the taxpayer.

This argument was rejected because § 1.1502-12 of the regulations, which defines separate taxable income for purposes of determining the limitation on the consolidated foreign tax credit under § 1.1502-4, merely states that, subject to enumerated modifications not relevant here, the taxable income of a

BEST COPY AVAILABLE

corporation filing a consolidated income tax return as part of an affiliated group of corporations is to be computed using the same Code rules that would apply to a corporation filing a separate income tax return. Section 1.1502-12 does not alter the principle of § 1.861-8 that deductions are to be allocated and apportioned based on the factual relationship between the deduction and a class of gross income. Moreover, as noted above, the unitary business theory of taxation is merely a method of determining the amount of taxable income that can be properly attributed to the taxpayer corporation.

One commentator further argues that the proposed regulations are inconsistent with §§ 1.1502-4 and 1.1502-12 because they could require state income tax imposed under the unitary business theory of taxation to be apportioned to foreign source income, thereby creating a negative amount of foreign source taxable income when a corporation has no foreign source gross income for federal tax purposes. This commentator asserts that §§ 1.1502-4 and 1.1502-12 of the regulations, which refer to a company's "separate taxable income," do not permit an allocation and apportionment of a deduction to nonexistent foreign source gross income. This argument was rejected because it is contrary to the language of § 1.1502-12, which states that the term "separate taxable income" shall include an excess of deductions over gross income. It is also contrary to Example 17 of paragraph (g) of § 1.861-8, which illustrates that a deduction can be allocated and apportioned in part to foreign source income when computing the consolidated foreign tax credit in a year in which the taxpayer has no foreign source gross income. Example 17, which was promulgated in 1977, indicates that a deduction can be factually related and thus allocable to a class of gross income which includes foreign source income in a year in which the taxpayer actually derives no foreign source income. Thus, the allocation and apportionment of a deduction can create a foreign source loss for purposes of computing the consolidated foreign tax credit. This rule is restated in the final regulation and illustrated in new Example 30 of paragraph (g) of this section.

Section 1.861-8(e)(6)(ii): One commentator asked that an allocation of state income tax based upon a methodology illustrated in the examples be presumed reasonable, and thus binding upon the Service, except at the election of the taxpayer. This proposal is adopted with respect to Example 33. However, this proposal was rejected with respect to the remaining examples because it could bind the Service to an allocation based upon an example, even if the taxpayer's facts bore no resemblance to the facts upon which those examples were based. Such a result would violate the fundamental principle of these regulations—that deductions be allocated based upon the factual relationship of the deduction to a class of gross income.

The final regulations revise the proposed regulations to indicate that a taxpayer that chooses to apply the methodology of Example 25 of paragraph (g) of this section must also apply the modifications of Example 25 illustrated in Examples 26 and 27 of paragraph (g), and that a taxpayer must always apply the rule illustrated in Example 28, with respect to foreign source dividends taxed by a state without regard to factors of the corporations paying those dividends, without regard to whether the particular methodology of Example 25 is applied with respect to the remaining deduction. The modification illustrated in Example 26 must be applied if the taxpayer's deduction for state income taxes is attributable in part to taxes paid to a state which exempts foreign source income from taxation. The modification illustrated in Example 27 must be applied if the taxpayer has income-producing activities in a state which does not impose a corporate income tax or other tax computed by reference to income. The final regulations also revise the proposed regulations to clarify that a methodology illustrated in Example 25 (as modified by Examples 26 and 27), 29, or 31 will not be appropriate with respect to an actual taxpayer if the facts of the example are so dissimilar from the taxpayer's factual situation that the application of the example to the actual facts does not result in a reasonable allocation, under all of the facts and circumstances, of a deduction to the gross income to which it relates.

A deduction may be allocated and apportioned under a method other than those illustrated in Example 25 (as modified by Examples 26 and 27) or 29 if it is established to the satisfaction of the District Director upon examination that a different method yields a more accurate allocation and apportionment of state income taxes based on the factual relationship of the state income tax to the income on which the tax is imposed.

The final regulation reserves on simplified methods for dealing with the effect of redeterminations of state income tax liability, subsequent to an allocation and apportionment of the deduction for state income tax. A taxpayer is generally required to recompute its allocation and apportionment of the deduction for state income taxes in the event of a redetermination of any state income tax liability. The Service is considering adoption of an approach in which the taxpayer would be permitted to perform this recomputation on the basis of a methodology other than that used for the initial allocation and apportionment, provided that the new methodology was consistent with these final regulations. If a taxpayer had performed an initial allocation and apportionment of the deduction on the basis of a methodology which utilized ratios of foreign source federal taxable income and U.S. source federal taxable income to total federal taxable income, the taxpayer generally would not be required to recompute these ratios for purposes of reapplying the same methodology to the redetermined deduction. In view of the fact that some taxpayers may not have retained all of the records that might be required to recompute an allocation and apportionment for an early taxable year, the Service is also considering adoption of a rule analogous to that of the regulations under section 905(c) with respect to redeterminations relating to taxable years beginning before January 1, 1988. Under such a rule, the deduction for state income tax in the taxable year of redetermination (whether a pre-1988 or post-1987 taxable year) would then be allocated and apportioned under this final regulation using the information for the year of the redetermination. The Service hereby requests taxpayer comments with respect to the approaches described above and alternative approaches. Comments should be directed to Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-0009-91), Washington, DC 20224.

Section 1.861-8(e)(6)(iii): Paragraph (e)(6)(iii) of § 1.861-8 provides that the regulations in paragraph (e)(6)(i) are effective for taxable years beginning after December 31, 1976, and that the regulations in paragraph (e)(6)(ii) (other than paragraph (e)(6)(ii)(D)) and Examples 25 through 32 of § 1.861-8(g) are effective for taxable years beginning on or after January 1, 1988. Paragraph (e)(6)(ii)(D) and Example 33 of paragraph (g) of § 1.861-8 are effective for taxable years ending after March 12, 1991. This paragraph also provides taxpayers with the option to apply the regulations in (e)(6)(ii) (other than paragraph (e)(6)(ii)(D)) and Examples 25 through 32 of paragraph (g) to deductions for state income tax incurred in taxable years beginning before January 1, 1988.

Section 1.861-8(g)

Paragraph (g) of § 1.861-8 as promulgated herein restates the previously promulgated language that precedes the examples in § 1.861-8(g). Language on the effect of examples contained in this paragraph of the proposed regulations was moved to paragraph (e)(6)(ii) to clarify the effect of Examples 25 through 33. Several linguistic and clarifying changes also have been made to the language of Examples 25 through 29.

Example 27

The final regulations revise Example 27 to state more clearly that any reasonable method may be used to determine the amount of taxable income attributable to a corporate taxpayer's activities in a state that does not impose a corporate income tax.

Example 29

The language of Example 29 has been revised to indicate more clearly that a deduction for income tax imposed by a state that applies a unitary business theory to determine state taxable income is allocated and apportioned under § 1.861-8 based solely upon the taxable income which the state considers to be attributable to the taxpayer's activities in that state.

Examples 30 through 33

In response to comments concerning the allocation and apportionment of the deduction for state income taxes in computing the consolidated foreign tax credit limitation under § 1.1502-4, the final regulations add new Example 30. Example 30 illustrates the general rule (stated in paragraph (e)(6)(i) of this section) that the principles of Example 17 of paragraph (g) of this section apply in the case of a deduction for state income tax, and that a deduction for state income tax may be apportionable to foreign source income even if the taxpayer has a foreign source loss in the taxable year as a result of the allocation and apportionment of deductions. Example 30 also demonstrates that a deduction for income tax imposed by a state which applies a unitary business theory of taxation may be apportionable to foreign source income, even if the taxpayer corporation has no foreign activities of its own, if the taxpayer's unitary business group includes one or more corporations whose activities produce foreign source income that is attributed to the taxpayer corporation.

In response to comments requesting clarification of acceptable alternatives to, and modifications of, the examples contained in the proposed regulations, the final regulations add new Examples 31 and 32 to paragraph (g) of § 1.861-8. Example 31 illustrates a situation in which an alternative method of allocating and apportioning a deduction does reasonably reflect the factual relationship of the deduction to gross income. Example 32 illustrates a situation in which an alternative method of allocating and apportioning a deduction does not reasonably reflect the factual relationship of the deduction to gross income.

Example 33 illustrates the operation of the elective safe harbor methods.

Special Analyses

It has been determined that this final rule is not a major legislative regulation subject to Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David F. Chan of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861-1 through 1.997-1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in United States, Foreign tax credit, FSC, Source of income, United States investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.861-8T [Amended]

Par. 2. Section 1.861-8T is amended as follows:

1. Section 1.861-8T(e)(6) is removed and reserved.

2. Section 1.861-8T(g) introductory text and *Examples (25)* through *(29)* are removed.

Par. 3. Section 1.861-8 is amended as follows:

1. Section 1.861-8(e)(6) is revised to read as set forth below.

2. In § 1.861-8(g), "[Reserved]" is removed, the introductory text and *Examples 25* and *26* are revised, and *Examples 27* through *33* are added to read as set forth below. The amendments to § 1.861-8 read as follows:

§ 1.861-8. Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) *Allocation and apportionment of certain deductions* * * *

(6) *Income taxes*—(i) *In general.* The deduction for state, local, and foreign income, war profits and excess profits taxes ("state income taxes") allowed by section 164 shall be considered definitely related and allocable to the gross income with respect to which such state income taxes are imposed. For example, if a domestic corporation is subject to state income taxation and the state income tax is imposed in part on an amount of foreign source income, then that part of the taxpayer's deduction for state income tax that is attributable to foreign source income is definitely related and allocable to foreign source income. In allocating and apportioning the deduction for state income tax for purposes including (but not limited to) the computation of the foreign tax credit limitation under section 904 of the Code and the consolidated foreign tax credit under § 1.1502-4 of the regulations, the income upon which the state income tax is imposed is determined by reference to the law of the jurisdiction imposing the tax. Thus, if a state attributes taxable income to a corporate taxpayer by applying an apportionment formula that takes into consideration the income and factors of one or more corporations related by ownership to the corporate taxpayer and engaging in activities

related to the business of the corporate taxpayer, then the income so attributed is the income upon which the state income tax is imposed. If the income so attributed to the corporate taxpayer includes foreign source income, then, in computing the taxpayer's foreign tax credit limitation under section 904, for example, the taxpayer's deduction for state income tax will be considered definitely related and allocable to a class of gross income that includes the statutory grouping of foreign source income. When the law of the state includes dividends that are treated under section 862(a)(2) as income from sources without the United States in taxable income apportionable to the state, but does not include factors of the corporation paying such dividends in the apportionment formula used to determine state taxable income, an appropriate portion of the deduction for state income tax will be considered definitely related and allocable to a class of gross income consisting solely of foreign source dividend income. A deduction for state income tax will not be considered definitely related to a hypothetical amount of income calculated under federal tax principles when the jurisdiction imposing the tax computes taxable income under different principles. A corporate taxpayer's deduction for a state franchise tax that is computed on the basis of income attributable to business activities conducted within the state must be allocated and apportioned in the same manner as the deduction for state income taxes. In determining, for example, both the foreign tax credit under section 904 of the Code and the consolidated foreign tax credit limitation under § 1.1503-4 of the regulations, the deduction for state income tax may be allocable and apportionable to foreign source income in a statutory grouping described in section 904(d) in a taxable year in which the taxpayer has no foreign source income in such statutory grouping. Alternatively, such an allocation or apportionment may be appropriate if a taxpayer corporation has no foreign source income in a statutory grouping, but its deduction is attributable to foreign source income in such grouping that is attributed to the taxpayer corporation under the law of a state which attributes taxable income to a corporation by applying an apportionment formula that takes into consideration the income and factors of one or more corporations related by ownership to the taxpayer corporation and engaging in activities related to the business of the taxpayer corporation.

Example 30 of paragraph (g) of this section illustrates the application of this last rule.

(ii) *Methods of allocation and apportionment*—(A) *In general.* A taxpayer's deduction for a state income tax is to be allocated (and then apportioned, if necessary, subject to the rules of § 1.861-8(d)) by reference to the taxable income that the law of the taxing jurisdiction attributes to the taxpayer ("state taxable income").

(B) *Effect of subsequent recomputations of state income tax.* [Reserved]

(C) *Illustrations*—(1) *In general.* Examples 25 through 32 of paragraph (g) of § 1.861-8 illustrate, in the given factual situations, the application of this paragraph (e)(6) and the general rule of paragraph (b)(1) of this section that a deduction must be allocated to the class of gross income to which the deduction is factually related. In general, these examples employ a presumption that state income taxes are allocable to a class of gross income that includes the statutory grouping of income from sources without the United States when the total amount of taxable income determined under state law exceeds the amount of taxable income determined under the Code (without taking into account the deduction for state income taxes) in the residual grouping of income from sources within the United States. A taxpayer that allocates and apportions the deduction for state income tax in accordance with the methodology of Example 25 of paragraph (g) of this section must also apply the modifications illustrated in Examples 26 and 27 of paragraph (g) of this section, when applicable. The modification illustrated in *Example 26* is applicable when the deduction for state income tax is attributable in part to taxes imposed by a state which factually excludes foreign source income (as determined for federal income tax purposes) from state taxable income. The modification illustrated in *Example 27* is applicable when the taxpayer has income-producing activities in a state which does not impose a corporate income tax. The specific allocation of state income tax illustrated in Example 28 follows the rule in paragraph (e)(6)(i) of this section, and must be applied whenever a taxpayer's state taxable income includes dividends apportioned to the state under a formula that does not take into account the factors of the corporations paying those dividends, regardless of whether the taxpayer uses the methodology of Example 25 with respect to the remainder of the deduction for state income taxes.

(2) *Modifications.* Before applying a method of allocation and apportionment illustrated in the examples, the computation of state taxable income under state law may be modified, subject to the approval of the District Director, to reflect more accurately the income with respect to which the state income tax is imposed. Any modification to the state law computation of state taxable income must yield an allocation and apportionment of the deduction for state income taxes that is consistent with the rules contained in this paragraph (e)(6), and that accurately reflects the factual relationship between the state income tax and the income on which that tax is imposed. For example, a modification to the computation of taxable income under state law might be appropriate to compensate for differences between the state law definition of taxable income and the federal definition of taxable income, due to a difference in the rate of allowable depreciation or the amount of another deduction that is allowable under both systems. This rule is illustrated in Example 31 of paragraph (g) of this section. However, a modification to the computation of taxable income under state law will not be appropriate, and will not more accurately reflect the factual relationship between the state tax and the income on which the tax is imposed, to the extent such modification reflects the fact that the state does not follow federal tax principles in attributing income to the taxpayer's activities in the state. This rule is illustrated in Example 32 of paragraph (g) of this section. A taxpayer may not modify the methods illustrated in the examples, or use an alternative method of allocation and apportionment of the deduction for state income taxes, if the modification or alternative method would be inconsistent with the rules of paragraph (e)(6)(i) of this section. A taxpayer that uses a method of allocation and apportionment other than one illustrated in Example 25 (as modified by Examples 26 and 27), or 29 with respect to a factual situation similar to those of the examples, must describe the alternative method on an attachment to its federal income tax return and establish to the satisfaction of the District Director, upon examination, that the result of the alternative method more accurately reflects the factual relationship between the state income tax and the income on which the tax is imposed.

(D) *Elective safe harbor methods.* (1) *In general.* In lieu of applying the rules set forth in paragraphs (e)(6)(ii) (A) through (C) of this section, a taxpayer

may elect to allocate and apportion the deduction for state income tax in accordance with one of the two safe harbor methods described in paragraph (e)(6)(ii)(D) (*2*) and (*3*) of this section. A taxpayer shall make this election for a taxable year by filing a timely tax return for that year that reflects an allocation and apportionment of the deduction for state income tax under one of the safe harbor methods and attaching to such return a statement that the taxpayer has elected to use the safe harbor method provided in either paragraph (e)(6)(ii)(D) (*2*) or (*3*) of this section, as appropriate. Once made, this election is effective for the taxable year for which made and all subsequent taxable years, and may be revoked only with the consent of the Commissioner. Example 33 of paragraph (g) of this section illustrates the application of these safe harbor methods.

(*2*) *Method One.* (*i*) *Step One—Specific allocation to foreign source portfolio dividends.* If any portion of the deduction for state income tax is attributable to tax imposed by a state which includes in a corporate taxpayer's taxable income apportionable to the state, portfolio dividends (as defined in paragraph (i) of Example 28 of paragraph (g) of this section) that are treated under section 862(a)(2) as income from sources without the United States, but does not include factors of the corporations paying the portfolio dividends in the apportionment formula used to determine state taxable income, the taxpayer shall allocate an appropriate portion of the deduction to a class of gross income consisting solely of foreign source portfolio dividends. The portion of the deduction so allocated, and the amount of foreign source portfolio dividends included in such class, shall be determined in accordance with the methodology illustrated in paragraph (ii) of Example 28 of paragraph (g). The taxpayer shall reduce its aggregate state taxable income by the amount of foreign source portfolio dividends to which a specific allocation is made (the reduced amount being referred to hereinafter as "adjusted state taxable income").

(*ii*) *Step Two—Adjustment of U.S. source federal taxable income.* If the taxpayer has significant income-producing activities in a state which does not impose a corporate income tax or other state tax measured by income derived from business activities in the state, the taxpayer shall reduce its U.S. source federal taxable income (solely for purposes of this safe harbor method) by the amount of federal taxable income attributable to its activities in such state. This amount shall be determined in accordance with the methodology illustrated in paragraph (ii) of Example 27 of paragraph (g) of this section, provided that the taxpayer shall be required to use the rules of the Uniform Division of Income for Tax Purposes Act to attribute income to the relevant state. The taxpayer's U.S. source federal taxable income, as so reduced, is referred to hereinafter as "adjusted U.S. source federal taxable income."

(*iii*) *Step Three—Allocation.* The taxpayer shall allocate the remainder of the deduction for state income tax (after reduction by the portion allocated to foreign source portfolio dividends under Step One) in accordance with the methodology illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section, illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section, a comparison of its adjusted state taxable income to an amount equal to 110% of its adjusted U.S. source federal taxable income.

(*iv*) *Step Four—Apportionment.* In the event that apportionment of the remainder of the deduction for state income tax is required, the taxpayer shall apportion that remaining deduction to U.S. source income in accordance with the methodology illustrated in paragraph (iii) of Example 25 of paragraph (g) of this section, substituting for domestic source income in that paragraph an amount equal to 110% of the taxpayer's adjusted U.S. source federal taxable income. The remaining portion of the deduction shall be apportioned to the statutory groupings of foreign source income described in section 904(d) of the Code in accordance with the proportion of the income in each statutory grouping of foreign source income described in section 904(d) to the taxpayer's total foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above).

(*3*) *Method Two.* (*i*) *Step One—Specific allocation to foreign source portfolio dividends.* Step One of this method is the same as Step One of Method One (as described in paragraph (e)(6)(ii)(D)(*2*)(*i*) of this section).

(*ii*) *Step Two—Adjustment of U.S. source federal taxable income.* Step Two of this method is the same as Step Two of Method One (as described in paragraph (e)(6)(ii)(D)(*2*)(*ii*) of this section).

(*iii*) *Step Three—Allocation.* The taxpayer shall allocate the remainder of the deduction for state income tax (after reduction by the portion allocated to foreign source portfolio dividends under Step One) in accordance with the methodology illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section. However, the taxpayer shall substitute for the comparison of aggregate state taxable income to U.S. source federal taxable income, illustrated in paragraph (ii) of Example 25 of paragraph (g) of this section, a comparison of its adjusted state taxable income to its adjusted U.S. source federal taxable income.

(*iv*) *Step Four—Apportionment.* In the event that apportionment of the deduction is required, the taxpayer shall apportion to U.S. source income that portion of the deduction that is attributable to state income taxes imposed upon an amount of state taxable income equal to adjusted U.S. source federal taxable income. The taxpayer shall apportion the remaining amount of the deduction to U.S. and foreign source income in the same proportions that the taxpayer's adjusted U.S. source federal taxable income and foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above) bear to its total federal taxable income (taking into account the adjustment of U.S. source federal taxable income under Step Two and after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One). The portion of the deduction apportioned to foreign source income shall be apportioned among the statutory groupings described in section 904(d) of the Code in accordance with the proportions of the taxpayer's total foreign source federal taxable income (after reduction by the amount of foreign source portfolio dividends to which tax has been specifically allocated under Step One, above) in each grouping.

(iii) *Effective dates.* The rules of § 1.861-8(e)(6)(i) and the language preceding the examples in § 1.861-8(g) are effective for taxable years beginning after December 31, 1976. The rules of § 1.861-8(e)(6)(ii) (other than § 1.861-8(e)(6)(ii)(D)) and Examples 25 through 32 of § 1.861-8(g) are effective for taxable years beginning on or after January 1, 1988. The rules of § 1.861-8(e)(6)(ii)(D) and Example 33 of § 1.861-8(g) are effective for taxable years ending after March 12, 1991. At the option of the taxpayer, however, the rules of § 1.861-8(e)(6)(ii) (other than

§ 1.861-8(e)(6)(ii)(E)(2)) and Examples 25 through 32 of § 1.861-8(g) may be applied with respect to deductions for state taxes incurred in taxable years beginning before January 1, 1992.

* * * * *

(g) *General examples.* The following examples illustrate the principles of this section. In each example, unless otherwise specified, the operative section which is applied and gives rise to the statutory grouping of gross income is the overall limitation to the foreign tax credit under section 904(a). In addition, in each example, where a method of allocation or apportionment is illustrated as an acceptable method, it is assumed that such method is used by the taxpayer on a consistent basis from year to year (except in the case of the optional method for apportioning research and development expense under paragraph (e)(3)(iii) of § 1.861-8). Further, it is assumed that each party named in each example operates on a calendar year accounting basis and, where the party is a U.S. taxpayer, files returns on a calendar year basis.

* * * * *

Example 24—Income Taxes—(i) *Facts.* X, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states A, B, and C. X also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In 1992, X has taxable income from these activities, as described under the Code (without taking into account the deduction for state income taxes), of $1,000,000, of which $200,000 is foreign source general limitation income subject to a separate limitation under section 904(d)(1)(I) ("general limitation income") and $800,000 is domestic source income. States A, B, and C each determine X's income subject to tax within their state by making adjustments to X's taxable income as determined under the Code, and then apportioning the adjusted taxable income on the basis of the relative amounts of X's payroll, property, and sales within each state as compared to X's worldwide payroll, property, and sales. The adjustments made by states A, B, and C all involve adding and subtracting enumerated items from taxable income as determined under the Code. However, in making these adjustments to taxable income, none of the states specifically exempts foreign source income as determined under the Code. On this basis, it is determined that X has taxable income of $550,000, $200,000, and $250,000 in states A, B, and C, respectively. The corporate tax rates in states A, B, and C are 10 percent, 5 percent, and 2 percent, respectively, and X has total state income tax liabilities of $69,000 ($55,000 + $10,000 + $4,000), which it deducts as an expense for federal income tax purposes.

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since the statutes of states A, B, and C do not specifically exempt foreign source income (as determined under the Code) from taxation, and since, in the aggregate, states A, B, and C tax $800,000 of X's income while only $800,000 is domestic source income under the Code, it is presumed that state income taxes are imposed on $550,000 of foreign source income. The deduction for state income taxes is therefore related and allocable to both X's foreign source and domestic source income.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The state income tax deduction of $69,000 must be apportioned between these two groupings. Corporation X calculates the apportionment on the basis of the relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, state income taxes are presumed to be imposed on $800,000 of domestic source income and $150,000 of foreign source general limitation income.

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $69,000 × ($150,000/$950,000) $10,895

State income tax deduction apportioned to income from sources within the United States (residual grouping): $69,000 × ($800,000/$950,000) 58,105

Total apportioned state income tax deduction $69,000

Example 25—Income Taxes—(i) *Facts.* Assume the same facts as in Example 25 except that the language of state A's statute and the statute's operation exempt from taxation all foreign source income, as determined under the Code, so that foreign source income is not included in adjusted taxable income subject to apportionment in state A (and factors relating to X's country Y branch are not taken into account in computing the state A apportionment fraction).

(ii) *Allocation.* X's deduction of $69,000 for state income taxes is definitely related and thus allocable to the gross income with respect to which the taxes are imposed. Since state A exempts all foreign source income by statute, state A is presumed to impose tax on $550,000 of X's $800,000 of domestic source income. X's state A tax of $55,000 is allocable, therefore, solely to domestic source income. Since the statutes of states B and C do not specifically exclude all foreign source income as determined under the Code, and since states B and C impose tax on $600,000 ($200,000 + $200,000) of X's income of which only $250,000 ($800,000 − $550,000) is presumed to be domestic source, the deduction for the $14,000 of income taxes imposed by states B and C is related and allocable to both foreign source and domestic source income.

(iii) *Apportionment.* (A) For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation gross income, and one residual grouping, gross income from sources within the United States. The deduction of $14,000 for income taxes of states B and C must be apportioned between these two groupings.

(B) Corporation X calculates the apportionment on the basis of the relative amounts of foreign source general limitation income and U.S. source income subject to state taxation.

States B and C income tax deduction apportioned to foreign source general limitation income (statutory grouping): $14,000 × ($150,000/$400,000) $5,250

States B and C income tax deduction apportioned to income from sources within the United States (residual grouping): $14,000 × ($250,000/$400,000) 8,750

Total apportioned state income tax deduction $14,000

(C) Of X's total income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $5,250. The total amount of state income taxes allocated and apportioned to U.S. source income equals $63,750 ($55,000 + $8,750).

Example 27—Income Tax—(i) *Facts.* Assume the same facts as in Example 26 except that state A, in which X has significant income-producing activities, does not impose a corporate income tax or other state tax computed on the basis of income derived from business activities conducted in state A. X therefore has a total state income tax liability in 1992 of $14,000 ($10,000 paid to state B plus $4,000 paid to state C), all of which is subject to allocation and apportionment under paragraph (b) of this section.

(ii) *Allocation.* (A) X's deduction of $14,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. However, in these facts, an adjustment is necessary before the aggregate state taxable incomes can be compared with U.S. source income on the federal income tax return in the manner described in Examples 26 and 28. Unlike the facts in Examples 25 and 26, state A imposes no income tax and does not define taxable income attributable to activities in state A. The total amount of X's income subject to state taxation is, therefore, $400,000 ($200,000 in state B and $200,000 in state C). This total presumptively does not include any income attributable to activities performed in state A and therefore can not properly be compared to total U.S. source taxable income reported by X for federal income tax purposes, which does include income attributable to state A activities.

(B)(1) Accordingly, before applying the method used in Examples 25 and 26 to the facts of this example, it is necessary first to estimate the amount of taxable income that state A could reasonably attribute to X's activities in state A, and then to reduce federal taxable income by that amount.

(2) Any reasonable method may be used to attribute taxable income to X's activities in state A. For example, the rules of the Uniform Division of Income for Tax Purposes Act ("UDITPA") attribute income to a state on the basis of the average of three ratios that are based upon the taxpayer's facts—property within the state over total property, payroll within the state over total payroll, and sales within the state over total sales—and, with adjustments, provide a reasonable method for this purpose. When applying the rules of UDITPA to estimate U.S. source income derived from state A activities, the taxpayer's UDITPA factors must be adjusted to eliminate both taxable income and factors attributable to a foreign branch. Therefore, in this example all taxable income as well as UDITPA apportionment factors (property, payroll, and sales) attributable to X's country Y branch must be eliminated.

(C)(1) Since it is presumed that, if state A had had an income tax, state A would not attempt to tax the income derived by X's country Y branch, any reasonable estimate of the income that would be taxed by state A must exclude any foreign source income.

(2) When using the rules of UDITPA to estiamte the income that would have been taxable by state A in these facts, foreign source income is excluded by starting with federally defined taxable income (before deduction for state income taxes) and subtracting any income derived by X's country Y branch. The hypothetical state A taxable income is then determined by multiplying the resulting difference by the average of X's state A property, payroll, and sales ratios, determined using the principles of UDITPA (after adjustment by eliminating the country Y branch factors). The resulting product is presumed to be exclusively U.S. source income, and the allocation and apportionment method described in Example 26 must then be applied.

(3) If, for example, state A taxable income were determined to equal $550,000, then $550,000 of U.S. source income for federal income tax purposes would be presumed to constitute state A taxable income. Under Example 26, the remaining $250,000 ($800,000 − $550,000) of U.S. source income for federal income tax purposes would be presumed to be subject to tax in states B and C. Since states B and C impose tax on $400,000, the application of Example 25 would result in a presumption that $150,000 is foreign source income and $250,000 is domestic source income. The deduction for the $14,000 of income taxes of states B and C would therefore be related and allocable to both foreign source and domestic source income and would be subject to apportionment.

(iii) *Apportionment.* The deduction of $14,000 for income taxes of states B and C is apportioned in the same manner as in Example 26. As a result, $5,250 of the $14,000 of state B and state C income taxes is apportioned to foreign source general limitation income ($14,000 × $150,000/$400,000), and $8,750 ($14,000 × $250,000/$400,000) of the $14,000 of state B and state C income taxes is apportioned to U.S. source income

Example 28—Income Tax—(i) *Facts.* (A) Assume the same facts as in Example 25 (X has $1,000,000 of taxable income for federal income tax purposes, $800,000 of which is U.S. source income and $200,000 of which is foreign source general limitation income), except that $100,000 of X's $200,000 of foreign source general limitation income consists of dividends from first-tier controlled foreign corporations ("CFCs") (as defined in section 957(a) of the Code) which derive exclusively foreign source general limitation income. X owns stock representing 10 to 50 percent of the vote and value in such CFCs.

(B) State A taxable income is computed by first making adjustments to X's federal taxable income. These adjustments result in X having a total of $1,100,000 of apportionable taxable income for state A tax purposes. None of the $100,000 of adjustments made by state A relate to the dividends paid by the CFCs. As in Example 25, the amount of apportionable taxable income attributable to business activities conducted in state A is determined by multiplying apportionable taxable income by a fraction (the "state apportionment fraction") that compares the relative amounts of X's payroll, property, and sales within state A with X's worldwide payroll, property and sales. An analysis of state A law indicates that state A law includes in its definition of the taxable business income of X which is apportionable to X's state A activities, dividends paid to X by its subsidiaries that are in the same business as X, but are less than 50 percent owned by X ("portfolio dividends"). The dividends received by X from the 10 to 50 percent owned first-tier CFCs, therefore, are considered to be portfolio dividends includable in apportionable business income for state A tax purposes. However, the factors of these CFCs are not included in the state A apportionment fraction for purposes of apportioning income to X's activities in the state. The comparison of X's state A factors with X's worldwide factors results in a state apportionment fraction of 50 percent. Applying this fraction to apportionable taxable income of $1,100,000, as determined under state law, results in attributing 50 percent of apportionable taxable income to state A, and produces total state A taxable income of $550,000. State A imposes an income tax at a rate of 10 percent on the amount of income that is attributed to state A, which results in $55,000 of tax imposed by state A.

(ii) *Allocation.* (A) States A, B, and C impose income taxes of $69,000 which must be allocated to the classes of gross income upon which the taxes are imposed. A portion of X's federal income tax dedution of $55,000 for state A income tax is definitely related and thus allocable to the class of gross income consisting of foreign source portfolio dividends. A definite relationship exists between a deduction for state income tax and portfolio dividends when a state includes portfolio dividends in state taxable income apportionable to the state, but determines state taxable income by applying an apportionment fraction that excludes the factors of the corporations paying those dividends. By applying a state apportionment fraction that excludes factors of the corporations paying portfolio dividends to apportionable taxable income that includes the $100,000 of foreign source portfolio dividends, $50,000 (50 percent of the $100,000) of the portfolio dividends is attributed to X's activities in state A and subjected to state A income tax. Applying the state A income tax rate of 10 percent to the $50,000 of foreign source portfolio dividends subjected to state A income tax, $5,000 of X's $55,000 total state A income tax liability is definitely related and allocable to a class of gross income consisting of the foreign source portfolio dividends. Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends from the first-tier CFCs are included within the general limitation described in section 904(d)(1)(I), the $5,000 of state A tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned. (If the total amount of state A tax imposed on foreign source portfolio dividends were to exceed the actual amount of X's state A income tax liability (for example, due to net operating losses), the actual amount of state A tax would be allocated entirely to those foreign source portfolio dividends.) After allocation of a portion of the state A tax to portfolio dividends, $50,000 ($55,000−$5,000) of state A tax remains to be allocated.

(B) A total of $64,000 (the aggregate of the $50,000 remaining state A tax, and the $10,000 and $4,000 of taxes imposed by states B and C, respectively) is to be allocated (as provided in Example 25) by comparing U.S. source taxable income (as determined under the Code) with the aggregate of the state taxable incomes determined by states A, B, and C (after reducing state apportionable taxable incomes by the amount of any portfolio dividends included in apportionable taxable income to which tax has been specifically allocated). X's state A taxable income, after reduction by the $50,000 of portfolio dividends taxed by state A, equals $500,000. X also has taxable income of $200,000 and $200,000 in states B and C, respectively. In the aggregate, therefore, states A, B, and C tax $900,000 of X's income, after excluding state taxable income attributable to portfolio dividends. Since X has only $800,000 of U.S. source taxable income for federal income tax purposes, it is presumed that sate income taxes are imposed on $100,000 of foreign source income. The remaining deduction of $64,000 for state income taxes is therefore related and allocable to both foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* For purposes of computing the foreign tax credit limitation, X's income is comprised of one statutory grouping, foreign source general limitation income, and one residual grouping, gross income from sources within the United States. The remaining state income tax deduction of $64,000 must be apportioned between these two groupings on the basis of relative amounts of foreign source general limitation taxable income and U.S. source taxable income subject to state taxation. In this case, the $64,000 of state income taxes is

considered to be imposed on $800,000 of domestic source income and $100,000 of foreign source general limitation income and is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $64,000 × ($100,000/$900,000)	$7,111
State income tax deduction apportioned to income from sources within the United States (residual grouping): $64,000 × ($800,000/$900,000)	56,889
Total apportioned state income tax deduction	$64,000

Of the total state income taxes of $69,000, the amount allocated and apportioned to foreign source general limitation income equals $12,111 ($5,000 + $7,111). The total amount of state income taxes allocated and apportioned to U.S. source income equals $56,889.

Example 29—Income Taxes—(i) *Facts.* (A) P, a domestic corporation, is a manufacturer and distributor of electronic equipment with operations in states F, G, and H. P also has a branch in country Y which manufactures and distributes the same type of electronic equipment. In addition, P has three wholly owned subsidiaries, US1, US2, and FS, the latter a controlled foreign corporation ("CFC") as defined in section 957(a) of the Code. P also owns stock representing 10 to 50 percent of the vote and value of various other first-tier CFCs that derive exclusively foreign source general limitation income.

(B) In 1988, P derives $1,000,000 of federal taxable income (without taking into account the deduction for state income taxes), which consists of $250,000 of foreign source general limitation income and $750,000 of U.S. source income. The foreign source general limitation income consists of a $25,000 subpart F inclusion with respect to FS, $150,000 of dividends from the other first-tier CFCs deriving exclusively foreign source general limitation income, in which P owns stock representing 10 to 50 percent of the vote and value, and $75,000 of manufacturing and sales income derived by P's U.S. operations and country Y branch. The $750,000 of U.S. source income consists of manufacturing and sales income derived by P's U.S. operations.

(C) For federal income tax purposes, US1 derives $75,000 of taxable income, before deduction for state income taxes, which consists entirely of U.S. source income. US2, a so-called "80/20" corporation described in section 861(c)(1), derives $250,000 of federal taxable income before deduction for state or foreign income taxes, all of which is derived from foreign operations and consists entirely of foreign source general limitation income. FS is not engaged in a U.S. trade or business and derives $550,000 of foreign source general limitation income before deduction for foreign income taxes.

(D) State F imposes a corporate income tax of 10 percent of P's state F taxable income, which is determined by formulary apportionment of the total taxable income attributable to P's worldwide unitary business. State F determines P's taxable income for state F tax purposes by first making adjustments to the taxable income, as determined for federal income tax purposes, of the members of the unitary business group to determine the total taxable income of the group. State F then computes P's state taxable income by attributing a portion of that unitary business taxable income to activities of P that are conducted in state F. State F does this by multiplying the unitary business taxable income (federal taxable income with state adjustments) by a fraction (the "state apportionment fraction") that compares the relative amounts of the unitary business group's payroll, property, and sales (the "factors") in state F with the payroll, property, and sales of the unitary business group. P is the only member of its unitary business group that has state F factors and that is thereby subject to state F income tax and filing requirements. State F defines the unitary business group to include any corporation more than 50 percent of which is directly or indirectly owned by a state F taxpayer and is engaged in the same unitary business. P's unitary business group, therefore, includes P, US1, US2, and FS, but does not include the 10 to 50 percent owned CFCs. The income of the unitary business group excludes intercompany dividends between members of the unitary business group and subpart F inclusions with respect to a member of the unitary business group. Dividends paid from nonmembers of the unitary group (the 10 to 50 percent owned CFCs) for state F tax purposes are referred to as "portfolio dividends" and are included in taxable income of the unitary business. None of the factors (in state F or worldwide) of the corporations paying portfolio dividends are included in the state F apportionment fraction for purposes of apportioning total taxable income of the unitary business to P's state F activities.

(E) After state adjustments to the taxable income of the unitary business group, as determined under federal tax principles, the total taxable income of P's unitary business group equals $2,000,000, consisting of $1,050,000 of P's income ($100,000 of foreign source manufacturing and sales income, $150,000 of foreign source portfolio dividends, and $800,000 of U.S. source manufacturing and sales income, but excluding the $25,000 subpart F inclusion attributable to FS since FS is a member of the unitary business group), $100,000 of US1's income (from sales made in the United States), $275,000 of US2's income (from an active business outside the United States), and $575,000 of FS's income. The differences between taxable income under federal tax principles and state F apportionable taxable income for P, US1, US2, and FS represent adjustments to taxable income under federal tax principles that are made pursuant to the tax laws of state F.

(F) The taxable income for each member of the unitary business group under federal tax principles and state law principles is summarized in the following table. (The items of income listed in the "Federal" column of the table refer to taxable income before deduction for state income tax.)

	Federal	State F
P		
U.S. source income	$750,000	$800,000
Foreign source general limitation income:		
Portfolio dividends	150,000	150,000
Subpart F income	25,000	0
Manufacturing and sales income	75,000	100,000
Total taxable income	1,000,000	1,050,000
US1		
U.S. source income	75,000	100,000
US2		
Foreign source general limitation income	250,000	275,000
FS		
Foreign source general limitation income	550,000	575,000
Taxable income of the unitary business group		2,000,000

(G) State F deems P to have state F taxable income of $500,000, which is determined by multiplying the total taxable income of the unitary business group ($2,000,000) by the group's state F apportionment fraction, which is assumed to be 25 percent in these facts. P's state F taxable income is then multiplied by the state F tax rate of 10 percent, resulting in a state F tax liability of $50,000. State G and state H, unlike state F, do not tax portfolio dividends. Although state G and state H apportion taxable income, respectively, on the basis of an apportionment fraction that compares state factors to total factors, state G and state H, unlike state F, do not apply a unitary business theory and consider only P's taxable income and factors in computing P's taxable income. P's taxable income under state G law equals $300,000, which is subject to a 5 percent tax rate resulting in a state G tax liability of $15,000. P's taxable income under state H law is $300,000, which is subject to a tax rate of 2 percent resulting in a state H tax liability of $6,000. P has a total federal income tax deduction for state income taxes of $71,000 ($50,000 + 15,000 + 6,000).

(ii) *Allocation.* (A) P's deduction of $71,000 for state income taxes is definitely related and allocable to the gross income with respect to which the taxes are imposed. Adjustments may be necessary, however, before aggregate state taxable incomes can be compared with U.S. source taxable income on the federal income tax return in the manner described in Examples 25 and 26. In allocating P's deduction for state income taxes, it is necessary first to determine the portion, if any, of the deduction that is definitely related and allocable to a particular class of gross income. A definite relationship exists between a deduction for state income tax and dividend income when a state includes portfolio dividends in state taxable income apportionable to the taxpayer's activities in the state, but determines state taxable income by applying an apportionment formula that excludes the factors of the corporations paying portfolio dividends.

(B) In this case, $150,000 of foreign source portfolio dividends are subject to a state F apportionment fraction of 25 percent, which results in a total of $37,500 of state F taxable income attributable to such dividends. As illustrated in Example 28, $3,750 ($150,000 × 25 percent state F apportionment percentage × 10 percent state F tax rate) of P's state F income tax is definitely related and allocable to a class of gross income consisting entirely of the foreign source portfolio dividends. Since under the look-through rules of section 904(d)(3) the foreign source portfolio dividends paid by first-tier CFCs are included within the general limitation described in section 904(d)(1)(I), the $3,750 of state F tax on foreign source portfolio dividends is allocated entirely to foreign source general limitation income and, therefore, is not apportioned.

(C) After reducing state F taxable income of the unitary business group by the taxable income attributable to portfolio dividends, P's remaining state F taxable income equals $462,500 ($500,000 − $37,500), the portion of the taxable income of the unitary business that state F attributes to P's activities in state F. Accordingly, in order to allocate and apportion the remaining $46,250 of state F tax ($50,000 of state F tax minus the $3,750 of state F tax allocated to foreign source portfolio dividends), it is necessary first to determine if state F is taxing only P's non-unitary taxable income (as defined below) or is imposing its tax partly on other unitary business income that is attributed under state F law to P's activities in state F. P's state F non-unitary taxable income is computed by applying the state F apportionment formula, solely on the basis of P's income (excluding portfolio dividends) and state F apportionment factors. If the state F taxable income (after reduction by the portfolio dividends attributed to state F) attributed to P under state F law exceeds P's non-unitary taxable income, a portion of the state F tax must be allocated and apportioned on the basis of the other unitary business income that is attributed to and taxable to P under state F law. If P's non-unitary taxable income equals or exceeds the $462,500 of remaining state F taxable income, it is presumed that state F is only taxing P's non-unitary taxable income, so that the entire amount of the remaining state F tax should be allocated and apportioned in the manner described in Example 25.

(D) If P's non-unitary taxable income is less than the $462,500 of remaining state F taxable income (after reduction for the $37,500 of state F taxable income attributable to portfolio dividends), it is presumed that state F is attributing to P, and taxing P upon, other unitary business income. In such a case, it is necessary to determine if state F is attributing to P, and imposing its income tax on, a part of the foreign source income that would be generally presumed under separate accounting to be the income of foreign affiliates and 80/20 companies included in the unitary group, or whether state F is limiting the income it attributes to P, and its taxation of P, to the U.S. source income that would be generally presumed under separate accounting to be the income of domestic members of the unitary group.

(E) Assume for purposes of this example that the non-unitary taxable income attributable to P equals $396,000, computed by multiplying P's state F taxable income of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) by P's non-unitary state F apportionment fraction, which is assumed to be 44 percent. Because P's non-unitary taxable income of $396,000 is less than the $462,500 of remaining state F taxable income, state F is presumed to be attributing to P and taxing the income that would have been generally attributed under separate accounting to P's affiliates in the unitary group. To determine if state F tax is being imposed on members of the unitary group (other that P) that produce foreign source income, it is necessary to compute a hypothetical state F taxable income for all companies in the unitary group with significant U.S. operations. (For this purpose, the hypothetical group of companies with significant domestic operations is referred to as the "water's edge group.") State F is presumed to be attributing to P and taxing income that would have been generally attributable under separate accounting to foreign corporations and 80/20 companies to the extent that the remaining state F taxable income ($462,500) of P exceeds the hypothetical state F taxable income that would have been attributed under state F law to P if state F had defined the unitary group to be the water's edge group.

(F) The members of the water's edge group would have been P and US1. The unitary business income of this water's edge group is $1,000,000, the sum of $900,000 (P's state F taxable income (before state F apportionment) of $1,050,000 less the $150,000 of foreign source portfolio dividends) and $100,000 (US1's state F taxable income). For purposes of this example, the state F apportionment fraction determined on a unitary basis for this water's edge group is assumed to equal 40 percent, the average of P and US1's state F payroll, property, and sales factor ratios (the water's edge group's state F factors over its worldwide factors). Applying this apportionment fraction to the $1,000,000 of unitary business income of the water's edge group yields state F water's edge taxable income of $400,000. The excess of the remaining $462,500 of P's state F taxable income over the $400,000 of P's state F water's edge taxable income equals $62,500, and is attributable to the inclusion of US2 and FS in the unitary group. The state F tax attributable to the $62,500 of taxable income attributed to P under state F law, and that would have generally been attributed to US2 and FS under non-unitary accounting, equals $6,250 and is allocated entirely to a class of gross income consisting of foreign source general limitation income, because the income of FS and US2 consists entirely of such income. After the $6,250 of state F tax attributable to US2 and FS is subtracted from the remaining $46,250 of net state F tax, P has $40,000 of state F tax remaining to be allocated and apportioned.

(G) To the extent that the remainder of P's state F taxable income ($400,000) exceeds P's non-unitary state F taxable income ($396,000), it is presumed that state F is attributing to and imposing on P a tax on U.S. source income that would have been attributed under separate accounting to members of the water's edge group other than P. In these facts, the $4,000 difference in P's state F taxable income results from the inclusion of US1 in the unitary group. The $400 of P's state F tax attributable to this $4,000 is allocated entirely to P's U.S. source income. P's remaining $39,600 of state F tax ($40,000 of P's state F tax resulting from the attribution of P of income that would have been attributed under non-unitary accounting to other members of the water's edge group, minus $400 of state F tax attributable to US1 and allocated to P's U.S. source income) is the state F tax attributable to P's non-unitary state F taxable income that is to be allocated and apportioned together with P's state G tax of $15,000 and state H tax of $6,000 as illustrated in Example 25.

(H) In allocating the $60,600 of state tax liabilities ($39,600 state F tax attributable to P's non-unitary state F income + $15,000 state G tax + $6,000 state H tax) under Example 25, P's state taxable income in state G and state H ($300,000 + $300,000) must be added to P's non-unitary state F taxable income ($396,000). The resulting $996,000 of combined state taxable incomes is compared with $750,000 of U.S. source income on P's federal income tax return. Because P's combined state taxable incomes exceeds P's federal U.S. source taxable income, it is presumed that the remaining $60,600 of P's total state income taxes is imposed in part on foreign source income. Accordingly, P's remaining deduction of $60,600 ($39,600 + $15,000 + $6,000) for state income taxes is related and allocable to both P's foreign source and domestic source income and is subject to apportionment.

(iii) *Apportionment.* The $60,600 of state taxes (the remaining $39,600 of state F tax + $15,000 of state G tax + $6,000 of state H tax) must be apportioned between foreign source general limitation income and U.S. source income for federal income tax purposes. This apportionment is based upon the relative amounts of foreign source general limitation taxable income and U.S. source taxable income comprising the $996,000 of income subject to tax by the states, after reducing the total amount of income subject to tax by the portfolio dividends and the income attributed to P under state F law that would have been attributed under arm's length principles to other members of P's state F unitary business group. The deduction for the $60,600 of state income taxes is apportioned as follows:

State income tax deduction apportioned to foreign source general limitation income (statutory grouping): $60,600 x ($246,000/$996,000)	$14,967
State income tax deduction apportioned to income from sources within the United States (residual grouping): $60,600 x ($750,000/$996,000)	45,633
Total apportioned state income tax deduction	60,600

Of the total state income taxes of $71,000, the amount allocated and apportioned to foreign source general limitation income is $24,967—the sum of $14,967 of state F, state G, and state H taxes apportioned to foreign source general limitation income, $3,750 of state F tax allocated to foreign source apportionable dividend income, and the $6,250 of state F tax allocated to foreign source general limitation income as the result of state F's worldwide unitary business theory of taxation. The total amount of state income taxes allocated and apportioned to U.S. source income equals $46,033—the sum of the $400 of state F tax attributable to the inclusion of US1 in the state F unitary business group and $45,633 of combined state F, G, and H tax apportioned under the method provided in Example 25.

Example 30—Income Taxes—(i) *Facts.* (A) As in Example 17 of § 1.861–8(g), X is a domestic corporation that wholly owns M, N, and O, also domestic corporations. X, M, N, and O file a consolidated income tax return. All the income of X and O is from sources within the United States, all of M's income is from sources within South America, and all of N's income is from sources within Africa. X receives no dividends from M, N, or O. During the taxable year, the consolidated group of corporations earned consolidated gross income of $550,000 and incurred total deductions of $370,000. X has gross income of $100,000 and deductions of $50,000, without regard to its deduction for state income tax. Of the $50,000 of deductions incurred by X, $15,000 relates to X's ownership of M; $10,000 relates to X's ownership of N; $5,000 relates to X's ownership of O; and the entire $30,000 constitutes stewardship expenses. The remainder of X's $20,000 of deductions (which is assumed not to include state income tax) relates to production of income from its plant in the United States. M has gross income of $250,000 and deductions of $100,000, which yield foreign source taxable income of $150,000. N has gross income of $150,000 and deductions of $200,000, which yield a foreign source loss of $50,000. O has gross income of $50,000 and deductions of $20,000, which yield U.S. source taxable income of $30,000.

(B) Unlike Example 17 of § 1.861–8(g), however, X also has a deduction of $1,800 for state A income taxes. X's state A taxable income is computed by first making adjustments to the federal taxable income of X to derive apportionable taxable income for state A tax purposes. An analysis of state A law indicates that state A law also includes in its definition of the taxable business income of X which is apportionable to X's state A activities, the taxable income of M, N, and O, which is related to X's business. As in Example 25, the amount of apportionable taxable income attributable to business activities conducted in state A is determined by multiplying apportionable taxable income by a fraction (the "state apportionment fraction") that compares the relative amounts of payroll, property, and sales within state A with worldwide payroll, property and sales. Assuming that X's apportionable taxable income equals $180,000, $100,000 of which is from sources without the United States, and $80,000 is from sources within the United States, and that the state apportionment fraction is equal to 10 percent, X has state A taxable income of $18,000. The state A income tax of $1,800 is then derived by applying the state A income tax rate of 10 percent to the $18,000 of state A taxable income.

(ii) *Allocation and apportionment.* In accordance with § 1.1502–4, each corporation must first compute its separate taxable income for purposes of computing the consolidated limitation on the foreign tax credit. Assume that under Example 29, it is determined that X's deduction for state A income tax is definitely related to a class of gross income consisting of income from sources both within and without the United States, and that the state A tax is apportioned $1,000 to sources without the United States, and $800 to sources within the United States. Under Example 17, without regard to the deduction for X's state A income tax, X has a separate loss of ($25,000) from sources without the United States. After taking into account the deduction for state A income tax, X's separate loss from sources without the United States is increased by the $1,000 state A tax apportioned to sources without the United States, and equals a loss of ($26,000), for purposes of computing the numerator of the consolidated foreign tax credit limitation.

Example 31—Income Taxes—(i) *Facts.* Assume that the facts are the same as in Example 29, except that state G requires P to adjust its federal taxable income by depreciating an asset at a different rate than is allowed P under the Internal Revenue Code for the same asset. Before using the methodology of Example 25 to determine whether a portion of its deduction for state income taxes is allocable to a class of gross income that includes foreign source income, P recomputes its taxable income under state G law by using the rate of depreciation that it is entitled to use under the Code, and uses this recomputed amount in applying the methodology of Example 25.

(ii) *Allocation.* P's modification of its state G taxable income is permissible. Under the methdology of Example 25, this modification of state G taxable income will produce a reasonable determination of the portion (if any) of P's state income taxes that is allocable to a class of gross income that includes foreign sources income.

Example 32—Income Taxes—(i) *Facts.* Assume the facts are the same as Example 29, except that P's state F taxable income differs from the amount of its U.S. source income under federal income tax principles solely because state F determines P's state taxable income under a worldwide unitary business theory instead of the arm's length principles applied in the Code. Before using the methodology of Example 25 to determine whether a portion of its deduction for state income taxes is allocable to a class of gross income that includes foreign source income, P recomputes state F taxable income under the arm's length principles applied in the Code. P substitutes that recomputed amount for the amount of taxable income actually determined under state F law in applying the methodology of Example 25.

(ii) *Allocation.* P's modification of state F taxable income does not accurately reflect the factual relationship between the deduction for state F income tax and the income on which the tax is imposed, because there is no factual relationship between the state F income tax and the state F taxable income as recomputed under Code principles. State F does not impose its income tax upon P's income as it might have been defined under the Internal Revenue Code. Consequently, P's modification of state F taxable income is impermissible because it will not produce a reasonable determination of the portion (if any) of P's state income taxes that is allocable to a class of gross income that includes foreign source income.

Example 33—Income Taxes—(i) *Facts.* Assume the same facts as in Example 29, except that state G does not impose an income tax on corporations. Thus only $56,000 of state income taxes ($50,000 of state F income tax and $6,000 of state H income tax) are deductible and required to be allocated and (if necessary) apportioned. As in Example 29, P has $800,000 of aggregate state taxable income ($500,000 of state F taxable income and $300,000 of state H taxable income).

(ii) *Method One.* Assume that P has elected to allocate and apportion its deduction for state income tax under the safe harbor method provided in § 1.861–8 (e)(6)(ii)(D)(*2*) ("Method One").

(A) *Step One—Specific allocation to foreign source portfolio dividends.* P applies the methodology of paragraph (ii) of *Example 28* to determine the portion of the deduction that must be allocated to a class of gross income consisting solely of foreign source portfolio dividends. As illustrated in paragraphs (ii) (A) and (B) of Example 29, $3,750 of the deduction for state F income tax is attributable to the $37,500 of foreign source portfolio dividends attributed under state F law to P's activities in state F. Thus $3,750 of P's deduction for state income tax must be specifically allocated to a class of gross income consisting solely of $37,500 of foreign source portfolio dividends. No apportionment of the $3,750 is necessary. P's adjusted state taxable income is $762,500 (aggregate state taxable income of $800,000 reduced by $37,500 of foreign source portfolio dividends).

(B) *Step Two—Adjustment of U.S. source federal taxable income.* P applies the methodology illustrated in paragraph (ii) of Example 27 (including the rules of UDITPA described therein) to determine the amount of its federal taxable income attributable to its activities in state G. Assume that P determines under this methodology that $300,000 of its federal taxable income is attributable to activities in state G. P's adjusted U.S. source federal taxable income equals $450,000 ($750,000 minus the $300,000 attributed to P's activities in state G).

(C) *Step Three—Allocation.* The portion of P's deduction for state income tax remaining to be allocated equals $52,250 ($56,000 minus the $3,750 specifically allocated to foreign source portfolio dividends). P allocates this portion by applying the methodology

illustrated in paragraph (ii) of Example 25, as modified by paragraph (e)(6)(ii)(D)(*2*)(*iii*) of this section. Thus, P compares its adjusted state taxable income (as determined under Step One in paragraph (A) above) with an amount equal to 110% of its adjusted U.S. source federal taxable income (as determined under Step Two in paragraph (B) above). Because P's adjusted state taxable income ($762,500) exceeds 110% of P's adjusted U.S. source federal taxable income ($495,000, or 110% of $450,000), the remaining portion of P's deduction for state income tax ($52,500) must be allocated to a class of gross income that includes both U.S. and foreign source income.

(D) *Step Four—Apportionment.* P must apportion to U.S. source income the portion of the deduction that is attributable to state income tax imposed upon state taxable income in an amount equal to 110% of P's adjusted U.S. source federal taxable income. The remainder of the deduction must be apportioned to foreign source general limitation income.

Amount of deduction to be apportioned	$52,250.00
Less portion of deduction to be apportioned to income from sources within the United States (residual grouping): ($52,250 × ($495,000/$762,500))	$33,919.67
Equals Portion of deduction to be apportioned to foreign source general limitation income (statutory grouping):	$18,330.33

(iii) *Method Two.* Assume that P has elected to allocate and apportion its deduction for state income tax under the safe harbor method provided in § 1.861–8(e)(6)(ii)(D)(*3*) ("Method Two").

(A) *Step One—Specific allocation.* Step One of Method Two is the same as Step One of Method One. Therefore, as described in paragraph (A) of paragraph (ii) above, $3,750 of P's deduction for state income tax must be specifically allocated to a class of gross income consisting solely of $37,500 of foreign source portfolio dividends. No apportionment of the $3,750 is necessary. P's adjusted state taxable income is $762,500 (aggregate state taxable income of $800,000 reduced by $37,500 of foreign source portfolio dividends).

(B) *Step Two—Adjustment of U.S. source federal taxable income.* Step Two of Method Two is the same as Step Two of Method One. Therefore, as described in paragraph (B) of paragraph (ii) above, assume that P determines that $300,000 of its federal taxable income is attributable to activities in state G. P's adjusted U.S. source federal taxable income equals $450,000 ($750,000 minus the $300,000 attributed to P's activities in state G).

(C) *Step Three—Allocation.* The portion of P's deduction for state income tax remaining to be allocated equals $52,250 ($56,000 minus the $3,750 of state F income tax specifically allocated to foreign source portfolio dividends). P allocates this portion by applying the methodology illustrated in paragraph (ii) of Example 25, as modified by paragraph (e)(6)(ii)(D)(*3*)(*iii*) of this section. Thus, P compares its adjusted state taxable income (as determined under Step One in paragraph (A) above) with its adjusted U.S. source federal taxable income (as determined under Step Two in paragraph (B) above). Because P's adjusted state taxable income ($762,500) exceeds P's adjusted U.S. source federal taxable income ($450,000), the remaining portion of P's deduction for state income tax ($52,500) must be allocated to a class of gross income that includes both U.S. and foreign source income.

(D) *Step Four—Apportionment.* P must apportion to U.S. source income the portion of the deduction that is attributable to state income tax imposed upon state taxable income in an amount equal to P's adjusted U.S. source federal taxable income.

Amount of deduction to be apportioned	$52,250.00
Less portion of deduction initially apportioned to income from sources within the United States (residual grouping): $52,250 × ($450,000/$762,500)	30,836.07
Remainder requiring further apportionment: $52,250 × ($312,500/$762,500)	21,413.93

The remainder of $21,413.93 must be further apportioned between foreign source general limitation income and U.S. source federal taxable income in the same proportions that P's adjusted U.S. source federal taxable income and foreign source general limitation income bear to P's total federal taxable income (taking into account the adjustment of U.S. source federal taxable income).

Portion of remainder apportioned to foreign source general limitation income (statutory grouping): $21,413.93 × ($250,000/$700,000)	$7,647.83
Remaining state income tax deduction to be apportioned to income from sources within the United States (residual grouping): $21,413.93 × ($450,000/$700,000)	13,766.10

Of P's total deduction of $56,000 for state income tax, the portion allocated and apportioned to foreign source general limitation income equals $11,397.83—the sum of $7,647.83 apportioned under Step Four and the $3,750.00 specifically allocated to foreign source portfolio dividend income under Step One. The portion of the deduction allocated and apportioned to U.S. source income equals $44,602.17—the sum of the $30,836.07 and the $13,766.10 apportioned under Step Four.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 5. Section 602.101(c) is amended by adding in the appropriate place in the table:

"1.861–8 (e)(6) and (g) ..... 1545–1224."

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Dated: February 20, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–5585 Filed 3–11–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AA82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

The stay was subsequently extended (54 FR 35638, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990). OSHA is completing its

reevaluation of the need to stay these paragraphs. More time is needed to complete this evaluation. Consequently the stay is extended an additional 90 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1(i) through (m)(4)(ii) will be effective until June 9, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1600; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Cancer, Chemicals, Formaldehyde, Health, Occupational Safety and Health, Risk assessment.

§ 1910.1048 [Stayed in Part]

Therefore, 29 CFR 1910.1048 (m)(1(i) through (m)(4)(ii) is stayed until June 9, 1991.

Signed at Washington, DC this 7th day of March, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91-5949 Filed 3-8-91; 2:13 pm]

BILLING CODE 4510-26-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301-10 and 302-11

[FTR Amdt. 15]

RIN 3090-AE24

Federal Travel Regulation; Relocation Income Tax Allowance

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal and State tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal and State income tax brackets and rates. The Federal and State tax tables contained in this rule are for calculating the 1991 RIT allowances to be paid to relocating Federal employees. This final rule also makes an editorial change to § 301-10.3 of the Federal Travel Regulation to reflect the implementation of the worldwide lodgings-plus per diem system.

EFFECTIVE DATE:

a. The change to § 301-10.3(b)(2) is effective December 1, 1990.

b. The new tax tables are effective January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Clauson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Part 301-10

Government employees, Travel, Travel allowances, Travel and transportation expenses.

41 CFR Part 302-11

Government employees, Income Taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR parts 301-10 and 302-11 are amended as set forth below.

PART 301-10—SOURCES OF FUNDS

1. The authority citation for part 301-10 continues to read as follows:

Authority: 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-10.3 is amended by revising paragraph (b)(2) to read as follows:

§ 301-10.3 Advance of funds.

* * * * *

(b) * * *

(2) *Allowable amount for meals and incidental expenses (M&IE).* The amount advanced for meals and incidental expenses shall not exceed the prescribed M&IE rate or other amount authorized by the agency under 41 CFR parts 301-7 or 301-8, as appropriate.

* * * * *

PART 302-11—RELOCATION INCOME TAX (RIT) ALLOWANCE

3. The authority citation for part 302-11 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349).

4. Appendixes A, B, and C to part 302-11 are amended by adding the following tables at the end of each appendix, respectively:

APPENDIX A TO PART 302-11—FEDERAL TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1990

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302-11.8(a)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1990.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,556	$25,167	$9,824	$35,312	$12,652	$44,759	$6,885	$23,069
28	25,167	51,042	35,312	75,233	44,759	84,283	23,089	50,147
33	51,042	112,568	75,233	170,564	84,283	200,559	50,147	148,107
28	112,568		170,564		200,559		148,107	

APPENDIX B TO PART 302-11—STATE TAX TABLES FOR RIT ALLOWANCE

* * * * * * *

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL—TAX YEAR 1990

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302-11.8(e)(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1990.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000-$24,999	$25,000-$49,999	$50,000-$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.8	4.4	5.25	7
If single status [3]	4.4	5.25	6.5	7
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	6	9.3	9.3
If single status [3]	6	9.3	9.3	9.3
6. Colorado	5	5	5	5
7. Connecticut	0	0	0	0
8. Delaware	6	7.6	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.8	8.2	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	8.8	9.98	9.98
17. Kansas	3.65	5.15	5.15	5.15
18. Kentucky	6	6	6	6
19. Louisiana	4	4	6	6
20. Maine	4.5	8.5	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	5
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.6	4.6	4.6	4.6
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27. Montana	6	10	11	11
If single status [3]	8	10	11	11
28. Nebraska	3.361	5.21	6.41	6.41
If single status [3]	5.21	6.41	6.41	6.41
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	2	2.5	3.5	3.5
32. New Mexico	3.8	6.9	7.7	8.5
If single status [3]	5.8	8.5	8.5	8.5
33. New York	5	7.375	7.375	7.375
If single status [3]	7.375	7.375	7.375	7.375
34. North Carolina	6	7	7	7
35. North Dakota	6.67	10.67	12	12
If Single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	6.9
37. Oklahoma	4	7	7	7
If single status [3]	7	7	7	7
38. Oregon	9	9	9	9
39. Pennsylvania	2.1	2.1	2.1	2.1
40. Rhode Island	22.96 percent of Federal income tax liability [4]			
41. South Carolina	7	7	7	7

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1] [2]			
	$20,000–$34,999	$35,000–$49,999	$50,000–$74,999	$75,000 and over
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont	28 percent of Federal income tax liability [4]			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6.5	6.5
If single status [3]	4	6	6.5	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.
[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).
[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.
[4] Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

APPENDIX C TO PART 302–11—FEDERAL TAX TABLES FOR RIT ALLOWANCE—YEAR 2

* * * * * * *

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS—TAX YEAR 1991

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, 1986, 1987, 1988, 1989, or 1990.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$5,754	$26,242	$10,177	$36,611	$13,093	$46,770	$7,120	$23,877
28	26,242	55,330	36,611	78,894	46,770	94,596	23,977	47,908
31	55,330		78,894		94,596		47,908	

Dated: March 4, 1991
Rebekah T. Johnson,
Deputy Administrator of General Services.
[FR Doc. 91-5786 Filed 3-11-91; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6838

[G-010-G1-0410-4214-10; NMNM 86632]

Transfer of Federal Mineral Interest Underlying Private Surface Estate for the Ambrosia Lake Uranium Mill Tailings Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order permanently transfers 234.70 acres of Federal mineral estate to the Department of Energy in accordance with the terms of the Uranium Mill Tailings Remedial Action Amendments Act of 1988.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: James Olsen, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6109.

By virtue of the authority vested in the Secretary of the Interior by section 106 of the Uranium Mill Tailings Radiation Control Act of 1978, as amended by the Uranium Mill Tailings Remedial Action Amendments Act of 1988, 42 U.S.C. 7916(2)(F), it is ordered as follows:

1. Subject to valid existing rights, the following described Federal mineral estate is hereby permanently transferred to the Department of Energy for the Ambrosia Lake Uranium Mill Tailings Site, and as a result of this transfer, this mineral estate is no longer subject to the operation of the mining and mineral leasing laws:

New Mexico Principal Meridian

A certain tract or parcel of land lying and being situated in sec. 28, T. 14 N., R. 9 W., being more particularly bounded and described as follows, to wit:

Beginning at a point for the southwest corner of said tract or parcel of land, said same point being the section corner common to secs. 28, 29, 32 and 33, T. 14 N., R. 9 W., set by Albuquerque Engineering and marked by a brass cap monument;

Thence N. 00°19'29" E., along the westerly line of said tract or parcel of land and the section line common to secs. 28 and 29, T. 14 N., R. 9 W., a distance of 2,955.39 feet to a point for the northwest corner;

Thence S. 90°00'00" E., along the northerly line of said tract or parcel of land a distance of 1,469.87 feet to a point on the westerly line of Mineral Survey Ann Lee No. 14;

Thence S. 00°19'29" W., along said westerly line a distance of 531.60 feet to an angle point, said same point being the southwest corner of Mineral Survey Ann Lee No. 14;

Thence N. 89°05'29" E., a distance of 1,500.00 feet to an angle point, said same point being a point common to Mineral Surveys Ann Lee Nos. 14, 22, and 23;

Thence S. 00°19'29" W., a distance of 600.00 feet to an angle point, said same point being the southwest corner of Mineral Survey Ann Lee No. 22;

Thence N. 89°05'29" E., a distance of 1,175.88 feet to a point on the easterly line of said tract or parcel of land;

Thence S. 00°46'00" W., along said easterly line a distance of 1,851.60 feet to a point for the southeast corner of said tract or parcel of land, said same point lying on the section line common to secs. 28 and 33, T. 14 N., R. 9 W.;

Thence S. 89°47'49" W., along said section line a distance of 4,180.80 feet to a point for the section corner common to secs. 28, 29, 32 and 33, T. 14 N., R. 9 W., said same point being the true point and place of beginning.

The tract as described contains approximately 234.70 acres in McKinley County.

2. The transfer of the above described Federal mineral estate to the Department of Energy vests in that Department the full management, jurisdiction, responsibility, and liability for such subsurface estate and all activities conducted thereon, except as provided in paragraph 3.

3. The Secretary of the Interior shall retain the authority to administer any existing claims, rights, and interests in this land and in the subsurface mineral estate that were established before the effective date of the transfer.

Dated: February 27, 1991.
Dave O'Neal,
Assistant Secretary of the Interior.
[FR Doc. 91–5757 Filed 3–11–91; 8:45 am]
BILLING CODE 4310–FB–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–546; RM–7526]

Radio Broadcasting Services; Live Oak, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 251C1 for Channel 251C2 at Live Oak, Florida, and modifies the license for Station WQHL(FM) to specify operation on the higher powered channel at the request of Day Communications, Inc. *See* 55 FR 48868, November 23, 1990. Channel 251C1 can be allotted to Live Oak in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.5 kilometers (14.6 miles) southwest, in order to avoid a short-spacing to a construction permit for Station WUVU–FM, Channel 250C2, St. Augustine, Florida, and a pending proposal to allot Channel 254A to Statenville, Georgia. The coordinates for this allotment are North Latitude 30–07–02 and West Longitude 83–07–29. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–546, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 251C2 and adding Channel 251C1 at Live Oak.

Federal Communications Commission.
Andrew J. Rhodes,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91–5700 Filed 3–11–91; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–568; RM–7476]

Radio Broadcasting Services; Barbourville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 241C3 for Channel 241A at Barbourville, Kentucky, and modifies the license of Station WYWY(FM) to specify operation on the higher class channel, at the request of Barbourville Community Broadcasting Company. *See* 55 FR 49098, November 26, 1990. Channel 241C3 can be allotted to Barbourville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) west, in order to avoid a short-spacing to Station WMXK(FM), Channel 240A, Morristown, Tennessee. The coordinates are North Latitude 36–52–32 and West Longitude 83–55–09. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–568, adopted February 25, 1991, and released March 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 241A and adding Channel 241C3 at Barbourville.

Federal Communications Commission.
Andrew J. Rhodes,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91–5701 Filed 3–11–91; 8:45 am]
BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-91-003]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposed to increase the fees charged for services provided under the dairy grading program. The program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increase would result in a fee of $41.60 per hour for continuous resident services and $46.60 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These proposed fees represent a $5.60 per hour increase for both resident and nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. would be $51.40, representing an increase of $6.40 per hour.

The fees need to be increased to recapitalize the program, rebuild the required operating reserve, and provide the necessary funding to restore the supervision and training activities that had been curtailed because of funding problems.

DATES: Comments must be received on or before April 11, 1991.

ADDRESSES: Comments should be sent to: Office of the Director, USDA/AM/Dairy Division, room 2968–S. P.O. Box 96456, Washington, DC 20090–6456.

Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Section, room 2750-South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 382–9381.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Department Regulation 1512–1 and has been classified a "non-major" rule under the criteria contained therein.

The proposed rule also been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that if promulgated it would not have a significant economic impact on a substantial number of small entities. The proposed changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that overall this rule will yield an additional $385,000 during 1991. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services tha facilitate marketing and help consumers obtain in quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased to cover the cost of maintaining a financially self-supporting program. During the early 1980's, the dairy grading program was severely taxed in meeting the needs of the dairy price support program. CCC purchases increased from 1.1 billion pounds milk equivalent in the 1978–79 marketing year to 16.6 billion pounds in 1982–83. To accommodate this increased workload, the Dairy Grading Section had to expand its staff significantly.

Purchases remained high through 1986, and then dropped to 5.6 billion pounds during the 1986–87 marketing year. By 1988, the dairy grading workload associated with the price support program and dropped to the point that it was necessary to cut the grading staff by about half. Staff reductions were made both in Washington and in the field, and three of the four field offices were closed. By the time the grading program was totally restructured, the trust fund reserve had been depleted and a debt of about $1 million incurred. To deal with the funding problem, grading fees have been increased substantially since 1988—131 percent for the resident programs and 116 percent for the nonresident programs. The most recent fee increases were made effective January 13, 1991, by a final rule published on January 9, 1991, in the **Federal Register** at 56 FR 773.

The fee increases have not improved materially the financial situation, and most of the $1 million debt remains. Viable opportunities for further cutting the program's overhead do not exist. In an effort to generate additional revenue, field staff who normally do supervision and training have been assigned instead to grading activities. This situation could undermine the program.

In order to maintain a viable program, additional resources are needed for the Dairy Grading Section. The funds are necessary to repay the nearly $1 million debt and associated interest charges, rebuild a four-month operating reserve of about $1.9 million, and provide the necessary capital (about $450,000 annually) to restore the supervision and training activities that had been curtailed.

Proposed Changes

This rule proposes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increase the hourly fee for nonresident services from $41.00 to $46.60 for services performed between 6 a.m. and 6 p.m. and from $45.00 to $51.40 for services performed between 6 p.m. and 6. a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increase the hourly fee for continuous resident services from $36.00 to $41.60.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

Timing of any Fee Increase

It is contemplated that any fees that might be implemented as a result of this action would be implemented on an expedited basis in order to start the recapitalization effort, rebuild the reserve and restore supervision and training. Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication or very soon after publication of the final rule in the **Federal Register** and that postponing the effective date of the final rule until 30 days after publication in the **Federal Register** would not occur. An approximate effective date would be May 19, 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 58, subpart A, be amended as follows:

PART 58—[AMENDED]

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

1. The authority citation for part 58 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in this section and §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of $46.60 for service performed between 6 a.m. and 6. p.m., and $51.40 for service performed between 6 p.m. and 6. a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in Sections 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $41.60 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Signed at Washington, DC, on: March 7, 1991.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 91–5790 Filed 3–11–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–91–7]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 12, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 6, 1991.

Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26493.
Petitioner: American Diabetes Association (ADA).
Regulations Affected: 14 CFR 67.13, 67.15, 67.17 and 67.19
Description of Petition: To amend Sections 67.13, 67.15, 67.17 and 67.19 to allow individuals with insulin-treated diabetes mellitus to be issued medical certificates on a case-by-case basis. The ADA further requests the creation of an FAA-appointed medical task force to develop a medical protocol capable of permitting meaningful case-by-case review.
Petitioner's Reason for the Request: The petitioner believes that consistent with its mission of improving the well-being of all people with diabetes and their families, the ADA is committed to combatting blanket policies, both in the public and private sectors, which unduly restrict individuals with diabetes in their pursuit of useful and productive lifestyles.

Docket No: 26438.
Petitioner: Ralph Seeley.
Regulations Affected: 14 CFR Section 91.215.
Description of Petition: To abolish or modify the 30-mile encoding transponder requirement around Seattle-Tacoma International Airport.
Petitioner's Reason for the Request: The petitioner believes the rule promotes inefficiency in that pilots on the lower end of the economic ladder without the financial wherewithal to purchase and install encoding

transponders are forced to fly 30 miles off course, and believes the rule serves no legitimate government function.

Petitions for Rulemaking

Docket No.: 28441.
Petitioner: Mr. Peter G. Tchamitch.
Regulations Affected: 14 CFR 91.113 (d) and (e).
Description of Petition: To amend § 91.113 to expand upon the existing right-of-way rules to provide for the special case of aircraft approaching (on what appears to be a collision course) at close quarters and at the same altitude. The new rule would require aircraft turning right to climb and aircraft turning left to descend.
Petitioner's Reason for the Request: The petitioner believes that there are many close-in situations in which pilots might feel forced to deviate from § 91.113 and have precious few seconds to decide whether or not to do so. The petitioner believes the essence of the new rule is that it is very easy to apply and that its application would deal with all conceivable collision courses no matter which way each pilot turned in any of those situations.

[FR Doc. 91-5778 Filed 3-11-91; 8:45 am]
BILLING CODE 4910-13-M

[Docket No. 91-ASO-7]

14 CFR Part 71

[Airspace Docket No. 91-ASO-7]

Proposed Revision of Transition Areas, Fort Payne, Al

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Fort Payne, AL Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve the Isbell Field Airport based on the Fort Payne nondirectional radio bacon (NDB). Due to rising terrain, especially east and north of the airport, it is necessary to increase the size of the existing 700-ft. transition area in order to provide controlled airspace protection for instrument flight rules (IFR) aeronautical operations. Additonally, a correction would be made in the latitude/longitude coordinates for the NDB.

DATES: Comments must be received on or before: April 30, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Vaiation Administration, Manager, System Management Branch, ASO-530, Docket No 91-ASO-7, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaing by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Fort Payne, AL Transition Area. An NDB SIAP has been developed to serve Isbell Field Airport predicated on the Fort Payne NDB. This action would increase the size of the existing transition area in order to provide the controlled airspace necessary for protection of IFR aeronautical operations. Also, a correction would be made in the latitude/longitude coordinate position of the Fort Payne NDB. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fort Payne, AL [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Isbell Field Airport (lat. 34°28'20" N., long. 85°43'25" W.); within 9.5 miles northwest and 5 miles southeast of the Fort Payne NDB (lat. 34°31'16" N., long 85°40'24" W.) 040° bearing, extending from the 8.5-mile radius area to 16.5 miles northeast of the NDB.

Issued in East Point, Georgia, on February 28, 1991.

James G. Walters,
Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 91-5783 Filed 3-11-91; 8:45 am]
BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 216

RIN 3220-AA15

Eligibility for Annuity

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to revise part 216, Eligibility for an Annuity, to reflect amendments to the Railroad Retirement Act which became effective in 1981 and 1983. The proposed action would also revise the rules concerning eligibility in a manner to make them easier to use and understand.

DATES: Comments must be submitted on or before April 11, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush, Chicago, Illinois 60611, (312) 751-4513, FTS 386-4513.

SUPPLEMENTARY INFORMATION: Part 216 of the Board's regulations contains the eligibility requirements for annuities under the Railroad Retirement Act of 1974, as amended. Amendments made by the Omnibus Budget Reconciliation Act of 1981 (OBRA) (Pub. L. 97-36) to the Railroad Retirement Act added, as new categories of beneficiaries under the Act, divorced spouses, surviving divorced spouses, and remarried widow(er)s. Eligiblity requirements for these types of annuities are found in proposed subparts F and G. Section 1116(b)(2) of the OBRA liberalized the test to establish a current connection with the railroad industry for purposes of eligibility for the supplemental annuity and survivor annuities. Eligibility requirements reflecting these amendment are found in proposed subpart B. Section 1117(a) of the OBRA restricted future supplemental annuity eligibility to employees with some service prior to October 1981. See proposed subpart E. Section 104(a) of the Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) changed the eligibility requirements for a child's annuity when the child is a full-time student to conform to social security benefit provisions. These changes are reflected in proposed subpart H. The Solvency Act, at section 413, also liberalized the eligibility conditions for a parent's annuity. This change is reflected in proposed subpart I.

The Railroad Retirement Act of 1974, prior to its amendment in 1988 by the Railroad Unemployment and Retirement Improvement Act of 1988, provided that no annuity was payable in any month in which an annuitant performed compensated service for his or her last employer prior to retirement, commonly referred to as the "last person service restriction." An exception to this restriction was made if the last employer was a governmental unit and the annuitant was a compensated elected public official of this unit. A similar rule for appointed public officials receiving nominal salaries was established by administrative ruling. The 1988 amendments eliminated the prohibition against payment of an annuity for any month in which the beneficiary performed compensated service for the last pre-retirement employer and substituted an earnings deduction to be applied to the tier II annuity component of a beneficiary engaged in last person service. The amendment also removed the language excepting elected public service from the employment restrictions. This change is reflected in subpart C of this proposed rule. Consistent with the amendment to the last person service provisions of the RRA, the Board proposes to no longer exempt public officers, elected or appointed, from the last person service work deductions. However, with respect to elected and appointed public officials this change will apply only to those individuals who file applications for annuities after the effective date of the final rule. Thus, elected and appointed public officials who will have applied for annuities prior to the effective date of the final rule will continue to be accorded the same treatment with respect to their service for a governmental unit as prior to the effective date of the final rule.

The Board also proposes to reorder various sections of part 216 to facilitate the reader's use of that part. Provisions dealing with the definition of a current connection with the railroad industry are proposed to be placed in new Subpart B. All provisions dealing with work restrictions which impact upon eligibility for an annuity have been moved to proposed subpart C. Proposed subparts D-I contain the eligibility provisions for the various types of annuities payable under the Railroad Retirement Act. Proposed subpart J contains the restrictions on eligibility for more than one annuity. Finally, the following sections of the present part 216 which deal with the definitions of various family relationships are proposed to be moved to a new part 222: §§ 216.23, 216.24, 216.37, 216.48, and 216.63.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 216

Railroad employees, Railroad retirement.

For the reasons set forth in the preamble, part 216 of subchapter B, chapter II, title 20 of the Code of Federal Regulations is proposed to be revised as follows:

PART 216—ELIGIBILITY FOR AN ANNUITY

Subpart A—General

Sec.
216.1 Introduction.
216.2 Definitions.
216.3 Other regulations related to this part.

Subpart B—Current Connection With The Railroad Industry

216.11 General.
216.12 When current connection is required.
216.13 Regular current connection test.
216.14 Regular non-railroad employment that will not break a current connection.
216.15 Special current connection test.
216.16 What is regular non-railroad employment.
216.17 What amount of regular non-railroad employment will break a current connection.

Subpart C—Railroad and Last Non-Railroad Employment

216.21 General.
216.22 Work as an employee which affects payment
216.23 Work which does not affect eligibility.
216.24 Relinquishment of rights to return to work.

Subpart D—Employee Annuity

216.30 General.
216.31 Who is eligible for an age annuity.
216.32 Who is eligible for a disability annuity.
216.33 What is required for payment of an age or disability annuity.

Subpart E—Supplemental Annuity

216.40 General.
216.41 Who is entitled to a supplemental annuity.
216.42 How a private railroad pension affects a supplemental annuity.
216.43 Effect of a supplemental annuity on other benefits.

Subpart F—Spouse and Divorced Spouse Annuities

216.50 General.
216.51 Who is eligible for a spouse annuity.
216.52 Who is eligible for an annuity as a divorced spouse.
216.53 What is required for payment.
216.54 Who is an employee's wife or husband.

Subpart G—Widow(er), Surviving Divorced Spouse, and Remarried Wido(er) Annuities

216.60 General.
216.61 Who is eligible for an annuity as a widow(er).
216.62 Who is eligible for an annuity as a surviving divorced spouse.
216.63 Who is eligible for an annuity as a remarried widow(er).
216.64 What is required for payment.
216.65 Who is an employee's widow(er).
216.66 Who is an employee's surviving divorced spouse.
216.67 "Child in care".
216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

Subpart H—Child's Annuity

216.70 General.
216.71 Who is eligible for a child's annuity.
216.72 What is required for payment of a child's annuity.
216.73 Who may be re-entitled to a child's annuity.
216.74 When a child is a full-time student.
216.75 When a child is a full-time student during a period of non-attendance.

Subpart I—Parent's Annuity

216.80 General.
216.81 Who is eligible for a parent's annuity.
216.82 What is required for payment.

Subpart J—Eligibility For More Than One Annuity

216.90 General.
216.91 Entitlement as an employee and spouse, divorced spouse, or survivor.
216.92 Entitlement as a spouse or divorced spouse and as a survivor.
216.93 Entitlement to more than one survivor annuity.
216.94 Entitlement to more than one divorced spouse annuity.

Authority: 45 U.S.C. 231f.

PART 216—ELIGIBILITY FOR AN ANNUITY

Subpart A—General

§ 216.1 Introduction.

This part explains when an individual is eligible for a monthly annuity under the Railroad Retirement Act. An individual eligible for an annuity as described in this part may become entitled to an annuity only in such amount as set forth in parts 225 through 229 of this chapter.

(a) *Regular annuity.* A regular monthly annuity is provided for—

(1) An employee who retires because of age or disability.

(2) An employee's spouse or divorced spouse; or

(3) The widow, widower, child, parent, remarried widow or widower; or surviving divorced spouse of an employee.

(b) *Supplemental annuity.* An employee who retires because of age or disability may also be entitled to a supplemental annuity.

§ 216.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Age means an individual's age on the day preceding the anniversary date of his or birth.

Annuity means a payment due an entitled individual for a calendar month and made to him or her on the first day of the following month.

Apply means to sign a form or statement that the Railroad Retirement Board accepts as an application for benefits under the rules set out in part 217 of this chapter.

Attainment of age means that an individual attains a given age on the first moment of the day preceding the anniversary date of his birth corresponding to such numerical age.

Board means the Railroad Retirement Board.

Claimant means an individual who files or for whom an annuity application is filed.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as here defined.

Employer means a company, individual, or other entity determined to be a covered employer under the Railraod Retirement Act as provided by part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Re-entitled annuity means an annuity to which an individual becomes entitled after an earlier-awarded annuity has been terminated. A re-entitled annuity is usually awarded on the basis of different factors of elibility from the initial annuity, and may be awarded without the filing of another application.

Retirement age means, with respect to an employee who attains age 62 before January 1, 2000 (age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) age 65. For an employee who attains age 62 (or age 60 in the case of a widow(er), remarried widow(er) or surviving divorced spouse) after December 31, 1999, retirement age means the age provided in section 216(1) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

Tier I benefit means the benefit component calculated using Social Security Act formulas and based upon earnings covered under both the Railroad Retirement Act and the Social Security Act.

Tier II benefit means the benefit component calculated under a formula found in the Railroad Retirement Act and based only upon earnings and service in the railroad industry.

Year of service means 12 calendar months, consecutive or otherwise, of service creditable to an employee as described in part 210 of this chapter.

§ 216.3 Other regulations released to this part.

This part is related to a number of other parts. Part 217 of this chapter describes how to apply for an annuity. Part 218 indicates when annuities begin and when they terminate. Part 219 sets out what evidence is necessary to prove eligibility. Where eligibility for an annuity is based upon a family relationship to an employee (for example, a widow's annuity), the definition of such family relationship may be found in part 222 of this chapter. Part 225 of this chapter describes the computation of the primary insurance amount.

Subpart B—Current Connection With The Railroad Industry

§ 216.11 General.

A current connection with the railroad industry is required to qualify for certain types of railroad retirement benefits. The existence of a current connection is clear in most cases where entitlement or death immediately follows continuous years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In these situations, special tests are applied to determine whether the employee can be considered to have a current connection with the railroad industry for the purpose of determining his or her eligibility for an annuity or other benefits.

§ 216.12 When current connection is required.

(a) A current connection is required to qualify an individual for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in subpart D of this part;

(2) A supplemental annuity as described in subpart E of this part;

(3) An employee vested dual benefit in certain cases;

(4) A survivor annuity as described in subparts G, H, and I of this part;

(5) A lump-sum death payment as described in part 234 of this chapter;

(b) A current connection which was established when an employee's annuity began is effective for—

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under part 234 of this chapter.

§ 216.13 Regular current connecton test.

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee has creditable railroad service in at least 12 of the 30 consecutive months immediately preceding the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee has creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

§ 216.14 Regular non-railroad employment that will not break a current connection.

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.13(b), in or after the month the annuity begins, or in the month the employee dies.

§ 216.15 Special current connection test.

(a) *For survivor annuities.* An employee who does not have a current connection under the regular test has a current connection only to qualify an individual for a survivor annuity if—

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad compensation after 1936 were treated as social security earnings; or

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act; or

(3) The employee received a pension or a retirement annuity that began before 1948 based on at least 114 months of service.

(b) *For survivor and supplemental annuities.* An employee who does not have a current connection under the regular test has a current connection in order to pay a supplemental or survivor annuity if he or she meets all of the following requirements:

(1) Has been credited with at least 25 years of railroad service;

(2) Stopped working in the railroad industry, "involuntarily and without fault" on or after October 1, 1975, or was on furlough, leave of absence or absent for injury on that date;

(3) Did not decline an offer of employment in the same "class or craft" as his or her most recent railroad service; and

(4) Was alive on October 1, 1981.

(c) *"Involuntarily and without fault" defined.* An employee is considered to have stopped railroad employment involuntarily and without fault if—

(1) The employee loses his or her job;

(2) The employee could not, through the exercise of seniority rights, remain in railroad service in the same class or craft as his or her most recent railroad service, regardless of the location where that service would be performed; and

(3) The employee did not lose his or her job because of poor job performance, misconduct, medical reasons or other action or inaction on the part of the employee.

(d) *Effect of separation allowance.* An employee who accepts a separation allowance and in so doing relinquishes his or her seniority rights to railroad employment is deemed to have voluntary terminated his or her railroad service. However, if the employee stopped railroad employment involuntarily and without fault, as defined in paragraph (c) of this section, receipt of a separation allowance will not affect a current connection under paragraph (b) of this section.

(e) *"Class or craft" defined.* The terms *class or craft*, as used in this section, have the same meaning as they do generally in the railroad industry.

(f) *For supplemental annuities only.* An additional special current connection test is required for an individual who was receiving a disability annuity which terminated due to the individual's recovery from disability. If the individual becomes entitled to a new annuity, a new current connection test based on the new annuity beginning date must be made. This test is made using the rules contained in §§ 216.13 and 216.17 of this chapter.

§ 216.16 What is regular non-railroad employment.

(a) Regular non-railroad employment is full or part-time employment for pay.

(b) Regular non-railroad employment does not include any of the following:

(1) Self-employment;

(2) Temporary work provided as relief by an agency of a Federal, State, or local government;

(3) Service inside or outside the United States for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States;

(4) Involuntary military service not creditable under the Railroad Retirement Act;

(5) Employment with the following agencies of the United States Government—

(i) Department of Transportation

(ii) Interstate Commerce Commission.

(iii) National Mediation Board.

(iv) Railroad Retirement Board.

(v) National Transportation Safety Board.

(6) Employment entered into after early retirement by an employee who is receiving an annuity under Conrail's voluntary annuity program. This program is provided under the Staggers Rail Act of 1980 (Pub. L. 96–448).

(7) Employment with the Alaska Railroad so long as it is an instrumentality of the State of Alaska.

§ 216.17 What amount of regular non-railroad employment will break a current connection.

The amount of regular non-railroad employment needed to break a current connection depends on when the applicable 30-month period ends (see § 216.13) of this part, as follows:

(a) If the 30-month period ends in the calendar year before or in the same calendar year as the annuity begins or the month the employee dies, the current connection is broken if the employee—

(1) Works in each month in the interval after the end of the 30-month

BEST COPY AVAILABLE

period and before the earlier of the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any three months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the calendar year in which the annuity begins or the employee dies, the current connection is broken if the employee—

(1) Works in an two consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies, whichever is earlier; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section (but not counting earnings during the 30-month period and after the annuity beginning date), even if that year is not one of the two consecutive years described in paragraph (b)(1) of this section.

Subpart C—Railroad and Last Non-Railroad Employment

§ 216.21 General.

To be eligible for an employee, a spouse, or a divorced spouse annuity, the Railroad Retirement Act requires that an applicant must stop work for pay performed as an employee for a railroad employer. In addition, no employee, spouse or divorced spouse annuity may be paid for any month in which the employee, spouse or divorced spouse annuitant works for pay for any railroad employer after the date his or her annuity began. No annuity may be paid to a widow or widower, surviving divorced spouse, remarried widow or widower, child, or parent for any month such individual works for pay for a railroad employer.

§ 216.22 Work as an employee which affects payment.

(a) *Work for a railroad employer.* Work for pay as an employee of a railroad employer always prevents payment on an annuity.

(b) *Work for last non-railroad employer.* Work for pay in the service of the last non-railroad employer by whom an individual is employed will reduce the amount of the tier II benefit of the employee, spouse and supplemental annuity as provided in part 230 of this chapter. An individual's last non-railroad employer is:

(1) Any non-railroad employer from whom the individual last resigned (in point of time) in order to receive an annuity; and

(2) Any additional non-railroad employer from whom the individual resigned in order to have an annuity become payable. Employment which an individual stops within 6 months of the date on which the individual files for an annuity will be presumed in the absence of evidence to the contrary to be service from which the individual resigned in order to receive an annuity.

(c) *Corporate officers.* An officer of a corporation will be considered to be an employee of the corporation. A director of a corporation acting solely in his or her capacity as such director is not an employee of the corporation.

§ 216.23 Work which does not affect eligibility.

An individual may engage in any of the following without adversely affecting his or her annuity:

(a) *Work for a railway labor organization.* An individual may work for a local lodge or division of a railway labor organization if the pay is under $25 a month, unless the work performed is solely for the purpose of collecting insurance premiums.

(b) *Work without pay.* Work performed for any person or entity for which no pay is received, or where the pay merely constitutes reimbursement for out-of-pocket expenses, or where the amount received consists only of free will donations and there is no agreement that such donation shall constitute remuneration for services, does not affect entitlement to an annuity.

(c) *Self-employment.* Self-employment is work performed in an individual's own business, trade or profession as an independent contractor, rather than as an employee. An individual is not self-employed if the business is incorporated. The designation or description of the relationship between the individual and another person as anything other than that of an employer and employee is immaterial. If the Board determines that an employer-employee relationship exists, the fact that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like will be disregarded. An individual determined to be an employee of a railroad employer pursuant to part 203 of this subchapter is not self-employed. Whether an individual performing services is an employee depends upon the degree to which the recipient of services controls the individual's work. Control is determined in accordance with general legal principles delineating an employer-employee relationship. Among the factors considered are:

(1) *Instructions.* An individual required to comply with instructions about when, where, and how to work is ordinarily an employee. Instructions may be oral or in the form of manuals or written procedures which show how the desired result is to be accomplished. An individual who ordinarily works without receiving instructions because he or she is highly skilled or knowledgeable may nevertheless be an employee if the employer has a right to instruct the individual in performance of the work.

(2) *Training.* Training provided an individual by an employer indicates that the employer wants the work to be performed in a particular method or manner, especially if the training is given periodically or at frequent intervals. An individual may be trained by an experienced employee working with him or her, by correspondence, by required attendance at meetings, or by other methods.

(3) *Integration into the employer's business.* Integration of an individual's services into the business operations of an employer generally shows that the individual is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the individuals who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

(4) *Services rendered personally.* A requirement that an individual personally work for the employer indicates that the employer is interested in the methods as well as the results, and that the employer intends to control the result by controlling who does the work.

(5) *Hiring, supervising, payment of assistants.* An employer generally hires, supervises, and pays assistants. An individual who hires, supervises, and pays other workers at the direction of the employer may be an employee acting as a representative of the employer. However, if an individual hires, supervises, and pays his or her own assistants pursuant to a contract under which the individual agrees to provide materials and labor and under which the individual is responsible only for the attainment of a result, this factor indicates an independent contractor status.

(6) *Continuing work relationship.* A work relationship between an individual and an employer which continues over time indicates that the individual is an employee. A relationship may continue if the individual works at frequently recurring, though somewhat irregular intervals, either on call of the employer or when work is available.

(7) *Set hours of work.* A requirement that an individual work for an employer during a specified period of the day, week, month or year, or for a specified number of hours daily indicates that the individual is an employee. An individual whose occupation renders fixed hours impractical may be an employee if required by the employer to work at certain times.

(8) *Full time required.* A requirement that an individual devote full time to the employer's business indicates that the indviidual is an employee. What full time means may vary with the intent of the parties, the nature of the occupation, and customs in the locality. Full-time work may be required indirectly even though not specified in writing or orally. An individual required to produce a minimum volume of business for an employer may be compelled to devote full time to producing the work. Prohibiting work for any other employer may require an individual to work full time to earn a living. However, part-time work performed on a regular basis, or on call of the employer, or when work is available, may also render an individual an employee.

(9) *Working on employer's premises.* Working on the employer's premises may indicate that an individual is an employee where by nature the work could be done elsewhere, because the employer's place of business is physically within the employer's direction and supervision. Desk space, telephone, and stenographic services provided by an employer place the worker within the employer's direction and supervision unless the worker has the option not to use these facilities. Work done off the employer's premises does not by itself indicate that the worker is not an employee because some occupations require that work be performed away from the premises of the employer. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

(10) *Order or sequence set.* Performing tasks in the order or sequence set by the employer indicates that the worker is an employee. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.

(11) *Oral or written reports.* Regular oral or written reports submitted to the employer indicate that the worker is an employee, compelled to account to the employer for his or her actions.

(12) *Payment by hour, week, month.* Payment at a fixed rate per hour, week, or month indicates that an individual is an employee. Payment by commission with a guaranteed minimum salary, or by a drawing account at stated intervals with no requirement to repay amounts which exceed the individual's earnings, also indicates that an individual is an employee. Payment in a lump sum for a completed job indicates that an individual is self-employed. The lump sum may be computed by the number of hours required to do the job at a fixed hourly rate, or by weekly or monthly installments toward a lump sum agreed upon in advance as the total cost. Payment made on a straight commission basis generally indicates that the worker is an independent contractor.

(13) *Payment of business and/or traveling expenses.* Payment by the employer of expenses which an individual incurs in connection with the employer's business indicates that the individual is an employee.

(14) *Furnishing of tools and materials.* The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

(15) *Investment in facilities.* If the worker invests in facilities which are used by the worker in performing services and which are not typically maintained by employees, such as an office rented by the worker from a party unrelated to the worker or to the employer, this factor tends to indicate that the worker is an independent contractor. On the other hand, if all facilities necessary to the work which an individual performs are furnished without charge by the employer, this factor indicates the existence of an employer-employee relationship. Facilities include equipment or premises necessary for the work, other than items such as tools, instruments, and clothing which may be commonly provided by an employee in a particular trade.

(16) *Realization of profit or loss.* An individual not in a position to realize a profit or suffer a loss as a result of work performed for an employer is an employee. An individual has an opportunity for profit or loss if he or she:

(i) Hires, directs, and pays assistants;

(ii) Has his or her own office, equipment, materials, or other facilities for doing the work;

(iii) Has continuing and recurring liabilities or obligations, and success or failure depends on the relation of receipts to expenditures; or

(iv) Agrees to perform specific jobs for prices agreed upon in advance and pays expenses incurred in connection with the work.

(17) *Working for more than one firm at a time.* If a worker performs more than *de minimus* services for a number of unrelated persons or firms at the same time, this factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of the persons, especially where such persons are part of the same service arrangement.

(18) *Making service available to general public.* The fact that an individual makes his or her services available to the general public on a regular and consistent basis rather than to one employer indicates that the individual is self-employed rather than an employee of any one firm. An individual may make services available to the public by working from his or her own office with assistants, from his or her own home, by holding business licenses, by a listing in a business director, or by advertising.

(19) *Employer's right to discharge.* The right to discharge a worker is a factor which indicates that the worker is an employee and the person who possesses the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An employer's right to discharge exists even if it is restricted due to a collective bargaining agreement. An employer ordinarily cannot end a relationship without incurring liability with a self-employed individual who meets contract specifications.

(20) *Employee's right to terminate.* The fact that an individual has the right to end his or her relationship with an employer at any time without incurring liability for work to be performed indicates that the individual is an employee. A self-employed individual is legally obligated to satisfactorily complete a specific job.

§ 216.24 Relinquishment of rights to return to work.

(a) *What return to work rights must be given up.* Before an individual may receive an annuity based on age, he or she must give up any seniority or other rights to return to work for any railroad employer.

(b) *When right to return to work is ended.* An individual's right to return to

work for a railroad employer is ended whenever any of the following events occur:

(1) The employer reports to the Board that the individual no longer has the right; or

(2) The individual or an authorized agent of that individual gives the employer an oral or written notice of the individual's wish to give up that right and—

(i) The individual certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the individual's certification; and

(iii) The employer either confirms the individual's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer; or

(3) An event occurs which under the established rules or practices of the employer automatically ends that right; or

(4) The employer or the individual or both take an action which clearly and positively ends that right; or

(5) The individual never had that right and permanently stops working; or

(6) The Board gives up that right for the individual, having been authorized to do so by the individual; or

(7) The individual dies.

(8) The individual signs a statement that he or she gives up all rights to return to work in order to receive a separation allowance or severance pay.

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0016.)

Subpart D—Employee Annuity

§ 216.30 General.

The Railroad Retirement Act provides annuities for employees who have reached a specified age and have been credited with a specified number of years of service. The Act also provides annuities for employees who become disabled. In addition, to be eligible for an annuity an employee must comply with the work restrictions outlined in subpart C of this part.

§ 216.31 Who is eligible for an age annuity.

The Railroad Retirement Act provides annuities based on the employee's age for employees who have been credited with at least 10 years of railroad service.

(a) *Annuities based on 10 years of service.* An employee with 10 years of railroad service but less than 30 years of service is eligible for an annuity if he or she:

(1) Has attained retirement age; or

(2) Has attained age 62 (the annuity cannot begin prior to the first full month during which the employee is age 62) but is less than retirement age. All components of the annuity are reduced for each month the employee is under retirement age when the annuity begins.

(b) *Annuities based on 30 years of service.* An employee who has been credited with 30 years of railroad service is eligible for an annuity at age 60 (the annuity cannot begin prior to the first full month the employee is age 60). The Tier I component of the annuity is reduced if the employee meets the following conditions:

(1) The employee annuity begins before the month in which the employee is age 62; and either

(2) He or she had not attained age 60, prior to July 1, 1984; or

(3) He or she had not completed 30 years of railroad service prior to July 1, 1984.

(c) *Change from employee disability to age annuity.* A disability annuity paid to an employee through the end of the month before the month in which the employee attains retirement age is converted to an age annuity beginning with the month in which he or she attains retirement age.

§ 216.32 Who is eligible for a disability annuity.

The Railroad Retirement Act provides two types of disability annuities for employees who have been credited with at least 10 years of railroad service. An employee may receive an annuity if his or her disability prevents work in his or her regular railroad occupation. An employee who cannot be considered for a disability based on ability to work in his or her regular railroad occupation may receive an annuity if his or her disability prevents work in any regular employment.

(a) *Disability for work in regular railroad occupation.* An employee disabled for work in his or her regular occuption, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Has not attained retirement age; and

(2) Has a current connection with the railroad industry; and has either—

(3) Completed 20 years of service; or

(4) Completed 10 years of service and is at least 60 years old.

(b) *Disabled for work in any regular employment.* An employee disabled for work in any regular employment, as defined in part 220 of this chapter, is eligible for a disability annuity if he or she:

(1) Is under retirement age, and

(2) Has completed 10 years of service.

§ 216.33 What is required for payment of an age or disability annuity.

In addition to the eligibility requirements listed above, an employee may be required to meet other conditions before payment of his or her annuity may begin.

(a) To receive payment of an employee annuity based on age, an eligible employee must:

(1) Apply to be entitled to an annuity, and

(2) Give up the right to return to service with his or her last railroad employer.

(3) If a disability annuity is converted to an age annuity when the annuitant attains retirement age, the age annuity cannot be paid until the employee gives up the right to return to work as described in subpart C of this part. The employee may authorize the Board to relinquish any such right on his or her behalf at the time when he or she applies for the disability annuity.

(b) To receive payment of an employee annuity based on disability, an eligible employee must apply to be entitled to an annuity.

(c) When requested, the employee must submit evidence to support his or her application, such as proof of age or evidence of disability.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under control number 3220–0002.)

Subpart E—Supplemental Annuity

§ 216.40 General.

An employee with a current connection with the railroad industry at the time of retirement may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid for a separate account funded by employer taxes in addition to those assessed for regular annuities. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer.

§ 216.41 Who is entitled to a supplemental annuity.

An employee is entitled to a supplemental annuity if he or she:

(a) Has been credited with railroad service in at least one month before October 1981; and

(b) Is entitled to the payment of an employee annuity awarded after June 30, 1966; and

(c) Has a current connection with the railroad industry when the employee annuity begins; and

(d) Has given up the right to return to work as shown in Subpart C of this part; and either

(e) Is age 65 or older and has completed 25 years of service, or

(f) Is age 60 or older and under age 65, has completed 30 years of service, and is awarded an annuity on or after July 1, 1974.

§ 216.42 How a private railroad pension affects a supplemental annuity.

(a) *What is a private railroad pension.* The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension for purposes of this subpart is a plan that—

(1) Is a written plan or arrangement which is communicated to the employees to whom it applies; and

(2) Is established and maintained by an employer for a defined group of employees; and

(3) Provides for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement or disability. Such a plan is sometimes referred to as a defined benefit plan.

(b) *Defined contribution plan.* A plan under which the employer is obligated to make fixed contributions to the plan regardless of profits (sometimes known as a money purchase plan) is a private pension plan. A plan under which the employer's contributions are discretionary is not a private pension plan under this section.

(c) *Other than retirement benefits.* A plan which provides benefits not customarily considered retirement benefits (such as unemployment benfits, sickness or hospitalization benefits) is not a private pension plan under this section.

(d) *Effective date of private railroad pension for supplemental annuity purposes.* A private pension reduces a supplemental annuity payment effective on the first day of the month after the month the Board determines that it is a private pension as defined in paragraph (a) of this section.

(e) *Effect of private railroad pension.* A supplemental annuity is reduced by the amount of any private pension the employee is receiving which is attributable to an employer's contributions, less any amount by which the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension attributable to the employee's contributions. The Board will determine the amount of a private pension for any month which is attributable to the employee's contributions.

§ 216.43 Effect of a supplemental annuity on other benefits.

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974, does not affect the payment of a regular employee annuity. A supplemental annuity beginning prior to 1975 causes a reduction in the employee annuity as provided by section 3(j) of the Railroad Retirement Act of 1937.

(b) *Spouse or survivor annuity.* The payment of supplemental annuity does not affect the amount of a spouse or survivor annuity.

(c) *Residual lump-sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See part 234 of this chapter for an explanation of the residual lump-sum benefit.

Subpart F—Spouse and Divorced Spouse Annuities

§ 216.50 General.

The Railroad Retirement Act provides annuities for the spouse, and divorced spouse, of an employee who is entitled to an employee annuity. A spouse may receive an annuity based on age, or on having a child of the employee in his or her care. A divorced spouse may only receive an annuity based on age. No spouse or divorced spouse annuity may be paid based upon disability.

§ 216.51 Who is eligible for a spouse annuity.

(a) To be eligible for an annuity, a spouse must—

(1) Be the husband or wife, as defined in part 222 of this chapter, of an employee who is entitled to an annuity described under subpart D of this part; and

(2) Stop working for any railroad employer.

(b) Where the employee's annuity began before January 1, 1975, the employee has completed less than 30 years of railroad service, and is age 65 or older, the spouse must be—

(1) Age 65 or older; or

(2) Less than age 65 and have in his or her care a disabled child or minor child (a child under 16 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under age 65. In such case, all annuity components are reduced for each month the spouse is under age 65 at the time the annuity begins.

(c) Where the employee's annuity begins after December 31, 1974, the employee has completed 10 years but less than 30 years of railroad service, and has attained age 62, the spouse must be—

(1) Retirement age or older; or

(2) Less than retirement age and have in his or her care a disabled child or a minor child (a child under 16 years old if the spouse claimant is a wife or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 62 or older but under retirement age. In such case, all annuity components are reduced for each month the spouse is under retirement age at the time the annuity begins.

(d) Where the employee's annuity began after June 30, 1974, the employee has completed 30 years of railroad service, and is age 60 or older, the spouse must be—

(1) Age 60 or older; or

(2) Less than age 60 and have in his or her care a disabled child or a minor child (a child under 16 years old if the spouse claimant is a wife, or under 16 years old if the spouse claimant is a husband) of the employee; or

(3) Age 60 but less than retirement age. In such case, the Tier I component is reduced if the following conditions are met:

(i) The employee was under age 62 at the time his or her annuity began; and

(ii) The employee annuity began after June 30, 1984; and

(iii) The employee was under age 60 on June 30, 1984 or completed 30 years of railroad service after June 30, 1984; and

(iv) The spouse annuity begins after June 30, 1984.

§ 216.52 Who is eligible for an annuity as a divorced spouse.

To be eligible for a divorced spouse annuity, the employee annuitant must be at least age 62 and the divorced spouse (see § 222.22 of this chapter) must—

(a) Be the divorced wife or husband of an employee; and

(b) Stop work for a railroad employer; and

(c) Not be entitled to an old-age or disability benefit under the Social Security Act based on a primary insurance amount that is equal to or greater than one-half of the employee's tier I primary insurance amount; and either

(d) Have attained retirement age; or

(e) Have attained age 62 but be under retirement age. The annuity is reduced for each month the spouse is under retirement age at the time the annuity begins.

§ 216.53 What is required for payment.

An eligible spouse or divorced spouse must—

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work for a railroad employer.

(Approved by the Office of Management and Budget under control number 3220–0016 and 3220–0042.)

§ 216.54 Who is an employee's wife or husband.

An employee's wife or husband is an individual who—

(a) Is married to the employee; and

(b) Has been married to the employee for at least one year immediately before the date the spouse applied for annuity; or

(c) Is the natural parent of the employee's child; or

(d) Was entitled to an annuity as a widow(er), a parent, or a disabled child under this part in the month before he or she married the employee; or

(e) Could have been entitled to a benefit listed in paragraph (d) of this section, if the spouse had applied and becn old enough in the month before he or she married the employee.

Subpart G—Widow(er), Surviving Divorced Spouse, and Remarried Widow(er) Annuities

§ 216.60 General.

The Railroad Retirement Act provides annuities for the widow(er), surviving divorced spouse, or remarried widow(er) of an employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A widow(er), surviving divorced spouse, or remarried widow(er) may receive an annuity based on age, on disability, or on having a child of the employee in his or her care.

§ 216.61 Who is eligible for an annuity as a widow(er).

A widow(er) of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity if he or she—

(a) Has not remarried; and either

(b) Has attained retirement age; or

(c) Is at least 50 but less than 60 years of age and became disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity); or

(d) Is less than retirement age but has in his or her care a child who either is under age 18 (16 with respect to the tier I component) or is disabled and who is entitled to an annuity under subpart H of this part; or

(e) Is at least 60 years of age but has not attained retirement age. (In this case, all components of the annuity are reduced for each month the widow(er) is age 62 or over but under retirement age when the annuity begins. For each month the widow(er) is at least age 60 but under age 62, all components of the annuity are reduced as if the widow(er) were age (62).

§ 216.62 Who is eligible for an annuity as a surviving divorced spouse.

(a) A surviving divorced spouse of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death, is eligible for an annuity if he or she:

(1) Is unmarried; and

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the surviving divorced spouse's annuity before any reduction for age; and either

(3) Has attained retirement age; or

(4) Is at least 50 years of age but less than retirement age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity.); or

(5) Is less than retirement age but has in his or her care a child who either is under age 16 or is disabled and who entitled to an annuity under subpart H of this part; or

(6) Is at least 60 years of age but has not attained reitrement age. In this case, the annuity is reduced for each month the surviving spouse is under retirement age when the annuity begins.

(b) A disabled surviving spouse's annuity is converted to an annutiy based on age beginning the month he or she becomes 60 years old. The annuity rate does not change.

(c) If a surviving divorced spouse marries after attaining age 60 (or age 50 if he or she is a disabled surviving divorced spouse), such marriage shall be deemed not to have occurred.

§ 216.63 Who is eligible for an annuity as a remarried widow(er).

(a) A widow(er) of an employee who completed 10 years of railroad service and had a current connection with the railroad industry at death is eligible for an annuity as a remarried widow(er) if he or she:

(1) Remarried either—

(i) After having attained age 60 (after age 50 if disabled); or

(ii) Before age 60 but the marriage terminated; and

(2) Is not entitled to an old-age benefit under the Social Security Act that is equal to or higher than the full amount of the remarried widow(er)'s annuity before any reduciton for age; and

(3) Has attained retirement age; or

(4) Is at least 50 but less than 60 years of age and is disabled as defined in part 220 of this chapter before the end of the period described in § 216.68 (this results in a reduced annuity); or

(5) Has not attained retirement age but has in his or her care a child who either is under age 16 or is disabled, and who is entitled to an annuity under subpart H of this part; or

(6) Is at least age 60 but has not attained retirement age. (In this case, the annuity is reduced for each month the remarried widow(er) is under retirement age when the annuity begins).

(b) An individual entitled to a widow(er)'s annuity may be entitled to an annuity as a remarried widow(er) if he or she;

(1) Remarries after having attained age 60 (after age 50 if he or she has been determined to be disabled prior to his or her remarriage) and is not a surviving divorced spouse; or

(2) Is entitled to an annuity based uon having a child of the employee in his or her care and marries an individual entitled to a retirement, disability, widow(er)'s mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement or Social Security Act.

§ 216.64 What is required for payment.

An eligible widow(er), surviving divorced spouse, or remarried widow(er) must—

(a) Apply to be entitled to an annuity; and

(b) Submit evidence requested by the Board to support his or her application.

(Approved by the Office of Management and Budget under control number 3220–0030.)

§ 216.65 Who is an employee's widow(er).

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

(a) Was married to the employee for at least nine months before the day the employee died; or

(b) Is the natural parent of the employee's child; or

(c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old; or

(d) Was married to the employee less than nine months before the employee died but, at the time of marriage, the employee was reasonably expected to live for nine months; and

(1) The employee's death was accidental; or

(2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least nine months; or

(e) Was entitled in the month before the month of marriage to either—

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) above, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marraige.

§ 216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either—

(1) Is the natural parent of the employee's child; or

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

§ 216.67 "Child in care".

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I component of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of "child in care" found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).

A widow(er), surviving divorced spouse, or married widow(er) who has a diability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which—

(a) Begins in the later of—

(1) The month in which the employee died; or

(2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or

(3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of—

(1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or

(2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

Subpart H—Child's Annuity

§ 216.70 General.

The Railroad Retirement Act provides an annuity for the child of a deceased employee but for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility requirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;

(b) To establish annuity eligibility for a widow(er), or surviving divorced spouse or remarried widow(er) under Subpart G of this part if he or she has the employee's child in care; or

(c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see part 229) by including the eligible child.

§ 216.71 Who is eligible for a child's annuity.

An individual is eligible for a child's annuity if the individual—

(a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in Part 222 of this chapter; and

(d) Meets one of the following at the time the application is filed—

(1) Is under age 18;

(2) Is age 18 or older and either—

(i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits); or

(ii) Is under age 19 and is a full-time student as defined in § 216.74 of this part; or

(iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

§ 216.72 What is required for payment of a child's annuity.

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220–0030.

§ 216.73 Who may be re-entitled to a child's annuity.

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with—

(a) The first month in which the individual is a full-time student if he or she is under age 19, or is age 19 and has not completed requirements for, or received a diploma or certificate from, a secondary school; or

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; or

(c) The first month in which the individual is under a disability that began before the last day of a 7-year period (84 consecutive month) following the month in which the previous child's annuity ended, or the individual was no longer included as a disabled child in a railroad retirement annuity paid under the Social Security Overall Minimum Annuity (see part 229).

§ 216.74 When a child is a full-time student.

(a) *Full-time student.* A child is considered a full-time student when that

individual is in full-time attendance at an elementary or secondary school. An individual is not a full-time student if while attending an elementary or secondary school he or she is paid compensation by an employer who has requested or required that the individual attend the school. An individual is not a full-time student while he or she is confined in a penal institution or correctional facility because he or she committed a felony after October 19, 1980. A student who reaches age 19 but has not completed the requirements for a secondary school diploma or certificate and who is in full-time attendance at an elementary or secondary school will continue to be eligible for benefits until the first day of the first month following the end of the quarter or semester in which he or she is then enrolled, or if the school is not operated on a quarter or semester system, the earlier of—

(1) The first day of the month following completion of the course(s) in which he or she was enrolled when age 19 was reached; or

(2) The first day of the third month following the month in which he or she reached age 19.

(b) *Full-time attendance.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the elementary or secondary school. The course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendance either begins or ends in a given month is in full-time attendance for that entire month. A student is in full-time attendance in the month in which he or she graduates, but has no classes, if classes end in the month before graduation.

(c) *Elementary or secondary school.* An elementary or secondary school is a school which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which it is located.

§ 216.75 When a child is a full-time student during a period of non-attendance.

A student who has been in full-time attendance at an elementary or secondary school is considered a full-time student during a period of non-attendance (include part-time attendance) if—

(a) The period of non-attendance is four consecutive months or less; and

(b) The student shows to the satisfaction of the Board that he or she intends to return, to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the school.

Subpart I—Parent's Annuity

§ 216.80 General.

The Railroad Retirement Act provides an annuity for the surviving parent of a deceased employee. The deceased employee must have completed 10 years of railroad service and have had a current connection with the railroad industry at the time of his or her death. A parent may only receive an annuity based on age.

§ 216.81 Who is eligible for a parent's annuity.

(a) Where the employee is not survived by a widow(er), or child who is or ever could be entitled to an annuity as described by Subparts G or H of this part, a parent of the deceased employee is eligible for both the tier I and tier II components of an annuity if he or she:

(1) Is age 60 or older; and

(2) Has not married since the employee died; and

(3) Received one-half of his or her support (as defined in Part 222 of this chapter) from the employee at the time the employee died.

(4) Files proof of support as provided for in paragraph (b)(4) and (b)(5) of this section.

(b) Where the employee is survived by a widow(er), or child who is or ever could be entitled to an annuity as described by subparts G or H of this part, a parent of the deceased employee is eligible for an annuity consisting of the tier I component alone if he or she:

(1) Is age 60 or older; and

(2) Has not married since the employee died; and

(3) Is not in receipt of an old age benefit under the Social Security Act equal to or exceeding the amount of the parent's Tier I annuity amount before it is reduced for the family maximum but after the sole survivor minimum is considered; and

(4) Received at least one-half of his or her support (as defined in part 222 of this chapter) from the employee either—

(i) When the employee died, or

(ii) At the beginning of the period of disability if the employee had a period of disability (as explained in part 220 of this chapter) which did not end before death; and

(5) Files proof of support with the Board within two years after either—

(i) The month in which the employee filed an application for a period of disability if support is to be established as of the beginning of the period of disability; or

(ii) The date of the employee's death if support is to be established at that point.

(6) The Board may accept proof of support filed after the two-year period for reasons which constitute good cause to do so as that term is defined in part 219 of this chapter.

§ 216.82 What is required for payment.

An eligible parent must file an application and submit the evidence requested by the Board to be entitled to an annuity.

(Approved by the Office of Management and Budget under control number 3220-0080.)

Subpart J—Eligibility for More Than One Annuity

§ 216.90 General.

An individual may meet the eligibility provisions for more than one annuity described in this part. The Railroad Retirement Act generally requires that the total amount of annuities otherwise independently payable to one individual must be reduced if that individual is entitled to multiple annuities. Entitlement as a survivor includes entitlement as a widow(er), surviving divorced spouse, remarried widow(er), child, or parent.

§ 216.91 Entitlement as an employee and spouse, divorced spouse, or survivor.

(a) *General.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the spouse, divorced spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply (except as provided in paragraph (b) of this section) if the spouse, divorced spouse or survivor or the individual upon whos earnings record the spouse, divorced spouse or survivor annuity is based worked for a railroad employer or as an employee representative before January 1, 1975.

(b) *Tier I reduction.* If an individual is entitled to an annuity as a spouse, divorced spouse or survivor, and is also entitled to an employee annuity, then the tier I component of the spouse, divorced spouse or survivor annuity must be reduced by the amount of the tier I component of the employee annuity. Where the spouse or survivor is entitled to a tier II component, then a portion of this reduction may be restored in the computation of this component.

§ 216.92 Entitlement as a spouse or divorced spouse and as a survivor.

If an individual is entitled to both a spouse or divorced spouse and survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.93 Entitlement to more than one survivor annuity.

If an individual is entitled to more than one survivor annuity, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

§ 216.94 Entitlement to more than one divorced spouse annuity.

If an individual is entitled to more than one annuity as a divorced spouse, only the larger annuity will be paid. However, if the individual so chooses, he or she can receive the smaller annuity rather than the larger annuity.

Dated: February 28, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91-5760 Filed 3-11-91; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-116-90]

RIN 1545-AP30

Allocation of Charitable Contributions

AGENCY: Internal Revenue Service. Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation and apportionment of charitable deductions. These regulations would provide guidance needed to comply with the provisions of subchapter N of the Internal Revenue Code and would affect taxpayers with foreign source income.

DATES: Comments and requests for a public hearing must be received by May 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 2604, Ben Franklin Station Attention: CC:CORP:T:R (INTL-116-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-116-90) (202-566-6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington DC 20503, with copies to the Internal Revenue Service, Attention IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.861-8(e)(iv). This information is required by the Internal Revenue Service to ensure the proper application of § 1.861-8(e)(iv). This information will be used to verify the United States source allocation of certain charitable contributions. The likely recordkeepers are businesses or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 500 hours.

Estimated annual burden per recordkeeper: 1 hour.

Estimated number of recordkeepers: 500.

Explanation of Provisions

Section 1.861-8(e) of the regulations is proposed to be amended. This amendment would add new paragraph (e)(12) to § 1.861-8 to provide new guidance concerning the allocation and apportionment of deductions for charitable contributions.

This new paragraph provides that a taxpayer shall allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain circumstances. The taxpayer shall allocate a deduction for a charitable contribution to United States source gross income if (1) the taxpayer, at the time of the contribution, both designates the contribution for use solely in the United States and reasonably believes that the contribution will be so used, and if (2) the contribution is not allocable to foreign source gross income under the following rule. The taxpayer shall allocate a deduction for a charitable contribution to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that (1) the contribution will be used solely outside the United States, or that (2) the contribution may necessarily be used only outside the United States. A deduction for a charitable contribution that is not allocable to United States or foreign source gross income under the foregoing rules is ratably apportioned as provided in § 1.861-8(c)(3). A coordination rule is added to clarify that, in applying these rules to an affiliated group as defined in § 1.861-14T(d), the allocation and apportionment of deductions for charitable contributions will be performed by treating the entire group as a single taxpayer. An example illustrating new § 1.861-8(e)(12) is added at § 1.861-8(g) *Example* (34).

The Service particularly seeks comments on the effects of the proposed rules on United States charities with significant international activities.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Chief Counsel for Advocacy for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and

place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.861-1 through 1.907-1

Aliens, Corporate deductions, Disc, Exports, Foreign investments in the U.S., Foreign tax credit, FSC, Income taxes, Source of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.861–8 is proposed to be amended as follows:

1. Paragraph (e)(9)(iv) is removed, paragraph (e)(9)(v) is redesignated as paragraph (e)(9)(iv), and the word "and" is added at the end of paragraph (e)(9)(iii).

2. Paragraph (e)(12) is added to read as set forth below.

3. Paragraph (g) Example (18) is amended by removing the portion of the table in paragraph (i) immediately following "Total gross income...40,000,000" and adding a new sentence following the table as set forth below, and by removing paragraph (iv).

4. Paragraph (g) is amended by adding Example 34 to read as set forth below.

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(e) Allocation and apportionment of certain deductions.

* * * * *

(12) Deductions for certain charitable contributions—(i) *Allocation to United States source gross income.* A taxpayer shall allocate a deduction for a charitable contribution solely to United States source gross income if—

(A) The taxpayer, at the time of the contribution, both designates the charitable contribution for use solely in the United States and reasonably believes that the contribution will be so used; and

(B) The contribution is not described in paragraph (e)(12)(ii) of this section.

If a deduction for a charitable contribution is allocable under this paragraph (e)(12)(i) to United States source gross income, in determining the combined taxable income of a DISC or FSC, as the case may be, and its related supplier, no portion of the deduction shall be allocable to the combined gross income of the DISC or FSC and its related supplier.

(ii) *Allocation to foreign source gross income.* The taxpayer shall allocate a deduction for a charitable contribution solely to foreign source gross income if the taxpayer, at the time of the contribution, knows or has reason to know that—

(A) The charitable contribution will be used solely outside the United States; or

(B) The charitable contribution may necessarily be used only outside the United States.

If a deduction for a charitable contribution is allocable under this paragraph (e)(12)(ii) to foreign source gross income, in determining the combined taxable income of a DISC or FSC, as the case may be, and its related supplier, the deduction shall be allocable solely to the combined gross income of the DISC or FSC and its related supplier.

(iii) *Ratable apportionment.* A deduction for a charitable contribution that is not required to be allocated to United States or foreign source gross income under paragraph (e)(12)(i) or (ii) of this section is ratably apportioned by the taxpayer on the basis of gross income as provided in § 1.861–8(c)(3).

(iv) *Special rule for private foundations.* If a taxpayer who is a substantial contributor (as defined in section 507 (d)(2)) with respect to a private foundation (as defined in section 509 (a)) claims a deduction for the year of more than $25,000 in charitable contributions to that private foundation, in order for that deduction in its entirety to be allocated solely to United States source gross income under paragraph (e)(12)(i) of this section, the following additional conditions must be met.

(A) The taxpayer must make the contributions on the condition that the foundation set up a restricted account solely for these contributions; and

(B) The taxpayer must take actions to ensure, and maintain records to show, in conformity with the principles of the expenditure responsibility requirements of § 53.4945–5 of this chapter (applied as if the taxpayer were itself a private foundation making grants to another private foundation), that the funds in the restricted account were or will be used solely in the United States. The taxpayer need not report annually to the Service the information described in § 53.4945–5(d), (1) and (2) of this chapter but must present that information upon request by the Service.

(v) *Coordination with § 1.861–14T.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section and § 1.861–14T. In this regard, § 1.861–14T (c) (1), but not § 1.861–14T (c) (2), applies to the allocation of such a deduction.

* * * * *

(g) * * *

Example (18). * * *

(i) * * *

Among other deductions, X incurs $1,600,000 in expenses of its supervision department.

* * *

* * * * * *

Example 34—Deduction for charitable contributions—(i) *Facts.* X, a domestic corporation and not a member of an affiliated group under § 1.861–14T (d), does business in the United States and, through a branch, in foreign country Y. X's gross income for the taxable year is $3,000,000, consisting of $2,000,000 United States source gross income and $1,000,000 foreign source gross income. During its taxable year, X made charitable contributions of $12,000 each to the following charities subject to the following conditions or circumstances (if any):

Charity A, an organization benefitting homeless persons in the United States but with some similar charitable activities carried on in Canada. X designates the contribution for use solely within the United States and Charity A represents generally that contributions will be used in accordance with donor designations.

Charity B, an organization promoting worldwide wildlife conservation, with the stipulation by X that its contribution be used only for activities outside the United States.

Charity C, an organization operating a regional relief organization. The form of the contribution is in Y currency, a blocked currency which X values at U.S. $12,000.

Charity D, an organization benefitting persons afflicted with a certain disease.

(ii) *Allocation and apportionment.* The contribution to Charity A shall be allocated solely to United States source gross income pursuant to § 1.861–8(e)(12)(i) because X designates the contribution for use solely within the United States, and, based on Charity A's representation generally that designations will be honored, reasonably believes that the contribution will be so used. The contribution to Charity B shall be allocated solely to foreign source gross income under § 1.861–8(e)(12)(ii) because X, based on its stipulation, has reason to know that its contribution will be used by Charity B only for B's activities outside the United States. The contribution to Charity C shall be allocated solely to foreign source gross income under § 1.861–8(e)(12)(ii) because X knows (or has reason to know) that the contribution may necessarily be used only in Y because its contribution was in blocked Y currency. The contribution to Charity D is apportioned ratably on the basis of gross income pursuant to § 1.861–8(e)(12)(iii), as follows, because the conditions of paragraph § 1.861–8(e)(12)(i) or (ii) do not apply.

Apportionment of contribution to Charity D to foreign source gross income:

$12,000 X $1,000,000 / $3,000,000 ..... $4,000

Apportionment of contribution to Charity D to United States source gross income:

$12,000 X $2,000,000 / $3,000,000 8,000

Total apportioned charitable contribution 12,000

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved: February 20, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–5586 Filed 3–11–91; 8:45 am]
BILLING CODE 4830–01–M

26 CFR Part I

[INTL-0952-86]

RIN 1545-AM20

Allocation and Apportionment of Interest Expense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the allocation and apportionment of interest expense necessary for purposes of computing taxable income from sources within and without the United States. The proposed regulations would require that, in certain circumstances, third party interest expense of an affiliated group of corporations be allocated directly to interest income received from related controlled foreign corporations. When finalized, the proposed regulations would replace existing temporary regulations.

DATES: Comments and requests for a hearing must be received by May 13, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0952–86), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Judith Cavell of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC: CORP:T:R(INTL–0952–86) (202–566–6442, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the temporary Income Tax Regulations (26 CFR part 1) under section 864(e) of the Internal Revenue Code of 1986. Proposed regulations which would have implemented section 864(e) were published in the Federal Register at 52 FR 34560 on September 11, 1987. Those proposed regulations were withdrawn and replaced by temporary regulations and a notice of proposed rulemaking by cross-reference to temporary regulations published on September 14, 1988, in the Federal Register at 53 FR 35525 and 53 FR 35467, respectively.

Explanation of Provisions

On September 14, 1988, the Federal Register published temporary regulations §§ 1.861–8T through 1.861–14T relating to the allocation and apportionment of interest and certain other expenses. A notice of proposed rulemaking was published on the same day by cross-reference to those temporary regulations.

Section 1.861–10T(e) requires that, in certain circumstances, third party interest expense of an affiliated group of corporations be allocated directly to interest income received from related controlled foreign corporations. Numerous written comments on this section have been received and considered. It is now proposed that § 1.861–10T(e) be replaced with the regulation provided herein. The remainder of this preamble discusses § 1.861–10T(e) and its origin, the most significant public comments received thereon, and the proposed regulation.

Section 864(e)

Section 864(e)(1) provides that the taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single taxpayer. Pursuant to section 864(e)(5), however, the term "affiliated group" does not include related controlled foreign corporations (herein "related CFCs") for this purpose. Section 864(e) reflects a legislative intent that indebtedness incurred by affiliated United States corporations be considered fungible for purposes of interest allocation, but that indebtedness of affiliated United States corporations should not be considered fungible with that of related CFCs. In effect, section 864(e) requires that interest expense incurred by related CFCs be traced directly to the income of these CFCs.

The Origin of § 1.861–10(e)

After the elimination of the separate company allocation method of prior law by the enactment of section 864(e), many multinational groups adopted a financing technique consisting of borrowing by United States group members coupled with the on-lending of such amounts to related CFCs. Such on-lending often replaced existing indebtedness owed (or that would otherwise have been incurred) by related CFCs to unrelated third parties; in effect, third party indebtedness of related CFCs was routed through the United States affiliated group.

This technique provided two significant tax benefits. The primary benefit was an increase in the foreign source income of the United States affiliated group by virtue of the creation of new foreign source interest income. The creation of offsetting interest deductions ensured, however, that overall taxable income of the United States affiliated group was not increased. Although a portion of the group's new interest deductions were apportioned to (and thus reduced) foreign source income, a group's holdings of domestic assets ensured that the amount of new interest expense apportioned to foreign source income did not exceed the amount of new foreign source interest income received from the related CFCs.

A second, related benefit was the effective apportionment of a portion of the CFCs' interest expense to United States source income of the United States affiliated group. As noted above, a portion of the new interest expense incurred by the affiliated group was apportioned to United States source income.

The Treasury Department believes that, to allow taxpayers to manipulate borrowing by related CFCs in order to achieve both an increase in the foreign source income, and a reduction of the United States source income, of a United States affiliated group would not carry out the purposes of section 864(e) as described above. Section 864(e)(7)

requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 864(e). The Report of the Conference Committee on the 1986 Act adds that "the conferees intend that the Secretary use the regulatory authority provided in the agreement to allocate interest expense directly to interest or other passive income where such a direct allocation is necessary to prevent taxpayers from defeating the purposes of this provision." Accordingly, the Treasury Department believes that it is necessary, in order to carry out the purposes of section 864(e), to require that interest expense of a United States affiliated group that is incurred to finance on-lending to related CFCs of the type described above be allocated directly to interest income received with respect to such on-lending.

Temporary Regulation § 1.861–10T(e)

As originally proposed in August, 1987, § 1.861–10(e) would have required that third party interest expense of an affiliated group be allocated directly to interest income received from related CFCs, in an amount sufficient to offset the entire amount of such interest income. In effect, the original proposal treated all lending by a United States affiliated group to related CFCs as tax-motivated.

Before reissuance in temporary form in September of 1988, proposed § 1.861–10(e) was revised substantially to provide a more precise method for the identification of tax-motivated borrowing and on-lending. Section 1.861–10T(e) treats lending by a United States affiliated group to its related CFCs as tax-motivated if the related CFC group owes a disproportionately small amount of indebtedness to unrelated parties. Under the temporary regulation, a related CFC group is considered to have "excess related person indebtedness" if the aggregate debt-to-asset ratio of all related CFCs (taking into consideration only indebtedness owed to unrelated parties) is less than 80 percent of the debt-to-asset ratio of the United States affiliated group. The amount of such "excess related person indebtedness" is the amount of related person indebtedness which, if borrowed instead from unrelated parties, would have raised the debt-to-asset ratio of the related CFC group to 80 percent of the debt-to-asset ratio of the United States group. If the related CFC group has insufficient related person indebtedness to attain the required debt-to-asset ratio, certain related CFC stock held by the United States affiliated group is treated as related person indebtedness under the temporary regulation.

Section 1.861–10T(e) requires that third party interest expense of a United States affiliated group, in an amount equal to interest income received on excess related person indebtedness, be allocated directly to foreign source income of the group in the various separate limitation categories of section 904(d)(1). Interest expense is allocated to separate limitation categories in proportion to the amounts of related CFC obligations held by the group in each such category. Section 1.861–10T(3) is applicable for taxable years beginning after December 31, 1987.

Comments on Temporary Regulation § 1.861–10T(e)

Numerous written comments have been received with respect to § 1.861–10T(e). Several commenters have argued that proportionality of domestic and foreign group debt-to-asset ratios bears no relationship to the existence or nonexistence of tax-motivated borrowing and on-lending. Commenters have noted that related CFCs may have debt-to-asset ratios which differ significantly from those of United States affiliates by virtue of differing business requirements. Commenters have also noted that lending to related CFCs may be financed with equity or retained earnings of the affiliated group, rather than with indebtedness; in such cases, they argue, lending is not tax-motivated. To address these comments, the proposed revision of § 1.861–10T(e) utilizes a methodology which is intended to achieve a more accurate approximation of the amount of debt-financed tax-motivated on-lending. In addition, the proposed revision eliminates the need for taxpayers to obtain, and the IRS to verify, information regarding the amounts of unrelated person indebtedness owed by related CFCs.

Proposed Regulations § 1.861–10(e)

These proposed regulations require a three-step calculation. Step One determines the amount of lending by a United States affiliated group to its related CFCs that is considered potentially tax-motivated ("excess related group indebtedness"). The amount of excess related group indebtedness is the excess of the actual amount of lending to related CFCs in the current year over the amount which would have been proportionate (given the amount of the current year assets of the related CFC group) to the affiliated group's average lending to related CFCs over a five-year historical base period. Two safe harbors are provided: these proposed regulations would not apply to an affiliated group in any year for which either (i) the actual amount of a group's lending to related CFCs did not exceed the actual amount of its lending to related CFCs in the immediately preceding year or (ii) the ratio of the group's actual amount of lending to related CFCs to the total assets of its related CFC group did not exceed 0.10.

Step Two determines the amount of United States affiliated group borrowing which is treated as having been incurred to finance related CFC group indebtedness ("excess U.S. shareholder indebtedness"). The amount of excess U.S. shareholder indebtedness is the excess of the actual amount of United States affiliated group borrowing in the current year over the amount which would have been proportionate (given the amount of the current year assets of the affiliated group) to the United States affiliated group's average borrowing over the same five-year base period. For purposes of determining a proportionate amount of United States affiliated group borrowing, the amount of any excess related group indebtedness in the current year is excluded from current year assets of the United States affiliated group; this exclusion reflects the fact that the purpose of Step Two is to determine the extent to which such excess related group indebtedness is financed with United States affiliated group borrowing.

If a United States affiliated group has both excess related group indebtedness and excess U.S. shareholder indebtedness in a single taxable year, the group is treated as having engaged in tax-motivated borrowing and on-lending, and a portion of the group's excess related person indebtedness is identified as "allocable related group indebtedness." If the amount of an affiliated group's excess U.S. shareholder indebtedness exceeds its amount of excess related group indebtedness in the current year, the entire amount of excess related group indebtedness is treated as having been financed with tax-motivated borrowing, and the taxpayer is considered to have "allocable related group indebtedness" in the amount of its excess related group indebtedness. If the amount of an affiliated group's excess U.S. shareholder indebtedness does not exceed its amount of excess related group indebtedness, the taxpayer is considered to have "allocable related group indebtedness" only in the amount of its excess U.S. shareholder indebtedness.

Step Three requires that third party interest expense of the United States affiliated group, in an amount equal to the amount of interest income received by the group on allocable related CFC group indebtedness, be allocated directly to foreign source income of the United States affiliated group. This interest expense is allocated to separate limitation categories in proportion to the United States affiliated in each category.

Special rules are provided with regard to the determination of base period ratios in the first five taxable years for which the regulation is effective and in periods following major corporate events, *e.g.*, acquisitions, dispositions and mergers. In addition, limitations are provided on the extent to which a substantial increase in a current year ratio may be reflected in the base period ratios of subsequent taxable years. Finally, several special rules are provided with respect to the classification of certain loans between related CFCs as related group indebtedness, and the treatment of certain dual character stock as related group indebtedness.

These regulations are proposed to be effective for taxable years beginning after December 31, 1990. Taxpayers, however, will be permitted to elect to apply these regulations as adopted as final regulations, instead of § 1.861–10T(e), retroactively for taxable years beginning after December 31, 1987.

Comments on Proposed Resolution § 1.861–10(e)

Comments are solicited with respect to all aspects of these proposed regulations and, in particular, the special rules governing the calculation of base period ratios after the occurrence of significant corporate events, *e.g.*, acquisitions and dispositions.

In addition, comments are invited with respect to Step Two of the proposed regulation. An alternative version of Step Two was considered in which the amount of a United States affiliated group's allocable related group indebtedness (*i.e.*, on-lending considered to be tax-motivated) would have been determined for any current taxable year by multiplying the amount of the group's excess related group indebtedness (*i.e.*, lending considered to be potentially tax-motivated) for the year by its U.S. debt-to-asset ratio for the year. Under this approach, excess related group indebtedness would be treated as financed with United States affiliated group borrowing in the same proportion that all other assets of the group are financed during the current year. This approach would be more consistent with the assumption (underlying section 864(e)) that money is fungible than is Step Two of the proposed regulation, which treats each dollar of excess related group indebtedness as financed with one dollar of excess U.S. shareholder indebtedness (to the extent that the two excess amounts are equal).

It was determined that Step Two of the proposed regulation would permit a more accurate approximation of the amount of on-lending that is in fact tax-motivated. By contrast, the alternative approach described above would have treated all excess related group indebtedness, as tax-motivated to some extent, *i.e.*, the extent to which it is debt-financed. The alternative approach has the significant advantage, however, of relative simplicity. Accordingly, taxpayers are invited to comment on the relative advantages and disadvantages of the two approaches.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Judith Cavell of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR §§ 1.861–1 through 1.907–1

Aliens, Corporate deductions, Disc, Exports, Foreign investments in U.S., Foreign tax credit, FSC, Income taxes, Source of income, U.S. investments abroad.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1 INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Section 1.861–10(e) is also issued under 26 U.S.C. 863(a), 26 U.S.C. 864(e), 26 U.S.C. 865(i) and 26 U.S.C. 7701(f).

Par. 2. Section 1.861–10, which was proposed on September 14, 1988, at 53 FR 35526, is amended by revising paragraph (e) (See 53 FR 35488) to read as follows:

§ 1.861–10 Special allocations of interest expense.

* * * * *

(e) *Treatment of certain related group indebtedness*—(1) *In general.* If, for any taxable year beginning after December 31, 1990, a U.S. shareholder (as defined in paragraph (e)(5)(i) of this section) has both—

(i) Excess related group indebtedness (as determined under Step One in paragraph (e)(2) of this section) and

(ii) Excess U.S. shareholder indebtedness (as determined under Step Two in paragraph (e)(3) of this section),

the U.S. shareholder shall allocate, to its gross income in the various separate limitation categories described in section 904(d)(1), a portion of its interest expense paid or accrued to any obligee who is not a member of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder ("third party interest expense"), excluding amounts allocated under paragraphs (b) and (c) of this section. The amount of third party interest expense so allocated shall equal the total amount of interest income derived by the U.S. shareholder during the year from related group indebtedness, multiplied by the ratio of the lesser of the foregoing two amounts of excess indebtedness for the year to related group indebtedness for the year. This amount of third party interest expense is allocated as described in Step Three in paragraph (e)(4) of this section.

(2) *Step One: Excess related group indebtedness.* (i) The excess related group indebtedness of a U.S. shareholder for the year equals the amount by which its related group indebtedness for the year exceeds its allowable related group indebtedness for the year

(ii) The "related group indebtedness" of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed to the U.S. shareholder by each controlled foreign corporation which is a related person (as defined in paragraph (e)(5)(ii) of this section) with respect to the U.S. shareholder.

(iii) The "allowable related group indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation, multiplied by

(B) The foreign base period ratio of the U.S. shareholder for the year.

(iv) The "foreign base period ratio" of the U.S. shareholder for the year is the average of the related group debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the foreign base period for the current year (each a "base year"). For this purpose, however, the related group debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the foreign base period ratio for that base year.

(v)(A) The foreign base period for any current taxable year (except as described in paragraph (e)(2)(v)(B) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as foreign base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(vi) The "The related group debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The related group indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(2)(ii) of this section), and

(B) The average of the aggregate values at the beginning and end of the year of the assets (including stock holdings in and obligations of related persons, other than related controlled foreign corporations) of each related controlled foreign corporation.

(vii) Notwithstanding paragraph (e)(2)(i) of this section, a U.S. shareholder is considered to have no excess related group indebtedness for the year if—

(A) Its related group indebtedness for the year does not exceed its related group indebtedness for the immediately preceding year (in each case, as determined under paragraph (e)(2)(ii) of this section); or

(B) Its related group debt-to-asset ratio (as determined under paragraph (e)(2)(vi) of this section) for the year does not exceed its foreign base period ratio (as determined under paragraph (e)(2)(iv) of this section) or does not exceed a ratio of 0.10.

(3) *Step Two: Excess U.S. shareholder indebtedness.* (i) The excess indebtedness of a U.S. shareholder for the year equals the amount by which its unaffiliated indebtedness for the year exceeds its allowable indebtedness for the year.

(ii) The "unaffiliated indebtedness" of the U.S. shareholder is the average of the aggregate amounts at the beginning and end of the year of indebtedness owed by the U.S. shareholder to any obligee, other than a member of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder.

(iii) The "allowable indebtedness" of a U.S. shareholder for the year equals—

(A) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder (including stock holdings in and obligations of related controlled foreign corporations, but excluding stock holdings in and obligations of members of the affiliated group (as defined in § 1.861–11T(d)) of the U.S. shareholder), reduced by the amount of the excess related group indebtedness of the U.S. shareholder for the year (as determined under Step One in paragraph (e)(2) of this section), multiplied by:

(B) The U.S. base period ratio of the U.S. shareholder for the year.

(iv) The "U.S. base period ratio" of the U.S. shareholder for the year is the average of the debt-to-asset ratios of the U.S. shareholder for each taxable year comprising the U.S. base period for the current year (each a "base year"). For the purpose, however, the debt-to-asset ratio of the U.S. shareholder for any base year may not exceed 110 percent of the U.S. base period ratio for that base year. Also, for this purpose, the assets of the U.S. shareholder for each base year shall include the amount of any excess related group indebtedness of the U.S. shareholder for that base year.

(v)(A) The U.S. base period for any current taxable year (except as described in paragraph (e)(3)(v)(B) of this section) shall consist of the five taxable years immediately preceding the current year.

(B) The U.S. shareholder may choose as U.S. base periods for all of its first five taxable years for which this paragraph (e) is effective the following alternative base periods:

(*1*) For the first effective taxable year, the 1982, 1983, 1984, 1985 and 1986 taxable years;

(*2*) For the second effective taxable year, the 1983, 1984, 1985 and 1986 taxable years and the first effective taxable year;

(*3*) For the third effective taxable year, the 1984, 1985 and 1986 taxable years and the first and second effective taxable years;

(*4*) For the fourth effective taxable year, the 1985 and 1986 taxable years and the first, second and third effective taxable years; and

(*5*) For the fifth effective taxable year, the 1986 taxable year and the first, second, third and fourth effective taxable years.

(vi) The "debt-to-asset ratio" of a U.S. shareholder for a year is the ratio between—

(A) The unaffiliated indebtedness of the U.S. shareholder for the year (as determined under paragraph (e)(3)(ii) of this section), and

(B) The average of the aggregate values at the beginning and end of the year of the assets of the U.S. shareholder, reduced by the amount of the excess related group indebtedness of the U.S. shareholder for the year (as determined under Step One in paragraph (e)(2) of this section). For this purpose, the assets of the U.S. shareholder include stock holdings in and obligations of related controlled foreign corporations but do not include stock holdings in and obligations of members of the affiliated group (as defined in § 1.861–11T(d)). also see paragraph (e)(3)(iv) of this section for a special rule relating to inclusion of excess related group indebtedness of the U.S. shareholder for base years.

(vii) A U.S. shareholder is considered to have no excess indebtedness for the year if its debt-to-asset ratio (as determined under paragraph (e)(3)(vi) of this section) for the year does not exceed its U.S. base period ratio (as determined under paragraph (e)(3)(iv) of this section) for the year.

(4) *Step Three: Allocation of third party interest expense.* (i) A U.S. shareholder shall allocate among the various separate limitation categories described in section 904(d)(1) a portion of its third party interest expense incurred during the year equal in amount to the interest income dervied by the U.S. shareholder during the year from allocable related group indebtedness.

(ii) The "allocable related group indebtedness" of a U.S. shareholder for any year is an amount of related group indebtedness equal to the lesser of—

(A) The excess related group indebtedness of the U.S. shareholder for the year (determined under Step One in paragraph (e) (2) of this section), or

(B) The excess U.S. shareholder indebtedness for the year (determined under Step Two in paragraph (e)(3) of this section).

(iii) The amount of interest income derived by a U.S. shareholder from allocable related group indebtedness during the year equals the total amount of interest income derived by the U.S. shareholder during the year with respect to related group indebtedness, multiplied by the ratio of allocable related group indebtedness for the year to the aggregate amount of related group indebtedness for the year.

(iv) Third party interest expense shall be allocated in proportion to the relative average amounts of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year. The remaining portion of third party interest expense of the U.S. shareholder for the year shall be apportioned as provided in §§ 1.861–8T through 1.861–13T, excluding this paragraph (e).

(v) The average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year equals the average of the aggregate amounts of such indebtedness in each separate limitation category at the beginning and end of the year. Solely for purposes of this paragraph (e)(4), each debt obligation of a related controlled foreign corporation held by the U.S. shareholder at the beginning or end of the year is attributed to separate limitation categories in the same manner as the stock of the obligor would be attributed under the rules of § 1.861–12T (c)(3), whether or not such stock is held directly by the U.S. shareholder.

(vi) The amount of third party interest expense of a U.S. shareholder allocated pursuant to this paragraph (e) (4) shall not exceed the total amount of the third party interest expense of the U.S. shareholder for the year (excluding any third party interest expense allocated under paragraphs (b) and (c) of this section).

(5) *Definitions.* For purposes of this paragraph (e), the following terms shall have the following meanings.

(i) *U.S. shareholder.* The term "U.S. shareholder" has the same meaning as the term "United States shareholder" when used in section 957, except that, in the case of a United States shareholder that is a member of an affiliated group (as defined in § 1.861–11T (d)), the entire affiliated group is considered to constitute a single U.S. shareholder.

(ii) Related person. For the definition of the term "related person", see § 1.861–8T(c)(2). A controlled foreign corporation is considered "related" to a U.S. shareholder if it is a related person with respect to the U.S. shareholder.

(6) *Determination of asset values.* A U.S. shareholder shall determine the values of the assets of each related controlled foreign corporation (for purposes of Step One in paragraph (e)(2) of this section) and the assets of the U.S. shareholder (for purposes of Step Two in paragraph (e)(3) of this section) for any year in accordance with the valuation method (tax book value or fair market value) elected for that year pursuant to § 1.861–9T(g) or (h).

(7) *Adjustments to asset value.* For purposes of apportioning remaining interest expense under § 1.861–9T, a U.S. shareholder shall reduce (but not below zero) the value of its assets for the year (as determined under § 1.861–9T(g)(3) or (h)) by an amount equal to the allocable related group indebtedness of the U.S. shareholder for the year (as determined under Step Three in paragraph (e)(4)(ii) of this section). This reduction is allocated among assets in each separate limitation category in proportion to the average amount of related group indebtedness held by the U.S. shareholder in each separate limitation category during the year (as determined under Step Three in paragraph (e)(4)((v) of this section).

(8) *Special rules*—(i) *Classification of liabilities as indebtedness.* For purposes of this paragraph (e), the term "indebtedness" has the same meaning that it has under section 163. A U.S. shareholder must be consistent in its classification of liabilities (whether incurred by the U.S. shareholder or by a related controlled foreign corporation) as indebtedness for purposes of this paragraph (e). The classification of a type of liability as indebtedness for purposes of this paragraph (e) shall be considered a method of accounting for purposes of section 446.

(ii) *Classification of certain loans as related group indebtedness. If*—

(A) A U.S. shareholder owns stock in a related controlled foreign corporation which is a resident of a country that—

(*1*) Does not impose a withholding tax of 5 percent or more upon payments of dividends to a U.S. shareholder, and

(*2*) Does not, for the taxable year of the controlled foreign corporation, subject the income of the controlled foreign corporation to an income tax which is greater than that percentage specified under § 1.954–1T(d)(1)(i) of the maximum rate of tax specified under section 11 of the Code, and

(B) The controlled foreign corporation has outstanding a loan or loans to one or more other related controlled foreign corporations,

then, to the extent of the aggregate amount of its capital contributions to the lending related controlled foreign corporation in taxable years beginning after December 31, 1986, the U.S. shareholder itself shall be treated as having made such loans and, thus, such loan amounts shall be considered related group indebtedness.

(iii) *Classification of certain stock as related person indebtedness.* In determining the amount of its related group indebtedness for any taxable year, a U.S. shareholder must treat as related group indebtedness its holding of stock in a related controlled foreign corporation if, during such taxable year, such related controlled foreign corporation claims a deduction under foreign law for distributions on such stock.

(9) *Corporate events*—(i) *Initial acquisition of a controlled foreign corporation.* If the foreign base period of the U.S. shareholder for any year includes a base year in which the U.S. shareholder did not hold stock in any related controlled foreign corporation, then, in computing the foreign base period ratio, the related group debt-to-asset ratio of the U.S. shareholder for any such base year shall be deemed to be 0.10.

(ii) *Incorporation of U.S. shareholder*-(A) *Nonapplication.* This paragraph (e) does not apply to the first taxable year of the U.S. shareholder. However, this paragraph (e) does apply to all following years, including years in which later

members of the affiliated group may be incorporated.

(B) *U.S. base period ratio.* In computing the U.S. base period ratio, the U.S. base period of the U.S. shareholder shall be considered to be only the period prior to the current year that the U.S. shareholder was in existence if this prior period is less than five taxable years.

(iii) *Acquisition of additional corporations.* (A) If a U.S. shareholder acquires stock of a foreign or domestic corporation which, by reason of the acquisition, then becomes a related controlled foreign corporation or a member of the affiliated group, then in determining excess related group indebtedness or excess U.S. shareholder indebtedness, the indebtedness and assets of the acquired corporation shall be taken into account only at the end of the acquisition year and in following years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the beginning of the year or relating to preceding years are not recalculated to take account of indebtedness and assets of the acquired corporation existing as of dates before the end of the year. If, however, a major acquisition is made near the end of the year and a substantial distortion of values for the year would otherwise result, the taxpayer must take into account the average values of the acquired indebtedness and assets weighted to reflect the time such indebtedness is owed and assets are held by the taxpayer during the year.

(B) In the case of a reverse acquisition subject to this paragraph (e)(9), the rules of § 1.1502-75(d)(3) apply in determining which corporations are the acquiring U.S. shareholder and the acquired corporation. For this purpose, whether corporations are affiliated is determined under § 1.861-11T(d).

(C) If the stock of a U.S. shareholder is acquired by (and, by reason of such acquisition, the U.S. shareholder becomes affiliated with) a corporation described below, then such U.S. shareholder shall be considered to have acquired such corporation for purposes of the application of the rules of this paragraph (e)(9)(iii). A corporation to which this paragraph (e)(9)(iii)(C) applies is—

(*1*) Corporation which is not affiliated with any other corporation (other than another similarly described corporation) and

(*2*) Substantially all of the assets of which consist of cash, securities and stock.

(iv) *Separate group acquisition election.* (A) A U.S. shareholder may choose, solely for purposes of paragraph (e)(9)(iii) of this section, to treat its acquisition described in that paragraph as occurring immediately after the year following the acquisition year (and immediately before the next year). In this case, this paragraph (e) shall continue to apply separately to the acquired corporation or corporations as a separate group for the acquisition year and the following year but not for any later year (or portion thereof). This election, if made for an acquisition, must be made for all separate acquisitions occurring during the year, and this paragraph (e) shall continue to apply separately to each separately acquired group for the foregoing prescribed two-year period.

(B) If during this two-year period a corporation is liquidated or merged, the indebtedness and assets of the liquidated or merged corporation shall immediately (but not earlier) be considered the indebtedness and assets of the successor corporation. In addition, the liquidation or merger of a corporation in one group into a corporation in another group shall be considered a disposition by the U.S. shareholder of the first group and, thus, subject to paragraph (e)(9)(v) of this section. This rule does not apply to the liquidation or merger of a lower-tier (or upper-tier) corporation into an upper-tier (or lower-tier) corporation in the same group.

(C) For purposes of applying this paragraph (e) during this two-year period, any indebtedness owed by a controlled foreign corporation to the U.S. shareholder of another group (whether acquiring or acquired) shall be treated as indebtedness owed to the U.S. shareholder to which it is directly related and as indebtedness owed by that U.S. shareholder to an unrelated person. All other indebtedness between the two groups shall likewise be considered indebtedness owed to an unrelated person.

(v) *Dispositions.* If a U.S. shareholder disposes of stock of a foreign or domestic corporation which, by reason of the disposition, then ceases to be a related controlled foreign corporation or a member of the affiliated group (unless liquidated or merged into a related corporation), in determining excess related group indebtedness of the divested corporation shall be taken into account only at the beginning of the disposition year and for the relevant preceding years. Thus, amounts of indebtedness and assets and the various debt-to-asset ratios of the U.S. shareholder existing at the end of the year or relating to following years are not affected by indebtedness and assets of the divested corporation existing as of dates after the beginning of the year. If, however, a major disposition is made near the beginning of the year and a substantial distortion of values for the year would otherwise result, the taxpayer must take into account the average values of the divested indebtedness and assets weighted to reflect the time such indebtedness is owed and assets are held by the taxpayer during the year.

(vi) *Separate group disposition election.* A U.S. shareholder may choose, solely for purposes of paragraph (e)(9)(v) of this section, to exclude a divested corporation described in that paragraph from the related group for the disposition year and for each preceding year which is a base year solely for purposes of computation of the foreign base period ratio and U.S. base period ratio of the U.S. shareholder for the disposition year and the following year but not for any later year (or portion thereof). This election, if made for a disposition, must be made for all separate dispositions occurring during the year.

(vii) *Section 355 transactions.* A U.S. corporation which becomes a separate U.S. shareholder as a result of a distribution of its stock to which section 355 applies shall be considered—

(A) As disposed of by the U.S. shareholder of the affiliated group of which the distributing corporation is a member, with this disposition subject to the rules of paragraph (e)(9)(v) and (vi) of this section, and

(B) As having the same related group debt-to-asset ratio and debt-to-asset ratio as the distributing U.S. shareholder in each year preceding the distribution for purposes of applying this paragraph (e) to the year of distribution and following years of the distributed corporation.

(10) Example.

(i) *Facts.* X, a domestic corporation, has a calendar taxable year and apportions its interest expense on the basis of the tax book value of its assets. In 1990, X incurred deductible third-party interest expense of $24,960 on an average amount of indebtedness (determined on the basis of beginning-of-year and end-of-year amounts) of $249,600. X manufactures widgets, all of which are sold in the United States. X owns all of the stock of Y, a controlled foreign corporation that also has a calendar taxable year and is also engaged in the manufacture and sale of widgets. Y has no earnings and profits or deficit of earnings and profits attributable to taxable years prior to 1987. X's total assets and their average tax book values (determined on the basis of beginning-of-year and end-of-year tax book values) for 1990 are:

Asset	Average tax book value
Plant and equipment	$315,000
Corporate headquarters	60,000
Y stock	75,000
Y note	50,000
Total	$500,000

Y had $25,000 of income before the deduction of any interest expense. Of this total, $5,000 is high withholding tax interest income. The remaining $20,000 is derived from widget sales, and constitutes foreign source general limitation income. Assume that Y has no deductions from gross income other than interest expense. During 1990, Y paid $5,000 of interest expense to X on the Y note and $10,000 of interest expense to third parties, giving Y total interest expense of $15,000 X elects pursuant to § 1.861-9T to apportion Y's interest expense under the gross income method prescribed in section 1.861-9T (j).

(ii) *Step 1:* Using a beginning and end of year average, X (the U.S. shareholder) held the following average amounts of indebtedness of Y and Y had the following average asset values:

	1985	1986-88	1989	1990
(A) Related group indebtedness	$11,000	24,000	26,000	50,000
(B) Average Value of Assets of Related CFC	$100,000	200,000	200,000	250,000
(C) Related Group Debt-to-Asset Ratio	.11	.12	.13	.20

X's "foreign base period ratio" for 1990, an average of its ratios of related group indebtedness to related group assets for 1985 through 1989, is:

(.11 + .12 + .12 + .12 + .13)/5 = .12

X's "allowable related group indebtedness" for 1990 is:

$250,000 x .12 = $30,000.

X's "excess related group indebtedness" for 1990 is:

$50,000 − $30,000 = $20,000

X's related group indebtedness of $50,000 for 1990 is greater than its indebtedness of $26,000 for 1989, and X's related group debt-to-asset ratio for 1990 is .20, which is greater than its foreign base period ratio of .12 and greater than the ratio of .10 described in paragraph (e) (2) (vi) (B) of this section. Therefore, X's excess related group indebtedness for 1990 remains at $20,000.

(iii) *Step 2:* Using a beginning and end of year average, X has the following average amounts of U.S. and foreign indebtedness and average asset values:

	1985	1986	1987	1988	1989	1990
(1)	$231,400	225,000	225,000	225,000	220,800	249,600
(2)	445,000	450,000	450,000	450,000	460,000	480,000
(3)	.52	.50	.50	.50	.48	(a) .52

(1) U.S. and foreign indebtedness
(2) Average value of assets of U.S. shareholder
(3) Debt-to-Asset ratio of U.S. shareholder
(a) [500,000−20,000 (excess related group indebtedness determined in Step 1)]

X's "U.S. base period ratio" for 1990 is:

(.52+.50+.50+.50+.48)/5=.50

X's "allowable indebtedness" for 1990 is:

$480,000×.50=$240,000

X's "excess U.S. shareholder indebtedness" for 1990 is:

$249,600−$240,000=$9,600

X's debt-to-asset ratio for 1990 is .52, which is greater than its base period ratio of .50. Therefore, X's excess U.S. shareholder indebtedness for 1990 remains at $9,600.

(iv) *Step 3:* Since X's excess U.S. shareholder indebtedness of $9,600 is less than its excess related group indebtedness of $20,000, X's allocable related group indebtedness for 1990 is $9,600. The amount of interest received by X during 1990 on allocable related group indebtedness is:

$$\$5{,}000 \times \frac{\$9{,}600}{\$50{,}000} = \$960$$

Therefore, $960 of X's third party interest expense ($24,960) shall be allocated among various separate limitation categories in proportion to the relative average amounts of Y obligations held by X in each such category. The amount of Y obligations in each limitation category is determined in the same manner as the stock of Y would be attributed under the rules of § 1.861-12T(c)(3). Since Y's interest expense is apportioned under the gross income method prescribed in section § 1.861-9T(j), the Y stock must be characterized under the gross income method described in § 1.861-12T(c)(3)(iii). Y's gross income net of interest expense is determined as follows:

Foreign source high withholding tax interest income.	= $5,000-(($15,000) multiplied by ($5,000)/($5,000+$20,000)) = $2,000
Foreign source general limitation income.	and =$20,000-(($15,000)) multiplied by ($20,000)/($5,000+$20,000)) $8,000.

Therefore, $192 (($960×$2,000/($2,000+$8,000)) of X's third party interest expense is allocated to foreign source high withholding tax interest income and $768 ($960 x $8,000/($2,000+$8,000)) is allocated to foreign source general limitation income.

(v) As a result of these direct allocations, for purposes of apportioning X's remaining interest expense under § 1.861-9T, the value of X's assets generating foreign source general limitation income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source general limitation income ($7,680), and the value of X's assets generating foreign source high withholding tax interest income is reduced by the principal amount of indebtedness the interest on which is directly allocated to foreign source high withholding tax interest income ($1,920), determined as follows:

Reduction of X's assets generating foreign source general limitation income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source } \textit{general limitation income}}{\text{Y's Foreign source income}}$$

$9,600 × $8,000/($8,000+$2,000)=$7,680

Reduction of X's assets generating foreign source high withholding tax interest income:

$$\text{X's allocable related group indebtedness} \times \frac{\text{Y's Foreign source high withholding tax interest income}}{\text{Y's Foreign source income}}$$

$9,600 × $2,000/($8,000+$2,000) = $1,920

Fred T. Goldberg, Jr.

Commissioner of Internal Revenue.

Approved: February 20, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

(FR Doc. 91-5587 Filed 3-11-91; 8:45 am)

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund; Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of inquiry.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received questions about its policy on the amount of abandoned mine land fees (AML) owed when an operator delivers run-of-mine coal to a purchaser who then pays the operator on an estimated clean coal tonnage basis. The purpose of this inquiry is (1) to clarify once again the statutory and regulatory requirements for correctly determining the AML fee liability of operators and (2) to seek comments regarding the application of the AML fee procedures to a specific factual situation where an independent operator delivers run-of-mine coal to a preparation plant; the coal is actually cleaned, and the purchaser pays the operator on the basis of an estimated clean coal tonnage yield from the delivered run-of-mine coal.

DATES: *Written Comments:* OSM will accept written comments on this issue until close of business on April 11, 1991.

ADDRESSES: *Written Comments:* The address for written comments is: Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson (202) 343–2826.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Background
III. Small Operator Impact—Request for Comments

I. Purpose

OSM's knowledge of the extent to which operators comply with existing AML fee payment requirements results mainly from information gained through on-site audits. As a result of these audits some companies have alleged that the OSM reclamation fee rules (1) ignore industry practices regarding the buying of coal on a "clean-coal" tonnage basis, (2) penalize small operators who must sell their run-of-mine coal to independent preparation plants on an estimated clean coal basis, and (3) preclude the coal industry's ability to utilize estimating methods for calculating coal tonnages during the cleaning process for sales purposes.

The Agency is currently investigating these complaints regarding the AML fee compliance procedures and will be assessing the overall impact of its AML fee payment requirements on the operator and the coal industry. The purpose of this notice is to provide the public with an opportunity to comment on common practice(s) used by the coal industry to determine the weight of coal an operator sells to a purchaser. Comments received in response to this notice will assist OSM in assessing the impact of its current rule on the coal industry and the AML fund. OSM will rely, in part, on information obtained through this process to substantiate a basis for any change in its policy on the determination of coal weight subject to the reclamation fee.

II. Background

Section 402(a) of the Surface Mining Control and Reclamation Act (SMCRA) requires all operators of coal mining operations subject to its provisions to pay a reclamation fee on each ton of coal produced. In December 1977 OSM first promulgated regulations to implement this provision. 42 FR 62714 (Dec. 13, 1977). Briefly, the regulations require that the AML fees must be paid on the actual gross weight of the coal, including impurities, at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. This regulation has been in effect basically unchanged since 1977. In 1982, OSM revised the regulatory language to clarify the point in time of fee determination and to stress that the actual gross weight of the coal must be used for fee calculation. At that time OSM also specifically noted that no fees were owed on impurities physically removed before the sale, transfer of possession or use. In 1988 OSM once again reminded operators that the general rule, which required all impurities not removed before the first transaction to be included in the gross weight for AML fee computation purposes, was not changed by the regulatory revision allowing calculated weight reduction for excess moisture.

In order to apply this regulation OSM determines: (a) When the first transaction occurs; (b) the gross weight at the time, which includes impurities not physically removed before the transaction occurs; and (c) the actual, not estimated or calculated, gross weight at the time (or as near to the time as possible) of the transaction.

(A) First transaction

OSM generally considers the first transaction to occur when physical possession of the coal, or such other indications of ownership as title and risk of loss, transfer to a purchaser. The time that payment is computed or made is not controlling. This approach is in accord with the Uniform Commercial Code (UCC), which has been adopted in all fifty states. Section 2–401(2) of the UCC provides that:

> unless otherwise explicitly agreed, title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods . . .

Under UCC section 2–401(2), when an operator delivers run-of-mine coal to a buyer's preparation plant for cleaning, the transaction upon which OSM calculates the AML fees under 30 CFR 870.12(b)(1) generally occurs upon delivery. In such a case, the AML fee must be calculated based on the run-of-mine tonnage which was delivered, including any impurities.

Some operators have not understood why they must pay reclamation fees on the raw tonnage they delivered, when the price they are paid by the buyer is based on the actual clean tonnage after processing. The fact that an operator is paid on some basis other than tons of actual "raw coal" shipped is immaterial to the critical issue—that is, the transfer of title. In most cases, when coal is delivered to a preparation plant by an operator, the transaction is not for cleaning and redelivery of the coal to the operator, but for the physical transfer of ownership of the coal to the preparation plant. The purchaser in this instance has total control of the goods and exercises all the indicia and rights of ownership; i.e., right to commingle, to alter shape and form, and to sell. There is no evidence in most instances that the preparation plant ever keeps an individual operator's coal separate from other sellers nor that it maintains any documents of the actual weight, as opposed to an estimated weight of the "clean coal".

The arrangement that the purchaser has with the coal operator for determining the amount owed is only the basis for payment and does not alter the fact that when the operator loads its coal on trucks or other means of transportation and delivers the coal to the preparation plant or other purchaser, title passes upon the physical delivery of the goods. Quite simply the operator in most instances is *not* shipping the coal for cleaning but for the purpose of selling the coal. The purchaser owns all the coal including the impurities. Accordingly, under 30 CFR 870.12 the actual gross weight includes the "impurities that have not been removed prior to the time of initial bona fide sale".

(B) Basis for Payment

Some of the concern regarding the calculation of AML fees has resulted from operators relying on the basis for payment, i.e. payment on a clean coal tonnage basis rather than on the actual gross weight of the coal at the time of initial bona fide sale, use, or transfer of ownership, as a means for determining fee liability. Such reliance is improper. The arrangement that a purchaser and a coal operator have for determining the amount owed is immaterial to determining AML fee liability and does not alter the required procedures of determining when the first transaction occurs and computing the reclamation fee based on the gross weight at that time. The AML fee is assessed on the actual gross weight of the material at the time of initial sale, transfer of ownership or use. Accordingly, if impurities have not been removed prior to the initial sale or transfer, they may not be deducted from actual gross weight used for AML fee purposes.

III. Small Operator Impact—Request for Comments

There is a perception that the AML fee rules may be unfair to the small independent operator who must sell his coal to a preparation plant for cleaning and resale purposes. In such circumstances, the Small operator is generally paid by the preparation plant on the estimated weight of the calculated clean coal tonnage, even though methods typically used to estimate the actual clean coal yield are acknowledged to be subject to wide variations and are not usually verifiable. Under these circumstances some small operators have objected to OSM's requirement for payment of reclamation fees on run-of-mine tonnage when the operator is paid on a clean coal weight. These small operators raise two specific objections. First, since they do not have the financial resources to own a preparation plant like some larger operators, they assert that they have no practical means of cleaning the coal prior to the first sale. In this circumstance, the first sale or transfer of ownership would be to the preparation plant to clean the coal. Second, even assuming that some flexibility existed regarding the transfer of coal, the small operator still maintains that he will lose under the Federal regulations because the rules require payment of the fees based on actual weight. Since coal from a variety of sources is commingled during the cleaning process, operators are paid by the preparation plants based on estimated clean coal tonnages not on actual clean coal weight.

Although some operators have complained about the unfairness of the rule, others have willingly paid reclamation fees on the raw tonnage. This may be due to the fact that the impact on some operators is less than others. For example the level of impurities in underground mined coal is generally greater than coal that is surface mined. Additionally, it can be argued that the small operator receives a benefit when the burden and cost of the disposal of reject material separated from the coal is borne by the purchaser.

OSM seeks comments, information, and recommendations from all interested parties to assist the agency in assessing the effectiveness of the current regulations in situations where the coal is cleaned by the purchaser. Specific attention is requested regarding the timing of the reclamation fee assessment, and whether OSM should allow operators whose coal is cleaned by another party, to pay on estimated clean coal tonnage rather than on actual weight. In this regard, OSM is particularly interested in receiving comments on the following:

(1) What testing methods and procedures do purchasers of run-of-mine coal use to estimate clean coal tonnage figures?

(2) How reliable are the testing methods used by the purchasers? (How much variance from actual clean coal weight can be reasonably expected?)

(3) How do operators ensure that they receive fair compensation if they are paid on estimated tonnage figures?

(4) Does the actual weight requirement help or constrain normal business operations?

(5) Are there any realistic alternatives that could be considered by the Federal Government as a substitute for the actual weight requirement?

(6) If estimated tonnage tests are permitted, how would the results be audited to ensure full compliance with the fee provisions in SMCRA?

(7) Should estimated clean coal tonnage figures be utilized for all coal produced or only for that coal which is delivered to a preparation plant for cleaning?

(8) Are small operators who must sell their run-of-mine coal to preparation plant owners or other purchasers of coal prior to cleaning receiving fair compensation for the clean coal yield in their delivered raw tonnage?

(9) What average cost per ton do coal preparation plant operators and other purchasers of coal incur for disposing of coal refuse?

(10) What quantity of coal sold annually is physically cleaned prior to use or resale? How much coal sold annually is sold on an estimated clean coal tonnage basis? What is the ratio of surface to underground tonnage sales?

(11) What are the normal business practices between small independent operators who sell their raw coal and their purchasers?

Dated: February 21, 1991.

Harry M. Snyder,
Director.

[FR Doc. 91–5799 Filed 3–11–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

48 CFR Parts 223 and 252

Department of Defense Federal Acquisition Regulation Supplement; Hazard Warning Labels

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering revision to the Defense FAR Supplement part 223 language and the addition of a clause to part 252 pertaining to hazard warning labels. The clause will require offerors and contractors to submit information on hazardous materials they propose to supply to the Government. Contractors will also be required to label packages, containing hazardous materials, to be delivered under a Government contract.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before April 11, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90–025 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, OUSD(A), ATTN: Charles W. Lloyd, room 3D139, The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory

(DAR) Council is proposing changes to DFARS part 223 and addition of a clause at 252.223–7006 to conform to DoD policy on obtaining and using hazard warning label information contained in DoD Instruction 6050.5, DoD Hazard Communication Program, and DoD Handbook 6050.5–H, Hazardous Chemical Warning Labeling System. This proposed rule revises the DFARS to require (1) Offerors to identify any hazardous items they propose to supply to the Government; (2) apparently successful offerors to submit warning labels that will be affixed to hazardous items; and, (3) contractors to affix hazardous warning labels on hazardous items and the containers used to package those items.

B. Regulatory Flexibility Act

This proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because it requires offerors or contractors merely to generate and furnish before and with their product, a hazard warning label which they are already required to do under 29 CFR 1910.1200. Therefore, the time and financial resources necessary to comply with the proposed requirement are already invested prior to any involvement in contracting with the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 610 (DAR Case 90–025) in the correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The hazard warning labels required under this proposed rule from offerors and contractors are already required by 29 CFR 1910.1200.

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR parts 223 and 252 be amended as follows:

1. The authority citation for 48 CFR part 223 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 223—ENVIRONMENT, CONSERVAITON, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Section 223.7202 is amended by revising paragraphs (b) and (e) to read as follows:

223.7202 Policy.

* * * * *

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit information on hazardous materials under the clauses at 252.223–7004 and 252.223–7006. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

* * * * *

(e) The contracting officer shall provide a copy of MSDS's and hazard warning labels received from apparently successful offerors to the cognizant safety officer and/or designated official, in order to facilitate:

(1) Inclusion of relevant data in an agency MSDS information system or label information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

3. Section 223.7203 is revised to read as follows:

§ 223.7203 Contract clauses.

The contracting officer shall insert the clauses at 252.223–7004, Hazardous Material Identification and Material Safety Data, and 252.23–7006, Hazard Warning Labels, in solicitations and contracts when one or more of the circumstances listed in 223.7202(c) exists.

4. Section 252.233–7006 is added to read as follows:

252.223–7006 Hazard warning labels

As prescribed in 223.7203, insert the following clause:

Hazard Warning Labels (XXX 1991)

(a) *Hazardous material,* as used in this clause, is defined in the clause in this contract entitled "Hazardous Material Identification and Material Safety data."

(b) The contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 *et seq*). The Standard requires that the hazard warning label conform to the requirements of the Standard unless the material is otherwise subject to the labelling requirements of one of the following statues:

(1) Federal Insecticide, Fungicide and Rodenticide Act.

(2) Federal Food, Drug and Cosmetics Act.

(3) Consumer Product Safety Act.

(4) Federal Hazardous Substances Act.

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list below which hazardous material listed in the clause in this contract entitled "Hazardous Material Identification and Material Safety Data" will be labelled in accordance with one of the Acts in paragraph (b) of this clause in lieu of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

Material (If none, insert "None.")	Act

(d) The apparently successful Offeror agrees to submit, prior to award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the clause in this contract entitled, "Hazardous Material Identification and Material Safety Data."

(e) The Contractor shall also comply with MIL–STD–129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of Clause)

[FR Doc. 91–5725 Filed 3–11–91, 8:45 am]
BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Joint Council on Food and Agriculture Science; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agriculture Sciences.

Date: April 17–19, 1991.

Time: 1 p.m.–5 p.m., April 17, 1991; 8:30 a.m.–5 p.m., April 18, 1991; 8:30 a.m.–12 Noon, April 19, 1991.

Place: Capitol Holiday Inn, Washington, DC

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: Select accomplishments for the 1991 Accomplishments Report; receive a report on the goals and objectives of Registries of Environmental and Agricultural Professionals; receive activities reports from constituent groups; receive progress report on implementing the National Research Council's recommendations for Forestry Research; examine 1990 Farm Bill mandated Joint Council responsibilities, and determine means of accomplishments.

Contact person for agenda and more information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, suite 302, Aerospace Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 401–4662.

Done in Washington, DC this 27th day of February, 1991.

John Patrick Jordan,

Administrator.

[FR Doc. 91–5780 Filed 3–17–91; 8:45 am]
BILLING CODE 3410–22–M

Forest Service

Registration of Gypsy Moth Nucleopolyhedrosis Virus, GYPCHEK®

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Forest Service gives notices of its intent to sign a Technology Transfer Agreement with ESPRO, Inc. of Columbia, Maryland, for the purpose of authorizing ESPRO to pursue the registration of a gypsy moth nucleopolyhedrosis virus registered by the Agency. The product is called GYPCHEK® is currently registered with the U.S. Environmental Protection Agency (EPA) by the Forest Service. It has been given EPA Registration Number 27586–2.

DATES: Anyone with an alternate proposal should notify the Forest Service in writing at the address below no later then April 11, 1991.

ADDRESSES: Proposals must be sent in writing to F. Dale Robertson, Chief (2100), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Knauer, Forest Pest Management, (202) 453–9600.

SUPPLEMENTARY INFORMATION: The gypsy moth is the most important pest of deciduous trees in the eastern United States. The current approach to gypsy moth management involves aerially applying biological or chemical insecticides to eliminate isolated infestations and to suppress potentially defoliating populations in areas of regulatory concern or where socio-economic impacts are projected to occur. These Federal and State cooperative suppression programs are conducted on approximately 0.5 million acres per year at an average cost of $7.5 million.

Over the past 5 years, the biological insecticide *Bacillus thuringiensis* (Bt) and the insect growth-regulating insecticide diflubenzuron (Dimilin®) have accounted for almost all of the insecticides applied aerially during cooperative gypsy moth suppression programs.

In an effort to develop a more effective and specific biological insecticide for suppression of gypsy moth populations the Forest Service registered a naturally-occurring nucleoployhedrosis virus of the gypsy moth with the U.S. Environmental Protection Agency in 1978. It is registered as GYPCHEK® (EPA Registeration Number 27586.2). Prior to 1987, the aerial application of GYPCHEK® to suppress gypsy moth populations often provided inconsistent results in terms of population reduction. This was due to many factors, including ineffective sunscreens, clogging of nozzles, and dosage restrictions. Post-1987 field evaluation of GYPCHEK® has been more consistent with the development of a more favorable sunscreen, and use of higher doses per application.

Since GYPCHEK® is specific and efficacious as a mortality agent to only gypsy moth larvae, there is a demand for its use for gypsy moth suppression, especially in environmentally sensitive areas. Unfortunately, at this time the only method available to produce this nucleopolyhedrosis virus involves laboratory rearing and infecting massive numbers of gypsy moth larvae and then recovering and processing GYPCHEK® from the virus-killed cadavers. The Animal and Plant Health Inspection Service (APHIS) and the Northeastern Forest Experiment Station have been, until recently, the only facilities rearing sufficient quantities of larvae to support the production of nucleopolyhedrosis virus. However, there is a need to "move" this production capability from the public to the private sector.

The GYPCHEK® production process is complex, with maintaining host insect quality and contamination of cadavers being major problem areas. Also, once the cadavers are produced, they must be processed into a product that can be aerially-applied through conventional spray nozzle and meet strict quality control and bioassay requirements. For the past 3 years, the Forest Service has provided funds to APHIS to support laboratory production of nucleopolyhedrosis virus-infected larvae and to the Northeastern Forest Experiment Station to support small-scale production and processing. These cooperative efforts have resulted in the production of approximately 3,000 acre treatments of GYPCHEK® per year. This product has been used for semi-operational control of gypsy moth larvae, primarily within the Appalachian Gypsy Moth Integrated Pest Management Demonstration Project area in West Virginia. Bioassay of

BEST COPY AVAILABLE

nucleopolyhedrosis virus-infected cadavers and the final composite product is done by the Forest Service for quality control purposes.

In 1989, ESPRO, Inc. entered into a Technology Transfer Agreement with the Forest Service to produce a sufficient quality of nucleopolyhedrosis virus-infected cadavers to produce 1,000 acre treatments of GYPCHEK®. In 1990, after the expiration of the original Technology Transfer Agreement, a contract (Number 53–3187–1–01) was awarded by the Forest Service to ESPRO for the production of at least 10,000 acre treatments of GYPCHEK® per year. Currently, ESPRO is the only private sector firm known to have the cabability to produce GYPCHEK® using this process.

A copy of the proposed new Technology Transfer Agreement to authorize ESPRO to pursue the registration of GYPCHEK® is set out at the end of this notice.

Dated: March 4, 1991.

Allan J. Ulest,

Deputy Chief.

Technology Transfer Agreement 90–TT–01 Between ESPRO, Inc. and the USDA Forest Service

This agreement, made and entered into by and between ESPRO, Inc., hereinafter referred to as the Company and the U.S. Department of Agriculture, Forest Service, hereinafter referred to as the Cooperating Institution respectively, under the provisions of the Stevenson-Wydler Technology Transfer Act of 1986 (15 U.S.C. 3710a),

Witnesseth:

Whereas, the parties hereto are mutually interested in:

1. Pooling resources in support of authorizing the transfer of technology of mutual interest among the cooperators by further evaluating private sector capabilities to commercially produce and distribute pest management alternatives such as the gypsy moth (GM) nucleopolyhedrosis virus (NPV). This virus is registered with the U.S. Environmental Protection Agency (EPA) and is known as Gypchek. Its EPA registration number is 27586–2.

Now, therefore the parties agree to:

1. Allow Espro, Inc. to pursue the registration of Gypchek or its equivalent.

2. Encourage private sector production, processing, distribution, and use of Gypchek, the nucleopolyhedrosis virus of the gypsy moth (*Lymantria dispar*).

3. Encourage the development of one or more environmentally-safe products suitable for gypsy moth management.

4. Pay their own expenses without exchange of funds.

In addition, and in consideration of the above premises, the parties hereto agree as follows:

A. The company shall:

1. Produce Gypchek for the USDA Forest Service as per the independent contract (No. 53–3187–1–01) that The Company has with The Cooperating Institution;

2. Request EPA registration of Gypchek or its equivalent using the FIFRA Section 3, registration process;

3. Use the EPA, FIFRA Sec. 3, registration process to cite all data (40 CFR 152.8) in the FS Gypchek registration package and secure a separate registration;

4. Request that EPA grant The Company the same data waivers for a biological ("safer") pesticide that have been granted The Cooperating Institution;

5. Pay EPA for all applicable annual pesticide registration maintenance fees;

6. Return all rights for Gypchek registration to The Cooperating Institution in the event The Company cannot perform under this Technology Transfer Agreement for whatever reason;

7. Conduct and pay for any additional tests required by EPA to maintain the registration of Gypchek or its equivalent registered by the Company;

8. Not hold the Federal Government liable for any misue of Gypchek or its equivalent. This would include losses to property or injuries resulting from actions taken under this agreement.

B. The cooperating institution shall:

1. Allow The Company to use The Cooperating Institution's data to obtain a FIFRA, Sec. 3 registration of the nucleopolyhedrosis virus of the gypsy moth;

2. Allow The Company to cite all data in the current Gypchek registration package without compensation;

3. Maintain the current Gypchek registration (No. 27586–2) to allow for additional research and development and until such time as The Company can demonstrate a capability to produce, market, and ensure (through appropriate labeling/training etc.) product efficacy and safety of Gypchek or an equivalent product registered by The Company;

4. Cooperate with The Company in their efforts to produce, distribute, and encourage the use of Gypchek or its equivalent;

5. Notify EPA that we are allowing The Company to obtain a FIFRA, Sec. 3 registration of the gypsy moth nucleopolyhedrosis virus;

6. Allow The Company to request the deletion of the statement "For Use By or Under the Supervision of the U.S. Forest Service," as currently specified on EPA label No. 27586–2;

7. Work jointly with The Company to ensure that proper field and pilot testing are done for future Gypchek-like products prior to recommending their operational use; and

8. Provide for project coordination and technical assistance out of Forest Pest Management, Washington Office.

C. It is mutually agreed and understood by and among the said parties that:

1. *Legal Authority:* The Company possesses legal authority to enter into this Technology Transfer Agreement. The official representative of the Company has been authorized to act in connection with the agreement and to provide such additional information as may be required.

2. *Effective Date:* This Agreement shall be deemed made upon execution by all parties hereto and as of the last date signed below.

3. *Duration, Term, and Termination:* The collaborative activities conducted under this Agreement shall have a duration lasting until December 31, 1992, unless otherwise extended by mutual agreement of the parties or cancelled by The Company or the USDA Forest Service giving sixty (60) days prior written notice to the other party. If cancelled by either party, the Company will reimburse The Cooperating Institution for any outstanding obligations The Cooperating Institution cannot cancel. The Cooperating Institution shall not incur any new obligations after the effective date of cancellation and shall cancel as many outstanding obligations as possible. Cancellation of this collaborative effort shall not affect any right and obligations of the parties accruing from the collaborative effort up to the date of cancellation. After such cancellation neither party shall have any obligation to the other party with regard to any efforts by either party in the area of the colaborative effort except as required by this Agreement in relation to obligations accruing prior to cancellation.

4. *Member of Congress:* No member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

5. *Confidential Business Information:* a. Business and technical information disclosed by The Company to The Cooperating Institution shall be considered confidential: (1) When disclosure would likely impair the Government's ability to obtain the necessary information in the future; or (2) when disclosure would likely cause substantial harm to the competitive position of The Company; or (3) when indicated by The Company at the time of its disclosure to The Cooperating Institution as being the confidential or proprietary information of the Company. It is recognized and ageed to by The Company that meeting only criteria (1) and (2), above, can avoid disclosure pursuant to requests made under the Freedom of Information Act (FOIA). Prior to making any disclosure of such information under the FOIA, The Cooperating Institution shall give The Company twenty (20) days written prior notice and the opportunity within such twenty-day period to indicate the The Cooperating Institution that information proposed to be disclosed by it should not be bisclosed because it meets criteria (1) or (2) above.

b. Information developed in the course of the work performed under this Agreement shall be considered confidential and shall not be disclosed by either party until the earlier of: (1) One year following completion of this collaborative effort; (2) a patent incorporating the information to be disclosed is filed; (3) it is decided not to file for a patent on the subject matter proposed to be disclosed; or (4) permission in writing to disclose is given by the oterh party.

6. *Civil Rights Act:* The Company shall comply with title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and in accordance with Title VI of the Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

7. *Sex Discrimination:* The Company shall comnply with Title IX of the Education Amendments of 1972, 20 J.S.C. 1681, and following which prohibits discrimination on the basis of sex in Federally-assisted programs.

8. *Handicap Discrimination:* The Company shall comply with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. Section 504 provides that no otherwise qualified handicapped individuals shall solely by reason of their handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

9. *Age Discrimination:* The Company shall comply with the Age Discrimination Act of 1975, 42 U.S.C., 6101–6107, which prohibits unreasonable discrimination based on age, in programs or activities receiving Federal financial assistance.

10. *Clean Air Act:* The Company shall comply with the Clean Air Act of 1970, 42 U.S.C. 7401 and following, which requires Federally-assisted activities to be in conformance with State (Clean Air) Implementation Plans.

11. *Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended:* The Company shall comply with FIFRA 7 U.S.C., part 136, as amended.

12. *Good Laboratory Practices (GLP) Final Rules under FIFRA:* The Company shall comply with GLPs promulgated by EPA under FIFRA (40 CFR, part 160, August 17, 1990).

[FR Doc. 91–5808 Filed 3–11–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 511]

Resolution and Order Approving the Application of the Greater Rockford Airport Authority for a Foreign-Trade Zone in Rockford, IL

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Rockford Airport Authority, filed with the Foreign-Trade Zones Board on March 26, 1990, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Rockford, Illinois, within the Rockford Customs user fee airport facility, the Board, finding the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in Rockford, IL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Greater Rockford Airport Authority (the Grantee), has made application (filed March 26, 1990, FTZ Docket 14–90, 55 FR 13301, 4/10/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Rockford, Illinois, within the Rockford Customs user fee airport facility;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, (the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 176, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 1st day of March, 1991, pursuant to Order of The Board.

Foreign—Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-5754 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-357-001]

Leather Wearing Apparel from Argentina; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On November 23, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina. We have now completed that review and determine the total bounty or grant to be zero for the period January 1, 1987 through December 31, 1987.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 48883) the preliminary results of its administrative review of the countervailing duty order on leather wearing apparel from Argentina (48 FR 11480; March 18, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Argentine leather, coats, jackets, and other apparel including leather vests, pants, and shorts for men, boys, women, girls and infants. Also included are outer shells and parts and pieces of leather wearing apparel. During the review period, such merchandise was classifiable under item numbers 791.7820, 791.7640 and 791.7660 of the "Tariff Schedules of the United States Annotated" (TSUSA). This merchandise is currently classifiable under item number 4203.10.40 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and four programs.

Analysis of Programs

We gave interested parties an comment on the preliminary results. We received no comments.

Preliminary Results of Review

As a result of our review, we determine the total bounty or grant to be zero for the period January 1, 1987 through December 31, 1987.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: February 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5801 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine from Canada; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 21, 1990, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on live swine from Canada. We have now completed those reviews and determine the net subsidy for the period April 1, 1986 through March 31, 1987 to be Can$0.0001/lb. for sows and boars and Can$0.0039/lb. for all other live swine; for the period April 1, 1987 through March 31, 1988 to be Can$0.0030/lb. for sows and boars and Can$0.0032/lb. for other live swine. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* rates. The rate is *de minimis* for sows and boars for the April 1, 1986 through March 31, 1987 review period and all other live swine for both review periods.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 20612) the preliminary results of its administrative reviews of the countervailing duty order on live swine from Canada (50 FR 32880; August 15, 1985). The Department has now completed those administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of live swine from Canada. During the review periods, such merchandise was classifiable under item number 100.8500 of the "Tariff Schedules of the United States Annotated" (TSUSA). This merchandise is currently classifiable under item numbers 0103.91.00 and 0103.92.00 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods April 1, 1986 to March 31, 1987 and April 1, 1987 to March 31, 1988, and 35 programs: (1) Agricultural Stabilization Act, (2) Feed Freight Assistance Program, (3) National Tripartite Red Meat Stabilization Program, (4) Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement, (5) Canada/Quebec Subsidiary Agreement on Agri-Food Development, (6) Saskatchewan Hog Assured Returns Program, (7) British Columbia Farm Income Insurance Plan, (8) Manitoba Hog Income Stabilization Plan, (9) New Brunswick Hog Price Stabilization Plan, (10) Newfoundland Hog Price Support Program, (11) Nova Scotia Pork Price Stabilization Program, (12) Prince Edward Island Price Stabilization Program, (13 Quebec Farm Income Stabilization Insurance Programs, (14) Alberta Crow Benefits Offset Program, (15) New Brunswick Swine Assistance Program, (16) New Brunswick Livestock Incentives Program, (17) New Brunswick Hog Marketing Program, (18) New Burnswick Swine Industry Financial Restructuring Program, (19) New Brunswick Swine Assistance Policy on Boars, (20) Newfoundland WEanling Bonus Incentive Policy, (21) Nova Scotia Swine Herd Health Policy, (22) Nova Scotia Transportation Assistance, (23) Nova Scotia Improved Sire Policy, (24) Ontario Farm Tax Rebate Program, (25) Ontario (Northern) Livestock Improvement and Transportation Assistance Programs, (26) Ontario Weaner Pig Stabilization Plan, (27) Ontario Pork Industry Improvement Plan, (28) Prince Edward Island (PEI) Hog Marketing and Transportation Subsidies, (29) PEI Swine Development Program, (30) PEI Interest Payments on Assembly Yard Loan, (31) PEI Swine Incentive Policy Program, (32) Quebec Productivity Improvement and Consolidation of Livestock Production Program, (33) Quebec Regional Development Assistance Program, (34) Saskatchewan Livestock Investment Tax Credit, and (35) Saskatchewan Livestock Facilities Tax Credit Program.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Case briefs were submitted by the petitioner, the National Pork Producers Council (NPPC), and two parties to the procedding, the Canadian Pork Council (CPC) and the Government of Quebec (GOQ). Rebuttal briefs were submitted by the petitioner and the CPC. At the request of the CPC, we held a public hearing on July 9, 1990.

Comment 1: Petitioner argues that the Department incorrectly calculated the benefit from the Ontario Farm Tax Rebate Program using the percentage of farmers in the $5,000 to $8,000 income range in the province rather than the percentage of farmers in the same income range in Eastern and Northern Ontario. Petitioner contends that the existence of a lower threshold for Eastern and Northern Ontario suggests that such farmers are more heavily concentrated there than in the rest of the province.

CPC points out that Ontario does not have farm income information by regions for the periods under review and agrees with the Department's methodology. However, CPC points out that, in the preliminary results, the Department calculated the benefit based on the entire amount of the tax rebate in each review period, rather than on the share of the rebate attributable to farmers in the $5,000 to $8,000 income range. CPC requests that the Department recalculate the benefit to accurately reflect the methodology stated in the preliminary results.

Department's Position: The data furnished by the Canadian government during the review periods does not allow us to calculate the concentration of farmers in the $5,000 to $8,000 income range in Eastern and Northern Ontario. Therefore, to calculate the benefit from this program, the Department used information on farmers's income from the 1986 Census of Agriculture, Statistics Canada, as best information available. This is consistent with *Alberta Pork Producers' Marketing Board* v. *United States*, 669 F.Supp. 445, 457-58 (1987).

In accordance with the CPC's comment, the Department has revised its calculations using the percentage of the total payout made to swine farmers in the $5,000 to $8,000 range during the 1986/87 and 1987/88 review periods. Based on these calculations, we determine the benefits during both review periods to be significantly less than Can$0.0001/lb., which is effectively zero, for both sows and boars and all other live swine.

Comment 2: Petitioner argues that, even though no benefits were provided to producers under the Canada/British Columbia Agri-Food Regional Development Subsidiary Agreement and the Canada/Quebec Subsidiary Agreement on Agri-Food Development programs during the periods of review, the Department should determine that the provincial contributions to these joint federal/provincial programs are countervailable because these programs provide benefits to a specific enterprise or industry, or group of enterprises or industries.

The CPC disagrees and asserts that such a determination would be premature, erroneous and constitute an advisory opinion. Furthermore, CPC submits that both programs involve a large number and a variety of agricultural products and therefore, the provincial governments' contributions are not limited to a specific enterprise or industry, or group of enterprises or industries.

Department's Position: It is the Department's practice not to address the countervailability of programs that producers/exporters of merchandise subject to a group of enterprises or industries.

Department's Position: It is the Department's practice not to address the countervailability of programs that producers/exporters of merchandise subject to a countervailing duty order have not used.

Comment 3: CPC contends that the Department has failed to consider all of the information provided by the Government of Canada in making its determination that the Tripartite agreements are counteravailable. Further, the Department's description of the Tripartite scheme for hogs is not accurate and if all the facts are considered fairly, the Tripartite stabilization program does not meet the four-part "specificity test" and is thus not countervailable.

In examining *de facto* selective treatmen', CPC argues that the

Department has focused too narrowly on the number of commodities for which there already are finalized Tripartite agreements, rather than recognizing Tripartite as a new, expanding program having the stated purpose to include all agricultural products. CPC points out that ongoing negotiations have resulted in more than doubling the number of commodities covered by agreements, from four during 1986/87 to ten by March 31, 1988. Because there were no payouts from the Tripartite plan for hogs during the periods of review, CPC contends hog producers were not "dominant" users nor did they receive disproportionately large benefits from the Tripartite plans. Finally, CPC contends that the legitimate exercise of governmental discretion, based not on undue political considerations, but on objective, neutral, and economic factors, is not evidence of selective treatment in the sense intended by the Department's regulations. Neither in the statutory language nor in the legislative history of the U.S. countervailing duty law is there any indication that Congress intended the Department to examine the decision-making processes of a trading partner in the conduct of its domestic economic programs.

Department's Position: No benefits were received under the Tripartite Program during either review period. Any issue related to its countervailability is therefore moot. *See* Comment 2.

Comment 4: CPC disputes the Department's determination that the Feed Freight Assistance Program (FFA) is a countervailable subsidy to live swine producers. CPC emphasizes that payments are made to livestock feed manufacturers who transform feed grains into commercial feed to be sold to livestock producers. Payments are made only incidentally to livestock producers based on their capacity to produce livestock feed, not as a livestock producer. There is no requirement that any of the feed produced be used to feed swine. Furthermore, since feed is obviously a different product from live swine, it can only be considered an input into the final product, live swine, and an upstream subsidy investigation must be conducted before countervailing duties are assessed to offset FFA benefits.

CPC also points out the statutory language and regulations limit benefits only to users to grain in "grain deficit" regions of Eastern Canada and British Columbia. CPC therefore states that the Department must amend its calculations and trade-weight the amount of the benefit.

Department's Position: In the Preliminary Results, we preliminarily determined that this program is countervailable because it is limited to a specific enterprise or industry, or group of enterprises or industries. The Department countervailed only the amount of FFA benefits paid to livestock producers who have indicated that they raise hogs. FFA benefits, in the form of reduced costs for feed, result in a direct reduction in the cost of production of hogs. Therefore, the Department is not required to conduct an upstream subsidy investigation under section 771A (*See "United States-Canada Binational Panel Review of Fresh Chilled and Frozen Pork, Secretariat File No. USA–89–1904–06"*September 28, 1990 at page 57). In these reviews, CPC submitted no new information addressing the requirements for an upstream subsidy investigation. Therefore, the Department's determination remains unchanged.

The Department has noted that the eligibility for benefits is restricted to Eastern Canada, British Columbia, the Yukon Territory and the Northwest Territories. The Federal Government's questionnaire response did not break out payouts according to regions; therefore, to calculate the benefit, we allocated five percent of the total payout made during each of the periods of review over hog production in Eastern Canada (including ¾ of Ontario, all of Quebec and the Maritime Provinces) and British Columbia. We then weight-averaged the benefit by the percent of total Canadian exports accounted for by these areas, resulting in a benefit during both review periods of Can$0.0001/lb., for both sows and boards and all other live swine.

Comment 5: CPC argues that the Alberta Crow Benefit Offset Program (Offset Program) is not a countervailable subsidy. They assert that the Federal Crow Benefit payment to railways shipping grain from Manitoba, Saskatchewan and Alberta to other parts of Canada reduces grain producers' shipping costs. Lower shipping costs for grain producers result in artificially higher prices for grain to Alberta users because the price of grain in Alberta is the market price of grain at the port of export net of transportation costs. The high price of grain places Alberta livestock producers at a comparative disadvantage with respect to producers outside of Alberta. The Offset Program partially counteracts this disadvantage created by the federal program, allowing livestock producers to buy grain feed at competitive prices and to maintain livestock production on a competitive basis.

CPC compares the benefits of the Offset Program to the benefits determined by the Department not to be countervailable in "Certain Steel Products from the Federal Republic of Germany" (47 FR 39345; Sept. 7, 1982). In that instance, because the Federal Republic of Germany (FRG) restricted imports of coking coal, steel producers were prevented from buying coal at lower world prices. Because these import restrictions created a competitive disadvantage for steel producers, the FRG began subsidizing the coking coal used by the steel industry. The Department determined that the production assistance and the import restrictions for coal were "inseparably linked": i.e., "one action simply renders the other null and void" resulting in no "economic benefit" to the steel industry. CPC contends that the Offset Program is similarly designed to counteract the disadvantage to Alberta feed users caused by a related federal program.

If, despite the parallels with the FRG steel case, the Department does determine that the Offset Program benefits hog producers, CPC states that the Department must conduct an upstream subsidy investigation since the direct benefits of the federal program go to the producers of grain, an input to live swine. Unless and until an upstream subsidy investigation is carried out, the benefit, if any, to hog producers from the Offset Program cannot be measured.

CPC asserts that the Department incorrectly calculated the benefit from this program relying on erroneous, unverified information from the "Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada," (54 FR 30774; July 24, 1989) (Pork). They submit copies of affidavits attesting that 10 percent instead of 15 percent of barley produced in Alberta is consumed by swine. CPC also contends that the Department has taken no notice that barley accounts for only 10 percent of Alberta's total crop production and that therefore hogs consume significantly less than 10 percent of total Alberta's feed grain production. Should the Department find that the Offset Program provides a benefit and that the benefit flows to hog producers, CPC suggests an alternative methodology to calculate the benefit. CPC proposes that the Department divide the amount of Farm Cash Receipts for Hogs for 1986 by the amount of Farm Cash Receipts for all commodities. This figure (5.48 percent) should be used to calculate the only measurable benefit under the Offset Program from payments that have been made for grain ultimately consumed by hogs.

Department's Position: We disagree with CPC. Certificates are issued directly to Alberta grain users enabling them to buy feed grain from the feedmill or grain producers at the market price less the value of the certificate. Therefore, the certificates benefit the grain users by reducing the cost of grain in Alberta.

The FRG steel determination is not relevant in this case. The Department determined that the coal subsidies and the import restrictions benefit the coal industry. The steel industry not only did not receive any direct benefits, but also was put at a competitive disadvantage since it was forced to buy the input, coal, at the higher domestic prices. Although the Crow Benefit payments result in higher prices in Alberta, we are not aware of any restrictions preventing Alberta's livestock producers from buying cheaper feed grains outside Alberta.

Because the subsidy from this program goes directly to the hog producers reducing their cost of a primary input, an upstream investigation is not required (See "United States-Canada Binational Panel Review of Fresh, Chilled and Frozen Pork" Secretariat File No. USA–89–1904–06, September 28, 1990 at page 66).

However, we have recalculated the benefit from this program. Based on the methodology in the cost model used by the National Tripartite Hog Stabilization Committee to calculate hog support prices, we first calculated that it takes 630 pounds of grains to produce one hog by multipling the live weight gained by a hog from the weanling to the market stage (180 lbs.) by the grains conversion ratio of 3.5, provided in the "Economic Indicators of the Farm Sector, Cost of Production—Livestock and Dairy, 1989", a U.S. Department of Agriculture publication. We then found the total amount of grains consumed by hogs in Alberta by multipling Alberta's total hog production by the quantity of feed consumed by each hog. By dividing the result by the total grain fed to all livestock in Alberta, we found that 12.75 percent of total grain is consumed by hogs. Therefore, to calculate the benefit from this program, we multiplied 12.75 percent by the total payout to fed grain users in Alberta and divided the result by the total weight of all live swine including sows and boars produced in Alberta. We then weight-averaged the benefit by Alberta's share of all live swine including sows and boars exported to the United States. On this basis, we determine the benefit for both sows and boars and all other live swine to be Can$0.0023/lb. for the 1987/88 review period.

Comment 6: CPC disputes the determination that four breeding stock programs are countervailable: New Brunswick Swine Assistance Policy on Boars, New Brunswick Livestock Incentives Program, Nova Scotia Improved Sire Policy, and Ontario (Northern) Livestock Improvement Program. CPC claims that "breeding stock, bred and sold as breeding stock, is not covered by this order on live swine."

Petitioner points out that payments from these programs go directly to the producers of live swine and are not limited to persons who deal exclusively in buying, breeding, and selling breeding stock.

Department's Position: We disagree with CPC. The benefits from these programs go directly to hog producers, not breeding stock producers, to aid in the purchase of breeding stock to upgrade the quality of their herds. Therefore, we determine that the programs are countervailable.

Comment 7: CPC asserts that the calculations for the 1986/87 review period should be revised to correct the following clerical errors: (1) The Department's calculations included incorrect individual provinces' percentages of total Canadian exports of live swine; (2) the Manitoba Hog Income Stabilization Plan benefits were overstated due to a typographical error; (3) the amount used for the benefit under the Prince Edward Island Price Stabilization Program (PEIPSP) was incorrect; (4) the Saskatchewan Investment Tax Credit was incorrectly calculated; (5) the FFA benefits should have been weighted by exports from each province; and (6) ASA benefits should have been broken out by province.

Department's Position: We agree with CPC and have revised our calculations accordingly. As a result, for the 1986/87 review period, we determine the benefits to be: zero for sows and boars and Can$0.0029/lb. for all other live swine from the Manitoba Hog Income Stabilization Plan; zero for sows and boars and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine from the PEIPSP; and zero for sows and boars and Can$0.0001/lb. for all other live swine from the Saskatchewan Investment Tax Credit Program.

Comment 8: CPC objects to the Department's determination, based on information submitted in the previous review, not to factor out the producer contributions in the Nova Scotia Pork Price Stabilization Program (NSPPSP). CPC contends that the Department has no authority to use information without incorporating appropriate documentation in the record and asks the Department to fully explain the methodology followed in calculating the benefits.

Department's Position: The questionnaire response in the instant reviews states that no changes have been made to the Nova Scotia Natural Products Act—PPSP (the Act) since 1985. The 1985 amendment to the Act, summarized in Nova Scotia's questionnaire response in the 1985/86 review, which we have incorporated into the record, stipulated that contributions by producers to this program would be used to pay off an existing industry loan. The questionnaire response showed no producer contributions to the payout during the review period. In accordance with the 1985 amendment and with the information submitted in the questionnaire response, we considered the total payout to be a grant and allocated the benefit over the total production minus sows and boars. We then weight-averaged the benefit by Nova Scotia's portion of total Canadian exports minus sows and boars, for a benefit of zero for sows and boars, and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine for both periods of review.

Comment 9: The Government of Quebec (GOQ) argues that the Department erred in determining that the Farm Income Stabilization Insurance Program (FISI) is countervailable because it is not limited, in law or in fact, to a specific group of enterprises or industries and there is no evidence in the record of exclusion or targeting.

The petitioner maintains that the FISI program has previously been found countervailable. Further, under the authority of the FISI Act, the GOQ is permitted to "order, for any product or group of products it indicates, the establishment of a farm income stabilization insurance scheme established for the whole of Quebec or any region of Quebec it designates."

Department's Position: The Quebec statute governing the FISI program states that any product or group of products may have an income stabilization insurance scheme established. The Department has determined that only a limited number of commodity producers have received income stabilization benefits. Because benefits provided under this program are limited to a specific group of enterprises or industries, the Department has determined that this

program is countervailable. *See Alberta Pork Producers' Marketing Board* v. *United States*, 687 F.Supp. 445 (CIT 1987). As a result, we have calculated a countervailable benefit of zero for sows and boars for both review periods; for all other live swine, Can$0.0001/lb. for the 1986/87 review period and significantly less than Can$0.0001/lb., which is effectively zero, for the 1987/88 review period.

Comment 10: CPC contends that the payments under the Quebec Farm Income Stabilization Insurance Programs (FISI) used to calculate the benefits in the 1986/87 review period have been countervailed in the previous review.

Department's Position: According to information submitted in the questionnaire response, payments from the FISI program are calculated on a crop year basis. Since the crop year for piglets is July 1 through June 30, payouts of the benefits for piglets are made at the end of June. The date of the payments for the 1985/86 crop year falls within our 1986/87 review period. Therefore, we included them in the calculations of benefits under this program. They were not included in the calculation of the benefits for the 1985/86 review period.

Comment 11: CPC asserts that the Department did not explain how it reached the figure used to calculate the benefits from the Quebec FISI program during the 1987/88 review period.

Department's Position: We have amended our calculations to include ⅔ of the compensation payment figure shown in FISI's financial statement for fiscal year 1987/88. This results in a benefit that is zero for sows and boars and significantly less than Can$0.0001/lb., which is effectively zero, for all other live swine for the review period.

Comment 12: CPC asserts that the Saskatchewan Livestock Facilities Tax Credit (SLFTC) benefit for the 1987/88 review period was overstated due to a typographical error.

Department's Position: We agree and have revised our calculations accordingly. On this basis, we determine the benefit for both sows and boars and all other live swine to be significantly less than Can$0.0001/lb., which is effectively zero, for the 1987/88 review period.

Comment 13: CPC asserts that, for the 1987/88 review period, for purposes of the *de minimis* calculations, the rate for both sows and boars should be rounded up from Can$0.0029/lb. to Can $0.003/lb.; and for live swine, it should be rounded up from Can$0.0039/lb. to $0.004/lb.

Department's Position: Using more detailed information submitted in the questionnaire response, we revised our *de minimis* calculations. For each review period, we calculated a separate provincial yearly average price for both sows and boars and for all other live swine. We then weight-averaged the average provincial prices by the portion of exports from each province and summed the results. We multiplied this weighted-average figure by 0.50 percent. Based on the result, we determine that rates of less than Can$0.0026/lb. for sows and boars and Can$0.0041/lb. for all other live swine are *de minimis* for the 1986/87 review period; rates of less than Can$0.0023/lb. for sows and boars and Can$0.0038/lb. for all other live swine are *de minimis* for the 1987/88 review period.

Final Results of Review

After reviewing the comments received, we determine the net subsidy for the period April 1, 1986 through March 31, 1987 to be Can$0.0001/lb. for sows and boars and Can$0.0039/lb. for all other live swine; for the period April 1, 1987 through March 31, 1988 to be Can$0.0030/lb. for sows and boars and Can$0.0032/lb. for all other live swine. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We converted the cents-per-pound rates to *ad valorem* rates. The rate is *de minimis* for sows and boars for the April 1, 1986 through March 31, 1987 and for all other live swine for both review periods.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of sows and boars exported on or after April 1, 1986 and on or before March 31, 1987, and of all other live swine exported on or after April 1, 1986 and on or before March 31, 1988. Further, the Department will instruct the Customs Serivce to assess countervailing duties of Can$0.0030/lb. on all shipments of sows and boars exported on or after April 1, 1987 and on or before March 31, 1988.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of Can$0.0030/lb. on all shipments of sows and boars and to waive cash deposits of estimated countervailing duties for all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-5802 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-056]

Melamine From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on melamine from Japan.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 4039) its intent to revoke the antidumping finding on melamine from Japan (42 FR 6366, February 2, 1977). The Department may revoke a finding if the Secretary concludes that the finding is no longer of interest to interested parties. We did not receive a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25(d)(4).

On February 20, 1991, Melamine Chemicals, Inc., one of the petitioners, objected to our intent to revoke the finding.

Dated: March 4, 1991.

Joseph A. Spetrini,

Deputy Assistance Secretary for Compliance.

[FR Doc. 91-5800 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. Because the U.S. cement industry is not interested in having the International Trade Commission conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order, we intend to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 21, 1983, the Department of Commerce (the Department) published in the **Federal Register** (48 FR 43063) a notice of final affirmative countervailing duty determination and countervailing duty order on portland hydraulic cement and cement clinker from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Consistent with our earlier positions in "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order (47 FR 44129; October 6, 1982) and "Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), to levy countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986, absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission (ITC) will, at the request of the United States Trade Representative (USTR), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) An industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on portland hydraulic cement and cement clinker from Mexico.

In response to a November 26, 1990 request from USTR, the ITC instituted an investigation on the conditions of competition between U.S. and Mexican portland hydraulic cement and cement clinker in the U.S. market (55 FR 53203; December 27, 1990). The ITC invited parties interested in the continuation of the investigation to provide relevant information in order to determine whether there was sufficient interest in the investigation. On February 6, 1991, the ITC terminated its investigation after concluding, based on comments submitted by the Ad Hoc Committee of Producers of Gray Portland Cement and the Embassy of Mexico, that there was insufficient interest for the continuation of the investigation (56 FR 4852).

Scope of Review

Imports covered by this review are shipments of Mexican portland hydraulic cement and cement clinker other than white, non-staining. Through 1988, such merchandise was classifiable under items 511.1420 and 511.1440 of the "Tariff Schedules of the United States Annotated" (TSUSA). This merchandise is currently classifiable under item numbers 2523.10.00, 2523.29.00, 2523.30.00 and 2523.90.00 of the "Harmonized Tariff Schedule" (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having the ITC conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intend to revoke the countervailing duty order on portland hydraulic cement and cement clinker from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice and may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any case or rebuttal brief or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR

355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2) and (d)(3).

Dated: March 5, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5803 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination; Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration. Commerce.

ACTION: Notice of short-supply determination: certain steel plate.

SHORT-SUPPLY REVIEW NUMBER: 40.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a request for a short-supply allowance of 21,097.34 net tons of certain steel plate for the fourth quarter of 1990 under Article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-4037 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On February 4, 1991, Berg Steel Pipe Corporation ("Berg") submitted an adequate petition requesting a short-supply allowance for 21,097.34 net tons of steel plate, 73.786 to 74.175 inches in width and 0.494 to 0.618 inch in thickness that meets or exceeds American Petroleum Institute specification X-70, to be delivered during the second and third quarters of 1991. This steel plate will be used by Berg to manufacture certain 24-inch diameter pipe. The request was made under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Berg's petition alleges that no mill in the United States is capable of meeting the required specifications for this plate and that its two potential foreign suppliers for this material do not have sufficient available quota to supply this order. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

Action: On February 4, 1991, the Secretary established an official record on this short-supply request (Case Number 40) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. On February 13, 1991, the Secretary published a notice in the **Federal Register** announcing its review of this request and soliciting comments from interested parties. Comments were required to be received no later than February 20, 1991, and interested parties were invited to file replies to any comments not later than February 25, 1991. In order to determine whether this product could be supplied to Berg during the second and third quarters of 1991, the Secretary sent questionnaires to Bethlehem Steel Corporation ("Bethlehem"), Oregon Steel Mills, and USX Corporation ("USX"), the three potential U.S. producers of this product. The Secretary received questionnaire responses from Bethlehem and USX and one comment to the **Federal Register** notice.

Questionnaire Responses: Bethlehem and USX indicated in their questionnaire responses that they would not be viable suppliers of the subject plate during the second and third quarters of 1991. Bethlehem noted that it would not be able to produce a product to meet the required X-70 steel plate specifications. However, Bethlehem's response also indicated that the original inquiry from Berg for the requested product was 1,024.6 net tons less than the short-supply request. USX indicated that it does not have the capability to produce the noted X-70 grade steel plate at the present time with its current equipment.

On February 25, 1991, Berg submitted comments in response to Bethlehem's statements concerning the discrepancy between the tonnage contained in Berg's original inquiry to Bethlehem and the tonnage contained in Berg's short-supply request. Berg states that it requested short-supply licenses with a five percent allowance because "* * * short supply licenses are based on actual weight while Berg and other steel mills place their orders based on theoretical weight." Berg maintains that because the actual weight of the plate it requires, given the tolerances, could be as much as five percent greater than the theoretical weight, Berg is requesting a short-supply allowance for five percent more tonnage than it will actually order. "The five percent additional is Berg's best estimate of a prudent amount to cover this discrepancy between actual and theoretical weight."

Conclusion: The potential domestic suppliers of X-70 grade steel plate did not indicate an ability to supply this material to Berg during the required time frame. Furthermore, sufficient quota is unavailable to the potential foreign suppliers for this steel plate. Therefore, the Secretary determines that short supply exists with respect to the requested product. Pursuant to section 4(b)(4)(A) of the Act, and section 357.102 of Commerce's Short-Supply Procedures (19 CFR 357.102), the Secretary grants Berg a short-supply allowance for 21,097.34 net tons of the requested plate for the second and third quarters of 1991.

Dated: March 6, 1991

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5804 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

William Paterson College of New Jersey, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89-177R. Applicant: William Paterson College of New Jersey, Wayne, NJ 07470. Instrument: Mass Spectrometer, Model JMS-DX303HF. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 54 FR 31721, August 1, 1989. Reasons: The foreign instrument provides FAB ionization and linked scan capabilities with a scan speed of 0.1 seconds per decade. Advice Submitted by: National Institutes of Health, December 18, 1990.

Docket Number: 90-029R. Applicant: University of Vermont, Burlington, VT 05405. Instrument: Mass Spectrometer, Model VG SIRA SERIES II. Manufacturer: VG Isogas, United Kingdom. Intended Use: See notice at 55 FR 9347, March 13, 1990. Reasons: The foreign instrument provides an internal precision of 0.05% for 3 bar μl samples of CO_2 and a triple Faraday collector. Advice Submitted by: National Institutes of Health, December 18, 1990.

Docket Number: 90-036R. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Mass Spectrometer, Model 252. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 55 FR 9347, March 13, 1990. Reasons: The foreign instrument provides: (1) 5 computer-controlled gas inlet systems, (2) a 6-cup multi-collector array and (3) internal precision to 0.005% for 100 bar μl samples of CO_2. Advice Submitted By: National Instruments of Health, December 18, 1990.

Docket Number: 90-170. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Radiation Detector, Model AB-5 and Accessories. Manufacturer: Pylon Electronic Development Co., Canada. Intended Use: See notice at 55 FR 41737, October 15, 1990.

Docket Number: 90-184. Applicant: Hawaii Institute of Geophysics, Honolulu, HI 96822. Instrument: Two (2) Field Portable Remote Radon Detectors, Model 611 Manufacturer: Alpha Nuclear Corporation, Canada. Intended Use: See notice at 55 FR 47787, November 15, 1990. Reasons. The foreign instrument provides the combination of both. (1) Field and laboratory operation, (2) computer adapted and tape readout and (3) real time and passive measurements. Advice Submitted By: National Institute of Standards and Technology, January 9, 1991

Docket Number: 90-208. Applicant Yale University, New Haven, CT 06520. Instrument Electron Paramagnetic Resonance Spectrometer System, Model ESP 300-10/12. Manufactuer: Bruker Analytische Messtechnik GmbH, West Germany. Intended Use: See notice at 55 FR 51752, December 17, 1990. Reasons. The foreign instrument provides. (1) A 10-inch magnet system with a 12kW power supply, (2) a temperature range of 100-700K and (3) ENDOR capability. Advice Received From. National Institute of Standards and Technology, January 24, 1991

The National Institutes of Health and National Institute of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-5805 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will meet on March 18-21, 1991, at the Marriott's Bay Point Resort, 100 Delwood Beach Road, Panama City, FL. Except as noted below, the meetings are open to the public.

Council: The Council will begin its meeting on March 20 at 8:30 a.m., and recess at 5 p.m. The agenda is as follows: (1) from 8:45 a.m., to 3:30 p.m., public testimony on the Red Snapper Regulatory Amendment; (2) from 3:30 p.m., to 5 p.m., discussion of Committee recommendations on the Red Snapper Regulatory Amendment. (3) from 8:30 a.m., to 11:30 a.m., on March 21 continue discussion of Committee recommendations on the Red Snapper Regulatory Amendment; (4) from 1 p.m., to 3 p.m., a closed session (not open to the public) discussion of the AP Selection Committee recommendations; (5) from 3 p.m., to 3:15 p.m., the Budget Committee report; (6) from 3:15 p.m., to 3:30 p.m., the Council Chairmen s meeting report; and (7) reports on Enforcement; on the National Marine Fisheries Service Stock Assessment meeting; and from the Director. Adjournment is scheduled at 4:30 p.m.

Committees. On March 18 at 1 p.m., the Budget Committee and AP Selection Committee will meet in a closed session (not open to the public). The meeting will adjourn at 5 p.m. On March 19 at 8 a.m., the Reef Fish Management Committee will meet and adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 881, Tampa, FL, telephone: (813) 228-2815.

Dated: March 6, 1991

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5724 Filed 3-11-91; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

[91-M-2]

Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a public hearing of the United States Commission on Minority Business Development will be held on Thursday, March 28, 1991 in New York, New York. The hearing is open to the public.

The March 28th hearing will convene at 9 a.m. at One Federal Plaza, Ceremonial Court Room.

The public hearing is for the purpose of receiving testimony from public and private sector decision-makers and entrepreneurs, professional exports, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in Federal programs and contracting opportunities.

A meeting of the Commissioners will be held on Wednesday, March 27, 1991 at 26 Federal Plaza, room 328. This meeting is open to the public.

The Commission was established by Public Law 100-656, for purposes of reviewing and assessing Federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in laws or regulations as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION AND TESTIMONY INFORMATION: Contact Connie K. McCracken or Anita Irick at 202-523-0030 at the Commission on Minority Business Development, 750 17th Street NW., suite 300, Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Transcripts of hearings will be available for public inspection during regular working hours at The Commission Office approximately 30 days following the hearing.

André M. Carrington,

Executive Director

[FR Doc. 91-5814 Filed 3-11-91 8:45 am]

BILLING CODE 6820-FB-M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Survey of Consumer Use of Bicycles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of consumers about use of bicycles. The requested expiration date is December 31, 1991.

For the past several years, bicycles have been associated with a large number of injuries and deaths. Since 1973, the Commission estimates that more than one million injuries have been associated with bicycles annually, and that approximately half of these have been treated in hospital emergency rooms. The Commission estimates further that more than 70 per cent of the injuries associated with bicycles which were treated in emergency rooms were to children younger than 15 years of age.

The National Safety Council estimates that in 1989, bicycles involved in collisions with motor vehicles were associated with approximately 1,000 accidental deaths. The Commission estimates that about 30 per cent of these accident victims were children younger than 15 years of age.

During 1991, the Commission plans to conduct a major study of injuries associated with bicycles. From that study, the Commission will obtain a better understanding of bicycle use patterns, bicycle hazard patterns, and factors that contribute to accidents involving bicycles. This study will give particular attention to accidents associated with bicycles which involve children; accidents which result in head injuries; and the relationship between head injuries and use of bicycle helmets. The Commission will use this information when it considers the appropriate action to be taken, if any, to reduce risks of deaths and injuries associated with bicycles.

One component of the Commission's study of bicycle-related injuries is a survey of bicycle use by consumers. The Commission has developed a proposed survey to obtain information about use of bicycles by consumers. This survey has been designed to gather statistically representative data about bicycle riders, bicycles in use, and bicycle usage patterns. The Commission will use the information obtained from the consumer use survery in conjunction with the results of an investigation of bicycle injuries to determine and quantify risk factors in injuries associated with bicycles.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Bicycle Consumer Exposure survey.

Type of request: Approval of a new plan.

Frequency of collection: One time.

General description of respondents: Persons who ride bicycles; parents and guardians of children who ride bicycles.

Total number of respondents: 1,150.

House per response: 0.25.

Total hours for all respondents: 287.

Comments: Comments about this request for approval of a collection of information should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7340. Copies of this request for approval of a collection of information are available from Francine Schacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: March 6, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–5706 Filed 3–11–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent; Planar Doped Barrier Semiconductor Device

AGENCY: U.S. Army Laboratory Command, DOD.

ACTION: Notice of availability.

SUMMARY: This is a Notice Availability of U.S. Patent No. 4,410,902 entitled, "Planar Doped Barrier Semiconductor Device, for non-exclusive, exclusive, or partially exclusive licensing.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL–LC–L, Fort Monmouth, New Jersey 07703–5000, (908) 534–4112.

SUPPLEMENTARY INFORMATION: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 4,410,902, entitled, "Planar Doped Barrier Semiconductor Device," for non-exclusive, exclusive or partially exclusive licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent concerns a majority carrier rectifying barrier semiconductor device housing a planar doped barrier. The device is fabricated in GaAs by an expitaxial growth process which results in an n+-i-p+-i-n+ semiconductor structure wherein an extremely narrow p+ planar doped region is positioned in adjoining regions of nominally undoped (intrinsic) semiconductive material. The narrow widths of the undoped regions and the high densities of the ionized impurities within the space charge region results in rectangular and triangular electric fields and potential barriers, respectively. Independent and continous control of the barrier height and asymmetry of the current versus voltage characteristic is provided through variation of the acceptor charge density and the undoped region widths. Additionally, the capacitance of the device is substantially constant with respect to bias voltage.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by the U.S. Army, Electronics Technology and Devices Laboratory, wishes to license the above-mentioned United States Patent in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above-mentioned patent.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–5710 Filed 3–11–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.136A]

Assistance for Training in the Legal Profession; Invitation for Applications for New Awards for Fiscal Year (FY) 1991.

Purpose of Program: To assist individuals from disadvantaged backgrounds to undertake training for the legal profession.

Eligible Applicants: Public and private agencies and organizations, other than institutions of higher education.

Deadline for Transmittal of Applications: April 10, 1991.

Applications Available: March 12, 1991.

Available Funds: $2,928,000.

Estimated Range of Awards: $100,000–$2,500,000.

Estimated Average Size of Awards: $600,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 651.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in EDGAR in 34 CFR 75.210.

The program regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). An additional five points are added to this criterion for a possible total of 20 points;

Budget and cost effectiveness (34 CFR 75.210(b)(5)). An additional 5 points are added to this criterion for a possible total of 10 points;

Evaluation plan (34 CFR 75.210(b)(6)). An additional 5 points are added to this criterion for a possible total of 10 points.

For Application or Information Contact: Mr. Walter T. Lewis, Program Manager, U.S. Department of Education, Division of Higher Education Incentive Programs, Mail Stop 5251, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC, 20202–5251. Telephone: (202) 708–9393. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

(Catalog of Federal Domestic Assistance Number: 84.136A Assistance for Training in the Legal Profession)

Program Authority: 20 U.S.C. 1134r.

Dated: March 6, 1991.

Leonard L. Haynes III,

Assistant Secretary, for Postsecondary Education.

[FR Doc. 91–5729 Filed 3–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Wetlands Notification for Proposed Removal Action at the Feed Materials Production Center, Fernald, OH

AGENCY: Department of Energy.

ACTION: Notice of wetlands involvement and opportunity to comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes a removal action to control the storm water runoff from the Waste Pit Area at the Feed Materials Production Center (FMPC) located near Fernald, Ohio. The removal action is required under a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 120 and 106(a) Consent Agreement between DOE and the U.S. Environmental Protection Agency (EPA). The fundamental objective of the removal action is to protect public health and the environment by controlling the release of storm water runoff with uranium concentrations exceeding the proposed DOE-derived concentration guides for surface water discharge. The proposed action incorporates the separation of drainage areas within the Waste Pit Area, thus isolating contaminated and non-contaminated storm water runoff. The segregation of drainage areas through the diversion of storm water runoff would be achieved through the modification of existing structures and topography, the plugging of existing culverts and ditches, and the creation of fill areas and earthen berms. The proposed action would be carried out in concurrence with the U.S. EPA and the Ohio EPA. The action would be performed in such a manner as to avoid or minimize impacts on the wetlands. In accordance with DOE regulations 10 CFR part 1022, DOE would prepare a wetlands assessment in the Engineering Evaluation/Cost Analysis-Environmental Assessment, which would be available in the Administrative Record. Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due to DOE to the addressee below by March 27, 1991.

ADDRESSES:

Mail Comments to: Jack C. Craig, FMPC Remedial Action Project Director, 7400 Wiley Road, Fernald, Ohio 45030.

Fax comments to: (513) 738–6650.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91–5698 Filed 3–8–91; 12:17 pm]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Metal Casting Industrial Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 stat. 770), notice is hereby given of the following meeting:

Name: Metal Casting Industrial Advisory Board.

Dates and Time: Tuesday, April 2, 1991, 8:30 a.m.–5 p.m., Wednesday, April 3, 1991, 8:30 a.m.–3 p.m.

Location: Department of Energy, Forrestal Building, room 6E–069, 1000 Independence Avenue SW., Washington, DC 20585.

Contact: David M. Pellish, Executive Secretary, Department of Energy, 1000 Independence Avenue, SW., Attn: CE–231, Washington, DC 20585, telephone: 202–586–6436.

Purpose of the Board: To provide guidance and oversight in implementing the selection criteria for proposals for establishing National Metal Casting Research Institutes and operation of a Metal Casting Competitiveness Research Program and to recommend to the Sectetary of Energy a list of Metal Casting Research Priorities.

Tentative Agenda: First Meeting of the Board—Tuesday, April 2, 1991, and Wednesday, April 3, 1991:

- Opening Remarks and Welcome by DOE Officials.
- Discussion of the Board's Statutory Responsibilities.
- Discussion of Related Programs.
- Discussion of the Metal Casting Industry Needs, including energy efficient processes, competitivenes, and environmental issues.
- Discussion of Research Resources and Programs at Universities.
- Discussion of Research Resources and Programs at Non-Academic Facilities.
- Discussion of Research Priorities.
- Other matters requiring Board consideration and Public Comment period.

Public Participation: The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on: March 7, 1991.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 91–5809 Filed 3–11–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[TQ91–5–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that on March 1, 1991, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fourth Revised Twelfth Revised Sheet No. 8
Fourth Revised Twelfth Revised Sheet No. 9

Carnegie states that pursuant to section 154.308 of the Commission's regulations and the Commission's Order Nos. 483 and 483–A, it is filing an Out-of-Cycle PGA to reflect an unanticipated reduction in its projected system sales requirements and to track a recent decrease in the sales rates of its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as filed in an Interim PGA by Texas Eastern on February 28, 1991. The revised rates are proposed to become effective March 2, 1991, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ91–5–63–000: a $0.6270 per Dth decrease in the commodity component of its LVWS, LVIS and CDS rate schedules; and a $0.0963 per Dth increase in its Standby Charge Adjustment, from $0.2203 to $0.3166 per Dth. Carnegie does not propose any change to the demand components of its sales rates.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such pleadings should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5734 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TM91–4–33–000]

El Paso Natural Gas Co.; Tariff Filing

March 6, 1991.

Take notice that on March 1, 1991, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that reflect a revision to the Monthly Direct Charge and Throughput Surcharge.

El Paso states that the filing reflects that no additions have been made to the amount presently being amortized, as set forth in El Paso's filing made February 16, 1990 at Docket No. RP90–81–000. The only adjustments proposed by the filing are being made pursuant to Sections 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payments, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.2630 per dth to $0.2499 per dth.

El Paso respectfully requested that the tendered tariff sheets be accepted and permitted to become effective on April 1, 1991, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system sales and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5735 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–3–33–000 and RP86–157–005]

El Paso Natural Gas Co.; Proposed Change in Rates

March 6, 1991.

Take notice that on March 1, 1991, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions in El Paso's FERC Gas Tariff, Second Revised Volume No. 1; and

(ii) Elimination of the Special Liquids Surcharge applicable to El Paso's one-part rate sales customers, except Gas Company of New Mexico, authorized by the Commission's order approving settlement at Docket No. RP86–157–000.

El Paso requests that the tariff sheets tendered be accepted for filing and permitted to become effective April 1, 1991.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a decrease of $0.0042 per dth in the gas cost component of El Paso's jurisdictional sales rates as compared to the gas cost component of the rates placed in effect on January 1, 1991 at Docket Nos. TQ91–2–33–000 and TM91–3–33–000.

El Paso also states that the tendered tariff sheets reflect the elimination of the Special Liquids Surcharge effective April 1, 1991 in accordance with the Commission's order authorizing settlement issued at Docket No. RP86–157–000.

El Paso also respectfully requests waiver of the filing requirement of FERC Form No. 542–PGA as it pertains to deregulated gas under renegotiated contracts which requires pipelines to identify gas purchase transactions by NGPA category and subcategory.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all intersted state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5737 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[RP91–111–000]

North Penn Gas Co.; Tariff Change

March 6, 1991.

Take notice that on March 1, 1991 North Penn Gas Company (North Penn) tendered for filing the following tariff sheets to modify its take-or-pay (TOP) recovery mechanism pursuant to Orders 528 and 528–A:

Fifth Revised Sheet No. 3A—Effective April 1, 1991
Second Revised Sheet No. 15H—Effective April 1, 1991
Third Revised Sheet No. 15H(1)—Effective April 1, 1991
First Revised Sheet No. 15H(1)(a)—Effective April 1, 1991

For the same reasons, North Penn proposes to eliminate the following tariff sheets:

First Revised Sheet No. 15H(2)
First Revised Sheet No. 15H(3)
Alternate Original Sheet No. 15H(4)
Original Sheet No. 15H(5)(a)
Original Sheet No. 15H(5)(b)
Original Sheet No. 15H(5)(c)
Original Sheet No. 15H(5)(d)
Original Sheet No. 15H(5)(e)
Original Sheet No. 15H(5)(f)
Original Sheet No. 15H(5)(g)
Original Sheet No. 15H(5)(h)
Original Sheet No. 15H(5)(i)
Original Sheet No. 15H(5)(j)

North Penn states that the specific method North Penn proposes to recover TOP costs is through a volumetric surcharge applicable to all of North Penn's FERC jurisdictional services.

While North Penn believes that no waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective April 1, 1991.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5732 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–4–59–000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on March 1, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volumn No. 1 Tariff) and Original Volume No. 2 (Volumn No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483–A. The instant filing reflects a Base Average Gas Purchase Cost of $1.4743 per MMBtu to be effective April 1, 1991, through June 30, 1991. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Damend rate component of $3.854 per MMBtu. This rate will be effective April 1, 1991 through June 30, 1991.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5736 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TM91–6–37–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1991.

Take notice that on February 28, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1
Third Revised Sheet No. 13
First Revised Volume No. 1–A
First Revised Sheet No. 202

Original Volume No. 2

Eleventh Revised Sheet No. 2.2 Twenty-Second Revised Sheet No. 2–B

The above tariff sheets were filed to reflect a new Fuel Reimbursement Percentage, based on Northwest's actual fuel use for the prior calendar year. The proposed percentages are 1.54% for mainline and 1.97% for gathering. Northwest has requested an effective date of April 1, 1991 for the tendered sheets.

Northwest states that a copy of this filing is being served on Pacific Interstate Transmission Company, Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5738 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–2–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on March 1, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Eighty-Fifth Revised Sheet No. 3–A
Sixty-Second Revised Sheet No. 3–B
Ninth Revised Sheet No. 3–B.1

The proposed effective date of these revised tariff sheets is April 1, 1991.

Panhandle states that these revised tariff sheets filed herewith reflect no change in Panhandle's D1 and D2 demand rates pursuant to Section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that it should be noted that by Commission Orders dated June 30, 1989, August 4, 1989 and August 28, 1989 in Docket Nos. PR89–185–000, *et al.* which accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume 1. Section 25.32(a) thereof provides that Panhandle shall re-establish normal PGA procedures in accordance with section 18 of the General Terms and Conditions on April 1, 1991, or earlier. Accordingly, the instant PGA filing reflects the current cost of purchased gas to be included in Panhandle's commodity sales rates. Further, in accordance with § 25.33(a)(ii) of the General Terms and Conditions, Panhandle has reflected a zero Account No. 191 balance and no deferred account surchage in its proposed rates to be effective April 1, 1991.

Panhandle states that the above-reference tariff sheets are being filed in accordance with section 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to section 18 (Purchased Gas Adjustment Clause) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional rates effective April 1, 1991.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5733 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[RP91–112–000]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on March 1, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 327
Second Revised Sheet No. 327A

Texas Eastern states that the purpose of this filing is to allow shippers under Texas Eastern's Rate Schedule IT–1 receiving service pursuant to section 311 of the Natural Gas Policy Act of 1978 to convert to service pursuant to Texas Eastern's blanket transportation certificate issued in Docket No. CP88–136–000. Texas Eastern also requests waiver of the prior notice requirements and the filing fees associated with the initial reports for the new agreements.

The proposed effective date of the tariff sheets listed above in April 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5739 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–2–32–000]

Colorado Interstate Gas Co.; Filing

Take notice that on March 1, 1991, Colorado Interstate Gas Company ("CIG") submitted for filing, as part of its Original Volume No. 1 FERC Gas Tariff, six copies of the following proposed tariff sheets:

Sixth Revised First Revised Sheet No. 7.1
Sixth Revised First Revised Sheet No. 7.2
Sixth Revised First Revised Sheet No. 8.1
Sixth Revised First Revised Sheet No. 8.2

The instant purchased gas adjustment ("PGA") filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et seq.* CIG has eliminated producer demand charges ("PDC") from its Demand-1 rates related to the OXY and Marathon contracts, pursuant to the Commission order issued on February 21, 1991 in Docjet Nos. TQ91–1–32–002 *et al.* The tariff rates underlying Sixth Revised First Revised Sheet Nos. 7.1 through 8.2 reflect a 0.03 cent/Mcf increase in the commodity rate for the G–1, P–1, SG–1, H–1, F–1 and PS–1 Rate Schedules, and a 2 cent decrease in the Demand-1 rate that is solely attributable to the eliminate of PDC's for OXY and Marathon. The proposed rats compared with those filed by CIG on January 17, 1991 in Docket No. TQ91–1–32–001, which rates were approved effective January 1, 1991 by Commission letter order issued February 12, 1991.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5744 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–2–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 6, 1991.

Take notice that on March 1, 1991, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies of Fourth Revised Sheet No. 4 (Primary) and Third Revised Sheet No. 4 (Alternate) and Fourth Revised Sheet No. 5 (Primary) and Third Revised Sheet No. 5 (Alternate) to First Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1991:

The purpose of the revisions to Revised Sheet Nos. 4 and 5 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of April 1991—June 1991 pursuant to § 21.2 of the General Terms and Conditions of East Tennessee's Tariff.

The Current Purchased Gas Cost Rate Adjustments to Sheet Nos. 4 and 5 are <$0.911> per dekatherm (Primary and Alternate). The adjustments to gas ratres are $3.0984 per dekatherm (Primary and Alternate) (purchase WACOG) and $3,1531 per dekatherm (Primary and Alternate) (sales WACOG).

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5743 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[RP91–105–000]

Florida Gas Transmission Co.; Request for Waiver

March 6, 1991.

Take notice that on February 28, 1991, Florida Gas Transmission Company (Florida) filed a request for permanent waiver of § 154.305(b) of the Commission's regulations to permit it to recover through its Purchased Gas Adjustment (PGA) clause on as "as billed" basis producer demand charges paid under purchased gas contracts between Florida and its producer suppliers. Alternatively, Florida requests permanent limited waiver of § 154.305(b)(1) regarding one contract that includes a producer demand charge so it can recover producer demand charges on an as-billed basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5749 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–7–4–000]

Granite State Gas Transmission, Inc.; Changes in Rates

March 6, 1991.

Take notice that on March 1, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, filed Fourth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on March 1, 1991.

According to Granite State, its filing reflects revised projected purchased gas costs for the balance of the first quarter of 1991 for reductions in the cost of purchases of Canadian natural gas from Boundary Gas, Inc. and Shell Canada Limited. Also, it is stated that Granite State's projected purchase costs for spot-market supplies have been made in projected sales. Overall, it is stated that the filing results in reduced rates for Granite State's juridictional sales.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to itervene or

protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for ublic inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5746 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-110-000]

Great Lakes Transmission Limited Partnership; Proposed Changes in F.E.R.C. Gas Tariff

March 6, 1991.

Take notice that Great Lakes Transmission Limited Partnership ("Great Lakes") on March 1, 1991, pursuant to § 154.63(a)(1) of the Regulations of the Federal Energy Regulatory Commission ("Commission") tendered for filing the following tariff sheets to its FERC Gas Tariff proposed to be effective April 1, 1991:

First Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 1
Thirty-Sixth Revised Sheet No. 57(i)
Thirty-Sixth Revised Sheet No. 57(ii)
Fifth Revised Sheet No. 57(iv)
Twenty-Second Revised Sheet No 57(v)

Original Volume No. 2

Thirty-Fifth Revised Sheet No. 1
Original Sheet No. 3-A
Sixteenth Revised Sheet No. 77
Second Revised Sheet No. 78
Third Revised Sheet No. 78-A
Third Revised Sheet No. 79
Ninth Revised Sheet No. 294
Fourth Revised Sheet No. 295
Fourth Revised Sheet No. 437
Second Revised Sheet No. 439
Third Revised Sheet No. 465
Fourth Revised Sheet No. 466
Second Revised Sheet No. 467
First Revised Sheet No. 474
First Revised Sheet No. 475
First Revised Sheet No. 476
Fourth Revised Sheet No. 603
First Revised Sheet No. 604
First Revised Sheet No. 605
First Revised Sheet No. 614
First Revised Sheet No. 615
Second Revised Sheet No. 760
First Revised Sheet No. 761
First Revised Sheet No. 771
First Revised Sheet No. 773
Second Revised Sheet No. 866
First Revised Sheet No. 867
First Revised Sheet No. 875
First Revised Sheet No. 876
First Revised Sheet No. 877
Second Revised Sheet No. 906
First Revised Sheet No. 907
First Revised Sheet No. 916
First Revised Sheet No. 917

Great Lakes advises that the primary purpose of this filing is to enable each of Great Lakes' transportaion customers, who desires to directly provide the company use gas needed by Great Lakes to transport such customers gas volumes, the mechanism to do so. The tariff sheets referenced above reflect the changes necessary to reflect this change in the appropriate Rate Schedules of Original Volume No. 2 of Great Lakes FERC Gas Tariff.

Any person desiring to be heard or to any protest said filing should file a Motion to Intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 13, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are om file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5730 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-16-000]

National Fuel Gas Supply Corp; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that on March 1, 1991, National Fuel Gas Supply Corporation ("National") submits for filing Sixth Revised Sheet No. 5 as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective April 1, 1991.

The purpose of this filing is to reflect a quarterly Purchased Gas Adjustment ("PGA"). Sixth Revised Sheet No. 5 results in a 2.58 cents per dekatherm ("Dth") reduction in its commodity gas cost in comparison with National's compliance filing on January 31, 1991, in Docket No. TA91-1-16-004. The revised RQ and CD sales commodity rate of $3.0616 per Dth is based upon a current average cost of purchased gas of $2.8110 per Dth. The tariff sheet also reflects the modification of National's demand and commodity sales rates required by the annual reconciliation of its Account No. 858 costs.

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such motions to intervene or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5748 Filed 3-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-108-000 and TM91-7-37-000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

March 6, 1991.

Take notice that on March 4, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Seventh Revised Sheet No. 10
Alternate Seventh Revised Sheet No. 10
Eighth Revised Sheet No. 10
Alternate Eighth Revised Sheet No. 10
Seventh Revised Sheet No. 11
Alternate Seventh Revised Sheet No. 11
Eighth Revised Sheet No. 11
Alternate Eighth Revised Sheet No. 11
Fourth Revised Sheet No. 13
Fifth Revised Sheet No. 13

First Revised Volume No. 1-A

Fourth Revised Sheet No. 201
Fifth Revised Sheet No. 201

Original Volume No. 2

Twenty-First Revised Sheet No. 2.3
Twenty-Second Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective April 1, 1991, to reflect (1) interest applicable to Janury, February and March 1991, and (2) the amortization of principal and interest. Northwest has proposed a one month incremental Commodity SSP Surchage of 12¢ per MMBtu for the thirty day period commencing April 1, 1991, as further explained in the transmittal letter. The proposed Commodity SSP Charges contained in this instant filing are 4.64¢ per MMBtu for the thirty day period commencing April 1, 1991, and 4.52¢ per MMBtu for the two months commencing May 1, 1991

Northwest has filed Sheet Nos. 10 and 11 above, in both the primary and alternate form, consistent with Northwest's annual PGA filing, submitted on January 30, 1991 in Docket No. TA91-1-37-000. The above mentioned primary sheets include a new footnote 2 intended to provide Northwest's customers with notice of a potential future change in Northwest's rates.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary

[FR Doc. 91-5740 Filed 3-11-91 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-2-41-001]

Paiute Pipeline Co.; Report of Refunds Under Order No. 528

March 6, 1991

Take notice that on February 7, 1991, Paiute Pipeline Company (Paiute) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds under Order No. 528 relating to the flowthrough of direct-billed amounts refunded by Northwest Pipeline Corporation (Northwest) in Docket No. RP90-118-000.

Paiute states that Northwest direct-billed Paiute for take-or-pay costs under a purchase deficiency allocation methodology in a series of Order No. 500 proceedings. Pursuant to its tariff provisions, Paiute states that it, in turn, direct-billed its customers for their proportionate shares. Order No. 528 stayed the authority of pipelines to collect take-or-pay fixed charges based on a purchase deficiency methodology effective December 1, 1990. On December 14, 1990, the Commission issued an order exempting all of Northwest's direct-billed take-or-pay filings from the provisions of Order No. 528 with the exception of its proceeding in Docket No. RP90-118-000. Consequently, Paiute indicates that on January 8, 1991, Northwest tendered to Paiute refunds of previously collected direct-billed amounts refunded by Northwest in Docket No. RP90-118-000.

Paiute further states that on February 5, 1991, it tendered a portion of the refunds from Northwest to its customer CP National Corporation. According to Paiute, it credited the remaining portion to its customer, Southwest Gas Corporation (Southwest), against direct-billed charges Southwest owed to Paiute.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before March 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91-5752 Filed 3-11-91 8:45 am]

BILLING CODE 6717-01-M

[TQ91-2-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991

Take notice that on March 1, 1991, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, suite 850, Houston, Texas 77081, filed a Fifth Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR 154.308.

Ringwood states that copies of the filing were served on Ringwood's jurisdictional customers and interested state agencies.

Ringwood's Quarterly PGA filing reflects an estimated $1.6812 per Mcf cost of gas, a current adjustment of zero per Mcf; a cumulative adjustment of $.1734 per Mcf; a credit surcharge adjustment of $.0012 per Mcf and a total sales rate of $1.9930 per Mcf

And person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 91-5750 Filed 3-11-91, 8:45 am]

BILLING CODE 6717-01-M

[TQ91-3-9-000 and TM91-3-9-000]

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 6, 1991

Take notice that on March 1, 1991, Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to it FERC Gas Tariff to be effective April 1, 1991:

Item A: Third Revised Volume No. 1

Second Revised Sheet No. 20
Second Revised Sheet No. 21
Fourth Revised Sheet No. 22

Item B: Original Volume No. 2

Twenty-Second Revised Sheet No. 5

Twenty-First Revised Sheet No. 6

Tennessee states that the purpose of this filing is to implement a quarterly Purchased Gas Adjustment to Tennessee's Gas Rates (Item A) and certain transportation rate schedules whose fuel rates track the Gas Rate (Item B). Tennessee states that the current Purchased Gas Cost Rate Adjustments consist of a $(.0065) per dekatherm adjustment applicable to the gas component of Tennessee's sales rate and a $.02 per dekatherm adjustment applicable to the Demand D–1 component.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5745 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Dockets Nos. RP88–115–000, RP90–104–000 and RP90–182–000]

Texas Gas Transmission Corp.; Informal Settlement Conference

March 6, 1991.

Take notice that an informal settlement conference will be convened in these proceedings on March 25, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will continue on March 26, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214).

For additional information, contact Donald A. Heydt (202) 208–0248 or Joanne Leveque (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5747 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–109–000]

Transwestern Pipeline Co. Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Transwestern Pipeline Company (Transwestern) on February 28, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Primary Sheets—Effective May 1, 1991

84th Revised Sheet No. 5
Original Sheet No. 5D(iv)
1st Revised Sheet No. 5E(ii)
48th Revised Sheet No. 6
6th Revised Sheet No. 87
7th Revised Sheet No. 88
7th Revised Sheet No. 89
7th Revised Sheet No. 90
6th Revised Sheet No. 90A
1st Revised Sheet No. 91
Original Sheet No. 92

Alternate Sheets—Effective May 1, 1991

Alternate 84th Revised Sheet No. 5
Alternate 1st Revised Sheet No. 5E(ii)
Alternate 48th Revised Sheet No. 6
Alternate 6th Revised Sheet No. 87
Alternate 7th Revised Sheet No. 88
Alternate 7th Revised Sheet No. 89
Alternate 7th Revised Sheet No. 90
Alternate 6th Revised Sheet No. 90A
Alternate 1st Revised Sheet No. 91
Alternate Original Sheet No. 92

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to modify its take-or-pay, buy-out and buy-down mechanism ("TCR" mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs ("Transition Costs") which amounts it paid subsequent to the implementation of its Gas Inventory Charge ("GIC"), which occurred on October 1, 1989, and which do not qualify under the Litigation Exception provision of its tariff. Transwestern is also requesting a waiver of the GTC condition imposed in the orders issued in Docket No. CP88–143–000 inasmuch as Transwestern's abandonment application in Docket No. CP90–2028–000 has not yet been acted upon by the Commission. Further Transwestern agrees to waive its right to assess or collect any GIC during the effectiveness of the proposed recovery herein of TCR Amount Six.

Transwestern states that it has paid additional $3,524,488 in settlement costs ("TCR Amount Six") and is revising certain tariff sheets and requesting authority to begin recovery of all of such amounts under the primary tariff sheets. Transwestern also states that in the event the Commission denies full recovery of such amounts, Transwestern is submitting alternate tariff sheets requesting authority to recover a portion of such amounts. Recovery of these amounts has not yet been allowed by the Commission.

Transwestern respectfully requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its Regulations, so as to permit the above listed tariff sheets to become effective May 1, 1991.

Transwestern states that copies of the filing were served on its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 or the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must fule a motin to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5741 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–5–11–000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

March 6, 1991.

Take Notice that on March 1, 1991; United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of April 1, 1991.

Second Revised Volume No. 1

Thirteenth Revised Sheet No. 4
Thirteenth Revised Sheet No. 4A
Thirteenth Revised Sheet No. 4B
Eleventh Revised Sheet No. 4D

Alternate Thirteenth Revised Sheet No. 4
Alternate Thirteenth Revised Sheet No. 4A
Alternate Thirteenth Revised Sheet No. 4B
Alternate Eleventh Revised Sheet No. 4D
Alternate Thirteenth Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect an increase of $0.0375 per Mcf to $2.1812 per Mcf in gas commodity costs compared to the proposed gas commodity cost level filed February 15, 1991 in Docket No. TQ91–4–11–00.

In addition, United states it has filed alternate tariff sheets that reflect non-gas cost base tariff rates as filed by United on February 1, 1991 in Docket No. RP91–83 to be effective April 1, 1991. In the event that the rates are accepted to be come effective April 1, 1991 in Docket No. RP91–83, United requests approval of these alternate sheets in conjunction with the gas adjustment included in this filing.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in such accordance with 18 CFR 385.214 of the Commission's regulations. All such petitions or protests should be filed on or before March 13, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5731 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[TQ91–2–35–000]

West Texas Gas, Inc.; Filing

March 6, 1991.

Take notice that on March 1, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Third Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1991. Twenty-Third Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214. All such motions or protests should be filed on or before March 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5751 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 6, 1991.

Take notice that Williams Natural Gas Company (WNG) on March 1, 1991, tendered Third Revised Sheet Nos. 6, 6A, and 9 to its FERC Gas Tariff, First Revised Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in Article 18 of its FERC Gas Tariff, it proposes to increase its rates effective May 1, 1991, to reflect:

(1) A $.4013 per Dth increase in the Cumulative Adjustment due to an increase in the WNG's projected gas purchase costs.

(2) A $.3125 per Dth increase in the Surcharge Adjustment (to a positive $.5680 per Dth from a positive $.2555 per Dth) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

(3) A $.0128 per DTh increase in the TOP Volumetric Surcharge (to a positive $.0360 per Dth from a positive $.0232).

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–5742 Filed 3–11–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3912–8]

Acid Rain Provisions

AGENCY: Environmetnal Protection Agency.

ACTION: Notice of availability of guidance for Clean Air Act section 405(d)(3), 405(d)(4), and 405(g)(2).

SUMMARY: This notice is to inform the public and affected utility units that EPA has prepared guidance and submittal forms for elections under sections 405(d)(3), 405(d)(4), and 405(g)(2) of the Clean Air Act Amendments of 1990. Section 405(d)(3) provides "bonus" allowances for certain "clean" coal-fired utility units. Section 405(d)(4) provides a different calculation for basic allowance allocations for certain units which are subject to and in compliance with new source performance standards in section 111 of the Clean Air Act. Section 405(g)(2) provides that units listed in Table B may elect to have their basic allowances calculated according to the other applicable equations in section 405(g).

DATES: Units which beleve they are eligible for the elections under sections 405(d)(3), 405(d)(4), and 405(g)(2) and which would elect the applicable bonus allowances or alternate calculation methods must send the appropriate submittal form (or sufficient information as outlined in the submittal form) to EPA by March 31, 1991.

Failure to provide the necessary notification to EPA will result in EPA determining the choice most beneficial to the unit for the purposes of sections 405(d)(4) and 405(g)(2) and most

BEST COPY AVAILABLE

beneficial to the operating company for the purposes of Section 405(d)(3)(C).

ADDRESSES: Copies of the guidance and submittal forms are available upon request at the following location: U.S. Environmental Protection Agency, Acid Rain Division, ANR-445, 401 M Street, SW., Washington, DC 20460, Attention: Election Forms. Completed forms may be sent to the same location.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 475-9400, (FTS) 475-9400.

SUPPLEMENTARY INFORMATION: Acid rain occurs when sulfur dioxide and nitrogen oxide emission are transformed in the atmosphere and return to earth in rain, fog or snow. Approximately 20 million tons of SO_2 are emitted annually by electric utilities. Acid rain damages lakes, harms forests and buildings, contributes to reduced visibility, and is suspected of damaging health.

The 1990 Clean Air Act Amendments will result in a permanent 10 million ton reduction in sulfur dioxide (SO_2) emissions from 1980 levels. The centerpiece of the acid rain control program is an innovative market approach where emission allowances are transferable, allowing market forces to govern their ultimate use. To be in compliance with the Act, affected sources (mainly electrical utilities) are required to hold an amount of emission allowances at least equal to their annual emissions. Existing sources, and some other sources as provided in the Amendments, will receive an initial allowance allocation. If a source reduces its emissions more than required, it will have left-over allowances that it can sell to another source. This would allow the other source to emit more than otherwise allowed while remaining in compliance. Such allowance transactions will achieve total emissions reductions in the most cost-effective way.

The Act is implemented in two phases. Phase I runs from 1995 to 2000 and affects 261 units which are specifically listed in the Act. Phase II begins in 2000 and is permanent. It affects most utility units that emit SO_2. Also, units not explicitly affected by Phase II requirements may opt into the allowance system.

The elections discussed in this notice affect the initial allowance allocations for eligible units that exercise the elections.

To ensure adequate notice to all potentially eligible units, EPA has chosen to provide this notice.

The requirements of the Paperwork Reduction Act are not applicable to the submittal forms because the forms do not go beyond the necessary notification required by the Act. Also, the guidance and submittal forms are, in fact, designed to reduce the level of effort expended by utilities in complying with the Act. Members of EPA's Acid Rain Advisory Committee, which includes utility owners and operators, specifically requested guidance regarding these elections. The submittal of notification to EPA by March 31, 1991 is mandated under the Clean Air Act Amendments of 1990.

Dated: March 5, 1991.

William G. Rosenberg,

Assistant Administrotor for Air and Radiation.

[FR Doc. 91-5791 Filed 3-11-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 6, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0282.

Title: Section 94.17, Shared Use of Radio Stations and the Offering of Private Carrier Communications Service.

Action: Extension.

Respondents: State or local governments, businesses or other for-profit (including small businesses) and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 300 recordkeepers; .33 hours average burden per recordkeeper; 100 hours total annual burden.

Needs and Uses: Section 94.17 requires licensees to keep in their station records the written agreement they use to share the facilities. Licensee must also keep up-to-date list of station sharers and private carrier subscribers and the basis of their part 94 eligibility. Information is required to be retained in order to assure that the rules on shared use of microwave radio stations and the offering of private carrier microwave communications service are complied with.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5817 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-270]

Comments Invited on Florida Regional Public Safety Plan Amendment

March 6, 1991.

The Commission has received a proposed amendment to the public safety radio communications plan for Florida (Region 9). Specifically, the Florida Region Committee approved the establishment of licensing benchmarks. The plan will add subsection 4.7 to read as follows:

4.7 Licensing Benchmarks.

Each channel allotment listed in Table III will remain in effect and incontestable for one year from the date of the initial FCC approval of this section. Should future allotments of either initial or additional channels be made, they will remain in effect for one year from the FCC approval date(s) of those allotments. Channels which have not been applied for within their one year period will be re-allotted following a filing window for new or expanded needs. Such re-allotted channels will similarly remain in effect for one year from their FCC approval date. The term "applied for" means submission to the Region Committee for a complete license application meeting the requirements of section 6 of this Plan. Channels applied for and approved by the Region Committee shall be subject to re-allotment if the application is not received by APCO within sixty (60) calendar days after the date of Region Committee approval. For the purposes of this section, replacement of FCC designated channel numbers with alternate channel numbers to improve spectrum efficiency or reduce interference shall not be considered an allotment or re-allotment. An increase or reduction in the number of channels allotted to a jurisdiction shall not affect the benchmark date(s) of original or remaining channels. Channels allotted for the State of Florida Joint Task Force State Agency Law Enforcement Communications System are exempt from these benchmark requirements.

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties may file comments on or before April 15, 1991 and reply comments on or before April 30, 1991. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 9 consists of the State of Florida. General Docket No. 87-112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 90-119, Florida—Region 9, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5818 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1840]

Petitions for Reconsideration of Actions in Rule Making Proceedings

March 7, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed on or before March 28, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Reorganization and Deregulation of part 97 of the Rules Governing the Amateur Radio Service. (PR Docket No. 88-139) Number of petitions received: 1.

Subject: Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers. (CC Docket No. 89-624) Number of petitions received: 5.

Subject: Computer III Remand Proceedings. (CC Docket No. 90-368) Number of petitions received: 1.

Subject: Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations. (MM Docket No. 88-140, RM Nos. 5416 & 5472) Number of petitions received: 8.[1]

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5819 Filed 3-11-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0727]

Proposed Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is publishing for comment proposed enhancements to certain Federal Reserve services and proposed new services related to checks not collected through the Federal Reserve. The proposed services are designed to enable paying banks to continue to provide timely cash management information to their corporate customers and to facilitate a paying bank's responsibility to settle for checks presented by private-sector presenting banks. Specifically, the Board requests comment on (1) A proposed presentment point service; (2) proposed Federal Reserve Bank payor bank services that would include checks presented by private-sector presenting banks; (3) enhancements to the Fedwire format to facilitate settlement for checks presented by private-sector presenting banks; and (4) whether the Federal Reserve Banks should offer a new bilateral settlement service. The Board is also providing its analysis of other Federal Reserve Bank services related to checks not collected through the Federal Reserve that were considered but are not being proposed.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0727 may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to room B-C-223 between 8:45 a.m. and 5:15 p.m. Commenters are encouraged to submit their comments on this proposal separately from any comments they may provide on the proposed amendments to Regulation CC to provide for same-day settlement for checks presented by private-sector banks (Docket R-0723). All comments received at the above address will be included in the public comments file, and may be inspected at room B-1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874), Julius F. Oreska, Manager (202/452-3878), Thomas C. Luck, Senior Financial Services Analyst (202/452-3935), or Nalini T. Rogers, Senior Financial Services Analyst (202/452-3801), Division of Reserve Bank Operations and Payment Systems. For the Hearing impaired only: Telecommunication Device for the Deaf, Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

A. Background

The Board has issued for public comment proposed amendments to Regulation CC to provide for same-day settlement by paying banks [1] for checks presented by private-sector presenting banks. (56 FR 4743, February 6, 1991). Under the same-day settlement proposal, a paying bank would be required to settle for checks presented by private-sector presenting banks on the day of presentment, if specified conditions are met. These conditions include an 8 a.m. (local time of the paying bank) presentment deadline for same-day settlement, and that the check be presented at a location of the paying bank designated by the paying bank that is consistent with the check processing region associated with the routing number encoded on the check. Under the proposal, if a bank presents a check in accordance with the time and location requirements for same-day settlement, the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or must return the check prior to the time for settlement.

[1] Doyle Brewer's 01-10-91 pleading was mistakenly omitted from the listing of petitions for MM Docket No. 88-140 on the "Petitions for Reconsideration" public notice, Report No. 1837-Corrected, released on February 20, 1991. Therefore, the dates for filing oppositions and replies to those petitions are extended to correspond to the due dates for responding to the petitions on this notice.

[1] Regulation CC defines *bank* to include all depository institutions, including commercial banks, savings institutions, and credit unions. A *paying bank* is a bank, by, at, or through which a check is payable and to which it is sent for payment or collection. The Uniform Commercial Code defines *collecting bank* as a bank, other than the paying bank, that handles a check for collection. A *presenting bank* is a bank, other than the paying bank, that presents a check.

The settlement must be in the form of a credit to the presenting bank's account (or the account of a correspondent settlement agent) at a Federal Reserve Bank. Because these rules would be subject to Regulation CC's variation by agreement provision, a paying bank could agree with a presenting bank to accept checks for same-day settlement if the checks are presented by a presentment deadline other than 8 a.m. or at an alternate location (such as an intercept processor). Similarly, a presenting bank may accept settlement in another form agreeable to it.

The Federal Reserve Banks currently provide a variety of services to banks, including check collection and net settlement services. The Federal Reserve assesses fees for its services to the banks using those services. In light of the same-day settlement proposal, the Board is proposing that the Federal Reserve Banks offer enhanced services and certain new services related to checks not collected through the Federal Reserve. These services, which are described in section B, include a presentment point service, new payor bank services to facilitate the paying bank's continued ability to provide timely cash management information to its corporate customers, and enhancements to the Fedwire service to facilitate settlement for checks presented by private-sector presenting banks.

The Board is considering whether the Federal Reserve Banks should offer a new settlement service for banks to settle for checks presented by private-section presenting banks through accounts maintained at the Federal Reserve Banks. Section C describes such a bilateral settlement service. The Board has also considered, and has determined not to propose, whether Federal Reserve Banks should provide transportation and adjustment services related to checks not collected through the Federal Reserve. The Board's analysis is included in section D.

Section E contains an analysis of the competitive impact of the proposed services and of the bilateral settlement service.

B. Proposed New Federal Reserve Services

Presentment Point Service

The Board proposes that the Federal Reserve Banks offer a new service under which a paying bank could designate its local Federal Reserve office as a presentment point for checks presented to the paying bank by a private-sector presenting bank. This new service would allow a private-sector presenting bank, with the agreement of the paying bank, to deliver checks to the paying bank's local Federal Reserve office, for subsequent pick-up by the paying bank. Under this proposed service, presentment of checks would occur at the time the checks are delivered to the Federal Reserve office. Because many banks currently maintain arrangements to transport checks to and from their local Federal Reserve office, and some banks deliver checks directly to multiple Federal Reserve offices, this service may prove convenient and economical for both presenting banks and paying banks.

Under the proposed service, paying banks could agree with presenting banks to designate the paying bank's local Federal Reserve office as an alternate presentment location. The Federal Reserve office would also require agreements with paying banks that are designating the Federal Reserve office as an alternative presentment location and with presenting banks that have agreed with paying banks to present checks at the Federal Reserve office. The paying bank would be required to provide the Federal Reserve office advance notice before presenting banks begin to present checks to the paying bank at the Federal Reserve office, and to provide advance notice to the Federal Reserve of a termination of the agreement. The Federal Reserve would assume no responsibility to determine whether a paying bank using the presentment point service has an agreement with any specific presenting bank to present checks at the Federal Reserve, nor would the Federal Reserve assume any responsibility to determine whether the presenting bank has met the presentment deadline that had been agreed to by the paying bank and the presenting bank. A presenting bank may not have made presentment by delivering checks to a Federal Reserve office as presentment point for a paying bank if the necessary agreements between the presenting bank and the paying bank and between those banks and the Federal Reserve office have not been made.

Under the proposed service, the Federal Reserve office would accept cash letters from presenting banks, time-stamp the incoming deliveries, provide verification of receipt to the delivery agent, physically control the cash letters, and provide copies of the verification of the time of receipt upon pick-up by the paying bank or its designated agent. The service would not include settlement for the checks. Presenting banks would be required to package and label separately all cash letters presented at the Federal Reserve office so as to distinguish them from other checks being deposited for collection through the Federal Reserve. The Federal Reserve office would incur no liability or accountability for the checks other than that associated with its duty to exercise ordinary care while the checks are in the possession of the Federal Reserve office. The Federal Reserve office would not provide transportation of the checks to the paying bank under this service.

The Federal Reserve's fees for this service would reflect the costs to receive and time-stamp the cash letters presented by designated presenting banks, the costs to physically control the checks at the Federal Reserve office until pick-up by the paying bank, and other administrative costs associated with providing this service. The Board proposes that a daily fixed fee, which may vary by Reserve Bank office and is estimated to be in the range of $15 to $25, be charged to the paying bank for the presentment point service. The paying bank would be assessed the fee because it is the bank for which the Federal Reserve office provides the service. The Board is proposing a fixed fee because, within a foreseeable range of activity, it is expected that the costs of providing the service would be predominately fixed rather than variable in nature. If the comments received indicate, or if subsequent experience demonstrates, that the number of presentments varies substantially among paying banks that use this service, the Board may adjust the proposed fee structure to base the fee, in whole or in part, on the number of cash letters handled by the Federal Reserve office for a paying bank.

The Board requests comment on the proposed presentment point service. Specifically, the Board requests commenters to indicate whether a paying bank would find it beneficial to have its local Federal Reserve office act as an alternate presentment site for checks presented by private-sector presenting banks and whether presenting banks would generally agree to deliver such checks to a Federal Reserve office rather than directly to the paying bank. In addition, the Board requests comment on whether a portion of the costs of providing the presentment point service should be recovered through a fee assessed to the presenting bank because this service offers the presenting bank the convenience of a central presentment location.

Supplemental Payor Bank Services

Same-day settlement for checks presented by 8 a.m., as provided under the proposal, may narrow the processing window for some paying banks' corporate cash management operations. Currently, banks provide certain corporate customers with information regarding the amount of the corporation's check payments that have been presented early enough each day for the corporation to invest surplus balances or borrow additional funds, as necessary, while money markets are still active. The same-day settlement proposal may adversely affect paying banks that currently rely on Federal Reserve payor bank services to provide corporate cash management products because checks presented directly by private-sector presenting banks would not be included in the daily transmission of Federal Reserve payor bank service data.

The Federal Reserve Banks currently offer payor bank services with respect to checks they collect as an option to paying banks. These services, which include account totals, MICR capture, special sort, extended MICR capture, and truncation [3], are offered (1) To accelerate availability, in the case of truncation and extended-MICR capture services, (2) to assist paying banks in assembling payment data to facilitate the provision of corporate cash management services, and (3) to reduce the paying bank's operating costs.

The Board proposes that the Federal Reserve Banks offer supplemental payor bank services under which a paying bank could designate its local Federal Reserve office as a presentment point for checks not collected through the Federal Reserve, or deliver such checks to the Federal Reserve office, which would provide payor bank services with respect to those checks. The Federal Reserve would not be acting as a collecting bank with respect to such checks.

Under the proposed service, a paying bank that wishes to receive payor bank services with respect to checks not collected through the Federal Reserve generally would agree with the presenting bank to designate the paying bank's local Federal Reserve office as its presentment point. The agreement would specify the time by which the presenting bank would be required to present the checks to the Federal Reserve office based on established Federal Reserve deadlines for this service, and that the Federal Reserve would effect settlement for the checks. Delivery of the checks to the Federal Reserve office in accordance with this proposed service would constitute presentment of the checks at the time of delivery.

The paying bank and presenting bank would also agree with the paying bank's Federal Reserve Bank that the Federal Reserve office would accept presentment of checks from designated presenting banks on behalf of the paying bank and provide the payor bank services requested by the paying bank. The paying bank would indemnify the Federal Reserve for any losses incurred in connection with the provision of this service due to the characterization of the Federal Reserve as a collecting bank, notwithstanding the Federal Reserve's disclaimer of that status with respect to providing this service.

The paying bank does not have to designate the Federal Reserve office as a presentment point in order for the paying bank to obtain supplemental payor bank services on checks presented directly to a location of the paying bank. However, checks for which the paying bank desires to obtain supplemental payor bank services would have to be delivered to the Federal Reserve office by the applicable deadline.

The Board anticipates that Federal Reserve offices may offer the service in two forms—regular and premium. Under the regular service, the presenting bank or the paying bank would deliver the checks to the Federal Reserve office, generally by the latest nonpremium deadline established by the Federal Reserve office for the deposit of checks drawn on the paying bank. Presenting banks would be required to package and label separately all cash letters presented at the Federal Reserve office so as to distinguish them from checks being deposited for collection through the Federal Reserve. The Federal Reserve office would intermingle checks received under the regular service with checks being collected through the Federal Reserve that are designated for payor bank services. The checks would be processed and reconciled by the Federal Reserve office. The Federal Reserve office would credit the presenting bank and function adjustments to the presenting bank for exception conditions found during the reconcilement process. Delivery of payor bank service data to the paying bank for the checks collected through the Federal Reserve as well as the checks presented to the paying bank by private-sector presenting banks would be made simultaneously. The paying bank could function adjustments for all of the checks received in such cash letters through the Federal Reserve. If delivery of checks to the paying bank were delayed beyond the 2 p.m. Federal Reserve Bank presentment deadline, the paying bank would still be required to settle for those checks that the Federal Reserve office had handled for supplemental payor bank services because the paying bank would be obligated to settle with the presenting bank for the checks if the presenting bank presents the checks at the Federal Reserve office by the agreed upon time.

Under a premium service, at the option of the paying bank, Federal Reserve offices would accept checks from presenting banks or paying banks at a later presentment deadline. Under this service, the later receipt of the checks would not allow intermingling of the checks with those being collected through the Federal Reserve and separate processing flows at the Federal Reserve office would be required to capture the information necessary to provide payor bank services. In addition, the processing of these checks would not be completed in time to be included in the regular outgoing shipments of checks to the paying bank. Accordingly, under the premium service, the Federal Reserve would assess higher fees and the paying bank would be responsible for arranging transportation to pick-up the checks from the Federal Reserve office after processing (unless safekeeping or delayed delivery services, which are described below, are provided by the Federal Reserve office).

As they do for checks collected through the Federal Reserve, paying banks would authorize the Federal Reserve office to charge their reserve or clearing accounts for the checks presented at the Federal Reserve under the terms of this service. Credit to presenting banks would be functioned by the Federal Reserve in a manner similar to that used today for fine sort and direct send cash letters Where the

[3] The *account totals* service provides paying banks with the dollar total and the number of checks being presented for specific individual accounts, or for a grouping of accounts. The *MICR capture* service provides paying banks, via tape or transmission, the MICR-line data from checks being presented to the paying banks. The *special sort* service provides paying banks with a specified subset of its checks, outsorted and presented separately from the remainder of its checks. The *extended MICR capture* service provides paying banks with MICR-line data from checks presented to the paying banks. Presentment occurs when the data are delivered electronically to the paying bank. The physical checks are retained at the Federal Reserve office to provide return services and are subsequently delivered to the paying bank, usually arriving at the paying bank within four or five days following presentment. The *truncation* service rovides paying banks with MICR-line data from checks presented to paying banks. Presentment occurs when the data are delivered electronically to the paying bank. The physical checks are not delivered to the paying bank, and return and retrieval services are provided.

presenting bank presents checks subject to the supplemental payor bank services at the Federal Reserve office, special cash letter forms and recap sheets, or automated input, would be used by the presenting bank to communicate the expected amount of credit to its local Federal Reserve office. Where the checks subject to supplemental payor bank services are delivered to the Federal Reserve office by the paying bank, that Federal Reserve office would provide the appropriate credit information to the presenting bank's Federal Reserve office to effect timely credit to the presenting bank.

The supplemental payor bank services products would include account total, MICR capture, and special sort services, as well as "delayed delivery" and "safekeeping" services, which would mirror the current extended MICR capture and truncation services, respectively, in all aspects except the timing of presentment. (Presentment under the delayed delivery and safekeeping supplemental payor bank service products would occur when the checks are physically delivered to the Federal Reserve. In contrast, under the extended MICR capture and truncation products, which are offered only with respect to checks collected through the Federal Reserve, presentment is based upon the electronic data transmission to the paying bank.) The timing of implementation of supplemental payor bank services at individual Federal Reserve offices would vary based on demand for the services by local paying banks and current resources in each office.

The proposed price structure for the supplemental payor bank services product would differ from the price structure for payor bank services for checks collected through the Federal Reserve. In addition to the capture and delivery of payor bank data to the paying bank, the supplemental payor bank services would encompass four basic services, i.e., presentment point service (if the checks are delivered to the Federal Reserve office by the presenting bank), settlement service, adjustment service, and transportation service. Both the presenting bank and the paying bank benefit from the supplemental payor bank services. For example, settlement and adjustment services benefit the presenting bank as well as the paying bank. The presenting bank also receives the benefit of a common presentment location. The Board proposes that a portion of the cost of providing supplemental payor bank services generally would be recovered through a fee to the presenting bank, with the majority of the fee for providing the service assessed to the paying bank. The paying bank would be assessed the entire fee for the service if the presenting bank presents the checks directly to the paying bank and the paying bank delivers the checks to the Federal Reserve Bank.

The Federal Reserve's fees would generally be higher for payor bank services under the supplemental payor bank services product than for payor bank services provided with respect to checks collected through the Federal Reserve. The Board estimates that the total fees to the paying bank and the presenting bank for the regular supplemental payor bank services product would be approximately the same as the sum of the fees for providing payor bank services on fine-sort checks collected by the Federal Reserve, plus the fine sort collection fee (which would recover the settlement, transportation and adjustments costs). Under the premium service, because processing the checks in separate payor bank service runs during peak processing hours would be necessary, the costs of providing premium payor bank information would be higher than the regular supplemental payor bank services.

The Board believes supplemental payor bank services would provide paying banks with consolidated and timely delivery of data from checks collected through the Federal Reserve and from checks presented by private-sector presenting banks. The Board anticipates that private-sector presenting banks, in most instances, would agree to deliver checks directly to the Federal Reserve because Federal Reserve offices offer a convenient central location for delivery.

The Board requests comment on the proposed supplemental payor bank services, which would allow the Federal Reserve Banks to provide payor bank services on cash letters presented by private-sector presenting banks. Specifically, the Board requests comment on whether paying banks perceive a need for Federal Reserve payor bank services on checks presented by private-sector presenting banks. In addition, the Board requests comment on the following questions:

1. Do paying banks perceive a benefit in the ability to obtain supplemental payor bank services from the Federal Reserve? In which particular payor bank services, i.e., account totals, delayed delivery, MICR capture, safekeeping, or special sorts, would paying banks be interested?

2. Would presenting banks wish to present checks at the paying bank's Federal Reserve office, even if they had to agree with the paying bank to present the checks earlier than 8 a.m. in order to retain the right to obtain same-day settlement on these checks?

3. Should the entire fee for the supplemental payor bank services be charged to the paying bank, rather than assessing a portion of the fee to the presenting bank?

4. Is there an interest among alternate service providers, including private-sector presenting banks, in offering payor bank services for checks collected outside the Federal Reserve?

Criteria for Evaluating Proposed Changes

All new services or major service enhancements proposed by the Federal Reserve must meet the criteria described in the March 1990 policy statement "The Federal Reserve in the Payments System." These criteria are full cost recovery, clear public benefit, and that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity.

With respect to the criterion requiring full cost recovery, the presentment point service and supplemental payor bank services products would be priced to achieve full recovery of costs over the long run. The second criterion requires that the service yield a clear public benefit. The Board believes that the presentment point service may provide benefits to both presenting banks and paying banks. This proposed service may allow presenting banks to present checks to many paying banks at a central location to which they have existing transportation. The presentment point service may also provide paying banks that do not process their checks at a location of their bank with an alternate convenient presentment location that likely would be acceptable to presenting banks. This service may decrease the transportation resources that would otherwise be necessary for presenting banks to transport checks to paying banks and for paying banks to transport checks to their processing location.

For the supplemental payor bank services, the public benefits include support for effective account management by corporate cash managers. Facilitating cash management through payor bank services on checks presented by private-sector presenting banks allows for more efficient use of corporate funds. In addition, the supplemental payor bank services would enable paying banks to receive payor bank service transmissions from one source, which may facilitate their internal corporate cash management operations.

The Board also believes that the supplemental payor bank services may meet the criterion that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity. Similar services are not widely offered by the private sector today, given the apparently limited demand by paying banks. Demand is low because some paying banks currently impose barriers to presentment by private-sector presenting banks if such presentments would impede their ability to provide cash management services or otherwise adversely affect their operations. The Board believes that private-sector service providers may be reluctant to offer similar services immediately if a same-day settlement rule were adopted, should significant capital investment be necessary. Without immediate and widespread response from the private sector, a level of service that would allow the product to be available with reasonable effectiveness, scope, and equity may not be available without Federal Reserve participation. The Board requests comment on whether the proposed presentment point service and the proposed supplemental payor bank services meet the criterion that private sector providers alone cannot be expected to provide such services with reasonable effectiveness, scope and equity.

Enhancements to the Fedwire Format To Facilitate Settlement

Under the same-day settlement proposal, the paying bank must settle with the presenting bank for checks presented in accordance with the regulation by credit to an account of the presenting bank at a Federal Reserve Bank or by any other form of settlement to which the presenting bank agrees. For example, settlement for checks could be made by the paying bank transferring funds to the presenting bank through the Fedwire funds transfer service, or by the paying bank and the presenting bank agreeing to settle through accounts maintained at one or both of the banks, or through accounts maintained at a correspondent bank(s). Generally, a fee of $0.50 is assessed to both the originating bank and the receiving bank for a funds transfer through the Fedwire service.

The Board requests comment on whether the existing Fedwire format could be utilized so that banks could identify, on an automated basis, those funds transfers related to settlement for check presentments and associated adjustment activity. Those transfers could then be segregated by the receiving bank for internal processing. The designation of certain Fedwire funds transfers as check settlement or adjustment transfers could be accomplished by establishing a new product code that could be used to differentiate these transfers from other funds transfers.

The details of the check settlement transaction could be conveyed using one of the existing Fedwire structured format fields. For example, the 155 character "bank-to-bank information" field could be designated as the field in which detailed information related to the check settlement transfer would be provided. The paying bank could use the designated field to explain any differences between the transfer amount and the cash letter total. For example, a paying bank could include in the designated field the original cash letter total and the net of all adjustments applied that day to facilitate the presenting bank's reconciliation of the transfer amount. The paying bank could provide reference numbers to identify adjustment activity, so that the presenting bank could associate the payment with supporting documentation sent separately. The paying bank could also use this field to detail individual cash letter totals, if the transfer amount represents settlement for multiple cash letters.

The Fedwire service currently provides a "request for credit transfer" (subtype code 31), which is a nonvalue message that requests the receiver to originate a value transfer to the designated party. This message type may be useful to a presenting bank in notifying a paying bank of the amount of settlement due to the presenting bank. For example, if the checks are presented to a service bureau for processing, the presenting bank may wish to use a request for credit transfer message to notify the paying bank of the amount of the cash letter (although the paying bank has the responsibility to determine the amount of its settlement obligation from its designated agent).

The Board requests comment on whether enhancements to the Fedwire message format would facilitate the use of Fedwire to settle for checks presented by private-sector presenting banks and for associated adjusting entries. The Board also requests the commenters' views on which particular structured third-party field should be designated to convey the detailed information related to the transfer amount. Comments are also requested on other changes to the Fedwire service that would be desirable to facilitate the settlement for checks presented by private-sector presenting banks.

C. Possible New Federal Reserve Service

Bilateral Settlement Service

Some banks have indicated that a bilateral settlement service for making settlement through Federal Reserve accounts for checks presented by private-sector presenting banks would facilitate efficient settlement in a same-day settlement environment. The Board is considering whether the Federal Reserve Banks should offer a new bilateral settlement service for the settlement of checks not collected through the Federal Reserve. The Board is uncertain whether a Federal Reserve bilateral settlement service would be attractive to banks, because alternative settlement vehicles, such as Fedwire, may adequately meet banks' needs. Based on its preliminary analysis of the attributes of a bilateral settlement service, the Board believes that paying banks may find that settlement through Fedwire would provide more control of the timing of payments, and that presenting banks may find such a bilateral settlement service to be cumbersome and costly compared to alternatives that are available. In addition, banks may determine that the risks associated with participating in a bilateral settlement service are unacceptable. The Board, however, is providing the following description of how a Federal Reserve bilateral settlement service might be designed in order to determine whether banks have sufficient interest in its use to warrant development of a new service and to obtain the commenters' views regarding the risks associated with this potential service.

If a Federal Reserve bilateral settlement service were implemented, the paying bank and the presenting bank could authorize the Federal Reserve to settle for checks presented by the presenting bank and for subsequent adjustments by the presenting bank and the paying bank through accounts maintained at the Federal Reserve. Settlement could be made through the accounts of the presenting bank and the paying bank or through the accounts of their correspondent settlement agents. The Board believes that the bilateral settlement service, if adopted, should be an all-electronic service, in which both the presenting bank and paying bank send and receive settlement payments

through an electronic connection to the Federal Reserve. An all-electronic service would provide greater efficiency and control, and would minimize the time needed for communication of data, thus providing more time for participants to review settlement data.

The Board proposes, if it adopts a bilateral settlement service, that there would be two settlement cycles as follows:

	Deadlines (ET)	
	a.m.	p.m.
Input to the Federal Reserve	9:00	2:00
Advise of pending charges	9:30	2:30
Reversals	10:30	3:30
Post entries, or advise of reversal	11:00	4:00

Both settlements and adjustments to prior settlements could be made through the bilateral settlement service.[3] Presenting banks could obtain settlement for checks presented, and presenting banks and paying banks could obtain settlement for adjustments, either at 11 a.m. Eastern Time (ET), or at 4 p.m. ET. The second settlement cycle would allow sufficient time for data to be submitted for checks presented to west coast banks and to accommodate presentments made by agreement after the proposed 8:00 a.m. local time presentment deadline.

The presenting bank initiating the settlement entry or the bank initiating an adjustment entry would transmit payment information to the Federal Reserve by the applicable input deadline.[4] The data would be edited and, where necessary, would be transmitted to the Federal Reserve office serving the receiving bank. The Federal Reserve would make information available to the presenting bank and paying bank pertaining to pending settlement and adjustment entries 30 minutes after the input deadline. A bank may reverse a pending charge to its account if, for example, the checks represented by a settlement entry had not been presented by the specified deadline. The paying bank could also reverse a portion of a pending settlement charge to adjust for a large-dollar error, such as an encoding error or a missing bundle, found in the cash letters being settled. Reversals would have to be made within one hour following the time the banks are advised of the pending charges.

Data concerning reversals would be made available to affected banks at the scheduled posting time, which would be 30 minutes following the reversal deadline. At the scheduled posting time, the banks' accounts at the Federal Reserve would be credited and debited, as applicable, and the entries would be reflected in the account balance monitoring system. Payments would be final at the end of the day.[5] If the bank subject to the charge either reversed the pending charge or the Federal Reserve decided not to post the transaction, the presenting bank and the paying bank would be notified at the scheduled posting time that the transaction had not been posted. A daily summary of settlement charges and credits would be provided to the banks participating in the settlement service.

The bilateral settlement service would not be used to function "as-of"[6] adjustments to correct bank errors resulting from the settlement process. The Board believes that it would be a time-consuming and costly administrative effort for the Federal Reserve to verify that both parties approved the "as-of" adjustment, that the "as-of" adjustment was being made for valid reasons, and that it was being made to the appropriate reserve periods. The Federal Reserve would function "as-of" adjustments to compensate for its errors in functioning settlement service transactions.

The Board requests comment on the number of daily cycles that should be provided in a bilateral settlement service and the optimal time(s) of the cycle(s). Under the proposed same-day settlement amendments to Regulation CC, the paying bank is not obligated to settle for checks until the close of Fedwire. The Board requests comment on whether one cycle late in the day would adequately address the needs of paying banks and presenting banks. The Board also requests comment on whether modifications to the timing and number of settlement cycles should be made if the Board adopts a same-day settlement rule with a requirement that the paying bank settle for checks earlier on the day of presentment. The Board recently proposed amendments to Regulation J (12 CFR part 210) that would require a paying bank to settle for checks presented by a Reserve Bank by a specified time during the day of presentment, shortly after presentment. (56 FR 3047, January 28, 1991) The Board also requested comment, in its recent proposal to amend Regulation CC to provide for same-day settlement, on whether the time by which a paying bank must settle for checks under the same-day settlement rule should conform to the time by which a paying bank must settle for checks with its Federal Reserve Bank under any future Regulation J amendment. Such a regulatory change would not mandate a change to the settlement service, because the settlement service would be used only by the agreement of the presenting bank and paying bank; by agreeing to use the settlement service, the participating banks would be agreeing to accept settlements by a time(s) provided under that service.

All fees for the bilateral settlement service would be paid by the presenting bank. The fee structure would have both a fixed and variable component. A fixed fee would be assessed for each transmission by the presenting bank, except for transmissions consisting solely of adjustment entries or of a reversal of a pending charge. The fixed fee would cover the fixed costs associated with processing the data in the transmission, the amortized software development and maintenance costs, and the costs of handling transmissions of adjustment entries by a paying bank. A per transaction fee would be assessed to cover the costs of functioning each settlement or adjustment entry or of reversing a pending charge. The presenting bank, rather than the paying bank, would pay the per transaction fee for adjustment entries initiated by the paying bank.

The Board estimates that the per transmission fee would be in the range of $5.00 to $10.00, and that the per transaction fee would be approximately $1.00. The relatively high fees projected for the bilateral settlement service, compared to the fees for other Federal Reserve electronic payments services, reflects the anticipated small number of presenting banks from which such costs would be recovered.

[3] The Federal Reserve would not handle the accompanying adjustment documentation. (See discussion in Section D.)

[4] The data elements for entries would consist of the presenting bank's routing number, the paying bank's routing number, the dollar amount of the entry, a transaction code identifying the transaction as a settlement transaction or an adjustment transaction, and optionally, in the case of settlement transactions, the dollar amount of the cash letter, the net amount of any adjustments to prior settlements, and a reference number assigned by the presenting bank. Banks may choose to summarize the settlement for adjustments in one entry to minimize fees, or may choose to make separate entries for each adjustment to provide control.

[5] Finality of settlement does not affect the paying bank's right to return a check or to process a subsequent adjustment to the settlement amount.

[6] "As-of" adjustments are memorandum items that are applied to the cumulative deposit position of a bank to correct the impact of an error. The cumulative deposit position is the base from which required reserves, are calculated. These adjustments affect the amount of a bank's required reserve or clearing balance, but do not directly affect the balance in the account.

Firm cost projections cannot be made at this time because the final system design would be contingent upon an assessment of the public comments received. The estimated fees reflect those that would be assessed if the bilateral settlement service were implemented as described above with relatively few users of the service. The actual per transmission fee could be less if there were a substantial number of users, or could be significantly higher if the number of users is very low. If a high volume of settlement transactions and service users evolves, a fee structure consisting solely of per transaction fees, similar to the Fedwire service, could become feasible. The Board requests comment on the price structure of the proposed bilateral settlement service.

The Board is concerned that a bank participating in the bilateral settlement service described above may incur significant risk due to the ability of another bank to instruct the Federal Reserve to charge its account. While the bank subject to the charge would have some opportunity (i.e., one hour) to instruct the Federal Reserve to reverse the pending charge, this time may not be adequate in all cases. If the bank did not reverse the pending debit to its account, it generally would be able to function an adjustment in a subsequent settlement cycle to recoup the improper charge to its account. Despite this capability, the bank might incur a loss, (1) if the bank receiving the debit adjustment reversed the pending charge, or (2) if the Federal Reserve were unable to post the adjustment due to the failure of the bank receiving the debit adjustment, or because the bank receiving the debit adjustment did not have sufficient funds in its account. The Board requests comment on the risks associated with the bilateral settlement service and whether these risks can be minimized by modifying the design of the proposed service.

In addition to the issues raised above, the Board requests commenters to consider and address the following issues with respect to the bilateral settlement service:

1. Do existing settlement options adequately meet the settlement needs of presenting banks and paying banks? If not, would a bilateral settlement service as described above adequately meet these settlement requirements?

2. Would paying banks and presenting banks use the bilateral settlement service?

3. To what extent would the decision to use, or not use, the bilateral settlement service be based on the fees assessed for the service?

4. Would the service be used for settling adjustment differences? If the bilateral settlement service were used to settle adjustments, how would the participants exchange documentation related to the adjustments?

5. Would additional data elements, other than those described above, be necessary to meet the informational requirements of paying banks and presenting banks?

6. Should a portion of the fees for the bilateral settlement service be assessed to the paying bank, rather than assessing all fees on the presenting bank. If so, how should the fees be allocated between paying banks and presenting banks?

7. How could the bilateral settlement service be modified to make it more attractive to presenting banks and paying banks?

Criteria for evaluating proposed changes.

The bilateral settlement service, if adopted, would be priced to achieve full cost recovery over the long run. The bilateral settlement service generally would yield a number of the same public benefits as settlement via Fedwire. The bilateral settlement service would provide an alternative means of settlement that may encourage direct presentment of checks where such presentments are more efficient than collection through intermediaries. The bilateral settlement service also could yield a public benefit by providing an additional mechanism through which banks could settle for checks through accounts maintained at the Federal Reserve Banks. The use of Federal Reserve accounts for settlement minimizes the correspondent balances banks would otherwise have to maintain in order to settle payment transactions. However, as described above, the bilateral settlement service may impose additional risk on the participants in the service.

The Board believes that the bilateral settlement service meets the criterion that the service be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope and equity. The Federal Reserve currently provides net settlement services for numerous check clearinghouses, and the Fedwire system is an effective vehicle that can be used for settlement of payment transactions between banks. The proposed bilateral settlement service is an alternative to the Fedwire service for banks wishing to use balances maintained at the Federal Reserve Banks to settle for checks not collected through the Federal Reserve. Other service providers currently provide, and are expected to continue to provide, settlement services to banks. However, a large number of banks are unlikely to establish and maintain new accounts at a central depository, in addition to those accounts already maintained at the Federal Reserve, in order to provide the basis for a major new private-sector alternative settlement system.

D. Other Potential Services Evaluated But Not Proposed

The Board evaluated several services that certain banks requested that the Federal Reserve provide in a same-day settlement environment, which it has determined not to propose to adopt.

Conjunctive Business on Federal Reserve Intradistrict (Local) Transportation Networks.

The Board evaluated whether the Federal Reserve Banks should be required to permit couriers hired by the Federal Reserve to seek conjunctive business on all intradistrict transportation routes. Conjunctive business means that the courier could carry goods for other customers on routes on which they transport checks for the Federal Reserve. Currently, Federal Reserve offices allow conjunctive business on nearly 90 percent of the local courier routes that deliver checks to banks in the region served by the Federal Reserve office. On those routes where conjunctive business is not allowed, the Federal Reserve offices have exclusive-use contracts because of the time-critical nature of the route. The preponderance of Federal Reserve contracts permitting conjunctive business indicates that presenting banks should encounter few problems in arranging courier services with private couriers for presentment of checks.

The Board believes that the Federal Reserve Banks currently allow conjunctive business on intradistrict transportation networks when it is operationally feasible and does not jeopardize the expeditious collection of checks by the Federal Reserve. Based on this evaluation, the Board does not propose to change the current policy with respect to the intradistrict transportation networks.

Conjunctive Business on the Federal Reserve's Interdistrict Transportation System (ITS).

The Board evaluated whether the Federal Reserve Banks should allow conjunctive business on the ITS network. The ITS network is currently

an exclusive-use, largely air, delivery system connecting Federal Reserve offices, through a hub-and-spoke arrangement, for the transportation of checks collected by the Federal Reserve as well as other Federal Reserve materials. Close coordination and timing among the various air couriers under contract to the Federal Reserve is essential for the network to operate smoothly.

The Federal Reserve System experimented with conjunctive business on the ITS network during the late 1970s. As a direct result of ITS couriers serving the differing needs of other business clients, the Federal Reserve was unable to obtain reliable delivery of its checks at scheduled times. Delays in delivering checks among Federal Reserve offices caused debit float to rise to high levels.

Because of the difficulties in forecasting accurately the daily level of debit float, management of the Federal Reserve's open market operations was made more difficult.

Based on this past experience, the Federal Reserve prohibited conjunctive business on ITS beginning in 1980 in order to retain control over the network. Because of its many interdependent connections under tight deadlines, the ITS network cannot operate effectively under decentralized decision-making by parties with divided loyalties. In order to ensure the efficiency of its check collection system, the Federal Reserve must retain control over the nightly decisions (e.g., when to hold a plane or instruct it to leave) and the network design decisions (e.g., when to change a scheduled departure time).

The Board believes that the only way to ensure control over the ITS network is to employ couriers that are responsible solely to the Federal Reserve. Based on past experience, and the time-critical nature of the interdistrict check collection system, the Board has concluded that the Federal Reserve Banks should not allow conjunctive business on the ITS network.

Transportation Services

The Board evaluated whether the Federal Reserve Banks should offer a new transportation service, under which banks could pay the Federal Reserve to arrange the delivery of checks to paying banks. Currently, the Federal Reserve Banks arrange transportation of only those checks for which the Federal Reserve is acting as a collecting bank or returning bank.[7] A Federal Reserve Bank assumes certain duties and rights with respect to checks it collects, incurs assets and liabilities on its balance sheet during the collection process, and provides warranties as an indorser of the check. Arranging for transportation, both intradistrict and interdistrict, is a function necessary for the collection of checks deposited with the Federal Reserve Banks. If the Federal Reserve Banks were to introduce a new priced transportation service that was not integrally related to the Federal Reserve's check collection responsibilities, the Federal Reserve Banks could be considered "common carriers," potentially subject to applicable Federal and state regulations.

Private-sector couriers can and do deliver checks for presenting banks and banks generally have adequate access to couriers in their local transportation markets. In addition, some correspondent banks maintain extensive networks to transport checks and other material to and from branches and respondents, which could be used by presenting banks to present checks to paying banks.

The Board has determined that the Federal Reserve Banks should not offer a priced check transportation service.[8] Because of the ready availability of courier services to presenting banks, a transportation service would not meet the criterion that new Federal Reserve services should be ones which other service providers cannot be expected to provide with reasonable effectiveness, scope and equity. On balance, it appears that there would be no clear public benefit if the Federal Reserve Banks were to offer a check transportation service.

Adjustment Service

The Board evaluated whether the Federal Reserve Banks should offer a new priced adjustment service to handle adjustments for checks not collected through the Federal Reserve. Currently, the Reserve Banks handle adjustments only for checks collected or returned through the Federal Reserve.[9] A new adjustment service could be limited to providing a clearinghouse for exchanges of claims for adjustments by paying banks and presenting banks, or the Federal Reserve Banks could play the role of resolving disputes between paying banks and presenting banks.

As a clearinghouse, a Federal Reserve office would receive documentation of an alleged error from one party involved in a presentment of checks, record and edit the documentation, and forward it, via mail or electronic transmission, to the other party involved in the presentment. The second party would respond either by accepting the reported error or by refuting the allegation in writing. The Federal Reserve Bank would serve as an intermediary handler of documentation until the two parties either resolved the issue or sought resolution through some other means outside of the Federal Reserve (e.g., the courts).

In the alternate case, a Federal Reserve office not only would serve as a clearinghouse for adjustment documentation, but also would resolve any dispute between the two parties to the check presentment. This form of an adjustment service raises the issue of whether it is appropriate for the Federal Reserve to make a decision involving a check which the Federal Reserve itself did not handle.

The Board has determined that the Federal Reserve Banks should not offer a priced adjustment service to handle adjustments for checks not collected or returned through the Federal Reserve, or otherwise processed by the Federal Reserve. Other service providers would be able to serve as intermediaries in exchanges of adjustment documentation or as arbiter for check adjustments. Because (1) it appears that there would be no clear public benefit if the Federal Reserve Banks were to offer an adjustments service, and (2) other entities alone could provide this service with reasonable effectiveness, scope, and equity, the Board believes it would be inappropriate, under its criteria for offering new services, for the Federal Reserve Banks to offer an adjustment service.

[7] One proposed exception is the provision of outgoing transportation from the paying bank's Federal Reserve office to the paying bank for checks not collected through the Federal Reserve for which the Federal Reserve provides payor bank services under the proposed regular supplemental payor bank service. These checks would be intermingled with checks collected through the Federal Reserve that are designated for payor bank services. The Federal Reserve would have to provide transportation for those checks collected through the Federal Reserve in order to fulfill its presentment obligation. It would not be operationally practical for the Federal Reserve to provide regular supplemental payor bank services on all of these checks and provide transportation for only those checks collected through the Federal Reserve.

[8] Cash transportation provided by four Federal Reserve Banks is the sole priced transportation service currently provided by the Federal Reserve. This cash transportation service is offered only with respect to cash for deposit to or withdrawal from a Federal Reserve Bank. The Federal Reserve does not provide cash transportation between private-sector banks.

[9] Under the proposed supplemental payor bank services, the Federal Reserve would also handle adjustments for checks processed by the Federal Reserve in order to provide the payor bank services, even though the checks were not collected through the Federal Reserve.

E. Competitive Impact Analysis

The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.[10] Under these procedures, the Board assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services and if such effects are due to legal differences or due to a dominant market position deriving from such legal differences. Following are the competitive impact analyses for the proposed new services and for the bilateral settlement service.

Presentment Point Service

The proposed presentment point service would allow a paying bank to designate its local Federal Reserve office as a presentment point for checks presented to the paying bank by a private-sector presenting bank. Because many banks currently maintain arrangements to transport checks to and from their local Federal Reserve office and some banks deliver checks directly to multiple Federal Reserve offices, this service may prove convenient and economical for both presenting banks and paying banks.

It does not appear that private-sector entities that could be designated as presentment points by paying banks would be adversely affected by the proposed Federal Reserve presentment point service. The Federal Reserve's proposed service does not rely on the existence of legal differences between the Federal Reserve Banks and other service providers, nor does it rely on the dominant market position of the Federal Reserve Banks in the provision of check collection services deriving from such legal differences. Typically, a paying bank would designate as its presentment point the location of a data processing firm or a correspondent bank that performs demand deposit accounting for the checks drawn on the paying bank. The Federal Reserve Banks do not provide demand deposit accounting services and do not have any inherent advantages in providing a presentment point service, with the possible exception of the convenience of a location where checks are already delivered and picked up by collecting banks and paying banks.

Supplemental Payor Bank Services

The proposed supplemental payor bank services would allow a paying bank to designate its local Federal Reserve office as a presentment point for checks not collected through the Federal Reserve, or to deliver to its Federal Reserve office checks that it has received directly, and instruct the Federal Reserve office to provide payor bank services with respect to those checks. The Federal Reserve Banks currently offer payor bank services as an option to paying banks for checks collected through the Federal Reserve.

The provision of supplemental payor bank services should not adversely affect the provision of similar services by private-sector providers due to legal differences between the Federal Reserve Banks and other service providers or due to a dominant market market position deriving from such legal differences. Generally, a presenting bank, because it has possession of the checks, would have an advantage in offering timely and cost-effective payor bank services to the paying bank. Thus, the Federal Reserve's market position does not provide an advantage in the provision of the proposed supplemental payor bank services.

Bilateral Settlement Service

The proposed same-day settlement rule requires the paying bank to settle with the presenting bank by credit to an account of the presenting bank at a Federal Reserve Bank. Settlement may also be in any other form to which the presenting bank and the paying bank agree. While other private-sector service providers may offer bilateral settlement services, most banks either hold accounts directly with the Federal Reserve Banks or have established relationships with correspondent banks that have accounts at the Federal Reserve. These accounts serve to maintain reserves and/or to permit participation in Federal Reserve payment services. The current base of accounts, especially the account relationships with all major participants in the payments system, provides the Federal Reserve Banks with an inherent advantage in providing settlement services. Private-sector providers of settlement services would have to hold account relationships with both parties to the settlement. In addition, a presenting bank would be more likely to agree to participate in a bilateral settlement service if the service could be provided with respect to multiple bilateral relationships, increasing the number of account relationships that a private-sector service provider might have to maintain. Attaining these account relationships for the explicit purpose of providing settlement services would likely be difficult.

Thus, a potential private-sector provider of bilateral settlement services would be adversely affected if the Federal Reserve Banks offered a bilateral settlement service. It is unclear, however, whether such adverse effects would be material. Settlement participants may choose to function entries from the Federal Reserve's bilateral settlement service through accounts held at correspondent banks, which are the primary private-sector service providers of settlement services. If this option is chosen by service users, the adverse effects of a bilateral settlement service on private-sector providers might be minimized. The Board requests comment on whether the potential effects of a bilateral settlement service are material.

If the effects are determined to be material, the Board must determine whether the adverse effects are due to legal differences or due to a dominant market position deriving from such legal differences. Because the Federal Reserve has account relationships with most banks in its roles both as central bank and payments system service provider, the adverse effect would be both due to legal differences between the Federal Reserve Banks and private-sector service providers and due to a dominant market position deriving from legal differences.

The objective of a bilateral settlement service would be to provide banks an alternative means of settlement for checks presented by private-sector presenting banks. Provision of an alternate means of settlement should facilitate direct presentments in cases where the direct presentment and the settlement service are less costly or more efficient than collection through intermediaries. The Board believes that provision of a settlement service through Fedwire, and possibly also through a bilateral settlement service, may enhance competition in the provision of check collection services by making it easier for private-sector presenting banks to obtain settlement for checks presented to paying banks. The Board requests comment on whether the provision of a bilateral settlement service, in addition to a Fedwire settlement alternative, would provide greater incentives for direct presentments to occur.

It does not appear that the service can be modified to lessen or eliminate any adverse effect on private-sector providers of settlement services. The

[10] These procedures are described in the Board's policy statement, "The Federal Reserve in the Payments System," which was revised in March 1990. (55 FR 11648, March 29, 1990)

service would allow paying banks and presenting banks to have their entries made through a correspondent settlement agent. Because correspondent banks are the primary private-sector providers of settlement services, the fact that such providers can participate within the context of the service should lessen the potential adverse effects of the proposal. The Board requests comment on whether any other modifications can be made to the service to lessen or eliminate the adverse effect on private-sector providers of settlement services.

By order of the Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5763 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-M

Cleo L. Craig Trust, et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 27, 1991.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Cleo L. Craig Trust, to acquire 16.34 percent; Cleo L. Craig Grandchildren Trust, C.L. Craig and Michael T. Craig, Trustees, to acquire 83.18 percent of the voting shares of Lawton Securities Bancshares, Inc., Lawton, Oklahoma, and thereby indirectly acquire The Security Bank and Trust Company, Lawton, Oklahoma.

B. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. John G. Sorenson, Jr. and Don C. Ballard, both of Salt Lake City, Utah; to acquire an additional 52.89 percent of the voting shares of Home Credit Corporation, Salt Lake City, Utah, for a total of 80.64 percent, and thereby indirectly acquire Home Credit Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5764 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

Johnson International, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 1, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Johnson International, Inc., Racine, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Biltmore Investors Bank, Lake Forest, Illinois, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5765 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

James T. Rainier and Nancy B. Rainier; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than April 1, 1991.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James T. Rainier and Nancy B. Rainier, to increase their ownership of voting shares of Benton Financial Corporation, Fowler, Indiana, by 0.60 percent to a total of 10.14 percent as the result of a stock redemption, and thereby indirectly acquire Fowler State Bank, Fowler, Indiana.

Board of Governors of the Federal Reserve System, March 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5765 Filed 3-11-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Public Buildings Service (PPB), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0060, Building Service Contractor Work Report. This information collection requires guard contractors to submit sign-in, sign-out logs as evidence of the hours that employees have worked.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden: Respondents: 180; annual responses: 52.0; average hours per response: 0.5000; burden hours: 4680.

FOR FURTHER INFORMATION CONTACT: Jewell D. Wilson, (202) 501-1811.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: March 1, 1991

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-5716 Filed 3-11-91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee; Meetings in April/May

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the months of April/May 1991.

The Extramural Science Advisory Board, NIMH, will discuss infrastructure and Brain Tissue Banks. Attendance by the public will be limited to space available.

The Boards of Scientific Counselors will review, discuss, and evaluate intramural research programs and projects and productivity and performance of individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Public Law 92-463.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: April 1-2: 8:30 a.m.

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—April 1-2: 8:30 a.m.-5 p.m.

Contact: Tony Pollitt, room 17C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3175.

Purpose: The committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: April 8-9: 8:30 a.m.

Place: St. Elizabeths Hospital, NIMH Neuroscience Center, Conference Room 149, 2700 Martin Luther King Avenue, SE., Washington, DC 20032 on April 8.

National Institutes of Health, Building 10, Director's Library, room 4N-224, 9000 Rockville Pike, Bethesda, MD 20892 on April 9.

Status of Meeting: Open—April 8: 8:30 a.m.-9 a.m. Closed—Otherwise.

Contact: Steven M. Paul, National Institutes of Health, Building 10, room 4N-224, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496-3501.

Purpose: The Board provides expert advice to the Director of Intramural Research and the Acting Director, National Institute of Mental Health, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: Board of Scientific Counselors, NIDA.

Date and Time: April 30-May 1: 9:30 a.m.

Place: Addiction Research Center, Building C, 2nd Floor Conference Room, 4940 Eastern Avenue, Baltimore, MD 21224.

Status of Meeting: Open—April 30: 9:30 a.m.-10:30 a.m. Closed—Otherwise.

Contact: Brian Butters, Addiction Research Center, P.O. Box 5180, Baltimore, MD 21224, (301) 550-1538.

Purpose: The Board provides expert advice to the Director, National Institute on Drug Abuse, and the Director, Addiction Research Center, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, room 10-42, (301) 443-2755; Ms. Joanna Kieffer, NIMH Committee Management Officer, room 9-105, (301) 443-4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 7, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-5820 Filed 3-11-91; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public hearing.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a hearing of the Advisory Council on Social Security.

DATES: The hearing will be open to the public on March 27, 1991 from 10 a.m. to 7 p.m.

ADDRESSES: Sunshine Center, 330 Fifth Street North, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: Arta Mahboubi, Advisory Council on Social Security, room 638 G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;

- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and outgo to budget-deficit reduction effors under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeny, and Don C. Wegmiller. The chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council will hear testimony on the interim report on Social Security and its relationship to the Federal budget; other aspects of the social security programs; and issues and options related to health care financing reforms; including long term care.

The agenda items are subject to change as priorities dictate.

[Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplementary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social-Retirement Insurance; 13.805 Social Security-Survivor's Insurance]

Dated: March 6, 1991.

Ann D. LaBelle,

Executive Director, Advisory Council on Social Security.

[FR Doc. 91-5919 Filed 3-11-91; 8:45 am]

BILLING CODE 4130-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1991:

Name: HRSA AIDS Advisory Committee.

Time: April 4-5, 1991, 9 a.m.

Place: The Embassy Suites Hotel, 4300 Military Road, Washington, DC.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning the status of activities being implemented under the Ryan White comprehensive AIDS Resources Emergency (CARE) Act; the status of recommendations made at the Committee's November 1990 meeting, and a presentation that will focus on Women and AIDS.

Anyone requiring information regarding the subject Committee should contact Dr. Samuel C. Matheny, Executive Secretary, HRSA AIDS Advisory Committee, Health Resources and Services Administration, room 14A-21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-4588.

Agenda items are subject to change as priorities dictate.

Dated: March 7, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-5821 Filed 3-11-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Genome Research Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, March 20-21, 1991, at the Guests Quarters Hotel, 7335 Wisconsin Avenue, Bethesda, Maryland. This meeting will be open to the public on March 20th from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 20 from 9 a.m. to adjournment on March 21 for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Engel, Chief, Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, room 604, Bethesda, Maryland 20892, (301) 402-0838, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 93-172, Human Genome Research, National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5712 Filed 03-11-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute Frederick Cancer Research and Development Center Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Cancer Institute Frederick Cancer Research and Development Center Advisory Committee, April 16-17, 1991, Building 549, Executive Board Room, at the NCI Frederick Cancer Research and Development Center, Frederick, Maryland 21702-1201.

The meeting will be open to the public on April 16 from 8:30 a.m. to approximately 9 a.m. to discuss administrative matters such as future meetings, budget, etc. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on April 16 from approximately 9 a.m to recess and on April 17 from 8:30 a.m. to adjournment for a site visit review of research being conducted by the AIDS Vaccine Program under contract with Program Resources, Inc. There will be a review and evaluation of the report of the previous site visit of the Crystallography Laboratory under contract with Advanced BioScience Laboratories, Inc. Basic Research Program. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, tel. (301) 496-5708, will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research and Development Center Advisory Committee, National Cancer Institute Frederick Cancer Research and Development Center, P.O. Box B, Frederick, Maryland 21702-1201, tel. (301) 846-1108, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5713 Filed 3-11-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart Lung and Blood Research Review Committee A; Meeting

Pursuant to Public Law 92-463 notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 28-29, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 28, 1991 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 28 from approximately 9 a.m. until recess and from 9 a.m. until adjournment on March 29, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Robert M. Chasson, Executive Secretary (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 552, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5714 Filed 03-11-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on March 28, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on March 28 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 522b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on March 28 from approximately 10 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236 will provide a summary of the meeting and roster of the committee members.

Dr. Jeffrey H. Hurst, Executive Secretary, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 5A-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4485, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: March 4, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5715 Filed 3-11-91; 8:45 am]

BILLING CODE 4140-01-M

Human Gene Therapy Subcommittee; Meeting; Amendment

Notice is hereby given of an amendment to the notice of meeting published in the Federal Register on March 7, 1991. The April 5, 1991, meeting will include discussion of an additional proposed action under the NIH Guidelines for "Research Involving Recombinant DNA Molecules" (51 FR 16958):

VI. Amendment in the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects/Dr. McIvor

In a letter dated March 4, 1991, Dr. R. Scott McIvor of the University of Minnesota requested an amendment to the "Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects" as published in the Federal Register (41 FR 7445) to read:

(I.B.2) Preclinical studies, including risk assessment studies. Results demonstrating the safety, efficacy and feasibility of the proposed procedures using the most relevant animal and/or cell culture model systems should be included. Describe the experimental basis (derived from tests in cultured cells and animals) for claims about efficacy and safety of the proposed system for delivery and explain why the model(s) chosen is (are) the most appropriate.

FOR FURTHER INFORMATION: Contact Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, fax (301) 496-9839.

Dated: March 7, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5860 Filed 3-11-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-230-08-6310-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1004-0102), Washington, DC 20503, telephone (202) 395-7340.

Title: Road Use Fees Paid Report.

OMB Approval Number: 1004-0102.

Abstract: This form is used to provide information needed to terminate a timber sale contract containing road amortization and road maintenance requirements.

Bureau Form Number: 5400-2 (formerly 5450-8).

Frequency: One for each relevant timber sale contract.

Description of Respondents: Individual, partnership, and corporate timber sale purchasers.

Estimated Completion Time: 15 minutes.

Annual Responses: 100.

Annual Burden Hours: 25.

Bureau Clearance Officer: Gerri Jenkins (202) 653-8853.

Dated: January 23, 1991.

Henry K. Noldan,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 91-5758 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-84-M

[AK-966-4230-16; AA-8096-A]

Alaska Native Claims Selection; St. George Tanaq Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue patent under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to St. George Tanaq Corporation for 32.67 acres. The lands involved are on St. George Island, Alaska, in T. 42 S., R. 130 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until April 11, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 91-5722 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-JA-M

[CO-920 01-4120-14; COC 51551]

Coal Lease Offering By Sealed Bid; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Rio Blanco County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*

DATES: The lease sale will be held at 2 p.m., Monday, April 15, 1991. Sealed bids must be submitted not later than 1 p.m., Monday, April 15, 1991.

ADDRESSES: The lease sale will be held in the West Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239-3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered is limited to coal recoverable by underground mining methods in the following lands:

Sixth Principal Meridian

T. 3 N., R. 101 W.,
Sec. 25, S½;
Sec. 26, SE¼SE¼;
Sec. 34, S½NE¼ and N½SE¼;
Sec. 35, NE¼NE¼, S½N½, and N½S½;
Sec. 36, N½ and N½S½.

The land described contains 1360 acres.

Total recoverable reserves are estimated to be 8,724,000 tons. The underground mineable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the B & D seams on an as-received basis is as follows:

	B Seam	D Seam
Btu	9,500 Btu/lb.	10,200 Btu/lb.
Moisture	12.15%	11.27%
Sulfur Content	0.39%	0.44%
Ash Content	15.51%	12.19%
Fixed Carbon	41.42%	43.99%
Volatile Matter	30.84%	32.36%

Rental and Royalty:

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR part 206.

Notice of Availability:

Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: March 5, 1991.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 91-5723 Filed 3-11-91; 8:45 am]

BILLING CODE 4310-JB-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (SUB-No. 343X)]

CSX Transportation, Inc; Abandonment Exemption; in Morgan County, WV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc. (CSXT), of 2.6 miles of rail line between mileposts 3.5 and 6.1, in Morgan County, WV, subject to standard labor protective conditions and to the condition that CSXT must continue to provide service over this line and over its Walker-to-Parkersburg, WV, line until May 1, 1991.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 11, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 22, 1991, petitions to stay must be filed by March 27, 1991, and petitions for reconsideration must be filed by April 8, 1991. Requests for a public use condition must be filed by March 22, 1991.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 343X), to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
and
(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Decided: February 27, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5806 Filed 3-11-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree; Sinclair Oil Corp., et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Sinclair Oil Corporation and Sinclair Oil Corporation* v. *Scherer. et al.*, Civil Action Nos. C88-0190-B and C89-0153-B (D. Wy.), is available to the public for review and comment. The consent decree resolves litigation in this matter with respect to Sinclair's Little America Refinery in Evansville, Wyoming in connection with which Sinclair is alleged to have been in violation of section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928. The terms of the decree are summarized in this notice to facilitate public review, and a copy of the decree is being made available at the Department of Justice in Washington, DC, and at the Office of the United States Attorney in Cheyenne, Wyoming at the addresses below. The public is invited to submit comments concerning the decree to the Department of Justice, at the address specified below, until thirty days from the date of this notice.

The decree settles two cases. The first was commenced by Sinclair alleging that the issuance of two administrative orders by the Environmental Protection Agency pursuant to sections 3008 and 7003 of RCRA, 42 U.S.C. 6928 and 7003, was arbitrary and capricious. The second suit was commenced by the United States to secure compliance with one of the two administrative orders. The decree provides that Sinclair will conduct corrective action at the LARCO refinery near Evansville. Corrective action will consist of interim measures to mitigate immediate threats to human health or the environment, a RCRA Facility Investigation, a Corrective Measures Study and Corrective Measures Implementation.

The Department of Justice will receive comments relating to the proposed consent decree until April 11, 1991. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sinclair*, DOJ Ref. No. 90-7-1-486. The draft consent decree may be examined at the office of the United States Attorney, District of Wyoming, 2120 Capitol Avenue, room 2141, Cheyenne, Wyoming 82001. The consent decree may also be examined and obtained in person at the Environmental Enforcement Section Document Center, 1333 "F" Street NW., suite 600, Washington, DC 20004 (Telephone 202-347-7829). A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.25 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5717 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Judgment in Action to Enjoin Violation of The Clean Water Act; Euclid, Ohio, et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

United States v. *The City of Euclid, Ohio et al.* (N.D. Ohio), Civil Action No. C83-3855 was lodged with the United States District Court for the Northern District of Ohio on February 22, 1991. The Consent Decree provides for penalties for failure to comply with federal regulations for the discharge of pollutants from wastewater treatment plants owned, operated, and maintained by the City of Euclid, Ohio and requires the defendants to comply with the Clean Water Act, 33 U.S.C. 1251 *et seq.* and all applicable federal and state regulations.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *The City of Euclid, Ohio et al.*, D.O.J. Ref. No. 90-5-1-1-1862.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Cleveland, Ohio 44114; the Region 5 office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 1333 F Street, suite 600, NW., Washington, D.C. 20004, telephone number (202) 347-2072. In requesting a copy, please enclose a check in the amount of $38.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5718 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act Of 1984; National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, Pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Center For Manufacturing Sciences, Inc. ("NCMS"), on February 5, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research activities. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following company recently was accepted as an Active Member of NCMS:

K.O. Lee Company.

The following companies recently resigned from membership as Active Members in NCMS:

Constitum, inc.
De Vlieg, Inc.
Haworth, Inc.
S.E. Huffman Corporation
Met-Coil Systems Corporation
Murdock Engineering Company
Newcor Bay City, Division of Newcor, Inc.
Perceptron, Inc.
Scientific Systems Services, Inc.
Sheffield Schaudt Grinding Systems, Inc.

The following organizations recently were accepted as Affiliate Members of NCMS:

Consortium for Laboratory and Industrial Applications of the Macintosh Industrial Technology Institute
Southwest Research Institute

Currently, NCMS has awarded contracts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward those objectives are under consideration.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, and November 7, 1990, notices of which the Department published on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22864), August 28, 1990 (55 FR 35194), and December 10, 1990 (55 FR 50790), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5719 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Structural Maintenance for New and Existing Ships; Regents of the University of California, Berkeley

Notice is hereby given that, on February 20, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. (the "Act"), The Regents of the University of California, Berkeley, have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to a project entitled "Structural Maintenance for New and Existing Ships" (the "Project") and (2) the nature and objectives of the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Project and its general area of planned activities are given below.

The current parties to the Project are American Bureau of Shipping, AMOCO Transport Company, ARCO Marine, Inc., BP Oil Shipping Company (USA), Bureau Veritas, Chevron Shipping Company, Daewoo Shipbuilding and Heavy Machinery, Ltd., Exxon Company International, Ishikawajima-Harima Heavy Industries Co. Ltd., Jurong Shipyard Limited, Lisnave-Estaleiros Navais de Lisboa, Mitsubishi Heavy Industries, Ltd., Mobil Shipping & Transportation Co., and the Ship Structures Committee. Participation in the Project will remain open until December 31, 1991. Additional notices will be filed to disclose all changes in membership of the Project.

The objective of the Project is to attempt to develop engineering procedures and computer programs that will improve the ability to make better decisions on design and repair of ships' internal structural components related to the effects of corrosion and fatigue.

Information regarding participation in the Project may be obtained from The Regents of the University of California, Berkeley, c/o Sponsored Projects Office, 530 Banway Building, Berkeley, CA 94720.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-5720 Filed 3-11-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON CHILDREN

Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces a Meeting of the National Commission on Children to be held in Charlottesville, Virginia.

Meeting

Time: 8 a.m.-6 p.m., Tuesday, March 26, 1991; 8 a.m.-3:30 p.m., Wednesday, March 27, 1991.
Place: Albemarle Room, Boar's Head Inn, Charlottesville, Virginia.
Status: Open to the public.
Agenda: Commission Meeting.
Contact: Jeannine Atalay, (202) 254-3800.

Dated: March 6, 1991.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 91-5768 Filed 3-11-91; 8:45 am]

BILLING CODE 6820-97-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeometry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeometry.
Date and Time: March 29, 1991, 9:00 a.m.-5:00 p.m.
Place: National Science Foundation, room 523, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. John E. Yellen, Program Director for Anthropology, room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7804.
Purpose of Meeting: To provide advice and recommendations concerning support for research in Archaeology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5772 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.
Date and Time:
March 28-29, 1991.
9 a.m.-5 p.m., March 28, 1991 (open).
8 a.m.-9 a.m., March 29, 1991 (closed).
9 a.m.-12 Noon, March 29, 1991 (open).
Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.
Type of Meeting: Partially closed.
Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9632.
Minutes: Dr. William S. Butcher at the above address.
Purpose of Meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.
Reason for Closing: The personnel matters being discussed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of U.S.C. 552b(c), the Government in the Sunshine Act.
Agenda:
Thursday, March 28, 1991, room 540, 8 a.m. to 9 a.m.—CLOSED.
Discussion of personnel issues including candidates for vancancies.
Thursday, March 28, 1991, room 540, 9 a.m. to 5 p.m., and Friday, March 29, 1991, room 540, 9 a.m. to 12 Noon—OPEN.
Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5773 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Research Initiation and Improvement; Meeting; Amendment

This notice is being amended to include the reason for closing. The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Rearch Initiation and Improvement.
Date and Time:
March 25, 1991: 8:30 a.m.-5:30 p.m.
March 26, 1991: 8:30 a.m.-3:30 p.m.
Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Lola E. Rogers, Acting Program Director, VPW, National Science Foundation, room 1225. Telephone: 202/357-7456.
Purpose: Proposal review and discussion.
Agenda: To evaluate and recommend for funding competitive proposals submitted for the FY 1991 VPW competition.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5775 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee Scientific, Technological, and International Affairs; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee Scientific, Technological, and International Affairs.
Date and Time: Thursday, March 28, 1991; 8:30 a.m.-5:30 p.m.
Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Dr. Marta Cehelsky, Executive Secretary, A/C for STIA, National Science Foundation, (202) 357-7613.
Minutes: May be obtained from contact person listed above after approval by the Chairman.
Purpose of Meeting: Provide advice to STIA Assistant Director.

Agenda: STIA mission statement, STIA Data and Policy Analysis activities, and science and technology in Europe.

Dated: March 7, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5774 Filed 3-11-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 60—Disposal of High-Level Radioactive Waste in Geologic Repositories.

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information need only be submitted one time.

5. Who will be required or asked to report: States of Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste repository site, or wishing to participate in a license review for a potential repository.

6. An estimate of the number of responses: 8.

7. An estimate of the total number of hours needed annually to complete the requirement or request: An average of 40 hours per response for consultation requests, 80 hours per response for license review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 244 hours.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning review of a potential repository site or wish to participate in a license review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such representative capacity. The information submitted by the States and Indian Tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-0127), Office of Information and Regulatory Affairs, NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 26th day of February 1991.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official for Information Resources Management.

[FR Doc. 91-5771 Filed 3-11-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-123 Facility Operating License No. R-79 Amdt. No. 9]

University of Missouri-Rolla (University of Missouri-Rolla Research Reactor); Order Modifying License

I

University of Missouri-Rolla (the licensee) is the holder of Facility Operating License No. R-79 (the license) issued on November 11, 1961, and subsequently renewed on April 16, 1985, by the U.S. Nuclear Regulatory Commission (the Commission). The license authorizes operation of the University of Missouri-Rolla Research Reactor (the facility) at a power level of up to 200 kilowatts (kw) thermal (t). The facility is a training reactor located in Rolla, Missouri, and is contained in the Nuclear Reactor Facility, which is located on the east edge of the campus of University of Missouri-Rolla. The mailing address is Nuclear Reactor Facility, University of Missouri-Rolla, Rolla, Missouri 65401-0249.

II

On February 25, 1986, the Commission promulgated a final rule in § 50.64 of title 10 of the Code of Federal Regulations (10 CFR) limiting the use of high-enriched uranium (HEU) fuel in domestic research and test reactors (non-power reactors) (see 51 FR 6514). The rule, which became effective on March 27, 1986, requires that each licensee of a non-power reactor replace HEU fuel at its facility with low-enriched uranium (LEU) fuel acceptable to the Commission (1) unless the Commission has determined that the reactor has a unique purpose and (2) contingent upon Federal Government funding for conversion-related costs. The rule is intended to promote the common defense and security by reducing the risk of theft and diversion of HEU fuel used in non-power reactors and the adverse consequences to public health and safety and the environment from such theft or diversion.

Sections 50.64(b)(2) (i) and (ii) require that a licensee of a non-power reactor (1) not initiate acquisition of additional HEU fuel, if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes that acquisition, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor, in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Section 50.64(c)(2)(i) of the rule, among other things, requires each licensee of a non-power reactor, authorized to possess and to use HEU fuel, to develop and to submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal (proposal) for meeting the rule's requirements.

Section 50.64(c)(2)(i) also requires the licensee to include the following in its proposal: (1) A certification that Federal Government funding for conversion is available through the U.S. Department of Energy (DOE) or other appropriate Federal agency and (2) a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for the available financial support, and reactor usage.

Section 50.64(c)(2)(iii) requires the licensee to include in its proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to the licensee's procedures

(all three types of changes hereafter called modifications). This paragraph also requires the licensee to provide supporting safety analyses so as to meet the schedule established for conversion.

Section 50.64(c)(2)(iii) also requires the Director to review the licensee's proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the licensee's supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of the public health and safety, any necessary modifications. In the statement of considerations of the final rule, the Commission explained that in most cases, if not all, the enforcement order would be an order to modify the license under 10 CFR 2.204 (see 51 FR 6514).

Section 2.204 provides, among other things, that the Commission may modify a license by issuing an amendment on notice to the licensee that it may demand a hearing with respect to any part or all of the amendment within 20 days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of this 20-day-or-longer period. If the licensee requests a hearing during this period, the amendment will become effective on the date specified in an order made after the hearing.

Section 2.714 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On November 16, 1988, as supplemented on May 8, 1990, May 30, 1990, August 9, 1990 and October 25, 1990, the Director received the licensee's proposal, including its proposed modifications, supporting safety analyses, and schedule for conversion. The conversion consists of replacement of high-enriched with low-enriched uranium fuel elements. The fuel elements contain materials testing reactor (MTR)-type fuel plates, with the fuel meat consisting of uranium silicides dispersed in an aluminum matrix. These plates contain an enrichment of less than 20 percent with the uranium-235 isotope. The Attachment to this Order includes the changes to the licensing conditions and technical specifications that are needed to amend the facility license. The NRC staff has reviewed the licensee's submittals and the requirements of 10 CFR 50.64 and has determined that the public health and safety and the common defense and security require the licensee to convert the facility from the use of HEU to LEU pursuant to the modifications stated in the Attachment in accordance with the schedule included herein following.

IV

Accordingly, pursuant to sections 51, 53, 57, 101, 104, 161b., 161i., and 161o., of the Atomic Energy Act of 1954, as amended, and to the Commission's regulations in 10 CFR 2.204 and § 50.64, it is hereby ordered that:

On the later date of either receipt of LEU fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** Facility Operating License No. R-79 is modified by amending the license conditions and Technical Specifications as stated in the Attachment to the Order.

V

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of this Order. Any request for a hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Assistant General Counsel for Hearings and Enforcement at the same address. If a person other than the licensee requests a hearing, that person shall set forth with particularity in accordance with 10 CFR 2.714 the manner in which the person's interest is adversely affected by this Order.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission shall issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearings is whether this Order should be sustained.

This Order shall become effective on the later date of either the receipt of LEU fuel elements by the licensee or 30 days following the date of publication of this Order in the **Federal Register** or, if a hearing is requested, on the date specified in an order following further proceedings on this Order.

Dated at Rockville, Maryland this 5th day of March 1991.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5770 Filed 3-11-91; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Draft Amendments; 1991

AGENCY: Pacific Northwest Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Notice of availability of Draft 1991 Power Plan.

SUMMARY: Pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (Act), the Council, in April 1983, adopted a Northwest Conservation and Electric Power Plan (Plan). A complete amendment of the Plan was adopted in 1986. Although the Act requires the Council to review the Plan at least every five years, the Council has taken up certain parts of the Plan more frequently, to respond to ongoing changes in the regional energy picture and to incorporate the most recent technology and analysis. The Council amended the Plan again in 1989 by publishing the 1989 Supplement to the 1986 Power Plan, updating the technical data of the Plan.

The Council voted to enter rulemaking on the 1991 revision of the Plan on November 14, 1990. As required by the Act, public hearings have been scheduled in each of the four Northwest states. Close of comment for written comments is 5 p.m., March 15, 1991. The Council will hold consultations through March 22, 1991.

SUPPLEMENTARY INFORMATION: As directed by the Northwest Power Act, the Council developed and adopted a regional conservation and electric power plan shortly after its formation. The Plan includes an energy conservation program, including, but not limited to, model conservation standards; a recommendation for research and development; a methodology for determining quantifiable environmental costs and benefits; a twenty year demand forecast; a forecast of power resources that the Bonneville Power Administration will need to meet its obligations; an analysis of reserve and reserve reliability requirements; and a surcharge methodology. The Plan also includes the Fish and Wildlife Program, developed pursuant to other procedural requirements under the Act.

FOR FURTHER INFORMATION: If you would like a copy of the Draft 1991 Power Plan, please contact Judi Hertz in the Council's Office of Public Information

BEST COPY AVAILABLE

and involvement. The Council's address is: 851 SW. 6th Avenue, suite 1100, Portland, Oregon 97204. The Council's telephone numbers are: (503) 222–5161 and (toll free) (800) 222–3355 in Idaho, Montana, and Washington or (800) 452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 91–5756 Filed 3–11–91; 8:45 am]

BILLING CODE 6820–32–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–29835; International Series Rel. No. 237; File No. SR–AMEX–90–25, Amdt. No. 1]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Listing Options on the EURO TOP–100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 19, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend its proposed rule filing SR–Amex–90–25 that would permit the trading of options on the Euro Top–100 Index ("E100" or "Index"). The amendment addresses changes to the composition, maintenance and calculation of the Index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The European Options Exchange ("EOE") as proprietor of the Euro-Top 100 Index has made certain changes to the procedures relating to the composition and maintenance of the Index, and calculation of the options settlement price. These changes and their impact on the trading of options on the E100 are discussed below.

Index Composition and Maintenance

The Index continues to measure the collective performance of the most actively traded stocks on the major European stock exchanges in the United Kingdom, France, Germany, Italy, Spain, Belgium, the Netherlands, Switzerland and Sweden. To be eligible for inclusion in the Index, a country must be a European member of the Organization of Economic Cooperation and Development ("OECD") [1]. Furthermore, a country's exchange(s) must now have a total market capitalization of at least 2.5 percent of the aggregate market capitalization of the exchanges in all the countries in the Index.

Each country which meets this criteria is represented in the Index based on its total market capitalization adjusted to reflect its gross national product ("GNP"). A country's base weighting in the Index is 90 percent dependent on its market capitalization and 10 percent dependent on its GNP.

Although the foregoing reflects a change to the index composition and weighting methodology, the countries and their respective weightings continue to remain the same: United Kingdom, 22%; Germany, 15%; France, 15%; Switzerland, 10%; Italy, 10%; The Netherlands, 8%; Sweden, 8%; Spain, 8%; and Belgium, 4%.

Initially, the EOE had planned to review annually, and, if appropriate, revise in April of each year the country base weightings. This annual review was to be based on the newly calculated three year averages of component country GNPs and market capitalizations as of the previous December 31. The EOE now intends to address country selection and weighting biennially. Changes, if appropriate, will be made in April of even numbered years based on the relative capitalizations and GNPs at the end of the previous year, not based on three year averages as had previously been the case. At such time, additional countries which meet the Index eligibility criteria may be added.

Review and revision, if applicable, of component stock selection and stock weighting will continue to occur annually and will continue to be based on three year averages of monetary share volumes of the stocks traded on the primary stock exchange in each component country. The number of such component stocks per country continues to be equal to the country's percentage weighting.

Three year averages of monetary share volumes will also continue to determine the relative weightings in terms of shares of each country's particular component stocks. These volumes will continue to be reviewed annually and revised, if appropriate, in April, based on the three calendar year data. As a result of such annual reviews, the component stocks and the respective number of their shares included in the Index are subject to change.

The Index component stocks represent those stocks in each country which have the highest monetary trading volume over the previous three calendar years. The monetary trading volume (or effective share volume) of a stock is equal to the value (in local currency) of the actual number of shares of stock traded during that three year period. Generally the Index components will represent those stocks with the highest price/volume figures in each country. However, investment company stocks and securities which are not available for investment by foreigners are not eligible for inclusion in the Index. In addition, if more than one class of stock of the same company meets the selection criteria, only the class with the largest effective share volume would be included.

Any revision to the Index due to periodic reviews or adjustments necessitated by corporate actions will not result in a change in Index value greater than one ECU (.01 Index point). The EOE utilizes a procedure for the implementation of any such adjustments as an alternative to changes in index divisors typically used for indexes generated in the U.S. This procedure assures price continuity and index integrity.

Index Calculation

The EOE as the proprietor of the Index has the responsibility for continuously calculating and disseminating Index values. The EOE is presently calculating the Index and disseminating it at five minute intervals to all EOE data vendors, which include Quotron, Reuters and Telekurs. Within the next month, the EOE plans to make it available every 15 seconds. In addition, Bridge Information Service also disseminates the Index value in the United States.

The Index calculation value is based on the last sale price of each component stock in its own currency, reported by the principal stock exchange in its home country, converted into ECUs at the then current effective exchange rate. Currency cross rates will be based on the lowest asked price quoted by the foreign exchange institutions whose quotes are disseminated by Reuters PLC. On an instaneous and continuous basis, each home country currency will first be converted into U.S. dollars and then into ECUs, based on the U.S. dollar/ECU lowest asked price at that moment.

The official E100 Index value will now be calculated from 11 a.m. Central European Time ("CET") to 4:30 p.m. CET (ordinarily 5 a.m. to 10:30 a.m. New York Time). The official Index value calculation begins at the time by which the primary exchanges in each of the Index countries ordinarily commence trading and continues until trading ceases on the primary markets on which more than 50 component stocks trade. However, in the event that 25 or more component stocks do not actually open for trading, an official Index value will not be calculated.

During periods of time in which the official Index value is not being calculated, but component stocks are trading on primary exchanges, the EOE will calculate and disseminate an unofficial Index value. This will occur once one or more primary exchanges begin trading but before all are not open for trading; after those exchanges on which more than 50 component stocks trade are closed; or under other circumstances when some component stocks are open for trading, but the official Index value is not being calculated.

Index values, both official and unofficial, will reflect the last available component stock price converted into ECUs. In the event there is no price change in a component stock, its value will be continuously updated to reflect any changes in the home currency/ECU crossrate.

For the U.S. options market, the Amex will apply a divisor to the EOE calculation for both official and unofficial values and disseminate them via its vendor network during U.S. trading hours. The Amex intends to use separate symbols to identify each of the values. In this way, the Exchange will make available pertinent Index value information without creating investor confusion regarding whether the Index value is official or unofficial.

Settlement Value

On each Expiration Friday, the EOE will calculate and disseminate an official Index settlement value. That value will now be based on the average of the official values for the Index at five minute intervals during the last 30 minutes of trading when all primary exchanges are open. This will ordinarily occur between 12:30 and 1 p.m. CET (6:30 to 7 a.m. New York Time). In the event that a primary exchange is not ordinarily open for trading on Expiration Friday, the settlement value will be calculated on the first preceding day when all primary exchanges are open.

Last Day of Trading

The Exchange proposes to cease trading in expiring options on the trading day prior to Expiration Friday. The Exchange had originally proposed to permit trading on Expiration Friday 10 a.m. New York Time—the time originally fixed by the EOE for determination of a settlement value, to be followed by a closing rotation once the settlement value was announced. Since the settlement value will now be determined and announced prior to the beginning of the Exchange trading day, there is no reason to permit trading in expiring options on Expiration Friday.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believe that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–Amex–90–25 and should be submitted by April 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5726 Filed 3–11–91; 8:45 am]

BILLING CODE 8010–01–M

[1] OECD is an organization of the 24 free market democratic countries in North America, Western Europe and the Pacific, formed to promote world trade and the world economy.

[Rel. No. 34–28936; File No. SR–BSE–90–19]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Composition of its Audit Committee

On November 21, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities

and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to amend Article VII, section 6 of the BSE Constitution. The proposed amendment revises the composition of the BSE's Audit Committee ("Committee").[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 28739 (January 3, 1991), 56 FR 1040 (January 10, 1991). No comments were received on the proposal.

Article VII, Section 6 of the BSE Constitution describes the responsibilities and composition of the Exchange's Audit Committee.[4] The Audit Committee's duties include reviewing and recommending to the BSE Board of Governors ("Board") the selection of independent auditors; reviewing the scope and extent of the auditors' examination, the auditors' procedures, and the results of the independent audit; overseeing the system of internal accounting controls; and supervising investigations into any matter within the scope of its duties.

Article VII, section 6 currently provides that the Audit Committee shall be composed of three persons. Article VII, section 6 also provides that the Chairman of the Board, with the approval of the Board, shall appoint the Audit Committee members at the Board's first meeting following the annual meeting of Exchange members. Article VII, section 6 further provides that the Committee members may be selected from among members of the Board, members of the Exchange, or other qualified persons who do not serve in a management capacity with the Exchange or an Exchange affiliate and who are free of a relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment.

The BSE proposes to increase the number of persons required to compose the Committee from three to four. As amended, article VII, section 6 would provide that the Chairman of the Board, with the approval of the Board, must select the Audit Committee members from among members of the Board, members of the Exchange, or other qualified persons. In addition, article VII, section 6 would specify that those persons who serve on the Audit Committee must not serve in a management capacity with the Exchange or an Exchange affiliate and must be free of any other relationship that, in the opinion of the Board, would interfere with the exercise of independent judgment.

The BSE states that the purpose of the proposed rule change is to revise the composition of the Audit Committee in order to provide that all members of the Committee must be free of a relationship that would interfere with a Committee member's independent judgment. The BSE states that the proposed revisions to the composition of the Committee are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6(b)(1) and 6(b)(5) of the Act.[5] Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission believes that the proposed revisions to the composition of the Audit Committee are consistent with section 6(b)(1) because the proposal should facilitate Exchange compliance with rule 6a-2 of the Act.[6]

Exchange Act rule 6a-2 requires that a registered national securities exchange file with the Commission annual amendments to its registration statement. More specifically, rule 6a-2(a)(2) requires that an exchange submit to the Commission an audited consolidated financial statement, for the latest fiscal year of the exchange, which is prepared in accordance with generally accepted accounting principles and is covered by a report prepared by an independent public accountant. Rule 6a-2(a)(2) also requires that a registered national securities exchange submit to the Commission an unconsolidated financial statement, for the latest fiscal year, for the exchange, its affiliates, and its subsidiaries.

The Commission believes that the proposed revisions to the composition of the Audit Committee should further the objectives of section 6(b)(1) by enhancing the Exchange's capacity to comply with the financial reporting requirements set forth in rule 6a-2 under the Act. As described above,[7] the Audit Committee's responsibilities include selecting an independent auditor and overseeing the audit. The Commission believes that the revised composition of the Audit Committee should help to ensure that Committee members act impartially in their oversight of the audit process. The Commission believes that this independent oversight should, in turn, facilitate compliance with rule 6a-2, by ensuring that the financial statements submitted to the Commission by the Exchange are audited by a truly independent accountant. Moreover, the Commission believes that because the proposal will allow other qualified persons, *i.e.*, non-members of the Exchange and non-members of the Board, to serve on the Committee, the proposal should contribute to the diversity of experience and expertise as well as the independence of the Committee.

The Commission believes that the proposed amendment is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to protect investors and the public interest, to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade. The Commission believes that the proposed amendment should promote the requirements of section 6(b)(5) by providing for an Audit Committee which is composed of impartial Committee members. In contrast to the current standards for Committee membership, the proposed amendment will impose an affirmative requirement that all Committee members must be selected from among members of the Board, members of the Exchange, or other qualified persons who must be free of any relationship with Exchange management or any other relationship that would interfere with the exercise of independent judgment. Moreover, the addition of another member to the Committee should broaden the expertise of the Committee. The revised composition of the Audit Committee, therefore, should increase independence in the oversight of the Exchange's financial procedures.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: March 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5792 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The BSE also submitted to the Commission a nonsubstantive amendment to the proposal, which made minor word changes and clarified the requirements for committee membership. See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Commission, dated December 5, 1990.

[4] The Commission recently approved the BSE's proposal to establish an Audit Committee. See Securities Exchange Act Rel. No. 28184 (July 10, 1990), 55 FR 28609 (July 16, 1990) (File No. SR-BSE-90-3).

[5] 15 U.S.C. 78f (1988).

[6] 17 CFR 240.6a-2 (1990).

[7] *See supra* pages 1-2 for a summary of the Audit Committee's responsibilities.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

[Investment Company Act Rel. No. 18025; International Series Rel. No. 238; 812-7690]

The Chase Manhattan Bank, N.A.; Application

March 4, 1991

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Chase Manhattan Bank, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of section 17(f) thereof.

SUMMARY OF APPLICATION: The Chase Manhattan Bank, N.A. ("Chase") seeks an order exempting any investment company registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Company"), Chase, and Chase AMP Bank Limited ("Chase AMP") from the provisions of section 17(f) of the 1940 Act so as to permit Chase, as the custodian of the securities and other assets of a Company ("Securities"), or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit, or to cause or permit the deposit of, the Securities in Chase AMP in Australia in accordance with the arrangement described below.

FILING DATE: The application was filed on February 25, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 1, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 1 Chase Manhattan Plaza, New York, New York 10081.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations:

1. On November 20, 1981, the SEC granted an order (Investment Company Act Release No. 12053) exempting Chase, any subcustodian of Chase, any custodian for which Chase acts as subcustodian, and any Company from the provisions of section 17(f) of the 1940 Act and rule 17f-4 thereunder to the extent necessary to permit Chase, as the custodian of Securities or as the subcustodian of Securities as to which any other entity is acting as custodian, and such other entity for which Chase so acts, to deposit or to cause or permit the deposit of the Securities in foreign banks and foreign securities depositories under certain conditions. On October 9, 1984, the SEC amended the order (Investment Company Act Release No. 14184) so that it would conform to certain conditions in rule 17f-5 which was adopted by the SEC on September 7, 1984 (Investment Company Act Release No. 14132). The order also was amended when the SEC made subsequent changes the rule 17f-5. The order, as amended, is referred to herein as the "Existing Order."

2. Chase AMP is a majority-owned indirect subsidiary of Chase that conducts general trading bank businesses, including loans, retail banking, treasury, corporate finance, and transaction banking activities. Chase AMP's headquarters is in Sydney, New South Wales, Australia, and it is supervised by the Reserve Bank of Australia.

3. The Existing Order requires that a foreign subsidiary of Chase must have shareholders' equity in excess of $100,000,000 to be an eligible foreign custodian. As of December 31, 1989, the shareholders' equity of Chase AMP was $121,676,000 (all figures reflect the then current rate of exchange). As of December 31, 1990, the shareholders' equity of Chase AMP was $82,975,849. Chase made an additional capital contribution to bring the shareholders' equity of Chase AMP to $90,683,849 as of January 2, 1991.

4. The reduction in the shareholders' equity of Chase AMP is the result of exchange rate fluctuations and an increased loan loss reserve. The board of directors of Chase AMP accepted the audited financial statements reflecting the reduction in shareholders' equity on February 12, 1991, and such statements were made public on February 14, 1991.[1]

5. Chase requests that the SEC grant an order permitting it to continue to deposit Securities in Australia with Chase AMP so long as the deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during which Chase AMP does not meet the requirements of the Existing Order relating to shareholders' equity, among (a) the Company or a custodian of the Securities of the Company for which Chase acts as subcustodian, (b) Chase, and (c) Chase AMP pursuant to the terms of which Chase would act as the custodian or subcustodian, as the case may be, of the Securities of the Company. Chase AMP would be delegated such duties and obligations of Chase thereunder as would be necessary to permit Chase AMP to hold in custody the Securities of the Company in Australia, provided that such delegation would not relieve Chase of any responsibility to the Company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Chase AMP) for which neither Chase nor Chase AMP would be liable under the Existing Order (*e.g.* despite the exercise of reasonable care, loss due to Acts of God, nuclear incident, and the like).

[1] By letter dated March 1, 1991, counsel for applicant informed the staff of the Division of Investment Management that none of its investment company clients had, for the first time, on or after January 1, 1991, placed funds with applicant for custody in Australia with Chase AMP. In addition, counsel stated that applicant would not permit new investment company deposit accounts to be opened in Australia until the exemptive relief sought by the application is granted.

8. Chase's Existing Order requires that the custody agreements between Chase and any Company will provide that Chase will indemnify and hold a Company whose Securities are held pursuant thereto harmless from and against any loss which shall occur as the result of the failure of a foreign custodian holding the Securities to exercise reasonable care with respect to the safekeeping of the Securities to the same extent that Chase would be required to indemnify and hold the Company harmless if Chase itself were holding the Securities in New York. The indemnity provides financial support to contractual responsibility in addition to that afforded by the shareholders' equity of a foreign bank. The agreements of Chase with respect to Chase AMP will afford protection significantly beyond such indemnification. As set forth in Chase's Existing Order, the Bankers Blanket Bond which Chase currently maintains provides standard fidelity and non-negligent loss coverage with respect to securities which may be held in the offices of Chase's subsidiary banks and the offices of non-affiliated foreign banks which may be utilized as subcustodians by Chase. Chase intends to maintain such coverage so long as it is available at reasonable cost.

7. Under the Existing Order, Chase must warrant to each Company that the established procedures to be followed by each foreign bank holding the Company's Securities, in the opinion of Chase after due inquiry by it, afford protection for the Company's Securities at least equal to that afforded by Chase's established procedures with respect to similar securities held by Chase in New York. Chase, in selecting a subcustodian under the Existing Order, takes into consideration the financial strength of the subcustodian, its general reputation and standing in the country in which it is located, its ability to provide efficiently the custodial services required and the relative costs for the services to be rendered by it.

8. Chase has taken the foregoing factors into consideration in its selection of Chase AMP as subcustodian in Australia. Chase believes that Chase AMP has adequate financial resources to meet its contractual responsibilities as subcustodian of Chase and that it enjoys an excellent reputation in Australia. Chase submits that, as shown by the protections that are provided by the Existing Order and the other qualifications of Chase AMP, the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Condition:

The order requested in the application is conditioned on Chase's compliance with all terms of the Existing Order except those relating to shareholders' equity.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5783 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18026; 812-7666]

National Home Life Assurance Co., et al.; Application for Exemption

March 5, 1991.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: National Home Life Assurance Company ("National Home"), National Home Life Assurance Company Separate Account IV (the "Separate Account") and the Vanguard Variable Insurance Fund (the "Fund").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of a mortality and expense risk charge imposed under certain deferred variable annuity contracts called the Vanguard Variable Annuity Plan Contract (the "Contracts").

FILING DATE: The application was filed on July 25, 1990 and amended on February 22, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on March 29, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Applicants, c/o Michael Berenson, Esq., Jorden Schulte & Burchette, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington D.C. 20007.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3048, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. National Home is a stock life insurance company incorporated under the laws of the State of Missouri.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account currently has four subaccounts, each of which invests solely in a corresponding portfolio of the Fund, an open-end diversified investment company.

3. The Fund is a member of the Vanguard Group of investment Companies ("The Vanguard Group"). The Fund and the other funds in The Vanguard Group obtain at cost virtually all of their corporate management, administrative, shareholder accounting and distribution services through their jointly owned subsidiary, the Vanguard Group, Inc. ("Vanguard"). In Investment Company Act Release No. 11645 (February 25, 1981) ("Release 11645"), the Commission granted the exemptive relief necessary to implement this arrangement.

4. For the cost of administering and maintaining the Contracts there is an annual charge of $25 per Contract plus a charge, assessed daily, equal to an annual rate of .10% of the net asset value of the Separate Account. These charges are guaranteed not to increase for the life of the Contracts and represent reimbursement for only the actual administrative costs expected to be incurred over the life of the Contracts.

Pursuant to the terms of a participation agreement among Vanguard, the Fund and National Home, Vanguard has assumed responsibility for performing National Home's administrative duties under the Contract and has agreed to assume the expenses of administration. In exchange for its assumption of these duties and expenses, Vanguard will receive the payments discussed in the preceding paragraph which will not exceed the actual costs Vanguard will incur in performing these administrative duties. In the event that Vanguard's administrative duties under the agreement are terminated, the responsibilities assumed by Vanguard would revert to National Home.

5. There is no sales load imposed in connection with sales of Contracts. Vanguard, through its wholly owned subsidiary Vanguard Marketing Corporation, will be the sole distributor of the Contracts and will bear all expenses related to the distribution of such Contracts. As a member of The Vanguard Group, the Fund will participate in the payment of the distribution expenses of The Vanguard Group on the same basis as the other Funds in The Vanguard Group. Pursuant to the Vanguard Modified Formula which is described in the application and in Release 11645, the Fund currently imposes a charge of approximately .04% annually, which will never exceed .20%, to cover its share of the costs of distributing the Vanguard Group of Investment Companies. No part of this fee will be paid to National Home nor will National Home receive any other payments from either Vanguard or the Fund. Also, no payments will be made to Vanguard by National Home in connection with distribution of the Contracts. Other than the fixed annuitization fee described in the application, Vanguard will not receive any payments from National Home.

6. Applicants state that, as a member of The Vanguard Group, the Fund and Contract owners will receive the same benefits received by the other funds in the group. Those benefits are summarized in the application and were discussed in Release No. 11645. Also, according to Applicants, the distribution process with respect to the Contract is analytically virtually identical to that for which relief was granted in Release No. 11645. Vanguard will be the sole distributor of the Contract. Sales of the Contract will result in the sale of Fund shares and Vanguard will receive fees from the Fund for performing distribution services. As is the case with the other funds in The Vanguard Group, these distribution services will be performed internally at cost. Neither the Fund nor Vanguard will pay any external entity for these services. Therefore, Applicants believe that the relief afforded in Release No. 11645 is available in connection with the Fund's payment of distribution fees to Vanguard.

7. The Contract provides for a Mortality and Expense Risk Charge which will be deducted on a daily basis at rates whose annual equivalents and approximate allocation between mortality and expense risks are as follows:

Assets (in millions)	Mortality (percent)	Expenses (percent)	Total (percent)
First $250	.270	0.180	0.450
Next $250	.245	.155	.400
Next $250	.220	.130	.350
Next $250	.210	.115	.325
Next $250	.200	.100	.300
Next $250	.190	.085	.275
Over $1,500	.175	.075	.250

This charge is assessed daily and compensates National Home for the mortality and expense risks it assumes under the Contract. National Home guarantees that this charge will never increase.

8. The mortality risk assumed by National Home arises from its obligations to continue to make Annuity Payments under the Contract determined in accordance with the guaranteed annuity tables and other provisions of the Contract, regardless of how long each annuitant lives and regardless of how long all payees as a group live. National Home also assumes a mortality risk as a result of its guarantee of a minimum payment in the event the Annuitant dies prior to the Annuity Date. In addition, National Home assumes a risk that the charges for the administrative expenses may be insufficient to cover the actual cost incurred by National Home for providing Contract administrative services which it is ultimately responsible for, although initially, Vanguard has assumed responsibility for providing those services. If the charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will fall on National Home. Conversely, if the charge proves more than sufficient, the excess will be added to the surplus of National Home. Any surplus resulting to National Home from the mortality and expense charge can be used by National Home, at its discretion, for any business purpose.

9. National Home and the Separate Account represent that they have reviewed publicly available information regarding the aggregate level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the insurance industry taking into consideration such factors as current charge levels, the manner in which they are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon the foregoing, National Home and the Separate Account further represent that the mortality and expense risk charge under the Contract is within the range of industry practice for comparable contracts. National Home and the Separate Account represent that they will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

10. National Home has concluded that there is a reasonable likelihood that the distribution financing arrangements of the Separate Account will benefit the Separate Account and the Contract owners. National Home will maintain and make available to the Commission on request a memorandum setting forth the basis for this representation. National Home and the Separate Account further represent that the Separate Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any fund, formulate and approve any plan under rule 12b-1 of the 1940 Act to finance distribution expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5794 Filed 3-11-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB to review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission

DATES: Comments should be submitted on or before April 11, 1991. If you intend to comment but cannot prepare

comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Elizabeth Zaic, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, telephone: (202) 205–6629.
OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Application for Business Loan SBA Forms 4, 4–I, 4 sch A, 4 short, 4 Ex short.
Frequency: On occasion.
Description of Respondents: Applicants for an SBA Business Loan.
Annual Responses: 28,000.
Annual Burden: 554,325.

Title: SBI Counseling Evaluation.
Form No.: SBA Temp Form 1434.
Frequency: On occasion.
Description of Respondents: Recepients of Small Business Institute Counseling.
Annual Responses: 2,400.
Annual Burden: 800.

Elizabeth Zaic,
Deputy Director, Office of Administrative Services.
[FR Doc. 91–5812 Filed 3–11–91; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1361]

Revocation of the Restriction on the Use of United States Passports for Travel To, In, or Through Kuwait

Pursuant to the authority of section 211a of title 22 of the United States Code, Executive Order 11295 (31 FR 10603), and in accordance with § 51.73(c) of Title 22 of the Code of Federal Regulations, the passport restriction invalidating United States passports for travel to, in, or through Kuwait is hereby revoked.

While this action is being taken because armed hostilities have ceased in Kuwait, certain potential health and safety dangers will continue to exist.

The Public Notice shall be effective upon publication in the **Federal Register.**

Dated: March 6, 1991.
James A. Baker III,
Secretary of State.
[FR Doc. 91–5832 Filed 3–11–91; 8:45 am]
BILLING CODE 4710-08-M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Implementation of the Accelerated Tariff Elimination

AGENCY: Office of the U.S. Trade Representative.

ACTION: Clarification of articles under consideration for negotiations with the Canadian Government for accelerated tariff elimination.

SUMMARY: Section 210(b) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim any accelerated schedule for duty elimination that may be agreed to by the United States and Canada under FTA Article 401(5). A notice of articles under consideration for accelerated tariff elimination was published in the **Federal Register** of October 5, 1990. This notice is intended to clarify the tariff classification of certain products which were referred to in the notice of October 5, 1990.

DATE: Public comments are due by March 14, 1991.

Additional Information: Further information on this subject may be found in the **Federal Register** notice of October 5, 1990, Volume 55, Number 194, at pages 40964 through 40973. Inquiries regarding this notice or relating to the implementation of accelerated tariff elimination under the FTA should be directed to James H. Grossman, Director of Tariff Negotiations, Office of North American Affairs, Office of the U.S. Trade Representative, Room 501, 600 17th Street, NW., Washington, DC. 20506, telephone (202) 395–5663.

Requests for Comments: Comments supporting or opposing accelerated U.S. or Canadian duty elimination on articles specified in this notice will be accepted until March 14, 1991. Comments should by type-written and submitted in ten copies to Carolyn Frank, Executive Secretary, Trade Policy Staff Committee, Room 517, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Until further notice, no packages will be accepted for delivery at the USTR Building. All packages should be delivered to the New Executive Office Building, 725 17th Street, NW., room G–1. Business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

Nonconfidential submissions will be available for public inspection at the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Advice of the United States International Trade Commission: The United States International Trade Commission has provided its judgement as to the probable economic effect of accelerated elimination of United States duties on industries producing products like or directly competitive with the products specified in this notice.

Advice of the Private Sector Advisory Committees: Pursuant to section 103(a)(1) of the FTA Implementation Act, private sector advisory committees have provided their advice on the products specified in this notice.

Clarification of Articles Under Consideration in Negotiations: The **Federal Register** notice of October 5, 1990, listed in Annex I to that notice the subheadings of the Harmonized Tariff Schedule of the United States (HTS) that might be subject negotiations with Canada for accelerated duty elimination. For subheadings listed in Annexes I with an asterisk, only certain specified products covered by the subheadings would be considered for accelerated tariff elimination. A list of the specific products which would be considered was available upon request to the Office of the U.S. Trade Representative. Subsequent to the publication of that notice, in the course of discussions with the Government of Canada and in work by the U.S. International Trade Commission and the U.S. Customs Service, it was determined that certain of the specific products named in the supplemental list to Annex I were not properly classified in the indicated tariff subheadings listed in Annex I, and that those products were properly classified in tariff subheadings which were not included in Annex I.

In order to clarify the intention of the notice of October 5, 1990, that the specified products would be considered for accelerated tariff removal, such products are listed below with the tariff subheading in which they are properly classified.

HTS subheading	Article
2930.90.20	2-Aminothiophenol.
2933.10.37 or 2933.90.39.	Benzotriazol-ylotris (dimethylamino) 2-(H-benzotriazol-1-yl)-1,1,3,3-tetramethyl uronium hexafluorophosphate/ 2-(H-benzotriazol-1-yl)-1,1,3,3-tetramethyl uronium tetrafluoroborate.
4411.19	Prefinished and primed (hardboard) sidings in 16 ft. panels or 4 ft. x 8 ft. sheets.

Charles E. Roh, Jr.,
Assistant U.S. Trade Representative for North American Affairs.
[FR Doc. 91–5810 Filed 3–11–91; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended March 1, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47435.
Date filed: February 26, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 466 (Reso 003yy—Cargo rates from Syria).
Proposed Effective Date: April 1, 1991.

Docket Number: 47436.
Date filed: February 26, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 467 (Reso 084d—GIT fares from Europe to South Asian subcontinent).
Proposed Effective Date: April 1, 1991.

Docket Number: 47441.
Date filed: March 1, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 468 (Reso 003a—Increase fares from Papua New Guinea to Australia).
Proposed Effective Date: April 1, 1991.

Docket Number: 47442.
Date filed: March 1, 1991.
Parties: Members of the International Air Transport Association.
Subject: RAC/Reso/366 dated February 14, 1991. Finally Adopted Resolutions, R–1 to R–25.
Proposed Effective Date: April 1, 1991.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–5727 Filed 3–11–91; 8:45 am]
BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 1, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47437.
Date filed: February 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 26, 1991.
Description: Application of Air Charter (SAFA) pursuant to section 402 of the Act and Subpart Q of the Regulations, request a foreign air carrier permit authorizing it to provide charter air transportation of persons, property and mail between France and the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–5728 Filed 3–11–91; 8:45 am]
BILLING CODE 4910-62-M

[Order 91–3–3 Docket No. 47445]

Order Instituting Japan Charter Authorization Proceeding (1991/1992)

AGENCY: Office of the Secretary, DOT.

ACTION: Institution of the Japan Charter Authorization Proceeding (1991/1992).

SUMMARY: U.S. air carriers can operate 400 to 450 one-way charter flights per year between the United States and Japan under the terms of a 1982 Interim Aviation Agreement and a 1989 Memorandum of Understanding. The precise number of charters available to U.S. carriers depends upon the number of charters operated by Japanese carriers in the preceding year. Up to 300 of the charters may be operated between the United States and Tokyo/Osaka. The aeronautical authorities of each country allocate the charter flights among their carriers.

The Department has decided to institute the Japan Charter Authorization Proceeding (1991/1992), to determine how these flights should be allocated among U.S. carriers for the October 1, 1991–September 30, 1992 period, and how many charters should be placed in a first-come, first-served pool for *od hoc* charters for the same period. The Department is inviting applications from interested U.S. direct air carriers that currently hold the requisite Department authority to perform service to Japan and have the necessary aircraft to operate such service. The Department states that it may consider using simplified procedures for this proceeding rather than setting the case before an administrative law judge and will announce the appropriate procedures after receipt of applications.

DATES: Applications (including service proposals and supporting information), petitions for leave to intervene, and petitions for reconsideration of Order 91–3–3 are due March 21, 1991; answers shall be due April 1, 1991.

ADDRESSES: Applications, supporting information, petitions for leave to intervene, and petitions for reconsideration should be filed in Docket 47445, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590, and should also be served on Mr. Robert Goldner, room 9216, and the U.S. Air Carrier Licensing Division (P–45.1), room 6412 at the same address.

Dated: March 4, 1991.
Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 91–5753 Filed 3–11–91; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 91–017]

Towing Safety Advisory Committee Subcommittee on OPA–90 Implementation; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Oil

Pollution Act–1990 (OPA) subcommittee to the Towing Safety Advisory Committee (TSAC). The meeting will be held on Tuesday, April 2, 1991 in room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 1 p.m. and end at 4 p.m. Attendance is open to the public. The agenda is as follows:

1. Call to order.
2. Opening remarks.
3. Identification of projects where TSAC assistance would be valuable to the Coast Guard. Tentative projects include:
   a. Study on tanker navigation safety standards,
   b. Overfill and tank level or pressure monitoring devices,
   c. Periodic gauging of plating thickness,
   d. National planning and response system,
   e. Tank vessel manning,
   f. Tug escort requirements.

The subcommittee was formed to provide data and information to the Coast Guard on various technical aspects of the OPA. With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at anytime; however, to ensure distribution to each Committee member, 10 copies of the written materials should be submitted to the Executive Director no later than March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, Towing Safety Advisory Committee, room 2412, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1406.

Dated: March 6, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–5755 Filed 3–11–91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Environmental Impact Statement; Third Parallel Runway, Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport, Tulsa, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Tim Tandy, Airport Environmental Specialist, ASW–611E, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611. Telephone (817) 624–5859.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the Tulsa Airports Improvement Trust, will prepare an EIS for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport. The primary components of the proposed action would consist of the following items: (1) A 9,000-foot by 150-foot parallel air carrier runway, with high intensity runway lights (HIRL) and an instrument landing system (ILS), located approximately 6,475 feet east of the existing east runway; (2) an associated 9,000-foot by 75-foot taxiway with high intensity taxiway lights (HITL); (3) a 4,300-foot by 75-foot crossover taxiway and a 3,300-foot by 75-foot crossover taxiway with HITL. The Tulsa Airports Improvement Trust intends to request Federal Airport Improvement Program funds for development of the proposed airport.

Alternatives to the proposed action include no action, extending existing Runway 17L/35R to the north or south, and extending existing Runway 17R/35L to the south.

An Environmental Assessment was prepared in 1988 for a proposed third parallel runway and an associated Public Hearing was held on June 12, 1988. However, subsequent to preparation of that document and in response to certain concerns expressed, the runway location was shifted several hundred feet to the east to avoid and reduce some of the impacts. As a result of the significant shift in runway location, the FAA determined that preparation of an EIS would be the proper course of action.

The FAA intends to consult and coordinate with Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. Scoping for the EIS will include a meeting to be held in the Conference Room, Second Floor, Terminal Building, Tulsa International Airport, Tulsa, Oklahoma at 10 a.m. on March 15, 1991, to solicit input from agencies and identified interested parties concerning the range of actions, alternatives and impacts to be considered. A notice will be placed in local newspapers of general circulation announcing the intent to prepare an EIS and soliciting comments on the scope of the study. While no formal scoping hearing is planned, written comments on the scope of the EIS will be considered throughout the process.

Issued on: March 1, 1991.

Otis T. Welch,

Manager, Airports System Capacity and Planning Branch.

[FR Doc. 91–5785 Filed 3–11–91; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE–91–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 1, 1991.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 6, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26477.
Petitioner: Alaska Mountain Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow the pilot employed by petitioner to perform the preventive maintenance function of removing and/or replacing the passenger seats of aircraft used in part 135 operations.

Docket No.: 26467
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 135.152(b).
Description of Relief Sought: To allow U.S. regional airlines to operate the Shorts 330 aircraft in revenue service until May 1, 1991, without requiring those aircraft to be retrofitted with flight data recorders.

Dispositions of Petitions

Docket No.: 25896
Petitioner: Allen Gerbino.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To allow petitioner to remove, replace, reinstall, and store main rotor blades for his Hughes 500, Model 300 series helicopters. Denied, February 25, 1991, Exemption No. 5279.

Docket No.: 26353.
Petitioner: British Aerospace Commercial Aircraft Limited/Air Wisconsin.
Sections of the FAR Affected: 14 CFR 121.312(a)(2).
Description of Relief Sought/ Disposition: To amend Exemption No. 5243, which allows operation of three airplanes that do not fully comply with the heat release and smoke density requirements or interior materials as specified in § 121.312(a)(2). The exemption allows the operation of three airplanes, whose dates of manufacture are after August 20, 1990, with certain interior components that do not comply with the heat release and smoke emission requirements of § 121.312(a)(2). The amendment adds two additional airplanes to the exemption. Grant, February 6, 1991, Exemption No. 5243A

Docket No.: 26481.
Petitioner: Texas American Flight Academy, Inc.
Sections of the FAR Affected: 14 CFR 141.91(a).
Description of Relief Sought/ Disposition: To allow petitioner to conduct part 141 pilot training at a facility located in Ennis, Texas, which is approximately 52 miles from its main operations base in McKinney, Texas. Grant, February 25, 1991. Exemption No. 5280.

Docket No.: 022NM.
Petitioner: MarkAir
Sections of the FAR Affected: 14 CFR 25.855 (c) and (e).
Description of Relief Sought/ Disposition: To allow certification and operation of two de Havilland DHC–8–311 airplanes in certain combination passenger/cargo configurations without providing firefighting access into the cargo compartments. Grant, February 8, 1991, Exemption No. 5276.

[FR Doc. 91–5784 Filed 3–11–91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration, DOT.

Environmental Impact Statement: City of Alexandria, VA

AGENCY: Federal Highway Administration

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent issued on September 16, 1988, to prepare an environmental impact statement for a proposed highway project to construct a new interchange with Interstate 95 at the existing Clermont Avenue underpass in the City of Alexandria, Virginia. The document was also to address a connector(s) for Eisenhower Avenue to Duke Street.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone (804) 771–2380.

SUPPLEMENTARY INFORMATION: When the Notice of Intent was published, there was reason to believe that one or more of the possible alternatives may significantly affect the environment. However, after exhaustive environmental studies of all alternatives under consideration, it has been determined that none of the alternatives under consideration will have a significant impact on the environment. Therefore, in accordance with Federal regulations, the proposed project is considered a Class III Action, and the environmental impacts will be documented with an Environmental Assessment (EA).

Don W. Holloway,

Acting District Engineer, Richmond, Virginia.

[FR Doc. 91–5759 Filed 3–11–91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of availability of report on closed meetings of the Art Advisory Panel.

SUMMARY: The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552(b), the Government in the Sunshine Act; and Treasury Directive 21–03 section 8 (1–29–87): A report summarizing the closed meeting activities of the Art Advisory Panel during 1990, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224, Telephone (202) 566–3770, (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW. room 224, Washington, DC 20024, Telephone (202) 252–8128, (Not a toll free telephone number).

Fred T. Goldberg, jr.,

Commissioner.

[FR Doc. 91–5824 Filed 3–11–91; 8:45 am]

BILLING CODE 4830–01–M

Trade Show; IRS Electronic Tax Filing National Conference and Exhibition

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of IRS's Electronic Tax Filing National Conferences and Exhibitions for 1991.

SUMMARY: The Electronic Filing Systems Office of the Internal Revenue Service (IRS) is offering three IRS Electronic Tax Filing National Conferences and Exhibitions in 1991. Dates and locations for the conferences are: July 16–17 in Arlington, Virginia; August 7–8 in Las Vegas, Nevada; and August 29–30 in New Orleans, Louisiana.

The conference and exhibition will provide a forum, in a trade show environment, on the latest information about electronic filing of federal tax returns. It will also be an opportunity to view the latest in computer hardware and software used for electronic tax filing.

Vendors of computer hardware, software, and other services related to electronic filing of tax return data are invited to exhibit their products during these two-day shows.

Seminars will be provided for new and experienced participants in electronic tax filing. Topics covered in the seminars will include the electronic filing of Individual returns and electronic/magnetic media filing of Fiduciary, Partnership, Employee Pension Plan, and the Form 1099 series of information returns. Attendance at these seminars will qualify for Continuing Professional Education (CPE) credits.

Electronic filing participants who currently have an application on file with IRS, will receive a mail-out that details the specifics of these shows.

DATES: July 16–17 in Arlington, Virginia; August 7–8 in Las Vegas, Nevada; and August 29–30 in New Orleans, Louisiana.

ADDRESSES:

Hyatt Regency at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, VA 22202.

Bally's Casino Resort, 3545 Las Vegas Boulevard, Las Vegas, NV 89109.

Hyatt Regency at Louisiana Superdome, Poydros at Loyola Avenue, New Orleans, LA 70140.

FOR FURTHER INFORMATION CONTACT: Anyone interested in being an exhibitor may obtain an Exhibitor Prospectus by contacting: Rodney K. West (301) 773–1881, RP Exhibit Service, Inc., 1761 Olive Street, Capitol Heights, MD 20743, FAX #301–773–8742.

Questions about attending the shows should be directed to the Electronic Filing Coordinator at your local IRS district office.

Mary Findlay,

Acting Chief, Marketing and Quality Assurance Section.

[FR Doc. 91–5825 Filed 3–11–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 48

Tuesday, March 12,

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Tuesday, March 19, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public: The Board will consider the following:

(1) Housing Finance Directorate Report: Update on comments received on Community Support Requirements;
(2) Federal Home Loan Bank System Financial Report;
(3) Office of Finance Monthly Report;
(4) Federal Home Loan Bank System Monthly Membership Report;
(5) FHFB personnel update; and
(6) Report on Board's meeting with Federal Home Loan Bank Chairmen and Vice-Chairmen and meeting with Affordable Housing Advisory Councils' representatives.

Portions Closed to the Public: The Board will consider the following:

(1) Quarterly Dividend Briefing;
(2) Funds Management Issues;
(3) Bank Examination Division Report;
(4) Federal Home Loan Bank Presidents Compensation Study;
(5) Federal Home Loan Bank System Membership Application Policy and Procedures;
(6) Affordable Housing Financing;
(7) Federal Home Loan Bank Director Financial Disclosure;
(8) Briefing from a Federal Home Loan Bank on Membership Outreach, Budget Policy and Operations; and
(9) Board Management Issues.

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Leonard H.O. Spearman, Jr., Executive Secretary to the Board, (202) 408–2574.

J. Stephen Britt,

Executive Director.

[FR Doc. 91–5977 Filed 3–8–91; 3:49 pm]

BILLING CODE 6725–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–08]

TIME AND DATE: Friday, March 15, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 22–52 (Peanuts)—briefing
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: March 5, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5906 Filed 3–8–91; 2:28 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–08A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published elsewhere in today's **Federal Register** is a document concerning this meeting.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. Friday, March 15, 1991.

AMENDMENT TO THE AGENDA:

7. Commission vote to amend the Commission's FY 1991 budget approved December 20, 1989, totalling $42,430,000 to conform to the present allocation of funds directed November 20, 1990, totalling, $39,533,000.

In conformity with 19 CFR 201.37(b), Commissioners, Lodwick, Rohr, and Newquist determined that commission business required the change in subject matter of the meeting of March 15, 1991 by the addition of Agenda Item 7, and affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Brunsdale voted in the negative.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: March 7, 1991.

Kenneth Mason,

Secretary.

[FR Doc. 91–5910 Filed 3–8–91; 2:27 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–09]

TIME AND DATE: Monday, March 25, 1991 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1 Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 701–TA–302 (Final) and 731–TA–454 (Final) (Fresh and Chilled Atlantic Salmon from Norway)—briefing and vote
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: March 7, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5907 Filed 3–8–91; 2:26 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–10]

TIME AND DATE: Wednesday, March 27, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1 Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Invs. 701–TA–307 and 731–TA–496/511 (Preliminary) (Ball Bearings, Mounted and Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, The Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: March 7, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5908 Filed 3–8–91; 2:26 pm]

BILLING CODE 7020–02–M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:
March 22, 1991, 8:30 a.m. Closed Session
March 22, 1991, 9:00 a.m. Open Session
PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.
STATUS:
Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.
MATTERS TO BE CONSIDERED March 22: Friday, March 22, 1991.

Closed Session (8:30 a.m.–9:00 a.m.)

1. Minutes—February 1991 Meeting
2. Alan T. Waterman Award
3. Grants and Contracts

Open Session (9:00 a.m.–11:30 a.m.)

4. Chairman's Report
5. Minutes—February 1991 Meeting
6. Director's Report
7. Presentation on Social Science Research on Organizations
8. Other Business

Thomas Ubois,
Executive Officer.
[FR Doc. 91–5867 Filed 3–8–91; 8:48 am]
BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 19, 1991.
PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.
STATUS: Open.
MATTERS TO BE CONSIDERED:
5453—Highway Special Investigation Report: Emergency Fire Apparatus.
NEWS MEDIA CONTACT: Ted Lopatkiewicz 383–6600.
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.
Dated: March 8, 1991.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 91–6061 Filed 3–8–91; 2:29 p.m.]
BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 11, 18, 25, and April 1, 1991.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Open and Closed.
MATTERS TO BE CONSIDERED:

Week of March 11

Thursday, March 14

9:30 a.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analysis (CNWRA) and Activities of the NRC in the HLW Program (Public meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) a. Access Authorization Program for Nuclear Power Plants (Tentative) (postponed from March 7)

Friday, March 15

10:00 a.m.
Briefing on Agreement State Compatibility Issues (Public meeting)

Week of March 18—Tentative

Friday, March 22

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of March 25—Tentative

Thursday, March 28

10:00 a.m.
Periodic Briefing on Definitions of Releases Into Containment and Policy on the Use of the Updated TID–14844 by Existing Plants (Public meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of April 1—Tentative

Wednesday, April 3

10:00 a.m.
Periodic Briefing on Progress on Resolution of Generic Safety Issues (Public meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings Call (Recording)—(301) 492–0292
CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.
Dated: March 7, 1991.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 91–5970 Filed 3–8–91; 2:27 p.m.]
BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, March 26, 1991.
PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street NW., Washington, DC.
STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately).
MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. President's Report
2. Finance and Insurance Project in Bolivia
3. Finance Project the Asia Pacific Growth Fund
4. Policy Briefings (3)
   (a) Support of reconstruction of Kuwait
   (b) Export Processing Zone/Togo
   (c) Credit Reform
5. Claims Report
6. Finance and Insurance Reports
7. Approval of 1/30/90 Minutes (Closed Portion)

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of 1/30/90 Minutes (Open Portion)
2. Notice to Board of Changes to OPIC Country List
3. Information Reports
   (a) Political Risk Insurance Issued for 1st Qtr FY 91
   (b) Country Concentration
   (c) Financial Statements as of January 31, 1991
   (d) Report on Smaller Business and Cooperative Activities for 1st Qtr FY 1991
   (e) U.S. Benefits and Less Developed Country Developmental Effects of Projects Assisted by OPIC for 1st Qtr FY 1991
4. Reconfirmation of meetings schedule for remainder of 1991

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457–7007.
Dated: March 7, 1991.
Dennis K. Dolan,
OPIC Corporate Secretary.
[FR Doc. 91–5950 Filed 3–8–91; 2:28 pm]
BILLING CODE 3210–01–M

federal register

Tuesday
March 12, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 158

Passenger Facility Charges; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Notice No. 91-4A; Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces an extension of the comment period on the Passenger Facility Charges Notice of Proposed Rulemaking (NPRM) (56 FR 4678; February 5, 1991). The comment period is extended from March 7, 1991, until March 18, 1991. The extension responds to a joint request from the Air Transport Association of America (ATA), American Association of Airport Executives, (AAAE), and the Airport Operators Council International (AOCI). The extension is needed to permit these organizations additional time to develop joint comments responsive to the NPRM.

DATES: The comment period is being extended from March 7, 1991 to March 18, 1991.

ADDRESSES: Comments on the NPRM should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26385, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION: On February 5, 1991, the FAA issued Notice No. 91-4, titled Passenger Facility Charges. This proposal is intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

By letter dated March 5, 1991, the ATA, AAAE, and AOCI requested that the comment period be extended by 10 days to March 18, 1991. The request states that the organizations are currently in the process of developing joint comments responsive to the NPRM, that the complexity of the discussions has delayed finalization of their comments, and that their discussions will be concluded in the next several days. They further assert that their comments will result in a more workable, efficient rulemaking that will benefit DOT/FAA, airlines, airports, and the traveling public.

Notice No. 91-4 stated that because of the 180-day statutory deadline for completion of this rulemaking by May 3, 1991, the FAA would not be able to entertain requests for extensions of the comment period. However, in view of the likelihood that these parties will provide additional substantive information which will be helpful in formulating an effective final rule, the FAA agrees that it would be in the public interest to grant their request. Accordingly, the comment period is being extended to March 18, 1991, to afford all interested persons the opportunity to comment on this notice.

Issued in Washington, DC on March 7, 1991.

Lowell H. Johnson,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 91-5767 Filed 3-7-91; 11:32 am]

BILLING CODE 4910-13-M

federal register

Tuesday
March 12, 1991

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Electric Motor Assemblies; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

RIN 1219-AA81

Electric Motor Assemblies

AGENCY: Mine Safety and Health Administration (MSHA), Labor.
ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Applications for approval or extensions of approval submitted two years after the effective date of the final rule would be required to be in compliance with subpart J of part 7. Those motors that incorporate features not specifically addressed in subpart J of part 7 would continue to be evaluated under part 18.

DATES: Written comments must be received on or before June 14, 1991.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background of Proposed Rule

On June 22, 1988, MSHA implemented new procedures and requirements for testing and approving certain products used in underground mines (53 FR 23486). As explained in that rulemaking, products approved under part 7 are required to be tested by the applicant or tested by a third party selected by the applicant. All testing is to be conducted using MSHA-specified test procedures with certification of test results by the applicant. In addition, the Agency has the right to observe all product testing. When requesting approval, the applicant is required to submit certain product information. This includes, for example, drawings and specifications to document compliance with the technical requirements. Based upon an evaluation of the technical documentation, MSHA observations of product testing, and a review of the certification statements, MSHA will issue an approval or notice denying approval of the product.

Once a product is approved under part 7, an approval holder is required to inspect or test critical characteristics of the product as part of its quality assurance program. Under the provisions of subpart A, the approval holder must report to MSHA any knowledge that a product has been distributed with critical characteristics not meeting required specifications. Upon receiving such a report, MSHA works with the approval holder to implement appropriate corrective action. As critical characteristics are features of a product which, if not built to specification, can create a hazard, immediate notification is necessary. MSHA performs periodic audits of products approved under part 7 to ensure that they are being manufactured as approved. If a product fails to meet the technical requirements of part 7 or creates a hazard related to this use, MSHA will take immediate action to address the problem, including revocation of the approval if necessary. Although MSHA's experience with existing subparts to part 7 is limited, primarily due to delayed effective dates, this transition has been positively received by manufacturers and applied without complications.

As a new subpart J to part 7, this proposal specifies the technical requirements and test procedures for the approval of electric motor assemblies. This proposal is derived from existing part 18 and MSHA policies. It would provide objective criteria for applicant or third party testing and replace subjective technical requirements with performance-oriented tests. The proposed tests are based on MSHA's engineering experience with the subjective criteria in the existing approval requirements. They are not intended to introduce more stringent testing methods, but rather to more explicitly state the tests used in MSHA's current testing program which have proven to be effective. Under the proposal, manufacturers would use these test procedures to measure, evaluate, and certify compliance of their product with the requirements of proposed subpart J of part 7 in order to receive an MSHA approval.

The proposal is consistent with the Federal Mine Safety and Health Act of 1977 (Mine Act), Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The proposal is issued under the authority of sections 101 and 508 of the Mine Act (30 U.S.C 811 and 957).

II. Paperwork Reduction Act

This proposal contains information collection requirements in § 7.303. These paperwork requirements have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the proposed paperwork provisions should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSHA (see address at the end of this discussion). The respondents would be mine equipment manufacturers. The burden hour estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collected information. In each instance, the resultant information collected would be used by MSHA to assess compliance with the proposed requirements. The information collection requirements contained in the proposal are discussed below.

Proposed § 7.303 would require applicants seeking approval of an electric motor assembly to submit an application for approval. MSHA estimates that there would be 50 applications submitted per year, each requiring 1.5 hours to prepare. The estimated burden hours are 75.

Existing § 7.4(a) requires records of test results and procedures that must be retained for at least 3 years. Standard testing protocols used by the manufacturing community include the keeping of records of product testing; therefore, no additional burden hours are assigned to this requirement.

Existing § 7.7(d) requires applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that under proposed subpart J manufacturers would submit 40 reports per year requiring 15 minutes per report. Estimated burden hours are 10. The proposal would require applicants to maintain records on the distribution of each product bearing an approval marking as set forth in § 7.7(c). This provision does not specify the type of record, and MSHA believes applicants will use existing sales record systems to comply; therefore, no burden hours are assigned to this requirement.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Diana Rowen, Desk Officer for MSHA, room 3001, New Executive Office Building, Washington, D.C. 20503.

III. Discussion of Proposed Rule

The following section-by-section analysis discusses each proposed provision to subpart J of part 7 and each proposed revision to part 18. All part and section references are to title 30 of the Code of Federal Regulations (30 CFR).

A. Section-by-Section Discussion of Part 7

Section 7.301 Purpose and Effective date.

This section, derived in part from existing § 18.1, would revise and simplify the statement of purpose and would require that certain electric motor assemblies be approved under part 7. The proposed rule would establish the specific requirements for approval of explosion-proof motor assemblies intended for use on-board approved equipment. Those motor assembly designs that contain devices not provided for under the proposed subpart such as devices for ventilation, pressure relief and drainage would continue to be evaluated under existing part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also be addressed under part 18. These designs are not being covered under this subpart because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

MSHA proposes a two-year phase-in period for the implementation of this subpart. This two-year phase-in period was chosen to allow industry time to develop testing facilities. MSHA specifically requests comments on the adequacy of this phase-in period. During the phase-in period, MSHA would accept applications for certification and extension of certification under existing part 18 or applications for approval under this proposed subpart. After two years, all motor assemblies submitted for approval, except those with designs not covered under this proposed subpart, would be required to be submitted under this subpart and meet its requirements.

Section 7.302 Definitions.

The following definitions apply to the approval of electric motor assemblies. Most are derived from existing § 18.2, although some are new. In order to address the specific requirements for motor assemblies some of these definitions have been modified. All of these definitions are designed to clarify the requirements of subpart J.

Afterburning. The proposal would define the combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure as afterburning. This definition would clarify the definition in § 18.2 by stating that afterburning is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion. This phenomenon is characterized by the development of secondary pressure peaks following a negative or zero pressure at the termination of the preceding pressure peak.

Cylindrical joint. The proposal would identify a joint comprised of two contiguous, concentric, cylindrical surfaces as a cylindrical joint. This definition would be the same as that in § 18.2.

Explosion-proof enclosure. The proposal would modify the existing definition in § 18.2. It defines an explosion-proof enclosure as a metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 and that is constructed to withstand the explosion tests of § 7.306. This definition would be modified to be specific to electric motor assemblies as this subpart applies only to motor assemblies.

Fastening. This definition would include a bolt, screw or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure. Although the definition is new, it reflects the items included as fastenings in existing § 18.32.

Flame-arresting path. This definition would identify two or more adjoining or adjacent surfaces between which the escape of flame is prevented as a flame-arresting path. It is the same as that contained in § 18.2.

Internal free volume (of an empty enclosure). The proposal would identify the internal free volume of an empty enclosure as that volume remaining after deducting the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute a flame-arresting path. This definition is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. While the definition is new, it retains the interpretation of "volume of empty enclosure" currently used for the classification of construction requirements contained in existing § 18.31.

Motor assembly. This new definition defines a motor assembly as the winding compartment including a conduit box when specified. It would also clarify that the motor assembly would be comprised of one or more explosion-proof enclosures. This definition describes the typical arrangement currently used for motor assemblies in underground mines.

Plane joint. This definition would identify a plane joint to be a joint comprised of two adjoining surfaces in parallel planes. It is the same as that contained in § 18.2.

Step (rabbet) joint. This definition is derived from § 18.2. It would retain its existing meaning and specify a step or rabbet joint to be a joint comprised of two adjoining surfaces with one or more changes in direction between the inner and outer edges. Examples of a step joint would be one composed of a cylindrical portion and a plane portion or one composed of two or more plane portions.

Stuffing box. This new definition would identify an entrance that has a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. This definition would maintain the definition in existing § 18.2 that a threaded joint is a joint consisting of a male and a female-threaded member, both of which are the same type and gauge.

General definitions such as "applicant," "approval," and "post-approval product audit" are not included in this subpart. They are defined in the general provisions of subpart A of part 7.

Section 7.303 Application requirements.

Under the proposed rule, derived from existing § 18.6(a), an application for approval of a subpart J motor assembly would be required to contain sufficient information to document compliance with the technical requirements of subpart J. The application would be accompanied by a composite drawing or drawings showing the design specifications for the motor assembly. For clear identification, each drawing would be required to be titled, dated, and numbered and include the latest revision number. A sample of a composite drawing would be available upon request from the Approval and Certification Center, Industrial Park Road, Dallas Pike, Triadelphia, West Virginia 26059.

Section 7.304 Technical requirements.

This section would revise and update the existing technical requirements for the approval of motor assemblies. The proposed technical requirements for the approval of motor assemblies are derived from the existing requirements of part 18.

Paragraph (a) is derived from existing § 18.47 and would specify the maximum voltage rating as 4160 volts which is the voltage limitation for machines approved under part 18.

Paragraph (b) is derived from existing § 18.23 and would limit the maximum temperature of the external surfaces of the motor assembly to 150 °C (302 °F) when operated at the manufacturer's specified ratings, which would be considered the normal operating conditions referred to in § 18.23. This is to prevent the thermal ignition of coal dust.

Paragraph (c) is derived from existing § 18.34 which requires the clearance between live parts and casings to be sufficient to minimize the possibility of arcs striking the casings. The proposal would establish specific minimum clearance distances based upon the circuit voltage of the live parts. These minimum clearances are listed in table J–1. The minimums would be applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These proposed minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center. These clearances would clarify existing requirements and would not result in additional costs to manufacturers or impose new requirements.

Paragraph (d) of § 7.304, derived from existing § 18.34(a)(4), would not allow the use of parts such as bearings and seals for flame-arresting paths because they can become worn during the motor operation and therefore cause the explosion-proof integrity of the enclosure to be lost. Paragraph (e), derived from existing § 18.34(a)(8), would add O-ring grooves to the types of grooves to be deducted when determining the width of the flame-arresting paths. This change is consistent with existing MSHA policy that addresses the use of O-ring grooves. Paragraph (f), derived from existing § 18.34(a)(3), would only allow an outer bearing cap to form part of a flame-arresting path if it houses the bearing. A bearing cap that does not house the bearing is not essential for the motor operation and could inadvertently be removed from the motor assembly. If the bearing cap were part of the flame-arresting path, its removal would cause the motor assembly to lose its explosion-proof integrity.

The design requirements of paragraph (g) are derived from existing §§ 18.28, 18.29, 18.31 through 18.34 and current policy. Paragraph (g)(1), derived from existing § 18.31(a)(1), would require the motor assemblies to be constructed of metal, designed to withstand a minimum internal pressure of 150 pounds per square inch, gauge (psig), to have castings free from blow holes and to be explosion-proof as determined by the tests of § 7.306. These requirements would ensure that a motor assembly would withstand an internal methane explosion.

Proposed § 7.304(g)(2), derived from existing § 18.31(a)(2), would establish the static pressure test requirements of § 7.307 as the minimum performance level for welded joints forming an enclosure. Submitting an enclosure to this performance test would be an alternative to welding in accordance with, or exceeding, American Welding Society (AWS) standard D14.4–77. Existing § 18.31(a)(2) states that these welds are to be made in accordance with AWS standards, with no specific standard identified. MSHA policy has been to accept welds made in accordance with AWS D14.4–77.

Paragraph (g)(3), derived from existing § 18.31(a)(3), would limit the magnesium content of external rotating parts constructed of aluminum alloys a 0.6 percent. Existing § 18.31(a)(3) specifies this magnesium limit to be 0.5 percent. The Agency developed a policy approximately 20 years ago allowing a 0.6 percent magnesium content based upon experimental data demonstrating this value to be within the range of permissible safety limits. Paragraph (g)(3) is also derived from existing § 18.29, and would require that all non-metallic rotating parts be provided with a means to prevent an accumulation of static electricity. This is to prevent a build-up of a static charge that could produce an incendive spark or arc.

Proposed § 7.304(g)(4), derived from existing § 18.31(a)(5), would require threaded covers and mating parts to be designed with Class 1A and 1B coarse, loose fitting threads. These are thread classifications from American National Standards Institute (ANSI) ANSI B1.1–1982. This provision would retain the requirement contained in existing § 18.31(a)(5); however, the classification terms (Class 1A and 1B) have been updated to reflect current terminology. The rule is still designed to minimize binding of threads. In addition, as in § 18.31(a)(5), the cover would be required to be secured against loosening.

Paragraph (g)(5), derived from existing § 18.33, would specify requirements for the planarity, surface finish, and preparation of all flame-arresting path surfaces. These requirements are important because they relate to maintaining the maximum clearances between flame-path surfaces to prevent the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(6), derived from existing § 18.34(c), would specify clearance requirements between laminations and end rings for laminated stator frames. This also addresses hazards associated with the escape of flames and/or hot gases resulting from an internal explosion.

Paragraph (g)(7) of § 7.304 is derived from existing § 18.32(b) and would require locking devices to be provided for all fastenings securing parts which form flame-path fits. The proposed rule would allow alternatives to lockwashers that meet the lockwasher equivalency test in § 7.308. The lockwasher equivalency test of § 7.308 is proposed to provide an objective means of evaluating devices as currently permitted under existing § 18.32(b). Paragraph (g)(8), which is derived from existing § 18.32(c), would require all fastenings that hold a flame-path part to be of uniform size if possible. This is intended to preclude improper assembly that may result in insufficient thread engagement or bottoming of the fastening.

Paragraph (g)(9), derived from § 18.32(d) would require that holes be threaded deep enough so the fastenings would not bottom if the locking device is omitted. Paragraph (g)(10), which is also derived from existing § 18.32(d) and § 18.34(a)(9), would require that holes for fastenings not penetrate to the interior of the enclosure except as specified. This would prevent the existence of a through hole from the interior of the enclosure to the exterior through which flames and/or hot gases could escape in the event that a fastening were inadvertently omitted. Holes made through motor casings for bolts, studs or screws to hold parts that are essential for the motor operation would be allowed.

Paragraph (g)(11) of § 7.304, derived from existing § 18.34(b), would specify requirements for the assembly of pole pieces to the frame of direct current motor assemblies including the use of shims during assembly of the pole pieces. The pole bolts are necessary to maintain the pole pieces in the frame. The proposed rule would require the total thickness of the shims to be specified, if used. This specification is required to determine the adequacy of the bolt engagement in the pole pieces. The proposed rule also would require the shim assembly to meet the same requirements as the pole piece when mounted to the frame.

Paragraph (g)(12) would allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped to the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18 requirements, current policy, based upon field experience, evaluation and testing by MSHA, permits their use. This provision would allow correction of damaged threads for fastenings securing flame-path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion.

Paragraph (g)(13) of § 7.304, derived from existing § 18.32 (e), would clarify the requirement for a minimum of ⅛" of stock at the bottom of each blind hole by identifying the subject holes as those that could penetrate into the interior of the explosion-proof enclosure. This requirement would provide protection against failure of the enclosure surface beneath the blind hole in case of fastenings not being present in the holes.

Paragraph (g)(14), derived from existing § 18.32(f), would clarify the requirement that fastenings hold only parts that are essential for maintaining the explosion-proof integrity of the motor or necessary for the operation of the motor. This would ensure the proper thread engagement necessary to maintain the explosion-proof integrity of the enclosure. The proposal would also retain the requirement that the same fastenings not be used for making electrical connections. This would address the concern that the electrical energy could cause the connection to loosen or the hardware to deteriorate.

Paragraph (g)(15), derived from existing § 18.29(c), would clarify the requirements for through holes in explosion-proof enclosures. Although all through holes are required to be plugged, the plug for holes where future access is necessary would only have to be spot welded or brazed, allowing for removal. However, plugs in through holes not requiring future access would have to be continuously welded all around for permanent assembly. The proposed rule also would require removable plugs to meet the flame-arresting path requirements of proposed § 7.304 (g)(19). Figure J–1 in the appendix illustrates the alternate methods of securing the plug.

Paragraph (g)(16) is new and would specify the acceptable location of O-rings in a flame-arresting path. Although not addressed in existing part 18, current policy specifies these locations when O-rings are installed to permit checking of flame-path fits without interference from O-rings. This proposed requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix are included to clarify the required locations for O-rings.

Paragraph (g)(17) is new and would set requirements for the mating parts of a pressed fit. Although not addressed in existing part 18, these requirements are current policy developed to define pressed fits. A pressed fit would have to meet minimum interference and length requirements. These requirements are intended to ensure the fit is sufficient to maintain the explosion-proof integrity of the motor assembly.

Paragraph (g)(18) of § 7.304, derived from existing § 18.31(a)(5), would require threaded joints to meet the applicable flame-path requirements of proposed § 7.304 (g)(19). This would address the hazards associated with the expulsion of flames and/or hot gases along these surfaces.

Paragraph (g)(19) would reference table J–2 and footnotes that specify the design requirements for flame-paths based on the volume of the empty enclosure. These provisions repeat requirements derived from existing § 18.31(a)(6), with a few clarifications and alternatives explained below.

Under the maximum fastening spacing for joints, portions of which are in different planes, the specification of 8 inches with a minimum of 4 fastenings would be added. This proposal would provide an objective requirement to replace the part 18 requirement that each application be evaluated individually. MSHA's experience with explosion-tested designs indicates that these minimum requirements would provide a design adequate to maintain the explosion-proof integrity of the enclosure.

Footnote 4 of table J–2, derived from existing § 18.34(d), would specify alternate flame-path dimension requirements for rabbet (step) joints on small motor assemblies having internal free volume not exceeding 350 cubic inches and joints not exceeding 32 inches in outer circumference. The proposed requirements would allow minimum total widths of rabbet (step) joints to be shorter than those specified in table J–2, provided the corresponding tighter clearances are maintained. Figure J–6 in the appendix is included to provide an illustration of a rabbet (step) joint.

Footnote 7 would specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. Although not addressed in existing part 18, these requirements would be consistent with current policy.

Footnotes 8 and 9 would contain new performance-oriented criteria to evaluate fastenings not meeting the minimum diameter and thread engagement dimensions specified. Footnote 8 would allow the use of fastenings with diameters smaller than those specified in the table, provided that the enclosure is first tested to meet the requirements of § 7.307 (static pressure test) and then § 7.306 (explosion-test). This new provision would provide performance criteria upon which fastenings with smaller diameters could be evaluated. Footnote 9 would allow minimum thread engagement less than the diameter of the fastening specified provided the enclosure meets these same test requirements. The proposed criteria would ensure adequate strength of the fastenings and threads for the motor design.

Footnote 10 of table J–2, which is new, would specify that the maximum clearance applies only when the fastening is located within the flamepath. It would clarify when the requirement in the table is applicable.

Footnote 11 would state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and would be added for clarification. Footnote 13 would require that shafts or operating rods not deform during normal operation. This performance requirement would replace the ¼" minimum diameter design requirement for shafts and operating rods in existing § 18.31(a)(6).

Paragraph (h) of § 7.304, derived from existing § 18.37, would specify the requirements for lead entrances. Except as explained below, the requirements would be the same as contained in § 18.37. Paragraph (h)(1) would require each cable extending through an outside wall of the motor assembly to pass through a stuffing-box lead entrance. This new provision would reflect the Agency's belief that this is the only type of lead entrance for which objective criteria can be developed at this time. Paragraph (h)(2)(ii) would provide for a

BEST COPY AVAILABLE

minimum of three effective engagement threads for the packing gland nut. Although not contained in existing part 18, this minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength. Paragraph (h)(5) would replace the term "asbestos packing material" with "MSHA accepted rope packing material" in order to address acceptable asbestos substitute materials. For clarification, Figures J–7 through J–14 in the appendix would be included for use with the lead entrance requirements of paragraph (h).

Paragraph (i) would specify requirements for insulating material, with respect to combustible gases. These requirements are derived from existing § 18.25. Paragraph (i)(1) would retain the requirement prohibiting the use of insulating materials that give off volatile gases when subjected to destructive electrical action. Paragraph (i)(2) would allow any method of treatment to remove combustible solvents, instead of only heat as provided under existing § 18.25(b). As the desired result is removal of any combustible solvents, the method of removal is not critical.

Section 7.305 Critical Characteristics

This section is new and lists the critical characteristics that would be required to be inspected on each motor assembly that has an approval marking. As defined in subpart A of part 7, a critical characteristic is a feature of a product that, if not manufactured as approved, could have an adverse effect on safety. The proposal would assure the explosion-proof integrity of the motor assembly prior to use by requiring inspection of the critical characteristics on an approved motor assembly. This list of critical characteristics was developed using the applicable technical requirements in § 7.304 of this proposal.

Section 7.306 Explosion Tests

Section 7.306, derived from existing § 18.62, would set forth the equipment, test procedures and acceptable performance criteria for the testing of a motor assembly to withstand an internal explosion of a combustible gas mixture. The provisions of this section would provide objective criteria to evaluate the explosion-proof performance of a motor assembly.

Paragraph (a) would require the use of an explosion test chamber, methane gas supply, electric ignition source and a pressure recording system when conducting explosion tests. Factors that would affect the accuracy, reliability and repeatability of the testing procedures would be specified.

The explosion test chamber would be defined in paragraph (a)(1) as being designed and constructed to contain an explosive gas mixture. The gas mixture, as described in the testing procedures, would surround and fill the motor assembly being tested. The explosive gas contained within the chamber would have to envelop the motor assembly during testing. The amount of leakage from the chamber would be controlled so that the gas mixture would be maintained within the specified tolerances for the duration of the testing. Therefore, a gas-tight chamber would not be required. The chamber would be darkened and have flamepath viewing capabilities enabling the testing personnel to discern the discharge of flame along flamepaths as well as the ignition of the explosive mixture surrounding the motor assembly being tested.

As specified in paragraph (a)(2) the methane gas supply would have to be composed of at least 98 percent of combustible hydrocarbons with inert products comprising the remainder. A minimum of 80 percent of the gas, by volume, would be required to be methane. This composition of gas, which would be specified to provide reliable and repeatable test results, is typical for commercial natural gas (methane) supplies.

Paragraph (a)(3) would define the coal dust to be used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" of § 18.62(a) would be replaced by a minimum volatile matter and BTU content. This change would allow equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh would be retained.

Paragraph (a)(4) would establish the minimum energy level for the electric spark ignition source as 100 millijoules. This minimum energy level would ensure that there is sufficient energy available to ignite the explosive gas mixture within the motor assembly during each test. This provision would retain the requirement in existing § 18.62(a) that an electric spark ignition source be used for the testing.

Paragraph (a)(5) is derived from § 18.62(a) and would retain the existing requirement that the explosion pressure developed during testing be recorded. The proposal would clarify this requirement by specifying that the pressure recording system must indicate the pressure peaks within the tested motor assembly as described in the test procedures.

Paragraph (b) of § 7.306 would describe the general test procedures for conducting the explosion tests. The preparation of the motor for testing would be described in paragraph (b)(1). This paragraph would require motor assemblies being tested to be equipped with unshielded bearings and have all parts not contributing to the operation or assuring the explosion-proof integrity of the enclosure removed. Examples of those parts to be removed would include oil seals, grease fittings, hose conduit, cable clamps and outer bearing caps that do not house the bearings. Preparation of the motor assembly in this manner is consistent with existing MSHA policy.

The types of parts identified in paragraph (b)(1) could obstruct the observation of flame paths during testing and possibly inhibit the expulsion of flames and hot gases. Additionally, since these parts do not contribute to operation or explosion-proof integrity of the motor, they could be omitted with no reduction in operational capabilities. Testing with these parts not present would ensure that no reduction in safety would result in such instances.

Paragraph (b)(2) would contain the general procedures of filling the chamber and motor assembly with explosive mixtures, the locations for pressure measurements and the number of tests permitted before the chamber would be purged and recharged. The motor assembly would have to be observed for discharge of flames during each test. In order to provide adequate observation of any discharge of flames, each externally visible flamepath fit would have to be observed for discharge of flame for at least two tests, one with coal dust added.

When the motor assembly is filled with and surrounded by explosive methane mixtures for each test, the gas concentrations within the chamber would be between 6.0 percent and the concentration that is within the motor assembly just before ignition. The gas mixtures must be adequately mixed to ensure that homogeneous gas concentrations within the explosive limits are present for the test to be accurate.

The proposal would also specify that a single spark source is to be used for all testing, with test holes of sufficient quantity and location to permit ignition and pressure recording in each enclosure as required in paragraph (c).

Finally, paragraph (b) would require the motor assembly to be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber would be required to be completely purged and recharged as necessary. The oxygen level would be maintained at no less than 16 percent. In the absence of oxygen monitoring equipment, the proposal includes an alternative method of ensuring this level is maintained. This method would limit the maximum number of tests between purgings to no more than the number obtained by dividing the chamber volume by forty times the motor assembly volume. This proposed requirement for purging and recharging of the chamber is the result of testing and analysis of data obtained by MSHA.

The purging and recharging sequences would be required in order to provide appropriate concentration levels of the combustion gases and the combustion by-products within the motor assembly and chamber. The concentration levels of these various gases must be maintained within proper limits to ensure reliable and repeatable ignition and combustion of the explosive gas.

Paragraph (c) would provide the specific testing procedures to be followed for each series of tests conducted on a motor assembly. The number of tests, methane concentration levels, stationary or rotating rotor, location of ignition source, and use of coal dust would be specified. Existing § 18.62(a) requires testing under these various conditions; however, specific values are not stated. The values that would be required under this proposed rule have been developed from the Agency's testing experience and existing policy. The procedures would provide an objective testing procedure to evaluate all designs foreseen to be explosion tested under this subpart.

The methane concentrations of 7.0 ± .3 and 9.4 ± .4 percent would be specified to accomplish testing at easily ignitable and violently explosive values, respectively. Ignitions while the rotor is rotating at rated speed would test the motor assembly at maximum internal turbulence. Ignitions with the rotor stationary would test the motor assembly with no turbulence along the flamepath. Turbulence along the flamepath might prevent flames from exiting. If the motor assembly incorporates a non-isolated conduit box, two additional tests would be proposed with ignitions within the conduit box. These tests are designed to detect pressure piling in the winding compartment resulting from ignitions in the conduit box. Pressure piling from pre-compression of the gases in the winding compartment due to ignition of the gases in the conduit box could result in higher pressures being attained.

Four tests would then be conducted with the gas concentration at 9.4±.4 percent methane and 0.05 ounce per cubic foot of internal free volume of the motor assembly of finely ground coal dust. The requirement of introducing coal dust is derived from § 18.62(a). The existing standard does not specify the quantity of coal dust to be added. The value of 0.05 ounce per cubic foot volume was established through MSHA's testing experience and engineering analysis to provide sufficient coal dust to coat all internal surfaces of the motor assembly.

These four tests, two with the rotor stationary and two with it rotating at rated speed, would require ignitions within the motor assembly at varying locations. These locations were chosen, based on MSHA's testing experience, to produce the greatest potential for development of the highest pressures within the motor assembly upon ignition of the explosive mixture.

Paragraph (c)(4) would outline additional testing procedures to be followed for motor assemblies that incorporate a conduit box isolated from the winding compartment. Examples of isolating barriers would be terminals or potting compound, such as chico. Paragraph (4)(i) would describe the location of ignition and pressure recording positions for the conduit box. Two ignition points would be utilized for a conduit box with internal free volume greater than 150 cubic inches. One ignition point would be as near to the geometric center as practical and the other as far as possible from the isolating barrier between the conduit box and winding compartment. Pressure recording points would be on the same and opposite sides of the conduit box as the latter ignition point. One ignition point as near to the geometric center as practical and one pressure recording point on a side of the conduit box would be used for a conduit box with internal free volume equal to or less than 150 cubic inches.

Paragraph (4)(ii) would require the conduit box to be tested separately by performing the tests with the isolating barrier in place. A total of ten explosion tests are to be performed on the conduit box. Six tests with 9.4±.4 percent methane by volume followed by two tests with 7.0±.3 percent methane by volume would have to be conducted. The remaining two tests are to be conducted at 9.4±.4 percent methane with coal dust added. The quantity (per cubic foot) and specifications of the coal dust would be the same as that provided for in paragraph (c)(3). If the internal free volume of the conduit box exceeds 150 cubic inches, the tests are to be equally divided between the two ignition points.

Paragraph (4)(iii) would describe the testing sequence to be followed in removal of the isolating barrier. If the isolating barrier is comprised of multiple assemblies, such as terminals, one assembly would be removed for the initial series of six explosion tests. Following this initial series of tests, one test would be conducted following the removal of each additional assembly. This procedure would continue until the motor assembly has been tested with all isolating barrier assemblies removed. Each test conducted under this paragraph would be performed using an explosive gas mixture containing 9.4±.4 percent methane by volume within the conduit box and winding compartment. For the initial six tests, the rotor would be stationary for one test and rotating for another for each of three ignition points. The three ignition points would be opposite ends of the winding compartment and the conduit box ignition point which provided the highest pressures during the tests conducted in paragraph (c)(4)(ii). Of these three ignition points, the one that produced the highest recorded pressures would be used for testing following removal of each additional isolating assembly (sectionalizing terminal).

Paragraph (d) would provide additional testing procedures or inclusion of a warning statement for any motor assemblies where recorded pressures exceeding 110 psig result following removal of any or all isolating barriers. The additional testing would require the motor assembly to withstand a static pressure test at a pressure of twice the maximum recorded explosion test pressure. As an alternative to conducting the static pressure testing, a warning statement would be required. The warning statement, incorporated on the approval plate, would have to state that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

During maintenance and repair of electric motor assemblies, isolating barriers might not be included in the assembly procedure. Normally, there is no evidence to indicate the prior existence of an isolating barrier. Deletion of this barrier could result in development of a hazardous situation with no prior warning. Paragraphs (c)(4)(iii) and (d) would address this situation.

Some winding compartment-conduit box combination designs can result in increased explosion pressures due to pressure piling. The provisions of paragraph (c)(4)(iii) and (d) would allow the use of such designs while providing what MSHA believes to be adequate safeguards. A warning statement on the approval plate would notify the user that the integrity of the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly.

Paragraph (e) would describe the acceptable performance criteria for the explosion tests. These criteria are derived from existing § 18.62 (b) and (c). The proposal would require that there be no flame discharge from the motor assembly or ignition of the explosive mixture surrounding the motor assembly. These conditions would indicate that the flame-arresting paths are inadequate to prevent the escape of flame and the enclosure is not constructed to withstand and contain internal explosions of methane-air mixtures, respectively. Rupture of any part of or any panel or divider within the motor assembly, clearances along accessible flame-arresting paths in excess of those specified in subpart J and permanent deformation greater than 0.040 inch per linear foot are each indications of structural deficiencies of the motor assembly.

The criterion which considers development of afterburning as an unacceptable result of explosion tests is derived from § 18.62(b)(3). The term "afterburning" is applied to combustion, immediately after an internal explosion, of a gaseous mixture that was not in the enclosure at the time of that explosion. Sometimes the external gases are drawn into a motor interior immediately after an explosion as a result of the cooling of the product of the original explosion or otherwise and continue to burn. If prolonged, afterburning may damage the insulation. What is more serious is that the heating may allow flames to pass to the outside of the apparatus along flame arresting paths that would otherwise be effective in cooling them. This condition reflects deficiencies in the motor assembly and would represent increased hazards in an explosive atmosphere.

The occurrence of subsequent pressure peaks within an electric motor assembly in conjunction with an internal explosion is not an unusual event. This phenomenon occurs in multiple compartmented enclosures when the explosion is initiated in one compartment and propagates to the others. This occurrence differs from afterburning in that the secondary pressure peaks result from the combustion of the gases already present in the enclosure at the time of ignition. The pressure developed from the initial explosion is not completely dissipated at the time the secondary peaks develop.

Development of pressures exceeding 110 psig developed during explosion tests would not be acceptable, unless the enclosure has met the acceptable performance criteria of the static pressure tests conducted at twice the maximum recorded explosion test pressure or a warning statement in accordance with proposed § 7.306(d) is included on the approval plate. This provision would modify the existing requirements contained in § 18.62(c).

The ignition and pressure recording locations specified in the explosion test procedures are designed to provide the maximum pressure development and sensing for the enclosures. However, variations in enclosure designs may cause the specified locations to differ slightly from the "optimum" locations. To provide for this potential variation, the proposal would require additional testing at a pressure indication of 110 psig rather than the 125 psig required for in existing § 18.62(d). The proposal would also require this testing to be done statically rather than dynamically as specified in the existing regulations. The Agency believes that static pressure testing at 2 times the highest recorded explosion test pressure will provide an adequate safety margin to ensure a safe design. The static pressure test at these higher pressures also provides greater safety to the testing personnel since the development and release of the testing pressure can be controlled.

Section 7.307 Static Pressure Test

Section 7.307 would describe the test procedures and the acceptable performance criteria for conducting static pressure tests. The proposed static pressure test is new and would provide an alternative means of satisfying the technical requirements of § 7.304(g)(2) for welded joints, § 7.304(g)(19) (footnote 8) for diameters of fasteners, and § 7.304(g)(19) (footnote 9) for engagement of fasteners. The test would also be used, as specified in § 7.306(d) and (e)(6), for motor assemblies where explosion test pressures exceed 110 psig. The test procedures are based on the static test procedures developed as part of the approval criteria for high voltage machines containing on-board switching of high voltage circuits. These criteria resulted from engineering investigation and testing experience. The acceptable performance criteria would be the same performance requirements of § 18.62 with regards to physical failure conditions.

The proposed static pressure test would provide an alternative means of satisfying the requirements of the above sections because the concern addressed by those sections was that of failure due to physical stress and deformities.

Section 7.308 Lockwasher Equivalency Test

Section 7.308 would propose new test procedures and acceptable performance criteria when conducting tests on locking devices other than lockwashers. The lockwasher equivalency test would provide an alternative means of satisfying the technical requirement of § 7.304(g)(7) if a locking device other than a lockwasher is used. The test has been developed based upon testing procedures specified in Society of Automotive Engineers (SAE) recommended practice, Torque-Tension Test Procedure for Steel Threaded Fasteners (SAE J174, 1971) and Military Specification, Inserts, Screw-Thread, Helical Coil (MIL–I–8846B, 1973)

Section 7.309 Approval Marking

Section 7.309, derived from § 18.13, would require a legible and permanent approval plate with the assigned MSHA approval number inscribed. The plate would be required to be securely attached to the motor assembly in a manner that does not adversely affect the explosion-proof integrity of the motor assembly. The proposal would allow identification of approved subpart J motor assemblies in a manner that facilitates field identification of the motor assembly as approved by MSHA.

Section 7.310 Post-Approval Product Audit

Section 7.310 is new and would require an approval holder, upon request, to make available to MSHA at no cost an approved subpart J motor assembly for audit. This request would be made no more than once a year by MSHA, except for cause. The audit would be made at a mutually agreeable site and time. This would be in addition to MSHA's ongoing quality assurance program for which the agency can obtain products for audit at any time at MSHA's expense.

Section 7.311 Approval Checklist

Section 7.311 is new and would require the manufacturer to include with each motor assembly bearing an MSHA approval marking, a list of items that should be checked by the user to ensure the motor assembly is maintained in approved condition. This is consistent with existing checklist requirements contained in §§ 7.51 and 7.71 of part 7.

B. Section-by-Section Discussion of Part 18

Part 18 includes various provisions by which MSHA can allow variations in design in the evaluation and testing of explosion proof enclosures. Under these provisions MSHA can evaluate certain variations in designs based upon its experience, engineering judgment and testing results. This flexibility exists in part 18, but is not appropriate in a part 7 subpart. As a result, some specific modifications to part 18 requirements have been proposed for incorporation into part 7 requirements, but not part 18. Those modifications judged appropriate for inclusion as part 18 requirements and that are necessary to make part 18 consistent with proposed subpart J of part 7 are discussed below.

Section 18.4 Equipment for Which Approval Will Be Used

This section would be revised to specify that components approved under part 7 would also be acceptable for incorporation in the assembly of a complete machine or accessory.

Section 18.24 Electrical clearances

This section would be revised to establish specific minimum clearance distances based upon the voltage of the energized parts. It would specify these minimum distances to define the adequacy of spacing required under the existing section. The minimums would be applicable to the distance between uninsulated electrical conductor surfaces or between uninsulated electrical conductor surfaces and grounded metal surfaces within the enclosure. These proposed minimum clearances are the result of an engineering study performed in conjunction with high voltage studies at MSHA's Approval and Certification Center.

Section 18.31 Enclosures-Joints and Fastenings

Paragraph (a)(3) would be revised to change the maximum allowable magnesium content of external rotating parts constructed of aluminum alloys to 0.6 percent from the existing limit of 0.5 percent. As stated in the preceding preamble discussion for proposed § 7.304(g)(3), this would be consistent with MSHA policy.

Paragraph (a)(5) would be revised to change the Class 1 thread terminology of the existing requirement to the present Class 1A and 1B terminology, consistent with that proposed for § 7.304(g)(4).

Paragraph (a)(6) would be revised for consistency with proposed subpart J of part 7. The introductory paragraph would be changed to include an explanation of "internal volume of an empty enclosure." This explanation would be expanded to include the parts necessary for use (operation), making it consistent with MSHA's existing policy.

The proposal would identify the internal free volume of an empty enclosure as that remaining after the volume of any part that is essential to maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts would include the parts that constitute the flame-arresting path as well as those necessary to secure the parts that constitute the flame-arresting path. This explanation is important because the volume of the enclosure defines the minimum design requirements of the explosion-proof enclosure. The interpretation of "volume of empty enclosure" currently used would be retained for the construction requirements in § 18.31.

The tabulated construction requirements would be modified in several areas. The requirements for minimum thickness of material for flanges and cover would be combined into one category. This change would represent a format change only, since the technical requirements would be unchanged. The maximum bolt spacing requirements for joints all in one plane would be modified to include the requirement for "a minimum of 4 bolts" to be used in the category of "more than 124 cu. ins." of volume. This modification would clarify the Agency's belief and experience that the minimum of 4 bolts are necessary regardless of the enclosure's volume or the configuration of the parts forming the joints.

The cylindrical joint portion of the table would also include several modifications. The maximum clearance along shafts centered by ball or roller bearings would be expressed in terms of diametrical rather than radial dimensions for clarity. The parts that constitute these fits are generally expressed in terms of diametrical rather than radial dimensions.

The categories of "shafts through journal bearings" and "other than shafts" would be combined into a single classification of "other cylindrical joints." The clearances specified would be the diametrical equivalent for the radial clearances listed in existing § 18.31(a)(6) for shafts through journal bearings. Except as discussed below, the contents of the footnotes of § 18.31[a)(8) would be retained.

Footnote 3 is derived from existing § 18.34(a)(6) and includes the requirement to deduct the width of oil grooves and grooves for oil seals in measuring the widths of flame-arresting paths. This provision would be expanded to include any groove because the minimum flame-path length would still be required to be met.

Footnote 7 would be added to specify clearance and location requirements for steel dowel pins. These pins are generally used in cover flanges to aid in aligning the covers. These requirements would be consistent with current policy.

Footnote 11, which is new, would specify that the maximum clearance applies only when the fastening is located within the flamepath. It would clarify when the specification in the table is applicable.

Footnote 12 would be added to state that the edge of the fastening hole must include the edge of any machining done to the fastening hole, such as chamfering. This is consistent with existing policy and would be added for clarification.

Paragraph (a)(7) of § 18.31 is new and would specify the acceptable location of o-rings in a flame-arresting path. When o-rings are installed current policy requires these locations to permit checking of flame-path fits without interference from o-rings. This proposed requirement is based upon the Agency's field experience. Figures J–2, J–3, J–4 and J–5 in the appendix to subpart J of part 7 are included to clarify the required locations for o-rings.

Section 18.32 Fastenings—Additional Requirements

Paragraph (i) would be added to allow for the use of coil-threaded inserts in holes for fastenings, provided they have conventional screw threads, the holes for the inserts are drilled and tapped to the insert manufacturer's specifications, and the insert is long enough to ensure the required minimum thread engagement of the fastening in the insert. Although not addressed in existing part 18, as a result of evaluation and testing by MSHA, current policy permits their use. This provision would allow correction of damaged threads for fastenings securing flame-path parts that could lead to the expulsion of flames and/or hot gases due to an internal explosion.

Section 18.33 Finish of Surface Joints

This section would be revised by clarifying that the final surface must not promote the adherence of foreign materials. This would clarify the type of preparation that might be used to inhibit

rusting. The addition of foreign particles to a flamepath is not desirable because it could interfere with maintaining the proper clearance to prevent the escape of flame and/or hot gases.

Section 18.34 Motors

This section would be revised by adding an introductory paragraph to specify that explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are addressed by part 7 are to be approved under part 7. Explosion-proof motor assemblies incorporating designs not specifically addressed under part 7 would continue to be submitted for acceptance or certification under part 18. Those motor assembly designs that, for example, contain devices for ventilation, pressure relief and drainage would continue to be evaluated under part 18. In addition, designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also be addressed under part 18. These designs are not being covered under proposed subpart J of part 7 because their acceptance by MSHA requires an individual evaluation of design and performance tests. Designs incorporating parts common to explosion-proof enclosures other than conduit boxes and those incorporating new technology would also require evaluation on an individual basis.

Paragraph (a)(6) would be revised by deleting the present wording "The widths of oil grooves and grooves for holding oil seals will be deducted in measuring the widths of flame-arresting paths," as this requirement would be incorporated into footnote 3 of § 18.31(a)(6). The wording of the present "note" would be retained as removing the oil seals is standard practice on motors submitted for testing.

Section 18.37 Lead Entrances

Paragraph (b) would be revised to provide for a minimum of three effective engagement threads for the packing gland nut. This minimum engagement is addressed by current policy. It was developed to define what the minimum thread engagement is for adequate mechanical strength.

Section 18.62 Tests to Determine Explosion-Proof Characteristics

Paragraph (a) of § 18.62 would be revised with respect to the definition of coal dust used in the explosion tests. The existing identification of "Pittsburgh bed coal dust" of § 18.62(a) would be replaced by a minimum volatile matter and BTU content. This change would allow equivalent coal from other coal seams to be used in the tests. The requirement that the coal be ground to a fineness of minus 200 mesh would be maintained.

Derivation Table

The following derivation tables list: (1) Each section number of the proposed rule (Proposed Section); and (2) The section number of the existing standard from which the proposed section is derived (Existing Section).

DERIVATION TABLE—PART 7

Proposed section	Existing section
7.301	18.1
7.302	18.2
7.303	18.6(a)
7.304(a)	18.47
7.304(b)	18.23
7.304(c)	18.24
7.304(d)	18.34(a)(4)
7.304(e)	18.34(a)(5)
7.304(f)	18.34(a)(8)
7.304(g)(1)	18.31(a)(1)
7.304(g)(2)	18.31(a)(2)
7.304(g)(3)	18.31(a)(3) and 18.26
7.304(g)(4)	18.31(a)(5)
7.304(g)(5)	18.33
7.304(g)(6)	18.34(c)
7.304(g)(7)	18.32(b)
7.304(g)(8)	18.32(c)
7.304(g)(9)	18.32(d) and 18.34(a)(9)
7.304(g)(10)	18.32(d)
7.304(g)(11)	18.34(b)
7.304(g)(12)	New
7.304(g)(13)	18.32(e)
7.304(g)(14)	18.32(f)
7.304(g)(15)	18.29(c)
7.304(g)(16)	New
7.304(g)(17)	New
7.304(g)(18)	18.31(a)(5)
7.304(g)(19)	18.31(a)(6) and 18.34(d)
7.304(h)	18.37
7.304(i)	18.25
7.305	New
7.306	18.62
7.307	New
7.308	New
7.309	18.13
7.310	New
7.311	New

DERIVATION TABLE—PART 18

Proposed section	Existing section
18.4	18.4
18.24	18.24
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.31(a)(6)	18.31(a)(6) and 18.34(a)(6)
18.31(a)(7) and 18.32(f)	New
18.33	18.33
18.34	18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

Distribution Table

The following distribution tables list: (1) Each section number of the existing part 18 standard (Existing Section); and (2) Each section number of the proposed rule (Proposed Section). Unless indicated in the part 18 Distribution Table, the existing sections of part 18 are maintained.

Existing section	Proposed section
18.1	7.301
18.2	7.302
18.6	7.303
18.13	7.309
18.23	7.304(b)
18.24	7.304(c)
18.25	7.304(i)
18.26	7.304(g)(3)
18.29(c)	7.304(g)(15)
18.31(a)(1)	7.304(g)(1)
18.31(a)(2)	7.304(g)(2)
18.31(a)(3)	7.304(g)(3)
18.31(a)(5)	7.304(g)(4) and (18)
18.31(a)(6)	7.304(g)(19)
18.32(b)	7.304(g)(7)
18.32(c)	7.304(g)(8)
18.32(d)	7.304(g)(9) and (10)
18.32(e)	7.304(g)(13)
18.32(f)	7.304(g)(14)
18.33	7.304(g)(5)
18.34(a)(4)	7.304(d)
18.34(a)(5)	7.304(e)
18.34(a)(8)	7.304(f) and 7.304(g)(10)
18.34(b)	7.304(g)(11)
18.34(c)	7.304(g)(6)
18.34(d)	7.304(g)(19)
18.37	7.304(h)
18.47	7.304(a)
18.62	7.306

DISTRIBUTION TABLE—PART 18

Existing section	Proposed section
18.4	18.4
18.24	18.24)
18.31(a)(3)	18.31(a)(3)
18.31(a)(5)	18.31(a)(5)
18.33	18.33
18.34	18.31(a)(6) and 18.34
18.37(b)	18.37(b)
18.62(a)	18.62(a)

IV. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared a Preliminary Regulatory Impact Analysis (PRIA). MSHA has determined that the proposal would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. This PRIA has also formed the basis for the analysis required by the Regulatory Flexibility Act. The Regulatory Flexibility Act requires that, in developing regulatory proposals, agencies evaluate compliance alternatives that minimize any adverse impact on small businesses. Proposed subpart J would clarify the standards that industry must meet for approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. MSHA designed its product testing requirements to be as performance oriented as possible to allow manufacturers to choose the most effective option. Performance-oriented standards should benefit both large and small manufacturers.

The proposal would increase private-sector involvement in the approval of mining products. For the first time, in lieu of testing only by MSHA, the applicant or a third party selected by the applicant would test explosion-proof electric motor assemblies. The Agency anticipates that this new procedure would in some cases reduce associated testing costs and potential delay in product approvals.

MSHA estimates that the total annual compliance cost to electric motor assembly manufacturers under the existing rule is about $88,500. The total annual compliance cost under the proposal would be about $105,900. The major difference between these two is the cost associated with the requirements for annual product audits and quality assurance procedures. Even though there are many small firms, MSHA lacks data on them to identify the potential impact on small entities.

MSHA estimates that the annual compliance cost increase due to the provisions of subpart J would be about $33,720; but, there would be an offsetting cost reduction of about $16,370. The total annual incremental cost increase, therefore, would be about $17,350. The post-approval product audit and MSHA expenses to witness initial manufacturer or third-party testing would generate about 75% of the costs. Less costly testing and evaluation procedures would provide 76% of the cost reduction. The following table summarizes MSHA's estimates of the compliance cost impact of the existing and proposed rules.

SUMMARY OF ANNUAL COMPLIANCE COSTS FOR THE PROPOSED RULE FOR APPROVAL OF ELECTRIC MOTOR ASSEMBLIES

Provision	Current [1]	Proposed	Difference
MSHA Fees	$83,741	56,920	($6,821)
Application Procedure	2,787	2,787	0
Testing Procedures:			
Testing	18,832	12,424	(6,408)
Shipping Motors	3,142	0 [2]	(3,142)
Travel to Observe	0	12,267	12,267
Quality Assurance Procedures:			
Inspections	0	7,694	7,694
Reporting Defects	0	369	369
Post-Approval Audits	0	13,000	13,000
Approval Checklist	0	394	394
Total	$88,501	105,855	$17,354

[1] Costs are based on full compliance with the existing requirements.
[2] Some manufacturers lack in-house testing facilities and may have to ship their assemblies to an appropriate test site.

This proposed rule would not significantly alter the existing technical requirement for electric motor assemblies. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or does not impose significant costs compared to the sales value of the product. The annual incremental compliance cost impact for those 40 manufacturing firms, which MSHA expects to be affected by the proposal, is about $430 per firm.

MSHA lacks data on the number of manufacturing firms that currently have in-house testing facilities and conduct their own testing of electric motor assemblies. MSHA requests specific data on the nature and extent of the use of in-house testing facilities in the affected firms. MSHA also requests data on the availability and costs of third-party testing facilities.

V. Executive Order 12612

The Agency has reviewed the final rule in accordance with Executive Order 12612 regarding federalism and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under this Executive Order.

VI. Metric Measurements

Under section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA intends to begin providing both metric and English specifications in its rules to assist industry in converting to metric measurements where appropriate. MSHA requests comments on the availability of metric equipment and supplies and metric nominal safety equivalences of the English inch-pound measurements in this proposed rule.

List of Subjects in 30 CFR Parts 7 and 18

Approval of equipment, Mine safety and health, Underground mining.

Dated: February 27, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

It is proposed that subchapter B, chapter I, title 30 of the Code of Federal Regulations be amended as follows:

PART 7—TESTING BY APPLICANT or THIRD PARTY

1. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957

Subparts E–I [Added and Reserved]

2. By adding and reserving subparts E through I to part 7.

3. A new subpart J is added to part 7 to read as follows:

Subpart J—Electric Motor Assemblies

Sec.
7.301 Purpose and effective date.
7.302 Definitions.
7.303 Application requirements.
7.304 Technical requirements.
7.305 Critical characteristics.
7.306 Explosion tests.
7.307 Static pressure test.
7.308 Lockwasher equivalency test.
7.309 Approval marking.
7.310 Post-approval product audit.
7.311 Approval checklist.

Appendix I to Subpart J—Figures J–1 through J–14

Subpart J—Electric Motor Assemblies

§ 7.301 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of certain explosion-proof electric motor assemblies intended for use in approved equipment in underground mines. Application for approval or extensions of approval submitted after (insert date two years after effective date of this subpart) shall meet the requirements of this part. Those motors that incorporate features not specifically addressed in this subpart will continue to be evaluated under part 18 of this chapter.

§ 7.302 Definitions.

The following definitions apply in this subpart:

Afterburning. The combustion of any flammable mixture that is drawn into an enclosure after an internal explosion in the enclosure. This condition is determined through detection of secondary pressure peaks occurring subsequent to the initial explosion.

Cylindrical joint. A joint comprised of two contiguous, concentric, cylindrical surfaces.

Explosion-proof enclosure. A metallic enclosure used as a winding compartment, conduit box, or a combination of both that complies with the applicable requirements of § 7.304 of this part and is constructed so that it will withstand the explosion tests of § 7.306 of this part.

Fastening. A bolt, screw, or stud used to secure adjoining parts to prevent the escape of flame from an explosion-proof enclosure.

Flame-arresting path. Two or more adjoining or adjacent surfaces between which the escape of flame is prevented.

Internal free volume (of an empty enclosure). The volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation of the motor. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path.

Motor assembly. The winding compartment including a conduit box when specified. A motor assembly is comprised of one or more explosion-proof enclosures.

Plane joint. A joint comprised of two adjoining surfaces in parallel planes.

Step (rabbet) joint. A joint comprised of two adjoining surfaces with a change or changes in direction between its inner and outer edges. A step joint may be composed of a cylindrical portion and a plane portion or of two or more plane portions.

Stuffing box. An entrance with a recess filled with packing material for cables extending through a wall of an explosion-proof enclosure.

Threaded joint. A joint consisting of a male- and a female-threaded member, both of which are the same type and gauge.

§ 7.303 Application requirements.

(a) An application for approval of a motor assembly shall include a composite drawing or drawings with the following information:

(1) Model (type), frame size, and rating of the motor assembly.

(2) Overall dimensions of the motor assembly, including conduit box if applicable, and internal free volume.

(3) Material and quantity for each of the component parts that form the explosion-proof enclosure or enclosures.

(4) All dimensions (including tolerances) and specifications required to ascertain compliance with the requirements of § 7.304 of this part.

(b) All drawings shall be titled, dated, numbered, and include the latest revision.

§ 7.304 Technical requirements.

(a) Voltage rating of the motor shall not exceed 4160 volts.

(b) The temperature of the external surfaces of the motor assembly shall not exceed 150 °C (302 °F) when operated at the manufacturers' specified ratings.

(c) Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall meet the requirements of table J–1 of this section.

TABLE J–1.—MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-ground or control circuit
0 to 550	0.5	0.25
1000 to 2400	1.4	0.8
2401 to 4160	3.8	1.4

(d) Parts whose dimensions can change with the motor operation, such as ball and roller bearings and oil seals, shall not be used as flame-arresting paths.

(e) The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.

(f) An outer bearing cap shall not be considered as forming any part of a flame-arresting path unless the cap is used as a bearing cartridge.

(g) Requirements for explosion-proof enclosures of motor assemblies.

(1) Enclosures shall be—

(i) Constructed of metal;

(ii) Designed to withstand a minimum internal pressure of 150 pounds per square inch (gauge);

(iii) Free from blowholes when cast; and

(iv) Explosion-proof as determined by the tests set out in § 7.306 of this part.

(2) Welded joints forming an enclosure shall be—

(i) Continuous and gas-tight; and

(ii) Made in accordance with or exceed the American Welding Society Standards D14.4–77 or meet the test requirements set out in § 7.307 of this part.

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium. Non-metallic rotating parts shall be provided with a means to prevent an accumulation of static electricity.

(4) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The covers shall be secured against loosening.

(5) Flat surfaces between fastening holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in paragraph (g)(19) of this section. All surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of non-hardening preparation to inhibit rusting may be applied to these finished metal surfaces as long as the final surface does not promote the adherence of foreign materials.

(6) For a laminated stator frame, it shall be impossible to insert a 0.0615 inch thickness gauge to a depth exceeding ¼ inch between adjacent laminations or between end rings and laminations.

(7) Lockwashers, or equivalent, shall be provided for all fastenings. Devices other than lockwashers shall meet the requirements of § 7.308 of this part. Equivalent devices shall only be used in the configuration in which they were tested.

(8) Fastenings shall be as uniform in size as practicable to preclude improper installation.

(9) Holes for fastenings in an explosion-proof enclosure shall be threaded to ensure that all specified bolts or screws will not bottom even if the washers are omitted.

(10) Holes for fastenings shall not penetrate to the interior of an explosion-proof enclosure, except holes made through motor casings for bolts, studs, or screws to hold essential parts, such as pole pieces, brush rigging, and bearing catridges. The attachments of such parts shall be secured against loosening. The treaded holes in these parts shall be blind unless the fastenings are inserted from the inside, in which case the fastenings shall not be accessible with the rotor in place.

(11) For direct current motor assemblies with narrow interpoles, the distance from the edge of the pole piece to any bolt hole in the frame shall be at least ⅛ inch. If the distance is ⅛ to ¼ inch, the diametrical clearance for the pole bolt shall not exceed 1/64 inch for not less than ⅛ inch through the frame. Furthermore, the pole piece shall have the same radius as the inner surface of the frame. Pole pieces may be shimmed as necessary. If used, the total resulting thickness of the shims shall be specified. The shim assembly shall meet the same requirements as the pole piece.

(12) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(i) The inserts shall have internal screw threads.

(ii) The holes for the inserts shall be drilled and tapped to the insert manufacturer's specifications.

(iii) The inserts shall be installed according to the insert manufacturer's specifications.

(iv) The insert shall be of sufficient length to ensure the minimum thread engagement of fastening specified in paragraph (g)(19) of this section.

(13) A minimum of ⅛" of stock shall be left at the center of the bottom of each blind hole that could penetrate into the interior of an explosion-proof enclosure.

(14) Fastenings shall be used only for attaching parts that are essential in maintaining the explosion-proof integrity of the enclosure, or necessary for the operation of the motor. They shall not be used for making electrical connections.

(15) Through holes not in use, shall be closed with a metal plug. Plugs, including eyebolts, in through holes where future access is desired shall meet the flame-arresting paths, lengths, and clearances of paragraph (g)(19) of this section and be secured by spot welding or brazing. The spot weld or braze may be on a plug, clamp, or fastening (for example see figure J–1). Plugs for holes where future access is not desired shall be secured all around by a continuous gas-tight weld.

(16) O-rings, if used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (g)(19) of this section within the outside edge of the path (see figure J–2).

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ⅛ inch within the outer edge of the plane portion (see figure J–3), or at the junction of the plane and cylindrical portion of the joint (see figure J–4); or in the cylindrical portion (see figure J–5).

(17) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001" between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (g)(19) of this section for the material in which the fit is made.

(18) The flame-arresting path of threaded joints shall conform to the requirements of paragraph (g)(19) of this section.

(19) Explosion-proof enclosures shall meet the requirements set out in table J–2 of this section, based on the internal free volume of the empty enclosure.

TABLE J-2.—EXPLOSION-PROOF REQUIREMENTS BASED ON VOLUME

[In inches]

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls	⅛	9/64	⅛
Minimum thickness of material for flanges and covers	[1] ¼	[2] ⅜	[2] ½
Minimum width of joint; all in one plane	½	⅝	1
Maximum clearance; joint all in one plane	0.002	0.003	0.004
Minimum width of joint, portions of which are in different planes; cylinders or equivalent	⅝	⅝	⅝
Maximum clearances; joint in two or more planes, cylinders or equivalent: [4]			
(a) Portion perpendicular to plane [5]	0.008	0.008	0.008
(b) Plane portion	0.006	0.006	0.006
Maximum fastening [6,7] spacing; joints all in one plane: 6 inches with a minimum of 4 fastenings			
Maximum fastening spacing; joints, portions of which are in different planes: 6 inches with a minimum of 4 fastenings			
Minimum diameter of fastening [8] (without regard to type of joint)	⅛	⅛	⅜
Minimum thread engagement of fastening [8]	⅛	⅛	⅜
Maximum diametrical clearance between fastening body and unthreaded holes through which it passes [7,10]	1/64	1/32	1/16
Minimum distance from interior of enclosure to the edge of a fastening hole: [7,11]			
Joint—minimum width 1			[12] 3/16
Joint—less than 1" wide	⅛	5/16	
Cylindrical Joints			
Shaft centered by ball or roller bearings:			
Minimum length of flame-arresting path	½	⅝	1
Maximum diametrical clearance	0.020	0.025	0.030
Other cylindrical joints: [13]			
Minimum length of flame-arresting path	½	⅝	1
Maximum diametrical clearance	0.008	0.008	0.010

[1] 1/32 inch less is allowable for machining rolled plate.
[2] 1/16 inch less is allowable for machining rolled plate.
[3] If only two planes are involved, neither portion of a joint shall be less than ⅛ inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.

[4] For winding compartments having internal free volume not exceeding 360 cubic inches and joints not exceeding 32 inches in outer circumference and provided with step joints between the stator frame and the end bracket the following dimensions shall apply:

DIMENSIONS OF RABBET (STEP) JOINTS—INCHES

[See figure J-6 in appendix]

Minimum total width	Minimum width of clamped radial portion	Maximum clearance at radial portion	Maximum diametrical clearance at axial portion
⅛	7/32	0.0015	0.006
¼	5/16	0.002	0.023
½	7/16	0.002	0.064

[5] The allowable diametrical clearance is 0.005 inch when the portion perpendicular to the plane portion is ¼ inch or greater in length. If the perpendicular portion is more than ¼ inch but less than ½ inch wide, the diametrical clearance shall not exceed 0.006 inch.

[6] Studs, when provided, shall bottom in blind holes, be completely installed in place, or have the bottom of the hole closed with a plug secured by weld or braze. Fastenings shall be provided at all corners.

[7] The requirements as to diametrical clearance around the fastening and minimum distance from the fastening hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the fastenings on either side of the pin shall not exceed 5 inches.

[8] Fastening diameters smaller than specified may be used if the enclosure meets the test requirements of 30 CFR 7.307 and then 7.308 in that order.

[9] Minimum thread engagement shall be equal to or greater than the diameter of the fastening specified, or the enclosure must meet the test requirements of 30 CFR 7.307 and then 7.308 in that order.

[10] This maximum clearance applies only when the fastening is located within the flamepath.

[11] Edge of the fastening hole shall include the edge of any machining done to the fastening hole, such as chamfering.

[12] If the diametrical clearance for fastening does not exceed ½₂ inch, then the minimum distance shall be ¼ inch.

[13] Shafts on operating rods through journal bearings shall not deform during normal operation. The length of the flame-arresting path shall not be reduced when a pushbutton is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.

(h) *Lead entrances.* (1) Each cable, which extends through an outside wall of the motor assembly, shall pass through a stuffing-box lead entrance (see figure J–7). All sharp edges shall be removed from stuffing boxes, packing nuts, and other lead entrance (gland) parts, so that the cable jacket is not damaged.

(2) When the packing is properly compressed, the gland nut shall have—

(i) A clearance distance of ⅛ inch or more to travel without interference by parts other than packing; and

(ii) A minimum of three effective threads engaged (see figures J–8, J–9, and J–10).

(3) Packing nuts (see figure J–7) and stuffing boxes shall be secured against loosening (see figure J–11).

(4) Compressed packing material shall be in contact with the cable jacket for a length of not less than ½ inch.

(5) Requirements for lead entrances in which MSHA accepted rope packing material is specified, are:

(i) Rope packing material shall be acceptable under § 18.37(e) of this chapter.

(ii) The width of the space for packing material shall not exceed by more than 50 percent the diameter or width of the uncompressed packing material (see figure J–12).

(iii) The maximum diametrical clearance, using the specified tolerances, between the cable and the through holes in the gland parts adjacent to the packing (stuffing box, packing nut, hose tube, or bushings) shall not exceed 75 percent of the nominal diameter or width of the packing material (see figure J–13).

(6) Requirements for lead entrances in which grommet packing made of compressible material is specified, are:

(i) The grommet packing material shall be accepted by MSHA as a flame-resistant material under § 18.37(i)(1) of this chapter.

(ii) The diametrical clearance between the cable jacket and the nominal inside diameter of the grommet shall not exceed ½₆ inch, based on the nominal specified diameter of the cable (see figure J–14).

(iii) The diametrical clearance between the nominal outside diameter of the grommet and the inside wall of the stuffing box shall not exceed ½₆ inch (see figure J–14).

(i) Combustible gases from insulating material.

(1) Insulating materials that give off flammable or explosive gases when decomposed electrically shall not be used within explosion-proof enclosures where the materials are subjected to destructive electrical action.

(2) Parts coated or impregnated with insulating materials shall be treated to remove any combustible solvent before assembly in an explosion-proof enclosure.

§ 7.306 Critical characteristics.

The following critical characteristics shall be inspected on each motor assembly to which an approval marking is affixed:

(a) Finish, width, and planarity of surfaces that form any part of a flame-arresting path.

(b) Clearances between mating parts that form flame-arresting paths.

(c) Thickness of walls, flanges, and covers that are essential in maintaining the explosion-proof integrity of the enclosure.

(d) Spacing of fastenings.

(e) Length of thread engagement on fastenings and threaded parts that assure the explosion-proof integrity of the enclosure.

(f) Use of lockwasher or equivalent with all fastenings.

(g) Dimensions which affect compliance with the requirements for packing gland parts in § 7.304 of this part.

§ 7.306 Explosion tests.

(a) The following shall be used for conducting an explosion test:

(1) An explosion test chamber designed and constructed to contain an explosive gas mixture to surround and fill the motor assembly being tested. The chamber must be sufficiently darkened and provide viewing capabilities of the flamepaths to allow observation during testing of any discharge of flame or ignition of the explosive mixture surrounding the motor assembly.

(2) A methane gas supply with at least 98 by volume per centum of combustible hydrocarbons, with the remainder being inert. At least 90 percent by volume of the gas shall be methane.

(3) Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 mesh U.S. Standard sieve series.

(4) An electric spark ignition source with a minimum of 100 millijoules of energy.

(5) A pressure recording system that will indicate the pressure peaks resulting from the ignition and combustion of explosive gas mixtures within the enclosure being tested.

(b) *General test procedures.* (1) Motor assemblies being tested shall—

(i) Be equipped with unshielded bearings regardless of the type of bearings specified; and

(ii) Have all parts that do not contribute to the operation or assure the explosion-proof integrity of the enclosure, such as, oil, seals, grease fittings, hose conduit, cable clamps, and outer bearing caps (which do not house the bearings) removed from the motor assembly.

(2) Each motor assembly shall be placed in the explosion test chamber and tested as follows:

(i) The motor assembly shall be filled with and surrounded by an explosive mixture of the natural gas supply and air. The chamber gas concentrations shall be between 6.0 by volume per centum and the motor assembly natural gas concentration just before ignition of each test. Each externally visible flamepath fit shall be observed for discharge of flames for at least two of the tests, including one with coal dust added.

(ii) A single spark source is used for all testing. Pressure shall be measured at each end of the winding compartment simultaneously during all tests. Quantity and location of test holes shall permit ignition on each end of the winding compartment and recording of pressure on the same and opposite ends as the ignition.

(iii) Motor assemblies incorporating a conduit box shall have the pressure in the conduit box recorded simultaneously with the other measured pressures during all tests. Quantity and location of test holes in the conduit box shall permit ignition and recording of pressure as required in paragraphs (c)(1) and (c)(4)(i) of this section.

(iv) The motor assembly shall be completely purged and recharged with a fresh explosive gas mixture from the chamber or by injection after each test. The chamber shall be completely purged and recharged with a fresh explosive gas mixture as necessary. The oxygen level of the chamber gas mixture shall be no less than 18 percent by volume for testing. In the absence of oxygen monitoring equipment, the maximum number of tests conducted before purging shall be less than or equal to the chamber volume divided by forty times the volume occupied by the motor assembly.

(c) *Test procedures.* (1) Eight tests at 9.4 ± 0.4 percent methane by volume within the winding compartment shall be conducted, with the rotor stationary during four tests and rotating at rated speed (rpm) during four tests. The ignition shall be at one end of the winding compartment for two stationary and two rotating tests, and then switched to the opposite end for the remaining four tests. If a non-isolated conduit box is used, then two additional tests, one stationary and one rotating, shall be conducted with ignition in the conduit box at a point furthest away from the opening between the conduit box and the winding compartment.

(2) Four tests at 7.0 ± 0.3 percent methane by volume within the winding compartment shall be conducted with the rotor stationary, 2 ignitions at each end.

(3) Four tests at 9.4 ± 0.4 percent methane by volume plus coal dust shall be conducted. A quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the winding compartment plus the non-isolated conduit box shall be introduced into each end of the winding compartment and non-isolated conduit box to coat the interior surface before conducting the first of the four tests. The coal dust introduced into the conduit box shall be proportional to its volume. The remaining coal dust shall be equally divided between the winding compartment ends. For two tests, one stationary and one rotating, the ignition shall be either in the conduit box or one end of the connected winding compartment, whichever produced the highest pressure in the previous tests. The two remaining tests, one stationary and one rotating, shall be conducted with the ignition in the winding compartment end furthest away from the conduit box.

(4) For motor assemblies incorporating a conduit box which is isolated from the winding compartment by an isolating barrier the following additional tests shall be conducted—

(i) For conduit boxes with an internal free volume greater than 150 cubic inches, two ignition points shall be used, one as close to the geometric center of the conduit box as practical and the other at the furthest point away from the isolating barrier between the conduit box and the winding compartment. Recording of pressure shall be on the same and opposite sides as the ignition point furthest from the isolating barrier between the conduit box and the winding compartment. Conduit boxes with an internal free volume of 150 cubic inches or less shall have one test hole for ignition located as close to the geometric center of the conduit box as practical and one for recording of pressure located on a side of the conduit box.

(ii) The conduit box shall be tested separately. Six tests at 9.4 ± 0.4 percent methane by volume within the conduit box shall be conducted followed by two tests at 7.0 ± 0.3 percent methane by volume. Then two tests at 9.4 ± 0.4 percent methane by volume with a quantity of coal dust equal to 0.05 ounces per cubic foot of internal free volume of the conduit box and meeting the specifications in paragraph (c)(3) of this section shall be conducted. For conduit boxes with an internal free volume of more than 150 cubic inches, the number of tests shall be evenly divided between each ignition point.

(iii) The motor assembly shall be tested following removal of the isolating barrier or one sectionalizing terminal (as applicable). Six tests at 9.4 ± 0.4 percent methane by volume in the winding compartment and conduit box shall be conducted using three ignition locations. The ignition shall be at one end of the winding compartment for one stationary and one rotating test; the opposite end for one stationary and one rotating test; and at the ignition point that produced the highest pressure on the previous test in paragraph (c)(4)(ii) of this section in the conduit box for one stationary and one rotating test. Motor assemblies that use multiple sectionalizing terminals shall have one test conducted as each additional terminal is removed. Each of these tests shall use the rotor state and ignition location that produced the highest pressure in the previous tests.

(d) A motor assembly incorporating a conduit box that is isolated from the winding compartment that exhibits pressures exceeding 110 psig, while testing during removal of any or all isolating barriers as specified in paragraph (c)(4) of this section, shall have a warning statement on the approval plate. This statement shall warn that the isolating barrier must be maintained to ensure the explosion-proof integrity of the motor assembly. A statement is not required when the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of paragraph (c)(4) of this section. The static pressure test shall be conducted on the motor assembly with all isolating barriers removed, and in accordance with § 7.307 of this part.

(e) *Acceptable performance.* Explosion tests of a motor assembly shall not result in—

(1) Discharge of flames.

(2) Ignition of the explosive mixture surrounding the motor assembly in the chamber.

(3) Development of afterburning.

(4) Rupture of any part of the motor assembly or any panel or divider within the motor assembly.

(5) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

(6) Pressure exceeding 100 psig, except as provided in paragraph (d) of this section unless the motor assembly has withstood a static pressure of twice the maximum pressure recorded in the explosion tests of this section following the static pressure test procedures of § 7.307 of this part.

(7) Permanent deformation greater than 0.040 inches per linear foot.

§ 7.307 Static pressure test.

(a) *Test procedure.* (1) The enclosure shall be internally pressurized to a minimum of 150 psig and the pressure maintained for a minimum of 10 seconds.

(2) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the enclosure.

(b) *Acceptable performance.* (1) The enclosure, during pressurization shall not exhibit—

(i) Leakage through welds or casting; or

(ii) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(2) The enclosure following removal of the pressurizing agent, shall not exhibit—

(i) Visible cracks in welds;

(ii) Permanent deformation exceeding 0.040 inches per linear foot; or

(iii) Clearances, in excess of those specified in this subpart, along accessible flame-arresting paths, following any necessary retightening of fastenings.

§ 7.308 Lockwasher equivalency test.

(a) *Test procedure.* (1) Each test sample shall be an assembly consisting of a fastening with a locking device. Each standard sample shall be an assembly consisting of a fastening with a lockwasher.

(2) Five standard samples and five test samples shall be tested.

(3) Each standard and test sample shall use a new fastening of the same specifications as being used on the motor assembly.

(4) A new tapped hole shall be used for each standard and test sample. The hole shall be of the same specifications as used on the motor assembly.

(5) Each standard and test sample shall be inserted in the tapped hole and continuously and uniformly tightened at a speed not to exceed 30 rpm until the fastening's proof load is achieved. The torquing device shall not contact the locking device or the threaded portion of the fastening.

(6) Each standard and test sample shall be engaged and disengaged for 15 full cycles.

(b) *Acceptable performance.* The minimum torque value required to start removal of the fastening from the installed position (minimum breakway torque) for any cycle of any test sample shall be greater than or equal to the average breakway torque of each removal cycle of every standard sample.

§ 7.309 Approval marking.

Each approved motor assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and a warning statement as specified in § 7.306(d) of this part. The plate shall be securely attached to the motor assembly in a manner that does not impair any explosion-proof characteristics.

§ 7.310 Post-approval product audit.

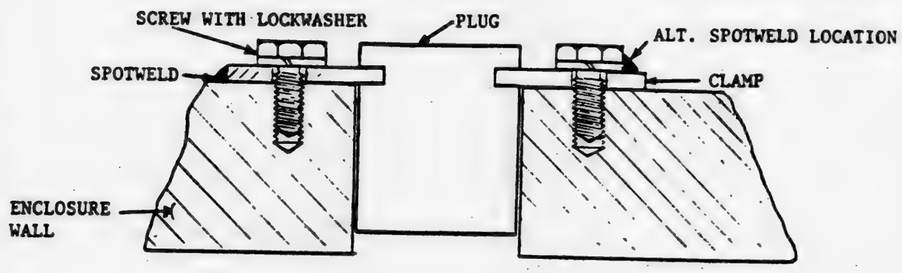
Upon request by MSHA but not more than once a year, except for cause, the approval-holder shall make a motor assembly available for audit at no cost.

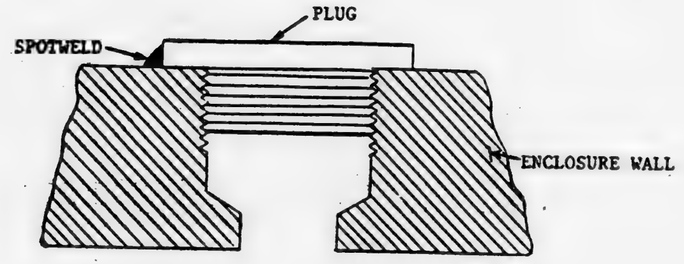
§ 7.311 Approval checklist.

Each motor assembly bearing an MSHA approval marking shall be accompanied by a list of items necessary for maintenance of the motor assembly as approved.

BILLING CODE 4510-43-M

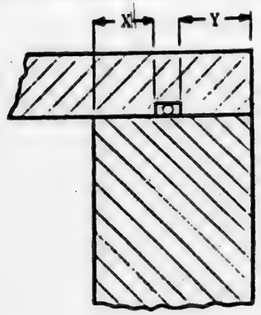
Appendix I to Subpart J—Figures J–1 through J–14





WELD (OR BRAZE) MAY BE ON PLUG, CLAMP, OR FASTENING

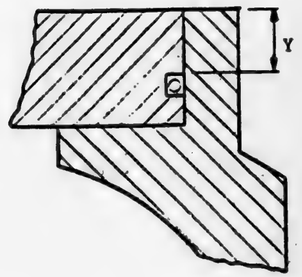
FIGURE J-1



X + Y = MIN. ACCEPTABLE FLAME-ARRESTING PATH LENGTH

$$Y = \frac{X + Y}{2}$$

FIGURE J-2



Y = 1/2" MIN..

FIGURE J-3

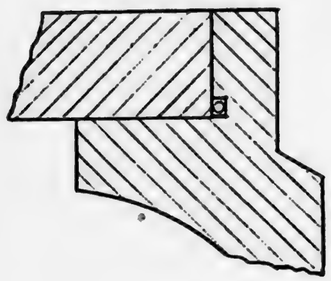
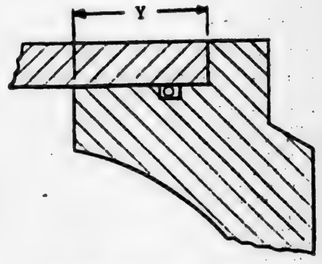
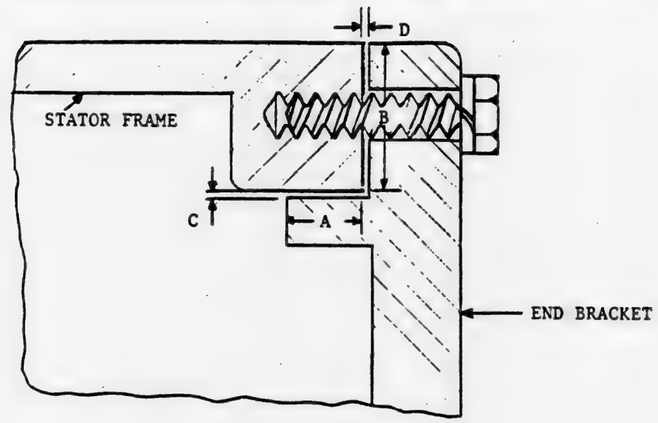


FIGURE J-4



O-RING CAN BE LOCATED ANYWHERE ALONG LENGTH OF (Y).

FIGURE J-5



A = Width of Axial Portion

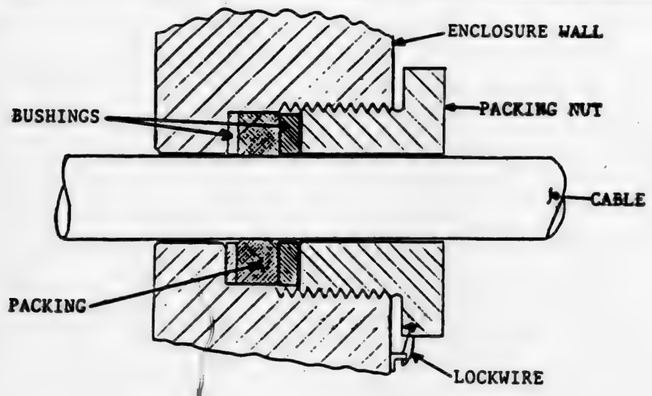
B = Width of Clamped Radial Portion

C = Clearance of Axial Portion

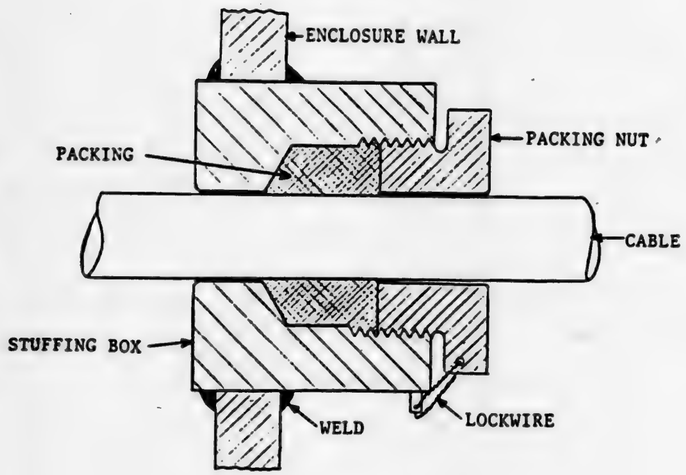
D = Clearance of Radial Portion

Total Width of Flamepath = A + B

FIGURE J-6

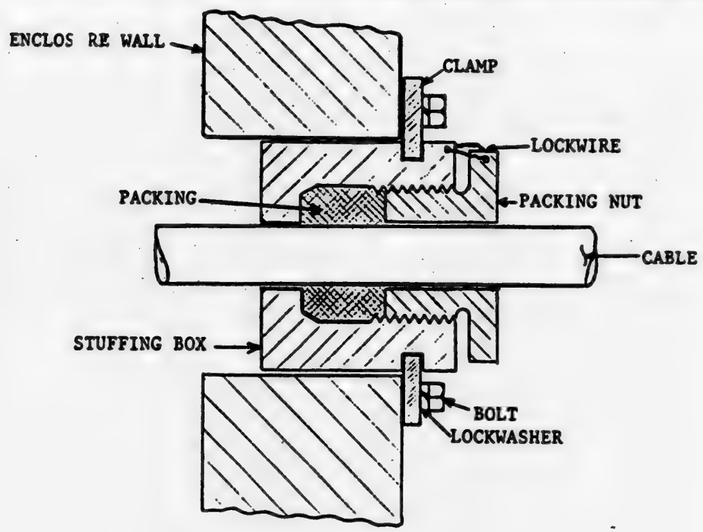


MACHINED-IN STUFFING BOX



WELD-IN STUFFING BOX

FIGURE J-7



SLIP-FIT STUFFING BOX

FIGURE J-7

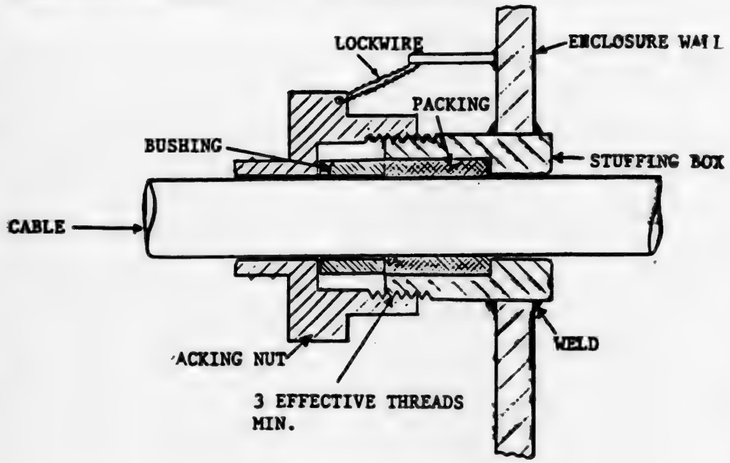


FIGURE J-8

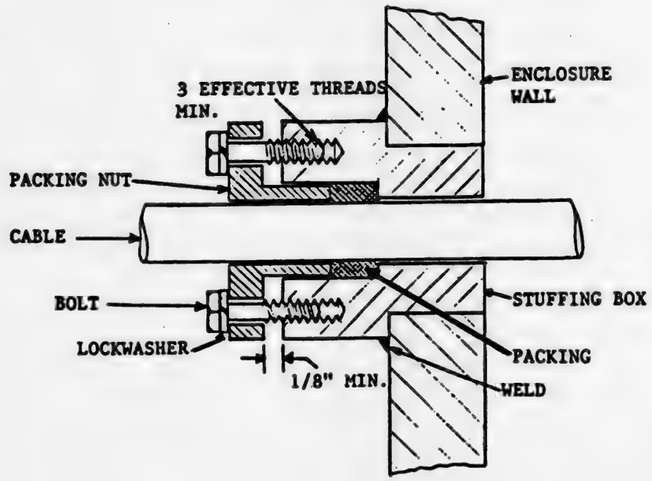


FIGURE J-9

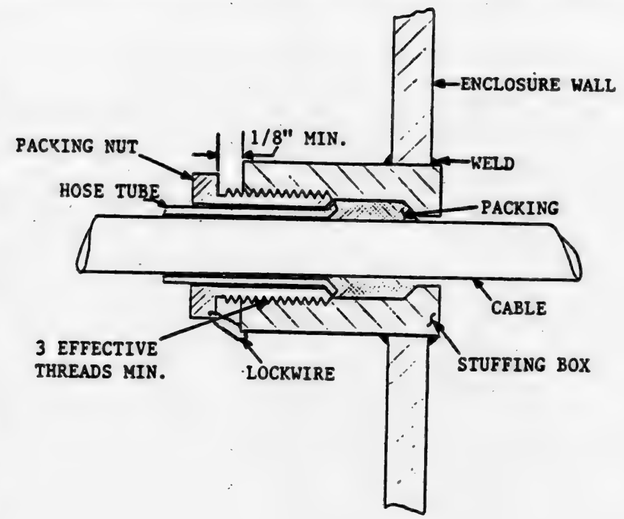


FIGURE J-10

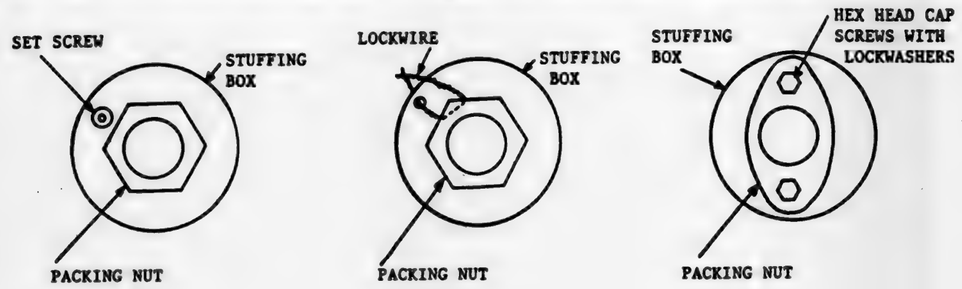
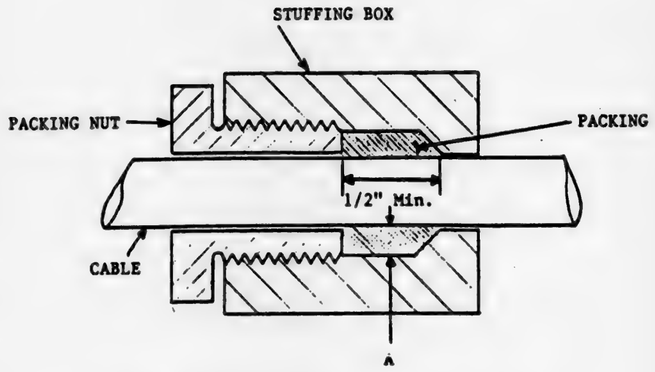
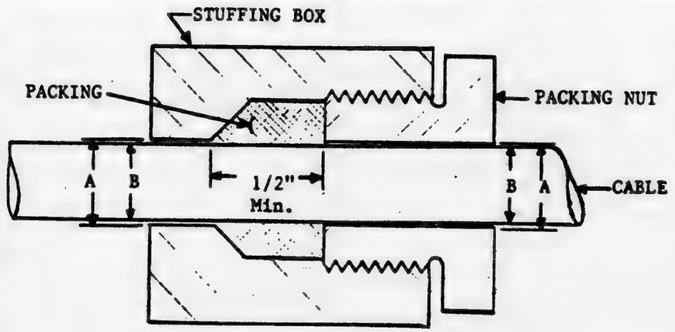


FIGURE J-11



A ≤ 150% of Packing Material Diameter or Width

FIGURE J-12



A - B ≤ 75% of Packing Material Diameter or Width

FIGURE J-13

BEST COPY AVAILABLE

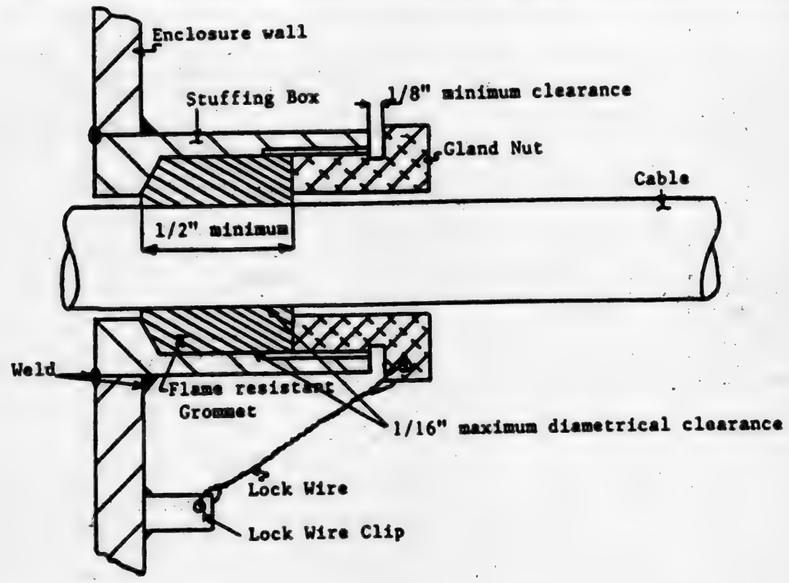


FIGURE J-14

BILLING CODE 4510-43-C

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957 and 961.

2. Section 18.4 is revised to read as follows:

§ 18.4 Electrical equipment for which approval is issued.

An approval will be issued only for a complete electrical machine or accessory. Only components meeting the requirements of subpart B of this part or those approved under part 7 of this chapter, unless they contain intrinsically safe circuits, shall be included in the assemblies.

3. Section 18.24 is revised to read as follows:

§ 18.24 Electrical Clearances.

Minimum clearances between uninsulated electrical conductor surfaces, or between uninsulated conductor surfaces and grounded metal surfaces, within the enclosure shall be as follows:

MINIMUM CLEARANCES BETWEEN UNINSULATED SURFACES

Phase-to-phase voltage (rms)	Clearances (inches)	
	Phase-to-phase	Phase-to-phase or control circuit
0 to 999	0.5	0.25
1000 to 2400	1.4	0.6
2401 to 4160	3.0	1.4

4. In section 18.31 paragraphs (a)(3), (a)(5), and (a)(6) are revised and (a)(7) and (a)(8) are added to read as follows:

§ 18.31 Enclosures-joints and fastenings.

(a) * * * * *

(3) External rotating parts shall not be constructed of aluminum alloys containing more than 0.6 percent magnesium.

* * * * * *

(5) Threaded covers and mating parts shall be designed with Class 1A and 1B (coarse, loose fitting) threads. The flame-arresting path of threaded joints shall conform to the requirements of paragraph (a)(6) of this section.

(6) Enclosure requirements shall be based on the internal volumes of the empty enclosure. The internal volume is the volume remaining after deducting the volume of any part that is essential in maintaining the explosion-proof integrity of the enclosure or necessary for operation. Essential parts include the parts that constitute the flame-arresting path and those necessary to secure parts that constitute a flame-arresting path. Enclosures shall meet the following requirements:

EXPLOSION-PROOF REQUIREMENTS ASED ON VOLUME

	Volume of empty enclosure		
	Less than 45 cu. ins.	45 to 124 cu. ins. inclusive	More than 124 cu. ins.
Minimum thickness of material for walls	1/8"	3/16"	1/4"
Minimum thickness of material for flanges and covers	[1] 1/4"	[2] 3/8"	[2] 1/2"
Minimum width of joint; all in one plane[3]	1/8"	3/4"	1"
Maximum clearance; joint all in one plane	0.002"	0.003"	0.004"
Minimum width of joint, portions of which are in different planes; cylinders or equivalent[3,4]	3/8"	3/8"	3/4"
Maximum clearances; joint in two or more planes, cylinders or equivalent:			
(a) Portion perpendicular to plane[5]	0.008"	0.006"	0.006"
(b) Plane portion	0.008"	0.006"	0.006"
Maximum bolt [6,7] spacing; joints all in one plane	6" with a minimum of 4 bolts		
Maximum bolt spacing; joints, portions of which are in different planes	(8)"	(8)"	(8)"
Minimum diameter of bolt (without regard to type of joint)	1/4"	1/4"	5/8"
Minimum thread engagement [9]	1/4"	1/4"	5/8"
Maximum diametrical clearance between bolt body and unthreaded holes through which it passes [7,10,11]	1/64"	1/32"	1/16"
Minimum distance from interior of enclosure to the edge of a bolt hole: [7,12]			
Joint-minimum width 1"			[13] 1/16"
Joint-less than 1"	1/8"	3/16"	
Cylindrical joints			
Staft centered by ball or roller bearings:			
Minimum length of flame-arresting path	1/8"	3/4"	1"
	0.020"	0.025"	0.030"
Other cylindrical joints: [14]			
Minimum length of flame-arresting path	1/8"	3/4"	1"
Maximum diametrical clearance	0.006"	0.008"	0.010"

[1] 1/32 inch less is allowable for machining rolled plate.
[2] 1/16 inches less is allowable for maching rolled plate.
[3] The widths of any grooves, such as grooves for holding oil seals or o-rings, shall be deducted in measuring the widths of flame-arresting paths.
[4] If only two planes are involved, neither portion of a joint shall be less than 1/8 inch wide, unless the wider portion conforms to the same requirements as those for a joint that is all in one plane. If more than two planes are involved (as in labyrinths or tongue-and-groove joints) the combined lengths of those portions having prescribed clearances are considered.
[5] The allowable diametrical clearance is 0.006 inch when the portion perpendicular to the plane portion is 1/4 inch or greater in length. If the perpendicular portion is more than 1/8 inch but less than 1/4 inch wide, the diametrical clearance shall not exceed 0.006 inch.
[6] Where the term "bolt" is used, it refers to a machine bolt or a cap screw, and for either of these studs may be substituted provided the stude, bottom in blind holes, are completely welded in place, or the bottom of the hole is closed with a plug secured by weld or braze, Bolts shall be provided at all corners.
[7] The requirements as to diametrical clearance around the bolt and minimum distance from the bolt hole to the inside of the explosion-proof enclosure apply to steel dowel pins. In addition, when such pins are used, the spacing between centers of the bolts on either side of the pin shall not exceed 5 inches.
[8] Adequacy of bolt spacing will be judged on the basis of size and configuration of the enclosure, strength of materials, and explosion test results.
[9] In general, minimum thread engagement shall be equal to or greater than the diameter of the bolt specified.
[10] Threaded holes for fastening bolts shall be machined to remove burrs or projections that affect planarity of a surface forming a flame-arresting path.
[11] This maximum clearance applies only when the bolt is located within the flamepath.
[12] The edge of the bolt hole shall include the edge of any machining done to the bolt hole, such as chamfering.
[13] Less than 7/16" (1/4" minimum) will be acceptable provided the diametrical clearance for fastening bolts does not exceed 1/32".
[14] Shafts or operating rods through journal bearings shall be not less than 1/4" in diameter. The length of fit shall not be reduced when a push buttom is depressed. Operating rods shall have a shoulder or head on the portion inside the enclosure. Essential parts riveted or bolted to the inside portion are acceptable in lieu of a head or shoulder, but cotter pins and similar devices shall not be used.

(7) O-rings. If used in a flame-arresting path, shall meet the following:

(i) When the flame-arresting path is in one plane, the o-ring shall be located at least one-half the acceptable flame-arresting path length specified in paragraph (a)(6) of this section within the outside edge of the path (see figure J–2 in appendix I, subpart J, of part 7 of this chapter),

(ii) When the flame-arresting path is one of the plane-cylindrical type (step joint), the o-ring shall be located at least ½ inch within the outer edge of the plane portions (see figure J–3 in appendix to subpart J part of 7 of this chapter), or at the junction of the plane and cylindrical portion of the joint (see figure J–4 in appendix to subpart J of part 7 of this chapter); or in the cylindrical portion (see figure J–5 in appendix to subpart J of part 7 of this chapter).

(8) Mating parts comprising a pressed fit shall result in a minimum interference of 0.001" between the parts. The minimum length of the pressed fit shall be equal to the minimum thickness requirement of paragraph (a)(6) of this section for the material in which the fit is made.

* * * * *

5. Section 18.32 is revised by adding paragraph (i) to read as follows:

§ 18.32 Fastenings-additional requirements.

* * * * *

(i) Coil-thread inserts, if used in holes for fastenings, shall meet the following:

(1) The inserts shall have internal screw threads.

(2) The holes for the inserts shall be drilled and tapped to the insert manufacturer's specifications.

(3) The inserts shall be installed according to the insert manufacturer's specifications.

(4) The inserts shall be of sufficient length to ensure the minimum thread engagement of fastening specified in § 18.31(a)(6).

6. Section 18.33 is revised to read as follows:

§ 18.33 Finish of surface joints.

Flat surfaces between bolt holes that form any part of a flame-arresting path shall be plane to within a maximum deviation of one-half the maximum clearance specified in § 18.31(a)(6). All metal surfaces forming a flame-arresting path shall be finished during the manufacturing process to not more than 250 microinches. A thin film of non-hardening preparation to inhibit rusting may be applies to these finished metal surfaces as long as the final surface does not promote the adherence of foreign materials.

7. Section 18.34 is amended by adding an introductory paragraph and revising paragraph (a)(6) before the note to read as follows:

§ 18.34 Motors.

Explosion-proof electric motor assemblies intended for use in approved equipment in underground mines that are specifically addressed in part 7 shall be approved under part 7 of this chapter after (insert date 2 years from the effective date of the rule). Those motor assemblies not specifically addressed under part 7 be accepted or certified under this part.

(a) * * *

(6) Oil seals shall be removed from motors prior to submission for explosion tests.

* * * * *

8. Section 18.37 is amended by revising paragraph (b) to read as follows:

§ 18.37 Lead entrances.

* * * * *

(b) Stuffing boxes shall be so designed, and the amount of packing used shall be such, that with the packing properly compressed, the gland nut still has a clearance distance of ⅛" or more to travel without meeting interference by parts other than packing. In addition, the gland nut shall have a minimum of three effective threads engaged (see figures 8, 9 and 10)

* * * * *

9. Section 18.62 is amended by revising the fifth sentence of paragraph (a) to read as follows:

§ 18.62 Tests to determine explosion-proof characteristics.

(a) * * * Coal dust having a minimum of 22 percent dry volatile matter and a minimum heat constant of 11,000 moist BTU (coal containing natural bed moisture but not visible surface water) ground to a fineness of minus 200 U.S. Standard sieve series.* * *

* * * * *

[FR Doc. 91–6574 Filed 3–11–91; 8:45 am]
BILLING CODE 4510–43–M

federal register

Tuesday
March 12, 1991

Part IV

Department of Housing and Urban Development

Office of the Secretary
Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Delegation of Authority to the Assistant Secretary for Housing—Federal Housing Commissioner To Oversee Financial Operations; Notice

Redelegation of Authority to Housing—Federal Housing Administration Comptroller; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-946; FR-2737-D-01]

Delegation of Authority to the Assistant Secretary for Housing—Federal Housing Commissioner To Oversee Financial Operations

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: On November 3, 1989, certain responsibilities to oversee FHA accounting and cash management functions were transferred from the Assistant Secretary for Administration to the Assistant Secretary for Housing—Federal Housing Commissioner. Subsequently, section 122 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, 103 Stat. 1987 (1989), established the position of Federal Housing Administration Comptroller within the Department. The Secretary of Housing and Urban Development is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner certain responsibilities to oversee the financial operations of the programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Eleanor M. Clark, Housing—FHA Comptroller, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5132, Washington, DC 20410. Telephone (202) 401–8800 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to the transfer of FHA accounting and cash management functions from the Assistant Secretary for Administration to the Assistant Secretary for Housing—Federal Housing Commissioner and pursuant to section 122 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, 103 Stat. 1987, at 2022, in which Congress established a new position in the Department entitled Federal Housing Administration Comptroller and gave that official certain responsibility for overseeing the financial management operations of the FHA, the Secretary is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner a variety of responsibilities related to the financial operations of those programs administered by the Assistant Secretary. These responsibilities include: formulating financial management policies and procedures, maintaining the FHA general ledger, preparing internal reports, and ensuring the accounting and actuarial soundness of the FHA funds and the financial management of other, non-FHA Housing programs.

At present, certain accounting services related to the Office of Housing's non-insurance programs are provided by the Office of Finance and Accounting (OFA) under the Assistant Secretary for Administration. OFA also provides accounting control over cash transactions for the insurance program and prepares all financial statements to the Department of the Treasury for both the insured and non-insured programs. These services include ensuring the adequacy of internal controls in the manual and automated accounting processes and systems, and ensuring the timeliness, relevance and accuracy of accounting data provided by the accounting systems. The Housing—FHA Comptroller will be responsible for ensuring that all Housing programs are managed in a financially prudent manner to ensure that laws and regulations governing Housing programs are complied with, that adequate internal controls are present in Housing's programs, and that accurate, timely and relevant information is provided to support management's responsibilities for program planning and control. At a later date, the provisions of 24 CFR part 3, subpart C, will be revised to indicate the delegated authority for the Office of Housing in light of certain organizational changes.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary delegates to the Assistant Secretary for Housing—Federal Housing Commissioner the following basic authority and functions:

1. To provide financial management of the programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner;

2. To formulate and develop financial management and internal control policies; to oversee FHA's compliance with OMB Circulars A–123 (Internal Controls), A–127 (Financial Management Systems), and A–130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles and procedures necessary for financial management; to issue directions to the Housing—Federal Housing Administration Comptroller to implement policies approved by the Assistant Secretary in the functions assigned to the Housing—FHA Comptroller; and to advise the Secretary on the financial impact of newly proposed housing programs and mortgage insurance products and modification to existing products;

3. To maintain the FHA General Ledger and the chart of accounts of the FHA funds;

4. To be responsible for the establishment and maintenance of appropriate financial management control over Housing and FHA programs; to devise and establish insurance fiscal servicing, accounting and fiscal procedures and to administer the fiscal policies and activities for Housing and FHA programs; to provide technical advice and guidance to all organizational elements under the Assistant Secretary in the fields of accounting and fiscal matters; to track actual Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of the Housing and FHA programs;

5. To prepare reports; to report to the Secretary, other Offices, the Department's Chief Financial Officer, and other HUD Regional and Field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and performance reports, program effectiveness controls and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Housing and FHA programs;

6. To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

7. To prepare and execute policies and systems to measure the financial and actuarial soundness of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

8. To obtain reports, information, advice and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost accounting information on a timely basis;

9. To be responsible for coordination and general supervision of the Actuarial staff, the Housing Standards and Procedures staff, and the Housing Reports staff;

10. To direct the investment of moneys held in the various Housing/FHA insurance funds, not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States.

Section B. Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner:

1. To sue and be sued.

Section C. Authority to Redelegate

The Assistant Secretary for Housing—Federal Housing Commissioner is authorized to redelegate the authority delegated in Section A.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 25, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–5761 Filed 3–11–91; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D–91–947; FR–2738–D–01]

Redelegation of Authority to Housing—Federal Housing Administration Comptroller

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary of Housing—Federal Housing Commissioner is redelegating to the Housing—Federal Housing Administration Comptroller certain responsibilities to oversee the financial operations of the programs administered by the Assistant Secretary.

EFFECTIVE DATE: February 25, 1991.

FOR FURTHER INFORMATION CONTACT: Eleanor M. Clark, Housing—FHA Comptroller, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., room 5132, Washington, DC 20410. Telephone (202) 401–8800 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Under section 122, Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, 103 Stat. 1987, at 2022, Congress established a new position in the Department entitled Federal Housing Administration Comptroller and gave that official responsibility for overseeing the financial operations of the FHA.

By delegation issued contemporaneously with this redelegation, the Secretary delegated to the Assistant Secretary for Housing—Federal Housing Commissioner a variety of responsibilities related to the financial operations of those programs administered by the Assistant Secretary. The Assistant Secretary is redelegating to the Housing—FHA Comptroller a variety of responsibilities related to the financial operation of those programs administered by the Assistant Secretary. These responsibilities include: formulating financial management policies and procedures, maintaining the FHA general ledger, preparing internal reports, and ensuring the accounting and actuarial soundness of the FHA funds and the financial management of other, non-FHA Housing programs.

At present, certain accounting services related to the Office of Housing's non-insurance programs are provided by the Office of Finance and Accounting (OFA) under the Assistant Secretary for Administration. OFA also provides accounting control over cash transactions for the insurance program and prepares all financial statements to the Department of the Treasury for both insured and non-insured programs. These services include ensuring the adequacy of internal controls in the manual and automated accounting processes and systems, and ensuring the timeliness, relevance and accuracy of accounting data provided by the accounting systems. The Housing—FHA Comptroller will be responsible for ensuring that all Housing programs are managed in a financially prudent manner to ensure that laws and regulations governing Housing programs are complied with, adequate internal controls are present in Housing's programs, and accurate, timely and relevant information is provided to support management's responsibilities for program planning and control. At a later date, the provisions of 24 CFR part 3, subpart C, will be revised in light of certain organizational changes.

Accordingly, the Assistant Secretary redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Housing—Federal Housing Administration Comptroller the following basic authority and functions:

1. To provide financial management for programs administered by the Assistant Secretary for Housing—Federal Housing Commissioner;

2. To formulate and develop financial management and internal control policies; to oversee Housing/FHA's compliance with OMB Circulars A–123 (Internal Controls), A–127 (Financial Management Systems), and A–130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles and procedures necessary for financial management; to issue directions that implement policies approved by the Assistant Secretary for Housing—Federal Housing Commissioner in the functions assigned to the Housing—FHA Comptroller; and to advise the Assistant Secretary for Housing—Federal Housing Commissioner on the financial impact of newly proposed housing programs and mortgage insurance products and modification to existing products;

3. To maintain the FHA General Ledger and the chart of accounts of the FHA funds;

4. To establish and maintain appropriate financial management control over Housing and FHA programs; to devise and establish insurance servicing, accounting and fiscal procedures and to administer the fiscal policies and activities for Housing and FHA programs; to provide technical guidance to organizational elements under the Assistant Secretary in the field of accounting and fiscal matters; to track Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of the Housing and FHA programs;

5. To prepare reports; to report to the Assistant Secretary for Housing—Federal Housing Commissioner, other Offices, the Department's Chief Financial Officer, and other HUD Regional and Field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and

performance reports, program effectiveness controls and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Housing and FHA programs;

6. To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

7. To prepare and execute policies and systems to measure the financial and actuarial soundness of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

8. To obtain reports, information, advice and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost accounting information on a timely basis;

9. To be responsible for coordination and general supervision of the Actuarial staff, the Housing Standards and Procedures staff, and the Housing Reports staff;

10. To direct the investment of moneys held in the various Housing/FHA insurance funds, not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 25, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-5762 Filed 3-11-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Tuesday
March 12 1991

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Historically Black Colleges and Universities Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3224; FR-3003-N-01]

Funding Availability for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1991.

DATE: The actual Application Due Date will be specified in the application kit. The Due Date will be a date no earlier than 60 days from the first date that applications are made available.

SUMMARY: This NOFA announces funding for the Historically Black Colleges and Universities (HBCU) Program. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding available amounts, objectives, eligibility and selection criteria;

(b) Application processing, including how and when to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

For an Application Kit Contact: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 401–2032. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

I. Purpose and Substantive Description

A. Authority

This program is authorized under Section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act). The program is governed by regulations contained in 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O. HUD expects to publish the HBCU final rule in March, 1991.

B. Allocation Amounts and Form

The Fiscal Year 1991 appropriation for the HBCU program is $4.5 million. The maximum amount awarded to any applicant will be $500,000. The awards will be made in the form of grants.

C. Objectives

The objectives of this program are:

1. To help HBCUs expand their role and effectiveness in addressing community development needs, including neighborhood revitalization, housing and economic development in their localities, consistent with the purposes of the 1974 Act.

2. To help HBCUs address the priority needs of their localities in meeting the following HUD priorities:

- Expand homeownership and affordable housing opportunities.
- Create jobs and economic development through enterprise zones.
- Empower the poor through resident management.
- Enforce fair housing for all.
- Help make public housing drug free.
- Help end the tragedy of homelessness.

In order to qualify for funding, an applicant will have to demonstrate how it will meet objective #1. Applicants who meet objective #2 in at least one priority area will receive higher scores in the rating process.

D. Eligibility

1. *Eligible Applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

2. *Eligible Activities.* Activities that may be funded under this NOFA are those activities eligible for CDBG funding. They are listed in 24 CFR 570.201 through 570.206, copies of which will be included in the application kit. Basic eligible activities include acquisition and disposition of real property, public facilities and improvements, rehabilitation assistance, special economic development activities, planning and other activities.

Activities which are ineligible for funding are listed in 24 CFR 570.207. Additionally, an activity which otherwise is eligible under 24 CFR 570.201-570.206 may not be funded if State or local law requires that it be carried out by a governmental entity.

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for any activities that would be located or carried out in the Coastal Barrier Resources System.

For several years, under the technical assistance grants authority of section 107 of the 1974 Act, HBCUs have been funded to provide technical assistance to units of general local government to increase the effectiveness of such entities in planning, developing and administering assistance under the CDBG program. While HBCUs will continue to be eligible to compete for such technical assistance grants, the HBCU program to be funded under this Notice is not for the provision of technical assistance, but the broader range of eligible activities described above. This new HBCU program was authorized as a separate special purpose grant program by the HUD Reform Act of 1989.

3. *Locality.* This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their localities. The term locality will differ for each HBCU, depending on its location. It includes any city, county, town, township, parish, village, or other general political subdivision of a State within which the HBCU is located. An HBCU located in a metropolitan statistical area, as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire area.

4. *Local Approval.* Since eligible activities must take place in a locality (as defined above), each local government where an activity is to take place must approve the activity and state that the activity is not inconsistent with its community development plan or program. This approval and finding must accompany each application and may take the form of a letter by the chief executive officer of the locality or resolution by the legislative body of the locality.

5. *Environmental Review.* HUD will conduct an environmental review in accordance with 24 CFR part 50 before giving its approval to a proposal. Applicants are urged to be cognizant of this factor in preparing their proposals.

E. Ranking Factors and Rating

The factors set forth below will be used by the Department to evaluate applications. Each application must contain sufficient technical information to be reviewed for its technical merits. The score of each factor will be based on the qualitative and quantitative aspects demonstrated in each. The maximum number of points for each factor (out of a total of 100 points) is as follows:

Ranking factors	Maximum points
1. Addressing the Objectives	20
The extent to which the applicant addresses the objectives of this program as specified in I.C. above. In rating this factor, the Department will consider:	
a. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community development needs in its locality(ies).	
b. The extent to which the applicant's proposed activities will address high priority needs in each locality's community development plan or program.	
c. The extent to which the applicant's proposed activities address one or more of the HUD priorities specified in I.C.2. above.	
2. Substantial Impact in Achieving Objectives	25
The extent to which the applicant demonstrates that the proposed activities will have a substantial impact in achieving the objectives in I.C. In rating this factor the Department will consider:	
a. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on increasing its role and effectiveness in addressing the community development needs of its locality.	
b. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on meeting one or more of the stated HUD priorities.	
c. The extent to which the applicant demonstrates how the proposed activities will have a substantial impact on the community development goals and programs of the locality in which the activity will take place.	
3 Special Needs of Applicant or Locality	10
The extent to which the applicant demonstrates that the applicant or locality has special needs which will be addressed or met by the proposed activities, particularly with respect to benefitting low- and moderate-income persons. In evaluating this factor, HUD will consider the immediacy of the special need in the locality, particularly with respect to low- and moderate-income persons.	
4. Technical and Financial Feasibility and Match	25
The extent to which the applicant demonstrates the technical and financial feasibility for achieving the objectives, including local support for the activities proposed to be carried out in the locality and any matching funds proposed to be provided from sources other than the applicant. In evaluating applications, HUD will consider:	
a. The extent to which the applicant demonstrates the technical feasibility for achieving the objectives within the program period proposed.	
b. The extent to which the applicant demonstrates the financial feasibility for achieving the objectives.	
c. The extent to which the applicant demonstrates local support for the activities to be carried out in the locality as evidenced by commitment of matching funds proposed to be provided from sources other than the applicant; commitment of local government or other staff; in-kind resources; or related governmental actions.	
5. Capacity	20
The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any prior HUD-assisted projects or activities. In evaluating applications, HUD will consider:	
a. The extent to which the applicant's proposed management plan: clearly delineates staff responsibilities and accountability for all work required; presents a work plan with a clear and feasible schedule for conducting all project tasks; presents a reasonable and adequate planned budget as reflected in the budget-by-task and supporting rationale and justification for the budget.	
b. The extent to which the applicant demonstrates timely and satisfactory recent performance in community development activities, including HUD-assisted projects or activities, of the same or similar type to those proposed in the application.	
c. The extent to which the applicant demonstrates the capacity, background and experience of the program manager and key staff to carry out satisfactorily the proposed activities in a timely fashion.	
Total Points	100

F. Selection Method

1. *Threshold Areas.* An applicant will have to demonstrate how it meets objective #1 of this HBCU program (helping HBCUs expand their role and effectiveness in addressing community development needs in their localities) in order to qualify for evaluation and ranking. Activities which are not eligible for funding under this program (see I.D.2 above) will not be reviewed in the evaluation process. If more than 50 percent of the amount requested in the application are for ineligible activities, then the application will not be evaluated or ranked.

2. *Ranking Process.* Applications for funding under this Notice will be evaluated competitively, and awarded points based on the factors identified above. The Department will rank the applications in descending order according to score. Applications will be funded in rank order, until all available funds have been obligated, or until there are no acceptable applications.

3. *HUD Flexibility.* In the case of proposals of approximately equal merit, HUD retains the right to exercise discretion in selecting projects that would best serve the program objectives, with consideration given to the needs of localities, types of activities proposed, equal geographical distribution, and program balance. These factors will be given equal consideration.

II. Application Process

A. Obtaining and Submitting Applications

Application kits will be available no earlier than 30 days from the date of publication of this Notice. Application kits must be requested in writing from: Connie Southerland Collins, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, or by facsimile machine to the following number: (202) 401–2032. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.)

Completed applications must be submitted to the address above. One copy of the application must be submitted to the HUD Field Office with jurisdiction for the locality in which the applicant is located.

B. Application Deadline

An application for funding under this Notice must be received by the date specified in the application kit. No application received after the deadline date will be considered.

III. Checklist of Application Submission Requirements

A. Document Submissions

Each application must include an original and two copies of the following documents: (An additional copy is to be submitted to the appropriate HUD Field Office as specified above.)

1. Standard Form 424 (Request for Federal Assistance) signed by the Chief Executive Officer of the HBCU submitting the application.
2. A budget by task.
3. A certification form.
4. A description of the activities and their location proposed to be carried out, including a timetable listing tasks and milestones. A management plan delineating staff responsibilities and a work plan must be included. If any match is to be provided, the type, amount, and source should be shown.
5. A description of how the applicant meets each of the ranking factors detailed in section I.E. above.
6. The letter of locality approval required in I.D.4 above.
7. If matching funding is to be provided, a letter from the Chief Executive Officer of the locality, corporation or other entity providing the match certifying as to the type, amount, and timing of the match.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determine whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the Department shall notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14-day cure period pertains only to nonsubstantive technical deficiencies or errors. Any deficiency capable of being cured shall only involve an item that is not necessary for the Department's ability to assess the merits of an application under the ranking factors set forth in this NOFA.

V. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) *Federalism, Executive Order 12612.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government, and State and local governments.

(c) *Family, Executive Order 12606.* The General Counsel, as the Designated under Executive Order 12606, The Family, has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being. The notice only solicits HBCU to apply for funding to address community development needs in their locality. An impact on the family will be indirect and beneficial in that better planning of community development needs should result.

The HBCU Program is listed in the Catalog of Federal Domestic Assistance under number 14.237.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 24 CFR 570.404).

Dated: March 7, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-5945 Filed 3-11-91; 8:45 am]

BILLING CODE 4210-29-M

federal register

Tuesday
March 12, 1991

Part VI

The President

Executive Order 12753—Nuclear Cooperation With EURATOM

Federal Register
Vol. 56, No. 48
Tuesday, March 12, 1991

Presidential Documents

Title 3—

The President

Executive Order 12753 of March 8, 1991

Nuclear Cooperation With EURATOM

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 126a(2) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2155(a)(2)), and having determined that, upon the expiration of the period specified in the first proviso to section 126a(2) of such Act and extended for 12-month periods by Executive Orders Nos. 12193, 12295, 12351, 12409, 12483, 12506, 12554, 12587, 12629, 12670, and 12706, failure to continue peaceful nuclear cooperation with the European Atomic Energy Community would be seriously prejudicial to the achievement of United States non-proliferation objectives and would otherwise jeopardize the common defense and security of the United States, and having notified the Congress of this determination, I hereby extend the duration of that period to March 10, 1992. Executive Order No. 12706 shall be superseded on the effective date of this Executive order.

George Bush

THE WHITE HOUSE,
March 8, 1991.

[FR Doc. 91-6023
Filed 3-11-91; 9:14 am]
Billing code 3195-01-M

Reader Aids

Federal Register
Vol. 56, No. 48
Monday, March 12, 1991

INFORMATION AND ASSISTANCE

Federal Register	
Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447
Code of Federal Regulations	
Index, finding aids & general information	523-5227
Printing schedules	523-3419
Laws	
Public Laws Update Service (numbers, dates, etc.)	523-5641
Additional information	523-5230
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230
The United States Government Manual	
General information	523-5230
Other Services	
Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-5641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

9581-9804	1
9805-9120	4
9121-9268	5
9269-9580	6
9581-9834	7
9835-10140	8
10141-10356	11
10357-10502	12

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305 9836

3 CFR

Proclamations:
6254 9121
6255 9269
6256 9579
6257 10359
6258 10357
Executive Orders:
12183 (See Presidential Determination 91-20 of January 25, 1991) 9581
12193 (See EO 12753) 10501
12295 (See EO 12753) 10501
12351 (See EO 12753) 10501
12409 (See EO 12753) 10501
12463 (See EO 12753) 10501
12506 (See EO 12753) 10501
12554 (See EO 12753) 10501
12587 (See EO 12753) 10501
12629 (See EO 12753) 10501
12570 (See EO 12753) 10501
12706 (See EO 12753) 10501
12758 (See EO 12753) 10501
Administrative Orders:
Memorandums:
February 21, 1991 9271
Presidential Determinations:
No. 91-20 of January 25, 1991 9581

5 CFR

213 10141
335 10141
317 10141
351 10141
831 10141
842 10141
870 10141
890 10141
Proposed Rules:
581 9181

7 CFR

1 9581
17 9273
46 8683
51 10362
301 9273
905 8684
911 10143
915 10143
916 10359
917 10359
918 8685
930 10359
946 8274
1434 9992
1804 10145
1903 10145
1910 10145
1944 10145
1945 10145
1951 10145
1955 10145
1956 10145
1965 10145
1980 10145
Proposed Rules:
12 9258
58 10382
704 9283
920 10302
929 10189
1005 8306
1410 9293
1413 9251
1421 ..... 10189, 10192

8 CFR

241 8906
242 8906
274 8985

9 CFR

82 9752
331 ..... 8907, 8908
381 ..... 8907, 8908

10 CFR

2 10359
730 10088
1048 9611
Ch. XVII 9605
Proposed Rules:
710 10075
1703 9902

11 CFR

110 9275

12 CFR

265 9987
325 10154
608 8918
661 8909
932 8909

603.....8910
604.....9611
606.....8910
611.....8910, 10169
612.....8910
614.....8910
615.....8910
617.....8910
618.....8910
619.....8910
621.....8910
960.....8688
1410.....10302
Proposed Rules:
327.....9306

14 CFR
21.....8699–8701

15 CFR
21.....8699–8701
25.....8699–8701
39.....9612–9618, 9635–9638
71.....9618–9620
121.....10360
122.....10360
1209.....8910
Proposed Rules:
39.....8732, 8733, 8935, 9659, 9661, 9907–9913
71.....9660, 9663, 9914
75.....10302
91.....8938

14 CFR
39.....10361
71 (4 documents).....10362–10364
Proposed Rules:
Ch. I.....10383
71.....10384
158.....10462

15 CFR
303.....9621

16 CFR
305.....9123
1500.....9276
1502.....9276
Proposed Rules:
1700.....9181

17 CFR
240.....9124

18 CFR
1301.....9288
Proposed Rules:
35.....8938

19 CFR
Proposed Rules:
141.....9311

20 CFR
302.....10302
Proposed Rules:
216.....10385

21 CFR
5.....8709
510.....9622, 9640
520.....8709, 8710, 9840
522.....9622
524.....9622
556.....8710
558.....9622, 9841
1308.....9132
1316.....8685
Proposed Rules:
201.....9312
356.....9915
808.....8940

22 CFR
514.....8711

23 CFR
1235.....10326

24 CFR
Ch. I.....9472
91.....9169
791.....9822
Proposed Rules:
203.....8941

26 CFR
1.....8911, 10365
31.....8911
301.....9169
602.....8912, 10365
Proposed Rules:
1.....8943–8967, 10211, 10395–10397
301.....9182

27 CFR
5.....8922
Proposed Rules:
16.....10066

28 CFR
0.....8923
8.....8685
Proposed Rules:
11.....8734
51.....10348

29 CFR
541.....9252
579.....9252
580.....9252
801.....9046
1601.....9623
1910.....10377
Proposed Rules:
516.....9183
778.....9183
1602.....9185

30 CFR
56.....9626
57.....9626
243.....9251
723.....10060
845.....10060
Proposed Rules:
7.....10464
18.....10464
870.....10404
901.....8967
913.....8969
935.....9312

31 CFR
100.....10169
570.....10356

32 CFR
191.....10170
291.....9841
627.....9424
Proposed Rules:
155.....10215
162.....10219
299a.....9314

33 CFR
3.....9288
100.....9850, 9851
110.....9852
117.....8712
151.....8878
165.....9289
Proposed Rules:
117.....9916

36 CFR
Proposed Rules:
9.....9917

38 CFR
6.....9626
8.....9626
21.....9627
36.....9853
Proposed Rules:
3.....10303
4.....10303

39 CFR
Proposed Rules:
111.....9664

40 CFR
52.....9172–9175, 10171
60.....9177
82.....9518
147.....9408
228.....9178
Proposed Rules:
Ch. I.....8972, 9315
86.....8856, 9754
123.....8973
300.....9187
600.....8856
799.....9092, 9105

41 CFR
105–8.....9862
301–1.....9878
301–10.....10378
302–11.....9289, 10378
Ch. 304.....9878

42 CFR
400.....8832
405.....8832
406.....8832
412.....9633

43 CFR
5400.....10173
5420.....10173
5450.....10173
5460.....10173
9230.....10173
Public Land Orders:
6838.....10380

44 CFR
353.....9452

45 CFR
74.....8712
205.....8924
232.....8926
234.....8926
235.....8926
801.....9180
1611.....9634
1180.....10176

46 CFR
25.....8878

47 CFR
0.....9752
2.....9881
21.....9897
69.....9897
73.....8933, 8934, 9898, 9899, 10178, 10381
80.....9881
94.....9897, 9900
Proposed Rules:
1.....10222
2.....10222
73.....8974–8976, 9189–9191, 9924, 10227
76.....9924
95.....10222

48 CFR
Proposed Rules:
Ch. 2, App. N.....9082
22.....9832
42.....9832
52.....9832
202.....9082
203.....9082
204.....9082
217.....9082
223.....10405
225.....9082
228.....9082
232.....9082
245.....9082
252.....9082, 10405
1403.....10227
1405.....10227
1415.....10227
1453.....10227
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR
1.....9635
386.....10179
571.....10185
1010.....9635
1011.....8721
1330.....8722
Proposed Rules:
383.....9925
571.....9928
Ch. X.....9191
1053.....9339

50 CFR
611.....8722, 38723
620.....8722
646.....9251
672.....9635, 9636
675.....9636
Proposed Rules:
20.....9462
285.....10227
641.....9930
658.....8736
672.....9251
675.....9251

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List March 8, 1991

Order Now!

The United States Government Manual 1990/91



As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy

Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

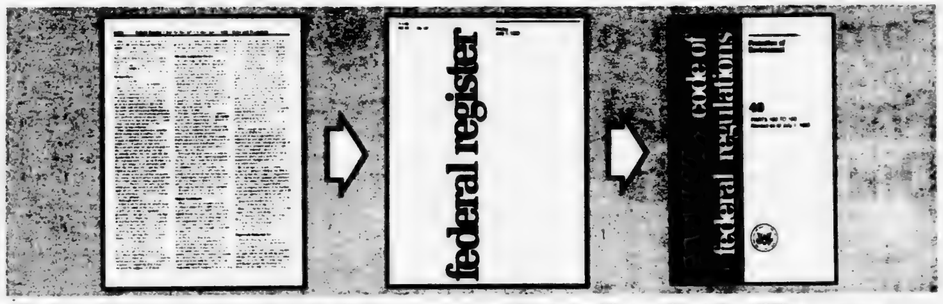
2. _____ (Company or personal name)
_____ (Additional address/attention line)
_____ (Street address)
_____ (City, State, ZIP Code)
(_____) (Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ (Credit card expiration date) *Thank you for your order!*
_____ (Signature) (Rev. 10-89)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the **Federal Register**.

Superintendent of Documents Subscription Order Form

Order Processing Code: *6463

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____ (Company or personal name)
_____ (Additional address/attention line)
_____ (Street address)
_____ (City, State, ZIP Code)
(_____) (Daytime phone including area code)

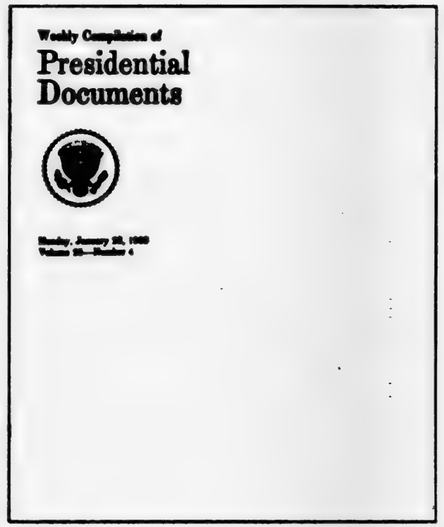
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ (Credit card expiration date) *Thank you for your order!*
_____ (Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ *Thank you for your order!*
(Credit card expiration date)

_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

OL
6

SS
8

R
2

91

MI

OL
56
SS
49
IR
13
991
MI

3-13-91
Vol. 56 No. 49

federal register

Wednesday
March 13, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56
SS
49
R
13
991
MI

3-13-91
Vol. 56 No. 49
Pages 10503-10770

federal register

Wednesday
March 13, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Miami, FL, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-0186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-0186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-0186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

MIAMI, FL

WHEN: April 16:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1-800-347-1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 49
Wednesday, March 13, 1991

Agency for Toxic Substances and Disease Registry
NOTICES
Contaminated sites, restrictions; annual list availability, 10559

Agricultural Marketing Service
RULES
Almonds grown in California, 10505
Kiwifruit grown in California, 10503

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Disaster payment program for 1990 crops
Correction, 10606

Agriculture Department
See also Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Farmers Home Administration; Foreign Agricultural Service
NOTICES
Agency information collection activities under OMB review, 10529

Army Department
NOTICES
Meetings:
Science Board, 10546

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control
NOTICES
Meetings:
Vital and Health Statistics National Committee, 10559

Coast Guard
RULES
Drawbridge operations:
Washington, 10512
Ports and waterways safety:
Los Angeles/Long Beach, CA; safety zone, 10513
PROPOSED RULES
Mobil offshore drilling unit requirements; revision; withdrawn, 10526

Commerce Department
See also Export Administration Bureau; International Trade Administration; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 10531

Conservation and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
Armstrong Air Conditioning, Inc., 10553

Copyright Office, Library of Congress
RULES
Computer software lending by libraries; copyright warning
Correction, 10660

Defense Department
See also Army Department
NOTICES
Privacy Act:
Systems of records, 10545
Tort claims settlement; correction, 10546

Defense Nuclear Facilities Safety Board
NOTICES
Energy Department defense nuclear facilities; recommendation, 10546

Education Department
PROPOSED RULES
Postsecondary education:
Perkins loan college work-study, and supplemental educational opportunity grant programs, 10742
NOTICES
Grants and cooperative agreements; availability, etc.:
School dropout demonstration assistance program; correction, 10718

Employment and Training Administration
NOTICES
Adjustment assistance:
SESA Fluorspar, Inc., 10575
Southern Triangle Oil Co., 10575
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Economic dislocation and worker adjustment assistance job creation demonstration project, 10576

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Rocky Flats Plant, CO, 10548
Grant and cooperative agreement awards:
Michigan University, 10550

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Radionuclides, 10514
Air programs:
Stratospheric ozone protection—
Chlorofluorocarbons and halons; production and consumption; amendment; correction, 10660
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Radionuclides, 10523, 10524
(2 documents)
Air programs; fuel and fuel additives:
Clean fuels; guidelines and proposed regulations negotiating advisory committee; establishment, etc., 10522

Water pollution; effluent guidelines for point source categories:
Oil and gas extraction; offshore subcategory, 10664
NOTICES
Pesticide programs:
Ecogen, Inc.—
Genetically altered microbial pesticide; field test, 10555
Pesticide assessment guidelines—
Dermal absorption studies; humans and domestic animals, 10556
Pesticides and hazardous substances control:
Premanufacture exemption applications, 10556

Executive Office of the President
See Science and Technology Policy Office

Export Administration Bureau
RULES
Export licensing:
Commodity control list—
Chemical and biological weapons production, equipment and technical data; foreign policy controls, 10760
Chemical weapon precursors; foreign policy controls expansion, 10756
PROPOSED RULES
Export licensing:
Non-proliferation policies; foreign policy controls imposition and expansion, 10756
NOTICES
Export privileges, actions affecting:
Govaerts, Franciscus B., et al., 10532
Grandia, Goris Christiaan, et al., 10534
Koster, Jan C., et al., 10536
Sanders, Marcel J., et al., 10537

Farmers Home Administration
RULES
Loan and grant programs:
Formulas for allocation; methodology, 10506
NOTICES
Rural rental housing displacement prevention; list of non-profit organizations; solicitation, 10529

Federal Aviation Administration
RULES
Transition areas; correction, 10660
PROPOSED RULES
Control zones; correction, 10660

Federal Communications Commission
RULES
Radio stations; table of assignments:
Florida, 10519
Kentucky, 10518
New York, 10519
PROPOSED RULES
Common carrier services:
International communications traffic data, 10526
Radio stations; table of assignments:
Iowa, 10527
Wisconsin, 10527
NOTICES
Agency information collection activities under OMB review, 10557

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Missouri, 10515
Texas et al., 10517
NOTICES
Disaster and emergency areas:
Mississippi, 10557

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Lakewood Cogeneration, L.P., et al., 10551
Applications, hearings, determinations, etc.:
Bristol-Myers Squibb Co., Inc., 10553

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Nassau County, NY, 10652

Federal Maritime Commission
NOTICES
Agreements filed, etc., 10558
(4 documents)

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 10659

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Anvil Insurance Co., 10655

Food and Drug Administration
NOTICES
Biological products:
Export applications—
Anti-Human Globulin Anti-C3b, -C3d, etc., 10559
Anti-Human Globulin Anti-IgG (Murine Monoclonal) Gamma-clone, 10560
Anti-Human Globulin Anti-IgG, -C3d (Polyspecific) (Murine Monoclonal) Gamma-clone, 10560
Anti-Human Globulin Anti-IgG, -C3d, etc., 10561
Anti-Human Globulin Anti-IgG, etc., 10561
Human drugs:
Export applications—
Floxin (ofloxacin); correction, 10660
Patent extension; regulatory review period determinations—
Cardura, 10562

Foreign Agricultural Service
NOTICES
U.S.-Canada Free-Trade Agreement:
Technical working groups; contact persons list, 10530

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service

Health Care Financing Administration
RULES
Medicaid:
Health maintenance organizations (HMOs); health insuring organizations; requirements; correction, 10515
NOTICES
Meetings:
Social Security Advisory Council, 10563

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Maternal and child health services; Federal set-aside program, 10563
Nurse anesthetist education programs, 10565
Meetings; advisory committees:
April, 10565

Interior Department
See Land Management Bureau; Minerals Management Service; Mines Bureau

International Trade Administration
NOTICES
Short supply determinations:
Doctor blade steel, 10539
Type 430 stainless steel wire rod, 10538

International Trade Commission
NOTICES
Import investigations:
United State-Mexico Free Trade Agreement; probable economic effects on U.S. industries and consumers, 10572

Interstate Commerce Commission
RULES
Practice and procedure:
Recordation of documents; documents executed with declaration in lieu of notorization, 10519
NOTICES
Motor and water carriers:
Purchase, merger, and control, 10572
Railroad services abandonment:
Bad Water Line, 10573

Justice Department
RULES
Organization, functions, and authority delegations:
Deputy Attorney General et al., 10509
NOTICES
Pollution control; consent judgments:
Boonville, IN, et al., 10573
Davis Walker Corp., 10574
E.I. du Ponte de Nemours & Co., 10574
Environmental Services, Inc., et al., 10574
Pinetree Power-Tamworth, Inc., 10575

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Global change research; ecosystems of western and northern United States, 10567
Management framework plans, etc.:
Utah, 10571

Legal Services Corporation
NOTICES
Grants and cooperative agreements; availability, etc.:
Migrant farmworker client population in Alabama et al.; civil legal service, 10577

Library of Congress
See also Copyright Office, Library of Congress
RULES
Mask works protection:
Claims registration protection
Correction, 10660

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Sykora, Richard, et al., 10577

Minerals Management Service
RULES
Royalty management:
State and Indian cooperative agreements; Federal funding limitation removal, 10515
NOTICES
Agency information collection activities under OMB review, 10571
Environmental statements; availability, etc.:
Alaska OCS—
Lease sale, 10572

Mines Bureau
NOTICES
Agency information collection activities under OMB review, 10571

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Expansion Arts Advisory Panel, 10578
Media Arts Advisory Panel, 10578

National Highway Traffic Safety Administration
PROPOSED RULES
Consumer information:
Uniform tire quality grading standards—
Vehicles in treadwear convoys; correction, 10661

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Programming language C, 10540

National Institutes of Health
NOTICES
Meetings:
National Institute on Deafness and Other Communication Disorders, 10566

National Library of Medicine, 10586

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 10521
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 10527
NOTICES
Endangered and threatened species:
Pacific salmon, 10542
Los Angeles/Long Beach Harbors, Palos Verde Shelf and ocean dumping sites; injury determination plan and damage assessment; document availability, 10544

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Cleveland Electric Illuminating Co. et al., 10579
Toledo Edison Co. et al., 10579
Meetings:
Reactor Safeguards Advisory Committee, 10580
Privacy Act:
Systems of records, 10580
Applications, hearings, determinations, etc.:
GPU Nuclear Corp., 10581
Gulf States Utilities Co., 10582
Wisconsin Electric Power Co., 10583
Wolf Creek Nuclear Operating Corp., 10584

Nuclear Waste Technical Review Board
NOTICES
Meetings, 10587

Pension and Welfare Benefits Administration
PROPOSED RULES
Employee Retirement Income Security Act:
Participant directed individual account plans, 10724

Personnel Management Office
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—Update, 10587
Senior Executive Service:
Career reserved positions; list, 10589

Public Health Service
See also Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Medical care:
Indian health service—
Contract health services; reimbursement rates; evaluation and establishment, 10566

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 10653, 10654 (2 documents)

Science and Technology Policy Office
NOTICES
Meetings:
Semiconductors National Advisory Committee, 10646

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Prudential Securities Inc., 10647

Small Business Administration
NOTICES
Privacy Act:
Systems of records, 10651

State Department
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 10651
Soviet and Eastern European Studies Advisory Committee, 10652

Thrift Supervision Office
NOTICES
Conservator appointments:
AmeriFederal Savings Bank, FSB, 10655
First Federal Savings Association of Toledo, 10655
First Federal Savings Bank of Zion, 10655
Peoples Federal Savings Bank, 10655
Receiver appointments:
AmeriFederal Savings Bank, 10655
First Savings Bank of Zion, 10655
Peoples Federal Savings & Loan Association, 10656
Pioneer Federal Savings Bank, 10656
Sandia Federal Savings Association et al., 10656
Statesman Federal Savings Bank, 10656

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration; Research and Special Programs Administration

Treasury Department
See Fiscal Service; Thrift Supervision Office

United States Information Agency
NOTICES
Art objects, importation for exhibition:
Wisdom and Compassion: The Sacred Art of Tibet, 10656
Meetings:
Book and Library Advisory Committee, 10656

Veterans Affairs Department
NOTICES
Meetings:
Career Development Committee, 10657
Former Prisoners of War Advisory Committee, 10657
Rehabilitation Advisory Committee, 10657
Privacy Act:
Computer matching program, 10657

Separate Parts in This Issue

Part II
Environmental Protection Agency, 10664

Part III
Department of Education, 10718

Part IV
Department of Labor, Pension and Welfare Benefits Administration, 10724

Part V
Department of Education, 10742

Part VI
Department of Commerce, Export Administration, 10756

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
944.....10503
981.....10505
1940.....10508
Proposed Rules:
777.....10660
14 CFR
71.....10660
Proposed Rules:
71.....10660
15 CFR
770.....10760
776 (2 documents).....10756, 10760
778.....10760
799 (2 documents).....10756, 10760
Proposed Rules:
771.....10760
776.....10760
778.....10760
20 CFR
0.....10509
29 CFR
Proposed Rules:
2550.....10724
30 CFR
228.....10510
33 CFR
117.....10512
165.....10513
34 CFR
Proposed Rules:
674.....10742
675.....10742
676.....10742
37 CFR
201.....10660
211.....10660
40 CFR
61.....10514
82.....10660
Proposed Rules:
Ch. I.....10522
435.....10664
61 (2 documents).....10523, 10524
42 CFR
434.....10515
44 CFR
64 (2 documents).....10515–10517
46 CFR
Proposed Rules:
56.....10526
58.....10526
107.....10526
108.....10526
109.....10526
111.....10526
174.....10526
47 CFR
73 (3 documents).....10518, 10519
Proposed Rules:
43.....10526
73 (2 documents).....10527
49 CFR
1177.....10519
Proposed Rules:
575.....10661
50 CFR
675.....10521
Proposed Rules:
675.....10527

Rules and Regulations

Federal Register
Vol. 56, No. 49
Wednesday, March 13, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 944

[Docket No. FV-91-222]

Kiwifruit Imported into the United States; Quality, Size and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule requires kiwifruit offered for importation into the United States to meet the same grade, quality, size and maturity standards that are in effect for kiwifruit grown in California under Marketing Order No. 920. The intent of this action is to ensure imports of acceptable quality and size kiwifruit, and is made necessary by recent legislation which added kiwifruit to the list of commodities covered by section 8e of the Agricultural Marketing Agreement Act of 1937. This action should benefit kiwifruit producers, marketers, importers and consumers.

DATES: The interim final rule is effective on imported kiwifruit shipped from the port of origin after March 16, 1991; comments which are received by April 12, 1991, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 447–2431.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department in accordance with Departmental regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this section on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 75 importers of kiwifruit who will be subject to regulation under this action. Small agricultural service firms, which include kiwifruit importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of the importers of kiwifruit may be classified as small entities.

This action is being initiated by the U.S. Department of Agriculture because section 8e of the Act (7 U.S.C. 608e–1) was recently amended to require imported kiwifruit to meet the same or comparable grade, size, quality and maturity requirements as those established under domestic marketing orders. Under this interim final rule, imported kiwifruit will have to meet the same minimum grade, size, quality and maturity requirements as domestically produced kiwifruit that is grown in California and regulated under Marketing Order No. 920 (7 CFR part 920).

California accounts for virtually all commercial production of kiwifruit in the U.S. Production has increased significantly in the past decade, reaching a record 11.5 million trays in 1990. (The net weight of a standard tray of kiwifruit is about 7.5 pounds.) Kiwifruit grown in California is typically harvested in late September or October. The fruit is packed shortly after harvest, and the bulk of the crop is placed into storage for later shipment. The domestic marketing season begins just subsequent to harvest and is concentrated through the following May. In recent seasons, however, supplies of California kiwifruit have been available all year long. The lengthening of the marketing season can be attributed to increasing supplies, improved consumer demand, and better storage techniques. The handling regulation established for California-grown kiwifruit is therefore in effect throughout the year. Thus, the import regulation will similarly be in effect year round in accord with section 8e.

Currently, fresh market shipments of California kiwifruit are required to be at least Size 49. Size 49 is defined to mean that no more than 60 pieces of fruit may be in an 8-pound sample.

The minimum grade requirement established for California kiwifruit is referred to as "KAC No. 1" quality (7 CFR 920.302). Kiwifruit meeting this quality standard is kiwifruit that meets all but the shape requirement of the U.S. No. 1 grade, as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340). With regard to shape, California kiwifruit is subject to the basic requirement of the

U.S. No. 2 grade, which is that the kiwifruit be "not badly misshapen."

This rule establishes these same minimum grade, size and quality requirements for kiwifruit imported into the U.S. While California kiwifruit is also subject to a number of pack and container requirements, section 8e does not authorize such requirements to be imposed on imports.

The volume of kiwifruit imported into the U.S. has risen from 4.6 million pounds in 1984 to 43.5 million pounds in 1989. New Zealand is the principal source of U.S. kiwifruit imports, accounting for roughly 95 percent of the total in 1989. Chile accounted for most of the remaining 5 percent, but the U.S. is expected to become a more significant market for Chilean kiwifruit in the future as the sizeable nonbearing acreage in that country comes into production. Imports from New Zealand occur primarily from May through September, peaking in July and August. Imports of Chilean kiwifruit are expected to begin in late March.

As is true for other fresh commodities regulated under section 8e of the Act, the Federal or Federal-State Inspection Service of the AMS is designated as the organization to certify the grade, size, quality and maturity of kiwifruit offered for importation into the U.S. Importers are responsible for arranging for the required inspection and certification prior to importation, which is defined to mean release from custody of the U.S. Customs Service.

The services of the Federal or Federal-State Inspection Service are available on a fee-for-service basis. This action will therefore result in increased costs for importers who do not now have their kiwifruit inspected. These additional costs should be offset, however, by the benefits accrued by ensuring that only acceptable quality kiwifruit is present in the U.S. marketplace. Such quality assurance should promote buyer satisfaction and increased sales.

The domestic regulation provides that small quantities of kiwifruit—200 pounds or less—may be shipped without regard to the established grade, size, maturity and inspection requirements. This same minimum quantity exemption will apply to imported kiwifruit.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. Kiwifruit is currently being imported into the U.S., and additional supplies are expected in the near future. California-grown kiwifruit is also now being marketed, subject to the established grade, size, quality and maturity requirements. To be consistent with section 8e of the Act, which provides that domestic and imported kiwifruit be subject to the same requirements, this action should become effective as soon as possible. Therefore, all imported kiwifruit leaving port of origin after March 18, 1991, will be subject to the requirements hereafter set forth. This action should benefit kiwifruit importers, producers, marketers and consumers by assuring that only acceptable quality kiwifruit is available in the U.S. marketplace.

A 30-day period is provided to allow interested persons to comment on this interim final rule. All written comments received within the comment period will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Import regulations, Kiwifruit.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Part 944 is amended by adding a new § 944.550 to read as follows:

§ 944.550 Kiwifruit import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, the importation into the United States of any kiwifruit is prohibited unless such kiwifruit meet all the requirements of a U.S. No. 1 grade, except that such fruit shall be "not badly misshapen" as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340). Such fruit shall be at least Size 49, which means there shall be a maximum of 60 pieces of fruit per 8-pound sample.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the quality and size of kiwifruit imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to a particular shipment of kiwifruit, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR part 51) and in accordance with the procedure for requesting inspection and designating the agencies to perform required inspection and certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not reconditioned or exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) Any person may import up to 200 pounds of kiwifruit in any one shipment exempt from the requirements of this section.

3. Section 944.400 is amended by revising the section heading and introductory text of paragraph (a) to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, limes, oranges, and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, kiwifruit, limes, oranges and table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of the specified fruit, is required on all imports. Such inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, kiwifruit, limes, oranges, and table grapes should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the fruit will be imported:

* * * * *

Dated: March 8, 1991.

Robert O. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5956 Filed 3–12–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[AMS-FV-90-206FR]

Almonds Grown in California; Minimum Prices for 1990–1991 Crop Year Reserve Almonds Disposed of by Handlers in Specified Outlets

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes minimum prices for 1990–91 crop year reserve almonds disposed of by handlers in several specified outlets. These outlets are almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. The action is needed to help ensure that 1990–91 crop year almonds which handlers dispose of in reserve outlets are sold at prices which will not be detrimental to producers' returns. This action is based on a recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

EFFECTIVE DATE: March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Young, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with U.S. Department of Agriculture (USDA) Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This final action establishes minimum prices for 1990–91 crop year reserve almond disposed of by handlers in several specified outlets. This action is intended to help ensure that reserve almonds are sold at prices which will not be detrimental to producer's returns and is not expected to impose any additional burden or costs on handlers.

This action revises § 981.467 of subpart—Administrative Rules and Regulations and is based on a recommendation of the Board, passed on a 7 to 1 vote, and other available information.

Section 981.67 of the order provides that upon request of a handler, the Board shall authorize such handler to act as agent of the Board for the disposition of that handler's reserve almonds upon such reasonable terms and conditions as the Board may specify. A final rule was published in the **Federal Register** on September 21, 1990 (55 FR 38797), which established a reserve percentage of 35 percent for marketable California almonds received by handlers during the 1990–91 crop year, which began on July 1, 1990. That rule became effective on October 22, 1990.

Section 981.467(a) of the rules and regulations established under the order provides that a handler may become an agent of the Board pursuant to § 981.67 for the purpose of disposing of reserve almonds of a particular crop year in authorized outlets. Section 981.66(c) of the order provides that those authorized outlets shall be sales to governmental agencies or to charitable institutions for charitable purposes and for diversion into almond oil, almond butter, poultry or animal feed, and other channels which the Board finds are noncompetitive with existing normal markets for almonds. The Board has designated three additional outlets for the disposition of 1990–91 crop year reserve outlets—natural almond paste and foil packets for sales to airlines, and donations to Operation Desert Shield/Storm.

This action adds a new paragraph (c) to § 981.467 of the administrative rules and regulations to establish minimum prices for 1990–91 crop year almonds disposed of by handlers in several specified outlets. These outlets are almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. Different minimum prices are hereby established for different grades and other categories of shelled almonds. The grades used are those contained in the "United States Standards for Grades of Shelled Almonds" (7 CFR 51.2105–51.2132). The minimum prices are ranked according to the quality of the grade, with the highest quality grade receiving the highest price. Minimum prices for almonds to be used for almond butter manufactured in the 48 contiguous states and shipped to European Economic Community (EEC) nations are set lower than the corresponding prices for domestic shipments or for shipments to foreign countries other than EEC countries, however, to counter a 12 percent duty imposed by the EEC on finished products such as almond butter going to EEC countries.

The minimum prices are established on a F.O.B. basis from the handler's plant. Thus, transportation costs to the buyer's facilities are not included in the minimum prices. To include such costs in the minimum prices would require an unduly complicated minimum price system, as the transportation costs to ship almonds to various destinations vary widely. A maximum two percent

brokerage commission will be allowed to be included in the minimum prices. Brokers customarily are employed in the industry to negotiate sales between handlers and buyers and the standard industry commission for this service is two percent. No cash discounts will be allowed because to devise a method for cash discounts would unduly complicate the system.

The minimum prices established by this rule apply to the disposition of the 35 percent reserve established by a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38797). The 35 percent reserve is estimated to represent 220 million kernelweight pounds of almonds. However, at a later date, the Board or two or more handlers who handled at least 15 percent of all almonds handled during the 1989–90 crop year could request that all or a portion of this reserve be released to the salable category. Pursuant to § 981.48 of the order, this recommendation must be made prior to May 15, 1991. In fact, on December 3, 1990, the Board recommended to the Secretary lowering the reserve percentage from 35 percent to 30 percent. The 1990–91 reserve percentage was subsequently reduced from 35 to 30 percent on February 11, 1991 (55 FR 5307). Further, on February 21, 1991, the Board recommended lowering the reserve percentage from 30 to 20 percent. At its July 25, 1990, meeting, however, the Board passed a resolution that it does not expect to recommend that the salable percentage for the 1990–91 crop year be increased to more than 93 percent of marketable production. The Board believes that, while additional almonds may need to be released to the salable category at a future date if it is found that the current 65 percent salable percentage is insufficient to satisfy 1990–91 trade demand needs or for desirable carryover requirements for use during the 1991–92 crop year, at least 7 percent of marketable production is not likely to be needed for this purpose.

The minimum prices, as recommended by the Board and implemented by this action, are in the range of 60 cents to 95 cents per kernelweight pound. These prices are expected to be approximately one-half of what comparable grades of almonds are expected to sell for in salable markets. By contrast, almonds disposed of in low-value outlets, such as almond oil and animal feed, for which no minimum prices are established, are expected to sell for less than 10 cents per kernelweight pound.

In making its recommendation for minimum prices, the Board considered different price levels for the various grades and categories for which minimum prices were desired. It was determined that the prices ultimately recommended were at levels that are competitive with other nuts, particularly peanuts, used for similar products such as peanut butter and foil packets of peanuts.

The Board hopes to develop new markets for almonds by supplying those markets with reserve almonds, which are generally sold at prices lower than those for salable almonds. However, the Board would also like sales to those markets to cover the costs of processing the almonds and provide at least some returns to growers. Thus, these minimum prices are intended to ensure the highest return possible to growers within the contraints of providing buyers of reserve almonds a price which is attractive enough to encourage the development of new markets, which in future years may utilize substantial quantities of salable almonds at competitive prices.

At the Board's December 3, 1990, meeting some members of the almond industry wanted the minimum prices established herein to apply to dispositions since July 1, 1990, the beginning of the crop year. Under this scenario, handlers would have received reserve credit for any dispositions made during the crop year which complied with the proposed minimum price requirements, even though those requirements were not established until the crop year was well under way. It is the position of the USDA, however, that applying such minimum prices in this manner would have discouraged handlers from disposing of reserve almonds until the rulemaking process on this issue was completed, due to uncertainty as to what minimum prices, if any, would have been established. Section 981.67 of the order provides that the Board shall authorize a handler to act as an agent of the Board for the purpose of disposing of reserve almonds upon request of the handler. It is the position of the USDA that handlers should be allowed to dispose of reserve almonds in a timely manner without concern as to minimum prices established after dispositions have been made. Therefore, the minimum prices will apply only to dispositions made after the effective date of this rule.

The Board also recommended surcharges for various finished products, such as almond butter or foil packets of almonds, manufactured by handlers themselves. These recommended surcharges would have required handlers to sell these finished products at a specified minimum price above the minimum price for the almonds themselves. Establishing such surcharges would unduly complicate the minimum price system, without necessarily benefiting producer returns. In addition, the recommendation failed to indicate how such a proposal is within the ambit of the order provisions. Therefore, these surcharges are not included in this rule.

Notice of this action was published in the **Federal Register** on December 7, 1990 (55 FR 50560). Written comments from interested persons were invited through December 24, 1990. Four comments were received.

Three comments of identical nature were received from attorney Brian Leighton, on behalf of Gold Hills Nuts Company; MacEnterprises, Brownslake Ranch, Van Kay, Inc., and Mr. Derk Van Konynenburg; and Cal-Almond, Inc. These commenters' first issue concerns the classification of the proposed minimum price rule as a "major" or a "non-major" rule. The USDA, in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, determined the rule to be a "non-major" rule.

The commenters, in objecting to the "non-major" status of the rule, calculated the total dollar value of the reserve (estimated at 200 million kernelweight pounds) and equated this figure to lost revenue. In actual practice, the reserve does not equal lost revenue because such a calculation does not take into account expected improved returns for the current 65 percent salable portion of the crop or the returns received for the current 35 percent of the crop which will be sold in noncompetitive outlets or released to the salable category at a later date. (Both the salable and reserve percentages were established in a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38797).)

Two approved outlets for disposing of reserve almonds are sales for airline snack packs and for almond paste. The commenters assert that while these may be available outlets, many handlers do not have the packaging and manufacturing facilities in order to prepare the product. This, the commenters maintain, limits sales of snack packs to airlines and sales of almond paste to those handlers with certain facilities.

While it is true that some handlers have packaging and manufacturing facilities while other handlers do not, the Board and the USDA have stated that handlers themselves do not have to manufacture the snack packets for airlines and almond paste. Handlers may sell the almonds to a packer who in turn will package the almonds. Handlers may also sell their reserve almonds to a manufacturer who in turn will make the almonds into paste. All handlers, therefore, are free to compete for airline contracts and for almond paste outlets by choosing to sell the almonds to a packer for sale to airlines or by selling the almonds to a manufacturer for making almond paste.

The commenters continue by stating that the only other reserve outlets besides almond paste and snack packs for airlines are to low value outlets such as cattle feed and almond oil. This in not the case. Along with almond paste and snack packs for airlines, there remain outlets for almond butter, governmental purchases for state and local school lunch programs, and sales to charitable organizations for charitable purposes.

The commenters further state that sales to governmental agencies for the Federal school lunch program has not proven to be a viable outlet because the government has offered to purchase only 2.2 million pounds of almond butter so far this crop year. The USDA disagrees with that statement. The amount which the USDA intends to purchase is substantial. On January 11, 1991, the USDA issued a notice of intent to purchase approximately 7.5 million pounds, in addition to the first 2.2 million pounds, of almond butter which the USDA is already committed to purchase for the school lunch program.

The commenters assert that since few handlers have disposed of their reserve almonds through the above-mentioned reserve outlets thus far this crop year, that these outlets impose additional burdens or costs on handlers. The USDA disagrees with this assertion. The Board is attempting to develop new and long-term outlets for handlers to dispose of reserve almonds. In addition to the above-mentioned outlets, handlers may work with local school districts, colleges, and universities to promote the sale of reserve almonds in the school lunch program at local and state levels. Any burdens imposed on handlers is far outweighed by the long term-benefits of developing these outlets.

The three commenters also do not think that the almond butter program would open up new uses for almonds and, therefore, should not be named as an outlet. The outlet for almond butter is specified as a reserve outlet under § 981.66(c) of the order. While the main thrust of this year's program is not almond butter, the option for almond butter to be an outlet cannot be eliminated through this rulemaking action because it is specified that it must be an option in the order. In addition, the USDA has asked the almond industry for a total of 9.7 million pounds of almond butter so far this crop year.

The three commenters state that selling almonds to airlines is not a "new" outlet since the peanut industry entered that market earlier. The Department disagrees with this statement. Sales of snack packs to airlines is a newly designated reserve outlet for almonds.

The three commenters state that the Act requires that the burdens of a surplus almond crop and reserve, and the benefits of the returns on the disposition of reserves, should be equitably apportioned. The commenters maintain, however, that not all handlers have equal opportunities to dispose of their reserve almonds. The USDA disagrees with these claims. All handlers of California almonds are bound under the same salable, reserve, and export percentages under the order. Further, all handlers have the opportunity to dispose of their reserve almonds through the Board approved outlets by signing an agency agreement. Under § 981.66(a) of the order, handlers may also choose to deliver their reserve almonds to the Board. The Board is then obligated to dispose of reserve almonds upon the best terms and conditions and at the highest return obtainable for reserve almonds.

The commenters state that § 981.67 of the almond marketing order, which states that if a handler requests to act as an agent of the Board, does not provide the authority for establishing minimum prices. Section 981.67 states that the Board may specify reasonable terms and conditions under which handlers may dispose of reserve almonds. It is the view of the USDA, as stated in the proposed minimum price rule, the minimum prices are authorized under § 981.67 of the order.

The commenters continue by stating that the reserve outlets for almond butter, almond paste and snack packs for airlines are profitable and, therefore, should not be specified outlets. As stated earlier, the Board is trying to develop new long-term markets for almonds. Under § 981.66(c) of the order, almond butter and almond oil are specified outlets for reserve almonds. Also under § 981.66(c) it states that the Board may find other outlets for reserve almonds which are noncompetitive with normal markets for almonds. Almond paste and snack packs for airlines fit into this noncompetitive outlet category for reserve almonds. The almond paste and snack pack outlets are new markets for domestically sold almonds and take time to develop.

Another issue that the commenters raised concerns the retroactivity of minimum prices. The reasons for not making minimum prices retroactive are stated earlier in this rule and in the proposed rule for minimum prices.

The commenters also mention that handlers did not specifically request that minimum prices be established through informal rulemaking. However, by allowing the opportunity for notice and comment, all handlers, growers, and others are given the opportunity to have their concerns and suggestions addressed by the USDA.

The commenters state that minimum prices cannot apply to any contracts entered into by handlers to sell reserve almonds prior to the effective date of this rule, regardless of when these shipments actually occur. The USDA agrees with the commenters on this issue. All contracts entered into prior to the effective date of this final rule will not be affected by the minimum prices established herein.

These commenters state that they are in agreement with the exclusion of surcharges for the same reasons mentioned in the proposed rule.

Another commenter is Mr. Steve Easter, representing Blue Diamond Growers (Blue Diamond).

Blue Diamond supports the minimum prices as they were presented in the proposed minimum price rule. Blue Diamond continues by stating that the minimum prices reflected in the proposed schedule are lower than normal trade prices and relatively attractive in the Board approved outlets, which in turn encourages increased almond consumption in these markets.

Blue Diamond adds that it is vital to establish minimum prices if an effective market development program is to be conducted using reserve almonds. According to Blue Diamond, minimum prices will provide that the industry as a whole will be working to develop these important new outlets, no one handler will have an advantage over other handlers, and all (handlers) will be focused on development of the market using a price lower than the general market price. Blue Diamond also adds that this effort will encourage almond consumption in new outlets while treating all handlers equally.

Blue Diamond does add, however, that the exclusion of the surcharges from the proposed minimum price rule will make it difficult for the Board to verify that handlers have met the minimum price provisions for the raw materials used in the manufactured items under the current reserve program. The USDA

disagrees for the reasons stated earlier in this rule and in the proposed rule.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Handlers are already disposing of their reserve almonds; and (2) Handlers, buyers, and producers should know as soon as possible the minimum prices which are in effect.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 981.467 is amended by adding a new paragraph (c) to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(c) *Minimum prices.* Minimum prices shall apply to 1990–91 crop year reserve almonds diverted to almond butter, natural almond paste, foil packets for sales to airlines, and sales to government agencies, including federal and state school lunch programs. Prices are F.O.B. handlers plant. The prices may contain a maximum of two percent brokerage commission. No cash discounts are allowed. The prices are as follows for various grades or categories of almonds:

Grade or category	Price per pound
U.S. Select Sheller Run or better, unblanched.	75 cents.
U.S. Standard Sheller Run, unblanched.	74 cents.
U.S. No. 1 Whole and Broken, unblanched.	73 cents.
U.S. No. 1 Pieces, unblanched	73 cents.
U.S. No. 1 Pieces or better, unblanched, to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries.	60 cents.
Blanched made from U.S. No. 1 Pieces or better.	95 cents.
Blanched made from U.S. No. 1 Pieces or better to be used for almond butter manufactured in the 48 contiguous states and shipped to EEC countries.	82 cents.

Dated: March 6, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5929 Filed 3–12–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1940

Methodology and Formulas for Allocation of Loan and Grant Program Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding formula allocation to immediately accommodate the guaranteed Section 502 Housing program, as set forth in section 706 of the Cranston-Gonzalez National Affordable Housing Act. The intended effect of this final rule is to immediately allocate $100 million in Guaranteed Section 502 Housing program funds for Fiscal Year 1991, to twenty FmHA States selected for program implementation testing.

Therefore, the final rule is issued on an emergency basis by the Agency to comply with Congressional mandates and time frames established for the successful implementation of the Section 502 Guaranteed Housing program in Fiscal Year 1991.

EFFECTIVE DATE: March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Neal A. Hayes, Jr., Senior Loan Officer, Home Ownership Branch, Single Family Housing Processing Division, FmHA USDA, room 5344, South Agriculture Building, Washington, DC 20250, Telephone: (202) 382–1488.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act must be published for public comment. The one noted exception is for a rule or regulation issued on an emergency basis. This action is not published for proposed rule making since it involves an emergency situation because there is not enough time to go through the proposed rulemaking process and still be able to allocate the $100 million appropriated for use in fiscal year 1991 so that a viable guaranteed rural Housing demonstration program would function this fiscal year.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.429, Guaranteed Rural Housing Loans—Demonstration Program.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs, Housing and community development, Loan programs—Agriculture and rural areas.

Therefore, part 1940, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Sections 1940.563 and 1940.564 are added to subpart L of part 1940 to read as follows:

§ 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552 (b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households between 80 and 100 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

§ 1940.564 Section 502 subsidized guaranteed Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households below 80 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administration allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

Dated: February 12, 1991.

Laverne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–5864 Filed 3–12–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1479–91]

Delegation of Authority to the Deputy Attorney General and the Director of the Federal Bureau of Investigation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to delegate to the Deputy Attorney General and the Director, Federal Bureau of Investigation, certain authority assigned to the Attorney General by section 528 of Public Law 101–509 regarding the use of Federal agency personnel in the investigation and prosecution of fraud or other unlawful activities in or against federally insured financial institutions.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ira H. Raphaelson, Acting Special Counsel for Financial Institution Fraud, U.S. Department of Justice, Washington, DC 20530, Telephone: (202) 514–4328.

SUPPLEMENTARY INFORMATION: Under section 528(a) of Public Law 101–509, the Attorney General may accept, and federal departments and agencies may provide, the services of attorneys, law enforcement personnel, and other employees of any other departments or agencies of the federal government to assist the Department of Justice, subject

to the supervision of the Attorney General, in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation. Section 528(a)(3) authorizes law enforcement personnel of the United States Secret Service, subject to the Attorney General's supervision, to conduct or perform any kind of civil or criminal investigation which Department of Justice law enforcement personnel are authorized by law to conduct or perform related to criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation.

This order delegates to the Deputy Attorney General the Attorney General's authority under section 528(a) to accept the services of attorneys and non-law enforcement employees and to supervise such personnel in the performance of any investigation and prosecution described in that section. In addition, the order delegates to the Director, Federal Bureau of Investigation, the Attorney General's authority under section 528(a) to accept the services of law enforcement personnel and to coordinate the activities of such law enforcement personnel in the performance of any investigation and prosecution described in that section.

This order is a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 5 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 878(a), 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 566; 31 U.S.C. 1108, 3801 *et seq.*, 50 U.S.C. App. 1989b, 2001–2017p; Public Law 91–513, sec. 501; EO 11919; EO 11267; EO 11300; Public Law 101–203.

2. Section 0.15 is amended by adding paragraph (g) to read as follows:

§ 0.15 Deputy Attorney General.

* * * * *

(g) The Deputy Attorney General is authorized to exercise the authority vested in the Attorney General under section 528(a), Public Law 101–509, to accept from federal departments and agencies the services of attorneys and non-law enforcement personnel to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and to supervise such personnel in the conduct of such investigations and prosecutions.

3. Section 0.85 is amended by adding paragraph (n) to read as follows:

§ 0.85 General functions.

* * * * *

(n) Exercise the authority vested in the Attorney General under section 528(a), Public Law 101–509, to accept from federal departments and agencies the services of law enforcement personnel to assist the Department of Justice in the investigation and prosecution of fraud or other criminal or unlawful activity in or against any federally insured financial institution or the Resolution Trust Corporation, and to coordinate the activities of such law enforcement personnel in the conduct of such investigations and prosecutions.

Dated: March 1, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–5721 Filed 3–12–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 228

RIN 1010–AB36

Removal of Federal Funding Limitation for State and Indian Cooperative Agreements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the funding of cooperative agreements with States or Indian tribes. The amended regulations will permit the Federal Government to fund up to 100 percent of the costs of eligible activities under a cooperative agreement with a State or Indian tribe.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432 or (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver of the Rules and Procedures Branch, Royalty Management Program, Minerals Management Service, Lakewood, Colorado.

I. Background

Section 202 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1732, authorizes the Secretary of the Interior to enter into a cooperative agreement with any State or Indian tribe to share oil or gas royalty management information, to carry out inspection, auditing, investigation, or enforcement (not including the collection of royalties, civil or criminal penalties or other payments) activities under FOGRMA and to carry out other activities described in section 108 of FOGRMA. The MMS's implementing regulations at 30 CFR part 228 provide that the Federal share of funding of such activities is limited to not more than 50 percent of the cost of eligible activities as established under the terms of the cooperative agreement.

In February 1988, the Special Committee on Investigations of the U.S. Senate Select Committee on Indian Affairs (Select Committee) initiated a comprehensive investigation into the Federal Government's relationship with American Indians. On May 12, 1989, MMS representatives testified before the Committee that MMS was committed to work to improve services to the Indian community. To fulfill that commitment, the MMS Director created a task force to evaluate the Committee's concerns and develop an improvement plan. The MMS task force, with input from State and tribal auditors, Indian tribes and allottees, and MMS royalty management personnel, identified several initiatives to improve services to the Indian community. One of these initiatives was to remove the 50-percent Federal funding limitation on cooperative agreements provided for in 30 CFR 228.105 and 228.107. The task force recommended that the funding for Indian cooperative agreements should be the same as delegated agreements with States pursuant to section 205 of FOGRMA, 30 U.S.C. 1735, which are reimbursed at 100 percent, to provide equity for all groups.

In July 1989, MMS requested formal review of the proposed improvements by the Department of the Interior's Royalty Management Advisory Committee (RMAC). The RMAC, chartered by the Secretary of the Interior to advise him on royalty management issues, is comprised of representatives from industry, States, and Indian tribes and allottees. The RMAC established a work panel representing these constituent interests to review the proposed initiatives and provide recommendations to RMAC. Based on recommendations of the work panel, RMAC accepted the proposed initiative to remove the 50-percent Federal funding limitation on cooperative agreements. The RMAC made this recommendation in its final report to the Secretary on September 13, 1989. The RMAC recommended the proposed initiative to be responsive to Indian tribal concerns. The RMAC also concluded that the proposed initiative provides more equity in the funding of State and Indian audit agreements, and that it could increase the number of cooperative agreements in the future.

During September 1989, MMS provided the Select Committee with a list of proposed improvements and a copy of the RMAC report. The Select Committee was advised that the proposed initiatives for improvements would be incorporated into an MMS Action Plan. The MMS Action Plan was published in February 1990 and included an action item to propose to modify existing regulations governing section 202 cooperative agreements to allow 100 percent reimbursement for eligible cooperative agreement audit costs.

The MMS published a Notice of Proposed Rulemaking in the **Federal Register** on August 9, 1990 (55 FR 32448), proposing to amend its regulations to remove the 50-percent funding limitation. In response to the proposed rulemaking, MMS received comments from four interested parties. All of the comments were considered in the final rule and are discussed in section II below. The final rule is summarized and discussed in section III below.

II. Comments Received on Proposed Rule

As stated above, MMS published a Notice of Proposed Rulemaking in the **Federal Register** on August 9, 1990 (55 FR 32448). The proposed rule provided for a 30-day public comment period which ended September 10, 1990. Four commenters (three Indian representatives and one State) submitted comments in response to the proposed rulemaking.

The three Indian commenters expressed strong support for adoption of the proposed amendment to remove the Federal funding limitation on cooperative agreements. Although the State representative did not specifically express support for the proposed rule, the State's concurrence was implied by a requested amendment to section 202 of FOGRMA. The State representative recommended that section 202 be amended to include an option for a State to enter into an agreement with MMS without reimbursement by MMS as a mandatory requirement of the cooperative agreement.

Response: Paragraph (c) of section 202 of FOGRMA states that any cooperative agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of the Act. Because the Secretary or his designated representative has the authority to specify terms and conditions in a cooperative agreement, MMS does not consider it necessary for section 202 to be amended to include the recommended option. In any event, FOGRMA amendments must be enacted by Congress.

However, based on the State commenter's recommendation, MMS has amended §§ 228.100 and 228.105 of the final rule to provide for cooperative agreements without a requirement for Federal funding. If a cooperative agreement provides for Federal funding, the amount of costs to be reimbursed would be established under the terms of the cooperative agreement, up to 100 percent of the costs of eligible activities.

The State representative also pointed out an error in the Supplmentary Information section of the proposed rule relative to MMS's statement that: "Although a State can enter into a cooperative agreement under the provisions of section 202 of FOGRMA and 30 CFR Part 228, no State has requested to do so." The representative referred to an application for a cooperative agreement that had been filed by his State, which is in the process of being reviewed by MMS. Therefore the above statement in the proposed rule was incorrect

III. Summary of Final Rule

The final rulemaking amends existing MMS regulations at paragraph (a) Of §§ 228.105 and 228.107 to remove the 50-percent Federal funding limitation. Under the final rule, MMS may reimburse States and Indian tribes up to 100 percent of eligible costs based on the satisfactory performance of activities as established under the terms of the cooperative agreement. The final rule also adds a new paragraph (c) under § 228.100 and a new § 228.105(a)(2) to provide for cooperative agreements without a requirement for Federal funding. The reference to 48 CFR 31.107 and 31.6 included under § 228.105(a) of the proposed rule was redesignated, with clarification, as a new § 228.103(b) of the final rule for organizational purposes.

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

Because this rule would result in an increase in funds to States and Indian tribes that have entered into a cooperative agreement, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* Public reporting burden for this collection of information is estimated to average 152 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 2300, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 228

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: January 3, 1991.

James M. Hughes,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR part 228 is amended as set forth below:

PART 228—COOPERATIVE ACTIVITIES WITH STATES AND INDIAN TRIBES

1. The authority citation for part 228 continues to read as follows:

Authority: Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

2. Section 228.100, under subpart C, add a new paragraph (c) to read as follows:

§ 228.100 Entering into an agreement.

* * * * *

(c) The eligible activities to be conducted under the terms of a cooperative agreement may be funded or unfunded by the Department. See § 228.105 of this subpart for funding of cooperative agreements.

3. Section 228.103, under subpart C, redesignate and revise the existing paragraph as paragraph (a) and add a new paragraph (b) to read as follows:

§ 228.103 Maintenance of records.

(a) The State or Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials for a period specified by MMS. All records and support materials must be available for inspection and review by appropriate personnel of the Department including the Office of the Inspector General.

(b) The State or Indian tribe shall maintain all books and records as may be necessary to assure compliance with the provisions of chapter 1, 48 CFR 31.107 and 48 CFR subpart 31.6 (Contracts with State, local, and federally recognized Indian tribal Governments).

(4) Section 228.105, under subpart C, revise paragraph (a) and add a new paragraph (c) to read as follows:

§ 228.105 Funding of cooperative agreements.

(a)(1) The Department may, under the terms of the cooperative agreement, reimburse the State or Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a workplan and funding requirement.

(2) A cooperative agreement may be entered into with a State or Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.

* * * * *

(c) The State or Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. The State or Indian tribe must provide the Department a summary of costs incurred, for which the State or Indian tribe is seeking reimbursement, with the voucher.

5. Section 228.107, under subpart C, revise paragraph (a) to read as follows:

§ 228.107 Eligible cost of activities.

(a) If a cooperative agreement provides for Federal funding, only costs directly associated with eligible activities undertaken by the State or Indian tribe under the terms of a cooperative agreement will be eligible for reimbursement. Costs of services or activities which cannot be directly related to the support of activities specified in the agreement will not be eligible for Federal funding or for inclusion in the State's share or in the Indian tribe's share of funding that may be established in the agreement.

* * * * *

[FR Doc. 91-5900 Filed 3-12-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 90-13]

Drawbridge Operation Regulations; Duwamish Waterway, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seattle Engineering Department (SED), the Coast Guard is changing the regulations governing the First Avenue South highway bridge across the Duwamish Waterway, mile 2.5, at Seattle, Washington, by lengthening the weekday morning and evening periods during which the bridge need not open for the passage of vessels (closed periods). This change is being made because of increases in both the volume and duration of vehicular traffic during morning and afternoon peak periods. The change will extend morning and afternoon closed periods by one hour each. Morning closed periods will be from 6 a.m. to 9 a.m. and evening closed periods will be from 3 p.m. to 6 p.m. This action should accommodate the needs of increased vehicular traffic and should still provide for the reasonable needs of navigation.

Also, the Coast Guard is revoking the regulations governing the Spokane Street highway bridge across the Duwamish West Waterway, mile 0.3, at Seattle, Washington. The bridge has been removed from the waterway and is being replaced with a new bridge which will provide greater navigation clearances.

DATES: These regulations become effective on April 12, 1991.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION: On August 17, 1990, the Coast Guard published a proposed rule (55 FR 33723) concerning the First Avenue South Bridge. The Commander, Thirteenth Coast Guard District, also published the proposal as Public Notice 90-N-06, dated August 17, 1990. In each notice interested persons were given until October 1, 1990 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Comments

Three comments were received concerning the First Avenue South Bridge. Two were from federal resource agencies who routinely respond to our public notices. Both had no objection to the proposed change. The third comment was from a barge and towing industry association. The commenter was concerned that the change would adversely affect scheduled departures of some barge line operators, citing a weekly 3:45 p.m. departure of one operator. We have carefully considered this comment and have decided that the requested increase in closed period time is not excessive and that barge operators can easily reschedule their departure times to accommodate it. Since the publication of the Notice of Proposed Rulemaking in August 1990, it was determined that the Spokane Street Bridge has been removed from the waterway. Accordingly, the portion of the final rule governing the First Avenue South Bridge is unchanged from the proposed rule published on August 17, 1990 and the portion of the rule governing the Spokane Street Bridge has been deleted.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this action is expected to be so minimal that a full regulatory evaluation is unnecessary. Extending the morning and evening closed periods by one hour each will not impose undue hardship on waterway users. Since the economic impact of this action is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.1041 paragraph (a)(1) is revised and paragraph (b)(1) is removed and reserved as follows:

§ 117.1041 Duwamish Waterway.

(a) * * *

(1) From Monday through Friday, except Federal holidays, the draws of the First Avenue South Bridge, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m., except: The draws shall open at any time for a vessel of 5,000 gross tons and over, a vessel towing a vessel of 5,000 gross tons and over, and a vessel proceeding to pick up for towing a vessel of 5,000 gross tons and over.

(2) * * *

(b) * * *

(1) (reserved)

* * * * *

Dated: February 26, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 91-5673 Filed 3-12-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 91-06]

Safety Zone Regulations; Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the navigable waters of Los Angeles harbor West Basin inland from a line drawn between Los Angeles berth 120 to Los Angeles berth 148, due to the clean up of an oil spill occurring at Los Angeles berth 146. The zone is needed to protect the personnel and equipment involved in the cleanup of an oil spill occurring at Los Angeles berth 146. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 7 a.m., February 27, 1991. It terminates at 7 a.m., March 15, 1991.

FOR FURTHER INFORMATION CONTACT: LT R. F. Shields at (213) 499-5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury or damage to the personnel and equipment involved in the cleanup of an oil spill occurring at Los Angeles berth 146.

Drafting Information

The drafters of this regulation are LT R. F. Shields, project officer for the Captain of the Port, and LCDR A. LOTZ, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation:

The event requiring this regulation will occur between 7 a.m., February 27, 1991. It terminates at 7 a.m., March 15 1991. This safety zone is necessary to ensure the safety of the personnel and equipment involved in the cleanup of an oil spill occurring at Los Angeles berth 146.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165 [AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new section 165.T1106 is added to read as follows:

§ 165.T1106 Safety Zone: Port of Los Angeles, CA.

(a) *Location.* The following area is a safety zone:

The navigable waters of Los Angeles harbor West Basin inland from a line drawn between Los Angeles berth 120 to Los Angeles berth 146.

(b) *Effective Date.* This regulation becomes effective 7 a.m., February 27, 1991. It terminates at 7 a.m. March 15, 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain Of The Port.

Dated: February 27, 1991.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 91-5892 Filed 3-12-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3913-3]

National Emissions Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order temporarily staying effective date.

SUMMARY: On February 13, 1991, EPA proposed to adopt a rule staying the effectiveness until November 15, 1992 of subpart I of 40 CFR part 61 for all categories of NRC-licensed facilities other than nuclear power reactors. The purpose of the proposed stay is to enable EPA to collect information needed to make a determination under section 112(d)(9) of the Clean Air Act for these facilities. Although the current stay of subpart I is scheduled to expire on March 9, 1991, EPA will be unable to take final action on the proposed rule in a manner conforming to the procedures specified by section 307(d) of the Clean Air Act prior to that date. In order to prevent subpart I from taking effect pending final action concerning the proposed stay, EPA is today issuing an order temporarily staying the effectiveness of subpart I for all NRC-licensed facilities other than nuclear power reactors until April 15, 1991.

DATE: This order stays the effectiveness of 40 CFR part 61, subpart I for all categories of NRC-licensed facilities other than nuclear power reactors until April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B).

EPA subsequently extended the stay of the effective date of subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990). The present stay of subpart I will expire on March 9, 1991.

On October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commmission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency may lack sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of subpart I for all categories of NRC-licensed facilities except for nuclear power reactors until November 15, 1992. 56 FR 6339 (February 15, 1991). The proposed stay will permit EPA to use its authority under section 114 of the Clean Air Act to collect the information which is required to make a determination under section 112(d)(9).

With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in its February 13, 1991 proposal to stay subpart I. Subpart I will take effect for non-DOE federal facilities on March 10, 1991.

A hearing concerning the proposed rule to stay the effectiveness of subpart I for all categories of NRC-licensed facilities other than nuclear power reactors was held in Washington, DC on February 25, 1991. Representatives of several organizations made oral presentations and submitted written statements. At the hearing, EPA announced that it would keep the record for this rulemaking open to receive additional written comments or information until March 27, 1991, thirty days after the completion of the hearing.

B. Order Temporarily Staying Effective Date

Section 307(d) of the Clean Air Act establishes procedures which apply in various types of rulemakings conducted by EPA under the Clean Air Act, including any rulemaking to promulgate or revise a National Emission Standard for Hazardous Air Pollutants (NESHAP) under section 112. Although it is not clear whether a rule to stay NESHAP previously promulgated under Clean Air Act section 112 should be construed as a revision of that standard, EAP believes that it is prudent to assume that section 307(d) applies to the proposed rule to stay subpart I for NRC licensees other than nuclear power reactors.

In those instances where an interested person requests an oral hearing concerning a proposed rule to which section 307(d) applies, section 307(d)(5)(iv) requires EPA to "keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information." If no person had requested a hearing concerning the Agency's proposal to stay subpart I for NRC licensees other than nuclear power reactors, it would have been possible for EPA to take final action concerning the proposal prior to March 9, 1991, the date on which the currently effective stay of subpart I will expire. However, because a hearing was in fact held on February 25, 1991, and the record will remain open until March 27, 1991 in order to conform to section 307(d), EPA will be unable to evaluate all submissions to the record and take final action on the proposed stay prior to expiration of the currently effective stay.

BEST COPY AVAILABLE

EPA believes that it would be disruptive and serve no useful purpose to permit subpart I to become effective on NRC-licensed facilities other than nuclear power reactors prior to final action concerning the proposed rule to stay the effectiveness of subpart I for these facilities until November 15, 1992.

Accordingly, in order to provide time for completion of the rulemaking on the proposed stay of subpart I, EPA is today issuing an order temporarily staying the effectiveness of subpart I for all NRC-licensed facilities other than nuclear power reactors until April 15, 1991. EPA intends to take final action concerning the proposed rule to stay subpart I on or before April 15, 1991.

Dated: March 8, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-6079 Filed 3-12-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 434

[MB-12-CN]

RIN 0938-AD31

Medicaid Program; Modification of Certain Requirements for Health Insuring Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice corrects 42 CFR 434.20, Basic rules, to restore current text which was inadvertently deleted in the final rule, to make a conforming redesignation change, and to correct technical errors.

EFFECTIVE DATE: These corrections are effective December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Lindsay, (301) 966-4673.

SUPPLEMENTARY INFORMATION: On December 13, 1990, in **Federal Register** document 90-29162, we published a final rule that included revisions to 42 CFR part 434. In doing so, we failed to take into account changes made to part 434 by a final rule published on June 12, 1990 (55 FR 23738). As a result, we inadvertently deleted from the December 13 final rule regulatory text that was added to § 434.20(a) by the June 12 final rule. We are publishing this correction notice to restore the deleted text as § 434.20(a)(4) of the final rule and, therefore, redesignate paragraph (a)(4) as (a)(5). We also correct the statutory citation and a typographical error in § 434.20(a)(3), and a typographical error in paragraph (e).

A. On page 51295, column 2, § 434.20(a) is correctly revised to read as follows:

§ 434.20 Basic rules.

(a) *Entities eligible for risk contracts for services specified in § 434.21.* A Medicaid agency may enter into a risk contract for the scope of services specified in § 434.21, only with an entity that—

(1) Is a Federally qualified HMO, including a provisional status Federally qualified HMO;

(2) Meets the State plan's definition of an HMO, as specified in paragraph (c) of this section;

(3) Is one of several entities identified in section 1903(m)(2)(B) (i), (ii) and (iii) of the Act, and considered as PHPs;

(4) Is one of certain Community, Migrant and Appalachian Health Centers identified in section 1903(m)(2)(G) of the Act. Unless they qualify for a total exemption under section 1903(m)(2)(B), these entities are subject to the regulations governing HMOs under this part, with the exception of the requirements of section 1903(m)(2)(A) (i) and (ii) of the Act; or

(5) Is an HIO that arranges for services and becomes operational before January 1, 1986.

* * * * *

B. On page 51295, column 2, § 434.20(e), line 2, "PHOs" should read "PHPs".

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance)

Dated: March 5, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-5920 Filed 3-12-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7507]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). Sixty-one Missouri communities were subject to NFIP suspension effective on March 4, 1991. However, on March 1, 1991 the Governor of Missouri signed into law legislation which allows the 61 affected Missouri counties to fully enforce their floodplain management ordinances in accordance with 44 CFR 60.3 of the NFIP regulations. As a result the NFIP suspension action has been withdrawn, and the Missouri counties may continue to participate without interruption in the NFIP. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the NFIP suspension action has been withdrawn for the communities on the attached list, flood insurance continues to be available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the flood map is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5

U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

PART 64—[AMENDED]

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community number	Effective date authorization/cancellation of sale or flood insurance in community	Current effective map date
Region VII—Regular Program			
Missouri:			
Andrew County, unincorporated areas	290004	Mar. 4, 1991 suspension withdrawn	7-04-88
Atchison County, unincorporated areas	290008	....do	3-01-90
Barton County, unincorporated areas	290785	....do	7-01-87
Benton County, unincorporated areas	290027	....do	3-01-87
Bollinger County, unincorporated areas	290787	....do	3-01-84
Boone County, unincorporated areas	290034	....do	6-15-83
Buchanan County, unincorported area	290040	....do	8-01-83
Butler County, unincorporated areas	290044	....do	4-03-85
Callaway County unincorporated areas	290049	....do	1-03-85
Region VII			
Missouri:			
Cape Girardeau County, unincorporated areas	290790	....do	8-15-89
Carroll County, unincorporated areas	290057	....do	10-17-86
Carter County, unincorporated areas	290060	....do	2-04-87
Cass County, unincorporated areas	290783	....do	4-15-82
Chariton County, unincorporated areas	290073	....do	12-03-87
Clark County, unincorporated areas	290792	....do	9-15-81
Clay County, unincorporated areas	290086	....do	2-17-81
Clinton County unincorporated areas	290793	....do	6-18-87
Cole County, unincorporated areas	290107	....do	12-15-81
Cooper County, unincorporated areas	290794	....do	9-02-89
Region VII			
Missouri:			
Crawford County, unincorported areas	290795	....do	5-01-87
Dunklin County, unincorporated areas	290122	....do	4-03-89
Franklin County, unincorporated areas	290493	....do	10-16-84
Gasconade County, unincorporated areas	290801	....do	9-04-87
Greene County, unincorporated areas	290782	....do	6-15-83
Grundy County, unincorporated areas	290150	....do	2-01-87
Holt County, unincorporated areas	290157	....do	1-06-88
Howard County, unincorporated areas	290162	....do	1-05-89
Jackson County, unincorporated areas	290492	....do	11-03-89
Jasper County, unincorporated areas	290807	....do	4-17-85
Jefferson County, unincorporated areas	290808	....do	9-16-88
Johnson County, unincorporated areas	290809	....do	4-02-90
Lafayette County, unincorporated areas	290812	....do	9-04-86
Lewis County, unincorporated areas	290844	....do	9-01-89
Lincoln County, unincorporated areas	290869	....do	11-15-89
Livingston County, unincorporated areas	290814	....do	5-01-89
Maries County, unincorporated areas	290816	....do	7-01-87
Marion County, unincorporated areas	290222	....do	4-26-79
Mississippi County, unincorporated areas	290781	....do	1-18-89
Montteau County, unincorporated areas	290237	....do	10-17-86
Montgomery County, unincorporated areas	290242	....do	4-01-87
New Madrid County, unincorporated areas	290849	....do	11-27-79
Osage County, unincorporated areas	290268	....do	2-02-90
Pemiscot County, unincorporated areas	290779	....do	5-17-82
Perry County, unincorporated areas	290280	....do	1-06-88
Phelps County, unincorporated areas	290824	....do	2-01-87
Pike County, unincorporated areas	290286	....do	5-01-89
Platte County, unincorporated areas	290475	....do	6-04-87
Pulaski County, unincorporated areas	290826	....do	4-17-85
Ralls County, unincorporated areas	290302	....do	5-01-89
Ray County, unincorporated areas	290776	....do	1-19-83
Ripley County, unincorporated areas	290830	....do	1-17-86
St. Charles County, unincorporated areas	290315	....do	9-15-78
St. Francois County, unincorporated areas	290832	....do	2-01-87
Ste. Genevieve County, unincorporated areas	290325	....do	9-30-77

State and location	Community number	Effective date authorization/cancellation of sale or flood insurance in community	Current effective map date
St. Louis County, unincorporated areas	290327	....do	11-18-88
Saline County, unincorporated areas	290834	....do	4-01-89
Scott County, unincorporated areas	290837	....do	9-06-89
Stoddard County, unincorporated areas	290845	....do	7-01-87
Vernon County, unincorporated areas	290841	....do	7-01-87
Warren County, unincorporated areas	290443	....do	4-03-85
Wayne County, unincorporated areas	290449	....do	2-01-87

Issued: March 7, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-5926 Filed 3-12-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 7508]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community number	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Texas: Wells, city of, Cherokee County	480741	Feb. 4, 1991	7-11-75
Indiana: Owen County, unincorporated areas	180481	Feb. 6, 1991	5-15-81
Alabama:			
Double Springs, town of, Winston County	010350	Feb. 8, 1991	1-28-77
Gurley, town of, Madison County	010152	Feb. 12, 1991	4-16-76
Illinois: Vermilion County, unincorporated areas	170935	Feb. 28, 1991	4-21-76
Georgia: Early County, unincorporated areas	130499	....do	
New Eligibles—Regular Program			
Washington: Enumclaw, city of, King County	530319	Feb. 15, 1991	9-29-89

State and location	Community number	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Reinstatements—Regular Program			
Maine: Roque Bluffs, town of, Washington County	230322	July 16, 1975, Emerg.; Sept. 18, 1985, Reg.; May 17, 1990, Susp.; Feb. 4, 1991, Rein..	9-18-85
Kentucky: Magoffin County, unincorporated areas	210158	Dec. 18, 1978, Emerg.; Mar. 4, 1986, Reg.; Oct. 18, 1988, Susp.; Feb. 1, 1991, Rein.	3-4-86
Georgia: Jenkins County, unincorporated areas	130118	Jan. 16, 1976, Emerg.; Sept. 29, 1989, Reg.; Sept. 29, 1989, Susp.; Feb. 1, 1991, Rein.	9-29-89
Pennsylvania: President, township of, Venango County	422112	July 7, 1975, Emerg.; Feb. 6, 1991, Reg.; Feb. 6, 1991, Susp.; Feb. 7, 1991, Rein..	2-6-91
Mississippi: Marshall County, unincorporated areas	280274	Aug. 4, 1986, Emerg.; Jan. 17, 1991, Reg. Jan. 17, 1991, Susp.; Feb. 18, 1991, Rein..	1-17-91
West Virginia: Elizabeth, town of, Wirt County	540212	June 9, 1975, Emerg.; Jan. 17, 1991, Reg.; Jan. 17, 1991, Susp.; Feb. 27, 1991, Rein.	1-17-91
Region II—Regular Program Conversions			
New York:			
Alden, town of, Erie County	360225	Feb. 6, 1991, suspension withdrawn	2-6-91
Rochester, town of, Ulster County	360661	....do	2-6-91
Pound Ridge, town of, Westchester County	360929	....do	2-6-91
Region III			
Pennsylvania:			
Pine Creek, township of, Jefferson County	422445	....do	2-6-91
Shade, township of, Somerset County	422054	....do	2-6-91
Virginia:			
Brunswick County, unincorporated areas	510236	....do	2-6-91
Dickenson County, unincorporated areas	510253	....do	2-6-91
James City County, unincorporated areas	510201	....do	2-6-91
Region IV			
South Carolina: Williamsburg County, unincorporated areas	450187	....do	2-6-91
Region V			
Ohio: Madison County, unincorporated areas	390773	....do	2-6-91
Region VI			
Texas: Blanco County, unincorporated areas	480711	....do	2-6-91
Region VII			
Iowa:			
Columbus Junction, city of, Louisa County	190307	....do	2-6-91
Louisa County, unincorporated areas	190193	....do	2-6-91
Regular Program Conversions—Region II			
New York: Thompson, town of, Sullivan County	360830	Feb. 15, 1991, suspension withdrawn	2-15-91
Pennsylvania: Hempfield, township of, Mercer County	421858	....do	2-15-91
Region V			
Minnesota:			
Fort Ripley, city of, Crow Wing County	270097	....do	2-15-91
Pipestone, city of, Pipestone County	270359	....do	2-15-91
Region V—Minimal Conversion			
Michigan: Union, township of, Isabella County	260812	....do	2-15-91

Code for reading fourth column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Issued: March 6, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-5925 Filed 3-12-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-576; RM-7393]

Radio Broadcasting Services; Garrison, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 252A to Garrison, Kentucky, as that community's first local FM service, at the request of James P. Gray. See 55 FR 49922, December 3, 1990. Channel 252A can be allotted to Garrison in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) east of the community, in order to avoid a short-spacing to Station WKQQ(FM), Channel 251C1, Lexington, Kentucky. The coordinates for this allotment are North Latitude 38-37-00 and West Longitude 83-07-18. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991; The window period for filing applications will open on April 23, 1991, and close on May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-576, adopted February 22, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW. Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation of part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Channel 252A, Garrison.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5962 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-616; RM-7018]

Radio Broadcasting Services; Panama City Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C3 for Channel 261A at Panama City Beach, Florida, and modifies the license for Station WPCF(FM) to specify operation on the higher class channel, at the request of Winstanley Broadcasting, Inc. See 55 FR 01481, January 16, 1990. Channel 261C3 can be allotted to Panama City Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) east of the community to prevent a short spacing to the vacant but applied for Channel 282A at Niceville, Florida. The coordinates are North Latitude 30-11-00 and West Longitude 85-42-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-616, adopted February 21, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 261A and adding Channel 261C3 at Panama City Beach.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5961 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-562; RM-7525]

Radio Broadcasting Services; Ballston Spa and Saratoga Springs, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Saratoga Radio Corporation, reallots Channel 272A from Saratoga Springs, New York, to Ballston Spa, New York, and modifies the license of Station WQQY (FM) to specify Ballston Spa as its community of license. See 55 FR 49543, November 29, 1990. Channel 272A can be allotted to Ballston Spa in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.8 miles) south of the community to avoid short-spacings to Stations WJIV, Channel 270B, Cherry Falls, New York, and WEQX(FM), Channel 274B, Manchester, Vermont, as well as to accommodate petitioner's desired transmitter site. The coordinates for Channel 272A at Ballston Spa are North Latitude 42-52-44 and West Longitude 73-51-47. Canadian concurrence has been received since Ballston Spa is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-562, adopted February 22, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 272A, Saratoga Springs, and adding Channel 272A, Ballston Spa.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5963 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1177

[Ex Parte No. 382 (Sub-No. 7)]

Revision of Rules for the Recordation of Documents Under 49 U.S.C. 11303—Documents Executed With a Declaration, Made Under Penalty of Perjury

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules which permit execution of documents with a declaration, made under penalty of perjury under 28 U.S.C. 1746, in lieu of notarization. The purpose of this change is to conform the Commission's regulations to federal law.

EFFECTIVE DATES: The rules are effective on March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, Assistant Secretary, 202-275-7429 [TDD for hearing impaired: 202-275-1721]

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-562, adopted February 22, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 272A, Saratoga Springs, and adding Channel 272A, Ballston Spa.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5963 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1177

[Ex Parte No. 382 (Sub-No. 7)]

Revision of Rules for the Recordation of Documents Under 49 U.S.C. 11303—Documents Executed With a Declaration, Made Under Penalty of Perjury

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission adopts final rules which permit execution of documents with a declaration, made under penalty of perjury under 28 U.S.C. 1746, in lieu of notarization. The purpose of this change is to conform the Commission's regulations to federal law.

EFFECTIVE DATES: The rules are effective on March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, Assistant Secretary, 202-275-7429 [TDD for hearing impaired: 202-275-1721]

SUPPLEMENTARY INFORMATION: The Commission's current regulations (49 CFR part 1177.3), require that documents filed with it for recordation under 49 U.S.C. 11303 be executed or certified with notarization. 28 U.S.C. 1746 allows a party to make a declaration that his/her statement is made under penalty of perjury under the laws of the United States as an alternative to notarization. Specifically, section 1746 states:

"Whenever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

The Commission regulations (49 CFR 1104.5) already provide for the acceptance in formal proceedings of documents that contain affirmations or declarations under penalty of perjury in lieu of oath. Also, the Commission's application forms, such as Form OP-1 and Form OP-FC-1, and the Commission rules (49 CFR part 1167) relating to submission of notices of intent to engage in compensated intercorporate hauling provide for an applicant's oath under penalty of perjury. There are severe penalties if knowing and willful misstatements or omission of material facts are made in a submission to the Commission. Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, when made under penalty of perjury, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

The rule change will conform our recordation regulations to federal law. Therefore, we will modify 49 CFR 1177.3, as set forth below, to provide for submission of documents executed or certified under penalty of perjury.

This amendment to the Commission's regulations has no effect on the substantive rights of parties and merely corrects these regulations to recognize a procedural alternative that is specifically made available by statute. Accordingly, for good cause shown, we find that notice and public procedure is unnecessary under 5 U.S.C. 553(b)(3)(B).

Environmental and Energy Considerations

We conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of the proposed action on small business and small organizations. We conclude that this decision will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1177

Administrative practice and procedure, Archives and records, Maritime carriers, Railroads.

Decided: March 6, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1177 of the Code of Federal Regulations is amended as follows:

PART 1177—RECORDATION OF DOCUMENTS

1. The authority citation for Part 1177 continues to read as follows:

Authority: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

2. Section 1177.3, paragraphs (a) and (b) are revised to read as follows:

§ 1177.3 Requirement for submission.

* * * * *

(a) Be in writing and executed by the parties to the document, and acknowledged or verified either in a form:

(1) Authorized by the law of the state, territory, district or possession where executed for the acknowledgement or verification of deeds of land; or

(2) Substantially as follows:

Individual Form of Acknowledgement

I, (name of signor), certify that I am the person described in and who executed the foregoing instrument and that I acknowledge that I executed the same as my free act and deed. I further declare (certify, verify or state) under penalty of perjury ("under the laws of the United States of America" if executed outside the United States) that the foregoing is true and correct. Executed on (date).

Signature.

or;

Corporate Form of Acknowledgement

I, (name of signor), certify that I am (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare (certify, verify or state) under penalty of perjury ("under the laws of the United States of America" if executed outside the United States of America) that the foregoing is true and correct. Executed on (date).

Signature.

or;

(3) Substantially as follows:

Individual Form of Acknowledgement

State of _____

County of _____, ss:

On this _____ day of _____, 19____, before me, personally appeared (name of signor), to be known to be the person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same as his/her free act and deed.

(SEAL)

_____

Signature of Notary Public

My commission expires _____

Corporate Form of Acknowledgement

State of _____

County of _____, ss:

On this _____ day of _____, 19____, before me personally appeared (name of signor), to me personally known, who being by me duly sworn, says that (s)he is the (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

_____

Signature of Notary Public

My commission expires _____

(b) Be accompanied by at least one fully executed and acknowledged or verified counterpart, or if no counterpart has been executed and acknowledged by the parties, one certified true copy. A certified true copy of an original document is a complete and identical copy in all respects to the original attached with:

(1) A certificate executed by a notary public, stating that he or she has compared the copy with the original and has found the copy to be complete and identical in all respects to the original document; or

(2) A certification of the filer stating that he or she has compared the copy with the original and found the copy to be complete and identical in all respects to the original document and that he or she declares under penalty of perjury ("under the laws of the United States of America" if executed outside the United States) that the foregoing is true and correct; or

(3) There may be attached to the copy, affidavits, wherein the affidavit states that he or she has compared the copy with the original document and found the copy to be complete and identical in all respects to the original documents.

* * * * *

[FR Doc. 91-5931 Filed 3-12-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 901190-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the first quarter seasonal apportionment of the secondary prohibited species catch (PSC) allowance for halibut for the domestic annual processing (DAP) "DAP other fishery" in the Bering Sea and Aleutian Island management area (BSAI) has been caught. The Secretary of Commerce is prohibiting directed fishing for pollock and Pacific cod combined by vessels using trawl gear other than pelagic trawl gear in the entire BSAI from 12 noon, Alaska local time (A.l.t.), March 8, 1991, through 24:00 hours, March 31, 1991. This action is necessary to prevent the first quarter seasonal apportionment of the secondary PSC allowance of halibut apportioned to the "DAP other fishery" from being exceeded before the end of the first quarter. This action is intended to implement regulatory measures controlling the bycatch of prohibited species in the trawl fisheries for groundfish.

DATES: Effective 12 noon, A.l.t., March 8, 1991, through 24:00 hours, March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

The final rule for amendment 16 to the FMP (56 FR 2700; January 24, 1991) established PSC limits of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea (BS), and for Pacific halibut throughout the BSAI Area. Under § 675.21(a)(5), the secondary PSC limit of Pacific halibut while conducting any DAH trawl fishery for groundfish in the BSAI during any fishing year is 5,333 metric tons (mt). Furthermore, § 675.21(b)(1) provides that the PSC limit of Pacific halibut be further apportioned into bycatch allowances, one of which is assigned to the "DAP other fishery" under § 675.21(b)(4). Within the "DAP other fishery," the halibut bycatch allowance may be further apportioned on a seasonal basis under § 675.21(b)(2). The final notice of initial specifications of BSAI groundfish for 1991 (56 FR 6290; February 15, 1991) established the 1991 secondary Pacific halibut allowance for the "DAP other fishery" at 3,233 mt, and the first quarter seasonal apportionment of that allowance at 1,455 mt.

Under § 675.21(C)(2)(iv), if the Regional Director (Director) determines that U.S. fishing vessels using trawl gear will catch the seasonal apportionment of the secondary PSC allowance of Pacific halibut in the BSAI while participating in the "DAP other fishery," the Secretary will publish a notice in the **Federal Register** closing the BSAI for the remainder of the season to DAP trawl vessels using other than pelagic trawl gear in the combined directed fishery for pollock and Pacific cod.

The Regional Director has determined that the first quarter apportionment of the secondary PSC allowance of Pacific halibut for the "DAP other fishery" will be reached on March 8, 1991. The Secretary of Commerce is prohibiting directed fishing for pollock and Pacific cod in the aggregate by DAP vessels using trawl gear other than pelagic trawl gear in the BSAI from 12 noon, Alaska local time (A.l.t.), March 8, 1991, through 24:00 hours, March 31, 1991. In accordance with § 675.21(c)(2)(iv), the aggregate amount of pollock and Pacific cod must comprise less than 20 percent of the aggregate amount of the other groundfish or groundfish products as measured in round weight equivalents retained by a vessel affected by this prohibition during a weekly reporting period.

Classification

This action is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C 1801 *et seq.*

Dated: March 6, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5952 Filed 3-8-91 2:33 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 49
Wednesday, March 13, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter 1

[FRL-3913-1]

Establishment of the Negotiated Rulemaking Advisory Committee to Negotiate Guidelines and Proposed Regulations Implementing Clean Fuels Provisions of Section 211 of the Clean Air Act

AGENCY: Environmental Protection Agency.

ACTION: Establishment of negotiated rulemaking committee on clean fuels guidelines and proposed rules.

SUMMARY: As required by the Federal Advisory Committee Act (FACA), 5 U.S.C. App. section 9(a)(2) and the Negotiated Rulemaking Act of 1990 (NRA), 5 U.S.C. 581 *et seq.*, EPA is giving notice of the establishment of an advisory committee to negotiate issues for the purpose of reaching a consensus in the development of proposed regulations under the clean fuels provisions of section 211 of the Clean Air Act (the Act) as amended by the Clean Air Act Amendments of 1990. Those regulations include requirements for reformulated gasoline under section 211(k), detergent additives under section 211(l), and labeling requirements for oxygenated fuels under section 211(m). In addition, the committee will be used to negotiate guidelines for oxygenated fuels credit programs under section 211(m). EPA has determined that this is in the public interest and will assist the Agency in performing its duties under section 211 of the Act.

Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress, in accordance with section 9(c) of FACA.

DATES: EPA published a "Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee—Clean Fuels Rules and Guidelines" on March 4, 1991 (56 FR 8972). This notice announced that the first meeting of the Advisory Committee, assuming it was convened, would be held on March 14–15, 1991 from 9 a.m. to 6 p.m. on March 14 and 9 a.m. until 4 p.m. on March 15. The purpose of this meeting, as discussed in the March 4 notice, is to discuss and ratify organizational protocols, organize workgroups, develop the committee's specific agenda for its operations, and begin to consider substantive issues. Since EPA has decided to convene the committee, the March 14–15 meeting will be held as scheduled.

ADDRESSES: The meeting will be held at the Quality Hotel Capital Hill, 415 New Jersey Avenue, NW., Washington, DC, (202) 638–1616. A docket has been set up for the negotiation. Comments should be submitted (in duplicate if possible) to Air Docket Section (LE–131), EPA, Attention Docket #A–91–17, 401 M Street SW., Washington, DC 20460. A copy should also be sent to Mr. Alfonse Mannato, Field Operations and Support Division (EN–397F), 401 M Street, SW., Washington, DC 20460. Docket #A–91–17 contains materials relevant to this negotiation, and may be inspected at room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC between 8:30 a.m. and noon, and 1:30 p.m. and 3:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters related to reformulated gasoline should call Carol Menninga, Motor Vehicles Emissions Laboratory, EPA, at (313) 668–4575. Persons needing more information on the substantive matters related to oxygenated gasoline should call Alfonse Mannato, Field Operations and Support Division, EPA, at (202) 382–2640. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Chris Kirtz, Director, Regulatory Negotiation Project, EPA, at (202) 382–7565, or one of the committee's independent facilitators, Philip J. Harter at (202) 887–1033 or Alana S. Knaster at (818) 702–0526.

SUPPLEMENTARY INFORMATION: On February 8, 1991, EPA announced its "Intent to Form an Advisory Committee to Negotiate Guidelines and Proposed Regulations Implementing the Clean Fuels Provisions of Section 211 of the Clean Air Act as Amended, and Announcement of Public Meeting" [56 FR 5167]. The notice discussed the section 211 clean fuels provisions in detail as well as the regulatory negotiation process, and the issues considered appropriated for negotiation. For further details, see that notice. A public meeting on the notice was held on February 21–22, 1991 in Washington, DC. After considering the comments submitted in response to the notice and made at the public meeting, EPA has determined that it is in the public interest to proceed with negotiating guidelines and proposed regulations under section 211 of the Act.

As required by section 583 of the NRA, EPA has considered and determined that there is a need for the rule, that there are a limited number of interests that will be significantly affected by the rule, that it is reasonably likely that the committee can convene with balanced representation of parties, that the parties are willing to negotiate in good faith and attempt to reach a consensus, that the negotiation procedure will not unreasonably delay either the notice of proposed rulemaking or issuance of the final rule, that the Agency has adequate resources and technical support to assist the committee, and that the Agency, to the maximum extent possible consistent with its legal obligations, will use the consensus of the committee as the basis of its proposed rules and guidelines.

The potential parties indicated that, besides the issues identified in the February 8, 1991 notice of intent, issues related to domestic supply, distribution capacity, length of program, and related issues are of concern. Therefore, a workgroup to deal with these issues was proposed at the public meeting of February 21–22. In addition to a Supply and Distribution workgroup, three other workgroups were suggested at the meeting. These proposed workgroups were suggested to address issues related to Certification (Modeling and Testing), Anti-Dumping, and Averaging and Enforcement. The proposed Certification (Modeling and Testing) workgroup would address issues related to baseline emissions, toxic performance standards, evaporative running loss and refueling emissions, test procedures and compliance criteria, among other issues.

The Anti-Dumping workgroup will address issues related to definitions, including those of "blender," "refiner," and "importer," the definition of adequate data for baseline, the effect of Phase II RVP controls on compliance, the interaction between oxygenated fuels programs, and anti-dumping, among other issues. The Averaging and Enforcement workgroup will address issues related to self-auditing, banking (if it is to be permitted), liability for violations, and oxygenate labeling requirements, among other issues.

The current objectives of the proposed negotiation are:

—To attempt, via face-to-face negotiations, to reach consensus on concepts and language to use as the basis of the guidelines and proposed rules under the clean fuels provisions of section 211 of the Act.

—To develop approaches to oxygenated fuels marketable oxygen credit guidelines and proposed labeling regulations.

—To address approaches to emissions testing and modeling of fuels, standards applicable to reformulated fuels, specifications for baseline fuels, and the credit program.

—To address such other issues under the section 211 clean fuels provisions of the act as are appropriate.

Parties to the Negotiation

After reviewing the comments and nominations received, EPA has tentatively determined that the following interests should be represented at the negotiating committee: Refiners, Automobile Manufacturers, Oxygenated Fuels Industry Members, States/cities, Marketers, Environmental and Public Interest Groups, Department of Energy, and EPA.

Based on comments received and the public meeting held on February 21–22, 1991, EPA believes that this distribution of interests will result in balanced representation on the committee. The distribution of seats among industry and association interests will represent small, medium, and large scale industry interests. Likewise, the automobile manufacturers will represent both domestic operations and importers.

Dated: March 6, 1991.

Daniel P. Beardsley,

Acting Assistant Administrator for Policy, Planning, and Evaluation.

[FR Doc. 91–5946 Filed 3–12–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 61

[FRL–3913–5]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In an advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, EPA is announcing its intention to enter into a future rulemaking pursuant to section 112(d)(9) of the 1990 amendments of the Clean Air Act to rescind subpart I of 40 CFR part 61 as it applies to nuclear power reactors. EPA intends to issue a proposal to rescind Subpart I for nuclear power reactors no later than June 30, 1991, and will further explain its rationale for rescission and solicit additional comments at that time.

In this companion action, EPA is proposing a rule to stay the effectiveness of Subpart I as applied to nuclear power reactors until the rulemaking concerning rescission of Subpart I for nuclear power reactors has been concluded. EPA intends to take final action concerning this proposed rule to stay Subpart I for nuclear power reactors at the same time that it issues a proposed rule to rescind Subpart I for nuclear power reactors. As part of today's action, EPA is issuing an order temporarily staying the effectiveness of Subpart I for nuclear power reactors pending final action concerning its proposed stay.

DATES: Comments concerning this proposed rule must be received by EPA on or before April 15, 1991. A hearing concerning this proposed rule will be held in Washington, DC on April 22, 1991 if a request for such a hearing is received by April 15, 1991. For the location of the hearing, please contact Al Colli at (703) 308–8787. EPA intends to take final action concerning this proposed rule no later than June 30, 1991.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE–131, Environmental Protection Agency, Attn: Docket No. A–79–11, Washington, DC 20460. Requests to participate in the hearing should be made in writing to the Director, Criteria and Standards Division, ANR–460W, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments and requests to participate in the hearing may also be faxed to the EPA at (703) 308–8763.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Divisio (ANR–460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460 (703) 308–8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of subpart I as permitted by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B).

EPA subsequently extended the stay of the effective date of Subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsideration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the

Agency lacks sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of subpart I for all NRC-licensed facilities except for nuclear power reactors until November 15, 1992. 56 FR 6339 (February 15, 1991). This stay will permit EPA to use its authority under section 114 of the Clean Air Act to collect the information which is required to make a determination under section 112(d)(9). With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of Subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in its February 13, 1991 proposal to stay subpart I.

In an Advance Notice of Proposed Rulemaking published elsewhere in today's **Federal Register**, EPA is announcing its intention to enter into a future rulemaking pursuant to section 112(d)(9) to rescind subpart I of 40 CFR part 61 (subpart I) as it applies to nuclear power reactors. After reviewing available information concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions, EPA has tentatively concluded that NRC's regulatory program limiting these emissions protects public health with an ample margin of safety. EPA intends to issue a proposed rule under section 112(d)(9) to rescind subpart I as it applies to nuclear power reactors no later than June 30, 1991.

B. Proposed Stay of Subpart I for Nuclear Power Reactors

EPA did not include nuclear power reactors in the stay previously proposed on February 13, 1991 because the basis of that stay, the Agency's need to collect further information before making a determination under section 112(d)(9), is not applicable to nuclear power reactors. However, in this companion action to the advance notice of proposed rulemaking published elsewhere in today's **Federal Register**, EPA is proposing a rule to stay the effectiveness of subpart I as applied to nuclear power reactors until the rulemaking to rescind subpart I for nuclear power reactors has been concluded.

In section 112(d)(9), Congress authorized EPA to decline to regulate NRC licensees under section 112 in those instances where NRC regulation is sufficient to provide an ample margin of safety. Congress clearly intended to give EPA the discretion to relieve affected facilities from the burdens associated wtih parallel regulation when this would not adversely affect public health. Since EPA has now concluded that a rulemaking under section 112(d)(9) to rescind subpart I for nuclear power reactors is warranted, it would frustrate the clear purpose of section 112(d)(9) for EPA to permit subpart I to take effect for this subcategory during the pendency of the rulemaking concerning rescission. Accordingly, EPA is proposing this rule to stay the effectiveness of subpart I as applied to nuclear power reactors pending completion of the rulemking concerning rescission of subpart I for nuclear power reactors. EPA will take final action concerning this proposed stay at the same time as it issues a proposed rule to rescind subpart I for nuclear power reactors. EPA intends to issue a proposed rule to rescind subpart I for nuclear power reactors no later than June 30, 1991.

C. Order Temporarily Staying Subpart I

The present stay of subpart I for all facilities, including nuclear power reactors, is scheduled to expire on March 9, 1991. Since the decision by EPA to stay subpart I as applied to nuclear power reactors is closely related to the decision by EPA to rescind subpart I for nuclear power reactors, EPA believes that it is appropriate to afford the public an opportunity to comment on both proposed actions. However, it is not practicable to complete notice and comment rulemaking concerning the proposed stay of subpart I for nuclear power reactors by March 9, 1991. As explained above, EPA believes that permitting the standard to take effect for such facilities, even temporarily, would frustrate the Congressional intent embodied section 112(d)(9). Therefore, EPA is today issuing an order temporarily staying the effectiveness of subpart I for nuclear power reactors until EPA takes final action either adopting or declining to adopt the proposed stay. The sole purpose of this order is to preserve the status quo pending such final action. In these circumstances, EPA considers such an order to be an integral part of the rulemaking process established by section 112(d)(9).

Dated: March 8, 1991.

William K. Reilly,
Administrator.

[FR Doc. 91-6077 Filed 3-12-91; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 61

[FRL-3913-4]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: EPA is today announcing its intention to enter into a future rulemaking pursuant to section 112(d)(9) of the 1990 amendments to the Clean Air Act to rescind subpart I of 40 CFR part 61 as it applies to nuclear power reactors, one of the subcategories of NRC-licensed facilities which are governed by subpart I. EPA intends to issue a proposed rule no later than June 30, 1991, and will further explain its rationale for rescission and solicit additional comments at that time.

In a related action published elsewhere in today's **Federal Register**, EPA is proposing a rule to stay the effectiveness of Subpart I as applied to nuclear power reactors until the rulemaking concerning rescission of Subpart I for nuclear power reactors has been concluded. As part of that action, EPA is also issuing an order temporarily staying the effectiveness of subpart I for nuclear power reactors pending final action concerning its proposed stay.

DATES: Any comments submitted concerning this ANPRM must be received by EPA on or before April 15, 1991. EPA intends to issue a proposed rule to rescind subpart I as applied to nuclear power reactors no later than June 30, 1991.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-79-11, Washington DC 20460. Comments may also be faxed to the EPA at (703) 308-8763.

FOR FURTHER INFORMATION CONTACT: Al Colli, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agnecy, Washingotn, DC 20460, (703) 308-8787.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated standards controlling radionuclide emissions to the ambient air from several source categories, including emissions from licensees of the Nuclear Regulatory Commission (NRC) (and from federal facilities not licensed by the NRC or operated by the Department of Energy (non-DOE Federal facilities) (subpart I, 40 CFR part 61). This rule was published in the **Federal Register** on December 15, 1989 (54 FR 51654). At the same time as the rule was promulgated, EPA granted reconsideration of subpart I based on information received late in the rulemaking on the subject of duplicative regulation by NRC and EPA and on potential negative effects of the standard on nuclear medicine. EPA established a comment period to receive further information on these subjects, and also granted a 90-day stay of Subpart I as permitted by Clean Air Act Section 307(d)(7)(B), 42 U.S.C. 7607 (d)(7)(B).

EPA subsequently extended the stay of the effective date of Subpart I on several occasions, pursuant to the authority provided by section 10(d) of the Administrative Procedure Act (APA), 5 U.S.C. 705, and section 301(a) of the Clean Air Act, 42 U.S.C. 7601(a). (55 FR 10455, March 21, 1990; 55 FR 29205, July 18, 1990; and 55 FR 38057, September 17, 1990).

In October 1990, Congress passed new legislation amending the Clean Air Act. Section 112(d)(9) of the amendments provides,

> No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health.

After evaluating the information received during the reconsidseration of subpart I, EPA concluded that for all categories of NRC-licensed facilities other than nuclear power reactors the Agency may lack sufficient information to determine whether the regulatory program established by NRC provides "an ample margin of safety to protect the public health," as that term is used in section 112 of the Clean Air Act (CAA). On February 13, 1991, EPA proposed to stay the effectiveness of Subpart I for all NRC-licensed facilities except for nuclear power reactors until November 15, 1992. 56 FR 6339 (February 15, 1991). This stay will permit EPA to use its authority under section 114 of the Clean Air Act to collect the information which is required to make a detrmination under section 112(d)(9). With regard to non-DOE federal facilities, EPA concluded that the factors which led to the reconsideration of subpart I, possible duplication of effort between the EPA and the NRC and potential negative effects on nuclear medicine, are not applicable to this subcategory of facilities. Since the determination concerning the adequacy of the NRC regulatory program contemplated by the new language in section 112(d)(9) could not apply to such facilities, EPA did not include non-DOE federal facilities in its February 13, 1991 proposed to stay subpart I.

EPA also did not include nuclear power reactors in the stay proposed on Febuary 13, 1991 because the basis of the stay, the Agency's need to collect further information before making a determination under section 112(d)(9), is not applicable to nuclear power reactors. However, in a related action published elsewhere in today's **Federal Register**, EPA is proposing a rule to stay the effectiveness of subpart I as applied to nuclear power reactors until the rulemaking concerning rescission of subpart I for nuclear power reactors has been concluded. As part of that action, EPA is also issuing an order temporarily staying the effectiveness of subpart I for nuclear power reactors pending final action concerning its proposed stay.

B. Summary of Rationale for Recission

Subpart I of 40 CFR part 61 limits radionuclide emissions to the ambient air from NRC-licensed facilities to that amount which would cause any member of the public to receive in any year an effective dose equivalent ("ede") of 10 millirem, of which no more than 3 millirem/year ede may be from radioiodine. The NESHAP limit represents the Agency's application of the policy for regulating section 112 pollutants which was first announced in the benzene standard. 54 FR 38044 (September 14, 1989). That policy considers the cancer risk to the maximally exposed individual to be presumptively acceptable if it is no higher than approximately one in ten thousand. This presumptive level provides a benchmark for judging the acceptability of maximim individual risk; however, EPA strives to protect as much of the population as possible to risks below in one million. EPA also considers other health and risk factors such as incidence of cancer, the number of persons exposed within each individual lifetime risk range, the weight of evidence presented in the risk assessment, and the incidence of non-fatal cancer and other health effects.

As part of the promulgation of subpart I, EPA estimated the lifetime risks associated with emissions of radionuclides to the ambient air from various categories of NRC-licensed facilities. The analysis of model nuclear power reactors indicated that the maximally exposed individual would be expected to receive a dose associated with an increased risk of fatal cancer of approximately 5 in one million and a risk of non-fatal cancer of approximately 2.5 in one million, which EPA considers to be presumptively acceptable. The Agency's analysis also indicated that emissions of radionuclides from nuclear power reactors are associated with a total of .09 fatal cancers per year, and almost all of that risk is borne by people whose risk is less than one in one million.

After Congress passed section 112(d)(9) of the new Clean Air Act, which gives EPA the authority not to regulate particular categories or subcategories of NRC-licensed facilities if it finds that the NRC regulatory program protects public health with an ample margin of safety, EPA evaluated the information it has collected during the reconsideration of subpart I. EPA believes that it has sufficient information to enable the Agency to make a determination under section 112(d)(9) for the subcategory of nuclear power reactors.

Data incorporated in the record for the reconsideration indicates that the maximum dose to the public for radionuclide emissions from nuclear power reactors is approximately 5 millirem/year ede. This dose is below the NESHAP limit of 10 millirem/year ede. Other data suggests that radioiodine emissions from nuclear power reactors are minimal.

EPA has evaluated the NRC program to implement standards which regulate emissions from nuclear power reactors. Prior to obtaining an NRC license to operate a nuclear power reactor, each facility must submit to NRC the design plans of the reactor, including effluent control information. Each facility is further required to submit calculations which demonstrate that it meets the requirements of 10 CFR 50 appendix which establishes, among other things, 5 millirem external total whole body dose from gaseous emissions as the design goal for reactors. If this design goal is met, NRC considers this to be quantitative evidence that the facility's radionuclide emissions meet NRC's

requirement of being "as low as reasonably achievable" (ALARA). Once a year, the facility must report offsite dose calculations, and calculations which demonstrate compliance with 40 CFR 190, the NRC's radiation standards. Twice a year, the facility must report effluent quantities. This provides a public record demonstrating that the emissions are being adequately controlled.

After reviewing available information concerning radionuclide emissions from nuclear power reactors and the program implemented by the NRC to control such emissions, EPA has tentatively concluded that NRC's regulatory program limiting these emissions protects public health with an ample margin of safety. EPA intends to issue a proposed rule under section 112(d)(9) to rescind subpart I as it applies to nuclear power reactors no later than June 30, 1991.

Dated: March 8, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-6078 Filed 3-12-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 56, 58, 107, 108, 109, 111 and 174

[CGD 83-071a]

RIN 2115-AB66

Mobile Offshore Drilling Unit Regulations Revision

AGENCY: Coast Guard DOT.

ACTION: Notice of withdrawal.

SUMMARY: On March 25, 1985, an advance notice of proposed rulemaking (ANPRM) addressing revisions to the Mobile Offshore Drilling Unit (MODU) regulations was published in the **Federal Register** (50 FR 11741).

The primary purpose of this rulemaking was to align the existing regulations more closely with the International Maritime Organization's MODU Code. One section of this rulemaking addressing operating manual requirements was "broken off" and published as a final rule on March 6, 1987 in the **Federal Register** (50 FR 1174).

This proposed rulemaking is being withdrawn because of the changing priorities and shift of resources within the Coast Guard necessary to respond to the Congressional mandates of the Oil Pollution Act, 1990. Work will continue with the National Offshore Safety Advisory Committee (NOSAC), as resources permit, with the intent of redocketing this regulatory project at a later date.

DATE: March 13, 1991.

FOR FURTHER INFORMATION CONTACT: CDR. Michael M. Ashdown, Chief, Offshore Activities Branch (202) 267-2307.

Dated: March 4, 1991.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-5893 Filed 3-12-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 91-22; FCC 91-37]

International Communications Traffic Data

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding will simplify § 43.61 of the Rules, delegate authority to the Chief, Common Carrier Bureau to develop a carrier reporting manual to replace the reporting requirements currently set out in the Rules, eliminate obsolete reporting requirements for international common carriers, reduce the reporting requirements for international resale carriers, and include data for service with Canada and Mexico in carrier submissions.

DATES: Comments must be filed by April 29, 1991. Reply comments are due by May 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Stanley, Industry Analysis Division, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in CC Docket No. 91-22, adopted February 4, 1991, and released March 8, 1991.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this notice may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt, (202) 395-4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0106.

Title: Section 43.61—Reports of Overseas Telecommunications Traffic.

Action: Proposed revision.

Respondents: Business or other for-profit.

Frequency of Response: Annually. Corrections are reported three months after the annual filing.

Estimated Annual Burden: 49 responses; 579 hours total; 12.1 hours average burden per response. (The foregoing estimates are based on the proposals contained in the Notice of Proposed Rule Making.)

Needs and Uses: The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The reported data are useful for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market services, and market analysis purposes. The reported data enable the Commission to fulfill its regulatory responsibilities.

Summary of Notice of Proposed Rule Making

1. Section 43.61 requires common carriers that provide international communications service to file annual reports on service between the United States and overseas points and it prescribes the requirements for reporting the traffic and revenue information. The data submitted by the carriers are compiled and a report is issued by the Commission. The data have several uses.

2. The Notice of Proposed Rule Making (NPRM) seeks to streamline and simplify § 43.61 by stating the reporting requirements in generic terms to replace the detailed requirements, data categories, definitions, and schedules in the current section the rules. The NPRM proposes to direct the Chief of the Common Carrier Bureau to issue a filing manual containing the reporting requirements and other instructions to be used by common carriers to compile their reports. Comments are requested on these proposals as well as the proposals listed below.

3. The NPRM also proposes several changes in the information to be submitted by the common carriers. The current § 43.61 does not require carriers to submit data for service with three points, Canada, Mexico, and St. Pierre-Miquelon. The NPRM proposes to require data on service with these points. The NPRM proposes to eliminate one schedule currently filed by carriers in their submissions. It also seeks to eliminate detailed reporting requirements for services no longer widely used by the public and the submission of data no longer needed to monitor the industry or fulfill other regulatory objectives.

4. The NPRM also proposes to reduce the reporting requirements applied to international resellers by requiring them to provide summary data rather than detailed reports.

5. Finally, the NPRM proposes that common carriers identify new service categories and report total revenue data for each such service.

6. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules. 47 CFR 1.231, for the governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 43

Communications common carriers, International traffic data reports.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 91-5964 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-48, RM-7621]

Radio Broadcasting Services; Milford, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by 202 Data Systems seeking the allotment of Channel 271C2 to Milford, Iowa, as the community's first local FM service. Channel 271C2 can be alloted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 3 kilometers (1.9 miles) northwest to avoid a shortspacing to Station KAYL-FM, Channel 268C1, Storm Lake, Iowa. The coordinates for Channel 271C2 at Milford are North Latitude 43-20-33 and West Longitude 95-07-40.

DATES: Comments must be filed on or before April 29, 1991 and reply comments before May 14, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kevin W. Galbraith, President, 202 Data Systems, Station Square Three, Paoli, Pennsylvania 19301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-48, adopted February 22, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5965 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-465, RM-7278]

Radio Broadcasting Services; Chippewa Falls, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition for rule making filed by Jay Lellman requesting the allotment of Channel 280C3 to Chippewa Falls, Wisconsin. *See* 55 FR 45623, October 30, 1990. The petition is dismissed at the request of the petitioner.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-465, adopted February 22, 1991, and released March 8, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5966 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 16a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATES: Comments on the amendment should be submitted on or before May 6, 1991.

ADDRESSES: Comments on the amendment should be submitted to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

Copies of the amendment with the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

FOR FURTHER INFORMATION CONTACT: Susan Salveson (National Marine Fisheries Service, Alaska Region), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon reviewing the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

If approved, Amendment 16a will make the following changes to the FMP: (1) Establish herring bycatch management measures for trawl fisheries, (2) authorize the Regional Director to close temporarily limited areas due to high bycatch rates, and (3) authorize the Regional Director to limit the amount of pollock that may be taken in the directed bottom trawl pollock fishery.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days of this notice (16 U.S.C. 1801 *et seq.*).

List of Subjects in 50 CFR Part 675

Fisheries.

Dated: March 7, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–5862 Filed 3–8–91; 10:19 am]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 56, No. 49

Wednesday, March 13, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 8, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

New Collection

- Food and Nutrition Service, Income and Eligibility Verification Systems (IEVS) Targeting, Study, One-time only, State or local governments; Non-profit institutions; 102 responses; 204 hours, Sharron Cristofar, (703) 756–3115.
- Food and Nutrition Service, WIC Vendor Issues Study, One-time only, State or local governments; Businesses or other profit; 4,860 responses; 1,818 hours, Dr. Steven K. Gale (703) 756–3117.

Existing

- Federal Crop Insurance Corporation, Federal Crop Insurance Policies With Options And Optional Forms, FCI–505, 506, 514, 523, 535, 539, 541, 547, 548, and 550, On occasion, Individuals or households; Farms; 32,935 responses; 8,234 hours, Bonnie L. Hart, (202) 245–5046.

Existing

- Federal Crop Insurance Corporation, Request To Exclude Hail and Fire Coverage From Insurance Policy, FIC–78 and FCI–78–A, On occasion, Individuals or households; Farms; 54,535 responses; 13 634 hours, Bonnie L. Hart, (202) 245–5046.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–5863 Filed 3–12–91; 8:45 am]

BILLING CODE 3410–01–M

Farmers Home Administration

Rural Rental Housing Displacement Prevention; Solicitation to Nonprofit Organizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The interim rule published on February 13, 1990, (55 FR 4985) based on the Tenant Displacement Prevention Provisions of the Housing and Community Development Act of 1987, provides that certain categories of rural rental housing (RRH) borrowers who wish to prepay their loans must first attempt to sell their projects to nonprofit organizations. In order to expedite this process, Farmers Home Administration (FmHA) maintains a list of nonprofit organizations which may wish to purchase such projects. The intended effect of this notice is to invite nonprofit organizations to be placed on this list in order to be notified when RRH borrowers request to prepay their loans.

ADDRESSES: Eligible regional and nationwide organizations should submit their names, addresses, contact persons and area(s) of interest to the Multiple Housing Servicing and Property Management Division, FmHA, room 5321, South Agriculture Building, Washington, DC 20250. Information submitted will be compiled and forwarded to the State periodically.

SUPPLEMENTARY INFORMATION:

Intergovernmental Consultation: This program/activity is listed in the Catalog of Federal Domestic Assistance under number 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983).

Discussion: By means of this Notice, FmHA is soliciting expressions of interest by local, regional and National nonprofit organizations interested in purchasing multifamily housing projects, in accordance with the procedures contained in Paragraph VI of exhibit E of subpart B of part 1965. FmHA procedure provides that borrowers who wish to prepay rural rental housing (RRH) loans which FmHA determines are still needed for low- and moderate-income use must be offered an incentive to remain within the FmHA program. If the borrowers reject the incentive offer, they must try to sell the project to a nonprofit organization which meets certain requirements. Prepayment may be accepted if a qualified nonprofit purchaser is not found.

Local and Statewide nonprofit organizations which meet the requirements contained in Paragraph VI C of exhibit E of subpart B of Part 1965 should submit their names, addresses and contact persons to the FmHA State Office(s) in the State(s) in which they are eligible. State Offices will be responsible for compiling and forwarding the information provided by the eligible organizations to the appropriate District Offices. Borrowers will be required to update the information for inclusion on this list annually.

The following is a list of FmHA State Offices. All correspondence should be directed to the Multiple Housing Coordinator.

Dale N. Richey, State Director, FmHA, Aronov Building, rm. 717, 474 South Court Street, Montgomery, AL 36104

Roger E. Willis, State Director, FmHA, 634 South Bailey, suite 103, Palmer, AK 99645.

Clark R. Dierks, State Director, FmHA, 201 East Indianola, suite 275, Phoenix, AZ 85012.

Robert L. Hankins,

State Director, FmHA,
700 West Capitol,
Post Office Box 2778,
Little Rock, AR 72203.
Richard E. Mallory,
State Director, FmHA,
194 West Main Street, suite F,
Woodland, CA 95695–2195.
Judy A. Jaklich,
State Director, FmHA,
room E–100,
655 Parfet Street,
Lakewood, CO 80215.
G. Wallace Caulk,
State Director, FmHA,
2319 South DuPont Highway,
Dover, DE 19901.
L. James Cherry, Jr.,
State Director, FmHA,
401 S.E. 1st Ave., rm. 214,
Gainesville, FL 32601–6805.
Thomas M. Harris,
Director, FmHA,
Stephens Federal Building,
355 East Hancock Avenue,
Athens, GA 30610.
Daniel K. J. Lee,
State Director, FmHA,
room 311, Federal Building,
154 Waianuenue Avenue,
Hilo, HI 96720.
Michael A. Field,
State Director, FmHA,
3232 Elder Street,
Boise, ID 83705.
Gerald A. Townsend,
Acting State Director, FmHA,
Illini Plaza III—suite 103,
1817 South Neil Street,
Champaign, IL 61820.
George A. Morton
State Director, FmHA,
5975 Lakeside Boulevard,
Indianapolis, IN 46278.
Robert R. Pim,
State Director, FmHA,
873 Federal Building,
210 Walnut Street,
Des Moines, IA 50309.
John R. Price,
State Director, FmHA,
444 S. E. Quincy Street,
room 176
Topeka, KS 66683.
Mary Ann Baron,
State Director, FmHA,
333 Waller Avenue,
Lexington, KY 40504.
John C. McCarthy,
State Director, FmHA,
3727 Government Street,
Alexandria, LA 71302.
Nathaniel A. Churchill,
State Director, FmHA,
444 Stillwater Avenue,
suite 2,
Bangor, ME 04402–0405.
Theodore L. Fusaro,
State Director, FmHA,
451 West Street,
Amherst, MA 01002.
Calvin C. Lutz,
State Director, FmHA,
1405 South Harrison Road,
room 209,
East Lansing, MI 48823.
Russ Bjorhus,
State Director, FmHA,
410 Farm Credit Building,
375 Jackson Street
St. Paul, MN 55101–1853.
James B. Huff, Sr.,
State Director, FmHA,
Federal Building, suite 831,
100 West Capitol Street,
Jackson, MS 39269.
Douglas A. Elliott,
State Director, FmHA,
555 Vandiver Drive,
Columbia, MO 65202.
Eugene Coombs,
State Director, FmHA,
Federal Building, rm. 210,
10 East Babcock Street,
P. O. Box 850
Bozeman, MT 59715.
James L. Howe,
State Director, FmHA,
Federal Building, rm. 308,
100 Centennial Mall N,
Lincoln, NE 68508.
Takashi Moriuchi,
State Director, FmHA,
Tarnsfield Plaza, suite 22,
Tarnsfield and Woodlane Road,
Mt. Holly, NJ 08060.
Vivian G. Cordova,
State Director, FmHA,
Federal Building, rm. 3414,
517 Gold Avenue, SW.,
Albuquerque, NM 87102.
Pierre L. Labourdette,
State Director, FmHA,
James M. Hanley Federal Building,
room 871,
100 South Clinton Street,
Syracuse, NY 13260.
Larry W. Godwin, Sr.,
State Director, FmHA,
310 New Bern Avenue, rm. 525,
Raleigh, NC 27601.
Marshall W. Moore,
State Director, FmHA,
Federal Building, rm. 208,
Third and Rosser.
Post Office Box 1737,
Bismarck, ND 58502.
Allen L. Turnbull,
State Director, FmHA,
Federal Building, room 507,
200 North High Street,
Columbus, OH 43215.
Ernest Hellwege, State Director, FmHA,
USDA Agricultural Center Building,
Stillwater, OK 74074.
Donald D. Thompson, State Director, FmHA,
Federal Building, rm. 1590, 1220 SW. 3rd
Avenue,
Portland, OR 97204.
D. Eugene Gayman, State Director, FmHA,
Federal Building, rm. 730, Post Office Box
906, Harrisburg, PA 17108.
Julia R. deVincenti, State Director, FmHA,
Federico Degetau Federal Building, rm. 623,
Carlos Chardon Street,
Hato Rey, PR 00918.
Elwood L. Gerald, Acting State Director,
FmHA, Strom Thurmond Federal Building,
1835 Assembly Street, rm. 1007, Columbia,
SC 29201.
Marvis T. Hogen, State Director, FmHA,
Federal Building, rm. 308, 200 Fourth Street,
SW., Huron, SD 57350.
Randle B. Richardson, State Director, FmHA,
Federal Building,
U.S. Courthouse, rm. 536, 801 Broadway,
Nashville, TN 37203.
Neal Sox Johnson, State Director, FmHA,
Federal Building, suite 102, 101 South Main,
Temple, TX 76501.
E. Lee Hawkes, State Director, FmHA,
Wallace F. Bennett Federal Building, 125
South State Street, rm. 5438, Salt Lake City,
UT 84138.
Bernice R. Murray, State Director, FmHA, 141
Main Street, Post Office Box 588,
Montpelier, VT 05602.
Lloyd A. Jones, State Director, FmHA,
Federal Building, rm. 8213, 400 North 8th
Street, Richmond, VA 23240.
Earl F. Tilly, State Director, FmHA, Federal
Building, rm. 319, Post Office Box 2427,
Wenatchee, WA 98807.
John C. Muagrave, State Director, FmHA, Post
Office Box 678, 75 High Street,
Morgantown, WV 26505.
Ronald W. Caldwell, State Director, FmHA,
4943 Kirschling Court, Stevens Point, WI
54481.
Michael F. Ormsby, State Director, FmHA,
100 East B, Federal Building, rm. 1005, Post
Office Box 820, Casper, WY 82602.

Dated: February 28, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–5865 Filed 3–12–91; 8:45 am]

BILLING CODE 3410–07–M

Foreign Agricultural Service

List of Technical Working Group Contact Persons for the United States-Canada Free-Trade Agreement

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice

SUMMARY: Notice is given of the U.S. contact persons of the technical working groups created by the United States-Canada Free Trade Agreement. The technical working groups are comprised of government officials from the United States and Canada. The purpose of these groups is to determine whether any technical changes to the administration of U.S. or Canadian law could be made to enhance bilateral agricultural trade. Each of these groups has been assigned specific trade areas. If any person wishes to submit information for consideration by a technical working group or obtain information about a technical working group, please contact the person representing that working group listed below.

Dairy, Fruit, Vegetable and Egg Inspection

Kenneth C. Clayton, Deputy Administrator, Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, room 3069–S, 14th & Independence Ave., SW., Washington, DC 20250, (202) 447–4276 telephone, (202) 447–8477 fax.

Food, Beverage and Color Additives and Unavoidable Contaminants

Ray Gill, Food and Drug Administration, Division of Nutrition (HFF–260), room 1844, 200 C St., SW., Washington, DC 20204, (202) 485–0160 telephone, (202) 472–1542 fax.

Packaging and Labeling

John Vanderveen, Food and Drug Administration, Division of Nutrition (HFF–260), rm 1844, 200 C st., SW., Washington, DC 20204, (202) 245–1064 telephone, (202) 426–7494 fax.

Seafood

Thomas Billy, National Martine Fisheries Serivce, U.S. Department of Commerce, 1335 East-West Highway, Silver Spring, MD 20910, (301) 427–2351 telephone, (301) 588–4853 fax.

Seeds

James Triplett, Agricultural Marketing Service, Seed Regulatory and Testing Branch, Bld 506, BARC–E, Beltsville, MD 20705, (301) 344–4430 telephone, (301) 344–4454 fax.

Animal Health

Dr. Robert Whiting, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 765 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8590 telephone, (301) 436–8226 fax.

Plant Health

Scot Campbell, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 657 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8892 telephone, (301) 436–8318 fax.

Meat and Poultry Inspection

Pat Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, room 341–E, 14th & Independence Ave., SW., Washington, DC 20250, (202) 447–3473 telephone, (202) 426–3856 fax.

Veterinary Drugs and Feeds

Dr. Gerald Guest, Dr. John Augburg, Food and Drug Administration, Center for Veterinary Medicine, 5600 Fisher Lane, room 757, Rockville, MD 20857, (301) 443–3450 telephone, (301) 443–3449 fax.

Pesticides and Fertilizers

Stanford Fertig, Agricultural Research Service, U.S. Department of Agriculture, BARC–East, Building 1070, Beltsville, MD 20705, (301) 344–2845 telephone, (301) 344–5063 fax.

DATES: March 13, 1991.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Fuell, FAS, International Trade Policy, room 5506–S, U.S. Department of Agriculture, Washington, DC 20250, (202) 382–1335 telephone, (202) 382–8069 fax.

SUPPLEMENTARY INFORMATION: On January 2, 1988, President Reagan signed the United States-Canada Free-Trade Agreement (hereafter "FTA"). Pursuant to Article 2105, the "Agreement shall enter into force on January 1, 1989, upon exchange of diplomatic notes certifying the completion of necessary legal procedures by each Party." To implement the United States obligations of the Agreement, the Congress passed and President Reagan signed into law the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100–449.

Article 708 of the FTA required the creation of technical working groups which would attempt to resolve barriers to bilateral agricultural trade caused by differences in U.S. and Canadian technical regulations and standards concerning agricultural, food, beverage, and other related goods. These working groups are comprised of government officials from the United States and Canada. The purpose of these groups is to raise issues concerning technical barriers to bilateral agricultural trade, develop proposals to resolve such trade barriers, and forward those proposals to their respective governments. These groups do not have the authority to make binding agreements between the two governments and they have no independent authority to change law in either the United States or Canada. The working groups merely provide a forum for the governments to raise and discuss possible solutions to technical agricultural trade issues.

Signed in Washington, DC, on March 7, 1991.

Duane Acker,

Administrator, Foreign Agricultural Service.

[FR Doc. 91–5868 Filed 3–12–91; 8:45 am]

BILLING CODE 3410

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Applications and Reports for Scientific Research and Public Display Permits under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.
Form Number: None; OMB—0648–0084.
Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Burden: 487 respondents; 6,134 reporting hours; average hours per response—12.6 hours. 2 hours recordkeeping for 259 respondents.
Needs and Uses: Respondents will be applicants for, and holders of, scientific research/public display permits. The MMPA and ESA prohibit the taking of marine mammals with certain exceptions. Applicants wanting authorization to take or import must provide certain information to be used as a basis for determining whether a permit should be issued. Permit holders are required to report periodically on the status of their permit.
Affected Public: State or local governments, businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Frequency: On occasion, annual.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 8, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-5955 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

[Docket No. 0108-01]

Action Affecting Export Privileges: Franciscus B. Govaerts Individually and Doing Business as Printlas Europa

Order

In the matter of Franciscus B. Govaerts individually and doing business as Printlas Europa, Respondent.

On February 5, 1991, the Administrative Law Judge (the "ALJ") entered his Recommended Decision and Order in the above captioned matter. The ALJ's Decision and Order, a copy of which is attached to and made a part of this final Order, has been referred to me for final action. Based upon the facts of this case, I am affirming in part and modifying in part that Decision and Order.

Specifically, I affirm the ALJ's conclusions of law that Respondent violated the Export Administration Act of 1979, as amended (50 U.S.C.A. App. sections 2401–2420 (Supp. 1989)) (the "Act") and the Export Administration Regulations (15 CFR Parts 768–799 (1990)) (the "Regulations"). Furthermore, I affirm the ALJ's Decision to deny Respondent's export privileges for a period of ten years, but to suspend the denial of such privileges for a period of five years. Contrary to the contention advanced by Agency Counsel, the record established that Respondent's cooperation with the U.S. Customs Service contributed to arrests and convictions in other criminal proceedings and, therefore, supports the ALJ's Decision to suspend in part the denial period.

Because the ALJ correctly concluded in this matter that Respondent had violated the Act and the Regulations, I am modifying the sixth, seventh, and eighth lines of Paragraph II (suspension of denial period) of the Recommended Order to reflect those conclusions. Accordingly, I am striking the sixth, seventh, and eighth lines of Paragraph II of the Recommended Order and am inserting in lieu thereof the following language: "provided that Respondent has committed no further violations of the Act or the Regulation, or has not committed a violation of the final Order entered in this proceeding."

I am also modifying in part the Statement of Facts of the Recommended Decision to reflect that the criminal proceeding upon which the ALJ based his legal conclusions was predicated upon Respondent's guilty plea to two counts of a federal grand jury indictment. Count One, which does not appear in the Statement Of Facts, provides in relevant part:

From a date unknown to the Grand Jury and continuing until on or about December 9, 1988, in and around Boston in the District of Massachusetts and elsewhere, Marcel Sanders, Goris Christiaan Grandia, Franciscus Govaerts, and Rogier Von Alphen, defendants herein, did knowingly and willfully combine, conspire, confederate and agree among themselves to commit offenses against the United States, namely (a) to knowingly and willfully export, cause to be exported and attempt to export from the United States through other nations to Bulgaria a Teradyne J937 Memory Test System and a Teradyne M218 Laser Repair System, without first applying for and obtaining a validated export license from the United States Custom Service and the United States Department of Commerce, Office of Export Licensing, knowing that the intended final destination of the Teradyne J937 Memory Test System and the Teradyne M218 Laser Repair System was Bulgaria, a controlled country, in violation of 50 U.S.C. App. section 2410(b); (b) to knowingly and willfully make a false, fictitious and fraudulent statement and representation, in a matter within the jurisdiction of the United States Custom Service and the United States Department of Commerce, departments and agencies of the United States, in violation of title 18, United States Code, section 1001; and (c) to transport and attempt to transport monetary instruments and funds to a place in the United States from a place outside the United States to promote the carrying on of the unlawful export of a Teradyne J937 Memory Test System and a Teradyne M218 Laser Repair System in violation of title 18, United States Code, section 1956(2)(A).

Finally, I am vacating in part the temporary denial order issued in this matter. On April 8, 1989, an order was issued that temporarily denied the export privileges of, *inter alia*, Franciscus B. Govaerts, individually and doing business as Printlas Europa. 54 FR 14667 (April 12, 1989) (the "Temporary Denial Order"). The Temporary Denial Order was renewed on October 4, 1989, 54 FR 41660 (October 11, 1989), April 2, 1990, 55 FR 14330 (April 13, 1990), and September 28, 1990, 55 FR 41366 (October 11, 1990). Pursuant to its terms, the Temporary Denial Order was to remain in effect until, among other events, the final disposition of the instant administrative proceeding.

The final Order of the Under Secretary for Export Administration constitutes the final disposition of the administrative proceeding in this matter. Accordingly, pursuant to the terms of the Temporary Denial Order, such Order shall cease to have any legal force and effect with regard to Franciscus B. Govaerts, individually and doing business as Printlas Europa, Torenakker 8–5731 CC, Mierlo, Netherlands, as of the date of this final Order. The Temporary Denial Order, however, shall remain in full force and effect for all the other individuals and companies named in that order.

Having examined the record of this administrative proceeding and based upon the facts of this case, I affirm the ALJ's Recommended Decision and Order in all other respects. This Order constitutes the final Agency action in this matter.

Dated: March 6, 1991.

Dennis E. Kloske,

Under Secretary for Export Administration.

Appearance for Respondent: Franciscus B. Govaerts, c/o Printlas Europa, Torenakker 8—5731 CC, Mierlo, Holland.[1]

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th St. and Constitution Ave. NW., room H–3839, Washington, DC 20230.

Preliminary Statement

In a charging letter dated June 19, 1990, the Office of Export Enforcement charged Respondent Franciscus B. Govaerts individually and doing business as Printlas Europa with four violations of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (Supp. 1989)) (the "Act"), and the implementing Export Administration Regulations (currently codified at 15 CFR Parts 768–799 (1989)) ("the Regulations").[2] Respondent filed

[1] A Temporary Denial Order was issued on April 8, 1989 (54 FR 14667 (1989)). The first renewal was issued on October 4, 1989 (54 FR 41660 (1989)); the second renewal was issued on April 2, 1990 (55 FR 14330 (1990)). Respondent made an unsuccessful appeal of the second renewal which was denied on June 8, 1990 (55 FR 27289 (1990)). The third renewal was issued on September 28, 1990 (55 FR 41366 (1990)). It was to remain in effect for 180 days from the date of issue (March 27, 1991) or the disposition of this proceeding. The dates of the Temporary Denial Order which are printed in the Federal Register Table of Denied Parties appear to be in error.

[2] The Act expired on September 30, 1990. Executive Order FR 12730 (55 FR 40373 (1990)) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

an Answer by letter dated July 9, 1990. Agency Counsel has moved for summary judgment with respect to Charge I (conspiracy to export without a license) and Charge III (attempt to export) of the charging letter citing Respondent's criminal conviction which was assertedly based on the same facts as are at issue here.[3] The record reflects that criminal proceedings were initiated and a conviction obtained respecting the Respondent in the United States District Court for the District of Massachusetts, which had jurisdiction of the Respondent and of the charged violations of the criminal law. As noted in the administrative proceeding titled, "In the Matter of Spawr Optical Research, Inc." 51 FR 7477 (1986), and subsequent federal court decision, *Spawr Optical Research, Inc.* v. *Baldridge*, 649 F. Supp. 1366 (D.D.C. 1986), factual determinations of a Court of competent jurisdiction are not subject to redetermination before this administrative Tribunal.

Facts

The facts in the grand jury indictment of which Respondent was convicted on his guilty plea are:

On or about December 9, 1988, at or around Boston in the District of Massachusetts, Marcel Sanders, Goris Christiaan Grandia, Franciscus Govaerts, and Rogier Von Alphen,[4] defendants herein, in furtherance of the conspiracy [to knowingly and willfully export as] charged in Court One, did knowingly and willfully attempt to export and did aid, abet, cause, counsel, command, procure and induce the knowing and willful attempt to export the Terandyne J927 Memory Test System and M218 Laser Repair System from the United States, without first having applied for and obtained a validated export license from the United States Department of Commerce, Office of Export Licensing, knowing that the intended final destination of the equipment was Bulgaria, a controlled country.

All in violation of [title 18, United States Code section 371]; title 50, United States Code, appendix, section 2410(b); title 15, Code of Federal Regulations, §§ 370.1–370.3, § 372.1; §§ 387.1–387.3, § 399.1; Title 18, United States Code, section 2.

(Agency Ex. 1. *See* Ex. 2).

Discussion

In his answer Respondent acknowledges acquaintances with some of the others involved in the charged export though he denies his own culpable participation. In his explanation, Respondent claims that he was pressured into executing and delivering the documents relating to the transaction. His criminal conviction may not be contradicted here. The United States District Court was the competent tribunal to consider the criminal charges. The criminal conviction may not be collaterally attacked here.

The disposition of administrative proceedings in summary fashion predicated upon facts found in a criminal proceeding is not open to question. Such process has been approved legislatively and judicially. 50 U.S.C. App. 2410(h); *Spawr, supra*. I conclude that this is an appropriate case for such summary disposition. Comparing the charge in this proceeding to the facts alleged and found in the Count in the criminal case, reflects that the essential facts and elements alleged in this administrative proceeding were found in that judicial criminal proceeding. The facts found in relation to the violations are identical.

I do not find that there are special circumstances which preclude reliance upon the criminal court's factual findings.

Conclusion

The Agency Motion for Summary Judgment is granted.

The results of the criminal proceeding introduced in the course of this adjudication establish that Respondent Govaerts violated the Act and Regulations as charged. Since his business activity Printlas Europa is but his *alter ego* or the *nom de plume* under which his operations are conducted, it too should be named.

The violation warrants denial of participation in export of the United States goods and technologies for 10 years. This is consistent with the action in other similar cases. The indication that Govaerts provided cooperation and information to U.S. Customs authorities after the violations were uncovered deserves some credit. Suspending 5 years of the denial will acknowledge that cooperation.

I. For a period of ten years from the date of the final order the Respondents Franciscus B. Govaerts individually and doing business as Printlas Europa, with addresses at Torenakker 8—5731 CC, Mierlo, Holland, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing five years from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 788.16(c) of the Regulations, for the remainder of the ten year period set forth in Paragraph I above, and shall be terminated at the end of such ten year period, provided that Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding. The provisions of paragraphs III and VI of this Order are also suspended during the five year suspension period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for re-export authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including,

[3] Agency Counsel represents that two of the counts (II and IV) are withdrawn if summary judgment is granted with respect to the two remaining counts which allege the same facts set forth in the criminal proceeding.

[4] Decisions respecting the first three named Respondents are being issued concurrently. No Charging Letter has been filed with respect to the last named individual.

but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: February 5, 1991.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW, room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-5847 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 0117-01, 0117-02]

Action Affecting Export Privileges: Goris Christiaan Grandia

In the matter of: Goris Christiaan Grandia individually and doing business as Grandia Project Services, Respondent.

Order

On February 5, 1991, the Administrative Law Judge entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the Administrative Law Judge.

In addition, as the Administrative Law Judge notes, there is a Temporary Denial Order currently in effect against the respondent. By Order of April 6, 1989 (54 FR 14667, April 12, 1989), which was renewed on October 4, 1989 (54 FR 41660, October 11, 1989), April 2, 1990 (55 FR 14330, April 17, 1990) and September 28, 1990 (55 FR 41366, October 11, 1990), Grandia, along with several other named parties, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The Order which I am now issuing concludes the administrative proceeding against Grandia as a result of the investigation which gave rise to the Temporary Denial Order. Accordingly, the Temporary Denial Order is amended by deleting from the list of respondents named therein: Goris Christiaan Grandia, individually and doing business as Grandia Project Services with addresses at:

Laurietstraat 59 1016 PH Amsterdam, Netherlands
and
Gudrunstrasse 121 A 1100 Vienna, Austria.

This constitutes final agency action in this matter.

Dated: March 5, 1991.

Dennis Kloske,

Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: M. V. van der Woude, Esq., Advocaat En Procureur, Hacquartstraat 10, 1071 SH Amsterdam.[1]

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., room H-3839, Washington, DC 20230.

Preliminary Statement

In a charging letter dated September 10, 1990, the Office of Export Enforcement charged Respondent Goris Christiaan Grandia individually and doing business as Grandia Project Services with one violation of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the "Act"), and the implementing Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1989)) ("the Regulations").[2] Following one extension, Respondent filed an Answer and requested a hearing by letter dated November 19, 1990, which was received on November 28, 1990. Agency Counsel thereafter moved for summary judgment citing Respondent's criminal conviction which was assertedly based on the same facts as are at issue here.[3] The record reflects that criminal proceedings were initiated and a conviction obtained respecting the Respondent in the United States District Court for the District of Massachusetts, which had jurisdiction of the Respondent and of the charged violations of the criminal law. As noted in the administrative proceeding titled, "In the Matter of Spawr Optical Research, Inc.", 51 FR 7477 (1986), and subsquent federal court decision, *Spawr Optical Research, Inc.* v. *Baldridge*, 649 F. Supp. 1366 (D.D.C. 1986), factual determinations of a Court of competent jurisdiction are not subject to redetermination before this administrative Tribunal.

[1] Respondent Grandia, doing business as R. Grandia Project Services B.V. and Grandia Project Services GmBH, was previously subject to a Temporary Denial Order (50 FR 7945 (1985)), which was vacated on May 21, 1989 (52 FR 19002 (1987)).

Further a Temporary Denial Order was issued on April 6, 1989 (54 FR 14667 (1989)). The first renewal was issued on October 4, 1989 (54 FR 41660 (1989)); the second renewal was issued on April 2, 1990 (55 FR 14330 (1990)); the third renewal was issued on September 28, 1990 (55 FR 41366 (1990)). The third renewal to remain in effect until March 27, 1991 or the disposition of this proceeding. The dates of the Temporary Denial Order which are printed in the Federal Register Table of Denied Parties appear to be in error.

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373 (1990)) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (Supp. 1990)).

[3] Following receipt of Respondent's Answer a schedule was established for processing this adjudication. The filing of the Indictment and Judgment of Conviction obviates the need for such filings.

BEST COPY AVAILABLE

Facts

The facts in the grand jury indictment of which Respondent Grandia was convicted on his guilty plea are:

On or about December 9, 1988, at or around Boston in the District of Massachusetts, Marcel Sanders, Goris Christiaan Grandia, Franciscus Govaerts, and Rogier Von Alphen,[4] defendants herein, in furtherance of the conspiracy [to knowingly and willfully export as] charged in Count One, did knowingly and willfully attempt to export and did aid, abet, cause, counsel, command, procure and induce the knowing and willful attempt to export the Terandyne J927 Memory Test System and M218 Laser Repair System from the United States, without first having applied for and obtained a validated export license from the United States Department of Commerce, Office of Export Licensing, knowing that the intended final destination of the equipment was Bulgaria, a controlled country.

All in violation of [title 18 United States Code section 371]; title 50, United States Code, appendix, section 2410(b); Title 15, Code of Federal Regulations, §§ 370.1-370.3, § 372.1; §§ 387.1-387.3, § 399.1; Title 18, United States Code, section 2.

(Agency Ex. 1; *See* Agency Ex. 2)

Discussion

In his answer Respondent acknowledges acquaintances with some of the others involved in the charged export though he denies culpable participation. His explanation acknowledges and indicates substantial knowledge and participation in the transaction. His attack upon the validity of the criminal conviction will not be considered here. The tribunal that issued the Writ of Extradition and the United States District Court were the competent tribunals to consider that action. The criminal conviction may not be collaterally attacked here.

The disposition of administrative proceedings in summary fashion predicated upon facts found in a criminal proceeding is not open to question. Such process has been approved legislatively and judicially. 50 U.S.C. App. 2410(h); *Spawr, supra.* I conclude that this is an appropriate case for such summary disposition. Comparing the charge in this proceeding to the facts alleged and found in the count in the criminal case, reflects that the essential facts and elements alleged in this administrative proceeding were found in that judicial criminal proceeding. The fact that this administrative proceeding does not allege or rely upon a conspiracy does not preclude reliance upon the criminal conviction. The facts found in relation to the violations are identical.

I do not find that there are special circumstances which preclude reliance upon the criminal court's factual findings. Respondent's assertions are devoid of merit.

Conclusion

The results of the criminal proceeding introduced in the course of this adjudication establish that Respondent Grandia violated the Act and Regulations as charged. Since his business activity Grandia Project Services is but his *alter ego* or the *nom de plume* under which his operations are conducted, it too should be named.

The violation warrants denial of participation in export of the United States goods and technologies for 10 years. As requested by Agency Counsel. This is consistent with the action in other similar cases.

Order

I. For a period of ten years from the date of the final order the Respondents Goris Christiaan Grandia, individually and doing business as Grandia Project Services with address at:

Laurierstraat 59 1016 PH Amsterdam, The Netherlands
and
Gudrunstrasse 121 A 1100 Vienna, Austria

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for re-export authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly and indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1))

[4] Decisions respecting the first three named Respondents are being issued concurrently. No Charging Letter has been filed with respect to the last named individual.

Dated: February 5, 1991.
Hugh J. Dolan,
Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order or the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-5848 Filed 3-12-91; 8:45 am]
BILLING CODE 3510-DT-M

Action Affecting Export Privileges; JAN C. KOSTER, Individually and Doing Business as Advanced Computing Management and Also as AQUA CITY MIJ

Order

In the Matter of: JAN C. KOSTER, individually and doing business as ADVANCED COMPUTING MANAGEMENT and also as AQUA CITY MIJ, World Trade Center, Strawinskylaan 59, 1077 XW Amsterdam Postbus 72311, 1007 VA, Amsterdam, The Netherlands, Respondents.

Whereas, on August 24, 1990, the undersigned entered an Order against Respondents which, in pertinent part, provided that:

It is therefore ordered,

A civil penalty in the amount of $50,000 is assessed against Koster, which Koster shall pay to the Department as follows: $25,000 shall be paid on or before December 31, 1990 and $25,000 shall be paid within one year of the entry of this Order. * * *

Jan C. Koster, individually and doing business as Advanced Computing Management and Aqua City Mij (hereinafter collectively referred to as Koster), World Trade Center, Strawinskylaan 59, Amsterdam Postbus 72311, 1007 VA Amsterdam, The Netherlands, and all his successors, assignees, officers, partners, representatives, agents and employes, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad. * * *

As authorized by § 788.16(c) of the Regulations, the denial period herein provided for against Koster shall be suspended for a period of five years beginning from the date of entry of this Order and shall thereafter be waived, provided that, during the period of applicable suspension, Koster has not committed any violation of the Act or any regulation, order or license issued under the Act.

Whereas, pursuant to §§ 788.17(b) and 788.16(c) of the Export Administration Regulations (15 CFR parts 788–799 (1990)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1990) (the Act),[1] the Department on February 1, 1991, applied to the undersigned to modify the Order of August 24, 1990, by revoking the five-year period of suspension of denial, because Respondents have refused or failed to pay the $25,000 installment of the civil penalty that was due and payable on December 31, 1990, as required by the Order of August 24, 1990;

Whereas, on February 1, 1991, Respondents were Ordered by the undersigned to show cause in writing on or before March 1, 1991, why the Order of August 24, 1990 should not be modified as requested by the Department for the Respondents' failure to pay the civil penalty as required by the Order of August 24, 1990;

Whereas, the Order to Show Cause was duly served on the Respondents in a manner authorized by §§ 788.4 of the Regulations;

Whereas, the Respondents have failed to show cause why the revocation of the suspension of the five-year denial period requested by the Department should not be ordered;

Now therefore, pursuant to §§ 788.17(b) and 788.16(c) of the Regulations and in consequence of Respondents' failure to pay the civil penalty as required by the Order of August 24, 1990;

It is hereby ordered that the Order of August 24, 1990, is modified, as follows:

First, the suspension of the five-year period of denial of all U.S. export privileges imposed against Respondents, by the Order of August 24, 1990 is hereby revoked. Jan C. Koster, individually and doing business as, Advanced Computing Management, and also as, Aqua City Mij, World Trade Center, Strawinskylaan 59, 1077 XW Amsterdam Postbus 72311, 1007 VA, Amsterdam, The Netherlands, collectively referred to herein as Respondents, and all their successors, assignees, offices, partners, representatives, agents and employees, shall be denied for a period of five years from the date of the entry of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individual validated export licenses in which any Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but is not limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to any specific authorization from the OFfice of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported, in whole or in part, or to be exported by, to, or for any Respondent or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

Second, the sum of $25,000 that was due on or before December 31, 1990 is immediately due and payable. The remaining balance due, $25,000, shall be paid on or before August 24, 1991.

Third, this Order shall be served upon Respondents and published in the **Federal Register**.

Entered this fifth day of March 1991.

Quincy M. Krosby,
Assistant Secretary for Export Enforcement.

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

[Docket No. 0118–01, 0118–02]

Action Affecting Export Privileges; Marcel J. Sanders

Order

In the matter of: Marcel J. Sanders, individually and doing business as [1] Belgian Trading Company, Lakeren S.A.; Respondent.

On February 5, 1991, the Administrative Law Judge entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the Administrative Law Judge.

In addition, as the Administrative Law Judge notes, there is a Temporary Denial Order currently in effect against the respondent. By Order of April 6, 1989 (54 FR 14667, April 12, 1989), which was renewed on October 4, 1989 (54 FR 41660, October 11, 1989), April 2, 1990 (55 FR 14330, April 17, 1990) and September 28, 1990 (55 FR 41366, October 11, 1990), Sanders, along with several other named parties, was temporarily denied all privileges of participating in any manner or capacity in the export of U.S.-origin commodities or technical data. The Order which I am now issuing concludes the administrative proceeding against Sanders as a result of the investigation which gave rise to the Temporary Denial Order. Accordingly, the Temporary Denial Order is amended by deleting from the list of respondents named therein:

Marcel Sanders, individually and doing business as Belgian Trading Company
Lokeren S.A., Sijpstraat 6, 9101
Lokeren, Belgium.

This constitutes final agency action in this matter.

Dated: March 5, 1991.
Dennis Kloske,
Under Secretary for Export Administration.

Decision and Order

Appeance for Respondent: Marcel J. Sanders, Belgian Trading Company, Lokeren S.A., Sijpstraat 6, 9101 Lokeren, Belgium.

Appearance for Agency: Thomas C. Barbour, Esq., Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., room H-3839 Washington, DC 20230.

Preliminary Statement

In a charging letter dated September 10, 1990, the Office of Export Enforcement charged Respondent Marcel J. Sanders individually and doing business as Belgian Training Company, Lokeren S.A., with two violations of the Export Administration Act of 1979, as amended (50 U.S.C.A. app 2401–2420 (Supp. 1989)) (the "Act"), and the implementing Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1989)) ("the Regulations").[2] Count One alleged a conspiracy to export without a license and Count Two alleged an attempt to illegally export, both of which are described hereafter. Respondent did not answer and was held to be in Default on October 30, 1990. The Agency submission pursuant to the regulations and the Order of this Tribunal was filed on November 28, 1990. Agency Counsel thereafter moved for judgment citing Respondent's criminal conviction which is based on the same facts as are at issue here. The record reflects that criminal proceedings were initiated and a conviction obtained respecting the Respondent in the United States District Court for the District of Massachusetts, which had jurisdiction of the Respondent and of the charged violations of the criminal law. As noted in the administrative proceeding titled, In the Matter of Spawr Optical Research, Inc.", 51 FR 7477 (1986), and subsequent federal court decision, Spawr Optical Research, Inc. v. Baldridge, 649 F. Supp. 1366 (D.D.C. 1986), factual determinations of a Court of competent jurisdiction are not subject to redertermination before this administrative Tribunal.

Facts

The facts in the grand jury indictment of which this Respondent was convicted on his guilty plea are:

On or about December 9, 1988, at or around Boston in the District of Massachusetts, Marcel Sanders, Goris Christiaan Grandia, Franciscus Govaerts, and Roger Von Alphen,[3] defendants herein, in furtherence of the conspiracy [to knowingly and willfully export as] charged in Count One, did knowingly and willfully attempt to export and did aid, abet, cause, counsel, commend, procure and induce the knowing and willful attempt to export the Terandyne J927 Memory Test System and M216 Laster Repair System from the United States, without first having applied for and obtained a validated export license from the United States Department of Commerce, Office of Export Licensing, knowing that the intended final destination of the equipment was Bulgaria, a controlled country.

All in violation of [title 18 United States Code section 371]; title 50, United States Code, appendix, section 2410(b); title 15, Code of Federal Regulations, §§ 370.1–370.3, § 372.1; §§ 387.1–387.3, § 399.1; title 18, United States Code, section 2.

(Agency Ex. 1; *See* Agency Ex. 2)

Discussion

The criminal conviction may not be collaterally attacked here. The action of

[1] A Temporary Denial Order was issued on April 6, 1989 (54 Fed. Reg. 14667 (1989)). The first renewal was issued on October 4, 1989 (54 Fed. Reg. 41660 (1989)); the second renewal was issued on April 2, 1990 (55 Fed. Reg. 14330 (1990)); the third renewal was issued on September 28, 1990 (55 Fedl Reg. 41366 (1990)). The third renewal to remain in effect until March 27, 1991 or the disposition of this proceeding. The dates of the temporary denial order which are printed in the **Federal Register** Table of Denied Parties appear to be in error.

[2] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373 (1990)) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

[3] Decisions respecting the first three named Respondents are being issued concurrently. No Charging Letter has been filed with respect to the last named individual.

the Federal District Court is not open to review in this administrative proceeding.

The disposition of administrative proceedings in summary fashion predicated upon facts found in a criminal proceeding is not open to question. Such process has been approved legislatively and judicially. 50 U.S.C. App. 2410(h); *Spawr, supra.* I conclude that this is an appropriate case for such summary disposition. Comparing the charge in this proceeding to the facts alleged and found in the count in the criminal case, reflects that the essential facts and elements alleged in this administrative proceeding were found in that judicial criminal proceeding.

I do not find that there are special circumstances which preclude reliance upon the criminal court's factual findings. The assertions made on behalf of Respondent are devoid of merit.

Conclusion

The results of the criminal proceeding introduced in the course of this adjudication establish that Respondent Sanders violated the Act and Regulations as charged. Since his business activity Belgian Trading Company, Lokeren is but his *alter ego* or the *nom de plume* under which his operations are conducted, it too should be named.

The violation warrants denial of participation in export of the United States goods and technologies for 10 years. This is consistent with the action in other similar cases. The facts established here do not support the more harsh penalty that Agency Counsel Rothberg requests, without support, in this case only.

Order

I. For a period of ten years from the date of the final order the Respondents: Marcel J. Sanders, individually and doing business as Belgian Trading Company, Lokeren S.A., with addresses at: Sijpstraat 6, 9101 Lokeren, Belgium, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for re-export authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: February 5, 1991.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 139(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-5849 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Short-Supply Determination; Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain type 430 stainless steel rod.

SHORT-SUPPLY REVIEW NUMBER: 42.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a short-supply allowance for 3,300 metric tons of certain Type 430 stainless steel rod for March-December 1991 under the U.S.-EC, U.S.-Brazil, U.S.-Korea, and U.S.-Japan steel arrangements.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377-0408 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On February 19, 1991, the Secretary received an adequate petition from the American Wire Producers Association ("AWPA"), requesting a short-supply allowance for 3,300 metric tons of certain Type 430 stainless steel rod for March-December 1991 under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, article 8 of the Arrangement Between the Government of South Korea and the Government of the United States of America Concerning Trade in Certain Steel Products, article 8 of the Arrangement Between the Government of Brazil and the Governmennt of the United States of America Concerning Trade in Certain Steel Products, and article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA requested short supply for this product because it alleges there are no reliable domestic suppliers of this product and because of quota limitations for stainless wire rod by potential foreign suppliers.

The requested material meets the specifications for Type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (mm)	Quantity (metric tons)
5.5 (including 6.0)	3,050
7.0	90
9.5	80
20.0	80
Total	3,300

The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

Action

On February 19, 1991, the Secretary established an official record on this short-supply request (Case Number 42) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) Commerce's Short-Supply Procedures require the Secretary to apply a rebuttable presumption that a product is in short supply and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that the importation of additional quantities of the rquested steel product was authorized during each of the two immediately preceding years. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Procedures.

Unless domestic steel producers provided proof that they could and would produce and supply the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than March 6, 1991. On February 26, 1991, the Secretary published a notice in the **Federal Register** announcing a review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than March 5, 1991.

On March 5, 1991, the Secretary received comments from Baltimore Specialty Steels Corporation (BSSC). BSSC stated it has the ability to produce the requested product, and can supply the entire 3,300 tons for which AWPA had requested short supply. Its normal order-to-delivery period for this product is 9 to 11 weeks. The AWPA did not provide comments contesting BSSC's ability to produce the requested product or supply the material within a normal order-to-delivery period.

Conclusion

The Secretary received comments to the **Federal Register** notice from a potential supplier that has indicated a wilingness and ability to produce and supply the requested product in its entirety. Thus, the presumption of short supply has effectively been rebutted.

The Secretary hereby denies, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, the short-supply request for 3,300 metric tons of the requested Type 430 stainless steel wire for March-December 1991 under the U.S.-EC, U.S.-Japan, U.S.-Korea, and U.S.-Brazil steel arrangements. However, if the Secretary determines that his decision in this review was based on inaccurate information submitted by a private party, the Secretary may reconsider his decision.

Dated: March 6, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-5846 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Doctor Blade Steel

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain Doctor Blade steel.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 44 tons of certain doctor blade steel for 1991 under the U.S.-EC steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 45.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to doctor blade steel used in the printing industry. On March 6, 1991, the Secretary received an adequate petition from Nedwick Steel Company ("Nedwick"), requested a short-supply allowance for 44 net tons of this product for 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. Nedwick is requesting short supply because this product is not available in the United States and because its foreign supplier has insufficient quota available to meet Nedwick's needs.

The requested material meets the following specifications:

Chemical Composition:

Grade	weight % normal				
	C	Si	Mn	Pmax	Smax
Eberle	1.0	0.25	0.40	0.015	0.004

Width and tolerance: 5.0 inch, ± 0.006 inch.

Thickness and tolerance: 0.008 inch, ± 0.000316 inch; 0.006 inch, ± 0.000236 inch.

Straightness deviation: Maximum of 0.024 inch/10 feet of length;

Edges: deburred.

Hardness: 580 HV nom.

Surface finish: bright fine polished.

Form of Supply: coils.

Camber Deviation: maximum of 0.012 inch/10 feet.

Cleanliness: Croz Beckart cleanliness standard of maximum 700.

Flatness deviation: Maximum of 0.003 inch/inch of width.

Section 4(b)(4)(B)(i) of the act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary granted short-supply allowances for this product during each of the two immediately preceding years. Therefore, in accordance with section 4(b)(4)(B)(i)(II) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than March 21, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than March 20, 1991 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person [other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accomplished by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa A. Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1382 or (202) 377-0159.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6072 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 60117-0290]

RIN 0693-AA46

Approval of Federal Information Processing Standards Publication 160, C

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 160, C.

SUMMARY: On May 11, 1990, notice was published in the **Federal Register** (55 FR 19766) that a Federal Information Processing Standard for C was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective September 30, 1991.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Miles (301) 975-3156, or L. Arnold Johnson (301) 975-3247, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: March 6, 1991.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 160 (date) Announcing the Standard for C

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949, as amended by the Computer Security Act of 1987, Public Law 100-235.

1. *Name of Standard.* C (FIPS PUB 160).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the adoption of American National Standard for C, ANSI X3.159-1989, as a Federal Information Processing Standard (FIPS). The American National Standard for C specifies the form and establishes the interpretation of programs written in the C programming language. The purpose of the standard is to promote portability of C programs for use on a variety of data processing systems. The standard is for use by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors; and by other computer professionals who need to know the precise syntactic and semantic rules adopted by ANSI.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology (Computer Systems Laboratory).

6. *Cross Index.* American National Standard X3.159-1989, Programming Language C.

7. *Related Documents.**

a. Federal Information Resources Management Regulation 201-39, Acquisition of Federal Information Processing Resources by Contracting.

b. Federal Information Processing Standards (FIPS) Publication 29, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—To encourage more effective utilization and management of programmers by ensuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—To reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—To reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems; and

—To protect the existing software assets of the Federal Government by ensuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages are applicable for computer applications and programs that are either developed or acquired for government use. FIPS C is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS C is suitable for use in programming relating to operating system level software, and applications which require very low level programming constructs that are independent of the system or hardware architecture.

b. The use of FIPS high level programming languages applies when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—THe program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.

—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

—The program is being used for "cooperative" processing across multiple processing platforms (e.g., desktops, servers, and mainframes).

c. Nonstandard language features should be used only when the needed operation or function cannot reasonably be implemented with the portable features alone. Although nonstandard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recongized that programmatic requirements may be more economically and efficiently satisfied through the use of statistical and numerical software packages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a C source program, then the resulting program should conform to the conditions and specification of FIPS C.

10. *Specifications.* FIPS C specifications are the language specifications contained in American National Standard for C, ANSI X3.159-1989.

a. The ANSI X3.159-1989 document specifies the representation, syntax, and semantics for C programs; the representation of input and output data processed by C programs; and the restrictions and limitations imposed by a conforming implementation of C.

b. The standard does not specify the mechanisms by which C programs are transformed or invoked for use by a data processing system, the mechanisms by which input data are transformed for use by a C program or output data are transformed after being produced by a C program, the limits on program size or complexity, nor all minimal requirements of a data processing system that is capable of supporting a conforming implementation.

c. A facility must be available in the processor for the user to optionally specify monitoring of the source program at compile time. The monitoring may be specified for all obsolete language elements included in the processor, or all C language elements that are not in conformance with this standard, or both. The monitoring is an analysis of the syntax used in the source program against the syntax included in the FIPS C. Any syntax used in the source program that does not conform to that included in this standard will be diagnosed and identified to the user through a message on the source program listing. Any syntax for an obsolete language element included in the processor and used in the source program will also be diagnosed and

* Refers to most recent revision of FIPS PUBS.

identified through a message on the source program listing. The determination of the need to flag any given source program syntax in accordance with these requirements cannot be logically resolved until the syntactic correctness of the source program has been established. The message provided will identify:

—The statement or declaration that directly contains the nonconforming or obsolete syntax.
—The source program line and an indication of the beginning of the location within the line of the statement or declaration which contains the nonconforming or obsolete code.
—The syntax as "obsolete" if monitoring is selected for the obsolete category.
—The syntax as "nonconforming nonstandard" if the nonconforming syntax is a nonstandard extension included in the processor and monitoring for all C language elements that are not in conformance with this standard is selected.

11. *Implementation.* The implementation of this standard involves three areas of consideration: acquisition of C processors, interpretation of FIPS C, and validation of C processors.

11.1 *Acquisition of C Processors.* This publication is effective September 30, 1991. C processors acquired for Federal use after this date should implement FIPS C. Conformance to FIPS C is applicable whether C processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce C processors conforming to the standard. The transition period begins on the effective date and continues for one year thereafter. The provisions of FIPS PUB 160 apply to orders placed after the effective date of this publication; however, a processor conforming to the FIPS PUB 160, if available, may be acquired for use prior to the effective date. If a conforming processor is not available a C language processor not conforming to this standard may be acquired for interim use during the transition period.

11.2 *Interpretation of FIPS C.* NIST provides for the resolution of questions regarding FIPS C specifications and requirements, and issues official interpretation as needed. All questions about the interpretation of FIPS C should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS C Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3156.

11.3 *Validation of C Processors.* The National Institute of Standards and Technology is investigating methods for providing validation services for FIPS C. For more information, contact: Director, Computer Systems Laboratory, ATTN: FIPS C Validation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–3156.

12. *Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

13. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 160 (FIPSPUB160), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 91–5827 Filed 3–12–91; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

[Docket No. 910248–1048]

Interim Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of interim policy.

SUMMARY: NMFS announces its interim policy on how it will apply the definition of species in the Endangered Species Act of 1973, as amended (ESA) in evaluating Pacific salmon stocks for listing under the ESA. A salmon stock will be considered a distinct population, and hence a species under the ESA, if it represents an evolutionarily significant unit of the biological species. The stock must satisfy two criteria to be considered an evolutionarily significant unit: (1) It must be substantially reproductively isolated from other conspecific population units; and (2) it must represent an important component in the evolutionary legacy of the species. Only Pacific salmon stocks that meet these criteria will be considered by NMFS for listing under the ESA.

DATES: This interim policy takes effect immediately and will be used in evaluating Pacific salmon stocks for listing under the ESA. This interim policy will remain in effect until revised or superseded. Comments on this policy will be accepted until June 11, 1991.

ADDRESSES: Comments should be mailed to the Director, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Merritt Tuttle, Environmental and Technical Services Division, NMFS, Portland, OR 97232 (503/230–5401 or FTS/429–5401), or Patricia Montanio, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/427–2322).

SUPPLEMENTARY INFORMATION:

Background

In addition to an entire species, a distinct population segment of a vertebrate species may be listed and protected under the ESA. On April 2 and June 7, 1990, NMFS received petitions to list a total of five (5) stocks of Pacific salmon under the ESA.

These petitions were all found to present substantial information indicating that the petitioned actions may be warranted and information was requested from the public (55 FR 22942, June 5, 1990; 55 FR 37342, September 11, 1990). The Notices accepting the petitions specifically requested information on whether or not the petitioned stocks qualify as distinct population segments under the ESA.

Both the U.S. Fish and Wildlife Service (FWS) and NMFS, which share jurisdiction under the ESA, have made listing determinations for populations of vertebrate species. Since the Services do not have established criteria for determining what qualifies as a distinct population segment, the Services have made determinations on an *ad hoc* basis based on criteria specific for the species in question. Because of the five pending petitions and numerous other Pacific salmon stocks that in the future may be considered for listing, NMFS developed this interim policy that it will use to determine whether or nor a Pacific salmon stock qualifies as a distinct population of vertebrate species. This interim policy does not affect any past listings, such as the listing of the Sacramento River winter-run chinook salmon (final listing determination published November 5, 1990; 55 FR 46515).

Definition of Species

The stated purposes of the ESA are to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species" (ESA section 2(b)). A review of legislative history indicates that a major motivating factor behind the ESA was the desire to preserve genetic variability, both between and within species. For example, the House of Representatives described the rationale for H.R. 37, a forerunner to the ESA, in the following terms (H.R. Rep. No. 412, 93d Cong., 1973):

> From the most narrow possible point of view, it is in the best interests of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot yet solve, and may provide answers to the questions which we have not yet learned to ask.

Under the original 1973 Act, a "species" was defined to include "any subspecies of fish or wildlife or plants and any other group of fish or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature." Use of this language established that the ESA protective measures extend to biological units below the species level. Amendments in 1978 provided the current language in the ESA: A "species" is defined to include" . . . any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature" (emphasis added).

Congress has provided limited guidance for interpreting this definition. In 1979, Congress declined to enact a provision recommended by the General Accounting Office that would have removed the authority to list vertebrate populations. The Senate Report to the 1979 amendments, however, stated that "the committee is aware of the great potential for abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when biological evidence indicates that such action is warranted" (S. Rep. No. 151, 96th Cong., 1979).

Joint FWS/NMFS regulations concerning the listing process (50 CFR part 424) define "species" to include "any distinct population segment of any vertebrate species that interbreeds when mature" (50 CFR 424.02(k)). In an attempt to develop guidelines for and consistency in interpreting the language of the ESA pertaining to vertebrate populations, FWS and NMFS convened a Vertebrate Population Workshop in June 1990. Workshop participants included scientists with expertise in the fields of genetics and population dynamics. The goal of the workshop was to recommend a consistent approach for determining what qualifies as a distinct vertebrate population. Based, in part, on the results of this workshop, the FWS and NMFS intend to propose a regulation to further define what constitutes a distinct population segment. Since this proposal will not be published until much later in 1991, NMFS has developed this interim policy to use in listing determinations for Pacific salmon. The interim policy adopted here is consistent with the concepts developed at the workshop.

Because this action is a general statement of policy under 5 U.S.C. 553(b)(A), advanced notice and opportunity for comments are not required; nevertheless, comments on this interim policy are invited, and the policy may be revised through publication in the Federal Register. It will be superseded by any final rule published by the FWS/NMFS to further define "distinct population."

Policy Statement

A stock of Pacific salmon will be considered a distinct population, and hence a species for purposes of listing under the ESA, if it represents an evolutionarily significant unit (ESU) of the biological species. A stock must satisfy two criteria to be considered an ESU:

(1) It must be reproductively isolated from other conspecific population units; and

(2) It must represent an important component in the evolutionary legacy of the species.

The first criterion, reproductive isolation, does not have to be absolute, but it must be strong enough to permit evolutionarily important differences to accrue in different population units. Insights into the extent of reproductive isolation can be provided by movements of tagged fish, recolonization rates of other populations, measurements of genetic differences between populations, and evaluations of the efficacy of natural barriers. Each of these methods has its limitations. Identification of physical barriers to genetic exchange can help define the geographic extent of distinct populations, but reliance on physical features alone can be misleading in the absence of supporting biological information. Physical tags provide information about the movements of individual fish but not the genetic consequences of migration. Furthermore, measurements of current straying or recolonization rates provide no direct informaiton about the magnitude or consistency of such rates in the past. In this respect, electrophoretic (or DNA) differences can be very useful because they reflect levels of gene flow that have occurred over evolutionary time scales. The best strategy is to use all available

lines of evidence for or against reproductive isolation, recognizing the limitations of each and taking advantage of the complementary nature of the different types of information.

The second criterion would be met if the population contributed substantially to the ecological/genetic diversity of the species as a whole. In making this determination, the following questions are relevant:

- Is the population genetically distinct from other conspecific populations?
- Does the population occupy unique habitat?
- Does the population show evidence of unique adaptation to its environment?
- And, if the population became extinct, would this event represent a significant loss to the ecological/genetic diversity of the species?

Several types of information are useful in addressing these questions. Again, the strengths and limitations of the information will be considered in making the evaluation. Phenotypic/life-history traits such as size, fecundity, and age and time of spawning may reflect local adaptations of evolutionary importance, but interpretation of these traits is complicated by their sensitivity to environmental conditions. Electrophoretic data provide valuable insight into levels of overall genetic differentiation among populations but little direct information regarding the extent of adaptive genetic differences. Habitat differences suggest the possibility for local adaptations but do not prove that such adaptations exist.

Technical Paper

In support of this policy, the Northwest Fisheries Center, NMFS, prepared a paper on "Definition of 'species' under the Endangered Species Act: Application to Pacific salmon." This technical paper is available upon request (see **FOR FURTHER INFORMATION CONTACT**) and contains more specific guidance on the application of this interim policy to Pacific salmon. The paper addresses several issues of particular concern regarding Pacific salmon, including anadromous/non-anadromous population segments, differences in run-timing, stock supplementation, introduced populations, and the role of hatchery fish.

Dated: March 7, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-5866 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-22-M

Injury Determination Plan—Damage Assessment: Los Angeles Harbor, Long Beach Harbor, Palos Verdes Shelf and Ocean Dump Sites

AGENCY: National Oceanic and Atmospheric Administration Commerce.

ACTION: Notice of 60-day comment period.

SUMMARY: Notice is given that the draft document entitled, "Injury Determination Plan—Damage Assessment: Los Angeles Harbor, Long Beach Harbor, Palos Verdes Shelf and Ocean Dump Sites" is available for public review and comment. This document is a revised version of, and includes responses to public comments received from, the document entitled, "Damage Assessment Plan: Los Angeles Harbor, Long Beach Harbor, Palos Verdes Shelf and Ocean Dump Sites," which was put forth for public review on March 13, 1990 (55 FR 9347). The National Oceanic and Atmospheric Administration (NOAA) is a trustee for coastal and marine natural resources pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, the Federal Water Pollution Control Act of 1972 (FWPCA), the Oil Pollution Act of 1990 (OPA), subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan. 40 CFR 300.600 and Executive Order 12580.

In coordination with the U.S. Department of the Interior and the State of California (the Co-Trustees), NOAA is undertaking an assessment of suspected damages to the natural resources of the Los Angeles Harbor, the Palos Verdes Shelf and offshore ocean dump sites that have been exposed to hazardous substances. In particular, NOAA and its Co-Trustees suspect that the resources of these areas have been exposed to DDT (dichlorodiphenyl-trichloroethane and its metabolites) and PCBs (all congeners or polychlorinated biphenyls) that have been released by certain industrial facilities. It is further suspected that this exposure has caused injury to these resources for which damages can and should be assessed.

NOAA is following the guidance of the Natural Resource Damage Assessment Regulations (the regulations) found at 43 CFR part 11 (1988), issued by the Department of the Interior. The procedure that NOAA intends to follow in conducting this damage assessment is substantially the same as that called for in these regulations, as modified by *Ohio* v. *Department of the Interior*, 880 F.2d 432 (DC Cir. 1989). The public review of this Injury Determination Plan, announced by this notice, is parallel to that provided for in 43 CFR 11.32(c) of the regulations.

Interested members of the public are invited to request a copy of this Injury Determination Plan from the Southwest Office of NOAA General Counsel at the address given below. All written comments will be considered by NOAA's Authorized Official and the Co-Trustees and included in the Report of Assessment issued at the conclusion of this damage assessment process.

DATES: Comments must be submitted on or before May 13, 1991.

ADDRESSES: Requests for copies of the Injury Determination Plan may be made to Jennifer Peacock or Paula Shields, NOAA General Counsel Southwest, 300 S. Ferry St., Terminal Island, CA 90731, (213) 514-6181.

FOR FURTHER INFORMATION CONTACT: Jennifer Peacock or Paula Shields, NOAA General Counsel Southwest, 300 S. Ferry St., Terminal Island, CA 90731, (213) 514-6181.

SUPPLEMENTARY INFORMATION: This document concerns the assessment of natural resource damages that are the subject of the lawsuit entitled, *U.S. and California* v. *Montrose Chemical Corporation of California, et. al.*, No. CV-90-3122-AAH (C.D. Cal., filed 6/18/90). NOAA solicited comments on the original version of the document entitled "Damage Assessment Plan: Los Angeles Harbor, Long Beach Harbor, Palos Verdes Shelf and Ocean Dump Sites," (put forth for public review at 55 FR 9347, 3/13/90). Changes made in the injury determination portion of the damage assessment process are substantial enough to warrant offering this draft Injury Determination Plan for public comment.

Plans for injury quantification and damage determination will be offered separately for public review at a later date. Separating the phases of the damage assessment plan for individual treatment allow NOAA and the Co-Trustees to start working on injury determination while permitting more time for the later phases.

Dated: March 7, 1991.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 91-5858 Filed 3-12-91; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Addition of a Record Systems Notice

AGENCY: Office of the Secretary (OSD), DOD.

ACTION: Addition of a record systems notice.

SUMMARY: The Office of the Secretary of Defense proposes to add a new record system to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The Proposed action will be effective without further notice on April 12, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155. Telephone (703) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) has been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 17506, May 13, 1986
51 FR 44668, Dec. 11, 1986
52 FR 23334, Jun. 19, 1987
53 FR 15868, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17655, Apr. 26, 1990
55 FR 20180, May 15, 1990
55 FR 21482, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49405, Nov. 28, 1990

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on February 26, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: March 6, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DODDS 25.0

SYSTEM NAME:

DoDDS Internal Review Office Project File.

SYSTEM LOCATION

Department of Defense Dependent Schools Internal Review Office, Lindsey Air Station, Wiesbaden, German, APO NY 09634-0005.

CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:

DoD civilian personnel, members of the Armed Forces of the United States and their dependents; DoD contractors; individuals residing on, having authorized access to, or contracting or operating any business or other functions at any DoDDS installation or facility; and individuals not affiliated with the Department of Defense, when the conduct of their activities may be under review or investigation by the DoDDS Internal Review Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigations prepared by DoDDS Internal Review Office or other DoD, Federal, or host country investigative activities; information summary reports, documenting solicited or unsolicited information of a criminal nature collected or received by the DoDDS IRO, concerning persons or incidents which are of direct interest to DoDDS or other DoD components or Federal Agencies; letters, memoranda, documents, statements; copies of individual records from official personnel and payroll files and records; audit working papers, listings, summations, and project tracking information; and other miscellaneous documentation supporting investigative and internal review functions of the DoDDS IRO.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 97-255, Federal Manager's Financial Integrity Act of 1982; and Executive Order 9397.

PURPOSE(S):

As an audit and financial information system, the Internal Review Office Project File is used to maintain financial accountability reviews of DoDDS operations world-wide and ensure that resources are protected from fraud, waste, mismanagement or other financial abuse. The system provides DoDDS managers with information on potential internal control weaknesses and contains supporting information for the annual DoDDS Internal Review Office Statement of Assurance. The system tracks all DoDDS audits, inquiries, reviews and investigations.

Investigative information is collected to identify offenders, to provide facts and evidence upon which to base prosecution, to effect corrective administrative action, and to recover money and property which has been wrongfully appropriated. Records are used: In the prosecution of criminal law enforcement violations; to sustain determinations in contractor responsibility and suspension/debarment decisions; to provide background information behind contractural actions and award decisions; to support statistical evaluations of DoDDS IRO investigative activities; to respond to Freedom of Information Act access request; to provide information in response to Inspector General, Equal Employment, or other complaint investigations and congressional inquiries; to obtain relevant information from Federal, state, local, and foreign agencies; to obtain employment records, if necessary, from business enterprises; and to obtain other information relevant to any on-going investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information collected may be shared during reciprocal investigations conducted for and with other DoD and Federal agency investigative and law enforcement elements. Additionally, release may be made to accredited state, local, or host country law enforcement agencies, regulatory and licensing authorities, congressional committees, and the General Accounting Office.

The "Blanket Routine Uses" published at the beginning of the OSD's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic data is maintained on a microcomputer.

RETRIEVABILITY:

Documents are filed chronologically in sequential numeric order by DoDDS Region. Files are retrieved by subject and source name, Social Security Number, position title, employing

activity, address, telephone number, project number, DoDDS assessable unit, year, status, originator, action office, project title, location, suspense dates, and cross-reference.

SAFEGUARDS:

The system location is a controlled-access facility that is locked when not occupied. Paper records are kept in filing cabinets and other storage devices that are secured when the office is not occupied. Access to records is restricted to DoDDS Internal Review Office personnel. The computer database is maintained on a personal computer. Access to computer records is controlled by a user identification and password system. Personnel having access are limited to those having a need-to-know who have been trained in handling Privacy Act information.

RETENTION AND DISPOSAL:

Paper records are retained for ten years and then destroyed. Computer files are retained for 15 years and are then deleted or media destroyed.

SYSTEM MANAGER AND ADDRESS:

Department of Defense Dependents Schools (DoDDS), Internal Review Office, ATTN: Internal Control Officer, APO NY 09634-0005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquires to the Office of Dependents Schools, ATTN: Privacy Act Officer, 2461 Eisenhower Avenue, Alexandria, VA 22331-1100.

The request should include the region and/or facility where the individual was assigned, employed, affiliated, or located, and the period during which the record may have been created. Individual's Social Security Number and should be included in the inquiry for positive identification.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address a written request to the Office of Dependents Schools, ATTN: Privacy Act Officer, 2461 Eisenhower Avenue, Alexandria, VA 22331-1100.

The individual should reference the region and location and where assigned or affiliated applicable to the period during which the record was maintained. Social Security Number should be included in the inquiry for positive identification.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Report and records of investigators, subjects, informants, witnesses, auditors, and other personnel. Source material includes official records, investigative leads, statements, depositions, business records, audit reports and studies, and other pertinent material available in the course of a review or investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)2) as applicable.

An exemption rule for this record system has been promulgated according to the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 286b.7. For additional information contact the system manager.

[FR Doc. 91-5916 Filed 3-12-91; 8:45 am]

BILLING CODE 3810-01-M

Settlement of Tort Claims; Correction

On February 28, 1991, the Department of Defense published a determination on the Settlement of Tort Claims. This notice is published to correct a typographical error cited for the United States Code that relates to the administrative settlement of Federal tort claims. "28 U.S.C. 2682" is corrected to read "28 U.S.C. 2672".

Dated: March 8, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5917 Filed 3-12-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/time of Meeting: 4 April 1991.

Time: 0800-1500 Hours.

Place: Fort Gordon, Georgia.

Agenda: Members of the C3I Issue Group of the Army Science Board will meet at Fort Gordon, Georgia to continue work on the Follow-On Radio to SINCGARS. This meeting will address in detail the emerging requirements for an objective combat net radio, the process and analysis which support the requirement, and the postulated and projected threat against which the new radio must operate. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-5897 Filed 3-12-91; 8:45 am]

BILLING CODE 3710-8-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91-1]

Strengthening the Nuclear Safety Standards Program for DOE's Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendations.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning strengthening the nuclear safety standards program for DOE's defense nuclear facilities. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before April 12, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: March 7, 1991.

John T. Conway,

Chairman.

Content and Implementation of DOE's Safety Standards Program

Dated: March 7, 1991.

Among other functions of the Defense Nuclear Facilities Safety Board (Board),

section 312 of the Atomic Energy Act requires that:

> The Board shall review and evaluate the content and implementation of the standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy (including all applicable Department of Energy orders, regulations, and requirements) at each Department of Energy defense nuclear facility. The Board shall recommend to the Secretary of Energy those specific measures that should be adopted to ensure that public health and safety are adequately protected. The Board shall include in its recommendations necessary changes in the content and implementation of such standards, as well as matters on which additional data or additional research is needed.

The Defense Nuclear Facilities Safety Board is continuing its review of the adequacy of the content and implementation of applicable nuclear safety standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities of the Department of Energy. This review is not confined to the area of standards as they are sometimes understood, such as those issued by standards organizations, but includes as well all applicable Department of Energy Orders and regulations, directives, and other requirements that fall within the Board's statutory oversight responsibility, 42 U.S.C. 2286a.

During 1990, the Board communicated to senior Department of Energy (DOE) personnel its preliminary concerns about the content and the implementation of currently available standards. The Board's previous Recommendation 90-2, dated March 8, 1990, addressed certain aspects of this subject. On several occasions since Recommendation 90-2 was issued, the Board and its staff have met with DOE representatives on this subject, including an in-depth briefing given to the Board, at the Secretary's direction, by three Assistant Secretaries, major Office Directors, and their staff on December 11, 1990. That briefing was arranged to provide an opportunity for senior DOE officials to present to the Board the Deparment's overall safety management philosophy and to demonstrate DOE's commitment to fully implement Recommendation 90-2 and other aspects of its standards program. On February 13,1991, in fulfillment of a commitment given to the Board at the briefing, DOE transmitted to the Board a schedule for completing the first phase of its nuclear safety rulemaking. In a cover letter accompanying the February 13, 1991, schedule, DOE stated that safety orders "will be issued concurrently with publication of the proposed rules for comment."

The Board remains concerned that progress in issuing standards within DOE is not being made rapidly enough to meet the priorities that the Secretary of Energy has articulated regarding the implementation of safety standards at DOE's defense nuclear facilities. Existing policy, infrastructure, and management priorities relating to the safety standards program may need alteration or refinement if nuclear safety requirements are to be issued, and more importantly, implemented, in a timely fashion. Therefore, the Board recommends:

1. That the Department expeditiously issue a formal statement of its overall Nuclear Safety Policy;

2. That increased attention to given to the qualifications and background of managers and technical staff assigned to the development and implementation of standards and that the numbers of personnel suited to this activity be increased commensurate with its importance;

3. That standards program officials be given direct access to the highest levels of DOE management;

4. That the Department critically reexamine its existing infrastructure for standards development and implementation at Headquarters to determine if organizational or managerial changes are needed to (1) emphasize the priority and importance of standards to assuring public health and safety; (2) expand the program to facilitate the rapid development and implementation of standards; and (3) streamline the DOE approval process for standards; and

5. That the Department reexamine the corresponding organizational units at DOE's principal Operations and Field Offices and DOE contractor organizations to determine if those organizations' standards infrastructure, responsibilities and resources would also benefit from changes to reflect improvements at Headquarters which strengthen and expedite standards development and implementation.

In addition to these important organizational and management concerns, the Board's continuing review of the Savannah River standards program has resulted in identifying other standards issues which need to be addressed. In November 1990, the Board transmitted to the Secertary of Energy copies of a MITRE Corporation report, developed under the Board's direction and guidance, on the subject of Department of Energy standards imposed by Department Orders and supplements prepared by the Savannah River Operations Office. The MITRE report disclosed a number of deficiencies in the Department's Order program, many of which had previously been noted by other reviewing bodies.

Certain findings and conclusions reached by MITRE are of particular concern to the Board. Specifically, MITRE concluded that "the DOE Orders * * * lack the systematic approach and coherence necessary for understanding DOE's safety management philosophy." MITRE also concluded that "In many areas pertinent to safety, the DOE Orders do not provide specific requirements and supporting guidelines for implementing DOE's safety objectives * * * a great deal is left to be defined and imterpreted by the DOE contractor(s) operating the facilies."

In addition, MITRE concluded that "Certain DOE Orders that address topics important to safety do not focus on safety," and that "The DOE Orders require compliance with very few mandatory nuclear safety standards for existing reactors or nonreactor facilities." Therefore, the Board recommends:

6 That DOE review all the findings and conclusions of both the Executive Summary and of Volume 2 of the MITRE report, identify which findings and conclusions it considers vaild and appropriate in DOE's Response to this set of Recommendations, and subsequently address those findings and conclusions in the Implementation Plan.

The Board has also noted that in DOE's restructuring of the hierarchy of orders, directives, and requirements governing the performance expected of the Department and its contractors, DOE is proceeding with the simultaneous development of rule and DOE orders. Following formal adoption of rules and issuance of related DOE orders, revised directives and other requirements are to be issued. Recognizing the immediacy of need, one such directive has already been issued as an Immediate Action Directive (IAD). In view of DOE's decision to proceed with rulemaking as the means for addressing some of the subjects appropriate for articulation of Department reuirements, the Board recommends:

7. That DOE expedite the issuance of revised safety orders, directives, or other requirements as a means of addressing the need for substantive guidance on the wide variety of safety

requirements, while DOE is promulgating rules.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

March 7, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On March 7, 1991, the Defense Nuclear Facilities Safety Board, in accordance with Section 312(5) of Public Law 100-456, approved a recommendation which is enclosed for your consideration.

Section 315(A) of Public Law 100-456 requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. Please arrange to have this recommendation placed on file in your regional public reading rooms as soon as possible.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 91-5943 Filed 3-12-91; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement and to Conduct Public Scoping Meetings; Rocky Flats Plant, Golden, CO

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare a Site-wide Environmental Impact Statement (EIS) on the operations at the Rocky Flats Plant (RFP) located near Golden, in Jefferson County, Colorado. The RFP Site-wide EIS will be prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 4321 *et seq.*), as amended, in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508, and the DOE NEPA guidelines (52 FR 47662, December 15, 1987).

The DOE also announces public scoping meetings in conjunction with developing the EIS. The Site-wide EIS will identify and assess potential impacts and also present a full evaluation of the cumulative environmental impacts of current operations and reasonably foreseeable future actions, including proposed near-term (within 5 to 10 years) projects and near-term environmental restoration activities at the RFP. NEPA does not require curtailment of continuing operations while a site-wide EIS is being prepared. The DOE does not intend to delay its decision on resumption of plutonium pit manufacturing at the RFP until completion of the updated Site-wide EIS.

Alternatives regarding the possible relocation of weapons production functions now performed at the RFP will be addressed in a DOE Programmatic EIS (PEIS) addressing reconfiguration of the DOE nuclear weapons complex and will not be included in this EIS. The notice of intent (NOI) for the Reconfiguration PEIS was published on February 11, 1991 (56 FR 5590). Similarly, issues concerning Department-wide long-term environmental restoration and waste management policies and practices will be assessed in a separate DOE PEIS on these subjects. The NOI for the DOE environmental restoration and waste management PEIS was published on October 22, 1990 (55 FR 42633).

Additional NEPA reviews for proposed projects at the RFP may be tiered from the final Site-wide EIS or PEISs, as appropriate. Individual environmental restoration projects subject to this Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) may be the subject of integrated NEPA/CERCLA documents as provided in DOE Order 5400.4. These documents will address the impacts of individual cleanup actions as the actions are planned.

PUBLIC INFORMATION MEETING: DOC will hold a public information meeting on April 4, 1991, at the Westminster City Park Recreation Center, 10455 N. Sheridan Blvd., Westminster, Colorado, from 7 to 9 p.m. The purpose of this meeting is to give the public an oppportunity to obtain information and have questions answered regarding the proposed EIS and to facilitate public participation in the EIS scoping proceess.

SCOPING PROCESS: Public scoping meetings are scheduled on April 8 and April 11, 1991, from 9 a.m. to 9:30 p.m., with breaks from 12 to 1 p.m. and 5 to 6:30 p.m. each day, at the following locations:

1. April 8, 1991, Jefferson County Comissioner's Hearing Room, 1700 Arapahoe Street, Golden, Colorado
2. April 11, 1991, Westminster City Park Recreation Center, 10455 N. Sheridan Blvd., Westminster, Colorado

The purpose of the scoping meetings is to receive public input on the Site-wide EIS scope, thereby assisting DOE in determining the appropriate range of impacts and environmental issues to be considered in the EIS. The meetings will be chaired by a presiding officer. The meetings will not be conducted as evidentiary hearings and there will not be cross-examining of the speakers; however, the presiding officer may ask for clarification of statements made to ensure that DOE fully understands the comments and suggestions. The presiding officer will establish the order of speaker and provide any additional procedures necessary for the conduct of the meetings. To ensure that all persons wishing to make presentations can be heard, a 10-minute limit for a designated organization representative and a 5-minute limit for each individual speaker will be used as a guideline. People who do not pre-register to speak may register at the meeting. They will be scheduled to speak, as time permits, after all previously scheduled speakers have been given an opportunity to make their presentations.

Written and oral comments will be given equal weight in determining the scope of the EIS. Anyone wishing to provide written comments may submit such comments to DOE at the public scoping meetings or at the address listed below. Written comments postmarked by April 29, 1991, will be considered by DOE in the preparation of the EIS. Written comments postmarked after that date will be considered to the extent practicable.

The DOE will prepare transcripts of the scoping meetings.The public may review the transcripts, written comments, reference material, related NEPA documents, and background information on the Rocky Flats Plant during normal business hours at the following DOE public reading rooms:

U.S. Department of Energy, Freedom of Information Act Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.
Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030, (303) 469-4435.

Following the completion of the public scoping process, an EIS Implementation Plan will be issued that summarizes the comments received and describes the intended scope of the EIS. The EIS Implementation Plan is scheduled to be issued in Summer 1991 and will be publicly available.

The publication schedule for the draft EIS will be included in the EIS Implementation Plan. The availability of the draft EIS will be announced in the **Federal Register** and local media, and public comments will be solicited. Comments on the draft EIS will be considered in preparing the final EIS.

DATES: A summary of relevant dates has been prepared to assist the public during the scoping process for the Site/wide EIS.

Public Information Meeting (Westminster, Colorado)—April 4, 1991
Scoping Meeting (Golden, Colorado)—April 8, 1991
Scoping Meeting (Westminster, Colorado)—April 11, 1991
Written Comments Due Date—April 29, 1991
Site-wide EIS Implementation Plan—Summer 1991

ADDRESSES AND FURTHER INFORMATION: Written comments regarding the scope of the RFP Site-wide EIS, requests to speak at a scoping meeting, requests for copies (when available) of the EIS Implementation Plan or draft EIS, or questions concerning the site should be addressed to: Ms. Beth Brainard, Office of Public Affairs, Attn: Site-wide EIS, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80402-0928, Phone: 1-800-446-7640.

For general information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: (202) 586-4600.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1990, the Secretary of Energy issued Secretary of Energy Notice 15-90, which directed the development of an agency policy for preparation and updating of site-wide EISs. This EIS is being prepared in response to that policy and to findings from DOE's internal environmental compliance assessment ("tiger team") that the existing 1980 RFP Site-wide EIS should be updated. NEPA does not require curtailment of continuing operations while a site-wide EIS is being prepared. DOE does not intend to delay its decision on resumption of plutonium pit manufacturing until completion of the updated RFP Site-wide EIS.

The RFP was established in 1952 as a government-owned, contractor-operated facility near Golden, Colorado, with the primary mission of producing nuclear weapons components. The RFP is part of DOE's nationwide nuclear weapons complex. The chief function at the RFP is the fabrication of plutonium and depleted uranium nuclear weapon components. The RFP is the only production facility in the nation that has the capability to perform these functions. The RFP is also responsible for the fabrication of beryllium and other nonnuclear metal parts used in nuclear weapons. In support of weapon component fabrication, the RFP operates facilities for the storage, treatment and transport of waste, chemical laboratories, research and development facilities, and special support operations for other DOE facilities. Activities and facilities involving health and safety, environmental management, security and other programs also support the primary mission.

In May 1975, an Environmental Assessment of activities at the RFP was issued by the U.S. Energy Research and Development Administration (ERDA). (ERDA was a predecessor agency of DOE, and managed the RFP from 1975 until its responsibilities were transferred to DOE in 1977.) Based on that assessment and related documents, ERDA announced its intent to prepare an EIS to assess the environmental effects of continued operation of the RFP) (40 FR 24234). The DOE continued the NEPA process started by ERDA, and in April 1980, DOE published the final EIS for the RFP (DOE/EIS-0064), followed by a Record of Decision on March 5, 1982 (47 FR 9500).

In February 1991, DOE announced its proposal to reconfigure its nuclear weapons complex to be smaller, less diverse, and less expensive to operate. This proposal will be analyzed in the Reconfiguration PEIS referenced above. As part of the reconfiguration proposal, DOE has proposed to relocate the nuclear weapons functions now located at RFP (56 FR at 5592). The Reconfiguration PEIS will analyze the environmental impacts of relocating these functions in the mid-term (in about the year 2000) as well as in the long-term (early next century). DOE does not consider that it would be feasible to shut down, dismantle and relocate these functions in the near-term (before the year 2000), because a relocation site must be selected, technology approved, and facilities designed, constructed, and tested before the existing facilities could be shut down.

Preliminary Definition of Alternatives

The Site-wide EIS will identify the proposed action and reasonable alternatives and evaluate and compare their expected environmental impacts. As background for public comments and suggestions concerning reasonable alternatives to be considered, DOE has identified the following two alternatives:

1. No Action

Continue current operations and current environmental restoration activities with no new proposed projects or change in the present facilities and operations at the RFP, except for modifications necessary for safe and environmentally sound operations. For operations, this would include actions such as routine maintenance, high efficiency particulate air filter replacements, ventilation duct cleaning, glove box changes, repair or replacement-in-kind of equipment, enhanced training and procedural improvements. For environmental restoration, this would include actions such as studies, site characterization, data collection, and limited actions to reduce the spread of contamination.

2. Proposed Action

The proposed action is to continue operation of the RFP and implement near-term (5 to 10 years) proposed projects (i.e., those projects that can be described with sufficient specificity that their potential environmental impacts can be evaluated). The proposed action would include projects that would reduce risk to the workers, the environment, and the general public. The proposed action consists of the no action alternative plus actions in three other major areas:

(a) Facility Upgrades, Modifications and Renovations. This would include actions such as upgrades to current waste handling facilities and any other modifications and upgrades identified as needed in the near-term.

(b) New Construction Projects. This would include actions such as the construction of additional office space and facilities in the previously undeveloped areas of the RFP. This construction could include office buildings, training facilities, waste storage, treatment and loading facilities, warehouses, maintenance facilities, and a water treatment facility.

(c) Environmental Restoration. This would include activities related to an overall RFP environmental restoration program. The cumulative impacts of environmental restoration activities would be assessed and broad-scope engineering alternatives would be evaluated. Some of the activities that will be evaluated are required by the Federal Facilities Agreement and Consent Order, signed January 22, 1991, between the Environmental Protection Agency, the Colorado Department of Health, and the DOE. It is DOE's policy to integrate CERCLA and NEPA procedural and documentation

requirements where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA.

Alternatives that would affect the mid- and long-term operatioin of the RFP will be analyzed in the Reconfiguration PEIS and the DOE environmental restoration and waste management PEIS and will not be considered in detail in this EIS. As stated above, DOE's proposal to relocate weapons complex functions now at RFP in either the mid- or long-term will be analyzed in the Reconfiguration PEIS. DOE does not consider the alternative of shutdown or relocation of these functions in the short-term to be a reasonable alternative for analysis in the Site-wide EIS. Continued fabrication of plutonium and depleted uranium components is essential to the Department's mission and the RFP is the only production facility in DOE's weapons complex that has the capability to perform these functions. Accordingly, these functions can only be relocated to another site in a reasoned manner. Therefore, the Reconfiguration PEIS analysis will consider the alternative of shutdown and relocation of these functions in the earliest possible timeframe.

During preparation of the Site-wide EIS, DOE plans to continue with current operations at the site as defined in the No Action alternative. DOE also may need to consider proceeding with certain actions included in the proposed action while the Site-wide EIS is being prepared. Some of these proposed projects may be required by Federal or state regulatory agencies under environmental compliance agreements or by judicial decrees. DOE will determine case-by-case whether a proposed project may proceed before the Site-wide EIS is completed, in accordance with the limitations on proceeding with "interim" actions that are under programmatic NEPA review as established in § 1506.1(c) of the CEQ regulations implementing NEPA. The CEQ criteria would also be applied case-by-case to decisions regarding proposed interim actions that are covered under the two programmatic EISs to be prepared by DOE, and any interim action that may be necessary regarding plutonium residue elimination as a result of the cancellation of the Plutonium Recovery Modification Project.

Preliminary Identification of Issues

The EIS will address the environmental impacts of the alternatives to the extent such data are available. In accordance with CEQ regulations (40 CFR 1500.4 and 1502.21), other environmental documents, as appropriate, may be incorporated by reference, in whole or in part, into the impact analyses. The following issues have been tentatively identified for analysis in the EIS, subject to consideration of comments received in response to public scoping.

1. Water Resources and Water Quality. The qualitative and quantitative effects of RFP operations on water resources in the region.

2. Air Quality. The effects of radiological and non-radiological emissions to the air.

3. Public and Occupational Safety and Health. The cumulative radiological and non-radiological impacts on workers and the public from routine operations and potential accidents.

4. Biological Resources. The disturbance or destruction of habitat including potential effects on threatened or endangered species.

5. Waste Management. The environmental effects of management of solid and liquid wastes, including radioactive, hazardous, mixed transuranic and low-level wastes, and wastes generated by restoration activities.

6. Environmental Restoration. Cumulative impacts from environmental restoration efforts to correct problems created by past releases to the environment, including groundwater and soil contamination.

7. Socioeconomics. The effects of construction and operations of the local community; e.g., housing, local businesses, and taxes.

8. Cultural Resources. The potential effects on historical, archaeological, scientific, or culturally important sites.

9. Transportation. Impacts from the on-site and off-site transportation of materials, equipment, products and wastes.

10. Decontamination and Decommissioning. The impacts of decontaminating and decommissioning RFP facilities.

Related Documents

The following documents contain background information related to the site and are available for review at the DOE public reading rooms listed earlier in this notice.

U.S. Energy Research and Development Administration, "Environmental Assessment for the Rocky Flats Plant of the U.S. Energy Research and Development Administration", Rocky Flats Area Office, Golden, Colorado, May 1975.

U.S. Department of Energy, "Final Environmental Impact Statement, Rocky Flats Plant Site", DOE/EIS-0064, Washington, DC, April 1980.

U.S. Department of Energy—Special Assignment Environmental Team, "Assessment of Environmental Conditions at the Rocky Flats Plant", Washington, DC, August 1989.

U.S. Department of Energy, "Corrective Action Plan in Response to the August 1989 Assessment of Environmental Conditions at the Rocky Flats Plant", Washington, DC, July 20, 1990.

Issued in Washington, DC, this 7th day of March 1991, for the United States Department of Energy.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-5904 Filed 3-12-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Cooperative Agreement to the Institute for Social Research (ISR) of University of Michigan

AGENCY: Department of Energy.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7, it is making a discretionary noncompetitive financial assistance award of $3,148,900 [DOE share: $1,278,590 University of Michigan share: $1,861,310) under Cooperative Agreement Number DE-FC01-91E122612 to the University of Michigan, Institute for Social Research (ISR).

SCOPE: The objective of the proposed 33 months cooperative agreement is the design and implementation of a national area probability sampling frame for the Residential Energy Consumption Survey and other related surveys using the results of the 1990 Decennial Census.

ELIGIBILITY: This cooperative agreement is being awarded on a noncompetitive basis because the University of Michigan has unique experience in this area of survey research and because its survey research staff are leading experts in this area of survey design.

In accordance with 10 CFR 600.7(b)(2)(i)(B), it has been determined that the activities will be conducted by the University of Michigan using its own resources; however, DOE support of the activities would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or planning to conduct such an activity. These criteria are met in that ISR is planning a partnership with the University of Chicago to design a national area probability sample frame, using 1990 Census data. These are the only two nonprofit, university-based social research entities which have independently undertaken this type of research. The survey frame design methods will be advanced by this research effort, and ultimately the research, private, and public communities will benefit from the results of this endeavor.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Donna Williams, PR-322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B" Office of Placement and Administration.

[FR Doc. 91-5905 Filed 3-12-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF88-418-001, et al.

Lakewood Cogeneration, L.P., *et al.*; *Electric Rate, Small Power Production, and Interlocking Directorate Filings*

Take notice that the following filings have been made with the Commission:

1. Lakewood Cogeneration, L.P.

[Docket No. QF88-418-001]

March 4, 1991.

On February 20, 1991, Lakewood Cogeneration, L.P. (Applicant), of 100 Clinton Square, Suite 400, Syracuse, New York 13202-1049, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Lakewood Industrial Park, in Lakewood Township, New Jersey. The primary energy source of the facility will be natural gas.

The original certification was issued on August 2, 1989, 48 FERC 61,174. Applicant proposes to reduce the number of combustion turbine generators from four to two and increase the electric power production capacity from 210 MW to 233 MW. In addition, the ownership of the facility has been transferred from CNG Energy Company to the Applicant. Applicant states that in all other respects the facility remains the same as set forth in the original application.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Seminole Fertilizer, Inc. and Bartow Cogeneration Partners, L.P.

[Docket No. QF85-521-002]

March 4, 1991.

On February 20, 1991, Seminole Fertilizer, Inc. and Bartow Cogeneration Partners, L.P., of P.O. Box 471, Bartow, Florida 33830, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located adjacent to an existing cogeneration facility, and integrated with a phosphate fertilizer manufacturing plant located in Polk County, Florida. The existing facility consists of a combustion turbine generator and a heat recovery boiler. Applicant proposes to expand the facility by addition of a combustion turbine generator, a heat recovery steam generator, a condensing steam turbine generator, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for chemical processes for the manufacture of sulfuric acid, phosphoric acid and diammonium phosphate. The electric power production capacity of the facility will be 102 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in December 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power and Light Co.

[Docket No. ER91-280-000]

March 5, 1991.

Take notice that The Dayton Power and Light Company (Dayton) tendered for filing on February 26, 1991, a proposed modification to the Interconnection Agreement dated March 1, 1987, between Dayton and The Ohio Edison Company (Ohio Edison) to add certain interconnection facilities between Dayton and Ohio Edison. Ohio Edison submitted a certificate of concurrence in the filing. A January 1, 1991, effective date has been requested. A copy of the filing was served upon Ohio Edison and the Public Utilities Commission of Ohio.

Comment date: March 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power & Light Co.

[Docket No. ER91-185-000]

March 5, 1991.

Take notice that on February 20, 1991, Wisconsin Power & Light Company (WP&L) tendered for filing a Substation Facility Agreement which was inadvertently omitted from its December 26, 1990 filing.

WP&L states that this Substation Facility Agreement has been executed in conjunction with the Wholesale Power Agreement to revise the terms of service.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER91-279-000]

March 5, 1991.

Take notice that on February 26, 1991, the New England Power Pool tendered for filing a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the Town of Belmont Municipal Light Board. The Two of Belmont Municipal Light Board has its principal office in Belmont, Massachusetts. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that the Town of Belmont Municipal Light Board has joined the over 90 other electric utilities that already participate in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make the Town of Belmont Municipal Light Board a participant in the pool.

NEPOOL requests an effective date of January 1, 1991 for commencement of participation in the power pool by the Town of Belmont Municipal Light Board, and requests waiver of the Commission's customary notice requirements to permit the membership of the Town of Belmont Municipal Light Board to become effective on that date.

Comment date: March 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER91-229-000]

March 5, 1991.

Take notice that PSI Energy, Inc. (PSI) on February 27, 1991, tendered for filing additional data with respect to a Settlement Agreement for an uncontested two step rate decrease previously filed on January 25 1991.

Copies of the filing were served upon the Indiana Utility Regulatory Commission, the City of Logansport, Indiana, Jackson County Rural Electric Membership Corporation, the Indiana Municipal Power Agency, and the Indiana municipalities of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg and Williamsport.

Comment date: March 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp., on behalf of Monongahela Power Corp., The Potomac Edison Co., and West Penn Power Co., (The APS Companies)

[Docket No. ER91-189-000]

March 5, 1991.

Take notice that on February 27, 1991, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (The APS Companies), filed Standard Transmission Service Agreement Forms to add Potomac Electric Power Company and Public Service Electric and Gas Company as customers to the APS Companies' Standard Transmission Service Rate Schedule which is now pending action by the Federal Energy Regulatory Commission in the above referenced docket. The proposed effective date for the Potomac Electric Power Company to take service under the proposed rate schedule is December 31, 1990, and the proposed effective date for Public Service Electric and Gas Company to take service under the proposed rate schedule is January 21, 1991.

Copies of the filing have been provided to the Public Utility Commission of Ohio, the Pennsylvania Public Utility Commission, Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record in the proceeding in the above referenced docket.

Comment date: March 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. John E. Bryson

[Docket No. ID-2524-000]

March 5, 1991.

Take notice that on February 25, 1991, John E. Bryson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Chairman and Chief Executive Officer
Southern California Edison Company
Director
First Interstate Bancorp

Comment date: March 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. James River-New Hampshire Electric

[Docket No. ER91-274-000]

March 5, 1991.

Take notice that on February 11, 1991, James River-New Hampshire Electric Inc., (James River) resubmitted for filing a Notice of Succession which was originally filed on October 21, 1981. James River states that this filing is being made at the request of the Commission staff because the original letter in this docket cannot be located. James River further states that its copy of the 1981 letter of acceptance from the Commission cannot be located either.

Comment date: March 15, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Electric Power Co.

[Docket No. ER91-297-000]

March 6, 1991.

Take notice that on March 1, 1991, Southwestern Electric Power Company (SWEPCO) tendered for filing the final return on common equity (Final ROE) to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in 1990 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, the City of Hope, Arkansas, the Oklahoma Municipal Power Authority, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc. and TEX-LA Electric Cooperative of Texas, Inc. SWEPCO provides service to these customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale customers, the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: March 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Arkansas Power & Light Co.

[Docket No. ER91-296-000]

March 6, 1991.

Take notice that Arkansas Power & Light Company ("AP&L") filed on March 1, 1991 proposed Second Amendments to Peaking Power Agreements between AP&L and the Cities of Conway, Osceola and West Memphis, Arkansas ("Cities"). The Peaking Power Agreements supplement the Power Coordination, Interchange & Transmission Agreements between each of the Cities and AP&L. The Amendments extend the term of the Peaking Power Agreements and allow the amount of peaking capacity and associated energy to vary for each annual period on October 1 dependent on the Cities peak demand in the previous peak period May through September. The Amendments also establish Minimum Billing Quantities and fixed escalation rates for both demand and energy charges.

The proposed Amended Agreements will affect a savings for each of the Cities.

Comment date: March 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Co.

[Docket No. ER91-286-000]

March 6, 1991.

Take notice that on February 28, 1991, Boston Edison Company tendered for filing a supplement to its Rate Schedule FPC No. 47 for service to the Town of Concord, Massachusetts. The supplement provides for the payment by Boston Edison to the Town of amounts that Boston Edison estimates it will be required to refund to the Town in Docket Nos. ER86-562-001 and ER87-581-001 as a result of the Commission's Opinion Nos. 299 and 299-A in Docket No. ER84-705-001.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon Concord and the Massachusetts Department of Public Utilities.

Comment date: March 20, 1991 in accordance with Standard Paragraph E at the end of this notice.

13. West Texas Utilities Co.

[Docket No. ER91-288-000]

March 6, 1991.

Take notice that on March 1, 1991, West Texas Utilities Company ("WTU") submitted for filing seventeen (17) executed Delivery Point and Service Specifications sheets providing for various minor changes to the Service Agreements between WTU and Brazos Electric Power Cooperative, Inc., Coleman County Electric Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc., Stamford Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1.

WTU states that copies of the filing have been sent to the Public Utility Commission of Texas and the affected full-requirements wholesale customers.

Comment date: March 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corp.

[Docket No. ER91-131-000]

March 6, 1991.

Take notice that Central Vermont Public Service Corporation on March 1, 1991 tendered for filing additional information in support of its proposed tariff providing for the sale of short term capacity at market based rates. Central Vermont states that it also has modified its proposed tariff to make affiliates of Central Vermont ineligible for service under that tariff. Central Vermont states that it has made this change in order to eliminate the possibility of abuse of an affiliate relationship.

Comment date: March 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. PSI Energy, Inc.

[Docket No. ER91-127-000, ER91-176-000, and ER91-179-000]

March 6, 1991.

Take notice that PSI Energy, Inc., on February 27, 1991, tendered for filing amended Service Schedules to the FERC Filings in Docket Nos. ER91-127-000, ER91-176-000 and ER91-179-000.

These amended Service Schedules change the cap language for Interchange Power and Interchange Energy. These Service Schedules are in the Interconnection Agreements with Indiana Michigan Power Company, Consumers Power Company and Louisville Gas and Electric Company. Such change is the result of a request by FERC Staff.

Copies of the filing were served on Indiana Michigan Power Company, American Electric Power Service Corporation, the Michigan Public Service Commission, Consumers Power Company, Louisville Gas and Electric Company, the Public Service Commission of Kentucky and the Indiana Utility Regulatory Commission.

PSI has requested that the effective dates, per the original filings, remain unchanged. Per Docket No. ER91-127-000 the effective date is November 28, 1990, per Docket No. ER91-176-000 the effective date is May 1, 1991 and per Docket No. ER91-179-000 the effective date is January 1, 1991.

Comment date: March 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5856 Filed 3-12-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-88-000]

Bristol-Myers Squibb Co., Inc.; Amendment to Filing

March 4, 1991.

On February 20, 1991, Bristol-Myers Squibb Co., Inc. tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the thermal energy uses of the proposed cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 21 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5857 Filed 3-12-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-028]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Armstrong Air Conditioning, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Armstrong Air Conditioning, Inc. (Armstrong) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's GRTC series induced draft rooftop furnaces.

Today's notice also publishes a "Petition for Waiver" from Armstrong. Armstrong's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Armstrong seeks to test using a blower delay time of 20 seconds for its GRTC induced draft rooftop furnaces instead of the specified 1.5-minutes delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than April 12, 1991.

ADDRESSES: Written comments (five copies) and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-028, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue,

SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process (45 FR 64108). Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On December 14, 1990, Armstrong filed an Application for an Interim Waiver regarding blower time delay. Armstrong's Application seeks an interim waiver from the DOE test provisions that require a 1.5-minutes time delay between the ignition of the burner and starting of the circulating air blower. Instead, Armstrong requests the allowance to test using a 20-second blower time delay when testing its GRTC induced draft rooftop furnace. Armstrong states that the 20-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent, according to Armstrong. Since current DOE test procedures do not address this variable blower time delay, Armstrong asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to the Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; and Amana Refrigeration, Inc., 56 FR 853, January 9, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Armstrong an Interim Waiver for its GRTC series induced draft rooftop furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Armstrong Air Conditioning, Inc. was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, March 4, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

March 4, 1991.

Mr. Bruce R. Maike
Vice President Product Engineering,
Armstrong Air Conditioning, Inc., 421 Monroe Street, Bellevue, OH 44811

Dear Mr. Maike: This is in response to your December 14, 1990, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Armstrong Air Conditioning, Inc. (Armstrong) GRTC series induced draft rooftop furnaces.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; and Amana Refrigeration, Inc., 56 FR 853, January 9, 1991.

Armstrong's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Armstrong will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Armstrong's Application for an Interim Waiver from the DOE test procedures for its GRTC series induced draft rooftop furnaces regarding blower time delay is granted.

Armstrong shall be permitted to test its line of GRTC series induced draft rooftop furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5-minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5-minutes, in which case the fan control shall be permitted to start the blower, or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe with ± 0.01 inch of water guage of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may ber revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

December 14, 1990

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Gentlemen: This is a petition for waiver and petition for interim waiver submitted pursuant to 10 CFR 430.27. Waiver is requested from the Furnace test procedure found at appendix N to subpart B of part 430.

The test procedure requires a 1.5 minute delay between burner on and blower on. Armstrong is requesting authorization to use a 20 second delay instead of 1.5 minutes. Armstrong is manufacturing a series of induced draft furnaces which includes the GRTC Series rooftop furnaces used for residential, commercial, and industrial installations.

Maximum energy efficiency is achieved by fixed timing controls installed in the GRTC series that activate the circulating air blower 20 seconds after the burner is on.

Under the appendix N procedures, the vent gas temperature climbs at a faster rate than it would with a 20 second blower on time, allowing energy to be lost out the vent system. This waste of energy would not occur in actual operation. If this petition is granted, the true blower on time delay would be used in the calculations. Proposed ASHRAE Standard 103-1988 paragraph 9.5.1.2.2 specifically addresses the use of timed blower operation.

The current test procedures do not give Armstrong credit for the energy savings which average approximately 0.6 percentage points on our A.F.U.E. test results.

Current prescribed test procedures prohibit Armstrong from taking credit for the saved energy, thus providing inaccurate comparative data.

Armstrong has been granted a waiver permitting the 20 second blower on time to be used in efficiency calculations for our Ultra series furnaces (Case Number-F-014) dated October 1985.

Several other manufacturers of furnaces have been granted a waiver to permit calculations based on timed blower operation.

Confidential comparative test data is available to you upon your request.

Sincerely,

Armstrong Air Conditioning Inc.

Bruce R. Maike,

Vice President Product Engineering.

[FR Doc. 91-5903 Filed 3-12-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50718; FRL-3881-1]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale field testing of a genetically engineered microbial pesticide, *Bacillus thuringiensis* strain EG7618, from Ecogen, Inc. of Longhorne, Pennsylvania. EPA has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), EPA is soliciting public comments on this application.

DATES: Written comments must be received on or before April 12, 1991.

ADDRESSES: Comments in triplicate, should bear the docket control number OPP-50718 and be submitted: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from Ecogen, Inc. of Longhorne, PA. The purpose of the proposed testing is to evaluate the efficacy of the *Bacillus thuringiensis* strain EG7618 at two concentrations of coleopterous toxin protein against Ecogen's Foil® bioinsecticide (EPA Reg. No. 55638-10) for the control of the Colorado potato beetle on spring-planted potatoes in Pennsylvania and Virginia. A total of 0.176 acres will be treated. Strain EG7618 is a recombinant *Bacillus thuringiensis* strain derived using the *Bacillus thuringiensis* strain EG2424, the active ingredient in Ecogen's Foil® bioinsecticide product.

Following the review of the Ecogen, Inc. application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: March 4, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-5672 Filed 3-12-91; 8:45 am]

BILLING CODE 6560-50-F

BEST COPY AVAILABLE

[OPP-36179; FRL-3875-7]

Dermal Absorption Studies of Pesticides Subdivision F Hazard Evaluation: Humans and Domestic Animals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: The Environmental Protection Agency is making available, for public comment, a proposed guideline for Dermal Absorption Studies of Pesticides. This guideline, when final, will serve to formalize the protocol on dermal absorption that has been in experimental development since the publication of Subdivision F in October 1982. A copy of the proposed guideline and a background document which provides the history and scientific rationale for the guideline are available at the address listed below for the Public Docket and Freedom of Information Section.

DATES: Comments must be received on or before June 11, 1991.

ADDRESSES: Submit three copies of written comments, identified with the docket control number "OPP-36179" by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 244 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-2805.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 244 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert P. Zendzian, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 816D, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-5495.

SUPPLEMENTARY INFORMATION: The Pesticide Assessment Guidelines, Subdivision F, describe protocols for performing toxicology and related tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Some of the tests are also used in tolerance reviews under the Federal Food, Drug, and Cosmetic Act (FFDCA).

Subdivision F was made available for public comment in 1978 and published in final form in October 1982. At that time the Agency published the criteria for performing a dermal absorption study on a pesticide and reserved Section 85-3, for a guideline on Dermal Absorption Studies of Pesticides. The Agency had available a preliminary protocol for dermal absorption studies but did not consider it ready for publication. Subsequently over 100 studies of dermal absorption of pesticides have been performed with the preliminary protocol and the protocol has undergone three revisions based on this experience. The Agency believes that the study design has been performed adequately in numerous laboratories to validate the experimental design, show its usefulness to the Agency, and demonstrate its practicality in the laboratory. Publication at this time will serve to formalize the Agency's accumulated experience with this study.

The basic experimental design of the proposed guideline is essentially that given in the document, *Procedure for Studying Dermal Absorption*, by Robert P. Zendzian, Ph.D., Senior Pharmacologist, Health Effects Division, Office of Pesticide Programs, Fourth Edition Revised September 18, 1987, Including California Modifications, October 9, 1985. The methodology was presented on October 31, 1988, at the Ninth Annual Meeting of the American College of Toxicology, Symposium on Epidemiology and Toxicology, Skin Absorption of Environmental Chemicals, Pesticides and Water Contaminants and published in the *Journal of the American College of Toxicology*, Volume 8, No. 5, pp 829-835, 1989.

The background document provides a detailed explanation and rationale on the requirement for a dermal absorption study, the choice of an *in vivo* study, the history of the protocol and the experimental design. The technical and scientific rationale of the experimental design are supported by data generated with the protocol.

All interested parties are encouraged to submit comments on the proposed guideline protocol for a dermal absorption study, and not on the regulatory decision as to whether or not such a study is/should be a data requirement to support the registration/reregistration of a pesticide. Specific comments should reference the specific number and paragraph or subparagraph of the proposed guideline. Recommended technical or scientific changes/modifications should be supported by current scientific/technical knowledge and include supporting references. References may be to the published literature, studies submitted to the Agency in support of registration and unpublished data. Citations should be sufficiently detailed so as to allow the Agency to obtain copies of the original documents and unpublished data supplied in sufficient detail to allow their evaluation.

Comments on the proposed guideline will be considered by the Agency and such modifications of the guideline as are considered to be of scientific and technical merit will be considered for inclusion in a revised guideline. The draft modifications will be made available to the public for further comment and will be presented to the FIFRA Scientific Advisory Panel at a public meeting for their comments before being published in a final form.

Dated: March 6, 1991.

Penelope A. Fenner-Crisp,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 91-5947 Filed 3-12-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59294; FRL 3883-5]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-9, March 24, 1991.

T 91-10, March 27, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59294)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW, Rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91-9

Close of Review Period. April 7, 1991.

Manufacturer. Confidential.

Chemical. (G) Alkylated diesters.

Use/Production. (S) Lubricants, oil additives, and emulsifers. Prod. range: Confidential.

T 91-10

Close of Review Period. April 10, 1991.

Manufacturer. Confidential.

Chemical. (G) Modified bitumen.

Use/Production. (S) Paving bitumen. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g.kg species (Rabbit). Eye irritation: none species (Rabbit). Skin irritation: moderate species (Rabbit). Mutagenicity: negative.

Dated: March 8, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-5948 Filed 3-12-91 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 7, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0141.

Title: Application for Renewal of Private Operational Fixed Microwave Radio Station License.

Form Number: FCC Form 402-R.

Action: Revision.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 4,400 responses; .33 hours average burden per response; 1,452 hours total annual burden.

Needs and Uses: The FCC Form 402-R is filed by licensees in the Private Operational Fixed Microwave Radio Service for renewal of an existing authorization. The data is used by FCC staff to determine eligibility for a renewal and to issue a radio station license. The data is also used by Compliance personnel in conjunction with field engineers for enforcement purposes.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 91-5967 Filed 3-12-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-895-DR]

Major Disaster and Related Determinations; MS

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-895-DR), dated March 5, 1991, and related determinations.

DATED: March 5, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated March 5, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms and flooding beginning on February 17, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

The counties of Adams, Calhoun, Itawamba, Leflore, Panola, Tallahatchie, Tishomingo, Washington, and Yalobusha for Individual Assistance and Public Assistance; and

The counties of Bolivar, Clay, Coahoma, Grenada, Lowndes, Monroe, Quitman, and Sunflower for Individual Assistance only.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 91-5924 Filed 3-12-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on March 1, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No: 224-000083-005.

Title: International Longshoremen's Association Assessment Agreement

Parties: International Longshoremen's Association, AFL-CIO (ILA). Carriers Container Council, Inc. (Carrier).

Synopsis: The agreement amends the Carrier-ILA Container Freight Station Trust Fund basic assessment agreement to reflect the establishment and administration of a joint labor-management container royalty fund for the purpose of collecting and distributing additional container royalties in ILA ports from Maine and Texas.

By Order of the Federal Maritime Commission.

Dated: March 7, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5845 Filed 3-12-91; 8:45 am]

BILLING CODE 6730-01-M

CCNI/Nedlloyd Cooperative, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011322.

Title: CCNI/Nedlloyd Cooperative Agreement.

Parties: Compania Chilena De Navegacion, Interoceanica S.A., Nedlloyd Lijnen B.V.

Synopsis: The proposed Agreement would permit the parties to charter space from one another in the trade between U.S. Atlantic Coast ports and inland and coastal points (including Canadian inland and coastal points) via such ports and ports of Chile and Peru, and inland and coastal points (including Bolivian inland points) via such ports. It would also permit the parties to agree upon and rationalize sailings, schedules, service frequency, ports to be served, port rotations, space and slot allocations aboard the vessels used in the service, as well as the compensation for said transportation. The parties have requested a shortened review period.

Dated: March 7, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5844 Filed 3-12-91; 8:45 am]

BILLING CODE 6730-01-M

Port of Houston Authority/Port of Houston Terminal C.E.S., Inc. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult with section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200461.

Title: Port of Houston Authority/Port Houston Terminal C.E.S., Inc. Terminal Agreement.

Parties:

Port of Houston Authority (Port)

Port Houston Terminal C.E.S., Inc. (PHT).

Filing Party: Martha T. Williams, Staff Counsel, Port of Houston Authority, Port of Houston, Authority, P.O. Box 2562, Houston, TX 77252-2562.

Synopsis: The Agreement provides for PHT to perform or have performed freight handling services at the Port's Wharves Numbers 8 and 9 and Transit Shed Number 9 for a term ending December 31, 1992.

Agreement No: 224-003565-003.

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Marine Terminal Agreement.

Parties:

Puerto Rico Ports Authority

Sea-Land Service, Inc.

Filing Party: Mrs. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, P.R. 00936-2829.

Synopsis: The Agreement amends the parties basic agreement to eliminate the right of preference use for 3,400 sq. ft. and reflect a $14.16 reduction in monthly rent.

Dated: March 7, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5842 Filed 3-12-91; 8:45 am]

BILLING CODE 6730-01-M

San Francisco Port Commission/ Maruba S.C.A., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200479.

Title: San Francisco Port Commission/Maruba S.C.A. Marine Terminal Agreement.

Parties:

San Francisco Port Commission

Maruba S.C.A. (Carrier).

Synopsis: The Agreement provides Carrier a non-exclusive right to use the North Container Terminal located in the City and County of San Francisco as its published regularly scheduled Northern California port of call. The facilities shall be used only for the berthing of Carrier's vessels, the loading and discharging of cargoes and operations ancillary thereto. The term of the Agreement is five years.

Agreement No: 224-200480.

Title: City and County of San Francisco/Pacific Meridian Line Terminal Agreement.

Parties:

City and County of San Francisco (City)

Pacific Meridian Line (PML).

Synopsis: The Agreement provides for: PML to make San Francisco its Northern California port of call; and PML to pay dockage and wharfage rates at less than 100% of those named in the City's Tariff No. 3-C. The term of the Agreement is for five years.

Dated: March 7, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-5843 Filed 3-12-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-33]

Availability of a Listing of Areas Closed or Restricted to the Public Due to Contamination by Toxic Substances

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service, HHS.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the list of areas closed or restricted to the public in 1989 due to toxic substance contamination. It is available under the title, "Restrictions Imposed on Contaminated Sites: A Status of State Actions."

AVAILABILITY: A limited supply of this report will be made available at no charge to the public upon request to. National Governors Association, National Resources Policy Studies, Center for Policy Research, Hall of the States, 444 North Capitol Street, Washington, DC, 20001-1572, Attention: Barbara Wells.

SUPPLEMENTARY INFORMATION: This report is required of the Agency for Toxic Substances and Disease Registry (ATSDR) by section 104(i)(1)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The law requires that ATSDR, in cooperation with the states and other Federal agencies, establish and maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination. The ATSDR develops and maintains the required listing through an agreement with the National Governors Association. The current report indicates that 1,705 sites were found to be closed or restricted by states because of contamination by toxic substances.

FOR FURTHER INFORMATION CONTACT: Division of Health Education, Agency for Toxic Substances and Disease Registry, Mailstop E-33, 1600 Clifton Road, Atlanta, Georgia, 30333, telephone (404) 639-0730. For copies of the report please contact the National Governors Association at their address provided above.

Dated: March 5, 1991

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-5891 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee: Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control, announces the following committee meeting.

Name: NCVHS Executive Subcommittee.

Time and Date: 9 a.m.-5 p.m., April 4, 1991.

Place: Columbia Square Building, Seventh Floor, 555 Thirteenth Street, NW., Washington, DC 20004-1109.

Status: Open.

Purpose: The purpose of this meeting is for the Executive Subcommittee to review the work plan of NCVHS and other subcommittees. The Executive Subcommittee will plan for the June 5-7, 1991, NCVHNS meeting.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050 or FTS 436-7050.

Dated: March 5, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-5890 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91N-0061]

Drug Export; Anti-Human Globulin, Anti-C3b, -C3d (Murine Monoclonal) Gamma-Clone

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gamma Biologicals, Inc., has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-C3b, -C3d (Murine Monoclonal) Gamma-clone to Australia, Italy, The Netherlands, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20856, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the

Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gamma Biologicals, Inc., 3700 Mangum Rd., Houston, TX 77092, has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-C3b, -C3d (Murine Monoclonal) Gamma-clone to Australia, Italy, The Netherlands, and Spain. The Anti-Human Globulin, Anti-C3b, -C3d (Murine Monoclonal) Gamma-clone is an in vitro diagnostic reagent for antiglobulin tests. The application was received and filed in the Center for Biologics Evaluation and Research on February 19, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1991, and to provide an additional copy of the submission directly to the contact person identifed above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 25, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-5883 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0068]

Drug Export; Anti-Human Globulin, Anti-IgG Murine Monoclonal) Gamma-Clone®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gamma Biologicals, Inc., has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgC (Murine Monoclonal) Gamma-Clone® to Australia, Italy, The Netherlands, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 80 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gamma Biologicals, Inc., 3700 Mangum Rd., Houston, TX 77092, has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgG (Murine Monoclonal) Gamma-Clone® to Australia, Italy, The Netherlands, and Spain. The Anti-Human Globulin, Anti-IgG (Murine Monoclonal) Gamma-clone is an in virtro diagnostic reagent for antiglobulin tests. The application was received and filed in the Center for Biologics Evaluation and Research on February 19, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 25, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center of Biologics Evaluation and Research.

[FR Doc. 91-5957 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0063]

Drug Export; Anti-Human Globulin, Anti-IgG (Murine Monoclonal) (Green) Gamma-Clone®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gamma Biologicals, Inc., has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgG Gamma-clone® (Murine Monoclonal) (Green) to Australia, Italy, The Netherlands, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing that Gamma Biologicals, Inc., 3700 Mangum Rd., Houston, TX 77092, has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgG, Gamma-clone® (Murine Monoclonal) (Green) to Australia, Italy, The Netherlands, and Spain. The Anti-Human Globulin, Anti-IgG, Gamma-clone® (Murine Monoclonal) (Green) is an in vitro diagnostic reagent for antiglobulin tests. The application was received and filed in the Center for Biologics Evaluation and Research on February 19, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 25, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-5962 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0062]

Drug Export; Anti-Human Globulin, Anti-IgG, -C3d; (Polyspecific) (Murine Monoclonal) (Green) Gamma-Clone®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gamma Biologicals, Inc., has filed an application requesting approval of the export of the biological product Anti-Human Globulin, Anti-IgG, -C3d; (Polyspecific) (Murine Monoclonal) (Green) Gamma-clone® to Australia, Italy, The Netherlands, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gamma Biologicals, Inc., 3700 Mangum Rd., Houston, TX 77092, has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgG, -C3d; (Polyspecific) (Murine Monoclonal) (Green) Gamma-clone® to Australia, Italy, The Netherlands, and Spain. The Anti-Human Globulin, Anti-IgG, -C3d; (Polyspecific) (Murine Monoclonal) (Green) Gamma-clone® is an in vitro diagnostic reagent for direct or indirect antiglobulin tests. The application has received and filed in the Center for Biologics Evaluation and Research on February 19, 1991, which shall be considered the filing data for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commission of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 25, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-5884 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0064]

Drug Export; Anti-Human Globulin, Anti-IgG, -C3d (Polyspecific) (Murine Monoclonal) Gamma-Clone®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Gamma Biologicals, Inc., has filed an application requesting approval for

the export of the biological product Anti-Human Globulin, Anti-IgG, -C3d (Polyspecific) (Murine Monoclonal) Gamma-clone® to Australia, Italy, The Netherlands, and Spain.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Gamma Biologicals, Inc., 3700 Mangum Rd., Houston, TX 77092, has filed an application requesting approval for the export of the biological product Anti-Human Globulin, Anti-IgG, -C3d (Polyspecific) (Murine Monoclonal) Gamma-clone® to Australia, Italy, The Netherlands, and Spain. The Anti-Human Globulin, Anti-IgG, -C3d (Polyspecific) (Murine Monoclonal) Gamma-Clone® is an in vitro diagnostic reagent for direct or indirect antiglobulin tests. The application was received and filed in the Center for Biologics Evaluation and Research on February 19, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 25, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: February 25, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-5885 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0016]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cardura®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cardura® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cardura®. Cardura® (doxazosin mesylate) is indicated for the treatment of hypertension. Cardura® may be used alone or in combination with diuretics or beta-adrenergic blocking agents. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cardura® (U.S. Patent No. 4,188,390) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated January 25, 1991, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Cardura® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cardura® is 2,843 days. Of this time, 1,510 days occurred during the testing phase of the regulatory review period, while 1,333 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* January 22, 1983. FDA has verified the applicant's claim that the investigational new drug application became effective was on January 22, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 11, 1987. FDA has verified the applicant's claim that the new drug application (NDA 19-868) was filed March 11, 1987.

3. *The date the application was approved:* November 11, 1990. FDA has verified that applicant's claim that NDA 19-868 was approved November 11, 1990.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, or or before May 13, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 10, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 7, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-5858 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare and Medicaid Programs; Meeting of the Advisory Council on Social Security

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Advisory Council on Social Security.

DATES: The meeting will be open to the public on March 28, 1991 from 9 a.m. to 5:30 p.m.

ADDRESSES: Hyatt Regency Tampa, Two Tampa City Center, Tampa, Florida 33602-5187.

FOR FURTHER INFORMATION CONTACT: Adele Eley, Advisory Council on Social Security, room 636 G. Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, 202-245-0217.

SUPPLEMENTARY INFORMATION:

I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every four years. The Council examines issues affecting the Social Security retirement, disability, and survivors insurance programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- The adequacy of the Medicare program to meet the health and long-term care needs of our aged and disabled populations, the impact on Medicaid of the current financing structure for long-term care, and the need for more stable health care financing for the aged, the disabled, the poor, and the uninsured;
- Major Old-Age, Survivors, and Disability Insurance (OASDI) financing issues, including the long-range financial status of the program, relationship of OASDI income and out go to budget-deficit reduction efforts under the Balanced Budget and Emergency Deficit Control Act of 1985, and projected buildups in the OASDI trust funds; and
- Broad policy issues in Social Security, such as the role of Social Security in overall U.S. retirement income policy.

The Council is composed of 12 members: G. Lawrence Atkins, Robert M. Ball, Philip Briggs, Lonnie R. Bristow, Theodore Cooper, John T. Dunlop, Karen Ignagni, James R. Jones, Paul O'Neill, A.L. "Pete" Singleton, John J. Sweeney, and Don C. Wegmiller, the Chairperson is Deborah Steelman.

The Council is to report to the Secretary and Congress in 1991.

II. Agenda

The Council has appointed an Expert Panel on the Future of Income Security and Health Care Financing. The Council will meet with the Expert Panel to discuss issues related to the Expert Panel's mission.

The agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Programs Nos. 13.714 Medical Assistance Program; 13.733 Medicare-Hospital Insurance; 13.774 Medicare-Supplemenatary Medical Insurance; 13.802, Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivor's Insurance)

Dated: March 6, 1991.

Barbara Cooper,

Deputy Director, Advisory Council on Social Security.

[FR Doc. 91-5921 Filed 3-12-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1991 funds are available for grants and cooperative agreements for the following activities: Maternal and Child Health (MCH) special projects of regional and national significance (SPRANS) which contributed to the health of mothers, children, and children with special health care needs; MCH research and training; genetic disease testing, counseling and information services; and hemophilia diagnostic and treatment centers. Awards will be made under the program authority of section 6502(a) of the Social Security Act, the MCH Federal set-aside program. The HRSA, through this notice, invites potential applicants to request application packages for the particular program category in which they are interested, and to submit their applications for funding consideration. It is anticipated that $13.6 million will be available to support approximately 75 new and competing renewal projects at an average of $180,000 per award under the MCH Federal set-aside program. This is an estimated funding level. The

actual amount available for awards may vary. Contracts are made for grant periods which generally run from 1 to 3 years in duration. Funds for the MCH Federal set-aside program are appropriated by Public Law 101–517. The regulation implementing the Federal set-aside program was published in the March 5, 1990 issued of the Federal Register at 51 FR 7720 (42 CFR part 51a).

DATES: Deadlines for receipt of applications differ for the several categories of grants and cooperative agreements; these deadlines are as follows:

(a) Grants:

(1) Research:

(A) Cycle One: April 15, 1991.

(B) Cycle Two. August 1, 1991.

(2) Long Term Training: April 15, 1991.

(3) Genetic disease testing, counseling and information: May 5, 1991.

(4) Hemophilia diagnostic and treatment centers: June 1, 1991.

(5) Special MCH improvement projects (MCHIP) of regional and national significance relevant to MCH in the following areas:

(A) Maternal and infant health (projects contributing to the reduction of infant mortality and the improvement of maternal and infant health and the reduction of infant mortality): May 7, 1991.

(B) Child and adolescent health (projects to enhance the health of children, adolescents, and their families: through prevention of violence and unintentional injuries; development of resources for improving access to health care and health outcomes for children and youth; and promotion of comprehensive community-based programs focusing on health care for Black, male children and adolescents): May 8, 1991.

(C) Children with special health care needs. (Grant applications in this MCHIP category, which have focused on demonstrating new or innovative approaches to the provision of health care and services, will not be available during this cycle.)

(D) Child health systems development program: May 13, 1991.

Grants will assist localities and States to demonstrate public/private partnerships to assure appropriate primary care for all children in a given geopolitical area. These grants are intended to foster integration and coordination of resources to assure access to and receipt of appropriate care.

(E) Healthy Tomorrows Partnerships for Children: April 22, 1991.

Healthy Tomorrows grants will support projects for children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants and children.

(F) Field-initiated projects: July 1, 1991.

Field-initiated proposals are limited to categories of projects not covered under other MCH program funding categories. These proposals will address other innovative and unique approaches to improving the health of mothers, children and children with special health care needs. Applications will be accepted at any time up to July 1, 1991. Panels will be convened as needed to review these applications.

(b) Cooperative Agreements (MCHIPs): May 1, 1991.

It is anticipated that substantive Federal programmatic involvement will be required in the cooperative agreements for improvement in maternal and child health described below. This involvement will be manifested through the periodic meetings, conferences, and/or communications with the grantees, to occur not less than quarterly during the period of the agreement, to review and evaluate the goals and objectives identified in the cooperative agreement, their achievements or progress to date, and changes to or redirection of efforts related to these goals and objectives, as mutually agreed to by Federal program officials and appropriate representatives of the grantee. Specifically, Federal program officials will be responsible for the approval of issues and concerns in maternal and child health identified and addressed by the applicants.

Additional details on the degree of Federal programmatic involvement will be included in the program guidance for cooperative agreement applications.

(1) A series of related cooperative agreements will support organizations representing governmental, professional and private sector interests in improving maternal and child health. Agreements will be entered into for the following purposes: disseminating programmatic information from the Maternal and Child Health Bureau in order to maximize impact in the field; facilitating input from key information sources to guide Federal programs, and promoting enhanced understanding of State/local system functioning and provider concerns to foster collaboration in maternal and child health.

(2) One cooperative agreement will provide mental health and related consultation services for the Head Start Services Program. This project will assist local Head Start programs in implementing effective health and related activities.

(3) A series of related cooperative agreements will support promotion of governmental and professional partnerships to encourage additional private sector and foundation support for improved coordination of and access to health resources at the community-level for pregnant woman, infants and children.

To receive consideration, all applications must be sent to the Grants Management Officer at the address below, and must be received by the close of business on the dates indicated. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commerical carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Grant applications received after the deadline date will be returned.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the Office of the Director, Maternal and Child Health Bureau, HRSA, room 9–03, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Requests for application materials should be made in writing to the Grants Management Officer, Office of Program Support, MCHB, suite 100–A, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided. In addition to providing application materials, the Grants Management Officer is available to provide assistance on business management issues. Applicants for research projects will use Form PHS 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for training projects will use Form PHS 6025–1, approved by OMB under control number 0915–0060. Applicants for all other projects will use application Form PHS 5161–1 with revised faceshest DHHS Form 424, approved by OMB under control number 0937–0189.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives: Under Section 502(a) of the Social Security Act, 15 percent of the funds appropriated for Title V of the Act in each fiscal year are to be retained by the Secretary for the purposes specified above. Support for projects covered by this announcement will come from these funds. Consistent with the statutory purpose of improving maternal and child health and with particular attention to the needs of minority and disadvantaged populations, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best address achievement of the Healthy People 2000 objectives related to maternal, infant, child and adolescent health, and otherwise promote improvements in maternal and child health (for example, applications which enhance efforts to reduce the unacceptably high rates of infant mortality, which increase the availability of and access to services for handicapped and chronically ill children and young adults, and which enhance the health and development of adolescents).

Applicants can obtain a listing of the Healthy People 2000 Objectives. Potential applicants can obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–1 or Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office Washington, DC 20402–9325 (telephone: 202 783–3238).

Eligible Applicants

The statute at section 502(a)(2) provides that training grants may be made only to public or nonprofit private institutions of higher learning and that research grants may be made only to public or nonprofit private agencies and organizations engaged in research in maternal and child health or programs for children with special health care needs. Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements in all other program categories.

Review Criteria

Applications for grants will be reviewed and evaluated according to:

1. The quality of the project plan or methodology.

2. Documentation of the need for the training and technical assistance.

3. The cost-effectiveness of the proposed project relative to the number of persons proposed to be benefitted, served or trained.

4. The extent to which the project will contribute to service system improvement for the target population(s).

5. The extent to which the projects will serve all regions of the country including urban and rural settings and any special circumstances associated with providing training in various areas.

6. The effectiveness of procedures to collect the cost of care and service from third-party payment sources (including government agencies) which are authorized or under legal obligation to make such payment for any service (including diagnostic, preventive and treatment services).

7. The extent to which the project will be integrated with the administration of the Maternal and Child Health Services block grants and other related programs in the respective State(s).

8. The soundness of the project's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

9. The extent to which the project gives attention to overcoming culture barriers to services for culturally distinct populations served by the project.

Applications for cooperative agreements will be reviewed and evaluated according to:

1. The evidence of capacity to identify and represent the MCH interests and/or concerns to one or more organizations.

2. The ability to identify programmatic issues in MCH of concern to the Federal MCHB and to the applicant and to specifically address relevant issues raised by the new Title V amendments (Pub. L. 101–239).

3. The ability to improve the capacity of the Federal MCHB to transmit important information to the applicant's organization or target group regarding MCH concerns and how the applicant will initiate or increase a dialogue between organization members and the MCHB to increase the prospect of effective MCH programming.

4. The soundness of the applicant's management, considering the qualifications of the staff of the proposed project and the applicant's facilities and resources.

Executive Order 12372

The MCHB Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: January 23, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–6034 Filed 3–12–91; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Proposed Review Criteria for Grants for Nurse Anesthetist Education Programs

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the due date previously published in the Federal Register on February 28, 1991 (56 FR 8354) for applications to provide for grants for projects to develop and operate programs for the education of nurse anesthetists. The new due date is May 31, 1991.

Dated: March 7, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–5886 Filed 3–12–91; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of April 1991:

Name: Commission on the National Nursing Shortage.

Date and Time: April 11–12, 1991, 8:30 a.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public. Identification may be needed to gain access to the building.

Purpose: The Commission advises the Secretary, the Assistant Secretary for Health, and the Administrator, Health Resources and Services Administration on specific projects implementing the recommendations of the Secretary's Commission on Nursing. These projects should attempt optimal utilization of available resources and expertise from Federal, State, and local government and private sector organizations.

The recommended project will target the following five focus areas: (1) Recruitment and the educational pathway; (2) retention and career development; (3) restructuring nursing services and effective utilization of nursing personnel; (4) data collection and analysis requirements; and (5) information systems and related technology in nursing.

In each focus area, the Commission shall formulate one targeted initiative designed to improve the imbalance in the nursing labor market and provide a model for broader endeavors. In addition, the Commission shall investigate ways to promote and identify specific commitments from private sector organizations and State and local government for fulfilling the projects.

Agenda: The purpose of the meeting is to discuss and refine the drafts of five projects that have been developed to address the recommendations of the Secretary's Commission of Nursing relative to the nursing shortage. Dr. Gloria Smith, Chairperson will preside.

There will be brief segments for public comment, once each day.

Persons interested in providing brief public comments should contact Dr. Caroline B. Burnett, Senior Consultant, Commission on the National Nursing Shortage, Health Resources and Service Administration, room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3400, for more specific information.

Anyone requiring information regarding the subject Council should contact Dr. Caroline B. Burnett, Senior Consultant, Commission on the National Nursing Shortage, Health Resources and Service Administrative, room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3400.

Agenda Items are subject to change as priorities dictate.

Dated: March 7, 1991.

Jackie E. Bowen,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-5968 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-15-M

National Institute on Deafness and Other Communication Disorders

Meeting of the Board of Scientific Counselors, NIDCD

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIDCD, April 4-5, 1991, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland.

This meeting will be open to the public from 8:30 a.m. to 9 a.m. on April 4 to discuss issues related to committee business. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 9:00 a.m. until recess on April 4 and from 8:30 a.m. until adjournment on April 5. The closed portions of the meeting will be for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Monica Davies, Acting Executive Secretary of the Board of Scientific Counselors, NIDCD, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: February 28, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-5853 Filed 3-12-91; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine

Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 5, 1991, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 9 a.m. to 3:30 p.m. for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on April 5, from approximately 3:30 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496-2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: February 28, 1991.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 91-5854 Filed 3-12-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Indian Health Service; Method for Evaluating and Establishing Reimbursement Rates for Health Care Services Authorized Under the Indian Health Service Contract Health Service Regulations—Portland Area

AGENCY: Public Health Service, HHS.

ACTION: General notice.

SUMMARY: The Indian Health Service (IHS) issues this General Notice to inform the public that IHS will conduct a pilot project in the Portland Area, IHS, to determine whether an alternative method of evaluating and establishing reimbursement rates for contract health services (CHS) will result in greater participation by health care providers and lower costs to IHS. The pilot project is limited to the Portland Area, and does not affect the present methods of evaluating and establishing reimbursements rates and awarding contracts for health care services in other IHS Areas. In addition, the pilot project does not change the current IHS payment policy requirement that health care services be procured at rates which do not exceed prevailing Medicare rates.

EFFECTIVE DATE: February 1, 1991 through March 31, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald G. Freeman, Director, Division of Health Care Administration/Contract Health Services, room 6-12, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-8373 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The IHS contract health services program is administered under regulations at 42 CFR 36.21 et seq. Under this program, IHS purchases health services from hospitals, physicians, and other health care providers to supplement the IHS direct care delivery system. IHS last issued a payment policy in 51 FR 23540 on June 30, 1986. This policy requires the IHS Area Offices to negotiate contracts with the providers that they expect to use for health care services. With certain specified exceptions, the contract must provide for reimbursement for services at rates which do not exceed prevailing Medicare allowable rates (including deductibles and co-insurance), and the Service Units which report to the IHS Area Offices must procure all of their health care services under these contracts.

Although the number of contracts that the IHS has in place has been steadily increasing, it has not been possible to enter into contracts with each of the approximately 850 facilities and 4,600 professionals providers that the IHS uses on a recurring basis. The Area Offices lack the contracting staff resources to develop solicitations, review proposals, and negotiate contracts with each of these providers; and, some providers are unwilling to review the lengthy solicitations or commit to accept the extensive and restrictive contract clauses required by the Federal Acquisition Regulations (48 CFR 1). In addition, when contracts are awarded, it is sometimes difficult for the Area Offices to determine which contract provider is offering the most favorable rate.

The Portland Area will honor its existing contracts for health care services during the pilot test, but will limit new contract awards to those situations in which it is feasible to fill all requirements for a specific service or set of closely related services from a single source and a requirements contract will yield lower prices than the preferred provider approach described below.

The IHS uses most of its providers for broad categories of services rather than for a few specific services (e.g., for physician services rather than for selected medical procedures), and the pilot project is directed at testing an approach for simplifying communications and establishing favorable rates with these providers. Under this approach, the Portland Area will send each of its current providers a standard rate solicitation letter that invites the provider to submit its most competitive rates for specified categories of services on an attached form. IHS will use a specialized contractor, who is familiar with the various rate structures used within the health care industry, to analyze these rate quotations and develop a preferred provider list which will rank the providers, by Service Unit and by category of service, based upon the relative favorableness of their rate offer. The Service Unit will then use this information to place their purchase order with the lowest cost provider that meets the quality of care, geographic, and other relevant criteria. Purchase orders will be issued, with rare exceptions, only to those providers on the preferred provider list.

The pilot test will be limited to contract health care services programs administered by the IHS, in the Portland Area, which includes the states of Washington, Oregon, and Idaho. The pilot project will not apply to services rendered by traditional Indian medicine men and women under Public Law 95-341, Joint Resolution on American Indian Religious Freedom.

This method is limited to the pilot project. The IHS will evaluate the pilot project, and decide whether to institute the method in other IHS Areas based on the results. Any decision to institute the method in other IHS Areas will be announced in the Federal Register.

Monday: January 4, 1991.

Everett R. Rhoades,

Assistant Surgeon General Director.

[FR Doc. 91-5860 Filed 3-12-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-4310-02-241A]

Global Change Research; Ecological Change in Environmentally Stressed Ecosystems in the Western and Northern United States

ACTION: Notice to solicit applications to conduct research projects.

SUMMARY: As part of the Bureau of Land Management (BLM) Global Change Research Program (GCRP), the BLM invites applications for cooperative agreements, interagency agreements, grants, and contract proposals to conduct three research projects on the effects of global change in the western United States (U.S.).

DATES: Applications are due no later than April 15, 1991.

ADDRESSES: Applications should be submitted to: BLM Service Center, Branch of Procurement (SC-651), 390 Union Boulevard, suite 540, Lakewood, Colorado, 80228.

FOR FURTHER INFORMATION CONTACT: Stanley Coloff at (202) 653-8210.

SUPPLEMENTARY INFORMATION: The BLM announces that it will accept applications for cooperative agreements, interagency agreements, grants, and contract proposals to conduct research related to the effects of global change on ecological processes and ecosystem characterization, and monitoring of ecological systems of climate stressed environments of the public lands administered by the BLM in the intermountain west and Alaska. The BLM GCRP is part of the U.S. GCRP initiated under the direction of the Committee on Earth and Environmental Sciences (CEES), established by the Executive Office of the President, Office of Science and Technology Policy.

Program Goals

The basic goals of the BLM GCRP are to:

(1) Determine the sensitivity and response of ecosystems and ecological processes to existing climate conditions and other environmental factors and human influences on a local and regional scale.

(2) Evaluate how future global change may influence ecosystem structure and function, and how such influences may affect long-term viability and productivity of rangelands, forestlands, wetlands, riparian areas, tundra, and other sensitive ecosystems on the public lands.

(3) Assess implications for future natural resource management of the public lands to sustain their multiple use, productivity, health, and diversity.

To accomplish these goals, the BLM intends to utilize and expand on its existing programs and natural resource management strengths. Some portion of the program will be accomplished in-house by BLM scientists. A major portion will be accomplished cooperatively with other agencies, universities, and other organizations utilizing grants, cooperative agreements, interagency agreements and, in certain circumstances when most advantageous, through the use of contracts.

The BLM GCRP is a 5-year research effort being conducted as part of the CEES U.S. GCRP under the science element Ecological System and Dynamics. The BLM GCRP includes projects in addition to those identified in this announcement. These projects are being conducted through existing cooperative agreements and interagency agreements. The titles of these research and monitoring projects and responsible BLM Office are:

Snake River Birds of Prey, Idaho, BLM Idaho State Office, Boise, Idaho.

Intermountain Wilderness Area Ecosystem Study, Paired Ecosystem Study, BLM Global Change Data

Management Project, BLM Wyoming State Office, Cheyenne, Wyoming.
Western U.S. Remote Area Climate Monitoring, BLM Boise Interagency Fire Center, Boise, Idaho.

Background

The BLM manages over 270 million acres of public lands. The majority of public lands are located in the intermountain west, an area subject to climatic extremes. Cold winters, hot summers, drought, wind, and wildfires are characteristic of most of these lands, which also include several of the nation's most important natural resources. The physical and biological diversity is high including an abundance of locally adapted populations, or ecotypes, that are extremely important to maintenance of ecosystem health and productivity and the stability of the region's ecological food webs.

It is projected that a changing global climate will exhibit higher levels of carbon dioxide and increased heat and aridity throughout much of the interior of North America. This may have profound effects on public lands, leading to increased desertification and land erosion diminished productivity, and perhaps widespread threats to sensitive biological species.

The BLM also manages large areas of arctic and subarctic lands in Alaska, especially in interior and northern Alaska. In many ways these northern lands are similar to the BLM managed lands in the intermountain west in that they are also subject to environmental extremes and may be affected significantly by changing climatic factors predicted by current global change models. Increasing temperatures may cause major changes in northern biological systems, and melting permafrost may cause increased erosion and important changes in soil processes. Increasing ultraviolet radiation resulting from reduced stratospheric ozone and increasing levels of atmospheric carbon dioxide may have additional biological consequences.

Included in the brand inventory of the public lands managed by the BLM are 28 wilderness areas (WA's) and 629 wilderness study areas (WSA's). These areas are more diverse in kinds of ecosystems than those managed by other agencies. Wilderness areas are specifically set aside to remain natural and unimpaired by human activity; they have had, by definition, only minimal or no impact from human activities. As such, they offer the opportunity to monitor change in areas that will only be influenced by climate changes on large scales. They offer the potential to distinguish global change-induced influences from local and regional atmospheric influences and from changes brought about by other direct human activities and factors such as local heat island effects of cities or the effects from local/regional air pollution sources. Outside the WA's and WSA's, the diversity of managed lands provides excellent areas for studying and evaluating the changes resulting from multiple use activities and for making comparisons with changes occurring within the WA's and WSA's.

The BLM's research program is designed to provide a more comprehensive understanding of how the physical and biological components of these ecosystems on the public lands interact and respond to future changing environments. This understanding is essential to sustain the multiple use and long-term viability and productivity of natural resources on the public lands.

Authority: This program is authorized under sections 307 (a) and (b) of the Federal Land Policy and Management Act of 1976.

Eligible Applicants

Eligible applicants are universities, State agencies, Federal agencies, and research organizations.

Availability of Funds

Approximately $500,000 is available in Fiscal Year 1991 (October 1, 1990 through September 30, 1991) to fund 3 research projects. It is anticipated that BLM GCRP awards will be for a 12-month period with options to renew the agreement annually up to 5 years. The length of the project period for individual projects will depend upon the nature and complexity of the projects. The Great Basin Columbia Plateau project may extend over a 10-year period.

The BLM anticipates that funding will be available in Fiscal Year 1992 to continue approved projects and additional funding may be available to fund new projects. Funding estimates may vary and are subject to change. Projects will be funded on an annual basis contingent upon satisfactory progress and the availability of funds.

Use of Funds

Funding will be available for allowable and reasonable costs which are allocated for program purposes such as salaries and fringe benefits, travel, supplies, contract services (as authorized by BLM), equipment (when justified and consideration is given to rental and/or lease), and indirect costs (overhead) approved by the cognizant audit agency.

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services, including contractual services (as authorized by BLM), and purchase of equipment (when justified and when rental and/or lease is found not to be feasible).

Purpose

The purpose of this program is to conduct research and monitoring of the potential effects of global change on the climate stressed ecosystems of the public lands in the western United States and Alaska in association with the U.S. GCRP. Additionally, this research program will provide the BLM with a better understanding of the interaction and response of the physical and biological components of these ecosystems in order to sustain and improve the multiple use, biodiversity and long-term productivity of the natural resources of the public lands.

Research Projects

The BLM requests applications and proposals to conduct research and monitoring studies on or related to the public lands in three regional areas including: (1) Great Basin and Columbia Plateau area of the western United States which includes portions of Oregon, Idaho, Washington, Nevada, Utah and California; (2) San Pedro River National Riparian Conservation Area of southwestern Arizona; and (3) Chihuahuan Desert of southern New Mexico.

Interested parties should request in writing or by electronic facsimile (FAX machine) a Request for Application from the responsible BLM State Office identified in the following project descriptions.

A. Great Basin and Columbia Plateau Area of the Western United States

1. *Project title:* Vegetation Diversity—A Research and Demonstration Program to restore and maintain native plant diversity on deteriorated rangelands in the Great Basin and Columbia Plateau Area.

2. *Project background:* Several million acres of public rangelands in the Great Basin and Columbia Plateau are threatened by infestation of undesirable vegetation and exotic weedy species which contribute to loss of biodiversity, lower vegetative productivity (forage for wildlife and domestic animals), diminished wildlife habitat, and soil erosion.

Extension research over the past 50 years has addressed many of these problems and impacts. However, the potential effects of global change upon these climate stressed ecosystems require a better understanding of the long-term influence and effects of the changing environment.

3. *Project research objectives:* The objectives of this research project are to improve the understanding of the ecological processes and other influencing factors on the ecosystems of the Great Basin and Columbia Plateau Area and advance the ability of the BLM to:

a. Determine the interaction and response of plants and plant communities to potential effects of global change.

b. Develop protocols and methods to restore and maintain natural vegetation for wildlife habitat.

c. Develop protocols and methods to restore and maintain natural forage for wildlife and domestic livestock.

d. Conduct monitoring and improve monitoring technology to distinguish changes in vegetation induced by global change including elevated levels of carbon dioxide and other environmental factors.

e. Determine protocols and methods to restore and maintain natural plant communities on selected sites in WA's and WSA's.

f. Determine strategies and methods to sustain or increase populations of special status plants (threatened or endangered species).

g. Determine strategies and methods to replace weedy plant species with native plants and retard or eliminate future spread of weedy plant species.

4. *Location of research project:* For the purposes of this research project, the Great Basin and Columbia Plateau are defined as those public lands administered by the BLM in eastern Oregon, eastern Washington, southern Idaho, western Utah, Nevada, northeast California, and other public lands with vegetation communities comparable to those found in the Great Basin and the Columbia Plateau. Although the primary focus of this research is on the public lands, activities related to this project are not restricted to public lands administered by the BLM.

5. *Responsible office:* The BLM Oregon State Office is responsible for this project. Applications regarding this project may be requested from Mr. Roger Sharp, State Procurement Analyst, BLM–OR952, Oregon State Office, Providence Office Park, 1300 NE. 44th Ave., P.O. Box 2965, Portland, Oregon 97213; telephone: (503) 280–7220, FAX (503) 280–73088.

B. San Pedro National Riparian Conservation Area and Associated Riparian Areas

1. *Project title:* Effects of Past and Contemporary Climate Change on the Ecological Communities and Hydrologic Regimes of the San Pedro River Watershed.

2. *Project background:* The potential effects of global change on the hydrologic regimes and ecological communities of the arid and semiarid lands of the southwestern United States may be critical to the environmental and economic well being of desert ecosystems.

The San Pedro River National Riparian Conservation Area and other associated riparian areas managed by the BLM are subject to environmental stress resulting from the combined influences and interaction of population growth, varying land use practices, competing uses for water resources, and climatic extremes characterized by high temperatures and extended periods of drought.

3. *Project research objectives:* The objective of this research project is to better understand past and present relationships of the climatic conditions, ecological communities and processes, hydrologic regimes, and human land uses upon the San Pedro river watershed in order to develop a predictive understanding to assess the potential impacts of global change on complex desert ecosystems including desertification processes.

4. *Location of research project:* The San Pedro River National Riparian Conservation Area is located in southeastern Arizona.

5. *Responsible office:* The BLM Arizona State Office is responsible for this project. Applications regarding this research project may be requested from Ms. Linda Johnson, State Procurement Analyst, BLM–AZ951, Arizona State Office, 3707 North 7th Street, P.O. Box 16563, Phoenix, AZ 85011, telephone: (602) 640–5525, FAX (602) 640–5556.

C. Chihuahuan Desert of Southern New Mexico

1. *Project title:* Global Change and the Dynamics of Plant Communities in the Chihuahuan Desert of Southern New Mexico.

2. *Project background:* The semiarid rangelands of the southwestern United States have undergone substantial change over the past century of human use. Originally, the northern Chihuahuan desert was dominated by perennial grasses. With historical times, shrubs have invaded and come to dominate extensive regions. Vegetation has become more diverse, less dominated by perennial grasses and more by shrubs. Desert plants display a wide diversity of growth forms, each performing best under slightly different environmental conditions.

Semiarid regions, which are transition zones between productive mesic zones and true deserts, are likely to be quite sensitive to climatic changes. Changing climatic conditions will alter the competitive balance among plant species and will be reflected in vegetational changes that may be critical to the future of the region.

3. *Project research objectives:* The objectives of this research project are to collect data needed to build a model of plant community dynamics incorporating native herbivore interactions, and to establish both modelling and experimental/observational methods for detecting alterations in composition and productivity of rangelands primarily, but not exclusively, in southern New Mexico. A further objective is to determine whether these rangelands are stable under current natural resource management practices, and how these communities and ecosystems may respond to changes in climate and other potential global change factors.

4. *Location of research project:* Research and monitoring studies for this project will be conducted primarily in the Jornada del Muerto basin (BLM Mimbres and Soccorro Resource Areas) in southern New Mexico. Additional public lands are also anticipated to be involved in this project.

5. *Responsible office:* The BLM New Mexico State Office is responsible for this project. Applications regarding this project may be requested from Ms. Peggy Dabb, State Procurement Analyst, BLM–NM951, New Mexico State Office, Joseph Montoya Federal Building, 120 S. Federal Place, P.O. Box 1449, Santa Fe, New Mexico, 87501, telephone: (505) 988–6889, FAX (505) 988–6530.

Program Requirements

A. Interagency Agreements

Interagency Agreements (IA) are agreements between one Federal agency and another. The BLM will enter into an IA when it is determined the other agency can most economically fulfill the BLM's needs.

B. Cooperative Agreements

In a cooperative agreement, the funding agency will actively participate with the collaborator in conducting the research, monitoring, and experimental studies described under Research

Projects in this announcement. The nature and extent of assistance will vary for each project and is described in the Request Application for each of the three research projects. Awards will be made and administered in accordance with the applicable Office of Management and Budget Circulars or the Common Rule.

The application should be presented in a manner that demonstrates the applicant's ability to address the project research objectives and successfully initiate the research project in Fiscal Year 1991.

C. Grants

A grant application should be presented in a manner that demonstrates the applicant's ability to address and successfully initiate the research project in Fiscal Year 1991 and indicates a high likelihood of completing the research project objectives. Awards will be made and administered in accordance with the applicable Office of Management and Budget Circulars or the Common Rule.

D. Contracts

A contract may be awarded as a result of this competitive announcement if it is determined by the contracting office to be in the best interest of the Federal Government. Federal acquisition regulation clauses will be included in any resulting contract.

E. Determination of Which Instrument To Use

Non-Federal applications must specify the type of award for which they are applying, either a cooperative agreement, grant, or contract.

F. Awards

Applicants may indicate their interest in conducting the entire research project or any portion thereof.

G. Reports, Project Review, and Technology Transfer

1. *Reports:* Progress reports will be required to be submitted semiannually (April 1, and October 1) to the BLM State Office Project Manager and the BLM Washington Office Global Change Program Coordinator. These reports will review the status of project activities and scientific findings of each task, indicate changes or deviations from the research plan, list publications and presentations, data management and data reporting activities, and activities planned for the upcoming report period.

Final reports are required of all projects and shall be submitted within 3 months of the conclusion of the project. The final report shall provide documentation of the methods and procedures used in the project, describe the quality of the data collected and analyzed, and provide the findings and accomplishments of the project relative to the project objectives.

2. *Project review:* The responsible BLM State Office will conduct a project review every 6 months following the semi-annual report to include site visits and review of work in progress. Periodic BLM Washington Office and Departmental review is anticipated including participation in Departmental and U.S. GCRP reviews and technical meetings.

3. *Technology transfer:* Project results and status shall be presented in a variety of ways to various audiences. Publication in the scientific literature will be a primary objective. Presentations will be made at scientific and professional society meetings, conferences, and symposia. Presentations in addition to the project review shall be made as requested to BLM staff and other agency personnel.

H. Project Description

The main body of the application and/or proposal should be a detailed description of how the statement of the work contained in the Request for Application is to be undertaken and should include: Objectives, hypotheses to be tested, methods to be used, and significance of the proposed work. Relevance of the proposed project to the objectives of the BLM GCRP and the U.S. GCRP should be clearly explained. The relationship to the present state of knowledge in the field of the research topic, and to related work in progress by the investigator or other investigators should be included.

To the extent possible, proposers are urged to provide a comprehensive project description carefully describing the work proposed including experimental design, a full description of the methods and procedures, and a list of the variables to be collected in support of each hypothesis or monitoring objective. The advantages and disadvantages of proposed methodolgies should be discussed.

I. Data Management

The BLM plans to establish a global change data management program in Fiscal Year 1991 to support the BLM GCRP and the data management policy established by the CEES for research conducted under the U.S. GCRP. This policy requires an early and continuing commitment to the establishment, maintenance, validation, description, accessibility, and distribution of high quality, long-term data sets. The primary objective of the policy is to achieve full and open sharing of quality global change data and supporting information. To accomplish this objective, the BLM plans to establish a central location where BLM global change data will be maintained and made available to the scientific community. Project participants will be required to submit quality-assured data and supporting information on a regular and timely basis. Data reporting formats and media may be determined by the BLM in conjunction with the project principal investigator or project leader.

Supporting documentation must be sufficient to allow others not involved in the initial data collection and processing to determine how, when, and where the data were collected, and how they have been calibrated, validated, or otherwise transformed. Schedules for the submission of data and supporting information will be specified in final research plans and/or task descriptions. Data submitted will be subjected to additional validation checks; project personnel will be expected to assist in resolving any discrepancies identified by these checks.

To facilitate comparisons of data acquired by different research and monitoring projects in the BLM GCRP, the BLM may, following consultation with the research project scientists, require the use of specified methods and protocols for measurements of some environmental parameters. These methods and protocols will be selected early in the research effort with the participation of research project scientists. The basic goal is to standardize measurement methods and protocols throughout the BLM GCRP to the extent that such standardization does not conflict with the research objectives and accomplishment of individual projects.

Evaluation Criteria

A. Project Evaluation Criteria

Specific evaluation criteria for each project will be provided in the Request for Application for each project.

B. CEES Evaluation Criteria

The evaluation criteria of the CEES U.S. GCRP as listed in the report "Our Changing Planet: The FY 1991 U.S. Global Change Research Program" will apply as listed below:

1. *Relevance/Contribution.* The research must address the overall goal and one or more of the three key scientific objectives (observe, understand, and predict) of the U.S. GCRP.

2. *Scientific Merit.* The proposed work must be scientifically sound and of high priority, and be the product of a documented scientific planning and review process.

3. *Readiness.* The level of planning and capabilities must be of high quality, and the research likely to produce vital and needed advances.

4. *Linkages.* The project should reflect high potential for interagency cooperation, cooperation among awardees, and/or other national and international connections.

5. *Costs.* Identified funding and other resources should be adequate to successfully undertake the project.

Catalog of Federal Domestic Assistance Number

The catalog of Federal domestic assistance number for research projects identified in this announcement is 15.DGC.

Application Submission Deadline Date

All research applications or proposals are due at the BLM Service Center, Branch of Procurement (SC–651), 390 Union Boulevard, suite 540, Lakewood, Colorado, 80228, by April 15, 1991.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and project descriptions may be obtained from the appropriate BLM State Office State Procurement Analyst, previously identified in this announcement. Request for technical assistance should be directed to the appropriate State Procurement Analyst.

Susan Recce Lamson,

Acting Deputy Director, Bureau of Land Management.

[FR Doc. 91–5899 Filed 3–12–91; 8:45 am]

BILLING CODE 4310–84–M

[UT–060–01–4212–13; UTU–65023]

Availability of the Proposed Planning Amendment for the Price River Resource Area Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Proposed Planning Amendment for the Price River Resource Area Management Framework Plan.

SUMMARY: Notice is given to the public that the proposed planning amendment is available for the public review. The plan amendment will read as follows:

Salt Lake Meridian, Utah

T. 13 S., R. 11 E.,
Sec. 25, S2SW4NE4, E2NE4SW4, SE4SW4, W2SE4.
Encompassing 160.0 acres, more or less.

The following described parcel of private land will be acquired only through exchange under Section 206 of the Federal Land Policy and Management Act of 1976:

Salt Lake Meridian, Utah

T. 14 S., R. 11 E.,
Sec. 13, S2SW4, NE4SW4,
Sec. 24, NE4NW4.
Encompassing 160.0 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Road, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management of 1976, and 43 CFR part 1610. The Proposed Planning Amendment is subject to protest from any adversely affected party who participated in the planning process. Protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protest must be received by the Director (WO–760) of the Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the Proposed Planning Amendment.

Dated: February 25, 1991.

James M. Parker,

State Director.

[FR Doc. 91–5831 Filed 3–12–91; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Mines

Information Collection submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Mangement and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0006), Washington, DC 20503, telephone 202–395–7340.

Title: Ferrous Metals Surveys.

OMB approval number: 1032–006.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

Bureau form number: 6–1066–MA ET AL (14 Forms).

Frequency: Monthly and Annual.

Description of respondents: Producers and Consumers of Ferrous Metals.

Annual responses: 6,926.

Annual burden hours: 3,602.

Bureau clearance officer: Alice J. Wisman, 202–634–1125.

Dated: March 5, 1991.

T.S. Ary,

Director, Bureau of Mines.

[FR Doc. 91–5836 Filed 3–12–91; 8:45 am]

BILLING CODE 4310–53–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The justification for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the justification and related information may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirements should be made directly to the bureau clearance officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: Information Collection Related to Cooperative Agreements.

Abstract: States and Indian tribes may voluntarily request the Director of the Minerals Management Service (MMS) for the opportunity to enter into cooperative agreements allowing the State or tribe to carry out royalty audits for MMS. The State or Indian tribe must submit an application to MMS detailing the activities to be undertaken, the term of the agreement, and the estimated budget, and also present evidence that the State or tribe can meet the standards

established by the Secretary of the Interior for audits to be conducted under the agreement. Eligible audit activities are 100 percent reimbursable upon the submission of a quarterly progress report and a voucher summarizing quarterly costs. Annual work plans and budgets are required each year the cooperative agreement is in effect.

Bureau form number: None.
Frequency: On occasion.
Description of respondents: States and Indian tribes.
Estimated completion time: 152 hours.
Annual responses: 3.
Annual burden hours: 456.
Bureau clearance officer: Dorothy Christopher 703–787–1239.

Dated: February 14, 1991.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 91–6001 Filed 3–12–91; 8:45 am]

BILLING CODE 4310–MR–M

[FES 91–9]

Alaska Region; Availability of the Final Environmental Impact Statement for the Proposed Mining Program Lease Sale in Norton Sound

The Minerals Managment Service has prepared a final Environmental Impact Statement (EIS) relating to the proposed 1991 Outer Continental Shelf Mining Program Lease Sale in Norton Sound. The proposed sale will offer for lease approximately 147,050 acres.

Single copies of the final EIS can be obtained from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. Copies can also be requested by telephone, (907) 261–4435.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Historical Library, Juneau, Alaska Pacific University Library, 1531 Cresent Avenue, Anchorage, Alaska; Alaska State Library, Juneau, Alaska; Hooper Bay Public Library, Hooper Bay, Alaska; Gambell Community Library and Learning Center, Gambell, Alaska; George Francis Memorial Library, Kotzebue, Alaska; Golovin Community Library, Golovin, Alaska; Kegoyah Kozga Public Library, Nome, Alaska; Kingikmo Public Library, Wales, Alaska; Koyuk City Library, Koyuk, Alaska; Kuskokwim Consortium Library, Bethel, Alaska; McQueen School Library, Kivalina, Alaska; North Slope Borough School Library, Barrow, Alaska; Northern Alaska Environmental Center Library, 218 Driveway Street, Fairbanks, Alaska; Palmer Public Library, 655 S. Valley Way, Palmer, Alaska; Savoonga Public Library, Savoonga, Alaska; Shaktoolik School Library, Shaktoolik, Alaska; Stebbins Community Library, Stebbins, Alaska; Ticasuk Library, Unalakleet, Alaska; Tikigaq Library, Point Hope, Alaska; University of Alaska, Elmer E. Rasmuson Library, Fairbanks, Alaska; University of Alaska, Government Documents Library, 3211 Providence Drive, Anchorage, Alaska; Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska.

Dated: March 7, 1991.

Thomas Gernhofer

Associate Director for Offshore Minerals Management.

Approved:

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91–5996 Filed 3–12–91; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–307]

Probable Economic Effect on U.S. Industries and Consumers of a Free-Trade Agreement Between the United States and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearings.

SUMMARY: As previously announced on February 6, 1991 (56 FR 5841, February 13, 1991), the Commission will hold hearings in Scottsdale, AZ (a Phoenix suburb), Chicago, IL, and Washington, DC to solicit views and opinions of the business community, labor, consumers, and other interested parties in connection with this investigation. This notice provides further information on hearing sites, dates, and times.

EFFECTIVE DATE: March 7, 1991.

SCHEDULE OF HEARINGS: Following is the schedule of the public hearings:

Hearing city and location	Hearing date (1991) and time
Scottsdale, AZ: The Inn at McCormick Ranch, 7401 N. Scottsdale Road, Scottsdale, AZ 85253.	Monday, April 8, 9:30 a.m.
Chicago, IL: The Knickerbocker Hotel, 163 East Walton Place, Chicago, IL 60611.	Wednesday, April 10, 9:30 a.m.
Washington, DC U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.	Friday, April 12, 9:30 a.m.

Issued: March 7, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5909 Filed 3–12–91; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11434–11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC–F–19782, filed December 27, 1990. Sidney Kuchin, et al.—Continuance in Control—Suburban Transit Corp., Suburban Trails, Inc., and H.A.M.L. Corp. Applicant's representative: Michael J. Marzano, 99 Kinderkamack Road, Westwood, NJ 07675. Applicants Sidney Kuchin, Kenneth, Ronald Kohn, and Donald Engis (Kuchin, *et al.*) are in control of: (1) Suburban Transit Corp. (MC–115116), a common carrier of passengers; (2) Suburban Trails, Inc. (MC–149061), a common carrier of passengers; and (3) H.A.M.L. Corp. (H.A.M.L.), a new carrier seeking its initial common carrier authority to transport passengers, in charter and special operations, between points in the United States (except Hawaii) (MC–194792). Upon issuance of authority to H.A.M.L., Kuchin, *et al.*, will be in control of three passenger carriers. This corrects a notice published in the ICC Register February 15, 1991.

Decided: March 7, 1991.

By the Commission, the Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–5930 Filed 3–12–91; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–346X]

Bad Water Line—Abandonment Exemption—In Fremont County, WY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 22.544-mile line of railroad between milepost 703.068, near Shoshoni, and milepost 725.612, at the end of the line in Riverton, Fremont County, WY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 12, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 25, 1991.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by April 2, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles H. Montange, 1400 16th Street, NW., suite 301, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environmental (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by March 18, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–5807 Filed 3–12–91; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so. The request for imposition of a trail use condition by Fremont County, WY, will be considered in a subsequent decision.

DEPARTMENT OF JUSTICE

Lodging of Proposed Stipulation and Order Under the Federal Water Pollution Control Act

Notice is hereby given, in accordance with Departmental policy, 28 CFR 50.7 that on February 28, 1991, a proposed Joint Stipulation and Order ("Stipulation") was lodged with the United States District Court for the Southern District of Indiana in *United States* v. *City of Boonville, et al.*, Civil Action No. EV–84–187–C (S.D. Ind.), between the United States—on behalf of the Environmental Protection Agency ("EPA")—and defendants City of Boonville ("City") and the State of Indiana.

The claims that would be resolved under the proposed Stipulation arise from alleged violations of the Consent Decree entered by the Court in this civil action in 1987. The Decree resolved claims of the United States concerning the City's publicly owned wastewater treatment works, for both injunctive relief and civil penalties arising under the Federal Water Pollution Control Act ("Act"), 33 U.S.C. 1251, *et seq.*, including, *inter alia*: (1) The City's violation of NPDES limits for discharge of pollutants and related analytic and reporting requirements, and (2) violation of an Administrative Order that had been issued to the City under sections 308 and 309 of the Act, 33 U.S.C. 1318 & 1319. The proposed Stipulation provides the City a modified schedule for completing work relating to compliance with its NPDES Permit and the 1987 Consent Decree. Much of the work to be completed is intended to redress problems relating to combined sewer overflow and influent infiltration. Also under the proposed Stipulation, the City will pay the United States a civil penalty of $50,000.

The Department of Justice will receive comments relating to the proposed Stipulation for 30 days following the publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Boonville, et al.*, D.J. Ref. No. 90–5–1–1–2071A. The proposed Stipulation may be examined at the Office of the United States Attorney for the Southern District of Indiana, 274 United States Courthouse, Indianapolis, Indiana, or at the Environmental Enforcement Section Document Center, 1333 F Street NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed Stipulation may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.50 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 91–5832 Filed 3 -12–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Settlement Stipulation

In accordance with the policy of the Department of Justice, 28 C.F.R. 50.7, notice is hereby given that on March 5, 1991, a proposed Stipulation and Agreement to Settle in *In re: Davis Walker Corporation.*, was lodged with the Bankruptcy Court for the Central District of California. The settlement is in connection with claims of the Environmental Protection Agency in Davis Walker's chapter 11 bankruptcy proceedings.

The proposed settlement stipulation resolves civil claims of the United States regarding the liability of Davis Walker Corporation for disposal of hazardous substances at the Operating Industries, Inc. landfill, located in Monterey Park, California, and for payment of outstanding settlement amounts under a previously agreed to settlement agreement related to the Western Processing site, in Kent, Washington. The settlement provides that the claim for past costs and for ongoing remedial action at the Operating Industries site, and for payment of the remaining settlement amounts for Western Processing, will be paid in the same fashion as all other general unsecured creditors in the bankruptcy. Davis Walker also agrees to pay 0.47% of all future response costs incurred at the Operating Industries site, up to a total payment of $2.35 million.

The Department of Justice will receive comments relating to the proposed settlement stipulation for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *In re: Davis Walker Corp.*, D.J. Ref. 90-11-3-156C.

The proposed settlement stipulation may be examined at the office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012, at the Region IX office of the U.S. Environmental Protection Agency, 1235 Mission Street, San Francisco, California 94103, and at the Region X office of the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101. A copy of the proposed settlement stipulation may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed settlement stipulation may be obtained in person or my mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5894 Filed 3-12-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Resources, Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *E. I. du Pont de Nemours & Co.*, Civil Action No. 1:91cv00768, has been lodged with the United States District Court for the District of New Jersey on February 22, 1991. The proposed consent decree settles certain past disposal and testing violations of the land disposal restrictions at Du Pont's Chambers Works facility located in Deepwater, New Jeresey. The proposed consent decree requires Du Pont to pay a civil penalty of $1.85 million. In addition, the consent decree requires Du Pont to perform a compliance audit to ensure that the Chambers Works facility and other Du Pont facilities nationwide that shipped restricted wastes to the facility are currently meeting the land disposal restrictions requirements. Further, the consent decree requires Du Pont to perform certain pollution prevention activities designed to identify and assess opportunities for reducing hazardous waste.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *E. I. du Pont de Nemours & Co.*, D.J. Ref. 90-7-1-497.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Post Office Building, 401 Market Street, Fifth Floor, Camden, New Jersey 08101; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. A copy of the proposed consent decree and appendices can be obtained in person or by mail from the Document Center. In requesting a copy of the consent decree, please enclose a check in the amount of $14.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-5833 Filed 3-12-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Environmental Services, Inc. et. al.* was filed in the United States District Court for the District of Nebraska on October 16, 1989. On March 5, 1991, a consent decree was lodged with the Court in settlement of the allegations in that complaint. This consent decree settles the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for the recovery of response costs incurred by the United States in responding to an actual or threatened release of hazardous substances from a facility located in Omaha, Nebraska known as the "Environmental Services Inc. Site." The complaint alleged, among other things, that the defendants are persons who owned or operated a facility at which hazardous substances were disposed of, or who arranged for the disposal of hazardous substances at the site or transported or arranged for transport of hazardous substances to the site, and that the United States has incurred response costs in response to the release or threat of release of hazardous substances from the site.

Under the terms of the proposed consent decree, the defendants agree to pay the United States the sum of $466,500.00 for past response costs incurred by the government.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue NW., Washington, DC 20530. All comments should refer to *United States* v. *Environmental Services, Inc., et al.*, E.J. Ref. 90-11-3-493.

BEST COPY AVAILABLE

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency:

EPA Region VII

Contact: Daniel Shiel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VII, 725 Minnesota Ave., Kansas City, KS 66101, (913) 551-7278, and the Office of the United States Attorney: 6000 U.S. Post Office & Courthouse, 215 North 17th Street, Omaha, NE 68101.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5834 Filed 3-12-91; 8:45 am]

BILLING CODE 4410-01-M

Notice of Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Pinetree Power-Tamworth, Inc.*, (D.N.J.), Civil Action No. 90-87-S was lodged with the United States District Court for the District of New Jersey on February 27, 1991. The Consent Decree provides for penalties for violation of the New Hampshire State Implementation Plan ("SIP") concerning permit requirements for major sources, and enjoins Pinetree from further violations of the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and the New Hampshire SIP.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Pinetree Power-Tamworth, Inc.*, D.O.J. Ref. No. 90-5-2-1-1454.

The Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, P.O. Box 480, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, J.F.K. Building, RCA-1903, Boston, Massachusetts 02203; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.75 payable to Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-5835 Filed 3-12-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF ENERGY

Employment and Training Administration

[TA-W-25,051]

SESA Fluorspar Eagle Pass, TX; Negative Determination Regarding Application for Reconsideration

By an application dated February 5, 1991, the petitioners and other former workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 21, 1990 and published in the Federal Register on January 17, 1991 (56 FR 1825).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produced fluorspar which was used in the production of aluminum. The subject facility closed in July, 1980.

The former workers, among other things, requested that the Department reconsider its determination in light of the economy of their city. The former employees also stated that workers producing flurospar at Reynolds Metals in Eagle Pass received trade adjustment assistance.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. U.S. imports of fluorspar decreased absolutely and relative to domestic shipments in 1989 compared to 1988 and decreased absolutely in the first six months of 1990 compared to the same period in 1989. A further review of the aggregate data shows that U.S. shipments and U.S. consumption of fluorspar declined in 1990 compared to 1989.

Investigation findings show that approximately half of the company sales were exported. A decline in export sales would not form a basis for certification. With regard to domestic sales, the major customer responding indicated that it would have continued to purchase fluorspar from the company had it remained open.

Workers at Reynolds Metals Company in Eagle Pass were certified for trade adjustment assistance under petition TA-W-18,651 issued on January 23, 1987. The workers met all the Group Eligibility Requirements of the Trade Act during the applicable period of their petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 5th day of March 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-5734 Filed 3-12-91; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-22,071]

Southern Triangle Oil Co., Mt. Carmel, IL, Operating at Various Locations in the Following States: TA-W-22,071A IL, TA-W-22,071B IN, TA-W-22,071C OH, TA-W-22,071D WV; Revised Certification on Reconsideration

By order dated February 14, 1991, the United States Court of International Trade (USCIT) remanded this case to the Department of Labor in accordance with the opinion of the U.S. Court of Appeals for the Federal Circuit.

A review of the matter shows that all records of the subject company were destroyed in a fire, AR 10, 11, 20. As a result of a list of customers obtained from the company AR 20, the Department found that the customers imported crude oil in the relevant period and certified the workers of Southern Triangle as an integrated producer with an impact date of November 15, 1987. The certification went the full statutory limit of one year prior to the date of the petition.

Mr. Charles Pierson whose layoff was prior to the Department's impact date sought redress through the State administration process and then to the USCIT. Administrative reconsideration was not sought.

On November 14, 1990, the USCIT remanded the matter to the Department to revise its negative determination by making the retroactive provisions of the 1988 amendments to the Trade Act apply to the certification. The Department complied with the order but appealed to the Federal Court of Appeals. On January 22, 1991, the Federal Court of Appeals concluded that the record was insufficient to support USCIT's judgment and remanded the matter to the USCIT with instructions to remand it to the Department to find the legally dispositive facts.

New information received from the company during this reconsideration shows that Southern Triangle was not a producer but a service company deriving half its revenues from drilling oil wells for others and half its revenues from the operation of oil producing properties of others. The new information shows that workers have a timely petition for the retroactive provisions and had decreased oil drilling revenues and employment declines in the relevant period.

Conclusion

After careful review of the additional information obtained on reconsideration, it is concluded that the workers have a timely petition which falls within the purview of the retroactive provisions of the Trade Act of 1974, as amended. It is further concluded that the workers met the Group Eligibility Requirements of the Trade Act contained in Section 222 and that this revised certification supersedes the one issued by the Department on April 13, 1990 which was published in the **Federal Register** on April 20, 1990 (55 FR 15028). In accordance with the provisions of the Act, I make the following revised certification:

"All workers of Southern Triangle Oil Company, Mt. Carmel, Illinois and operating at various other location in the States listed below who became totally or partially separated from employment on or after October 1, 1986 and before November 15, 1987, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

TA-W-22,071A Illinois
TA-W-22,071B Indiana
TA-W-22,071C Ohio
TA-W-22,071D West Virginia

Signed at Washington, DC this 1st day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5935 Filed 3-12-91; 8:45 am]

BILLING CODE 4510-30-M

Experimental and Demonstration (E & D) Solicitation for Grant Application—Economic Dislocation and Worker Adjustment Assistance (EDWAA) Job Creation Demonstration Project

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of Solicitation for Grant Application (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor announces the intent to award grants on a competitive basis for the conduct of projects to demonstrate the effectiveness of non-profit Community Development Corporations (CDCs) in creating employment and entrepreneurial opportunities for dislocated workers residing in rural and urban communities that have been adversely affected by worker dislocation. Indian and Native American Tribal Organization are also eligible to apply to conduct these projects. This notice provides a synopsis of the proposed SGA. It is anticipated the awards will be made by June 30, 1991.

DATES: The applications will be available March 28, 1991. The requests shall be made in writing to the address below. Telephone and telefacsimile (FAX) requests will not be honored. The requests shall cite SGA-DAA 91-001 and shall include two (2) self-addressed labels. These requests will be honored on a first-come, first-serve basis until the supply of 300 copies is exhausted.

The closing date for receipt of proposals will be May 13, 1991 at 4:45 p.m., Eastern Standard Time. Any application not meeting the designated place, date and time of delivery will not be considered.

ADDRESSES: Mail requests for grant applications to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room C-4305, Washington, DC 20210. Attention: Gwendolyn Simms, Reference SGA/DAA 91-001.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Simms Telephone: (202) 535-8702 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA), U.S. Department of Labor, announces the availability of funds to demonstrate the effectiveness of Community Development Corporation (CDCs) with the cooperation of local Job Training Partnership Act (JTPA) title III substate grantees in creating employment for eligible disclocated workers. This solicition is authorized by JTPA, section 324(a), 20 U.S.C. 1662(a). The purpose of these demonstrations is to experiment on a modest scale with novel approaches that subsequently may prove beneficial to larger dislocated worker populations. The Secretary must thoroughly research and evaluate the success of each demonstration conducted under this provision of the Act. These demonstration projects must include two of the following: (1) Self-employment opportunity program, (2) public work employment program, (3) dislocated farmer program, and (4) job creation program.

The period of performance will be 15 months from the date of execution of the grant award. It is anticipated that $2 million will be available for these projects. The maximum grant award will be $500,000. ETA may, at its option, extend the grants and provide additional funds based on grantee's performance and the available of funds, for up to two additional years. Awards under this solicitation will be made to eligible non-profit urban and rural CDCs and/or Indian and Native American tribal organizations to encourage the creation of projects intended to provide employment and business development opportunities for dislocated workers. The term "CDCs" means a private non-profit, locally initiated entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development. The term "Indian and Native American tribal organizations" as used in this announcement means those Indian tribes, bands or groups on Federal or State reservations, Oklahoma Indians, and Alaska native villages or groups funded under Section 401 of JTPA that the Secretary determines as having demonstrated a focus on the capability of engaging in economic development projects.

Job Creation Demonstration—ETA is interested in demonstrating innovative, replicable and effective approaches to creating new employment opportunities for dislocated workers through cooperative efforts between EDWAA substate grantees and CDCs. Each respondent to this solicitation shall provide written commitments and assurances that a cooperative relationship exists between the applicant and the agency responsible for administering Title III of the Job Training Partnership Act in the area to be served by the project. While the focus of this solicitation is on job creation, the range of activities that could be part of the project is very open ended.

Evaluation Component—All grantees under this solicitation will be required to participate in an evaluation process. Evaluation will be conducted at two levels: (1) Individual project evaluations, and (2) a national evaluation across all grantee projects. This evaluation will be the basis for a report to the Congress, due in October 1992. The national evaluation will be conducted by a contractor selected by ETA.

All eligible applications will be reviewed and evaluated against the following criteria: Need for the project—10 points; Service Delivery Strategy—30 points; Significant and Beneficial Impact—20 points; Evaluation—15 points; Level of Efforts—10 points; and Organization Capability—15 points.

Signed at Washington, DC, this 27th day of February, 1991.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 91-5938 Filed 3-12-91; 8:45 am]

BILLING CODE 51-2555-M

Mine Safety and Health Administration

Petition for Modification

The following parties have filed petitions to modify the application of manadatory safety standards under 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Richard Sykora, P.O. Box 822, Foresthill, California 95631 has filed a petition (M-91-01-M) to modify the application of 30 CFR 57.4431 (surface storage restrictions) to his DeMaria Mine (I.D. No. 04-04488) located in Placer County, California. The petitioner proposes to store a 550-gallon fuel tank 57 feet from the mine opening.

2. Manalapan Mining Company, Inc., P.O. Box 311, Brookside, Kentucky 40801-0311 has filed a petition (M-91-17-C) to modify the application of 30 CFR 75.1710-1(a) (canopies or cabs; self-propelled electric face equipment; installation requirements) to its No. 7 Mine (I.D. No. 15-16733) located in Harlan County, Kentucky. Due to low mining heights, the petitioner proposes that the use of canopies on electric face equipment will result in a dimunition of safety.

3. J & S Collieries, Inc., P.O. Box 3544, Pikeville, Kentucky 41502 has filed a petition (M-91-18-C) to modify the application of 30 CFR 75.1710 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its No. 1 to low mining heights, the petitioner requests relief from the use of canopies on shuttle cars.

4. Webster County Coal Corporation, P.O. 128, Clay, Kentucky 42404 has filed a petition (M-91-19-C) to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device sysems; installation; minimum requirements) to its Dotiki Mine (I.D. No. 15-02132) located in Webster County, Kentucky. The petitioner is requesting to amend their existing petition to change the location of carbon monoxide sensors.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 12, 1991.

Dated: March 5, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-5944 Filed 3-12-91; 8:45 am]

BILLING CODE 4510-43-M

LEGAL SERVICES CORPORATION

Announcement of Availability of Grant Funds for Provision of Legal Services in the States of Alabama, Arkansas, Mississippi, and Tennessee

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of grant funds for the provision of legal services to the eligible migrant farmworker client population in the states of Alabama, Arkansas, Mississippi, and Tennessee.

DATES: All applications must be received on or before April 22, 1991.

ADDRESSES: A solicitation package, setting out the grant application guidelines, proposal content requirements, and specific selection criteria, is available upon request. Address all inquiries and solicitations to the Grants and Budget Division, Office of Field Services, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budget Division, at the address given above; telephone (202) 863-1837.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. LSC is seeking applicants from the private bar and/or other organizations (including currently funded LSC grantees) with a demonstrated sensitivity and commitment to service delivery to low-income persons to provide civil legal services to the eligible migrant farmworker client population in the state of Alabama, Arkansas, Mississippi, and Tennessee.

A total of $42,397 in one-time grant funds is available for Alabama, $49,140 for Arkansas, $179,735 for Mississippi, and $12,527 for Tennessee. Grant funds will be awarded no earlier than June 1, 1991.

Selection Criteria

Each proposal will be reviewed to insure that it meets the minimum requirements set forth in this solicitation. The following summarizes selection criteria to be used in conducting the review:

I. Objectives of Program Development/Expansion (25%)

The extent of the applicant's objectives (e.g., the number of clients to be served, or the complexity and special characteristics of cases to be closed by the program) and quality of the applicant's objectives (e.g., program characteristics that would enhance the quality of basic legal services which it would provide) will be assessed in the context of the amount of funding requested and the applicant's prior grant history, if any.

II. Capability of Applicant to Accomplish Objectives (40%)

The proposed project design, management plan, staff level and experience, and program structure as well as the qualifications and experience of the program director and staff will be evaluated. The applicant should also explain how it will provide opportunity for involvement by the private bar in the direct delivery of legal service.

III. Reasonableness of Costs in Relation to Objectives (25%)

The applicant's budget submission (part B) will be reviewed in the context of its stated objectives to determine whether projected costs are reasonable.

IV. Community Support (10%)

The applicant should explain how the proposed program activities and services will complement the civil legal services provided by other local entities to low-income migrant farmworkers. The extent to which a cooperative effort exists between the applicant and local courts and bar associations should also be described.

Any grant application(s) recommended for funding by LSC will, pursuant to section 1007(f) of the LSC Act, be announced in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant(s).

Dated: March 8, 1991.

Ellen J. Saneed,

Director, Office of Field Services.

[FR Doc. 91-5953 Filed 3-12-91; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Organizations: Theater Section) to the National Council on the Arts will be held on March 26, 1991 from 9:15 a.m.-6 p.m. and March 27-29 from 9 a.m.- 6 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 26 from 9:15 a.m.-10:30 a.m. and March 29 from 2:45 p.m.-6 p.m. The topics will be opening remarks, general program overview and policy discussion.

The remaining portions of this meeting on March 26 from 10:30 a.m.-6 p.m., March 27-28 from 9 a.m.-6 p.m. and March 29 from 9 a.m.-2:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 522b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: February 26, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-5837 Filed 3-12-91; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel, Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Section) to the National Council on the Arts will be held on March 27, 1991 from 9:30 a.m.-6:30 p.m. and March 28 from 9 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 27, from 9:30 a.m.-10 a.m. and on March 28 from 5 p.m.-5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 27 from 10 a.m.-6:30 p.m. and on March 28 from 9 a.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: February 26, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-5838 Filed 3-12-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

The Cleveland Electric Illuminating Company, et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.45(b)(2)(iii) to the Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company, (the licensees), for the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow a 3-month delay in the submittal of the certification of the Perry Nuclear Power Plant, Unit 1, control room simulator. Title 10 CFR 55.45(b)(2)(iii) requires that the certification be submitted by March 26, 1991. Because of delays resulting from the licensee's decision to purchase a new simulator, as opposed to upgrading the existing simulator as was originally envisioned, the licensee proposes to submit the required certification by June 28, 1991.

The first operator examinations using the new simulator are scheduled for February 1992. The licensees do not anticipate any delay in the administration of the simulator portion of these operator examinations. The licensees have not requested an exemption to the provision of 10 CFR 55.45(b)(2)(iv) which requires that, after May 26, 1991, the simulator portion of the operating test be administered on a certified or approved facility.

The proposed action is in accordance with 10 CFR 55.11, Specific Exemptions, and is based on the information provided to the NRC in letters from the licensees dated November 21, 1989, January 30, 1990, and February 12, 1991.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensees to complete the factory acceptance testing of the new plant-referenced simulator. This will permit the licensees to use the factory acceptance testing as the testing portion of the certification process.

Environmental Impacts of the Proposed Action

The proposed action will have no incremental impact relative to current practice because the exemption will affect the schedule for activities related to simulator certification but will not otherwise alter the actions being taken to install a new plant-referenced simulator at the Perry Nuclear Power Plant, Unit 1.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts attributed to this facility but would impose on the licensees a less efficient and more costly certification process.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Perry Nuclear Power Plant, Unit No. 1, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 21, 1989, supplemented by letters dated January 30, 1990, and February 12, 1991, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 7th day of March 1991.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5838 Filed 3-12-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Co. et al.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.45(b)(2)(iii) to the Toledo Edison Company, (the licensee), for the Davis-Besse Nuclear Power Station located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The revision to 10 CFR part 55, "Operators' Licenses," became effective on May 26, 1987, which established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i-1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalification. These regulations further require that a certified or NRC-approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated November 5, 1990, the Toledo Edison Company (the licensee) requested a temporary exemption from the schedule requirements for certification of a plant-referenced simulator. The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR Part 55 requires that facility licensees preparing to use a simulation facility consisting solely of a plant-referenced simulator submit NRC Form-474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. The November 5, 1990, submittal by the licensee requested an exemption from this filing requirement to allow for the submittal of NRC Form-474 after March 26, 1991, but no later than September 1, 1991.

The proposed action is in accordance with 10 CFR 50.12 and 55.11, "Specific Exemptions," and is based upon the information provided to the NRC in the licensee's request dated November 5, 1990.

The Need for the Proposed Action

The proposed exemption is needed to assure that 93 plant modifications and the resulting modifications made in the Control Room are accurately included in the simulator.

Environmental Impacts of the Proposed Action

The proposed action will have no incremental impact on the environment because the exemption only delays final certification of the simulator until after it becomes operable. The exemption will merely defer the required administrative burden of reporting that certification is complete for a nominal period of time to allow the licensee an opportunity to more fully comply with the spirit of the rule. In the mean time, operators will continue to be trained and examined on the offsite simulator (Power Safety International) as they have since 1977. Final certification of the new simulator, and compliance with 10 CFR 55.45, shall be accomplished by September 1, 1991.

Alternative to the Proposed Action

Since the Commission concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to the facility and would still result in operators being trained and examined on the offsite facility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement" related to operation of the facility.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for amendment dated November 5, 1990 which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the University of Toledo Library, Document Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 5th day of February 1991.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5941 Filed 3-12-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Improved Light Water Reactors; Meeting Postponed

Notice of an open meeting of the ACRS Subcommittee on Improved Light Water Reactors to be held on Thursday and Friday, March 14 and 15, 1991, at EPRI, 3412 Hillview Avenue, Palo Alto, CA was published in the **Federal Register** on Friday, March 1, 1991 (56 FR 8607). The meeting has been rescheduled for Tuesday, April 9 (8:30 a.m.–5 p.m.) and Wednesday, April 10 (8:30 a.m.–10:30 a.m.), 1991, at 7920 Norfolk Avenue, room P–110, Bethesda, MD.

The Subcommittee will review NRC staff's Draft Safety Evaluation Reports corresponding to Chapters 6–13 of the EPRI–ALWR Requirements Document for the Evolutionary Designs and other related issues.

For further information contact: Mr. Medhat El-Zeftawy, ACRS Senior Staff Engineer (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m.

Dated: March 6, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–6066 Filed 3–12–91; 8:45 am]

BILLING CODE 7590-01-M

Privacy Act of 1974; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Minor amendments to system of records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending several of its systems of records notices. The amendments are minor in nature and are necessary to let employees know addresses where personal information is maintained, to inform them of new system managers due to a reorganization in NRC's Office of Personnel, and to add the street address of the NRC Technical Training Center.

EFFECTIVE DATE: The proposed amendments will take effect without further notice on April 12, 1991, unless comments received on or before that date require a different decision. If, based on NRC's review of comments received, changes are made, NRC will publish a new final notice.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: 301–492–7086 or toll free 800–368–5642.

SUPPLEMENTARY INFORMATION: The NRC is experiencing a period of great demand for highly qualified health physicists, nuclear engineers, and engineers in certain specialty disciplines. This demand is also being experienced by utilities; other Federal agencies, including the Department of Energy; laboratories; and the nuclear industry. To meet stronger competition for highly trained nuclear specialists and maintain a base of technical expertise, the NRC Graduate Fellowship seeks to encourage highly qualified bachelor-level graduates in science and engineering to pursue an education and a career in nuclear power regulation. The Graduate Fellowship Program will assist the NRC in meeting its workforce needs by sponsoring graduate scientists and engineers in either an applied health physics/radiation protection or an applied nuclear engineering, specialized engineering discipline Master's program. Information provided on the application for the NRC Graduate Fellowship Program will be used solely for the purpose of selecting fellows and administering the fellowship program, and the application will be copied for that purpose only. NRC will review all applications and individually select each fellow and alternatives.

The amendments set forth below amend paragraphs entitled "System Manager(s) and Address" in four systems of records to reflect a recent reorganization within the Office of Personnel, and paragraphs entitled "System Location" in each of two systems of records notices to add a new address to those indicated under duplicate systems. In addition, the street address for the NRC Technical Training Center is added to Addendum I.

1. NRC–8, Employee Appeals, Grievances, and Complaints Records—NRC, is being amended to indicate the correct title of the system manager.

NRC–8

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Policy and Labor Relations, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

2. NRC–11, General Personnel Records (Official Personnel Folder and Related Records)—NRC, is being amended to indicate a new location for duplicate systems.

NRC–11

* * * * *

SYSTEM LOCATION:

Primary system—For Headquarters and Region V personnel, Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland. For the remaining Regional personnel, at Regional Offices I–IV listed in Addendum 1, Part 2.

Duplicate systems—Duplicate systems exist, in whole or in part, at the locations listed in Addendum I, Parts 1 and 2; at the National Institutes of Health Computer Facility, Bethesda, Maryland; and at the NRC Graduate Fellowship Program, Science/Engineering Education Division, Oak Ridge Associated Universities, P.O. Box 117, Oak Ridge, Tennessee. The duplicate systems maintained in a particular office, division, or branch may contain information of specific applicability to employees in that organization in addition to that information contained in the primary system.

* * * * *

3. NRC–13, Incentive Awards Files—NRC, is being amended to indicate the correct title of the system manager.

NRC–13

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Recruitment, Incentive and Executive Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

4. NRC–14, Employee Assistance Program Files—NRC, is being amended to indicate the correct title of the system manager in the Safeguards, System Manager(s) and Address, and Record Source Categories.

NRC–14

* * * * *

SAFEGUARDS:

Files are maintained in a safe under the immediate control of the Employee Assistance Program Manager.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Employee Assistance Program, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

* * * * *

RECORD SOURCE CATEGORIES:

Information compiled by the Manager, Employeee Assistance Program, during the course of counseling with an NRC employee or members fo the employee's family.

5. NRC–19, Official Personnel Training Records Files—NRC, is being amended to indicate a new location for duplicate systems.

NRC–19

* * * * *

SYSTEM LOCATION:

Primary system—Office of Personnel, NRC, 8120 Woodmont Avenue, Bethesda, Maryland.

Duplicate systems—Duplicate systems exist, in whole or in part, at the location listed in Addendum I, Parts 1 and 2; and at the NRC Graduate Fellowship Program, Science/Engineering Education Division, Oak Ridge Associated Universities, P.O. Box 117, Oak Ridge, Tennessee.

* * * * *

6. NRC–22, Personnel Performance Appraisals—NRC, is being amended to indicate the correct titles of the system managers.

NRC–22

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Part A. Chief, Benefits and Operations Support, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. For the remaining Regional personnel, at the Regional Offices I–IV listed in Addendum I, Part 2.

Part B. Chief, Recruitment, Incentive and Executive Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Wasington, DC 20555.

* * * * *

7. NRC–28, Recruiting, Examining, and Placement Records—NRC, is being amended to indicate the correct titles of the system managers and the types of records for which each is responsible.

NRC–28

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Part A: Chief, Recruitment, Incentive and Executive Programs, Office of Personnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (for records from outside the agency).

Part B: Chief, Employment and Staffing Programs, Office of Peronnel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (for merit promotions).

* * * * *

8. Addendum I—List of U.S. Nuclear Regulatory Commission Locations, is being amended to read as follows:

Addendum I

* * * * *

Part 1—NRC Headquarters Offices

* * * * *

j. NRC Technical Training Center, Osborne Office Center, 5700 Brainerd Road, Suite 200, Chattanooga, Tennessee.

* * * * *

Dated at Rockville MD,. this 28th day of February, 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–5942 Field 3–12–91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

GPU Nuclear Corp; Issuance of Amendment To Provisional Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 150 to Provisional Operating License No. DPR–16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to permit the removal of seven main steam safety valves with the two highest setpoints.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on

February 1, 1988 (53 FR 3052). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendment dated December 18, 1986, as supplemented April 30, October 16, and November 16, 1990, (2) Amendment No. 150 to License No. DPR–16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room, Ocean County Library Reference Department, 101 Washington Street, Toms River, New Jersey 08753. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—I/II.

Dated at Rockville, Maryland this 6th day of March 1991.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick, Jr.,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–5937 Filed 3–12–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47, issued to Gulf States Utilities Company (GSU) (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would revise Technical Specification (TS) Table 3.3.2–1, "Isolation Actuation Instrumentation" to correctly identify actuation of the emergency mode of the main control room area ventilation system at reactor vessel water low, low level 2 instead of low, low, low level 1, as currently reflected in the table.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. The proposed change would not increase the probability or consequences of a previously evaluated accident because:

The proposed change to the TS table will reflect initiation of the main control room area ventilation system (MCRAVS) at low, low level 2 (−43 inches) as opposed to initiating low, low, low level 1 (−143 inches), which is currently reflected in TS Table 3.3.2–1, "Isolation Actuation Instrumentation." The safety analysis was performed assuming initiation of the system at level 2. Operation of the plant is now in full compliance with the safety analysis as a result of the work performed during the forced outage beginning February 27, 1991. The control circuitry for the charcoal filter start logic was modified so that the system will start on reactor water low, low level 2, which is more conservative than the previous initiation at low, low, low level 1. The modification was discussed in the February 28, 1991, GSU letter to the NRC.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

As a result of the modification, plant operation is in conformance with the existing safety analysis which assumes initiation of the MCRAVS at level 2. No new or different accidents will result from the proposed TS change.

3. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed TS change does not alter any part of the existing safety analysis. The proposed TS change would accurately reflect current plant design.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an

Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner shall also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325–6000 (in Missouri 1 (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George F. Dick: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Winston & Strawn, ATTN: Mark Wetterhahn, Esq., 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 7th day of March 1991.

For the Nuclear Regulatory Commission.

George F. Dick,

Acting Director, Project Directorate IV–2 Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–5939 Filed 3–12–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units No. 1 and No. 2); Exemption

I

Wisconsin Electric Power Company (Wisconsin Electric or the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2. The licenses provide, among other things, that the Point Beach Plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The facility consists of two pressurized

water reactors located on the licensee's site in Manitowoc County, Wisconsin.

The revision to 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987, established requirements for the administration of operating tests on nuclear power plant simulators. These regulations, in conjunction with 10 CFR 50.54(i–1), require facility licensees to use simulation facilities when administering operating tests for initial licensing and requalificaiton. These regulations further require that a certified or NRC–approved simulation facility must be used to administer operating tests after May 26, 1991. By letter dated December 17, 1990, Wisconsin Electric requested an exemption from the schedular requirements for certifications of a plant-referenced simulator.

II

The licensee intends to comply with 10 CFR 55.45(b) by certifying a plant-referenced simulator. Section 55.45(b)(2)(iii) of 10 CFR part 55 requires that facility licensees proposing to use a simulation facility consisting solely of a plant-referenced simulator submit Form NRC–474, "Simulation Facility Certification," no later than 46 months after the effective date of this rule, that is, by March 26, 1991. On December 17, 1990, Wisconsin Electric requested an exemption from this filing requirement to allow for the submittal of NRC Form–474 after March 26, 1991, but no later than July 24, 1991.

Wisconsin Electric began writing the specifications for the purchase of a plant-referenced simulator in early 1986. These specifications were issued to prospective bidders in December 1986. After extensive negotiations with qualified bidders, the contract for the construction of the Point Beach Plant simulator was let on April 15, 1988.

In accordance with 10 CFR 55.45(b)(5)(vi), any certification report must include, among other things, a description of performance testing completed for the simulation facility. It has always been the intent of Wisconsin Electric to use the Factory Acceptance Testing (FAT) of the plant-referenced simulator as the testing portion of the certification process. The FAT of the simulator was originally scheduled for a 90-day period beginning on September 3, 1990. Due to delays in hardware delivery and software development, the FAT was not actually commenced until October 9, 1990.

This 5-week delay, of itself, would not have necessitated a late submittal of NRC Form–474. However, once the FAT began, the simulator did not perform as well as expected. Wisconsin Electric, therefore, augmented its staff at the simulator vendor's site by three people in order to better support test administration and documentation. The licensee also increased the testing schedule from one shift a day, 5 days a week, to two shifts a day, 6 days a week. These actions have achieved some positive results, but the resolution of some of the test discrepancies and failures still requires the attention of expert vendor technical personnel. Additional resources of this nature have not been available. Because of the late testing start and the unexpectedly poor performance of the simulator, Wisconsin Electric has concluded that the Point Beach Plant simulator will not be ready for certification until after the March 26, 1991 deadline.

Wisconsin Electric proposes to comply with 10 CFR 55.45(b) for the Point Beach Plant by certifying a plant referenced simulator by July 24, 1991. During the period from May 26, 1991 until certificaiton of the simulator, no initial or requalification operating tests are scheduled.

III

The Commission has determined, pursuant to 10 CFR 55.11, that this exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of 4 months from the March 1991 date for submittal of the Point Beach Plant simulation facility certification. Good faith efforts to comply with the regulation were made as follows:

(1) Wisconsin Electric began writing specifications for a plant-referenced simulator in early 1986 and issued invitations for bids in December 1986.

(2) On April 15, 1988, Wisconsin Electric entered into contract for construction of a plant-referenced simulator. The simulator was originally scheduled for delivery by December 1990 and was to be ready for training by February 1991.

(3) Wisconsin Electric has kept the NRC informed of the status of the Point Beach Plant simulator project. In letters dated October 11, 1989, and March 13, 1990, the licensee provided updated estimated certification dates. On April 10, 1990, in a meeting at NRC headquarters, Wisconsin Electric presented the details of the project and its status.

(4) Upon identifying unexpectedly poor performance during simulator testing, Wisconsin Electric allocated additional resources to the project. Three people were added to the licensee's staff at the simulator vendor's site and testing was increased from five to twelve shifts per week.

Wisconsin Electric intends to comply with 10 CFR 55.45(b)(2)(iv) by not administering the simulation facility portion of the operating test on other than a certified simulator after May 26, 1991.

The Commission hereby grants an exemption from the schedular requirements of 10 CFR 55.45(b)(2)(iii) for submittal of NRC Form–474, "Simulation Facility Certification." This exemption is effective until July 24, 1991.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** on March 5, 1991 (56 FR 9238). Accordingly, based upon the environmental assessment, the Commission has determined that the issuance of this amendment will not have a significant effect on the quality of the human environment.

The licensee's exemption request dated December 17, 1990 is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the local public document room located at the Joseph P. Mann Public Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 5th day of March 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–5940 Filed 3–12–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42 issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment would revise the Technical Specifications and associated bases to increase the surveillance test intervals and allowed outage times for the analog channels of the Engineered Safety Features Actuation System (ESFAS). Spurious spiking has been experienced on one of three channels of containment pressure that provide input to ESFAS for actuation of Safety Injection (SI) and Steam Line Isolation (SLI). While performing the monthly Analog Channel Operational Tests (ACOTs) these containment pressure channels are individually placed in "test" mode, generating a trip input to the ESFAS logic. The receipt of a spike during testing of another containment pressure channel would complete the two-of-three ESFAS logic and result in a full SI and SLI actuation and a reactor trip.

When the licensee identified spurious spiking of the containment pressure channel, immediate troubleshooting and repair efforts were initiated. Initial efforts included the installation of instrumentation to monitor the channel followed by the replacement of the component's power supply. However, the spiking continued and on January 23, 1991, the licensee requested, and was subsequently granted, a temporary waiver of compliance to remove the spiking channel from service while performing the monthly ACOTs on the remaining channels. The licensee then determined that the next repair effort required the replacement of a custom built circuit card for the pressure transmitter. Due to the necessary lead time in obtaining such a card, on February 22, 1991, the licensee requested, and was again granted, the same temporary waiver of compliance for conducting the monthly ACOTs. By changing the test frequency from monthly to quarterly, and revising the action statements to provide additional flexibility, the technical specification changes in this proposed amendment are intended to preclude the need for additional requests for temporary waivers of compliance relative to this issue. Considering that the next scheduled ACOT does not allow sufficient time for normal staff review, the staff is issuing this notice under exigent circumstances.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind fo accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application. The staff has reviewed the licensee's analysis as follows:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluation Report (SER) and Supplemental SER (SSER) prepared for WCAP–10271, Supplement 2 and WCAP–10271, Supplement 2, Revision 1 (issued by letters dated February 22, 1989 and April 30, 1990). Implementation of the proposed changes is expected to result in an acceptable increase in total ESFAS unavailability. This increase, which is primarily due to less frequent surveillance, results in a small increase (less than 6 percent) in core damage frequency (CDF) and public health risk. The values determined by the Westinghouse Owners Group (WOG) and presented in the above WCAP for the increase in CDF were verified by Brookhaven National Laboratory as part of an audit and sensitivity analyses for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase was considered to be acceptable. Applicability of these conclusions to WCGS has been verified through a plant-specific review.

Removal of the requirement to perform the RTS analog channel operational test (ACOT) on a staggered basis will have a negligible impact on the RTS unavailability. Staggered testing was initially imposed to address the concerns of common cause failures. Wolf Creek Nuclear Operating Corporation's implementation of a program to evaluate failures for common cause, process parameter signals diversity, and normal operational test spacing yield most of the benefits of staggered testing.

Allowable out-of-service time and surveillance test interval extensions for the ACOT of the refueling water storage tank (RWST) Level Low-Low Coincident with Safety Injection (for Automatic Switchover from the RWST to Containment Sump), Functional Unit 7.b, were not included in the generic analysis presented in WCAP–10271, Supplement 2 and Supplement 2, Revision 1. However, a separate qualitative evaluation performed for this item showed the associated unavailability and risk to be equivalent to, or less than, that of other functional units included in the WCAP evaluation.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes do not involve hardware changes and do not result in a change in the manner in which the Reactor Trip System (RTS) or the Engineered Safety Features Actuation System (ESFAS) provide plant protection. No change is being made which alters the functioning of the RTS or ESFAS. Rather the likelihood or probability of the RTS or ESFAS functioning properly is affected as described above. Therefore the proposed changes do not create the possibility of a new or different kind of accident.

3. The proposed amendment would not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determination. The impact of reduce testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. The review of existing monthly calibration/setpoint drift data for ESFAS instrumentation addresses this concern. Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

a. Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation testing.

c. Longer repair times associated with increased AOTs will lead to higher quality repairs and improved reliability.

Therefore, based on the above considerations, the Commission

proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2010 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 12, 1991, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing on an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide reference to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a signficant hazards consideration, any hearing held would take place before the issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George F. Dick: petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Rooms, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 11th day of March 1991.

For the Nuclear Regulatory Commission.

George F. Dick, Jr.,

Acting Director, Project Directorate IV-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-6063 Filed 3-12-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Pursuant to the Nuclear Waste Technical Review Board's (Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the full Board will hold a meeting on analogues on April 16, 1991, from 8:30 a.m. to 5 p.m. and on April 17, 1991, from 8:30 a.m. to early afternoon. The meeting will be held at the Peppermill Hotel, 2707 South Virginia Avenue, Reno, Nevada 89502; (702) 826-2121.

Board members will be briefed on the use of analogues to assess the long-term performance of a potential site for the disposal of spent nuclear fuel and high-level defense waste. In its "Second Report to the U.S. Congress and the U.S. Secretary of Energy (November 1990)," the Board recommended that the Department of Energy (DOE) investigate the use of natural analogues in helping to assess performance of the Yucca Mountain Site. The site, which is located in Nevada, is currently being studied by the DOE as a potential site for a permanent repository.

Analogues are naturally occurring geologic settings, such as uranium ore bodies, or other material that have been subjected to environmental forces over long periods of time. Measurements taken from analogues can provide useful information on material behavior, and radionuclide and elemental transport. This information, in turn, may prove helpful in characterizing a potential repostory site, such as the one at Yucca Mountain.

On April 16 and 17, the Board will hear from a number of individuals involved in identifying, studying, or evaluating the potential usefulness of natural analogues. On April 16, representatives from Lawrence Livermore National Laboratory and the U.S. Geological Survey will provide information on field studies at the Nevada Test Site and the use of natural analogues in archaeological studies. Staff from the Office of Research, Nuclear Regulatory Commission (NRC) will discuss recent research activities. Also, the Center for Nuclear Waste Regulatory Analysis, or the Office of Research, NRC will discuss analogue sites in Mexico and on the Nevada-Oregon border. Staff from the NRC Office of Nuclear Materials, Safety and Safeguards (NMSS) will speak on their own behalf (versus presenting a Commission position) on the potential usefullness of natural analogues in the licensing process.

Following the presentations on April 16, the DOE will begin a briefing on its international and domestic analogue activities. This briefing will continue on April 17. The remaining time on April 17 will be used by the Board to hold a general discussion among participants on the potential usefulness and applicability of analogues to the DOE waste management program.

Members of the public are welcome to attend the meeting as observers. Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning May 6, 1991.

For further information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: March 7, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-5880 Filed 3-12-91; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Services; Schedules

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 11, 1991 (55 FR 12973). Individual authorities established or revoked under Schedules A, B, or C between January 1 and January 31, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1991.

Schedule A

The following exceptions were established:

General Services Administration

All law clerk positions in the Board of Contract Appeals' Law Clerk Fellows Program. Appointments under this authority at GS-11 and GS-12 will be limited to 2 years with provisions for a 1-year extension at the GS-13 level only in cases of exceptional circumstances, as determined by the Chief Judge and Chairman. Effective January 15, 1991.

Schedule B

The following exception was established:

Department of the Navy

One position of Staff Assistant, in the Navy's Executive Dining facilities at the Pentagon. Effective January 28, 1991.

Schedule C

Department of Agriculture

One Confidential Assistant to the Director, Intergovernmental Affairs, Office of Public Affairs. Effective January 3, 1991.

One Confidential Assistant to the Administrator, Federal Grain Inspection Service. Effective January 9, 1991.

One Director, Press and Media Relations, to the Director, Office of Public Affairs. Effective January 16, 1991.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective January 23, 1991.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective January 29, 1991.

One Confidential Assistant to the Assistant Secretary for Administration. Effective January 29, 1991.

Department of Commerce

One Confidential Assistant to the Secretary. Effective January 2, 1991.

One Confidential Assistant to the Director, White House Liaison. Effective January 8, 1991.

One Chief, Intergovernmental Affairs Division to the Director, Legislative Affairs. Effective January 16, 1991.

One Director, Congressional Affairs Staff, to the Under Secretary for Export Administration. Effective January 16, 1991.

One Special Assistant to the Director, Office of Public Affairs. Effective January 24, 1991.

One Congressional Affairs Officer to the Director, Bureau of the Census. Effective January 30, 1991.

One Intergovernmental Affairs Specialist to the Chief, Intergovernmental Affairs Division. Effective January 31, 1991.

Department of Education

One Confidential Assistant to the Director, Office of Public Affairs. Effective January 18, 1991.

One Confidential Assistant to the Director of Bilingual Education and Minority Languages Affairs. Effective January 29, 1991.

One Executive Secretary to the Chief of Staff, Counselor to the Secretary. Effective January 29, 1991.

One Special Assistant to the Director, Intergovernmental Affairs. Effective January 29, 1991.

One Special Assistant to the Assistant Secretary for Vocational and Adult Education. January 30, 1991.

One Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective January 30, 1991.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective January 30, 1991.

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective January 30, 1991.

Department of Energy

One Staff Assistant to the Director, Office of Management and Resources. Effective January 3, 1991.

One Staff Assistant to the General Counsel. Effective January 18, 1991.

Department of Transportation

Two Staff Assistants to the Secretary. Effective January 8, 1991.

One Staff Assistant to the Director, Office of the Executive Secretariat. Effective January 17, 1991.

Environmental Protection Agency

One Program Advisor to the Assistant Administrator for Administration and Resources Management. Effective January 3, 1991.

Federal Communications Commission

One Special Assistant to the Chief, Public Affairs. Effective January 9, 1991.

Federal Emergency Management Agency

One Secretary (Typing) to the Deputy Director. Effective January 30, 1991.

Federal Mine Safety and Health Review Commission

One Attorney-Adviser to a Commissioner. Effective January 31, 1991.

One Confidential Assistant to a Commissioner. Effective January 31, 1991.

One Confidential Assistant to the Chairman. Effective January 31, 1991.

General Services Administration

One Confidential Assistant to the Regional Administrator, Region 8 (Denver). Effective January 4, 1991.

One Confidential Assistant to the Associate Administrator for Public Affairs. Effective January 4, 1991.

One Staff Assistant to the Chief of Staff. Effective January 7, 1991.

One Confidential Assistant to the Regional Administrator, Region 4. Effective January 11, 1991.

Department of Health and Human Services

One Confidential Assistant to the Special Assistant to the Secretary for Civil Rights. Effective January 11, 1991.

One Writer to the Secretary. Effective January 18, 1991.

One Special Assistant to the Deputy Assistant Secretary for Public Affairs. Effective January 18, 1991.

One Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media). Effective January 10, 1991.

One Speechwriter to the Surgeon General. Effective January 18, 1991.

One Special Assistant to the Administrator, Alcohol, Drug Abuse and Mental Health Administration. Effective January 17, 1991.

One Executive Assistant to the Secretary for Public Affairs. Effective January 29, 1991.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing. Effective January 2, 1991.

One Special Assistant to the Secretary. Effective January 2, 1991.

One Special Assistant to the Assistant Secretary for Housing—Federal Housing Commissioner. Effective January 2, 1991.

One Special Assistant to the Secretary for Field Coordination to the Deputy Under Secretary for Field Coordination. Effective January 4, 1991.

One SpecialAssistant to the Secretary. Effective January 15, 1991.

One Special Assistant to the Deputy Secretary. Effective January 15, 1991.

One Special Assistant to the Deputy Assistant Secretary for Single Family Housing. Effective January 15, 1991.

One Special Assistant to the Regional Administrator, Regional Housing Commissioner. Effective January 24, 1991.

Department of Interior

One Director, External Affairs, to the Commissioner of Reclamation. Effective January 8, 1991.

International Trade Commission

One Staff Assistant (Legal) to a Commissioner. Effective January 3, 1991.

Department of Justice

One Secretary (Typing) to the Director, Office of Public Affairs. Effective January 3, 1991.

One Staff Assistant to the Attorney General. Effective January 11, 1991.

One Staff Assistant to the Attorney General. Effective January 23, 1991.

One Staff Assistant to the Attorney General. Effective January 29, 1991.

Department of Labor

One Confidential Staff Assistant to the Assistant Secretary for Employment and Training. Effective January 29, 1991.

Office of National Drug Control Policy

One Staff Assistant to the Director of Congressional Relations. Effective January 3, 1991.

One Staff Assistant to the Director. Effective January 18, 1991.

Small Business Administration

One Special Assistant to the Regional Administrator, Boston, Massachusetts. Effective January 22, 1991.

Securities and Exchange Commission

One Confidential Assistant to a Commissioner. Effective January 3, 1991.

Department of State

One Program Analyst to the Deputy Assistant Secretary for Policy and Counterterrorism. Effective January 3, 1991.

One Legislative Management Officer to the Principal Deputy Assistant Secretary for Legislative Affairs. Effective January 3, 1991.

One Program Assistant to the Deputy Assistant Secretary for Policy and Counterterrorism. Effective January 3, 1991.

One Secretary to the Assistant Secretary, Bureau of Public Affairs. Effective January 25, 1991.

One Special Assistant to the Coordinator, Bureau of International Communications and Information Policy. Effective January 16, 1991.

Department of the Treasury

One Special Assistant to the General Counsel. Effective January 2, 1991.

One Associate Director for Public Affairs to the Director, Office of Thrift Supervision. Effective January 29, 1991.

One Senior Legislative Manager to the Deputy Assistant Secretary (Legislative Affairs). Effective January 29, 1991.

One Special Assistant to the Director, Office of Public Affairs. Effective January 30, 1991.

United States Information Agency

One Special Assistant to the Senior Advisor to the Director. Effective January 11, 1991.

One Special Assistant to the Associate Director for Programs. Effective January 30, 1991.

One Chief, Voluntary Visitors Division, to the Director, Office of International Visitors. Effective January 30, 1991.

Office of U.S. Trade Representative

One Confidential Assistant to the Deputy United Trade Representative. Effective January 3, 1991.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Congressional and Public Affairs. Effective January 30, 1991.

One Special Assistant to the Assistant Secretary. Effective January 29, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp. P.218.

U.S. Office of Personnel Management
Constance Berry Newman,
Director.

[FR Doc. 91–5829 Filed 3–12–91; 8:45 am]
BILLING CODE 6325–01–M

SES Positions That Were Career Reserved During 1990

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1990.

FOR FURTHER INFORMATION CONTACT: Charles Vaugh, Office of Executive and Management Policy, (202) 606–1927.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1990 whether or not they were still career reserved on December 31, 1990. Section 3132(b)(4) of title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990

Agency organization	Career reserved positions
Action:	
Office Inspector General	Inspector General.
Assoc Director for Mgmt & Budget	Associate Director for Management & Budget.
	Asst Dir, for Financial Management.
Administrative Conference of the U.S.:	
Administrative Conference of the U.S.	Executive Director.
	Research Director.
	General Counsel.
Advisory Council on Historic Preservation:	
Ofc of the Exec Director	Executive Director.
Department of Agriculture:	
Ofc of the Inspector General	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Dep Assistant Inspector General for Audit.
	Dep Asst Inspector General for Audit.
	Asst Inspector Gen for Pol Dev & Res Mgmt.
Office of Operations	Director Office of Operations.
Office of Finance and Management	Dep Dir, for E/S, Real Property, F/P Division.
	Director, Applications Systems Division.
	Dir. Info Resources Management Division.
	Director, Financial Services Division.
	Dir, Thrift Savings Plan Development Division.
Farmers Home Administration	Deputy Administrator for Management.
	Assistant Administrator, Finance Office.
	Asst Admr for Automated Information Services.
	Asst Admr, Community and Business Programs.
Federal Crop Insurance Corporation	Asst Mgr for Actuarial & Underwriting Svcs.
	Deputy Administrator, Management.
	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Tobacco Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Animal & Plant Health Inspection Service	Agricultural Marketing Svc, Dir Poultry Div.
	Director, Compliance Staff.
	Dir, Commodity Scientific Support Division.
	Deputy Administrator for Management & Budget.
	Assoc Dep Administrator for Mgt. & Budget.
	Dep Admr, Regulatory Enforcement/Animal Care.
Veterinary Services	Dir Natl Veterinary Services Labs, Ames.
	Director, Northern Region.
	Dir, S E Region, Veterinary Services.
	Director, Western Region.
	Director, South Central Region.
	Assistant Deputy Administrator.
	Dep Admr, Animal Damage Control.
	Dir, Operational Support, Veterinary Services.
Plant Protection & Quarantine Service	Dep Admr, International Services.
	Director Northeastern Region.
	Director, South Central Region.
	Director, Western Region.
	Director, Southeastern Region.
	Asst to the Asst Dep Admr, Natl Programs, PPQ.
	Director Operational Support PPQ.
Science and Technology	Director Science and Technology.
Food Safety and Inspection Service	Asst Deputy Admin Technical Services.
	Dep Admir-Administrative Mgmt.
	Dir, Northeast Region, Phila., Pa.
	Regl Director, Atlanta George.
	Dir, North Central Region, Des Moines, Iowa.
	Director, Southwestern Region, Dallas, Texas.
	Dir, Western Region, Alameda, California.
	Asst Dep Admr Comp & Staff Operations.
	Asst Dep Admr Inspection Mgmt Program.
	Asst Dep Admr. Scientific Staff Services.
	Asst Dep Admin (Admin Mgt).
	Deputy Administrator, Science.
	Dep Admr Internal Programs.
	Associate Deputy Administrator.
Food & Nutrition Service	Asst to the Dep Admr International Programs.
	Deputy Admin for Financial Management.
Agricultural Stabilization & Conservation Service	Deputy Admr for Management.
	Accounting Officer.
Foreign Agricultural Service	Director, Budget Division.
Agriculture Research Service	Dir, Grain & Feed Div.
	Dep Admr for Adm Mgmt.
	Assoc Dep Admin for Administrative Management.
	Asst Adm for Cooperative Interactions.
	Global Change Research Staff Assistant.
	Corr for Sci & Educ Agencies for Intl Activ.
National Program Staff Office	Deputy Administrator National Program Staff
	Assoc Dep Admr.
	Assoc Dep Admr. Natl Prog Staff.
Beltsville Area Office	Dir, Beltsville Human Nutrition Research Ctr.
	Director Beltsville Area Office.
	Assoc Dir, Beltsville Area.
North Atlantic Area Office	Director, Eastern Regl Research Center.
	Dir, Plum Island Animal Disease Ctr.
	Director, North Atlantic Area.
	Assoc. Dir, North Atlantic Area.
South Atlantic Area Office	Research Leader-Forage and Turf Research.
	Res Leader-Plant Physio & Photosynthesis Res.
	Director South Atlantic Area .
	Associate Dir South Atlantic Area.
Midwest Area Office	Dir, Midwest Area.
	Dir, Northern Regional Research Ctr.
	Assoc Dir, Midwest Area.
	Supervisory Veterinary Medical Officer.
Mideouth Area Office	Dir, Southern Regional Res Center, New Orleans.
	Director, Mid-South Area.
	Associate Director, Mid South Area.
Central Plains Area Office	Dir Natl Animal Disease Ctr.
Southern Plains Area Office	Director Southern Plains Area.
	Director Conservation & Production Res Lab.
	Assoc Dir, Southern Plains Area.
Northern Plains Area Office	Director, Northern Plains Area.
	Associate Director, Northern Plains Area Ofc.
	Dir, R.L. Hruska US Meat Animal Res Center.
Northwest Area Office	Director, Northwest Region.
Pacific West Area Office	Director, Western Regional Research Center.
	Res Leader Natural Products Chemistry Res.
	Dir, Western Human Nutrition Research Center.
	Director, Pacific West Area Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Director, Plant Gene Expression Center.
	Associate Director, Pacific West Area Office.
	Dir, Western Cotton Research Laboratory.
	Supervisory Research Plant Pathologist.
	Supervisory Research Plant Pathologist.
	Supervisory Soil Scientist.
Cooperative State Research Service	Assoc Administrator for Grants & Program Sys.
Extension Service	Deputy Admin Management.
Soil Conservation Service	Director Engineering Division.
	Dir, Ecological Sciences and Technology Divisi .
	Dep Chf for Administration.
	Dir, Consv Planning and App.
	Director, Watershed Projects Division.
	Dir, Basin & Area Planning (Soil Conserv).
	Assoc Dep Chief for Administration.
	Dir, Soils (Soil Scientist).
	Dir, Land Treatment Program.
	Dir, Information Res Management Division.
	Dir, South National Technical Center.
	Special Asst for Science & Technol.
Forest Service	Dep Chf for Administration.
	Associate Deputy Chief—Administration.
	Dir, Forest Pest Mgmt Staff.
	Dir, Fiscal and Accounting Management.
	Associate Deputy Chief for Administrator.
	Director, Fire and Aviation Staff.
Research	Director, Timber Mgmt Research Staff.
	Dir, Insect and Disease Research Staff.
	Dir, Forest Environment Research Staff.
	Director, Forest Resource Economics Staff.
	Dir, Forest Prod & Harvesting & Research Staff.
	Dir, Forest Fire & Atmos Sciences Res Staff.
Nat'l Forest System	Dir, Range Management Staff.
	Dir, Recreation, Mgmt Staff.
	Dir, Timber Management Staff.
	Director, Engineering Staff.
	Director, Lands Staff.
	Dir, Land Management Planning Staff.
	Dir, Wildlife & Fisheries Mgmt Staff.
	Dir, Minerals & Geology Staff.
	Director, Watershed & Air Management Staff.
	Dir, Ecological Management.
State & Private Forestry	Dir, Cooperative Forestry.
Field Units	NE Area Dir, State & Private Forestry, U Darb.
	Dir, Intermountain Forest & Range Exp Stat, OGD.
	Dir, N Eastern Forest Experiment Station.
	Dir, North Central Forest Exp Station.
	Dir, Pacific NW Forest & Range Range Exp Station.
	Dir, Pacific SW for & Range Exper Sta.
	Director Rocky Mt. Forest & Range Exper Stat.
	Dir, S Eastern Forest Experiment Station.
	Dir, S. Forest Experiment Station, New Orleans.
	Director, Forest Products Laboratory.
Economic Research Service	Admr. Economic Research Service.
	Associate Administrator-Economic RSCH Svc.
	Director Agriculture & Trade Analysis Div.
	Director Commodity Economics Division.
	Director Resources & Technology Division.
	Director Agriculture & Rural Econ Division.
	Deputy Administrator for Situation & Outlook.
Economics Management Staff	Director, Economic Management Staff.
National Agricultural Statistics Service	Admr National Agricultural Statistics Serv.
	Deputy Administrator for Operations.
	Dir, Estimates Div.
	Dir, Research and Applications Division.
	Dir, State Statistical Division.
	Deputy Administrator for Programs.
	Dir, Systems & Information Division.
World Agricultural Outlook Board	Chairperson.
	Dep Chairperson.
Board for International Broadcasting:	
Board Staff	Exec Director.
	Dir, for Research & Engineering.
	Dep Exec Director/Director of Program Review.
	General Counsel.
	Director of Financial & Congressional Affairs.
Department of Commerce:	
Office of Technology	Executive Director.
Office of the General Counsel	Asst General Counsel for Finance & Litigation.
	Director, Office of Intelligence Liaison.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
OFC of Asst Secy for Administration	Director for Finance & Federal Assistance.
Director for Management and Information	Dir, OFC of Information Resources Management.
Director for Procurement & Administrative Services	Director for Procurement & Admin Services.
	Dep Dir, for Procurement & Admin Services.
	Director, Office of Security.
	Deputy Director for Procurement.
Director Personnel and Civil Rights	Director of Personnel.
	Depury Director of Personnel.
Director for Planning Budget and Evaluation	Director, Office of Budget.
OFC of the Under Secy for Economic Affairs	DEP Asst Secy for Statistical Affairs.
	Dir, Office of Business Analysis.
	Supervisory Economist.
Bureau of Economic Analysis	Director.
	Dep Dir, Bur of Economic Analysis.
	Assoc Dir, for Natl Economic Accounts.
	Assoc Dir, for Regional Economics.
	Assoc Dir, for International Economics.
	Chief Economist.
	CHF Statistician.
	Asst to the Director for Econometrics.
	CHF, Natl Income & Wealth Div.
	Chief, Current Business Analysis Div.
	Chief, Business Outlook Div.
	Chief International Investment Division.
Bureau of the Census	Dep Dir,
	Asst Director for ADP.
	Chief, Technical Services Division.
	Assoc Dir, for Management Services.
	Chief, Personnel Division.
	Chief Admin & Publications Services Division.
	Senior Program Analyst.
	Asst Dir, for Administration.
	Chief, Computer Services Division.
Demographic Programs	Associate Director for Demographic Fields.
	Chf, Population Div.
	Chf, Geography Div.
	Chief Demographic Surveys Division.
	Chf, Housing & Household Econ Statistics Div.
	Chief, Statistical Methods Division.
	Chief Intl Statistical Programs Center.
	Chief, Statistical Support Division.
Decennial Census	Associate Director for the Decennial Census.
	Asst Dir, for Publicity and outreach.
	Chief, Decennial Planning Division.
	Chief, Decennial Operations Division.
Statistical Standards and Methodology	Chief Statistical Research Division.
	Senior Program Analyst.
Field Operations	Assoc Dir, for Field Operations.
	Chief, Field Div.
	Chief Data Preparation Division.
	Chief Data User Services Division.
Economic Programs	Associate Director for Economic Programs.
	Asst Dir, for Economic & Agric Censuses.
	Chief, Agriculture Div.
	Chf, Business Div.
	Chf, Construction Statistics Div.
	Chf, Econ Surveys Div.
	Chf, Foreign Trade Div.
	Chf, Industry Div.
	Chf, Census Programming Division.
Institute for Telecommunications Sciences	Assoc Admr for Telecommunications Science.
	Deputy Dir, for Systems & Networks.
	Deputy Director for Spectrum.
Economic Development Administration	Deputy Asst Secretary for Management Support.
	Dep Director for Program Operations.
Ofc of the Inspector General	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Asst Insp Gen for Compl & Audit Resolution.
	Deputy Assistant Inspector Gen for Auditing.
	Asst Insp Gen for Plng, Eval & Inspections.
	Counsel to the Inspector General.
	Dep Asst Insp Gen for Investigations.
Ofc or the Under Sec for Export Administration	Director of Administration.
Ofc Dep Asst Secy for Cap Goods & Intl Const	Dir, Office of Special Industrial Machinery.
Ofc of Dep Asst Secy for Automotive Aff & Cons Gds	Director Office of Consumer Goods.
Ofc of Dep Asst Secy for Compliance	Dir, Office of Agreements Compliance.
	Dir, Office of Antidumping Compliance.
Ofc of Dep Asst Secy for Investigations	Dir, Office of Antidumping Investigations.
	Dir, Office of Countervailing Investigations.
National Oceanic and Atmospheric Administration	Dir, Natl Ocean Pollution Program Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Dir, NOAA Coastal Ocean Program Office.
Office of Administrative & Management Services	Director for Personnel & Civil Rights.
	Dir for Procurement, Grants & Adm Services.
National Marine Fisheries Service	Senior Scientist for Fisheries.
	Dir, Ofc of Research & Environmental Info.
Fisheries Resource Management	Director, Office of Enforcement.
Fisheries Centers	Science & Research Dir Northeast Region.
	Science & Research Dir.
	Science & Research Dir Southwest Region.
	Science & Research Dir.
	Science and Research Director.
Natl Environ Satellite, Data & Info Services	Poes Program Manager.
	Dir, Ofc of Sys Development.
Deputy Asst Admr for Satellites	Poes Program Manager.
	Goes Program Manager.
Dep Asst Admr for Information Services	Dir, Natl Oceanographic Data Center.
	Director, National Climatic Data Center.
	Dir, National Geophysical Data Center.
Office of Oceanic and Atmospheric Research	Director, Forecast Systems Laboratory.
Office of Sea Grant & Extramural Programs	Dep Dir, Ofc of Oceanic Research Programs.
Environmental Research Laboratories	Dep Dir, Environmental Research Laboratories.
	Dir, Space Environment Laboratory.
	Dir, Climate Monitoring & Diagnostics Lab.
Atlantic Oceanographic and Meterological Labs	Dir, Atlantic Oceanographic & Meteorological.
	Depy Dir, Atlantic Oceanographic & Meteorologi.
Wave Propagation Lab	Director.
Aeronomy Lab	Director, Aeronomy Laboratory.
	Senior Scientist/Deputy Director.
Geophysical Fluid Dynamics Laboratories	Director.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
Great Lakes Environmental Research Lab	Dir, Great Lakes Environmental Research Lab.
National Severe Storms Laboratory	Dir, Nat'l Severe Storms Lab.
Air Resources Laboratory	Director Air Resources Laboratory.
Pacific Marine Environmental Lab	Dir, Pacific Marine Environmental Lab.
Ocean Services & Coastal Zone Management	Director, Office of Ocean Services.
Ocean and Coastal Resources Management	Spec Asst to Dir Ofc of Ocean & Coastal Res.
Oceanography & Marine Services	Chief, Ocean Systems Division.
	Chief, Ocean Resources Assessment Division.
	Chf, Physical Oceanography Division.
National Ocean Service	Dir, Geodetic Research & Development Lab.
	Assoc Dir Ofc of Aeronautical Charting & Cart.
	Chief Geodesist.
National Weather Service	Director, NOAA Data Buoy Office.
	Dir, Transition Program Office.
	Dir, Nexrad Joint Systems Program Ofc.
	Chief, Management and Budget Staff.
	Chief, International Affairs Division.
	Chf, Ofc of the Fed Coordinator for Meteorolg.
	Deputy Assistant Administrator for Operations.
	Dir, Nexrad Operational Support Facility.
Office of Meteorology	Dir, Office of Meteorolgy.
	Chief Operations Division.
	Chf, Prog Requirements & Plng Division.
Office of Hydrology	Director, Office of Hydrology.
	Chief, Hydrologic Services Division.
	Chief, Hydrologic Research Laboratory.
Office of Systems Operations	Chief, Engineering Division.
	Chief, Systems Operations Center.
	Chief, Systems Integration Division.
	Dir, Office of Systems Operations.
Office of Systems Development	Director, Office of Systems Development.
	Chief, Integrated Systems Laboratory.
	Chief, Techniques Devel Laboratory.
	Program Manager.
	Dep Dir, Office of Systems Development.
	CHF/AWI Interactive Processing System/1990's.
National Meteorological Ctr	Director National Meteorological Center.
	Deputy Director.
	Director, Climate Analysis Center.
	Chief, Automation Division.
	Chief, Development Div.
	CHF, Meteorological Operations Division.
	Dir, Natl Severe Storms Forecast Center.
	Director Natl Hurricane Center.
Regional Offices & Centers	Dir Southern Region, Ft Worth.
	Dir, Salt Lake City Region.
	Dir, Alaska Region, Anchorage.
	Dir Eastern Region NWS.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Natl Institute of Standards & Technology	Director Central Region.
	Assoc Dir for International & Academic Affs.
	Dir, Ofc of Res & Technology Applications.
	Dep Dir Center for Chemical Technology.
	Director for International & Academic Affairs.
	Assoc Dir for Programs, Budget, and Finance.
	Dir, Office of Technology Commercialization.
	Chf, Phy Meas S/P Ofc of Measurement Services.
	Chief, Program Office.
	Dep Assoc Dir for International Affairs.
	Chf Standard Reference Materials Program.
	Director, Center for Chemical Technology.
	Director for Academic Affairs.
	Associate Director for Quality Programs.
	Dep Assoc Dir for Industry & Standards.
	Associate Director.
	Dir, Office of Standards Services.
	Dir, Ofc of Inventions Evaluation Programs.
	SR Advr to the Dir, Technology Services.
National Measurement Lab	Senior Mathematical Statistician.
	Chief Molcular Phsics Div.
	Chief Inorganic Analytical Research Division.
	Chief Gas and Particulate Science Division.
Deputy Director for Programs	Deputy Director for Programs.
	Director, Standard Reference Data.
Center for Basic Standards	Dir, Center for Basic Standards.
	Chief, Electricity Division.
	Senior Scientist.
	Senior Scientist & Fellow of JILA.
	Senior Scientist & Fellow of JILA.
	Chief, Atomic and Plasma Radiation Division.
	Physicist (Nuclear).
	Group Leader for Far Ultraviolet Physics.
	Dir, Cntr for Atomic, Molecular & Optical Phy.
	Chief, Quantum Metrology Division.
	Mgr, Fundamental Constants Data Center.
	Chief, Time and Frequency Division.
	Chief, Surface Science Div.
	Mgr, Tech Applications of Measurement Stds.
	Dep Dir, Cntr for Molecular & Optical Phy.
	Chief, Quantum Physics Division.
Organization Abolished	Director-Center for Analytical Chemistry.
Center for Analytical Chemistry	Chief Organic Analytical Research Division.
	Dir Center for Radiation Research.
Center for Radiation Research	Dep Dir, Ctr for Radiation Research.
	Chief Radiometric Physics Division.
Ionizing Radiation Division	Chief Ionizing Radiation Division.
Center for Radiation Research	Physicist (Nuclear).
	Chief Radiation Physics Division.
Materials Science & Engineering Laboratory	Dir, Materials Sci & Eng Laboratory.
	Chief, Reactor Radiation Division.
	Senior Scientist.
	Physicist (Solid State).
	Group Leader for Crystallography.
	Chf, Ofc of Nondestructive Evaluation.
	Chf, Metallurgy Division.
	Chief, Polymers Division.
	Scientific Assistant to the Director, IMSE.
	Chief Materials Reliability Div.
	Manager, Cold Neutron Program.
	Chief Ceramics Division.
	Dep Dir, Materials Sci & Eng Lab.
	Chief, Reactor Operations.
Reactor Radiation Division	Group Leader Neutron Condensed Matter Science.
Center for Chemical Physics	Director Center for Chemical Physics.
	Deputy Director, Center for Chemical Physics.
	Chief, Chemical Process Metrology Division.
National Engineering Lab	Assoc Dir for Technical Evaluation.
	Chf, Office of Energy Related Inventions.
Center for Fire Research	Director-Center for Fire Research.
	Chief, Fire Measurment & Research Division.
	Deputy Director, Center for Fire Research.
Center for Building Technology	Dir, Center for Building Technology.
	Deputy Director, Center for Building Tech.
	Chief, Structures Division.
	Chf, Building Materials Div.
	Chief, Building Environment Division.
Ctr for Manufacturing Engrng	Dir, Center for Manufacturing Engineering.
	Chief, Precision Engineering Division.
	Chief, Robot Systems Division.

BEST COPY AVAILABLE

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Program Manager Automated Manufacturing Res.
	Chief, Factory Automation Systems Division.
	Chief, Thermophysics Division.
Center for Applied Mathematics	Dir, Ctr for Computing & Applied Mathematics.
	Dep Dir, Ctr for C & A Mathematics.
	Chief, Computer Services Division.
	Chief Scientific Computing Division.
	Chief, Statistical Engineering Division.
	Asst dir for Management Information Technolog.
Center for Electronics and electrical Engring	Associate Director for Computing.
	Dir, Ctr for Electronics & Electrical Eng.
	Chief, electrosystems Division.
	Chf-Electromagnetic Technology Division.
	Senior Research Scientist.
	Chief, Electricity Division.
	Dep Dir, Ctr for Electronics & Electrical Eng.
	Chief Semiconductor Electronics Division.
	Associate Director for Program Development.
Organization Abolished	Deputy Director Ctr for Chemical Engineering.
	Director Center for Chemical Engineering.
National Computer Systems Laboratory	Chief systems & Network Architecture Division.
	Chf, Advanced Systems Division.
	Chf, Infor syst Engineering Division.
	Chf, Systems Software Technology Division.
	Associate Director for Computer Security.
	Chief, Computer Security Division.
Patent and Trademark Administration	Asst Commissioner for Finance and Planning.
	Assistant Commissioner for External Affairs.
	Dir, Office of Interdisciplinary Programs.
Office of Assistant Commissioner for Patents	Adm'r for Documentation.
	Dep Assistant Commissioner for Administration.
Chemical	Group Director—110.
	Group Director—20.
	Group Director—130.
	Group Director—150.
	Group Director—180.
	Deputy Group Dir—150.
	Deputy Group Director—180.
Electrical	Group Director—260.
	Group Director—210.
	Group Director —220.
	Group Director—230.
	Group Director—240.
	Group Director—250.
Mechanical	Group Director—310.
	Group Director—320.
	Group Director—330.
	Group Director—340.
	Group Director—350.
Office of Assistant Commissioner for Trademarks	Chairman, Trademark Trial & Appeal Board.
	Deputy Asst Commissioner for Trademarks.
	Director, Trademark Examining Operation.
Commodity Futures Trading Commission:	
Office of the General Counsel	Deputy General Counsel (Opinions & Review).
	Deputy General Counsel (Litigation).
	Deputy General Counsel (Reg & Adm).
Office of the Executive Director	Dep Exec Dir.
	Dir, Ofc in Information Resources Mgmt.
Office of Economic Analysis	Dep Chf Economist.
	Chf, Analysis Section.
	Associate Director for Surveillance.
	Director of Economic Research.
Division of Enforcement	Deputy Director (Western Operations).
	Deputy Director (Eastern Operations).
Division of Trading and Markets	Deputy Director (Contract Markets).
	Chief Counsel.
Consumer Product Safety Commission:	
Ofc of Executive Dir	Associate Executive Dir for Field Operations.
	Dir, Office of Program Management & Budget.
Office of Asst for Epidemiology	Associate Exec Dir for Epidemiology.
Ofc of Asst for Compliance & Administrative Litigation	Assoc Exec Dir for Compl & Admin Litigation.
Ofc of Asst for Administration	Assoc Exec Dir for Adm.
Ofc of the Asst for Economics	Associate Executive Director for Economics.
Ofc Secy of Defense:	
Office of the Secretary	Asst to the Secy of Defense (Intel Oversight).
Ofc of Deputy Under Secy for Policy	Dir, C/I Programs.
Ofc of Asst Secy (Sollc)	Asst for Res Assessment & Acquisition Issues.
Director Operational Test and Evaluation	Dir, Strategic Def Syst Operational Test Org.
	Dep Dir for Resources & Administration.
OFC of Inspector General	Deputy Inspector General.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Asst Inspector General for Investigations.
	Dep Asst Inspector Gen for Investigations.
	Dep Asst Inspector General for Inspections.
	Assistant Inspector General for Auditing.
	Asst Inspector Genl for Analysis & Followup.
	Asst Insp Gen for Adm & Info Management.
	Alg for Departmental Inquiries.
	Asst I/G for Criminal Investigations P & O.
	Dep Asst Inspector Gen for Adm & Info Mgmt.
	Dir, Audit Planning & Technical Support.
	Dep Asst Insp Gen for Audit, Pol & Oversight.
	Director, Acquisition Management.
	Director, Logistics Support.
	Director, Contract Management.
	Dir, Readiness & Operational Support.
	Director, Financial Management.
	Asst Inspector Gen for Audit, Pol & Oversight.
	Deputy Asst Inspector General for Auditing.
	Dep Asst Insp Gen for Insp S & T Evaluation.
	Asst Ig for Inspections.
	Freedom of Appellate Rev Auth Spec Proj Ofc.
	Asst Inspector General for Auditing.
	Dir for Investigative Operations.
Ofc of Asst Secy of Defense (Reserve Affairs)	Principal Director (Manpower and Personnel).
Ofc Dep Asst Sec (Civilian Personnel Policy & Req)	Dep Dir Compensation & Oversees Emply Policy.
	Dir for W/R, Training & Staffing Policy.
	Director, Personnel Management.
Ofc of Dir of DOD Dependents Schools	Dept Dir C/E Stability, N/F Special Projects.
	Dir Pacific Region Dodds.
	Director, Germany Region.
	Dep Dir Dep of Defense Dependents School.
ODASD (Mobilization Planning & Requirements)	Assoc Dir for Financial, Logistl, & Info Mgmt.
Office Assistant Sec Health Affairs	Asst Dir for Syst Engineering & Integration.
	Dir, Defense Medical Systems Support Center.
Office of Assistant Secretary, Public Affairs	Das of Defense for Medical Resource Adm.
	Dir, Freedom of Information & Security Review Dep Dir, Armed Forces Radio & Television Serv.
DASD (Theater Assessments & Planning)	Assistant for Planning.
Washington Headquarters Services	Director of Personnel and Security.
	Dep Dir, Real Estate & Facilities.
	Dep Dir, Personnel and Security.
Office of the General Counsel	Chief Counsel to the Inspector General.
Ofc of Under Secy of Def for Acquisition	Exec Director, Adv Boards & Committees.
	Adued (Asia/Southern Hemisphere Affairs).
	Deputy Dir Program Assessment.
	Dep Dir, Program & Budget Integration.
	Dir, DOD Contracted Advsory & Asst Services.
	Asst Dep Under Secy of Def (Plnng & Eval).
	Asst Dep Under S/D (Manuf & Industrial Prog).
	Asst Dep Under S/D (Intl Technol & Trade).
	Asst Dep Under S/D (Intl Dev & Prod Prog).
Office of the DD (Test & Evaluation)	Director Test Facilities and Resources.
	Director Live Firetest.
	Director Weapon System Assessment.
	Director Special T&E Programs.
Ofc of DD (Research and Advanced Tech)	Dir (Engineering Technology).
	Staff Specialist for Vehicle Propulsion.
	Staff Specialist for Materials & Structures.
	Staff Specialist for Weapons Technology.
	Dir Environmental & Life Sciences.
	Staff Spec/Mobility, Logistics & Adv Concepts.
	Dir, Research & Laboratory Management.
	Spec Asst for MCTL & Long-Range Plnng Matters.
	Staff Spec for Electronic W/C, Ctrl & Comms.
	Staff Specialist for Electronic S/D.
	Staff Specialist for Spec Technology Programs.
	Dir, Balanced Technology Initiative.
Ofc of DD (Strategic & Theater Nuclear Forces)	Director Offensive and Space Systems.
	Director Defensive Systems.
	Dir Strategic Aeronautical & Theater N/S.
	Staff Specialist for Space & Advanced Systems.
	Staff Spec for Techn & Analysis (Off Sys).
	A/D Under S/D (Start & Arms Control).
	Staff Spec for Ball Missile Def Sys.
	Director Force Analysis Concepts and Plans.
Ofc of DD (Tactical Warfare Progs)	Asst Dep Under Secretary of Def (Air Warfare).
	Director, Naval Warfare & Mobility.
	Staff Spec for Interdiction/Naval Strike.
	Staff Specialist for Ground Air Defense Sys.
	Staff Spec, Close Air Sup/Battlefield Int.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Staff Specialist for Antisub & Mine Systems.
	Staff Spec for Naval Proj & Anti-Air Warfare.
	Director, Office of Munitions.
	Staff Spec Intertheater & Intratheater Mobil.
	Staff Specialist for Propulsion.
	Director, Land Warfare.
	Dir, Otc of Conventional Initiatives.
	Spec Asst Dued(Twp) for Tact Syst Acq Prog.
	Staff Spec for Ship Sys & Naval Technology.
Office of DD (Plans & Resources)	Deputy Director, Plans & Resources.
Ofc Dep Asst Secy (Installations)	Dir, Base Closure and Utilization.
Ofc Dep Asst Secy (Production Resources)	Dir Standardization & Acquisition Support.
	Dir Computer Aided Logistics Support Office.
	Dir, Industrial Productivity & Quality.
	Dep Dir for Manufacturing and Quality.
Ofc Dep Asst Secy (Procurement)	Dep Asst Sec of Defense (Procurement).
	Director Cost Pricing and Finance.
	Dir, Contract Policy and Administration.
	Dir, Defense Systems Procurement Strategies.
	Dir, Def Acquisition Reg Sys & Council.
	Dir Foreign Contracting.
	Asst for Acquisition Reform & Contract Simpl.
Ofc Dep Asst Secy (Environment)	Principal Dir (Environmental Restoration).
Ofc Dep Asst Secy (Systems)	Dir Acquisition Logistics & Production Supp.
Director, Electronic Combat	Asst Dir for Elec Combat C3I Countermeasures.
	Dir, Electronic Combat.
Director, Strategic & Theater Nuclear Forces	Dir Strategic & Theater Nuclear Forces C3.
	Staff Asst S/C, Control & Communications.
Director, Theater & Tactical C3	Dir Theater & Tactical Commun Command & Contr.
	Dep Dir Theater & Tactical Command Control.
Director, National Intelligence Systems	Director National Intelligence Systems.
	Dep Dir, National Intelligence Systems.
Director, Tactical Intelligence Systems	Director Tactical Intelligence Systems.
	Dep Dir Tactical Intelligence Systems.
Director, Special Technology Support	Dir, Special Technology Support.
Director, Intelligence Resources & Training	Dir, Intelligence Resources & Training.
Director, Information Systems	Director, Information Systems.
Director, C3 Mobilization Systems	Director C3 Mobilization systems.
Organization Abolished	Dir Strategic & Critical Materials.
Organizaiton Abolished	Asst Dir. Elec Combat Sys (Elec Warfare).
Defense Advanced Research Projects Agency	Chief Advanced Technology.
	Special Assistant for Technology Assessment.
	Deputy Director, Management.
	Deputy Director.
Technology Assessment & Long Range Planning Office	Special Assistant for Special Operations.
Tactical Technology Office	Dir-Tactical Technology Office.
	Dep Dir Tactical Technology Office.
	Assistant Dir for Armor/Anti-Armor.
	Asst Dir Smart Weapons & Sensors.
	Assistant Director, Special Programs.
	Assistant Director, Undersea Warfare.
Advanced Vehicle Systems Technology Office	Dir, Advanced Vehicle Systems Technology Ofc.
	Deputy Director Aero-Space Technology Office.
	Deputy Director, Advanced Vehicle Systems.
	Assistant Director, Undersea Systems.
Information Science & Technology Office	Assistant Director, Electronics Sciences.
	Assoc Dir, Research.
Defense Sciences Office	Executive Director (Software).
	Dir Defense Sciences Office.
	Assistant Director for Material Sciences.
Defense Manufacturing Office	Dep Dir. Defense Manufacturing Office.
	Mgr M & M Wave Integrated Circuit Prog.
Contracts Management Office	Dir, Contracts Management Office
Nuclear Monitoring Office	Dir Nuclear Monitoring Research Ofc.
	Dep Dir, Nuclear Monitoring Res Office.
Office of the Joint Chiefs of Staff	Dep Dir for C3 Systems Integration.
	Dep Dir for Technical Operations.
Strategic Defense Initiative Organization	Assistant Director for Interceptors.
	Asst Dir for Sensors Demonstration.
	Assistant Director for Sensor Technology.
	Deputy Director, Resource Management.
	Asst Dir for Interceptors & Communications.
	Chief, Program Control.
	Director, Information Systems.
	Deputy for Program Operations.
Defense Contract Audit Agency	Director, DCAA.
	Deputy Director, DCAA.
	Assistant Director, Operations.
	Asst Dir, Policy & Plans.
	Director, Filed Detachment.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Regional Managers	Regional Director, Eastern.
	Regional Director, Northeastern
	Regional Director, Central.
	Regional Director, Southwestern.
	Regional Director, Mid-Atlantic.
	Regional Director, Western.
	Deputy Regional Director Northeastern Region.
	Deputy Regional Dir Central Region.
	Deputy Regional Dir Western Region.
Defense Logistic Agency	Special Asst for Integrity in Contracting.
	Dir, Defense Manpower Data Center.
	Chief Actuary.
Directorate for Contract Management	Admr, Defense Logistics Agency Finance Center.
	Executive Directive, Contract Management.
	Chief, Plans, Policies & Systems Division.
Directorate of Quality Assurance	Chf, Plans, Policies & Systems Division.
Olc of Staff Dir-Small & Disadvantaged Business Util	Dep Exec Dir, Quality Assurance.
Office of Civilian Personnel	Staff Dir, Small & Disadv Busin Utilization.
	Staff Director, Civilian Personnel.
Directorate of Contracting	Deputy Staff Director, Civilian Personnel.
	Executive Director, Contracting.
	Chief, Contracts Division.
Directorate of Program and Technical Support	Dep Exec Dir Program & Technical Support.
Directorate of Tech & Logistic Services	Chf, Property Disposal Div.
Defense Personnel Support Center	Exec Dir, Acquisition Mgmt Plan & Support.
Defense Training & Performance Data Center	Dir Defense Training and Performance Data Ctr.
Stockpile Management	Executive Director for Stockpile Management.
Olc of Assoc Dir for Eng, Technol & Corporate Planning	Assoc Dir for Eng, Technology & Corp Plng.
Special Programs Organization	Dep Dir, Special Programs Organization.
	Spec Asst to the Dir, Spec Prog Organization.
National Communications System	Deputy Manager, Nati Communications Systems.
	Asst Mgr, NCS, Technology & Standards.
	Asst Mgr, NCS, Plans & Operations.
Center for Command, Control & Communications (C3) Sys	Dir, CTR for CMD, CTL & Communications Sys.
	Dep Dir, Theater Systems.
	Dep Dir, Mil Satellite Communication System.
	Dep Dir for Switched Network Engineering.
	Assoc Dir NMCS/WWMCCS Engineering Integration.
	S/A to the Dir, CPSI for Satellite Com Sys.
	Asst Dir for Prog Development & Coordination.
	Spec Asst to Dir, Ctr for C3 for Intl Dig Arch.
	Dep Dir Strategic Systems Directorate.
Defense Communications System Organization	Dep Dir, Defense Comm System Organization.
	Dep Dir, DCS Telecommunications Networks.
	Deputy Director for DCS Integration.
Defense Communications Engineering Center	Dir, Def Communications Engineering Center.
Defense Commercial Communications Office	Dir Defense Commercial Communications Office.
Center for Agency Services	Director, Center for Agency Services.
Resource Management Directorate	Deputy Director, Resource Management.
Joint Data Systems Support Center	Director, Joint Data Systems Support Center.
	Tech Dir, WWMCCS Adp Tech Support Directorate.
	Deputy Director, NMCS Adp Directorate.
	Assoc Dir for Technical & Management Support.
Joint Tactical Command, Control & Communications Agency	Asst Dir for Washington Operations.
	Assistant Director, JTC3A.
	Dep Dir, Architecture Directorate.
	Deputy Director for Testing.
Office of the Director	Deputy Director.
	Special Assistant to the Deputy Director.
Acquisition Management Office	Dir, Acquisition Management.
Plans, Programs & Requirements Directorate	Director for Plans, Programs & Requirements.
Office of the Director, AFRRI	Scientific Director, AFRRI.
Operations Directorate	Deputy Director, Operations Directorate.
	Chief, Structural Dynamics Division.
Radiation Sciences Directorate	Dir for Radiation Sciences.
	Chief, Atmospheric Effects Division.
	Chief, Electronic Effects Division.
	Chief, Electromagnetic Applications Division.
Shock Physics Directorate	Director for Shock Physics.
	Chief, Weapons Effects Division.
Test Directorate	Director for Test.
	Chf, Nevada Operations Olc, Test Directorate.
DMA Headquarters	Asst Dep Dir for Plans and Requirements.
	Director of Personnel.
	Asst Deputy Dir for Programming.
	Director of Acquisition.
	Dep Dir for Progs, Production & Operations.
	Dep Dir for Research & Engineering.
	Dep Dir, Management & Technology.
	Asst Dep Dir for Production & Distribution.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Deputy Dir for Transition Management.
	Asst Deputy Dir for Research & Engineering.
DMA Field Activities	Tech Dir, DMA Aero Center.
	Tech Dir, DMA Hydrographic-Topographic Center.
	Dep Dir for Prog, Prod & Operations DMA HTC.
	Dept Dir for Progs, Production and Operations.
	Chf, Digital Products Department AC.
	Chf, Digital Products Department HTC.
	Dep Dir for Program Integration & Operations.
	Tech Dir/Dep Dir, Combat Support Center.
	Chief, Scientific Data Dept.
	Chief, Scientific Data Department.
	Director, Systems Center.
	Technical Director, Reston Center.
	Dep Dir for Prog, Production and Operations.
	Dep Dir for Modernization Development.
	Dir Telecomm Ser C/D Dir for Info Systems.
	Chief, Digital Products Department.
	Chief, Data Services Department.
Defense Investigative Service	Dir, Defense Investigative Service.
	Deputy Director (Investigations).
	Dep Dir (Industrial Security).
	Deputy Director (Resources).
	Dir, Personnel Investigations Center.
Department of Air Force:	
Olc of Administrative Assistant to the Secretary	Administrative Assistant to the Secy.
	Dep Administrative Assistant.
Olc of Small & Disadv Bus Utilization	Dir, Olc of Small & Disadv Bus Utilization.
Office of the Inspector General	Dep Asst Inspector Gen/Spec Investigations.
Office of ASAF for Financial Management & Comptroller	Dep Comptroller.
	Principal Dep Asst Secry (Financial Mgmt).
ODAS Budget	Deputy for Budget.
	Director of Budget Investment.
	Director of Budget Management & Execution.
	Deputy Director of Budget Operations.
ODAS Cost & Economics	Assoc Dir of Mgmt Analysis.
	Dir Cost Applications & Dir AF Cost Center.
ODAS Accounting, Finance & Banking	Dep Asst Secy (Acct, Banking & Finance).
	Deputy for Financial Policy & Banking.
Office of ASAF for Acquisition	Automated Info Syst Prog Executive Ofcr.
ODAS Acquisition Management & Policy	Dep Asst Secy (Acquisition).
	Dep for Acquisition.
	Competition Advocate General.
	Director, Test & Evaluation.
Directorate of Contracting & MFG Policy	Assoc Dir of Contracting & Manufacturing Pol.
ODAS Communications, Computers & Logistics	Dep for Supply, Maintenance & Log Plans.
	Dep for Transportation & Federal Aviation.
Olc of ASAF for Manpower, Reserve Affairs, Install & Env	Dep for Air Force Review Boards.
ODAS Installations	Deputy for Installations Management.
Office of ASAF for Space	Deputy for Contracting.
Office, Asst Vice Chief of Staff	Chief Office of Air Force History.
Asst Chief of Staff for C3 and Computers	Dir of Technology & Architecture.
	Director of C4 Software, Architecture & Pol.
Olc of Dep Chief of Staff, Logistics and Engineering	Assoc Dir for Logistics Plans & Programs.
	Chief Modification & O&M Programs Division.
	Chief Combat Support Programs Division.
	Assoc Dir for Engineering & Services.
	Deputy Director for Programs.
	Deputy Director for Construction.
	Assoc Dir of Maintenance Engineering & Supply.
Organization Abolished	Deputy Director of Programs and Evaluation.
Office of Deputy Chief of Staff, Personnel	Dir of Civilian Personnel.
	Deputy Director of Personnel Management.
	Deputy Director for Plans and Requirement.
	Dep Dir for Work Force Effectiveness.
	Spec Project Ofcr for Personnel Management.
Air Force Systems Command	Principal Deputy ACS Personnel.
	Asst for Intelligence.
	Chief Engineer.
DCS/Contracting	Prin Asst/Contracting & Manufacturing.
	Dir Contract Clearance & Policy Development.
DCS/Engineering & Technology Management	Principal Asst DCS/Product A/A Logistics.
	Technical Director, Product Assurance.
Deputy Chief of Staff/Comptroller	Asst to the DCS/Comptroller.
DCS/Technology	Asst Dep Chief of Staff/Plans and Programs.
	Director of Plans & Programs.
Space Systems Division	Asst for Acquisition Management & Competition.
	Deputy Program Dir Launch Systems.
Air Force Space Technology Center	Deputy Director (AFSTC).
Space Physics Division	Dir, Space Physics Div, AFGL.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Meteorology Division	Ch, Atmospheric Structure Br.
Optical & Infrared Technology Division	Director Optical & Infrared Technology Div.
Astronautics Laboratory	Dir, Astronautics Laboratory.
	Dir, Solid Rocket Div.
Electronic Systems Division	Executive Director.
	Asst Dep for Contracting & Manufacturing.
	Assistant Deputy Commander/Tactical Systems.
	Tech Dir, Dep CMD Tactical Syst, J-TIDS/AWACS.
	Technical Director.
	Prog Dir for Air Base Decision Systems.
	Deputy for Product Assurance & Acquis Logist.
Rome Air Development Center	Director (Plans).
	Techn Dir (Intelligence & Reconnaissance).
	Technical Dir (Surveillance).
	Technical Director (Command & Control).
	Deputy Comptroller.
Aeronautical Systems Division	Director (Mission Analysis).
Deputy for Development Planning	Asst Deputy for Contracting & Manufacturing .
Deputy for Contracting & Manufacturing	Engineering Advisor Product Assurance Engr.
Deputy for Engineering	Technical Dir Avionics Engineering.
	Dir, Flight Systems Engineering.
	Director, Systems Engineering.
Directors of Engineering	Director of Engineering (F–16).
	Dir of Eng Reconnaissance & Elec Warfare Sys.
	Dir Engineering Propulsion Systems.
	Director of Engineering (Strategic Systems).
	Dir of Engineering (Advanced Technol Bomber).
	Dir of Eng, Advanced Tactical Fighter.
	Dir of Engineering C–17.
Systems Program Offices	Deputy Program Director Propulsion SPO.
	Deputy Program Director Systems SPO.
Wright Research and Development Center	Dir Manufacturing Technology Directorate .
Materials Laboratory	Dir, Metals & Ceramics Div.
	Dir, Metals & Ceramics Div.
	Dir, Nonmetallic Materials DN.
Organization Abolished	Technical Advisor, 3246 TW.
Foreign Technology Division	Technical Director (Aerospace Systems).
	Technical Director (Technology and Threat).
USAF School of Aerospace Medicine	Research Director (Crew Technology).
Aerospace Medical Research Lab	Dir, Toxic Hazards Div.
	Director Human Engineering.
Organization Abolished	Chief Scientist.
Air Force Development Test Center	Assistant for Contract Administration Service.
Air Force Logistics Command	Asst DCS—Comptroller.
	Asst Dep Chf of Staff, Maintenance.
	Chairman A F Logistics Command Procur Committ.
	Assistant DCS/PLANS & Programs.
	Director of Civilian Personnel.
	A/D Chf of Staff-Contracting & Manufacturing.
	Asst Dep to the Commander for Intl Logistics.
	Asst Deputy Chief of Staff, Materiel Mgt.
	Asst Deputy Chief of Staff Logis Magnt System.
	Asst Deputy Chief of Staff/Distribution.
	Asst to the Comdr AF Electornic Combat OFC.
	Principal Asst for Sci, Technol & Engineering.
	Special Asst for Depot Maintenance Mgt Sys.
Air Force Acquisition Logistics Center	Asst to the Commander AFALC.
	Asst to the Commander, Logistics Oper Center.
	A/D Aeronautical Prog AF Acquisition Log Ctr.
Air Logistics Center, San Antonio	Dep Dir, Directorate of Maintenance.
	Dep. Dir. Materiel Mgt. San Antonio Log. Ctr.
	Dep Director, Contracting and Manufacturing.
Air Logistics Center, Oklahoma City	Dep Dir, Directorate of Materiel Mgmt.
	Dep Dir, Directorate of Maintenance.
	Dep Director, Contracting and Manufacturing.
Air Logistics Center, Warner Robins	Deputy Director, Directorate of Materiel Mgt.
	Deputy Dir, Dir of Maintenance.
	Dep Director, Contracting and Manufacturing.
Air Logistics Center, Ogden	Dep Dir, Directorate of Maintenance.
	Deputy Director, Materiel Management.
	Dep Dir Contracting & Manufacturing.
Air Logistics Center, Sacramento	Dep Dir Directorate of Materiel Management.
	Dep Dir, Directorate of Maintenance.
	Dep Director Contracting & Manufacturing.
Air Force Audit Agency	Auditor General of the Air Force.
	Asst Aud Gen (Field Activities).
	Asst Aud Gen (Operations).
	Asst Aud Gen (Financial + Support Audits).
	Asst Aud Gen (Acq + Logistics Audits).
Electronic Security Command	Asst to the Commander.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Air Force Communications Command	Dir, Air Force Comms Computer Syst I/OFC.
	Deputy Commander Standard Systems Center.
Military Airlift Command	Asst Dep Chf of Staff/Air Transportation.
Strategic Air Command	Chief, Operations Analysis Division.
	Chief, Applied Research Division.
Tactical Air Command	Chief Scientist Tactical Air Warfare Ctr.
Headquarters, Pacific Air Forces	Chief, Operations Analysis.
U.S. Air Forces in Europe	Director of Civilian Personnel.
Shape Technical Centre	Deputy Director.
AF Space Command	Sr Scientist & Tech Advisor for Afspacecom.
AF Operational Test & Eval Ctr (AF OTEC)	Scientific Advisor (Test & Evaluation).
Air University	Director of Academic Affairs.
Joint Electronic Warfare Center (JEWC)	Technical Director.
Air Force Commissary Service	Deputy to the Commander, AF Commissary Serv.
Air Force Accounting & Finance Center	Dep Asst Comptroller for Accounting & Finance.
	Director of Plans & Systems.
	Dir, Security Assistance Accounting Center.
U.S. Central Command	Scientific Advisor.
Department of Army:	
Office of the Under Secretary	Operations Research Analyst.
	Chf, Ops Res Analyst for Forces & Readiness.
	Operations Research Analyst for Systems.
	Opers Research Analyst for Cmd. Cont, C&I.
	Special Asst to the Under Secretary.
Ofc of the Administrative Assistant	Adm Asst to the Secy of the Army.
	Dep Administrative Assistant.
	Director, Defense Supply Service—Washington.
HQDA Army Acquisition Executive	Dep Prog Mgr, Light Helicopter Program.
	Deputy Peo, Close Combat Vehicle.
	Program Exec Officer—Strategic Info Sys.
	Dep Prog Exe Ofcr, Army Cmd & Ctrl Syst.
	Deputy Prog Executive Officer Comm Systems.
	Dep Program Executive Officer, Fire Support.
	D/Prog Exec Ofcr High Med Air Def/Thr Male Def.
	Peo Troop Support.
	Program Executive Officer Stamis.
	Prog Exec Ofc for Chemical/Nuclear.
	Progr Exec Officer, Close Combat Armament.
	Program Manager Sustaining Base Network.
	Dep Program Executive Officer for Aviation.
	Dep Peo, Intelligence & Electronic Warfare.
	Program Executive Officer, Combat Support.
Dir of Infor Sys for Command, Control, Comms & Computers	Army Spectrum Manager.
	Ofc, U.S. Army Info Syst & Sel Acq Activity.
	Dir Command Systems Integration Agency.
	Vice Dir For Information Management.
OASA Research Development and Acquisition	Dir for Program & Technology Assessment.
	Dep Dir US Contracting Support Agency.
	Chief, Policy & Procedures Division.
	Assistant Deputy for Plans & Programs.
ODASA Research and Development	Dep Asst Secy for Res & Tech Scientist.
	Dir for Program Review.
	Dir for Space and Strategic Systems.
	Director for Research Laboratory Management.
	Director for Technology.
	Director for Adv Concepts & Tech Assessment.
ODASA Systems Mgmt Integration & Coord	Dir Sys Mgt Integ & Coordination Ofc.
ODASA Procurement	Deputy Asst Secy of the Army (Procurement).
	Director for Procurement Policy.
ODASA Management and Programs	Deputy for Program Evaluation.
	Dep Asst Secy for Plans & Programs.
Ofc of Asst Secretary (Installations, Logistics & Envmt)	Dep for Programs & Install Assistance.
	Dep Program Exec Officer for Chem-Demil.
Ofc of Asst Secy (Financial Mgmt)	Assistant Deputy ASA for Army Budget.
	Assoc Dep Assistant Comptroller.
	Deputy Director of Operations & Maintenance.
	Deputy for Cost Analysis.
	Dir Investment Directorate.
	Dep Asa for Review & OVersight.
	Dep Asa for Finance & Accounting.
	Special Asst for Finance & Accounting.
	Spec Adv for Economic Pol & Productivity Prog.
	Dir of Fin Management System Integration.
	Deputy Director Operations Directorate.
Off of Asst Secretary, Manpower & Reserve Affairs	Dep Asst Secy (Rev Bde & EEO Compl).
Ofc of Asst Secretary Civil Works	Deputy for Policy & Evaluation.
	Deputy for Management and Budget.
	Deputy for Plnng Pol & Legislation.
	Deputy for Project Management.
Office, Director of Army Staff	Dep Dir of Management (Installation M & R).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Office, Deputy Chief of Staff, Intelligence	Director Missle & Space Intelligence Center.
	Deputy & Technical Director, FSTC.
	Deputy Director, US Army Intelligence Agency.
USA Strategic Defense Command Huntsville AL OSCA FOA	Proj Mgr, Ground Based Interceptor Proj OFC.
	Director, Directed Energy Weapons Directorate.
	Proj Mgr High Endo Atmos Def Int Proj.
	D/S Lethality & Key Technologies Directorate.
	Dir Kinetic Energy Weap Directorate.
	Chief, Battle Management Division.
	Prin Assistant Resp. for Contracting.
	Chief, Passive Sensors Division.
	Chf, Active Sensors Div Sensors Directorate.
	Chf, Discrimination Div Sensors Directorate.
	Dir, Advanced Technology Directorate.
	Proj Mgr, G-B Surveillance & Tracking Syst.
Program Management Systems Development	Dir, Program Management Systems Dev Agency.
Army Center of Military History	Chief Historian, Army Ctr of Military History.
Office, Dep Chief of Staff for Personnel	Director for Manprint.
	Director of Manpower.
	Dir, Test and Evaluation Management Agency.
Directorate of Civilian Personnel	Director of Civilian Personnel.
	Dep Director of Civilian Personnel.
	Chief Employment and Classification Office.
US Total Army Personnel Command	Director, Civilian Personnel Mgt.
Army Research Institute for Behavioral & Social Sciences	Dir. Systems Rsch Lab & Assoc Dir ARI.
	Dir, Trng Res Lab & Assoc, Ari..
	Dir, Manp & Pers Res Lab & Assoc Dir, Ari.
Office, Deputy, Chief of Staff for Logistics	Asst Director for Supply Mgmt.
	Asst Dir for Maintenance Mgmt.
	Spec Asst to DCSLOG & Chf Av Log OFC.
	Asst Dir for Transportation.
	Asst Dir for Energy & Troop Support.
	Deputy for Troop Support Agency.
	Director for Security Assistance.
	Director for Resources and Management.
	Executive Director, Strategic Logistics Agcy.
Army Audit Agency	The Auditor General, U.S. Army.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Director, Acquisition & Systems Audits.
	Dir Personnel and Force Management Audits.
	Dir Audit Policy Plans and Resources.
	Regional Auditor General (European Region).
	Director Acquisition & Systems Audits.
Ofc Dep Chf of Staff for Operations & Plans	Tech Adv.
	Technical Director, US Army Nuc & Chem Agency.
	Dir. US Army Ctr of Mil His & Chf of Mil His.
US Army Information Systems Command	Dir. Info Systems Command Pentagon.
Concepts Analysis Agency (OCSA)	Assistant Dir for Res and Analysis Support.
U.S. Army Med Res Inst of Infectious Dis. Ft Detrick Md	Deputy for Science.
Training and Doctrine Command (TRADOC)	Scientific Advisor to CG.
	Scientific Advisor.
	Asst Deputy Chief Staff Personnel Admin Logis.
	Asst Deputy Chief of Staff for Resources Mgmt.
	ADCOS for Training Policy Plans and Programs.
Combat Developments Experimentation Command	Dir. USA Combat Develop Experimentation Ctr.
TRADOC Analysis Command	Director of Operations.
	Deputy Director, TRAC.
	Director of Operations.
TRADOC Combined Arms Test Facility	Scientific Advisor.
Military Traffic Mgmt Commd	Special Assistant for Transportation Engr.
	Executive Director.
U.S. Army Forces Command	Civilian Personnel Director.
	Deputy Comptroller.
U.S. Army Corps of Engineers	Chief, Office of Personnel.
	Director Resource Management.
	Dir. Engineering and Housing Support Center.
Directorate of Civil Works	Deputy Director, Civil Works.
	Chf-Ofc of Policy.
	Chf, Programs Div.
	Chf-Planning Division.
	Chief Dredging Division.
	Chief Operations & Readiness.
	Chief Engineering Division.
Directorate of Engineering & Construction	Chf, Ops, Construction & Readiness Division.
	Dep/Dir Engineering and Construction.
	Deputy Chief Construction Division.
	Chief Construction Division.
	Chief Engineering Division.
	Chief, DAEB, Engineering Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Directorate of Military Programs	Deputy Director, Military Programs.
Board of Engineers for Rivers and Harbors	Tech Dir. Bd Engr Rivers and Harbors.
Planning Divisions, COE	Chf Planning Div. Ohio River Div.
	Chf Planning Div. No Pacific Div.
	Chf, Planning Div, South Atlantic Div.
	Chief, Planning Div Lower Miss Valley Div.
	Chf, Planning Div, South Pacific.
	Chief Planning Div, N. Atlantic Div.
	Chf Planning Div-Southwestern Div.
	Chf Planning Dir North Central Div.
Engineering Divisions, COE	Chief, Engineering Div., Ohio River Div.
	Chief, Engineering Div., Southwestern Div.
	Chief, Engineering Div., N. Central Div.
	Chief, Engineering Div., S. Pacific Div.
	Chief, Engineering Div., N Atlantic Div.
	Chief, Engineering Div., S. Atlantic Div.
	Chief, Engineering Div Lower Miss Div.
	Chief, Engineering Div. Missouri River Div.
	Chief, Engineering Div, North Pacific Div.
	Chief, Engineering Div, Pacific Ocean Div.
	Chf Engineering Div, Europe Div.
	Chief Engineering Div, Huntsville Div.
Construction Divs-Coe	Chief Construction-Operations Div Satl.
	Chief Construction-Operations Div S Western.
	Chief Construction-Operations Div, Ohio River.
	Chief Construction-Operations Div, LR MS VAL.
	Chief Construction Operations Division.
	Chief Construction Operations Division.
	Chief Construction-Operations Div, Natl.
	Chief Construction-Operations Div Pacific.
	Chf, Construction-Operations Division.
Army Materiel Command (AMC)	Chief Scientist.
	Deputy Chief of Staff for Production.
Office of DCS Supply Maintenance & Transportation	Asst Dcs for Supply Maintenance & Trans.
Office of the Chief of Staff	Dep Chief of Staff for Product Assur/Testing.
Ofc Dep Cmdg Gen Material Dev Darcom	Prin Asst Dep for Res Develop and Acquisition.
	Asst Dep Int'l Cooperative Programs.
Dir for Devel Engineering & Aquisition	Asst Dcs Develop Engineering & Acquisition.
	Asst Dca Acquisition Management.
	Asst Dca for Program Management.
Ofc Dep Cmolg Gen Matl Readiness	Asst Dep for Materiel Readiness.
Direc for Material Management	Asst Dep Chf of Staff for Policy & Procedures.
Asst Chf of Staff for Ammunition	Asst Deputy Chief of Staff for Ammunition.
Office of DCS for Procurement	Asst DCS for Readiness.
Office of DCS for Procurement	Asst DCS for Procurement.
Direc for Test, Measurement & Diag Eq	Deputy Executive Director for Tmde.
Direc for Personnel Trng & Force Dev	Asst Deputy Chf of Staff for Personnel.
Office of Comptroller Darcom Hq	Adcs for Resource Mgmt.
	ADCS for Cost Analysis.
Program Analysis & Evaluation Directorate	Dcs for Program Analysis & Evaluation.
USA Security Affairs Command	Deputy.
Systems Integration Management Activity	Dir Automated Logistics Mgt. Systems Activity.
	Dir, Syst Integration Mgmt Activity.
Armament, Munitions & Chemical Command (MCCOM)	Comptroller.
	Deputy for Procurement and Production.
	Deputy for Logistics Readiness.
	Director of Product Assurance.
	Dep for Indust Preparedness & Installations.
Amccom, Ardec	A/Tech/Dir/ (Sys Development & Engineering).
	Assoc Tech Dir (Producib & Process Technol).
	Director, Armament Engineering Directorate.
Close Combat Armanentcenter	Chf Fire Control Systems Division.
Chemical Sys Lab Amccom	Dir Munitions Directorate.
	Director, Research Directorate.
U.S. Army Def Ammunition Center & School	Dir, U.S. Army Def Ammunition Center & School.
Aviation Systems Command (AVSACOM)	Dir of Procurement and Production.
	Dir Avionics Research & Development Act.
	Dep Director, Applied Technology Directorate.
	Logistics Director.
Aviation Research Development & Engineering Center	Dir US Army Aviation Res & Tech Activity.
	Director of Engineering.
	Director Aeroflight Dynamics.
	Director Propulsion Directorate.
	Director Aero Structures Dir.
Communications & Elect Comd (CECOM)	Comptroller.
	Dir, of Product Assurance and Test..
US Army Communication Electronics Comm	Dir Communications/ADP Directorate.
	Assoc Techn Dir (Research & Technology).
	Dir, Comd, Control, C/I (C3I) L & R Center.
Program Mgr. Army Tactical Data Systems (CORADCOM)	Dir, Life Cycle Software Engineering Dir.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Depot Systems Command (DESCOM)	Deputy for Command Operations.
	Dep for Supply, Maintenance & Transp.
US Army Laboratory Command	ADC for Technology Planning & Management.
	Assoc Tech Dir for Elec Warfare and Intel.
Harry Diamond Labs (HDL)	Director, Harry Diamond Laboratories.
	Dir Technical Applications Lab.
Army Research Office (ARO)	Director, Materials Science Division.
	Dir, Engr Sci Div.
	Dir, Research & Technology Integration.
	Dir Chem & Bio Sci Div.
US Army Ballistic Research Laboratory	Chf, Sys Engineering & Concepts Analysis Div.
	Chief Interior Ballistics Division.
	Chief-Launch and Flight Division.
	Chief Terminal Ballistics Div.
	Chief Vulnerability Lethality Division.
Missile Command (MICOM)	Director for Procurement.
	Dir, Missile Logistics Ctr.
	Director of Product Assurance.
	Deputy for Procurement and Readiness.
Research Development & Engineering Center	Dir for System Engineering & Production.
	Dir for Test and Evaluation.
	Director for Advanced Sensors.
	Associate Director for Systems.
	Director for Directed Energy.
Troop Support Command (TROSCOM)	Director of Procurement and Production.
	Deputy to the Commander.
Belvoir Research & Development Center	Dir, Combat Engineering Directorate.
	Director, Logistics Support Directorate.
Natick Research Development & Engineering Center	Director Individual Protection Laboratory.
	Director, Science & Adv Tech Directorate.
	Dir Soldier Sustainment Directorate.
Tank-Automotive Comd (TACOM)	Director of Resource Mgt.
	Dir for Procurement and Production.
	Director of Product Assurance & Test.
	Asst Deputy for Procurement and Readiness.
	Associate Director for Systems.
	Dir, Tank-Automotive Technology Directorate.
Test and Evaluation Command, (TECOM)	Technical Director Combat Syst Test Activity.
	Dir for Test and Assessment.
Army Material Systems Analysis Activity	Director.
	Chief Combat Support Div.
	Chief Air Warfare Div.
	Chief, Reliability, Availability & Maintainabil.
	Chief, Ground Warfare Division–AMSAA.
	Chief, Logistics Readiness & Analysis Division.
Army Information Systems Command	Deputy Chief of Staff for Resource Management.
	Technical Director.
Headquarters, U.S. Army, Europe	Asst Dep Chf of Staff, Personnel (Civ Pers).
	Asst Dep Chief of Staff Eng for Eng & Housing.
	Asst Dep Chf of Staff, Resource Mgmt USAREUR.
Army Intel and Security Command	Deputy for Policy & Development.
Aclas, NATO	Asst Dir, Command, Control and Comms Syst.
Defense Systems Management College	Deputy Commandant (PROVOST).
DOD Wage Fixing Authority	Director, Technical Staff.
National Defense University	Dir. Information Resources Management College.
Department of Navy:	
Office of the Secretary	Dir, Naval Industrial Management Program.
Office of the Under Secretary of the Navy	Assistant for Administration.
Office of the Auditor General	Auditor General of the Navy.
Naval Audit Service	Director, Plans and Policy.
	Dir, Naval Audit Service Western Region.
	Dir, Naval Audit Service Capital Region.
	Director, Plans and Policy.
	Director, Audit Operations.
Ofc of the Asst Secy of Navy (Manpwr & Res Affs)	Staff Dir Dir Manpower Analysis Staff.
Office of Civilian Personnel Management	Dir, Ofc of Civilian Personnel Management.
	Associate Director (OCPM–30).
	Associate Director (OCPM–20).
	Associate Director (OCPM–10).
OCPM—Pacific Region	Director Pacific Region.
OAS of Navy (Installations & Environment)	Director, Contracts & Business Management.
	Asst Dep Chf Nav Mat (Reliability and Eng).
	Assistant Director, Contracts & Pricing Div.
	Specification Control Advocate General.
OAS of the Navy (Research, Dev & Acquisition)	Program Exec Ofcr, Expeditionary Force Prog.
	Dir, Acquisition Workforce Policy.
	Dir for Low Observable & Technol & Spec Prog.
	Deputy Director, Air Warfare.
Program Executive Officers	Director, Plans & Programs Division.
	HD, Guidance Section.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Head Fire Control Section.
	Head Operations Engineering Section.
	Test & Instrumentation Branch Engineer.
	Branch Engr, Launcher Branch.
	HD, Navigation Equip Sect.
	Chf Engr, Missile Branch.
	Chief Engr.
	Br Engr Fire Control & Guidance Br.
	Branch Engr, Ship Installation & Design Br
	Dep Prog Mgr, Seawolf Class Submrne Acq Prog.
	Asst Dep Comm ASW & Undersea Warefare Sys.
	Program Manager, MK–50 Torpedo Program Office.
	Prog Dir, Air, for Weapon & Armament Programs.
	Prog Dir/Air for EW & Mission Support Prog.
	Sect Head, Reentry Systems Sect, Missle Br.
	Deputy Logistics Support Coordinator.
	Dep P/E Officer for Unmanned Aerial Vehicles.
	Director Plans & Programs Division.
	Deputy Director, Plans & Programs Division.
	Head, Resources Branch.
	Branch Engineer, Navigation Branch.
	Dep P/E Officer for Cruise Missiles Program.
	Prog Mgr for Comms (RF) Satellite Systems.
	Dep Prog Dir, Space & Sensor Sys Directorate.
	Asst for Systems Integration & Compatibility.
	Dep Prog Exec Ofcr for Asw, A/S Mission Prog.
	Dep Prog Exec Ofcr for Tactical Air Programs.
	Exec Dir, Aegis Shipbuilding Program.
Ofc of the Asst Secy of Navy (Financial Management)	Spec Asst for Info Res Mgmt (IRM) Cost Anal.
	Assoc Dir, Information Resources Management.
Naval Center for Cost Analysis	S/A for Cost A/T Dir, Naval Ctr for Cost Anal.
Office of the Comptroller of the Navy	Assoc Dir, Budget & Reports/Fiscal Manag Div.
	Exec Asst Compt for Financial Mgmt Systems.
	Counsel.
	Dir, Investment & Dev Div.
	Dir, Budget & Mgmt, Policy and Procedures Div.
	Exec Asst Comptroller for Accounting Policy.
	Dir, Budget Evaluation Group.
	Director Financial Control Division,
Navy Comptroller Standard Systems Activity	Director, Civilian-Contractor Manpower Div.
Office of the Naval Inspector General	Dir, Navy Comptroller Standard Syst Activity.
Office of the General Counsel	Deputy Naval Inspector General.
	Asst General Counsel (Acquisition)
Director-Naval Administration/Asst Vice CNO	Asst Gen Counsel (Civilian Personnel Law).
	Dir Naval History/Dir, Naval Historical Ctr.
	Asst for Educational Resources.
	CNO Executive for Total Quality Management.
Director, Navy Program Planning	Head, Studies & Analysis Branch.
	Asst Dir, for Readiness Appraisal.
	Deputy Director for Programming.
	Head, Logistics & Fleet Support Branch.
Director Naval Medicine & Surg General	Director Resources Division.
Director Space Command and Control	Dir, Electromagnetic Spectrum Management.
Director, Naval Warfare	Advanced Technology Advisor.
	Technical Director.
	Techn Dir, Naval Warfare Anal A/F Level Plans.
Office of the Oceanographer of the Navy	Technical Director.
Advanced Technology Development Branch	Director, Advanced Tech Dev Branch.
Director, Naval Intelligence	Technical Director.
	Advisor for Research & Development Programs.
	Deputy Director of Naval Intelligence.
	Director, Special Liaison Group.
DCNO (Manpower, Personnel & Training)	Asst for History/Intelligence Community Affs.
	Dir, Total Force Info Res & Sys Mgmt Div.
Office ACNO (Undersea Warfare)	Dir, Civilian Personnel Programs Division.
Office DCNO (Logistics)	Tech Dir, Submarine & SSBN Security Program.
	Dir, Ilap. Technol & Assessment Division.
	D/Dir Joint Operatnl Logis Plans & Progs Div.
Office ACNO (Air Warfare)	Director Strategic Sealift Division.
	Spec Asst for Aviation Budget and Acquisition
	Special Asst for Technology and Analysis.
Naval Military Personnel Command	Dir Military Pay Financial Mgmt Directorate.
Navy Personnel Rsch & Devl Center	Technical Director, NPRDC.
Naval Observatory	Dir, Time Service Div.
Naval Data Automation Command Headquarters	Technical Director.
	Dir, Naval Data Automation Command.
Naval Investigative Service Command	Dep Dir, Naval, Investigative Service.
Naval Technical Intelligence Center	Technical Director.
	Director of Analysis.
Bureau of Medicine & Surgery	Dep Commander for Fin Mgmt & Comptroller.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Naval Medical Research Institute	Scientific Director
Military Sealift Command	Counsel.
	Engineering Officer.
	Comptroller.
	Deputy Commander.
Naval Tactical Support Activity	Dir, Navy Tactical Support Acty.
Naval Space Command	Technical Director.
Naval Oceanography Command	Technical/Deputy Director.
Ofc of Commander, Operational Test & Evaluation Force	Technical Director.
Ofc of Commander in Chf/Allied Forces/Southern Eur	Director, Tactical Development & Training.
Office of the Commander-in-Chief, U.S. Pacific Fleet	Deputy Fleet Inspector General
Ofc of the Commander-in-Chief, U.S. Pacific Command	Scientific Advisor.
	Chief, Research & Analysis.
	Comptroller.
Ofc of the Chief of Naval Education and Training	Deputy Chief of Naval Education & Training.
	Director NROTC Selection and Placement.
Executive Development Cadre	Director, Civilian Resources Management Dir
	Science and Technology Advisor.
	Technology Assessment Consultant.
	Asst for RDT&E/Acquisition Management.
	Spec Asst for Total Quality M&S Acquisition.
	Spec Asst Prin Dep Asst Secy Navy (Res E & S).
	Spec Asst to the Chf Engineer of the Navy.
Naval Air Systems Command Headquarters	Deputy Dir Logistics/Fleet Support & Group.
	Executive Director, Management Plans & Progr.
	Exec Dir Acquisition Mgt.
	Exec Dir, Procurement Management.
	Deputy Comptroller.
	Counsel, Naval Air Systems Command.
	Technical Director, Weapons Engineering Div.
	Dir, Engineering Sup & Prod Integ Mgmt Div.
	Techn Dir, Computer Resources & Avionics Div.
	Director, Weapons Division.
	Dir, Evaluation Div.
	Techn Dir, Res & Techn.
	Technical Director Air Vehicle Division.
	Asst Dir Logistics Mgmt Div.
	Dir Aircraft Weapons Systems Purchase Div.
	Dir, Missile Weapons Systems Contracts Div.
	Dir, Systems Acquisition Directorate Special Asst for Tom.
	Director Cost Analysis Division.
	Dir, Surveillance and Avionics Division.
	Dir, Systems Alternatives Directorate.
	Techn Dir, Navy Ranges & Field Activity Mgmt.
	Director, Aircraft Division.
	Asst Dir Propulsion & Power Division.
	Assoc Dir Systems Engineering Mgmt.
	Deputy Commander, Naval Air Sys Command.
	Dir Cruise Missile Contracts Division.
	Director, Procurement Budget Division.
	Director Airborne Weapons Logistics Division.
	Deputy Counsel, Navair.
	Executive Director for Aviation Depots.
	Director, Corporate Management Directorate.
	Dir, Information Resources Mgmt Division.
	Dir, ASW/Support A/A Components Contracts Div.
	Exec Dir for Fleet Support/Product.
Naval Air Engineering Center	Executive Director.
	Chief Engineer.
Naval Air Test Center	Executive Director.
	Dir, Systems Engineering Test Directorate.
	Director, Range Directorate.
Naval Avionics Center	Executive Director.
	Director of Engineering.
	Director of Plans and Programs.
Pacific Missile Test Center	Assoc Dir and Assoc TD (Ranges and Tests).
	Dir, Weapons Evaluation Directorate.
	Executive Director.
	Dir Elec Warfare Dir/Assoc Tech Dir (Elec/WP).
Naval Training Systems Center	Technical Director.
	Director of Research & Technology.
	Director of Engineering.
	Dir of Research & Engineering.
	Dep Dir of Research & Engineering.
Space & Naval Warfare Systems Command	Exec Dir, Contracts.
	Techn Dir, Ship & Shore Communications.
	Tech Dir, Navy Space Project Ofc.
	Dep Program Mgr Directed Energy Laser Weapons.
	Deputy Comptroller.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Counsel.
	Deputy Commander.
	Technical Director.
	Deputy Project Mgr/Tech Dir Com Sys Proj Ofc
	Technical Director, Submarine Communications.
	Techn Dir, Surveillanc D/A Development Prog.
	Program Manager for Strategic Defense Systems.
	Dep & Techn Dir, NCCS Allocat Prog Office.
	Assoc Tech Dir for Research & Technology.
	Executive Director, Life Cycle Support Group.
	Dep Dir, Operations & Program Development.
	Asst Commander Acquisition & Logistic Plnng.
	Tech Dir Info Transfer Sys Program Directo.
	Techn Dir, Warfare Syst Architecture Group.
	Techn Dir, Undersea Warfare Program Directorate.
	Techn Dir, Warfare Systems Engineering.
	Dep Cmdr for Navy Lab/Director of Navy Lab.
	Techn Dir, Advanced Anti-Submarine WRFR Prog.
	Tech Dir, Warfare Sys Arch & Engr Direct.
	Techn Dir, Satellite Communications Prog Ofc.
	Tech Dir, Technol A & A Program Directorate.
Delete Org	Technical Director.
Naval Air Development Center	Dir Aircraft and Crew Systems Technology Dire.
	Technical Director/Consultant.
	Associate Technical Director.
	Department Head:
	Dept Head, Mission Avionics Technology Dept.
	Head Systems & Software Technology Department.
	Head, Tactical Air Systems Department.
	Head, Warfare Systems Analysis Department.
	Weapons Systems Technology Manager.
	Head, Air Vehicle Technology & Programs.
	Assoc Dep Head A/W D/Head, Asw A/D Division.
Naval Coastal Systems Center	Tech Dir/Consultant.
	Head, Research & Technology Department.
	Head, Coastal Warfare Systems Department.
Naval Ocean Systems Center	Head, Undersea Warfare Systems Department.
	Head, Surveillance Dept.
	Dir, Undersea Weapon Systems Department.
	Head, Engineering & Computer Sciences Dept.
	Chf Res Scientist (Arctic Submarine Tech.
	Technical Director/Consultant.
	Deputy Technical Director.
	Head, Marine Sciences & Technology Dept.
	Head, Command and Control Department.
	Head, Communication Department.
	Director, Systems Planning Group.
David Taylor Research Center	Associate Tech Dir for Sys Development.
	Assoc Tech Dir for Aerodynamics.
	Tech Dir Consultant.
	Associate Technical Director for Structures.
	Assoc Tech Dir, Computation & Mathematics.
	Assoc Tech Dir for Ship Acoustics.
	A/T Dir for Propulsion & Auxiliary Systems.
	Assoc Tech Dir for Ship Performance.
	Assoc Techn Dir for Materials Sci & Technology.
	A/T Dir for Ship E/S & Head, Ship E/S Depart.
	Assoc Tech Dir for Tech & Dir of Tech & Plans.
Naval Surface Warfare Center	Tech Dir Consultant.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Techn Dir/Assoc Techn Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Associate Tech Dir.
	Dep H/D Tech Dir/Assoc Tech Director.
	Head, Protective Systems Department.
Naval Underwater Systems Center	Head, Submarine Sonar Department.
	Assoc Tech Dir for Technology.
	Tech Dir, Consultant.
	Head, Test & Evaluation Department.
	Assoc Tech Dir for Submar Combat Control Accu.
	Assoc Techn Dir for Submarine Warfare Systs.
	A/T Dir for Surface Anti-Submarine Warfare Asw.
	Hd, Submarine Electromagnetic Sys Dept.
	Head Combat Control Systems Department.
	HD/Environmental & Tactical Support Sys Dept.
	Head Combat Systems Analysis Staff.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Naval Weapons Center	Deputy Technical Director.
	Laboratory Dir/Deputy Tech Dir.
	Asst Tech Dir for Dev (AWI)/Head, Awd.
	Asst Tech Dir Deve (Ord Sys) & Dept Head.
	Tech Dir/Consultant.
	Asst Tech Dir for Res & Head Res Dept.
	Test & Eval Dir/Asst Tech Dir for Test & Eval.
	Asst Tech Dir for Dev (AWI) & Head, AWID.
	Asst Tech Dir for Engnr & Head Engnr Dept.
	Asst Tech Dir for Fuzes/HD Fuzed Dept.
	Asst Tech Dir for D/H, Intercept Weapons Dept.
	Asst Tech Dir and Head, Range Department.
	Asst Tech Dir for P/E/H, Plans & Eval Dep.
	Asst Tech Dir/Head, Aerosystems Department.
	Asst Techn Dir for Technol B/T Base Director.
Naval Facilities Engineering Command	Counsel.
	Dep Dir of Programs & Comptroller.
	Deputy Commander for Contracts.
	Chief Engineer.
	Techn Advisor-Real Property Management.
	Deputy Assistant Commander for Construction.
	Asst Commander for Engineering & Design.
	Spec Advisor for Res Dev, Test & Evaluation.
Naval Facilities Eng Command Western Div	Executive Director, Broadway Complex.
Naval Civil Engineering Lab	Technical Director.
Naval Sea Systems Command	Dir, Research Techn & Assessment Ofc.
	Executive Dir for Combat Sys Engineering.
	Executive Dir for Electronic Warfare.
	Counsel.
	Asst Dep Commander for Contracts.
	Dep Proj Mgr & Tech Dir.
	Executive Director/Deputy Comptroller.
	Dir Ship Survivability Subgroup.
	Dir Preliminary Design Div Ast Deputy Dir Sdg.
	Program Mgr, Mine C & C Minehunter Sep.
	Dir, Submarine Systems (S5W & S8G) Division.
	Director-Reactor Materials Division.
	Head, Improved Reactor Design Branch.
	Dir-Secondary Plant Components Division.
	Asst Dir React Engr Div, Hd Adv Reactor Br.
	Dir, Structural Integrity Subgroup.
	Director, Naval Architecture Subgroup.
	Deputy Director, Auxiliary Systems Subgroup.
	Deputy Director, Ship Design Group.
	Director, Hull Engineering Group.
	Director Cost Estimating & Analysis.
	Dir, Shipbuilding Contracts Division.
	Asst Dep Cmdr, Ind/Fac Mgmt Directorate.
	Executive Director, Surface Ship Directorate.
	Exec Dir Submarine Directorate.
	Dep Proj Mgr/Tech Dir Aux & Spec Mission Ship.
	Dir, Reactor Plant Valve Division.
	Asst Dept Com Asw & Undersea Warfare Sys.
	Dep Chief Engineer for Logistics.
	Deputy Director, Supship Management Division.
	D/C Engineer, Design & Manufacturing Quality.
	Tech Dir Theater Nuclear Warfare Prog Office.
	Dep Prog Manager Tech Dir Attack Subm Prog.
	D/P Mgr, Gas Turbine Combatant Ship Prog Ofc.
	Dir, Nuclear Propulsion Logistics Division.
	Dep Prog Manager, Aircraft Carrier Prog Ofc.
	Dir, Special Systems Contracts Division.
	Deputy Director for Submarines.
	Dir Surface Ship Systems Division.
	Deputy Director, Nuclear Components Div.
	Dir, Reactor Plant Safety & Analysis Division.
	Technical Assistant for Surface Ship Systems.
	Dir, Ship Silencing Officd.
	Dir. Propulsion Systems Subgroup.
	Dir. Hull Systems Subgroup.
	Exec Director, Combat Systems Directorate.
	Director, Field Operations Subgroup.
	Director, Machinery Group.
	Director, Materials Engineering Office.
	D/D D/T Dir, Amph & Combat S/S Logistic Div.
	Dep Dir, Electrical Systems Subgroup.
	Exec Dir, Anti-Air & Surface Warfare Systems.
	Exec Dir, Ship Design & Engrng Directorate.
	Prog Mgr, Amphibious W & S Sealift Program.
	Director Naval Shipyard Operations Group.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Dir, Surface Systems Contracts Division.
	Assoc Director for Regulatory Affairs.
	Dep Commander for Acquisition Plan Appraisal
	Exec Dir, Amph, Aux, Mine & Sealift Ships Dir
	Dir, Reactor Refueling Division.
	Deputy Counsel.
	Dis Environmental Protection Office.
	Project Manager, Deep Submergence Sys Project.
	Dir, Advanced Programs Office.
Consolidate Civilian Personnel Office/Crystal City	Dir/Consolidated Civ Pers Ofc/ Crystal City.
Naval Ship Systems Engineering Station	Technical Director.
Naval Weapons Support Center	Technical Director.
Naval Warfare Assessment Center, Corona	Technical Director.
Naval Undersea Warfare Engineering Station	Technical Director.
Naval Ship Weapons Systems Engineering Station	Technical Director.
Naval Ordnance Station	Technical Director.
Naval Supply Systems Command Hdqtrs	Counsel.
	Asst Dep Cmdr for Fin Mgmt/Comp.
	Asst Dep Commander, Contracting Management.
	Director of Acquisition for Special Programs.
	A/D Commander, Inventory & Info Syst Dev.
	Dir Advanced Logis Tech Div.
	Prog Mgt and Technology Program Mgt Office.
Navy Ships Parts Control Center	Executive Dir for Contracts & Business Mgmt.
Navy Aviation Supply Office	Exec Dir Acquisition & Logistics Plng & Suppt.
	Executive Dir Logistics Planning & Support.
Navy Fleet Material Support Office	Exec Dir, Acquisition Mgmt & Planning.
	Executive Director ADP Systems Plann & Devel.
Naval Supply Center, Norfolk	Exec Dir, ADP System Planning and Development.
U.S. Marine Corps Headquarters Office	Executive Director, Planning and Resources.
	Fiscal Dir of the Marine Corps.
	Dir Contracts Division.
	Counsel for the Commandant.
	Accounting & Fin Officer of the Marine Corps.
	Special Assistant to the Dir of Intelligence.
	Spec Asst to the Dep Chf Installations/Logist.
	Asst Dep Chief of Staff for Manpower.
	Asst Dep Chf of Staff for Requirements & Prog.
Marine Corps Res. Development, and Acquisition Command	Deputy Prog Director/Technical Director.
	Deputy for Support.
	Executive Director Maglev.
Marine Corps Combat Development Command	Executive Dir for Logistics Operations.
Marine Corps Logistics Base Albany GA	Director Contract Research Department.
Office of Naval Research	Dir, Fin Mgmt/Compt/Spec Asst(Fm)to Asn(R,E&S).
	Director, Ofc of Naval Research.
	Dir of Planning and Assessment.
	Dep Dir for Technology Programs.
	Director, Computer Science Division.
	Director, Mechanics Division.
	Dir, Ocean Biology/Optics/Chemistry Division.
	Director, Acquisition.
	Deputy Counsel (Patents).
	Director, Ocean Engineering Division.
	Counsel, Office of Naval Research.
	Director, Physics Division.
	Dir, Cognitive & Neutral Sciences Div.
	Director, Life Sciences Directorate.
	Director, Biological Sciences Division.
	Dis, Mathematical & Physical Sciences Dir.
	Dir, Mathematical Sciences Division.
	Dir, Engineering Sciences Directorate.
	Director, Electronics Division.
	Director, Geophysical Sciences Division.
	Director, Ocean Sciences Division.
	Dir, Environmental Sciences Directorate.
	Deputy Comptroller.
	Director, Materials Division.
	Dir, University Business Affairs.
	Dir Operations Resources & Management Directo.
	Assoc Dir, Combat Research Department.
Office of Advanced Technology	Dir, Office of Advanced Technology.
Office of Naval Technology	Dir Anti/Air Anti/Surf Warf & Aerospace Tec Dv.
	Dep Dir, Ont/Dir, Plng & Assess Directorate.
	Dir, Office of Naval Technology.
	Dir, Industry Independent Res & Devel Dir.
	Dir, Support Technology Directorate.
	Chief Scientist.
	Dir Anti Submarine Warfare & Undersea Tecn.
Ofc of Naval Research Detachment Boston	Dir, Applied Physics Field Division.
Naval Res Liaison Ofc, Far East	Dir, Ofc of Naval Res Liaison Ofc, Far East.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Naval Oceanographic and Atmospheric Research Laboratory	Technical Director
	Assoc Tech Dir & Dir, Ops Res & Strat Planng.
	Assoc Tech D & D, Atmospheric Sci Directorate.
	Assoc Tech Dir&Dir, Ocean Science Directorate.
	Assoc Tech Dir&Dir Ocean Acoustics & Tech Dir.
NATO SACLANT ASW Research Center	Director NATO SACLANT ASW Research Centre.
Naval Research Laboratory	Superintendent, Chemistry Division.
	Superintendent, Optical Sciences Div.
	Supt Materials Sci and Tech Division.
	Superintendent, Plasma Physics Div.
	Supt Condensed Matter & Radiation Sci Div.
	Assoc Dir of Res for Matl Sci & Comp Technol.
	Superintendent, Info Technol Div.
	Head Combustion and Fuels Branch.
	Chf Sci, Lab for Structure of Matter.
	Dir of Research.
	Superintendent Space, Science Div.
	Supt. Radar Div.
	Assoc Dir of Res for Gen Sci & Technol.
	Supt. Acoustics Div.
	Superintendent Electronics Technology Div.
	Supt. Tactical Electronic Warfare Div.
	Supt Underwater Sound Reference Division
	Chief Sci Lab for Computational Physics.
	Dir, Nv Ctr for Applied Res in Artfl Intel.
	Chf Scientist & Head, Solar Physics Program.
	Chf Scie/Head, Radio/Infrared Astronomy Progr.
	Assoc Dir of Res for Business Operations.
	Chief Scientists & Beam Physics Program.
	Mgr, Joint Space Systems Technology Programs.
	Superintendent, Space Syst. Technology Dep.
	Head Elect Warfare Strategic Planning Org.
	Assoc Dir of Rese for Technical Services.
	Assoc Dir of Research for Strategic Planning.
	Head Program Coordination Office.
	Assoc Dir of Res for Warfare Sys & Senors Res
	Superintendent, Space Syst Development Dep.
	Superintendent, Spacecraft Engineering Dep.
	Dir, Naval Center for Space Technology.
	Chief Scientist for Telecom & Director.
Defense Nuclear Facilities Safety Board	Site Review Officer.
	Site Review Officer.
	Site Review Officer.
	Site Review Officer.
	Site Review Officer.
	Site Review Officer.
	Site Review Officer.
Department of Education:	
Management	Deputy General Manager.
	Director Admin Resource Management Service
	Director Personnel Management Service
	Director Financial Management Service
	Director, Grants and Contracts Service
Inspector General	Assistant Inspector General for Audits.
	Asst Insp Gen for Policy Plng & Mgmt Serv.
	Asst Inspector General for Investigation.
	Dep Asst Insp Gen for Audit Operations.
	Dep Asst Inspector Gen for Techn Audit Svc.
General Counsel	Asst Gen Coun for Busin & Adm Law.
	Asst General Counsel for Educational Equity.
	Asst Gen Counsel for Regulations.
	Asst Gen Coun for Div of Legislative Counsel.
	Asst Gen Coun for Postsecondary Ed & Ed Res.
Educational Research and Improvement	Research Coordinator.
	Senior Advisor on Library Programs.
National Center for Education Statistics	Admr, Natl Center for Educational Statistics.
	Assoc Comr for Postsecondary Education Stat.
	Assoc Comr, Data Collection & Dissemination.
Department of Energy:	
Office of Hearings & Appeals	Dep Dir for Legal Analysis.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Albuquerque Operations Office	Dir, Quality Engr Div.
	Dir Transportation Safeguards Div.
	Dir Budget & Resources Mgmt Div.
	Dir, Production Assurance & Ops Division.
	Dir, Weapons Programs Div.
	WIPP Project Manager.
	Dir of Emergency Plans & Operations.
	Asst Manager.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Dir Ofc of Mgt Plan & Analysis.
	Deply Asst Manager.
Chicago Operations Office	Asst Manager for Administration.
	Area Manager Batavia Area Office.
	Asst MGR for Laboratory Management.
Idaho Operations Office	Assistant Manager for Administration.
Nevada Operations Office	Chief Counsel.
	Assistant Manager for Administration.
Oak Ridge Operations Office	Asst Manager for Administration.
	Asst Manager for Financial Affairs.
Richland Operations Office	Asst Mgr for Admin.
	Asst Mgr for Safety Security & Quality Assur.
San Francisco Operations Office	Asst Mgr for Admin.
	Dir Ofc of Special Programs.
Savannah River Operations Office	Asst Mgr for Admin.
Bonneville Power Administration	Senior Asst Admr for Power Management.
Western Area Power Administration	Asst Admr for Mgmt Svce.
Ofc of the Inspector General	Spec Asst for Policy and Planning.
Ofc of Asst Insp Gen for Audits	Manager, Western Regional Audit Office.
	Director Program Development Division.
	Manager, Eastern Regional Audit Office.
	Director Audit Management Division.
	Dir Capitol Regional Audit Office.
Ofc of Asst Insp Gen for Inspections	Asst Inspector Gen for Inspections & Analysis.
Ofc of Asst Insp Gen for Investigations	Asst Inspector General for Investigations.
	Deputy Asst Inspector Gen for Investigations.
Energy Information Administration	Director, EIA–ADP Services Staff.
Office of Oil & Gas	Dir, Ofc of Oil and Gas.
	Director Petroleum Supply Division.
	Chief Data Analysis and Support Branch.
	Dir Reserves and Natural Gas Division.
	Director Petroleum Marketing Division.
Ofc. of Coal, Nuclear, Electric & Alternate Fuels	Dir Ofc of Coal Elec & Altern Fuels.
	Director Electric Power Division.
	Dir, Nuclear and Alternate Fuels Division.
	Dir Coal Division.
Office of Energy Markets & End Use	Director, Ofc of Energy Markets & End Use.
	Director Economics & Statistics Division.
	Dir Internl & Contingency Planning Division.
	Dir, Energy Analysis & Forecasting Division.
	Dir Energy End Use Div.
Office of Statistical Standards	Dir Ofc of Statistical Standards.
	Director Quality Assurance Division.
Asst. Sec. for Conservation & Renewable Energy	Dir Photovoltail Energy Technical Div.
	Director, Waste Material Management Division.
	Dir, Wind/Hydro/Ocean Technology Division.
	Dir Ofc Solar Energy Conversion.
Office or Renewable Technology	Dir, Geothermal Division.
	Dir, Biofuel & Municipal Waste Tech Div.
	Dir, Solar Thermal Technology Div.
Office of Nuclear Safety	Dir Nuclear Safety Enforcement Division.
	Dep Dir Invest Nuclear Safety Enforcement Div.
Asst Secretary for Environment, Safety & Health	Director, Office of Environmental Audit.
Dep Asst Sec for Military Application	Assoc Dep Asst Secy for Military Application.
Office of Military Application	Dir, Ofc of Weapons Res, Dev and Testing.
Office of Classification & Technology Policy	Dir Ofc of Classification & Technology.
Das for Planning & Resource Management	Director Ofc Mgmt Support.
	Dir Ofc of Program Analysis & Financial Mgmt.
Rocky Flats Office	Manager, Rocky Flats Office.
	Dep Mgr Rocky Flats Office.
	Assistant Manager for Compliance.
Dep Asst Sec for Energy Emergencies	Dir, Ofc of Energy Emergency Pol & Eval.
Office of Energy Research	Scientific Computing Staff.
Office of Management	Deputy Dir for Management
	Director for Management.
	Deputy Dir for Nuclear Safety Safeguard.
	Dir, Office of Assessment & Support.
Office of Health & Environmental Research	Director, Human Health & Assessment Div.
Office of Fusion Energy	Dir, International Programs Staff.
	Dir, Confinement Systems Div.
Office of Field Operations Management	Assoc Dir for University & Science ED Prog.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Office of Basic Energy Sciences	Dir Submarine Systems Div.
	Dir Instrumentation & Control Div.
	Director Office of Resources Management.
	Dep Dir Keeseling/Windsor/Site/CGN/S6G Rec SV.
	Asst Prfogrm Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Prog Mgr for Prototypes & Sepco.
	Asst Chief Physcist.
	Director Nuclear Technology Div.
	Dir Reactor Engineering Division.
	Head, Core Manufacturing Branch.
	Dep Director Reactor Materials Division.
	Director, Fiscal Division.
	Program Manager for Shipyard Matters.
	Dir Nuclear Components Division.
	Senior Naval Reactors Representative.
	Manager, West Milton Field Ofc.
	Prog Manager for Advanced Submarines.
	Head Advanced Concepts Branch.
Schnectady Naval Reactors Office	Asst Manager for Operations.
Pittaburgh Naval Reactors Office	Senior Naval Reactors Rep (Pearl Harbor).
	Manager, Idaho Branch Office.
	Asst Manager for Operations.
Dep Asst Secretary for Civilian Reactor Development	Dir Isotope Production & Distribution Prog.
Associate Director for Admin, Info & Fac Mgt	Director of Administration.
	Dep Assoc Dir for Admin Info & Facilities Mgt.
Office of Administrative Services	Dir Ofc of Admin Svcs.
	Dep Dir Ofc of Admin Serv.
Ofc of Project & Facilities Management	Dep Dir Ofc of Project and Facilities Mgmt.
	Director, Policy Development Division.
Ofc of Irm Pol, Plans & Oversight	Dir Ofc of Adp Mgmt.
	Dep Dir Ofc of Adp Mgmt.
Ofc of Info Tech Services & Operations	Dir Ofc of Comp Serv and Tele Mgmt.
	Dep Dir Ofc of Comp Serv and Tele Mgmt.
	Dir Div of Telecommunications.
	Dir, Adp & Communications Services.
	Dir Information Systems Division.
	D/ADP Telecomm Plning & Integrity Division.
Associate Director for Human Resources Mgmt	Dep Assoc Dir for Human Resource Management.
	Dir, Ofc of Irm Pol, Plans, & Oversight.
Ofc of Personnel & Career Development	Dir Office of Personnel & Career Development.
	Director, Personnel Policies and Programs.
	Dir Empl Dvlmt & Trng Div.
	Dir HQ Personnel Operations Div.
	Director Office of Personnel & Career Dev.
Ofc of Organization & Management System	Dir Ofc of Org and Mgmt Sys.
	Dir Management Sys Analysis Div.
	Dir Manpwr Res Mgmt Div.
	Dir, Org, Planning, Management & Ops Div.
Office of Storage & Transportation Systems	Assoc Dir Ofc of Syst Integration & Regul.
Office of Business Mgt	Dir Ofc of Business Management.
Office of Procurement, Assistance & Program Mgt	Director of Procurement & Assistance Mgmt.
Ofc of Assoc Dir for Procurement, Assice & Property	Assoc Deputy Asst Secy for Prol & Asst Mgmt.
Office of Policy	Dir Ofc of Policy.
Office of Clearance and Support	Director, Office of Clearance and Support.
Office of Management Review & Assistance	Director, Procurement Management Rev Div.
Ofc of Contractor Human Resource Mgt	Dir Ofc of Industrial Relations.
Ofc of Procurement & Info Sys/Property	Director, Office of Review and Analysis.
Ofc of Pgm/Proj Mgt	Dir, Prog/Const MGM, Proce & Operations Div.
Associate Dir for Hq Procurement Opns	Dir Ofc of Procurement Operations.
	Dep Dir Ofc of Procur Op.
Office of Fin Management & Controller	Deputy Controller.
	Controller.
Office of Budget	Dir Ofc of Budget.
	Dep Dir Ofc of Budget.
	Director, Budget Analysis Division.
	Director, Budget Operations Division.
Office of Financial Policy	Dir Ofc of Financial Policy.
Office of Compliance and Audit Liaison	Dir Ofc Compliance and Audit Liaison.
Ofc of Dept Acct & Fin Systems Development	Dir Ofc of Dep Accounting & Fin Sys Dev.
Office of Headquarters Acct Operations	Dir Ofc of Headquarters Accounting Operations.
Ofc of Small & Disadvantaged Bus Utilization	Dir of Sm and Disadv Bus Utiz.
Environmental Protection Agency:	
Ofc of the Asst Admr for Admin & Resources Management	Dep Asst Admr for Admin & Resources Mgmt.
	Spec Asst to the Asst Admr for Adm & Res Mgmt.
Office of the Comptroller	Dir Ofc of the Comptroller.
	Dir, Financial Mgmt Div.
	Associate Comptroller.
	Director, Budget Division.
	Assoc Dir, Financial Management Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Special Asst to the Comptroller.
	Dir, Resource Management Division.
Office of Administration	Dir Ofc of Administration.
	Deputy Dir, Ofc of Administration.
	Dir, Grants Admin Div.
	Dir, Procurement & Contracts Mgmt Division.
	Dir, Facilities & Support Services Division.
	Spec Asst for Employee Wellness Program.
	Assoc Dir for Superfund/RCA Procurement Oper.
	Director, Management and Organization Division.
	Dir, New Headquarters Project Staff.
	Dir, Environmental Health & Safety Division.
Office of Information Resources Management	Dir Ofc of Information Resources Management.
	Assoc Dir for Mgmt Planning & Evaluation.
	Dep Dir Ofc of Information Resources Magnt.
	Dir, Administrative Systems Division.
	Dir, Information Management & Services Div.
	Director, Program Systems Division.
Ofc of Administration & Resources Mgmt —Cincinnati OH	Dir Ofc of Admin and Resources Management.
Office of Administration & Resources Mgmt—RTP, NC	Director Office of Administration & Res Mgmt.
	Director, Office of Data Processing.
	Assoc Dir, Ofc of Adm & Res Management.
Office of Human Resource Management	Director, Office of Human Resource Mgmt.
	Special Assistant to Director, OHM.
	Dep Dir for Operations Comm & Client Services.
Ofc Asst Admr for Enforcement & Compliance Monitoring	Dir Ofc Compliance Analysis Prog Operations.
National Enforcement Investigations CTR—Denver	Dir Nat'l Enforcement Investigations Center
	Special Asst to the Dir NEIC
Office of Policy Analysis	Dir Water & Agriculture Policy Div.
	Dir, Regulatory Integration Division.
	Dir Air & Energy Policy Division.
Office of Regulatory Management and Evaluation	Dir. Science, Econ & Statistics Div.
Organization Abolished	Dir Ofc of Management Systems & Evaluation.
	Dir, Management Systems Div.
Office of Pollution Prevention	Dir, Pollution Prevention Div.
Office of International Activities	Sr Advisor for Interm'll Chemical Affairs.
Office of the Inspector General	Deputy Inspector General.
	Assist Inspector Gen for Investigations.
	Asst Inspector General for Audits.
	Dep Asst Inspector General for Audits.
	Dep Asst Inspector General for Investigations.
	Asst Inspector Gen for Mgmt & Tech Assessment.
	Deputy Inspector General.
Office of Water Enforcement and Permits	Director Enforcement Division.
	Director, Permits Division.
Office of Water Regulations and Standards	Director, Industrial Technology Division.
	Dir, Assessment & Watershed Protection Div.
	Dir, Analysis and Evaluation Division.
	Dir, Criteria and Standards Division.
Office of Water Program Operations	Director, Municipal Facilities Division.
	Director Municipal Construction Division.
Office of Drinking Water	Director, State Programs Division.
	Dir Ofcv of Program Development & Evaluation.
	Director, Criteria and Standards Division.
Office of Waste Programs Enforcement	Dep Dir, Office of Waste Programs Enforcement.
	Dir, Cercla Enforcement Division.
	Director, RCRA Enforcement Division.
Office of Solid Waste	Dir Waste Mgmt and Economics Division.
	Dir, Characterization & Assessment Division.
	Director, Permits & State Programs Division.
	Spec Asst to the Dir, Office of Solid Waste.
Office of Emergency and Remedial Response	Director, Hazardous Site Evaluation Division.
	Dir, Emergency Response Div.
	Director, Hazardous Site Control Division.
Ofc of the Asst Admr for Air and Radiation	Director, Ofc of Program Mgmt Operations.
Office of Air Quality Planning and Standards	Dir, Stationary Source Compliance Divisioin.
	Assoc Dir for Intermedia & Intgovt Prog.
	Director, Air Quality Management Division.
	Director, Technical Support Division.
Office of Mobile Sources	Director, Emission Control Technology Div.
	Director Certification Division.
	Dir Manufacturers Operations Division.
	Dir Field Operations & Support Division.
Office of Radiation Programs	Dir, Criteria & Standards Div.
	Director, Radon Division.
	Dir, Analysis and Support Division.
Ofc of Asst Admr for Pesticides & Toxic Substances	Dir Ofc of Program Management Operations.
Office of Pesticides Programs	Dir, Ofc of Pesticides Programs.
	Dir-Registration Division.
	Director-Program Support Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Office of Toxic Substances	Dir, Biological & Economic Analysis Division.
	SR Science Advisor/Nat'l Laboratory Aud Prog.
	Senior Advisor.
	Dir, Spec Review & Reregistration Division.
	Dir Envir Fate and Effects Division.
	Dir, Health Effects Division.
	Director Exposure Evaluation Division.
	Dir, Existing Chemicals Assessment Division.
	Dir, Health & Environmental Rev Div.
	Director, Environmental Assistance Division.
	Director Economics & Technology Division.
	Director, Chemical Control Division.
	Director, Information Management Division.
Olc of the Asst Admr for Research and Development	Senior Official for Research & Development.
Office of Health and Environmental Assessment	Director exposure Assessment Group.
	Director, Human Health Assessment Group.
Environmental Criteria & Assessment Olc (RTP)	Dir, Environmental Criteria & Asses Olc Rtp.
Olc of Modeling, Monitoring Systems & Quality Assur	Spec A/D, Olc of Mdlg, Monitoring S/Q Assur.
Atmospheric Rsch & Exposure Assessment Lab, Rtp	Dir, Atmospheric Res & Exp Assessment Lab.
Environmental Monitoring Systems Lab-Cincinnati	Dir, Environment Monitoring Syst Lab.
Environmental Monitoring Systems Lab-Las Vegas	Dir, Env Monitoring Sys Lab, Las Vegas.
Olc of Environmental Engineering & Tech Demonstration	Spec Ass Dir, Olc Environ E/T Demonstration.
Air & Energy Engineering Research Laboratory-Rtp	Dir, Air & Energy Eng Res Lab.
Risk Reduction Engineering Laboratory—Cincinnati	Dir, Hazardous Waste Engin Res Lab—Cincinnati.
	Dir, Risk Reduction Engineering Laboratory.
Environmental Research Laboratory—Corvallis	Dir, Env Research Laboratory Corvallis.
Environmental Research Laboratory—Athens	Dir, Environmental Research Lab Athens Ga.
Robert S. Kerr Environmental Res Laboratory—Ada	Dir, Robert S Kerr Environmental Res Lab.
Environmental Research Laboratory—Duluth	Dir, Environmental Research Lab—Duluth.
Envir mental Research Laboratory—Narragansett	Dir, Environmental Res Lab, Narragansett.
Envir. antal Research Laboratory—Gulf Breeze	Dir, Env Res Lab Gulf Breeze.
Health Effects Research Laboratory—Rtp	Dir-Health Effects Research Lab-Rtp.
Olc of Technology Transfer & Regulatory Support	Dir, Olc of Technology Transfer & Reg Support.
Center for Environmental Research Information	Dir, Center for Environmental Research Info.
Office of Exploratory Research	Dir, Olc of Exploratory Research.
Region I—Boston	Director, Water Management Division.
	Dir, Waste Management Division.
	Regional Counsel.
Region II—New York	Asst Regl Admr for Planning & Management.
	Director, Environmental Services Division.
	Director, Water Management Division.
	Asst Regl Admr for Policy and Management.
	Dir, Air & Waste Management Division.
	Regional Counsel, Region II, New York.
Region III—Philadelphia	Dir, Office of Emergency & Remedial Response.
	Director, Water Management Division Reg III.
	Regional Counsel.
	Asst Reg Admin for Policy & Management.
	Director, Hazardous Waste Mgmt Div.
Region IV—Atlanta	Director, Environmental Services Division.
	Dir, Air Management Division.
	Dir, Water Management Division Region IV.
	Dir, Environmental Services Division Region IV.
	Asst Regional Admin for Policy and Mgmt.
	Regional Counsel, Reg IV, Atlanta, Georgia.
Region V—Chicago	Director Waste Management Division.
	Dir, Air Management Div Region V.
	Dir, Envir Services Div Region V.
	Dir, Water Management Div Region V.
	Asst Regional Admr for Policy & Management.
	Regional Counsel.
	Director, Waste Mangement Division.
Region VI—Dallas	Associate Division Director for RCRA.
	Assoc Div Director for Superfund.
	Dir Air & Waste Management Div.
	Dir Water Management Division
	Director, Environmental Services Division.
	Asst Regional Admr for Management.
	Regional Counsel.
Region VII—Kansas City	Dir, Air, Pesticides & Toxic Division.
	Dir Water Management Division.
	Regional Counsel.
	Director, Waste Mgmt Division.
	Asst Reg Admin For Policy & Mgmt-Reg VII.
Region VIII—Denver	Director, Air and Toxics Division.
	Dir Water Management Division.
	Regional Counsel.
	Dir Air Toxics Division.
Region IX—San Francisco	Asst Regional Admr For Policy & Management.
	Director, Water Management Division.

BEST COPY AVAILABLE

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Region X—Seattle	Director, Air Management Division.
	Regional Counsel, Reg IX, San Fran; Cal.
	Dir, Toxics & Waste Management Div.
	Asst Regional Admr For Policy & Management.
	Dir-Water Div Reg X.
	Regional Counsel.
	Director Air and Toxics Division.
	Director, Hazardous Waste Division.
	Asst Regl. Admr For Policy & Management.
Equal Employment Opportunity Commission:	
Office of the Chairman	Director, Office of Review and Appeals.
Field Management—East	Dist Dir—(Baltimore).
	Dist Dir—(New York).
	Dist Dir—(Atlanta).
	District Director—(Detroit).
	Dist Dir—(Miami).
	Dist Dir—(Memphis).
	Dist Dir—(Birmingham).
	Dist Dir—(New Orleans).
	Dist Dir—(Charlotte).
Field Management—West	Dist Dir—(Cleveland).
	Dist Dir—(Philadelphia).
	Dist Dir—(Houston)
	Dist Dir—(San Francisco).
	Dist Dir—(Dallas).
	Dist Dir—(Chicago).
	Dist Dir—(St Louis).
	Dist Dir—(Indianapolis).
	District Director—(Los Angeles).
	Dist Dir—(Denver).
	Dist Dir—(Phoenix).
	District Dir—(San Antonio).
Farm Credit Administration:	
Olc of Gen Coun	General Counsel.
	Assoc Gen Counsel for Litigation & Enforce.
Office of Examination	Assoc Gen Coun for Corp & Administrative Law.
	Regional Director, Northeast Region.
	Regional Director, Central Region.
	Regional Director, Southeast Region.
	Division Director, Special Examination Div.
	Chief Examiner.
	Regional Director, Western Region.
	Dir. Policy & Risk Analysis Division.
	Assoc. Dir. Research & Special Studies.
	Regional Director, Western Region.
	Regional Director, Eastern Division.
Office of Resources Management	Chief, Information Resources Planning.
	Director, Office of Resources Management.
Olc of Inspector General	Inspector General.
	Assistant Inspector General.
Office of Financial Analysis	Dir, Office of Financial Analysis.
	Dep Dir, Olc of Financial Analysis.
	Deputy Director, Office of Financial Analysis.
Office of Regulatory Enforcement	Dir. Office of Regulatory Enforcement.
Federal Communications Commission:	
Office of the Managing Director	Assoc Managing Director/Human Resources Mgmt.
Mass Media Bureau	Chief Audio Services Division.
	Chief Video Services Division.
	Chf, Enforcement Div.
Private Radio Bureau	Chief Land Mobile & Microwave Division.
Field Operations Bureau	Chief Enforcement Division.
	Assistant Bureau Chief for Technology.
Common Carrier Bureau	Chief, Tariff Division.
	Asst Bureau Chief (International).
	Chief Domestic Facilities Division.
	Chief Accounting & Audits Division.
Olc of Engineering Technology	Chief, Spectrum Engineering Division.
	Chief, Authorization and Evaluation Division.
Federal Emergency Management Agency:	
Office of the Director	Comptroller.
	Deputy Inspector General.
Office of Chief of Staff	Director of Security.
National Preparedness Directorate	Deputy Associate Director.
	Senior Policy Advisor.
Office of Mobilization Preparedness	Asst Assoc Dir Olc of Mobilization Preparedns.
Office of Analysis & Support	Asst Assoc Dir Olc of Analysis & Support.
Office of Facilities Management	Assistant Assoc Director.
Office of Systems Engineering	Special Asst for Architecture & Technology.
	Asst Assoc Dir Olc of Systems Engineering.
Office of Operations	Asst Associate Director Olc of Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Federal Insurance Administration	Deputy Administrator.
Federal Energy Regulatory Commission (DOE):	
Ofc of Chief Accountant	Deputy Chief Accountant. Dir Division of Audits. Director, Division of Accounting Systems.
Ofc of Hydropower Licensing	Dir, Div of Inspection
Federal Labor Relations Authority:	
Office of the Chairman	Chief Counsel. Executive Assistant to the Chairman.
Office of Member	Chief Counsel.
Office of Member	Chief Counsel.
Federal Service Impasses Panel	Exec Director FSIP.
Ofc of the Executive Director	Executive Director. Solicitor.
Ofc of the General Counsel	Dir, Information Resources & Research Serv Deputy General Counsel.
Regional Offices	Asst General Counsel (Field Management). Asst General Counsel (Appeals). Asst Gen Counsel, Legal Policy & Advice. Regional Director—Washington, D.C. Regional Director—Boston. Regional Director—New York. Regional Director—Atlanta. Regional Director—Dallas. Regional Director—Chicago Illinois. Regional Director—Los Angeles. Regional Director—San Francisco. Regional Director—Denver.
Federal Maritime Commission:	
Office of the Members	Secretary.
Office of the General Counsel	Dep Gen Cnsl for Reports Opinions & Decisions.
Office of the Managing Director	Dep Managing Dir. Dir, Bureau of Administration. Director, Bureau of Trade Monitoring. Director, Bureau of Domestic Regulation. Dir, Bureau of Investigations. Dir, Bureau of Hearing Counsel.
Federal Retirement Thrift Investment Board:	
	Assistant General Counsel (Admin). Assistant General Counsel (Programs). Director of Investments. Director of Contracts & Administration. Director of Automated Systems. Director of Benefits and Program Analysis. Director of Accounting. Director of Communications.
Federal Trade Commission:	
Office of the Inspector General	Inspector General.
Ofc of Executive Director	Deputy Exec Dir for Management. Dep Exec Dir for Planning & Information.
General Services Administration:	
Office of the Administrator	Dir, Ofc of Small & Disadvantaged Bus Utilz. Dep AA for Operations & Industry Relations.
Office of Associate Administrator for Administration	Director, Office of Administrative Services. Director of Management Services. Assoc Dir for Operations (CASU) Director of Personnel. Deputy Director of Personnel. Dir of Administrative Programs & Support. Dir Total Quality Management & Training.
Office of the Inspector General	Deputy Inspector General. Asst Inspector Gen for Auditing. Deputy Asst Inspector General for Auditing. Asst I/G for Investigations. Counsel to the Inspector General. Asst Inspector Gen for Administration. Asst Inspector Gen for Investigations.
Office of Acquisition Policy	Assoc Administrator for Acquisition Policy. Dir of Acquis Mgmt and Contract Clearance.
Office of the Comptroller	Deputy Comptroller for Finance. Deputy Comptroller for Budget. Dep to the Deputy Comptroller for Finance.
Federal Property Resources Service	Asst Comm for Real Estate Policy/Sales (FPRS).
Public Buildings Service	Asst Comm for Real Prop Mgmt & Safety. Asst Comr for Physical Security & Law Enf. Asst Comr for Procurement. Asst Comr for Real Property Development. Dep Asst Comr for Real Property Development. Dep Asst Comm for Real Prop Mgmt & Safety. Asst Commissioner for Facility Planning.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Office of Information Resources Management	Asst Comm for Govt Wide Real Prop Relations Spec Asst/Asst Comr for Real Property Dev. Asst Comm for Info Resources Procurement. Dep Asst Commissioner for Network Services. Dep Asst Comr for Info Res Mgmt Policy. Asst Comr for GSA Info Resources Management. Asst Commissioner for Technical Assistance. Dep Asst Comr for Regl Telecomm Services. Director Ofc of Innovative Office Systems.
Office of Federal Supply and Services	Asst Commissioner for Customer Svc & Marketing. Asst Commr for Quality and Contract Admn. Asst Commissioner for Commodity Management. Asst Comr for Transportation & Property Mgt. Director for Transportation Audits. Asst Commr for Strategic Business Planning.
Region 2—New York	Asst Reg Admr for Public Bldg Service.
Region 3—Philadelphia	Asst Reg Admr for Federal Supply Service. Asst Reg Admr for Public Bldg Service.
National Capital Region	Asst Reg Admr for Info Reso Mgmt Ser. NE Zone. Asst Regl Admr Federal Supply Service. Asst Regl Admr for Info Resources Mgmt. Asst Regl Admr for Real Property M & O.
Region 4—Atlanta	Asst Reg Admr for Real Estate & Devel, NCR. Dir of Fed Domes Asst Ctg Staff (IRMS) NCR. Asst Reg Admr for Public Bldg Service.
Region 5—Chicago	Assistant Reg Admin for Inform Res Mgmt-R-4. Asst Reg Admr for Federal Supply & Services.
Region 6—Kansas City	Asst Reg Admr for Public Bldg Service. Asst Regional Admr for Administration, R6.
Region 7—Fort Worth	Asst Reg Admr for Public Bldg Service. Asst Reg Admr for Public Bldg Service.
Region 9—San Francisco	Asst Regl Admr for Info Resources Mgmt R-7. Asst Reg Admr for Federal Supply Service. Asst Commissioner for Public Buildings Svc. Asst Reg Admr for Federal Supply Service. Asst Reg Admr for Information Res Management.
Department of Health and Human Services:	
ODAS for Budget	Dir. Division of OS Budget Analysis.
ODAS for Finance	Dep Asst Sec. Finance. Dir. Ofc of Grant & Contract Fin Management. Dir. Office of Financial Policy.
ODAS for Management and Acquisition	Dir. Office of Acquisition & Grants Mgmt.
OAS for Personnel Administration	Asst Sec. for Personnel Administration.
Associate General Counsel Divisions	Assoc Gen Coun, Business & Adm Law Division.
Office of the Inspector General	Principal Dep Inspector General. Asst Inspector Gen for Mgmt & Policy.
ODIG for Investigations & Enforcement	Dep Insp Gen for Investigations. Asst Insp General for Criminal Investigations. Asst Insp Gen for Civil & Adm Remedies.
ODIG for Audit Services	Asst Insp Gen for Investigation P & O. Dep Inspector General for Audit Services. Asst Inspector Gen for Social Security Audits. Asst Insp Gen for Human, F & D Serv Audits. Asst Inspector Gen for Health Care Fin Audits. Asst Inspector Gen for Audit Pol & Oversight.
ODIG for Analysis & Inspections	Asst Insp Gen for Public Health Serv Audits. Dep Insp Gen for Evaluation & Inspections.
OAA for Management	Asst Insp Gen for Analysis & Inspections. Dir. Office of Financial Management. Chief Actuary. Dir. Bureau of Data Management and Strategy. Dep Dir. Bureau of Data Management & Strategy. Dir. Ofc of Medicare Cost Est. Ofc of Actuary.
OAA for Operations	Dir. Office of Acquisitions and Grants. Dir Ofc of Prog Adm, Bur of Prog Operations.
OAA for Program Development	Director, Office of Financial Operations. Dir Office of Demonstrations and Evaluations.
OAS for Health	Dir, Office of Research. Deputy Director, Office of Management. Director, Office of Resource Management. Dir, Div of Public Health Service Budget. Director, Office of Minority Health. Director, Ofc of Scientific Integrity Review.
Natl Cent for Hlth Svcs Rsch & Hlth Care Tech Assess	Dir, Div of Intramural Research. Dir, Div of Extramural Research.
Alcohol Drug Abuse & Mental Health Admin	Assoc Admin for Extramural Programs.
Natl Inst of Alcohol Abuse & Alcoholism	Chief Laboratory of Clinical Studies. Director, Division of Basic Research. Dir, Div of Intramural Clinical & Bio Res. Dir Div of Biometry & Epidemiology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
National Institute on Drug Abuse	Director, Office of Scientific Affairs. Dir, Div of Clinical & Prevention Research. Director Addiction Research Center.
National Institute of Mental Health	Dir Div of Preclinical Research. Director Division of Clinical Research. Chief Neuroscience Research Branch. Dir, Office of Extramural Program Review. Dir, Medications Development Division. Assoc Dir for Planning & Resource Management. Assoc Director for Services Research. Executive Officer NIMH.
Intramural Research	Dir, Div of Basic Brain & Behavioral Sciences. Director, Division of Extramural Activities. Associate Dir for Special Program Operations. Dir, Intramural Research Programs. Dir Division of Special Mental Health Researc. Chf, Lab of Cerebral Metabolism. Chf, Lab of Neurochemistry. Chf Lab of Gen & Comparative Biochemistry. Chf Lab of Developmental Psychology. Chf–Clinical Neuropharmacology Branch. Chief Lab of Psychology and Psychopathology. Chief Laboratory of Neuropsychology Dcbr. Chief Section Histopharmacology. Chief, Biological Psychiatry Branch. Chief, Child Psychiatry Branch. Asst Dir for Laboratory Science. Assistant Director for Science. Executive Officer, Nimh.
Center for Infectious Diseases	Dir Div of Environmental Health Lab Sciences.
Natl Center for Occupational Safety & Health	Chief Epidemiology Research Branch.
Center for Env Health & Injury Control	Assoc Dir for Analysis & Epidemiology.
Center for Prevention Services	Associate Dir, Ofc of P & E Programs.
National Center for Health Statistics	Assoc Dir for Research & Methodology. Assoc Dir. Ofc of Vital & Health Stats Syst. Director Parklawn Computer Center.
Food and Drug Administration	Regl Food & Drug Dir, Reg III, Philadelphia.
Office of Regulatory Affairs	Regl Dir, Food & Drug Adm, Reg IV, Atlanta. Regl Food and Drug Director, Reg V, Chicago. Regional Food & Drug Dir, Reg VI, Dallas. Reg:L Dir, Food & Drug Adm, Reg IX (San Franc. Director Contaminants Policy Staff. Regl Food & Drug Dir, (Northeast Region).
National Center for Toxicological Research	Director, Division of Biometry. Director, Office of Research.
Center for Food Safety & Applied Nutrition	Assoc Dir for Laboratory Investigations. Dir, Div of Nutrition. Dir Ofc of Compliance. Dir Div of Chemical Technology. Director Ofc of Toxicological Sciences.
Center for Drug Evaluation and Research	Director, Product Policy Staff. Dir, Div of Anti-infective Drug Products Dir Div Oncology & Radiopharmaceutical Drug P. Dir Div of Scientific Investigations. Dir Div of Cardio-renal Drug Products. Dir Ofc of Compliance. Dep Dir Ofc of Epidemiology & Biostatistics. Dir Div of Biometrics. Dir, Div of Neuropharmacological Drug Prod. Dir Div of Surgical Dental Drug Products. Dir, Div of Metabolism & Endocrine Drug Prod. Dep Dir for Prog Management. Director, Division of OTC Drug Evaluation. Dir, Office of Drug Evaluation I. Director, Office of Drug Standards. Deputy Dir, Ofc of Drug Standards. Director, Division of Generic Drugs. Dir, Div of G & C Drug Products. Dir, Ofc of Drug Eval II CTR for Drug E & R. Director, Office of Research Resources. Dep Dir, Office of Research Resources. Dep Dir, Office of Drug Evaluation II. Dir, Div of Anit-vir Drug Products. Director, Pilot Drug Evaluation Staff. Director, Office of Management.
Center for Biologics Evaluation and Research	Dir, Div of Oncology-pulmonary Drug Products. Dir, Div of Med Imaging, S & D Drug Products. Director, Division of Biochem & Biophysics. Director, Division of Bacterial Products. Dir, Division of Cytokine Biology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Center for Veterinary Medicine	Director, Office of Biologics Research. Dir Ofc of Biological Product Review. Dir, Div of Biol Investigational New Drugs. Dir-Div of Thera Drugs for Non Food Animals. Dir Ofc of Surveillance & Compliance. Director, Ofc of New Animal Drug Evaluation. Director, Office of Science. Dir, Div of Drugs Manufacturing & Controls. Dir Div of Biometrics & Production Drugs. Dir Div of Therapeutic Drugs for Food Animals. Dir Div of Veterinary Medical Research.
Center for Devices & Radiological Health	Assoc Dir Scientific Infor & Education Director, Division of Animal Feeds. Dep Dir for Human Food S&C Services. Dep Dir for Therapeutic & Production Drug Rev. Dep Dir, Ofc of Surveillance & Compliance. Dir Ofc of Device Evaluation. Dir, Ofc of Standards & Regulations. Dir, Office of Science & Technology. Dep Dir, Office of Science and Technology.
Office of Science Policy & Legislation	Deputy Director, Office of Compliance. Dep Dir, Office of Device Evaluation. Director, Div of Financial Management. Director, Division of Contracts & Grants. Dir Ofc of Protection from Research Risk. Associate Director for Extramural Affairs. Director, Division of Program Analysis.
Natl Heart, Lung & Blood Institute	Dir, Ofc of Medical Applications of Research. Dir, Office of Scientific Integrity. Assoc Director for Review. Assoc Dir Epidemiology & Biometry Program. Chief, Sickle Cell Disease Br. Dir, Div of Lung Diseases. Dir, Div of Blood Diseases & Resources.
Intramural Research	Dir, A/Sclerosis, Hypertension & Lip Met Prog. Dep Director Div of Extramural Affairs. Director, Division of Extramural Affairs. Dir, Div of Epidemiology/Clinical Applications. Assoc Dir for International Programs. Chief, Biostatistics Research Branch. Dir, Division of Intramural Research. Chf Lab of Biochemical Genetics. Chf Lab or Biochemistry. Chief Lab of Molecular Hematology. Chief Lab of Biophysical Chemistry. Chief, Laboratory of Chemical Pharmacology. Sr Res Chemist Laboratory of Cell Biology. Chief Macromolecules Section. Chf, Intermediary M & B Section. Chief, Laboratory of Cellular Metabolism. Chf. Lab of Kidney & Electrolyte Metabolism.
Division of Cancer Biology & Diagnosis	Dir, Div of Cancer Biology Diagnosis & Ctrs. Dep Dir, Div of Cancer Biology Diag & Centers. Chief, Lab of Cell Biol, Immun Prog, IRP. Chief, Dev Biochem & Genetics Sec Lab of Birp. Chief, Lab of Biochem Intramural Res Prog. Assoc Dir, Extramural Research Program. Chief Dermatology Br, Intramural Res Prog. Head Cellular Immun of Modified Antigens Group. Chief Laboratory of Immunobiology. Chief, Lab of Tumor & Biol Immunology, IRP. Assoc Dir, Ctrs Training & Resources Prog. Chief, Laboratory of Molecular Biology
Division of Cancer Etiology	Dir, Div of Cancer Etiology. Chief Lab of Biology. Chief Clinical Epidemiology Branch. Chief Laboratory of Molecular Carcinogenesis. CHF Lab of Experimental Pathology. Head, Math Statistics & Applied Mathematics s. Head In Vitro Carcinogenesis Section.
Division of Cancer Prevention & Control	Dep Dir, Div of Cancer Prevention & Control. Assoc Dir Cancer Prevention Research Prog. Associate Dir, Surveillance Program, DCPC.
Division of Extramural Activities	Dir, Div of Extramural Activities. Deputy Dir, Div of Extramural Activities.
Division of Cancer Treatment	CHF—Radiation Oncology Br. CHF—Lab of Medicinal Chemistry & Biology. Assoc Dir Radiation Research Program.
Natl Institute of Diabetes & Digestive & Kidney Dis	Dir Div Kidney, Urologic&Hematologic Diseases. Dir Division of Extramural Activities.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Intramural Research	Assoc Dir for Diabetes, Endocrin & Metab Dis.
	Assoc Director for Research & Assessment.
	Assoc Dir Disease Prevention Technol Transfer.
	Chief Section on Biochemical Mechanisms.
	CHF—Sect on Biochemistry.
	CHF, Section on Spectroscopy & Structure.
	CHF Sect on Metabolic Enzymes.
	CHF Sect on Physical Chemistry.
	Chief, Section on Molecular Structure.
	SR RES Physicist, Mathematical Research Br.
	SR Chemist, Clinical Endocrionology Br.
	Senior Research Chemist.
	Chief Lab of Chemistry.
	Chief Theoretical Biophysics Section.
	Chief, Laboratory of Bio-Organic Chemistry.
	Chief Oxidation Mechanisms Section L B C.
	Chief Laboratory of Biochemistry & Metabolism.
	CHF, Sec on Nuclear Mag Res, Lab/Chem Physics.
	Clinical Dir & Chief, Kidney Disease Section.
	Chief, Section on Molecular Biophysics.
	CHF, Sec Carbohydrates Lab of Chemistry/NIDDK.
	Chief, Metabolic Diseases Branch.
	CHF, Drug D & S Sec Lab of Neurosci, NIDDK.
	Chief, Laboratory of Neuroscience, NIDDK.
	Chief Epidemiology & Clinical Research Branch.
	CHF, Lab of Physical Biology.
Natl Inst of Arthr & Musculoskeletal & Skin Diseases	Director, Extramural Program.
	Deputy Dir.
National Library of Medicine	Dep Dir, Natl Lib of Medicine.
	Dep Dir for Res and Education.
	Associate Director for Library Operations.
	Assoc Dir, Specialized Info Services.
	Dep Dir Lister Hill Natl Ctr for Biomed Comms.
	Director, Information Systems.
Natl Inst of Allergy & Infectious Diseases	Dir, Div of Allergy/Immunology/Transplantatn.
	CHF, Lab of Parasitic Diseases.
	CHF, Lab of Biology of Viruses.
	Spec Asst for Biometry, Off Sci Dir.
	Dir, Div of Microbiology/Infectious Diseases.
	Chief, Lab or Immunogenetics.
	Dir. Div of Extramural Activities.
	CH, Lab of Microbial Structrure and Function.
	Chief Lab of Molecular Microbiology.
	Head Malaria Section.
	Dir, Div Acquired Immunodeficiency Syndrome.
	Assoc Dir for Administration & Operations.
	Deputy Dir, Division of Extramural Activities.
	Chief, Biological Resources Branch.
	Head, Lymphocyte Biology Section.
	Chief, Laboratory of Infectious Diseases.
	Head Experimental Pathology Section.
	Dep Dir Div of Acquired Immunodeficiency.
	Head Epidemiology Section.
Natl Inst on Aging	Scientific Director Gerontology Rsch Cntr.
	Clin Director and Chief Clin Physiology Br.
	Chief Lab or Cellular & Molecular Biology.
	Associate Dir For Behavioral Sciences Res.
	Assoc Dir, Biomed Res & Clinical Medicine Prog.
	Assoc Dir, Office of Extramural Affairs.
	Assoc Dir, Epidemi, Demo, & Biometry Program.
	Assoc Dir for Plng, Analysis & Communications.
	Assoc Dir Neurosci & Neuropsych of Aging Prog.
Natl Inst of Child Health & Human Development	Chief, Laboratory of Molecular Genetics.
	Dep Dir Center for Population Res.
	CHF, Endocrinology & Reproduction Research Br.
	Director Ctr Forres for Mothers & Children.
	Director Cntr for Population Research.
	Chief, Section on Growth Factors.
	Assoc Dir for Prevention Research.
	CHF, Section on Mammalian Gene Regulation.
	Chief, Section on Molecular Endocrinology.
	Chief, Section on Neuroendocrinology.
	Chief Section on Microbial Genetics.
	Chief, Laboratory of Comparative Ethology.
Natl Inst of Dental Research	CHF, Cell Biology & Metabolism Branch.
	Chief Lab of Microbiology & Immunology.
	CHF, Laboratory of Dev Biology & Anomalies.
	CHF, Enzyme Chemistry Section.
	Dir, Extramural Program.
	Chief, Bone Research Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Natl Inst of Environmental Health Services	Chief, Epidemiology Branch.
	CHF Lab of Pulmonary Pathobiology.
	Chief, Lab of Genetics.
	Head Mutagenesis Section.
	Head Mammalian Mutagenesis Section.
	Dir, Div of Biometry and Risk Assessment.
	Senior Scientific Advisor.
	Dir. Div of Toxicology Research & Testing.
	Associate Director for Management.
Natl Inst of General Medical Sciences	Chief, Signal Transduction Section.
	Dir, Cell & Molec Basis of Disease Prog.
	Dir Genetics Program.
	Assoc Dir for Program Activities.
	Dir, Pharmacological Sciences Program Branch.
	Dir Bio Phys Sciences Program Branch.
	Dep Dir Natl Institute of General Med Sci.
Natl Inst of Neurological Disorders and Stroke	Dir Fundamental Neurosciences Program.
	Director, Stroke and Trauma Program.
Intramural Research	Chief Lab of Central Nervous System Studies.
	Chf, Devel & METAB Neurology Branch.
	Chf Lab of Molecular Biology.
	Deputy Chief, Lab of Central Nervous Sys Stud.
	HD Cellular Neuropathology Section.
	Chief, Section on Neuroradiology.
	Chief, Lab of Biophysics.
	Chf, Lab of Neuropathology & Neuroanatomical S.
	Chf Lab of Neurochemistry.
	Chf, Surgical Neurology Branch.
	Chief Biometry & Field Studies Branch.
	Chief, Laboratory of Neurobiology.
	Chief, Laboratory of Neura Control.
	Chief Brain Structural Plasicity Section.
	Chf, Lab of Viral & Molecular Pathogenesis.
Natl Eye Institute	Chief Laboratory of Retinal Cell & Mol Biolog.
	Dir, Intramural Research Program, NEI.
	Chief, Lab of Molecular & Dev. Biology.
	Chief, Laboratory of Sensorimotor Research.
	Chief, Lab of Ophthalmic Pathology.
	Assoc Dir. Biometry & Epidemiology Prog.
Natl Inst on Deafness & Other Communications Disorders	Chf, Lab of Neuro-Otolaryngology.
	Director, Communicative Disorders Program.
NIH Clinical Center	Assoc Dir for Clinical Care/Dir, Clinical Ctr.
	Health Systems Administrator.
	Associate Director for Planning.
Division of Computer Research & Tech	Chief, Computer Center Branch.
	Chief, Physical Sciences Lab.
	Chief, Data Management Branch.
Division of Research Resources	Dir, Div of Research Resources.
	Dep Dir, Div of Res Resources.
	Dir, Gen Clinical Res Center Program Branch.
Division of Research Grants	Associate Director for Referral and Review.
	Assoc Dir for Statistics & Analysis.
Division of Research Services	Chf Biomedical Engineering & Instrumentation.
National Center for Nursing Research	Director National Cntr for Nursing Research.
National Center for Human Genome Research	Deputy Director.
Agency for Health Care Policy & Research	Dir, Ctr for Gen Health Serv Intramural Res.
	Dir, Ctr Gen Health Svce Extramural Research.
OFC of Actuary	Chf Actuary.
	Dep Chief Actuary (Long-range).
	Dep Chief Actuary Short Range SSA.
Office of Systems Operations	Dir, OFC of Computer Processing Operations.
Office of Systems Design & Development	Director, Office of Programmatic Systems.
OFC of Management	Director, Office of Acquisition and Grants.
Office of the Chief Financial Officer	Chief Financial Officer.
OFC of Financial Policy & Operations	Assoc Comr, Office of Fin Policy & Operations.
	Dep Assoc Comm Financial Policy & Opertions.
Family Support Administration	Assoc Admin OFC of Financial Management.
	Assoc Admr, OFC of Mgmt and Info Systems.
Department of Housing and Urban Development:	
Office of the Secretary	Dep Chief Financial Officer for Operations.
Office of the General Counsel	Assoc Gen Coun for Program Enforcement.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Assistant Inspector General for Audit.
	Asst Inspector General for Management & Pol.
	Deupty Asst Inspector Gen for Audit Operation.
	Dep Asst IG for Audit Plng & Qlty Assurance.
	Dep Asst Inspector General for Investigation.
Office of the Chief Financial Officer	Chief Financial Officer.
Assistant Secretary for Administration	Deputy Director, Ofc. of Personnel & Training.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Assistant Secretary for Housing	Dir, Ofc of Budget.
	Director, Office of Finance & Accounting.
	Dep Dir, Ofc of Budget.
	Director Ofc of Procurements & Contracts.
	Dir, General & Program Accounting Group.
	Deputy Director Office of Finance & Accounig.
	Dep Dir for Accounting Policy & Planning.
	Special Projects Officer.
	Adm Comptroller-Dir, Ofc of Fin & Accounting.
	Dir, Office of Insured Single Family Housing.
	Dir, Moderate Rehabilitation Division.
	Dir, Mortgage Insurance Acctng Serv Group.
	Dir, Ofc of Multifamily Housing Management.
	Dir, Office of Elderly & Assisted Housing.
	Housing/Fed Housing Adm Comptroller.
	Deputy Comptroller for Policy & Planning.
	Dep Comptroller for Fin Systems Enhancements.
Asst Secy for Fair Housing and Equal Opportunity	Dir Ofc of HUD Program Compliance.
	Dir Ofc of Fair Housing Enforce and Sec 3.
Asst Secy for Community Planning and Development	Dir Office of Environment and Energy.
	Dir Ofc of Block Grant Asst.
Government National Mortgage Association	Vice President for Asset Management.
	Vice President for Mortgage Backed Securities.
	Vice President for Finance.
Asst Secy for Public and Indian Housing	Gen Dep Asst Secy for Public & Indian Housing.
	Dir. Office of Public Housing.
	Public & Indian Housing—Comptroller.
	Dir, Ofc of Management & Operations.
Region II New York	Manager.
	Manager Buffalo.
Region III Philadelphia	Manager.
Region IV Atlanta	Manager.
Region V Chicago	Manager.
	Manager.
	Manager.
Region VI Dallas	Manager.
	Manager.
Region IX San Francisco	Manager.
Department of Interior:	
Ofc of the Inspector General	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Deputy Asst Inspector General for Audits.
Ofc of the Solicitor	Deputy Assoc Solicitor, General Law.
	Asst Solicitor Bureau of Parks and Recreation.
	Special Asst to the Assoc Solicitor—Gen Law.
	Dep Associate Solicitor—Energy & Resources.
	Dep Associate Solicitor—Indian Affairs.
Asst Secy for Policy, Budget & Administration	Asst Dir for Economics.
	Chief, Div of Budget Operations (A).
	Asst Dir for Special Analysis.
	Dep Agcy Ethics & Audit Coordination Officer.
	Chief Division of Budget Operations (B).
	Chief Div of Budget Admin.
Nat'l Park Service	Senior Scientist.
	Science & Technology Advisor.
	Asst Dir Minority Business Enterprise.
US Fish & Wildlife Service	Deputy Associate Director-Research.
	(Special Assistant to the Director).
	Dep Asst Dir—Pol, Budget, & Administration.
	Exec Dir—North American Waterfowl Plan.
	Research Director Patuxent Research Center.
	Director, National Ecology Center.
	Asst Regl Dir—Techn & Adm Services.
	Deputy Regl Dir-Region 6-Res & Dev.
	Spec Asst to the Reg Dir Research & Develop.
	Special Assistant to the Director.
Bureau of Mines	Reach Dir, Pittsburgh Research Center.
	Research Dir, Twin Cities Research Ctr.
	Research Director, Albany Research Ctr.
	Staff Asst to Deputy Assoc Dir Research.
	Chf, Ofc of Regulations Projects Coordination.
	Chief Division of Environmental Technology.
	Chief Div of Environmental Technology.
	Chief Division of Mineral Commodities.
	Deputy Assoc Dir Info & Analysis.
	Chief Division of Health Safety & Min Tech.
	Std Asst to the Dep Assoc Dir-Info Analysis.
	Spec Asst to the Dir, Bureau of Mines.
	Chief, Division of Resource Evaluation.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Bureau of Reclamation	Chief, Division of Policy Analysis.
	Chief Mineral Economist.
	Chief Div of Research & Lab Services.
	Director, Program Services Office.
	Deputy Asst Commissioner Eng & Research.
	Senior Scientist.
	Deputy Assistant Commissioner Administration.
	Deputy Ass Commissioner-Resources Management.
	Project Manager/Arizona Projects Office.
	Dir Colorado River Storage Project Initiative.
	Chief Div Prog Coordination & Finance.
US Geological Survey	Staff Geologist for NPRA/Alaska Activities.
National Mapping Div	Chief, National Mapping Division.
	Associate Chief, National Mapping Division.
	Chief, EROS Data Center.
	Chief Western Mapping Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Asst Div Chief for Information & Data Svc.
	Chief Eastern Mapping Center.
	Asst Div Chf for Program, Budget & Adm.
	Asst Div Chf for Research.
	Asst Div Chf for Coordination & Requirements.
Water Resources Div	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Regl Hydrologist Central Reg Lakewood.
	Chief, Branch of Ground Water.
	Regl Hydrologist Southeastern Region.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
	Asst Chf Hydrologist for Operations.
	Asst Chief Hydrologist for Scien Info Mgmt.
	Asst Chf Hydrologist for Water A & D Coord.
	Asst Chf Hydro for Res & Extrnl Coordination.
	Asst Chf Hydrologist/Prog Coord & Tech Supp.
	Chf, OFC of Atmospheric Deposition Analysis.
	Chf, OFC of Hydrologic Research.
	Chief, WRSIC Program.
	Chief, Office of Water Quality.
	Chf, Br of Water Information Transfer.
	Chief, Office of Surface Water.
	Chief, Office of External Research.
	Chief, National Water Data Exchange Program.
Geologic Div	Chief Geologist.
	Chief, OFC of Earthquakes, Volcanoes & Engr.
	Chief, OFC of Scientific Publications.
	Assoc CHF Geologist.
	Chf, OFC of Mineral Resources.
	Chief, Office of Energy & Marine Geology.
	Chief, Office of International Geology.
	Asst Chief, OFC of Energy and Marine Geology.
	Assistant Chief Geologist for Programs.
Bureau of Land Management	Deputy Asst Dir Management Services.
	Director, Boise Interagency Fire Center.
	Dep Asst Dir, Land & Renewable Resources.
	Dep Asst Dir, Energy & Minerals Resources.
Ofc of Surface Mining Reclam & Enforcement	Administrator-Technical Center—West
	Dep Asst Dir Eastern FLD OPS (Programs OPS).
	Asst Dir for Eastern Field Operator.
	Assistant Director, Western Field Operations.
Minerals Management Service	Regional Director, Gulf of Mexico OCS Region.
	Dep Associate Director for Offshore Leasing.
	Chief, Leasing Management Division.
	Regional Manager, Atlantic OCS Region.
	Regional Manger, Alaska OCS Region.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Regional Manager, Pacific OCS Region.
	Dep Associate Dir for Offshore Operations.
	Dep Assoc Dir for Collection & Disbursement.
	Prog Dir, OFC of Strategic & Internal MINLS.
	Dep Assoc Dir for Valuation & Audit.
	Dep Assoc Dir for Administration.
	Deputy Assoc Dir for Budget & Appeals.
Asst Secy-Indian Affs	Spec Asst to the Asst Secy—Indian Affairs.
Bureau of Indian Affairs	Asst Dir of Administration (Financial Mgmt).
	Dep to the Dir Indian Education Programs.
International Development Cooperation Agency:	
Ofc of the Administrator	Asst to the Admr for Personnel & Fin Mgmt.
Ofc of the General Counsel	Deputy General Counsel.
Office of the Inspector General	Asst Inspector General for Security.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Asst Inspector General for Investigations.
	Counsel to the Inspector General.
	Deputy Inspector General.
Office of Equal Opportunity Programs	Dir Ofc of Equal Opportunity Programs.
Office of Financial Management	Controller and Senior Financial Officer.
	Financial Manager for Policy and Systems.
Office of Personnel Management	Dep, Dir, Office of Personnel Management.
Bureau for Management	Assistant to the Administrator for Management.
Directorate for Program and Management Services	Associate Director for Management.
	Dir Office of Information Resource Management.
	Deputy Dir for Program Operations.
	Director Office of Procurement.
	Deputy Director Office of Infor Res Manag.
	Dir. Ofc of Management Operations.
Interstate Commerce Commission:	
Ofc of the Chairman	Legislative Counsel.
Office of the General Counsel	Trial Atty (Trans) Assoc Gen Coun Lit 76-068.
	Assoc Gen Counsel—Litigation.
	Assoc Gen Coun Research & Legislation.
Ofc of the Managing Director	Dir of Personnel.
Bureau of Accounts	Deputy Director.
	Director Bureau of Accounts.
	Deputy Director—Accounts.
Bureau of Traffic	Dir, Bureau of Traffic.
Office of Transportation Analysis	Deputy Director—Analysis.
Office of Compliance & Consumer Assistance	Deputy Director for Enforcement.
	Assoc Dir, Ofc of Compliance & Consumer Asst. Director.
	Associate Director—Policy & Review.
Regional Offices	Regional Director (Philadelphia).
	Regional Director (Chicago).
	Regional Director (San Francisco).
Office of Proceedings	Deputy Director.
	Deputy Director.
	Assistant Deputy Director.
Department of Justice:	
Office of the Attorney General	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Office of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Inspections.
	Assistant Inspector General for Audit.
	Assistant Inspector General for Investigation.
	Asst Inspector Gen for Management & Planning.
Justice Management Division	Dep Asst Attorney Gen; Personnel Adm.
	Asst Attorney General for Administration.
	Prin Dep Asst Atty General for Administration.
	Dir, Security & Emergency Planning Staff.
	Dir, Facilities and Administrative SVC Staff.
	Assoc Asst Attorney General, Legal Counsel.
	A/A Atty Gen. Ofc of the Asst Atty Gen Adm.
	Associate Assistant Attorney General.
	Director Management and Planning Staff.
	Director, Budget Staff.
	Senior Management Counsel.
	Procurement Executive.
	Senior Policy Advisor.
Office of the Controller	Dep Asst Attorney General: Controller.
	Deputy Comptroller
	Dir Finance Staff.
	Special Projects Officer.
	Dep Asst Atty Gen for Debt Collection.
Office of Personnel and Administration	Asst Dir. Management & Planning Staff.
	Director Personnel Staff.
Office of Info & Admin Services	Director General Services Staff.
	Deputy Assistant Attorney General
	Director, Computer Services Staff.
	Director, Systems Policy Staff.
	Dir. Legal and Informations Systems Staff.
Executive Office for Immigration Review	Chief Immigration Judge.
	Assistant to the Director.
	Chief Admin Hearing Officer.
Antitrust Division	Chief Economic Litigation Section.
Immigration and Naturalization Service	Comptroller.
	Asst Commissioner for Detention & Deportation.
	Assistant Commissioner for Border Patrol.
	Asst Comm for Employer & Labor Relations.
Associate Commissioner for Information Systems	Assistant Commissioner for Records Systems.
Associate Commissioner for Examinations	Asst Commissioner for Adjudication & Natural.
	Asst Comm for Inspections.
Associate Commissioner for Enforcement	Assistant Commissioner for Investigations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Associate Commissioner for Management	Asst Commissioner for Administration.
Community Relations Service	Regl Director, Region IX, San Francisco.
Ofc of the Associate Attorney General	Exec Asst to the Assoc Atty Gen for Mgt Issue.
Executive Ofc for U.S. Attorneys	Dire Ofc of Mgnt Information Systems Support.
	Dir. Office of Administration & Review.
Ofc of Deputy Asst Attorney General I	Counsel to the Office Fraud Section.
Federal Prison System	Deputy Director.
	Asst Dir for Planning and Development.
	General Counsel.
	Assoc Commr. Fed Prisons Industries, Unicor.
	Dep Assoc Comm for Fed Prison Industries.
	Deputy Associate Commissioner.
	Contl Prog Admr Asst Dir for Human Res Mgmt.
	Correctional Prog Admr Asst Dir for Prog Rev.
	Sen Dep Asst Dir Admin Div.
	Senior Deputy Asst Dir Health Services Div.
	Senior Deputy Assistant Director.
	Assistant Dir. Program Review Division.
	Sr Dep Asst Dir Federal Prison Industries.
	Regional Director Mid Atlantic Division.
	Chief of Staff to the Director.
Office of Correctional Programs	Asst Dir Correctional Programs Div.
Northeast Region	Regional Director.
	Warden, Lewisburg, PA.
	Warden Danbury Conn.
	Warden, McKean, PA.
Southeast Region	Regional Director.
	Warden Atlanta.
	Warden, Lexington Kentucky.
	Warden Butner North Carolina.
	Warden Marianna FL.
North Central Region	Regional Director.
	Warden Leavenworth Kansas.
	Warden Springfield MO.
	Warden Marion IL.
	Warden Terre Haute, IN.
	Correctional Institution ADMR.
	Warden, Fed Correctional Institution.
South Central Region	Regional Director.
	Warns El Reno Okla.
	Warden Ft Worth, Texas.
	Warden La Tuna, TX.
Western Region	Regional Director.
	Warden Terminal Island, CA.
	Warden, Lompoc, CA.
	Warden Los Angeles CA.
	Warden Phoenix AZ.
	Warden Federal Correctional Institution.
Ofc of Justice Programs	Comptroller, Ofc of the Comptroller
National Institute of Justice	Asst Dir, Ofc of Dev Testing & Dissemination
Bureau of Justice Statistics	Deputy Dir, Bureau of Justice Statistics.
U.S. Marshall Service	Associate Director for Administration.
	Associate Director for Operations.
	Assistant Director for Inspections.
	Comptroller.
	Asst. Dir, Operations Support.
	Assoc Dir for Training Glynco, GA.
	Asst Dir, for Human Resource Management.
Department of Labor:	
Ofc of the Inspector General	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Asst Inspector Gen for Audit.
	Deputy Assistant Inspector General for Audit.
	Dir, Ofc Resource Mgnt & Legislative Asmt.
	Asst Inspector Gen for Labor Racketeering.
	Dep Asst Insp Gen for Labor Racketeering.
Office of the Deputy Secretary	Director, DOL Academy.
Office of the Solicitor	Deputy Solicitor (Regional Operations).
	Associate Solicitor for Labor-Management Laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & Hlt.
	Assoc Solicitor for Mine Safety & Health.
	Assoc Solicitor for Fair Labor Standards.
	Assoc Solicitor for Employee Benefits.
	Associate Solicitor for Spec Litigation.
	Assoc Sol for Spec Appel & Sup Court Lit.
	Dep Solicitor for Planning and Coordination.
	Dir, Office of Manag ment.
	Associate Solicitor for Black Lung Benefits.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Regional Solicitors	Regional Solicitor.
	Regional Solicitor Region IV-Atlanta.
	Regl Solicitor Boston.
	Regl Solicitor New York.
	Regional Solicitor Philadelphia.
	Regl Solicitor Dallas.
	Regl Solicitor Kansas City.
	Regl Solicitor San Francisco.
OAS for Administration and Management	Asst Sec'y for Admin & Mgmt.
	Dep Asst Sec for Adm and Mgmt.
	Director, Office of Budget.
	Dir of Management Policy and Systems.
	Comptroller for the Department.
	Dir of Personnel Management.
	Dep Dir of Personnel Management.
	Deputy Comptroller.
	Deputy Director Office of Civil Rights.
	Director, Directorate of Civil Rights.
	Dir Natl Capital Service Center.
	Director of Information Resources Management.
	Dir, Administrative & Procurement Programs.
Office of Management, Administration and Planning	Dir Ofc of Mgmt, Administration and Planning.
Ofc of Federal Contract Compliance Programs	Director Division of Programs Operations.
Wage and Hour Division	Asst Admin for Program Operations.
	Asst Admin for Policy Planning & Review.
	Dep Wage & Hour Admin.
Ofc of Workers Compensation Programs	Dir Federal Employees Compensation.
	Dir Coal Mine Workers Compensation.
Pension & Welfare Benefits Administration	Director of Enforcement.
	Dir of Regulations & Interpretations.
	Director of Program Services.
	Deputy Director of Program Services.
	Senior Dir of Policy & Legislative Analysis.
	Dep Asst Secy for Program Operations.
	Director of Exemption Determinations.
Office of Labor Management Standards	Dir Ofc of Standards, Tech Asst & Disclosure.
	Dir Ofc of Elect Trustshp/Intern'l Union Audt.
	Director, Ofc of Policy & Program Support.
Bureau of Labor Statistics	Associate Commissioner for Field Operations.
	Dir, Quick Response Pol Surveys & Analysis.
Data Analysis	Assoc Commr, Economic Growth.
	Assoc Comr for Prices and Living Conditions.
	Assoc Commr Productivity & Technology.
	Assoc Comr for Research & Evaluation.
	Assoc Comm for Employment & Unempl Statistics.
	Asst Commr for Consumer Prices & Price Indexes.
	Asst Commr for Indust Prices & Price Indexes.
	Asst Commissioner for Mathematical Statistics.
	Assistant Commissioner for Economic Research.
	Asst Commissioner for Federal-State Programs.
	Asst Commissioner for Current Employ Analysis.
	Asst Comr for Compensation Levels & Trends.
	Asst Comr for Safety, H & W Conditions.
	Assoc Comr Compensation & Working Conditions.
	Asst Comm for Survey Methods Research.
	Asst Comm for International Prices.
Administrative and Internal Operations	Dep Comm for Adm and Internal Operations.
	Assistant Commissioner for Administration.
	Director of Survey Processing.
	Dir of Technology & Computing Svcs.
	Asst Comr for Technology & Survey Processing.
	Dir Quality & Info Management.
Office of Employment Security	Director, Ofc of Trade Adjustment Assistance
Office of the Comptroller	Comptroller.
	Admr, Ofc of Financial & Administrative Mgmt.
	Dep Admr, Ofc of Financial & Adm Management.
	Dep Admr for Information Resources Management.
Office of Info Resources Management	Dir, Ofc of Information Resources Management.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs	Dir Health Standards Programs.
Safety Standards Programs	Director Safety Standards Programs.
Federal/State Operations	Director, Federal/State Operations.
Technical Support	Dir of Technical Support.
Mine Safety and Health Administration	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
Merit Systems Protection Board:	
Ofc of the Executive Director	Director, Office of Policy & Evaluation.
	Executive Director.
	Director, Office of Administration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Dir, Office of Management Analysis.
	Dep Exec Dir for Regional Operations.
	Dep Executive Dir for Management.
Ofc of General Counsel	Deputy General Counsel.
Office of Appeals Counsel	Deputy Director Office of Appeals Counsel.
Regional Offices	Regional Director, San Francisco.
	Regional Director, Chicago.
	Regional Director, Atlanta.
	Regional Director, Philadelphia.
	Regional Director, Dallas.
	Regional Director, Washington, DC.
National Aeronautics and Space Administration:	
Office of the Assoc Admr for Policy	S/A to the Assoc Admr for Policy Integration.
	Dir of Strategic Analysis.
Office of the Comptroller	Assistant Comptroller for Systems Analysis.
	Technical Assistant to the Comptroller.
	Asst Compt for Prog Status Rev & Cost Assess.
Financial Management Division	Dir Financial Mgmt Div.
	Dep Dir, Financial Management Div.
Resources Analysis Division	Director, Resources Analysis Division.
Ofc Safety Reliability Maintainability & Qual Assur	Director, Safety and Product Assurance Office.
	Dir, NASA Q & P Improvement Programs Division.
	Director, Safety Division.
	Dir, Reliability, M/Q Assurance Division.
	Dep Assoc A/S, Reliability, M/Q Assurance.
	Director, Programs Assurance Division.
	Dir Systems Assessment Division.
Ofc of the Assoc Admr, Space Science and Applications	Asst Assoc Administrator (Institutions).
	Assistant Assoc Administrator (Space Station).
Earth Science and Applications Division	Chief, Oceanic Processing Branch.
	Chief, Flight Programs Branch.
	CHF, Upper Atmospheric R/T Chemistry Branch.
	CHF, Atmospheric Dynamics and Radiation Br.
	Dep Dir, Earth Sci & Applications Division.
	Chief Land Processes Branch.
	CHF, Advanced M/I Science Research Branch.
	Spec Asst to the Dir, Earth Sci/Applications.
Communications Division	Dep Dir, Communications & Info Syst Div.
	CHF, Information Systems Branch.
Life Sciences Division	Chief, Space Medicine & Biology Branch.
	Chief, Flight Programs Branch.
	Dep Dir, Life Sciences Division.
Administration and Resources Management Division	Dep Dir, Administration & Resources Mgmt Div.
Solar Systems Exploration Division	Dep/Dir Solar System Exploration Division.
	Chief, Mission Operations Branch.
	Chief, Planetary Science Branch.
	Dep Dir for Adv Studies, Solar Sys Explin Div.
	Manager, Craf-Cassini Program.
Flight Systems Division	CHF, Space Station Utilization Branch.
	Chief Microgravity Payloads Branch.
	Deputy Dir Flight Systems Division.
	CHF, Astrophysics & Earth Sci Payloads Branch.
Astrophysics Division	CHF, High Energy Astrophysics Br.
	Chief, Astronomy/Relativity Branch.
	Chief, Explorer Programs Branch.
	Deputy Dir Astrophysics Division.
	CHF, Observatories Dev & Operations Branch.
Microgravity Sciences and Applications Div	Dep Dir, Microgravity Science and Applications Div.
Space Physics Div	Chief, Solar Physics Branch.
	Dep Dir, Space Physics Division.
	Chief, Flight Programs Branch.
	Director, Space Physics Division.
Ofc of General Counsel, NASA	Deputy General Counsel (Policy Review).
Office of Procurement	Asst Admr for Procurement.
	Deputy Asst Admr for Procurement.
	Dir, Advanced Procurement Planning Division.
	Director, Program Operations Division.
	Director, Procurement Policy Division.
	Dir, Procurement Management Division.
	Dir, Contract Pricing & Finance Office.
Ofc of Asst Admr for Commercial Programs	Dir, Commercial Development Division.
	Deputy Assistant Administrator (Programs).
	Dir, Small Business Innovation Res Office.
	Spec Asst to the Asst. Admr.
Ofc of the Assoc Admr, External Relations	Mgr, Institutional Planning & Operations.
Industry Relations Division	Dep Dir, Industry Affairs Division.
Educational Affairs Division	Dep Director, Educational Affairs Division.
	Director, Educational Affairs Division.
Congressional Relations Office	Dep Asst Admin for Congrl Relations (Opers).
	Dir, Congressional Liaison Division.
International Relations Division	Dep Dir, International Relations Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Ofc of the Assoc Admr Space Flight	Deputy Director, Engineering Division.
	Deputy Director, Space Shuttle Operations.
Unmanned Lauch Vehicle and Upper Stages Div	Dir Unmanned Launch Vehs & Upper Stgs Div.
	Chf, Orbital Maneuvering Vehicle Program.
Shuttle Carrier Systems Division	Director, Shuttle Carrier Division.
Advanced Program Development Division	Chief Advanced Transportation Branch.
	Dep Dir Advanced Program Development Division.
Transportation Services	Chief Flight Requirements & Analysis Branch.
	Dir, National Security & DOD Affairs Office.
	Chf, US Civil & Intl Payloads Branch.
National Space Transportation System	Natl Space Trans Syst Engineering Integration.
	Deputy Dir Transportation Services Office.
	Manager, Operations Integration Office.
	Mgr, Natl Space Trans Syst Integration & Ops.
	Director, Space Shuttle.
	Dep Mgr, Natl Space Transportation Sys Prog.
	Dep Dir, National Space Transportation Syst.
	Dep Mgr, Natl Space Trans Syst Operations.
	Manager, Shuttle Projects Office.
	Manager, NSTS Program Control.
System Engineering and Analysis	Director, Shuttle Systems Division.
	Dep Dir, Syst Eng & Analysis Division.
	Chief Solid Rocket Booster Program Branch.
	Dir Shuttle Orbiter Division.
Propulsion Division	Chf, Solid Rocket Booster Program Branch.
Operations Utilization	Director, Shuttle Propulsion Division.
	Dir, Kennedy Space Center Projects Division.
	Director, Operations Utilization Division.
	Dir, Operations Utilization Directorate.
Office of the Associate Administrator, Management	Dir Aircraft Management Ofc.
	Director, Management Operations.
Facilities Management	Dep Asst Assoc Admr for Facilities Management.
	Logistics and Security
	Dir, Logistics & Security Division.
Personnel and General Management	Dep Asst Assoc Admin for Personnel Management.
	Asst Assoc Admr for Personnel Management.
Information Systems Division	Chf Scientific and Tech Info Br.
	Asst Assoc Admr for Info Res Management.
	Dep A/A Admr for Info Res Mgmt Pol & Systems.
Ofc of Exploration	Dep Assistant Administrator for Exploration.
	Special Asst for Strategic Planning.
Headquarters Operations	Dep Asst Administrator for Headquarters Ops.
	Dir, Information Syst & Technology Division.
Ofc of the Assoc Admr, Aeronautics and Space Tech	S/A to the Adm Aeron/Space Tech (E/T).
	Manager, Heavy Lift Launch Vehicle.
Ofc of Director for Aeronautics	Asst Dir of Aeronautics (Gen A & T Aircraft).
	Deputy Director for Aeronautics.
	Dir for Aeronautics (High-Perf Aircraft).
	Asst Director for Aeronautics (Rotorcraft).
Office of Space Exploration	Asst Dir for Space Explorations (Intl).
	Asst Dir for Space Exploration (Comms).
Ofc of Dir for Space	Deputy Director for Space Technology.
	Manager, Civil Space Technology Initiative.
	Asst Dir for Space (Spacecraft Technology).
	Deputy Director for Space.
	Director for Space Technology.
Ofc of Dir for Institutions	Asst Director for Institutions (Facilities).
	Asst Dir for Institution (Information Syst).
	Dir, Resources & Management Systems Office.
	Director for Institutions.
Aerodynamics Division	Deputy Dir Aerodynamics Division.
Materials & Structures Division	Director, Materials and Structures.
Propulsion, Power, & Energy Division	Dir, Propulsion, Power and Energy Division.
National Aerospace Plane Office	NASA Dep Prog Mgr, Natl Aero-Space Plane Prog.
	Dep Dir, National Aero-Space Plane Office.
Ofc of Assoc Admr for Space Station	S/A to the Director.
Policy Division	Director, Policy Division.
Utilization Division	Deputy Director, Utilization Division.
	Chf, Integration & Marketing Branch.
Strategic Plans Programs Division	Dep Dir, Strategic Plans & Programs Division.
	Dir, Strategic Plans & Programs Division.
Resources & Administration Division	Dep Dir, Resources & Administration Division.
	Dir, Resources & Administration Division.
Space Station Program Office	Associate Program Director.
	Dir, Prog Syst Engineering/Integration Group.
	Tech Asst Dir, Space Station Freedom Program Ofc.
	Dep Dir, Space Station Program Office.
	Techn Asst to the Dep Dir Spc Stat Fred Prog.
	Director, Space Station Freedom.
	Manager, Element Integration.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Manager, Management Integration Office.
	Director, Program Support Office.
	Dir, User Integration Division.
Program Control Group	Director Program Control Group.
	Dir, Program Planning & Control Division.
Utilization & Operations Group	Dir, Program Utilization & Operating Group.
	Dir, Integrated Logistics Division.
	Dep Dir, Utilization & Operations Group.
	Dir, Planning & Analysis Division.
	Assoc Dir, Prog Utilization & Ops Group.
Programs System Engineering & Integration Group	Dep Mgr Mgt Integration Office.
	Dir, Information Syst Integration Division.
	Dep Dir, Prog Syst Eng & Integration Group.
	Dir, System Engineering Division.
	Assoc Manager, Program Engineering Office.
International Programs Group	Deputy Manager, International Programs.
	Dep Dir, Program Control Group.
	Asst Dir, International Programs Group.
	Dir, International Programs Group.
Ofc of the Assoc Admr Space Operations	Assistant Associate Administrators (Plans).
	Special Assistant (Operations).
	NASA Australian Representative.
Network System Division	Manager Space Network Operations.
	Dir, Ground Network Division.
Communications and Data Systems Division	Dir, Communications & Data Systems Div.
	Dep Dir, Communication & Data Systems Div.
	Dir, Communications Data Systems Division.
Tdrss Division	Manager, White Sands Space Network Complex.
	Manager, Tdrss Continuation Program.
Discrimination Complaints Division	Director, Discrimination Complaints Division.
Office of the Inspector General	Assist Inspector General for Investigation.
	Assistant Inspector General for Auditing.
Ames Research Center	Chief OFC of Safety Reliability & Qual Assure.
	Asst to Center Dir for Advanced Sys Design.
Administration Directorate	Comptroller.
	Chief, Acquisition Division.
Aerospace Systems Directorate	Chief, Aerodynamics Division.
	Chf Flight Systems & Simulation Rsch Div.
	Deputy Dir Aerospace Systems Directorate.
	Chief Aircraft Technology Division.
Space Research Directorate	Deputy Director of Space Research.
	Chief, Life Sciences Division.
	Chief, Earth Systems Science Division.
	Chf, Aerospace Human Factors Research Div.
Engineering and Technical Services Directorate	Dep Director Engineering & Tech Svcs.
Aerophysics Directorate	Chief, Space Science Division.
	Chief Computational Fluid Dynamics Branch.
	Chf, Systems Engineering Div.
	Chief, Full Scale Aerodynamics Research Center.
	Chief, Fluid Dynamics Division.
	Chief Computer Systems & Research Division.
	Chief Thermoscience Division.
	Chief, Information Sciences Division.
	Dir Numerical Aerodynamics Simu Sys Div.
	Deputy Director of Aerophysics.
Flight Operation and Research Directorate	Chief, Science & Applications Aircraft Div.
	Chf Engineer.
	Chf, Dryden Research Aircraft Operations Div.
	Chief, Research Engineering Division.
	Chf, Ames Research Aircraft Operations Div.
Goddard Space Flight Center	Comptroller.
	Director of Human Resources.
	Deputy Director for Earth Sciences.
	Dir of University Programs.
Management Opers Directorate	Dep Dir of Management Operations.
	Associate Director for Acquisition.
Flight Assurance Directorate	Director of Flight Assurance.
	Dep Dir Office of Flight Assurance.
Flight Projects Directorate	Deputy Director of Flight Projects.
	Assoc Dir of Flt Proj Space Stat Frdm-Goddard.
	Dep Dir Flight Project for Ping Business Mgmt.
	Dep Dir of Flight Proj for Space Stat-Goddard.
	Chief Engineer.
	Mgr Hubble Space Telescope Oper & Ground Syst.
	Project Manager, Gamma Ray Observatory.
	Proj Mgr, Hubble Space Telescope Prog-Goddard.
	Project Manager, Satellite Servicing Project.
	Assoc Dir of Flt Proj Hubble Space Telescope.
	Proj Mgr, Intl Solar Terr Physics Proj (Istp).
	Proj Mgr Hubble Spc Telescope Syst & Serv.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Project Manager Meteorological (Metsat) Projec.
Mission Operations & Data Systems Directorate	Asst Director for Systems Engineering.
	Assoc Dir of Mission Operations & Data Syst.
	Dep Dir of Mission Operations & Data Systems.
	Chief, Networks Division.
	Chief, Flight Dynamics Division.
Space & Earth Sciences Directorate	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Assoc Dir for Projects Engineering.
	Chf, Laboratory for Hydrospheric Processes.
	Chief, Space Data and Computing Division.
	Deputy Dir for Space Sciences.
	Chf, Laboratory for Atmospheres.
	Director of Space Sciences.
	Chief, Laboratory for Oceans.
	Associate Director for Program Planning.
	Associate Director for Space Station.
	Chief, Goddard Institute for Space Studies.
	Deputy Director for Earth Sciences.
	Associate Director for Science.
	Assoc Dir of the Earth Sciences Directorate.
	Chief, Laboratory for High Energy Astrophysics.
	Director for Earth Sciences.
	Chief, Laboratory for Terrestrial Physics.
Engineering Directorate	Dep Dir of Engineering.
	Chief, Instrument Division.
	Chf, Applied Engineering Div.
	Chief, Engineering.
	Chief, Special Payloads Division.
	Asst Dir of Engineering for Development Proj.
	Assistant Director for Technical Resources.
	Chief, Space Technology Division.
Suborbital Projects and Operations Directorate	Chf, Operations Division.
Johnson Space Center	Comptroller.
	Assistant Director (Plans).
	Dir of Public Affairs.
	Spec Asst for Engineering Operations & Safety.
	Assistant Director.
	Director of Procurement.
	Director of Human Resources.
	Special Assistant for Programs.
New Initiatives Office	Manager, New Initiatives Office.
	Mgr, Crew Emergency Return Vehicle Office.
	Deputy Manager, New Initiatives Office.
Center Support	Deputy Dir, Center Operations.
	Dir, Admin.
	Deputy Director, Administration.
	Dir, Center Operations.
Space Operations	Chief, Aircraft Operations Division.
	Chief, Training Division.
	Chief, Mission Planning and Analysis Division.
	Assistant Director, Mission Operations.
	Director, Mission Operations.
	Deputy Asst Dir for Program Support.
	Deputy Director, Mission Support.
	Director, Information Systems.
	Chief, Systems Development Division.
	Deputy Director, Mission Operations.
	Assistant Director for Program Support.
	Chief, Space Station Ground Systems Division.
	Assistant Director for NSTS programs.
	Chf, Facility & Support Systems Division.
	Dep Dir, Flight Crew Operations.
	Asst Dir for Space Shuttle Program.
	Chief, Space Shuttle Ground Syst Division.
	Assoc Dir for Information Systems Planning.
Research & Engineering	Deputy Director, Information Systems.
	Deputy Director, Engineering.
	Chief, Propulsion & Power Division.
	Chief, Structures and Mechanics Division.
	Chief, Crew & Thermal Systems Division.
	Chief Solar System Exploration Division.
	Chief, Medical Sciences Division.
	Chief, Automation and Robotics Division.
	Chief, Systems Engineering Division.
	Manager for Program Science.
	Associate Director, Engineering.
	Director, Engineering.
	Chief Engineer, New Initiatives.
	Manager, Orbiter Engineering Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Deputy Director, Space and Life Sciences.
	Chf, Avionics Systems Division.
	Chief, Navigation, Control & Aeronautics Div.
Natl Space Transp Sys Prog Ofc	Dep Manager, Orbiter & GFE Projects Office.
	Chf, Man-Systems Division.
	Manager, Orbiter and GFE Projects Office.
Space Station Project Office	Manager for Development.
	Dep Mgr, Space Station Projects Office.
Safety, Reliability & Quality Assurance	Dir, Safety, Reliability, & Quality Assurance.
	Dep Dir, Safety, Reliability & Qual Assurance.
Sts Operations Program Office	Manager, Lunar & Mars Exploration Prog Office.
NASA White Sands Test Facility	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Director, Procurement.
	Dir, Exec Management Ofc.
	Associate Deputy Director.
Biomedical Office	Chf., Biomedical Office.
Public Affairs	Dir, Public Affairs.
Safety, Reliability and Quality Assurance	Director, Safety and Reliability
	Director, Protective Services.
	Director, Quality Assurance.
Shuttle Management Operations	Deputy Dir Vehicle Engineering.
	Manager Space Station Projects Office.
	Dir, Shuttle Logistics Project Management.
	Dir of Space Trans System Mgmt & Operations.
Center Support Operations	Director of Center Support Operations.
	Deputy Director of Center Support Operations.
Engineering Development	Deputy Director of Engineering Development.
Project Management	Director, Facilities Engineering.
Mechanical and Facilities Engineering	Dir, Mechanical Engineering.
Electronic Engineering	Director, Electronic Engineering.
Cargo Management and Operations	Dep Dir of Cargo Operations.
	Director, Expendable Vehicles.
Sts Cargo Operations	Director, Sts Payload Operations.
Shuttle Projects Office	Director, Shuttle Operations.
	Director, Ground Engineering.
Langley Research Center	Chief Engineer.
Electronics Directorate	Chf, Analysis & Computation Division
	Chief, Projects Division.
	Chief Flight Electronics Division.
	Chief Instrument Research Division.
Structures Director	Chf, Acoustics Division.
	Chief Structural Mechanics Division.
	Chief Materials Division.
Aeronautics Directorate	Chief, Structural Dynamics Division.
	Chief, Advanced Vehicles Division.
	Chief Applied Aerodynamics Division.
	Deputy Director for Aeronautics.
	Chief, Flight Applications Division.
	Deputy Director For Aeronautics.
	Chief, Flight Applications Division.
	Manager, Hypersonic Technology Office.
	Chief, Fluid Mechanics Division.
Space Directorate	Chief, Space Systems Division.
	Chief, Atmospheric Sciences Division.
	Manager, Space Station Freedom Office.
	Deputy Manager, Space Station Freedom Office.
	Manager, Human Exploration Initiative Office.
Systems Engineering and Operations Directorate	Dep Dir For Syst Engineering & Operations.
	Chief Facilities Engineering Division.
	Chief Systems Engineering Div.
	Chf, Syst Sfty, Quality, & Reliability Div.
Manager Operations	Deputy Director for Management Operations.
Flight Systems Directorate	Chief Information Systems Division.
	Chf, Guidance and Control Division.
	Chief Flight Management Division.
Lewis Research Center	Director, Ofc of Intergency & Industry Prog.
	Chf, Ofc of Sfty, Reliability & Quality Assur.
Administration & Computer Services	Chief, Computer Services Division.
	Dir, Adm & Computer Services Directorate.
Aeronautic Directorate	Chief Internal Fluid Mechanics Division.
	Chf, Propulsion Systems Div.
	Chief, Instrumentation & Control Technol Div.
	Chf, Internal Fluid Mechanics Division.
	Chief Technologist.
	Chf, Aeropropulsion Analysis Office.
	Chf, Aeropropulsion Facilities & Exper Div.
Space Station Systems Directorate	Dep Dir of Space Station Systems.
	Chief Electrical Systems Division.
	Chief, Photovoltaic Power Module Division.
	Chief Engineer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Aero Space Technology Directorate	Chief, Power Technology Division. Chf, Systems Engineering & Integration Div. Deputy For Integration. Chief, Space Propulsion Technology Division.
Space Flight Systems Directorate	Chief, Materials Division. Chief, Structures Division. Chief, Interdisciplinary Technology Office. Chf. Advanced Space Analysis Office. Manager Launch Vehicle Project Office. Manager, Acts Project Office.
Engineering & Technical Services Directorate	Chief, Space Experiments Division. Chief, Space Communications Division. Chief, Structural Systems Division Chf, Electronics & Control Systems Division.
Marshall Space Flight Center	Director of Engineering Deputy Director of Engineering. Chief, Propulsion & Fluid Systems Division. Executive Assistant to the Director. Comptroller. Assistant to the Director. Dir, Admin. Operations Office.
Office of Sfty, Rel & Quality Assurance	Associate Director. Director, Quality Assurance Office. Dir, Systems Safety & Reliability Office. Director, Safety & Mission Assurance Office.
Science and Engineering	Chief Engineer, Observatory Projects. Director, Space Sciences Lab Director, Propulsion Laboratory. Director, Syst Anal & Integration Laboratory. Dep Dir Sys Analysis and Integration Lab. Chf Mission Analysis Division. Chf, Aerophysics Div. Deputy Director, Space Science Laboratory. Dep Dir Structures & Dynamics Laboratory. Deputy Dir, Materials & Processes Laboratory. Dep Dir, Mission Operations Laboratory. Dep Dir, Syst Anal & Integration Laboratory. Chf Engineer, Space Shuttle Main Engine Proj. Director Information & Electronic Sys Lab. Deputy Director For Space Systems. Dir Structures Dynamics Laboratory. Chief Engineer, Space Station Projects. Dep Dir Propulsion Laboratory. Dir, Materials & Processes Laboratory. Dep Dir For Space Transportation Systems. Dep Dir, Info & Electronic Systems Laboratory. Dir, Research & Technology Office. Director, Mission Operations Laboratory.
Special Projects Office	Manager, Orbital Maneuvering Vehicle Project.
Spacelab Payload Projects	Mgr, Science & Applications Payload Projects. Dep Manager Payload Projects Office.
Space Station Projects Office	Manager, Space Station Projects Office. Deputy Manager For Advanced Launch System. Dep Mgr, Space Station Projects Office.
Program Development	Deputy Director, Program Development. Director, Preliminary Design Office. Assoc Dir For Advanced Planning.
Shuttle Projects Office	Manager, External Tank Project. Mgr Solid Rocket Booster Project. Mgr Redesign Solid Rocket Motor Project. Mgr Space Shuttle Maine Engine Project. Manager, Advanced Solid Rocket Motor Project.
Spacecraft Office	Manager, Observatory Projects Office. Dep Mgr, Observatory Projects Office. Manager, Spacecraft Office.
Administration and Program Support	Dir Info Systems Office. Dir, Institutional & Program Support. Director, Procurement Office. Assistant to the Director.
Stennis Space Center	Dep Dir, Institutional & Program Support. Dir Sci & Tech Lab. Director, Science and Technology Laboratory. Director, Center Operations. Deputy Director, NASA Stennis Space Center. Assoc Director for Institution. Dir. Propulsion Test Operations. Director, Center Operations.
National Archives & Records Administration:	
National Archives & Records Administration	Deputy Archivist of the United States. Asst Archivist for the National Archives.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Asst Archivist for Federal Records Centers. Asst Archivist for Records Administration. Director, Lyndon B. Johnson Library. Director, Harry S Truman Library. Director Dwight D. Eisenhower Library.
National Capital Planning Commission:	
National Capital Planning Commission Staff	Executive Director. Assoc Exec Dir D.C. Affairs. Assistant Executive Director for Operating. Dir of Intergovernmental & Public Affairs.
National Endowment for the Arts:	
National Endowment for the Arts	Director of Program Coordination. Deputy Chairmen for Management.
National Endowment for the Humanities:	
National Endowment for the Humanities	Dir, Office of Planning & Budget. Asst Chairmen for Operations.
National Labor Relations Board:	
Ofc of the Board Members	Executive Secy. Deputy Executive Secretary. Inspector General.
Div of Enforcement Litigation	Deputy Assoc. Gen. Counsel Appellate Court Br.
Div of Advice	Director, Office of Appeals. Associate Gen Counsel, Div of Advice. Deputy Assoc Gen Counsel.
Div of Administration	Director of Administration. Deputy Director of Administration.
Div of Operations Management	Assoc General Counsel, Div of Operation-Mgmt. Dep Assoc Gen Counsel, Div of Operations-Mgmt. Assistant General Counsel. Assistant General Counsel. Assistant General Counsel. Assistant General Counsel. Assistant General Counsel. Asst of the General Counsel.
Regions' Offices	Regl Dir Reg 1 Boston. Regional Director, Reg. 2 New York. Regional Director, Reg. 3, Buffalo. Regl Dir Reg 4 Philadelphia. Regional Director, Reg. 5, Baltimore. Regional Director, Reg. 6, Pittsburgh. Regl Dir, Region 7, Detroit Mich. Regional Director, Reg. 8, Cleveland. Regional Director, Reg. 9, Cincinnati. Regl Dir Reg 10, Atlanta. Regl. Dir., Reg. 11, Winston Salem. Regional Director, Reg 12, Tampa. Regional Director, Reg 13, Chicago. Regl Dir Reg 14, St. Louis. Regl Dir Reg 15, New Orleans. Regl Dir Reg 16, Ft. Worth. Regl Dir Reg 17, Kansas City. Regl Dir Reg 18, Minneapolis. Regl Dir Reg 19, Seattle. Regional Dir, Reg 20, San Francisco. Regional Director, Reg. 21, Los Angeles. Regional Director Reg 22, Newark. Regional Director Reg 24, Hato Rey Puerto Rico. Regl Dir, Reg 25, Indianapolis. Regl Dir Reg 26, Memphis. Regl Dir Reg 27, Denver. Regl Dir Reg. 28, Phoenix. Regl Dir Reg 29, Brooklyn. Regl Dir Reg 30, Milwaukee. Regl. Dir., Reg 32, Oakland. Regional Director, Reg. 33, Peoria, Ill. Regl Dir Reg 31, Los Angeles. Regional Director 34, Hartford.
National Science Foundation:	
Office of the Inspector General	Inspector General.
Office of the Director	Senior Staff Associate. Executive Asst to the Director.
Office of Information Systems	Dir, Information Management Division. Dir, Technological Environment Division.
Research Facilities Office	Executive Officer.
Office of the General Counsel	Deputy General Counsel.
Division of Budget	Division Director.
Program Evaluation Staff	Director, Program Evaluation Staff.
Office of Legislative and Public Affairs	Sr Assoc Ofc of Legislative & Public Affairs.
Directorate for Geosciences	Executive officer.
Division of Atmospheric Sciences	Head Centers & Facilities Section.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Section Head, Upper Atmosphere Section.
	Head Lower Atmosphere Section.
Division of Earth Sciences	Section Head, Research Grants Section.
	Head Major Projects Section.
Division of Ocean Sciences	Section Head Ocean Sciences Research Section.
Division of Polar Programs	Manager Polar Ops Section.
	Head, Polar Coordination & Info Section.
	Dep Dir Division of Polar Programs.
Directorate for Engineering	Senior Engineering Advisor.
Div of Design and Manufacturing Systems	Deputy Division Director.
Division of Biological and Critical Systems	Head Hazard Mitigation Section.
Div of Electrical and Communications Systems	Deputy Division Director.
Div of Mechanical and Structural Systems	Deputy Division Director.
Division of Engineering Infrastructure Development	Senior Staff Associate.
	Dep Dir, Div of Eng Infrastructure Dev.
Directorate for Biological, Behavioral Social Sciences	Executive Officer.
Division of Biotic Systems and Resources	Deputy Division Director.
Division of Behavioral and Neural Sciences	Dep Div Dir, Div of Behavioral & Neural Sci.
Division of Social and Economic Sciences	Deputy Division Director.
	Senior Scientist.
Directorate for Mathematical and Physical Sciences	Executive Officer.
	Senior Staff Associate for Planning.
Division of Physics	Deputy Division Director.
Division of Astronomical Sciences	Dep Dir, Division of Astronomical Sciences.
Division of Mathematical Sciences	Deputy Division Director.
Division of Materials Research	Sect Head, Metallurgy, Polymers, & Ceramics.
	Head Condensed Matter Sciences Section.
	Deputy Director.
	Head, Special Programs in Materials Office.
Division of Chemistry	Head Special Projects Office.
	Dep Dir Division of Chemistry.
Directorate for Education & Human Resources	Executive Officer.
	Deputy Asst Director.
	Senior Education Policy Advisor.
Directorate for Education and Human Resources	Senior Science Associate.
Directorate for Scientific, Tech & Internat'l Affairs	SR S/A for Strategic Planning & Assessment.
	SR Staff Assoc for Human Resources S & A.
Division of Policy Research and Analysis	Section Head, Science & Innovation Pol. Sec.
Division of Science Resources Studies	Section Head Survey and Analysis Section.
	Section Head, Special Analytical Studies Sect.
Division of International Programs	Deputy Division Director.
	Head Special Projects Office.
	Senior Staff Associate.
	Head, Information and Analysis Section.
	Head, Cooperative Science Section.
Directorate for Administration	Executive Officer.
Division of Grants and Contracts	Director, Division of Grants and Contracts.
	Director, Operations and Analysis.
Division of Financial Management	Division Director.
Division of Administrative Services	Dir, Division of Administrative Services.
Division of Personnel and Management	Division Director.
Directorate for Computer & Info Science & Engineering	Executive Officer.
Div of Advanced Scientific Computing	Deputy Director.
Div of Computer and Computation Research	Deputy Division Director.
Div of Information, Robotics & Intelligent Systems	Deputy Division Director.
Division of Microelectronic Information Processing Sys	Deputy Division Director.
Div of Networking & Comm Res & Infrastructure	Deputy Division Director.
National Transportation Safety Board:	
Office of the Managing Director	Dep Managing Dir for Mgmt & Policy.
	Director.
	Deputy Director.
	Chief Technical Advisor.
Office of Administration	Dir Office of Administration.
Office of Aviation Safety	Director.
	Deputy Director.
Office of Research & Engineering	Dir Ofc of Research and Engineering.
	Deputy Dir Ofc of Research and Engineering.
Office of Safety Recommendations	Director.
Office of Surface Transportation Safety	Dir Ofc of Surface Transportation Safety.
Nuclear Regulatory Commission:	
Atomic Safety and Licensing Brd Panel	Chairman ASLBP.
	Deputy Chief Administrative Judge Executive.
Atomic Safety and Licensing Appeal Panel	Chairman Aslap.
Office of the Inspector General	Dep Dir Ofc of the Inspector General.
	Asst Inspector General for Investigations.
	Asst Inspector General for Audits.
Deputy GC for Licensing & Regulation	Deputy Assistant GC/Legislative Counsel.
Dep GC for Hearings, Enforcement & Administration	Deputy Assistant GC for Administration.
Assistant GC for Hearings and Enforcement	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.

BEST COPY AVAILABLE

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
	Deputy Assistant General Counsel.
Division of Operational Assessment	Chief Incident Response Branch.
	Chf, Diagnostic Eval & Incident Invest Branch.
Division of Safety Programs	Chf, Reactor Operations Analysis Branch.
	Chf, Trends & Patterns Analysis Branch.
Office of Administration	Dir Div of Contracts & Property Management.
	Director, Div of Security.
Office of the Controller	Dir Division of Accounting and Finance.
	Special Assistant for Internal Controls.
Office of Investigations	Associate Director for Legal Affairs.
Ofc of Small and Disadv Bus Utilization/Civil Rights	Director.
Program Management, Policy Development & Analysis Staff	Chief, Plng, Programs & Mgmt Support Branch.
	Chf, Pol Dev & Tech Support Branch.
	Chf, Inspection & Licensing Progs Branch.
Assistant Director for Region I Reactors	Project Dir, Project Directorate I–1.
	Project Director, Project Directorate I–2.
	Project Director, Project Directorate I–3.
	Project Director, Project Directorate I–4.
Assistant Director for Region II Reactors	Proj Dir Project Directorate II–1.
	Proj Dir Project Directorate II–2.
	Proj Dir Project Directorate II–3.
Assistant Director for Region III Reactors	Proj Dir, IV–A Project Directorate
	Proj Dir Project Directorate III–1.
	Proj Dir Project Directorate III–2.
Assistant Director for Region IV and V Reactors	Proj Director Project Directorate III–3.
	Proj Dir Project Directorate V.
	Proj Dir. Project Directorate IV–1.
Asst Dir for Special Projects	Project Dir, Proj Directorate IV–2.
	Project Dir, Standardization Proj Directorate.
	Proj Dir. N–P Reactor, D&E Proj Directorate.
	Asst Dir for Special Projects.
Division of Engineering Technology	Proj Dir License Renewal Proj Dir.
	Chief, Materials & Chemicals Engineering Br.
	Chf. Mechanical Engineering Branch.
Division of Systems Technology	Chf, Structural & Geosciences Branch.
	Chf, Plant Systems Branch.
	Chf, Reactor Systems Branch.
	Chf, Instrumentation & Control Syst Branch.
Division of Operational Events Assessment	Chf, Electrical Systems Branch.
	Chief, Generic Communications Branch.
	Chf, Technical Specification Branch.
Division of Reactor Inspection & Safeguards	Chief, Events Assessment Branch.
	Chf, Vendor Inspection Branch.
	Chf, Safeguards Branch.
Div of Radiation Protection & Emergency Preparedness	Chf, Special Inspections Branch.
	Chief Emergency Preparedness Branch.
	Chf, Risk Application Branch.
Division of Licensee Performance & Quality Evaluation	Chf, Radiation Protection Branch.
	Chf, Human Factors Assessment Branch.
	Chf, Operator Licensing Branch.
	Chf, Performance & Quality Evaluation Branch.
Office of Nuclear Material Safety and Safeguards	Dir Special Issues Group.
	Asst Dir, Special Issues Group.
Division of Safeguards & Transportation	Chf, Domestic SG & Regl Oversight Branch.
	Chf, International Safeguards Branch.
	Chief, Transportation Branch.
Div of Industrial & Medical Nuclear Safety	Chief, Operations Branch.
	Chief, Fuel Cycle Safety Branch.
	Chief, Medical, Acad & Com Use Sfty Branch.
Division of High Level Waste Management	Chf, Engineering Branch.
	Proj Dir, Repository L&Q Assurance.
	Chf, Geosci & Systems Performance Branch.
Div of Low Level Waste Management & Decommissioning	Chief, Operations Branch.
	Chief, Technical Branch.
	Chief, Regulatory Branch.
Division of Engineering	Chief, Materials Engineering Branch.
	Chief Waste Management Branch.
	Chief, Electrical and Mechanical Engineer Brh.
	Chief, Structural and Seismic Engineering Brh.
Division of Safety Issue Resolution	Chief, Severe Accident Issues Branch.
	Chief, Engineering Issues Branch.
	Chief, Reactor and Plant Sfty Issues Branch.
Division of Regulatory Applications	Chief Regulation Development Branch.
	Chf, Radiation Protection & Health Effects Br.
	Chief Adv Reactors and Generic Issues Branch.
Division of Systems Research	Chief Accident Evaluation Branch.
	Chf, Probabilistic Risk Analysis Branch.
	Chief, Reactor and Plant Systems Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Region I	Chief, Human Factors Branch.
	Deputy Regional Administrator.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
	Director Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director, Division of Reactor Projects.
Region II	Deputy Regional Administrator Region II.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
	Director, Division of Reactor Projects.
	Deputy Director, Division of Reactor Projects.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
Region III	Dep Regional Administrator Region III.
	Director, Division of Reactor Safety.
	Dep Dir, Div of Reactor Safety.
	Director, Division of Reactor Projects.
	Deputy Director Division of Reactor Projects.
	Dir, Div of Radiation Safety & Safeguards.
	Dep Dir, Div of Radiation Safety & Safeguards.
Region IV	Deputy Regional Administrator, Region IV.
	Director Uranium Recovery Field Office.
	Director Div of Reactor Projects.
	Deputy Director, Div of Reactor Projects.
	Dir, Div of Radiation Safety & Safeguards.
	Dir, Division of Reactor Safety.
Region V	Deputy Regional Administrator, Region V.
	Dir, Div of Reactor Safety and Projects.
	Dep Dir, Div of Reactor Safety and Projects.
	Dir, Div of Radiation Safety & Safeguards.
Office of Government Ethics:	
Office of Government Ethics	Deputy Director.
	Deputy General Counsel.
Office of Management and Budget:	
Office of the Director	Assistant Director for Administration.
	Deputy Associate Dir for Economic Policy.
	Assoc Dir for Leg Reference & Admin.
	Assoc Dir for Legislative Ref & Adm.
Office of General Counsel	Dep Gen Counsel.
	Associate General Counsel for Budget.
Legislative Reference Division	Asst Dir, Legislative Reference.
	Dep/Asst/Dir for Legislative Reference.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources-Defense-International Branch.
Office of Federal Procurement Policy	Assoc. Administrator for Management Control.
Office of Information and Regulatory Affairs	Chief Information Policy Branch.
	Chief, Human Resources and Housing Branch.
	Chief, Commerce and Lands Branch.
	Chief, Statistical Policy Branch.
	Chief, Natural Resources Branch.
	Chf, Info Technology Management Branch.
Associate Director for Management	Deputy Associate Director for Operations.
	Chief, Management Integrity Branch.
	Chief, Financial Systems and Policy Branch.
	Chief, Personnel & General Services Branch.
	Chief, Productivity Management Branch.
	Chief, Credit and Cash Management Branch.
	Assistant Director for General Management.
	Deputy Assistant for General Management.
	Branch Chief, Federal Personnel Policy Branch.
	Chief, Federal Services Branch.
Budget Review Division	Asst Dir for Budget Review.
	Dep Assistant Director for Budget Review.
	Chief, Fiscal Analysis Branch.
	Dep Chief, Fiscal Analysis Branch.
	Chf, Budget Preparation Branch.
	Chief, Resources Systems Branch.
	Chief, Central Budget Management Staff.
	Deputy Chief, Budget Preparation Branch.
	Budget Advisor to the Director, Brd.
Assoc Dir for National Security and International Affs	Deputy Associate Director for Special Studies.
International Affairs Division	Dep Assoc Dir for Internal Affairs.
	Chief, State-USIA Branch.
	Chief, Economic Affairs Branch.
	Chief International Security Affairs Branch.
National Security Division	Dep Assoc Dir for National Security.
	Dep Chief.
	Chief, Command, Ctrl, Comms, & Intellig Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Chief, Navy Branch.
	Chief, Force Structure & Investment Branch.
	Chief, Oper & Support Branch.
Assoc Dir for Human Resources, Veterans and Labor	Dep Assoc Dir for Special Studies.
Health and Income Maintenance Division	Dep Assoc Dir for Health & Income Maintenance.
	Chief Health & Social Services Branch.
	Chief Health & Financing Branch.
Labor, Veterans, and Education Division	Deputy Associate Director for Labor, Vet & Ed.
	Dep Div Chf-Labor.
	Chief, Education Branch.
	Chf Veteran Affairs Branch.
Associate Director for Economics and Government	Dep Assoc Dir for Special Studies.
Transportation, Commerce, and Justice Division	Dep Assoc Dir for Transp Commerce & Justice.
	Chief Commerce & Justice Branch.
	Chief Transport General Services Branch.
Housing, Treasury and Finance Division	Deputy Assoc Dir for Housing Treasury Finance.
	Chief, Treasury/Post Branch.
	Chief, Financial Institutions Branch.
	Chief, Housing Branch.
Assoc Dir for Natural Resources, Energy, and Science	Dep Assoc Dir for Spec Studies.
Natural Resources Division	Dep Associate Dir. for Natural Resources.
	Chief, Water Resources Branch.
	Chief, Agricultural Branch.
	Chief, Environment Branch.
	Chief Interior Branch.
Energy and Science Division	Asst Division Chief NRD.
	Dep Assoc Dir for Energy & Science.
	Chief, Nuclear Energy Branch.
	Chief, Science and Space Programs Branch.
	Chief, Non-Nuclear Energy Branch.
Office of Personnel Management:	
Office of the Director	Dir, Ofc of Combined Fed Campaign Operations.
Office of the Inspector General	Inspector General.
Office of Finance and Administrative Services	Asst Dir for Finance & Administrative Serv.
Office of Information Management	Executive for ADP Operations.
Office of Actuaries	Director, Office of Actuaries.
Office of Insurance Programs	Asst Dir for Insurance Program.
Office of Retirement Programs	Asst Dir for Retirement Programs.
Office of Personnel Research and Dev	Asst Dir for Personnel Research & Development.
Office of Administrative Law Judges	Asst Dir for Administrative Law Judges.
Staffing Service Center	Director, Staffing Service Center.
Office of Agency Compliance & Evaluation	Asst Dir for Agency Compliance & Evaluation.
Office of Classification	Asst Dir for Classification.
Office of Federal Investigations	Asst Dir for Federal Investigations.
Office of Washington Examining Services	Asst Dir for Wash Examining Services.
Office of the Special Counsel:	
Headquarters, Office of Special Counsel	Assoc Spec Counsel (Investigation).
	Assoc Special Counsel (Prosecution).
	Deputy Associate Spec Counsel for Prosecution.
	Director for Management.
Railroad Retirement Board:	
Board Staff	Dir of Unemployment & Sickness Insurance.
	Director of Data Processing.
	Dir of Legal & Admin Services & General Counl.
	Director of Retirement Claims.
	Chief Actuary.
	Director of Field Service.
	Chief Executive Officer.
	Deputy General Counsel.
	Asst Inspector General for Investigations.
	Chief Financial Officer.
	Assistant Inspector General for Audit.
	Director of Systems Initiatives.
Securities and Exchange Commission:	
Office of the Chairman	Dep Chf Accountant.
Office of the Executive Director	Dep Exec Director.
Div of Corporation Finance	Associate Director (Disclosure Operations).
	Chf Coun-Assoc Dir (Legal).
Selective Service System:	
Selective Service System	Assoc Dir Information Management.
Small Business Administration:	
Small Business Administration	Asst Administrator for Hearings and Appeals.
Ofc of the Inspector General	Asst Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Dep Inspector Gen & Coun to the Inspector Gen.
Office of the General Counsel	Associate General Counsel for General Law.
	Assoc Gen Counsel Litigation.
Office of Finance and Investment	Asst Administrator for Financial Assistance.
Financial Assistance Division	Director of Portfolio Management.
Office Procurement Assistance	Director of Prime Contracts.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Ofc of Minority Small Business & Capital Ownership Dev	Assoc Admr for MSB-COD.
	Dep Assoc Adm M/S B&C Ownership Development.
	Dep Assoc Admr for Pol Coor, Prog C&E.
	Dep Assoc Admr for Programs (MSB & COD).
Office of Information Resources Mgmt	Asst Admin for Information Resources.
Office of Personnel	Director of Personnel.
Office of the Comptroller	Comptroller.
Office of Program Analysis & Review	Director of Program Analysis and Review.
Office of EEO & Compliance	Dir Ofc of Equal Employment Opport & Complian.
District Directors	District Dir Phila.
	District Director, Region IX, San Francisco.
	District Dir, Reg IX, Los Angeles.
	District Director, Region V, Chicago.
	District Director, New York.
Department of State:	
Bureau of Administration	Supervisory Structural Engineer.
Bureau of Economic & Business Affairs	Dir, Office of East-West Trade.
Bureau of Intelligence and Research	Dir, Ofc of Resources Policy.
	Dir Ofc of Research & Analysis Soviet Affrs.
Office of the Inspector General	Assistant Inspector General for Audits.
	Asst. Inspector General for Investigations.
	Counsel to the Inspector General.
	Dep Asst Inspector General for Audits.
	Dep Asst Inspector Gen for Investigations.
	Asst Insp Gen for Policy, Plng and Management.
	Dep Asst Inspector Gen for Inspections.
	Dep Asst Insp Gen for Ofc of Secur Oversight.
Bureau of Personnel	Director, Ofc of Civil Service Personnel Mgmt.
International Boundary & Water Commission	Supervisory Civil Engineer, Operations.
Department of Transportation:	
Office of Inspector General	Asst Insp General for Auditing.
	Asst I/G for Policy, Planning and Resources.
	Asst Inspector General for Investigations.
	Dir Ofc of Surface Transportation Programs.
	Dir, Ofc of Aviation Marine & Research Progs.
	Dep Asst Inspector General for Auditing.
	Dir, Office of Adp Audits & Technical Support.
	Dep Asst Inspector General for Investigations.
Asst Sec for Public Affairs	Dir, Office of Public Information.
Asst Sec for Administration	Asst Secy for Administration.
	Senior Procurement Advisor.
Office of Acquisition & Grant Management	Director Ofc of Acquisition & Grant Mgmt.
	Dep Dir, Ofc of Acquisition & Grant Mgmt.
Assoc Adm'r for Safety	Assoc Admr for Safety.
	Dir, Office of Research and Development.
	Director, Office of Safety Enforcement.
Ofc of Pipeline Safety	Dir, Ofc of Pipeline Safety.
Ofc of Assoc Admr for Marketing	Associate Administrator for Marketing.
Office of Assoc Admr for Shipbuilding Operations	Dep Dir, Ofc of Ship Construction.
	Dir, Ofc of Ship Construction.
Office of Associate Administrator for Maritime Aids	Associate Administrator for Maritime Aids.
Associate Administrator for Aviation Safety	Asst Admin for Aviation safety.
	Dep Asst Admin for Aviation Safety.
Office of Accounting	Dir Office of Accounting.
Acquisition and Materiel Service	Mgr, Contracts Division.
Office of Acquisition Pol & Oversight	Dir, Ofc of Acquisition Pol & Oversight.
Logistics Service	Director, Logistics Service.
	Deputy Director, Logistics Service.
Associate Administrator for Aviation Stds	Assoc Administrator for Aviation Standards.
	Deputy Assoc Administrator Aviation Standards.
	Dir Ofc of Civil Aviation Security.
Office of Accident Investigation	Dir, Office of Accident Investigation.
Office of Aviation Medicine	Deputy Federal Air Surgeon.
	Mgr, Medical Specialties Division.
	Director Civil Aeromed Institute.
Office of Civil Aviation Security	Director, Office of Civil Aviation Security.
	Dep Asst Admr for Civil Aviation Security.
Aviation Standards Natl Field Office (Oklahoma)	Dir, Aviation Standards Natl Field Ofc.
	Deputy Director.
	Manager Intelligence Division.
Office of Air Traffic Rules & Procedures	Dir, Air Traffic Rules & Procedures Service.
Associate Administrator Regulation & Certification	Assoc Admr for Regulation & Certification.
	Dep Assoc Admr for Regulation & Certification.
Aircraft Certification Service	Director, Aircraft & Certification Service.
	Asst Dir, Aircraft Certification Service.
	Deputy Director Aircraft Certification Service.
	Manager, Aircraft Manufacturing Division.
Regional Aircraft Certification Divisions	Mgr Transport Airplane Directorate.
	Mgr Engine & Propeller Directorate.
	Mgr Small Airplane Directorate.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Flight Standards Service	Manager Rotorcraft Directorate.
	Dir, Flight Standards Service.
	Dep Dir, Flight Standards Service.
	Mgr, General Aviation and Commercial Div.
	Manager, Air Transportation Division.
	Manager Aircraft Maintenance Division.
	Manager General Aviation Staff.
	Manager Field Program Division.
	Asst Director for Special Programs.
Regional Flight Standards Division	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Division.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Div.
	Mgr, Flight Standards Division.
	Mgr, Flight Standards Div.
	Manager, Flight Standards Service.
Aircraft Engineering Division	Manager, Aircraft Engineering Division.
Office of Program and Resource Management	Dir, Office of Program & Resource Management.
Office of Airport Planning and Programming	Dir, Office of Airport Planning & Program.
	Mgr, Grants-in-Aid Division.
Assoc Administrator for NAS Development	Dir, Office of Advanced Sys Acquisition.
	Program Director for Surveillance.
Program Manager for Advanced Automation	Program Manager for Advanced Automation.
	Dep Program Mgr for Advanced Automation.
	Mgr Automation Engineering Division.
	Mgr Advanced Automation System Div.
Program Dir for Weather & Flight Service Systms	Prog Dir for Weather & Flight Services Syst.
Program Dir for Navigation & Landing Aids	Program Dir for Navigation & Landing Aids.
Program Director for Communications	Program Director for Communications.
Program Director for Automation	Program Director for Automation.
Executive Director for System Operations	Dep Dir, Advanced System Acquisition Service.
Assoc Admin for Air Traffic	Assoc. Administrator for Air Traffic.
	Dep Assoc Admin for Air Traffic.
	Director, Air Traffic System Management.
Air Traffic Operations Service	Manager, Procedures Division.
	Mgr. Airspace-Rules & Aeronautical Inf. Div.
	Manager, Operations Division.
	Dir Air Traffic Operations Service.
Air Traffic Plans and Requirements Service	Manager System Plans & Program Div.
	Dir, Air Traffic Plans & Requirements Serv.
	Manager Automation Software Division.
	Manager Advanced Sys & Facilities Division.
Office of Air Traffic Evaluations and Analysis	Dir, Ofc of Air Traffic Syst Effectiveness.
Regional Air Traffic Division Managers	Mgr, Air Traffic Division.
	Mgr, Air Traffic Division.
	Mgr, Air Traffic Div.
	Manager, Air Traffic Division.
	Mgr, Air Traffic Division.
	Mgr, Air Traffic Division.
	Manager, Air Traffic Division.
	Manager, Air Traffic Division.
Office of Air Traffic Program Management	Dir, Ofc of Air Traffic Program Management.
Federal Highway Administration	Executive Director.
Assoc Admr for Admin	Director Office of Fiscal Services.
	Director Office of Contracts and Procurement.
Associate Administrator for Safety & System App	Assoc Admr for Safety & System Applications.
Office of Highway Safety	Dir, Office of Highway Safety.
Assoc Admr for Right of Way and Environment	Assoc Admr for Right-of-Way & Environment.
Off of Environmental Policy	Dir, Ofc of Environmental Policy.
	Chief Environmental Operations Division.
Off of Right of Way	Dir, Ofc of Right of Way.
	Chief, Operations Divison.
Office of Motor Carrier Standards	Dir, Office of Motor Carrier Standards.
Office of Motor Carrier Safety Field Operations	Dir, Ofc of Motor Carrier S/F Operations.
Natl Center for Statistics and Analysis	Chf, Accident Investigation Div.
Assoc Admr for Enforcement	Assoc. Administrator for Enforcement.
Ofc of Defects Investigation	Dir-Ofc of Defects Intevestigation.
Ofc of Vehicle Safety Comp	Dir-Ofc of Vehicle Safety Compliance.
Ofc of Vehicle Safety Standards	Chf Crash Avoidance Division.
	Chf Crashworthiness Division.
US Coast Guard	Chief, Procurement Management Division.
Department of Treasury:	
Office of the Secretary	Senior National Intelligence Advisor.
Ofc of the Inspector General	Dep Asst Insp Gen for Audit (Audit Prog Serv).
	Dep Asst Inspector Gen for Audit (Audit Ops).
	Asst Inspector General (Fiscal Svc/Adp).
	Asst Insp Gen for Oversight & Quality Assur.
	Asst Inspector General for Audit (Dotocc).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
	Asst Inspector General for Investigations.
Ofc of Tax Analysis	Senior Advisor (Economics).
	Dep Dir (Economics Med & Computer Applicat).
Ofc of Asst Secy (Economic Policy)	Asst Dir for Economic Forecasting.
	Senior Adv for Bal of Payments Anal & Proj.
	Sr Economist.
Ofc of the Fiscal Asst Secy	Fiscal Assistant Secretary.
	Assistant Fiscal Assistant Secretary.
Financial Management Service	Commr of Financial Management Service.
	Dep Com Financial Management Service.
	Dir, Regional Financial Center (Chicago)
	Director, Regl Fin Ctr (Philadelphia).
	Director, Regl Fin Ctr (San Francisco).
	Director, Regl Fin Ctr (Austin).
	Deputy Director, Operations Group.
	Assistant Commissioner, Information Systems.
	Asst Commissioner Federal Finance.
	Assistant Commissioner, Comptroller.
	Asst Commissioner Headquarters Operations.
	Asst Commissioner Field Operations.
	Director Operations Group.
	Director, Accounting Group.
	Asst Commissioner Administration.
	Director, Systems Development Group.
	Dir, Technology & Information Group.
	Director, Working Capital Group.
Bureau of Public Debt	Commissioner.
	Dep Commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Asst Commr (Financing).
	Asst Commr (Administration).
	Government Securities Act Program Director.
	Asst Commr/Securities & Accounting Services.
	Asst Commissioner (Automated Info Systems).
	Asst Commissioner (Public Debt Accounting).
Ofc of Foreign Exchange Operations	Dir Ofc of Foreign Exchange Operations.
Ofc of Asst Secy Management	Dir, Management Programs Directorate.
	Directorate, Office of Procurement.
Ofc of Assistant Secretary (Enforcement & Operations)	Dir Fin Crimes Enforcement Network.
	Dep Dir, Financial Crimes Enforcement Network.
Bur of Alcohol, Tobacco, Firearms	Assistant Director Internal Affairs.
	Midwest Regl Counsel.
	Asst Dir, Congressional and Media Affairs.
	North-Atlantic Regional Counsel.
	Staff Assistant to the Chief Counsel.
Deputy Director (Compliance Operations)	Deputy Director (Compliance Operations).
	Dep. Associate Dir, (Compliance Operations).
	Chief, Revenue Programs Division.
	Chief, Firearms & Explosives Division.
Deputy Director (Law Enforcement)	Deputy Director (Law Enforcement).
	Chief, Spec Operations Division.
	Special Agent in Charge (NY District Office).
	Special Agent in Charge (LA District Office).
	Special Agent in Charge (Miami District Ofc).
	Chief, Planning & Analysis Staff.
	Spec Agent in Charge (Washington Dist Office).
	Spec Agent in Charge (Detroit Dist Office).
	Chief, Explosives Division.
	Deputy Assoc Dir (Law Enforcement).
	Chief, Firearms Division.
Comptroller	Director, Laboratory Services.
US Customs Service	Spec Asst to the Commissioner.
	Asst Commissioner (Ofc of Info Mmgt).
	Director, Ofc of Automated Systems Operations.
	Exec Dir the Interdiction Committee.
	Spec Asst to the Asst Secy (Enforcement).
	Director, Ofc of Automated Commercial Systems.
Ofc of the Chief Counsel	Asst Chief Counsel (Customs Court Litigat).
	Miami Regl Counsel.
	Chicago Regl Counsel.
	New York Regl Counsel.
	Regional Counsel (Pacific Region).
Office of the Comptroller	Dir Ofc of Financial Mgmt & Prog Analysis.
	Director Office of Data Systems.
	Comptroller.
	Comptroller.
	Dir Ofc of Training.
	Dir Budget and Planning.
	Assistant Commissioner, Office of Management.
	Dir Ofc of Human Resources.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Ofc of Asst Commr for Internal Affairs	Asst Commissioner for Internal Affairs.
Ofc of Asst Commr for Enforcement	Deputy Assistant Commissioner (Enforcement).
	Dir Smuggling Investigations Division.
	Dir, Office of Commercial Fraud Enforcement.
	Asst Comm Ofc of Aviation Operations.
Ofc of Asst Commr for Inspection & Control	Asst Commr (Inspection & Control).
	Deputy Asst Commr (Inspection & Control).
Ofc of Asst Commr for Commercial Operations	Deputy Asst Comm. Ofc of Regul & Rulings.
	Director, Entry Procedures & Penalties Div
	Dir Ofc of Regulatory Audit.
	Dir, Office of Technical Services.
	Dep Asst Comm (Ofc of Trade Operations).
	Dep Asst Commissioner Commercial Operations.
	Dir, Commercial Rulings Division.
	Dir, Ofc of Automated Commercial Syst Ops.
Ofc of Asst Commr for International Affairs	Deputy Asst Comr (International Affairs).
Regional Office	Regl Commr Reg 2 NY.
	Reg Commr. Reg 1, Boston.
	Asst Regn Commr Operations Reg II New York.
	Regl Commr, Reg. 4, Miami.
	Reg Commr. Reg. V, New Orleans.
	Regional Commissioner, Chicago.
	Asst Regional Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regional Commr (Operations).
	Special Agent in Charge, Miami.
	District Director, Miami.
	Asst Regional Commissioner (Enforcement).
	District Director, Laredo.
	District Director, Seattle.
	Area Dir, Newark.
	Asst Regional Commissioner Enforcement.
	Area Director, JFK Airport.
	Area Director, New York Seaport.
	Asst Regl Commr—Houston (Enforcement).
	Asst Regl Commr—Miami (Enforcement).
	Regional Commissioner.
	District Director, Los Angeles.
	Assistant Regl Commissioner (Enforcement).
	Asst Regl Commr (Enforcement).
	Asst Regional Commissioner (Enforcement).
	Regional Dir of Internal Affairs.
US Secret Service	Director of the Secret Service.
	Deputy Director U.S. Secret Service.
	Assistant Director—Training.
	Asst Director—Govt Liaison and Public Aff.
Ofc of Administration	Assistant Director, Administration.
Ofc of Inspection	Assistant Director Inspection.
Ofc of Protective Research	Asst Dir (Protective Research).
	Dep. Asst. Dir. (Protective Research).
	Spec Agent in Charge-Tech Sec Div.
	Spec Agent in charge-Intelligence Div.
	Chf, Info Resources Management Division.
Ofc of Protective Operations	Asst Dir (Protective Operations).
	Dep Asst Dir (Protective Operations).
	Spec Agent in charge-Presidental Protective.
	Dad protective Opers (Uniformed Div).
	Spec Agent in Charge-VP Protect Div.
	Deputy Asst Dir Protective Operations.
	Spec Agent in Charge Dignitary Protective Div.
	Deputy Special Agent in Charge Pres Prot Div.
	Deputy Special Agent in Charge.
Office of Investigations	Asst Director, Investigations.
	Dep Asst Dir Investigations.
	Special Agent in Charge, New York Office.
	Special Agent in Charge, Chicago.
	Special Agent in Charge, Los Angeles Office.
	Spec Agent in Charge—Washington Field Office.
	Spec Agent in Charge—Philadelphia Field Offic.
	Deputy Assistant Director Ses & Foreign Ops.
	Deputy Special Agent in Charge.
	Spc Agent in Charge San Francisco Office.
	Dep Asst Dir—Investigations (Hdqrtrs Ops).
	Spec Agent in Charge—Miami Field Office.
	Special Agent in Charge—Boston Field Office.
	Spec Agent in Charge—Atlanta Field Office.
Bureau of the Mint	Associate Director of Operations.
	Assoc Dir of Pol & Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Ofic of the Commissioner	Associate Director for Marketing. Director, Legislative Analysis Division. Asst to the Commissioner (Equal Opportunity). Senior Deputy Commissioner. Taxpayer Ombudsman. Asst to the Commissioner (Legis Affairs). Deputy Commissioner (Operations). Asst to the Commissioner (Quality). Chief Information Officer. Assistant to the Senior Deputy Commissioner.
Appeals Division	Regl Dir of Appeals—Central Region. Reg Dir of Appeals, Mid-Atlantic Region. Reg Dir of Appeals—Southwest Reg. Regional Dir of Appeals North Atlantic Region. Regional Director of Appeals—Western Region. Chief Appeals Office New York City. National Director of Appeals. Deputy National Dir of Appeals.
Chief Information Officer	Dir, Returns Processing and Accounting Div. Director, Systems Design Division. Director Systems Acquisition Division. Dep Asst Chf Info Officer Info Systems Mgmt. Dir Project Mgnt Division. Director, Statistics of Income Division. Asst Chf Info Officer Info Systems Dev. Dep Asst Commr (Returns & Info Processing). Director, Compliance Processing Systems Div. Director, Systems Integration Division. Assistant Dir, Taxpayer Service Division.
Ofc of Asst Comm: R, Inspection	Asst Commissioner (R & IP). Dir Taxpayer Service Division. Director, Quality Assurance Division. Director, Software Division. Asst Chf Info Officer Info Systems Mgmt. Chief Inspector. Dep Asst Commr (Inspection). Director, Internal Audit Div. Assistant Director Internal Audit Division. Director, Internal Security Division. Asst Dir, Internal Security Division Regional Inspector, Midwest Reg. Regional Inspector, North Atlantic. Regional Inspector Western Region. Regional Inspector, Southwest Reg. Regional Inspector, Mid-Atlantic Reg. Regional Inspector, Central. Regional Inspector Southeast.
Policy and Management	Dir, Tax Forms & Publications Div. Dir, Martinsburg Computing Center. Dir, Ire Data Center Detroit. Dir Finance Division. Dir, Natl Ofc Resources Management Division. Dir Financial Management Division. Assistant Commissioner (Procurement). Director, Budget Division. Dir Systems Management & Oper Services Div. Dir Natl Ofc Resources Mgnt Division. Dep Asst Commr (Planning, Finance, & Resch). Dir, Facilities & Info Mgmt Support Division. Asst Dir, Research. Spec Asst to Dep Comr (P & R)/Chf Fin Officer. A/C (Planning & Research). Dep Asst Commr (Human Resources). Director, Planning Division. Dir Telecommunications Division. Director, Human Resources Division. Dir, Contracts & Acquisitions Division. Asst Commissioner (Finance)/Controller. Dep Comr (Plnng & Ree)/Chf Financial Officer. Dep Asst Commissioner (Human Res & Support). Assistant Commissioner (Human Resources). Dir Accounting Standards & Systems Division. Assistant Commissioner (Human Res & Support).
Central Region)	Regional Commr. Arc (Examination) Central Region. Asst Regl Comr (Criminal Investigation). Asst Reg Comm (Resource Management). Assistant Regional Commissioner (Collection). Asst Regl Commissioner (Data Processing). Dir Service Ctr Cincinnati.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Mid-Atlantic Region	District Dir (Cleveland) District Director Detroit. District Director (Parkersburg). District Director, Indianapolis. District Director, Louisville. District Dir, Cincinnati. Assistant District Director Detroit. Asst Service Center Director. Reg Commissioner. Arc (Examination) Mid-Atlantic. Arc (Criminal Investigation) Mid Atlantic Reg. Asst Reg Commr (Collection). Assistant Regional Commissioner (Data Proc). Service Center Dir. Philadelphia. District Dir. Newark. District Dir, Pittsburgh. District Director Richmond District. Asst District Dir. Philadelphia. Asst District Director (Newark). Assistant District Director—Baltimore, MD. District Director, Wilmington. District Dir. Baltimore.
Midwest Region	District Director. Assist Reg'l Commissioner (Resources Mgmt). Assistant Service Center Director. Regional Commr. Midwest Region. Asst Reg Commr (Resources Mgmt). ARC (Criminal Investigation) Midwest Region. Assistant Regional Commissioner (Data Proc). ARC (Examination). Midwest Region. ARC (Collection) Midwest Region. Srvc Ctr Dir. Kansas City. District Dir. Chicago. District Director St Louis. District Dir. St Paul. District Dir. Omaha. District Dir. Springfield. District Dir. Milwaukee. Asst District Dir. Chicago.
North Atlantic Region	District Director, Fargo. District Director. Aberdeen. District Director, Helena. District Director. Assistant Service Center Director. Reg Commr. Asst Reg Commr (Exam) North Atlantic Reg. ARC (Criminal Investigation). ARC (Resources Mgmt). ARC (Collection) North Atlantic Region. Assistant Regional Commissioner (Data Proc). Service Center Director. Andover, Mass. Srvc Ctr Dir. Brookhaven. District Dir. Manhattan. District Dir. Brooklyn. District Dir. Boston. District Dir. Albany. Dist Dir (Hartford). District Dir. Buffalo. Asst Dist Dir. Brooklyn. Assistant District Director Manhattan. Asst District Dir. Boston. District Director Providence. Dist Dir. Augusta. District Director, Portsmouth. District Director, Burlington. Asst Service Center Director, Brookhaven. Asst Service Center Director, Andover. Chief, Appeals Office, Long Island.
Southeast Region	Reg Commr. Arc (Examination) Southeast Region. Asst Reg Commissioner—Criminal Investigation. Asst Reg'l Commr (Resources Management). Asst Reg (Collection) SE Reg Atlanta. Asst Regional Commissioner (Data Proc). Service Center Director, Memphis. SRVC Ctr Dir, Atlanta. District Director, Jacksonville. District Director, Atlanta. District Director, Greensboro. District Director, Nashville.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Southwest Region	District Director, Birmingham. District Director, New Orleans. District Director, Columbia. District Director, Little Rock District. District Director, Jackson, Miss. Asst District Director, Jacksonville. Asst District Director, Atlanta. Asst Service Center Director, Memphis. Regional Director of Appeals. Assistant District Director. Assistant District Director. Assistant Service Center Director. Regional Comm: R. Asst Regl. Commr (Examination). ARC (Criminal Investigation) S W Region. ARC (Resources Mgmt). Assistant Regional Commissioner (Collection). Assistant Regional Commissioner (Data Proc). Service Center Director, Ogden. Service Center Director, Austin. District Director, Austin. District Director, Dallas. District Director, Wichita. District Director, Oklahoma City. District Director, Phoenix. District Director, Denver. Assistant District Director Dallas. District Director, Albuquerque. District Director, Cheyenne. District Director, Salt Lake City. Compliance Center Director. Asst Service Center Director, Ogden. Asst District Director. Assistant District Director, Houston. District Director, Houston.
Western Region	Reg. Commr. ARC (Criminal Investigation). Assistant Regional Commissioner (Data Proc). Assistant Regional Commissioner (Examination). Asst Regl Commr (collection). Asst Regl Commr (resources management). Service Center Director, Fresno. District Dir, Los Angeles. District Dir, San Francisco. District Director, Portland District. District Dir, Seattle. Asst District Dir, Los Angeles. Asst Dist Dir, San Francisco. District Director, Honolulu. District Director, Anchorage. District Director, Boise. District Director (Sacramento). District Director (Las Vegas). District Director, San Jose. Assistant District Director, Laguna Niguel. Asst Service Center Director. District Director, Laguna Niguel. Asst Commr (employee plans & Exemp & Organizs. Special Asst for Exempt Organization Matters. Assistant Commissioner (taxpayer services). Asst Dir, Returns Processing & Accounting Div. Assistant Commissioner (examination). Asst Commr (criminal investigation). Dir Exempt Organizations Technical Division. D/Employee Plans Tech & Actuarial Division. Deputy Assistant Commissioner (examination). Dep Asst Commr (criminal investigation). Director, Olc of Field Operations. Asst/Dir, Employee Plans Techn & Actuarial Div. Director, Coordinated Examination Program. Dep Asst Chf Info Officer Info System Dev. D/A Comr (employee plans & exempt orgs). Dept Asst Commr (collection). Assistant Commissioner (collection). Assistant Commissioner (international). Dir Information Reporting Program. Deputy Asst Commissioner (International). Associate Chief Counsel (litigation). Deputy Associate Chief Counsel (technical). Asst Chief Counsel (general litigation).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Regional Counsels	Asst Chief Counsel (tax litigation). Asst Chief Counsel (criminal tax). Asst Chief Counsel (general legal services). Asst Chief Counsel (disclosure litigation). Deputy Asst Chief Counsel (tax litigation). Assistant Chief Counsel (corporate). Dep Asst Chf Coun (income tax & accounting). Dep Asst Chf Coun (passthroughs/spec indust). Dep Asst Chf Coun (passthroughs/spec indust). Asst to the Assoc Chf Coun (fin & mgmt). Asst Chf Coun (passthroughs/spec industries). Deputy Asst Chief Counsel (corporate). Dep Assoc Chief Counsel (fin & management). Special Appellate Counsel. Asst Chf Coun (Empl Benefits/Exempt Orgs). Sen Tech Adv to the Assoc Chf Counsel (Tech). Dep Asst Chief Coun (Financial Inst & Prod). Dep Assoc Chief Counsel International. Asst Chf Coun (Fin Institutions & Products). Dep Asst Chief Coun (Income Tax & Accounting). Asst Chief Counsel (Income Tax & Accounting). Special Litigation Counsel. Deputy Associate Chief Counsel (Litigation). Deputy Chief Counsel. Associate Chief Counsel (International). Assoc Chf Counsel (Finance & Management). Associate Chief Counsel (Technical). Regl Counsel, Central Reg. Regional Counsel, Mid-Atlantic Region. Dep Regl Counsel (Criminal Tax). Regl Counsel Midwest Region. Regl Counsel, North Atlantic Region. Dep Regl Coun (Tax Litigat) No-Atlantic Reg. Deputy Regional Counsel (General Litigation). Regional Counsel SE Region. Regl Counsel Southwest Region. Regional Counsel. District Counsel-Boston. District Counsel-Los Angeles. District Counsel-Cincinnati. District Counsel-Philadelphia. District Counsel-Newark. District Counsel, Chicago. District Counsel, Manhattan. District Counsel-Dallas. District Counsel-San Francisco. Dep Regional Counsel (Tax Litigation). Dep Regional Counsel (Tax Litigation). Regional Director of Appeals. District Counsel, Washington, DC. Deputy Regional Counsel (Tax Litigation). District Counsel, Brooklyn, New York. District Counsel, Houston, Texas. District Counsel, Denver.
US Arms Control and Disarmament Agency:	
Office of the Director	Executive Secretary.
Verification and Implementation Bureau	Chief, Verification Division Ver & Intell Bur. Chief, Operations Analysis Division.
Olc of Administration	Administrative Director.
Strategic and Nuclear Affairs Bureau	Chief, Defense & Space Division.
Theatre Affairs Division	Chief, Theater Affairs Division-A966.
Strategic Affair Division	Chief, Strategic Affairs Division A–977.
Non-Proliferation Policy Bureau	Chief Scientist. Chief, Nuclear Safeguards & Technology Div. Chf, Nuclear Safeguards & Technology Div.
Multilateral Affairs Bureau	Chf, International Nuclear Affairs Divisions. Chief Sci & Technological Division.
United States Information Agency:	
Olc of the Director	Assistant Inspector General for Audits. Assistant Inspector General for Inspections.
Bureau of Management	Director, Office of Personnel. Director, Office of the Comptroller. Dir Off Security. Dir Olc of Contracts. Dep Director, Office of Administration. Director, Office of Technology.
Voice of America	Dir Engineering and Technical Operations. Deputy of Systems Engineering. Chief Broadcast Systems Engineering Division. Deputy for Projects Management.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1990—Continued

Agency organization	Career reserved positions
Ofc of the Gen Counsel & Cong Liaison	Deputy for Operations. Deputy General Counsel.
US International Trade Commission:	
Office of Industries	Dir Ofc of Industries.
Office of Investigations	Dir, Ofc of Investigations.
Department of Veterans Affairs:	
Office of the Inspector General	Dep Inspector General. Assistant Inspector General for Auditing. Asst. Inspector General for Investigation. Asst Insp Gen for Policy, Plan & Resources. Dep Asst for Inspec General for Hdqtrs Audits. Dep Asst Inspec General for Regional Audits. Dep Asst I/G for Policy, Planning & Resources. Dep Asst Inspector General for Investigations.
Board of Veterans Appeals	Chairman. Vice Chairman. Deputy Vice Chairman. Deputy Vice Chairman.
Office of Financial Management	Assoc Dep Asst Secy for Financial Operations.
Ofc of Info Resources Plans & Policies	Dep for Info Res Plans & Policies.
Office of Information Resources Operations	Director for Telecommunications. Director for Operations Management. Dir Ofc of Applications Design Development.
Data Processing Center (DPC) Directors	Dir Ofc of Operations Support. Director Dpc Austin.
Office of Personnel and Labor Relations	Assoc Dir for Personnel Policy. Assoc Dir for Personnel Operations.
	Assoc Deputy Asst Secretary. Associate Deputy Asst Secretary.
Office of Security & Law Enforcement	Dep Asst Secy for Security & Law Enforcement.
Ofc of the Asst Secretary for Acquisition and Facilities	Dir Canteen Service.
Office of Facilities	Northeastern Area Project Manager. Southern Area Project Manager. Central Area Project Manager. Western Area Project Manager.
	Dir, Office of Project Management. Director Ofc of Architecture & Engineering. Dep Dir, Ofc of Architecture & Engineering.
Office of Acquisition and Material Management	Dir, Office of Real Property Management. Dep Asst Sec for Acquisition & Material Mgmt. Assoc Dep Assistant Secy for Acquisitions. Associate Dep Asst Secy for Depots. Assoc Dep Asst Secy for Resources. Associate Deputy Asst Secretary for Material.
Veterans Benefits Administration	Director Budget Staff. Dep Dir Compensation & Pension Service. Dep Dir Loan Guaranty Svc.
Veterans Health Services and Research Administration	Dir Info Management & Tech Assessment Service. Dep Dir, Mental Health & Behavioral Sciences. Dir, Resources Management Ofc. Deputy Director, Resource Management Office.
	Dir, Security Service. Dir Office of Medical Sharing.
Executives Pending Placement Action	Dir, Office of Information Mgmt & Statistics.

[FR Doc. 91-5705 Filed 3-8-91; 8:45 am]
BILLING CODE 6325-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors; Meetings

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Tuesday, March 26, 1991 at Science Applications International Corporation (SAIC), 1551 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its organization and administration.
2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.
3. Discussion of Working Group actions.

A portion of the March 26th session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 528-6090 prior to March 25, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: March 8, 1991.

Damar W. Hawkins,

Executive Assistant to D. Allan Bromley, Office of Science and Technology Policy.

[FR Doc. 91-6044 Filed 3-11-91; 12:23 pm]
BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18031; 812-7591]

Prudential Securities Incorporated; Application and Temporary Order

March 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: Prudential Securities Incorporated ("Prudential Securities" or "Applicant").

RELEVANT 1940 ACT SECTIONS: Permanent order requested, and temporary order granted, under section 9(c) of the Act granting exemption from section 9(a) of the Act.

SUMMARY OF APPLICATION: Prudential Securities has been granted a temporary order, and has requested a permanent order, exempting it from the provisions of section 9(a) to relieve Prudential Securities from any ineligibility resulting from the employment of five individuals who are subject to securities-related injunctions.

FILING DATE: The application was filed on September 11, 1990, and amended on November 5, 1990, January 24, 1991 and March 6, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 3, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Kevin J. McKay, Esq., Prudential Securities Incorporated, 127 John Street, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026, Thomas G. Sheehan, Senior Staff Attorney at (202) 272-7324, or Stephanie M. Monaco, Branch Chief, at (202) 275-3030.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Prudential Securities, a Delaware corporation,[1] is a registered broker-dealer and registered investment adviser with 346 domestic and international offices. Prudential Securities is a wholly owned subsidiary of Prudential Securities Group, Inc. ("PSG, Inc."). Prudential Insurance Company of America ("Prudential") is Applicant's ultimate parent corporation. Other direct and indirect subsidiaries of Prudential are also engaged in the broker-dealer and investment advisory businesses, including with respect to registered investment companies. In particular, Prudential Mutual Fund Management, Inc. ("PMFM"), an 85% owned subsidiary of PSG, Inc., acts as an investment adviser, administrator and distributor to a number of investment companies, including some of those listed below.

2. Prudential Securities serves as principal underwriter of the Class B shares, and under contract to PMFM, as sub-adviser, of the Prudential-Bache Research Fund, Inc. ("Research Fund") an open-end, diversified management investment company with approximately $283,000,000 of total assets on August 31, 1990.

3. Prudential Securities serves as the principal underwriter of the Class B shares for the following registered open-end management investment companies and portfolios (the portfolios are identified in parentheses):

Prudential-Bache California Municipal Fund—
(California Series)
Prudential-Bache Equity Fund, Inc.
Prudential-Bache Equity Income Funds, Inc.
Prudential-Bache FlexiFund—
(Aggressively Managed Portfolio)
(Conservatively Managed Portfolio)
Prudential-Bache Global Fund, Inc.
Prudential-Bache Global Genesis Fund, Inc.
Prudential-Bache Global Natural Resources Fund, Inc.
Prudential-Bache GNMA Fund, Inc.
Prudential-Bache Government Plus Fund, Inc.
Prudential-Bache Government Securities Trust—
(Intermediate Term Series (only one class of securities)
Prudential-Bache Growth Opportunity Fund, Inc.
Prudential-Bache High Yield Fund, Inc.
Prudential-Bache IncomeVertible Plus Fund, Inc.
Prudential-Bache Multi-Sector Fund, Inc.
Prudential-Bache Municipal Bond Fund—
(Insured Series)
(High Yield Series)
(Modified Term Series)
Prudential-Bache Municipal Series Fund—
(Arizona Series)
(Georgia Series)
(Maryland Series)
(Massachusetts Series)
(Michigan Series)
(Minnesota Series)
(New Jersey Series)
(New York Series)
(Ohio Series)
(North Carolina Series)
(Oregon Series)
(Pennsylvania Series)
Prudential-Bache National Municipal Fund, Inc.
Prudential-Bache Option Growth Fund, Inc.
Prudential-Bache Structured Maturity Fund, Inc.
Prudential-Bache U.S. Government Fund
Prudential-Bache Utility Fund, Inc.
Prudential-Bache ContraValue Fund, Inc.
Prudential-Bache Canadian/U.S. Government Securities Fund, Inc.
Prudential-Bache Strategic Income Fund, Inc.

4. Prudential Securities serves as a principal underwriter and depositor for the following registered unit investment trusts:

Prudential Unit Trusts—
(Insured Tax-Exempt Series 1-42)
(Insured Tax-Exempt Intermediate Series 1-2)
(Insured Tax-Exempt Selected Term Series 3-6)
(Insured Multistate Tax-Exempt Series 1-26)
(Tax-Exempt Series 1-21)
(Tax-Exempt Selected Term Series 1)
(Tax-Exempt Multistate Series 1)
(High Yield Tax-Exempt Series 1-6)
(Prudential Equity Trust Shares 4)

[1] Until February 25, 1991, Applicant was known as Prudential-Bache Securities, Inc. On that date, Prudential-Bache Securities, Inc. changed its name to Prudential Securities Incorporated. On March 1, 1991, the firm filed with the Commission an amendment to its Form BD reflecting the name change. All references to Prudential-Bache Securities, Inc. in the original application and the first and second amendments thereto were changed to Prudential Securities Incorporated by the third amendment to the application. As used in this notice and temporary order, "Prudential Securities" refers to Prudential Securities Incorporated and/or its predecessor, Prudential-Bache Securities, Inc., as appropriate. The names of the investment companies identified in the application (*see* ¶¶ 2-5, *infra*) have not been changed.

National Equity Trusts—
(Utility Series 1)
Prudential-Bache Unit Trusts—
(Corporate High Yield Series 1–5)
Government Securities Equity Trust Series 1–2
Corporate Investment Trust Fund 3
National Municipal Trust—
([National] Series 1–120; 121–127)
(Insured Series 1–44)
(Selected Credit Trust Series 1)
(Discounted Series 1–43)
(Put Series 1–2)
(Intermediate Series 3–4)
(Multistate Series 1–25)
(Multistate Series 28–30)

5. Prudential Securities also acts as a co-sponsor and codepositor with other broker-dealer firms of a number of unit investment trusts.[3]

6. Applicant currently employs five individuals subject to securities-related injunctions: Peter A. Engelbach, Eugene P. Ingaragiola, Kenneth J. Leach, Kim B. Stires, and Todd B. Marsh (collectively, the "Subject Employees").

7. Peter A. Engelbach joined Prudential Securities as an account executive and registered representative in Prudential Securities' Jenkintown, Pennsylvania, branch office in August, 1984. Prior to employment with Prudential Securities, on October 16, 1972, Engelbach consented to the entry of permanent injunction in a suit brought by the Commission alleging that in 1971, while employed as a registered representative by Advest, Inc., he participated in the sale to the public of unregistered shares of Galco Leasing Systems, Inc. ("Galco") and employed a device, scheme or artifice to defraud in connection with the sale of Glaco stock, in violation of sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("1933 Act") and section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b–5 thereunder.

8. The New York Stock Exchange ("NYSE"), Prudential Securities' principal self-regulatory organization, approved Engelbach's employment by Prudential Securities effective August 15, 1984. Later, the NYSE approved Engelbach as an assistant manager of the Breyer, Elkins Park, Pennsylvania, branch office effective February 4, 1987, and as an assistant manager of the Philadelphia, Pennsylvania, branch office effective February 8, 1990.

9. Eugene P. Ingaragiola joined Prudential Securities as an account executive and a registered representative in the Morristown, New Jersey branch office in June, 1984. Prior to his employment with Prudential Securities, in November 1977, Ingaragiola consented to the entry of the permanent injunction enjoining him from violating the antifraud provisions of section 17(a) of the 1933 Act and section 10(b) of the Exchange Act and Rule 10b–5 thereunder. At the time of the activities giving rise to the injunction, Ingaragiola was the Chairman of the Board and a shareholder of Scott Gorman Municipals, Inc. ("Scott Gorman"), a municipal bond dealer. The injunction arose from an SEC complaint alleging that, during 1974 and 1975, Ingaragiola and others engaged in fraudulent and deceptive acts and practices by failing to disclose the true financial condition of Scott Gorman; failing to disclose to customers that fully paid customer securities were being illegally pledged at lending institutions; failing to deliver fully paid securities to customers; and failing to disclose to customers that the books and records of the firm were not accurate or current. Ingaragiola was also ordered to pay $10,000 to the trustee in bankruptcy of Scott Gorman.

10. The NYSE approved his employment with Prudential Securities effective June 4, 1984. Later, the NYSE approved Ingaragiola as an Assistant Branch Office Manager of the Morristown, New Jersey, branch office effective February 19, 1987, and Branch Office Manager of the Red Bank, New Jersey, branch office effective February 23, 1990.

11. Kenneth J. Leach, Kim B. Stires and Todd B. Marsh have been account executives and registered representatives in Prudential Securities' Morristown, New Jersey, branch office since March 20, 1981. Prior to their employment with Prudential Securities, Leach, Stires, and Marsh were all employed by Smith Barney, Harris Upham & Co. ("Smith Barney") as registered representatives in Smith Barney's Morristown branch office. On April 28, 1983, Leach, Stires and Marsh consented to the entry of permanent injunctions enjoining them from violating the antifraud provisions of section 10(b) and section 14(e) of the Exchange Act, and Rule 10b–5 thereunder. The consent arose from SEC complaints against Leach, Stires, Marsh and others alleging that during January and February 1980, while employed at Smith Barney, Leach, Stires, and Marsh received non-public information concerning the acquisition of Clark Oil and Refining Corporation ("Clark Oil") by a private investment organization. In particular, the complaint alleged Leach, Stires, and Marsh profited from the misuse of the information by effecting transactions in the common stock of Clark Oil for their customers, their own accounts and the accounts of family members. Leach, Stires and Marsh were also ordered to pay disgorgements reflecting trading profits and commissions of $1,322.78, $5,765.53, and $16,611.02, respectively.

12. On April 2, 1984, the NYSE approved the continued association of Leach, Stires and Marsh as registered representatives with Prudential Securities.

13. The existence of the injunctions against the Subject Employees disqualifies Prudential Securities, under section 9(a)(3) of the Act, from acting as an investment adviser to a registered investment company, as a principal underwriter of a registered open-end company, or as a principal underwriter or depositor of a registered unit investment trust, unless an exemption is obtained pursuant to section 9(c).

14. Prudential Securities claims that it has had adequate procedures in place to screen for and detect the existence of injunctions of the type which are predicates of ineligibiltiy under section 9(a). However, Prudential Securities failed to appreciate that an application for exemptive relief under Section 9(a) remains necessary notwithstanding clearances that had been obtained through the provisions of Rule 19h–1 under the Exchange Act.

15. To the best of Applicant's knowledge, since the entry of their respective injunctions, none of the Subject Employees has been subject to any injunctive actions, nor have any complaints been filed against them with or by the Commission, with any self-regulatory organization, or with any state securities commission.

16. Senior members of Prudential Securities' Legal Department have reviewed each of the Subject Employees' record during the course of his employment with Prudential Securities with his branch manager. To the best of Applicant's knowledge, with three exceptions (*See* ¶¶17–20 below), there have been no customer complaints against any of the Subject Employees during their employment with Prudential Securities, nor, to Prudential Securities' knowledge, is there any basis for such a complaint. Prudential Securities has also reviewed the employment background of the Subject Employees subsequent to entry of their respective injunctions, and, where applicable, prior to their employment by Prudential Securities, and has found no customer complaints or other disciplinary action.

17. One customer complaint involved a claim filed against Marsh in small claims court in California in April 1990. The complaint alleged that Marsh recommended unsuitable options trading for a customer. The customer worked on the floor of the Pacific Stock Exchange for two years. Marsh vigorously denies the allegations, particularly in view of the sophisticated investment background of the complaint. However, in the interest of customer relations and to avoid the cost of litigation, Prudential Securities settled the matter for a $750.00 in May, 1990.

18. A second customer complaint involves allegations against Engelbach made in a letter received by Prudential Securities' law department on December 10, 1990. The complaint alleges that Engelbach, acting as broker, recommended that the customer invest in a closed-end fund (the "Fund"). The complaint further alleges that Engelbach falsely represented to the customer that the Fund invested only in high quality corporate bonds, and that there was little down side risk because the Fund would be obligated to support the stock by buying in shares if the price fell below a certain prices (the "support price"). Based on Engelbach's recommendation, the customer purchased 20,000 shares of the Fund on margin. The customer also claims that when the share price fell below the alleged support price, Engelbach told the customer that he was surprised at the absence of market support and would look into the matter. In connection with the complaint, the customer claims damages in the amount of the difference between the alleged support price and the current market price for each of the 20,000 shares of the fund that he purchased.

19. Prudential Securities represents that it has completed its investigation of this complaint and believes that the claims against Engelbach are unfounded. The firm determined that the customer was a wealthy and sophisticated investor whose previous trading history reflected numerous speculative investments and investments on margin. Prudential Securities also determined that Engelbach fully informed the customer of the features of the bond fund as well as the risks involved with the investment. In connection with this complaint, Prudential Securities also has agreed to comply with condition number 5 below.

20. On December 28, 1990, Applicant's counsel informed Division of Investment Management staff of a third customer complaint, involving Kenneth Leach. Applicant represents that this complaint, dated August 31, 1990, was received by Prudential Securities on September 20, 1990, subsequent to the date that Prudential Securities filed its original application for section 9(c) relief (September 11, 1990), but before it filed its first amendment to the application (November 5, 1990).[4] The complaint, alleges in part that Leach misrepresented the nature of an investment. The complainants, a married couple, claim that Leach told them they were buying government bonds when in fact they were purchasing shares in the Prudential-Bache High Yield Fund, Inc., an open-end investment company managed and advised by affiliates of Prudential Securities. The customers also assert that Leach made misrepresentations to them concerning a loan made to them in connection with this investment, and claim that the investment was transferred to the Prudential-Bache Government Plus Fund without their knowledge or approval. Finally, the customers claim that an investment in a real-estate limited partnership purchased by Prudential Securities on their behalf was unsuitable for them.

21. Prudential Securities represents that it has investigated the complaint against Leach and has determined that the customers' claims are unfounded. In particular, the firm determined that the husband has been provided a prospectus on the Prudential-Bache High Yield Fund, that he had had several discussions with Leach regarding the investment, and that he had full knowledge of the nature and terms of the investment. With respect to the allegations concerning the loan, Applicant determined that there had been an operational error in connection with the customers' account which the firm had explained to the customers when it occurred and had agreed to correct. Applicant also determined that the husband had initiated and approved the transfer to the Prudential-Bache Government Plus Fund. Finally, with respect to the limited partnership investment, the firm determined that the customers had investments in real esatate programs prior to their involvement with Prudential Securities, that they were experienced and knowledgeable investors, and that they were fully capable of understanding the terms and conditions of the investment. In connection with this complaint, Prudential Securities also has agreed to comply with condition number 5 below.

22. None of the Subject Employees is employed by any Prudential affiliate other than Prudential Securities, serves in any capacity related to providing investment advice to or acting as depositor for any registered investment company, or acting as principal underwriter to any registered open-end company, registered unit investment trust, or registered face-amount certificate company. None of the Subject Employees is an executive officer of Prudential Securities or serves in a policy making role. None of the Subject Employees has any relation to Prudential Securities' management or administrative activities relating to registered investment companies.

23. The conduct that precipitated the injunctive actions against the Subject Employees was unrelated to providing investment advice or acting as depositor or underwriter for any registered investment company.

24. The Subject Employees disclosed the existence of the disqualifying injunctions to Prudential Securities in a timely manner. Engleback and Ingaragiola disclosed the injunctions to Prudential Securities prior to becoming employed by the firm. Leach, Stires and Marsh were employed by Prudential Securities at the time that the injunctions were entered and the firm was apprised of the ongoing proceedings and the injuntions against them. Prudential Securities and each of the Subject Employees took necessary steps to obtain the approval of their principal self-regulatory organization, the NYSE, for these employees to associate with the firm.

25. Pending dispositon of Prudential Securities' request for temporary relief,

[3] These include: Municipal Investment Trust Fund—(Monthly Payment, State and Multistate Series), (Intermediate Term Series), (Insured Series); The Equity Income Fund—(Utility Common Stock Series), (S&P 500 Index Monthly Payment Series), (Blue Chip Stock Series), (Concept Series); Municipal Income Fund—(Insured Discount Series); The Corporate Income Fund—(Monthly Payment Series), (Intermediate Term Series), (Collateralized Bond Series), (Cash or Accretion Bond Series and SELECT Series), (Preferred Stock Series), (High Yield Series), (Insured Series); The International Bond Fund)—(Multicurrency Series), (Australian and New Zeland Dollar Bonds Series), (Australian Dollar Bonds Series), (Canadian Dollar Bonds Series); The Government Securities Income Fund—(GNMA Series (other than those listed below)), (GNMA Series E or other GNMA Series having units with an initial face value of $1.00), (U.S. Treasury Accumulation Serial Payout Series, Long-Term Trust), U.S. Treasury Accumulation Series), (Freddie Mac Series).

[4] As an explanation of its failure to inform the Commission of the customer complaint against Leach, Applicant represents that although it completed a thorough review of the background of each of the Subject Employees before drafting the original application, it conducted no supplemental review before filing the first amendment to the application. In addition, the Prudential Securities attorneys who responded to the complaint against Leach failed to notify the attorneys responsible for preparing the section 9(c) application of the customer complaint. Applicant represents that it has implemented a procedure to ensure that appropriate personnel are alerted immediately concerning additional customer complaints or other relevant circumstances involving the Subject Employees.

Prudential Securities has placed each of the Subject Employees on a leave of absence with pay. If temporary relief is granted, Prudential Securities will permit each to return to work on a normal basis pending determination as to permanent relief.

26. Prudential Securities is enhancing its employment and hiring procedures so that they are reasonably designed to ensure that any prospective employee or current employee who is subject to or becomes subject to a statutory disqualification under section 9(a) is not employed by or continued in employment by Prudential Securities until all section 9(c) issues are resolved. These procedures include notification to the Legal Department whenever any prior disciplinary or regulatory matters are disclosed in an employment application for prospective employees, or in a background investigation which will be made for certain types of current and prospective employees.

27. After recognizing the significance of the injunctions under section 9(a), Prudential Securities instructed the Research Fund to accrue investment advisory fees, due to Prudential Securities for payment, into an escrow account which Prudential Securities has established. Prudential Securities began escrowing these fees on July 1, 1990, the beginning of the month during which Prudential Securities first focused on the issues addressed in the application. Amounts paid into such escrow account will be disbursed to Prudential Securities or to the Research Fund only after the Commission has acted on Prudential Securities' application for permanent relief and after discussions with the Research Fund's Board of Directors.

Applicant's Legal Analysis

1. Each of the Subject Employees is ineligible to serve or act as an investment adviser, principal underwriter or depositor for a registered investment company. Each of these individuals is an employee, and thus an "affiliated person" of Prudential Securities. Prudential Securities is a company any affiliated person of which is ineligible, by reason of Section 9(a)(3) of the Act, to serve or act in the capacities enumerated. Prudential Securities is therefore ineligible under section 9(a)(3) of the Act to serve or act in the capacities enumerated unless it obtains an exemption under section 9(c) of the Act.

2. Prudential Securities argues that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to Prudential Securities, and the conduct of Prudential Securities does not make it against the public interest or the protection of investors to grant the application.

3. Prudential Securities also submits that the activities that give rise to the injunctions are not sufficiently related to Prudential Securities or to the investment companies for which Prudential Securities acts as investment adviser, principal underwriter, or depositor to justify denying the application. Furthermore, there is no basis to assert that employment of the Subject Employees may affect Prudential Securities' performance of its responsibilities to any registered investment company.

4. Prudential Securities states that because the activities that give rise to the injunction are remote in time, and because there has been no indication of subsequent wrongdoing, it would be unduly and disproportionately severe to permit the injunctions to interrupt the investment advisory, underwriting, and depositor services that have been made available to the shareholders of the investment companies which the Applicant serves.

5. Prudential Securities claims that a denial of the application would harm many of Prudential Securities' employees, and is not necessary for the protection of investors of the investment companies served by the Applicant.

6. Prudential Securities submits that the balance of fairness requires that the application be granted. In particular, Prudential Securities argues if the exemption is not granted, it would be required to terminate the employment of the Subject Employees in order to continue the affected business. Prudential Securities contends that such a result would be manifestly unfair since each of the Subject Employees has fulfilled the terms of his sanction.

Conditions to the Requested Relief

1. As a condition to the temporary relief, Applicant will continue to escrow all investment advisory fees until the Commission acts on Prudential Securities' request for a permanent exemption. Amounts paid into the escrow account will be disbursed to the Research Fund or to Prudential Securities after the Commission has acted on Prudential Securities' application for permanent relief.

2. As a condition to the permanent relief, Prudential Securities will not, without first making further application to the Commission, employ any of the Subject Employees in any capacity related directly to providing investment advice for, or acting as depositor of, any registered investment company, or to acting as a principal underwriter for a registered open-end company, a registered unit investment trust, or registered face-amount certificate company.

3. Prudential Securities will take appropriate steps to confirm that there are no other employees subject to a Statutory Disqualification. These steps may include reviewing the personnel files of other employees, requesting employees to confirm that they are not subject to a Statutory Disqualification, or utilizing some other combination of procedures that may vary depending on the level and type of employee. A permanent order will not be granted until Prudential Securities has notified the Commission in writing that these steps have been completed.

4. As a condition to the permanent relief, Prudential Securities has filed as an exhibit to this application a representation, attested to by its General Counsel, stating that he has reviewed the compliance procedures described in the application, that after due inquiry he believes those procedures have been duly implemented, and that those procedures are reasonable and appropriate to prevent persons subject to a Statutory Disqualification from becoming or remaining affiliated with Prudenital Securities in the future without proper resolution of the section 9(a) disqualification issues.

5. As a condition to the temporary and permanent relief, Prudential Securities has filed as an exhibit to the application a representation, attested to by its General Counsel, stating that after due inquiry based on the firm's investigation he believes that: (a) The customer complaints against Engelbach and Leach have been investigated; (b) there is no substantial basis for concluding that Engelbach or Leach engaged in any wrongdoing with respect to the allegations in those complaints; and (c) Prudential Securities will support Engelbach and Leach should these matters go to arbitration or litigation, subject to Prudential Securities' right to determine whether or not to settle the complaint. The General Counsel will promptly notify the Commission if any subsequent information comes to the firm's attention which changes such beliefs and/or conclusions.

Temporary Order

The Commission has considered the matter and finds, under the standards of section 9(c), that Applicant has made the necessary showing to justify granting a temporary exemption.

Our decision to grant the requested relief is based primarily on two factors. First, the individuals creating the

statutory disqualification have not been, and (without further Commission action) will not be, engaged in investment adviser or investment company activities. Second, Prudential Securities has represented that it is correcting the deficiencies in the compliance procedures that allowed these violations of section 9(a) to occur. It is also relevant to our determination that each of these employees fully disclosed the existence of the injunctions to Prudential Securities on a timely basis, and was authorized by action of the New York Stock Exchange to associate or reassociate with Prudential Securities as a registered representative. The Commission's decision to allow Prudential Securities to continue to employ these individuals in non-investment adviser, non-investment company activities is thus consistent with the actions of the self-regulatory organizations.

We must nevertheless express our concern with the deficiencies in Prudential Securities' compliance system, which allowed multiple violations of section 9(a) to go undetected for an extended time period. In recent months, the Commission has become aware of a number of companies that have violated section 9(a)(3) of the Act under circumstances similar to this case. *See Smith Barney, Harris, Upham & Co., Inc.*, Investment Company Act Release Nos. 17404 and 17404A (April 2 and April 11, 1990) (notice and temporary order), 17501 (May 21, 1990) (permanent order); *PaineWebber Inc.*, Investment Company Act Release Nos. 17588 (July 16, 1990) (notice and temporary order), 17789 (October 10, 1990) (permanent order); *Dean Witter Reynolds Inc.*, Investment Company Act Release Nos. 17887 (November 29, 1990) (notice and temporary order); *Prescott, Ball & Turben, Inc.*, (File No. 812-7576). We view such violations with concern because they evidence deficiencies in a company's compliance system which have resulted in the employment of disqualified employees for extended periods without discovery. In granting Prudential Securities relief under section 9(c), we weighed heavily that it voluntarily undertook a review of its employees to determine the existence of such violations after publication of the notice and order in *Smith Barney*. Our decision to grant relief should not be read as an indication that the Commission views violations of section 9(a) as unimportant, or that we would regard any repeat of this problem by Prudential Securities with anything other than serious concern. Moreover, we may not be as sympathetic to future applicants that are less timely or forthcoming in examining their compliance with the Section.[4]

Accordingly, *it is ordered*, under section 9(c) of the Act, that, subject to the conditions set forth above, Applicant is hereby temporarily exempted from the provision of section 9(a) of the Act for the shorter of 90 days or until the Commission takes final action on the application for an order granting Applicant a permanent exemption from the provisions of section 9(a) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5855 Filed 3-12-91; 8:45 am]

BILLING CODE 8010-01-M

[4] As discussed above, Prudential Securities has accrued advisory fees from July 1, 1990. Taking into account the timing of the Commission's actions with respect to a similar application, *see Smith Barney, Harris Upham & Co., Inc.*, Investment Company Act Release Nos. 17404 and 17404A (April 2 and April 11, 1990) (notice and temporary order), 17501 (May 21, 1990) (permanent order), the Commission believes that firms exercising reasonable diligence should have discovered similiar section 9(a) disqualifications by July 1, 1990, and sought the appropriate relief from the Commission. Thus, the Commission has determined that future applicants for exemptive relief under section 9(c) for similar section 9(a) disqualifications will be required to use July 1, 1990 as the date to begin accruing fees in an escrow account.

SMALL BUSINESS ADMINISTRATION

Revision of Privacy Act System of Record; Correction

AGENCY: Small Business Administration.

ACTION: Notice of Revision of Agency's System of Record, Correction.

SUMMARY: In FR Doc. 91-4080, appearing at page 8007 in the **Federal Register** of Tuesday, February 26, 1991 in the system of record SBA 145, Temporary Disaster Employee on page 8037, the following routine uses were omitted:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

* * * * *

To disclose them to the Department of Justice when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency or any of its components,

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to a court or other adjudicative body is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

* * * * *

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act stipulation that Agencies publish their systems in the **Federal Register** when there is a revision, change or addition.

Dated: March 5, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91-5813 Filed 3-12-91; 8:45 am]

BILLING CODE 8025-01

DEPARTMENT OF STATE

[Public Notice 1357]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A Meeting

The Department of State announce that Study group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone

Consultative Committee (CCITT) will meet on Friday, April 12, 1991, in Conference Room 1105 and on May 14, 1991, in Conference room 1207, both meetings to commence at 10 a.m. at the Department of State, 2201 C Street NW., Washington, DC 20520.

The Agenda for the meeting will include the following:

1. Debrief and review of the results of CCITT Study Group III Meeting of March 6 to 22, 1991, Geneva and London.
2. Debrief and review of the results of the CCITT Study Group II Meeting, Geneva, March 12–22, 1991.
3. Preparatory activities for the upcoming meetings of CCITT Study Group I, May 28–June 7, 1991.
4. Debrief of Canadian Resolution #18 Talks.
5. Future Schedule of Work Activities.
6. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated in arrangements are made five (5) days in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of State, (202) 647–2592, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: March 4, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91–5839 Filed 3–12–91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1358]

Soviet and Eastern European Studies Advisory Committee

The Department of State announces that the Soviet and Eastern European Studies (title VIII) Advisory Committee will convene on April 8, 1991, beginning at 9 a.m. in room 1105, U.S. Department of State.

The Advisory Committee will recommend grant recipients for the supplemental FY 1991 competition of the Soviet and Eastern European Research and Training Act of 1983. The agenda will include: Opening statements by the Chairman of the Committee and its members; oral statements by interested members of the public about the title VIII program in general; and within the Committee, discussion, approval, and recommendation that the Department of State negotiate grant agreements with certain "national organizations with an interest and expertise in conducting research and training concerning the USSR and Eastern Europe," based on the guidelines contained in the call for applications published in the Federal Register on December 20, 1990.

This meeting will be open to the general public; however, attendance will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. Those wishing to attend should notify Joanne Bramble, INR/RES, U.S. Department of State, (202) 632–2066, by March 29, providing their date of birth and Social Security number. All attendees must use the 21st Street entrance to the building. Visitors who arrive without prior notification and without a photo ID will not be admitted.

Dated: February 26, 1991.

Kenneth E. Roberts,

Executive Director, Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 91–5840 Filed 3–12–91; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Nassau County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Nassau County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, telephone: (518) 472–3616.

or

J.R. Lambert, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, telephone: (518) 457–6452.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the New York State Department of Transportation will be preparing an Environmental Impact Statement (EIS) on a project to complete the service road system on the Long Island Expressway (LIE) from South Oyster Bay Road to Sunnyside Boulevard (Exits 43 to 46) and for improvements to the Long Island Expressway Interchange with the Seaford Oyster Bay Expressway.

Two proposed alternatives will be studied for this project. Alternative 1, is a proposal to construct service road links adjacent to the Long Island Expressway that complete the existing Service Roads between South Oyster Bay Road and Sunnyside Boulevard. Like the existing 30 miles of the Service Road System, this last link will be two (2) lanes wide except where ramp connections require the addition of an acceleration-deceleration or weaving lane. In this alternative, we will consider the inclusion of a new semi-direct connection ramp from the new westbound Service Road link to the Southbound Seaford-Oyster Bay Expressway, and the elimination of the existing interchange loop in the northwest quadrant of the interchange. The new ramp would pass under the Seaford-Oyster Bay Expressway and either over or under the present Long Island Expressway. The existing frontage road segment south of the Expressway from Manetto-Hill Road to Woodbury Road, would be eliminated.

Alternative 2, is a variation of the basic concept of Alternative 1. This alternative shifts the alignment of the new Service Road links, as well as the Expressway to the south in the vicinity of Gateway Drive, and to the north in the vicinity of Sally Lane. In these two areas, the new Service Road links will not, for the most part, be any closer to the existing North Service Road and Sally Lane than the present Expressway. As part of this Alternative, the existing bridges at South Oyster Bay Road and Sunnyside Boulevard would be modified to allow for improved connections to the Expressway while reducing the amount of traffic currently using these intersections. These bridge modifications will also allow for the elimination of an acceleration lane over Gateway Drive that is necessary in Alternative 1. As in Alternative 1, we would also propose to eliminate the existing frontage road segment south of the Expressway from Manetto-Hill Road to Woodbury Road.

Detours, as well as possible temporary closures, may be necessary during construction under either alternate.

In addition, a no-build or existing condition alternative will be studied.

This EIS is being advanced with the recognition that there is another project on the Long Island Expressway which is scheduled for construction. The Long Island Expressway Capacity Improvement Project is evaluating additional travel lanes in the median between Exit 30 and Exit 64. The objective of that project is to address the through capacity deficiencies of the entire Long Island Expressway corridor.

Announcements describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. After the Draft Environmental Impact Statement is prepared, it will be available for public and agency review and comment. This will be followed by a Public Hearing for which a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: March 1, 1991.

Harold J. Brown,

Division Administrator, Albany.

[FR Doc. 91–5902 Filed 3–12–91; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration, Office of Hazardous Materials Safety; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 11, 1991.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW, Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10546–N	GPS Industries, City of Industry, CA	49 CFR 176.67(i) & (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the pheyical presence of an unloader. (mode 2).
10547–N	Tri-Wall, Louisville, KY	49 CFR 173.154, 173.245(b), 173.365	To authorize the manufacture, marking and sell of non-DOT specification non-reusable fiberboard bulk box of triple wall corrugated fiberboard construction and mounted to a wood pallet base for shipment of waste solids to hazardous waste landfill disposal sites. (mode 1).
10549–N	Astrotech Space Operations, L.P., Sivler Spring, MD.	49 CFR 173.145, 173.328, 173.336	To authorize shipment of non-DOT specification propellant transfer tanks containing residual amounts of either monomethyl-hydrazine classed as a flammable liquid or nitrogen tetroxide, classed as a poison A. (modes 1, 3).
10550–N	Chem Lab Products, Inc., Ontario, CA	49 CFR 176.67(i) & (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physicial presence of an unloader. (mode 2).
10551–N	Hasse, Inc., Saugus, CA	49 CFR 176.67(i) & (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10552–N	Hasa of Arizona, Inc., Elcy, AZ	49 CFR 176.67(i) & (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physical presence of an unloader. (mode 2).
10553–N	All Pure Chemical Company, Tracy, CA.	49 CFR 176.67(i) & (j)	To authorize chlorine filled tank cars to stand with unloading connections attached during unloading without the physicial presence of an unloader (mode 2).
10554–N	Cryotech Systems, Inc., Breinigsville, PA.	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize the manufacture, marking and sell of non-DOT specification portable tanks designated and constructed iun accordance with the MC 338 specification for transportation of flammable and nonflammable gases. (mode 1, 2, 3).
10555–N	HTL/Kin-Tech Division of Pacific Scientific, Durate, CA.	49 CFR 178.50-9	To authorize the use of a non-DOT approved mounting configuration in the construction of a cylinder patterned after a DOT 4B specification cylinder for shipment of compressed gas. (modes 1, 2, 4, 5).
10556–N	Liquid Control Corporation, North Canton, OH.	49 CFR 173.29	To authorize the transportation of mix and dispensing equipment containing residual amounts of material classed as corrosive material and flammable liquid in the holding tanks. (mode 1).

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10559-N	Nalco Chemical Company, Naperville, IL.	49 CFR 173 Subpart D, E, and F	To authorize the manufacture, marking and sell of non-DOT specification polyethylene protable tanks enclosed in a steel frame in 200 gallon and 400 gallon sizes for shipment of hazardous materials classed as oxidizers, corrosives and flammable liquids. (Modes 1, 2, 3).
10500-N	AirVantage, Inc., St. Paul, MN	49 CFR 172.101, 172.204 (c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize the transportation of Class A, B, and C explosives which are forbidden for shipment by air or in quantities which exceed those prescribed for shipment by air, by cargo-only aircraft. (mode 4).

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 7, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-5914 Filed 3-12-91; 8:45 am]

BILLING CODE 4910-60-M

Research and Special Programs Administration; Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before March 28, 1991.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation fo receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in th Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
7023-X	PVS Chemicals, Inc. (NY), Buffalo, NY (See Footnote 1).	7023
9519-X	Transchem I, Inc. Kearny, NJ (See Footnote 2).	9519
9606-X	Ensign-Bickford Company, Simsbury, CT (See Footnote 3).	9606
9637-X	Connelly Containers, Inc., Bala Cynwyd, PA (See Footnote 4).	9637
9758-X	Camping Gaz International Paris, France (See Footnote 5).	9758
10273-X	Georgia-Pacific Corporation, Schenectady, NY (See Footnote 6).	10273

(1) To modify exemption to increase the internal inspection of teflon lined tote containers to every two years.

(2) To modify exemption to include poison as an additional class.

(3) To modify exemption to provide for modification of packaging method for shipment of detonators, Class A explosive.

(4) To modify exemption to auth. cargo vessel as an additional mode of transp. and additional commodities class as oxidizers, corr. mat., flammable solids and poison B for shpmt. in DOT spec. 21 fibre drum.

(5) To authorize an additioal designer cartridge (CV-360) for the shipment of Butane or Butane-Propane mixtures classed as flammable gas.

(6) To authorize rail and cargo vessel as addtional modes and to authorize flammable solids, organic peroxide solids, and oxiders, dry, as additional classes for shipment in bulk bags.

Application	Applicant	Parties to exemption
4932-P	Personal Security Systems, Throggs Neck, NY (See Footnote 1).	4932
8009-P	CNG Technologies, Inc., Austin, TX.	8009
8074-P	El Paso Natural Gas Company, Farmington, NM.	8074
8214-P	Highland Industries, Inc., Greensboro, NC.	8214
8273-P	Highland Industries, Inc., Greensboro, NC.	8273
8451-P	Halliburton Logging Services, Inc., Houston, TX.	8451
8451-P	Ireco Incorporated, Salt Lake City, UT.	8451
8582-P	Metro-North Commuter Railroad Company, New York NY.	8582
9066-P	Highland Industries, Inc., Greensboro, NC.	9066
9275-P	Mene, U.S.A. Wayne, NJ.	9275

BEST COPY AVAILABLE

Application	Applicant	Parties to exemption
9723-P	S&W Waste, Inc., South Kearny, NJ.	9723
9723-P	Environmental Transportation Services, Inc., Oklahoma City, OK.	9723
9769-P	S&W Waste, Inc., South Kearny, NJ.	9769
9941-P	Orbital Sciences Corporation/ Space Data Division Chandler, AZ.	9941
9953-P	Thiele-Engdahl, Winston-Salem, NC.	9953
10001-P	Lake Welding Supply Company, Muskegon, MI.	10001
10434-P	A.B.C. Compounding Company, Inc., Morrow, GA.	10434
10442-P	United Technologies Corporation, San Jose, CA.	10442

(1) To authorize party status and to modify exemption to add an additional device.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on March 8, 1991.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 91-5815 Filed 3-12-91; 8:45 am]

BILLING CODE 4910-10-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1990—Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: Anvil Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Anvil Insurance Company, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27338, July 1, 1990.

With respect to any bonds currently in force with Anvil Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: February 27, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91-5879 Filed 3-12-91; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

AmeriFederal Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for AmeriFederal Savings Bank, FSB, Lawrenceville, New Jersey, on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5868 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of Toledo; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Toledo, Toledo, Ohio, on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5869 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Zion; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Bank of Zion, Zion, Illinois, on February 28, 1991.

Dated: February 28, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5870 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Peoples Federal Savings Bank, New Kensington, Pennsylvania, on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5871 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

AmeriFederal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for AmeriFederal Savings Bank, Lawrenceville, New Jersey (OTS No. 8032), on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5872 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

First Savings Bank of Zion; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has

duly appointed the Resolution Trust Corporation as sole Receiver for First Savings Bank of Zion, Zion, Illinois OTS Number 5230, on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5873 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Peoples Federal Savings and Loan Association, New Kensington, Pennsylvania, OTS No. 3806, on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5874 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

Pioneer Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Pioneer Federal Savings Bank, Clearwater, Florida ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5875 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

Sandia Federal Savings Association et. al.; Replacement of Conservator with a Receiver

Notice is hereby given that, on February 28, 1991 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	Docket No.
1. Sandia Federal Savings Association.	Albuquerque, NM	8646
2. ABQ Federal Savings Bank.	Albuquerque, NM	8797

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5876 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

Statesman Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Statesman Federal Savings Bank, Des Moines, Iowa with the Resolution Trust Corporation as sole Receiver for the Association on February 28, 1991.

Dated: March 7, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-5877 Filed 3-12-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Widsom & Compassion: The Sacred Art of Tibet" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asian Art Museum, San Francisco, California, beginning on or about April 17, 1991, to on or about August 18, 1991, and at the IBM Gallery of Science and Art, New York, New York, beginning on or about October 15, 1991, to on or about December 28, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 11, 1991.

Alberto J. Mora,

General Counsel.

[FR Doc. 91-6109 Filed 3-12-91; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/619-6975, and the address is U.S. Information Agency, 301 Fourth Street, SW., room 700, Washington, DC 20547.

Book and Library Advisory Committee Meeting

AGENCY: United States Information Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Information Agency announces an open meeting of the Book and Library Advisory Committee March 26, 1991, 1 p.m.-4:30 p.m. in room 800, USIA Headquarters, 301 Fourth Street, SW., Washington, DC.

The Agenda will include reports from Book and Library Subcommittee Chairmen; USIA's Director of Private Sector Committees, Louise Wheeler, and USIA's Assistant Director, Bureau of Educational and Cultural Affairs, William Glade.

DATES: March 26, 1991.

ADDRESSES: 301 4th St. SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For additional information call Louise G. Wheeler or Patricia Gribben at 619-6089.

SUPPLEMENTARY INFORMATION: Copies of minutes can be obtained by calling 619-6089.

Dated: March 5, 1991.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 91-5841 Filed 3-12-91; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the Terrace Room of the Edgewater Hotel, Pier 67, 2411 Alaskan Way, Seattle, WA 98121, May 1 through 3, 1991, starting at 8 a.m., May 1. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 8:30 a.m. on May 1, 1991, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. Robert E. Meci, Executive Secretary of the Career Development Committee (142A3), Department of Veterans Affairs Washington, DC 20420 (202) 233-2317 prior to April 23, 1991. The meeting will be closed from 8:30 a.m. to 5:30 p.m. on May 1, 8 a.m. to 5:30 p.m. on May 2, and 8 a.m. to 5:30 p.m. on May 3, for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Robert E. Meci, Acting Chief, Career Development Program, Medical Research Service (142A3), Department of Veterans Affairs, Washington, DC 20420 (phone 202-233-2317).

Dated: March 5, 1991.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-5887 Filed 3-12-91; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Former Prisoners of War; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Former Prisoners of War will be held in room 119, at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420, from April 24, 1991, through April 26, 1991. The meeting will convene at 9 a.m. each day and will be open to the public. Seating is limited and will be available on a first-come, first-served basis.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the need of such veterans for compensation, health care and rehabilitation.

The Committee will receive briefings and hold discussions on various issues affecting health care and benefits delivery, including, but not limited to, the following: education and training of VA personnel involved with former POWs; the status of privately and publicly funded research affecting former prisoners of war; past and current legislative issues affecting former prisoners of war; the various disabilities and sequelae of long-term captivity; and the procedures involved in processing claims for service-connected disabilities submitted by former prisoners of war.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), room 275, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Submitted material must be received at least five business days prior to the meeting. Members of the public may be asked to clarify submitted material prior to consideration by the Committee.

A report of the meeting and a roster of Committee members may be obtained from Mr. Hickman.

Dated: March 5, 1991.

By Direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-5888 Filed 3-12-91; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 1521, will be held on April 9 and 10, 1991, from 9 a.m. to 4 p.m. and on April 11, 1991 from 9 a.m. to 12 noon in the Domiciliary Conference Room, room S-111, of the VA Medical Center, Hampton, VA 23667. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity, it will be necessary for those wishing to attend to contact Theresa Boyd, Executive Secretary, Veterans' Advisory Committee on Rehabilitation at (202) 233-6493 prior to March 29, 1991.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in writen form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9 a.m. on April 11, 1991.

Dated: March 6, 1991.

By direction of the Secretary:

Laurence M. Christman,

Executive Assistant.

[FR Doc. 91-5889 Filed 3-12-91; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the VA (Department of Veterans Affairs) intends to conduct a recurring computer matching program matching OPM (Office of Personnel Management) records of benefit recipients with VA pension and parents' dependency and indemnity compensation records.

The goal of this match is to identify VA benefit recipients who are also receiving civil service annuities and survivor benefits payments reportable to VA as countable income. For the information of all concerned, the text of the VA matching program report, describing the computer match follows. In accordance with 5 U.S.C. 552a(O)(2)(A), copies of this report are being sent to both Houses of Congress.

This notice is provided due to Public Law 100-503.

This match is estimated to start April 1, 1991 and end September 30, 1992. The

match may be extended for a 12-month period provided the agencies participating in the match certify to their Data Integrity Boards that the matching program will be conducted without change and, the matching program has been conducted in compliance with the original matching agreement.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert Yurgal (213B), (202) 233-3504.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided below. This information is requried by 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 5, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Report of Matching Program: Department of Veterans Affairs Pension and Dependency and Indemnity Compensation Records with Office of Personnel Management Civil Service Retirement and Insurance records

a. *Authority.* Title 38 United States Code, section 3006.

b. *Program description.*

(1) *Purpose.* The VA (Department of Veterans Affairs) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive DIC (dependency and indemnity compensation) for VA with records of Civil Service Benefit payments maintained by OPM (Office of Personnel Management). The match with OPM will provide VA with data from the OPM Central-1 Civil Service Retirement and Insurance records. VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of OPM benefits is obtained from reporting by the beneficiary. The proposed matching programs will enable VA to ensure accurate reporting of OPM benefits.

(2) *Procedures.* VA will prepare an extract file of beneficiaries receiving income dependent benefits whose VA records contain a valid Social Security number. The extract file will be processed against OPM's benefit files. If a VA record and an OPM benefit record match on social security number and name, VA will update its master record with the amount of the OPM benefit. No information from the VA extract file will be maintained by OPM as a result of this matching program.

In the event of a "hit", i.e., the identification of a person in receipt of VA income dependent benefits and in receipt of OPM benefits, the case will be referred for field station development to assure the validity of the "hit" and to make any required award adjustment. Where there are reasonable grounds to believe there has been a violation of criminal laws, the matter will be investigated and referred for prosecutive consideration in accordance with existing VA policies.

c. *Records to be matched.* OPM as "source agency" will provide civil service benefit payment information from the systems of records designated OPM Central-1 Civil Service Retirement and Insurance Records, 55 FR 3816, February 5, 1990 which will be matched against the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1989 compilation, volume II, page 918 and as amended at **Federal Register** 52 FR 4078.

d. *Period of match.* The match is estimated to start April 1, 1991 and end September 30, 1992. The Data Integrity Boards of VA and OPM may, within 3 months prior to the expiration of this agreement, renew this agreement for a period not to exceed 12 months on the showing to such Boards by VA and OPM that the matching program will be conducted without change and, the matching program has been conducted in compliance with the original agreement.

[FR Doc. 91-5969 Filed 3-12-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 49

Wednesday, March 13, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11 a.m., Monday, March 18, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 425-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5997 Filed 3-8-91; 8:45 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
Vol. 56, No. 49
Wednesday, March 13, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 777

Disaster Payment Program for 1990 Crops

Correction

In proposed rules document 91-4006 beginning on page 6994 in the issue of February 21, 1991, make the following correction:

§ 777.1 [Corrected]

On page 6995, in the first column, in § 777.1, in the third line from the bottom of the paragraph, remove "⅛".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3909-8]

Protection of Stratospheric Ozone

Correction

In rule document 91-5152, beginning on page 9518, in the issue of Wednesday, March 6, 1991, make the following correction:

On page 9528, in the second column, in the amendatory language for § 82.3, in the fourth line"(f)" should read "(t)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0027]

Drug Export; Floxin® (Ofloxacin) Tablets

Correction

In notice document 91-2280 beginning on page 3834 in the issue of Thursday, January 31, 1991, make the following correction:

On page 3834, in the third column, under the paragraph **SUPPLEMENTARY INFORMATION**, in the fourth line, "provides" should read "provide".

BILLING CODE 1505-01-D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 91-2]

Computer Software Lending by Libraries; Copyright Warning

Correction

In rule document 91-4410 beginning on page 7811, in the issue of Tuesday, February 26, 1991, make the following correction:

On page 7811, in the third column, in footnote 1, in the third line, "not" should read "now".

BILLING CODE 1505-01-D

LIBRARY OF CONGRESS

37 CFR Part 211

[Docket No. RM 88-7B]

Registration of Claims of Protection in Mask Works; Gate Arrays

Correction

In rule document 91-4412 beginning on page 7816, in the issue of Tuesday, February 26, 1991, make the following corrections:

1. On page 7816, in the first column, under **SUPPLEMENTARY INFORMATION**, in the ninth line, "regulation" should "registration".

2. On the same page, in the second column, in the next to last paragraph, in the third line, "other" should read "others".

3. In the third column, under **2. Summary of Public Comments**, in the ninth line, "compaq" should read "Compaq", and in the second paragraph, in the sixth line, "Compaq" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AGL-14]

Alteration of Transition Area; Morris, MN

Correction

In rule document 91-1034 beginning on page 1570, in the issue of Wednesday, January 16, 1991, make the following correction:

On page 1570, in the third column, under **History**, in the fourth line, "Administration" should read "Regulations".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ASO-5]

Proposed Revision of Control Zone, Brunswick Malcolm-McKinnon Airport, GA

Correction

In proposed rule document 91-4351 beginning on page 7628, in the issue of Monday, February 25, 1991, make the following corrections:

1. On page 7628, in the second column, in the second line, the docket number should read as set forth above.

2. On the same page, in the same column, under **SUMMARY:** in the fourth and eighth lines, "Burnswick" should read "Brunswick", each time it appears

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 63]

RIN 2127-AD68

Consumer Information Regulations; Uniform Tire Quality Grading Standards: Vehicles in Treadwear Convoys

Correction

In proposed rule document 91-4317 beginning on page 7643, in the issue of Monday, February 25, 1991, make the following correction:

On page 7643, in the second column, the last two lines should read "would become effective 30 days after publication of the final rule."

BILLING CODE 1505-01-D

OL
56
SS
49
MR
13
991
MI

federal register

Wednesday
March 13, 1991

Part II

Environmental Protection Agency

40 CFR Part 435
Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL-3896-4]

RIN 2040-AA12

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing regulations under the Clean Water Act to limit effluent discharges to waters of the United States from offshore oil and gas extraction facilities. The purpose of this proposal is to establish new source performance standards (NSPS), best available technology economically achievable (BAT), and best conventional pollutant control technology (BCT) effluent limitations guidelines for the offshore subcategory of the oil and gas extraction point source category.

On November 26, 1990, EPA published an initial proposal and reproposal that presented the major regulatory options that the Agency is considering for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, well treatment/workover fluids, and domestic and sanitary wastes. Today's notice describes the proposal in greater detail and sets forth additional technical, economic, environmental, and other information relating to the establishment of effluent guidelines and standards for the offshore subcategory. After considering comments received in response to today's proposal and the November 26 proposal, EPA will promulgate a final rule.

The Agency will schedule two public workshops to explain the proposed regulation. The Agency is inviting state and EPA permit writers, industry representatives and members of the general public to attend and participate in these workshops. For information on the dates and locations of the workshops see the **ADDRESSES** section of today's notice.

DATES: Comments must be received on or before April 12, 1991.

ADDRESSES: Comments should be sent to Mr. Marvin B. Rubin, Office of Water, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7124.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, room M2904 (Rear of EPA Headquarters Library), 401 M Street SW., Washington, DC, 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. Technical information on workshops and copies of technical documents may be obtained from Mr. Marvin B. Rubin at the above address. The economic analysis report may be obtained from Ms. Ann Watkins, Economic Analysis Staff (WH-586), at the above address, or call (202) 382-5387. The Regulatory Impact Analysis (RIA) may be obtained from Ms. Alexandra Tarnay, Assessment and Watershed Protection Division (WH-553), at the above address, or call (202) 382-7046.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin B. Rubin at the above address, or call (202) 382-7124.

SUPPLEMENTARY INFORMATION:

Organization of Today's Notice

I. Introduction.
II. Summary of Legal Background.
A. Best Practicable Control Technology Currently Available (BPT).
B. Best Available Technology Economically Achievable (BAT).
C. Best Conventional Pollutant Control Technology (BCT).
D. New Source Performance Standards (NSPS).
III. Overview of the Industry.
A. Exploration, Development, and Production.
B. New and Existing Sources.
C. Waste Streams.
IV. Prior EPA Regulations, Proposals and Other Notices, and General Permits.
A. EPA Rulemakings and General Permits.
B. Relationship of Today's Proposal to the 1985 Proposal.
1. Parts Changed from the 1985 Proposal.
a. Section II of the 1985 Proposal: Scope of Today's Rulemaking.
b. Section V of the 1985 Proposal: Overview of the Industry.
c. Section XIII of the 1985 Proposal: Non-Water Quality Environmental Impacts.
d. Appendix 4 of the 1985 Proposal: Regulatory Boundaries.
e. Appendix 2 of the 1985 Proposal: Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings Analytical Method.
2. Parts Not Changed from the 1985 Proposal.
V. Industrial Sectors.
A. Shallow/Deep Waters.
B. Distance from Shore.
VI. Regulatory Definitions.
A. Domestic Waste.
B. Well Treatment, Completion, and Workover Fluids.
C. Produced Sand.
D. Development Facility and Production Facility.
VII. Data Gathering Efforts.
A. Existing Information.
B. New Studies.
1. EPA Variability Study for Drilling Fluids Toxicity Test.
2. Performance of Granular Media and Membrane Filtration Technologies on Produced Water.
C. Analytical Methods.
1. Static Sheen Test.
2. Diesel Oil Detection and Total Oil Content—Proposed Method 1651.
D. Radioactivity of Produced Water.
E. Other Studies.
VIII. Waste Characterization.
A. Produced Water and Drilling Wastes.
B. Deck Drainage.
C. Produced Sand.
D. Well Treatment, Completion, and Workover Fluids.
E. Sanitary and Domestic Wastes.
F. Other Minor Wastes.
IX. Parameters Selected for Regulation.
A. Free Oil.
B. Diesel Oil.
C. Toxicity.
D. Cadmium and Mercury.
E. Oil Content.
1. Drilling Fluids.
2. Drill Cuttings.
F. Oil and Grease.
G. Residual Chlorine and Floating Solids.
H. Foam.
X. Control and Treatment Technologies.
A. Current Practice.
1. Drilling Fluids.
2. Drill Cuttings.
3. Produced Water.
4. Deck Drainage.
5. Produced Sand.
6. Well Treatment Fluids.
7. Completion and Workover Fluids.
8. Sanitary Wastes.
9. Domestic Wastes.
B. Additional Technologies Considered.
1. Drilling Fluids.
a. Product Substitution.
b. Zero Discharge.
c. Clearinghouse Approach.
d. Other Technologies.
2. Drill Cuttings.
3. Produced Water.
a. Improved Performance of BPT Technology.
b. Filtration.
c. Reinjection.
d. Other Technologies.
4. Deck Drainage, Domestic and Sanitary Wastes.
5. Produced Sand.
6. Well Treatment, Completion and Workover Fluids.
XI. Best Practicable Technology.
XII. Selection of Control and Treatment Options for BCT.
A. Methodology.
B. Drilling Fluids and Cuttings.
1. Options Considered.
2. Alaskan Waters.
3. Options Selection.
C. Produced Water.
1. Options Considered.
2. Options Selection.

D. Deck Drainage.
E. Produced Sand.
F. Well Treatment, Completion and Workover Fluids.
G. Sanitary and Domestic Wastes.
XIII. Selection of Options for BAT.
A. Drilling Fluids and Drill Cuttings.
1. Options Considered.
2. Options Selection.
B. Produced Water.
1. Options Considered.
2. Options Selection.
C. Deck Drainage.
D. Produced Sand.
E. Well Treatment, Completion and Workover Fluids.
F. Domestic and Sanitary Wastes.
XIV. Selection of Control and Treatment Options for NSPS.
XV. Revised Technology Costs and Assumptions.
A. Drilling Fluids and Cuttings.
B. Produced Water.
XVI. Economic Analysis.
A. Introduction.
B. Costs and Economic Impacts.
1. Basis of Analysis.
2. Total Costs and Impacts of Proposed Regulations.
3. Economic Methodology.
4. Costs and Impacts of Best Conventional Pollutant Control Technology.
5. Costs and Impacts of Best Available Technology.
a. Drilling Fluids and Drill Cuttings.
b. Produced Waters.
6. Costs and Impacts of New Source Performance Standards.
a. Drilling Fluids and Drill Cuttings.
b. Produced Water.
C. Cost-Effectiveness Analysis.
D. Regulatory Flexibility Analysis.
E. Paperwork Reduction Act.
XVII. Executive Order 12291.
A. Produced Water.
B. Drilling Fluids and Drill Cuttings.
XVIII. Non-Water Quality Environmental Impacts and Other Factors.
A. Non-Water Quality Environmental Impacts.
1. Energy Requirements and Air Emissions.
2. Solid Waste Generation.
3. Underground Injection of Produced Water.
B. Other Factors.
XIX. Solicitation of Comments.
A. Industry Profile.
B. Produced Water Treatment Costs.
C. Drilling Fluids and Drill Cuttings Treatment Costs.
1. Discharge Volumes.
2. Well Depths and Formation Characteristics.
3. Calculation of Discharge Volume Ratios.
4. Valuation of Receiving Waters.
D. Miscellaneous Discharges.
E. Industry Profile Within Three Miles.
F. Membrane Filtration Treatment Technology for Produced Waters.
G. Static Sheen Analytical Method.
H. Radioactivity of Produced Water.
I. Alaskan Waters.
J. Treatment/Control Options for Drilling Wastes.
K. Cadmium Formation Contribution to Drilling Wastes.
L. Treatment/Control Options for Produced Water.
M. Environmental Impact Analysis.
XX. Variances and Modifications.
A. Stormwater Variance.
XXI. OMB Review.
Appendices
A. Abbreviations, Acronyms and Other Terms Used in Today's Notice.
B. Major Documents Supporting the Proposed Rule.
C. Regulatory Boundaries.

I. Introduction

The purpose of this rulemaking is to propose standards of performance for new sources and effluent limitations guidelines for existing sources under sections 301, 304, 306, 307, and 501 of the Clean Water Act for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. These regulations are also proposed in response to a Settlement Agreement approved on April 5, 1990 in *NRDC* v. *Reilly*, D.D.C. No. 79-3442 (JHP) and in accordance with EPA's Effluent Guidelines Plan under section 304(m) of the Clean Water Act (55 FR 80) (January 2, 1990).

The proposed regulations would apply to discharges from offshore oil and gas extraction facilities, including exploration, development and production operations that are seaward of the inner boundary of the territorial seas. The inner boundary of the territorial seas is defined in section 502(8) of the Clean Water Act as: "The line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The processes and operations which comprise the offshore oil and gas extraction subcategory (Standard Industrial Classification (SIC) Major Group 13) are currently regulated under 40 CFR part 435, subpart A. The existing effluent limitations guidelines, which were issued on April 13, 1979 (44 FR 22069), are based on the achievement of best practicable control technology currently available (BPT).

In general, BPT represents the average of the best existing performances of well-known technologies and techniques for control of pollutants. BPT for the offshore subcategory limits the discharge of oil and grease in produced water to a daily maximum of 72 mg/l and a thirty-day average of 48 mg/l; prohibits the discharge of free oil in deck drainage, drilling fluids, drill cuttings, and well treatment fluids; requires a minimum residual chlorine content of 1 mg/l in sanitary discharges; and prohibits the discharge of floating solids in sanitary and domestic wastes. BPT limitations are not being changed by this proposal.

This rulemaking will establish regulations based on best available technology economically achievable (BAT) that will result in reasonable progress toward the goal of the CWA to eliminate the discharge of all pollutants. At a minimum, BAT represents the best economically achievable performance in the industrial category or subcategory. This rulemaking also proposes requirements based on best conventional pollutant control technology (BCT). In addition, this rulemaking proposes new source performance standards (NSPS) based on the best demonstrated control technology.

On August 26, 1985, EPA proposed BAT, BCT, and NSPS for the offshore oil and gas industry (50 FR 34592). This proposal being issued today does not supersede the 1985 proposal entirely but, rather, changes the proposal in certain areas. Some items proposed in 1985 remain unchanged. In today's notice, EPA highlights the differences and similarities between today's proposal and the 1985 proposal.

Much data and information have been acquired by EPA since the 1985 proposal regarding waste characterization, treatment technologies, industrial practices, industry profiles, analytical methods, environmental effects, costs, and economic impacts. Some of this new information regarding drilling wastes was published in a Notice of Data Availability (53 FR 41356) (October 21, 1988). This new information has led EPA to develop additional regulatory options different from those proposed in 1985.

On November 26, 1990 the Agency published an initial proposal and reproposal (55 FR 49094) that presented the major BCT, BAT, and NSPS regulatory options under consideration for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, domestic and sanitary wastes, and well treatment, completion, and workover fluids. The options presented in that proposal are identical to those presented today, with the exception that the November 26 proposal stated that NSPS for sanitary wastes includes a prohibition on the discharge of visible foam.

For this rulemaking, EPA is proposing BAT and NSPS effluent limitations for produced waters equal to BPT for structures located more than 4 miles from the inner boundary of the territorial seas (shore). For structures located 4 miles or less from shore, EPA is proposing produced water effluent limitations for oil and grease based on

membrane filtration as an add-on technology to BPT. The limitations are 7 mg/l monthly average and 13 mg/l daily maximum not to be exceeded. For drilling fluids and drill cuttings, wells located more than 4 miles from shore are subject to effluent limitations for toxicity of 30,000 ppm (SPP basis), cadmium and mercury of 1 mg/kg each in drilling fluids and drill cuttings discharges, as well as a requirement for no discharge of diesel oil and free oil. For wells located 4 miles or less from shore, zero discharge of drilling fluids and drill cuttings is being proposed. An exception to the limitations on drilling fluids and cuttings is being proposed for Alaska and is discussed later in section XII.

BAT and NSPS are also being proposed for deck drainage; produced sand; treatment, completion, and workover fluids; and domestic and sanitary wastes. These are collectively referred to as the miscellaneous waste streams. Zero discharge is being proposed for the produced sand (solids) waste stream. Zero discharge of treatment, completion, and workover fluids is being proposed when they resurface as a discrete slug. Otherwise, if these fluids do not surface as a discrete unit, then they would be commingled with and treated along with produced waters. The Agency is proposing that deck drainage be subject to the same limitations as produced water during the production phase of the oil and gas extraction operation. During the exploration and development phases, deck drainage will be subject to the BPT limits prohibiting discharge of free oil. The Agency is not proposing BAT for domestic and sanitary wastes because there have been no toxic or nonconventional pollutants of concern identified in these wastes. NSPS for sanitary wastes is being proposed as equal to BPT. NSPS for domestic wastes is proposed as equal to current permit requirements prohibiting discharge of floating solids, plus the additional requirement for no visible discharge of foam.

BCT for produced waters is being proposed equal to BPT. BCT for drilling fluids and drill cuttings is being proposed equal to the zero discharge for structures located 4 miles or less from shore and BPT for structures greater than 4 miles from shore. The proposed BCT requirement for well treatment, completion, and workover fluids; deck drainage and produced sand is no discharge of free oil; for sanitary wastes BCT limitations are proposed controlling residual chlorine at facilities with ten or more personnel and no discharge of floating solids for both sanitary wastes at facilities with less than nine personnel and for domestic wastes.

The Agency is collecting additional data concerning membranes which will be noticed for public comment between today's proposal and final rulemaking. In addition, the Agency solicits comment on this topic as part of this proposed rulemaking (see section XIX of today's notice). Should the membrane technology ultimately prove to be not demonstrated for the purposes of this regulation, EPA may promulgate BAT and NSPS requirements for produced water based on other technologies giving strong consideration to BPT as the basis for BAT and NSPS since the costs of alternative technologies are high. The level of pollutant removals will also be considered in evaluating these technologies.

II. Summary of Legal Background

The regulations described in today's notice are being developed under the authority of sections 301, 304 (b), (c), and (e), 306, 307, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987; 33 U.S.C. 1311, 1314 (b), (c), and (e), 1316, 1317, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 101 Stat. 7, Pub. L. 100–4) ("the Act").

The Clean Water Act establishes a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (sec. 101(a)). To implement the Act, EPA is to issue technology based effluent limitations guidelines, new source performance standards and pretreatment standards for industrial dischargers. The levels of control associated with these effluent limitations guidelines and the new source performance standards for direct dischargers are summarized briefly below. Since no offshore facilities currently discharge into municipal sewer systems, pretreatment standards are not included in this proposal and are reserved.

A. Best Practicable Control Technology Currently Available (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies and non-water quality environmental impacts (including energy requirements). The total cost of applying the technology is considered in relation to the effluent reduction benefits.

B. Best Available Technology Economically Achievable (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters. In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the costs and economic impact of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator of EPA deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

C. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: Biochemical oxygen demanding pollutants (BOD), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation, but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). EPA first published its methodology for carrying out the BCT analysis on August 19, 1979 (44 FR 50372).

A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176), and became effective on August 22, 1986 (51 FR 24974; July 9, 1986).

D. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In addition, in establishing NSPS, EPA is required to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impact and energy requirements.

III. Overview of the Industry

A. Exploration, Development, and Production

The offshore subcategory of the oil and gas extraction point source category covers those structures involved in exploration, development, and production operations seaward of the inner boundary of the territorial seas, as defined in Section 502 of the Clean Water Act.

Exploration and development activities for the extraction of oil and gas include work necessary to locate and drill wells. Exploration (only) activities are those operations involving the drilling of wells to determine the potential hydrocarbon reserves. These activities are usually of short duration at a given site, involve a small number of wells, and are generally conducted from mobile drilling units. (Only those exploratory activities with significant site preparation are covered by today's proposal. Significant site preparation, as defined in the 1985 proposal, "shall mean the process of surveying, clearing and preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.") The major waste streams from exploration activities are drilling fluids and drill cuttings.

Development activities involve the drilling of production wells once a hydrocarbon reserve has been identified. These operations, in contrast to exploration activities, usually involve a large number of wells and are typically conducted from a fixed platform. The waste streams of concern include drilling fluids, drill cuttings, deck drainage, and sanitary and domestic wastes.

Production operations include all work necessary to bring hydrocarbon reserves from the producing formation beginning with the completion of each well at the end of the development phase. The major waste stream from production activities is the produced water waste stream. Other waste streams of concern include produced sand; deck drainage; sanitary and domestic wastes; and well treatment, workover, and completion fluids. Produced water and sand originate with the gas and/or oil product stream and are separated from the oil product during the initial processing of the production stream. Well treatment, completion, and workover fluids are special fluids designed and used to prepare the well for production or enhance recovery of the oil product from, or prevent damage to, the formation.

B. New and Existing Sources

EPA's industry profile estimates are based upon information from the March 1988 "Minerals Management Service Platform Inspection System, Complex/Structure Data Base." According to the Minerals Management Service (MMS) data, 2,260 structures currently produce oil and/or gas in the offshore waters of the United States. This estimate includes all tracts leased offshore in the Gulf of Mexico, California and Alaska. The Agency's estimate of existing structures includes only those platforms that are currently producing known volumes of a specific product (i.e., oil, gas or both). There are no structures in the Atlantic, and the only platforms producing oil in Alaskan waters which are seaward of the inner boundary of the territorial seas are on gravel islands and reinject their produced water. Thus, the Agency's estimate of existing production structures for Alaska is zero.

Structures located in state waters in the Gulf of Mexico are not included in this summary. However, the total volume of produced water being discharged and used as the basis for costing the regulatory options is based on industry estimates which include the state water activities. The Agency has attempted also to profile the number of structures in state "offshore" waters in the Gulf of Mexico. Because of different definitions contained in the state permit records, precise numbers of offshore structures and wells have not been determined. The state offshore records have recorded permitted structures under three subcategories: Onshore (for those structures whose well-head is on land but the bottomhole is offshore), coastal, and offshore. In the charts and maps available from the National Oceanic and Atmospheric Administration (NOAA) and other sources, there is no indication of how many wells there are per structure, whether any of the wells are producing or what product may be produced.

In terms of new source development operations, offshore drilling varies from year to year depending on such factors as the price and supply of oil, the amount of state and federal leasing, and reservoir discoveries. In 1981, there were almost 1500 wells drilled offshore culminating the upward trend of the 1970s. The average number of wells drilled during the 1972–1982 time period was 1100 wells/year. Drilling activity has declined since 1982. Based on the Minerals Management Service's 30-year regionalized forecasts the Agency estimates that between 1986 and the year 2000, assuming no regional constraints on development of offshore oil and gas resources, there will be an average of 960 wells/year drilled offshore nationwide (based on an average barrel of oil equivalent (BOE) price for the years 1986–2000 of $21/barrel). Of these 960 wells/year, 590 wells/year will become producing wells and the remaining 390 wells/year will be dry holes.

EPA has also prepared an estimate of drilling activity which takes into account the recent moratorium and restricted leasing in the Pacific Ocean off of California. On June 26, 1990, the President announced his decision to implement a moratorium on oil and gas leasing and development in federal waters off of California until the year 2000. This "constrained" new well projection estimates that a total of 759 wells/year will be drilled (with 455 of these going into production) between 1986 and 2000 (also assuming $21/barrel (BOE)).

In addition to the offshore areas of the Gulf of Mexico and the California coast, exploration is also occurring in areas within the Chukchi and Beaufort Seas of Alaska, as well as in the Atlantic Ocean, that may lead to new source development and production activities.

Estimates for production are also based on the constrained and unconstrained (restricted and unrestricted) scenarios. The unconstrained profile estimates that 851 platforms will be producing between 1986 to 2000, while the constrained scenario estimates 766 platforms.

C. Waste Streams

The major wastewater sources from the exploration and development phase of the offshore oil and gas extraction industry include the following:

- Drilling fluids.
- Drill cuttings.
- Sanitary wastes.
- Deck drainage.

• Domestic wastes.

Drilling fluids (typically termed "muds") and drill cuttings are the most significant waste streams from exploratory operations in terms both of volume and in toxic pollutant control.

The major wastewater sources from the production phase of the industry include the following:

• Produced water.
• Produced sand.
• Sanitary wastes.
• Deck drainage.
• Domestic wastes.
• Well treatment fluids.
• Well completion and workover fluids.

Produced water is the most significant waste stream for production based on its volume of discharge and quantity of pollutants. For purposes of this proposal, deck drainage, sanitary wastes, domestic wastes, produced sand, and well treatment, completion, and workover fluids are all termed "miscellaneous wastes."

Produced water is brought up from the hydrocarbon-bearing strata along with produced oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

Drilling fluids means any fluid sent down the drillhole. This includes those materials used to maintain hydrostatic pressure control in the well, lubricate the drill bit, remove drill cuttings from the well, and stabilize the walls of the well during drilling or workover operations. A water-based drilling fluid is the conventional drilling system in which water is the continuous phase.

Drill cuttings are the solids generated by drilling into subsurface geologic formations, and are carried to the surface by the drilling fluid system.

Deck drainage includes all waste resulting from platform washings, deck washings, rainwater, and runoff from curbs, gutters, and drains including drip pans and work areas.

Well treatment wastes are spent fluids that result from acidizing and hydraulic fracturing operations to improve oil recovery. Workover fluids and completion fluids are low solids fluids used to prepare a well for production, provide hydrostatic control, and/or prevent formation damage.

Produced sand consists of the slurried particles used in hydraulic fracturing and the accumulated formation sands and other particles, and as scale, that can be generated during production.

Sanitary wastes originate from toilets. Domestic wastes originate from sinks, showers, laundries, and galleys.

Detailed discussions of the origins and characteristics of the wastewater effluents from exploration, development, and production are presented in section VIII. The focus of this regulatory effort is on drilling fluids, drill cuttings, and produced waters. Data gathering efforts and data analyses have been focused on these waste streams due to their volumes and potential toxicity. The information on the miscellaneous wastes is more limited. Their volumes are generally smaller, and in most cases either sporadic or are part of the major waste streams. However, due to the concern over the potential toxicity of these wastes, regulations for miscellaneous wastes are being proposed in this notice as well.

In addition, other minor wastes are generated during the offshore exploration development and production activities. These minor wastes are identified and discussed in section VIII.F of today's notice; however, no limits on these wastes are being proposed since these types of discharges are being sufficiently controlled by best professional judgment (BPJ) limits in current permits.

IV. Prior EPA Regulations, Proposals and Other Notices, and General Permits

A. EPA Rulemakings and General Permits

On September 15, 1975, EPA promulgated effluent limitations guidelines for interim final BPT (40 FR 42543) and proposed regulations for BAT and NSPS (40 FR 42572) for the offshore subcategory of the oil and gas extraction point source category. The Agency promulgated final BPT regulations on April 13, 1979 (44 FR 22069), but deferred action on the BAT and NSPS regulations. Table 1 presents the 1979 BPT limitations. These BPT limitations are not being changed by this proposal.

TABLE 1.—BPT EFFLUENT LIMITATIONS (PROMULGATED 1979)

Waste stream	BPT effluent parameter	Limitation
Produced water	Oil and grease	72 mg/l daily maximum 48 mg/l 30-day avg.
Drilling fluids	Free oil	No discharge.
Drill cuttings	Free oil	No discharge.
Well treatment fluids.	Free oil	No discharge.
Deck drainage	Free oil	No discharge.
Sanitary-M10	Residual chlorine.	1 mg/l (min.).
Sanitary-M61M	Floating solids	No discharge.

NOTE: The free oil "no discharge" limitation is implemented by requiring no oil sheen to be present upon discharge.

The Natural Resources Defense Council (NRDC) filed suit on December 29, 1979 seeking an order to compel the Administrator to promulgate final NSPS for the offshore subcategory. In settlement of the suit (NRDC v. Costle, D.D.C. No. 79-3442 (JHP)), the Agency acknowledged the statutory requirement and agreed to take steps to issue such standards. However, because of the length of time that had passed since proposal, EPA believed that examination of additional data and re-proposal were necessary. Consequently, the Agency withdrew the proposed NSPS on August 22, 1980 (45 FR 56115). The proposed BAT regulations were withdrawn on March 19, 1981 (46 FR 17567).

The Settlement Agreement was revised in April 1990. Under the modified agreement, EPA was to propose or repropose BAT and BCT effluent limitations guidelines and new source performance standards for produced water, drilling fluids and drill cuttings, well treatment fluids, and produced sand, as described at 50 FR 34595 (August 26, 1985), by November 16, 1990. The November 28, 1990 proposal (which was signed on November 16) was an initial proposal that was issued in satisfaction of this provision of the Settlement Agreement. EPA is to promulgate final guidelines and standards covering these waste streams by June 19, 1992.

EPA also was to determine by November 16, 1990 whether to propose effluent limitations guidelines and new source performance standards covering deck drainage and domestic and sanitary wastes and, if it determined to do so, to promulgate final guidelines and standards covering those waste streams by June 30, 1993. EPA has determined that it is appropriate to propose effluent limitations guidelines and new source performance standards covering deck drainage and domestic and sanitary wastes. The Agency included such proposals in the November 28 proposal and they are included in today's notice.

The Agency is using its best efforts to comply with the promulgation dates established in the modified Settlement Agreement and currently expects to meet them.

Ocean discharge criteria applicable to this industry subcategory were promulgated on October 3, 1980 (45 FR 65942) under section 403(c) of the Act. These guidelines are to be used in making site-specific assessments of the impacts of discharges. Section 403 limitations are imposed through section 402 National Pollutant Discharge Elimination System (NPDES) permits. Section 403 is intended to prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal.

On August 26, 1985 the Agency proposed BAT, BCT, and NSPS regulations to control the discharge of pollutants from the offshore oil and gas extraction subcategory (50 FR 34592) ("1985 proposal"). The 1985 proposal also included an amendment to the BPT definition of "no discharge of free oil." The waste streams covered by the 1985 proposal were drilling fluids, drill cuttings, produced water, deck drainage, well treatment fluids, produced sand, and sanitary and domestic wastes. No BAT effluent limitations guidelines were proposed for the produced water waste stream; only NSPS and BCT requirements for produced water were proposed.

The key provisions of the 1985 prooosal were as follows:

—Limit oil and grease to 59 mg/l daily maximum and 48 mg/l monthly average for produced water (NSPS only) for all oil facilities located in deep water (Note: The definitions of deep and shallow water are described in section V of today's notice), for all oil and gas facilities regardless of location or water depth, and for all exploratory facilities regardless of location or water depth. This limitation was based on the best operation of the BPT control technology (gas flotation). NSPS for oil facilities located in shallow water prohibited the discharge of produced water.
—Prohibit the discharge of free oil in drilling fluids, drill cuttings, deck drainage, produced sand, and well treatment fluids.
—Prohibit the discharge of diesel oil in detectable amounts in drill cuttings and drilling fluids.
—Limit the acute toxicity of drilling fluid discharges to a minimum 96-hour LC50 of 3 percent (30,000 ppm) as measured in the diluted suspended particulate phase (SPP).
—Limit the discharge of cadmium and mercury in drilling fluids to a maximum of 1 mg/kg each at the point of discharge.

The proposed BCT limitations guidelines for produced water covered the conventional pollutant oil and grease and were equal to the previously promulgated BPT effluent limitations guidelines. For deck drainage, drilling fluids, drill cuttings, produced sand, and well treatment fluids, proposed BCT limitations prohibited the discharge of free oil. BCT effluent limitations guidelines for additional conventional pollutant parameters in deck drainage, drilling fluids, drill cuttings, produced sand, and well treatment fluids were reserved for future rulemakings.

On October 21, 1988, the Agency published a Notice of Data Availability (53 FR 41356) concerning the development of NSPS, BAT, and BCT regulations for the drilling fluids and drill cuttings waste streams (the "1988 notice"). The 1988 notice presented substantial additional and revised technical, cost, economic, and environmental effects information which the Agency collected after publication of the 1985 proposal. New information was presented regarding the diesel oil prohibition and the toxicity limitation. New compliance costing and economic analysis results were presented based on new profile data and treatment and control option development. The new control technologies discussed were based on thermal distillation, thermal oxidation, and solvent extraction. Performance data for these technologies were also included. In addition, alternative requirements for limitations of 5 mg/kg cadmium and 3 mg/kg mercury in the stock barite based on the use of existing barite supplies, or at 2.5 mg/kg cadmium and 1.5 mg/kg mercury in the drilling fluids (whole fluid basis) were noticed for comment.

On January 9, 1989, the Agency published a Correction to Notice of Data Availability (54 FR 634) concerning the analytical method for the measurement of oil content and diesel oil. The 1988 notice had inadvertently published an incomplete version of that method.

As described in section I, on November 28, 1990 the Agency published a notice as an initial proposal and reproposal (55 FR 49094) that presented the major BCT, BAT, and NSPS regulatory options under consideration for control of drilling fluids, drill cuttings, produced water, deck drainage, produced sand, domestic and sanitary wastes, and well treatment, completion, and workover fluids.

In addition, EPA has issued a series of general permits that set BAT and BCT limitations applicable to sources in the offshore subcategory on a Best Professional Judgment (BPJ) basis under 402(a)(1) of the Clean Water Act. See e.g., 51 FR 24897 (July 9, 1988) (Gulf of Mexico General Permit); 49 FR 23734 (June 7, 1984), modified 52 FR 30481 (September 29, 1987) (Bering and Beaufort Seas General Permit); 50 FR 23570 (June 4, 1985) (Norton Sound General Permit); 51 FR 35400 (October 3, 1986) (Cook Inlet/Gulf of Alaska General Permit); 53 FR 37840 (September 20, 1988), modified 54 FR 39574 (September 27, 1989) (Beaufort Sea II/ Chukchi Sea General Permit). Where pertinent, today's notice discusses the major provisions of these general permits in relation to the effluent guidelines and standards being proposed. The rulemaking record for this proposal includes copies of the most significant Federal Register notices proposing these general permits and issuing them in final form.

The Gulf of Mexico General Permit was challenged by industry and an environmental group. *Natural Resources Defense Council* v. *EPA*, 863 F.2d 1420 (9th Cir. 1988). The Bering and Beaufort Seas General Permit was the subject of industry challenge. *American Petroleum Institute* v. *EPA*, 787 F.2d 965 (5th Cir. 1986); later opinion following partial remand, 858 F.2d 261, (5th Cir. 1988); clarified and rehearing denied, 864 F.2d 1156 (5th Cir. 1989). Copies of these decisions are also included in the rulemaking record for this proposal.

B. Relationship of Today's Proposal to the 1985 Proposal

The proposal being issued today does not supercede the 1985 proposal entirely, but rather changes the proposal in certain areas. Below is a discussion of the parts of the 1985 proposal that remain the same and the parts that are being changed. Reasons for the changes are discussed in the appropriate preamble sections as indicated.

1. Parts Changed from the 1985 Proposal

New data and information gathered since the 1985 proposal have led the Agency to consider and develop new treatment and control options for the offshore oil and gas waste discharges. New information regarding data gathering and analytical methods is outlined in section VII. New treatment performance data are presented in section X. The new treatment and control options developed as a result of this new information are presented in sections XII–XIV. Also included in these sections are a discussion of the 1985 options and how they differ from the current proposals. The revised costs and economic analyses performed on these new options are summarized in sections XV and XVI. Other sections of the 1985 proposal that have been changed are listed below.

a. Section II of the 1985 Proposal: Scope of Today's Rulemaking. In 1985, no BAT limitations were proposed for produced water. Today's notice is proposing BAT and NSPS effluent limitations for produced water for oil and grease as an indicator pollutant. The limitations being proposed today

are based on membrane filtration and set limits on oil and grease at 7 mg/l monthly average and 13 mg/l daily maximum not to be exceeded.

For drilling fluids, BAT and NSPS discharge limitations were proposed in 1985 for all drilling structures. This reproposal of BAT and NSPS is equivalent to the 1985 proposed discharge limitations for those structures located outside of 4 miles from the inner boundary of the territorial seas (shore). For wells located 4 miles or less from shore, zero discharge is proposed in today's notice.

For drill cuttings, the 1985 BAT and NSPS proposal included a prohibition on the discharge of diesel oil and free oil for all structures. Today's notice is proposing the same limitations for drill cuttings as for drilling fluids.

The 1985 BAT and NSPS proposal included a prohibition on the discharge of free oil for deck drainage, produced sand, and well treatment fluids. For BAT and NSPS, today's notice is proposing: (1) That deck drainage be subject to the same limitations as produced water during production operations and to requirements equal to the current BPT limits during the drilling operations before any wells on a given structure are put into production; (2) that zero discharge be required for produced sand; and (3) that for those well treatment, completion, and workover fluids that resurface as a discrete slug, zero discharge be required for the slug and a 100 barrel buffer on both sides of the slug. For those treatment, completion, and workover fluids that cannot be segregated from the produced water, the produced waters limitations would apply. In the case of acid workover fluids which resurface as a slug, neutralization (pH control) and application of the produced water limitations would be required. As in the 1985 proposal, no BAT requirements for domestic wastes or sanitary wastes are being proposed. NSPS for sanitary wastes were proposed in 1985 as equal to BPT. NSPS for domestic wastes was proposed in 1985 to prohibit the discharge of floating solids. Today's notice today proposes BPT, plus a requirement for no visible foam, as NSPS for domestic wastes. Proposed NSPS for sanitary wastes is identical to the 1985 proposal.

As in 1985, today's notice proposes BCT for produced water as being equal to BPT limitations on oil and grease. BCT limitations proposed in today's notice for deck drainage and well treatment, completion and workover fluids are identical to the 1985 proposed limitations equal to the BPT prohibition on the discharge of free oil. BCT for drilling fluids and drill cuttings was proposed in 1985 as being equal to BPT. In today's notice, BCT for drilling fluids and drill cuttings is proposed as zero discharge for structures located within four miles from shore and BPT for those structures at distances greater than four miles from shore. In 1985, proposed BCT for produced sand prohibited the discharge of free oil. As proposed in today's notice, BCT limitations would require zero discharge of produced sand. Today's proposed BCT limitations for sanitary wastes are identical to the 1985 notice and set BCT equal to BPT. Today's notice also proposes BCT limitations for domestic wastes prohibiting the discharge of floating solids.

b. Section V of the 1985 Proposal: Overview of the Industry. The location, size, and number of platforms, as well as the status of the oil and gas industry has been updated. New profile information is included in today's proposal in section III.

c. Section XIII of the 1985 Proposal: Non-Water Quality Environmental Impacts. Non-water quality environmental impact analyses on the new options EPA developed for this rulemaking have had significant influence on the selection of preferred options for proposal. Section XVIII of today's proposal presents a discussion of the non-water quality environmental impacts associated with the new options.

d. Appendix 4 of the 1985 Proposal: Regulatory Boundaries. This appendix lists regulatory boundaries associated with the shallow water classification proposed in 1985. The boundaries as proposed have not changed, only the applicability of this classification. The 1985 proposal states that this appendix is applicable to shallow production structures subject to a zero discharge requirement only. Today's notice deletes this statement so as not to limit the applicability of the shallow classification to zero discharge requirements. This change is included in appendix C of today's notice.

e. Appendix 2 of the 1985 Proposal: Analysis of Diesel Oil in Drilling Fluids and Drill Cuttings Analytical Method. Changes to this method were presented in appendix A of the 1988 Notice of Availability. These changes were a result of experience obtained during the Diesel Pill Monitoring Program. An incomplete version of the analytical method was published in the 1988 notice. A **Federal Register** notice was published later which contained the correct version (54 FR 634, Jan. 9, 1989).

2. Parts Not Changed from the 1985 Proposal

While the data acquired and treatment and control options for the offshore oil and gas industry are different in the current proposal, many items proposed in 1985 remain the same. These items, are not included in this proposal. Rather, those items that have not changed since 1985 are now subject to promulgation along with the items being proposed in today's notice. Those items proposed in 1985 that are not being affected by this reproposal are listed below.

a. Section IX of the 1985 proposal. Industry Subcategorization.

b. Section XI of the 1985 proposal. Selection of Control and Treatment Options where it concerns the toxicity limitation of 30,000 ppm in the suspended particulate phase for drilling fluids.

c. Section XI.B of the 1985 proposal. The proposed amendment to the BPT definition of "no discharge of free oil".

d. Section XIV of the 1985 proposal. Definition of "new source."

e. Section XV of the 1985 proposal. Best Management Practices.

f. Section XVI of the 1985 proposal. Upset and Bypass Provisions.

g. Section XVII of the 1985 proposal. Variances and Modifications, except for a new discussion on Stormwater Events included in section XX of today's proposal.

h. Section XVIII of the 1985 proposal. Relationship to NPDES Permits.

i. Appendix 1 of the 1985 proposed regulation. Static Sheen Test.

j. Appendix 3 of the 1985 proposed regulation. Drilling Fluids Toxicity Test analytical method.

V. Industrial Sectors

A. Shallow/Deep Waters

One method used in today's notice (and in the previous 1985 proposal) divided the industry into two sectors: Those in shallow waters and those in deep waters. The Agency proposed depth limits in order to allow for an option of onshore reinjection of produced water from those structures located in shallow water. The Agency found that in shallower waters a high percentage of the existing production platforms pipe produced waters to shore for treatment rather than treating produced waters on the platform. The Agency has also determined that the cost of drilling and equipping reinjection wells on land is less than drilling reinjection wells at the platform.

In the 1985 proposal, the Agency proposed variable depth limits that defined "shallow" for different offshore areas which were based on bathymetric features and industry practice for produced water treatment and reinjection onshore. This proposed method of dividing the industry has not changed since 1985 but is discussed in today's notice for the reader's information.

Through the compilation of data from industry the following water depths were proposed to be shallow water:

Gulf of Mexico: Industry data indicated that 52 percent of all the projected new sources in 15 meters or less of offshore waters would pipe produced water to shore. The Agency believed the same percentage of platforms in water depths of 20 meters or less could pipe to shore and reinject.

Atlantic: The water depth of 20 meters was proposed as shallow for this region since there was no historic data for production.

California: It was determined that 60 percent of the active production platforms located in water depths of 50 meters or less piped to shore for treatment while only 8 percent of the structures in depths greater than 50 meters piped to shore for treatment. Based on this information, a depth of 50 meters or less was proposed as shallow water in California.

Alaska: It was assumed that southern Alaska bathymetry (ocean depth) was similar to California's bathymetry, so a water depth of 50 meters or less was proposed to be shallow. The southern Alaska region includes the Bristol Bay, Aleutian Island Chain, Cook Inlet, and the Gulf of Alaska. For other parts of Alaska the Agency proposed shallow water to be of a depth of 20 meters or less in the Norton Sound and 10 meters or less in the Beaufort Sea. The water depths in the North were proposed to be less than the 50 meters for southern Alaska because the harsher climates in the more northern region made piping to shore for treatment less probable.

For determination of water depth, appendix 4, "Regulatory Boundaries," of the 1985 proposed regulations (and appendix C of today's notice) referenced nautical charts or bathymetric maps available from the National Oceanic and Atmospheric Administration. The water depth of the structure was defined to be based on the proposed location of the structure's well slot or produced water discharge point.

The shallow/deep water grouping was considered in 1985 only for the production phase of the industry. This distinction was evaluated for certain zero discharge options based on reinjection of produced water. Today's current reproposal includes the same shallow/deep water classification for produced waters; in addition, those classifications also apply to drilling fluids and drill cuttings. As discussed later in section XII, a zero discharge option for drilling wastes is being considered for today's proposal. The technology basis for a zero discharge requirement for drilling wastes is barging to shore for disposal. In addition to requiring zero discharge for all structures, EPA considered requiring zero discharge only for those new wells drilled in shallow water in order to minimize the non-water quality environmental impacts from barging and land disposal of these wastes.

Table 2 presents the number of existing producing structures by geographic region, production type, and water depth and shows that 99 percent of the existing offshore structures are in the Gulf of Mexico. Shallow water structures account for approximately 58 percent of existing structures.

TABLE 2.—NUMBER OF EXISTING PRODUCING STRUCTURES BY GEOGRAPHIC REGION, PRODUCTION TYPE, AND WATER DEPTH

Region	Shallow Water				Deep Water				Total all
	Oil only	Oil and gas	Gas only	Total shallow	Oil only	Oil and gas	Gas only	Total deep	
Gulf	126	497	676	1,299	35	471	428	934	2,233
Pacific	0	10	0	10	0	16	1	17	27
Alaska	0	0	0	0	0	0	0	0	0
Atlantic	0	0	0	0	0	0	0	0	0
Totals	126	507	676	1,309	35	487	429	951	2,260

The definition of shallow depth for use with new well drilling is the same as the definition used in the 1985 proposals for production activities. Table 3 presents the estimate of the number of new wells to be drilled annually by geographic region and water depth (based on projections for the years 1986–2000, at $21/barrel). This shows that a greater percentage of the drilling is expected for new wells in deep waters than in shallow waters (approximately 71 percent).

TABLE 3.—ESTIMATE OF THE NUMBER OF NEW WELL DRILLINGS PER YEAR BY GEOGRAPHIC REGION AND WATER DEPTH

[1986 to 2000: 980 wells/year will be drilled (60 structures/year) 590 Producing Wells; 390 dry holes]

Region	Shallow water	Deep water	Total
Gulf of Mexico	265	450	715
Pacific	10	227	237
Alaska	6	3	12
Atlantic	0	16	16
Totals	284	696	980

B. Distance From Shore

In addition to those options which divided the industry by water depth, EPA evaluated regulatory options which grouped the industry based on distance and a well or structure from shore. This evaluation showed that the non-water quality environmental impacts associated with the zero discharge options for drilling wastes warranted further investigation and/or consideration of adopting different regulatory approaches for different portions of the offshore industry.

The impacts of concern are the fuel requirements and air emissions resulting from the barging of solid wastes to shore for disposal. Also, EPA was concerned with the long-term available on-land disposal capacity to support the zero discharge options. Thus, EPA investigated regulating the industry in a manner which would mitigate these non-water quality environmental impacts.

EPA evaluated a breakdown of structure location based on distance (in miles) from shore instead of depth of well. The distances evaluated were 4, 6, and 8 miles from shore. As a matter of consistency, these distances offshore were evaluated for produced waters as well as drilling fluids and drill cuttings. EPA also attempted to evaluate a distance of 3 miles from shore since the delineation between state and federal leased water areas for the purpose of oil and gas extraction provides a well-defined separation point. However, due to the problems in identifying existing offshore production facilities from the state data bases and the NOAA charts (as previously discussed in section III.B), an accurate count of facilities at 3 miles or less from shore could not be estimated. For the 4, 6, and 8 mile distances, MMS empirical data and projections were a basis for straight line extrapolations for distances at 3 miles and less for existing new sources. The Agency still considers the 3 mile delineation as a viable option and may use this in the final rule if accurate information on the number of existing production facilities and new source projections can be obtained for these waters.

EPA determined in its analysis of regulatory options that the use of a 4 mile category is preferable to the other distances evaluated (6 and 8 miles) because either the further distances from shore (8 miles or greater) do not reduce non-water quality environmental impacts sufficiently, or the difference between the pollutant removals at 6 miles from those at 4 miles are not significant. The 4 mile option is the Agency's preferred option based on distance. However, the Agency will consider setting the final rule on distances other than 4 miles with the receipt of additional state waters information on the number of existing structures and new well drilling projections.

Table 4 presents the number of existing producing structures by geographic region and production type according to the 4 mile cutoff. Approximately 208 structures are 4 miles or closer to shore. These represent approximately 9 percent of the total. This same percentage of structures, although not necessarily the same structures, would be equivalent to regulating the drilling and production activities at a water depth of 6.3 meters in the Gulf of Mexico.

TABLE 4.—EXISTING PRODUCING STRUCTURES ACCORDING TO DISTANCE FROM SHORE

Region	Less than or equal to 4 miles					Greater than 4 miles					Total
	Oil only	Oil and gas	Gas only	Sub-total	Per-cent	Oil only	Oil and gas	Gas only	Sub-total	Per-cent	
Gulf	50	63	84	197	9	111	905	1,020	2,036	91	2,233
Pacific	0	11	0	11	41	0	15	1	16	59	27
Alaska	0	0	0	0	0	0	0	0	0	0	0
Atlantic	0	0	0	0	0	0	0	0	0	0	0
Totals	50	74	84	208	0	111	920	1,021	2,052	0	2,260

Table 5 presents the estimate of the number of new well drillings annually by geographic region according to the 4 mile cutoff (for the years 1986–2000 at $21/barrel). As can be seen by the table, approximately 16 percent of the estimated 960 new wells will be in waters 4 miles or less from shore.

TABLE 5. Estimate of New Well Drillings Per Year According to Distance from Shore "Unconstrained Development"

Region	Less than or equal to 4 miles	Greater than 4 miles	Total
Gulf	72	643	715
Pacific (off California [1])	71	166	237
Alaska	9	3	12
Atlantic	0	16	16
Total			960

[1] This projection assumes no moratorium or restricted leasing off the coast of California.

This estimate is based on assumptions contained in the MMS Table 4 projections which do not take into account the recent moratorium and restricted leasing in the Pacific off California. A more "constrained" projection of new wells based on these conditions gives approximately 759 new wells drilled annually (for the years 1986–2000 at $21/barrel (BOE)). Table 6 shows projections on a regional basis for this constrained scenario and estimates approximately 11 percent of the new wells in waters 4 miles or less from shore.

TABLE 6. Estimate of New Well Drillings Per Year According to Distance from Shore "Constrained Development"

Region	Less than or equal to 4 miles	Greater than 4 miles	Total
Gulf	72	643	715
Pacific (off California)	71	32	32
Alaska	9	3	12
Atlantic	0	0	0
Total			759

VI. Regulatory Definitions

A. Domestic Waste

The August 26, 1985 proposal defines domestic waste as wastewater resulting from laundries, galleys, showers, etc. In today's proposal, other examples of domestic wastes are added for the purpose of clarity. These include wastes from safety shower and eye wash stations, hand wash stations, and fish cleaning stations. This clarification of the proposed definition does not change the regulation or its economic impact.

B. Well Treatment, Completion, and Workover Fluids

The 1985 proposal defines well treatment fluids as "those fluids used in stimulating a hydrocarbon bearing formation or in completing a well for oil and gas production, and drilling fluids used in re-working a well to increase or restore productivity."

EPA is proposing to change this definition of well treatment fluids to make it similar to the definition being proposed in the coastal drilling permits for Texas and Louisiana by EPA's Region VI. This new definition makes a distinction between well treatment fluids, completion fluids, and workover fluids. The following definitions are being proposed in today's notice:

Well Treatment Fluids: "Any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled." These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents and propping agents.

Well Completion Fluids: "Salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production." These fluids move into the formation and return to the surface as a slug with the produced water.

Workover Fluids: "Salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures." High solids drilling fluids used during workover operations are not considered workover fluids by definition. Packer fluids—low solids fluids between the packer, production string, and well casing—are considered to be workover fluids.

The definitions above distinguish treatment, completion, and workover fluids from drilling fluids and each other based on clear descriptions of form and function. Drilling fluids remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

Both high and low solids drilling fluids used during workover operations are not considered workover fluids and must also meet drilling fluids effluent limitations.

Production operations are defined as "operations including work necessary to bring hydrocarbon reserves from the producing formation beginning with the completion of each well in the development phase;" thus, treatment, completion, and workover fluids, as defined above, are considered part of the production phase. If these fluids do not come back up as a discrete slug, they will either remain in the hole, or diffuse within the well's formation fluids and resurface as part of the produced water.

C. Produced Sand

Sand is obtained with the fluids from the formation during the production process. This sand, termed "produced sand," is defined (1985 proposal) as "slurried particles used in hydraulic fracturing and the accumulated formation sands and scale particles generated during production." The sand is separated out from the produced water, washed with either water or solvent, and is either discharged overboard with the produced water waste stream or is stored in 55 gallon drums and transported to shore for disposal.

EPA is proposing to make this definition more specific to include "desander discharge from the produced water waste stream and blowdown of the water phase from the produced water treating system." Thus, for the options considered for this proposal, the definition of produced sand is being modified to include the following sentence:

Produced sand also includes desander discharge from the produced water waste stream and blowdown of the water phase from the produced water treating system.

D. Development Facility and Production Facility

EPA is proposing to change the 1985 proposal definitions of "development facility" and "production facility" to more accurately reflect the waste streams that occur during these phases of the industry. The definition of development facility is being changed to cover only the drilling portion of the operation. Thus, the major waste streams associated with this phase are drilling fluids and cuttings.

The definition of production facility is being proposed to include the completion phase of the operation as well as actual hydrocarbon extraction. The major waste stream associated with this phase is produced water. Since well treatment and completion fluids resurface (if they surface at all) along with the produced waters, EPA believes it appropriate to associate well treatment and completion with the production phase.

VII. Data Gathering Efforts

A. Existing Information

In October 1988, the Agency published a Notice of Data Availability (53 FR 41356) which presented new technical, economic, and environmental information relating to the development of BAT and NSPS effluent guidelines limitations for the drilling fluid and drill cuttings waste streams. This new information was submitted to the Agency in public comments in the response to the 1985 proposal. The notice was organized in two parts. Part 1 of the notice discussed key issues surrounding the drilling fluids toxicity limitation, the proposed toxicity test method, the prohibition on the discharge of drilling fluids containing diesel oil additives, a re-evaluation of industry compliance costs, an economic impact assessment of the revised cost estimates and environmental impacts of the discharge of cadmium and mercury in drilling fluid waste streams. It also presented two variations on the August 1985 proposed regulatory approach related to the mercury and cadmium limitations in the whole drilling fluids and stock barite used in the drilling fluids.

Part 2 of the notice discussed information gathered on new treatment technologies for controlling the oil content of drilling wastes. Data on the performance and cost of thermal distillation/oxidation and solvent extraction technologies for treating drilling fluids and drill cuttings were presented for public review and comment. This information was being considered for the development of an oil content limitation on drilling waste streams. In addition, an analytical method for determining diesel oil and oil content was included for comment.

B. New Studies

Since the 1988 notice, additional studies were conducted in response to concerns over various aspects of this rulemaking. Such concerns include: The variability of the test method used to measure toxicity of drilling fluids and drill cuttings, additional technologies available for produced water treatment, procedures for the static sheen test, radioactivity associated with produced waters, and non-water quality environmental impacts associated with various treatment and control options. The evaluation of non-water quality environmental impacts including solid waste disposal, air emissions and fuel requirements are discussed separately in section XVIII of today's notice. A summary of new information acquired is given below.

1. EPA Variability Study for Drilling Fluids Toxicity Test

The 1985 offshore oil and gas proposal included a limitation on the toxicity of discharged drilling fluids. The toxicity limit is expressed as the concentration of the suspended particulate phase (SPP) from a sample of drilling fluid that would be lethal to 50 percent of a particular species exposed to that concentration of the SPP, i.e., the LC50 of the discharge. The species used in the toxicity test is *Mysidopsis bahia*, otherwise called mysid shrimp. The Agency proposed a toxicity limitation of 30,000 ppm (SPP) based on the toxicity of the most toxic of eight generic drilling fluids that were in general use at the time of proposal. In addition, permit writers have set this limit as their best professional judgment of BAT. It is currently included in the general permit for oil and gas activities on the outer continental shelf of the Gulf of Mexico.

several individual offshore oil and gas permits for California, and in Alaska.

As part of the evaluation of methods under section 304(h) of the Clean Water Act and as a response to comments from the 1985 offshore oil and gas proposal, the Agency has recently conducted a study of the variation in results from the toxicity test for drilling fluids. The study was conducted in two phases.

In Phase I, each lab was required to conduct one toxicity test on a sub-sample of generic drilling fluid #3 (lime mud). The participating labs included 2 Agency labs and 28 contract labs. The contract labs included all commercial, academic, and industry labs known to the Agency that claimed to have experience with some form of toxicity testing and were willing to participate. The Agency knows of over 100 commercial, academic, and industry labs that are potentially capable of conducting the required test.

In Phase II, each lab was required to conduct two toxicity tests on sub-samples of generic drilling fluid #8 (lignosulfonate freshwater mud) and two toxicity tests on sub-samples of generic drilling fluid #8 with 3 percent mineral oil. Contract labs were selected at random from those contract labs that demonstrated the ability to conduct the toxicity test at a competitive price.

A summary of the study results is presented in table 7. The "selected" labs in the summary for generic fluid #3 were included because a review of the raw lab reports indicated that they correctly followed the test protocol they received as part of the study. The primary summary statistics included in the table are the average toxicity (LC50), standard deviation (SD), prediction intervals, and the coefficient of variation (CV).

Table 7.—Preliminary Results from the Variability Study of the Drilling Fluids

Drilling fluid	Responses	No. of labs	Average LC50 (percent)	SD (percent)	CV (percent)
Combined within- and between-lab variation					
Generic Fluid #3	All	28	25.6	12.0	47.1
	Selected	16	22.6	5.96	26.4
Generic Fluid #8	All	9	50.9	19.4	38.1
Generic Fluid #8 (3% Oil)	All	9	0.27	0.36	133.9

Drilling fluid, upper	Responses	No. of labs	Average LC50 (percent)	SD (percent)	CV (percent)	Lower (percent)	95% prediction interval
Within-lab variation							
Generic Fluid #8	All	9	59.9	10.4	20.5	26.6	75.2
Generic Fluid #8 (3% Oil)	All	9	0.27	0.20	72.0	+0.0	0.73

NOTES:
LC50 calculated using Probit Analysis by Maximum Likelihood with optimization for control mortality.
"Average LC50" is the average of the average LC50 for each lab.
Standard Deviation (SD) for combined within- and between-lab variation is the square root of the sum of mean squares for within-lab variation plus the sum of mean squares for between lab variation. SD for within-lab variation is the square root of the sum of squares for within-lab variation.
Coefficient of Variation (CV) is SD/Average LC50.
Prediction Interval is for within-process variation from labs that have demonstrated the ability to conduct EPA's toxicity test.

The average LC50 was slightly higher (less toxic) than expected for the sample of generic drilling fluid #3 and for the sample of drilling fluid #8. However, the average LC50 reported for drilling fluid #8 with 3 percent mineral oil was lower (more toxic) than expected. It is important to note that each of these averages is based on a sub-sample from a single well-mixed sample of drilling fluid. Hence, the variation found in this study is related only to within- and between-lab variation and any average result applies only to that one sample of drilling fluids. Generalizations to average levels for other batches of the same generic drilling fluid or the same generic drilling fluid with mineral oil are not supported by these data.

The standard deviations (SD) reported in Table 7 indicate the magnitude of variation found in lab results for a particular drilling fluid system. Because only one test per lab was conducted on the sample of generic drilling fluid #3 it is not possible to estimate within-lab variation for that sample. In order to provide comparable statistics, combined within- and between-lab standard deviations are presented for all samples tested in the study. However, the Agency is primarily interested in estimates of within-lab variation so these estimates are presented for generic drilling fluid #8 and generic drilling fluid #8 with 3 percent mineral oil. Estimates of within-lab variation from competent labs quantifies the natural variability inherent in the measurement process while between lab estimates of variability quantifies lab bias. Lab bias describes the situation when all results of a particular lab are consistently above or below the multi-lab average result. The Agency believes that between lab variation is caused by consistent lab practices that can be modified through learning from experience. Additionally, an hypothesis that lower LC50s are linked to lower standard deviations is suggested by table 7 and the Agency is considering further statistical analysis of this relationship.

Prediction intervals for within-lab variation reported in table 7 are calculated on the results from the number of labs indicated in the table and adjusted to account for the current population of 16 labs that have demonstrated the ability to conduct the Agency's toxicity test. These intervals indicate that within-lab variation would be unlikely to change the compliance status of the tested samples. In other words, when the LC50 was above 3 percent the Agency is 95 percent confident that within-lab variation would not cause a new measurement on that sample of drilling fluid to be below 3 percent. When the LC50 was below 3 percent, the Agency is 95 percent confident that within-lab variation will not cause a new measurement to be above 3 percent. If lower LC50s are linked to lower standard deviations, then the confidence intervals for LC50s will become smaller as the substance becomes more toxic.

Coefficients of variation (CV) indicate how much, on a percentage basis, the LC50 could vary within a single standard deviation. However, for regulatory purposes, the Agency is primarily concerned with the magnitude of change in toxicity and industry's ability to use either product substitution with drilling fluids or treatment/disposal so that, based on within-lab variation, industry would be able to comply with proposed limitations.

Preliminary analysis of the multi-lab results for toxicity tests from the recent study continue to support the conclusion that the test protocol is adequate for use in a regulatory framework. Industry will be able to use either product substitution in order to discharge drilling fluids that comply with a 30,000 ppm limitation on toxicity or available technology to avoid discharging drilling fluids or drill cuttings.

2. Performance of Granular Media and Membrane Filtration Technologies on Produced Water

Filtration, as an add-on technology to BPT, is being considered as an option for treatment of the produced water waste stream for both BAT and NSPS effluent limitations guidelines. To assess the levels of pollutants in effluents from treatment and the efficiency of reducing pollutants in produced water, a "three facility study" of granular media filtration was conducted by the Agency in the summer of 1989. In addition, data were received on the performance of membrane filtration from an equipment vendor. The performance of membrane filtration differs from granular media filtration in that membrane filtration removes much of the soluble oil and grease from the produced water as well as suspended solids and the insoluble oil and grease fraction. A summary of the results of the use of both types of filtration technologies on produced water is discussed below.

The Agency selected facilities for the "three facility study" based on: (1) Their use of granular filtration, and (2) the oil and grease level being somewhat comparable to the BPT level prior to filtration. Not all of these facilities were located offshore (one was offshore, one was onshore, and one was coastal). However, the efficiency of granular media filters at each location is not dependent upon the facility's location. Each facility was unique in its handling of produced waters prior to filtration; however, two of the three use chemical feed prior to filtration and all facilities reinjected their produced water after filtering. Specifically, the onshore facility uses fresh makeup water, combines it with the produced water, and adds a chemical feed (polymer) prior to the filtration unit. The offshore facility (a three-well platform located off the coast of California) combines produced waters from the three wells after oil/water separation before entering the multimedia granular filtration unit. At the coastal facility, an "ultrahigh" rate filtration unit is utilized and a polymer is added to the produced water prior to entering the filtration unit.

Influent and effluent produced waters into each filtration unit were analyzed. At two of the facilities, the filtration influent waters are the effluent waters from gas flotation units (BPT technology basis). One facility does not use gas flotation. Statistical analyses of data from the "three facility study" were conducted. Results of these analyses and the examination of operational information showed that results from only the two facilities which used polymers provided satisfactory filter performance data. A summary of these results, shown in Table 8, demonstrates a 40 to 60 percent removal of oil and grease, from levels approximately at the BPT long-term average level of 25 mg/l, to 11.3 mg/l for the two facilities using polymer addition.

Table 8.—Three Facility Study Statistical Results

Parameter	Long Term Average Concentrations (mg/l)	
	Influent	Effluent
Oil and Grease	27.26	11.33
Total Suspended Solids	44.83	21.17

NOTE: Only the onshore and coastal facilities data are included.

A vendor of membrane filtration equipment has supplied the Agency with limited data from a membrane separation unit that is operating in the Gulf of Mexico and several pilot scale evaluations at facilities in offshore, coastal, and onshore locations. Results from the full-scale operation indicate that, in most cases, regardless of the values of TSS and oil and grease in the influent, effluent values of less than 5 mg/l of oil and grease are readily attained. In addition, this technology shows potential for more efficient removals of soluble oil and grease (organics) than the BPT technology and granular media filtration technology. Further discussion of this technology and its performance is included in section X of today's notice.

C. Analytical Methods

1. Static Sheen Test

Since the 1985 proposal of a new analytical procedure to measure free oil, known as the "Static Sheen Test," other variations to this method have been suggested. EPA has reviewed three other methods: one developed by its Region IX office, one by its Region X office, and an additional version known as the "minimal volume" method. A comparison of the differences between the 1985 proposal and Region IX's suggested method is presented below:

- Receiving water—The "original" procedures require ambient seawater to be utilized as the receiving water in the test whereas Region IX procedures call for tap/drinking water.
- Mixing/stirring—The "original" procedures call for thorough mixing of both the test material samples and the mixture of test material and receiving water. Region IX procedures delete all references to mixing test material samples and require efforts to "minimize any mixing of the test material in the test water." This is because of test interferences due to bubbling/foaming and particulate surface deposits caused by mixing or stirring.
- Sample volumes/weights—The "original" procedures specify drilling fluid, deck drainage, or well treatment fluid samples of 0.15 mL and 15 mL and drill cuttings or produced sand samples of 1.5 g and 15 g on a wet weight basis. Region IX procedures call for 15 mL samples for drilling fluid, deck drainage, or well treatment fluid samples and 15 gram (wet weight) samples of drill cuttings or produced sand. Region IX's requirements simplify the test by requiring only the largest sample of the waste stream.
- Observations—The "original" procedures require observations to "be made no later than one hour after the test material is transferred to the test container." Region IX requirements dictate that observations occur "immediately, and at 15, 30, and 60 minutes after the test material is transferred to the test container."
- Sheen designation—"Detection of a silvery or metallic sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface" is considered to be an indication of "free oil" under the "original" guidelines. Under Region IX guidelines, the discoloration must cover "more than one-half of the surface of the test water" and "the appearance of a sheen must persist for at least 30 seconds" to be classified as indicating the presence of "free oil."

The method suggested by Region X is the same as the 1985 proposal except that the free oil detection criterion is similar to that for Region IX's version (that a sheen must cover more than one half of the surface of the test water).

BEST COPY AVAILABLE

The minimal volume test is a procedure designed to be more appropriate for laboratory analysis because of the smaller volumes: A 5 ml sample of drilling fluid is used instead of 15 ml. Drinking water is used as the receiving water and mixing is minimized. Observations are made immediately and 5 minutes after combining the test sample and receiving water. The free oil detection criterion is similar to the 1985 proposal.

A study was performed by industry which compared the static sheen methods. This study, among other aspects of the test, investigated the tendency of false positive readings for each method. False positive results are those that show a free oil detection for non-oil containing samples. A percentage of false positives results gives an indication of the reliability of the test. The 1985 proposed method, which was also the same method used by Region IX at the time of the study, showed 16.76 percent false positives (63 samples out of 376). The region X method showed 2.5 percent and the minimal volume method, 21.86 percent.

EPA is considering these variations on the static sheen test, although the method proposed in 1985 remains preferred. The Agency is soliciting comments, on this and the other three procedures as to the appropriateness of each method.

2. Diesel Oil Detection and Total Oil Content—Proposed Method 1651

The 1985 proposal included proposed methods for detecting the presence of diesel oil in drilling fluids and drill cuttings waste streams. The method based on retort distillation and gas chromatography, was subsequently modified based on experience gained during the conduct of the Diesel Pill Monitoring Program (DPMP). The DPMP study was performed in order to evaluate the efficiency of diesel recovery practices after spotting of a diesel pill. This study, performed in 1986–1987, is described in the 1988 Notice of Availability along with the modified analytical procedure (which was corrected in the January 1989 notice at 54 FR 634).

This modified procedure was the method accepted by EPA. No comments were received on it after the 1988 and 1989 notices. The method has an estimated detection limit of 100 mg/kg (0.02 percent of diesel oil). Documentation on precision and accuracy measurements of the test method is included in the record for the 1988 notice of availability.

The Offshore Operators Committee (OOC) of the American Petroleum Institute (API) conducted the Diesel Pill Monitoring Program (DPMP) in 1986 and 1987. One of the objectives of this program was to measure the recovery of diesel oil from drilling fluids and drill cuttings wastes. The test method used to determine the concentration of diesel oil employed a thermal (retort) extraction to separate the diesel oil from the mud system, solvent extraction to separate the diesel oil from the water and inorganic salts co-extracted in the thermal desorption process, evaporation of the solvent to concentrate the diesel oil in the solvent, and determination of the diesel oil in the solvent by gas chromatography. (For an explanation of gas chromatography, see the preamble to the test procedures for determination of pollutants in wastewater [49 FR 43234].)

This test method was practiced by two laboratories, one under contract to EPA and one under contract to industry. One of the conclusions from the DPMP was that thermal extraction/gas chromatography was capable of rigorously identifying and quantifying diesel oil in drilling wastes when the oil used to spot the pill was used as the reference oil for calibration of the gas chromatography, and when other potentially interfering oils were not present in the mud at concentrations large enough to affect the result. In instances where a reference oil were not available, number two diesel oil was used as the reference, and its use made identification and quantification of the diesel oil more difficult than when the reference oil was used. In instances where other oils were present in the wastes, determination of the identity and concentration of the diesel oil were also made more difficult, especially when the concentration of the interfering oil was large in comparison to the diesel oil. However, in nearly every instance in which a potential interference occurred (estimated at approximately 20 percent of all cases), both the EPA contract laboratory and the industry contract laboratory reported that an interference was present. Thus, from the testing done in the DPMP, EPA concluded that the thermal desorption/gas chromatography method was capable of determining the presence and concentration of diesel oil in the waste, and of identifying those situations in which an interference was present.

As a result, the details of the thermal desorption/gas chromatography test procedure and the results obtained were used to write EPA Method 1651 and to develop the quality control specifications for this method. The method included the requirement to use the diesel oil that was used for the pill for calibration of the gas chromatograph, if a sample of this oil was available. Method 1651 also provided criteria for identification of interferences, and suggested the use of gas chromatography combined with mass spectrometry (GCMS) for rigorous identification of diesel oil if an interference was suspected.

In 1990, EPA and the oil industry conducted a limited inter-laboratory validation study of Method 1651, using the EPA contract laboratory and industry contract laboratory that had participated in the DPMP, plus three industry laboratories that had either limited or no experience with the method. The results demonstrated that the inexperienced laboratories had difficulty in understanding the method. It was also noted that the EPA contract laboratory had difficulty with the thermal desorption apparatus. As a result, EPA agreed to modify Method 1651 to incorporate language clarifying some of the operational aspects of the method. EPA and the industry also agreed to investigate alternative extraction and analysis techniques, in order to simplify the operational portions of the method and enable better identification of diesel oil in the presence of interferences. However, because EPA does not want to further delay the regulation of pollutants discharged into the environment from offshore oil platforms, and because EPA believes that Method 1651 is adequate for determination of diesel oil in drilling fluids and drill cuttings when this method is followed, EPA is proposing this method for determination of diesel oil in drilling fluids and drill cuttings as published in the January 9, 1989 Federal Register (54 FR 634).

D. Radioactivity of Produced Water

Within the past year, there has been much concern over the presence and levels of radium–226 (Ra^{226}) and radium–228 (Ra^{228}) in the produced water waste stream from oil and gas facilities. Both Ra^{226} and Ra^{228} are naturally occurring radioactive isotopes with half-lives of 1620 years and 5.7 years, respectively.

Uranium and thorium (present in deep geologic formations) undergo a decay series whereby radium is the first element in the decay series that is water soluble. The level of radium present in the formation water—which ultimately becomes the produced water—has been found to be proportional to the salinity of the formation water. There has also been some evidence which indicates that the radium-salinity relationship may vary depending on the source of the produced water, e.g., wells producing oil only or wells producing gas only.

There have been several studies conducted on produced waters from a range of locations, including offshore, coastal, and onshore facilities. The results of these studies have given preliminary information on the levels of radium in produced water across this range of locations. These results indicate that radium levels in the saline produced waters from the Gulf Coast region exceed proposed and existing radium discharge limits for other industries. Average open ocean surface waters contain 0.05 pCi/1 of Ra^{226} while coastal waters generally do not contain natural levels of Ra^{226} much higher than 1 pCi/1.

In late 1986, API initiated a nationwide program to gather information on naturally occurring radioactive materials. This program involved voluntary sampling and analysis by oil and gas companies throughout the country. Specific sampling and analytical protocols were distributed to all the interested companies to ensure consistency of methodology. Companies were requested to perform radioactivity measurement for service equipment. Companies from twenty of the major oil and gas production states participated and a large volume of data were accumulated. The data were summarized in a final report from API entitled, "A National Survey on Naturally Occurring Radioactive Materials (NORM) in Petroleum Producing and Gas Processing Facilities" dated July 1, 1989. The report indicates that NORM activity levels showed wide variability, both geographically and among types of oil field equipment in the same geographic area. Although the data were not developed from a statistical plan, some trends have been noted. The geographic areas with the highest equipment readings for radioactivity are the entire Gulf Coast crescent (Florida panhandle to Brownsville, Texas), the northeast Texas crescent, southeast Illinois, and a few counties in southern Kansas. Gas processing equipment having the highest levels of radioactivity are reflux pumps, propane pumps and tanks, other pumps, and product lines. Water handling equipment in the production facilities category exhibits the greatest NORM activity levels.

Some findings of various other studies are summarized below:

- Battelle Laboratories completed a study for API in August, 1988 on the fate and effects of produced water discharges from four facilities in Louisiana coastal waters (three of which are covered by the offshore subcategory). The levels of Ra^{226} and Ra^{228} combined were found to range anywhere from 605 to 1,215 pCi/1.
- Kramer and Reid in a 1984 publication, "The Occurrence and Behavior of Radium in Saline Formation Water of the U.S. Gulf Coast Region," reported measured amounts of total radium ranging from less than 0.2 pCi/1 in a produced water sample from a well in McAllen, Texas to 13,808 pCi/1 in a produced water sample from Vermillion Parish, Louisiana.
- In the Leeville oil field in LaFourche Parish, Louisiana, the produced waters were sampled and analyzed for Ra^{226} levels over a five year period. The levels of Ra^{226} varied from 16 pCi/1 to 397 pCi/1. Assuming that the average level in the produced water was about 280 pCi/1, over the five year sampling period, up to 1.76 Curies of Ra^{226} were discharged into surface waters with the produced water. (One picoCurie = 1×10^{-12} Curies.)

When elevated levels of up to 2,800 pCi/1 were discovered in the produced water discharges in Louisiana, the Louisiana Department of Environmental Quality (DEQ) issued an emergency rule which went into effect on February 20, 1989. This rule required a radioactivity measurement and toxicity tests to be performed on all existing produced water discharges that flow into the surface waters of the state (this includes offshore structures located in state waters).

The Louisiana DEQ has completed a preliminary analysis of the data received as a part of the sampling under the emergency rule. There were submissions of data from 450 sites discharging produced water into the surface waters of the state. The analyses for Ra^{226} and Ra^{228} were performed using the EPA Standard Method for drinking water. The results indicate that Ra^{226} and Ra^{228} are primarily found in the soluble phase and that one-third to one-half of the sites had levels of over 300 pCi/1. The maximum values were 930 pCi/1 of Ra^{226} and 928 pCi/1 of Ra^{228} while the overall average values were 158 pCi/1 of Ra^{226} and 164 pCi/1 of Ra^{228}.

As a part of the "three facility filtration study" conducted by the Agency in the summer of 1989, samples of the produced water waste stream were analyzed at different locations in the treatment system for Ra^{226} and Ra^{228}. Assessment of the raw data show effluent values after filtration of the produced water ranging from 10.6 to 213 pCi/1 Ra^{226} and 0 to 68 pCi/1 Ra^{228}, with very little if any removal by the filters.

Data bases are scattered and, for the most part, preliminary. This information is presented today to notice its availability and solicit additional data. EPA is concerned about the levels of radium in produced water and possible effects on human health and the environment. EPA intends to investigate the presence of radionuclides in produced water from facilities further offshore and the effects of radioactivity on the oceanic environment surrounding the platforms. Following receipt of any data as a result of today's notice and EPA's investigations, EPA intends to issue a Notice of Data Availability and will take all available information about radioactivity into account in developing final regulatory controls on produced water.

E. Other Studies

EPA and other agencies have performed studies regarding several other aspects of regulatory developing for the offshore oil and gas rulemaking effort. The titles and subjects of these studies are listed below. Descriptions of them and conclusions derived are discussed throughout the later sections of today's notice where appropriate.

1. "An Evaluation of Technical Exceptions for Brine Reinjection for the Offshore Oil and Gas Industry." An investigation into the feasibility of reinjection for produced waters.
2. "The EPA/API Diesel Pill Monitoring Program." An evaluation of the efficiency of diesel recovery practices after a diesel pill has been injected to free stuck pipe.
3. "Summary of Data Relating to Minor Discharges." An assimilation of available data on miscellaneous and minor offshore oil and gas discharges.
4. "Onshore Disposal of Offshore Drilling Waste—Capacity and Cost of Onshore Disposal Facilities." An assessment of land available and suitable for disposal of drilling wastes required as a result of a zero discharge requirement. Costs for on land disposal were also estimated.
5. "An Assessment of Produced Water Impacts to Low-Energy, Brackish Water Systems in Southeast Louisiana." A study by the Louisiana Department of Environmental Quality on the produced water impacts on low flow systems.
6. "Produced Water Effects on Coastal Environments." Minerals Management Service.

VIII. Waste Characterization

A. Produced Water and Drilling Wastes

Since the 1985 proposal, no new EPA field sampling data have been acquired

relating to the general character of untreated produced waters and drilling wastes. Additional studies have been conducted on BPT treated produced waters (the "three-facility study"), on the appropriateness of the diesel oil discharge prohibition for drilling wastes, and on treatment technologies for drilling wastes (discussed in the 1988 notice). In addition, statistical evaluations of some previously submitted data were conducted. The results of the studies and evaluations and how they affect this rulemaking are discussed in later sections of today's notice.

As discussed in the 1985 proposal, the Agency also categorized the pollutants present in drilling fluids waste streams for purposes of determining appropriate limitations and standards. First, drilling fluids contain organics and metals that are priority toxic pollutants. These toxic pollutants include the cadmium and mercury and organic constituents of the diesel and mineral oils which may be added to drilling fluids. Also, the large number of specialty additives which may be used can contain priority toxic pollutants or nonconventional pollutants. BAT limitations and NSPS are being proposed to control the toxic and nonconventional pollutants. As discussed in greater detail in section IX, the Agency has considered options that include specific numeric limitations on cadmium and mercury, both in the stock barite and in the drilling wastes (fluids and cuttings); a prohibition on the discharge of diesel oil and free oil; and a toxicity limitation. Second, the oil and grease and total suspended solids present in drilling fluids are listed conventional pollutants subject to BCT limitations as well as NSPS. The prohibition on the discharge of free oil is the current BPT requirement; a static sheen test is proposed to implement this requirement. The Agency's approach to determining the appropriate guidelines and standards for drill cuttings is the same as that used for drilling fluids since the drilling fluids that adhere to the drill cuttings are the major concern.

The conventional pollutants oil and grease and total suspended solids will be subject to BCT limitations and NSPS.

As further discussed in the 1985 proposal, for purposes of determining appropriate guidelines and standards, the Agency categorized the pollutants present in produced water waste streams as follows. Produced water contains priority toxic organics and metals. BAT limitations and NSPS are being proposed to control these pollutants. Other chemicals, such as those contained in biocides, coagulants, corrosion inhibitors, cleaners, dispersants, emulsion breakers, paraffin control agents, reverse emulsion breakers, and scale inhibitors which have not been identified as containing conventional or toxic pollutants, would be considered nonconventional pollutants subject to BAT limitations and NSPS. Any pollutants in these products which have been designated "toxic pollutants" would be subject to BAT and NSPS toxic limitations and standards. Finally, the oil and grease and total suspended solids present in produced water would be considered conventional pollutants subject to BCT and NSPS limitations, and possible indicator pollutants for the control of the toxic and nonconventional pollutants subject to BAT and NSPS.

B. Deck Drainage

Deck drainage results primarily from precipitation runoff, miscellaneous leakage and spills, and washdown of platform or drill ship decks, floors, and vessels. Virtually any material used at the site may find its way into the deck drainage system. Deck drainage often contains petroleum-based oils from miscellaneous spills and leakage of oils and other production chemicals used by the facility. It may also contain detergents from washdown operations and discarded or spilled drilling fluid components. The primary pollutant of concern in deck drainage wastes is oil and grease.

New data since the 1985 proposal were collected on deck drainage as part of a three-facility sampling program conducted during 1989. The Agency also recently reviewed extensive records of deck drainage collected in the 1970s by the API. Also, deck drainage information from platforms in Cook Inlet, Alaska, was reviewed.

The three-facility study sampled untreated deck drainage at two of the facilities. The API data review obtained influent to the deck drainage clean-up system and the actual discharge (effluent). Table 9 presents oil and grease loadings from deck drainage samples obtained from these studies and from the data contained in the 1985 proposal record. The Cook Inlet study acquired information about the compounds identified as hazardous chemicals found in deck drainage discharges. These include paraffins, sodium hydroxide, ethylene glycol, methanol, and isopropyl alcohol.

TABLE 9—DECK DRAINAGE CHARACTERISTICS

Study	Oil and grease (mg/l)	
	Influent	Effluent
Three-facility study	12–1,310[1].	NA[2].
API data	1-16,908	1–673.
1985 data	NA	5–183[3].

[1] Ranges of individual sample values
[2] Not analyzed
[3] Range of monthly averages of Discharge Monitoring Reports (DMRs) from the 1985 rulemaking record.

Both the Agency's data gathering efforts and API's survey information indicate the frequency, volume, and oil and grease content of deck drainage is highly variable. Oil and grease content of deck drainage may greatly exceed the BPT level discharge limits of produced water. The content and concentration of materials in deck drainage is highly dependent upon the operating and maintenance practices at the site, the flow of the deck wash, time between deck washings, and the point of time during a washing. For example, pollutant concentrations would be higher during the early stages of a deck washing episode than at the end of the episode.

For the reasons described above, the Agency has identified priority pollutant constituents of oil as pollutants of concern in deck drainage.

C. Produced Sand

Produced sand consists of particulate matter from the producing formation and other solids, such as scale, corrosion by-products, and paraffin. This material accumulates in production tubing, flowlines, and various oil and gas process vessels. This waste stream would also cover any residential sludges generated by chemical polymers used in the filtration portion of the produced water treatment system.

These solids must be removed periodically to restore oil and gas production and processing and/or avoid interruptions to those same activities. The sand is separated out from the produced water, washed with either water or solvent, and either discharged overboard with the produced water waste stream or stored in 55-gallon drums and transported to shore for disposal.

Produced sand generation is estimated at an average rate of 1 barrel per 2,000 barrels of oil. Actual volumes of sand production experienced by individual facilities depends upon the characteristics of the producing reservoir, sand control procedures utilized, and drawdowns experienced by the reservoir among other factors.

The primary pollutant of concern in produced sand wastes is oil and grease. The Agency collected new data on produced solids from three facilities in California and New Mexico during 1989. A review of individual sample results obtained from these facilities shows sand and solids associated with oil and gas production to have oil and grease contents as high as 132,000 ppm.

D. Well Treatment, Completion, and Workover Fluids

Well treatment fluids are used to improve the hydrocarbon recovery from productive reservoirs. These fluids move into the formation and either remain in the hole, return in diffused form with the produced water, or return as a discrete slug. Some of the more common well treatment fluids used include hydrofluoric acid; hydrochloric acid; ethylene diaminetetraacetic acid (EDTA); ammonium chloride; nitrogen; various alcohols and solvents such as methanol, xylene, and toluene; and numerous additives such as iron sequestering agents, corrosion inhibitors, surfactants, and fluid diverters. The acidic portion of well treatment fluids are generally spent on the formation and accompany the produced water phase. Other portions of the treatment fluids may become associated with the produced oil or gas phases.

Once production resumes, well treatment fluids are usually routed through the process equipment used to separate and treat the normal production stream. However, under current practice these fluids may also be captured in tanks at the surface and then disposed of by draining the water portion into the ocean or by transporting the fluid to onshore disposal sites. The volumes and constituents of well treatment fluids are well-specific, and the discharge frequency varies between locations. Well treatment discharges have been known to range from 12 bbls/day to 1,800 bbls/day.

EPA, during the three-facility study, sampled well treatment fluids at the coastal production facility. The well was acidized to enhance the productivity of the formation. The samples obtained of the treatment fluids prior to treatment showed an oil and grease level of 619 mg/l. The pH was 2.48. Other constituents present were aluminum, iron, magnesium, molybdenum, sodium, zinc, aniline, toluidine, and 2,4,5-trimethylaniline.

Completion and workover fluids are generally low solids fluids used to provide hydrostatic control and/or prevent formation damage. Typical well completion and workover fluid constituents may include hydroxyethyl cellulose, xanthan gum, hydroxypropyl guar, sodium polyacrylate, filtered seawater, calcium carbonate, calcium chloride, potassium chloride, and various corrosion inhibitors and biocides.

Completion and workover fluids currently may be collected and recycled, processed with the production stream and then discharged, or discharged directly into the ocean. The decision on whether to recycle or dispose of these fluids depends upon the cost and type of fluids utilized and various site specific factors. These fluids are more likely to be recycled if they are expensive or not contaminated with other materials. When these fluids are in use, discharges of completion and workover fluids have been estimated to range from 100 bbls/day to 1,300 bbls/day per facility.

Additional data since the 1985 proposal have also been obtained by the Cook Inlet study conducted by EPA's Region X on well treatment, workover, and completion fluids from structures in Alaska. This study lists the hazardous constituents associated with these fluids. These hazardous compounds include disodium salt of EDTA, quaternary polyamine, acetylenic acid, hydrochloric acid, hydrofluoric acid, isopropanol, and ethylene glycol. These compounds often comprise over 60 percent of the fluid composition.

A comparison was made between free oil detections (using the Static Sheen Test) and oil and grease levels in this Region X study. The data show that all well treatment, workover, or completion fluids did not exhibit a sheen, but oil and grease levels ranged from 0.1 to 1,420 mg/l.

Well treatment, completion, and workover fluids consist of acids, solvents, additives, polymers, or other low solids fluids. They are separate and distinct from drilling fluids. Oil and other organic constituents, which either are used in or surface with the well treatment, completion, or workover fluids, are the primary pollutants of concern.

E. Sanitary and Domestic Wastes

No additional data have been obtained on sanitary and domestic wastes since 1985.

F. Other Minor Wastes

In addition to those specific wastes for which effluent limitations are proposed, offshore exploration and production facilities discharge other wastewaters. Although believed to be minor, these wastes were nonetheless investigated. No control of these other wastes is being proposed by this notice, since these types of discharges from existing operations currently are being controlled by BPJ limits in NPDES permits. These sources are categorized into 15 "minor wastes" and are listed as follows:

(1) Desalinization unit discharge—wastewater associated with the process of creating fresh water from seawater.

(2) Blow-out preventer fluid—fluid used to actuate the hydraulic equipment on the blowout preventer.

(3) Laboratory wastes from drains.

(4) Uncontaminated ballast/bilge water (with oil and grease less than 30 mg/l)—seawater added or removed to maintain proper draft.

(5) Drilling fluid, drill cuttings, and cement at the sea floor that result from marine riser disconnect and well abandonment and plugging.

(6) Uncontaminated seawater including fire control and utility lift pumps excess water, excess seawater from pressure maintenance, water used in training and testing of fire protection personnel, pressure test water, and non-contact cooling water.

(7) Boiler blowdown—discharge from boilers necessary to minimize solids build-up in the boilers.

(8) Excess cement slurry that results from equipment washdown after a cementing operation.

(9) Diatomaceous earth filter media that are used to filter seawater or other authorized completion fluids.

(10) Waste from painting operations such as sandblast sand, paint chips, and paint spray.

(11) Uncontaminated fresh water such as air conditioning condensate and potable water.

(12) Material that may accidentally discharge during bulk transfer, such as cement materials, and drilling materials such as barite.

(13) Water flooding discharges—discharges associated with the treatment of seawater prior to its injection into a hydrocarbon-bearing formation to improve the flow of hydrocarbons from production wells. These discharges include strainer and filter backwash water, and treated water in excess of that required for injection.

(14) Test fluids—the discharge that would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content.

(15) Source Water—Formation water used for water flooding (excess may be discharged).

Many of these wastes are low in volume and/or are infrequently discharged. In addition, the constituents in these wastes are mostly the same as those found in seawater or are inert material. Wastes containing the same constituents as the seawater include: Desalination unit discharge, uncontaminated ballast water, uncontaminated bilge water, and uncontaminated sea water. Minor waste sources that contain mostly inert material include source water and sand from enhanced recovery operations, boiler blowdown, and uncontaminated fresh water. The other minor wastes contain some degree of contaminants, but they are difficult to contain (such as waste from chipping, sanding, and painting operations, accidental releases during bulk transfer operations, and blow out preventer fluid), or their discharges are infrequent and expected to pose minor environmental impact (such as washdown after cementing operations; diatomaceous earth filter media from washing of filtration unit; and drilling fluids, cuttings, and cement at the sea floor resulting from marine riser disconnect and well abandonment and plugging).

The laboratory waste contains material used for sample analysis and the material being analyzed. The volume of this waste stream is relatively low and is not expected to pose significant environmental problems. However, freon may be present in laboratory waste. With the high volatility of freon, these wastes are not expected to remain in aqueous state for very long and are, therefore, not expected to be present in significant quantity. The Agency is discouraging the discharge of all chlorofluorocarbons, including foam, to the air or water media, and is proceeding under separate rulemaking with the identification and approval of alternate extraction solvents other than freon for the oil and grease analytical method.

IX. Parameters Selected for Regulation

A. Free Oil

A change in the test method of compliance for free oil was proposed in 1985. The proposal involved changing from a visual inspection after discharge to a "static sheen" test performed prior to discharge. The static sheen test would apply to certain options prohibiting the discharge of free oil. Affected waste streams are deck drainage, drilling fluids, drill cuttings, produced sand, and well treatment completion and workover fluids.

Based on comments received that the proposed test gave erroneous results, a modified test was also evaluated. Differences between the proposed test and the modified static sheen test are described in section VII. Below is a discussion of the reasons that the static sheen test was proposed in 1985.

Prior to the 1985 proposal, the compliance monitoring procedure required by BPT regulations was a visual inspection of the receiving water after discharge. However, since the intent of the limitation is to prohibit discharges containing free oil that will cause a sheen, the method of determining compliance should examine oil contamination prior to discharge. Also, concerns have been raised that the intent of the existing definition of "no discharge of free oil" may be violated too easily for the limitation to be effective. Violations which may result from intentional or unintentional actions include the use of emulsifiers or surfactants, discharges that occur under poor visibility conditions (i.e., at night or during stormy weather), and discharges into heavy seas, which are common on the outer continental shelf. Additionally, concerns have been expressed over the utility of the visual observation of the receiving water compliance monitoring procedure for certain discharges during ice conditions common in Alaskan operations. These include above-ice discharges where the receiving water would be covered with broken or solid ice, and below-ice discharges where the effluent stream would be obscured.

To address these monitoring problems, the Agency developed the static sheen test as an alternative compliance test. The alternative test continues the visual observation for sheen but provides for inspection before discharge using laboratory procedures. The test is conducted by adding samples of the effluent stream into a container in which the sample is mechanically mixed with a specific proportion of either seawater or fresh water, allowed to stand for a designated period of time, and then viewed for a sheen under controlled conditions.

Since the intent of a "no discharge of free oil" limitation is to prevent the occurrence of a sheen on the receiving water, the new test method will prevent the discharge of fluids that will cause such a sheen.

As proposed in 1985, free oil is being regulated under BAT and NSPS as an "indicator" pollutant for the control of priority pollutants (see section IX.B below). Free oil is being regulated under BCT as well. Although it is not a conventional pollutant, as is oil and grease, EPA is limiting free oil as a surrogate for oil and grease under BCT in recognition of its previous use under BPT to limit the creation of a visible sheen.

B. Diesel Oil

In 1985, EPA proposed a prohibition on the discharge of diesel oil in several of its regulatory options for drilling fluids and cuttings. EPA is not changing that proposal in today's notice. As proposed in 1985 (and included here for informational purposes), the prohibitions on free oil and diesel oil are intended to limit the oil content in drilling fluids and cuttings waste streams and thereby control the discharge of the priority toxics as well as conventional and nonconventional pollutants present in those oils. The prohibition on the discharge of oil is included in this option as an "indicator" of the toxic pollutants. The discharge of diesel oil, either as a component in an oil-based drilling fluid or as an additive to a water-based drilling fluid would be prohibited. An indicator pollutant is one that, by its regulation, will provide control on discharges of one or more toxic pollutants. Diesel oil would be regulated as a nonconventional pollutant and an indicator because it contains toxic organic pollutants such as benzene, toluene, ethylbenzene, naphthalene, and phenanthrene. The Agency's primary concern is controlling the priority pollutants in the oils, although these prohibitions also will serve to control nonconventional and conventional pollutants. The Agency selected the "indicator" approach as an alternative to establishing limitations on each of the specific toxic and nonconventional pollutants present in these oil-contaminated waste streams. The sampling and analysis data demonstrate that when the amount of oil is reduced in drilling fluid, the concentrations of priority pollutants and the overall toxicity of the fluids generally are reduced. The Agency has determined that the proposed controls on diesel oil will provide BAT-level control of the priority toxic and nonconventional pollutants present in drilling fluids. This method of toxic regulation is necessary because it is not economically or technical feasible to establish specific BAT limitations upon each of the toxic pollutants present in the drilling fluids. The technology basis for this limitation is product substitution.

C. Toxicity

In 1985, EPA proposed a limitation on toxicity as part of the regulatory options for drilling fluids and drill cuttings. EPA is not changing that proposal in this

rulemaking. The limitation is set at 30,000 ppm and is based on the toxicity of the most toxic of eight generic drilling fluids in use at the time of the 1985 proposal. The toxicity limit is expressed as the concentration of the suspended particulate phase (SPP) of the drilling fluid that is lethal to 50 percent of *Mysidopsis bahia* exposed to that concentration of the SPP, i.e., the LC50 of the discharge.

The purpose of the LC50 toxicity limitation on the discharge of drilling fluids is to control the toxic constituents in drilling fluid discharges. While the limitations on free oil and diesel oil could significantly reduce the toxic pollutants present in drilling fluids, other additives, such as mineral oil or some of the numerous specialty additives, could greatly increase the toxicity of the drilling fluid, especially water-based drilling fluids. The toxicity is, in part, caused by the presence and concentration of priority pollutants. Thus, as proposed in 1985, the toxicity limitation will control toxic pollutants and effluent toxicity.

D. Cadmium and Mercury

The trace metals of concern in drilling fluids include cadmium, mercury, barium, zinc, lead, chromium, copper, and arsenic. One of the sources of barium and some of the other trace metals in drilling fluids is barite. Barite is mined from either bedded or vein deposits. Research has shown that the bedded deposits of barite are characterized by substantially lower concentrations of heavy metal contaminants such as cadmium and mercury (Kramer, J.R. et al, "Occurrence and Solubility of Trace Metals in Barite for Ocean Drilling Operations," Symposium—Research on Environmental Fate and Effects of Drilling Fluids and Cuttings, Sponsored by API, January 1980).

Barite may be contaminated with several metals of concern, including mercury, cadmium, zinc, lead, arsenic, as well as other substances. The Agency believes that by limiting the levels of cadmium and mercury in either the stock barite or the drilling fluid system discharge, concentrations of other related metals would be limited as well. EPA is proposing to regulate these two toxic metals in order to control the metals content of the barite component of any drilling fluid discharges. Cadmium and mercury are "toxic pollutants" subject to BAT and NSPS limitations.

The 1985 proposal included proposed effluent limitations of 1 mg/kg each of cadmium and mercury in the discharge of the whole drilling fluid on a dry weight basis. The proposed limitations would be maximum values. These effluent limitations are also included in some of the regulatory options proposed today.

In the 1988 notice, two alternative limitations for cadmium and mercury were presented. One established limits at 2.5 mg/kg cadmium and 1.5 mg/kg mercury in the whole drilling fluid. This was developed in response to comments regarding the cost and availability of barite "clean" enough to meet the 1 mg/kg cadmium and 1 mg/kg mercury limitations. The 2.5/1.5 mg/kg cadmium/mercury limitations were suggested based on the use of barite containing no more than 5 mg/kg cadmium and 3 mg/kg mercury which, commenters declared, was available in adequate supply. The 2.5 mg/kg cadmium and 1.5 mg/kg mercury limitations were derived using an assumption that barite is diluted by 50 percent or more in the drilling fluid. In the 1988 notice, the Agency also presented the option of limiting cadmium and mercury at 5 mg/kg and 3 mg/kg, respectively, in the stock barite instead of setting an effluent limitation in the drilling fluid.

The limitations for cadmium and mercury of 2.5 and 1.5 mg/kg, respectively, in the drilling fluid are no longer considered appropriate because insufficient support exists for the assumption that a 50 percent dilution occurs once barite is mixed with drilling fluids.

Based on additional information since the 1988 notice, today's proposal further presents three alternatives for cadmium and mercury limitations: (1) Maintaining the 1985 proposed discharge limitations of 1 mg/kg cadmium and 1 mg/kg mercury each in the drilling fluid, (2) limitations based on barite composition of 5.0 mg/kg cadmium and 3.0 mg/kg mercury as included in the 1988 notice, and (3) limitations of 3.0 mg/kg of cadmium and 1.0 mg/kg of mercury based on stock barite composition. All of these limitations would be a maximum (no single sample to exceed) value.

Recent information to evaluate EPA's current alternatives for metals limitations comes from data compiled during a joint effort by EPA and API. The current version of this database, "API—USEPA Metals Database for Metals Content in Drilling Muds—Drill Cuttings/Formations—Barites—Sediments," is from April 1990. This database contains data sets, from all studies currently known to EPA and API, on the metals content of drilling fluids and drill cuttings.

Analysis of a select set of data sources from this data base, considered appropriate for the following statistical analyses, was performed to determine compliance rates with each set of limitations. All of the data sets show passing rates to some degree for all limitation options. The limitations for 1 mg/kg cadmium and 1 mg/kg mercury in the drilling fluids are the most stringent; however, 100 percent compliance was achieved by the four samples measured in EPA's Region IX. This is probably due to the fact that some of the recent Region IX individual permits have limitations of 2 mg/kg cadmium and 1 mg/kg mercury in the barite composition. Region X, which includes in its general permits limitations of 3/1 mg/kg cadmium and mercury, respectively, in barite composition, shows a 67 percent compliance rate for 1/1 mg/kg cadmium/mercury limit in drilling fluids. Data from Gulf of Mexico facilities show a lower percentage of compliance; however, there are currently no metals limitations in the Region VI general permit. Region VI is preparing limitations for proposal in response to the decision of the United States Court of Appeals for the Ninth Circuit in *NRDC* v. *EPA*, 863 F.2d 1420, 1432–33 (9th Cir. 1988). For comparative purposes, EPA is evaluating in its regulatory options, discussed later in section XII, the most stringent cadmium and mercury limitations (1/1 mg/kg in the fluids) and the least stringent option (the 5/3 mg/kg cadmium and mercury limitations in the barite composition).

In response to comments regarding concern over availability of barite supplies, EPA investigated the adequacy of available foreign and domestic supplies of barite that meet the proposed cadmium and mercury limitations of either 1/1 mg/kg in the fluids or 5/3 mg/kg in barite. This investigation compared foreign and domestic barite supplies, with compositions adequate to meet the proposed limitation, to the projected industrial demand. The conclusion was that supplies are adequate to meet the needs of offshore drilling operations if either limitation were in place.

In addition to noncompliance being caused by the use of barite with high cadmium and mercury content, commenters stated that the presence of cadmium in the formation itself could cause noncompliance with limitations applied at the drilling waste discharge point. In particular, an analysis of API's 15 Rig Study (discussed later in section XIII.A.2) estimates cadmium formation contribution to drilling fluids as high as 79 percent. However, this report is based on certain assumptions for which EPA is also requesting comment. If,

however, the metals limitations could not be met for this or any other reason, then barging would be necessary for land disposal.

The proposed BAT and NSPS limitations on cadmium and mercury would also serve to control the concentration of other toxic metals in the drilling waste discharges. The same metals data base study referenced above concluded that concentrations of other toxic metals are positively correlated with concentrations of cadmium and mercury. This information supports EPA's proposal in 1985 to consider limiting mercury and cadmium in order to control other toxic metals.

E. Oil Content

The 1985 proposal included an option for regulating oil content for drill cuttings. However, this option was rejected in 1985 because EPA believed that establishing an oil content limitation on drill cuttings was redundant since the prohibition on the discharge of free oil appeared to be a more stringent limitation. Data on the performance of cuttings washer technologies showed residual oil content levels near 10 percent by weight. Data on the visual sheen test (used then for the free oil discharge limitation) showed compliance with this limitation required levels of oil content to be reduced to less than 1 percent.

The Agency continued to study technologies for controlling the oil content of drilling wastes, and presented its findings in the 1988 notice. This study was expanded to explore the applicability of an oil content limit to drilling fluids as well as to drill cuttings. A number of conclusions evolved from this study which EPA reiterates below.

1. Drilling Fluids

An oil content limit for drilling fluids based on the technologies studied is not appropriate because the volume of fluids at the end of the drilling that would require treatment is much greater than the technologies evaluated were capable of handling (with regard to treatment rate). In addition, space is insufficient on platforms to accommodate these kinds of drilling volumes of fluids that must be stored in preparation for processing at rates acceptable by the technologies.

2. Drill Cuttings

The 1988 notice discussed technologies for controlling the oil content of drilling wastes with respect to both oil-based and water-based systems. Oil content of untreated drill cuttings associated with oil-based drilling fluids was estimated at 20 percent oil by weight. Untreated drill cuttings from water-based drilling fluids to which oil had been added for spotting or lubricity were estimated to contain 1 percent oil by weight. Data on performance of thermal distillation showed that oil content for drill cuttings (associated with either water- or oil-based fluids) could be reduced to 1 percent by weight. For solvent extraction, reductions were attained to 0.3 percent by weight. Thus, it was stated that drill cuttings from water-based systems to which oil had been added for spotting or lubricity would not require treatment to comply with an oil content limit of 1 percent by weight.

EPA continues to believe that reductions even to 1 percent in water-based systems are redundant. The free oil limitation already results in compliance to this level. In addition, the limitation on diesel oil and toxicity adequately covers toxic pollutants associated with oil content of drilling wastes. Reductions of another 0.7 percent exhibited by the solvent extraction technology do not compensate for the disadvantages in using this system. As discussed in the 1988 notice, the potential for losses of chlorofluorocarbon-type solvents to the atmosphere are a major concern for solvent extraction.

In addition, EPA is not in the position to develop limitations based on the thermal distillation technologies because this technology has not been demonstrated either by full-scale or pilot testing to be capable of operating at offshore facilities and due to safety concerns regarding fire hazards. EPA is not prohibiting the use of these technologies, as it remains an operator's decision to choose a preferred compliance method. However, federally applicable limitations based on these technologies are not appropriate at this time.

F. Oil and Grease

The most obvious pollutant of concern for produced waters is oil and grease. This pollutant is already regulated under BPT. EPA is proposing certain options that will either equal or be more stringent than the BPT oil and grease limits for produced water. Oil and grease is a conventional pollutant subject to BCT limitations as well as NSPS. EPA is also limiting oil and grease under BAT as an indicator pollutant for certain toxic and metal priority pollutants as well as nonconventional pollutants.

EPA believes it is appropriate to regulate oil and grease under BAT as an indicator for other organic and metal toxic pollutant removals because the technologies used to remove oil and grease also remove additional pollutants of concern. As discussed in section X, membrane and granular media filtration along with chemical polymer addition form the basis for certain regulatory options. Granular media filtration, while it primarily removes suspended insoluble matter, does achieve a degree of organic and metal removal as well. Membrane filtration removes considerably more of the soluble hydrocarbon constituents.

Analysis of data from the three-facility study on performance of granular media filtration showed significant reductions for total suspended solids and oil and grease. Significant reductions in the metals aluminum, calcium, iron, magnesium, and manganese were also achieved. Additionally, significant reductions were achieved in 2-propanone. The Agency believes other compounds would show significant reductions if a larger number of samples had been collected.

G. Residual Chlorine and Floating Solids

NSPS limitations on residual chlorine and floating solids were proposed in 1985 for sanitary wastes as being equal to BPT. The presence of residual chlorine gives positive indication that fecal coliform does not exist. BCT and NSPS were proposed in 1985 for domestic wastes as prohibiting the discharge of floating solids. Today's notice does not change that 1985 proposal. No BAT limits were proposed for these parameters because no toxic or nonconventional pollutants of concern were identified in sanitary or domestic wastes.

H. Foam

The general permit for the Gulf of Mexico prohibits the discharge of visible foam in other than trace amounts for all wastes. Limitations on foam are intended to control discharges that include detergents. EPA believes this is a particularly appropriate pollutant to limit for domestic wastes. The sources of domestic wastes include laundries, galleys, showers, safety shower and eyewash stations, hand wash stations, and fish cleaning stations. Detergents are an inherent nature of this waste. Foam is a nonconventional pollutant proposed for NSPS.

X. Control and Treatment Technologies

A. Current Practice

The BPT regulations established for the offshore subcategory are focused primarily on the control of free oil and the oil and grease content of waste streams that are discharged to the ocean. The information concerning current practice, and discussed in this section, was obtained both for the 1979 rulemaking and the 1985 proposal. The only change in the data obtained for these previous efforts and discussed at this time is an updated statistical analysis on sample results for BPT produced water effluents.

1. Drilling Fluids

The current BPT regulation for drilling fluids prohibits the discharge of free oil. In general, water-based drilling fluids are discharged directly to the ocean, because they do not cause a sheen unless the fluids have been contaminated with oil. In the case of water-based drilling fluids to which oil has been added for spotting or lubricity, current BPT regulations prohibit their discharge if they cause a sheen. Compliance with the prohibition of free oil is achieved by transportation of the spent fluids to shore for land disposal, or treatment to recover the oil and land disposal of the residual solids. When oil-based drilling fluids are used offshore, the fluids are not discharged, but are returned to shore for reconditioning and reuse or disposal.

In addition to the requirement for no discharge of free oil, current NPDES permits require compliance with toxicity limits and prohibit the discharge of diesel oil. Failure, or anticipated failure, of the drilling fluid system to meet the toxicity limit or diesel oil discharge prohibition also causes the spent fluids to be returned to shore for disposal.

2. Drill Cuttings

The cuttings are segregated from the drilling fluid with a shale shaker and associated separation equipment. Existing practices for drill cuttings based on the same BPT requirement as drilling fluids (i.e., no free oil) and current permits for the handling of drill cuttings include: (1) On-site disposal of drill cuttings with an oil content that does not cause a sheen on the receiving water; (2) washing of drill cuttings that contain oil at a level that would cause a sheen so that they may be discharged on-site to the receiving water; and (3) transportation to shore for treatment and/or land disposal.

3. Produced Water

Existing technologies for the on-site removal of oil and grease from produced water discharges include gas flotation, gravity separation, chemical addition to assist oil-water separation, and, less often, parallel plate coalescers and loose or fibrous media filtration. On-site disposal methods from offshore production platforms include free fall discharge to the ocean, discharge below the water surface, and, at times, reinjection into a subsurface formation. As an alternative, some production sites transport produced fluids by pipeline to shore facilities for oil-water separation and disposal.

The removal of priority pollutants in BPT treatment systems is minimal. While the sampling data indicated quantifiable reductions of naphthalene, lead, and ethylbenzene by the BPT treatment (i.e., by oil-water separator technology), the presence of significant levels of priority pollutants (e.g., naphthalene and ethylbenzene) in all effluent samples demonstrates the limitations of such treatment technologies.

Reinjection is a disposal technique for injection of produced water into a subsurface formation. When reinjection is used for disposal purposes only, it is possible that the receiving formation may not be the same formation from which produced fluids were extracted. Secondary recovery or pressure maintenance (water flooding) is a practice under which produced water (or other fluids) is injected into a producing formation to enhance recovery of hydrocarbons. Reinjection of produced water into a producing formation may serve both purposes, i.e., disposal of produced water and enhanced recovery of hydrocarbons.

Treatment of produced water (or other fluids) prior to injection may be necessary, and such treatment may include oil-water separation and/or filtration to minimize plugging of the receiving formation. (Oil-water separation also serves for recovery of oil as a commercial product.) Also, biocides, corrosion inhibitors and sequestering agents (or ionic bonding agents) may be added to the water to reduce or prevent scaling and corrosion of the injection equipment. The type and amount of treatment depends primarily on the properties of the receiving formation and characteristics of the fluids being injected.

The concentration of toxic pollutants in BPT treated produced waters was investigated during an extensive sampling and analysis effort performed at 30 platforms prior to the 1985 proposal. Selected conventional and nonconventional pollutants were also analyzed.

EPA updated the statistical analysis of results from the 30 platform study in 1989 in order to correct inadequacies in the consideration of detection limits, duplicate samples, and sample exclusion. The results of the analysis do not affect this or previously proposed regulations. Data simply are recalculated in an effort to more accurately estimate BPT effluent pollutant loadings. The results of the analysis show flow-weighted oil and grease effluents averaging 89.8 mg/l. The priority organics most often present in significant amounts were benzene, bis (2-ethylhexyl) phthalate, ethylbenzene, naphthalene, phenol, toluene, and 2,4-dimethylphenol. Priority metals present were cadmium, copper, lead, nickel, silver, and zinc.

4. Deck Drainage

The current BPT requirement for deck drainage prohibits the discharge of free oil (i.e., sheen). Under current practices, deck drainage is either collected and treated separately for oil removal by gravity separation or is handled by the produced water treatment system before discharge.

A commonly used treatment technology for removal of free oil from deck drainage is oil-water separation. This is typically a gravity separation process, whereby the waste stream is collected and diverted to a tank or other vessel. Adequate volume is provided in the vessel to provide sufficient detention time for the free oil and water to separate. The oil layer is then removed by decanting or skimming and returned to the production process, and the water layer drawn off for discharge. The majority of platforms in the Gulf of Mexico and offshore California use gravity separation technology on the platform for treatment of deck drainage. Some California platforms pipe deck drainage along with produced water to shore for treatment. Alaska operations typically treat deck drainage wastes on the platform.

Deck drainage treatment systems and systems that handle both produced water and deck drainage operate much more efficiently when good housekeeping and maintenance practices are employed. These include separation of crankcase oils from the deck drainage collection system, minimization of spills, discriminate use of detergents, and preventing drilling fluids from entering the deck drainage collection system.

5. Produced Sand

Produced sand wastes are either transported to shore for treatment and/or disposal or are treated by water and/or solvent washes for oil removal to prevent the discharge of free oil and discharged to the ocean.

6. Well Treatment Fluids

The current BPT requirement for well treatment fluids prohibits the discharge of free oil (i.e., sheen). Well treatment fluids are used to enhance production from oil and gas bearing zones. These fluids are injected into the producing formation as a slug, and some of the fluids remain in the hole. Under current practices, well treatment fluids that resurface are not treated as discrete sources but are considered to be mixed with the oil, gas, and water produced from the formation. Therefore, separate processing equipment is not provided for well treatment fluids. The spent acid, or other treatment fluid, moves through the normal processing system. After separation, well treatment fluids may end up with the oil, gas, or water phase depending upon the type of fluid. For instance, solvents such as xylene or toluene will normally become part of the oil stream while nitrogen used as a displacement fluid will separate with the gas, and spent acid will be discharged with the produced water. Minor volumes of well treatment fluids may also be disposed of through the deck drainage system as a result of leakage and washdown operations.

Normally all of the well treatment fluids brought to the location are utilized. However, occasionally a portion of the treatment is not used. If this occurs, the service company supplying the fluids usually retains it for reuse or disposal.

7. Completion and Workover Fluids

Completion and workover fluids are generally low solids fluids used to provide hydrostatic control and/or prevent formation damage. Usually, these fluids are handled by processing through the normal production system, capturing for reuse or disposal, or direct discharge into the ocean. This decision is dependent upon the type of fluid, its cost, and the facilities available.

8. Sanitary Wastes

Sanitary wastes from offshore facilities are usually treated at the source by physical/chemical systems. Facilities that are manned continuously by ten or more people are required by current BPT regulations to maintain a residual chlorine concentration in the sanitary waste discharge at a minimum of 1 mg/l for disinfection purposes and to maintain the residual chlorine as close to this level as possible. This chlorine residual is achieved by introducing chlorine in flow dependent amounts. Chlorine is either supplied from commercial sources or may be electrocatalytically generated from seawater. This chlorine requirement is based upon the use of U.S. Coast Guard-approved marine sanitation devices (described in 40 CFR part 140) and is required by the BPT regulations.

9. Domestic Wastes

Current permits require domestic wastes at all facilities to be free of floating solids. This is accomplished by the use of shredders or screening devices. In addition, a general permit controls the discharge of foam.

B. Additional Technologies Considered

The Agency has investigated additional control and treatment technologies in the formulation of today's proposed regulations. Some of these technologies were considered in the 1985 proposal and some in the 1988 notice. Additional technologies, particularly for produced waters, have been evaluated since the 1988 notice. These technologies, as well as those previously considered technologies no longer deemed appropriate for use in this regulation, are discussed below.

1. Drilling Fluids

a. Product Substitution. Product substitution was one of three technology bases considered for drilling fluids and drill cuttings in 1985. Product substitution is a method to achieve the discharge limitations on free oil, diesel oil, cadmium, mercury, and toxicity. Some typical methods for compliance with these limitations are: (1) Use of water-based drilling fluids; (2) use of product substitutes such as low toxicity mineral oils for spotting and lubricity purposes; (3) use of low-toxicity specialty additives, and (4) use of barite with low toxic metals content. EPA's preferred option for control of drilling fluids in the 1985 proposal was based on product substitution. Comments expressed concern over the diesel oil discharge prohibition and the fact that it would force the use of mineral oil.

Studies performed by EPA and industry (53 FR 41356; 51 FR 29600; 52 FR 3646) support EPA's conclusions that: (1) Mineral oil is in common use by operators in the Gulf of Mexico and Alaska, as well as internationally; (2) mineral oil is an available alternative to the use of diesel oil; and (3) success rates (for spotting purposes) comparable to those with diesel oil can be achieved with mineral oil.

Other comments submitted after the 1985 proposal suggested allowing the discharge of diesel oil when it is used as a spotting fluid. In response to this, EPA also conducted a study to determine the recovery capability of diesel oil when using it as a spotting fluid. This study, known as the "Diesel Pill Monitoring Program" (DPMP) and described in the 1988 notice, supported EPA's conclusions that pill recovery techniques implemented during the program do not result in recovery of sufficient amounts of the diesel pill and reduction of drilling fluids and cuttings toxicity to acceptable levels for discharge of bulk systems. Systems for approximately one-half of all wells in the DPMP contained residual diesel levels between 1–5 percent by weight after introduction of a diesel pill and subsequent pill recovery efforts. In addition, systems for approximately 80 percent of the DPMP wells failed the 30,000 ppm LC50 toxicity level after pill recovery. Almost half that number (40 percent of the total) of the DPMP wells had water-based systems that contained residual diesel following pill recovery and showed LC50 values of less than (more toxic than) 5,000 ppm.

For the reasons discussed above, the Agency believes that its proposed prohibition on the discharge of drilling fluid and drill cuttings which have been contaminated with diesel oil is appropriate for the BAT and NSPS levels of control for waterbased drilling fluids. The pollutant "diesel oil" is being used as an indicator of the listed toxic pollutants present in diesel oil. The technology basis for the prohibition on the discharge of diesel oil in drilling fluids and drill cuttings is substitution of mineral oil for diesel oil in the fluid system and for lubricity and spotting purposes, and the barging and land treatment and/or disposal of drilling fluids and cuttings which fail the sheen test or toxicity limits. Such a prohibition on the discharge of diesel oil contaminated drilling fluids and drill cuttings was upheld by the United States Court of Appeals for the Fifth Circuit, *American Petroleum Institute* v. *EPA*, 858 F.2d 261, 263–66, clarified and rehearing denied, 864 F.2d 1156 (5th Cir. 1988) (Bering and Beaufort Seas general permits).

b. Zero Discharge. EPA also considered zero discharge of drilling fluids and drill cuttings in 1985. This option is based upon the transport of spent drilling wastes to shore for recovery, reconditioning for reuse, or land disposal. EPA rejected this option in 1985 because the costs of barging and land disposal were too high. The availability of landfill sites was also a concern.

Since the 1985 proposal, EPA has re-evaluated this option and determined that barging drilling wastes is technically and economically feasible. In addition, in response to both industry and Agency concerns, EPA has studied the availability of land disposal capacity ("Onshore Disposal of Offshore Drilling Waste—Capacity and Cost of Onshore Disposal Facilities," ERC Environmental and Energy Services Co. for U.S. EPA, January 1991). The study concluded that enough land is projected to be available to support the disposal requirements for this option. Yet, while available disposal sites exist, EPA has concerns over the use of large land areas for the disposal of drilling wastes. In addition, the increased barging and handling operations, both on platforms and at dock facilities, require a significant increase in fuel use and result in large amounts of air pollutant emissions. Thus, this option is considered in today's proposal for all structures, and then, to accommodate the non-water quality environmental impact concerns, for shallow water structures only and for structures located 4 miles or less from shore.

c. Clearinghouse Approach. In the 1985 proposal, one of the options proposed for limiting the discharge of muds was referred to as the "Clearinghouse/Toxicity Approach" (50 FR 34592). The clearinghouse concept is based on the fact that operationally satisfactory drilling fluids can be formulated with constituents that are less environmentally harmful than many that are available. The generic drilling fluid concept was developed in 1978 when the Agency instituted a joint testing program for various formulations for operations in the Atlantic Ocean lease sale areas. EPA Region II and the Offshore Operators Committee (OOC) conducted the Mid-Atlantic Bioassay Program which identified eight water-based drilling fluid types (generic fluids) that encompassed virtually all types of drilling fluids in use at the time. The generic fluids were then bioassayed once as an alternative to having the participating operators perform bioassay and chemical tests every time a discharge occurred. The selected generic fluids demonstrated relatively low toxicity in the referenced bioassay program. Operators were then allowed to discharge the generic fluid types, including certain approved specialty additives ("additives"), without conducting additional testing (50 FR 34603). Other EPA Regions used the results from the generic fluids testing in permits issued for Outer Continental Shelf (OCS) lease areas.

In the 1985 proposal, Option 2—Clearinghouse Approach discussed the establishment of a national clearinghouse to be administered by EPA. Under this option, the Agency would serve as repository for all toxicity and related physical and chemical characteristics of base drilling fluid formulations and additives. The information would be used by the public and operators for use in selecting fluid/additive formulations that would likely comply with the established toxicity regulation (50 FR 34608).

EPA Region X later issued several NPDES general permits (Norton Sound (50 FR 23578, June 4, 1985), Cook Inlet/Gulf of Alaska (51 FR 35460, October 3, 1986), Chukchi Sea and Beaufort Sea II (53 FR 37846, September 28, 1988)) that used the generic fluids concept and authorized the discharge of certain additives without bioassay testing in the discharged fluids upon discharge. In all of these permits, Region X listed generic fluids and additives authorized without further bioassay requirements in a table in the permit. However, operators required specialty additives that were not authorized in the Region X permit. Lacking any method to precisely determine the cumulative toxicity of generic fluids discharge with additives not in the permits, Region X applied the concept of additivity to estimate the cumulative toxicity of fluids and additives.

In the 1985 proposal, the Agency rejected the Clearinghouse option based on the time required to develop such a program, and the complexity of managing such a program on a national level (50 FR 34592). Although the Agency has received many comments in favor of a clearinghouse approach to fluids/additive discharge authorization, several important reasons remain that support rejection of this regulatory option.

First, the Agency's NPDES permitting program (sec. 402 of the Act) is based on point of discharge ("end-of-pipe") accountability. While bioassays of drilling wastes to be disposed of are an established measure of compliance with "end-of-pipe" toxicity limits, a clearinghouse approach would require the cumulative toxicity of the fluids and additives to be projected in advance. These advance estimates would have to be performed for each discharge of drilling fluids by hundreds of offshore wells annually. Whether EPA performs the estimates or industry submits them for Agency review, the administration of such a program would be complex and would place a huge administrative burden on the Agency. Compounding this, EPA would be required to maintain a data base with up-to-date information on fluids and additives, provide resources to track the data, and respond to challenges to clearinghouse determinations.

Although it has been demonstrated that the clearinghouse system can be effective on a small scale, the Agency has reservations regarding a nationwide program. The success of the Region X program is due, in large part, to the relatively small number of wells drilled in the past and estimated for the future. (The projected number of new drillings for the Region X offshore area is 12 per year in the unconstrained scenario). A national clearinghouse program involving almost 1,000 new drillings per year and requiring maintenance and updating of a database containing information on numerous additives and fluids combinations would be much more difficult to manage and would place an enormous burden on the Agency.

For these reasons, EPA continues to reject the clearinghouse option as a component of nationally applicable regulations; however, this would not necessarily preclude the use of a clearinghouse approach in permits as a means of implementing toxicity limits in these regulations, if appropriate.

d. Other technologies. Thermal distillation and solvent extraction were discussed both in the 1985 proposal, the 1988 notice and a proposed general demonstration permit issued by Region VI on October 18, 1989 (54 FR 42335). The operation of these technologies results in a reduction of oil content in drilling wastes. Thus, the regulated parameter associated with these technologies would be oil content. EPA rejected these technologies as a basis for regulatory control on the general premise that limitations on the other parameters, diesel oil, free oil, and toxicity are sufficient to reduce toxics from drilling wastes. In addition, thermal distillation is no longer being considered as an option because it has not been adequately demonstrated at the present time as a viable technology for use on an offshore platform. Solvent extraction is not considered because the Agency remains concerned (as stated in the 1988 notice) over the potential losses of chlorofluorocarbon-type solvents from these processes to the atmosphere.

Incineration was discussed in the 1985 proposal but rejected due to equipment size, energy costs, and possible fire hazards associated with this process. Some of these technologies may be applicable for onshore treatment of drilling fluids and cuttings that are barged and transported to central locations for reconditioning, treatment and/or disposal.

2. Drill Cuttings

EPA is considering requirements for drill cuttings based on the same treatment/disposal methods described in the previous section on drilling fluids. Those methods involve the use of certain types of drilling fluids which would be mixed with the drill cuttings extracted from the drilled hole (bore hole). The use of water-based drilling fluids, mineral oil instead of diesel oil for spotting or lubricity, barite with low cadmium and mercury content, or on-land disposal are the basis for meeting the proposed requirements. The same technologies considered in the 1985 proposal and 1986 notice, but rejected for drilling fluids, were also rejected for cuttings.

3. Produced Water

EPA evaluated each of the following treatment technologies in addition to the control technology. These technologies were considered for implementation at offshore facilities and onshore where produced water is piped to shore for treatment.

a. Improved Performance of BPT Technology. The 1985 proposal evaluated the costs and feasibility of improved performance of existing BPT treatment technologies to determine whether more stringent effluent limitations for oil and grease would be appropriate. This approach would be based on improved operation and maintenance of existing BPT treatment equipment (e.g., gas flotation, coalescers, gravity oil separation), more operator attention to treatment system operation, and possibly re-sizing of certain treatment system components for better treatment efficiency.

When discussed in the 1985 proposal, statistical analysis of effluent data from facilities sampled during the Agency's 30-platform survey showed that an oil and grease effluent limitation of 59 mg/l maximum (i.e., no single sample to exceed) could be achieved through improved performance of BPT technology. Problems with the original analysis included lack of documentation for the platforms selected as examples of improved performance for BPT and the treatment of samples split for quality control of lab results as if they were independent samples from the wastewater treatment process.

This re-analysis shows that the appropriate limitations are 38 mg/l as a daily maximum value not to be exceeded in any single daily composite analysis and 27 mg/l as a monthly average value not to be exceeded. A daily composite sample consists of four grab samples taken at different times throughout the day. These potential limitations can be compared to current BPT limitations of 72 mg/l daily maximum and 48 mg/l monthly average. The potential limitations are calculated based on the same number of grab samples per day as current limitations. The data used to determine the potential limitations were obtained at platforms whose selection is documented and where split sample results are averaged prior to capability analysis for the effluent.

The 1985 proposal, in its options selection process, chose this option for all deep water facilities, and for all gas facilities regardless of water depth. This option, although still being considered, is no longer a preferred option for this rulemaking because of the problems identified with the performance evaluation.

b. Filtration. In the 1985 proposal, EPA discussed filtration as both an add-on technology to BPT and as pretreatment for reinjection. The primary purpose of filtration is to remove suspended matter, including insoluble oils, from produced water. Additional removal of soluble pollutants can also be achieved, but it is not as significant as the reduction of conventional pollutants such as suspended solids and oil and grease. The 1985 proposal discussed the granular media technology as an option for treatment of produced waters, but only for BCT and NSPS, since significant reduction in soluble organics or metals was not evident. For NSPS, the proposal included, as an option, limitations for both TSS and oil and grease of 20 mg/l monthly average and 30 mg/l daily maximum. However, this option was rejected in the 1985 proposal.

After the 1985 proposal, EPA continued to evaluate filtration technologies. A granular media filtration study (known as the "three-facility study" and discussed in section VII, Data Gathering) was conducted to acquire additional data on the performance of this technology. In addition, the Agency has been supplied with information on a membrane filtration technology and its application to treating oil and gas wastes, specifically by the use of ceramic membranes to treat produced water. Membrane filtration is more effective in removing constituents of wastewaters that are normally referred to as soluble and are more resistant to physical separation by filters. However, the three facility study showed significant removals of hydrocarbons from granular media filtration as well. Today's notice presents additional filtration performance data, both for granular and membrane filters, upon which regulatory options are based.

Granular media filtration involves the passage of water through a bed of filter media with resulting deposition of solids. The filter media can be single, dual, or multi-media beds. When the ability of the bed to remove suspended solids becomes impaired, cleaning through backwashing is necessary to restore operating head and effluent quality. In many cases, filters are operated in conjunction with chemical polymers which are added to increase removal efficiencies. There are a number of variations in filter design. These include (1) the direction of flow: down-flow, up-flow, or bi-flow; (2) types of filter beds: single, dual, or multi-media; (3) the driving force: gravity or pressure; and (4) the method of flowrate control: constant-rate or variable-declining-rate.

Filtration is widely used for produced water treatment prior to reinjection. The filters are used for the removal of suspended solids and are usually preceded by chemical pretreatment and/or oil removal treatment systems. EPA has investigated this technology, not only as a pretreatment to reinjection but as an add-on system to BPT prior to discharge.

During the three-facility filtration study, influent and effluent samples were taken from three granular media filtration units used as a means of pretreatment prior to reinjection. One of the facilities was an onshore operation in New Mexico, one was an offshore operation off of California, and the third facility was a California coastal production facility (gravel island) which treated and reinjected produced water.

The gravel island facility generated approximately 18,000 barrels per day of produced water to be treated. However, in order that there be sufficient water for reinjection purposes, approximately 5,000 barrels per day of fresh water were added to the produced water before filtration, requiring the filters to handle approximately 24,000 barrels per day. Prior to the addition of fresh water at the filtration step, skim tanks receive all the produced water from the oil field after the initial removal of oils from each group of production facilities. The skim tanks remove additional oil by gravity before treatment. The fresh water is then combined with the produced water along with chemicals consisting of a corrosion inhibitor, a coagulant, and a flocculent aid prior to the filters. These combined waters are pumped to three sand filters. Normally, two filters are operating in an upflow direction while the third either is on standby or backwashing.

Operation of the other two facilities is somewhat similar except that the New Mexico facility does not employ gas flotation, and the offshore facility does not employ chemical addition prior to filtration and subsequent reinjection.

EPA statistically analyzed the data from this study to determine effluent levels achievable from granular-media filtration technology. Data from two of the three facilities were determined to reflect adequate treatment beyond BPT. The third facility had poor performance due to the absence of chemical addition prior to filtration.

Effluent limits for oil and grease, based on granular media filtration, are calculated from concentration data collected during the three facility study. The daily maximum of 29 mg/l is the estimated 99th percentile for daily composite samples. Each daily composite value is the average of chemical analytical results from 12 grab samples taken at two hour intervals throughout the day. The monthly average of 16 mg/l is the estimated 95th percentile for the average of four daily composite samples. For comparison purposes, effluent limitations on the same four grab sample per day basis as current BPT limitations are 32 mg/l as a daily maximum and 17 mg/l as a monthly average.

The use of membrane filters to treat produced water from oil and gas extraction activities is a relatively new application for this process. However, membrane technology has been applied in a number of industries for many years. Ceramic (membrane) filters are used to separate oil, bacteria, solids, and emulsified material from water in several industrial applications, including the dairy, beverage, and pharmaceutical industries. In the case of produced water, the waste stream is first chemically pretreated to produce discrete solids that flocculate a portion of the emulsified oil and suspended solids. The pretreated water is then passed through ceramic filters which consist of multichannel, cylindrical passages in a ceramic block and one or two layers of alumina ceramic material.

As the wastewater passes through the cylindrical passages, a portion of the wastewater moves though the ceramic material to the outside of the filter, leaving a relatively small volume of concentrated retenate behind. The retenate is recycled to the pretreatment process where a blowdown periodically occurs. The membranes may require periodic chemical cleaning to remove foulants, in addition to the operational back-pulsing which is used to continuously clean the passages in the ceramic block. The units are tolerant of high temperatures and pressures, and, due to their compact size, are suited for use on offshore oil and gas platforms.

At the present time, the Agency knows of one membrane unit operating in the Gulf of Mexico and three additional units under construction or in start-up phase in the Gulf of Mexico, Canada and the North Sea. The Agency has been supplied with information concerning the ceramic membrane filtration unit operating in the Gulf of Mexico and data from pilot scale tests conducted in Kansas, Alaska, California, Canada, the Gulf of Mexico, and the North Sea. Table 10 shows the results of some of these tests. The tests show that the performance of ceramic membrane technology is capable of giving a range of effluent values of oil and grease as low as 1 to 9 mg/l even when influent levels are much greater than the current BPT levels.

TABLE 10.—MEMBRANE SEPARATION PERFORMANCE: RANGE OF CONCENTRATION RESULTS BY GEOGRAPHIC LOCATION

Location	Test scale	Character of feed	Oil and grease (mg/l)		Total suspended solids (mg/l)	
			Infl.	Eff.	Infl.	Eff.
North Sea	Bench	Spiked raw produced water	50,000	4	N/A	N/A
Louisiana (onshore)	Pilot	Effluent from separator/chemical addition	186–582	<8.8	N/A	N/A
Gulf of Mexico	Full-scale	Chemical addition/water precipitator	27–108	<5.0	100–290	<1
Gulf of Mexico	Pilot	Chemical addition/water precipitator/parallel plate coalescers	105–574	2–5	73–350	<1

Membrane filtration may be utilized as add-on technology or as replacement equipment for present produced water treatment technologies and shows potential for more efficient removals of the organic compounds than the BPT technology and granular filtration technology.

The effluent limits based on membrane filtration were developed from data with an assumed detection limit (ASTM Gravimetric Method 4281) of 5.0 mg/l. Data obtained from performance tests of the membrane technology are reported lower than this limit (as low as 1 mg/l), but the Agency believes that it is not appropriate for technology based limitations to be set lower than the detection limit specified for the Agency approved oil and grease method. Hence, the Agency will consider 5.0 mg/l to be the long-term average oil and grease concentration. The daily maximum limitation of 13 mg/l and the monthly average of 7 mg/l are calculated using variability factors estimated from the three facility study of granular filtration. The variability factor for the daily maximum limitation is based on the 99th percentile for the distribution of daily oil and grease measurements where four grab samples are composited each day. The variability factor for the monthly average limitation is based on the 95th percentile for the average of four daily composite samples.

c. Reinjection. Reinjection technology for produced water typically consists of injecting it under pressure into subsurface strata or formations. Treatment of the waters prior to injection is usually necessary, and such treatment may include removal of oils and suspended matter by oil separation and filtration technology. The removal of suspended matter for injection is usually performed to prevent pressure build-up and plugging of the receiving formation or strata and/or protect injection pumps from damage. Biocides and corrosion inhibitors are typically added to the waters to minimize corrosion and scaling of injection equipment. Reinjection technology results in no discharge to surface waters, i.e., zero discharge.

Reinjection was considered in the 1985 proposal, both for all structures and for shallow water structures only. EPA, in its preferred option, chose reinjection for all shallow water structures except for gas wells, which were allowed to discharge according to the improved BPT performance option. Gas wells create considerably less discharge

volumes, and it was considered appropriate not to require zero discharge for these wells. Zero discharge was considered appropriate for shallow water wells (and not for deep water wells) because EPA found that shallow water structures can, and do, pipe produced water to shore because onshore treatment and reinjection is less costly than installing and operating individual on-platform systems.

As part of today's proposal, and in response to industry concerns about the feasibility of reinjection due to the formation characteristics, EPA evaluated the implementation of this technology for both existing and new platforms. The study showed that reinjection is generally technologically feasible in all offshore areas, i.e., suitable formations and conditions are available for disposal operations. However, specific locations may experience problems in being able to inject due to formation characteristics or proximity to seismically active areas.

EPA is evaluating options which are based on reinjection of produced water from shallow wells only, or from all producing structures regardless of location or water depth.

d. Other Technologies. In 1985, EPA also considered other technologies such as carbon adsorption and biological treatment for treatment of produced waters. Carbon adsorption was rejected from further investigation because the limited use of this technology does not give sufficient performance data to evaluate competitive adsorption phenomena. Biological treatment was rejected because of the severely difficult problems associated with biologically treating briny waters. Chemical precipitation was also considered but rejected because of operational problems and non-quantifiable reductions of priority pollutant metals levels.

The use of hydro-cyclones to treat produced water was also investigated in 1985. This process uses the kinetic energy of pumped produced water to spin it causing materials of different specific gravity to separate, in this case, oil and water. Theoretically, the higher the pressure that the units are operated, the higher the induced gravity and the greater the oil-water separation and contaminant removal. The units are relatively simple to operate and are suited for use on offshore platforms. Little maintenance is required except for unit or liner replacement due to wear. The removed oil can be combined with the platform oil production. Information on this technology at the present time demonstrated only that it was capable of meeting the BPT limits for oil and grease.

4. Deck Drainage, Domestic and Sanitary Wastes

The treatment technologies evaluated for deck drainage are the same as those for the produced water waste stream. No additional technologies beyond BPT and current permit requirements were considered for domestic and sanitary wastes. (However, control of foam is an additional requirement proposed for domestic wastes.)

5. Produced Sand

In addition to current permit requirements zero discharge has been evaluated for produced sand. This is considered feasible because, in most cases due to the small volumes, produced sands can be stored in barrels and barged onshore for disposal, especially in cases where barging is already necessary for other transport requirements.

6. Well Treatment, Completion and Workover Fluids

EPA is considering treatment options for zero discharge of all well treratment, completion, and workover fluids, zero discharge of a 100-barrel buffer on both sides of the fluids slug plus the slug itself or setting the limitation on these fluids equal to the BPT requirement prohibiting the discharge of free oil. For those fluids where a discrete slug does not resurface, the 100-barrel buffer option would not apply. Rather, the fluids would be treated along with the produced water.

XI. Best Practicable Technology

EPA is not proposing to modify existing BPT limits in this rulemaking; however, the Agency is considering requiring the use of a static sheen test method for demonstrating compliance with the BPT as well as BAT, BCT, and NSPS "no free oil" requirement. This is discussed in section VII of today's notice.

XII. Selection of Control and Treatment Options for BCT

A. Methodology

The BCT level of control is based upon the requirement that limitations for conventional pollutants be assessed in light of "cost-reasonableness." The methodology for determining cost reasonableness was proposed by EPA on October 29, 1982 (47 FR 49176) and became effective on August 22, 1986 (51 FR 24974). These rules set forth a procedure which includes two tests to determine the reasonableness of costs incurred to comply with candidate BCT technology options.

BCT limitations for conventional pollutants more stringent than BPT are appropriate in instances where the cost of such limitations meet the following criteria:

1. The removal cost is less than the comparative cost for removal of conventional pollutants at a typical publicly owned treatment works (POTW); the POTW cost is $0.46 per pound (in 1986 dollars).

2. The ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29; as such, the cost increase must be less than 129 percent.

These two criteria represent the two-part BCT cost test. Each of the regulatory options was analyzed according to this cost test to determine the appropriate BCT limitations for drilling fluids, drill cuttings, and produced water are appropriate. BOD was not used because it was not a parameter normally measured in wastewaters from this industry since it is associated with the oil content, e.g., oil and grease measurement. The use of BOD and oil and grease would result in double-counting, thus giving erroneous results. The differences between the various BCT options are explained below.

B. Drilling Fluids and Cuttings

1. Options Considered

There are four options considered for drilling fluids and drill cuttings for BCT. One option is based on water depth, one option is based on well distance from shore, and two are applicable to all structures regardless of location or water depth. They are summarized in Table 11 as described below.

TABLE 11.—SUMMARY OF BCT DRILLING FLUIDS AND CUTTINGS OPTIONS

Option	Applicability	Control level
BPT All Structures.	All structures	BPT.[1]
Zero Discharge Shallow; BPT Deep.	Shallow water structures.	Zero discharge.
	Deep water structures.	BPT.[1]
Zero Discharge Within 4 Miles; BPT Beyond.[2].	<4 miles from shore.	Zero discharge.
	>4 miles from shore.	BPT.[1]
Zero Discharge All Structures.	All structures	Zero discharge.

[1] BPT requirement of "no free oil" determined by static sheen test.
[2] Preferred option in today's notice. BPT would apply to all wells in Alaskan waters.

BPT All Structures: This option is equal to BPT as promulgated on April 13, 1979 (44 FR 22069) except the static sheen test would be used to determine free oil. This was the option proposed in 1985.

Zero Discharge Shallow; BPT Deep: This option distinguishes between offshore structures located in shallow water and those located in deep water. For offshore structures located in shallow water, there is a zero discharge requirement which is based on recycle/reuse of the drilling fluid portion of the drilling fluid system and/or transport (mostly by barging) to shore for treatment and for land disposal of the spent mud system and associated cuttings. For offshore structures located in deep water, discharge requirements are the same as for the "BPT All" option described above.

Zero Discharge Within 4 Miles; BPT Beyond: Zero discharge is required for wells drilled at a distance of 4 miles or less from shore. All structures drilled at a distance greater than 4 miles would be regulated by the "BPT All" discharge limitations option.

Zero Discharge All Structures: Zero discharge would apply to all offshore structures regardless of location or the depth of water in which they are located.

TSS and oil and grease are the only conventional parameters for which the BCT analysis was conducted for drilling wastes. BOD was not used because it was not a parameter normally measured in wastewaters from this industry since it is associated with the oil content, e.g., oil and grease measurement. The use of BOD and oil and grease would result in double-counting, thus giving erroneous results. The parameter of settleable solids was not included as a limitations option for consideration because both drilling fluids and drill cuttings are so high in total solids content, both settleable and suspended. The only option suitable for the control of suspended solids is zero discharge. In addition, EPA is not aware of any control technologies other than zero discharge that are specifically developed and operated for the removal of total suspended solids from drilling wastes. Rather, there are technologies that remove oils from drilling wastes. Therefore, the only BCT options more stringent than BPT that are considered are those involving zero discharge.

2. Alaskan Waters

Comments were submitted to EPA regarding specific situations in Alaskan waters (state and OCS waters off of Alaska) which make compliance with a zero discharge requirement based on barging and land disposal difficult. Reasons for this primarily relate to the severe weather conditions. Because of sea ice, tugs and barges can only be used for 4 months in the summer during open-water/broken ice season. In addition, winter snow and fog conditions restrict visibility. White-out conditions occur restricting air and water travel. For these reasons, the long distances required to barge to areas which may be suitable for land disposal, and the lack of current land disposal sites, EPA is proposing to exclude Alaskan waters from zero discharge based on barging (under any options).

However, zero discharge of drilling wastes may be attained by reinjection of the fluids and ground cuttings. EPA is aware that this is occurring at one location in Alaska on an experimental basis only. EPA solicits comments on the feasibility of requiring zero discharge based on reinjection, rather than barging of wastes to land for onshore disposal, for Alaska.

3. Options Selection

Cost for BPT for drilling fluids was calculated based on disposal of oil-based drilling fluids which had to be disposed onshore because they failed the sheen test. This is the only cost attributed to BPT. Since oil and grease related parameters (such as oil content) are normally measured in drilling wastes and not the oil and grease content, the pounds of oil content removed is used as a surrogate for oil and grease in the calculations. The following are annual costs and conventional pollutant removals for drilling fluids:

Cost: $13,886,000 (1986 dollars).
TSS Removal: 186,373,000 lb/yr.
Oil Removal: 7,862,000 lb/yr.
Total Conventional Pollutants Removal=194,235,000 lb/yr.

Thus, the BPT cost of conventional pollutant removal for drilling fluids is $0.0715 per pound.

The cost of each regulatory option for drilling fluids was determined by dividing the "Cost of Pollutant Removal" by the amount of TSS and oil removal achieved under the option. For example, the annual cost of removal for zero discharge for all structures is $235,984,000 (in 1986 dollars). Zero discharge achieves an incremental removal above BPT of 1.443 billion pounds of TSS and 10.0 million pounds of oil. The BCT (option) removal cost is $0.162 per pound. This is less than the comparable POTW benchmark removal cost ($0.46/lb in 1986 dollars); thus, the option passes the first test. The second test, the Industry Cost Ratio (ICR), is calculated as follows:

$$ICR = \frac{\text{BCT cost—BPT cost}}{\text{BTP cost—preBPT cost}} =$$

$$\frac{\$/\text{lb BCT—\$/lb BPT}}{\$/\text{lb for BPT—\$/lb preBPT}}$$

$$ICR = \frac{.163—.0715}{.0715—0} = 1.27$$

The ICR is less than 1.29; thus, the option passes the second portion of the test. As such, BCT limitations based on the zero discharge regulatory option for drilling fluids pass both tests. Table 12 presents the results of the BCT cost tests for drilling fluids. All options pass both tests.

TABLE 12.—BCT COST TEST FOR DRILLING FLUIDS

Option	Cost ($/yr)	Removal (lb/yr)	Removal Cost ($/lb)	POTW Test (must be <0.46) (Pass/Fail)	ICR	ICR Test (must be <1.29) (Pass/Fail)
Zero Discharge Shallow; BPT Deep	68,367,200	421,073,000	0.162	Pass	1.27	Pass.
Zero Discharge All	236,984,000	1,453,000,000	0.162	Pass	1.27	Pass.
4 Mile Zero Discharge; BPT Beyond	36,801,800	225,360,000	0.162	Pass	1.27	Pass.

Costs expressed in 1986 dollars.
ICR: Industry Cost Ratio

For the various drill cuttings options, the cost and conventional pollutant removals for BPT were calculated based on the disposal of cuttings from oil based muds which required disposal onshore because they failed the sheen test. The following are the annual costs and pollutant removals:

Cost—$4,852,000.
TSS Removal—51,221,000 lb/yr.
Oil Removal—7,122,000 lb/yr.
Total Conventional Pollutants Removal=58,343,000 lb/yr.

The BPT cost per pound of conventional pollutant removal for drill cuttings is $0.083 per pound.

The BCT cost test procedure was then applied to the drill cutting wastes, and a summary of the results is shown in Table 13. Each of the options evaluated passes both test criteria.

TABLE 13.—BCT COST TEST FOR DRILL CUTTINGS

Option	Cost ($/yr)	Removal (lb/yr)	Removal Cost ($/lb)	POTW Test Must be <0.46) (Pass/Fail)	ICR	ICR Test (Must be <1.29) (Pass/Fail)
Zero Discharge Shallow; BPT Deep	20,924,714	222,909,571	0.094	Pass	0.95	Pass.
Zero Discharge All	72,206,000	769,195,000	0.094	Pass	0.95	Pass.
4 Mile Zero Discharge; BPT Beyond	11,199,143	119,303,714	0.094	Pass	0.96	Pass

Costs expressed in 1986 dollars.
ICR: Industry Cost Ratio

Zero discharge for all structures was determined to be available and technologically feasible technology and it passes the BCT cost test. Upon detailed evaluation, however, certain non-water quality environmental impacts incident to ship transportation and barging surfaced as significant concerns. As a result of these concerns, "Zero Discharge All Structures" is not being proposed as the preferred option for BCT control of drilling fluids and drill cuttings; instead, EPA is proposing as preferred the "4 Mile Zero Discharge; BPT Beyond" option.

Section 304(b)(4)(B) of the Clean Water Act requires EPA to take into account a variety of factors, in addition to the foregoing BCT cost test, in establishing BCT limitations. These additional factors include "non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate." EPA conducted an investigation into both the impacts of barging and the availability of land for drilling waste disposal (see section XVIII). These non-water quality environmental impacts and energy requirements and their effect on the selection of EPA's preferred options for control of drilling fluids and drill cuttings covering existing sources and new sources are summarized here; however, they are discussed in greater detail in section XIV and section XVIII.

While EPA's study of non-water quality environmental impacts estimated that sufficient land disposal facility capacity is, or would be, available to support a zero discharge requirement applicable to existing sources and new sources, EPA is concerned about the use of the large amount of land that would be required for this purpose. In addition, EPA is currently conducting a study under the Resource Conservation and Recovery Act (RCRA) of wastes associated with oil and gas activities to determine whether additional, more stringent requirements are necessary for the treatment and disposal of such wastes. The outcome of this effort might have a significant effect on the future available capacity and/or cost of land disposal for drilling fluids and drill cuttings.

The evaluation of barging requirements also estimated the air emissions from fuel consumption that would be necessary for transport of the fluids and cuttings to shore from existing sources and new sources as a result of a zero discharge requirement applicable to all sources. These estimates were unexpectedly high in air emissions and fuel use in comparison with the other options (See section XVIII). Thus, while zero discharge is technologically feasible and passes the BCT cost test, other options were explored which allowed discharges for certain portions of the industry in order to minimize these impacts.

EPA has selected the "4 Mile Zero Discharge; BPT Beyond" option as its preferred option for BCT effluent limitations for drilling fluids and cuttings. This option proposes zero discharge based on barging and land disposal for new wells drilled on existing structures at a distance from the inner boundary of the territorial seas (shore) of 4 miles or less. New wells drilled on existing structures at a distance greater than 4 miles would be allowed to discharge after meeting BPT requirements using the static sheen test. However, for BCT in the Alaska region, BCT would be set equal to BPT for new wells because, as previously discussed, the special climate and safety conditions that exist for parts of the year make barging especially difficult and hazardous, the lack of current disposal sites, and the long distance that barging would have to occur over.

The "4 Mile Zero Discharge; BPT Beyond" option, when compared to the zero discharge option for all drilling fluids and drill cuttings, substantially reduces the amount of material requiring land disposal. Increases in both air emissions and fuel use are also substantially less. See section XIV. EPA believes the non-water quality environmental impacts associated with the "4 Mile Zero Discharge; BPT Beyond" option, in conjunction with those associated with the BAT/NSPS preferred option for control of drilling fluids and drill cuttings, are reasonable.

See sections XV, XVI, XVII, and XVIII of today's notice for detailed discussions of non-water quality environmental impacts, costs, and economic impacts.

C. Produced Water

1. Options Considered

Seven options were considered by EPA for the regulation of produced water for BCT. Three options are based on water depth, one option on platform distance from the shore, and three options apply to all platforms regardless of location or water depth. Table 14 summarizes the options.

TABLE 14.—SUMMARY OF BCT PRODUCED WATER OPTIONS

Option	Applicability	Control level
BPT All Structures [1]	All structures	BPT.
Filter and Discharge Within Four Miles; BPT Beyond	≤ 4 Miles from shore	Filter and discharge.[2]
	≤ 4 miles from shore	BPT.
Filter and Discharge Shallow; BPT Deep	Shallow water structures	Filter and discharge.[2]
	Deep water structures	BPT.
Filter and Discharge All Structures	All structures	Filter and discharge.[2]
Zero Discharge Shallow; BPT Deep	Shallow water structures	Zero discharge.
	Deep water structures	BPT.
Zero Discharge Shallow; Filter Deep	Shallow water structures	Zero discharge.
	Deep water structures	Filter and discharge.[2]
Zero Discharge All Structures	All structures	Zero discharge.

[1] Perferred option in today's notice.
[2] Discharge limits for "Filter and Discharge" options are being considered based on membrane and granular filtration. Within these options, EPA prefers filtration limits for oil and grease of 13 mg/l daily maximum and 7 mg/l monthly average, based on membrane filtration. The granular filtration discharge limits for oil and grease that are being considered are 29 mg/l daily maximum and 16 mg/l monthly average.

The manner of control involves various combinations of treatment and discharge and/or zero discharge. The treatment and discharge technologies considered in the options described below involve either BPT, filtration, or reinjection. The limits associated with these technologies are for oil and grease.

Filter and Discharge Shallow; BPT Deep: This option distinguishes between those offshore structures that are located in shallow water and those located in deep water. The offshore structures located in shallow water would have requirements based on the use of filtration (granular media or membrane separation) technology as an add-on to the existing BPT technology (dissolved gas flotation). The 1985 proposal contained a produced water filtration option; however, new data have been collected for both types of filtration—granular and membrane separation—since then, and the proposed limits would be based on the new data. Two sets of limits are considered in this option; however, EPA is identifying the set based on membrane filtration as preferred. For offshore structures that are located in deep water BCT would be set equal to BPT. Better operation of the BPT technology was not selected as preferred because of the problems with the original performance analysis as discussed previously.

Zero Discharge Shallow; BPT Deep: This option also makes a distinction between those structures located in shallow water and those in deep water. Under this option, the offshore structures located in shallow water would be subject to a zero discharge requirement based on reinjection of the produced water. The reinjection system would include oil flotation and gas separation technology (BPT level control), filtration, and an injection well system. For offshore structures located in deep water, BCT would be set equal to BPT.

Filter and Discharge All Structures: All structures, regardless of the water depth or distance from shore at which they are located, would be required to meet limits based on filtration of the produced water prior to discharge. Two sets of limits are considered; however, the limits based on membrane filtration are preferred.

Zero Discharge Shallow; Filter Deep: This option would require offshore structures located in shallow water to meet a zero discharge requirement for the produced water waste stream, while those structures located in deep water would be required to meet discharge limits based on membrane filtration.

Zero Discharge All Structures: This option would require all structures to meet a zero discharge requirement based on reinjection of the produced water.

Filter and Discharge Within 4 Miles; BPT Beyond: Structures located at a distance of 4 miles or less from shore would be required to meet discharge limits based on membrane filtration. Structures located at distances greater than 4 miles from shore would be required to meet the existing BPT limitations only. Other distances, specifically 3, 6, and 8 miles from shore were being considered and are being evaluated for suitability with respect to minimizing non-water-quality impacts.

BPT All Structures: EPA has included as an option setting BCT equal to BPT. By doing so, EPA is not ruling out the possibility that, based on the fluctuating economic stability of the oil market, nature of control technology, costs and pollutant removals, compliance with stricter standards may be unachievable.

2. Options Selection

All options considered for BCT regulation were evaluated according to the BCT cost tests. The pollutant parameters used in this analysis were TSS and oil and grease. All options (except the "BPT All Structures" option) fail the BCT cost test. The range of results for the first (POTW comparison) test is $3.47 to $3.71 per pound of conventional pollutant removed. Thus, EPA is proposing BCT equal to BPT for produced waters. This proposal is the same as that proposed in 1985.

D. Deck Drainage

BPT limitations for deck drainage are for no discharge of "free oil." Typical BPT technology for compliance with this limitation is a "skim pile" which facilitates gravity separation of any floating oil prior to discharge of the deck drainage.

EPA's preliminary cost estimates for BCT for deck drainage concluded that the cost to provide treatment capacity for deck drainage (which included dissolved air floatation/filtration) would be considerably more expensive than the cost for BPT treatment. BPT treatment consists of a skim pile and the annual cost to operate a skim pile is on the order of a few pennies per thousand gallons. The cost to operate a filtration unit is $3.36 per thousand gallons and this does not include the operating cost of the dissolved air flotation portion of the treatment unit. As the second cost test for BCT limits the incremental cost to 129 percent of the BPT cost, this option would doubtlessly fail this test.

If the filtration/reinjection option were employed, the costs and conventional pollutant removals would only increase compared to the filtration/discharge option. The conclusions reached above for filtration/discharge option regarding the second cost test would also hold for the reinjection option. As the second test limits the incremental cost to 129 percent of the BPT cost, the option fails this test also.

Thus, EPA is proposing BCT equal to BPT for deck drainage. This is the same as that proposed in 1985.

E. Produced Sand

BPT limitations for produced sand have not previously been promulgated, however, the current permit requirement for produced sand is no discharge of free oil. EPA has not performed a BCT cost analysis on this option, because it is assumed no incremental costs will be incurred since the limitation is currently in effect. Therefore, BCT for produced sand is being proposed as equal to no discharge of free oil.

F. Well Treatment, Completion and Workover Fluids

EP \ is not changing the 1985 proposal which set BCT equal to BPT for treatment fluids. No additional cost tests have been performed, however, due to a lack of sufficient data on TSS concentration, both in treated and untreated wastes.

G. Sanitary and Domestic Wastes

Sanitary wastes are human body wastes from toilets and urinals. BPT requirements for discharge are for a minimum free chlorine content residual exceeding 1 mg/l and maintained as close to this concentration as possible.

Domestic wastes result from laundries, galleys and sinks. Current permits require that the discharge of domestic wastes does not result in floating solids. Treatment using macerators is usually sufficient to ensure that the discharge complies with permit requirements.

Given the high cost of offshore operations, it would probably be less costly to transport these wastes to shore than to install a treatment unit. No cost data are available on transport costs for shipment to shore. As muds/cuttings can be transported to shore and disposed of for $36 to $51 a barrel, onshore disposal of sanitary wastes should be less costly by an amount equal to the fee charged by the onshore disposal facility. This cost equals $7 to $10 per barrel. Using the low cost of $26 per barrel and average BOD and TSS levels reported earlier, the cost is $67 per pound of conventional pollutants in the domestic/sanitary waste. Obviously, this greatly exceeds the POTW cost of $0.49 per pound and requiring transfer to shore would not be justified.

Possibly, some on-platform treatment process could achieve a lower cost per pound of conventional pollutant removal than onshore disposal, but it is highly unlikely that it could compete with a POTW (which is designed to achieve the same result on a massive scale) in terms of operational cost. Thus, EPA is not changing the 1985 BCT proposal for sanitary and domestic waste.

XIII. Selection of Options for BAT

A. Drilling Fluids and Drill Cuttings

1. Options Considered

Seven options are being considered for BAT control of drilling fluids and drill cuttings. Below is a discussion of all of the options with particular emphasis on regulation of toxic pollutants. Table 15 summarizes these options.

TABLE 15.—SUMMARY OF BAT/NSPS DRILLING FLUIDS AND CUTTINGS OPTIONS

Option	Applicability	Control level
5/3 all structures	All structures	● Toxicity ≥ 30,000 ppm (SPP). ● No diesel oil discharge. ● No free oil discharge.[1] ● 3 mg/kg mercury, 5 mg/kg cadmium, both in stock barite.
1/1 all structures	All structures	● Toxicity ≥ 30,000 ppm (SPP). ● No diesel oil discharge. ● No free oil discharge.[1] ● 1 mg/kg mercury, 1 mg/kg cadmium, in the whole drilling fluid.
Zero discharge shallow; 5/3 deep	Shallow water structures	Zero discharge.
	Deep water structures	Discharge limits for "5/3 All Structures".
Zero discharge shallow; 1/1 deep	Shallow water structures	Zero discharge.
	Deep water structures	Discharge limits for "1/1 All Structures".
Zero discharge all structures	All structures	Zero discharge.
Zero discharge within 4 miles; 5/3 beyond	≤ 4 miles from shore	Zero discharge.
	> 4 miles	Discharge limits for "5/3 All Structures".
Zero discharge within 4 miles; 1/1 beyond[2]	≤ 4 miles from shore	Zero discharge.
	> 4 miles	Discharge limits for "1/1 All Structures".

[1] Determined by static sheen test.
[2] Preferred option in today's notice.
SPP: Suspended Particulate Phase.

5/3 All Structures: This option includes four requirements: (1) Toxicity limitation set at 30,000 ppm in the suspended particulate phase; (2) a prohibition on the discharge of diesel oil used either for lubricity or spotting purposes; (3) no discharge of free oil based on the static sheen test; and (4) limitations for cadmium and mercury set in the stock barite at 5 mg/kg and 3 mg/kg, respectively. These requirements are to be met by all offshore structures regardless of the depth of the water in which they are located.

The discharge prohibitions on diesel oil and free oil will serve as "indicators" of toxic pollutants. The discharge of diesel oil, either as a component in an oil-based drilling fluid or as an additive to a water-based drilling fluid, would be prohibited under this option. Diesel oil would be regulated at the BAT level because it contains such toxic organic pollutants as benzene, toluene, ethylbenzene, napthalene, and phenanthrene. The method of compliance with this prohibition is to use mineral oil instead of diesel oil for lubricity and spotting purposes or barge to shore for recovery of the oil, reconditioning of the drilling fluid for reuse and land disposal of the drill cuttings. EPA believes that in most cases substitution of mineral oil will be the method of compliance with the diesel oil discharge prohibition. Mineral oil is a less toxic alternative to diesel oil and is available to serve the same operational requirements. Low toxicity mineral oils are also available as substitutes for diesel oil and continue to be developed for use in drilling fluids.

Free oil is proposed to be used as an "indicator" pollutant for control of priority pollutants also, including benzene, toluene, ethylbenzene, and naphthalene.

The toxicity limitation is the same as that proposed in 1985. The purpose of the toxicity limitation for any drilling fluids which are to be discharged is to encourage the use of generic or water-based drilling fluids and the use of low-toxicity drilling fluid additives. The basis for the toxicity (LC50) limitation, as discussed in the 1985 proposal, is the toxicity of the most toxic of the generic fluids.

The Agency has considered the costs of product substitution and finds them to be acceptable for this industry, resulting in no barrier to future entry. (51 FR 29600–09 and 53 FR 37849–50, Draft Beaufort Sea and Beaufort/Chukchi Seas General Permits.) Where the toxicity of the spent drilling fluids and cuttings exceeds the LC50 toxicity limitation, the method of compliance with this option would be to transport the spent fluid system to shore for either reconditioning for reuse or land disposal.

The toxicity limitation would apply to any periodic blow-down of drilling fluid as well as to bulk discharges of drilling fluids and cuttings systems. The term "drilling fluid systems" refers to the major types of materials (muds) used during the drilling of a single well. As an example, the drilling of a particular well may use a spud mud for the first 200 feet, a seawater gel mud to a depth of 1,000 feet, a lightly treated lignosulfonate mud to 5,000 feet, and finally a freshwater lignosulfonate mud system to a bottom hole depth of 15,000 feet. Typically, bulk discharges of spent drilling fluids occur when such systems are changed during the drilling of a well or at the completion of a well.

For the purpose of self monitoring and reporting requirements in NPDES permits, it is intended that only samples of the spent drilling fluid system discharges be analyzed in accordance with the proposed bioassay method. These bulk discharges are the highest volume mud discharges and will contain all the specialty additives included in each mud system. Thus, spent drilling fluid system discharges are the most appropriate discharges for which compliance with the toxicity limitation should be demonstrated. In the above example, four such determinations would be necessary.

For determining the toxicity of the bulk discharge of mud used at maximum well depth, samples may be obtained at any time after 80 percent of actual well footage (not total vertical depth) has been drilled and up to and including the time of discharge. This would allow time for a sample to be collected and analyzed by bioassay and for the operator to evaluate the bioassay results so that the operator will have adequate time to plan for the final disposition of the spent drilling fluid system, e.g., if the bioassay test is failed, the operator could then anticipate and plan for transport of the spent drilling fluid system to shore in order to comply with the effluent limitation. However, the operator is not precluded from discharging a spent mud system prior to receiving analytical results. Nonetheless, the operator would be subject to compliance with the effluent limitations regardless of when self monitoring analyses are performed. The prohibition on discharges of free oil and diesel oil would apply to all discharges of drilling fluid at any time.

Cadmium and mercury would be regulated at a level of 5 and 3 mg/kg, respectively, in the stock barite. This is not an effluent limit to be measured at the point of discharge but a standard pertaining to the barite used in the drilling fluid compositions. These two toxic metals would be regulated to control the metals content of the barite component of any drilling fluid discharges. Compliance with this requirement would involve use of barite from sources that either do not contain these metals or contain the metals at levels below the limitation.

1/1 All Structures: This option also includes four requirements: (1) The same toxicity limitation as above; (2) the same discharge prohibition on diesel oil as above; (3) the same prohibition on the discharge of free oil as above; and (4) limitations for cadmium and mercury in the drilling fluids and cuttings at 1 mg/kg each at the point of discharge. The cadmium and mercury limits are based upon the use of "clean" stock barite which has been costed for use by the industry. Previous comments have stated that the availability of barite stocks containing low levels of trace metals could be limited at any given time due to market conditions. However, EPA investigated the availability of "clean barite" needed to meet the 1/1 mg/kg limitations for cadmium and mercury and estimates that sufficient sources of such barite do exist and can be directed to offshore drilling use in those cases where an operator would be able to discharge drilling fluids based on meeting the other requirements of this option. The requirements in this option are to be met by all existing offshore structures drilling new wells regardless of the depth of the water in which they are located or distance from shore.

Zero Discharge Shallow; 5/3 Deep: This option distinguishes between offshore structures located in shallow water and those located in deep water. For offshore structures located in shallow water, there is a zero discharge requirement which is the same as that portion of the "Zero Discharge Shallow; BPT Deep" option for BCT described in section XII, and is based on recycle/reuse of the drilling fluid portion of the drilling fluid system and/or transport (mostly by barging) of drill cuttings (with residual drilling fluid) to shore for treatment and/or land disposal. For offshore structures located in deep water, the requirements are the same as the first option.

Zero Discharge Shallow; 1/1 Deep: This option also makes a distinction between offshore structures located in shallow water and those in deep water. It is the same as the "Zero Discharge Shallow; 5/3 Deep" option except that the cadmium and mercury requirements are 1 mg/kg each of these limitations apply to the drilling fluid and drill cuttings at the point of discharge.

4 Mile Zero Discharge; 5/3 Beyond: Zero discharge is required for wells drilled at a distance of 4 miles or less from shore, the same as discussed for the BCT option identifying 4 miles as a delineation for zero discharge based on minimizing non-water quality environmental impacts. All new wells (on existing structures) drilled at a distance greater than 4 miles would be regulated by the same limitations included in the "5/3 All Structures" option.

4 Mile Zero Discharge; 1/1 Beyond: Same as "4 Mile Zero Discharge" discussed above for wells drilled 4 miles or less from shore and for wells drilled at a distance greater than 4 miles the limitations are the same as the "1/1 All" option. This option provides for more additional control on the toxic pollutants cadmium and mercury in the drilling fluids and drill cuttings at the point of discharge.

Zero Discharge All Structures: Zero discharge would apply to all offshore structures regardless of the depth of water in which they are located. This option is similar to the "Zero Discharge All" option considered for BCT limitations. The only difference is that the BCT option is considered for control of conventional pollutants, while the BAT option focuses on the control of toxic and nonconventional pollutants.

2. Options Selection

EPA has selected the "4 Mile Zero Discharge; 1/1 Beyond" option as its preferred option for effluent limitations

for drilling fluids and drill cuttings based on the same consideration of non-water quality environmental impacts that are summarized in section XII describing the BCT options selection. These impacts are discussed further in section XIV and section XVIII of today's notice. This option proposes zero discharge based on barging and land disposal for new wells drilled from existing structures at a distance from shore of 4 miles or less. New wells drilled from existing structures at a distance of greater than 4 miles would be allowed to discharge after meeting requirements for toxicity, cadmium and mercury at 1/1/ mg/kg respectively, no static sheen, and no discharge of diesel oil. However, for the Alaska region, new and existing wells would be covered by the "1/1 All Structures" option, because the special climate and safety conditions that exist for parts of the year make barging especially difficult and hazardous, the lack of disposal sites and the long barging distances necessary to get to suitable land disposal sites.

EPA is proposing, for the wells drilled at a distance greater than 4 miles, the 1 mg/kg cadmium and 1 mg/kg mercury limitations at the point of discharge instead of the 5 mg/kg cadmium and 3 mg/kg mercury limitations in the stock barite because (a) EPA believes it more appropriate to develop effluent standards based on point source discharge limitations than on the regulation of only one raw material component of the discharge (barite in this case); and (b) it represents control at the BAT level based on the evaluation of cadmium and mercury discharge monitoring report (DMR) data reporting concentrations of these metals in drilling fluids and drill cuttings that demonstrate the ability of the industry to meet these limits. These data represent compliance information reported from facilities located offshore in the Pacific Ocean and Gulf of Mexico and covered by several levels of concentration limitations depending upon the individual (facility or general) permit requirements. Evaluation of the DMR data showed that even though industry was operating under less stringent metals limits than the 1/1 mg/kg cadmium/mercury limits being proposed today, discharges would have been in compliance with the 1/1 mg/kg requirement for the four cases where the NPDES permits established a 2/1 mg/kg cadmium/mercury requirement, and 67 percent of the time for operators under a 3/1 mg/kg cadmium/mercury requirement, and even 18 percent of the time in the Gulf of Mexico, where there are currently no cadmium/mercury requirements.

However, EPA is still considering, for this option and other options presented in today's proposal, a 3 mg/kg cadmium and 1 mg/kg mercury limitation in the barite based on the continuing evaluation of the availability of barite required to meet the limitations. The influence of underground formation characteristics on the level of cadmium and mercury in drill cutting and recycled drilling fluids will also be considered.

In addition to noncompliance with the cadmium and mercury limitations attributable to the use of barite with high metals content, commenters responding to the 1985 and 1988 proposal notices have stated that the presence of cadmium in the formation itself could cause noncompliance with limitations applied at the drilling waste discharge point. In response to this comment, EPA has analyzed data from the American Petroleum Institute's Fifteen Rig Study. In this study, operators of 14 rigs volunteered to collect matched sets of measurements. Each rig collected a sample of drill cuttings, a sample of used drilling fluids, and a sample of barite that was present at the time the first two samples were taken. Splits or duplicates of these samples were analyzed by labs associated with the Agency. Results of statistical analysis indicate that some cadmium present in the drilling fluids came from a source other than the barite. In particular, physical analyses by the industry lab indicate that 11 out of 14 rigs had higher cadmium concentrations in their drilling fluid than in their barite. Physical analyses by the Agency lab indicate that 13 out of the 13 rigs for which the Agency lab reported results, had higher cadmium concentrations in their drilling fluid than in their barite. These results suggest that cadmium, from a source other than barite, is contaminating the drilling fluid.

This conclusion is based on the assumption that metals are uniformly distributed throughout the barite present at a single rig and throughout the drilling fluids used on that rig. The Agency requests information as to the appropriateness of this assumption and its requests information on what additional sources of cadmium may affect drilling fluids.

The annualized cost for this option and its cost-effectiveness are $29.5 million and $22 per pound-equivalent, respectively. Two of the other distance options evaluated (6 and 8 miles), as well as the shallow/deep option, are not as attractive because they do not appreciably reduce the non-water quality impacts compared to the 4 mile option. The 3 mile option was not fully evaluated due to the lack of data on existing structure locations.

EPA solicits comments on the "4 Mile Zero Discharge; 1/1 Beyond" option and the other options as well. EPA especially invites comment on the appropriateness of the "5/3 All Structures" and "1/1 All Structures" discharge options and also on the "Zero Discharge All Structures" option.

See sections XV, XVI, XVII, and XVIII for detailed discussions of non-water quality environmental impacts, costs, economic, and environmental impacts.

B. Produced Water

1. Options Considered

The options considered for produced water under BAT are the same as those discussed previously for BCT. The only difference is that while BCT options are intended to control the conventional pollutants, BAT options focus on the control of toxic and nonconventional pollutants. Oil and grease remains the only regulated pollutant. It is being limited under BAT as an indicator pollutant controlling the discharge of toxic pollutants (see section IX).

2. Options Selection

EPA has selected for BAT proposal and "Filter within 4 miles; BPT Beyond" option as its preferred option. This option requires all existing production structures located at a distance of 4 miles or less from shore to meet discharge limitations based on membrane filtration, and all existing production structures located at a distance greater than 4 miles from shore to meet the current BPT limitations. EPA has determined this option to be economically and technically feasible.

Membrane filtration is being used as the technology basis for the proposed limits on produced water BAT since it is a demonstrated technology, the EPA has acquired sufficient data to develop effluent limits of 13 mg/l for daily maximums with a composite sample and 7 mg/l for the maximum monthly average. Although not yet in widespread use in the oil and gas industry, membrane filtration is a commercially demonstrated technology in several other industries and is considered to be applicable to oil and gas effluents, as shown by extensive pilot scale tests and movement toward commercial application of this technology to treat produced water. To obtain additional full-scale data other than oil and grease results, studies are planned to obtain performance information from these

BEST COPY AVAILABLE

treatment systems with respect to specific toxic and nonconventional pollutants. Such data will be used to further assess the potential for developing limitations based on membrane technology and its availability will be noticed in the Federal Register if appropriate. EPA solicits any information available on membrane filtration technology and its performance regarding the treatability of oil and gas produced waters.

Another set of limitations (29 mg/1 for daily maximum with a composite sample and 16 mg/1 for maximum monthly average) was considered based on performance of the granular filtration technology. Granular filtration is being used in the oil and gas industry. However, EPA chose to propose produced water limitations as its preferred option based on membrane filtration due to its better performance and projected lower cost relative to granular filtration systems. EPA solicits information concerning the relative technical efficiency and cost of these alternative treatment systems. Should membrane filtration ultimately prove to be insufficiently demonstrated to serve as the basis for produced water treatment, EPA will base the limitations on alternative technologies giving strong consideration to BPT as the basis for BAT since the costs of alternative technologies are high.

EPA did not select the most stringent option, zero discharge based on reinjection, for three reasons. First, there are questions concerning the applicability of reinjection to all structures. Although reinjection may be technically feasible in general, depending on geological conditions, specific structures would not be able to reinject. Second, the air emissions and fuel use associated with the large pumps necessary to reinject fluids are unacceptably high. Finally, reinjection for all production structures would result in a 4.9 percent (13 million BOE/year) production loss in barrels of oil equivalent (BOE). This loss of production is not merely a cost concern. Loss of production has independent significance in light of the statutory directive that EPA consider energy impacts in establishing effluent limitations and new source performance standards under the Clean Water Act.

EPA did not select the "Filtration All" option as preferred because of the potential adverse effects on oil and gas production (approximately 3 million BOE per year based on membrane filtration).

The other options considered would require filtration for near-shore wells but BPT controls for wells farther offshore; these options use water depth and distance from shore as alternative means of reducing the loss of oil and gas production. EPA selected the 4 mile distance in order to minimize the loss of oil and gas production resulting from controls on produced water and because it is consistent with the 4 mile distance used in the preferred options for control of drilling fluids and drill cuttings. This option also has the lowest associated fuel requirements and air emissions of any of the options considered.

Reinjection does eliminate potential discharge of radionuclides, particularly radium-226 and -228. These radionuclides have been measured at elevated levels (as high as several thousand picoCuries per liter) in produced water discharges on coastal and near-shore areas in the Gulf of Mexico. EPA is concerned about the possible effects of radium in produced water discharges on human health and the environment. Options involving zero discharge based on reinjection will receive further consideration as more data on radionuclides are obtained.

The "Filtration All" option is also being given consideration as the basis for BAT for promulgation, since the potential effect of this option on offshore production is a very small percentage of the total of present value of offshore production at existing structures (1.1 percent assuming membrane filtration is installed).

EPA solicits comment on the viability and appropriateness of the other options for produced water, especially with respect to the "Filtration All Structures", "BPT All Structures" and "Zero Discharge" options.

See sections XV, XVI, XVII, and XVIII of today's notice for further discussion of costs, environmental assessment, and economic and non-water quality environmental impacts for these options.

C. Deck Drainage

Deck drainage consists of platform and equipment runoff due to storm events and wastewater as a result of platform and equipment washdown/cleaning practices. Options being considered as a basis for BAT for this waste stream are either to establish the requirement equal to the current BPT limits of no discharge of free oil (with compliance measured by the static sheen test) or to require the same standards as those selected for the produced water waste stream. In many instances the deck drainage waste stream has similar pollutant characteristics as produced water and is commingled, and therefore treated, with the produced water waste stream. Due to the similarity and commingling of waste streams, the same BAT options, in addition to current BPT as an option, presented for the produced water waste stream are considered for the deck drainage waste stream.

The volumes of deck drainage are minimal compared to the volumes of produced water and the deck drainage waste stream is not a continuous flow waste stream. Thus, the capacity of the produced water treatment system would not have to be increased to accommodate the deck drainage volumes so it is expected that no additional costs would be incurred. As described later in section XV, Revised Technologies Costs and Assumptions, and in section XIX, Solicitation of Comments, two sets of costs for produced water treatment were developed and evaluated for economic achievability. Even the higher costs, which include geographic factors based on Alaska construction and operation considerations and platform structural additions at every location for the installation of the filtration units, did not significantly change the economic achievability. In the case of the models used to cost produced water treatment systems, EPA believes the normal safety margins included in costing these systems will accommodate the minimal costs that may be associated with intermittent treatment for deck drainage Thus, the economic impact analysis for produced water is considered to include the necessary deck drainage volumes for treatment to comply with the options considered. No separate evaluations have been conducted for the economic analyses of the options for deck drainage.

EPA has selected as its preferred option for effluent limitations for deck drainage the produced water discharge option based on filtration for facilities at 4 miles and less from shore and the BPT produced water oil and grease limitations for facilities greater than 4 miles from shore. This is because deck drainage is similar in pollutant characteristics and can be commingled and treated with produced water.

There are, however, certain situations where effluent limitations based on filtration may not be appropriate for deck drainage. For example, deck drainage occurs on drilling platforms where a production well may not exist; therefore, the produced water treatment may not be in place either. Thus, EPA is proposing that the produced water "Filter 4 Mile Within; BPT Deep" option be applicable to deck drainage during the production phase of the oil and gas extraction operation only, and at earlier

stages, the BPT limits on free oil will apply.

D. Produced Sand

Produced sand consists of sand and other particulate material from the producing formation and production piping, which comes to the surface along with the crude oil and/or gas and produced water and is separated by the produced water desander (settling/screening device) and treatment system. This waste stream could also include sludges generated by any chemical polymer use in the filtration portion (or other portions) of the produced water treatment system. There are two options being considered for this waste stream: (1) Establish the requirement equal to the current permit limits of no discharge of free oil or (2) require zero discharge by barging and treatment/disposal onshore. The technology basis for the options limiting free oil is a water or solvent wash of produced sands prior to discharge. The method of determining compliance with the free oil prohibition is by the static sheen test discussed earlier.

The prohibition on the discharge of free oil or the zero discharge requirement for produced sand would act to reduce or eliminate the discharge of any toxic pollutants in the free oil to surface waters. Becasue this waste stream is of low volume and because most facilities currently practice either washing or land disposal to meet the free oil limitation, the Agency did not attribute any compliance costs to this proposed option except for nominal compliance monitoring expenses to perform the static sheen test to determine the presence of free oil.

The zero discharge option would also impose nominal impacts because the volume of sand in most locations would be minimal and would be barged to shore infrequently and as part of the barging of other materials for disposal.

The option selected for proposal is zero discharge for all facilities based on the minimal volume of waste zero discharge represents the best technology which is both economically and technically feasible. However, zero discharge for structures 4 miles or less from shore and the free oil limitation options are still being considered as a basis for the final rule if information is made available to show that the volumes of produced sand are significantly higher than EPA raw estimates.

E. Well Treatment, Completion and Workover Fluids

Well treatment, completion and workover fluids either stay in the hole, resurface as a concentrated volume (slug), or are dispersed with the produced water. There are three options being considered for these wastes: (1) Establish the requirements equal to the current BPT limit of no discharge of free oil; (2) require zero discharge of any concentrated slug of fluids along with a 100-barrel buffer on either side of the fluids slug; or (3) meet the same requirements as produced water (based on filtration, reinjection, or current produced water BPT).

The prohibition on the discharge of free oil and the zero discharge (reinjection along with produced water) requirement are both intended to reduce or eliminate the discharge of toxic pollutants. The method of compliance with the free oil prohibition would be the static sheen test.

The zero discharge of the fluids slug would require capturing 100-barrel buffers on both sides of the slug, plus the slug, and barging it to shore for land disposal. For those fluids that cannot be segregated from the produced water waste stream, the produced water limitations would apply.

For cases where the fluids resurface as a discrete slug, EPA has selected zero discharge of the slug plus a 100-barrel buffer on either side of it as the preferred option. Where the fluids are diffused with the produced waters, the preferred option for produced waters will apply (e.g., based on filtration at 4 miles and less, and produced water BPT limitations at greater than 4 miles).

F. Domestic and Sanitary Wastes

The Agency is not proposing to establish BAT effluent limitations for these waste streams, because there have been no toxic or nonconventional pollutants of concern identified in sanitary or domestic wastes.

XIV. Selection of Control and Treatment Options for NSPS

The basis for new source performance standards under section 306 of the Act is the "best available demonstrated technology." New facilities have the opportunity to design and implement the best and most efficient processes and waste treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible.

The control and treatment options investigated as a basis for NSPS to reduce the discharge of pollutants in waste streams generated by the offshore segment of this industry consist of those options evaluated for use in the BCT and BAT levels of control. No additional demonstrated technologies were identified that would be applicable to new sources only. However, some of the options considered but not identified as preferred for BAT, or for that matter NSPS, are still being seriously considered for the basis of NSPS in the final rule, provided that additional information can be obtained. Since all of the options considered are the same as previously described for BCT and BAT, with the exception of the proposed NSPS prohibition on discharge of foam for domestic wastes, no detailed discussion is repeated here.

For drilling fluids and drill cuttings, the preferred option for proposal is the same as BAT, "Zero Discharge Within 4 Miles; 1/1 Beyond", and is based upon the same factors. These factors are the minimization of potential non-water quality environmental impacts due to the large volume of solids requiring land disposal and the air emissions and fuel use associated with transportation of the solids to land. It is estimated that only about four percent of the new well drillings will be on existing structures (platforms); thus, the assignment of costs and impacts for evaluating the limitations are shown under the NSPS selection for drilling wastes. The non-water quality environmental impacts are described in section XVIII, along with the evaluation conducted to minimize the estimated impacts.

Section 306(b)(1)(B) of the Clean Water Act requires EPA, in establishing new source performance standards, to take into account any non-water quality environmental impacts and energy requirements incident to the rules. Non-water quality environmental impacts and energy requirements have played an important role in EPA's selection of its preferred NSPS option for control of drilling fluids and drill cuttings.

The most stringent option considered by the Agency, zero discharge of drilling fluids and drill cuttings for all structures (based on transport of spent drilling wastes to shore for recovery, reconditioning for reuse or land disposal) was determined to be technologically and economically achievable. However, a zero discharge requirement applicable to all structures would cause an enormous amount of solids (estimated at 8.2 million barrels per year) to be barged to shore for land disposal. In developing this proposal, EPA studied the non-water quality environmental impacts caused by the barging of this quantity of drilling waste to land and the availability of appropriate landfill sites for its ultimate

disposal. (See section XVIII of today's notice).

EPA's evaluation of the non-water quality environmental impacts of barging focused on the air emissions that would result from the transport of 8.2 million barrels of drilling fluids and drill cuttings to shore. Air emissions from sources on the OCS are a matter of longstanding concern to the Agency, Congress and states adjoining OCS areas where oil and gas operations take place. Section 801 of the Clean Air Act Amendments of 1990 (codified as new section 328 of the Clean Air Act) reflects this concern. This new provision requires EPA to "establish requirements to control air pollution" from OCS sources located offshore of the states along the Pacific, Arctic and Atlantic coasts and along the Gulf coast off the State of Florida. The air pollution control requirements that are to be established pursuant to new section 328 must "attain and maintain Federal and State ambient air quality standards" and comply with the provisions of title I, part C of the Clean Air Act, which relate to the prevention of significant deterioration. For sources located within 25 miles of the seaward boundary of these states, the requirements "shall be the same as would be applicable if the source were located in the corresponding onshore area."

New section 328 identifies "platform and drill ship exploration, construction, development, production processing and transportation" and "emissions from any vessel servicing or associated with an OCS source" as specific air pollutant sources of concern.

In addition, new section 328 of the Clean Air Act requires the Secretary of the Interior, in consultation with the Administrator of EPA, to "assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas" for portions of the Gulf coast OCS off the states of Texas, Louisiana, Mississippi and Alabama.

The Agency has estimated that the air emissions associated with barging to attain zero discharge of drilling fluids and drill cuttings would be 6,352 short tons of particulates, nitrous oxides, carbon dioxide, hydrocarbons and sulphur oxides per year. This estimate was unexpectedly high in comparison to other options, which ranged from 532 short tons for the "5/3 All" and "1/1 All" options to 2,116 short tons for the "Zero Discharge Shallow; 5/3 Deep" and the "Zero Discharge Shallow; 1/1 Deep" options. (See Table 22.)

In examining energy requirments, EPA estimated the amount of diesel fuel that would be required to operate the barging systems associated with the options under consideration. The amount of fuel that would have to be expended to attain zero discharge was estimated at 818,029 barrels per year. This figure also is significantly higher than the fuel use estimates associated with the other options, which ranged from 79,517 barrels per year for the "5/3 All" and "1/1 All" options to 293,535 barrels per year for the "Zero Discharge Shallow; 5/3 Deep" and the "Zero Discharge Shallow: 1/1 Deep" options. (See Table 22.)

Finally, EPA studied the availability of land for drilling waste disposal in connection with its evaluation of the control options for drilling fluids and drill cuttings. The study estimated the available capacity of all existing landfills in the Gulf of Mexico region and California. The Agency concluded that sufficient capacity is, or would be, available to support a zero discharge requirement. However, the 8.2 million barrels of drilling wastes that would be generated annually as a result of the zero discharge requirement represents approximately 57 percent of the capacity of the existing landfills in the Gulf area and California (there are currently no landfills in Alaska that accept these wastes), and approximately 18 percent of the projected available landfill capacity in these areas. EPA is concerned about the use of this segment of existing landfill capacity for the disposal of drilling wastes. These concerns are compounded by the fact that EPA is currently conducting a study under RCRA of wastes associated with oil and gas activities to determine whether additional, more stringent requirements are necessary for the treatment and disposal of such wastes. The outcome of this effort might have a significant effect on the future available capacity and/or cost of land disposal for drilling wastes and drill cuttings.

Thus, while zero discharge is technologically and economically achievable, EPA determined that the non-water quality environmental impacts and energy requirements associated with this option are significant enough to rule out the selection of this option as preferred.

The volume of drilling wastes that would have to be transported to shore for disposal as a result of the "4 Mile Zero Discharge; 1/1 Beyond" option is 1.6 million barrels annually, a reduction of approximately 80 percent as compared to zero discharge. This reduces the impacts on landfill capacity accordingly. The fuel requirements associated with this option are 173,360 barrels per year, also reduction of 80 percent. Annual air emissions are reduced by about 82 percent, from 6,352 short tons to 1,166 short tons compared to the zero discharge option. EPA believes these non-water quality environmental impacts associated with the "4 Mile Zero Discharge; 1/1 Beyond" option are reasonable. The "4 Mile Zero Discharge; 1/1 Beyond" option also has the advantage of eliminating discharges of drilling fluids and drill cuttings from the sensitive marine areas within four miles of shore while subjecting discharges seaward of that area to stringent controls. The other distance options (6 and 8 miles), as well as the shallow/deep options, do not appreciably reduce non-water quality environmental impacts compared to the 4 mile option, and insufficient information is available to evaluate 3 miles.

For NSPS produced water, in addition to the proposed option of "Filtration Within 4 Miles; BPT Beyond" which is the same as the BAT proposal, and the "Filtration All Structures" option which is also being strongly considered, zero discharge at 4 miles or less in conjunction with BPT or filtration beyond 4 miles are being considered for NSPS. The proposed NSPS option is the same as BAT based on the estimated loss of production associated with the other options. For example, the loss for the "Filtration All" options, although small in percent of total production (0.2 percent), is still quite large in barrels of oil equivalent (1.1 million BOE per year). These considerations are discussed in more detail in section XIII.B describing the BAT options selection for produced water. For the reinjection options, the generation of additional air emissions due to the increased use of high pressure pumping is significant, although selecting a 4 miles and less from shore option requiring zero discharge based on reinjection will minimize the air emissions impact to some extent. This technology option would reduce overall discharge of pollutants and eliminate within 4 miles of shore the discharge of radionuclides, specifically radium-226 and radium-228. Preliminary information shows that elevated levels of these radionuclides are present in produced water, with some of the highest measurements coming from oil and gas production areas along the Gulf of Mexico coast. EPA may consider reinjection technology options further based on obtaining additional data, further characterizing the radionuclides in produced water discharges, and identifying geographic areas where there are pollutants of concern in produced water. See sections XV, XVI, XVII, XVIII of today's notice of further

discussion of costs, environmental assessment, and economic and non-water quality environmental impacts for these options.

For well treatment, completion and workover fluids that resurface as a discrete slug, NSPS is proposed as zero discharge of the slug plus a 100-barrel buffer on either side of the slug. In the case where these fluids are diffused with the produced water, the limits of the preferred option for produced water (Filtration Within 4 Miles; BPT Beyond) will apply. NSPS for deck drainage during production is proposed as equal to the preferred option for produced water. During drilling operations, NSPS for deck drainage is proposed to be equal to BPT limits prohibiting discharge of free oil. Zero discharge is proposed as NSPS for produced sand. NSPS for sanitary wastes is being proposed equal to current BPT. NSPS for domestic wastes is proposed as equal to current practice prohibiting discharge of floating solids, plus the additional requirement for no visible discharge of foam.

XV. Revised Technology Costs and Assumptions

A. Drilling Fluids and Cuttings

In order to evaluate the cost of control technologies for drilling wastes, a database was established that defined:

- Projections of the number of wells that will be drilled over the next 15-year period in each geographic region.
- Characteristics of a "model well" describing average levels for parameters such as well depth, volume of waste associated with drilling activity, use of additives to aid in drilling, and length of time to drill a well.
- Characteristics of drilling wastes, specifying pollutant concentration and physical properties of the waste specific to certain drilling scenarios.
- Failure rates of drilling wastes with respect to certain discharge limitations compliance tests (e.g., static sheen, toxicity).
- Disposal costs for transportation and land disposal of drilling wastes.

Table 16 summarizes the current permit requirements that were used as baseline requirements in the cost as well as economic analyses.

TABLE 16.—SUMMARY OF CURRENT REQUIREMENTS FOR DRILLING FLUIDS AND CUTTINGS FOR THE OFFSHORE PERMITS

Requirement	Gulf of Mexico	Pacific	Alaska
No discharge of oil-based drilling fluids and cuttings (BPT requirement).	Yes	Yes	Yes
Metals Limitation	No	Yes (barite)	Yes (barite)
—Mercury (mg/kg)		1	1
—Cadmium (mg/kg)		2	3
No discharge of oil in detectable amounts:			
—for Lubricity	Yes (Diesel)	Yes (Diesel)	Yes (Diesel)
—as a Pill	No [1]	No [1]	Yes (Mineral) [2]
Toxicity limitation	Yes	Yes	Yes [3]
Limit (drilling fluids)	30,000 ppm SPP	30,000 ppm SPP	
No discharge of "free oil"; static sheen test (cuttings from use of water-based drilling fluids).	No	Yes	Yes

SSP: Suspended Particulate Phase
[1] Diesel pill plus a 50 bbl. buffer of drilling fluid on either side of the pill cannot be discharged; mineral oil can be discharged without a buffer.
[2] Mineral oil pill plus a 50 bbl. buffer of drilling fluid on either side of the pill cannot be discharged. Diesel not allowed.
[3] With a pre-approved drilling fluid system.

Using these data, regulatory options, as defined in section XII, were evaluated to determine costs and pollutant removals associated with compliance with each of the options. In evaluating the cost of regulatory options, it was assumed that all drilling operations would utilize material substitution rather than have to take waste onshore for disposal. This includes substituting mineral oil for diesel and using "clean" barite. For the zero discharge options, however, such material substitution was not utilized.

An analysis of each option was conducted to determine:

- Number of wells affected
- Cost incurred by industry to comply with the regulations
- Volume and percent of drilling waste requiring onshore disposal
- Direct and incidental pollutant removal

Costs are presented on an annual basis only; no capital costs are presented, because no capital costs were identified for any of the drilling fluids and drill cuttings options.

Compliance costs for each option are based on the cost of material substitution (e.g., mineral oil for diesel) or the cost of onshore disposal of drilling waste. No distinction was made between BAT and NSPS wells because it is estimated that all but approximately 4 percent of the wells will be considered new sources. The results of the analyses are presented in Table 17 for drilling fluids and drill cuttings combined.

TABLE 17.—ANNUAL COMPLIANCE COST/POLLUTANT REMOVALS FOR REGULATORY OPTIONS: DRILLING FLUIDS AND DRILL CUTTINGS COMBINED—NSPS AND BAT/BCT

	5/3 All	1/1 All	Zero discharge shallow; 5/3 deep	Zero discharge shallow; 1/1 deep	Zero discharge all	Zero at 4 mile; 5/3 beyond*	Zero at 4 mile; 1/1 beyond*
Cost of pollution removal ($1000/yr)	22,029	32,564	108,548	116,362	306,189	83,064	72,252
Volume of drilling fluid barged (1000/bbl/yr)	552	552	2,746	2,746	5,190	1,598	1,598
Priority pollutant removal (lb/yr)	29,000	34,840	364,494	367,000	986,000	193,000	183,500
Nonconventionals removal (lb/yr)	790,000	790,000	678,080	682,570	957,000	736,000	733,000
Oil removal (1000/lb/yr)	4,248	4,251	6,308	6,840	13,995	5,274	5,267
Incidental pollutant removal (lb/yr)	190,000	188,000	472,200	466,900	751,000	316,000	317,000

TABLE 17.—ANNUAL COMPLIANCE COST/POLLUTANT REMOVALS FOR REGULATORY OPTIONS: DRILLING FLUIDS AND DRILL CUTTINGS COMBINED—NSPS AND BAT/BCT—Continued

	5/3 All	1/1 All	Zero discharge shallow; 5/3 deep	Zero discharge shallow; 1/1 deep	Zero discharge all	Zero at 4 mile; 5/3 beyond*	Zero at 4 mile; 1/1 beyond*
Conventionals—TSS removal (10^6 lb/yr)	210	210	830	830	2,208	519	519

Notes:
1. Approximately 4 percent of the costs and removals are associated with new wells at existing structures covered by BCT/BAT.
2. All removals shown incremental to BPT.

* Excludes Alaska region from the zero discharge requirement.

In determining pollutant removals, specific pollutants were selected for evaluation based on their consistently significant presence in offshore oil and gas wastes. Removals are considered direct or incidental. The priority pollutants, conventionals, oil, and nonconventionals listed in Table 17 are pollutants directly removed by the technologies being evaluated. For the priority pollutants, pollutant removals were calculated on the sum total of concentrations for benzene, naphthalene, fluorene, phenanthrene, phenol, cadmium, mercury, antimony, arsenic, beryllium, chromium, copper, lead, nickel, selenium, silver, thallium, and zinc. The nonconventionals evaluated consisted of classes of organics including the alkylated homologs for benzene, naphthalene, biphenyl, fluorene, and phenanthrene, the alkylated phenols for ortho-cresol, meta- and para-cresol, C2 phenols, C3 phenols, and C4 phenols, and total dibenzothiophenes. An additional category labeled "incidental removal" was included to measure removals of pollutants be technologies not necessarily intending to remove them. These pollutants are the same as the priority pollutant metals and include cadmium, mercury, antimony, arsenic, beryllium, chromium, lead, nickel, selenium, silver, zinc, and thallium.

B. Produced Water

In order to evaluate regulatory options for discharge limitations on produced water associated with oil and gas extraction, a database was developed that defined:

- Industry profile data on the number and type of platforms and produced water discharge rates.
- Projected future production activity.
- Produced water contaminant effluent levels associated with BPT treatment and with BAT/NSPS treatment options.
- Cost to implement the BAT/NSPS treatment technology options.

Using these data, regulatory options were evaluated to define the cost and pollutant removals associated with compliance with the options defined earlier in section XII.

Two sets of treatment technologies were considered as BAT/NSPS model technologies: (1) Filtration and subsequent discharge, and (2) filtration followed by injection (or reinjection). Because calculations of cost/pollutant reductions on a platform-by-platform basis were considered impractical from a data collection standpoint, the industry was characterized as consisting of a platform population divided among "model platforms." These "model platforms" were considered typical of the industry and were differentiated based on the number of well slots on the platform, and in the case of one well platform, there was also a differentiation for those that pipe the produced fluids (or water) to a central offshore or land-based locality for processing and/or treatment.

For each "model platform" it was possible to predict the number of producing wells, the quantity of produced water generated (average and peak flow), and the cost to implement a produced water treatment system. Thus, by dividing the industry among these "model platforms," estimates of costs and pollutant reductions could be derived.

Contaminant removals were determined by comparing the estimated effluent levels after treatment by the BAT/NSPS treatment system (either filtration or reinjection) versus the effluent levels associated with a typical BPT treatment (gas flotation or gravity separation).

The cost to install a BAT/NSPS treatment system for each of the model platforms was estimated based on the maximum produced water flow rate over the life of the project and the cost of a treatment system designed to provide the needed capacity. Data were developed for treatment systems capital and annual costs over a range of flows, and the cost for each model platform was determined by interpolating within these data.

The results of the analysis are presented in Tables 18 for BAT and 19 for NSPS. Data are presented on number of platforms affected, capital, and annual compliance costs, and annual pollutant removals in terms of conventional, metal, and organic pollutants.

TABLE 18.—SUMMARY OF IMPLEMENTATION COSTS AND CONTAMINANT REMOVAL FOR PRODUCED WATERS—BAT

	No. of platforms	Capital cost ($)	Annual cost ($/yr)	Pollutant reduction (lb/yr)		
				Conventional	Metals	Organics
Filter and discharge shallow; BPT deep	1,309	172,850,302	44,248,123	11,006,000	249,000	510,000
Zero discharge shallow; BPT deep	1,309	1,258,707,237	78,194,925	16,101,000	255,000	575,000
Filter and discharge all	2,260	423,510,006	104,267,634	34,605,000	831,000	1,626,000
Zero discharge shallow; filter deep	2,260	1,517,365,941	136,154,436	41,700,000	837,000	1,690,000
Zero discharge	2,260	2,358,304,406	160,868,900	56,693,000	850,000	1,829,000
Filter and discharge 4 mile; BPT beyond	208	35,250,039	8,384,563	3,234,000	74,000	140,000

TABLE 19.—SUMMARY OF IMPLEMENTATION COSTS AND CONTAMINANT REMOVAL FOR PRODUCED WATERS—NSPS (UNCONSTRAINED DEVELOPMENT)

	No. of platforms	Capital cost ($)	Annual cost ($/yr)	Pollutant reduction (lb/yr)		
				Conventional	Metals	Organics
Filter and discharge shallow; BPT deep	393	104,874,421	22,108,417	8,569,000	142,000	312,000
Zero discharge shallow; BPT deep	393	607,540,177	35,937,583	10,894,000	146,000	346,000
Filter and discharge all	551	300,853,708	51,717,562	27,404,000	573,000	1,328,000
Zero discharge shallow; filter deep	551	803,519,464	75,626,728	31,998,000	577,000	1,359,000
Reinject all	551	1,300,207,478	89,509,755	44,850,000	588,000	1,465,000
Filter and discharge 4 mile; BPT beyond	152	63,827,101	12,698,327	8,362,449	130,751	276,393

XVI. Economic Analysis

A. Introduction

The Agency's economic impact assessment is presented in the "Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry" (hereinafter, "EIA"). This report details the investment and annualized costs for the industry as a whole and the impacts of these costs on affected projects and on typical companies involved in offshore oil and gas drilling and production. The report also estimates the economic effect of compliance costs on production, Federal and State revenues and discusses the impact on the balance of trade and inflation. (In this report, as in the section following, unless otherwise indicated, all costs are in 1986 dollars.)

EPA has also conducted an analysis of the cost-effectiveness of alternative treatment options. The results of this cost-effectiveness analysis are expressed in terms of the incremental costs per pound-equivalent. Pound-equivalents account for the differences in toxicity among the pollutants removed. The number of pounds of a pollutant removed by each option is multiplied by a toxic weighting factor. The toxic weighting factor is derived using ambient water quality criteria and toxicity values. The toxic weighting factors are then standardized by relating them to a particular pollutant, in this case, copper. Cost-effectiveness is calculated as the ratio of incremental annualized costs of an option to the incremental pounds-equivalent removed by that option. This analysis, "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry" (hereinafter, "Cost-Effectiveness Report"), is included in the record of this rulemaking. Copies of this report and of the Economic Impact Analysis cited above may be obtained from the economic analysis staff. (See the ADDRESSES section of today's notice.)

B. Costs and Economic Impacts

1. Basis of Analysis

The costs and economic impacts of today's proposed regulations cover two major waste streams: (1) Drilling fluids and drill cuttings associated with drilling operations; and (2) produced waters associated with production operations. (Incremental treatment requirements for miscellaneous waste streams create little or no additional costs and so the impacts of those costs are not analyzed separately here.)

The economic analysis of drilling operations is based on the average number of exploratory, delineation and development wells that the Agency estimates will be drilled each year through the year 2000. Only a small percentage of those wells are estimated to be BAT wells, i.e., wells drilled on existing platforms. The cost of controlling the pollution from drilling operations is estimated to be the same, on a per well basis, for BAT and NSPS wells.

The economic analysis of production operations is based on the number of offshore platforms producing in 1986 and on the Agency's projections of the number of platforms to be built between 1986 and the year 2000. By the year 2000, new source oil and gas development is expected to be stabilized, i.e., in that year, the number of new platforms beginning production should equal the number of obsolescent platforms being retired.

The basis of the economic analysis has changed in part since the 1985 proposal, in response to new data and to comments received on that proposal and on the 1986 Notice of Data Availability. The changes include:

(1) Data from the Minerals Management Service (NMS), are used instead of Department of Energy (DOE) data to estimate the number of new wells and platforms. MMS data are an improvement over DOE data because MMS data are regionalized and include projections beyond the year 2000.

(2) In the 1985 proposal, the projections of the number and type of offshore facilities were based on an expected average price of $32 per barrel of oil (bbl) ($1,986). The current projections are based on an average of $21 per bbl with sensitivity analyses at $15 and $32 per bbl ($1,986).

(3) In response to comments on the 1986 Notice, the Agency now includes a one-well model platform. One-well platforms comprise about 20 percent of the facilities in the Gulf of Mexico. (Previously, the Agency's smallest model facility was a four-well platform.)

(4) Treatment costs are now regionalized. (Previously, only the economic impact models were regionalized.)

(5) Costs and impacts for BAT and NSPS are now estimated from "current," as defined by the current regional permit requirements. Previously, NSPS and BAT were defined as incremental to BPT, not current. This change only affects the treatment requirements for drilling fluids and drill cuttings; regional permits for produced water do not require controls above BPT.

(6) The estimated number of offshore wells and platforms (based on $21 per bbl) are presented below. Estimates of constrained development are presented to reflect current constraints on leasing and drilling in the Pacific and the lack of Atlantic development. Unconstrained development estimates assume no constraints on Pacific drilling and some Atlantic drilling.

The following discussion of costs and economic impacts assumes $21 per bbl, constrained development, and for produced water, membrane filtration. The EIA and Cost-Effectiveness Reports also include sensitivity analyses of costs and impacts based on $15 and $32 per bbl, unconstrained development, and granular filtration.

Assuming $21 per bbl the Agency estimates:

Wells Drilled, NSPS:

—750 per year, Constrained Development;

—960 per year, Unconstrained Development.

These well counts presented as NSPS are the total wells drilled during the period 1986 to 2000 divided by 15 years to give the annual average number of wells drilled. The Agency does not have data on which to base a precise estimate of the number of wells drilled on existing platforms. However, the Agency estimates that with restricted development about 1 percent of the wells drilled will, in fact, be BAT wells drilled on existing platforms. Typically, these BAT wells will be on the larger platforms that have not completed their drilling program when this regulation goes into effect. The drilling of BAT wells will, therefore, be concentrated in the first years after promulgation of this regulation as the larger existing platforms complete multiple-year drilling programs. As a result, most of the cost for these BAT wells will be incurred in the first years after the regulation goes into effect. The number of BAT wells drilled will be highest in the first year after the regulation and will decline thereafter. Five years after the regulation goes into effect, few or no BAT wells will be drilled.

The Agency's estimates of total platforms are as follows:

Platforms, NSPS:

—786 total, 1986–2000, Constrained Development;

—851 total, 1986–2000, Unconstrained Development;

Platforms, BAT: 2260.

Note that the number of platforms are *total* currently producing and the *total* projected to be installed during the period 1986 to 2000 while the number of wells drilled is presented as *annual* average.

The number of offshore wells drilled annually that are within four miles of shore and, therefore, will be affected by the proposed zero discharge option are as follows:

Wells Drilled, NSPA:

—81 (11 percent of 759), Constrained Development;

—152 (16 percent of 980), Unconstrained Development.

As explained above, the only site of BAT wells would be on the larger platforms, and, under constrained development, few of the larger platforms are within four miles of shore. Under constrained development, the Agency estimates that, at most, only a total number of 100 BAT wells will be drilled within four miles of shore during the period 1986–2000.

The number of platforms within four miles of shore which are assumed to filter prior to discharge to meet the proposed limitations on produced waters are as follows:

Platforms, NSPA:

—142 (19 percent of 786), 1986–2000, Constrained Development;

—162 (19 percent of 851), 1986–2000, Unconstrained Development

Platforms, BAT: 208 (9 percent of 2260).

2. Total Costs and Impacts of Proposed Regulations

The combined annualized cost of the preferred options proposed today for BCT, BAT and NSPS for both major waste streams is $54 to $80 million. (The lower total costs reflect constrained development; the higher cost, unconstrained development of offshore energy resources.) For purposes of estimating costs and impacts, zero discharge for drilling fluids and drill cuttings, is assumed to be achieved by barging. For produced water, zero discharge is assumed to be achieved by reinjection and the limitations greater than BPT but less stringent than zero discharge are assumed to be achieved by membrane filtration prior to discharge. The capital investment for the proposed requirements is limited to produced water control. (No capital investment is associated with the barging of fluids and cuttings. Barging, land transportation and disposal is a service supplied to the oil and gas companies that are drilling offshore wells.) Total capital investment for the preferred BAT option for produced water is $35 million. Total capital investment for the preferred NSPS requirement for produced water is $84 million.

The combined impact of the preferred options for drilling fluids and drill cuttings and for produced water would reduce the working capital of a typical major offshore oil and gas company by 0.2 percent and the working capital of a typical independent company by 1.9 percent. (Working capital is the parameter most sensitive to increased costs.)

The potential loss in the present value of future production of oil and gas as a result of the preferred options is minimal. The preferred option for drilling fluids and drill cuttings has no impact on production. The preferred BAT and NSPS options for control of produced water is projected to result in a potential loss of 2 million barrels of oil equivalent (BOE) due to premature shut downs of wells. (BOE is a standard measure of energy-equivalent.) The shut downs are projected to occur because the regulation increases the cost of option and shortens the economic life of some platforms. This loss represents a small percentage (0.02 percent) of 11.7 billion BOE, the present value of offshore production during the period 1986–2000.

The preferred options potentially could result in an $50 million loss to federal revenues (through tax effects and lower lease bids) and a $3 million loss to state revenues (through lower lease bids). The impact of this potential loss is minimal, representing, for example, less than 0.01 percent of total state revenues in Texas. Furthermore, these losses are only potential: companies may not choose to recoup all the cost increase from the proposed regulation through lower lease bids. If lease bids are too low, companies might not win the lease. Under these circumstances, companies may absorb the cost increase through reductions in profits.

The proposed regulations are not expected to impact energy prices, inflation, employment or international trade. The preferred options may, in fact, lead to temporary positive impacts on the offshore service industry due to the need to retrofit existing facilities with filtration equipment. The Agency finds the costs of the proposed BAT and NSPS regulations to be economically achievable for the oil and gas industry.

3. Economic Methodology

The Agency used a net present value analysis to calculate whether offshore development operations could remain profitable after regulatory costs were incurred. First, costs and revenues were projected over the life of the model project based on the current, or baseline, requirements. (The life of a project varies among the model projects.) Then the regulatory costs were added to those baseline costs to determine if the model platforms remained profitable. EPA used 34 model platforms to represent the diversity in offshore platform size (i.e., the number of well slots per platform), geographic location (Gulf of Mexico, Pacific, Alaska, and Atlantic coasts), and production type (oil only, gas only or both). Distinct technical and economic characteristics for each model were developed. Costs included in the baseline were those associated with exploration, delineation, development production operations, as well as the costs needed to meet current regional permit requirements.

To assess the impact on offshore oil and gas companies operating in the offshore area, the Agency developed two representative company financial profiles: One for major integrated companies and one for independents. Pre- and post-regulation balance sheets

were developed and the effect of regulatory costs on the typical major and on the typical independent companies was then analyzed.

4. Costs and Impacts of Best Conventional Pollutant Control Technology

Section XII presents proposed BCT options. For drilling fluids and drill cuttings, the preferred option requires zero discharge for wells at four miles or less from the shore. For purposes of costing, this requirement is assumed to be achieved by barging of fluids and cuttings for transportation and disposal on land. On a per-well basis, barging costs are the same for BCT, BAT, and NSPS. The preferred options for BCT, BAT and NSPS all require zero discharge for wells drilled within four miles of shore; costing for BCT, BAT, and NSPS all assumed, for purposes of costing, that zero discharge would be achieved by barging. For wells drilled beyond four miles of shore, BAT and NSPS costs include monitoring for and control of toxics; BCT costs do not. As explained above, at most a total of 100 BAT wells are projected to be drilled on the existing platforms that are four or less miles from shore. Thus, for the preferred BCT option, at most, total (not annualized) BCT costs would not exceed $350 million for the period 1986 to 2000. Most of these costs would be incurred in the first years after the regulation goes into effect. On a per-well or per-projected basis, BCT costs equal BAT/NSPS costs. According to the Agency's analysis, BAT/NSPS costs are economically achievable. Consequently, the BCT costs are also economically achievable.

As discussed in section XII above, for produced water, BCT equals BPT. Therefore, for produced water, there are no incremental costs for BCT and no economic impacts.

5. Costs and Impacts of Best Achievable Technology

a. *Drilling Fluids and Drill Cuttings.* The Agency estimates that during the period 1986–2000, at most, only a total of 100 wells drilled offshore will be on existing platforms located within four miles of shore and thus subject to the proposed BAT regulation of zero discharge. For purposes of costing and estimating impacts, wells required to meet zero discharge are assumed to barge fluids and cuttings to shore; wells beyond four miles are to meet the limitations described in section XIII.A.2 above (the 1/1 option). On a per-well-basis, the average cost of barging from a BAT well drilled on an existing platform is expected to be equal to the cost of barging from an NSPS well, or an average of $360 thousand per well drilled (assuming restricted development). This per-well cost includes barging, land transportation, and land disposal of fluids and cuttings from wells within four miles from shore. For wells drilled beyond four miles of shore, the costs of compliance include monitoring, the cost of substituting mineral oil for diesel oil for spotting and lubricity and the cost of "clean" barite to meet the limitations on cadmium and mercury in the drilling fluids. The costs of the preferred option are incremental to current permit requirements.

Most of the wells drilled on existing platforms will be on the larger platforms (i.e., those with more well-slots). These large platforms will not have completed their drilling programs at the time the regulation goes into effect, but they will do so in the first few years of the regulation. Therefore, the economic impact of BAT regulations on drilling fluids and drill cuttings will be concentrated in the first five or so years after the regulation goes into effect. After five years, few, if any, wells will be drilled on existing platforms.

No capital investment will be needed to meet the preferred limitations on drilling fluids and drill cuttings because oil companies that drill offshore typically do not purchase barges, but instead contract for that service. In this analysis, BAT costs are included in the total annualized NSPS. Total (i.e., not annualized) BAT costs of $350 million are based on an estimated total of 100 wells will be drilled in the first five years after this regulation goes into effect.

According to the Agency's analysis, the economic impact of the proposed BAT option for drilling fluids and drill cuttings is the same as the impact of the NSPS, which are discussed below. The costs of the proposed BAT regulation of drilling fluids and drill cuttings are economically achievable.

b. *Produced Waters.* The Agency estimates that 2,200 offshore platforms currently are producing either oil or gas or both. Of these, 208 platforms are within four miles of shore and therefore, under the preferred option, will be subject to limitations beyond BPT for produced waters (as described in sections XII.C.1 and XIII.C.2, above). For purposes of estimating costs and impacts, the Agency assumed the limitations on existing platforms within four miles of shore would be achieved by membrane filtration of produced water prior to discharge. Platforms beyond four miles would be subject to BPT.

Total capital costs of the BAT preferred option are estimated to be $35 million. Annual operating and maintenance costs of $8 million include monitoring at all platforms and filtration of produced waters at those platforms within four miles of shore. The annualized incremental costs of the BAT options considered for produced water range between $13 million and $491 million. The annualized incremental cost of the proposed option is $13 million.

The EIA includes impacts of the options considered on each type of model platform. Selected impacts are presented here: Impacts on the Gulf-12 platform are typical of impacts on the industry; impacts on the Gulf one-well model platforms are presented here because these small platforms are most sensitive to impacts of the regulation.

For existing oil and gas Gulf-12 platforms four miles or less from shore, the BAT preferred (filtration) option increases the corporate cost per BOE 1.6 percent and decreases the net present value of the project 4.7 percent. The platform's production is decreased 11 percent because it would shutdown a year early.

For existing one-well platforms in the Gulf of Mexico that produce oil and gas and have their own production equipment, the BAT preferred option increases the corporate cost per BOE 14 percent and decreases the net present value of the project 27 percent. The platform's production is decreased 22 percent because it would shutdown two years early. (See impacts on Gulf 1B's in the EIA.)

The preferred BAT option would have virtually no impact on the working capital of a typical major company that is involved in offshore energy production and would reduce the working capital of a typical independent company by 0.5 percent. According to the Agency's analysis, the preferred option would have no effect on oil and gas prices, employment, or international trade. The Agency finds the costs of the preferred BAT option for control of produced waters to be economically achievable for the oil and gas industry.

6. Costs and Impacts of New Source Performance Standards

a. *Drilling Fluids and Drill Cuttings.* Of the 759 exploratory, delineation, and development wells projected to be drilled each year 1986–2000 under constrained offshore development, 81 (or 11 percent) will be on new platforms and thus subject to the NSPS proposed option. For purposes of costing and impacts, the Agency assumes wells drilled within four miles of shore will meet the zero discharge limitation by barging; wells drilled beyond four miles will meet limitations described previously as the "1/1" option.

The total annualized incremental costs of regulating drilling fluids and drill cuttings range between $0.8 million and $211 million. The annualized incremental cost of the preferred option is $29.5 million. (As explained above, for fluids and cuttings, these costs are operating and maintenance costs, including monitoring; there are no capital costs associated with any options considered for these waste streams.)

For new oil and gas wells drilled on Gulf-12 platforms four miles or less from shore, the preferred NSPS option increases the corporate cost per BOE 0.2 percent and decreases the net present value of the project 0.9 percent. For new oil and gas wells drilled in the Gulf on one-well platforms that have their own production equipment, option increases the corporate cost per BOE 0.7 percent and decreases the net present value of the project 11.5 percent. (See impacts on the Gulf 1B's in the EIA.)

None of the options considered for drilling fluids and drill cuttings have an adverse impact on production.

The preferred option would reduce the working capital of a typical major company that is involved in offshore energy production by 0.1 percent and the working capital of a typical independent company by 1.0 percent. According to the Agency's analysis, the preferred option would have no effect on oil and gas prices, employment, or international trade. The Agency finds the costs of the preferred NSPS option for fluids and cuttings are economically achievable.

b. *Produced Water.* Of the 766 platforms projected to be installed offshore between 1986 and the year 2000, assuming constrained offshore development, 142 are estimated to be four or less miles from shore and therefore, under the preferred option, will be subject to limitations beyond BPT for produced water (as described in sections XII.C.1 and XIII.C.2, above). For purposes of estimating costs and impacts, the Agency assumed the limitations on new platforms within four miles of shore would be achieved by membrane filtration of produced water prior to discharge. Platforms beyond four miles would be subject to BPT.

Total capital costs of the NSPS preferred option are estimated to be $41 million ($94 million for the unconstrained scenario). Annual operating and maintenance costs of $6 million ($13 million for the unconstrained scenario) include monitoring at all platforms and filtration of produced waters at those platforms within four miles of shore. The annualized incremental cost of the NSPS options considered for produced water range between $11 million and $156 million. The annualized incremental costs of the preferred option is $11 million ($17 million for the unconstrained scenario).

For new oil and gas Gulf-12 platforms four miles or less from shore, the preferred NSPS membrane filtration option increases the corporate cost per BOE 0.6 percent and decreases the net present value of the project 2.2 percent. The preferred NSPS option for produced water has no adverse impact on production from Gulf-12 platforms. (Production on most model platforms, in fact, is not adversely impacted by NSPS for produced waters.)

For the projected NSPS one-well platforms in the Gulf that produce oil and gas and have their own production equipment, the preferred membrane filtration option increases the corporate cost per BOE by 2.7 percent and decreases the present value of the project by 69 percent. Production on these platforms would decrease 10 percent because they would shut down two years earlier than normal.

The preferred NSPS option for produced water would have virtually no impact on the working capital of a typical major company that is involved in offshore energy production and would reduce the working capital of a typical independent by only 0.4 percent. According to the Agency's analysis, the preferred option would have no effect on oil and gas prices, employment, or international trade. The Agency finds the costs of the proposed NSPS regulation of produced waters to be economically achievable for the oil and gas industry.

C. Cost-Effectiveness Analysis

In addition to the foregoing analyses, the Agency has performed a cost-effectiveness analysis for each of the proposed options. According to the Agency's standard procedures for calculating cost-effectiveness, all the options considered for each waste stream have been ranked in order of increasing pounds-equivalent (PE) removed. The pounds-equivalent removed for each option considered were calculated by weighting the number of pounds of each pollutant removed for each option by the relative toxic weighting factor for each pollutant. The use of "pounds-equivalent" gives relatively more weight to removal of more highly toxic pollutants. Thus for a given expenditure, the cost per pound-equivalent would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. Cost effectiveness is calculated as the ratio of the incremental annual costs to the incremental pounds-equivalent removed for each option. So that comparisons of the cost effectiveness among regulated industries may be made, annual costs for all cost-effectiveness analyses are reported in 1981 dollars.

For the selected options (in $1981), the incremental cost effectiveness is $22 per pound-equivalent for drilling fluids and drill cuttings; $60 per pound-equivalent for produced waters, BAT, and $83 per pound-equivalent for produced waters, NSPS. The Cost-Effectiveness Report, which is available in the record of this rulemaking, describes the cost effectiveness calculations in detail and presents the pollutants included in the cost-effectiveness analysis, the toxic weights used for each pollutant, and sensitivity analyses for such variables as unconstrained development, alternative energy values of $15 and $32 per bbl, and use of granular filtration.

These cost-effectiveness values reflect the Agency's standard cost-effectiveness methodology. In the majority of the Agency's effluent guideline regulations developed to date, the discharges have been to fresh waters (directly or indirectly via publicly owned treatment works). In this case the discharges are to marine waters. As described below in section XVII, the Agency has had some difficulty assessing the benefits of this regulation due to the nature of the waters affected by discharges from offshore platforms. For this reason, the Agency is requesting comment concerning the procedures that can be used to assess the value of controlling discharges to these different waters for the purposes of benefit analyses. (See section XIX of today's notice.)

D. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, Public Law 96–354, requires that the Agency prepare an initial Regulatory Flexibility Analysis (RFA) for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. The purpose of the Act is to ensure that, while achieving the Agency's statutory goals, the Agency's regulations do not impose unnecessary costs on small entities.

The economic impact analysis described above indicates that the expenditures necessary to meet the proposed limitations and guidelines for

the offshore oil and gas industry will be financed by major and independent oil companies. These are not "small businesses" by any standard. Additionally, the analysis has determined that none of the companies directly affected by this regulation are small businesses. Therefore, a formal Regulatory Flexibility Analysis is not required.

E. Paperwork Reduction Act

This proposed rule will impose no increase in reporting or recordkeeping burden to respondents as covered under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed rule contains no information collection provisions.

XVII. Executive Order 12291

Executive Order 12291 requires the Environmental Protection Agency and other agencies to perform a Regulatory Impact Analysis (RIA) of major regulations. Major rules are those which impose an annual cost on the economy of $100 million or more or meet certain other economic impact criteria. The RIA prepared by EPA for this rule may be obtained at the address listed at the beginning of the preamble. This RIA was submitted to the Office of Management and Budget (OMB) for review, as required by Executive Order 12291.

Three types of benefits were analyzed in this RIA: Quantified and monetized benefits; quantified and non-monetized benefits; non-quantified and non-monetized benefits. The combined monetized benefits of regulating drilling fluids, drill cuttings, and produced water in the offshore subcategory of the oil and gas extraction industry were found to be reasonably commensurate with their costs. The total monetized benefits for the selected options (1986 dollars: Gulf of Mexico only) range from $13.4 to $65.2 million annually. The total annualized BAT and NSPS costs (1986 dollars; Gulf of Mexico only) range from $47.4 to $67.6 million for drilling fluids, drill cuttings, and produced water. (The primary difference in the cost range reflects membrane filtration at the low end and granular filtration at the high end.)

Monetized benefits were based solely on health-related impacts. Benefits associated with regulating drilling fluids and cuttings greatly predominated over those associated with regulating produced water; for drilling fluids and cuttings, lead-related health benefits greatly predominated over carcinogen-related health benefits. The quantified, non-monetized benefits assessment included a review of case studies of environmental impacts of drilling fluids and cuttings and produced water that documented adverse chemical and biological impacts result from discharges of these wastes. In addition, a water quality analysis was prepared that for selected options projected decreases in the number of pollutants exhibiting water quality criteria exceedances as well as the magnitude of these exceedances.

The RIA contains an analysis of the effect of the proposed regulations for major waste streams from offshore oil and gas exploration (i.e., drilling muds and cuttings), and production activities (i.e., produced water) on existing marine water quality. The analysis for these waste streams has two parts.

The first part of the RIA summarizes case studies of local impacts found near oil and gas platforms located in the Gulf of Mexico, in water off California and Alaska. A comprehensive review of available data (over 800 references, plus EPA's Ocean Data Evaluation System (ODES) database) shows documented local impacts for drilling muds and cuttings (18 case studies) and for produced water discharges (seven case studies). Widespread marine impacts were not well documented.

Discharged muds and cuttings are shown to cause contamination of sediments with heavy metals and hydrocarbons known to be present in these discharges up to 4,000 meters from the platforms. Other documented impacts include declined abundance in benthic species (up to 1000 m from the platform), reduced bryozoan coverage (within 2000 m of discharge), altered benthic communities (up to 300 m from platform), bioaccumulation of heavy metals known to be present in drilling muds and cuttings by benthic organisms, complete elimination of seagrass (within 300 m of discharge) inhibited growth of seagrass (up to 3,700 m distance) and decreased coral coverage.

Produced water discharges are shown to cause contamination of sediments with polynuclear aromatic hydrocarbons (PAH) up to 3000 m from the platforms. Other significant impacts include complete elimination of benthic organisms up to 400 m from the platform, depressed abundance of benthic species up to 5000 m, and alteration of benthic communities (mostly toward opportunistic species).

The second part of the RIA uses modeling to project water quality impacts/benefits for existing and new Outer Continental Shelf (OCS) oil and gas platforms in the Gulf of Mexico. The current "baseline" and considered BAT and NSPS options are assessed. EPA's published marine water quality criteria are used to assess water quality impacts. The human health risk/benefits from consumption of fish and shellfish exposed to the OCS oil and gas platform discharges in the Gulf of Mexico area are also assessed. The Gulf of Mexico was selected as a case study area because of its majority of the offshore oil and gas exploration and production activities, as well as its extensive and abundant commercial and recreational fishing activities.

The RIA attempts to monetize the specific health and environmental benefits that may result from the proposed regulations. However, the extent of dilution afforded by the marine environment resulted in modeled concentrations for the selected average industry-wide pollutants so low that under current regulatory controls no direct quantifiable impacts on the Gulf of Mexico fishery can be attributed to the platform-related discharges. Predictions could not be made to quantify direct impacts of current discharges and proposed regulations on: composition and abundance of fin fish and shellfish population; recreational fishing and other recreational activities; commercial fishing; or nonuse benefits. Therefore, the RIA focuses almost exclusively on the benefits associated with human health risk reduction through reduced concentration of platform-related pollutants in selected recreational fish species and commercial shrimp. Both carcinogenic and systemic human toxicants are considered. These quantified and monetized incremental benefits are compared to the annualized incremental cost in the Gulf of Mexico for the BAT and NSPS control options under consideration.

A. Produced Water

Water quality impacts are projected for granular filtration on the basis of eight pollutants representing average industry-wide production discharges; for membrane filtration, impacts are projected on the basis of 23 pollutants. The membrane filtration analysis project two pollutants (arsenic and bis(2-ethylhexyl) phthalate) exceeding human health criteria for fish consumption. Granular filtration analysis projects that one pollutant (bis(2-ethylhexyl) phthalate) exceeds human health criteria. None of the pollutants modeled exceeds marine aquatic life criteria at the current discharge (BPT). The preferred BAT and NSPS options will not completely eliminate these human health criteria exceedances but will reduce the magnitude of the impact.

Determination of the cost/benefit analysis for both the membrane and granular filtration technologies has been restricted by the limited amount of published quantifiable human health data for the majority of pollutants of concern. As a result, human health benefits have been underestimated. The cost/benefit analysis for membrane filtration was limited to analysis of three pollutants (arsenic, benzene, and bis(2-ethylhexyl) phthalate), while the granular filtration analysis included only two pollutants (benzene and bis(2-ethylhexyl) phthalate).

Based on these limitations in the analysis, human health benefits are estimated to range between $1,000 and $6,000 per year for the proposed BAT option using membrane filtration in the Gulf of Mexico, compared with a projected incremental annualized cost of $9 million for membrane filtration in the Gulf. These monetized benefits are based on the average risk reduction associated with the consumption of platform-contaminated fish and shrimp for the three carcinogens noted above. The risk reduction projections are derived from flow-weighted industry-wide average pollutant concentrations. Monetized human health benefits due to removals of the two carcinogens associated with the proposed BAT option using granular filtration range between $2,000 and $9,000 per year in the Gulf of Mexico. The risk reduction projections for granular filtration are based on concentrations for individual production groups (oil only, gas only, oil and gas). The annualized costs for the proposed BAT option are $24 million for the Gulf. The estimated annualized human health benefits in the Gulf of Mexico for the proposed NSPS option (based on the same pollutants and methodology) are estimated to range from $300 to $2,000 for membrane filtration and from $200 to $1,000 for granular filtration. These NSPS benefits compare with NSPS annualized costs for the Gulf of $9 million (membrane filtration) and $14 million (granular filtration) (1986 dollars) (Table 20). An additional reduction in human health risk due to subsistence fishing near the oil and gas platforms in the Gulf of Mexico region is also anticipated but could not be quantified in the RIA.

TABLE 20—INCREMENTAL ANNUALIZED BENEFITS AND COSTS FOR PRODUCED WATER BAT/NSPS OPTIONS

[Thousands of 1986 dollars per year; Gulf of Mexico only]

Regulatory option	Produced water BAT options				Produced water NSPS options			
	Incremental benefits		Incremental costs		Incremental benefits		Incremental costs	
	Membrane filter	Granular filter	Membrane filter	Granular filter	Membrane filter	Granular filter	Membrane filter	Granular filter
BPT all	0	0	0	0	0	0	0	0
Four mile filter; BPT beyond*	1–6	2–9	8,787	24,287	0.3–2	0.2–1	9,079	13,842
Filter shallow; BPT deep	N/A	4–22	59,378	N/A	N/A	3–13	26,236	N/A
Filter and discharge all	N/A	6–31	139,809	438,057	N/A	3–16	56,558	86,845
Zero discharge shallow; BPT deep	N/A	5–23	247,095	N/A	N/A	3–14	81,388	N/A
Zero discharge shallow; filter deep	N/A	6–31	327,328	N/A	N/A	3–17	111,629	N/A
Zero discharge all	N/A	6–32	458,796	776,772	N/A	3–17	145,572	186,605

Notes:
1. All incremental values relative to current (BPT) treatment level.
2. Incremental benefits reflect monetized health benefits only. Membrane filter benefit projections derived from industry-wide flow-weighted averages for 3 carcinogens are not directly comparable to granular filter projections based on individual production groups for 2 carcinogens.

*Preferred option in today's notice.

N/A: Not Available.

Neither analysis for granular or membrane filtration considers impacts of various additives, especially biocides, due to the lack of specific data on the actual use/discharge of these components by the industry. EPA identified only a limited number of the biocides as actually used by the industry. Many of the biocides registered by EPA's Office of Pesticides and Toxic Substances, or identified as used by the industry, are highly toxic to marine aquatic life, and others are carcinogenic. These pollutants may cause adverse impacts on the marine environment and/or human health through fish consumption if discharged in sufficient quantities. EPA expects to collect additional pollutant data, and data on actual use/discharge of biocides and other toxic additives, prior to final promulgation to more precisely characterize average industry-wide discharges. EPA is also soliciting new information on produced water characteristics, and environmental impacts associated with discharges of these wastes into the marine environment.

The impacts of radioactive pollutants in produced water (e.g., radium-226 and radium-228) are not evaluated for either filtration technology although they have been identified in produced waters in the Gulf of Mexico region. These radioactive pollutants are known human carcinogens and are known to bioaccumulate in fish and shellfish. These pollutants have a potential to cause human health impacts through fish consumption. Recent data from a coastal Louisiana study show these pollutants to accumulate in the sediments, as well as caged oysters.

However, data are lacking on the fate and impacts of these pollutants in the offshore environment which precludes a complete assessment of potential human health risks and projected benefits associated with controlling the discharge of these pollutants at this time. EPA is concerned about these impacts, however, and expects to collect additional data on discharges of radioactive pollutants by the offshore subcategory, and on the removal efficiency of the existing control technologies prior to final promulgation. This new information will be used to project potential environmental impacts and regulatory benefits for the final RIA. EPA is also soliciting information on discharge levels of these pollutants, their fate in the marine environment, as well as data on the known environmental impacts in the offshore environment.

B. Drilling Fluids and Drill Cuttings

Water quality impacts/benefits are projected for eight pollutants representing average industry-wide drilling discharges. The analysis indicates that two pollutants (lead and mercury) exceed marine aquatic life

criteria, and two pollutants (arsenic and mercury) exceed human health criteria for fish consumption under current discharge conditions. The preferred BAT/NSPS option will eliminate these violations from the more environmentally sensitive shallow water areas, as well as reduce the number of pollutants with projected exceedances to one (mercury) for marine aquatic life criteria and one (arsenic) for human health criteria for fish consumption.

The estimated human health benefits for the preferred BAT/NSPS option based on the combined quantified average risk reduction associated with consumption of platform contaminated fish and shrimp by lead and arsenic are in the range of $13.4 million to $65.2 million, versus a projected incremental annualized cost of $29.5 million (1986 dollars). (Table 21) An additional reduction in human health risk due to the subsistence fishing near the platforms in the Gulf of Mexico region is also anticipated but cannot be quantified by the preliminary RIA.

TABLE 21—INCREMENTAL ANNUALIZED BENEFITS AND COSTS FOR DRILLING FLUIDS AND CUTTINGS BAT/NSPS OPTIONS

[thousands of 1986 dollars per year; Gulf of Mexico only]

Regulatory option	Incremental benefit	Incremental cost
5/3 All [1]	N/C	787
1/1 All	13,431–65,184–65,361	6,466
Zero discharge 4 miles; 5/3 beyond	12,396–60,381	22,493
Zero discharge 4 miles; 1/1 beyond [2]	13,341–65,184	29,500
Zero discharge shallow; 5/3 deep	12,584–60,856	61,119
Zero discharge shallow; 1/1 deep	13,431–65,185	66,279
Zero discharge all	13,432–65,188	211,859

NOTES
1. All incremental values relative to current treatment level.
2. Incremental benefits reflect monetized benefits only.
3. Current treatment assumed to be equivalent to "5/3 All" option for analytic purposes.
[1] Current treatment assumed to be equivalent to "5/3 All" option for analytic purposes. Incremental costs incurred are due to monitoring requirements.
[2] Preferred option in today's notice.
N/C: Not Calculated.

The water quality analysis and cost/benefit analysis for drilling fluids and cuttings underestimates the benefits derived from the proposed regulation by considering impacts of only eight pollutants to represent average industry-wide drilling discharges. Pollutants detected only in limited number of samples, are not considered to be industry-wide pollutants, and are therefore not considered in the preliminary RIA. Some of these non-considered pollutants are toxic to the marine life and/or human health and may cause local chronic or sub-chronic marine life or human health impacts around the platforms if discharged in sufficient quantities. EPA expects to collect additional pollutant data prior to final promulgation to more precisely characterize average industry-wide discharges. These pollutants will be included in water quality and cost/benefit analysis for the final promulgation. EPA is also soliciting new information on drilling waste characteristics, and environmental impacts associated with discharges of these waste streams into the marine environment.

XVIII. Non-Water Quality Environmental Impacts and Other Factors

A. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require the Agency to consider the non-water quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, the Agency has evaluated the effect of the options being considered for the proposed regulations on air pollution, solid waste generation and management, and energy consumption.

The following is a description of the non-water quality environmental impacts associated with the options considered for today's proposed regulations and a summary of the results of the evaluations identifying the estimated levels and impacts for each of the considered options.

1. Energy Requirements and Air Emissions

Some of the proposed options are estimated to result in the generation of significant amounts of air emissions and the use of significant amounts of additional energy to comply with the additional treatment and control requirements for drilling fluids and drill cuttings and produced water.

Energy requirements and resulting air emissions for the control options considered by EPA are presented in Table 22 for drilling wastes and in Table 23 for the production wastes. Estimates are incremented to BPT. Thus, for example, the "5/3 All" estimates should approximate the energy requirements and air emissions associated with the requirements of existing permits. Presently, there are no national standards that directly regulate emissions from offshore oil and gas facilities. However, pursuant to the Clean Air Act Amendments of 1990, specific requirements are to be issued within a year controlling air emissions from OCS sources located offshore of the states along the Pacific, Arctic, and Atlantic coasts and along the Gulf coast off the state of Florida. The majority of offshore oil and gas activities, which are in the Gulf of Mexico offshore of Louisiana, Texas, etc., are not included in the coverage of these upcoming requirements. Sources of air pollution from offshore activities include leaks, oil-water separators, dissolved air flotation units, painting apparatus, and storage tanks, but more significantly diesel or gas engines for generating power, either on the structures or for the purpose of transportation to and from the structures.

TABLE 22—NON-WATER QUALITY ENVIRONMENTAL IMPACTS: UNCONSTRAINED DEVELOPMENT

Options	Volume of barged waste (bbl/yr)	Air emissions (short tons/yr)	Fuel requirements (BOE/yr)
Drilling Fluids and Cuttings			
5/3 all structures	552,000	532	79,517
1/1 all structures	552,000	532	79,517
Four mile zero discharge; 5/3 beyond [1]	1,598,000	1,186	173,360
Four mile zero discharge; 1/1 beyond [1]	1,598,000	1,186	173,360
Zero discharge shallow; 5/3 deep	2,746,000	2,116	293,535
Zero discharge shallow; 1/1 deep	2,746,000	2,116	293,535

TABLE 22—NON-WATER QUALITY ENVIRONMENTAL IMPACTS: UNCONSTRAINED DEVELOPMENT—Continued

Options	Volume of barged waste (bbl/yr)	Air emissions (short tons/yr)	Fuel requirements (BOE/yr)
Zero discharge; all structures	8,190,000	6,352	818,029

BOE: Barrel of Oil Equivalent.
[1] Excludes Alaska region from the zero discharge requirement.

For drilling fluids and drill cuttings, the only technology under consideration that has significant energy consumption impact is the use of barges to transport waste solids to shore and land transportation of land disposal of these wastes. Table 22 summarizes the fuel requirements and resulting air emissions for this option.

Air emissions are calculated for sulfur dioxide (SO_2), carbon dioxide (CO_2), hydrocarbons (HC), and nitrogen oxides (NO_x). These calculations are incremental to BPT and assume all oil-based drilling fluids and drill cuttings have either been substituted for or are being disposed of by shipment to land. The methodology used for the fuel consumption and emission calculations are described in the development documents.

Materials barged for the "5/3 All" and the "1/1 All" options are those that would normally require barging (i.e., do not comply with the required effluent limits). As can be seen by the table, a zero discharge requirement, whether applicable to all of the structures or to those structures located in shallow water depth, significantly increases the amount of barged material and resulting fuel consumption and air emissions.

The non-water quality environmental impacts related to the produced water options are shown in Table 23. The opertions requireing zero discharge for produced water greatly increase air emissions and fueld requirements as compared to those of the filtration and discharge options. This is due primarily to the energy required of reinjection equality in order to pumpt fluids into formations.

TABLE 23—NON-WATER QUALITY ENVIRONMENTAL IMPACTS: UNCONSTRAINED DEVELOPMENT

[Produced Water]

Option	Fuel requirements (BOE/year)		Total emissions (short tons/year)	
	BAT	NSPS	BAT	NSPS
Filter and discharge; 4 miles; BPT deep	5,490	10,920	9	18
Filter shallow; BPT deep	19,190	11,440	32	19
Filter and discharge; all	58,980	46,650	97	77
Zero discharge shallow; BPT deep	709,510	422,540	1,178	702
Zero discharge shallow; filter deep	750,000	457,750	1,244	760
Zero discharge; all	2,179,580	1,718,310	3,619	2,853

BOE: barrel of oil equivalent.

Air emissions calculated for produced waters include particulates in addition to NO_x, CO_2, and SO_2. These are pollutants associated with gas turbine operation. Energy requirements for reinjection were based on an injection pressures of 1,800 psi and the energy derived from a natural gas turbine. An 80 percent motor efficiency and a 20 percent energy conversion efficiency were assumed. The same basis was used for the power requirements for the filtration option calculations, except pressurization to 50 psi was assumed.

2. Solid Waste Generation

The Agency evaluated the impacts of solid waste generation and disposal for the options considered in this rulemaking. The Agency concluded that there is adequate onshore capacity for the disposal of the amounts of drilling wastes (drilling fluids and cuttings) estimated to be generated by the preferred regulatory option (4 Mile; 1/1 deep). The following is a summary of the Agency's findings in this regard.

The regulatory options described in today's notice will not cause the generation of additional solids as a result of the treatment technology. However, some of the options—particularly those requiring zero discharge for drilling fluids and cuttings—would require disposal of the solids associated with waste materials. In particular, used drilling fluids and cuttings contain relatively high levels of solids, and considerable volumes are generated which would be disposed onshore under several of the regulatory options presented in today's notice.

For example, under the option requiring zero discharge of drilling wastes from all new offshore wells, EPA estimates that approximately 8.2 million barrels per year of drilling fluids and drill cuttings would be transported to shore for disposal. As indicated in Table 22, this zero discharge option represents the maximum amount of barged wastes required by any of the options considered in this rulemaking. This volume of barged wastes may be compared to the Agency's estimates of 361 million barrels per year of drilling wastes generated from the drilling of onshore wells, including the "onshore" and "coastal" subcategories. See "Report to Congress: Management of Wastes from the Exploration, Development, and Production of Crude Oil, Natural Gas, and Geothermal Energy," U.S. EPA, Office of Solid Waste, EPA/530–SW–88–003, December 1987 (hereinafter "Report to Congress"). The maximum barged volume of approximately 8.2 million barrels per year represents about 2.3 percent of the volume of all drilling wastes that are generated and disposed onshore. Likewise, Table 20 indicates that the Agency's preferred regulatory option (4 Mile; 1/1 deep) would require the transport of approximately 1.6 million barrels per year of drilling waste to shore for disposal. This represents less than 0.5 percent of the volume of all the

drilling wastes that are generated and disposed onshore.

These drilling wastes that are generated offshore and transported to shore for disposal under the preferred option would be deposited in land disposal units similar to those used to manage a portion of onshore-generated drilling wastes. These land disposal units would generally be located relatively near the coast where the wastes are brought to shore. While there are currently no federal requirements for the onshore disposal of drilling wastes under the RCRA (see EPA's "Regulatory Determination for Oil and Gas Geothermal Exploration, Development and Production Wastes" at 53 FR 25446), there are existing State program requirements in the Gulf Coast and California Coast areas where the wastes would be brought to shore. EPA is developing a tailored program for the management of exploration and production wastes under RCRA Subtitle D.

As discussed in Section XIV of today's notice, the Agency did study that availability of land disposal capacity for drilling wastes that would be transported to shore for disposal under the regulatory options presented in today's notice ("Onshore Disposal of Offshore Drilling Waste—Capacity and Cost of Onshore Disposal Facilities," ERC Environmental and Energy Services Co. for U.S. EPA, January 1991). That study concluded that there is at least 45 million barrels per year of available or projected land disposal capacity for drilling wastes beyond current requirements in the Gulf and California coastal areas (including those volumes of onshore-generated drilling wastes and those offshore-generated drilling wastes which are currently brought to shore for land disposal). The 1.5 million barrels per year of drilling wastes that would be disposed onshore under today's preferred option represents approximately 3.5 percent of the estimated available land disposal capacity in these coastal areas, which the Agency believes to be a reasonable use of the available capacity.

3. Underground Injection of Produced Water

In the Report to Congress, EPA analyzed the impact of the disposal of produced water in injection wells. The study found that injection wells used for the disposal of produced water have the potential to degrade fresh groundwater in the vicinity if they are inadequately designed, constructed, or operated. Highly mobile chloride ions can migrate into freshwater aquifers through corrosion holes in injection tubing, casing, and cement. The federal Underground Injection Control (UIC) program (administered by EPA and states pursuant to the Safe Drinking Water Act, sections 1421–1425) requries mechnical integrity testing of all Class II injection wells every 5 years. All states meet this requirement, although some states have requirements for more frequent testing.

Many states have primacy for the UIC program. Both the criteria used for passing or failing an integrity test for a Class II well and the testing procedure itself can vary. There is considerable variation in the actual construction of Class II wells in operation nationwide, both because many wells in operation today were constructed prior to the enactment of current programs and because current state programs vary significantly. State requirements for new injection wells can be quite extensive. However, state requirements for construction of injection wells prior to the enactment of the UIC program have evolved over time, and construction ranges from injection wells in which all groundwater zones are fully protected with casing and cementing to shallow injection wells with one casing string and little or no cement. Furthermore, the offshore areas which may be considered for reinjection at distances greater than 4 miles may not have freshwater aquifers in proximity to the injection formations.

B. Other Factors

The industry has argued that injuries and fatalities due to hauling additional volumes of drilling wastes to shore would increase. Based upon available information, it is likely that the number of accidents would increase if the volume of waste transported to shore increased. However, it is difficult to determine quantitatively the increase in accidents and fatalities.

XIX. Solicitation of Comments

The Agency invites and encourages comments on any aspect of these proposed regulations. The preceding parts of today's notice list specific areas where comments are solicited. Many of these areas and several additional areas open for comment are summarized below. In order for the Agency to evaluate views expressed by commenters, the comments should contain specific data, references, and information to support their views.

A. Industry Profile

The Agency believes that the estimated total capital costs and operation and maintenance costs for BAT produced water are valid even though the profiling effort does not include those structures currently producing in state offshore waters.[1] Peak and annual average water production rates are calculated for each model project, based on initial production rates, initial water cut, annual decline rates and the estimated economic lifetime of the model project. For each model project, peak water production rates were used in the development of capital costs, while average annual water production volumes were used to calculate operating and maintenance costs. The Minerals Management Service (MMS) reported the water production volumes for offshore federal waters in the year 1987 and state waters records reported water production volumes for state offshore waters for the year 1988. The Agency's estimate of average water production volumes in offshore federal water areas only exceeded the summation of the MMS and state records volumes reported by 60 percent. Since the Agency's water production volume did not exceed actual volumes, the capital costs and the operating and maintenance costs that were developed accounted for those structures in state waters that the Agency was unable to profile. However, because these costs are distributed over fewer structures, the impacts may be somewhat overestimated.

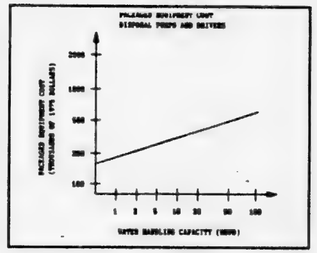
EPA welcomes comment, information and data concerning the number of structures currently in production in state offshore waters and their associated water production using the Agency's definition of "offshore."

B. Produced Water Treatment Costs

The Agency believes that today's proposal is based on produced water treatment costs that are substantially improved from those used in the 1985 proposal. The capital costs that were used for the 1985 proposal and have been used for today's proposal were costs supplied to the Agency by industry. These costs were contained in an October 1975 report entitled, "Potential Impact of EPA Guidelines for Produced Water Discharges from the Offshore and Coastal Oil and Gas Extraction Industry." This report was prepared by Brown and Root for the Sheen Technical Subcommittee of the Offshore Operators Committee. In this report, costs of equipment were plotted

[1] Drilling and production effluents in state waters are included in the evaluation of NSPS costs and impacts for drilling fluids, drill cuttings and produced water.

in graphs such as the example shown in Figure 1.



In 1982, a second report was prepared for EPA by Hydrotechnic Corporation entitled, "Cost Estimates for Systems to Treat Produced Water Discharges in the Offshore Gas and Oil Industry to Meet BAT and NSPS." The costs in this report were derived from the 1975 Brown and Root report as follows: for a given piece of equipment at a given capacity, the costs were read off of the charts contained in the report. The costs from the charts were adjusted to 1981 costs by applying an inflation factor to them.

Up until late October, 1989, the costs being used were the escalated 1981 costs from the Hydrotechnic report which were escalated once again to achieve 1986 costs. Comments from environmental groups such as the Natural Resources Defense Council indicated that the costs used by the Agency in the 1985 Federal Register were too high thereby making some of the more stringent options economically infeasible. However, no adjustments in costs were made in response to such comments.

Since late October 1989, the submitted data have been extensively corrected throughout the offshore oil and gas project. The equipment costs used in the 1985 proposal were high to begin with and have continually been inflated over the years. Some re-costing of equipment has been performed that has resulted in reduced capital costs and lowered operating and maintenance costs. An example of equipment re-costing is the pump and its associated piping for the disposal system. For a disposal system that has the capacity to handle 200 barrels of water per day. The following costs from the 1975 Brown and Root Report were used:

Pump	$946,000
Associated Piping	1,960,000
Total	$2,906,000

EPA consulted the Department of Energy, Energy Information Administration for updated equipment costs. The Energy Information Administration produces an annual report, entitled "Costs and Indices for Domestic Oil and Gas Field Equipment and Production Operations," which is a result of extensive information gathering from equipment manufacturers and suppliers. The same 200 barrels of water per day disposal system costed to be $2.9 million from the 1975 Brown and Root report was re-costed using the Energy Information Administration basis to be:

Pump and Associated Piping: $240,000.

This annual report updates costs on pumps and disposal systems for different produced water handling capacities. This re-costing effort resulted in reductions of up to 91 percent in the capital costs of these disposal systems.

Once the equipment was re-costed and the engineering errors were corrected, there was a dramatic reduction in the total capital costs of the produced water options. For example, the option of a zero discharge requirement for all structures had capital costs reduced by 61 percent and the operating and maintenance costs were reduced by 54 percent.

The Agency is interested in comment on the cost corrections explained above and also the costs associated with installing and operating membrane filtration systems. In particular, EPA requests information and data as to the various advantages and disadvantages of membrane systems relative to granular (or other) filtration systems and other produced water treatment methods, especially BPT. For example, do membrane or other systems have advantages in terms of platform space requirements, fitting into the configuration of other production and treatment components, maintenance requirements, or energy use.

C. Drilling Fluids and Drill Cuttings Treatment Costs

1. Discharge Volumes

For the 1988 Notice of Data Availability, the Agency used discharge volumes for drilling fluids and drill cuttings that were submitted in response to the 1985 proposal. These discharge volumes were contained in a February, 1986 report entitled "Water-based Drilling Fluids and Cuttings Disposal Option Survey," by Walk, Haydel and Associates. During the comment period on the 1988 notice, an updated report for discharge volumes entitled, "Water-based Drilling Fluids and Cuttings Disposal Study Update," (Walk, Haydel and Associates, November, 1988) was submitted to the Agency.

This study update contained results from the measurement of the discharge volumes of drilling fluids and cuttings from 15 wells in Mobile Bay. A comparison of the data from the updated study was made in relation to the data contained in the 1986 report.

The 1986 report contained discharge volumes of 1,430 barrels of cuttings and 5,349 barrels of drilling fluid (with an additional 1,400 barrels of fluid allocated to the active mud system) for a 10,000 foot well located in the Gulf of Mexico. These data were based on theoretical calculations used by most operators in estimating the volumes of drilling wastes reported in the Agency's Discharge Monitoring Reports.

After review of the 1988 study, the Agency believes for the reasons explained below that the data from the 1986 Walk, Haydel and Associates report provide better information for estimating typical discharge volumes of drilling fluids and cuttings from those reported in the 1988 study for U.S. offshore wells.

2. Well Depths and Formation Characteristics

For the purpose of costing options for drilling fluids and cuttings, the average well depth in the Gulf of Mexico was assumed by EPA to be 10,000 feet. In the updated study, all of the well depths were over 12,000 feet and over half of the wells went to depths of 20,000 feet. These 20,000-foot wells in the Mobile Bay area were most likely tapping the Norphlet formation which is a high temperature, high pressure and high sulphur environment. Chevron, USA, Inc. made a request of the Minerals Management Service to allow a delay in field delineation while developing a metallurgy technology compatible with the environment. Mobile Oil Corporation had to replace liners in Norphlet wells because of corrosion. The Norphlet formation has proven to be a difficult formation to produce from and therefore may be an equally difficult formation to drill. These wells are atypical of the majority of wells drilled and, therefore, the data from such wells do not realistically reflect the population of wells drilled in others formations.

3. Calculation of Discharge Volume Ratios

In the 1986 Walk Haydel report, the calculated discharge volume of drilling fluids and cuttings from an 18,000 foot well was 13,287 barrels. The actual volume from a 16,300 foot well (which industry considers to be similar to an 18,000 foot well) was measured to be 37,200 barrels. Industry then determined the ratio of the actual barrels discharged to the calculated barrels discharged to be 37,200/13,287=2.804. The "actual" volume of a 10,000 foot well was then determined by multiplying the calculated volume (1986) of 6,770 barrels by 2.804:

6,770×2.804=19,008 barrels

This type of calculation assumes a direct linear correlation between well depth and discharge volumes of drilling fluids and cuttings. In 1985, the American Petroleum Institute surveyed 1 percent of the wells drilled onshore that year. It should be noted that the amount of drilling wastes from a given well are more likely to vary according to the depth of the well and the formation being drilled than whether the well is onshore or offshore. A regression analysis was run to fit the data obtained and the regression equations were used to extrapolate from the sample population to all onshore wells drilled in 1985. The 1986 report fit four regression models to the data, however, the model with the best fit was:

volume of waste=a(footage)+b(footage^2)+c

This non-linear relationship can be attributed to several factors: Drilling rate; mud system change overs (each time a mud type is changed, the entire mud circulation system is changed as well); and mud type (larger quantities of mud are generated if low-density muds are diluted with water to maintain the solids concentration below a specified limit).

4. Valuation of Receiving Waters

As introduced in section XVI.C and discussed in section XVII of today's notice, the Agency is requesting comment on its approach to valuing marine waters. The monetized benefit values in the RIA primarily focus on human health effects. The RIA does not include monetized estimates of benefit parameters such as recreational uses or the intrinsic value of the resource. The Agency requests comment on the data and methodologies used in developing the benefit estimates presented in the Regulatory Impact Analysis.

D. Miscellaneous Discharges

EPA solicits additional information regarding the pollutant characteristics, sources, and treatment of deck drainage, produced sand, and well treatment, completion, and workover fluids. While EPA believes that its proposed treatment/control options for these sources are appropriate, the options are based on limited information. Additional data on pollutant loadings and quantity is solicited, as well as operational information on well treatment, workover and completion fluids including types of fluids, methods of injection and recovery, operational practices.

E. Industry Profile Within Three Miles

As discussed in section V.B, EPA evaluated regulatory options according to, among other criteria, distance from shore. The distances examined include 4, 6, and 8 miles from shore. EPA is also considering regulatory options based on 3 miles from shore. However, industry profile information is limited inside of 3 miles. EPA solicits information regarding numbers and types (i.e., gas only, oil only, gas and oil), and levels of production and waste discharges of oil and gas extraction producing facilities and projections or plans for new well drillings at 3 miles or less from shore.

F. Membrane Filtration Treatment Technology for Produced Waters

As discussed in section X.B, EPA is assessing the performance of membrane filtration on produced waters. EPA will be collecting sample data on tests performed at systems operating on offshore structures following this proposal. Analysis of these samples will include measurements of oil and grease exclusive of non-hydrocarbon organic materials. The Agency has recently received a petition from the OOC requesting review and revision of the oil and grease limitations for produced water based on the current analytical procedure not being appropriate. EPA requests additional comment or data on this subject. EPA is also soliciting any additional information on the performance of membrane filtration applications at any locations in the oil and gas industry and its applicability to treating oily waters.

G. Static Sheen Analytical Method

As discussed in section VII, the Agency is not changing the 1985 proposal which proposed the Static Sheen Test for determination of the presence of free oil. The method for this analysis was also proposed in that Federal Register notice. As further stated in section VII, there have been other analytical methods developed, that are in use, for the Static Sheen Test. In particular, the analyses developed by Region IX, and X, and another known as the "minimal volume method" are currently in use. These methods vary according to the volume of sample, the type of receiving medium (tap water, or sea water), mixing time, observation time, and determination criteria for the presence of free oil.

The Agency is soliciting comments on the 1985 proposed method and the other methods described with respect to their relative accuracy in identifying the presence of free oil.

H. Radioactivity of Produced Water

As also discussed in section VII, the Agency has conducted a literature and data gathering search regarding the presence and levels of radium in produced waters. Several studies on effluent or ambient levels of radium in areas surrounding offshore production sites are cited in section VII, although it was concluded that data bases are scattered and, for the most part, preliminary. EPA is soliciting comment and additional data concerning radioactivity of produced water, and its effect on ambient levels in the surrounding environment. Depending upon evaluation of additional data and comments submitted as a result of today's proposal, technologies such as ion exchange and types of membrane or other filtration suitable for removal of radioactivity may be considered as a technology basis for the treatment of produced water at promulgation.

I. Alaskan Waters

In section XII, EPA explained why it believes a zero discharge of drilling fluids and cuttings, based on barging of wastes, is not appropriate for offshore drilling operations in Alaskan waters. However, EPA is aware of an experimental operation to reinject drilling wastes. EPA solicits comments and information on the feasibility of requiring zero discharge based on reinjection, rather than barging of wastes to land for onshore disposal, for Alaskan waters.

J. Treatment/Control Options for Drilling Wastes

In section XIII, EPA lists and describes the BAT and NSPS options being considered for treatment and control of drilling wastes. EPA solicits comments on the preferred option (4 Mile Zero Discharge; 1/1 Beyond Option) and on the other options as well. EPA especially invites comment on

the "5/3 All Structures" and the "1/1 All Structures" discharge options and on the "Zero Discharge All Structures" option.

K. Cadmium Formation Contribution to Drilling Wastes

In section XIII EPA describes an analysis of data from an API study on composition of drilling wastes. The analysis of these data estimates that 11 to 13 sites had higher concentrations of cadmium in their drilling fluids than in their barite. Certain assumptions are necessary in order to assign the increases in cadmium levels in the drilling fluids to sources other than the barite or to the formation being drilled. The assumption that cadmium is uniformly distributed throughout the barite and the drilling fluids must be made, the other components of the drilling fluid system do not contribute to this increase in cadmium levels, and that these sites are representative of the locations at future drilling will occur.

L. Treatment/Control Options for Produced Water

In section XIII EPA describes the BAT options being considered for treatment and control of produced waters. The types of control involve various combinations of treatment and discharge and/or zero discharge. The treatment and discharge technologies considered in the options described involve either BPT, filtration, or reinjection. Each option also varies according to requriements which may differ with respect to depth or distance from shore. EPA solicits comments on the viability and appropriateness of these options, especially with respect to the "Filtration All Structures," "BPT All Structures," and the "Zero Discharge" options. In addition, EPA solicits comment on the impact of produced water radioactivity on the viability and appropriateness of the proposed treatment options. EPA intends to issue a Notice of Data Availability and will take all available information into account in developing final regulatory controls on produced water.

M. Environmental Impact Analysis

Section XVII describes the environmental impact/benefit analyses performed by EPA on the proposed regulatory options for drilling wastes and produced waters. EPA believes that the water quality and cost/benefit analyses performed on both of these waste sources underestimates the benefits derived from the proposed regulations because only eight pollutants are used to represent average industry-wide discharges. These eight pollutants, according to EPA data, are those that are consistently present in significant levels. Some of the pollutants excluded from consideration were found in insignificant quantities or numbers of facilities. Yet, some of these pollutants are highly toxic. This analysis also does not consider impacts of various produced water additives, especially biocides, due to the lack of specific data on the use of these components. Thus, EPA solicits additional information on produced water and drilling waste characteristics, especially with respect to toxic pollutants, biocides, and use of other toxic additives. EPA also solicits information on the environmental impacts associated with these discharges.

XX. Variances and Modifications

A. Stormwater Variance

A concern not previously addressed is with respect to noncompliance with the deck drainage regulations because of storms. Rainwater comes in contact with the decks of the platforms and any open treatment or storage devices. Short-term, high volume loadings can temporarily interfere with treatment and control processes. One way to handle this is to require a certain size holding tank capable of containing stormwater associated with a certain size storm event until it can be routed to the treatment system, and allowing a variance for any overflows that may occur. Another method would be to allow a variance during the initial period (the "first flush") of the storm events and for a designated period after certain sized storm events.

EPA solicits comment on the appropriate approach to storm exemptions, especially regarding the appropriate size of storm events which would trigger a variance allowance, or the appropriate capacity of stormwater holding tanks.

EPA also solicits comment on Best Management Practices (BMPs) applicable to deck drainage. Such BMPs could, for example, require a regular washdown schedule where the drainage is sent through the major wastewater treatment system, thereby being subject to controls on produced water.

XXI. OMB Review

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection at the EPA Public Information Reference Unit listed in the ADDRESSES section of today's notice.

List of Subjects in 40 CFR Part 435

Oil and gas extraction, Waste treatment and disposal, Water pollution control.

Dated: February 28, 1991.

F. Henry Habicht,

Acting Administrator.

Appendices

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—Clean Water Act.

Agency—U.S. Environmental Protection Agency.

API—American Petroleum Institute.

ASTM—American Society for Testing and Materials.

BAT—Best available technology economically achievable, under section 304(b)(2)(B) of the Act.

BCT—Best conventional pollutant control technology, under section 304(b)(4) of the Act.

BMP—Best Management practices.

BOD—Biochemical oxygen demand.

BPT—Best practicable control technology currently available, under section 304(b)(1) of the Act.

Bypass—An act of intentional noncompliance during which waste treatment facilities are circumvented because of an emergency situation.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 and Water Quality Act of 1987.

LC50—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay.

NPDES Permit—National Pollutant Discharge Elimination System permit issued under section 402 of the Act.

NRDC—Natural Resources Defense Council.

NSPS—New source performance standards under section 306 of the Act.

OCS—Outer Continental Shelf.

OOC—Offshore Operators Committee.

PESA—Petroleum Equipment Suppliers Association.

Priority Pollutants—The 65 pollutants and classes of pollutants declared toxic under section 307(a) of the Act.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976. Amendments to Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

SPP—Suspended particulate phase.

Spot—The introduction of oil to a drilling fluid system for the purpose of freeing a stuck drill bit or string.

Upset—An unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee.

Appendix B—Major Documents Supporting the Proposed Regulation

1. ERC Environmental and Energy Services Co. for EPA, "An Evaluation of Technical Exceptions for Brine Reinjection for the Offshore Oil and Gas Industry", January 1991.

2. Offshore Operators Committee, "Gulf of Mexico Spotting Fluid Survey", prepared by Exxon Production Research Company and Chevron, USA, Inc., April 4, 1987.

3. Offshore Operators Committee, "Final Report for Research Program on Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives—Phase II", prepared by Battelle New England Marine Research Laboratory, December 24, 1986.

4. EPA/API Diesel Pill Monitoring Program, presented at the 1986 International Conference on Drilling Wastes, Calgary, Alberta, Canada, April 5–8, 1986.

5. Science Applications International Corporation of EPA, "Summary of Data Relating to Minor Discharges", February 1991.

6. KRE, P.C. for EPA, "Offshore and Coastal Oil and Gas Extraction Industry Study of Onshore Disposal Facilities for Drilling Fluids and Drill Cuttings Located in the Proximity of the Gulf of Mexico", March 25, 1987.

7. KRE, P.C. for EPA, "Drilling Fluids and Drill Cuttings Disposal, Offshore Oil and Gas Extraction Industry", November 22, 1986.

8. ERC Environmental and Energy Services Co. for EPA, "Onshore Disposal of Offshore Drilling Waste—Capacity and Cost of Onshore Disposal Facilities", February 1991.

9. ERC Environmental and Energy Services Co. for EPA, "Review of Static Sheen Testing Procedures", January 1990.

10. American Petroleum Institute, "A National Survey on Naturally Occurring Radioactive Materials (NORM) in Petroleum Producing and Gas Processing Facilities", July 1989.

11. EPA, "Development Document for 1991 Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category", February 1991.

12. Walk, Haydel and Associates, "Water-based Drilling Fluids and Cuttings Disposal Study Update", January 1989.

13. Technical Resources, Inc., "The NPDES Drilling Fluids Toxicity Test Variability Study", February 1991.

14. EPA, "Economic Impact Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry", February 1991.

15. EPA, "Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry", February 1991.

16. EPA, "Regulatory Impact Analysis of the Effluent Guidelines Regulation for the Offshore Subcategory of the Oil and Gas Extraction Industry", February 19, 1991.

Appendix C.—Regulatory Boundaries

Structures discharging to the following areas shall be considered "shallow." Unless otherwise stated below, the outer boundary for each designated area is the 200-mile boundary of the Fishery Conservation Zone.

(A) Gulf of Mexico—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas of Eastern Texas, Louisiana, Mississippi, Alabama, and Eastern Florida.

(B) Atlantic Coast—Water Depth 20 Meters or Less

Extending from the inner boundary of the territorial seas offshore of the contiguous states between and including Maine and Florida.

(C) California Coast—Water Depth 50 Meters or Less

Central and Northern California: Extending offshore of California and bounded on the north by approximately 42° N. latitude and bounded on the south by the U.S.-Mexico boundary.

(D) Alaska

1. Gulf of Alaska—water depth 50 meters or less: It is bounded approximately on the west by 131° 55' W. longitude, thence east along 56° N. latitude to 147° V. longitude, thence south.

2. Cook Inlet/Shelikof Strait—water depth 50 meters or less: Lies east of 156° W. longitude and north of 57° N. latitude to the inner boundary of the territorial seas near Kalgin Island.

3. Bristol Bay/Aleutian Range—water depth 50 meters or less: (a) North Aleutian Basin: Lies in the eastern Bering Sea northwest of the Alaskan Peninsula and south of 59° N. latitude. It is bounded on the west by 165° W. longitude and on the east by the inner boundary of the territorial seas.

(b) St. George Basin—water depth 50 meters or less: Lies in the eastern Bearing Sea northwest of the Aleutian Islands chain and is bounded on the north by 59° N. latitude and on the west by 174° W. longitude from 59° N. latitude to 56° N. latitude, thence east to 171° W. longitude, thence south. It is bounded on the east by 165° W. longitude.

4. Norton Basin—water depth 20 meters or less: Lies south and southwest of the Seward Peninsula. It is bounded on the south by 63° N. latitude, on the west by the U.S.-Russia Convention Line of 1867, on the north by 65° 34' N. latitude, and on the east by the inner boundary of the territorial seas.

5. Beaufort Sea—water depth 10 meters or less: Lies offshore of Alaska in the Beaufort Sea and the Arctic Ocean. It is bounded on the west by the Mineral Management Service Chukchi Sea planning area, extends eastward to the limit of U.S. jurisdiction, and on the south by the inner boundary of the territorial seas.

To determine water depth at the facility location, reference that most recent nautical charts or bathymetric maps with the smallest scale (highest resolution) available from the National Oceanic and Atmospheric Administration for the area in question. Water depth is the mean lower low water depth indicated on the appropriate map for the location of the facility or discharge. Water depth at the facility is based upon the proposed location of the facility's well slot structure or produced water discharge point.

For the reasons set out in the preamble, title 40, part 435 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for part 435 is revised to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Public Law 92–500, 86 Stat. 816, Public Law 95–217, 91 Stat. 156, Public Law 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. 40 CFR part 435, subpart A is proposed to be revised to read as follows:

Subpart A—Offshore Subcategory

Sec.

435.10 Applicability; description of the offshore subcategory.
435.11 Specialized definitions.
435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
435.15 Standards of performance for new sources (NSPS).

Subpart A—Offshore Subcategory

§ 435.10 Applicability; description of the offshore subcategory.

The provisions of this subpart are applicable to those facilities engaged in field exploration, drilling, well production, and well treatment in the oil and gas extraction industry which are located in waters that are seaward of the inner boundary of the territorial seas ("offshore") as defined in section 502(g) of the Clean Water Act. This includes offshore facilities that transport wastes to onshore locations for treatment or disposal.

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *drilling fluid* shall refer to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-base drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil-base drilling fluid has diesel, crude, or some other oil as its continuous phase with water as the dispersed phase.

(c) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried to the surface with the drilling fluid.

(d) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(e) The term *produced water* shall refer to the water (brine) brought up from the hycarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(f) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream and blowdown of the water phase from the produced water treating system.

(g) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(h) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(i) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

The term *M/IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(k) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(l) The term *no discharge of free oil* shall mean that waste streams may not be discharged when they would cause a film or sheen upon or a discoloration of the surface of the receiving water, as determined by the Static Sheen Test.

(m) The term *Static Sheen Test* shall refer to the standard test procedure that has been developed for this industrial sub-category for the purpose of demonstrating compliance with the requirement of no discharge of free oil.

(n) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

(o) The term *96-hour LC50* shall mean the concentration of test material that is lethal to 50% of the test organisms in a bioassay after 96 hours of constant exposure.

(p) The term *exploration facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(q) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(r) The term *production facility* shall mean any platform or fixed structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

(s) The term *new source* means any exploratory, development or production facility or activity that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistent with the following definitions:

(1) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing and preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

(t) The term *gas well* shall refer to any well that produces more than 15,000 cubic feet of natural gas for each barrel of produced petroleum liquids.

(u) The term *oil development and production facilities* shall mean those facilities subject to this subpart that are engaged in the development of or production from oil wells or oil and gas wells.

(v) The term *maximum for any one day* as applied to BPT and BCT effluent limitations for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately.

(w) The term *maximum* as applied to BAT effluent limitations for drilling fluids and to NSPS for produced water and drilling fluids shall mean the maximum concentration allowed as measured in any single sample of the discharged waste stream.

(x) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids shall mean the minimum 96-hour LC50 value allowed as measured in any single sample of the discharged waste stream.

(y) The term *well completion fluids* means: Salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operation which prepare the drilled well for hydrocarbon production.

(z) The term *workover fluids* means: Salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures.

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

Pollutant parameter waste source	BPT effluent limitations oil and grease mg/l		
	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
Produced water	72	48	NA
Deck drainage	(1)	(1)	NA
Drilling fluids	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA
Well treatment fluids	(1)	(1)	NA
Sanitary:			
M10	NA	NA	* 1
M/IM *	NA	NA	NA
Domestic	NA	NA	NA

[1] No discharge of free oil.
* Minimum of 1 mg/l and maintained as close to this concentration as possible.
[1] There shall be no floating solids as a result of the discharge of these wastes.
NA—Not applicable.

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

Waste source	BAT effluent limitations	
	Pollutant parameter	BAT effluent limitation
Produced water:		
(A) For facilities located 4 miles offshore or less.	Oil and grease	The maximum for any one day shall not exceed 13 mg/l; the average of daily values for 30 consecutive days shall not exceed 7 mg/l.
(B) For facilities located more than 4 miles offshore.	Oil and grease	The maximum for any one day shall not exceed 72 mg/l; the average of daily values for 30 consecutive days shall not exceed 48 mg/l.
Drilling fluids and cuttings:		
(A) For facilities located 4 miles offshore or less.		No discharge.[1]
(B) For facilities located more than 4 miles offshore.	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume.
	Free oil	No discharge.[2]
	Diesel oil	No discharge in detectable amounts.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid.
Well treatment, completion and workover fluids.		Zero discharge of fluids slug plus 100-barrel buffer on either side.
Deck drainage during production: (A) For facilities located 4 miles offshore or less.	Oil and grease	The maximum for any one day shall not exceed 13 mg/l; the average of daily values for 30 consecutive days shall not exceed 7 mg/l.
(B) For facilities located more than 4 miles offshore.	Oil and grease	The maximum for any one day shall not exceed 72 mg/l; the average of daily values for 30 consecutive days shall not exceed 48 mg/l.
Deck drainage during drilling.	Free oil	No discharge.[1]
Produced sand		Zero discharge.
Sanitary M10	None	
Sanitary M9IM	None	
Domestic waste	None	

[1] All Alaskan facilities are subject to the drilling fluids and cuttings discharge limitations for facilities located more than 4 miles offshore.
[2] Based on Static Sheen Test.

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Waste source	BCT effluent limitations	
	Pollutant parameter	BCT effluent limitation
Produced water (all structures)	Oil & grease	The maximum for any one day shall not exceed 72 mg/l; the average of daily values for 30 consecutive days shall not exceed 48 mg/l.
Drilling fluids and cuttings:		
(A) For facilities located 4 miles offshore or less		No discharge.[1]
(B) For facilities located more than 4 miles offshore.	Free oil	No discharge.[2]
Well treatment, completion and workover fluids	Free oil	No discharge.[2]
Deck drainage	Free oil	No discharge.[2]
Produced sand	Free oil	No discharge.[2]
Sanitary M10	Residual chlorine	Minimum of 1 mg/l and maintained as close to this as possible.
Sanitary M9IM	Floating solids	No discharge.
Domestic waste	Floating solids	No discharge.

[1] All Alaskan facilities are subject to the drilling fluids and drill cuttings discharge limitations for facilities located more than 4 miles offshore.
[2] Based on the Static Sheen Test.

§ 435.15 Standards of performance for new sources (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

BEST COPY AVAILABLE

Waste source	NSPS effluent limitations	
	Pollutant parameter	NSPS effluent limitation
Produced water:		
(A) For facilities located 4 miles offshore or less	Oil & grease	The maximum for any one day shall not exceed 13 mg/l; the average of daily values for 30 consecutive days shall not exceed 7 mg/l.
(B) For facilities located more than 4 miles offshore.	Oil & grease	The maximum for any one day shall not exceed 72 mg/l; the average of daily values for 30 consecutive days shall not exceed 48 mg/l.
Drilling fluids and cuttings:		
(A) For facilities located 4 miles offshore or less		No discharge.[1]
(B) For facilities located more than 4 miles offshore.	Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume.
	Free oil	No discharge.[2]
	Diesel oil	No discharge in detectable amounts.
	Mercury	1 mg/kg dry weight maximum in the whole drilling fluid.
	Cadmium	1 mg/kg dry weight maximum in the whole drilling fluid
Well treatment, completion and workover fluids		Zero discharge of fluids slug plus 100-barrel buffer on either side
Deck drainage during production:		
(A) For facilities located 4 miles offshore or less	Oil & grease	The maximum for any one day shall not exceed 13 mg/l; the average of daily values for 30 consecutive days shall not exceed 7 mg/l.
(B) For facilities located more than 4 miles offshore.	Oil & grease	The maximum for any one day shall not exceed 72 mg/l; the average of daily values for 30 consecutive days shall not exceed 48 mg/l.
Deck drainage during drilling	Free oil	No discharge.[2]
Produced sand		Zero discharge
Sanitary M10	Residual chlorine	Minimum of 1 mg/l and maintained as close to this as possible.
Sanitary M9IM	Floating solids	No discharge.
Domestic Waste	Floating solids	No discharge.
	Foam	No discharge.

[1] All Alaskan facilities are subject to the drilling fluids and cuttings discharge limitations for facilities located more than 4 miles offshore.
[2] Based on Static Sheen Test.

[FR Doc. 91–5553 Filed 3–12–91; 8:45 am]
BILLING CODE 6560–50–M

OL
56
SS
49
IR
13
91
MI

federal register

Wednesday
March 13, 1991

Part III

Department of Education

School Dropout Demonstration Assistance Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.301]

School Dropout Demonstration Assistance Program

ACTION: Correction; notice inviting applications for new awards for fiscal year (FY) 1991.

SUMMARY: This notice corrects an error made in the application notice published in the **Federal Register** on February 4, 1991 (56 FR 4364). The notice published on February 4, 1991 is an application notice that contained all of the forms needed to apply for a grant under the School Dropout Demonstration Assistance Program. However, two of the forms were incorrectly printed as part of the narrative and are reprinted in this issue of the **Federal Register**. Applicants are to include these forms titled "School Dropout Demonstration Assistance Program—Absolute Priorities", and "School Dropout Demonstration Assistance Program—Data Sheet", together with the application forms published on February 4, 1991 when applying for an award under this competition.

FOR FURTHER INFORMATION CONTACT: John R. Fiegel, School Dropout Demonstration Assistance Program, U.S. Department of Education, 400 Maryland Avenue, SW., room 2049, Washington, DC 20202-6439. Telephone (202) 401-1342. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3241.

Dated: March 7, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Absolute priorities

Indicate whether your application meets the statutory priority by marking the following box:

☐ Statutory priority. Application shows the replication of successful programs conducted in other LEAs or the expansion of successful programs within an LEA, and reflects very high numbers or very high percentages of school dropouts in the schools of the applicant.

!!!IMPORTANT NOTE: An application that fails to meet the statutory priority will not be considered!!!

In addition to the statutory priority, indicate which priorities your application addresses by marking the appropriate boxes:

☐ Restructuring and reform. Application meets all of the requirements of this priority.

☐ Targeted programs for at-risk youth. Application meets all of the requirements of this priority.

☐ Field-initiated projects. Application does not meet the requirements of either the restructuring priority or the targeted priority, but proposes a project which otherwise meets the requirements of the authorizing statute.

If an applicant does not mark either the restructuring and reform box or the targeted programs for at risk youth box, the application will be considered as a field-initiated project.

Special considerations/invitational priority

Identify any special consideration(s) or invitational priority under which you are submitting an application by marking the appropriate box(es).

☐ Application contains provisions that emphasize early intervention designed to identify at-risk students in elementary or early secondary schools.

☐ Application contains provisions for significant parental involvement in the design and conduct of the project.

☐ An application contains provisions to address the persistently high dropout rate among Hispanic Americans.

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please mark the appropriate box.

☐ Total enrollment of 100,000 or more elementary and secondary school students.

☐ Total enrollment of at least 20,000 but less than 100,000 elementary and secondary school students.

☐ Total enrollment of less than 20,000 elementary and secondary school students. Check here if enrollment is less than 2,000 ____.

*Please check the box below if the applicant is a community-based organization.

☐

**Please check below if the applicant is an educational partnership. Then list the members of the partnership and circle the type of organization.

☐

(A)_____
local educational agency

(B)_____
business concern or business organization, or, if not available, a community-based organization, nonprofit private organization, institution of higher education, State educational agency, State or local public agency, private industry council (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station.

*Evidence of the applicant's nonprofit status should be attached.

**Evidence of the applicant's nonprofit status should be attached if the educational partnership includes a nonprofit private organization.

SCHOOL DROPOUT DEMONSTRATION ASSISTANCE PROGRAM

Data Sheet

Please provide the information set forth below on the number and percentage of children who were enrolled in the schools of the applicant for the five academic years prior to the date of this application who have not completed their elementary and secondary education and who are classified as dropout students.

School year	# dropout students	Total enrollment	% dropouts
1989-90			
1988-89			
1987-88			
1986-87			
1985-86			

Applicant's definition of a dropout:

[FR Doc. 91-5678 Filed 3-12-91; 8:45 am]
BILLING CODE 4000-01-C

OL
56
SS
49
IR
13
991
MI

federal register

Wednesday
March 13, 1991

Part IV

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Participant Directed Individual Account Plans; Notice of Proposed Rulemaking and Withdrawal of Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Participant Directed Individual Account Plans

AGENCY: Pension and Welfare Benefits Administration, DOL.

ACTION: Notice of proposed rulemaking and withdrawal of proposed rule.

SUMMARY: The document contains a revised proposed regulation under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). At this time the Department of Labor (the Department) is also withdrawing the notice of proposed rulemaking under section 404(c) that it published in 1987. That section provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him under the plan, the participant or beneficiary is not considered a fiduciary by reason of his exercise of control and other plan fiduciaries are relieved of liability under part 4 of title I of ERISA for the results of the participant's or beneficiary's exercise of control. Section 404(c) specifically contemplates the issuance of regulations. The regulation describes the circumstances in which section 404(c) applies to a transaction involving a participant's or beneficiary's exercise of control over his individual account.

In general, in order for a participant to exercise control over the assets in his account, the participant or beneficiary must have the opportunity, under the plan, to: (1) Choose from a broad range of investment alternatives, which consist of at least three diversified investment categories, each of which has materially different risk and return characteristics; (2) give investment instruction with a frequency which is appropriate in light of the market volatility of the investment alternatives, but not less frequently than once within any three month period; and (3) diversify investments generally and within investment categories. If adopted, the regulation will affect participants and beneficiaries as well as plan fiduciaries.

DATES: Written comments on the proposed regulation must be received by the Department of Labor (the Department) on or before May 13, 1991. The proposed regulation, if adopted, would apply to transactions occurring 180 days after the date of publication of the regulation in final form.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, 200 Constitution Avenue NW., room N5669, U.S. Department of Labor, Washington, DC 20210 and marked "Attention: section 404(c) regulation". All submissions will be available for inspection in the Public Documents Room, Pension and Welfare Benefits Administration, room N5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Deborah S. Hobbs, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-7901; or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 523-9692. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On September 3, 1987, the Department of Labor published a notice in the Federal Register (52 FR 33508) containing a proposed regulation (the "1987 proposal") that would describe the circumstances in which section 404(c) of ERISA [1] would apply to a transaction involving a participant's or beneficiary's exercise of control over his account and the effect of such application. The Department received more than 230 letters of comment regarding that proposal. A public hearing on the proposal was held in Washington, DC on February 10 and 11, 1988, at which time 23 speakers testified.

After consideration of the issues raised by the written comments and oral testimony, the Department has, as discussed below, made substantial changes to the regulation. In view of the significance of the changes made to the 1987 proposal, the Department has decided that interested members of the public should be afforded the opportunity to comment on the changes prior to the adoption of a final regulation. Accordingly, the Department is withdrawing the 1987 proposal and is proposing a revised section 404(c) regulation.

The following discussion summarizes the 1987 proposal and the major issues raised by commentators and explains the Department's reasons for the modifications reflected in the proposed regulation that is published with this notice.

[1] 29 U.S.C. 1104(c).

DISCUSSION OF THE PROPOSED REGULATION

I. The Statute

Section 404(c) of ERISA provides that where a participant or beneficiary of an employee pension benefit plan that provides for individual accounts exercises control over assets in his account, then (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of ERISA for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

The relief from the fiduciary responsibility provisions of ERISA that is provided by section 404(c) applies only to individual transactions that meet the criteria established that section, i.e., the transaction must be executed pursuant to the kind of plan described in section 404(c) and the participant must actually have exercised control with respect to the transaction. Thus, a determination whether section 404(c) (1) and (2) apply can only be made on a case by case basis. It is the Department's view that section 404(c) is similar to a statutory exception to the general fiduciary provisions of ERISA and, accordingly, the person asserting applicability of the exception will have the burden of proving that the conditions of section 404(c) and any regulation thereunder have been met.[2]

II. Consequences of Noncompliance with the Regulation

Several commentators expressed uncertainty or concern regarding the effect, direct or indirect, of this regulation on the duties and responsibilities of fiduciaries with respect to plans which are not "ERISA 404(c) plans" as described in the regulation. These commentators expressed the view that the regulation should have no express or implied bearing on any present or future legal standards which may apply to such

[2] See *Donovan* v. *Cunningham*, 716 F.2d 1455, 1466, 1467-68 (5th Cir. 1983) in which it was held that a fiduciary of an employee stock ownership plan had the burden of proof to show that the conditions to the availability of the statutory exemption found in section 408(e) of ERISA were met. As support, the court cited *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953): "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme. *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct. 981, 97 L.Ed. 1494 (1953)." *Id.* at 1467-68, n.17.

nonconforming plans or on the prudence of maintaining such plans.

In publishing the 1987 proposal, the Department did not intend to imply that the regulatory standards applicable to ERISA 404(c) plans were also applicable to plans which were not intended to be ERISA 404(c) plans or to provide the relief from the ERISA fiduciary responsibilities provided by section 404(c). The proposal contained in this notice is limited to describing the requirements for an ERISA 404(c) plan, and the type and degree of independent control on the part of the participant of such a plan necessary to provide the transactional relief from the fiduciary responsibility provisions of ERISA described in section 404(c). By publishing a regulation interpreting ERISA section 404(c), the Department is not promulgating a standard for all ERISA-covered plans concerning the types of plan investments a fiduciary must make in order to maintain a prudent investment portfolio. A plan which does not meet the requirements for an ERISA 404(c) plan may, nonetheless, have a prudent and well diversified investment portfolio.

It was also suggested that the Department adopt the regulation as a "safe harbor" under ERISA section 404(c), thereby providing a fiduciary of a plan which failed to comport with the requirements of this regulation the opportunity to argue that the particular plan and any particular participant-directed transaction executed pursuant to such plan falls within the statutory definition, and, as such, should be afforded the exception to fiduciary liablity described in ERISA section 404(c). After due consideration, the Department rejects this suggestion. The Department believes that it can best satisfy its statutory responsibility under ERISA section 404(c) by describing the basic framework necessary for a participant's exercise of control, thereby providing guidance and clarification as to the application of ERISA section 404(c), within which plan sponsors are afforded flexibility in the design of ERISA section 404(c) plans. Finally, as previously explained, a non-complying plan does not necessarily violate ERISA; non-compliance merely results in the plan not being accorded the statutory relief described in section 404(c).

III. ERISA Section 404(c) Plans

In General. The 1987 proposal defined an "ERISA section 404(c) plan" as an individual account plan described in section 3(34) of ERISA that permits a participant to make an independent choice, from a broad range of investment alternatives, regarding the manner in which any portion of the assets in his individual account is invested.[3] This definition permitted a plan to provide for participant control in many different ways and in varying degrees. For example, under the definiton, a plan could meet the requirements for treatment as an ERISA section 404(c) plan notwithstanding that it only allows certain participants to exercise control over their individual account balances and notwithstanding that it only permits participants to exercise control over a specified portion of their account balances.[4] However, if a plan does not permit a participant to exercise control over all of the assets in his account, the provisions of sections (404(c)(1) and 404(c)(2) would not, in any circumstances, apply to transactions involving assets with respect to which the participant is not permitted to exercise control. To the extent the participant is not permitted to exercise control, plan fiduciaries are subject to all of the fiduciary duties and obligations set forth in part 4 of title I of ERISA.[5]

The Department received no substantive comments on the general conceptual framework of the definition of an ERISA 404(c) plan as described above, and, thus, in this regard the proposed regulation has not been changed. The Department did receive comments concerning several of the specific requirements of the definition contained in the 1987 proposal (paragraph (b)) and these are discussed below.

1. Opportunity to Exercise Control

Paragraph (b)(1) of the 1987 proposal provided that, to be an ERISA 404(c) plan, a plan must (among other things) provide an opportunity for a participant or beneficiary to exercise control over the assets in his individual account in the manner described at paragraph (b)(2) of the proposal. In turn, paragraph (b)(2) set forth the rules with respect to a participant's opportunity to exercise control. First, the terms of the plan must provide that participants have a reasonable opportunity to submit investment instructions to an identified plan fiduciary who is obligated to comply with such instructions. Second, a plan may impose reasonable restrictions on the frequency with which participants may give investment instructions. Third, certain other reasonable limitations may be imposed on the participant's ability to exercise control. Each of these concepts is discussed below.

A. The Identified Plan Fiduciary

The 1987 Proposal and Comments. Paragraph (b)(2)(i) of the proposal provided that a plan must provide participants with an opportunity to give investment instructions "to an identified plan fiduciary who is obligated to comply with such instructions." The Department believed this requirement was necessary primarily for two reasons. First, participants should be able to identify the individual to whom they are to give their investment instructions. Second, that individual to whom instructions are to be given should receive and execute such directions as a fiduciary under ERISA, *i.e.*, all directions must be reasonably executed insofar as they do not fall within one of the exemptions described in paragraph (e)(2)(ii) of the 1987 proposal, which outlined four situations in which fiduciaries must ignore participant instructions or be subject to liability for the consequences.

Several commentators suggested that the identified plan fiduciary should be permitted under the regulation to designate an agent for the receipt and implementation of investment instructions from participants and beneficiaries. The commentators suggested that this would be particularly useful in the case of a plan which makes available a family of mutual funds as investment alternatives. In such circumstances, the entity serving as the transfer agent with respect to the family of funds could be designated by the identified plan fiduciary as his agent. Participants would thereafter be able to contact the transfer agent directly with their investment instructions.

The Proposed Regulation. In the Department's view, the 1987 proposal

[3] Section 404(c) refers to a pension plan that "provides for individual accounts." The 1987 proposal, however, limited coverage of section 404(c) to "individual account plans" described in section 3(34) of ERISA because the Conference Report accompanying ERISA, H.R. Rep. No. 1280, 93d Cong., 2d Sess., 305 (1974) (hereafter, the Conference Report) refers to individual account plans that provide for participant control and because section 404(c) contemplates separate individual accounting so that each participant will bear the sole risk of loss attributable to his investment decision.

[4] This discussion deals only with the effect of such classifications on a plan's status as an ERISA section 404(c) plan; in certain circumstances such classifications may violate other provisions of law, including conditions to qualification of a pension plan under section 401(a) of the Internal Revenue Code (the Code).

[5] ERISA also imposes certain requirements which are not affected by a participant's exercise of control over the assets in his individual account; those requirements, of course, continue to apply to plan fiduciaries even though a plan is an ERISA section 404(c) plan. For example, the bonding requirements of section 412 of ERISA would apply to all persons (other than the participant) who handle plan funds under an ERISA section 404(c) plan.

would not have foreclosed the identified plan fiduciary from designating an agent to receive and execute participant directions and, indeed, the Department believes that such an arrangement may, in certain circumstances, serve to increase the degree of control exercised by participants and beneficiaries over the assets in their account. It should be recognized that such an arrangement may, however, result in the designated agent himself becoming a plan fiduciary if, under the facts and circumstances, he exercises discretionary authority or control as defined in section 3(21) of ERISA in deciding which directions to execute. In any event, the identified plan fiduciary who designates an agent will remain a fiduciary with regard to the execution of the participant directions for which he is responsible through his agent, and, thus, must prudently monitor the agent's performance of his duties.

B. Frequency of Opportunity to Give Investment Instructions

The 1987 Proposal and Comments. Section (b)(2)(ii)(A) of the proposal provided that an ERISA 404(c) plan may impose "reasonable restrictions on the frequency with which the participant or beneficiary may give investment instructions." In the preamble to the proposal, the Department expressed the view that the reasonableness of such a restriction with respect to an investment should be judged in relation to the volatility which may be expected for an investment of that kind. This concept was illustrated with two examples: (1) Where the investment options available to the participant are diversified pooled funds and the underlying assets of each fund consist of a large diversified group of securities which are actively traded and for which there is a recognized market such that the market value of an interest in any of these funds should not fluctuate greatly over short periods of time, an opportunity to give instructions once every calendar quarter should be sufficient; (2) in comparison, if one of the options offered is an option to invest in the highly volatile market of commodities futures, the plan may need to provide participants the opportunity to give investment instructions at any time during which such futures are traded in order to assure reasonable opportunity to exercise control over the assets in his account.

Numerous commentators expressed concern that the proposal was vague, and that it seemed to require more opportunities to give investment instructions than necessary. Many of these commentators also offered the opinion that the standard contained in the 1987 proposal exceeds the usual practice among existing participant-directed individual account plans, and that by requiring plans to increase the frequency of transfer opportunities, plans would incur a significant increase in administrative expenses.

The Proposed Regulation. The Department continues to believe that the frequency of opportunity to give investment instructions (i.e., to transfer account assets to or from an investment) is properly judged in relation to the volatility which may be expected with regard to the type of investment at issue. In order to assure that participants truly exercise control over the investment of their plan accounts, they must have the ability to transfer their account assets from one investment to another at intervals reasonably commensurate with the volatility of the initial investment in order to minimize the risk of loss. What is reasonable in turn depends on the nature of the investment alternatives which are made available to the participants by the plan.

In an effort to provide more certainty, however, the proposed regulation provides a more specific framework with respect to this issue while retaining the basic concept concerning the relationship between frequency of transfer opportunity and the volatility of the related investment option. This revised framework assigns a specific minimum frequency to at least three investment categories made available by a plan, to its participants and beneficiaries, which are intended to satisfy the broad range of investment alternatives requirement of paragraph (b)(3) of this proposed regulation. Thus paragraph (b)(2)(ii)(C) of the proposal provides generally that, with respect to each investment alternative made available by a plan, the opportunity to exercise control will not exist unless participants and beneficiaries are afforded the opportunity to give investment instructions with a frequency which is appropriate in light of the volatility to which the investment may reasonably be expected to be subject. However, subparagraph (*1*) of paragraph (b)(2)(ii)(C) requires that, regardless of the frequency warranted by an investment's volatility, with regard to at least three of the investment categories designed to satisfy the terms of paragraph (b)(3)(i)(B), relating to a broad range of investment alternatives, an ERISA 404(c) plan must at a minimum provide a participant an opportunity to give investment instructions at least once within any three month period. For example, if an ERISA 404(c) plan offered participants the opportunity to investment in long term certificates of deposit, as one of only three investment alternatives available under the plan designed to satisfy paragraph (b)(3)(i)(B), the inability to transfer assets out of such investment at least once within any three month interval would mean that the terms of paragraph (b)(2)(ii)(C)(*1*) are not met. If, on the other hand, the same investment opportunity of long term certificates of deposits were offered simply as an additional investment alternative and the plan makes available at least three other investment categories for purposes of satisfying the terms of paragraph (b)(3)(i)(B), and permits investment instruction no less frequently than once within any three month period with respect to each such category, the three month minimum prescribed at paragraph (b)(2)(ii)(C)(*1*) would not apply. Such an investment would, however, continue to be subject to the general rule contained in paragraph (b)(2)(ii)(C) which requires that the reasonableness of frequency of opportunity to give investment instructions be determined relative to the anticipated market volatility of the investment.

The proposed regulation provides an additional standard, paragraph (b)(2)(ii)(C)(*2*). This paragraph requires that an ERISA 404(c) plan must provide the opportunity to transfer account assets to or from the least volatile category of those with respect to which a participant or beneficiary is permitted to give investment instruction no less frequently than once within any three month period pursuant to (b)(2)(ii)(C)(*1*), with the same frequency with which participants and beneficiaries are permitted to make such transfers with respect to the most volatile investment made available under the plan. This requirement is necessary because the ability to transfer assets to or from a highly volatile investment has meaning only where there is in fact another investment vehicle available which can just as readily transfer out or accept assets.

Finally, paragraph (b)(2)(ii)(C) has been amended to clarify that in order for a restriction to be deemed reasonable, it must be applied on a uniform and consistent basis to all directing participants and beneficiaries of that plan.

C. Other Limitations on the Exercise of Control

The 1987 Proposal and Comments. Paragraph (b)(2)(ii) of the proposal provided that a plan did not fail to provide an opportunity to exercise control by charging a participant's account for the reasonable expenses of carrying out his instructions, or by authorizing plan fiduciaries to decline to implement participant instructions which would generate income that would be taxable to the plan. A number of commentators urged that other limitations on the exercise of control by participants and beneficiaries should be permitted. Specifically, these commentators suggested that an ERISA 404(c) plan should be allowed to authorize its fiduciaries to decline to implement investment instructions which were described at paragraph (e)(2)(ii) of the proposal, which would result in a prohibited transaction, or which could result in a loss in excess of the directing participant's account balance.

The Proposed Regulation.—The preamble to the 1987 proposal explained that the allowable limitations on the exercise of control which were described at paragraph (b)(2)(ii) of the proposal were not intended to constitute an exhaustive list of such limitations.[6] The Department continues to hold to this view. In response to the expressions of uncertainty as to this matter, however, the proposed regulation expressly states at paragraph (b)(2)(ii)(B) that a plan does not fail to provide an opportunity to exercise control where, by its terms, it permits a fiduciary to decline to implement participant instructions which are described at paragraph (e)(2)(ii) of the regulation, which would result in a prohibited transaction, or which could result in a loss in excess of the directing participant's account balance.

2. Broad Range of Investments

The 1987 Proposal and Comments. Paragraph (b)(1)(ii) of the 1987 proposed regulation provided that, to be an ERISA 404(c) plan, a plan must make available to its participants a broad range of investment alternatives into which a participant may direct the investment of his account assets. This requirement was based on the statement of Congress in the Conference Report accompanying the enactment of ERISA that the regulations promulgated pursuant to section 404(c) "generally will require that for there to be independent control by participants, a broad range of investments must be available to the individual participants and beneficiaries." [7] To that end, paragraph (b)(3) of the 1987 proposal described what would constitute a "broad range of investments." First, a plan must make available to its participants and beneficiaries the opportunity to materially affect the potential return on the assets in his account and the risk to which such assets are subject. Second, the options must be sufficient to permit the participant to pursue a variety of different investment objectives which at a minimum must include: (1) capital preservation and generation of income; (2) capital appreciation; and (3) liquidity with a high degree of assurance of repayment. Third, the available investments must be sufficient to enable participants to diversify their investments to minimize the risk of large losses.

The Department received numerous comments on this part of the 1987 proposal, offering a variety of suggestions. Some commentators urged the Department to be more specific in describing the three investment categories which appeared at paragraph (b)(3)(i)(B) of the proposal. Within this group of commentators, some expressed the view that the terminology used at paragraph (b)(3)(i)(B) was unclear; others in this group suggested that the Department should specify investment instruments, such as common stocks, long term bonds, or guaranteed investment contracts of banks or insurance companies, in describing the required investment categories.

Another group of commentators offered the view that the regulation should be less specific in defining the investment opportunities which are necessary to constitute a broad range of investments. These commentators generally urged that the regulation not prescribe specific investment categories but rather only require that the investments provided by a plan cover a substantial part of the risk/return spectrum, thereby, providing a participant the opportunity to materially affect the potential risk and return on amounts invested and to diversify his investments. The commentators also argued that such an approach would afford plan sponsors the flexibility necessary to develop new programs or adapt existing plans to changing employee needs.

The Proposed Regulation. The Department continues to believe that a plan offers a broad range of investments only where participants and beneficiaries are provided with the opportunity to materially affect the risk and return of their accounts and to diversify investments so as to minimize the risk of large losses. Thus, this requirement is retained in paragraph (b)(3)(i)(A) of the proposed regulation. The Department also continues to believe that available investment options must be sufficient to permit the participant to pursue a variety of investment objectives. As discussed above, the 1987 proposal defined three categories of investments which were intended to satisfy this requirement. However, after careful consideration of the public comment on this aspect of the regulation, the Department has determined that, given the general requirement contained in paragraph (b)(3)(i)(A), requiring defined investment alternatives to be made available to participants and beneficiaries for purposes of a section 404(c) plan may unnecessarily limit the ability of plan sponsors to accommodate changes in employee needs and changes in investment products and markets. Accordingly, while paragraph (b)(3)(i)(B) retains the general requirement that participants and beneficiaries have the opportunity to choose from at least three diversified groups of investments which have materially different risk and return characteristics, the proposed regulation does not describe specific categories of investments which must be made available by a section 404(c) plan. Instead, in (b)(3)(i)(B)(*2*) the proposal requires that the three categories of investments in the aggregate enable the participant, by choosing among them, to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant. This will allow each participant to construct a portfolio with risk and return characteristics appropriate to his financial and personal circumstances. In addition, (b)(3)(i)(B)(*3*) requires that each of the investment categories when combined with investments in either of the other categories tends to minimize the risk of a participant's portfolio at any given level of expected return. The purpose of this requirement is to give a participant the ability to allocate his account among the three categories of investments, so as to minimize the risk presented by his portfolio at any given expected rate of return, while allowing maximum flexibility in plan design.

A. Diversification.

Paragraph (b)(3)(i) of the 1987 proposal required ERISA 404(c) plans to

[6] A plan may impose other reasonable limitations. However, such restrictions could so restrict a participant's opportunity to exercise control as to cause the plan to fail to meet the general requirement that an ERISA section 404(c) plan must provide for a broad range of investment alternatives. Thus, such restrictions should be taken into account in determining whether a particular plan meets the requirements for treatment as an ERISA section 404(c) plan and in determining the scope of the responsibilities of plan fiduciaries.

[7] Conference Report at 305–306.

provide participants and beneficiaries with a reasonable opportunity to (1) choose from a diversified group of investments within each of three categories and (2) diversify the investments of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' accounts. The 1987 proposal further explained in paragraph (b)(3)(ii) that where pooled investment funds are available as investment options to participants or beneficiaries, the underlying investments of the pooled investments funds shall be considered in determining whether the plan satisfies the requirements of paragraph (b)(3)(i)(B) and paragraph (b)(3)(i)(C) (relating to diversification of investments). The Department received no substantive comments in this area, and thus, retains these diversification requirements proposed in 1987. Hence, under the proposal, where a plan makes available the opportunity to invest in a "look-through investment vehicle",[8] the underlying assets of the vehicle will be considered in determining whether the plan satisfies the diversification requirements of paragraphs (b)(3)(i)(B) and (b)(3)(i)(C).[9] With regard to the diversification requirement contained in paragraph (b)(3)(i)(C), the Department recognizes that a participant may need a substantial amount of investment capital to achieve such diversification if investment options are limited to direct investment in individual instruments (such as common stocks, bonds, etc.). However, broad diversification may be achieved with a much smaller amount of capital where assets are held in the form of an individed interest in a pool of broadly diversified investment instruments. Therefore, paragraph (b)(3)(i)(C) of the proposed regulation clarifies the 1987 proposal to stress that where a plan provides the opportunity to invest solely in individual investment instruments, such an opportunity will not meet the "broad range" requirement of paragraph (b)(3)(i) unless the account balance of each plan participant and beneficiary is large enough to permit broad diversification through that form of investment. Where the account balance of any participant is not sufficiently large, a plan can meet the requirements of paragraph (b)(3)(i) only by making available the opportunity to invest in look-through investment vehicles.[10] Of course, a plan which permits a participant to invest his account assets in any available investment implicitly makes available all look-through investment vehicles and therefore would meet the requirements of paragraph (b)(3)(i) regardless of the account balances of the participants.

B. Sufficient Investment Information

Paragraph (b)(3)(iii) of the 1987 proposal provided that an investment option would not be deemed to be part of a broad range of investment alternatives unless sufficient information as to that investment is available to the participant to permit informed investment decisions by that participant. It is the Department's contention that participants cannot exercise meaningful control over their investments unless they have access to information on the basis of which informed investment decisions can be made.

As originally proposed, this provision did not require plans to limit the available investment alternatives to those which met these information requirements, but rather required only that participants under an ERISA 404(c) plan be able to choose from a broad range of investments with respect to which such information is available. Thus, under the 1987 proposal, a plan could offer investment alternatives for which no information is available and still meet the broad range of investment alternatives requirement if it also offered a sufficient number of investment alternatives about which information is available. Numerous commentators expressed concern that this provision was unclear.

The proposed regulation retains the requirement of the 1987 proposal with additional clarification. The proposed regulation would not create an absolute obligation on the part of ERISA 404(c) plans' fiduciaries to furnish the required information to the participants and beneficiaries. Rather, broad public availability generally will be sufficient. The proposed regulation, however, clarifies that where the investment alternatives are limited to designated group of investments, an investment will not be considered in determining whether a plan meets the requirements of paragraph (b)(3)(i) unless, at a minimum, an identified plan fiduciary (such as the plan administrator) is available to direct participants as to a means by which such information can be obtained (e.g., by providing an appropriate address or telephone number through which a participant may directly request and obtain the desired information).

The Department notes that, under the proposed regulation, the requirement that sufficient information must be available to permit informed investment decisions applies not only to the initial participant investment decision but also to subsequent decisions with regard to that investment. Thus, for example, in order for an investment option to meet this requirement, information regarding the current value of the investment would need to be readily available on a regular basis as well as information regarding the financial condition of the issuer. With regard to look-through investment vehicles, the relevant information is that which concerns the vehicle and its characteristics, not the underlying assets of the vehicle. A participant must also be given sufficient information to make informed decisions with regard to all incidents of ownership of that investment in order for an investment to be taken into account for purposes of the broad range requirement. In the case of a security, such information would include information sufficient to permit the participant to make informed decisions in exercising any voting rights attendant to such ownership. The example at paragraph (g)(1) illustrates that this standard would be met where the investment options available under the plan include a broad range of publicly-offered securities for which market quotations are readily available and where the plan administrator forwards copies of proxies, periodic reports and similar materials to the participants who have invested in such securities.

C. Definition of Pooled Investment Fund

The 1987 Proposal and Comments. Paragraph (f)(1) of the 1987 proposal defined "pooled investment fund" as: (1) an investment company described in section 3(a) of the Investment Company Act of 1940; (2) a common or collective trust fund or a pooled investment fund maintained by a bank; (3) a pooled separate account of an insurance company qualified to do business in a State; or (4) any entity whose assets include plan assets by reason of a plan's investment in the entity. A number of commentators urged that this definition be broadened to include guaranteed investment contracts issued by insurance companies. One commentator urged that similar investment arrangements provided by banks also be included. Other commentators expressed uncertainty as to application of the definition to a variety of specific investment vehicles, such as group trusts, individually constructed portfolios established as a sub-fund within a trust, bank-maintained trust funds which pool the assets of participants of a single plan, and individual portfolios of a series investment company as described at section 18(f) of the Investment Company Act of 1940 and 17 CFR § 270.18f-2.

The Proposed Regulation. Paragraph (f)(1) of the proposed regulation retains essentially the definition which appeared in the 1987 proposal, modified to specifically include bank deposits, bank and insurance company guaranteed investment contracts, as well as series investment companies as defined in section 18(f) of the Investment Company Act of 1940 and 17 CFR § 270.18f-2 and the segregated portfolios of such companies. The original proposal was drafted so that any investment vehicle within the definition would be the type of vehicle for which its underlying assets could properly be considered in determining whether the diversification requirement of section 404(a)(1)(C) is met. In this regard, the Conference Report [11] indicates that a determination of diversification with regard to a plan investment in a mutual fund, a bank investment vehicle or insurance company contracts would be achieved through an examination of the underlying assets and investments of the bank or insurance company. Thus, the Department believes that it is consistent with the underlying rationale of the definition in the 1987 proposal to specifically include series investment companies and their segregated portfolios as well as bank deposits, and bank and insurance company guaranteed investment contracts. However, because guaranteed investment contracts by definition do not permit investors to participate in the investment experience of the underlying assets supporting such contracts, the Department has redesignated the "pooled investment fund" to "look-through investment vehicle".

The remainder of the definition of pooled investment fund which appeared in the 1987 proposal is unchanged. In general, a determination of whether any particular investment entity comes within the definitional framework of the term "look-through investment vehicle" is a factual determination and, thus, must be made on a case by case basis. However, in response to numerous requests for clarification, the Department notes that group trusts as defined in IRS Rev. Rul. 81–100 will, at a minimum, meet paragraph (f)(1)(iv) of the definition, "i.e., any entity whose assets include plan assets by reason of a plan's investment in the entity" [12] and, as such, would be considered a "look-through investment vehicle" for purposes of the proposal.

3. The Special Rule for Designated Look-Through Investment Vehicles and Designated Investment Managers.

The 1987 Proposal and Comments. The 1987 proposed regulation included a special rule which would apply to plans which made available one or more designated pooled investment funds or one or more designated investment managers as investment alternatives. That regulation provided that a plan whose investment alternatives include any specified pooled investment fund or the right to appoint a designated investment manager is an ERISA section 404(c) plan only if (in addition to the plan's compliance with the requirements of paragraph (b)): (1) An independent plan fiduciary is required to designate the pooled investment funds or investment manager(s) offered as investment options, and (2) in the case of designated funds, the fiduciary designates at least four funds, each of which is managed in furtherance of a different investment objective (preservation of capital, capital appreciation, liquidity, and balanced funds).

A number of commentators expressed the opinion that the requirement of an independent fiduciary is unnecessary, since *any* fiduciary (independent or not) who selects a pooled investment fund or an investment manager must bear responsibility under section 404(c) of ERISA to do so prudently and solely in the interest of participants and beneficiaries. Indeed, a number of financial institutions commented that it would be contrary to existing business practice for them to delegate to another entity the responsibility for selecting pooled funds for the plans which they themselves sponsor, since such financial judgments involve exactly the expertise which it is their business to provide.

A large number of commentators expressed concern over the four fund portion of the special rule. Many comments addressed the terminology which appeared in this provision, and expressed uncertainty as to the meaning of those terms. Other commentators noted that as a result of the special rule, a plan could not offer a combination of pooled and non-pooled investments in satisfying the "broad range of investments" requirements, but would

[8] As will be further explained below, the concept of a "pooled investment fund" has been expanded to include investments which do not permit the investors to share in the gains or losses of the underlying assets of the investment vehicle. Thus, the investment vehicles defined in paragraph (f)(1) are referred to in the reproposed regulation as "look-through investment vehicles" because of the treatment provided these vehicles under paragraph (b)(3)(ii) which permits the consideration of the underlying investments of these vehicles in determining whether the diversification requirements of paragraph (b)(3)(i) are met. Such designation is relevant to this regulation only and should not be read to imply that the underlying assets of such entities include plan assets. (See 29 CFR § 2510.3–101 for plan assets rules regarding investment vehicles).

[9] Even if a plan offers a diverse group of investments in each of the categories of investments, it may not meet the general diversification standard of the proposed regulation. For example, a plan may fail to provide a participant an opportunity to diversify his account if all of the available options related to one industry.

[10] In this regard, a plan which is designed to be an ERISA 404(c) plan for all plan participants may fail to meet the "broad range of investment alternatives" requirement because the investment alternatives offered by the plan would not permit those participants with small account balances to diversify their investments. In such circumstances, the plan would be considered an ERISA 404(c) plan solely with regard to the transactions directed by those participants whose account balances are large enough to permit broad diversification through the investment alternatives offered by that plan, and only to the extent all other requirements of this regulation were met.

[11] Conference Report at 305.

[12] This concept is described and clarified in the Department's regulation at 29 CFR 2510.3–101. 51 FR 41262 (November 13, 1986).

be limited to either a group of pooled funds or a group of non-pooled investments. Commentators also objected to the fact that a plan which satisfied the broad range requirements by offering a diversified array of non-pooled investments could not also offer a pooled investment fund under the plan without triggering the special rule and thereby losing its status as an ERISA 404(c) plan. A substantial number of commentators expressed the opinion that the number of funds required under the terms of the special rule was excessive. These commentators suggested that the four fund requirement would result in the imposition of significant and unnecessary additional costs upon plans and their sponsors. Many commentators questioned the need for that part of the special rule which required that plans subject to the rule must offer a fund the objective of which is a balance between capital appreciation and the generation of income. It was suggested that a participant could achieve the same result by apportioning account assets between the required capital appreciation fund and the generation of income fund. For the foregoing reasons, many commentators urged the Department to eliminate the special rule.

The Proposed Regulation. After carefully reviewing the public comment on this matter, the Department has determined to retain in the proposed regulation the requirement that, in the case where an ERISA 404(c) plan limits a participant's investment options by designating one or more look-through investment vehicles, an independent fiduciary is required to designate each look-through investment vehicle offered to the participant. In such plans which offer participants designated look-through vehicles to the exclusion of other investments, participants are able to choose from vehicles that have different investment objectives, but once they invest in a vehicle they do not have control over individual investment decisions made by the vehicle's manager. Moreover, in many cases, the participant has no choice with respect to the investment managers who do make individual investment decisions. For these reasons, the Department continues to believe that it is important that any regulation under section 404(c) of ERISA clearly reflect plan fiduciaries' ongoing duty to consider the suitability of the designated vehicles in these circumstances in order to protect the interests of participants.[15]

Similarly, the Department has retained the 1987 proposal's requirement that a plan whose investment alternatives include the selection of one or more designated investment managers is an ERISA 404(c) plan only if an independent fiduciary is required to designate the investment managers from which the participant may select. The Department continues to believe that any such plan should be subject to this rule in order to assure that a plan fiduciary assumes a continuing obligation to assess the suitability of the designated investment manager(s).

The Department is persuaded, however, that in the case of plans sponsored by certain financial institutions which have appropriate professional expertise in investment management, the designating fiduciary need not be independent. In enacting ERISA, Congress recognized the need to accommodate such plans by fashioning special rules. For example, section 408(b)(4) of ERISA permits a bank to invest the assets of an in-house plan in deposits of that bank and section 408(b)(5) permits an insurance company to issue contracts to a plan covering its own employees. The stated Congressional policy underlying these exemptions is that it would be "contrary to normal business practice" for a bank or insurer to purchase the products of another company for its own in-house plans. Moreover, the Department has recognized in certain administrative exemptions that it would be contrary to normal business practice for a company whose business is financial management to seek financial management services from a competitor, *e.g.*, Prohibited Transaction Exemptions 77–3 and 82–63. Hence, the Department has modified the independent fiduciary requirement for in-house plans of financial institutions in the following fashion. Paragraph (c)(2) of the proposed regulation states that an entity, as described in section 3(38) of ERISA,[16] may designate itself or an affiliate as an investment manager option under the plan or designate an affiliated look-through investment vehicle as an investment option pursuant to paragraph (c)(1) under certain limited circumstances. First, the ERISA 404(c) plan for which the manager or vehicle is being designated must be a plan sponsored by the section 3(38) entity or an affiliate whose participants and beneficiaries are solely its own employees, former employees, retirees, or beneficiaries thereof, or those of an affiliate. Second, at the time of the designation and any subsequent redesignation or change in the terms of such designation, the amount of assets of all plan(s) sponsored by such entity and its affiliates which are under the management of the designated manager are less than 50 percent of the total assets under such designated manager's management. Finally, such selection must meet the prudence requirement as described in section 404(a) of ERISA. Under such conditions, the Department believes the interests of the participants and beneficiaries of such in-house plans will be adequately protected.[17]

With regard to that portion of the special rule in the 1987 proposal that required an ERISA 404(c) plan to offer four pooled investment funds if its investment alternatives include one or more *designated* pooled investment funds, the Department has concluded that the inflexibility of the special rule and the potential for added plan expenses outweigh the benefits of any increased participant control which might be gained by requiring four pooled fund options. The proposed regulation therefore does not contain this portion of the special rule. However, as discussed previously in the context of paragraph (b)(3)(i)(C), the proposed regulation does continue to require the provision of look-through investment vehicles where the amount of investment capital available in the accounts of participants of the ERISA 404(c) plan is of such limited size that investment in look-through investment vehicles is the only prudent means to assure proper diversification within the broad range of investment opportunities.

4. The Relatively "Safe" Investment

The 1987 Proposal and Comments. Paragraph (b)(1)(iii) of the 1987 proposal provided that, to be an ERISA 404(c) plan, a plan must make available to participants an opportunity to invest their account assets in either (1) "An interest-bearing deposit in a bank or similar financial institution, which deposit has a high degree of liquidity and is fully insured against loss by the United States or an agency of the United States," or (2) "A pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies and the principal investment objectives of which include a high level of current income consistent with the preservation of capital and a high degree of liquidity." Paragraph (d)(4) of the proposal provided that an ERISA 404(c) plan could establish reasonable procedures by which amounts contributed to a plan participant's account as to which the participant gave no investment instructions could be invested by a plan fiduciary in an investment described in paragraph (b)(1)(iii), in which case that investment would be deemed to have occurred as a result of the participant's exercise of control.

The Department proposed this "safe/default" fund for two reasons. First, the Department believed that some means should be provided by which fiduciaries of ERISA 404(c) plans could be relieved of responsibility for all contributions to participant accounts, even where a participant failed to submit investment instructions. It was recognized that maintaining non-directed contributions "in suspense" pending the participant's eventual instructions could raise administrative, as well as possible fiduciary, problems. Moreover, if fiduciaries were to have exposure to liability even where a plan complied with all Department regulations, there might be a disincentive to establish participant-directed plans. Therefore, the Department proposed a mechanism by which fiduciaries would be relieved of liability for investment decisions even though, in one sense, the decisions had not been made by participants. If fiduciaries were to invest plan assets without bearing any legal responsibility, however, it seemed appropriate to limit this privilege to only the safest of investments. Second, the Department believed that participants should have an opportunity to invest their account balances in a manner that presents little to no risk of loss. In other words, participants should not be obligated to subject their account balances to any risk except by choice.

Many commentators represented that it is not the existing practice of plans which provide participant-directed individual accounts to offer either of the types of investments described at paragraph (b)(1)(iii) of the 1987 proposal.[18] A large number of commentators urged that if the final regulation were to retain the concepts embodied in paragraphs (b)(1)(iii) and (d)(4), then additional investments which are relatively safe, such as money market funds and insurance company guaranteed investment contracts, should be included in the list of approved investments at paragraph (b)(1)(iii). Other commentators urged that the regulation should not identify specific investment vehicles, but instead should describe only the characteristics of the required investment. These commentators expressed the view that the provisions of paragraphs (b)(1)(iii) and (d)(4) improperly involved the Department in the particulars of plan design. A related comment was that paragraph (b)(1)(iii) is entirely unnecessary, since paragraph (b)(3)(i)(B) independently requires that all ERISA 404(c) plans must offer an investment alternative which reasonably assures the preservation of capital. Indeed, it was represented that sponsors of participant-directed individual account plans would rather retain fiduciary responsibility for contributions to which participants have not submitted instructions than avail themselves of the procedures described at paragraphs (b)(1)(iii) and (d)(4) of the 1987 proposal.

The Proposed Regulation. Both the comments and the statistical evidence submitted into the record indicate that very few participant-directed plans currently offer either of the options described in paragraph (b)(1)(iii) of the 1987 proposal and that, for those plans which do, a *de minimis* amount of plan assets is directed into such options. Thus, the Department has concluded that the provisions which appeared at sections (b)(1)(iii) and (d)(4) of the 1987 proposal will not be retained in the proposed regulation. By so eliminating the requirements of these two paragraphs, the Department has removed the mechanism by which a fiduciary may direct plan money in a participant's account in the absence of participant direction and be relieved of fiduciary responsibility for that investment decision under the terms of ERISA section 404(c). Thus, under the proposed regulation, plan fiduciaries will not relieved of responsibility for investment decisions under the terms of ERISA section 404(c) except where those decisions have affirmatively been made by participants or beneficiaries who have exercised independent control. In this regard, the Department notes that, as in any other type of ERISA-covered plan, plan fiduciaries of ERISA 404(c) plans have a duty to provide for the investment of idle plan assets; lack of participant direction will not absolve a fiduciary of an ERISA 404(c) plan from such fiduciary duty. Plan provisions providing for investments in the absence of participant direction may be followed only if the fiduciary determines that following such provisions would not violate his fiduciary duties, including his duties under sections 404 and 406 of ERISA.

IV. The Independent Exercise of Control

The 1987 Proposal and Comments. In view of the transactional nature of the relief provided by section 404(c), the 1987 proposal stated clearly that a determination whether a participant has in fact exercised control must necessarily be made on a case by case basis, taking into account the relevant facts and circumstances.

The 1987 proposal also stated that sections 404(c)(1) and 404(c)(2) apply only where the participant's exercise of control has been independent. This is consistent with the Conference Report discussion of section 404(c).[19] In this regard, the 1987 proposal described certain factors that indicate the absence of independent control. These are: (1) improper influence by a plan fiduciary or plan sponsor with respect to the transaction; (2) concealment from the participant by a plan fiduciary of material nonpublic facts regarding the transaction that are known by the plan fiduciary; and (3) the legal incompetence of the participant where the plan fiduciary accepting his instructions knows him to be incompetent.[20]

---

[15] The ongoing fiduciary duty to consider the suitability of a designated look-through investment vehicle encompasses the continuing determination that the vehicle remains a prudent investment option.

[16] Section 3(38) of ERISA defines

(38) The term "investment manager" to mean "any fiduciary (other than a trustee or named fiduciary), as defined in section 402(a)(2)—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in the Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan."

[17] Pursuant to the circumstances described above, paragraph (c)(2) of the proposal permits such designations to occur under a plan without that plan losing its ERISA 404(c) status. Paragraph (c)(2) does not provide relief from any section 408 violation which may occur based on a fiduciary's limitation of investment options to include designation of itself or its investment vehicle. *See* footnote 21 *infra*.

[18] A 1987 survey by Bankers Trust Company found that only 18% of existing participant-directed plans presently offer a government securities fund of any kind. The study also indicated that in plans which do offer a government fund, only 13% of total contributions is directed there. Thus, less than 2% of all contributions to participant-directed plans appear to be held in government funds of the kind described at section (b)(1)(iii). No plans surveyed for the Bankers Trust study offered as an investment option a passbook savings account as contemplated by proposed paragraph (b)(1)(iii). See *Corporate Defined Contribution Plans, A Changing Environment*, Bankers Trust, 1987.

[19] Conference Report at 305.

[20] With respect to the third factor, the Department did not intend to impose an affirmative duty on the implementing fiduciary to evaluate the participant's competence. However, the Department is of the opinion that the implementing fiduciary should not be able to invoke section 404(c) to avoid liability for losses resulting from the imprudent instructions of a participant where the fiduciary has actual knowledge of the incompetence.

The 1987 proposal also stated that where a participant exercises control over the assets in his account to engage in a sale or an exchange of property or a loan with a plan fiduciary (other than a plan sponsor, or an affiliate as discussed below) or an affiliate of such fiduciary, such exercise of control will not be "independent" (regardless of whether it meets the other requirements of the regulation) unless the terms of the transaction are fair and reasonable to the participant at the time of the transaction. A transaction will be deemed to be fair and reasonable to the participant if the participant pays no more than, or receives no less than, adequate consideration as defined in section 3(18) of the Act in connection with the transaction. These standards were adopted from established principles relating to the circumstances under which consent of a beneficiary of a trust will relieve a trustee from liability for breach of his fiduciary duties.[19]

Other than the provision in paragraph (d)(4) concerning the absence of affirmative instructions (discussed earlier), the Department received substantive comment on only one area of this paragraph, *i.e.*, disclosure of material information. A number of commentators expressed concern regarding the implication in paragraph (d)(2) of the proposal that plan fiduciaries would be required to reveal material non-public information concerning transactions which participants have directed a fiduciary to undertake. These commentators suggested that this provision would conflict with rules of the Securities and Exchange Commission which generally prohibit the purchase or sale of securities by a person possessing material inside information with respect to such securities. Other commentators raised similar concerns regarding rules of the Federal Reserve and the Comptroller of the Currency which require that banks under their jurisdictions observe "Chinese Wall" procedures designed to insure that material inside information obtained by banks in the course of their commercial lending operations is not communicated to the bank's fiduciary investment officers.

The Proposed Regulation. In general, the provisions which appeared in paragraphs (d)(1) and (d)(2) of the 1987 proposal have been retained in the proposed regulation. However, the Department agrees that paragraph (d)(2)(ii) of the 1987 proposal, if implemented, might present the potential in certain circumstances for the conflict described by the commentators. The proposed regulation, therefore, amends the provision set forth at paragraph (d)(2)(ii) of the 1987 proposal so that a plan fiduciary must reveal material non-public information unless such disclosure to the directing participant without disclosure to the general public would violate securities or banking laws. The proposed regulation does not require the plan fiduciary to disclose information to the general public.

V. Effect of Independent Exercise of Control

In general. As provided in section 404(c)(1), the 1987 proposal stated that a participant is not considered to be a fiduciary solely because he exercises control over assets in his individual account. The two primary effects of this provision are: (1) Because a participant is not a fiduciary, he would not violate the prohibited transaction provisions of Title I of ERISA if he exercises control over assets in his account to engage in a transaction with a party in interest; and (2) other fiduciaries generally would have no co-fiduciary liability under section 405 of the Act with respect to participant investment decisions under ERISA section 404(c) plans.

With regard to other plan fiduciaries, section 404(c) provides that plan fiduciaries are relieved of liability for losses, or with respect to breaches of the requirements of Title I, which "result" from a participant's exercise of control over individual account assets.[20] Thus, given the transactional nature of the relief provided by section 404(c), it is necessary to determine in any particular case whether alleged losses or violations resulted from a participant's investment decision.

The 1987 proposal stated that a fiduciary is relieved of responsibility only for the direct and necessary consequences of a participant's exercise of control.[21] Accordingly, if a participant gives investment instructions to a plan fiduciary, and, due to the imprudence of the fiduciary in carrying out the instructions, the participant suffers a loss, then the fiduciary is liable for such loss because it resulted from a breach of his duties as a fiduciary rather than from the participant's exercise of control.

Similarly, the preamble to the 1987 proposal stated that if a participant gives investment instructions that may be carried out in more than one way, and the fiduciary chooses a method of carrying out the instructions that results in a breach of his obligations as a fiduciary, then he is liable for any resulting losses because such losses would not be a necessary consequence of the participant's exercise of control. Thus, if a participant directs a fiduciary

---

[19] Restatement (Second) of Trusts section 216 (1959) provides:

Section 216. Consent of Beneficiary.

(1) Except as stated in Subsections (2) and (3), a beneficiary cannot hold the trustee liable for conduct of the trustee as a breach of trust if the beneficiary prior to or at the time of the act or omission consents to it.

(2) The consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust, if—

(a) the beneficiary was under an incapacity at the time of such consent or of such act or omission; or

(b) the beneficiary, when he gave his consent, did not know of his rights and of the material facts which the trustee did not reasonably believe that the beneficiary knew; or

(c) the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Where the trustee has an adverse interest in the transaction, the consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust not only under the circumstances stated in Subsection (2), but also if the transaction to which the beneficiary consents involved a bargain which was not fair and reasonable.

See also III Scott, Trusts section 216 (3rd ed. 1967); Bogert, Trusts section 582 (5th ed. 1966).

[20] In following any particular participant's instruction under a section 404(c) plan, the 1987 proposal stated that a fiduciary is relieved of liability only with respect to the individual participant whose instruction he is following that fiduciary is not, however, relieved of any fiduciary obligation he may owe to any other plan participant. Therefore, for example, if a participant in an ERISA section 404(c) plan directs the investment of a portion of his individual account in a bank-managed collective trust fund pursuant to an arrangement with the bank manager of the fund under which the manager will lend a portion of the fund's assets to the participant's employer who is a service provider to the plan, the fund manager may be relieved of liability to the directing participant by reason of section 404(c), but would not be relieved of liability with respect to any other plans or plan participants that have interests in the collective trust fund.

[21] In this regard, the Department notes that the act of limiting or designating investment options which are intended to constitute the investment universe of an ERISA 404(c) plan is a fiduciary function which, whether achieved through fiduciary designation or express plan language, is not a direct or necessary result of any participant direction of such plan. Thus, for example, in the case of look-through investment vehicles which, pursuant to paragraph (c) of the proposed regulation must be designated by a plan fiduciary, the plan fiduciary has a fiduciary obligation to prudently select such vehicles, as well as a continuing fiduciary obligation to periodically evaluate the performance of such vehicles to determine, based on that evaluation, whether the vehicles should continue to be available as participant investment options. Similar fiduciary obligations would exist in the case of a limited investment universe consisting of investment options which are not look-through investment vehicles but are specifically designated by plan fiduciaries. In those situations where the ERISA 404(c) plan by its own provisions limits the investment universe by designating specific investment options which are not look-through investment vehicles, the plan fiduciary must comply with the requirements of ERISA section 404(c)(1)(B)

to acquire certain securities, but does not specify the manner in which the acquisition is to be effected, and the fiduciary causes a party in interest to execute the transaction, the fiduciary would be liable with respect to the resulting prohibited transaction (unless an exemption is otherwise available) notwithstanding the participant's exercise of control.

The 1987 proposal also specifically stated that the individual investment decisions of an investment manager are not direct and necessary results of the participant's designation of the investment manager or of investment in a pooled investment fund managed by the investment manager. However, the 1987 proposal also provided that this rule should not be construed to impose co-fiduciary liability on a fiduciary who would otherwise be relieved of liability under section 404(c). Thus, if a participant chooses an investment manager who imprudently invests plan assets, the investment manager will not be relieved of liability because his imprudence is not a direct and necessary result of the participant's exercise of control. However, other plan fiduciaries would be relieved of liability under section 405, even if, for example, they had knowledge of the investment manager's imprudent decisions. The preamble to the proposal explained that a fiduciary that designates an investment manager or pooled fund in the manner contemplated by paragraph (c) of the regulation, would, however, be required to take any known imprudence of the manager into account in determining whether to continue the designation of that manager.[22]

Because there were no significant comments on the general conceptual framework of paragraph (e) of the 1987 proposal, described above, it has been retained.

1. Limitation on Liability of Plan Fiduciaries The 1987 Proposal and Comments. The 1987 proposal contained four exceptions to the general rule regarding the relief provided to a fiduciary. Under these exceptions, a plan fiduciary would not be relieved of liability with respect to a participant's instructions which: (a) would not be in accordance with the documents and instruments governing the plan; (b) would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside of the jurisdiction of the district courts of the United States (other than as permitted by section 404(b) of the Act); (c) would jeopardize the plan's tax qualified status under the Code; or (d) would result in a direct or indirect acquisition, sale, or lease of property (including employer securities or employer real property) between a participant and a plan sponsor or an affiliate of the sponsor or a direct or indirect loan to a plan sponsor or any affiliate of the sponsor. In addition, a plan fiduciary would not be relieved of liability with respect to any sale, acquisition or lease of employer securities or employer real property whether or not the transaction involves the employer.

Two of the exceptions drew significant comment.

A. Participant Loans

As noted above, paragraph (e)(2)(ii)(D)(*2*) of the 1987 proposal provided that the relief from fiduciary liability provided under ERISA section 404(c) will not extend to transactions in which assets of a participant's account are loaned to the plan sponsor or any affiliate of the plan sponsor. Paragraph (f)(4) of the proposal defined an "affiliate" of a person as including an employee of that person. Therefore, no relief from fiduciary liability was available under the 1987 proposal for loans of a participant's account assets to that participant. Some commentators submitted comments which suggested that they misinterpreted the proposal to say that a plan which permits the loan of a participant's account assets to the participant cannot be an ERISA 404(c) plan. Other commentators recognized that ERISA 404(c) plans would be free under the 1987 proposal to permit such loans, subject to the usual fiduciary responsibility provisions of ERISA title I, part 4 (particularly section 408(b)(1) and the regulations issued thereunder). However, these commentators argued that the regulation should relieve fiduciaries of liability in connection with such loans, because such transactions constituted the independent exercise of control by participants.

The Proposed Regulation. After carefully reviewing the public comment on this subject, the Department continues to believe that although an ERISA 404(c) plan may offer a participant loan program, the transactional relief from fiduciary liability provided under ERISA section 404(c) should not extend to the loan of assets of a participant's account to the participant. Rather, it is the Department's belief that the interests of ERISA 404(c) plan participants and beneficiaries in accumulating savings for retirement will be better served if ERISA 404(c) plan fiduciaries retain responsibility for compliance with the terms of section 408(b)(1) of ERISA as opposed to permitting participants to freely lend account assets to themselves without restriction. The provisions of paragraph (e)(2)(ii)(D)(*2*) have therefore been retained in the proposed regulation.

B. Employer Securities

Paragraph (e)(2)(ii)(D)(*3*) of the 1987 proposal stated that the relief from the fiduciary responsibility provisions provided by section 404(c) of ERISA would not extend to any participant instruction which, if implemented, would result in the acquisition or sale of any employer security. In the preamble to the 1987 proposal, it was explained that the Department had not yet determined whether it is appropriate to extend the coverage of section 404(c) to participant-directed investments in employer securities. It was noted in the preamble that the Conference Report on section 404(c) expresses concern regarding participant-directed investments which may inure to the benefit of a plan sponsor and indicates that the Department should impose stringent standards with respect to such investments.[23] Because the Department did not believe that it had sufficient information to determine whether it is appropriate to apply section 404(c) to such investments, it did not provide in the 1987 proposal that section 404(c) would extend to such investments. However, the Department specifically invited comments addressing this issue.

---

[22] The Department notes that this provision relating to individual investment decisions of an investment manager related only to the scope of the relief provided by section 404(c)(2); it is not intended to create fiduciary duties which would not otherwise exist. Thus, even though the individual decisions of the investment manager of an investment company registered under the Investment Company Act of 1940 would not be considered to "result" from a participant's decision to invest in the investment company, the manager would have no liability under ERISA for any losses because mutual fund investment advisers are excluded from the statutory definition of "fiduciary" in ERISA (see sections 3(21)(B) and 401(b)(1) of ERISA).

[23] The relevant passage of the Conference Report states:

"The conferees expect that the (section 404(c)) regulations will provide for stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient individual control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan)."

Conference Report at 305.

A large number of commentators responded to this provision, urging that section 404(c) relief from fiduciary liability be extended to participant-directed investments in employer securities. It was pointed out that Congress has provided for participant investment in employer securities in a number of other contexts. A variety of suggestions were submitted as to measures which would assure that participants are not subjected to undue influence with respect to such investments. Commentators variously urged the Department to limit section 404(c) relief for transactions involving employer securities to situations where: Such securities are publicly traded; participants have an opportunity to move into other investments; the percentage of any participant's account which can be invested in employer securities is limited; the percentage of the total outstanding number of any class of securities issued by the plan sponsor which may be held by the plan at any time is limited; solicitation and exhortation of participants by plan sponsors to invest in employer securities is prohibited; the incidents of ownership such as proxy voting, are required to be directed by participants; and where the plans offering investment in employer securities use a fiduciary independent of the plan sponsor to implement the purchase or sale of employer securities, as well as the other incidents of ownership.

The Proposed Regulation. After careful consideration of the comments and suggestions submitted on this subject, the Department has decided to propose conditions under which section 404(c) coverage would be extended to participant-directed investments in employer securities. In this regard, paragraph (e)(2)(ii)(D)(*4*) of the proposed regulation, which otherwise excludes any acquisition or sale of employer securities from the limited liability afforded by section 404(c) relief, provides an exception for employer securities where: (I) Such security is a qualifying employer security (as defined in ERISA section 407(d)(5)); (II) such security is stock; (III) such securities are publicly traded on a national exchange or other generally recognized market; (IV) such securities are traded with sufficient frequency and in sufficient volume to assure that participant directions to buy or sell the securities may be acted upon promptly; (V) information provided to shareholders of such securities is provided to participants with accounts holding such securities; (VI) voting and similar rights with respect to such securities are passed through to participants with accounts holding such securities; and (VII) activities related to the purchase, sale, and the exercise of voting and similar rights with respect to such securities are the responsibility of an independent fiduciary who carries out such activities on a confidential basis. For purposes of condition (VII), the proposed regulation provides that a fiduciary is not independent if the fiduciary is affiliated with any sponsor of the plan.

By proposing to extend relief under section 404(c) under these conditions, the Department seeks to limit the potential for overreaching as well as to insure that participants have a reasonable ability to exercise control with respect to such investments by incorporating protections suggested by the commentators, as well as standards in the Act itself. For example, limiting relief to qualifying employer securities is consistent with the prohibition of section 406(a)(1)(E) of ERISA. In further limiting relief to purchases or sales of employer stock, the Department notes that commentators generally appeared to focus on relief for purchases and sales of stock rather than marketable obligations of the employer. Requiring that employer securities be publicly traded on a national exchange or other generally recognized market with sufficient frequency and volume to assure prompt execution of buy and sell orders together with the requirements of paragraph (b)(2) of the regulation, serve to ensure that participants can dispose of such securities in a public market which is not subject to the influence of the employer. These conditions also serve to ensure that participants have ready access to price quotations for the securities, as well as the ability to direct trades which will be promptly executed.

As the beneficial owners of shares of stock, participants have economic interests similar to those of legal owners of the shares; therefore, it is appropriate, in the Department's view, to require that they be provided with the same information. This is consistent with the requirements generally applicable to participant directed investments in publicly-offered securities. Finally, the condition that activities related to the purchase, sale or exercise of rights with regard to employer securities be the responsibility of an "independent fiduciary" who carries out instructions on a confidential basis was suggested by a number of commentators as a means of mitigating the potential for undue influence by the sponsor. The Department believes the involvement of an independent fiduciary is a critical element in ensuring the meaningful exercise of independent control by participants with respect to investments in employer securities. In this regard, the proposal provides that the "independent fiduciary" cannot be affiliated with any sponsor of the plan.

It is the view of the Department that the foregoing conditions, a number of which were suggested in public comment, are necessary, in conjunction with the requirements of paragraph (d)(2) relating to the exercise of independent control, to ensure that participant-directed investments involving employer securities are free from improper influence and pressure by the plan sponsor and otherwise comport with the requirements of Title I of ERISA.

2. Tax on Prohibited Transactions

The 1987 Proposal and Comments. Paragraph (e)(3) of the 1987 proposal explained that the relief provided by section 404(c) of ERISA applies only to the provisions of part 4 of Title I of ERISA. There is no provision in the Internal Revenue Code corresponding to section 404(c) of Title I, thus, there is no statutory exemption from the excise taxes imposed by the Code on prohibited transactions involving a 404(c) plan. Moreover, the authority to grant administrative exemptions for 404(c) transactions remains with the Treasury Department pursuant to the Reorganization Plan No. 4 of 1978. Thus, nothing in section 404(c) or the regulation would relieve a disqualified person from the taxes imposed with respect to prohibited transactions by section 4975 of the Internal Revenue Code even though the transaction was a direct and necessary result of a participant's instructions. Eight commentators expressed the opinion that disqualified persons should be relieved of those taxes. To this end, the Department was urged to seek companion relief from the Treasury Department.

The Proposed Regulation. The terms of paragraph (e)(3) of the 1987 proposal have been retained in the proposed regulation. Section 404(c) of ERISA expressly states that where a plan participant exercises control over his account assets in the manner contemplated by that section, no fiduciary with respect to that plan will be liable "under this part," i.e., under Part 4 of Title I of ERISA. No similar relief is granted with respect to any other provision of law, including the Internal Revenue Code. Moreover, as explained in the preamble to the 1987 proposal, the Department has no authority to provide exemptive relief for a disqualified person's liability for the excise taxes imposed by section 4975 of the Code with respect to a transaction that results from a participant's exercise of control. Accordingly, the Department is unable to address the concerns expressed by the commentators.

BEST COPY AVAILABLE

VI. Reporting and Disclose

As with the 1987 proposal, this proposal does not address the reporting and disclosure provisions of ERISA with respect to their applicability to ERISA section 404(c) plans. The Department does again, however invite comments discussing the application of the existing reporting and disclosure requirements of ERISA to such plans and whether it would be appropriate for the Department to develop an alternative method of compliance under section 110 of ERISA for ERISA section 404(c) plans.

VII. Effective Date

The 1987 Proposal and Comments.

Section (h) of the 1987 proposal provided that the final regulation would be effective with respect to transactions occurring in plan years beginning 90 days or more after publication of the regulation. Many commentators expressed the view that the proposed notice period between publication and the effective date of a final regulation is too short to allow most existing participant-directed plans to complete the plan modifications required to achieve conformity with the terms of the regulation.

The Proposed Regulation

Although the department believes that the proposed regulation is more consistent with current plan design, the effective date set forth in the regulation has been modified to assure that all plan sponsors desirous of offering an ERISA section 404(c) plan will have six months in which to make adjustments necessary to achieve conformity with the regulation. Thus, the regulation would be effective with respect to transactions occurring 180 days after the date of publication of a final regulation.

VIII. Regulatory Impact of Proposed Regulation

After carefully considering the public comments submitted to the Department of Labor regarding the economic and other effects of the 1987 section 404(c) proposal, the Department believes that, as a result of the flexibility afforded plan sponsors in designing section 404(c) plans provided by the modifications contained in this proposed regulation, adoption of the proposed regulation as a final regulation would have little, if any, impact, economic or otherwise, on the establishment or maintenance of participant directed individual account plans. However, in order to fully analyze the effects of the proposed regulation, the Department invites interested parties to include, as part of their comments on the proposed regulation, the following information and data:

1. *Investment options.* How many and what type of investments are offered by participant-directed individual account plans? How many plans have specific combinations of investment options (e.g., an equity fund and a fixed income fund)? How many plans offer interest-sensitive competing investments as options (e.g., a GIC or BIC and a money market fund)? Under what conditions may participants direct their investments from one such competing fund to another? Do the types of investments offered vary by number of participants or other characteristics of plans? What, if any, effect will the proposed regulation have on investment options, or rates of return thereon, currently made available to participants in participant-directed individual account plans? To what extent, if any, will such changes benefit or adversely effect participants, specific segments of the economy (e.g., banking, insurance, mutural fund industries), and the economy as a whole?

2. *Frequency of investment direction.* How often are participants permitted to move from one investment alternative to another? How often do participants move from one investment alternative to another, taking into consideration any limitations on the frequency of investment instruction (e.g., 40 percent of participants move their investment as often as is permitted under the plan, 60 percent move less frequently than is permitted under the plan)? What restrictions, if any, are generally placed on a participant's ability to move from one investment alternative to another? What are the incremental costs and burdens to increasing the frequency of participant direction from two to three times a year and from three times a year to quarterly? Are the costs attendant to participant transfers borne by the plan sponsor, the plan generally, or the individual participant, depending on the frequency with which the individual directs his account? Do restrictions on participant transfers vary by types of investments, number of investment options, and/or number of participants?

3. *Investments selected by participants.* What is the total value of plan assets in participant directed individual account plans? What percentage of assets are invested in the various types of investment options offered by a plan? Does this vary by plan size or other characteristics of the plans? What effect do investment preferences of plan participants have on the investments offered by plans or on restrictions governing the frequency of participant direction of investments?

4. *Administrative costs.* What, if any, increase in administrative costs will result from requiring a minimum of three diversified categories of investment alternatives, each of which has different risk and return characteristics? To what are these costs attributable? Will the administrative costs differ by plan size or other characteristics, if so, how? To what extent are any increases in administrative costs attributable to plan changes required to accommodate the regulation outweighed by the benefits attributable to limiting the liability of plan fiduciaries? What cost savings are attributable to limiting the liability of plan fiduciaries under the proposed regulation?

Technical Revisions

Pursuant to recent amendments to the rules for publication of the Office of the Federal Register, this proposal contains a proposed amendment of the authority citation for part 2550 of chapter XXV of Title 29 of the Code of Federal Regulations.

Executive Order 12291 Statement

The Department has determined that this proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action does not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

The Department has determined that this regulation would not have a significant economic impact on small entities. While small plan sponsors that want to take advantage of the relief provided by this regulation may need to amend their plans in order to meet the requirements necessary to obtain relief under the regulation, no small entity is required to amend its plan under the regulation. Thus, unless a small entity voluntarily decides to modify its plan,

this regulation would not impose any increased burden on small entities that sponsor pension plans that conform with ERISA generally. Although it would not be appropriate to provide simplified requirements for small entities under the regulation, it should be noted that in response to public comments the burden associated with plan amendments necessary to obtain relief has been reduced for all plan sponsors regardless of size.

Paperwork Reduction Act Statement

This proposed regulation is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to sections 404(c) (Pub. L. 93-406, 88 Stat. 877, 29 U.S.C. 1104) and 505 (Pub. L. 93-406, 88 Stat. 894, 29 U.S.C. 1135) of the Act and under Secretary of Labor's Order No. 1-87.

Withdrawal of Proposed Regulation

The Notice of Proposed Rulemaking published on September 3, 1987 (52 FR 33508) is hereby withdrawn.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pensions and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing the Department proposes to amend part 2550 of chapter XXV of title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. By revising the authority citation for Part 2550 to read as set forth below and the authority citations following all the sections in part 2550 are removed.

Authority: 29 U.S.C. 1135.

§ 2550.401b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., p. 332.

§ 2550.404c-1 also issued under 29 U.S.C. 1104.

§ 2550.407c-3 also issued under 29 U.S.C. 1107.

§ 2550.412-1 also issued under 29 U.S.C. 1112.

§ 2550.414b-1 also issued under 29 U.S.C. 1114.

Secretary of Labor's Order No. 1-87.

2. By adding a new § 2550.404c-1 to read as follows:

§ 2550.404c-1 ERISA Section 404(c) Plans.

(a) *In general.* Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over the assets in his account and that participant or beneficiary in fact exercises control over assets in his account, then the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise or control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control. This section describes the kinds of plans that are "ERISA section 404(c) plans," the circumstances in which a participant is considered to have exercised independent control over the assets in his account as contemplated by section 404(c), and the consequences of a participant's exercise of control.

(b) *ERISA section 404(c) plans*—(1) *In general.* An "ERISA section 404(c) plan" is an individual account plan described in section 3(34) of the Act that:

(i) Provides an opportunity for a participant or beneficiary to exercise control over the assets in his individual account (see paragraph (b)(2) of this section); and

(ii) Provides a participant or beneficiary an opportunity to choose, from a broad range of investments, the manner in which some or all of the assets in his account are invested (see paragraph (b)(3) of this section).

(2) *Opportunity to exercise control.* (1) A plan provides a participant or beneficiary the opportunity to exercise control over assets in his account if, under the terms of the plan, the participant or beneficiary has a reasonable opportunity to give written investment instructions (or oral instructions followed by a written confirmation of such instructions returned to the participant) to an identified plan fiduciary who is obligated to comply with such instructions.

(ii) A plan does not fail to provide an opportunity for a participant or beneficiary to exercise control over his individual account merely because it—

(A) *Imposes charges for reasonable expenses.* A plan may charge the participant or beneficiary's account for the reasonable expenses of carrying out his instructions, provided reasonable procedures are established under the plan to inform participants that such charges are made and to inform each participant periodically of the actual expenses incurred with respect to his individual account;

(B) *Permits a fiduciary to decline to implement certain instructions.* A plan may permit a fiduciary to decline to implement participant instructions—

(*1*) which are described at paragraph (e)(2)(ii) of this section,

(*2*) which would result in a prohibited transaction described in ERISA section 406 or section 4975 of the Internal Revenue Code,

(*3*) which could result in a loss in excess of that participant's account balance, or

(*4*) which would generate income that would be taxable to the plan; or

(C) *Imposes reasonable restrictions on frequency of investment instructions.* A plan may impose reasonable restrictions on the frequency with which the participant or beneficiary may give investment instructions. In no event, however, is such a restriction reasonable unless it is applied on a uniform and consistent basis to all directing participants and beneficiaries of that plan and, with respect to each investment alternative made available by the plan, it permits the participant or beneficiary to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment may reasonably be expected to be subject, provided that with respect to the investment categories made available pursuant to the requirements of paragraph (b)(3)(i)(B) of this section—

(*1*) At least three of such investment categories permit the participant or beneficiary to give investment instructions no less frequently than once within any three month period; and

(*2*) The least volatile investment category meeting the requirements of paragraph (b)(2)(ii)(C)(*1*) of this section permits the participant or beneficiary to give investment instructions no less frequently than he is permitted to give such instructions with respect to the most volatile investment alternative made available by the plan.

(iii) Paragraph (d) of this section describes the circumstances under which a participant or beneficiary will be considered to have exercised independent control with respect to a particular transaction.

(3) *Broad Range of Investment Alternatives.* (i) A plan offers a broad range of investment alternatives only if the available investment alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to:

(A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject;

(B) Choose from at least three diversified categories of investments:

(*1*) Each of which has materially different risk and return characteristics;

(*2*) Which in the aggregate enable the participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant; and

(*3*) Each of which when combined with investments in either of the other categories tends to minimize the risk of a participant's portfolio at any given level of expected return;

(C) Diversify the investment of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participant's accounts. In determining whether a plan provides the participant or beneficiary with a reasonable opportunity to diversify his investments, the nature of the investment options offered by the plan and the size of participants' accounts must be taken into account. Where the account of any participant is of such limited size that investment in look-through investment vehicles is the only prudent means to assure appropriate diversification, a plan may satisfy the requirements of this paragraph only by offering look-through investment vehicles.

(ii) *Diversification and Look-Through Investment Vehicles.* Where look-through investment vehicles are available as investment options to participants or beneficiaries, the underlying investments of the look-through investment vehicles shall be considered in determining whether the plan satisfies the requirements of paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) of this section.

(iii) *Investment information.* In determining whether a plan provides a broad range of investment alternatives, only those investment alternatives are to be taken into account as to which sufficient information is available to the participant or beneficiary to permit informed investment decisions. Where the investment alternatives made available to participants and beneficiaries are limited to designated investments, information will not be considered to be available unless an identified plan fiduciary is available to provide participants and beneficiaries with directions as to how such information may be obtained.

(c) *Special Rule for Designated Look-Through Investment Vehicles and Investment Managers—(1) In general.* A plan under which the investment alternatives available to a participant or beneficiary include investment in one or more designated look-through investment vehicles or the right to appoint one or more designated investment managers is an ERISA section 404(c) plan only if it meets the requirements of paragraph (b) of this section, and if, under the plan, an independent fiduciary is required to designate the look-through investment vehicle(s) or investment manager(s) which the participant or beneficiary may choose.

(2) *Independent fiduciary.* (i) For purposes of paragraph (c) of this section, a fiduciary is an independent fiduciary if he is not affiliated with any designated look-through investment vehicle or any investment manager with respect to such a vehicle or with any designated investment manager.

(ii) Notwithstanding the foregoing provision, an entity, as described at ERISA section 3(38), may designate itself or an affiliate as an investment manager or designate a look-through investment vehicle managed by itself or an affiliate to be made available to the participants and beneficiaries of an ERISA section 404(c) plan if:

(A) The participants and beneficiaries of the plan are solely its own employees, former employees, and retirees (or beneficiaries thereof) or those of an affiliate;

(B) At the time of designation and any subsequent redesignation or change in the terms of such designation, the amount of assets of all plan(s) sponsored by such entity and its affiliates which are under management of the designated manager are less than 50 percent of the total assets under such designated manager's management; and

(C) Such selection meets the prudence requirement as described in section 404(a) of ERISA.

(d) *Exercise of Control*—(1) *In general.* Sections 404(c)(1) and 404(c)(2) of the Act and paragraphs (a) and (e) of this section apply only with respect to a transaction where a participant or beneficiary has exercised independent control in fact with respect to the investment of assets in his individual account under an ERISA section 404(c) plan.

(2) *Independent Control.* Whether a participant or beneficiary has exercised independent control in fact with respect to a transaction depends on the facts and circumstances of the particular case. However, a participant's or beneficiary's exercise of control is not independent in fact if:

(i) The participant or beneficiary is subjected to improper influence by a plan fiduiary or the plan sponsor with respect to the transaction;

(ii) A plan fiduciary has concealed material non-public facts regarding the transaction from the participant or beneficiary unless the disclosure of such information by the plan fiduciary to the participant or beneficiary would violate securities or banking laws; or

(iii) The participant or beneficiary is legally incompetent and the responsible plan fiduciary accepts the instructions of the participant or beneficiary knowing him to be legally incompetent.

(3) *Transactions involving a fiduciary.* In the case of a sale, exchange or leasing of property (other than a transaction described in paragraph (e)(2)(ii)(D) of this section) between an ERISA section 404(c) plan and a plan fiduciary or an affiliate of such a fiduciary, or a loan to a plan fiduciary or an affiliate of such a fiduciary, the participant or beneficiary will not be deemed to have exercised independent control unless the transaction is fair and reasonable to him. For purposes of paragraph (d) (3) of this section, a transaction will be deemed to be fair and reasonable to a participant or beneficiary if he pays no more than, or receives no less than, adequate consideration (as defined in section 3(18) of the Act) in connection with the transaction.

(4) *No obligation to advise.* A fiduciary has no obligation under part 4 of Title I of the Act to provide advice to a participant or beneficiary with respect to an investment made pursuant to the participant's or beneficiary's independent exercise of control under an ERISA section 404(c) plan.

(e) *Effect of independent exercise of control*—(1) *Participant or beneficiary not a fiduciary.* If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d) of this section, then such participant or beneficiary is not a fiduciary of the plan by reason of such exercise of control.

(2) *Limitation on liability of plan fiduciaries.* (i) If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d) of this section, then no other person who is a fiduciary with respect to such plan shall be liable to such participant or beneficiary for any loss, or with respect

to any breach of part 4 of Title I of the Act, that is the direct and necessary result of that participant's or beneficiary's exercise of control.

(ii) Paragraph (e)(2)(i) of this section does not apply with respect to any instruction which, if implemented—

(A) Would not be in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA;

(B) Would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside the jurisdiction of the district courts of the United States other than as permitted by section 404(b) of the Act and 29 CFR 2550.404b–1;

(C) Would jeopardize the plan's tax qualified status under the Internal Revenue Code; or

(D) Would result in a direct or indirect: (*1*) Sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan except for the purchase or sale of any qualifying employer security (as defined in section 407(d)(5) of the Act) which meets the conditions of section 408(e) of ERISA and paragraph (e)(2)(ii)(*D*)(*4*) of this section;

(*2*) Loan to a plan sponsor or any affiliate of the sponsor;

(*3*) Acquisition or sale of any employer real property (as defined in section 407(d)(2) of the Act); or

(*4*) Acquisition or sale of any employer security except to the extent that: (*i*) Such securities are qualifying employer securities (as defined in section 407(d) (5) of the Act);

(*ii*) Such securities are stock;

(*iii*) Such securities are publicly-traded on a national exchange or other generally recognized market;

(*iv*) Such securities are traded with sufficient frequency and in sufficient volume to assure that participant directions to buy or sell the security may be acted upon promptly and efficiently;

(*v*) Information provided to shareholders of such securities is provided to participants with accounts holding such securities;

(*vi*) Voting and similar rights with respect to such securities are passed through to participants with accounts holding such securities; and

(*vii*) Activities relating to the purchase, sale, and exercise of voting and similar rights with respect to such securities are the responsibility of an independent fiduciary who carries out such activities on a confidential basis. For purposes of paragraph (e)(2)(ii)(D)(*4*)(*vii*) of this section, a fiduciary is not independent if the fiduciary is affiliated with any sponsor of the plan.

(iii) The individual investment decisions of an investment manager who is designated directly by a participant or who manages a look-through investment vehicle which a participant has invested are not direct and necessary results of the designation of the investment manager or of investment in the look-through investment vehicle. However, paragraph (e)(2)(iii) of this section shall not be construed to result in liability under section 405 of ERISA with respect to a fiduciary (other than the investment manager) who would otherwise be relieved of liability by reason of section 404(c)(2) of the Act and paragraph (e) of this section.

(3) *Prohibited Transactions.* The relief provided by section 404(c) of the Act and this section applies only to the provisions of part 4 of title I of the Act. Therefore, nothing in this section relieves a disqualified person from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code with respect to the transactions prohibited by section 4975(c)(1) of the Code.

(f) *Definitions.* For purposes of this section:

(1) "Look-through investment vehicle" means:

(i) An investment company described in section 3(a) of the Investment Company Act of 1940, or a series investment company described in section 18(f) of the 1940 Act or any of the segregated portfolios of such company;

(*ii*) A common or collective trust fund or a pooled investment fund maintained by a bank, a bank deposit, or a guaranteed investment contract of a bank;

(iii) A pooled separate account or a guaranteed investment contract of an insurance company qualified to do business in a State; or

(iv) Any entity whose assets include plan assets by reason of a plan's investment in the entity;

(2) "Adequate consideration" has the meaning given it in section 3(18) of the Act and in any regulations under this title;

(3) "Investment manager" includes any person described in section 3(38) of the Act and any person who exercises discretionary authority or control over the assets of a plan or a look-through investment vehicle or who provides investment advice with respect to such assets for a fee;

(4) An "affiliate" of a person includes the following:

(i) Any person directly or indirectly controlling, controlled by, or under common control with the person;

(ii) Any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and

(iii) Any corporation or partnership of which the person is an officer, director or partner.

For purposes of paragraph (f)(4) of this section, the term "control" means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person.

(g) *Examples.* The provisions of this section are illustrated by the following examples. Examples (2) through (8) assume that the participant has exercised independent control with respect to his individual account under an ERISA section 404(c) plan described in paragraph (b) of this section and has not directed a transaction described in paragraph (e)(2)(ii) of this section.

(1) Plan A is an individual account plan described in section 3(34) of the Act under which a plan participant may direct the plan administrator to invest any portion of his individual account in any asset which it is administratively feasible for the plan to hold and the acquisition of which would not result in disqualification of the plan under the Internal Revenue Code. Plan A provides that the plan administrator is obligated to effect participant investment instructions when requested but must decline to implement any participant instructions which would not be in accordance with plan documents or which would cause a fiduciary to hold the indicia of ownership of any plan assets outside the jurisdiction of the district courts of the United States. In addition, Plan A provides that the administrator is required to forward to the participants any proxy solicitations, periodic reports, and other communications with respect to participant directed investments in publicly-offered securities. Plan A is an ERISA section 404(c) plan. Although a participant in Plan A would be permitted to direct an investment as to which there is no sufficient information available to permit an informed investment decision, it nonetheless provides a broad range of investment alternatives as to which such information is available (*e.g.*, publicly-offered securities). Finally, Plan A is an ERISA section 404(c) plan notwithstanding that it does not meet the requirements of paragraph (c) of this section because, although the plan implicitly permits participants to invest in look-through investment vehicles, it does not limit the choices of investment vehicles or investment managers to *designated* vehicles or to *designated* managers.

(2) A participant, P, independently exercises control over assets in his individual account plan by directing a plan fiduciary, F, to invest 100% of his account balance in a single stock. P is not a fiduciary with respect to the plan by reason of his exercise of control and F will not be liable for any losses that necessarily results from P's investment instruction.

(3) Assume the same facts in paragraph (g)(2) of this section, except that P directs F to purchase the stock from B, who is a party in interest with respect to the plan. Neither P nor F has engaged in a transaction prohibited under section 406 of the Act: P because he is not a fiduciary with respect to the plan by reason of his exercise of control and F because he is not liable for any breach of part 4 of Title I that is the direct and necessary consequence of P's exercise of control. However, a prohibited transaction under section 4975(c) of the Internal Revenue Code may have occurred, and, in the absence of an exemption, tax liability may be imposed pursuant to sections 4975 (a) and (b) of the Code.

(4) Assume the same facts as in paragraph (g)(3) of this section, except that P does not specify that the stock be purchased from B, and F chooses to purchase the stock from B. In the absence of an exemption, F has engaged in a prohibited transaction described in 406(a) of ERISA because the decision to purchase the stock from B is not a direct or necessary result of P's exercise of control.

(5) Pursuant to the terms of the plan, plan fiduciary F designates three reputable investment managers which participants may appoint to manage assets in their individual accounts. Participant P selects M, one of the designated managers, to manage the assets in his account. M prudently manages P's account for 6 months after which he incurs losses in managing the account through his imprudence. M has engaged in a breach of fiduciary duty because M's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of M as manager). F has no fiduciary liability for M's imprudence because he has no affirmative duty to advise P (see paragraph (d)(4) of this section) and because F is relieved of co-fiduciary liability by reason of section 404(c)(2) (see paragraph (e) of this section). F does have a duty to determine the suitability of M as an investment manager, however, and M's imprudence would be a factor which F must consider in periodically reevaluating its decision to designate M.

(6) Participant P instructs plan fiduciary F to appoint G as his investment manager pursuant to the terms of the plan which provide P total discretion in choosing an investment manager. Through G's imprudence, G incurs losses in managing P's account. G has engaged in a breach of fiduciary duty because G's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of G as manager). Plan fiduciary F has no fiduciary liability for G's negligence because F has no obligation to advise P (see paragraph (d)(4) of this section) and because F is relieved of co-fiduciary liability for G's actions by reason of section 404(c)(2) (see paragraph (e)(2)(iii) of this section). In addition, F also has no duty to determine the suitability of G as an investment manager because the plan does not limit P's choices to *designated* investment managers.

(7) Participant P directs a plan fiduciary, F, a bank, to invest all of the assets in his individual account in a collective trust fund managed by F that is designed to be invested solely in a diversified portfolio of common stocks. Due to economic conditions, the value of the common stocks in the bank collective trust fund declines while the value of publicly-offered fixed income obligations remains relatively stable. F is not liable for any losses incurred by P solely because his individual account was not diversified to include fixed income obligations. Such losses are the direct result of P's exercise of control; moreover, under paragraph (d)(4) of this section F has no obligation to advise P regarding his investment decisions.

(8) Assume the same facts as in paragraph (g)(7) of this section except that F, in managing the collective trust fund, invests the assets of the fund solely in a few highly speculative stocks. F is liable for losses resulting from its imprudent investment in the speculative stocks and for its failure to diversify the assets of the account. This conduct involves a separate breach of F's fiduciary duty that is not a direct or necessary result of P's exercise of control (see paragraph (e)(2)(iii) of this section).

(h) *Effective date.* This section is effective with respect to transactions occurring after [180 days after publication of a final rule]. Transactions occurring before that date would be governed by section 404(c) of the Act without regard to the regulation.

Signed at Washington, DC, this 26th day of February, 1991.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 91–5797 Filed 3–12–91; 8:45 am]

BILLING CODE 4510-29-M

OL
56
SS
49
1R
13
991
MI

federal register

Wednesday
March 13, 1991

Part V

Department of Education

34 CFR Parts 674, 675, and 676
Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840-AB31

Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Perkins Loan (formerly named the National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs, known collectively as the campus-based programs. These proposed regulations would make typographical corrections to and clarify provisions contained in the current regulations.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Harold F. McCullough, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW. (room 4018, ROB-3), Washington, DC 20202-5446.

FOR FURTHER INFORMATION CONTACT: Richard P. Coppage or Michael J. Oliver, U.S. Department of Education, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW. (room 4018, ROB-3), Washington, DC 20202-5446. Telephone (202) 708-4690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The proposed revisions in these regulations result from a review of the current regulations and concerns raised by educational institutions. The review identified the need to clarify certain provisions of the current regulations, add language inadvertently omitted, and make corrections due to typographical errors.

Summary of Significant Proposed Changes

Proposed Changes to Perkins Loan and CWS Program Regulations

Sections 674.2 and 675.2 Definitions

The current definition of "Full-time student" applies to both graduate and undergraduate students. Since many institutions have different standards for enrollment status for graduate and undergraduate students, the Secretary is proposing to add a definition of "Full-time graduate or professional student" and rename the definition of "Full-time student" to "Full-time undergraduate student."

The Secretary proposes to allow an institution participating in the Perkins Loan and CWS programs to have similar flexibility in determining a "full-time graduate or professional student" as the institution does under the Guaranteed Student Loan (Stafford Loan, PLUS, and Supplemental Loans for Students) programs. This proposed definition would allow the institution to determine what constitutes a full-time academic workload according to its own standards and practices.

Proposed Changes to the Perkins Loan Program Regulations

Section 674.31 Promissory Note

The Secretary proposes to amend this section to clarify that institutions may still capitalize the penalty charge assessed on National Defense/Direct Student Loan borrowers during the repayment period. This language was inadvertently omitted from § 674.31(b)(5) of the final regulations published December 1, 1987.

Section 674.32 Promissory Note

Section 674.32 Special Terms: Loans to Less Than Half-Time Student Borrowers

Section 674.34 Deferment of Repayment—Perkins Loans

Section 674.35 Deferment of Repayment—Direct Loans Made on or After October 1, 1980

Section 674.36 Deferment of Repayment—Direct Loans Made Before October 1, 1980 and Defense Loans

The Secretary is proposing to delete the word "regular" in the phrases "half-time regular student," "regular half-time student" and "less than half-time regular student" in §§ 674.31, 674.32, 674.34, 674.35 and 674.36 to be consistent throughout the Perkins Loan, CWS and SEOG program regulations. For example, §§ 674.32, 674.33 and 674.34 used the term "half-time student" without using the work "regular." The term "regular" has been deleted as redundant because 34 CFR 668.7(a)(1) already requires a student to be a regular student in order to be eligible for assistance under the Perkins Loan, CWS and SEOG programs.

Section 674.36 Postponement of Loan Repayments in Anticipation of Cancellation

The Secretary proposes to revise § 674.36(a)(1) in order to specifically cross-reference §§ 674.53 and 674.54 regarding cancellations for teaching. These sections were inadvertently not listed with the other sections regarding services that qualify for loan cancellation.

Section 674.43 Billing Procedures

Section 674.47 Costs Chargeable to the Fund

The Secretary proposes to revise § 674.43(a) to provide that an institution may use billing procedures in addition to those expressly listed in the regulations. This includes telephone calls made to borrowers among the billing procedures that an institution may follow. The Secretary believes that making telephone calls and working with the debtor over the telephone, as soon as the borrower is overdue in making a payment, is in keeping with the Department's goal of using all effective methods of collection. The Secretary intends to encourage institutions to use such methods in order to reduce defaults. Therefore, as a result of a review of concerns raised by the educational institutions, the Secretary proposes to revise §§ 674.43(a) and 674.47(a)(2) to clarify that the costs of all documented telephone calls made during the billing cycle to demand payment of overdue amounts on the loan, that are not recovered from the borrower, may be charged to the Perkins Loan Fund.

Appendices A, B, C, and D—Promissory Notes

The Secretary proposes to revise the sample promissory notes found in Appendices A, B, C, and D of part 674. These revised notes would correct typographical errors and clarify requirements for handling prepayments made by borrowers. These revised promissory notes reflect the current regulatory requirements and contain no policy changes. The Secretary has previously notified institutions of these revisions and instructed the institutions to begin using these revised promissory notes.

Proposed Changes to the CWS Program Regulations

Section 675.26 CWS Federal Share Limitations

The Secretary proposes to amend § 675.26 to clarify the CWS Federal share limitations and make the regulatory language more consistent with the statute.

Section 675.26 Community Service Learning Program

The Secretary proposes to amend § 675.26 to more accurately reflect the statutory language governing the Community Service Learning Program. The modified language would clarify that students should be provided, to the extent practicable, work-learning opportunities that relate to their educational or vocational program or goals. In addition, the section is amended to include tutorial services, child care and literacy training in order to list all examples of community services that are given in the statute.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these regulations would be small institutions of higher education participating in the campus-based programs. Based on analysis conducted by the Department, the Secretary has determined that these provisions would affect a minimal number of institutions.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB-3, 7th and D Streets, SW., Washington, DC 20202-5446, between the hours of 8:30 a.m. and 4 p.m., Monday thorugh Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid.

(Catalog of Federal Domestic Assistance Numbers: Perkins Loan Program, 84.038; College Work-Study Program, 84.033; Supplemental Educational Opportunity Grant Program, 84.007)

Dated: March 6, 1991.

Ted Sanders,

Acting Secretary of Education.

The Secretary proposes to amend parts 674, 675, and 676 of title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429, unless otherwise noted.

2. Section 674.1 is amended by revising paragraph (b)(1) to read as follows:

§ 674.1 Purpose and identification of common provisions.

* * * * *

(b)(1) The Perkins Loan Program authorized by title IV-E of the Higher Education Act of 1965, as amended, and previously named the National Direct Student Loan Program is a continuation of the National Defense Loan Program authorized by title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under title II before the enactment of title IV-E continue to exist.

* * * * *

3. In § 674.2, paragraph (b) is amended by adding the definition of "Full-time graduate or professional student" after the definition of "Financial need"; by removing the heading "Full-time student," and adding, in its place, "Full-time undergraduate student"; and under the definition of "Full-time undergraduate student"; the first line of the introductory text is amended by adding the word "undergraduate" after the word "enrolled"; paragraph (2) is amended by removing "36" and adding, in its place, "36". The definition of "Full-time graduate or professional student reads as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by the institution according to its own standards and practices.

* * * * *

4. Section 674.8 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

§ 674.8 Program participation agreement.

* * * * *

(a) The institution shall establish and maintain a Fund and shall deposit into the Fund—

* * * * *

(3) Payments of Principal, interest, late charges, penalty charges and collection costs on loans from the Fund;

* * * * *

§ 674.16 [Amended]

5. In § 674.16, paragraph (b)(4) is amended by adding "Pell Grant" before "CWS".

6. Section 674.19 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credit to principal, interest collection costs and either penalty of late charges.

* * * * *

7. Section 674.31 is amended by revising paragraphs (b)(2)(i)(A) and (b)(B)(3) and (b)(5)(iii)(A) to read as follows:

§ 674.31 Promissory note.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Direct Loans made before October 1, 1980, and Perkins Loans, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

* * * * * *

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, collection costs, and either penalty or late charges on the loan are canceled upon the death or permanent and total disability of the borrower.

* * * * * *

(5) * * *

(iii) * * *

(A) Add either the penalty or late charge to the principal the day after the scheduled repayment was due; or

* * * * * *

8. Section 674.32 is amended by revising paragraph (a)(2)(ii) and the authority citation to read as follows:

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) * * *

(2) * * *

(ii) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

* * * * * *

(Authority: 20 U.S.C. 1087dd)

9. Section 674.34 is amended by revising paragraphs (b)(3), (c)(3), (c)(4), and (d)(3) introductory text, (d)(4) introductory text and (d)(4)(iii) to read as follows:

§ 674.34 Deferment of repayment—Perkins loans.

* * * * * *

(b) * * *

(3) If a borrower is attending as at least a half-time student for a full academic year and intends to enroll as at least a half-time student in the next academic year, the borrower is entitled to deferment for 12 months.

* * * * * *

(c) * * *

(3) A Peace Corps volunteer (see § 674.57);

(4) A volunteer under part A of the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.57);

* * * * * *

(d) * * *

(3) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

* * * * * *

(4) To qualify for an internship deferment as provided in paragraph (d)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

* * * * * *

(iii) The internship or residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

* * * * * *

10. Section 674.35 is amended by revising paragraphs (b)(3), (c) introductory text, (c)(3) and (g) to read as follows:

§ 674.35 Deferment of Repayment—Direct loans made on or after October 1, 1980.

* * * * * *

(b) * * *

(3) If a borrower is attending as at least a half-time student for a full academic year and intends to enroll as at least a half-time student in the next academic year, the borrower is entitled to deferment for 12 months.

* * * * * *

(c) The borrower need not repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

* * * * * *

(3) A volunteer under part A of the Domestic Volunteer Service Act of 1973 (ACTION programs) (See § 674.57);

* * * * * *

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), and (d) of this section.

* * * * * *

11. Section 674.36 is amended by revising paragraphs (b)(3), (c)(3), (d) and (f) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

* * * * * *

(b) * * *

(3) If a borrower is attending as at least a half-time student for a full academic year and intends to enroll as at least a half-time student in the next academic year, the borrower is entitled to deferment for 12 months.

* * * * * *

(c) * * *

(3) A volunteer under part A of the Domestic Volunteer Service Act of 1973 (ACTION programs) (see § 674.57);

* * * * * *

(d) The institution shall exclude the deferment periods described in paragraphs (b) and (c) of this section when determining the 10-year repayment period.

* * * * * *

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time student.

* * * * * *

12. Section 674.38 is amended by revising paragraph (a)(1) to read as follows

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) * * *

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under §§ 674.53 674.54, 674.55, 674.56 or 674.57.

* * * * * *

13. Section 674.42 is amended by adding a new paragraph (a)(2)(x) and revising paragraph (b)(1)(i) to read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(2) * * *

(x) General information with respect to the average indebtedness of students who have loans at that institution under part E of the Higher Education act of 1965, as amended.

* * * * * *

(b) *Contact with the borrower during the initial and post-deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (Direct loans made before October 1, 1980, and Perkins loans), the institution shall contact the borrower three times within the initial grace period.

* * * * * *

14. Section 674.43 is amended by revising paragraphs (a) introductory text, (b)(3) introductory text and (b)(5)(ii), and adding a new paragraph (b)(5)(iii) to read as follows:

§ 674.43 Billing procedures.

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

* * * * * *

(b) * * *

(3) The institution shall determine the amount of the late charge imposed for loans described in paragraph (b)(2) of this section based on either—

* * * * * *

(5) * * *

(ii) May assess a late charge only during the period described in paragraph (b)(2) of this section; or

(iii) May assess a penalty charge throughout the life of the loan.

* * * * * *

15. Section 674.45 is amended by revising paragraphs (c)(1)(i) and (ii)(B) and adding a new paragraph (c)(1)(iii) to read as follows:

§ 674.45 Collection procedures.

* * * * * *

(c) * * *

(1) * * *

(i) Litigate;

(ii) * * *

(A) * * *

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firms; or

(iii) Assign the account to the Secretary in Accordance with the procedure in § 674.50.

* * * * * *

16. Section 674.47 is amended by revising paragraph (a)(2) to read as follows:

§ 674.47 Costs chargeable to the Fund.

(a) * * *

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and the penalty or late charges, the institution may charge the Fund for only that unpaid portion of the cost of telephone calls to the borrower made pursuant to § 674.43 to demand payment of overdue amounts on the loan.

* * * * * *

17. Section 647.49 is amended by revising paragraphs (f) introductory text and (h)(1)(ii) to read as follows:

§ 674.49 Bankruptcy of borrower.

* * * * * *

(f) *Resumption of collection from the borrower.* The institution shall resume billing and collection action prescribed in this subpart after—

* * * * * *

(h) * * *

(1) * * *

(ii) A discharge order, other than an order filed under 11 U.S.C. 1328(b) on a borrower owing a student loan obligation which entered the repayment period less than 5 years, exclusive of periods of deferment, from the date on which a petition for relief was filed, in a case brought under chapter 13 of the Code; or

* * * * * *

§ 674.50 [Amended]

18. In § 674.50, paragraph (c)(6) is amended by changing the word "deferred" to "deferment" after the word "for."

* * * * * *

19. In § 674.52, paragraph (d) is revised to read as follows:

§ 674.52 Cancellation procedures.

* * * * * *

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military, Peace Corps or ACTION program service is granted.

* * * * * *

§ 674.57 [Amended]

20. In § 674.57, paragraph (a)(2) is amended by adding after "1973" the words "(ACTION programs)."

* * * * * *

23. Appendix A to part 674 is revised to read as follows:

Appendix A—Promissory Note—Perkins Loan

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____, promise to pay to _____ (hereinafter called the Institution), located at _____, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under part E of title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose any deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is [shortened under paragraph III(5), or] extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly

repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled payments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan, and my initial grace period has ended.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII, IX, and X performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled.

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services); in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accuring during that year will be canceled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve-month period of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I became totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number, or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number, or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it.

I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature ———————[(seal)].
Date ———, 19——.
Permanent Address (Street or Box Number, City, State, and Zip Code).
Social Security Number (borrower must provide) ———————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ———————[(seal)].
Date ———, 19——.
Permanent Address (Street or Box Number, City, State, and Zip Code).

The Institution shall provide a copy of this note to you and any cosigner.

(Authority: 20 U.S.C. 1087dd)

24. Appendix B to part 674 is revised to read as follows:

Appendix B—Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ———, promise to pay to ——— (hereinafter called the Institution), located at ———, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the annual percentage rate of five percent (5%) on the unpaid balance, except that no interest

shall accrue during any deferment period described in paragraph VII(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that is [shortened under paragraph III(5), or] extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installation payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan, and my initial grace period has ended.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act or 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I my receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through (VI)(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellations for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent for the total principal amount plus interest on the unpaid balance accruing during the year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during the last year of each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None".)

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it.

I understand and agree to all the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ————, 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code). ————

Social Security Number (borrower must provide) ————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner ————

[(seal)].

Date ————, 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code) ————

The Institution shall provide a copy of this note to you and any cosigner.

(Authority: 20 U.S.C. 1087dd.)

25. Appendix C to part 674 is revised to read as follows:

Appendix C—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program; Perkins Loan

[Any bracketed clause or paragraphs may be included at option of institution.]

I, ————, promise to pay to ———— (hereinafter called the Institution), located at ————, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under part E of title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellations.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the Annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

II. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins Loan I have received; or

(ii) If I have no other outstanding Perkins Loans, either nine months from the date this loan is made, or if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, biomonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans, including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII, IX, and X, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayment if it determines that the deferment is necessary to avoid a financial hardship for me. Interest however, will continue to accrue.

VII. Cancellation for Teaching

(1) In understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) The Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer-Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a volunteer under the Peace Corps Act, or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs).

(2) This loan will be canceled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next schedule repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you read it.

I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)].
Date _____, 19____.
Permanent Address (Street or Box Number, City, State, and Zip Code) _____

_____

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner _____
[(seal)].
Date _____, 19____.
Permanent Address (Street or Box Number, City, State, and Zip Code) _____

_____

The Institution shall provide a copy of this note to you and any cosigner.
(Authority: 20 U.S.C. 1087dd)

26. Appendix D to part 674 is revised to read as follows:

Appendix D—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ————, promise to pay to ———— (hereinafter called the Institution), located at ————, the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all reasonable collection costs, including attorney fees and other charges, necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under part E of title IV of the Higher Education Act of 1965, as amended (hereinafter called the Act), and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the annual percentage rate of five percent (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(3).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the United States Secretary of Education (hereinafter called the Secretary).

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all outstanding Direct, Defense and Perkins Loans, including those received from other institutions. The portion of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan, and my initial grace period has ended.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is assigned to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching or military service described in Articles VII, VIII, and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For any period not to exceed three years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service,

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled.

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice of service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number or Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the late charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

Notice to Borrower: Do not sign this note before you have read it.

I understand and agree to all of the foregoing terms and conditions.

[This note is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ————, 19 ——.

Permanent Address (Street or Box Number, City, State, and Zip Code) ————

Social Security Number (borrower must provide) ————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner ———— [(seal)].

Date ————, 19 ——.

Permanent Address (Street of Box Number, City, State, Zip Code) ————

The Institution shall provide a copy of this note to you and any cosigner.

(Authority: 20 U.S.C. 1087dd)

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756a, unless otherwise noted.

2. In § 675.2, paragraph (b) is amended by adding the definition of "Full-time graduate or professional student" after the definition of "Financial need"; by removing the heading "Full-time student", and adding, in its place, "Full-time undergraduate student"; and under the definition of "Full-time undergraduate student" the first line of the introductory text is amended by adding the word "undergraduate" after the word "enrolled". The definition of "Full-time graduate or professional student" reads as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Full-time graduate or professional student. An enrolled graduate or professional student who is carrying a full-time academic workload at an institution of higher education as determined by the institution according to its own standards and practices.

* * * * *

§ 675.16 [Amended]

3. In § 675.16, paragraph (b)(1) is amended by changing the word "or" to "of" before the word "his", and paragraph (b)(3) is amended by changing the word "or" to "of" before the word "prepaid."

§ 675.18 [Amended]

4. In § 675.18, paragraph (a)(4) is amended by changing the word "allocation" to "program" after "SEOG."

§ 675.22 [Amended]

5. In § 675.22, paragraph (a)(8) is amended by changing the word "dlobbying" to "lobbying."

§ 675.23 [Amended]

6. In § 675.23, paragraph (b)(2)(ii) is amended by changing the word "by" to "be" after the word "otherwise."

7. Section 675.26 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(ii) and (a)(2) to read as follows:

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student enrolled in any institution participating in the CWS program who is employed other than by a for-profit organization described in § 675.23 may not exceed—

* * * * *

(ii) 90 percent for a student employed in a community service learning program described in § 675.28, and the amount paid to students under the community service learning program shall not exceed 10 percent of the institution's cumulative CWS allocations and reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years.

* * * * *

8. Section 675.28 is amended by revising paragraphs (a), (b)(2) and (c)(2)(ii) to read as follows:

§ 675.28 Community service learning program.

(a) An institution may use up to 10 percent of its allocation under the CWS program to employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular problems related to the needs of low-income individuals.

(b) * * *

(2) Provides students with work-learning opportunities, to the maximum extent practicable, that relate to their educational or vocational programs or goals.

(c) * * *

(2) * * *

(ii) May include activities related to such fields as health care, education (including tutorial services), child care, literacy training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

* * * * *

9. Section 675.34 is amended by revising paragraph (a)(2) to read as follows:

§ 675.34 Multi-institutional job location and development programs, or arrangements with nonprofit organizations.

(a) * * *

(2) A nonprofit organization for a community services job location and development program only. The nonprofit organization must have professional direction and staff.

* * * * *

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.2 [Amended]

2. In § 676.2, paragraph (b) is amended by removing the title "Full-time student" and adding in its place the title "Full-time undergraduate student"; and under the definition of "Full-time undergraduate student", the first line of the introductory text is amended by adding the word "undergraduate" after the word "enrolled".

§ 676.3 [Amended]

3. In § 676.3, paragraph (b) is amended by changing the word "of" to "or" after the word "allocation".

§ 676.16 [Amended]

4. In § 676.16, paragraph (f) is amended by removing the words "and NDSL" after "SEOG".

§ 676.18 [Amended]

5. In § 676.18, paragraph (a)(3) is amended by changing the word "allocation" to "program" after "CWS".

[FR Doc. 91–5828 Filed 3–12–91; 8:45 am]
BILLING CODE 4000–01–M

BEST COPY AVAILABLE

federal register

Wednesday
March 13, 1991

Part VI

Department of Commerce

Bureau of Export Administration

15 CFR Parts 770, 776, 778, and 799

Expansion of Foreign Policy Controls on Chemical Weapon Precursors; Imposition of Foreign Policy Controls on Equipment and Technical Data Related to the Production of Chemical and Biological Weapons; Interim Rules

15 CFR Parts 771, 776, and 778

Imposition and Expansion of Foreign Policy Controls; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 799

[Docket No. 910237-1037]

Expansion of Foreign Policy Controls on Chemical Weapon Precursors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: In support of U.S. policies opposing the proliferation and use of chemical weapons, the Department of Commerce is expanding the foreign policy controls on exports of certain chemical weapon precursors (i.e., chemicals that can be used in the manufacture of chemical weapons).

This interim rule amends the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR), by expanding the number of countries for which a validated license is required for thirty-nine precursor chemicals. Under this rule, the thirty-nine chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. Previously, these chemicals required a validated license only for export to Country Groups S and Z, Iran, Iraq, Syria, and military and police entities in the Republic of South Africa.

DATES: This rule is effective March 13, 1991. Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

This interim rule expands the number of countries for which a validated license is required to export thirty-nine precursor chemicals. Under this rule, a validated license is now required to export these chemicals to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. This rule amends the CCL by adding to ECCN 4798B the thirty-nine chemicals formerly controlled under ECCN 5798F and removing ECCN 5798F from the CCL.

The changes made by this rule address one of the measures called for in President Bush's December 13, 1990, decision on the Enhanced Proliferation Control Initiative (EPCI) and included in Executive Order 12735 of November 16, 1990, on chemical and biological weapons proliferation. Executive Order 12735 of November 16, 1990, directs the Secretary of Commerce to exercise his authority under Executive Order 12730 to control exports that the Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The EPCI directs the Commerce Department to adopt worldwide export controls on fifty chemical weapons precursors. Worldwide controls were already in place for eleven of these fifty chemicals under ECCN 4798B. The revision to ECCN 4798B, which adds the thirty-nine chemicals formerly controlled under ECCN 5798F, provides worldwide export controls on all fifty chemicals consistent with the President's directive. These fifty chemicals have been identified as precursors by the twenty-nation Australia Group, which seeks to control the proliferation of chemical weapons. The United States will seek the agreement of all Australia Group governments to adopt equivalent controls.

Consistent with the expansion of foreign policy controls on exports of chemical precursors, this rule also amends § 776.19 to apply the reexport provisions of part 774 to reexports of chemical precursors controlled under ECCN 4798B and to apply the parts and components provisions of § 776.12 to all items controlled under ECCNs 4798B, 4997B, and 4998B.

This rule also amends Supplement No. 1 to § 799.2 (Commodity Interpretations) by revising "Interpretation 23: Precursor Chemicals" to reflect the changes in the list of chemicals controlled by ECCN 4798B and the removal of ECCN 5798F.

The general policy of denying applications to export or reexport chemicals controlled under ECCN 4798B to Iran, Iraq, Libya and Syria remains in effect. Exports and reexports to other destinations will generally be approved unless there is reason to believe the chemicals will be used in producing chemical weapons or otherwise devoted to chemical warfare purposes.

The contract sanctity provisions contained in this rule are consistent with the requirements of the Export Administration Act of 1979, as amended (EAA). However, serious consideration is being given to eliminating these contract sanctity provisions when the final rule is published, in light of the serious concerns raised by chemical and biological weapons. The Department invites public comments on this issue, as well as all other aspects of the regulation.

The Department of Commerce has submitted a report to the Congress to support this expansion in U.S. foreign policy controls.

Saving Clause

Shipments of items removed from general license authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before March 27, 1991, may be exported under the previous general license provisions up to and including April 10, 1991. Any such items not actually exported before midnight April 10, 1991, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close April 12, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-5653.

List of Subjects in 15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 776 and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 776 and 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*), E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 776—[AMENDED]

§ 776.19 [Amended]

2. Section 776.19 is amended:

a. By removing paragraph (a)(ii) and redesignating paragraphs (a)(i) and (a)(iii) as new paragraphs (a)(1) and (a)(2), respectively;

b. By revising paragraphs (b) and (e);

c. By removing paragraph (i);

d. By redesignating paragraphs (f), (g), and (h) as new paragraphs (g), (h), and (i), respectively;

e. By adding a new paragraph (f);

f. By removing paragraph (1) and redesignating paragraph (m) as new paragraph (n);

g. By redesignating paragraphs (j) and (k) as new paragraphs (l) and (m), respectively; and

h. By adding new pargraphs (j) and (k), as follows:

§ 776.19 Chemical and biological agents.

* * * * *

(b) Unless one or more of the criteria stated in paragraphs (c) through (k) of this section are met, applications to export the goods in ECCNs 4798B, 4997B, and 4998B will generally be denied to Libya, Iran, Iraq, and Syria. Applications will generally be approved to other destinations, except where there is reason to believe that those goods will be used in producing chemical or biological weapons or will otherwise be devoted to chemical or biological warfare purposes.

* * * * *

(e) The contract sanctity date for exports of items in ECCNs 4997B and 4998B from the United States to Iran, Iraq, or Syria is February 22, 1989.

(f) The contract sanctity date for exports of the following chemicals from the United States to Iran or Iraq is February 22, 1989: Dimethyl methylphosphonate, methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, and thiodiglycol. The contract sanctity date for exports of the following chemicals from the United States to Syria is February 22, 1989: Dimethyl methylphosphonate, methylphosphonyl dichloride, and methylphosphonyl difluoride.

* * * * *

(j) The contract sanctity date for exports of chemicals controlled by ECCN 4798B from the United States to all destinations (except Iran, Iraq, Libya, or Syria) is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride, triethanolamine, and trimethyl phosphite. (See also paragraphs (h) and (i) of this section.) This provision does not apply to exports to Country group Z or to military or police entities in the Republic of South Africa. For exports to Iran, Iraq, Libya, Syria, see paragraphs (c) through (g) of this section.

(k) The contract sanctity date for reexports of chemicals controlled under ECCN 4798B to any destination (except Iran, Iraq, Libya, or Syria) is March 7, 1991. The contract sanctity date for reexports of these chemicals to Iran, Iraq, Libya, or Syria is December 12, 1989. This provision does not apply to exports to Country Group Z or to military or police entities in the Republic of South Africa.

* * * * *

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to Section 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products, and Related Materials), ECCN 4798B is amended by revising the List of Chemicals Controlled, as follows:

4798B Precursor and intermediate chemicals used in the production of chemical warfare agents.

* * * * *

List of Chemicals Controlled by ECCN 4798B

(See Supplement No. 1 to 799.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals.)

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;
(2) (C.A.S. #7784-34-1) Arsenic trichloride;
(3) (C.A.S. #76-93-7) Benzilic acid;
(4) (C.A.S. #107-07-3) 2-Chloroethanol;
(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate;
(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite;
(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoroamidate;
(8) (C.A.S. #762-04-9) Diethyl phosphite;
(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine;
(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol;
(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol;
(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride;
(13) (C.A.S. #108-18-9) Diisopropylamine;
(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate;
(15) (C.A.S. #756-79-6) Dimethyl methylphosphonate;
(16) (C.A.S. #868-85-9) Dimethyl phosphite (dimethyl hydrogen phosphite);
(17) (C.A.S. #124-40-3) Dimethylamine;
(18) (C.A.S. #506-59-2) Dimethylamine hydrochloride;
(19) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);
(20) (C.A.S. #1498-40-4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride]; [1]
(21) (C.A.S. #430-78-4) Ethylphosphonus difluoride [Ethylphosphinyl difluoride]; [2]
(22) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride;
(23) (C.A.S. #753-98-0) Ethylphosphonyl difluoride;
(24) (C.A.S. #7664-39-3) Hydrogen fluoride;
(25) (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine;
(26) (C.A.S. #76-89-1) Methyl Benzilate;
(27) (C.A.S. #676-83-5) Methylphosphonous dichloride [Methylphosphinyl dicloride]; [2]
(28) (C.A.S. #753-59-3) Methylphosphonous diflouride [Methylphosphinyl difluoride]; [4]
(29) (C.A.S. #676-97-1) Methylphosphonyl dichloride;
(30) (C.A.S. #676-99-3) Methylphosphonyl difluoride;
(31) (C.A.S. #10025-87-3) Phosphorus Oxychloride;
(32) (C.A.S. #10026-13-8) Phosphorus pentachloride;
(33) (C.A.S. #1314-80-3) Phosphorus pentasulfide;
(34) (C.A.S. #7719-12-2) Phosphorus trichloride;
(35) (C.A.S. #75-97-8) Pinacolone;
(36) (C.A.S. #464-07-3) Pinacolyl alcohol;
(37) (C.A.S. #151-50-8) Potassium cyanide;
(38) (C.A.S. #7789-23-3) Potassium fluoride;
(39) (C.A.S. #7789-29-9) Potassium hydrogen fluoride;
(40) (C.A.S. #1619-34-7) 3-Quinuclidinol;
(41) (C.A.S. #3731-38-2) 3-Quinuclidinone;
(42) (C.A.S. #1333-83-1) Sodium bifluoride;
(43) (C.A.S. #143-33-9) Sodium cyanide;
(44) (C.A.S. #7681-49-4) Sodium fluoride;
(45) (C.A.S. #1313-82-2) Sodium sulfide;
(46) (C.A.S. #111-48-8) Thiodiglycol;
(47) (C.A.S. #7719-09-7) Thionyl chloride;
(48) (C.A.S. #102-71-6) Triethanolamine;
(49) (C.A.S. #122-52-1) Triethyl phosphite; and
(50) (C.A.S. #121-45-9) Trimethyl phosphite.

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5798F is removed.

Supplement No. 1 to § 799.2 [Amended]

5. In Supplement No. 1 to § 799.2 (Interpretations), Interpretation 23 (Precursor Chemicals) is revised to read as follows:

Interpretation 23: Precursor Chemicals

Following is a listing of chemicals controlled by ECCN 4798B that includes their Chemical Abstract Service Registry (C.A.S.) number and synonyms (i.e., alternative names). These chemicals require a validated license to all countries except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom.

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride
Acid ammonium fluoride
Ammonium bifluoride
Ammonium difluoride
Ammonium hydrofluoride
Ammonium hydrogen bifluoride
Ammonium hydrogen difluoride
Ammonium monohydrogen difluoride
(2) (C.A.S. #7784-34-1) Arsenic trichloride
Arsenic (III) chloride
Arsenous chloride
Fuming liquid arsenic
Trichloroarsine
(3) (C.A.S. #76-93-7) Benzilic acid
.alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
Diphenylglycolic acid
.alpha.,.alpha.-Diphenylglycolic acid
Diphenylhydroxyacetic acid
.alpha.-Hydroxy-2,2-diphenylacetic acid
2-Hydroxy-2,2-diphenylacetic acid
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
Hydroxydiphenylacetic acid
(4) (C.A.S. #107-07-3) 2-Chloroethanol
2-Chloro-1-ethanol
Chloroethanol
2-Chloroethyl alcohol
Ethene chlorohydrin
Ethylchlorohydrin
Ethylene chlorhydrin
Ethylene chlorohydrin
Glycol chlorohydrin
Glycol monochlorohydrin
2-Hydroxyethyl chloride
(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate
Ethylphosphonic acid diethyl ester
(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite
Diethoxymethylphosphine
Diethyl methanephosphonite
O,O-Diethyl methylphosphonite
Methyldiethoxyphosphine
Methylphosphonous acid diethyl ester
(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoroamidate
N,N-Dimethyl-O,O'-diethyl phosphoramidate
Diethyl dimethylphosphoramidate
Dimethylphosphoramidic acid diethyl ester
(8) (C.A.S. #762-04-9) Diethyl phosphite
Diethoxyphosphine oxide
Diethyl acid phosphite
Diethyl hydrogen phosphite
Diethyo phosphonate
Hydrogen diethyl phosphite
(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine
N,N-Diethyl-2-aminoethanol
Diethyl (2-hydroxyethyl)amine
N,N-Diethyl-N-(.beta.-hydroxyethyl)amine
N,N-Diethyl-2-hydroxyethylamine
Diethylaminoethanol
2-(Diethylamino)ethanol
Diethylamino)ethyl alcohol
N,N-Diethylmonoethanolamine
(2-Hydroxyethyl)diethylamine
2-Hydroxytriethylamine
(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol
2-(Diisopropylamino) ethanethiol
Diisopropylaminoethanethiol
.beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol
(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride
2-Chloro-N,N-diisoproplethanamine
1-Chloro-N,N-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chlorethyl)-N-(1-methylethyl)-2-propanamine
N-(2-Chloroethyl) diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-cholorethane
2-(Diisopropylamino) ethyl chloride
Diisopropylaminoethyl chloride
.beta.-Diisopropylaminoethyl chloride
(13) (C.A.S. #108-18-9) Diisopropylamine
N,N Diisopropylamine
N-(1-Methylethyl)-2-propanamine
(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate
Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester
(15) C.A.S. #756-79-6) Dimethyl methylphosphonate
Dimethoxymethyl phosphine oxide
Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester
(16) (C.A.S. #868-85-9) Dimethyl phosphite
Dimethoxphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphonate
(17) (C.A.S. #124-40-3) Dimethylamine
N-Methyl methanamine
(18) (C.A.S. #506-59-2) Dimethylamine hydrochloride
Dimethylammonium chloride
N-Methyl methanamine hydrochloride
(19) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL)
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
(20) (C.A.S. #1498-40-4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine
(21) (C.A.S. #430-78-4) Ethylphosphonus difluoride
Ethyldifluorophosphine
(22) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride
(23) (C.A.S. #753-98-0) Ethylphosphonyl difluoride
Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride
(24) (C.A.S. #7664-39-3) Hydrogen fluoride
Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas
(25) (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine
3-Hydroxy-N-methylpiperidine
1-Methyl-3-hdroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidonol
(26) (C.A.S. #76-89-1) Methyl benzilate
Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate
(27) (C.A.S. #676-83-5) Methylphosphonous dichloride
Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride
(28) (C.A.S. #753-59-3) Methylphosphonous diflouride
Difluoromethylphosphine
Methyldifluorophosphine
(29) (C.A.S. #676-97-1) Methylphosphonyl dichloride
Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride
Methylphosphonodichloridic acid
Methylphosphonyl chloride
(30) (C.A.S. #676-99-3) Methylphosphonyl difluoride
Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride
(31) (C.A.S. #10025-87-3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide
(32) (C.A.S. #10026-13-8) Phosphorus pentachloride
Pentachlorophosphorane
Pentachlorophosphorus
Phosphoric chloride
Phosphorus(V) chloride
Phosphorus perchloride
(33) (C.A.S. #1314-80-3) Phosphorus pentasulfide
Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide
(34) (C.A.S. #7719-12-2) Phosphorus trichloride
Phosphorus chloride
Trichlorophosphine
(35) (C.A.S. #75-97-8) Pinacolone
tert-Butyl methly ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl kentone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone
(36) (C.A.S. #464-07-3) Pinacolyl alcohol
tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol
(37) (C.A.S. #151-50-8) Potassium cyanide
(38) (C.A.S. #7789-23-3) Potassium fluoride
Potassium monofluoride
(39) (C.A.S. #7789-29-9) Potassium hydrogen fluoride
Hydrogen potassium difluoride
Hydrogen potassium fluoride
Potassium acid fluoride
Potassium bifluoride
Potassium hydrogen difluoride
Potassium monohydrogen difluoride
(40) (C.A.S. #1619-34-7) 3-Quinuclidinol
1-Azabicyclo(2.2.2)octan-3-ol
3-Hydroxyquinuclidine
(41) (C.A.S. #3731-38-2) 3-Quinuclidinone
1-Azabicyclo(2.2.2)octan-3-one
3-Oxyquinuclidine
Quinuclidone
(42) (C.A.S. #1333-83-1) Sodium bifluoride
Sodium hydrogen difluoride
Sodium hydrogen fluoride
Thiophosphoric anhydride
(43) (C.A.S. #143-33-9) Sodium cyanide
(44) (C.A.S. #7681-49-4) Sodium fluoride
Sodium monofluoride
(45) (C.A.S. #1313-82-2) Sodium sulfide
Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulphide
(46) (C.A.S. #111-48-8) Thiodiglycol
Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2'-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2'-Thiobisethanol
2,2'-Thiodiethanol
Thiodiethylene glycol
2,2'-Thiodiglycol
(47) (C.A.S. #7719-09-7) Thionyl chloride
Sulfinyl chloride
Sulfinyl dicholoride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(48) (C.A.S. #102-71-6) Triethanolamine
Alkanolamine 244
Nitrilotriethanol
2,2',2''-Nitrilotriethanol
2,2',2''-Nitrilotris(ethanol)
TEA
TEA(amino alcohol)
Tri(2-hydroxyethyl)amine
Triethanolamin
Tris (.beta.-hydroxyethyl)amine
Tris(2-hydroxyethyl)amine
Trolamine
(49) (C.A.S. #122-52-1) Triethyl phosphite
Phosphorous acid triethyl ester
Triethoxyphosphine

[1] Chemical name used elsewhere in the List of Chemicals for this ECCN 4798B.
[2] See footnote 1 to this ECCN 4798B.
[3] See footnote 1 to this ECCN 4798B
[4] See footnote 1 to this ECCN 4798B

Tris(ethoxy) phosphine
(50) (C.A.S. #121-45-9) Trimethyl phosphite
Phosphorus acid trimethyl ester
Trimethoxyphosphine

Dated: March 7, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-5659 Filed 3-8-91; 4:25 pm]

BILLING CODE 3510-DT-M

---

15 CFR Parts 770, 776, 778, and 799

[Docket No. 910241-1041]

Imposition of Foreign Policy Controls on Equipment and Technical Data Related to the Production of Chemical and Biological Weapons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: In support of U.S. policies opposing the proliferation and prohibited use of chemical and biological weapons, the Department of Commerce is imposing foreign policy controls on exports of certain dual-use equipment that can be used to produce:

(1) Chemicals or biological agents controlled by ECCNs 4798B, 4997B, or 4998B on the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR);

(2) Chemicals or biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

The Department is also imposing foreign policy controls on technical data for the production of such equipment.

Specifically, this interim rule amends the Export Administration Regulations (EAR) to impose validated licensing requirements on exports of this equipment and technical data to Country Groups S and Z and countries listed in a new Supplement No. 5 to part 778 of the EAR.

DATES: This rule is effective March 13, 1991. Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

This interim rule amends the Export Administration Regulations (EAR) to impose a validated licensing requirement on exports of certain equipment that can be used to produce the following:

(1) Chemicals or biological agents controlled under ECCNs 4798B, 4997B, or 4998B on the Commodity Control List (CCL);

(2) Chemicals and biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130), administered by the U.S. Department of State.

This rule also creates a new § 776.20, which imposes a validated licensing requirement on exports of technical data for the production of such equipment. The equipment and technical data subject to this validated licensing requirement have diverse civil applications and, this, are not uniquely related to chemical and biological weapons production.

The validated licensing requirement for this equipment and technical data applies only to exports and reexports to Country Groups S and Z and the regions and countries listed in new Supplement No. 5 to part 778 of the EAR. Supplement No. 5 includes the Middle Eastern and Southwest Asian regions and certain other countries.

Section 776.20 establishes the licensing policy for reviewing applications to export or reexport equipment and the technical data related to chemical and biological weapons production. Exports and reexports of such items will be denied if they would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons.

This rule implements part of Executive Order 12735 of November 16, 1990, on Chemical and Biological Weapons Proliferation, as well as the Enhanced Proliferation Control Initiative (EPCI) announced on December 13, 1990. Excutive Order 12735 of November 16, 1990, directs the Secretary of Commerce to control exports that the Secretary of Commerce and the Secretary of State determine would assist a country in acquiring chemical and biological weapons capability. The EPCI directs Commerce to control dual-use equipment and technical data related to chemical and biological weapons. This rule creates new Export Control Commodity Numbers (ECCNs) in the CCL to control this equipment to Country Groups S and Z and the regions and countries listed in new Supplement 5 to part 778.

The following ECCNs are added to the CCL:

5129F: Chemical processing equipment linked with nickel or constructed of Hastelloy, Monel, or another alloy with nickel content.

5132F: Pumps or valves designed to be vapor leak proof.

5133F: Thermometers or other chemical processing sensors encased in nickel alloy.

5134F: Filling equipment enclosed in a glove box or similar environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle.

5135F: Specially designed incinerators for chemical precursors listed in ECCN 4798B, chemical warfare agents, or organophosphorus compounds.

5140F: Toxic gas monitoring systems.

5141F: Monitoring systems for the detection of chemical compounds having anticholinesterase activity.

5165F: Detection or assay systems for biological agents.

5167F: Biohazard containment equipment.

5170F: Equipment for the microencapsulation of live microorganisms.

5797F: Intermediate chemicals used in the production of chemical warfare agents.

5997F: Complex media for the growth of microorganisms.

The United States will seek the agreement of all Australia Group governments to adopt equivalent controls on this equipment. The twenty-member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons.

The Department of Commerce has submitted a report to the Congress in accordance with section 6 of the Export Administration Act of 1979, as amended, to support this imposition of U.S. foreign policy controls.

The contract sanctity provision contained in this rule is consistent with the requirements of the Export Administration Act of 1979, as amended (EAA). However, serious consideration is being given to eliminating this contract sanctity provision when the final rule is published, in light of the serious concerns raised by chemical and biological weapons. The Department invites public comments on this issue, as well as all other aspects of the regulation.

Consistent with the prohibitions on trade with Iraq and Kuwait contained in the Executive Orders issued on August 2 and 9, 1990, exporters should obtain guidance from the Office of Foreign Assets Control, U.S. Department of Treasury, concerning any export or reexport to Iraq or Kuwait.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before March 27, 1991, may be exported under the previous general license provisions up to and including April 10, 1991. Any such items not actually exported before midnight April 10, 1991, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encou ages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provision contained in this rule are especially encouraged.

The period for submission of comments will close April 12, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-5653.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, parts 770, 776, 778, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 776 and 778 is revised to read as follows:

Authority: Public Law 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95-242, 92 Stat. 141 (42 U.S.C. 2139(a)); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Public Law 96-72, 93 Stat. 503 (50 U.S.C. app 2401 *et seq.*), as amended; Public Law 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 770—[AMENDED]

3. Section 770.2 is amended by adding alphabetically a definition for "Middle East" a definition for "Southwest Asia" to read as follows:

§ 770.2 Definitions of terms.

* * * * *

Middle East. Geographically, this region is understood to include Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.

* * * * *

Southwest Asia. Geographically, this region is understood to include Afghanistan, India, Iran, and Pakistan.

* * * * *

PART 776—[AMENDED]

4. Part 776 is amended by adding a new § 776.20 to read as follows:

§ 776.20 Equipment and technical data related to the production of chemicals and biological agents.

(a) The following controls on equipment and technical data related to the production of chemicals and biological agents are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) Equipment identified in ECCNs 5129F, 5132F, 5133F, 5134F, 5135F, 5140F, and 5141F in the Commodity Control List, which can be used in the production of chemical weapons precursors and chemical warfare agents, requires a validated license for export from the United States to Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

(2) Equipment and materials identified in ECCNs 5165F, 5167F, 5170F, 5797F, and 5997F, which can be used in the production of biological agents, require a validated license for export from the United States to Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

(3) Technical data for the production of commodities described in paragraphs (a)(1) and (a)(2) of this section are not eligible for General License GTDR if destined for a country listed in Supplement No. 5 to part 778 of this subchapter.

(b) *Licensing policy.* (1) Unless the criteria stated in paragraph (b)(3) of this section are met, applications to export the commodities and technical data described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country; and

(iv) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case.

(3) The contract sanctity date for the commodities and technical data described in paragraph (a) of this section is March 7, 1991.

PART 778—[AMENDED]

5. Part 778 is amended by adding a new Supplement No. 5 to read as follows:

Supplement No. 5—Dual-use Chemical and Biological Equipment; Regions, Countries, and Other Destinations

Bulgaria
China (People's Republic of)
Cuba
Middle East [1]
Myanmar (Burma)
North Korea
Romania
South Africa
Southwest Asia [2]
Soviet Union
Taiwan
Vietnam

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

6. In Supplement No. 1 to Section 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5129F is added immediately following ECCN 4128B, as follows:

5129F Chemical processing equipment lined with nickel or constructed of Hastelloy, Monel, or another alloy with nickel content.

Controls for ECCN 5129F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5129F

Any of the following types of chemical processing equipment lined with nickel or constructed of Hastelloy, Monel, or another alloy with a nickel content in excess of 40% by weight, as follows:

(a) Reactor vessels with a capacity greater than 5 liters;

(b) Storage tanks and containers with a capacity greater than 10 liters;

(c) Heat exchangers;

(d) Distillation columns with a capacity greater than 2 liters per hour;

(e) Degassing equipment or condensers.

7. In Supplement No. 1 to section 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5132F is added immediately following ECCN 3131A, as follows:

5132F Pumps or valves designed to be vapor leak proof.

Controls for ECCN 5132F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5132F

Pumps or valves having any of the following characteristics:

(a) Incorporating a body made from alloy with a nickel content in excess of 40% by weight;

(b) Lined with nickel; or

(c) Otherwise designed to be vapor leak proof.

Note: This ECCN 5132F controls double seal, electromagnetic drive, or canned pumps, and bellows or diaphragm valves, having any of the characteristics described in paragraphs (a) through (c) of the List of Equipment Controlled.

8. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5133F is added immediately following ECCN 5132F, as follows:

5133F Thermometers or other chemical process sensors encased in nickel alloy having a nickel content greater than 40%.

Controls for ECCN 5133F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5134F is added immediately following ECCN 5133F, as follows:

5134F Filling equipment enclosed in a glove box or similar environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle.

Controls for ECCN 5134F

Unit: Report in "number".

Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5135F is added immediately following ECCN 5134F, as follows:

5135F Specially designed incinerators for chemical precursors listed in ECCN 4798B, chemical warfare agents, or organophosphorus compounds.

Controls for ECCN 5135F

Unit: Report in "number".

Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

11. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5140F is added immediately following ECCN 5135F, as follows:

5140F Toxic gas monitoring systems.

Controls for ECCN 5140F

Unit: Report in "number".

Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5140F

Toxic gas monitoring systems designed to detect phosphorus, sulphur, or fluorine compounds, or designed to detect any chemical weapons precursor or chemical warfare agent, that are:

(a) Designed for continuous operation; and

(b) Capable of detecting such chemicals at a concentration less than 0.1 milligrams per cubic meter of air.

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5141F is added immediately following ECCN 5141F, as follows:

5141F Monitoring systems for the detection of chemical compounds having anticholinesterase activity.

Controls for ECCN 5141F

Unit: Report in "number"

Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5165F is added immediately following ECCN 1145F, as follows:

5165F Detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by ECCN 4997B or ECCN 4998B.

Controls for ECCN 5165F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5167F is added immediately following ECCN 5165F, as follows:

5167F Biohazard containment equipment.

Controls for ECCN 5167F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled Under ECCN 5167F

Biohazard containment equipment, as follows:

(a) Complete P3 or P4 level laboratory facilities;

(b) Equipment that incorporates or is contained in a P–3 or P–4 containment housing.

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5170F is added immediately following ECCN 5167F, as follows:

5170F Equipment for the microencapsulation of live microorganisms.

Controls for ECCN 5170F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

16. In Supplement No. 1 to section 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), a new ECCN 5797F is added immediately following ECCN 4764B, as follows:

5797F Intermediate chemicals used in the production of chemical warfare agents.

Controls for ECCN 5797F

Unit: Report in "$ value".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Chemicals Controlled by ECCN 5797F

(a) (C.A.S. #693–13–0) Di-isopropylcarbodiimide;

(b) (C.A.S. #538–75–0) Di-cyclohexocarbodiimide.

17. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 9 (miscellaneous), a new ECCN 5997F is added immediately following ECCN 4997B, as follows:

5997F Complex media (specifically brain/heart infusion media) for the growth of microorganisms in Class 3 or Class 4, in quantities greater than 100 kilograms.

Controls for ECCN 5997F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

[1] See § 770.2 of this subchapter for definition.

[2] See footnote 1.

Dated: March 7, 1991.
James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.
[FR Doc. 91-5860 Filed 3-8-91; 4:28 pm]
BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 776, and 778

[Docket No. 910249-1049]

Imposition and Expansion of Foreign Policy Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Department of Commerce is proposing to amend the Export Administration Regulations (EAR) in support of U.S. non-proliferation policies. This proposal would impose foreign policy controls on certain exports by providing authority to deny items that already require a validated license, for any reason other than short supply, where the export is determined to be for a facility involved in the design, development, production, or use of missiles or chemical or biological weapons.

This proposal would also impose foreign policy controls on exports to specified destinations when the exporter knows, or to any destination when the exporter is informed by the Office of Export Licensing (OEL), that the commodities, technical data, or software will be used in the design, development, production or use of missiles or of chemical or biological weapons, or are destined for a facility engaged in such activities.

In addition, this proposal would impose foreign policy controls on exports to specified destinations when a U.S. person knows, or to any destination when the U.S. person is informed by OEL, that the commodities, technical data, or software will be used in the design, development, production, or use of missiles or chemical or biological weapons, or are destined for a facility engaged in such activities. Neither may a U.S. person, without a validated license, perform any contract, service, or employment knowing that it assists such activities.

This proposal would also impose foreign policy controls on participation and support by U.S. persons in the design, development, production, or use of missiles or of chemical or biological weapons.

This proposal would restrict participation by U.S. persons in construction of whole plants to produce chemical weapon precursors in certain countries.

This proposal would also make changes in the organization of regulations relating to weapons proliferation, grouping them in newly designated part 778, Proliferation Controls.

DATES: Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Bureau of Export Administration, Telephone: (202) 377-8760.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce, in consultation with the Department of State, has decided to propose expanding foreign policy controls in several ways in support of U.S. non-proliferation policies.

One proposed EAR change would provide authority to deny a license for exports of items that already require a validated license, for any reason other than short supply, where the export could be destined for the design, development, production, or use of missiles or chemical or biological weapons, or for a facility engaged in such activities.

The proposed rule would also impose foreign policy controls on exports to specified destinations when the exporter knows the export will be used in the design, development, production, stockpiling, or use of missiles or of chemical or biological weapons, or is destined for a facility engaged in such activities.

The rule does not provide a proposed definition of the term "know". However, consideration is being given to whether such a definition is advisable. The following definition is under consideration for inclusion in the final rule, and comments on the need for and wording of a definition are especially encouraged.

Know. Except as the term is used in part 769, a person shall be considered to know a circumstance or result when that person:

(a) Is aware that such circumstance exists, or that such result is substantially certain to occur; or

(b) Has a firm belief that such circumstance exists, or that such result is substantially certain to occur.

A person knows of the existence of a particular circumstance if that person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

In addition, the proposed rule would amend the EAR to make clear that the Office of Export Licensing may inform an exporter at any time that a validated license is required for a specific export or reexport transaction or for exports or reexports to a specific end-user or end-use because of an unacceptable risk that such shipments will be used in sensitive nuclear activities, in the design, development, production, stockpiling, or use of chemical or biological weapons, or in the design, development, production or use of missiles. An exporter or reexporter may be individually informed by OEL, or notice may be published in the **Federal Register**. This proposal would provide new supplements to the EAR to identify regions and countries, as well as facilities and projects, to which certain validated license requirements apply.

Also, the proposed rule would substitute the term "missiles" for the current "missiles capable of delivering nuclear weapons". The definition of such missiles, as contained in the EAR, is not affected by this change.

Also, the proposed rule would add a new provision to the EAR to restrict participation by U.S. persons in missile, chemical weapons, or biological weapons development. No U.S. person may knowingly export or reexport to specified destinations commodities, software, or technical data, regardless of origin, for use in the design, development, production, stockpiling, or use of chemical or biological weapons, or of missiles, or to a facility engaged in such activities. Nor may a U.S. person, without a validated license, perform any contract, service, or employment knowing that it assists such activities. When a U.S. person has been informed by OEL, these prohibitions apply to any destination. In addition, the rule restricts participation and support by U.S. persons in the design, construction, or export of whole plants to make precursors for chemical weapons. This prohibition also extends to support of any such transactions, through financing, freight forwarding, or other comparable activities. The term "U.S. person" is defined for the purposes of these provisions to include foreign branches of companies organized in the United States.

In amending the Export Administration Act of 1979 in 1985, the Congress added section 6(m), which prohibited the President from restricting transactions in performance of a contract entered into before the date of a report to Congress of the intent to

impose a foreign policy control. The effect of that provision has been to require approval of export license applications when a contract predates the control program, unless denial is based on some other control provision of the EAR. While contract sanctity is provided in this proposal, serious consideration is being given to eliminating these contract sanctity provisions when the final rule is published, in light of the serious concerns raised by missiles or chemical or biological weapons. The Department invites public comments on this issue, as well as all other aspects of the regulation.

Consistent with the prohibitions on trade with Iraq and Kuwait contained in the Executive Orders issued on August 2 and 9, 1990, exporters should obtain guidance from the U.S. Department of Treasury, Office of Foreign Assets Control concerning any export or reexport to Iraq or Kuwait.

On March 7, 1991, the Department submitted a report notifying the Congress of its intent to impose these controls. To provide contract sanctity, export licenses may be issued on a case-by-case basis for the export of commodities, software, or technical data subject to these new controls in performance of a contract or an agreement entered into before March 7, 1991 (the date of notification to Congress of intent to impose these controls).

Rulemaking Requirements and Invitation to Comment

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. The Secretary of Commerce has submitted a report to Congress on the need for these controls. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is being issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the suggested definition of "know" and on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close (April 12, 1991.). The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects

15 CFR Parts 771 and 776

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, parts 771, 776, and 778 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 771, and 776 are revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); Executive Order 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for part 778 is revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 141 (42 U.S.C. 2139(a)); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and Executive Order 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 771—AMENDED

3. Section 771.2(c) is amended by removing the word "or" at the end of paragraphs (c)(11) and (c)(12), and by adding new paragraphs (c)(13) and (c)(14) to read as follows:

§ 771.2 General provisions.

* * * * *

(c) * * *

(13) The exporter either:

(i) Knows that the commodity, software or technical data:

(A) Are destined for any facility or project listed in Supplement No. 7 to part 778 of this subchapter; or

(B) Will be used in the design, development, production, or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 of this subchapter is located; or

(ii) Is informed by OEL that a validated license is required for export to a consignee, wherever located, because the export may apply to the design, development, production, or use of missiles;

(14) The exporter either:

(i) Knows that the commodity, software or technical data:

(A) Are destined for any facility listed in Supplement No. 6 to part 778 of this subchapter; or

(B) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Supplement No. 5 to part 786; or

(ii) Is informed by OEL that a validated license is required for export to a consignee, wherever located, because the export may apply to the design, development, production, stockpiling, or use of chemical or biological weapons.

* * * * *

PART 776—AMENDED

4. Part 776 is amended by removing §§ 776.18, 776.19, and 776.20.

5. The heading to part 778 is revised to read as follows:

PART 778—PROLIFERATION CONTROLS

6. Section 778.1 is revised to read as follows:

§ 778.1 Purpose.

(a) *Scope.* This part defines the types of transactions that are governed by the U.S. policy concerning the non-proliferation of chemical and biological weapons, nuclear weapons or explosive devices, missile systems and the U.S. maritime nuclear propulsion policy. The controls implement policies set out in section 3(2) (A) and (B) of the Export Administration Act and section 309(c) of the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242), that is:

(1) To exercise the necessary vigilance from the standpoint of their significance to the national security of the United States;

(2) To further significantly the foreign policy of the United States or to fulfill its international responsibilities; and

(3) To maintain controls over items because of their potential significance for nuclear explosive purposes.

(b) *Related legislation.* These controls supplement those exercised by the Nuclear Regulatory Commission and the Department of Energy under the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and other statutes, and by the Office of Defense Trade Controls, Department of State, under the Arms Export Control Act of 1976. (See §770.10 of this subchapter.)

§ 778.2 [Amended]

7. In § 778.2 paragraph (a) is amended by removing the last two sentences.

8. Section 778.3 is amended by adding two new sentences at the end of the introductory text to read as follows:

§ 778.3 Additional validated license requirements for exports with certain nuclear end-uses.

* * * When the Office of Export Licensing determines that there is an unacceptable risk of use in or diversion to such activities, it may inform the exporter, either individually or through amendment to the regulations in this subchapter, that an individual validated license is required. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of this section.

* * * * * *

9. A new § 778.6 is added to read as follows:

§ 778.6 Preparing nuclear-related application.

An application for a license to export commodities or technical data subject to provisions of § 778.2, § 778.3, or § 778.5 shall be prepared and submitted on Form BXA–622P, Application for Export License, in accordance with instructions set forth in §§ 772.5 and 779.5(e) of this subchapter with the following additional instructions:

(a) *Identification of License Application.* Enter the words "NUCLEAR CONTROLS" in Item 4, "Special Purpose," of Form BXA–622P.

(b) *Consignee in country of ultimate destination.* If the consignee in the country of ultimate destination is not the end-user of the commodities give the name and address of the end-user in item 12, "Special End-Use," or on an attachment to the application, and if known, the specific geographic locations of any installations, establishments, or sites at which the commodities will be used.

(c) *Commodity description.* (1) If the CCL entry in question is divided into sub-entries, indicate the specific sub-entry that describes the commodity. In addition, specifications or descriptive brochures should be provided when available.

(2) If applicable, include a description of any specific features of design or specific modifications that make the commodity capable of the uses described in § 778.3.

(d) *End-use.* (1) A vague or general end-use description will delay review of an application. Applications indicating resale as the end-use sometimes must be returned without action in order to obtain more information.

(2) When submitting an application under § 778.3, fully explain the basis for the knowledge or belief that the commodities are intended for the purpose(s) described therein. Additionally, indicate, if possible, the specific end-use(s) the commodities will have in the designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in the designing, constructing, fabricating, or operating the facilities described in § 778.3.

10. Sections 778.7 and 778.8 are revised to read as follows:

§ 778.7 Equipment and related technical data used in the design, development, production, or use of missiles.

(a) *Validated license requirements.* In support of U.S. foreign policy to limit the proliferation of missiles, an individual validated license is required to export certain commodities, software, and technical data related to the design, development, production, or use of such missiles to Country Groups QSTVWYZ.

(1) *Commodities subject to weapons delivery systems controls.* The commodities that require a validated license because they are subject to foreign policy controls on weapons delivery systems appear within ECCNs 2018A, 2116A, 4116B, 4302B, 1357A, 1361A, 1362A, 1385A, 1460A, 1485A, 1501A, 1516A, 1517A, 4516B, 1522A 1529A, 4529B, 1531A, 1533A, 1564A, 4564B, 1585A, 1568A, 4568A, 4587B, 1595A, 1715A, and 1746A. Exporters should consult the Reason for Control paragraph in each ECCN to determine the specific items subject to these foreign policy controls.

(2) *Technical data and software subject to weapons delivery systems controls.* Technical data and software that require a validated license because they are subject to foreign policy controls on nuclear weapons delivery systems are listed in paragraph (4) of Supplement No. 4 to part 779 of this subchapter.

(3) *Definition.* The term "missiles" is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of at least 300 kilometers (km).

(b) *Controls on other commodities, technical data, and software.* BXA will review license applications, in accordance with the licensing policy described in paragraph (d) of this section, for commodities, technical data, or software not described in paragraph (a) of this section that:

(1) Require a validated license for reasons other than short supply; and

(2) Could be destined for the design, development, production, or use of missiles, or for a facility engaged in such activities.

(c) *Additional validated license requirements based on end-uses related to the design, development, production, or use of missiles.* (1) In addition to the validated license requirements described in paragraph (a) and paragraph (b) of this section, a validated license is required to export any commodity, software, or technical data (excluding technical data exportable under the provisions of General License GTDA and commodities identified in ECCN 7599I or 7999I), when the exporter knows that the commodities, software, or technical data:

(i) Are destined for any facility or project listed in Supplement No. 7 to part 778; or

(ii) Will be used in the design, development, production or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 is located.

(2) The Office of Export Licensing may inform the exporter, either individually or through amendment to these regulations, that an individual validated license is required because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (c)(1) of this section. Those facilities, projects, companies, or government entities currently identified are listed in Supplement No. 7 to part 778.

(d) *Licensing policy.* (1) Unless the criteria stated in paragraphs (d)(3), (d)(4) or (d)(5) of this section are met, applications to export the commodities will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country; and

(v) The types of assurances or guarantees against design, development production or use, of missiles delivery purposes that are given in a particular case.

(3) Consistent with section 6(m) of the EAA, the following contract sanctity dates have been established:

(i) License applications involving contracts for batch mixers specified in ECCN 4118B that were entered into prior to January 19, 1990, will be considered on a case-by-case basis.

(ii) License applications for commodities, technical data, or software described only in paragraph (b) or (c) of this section that involve a contract entered into prior to March 7, 1991, will be considered on a case-by-case basis.

(iii) Applicants who wish a pre-existing contract to be considered in reviewing their license applications must submit documentation sufficient to establish the existence of a contract.

(e) Commodities and technical data described in paragraph (a) of this section are not eligible for special licenses.

§ 778.8 Chemical precursors and biological agents, and associated equipment and technical data.

(a) *Validated license requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) Chemicals identified in ECCN 4798B require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Neitherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom.

(2) Equipment identified in EECNs 5129F, 5132F, 5133F, 5134F, 5135F, 5140F, and 5141F in the Commodity Control List, which can be used in the production of chemical weapons precursors and chemical warfare agents, requires a validated license for export from the United States to Country Groups S and Z and regions and countries listed in Supplement No. 5 to Part 778.

(3) Viruses and viroids identified in ECCN 4997B and bacteria, fungi, and protozoa identified in ECCN 4998B require a validated license to all destinations except Canada.

(4) Equipment and materials identified Regional Director, ECCNs 5165F, 5167F, 5170F, 5797F, and 5997F, which can be used in the production of biological agents, require a validated license for export from the United States to Country Groups S and Z and regions and countries listed in Supplement No. 5 to part 778.

(5) The following restrictions apply to use of General License GTDR:

(i) General License GTDR is not available for technical data for the production of chemical precursors described in paragraph (a)(1) of this section, except to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom;

(ii) General License GTDR is not available for the export of technical data for the production of commodities described in paragraphs (a)(2) and (a)(4), of this section to regions and countries listed in Supplement No. 5 to Part 778;

(iii) General License GTDR is not available for the export of technical data for the production of commodities described in paragraph (a)(3) of this section;

(iv) (A) General License GTDR is not available for technical data for facilities designed or intended to produce chemical weapons precusors controlled by ECCN 4798B on the CCL, involving the following:

(*1*) Overall plant design;

(*2*) Design, specification, or procurement of equipment;

(*3*) Supervision of construction, installation, or operation of complete plant or components thereof;

(*4*) Training of personnel;

(*5*) Consultation on specific problems involving such facilities.

(B) This prohibition on use of General License GTDR does not apply to exports to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom;

(v) General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom, for software for process control that is specifically configured to control or initiate the production of chemical weapons precusors controlled by ECCN 4798B.

(b) *Controls on other commodities, technical data, and software.* BXA will review license applications, in accordance with the licensing policy described in paragraph (d) of this section, for commodities, technical data, or software not described in paragraph (a) of the section that:

(1) Require a validated license for reasons other than short supply;

(2) Are destined to a country other than those listed in paragraph (a)(1) of this section; and

(3) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Additional validated license requirements based on end-uses related to the design, development, production, stockpiling, or use of chemical or biological weapons.* (1) In additon to the validated license requirements described in paragraph (a) and paragraph (b) of this section, a validated license is required to export any commodity, software, or technical data excluding technical data exportable under the provisions of General License GTDA and commodities identified in ECCN 7599I or 7999I], when the exporter knows that the commodities, software, or technical data:

(i) Are destined for any facility listed in Supplement No. 6 to par 778; or

(ii) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a region or country listed in Supplement No. 5 to part 778.

(2) The Office of Export Licensing may inform the exporter, either individually or through amendment to these regulations, that an individual validated license is required because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (c)(1) of this section. Those facilities currently identified are listed in Supplement No. 6 to part 778.

(d) *Licensing policy.* (1) Unless the criteria stated in paragraph (d)(3) of this section are met, applications to export the commodities and technical data subject to this policy will be considered on a case-by-case basis to determine whether the export would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country; and

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case.

(3) *Contract sanctity.* Consistent with section 6(m) of the EAA, the following contract sanctity dates have been established.

(i) The contract sanctity date for exports to Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(ii) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylaminoethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(iii) The contract sanctity date for exports to Iran or Syria of items in ECCNs 4997B and 4998B is February 22, 1989.

(iv) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous oxychloride, and thiodiglycol is February 22, 1989.

(v) The contract sanctity date for exports to Syria of dimethyl methylphosphonate, methylphosphonyl dichloride, and methylphosphonyl difluoride is February 22, 1989.

(vi) The contract sanctity date for exports to Iran, Libya, or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine is December 12, 1989.

(vii) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (d)(3)(ii) of this section applies.

(viii) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Syria, paragraph (d)(3)(i) of this section applies. For exports of triethanolamine to Iran, Libya, or Syria, paragraph (d)(3)(vi) of this section applies.

(ix) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of chemicals controlled by ECCN 4798B is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride, triethanolamine, and trimethyl phosphite. (See also paragraphs (d)(3)(vi) and (d)(3)(vii) of this section.) For exports to Iran, Libya, or Syria, see paragraphs (d)(3)(i) through (d)(3)(vi) of this section.

(x) The contract sanctity date for exports of the following commodities and technical data is March 7, 1991:

(A) equipment (for producing chemical weapon precursors and chemical warfare agents) described in paragraph (a)(2) of this section;

(B) Equipment and materials (for producing biological agents) described in paragraph (a)(4) of this section;

(C) Technical data described in paragraph (a)(5) of this section; and

(D) Commodities, technical data, or software described in paragraph (c) of this section.

(xi) The contract sanctity date for exports of commodities, technical data, or software described in paragraph (b) of this section is March 7, 1991.

(xii) The contract sanctity date for reexports of chemicals controlled under ECCN 4798B is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya, or Syria is December 12, 1989.

(xiii) The contract sanctity date for reexports of viruses and viroids identified under ECCN 4997B and bacteria fungi, and protozoa identified under ECCN 4998B is March 7, 1991.

(4) When preparing a license application for chemicals, applicants shall type the Chemical Abstract Service (C.A.S.) Registry number in Item 9(b) before each chemical name. The C.A.S. numbers are listed with the controlled chemicals in ECCN 4798B under the "List of Chemicals." See Supplement No. 1 to § 799.2 of this subchapter, Interpretation 23: Precursor Chemicals,

for synonyms of controlled chemicals in ECCN 4798B.

11. A new § 778.9 is added to read as follows:

§ 778.9 Activities of U.S. persons.

(a) A validated license or reexport authorization is required for the export, reexport, or transfer of any commodities, software, or technical data, regardless of origin, by a U.S. person (defined below) where that person knows that such commodities, software, or technical data:

(1) Will be used in the design, development, production, or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 is located; or

(2) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Supplement No. 5 to part 778, or are destined for a facility listed in Supplement No. 6 to part 778.

(b) No U.S. person shall, without a validated license or other authorization from the Office of Export Licensing:

(1) Perform any contract, service, or employment that the U.S. person knows will assist in the design, development, production, or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 is located;

(2) Perform any contract, service, or employment that the U.S. person knows will assist in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Supplement No. 5 to part 778, or is destined for a facility listed in Supplement No. 6 to part 778.

(c) No U.S. person shall, without a validated license or other authorization from the Office of Export Licensing, participate in the design, construction, or export of a whole plant to make chemical weapons precursors identified in ECCN 4798B, in countries other than Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom.

(d) No U.S. person shall, without a validated license or other authorization from the Office of Export Licensing, knowingly support an export, reexport, or transfer that does not have a validated license or other authorization as required by this section. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

(e) The Office of Export Licensing may inform U.S. persons, either individually or through amendment to these regulations, that an individual validated license is required because an activity could involve the types of participation and support described in paragraphs (a) through (d) of this section, anywhere in the world.

(f) For purposes of this section, the term "U.S. person" includes:

(1) Any individual who is a citizen or permanent resident alien of the United States;

(2) Any juridical person organized under the laws of the United States, or any jurisdiction within the United States including foreign branches; and

(3) Any person in the United States.

(g) It shall be the policy of the Department of Commerce to permit no activity covered by this section that is material in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons, or of missiles.

(h) See §§ 770.2 and 779.1(a) of this subchapter for definitions of other terms used in this section.

12. A new section 778.10 is added to read as follows:

§ 778.10 Effect of other provisions.

If, at the time of export, a validated license is also required under other provisions of the Export Administration Regulations (15 CFR parts 730–799), the application shall be submitted in accordance with the provisions of part 778 as well as other applicable provisions. The requirements of part 778 are applicable in addition to, rather than in lieu of, any other validated license requirement set forth in the Export Administration Regulations. Insofar as consistent with the provisions of part 778, all of the other provisions shall apply equally to applications for licenses and licenses issued under these special provisions.

13. Part 778 is amended by adding a new Supplement No. 6 to read as follows:

Supplement No. 6—Chemical and Biological Agent Facilities

[TEXT TO BE FURNISHED IN FINAL RULE]

14. Part 778 is amended by adding a new Supplement No. 7 to read as follows:

Supplement No. 7—Missile Technology Projects and Facilities

[TEXT TO BE FURNISHED IN FINAL RULE]

Dated: March 7, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-5861 Filed 3-8-91; 4:27 pm]

BILLING CODE 3510-DT-M

Reader Aids

Federal Register

Vol. 56, No. 49

Wednesday, March 13, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904	1
8905-9120	4
9121-9268	5
9269-9580	6
9581-9834	7
9835-10140	8
10141-10356	11
10357-10502	12
10503-10770	13

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:

305	9656

3 CFR

Proclamations:

6254	9121
6255	9269
6256	9579
6257	10353
6258	10357

Executive Orders:

12163 (See Presidential Determination 91-20 of January 25, 1991)	8681
12193 (See EO 12753)	10501
12295 (See EO 12753)	10501
12351 (See EO 12753)	10501
12409 (See EO 12753)	10501
12463 (See EO 12753)	10501
12506 (See EO 12753)	10501
12554 (See EO 12753)	10501
12587 (See EO 12753)	10501
12629 (See EO 12753)	10501
12670 (See EO 12753)	10501
12706 (Superseded by EO 12753)	10501
12753	10501

Administrative Orders:

Memorandums:

February 21, 1991	9271

Presidential Determinations:

No. 91-20 of January 25, 1991	8681

5 CFR

213	10141
316	10141
317	10141
351	10141
831	10141
842	10141
870	10141
890	10141

Proposed Rules:

581	9181

7 CFR

1	9581
17	9273
46	8683
51	10302
301	9273
905	8684
911	10143
915	10143
916	10359
917	10359
918	8905
944	10503
958	10359
981	10505
1046	9274
1434	9592
1864	10145
1903	10145
1910	10145
1940	10508
1944	10145
1945	10145
1951	10145
1955	10145
1956	10145
1965	10145
1980	10145

Proposed Rules:

12	9258
58	10382
704	9293
777	10660
920	9302
929	10189
1005	9306
1410	9293
1413	9251
1421	10189, 10192

8 CFR

241	8906
242	8906
274	8685

9 CFR

82	9752
331	8907, 8908
381	8907, 8908

10 CFR

2	10359
710	10068
1048	9611
Ch. XVII	9605

Proposed Rules:

710	10075
1703	9902

11 CFR

110	9275

12 CFR

265	8687
325	10154

600.....8910
601.....8910
602.....8910
603.....8910
604.....9611
606.....8910
611.....8910, 10169
612.....8910
614.....8910
615.....8910
617.....8910
618.....8910
619.....8910
621.....8910
980.....8686
1410.....10302

Proposed Rules:
327.....9306

13 CFR
21.....8699–8701
25.....8699–8701
39.....9612–9618, 9935–9938
71.....9618–9620
121.....10360
122.....10360
1206.....8910

Proposed Rules:
39.....8732, 8733, 8936, 9658, 9661, 9907–9913
71.....9660, 9663, 9914
75.....10802
91.....8936

14 CFR
21.....8699–8701
39.....10361
71.....10362–10364, 10660

Proposed Rules:
Ch. I.....10363
71.....10364, 10660
158.....10462

15 CFR
303.....9621
770.....10760
776.....10756, 10760
778.....10760
799.....10756, 10760

Proposed Rules:
771.....10760
776.....10760
778.....10760

16 CFR
305.....9123
1500.....9276
1502.....9276

Proposed Rules:
1700.....9181

17 CFR
240.....9124

18 CFR
1301.....9288

Proposed Rules:
35.....8936

19 CFR

Proposed Rules:
141.....9311

20 CFR
302.....10362

Proposed Rules:
216.....10385

21 CFR
5.....8709
510.....9622, 9840
520.....8709, 8710, 9840
522.....9622
524.....9622
556.....8710
558.....9622, 9841
1308.....9132
1316.....8685

Proposed Rules:
201.....9312
356.....9915
806.....8940

22 CFR
514.....8711

23 CFR
1235.....10928

24 CFR
Ch. I.....9472
91.....9189
791.....9822

Proposed Rules:
203.....8941

26 CFR
1.....8911, 10365
31.....8911
301.....8169
602.....8912, 10365

Proposed Rules:
1.....8943–8967, 10211, 10395–10397
301.....9182

27 CFR
5.....8822

Proposed Rules:
16.....10066

28 CFR
0.....8923, 10509
8.....8985

Proposed Rules:
11.....8734
51.....10346

29 CFR
541.....9252
579.....9252
580.....9252
801.....9046
1601.....9823
1910.....10377

Proposed Rules:
516.....9183
778.....9183
1602.....9185
2550.....10724

30 CFR
56.....9626
57.....9626
228.....10510
243.....9251
723.....10080
845.....10080

Proposed Rules:
7.....10464
18.....10464
870.....10404
901.....8967
913.....8969
935.....9312

31 CFR
100.....10169
570.....10356

32 CFR
191.....10170
291.....9841
627.....9424

Proposed Rules:
155.....10215
162.....10219
299a.....9314

33 CFR
3.....9288
100.....9850, 9851
110.....9852
117.....8712, 10512
151.....8878
165.....9289, 10513

Proposed Rules:
117.....9916

34 CFR

Proposed Rules:
674.....10742
675.....10742
676.....10742

36 CFR

Proposed Rules:
9.....9917

37 CFR
201.....10660
211.....10660

38 CFR
6.....9626
8.....9626
21.....9627
36.....9853

Proposed Rules:
3.....10303
4.....10303

39 CFR

Proposed Rules:
111.....9664

40 CFR
52.....9172–9175, 10171
60.....9177
61.....10514
82.....9518, 10660
147.....9406
228.....9178

Proposed Rules:
Ch. I.....8972, 9315, 10522
61.....10523, 10524
86.....8856, 9754
123.....8973
300.....9187
435.....10664
600.....8856
799.....9092, 9105

41 CFR
105–8.....9862
301–1.....9678
301–10.....10378
302–11.....9289, 10378
Ch. 304.....9678

42 CFR
400.....8832
405.....8832
406.....8832
412.....9633
434.....10515

43 CFR
5400.....10173
5420.....10173
5450.....10173
5460.....10173
9230.....10173

Public Land Orders:
6836.....10360

44 CFR
64.....10515, 10517
353.....9452

45 CFR
74.....8712
205.....8924
232.....8926
234.....8926
286.....8926
801.....9180
1180.....10176
1611.....9634

46 CFR
25.....8878

Proposed Rules:
56.....10526
58.....10526
107.....10526
108.....10526
109.....10526
111.....10526
174.....10526

47 CFR
0.....8752
2.....9881
21.....9897
69.....9897
73.....8933, 8934, 9898, 9899, 10178, 10381, 10518, 10519
80.....9881
94.....9897, 9900

Proposed Rules:
1.....10222
2.....10222
43.....10526
73.....8974–8976, 9189–9191, 9924, 10227, 10527
76.....9924
95.....10222

48 CFR

Proposed Rules:
22.....9832
42.....9832
52.....9832
Ch. 2, App. N.....9082
202.....9082
203.....9082
204.....9082
217.....9082
223.....10405

225.....9082
226.....9082
232.....9082
245.....9082
252.....9082, 10405
1403.....10227
1405.....10227
1415.....10227
1453.....10227
1803.....8718
1804.....8718
1805.....8718
1806.....8718
1814.....8718
1815.....8718
1819.....8718
1836.....8718
1849.....8718
1852.....8718
1853.....8718

49 CFR
1.....9635
386.....10179
571.....10185
1010.....9635
1011.....8721
1177.....10519
1330.....8722

Proposed Rules:
383.....9925
571.....9928
575.....10861
Ch. X.....9191
1053.....9339

50 CFR
611.....8722, 38723
620.....8722
646.....9251
672.....9635, 9636
675.....9636, 10521

Proposed Rules:
20.....9482
285.....10227
641.....9930
658.....8736
672.....9251
675.....9251, 10527

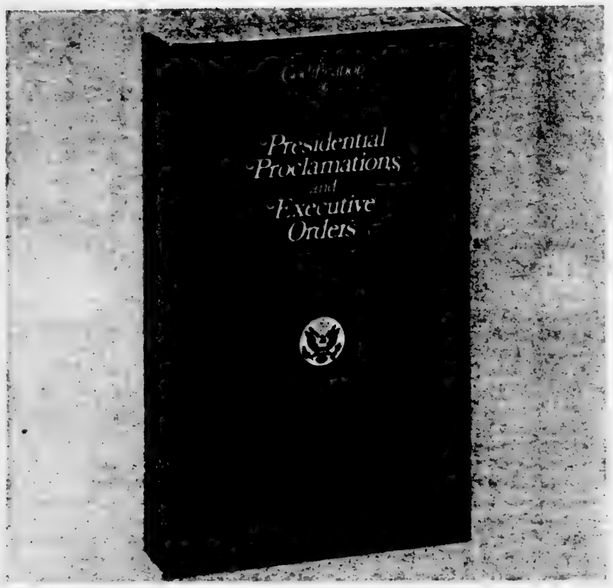
LIST OF PUBLIC LAWS

Last List March 8, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S.J. Res. 55/Pub. L. 102-8
Commemorating the two hundredth anniversary of United States-Portuguese diplomatic relations. (Mar. 8, 1991; 105 Stat. 26; 2 pages)
Price: $1.00

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code: *6661

Superintendent of Documents **Publications** Order Form

Charge your order. It's easy!

To fax your orders and inquiries – (202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

BEST COPY AVAILABLE

OL
56
SS
49
MR
13
991
MI

OL
56
SS
50
MR
14
991
MI

3-14-91
Vol. 56 No. 50

federal register

Thursday
March 14, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

**********5-DIGIT 48106
A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

3-14-91
Vol. 56 No. 50
Pages 10771-11052

federal register

Thursday
March 14, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Miami, FL, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-783-3238
Magnetic tapes	275-0186
Problems with public subscriptions	275-3054

Single copies/back copies:

Paper or fiche	783-3238
Magnetic tapes	275-0186
Problems with public single copies	275-3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523-5240
Magnetic tapes	275-0186
Problems with Federal agency subscriptions	523-5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202-523-5240

MIAMI, FL

WHEN: April 16:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1-800-347-1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1-800-366-2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202-523-5240 (voice); 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

Agricultural Marketing Service
RULES
Almonds grown in California, 10793
Grapefruit import requirements; suspension, 10792
Oranges, grapefruit, tangerines, and tangelos grown in Florida, 10790
Spearmint oil produced in Far West, 10794
PROPOSED RULES
Pears, plums, and peaches grown in California, 10819
Potatoes (Irish) grown in—
Washington, 10828

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, 10820

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Forest Service; Rural Electrification Administration

Air Force Department
RULES
Sales and services:
Visual information materials; release, dissemination, and sale
Correction, 10945
NOTICES
Meetings:
Air University Board of Visitors, 10862

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, foreign:
Apples, peaches, and citrus from Sonora, Mexico, 10789

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
First Hawaiian, Inc., et al., 10916

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Washington, 10860

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Connecticut River, CT; safety zone, 10853

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Defense Department
See also Air Force Department
PROPOSED RULES
Acquisition regulations:
Independent research and development costs; supplement, 10854

Delaware River Basin Commission
NOTICES
Hearings:
Project review filing fee schedule, 10862

Drug Enforcement Administration
PROPOSED RULES
Schedules of controlled substances:
Anabolic steroid products, 10845
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 10926
Celgene Corp., 10926
Norac Co., Inc., 10926
Stanford Seed Co., 10926

Education Department
NOTICES
Agency information collection activities under OMB review, 10863

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Extended benefit periods—
Maine, 10929

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Powerplant and industrial fuel use; new electric powerplant coal capability; compliance certifications:
March Point Cogeneration Co., 10880

Environmental Protection Agency
NOTICES
Pesticide programs:
Endangered species protection program; may affect determinations, 10886
Pesticides; emergency exemptions, etc.:
Benomyl, 10885

Equal Employment Opportunity Commission
PROPOSED RULES
Privacy Act; implementation, 10850
Records availability, 10847
NOTICES
Privacy Act:
Systems of records, 10887

Executive Office of the President
See Presidential Documents

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 10943

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 10796
Airbus Industrie, 10797, 10798
(2 documents)
Boeing, 10799, 10800
(2 documents)
British Aerospace, 10802, 10805
(4 documents)
PROPOSED RULES
Airworthiness directives:
Beech, 10837, 10838
(2 documents)
British Aerospace, 10841
Israel Aircraft Industries, 10840
Jet routes, 10843
NOTICES
Airport noise compatibility program:
Lawton Municipal Airport, OK, 10939
Meetings:
Aeronautics Radio Technical Commission, 10940
(2 documents)
Aviation System Capacity Advisory Committee, 10940

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 10943

Federal Energy Regulatory Commission
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Pacific Electric Operations et al., 10863
Natural gas certificate filings:
Kern River Gas Transmission Co. et al., 10865
Mississippi River Transmission Corp. et al., 10870
Applications, hearings, determinations, etc.:
Alabama-Tennessee Natural Gas Co., 10874
Arkla Energy Resources, 10875
Columbia Gas Transmission Corp., 10875
Equitrans, Inc., 10875
Granite State Gas Transmission, Inc., 10876
Kentucky West Virginia Gas Co., 10876
Louisiana Interstate Gas Corp., 10876
Midwestern Gas Transmission Co., 10877
Mississippi River Transmission Corp., 10877
North Penn Gas Co., 10877
Northern Natural Gas Co., 10878
Panhandle Eastern Pipe Line Co., 10878
(2 documents)
Red River Pipeline, 10878
Southern Natural Gas Co., 10879
Texas Eastern Transmission Corp., 10879
United Gas Pipe Line Co., 10880
Washington Water Power Co., 10880

Federal Maritime Commission
NOTICES
Agreements filed, etc., 10901
(2 documents)

Federal Procurement Policy Office
NOTICES
Procurement regulatory activity report; availability, 10930

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 10943
Applications, hearings, determinations, etc.:
C&S/Sovran Financial Corp., 10902
First Bancorp, Inc., 10902
Francklow, George D., Jr., 10902
TAG Bancshares, Inc., et al., 10903

Fish and Wildlife Service
RULES
Endangered and threatened species, and Endangered Species Convention:
Giant Pandas; import permit policy, 10809
NOTICES
Las Vegas, NV; incidental taking of Mojove desert tortoise, 10912

Food and Drug Administration
RULES
Human drugs:
Radioactive drugs for research purposes—
Editorial amendments, 10806
PROPOSED RULES
GRAS or prior-sanctioned ingredients:
Glycerophosphates, 10843
NOTICES
Committees; establishment, renewal, termination, etc.:
Antiviral Drugs Advisory Committee, 10903
Food additive petitions:
Hulls America, Inc., 10903
Food for human consumption:
Identity standards deviation; market testing permits—
Cottage cheese, nonfat, 10904
Human drugs:
New drug applications—
Wyeth-Ayerst Laboratories, Inc.; approval withdrawn, 10904
Meetings:
Advisory committees, panels, etc., 10904
Plasma volume expanders, assessment; workshop, 10905
Nutrition Labeling and Education Act; petitions permitted; procedural regulations development, 10906

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Indiana—
Toyota Industrial Equipment Manufacturing, Inc.; forklift truck manufacturing plant, 10860

Forest Service
NOTICES
Environmental statements; availability, etc.:
Columbia River Basin, ID, OR, and WA; anadromous fish management guidelines, 10857
Hiawatha National Forest, MI, 10857
Tahoe National Forest, CA, 10858
Wenatchee National Forest, WA, 10859

Health and Human Services Department
See Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Human Development Services Office; National Institutes of Health; Public Health Service; Social Security Administration

Health Care Financing Administration
RULES
Medicaid:
Alien eligibility; correction, 10806

Eligibility groups, coverage, and conditions of eligibility, legislative changes under OBRA '87, COBRA, and TEFRA, 10807

Health Resources and Services Administration
See also Public Health Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Pediatric Acquired Immune Deficiency Syndrome (AIDS)—
Health care demonstration projects, 10908

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 10880

Housing and Urban Development Department
RULES
HUD assistance provisions; accountability, 11032
NOTICES
Environmental statements; availability, etc.:
Village of Port Chester, NY, 10911

Human Development Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Coordinated discretionary funds program, 10948

Indian Affairs Bureau
RULES
Tribal government:
Preparation of rolls of Indians—
Coquille Indian Tribe; correction, 10806

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Mines Bureau; Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Forged steel crankshafts from United Kingdom, 10860

International Trade Commission
NOTICES
Import investigations:
Automotive fuel caps and radiator caps and related packaging and promotional material, 10916

Interstate Commerce Commission
RULES
Railroad acquisition, control merger, consolidation project, trackage rights, and lease procedures:
Bankrupt Railroad Service Preservation and Employee Protection Act; regulations removed, 10808

Justice Department
See Antitrust Division; Drug Enforcement Administration

Labor Department
See also Employment and Training Administration
NOTICES
Agency information collection activities under OMB review, 10927

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 10913
Meetings:
Butte District Grazing Advisory Board, 10913
Las Cruces District Grazing Advisory Board, 10913

Management and Budget Office
See Federal Procurement Policy Office

Marine Mammal Commission
NOTICES
Meetings; Sunshine Act, 10943

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Gulf of Mexico OCS—
Oil and gas operations, 10914

Mines Bureau
NOTICES
Agency information collection activities under OMB review, 10915

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 10944
(4 documents)

National Institutes of Health
NOTICES
Meetings:
National Institute on Aging, 10911

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
Chesapeake Bay National Estuarine Research Reserve, VA, 10860
Meetings:
Pacific Fishery Management Council, 10861
Permits:
Marine mammals, 10861
(2 documents)

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Philadelphia Electric Co., 10930
University of—
California at Berkeley, 10930

Occupational Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 10944

Oversight Board
NOTICES
Meetings:
National Advisory Board, 10930

Presidential Documents
ADMINISTRATIVE ORDERS
Appropriations; suspension of restrictions on availability (Presidential Determination No. 91-21 of February 27, 1991), 10771

Narcotics: certifications of major producing and transit countries (Presidential Determination No. 91-22 of March 1, 1991), 10774

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
NOTICES
Meetings:
President's Council on Physical Fitness and Sports, 10911

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Glen Canyon Dam, AZ; Colorado River Storage Project, 10915

Rural Electrification Administration
PROPOSED RULES
Insured and guaranteed electric loans; general and preloan policies and procedures
Correction, 10945
Telecommunications standards and specifications for materials, equipment and construction, 10827
Telephone standards and specifications:
Materials and equipment specifications; incorporation by reference, 10835

Securities and Exchange Commission
NOTICES
Agency information collection activities under OMB review, 10936
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 10931, 10933
(3 documents)
New York Stock Exchange, Inc., 10935
Applications, hearings, determinations, etc.:
Mortgage Liquidity Fund, Inc., 10931

Small Business Administration
NOTICES
Commercial and fixed rate loans; interest rates, 10936

Social Security Administration
RULES
Social security benefits and supplemental security income:
Disability determinations; administrative requirements and procedures, 11012
PROPOSED RULES
Social security benefits:
Disability determinations—
State agency substantial failure, 11025

State Department
NOTICES
Meetings:
Private International Law Advisory Committee, 10936

Transportation Department
See also Coast Guard; Federal Aviation Administration
NOTICES
Agency information collection activities under OMB review, 10936
Aviation proceedings:
Hearings, etc.—
Tropical Airways, Inc., 10938

Lebanon; aircraft security and passenger safety, 10938

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 10941, 10942
(3 documents)

Separate Parts in This Issue

Part II
Department of Health and Human Services, Office of Human Development Services, 10948

Part III
Department of Health and Human Services, Social Security Administration, 11012

Part IV
Department of Housing and Urban Development, 11032

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determinations:
No. 91-21 of February 25, 1991 10771
No. 91-22 of March 1, 1991 10774

7 CFR
319 10789
905 10790
944 10792
981 10793
985 10794
Proposed Rules:
723 10820
917 10819
946 10826
1710 10945
1755 (2 documents) 10827–10835

14 CFR
39 (9 documents) 10796–10805
Proposed Rules:
39 (4 documents) 10837–10841
75 10843

20 CFR
404 11012
416 11012
Proposed Rules:
404 11025
416 11025

21 CFR
361 10806
Proposed Rules:
182 10843
184 10843
1308 10845

24 CFR
12 11032
207 11032
220 11032
221 11032
231 11032
232 11032
241 11032
282 11032

25 CFR
61 10806

29 CFR
Proposed Rules:
1610 10847
1611 10850

32 CFR
811 10945

33 CFR
Proposed Rules:
165 10853

42 CFR
435 10806
436 10806
440 (2 documents) 10806, 10807

48 CFR
Proposed Rules:
225 10854
231 10854
242 10854

49 CFR
1180 10808

50 CFR
17 10809
23 10809

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

Presidential Documents

Title 3—

The President

Presidential Determination No. 91–21 of February 27, 1991

Determination Under Section 633(a) of the Foreign Assistance Act of 1961, as Amended, Waiving Requirements With Respect to Close Out of Prior Year Appropriations Accounts

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 633(a) of the Foreign Assistance Act of 1961, as amended (the "Act"), 22 U.S.C. 2393(a), I hereby determine it to be in furtherance of the purposes of the Act that the functions authorized by the Act be performed without regard to section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), and amendments contained therein.

This determination shall apply only to funds appropriated to carry out the provisions of the Act that were appropriated for fiscal year 1984 and for prior fiscal years, and shall suspend the application of the provisions of section 1405 of the National Defense Authorization Act for Fiscal Year 1991, and amendments contained therein, through September 30, 1992.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, February 27, 1991.

[FR Doc. 91–6309
Filed 3–12–91; 4:24 pm]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 91-22 of March 1, 1991

Certifications for Major Narcotics Producing and Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 481(h)(2)(A)(i) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2291(h)(2)(A)(i) ("the Act"), I hereby determine and certify that the following major narcotics producing and/or major narcotics transit countries/dependent territory have cooperated fully with the United States, or taken adequate steps on their own, to control narcotics production, trafficking and money laundering:

The Bahamas, Belize, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Paraguay, Peru, and Thailand.

By virtue of the authority vested in me by Section 481(h)(2)(A)(ii) of the Act, 22 U.S.C. 2291(h)(2)(A)(ii), I hereb determine that it is in vital national interests of the United States to certify the following country:

Lebanon.

Information for this country as required under Section 481(h)(2)(B) of the Act, 22 U.S.C. 2291(h)(2)(B), is enclosed.

I have determined that the following major producing and/or major transit countries do not meet the standards set forth in Section 481(h)(2)(A) of the Act, 22 U.S.C. 2291(h)(2)(A):

Afghanistan, Burma, Iran, and Syria.

In making these determinations, I have considered the factors set forth in Section 481(h)(3) of the Act, 22 U.S.C. 2291(h)(3) based on the information contained in the International Narcotics Control Strategy Report of 1991. Because the performance of these countries varies, I have attached an explanatory statement in each case.

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register.**

George Bush

Billing code 3195-01-M

STATEMENT OF EXPLANATION

THE BAHAMAS

The United States enjoyed excellent cooperation on narcotics control from The Bahamas, a major transit country for cocaine destined for the United States. Expanded U.S.-Bahamian interdiction efforts and unilateral measures enforced by the Bahamian Government have encouraged some traffickers to seek alternate routes to the United States and have forced others to adopt methods of trafficking through The Bahamas which are more sophisticated and, therefore, less vulnerable to detection and apprehension by law enforcement. In 1990, The Bahamas made a strong effort to curb official corruption. We are encouraged by this trend, but more attention needs to be directed at this problem and towards adopting enforcement measures that effectively respond to changing trafficking methods.

The USG believes substantial quantities of cocaine continue to transit the Bahamian archipelago. Nonetheless, cocaine seizures in The Bahamas and adjacent waters decreased from 8.8 metric tons in 1989 to 3.5 metric tons in 1990. Marijuana seizures went from 0.6 metric tons to 2.3 metric tons in 1990. By comparison, in 1987, 12.6 metric tons of cocaine and 160.5 metric tons of marijuana were seized. Bahamian cooperation with the USG, particularly with U.S. law enforcement agencies, clearly has acted as a deterrent to drug trafficking through The Bahamas.

In 1990, the United States, The Bahamas, and the United Kingdom signed an agreement that opened the way for joint narcotics law enforcement in the Turks and Caicos Islands (TCI). As a result, an Operation Bahamas and Turks and Caicos (OPBAT) base was established in TCI in September, extending interdiction coverage southeastward and bringing to four the total number of bases that are now functioning. Other significant developments in 1990 included the conviction on narcotics charges of major Bahamian drug trafficker Livingston Gray and the successful completion of a year-long drug conspiracy/corruption case which, by the end of the year, led to the arrests by the Bahamian Government of twenty-six persons, thirteen of whom were government officials.

STATEMENT OF EXPLANATION

BELIZE

Joint U.S.-Belizian aerial spray programs and other Government of Belize efforts resulted in the reduction of marijuana production in the country to 66 metric tons, about 10 percent of the peak production levels of five years ago. Narcotics control law enforcement capabilities in Belize improved, with a number of special operations during the year resulting in the arrest of traffickers and destruction of

narcotics. Belize has enacted new legislation to modernize its criminal code to permit asset seizures. The government has begun to deal with cases of corruption among low-level officials in the police and defense force, but corruption remains a significant impediment to law enforcement efforts in Belize.

STATEMENT OF EXPLANATION

BOLIVIA

The Government of Bolivia (GOB) cooperated with USG efforts to reduce production of refined cocaine products for export to the United States or other markets. Increasingly effective law enforcement operations are exemplified by the successful dismantling of a major cocaine trafficking organization led by Carmelo "Meco" Dominquez, simultaneous arrest of key members, and seizure of assets. Joint police, Air Force and Navy task forces are expanding counter-narcotics activities to disrupt trafficking patterns and enforce narcotics laws in areas of drug production or trafficking activity.

An estimated 51,900 hectares of coca were under cultivation in 1990, a decline from 53,900 hectares in 1989. Coca eradication during the year reached a record level of over 8,000 hectares. This is the first time a net reduction in the amount of coca cultivation has been attained in Bolivia. The GOB continued to maintain its economic model and to cooperate effectively in implementation of significant U.S. alternative agricultural and economic development assistance programs.

Notwithstanding continuing GOB cooperation and important successes achieved in 1990 -- largely due to significant GOB progress in developing institutional law enforcement capabilities -- sustained, effective progress on counter-narcotics was impeded by the ill effects of pervasive corruption. In addition, Bolivia did not sign a modern extradition treaty with the United States, which was negotiated between the two governments in 1990.

STATEMENT OF EXPLANATION

BRAZIL

Brazil is a major transshipment point for Colombian, Peruvian, and Bolivian traffickers. Brazil engaged in a sustained, but limited counter-narcotics effort in 1990. Despite severe economic problems and major government austerity measures, President Collor publicly declared war on drug trafficking and abuse in 1990. Because of severe budgetary restraints, Government of Brazil (GOB) counter-narcotics efforts, while effective, did not increase to match the magnitude of the narcotics problem in Brazil.

The size of Brazil remained a major impediment to focusing limited resources against narcotics trafficking within its borders. An additional problem continued to be the understaffing and underfunding of the Federal Police involved in narcotics operations.

Brazilian law enforcement efforts led to the destruction of approximately 14 metric tons of coca leaf, while coca crop surveys indicate that indigenous coca cultivation declined. Enforcement efforts also led to a 29 percent increase in cocaine HCl seizures (2,190 kgs). Cocaine processing lab seizure statistics remained disappointing, with the same number (4) seized as in 1989.

STATEMENT OF EXPLANATION

COLOMBIA

The USG assisted the Government of Colombia (GOC) in maintaining its vigorous campaign against narcotrafficking organizations, with a 37 percent increase in seizures over the previous year. Accomplishments include the seizure of over 50 metric tons of cocaine, the destruction of over 300 processing labs and 7,000 arrests. Colombian police have also eradicated virtually all marijuana cultivation in traditional growing areas. The GOC, led by the National Police, severely damaged the leadership structure of the Medellin Cartel by keeping drug kingpin Pablo Escobar constantly on the run, and arresting or killing his key lieutenants. The GOC also extradited 14 drug suspects to the United States. At least two major traffickers have surrendered under President Gaviria's amnesty decrees which guarantee confessing traffickers a shortened sentence and no extradition. Colombian National Police paid a high price for their role in the drug campaign with 420 deaths at the hands of traffickers.

Nevertheless, Colombian traffickers continued to move large quantities of cocaine out of Colombia. Although the level of trafficker terrorism diminished somewhat, cartel leaders still exerted tremendous influence through kidnapping, intimidation and corruption. Additionally, almost all of the successful counter-narcotics operations were focused against the Medellin Cartel, allowing the Cali Cartel to continue lower profile but effective drug smuggling operations.

It is unclear whether more major traffickers will surrender under the GOC's plea bargaining decree. This strategy's success hinges on revamping Colombia's judicial system, which is highly susceptible to threats and corruption, as well as on continued police pressure against the traffickers. The USG strongly supports efforts to reform and strengthen Colombia's judicial system, a long-term process, but is concerned that justice be done in the cases of drug traffickers who have surrendered. The USG is committed to assisting the GOC to attain our common goals of dismantling the trafficking networks and stemming the flow of cocaine from Colombia to the United States.

STATEMENT OF EXPLANATION

ECUADOR

In 1990, the Government of Ecuador continued its sustained efforts to prevent coca cultivation from taking hold in Ecuador. The Ecuadorian National Police's anti-drug arm, Interpol, conducted coca and marijuana reconnaissance and eradication operations along the border and in the Pacto area of Pichincha Province. USG reconnaissance did not reveal any new coca cultivation despite meticulous surveys in all but the southernmost portion of the country.

In 1990, Interpol, putting its limited resources to excellent use, seized over 400 kgs of cocaine HCl, 550 kilos of cocaine base and paste, and 400 kgs of marijuana. Interpol's special precursor chemicals control unit completed its computerized listing of legitimate chemical importers. It also established a monitoring program to track chemicals that can be diverted to produce illicit drugs. The unit has investigated a number of reports of illegal imports, diversions, and misuse of chemicals for drug production. During 1990, a special group of Interpol officers assisted the DEA with the identification of suspect chemical companies.

Two major developments in 1990 were the enactment of a comprehensive new drug law and the ratification of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The drug law established a ministerial-level National Drug Council, stiffened sentences for related drug crimes, criminalized diversion of essential and precursor chemicals, and broadened police authorities in drug crimes.

The USG has monitored with concern the increase of cocaine and chemicals transiting Ecuador. Reports indicate that Colombians have invested heavily in Ecuadorian businesses, including transportation and fruit-packing companies. Suspected Colombian traffickers have also bought properties in areas well suited for coca cultivation.

STATEMENT OF EXPLANATION

GUATEMALA

Guatemala is now included in the list of countries to be certified as it is becoming both a major producer and a major transit country despite Government of Guatemala (GOG) efforts to prevent this. Cocaine seized through combined GOG/DEA interdiction efforts totalled over 15 metric tons, compared to 4 in 1989. This year, after eradication, an estimated 845 hectares of opium poppy could have been available for harvesting, a 31 percent drop from last year's estimate of 1,225 hectares.

During 1990, the government of President Cerezo provided excellent cooperation with the State Department's aerial eradication program of opium fields and with DEA, conducting an increasing number of interdiction operations. For the first time, a morphine laboratory was seized by the GOG. Also, cooperation between the Governments of Guatemala and Mexico increased in an effort to reduce drug shipments across their common border. The government of President Cerezo, however, was less energetic in conducting full investigations into allegations of official corruption related to narcotics.

Newly-elected President Serrano has clearly pronounced a commitment to combat narcotics and corruption and to professionalize narcotic law enforcement programs. We hope to have a close, cooperative relationship in this effort.

STATEMENT OF EXPLANATION

HONG KONG

Hong Kong remained an important transit point for heroin and opium. Local drug traffickers use the territory to conduct business and launder drug proceeds. During 1990, Hong Kong continued its highly effective enforcement record and its excellent cooperation with U.S. law enforcement authorities, including several successful joint investigations. The United States and Hong Kong reached agreement under the terms of the Hong Kong Drug Trafficking Ordinance (1989) that allows Hong Kong to enforce asset forfeiture orders. In addition, the Hong Kong Government cooperated with the USG on money laundering cases and extraditions.

STATEMENT OF EXPLANATION

INDIA

India has become a major conduit for heroin trafficking from both the Golden Crescent and the Golden Triangle because of increased production and the disruption of traditional routes through Iran. India cooperates with the DEA on enforcement matters and with the UN in other counter-narcotics programs. Indian authorities have yet to devote adequate resources or priority to stemming the flow of illicit drugs through India. The Government of India (GOI) also has not fully addressed its growing drug addiction problem, estimated to be at four million addicts.

India is also the world's leading producer of licit drugs. GOI continues to take steps to prevent diversion of its licit cultivation and production, including reduction of the amount of land licensed for licit cultivation and the number of farmers licensed to grow licit opium. The Government has also taken steps to reduce production and stockpiles to a level consistent with demand in the international market. Illicit cultivation and production of opium remains illegal throughout India and the Government has eradicated illegal fields of poppy when located.

Nevertheless, greater attention needs to be given to reducing the possibility of diversion through improved monitoring techniques and practices. The GOI cooperates with the United Nations Fund for Drug Abuse Control (UNFDAC) in this regard.

STATEMENT OF EXPLANATION

JAMAICA

Operation Buccaneer, the Government of Jamaica's (GOJ) marijuana control effort, is in its fifth consecutive year. While over 1,000 hectares of marijuana were eradicated in 1990, a lack of U.S. aviation resources during the year prevented the GOJ from making more substantial reductions in the crop. Cultivation, after eradication, expanded significantly in 1990. The increase indicates that the GOJ will need to make an expanded effort to bring down net marijuana cultivation in 1991.

The GOJ, however, has made significant gains in seizing cocaine that transits Jamaica. Two large seizures in August (874 pounds) and October (652 pounds) contributed to 1990 seizures of 1,672 pounds compared to 28 pounds in 1989. While the GOJ has sought to eliminate bribery and other forms of public corruption connected with drug dealers, low salaries continued to make security force personnel vulnerable to payoffs by narcotics traffickers.

STATEMENT OF EXPLANATION

LAOS

While making progress, Laos remains the third major producing opium country. The positive change in drug control policies and broadened cooperation that was noted in connection with last year's certification of Laos continued in 1990. An estimated 27 percent decrease in opium poppy cultivation, due in part to increased central government persuasion and programs as well as continued implementation of large alternative crop projects, one funded by the USG, were positive accomplishments during the year. Lao Government (GOL) authorization of and participation in DEA and Customs training courses was an encouraging step. Enforcement measures, which previously were unknown, began in 1990 as the government reported seizures of a ton of marijuana, opium seizures and arrests, and the destruction of heroin refinery components and precursor chemicals.

Of serious concern to the United States were continued credible reports of the involvement in the drug trade of local and military officials, particularly from the para-statal Mountainous Area Development Company. These raised questions about the GOL commitment to counter-narcotics efforts. Moreover, the GOL has not facilitated cooperative activities with DEA, although the Lao have met several time with DEA representatives and other U.S. counter-narcotics officials.

This certification is made on the belief that the Lao Government is endeavoring to strengthen its drug control efforts to continue progress on reducing cultivation, and to curtail corruption among individuals and institutions. In addition, the United States will push for more law enforcement actions as a major element in our relationship, and it will be a central concern for certification next year.

STATEMENT OF EXPLANATION

MALAYSIA

Malaysia is an important processing and trafficking center for opium grown in other countries. Much of the product is consumed locally but significant amounts continue to transit Malaysia destined for world markets.

Malaysia continued its strong enforcement efforts in 1990, seizing about 30 kgs of U.S.-bound heroin as well as the same high level of raw opium as in the previous year. Malaysia has an active demand reduction program and can point to a decrease in the growth rate of the new addict population as evidence of its success. In 1990, the United States made a small grant to the anti-drug police, and top drug officials visited the United States. Malaysia also put three mobile drug prevention vans into service and instituted drug screening at the Thai-Malay border for suspected users.

STATEMENT OF EXPLANATION

MEXICO

Mexico's anti-narcotics record for 1990 is impressive -- not only in terms of seizures, arrests and eradication, but in the broader sense of an overall, systemic improvement in narcotics control. This was due, in large part, to the commitment and leadership of President Carlos Salinas de Gortari. Under his direction, Mexico has strengthened its drug laws, increased funding for anti-narcotics programs, intensified both its eradication and interdiction efforts, and implemented tough anti-corruption measures.

Mexico seized a record 46.5 metric tons of cocaine in 1990, second only to Colombia. The Government of Mexico also issued new directives to the Federal Judicial Police to ensure protection of human and civil rights. The GOM continued to expand anti-narcotics cooperation with the USG; our governments exchanged instruments of ratification for the broad agreement on narcotics cooperation (Chiles Amendment Agreement) paving the way for greater cooperation in the future.

Mexico is commended for its accomplishments in 1990, but there is still much to do. Mexico remains an important supplier of marijuana and heroin to the United States and a major conduit for the movement of cocaine from South America. President Salinas has moved vigorously to combat official corruption, which continues to impede efforts to curb drug trafficking in Mexico.

BEST COPY AVAILABLE

STATEMENT OF EXPLANATION

MOROCCO

Morocco is a traditional producer of cannabis and hashish, as well as a growing transit point for heroin and cocaine destined primarily for European consumption. Cannabis is mainly cultivated in the northern mountainous region called the Rif. A recently initiated United Nations Fund for Drug Abuse Control crop substitution project in the region has resulted in a significant reduction in cannabis production in the project area.

There is increasing Moroccan and European concern that cannabis smuggling networks will diversify their activities and begin trafficking in heroin from the Golden Crescent and cocaine from South America. The lack of direct commercial air connections to the United States limits the trans-Atlantic flow of narcotics from Morocco except indirectly through Europe.

Following the signing of a bilateral narcotics agreement with the United States in 1989, Morocco signed anti-narcotics Mutual Legal Assistance Agreements with the European Community and Spain in 1990. Agreement has been reached with the United States on a Mutual Legal Assistance Treaty (MLAT) but the King has not yet approved its ratification. Counter-narcotics cooperation with the USG has been limited, but is expanding.

STATEMENT OF EXPLANATION

NIGERIA

Nigeria continues as a major heroin trafficking and narcotics transshipment point to Europe and the United States. There are at least seven known trafficking organizations in the country which operate with little interference or difficulty. Corruption, as well as liberal banking regulations which facilitate narcotics money laundering, remain serious problems.

The Federal Military Government of Nigeria (FMG) intensified its cooperation with the USG during 1990. A task force aimed at reducing Nigeria's involvement in narcotics trafficking by more vigorously investigating and prosecuting drug traffickers was established and more stringent visa and passport controls were instituted. Money laundering investigations have been broadened, improved airport security and narcotics detection measures installed and two new drug offenses enacted into law.

While no major traffickers have been arrested and seizures have been primarily small amounts on individual couriers, overall arrests remain constant, total seizures are up slightly and the FMG has taken a strong public stance opposing narcotics. The new Nigerian Drug Law Enforcement Agency (NDLEA) has requested increased budgetary and personnel resources to augment its counter-narcotics efforts. Continued high-level FMG attention and priority as well as resources need to be given to anti-narcotics activities to bring more positive results.

STATEMENT OF EXPLANATION

PAKISTAN

Pakistan's counter-narcotics efforts in 1990 were affected by a change in government, an interim government, and national election campaigns followed by a transition period. Nevertheless, the Government of Pakistan (GOP) continued successfully to enforce its ban on opium poppy cultivation in the Northwest Frontier Province (NWFP) in the face of increased efforts by farmers to increase production. Although total opium production is estimated to have increased to 165 metric tons in 1990, up from 130 metric tons in 1989, the government's measures prevented the crop from equaling the 1988 pre-drought level of 205 metric tons.

The results of GOP law enforcement measures remain mixed. No significant action was taken against heroin laboratories in the NWFP, and no major traffickers were convicted although two are under arrest. However, the para-military Frontier Corps uncovered a major narcotics cache in Baluchistan Province, including nearly two tons of heroin, 100 pounds of opium, and seven tons of hashish intended for export, and has been more actively engaged in anti-drug patrols along the border. Moreover, the Frontier Corps and the Customs Service have made several subsequent large seizures. Meanwhile, the GOP has taken action to stop the import and delivery of 19 tons of acetic anhydride to heroin labs.

Following the election, the government established a new separate Ministry of Narcotics Control to coordinate all counter-narcotics efforts. The government also has enunciated a policy of giving a higher priority to counter-narcotics activities. On the other hand, the Elite Units, which the USG and GOP agreed to establish in mid-1989, still lack the legal authority to function. Continued GOP commitment and cooperation between the USG and the GOP will be essential to improving GOP performance in the year ahead. Expanded law enforcement will be a central concern for certification next year.

STATEMENT OF EXPLANATION

PANAMA

After the U.S. military action, the Government of Panama (GOP) had to create a drug policy and counter-narcotics infrastructure from the ground up. Although its record of achievement has been spotty, it is clear that the new GOP has joined the international effort to fight drugs. It signed a Chiles Amendment Agreement on Narcotics Cooperation and a bilateral narcotics control program agreement with the USG. It has cooperated with USG officials in tracing narcotics dollars through bank accounts in Panama, begun enforcing tough drug laws which had earlier been ignored, overturned previous interpretations of laws which had barred bank records from law enforcement scrutiny, signed an agreement on controlling essential chemicals, and passed a decree and implementing regulations against money laundering. The GOP has reorganized its anti-narcotics police, Customs and Maritime Services. The result was record seizures of cocaine in 1990. Panamanian popular support for demand reduction and stronger law enforcement is exemplary.

Despite these impressive steps, the GOP has not demonstrated the political will to conclude a Mutual Legal Assistance Agreement with the United States, and a Shiprider Agreement is in the final stages of negotiation after lengthy delays. These agreements would greatly facilitate mutual law enforcement cooperation. The GOP has yet to submit the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to the Legislative Assembly for ratification, but has indicated its intention to do so at the March 1991 National Assembly session. Its criminal justice system is overburdened and in chaos, with a backlog of over 17,000 criminal cases -- including drug cases.

The USG is concerned that drug proceeds continue to be laundered through Panamanian banks and the Colon Free Zone. Money laundering in Panama continues to be its most serious narcotics control problem. In this regard, there have been allegations of official corruption. We are aware that Panamanian authorities are investigating these allegations. Our concern is that these investigations be pursued rigorously and that indictments be issued where warranted. We have told the Panamanian Government of our concern.

Although the GOP's record is mixed, its achievements, particularly in the area of law enforcement, indicate a serious desire to work domestically and internationally to fight the war on drugs. The USG intends to work closely with the Panamanian Government to help improve its performance against drug trafficking and money laundering.

STATEMENT OF EXPLANATION

PARAGUAY

During 1990, the Government of Paraguay (GOP) made progress in its efforts to establish a credible counter-narcotics program. Following the firing of 19 corrupt officers from the National Narcotics Police (DINAR), DINAR's budget was more than doubled and a joint police-military counter-narcotics strike force was established, trained, and fielded. Two generals were removed for involvement in narcotics trafficking, the first such action against army commanders since the 1940's. The GOP, with USG assistance, is developing a national drug prevention strategy and is cooperating more effectively with the USG in making narcotics seizures.

On the other hand, the GOP's record was spotty. Corruption, enforcement activities, and drug money laundering remain areas of particular concern and will require continued attention.

STATEMENT OF EXPLANATION

PERU

Peru's Upper Huallaga Valley (UHV) contains the world's largest concentration of coca cultivations as well as numerous labs for converting coca leaf into base. Although the UHV is a military emergency zone, the Peruvian military did not generally support Peruvian law enforcement units in counter-narcotics activities, nor were they able to keep key areas free from insurgent control. As in 1989, serious military and police corruption impeded efforts to expand counter-narcotics missions. There were, however, also indications in late 1990 that the Peruvian military had started supporting police counter-narcotics efforts in the UHV as a matter of policy.

Despite the security threat posed by the Shining Path and non-cooperation of the Peruvian military, Peruvian law enforcement agencies destroyed more labs and seized more cocaine than in previous years. However, these efforts only had a marginal effect on the overall flow of cocaine base from Peru.

President Fujimori who was inaugurated on July 18, 1990, has taken on active interest in improving Peru's performance. He proposed a promising comprehensive narcotics strategy in late 1990, but it has not yet been implemented. The strategy would place narcotics-related military and law enforcement efforts, demand reduction and alternative development under one specialized governmental office (the Autonomous Authority for Alternative Development). We are engaged in intense discussions with the Peruvian Government on the basis of this proposal and are hopeful that our two governments will be able to work together to combat narcotics production and trafficking in the future. The ability of the Peruvian Government to implement its comprehensive narcotics strategy in 1991 will be an important indicator of its resolve on narcotics issues.

If not for the Presidential transition in Peru and the positive steps taken by Peru during the last days of 1990, certification for Peru would have been very problematic. The President has not made the Determination, pursuant to Section 4(a) of the 1990 International Narcotics Control Act, which is required to release counter-narcotics-related economic and military assistance for Peru in FY-91. Funding for Peru will not be released until we have completed a comprehensive counter-narcotics cooperation agreement and until more effective law enforcement actions and police-military cooperation are under way.

STATEMENT OF EXPLANATION

THAILAND

U.S. narcotics interests in Thailand, a key trafficking conduit for drugs produced in neighboring countries, are largely in law enforcement. We have supported Thai narcotics suppression efforts for twenty years, and DEA has a strong working relationship with the Thai police. Nevertheless, greatly increased production in Burma has substantially increased the flow of narcotics through Thailand. Thai seizures and arrests of major traffickers have not kept pace. Moreover, the network of relationships developed for security purposes between Thai military and government officials and ethnic groups which traffic narcotics from Burma creates an environment in which narcotics-related corruption exists.

The United States has expressed its concern over this situation to the previous Government of Thailand (RTG). We have also raised with the previous RTG recurring allegations that some politicians and Thai officials have been involved in or abetted narcotics trafficking. For its part, the previous RTG said it will take action if we can provide firm information usable in legal proceedings.

In 1990, the Thai police moved to improve its counter-narcotics institutional structure by creating a new Narcotics Suppression Bureau which combines and focuses duties and responsibilities of formerly disparate units. Nonetheless, the USG believes greater effort is required to better control the narcotics threat in Thailand.

A military coup d'etat occurred on February 23, 1991. While military and economic assistance has been suspended because of the coup, narcotics aid continues to provide support for law enforcement and crop substitution programs. Serious efforts by the RTG to reduce corruption and the flow of drugs through Thailand will be a central concern for certification next year.

STATEMENTS IN SUPPORT OF DENIALS OF CERTIFICATION

AFGHANISTAN

Afghanistan is considered the second largest producer of opium in the world with an estimated harvest of 585 metric tons in 1989 and 415 metric tons in 1990. The drop in production during 1990 was the result of a voluntary poppy ban in the Helmand Valley.

The United States has had no diplomatic relations or counter-narcotics cooperation with the Government of Afghanistan. The political turmoil and lack of government control over large areas of the country precluded effective anti-narcotics activity in the opium producing provinces. There is no indication that the GOA has engaged in serious counter-narcotics efforts.

BURMA

Despite three highly publicized burnings of narcotics and refinery equipment, the Government of Burma did not demonstrate a comprehensive interest in narcotics law enforcement in 1990. Opium production, down slightly from the previous year's level, was nonetheless nearly twice as large as that of two years ago, and Burma remains the largest opium producing country in the world. Continued high levels of production are due to the abandonment of eradication and increased cultivation since 1988, as well as the control of poppy cultivation areas by various ethnic insurgent and trafficking groups. Burma's military rulers have reached agreements with a number of insurgent groups which permit continued poppy cultivation, heroin production, and narcotics trafficking in the short-term in return for peace and long-term rural development and crop substitution projects. Burma cooperated with the United States on narcotics control until September 1988. At that time, narcotics assistance was suspended along with other U.S. assistance due to serious human rights violations. Law enforcement liaison with DEA has continued, but the level of cooperation with the United States on anti-drug matters was minimal.

IRAN

Iran cannot be certified, as it remains unwilling to cooperate with the United States on counter-narcotics, and we have no conclusive evidence that the Government of Iran has taken effective steps on its own to stem drug production or trafficking. Although it has begun anti-drug discussions with the USSR and United Nations Fund for Drug Abuse Control, it has not begun to cooperate with its neighbors to curtail production in, or trafficking through, its territory.

SYRIA

Syria is a transit point for illicit narcotics as well as a heroin refining center. Members of the Syrian military continue to control the Bekaa Valley of Lebanon, where we believe they facilitate and profit from drug trafficking in this key production area. Discussions with USG officials on narcotics cooperation, which were reinstituted in 1989, continued in 1990, but there have been no actions taken by the Syrian Arab Republic Government to indicate a serious desire to cooperate with the USG or to take steps on its own against drug trafficking.

JUSTIFICATION FOR NATIONAL INTEREST CERTIFICATION

LEBANON

During 1990, the United States had no narcotics cooperation with Lebanese authorities as a result of continuing political and social turmoil and the government's inability to take action against either poppy or hashish cultivation or trafficking. The Bekaa Valley, the country's central producing region, remains under the control of the armed forces of Syria, which fail to enforce anti-narcotics controls. Lebanese hashish and refined heroin are distributed throughout the Middle East and onward to Europe and the United States.

U.S. national interests would be damaged by a weakening or collapse of the Government of Lebanon. The United States needs to have flexibility to respond to Lebanon's legitimate needs for economic and developmental assistance. Such assistance could be critical in the Government of Lebanon's fight for survival and attempt to expand its control over the country. Broad United States policy objectives in Lebanon and the region, including narcotics policy objectives, would be at risk if the Government of Lebanon ceased to exist.

There are no countervailing risks to other United States interests as the Government of Lebanon presently has no capability to obstruct or prevent narcotics production or trafficking. United States narcotics policy seeks to strengthen such capability.

For these reasons, Lebanon is granted a national interest waiver.

Rules and Regulations

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91-014]

Importation of Apples, Peaches, and Citrus from Sonora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations by adding Empalme and Guaymas to the list of definite areas in Sonora, Mexico, determined to be free from certain injurious insect pests and from which apples, grapefruit, oranges, peaches, and tangerines may be imported without treatment for these pests. We believe that these municipalities are free from certain injurious insect pests known to attack apples, grapefruit, oranges, peaches, and tangerines, and that are known to occur in Mexico. This action allows the importation of this fruit into the United States from Empalme and Guaymas, in accordance with the regulations.

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Frank E. Cooper, Senior Operations Officer, Port Operations Staff, PPQ, APHIS, USDA, room 652, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as the regulations) impose restrictions on the importation of fruits and vegetables in order to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed within and throughout the United States. Paragraphs (e) and (f) of § 319.56-2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area is free from all or certain injurious insects. Paragraph (h) of § 319.56-2 lists certain municipalities in Sonora, Mexico, that meet the criteria with regard to five listed insect pests: *Ceratitis capitata, Anastrepha ludens, A. serpentina, A. obliqua, and A. fraterculus.* Apples, grapefruit, oranges, peaches, and tangerines from municipalities listed in paragraph (h) may be imported into the United States without treatment for the five listed insect pests.

In a document published in the Federal Register on November 28, 1990, (55 FR 49053-49054, Docket Number 90-197) we proposed to amend the regulations by adding Empalme and Guaymas to the list of municipalities in Sonora, Mexico, determined to be free from the five listed fruit flies and from which apples, grapefruit, oranges, peaches and tangerines may be imported into the United States without treatment for these pests. We have determined that Empalme and Guaymas meet all the criteria contained in § 319.56-2(e)(4) and (f).

Comments on the proposed rule were required to be received on or before January 25, 1991. We received seven comments: five from agricultural organizations in Sonora, one from the government of Sonora, and one from the agricultural counselor of Mexico. All seven comments favored the proposed rule. They indicated, generally, that its adoption as a final rule would benefit fruit-producers in Sonora by expanding their markets, and would benefit consumers in the United States by supplementing their fruit supply during periods when certain domestically-grown fruit may not be as readily available. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Sonoran citrus is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon signature.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action allows the importation of apples, grapefruit, oranges, peaches, and tangerines from Empalme and Guaymas into the United States without treatment for the five listed fruit flies. This could increase imports of these articles into the United States, since import costs will be lowered through the elimination of treatment costs. The small entities that could be affected by this action include fumigators at the Mexican border, importers of apples, grapefruit, oranges, peaches, and tangerines; and domestic growers, distributors, and retailers of these fruits.

The economic impact on these entities should be insignificant, since the amount of fruit imported into the United States from these municipalities is expected to be extremely small.

No fruit was imported into the United States from Guaymas before July 1988 (the effective date of the prohibitions on the importation of fruit from that

municipality), and we are aware of no planned fruit shipments from that municipality.

Oranges and grapefruit appear to be the only fruit likely to be imported into the United States from Empalme. Oranges and grapefruit were the only fruit imported from Empalme in 1988, the last full calendar year before we placed prohibitions on the importation of fruit from Empalme (the prohibitions became effective in March 1989). During 1988, the amount of oranges and grapefruit imported into the United States from Empalme amounted to less than 1 percent of the total United States production of these fruits, and less than 1 percent of total United States imports of these fruits. Empalme is not a major production area for citrus. We therefore believe that orange and grapefruit imports into the United States from Empalme would resume at 1988 levels.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Fruits, Imports, Plant diseases and pests, Quarantine.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 is amended as follows:

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.56–2 [Amended]

2. In § 319.56–2, paragraph (h) is amended by adding "Empalme; Guaymas;" immediately after "Carbo;".

Done in Washington, DC, this 11th day of March 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–6073 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–90–202IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes the minimum grade requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 from Improved No. 2, and the minimum size requirement for domestic shipments of white seedless grapefruit (seedless grapefruit, except red seedless grapefruit) to 3⁹⁄₁₆ inches in diameter from 3⁹⁄₁₆ inches in diameter. The relaxation for Florida grapefruit is based on the current and prospective crop and market demand conditions and maturity level and size composition of the remaining 1990–91 Florida grapefruit crop.

DATES: The amendments for "red seedless grapefruit" are effective March 11, 1991, and the amendments for "seedless, except red grapefruit" are effective April 15, 1991. Comments which are received by April 15, 1991 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers and a majority of importers may be classified as small entities.

The Citrus Administrative Committee (CAC), which administers the order locally, met January 29, 1991, and unanimously recommended the grade and size relaxations. The relaxations are based on the CAC's assessment of the current crop conditions and the remaining available supply of marketable grapefruit. The CAC meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. CAC meetings

generally are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews CAC recommendations and information submitted by the CAC and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

An interim final rule was issued October 19, 1990 (55 FR 42843, October 24, 1990). That rule amended § 905.306 (7 CFR 905.306). Section 905.306 specifies minimum grade and size requirements for Florida citrus. Minimum grade and size requirements for domestic shipments of Florida citrus are specified in that section in Table I of paragraph (a) and for export shipments in Table II of paragraph (b). That interim final rule, among other things, relaxed the minimum size requirement for domestic shipments of red seedless grapefruit to size 56 (3⁹⁄₁₆ inches in diameter) for the period October 22, 1990 through October 20, 1991. In the absence of that action, the minimum size requirement would have increased to size 48 (3⁹⁄₁₆ inches in diameter). That interim final rule also similarly relaxed the requirements for grapefruit imported into the United States pursuant to section 8e of the Act (7 U.S.C. section 608e–1).

This action relaxes the minimum external quality requirement for domestic and export shipments of red seedless grapefruit to U.S. No. 2 grade from Improved No. 2 grade for the period March 11, 1991, through August 18, 1991, and the minimum size requirement for domestic shipments of white seedless grapefruit to size 56 (3⁹⁄₁₆ inches in diameter) from size 48 (3⁹⁄₁₆ inches in diameter) for the period April 15, 1991, through August 18, 1991. At the same time, the grapefruit import requirements specified in § 944.106 (7 CFR 944.106) will be temporarily suspended beginning March 11, 1991 in a separate action also published in this issue of the **Federal Register**.

The CAC recommended this action based on analysis of the grade and size composition of this season's remaining Florida grapefruit crop. Relaxing the minimum grade requirement for red seedless grapefruit on March 11, 1991, is expected to make additional fruit of acceptable quality available, since the grade relaxation pertains only to external quality of the fruit, and it does not change the internal requirements. Under the grade relaxation, the fruit will be required to meet the requirements of U.S. No. 2 grade rather than U.S. No. 1 grade relating to shape (form) and color. The requirements are set forth in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784). Relaxing the minimum size for white seedless grapefruit to 3⁹⁄₁₆ inches in diameter on April 15, 1991, is expected to make smaller fruit available which is of acceptable quality, maturity, and flavor to receive consumer acceptance. This action is expected to maximize shipments to fresh market channels. The Florida grapefruit shipping season normally begins in September and continues through the following August.

Under this marketing order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the CAC's and the Department's appraisal of the need to relax the grade and size requirements as hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those grades and sizes of fruit available to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes grade and size requirements currently in effect for Florida grapefruit; (2) Florida grapefruit handlers are aware of this action which was recommended by the CAC at a public meeting and they will need no additional time to comply with the relaxed requirements; (3) shipment of the 1990–91 season Florida grapefruit crop is currently in progress, and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 905.306 is amended as follows:

A. In paragraph (a), Table I, the entries for "seedless, red grapefruit" and "seedless, except red grapefruit" are revised to read as set forth below.

B. In paragraph (b), Table II, the entries for "seedless, red grapefruit" are revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

Section 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Grapefruit:			
Seedless, red	03/11/91-08/18/91	U.S. No. 2 (External) U.S. No. 1 (Internal)	3⅛
Seedless, red	08/19/91-10/20/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3⅛
	On and after 10/21/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3⅛
Seedless, except red	04/15/91-08/19/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3⅛
	On and after 08/19/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3⅛

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
Grapefruit:			
Seedless, red	03/11/91-08/18/91	U.S. No. 2 (External) U.S. No. 1 (Internal)	3⅛
	On and after 08/19/91	Improved No. 2 (External) U.S. No. 1 (Internal)	3⅛

Dated: March 8, 1991.

Charles S. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 91-6075 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 944

[Docket No. FV-91-256FR]

Fruits; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule temporarily suspends requirements for grapefruit imported into the United States. The suspension is necessary to provide the U.S. Trade Representative (USTR) adequate time to review changes in the grapefruit import requirements. Grapefruit import requirements are effective under section 8e of the Agricultural Marketing Agreement Act of 1937 (Act).

EFFECTIVE DATE: March 11, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e (17 U.S.C. section 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 25 importers of grapefruit. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States is in most direct competition with grapefruit grown in Florida regulated under M.O. 905, and has found that the minimum grade and size requirements for imported grapefruit shall be the same as those established for grapefruit under M.O. 905.

The Citrus Administrative Committee (CAC) recommended relaxations in the grade and size requirements for shipments of certain types of grapefruit grown in Florida to become effective March 11, 1991. This is intended to assure that fresh market requirements are supplied with the best quality fruit available in order to encourage demand. The Department has reviewed the CAC's recommendation and has determined that the relaxations should be made effective. This action is contained in a separate document.

Section 944.106 (7 CFR 944.106) currently specifies that grapefruit imported into the United States must meet the same minimum grade and size requirements specified in § 905.306 (7 CFR 905.306) for grapefruit grown in Florida. However, a provision in the Food, Agriculture, Conservation, and Trade Act of 1990 amended section 8e to require the Secretary of Agriculture to notify the USTR prior to implementing or modifying import regulations to ensure that they are consistent with trade agreements in effect. The USTR is required to provide advice to the Secretary within 60 days. Since there is not enough time for the USTR to complete a review by March 11, 1991, it is necessary to temporarily suspend the grapefruit import requirements in § 944.106, so that relaxations for Florida grapefruit can be made effective by March 11, 1991. Accordingly, the grapefruit import requirements in § 944.106 would be temporarily suspended beginning March 11, 1991.

This final rule reflects the Department's appraisal of the need to suspend the grapefruit import regulation, as hereinafter set forth, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This temporary action suspends grade and size requirements currently in effect for imported grapefruit; (2) the suspension needs to be made effective by March 11, 1991, so that grade and size requirements can be made effective by that date for certain types of Florida grapefruit; and (3) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. The provisions of § 944.106 (7 CFR 944.106) are hereby temporarily suspended beginning March 11, 1991.

Note: This section will not appear in the annual Code of Federal Regulations.

Dated: March 8, 1991.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 91-6074 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[FV-91-217FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Reserve Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends from September 1, 1991 to December 31, 1991, the date by which handlers of California almonds must satisfy their 1990-91 crop year reserve disposition obligation. This action is needed in order to provide ample time for handlers to sell reserve almonds in authorized reserve outlets. This action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Young, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action of small entities.

The purpose of RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 100 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less then $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action gives handlers of California almonds an additional four months to satisfy their 1990-91 crop year reserve disposition obligations. This action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

On September 21, 1990, a final rule was published in the Federal Register (55 FR 38793) which requires handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 35 percent of merchantable almonds received from

growers during the 1990-91 crop year. The remaining 65 percent (the salable percentage) of the crop may be sold by handlers in any market. The crop year for regulating almonds grown in California is from July 1 through the following June 30.

Section 981.66(e) of the order provides that all reserve almonds which remain unsold as of September 1 of the next crop year shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets. The date of September 1 may be extended to a later date by the Secretary, upon recommendation of the Board or other information.

In a mail vote completed on October 19, 1990, the Board unanimously recommended to extend the reserve disposition date to December 31, 1991, for the 1990-91 crop year only. This action is an effort on the part of the Board to give handlers additional time to dispose of their reserve almonds.

The Board recommended extending the reserve disposition date by four months since the agency agreement under which handlers dispose of reserve almonds was not available to handlers until roughly four months after the beginning of the crop year. Extending the date by which handlers must dispose of their reserve almonds imposes no additional burdens on such handlers. Therefore, under this action handlers who find it profitable to dispose of such reserve almonds prior to December 31, 1991, can do so.

Notice of this action was published in the Federal Register on December 20, 1990 (55 FR 52999). Written comments from interested persons were invited through January 25, 1991. One comment was received in support of this final action.

Mr. Steve Easter, representing Blue Diamond Growers (Blue Diamond), commented that this action was unanimously supported by the Board and that it relaxes restrictions on handlers with no additional burden or costs on handlers. In addition, Blue Diamond stated that handlers need ample time to research, develop and implement their marketing and sales plans in order to sell almonds in the developing almond reserve outlets.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 981.467 is amended by adding a new paragraph (c) to read as follows:

§ 981.467 Disposition in reserve outlets by handlers.

* * * * *

(c) For the 1990-91 crop year only, any reserve almonds remaining unsold as of December 31, 1991, shall be disposed of by the Board as soon as practicable through the most readily available reserve outlets.

Dated: March 6, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-5989 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 985

[FV-91-213 FR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1991-92 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1991-92 marketing year, which begins on June 1, 1991. This action is taken under the marketing order for spearmint oil produced in the Far West in order to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the spearmint oil market. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for local administration of the order.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The Far West spearmint oil industry is characterized by primarily small producers whose farming operations generally involve more than one commodity and whose income from farming operations is not exclusively dependent on the production of spearmint oil. The production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered under the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order normally accounts for more than 75 percent of U.S. annual production of spearmint oil.

The Committee reports that there are approximately 9 handlers and 253 producers of spearmint oil under the marketing order for spearmint oil produced in the Far West. Of the 253 producers, 169 producers hold "Class 1" (Scotch) oil allotment base, and 136 producers hold "Class 3" (Native) oil allotment base.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose average gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

This action establishes a new § 985.210 and is based on recommendations of the Committee and other information.

This final rule establishes salable quantities of 1,010,943 pounds and 1,117,648 pounds, respectively, for Scotch and Native spearmint oils produced in the Far West and an allotment percentage of 59 percent both for Scotch and Native spearmint oils produced in the Far West. This action limits the amount of spearmint oil that may be purchased from or handled for producers by handlers, during the 1991-92 marketing year, which begins on June 1, 1991. Such salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980. The amounts recommended for sale reflect moderate and steady increases in trade demand for both Scotch and Native spearmint oil over the past four years. Information available to the Committee indicates that additional increases in trade demand are likely in the 1991-92 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market needs up to 150,000 pounds which may develop for Native spearmint oil can be satisfied by an increase in the salable quantity which producers can fill with reserve stocks. For Scotch oil, reserve stocks are depleted. However, both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1991-92 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from improved returns.

The salable quantities and allotment percentages were unanimously recommended by the Committee at its October 16, 1990, meeting.

The salable quantity and allotment percentage for each class of spearmint oil for the 1991-92 marketing year, which begins on June 1, 1991, is based upon recommendations of the Committee and the following data and estimates.

(1) "Class 1" (Scotch) Spearmint Oil

(A) Estimated carryin on June 1, 1991—0 pounds.

(B) Estimated trade demand (domestic and export) for the 1991-92 marketing year—1,000,000 pounds.

(C) Recommended desirable carryout on May 31, 1991—0 pounds.

(D) Salable quantity required from 1991 regulated production—1,000,000 pounds.

(E) Total allotment bases for Scotch oil for the 1991-92 marketing year—1,713,463 pounds.

(F) Computed allotment percentage—58.4 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,010,943 pounds.

(2) "Class 3" (Native) Spearmint Oil

(A) Estimated carryin on June 1, 1991—57,210 pounds.

(B) Estimated trade demand (domestic and export) for the 1991-92 marketing year—1,150,000 pounds.

(C) Recommended desirable carryout on May 31, 1992—0 pounds.

(D) Salable quantity required from 1991 production—1,092,790 pounds.

(E) Total allotment bases for Native oil—1,894,319 pounds.

(F) Computed allotment percentage—57.7 percent.

(G) Recommended allotment percentage—59 percent.

(H) The Committee's recommended salable quantity—1,117,648 pounds.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee.

Notice of the proposal to establish the salable quantity and allotment percentage for each class of oil was published in the December 18, 1990, issue of the Federal Register (55 FR 51911). Comments on the proposed rule were solicited from interested persons until February 1, 1991. No comments were received. The salable quantities and allotment percentages established by this final rule are identical to those contained in the proposed rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the Committee's recommendations and other available information, it is found that the regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Add a new § 985.210 under Subpart—Salable Quantities and Allotment Percentages to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

Subpart—Salable Quantities and Allotment Percentages

§ 985.210 Salable quantities and allotment percentages—1991-92 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins on June 1, 1991, shall be as follows:

(a) *Class 1* (Scotch) oil—a salable quantity of 1,010,943 pounds and an allotment percentage of 59 percent.

(b) *Class 3* (Native) oil—a salable quantity of 1,117,648 pounds and an allotment percentage of 59 percent.

Dated: March 6, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-5990 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-40-AD; Amdt. 39-8039]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Models I, III, and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Models I, III, and VIR series airplanes, which requires repetitive ultrasonic inspections to detect damaged main landing gear (MLG) front hinge bearings, and repair, if necessary. This amendment is prompted by a report of a left MLG collapsing due to failed bearings. This condition, if not corrected, could result in further instances of collapse of the MLG and consequent structural damage to the airplane.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all Aerospatiale Caravelle SE 210 Models I, III, and VIR series airplanes. There has been a recent report of a left main landing gear (MLG) collapsing on a Caravelle Models III (Mark 10B3) airplane due to failure of the hinge beam bearings. These same hinge beam bearings are installed on all Caravelle SE 210 Models I, III, and VIR series airplanes. This condition, if not corrected, could result in further instances of collapse of the MLG and consequent structural damage to the airplane.

Messier-Hispano-Bugatti has issued Caravelle Service Bulletin 32-083, Revision 4, dated November 28, 1990, which describes procedures to perform repetitive ultrasonic inspections to detect defects in the MLG front hinge beam bearings, and repair, if necessary. The French DGAC has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 90-239-071(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires repetitive ultrasonic inspections to detect defects in the MLG front hinge beam bearings, and repair, if necessary, in accordance with the service bulletin previously described. The AD also specifies sections of the Aerospatiale Overhaul Manual, Repair Document HS RA20017, and Aeroservice Section 1, No. 82, for additional service information sources.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale (Formerly SUD-Service/SUD Aviation): Applies to all Caravelle SE 210 Model I, III, and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the main landing gear (MLG) and consequent structural damage to the airplane, accomplish the following:

A. Prior to the accumulation of 50 landings after the effective date of this AD, or within 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 2,500 landings, perform an ultrasonic inspection of the front hinge beam upper bearings on each MLG, in accordance with Figure 2 on page 18 of Messier-Hispano-Bugatti Service Bulletin 32-063, Revision 4, dated November 28, 1990.

B. If defects are found as a result of the inspections required by paragraph A. of this AD, which are outside the limits specified in Messier-Hispano-Bugatti Service Bulletin 32-063, Revision 4, dated November 28, 1990, prior to further flight, remove the damaged MLG and perform an ultrasonic inspection of the hinge beam, an eddy current inspection following removal of the bushings, and a complete geometric check of the MLG, in accordance with the service bulletin.

1. MLG's which have been reconditioned in accordance with these procedures may only be returned to service provided that no defects are found.

2. If defects are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, or replace affected part with a serviceable part of same part number.

C. If no defects are found as a result of the inspections required by paragraph A. of this AD, and the MLG components have been overhauled, prior to further flight, accomplish the following:

1. Assemble in accordance with Overhaul Manual 32-1-61.

2. Accomplish geometric adjustment in accordance with Repair Document HS RA20017.

3. Accomplish eccentric adjustment in accordance with Repair Document HS RA20017 or Aeroservice section 1, No. 82.

4. Repeat the inspection required by paragraph A. of this AD prior to the accumulation of 2,500 landings and thereafter at intervals not to exceed 2,500 landings.

D. If no defects are found as a result of the inspections required by paragraph A. of this AD, and the MLG components have not been subjected to the procedures identified in paragraphs C.1., C.2., and C.3. of this AD during the last overhaul, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 50 landings until next overhaul, including a complete ultrasonic inspection of the hinge beam, an eddy current inspection following removal of bushes, and a complete geometric check of the MLG.

1. MLG's which have been inspected in accordance with this procedure may only be returned to service provided that no defects are found.

2. If defects are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, or replace affected part with serviceable part of same part number.

3. Following overhaul of the MLG components, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 2,500 landings.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 1, 1991.

Issued in Renton, Washington, on March 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6066 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-229-AD; Amdt. 39-6941]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires the identification and removal of faulty hydraulic power fire shut-off valves and replacement with modified valves. This amendment is prompted by reports of inoperative hydraulic power fire shut-off valves discovered during aircraft production tests. This condition, if not corrected, could result in the inability to close the fire shut-off valves in the event of a fire.

EFFECTIVE DATE: April 22, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300, A310, and A300-600 series airplanes, which requires the identification and removal of faulty hydraulic power fire shut-off valves and replacement with modified valves, if necessary, was published in the Federal Register on November 6, 1990 (55 FR 46753).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters supported the rule. However, one commenter stated that the French Airworthiness Directive cited in the preamble to the notice as "90-042-104(B)" should read "90-042-107(B)" to rectify a previous sequential error in the numbering system. The FAA notes this correction.

The other commenter requested that the description of the unsafe condition be clarified; the commenter stated that the failure of the valve to close does not lead to the hydraulic powered system being lost, but results in the engine pump suction not being isolated in the event of a fire. The FAA agrees that the suggested wording provides a clear understanding of the nature of the addressed problem, and has modified the description of the unsafe condition accordingly.

Both comments received are merely clarifying in nature and do not affect the rule itself.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 113 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The modified hydraulic power fire shut-off valves will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A300, A310, and A300-600 series airplanes, on which Airbus Industrie Modification 8135 has not been accomplished, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the inability of the hydraulic power fire shut-off valves to close during emergency conditions, accomplish the following:

A. Within 180 days after the effective date of this AD, conduct an inspection of the hydraulic power fire shut-off valves to identify faulty valves, as specified in Airbus Industrie Service Bulletins A300-29-096 (for Model A300 series airplanes), A310-29-2025 (for Model A310 series airplanes), and A300-29-6017 (for Model A300-600 series airplanes), all dated January 29, 1990. Any faulty valve identified must be removed and replaced with a modified valve prior to further flight, in accordance with the appropriate service bulletin.

Note: The Airbus Industrie service bulletins reference Lucas Air Equipment Service Bulletin No. B38LC15-29-05, Revision 1, dated February 1990, for additional instructions.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 22, 1991.

Issued in Renton, Washington, on March 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6062 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-225-AD; Amdt. 39-6940]

Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Industrie Model A310-200 series airplanes, which requires repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in the wing rear spar emanating from certain bolt holes at the attachment of the MLG forward pick-up fitting. This condition, if not corrected, could result in reduced structural integrity of the wings.

EFFECTIVE DATE: April 22, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Airbus Industrie Model A310-200 series airplanes, which requires repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, and repair, if necessary, was published in the Federal Register on November 6, 1990 (55 FR 46672).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule.

The other commenter supported the rule, but requested that proposed paragraph A.2. be revised to require repair procedures (cold expansion of the bolt holes) to be conducted in accordance with Airbus Service Bulletin A310-57-2049, rather than Service Bulletin A310-57-2046. Airbus Industrie Service Bulletin A310-57-2049, dated April 10, 1990, describes procedures for cold expansion of the holes to improve the rear spar fatigue life; and procedures to replace the light alloy nuts with new steel nuts, at specified positions, to improve clamping and prevent possible fretting. (The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has not classified this service bulletin as mandatory. However, a parallel French Airworthiness Directive, Number 90-043-105(B)R1 issued on May 2, 1990, does allow the cold expansion of the holes to be accomplished in accordance with either service bulletin.)

The FAA partially concurs with this commenter's request. Both service bulletins provide repair procedures related to cold expansion of the bolt holes; however, Service Bulletin A310-57-2049 only provides procedures for cold expansion of the holes where no cracks are found. The inspection procedures are addressed only in Service Bulletin A310-57-2046. Paragraph A.2. of the final rule has been revised to permit repair in accordance with either service bulletin. The repetitive inspections, however, are still required at the same interval whether the repair procedures are carried out in accordance with either service bulletin.

After careful review of the available data, including comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators, is estimated to be $50,400.

The regulations adopted herein will not have substantial direct effects on the States on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to all Model A310-200 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the wing rear spar and prevent reduced structural integrity of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) rototest inspection of the wing rear spar at certain bolt holes where the main landing gear (MLG) forward pick-up fittings are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A310-57-2046, dated March 5, 1990.

1. If no cracks are found at the first inspection and no cold working of the holes concerned is carried out, repeat the HFEC rototest inspection at intervals not to exceed 4,500 landings.

2. If no cracks are found at the first inspection and a spar life extension by cold working of the holes concerned is carried out in accordance with the paragraph 2.3.(1)(b) of the Accomplishment Instructions of the above service bulletin or Airbus Industrie Service Bulletin A310-57-2049, dated April 10, 1990; repeat the HFEC rototest inspection within the next 18,000 landings, and thereafter at intervals not to exceed 12,000 landings.

B. If cracks are found, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Repeat the HFEC rototest inspection at an interval approved by the Manager, Standardization Branch, ANM-113.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Line Avenue SW., Renton, Washington.

This amendment becomes effective April 22, 1991.

Issued in Renton, Washington, on March 6, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6063 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-164-AD; Amdt. 39-6931]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which requires modification of the electronic flight instrument system (EFIS) control panel. This amendment is prompted by reports of electrical failure within this panel, resulting in smoke in the flight deck. This condition, if not corrected, could result in loss of primary control of either pilot's attitude and navigation displays, with concurrent emission of smoke from the pilot's glare shield.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2795. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747-400 series airplanes, which requires modification of the EFIS control panel, was published in the Federal Register on October 10, 1990 (55 FR 41198). Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter expressed concern that the proposed 30 day compliance period would not allow sufficient time to modify all of the commenter's subject control panels. The vendor had advised that a 30 to 35 day turnaround time would be required for retrofit. The

commenter requested that the compliance time be extended to 180 days. The FAA agrees that the compliance time can be extended somewhat. Inquiry by the FAA as to the present modification status and the ability of the vendor to support the existing airplane fleet has substantiated the commenter's concern that compliance cannot be accomplished within 30 days. In addition, approximately 50% of the panels delivered with the improper components have been modified. After considering this information, the FAA has determined that the compliance time may be extended to 90 days without adversely impacting safety. The final rule has been changed accordingly.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 77 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Required modification parts will be provided by Collins at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97–449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747–400 series airplanes through line number 791, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of either pilot's electronic flight instrument system (EFIS) control panel, with resultant smoke in the flight deck, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect both EFIS control panels installed on the airplane and record the serial number and modification status. Control Panels with serial numbers identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which do not have Modification 4 implemented, must be removed and modified in accordance with the service bulletin before further flight.

B. Any EFIS control panel with a serial number identified in Collins Service Bulletin DCP–7000–31–04, dated December 1, 1989, and which does not have Modification 4 implemented, must be modified in accordance with the service bulletin before installation on an airplane.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and Collins Air Transport Division/Rockwell International, 400 Collins Road NE., Cedar Rapids, Iowa 52406. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 28, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–6057 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 90–NM–194–AD; Amdt. 39–6936]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires periodic inspection, repair, if necessary, and modification of the Number 4 left and right passenger door upper and lower hinge arm leaf springs to ensure proper opening of the door. This amendment is prompted by reports of fractured hinge arm leaf springs. This condition, if not corrected, could result in pieces of the fractured leaf spring jamming the door hinge arm and preventing the door from opening during an emergency evacuation.

EFFECTIVE DATE: April 18, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which requires repetitive inspections of the Number 4 left and right passenger door upper and lower hinge arm leaf springs, and repair, if necessary; and eventual installation of the terminating modification; was published in the Federal Register on November 2, 1990 (55 FR 46217).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of it members, requested that the terminating action compliance time be extended from the proposed 18 months to 27 months after the effective date of the AD because 9 months are required to obtain parts from the manufacturer. The FAA does not concur with the request; all kits for terminating action will be available from the manufacturer by April 30, 1991.

One commenter requested that the final rule not restrict the use of new steel leaf springs as a replacement spring, provided that the inspections continue until titanium springs are installed as required for terminating action. The FAA concurs and the final rule has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 296 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 163 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 manhour to accomplish the inspection and 12 manhours per airplane to accomplish the required modification actions. The average labor cost will be $40 per manhour. Required parts are estimated at $161 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,003.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes listed in Boeing Alert Service Bulletin 757–52A0049, dated July 5, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure left and right passenger door Number 4 opening when required for emergency use, accomplish the following:

A. Prior to the accumulation of 2,000 flight cycles, or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, inspect the left and right Number 4 passenger door upper and lower hinge arm leaf springs for cracks and fractures, in accordance with Boeing Alert Service Bulletin 757–52A0049, dated July 5, 1990.

B. If cracked or fractured leaf springs are found as a result of the inspection required by paragraph A. of this AD, prior to further flight, accomplish either paragraph B.1. or B.2., below:

1. Replace cracked or fractured leaf springs in accordance with section III. of the service bulletin; or

2. Replace the cracked or fractured leaf springs with new steel leaf springs in accordance with an FAA-approved method, and reinspect those springs prior to the accumulation of an additional 2,000 flight cycles and thereafter at intervals not to exceed 500 flight cycles until the terminating action, required by paragraph D. of this AD, is accomplished.

C. Repeat the inspection required by paragraph A. of this AD at the following intervals.

1. For airplanes with less than 5,000 flight cycles at the time of the last inspection: Accomplish the next inspection within the next 500 flight cycles.

2. For airplanes with 5,000 or more flight cycles at the time of the last inspection: accomplish the next inspection within the next 150 flight cycles.

D. Within the next 18 months after the effective date of this AD, replace the upper and lower hinge arm steel leaf springs with titanium leaf springs for the left and right Number 4 passenger door, in accordance with section III., of Boeing Alert Service Bulletin 757–52A0049, dated July 5, 1990. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–6065 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–13–M

BEST COPY AVAILABLE

14 CFR Part 39

[Docket No. 90-NM-235-AD; Amdt. 39-6936]

Airworthiness Directives; British Aerospace Model ATP Series Airplane Equipped With Main Wheel Assemblies, Part Number AHA1536 and AHA1683

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary. This amendment is prompted by reports that certain seals can grip the axle or contact the wheel bearing. This condition, if not corrected, could result in seizure of the wheel and subsequent damage to the tire.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect defects in the main landing gear (MLG) wheel assembly grease retainer seals, and replacement of the seals, if necessary, was published in the Federal Register on December 11, 1990 (55 FR 50838).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The required parts will be supplied to the operator at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes equipped with main wheel assemblies, Part Number AHA1536 and AHA1683, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent seizure of the main landing gear (MLG) wheel and subsequent damage to the tire, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at each wheel removal, on each wheel of the left and right main landing gear, perform a visual inspection of the wheel hub bolsters and wheel bearing grease retainer seals, in accordance with British Aerospace Service Bulletin ATP-32-13, Revision 1, dated February 28, 1990.

Note: The British Aerospace service bulletin references Dunlop Limited Service Bulletin 32-1032, Revision 1, dated February 13, 1990, for additional instructions.

1. Measure the diameter of the grease retainer seal locating groove for wear on the brake side half hub.

a. If the diameter of the groove exceeds 4.540 inches, prior to further flight, replace with a serviceable part, in accordance with Dunlop Limited Service Bulletin 32-1032, Revision 2, dated February 13, 1990.

b. If the diameter of the groove does not exceed 4.540 inches, prior to further flight, protect the bore of the hub half with an application of Alocrom, in accordance with the Dunlop Limited service bulletin.

2. Verify that the brake side grease retainer seal, Part Number AH089109, has the cross-section shown in Figure 2 of Dunlop Limited Service Bulletin 32-1032, Revision 2, dated February 13, 1990. If this part's configuration is different (has not been chamfered), prior to further flight, replace it with a modified Part Number AH089109, in accordance with the Dunlop Limited service bulletin.

3. Visually inspect the inner bore and outer circumference of brake side grease retainer seal, Part Number AH089109. If the external circumference and the internal bore of the grease retainer seal, Part Number AH089109, is scored or chipped, prior to further flight, replace it with a serviceable part in accordance with the Dunlop Limited service bulletin.

4. Verify that the valve side grease retainer seal is marked as Part Number AH089730. Prior to further flight, replace any grease retainer seals not marked Part Number AH089730 with one so marked.

5. Visually inspect the valve side grease retainer seal, Part Number AH089730. If the internal bore and the wheel bearing face of the grease retainer seal show signs of wear, prior to further flight, replace all defective grease retainer seals in accordance with the Dunlop Limited service bulletin.

B. Accomplishment of Dunlop Modification C2614, which consists of installing improved grease retainer seals on both the brake side and the valve side half hubs, in accordance with Dunlop Limited Service Bulletin AH-[illegible]/AHA1683-32-1042, dated April 30, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 28, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6056 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-234-AD; Amdt. 39-6935]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades and repair, if necessary. This amendment is prompted by a report of disbonding of a nickel sheath erosion strip from a propeller blade leading edge. This condition, if not corrected, could result in structural damage to the fuselage and possible injury to personnel on the ground.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive inspections to detect disbonding of the nickel sheath from the leading edge of the propeller blades, and repair, if necessary, was published in the Federal Register on December 5, 1990 (55 FR 50191).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to ALL Model ATP series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect disbonding of the nickel sheath from the propeller blades, accomplish the following:

A. Within 125 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 125 hours time-in-service, perform a visual inspection of the propeller blades for disbonding of the leading edge nickel sheath, in accordance with British Aerospace Alert Service Bulletin A-ATP-61-5, dated April 4, 1990.

B. If disbonding is found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on March 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6057 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-241-AD; Amdt 39-6937]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary. This amendment is prompted by a report of incorrectly crimped connections during production. This condition, if not corrected, could result in the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power.

EFFECTIVE DATE: April 18, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-9100. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires visual inspections to detect overheat damage in the electrical cable ring tongue terminal tags, and replacement of terminal tags, if necessary, was published in the **Federal Register** on November 26, 1990 (55 FR 49069).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule, but noted that a minimum time-in-service of 2,000 hours from the initial inspection should be required before a repeat visual inspection of the terminal blocks is accomplished. This is to allow any discoloration from overheating at terminal tags to become clearly identifiable. The FAA concurs. Paragraph C. of the final rule has been revised to clarify that the repeat inspection must be conducted within 2,500 hours, but not less than 2,000 hours, after the initial inspection.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. This change will neither significantly increase the economic burden on affected operators nor increase the scope of the rule.

It is estimated that one airplane of U.S. registry will be affected by this AD, that it will take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model ATP series airplanes; Serial Numbers 2001 through 2020, inclusive; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent the malfunction of electrical equipment, overheat damage or fire, and the loss of electrical power, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the electrical cable ring tongue terminal tags listed in Tables 1 to 21 of British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990, for security and discoloration, in accordance with the service bulletin.

Note: The service bulletin and this AD refer to "ring tongue terminal tags." That terminology is used to describe crimp-on wire terminals that have a loop on one end to fit over a terminal stud.

B. If any terminal tag shows signs of being insecurely crimped or is discolored, replace it prior to further flight, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

C. Within 2,500 hours time-in-service, but not sooner than 2,000 hours time-in-service, following the inspection required by paragraph A. of this AD, perform a one-time repeat visual inspection on all listed terminal tags that have not been replaced or recrimped, in accordance with British Aerospace Service Bulletin ATP-24-21, Revision 2, dated April 24, 1990.

1. If any terminal tag shows signs of being insecurely crimped or is found discolored, replace it prior to further flight, in accordance with the service bulletin.

2. For those terminal tags which do not show signs of being insecurely crimped or discolored, no further action is required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service

Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment becomes effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6068 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-257-AD; Amdt. 39-6935]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires various modifications to the rear pressure bulkhead door. This amendment is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These conditions, if not corrected, could result in reduced structural integrity of the rear pressure bulkhead door. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

EFFECTIVE DATE: April 18, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires various modifications to the rear pressure bulkhead door, was published in the **Federal Register** on December 7, 1990 (55 FR 50563).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 240 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The estimated cost for the required parts and modification kit is estimated to be $8,415 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,261,050.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Service Bulletin 52-PM-5970, dated August 16, 1990, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the rear pressure bulkhead door, accomplish the following:

A. Prior to the accumulation of 55,000 landings or within 15 months after the effective date of this AD, whichever occurs later, install horizontal members, various angle bracket assemblies, throat strips, cleats, furnishing bracket assemblies, furnishing angles, stiffeners, and a detachable door panel, in accordance with British Aerospace Service Bulletin 52-PM-5970, dated August 16, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Services Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment become effective April 18, 1991.

Issued in Renton, Washington, on March 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6069 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 361

Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research; Editorial Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a change in the mailing symbol for the office within FDA where Radioactive Drug Research Committees are to submit information. This action will improve the accuracy of the regulations.

EFFECTIVE DATE: March 14, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR 361.1 (c)(3), (c)(4), and (d)(8) to reflect a mailing symbol change for the office within FDA where Radioactive Drug Research Committees are to submit information.

The amendment is wholly editorial in nature. For this reason, FDA finds that public procedure and delayed effective date are unnecessary (5 U.S.C. 553 (b)(3)(B) and (d)).

List of Subjects in 21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 361 is amended as follows:

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

1. The authority citation for 21 CFR part 361 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 361.1 [Amended].

2. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraphs (c)(3), (c)(4), and (d)(8) by removing "HFD–150" and replacing it with "HFD–160".

Dated: March 7, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–5036 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076–AC21

Preparation of Rolls of Indians

Dated: February 19, 1991.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule, correction.

SUMMARY: This document corrects the Public Law number appearing in the final rule amending part 61 published in the **Federal Register** on Friday, October 12, 1990, 55 FR 41516. The membership roll of the Coquille Tribe of Indians is being prepared pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Public Law 101–42. In paragraph 61.4(j)(1) of the final rule, the Public Law number was erroneously cited as 100–139. The Public Law should read Public Law 101–42. No other corrections are being made to the final rule document.

EFFECTIVE DATE: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380, telephone number: (503) 444–2679.

Stanley M. Speaks,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 91–6090 Filed 3–13–91; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, and 440

[MB–15–F]

RIN 0938–AD 15

Medicaid; Eligibility of Aliens for Medicaid

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Technical amendments.

SUMMARY: This document makes technical corrections to final regulations regarding eligibility of aliens for Medicaid published on September 7, 1990, at 55 FR 36813.

EFFECTIVE DATE: These amendments are effective as of October 9, 1990, the effective date of the final rule that contained the errors.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Lindsay (301) 966–4673.

SUPPLEMENTARY INFORMATION: Final regulations published on September 7, 1990, at 55 FR 36813 amended 42 CFR parts 435, 436, and 440 to revise Medicaid rules applicable to aliens who meet eligibility requirements as categorically needy or medically needy. In the final regulations, we—

1. Made several technical errors;
2. Unintentionally in 42 CFR 440.255 (b)(1) and (c)(1) did not make the definition of emergency medical condition consistent with the description of the change to the definition in the preamble; and
3. Unintentionally in 42 CFR 435.408(a)(13) and 436.408(a)(13) did not make the types of documents acceptable as proof in establishing entry and continuous residence of an alien consistent with the description in the preamble.

This document corrects those errors by amending §§ 435.406, 435.408(a)(13), 436.408(a)(13), 440.210, 440.220, and 440.255.

In order to ensure clear understanding of Medicaid policy applicable to aliens who meet eligibility requirements as categorically needy or medically needy we are making the following changes:

1. Amending § 435.406(a)(2) to replace the phrase "in § 435406" with the phrase "in § 435.408."
2. Amending §§ 435.408(a)(13) and 436.408(a)(13) to make the types of documents acceptable as proof in

establishing entry and continuous residence of an alien consistent with the description in the preamble published in the final regulations on September 7, 1990 at 55 FR 36813.

3. Amending §§ 440.210 (b) and (c), and §§ 440.220 (b) and (c) to replace the phrase "this subpart" with the phrase "this subchapter."

4. Revising §§ 440.255 (b)(1) and (c)(1) to make the definition of emergency medical condition consistent with the definition described in the preamble of the final regulations.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR chapter IV is amended as set forth below:

PART 435—[AMENDED]

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 435.406 [Amended]

2. In § 435.406(a)(2), the phrase "in § 435.406" is replaced with the phrase "in § 435.408".

§ 435.408 [Amended]

3. In § 435.408, paragraph (a)(13) is revised to read as follows:

§ 435.408 Categories of aliens who are permanently residing in the United States under color of law.

(a) * * *

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

* * * * *

PART 436—[AMENDED]

4. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

5. In § 436.408, paragraph (a)(13) is revised to read as follows:

§ 436.408 Categories of aliens who are permanently residing in the United States under color of law.

(a) * * *

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). Ask for any proof establishing this entry and continuous residence;

* * * * *

PART 440—[AMENDED]

6. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.210 [Amended]

7. In § 440.210, paragraphs (b) and (c) the phrase "this subpart" is replaced with the phrase "this subchapter."

§ 440.220 [Amended]

8. In § 440.220, paragraphs (b) and (c) the phrase "this subpart" is replaced with the phrase "this subchapter."

9. In § 440.255, paragraphs (a), (b)(1) and (c)(1) are revised to read as follows:

§ 440.255 Limited services available to certain aliens.

(a) *FFP for services.* FFP is available for services provided to aliens described in this section which are necessary to treat an emergency medical condition as defined in paragraphs (b)(1) and (c) or services for pregnant women described in paragraph (b)(2).

(b) * * *

(1) Emergency services required after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) Placing the patient's health in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part.

* * * * *

(c) * * *

(1) The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) Placing the patient's health in serious jeopardy;

(ii) Serious impairment to bodily functions; or

(iii) Serious dysfunction of any bodily organ or part, and

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance)

Dated: March 5, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91–5922 Filed 3–13–91; 8:45 am]

BILLING CODE 4120–01–M

42 CFR Part 440

[MB–014–CN]

RIN 0938–AD16

Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; Correction notice.

SUMMARY: This notice corrects 42 CFR 440.210, Required services for the categorically needy, and 42 CFR 440.220, Required services for the medically needy, to restore current text which was inadvertently deleted in the final rule and to make conforming redesignation changes.

EFFECTIVE DATES: These corrections are effective November 21, 1990.

FOR FURTHER INFORMATION CONTACT: Valerie Krauss (301) 966–4670.

SUPPLEMENTARY INFORMATION: On November 21, 1990, in FR Doc. 90–27393, we published a final rule that included revisions to 42 CFR part 440. In doing so, we failed to take into account changes made to part 440 by a final rule published on September 7, 1990 (55 FR 36813). As a result, we inadvertently deleted from the November 21 final rule regulatory text that was added to §§ 440.210 and 440.220 by the September 7 final rule. Consequently, we are publishing this correction notice to integrate the provisions of the two final rules and to restore the deleted text in §§ 440.210 and 440.220. We are also revising § 440.250, Limits on comparability of services, to indicate that paragraph (o) of this section has not yet been established and is therefore reserved.

A. On page 48611, column 1, § 440.210 is correctly revised to read as follows:

(a) A State plan must specify that, as a minimum categorically needy recipients are provided the following services:

(1) The services as specified in §§ 440.10 through 440.50, 440.70 and (to the extent nurse-midwives are authorized to practice under State law or regulation), 440.165;

(2) Pregnancy-related services and services for other conditions that might complicate the pregnancy

(i) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(ii) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(3) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subchapter will receive at least the services provided in paragraph (a) of this section.

(c) A State plan must specify that aliens not defined in §§ 435.406(a) and 436.406(a) of this subchapter will only be provided the limited services specified in § 440.255.

B. On page 48611, column 2, § 440.220 is correctly revised to read as follows:

§ 440.220 Required services for the medically needy.

(a) A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

(1) Prenatal care and delivery services for pregnant women.

(2) Ambulatory services, as defined in the State plan, for—

(i) Individuals under age 18; and

(ii) Individuals entitled to institutional services.

(3) Home health services (§ 440.70) to any individual entitled to skilled nursing facility services.

(4) If the State plan includes services in an institution for mental diseases (§ 440.140 or § 440.160) or in an intermediate care facility for the mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(i) The services contained in §§ 440.10 through 440.50 and (to the extent nurse-midwives are authorized to practice under State law or regulation) § 440.165; or

(ii) The services contained in any seven of the sections in §§ 440.10 through 440.185.

(5) For women who, while pregnant, applied for, were eligible as medically needy for, and received Medicaid services under the plan, services under the plan that are pregnancy-related (as defined in § 440.210(a)(2)(i) for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

(Catalog of Federal Domestic Assistance Program No. 93.714—Medical Assistance Program)

Dated: March 5, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information and Resource Management.

[FR Doc. 91-5923 Filed 3-13-91; 8:45 am]

BILLING CODE 4120-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 13)]

Removal of Obsolete Regulations Issued Pursuant to Section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing the regulations that implement section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982. These regulations, which are now obsolete, are codified at 49 CFR part 1180, subpart C.

EFFECTIVE DATE: This rule is effective on March 14, 1991.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: The regulations codified at 49 CFR part 1180, subpart C (§§ 1180.40-49) implement section 213 of the Bankrupt Railroad Service Preservation and Employee Protection Act of 1982, Public Law 97-468, title II, section 213, Jan. 14, 1983, 96 Stat. 2544 [codified at 45 U.S.C. 915(b)(3)].

Section 213 provided that a financially responsible person, having made an offer to acquire from a carrier subject to liquidation a rail line over which no service was being provided by that carrier, and having had that offer rejected by the bankruptcy trustee, could submit an application to the Commission seeking approval of the proposed acquisition of the line. The railroads which were to be subject to this new acquisition procedure included only those railroads (a) which, on January 14, 1983, were subject to a proceeding pending under section 77 of the old Bankruptcy Act or under subchapter IV of chapter 11 of title 11, United States Code, and (b) which had been ordered by the court to liquidate their properties.

This acquisition procedure was intended to apply to one railroad only: The Chicago, Rock Island and Pacific Railroad Company (the Rock Island). The legislative history of section 213 mentions only the Rock Island in relation to this procedure: "The Rock Island is currently being liquidated, with all its assets being sold. Shippers, other railroads, and government entities, are interested in buying lines of the Rock Island, but feel that the Trustee is not particularly interested in selling lines for continued rail service. They feel he is asking excessive prices and might prefer to sell the lines for scrap." H.R. Rep. No. 97-571, part 1, 97th Cong., 2nd Sess., 18 (1982), reprinted in 1982 U.S. Code Cong. and Adm. News, p. 4494, p. 4500. Section 213 was intended to make applicable to the Rock Island a "forced sale" procedure analogous to the procedures set out in 49 U.S.C. 10906. *See also* the Commission's 1982 Annual Report, at 27-29 (the Rock Island is the only bankrupt railroad described as being in liquidation) and the 1983 Annual Report, at 28 (same description).

The Rock Island has ceased to exist, and the section 213 regulations codified at 49 CFR part 1180, subpart C, have thereby been rendered obsolete. We are therefore removing these obsolete regulations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This action will have no significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads,

Reporting and recordkeeping requirements.

Decided: March 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903-10906, 11341, 11343-11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

PART 1180—[AMENDED]

2. Part 1180 is amended by removing subpart c, §§1180.40 through 1180.49.

[FR Doc. 91-6080 Filed 3-13-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 17 and 23

Policy on Giant Panda Import Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Policy statement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a policy for issuance of permits for the import of giant pandas, and will recommence the review and processing of permit applications for the import of giant pandas for temporary exhibition loans. Existing regulations and guidelines are clarified as a result of new information related to situations involving issuance of permits for giant pandas. Specifically, import prohibitions on animals intentionally removed from the wild for exhibition loans will continue. Furthermore, restrictions on the import of other pandas will be imposed as follows: Only female pandas 2 years to under 4 years and males 2 years to under 5 years at the start and conclusion of a loan period, respectively, or animals incapable of reproducing, and those over 18 years old (especially if they are already represented by offspring) would typically be considered for temporary exhibition loans, and then only if funds committed in the loan agreement are used for specific projects designed primarily to enhance the survival of the giant panda. The Service would be supportive of the use of captive animals when the loan or permanent transfer is likely to enhance the captive-breeding population. Furthermore, the basis for findings required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) on "primarily commercial purposes" and the "suitability of facilities" are clarified and conditioned in this policy.

DATES: This policy is effective March 14, 1991. Import permit applications will also receive consideration as of March 14, 1991 in accordance with the permit provisions of 50 CFR Parts 17 and 23.

ADDRESSES: Send correspondence to the Office of Scientific Authority, Mail Stop: Arlington Square Building, room 725, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority Findings—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-1708.

Management Authority Findings—Mr. Marshall P. Jones, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-2093.

Permit Issuance—Mr. Richard K. Robinson, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (703) 358-2093.

SUPPLEMENTARY INFORMATION:

Background

The survival and ultimately the increase of the giant panda (*Ailuropoda melanoleuca*) is the strong desire of the United States, the People's Republic of China (PRC), and the international conservation community.

Since 1983, natural calamities, especially the die-off of certain bamboo populations (the giant panda's principal food), have threatened the survival of the giant panda. The people and the Government of the PRC have undertaken significant efforts to save the panda and to restore its habitat. This has generated interest and support of people and conservation organizations worldwide, and perhaps has also generated the interest in panda loans that are now a point of concern.

There are believed to be fewer than 1,000 giant pandas remaining in the wild. These animals occur in many fragmented populations, only a few of which consist of as many as 50 pandas. Poaching of pandas and loss of their habitat continues. Finally, there are fewer than 100 pandas in captivity, and breeding programs have not yet resulted in a self-sustaining captive population.

On December 6, 1983, the giant panda was placed on appendix III of the Convention at the request of the PRC, on January 23, 1984, the giant panda was listed under the Endangered Species Act (Act) as an endangered species, and on March 14, 1984, it was added to Appendix I of the Convention. The giant panda is subject to strict U.S. and international protection by its listings under the Act and the Convention. The Service is responsible for regulating panda loans to the United States by deciding whether to grant the import, export, and re-export permits required by the Act and the Convention. The Service believes that its existing regulations and guidelines under the Act and the Convention have been sufficient for panda imports and re-export permit decisions made to date. However, in 1987, proposals for temporary exhibition loans of giant pandas became an increasingly controversial issue, and during one period, as many as 30 institutions may have been negotiating with various entities in the People's Republic of China to arrange panda loans, potentially posing additional threats to the wild and captive populations of the species.

Under Article III, paragraph 3 of the Convention, a permit for the import of specimens of Appendix I species may be issued only if certain conditions are met. A Scientific Authority of the State of import must advise that the import will be for purposes which are not detrimental to the survival of the species, and it must be satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it. A Management Authority of the State of import must be satisfied that the specimen is not to be used for primarily commercial purposes.

Issuance of a permit under the Act requires prior determinations that, among other things, the import would be for scientific purposes or to enhance the propagation or survival of the species in a manner consistent with the purposes and policies of the Act, and that issuance of an import permit would not be likely to jeopardize the continued existence of the species.

The Service has already adopted general guidelines that are used by the Scientific Authority to determine whether the purposes of an import would not be detrimental to the survival

of a species in question, but for the giant panda it was felt that more specific guidance was needed. The same was true for determining the suitability of facilities for housing pandas.

Regarding the Management Authority's determination, an applicant for an import permit for wildlife listed in Appendix I of the Convention must demonstrate that the wildlife is not to be used for primarily commercial purposes. The Service therefore must make a specific determination that a loan is not to be for primarily commercial purposes to approve an import of pandas. Furthermore, the fifth meeting of the Conference of the Parties of the Convention recommended (Resolution Con. 5.10) that the following general principles be used by the Parties in assessing whether the importation of a specimen of an Appendix I species would result in its use for "primarily commercial purposes":

1. Trade in Appendix I species must be subject to particular strict regulation and authorized only in exceptional circumstances.

2. An activity can generally be described as "commercial" if its purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service or other form of economic use or benefit.

3. The term "commercial purposes" should be defined by the country of import as broadly as possible so that any transaction which is not wholly "non-commercial" will be regarded as "commercial". In transposing this principle to the term "primarily commercial purposes", it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature with the result that the importation of Appendix I specimens should not be permitted. The burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.

4. Article III, paragraphs 3(c) and 5(c), of the Convention concern the intended use of the Appendix I specimen in the country of importation, not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of Appendix I specimens from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for "primarily commercial purposes".

The Service has determined that in order to more effectively evaluate permit applications for panda loans, in satisfying the applicable requirements of 50 CFR subchapter B (including, but not limited to, 50 CFR 13.12(a)(9), 17.22(a)(1)(vii), and 23.15(c)(7)), applicants should include in each application a detailed plan for the disposition of all funds expected to be raised during the course of a panda loan. Furthermore, in order to more effectively monitor panda loans, compliance with Service policy, and the non-commercial aspects of said loans, the Service has determined that each institution that receives a panda loan, in satisfying the requirements and conditions of the permit, would likely be required to submit an annual report to the Director in accordance with 50 CFR 13.45. The annual report shall contain a full accounting of all funds raised directly or indirectly by the institution or organization in relation to the loan, the portion of those funds that is in excess of expenses attributable to the loan, and the uses to which those funds have been or will be put, in accordance with the plan submitted previously to the Service.

The Service has evaluated new information as it relates to existing regulations and guidelines to ensure that its permitting actions continue to meet required issuance criteria. The Service announced the initiation of this evaluation in the June 24, 1988 **Federal Register** (53 FR 23647), and in the same document announced that the review and processing of permit applications for the import of giant pandas for temporary exhibition loans was temporarily suspended until this evaluation was completed. After receiving responses to this announcement, the Service published a notice in the **Federal Register** of a proposed policy for the issuance of permits for giant pandas (54 FR 36623) on September 5, 1989, with a request for comments. This notice finalizes that proposed policy and removes the suspension on reviewing and processing giant panda import permit applications for temporary exhibition loans.

Information and Comments Received

Eight organizations and the Ministry of Forestry of the PRC submitted written information and comments on the notice of proposed policy of September 5, 1989. The following is a summary of these comments and the Service's responses.

Age and Reproductive Potential of Animals Available for Loans

Comment: One commenter stated that pandas to be considered for loans should not exceed 4 years of age at the time of their return.

Response: The Service agrees with this age limit for females, but, in the absence of additional information to the contrary, still maintains that, since males mature somewhat later than females and since females in strong estrus do not appear to be selective in accepting a male for natural mating, the maximum age of 5 years at the time of their return for males is acceptable.

Comment: At least three comments recommended that older animals not be included in any short-term loans unless there was unequivocal evidence that the animals could not breed. There appear to be indications that the maximum reproductive age of pandas is greater than previously thought, as evidenced by females in China bearing young in their teens and experiencing reproductive cycles in their early twenties, and males have shown reproductive activity in their mid-twenties. The female panda at the National Zoological Park gave birth to a live cub at an estimated age of at least 19.

Response: After consideration of additional information, the Service still feels that older pandas should not be categorically excluded from consideration for loans, although the policy has been modified to take into account an older animal's reproductive potential and whether it has already produced offspring. Therefore, animals 18 years and older will still be considered for loans on a case-by-case basis, especially if they are already represented by offspring and/or are unlikely to breed. With regard to consideration of any pandas between the ages of 4 (or 5 for males) and 18 years, there must be clear evidence that such animals are incapable of reproducing, first, as certified by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office of the PRC, and second, with the concurrence of veterinary expertise for the applicant and any additional expertise the Service might want to use.

Comment: It was recommended that no young pandas be isolated from other pandas for more than a 6-month period during the 2–3 year period when they might be eligible for loans because a more extended period of isolation might inhibit proper social development. Another commenter suggested that repeat loans should only involve compatible male/female pairs to assure continued social and reproductive development. Another commenter recommended that exhibit loans should not exceed 3 months to 100 days because the success rate of the project declines after that length of time and a shorter loan would allow the animals to be returned to China to benefit from having time in which to develop social behavioral patterns. A related comment objected to the possibility of pandas being loaned to several locations during one stay in the United States on the basis that repeated moves could increase health and reproductive risks to the animals to unacceptable levels, and that such moves should be limited to two.

Response: The Service expressed similar concerns for the well being of young pandas in its proposed policy, but had stated that "these risks are acceptable if specific beneficial management projects are part of the total import application." Even though the proposal indicated that both young and old pandas might be loaned to more than one location during the time they are in the United States, the Service recognizes that frequent moves of individuals may not be desirable and each such case would be evaluated by contrasting the potential conservation values to be derived for the species against the possible loss of breeding potential of individual animals. Furthermore, for any sequential exhibition loans, the Service would monitor the health of the animal(s) prior to each relocation of the animal(s) within the United States for another exhibition loan. It has been suggested that it might be desirable to allow non-reproductive animals to stay in the country longer while being exhibited at more that one institution, thereby reducing the stresses associated with moving animals into and out of the country in a relatively short period of time. Nevertheless, the Service agrees that some limit on the number of loans and the length of a loan period is desirable for the health of the animals and to minimize any effects on behavioral development. Therefore, loans of young, non-breeding animals for exhibition purposes will be limited to no more than three moves during a loan period that cannot extend beyond 1 year with individual loans being for a period of at least 3 months each. The total time might be extended to 1½ years if a compatible male/female "pair" were involved.

Comment: Two commenters disagreed with aspects of the statement, "In general, the Service believes that animals of breeding age that are already in captivity should be maintained in captive-breeding programs. Therefore, the Service would not support loans of breeding age animals even during the non-breeding season unless the loans are clearly in support of creating breeding opportunities, except for special situations discussed elsewhere in this guidance." It was suggested that the first sentence implies that a systematic international captive breeding program for giant pandas exists, and that inclusion of the exception for "special situations" in the second sentence is too soft as a policy nor are such special situations defined or discussed later.

Response: The use of the phrase, "captive-breeding program," was not meant to imply that an internationally coordinated captive breeding program necessarily exists, rather, that breeding age pandas currently at a facility that has been or that intends to start breeding or attempting to breed giant pandas should remain at that facility in that "captive-breeding program." Finally, the "special situations" discussed elsewhere are those situations when a panda can be shown to be incapable of breeding. The Service continues to support the contention that a breeding loan will only be considered if there is strong evidence that it would enhance the survival of the species.

Registry of Animals

Comment: Three commenters felt that inventory records or a registry of all captive-held giant pandas must be available before any more permits are issued for panda loan imports, while another essentially agreed that a registry of pandas available for loans should be available before permits are issued.

Response: The Service agrees that anything from a simple inventory of all captive held animals to a well developed Species Survival Plan for pandas would be desirable, but at this time the latter may not be immediately achievable. At the same time, the Service also feels that requiring all pandas at the facility providing panda(s) for loans to be included in a registry (with information comparable to that in studbooks) might be a reasonable start in this direction and has modified its final policy accordingly.

Comment: One commenter felt that requesting a list of distinctive or identifying markings to keep track of specific animals involved in loans is unreliable, and that a permanent identification such as tattooing should be developed and used in conjunction with specimen photographs for identification purposes. Another commenter expressed concern that the request for age, sex and identifying information for each animal involved in a loan would not be effectively implemented because the Chinese do not now use any standardized system of permanently marking giant pandas.

Response: We agree that a more permanent marking system for giant pandas would be desirable and will encourage the Chinese to develop and use such a system, but we do not feel that we should require any specific system. Furthermore, the Chinese Ministry of Forestry has offered to consult on appropriate identification methods for each animal made available for loan, and the Service appreciates this offer of cooperation.

Comment: It was felt by a commenter that by stating that, "A coordinated registry presumably is or would be maintained by the Chinese Association of Zoological Gardens * * *", the Service is uncertain whether such a registry or family file actually exists, how complete it is, or who maintains it. This commenter also wondered whether the statement in the proposed policy indicating that certain information on pandas for loans should be "available to all involved parties from the PRC Ministry of Forestry" suggests that two lists or registries of giant pandas need to be maintained, one by the Chinese Association of Zoological Gardens and another (for permitting purposes) by the PRC Ministry of Forestry.

Response: The Service is not certain to what extent a family file or registry of giant pandas has been developed by the Chinese, but only one file or registry would need to be maintained so long as the same list is provided to the PRC Ministry of Forestry (functioning as the Chinese Management Authority) so that they can make necessary information available to a permit applicant, as required under this policy. The Service understands that recent contacts with the Chinese suggest that they are still interested in developing a studbook or registry for giant pandas. The Service encourages this endeavor, and therefore will require a complete registry of all giant pandas being held at the facility offering animals for an exhibition loan as part of a permit application.

Comment: The Ministry of Forestry of the PRC felt that the specific wording in the proposed policy regarding the registration of animals and the need for listing distinguishing markings of animals on loan was vague. They suggested that the statement should be elaborated or, through consultation, "determined by the concerned authorities of both countries when the import and export licenses are being verified.". The following wording was then suggested: "The pandas on loan for exhibition purposes shall be registered

at and recorded by the Ministry of Forestry of the People's Republic of China. The export license shall specify the age, the sex and the origin of the animal, including whether its was bred in captivity or the time and place if captured in the wild."

Response: The Service feels that the proposed policy essentially provides for this. The summary statement in the proposed policy read: "Information about animals involved in a loan should be documented in a registry or family file available from the PRC Ministry of Forestry, and they should be certified as to their age and sex, with any distinctive or identifying marks indicated, on the export license or permit.". The thrust of all the statements in the policy concerning information about pandas available for loans is that a registry or studbook of all captive giant pandas should be developed and maintained by the Chinese. The Service encourages such development, and considers that requiring a registry of all giant pandas held at a lending facility at the time of permit application as a reasonable first step in this direction, as well as coinciding with the spirit of the Ministry's suggested re-wording. Regarding individual identifying markings, the Service agrees and will pursue discussions between concerned authorities of the two countries that might be useful in developing a permanent marking and/or identification system to be used on captive giant pandas. The final policy has been modified to partially conform to the Ministry's suggested wording.

Comment: A commenter indicated that an inventory of captive pandas would provide evidence of the status of the captive population, and thereby allow the establishment of quotas for panda loans. In addition, breeding facilities in China should be inventoried to facilitate placement of breeding age pandas there before any are made available for loans for display purposes only. Another commenter suggested that with relatively few pandas being born in captivity in China, an increased demand for pandas for loan in the absence of a quota for panda loans might place pressure on the Chinese to remove additional animals from the wild to satisfy this demand. They recommended the imposition of an annual quota of two duos "(two sets of two pre-reproductive animals)" per year from China to be distributed to several institutions for 2–4 months at a time.

Response: As both commenters imply, a detailed record of captive pandas could very well serve as nucleus for a coordinated captive breeding program for the species, and could provide a more complete record to show the number of pandas that might be available for loans. But, acquisition of this kind of information would not necessarily mean that panda exhibition loan quotas should be or would need to be established. In fact, if the information on captive held pandas in China were sufficiently detailed concerning ages, captive births, etc., it could be used to keep track of the availability of specific animals over time and whether they fit the parameters of this policy as likely candidates for exhibition loans, which might then obviate the necessity of establishing quotas. At present, the Service feels that the more important aspect of this suggestion is encouraging the development of a registry or studbook of captive pandas, especially in China, and to this end the policy does require that all pandas at an institution from which a panda would be obtained for an exhibition loan must be included in a registry that includes studbook information. Through this the Service hopes that a total inventory of captive held pandas might eventually be established. With this information other decisions might be made, including the possibility of establishing loan quotas. Also, should the Service acquire any evidence indicating that animals are being removed from the wild to satisfy increased exhibition loan requests, the moratorium for such loans might be reestablished.

Conservation Benefits of Specific Projects

Comment: One commenter was opposed to any loan that is not intended to benefit giant pandas through public education and captive breeding, and another maintained that the United States offers the most likely environment for the establishment of successful programs for the captive propagation of pandas. In contrast, another commenter felt that as long as it can be assured that loans would not interfere with potential captive breeding programs for pandas, then the benefits in terms of public education and the provision of funds targeted for conservation of the species and its habitat would benefit the species as long as animals for loan are in good physical condition.

Response: Among other things, it is the intent of this policy to ensure that any imports of giant pandas on loan in the U.S. would be for purposes that are not detrimental to the survival of this species, would not be likely to jeopardize the continued existence of the species, would enhance the propagation or survival of the species, and that the permit applicant could suitably house and care for the animals. Therefore, much of the policy is directed toward minimizing the deleterious impact of loans on any existing or potential captive breeding programs while at the same time maximizing the conservation benefits that result from these loans through the use of funds derived due to the loans. On the other hand, this policy would not prohibit loans designed specifically for captive breeding purposes. The Service feels that it would be short-sighted to fail to allow utilization of non-reproductive, captive-held pandas in ways that have the potential of contributing conservation value for the survival of the species in the wild. Finally, the health and physical condition of the animals while on loan should be ensured by assuring that applicants are suitably equipped to house and care for any giant pandas while they are in the United States.

Comment: One commenter expressed concern regarding references to captive population projects that may enhance the propagation of the species and the "significant relocation of the species," because they were unaware of the "progress of cooperative breeding and/or conservation projects for the species." The commenter believed that any relocation of animals for breeding purposes should first bolster the breeding efforts in China and then enhance and expand captive breeding efforts outside China.

Response: The statement to which the commenter referred was part of a brief summary of the Service's understanding of what is included in the PRC's management plans to enhance the survival of pandas. The complete statement says that "there are some projects related to the captive population that may enhance the propagation, hence survival of the species in captivity, such as development of a studbook, significant relocation of the animals for breeding purposes and, under special circumstances (i.e., where actually needed for animals already in captivity), the creation or renovation of breeding facilities." Relocation of animals (not species) was mentioned as one example of the kind of efforts that might be carried out under the management plan to enhance propagation (presumably in China), but we believe that any movements of animals should first bolster breeding efforts wherever they are likely to contribute the most to captive breeding efforts.

Comment: The same commenter was also concerned that although the Service preferred that the high priority projects be certified by the Ministry of Forestry of the PRC, there were no criteria provided in the policy as a basis for this certification. Another commenter referred to this same statement in the policy while questioning whether funding part or all of a high priority project would satisfy the enhancement requirements of the Endangered Species Act or the no detriment determination required by the Convention or both.

Response: The statement referred to in the policy says that "high priority projects identified in the panda reserve and national management plans or appropriate captive breeding programs, *preferably* (emphasis added) certified by the Ministry of Forestry of the PRC to the U.S. Management Authority, would be accepted as offsetting the possible effect of loans of pandas . . .". Such high priority projects can be merely identified in the management plans, but the Service would prefer that these plans be accepted officially by the PRC Ministry of Forestry, which would constitute certification that projects had been recognized by the PRC as having significant conservation or enhancement value for the giant panda. As for the applicability of enhancement values of a project, the Endangered Species Act requires that activities must enhance the propagation or survival of the species, and an import under the Convention may be judged to be for purposes that are not detrimental if the activities of the permit are determined to be likely to enhance the survival of the species. Therefore, such "high priority projects" might satisfy both the Act and the Convention. There are no totally objective criteria to determine the level of funding and support of projects required to achieve enhancement or no detriment. These are qualitative requirements that should appropriately be considered on a case-by-case basis.

Determination of Whether Import is for Primarily Non-Commercial Purposes

Comment: One commenter stated that "The public exhibition of captive animals with the expectation to deriving substantial revenues therefrom is a commercial activity, regardless of the use to which such revenues may be put and regardless of whether the exhibitor is public or private, or a profit or non-profit institution." The same commenter noted that "The parties to CITES have by resolution made abundantly clear that only when the deriving of such revenues from the exhibition of Appendix I specimens is incidental and subordinate to other clearly non-commercial purposes can the importation of such specimens be permitted." Another commenter recommended that short-term exhibition loans only be allowed when it is unequivocally clear that non-commercial aspects of the exhibition predominate over commercial aspects.

Response: An activity that is primarily commercial, with a secondary non-commercial component, would not qualify for an Appendix I import permit.

An activity can generally be described as "commercial" if its purpose is to obtain economic benefit, including profit. The Service agrees that the importation of Appendix I specimens should only be permitted if revenues derived from their exhibition are secondary to other clearly non-commercial purposes. The Service agrees that the exhibition of animals with the sole expectation of deriving revenues is a commercial activity that by itself would preclude their importation. However, one must consider all uses of an animal in order to determine whether or not it will be used for primarily commercial purposes. Non-commercial uses must clearly predominate to enable import.

Comment: One commenter noted that the burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens.

Response: The Service agrees, particularly in the importance of the submission of a detailed plan and annual reports, and this has been incorporated into the final policy.

Comment: Several commenters recommended that any revenues specially generated from exhibitions should be devoted to giant panda conservation only. Other commenters recommended that any excess funds generated be used for the conservation of either the giant panda or other species.

Response: The Service does not agree that all such revenues must be utilized for giant panda conservation. The Service does agree that all such revenues should be utilized for either the conservation of the giant panda, the conservation of other endangered species, or the general conservation of fauna and flora; this would be consistent with the goals of the Convention and satisfy the "not for primarily commercial purposes" test.

Comment: One commenter urged the Service to enforce the requirement that Appendix I imports be only for primarily non-commercial purposes in all permitting procedures for all Appendix I species.

Response: As per 50 CFR 23.15, in determining whether an applicant can receive an Appendix I import permit, the Service determines whether or not the import permit, the Service determines whether or not the import is to be used for primarily commercial activities. The Service is committed to implementing article III paragraph 3(c) of the Convention, and all pertinent resolutions of the Conference of the Parties, which articulate the restriction on imports for primarily commercial purposes.

Comment: A commenter urged the Service to establish a more rigorous set of objective criteria and guidelines than what was proposed. The commenter stated that the Service must objectively determine the level at which non-commercial uses clearly predominate over commercial uses, and suggests 75 percent as a cutoff.

Response: The Service agrees that applicants must make a showing that the non-commercial aspects of the panda exhibition loans clearly predominate over commercial uses. Policy guidance is specified later in this notice.

Comment: A few commenters objected to disallowing profit-making institutions from receiving a panda loan. Two commenters recommended that the sole test should be the use of the funds generated by the panda loan. One commenter agrees with the Service's policy that non-commercial uses must be predominant to be deemed primarily non-commercial, but objects to the import turning on the non-profit institutions can take actions that are non-commercial in nature.

Response: The Service notes that public, non-profit institutions or organizations have a substantially less difficult burden in satisfying the "not to be used for primarily commercial purposes" requirement. As provided in resolution Conf. 5.10, "all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial." As an Appendix I species, the animals loaned are not to be used in the course of primarily commercial activities. Collection of revenues by the importing institution for profit-making purposes would be judged to be a primarily commercial activity. As per resolution Conf. 5.10, "any transaction which is not wholly non-commercial will be regarded as commercial" by the Service. The Service is aware that profit-making institutions can pursue non-commercial activities. In the specific case of panda loans for exhibition purposes, the profit-making motive of for-profit institutions, coupled

with the strong income-generating potential of such an exhibition and the publicity that would inure to the economic benefit of the institution, could frequently outweigh any non-commercial purposes.

Therefore, the Service will hold commercial enterprises to a stricter burden of proof to show that the "non-commercial" aspects clearly predominate and that all requirements of resolution Conf. 5.10 have been met.

Comment: One commenter stated that loans for exhibition, by their very nature, cannot be considered to be for commercial purposes, whether or not the sponsors and organizers of giant panda exhibition loans derive direct or indirect economic benefits.

Response: Wildlife used for exhibition purposes can potentially be used for either primarily commercial or primarily non-commercial purposes, and as such, each application for an import permit will be considered on a case-by-case basis.

Comment: One commenter notes that confining panda exhibitions to non-profit organizations would not serve the goal of preserving these animals, and removes potentially valuable sources of financial support for panda conservation programs.

Response: The parties to the Convention have made it clear that a permit for the import of specimens of Appendix I species may be issued only if the Management Authority of the country of import is satisfied that the specimens are not to be used for primarily commercial purposes, and that the importation of Appendix I specimens would only be permitted if revenues derived form their exhibition are clearly subordinate to other wholly non-commercial purposes.

Comment: One commenter questions the ability of an exhibiting institution to isolate revenues resulting from a panda exhibition, resulting in accounting difficulties. The commenter proposes instead that both an institution's accreditation by the American Association of Zoological Parks and Aquariums (AAZPA) and the loan agreement with the exporting country suffice as a test of non-commercial purposes.

Response: The Service does not consider an institution's accreditation by AAZPA to be relevant to the question of whether or not an import is for primarily non-commercial purposes. Indeed, the use of species for primarily commercial or non-commercial purposes is not a criterion for AAZPA accreditation. It is not within the Service's authority to limit those institutions it considers to those that are accredited by AAZPA, a private organization. The Service cannot allow the loan agreement between AAZPA and the exporting country to suffice as a test of primarily non-commercial purposes, since under article III and resolution Conf. 5.10 the test is the actual uses to which a specimen is to be put, and not the transaction between the country of export and the recipient. Furthermore, the loan agreement may or may not be fully descriptive of the uses of the animal or the commercial or non-commercial nature of the loan.

Comment: One commenter objects to the Service's barring entities simply because of their business and tax status, noting the charitable endeavors of America's business corporations in making the point that the Service should not distinguish between public/non-profit and private/profit-making entities.

Response: The Service is aware of many of the fine philanthropic endeavors of many of America's businesses and corporations, which result from their successful commercial activities. The Service urges profit-making animal exhibitors to make contributions that benefit the conservation of species in the wild. The Service does in fact encourage private, for-profit institutions to cooperate with public, non-profit institutions for the benefit of the conservation of threatened and endangered species. As noted above, however, the Convention precludes the trade in Appendix I animals for primarily commercial activities. Although this CITES standard does not preclude the participation of business organizations in the panda exhibition loan activity, a high burden of proof must be borne by such applicants to show that their applications satisfy the "not to be used for primarily commercial purposes" test.

Suitability of Facilities

Comment: One commenter expressed the view that this section of the policy should require applicants to consult with independent experts on the stewardship of the giant panda, as well as the animal welfare community, to ensure humane standards of handling, training, and care for the animals.

Response: We are not aware of independent experts who have had experience with the care and upkeep of giant pandas outside the zoo community, and the policy requires that an applicant consult with at least two other facilities that have had experience with maintaining pandas in recent years. The Service considers that most accredited zoo facilities make every effort to provide humane standards of handling and care for animals. But, regardless of an applicant's sources of advice and expertise, it is the responsibility of the Service to judge the suitability of their facilities on a case-by-case basis.

Comment: The same commenter also felt that the Service should state in the policy that no giant pandas will be used in animal acts or shows during any short-term loans.

Response: While the Service recognizes that use of individuals of some animal species in various entertainment performances may provide desirable exercise, the Service has no information to show that this is desirable for the panda. In the absence of such information and considering that the focus of managing captive pandas should be for breeding purposes, any training or use of pandas for animal acts is seen as distracting from the necessary breeding program. Any use of pandas in animal acts during exhibition loans could encourage such training activities; therefore, the Service agrees that pandas should not be used in animal acts or shows during loans to the United States. Such a stipulation is included in the final policy.

Comment: It was suggested by another commenter that the Service should make accreditation by the AAZPA the standard by which an institution could be deemed to qualify as an appropriate permittee and caretaker of giant pandas. Similarly, another commenter suggested that a recipient facility should have the full support of the AAZPA or other national professional zoo associations.

Response: The Service cannot abdicate or delegate its responsibility under the Convention to make a determination regarding suitability of facilities for the import of giant pandas, although comments and advice from every source will be welcomed and sought when considering each permit application.

Comment: Two commenters objected to making permit issuance conditional on inspection of giant panda facilities by representatives of the PRC. It was felt that such conditioning would set a dangerous precedent for imports of other Appendix I species for display purposes.

Response: The Service recognizes this concern. Approval of facilities by the Chinese has been part of all contractual agreements between the previous applicants and the PRC, and the Service expects this requirement to continue. The Service will continue to request evidence as to whether such a stipulation has been made in the agreement, and, if so, that it has been satisfied before pandas will be allowed to enter the country. If such a stipulation has not been made, the Service will not unilaterally require such inspections, although the Service will conduct whatever review of facilities that it believes warranted.

Comment: A commenter inferred that the statement, "* * * the Service believes that there is sufficient information available that, if followed, would ensure the safety of the pandas and the viewing public," meant, "* * * that the zoological world now has enough knowledge of how to manage giant pandas in a zoo environment that the success of any giant panda short-term exhibition loan or long-term breeding loan would be ensured as long as that knowledge were applied correctly."

Response: The Service essentially agrees with this statement except to note that during any exhibition loan or breeding loan, as well as during any permanent transfer, single catastrophic events can occur such that "success" could not be ensured, nor could successful breeding be assured during any breeding loans/transfers.

Comment: Another commenter considered that it is inadequate to merely require an applicant to present a statement indicating that necessary reviews of other panda facilities have occurred, that features for maintaining and exhibiting pandas have been incorporated, and that zoo staff have proper training. The commenter felt that applicants should be required to submit a detailed explanation of how they intend to house and care for the giant pandas, including a description of how they have complied with the National Zoological Park's recommended measures for giant panda care and facilities. This commenter also questioned the use of "successfully" in the statement that says applicants should, "consult with at least two other facilities that have successfully held pandas in recent years," and whether the definition of success might change "depending on whether long-term or short-term loans were being considered."

Response: The proposed policy stated that, "Applicants should demonstrate that they have consulted with at least two other facilities that have successfully held pandas in recent years, that they have facility designs that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers, have had proper training. Facilities should be fully acceptable to the Service . . ." The operative parts of this statement are first, the word, "demonstrate," and second, the phrase, "Facilities should be fully acceptable to the Service . . ." For all Convention import permits the applicant is already required to submit a detailed description of their facilities and expertise, and the Service feels that these statements are adequate to require as much from an applicant as is necessary to be satisfied that facilities are fully acceptable. Article III, paragraph 3(a), of the Convention requires, among other things, that before an import permit is issued for an appendix I species, "the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it." No other guidance has been provided by the Parties to the Convention. Concerning the use of the term "successfully" in regard to facilities that have held giant pandas in recent years, the Service believes that giant pandas should leave the recipient's facility following a loan period in at least the same condition that they exhibited upon entry.

Response to the Secretariat's Views

Comment: One commenter applauded the statement in the guidelines that, "No exhibition loan permit would typically be issued for animals removed from the wild after December 30, 1986," because this would mean that only captive born pandas would be available for loans. However, they urged the deletion of the word "typically" because this could allow for the removal of more animals from the wild. They were also concerned that the arbitrary nature of the December 30, 1986, date could lead to its being changed easily.

Response: As stated in the proposed guidelines, "The Service will continue its policy of approving applications only if it is sure of the possibility that the loan did not, or will not, contribute to removal of pandas from the wild." The date of December 30, 1986, was designated because the Service first became aware of increased interest in loans in 1987 and considers that the value associated with these loans may have contributed to removal of additional animals from the wild.

Miscellaneous Comments

Comment: One commenter noted that the Service should indicate the likelihood that this policy will change as more information on giant panda biology is obtained. They also suggested that the Service should "implement a mechanism to determine the effects of short-term exhibit loans, including the analysis of the reproductive activity and reproductive success of giant pandas involved in short-term loans in the past and in the future."

Response: It is not possible to indicate in terms of probabilities whether this policy will change or at what frequency, but the Service would anticipate that any significant change in biological knowledge of the giant panda could result in a reappraisal of the policy. Regarding the effects of loans on panda reproduction, we do not anticipate that the number of animals on loan for given periods of time would be large enough to make record keeping difficult, and the Service, in cooperation with the PRC Ministry of Forestry will endeavor to maintain records on those pandas involved in loans to the United States. Permits may be conditioned with a requirement that a report be submitted on the physical condition of an animal during the course of a loan period. Ultimately, follow-up information on effects of loans will have to be derived from records kept by the Chinese, which further increases the importance of encouraging the Chinese to maintain a registry or studbook for captive pandas.

Comment: Another commenter thought that "There should be a waiting period for zoological gardens requesting permits for repeat exhibit loans. A ten-year period may be appropriate."

Response: The Service appreciates this concern, but feels that it is appropriate to make this decision based on the enhancement value to the species on the one hand and potential detrimental affects to the species on the other hand.

Comment: One commenter criticized the excessive flexibility of the policy resulting from the frequent use of terms such as "in general," "usually," "typically," "some," "special circumstances," and "special situations." For instance the statement, "applicants usually must include descriptions of projects to be funded in China," should read, "applicants must include * * *". The commenter felt that the use of these terms in the guidelines allows almost any applicant for giant panda loans to fulfill the stated criteria.

Response: In some cases the use of more specific terms could eliminate the flexibility characteristic of policy and might necessitate the promulgation of rigid regulations under which it would be difficult to provide the individual consideration of permit applications that the Service feels is desirable. Nevertheless, we have reviewed the use of qualifying terms in the policy, such as generally and typically, and omitted those (including the one dealing with descriptions of projects) that did not appear to affect necessary flexibility. This should especially be reflected in

the policy on giant panada loans described at the end of this notice.

Comment: The policy states that, "this proposed policy also addresses long-term loans for breeding purposes * * *"; however, one commenter pointed out that there is no additional reference to long-term loans in the document and urges that provisions for such loans be included.

Response: Loans for breeding purposes in the United States have not been requested, but if imports for such programs should be requested, the Service would generally be supportive of loans for captive breeding efforts. However, whether such loans would disrupt successful breeding activities would have to be considered, and each such request would be considered on a case-by-case basis. Information on which to base policy may change by the time that any such import is requested.

The U.S. Fish and Wildlife Service has reviewed available information, comments received, and present policies to ensure that those loans of giant pandas that are permitted will not be harmful to the survival of the species. To the best of our knowledge, the PRC Ministry of Forestry is developing management plans for panda reserves, and the Chinese Association of Zoological Gardens is making a concerted effort to coordinate and strengthen the captive breeding program for pandas in China. The U.S. policy presented herein was developed to provide all involved and interested parties with the Service's understanding of the issues that it considers important to ensure that loans will not have a detrimental effect on the species and will contribute to specific activities most likely to enhance the propagation or survival of the species. The June 24, 1988, **Federal Register** notice focused on temporary exhibition loans, since recent loans have been of this type. However, this proposed policy also addressed loans for breeding purposes because these loans also may have significant effects on the species.

Policy on Giant Panda Loans

Before any import permit will be granted, it must be reviewed in terms of the applicable requirements of the Convention and the Act by the Service's Offices of Scientific and Management Authority. Issuance of an import permit under the Convention requires prior findings that: (1) The proposed import would not be for purposes detrimental to the survival of the species; (2) the import would not be for primarily commercial purposes; and (3) the permit applicant could suitably house and care for the animals. Issuance of a permit under the Act requires prior determinations that, among other things: (1) The import would be for scientific purposes or to enhance the propagation or survival of the species, in a manner consistent with the purposes and policies of the Act; and (2) issuance of the import permit would not be likely to jeopardize the continued existence of the species. These requirements are further implemented by application requirements and issuance criteria found in 50 CFR 13.12, 17.22, 23.14, and 23.15.

With regard to making the first findings listed above under both the Convention and the Act, the issue is to determine whether the loss of breeding potential as a result of a loan is offset by specific enhancement features in order to allow determinations that the import will be for purposes that are not detrimental and that will enhance the survival of the species. The second determination listed above under the Act (that the action would not be likely to jeopardize the continued existence of the species) would, of course, also have to be made.

Age and Reproductive Potential of Animals Available for Loans

1. Applications to import giant pandas of breeding age would not be considered, even during the non-breeding season, unless the loans are clearly in support of creating breeding opportunities that would enhance the survival of the species, except for special situations where an animal over 18 years of age is already adequately represented by offspring or is unlikely to breed, or for an animal, regardless of age, that is incapable of reproducing (as described below). Breeding loan permit applications would be considered as long as the breeding situation can be shown to contribute to the propagation of the species or to the enhancement of the species, and would not be detrimental to the species' survival.

2. For purposes of this policy guidance, only giant pandas that fall into one of the following categories would be considered eligible for temporary exhibition loans.

(a) Animals that are independent of maternal care but are not yet of breeding age or approaching breeding age. Specifically, this includes females at least 2 years of age at the start of a loan period, and under 4 years at its conclusion; and males at least 2 years of age at the start of a loan period, and under 5 years at its conclusion.

(b) Animals that are more than 18 years of age, especially if they are already represented by offspring and/or are unlikely to breed.

(c) Animals that are incapable of reproducing. (Aggressive or incompatible behavior, or low sperm count would not be acceptable as the sole indicator of an inability to reproduce.) Reproductive incapacity should first be certified by the Endangered Species of Wild Fauna and Flora Import and Export Administrative Office of the PRC, and second, should receive concurrence from veterinary expertise for the applicant and from any additional expertise the Service may request.

3. The following time constraints apply only to exhibition loans of young, non-breeding animals. During a single 1-year loan period in the United States, up to three different institutions may receive and display the pandas for periods of a least 3 months. Each institution following the first in the sequence of exhibitions must have submitted complete application material as well as written authorization from the Chinese Management Authority to the Service no later 6 months prior to the date of the planned exhibition, which must then qualify it for an individual U.S. import permit. The overall loan period should not extend for more than 1 year (or 1½ years in the case of a compatible male/female pair), and each loan should be for a period of at least 3 months, unless health consideration dictate otherwise.

4. The Service will monitor the health of pandas imported, especially prior to the relocation of animals in the United States.

Registry of Animals

1. As part of an application for a permit to import pandas, applicants shall include evidence that all the giant pandas held in captivity at the facility offering animals for loan are included in a registry or family file available to the Ministry of Forestry of the PRC, and the registry will contain information on each panda comparable to that included in international studbooks.

2. The export permit issued by the PRC must certify the age, sex, and origin (whether the animal(s) came from the wild or was born in captivity), and any distinctive marks on each animal.

Conservation Benefits of Specific Projects

1. Permit applications for temporary exhibitions shall include descriptions of conservation projects to be funded. These projects should be designed to implement high priority tasks from the panda reserve and national management plans developed with the PRC, or appropriate captive breeding programs (with supporting information from the Chinese Management Authority if available). Preferably, any management plans or breeding programs cited as including projects to be funded should be formally approved by the Ministry of Forestry of the PRC, but plans or programs that have not been officially approved will be considered. (The Service will identify the specific projects to which resources would be committed by the applicant as part of the **Federal Register** notice for each such endangered species permit application.)

2. Projects supported through loans or permanent transfers of pandas into captive breeding programs will also be considered in deciding whether enhancement criteria under the Act (50 CFR 17.3 & 17.22) have been met.

3. The ultimate objective of managing captive pandas should be for breeding purposes and any training or use of pandas in animal acts would be considered as detracting from this objective; therefore permit applications to import giant pandas to be used in animal acts or shows during the loan period would not be considered, and such uses would be foreclosed by condition included in permits issued for other, acceptable educational/conservation uses.

Determination of Whether Import is for Primarily Non-commercial Purposes

With regard to the determination of whether an exhibition loan of giant pandas is not to be used for primarily commercial purposes, the Service will utilize the following policy:

1. Resolution Conf. 5.10 of the Conference of the Parties to the Convention establishes that the nature of the transfer between the owner in the country of export and the recipient in the country of import may be commercial. It is the intended use of the specimens in the country of import that must not be for primarily commercial purposes, and it is the responsibility of the recipient country's Management Authority to make this determination. The resolution further establishes that there may be some commercial aspects of that use, but that the non-commercial uses must predominate in order to be deemed primarily non-commercial.

2. Public, non-profit institutions, organizations and agencies will receive consideration for panda loans. The Service's general regulations at 50 CFR 10.12 define "public" institutions as those that * * * "are open to the general public and are either established, maintained, and operated as a government service, or are privately endowed and organized but not operated for profit." Although commercial organizations may also choose to apply for such loans, the profit-making characteristics of such organizations will make it more difficult for the Service to find that the specimen(s) proposed for import is not to be used primarily for commercial purposes. As in all cases, the burden rests with the applicant to show that this CITES requirement is satisfied. Of necessity, the burden of proof will be higher for commercial enterprises than for non-profit entities.

3. It is the Service's policy that funds or other valuable considerations raised directly or indirectly by a public institution or other organization that are obtained by the organization(s) or institution(s) involved as result of the exhibition loan are, to the extent that such funds or other valuable considerations exceed the expenses that are properly attributable to the exhibitions, to be used entirely for the following non-commercial purposes: the conservation of the giant panda, the conservation of other endangered species, and/or the general conservation of fauna and flora.

Collection of revenues from the panda exhibition by the importing institution, either for its own use or for the use of other organizations, for purposes other than those described above, would be judged to be a primarily commercial activity, as would the use of revenues for profit-making purposes.

4. Each applicant for a panda loan, in satisfying the applicable requirements of 50 CFR subchapter B, should submit a detailed plan for the allocation of all funds raised in excess of expenses, as a result of the panda loan.

5. Each recipient of a permit to obtain a panda loan would likely be required, in accordance with 50 CFR 13.45, to submit an annual report to the Director as a condition of the permit. The annual report shall contain a full accounting of all funds raised directly or indirectly by the institution or organization, the portion of those funds that is in excess of expenses, and the uses to which those funds have been or will be put, in accordance with the plan submitted previously to the Service.

These policy considerations will be used by the Service only for determining whether panda imports for short-term exhibition purposes are primarily commercial in nature. They are not intended to apply to other Appendix I import permit applications. All such applications must continue to demonstrate that the proposed import meets the general requirements of resolution Conf. 5.10 to satisfy the "not to be used for primarily commercial purposes" test.

Suitability of Facilities

Under the Convention, the Service must be "satisfied that the proposed recipient of a living specimen [to be imported] is suitably equipped to house and care for it;". To aid in satisfying this requirement, applicants must demonstrate that they have consulted with at least two other facilities that have successfully held pandas in recent years, that they have facility designs that address the National Zoological Park's recommended measures for giant panda care and facilities, and that zoo staff, especially keepers, have had proper training to care for pandas. Since approval of facilities by the Chinese has been part of all contractual agreements between the applicant and the PRC in the past, the Service expects this requirement to continue. Therefore, the applicant should also provide evidence as to whether such a stipulation has been made in the agreement and, if so, as a condition of the permit, the applicant would certify that the agreement stipulation has been satisfied before animals will be allowed to enter the country.

Response to the Secretariat's Views on Giant Panda Loans

The Service notes with approval the recommendation of the Secretariat that no exemptions be granted to the requirements of Article III of the Convention for the shipment of giant pandas, even for animals that might otherwise qualify for an exemption as "pre-Convention" animals under Article VII. However, the Service does not currently have the authority to refuse to accept a valid pre-Convention certificate. If the Management Authority of the country of origin or of the country of re-export does not issue a pre-Convention certification, the Service will require a U.S. import permit and export permit or re-export certificate, as appropriate, from the exporting country in accordance with Article III of the Convention. The Service will also continue its policy of approving applications only if it is sure of the possibility that the loan did not, or will not, contribute to removal of pandas from the wild, and that non-commercial purposes for the loan predominate. No exhibition loan permit would typically be issued for animals removed from the wild after December 30, 1986.

Note.—The information collection requirements identified in this policy as part of the permit application have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. The additional information collection requirements.

especially as pertains to the annual report(s) contained in item 5 of the section titled, "Determination of whether import is for primarily non-commercial purposes", will be submitted to the Office of Management and Budget for approval and will not be required until they have been approved by that Office.

Authority: The authority for this action is the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and the Endangered Species Act of 1973, as amended (16 U.S.C.1531–44).

Dated: December 3, 1990.

Richard N. Smith,

Acting Director, Fish & Wildlife Service.

[FR Doc. 91–6111 Filed 3–13–91; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV–90–252PR]

Proposed Increase in 1990–91 Budgeted Expenditures for the Pear Commodity Committee; California Fresh Pears, Plums, and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize an increase in expenditures for the Pear Commodity Committee (committee) established under Marketing Order No. 917 for the 1990–91 fiscal period. The fiscal period covers the period March 1, 1990, through February 28, 1991. The expenses would be increased from $1,138,367 to $1,141,342. The $2,975 increase is needed to cover unforeseen administrative expenses. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by March 25, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California pears regulated under this marketing order, and approximately 300 pear producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California pear producers and handlers may be classified as small entities.

Marketing Order No. 917, administered by the Department, requires that the assessment rate for the committee for a particular fiscal year shall apply to all assessable pears handled by regulated handlers from the beginning of that period. The fiscal period covers the period March 1, 1990, through February 28, 1991. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are pear producers and handlers. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area, and are in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing the anticipated expenses by expected pear shipments in 38 pound cartons or equivalents. Because that rate is applied to actual shipments, it must be established at a rate that will produce sufficient income to pay the committee's expected expenses.

A final rule published in the Federal Register on August 29, 1990 (55 FR 35294), incorrectly authorized 1990–91 fiscal period expenditures of $865,750. The total authorized expenditures should have been $1,138,367, as proposed in the Federal Register on August 3, 1990 (55 FR 31605), and as described in the supplemental information of the final rule. The final rule also fixed an assessment rate of $0.25 per 36 pound box, or equivalent, of assessable pears handled by handlers under M.O. 917 during the 1990–91 fiscal period.

At its January 30, 1991, meeting, the committee voted unanimously to increase its budget of expenses from $1,138,387 to $1,141,342. The proposed $2,975 increase is needed to cover the cost of unforeseen administrative expenses. No change in the assessment rate was recommended. Adequate funds are available to cover the increase in expenses proposed by this action.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 10 days is appropriate because the budget increase approval should be expedited. The committee needs authority to pay the additional expenses as soon as possible.

List of Subjects in 7 CFR Part 917

Marketing agreements, Pears, Plums and peaches, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 917 be amended as follows:

Note: This section will not appear in the annual *Code of Federal Regulations.*

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 917.254 is revised as follows:

§ 917.254 Expenses and assessment rate (Revised).

Expenses of $1,141,342 by the Pear Commodity Committee are authorized, and an assessment rate of $0.25 per 36 pound box, or equivalent, of assessable pears is established for the fiscal year ending February 28, 1991. Unexpended funds may be carried over as a reserve.

Dated: March 11, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–6113 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

Agriculture Stabilization and Conservation Service

7 CFR Part 723

Farm Marketing Quotas, Acreage Allotments, and Production Adjustment; Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Proposed rule.

SUMMARY: The proposed rule amends the regulations at 7 CFR part 723 to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 (Pub. L. 101–577), enacted November 15, 1990) with respect to the burley tobacco marketing quota program. The proposed rule permits, effective for the 1991 and subsequent crop years, the sale of burley tobacco marketing quota from one farm to another farm in the same county; requires, beginning with the 1994 crop, that a burley tobacco farm quota will be reduced to zero if no tobacco is planted or considered planted in two out of the three immediate preceding years on the farm for which such quota is established; increases the burley tobacco lease limitation from 15,000 to 30,000 pounds for the receiving farm; permits the lease and transfer of burley tobacco quota from one county to any other county in the State of Tennessee provided a majority of active burley tobacco producers approve such lease and transfer by a state-wide referendum; and restricts the transfer of burley tobacco quota which transfers with the divided land when a farm is divided through reconstitution.

In addition, the proposed rule amends the regulations to require burley tobacco quotas to be reduced when there is no cropland suitable for the production of a crop on the farm for which such quota is established; redefines the term "active burley tobacco producer"; revises the period required to share in the risk of producing flue-cured tobacco that is purchased or reallocated; sets forth the actions that will be taken by ASCS if burley and flue-cured tobacco dealers do not comply with end-of-marketing year purchase and resale reporting and inspection requirements; requires burley and flue-cured tobacco warehouse operators and dealers that purchase from processors and manufactures tobacco that is in the form not normally marketed by producers to maintain certain records and provide for the inspection and weighing of such tobacco by an ASCS representative; adds a scheme and device provision; and provides for the collection of tobacco marketing assessments as set forth in the Omnibus Budget Reconciliation Act of 1990.

DATES: Comments must be received on or before March 29, 1991, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750—South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Raymond S. Fleming, Agricultural Program Specialist, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4318.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

Information collection requirements contained in the current rule have been approved by OMB through May 31, 1992, under the provisions of 44 U.S.C., chapter 35 and have been assigned OMB #0560–0058 and #0560–0006. These information collections have not changed as a result of this proposed rule, however, an addendum will be sent to OMB reflecting any change in requirements. Public reporting burden for the collections of information contained in this regulation are estimated to range from 5 minutes to 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule is necessary to implement the provisions of the Farm Poundage Quota Revisions Act of 1990 which amended the Agricultural Adjustment Act of 1938 (hereinafter referred to as the "1938 Act") and the Omnibus Budget Reconciliation Act of 1990. Additionally, the proposed rule provides changes to the current regulations to strengthen the administration of the burley and flue-cured tobacco programs.

Discussion of Proposed Changes

The major provisions of this proposed rule are as follows:

(1) *Sale of burley tobacco marketing quota.* Currently, regulations provide that burley tobacco marketing quota can be sold only under mandatory sales provisions set forth in section 316B of the 1938 Act. The Farm Poundage Quota Revisions Act of 1990 as amended section 319(g) of the 1938 Act to provide that effective for the 1991 crop, burley tobacco quota may be voluntarily sold from one farm to another farm in the same county if the buyer, who is an active tobacco producer, is not buying an amount larger than 30 percent of the existing quota for the buyer's farm, or 20,000 pounds whichever is greater. The term "active burley tobacco producer" means any person who shared in the risk of producing a crop of burley tobacco in not less than one of the three years preceding the year involved, or any person who intends to become an active burley tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator. The term "shared in the risk of production" is currently defined at 7 CFR 723.104. Section 319(g) further provides that no sale of burley tobacco quota from a farm shall be permitted if any sale of quota to the same farm has been made within the three immediate preceding years. The marketing quota determined by any farm subsequent to each sale shall not exceed an amount determined by multiplying the farm yield by 50 percent of the acreage of cropland in the farm. To be effective for the current crop year a record of the sale shall be filed with the county committee not later than July 1 of the crop year.

The proposed rule provides that once a burley tobacco quota is purchased under the provisions of section 319(g) of the 1938 Act, the purchaser must share, for a period of three years, in the risk of production of tobacco produced under the quota or the quota shall be sold or forfeited in accordance with the provisions at 7 CFR 723.219.

(2) *Loss of burley tobacco quota for nonuse.* Section 319(h) of the 1938 Act provides that if burley tobacco quota established for a farm will be reduced to zero effective for the 1994 crop year on any farm that does not have burley tobacco planted or considered planted credit in two of the three immediately preceding years. Currently a farm can retain its quota if the farm has planted or considered planted credit in one of the five immediately preceding years.

(3) *Increase burley tobacco lease limitation.* Section 319(g) of the 1938 Act provides that the amount of quota that may be leased and transferred to any farm be increased from 15,000 pounds to an amount not more than 30,000 pounds.

(4) *Cross county leasing of burley tobacco quota in the State of Tennessee.* Section 319 of the 1938 Act is amended to permit the lease and transfer of burley tobacco quota from one farm to any other farm within the State of Tennessee. To be effective for the 1991 and subsequent crop years, burley tobacco producers within the State must approve such lease and transfer by a State-wide referendum. Currently, burley tobacco quota can be transferred by lease to only farms within the county unless the farm is eligible to lease and transfer quota after July 1 under the disaster lease and transfer provisions at 7 CFR 723.216(g).

(5) *Restriction on the division of burley tobacco quotas through reconstitutions.* The Farm Poundage Quota Revisions Act of 1990 amended section 379 of the 1938 Act to provide, effective beginning with the 1991 crop year, when a farm is divided through reconstitution, the burley tobacco farm poundage quota which transfers with the divided land shall not be less than 1,000 pounds. The law exempts the 1,000 pounds limitation when the reconstitution of the farm is among immediate family members or pursuant to probate proceedings.

The intent of the law is to stop the proliferation of farms with a small amount of burley tobacco quota. Approximately 146,000, or 46 percent of burley tobacco farms, have a quota that is less than 1,000 pounds. This has occurred, in part, because land with burley quota is being subdivided into small parcels which receive a small amount of quota. This large number of small quota farms has contributed to the under production of the national marketing quota in recent years. For instance, in 1989 only 75 percent of the national quota was marketed by producers. In 1988, 84 percent of the national quota was marketed.

The law does not specify the disposition of that quota which is less than 1,000 pounds or the manner in which farms must comply with the 1,000 pounds minimum quota. As a means for implementing the law, consideration was given to reducing the quota to zero on all farms that would receive less than 1,000 pounds. Reduced the quota to zero would have an adverse effect on land values and the owners of land with burley quota. There was also concern that the quota would leave the county and State where it was originally established. Also there was no provision for persons who acquire land with a quota of less than 1,000 pounds to retain this quota by combining the land with other land that they own or to purchase additional quota that would result in the farm having at least 1,000 pounds of quota. Because of these adverse effects, consideration was given to a method that would provide the owners of divided farms with less than 1,000 pounds of quota the opportunity to take action that would comply with the law.

The proposed rule provides that owners of divided farms with less than 1,000 pounds of burley tobacco quota can sell the quota, purchase additional quota to meet the 1,000 pounds minimum, or combine the divided farm with other land owned by the same person so that the combined farm has at least 1,000 pounds of quota. The owners of divided farms in this situation must take action to comply with the law by July 1 of the current crop year or the quota is reduced to zero.

By having the opportunity to sell the quota, landowners can receive financial benefit from the sale. Also, quota transferred by sale will remain in the county where it was originally established. Burley tobacco producers have the opportunity to purchase additional quota so that the farm will have at least 1,000 pounds. The owners can also combine the divided farm with other land that they own so that the combined farm has at least 1,000 pounds of quota.

(6) *Determining preliminary burley tobacco quota.* Current regulations provide that the preliminary farm marketing quota will not be established for a farm when the farm or all the cropland has gone out of agricultural production and eminent domain procedure does not apply. The term "agricultural production" means cropland that is no longer suitable for the production of crops due to growth of trees and brush. Under the current regulations, burley tobacco quotas have been permitted to remain on these farms. Producers have been permitted to lease and transfer the quotas to other farms to receive planted credit for history purposes and maintain the quota on the farm.

The proposed rule would require the preliminary farm marketing quota to be zero if the county committee determines that there is no cropland on the farm suitable for the production of a crop.

(7) *Burley and flue-cured tobacco dealer registration.* The current

BEST COPY AVAILABLE

regulations provide that each person who expects to purchase and resale burley and flue-cured tobacco during a marketing year shall annually register with the US Department of Agriculture for the respective marketing year. Dealer applications are approved by the State ASC committee in the State in which the application is filed.

There have been reported incidences of persons filing applications for and receiving dealer identification cards that are not bona fide tobacco dealers. OIG investigations have disclosed that some dealers that obtain dealer identification cards do not file reports and maintain records that are required by regulations. There have been incidences of dealers that never file reports of purchases, however, other dealers show large amounts of tobacco purchased from such dealers. Each dealer purchases and resales of tobacco are reconciled at the end of each marketing year. When a dealer's resales of tobacco exceeds the pounds purchased, the dealer is subject to a marketing quota penalty for each pound of excess resales. Indications are that persons are obtaining dealers cards with no intentions of actually dealing in the purchase and resale of tobacco but are allowing their dealer card to be used by other dealers to report purchases of tobacco that are only paper transactions and no actual tobacco changed hands. In this way dealers can hide excess resales thereby avoiding the penalty due.

The proposed rule would provide the State ASC committee the authority to not approve a dealer application if the State ASC committee has reason to doubt that the application is by a bona fide dealer or doubt that the applicant has the intention to become a bona fide dealer until such time as the applicant furnish information to substantiate to the satisfaction of the State ASC committee that such dealer operation is bona fide.

(8) *Dealer records and reports.* Section 373 of the 1938 Act provides that the Secretary may require persons engaged in the business of purchasing tobacco to report to the Secretary such information and keep such records as the Secretary finds necessary to carry out the provisions of the tobacco program as set forth in the 1938 Act.

Sections 311–314 of the 1938 Act provides the Secretary with the authority to regulate producers, warehouse operators, and dealers as the Secretary finds necessary to implement acreage allotments and marketing quotas in the tobacco program.

State and County Agricultural Stabilization and Conservation Service offices report that individuals who deal in purchasing and reselling of tobacco have failed to provide complete and timely reports of all tobacco purchases and resales, and such dealers have not provided timely access to tobacco for the purpose of inspection as provided for in the regulations currently in effect. Regulations require marketing penalties when resales of tobacco under quota exceed purchases of such tobacco. Dealers are able to avoid or delay payment of marketing penalties by delaying the reporting and inspection requirements.

Current tobacco regulations provide that all purchases and resales of flue-cured or burley tobacco similarly shall be recorded on ASCS Form MQ–79. An ASCS Form MQ–79 showing "final" shall be submitted at the end of the dealer's annual marketing operation, but not later than December 15 for flue-cured tobacco dealers and April 1 for burley tobacco dealers. Additionally, dealers must report on the final ASCS Form MQ–79 any tobacco on hand and the location of such tobacco. Such tobarro must be weighed and made available to ASCS officials for eventual inspection and reinspection. Under the proposed rule, the current deadline dates for dealer end-of-marketing year reporting requirements would be January 15 for flue-cured and remains at April 1 for burley tobacco dealers. If the dealer has not complied by such date, ASCS will immediately issue the dealer a notice of reporting noncompliance. The dealer will be given 15 days to comply or show cause why compliance is not feasible. After 15 days from the date of the notice, should the dealer still not have complied with reporting requirements, the dealer will not be eligible to receive a MQ–79–2 (dealer identification card), to purchase and resale tobacco in the following marketing year. All appeals with respect to this determination must be filed in accordance with 7 CFR part 780.

(9) *Sharing in the risk of production.* Section 316B(a) of the 1938 Act provides for the mandatory sale of certain burley tobacco marketing quotas.

Section 316B(c)(1)(B) provides that any person who purchases burley tobacco quota under subsection (a) of this section and fails for a five year period to share in the risk of producing burley tobacco under such quota shall sell the purchased quota or the quota shall be subject to forfeiture.

Section 316(g) of the 1938 Act provides for the voluntary sale of flue-cured tobacco allotments and quotas. This section provides that a person that purchases flue-cured allotment and quota shall share in the risk of production of such quota or such quota shall be subject to forfeiture or sale, however, no time limitation on sharing in the risk of production is specified in the law.

By regulations issued by the Department, a five year period for sharing in the risk of production has been used for both flue-cured and burley tobacco. The proposed rule would amend the current regulations to reduce from five years to three years the period for sharing in the risk of production of flue-cured tobacco quota purchased under the provisions of section 316(g) of the 1938 Act. The three year period for sharing in the risk of production of purchased allotment and quota should be sufficient to prevent speculation (buying and selling for a profit) of flue-cured tobacco quota.

(10) *Tobacco marketing assessments.* The Omnibus Budget Reconciliation Act of 1990 requires, effective for the 1991 through 1995 crops of tobacco for which price support is available, that both the producer and the purchaser of such tobacco marketed shall each remit to the Commodity Credit Corporation (CCC) a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such crop. The CCC will determine and announce the marketing assessment for each of the 1991 through 1995 crops of the respective kinds of tobacco. The proposed rule will provide minor changes in the regulations with respect to tobacco dealers reporting and remitting tobacco marketing assessments.

(11) *Scheme and device.* Current regulations do not provide a scheme and device provision with respect to tobacco producers, warehouse operators, dealers, and other persons who intentionally act to defeat the purpose of the tobacco program regulations. The proposed rule would provide for assessing penalties in such a manner as will correct and nullify any action in which a person or entity adopted any scheme or device to defeat the purpose of the regulations.

(12) *Other minor revisions effecting flue-cured and burley tobacco warehouse operators and dealers.* The proposed rule amends the regulations at 723.406 to provide for the inspection by an ASCS representative of flue-cured and burley tobacco purchased by warehouse operators and dealers that is classified as not in the form normally marketed by producers. Also, the proposed rule amends the regulations at § 723.410 to clarify warehouse operators and dealers responsibility for the collection of penalties due on nonauction purchases of tobacco. These changes are necessary to strengthen the administration of the flue-cured and burley tobacco programs.

List of Subjects in 7 CFR Part 723

Acreage allotment, Marketing quotas, Reporting and recordkeeping requirements, Tobacco.

Proposed Rule

For the reasons set forth in the preamble, chapter VII, title 7, part 723 is amended as follows:

PART 723—TOBACCO

1. The authority for part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311, 1312, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1314–d, 1314–f, 1314–h, 1315, 1316, 1363, 1372–75, 1377, 1378, 1379, 1421, 1445, 1445–1, and 1445–2.

2. Section 723.104 is amended by amending paragraph (b) to remove the terms "Active burley tobacco producer" and "active flue-cured tobacco producer" and add new terms "Active burley and flue-cured tobacco producer" and "Damaged tobacco". The definition of the term "Base period" is revised to read as follows:

§ 723.104 Definitions.

* * * * *

(b) *Terms.* * * *

Active burley and flue-cured tobacco producer. (1) Any person who shared in the risk of producing a crop of burley or flue-cured tobacco in at least one of the three years preceding the current year, or

(2) Any person who intends to become a burley or flue-cured tobacco producer in the current year by sharing in the risk of producing the crop and who provides a certification of such intentions on a form approved by the Deputy Administrator.

* * * * *

Base period. The 5 calendar years immediately preceding the year for which farm acreage allotments or marketing quotas are currently being established. For burley tobacco marketing quotas established effective for the 1994 and subsequent crop years, the base period shall be the 3 calendar years immediately preceding the year for which farm marketing quotas are currently being established. For all other kinds of tobacco the five year base period shall remain in effect.

* * * * *

Damaged tobacco. Any tobacco that is offered for sale at nonauction that has suffered a loss of value due to:

(1) Fire, smoke, water or other natural causes or;

(2) Deterioration resulting from aging such as rot, separation of leaves from stems, or other conditions that would cause such tobacco to be distinguishable different from that normally marketed in trade channels.

* * * * *

3. Section 723.201 is amended by revising paragraph (b) by adding (b)(5) to read as follows:

§ 723.201 Determination of preliminary farm acreage allotments and preliminary farm marketing quotas

* * * * *

(b) * * *

(5) All the cropland on the farm has been determined by the county ASC committee to be no longer suitable for the production of a crop and provisions of part 704 of this title does not apply.

* * * *

4. Section 723.208 is amended by revising paragraph (b) to read as follows:

§ 723.208 Determination of acreage allotments, marketing quotas and yields for divided farms.

(a) * * *

(b) *Burley tobacco.*—(1) *Division of farm marketing quota.* The farm marketing quota for the divided farm shall be divided according to part 719 of this title. Other basic data shall be apportioned among the resulting farms in the same proportion as the farm marketing quota.

(2) *Divided burley tobacco farms with less than 1,000 pounds of quota.* If a farm is divided through reconstitution and the burley tobacco poundage quota which transfers with the resulting farms receive less than 1,000 pounds of quota, the owners of such farms shall take action by July 1 of the current crop year to increase the quota to a minimum of 1,000 pounds or the quota shall be reduced to zero. The quota on the divided farms may be increased by:

(i) Combining the farm having less than 1,000 pounds with other land owned by the same person so that the combined farm has a minimum of 1,000 pounds of farm marketing quota, or

(ii) Purchasing a sufficient amount of quota so that the farm has at least 1,000 pounds of quota.

(3) *Effective quota.* For the current crop year, the effective farm marketing quota on the divided farms shall be zero for leasing and planting purposes until the farm complies with the 1,000 pounds minimum quota.

(4) *Sale of quota.* If the owners of the divided farms fail to increase the quota on such farms to a minimum of 1,000 pounds, the owner may sell the quota by July 1 of the current crop year.

(5) *Reduction of quota.* The county ASC committee shall reduce the quota to zero on the divided farms if the owners of such farms fail to take action as provided in paragraph (b)(2) and (4) of this section.

(6) *Farm exemptions.* Farms exempt from the 1,000 pounds minimum quota limitation are farm divisions:

(i) Among immediate family members.

(ii) Through probate or,

(iii) Where common ownership tracts are divided by the contribution method according to part 719 of this title or,

(iv) When the buyer and purchaser can furnish proof acceptable to the county ASC committee in accordance with guidelines provided by the Deputy Administrator that the transaction was finalized prior to November 15, 1990.

* * * * *

5. Section 723.216 is amended as follows:

A. By revising the introductory text of paragraph (a) and paragraphs (a)(1) (i), (ii), and (iii), and (e)(5)(iv);

B. By adding paragraph (e)(5)(ix);

C. By revising paragraphs (e)(6)(i), (e)(7)(i) introductory text and (e)(7)(iii);

D. By adding paragraphs (e)(7) (vii) and (viii);

E. By revising paragraph (e)(8)(iii) and adding paragraph (e)(8)(v);

F. By revising paragraph (f)(6)(i) introductory text and paragraph (f)(7)(iii).

The revised and added text reads as set forth below.

§ 723.216 Transfer of tobacco acreage allotments or marketing quotas by sale or lease.

(a) *Owners of life estates.* Except with respect to cigar binder (types 54 and 55) tobacco, tobacco acreage allotments or marketing quotas may be transferred between eligible farms in accordance with the provisions of this section. A person who owns a life estate in all or part of a farm shall be considered an owner who possesses all rights to sell, lease, or otherwise transfer tobacco acreage allotments or marketing quota as permitted in this section irrespective of the party who possesses a future interest in the farm.

(1) *Types of Transfers.* * * *

(i) Cigar-filler (type 46) and cigar-filler (types 42, 43, and 44), tobacco transfers may be by lease only.

(ii) Flue-cured tobacco, transfers may be by:

(a) Sale, or

(B) Lease under certain natural disaster conditions provided in this section.

(iii) Burley tobacco, transfers may be by:

(A) Lease
(B) Owner, or
(C) Sale.
* * * * *
(e) * * *
(5) * * *
(iv) *Filed on or before July 1.* Unless the receiving farm is administratively located in the same county as the transferring farm. *Provided,* that for 1991 and subsequent crops burley tobacco producers in the State of Tennessee shall be permitted to lease and transfer burley tobacco quota to any other farm in the State if a majority of active burley tobacco producers within the state approve such lease and transfer in a State-wide referendum to be conducted prior to July 1, 1991.
* * * * *
(ix) *Divided farms with less than 1,000 pounds of quota.* If the farm has been divided by reconstitution and the divided farm has a farm marketing quota of less than 1,000 pounds subject to being reduced to zero pursuant to § 723.208(b) of this part.
(6) *Receiving farm restrictions.* * * *
(i) *Filed on or before July 1.* If the transfer agreement is filed on or before July 1:
(A) Unless the receiving farm is administratively located in the county as the transferring farm. *Provided,* that the provisions of paragraph (e)(5)(iv) of this section are not applicable.
(B) If the pounds of quota being transferred to the farm exceed the smaller of 30,000 pounds or the difference between the farm marketing quota and one-half the result obtained by multiplying the acres of cropland on the farm by the farm yield.
* * * * *
(7) *Selling farm restrictions.* * * *
(i) *Previously purchased and/or reallocated quota.* If the farm marketing quota was brought and/or reallocated from quota previously forfeited as provided in § 723.219(i)(1) and the purchase and/or reallocation became effective within the three preceding years; if the purchased and/or reallocated quota was obtained from quota purchased and/or reallocated as provided in paragraph (b) of this section within the four preceding years. However, this provision shall not be applicable if:
* * * * *
(iii) *Pounds of sale.* The pounds transferred by sale shall be based on part or all of the farm poundage quota.
* * * * *
(vii) *Consent of lien holder.* If the farm is subject to a lien unless the lien holder agrees in writing to the transfer. However, consent of a lien holder is not required for a transfer of the pounds of quota for which forfeiture is required in accordance with the provisions of § 723.219 of this part.
(viii) *Quota is subject to an approved Conservation Reserve Program Contract.* If the quota has been reduced because of an approved Conservation Reserve Program contract according to part 704 of this title unless forfeiture is otherwise required.
* * * * *
(8) * * *
(iii) *Quota previously sold.* If quota was sold from the farm in the current or either of the two preceding years.
* * * * *
(v) *Quota limitation.* If the sum of the pounds of quota being transferred in the current year exceeds the larger of:
(A) 30 percent of the receiving farm's existing quota, or (B) 20,000 pounds.
* * * * *
(f) * * *
(6) * * *
(i) *Previous purchased and/or reallocated quota.* If a farm marketing quota includes quota that was purchased and/or reallocated from the quota which has been forfeited and the purchase and/or reallocation became effective in the three preceding years. However, this provision shall not be applicable if:
* * * * *
(7) * * *
(iii) *Quota previously sold.* If the farm owner sold quota from a farm during the current or any of the two preceding years.
* * * * *

6. Section 723.219 is amended by revising paragraphs (c) (1) and (2), adding paragraph (d)(3)(iii), and revising paragraph (h) to read as follows:

§ 723.219 Forfeiture of burley tobacco marketing quota.

* * * * *

(c) *Buyers of quota fails to share in the risk of production—(1) Forfeiture required.* If any person buys burley tobacco quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the 3 crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted. However, any purchaser or subsequent purchaser of quota required to be sold under the mandatory sale to prevent forfeiture, provisions of paragraph (b) of this section shall be required to share in the risk of production of such quota for five crop years beginning with the crop year for which the purchase became effective.

(2) *Failure to utilize purchased quota* for the production of tobacco shall not result in the forfeiture of such quota, but the three year period and the five year period which is specified in paragraph (c)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.
* * * * *
(d) * * *
(3) * * *
(iii) The affected person knowingly failed to take steps to prevent forfeiture of burley tobacco quota.
* * * * *
(h) *Forfeiture of reallocated quota.* Any burley tobacco quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (c)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.
* * * * *

7. Section 723.220 is amended by revising paragraphs (e) (1) and (2) and (k) to read as follows:

§ 723.220 Forfeiture of flue-cured tobacco acreage allotment and marketing quota.

* * * * *

(e) *Buyers of allotment fails to share in the risk of production—(1) Forfeiture required.* If any person buys flue-cured acreage allotment and quota and such person fails to share in the risk of producing the tobacco which was planted subject to such quota during any of the three crop years beginning with the crop year for which the purchase became effective such person shall forfeit the purchased quota if it is not sold on or before December 31 of the year after the crop year in which such crop was planted.

(2) *Failure to utilize purchased allotment and quota.* Failure to utilize purchased allotment and quota for the production of tobacco shall not result in the forfeiture of such quota, but the 3 year period which is specified in paragraph (e)(1) of this section shall be extended 1 year for each year for which the quota is not utilized.
* * * * *
(k) *Forfeiture of reallocated allotment and quota.* Allotment and quota which is reallocated in accordance with the provisions of this section shall be forfeited if the applicant to whom the quota is reallocated fails to share in the risk of producing a crop of tobacco which is subject to such quota during any of the 3 years beginning with the crop year during which the quota is reallocated. The amount of farm marketing quota which must be forfeited shall be determined in the same manner which is specified in paragraph (e)(4) of this section with respect to the forfeiture of purchased quota. Any forfeiture of quota shall occur on December 1 of the year in which the applicant fails to share in the risk of production of tobacco which is produced subject to such quota. While the failure to utilize a quota shall not subject the quota to forfeiture, the 3 year period which is specified in this paragraph shall be extended by 1 year for each year in which the quota is not utilized.
* * * * *

8. Section 723.401 is amended by adding paragraph (c) to read as follows:

§ 723.401 Registration of burley and flue-cured tobacco dealers and warehouse operators.

* * * * *

(c) *Disapproval of request for dealer card.* If the State ASC committee in the State in which the application is made has reasons to doubt that the applicant is a bonafide dealer or intends to become a bonafide dealer, the application may be disapprove until such time as the applicant furnishes information to substantiate to the satisfaction of the State ASC committee that such applicant's operation is bonafide.

9. Section 723.404 is amended by revising paragraphs (b)(1)(viii), (c)(2)(iii) and (c)(3)(ii), and the introductory text of paragraph (d)(5) and paragraphs (d)(6) and (8) and adding paragraph (d)(9) to read as follows:

§ 723.404 Dealers records and reports, excluding cigar tobacco buyers.

* * * * *
(b) * * *
(1) * * *
(viii) The amounts remitted for the No Net Cost and the Tobacco Marketing Assessments.
* * * * *
(c) * * *
(2) * * *
(iii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer who identifies the tobacco for marketing with a marketing card which has zero pounds as the 103 percent entry on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.
(3) * * *
(ii) For nonauction purchases which are made by the dealer from producers, the dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. However, the No Net Cost Assessment shall not be remitted from a producer if the marketing card used to identify a kind of tobacco shows a converted penalty rate of 100 percent. A marketing penalty at the full rate shall be collected on the marketings identified by such card. the amount of the No Net Cost and the Tobacco Marketing Assessments which is applicable for each kind of tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.
(d) * * *
(5) At the end of the dealer's marketing operation, but not later than April 1 for tobacco other than flue-cured and January 15 for flue-cured tobacco, such dealer shall for each kind of tobacco:
* * * * *
(6) Notwithstanding the provisions of paragraph (d)(5) of this section, any dealer having tobacco transactions after January 15 for flue-cured and April 1 for other than flue-cured shall make reports on Form MQ–79 at the end of each week, as provided in paragraph (d)(3) of this section.
* * * * *
(8) In addition to forms MQ–79 and MQ–72–2, if applicable, form MQ–79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ–79. A check, draft, or money order in the amount of the collections recorded on form MQ–79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ–79 and MQ–79 (Supplemental).
(9) Any flue-cured or burley dealer who fails to comply with all provisions of paragraph (d)(5) of this section by January 15 for flue-cured and April 1 for burley tobacco will be issued a notice of noncompliance and the dealer shall be given 15 days to either comply or show cause why compliance is not feasible. Failure to complete all required actions within 15 days from date of such notice shall result in such dealer not being issued a MQ–79–2 for the marketing year immediately following the marketing year in which the dealer failed to conform with the deadline of January 15 for flue-cured April 1 for burley tobacco.
* * * * *

10. Section 723.406 is amended by adding paragraph (e) to read as follows:

§ 723.406 Provisions applicable to damaged tobacco or to purchases of tobacco from processors or manufactures.

* * * * *

(e) *Dealer records and reports.* (1) Any dealer, warehouse operator or other persons who purchased tobacco classified as not in the form normally marketed by producers shall keep such records as will enable such person to report to the State ASCS office the following:
(i) Name of seller, pounds purchased, and date of purchase.
(ii) The disposition of such tobacco including name of buyer, pounds sold, date of sale.
(2) Upon request by the State ASCS office such person shall provide for the inspection and weighting of the tobacco to be witnessed by an ASCS representative.

11. Section 723.407 paragraphs (b)(7), (d), and (f)(3) are revised to read as follows:

§ 723.407 Cigar tobacco buyer's records and reports.

* * * * *

(b) * * *

(7) The amounts remitted for the No Net Cost and Tobacco Marketing Assessments.

* * * * *

(d) The dealer shall remit the producer's and the dealer's share of the No Net Cost and Tobacco Marketing Assessments as provided in part 1464 of this title. The dealer may deduct the producer's share of each assessment from the price paid for the tobacco. The No Net Cost Assessment shall not be collected from a producer who identifies the tobacco for marketing with a marketing card which has a converted penalty rate of 100 percent on the marketing card. A marketing penalty at the full rate shall be collected on the marketings identified by such card. The amount of the No Net Cost and Tobacco Marketing Assessments which is applicable to tobacco marketed during each marketing year will be the amount per pound which is approved and announced by the Secretary.

* * * * *

(f) * * *

(3) In addition to forms MQ–79 and MQ–72–2, if applicable, form MQ–79 (Supplemental) shall be executed to record information relating to each nonauction purchase of tobacco for which the No Net Cost and Tobacco Marketing Assessments are due from producers and dealers. The form MQ–79 (Supplemental) shall be forwarded to the State ASCS office at the same time as the purchase is reported on the MQ–79. A check, draft, or money order in the amount of the collections recorded on form MQ–79 (Supplemental) and made payable to Commodity Credit Corporation shall be submitted to the State ASCS office along with the forms MQ–79 and MQ–79 (Supplemental).

12. Section 723.409 is amended by adding paragraph (h) to read as follows:

§ 723.409 Producer penalties, false identification and related issues.

* * * * *

(h) *Misrepresentation and scheme or devise.* (1) A producer who is determined by ASCS to have erroneously represented any fact affecting a program determination shall not be entitled to price support with respect to which such representation was made, and shall refund to CCC all payments received by the producer with respect to such farm and the tobacco progress.

(2) A producer who is determined by ASCS to have knowingly:

(i) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(ii) Made any fraudulent representation, or

(iii) Misrepresented any fact affecting a program determination in addition to any other penalties prescribed in this part shall not be entitled to price support with respect to which such representations were made, and shall refund to CCC all payments received by such producer with repsect to all farms.

13. Section 723.410 is amended by revising paragraph (g) to read as follows:

§ 723.410 Penalties considered to be due from warehouse operators, dealer, buyers and others excluding producers.

* * * * *

(g) *Dealer tobacco-burley and flue-cured.* The burley or flue-cured tobacco resales by a dealer (as shown or due to be shown on Form MQ–79), which are in excess of such dealer's total prior purchases of the respective kind of tobacco shall be considered to be a marketing of excess tobacco and peanlty thereon shall be due at the time the marketing takes place which results in the excess. If the resale which results in penalty being due is made at auction, the warehouse shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the marketing recorder. If the resale which results in penalty being due is made at nonauction, the purchaser shall deduct the penalty from the proceeds of the sale and shall remit the penalty to the applicable State ASCS office.

* * * * *

14. Section 723.414 is amended by adding paragraph (c) to read as follows:

§ 723.414 Failure to keep records and make reports or making false report or record.

* * * * *

(c) *Misrepresentation and scheme or device.* A warehouse operator or dealer who is deterined by ASCS to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the tobacco program,

(2) Made any fraudulent representation,

(3) Misused a MQ–78 or MQ–79–2, or

(4) Sold excess tobacco, shall pay a marketing quota penalty as prescribed in this part.

Signed in Washington DC, on March 8, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–6025 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV–91–255]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 946 for the 1991–92 fiscal period. Authorization of this budget would permit the State of Washington Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by April 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order, Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456, telephone 202–447–3321.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes under this marketing order, and approximately 385 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal year was prepared by the State of Washington Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Secretary of Agriculture for approval. The members of the committee are producers and handlers of Washington potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met February 7, 1991, and unanimously recommended a budget for the 1991–92 fiscal year of $35,000. Also recommended was an assessment rate of $0.005 per hundredweight (cwt.) of potatoes. The new budget includes a decrease of $1,100 in compliance audits to be equally offset by increases in office supplies, postage, audit, salaries, and salary expenses. All other budget categories remain the same.

The committee recommended an assessment rate of $.005 per cwt., which is $.001 more than last year's rate. The increased assessment rate would yield $30,000 in assessment income when applied to anticipated fresh market shipments of six million cwt., down from last year's shipments of just over 7 million cwt. Total assessment income plus $5,000 from the committee's authorized reserve, would be adequate to cover budgeted expenses of $35,000. Estimated reserves at the beginning of the year will be $15,000.

While this action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation of 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.244 is added to read as follows:

§ 946.244 Expenses and assessment rate.

Expenses of $35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: March 8, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–5969 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1755

RIN 0572–AA20

Telecommunications Standards and Specifications for Materials, Equipment and Construction; REA Form 525–Central Office Equipment Contract (Including Installation)

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, to announce a general revision of REA Contract Form 525, Central Office Equipment Contract (Including Installation). A 7 CFR part 1762 proposed rule was published in the Federal Register (54 FR 43429) on October 25, 1989, announcing that REA was proposing to revise REA Form 525 to update the terms and conditions to reflect the current technological and market environment. Public comments and suggestions were invited. Since that time part 1762 has been incorporated into part 1755.

Comments and suggestions were received from four major manufacturers of central office equipment and three consulting engineering firms. Many useful comments and suggestions were received and many of them have been incorporated into the proposed revised Form 525 Contract.

The last revision to the Form 525 Contract was September 1986. Since that date, significant changes have been made in the telephone industry. The profound advancement in central office equipment technology has made possible many new services on a cost effective basis. Divestiture and competition, legislation and regulation have brought about many changes in the conduct of telecommunications business. There is a need to revise the Form 525 Contract to incorporate these changes into the Central Office Equipment Contract. The main changes to the Contract proposed are new requirements (1) to provide for a complement of spare parts, (2) to provide a software license, (3) for patent, copyright, and trademark infringement, (4) for consequential damages, and (5) equal employment opportunities, and to revise and update provisions for (1) delivery and installation of equipment, (2) inspection and testing of the completed

installations, (3) payments to the contractor, (4) insurance, (5) liquidated damages, and (6) completion of the project. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATES: Public comments must be received by REA no later than May 13, 1991.

ADDRESSES: Submit written comments to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Copies of the document are available upon request from the above address. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8671.

SUPPLEMENTARY INFORMATION: Comments and suggestions received in response to the October 25, 1989, proposed rule announcement for the proposed revision of REA Form 525 are of such pertinence that REA has decided that they should be incorporated into the document. REA has determined that it will again publish the rule, as revised, in proposed form, with a 60-day comment period. This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The reporting and recordkeeping provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.) contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 0572–0062.

Background

REA has issued a series of 7 CFR chapter XVII parts which serve to implement the policies, procedures, and requirements for administering its loan and loan guarantee programs and the loan documents and security instruments which provide for and secure REA financing. The proposed revision to 7 CFR part 1755 announces revisions of the Central Office Equipment Contract (Including Installation), REA Form 525. The 7 CFR part 1755 also describes where copies of the contract may be obtained and the price per copy, where applicable. REA telephone borrowers are required to use the Form 525 Contract where major central office facilities are being procured and installed under contract. The present REA Form 525 has become outdated due to technological advancements and other reasons. Advanced technology and equipment concepts have introduced new issues. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues addressed in updating this contract are: expansion of patent infringement protection to include copyrights, trademarks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provisions; and support of discontinued products. All these proposed additions and changes need to be made so that REA telephone borrowers can continue to provide their subscribers with the most up-to-date and efficient telephone service.

Comments

Public comments and recommendations were received from AT&T, Northern Telecom Inc., GPT Stromberg—Carlson, NEC America Inc., American Communications Consultants Inc., Finley Engineering Company Inc., and Ladd Engineering Associates Inc. The comments, recommendations and responses are summarized as follows:

General Comments

One respondent commented that several sections of the revised Form 525 require that some things be satisfactory to the owner or the owner and the administrator. The respondent felt that this is an arbitrary, nonlegal, subjective standard.

Response: Changes have been made in the contract to refer to objective standards to assist the owner and/or the administrator in deciding whether something is acceptable. In many cases, acceptance will involve judgement or interpretation of a provision, and the contract must state which party's decisions will be final. A specific comment and response on this matter follows under "Article II."

One respondent commented that all "it" and "its" references to the owner and bidder should be changed to read "his/her."

Response: The personal pronoun "it" was used to eliminate references to gender.

One respondent commented that there are a number of references to days in the Form 525 and asked if these references to days meant calendar days inclusive of weekend and holidays, or working days exclusive of weekends and holidays.

Response: A definition of "days" has been added to Article VI, Section 1, specifying that all references to "days" in the contract shall mean "calendar days."

Notice and Instructions to Bidders

One respondent commented that the last sentence on page i suggests that proprietary information may be made public. The respondent proposed that only the information found in article I, section 1, of REA Form 525 be made available to the public.

Response: REA requires that bid results be submitted for review, and this information is available to the public under the Freedom of Information Act. Only pricing information, and special conditions placed on the bid by the Bidder, are required to be submitted to REA (7 CFR part 1753, subpart E). REA recommends that Bidders not provide unnecessary proprietary information in proposals.

One respondent asked if it would be appropriate to charge the Bidder for a copy of the Specification such as is done with Outside Plant Plans and Specifications.

Response: No charge is made for the plans and specifications because the document is small and not expensive to reproduce, and there are not many prospective bidders in central office equipment purchases.

One respondent commented that in item 3, line 10, the Bidder's Software License must be standard and subject only to acceptance by the Administrator as a pre-condition for bid and cannot be within the discretion of the owner.

Response: 7 CFR 1753.38(c) provides that a software license agreement, accepted by the owner and approved by REA, may become part of the contract. REA Form 525 is written to comply with this regulation.

One respondent recommended that item 3 require all bidders to attend the pre-bid technical session to ensure that all bidders follow the same procedures.

Response: The provision for waiving attendance of prospective bidders has been deleted.

One respondent commented that item 3 requires the owner to attach to the notice a list of information required in the bidder's technical proposals. The respondent asked who determines what is to be included on the list—the owner, REA or both?

Response: Both REA and the owner may require information. REA's requirements are listed in 7 CFR 1753.38(a)(2)(i).

One respondent commented that in item 4 the term "supporting instruments" should be defined or some other word used.

Response: Reference to "supporting instruments" has been deleted.

One respondent commented that for item 4 the owner should be responsible for providing a notice that the State requires a license for bidding, if such a requirement exists.

Response: Since the bidder is the party who ultimately will have to abide by the State's licensing requirements, REA believes it is prudent for the bidder to bear the responsibility of determining whether a license is required for bidding.

One respondent commented that in item 5, line 9, "etc." should be deleted since it is overly broad and inappropriate for a legally binding Public Bid document.

Response: "etc." has been deleted and "codes" has been added.

One respondent commented that in item 7, it would be helpful to the bidder to know where it could obtain a copy of 7 CFR part 1788, subpart C, and what the document is.

Response: The Code of Federal Regulations (CFR) is available at libraries, law offices and by mail by subscription. It is so readily available that REA does not believe additional reference is necessary. For clarity, the title of the CFR has been added.

One respondent commented on item 9, requesting a statement as to what happens if the bidder fails to furnish the requested information.

Response: Failure to provide required information may result in a non-responsive bid. Bids that are not responsive will be rejected by the owner.

One respondent commented on item 11, stating that "minor irregularities" and "minor errors" must be defined.

Response: The definition for the term "Minor errors or irregularities" has been added to section 1, article VI of Form 525.

One respondent commented on item 12, asking if the owner needs a reason to reject any or all proposals even though it reserves the right to do so, and should the bidder be advised of reasons for proposal rejection.

Response: While the notice and instructions to bidders establishes the owners right to reject bids, REA sets forth circumstances for rejection of bids in 7 CFR part 1753.

Two respondents commented on the requirement in item 13 for equipment to be furnished for all central offices and remote switching terminals to be of one and the same basic design.

Response: A primary objective of a contract purchase is to buy equipment that can be maintained and administered easily and efficiently. This provision will assure that the owner only has to accommodate one type of equipment.

Bidder's Proposal to Engineer, Furnish, Deliver, and Install Equipment, Material and Software

Two respondents commented on the last paragraph, page 2, asking who has the authority to exclude a proposal from consideration.

Response: 7 CFR 1753.38 gives the owner the right to respond to exceptions taken by bidders at the technical session by modifying the specifications. In subsection 1753.38(a)(2)(iv), REA requires the owner to reject technical proposals that are not responsive, and in subsection 1753.8(a)(10), REA requires rejection of any bid that is not responsive. A "responsive bid" is defined in 1753.2 as "a bid that complies with the requirements of the plans and specifications."

Article I Bid Price

One respondent commented that in section 1, the sixth column should be Completion of Installation, not Completion of the Project, since Completion of the Project is beyond the bidders' control.

Response: Article I, section 1, has been revised substantially to resolve this problem. Several contract milespost events have been redefined and relationships among them have been established. For example, see note 3 in article I, section 1.

One respondent commented that in section 1 the items a, b, c, etc. in column 8 are confusing and asked for an explanation.

Response: The alphabetical designation is used to identify the accepted spare parts and maintenance tools on the Acceptance page of this contract.

One respondent commented that in section 1, "Total Base Bid" should be changed to read "Total Contract Price" for consistency with other parts of Form 525.

Response: The "Total Contract Price" includes the "Total Base Bid" plus accepted alternates. The term "Total Base Bid" is properly used in section 1.

One respondent commented that with regard to section 1, there was an understanding that REA required transportation charges to be included in the total contract price, not separately stated or invoiced.

Response: Section 1 clearly states that delivery of the equipment, materials and software is included in the bid price. Delivery includes transportation charges.

Two respondents commented that in section 2, the term "most recent" may be interpreted to preclude additions to existing switches or inhibit offering one of several release levels available for sale concurrently.

Response: When the REA Form 525 is used for the purchase of equipment additions, the owner's specification will state special requirements, such as the date of issue of the original equipment.

It is REA's intent to inhibit bidders from providing any but the latest of release levels available for sale at the time of bidding, or of near future release for which the Bidder can assure timely delivery.

One respondent commented that in section 3, the word "cost" in the ninth line should be changed to read "price" and also recommended adding

"discount pricing" to this provision for quantity purchases.

Response: REA disagrees. If a change requested by the Owner results in an additional or lesser cost to the bidder, the contract price should be amended to reflect such change. A requirement for "discount pricing" in this section is unenforceable.

One respondent commented that in section 3, those changes made by the owner should not be effective until agreed to in writing between the owner and bidder, including adjustments in schedule and price.

Response: The respondent is correct, but no change to the contract is necessary. In any contract, the bidder is responsible for performing the work in accordance with the contract specifications. Those specifications remain as originally agreed upon until they are changed by amendment.

Two respondents commented that in section 3 the words "reasonable" and "substantial" should be defined or deleted due to their subjective interpretation.

Response: REA disagrees in that omitting these words could permit arbitrary or unreasonable action on the part of the Owner or REA.

One respondent commented that the last sentence of section 3 was not clear regarding the need to amend the contract if the Bidder want to improve his delivery/completion time.

Response: Without an amendment to the contract, early delivery is a voluntary act that would be subject to approval of the Owner.

One respondent commented that in section 4 the words ". . . which the Bidder estimated will . . ." in the first sentence should be eliminated because it is irrelevant.

Response: The language has been deleted.

One respondent commented regarding section 4 that the bidder should, where possible, state what taxes are due at the time the proposal is presented.

Response: This would be an unnecessary burden on the Bidder. (REA believes all Bidders will be subject to the same taxes. If this is not the case, REA would appreciate comment to that effect).

Article II Delivery and Installation

One respondent commented that in section 1 the contract should clearly reflect that if the bidder fails to meet the completion date(s) the owner's exclusive remedy is the provision for liquidated damages as set forth in article V, section 2.

Response: The contract already contains such language in article V, section 5, Cumulative Remedies.

One respondent commented that in section 1 the reference to "the satisfaction of the Owner and the Administrator" is not quantifiable and therefore undesirable in a contract.

Response: If the language in question is deleted, the section would require unconditional adherence to the terms of the contract. The language is included here to allow the possibility of latitude, where the owner and REA agree.

One respondent commented that in section 1, page 6, line 7, the term "solely" is an unnecessary caveat and therefore should be deleted.

Response: The sentence in question lists some, but not all, situations where the bidder would be granted an extension of time. Such a list would include only circumstances which clearly warrant time extensions. If a delay arose from a situation for which the Owner was partially responsible, rather than "solely" responsible, it is not certain that an extension of time would be appropriate. REA believes the language is appropriate and did not change it.

One respondent commented that in section 1 the compensation of the bidder should be price adjustment basis, not cost.

Response: This is one of several sections in the contract where one party would reimburse costs and expenses of the other party. The intent is not to provide either party an opportunity to profit by the other party's failure.

One respondent commented that in section 1 the phrases "reasonable delay" and "reasonable cost and expense" need to be defined.

Response: Standard usage of the term "reasonable" in the Contract means "not excessive." When describing costs and expenses, "reasonable" has been replaced by "supportable."

Two respondents commented that in section 2 there should be a procedure to permit a change in the sequence of installation if both Owner and Bidder agree to such a change.

Response: The procedure for making this and other substantive changes to the contract is a contract amendment, which is discussed in detail in 7 CFR 1753, subpart A.

One respondent commented that in section 3, line 4, the phrase "at once" should be changed to either "a reasonable time" or "expeditiously."

Response: The more quickly an error, inconsistency or omission is brought to the owner's attention and corrected, the less harmful it is to the project. The term "at once" has been replaced with "promptly" in section 3.

One respondent commented that regarding the second sentence in section 3, the failure of the bidder to discover these items shall not create any obligation or liability on the part of the Bidder nor relieve the owner of its responsibilities.

Response: The bidder brings to this project a wealth of expertise in the field of central office switching. REA believes it is reasonable for the bidder to be responsible for reporting errors, inconsistencies or omissions it discovers.

Two respondents commented that in section 3 it should be made clear as to the extent that a superintendent is required on site and who is held responsible for delays if the owner causes removal of the superintendent.

Response: REA intends for the Bidder to keep a superintendent on the project whenever progress toward completion of installation is being made. The existing language requires this. The bidder is responsible for delays caused by the absence of a superintendent.

One respondent commented that the last sentence of section 3 should be changed to indicate who may request that the directions be confirmed in writing.

Response: Section 3 has been rewritten to clarify that the Bidder may request that oral directions from the owner be confirmed in writing.

One respondent commented that in section 3, the third sentence should be changed from "The bidder shall keep on the work * * * " to read "The bidder shall keep on the project * * * .".

Response: Section 3 has been rewritten as suggested.

One respondent commented that the last sentence in section 4 should be deleted since such testing is at the owner's option and therefore associated cost is a responsibility of the owner.

Response: Under this section 4, the owner pays for up to two sessions of acceptance testing. It is unreasonable for the Owner to pay for additional tests made necessary by a Bidder's inability or unwillingness to correct deficiencies.

One respondent commented that in section 4 it is not clear to what extent the owner and administrator shall have the right to inspect all records.

Response: Section 4 states the rights of the owner and REA to inspect the bidder's records. One example of such an inspection would be an examination of records to determine whether materials provided are new, or are domestic in origin. The parenthetical statement defining "pertinent records" has been narrowed to exclude only manufacturing cost information.

One respondent commented that in section 4, since the bidder was not required to provide test equipment, the owner should not be required to provide telephones, paystations, etc. to aid the bidder in system testing.

Response: It is in the owner's interest to provide reasonable assistance to the bidder in the bidder's testing, but under the contract the owner has no obligation to furnish test equipment for the bidder's tests.

One respondent commented that in paragraph 2 of section 4 the phrases "reasonable amount" and "reasonable cost" should be defined.

Response: The second paragraph of section 4 has been rewritten to eliminate the word "reasonable" as applied to costs and amounts.

One respondent commented that the second paragraph of section 4 should state when Form 517 is required for each individual office, and what happens if there is a failure to resolve all items within 45 days.

Response: The section has been rewritten to require testing and notification for each office as completed. The entire contract, including section 4, has been rewritten to establish a sixty day interval between the scheduled completion of installation and the actual completion of the project. This allows 30 days for the owner's inspection and tests and 30 days for the bidder's remedies of deficiencies found and the submission of required documents for Completion of Project. If the bidder fails to remedy deficiences, actual completion of the project cannot occur and liquidated damages accrue.

Two respondents commented that in the first paragraph of section 6 the "notice" should be "written notice" and that the "remedy or replace" should be shown to be at bidder's election.

Response: Change has been made to indicate that written notice is required and that remedy or replacement is to be at the bidder's option.

Two respondents commented that section 6(a), is unclear as to whether the warranty start date is the date of delivery of control of each central office and its associated remote switching terminals or is the date of delivery of control of the last RST in the contract.

Response: Paragraph (a) has been changed to clarify that the warranty for each central office and its associated remote switching terminals begins with its turnover to the owner.

Two respondents commented on section 6(b), noting that "notice" should be a "written notice."

Response: Change has been made to indicate that a written notice is required.

Two respondents commented in section 6(b), observing that there appears to be a warranty of an indefinite period.

Response: Change has been made to indicate a minimum software warranty period of five (5) years which is consistent with 7 CFR part 1753.38(c)(1)(v).

One respondent commented on section 6(b), noting that the word "substantially" needs to be defined or reworded.

Response: The word "substantially" has been deleted.

One respondent commented that in section 6(c), the word "use" should be changed to read "use, access and service" provided by Bidder at the request of owner.

Response: The word "use" adequately defines this requirement for technical assistance center service.

One respondent commented that in section 6(c), a subparagraph is needed which provides compensation to the owner for his time in assisting the bidder in correcting the bidder's problems after they have been diagnosed.

Response: Compensation for such assistance is a matter for negotiation between the owner and the bidder. (The contract does not require the owner to assist the bidder in diagnosing or correcting warranty failures).

One respondent commented that in section 6(e), the warranty limitation should be extended to include misuse and defects caused by failure to maintain appropriate environmental conditions.

Response: Misuse and failure to maintain appropriate environmental conditions are considered "abuse by the owner" and are thereby covered by paragraph (e).

One respondent commented that in section 6(f), the payment for shipment of defective components under warranty back to the Bidder should be the full responsibility of the Bidder.

Response: The arrangement stated in the proposed rule for shipment of defective and replacement components is a reasonable and convenient procedure for the owner and bidder.

Two respondents commented that in section 6(g), it is inappropriate to modify or add significant warranty terms or conditions through the technical section of a specification.

Response: To ensure fair, consistent and equitable treatment of all bidders section 6(g) has been deleted.

Two respondents commented that in section 6(h), the first sentence allowing bidders to propose additional warranty coverage should be deleted because it could disrupt the competitive bidding process.

Response: To ensure fair, consistent and equitable treatment of all bidders section 6(h) has been deleted.

One respondent commented that section 6 should be completely revised to free each bidder to negotiate an acceptable warranty provision with the owner.

Response: This contract contains a common set of warranty provision to facilitate competitive bidding, which is required in the REA loan programs.

Three respondents commented that section 6 should be extensively rewritten to add disclaimers, limit Bidder's liabilities, and limit owners' remedies.

Response: REA believes that the language as stated divides the risks equitably.

Article III Payments and Releases of Liens

One respondent commented that section 1(a), should be revised to indicate that the payment terms will be applied separately to each central office or remote switching terminal.

Response: Article I, section 1, and the contract in general, regard a central office, including all associated remote switching terminals, to be an indivisible unit, for delivery, payment, turnover, closeout, liquidated damages, and other purposes. A host office and its remotes are interdependent and alterations to one may affect the others. Therefore, REA regards a host office and all associated remotes as one item under this contract.

One respondent commented that section 1(a), involves software delivery which may be delayed several months or longer for future delivery of features. Does the payment schedule delay payment for delivery when undelivered materials, equipment and software are understood by the owner to be scheduled for delivery in the future?

Response: Article I, section 1, may provide separate time frames for delivery and installation of software or services that cannot be provided at the time the central office and remote switching units are to be placed in service. If separate schedules are not part of the contract, delays in delivery would cause delays in payments for the entire central office (including its associated remote switching units). This encourages a bidder's disclosure of delayed-delivery features prior to

bidding as required in article V, section 2.

One respondent commented that section 1(b), should clarify if 90 percent is to be paid after completion of installation of each individual central office and remote or after completion of installation of the host office and all associated RSTs.

Response: As stated above, the central office and all associated remote switching terminals are a unit for purposes of this contract.

One respondent commented that in section 1(c), the two references to completion of the project should read completion of installation.

Response: The references to completion of the project were proper, but REA has created a new term, "Completion of the Contract," defined under article VI to clarify this paragraph. These specific references to completion of the project have been deleted.

One respondent commented that in section 1(c), the 60 day timeframe for submission of the final certificate after completion of the project is too long. It should be 15 days and payment should be no later than 60 days.

Response: Preparation and execution of final documents to establish completion of the project involves the bidder, owner, a consulting engineer and REA. Fifteen (15) days in not sufficient time to accomplish the required processing of the final documents. The interval for the owner's submission of final documents to REA has been shortened to 30 days, and final payment is now due 60 days after Completion of the Contract.

One respondent commented that in section 1(c), there is no reference to the owner's engineer. Will REA Form 754 be revised to remove reference to the engineer.

Response: The engineer may be an agent of the owner but the owner has the ultimate contractual responsibility. The REA Form 754 is being revised, but the signature of the engineer is still required as a qualified agent of the owner to certify the completion of the project.

One respondent commented that section 1(c) indicates in the last sentence that the bidder can fault after completion of the project. How can this be?

Response: Evidence of bidder's default could be received by REA after completion of the project (or contract) which would cause a delay in REA approval of the closeout.

One respondent commented that in section 1(d), a change should be made from 45 days to 30 days.

Response: The 45 day interval was based on current turnaround time for REA advances of funds. REA is automating this process and the resulting reduction in turnaround time should be about 2 weeks. Therefore, this interval has been changed from 45 days to 30 days as suggested.

One respondent commented that in section 1(d), the second sentence should be changed from "Any amounts not paid when due . . ." to read "Any undisputed invoice amounts not paid when due . . . .".

Response: Section 1(d) has been changed to clarify that reference is made to the undisputed invoice amounts.

One respondent commented that in section 1(d), its does not seem to be a good idea to tie an interest rate to a particular publication since it could cease to exist.

Response: The Wall Street Journal is a widely circulated financial information publication and a readily available reference. If it ceases to exist a new reference will be selected.

Two respondents commented that in section 1(e), the partial closeout procedure should be applicable whenever separate central offices are involved and conditions should be identified that would cause the partial closeout procedure not to be allowed.

Response: REA does not wish to require borrowers to perform partial closeouts in all cases because in many situations the possible savings could not be offset by the cost of handling multiple closeouts. The bidders will know in advance whether partial closeouts will be allowed so they can build into their bids the costs or savings thereof.

One respondent commented that section 1(e), should be entitled "Partial Closeout Procedure" and that there may be a conflict with article IV, section 2, which provides for owner to take possession and control ahead of the scheduled completion date.

Response: Section 1(e) does not describe in detail a partial closeout procedure; Partial closeout procedures are addressed in 7 CFR part 1753, subpart E. Denial of partial closeouts presents no conflict with article IV, section 2.

Two respondents commented that in section 2 the second paragraph should be qualified to indicate that the Administrator's approval will not be unreasonably withheld and there should be an example of the required form.

Response: Language in section 2 has been changed to state the circumstance where REA would allow use of the alternative certification. Forms of certificates and release of lien have been incorporated into the contract. Concerning circumstances where REA approvals will be withheld, 7 CFR 1753.1(d) states REA's policy for withholding approvals of contracts, proposals, plans and specifications and other documents.

Article IV Particular Undertakings of the Bidder

Three respondents commented that in section 1(b), the risk of loss, damage, etc., should pass from the bidder to the owner on delivery of equipment to the installation site.

Response: Under the contract, the equipment remains under the control of the bidder until "delivery of possession and control" to the owner occurs. During the time between delivery of the equipment to the project and delivery of possession to the owner, the bidder is handling the equipment and software for purposes of installation and testing. The bidder is clearly in the best position to protect the equipment, and supervise environmental control for the protection of the equipment, throughout this period.

One respondent commented that in section 1(b), the last sentence contains the phrases "full authority" and "reasonably cooperate" which need to be defined. The respondent further commented that the owner's giving the bidder "full authority" to settle claims was inadvisable since the owner may also make a claim.

Response: Whenever unique or special terms are used in the contract, REA defines those terms. The terms cited are used as in normal usage and, therefore, require no contract definition. The paragraph has been revised to clarify the authority given the bidder by the owner to settle claims.

One respondent commented that in section 1(c), there should be an explanation of what data the owner is entitled to.

Response: The intent of this subsection is to enable the owner to meet its legal obligations for reporting accidents. Since those requirements vary from jurisdiction to jurisdiction, the language in section 1(c) cannot be made specific.

One respondent commented that in section 2, the owner should obtain full possession and control upon Completion of Installation and payment of amounts due upon Completion of Installation.

Response: Article IV, section 2, states the requirements for the owner's taking possession and control of the equipment. If the owner can use the equipment ahead of schedule, the contract allows the parties to agree to an earlier delivery of possession and control. If the owner cannot benefit from a premature delivery of possession and control, the contract does not require the owner to accept such delivery. REA believes this section as written is appropriate.

One respondent commented that in section 2, a provision should be added to clarify that in-service cannot occur without first having delivery of possession and control passing to the owner.

Response: Article IV, section 2, has been rewritten to clarify this point.

One respondent commented that this section 2 and article I, section 3, related to time of completion of the project do not seem to agree.

Response: REA believes this comment is based upon the respondent's belief that delivery of possession and control is identical to completion of the project. Language has been added to Article IV, section 2, to clarify the distinction.

Three respondents commented that in section 3, it is impractical for the bidder to add the premiums for additional insurance to the bid price after the contract is executed.

Response: Article IV, section 3, has been rewritten to require that (1) the owner is to state special insurance requirements prior to bidding and (2) that payment for additional insurance specified after approval of contract shall be added to the contract price by an amendment to the contract.

One respondent commented that in section 3, provisions should be added to permit a bidder to self-insure.

Response: Insurance requirements for contractors are set forth in 7 CFR part 1788, subpart C, Insurance for Contractors, Engineers and Architects. This regulation does not provide for self insuring.

One respondent commented that in section 4, a provision should indicate that title shall not pass until 100 percent of the contract price is paid to bidder on a per office or RST basis.

Response: Such a provision would prevent the bidder's delivery of possession and control to the owner prior to completion of the project. It would not serve the interests of the bidder or the owner in many cases. After delivery of possession, the bidder has adequate protection under the contract and at law.

Two respondents commented that in section 5 an acceptable software license should be defined or a Uniform Software License should be an amendment to the contract.

Response: REA's objectives for software licensing were to provide Bidders with reasonable latitude in licensing and establish a system for licensing that would adapt to technological developments, while meeting requirements essential to the owner's reasonable use of the equipment and REA's need for security. REA's requirements for the software license are stated in 7 CFR 1753.38(c).

One respondent commented that in section 6, wording should be changed to eliminate the possibility of a lesser warranty being passed into the owner for vendor items.

Response: The language in section 6 has been changed to state that any quarantees passed onto the owner by the bidder shall be in addition to the warranty coverage defined in article II, section 6.

Two respondents commented that in section 7, in the event of the bidder's inability either to replace, or obtain a license for, infringing equipment, the bidder should have the option to refund purchase price less depreciation. The respondents further commented that this clause should be the owner's sole remedy.

Response: Such a provision would give the Bidder the right simply to "buy back" equipment or software when a copyright problem is encountered. To the owner, this means that essential features or capability could be lost and would remain unavailable for the entire useful life of new switching equipment. The resulting reduction in value of the contract to the owner cannot be predicted, and certainly cannot be limited to the price of the infringing equipment or software less depreciation.

One respondent commented that in section 7; the wording of the second sentence ". . ., the Bidder shall at the Owner's option modify . . ." should be changed to read ". . ., the Bidder, at no expense to the Owner, shall at the Owners option modify. . . .".

Response: The section has been rewritten to clarify this point.

One respondent commented that section 7 should include reference to trade secret infringement.

Response: The language in section 7 has been changed to include the suggested reference.

Article V Remedies

Three respondents commented on section 2, Liquidated Damages, regarding a contract-imposed limit. The comments and recommendations are summarized here:

Three respondents proposed a contract-imposed limit on liquidated damages.

Two respondents proposed that this limit be negotiated with the owner at the time of purchase.

One respondent proposed that a limit be written into the contract.

One respondent proposed that the limit not be an amount greater than the project price.

One respondent proposed eliminating the "no limit" option offered in the proposed rule.

Response: We believe that manufacturers strive to complete projects on schedule. However, the REA construction contracts have liquidated damages provisions, which provide a method of assessing damages by flat rate, per day of delay, to ensure completion of the project in a timely manner.

REA believes that if a limit is to be set in the contract, it should not be less than the price of the affected central office and all associated remote switching units. This in many cases will be less than the total contract price.

The proposal to allow the bidder and owner to negotiate a limit is unworkable. It would be very unwieldy in competitive bidding, which is a requirement for most REA-financed systems.

The initial proposed rule gave the owner the option of declaring a no limit liquidated damages provision, and one respondent proposed eliminating this option. REA believes a fixed limit in the amount of the affected central office and its associated remote switching units provides the protection the Owner needs, so the no limit option has been deleted.

One respondent commented that in section 2, the second to last paragraph on page 20 requires rewording to avoid unrealistic demands for liquidated damages being made on the bidder.

Response: Language in this paragraph has been rearranged to clarify that liquidated damages can be assessed only when the Bidder has failed to complete on time.

Two respondents commented that the paragraph in section 2 defining "placed in service" should be clarified.

Response: The language defining "placed in service" has been revised and this definition has been moved to article VI, section 1, Definitions.

Five respondents commented on section 3, consequential damages. From the comments received, it appears that this section is of great concern to equipment manufacturers. The comments and recommendations received were diverse, but are summarized here:

Three respondents commented that without a limit on liability for consequential damages, there is no way for a bidder to assign a cost to the risk.

These respondents argued that it is at least unwise for a Bidder to prepare a bid with an unknown factor as substantial as this. They suggested that responsible Bidders would eventually refuse to bid REA projects.

Two respondents proposed liability limits to be negotiated with the owner at the time of purchase.

One respondent proposed to delete the section and any reference to consequential damages entirely.

One respondent commented that consequential damage claims would be decided by the courts and that no limits should be set in the contract.

Response: REA's intent is to place a limit of liability on consequential and incidental damages, except for personal injury or tangible property damage, which will: Enable bidders to insure for a risk of known limit; provide owners with protection against losses related to product failure; protect the government's loan security; and serve as a standard that bidders and owners alike can expect to see on every contract so competitive bidding can be facilitated.

Respondents representing Bidders' interests proposed that Bidders bear no liability for consequential damages, and respondents representing owners' interests proposed that there be no limit on a bidder's liability for consequential damages. Neither of these proposals satisfies REA's objectives stated above.

The proposed to allow the bidder and owner to negotiate a limit is unworkable. It would be very unwieldy in competitive bidding, which is a requirement for most REA-financed systems.

REA has established a liability limit of ten times the total contract amount, which will result in a limit in the range of $2.5 million to $7.5 million for typical REA contracts.

One respondent commented that the section 5 cumulative damages provision is not proper, rather each damage or infringement issue should have an exclusive remedy.

Response: The liquidated damages provision is an exclusive remedy, as section 5 states, but the warranty and infringement provisions are not exclusive remedies. For example, a defective component, serviced under article II, section 6, could cause a consequential damages claim. The language in section 5 is unchanged.

One respondent commented that section 5 seems to conflict with section 2 since both liquidated and consequential damages may result from late completion.

Response: the liquidated damage provision is the exclusive remedy for late completion. It is an estimate of the owner's total losses resulting from late completion, and it precludes other claims.

Article VI Miscellaneous

One responent commented that the contract consists of more than that which is stated in section 1(a).

Response: REA Form 525 consists of the notice and Instructions to bidder, the bidder's proposal, the contractor's bond, and the owner's acceptance. The definition in section 1(a) includes these items plus the specifications. This is a complete definition of the contract.

One respondent commented that in section 1(c), the software definition should specifically exclude "source code" from backup documentation.

Response: Paragraph (c) has been rewritten to exclude source code from backup documentation.

One respondent commented that in section 1(d), the wording should be changed because it is impossible in many cases to determine completion of installation without final acceptance testing.

Response: Paragraph (d) has been substantially rewritten to resolve this and other areas of confusion. The actual date of completion of installation is defined as the date the bibber submits to the owner written notification that the equipment is complete in conformance with the specifications and is ready for the owner's tests.

One respondent commented that in section 1(e), there should be a clarification to show that the date of project completion is not the date approved by the administrator but rather the date shown on the form approved by the administrator.

Response: Paragraph (e) has been substantially rewritten to clarify this point.

Four respondents commented on section 2, with views varying from the possibility that the requirement for continuing equipment support may not be workable to suggestions that support should be limited to 8 years from completion of project or 15 years from date of contract.

Response: From the comments received and the quality of their supporting arguments, REA concludes that this new section strikes a reasonable balance for sellers and buyers. The original section, written for the part 1762 proposed rule revision, was derived from existing language in one manufacturer's contract, and by the actual performance of another manufacturer who honorably left the field of manufacturing switching equipment several years ago.

One respondent commented that in section 4(a), the second sentence of paragraph (1) should be reworded because the present wording states that the bidder shall take affirmative action to ensure that applicants are employed. However, the bidder is in no position to ensure applicants are employed.

Response: The entire Equal Employment section has been rewritten to conform with current requirements.

One respondent commented that section 6 should be tied in with article VI, section 2, in such a manner as to allow third party support where the bidder abandons production and support of his equipment.

Response: REA agrees. The language in section 6 has been changed.

One respondent commented that in section 6, the confidentiality obligation should include not only technical information but all information that is appropriately marked.

Response: Section 6 has been revised to cover all information so marked.

One respondent commented that in section 6, the public domain exception should not apply when the receiving party has caused the information to be in the public domain. On the other hand, the receiving party should be relieved of the confidentiality obligation with respect to information which is independently developed by the receiving party, is lawfully received free of restriction, or is already known to the receiving party at the time of disclosure free of restriction.

Response: A sentence has been added to section 6 to state this.

One respondent commented that in section 7, contrary to the statements in this section, the REA Form 525 in its present draft form does contain implied understandings and representations.

Response: The respondent did not give any examples to support its comment, and REA does not intend the form to contain implied understanding or representations, so the language is unchanged.

Comment: One respondent commented that in section 11 the Contractor's license requirement causes problems and project delays due to the uncertainty of the need for a license. The respondent suggested that the Owner be required to determine the need for a license.

Response: Since the bidder is the party who ultimately will have to abide by the State's licensing requirements, REA believes it is prudent for the bidder to bear the responsibility of determining whether a license is required for bidding.

Three respondents commented that in section 12, the bidder should be allowed to subcontract the installation work to a third party whether or not it is a subsidiary of the bidder with approval of the owner and the administrator.

Response: REA agrees. The requirement that an installation subcontractor be a subsidiary of the bidder has been deleted.

One respondent suggested that section 9 be changed to read "No Waiver of any term or condition * * *" rather than the current "No Waiver of the terms and conditions * * *".

Response: The suggested language clarifies the section and has been adopted.

One respondent commented that in section 14, the 90 day time interval needs to be increased to at least 120 days due to delays in obtaining REA approval of the award of contract (bid), getting all the documents executed, and obtaining the contractor's bond.

Response: REA believes that 90 days is adequate for all parties to diligently execute a Contract.

One respondent commented that in section 14, the bidder should be required to furnish a copy of the power of attorney with each contract because the owner does not know what power of attorney is on file with REA.

Response: Although the commentor argues that this new requirement would cut down delays in obtaining proper contract documents from the bidder, REA believes it would slow the process. A power of attorney is a legal document, executed and certified by company officials under proper authority from the corporation's governing body. Such documents take time to generate. If a borrower, such as a borrower on the Certification Program, needs to confirm a power of attorney, REA will be pleased to do so by telephone.

One respondent commented that in section 14 regarding the circumstances requiring the "Power of Attorney" authorization, some corporations use other forms to delegate authority, therefore, a change should be made to accommodate such arrangements.

Response: The language has been changed in the proposed rule to accommodate other legally acceptable documents authorizing execution.

Contractor's Bond

One respondent commented that in the last paragraph on page 36 entitled, Power of Attorney, the phrase that reads " . . . in jurisdictions so requiring should be counter signed . . ." should be changed to read " . . . in jurisdictions so requiring shall be countersigned . . .".

Response: The contractor's bond form has been changed to replace the word "should" with "shall" as suggested.

REA has incorporated the changes noted above and has also incorporated Executive Order 12549, Debarment and Suspension, and the requirement of Public Law No. 101–121, section 319, 103 Stat. 701, 750–755 (31 U.S.C. section 1352) (1989), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and their implementing regulations.

List of Subjects in 7 CFR Part 175

Loan programs—communications, Reporting and recordkeeping requirements, Telecommunications, Telephone.

In view of the above, REA is proposing to amend 7 CFR part 1755 as follows:

1. The authority cited for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1755.93 would be amended by revising the entry for REA Form 525 to read as follows:

§ 1755.93 List of standard forms of telecommunications contracts.

* * * * *

REA Form No.	Issue date	Title	Purpose	Source of copies
525	Date of final rule	Central office equipment contract (including installation).	Purchase and installation of Central office switching equipment.	REA [1]

[1] A limited number of copies of the publication will be furnished by REA upon request. As this document is produced by the Federal Government and is, therefore, in the public domain, additional copies may be duplicated locally by any user as desired. Requests for copies should be sent to the Director, Administrative Services Division, U.S. Department of Agriculture, Rural Electrification Administration, Washington, DC 20250. The telephone number of the REA Publications Office is (202) 382–8674.

* * * * *

Dated: March 7, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–5927 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–01–M

7 CFR Part 1755

Telecommunications Standards and Specification for Materials, Equipment and Construction

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR 1755.97, Incorporation by reference of telephone standards and specifications by rescinding REA Bulletin 345–165, General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522, and issuing a revised version as Bulletin 1753E–001 (522), to permit greater latitude in the provisioning of power converters and ringing source functions where such units are of sufficient reliability as to not diminish public telephone service integrity. This proposed minor revision is restricted to changes that are to be made to pages 44 and 54 of Bulletin 1753E–001 (522), General Specification for Digital, Stored Program Controlled Central Office Equipment.

DATES: Public comments concerning this proposed rule must be received by REA or postmarked no later than April 15, 1991. REA requests an original and three copies of all comments.

ADDRESSES: Comments may be mailed to Donald M. Van Bellinger, Director, Telecommunications Staff Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1500. Comments received may be inspected Monday through Friday in room 2835 between 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dean A. Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, room 2832, South

Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–8671.

SUPPLEMENTARY INFORMATION: The proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This proposed rule does not contain new or amended reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under OMB approval number 0572–0062.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related notice to 7 CFR 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is proposing to rescind Bulletin 345–165 "REA General Specification for Digital, Stored Program Controlled Central Office Equipment, REA Form 522" and to replace it with a revision designated Bulletin 1753E–001 (522), "REA General Specification for Digital, Stored Program Controlled Central Office Equipment."

The REA specification needs to be changed occasionally to incorporate technical changes which are considered advantages to the REA telephone borrower and their subscribers and to keep pace with advancements in technology. Substantial improvement in recent years of electronic component reliability now permits the introduction of an alternative to the present stringent specification requirements that makes it necessary to always provide redundant ringing equipment and duplicated power converters. Revision of these requirements will allow nonredundant ringing equipment and nonduplicated power converters to be provided when there is full compliance with certain specified service criteria. This minor revision will permit greater latitude in the provisioning of power converters and ringing equipment where such units are of sufficient proven reliability as to not diminish public telephone service integrity. It is proposed that Bulletin 1753E–001 (522) "General Specification for Digital, Stored Program Controlled Central Office Equipment" be changed as follows:

It is proposed to modify, part I, section 15.5 Ringing Generator and section 19.6 Power by renumbering the present paragraphs 15.5.2 and 19.6.2 to be 15.5.2.1 and 19.6.2.1 respectively, using 15.5.2 and 19.6.2 for subsection titles and adding paragraphs 15.5.2.2 and 19.6.2.2, which would result in the subsections reading as follows:

15.5.2 Ringing Equipment Provisioning

15.5.2.1 Provision shall be made for redundant ringing equipment. There shall be automatic transfer to the redundant equipment within the period of one ringing cycle, in case of failure of the equipment in use (either regular or standby). Automatic transfer shall not take place under any other conditions. Provision shall be made for manual transfer in each direction.

15.5.2.2 An exception to the redundant ringing equipment requirement shall permit nonredundant ringing equipment to be utilized where there is full compliance with the following service criteria.

a. In a central office switching system of 400 or more equipped lines, a single nonduplicated ringing source failure shall not cause the complete loss of ringing capability to more than 100 lines.

b. In a central office switching system of less than 400 equipped lines, a single nonredundant ringing source failure shall not cause the complete loss of ringing capability to more than 25 percent of the total equipped lines.

19.6.2 Ringing Equipment Provisioning

19.6.2.1 Ringing Machine: Ringing sources shall be supplied in duplicate.

19.6.2.2 An exception to the duplicated ringing source requirement shall permit nonduplicated ringing source(s) to be utilized where there is full compliance with the following service criteria.

a. In a remote switching terminal (RST) of 400 or more equipped lines, a single nonduplicated ringing source failure shall not cause the complete loss of ringing capability to more than 100 lines.

b. In a remote switching terminal (RST) of less than 400 equipped lines, a single nonredundant ringing source failure shall not cause the complete loss of ringing capability to more than 25 percent of the total equipped lines.

It is also proposed that, part I, section 15.4, Miscellaneous Voltage Supplies and section 19.6 Power be modified by the renumbering of the present 15.4.2 and 19.6.3 paragraphs to be 15.4.2.1 and 19.6.3.1, respectively, using 15.4.2 and 19.6.3 for subsection titles and adding paragraphs 15.4.2.2 and 19.6.3.2, which would result in the subsections reading as follows:

15.4.2 Power Converters

15.4.2.1 Power converters required for the purpose of providing various operating voltages to printed circuit boards or similar equipment employing electronic components shall be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

15.4.2.2 An exception to the duplicate power converter requirement shall permit nonduplicated power converter(s) to be utilized where there is full compliance with the following criteria.

a. The failure of any single nonduplicated power converter shall not reduce the grade of service of common control and service circuits to any individual line or trunk by more than 50 percent.

b. The failure of any single nonduplicated power converter shall not reduce the traffic carrying capacity of any interoffice trunk group by more than 50 percent.

c. In central office switching systems of 400 or more equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 100 equipped lines.

d. In central office switching systems of 400 equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 25 percent of the total equipped lines.

19.6.3 Power Converter

19.6.3.1 Power converters required for the purpose of providing various operating voltages to printed circuit boards or similar equipment employing electronic components shall be provided in duplicate with each unit capable of immediately assuming the full operating load upon failure of a unit.

19.6.3.2 An exception to the duplicate power converter requirement shall permit nonduplicated power converter(s) to be utilized where there is full compliance with the following criteria.

a. The failure of any single nonduplicated power converter shall not reduce the grade of service of common control and service circuits to any individual line or trunk by more than 50 percent.

b. The failure of any single nonduplicated power converter shall not reduce the traffic carrying capacity of any trunk group or service links to a host office by more than 50 percent.

c. In a remote switching terminal (RST) of 400 or more equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 100 equipped lines.

d. In a remote switching terminal (RST) of less than 400 equipped lines, any single nonduplicated power converter failure shall not cause a complete loss of service to more than 25 percent of the total equipped lines.

The above proposed specification changes will sufficiently increase the text content of pages 44 and 54 as to require that two additional pages be added. To avoid renumbering the pages of this sizable document at this time, the additional pages are to be designated 44(a) and 54(a).

Major central office manufacturers presently have the ability to support the changes contained in this revision of the REA specification. Therefore, there should be little impact on them in complying with the new requirements.

List of Subjects in 7 CFR Part 1755

Loan Programs—communications, Telecommunications, Telephone.

In view of the aboe, REA is proposing to amend 7 CFR part 1755 by revising Bulletin 345–165 and reissuing it as Bulletin 1753E–001(522).

PART 1755—(AMENDED)

1. The authority cited for part 1755 continues to read as follows.

Authority: 7. U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

2. The table in § 1755.97 is amended by removing the entry for Bulletin 345–165 and adding in numerical order the entry for Bulletin 1753E–001(522) to read as follows:

§ 1755.97 Incorporation by reference of telephone standards and specifications.

* * * * *

REA Bulletin No.	Specification No.	Date last issued	Title of standard or specification
*	* *	* *	*
1753E–001(522)		Date of final rule	REA general specification for digital, stored program controlled central office equipment.

Dated: March 7, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91–5928 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–08–AD]

Airworthiness Directives; Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models 95–C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. The proposed action would require periodic inspections for cracks in the engine mounts. There have been reports of cracked engine mounts on the affected airplanes. Cracked engine mounts, if not detected and corrected, could lead to severe engine vibration and possible separation of the engine from the airplane. The actions specified in the proposed AD are intended to detect and correct engine mount cracks before the engine mounts are damaged to the point of failure.

DATES: Comments must be received on or before May 17, 1991.

ADDRESSES: Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991, and Beech Kit 58–007–1S that are discussed in this Ad may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. The service information may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–08–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-08-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of cracks in the engine mounts on certain Beech Models 95-C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes. Cracked engine mounts, if not detected and corrected, could lead to severe engine vibration and possible separation of the engine form the airplane. Beech has issued Service Bulletin (SB) No. 2362, Revision 1, dated February 1991, which specified periodic inspections for engine mount cracks on the affected airplanes. If cracks are found, the SB also specifies a modification to the engine mount (Beech Kit 58-9007-1S) or replacement with a new engine mount (part number 96-910010-67). The periodic inspections may be terminated if the modificaiton is accomplished or a replacement engine mount is installed. The FAA has determined that AD action is necessary to detect and correct any cracked engine mount on the affected airplanes.

Since the condition described is likely to exist or develop in other Beech Models 95-C55, C55A, D55, D55A, E55, E55A, 58, and 58A airplanes of the same type design, the proposed AD would require periodic inspections for engine mount cracks and, if found cracked, either installation of Beech Kit 58-9007-1S or replacement with a new engine mount (part number 96-910010-67) in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991. The periodic inspections may be terminated if the modification is accomplished or a replacement engine mount is installed.

It is estimated that 2,612 airplanes will be affected by the proposed AD and that it will take approximately 4 hours per airplane to accomplish the proposed inspections at $40 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $449,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 91-CE-08-AD.

Applicability: Models 95-C55, 95-C55A, D55, D55A, E55, and E55A airplanes (serial number (S/N) TC350, and S/N TE-1 through TE-1201), and Models 58 and 58A airplanes (S/N TH-1 through TH-1610), certified in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent severe engine vibration and possible separation of the engine from the airplane caused by cracked engine mounts, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, conduct a visual and dye penetrant inspection of the engine mounts in accordance with the instructions in Beech Service Bulletin (SB) No. 2362, Revision 1, dated February 1991.

(1) If no cracks are found, repeat the inspection on each engine mount thereafter at intervals not to exceed 100 hours TIS.

(2) If a crack is found in an engine mount, prior to further flight, remove the engine from the affected engine mount, remove the mount from the airplane, and magnetic particle inspect the engine mount to determine the length of the crack in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(i) If the length of the crack is .52 inches (true) or less, repair and reinforce the engine mount using Beech Kit 58-9007-1S in accordance with the instructions in Beech SB 2362, Revision 1, dated February 1991.

(ii) If the length of the crack is greater than .52 inches (true), remove and replace the cracked engine mount with a part number (P/N) 96-910010-67 engine mount in accordance with the instructions in Beech SB No. 2362, Revision 1, dated February 1991.

(3) The repetitive inspections specified in paragraph (a)(1) of this AD may be terminated on an engine mount that has been repaired and reinforced with Beech Kit 58-9007-1S or if a P/N 96-910010-67 engine mount has been installed.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Witchita, Kansas 67201-0085; or may examine the service information d at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 1, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6052 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 90-CE-73-AD]

Airworthiness Directives; Beech 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration (FFA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 33, 35, and 36 series airplanes. The proposed action would require initial and repetitive inspections for cracks in the wing front spar carry-through structure. There have been reports of cracks developing in this structure on the affected airplanes. The actions specified in this proposed AD are intended to detect and repair cracks before the wing structure is damaged to the point of failure.

DATES: Comments must be received on or before May 3, 1991.

ADDRESSES: Beech Service Bulletin (SB) No. 2360, dated November 1990, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-73-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-73-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Several reports have been received of cracks developing in the wing front spar carry-through structure forward and aft frames (webs) on certain Beech 33, 35, and 36 series airplanes. As a result, Beech has issued Service Bulletin (SB) No. 2360, dated November 1990, which specifies the inspections and repairs that are necessary to detect and repair these cracks on the affected airplanes. The FAA has determined that if these cracks are not detected and repaired, the structural integrity of the wing carry-through structure may be damaged to the point of failure.

Since the condition described is likely to exist or develop in other Beech 33, 35, and 36 series airplanes of the same type design, the proposed AD would require initial and repetitive inspections of the wing front spar carry-though structure forward and aft frames, and repairs if cracks are found, in accordance with Beech SB No. 2360, dated November 1990.

It is estimated that 11,000 airplanes in the U.S. registry will be affected by the proposed AD, and that it will take appoximately 8 hours per airplane to accomplish the proposed inspections at $40 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,520,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 90-CE-73-AD.

Applicability: Applies to the following Models and serial numbered airplanes, certificated in any category.

Models	Serial Numbers
35-33, 35-A33, 35-B33, 35-C33, E33, F33, and G33.	CD-1 through CD-1304.
35-C33A, E33A, and F33A.	CE-1 through CE-1192.
E33C and F33C	CJ-1 through CJ-179.
H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B.	D-4866 through D-10403.
36 and A36	E-1 through E-2397.
A36TC and B36TC	EA-1 through EA-471

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent structural damage of the wing attachment to the fuselage, accomplish the following:

(a) Upon the accumulation of 1,500 hours time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, inspect the wing front spar carry-through frame (web) structure for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2360, dated November 1990.

(b) If crack are found in the bend radius as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech (SB) No. 2360:

(1) For cracks up to 2.25 inches, prior to further flight, stop drill at the crack ends. Only one stop-drilled crack per left side and one stop-drilled crack per right side of the wing forward spar carry-through structure bend radius in permissible if neither one exceeds 2.25 inches. If more than one is found, prior to further flight, install Beech part number (P/N) 36-4004 Kit.

(2) For cracks between 2.25 and 4.0 inches, prior to further flight, stop drill at the crack ends, and within the next 100 hours TIS, install Beech P/N 36-4004 kit. Only one stop-drilled crack per left side and one stop-drilled crack per right side of the wing forward spar carry-through structure bend radius in permissible if neither one exceeds 2.25 inches. If more than one is found, prior to further flight, install Beech (P/N) 36-4004 Kit.

(3) For cracks exceeding 4.0 inches, prior to further flight, install Beech P/N 36-4004 Kit.

(c) If cracks are found in the web face in the area of the buckbolt fasteners as a result of the inspections required in paragraph (a) of this AD, accomplish the following in accordance with the instructions in Beech SB No. 2360:

(1) For cracks less than 1 inch in length, no action is required until the repetitive inspection interval. Do not stop drill these cracks because it is possible to damage the structure behind the web face. One crack on each side is allowable if neither one exceeds 1 inch. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36-4004 Kit.

(2) For cracks more than 1 inch in length, within the next 25 hours TIS, install Beech P/N 36-4004 Kit. One crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36-4004 Kit.

(3) If a cracks passes through two fasteners but is less than 0.5 inches beyond either fastener, within the next 25 hours TIS, install Beech P/N 36-4004 Kit. One crack on each side is allowable. If more than one crack is found on either side, prior to further flight, install Beech (P/N) 36-4004 Kit.

(4) If a cracks passes through two fasteners but is more than 0.5 inches beyond either fastener, prior to further flight, install Beech P/N 36-4004 Kit.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine the document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 20, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6053 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-32-AD]

Airworthiness Directives; Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which would require the removal of a towing instruction placard and the installation of a new placard. This proposal is prompted by a report of a nose gear-up landing due to landing gear actuating system damage that jammed the nose gear in the retracted position. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

DATES: Comments must be received no later than April 30, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-32-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service informatoin may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standization Branch, ANM-113; telephone (206) 227-2138. Mailing Address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the subsection of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-32-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On November 9, 1989, an Israel Aircraft Industries (IAI) Model 1124A airplane landed with the nose gear jammed in the nose gear wheel well. Subsequent inspection of the nose gear revealed that the nose steering attachment brackets were broken from their mounts and the steering actuator assembly was wedged between the nose gear trunnion and the nose wheel well forward bulkhead.

The pilot-guided steering mechanism is limited in its range of turning movement, and must be disconnected by removing the scissor pin and securing the upper scissor in the "up" position when the airplane is being towed. If this procedure is not followed, and if a towing turn is attempted that exceeds the angle of the steering stop, the attachment brackets will break from their mounts attached to the forward wheel well bulkhead. The nose gear-up landing incident described above may have been caused by failure to disconnect the scissor pin during earlier ground towing.

At least three previous nose wheel steering breakage incidents have occurred over a 10-year period. Whenever the airplane's turn limits were exceeded during towing with the scissor pin installed, the nose steering mount brackets broke from their mounts attached to the nose wheel well forward bulkhead. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

IAI has issued Service Bulletins 1121-11-015, 1123-11-031, and 1124-11-103, all dated November 16, 1990, which describe procedures for removing the existing towing instruction placard located on the nose landing gear forward door, and installing an improved placard. The original towing placard instructions have been delineated and clarified for the new placard. In addition, instructions have been added to secure the upper scissor in the "up" position before towing, to put the nose gear in the center forward position, and to reconnect the scissor for normal flight after towing. The Civil Aviation Administration of Israel (CAAI) has approved these service bulletins, but has not classified them as mandatory.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require removal of the existing towing instruction placard and the installation of a new placard in accordance with the service bulletin previously described.

It is estimated that 316 airplanes of U.S. registry would be affected by this AD, that it would take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required placards is $7 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,532.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the nose landing gear for landing, accomplish the following:

A. Remove the existing towing instruction placard and install a new placard in accordance with the applicable service bulletin, as follows:

Airplane Models	Service Bulletin
1121, 1121A, 1121B	1121-11-015, dated November 26, 1990.
1123	1123-11-031, dated November 26, 1990.
1124 and 1124A	1124-11-103, dated November 26, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6059 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-27-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes, Pre-Modification HCM0115A and HCM00967A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require modification of the parking brake selector assembly by installation of a special washer. This proposal is prompted by reports of failure of the hook end of the spring on the parking brake quadrant due to fatigue. This can result in the inadvertent engagement of the parking brake, and the resultant inability of the flight crew to release the parking brake. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff or landing.

DATES: Comments must be received no later than April 30, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-27-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2138. Mailing address; FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-27-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, pre-modification HCM01159A and HCM00987A. There have been recent reports of failures of the hook end of the spring on the parking brake quadrant due to fatigue. This can result in the inadvertent engagement of the parking brake, and the resultant inability of the flight crew to release the parking brake. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff or landing

British Aerospace has issued Service Bulletin 32-104-01159A, dated October 1, 1990, which describes procedures to install a special washer in the parking brake selector assembly (Modification No. HCM01159A). This prevents the cable tension spring in the selector assembly from inadvertently selecting the parking brake when pilots apply full brakes after failure of another spring in the parking brake mechanism. The United Kingdom has classified these service bulletins as mandatory.

This airplanes model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a special washer in the parking brake selector assembly, in accordance with the service bulletin previously described.

It is estimated that 74 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,160.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, -200A, and -300A series airplanes, pre-modifications HCM01159A and HCM00987A, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inadvertent application of the parking brake, and subsequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new washer in the parking brake selector assembly, in accordance with British Aerospace Service Bulletin 32-104-0115A, dated October 1, 1990 (Modification No. HCM01159A).

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on March 1, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-6058 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 91-AGL-1]

Proposed Alteration of Jet Route J-522; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-522 located in the vicinity of Traverse City, MI. The realignment would eliminate the dogleg between Traverse City and Toronto, ON; Canada, thereby improving navigation between those facilities. This action would enhance flight operation in the area.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, AGL-500, Docket No. 91-AGL-1, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to realign a segment of Jet Route J-522 between Traverse City, MI, and Toronto, ON, Canada. The realignment would eliminate a dogleg to the north, thereby saving fuel and improving navigation along the course line. This action would enhance flight operations in the area. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR prt 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J-522 [Revised]

From Green Bay, WI; Traverse City, MI; Au Sable, MI; Toronto, ON, Canada; INT Toronto 099°T(106°M) and Hancock, NY, 302°T(313°M) radials; Hancock; to Kingston, NY. The airspace within Canada is excluded.

Issued in Washington, DC, on March 4, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-6055 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 78N-0335]

Glycerophosphates; Tentative Affirmation of Gras Status as Direct Human Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively (1) affirming that calcium glycerophosphate is generally recognized as safe (GRAS) for use as a direct human food ingredient in conventional food; (2) removing calcium, manganese, and potassium glycerophosphates from 21 CFR part 182, subpart I, for use as nutrients used in food; and (3) taking no

action with respect to the listing of calcium, manganese, and potassium glycerophosphates in 21 CFR part 182, subpart F, for use as dietary supplements. The safety of these ingredients in food has been evaluated under the comprehensive safety review conducted by the agency. This action is being published as a tentative final rule because the proposal to affirm glycerophosphate published 12 years ago in the **Federal Register** of May 15, 1979 (44 FR 28336). The agency now feels a need to allow comments on the proposed action.

DATES: Written comments by May 13, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 15, 1979 (44 FR 28336), FDA published a proposal to affirm that calcium glycerophosphate is GRAS for use as a direct human food ingredient in conventional food (44 FR 38336). (FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).) The agency also proposed to remove potassium glycerophosphate and manganese glycerophosphate from the list of GRAS ingredients because there were no reported uses for these substances. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on glycerophosphates and the report of the Select Committee on GRAS Substances on glycerophosphates are available for public review in the Dockets management Branch (address above). Copies of these documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of calcium glycerophosphate and to remove manganese and potassium glycerophosphates from the GRAS list, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances other than the uses listed in part 181—Prior-Sanctioned Food Ingredients (21 CFR part 181). Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 7, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have additional prior-sanctioned uses of the glycerophosphates recognized by issuance of an appropriate regulation under part 181 or affirmed as GRAS under part 184 or 186 (21 CFR part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of any applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for these ingredients were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for uses of these ingredients under conditions different from those set forth in part 181 has been waived.

After FDA published its May 1979 proposal to affirm the GRAS status of calcium glycerophosphate and to remove manganese and potassium glycerophosphates from the GRAS list, the agency, in the **Federal Register** of September 5, 1980 (45 58837), reorganized part 182 to provide separate listings for the use of GRAS ingredients in dietary supplements and for the use of the same ingredients as nutrients in conventional food. The reorganization document stated that creation of these separate lists was intended to facilitate separate reviews of these substances as nutrients and as dietary substances. The reorganization thus resulted in the listing of calcium, manganese, and potassium glycerophosphates on both the GRAS "Dietary Supplements" list (Subpart F of part 182) and the GRAS "Nutrients" list (Subpart I of part 182).

One comment was received in response to the agency's proposal on glycerophosphates. The comment submitted information on the use of manganese glycerophosphate in enteral dietary formulas that are used under medical supervision. The company, a pharmaceutical manufacturer, stated that this use was not included in FDA's survey of food manufacturers for the purpose of determining the specific foods in which various glycerophosphates are used and the levels of usage. The company, therefore, requested that the agency retain manganese glycerophosphate on the GRAS list to permit its continued use in enteral dietary supplement formulas.

As stated above, FDA's May 15, 1979 (44 FR 28336), proposal to affirm that the use of calcium glycerophosphate as a nutrient supplement is GRAS, and to remove manganese and potassium glycerophosphates from the GRAS list, addressed the use of these ingredients in conventional foods (those described in the food categories listed in § 170.3(n)). The proposal did not address the use of these ingredients in dietary supplements or in enteral formulas designed for use under medical supervision in the nutritional management of patients. FDA is not taking any action on the use of the subject glycerophosphates in dietary supplements or enteral formulas because it has only limited information on such uses. Therefore, pending further review of the safety of the use of ingredients in dietary supplements and medical foods, calcium, manganese, and potassium glycerophosphates will continue to be listed for use in dietary supplements in subpart F of part 182.

The agency is issuing this tentative final rule to affirm calcium glycerophosphate as GRAS for use in conventional foods, and to remove calcium, manganese, and potassium glycerophosphates from subpart I of part 182, for use as nutrients. FDA is retaining the listings of calcium, manganese, and potassium glycerophosphates in 21 CFR part 182, subpart F, pending further action on the dietary supplement use of these ingredients.

The format of the tentative final regulation for calcium glycerophosphate is different from the format of the proposed regulation. FDA has modified § 184.1201(c) to make clear that the agency's determination that its GRAS affirmation is based upon current good manufacturing practice (CGMP) conditions of use, including both the technical effect and the food category listed. This change removes the maximum CGMP level of use that the agency included in the proposal. FDA concludes that it is unnecessary to include this level of use in the regulation to assure the safe use of this ingredient.

FDA is modifying this tentative final rule to incorporate the specifications for calcium glycerophosphate that have been published in the Food Chemicals Codex, 3d Ed. (1981), pp. 51–52. No differences exist between these specifications and the specifications that FDA proposed to adopt from the Food Chemicals Codex 2d Ed. (1972), pp. 130–131. This change, therefore, has no substantive effect.

The agency has determined under 21 CFR 25.24(b)(7) that the GRAS affirmation of calcium glycerophosphate as a direct human food ingredient for use in conventional food under 21 CFR 184.1201 is an action of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has carefully considered the potential environmental effects of removing manganese glycerophosphate and potassium glycerophosphate from the GRAS list for use as nutrients in food (21 CFR part 182, subpart I). FDA has concluded that this action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with the Regulatory Flexibility Act, the agency has considered the potential effects that this rule would have one small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule and determined that the rule is not a major rule as defined by the Order.

The agency's finding of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch.

Interested persons may, on or before May 13, 1991, submit to the Dockets Management Branch written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading on this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 182

Food ingredients, Food packaging, Spices and flavorings.

Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 182 and 184 are proposed to be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§§ 182.8201, 182.8455, and 182.8628 [Removed]

2. Section 182.8201 *Calcium glycerophosphate*, § 182.8455 *Manganese glycerophosphate*, and § 182.8628 *Potassium glycerophosphate* are removed from subpart I.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. New § 184.1201 is added to subpart B to read as follows:

§ 184.1201 Calcium glycerophosphate.

(a) Calcium glycerophosphate ($C_5H_7CaO_6P$, CAS Reg. No. 27214–00–2) is a fine, white, odorless, almost tasteless, slightly hygroscopic powder. It is prepared by neutralizing glycerophosphoric acid with calcium hydroxide or calcium carbonate. The commercial product is mixture of calcium *β*-, and *D*-, and *L*-*α*-glycerophosphate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 51–52, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or may be examined at the Office of the Federal Register, 1100 L Street. NW., Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in gelatins, puddings, and fillings as defined in § 170.3(n)(22) of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section or different from that as set forth in part 181 of this chapter, do not exist or have been waived.

Dated: March 5, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–5881 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Procedures for Removing Certain Anabolic Steroid Products from All or Part of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 27, 1991, any material, compound, mixture, or preparation which contains any quantity of an anabolic steriod will be included in Schedule III of the Controlled Substances Act (CSA). This proposed rule describes procedures designed to implement two provisions of the Anabolic Steroids Control Act of 1990 through which certain products will be exempted from all or part of the CSA. The affected products will be those which are approved for implantation into animals and those which have no significant potential for abuse. When finalized, this proposed action will remove certain regulatory control mechanisms of Schedule III from the manufacture, distribution, and possession of specific products which contain anabolic steroids.

DATES: Comments must be submitted on or before April 15, 1991.

ADDRESSES: Comments and objections should be submitted to: Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and

BEST COPY AVAILABLE

Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: On November 29, 1990, the Anabolic Steroids Control Act of 1990 (title XIX of Pub. L. 101-647) was enacted. The Act requires that anabolic steroids be added to Schedule III of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.) on February 27, 1991. The Act also provides that any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration not be added to the CSA. Further, the Act provides that if an excluded anabolic steroid is prescribed, dispensed, or distributed for human use it will be a Schedule III substance. To identify the products which are excluded from the CSA and to insure that the exclusion is properly applied, the Administrator of the Drug Enforcement Administration (DEA) herein proposes a procedure through which each product which is approved for administration through implantation in nonhuman species will be identified as excluded from the CSA unless it is prescribed, dispensed, or distributed for human use.

The Anabolic Steroids Control Act provides that the Attorney General, upon the recommendation of the Secretary, may exempt any compound, mixture, or preparation which contains an anabolic steroid from the application of all or any part of the CSA if, because of its concentration, preparation, mixture, or delivery system, it has no significant potential for abuse. The Administrator herein proposes a regulatory procedure through which products will be evaluated and extempted from the registration, prescription limitation, record keeping, labeling, security, import, and export requirements related to Schedule III substances.

Interested persons are invited to submit their comments in writing with regard to this proposal. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative.

The Administrator of the Drug Enforcement Administration hereby certifies that this proposed rule will have no significant economic impact on entities whose interests must be considered under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule is not a major rule for purposes of Executive Order (E.O.) 12291 (46 FR 13193, February 17, 1981). Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291 this proposed rule has been submitted for review to the Office of Management and the Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by title XIX of Public Law 101-647 and delegated to the Administrator of the DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that part 1308, chapter II, title 21, Code of Federal Regulations be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. An undesignated center heading, § 1308.25, and § 1308.26 are added to read as follows:

Excluded Veterinary Anabolic Steroid Implant Products

§ 1308.25 Exclusion of a veterinary anabolic steroid implant product; application.

(a) Any person seeking to have any anabolic steroid product which is expressly intended for administration through implants to cattle or other nonhuman species and which may be lawfully sold under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 500), identified as being excluded from any schedule, pursuant to section 102(41)(B)(i) of the Act (21 U.S.C. 802(41)(B)(i)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(b) An application for an exclusion under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the product;

(3) The chemical structural formula or description for any anabolic steroid contained in the product;

(4) A complete description of dosage and quantitative composition of the dosage form;

(5) The conditions of use including whether or not Federal law restricts this product to use by or on the order of a licensed veterinarian;

(6) A description of the delivery system in which the dosage form will be distributed with sufficient detail to identify the product (e.g. 20 cartridge brown plastic belt);

(7) The label and labeling of the immediate container and the commercial containers, if any, of the product;

(8) The name and address of the manufacturer of the dosage form if different from that of the applicant; and

(9) Evidence that the product has been approved by the Secretary of Health and Human Services for administration to cattle or other nonhuman species.

(c) Within a reasonable period of time after the receipt of an application for an exclusion under this section, the Administrator shall notify the applicant of his acceptance or nonacceptance of the application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (b) of this section is lacking or is not set forth as to be readily understood. The applicant may amend the application to meet the requirements of paragraph (b) of this section. If the application is accepted for filing, the Administrator shall issue and publish in the **Federal Register** his order on the application, which shall include a reference to the legal authority under which the order is issued and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(d) The Administrator may at any time revoke or modify any designation of excluded status granted pursuant to this section by following the procedures set forth in paragraph (c) of this section for handling an application for an exclusion which has been accepted for filing.

§ 1308.26 Excluded veterinary anabolic steroid implant products.

(a) The following anabolic steroid-containing products which are expressly intended for administration through implants to cattle or other nonhuman species and which may be lawfully sold under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 500) are excluded from all schedules pursuant to section 102(41)(B)(i) of the Act (21 U.S.C. 802(41)(B)(i)):

TABLE OF EXCLUDED VETERINARY ANABOLIC STEROID IMPLANT PRODUCTS

Company	Trade name	NDC code	Delivery system	Ingredients	Quantity
[Reserved]					

(b) In accordance with section 102(41)(B)(ii) of the Act (21 U.S.C. 802(41)(B)(ii)) if any person prescribes, dispenses, or distributes a product listed in paragraph (a) of this section for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of section 102(41)(A) of the Act (21 U.S.C. 802(41)(A)).

3. An undesignated centerheading, § 1308.33, and § 1308.34 are added to read as follows:

Exempt Anabolic Steroid Products

§ 1308.33 Exemption of certain anabolic steroid products; application.

(a) The Administrator, upon the recommendation of the Secretary of Health and Human Services, may, by regulation, exempt from the application of all or any part of the Act any compound, mixture or preparation containing an anabolic steroid as defined in § 1308.02 if, because of its concentration, preparation, mixture or delivery system, it has no significant potential for abuse (Pub. L. 101-647, section 1903(a)).

(b) Any person seeking to have any compound, mixture, or preparation containing an anabolic steroid as defined in § 1308.02 exempted from the application of all or any part of the Act, pursuant to paragraph (a) of this section, may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

(c) An application for an exemption under this section shall contain the following information:

(1) The name and address of the applicant;

(2) The name of the product;

(3) The chemical structural formula or description for any anabolic steroid contained in the product;

(4) The complete description of dosage and quantitative composition of the dosage form;

(5) A description of the delivery system, if applicable;

(6) The indications and conditions for use in which species, including whether or not this product is a prescription drug;

(7) Information to facilitate identification of the dosage form, such as shape, color, coating, and scoring;

(8) The label and labeling of the immediate container and the commercial containers, if any, of the product;

(9) The units in which the dosage form is ordinarily available; and

(10) The facts which the applicant believes justify a determination that the product has no significant potential for abuse and a granting of an exemption under this section.

(d) Within a reasonable period of time after the receipt of the application for an exemption under this section, the Administrator shall notify the applicant of his acceptance or nonacceptance of the application, and if not accepted, the reason therefore. The Administrator need not accept an application for filing if any of the requirements prescribed in paragraph (c) of this section is lacking or is not set forth so as to be readily understood. The applicant may amend the application to meet the requirements of paragraph (c) of this section. If accepted for filing, the Administrator will request from the Secretary for Health and Human Services his recommendation, as to whether such product which contains an anabolic steroid should be considered for exemption from certain portions of the Controlled Substances Act. On receipt of the recommendation of the Secretary, the Administrator shall make a determination as to whether the evidence submitted or otherwise available sufficiently establishes that the product possesses no significant potential for abuse. The Administrator shall issue and publish in the **Federal Register** his order on the application, which shall include a reference to the legal authority under which the order is issued, and the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect. The Administrator shall permit any interested person to file written comments on or objections to the order within 60 days of the date of publication of his order in the **Federal Register**. If any such comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which the order is based, the Administrator shall immediately suspend the effectiveness of the order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

(e) The Administrator may revoke any exemption granted pursuant to section 1903(a) of Public Law 101-647 by following the procedures set forth in paragraph (d) of this section for handling an application for an exemption which has been accepted for filing.

§ 1308.34 Exempt Anabolic Steroid Products.

The following anabolic steroid containing compounds, mixtures, or preparations have been exempted by the Administrator from application of sections 302 through 309 and 1002 through 1004 of the Act (21 U.S.C. 822-829 and 952-954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only:

TABLE OF EXEMPT ANABOLIC STEROID PRODUCTS

Company	Trade name	NDC code	Dosage form	Ingredients	Quantity
[Reserved]					

Dated: February 12, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-5978 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

Availability of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking; revision.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) proposes to revise its Freedom of Information Act (FOIA) regulations to include procedures for obtaining records maintained under the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*, and prediscloure notification procedures for confidential commercial information. The Commission also proposes several nonsubstantive administrative changes.

DATES: Comments must be submitted on or before April 15, 1991.

ADDRESSES: Comments should be submitted to: Executive Officer, room 10402, EEOC, 1801 L Street, NW., Washington, DC 20507.

Copies of this notice of proposed rulemaking are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Kathy Oram, Senior Attorney, or Maia Caplan, Attorney, (202) 663-4669 (voice) or (202) 663-7026 (TDD).

SUPPLEMENTARY INFORMATION: The Commission proposes to revise its regulations under the Freedom of Information Act, 5 U.S.C. 552, to encompass records maintained pursuant to the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* On July 26, 1990, President Bush signed the ADA, effective July 26, 1992, which prohibits discrimination against individuals with disabilities and empowers the Commission to accept and investigate charges of discrimination. The revised regulations establish procedures for requesting access to records related to charges filed under the ADA.

The proposed regulations also add a new § 1610.19 on prediscloure notification procedures for confidential commercial information. Section 1610.19 conforms this part to the requirements of Executive Order No. 12600, and to the Commission's practice since the issuance of the Executive Order. The prior §§ 1610.19 and 1610.20 are numbered as §§ 1610.20 and 1610.21, respectively.

A number of other clarifying changes are proposed, including updating the addresses of Commission field offices and codifying the Commission's practice of remanding appeals for charge file information to the appropriate Regional Attorney when the Commission closes charge files during the interim between an initial denial by a field office and consideration of an appeal by the Office of Legal Counsel. Owing to an organizational change, the term Deputy Legal Counsel is replaced with the term Legal Counsel or designee.

For the Commission,

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR part 1610 as follows.

1. The authority citation for 29 CFR part 1610 continues to read as follows:

Authority: Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e-12(a), 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 483a.

2. Section 1610.4 is amended by revising paragraph (c) to read as follows:

§ 1610.4 Public reference facilities and current index.

* * * * *

(c) The Commission's field offices are:

Albuquerque Area Office (Phoenix District), Western Bank Building, suite 1105, 505 Marquette, NW., Albuquerque, New Mexico 87102-2189.
Atlanta District Office, Citizens Trust Bank Building, suite 1100, 75 Piedmont Avenue, NE., Atlanta, Georgia 30335.
Baltimore District Office, 111 Market Place, suite 4000, Baltimore, Maryland 21202.
Birmingham District Office, 1900 3rd Avenue, North, suite 101, Birmingham, Alabama 35203-2397.
Boston Area Office (New York District), 1 Congress Street, suite 100, Boston, Massachusetts 02114.
Buffalo Local Office (New York District), 28 Church Street, room 301, Buffalo, New York 14202.
Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212.
Chicago District Office, Federal Building, room 930A, 536 South Clark Street, Chicago, Illinois 60605.
Cincinnati Area Office (Cleveland District), 550 Main Street, room 7015, Cincinnati, Ohio 45202.
Cleveland District Office, 1375 Euclid Avenue, room 600, Cleveland, Ohio 44115.
Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247.
Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203.
Detroit District Office, 477 Michigan Avenue, room 1540, Detroit, Michigan 48226.
El Paso Area Office (San Antonio District), The Commons, Building C, suite 100, 4171 North Mesa Street, El Paso, Texas 77902.
Fresno Local Office (San Francisco District), 1313 P Street, suite 103, Fresno, California 93721.
Greensboro Local Office (Charlotte District), 324 West Market, room B-27, P.O. Box 3363, Greenboro, North Carolina 27402.
Greenville Local Office (Charlotte District), 300 East Washington Street, suite B41, Greenville, South Carolina 29601.
Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, suite 404, P.O. Box 50082, Honolulu, Hawaii 96813.
Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
Indianapolis District Office, 46 East Ohio Street, room 456, Indianapolis, Indiana 46204.
Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201.
Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106.
Little Rock Area Office (Memphis District), 320 West Capitol Avenue, suite 621, Little Rock, Arkansas 72201.
Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010.
Louisville Area Office (Indianapolis District), 601 West Broadway, room 613, Louisville, Kentucky 40202.
Memphis District Office, 1407 Union Avenue, suite 621, Memphis, Tennessee 38104.
Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132.
Milwaukee District Office, 310 West Wisconsin Avenue, suite 800, Milwaukee, Wisconsin 53203.
Minneapolis Local Office (Milwaukee District), 220 Second Street South, room 108, Minneapolis, Minnesota 55401-2141.
Nashville Area Office (Memphis District), 50 Vantage Way, suite 202, Nashville, Tennessee 37228.
Newark Area Office (Philadelphia District), 60 Park Place, room 301, Newark, New Jersey 07102.
New Orleans District Office, 701 Loyola Avenue, suite 600, New Orleans, Louisiana 70113.
New York District Office, 90 Church Street, room 1501, New York, New York 10007.
Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510.

Oakland Local Office (San Francisco District), 1333 Broadway, room 430, Oakland, California 94612.
Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
Phoenix District Office, 4520 North Central Avenue, Suite 300, Phoenix, Arizona 85012-1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, room 2038-A, Pittsburgh, Pennsylvania 15222.
Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608-2129.
Richmond Area Office (Baltimore District), 400 North 8th Street, room 7026, Richmond, Virginia 23240.
San Antonio District Office, 5410 Fredericksburg Road, suite 200, San Antonio, Texas 78229.
San Diego Local Office (Los Angeles District), 880 Front Street, room 4S-21, San Diego, California 92188.
San Francisco District Office, 901 Market Street, suite 500, San Francisco, California 94103.
San Jose Local Office (San Francisco District), 280 South First Street, room 4150, San Jose, California 95113.
Savannah Local Office, 10 Whitaker Street, suite B, Savannah, Georgia 31401.
Seattle District Office, 2815 Second Avenue, suite 500, Seattle, Washington 98121.
St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63018.
Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602.
Washington Field Office, 1400 L Street, NW., suite 200, Washington, DC 20005.

§ 1610.5 [Amended]

3. Section 1610.5 is amended by removing paragraph (d).

§ 1610.7 [Amended]

4. Section 1610.7 is amended by revising (a) to read as follows:

§ 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the regional attorney for the pertinent district, area or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office at the address listed in § 1610.4(c):

(1) Information about current or former employees of a field office

(2) Existing non-confidential statistical data related to the case processing of a field office.

(3) Agreements between the Commission and state or local fair employment agencies operating within the jurisdiction of a field office; or

(4) Materials in field office investigative files related to charges under: Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq;* The Equal Pay Act (29 U.S.C. 206(d)); the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*); or, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

* * * * *

§ 1610.7 [Amended]

5. Sections 1610.7, 1610.8, 1610.9, 1610.13, and 1610.14 are amended by removing the words "Deputy Legal Counsel" and adding, in their place, the words "Legal Counsel."

6. Section 1610.9 is amended by adding paragraph (a)(4) to read as follows:

§ 1610.9 Prompt response.

(a) * * *

(4) The Commission is required to provide notification of the request to a commercial submitter pursuant to § 1610.19 of this subpart.

* * * * *

7. Section 1610.10 is amended by revising paragraphs (a) and (b) as follows:

§ 1610.10 Responses: form and content.

(a) Once a requested record is identified and available, the requester will be notified of when and where the record will be made available and the cost assessed for processing the request. Fees for processing requests will be determined in accordance with the schedule set forth in § 1610.15. Checks shall be made payable to the Treasurer of the United States.

(b) A reply denying a written request for a record shall be in writing, signed by the Legal Counsel, designee, or the appropriate regional attorney, and shall include:

(1) His or her name and title;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9(a), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) a statement that the denial may be appealed to the Commission within 30 days of receipt of the denial or partial denial.

* * * * *

8. Section 1610.11 is amended as follows:

(a) Paragraph (a) is revised by removing the words "Deputy Legal Counsel or designee" and replace it with "Legal Counsel's designee.

(b) Paragraph (f) is added to read as follows:

§ 1610.11 Appeals to the Commission from initial denials.

(f) In the event that the Commission closes its charge file during the interim between an initial denial by the field office and consideration of the requester's appeal by the Legal Counsel's designee, the designee may remand the request to the appropriate Regional Attorney for redetermination. The requester retains a right to appeal to the Legal Counsel or designee from the decision on remand.

9. Section 1610.17 is amended as follows:

(a) Paragraphs (f) and (g) are redesignated as paragraphs (g)(h).

(b) Paragraph (f) is added to read as follows:

§ 1610.17 Exemptions.

* * * * *

(f) Section 107 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) explicitly adopts the powers, remedies, and procedures set forth in title VII, including those contained in sections 706(b) and 708. Accordingly, the prohibitions on disclosure outlined in subsections (b)(, (c), (d), and (e), apply with equal force to requests for information related to charges filed with, or investigations by, the Commission under the Americans with Disabilities Act.

10. Section 1610.18 is revised to read as follows:

§ 1610.18 Information to be disclosed.

The Commission will provide the following information to the public:

(a) The Commission will make available for inspection and copying certain tabulations of aggregate industry, area, and other statistics derived from the Commission's reporting programs authorized by section 709(c) of title VII, provided that such tabulations: Were previously compiled by the Commission and are available in documentary form; comprise an aggregation of data from not less than three responding entities; and, do not reveal the identity of an individual or

dominant entity in a particular industry or area;

(b) All blank forms used by the Commission;

(c) Subject to the restrictions and procedures set forth in § 1610.19, all signed contracts, final bids on all signed contracts, and agreements between the Commission and state or local agencies charged with the administration of state or local fair employment practices laws;

(d) All final reports that do not contain statutorily confidential material in a recognizable form;

(e) All Agency correspondence to members of the public, Members of Congress, or other persons not government employees or special government employees, except those containing information that would produce an invasion of privacy if made public;

(f) All administrative staff manuals and instructions to staff that affect members of the public unless the materials are promptly published and copies offered for sale; and

(g) All final votes of each Commissioner, for every Commission meeting, except for votes pertaining to filing suit against respondents until such litigation is commenced.

11. Section 1610.20 is redesignated § 1610.21.

12. Section 1610.19 is redesignated § 1610.20.

13. Section 1610.19 is added to read as follows:

§ 1610.19 Predisclosure Notification Procedures for Confidential Commercial Information.

(a) *In general.* Commercial information provided to the Commission shall not be disclosed except in accordance with this section. For the purposes of this section, the following definitions apply:

(1) "Confidential commercial information" refers to records provided by a submitter containing information that is arguably exempt from disclosure under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" refers to any person or entity who provides confidential commercial information to the government. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitter.* Except as provided in paragraph (g) of this section, the Commission shall provide a submitter with explicit notice of a FOIA request for confidential commercial records whenever:

(1) The Commission reasonably believes that disclosure could cause substantial competitive harm to the submitter;

(2) The information was submitted prior to January 1, 1988, the records are less than 10 years old, and the submitter designated them as commercially sensitive; or

(3) The information was submitted after January 1, 1988, and the submitter previously, in good faith, designated the records as confidential commercial information. Such designations shall:

(i) require the support of a statement or certification from an officer or authorized representative of the company that the information is in fact confidential commercial information and has not been disclosed to the public; and

(ii) expire ten years from the date of submission unless otherwise justified.

(c) *Notice to requester.* When notice is given to a submitter under this section, the requester shall be notified that notice and opportunity to comment are being provided to the submitter.

(d) *Opportunity of submitter to object.* When notification is made pursuant to paragraph (b) of this section, the Commission shall afford the submitter seven working days to provide it with a detailed statement of objections to disclosure. Such statement shall provide precise identification of the exempted information, and the basis for claiming it as a trade secret or as confidential information pursuant to 5 U.S.C. 552(b)(4), the disclosure of which is likely to cause substantial harm to the submitter's competitive position.

(e) *Notice of intent to disclose.* (1) The Commission shall consider carefully the objections of a submitter provided pursuant to paragraph (d) of this section. When the Commission decides to disclose information despite such objections, it shall provide the submitter with a written statement briefly explaining why the objections were not sustained. Such statement shall be provided seven working days prior to the specified disclosure date, in order that the submitter may seek a court injunction to prevent release of the records if it so chooses.

(2) When a submitter is notified pursuant to paragraph (e)(1) of this section, notice of the Commission's final disclosure determination and proposed release date shall also be provided to the requester.

(f) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the Commission shall promptly notify the submitter of the legal action.

(g) *Exceptions to the notice requirement.* The notice requirements of this section shall not apply if:

(1) The Commission determines that the information shall not be disclosed;

(2) The information is published or otherwise officially available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

[FR Doc. 91-5912 Filed 3-13-91; 8:45 am]
BILLING CODE 6570-06-M

29 CFR Part 1611

Privacy Act of 1974

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is proposing to revise its regulations at 29 CFR part 1611 which implement the Privacy Act of 1974. These regulations set forth the procedures whereby individuals can request information about, access to, or amendments of records pertaining to them that are contained in a system of records established or maintained by the Commission. They also set forth the procedures to be followed in processing those requests. The proposed amendments update the regulations, delegate authority, clarify the appeal process and exempt two EEOC systems of records from some of the Act's requirements.

DATES: Written comments on the proposed regulations must be received on or before May 13, 1991. The Commission proposes to consider any comments received and thereafter adopt final regulations.

ADDRESSES: Comments should be addressed to the Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's library, room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

Copies of this notice of proposed rulemaking are available in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Equal Employment Opportunity by calling (202) 663-4395 (voice) or (202) 663-4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney, at (202) 663-4670 (voice) or (202) 663-7026 (TDD).

SUPPLEMENTARY INFORMATION: Pursuant to section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), each agency that maintains a system of records must promulgate rules in accordance with the Administrative Procedure Act, 5 U.S.C. 553, establishing procedures and requirements for carrying out the provisions of the Privacy Act. Accordingly, the Commission is publishing proposed amendments to its Privacy Act regulations in order to update them and to make other administrative and editorial changes.

The Commission proposes to amend § 1611.14 of its regulations in order to exempt government-wide system EEOC/GOVT-1 from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Privacy Act. Section (k) of the Privacy Act allows an agency to exempt any system of records from the above-referenced subsections of the Act if it consists of "investigatory material compiled for law enforcement purposes." 5 U.S.C. 552(b)(2). The files in this system contain information obtained by federal agencies in the course of investigations of alleged violations of title VII of the Civil Rights Act of 1964 42 U.S.C. 2000e-16, the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a, the Equal Pay Act of 1963, 29 U.S.C. 206(d), and the Rehabilitation Act of 1973, 29 U.S.C. 791 and 794(a). In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the agencies and the Commission to apply the disclosure and amendment provisions of the Privacy Act to these files. Subject individuals know that the Commission or agency is maintaining a file and receive a copy of it at the end of the investigation of the complaint pursuant to 29 CFR 1613.220. Subject individuals already have the opportunity to submit evidence and argument contradicting or commenting upon the records in the file; a right to correct or amend such records under the Act would be inconsistent with the law enforcement function and would undermine the integrity of the administrative record. Thus, the Commission has determined that not exempting system EEOC/GOVT-1 from the above named subsections of the Privacy Act would impede the agency's law enforcement efforts.

The Commission also proposes to extend the existing exemption for system EEOC-1 to include exemption from sections (e)(4)(G) and (e)(4)(I) of the Privacy Act in order to parallel the exemption for system EEOC-3.

A number of administrative and technical changes are also proposed. The Commission proposes to delegate authority for processing appeals under the Privacy Act from the Chairman of the Commission to the Legal Counsel or the Legal Counsel's designee. The Commission proposes to clarify the procedures for requests and appeals pertaining to records maintained in system EEOC/GOVT-1, EEOC's only government-wide system of records. The Commission proposes to add the locations of EEOC maintained records covered by General Services Administration, Merit Systems Protection Board, Office of Government Ethics and Department of Labor government-wide systems and to provide information regarding how and where to appeal denials under those systems. The proposed regulations change the charge for copying of documents from $.05 per page to $.15 per page to conform with the Commission's Freedom of Information Act regulation, 29 CFR 1610.15.

List of Subjects in 29 CFR Part 1611

Privacy Act.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

Accordingly, it is proposed to amend 29 CFR part 1611 as follows:

PART 1611—PRIVACY ACT REGULATIONS

1. The citation authority for part 1611 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1611.1 is revised to read as follows:

§ 1611.1 Purpose and scope.

This part contains the regulations of the Equal Employment Opportunity Commission (the Commission) implementing the Privacy Act of 1974, 5 U.S.C. 552a. It sets forth the basic responsibilities of the Commission under the Privacy Act (the Act) and offers guidance to members of the public who wish to exercise any of the rights established by the Act with regard to records maintained by the Commission. All records contained in system EEOC/GOVT-1, including those maintained by other agencies, are subject to the Commission's Privacy Act regulations. Requests for access to, an accounting of disclosures for, or amendment of records in EEOC/GOVT-1 must be processed by agency personnel in accordance with this part. Commission records that are contained in a government-wide system of records established by the U.S. Office of Personnel Management (OPM), the General Services Administration (GSA), the Merit Systems Protection Board (MSPB), the Office of Government Ethics (OGE) or the Department of Labor (DOL) for which those agencies have published systems notices are subject to the publishing agency's Privacy Act regulations. Where the government-wide systems notices permit access to these records through the employing agency, an individual should submit requests for access to, for amendment of or for an accounting of disclosures to the Commission offices as indicated in § 1611.3(b).

3. Section 1611-3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1611-3 Procedures for requests pertaining to individual records in a record system.

(a) Any person who wishes to be notified if a system of records maintained by the Commission contains any record pertaining to him or her, or to request access to such record or to request an accounting of disclosures made of such record, shall submit a written request, either in person or by mail, in accordance with the instructions set forth in the system notice published in the **Federal Register**. The request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice; and

(4) When the request is for access to records, a statement indicating whether the requester desires to make a personal inspection of the records or be supplied with copies by mail.

(b) Requests pertaining to records contained in a system of records established by the Commission and for which the Commission has published a system notice should be submitted to the person or office indicated in the system notice. Requests pertaining to Commission records contained in the government-wide systems of records listed below should be submitted as follows:

(1) For systems OPM/GOVT–1 (General Personnel Records), OPM/GOVT–2 (Employee Performance File System Records), OPM/GOVT–3 (Records of Adverse Actions and Actions Based on Unacceptable Performance), OPM/GOVT–5 (Recruiting, Examining and Placement Records), OPM/GOVT–6 (Personnel Research and Test Validiation Records), OPM/GOVT–9 (Files on Position Classification Appeals, Job Grading Appeals and Retained Grade or Pay Appeals), OPM/GOVT–10 (Employee Medical File Sytem Records) and DOL/ESA–13 (Office of Workers' Compensation Programs, Federal Employees' Compensation File), to the Director of Personnel Management Services, EEOC, 1801 L St, NW., Washington, DC 20507;

(2) For systems OGE/GOVT–1 (Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records), OGE/GOVT–2 (Confidential Statements of Employment and Financial Interests), and MSPB/GOVT–1 (Appeals and Case Records), to the Legal, Counsel, EEOC, 1801 L Street, NW., Washington, DC. 20507;

(3) For system OPM/GOVT–7 (Applicant Race, Sex, National Origin, and Disability Status Records), to the Director of the Office of Equal Employment Opportunity, EEOC, 1801 L St., NW., Washington, DC 20507;

(4) For systems GSA/GOVT–3 (Travel Charge Card Program) and GSA/GOVT–4 (Contracted Travel Services Program) to the Director of Financial and Resource Management Services, EEOC, 1801 L St., NW., Washington, DC 20507.

* * * * *

4. Section 1611.5 is amended as follows:

(a) Paragraph (a)(5) is amended by removing the words "or § 1611.14."

(b) Paragraphs (c) and (d) are revised to read as follows:

§ 1611.5 Disclosure of requested information to individuals.

* * * * *

(c) If a request for access to records is denied pursuant to paragraph (a) or (b) of this section, the determination shall specify the reasons for the denial and advise the individual how to appeal the denial. If the request pertains to a system of records for which the Commission has published a system notice, any appeal must be submitted in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a government-wide system of records any appeal should be in writing, identified as a Privacy Act appeal and submitted as follows:

(1) For systems established by OPM and for which OPM has published a system notice, to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, OPM, 1900 E St., NW., Washington, DC 20415. The OPM Privacy Act regulations, 5 CFR 297.207, shall govern such appeals.

(2) For systems established by OGE and for which OGE has published a system notice, to the Privacy Act Officer, Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. The OGE Privacy Act regulations, 5 CFR part 2606 shall govern such appeals.

(3) For the system established by MSPB and for which MSPB has published a system notice, to the Deputy Executive Director for Management, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. The MSPB Privacy Act regulations, 5 CFR part 1205 shall govern such appeals.

(4) For systems established by GSA and for which GSA has published a system notice, to GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. The GSA Privacy Act regulations, 41 CFR 105–64.301–5, shall govern such appeals.

(5) For the system established by DOL and for which DOL has published a system notice, to the Solicitor of Labor, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The DOL Privacy Act regulations, 29 CFR 70a.9, shall govern such appeals.

(d) In the event that access to a record is denied on appeal by the Legal Counsel or the Legal Counsel's designee, the requestor shall be advised of his or her right to bring a civil action in federal district court for review on the denial in accordance with 5 U.S.C. 552a(g).

6. Section 1611.7(c) is amended to remove the words "Civil Service Commission's" and add, in their place, the word "OPM's."

7. Section 1611.8 is amended as follows:

(a) Paragraph (a)(2) is amended by removing the word "Chairman" and adding, in its place, the words "Legal Counsel."

(b) Paragraphs (d) and (e) are revised to read as follows:

§ 1611.8 Agency review of request for correction or amendment to record.

* * * * *

(d) In the event that the Commission receives a notice of correction or amendment from another agency that pertains to records maintained by the Commission, the Commission shall make the appropriate correction or amendment to its records and comply with paragraph (a)(1)(iii) of this section.

(e) Requests for amendment or correction of records maintained in the government-wide systems of records listed in § 1611.5(c) shall be governed by the appropriate agency's regulations cited in that paragraph. Requests for amendment or correction of records maintained by other agencies in system EEOC/GOVT–1 shall be governed by the Commission's regulations in this part.

9. Section 1611.9 is revised to read as follows:

§ 1611.9 Appeal of initial adverse agency determination on correction or amendment.

(a) If a request for correction or amendment of a record in a system of records established by EEOC is denied, the requester may appeal the determination in writing to the Legal Counsel, EEOC, 1801 L Street, NW., Washington, DC 20507. If the request pertains to a record that is contained in the government-wide systems of records listed in § 1611.5(c), and appeal must be made in accordance with the appropriate agency's regulations cited in that paragraph.

(b) The Legal Counsel or the Legal Counsel's designee shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 working days from the date on which the individual requests a review, unless for good cause shown, this 30-day period is extended and the requester is notified of the reasons for the extension and of the estimated date on which a final determination will be made. Such extensions will be used only in exceptional circumstances and will not normally exceed 30 working days.

(c) In conducting the review of an appeal submitted under paragraph (a) of this section, the Legal Counsel or the Legal Counsel's designee shall be guided by the requirements of 5 U.S.C. 552a(e).

(d) If the Legal Counsel or the Legal Counsel's designee determines to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall so inform the requester, and the appropriate Commission official shall comply with the procedures set forth in § 1611.8(a)(1)(ii) and (iii).

(e) If the Legal Counsel or the Legal Counsel's designee determines in accordance with paragraphs (b) and (c) of this section not to grant all or any portion of a request on an appeal submitted under paragraph (a) of this section, he or she shall inform the requester:

(1) Of this determination and the reasons for it;

(2) Of the requester's right to file a concise statement of reasons for disagreement with the determination of the Legal Counsel or the Legal Counsel's designee;

(3) That such statements of disagreement will be made available to anyone to whom the record is subsequently disclosed, together with (if the Legal Counsel or the Legal Counsel's designee deems it appropriate) a brief statement summarizing the Legal Counsel or the Legal Counsel's designee's reasons for refusing to amend the record;

(4) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement together with (if the Legal Counsel or the Legal Counsel's designee deems it appropriate) a brief statement of the Legal Counsel or the Legal Counsel's designee's reasons for refusing to amend the record, to the extent that an accounting of disclosure is maintained under 5 U.S.C. 552a(c); and

(5) Of the requester's right to file a civil action in federal district court to seek a review of the determination of the Legal Counsel or the Legal Counsel's designee in accordance with 5 U.S.C. 552a(g).

(f) The Legal Counsel or the Legal Counsel's designee shall ensure that any statements of disagreement submitted by a requestor are made available or distributed in accordance with paragraphs (e) (3) and (4) of this section.

§ 1611.11 [Amended]

10. Section 1611.11(a)(1) is amended to remove the words "copies made by photocopy device or otherwise (per page), $.05." and add, in their place, the words "photocopies (per page), $.15."

§ 1611.13 [Removed]

11. Section 1611.13 is removed.

§ 1611.14 [Redesignated as § 1611.13 and revised]

12. Section 1611.14 is redesignated as § 1611.13 and revised to read as follows:

§ 1611.13 Specific exemptions.

Pursuant to subsection (k)(2) of the Act, 5 U.S.C. 552a(k)(2), systems EEOC–1 (Age and Equal Pay Act Discrimination Case Files), EEOC–3 (title VII and Americans With Disabilities Act Discrimination Case Files) and EEOC/GOVT–1 (Equal Employment Opportunity Complaint Records and Appeal Records) are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act. The Commission has determined to exempt these systems from the above named provisions of the Privacy Act for the following reasons:

(a) The files in these systems contain information obtained by the Commission and other Federal agencies in the course of investigations of charges and complaints that violations of title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans With Disabilities Act and the Rehabilitation Act have occurred. In some instances, agencies obtain information regarding unlawful employment practices other than those complained of by the individual who is the subject of the file. It would impede the law enforcement activities of the Commission and other agencies for these provisions of the Act to apply to such records.

(b) The subject individuals of the files in these systems know that the Commission or their employing agencies are maintaining a file on their charge or complaint, and the general nature of the information contained in it.

(c) Subject individuals of the files in each of these systems have been provided a means of access to their records by the Freedom of Information Act. Subject individuals of the charge files in system EEOC–3 have also been provided a means of access to their records by section 83 of the Commission's Compliance Manual. Subject individuals of the case files in system EEOC–GOVT–1 have also been provided a means of access to their records by the Commission's Equal Employment Opportunity in the Federal Government regulation, 29 CFR 1613.220.

(d) Many of the records contained in system EEOC/GOVT–1 are obtained from other systems of records. If such records are incorrect, it would be more appropriate for an individual to seek to amend or correct those records in their primary filing location so that notice of the correction can be given to all recipients of that information.

(e) Subject individuals of the files in each of these systems have access to relevant information provided by the allegedly discriminating employer as part of the investigatory process and are given the opportunity to explain or contradict such information and to submit any responsive evidence of their own. To allow such individuals the additional right to amend or correct the records submitted by the allegedly discriminating employer would undermine the investigatory process and destroy the integrity of the administrative record.

(f) The Commission has determined that the exemption of these three systems from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the agency's law enforcement efforts.

[FR Doc. 91–5911 Filed 3–13–91; 8:45 am]
BILLING CODE 6750–06–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

CGD1 90–191

Safety Zone: Connecticut River, Middletown, CT.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a safety zone on the Connecticut River between Middletown, CT and Portland, CT on the 4th, 5th and 6th of July, 1991. It will be the intent of this safety zone to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display in a narrow channel.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Comments should be mailed to the Captain of the Port Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. The comments and other material referenced in this notice will be available for inspection and copying at the Captain of the Port office at 120 Woodward Avenue in New Haven. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: The Captain of the Port Duty Watchstander or LT David D. Skewes at (203) 468–4464.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD1 90–191 and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make

oral presentations will aid the rulemaking process.

Drafting Information:

The drafters of this regulation are LT David D. Skewes, project officer for Captain of the Port Long Island Sound, and LT Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulations

Due to the safety hazard involved with the detonation of fireworks Special (Class B) explosives in this narrow channel area, the following restrictions would apply.

Proposed Location

The proposed safety zone will encompass all waters within a 500 ft square marked by four large orange spheres/market buoys around the fireworks launching platform. The platform will be positioned approximately 500 ft offshore from the Americas Cup Restaurant on the Connecticut River in Middletown, CT. The lauching platform will be anchored on the East side of the channel between Connecticut River Buoys N"92" to the North and N"90" to the South.

Proposed Effective Dates

On July 4, 5 and 6, 1991 the main channel of the river in the proposed location will be closed to all marine traffic from 9 p.m., approximately 15 minute prior to the start of the fireworks display, until the completion of each night's display at approximately 9:45 p.m., unless terminated sooner by the Captain of the Port.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed safety zone is expected to interrupt the flow of marine traffic for no more than 30 minutes during each of the three displays.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The Authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 33 CFR 165.T01191 is added to read as follows:

§ 33 CFR 165.T01191 Safety Zone, Connecticut River, Middletown Connecticut.

(a) *Location.* The following area is a safety zone:

All waters within a 500 ft square area marked by four large orange spheres/marker buoys around the fireworks launching platform positioned approximately 500 ft from the Americas Cup Restuarant on the Connecticut River in Middletown, CT. The launching platform will be anchored on the East side of the channel between Connecticut River Buoys N"92" to the North and N"90" to the South at an approximate position of (41 33.65'N, 072 38.6'W).

(b) *Effective Dates.* This regulation becomes effective on July 4, 5, and 6, 1991 at approximately 9 p.m. local time, approximately 15 minutes prior to the fireworks display. It terminates on July 4, 5, and 6, 1991, at the completion of each night's display at approximately 9:45 p.m. local time.

(c) *Regulations.*

In accordance with the general regulations in 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port.

Dated: March 4, 1991.

H. Bruce Dickey,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 91–6097 Filed 3–13–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225, 231 and 242

Department of Defense, Federal Acquisition Regulation Supplement; Independent Research and Development Costs

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing changes to the DoD FAR Supplement to amend parts 225, 231, and 242 to implement section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) to incorporate the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD" and to make other related changes. Other requirements of 10 U.S.C. 2372 have been proposed for implementation in the Federal Acquisition Regulation and will be published at a later date.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before April 15, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90–313 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, Procurement Analyst, DAR Council, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 824 of the FY 1991 DoD Authorization Act (Pub. L. 101–510) repealed "Section 203 of Pub. L. 91–441 (10 U.S.C. 2358 note)" and amended 10 U.S.C. by adding a new section 2372, "Independent research and development." This proposed rule makes several required changes to the DFARS. Related changes to FAR 31.205–18 and subpart 42.10 are being published at a later date.

DFARS 225.7304(c)(2) is amended to remove an inconsistency that currently exists with 225.7304(c)(3). DFARS 225.7304(c)(3) is amended to incorporate the new 10 U.S.C. 2372 citation and to correct an erroneous reference to IR&D/B&P ceiling limitations or formula constraints as being contained in DFARS part 231, rather than in FAR part 31. DFARS 231.205–18 is rewritten to incorporate the new, broader legislative standard for IR&D/B&P projects which are of "potential interest to DoD," including the specific examples of such projects listed in 10 U.S.C. 2372(c). DFARS 242.1005(a) is added to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing guidance for contractor submission of technical information to support IR&D proposals. DFARS 242.1005(b) is amended to clarify that the DoD IR&D Technical Evaluation Group is responsible for providing contracting officers with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD. DFARS 242.1005(c), 242.1006, and 242.1007 are amended to incorporate the new standard of "potential interest to DoD" and to otherwise satisfy the requirements of 10 U.S.C. 2372. DFARS 242.1008 is amended to reflect current organizations and titles within DoD.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been performed because the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq* because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. Comments from small entities concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 91–610 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 231 and 242

Government procurement.

Nancy L. Ladd,

Colonel, USAF, Director, Defense Acquisition, Regulatory Council.

Therefore, it is proposed that 48 CFR parts 225, 231, and 242 be amended as follows:

1. The authority citation for 48 CFR parts 225, 231, and 242 continues to read as follows:

Authority: 5 U.S.. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is amended by revising paragraphs (c) (2) and (3) to read as follows:

222.7304 Pricing acquisitions for foreign military sales.

* * * * *

(c) Cost of doing business with a foreign government or an international organization

* * * * *

(2) Costs that are not allowable under FAR part 31 are not allowable in pricing FMS contracts, except as noted in paragraph (c)(3) of this section.

(3) The provisions of 10 U.S.C. 2372 do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on independent research and development and bid and proposal (IR&D/B&P) costs incorporated in FAR part 31 shall not be applicable to contracts for Foreign Military Sales. IR&D/B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

* * * * *

PART 232—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Section 231.2095–18 is revised to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(iii)(A)(*1*) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205–18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of:

(*i*) Such contracts' allocable share of incurred IR&D/B&P costs,

(*ii*) Such contracts' allocable share of the total IR&D/B&P ceiling, or

(*iii*) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(*2*)Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to Dod, including activities that:

(*i*) Strengthen the defense industrial and technology base of the United States;

(*ii*) Enhance the industrial competitiveness of the United States;

(*iii*) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;

(*iv*) Increase the development of technologies useful for both the private commercial sector and the public sector; or

(*v*) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(B) The contracting officer will:

(*1*) Determine whether IR&D/B&P activities are of potential interest to DoD, and

(*2*) Provide the results of the determination to the contractor.

(C) See 225.7304 for additional allowability requirements affecting Foreign Military Sales contracts.

PART 242—CONTRACT ADMINISTRATION

4. Section 242.1005 is revised to read as follows:

242.1005 Lead negotiating agency responsibilities.

(a) The DoD IR&D Technical Evaluation Group will provide the necessary guidance for contractor submission of technical information to support IR&D proposals.

(b) The DoD IR&D Technical Evaluation Group will provide the contracting officer with the required technical evaluation, including an opinion concerning the potential interest of the proposed IR&D projects to DoD.

(c) The determination shall address the 231.205–18(c)(1)(iii)(A) requirement that the proposed IR&D/B&P projects must be of potential interest to DoD.

5. Section 242.1006 is revised to read as follows:

242.1006 Conducting negotiations.

(a)(5) Ensure that the 231.205–18(c)(1)(iii)(A) requirement that proposed IR&D/B&P projects must be of potential interest to DoD is met.

(b) To implement 10 U.S.C. 2372(c), contracting officers shall encourage contractors to engage in the IR&D/B&P activities cited in 231.205–18(c)(1)(iii)(A).

6. Section 242.1007 is revised to read as follows:

242.1007 Content of advance agreements.

(e) The agreement shall specifically note that:

(1) A review of the proposed IR&D/B&P projects for potential interest to DoD was performed and

(2) A determination was made that the Government's allocable share of the negotiated ceiling met the requirement for potential interest to DoD at the time of negotiation.

(f)(2) Allowable IR&D/B&P costs are limited to those incurred for projects that are of potential interest to DoD.

7. Section 242.1008 is revised to read as follows:

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member, and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S-70)(1) *For the Army.* The Deputy Assistant Secretary (Procurement) will appoint the acquisition member. The Deputy Assistant Secretary (Research and Technology) will appoint the technical member. The Deputy General Counsel (Acquisition) will appoint the legal member.

(2) *For the Navy.* The Principal Assistant Secretary (Research Development and Acquisition) will appoint the acquisition member and the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member and the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

[FR Doc. 91-5975 Filed 3-13-91; 8:45 am]
BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia River Basin Anadromous Fish Management; Idaho, Oregon, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of management guidelines.

SUMMARY: The Northern, Intermountain, and Pacific Northwest Regions have jointly developed management guidelines that provide for consistency among the Regions and Forests and will lead to more coordinated management of anadromous fish resources among all fish and land management agencies. The Notice of availability of management guidelines and request for comments was published in the **Federal Register** on August 10, 1990. The three Regions received comments from 17 respondents and their comments were considered in the preparation of the management guidelines. The management policy will be issued as Regional Supplements to Forest Service Manual FSM 2636, Wildlife, Fish, and Sensitive Plant Habitat Management. The management guidelines will be issued as Regional Supplements to Forest Service Handbook, FSH 2609.24, Wildlife and Fisheries Habitat Management Handbook. By agreement with the other two Regions, the Northern Region is publishing this notice of availability.

DATES: The management guidelines were adopted by the three regions on January 25, 1991.

ADDRESSES: To obtain copies of the Columbia River Basin Anadromous Fish Habitat Management Guidelines, written request should be sent to: Gordon Haugen, Columbia Basin Fish & Wildlife Coordinator, Multinomah Bldg., P.O. Box 3623, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Gordon Haugen at the above address or phone (503) 326-4929.

SUPPLEMENTARY INFORMATION: The Columbia River flows through the states of Washington, Oregon and Idaho, through three Forest Service regions, and through 16 national forests. The Forest Service manages a third of the land in the Columbia River Basin, including about 15,000 miles of anadromous fish habitat which is more than 50% of the remaining suitable habitat in the basin. Because of this, management of anadromous fish habitat has always been an important activity the Forest Service has included in it's multi-resource program. Habitat management has been addressed in Forest Plans and will continue to be addressed during implementation of these Plans within the context of multiple-use goals and objectives. The significance of this resource, internal reviews, and forest plan appeals indicated a need to look closely at management direction in the areas of setting objectives and assessing management effects as related to the planning of other agencies in the Columbia River Basin.

The Forest Service has adopted this policy and management guidelines recognizing they have a vital role in the restoration of wild and naturally reproducing stocks of anadromous fish in the Columbia River Basin. The three Regions intend to support and participate in the achievement of basin wide anadromous fish restoration goals and will adopt consistent approaches to management the anadromous fish habitat on National Forest lands throughout the Columbia River Basin.

The mechanism to achieve this consistency is through common management guidelines issued as a supplement to the Wildlife and Fisheries Habitat Management Handbook, FSH 2609.24. Briefly, the handbook will provide guidance for Forest Service employees on how to:

1. Establish anadromous fish production capability objectives.

2. Explicitly describe the physical and biological characteristics of riparian and aquatic ecosystems (i.e. "Desired future conditions") necessary to meet those production capability objectives.

3. Identify habitat inventory needs and procedures.

4. Develop and implement a monitoring strategy for anadromous fish habitats.

5. Define and implement cumulative effects assessment procedures.

6. Identify and address information and research needs.

7. Implement the management guidelines relative to forest land management plans.

8. Develop or revise MOU's with anadromous fish/habitat management entities.

9. Coordinate with related anadromous fish/habitat management programs/activities.

10. Establish an oversight group to facilitate technical development and implementation of the management guidelines.

The management guidelines are intended to be dynamic and will be reviewed annually and amended as necessary.

Dated: March 6, 1991.

John M. Hughes,

Deputy Regional Forester.

[FR Doc. 91-6086 Filed 3-13-91; 8:45 am]
BILLING CODE 3410-11-M

Environmental Impact Statement for the Development of the Management Plan for Grand Island National Recreation Area, Hiawatha National Forest, MI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) for the development of the management plan for Grand Island National Recreation Area (GINRA), Munising Ranger District, Hiawatha National Forest, Alger County, Michigan. The Forest Service invites written comments and suggestions on the scope of the analysis.

The Forest Service gives notice that a full environmental analysis and decision making process will occur on the proposal so that interested persons are aware of how they may participate and contribute to the final decision.

The agency will initially accept written comments and suggestions as well as hold public meetings on the scope of the analysis. Since the agency

has received voluminous public comments relating to the possible management of GINRA, it urges that additional comments focus on specific issues. Those earlier comments will be considered during the preparation of the DEIS. General notice to the public concerning the scope of the analysis will be provided by a newsletter called Full Circle and/or news releases.

There will also be a period provided for written comments and public meetings on the content of the Draft Environmental Impact Statement (DEIS) once it is issued. That period will extend for 45 days from the date the Environmental Protection Agency's notice of availability of the DEIS appears in the Federal Register. It will be critical that those persons interested in the management of the Hiawatha National Forest participate during the comment period for the DEIS. Comments on the DEIS should be specific, and may address the adequacy of the DEIS or the merits of the alternatives discussed (see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) at 40 CFR 1503.3. After the comment period ends on the DEIS, the comments will be analyzed and considered by the agency in preparing the Final Environmental Impact Statement (FEIS).

DATES: Comments related to the scope of the analysis should be mailed to the agency by May 3, 1991, to ensure timely consideration. Public meetings on the scope of the analysis will be held during April 1991 with the dates, times, and locations to be announced through news releases and direct mailings of Full Circle.

ADDRESSES: Mail comments to District Ranger, Munising Ranger District, Hiawatha National Forest, 400 E Munising Ave., Munising, MI 49862.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the DEIS to: Paul Pedersen, Project Team Leader, Munising Ranger District, 400 E. Munising Ave., Munising, MI 49862, (phone 906–387–2512).

SUPPLEMENTARY INFORMATION: The GINRA, located on the Munising District of the Hiawatha National Forest, was created as a result of Congressional legislation in May, 1990. The island of 12,900 acres was acquired from the Trust for Public Lands. Previous to that, the island was owned by Cliffs Forest Products Company for almost 90 years. The island was used primarily for recreation and since the 1950's was heavily logged. There are 16 cabins on the island. Fifteen landowners own one parcel of about 45+ acreas. The remainder of the island is in Federal ownership. The legislation directs the Forest Service to develop a long-range management plan for the island and authorizes the Forest Service to administer the island under the objectives of that plan.

Preliminary information indicates there are several significant issues such as:

- The legislation requires that a feasibility study be completed to analyze the opportunity to develop up to 55 acreas in a commercial lodge development. Where this facility can be located may be retricted by the availability of water, sewage treatment facilities, wetlands and mitigation of cultural resources.
- Acquisition of lots in the 45-acre private ownership has to be clarified. Criteria have to be set up to determine under what circumstances the Forest Service would want to acquire land. In all cases it would be only if there is a willing seller.
- Motorized versus non motorized use of the island will need to be resolved. The legislation requires that opportunities for snowmobiles be provided. Vehicle uses by the permittees and landowners needs to be clarified. The legislation allows for traditional access to the island.
- A range of recreation opportunities needs to be provided. This could, for example, vary from developed campgrounds to dispersed campsites along the trails; motorized trails to hiking trails; public transportation to rentals of mountain bikes; from a lodge to a marina, etc.

Possible alternatives in response to these issues include:

- Alternative 1. A no-action alternative which will continue current operations at Grand Island National Recreation Area with no expansion of services or facilities.
- Alterntaive 2. An alternative which provides for little convenience or comforts, with no motorized use or commercial development.
- Alternative 3. An alternative which provides for motorized use and commercial development.
- Alternative 4. An alternative that provides for a mix of Alternatives 2 and 3.
- Alternative 5. Other alternative(s) that may be developed as a result of the scoping process.

A preferred alternative will be identified in the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 1991. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register**; notices will be published in local newspapers; and the Forest Service will mail copies of the DEIS or summary of the DEIS to all who have notified me of their interest in the management plan.

The FEIS is scheduled to be completed and available to the public approximately 6 months following the close of the review period for the DEIS. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR 217.

The Forest Service official responsible for approving the proposed action is: William F. Spinner, Forest Supervisor, Hiawatha National Forest, 2727 No Lincoln Rd., Escanaba, MI 49829.

Dated: March 4, 1991.

William F. Spinner,

Forest Supervisor.

[FR Doc. 91–6004 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–11–M

Duncan/Sunflower Timber Sale, Draft Environmental Impact Statement, Foresthill Ranger District, Tahoe National Forest, Placer County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice to extend comment period for the draft environmental impact statement.

SUMMARY: The comment period for the draft EIS for the Duncan/Sunflower Timber Sale is hereby extended 30 days to April 10, 1991. The original comment period closes March 11, 1991, as noticed by the Environmental Protection Agency in the **Federal Register**, Vol. 56, No. 17, Friday, January 25, 1991 (56 FR 2924).

DATES: Written substantive comments need to be received by April 10, 1991 to be considered.

ADDRESSES: Submit comments to John H. Skinner, Forest Supervisor, Tahoe National Forest, Highway 49 and Coyote Street, Nevada City, CA 95959.

FOR FURTHER INFORMATION CONTACT: Philip G. Tuma, Timber Management Planner, Foresthill Ranger District, Tahoe National Forest, 22803 Foresthill Road, Foresthill, CA 95631, (916) 367–2224.

SUPPLEMENTARY INFORMATION: Because of the complexity of the issues affecting the Duncan and Sunflower Timber Sale Draft Environmental Impact Statement, and the request of several parties including federal and local agencies for an extension of time to provide substantive comment, the close of the comment period is extended 30 days from March 11, 1991 to April 10, 1991.

Dated: March 6, 1991.

John H. Skinner,

Forest Supervisor.

[FR Doc. 91–6085 Filed 3–13–91; 8:45 am]

BILLING CODE 3410–11–M

Grouse Meadows Timber Sale, Wenatchee National Forest, Yakima County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, and construct associated roads on the Grouse Meadows timber sale. The proposed projects will be in compliance with the March 1990, Wenatchee Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area including a schedule of proposed activities for the next ten years. The proposed projects lie within the Short and Dirty Creek drainage, between Divide Ridge and the South Fork of the Tieton River on the Naches Ranger District. This planning area is part of the Blue Slide roadless area described in appendix C of the Forest Plan Environmental Impact Statement. Implementation of the proposed project will begin in fiscal year 1991.

The Wenatchee National Forest invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the environmental analysis and decision making process occurring on this proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the management of this project area should be received by April 12, 1991.

ADDRESSES: Submit written comments and suggestions concerning the management of this area within the scope of this analysis to Don Rotell, District Ranger, Naches Ranger District, 10061 Highway 12, Naches, Washington, 98937.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Keith Hole, Timber Management Assistant, Naches Ranger District, 10061 Highway 12, Naches, Washington, 98937; telephone (509) 653–2205.

SUPPLEMENTARY INFORMATION: The Forest Service site specific proposal includes harvesting 3.6MMBF of timber (net green) from 225 acres of land and constructing 5.5 miles of road on the Grouse Meadows timber sale. The planning area being analyzed for the project is approximately 3,200 acres. The proposed and other associated projects, including site preparation, tree planting, and precommercial thinning will be evaluated in a draft EIS.

Tentative issues that have been identified include: (1) Timber harvest and road construction in the Blue Slide roadless area, (2) effects of timber harvest and road construction on big game, and (3) effects of timber harvest and road construction on Off Road Vehicle (ORV) trails.

A range of project alternatives will be considered including a No Action alternative. The issues gathered through scoping will be used to formulate action alternatives. The action alternatives will vary in (1) amount and location of acres considered for treatment, (2) the amount of roads constructed for access, (3) the silvicultural and post-harvest treatments prescribed, and (4) the number, type, and location of other integrated resource projects.

The proposal addressed through the Draft EIS will tier to the Forest Plan. The Forest Plan provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

Approximately 25 percent of the potentially affected area lies in a Habitat Conservation Area (HCA). No harvest will be considered within that HCA. Of the remaining area, about 40 percent is classified as General Forest (GF), 40 percent is classified as Scenic Travel II (ST–2) and 20 percent is in Nonroaded Motorized 4 × 4 (RE 2b.)

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from other Federal, State, tribal and local agencies, potential purchasers and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. Scoping and analysis for this project will begin in March, 1991. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions.)
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1991. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon v Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy

Act at 40 CFR 1503.3 in addressing these points).

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by September, 1991. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Don Rotell, Naches District Ranger, Wenatchee National Forest is the responsible official. As the resposible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulation (36 CFR 217).

Dated: February 20, 1991.

Donald F. Rotell,

Naches District Ranger.

[FR Doc. 91-6026 Filed 3-13-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Washington Advisory Committee to the Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on April 18, 1991, at the Radisson Hotel Airport, 17001 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office in at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 7, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-6087 Filed 3-13-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zone 72—Indianapolis, IN, Application for Subzone Toyota Industrial Equipment Manufacturing Plant, Columbus, IN; Further Extension of Comment Period

The comment period for the above case, involving a proposed special-purpose subzone for the forklift truck manufacturing plant of Toyota Industrial Equipment Manufacturing, Inc. (55 FR 49662, 11/30/90), is further extended to March 20, 1991, based on a request from an interested party for additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 8, 1991

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-6107 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-412-602]

Amendment to Final Results of Antidumping Duty Administrative Review; Certain Forged Steel Crankshafts from the United Kingdom

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We are amending the final results of the administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom (56 FR 5975, February 14, 1991) based on a clerical error in the calculations. The correct cash deposit rate for United Engineering and Forging (UEF) and any new exporters whose first shipment occurred after August 31, 1989, is 9.77 percent.

EFFECTIVE DATE: March 14, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Brad Hess, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 or (202) 377-3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

After publication of our final results, UEF alleged that, for a small number of U.S. sales, the Department had made ministerial errors by basing the determination of contemporaneity on erroneous dates of sale rather than corrected dates. We agree with UEF.

After correcting the calculation to ensure that all U.S. sales were matched to contemporaneous home market sales, the final results changed from the 9.88 percent published in the original final results to 9.77 percent.

Accordingly, pursuant to section 751(f) of the Tarrif Act of 1930, as amended, we are correcting the ministerial errors in the final results of this administrative review. The cash deposit rate for UEF and any new exporters not covered in this administrative review whose first shipments occured after August 31, 1989, and who are unreleated to UEF is now 9.77 percent.

This notice is published pursuant to 19 CFR 353.28.

Dated: March 7, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6106 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Public Hearing on the Final Environmental Impact Statement and Final Management Plan for the Proposed Chesapeake Bay National Estuarine Research Reserve in Virginia

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Final Environmental Impact Statement and Final Management Plan (FEIS/FMP) prepared on the proposed designation of Goodwin Islands, Catlett Islands, Taskinas Creek, and Sweet Hall Marsh as the components of the Chesapeake Bay National Estuarine Research Reserve in Virginia.

The Office of Ocean and Coastal Resource Management will hold the public hearing at the following time and place:

Wednesday, April 10, 1991 at 7 p.m.—Watermen's Hall, Virginia Institute of Marine Science, College of William and Mary, Route 1208, Gloucester Point, VA.

The views of interested persons and organizations on the adequacy of the FEIS/FMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined.

FOR FURTHER INFORMATION CONTACT: Patmarie S. Maher, (202) 673-5122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Copies of the Final Environmental Impact Statement/Final Management Plan are available upon request to the Sanctuaries and Reserves Division.

The comment period for the FEIS/FMP will end on Monday, April 15, 1991.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: March 8, 1991.

John J. Carey,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-6046 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold a public meeting of its Groundfish Management Team (GMT), on March 25-27, 1991, at the Metro Center, 2000 SW. First Avenue, room 335, Portland, OR. The GMT will begin its meeting on March 25 at 1 p.m. The meeting, which is open to the public, will adjourn on March 27 at 12 noon.

The GMT will discuss a change in California State gillnet regulations, development of a comprehensive observer program for the entire groundfish fleet, a proposed change in the minimum trawl net mesh size, and catch projections for several important groundfish species. The GMT will also prepare recommendations to the Council on these and other issues pertaining to management of the West Coast groundfish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: March 8, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-6022 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service

Marine Mammals; Application for Permit; National Marine Mammal Laboratory (P77#49)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Howard Braham, Director, National Marine Mammal Laboratory, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* 60 California sea lions (*Zalophus californianus*).

4. *Type of Take:* The applicant proposes to capture, restrain, sample, mark/tag and release 10 females giving birth to full-term pups and 20 females giving birth to premature pups. Ten (10) full-term pups and 20 premature pups, of the females listed above, will be captured, sacrificed and sampled. Included in the 20 premature pups taken will be pups which die within a few hours of birth, but should any premature pups be alive at the time of collection they will be sacrificed. The research is designed to determine whether pesticide levels (DDT and PCB's) are responsible for premature births in sea lions by sampling dead, prematurely born pups and live healthy pups.

5. *Location and Duration of Activity:* The taking will be conducted late in the premature pupping season (April 20 to May 20) and during the pupping season (May 20 to June 20, 1991) on San Miguel Island, California.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of his notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301-427-2289);

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213-514-6196).

Dated: March 5, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-6020 Filed 3-13-91; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Sea World, Inc. (P2V)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. *Type of Permit:* Public display.

3. *Name and Number of Animals:* Killer whale (*Orcinus orca*)—1.

BEST COPY AVAILABLE

4. *Requested Activity:* Import from Windsor Safari Park Windsor, England.

5. *Duration of Activity:* The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written date or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 5, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–6021 Filed 3–13–91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors

The Air University Board of Visitors will hold an open meeting on 21–24 April 1991 beginning at 0830 in the Air University Conference Room, Air University Headquarters, Maxwell Air Force Base, Alabama (10 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112–5001, telephone (205) 953–5159.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–6089 Filed 3–13–91; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Revised Proposed Amendment of Project Review Filing Fee Schedule

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing in accordance with this notice to receive comments on revised proposed amendments to its schedule of project review filing fees for review of water resources projects.

DATES: The public hearing will be held on April 24, 1991, at 1 p.m.

ADDRESSES: The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Comission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: On June 28, 1972, the Commission adopted a regulation requiring that a filing fee be paid to the Commission at the time of filing applications pursuant to § 3.8 of the Delaware River Basin Compact. Staff time and other costs incurred by the Commission in reviewing water resources projects proposed by other public agencies, private entities and individuals had become substantial and it was deemed timely and in the public interest to initiate a program of allocating a portion of the project review costs to the applicant or project sponsor. On April 23, 1975, the Commission amended the filing fee regulation by increasing the level of filing fees in recognition of the fact that revenues obtained from the filing fees since 1972 amounted to considerably less than the cost of administering the Commission's project review program. Although the levels were increased, government agencies continued to be exempt from such filing fees.

As noticed in the October 15, 1990 and December 5, 1990 issues of the **Federal Register**, the Commission proposed new amendments to its schedule of project review filing fees to make the project review program more self-sustaining. Those amendments would have: required filing fees for project review pursuant to § 3.8 and Article 10 of the Delaware River Basin Compact; discontinued the exemption of government agencies from such filing fees; and increased the minimum fee to $1,000 for any project requiring Commission action. In addition, each substantial project modification following Commission action would have required an additional filing fee. At its December 12, 1990 public hearing on these proposed amendments and during the course of the hearing comment period which extended through January 2, 1991, the Commission received and considered testimony from water users and other interested parties and is now revising its proposal in response to the testimony.

At this time, the Commission is revising the recent proposal as follows: government agencies would continue to be exempt from such filing fees; the minimum fee would be $250 for any project requiring Commission action; and fees for projects that would result in an out-of-basin diversion would increase by 50%. All other aspects of the project review filing fee proposal which was the subject of the Commission's December 12, 1990 public hearing would remain as originally proposed with the exception of the effective date, which is now proposed as May 1, 1991.

The subject of the hearing will be as follows:

Amendment of Project Review Filing Fee Schedule

The proposed amendment would read as follows:

1. A filing fee shall be paid to the Commission, according to the schedule herein, at the time of filing each application for project review, pursuant to § 3.8 and article 10 of the Delaware River Basin Compact. Government agencies shall be exempt from such filing fees.

2. The project review filing fee is the greater of (a) or (b) as follows, and (c), if and as applicable:

(a) *Minimum fee:* $250 for any project that requires Commission action;

(b) *Alternative fee:*

(1) 1/10 of 1% of project cost to $10,000,000;

(2) 1/8 of 1% of remaining cost above $10,000,000 but not to exceed a maximum fee of $50,000 as to any one project.

(c) For any project that results in an out-of-basin diversion, the fee as described above is increased by 50%.

3. The project cost shall include the estimated costs of design, supervision of construction, legal services, contract administration, land, materials, equipment, construction and fabrication.

4. Revenues received pursuant to this regulation shall go into the Commission's general fund and be subject to specific appropriation by the Commission.

5. Each substantial project revision or modification following Commission action requires an additional fee.

6. These amendments become effective May 1, 1991.

Authority: Delaware River Basin Compact, 75 Stat. 688.

Dated: March 7, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91–6088 Filed 3–13–91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 15, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: March 8, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Children of Alcoholics Survey.
Frequency: On occasion.
Affected Public: Individuals or households.

Reporting Burden

Responses: 100.
Burden Hours: 16.

Recordkeeping Burden

Recordkeepers: 0
Burden Hours: 0.

Abstract: This survey will be given to school teachers who have reviewed the Children of Alcoholics Handbook. The Department will use this information to improve the effectiveness of the handbook.

Office of Postsecondary Education

Type of Review: New.
Title: Report of Financial Need and Certification for the Jabob K. Javits Fellows Program.
Frequency: Annually.
Affected Public: Individuals or households; non-profit institutions.

Reporting Burden

Responses: 100.
Burden Hours: 500.

Recordkeeping Burden

Recordkeepers: 100.
Burden Hours: 500.

Abstract: This report will collect information from institutions of higher education regarding graduate participants of the Jacob K. Javits Fellows Program. The Department uses this data to monitor grantee's performance and to close out grants.

[FR Doc. 91–5986 Filed 3–13–91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91–287–000, et al.]

Pacific Electric Operations, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

March 7, 1991.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp Electric Operations

[Docket No. ER91–287–000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on March 1, 1991, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Fourth Revised Sheet No. 5D superseding Third Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements) under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between PacifiCorp and Imperial Irrigation District (Imperial) dated January 8, 1991 under Service Schedule PPL–3 of the Tariff.

The Service Agreement, provides for the sale of non-firm power and energy for resale in accordance with Service Schedule PPL–3 of the Tariff. PacifiCorp's filing herein is provided to add Imperial to the Index of Purchasers Executing Service Agreements under the Tariff.

PacifiCorp requests, pursuant to 18 CFR 35.11 of the Commission's Rules

and Regulations, that a waiver of prior notice be granted and that an effective date of January 1, 1991 be assigned to the Service Agreement. This date is consistent with the effective date shown on the Service Agreement.

Copies of this filing were supplied to Imperial Irrigation District, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: March 21, 1991, in accordance with Standard Paragraph E end of this notice.

2. Consumers Power Co., The Detroit Edison Co. and The Toledo Edison Co.

[Docket No. ER91-291-000]

Take notice that Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company (sometimes collectively referred to as the "Parties") on March 4, 1991 filed Amendment No. 9 to the "Operating Agreement Among Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company". Amendment No. 9 revises the rates in the Emergency Services, Interchange Power and Short Term Power Schedules to reflect updated cost justification data.

In addition, Amendment No. 9 cancels three out-of-date services, i.e., the Coordinating of Scheduled Maintenance of Generating Facilities, Off Peak Power and Transmission Service for Ontario Hydro Keith Power.

Copies of the filing were served upon the Ohio Public Utilities Commission and the Michigan Public Service Commission.

Comment date: March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Co.

[Docket No. ER91-285-000]

Take notice that Florida Power & Light Company (FPL) on February 28, 1991, tendered for filing a document entitled Amendment Number Two to St. Lucie Nuclear Reliability Exchange Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (Amendment Number Two).

FPL states that the Amendment Number Two, FPL and the Florida Municipal Power Agency (FMPA) have agreed to revise the methodology used to determine the cost of energy associated with exchange capacity which is exchanged between FPL and FMPA. FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective March 1, 1991. FPL states that a copy of the filing was served on FMPA.

Comment date: March 21, 1991, in accordance with Standard Paragraph E end of this notice.

4. Northern States Power Co.

[Docket No. ER90-231-000]

Take notice that on February 28, 1991, Northern States Power Company (NSP) tendered for filing, the following supplement to its Rate Schedule FERC No. 419:

Supplement No. 3

NSP states that such supplement is and the "Assignment of Contracts and Warranties" between United Minnesota Power Agency, (UMMPA) and the Southern Minnesota Municipal Power Agency (SMMPA). NSP states that it apparently neglected to previously file the agreement for acceptance for filing as Supplement 3 to Rate Schedule FERC No. 419. The Amendment proposes to amend the Application filed in this docket on January 24, 1991 regarding Rate Schedule FERC No. 415. NSP is no longer requesting Commission approval of the UMMPA Outlet Agreement because it was previously approved as Rate Schedule FERC No. 419 by letter order dated March 11, 1983.

NSP states that the Assignment Agreement supplements the "Sherco 3 Outlet Transmission Agreement between Northern States Power Company and Southern Minnesota Municipal Power Agency" and the "Shared Transmission Agreement between Northern States Power Company and Southern Minnesota Municipal Power Agency," and other agreements previously approved as Rate Schedule FERC No. 413 and supplements by the Commission in Docket Nos. ER82-550-000, *et al.* Under the Assignment, UMMPA assigned certain transmission rights and obligations for use of NSP's transmission system to SMMPA. NSP further requests that Rate Schedule FERC No. 419 now be transferred as additional supplements to Rate Schedule FERC No. 415.

Comment date: March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

5. Century Power Corp.

[Docket No. ER91-282-000]

Take notice that on February 27, 1991, Century Power Corporation ("Century") tendered for filing a January 21, 1991 letter agreement amending its 1990-1992 Power Sales Agreement with Nevada Power Company ("Nevada"). The letter agreement eliminates a variable energy charge feature in the Power Sales Agreement and substitutes, instead, fixed energy charges for the balance of 1991 and 1992.

Century asks that the filing become effective as anticipated in the parties' letter agreement on February 1, 1991. Accordingly, waiver of notice is requested.

Comment date: March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corp.

[Docket No. ER-91-283-000]

Take notice that on February 27, 1991, Central Vermont Public Service Corporation ("CVPS") tendered for filing as an initial rate schedule a Purchase Agreement ("The Agreement") between UNITIL Power Corp. ("UNITIL Power") and CVPS. The Agreement, dated as of July 30, 1990, provides for the sale of a 10 MW entitlement of the Vermont Yankee nuclear power plant by CVPS to UNITIL for the period May 1, 1991 to October 31, 1991, and further provides for the sale by CVPS to UNITIL of 4.8077% (normally 25 MW) of the Vermont Yankee nuclear power plant for the period November 1, 1991 to October 31, 1996. The contract further provides for a sale by UNITIL to CVPS of 10 MW of the New Haven Harbor Station for May 1, 1991 to October 31, 1991.

CVPS states that copies of the filing were served upon the respective jurisdictional state regulatory agencies of the parties hereto. CVPS further states that the filing is in accordance with section 35 of the Commission's regulations.

Comment date: March 21, 1991 in accordance with Standard Paragraph E at the end of this notice.

7. Ocean State Power

[Docket No. ER91-284-000]

Take notice that Ocean State Power (Ocean State), on February 28, 1991, tendered for filing the following supplements (the "Supplements") to its rate schedule with the Federal Energy Regulatory Commission (the "Commission"):

Supplement No. 12 to Rate Schedule FERC No. 1
Supplement No. 9 to Rate Schedule FERC No. 2
Supplement No. 8 to Rate Schedule FERC No. 3
Supplement No. 9 to Rate Schedule FERC No. 4

The Supplements to the rate schedules request approval of Ocean State's proposed rate of return on equity for the period beginning with the requested effective date of the Supplements, April 29, 1991, to the effective date of Ocean State's updated rate of return on equity to be filed in February, 1992. The Supplements are being filed pursuant to § 7.5 of each of Ocean State's unit power agreements (the "Agreements") between Ocean State and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation, respectively and the Commission's orders in *Ocean State Power*, 38 FERC ¶ 61,140 at 61,380 (1987) and 44 FERC ¶ 61,985 (1988). The Amendments do not constitute a rate increase.

Ocean State Power has requested that the Supplements be permitted to become effective sixty days from the date of filing.

Copies of the filing have been served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada PipeLines Limited.

Comment date: March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Canal Electric Co.

[Docket No. ER91-217-000]

Take notice that on February 28, 1991, Canal Electric Company (Canal) submitted additional information in support of the Participation Agreement among itself, Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) that Canal filed on January 15, 1991. The Participation Agreement governs the rights and obligations of the parties with respect to Phase II of the New England/Hydro-Quebec Interconnection (the Project). The additional information filed by Canal indicates that, when the capacity benefits provided by the Project are not considered, the Participation Agreement results in an increase in the wholesale charges to Cambridge and Commonwealth during the first year of the Project's operation of approximately $3.2 million. Canal has requested that the Commission waive its notice requirements pursuant to § 35.11 of the Commission's regulations in order to allow the Participation Agreement to become effective as of November 1, 1990 and, to the extent necessary, to allow the recovery, commencing on that date, of certain costs incurred previously by Canal in connection with the Project.

Comment date: March 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-5999 Filed 3-13-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-1379-000, et al.]

Kern River Gas Transmission Co., et al.; Natural Gas Certificate Filings

March 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Kern River Gas Transmission Co.

[Docket No. CP91-1379-000]

Take notice that on February 27, 1991, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas, 77252-2511, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and subpart E of part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), filed in Docket No. CP91-1379-000, an application for an optional certificate of public convenience and necessity authorizing it to: (1) Construct, own, and operate pipeline, compression and related facilities to be located between Kern River's previously authorized interstate pipeline system and several major natural gas processing plants in southwestern Wyoming; and (2) abandon all or any part of the authorized facilities or services Kern River determines are no longer needed upon expiration of the underlying contracts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kern River's proposed facilities will consist of 13.34 miles of 20-inch O.D. pipeline, 0.43 mile of 12.75-inch O.D. pipeline, 7,200 site-rated horsepower of compression, taps, meter stations and related facilities, designed to interconnect Kern River's previously authorized facilities and the Whitney Canyon, Carter Creek and Painter gas processing plants in southwestern Wyoming. All of the proposed facilities are located in Uinta County, Wyoming. From approximate milepost 39.6 on Kern River's 36-inch line, Kern River will construct 1.96 miles of 20-inch O.D. pipe extending west and then north to a new compressor station to be built by Kern River to be located in the northeast ¼ of Section 32, Township 16 north, Range 119 west. From that compressor station, containing two turbine units with a total of 7,200 site-rated horsepower of compression, one line of 12.75-inch O.D. pipe will extend 0.43 mile south to a new meter station near the Painter gas processing complex and a second line of 20-inch O.D. pipe will extend 11.36 miles in a northerly direction to Kern River's proposed measuring station located in the southwest ¼ of Section 16, Township 17 north, Range 119 west, adjacent to the Amoco Whitney Canyon plant.

The proposed facilities will be capable of transporting 220,000 Mcf of gas from the Whitney Canyon and Carter Creek plants and 118,000 Mcf of gas from the Painter complex on a firm bases for delivery into Kern River's 36-inch line. Kern River will construct the facilities in coordination with its construction of the previously authorized adjacent pipeline system. To permit such coordinated construction to occur, Kern River requests that the Commission grant the instant application by no later than July 1, 1991. Service is scheduled to commence in January, 1992.

The estimated capital cost of the proposed facilities is $22,367,000, including overhead, regulatory fees and the allowance for funds used during construction.

Kern River will render service on the proposed facilities to firm and interruptible shippers, in accordance with Kern River's executed firm transportation service agreements and Kern River's FERC Gas Tariff, previously submitted to the Commission.

Comment date: March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. DEKALB Energy Co.

[Docket No. CI90-63-001]

Take notice that on January 23, 1991, DEKALB Energy Company (DEKALB Energy) of 1625 Broadway, Denver, Colorado 80202, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory

Commission's (Commission) regulations thereunder requesting that the Commission amend the blanket certificate with pregranted abandonment previously issued to DEKALB Energy Canada Ltd. (DEKALB Canada) in Docket No. CP90-63-000 to reflect DEKALB Energy as the certificate holder, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective December 1, 1990, DEKALB Canada's authorization to import Canadian natural gas into the United States was transferred to DEKALB Canada's parent, DEKALB Energy. Therefore DEKALB Energy requests that the certificate previously granted to DEKALB Canada be amended to reflect DEKALB Energy as the certificate holder effective December 1, 1990.

Comment date: March 25, 1991, in accordance with Standard Paragraph J at the end of this notice.

3. Northern Natural Gas Co.

[Docket No. CP91-1472-000]

Take notice that on March 6, 1991, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1472-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Cibola Corporation (Cibola) under the blanket certificate issued by in Docket No. CP86-435-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to implement a transportation service agreement dated December 10, 1990, providing for a maximum transportation volume of 20,000 million Btu per day. It is indicated that Northern would receive the gas at specified points located in the states of Texas, Oklahoma, Kansas, New Mexico, Wisconsin, Iowa, Minnesota, and South Dakota and redeliver the gas at specified points located in the states of Texas and Kansas. Northern estimates peak day, average day, and annual volumes of 20,000 million Btu, 15,000 million Btu, and 7,300,000 million Btu, respectively. It is stated that Northern initiated a 120-day transportation service for Cibola on December 20, 1990, as reported in Docket No. ST91-7188-000.

Northern states that no new facilities would be required to implement the service and that it would charge the rates and abide by the terms and conditions of its Rate Schedule IT-1.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Co.

[Docket No. CP91-1401-000]

Take notice that on February 28, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1401-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service on behalf of Texas Gas Transmission Corporation (Texas Gas), all as more fully detailed in the application which is on file with the Commission and open to public inspection.

ANR proposes to abandon a transportation service which ANR was performing for Texas Gas pursuant to an agreement dated February 28, 1989, as amended December 19, 1989, and filed as Rate Schedule X-12 in ANR's FERC Gas Tariff Original Volume No. 2. It is stated that the transportation service was authorized by the Commission in Docket Nos. CP69-249 and CP70-183. It is explained that ANR was authorized to transport, on a firm basis, up to 100,000 Mcf of natural gas per day for Texas Gas from Calumet, Louisiana, to an interconnection of the facilities of ANR and Texas Gas near Eunice, Louisiana. It is asserted that ANR is requesting abandonment authorization in response to Texas Gas' request. It is stated that the transportation service was authorized for a primary term of 20 years, with year-to-year extensions thereafter. It is further stated that Texas Gas gave ANR timely notice of its desire to terminate the agreement with an effective date of February 28, 1991. It is asserted that there would be no loss of service as a result of the proposed abandonment. It is explained that no facilities would be abandoned in connection with the abandonment of the transportation service.

Comment date: March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. ANR Pipeline Co.

[Docket Nos. CP91-1416-000, CP91-1417-000, CP91-1418-000 and CP91-1419-000]

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1416-000 (3-1-91)	Kaztex Energy Management, Inc. (marketer).	1,000 1,000 365,000	LA, OLA	WI	12-3-90, FTS-1, Firm.	ST91-6606, 1-1-91.
CP91-1417-000 (3-1-91)	Chevron U.S.A. Inc. (marketer).	50,000 50,000 16,250,000	LA	OLA	12-31-90, ITS, Interruptible.	ST91-6751, 1-5-91.
CP91-1418-000 (3-1-91)	Union Texas Petroleum Corp. (marketer).	15,000 15,000 5,475,000	OLA	LA	10-18-90, ITS, Interruptible.	ST91-6606, 1-4-91.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1419-000 (3-1-91)	Amerada Hess Corp. (marketer).	150,000 150,000 54,750,000	OTX	OTX	8-16-90, ITS, Interruptible.	ST91-6750, 1-5-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

6. Texas Eastern Transmission Corp.

[Docket No. CP91-1356-000]

Take notice that on February 26, 1991, Texas Eastern Transmission Corportation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1356-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a firm transportation service of up to 20,000 dekatherms (Dt) per day and interruptible transportation service of up to 10,000 Dt per day for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states by Commission order issued August 5, 1982, in Docket No. CP82-295-000, it is authorized to transport for Texas Gas on a firm basis, 20,000 Dt per day of natural gas volumes. Texas Eastern further states that by Commission order issued on May 24, 1983, in Docket No. CP82-295-001, it is authorized to transport for Texas Gas on an interruptible basis an additional 10,000 Dt per day of natural gas. Texas Eastern states that it receives gas through an interconnection with Houston Pipe Line Company in Chambers County, Texas, and transports and redelivers such gas to an existing interconnection in Jefferson Davis Parish, Louisiana, or alternately to existing interconnections in Evangeline Parish, Louisiana or Claiborne Parish, Louisiana.

It is further stated that Texas Eastern requests authorization to abandon this transportation service pursuant to a letter from Texas Gas cancelling the agreement under which the gas is transported, effective November 15, 1990. It is also stated that Texas Eastern has agreed to waive the minimum two year written notice requirement as states in the service agreement. Texas Eastern further states that no facilities are proposed to be abandoned.

Comment date: March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Equitrans, Inc and Columbia Gulf Transmission

[Docket Nos CP91-1408-000, CP91-1409-000, CP91-1410-000, CP91-1411-000, and CP91-1412-000]

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No.[2] (date filed)	Applicant	Shipper name	Peak day, average, annual [1]	Points of		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP91-1408-000 3-1-91	Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275.	Harrison Energy, Inc.	5,060 225 27,000	PA	PA	1-23-91, ITS	CP86-553-000, ST91-6976-000.
CP91-1409-000 3-1-91	Equitrans, Inc., 3500 Park Lane, Pittsburgh, PA 15275.	Columbia Gas of Pennsylvania, Inc.	30,362 4,000 604,000	PA, WV	PA, WV	112-1-90, ITS	CP86-553-000, ST91-7012-000.
CP91-1410-000 3-1-91	Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001.	Mobil Natural Gas, Inc.	30,000 10,000 10,950,000	LA	LA	12-22-90, ITS-2	CP86-239-000, ST91-6816-000.
CP91-1411-000 3-1-91	Columbia Gulf Transmission Company, P.O. Box 683, Houston, TX 77001.	Union Texas Petroleum Corporation	50,000 20,000 7,300,000	Off LA	LA	12-25-90, ITS-2	CP86-239-000, ST91-6306-000.

Docket No.[1] (date filed)	Applicant	Shipper name	Peak day, average, annual [1]	Points of		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP91-1412-000 3-1-91	Columbia Gulf Transmission Company P.O. Box 683 Houston, TX 77001.	Union Texas Petroleum Corporation.	35,000 15,000 5,475,000	LA Off LA	LA, TN, MS	10-18-90, ITS-1 and ITS-2.	CP86-239-000, ST91-6388-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Trunkline Gas Co.

[Docket Nos. CP91-1425-000, CP91-1426-000, CP91-1427-000, CP91-1428-000, CP91-1429-000, CP91-1430-000, CP91-1431-000, CP91-1432-000]

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start update
CP91-1425-000 (3-1-91)	Enserch Gas Company (marketer).	50,000 50,000 18,250,000	LA, OLA, IL, TN, TX, OTX.	LA	1-8-91, PT, Interruptible.	ST91-6915, 2-2-91.
CP91-1426-000 (3-1-91)	Tejas Power Corporation (marketer).	100,000 100,000 36,500,000	LA, OLA, IL, TN, TX, OTX.	IL	9-7-89, PT, Interruptible.	ST91-6913, 2-2-91.
CP91-1427-000 (3-1-91)	Boyd Rosene and Associates, Inc. (marketer).	5,000 5,000 1,825,000	LA, OLA, IL, TN, TX, OTX.	LA	12-20-90, PT, Interruptible.	ST91-6911, 2-1-91.
CP91-1428-000 (3-1-91)	Bishop Pipeline Corporation (intrastate pipeline).	40,000 40,000 14,600,000	LA, OLA, IL, TN, TX, OTX.	IN	1-22-88, PT, Interruptible.	ST91-6910, 2-1-91.
CP91-1429-000 (3-1-91)	Eastex Hydrocarbons, Inc. (marketer).	50,000 50,000 18,250,000	LA, OLA, IL, TN, TX, OTX.	LA	3-20-89, PT, Interruptible.	ST91-6784, 1-4-91.
CP91-1430-000 (3-1-91)	Enserch Gas Company (marketer).	50,000 50,000 18,250,000	LA, OLA, IL, TN, TX, OTX.	IL	1-8-91, PT, Interruptible.	ST91-6908, 2-1-91.
CP91-1431-000 (3-1-91)	Panhandle Trading Company (marketer).	50,000 50,000 18,250,000	LA, OLA, IL, TN, TX, OTX.	IL	3-20-89, PT, Interruptible.	ST91-6785, 1-4-91.
CP91-1432-000 (3-1-91)	TXG Gas Marketing Company (marketer).	30,000 30,000 10,950,000	LA, OLA, IL, TN, TX, OTX.	IL	11-15-89, PT, Interruptible.	ST91-6781, 1-19-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

9. Alabama-Tennessee Natural Gas Co.

[Docket Nos. CP91-1393-00 and CP91-1403-000]

Take notice that Alabama-Tennessee Natural Gas Company, P.O. Box 918, Florence, Alabama 35631, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-2201-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1393-000 (2-28-91)	EFP South Corporation (end-user).	600 600 216,000	System	AL	11-21-90, IT, Interruptible.	ST91-7053, 12-1-90.
CP91-1403-000 (2-28-91)	Union Camp Corporation (end-user).	400 400 60,800	System	AL	9-12-90, IT, Interruptible.	10-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

10. Tennessee Gas Pipeline Co.

[Docket No. CP91-1373-000]

Take notice that on February 27, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application in Docket No. CP91-1373-000 pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to partially abandon firm sales service to North Penn Gas Company (North Penn), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on November 20, 1990, Tennessee and North Penn agreed to reduce North Penn's sales service entitlement from Tennessee under Rate Schedule CD-4 by 3,000 dt equivalent of natural gas per day, effective November 1, 1990, pursuant to the Commission's Regulations promulgated under Order Nos. 490 and 490-A. No abandonment of facilities is proposed.

Comment date: March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Co.

[Docket No. CP91-1372-000]

Take notice that on February 27, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act and § 157.7 of the Commission's Regulations under the Natural Gas Act for authorization to partially abandon certain firm sales service to Connecticut Natural Gas Company (Connecticut), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on October 12, 1989, Connecticut requested a conversion from firm sales to firm transportation pursuant to § 284.10 of the Commission's Regulations under the Natural Gas Act of 10,000 dt equivalent of natural gas per day, effective on November 1, 1989. It is indicated that as a result of the conversion, Connecticut's sales entitlements would be reduced to 27,751 dt equivalent of natural gas per day and 8,268,085 dt equivalent of natural gas annually. No abandonment of facilities is proposed.

Comment date: March 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

12. Trunkline Gas Co.

[Docket Nos. CP91-1420-000, CP91-1421-000, CP91-1422-000, CP91-1423-000, and CP91-1424-000]

Take notice that on March 1, 1991, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket number, docket [2] (date filed)	Shipper name	Peak day,[1] average annual	Points of [2]		Start up date, rate schedule, service type	Related contract date
			Receipt	Delivery		
CP91-1420-000 (3-1-90)	Panhandle Trading Company.	10,000 10,000 3,650,000	IL, IN, LA, TN, TX, OLA, OTX.	IL	2-1-91, PT, Interruptible.	ST91-6970-000, 1-25-91.
CP91-1421-000 (3-1-90)	Equitable Resources Marketing Company.	75,000 75,000 27,375,000	IL, IN, LA, TN, TX, OLA, OTX.	IL	1-8-91, PT, Interruptible.	ST91-6765-000, 9-28-89.
CP91-1422-000 (3-1-90)	Elf Aquitaine, Inc.	5,500 5,500 2,044,000	OTX	OTX	2-1-91, PT, Interruptible.	ST91-6865-000, 9-13-88.
CP91-1423-000 (3-1-90)	Entrade Corporation	100,000 60,000 21,840,000	IL, IN, LA, TN, TX, OLA, OTX.	IL	2-1-91, PT, Interruptible.	ST91-6912-000, 7-11-90.
CP91-1424-000 (3-1-90)	Panhandle Trading Company.	80,000 80,000 29,200,000	IL, IN, LA, TN, TX, OLA, OTX.	LA	2-1-91, PT, Interruptible.	ST91-6909-000, 5-24-88.

[1] Quantities are shown in Mcf.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6000 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1395-000, et al.]

Mississippi River Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation; Tennessee Gas Pipeline Company

[Docket No. CP91-1395-000, Docket No. CP91-1396-000, Docket No. CP91-1404-000, Docket No. CP91-1407-000]

March 5, 1991.

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-1121-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1395-000 (2-28-91)	Arkla Energy Marketing Company (Marketer/broker).	8,000 8,000 1,464,000	AR, LA, OK, TX, IL	AR	12-20-90, FTS, Firm.	ST91-6695-000, 1-1-91.
CP91-1396-000 (2-28-91)	River Trading Company (Marketer/broker).	14,000 2,000 730,000	AR, IL, LA, TX	MO	12-26-90, ITS, Interruptible.	ST91-6694-000, 1-1-91.
CP91-1404-000 (2-28-91)	Bishop Pipeline Corporation (Marketer/broker).	20,900 19,900 7,263,500	OK, TX, IL, LA, AR	MO, IL	1-15-90 ITS, Interruptible.	ST91-6429-000, 10-9-90.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1407-000 (3-1-91)	Suncor, Inc. (Producer)	100,000 100,000 36,500,000	Various	OH, NY, NJ, PA	1-31-91, IT, Interruptible.	ST91-7088-000, 2-9-91.

[1] Tennessee's quantities are in dekatherms.

2. Southern Natural Gas Company, Colorado Interstate Gas Company

[Docket No. CP91-1359-000, Docket No. CP91-1360-000, Docket No. CP91-1361-000, Docket No. CP91-1362-000, Docket No. CP91-1363-000, Docket No. CP91-1366-000]

March 5, 1991.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, have been provided by Applicants and are summarized in the attached appendix.

[2] These prior notice requests are not consolidated.

Applicants states that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Southern Natural Gas Company, Post Office Box 2563, Birmingham, AL 35202-2563

Blanket Certificate: Issued in Docket No. CP88-316-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day [1], average, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-1359-000 (02-26-91)	City of America, GA (LDC).	1,508 1,508 550,420	Offshore TX, Offshore LA, TX, LA, MS, AL	AL	01-01-91, FT	ST91-6362-000.
CP91-1360-000 (02-26-91)	Dekalb-Cherokee Counties Gas District (LDC).	1,907 1,907 696,055	Offshore TX, Offshore LA, TX, LA, MI, AL	AL	01-01-91, FT	ST91-6379-000.
CP91-1361-000 (02-26-91)	City of Adel, GA (LDC)	319 319 116,435	Offshore LA, Offshore TA, TX, LA, MI, AL	AL	01-01-91, FT	ST91-6363-000.
CP91-1362-000 (02-26-91)	City of Cordele, GA (LDC).	704 704 256,960	Offshore TX, Offshore LA, TX, LA, MI, AL	AL	01-01-91, FT	ST91-6365-000.
CP91-1363-000 (02-26-91)	Alabama Gas Corporation (LDC).	70,000 70,000 25,550,000	Offshore TX, Offshore LA, TX, LA, MI, AL	AL	01-01-91, FT	ST91-6380-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: Colorado Interstate Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944

Blanket Certificate: Issued in Docket No. CP86-589-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day [1], average, annual	Points of		Start up date, rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91-1366-000 (02-26-91)	Cross Timbers Oil Company, L.P. (Marketer).	4,500 4,500 1,560,000	OK	CO	11-01-90, TI-1	ST91-5572-000.

3. Trunkline Gas Company

[Docket Nos. CP91-1386-000,[a] CP91-1387-000, CP91-1388-000, CP91-1389-000, CP91-1390-000, CP91-1391-000, CP91-1392-000]

March 5, 1991.

Take notice that on February 28, 1991, Trunkline Gas Company (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[a] These prior notice requests are not consolidated.

Docket No.[a] (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets
CP91-1386-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Kerr-McGee Corporation.	15,000 15,000 5,475,000	Off LA	LA	1-1-91, PT	CP86-586-000, ST91-6696-000.
CP91-1387-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Equitable Resources Marketing Company.	75,000 75,000 27,375,000	LA, IL, TN, TX, Off LA, Off TX.	IN	1-1-91, PT	CP86-586-000, ST91-6654-000.
CP91-1388-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Howell Gas Management Company.	50,000 50,000 18,250,000	LA, IL, TN, TX, Off LA, Off TX.	IL	1-1-91, PT	CP86-586-000, ST91-6697-000.
CP91-1389-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Phibro Distributors Corporation.	100,000 100,000 36,500,000	LA, IL, TN, TX, Off LA, Off TX.	LA	1-1-91, PT	CP86-586-000, ST91-6656-000.
CP91-1390-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Polaris Pipeline Corporation.	30,000 30,000 10,950,000	LA, IL, TN, TX, Off LA, Off TX.	IL	1-1-91, PT	CP86-586-000, ST91-6658-000.
CP91-1391-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Bishop Pipeline Corporation.	10,000 10,000 3,650,000	LA, IL, TN, TX, Off LA, Off TX.	IL	1-5-91, PT	CP86-586-000, ST91-6766-000.
CP91-1392-000 2-28-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Conoco, Inc.	5,000 5,000 1,825,000	LA, IL, TN, TX, Off LA, Off TX.	TN	1-1-91, PT	CP86-586-000, ST91-6659-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. ANR Pipeline Company, ANR Pipeline Company, ANR Pipeline Company

[Docket No. CP91-1397-000, Docket No. CP91-1398-000, Docket No. CP91-1399-000, Docket No. CP91-1400-000]

March 5, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[a]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment days: April 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[a] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Recipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-1397-000 2/28/91	ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243.	Scot Forge	600 600 219,000	Offshore LA	WI	FTS-1, Firm, 1/1/91.	CP88-532-000, ST91-6610-000.
CP91-1398-000 2/28/91	ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243.	NGC Transportation, Inc.	3,000 3,000 1,095,000	Offshore Federal-LA.	LA	ITS, Interruptible, 1/1/91	CP88-532-000, ST91-6611-000.
CP91-1399-000 2/28/91	ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243.	ENRON Gas Marketing, Inc.	100,000 100,000 36,500,000	Offshore LA, TX, OK, KS.	LA	ITS, Interruptible, 1/1/91	CP88-532-000, ST91-6603-000.
CP91-1400-000 2/28/91	ANR Pipeline Company, 500 Renaissance Center Detroit, MI 48243.	Arco Natural Gas Marketing, Inc.	200,000 200,000 73,000,000	Offshore LA, TX	LA	ITS, Interruptible, 1/1/91.	CP88-532-000, ST91-6612-000.

[1] Quantities are shown in DTH unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-1452-000]

March 6, 1991.

Take notice that on March 5, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), suite 1600, One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP91-1452-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Northern States Power Company (MN & WI), a distributor, under the blanket certificate issued in Docket No. CP89-2198-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that, pursuant to an agreement dated December 21, 1990, under its Rate Schedule IT, it proposes to transport up to 35,000 Mcf per day of natural gas. Great Lakes indicate that the gas would be transported from Michigan, and would be redelivered in Minnesota and Michigan. Great Lakes further indicates that it would transport 35,000 Mcf on an average day and 12,775,000 Mcf annually.

Great Lakes advises that service under § 284.223(a) commenced December 22, 1990, as reported in Docket No. ST91-6531-000.

Comment date: April 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Questar Pipeline Company

[Docket No. CP91-1252-000]

March 6, 1991.

Take notice that on February 14, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP91-1252-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to provide open-access storage service at its Clay Basin Storage Field (Clay Basin) located in Daggett County, Utah, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar seeks a blanket certificate of public convenience and necessity, with pregranted abandonment authority, authorizing it to provide open-access firm and interruptible storage services under proposed Storage Service Rate Schedules FSS and ISS and in accordance with the general terms and conditions of its pro forma open-access storage tariff. Questar states that its pro forma tariff incorporates (1) a statement of rates, (2) Rate Schedule FSS, covering firm storage service, and Rate Schedule ISS, related to interruptible storage service, (3) General Terms and Conditions delineating the specific operating procedures to be followed by Questar and its storage buyers and (4) a form of service agreement for service provided under Rate Schedules FSS and ISS.

Questar requests the following additional authorizations related to open-access: (1) Certificate authority to increase the annual working-gas volume of Questar's Transmission Division from 7.5 Bcf to 10.0 Bcf and decrease the annual working-gas volume of Northwest Pipeline Corporation (Northwest) from 20.0 Bcf to a substantially decreased level (currently estimated to be 10.2 Bcf), to be specified by Northwest on or before May 1, 1991; (2) approval to "grandfather" Questar's and Northwest's Clay Basin firm service priorities and (3) authority to abandon existing Storage Service Rate Schedules S-1 and S-3.

Questar's open-access storage proposal includes the following elements:

1. *Open Season:* Questar proposes to publish notification of its upcoming open season on March , 1991, and hold the open season from March 16 through March 31, 1991.

2. *Priority of Service:* During the open season, Questar states that it would determine firm service priority based upon the present value of the demand charges over the term of the applicable service agreement. After the open season, Questar indicates that firm service priority would be first-come, first-served based upon request for service date and that interruptible service priority would be determined by

the inventory rate that potential Buyers wish to pay.

3. *Capacity Allocation:* Questar proposes to allocate firm and interruptible withdrawal capacity and firm injection capacity through the use of three allocation formulas that take into account working and cushion-gas inventories, maximum possible reservoir deliverability and minimum required deliverability.

4. *Proposed Rates:*

RATE SCHEDULE FSS

	Proposed rates (Mcf)	
	Maximum	Minimum
Demand:		
Deliverability (Monthly)	$3.19382	$0.00000
Inventory capacity (Monthly)	3.02662	0.00000
Commodity:		
Injection	[1] 0.02084	[1] 0.02084
Withdrawal	0.01902	0.01902
Authorized Overrun	0.33840	0.01902

[1] For first storage season under open access; effective May 15, 1992, the rate would decrease to $0.01082/Mcf.

RATE SCHEDULE ISS

	Proposed rates (Mcf)	
	Maximum	Minimum
Inventory (Monthly)	$0.97060	$0.0000
Injection	[1] 0.02084	[1] 0.02084
Withdrawal	0.01902	0.01902

[1] For first storage season under open access; effective May 15, 1992, the rate would decrease to $0.01802/Mcf.

5. *Rate Assumptions:* Questar indicates that rates include the following assumptions: (1) Rate base at November 30, 1990, adjusted solely for additional cushion gas requirements of 17.0 Bcf at a spot market price of $1.29 per Mcf; (2) 14 percent return on equity; (3) actual capital structure and debt costs at November 30, 1990; and (4) 4.1 percent depreciation rate.

6. *Rate Design:* Questar states that the Equitable four-part rate design, reflecting costs associated with deliverability, inventory capacity, injection and withdrawal, would be used for firm rates. It is indicated that fixed costs are split 50/50 and assigned to the demand deliverability and inventory capacity charges and that variable costs are equally assigned to the commodity injection and withdrawal charges. Irrespective of whether open-access authority is received, Questar also indicates that a 100 percent load factor rate, based upon the fewest number of days required to withdraw the working gas inventory, is utilized for interruptible rates.

In the event that the Commission has not issued an acceptable open-access blanket and related requests by May 15, 1991, Questar seeks two interim authorizations, by May 15, 1991, that will permit Clay Basin storage capacity to become fully subscribed, by firm or interruptible buyers, and Rate Schedules S-1 and S-3, as amended, to remain in effect for a limited term that will expire upon implementation of open-access service. Questar states that the proposed modifications to existing Rate Schedules S-1 and S-3 under the alternative request include (1) increasing Questar's annual working-gas volume from 7.5 Bcf to 10.0 Bcf, (2) decreasing Northwest's annual working-gas level to that level determined by Northwest on or before May 1, 1991, (3) revising cushion gas levels for the 1991-1992 withdrawal season, (4) incorporating new daily withdrawal and injection allocation formulas, (5) changing the definition of "proration factor" appearing in Rate Schedule S-3 and (6) removing prohibitive tariff language in order that self-implementing firm storage service may be offered at Clay Basin under 18 CFR 157.213. Irrespective of whether open-access authority is received Questar also requests that it be permitted to maintain separate valuation for its new cushion gas inventory and to price future withdrawals accordingly.

Comment date: March 27, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6007 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-1-001]

Alabama-Tennessee Natural Gas Company; Notice of Proposed PGA Rate Adjustment

March 7, 1991.

Take notice that on March 1, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Alternate Twenty-Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective April 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to substitute for a filing tendered the previous day which contained erroneous information.

Alabama-Tennessee has also requested a limited waiver on a continuing basis of § 154.22 of the Commission's Regulations with regard to the preparation of its quarterly PGA. Alabama-Tennessee states that virtually without exception, it faces difficulties in obtaining accurate information from Tennessee Gas Pipeline Company (Tennessee), its upstream supplier, in connection with the preparation of its quarterly PGA filing. This information must be obtained in sufficient time so that there will be no lag in time between the effective date of Tennessee's revised quarterly PGA and that of Alabama-Tennessee. Alabama-Tennessee proposes that it be permitted to file revisions to its quarterly PGA filing three days after the filing of the revised quarterly PGA of Tennessee, and that Alabama-Tennessee's quarterly PGA filing be permitted to become effective on less than thirty days notice, on the same effective date as that of Tennessee's revised PGA. Alabama-Tennessee states that granting this limited waiver will provide Alabama-Tennessee adequate time to prepare its quarterly PGA filing accurately, but will prejudice no one because it will still provide the public nearly thirty days notice.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6006 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-31-002]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

March 7, 1991.

Take notice that on March 4, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective April 1, 1991:

2nd Revised Volume No. 1
3nd Revised Original Sheet No. 11
2nd Revised Volume No. 1
2nd Revised Original Sheet No. 16

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6017 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on February 28, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1991.

Substitute Ninth Revised Sheet No. 26
Substitute Ninth Revised Sheet No. 26A
Substitute Ninth Revised Sheet No. 26B
Substitute Eighth Revised Sheet No. 163

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued February 1, 1991 in Docket Nos. TQ91-3-21-000 and TM91-7-21-000. Such order directed Columbia to refile its PGA tariff sheets to be effective February 1, 1991, to track the rates reflected on Tennessee Gas Pipeline Company's (Tennessee) alternative tariff sheets accepted by the Commission's December 28, 1990 order.

Columbia notes, however, these alternative tariff sheets were never placed in effect by Tennessee. The rates that Columbia has reflected for Tennessee for the instant filing are those filed in Tennessee's Interim PGA adjustment filed on January 4, 1991.

In addition to the revised pipeline rates for Tennessee, Columbia has also reflected in the instant filing revised rates for Texas Eastern Transmission Corporation (Texas Eastern). The rates in the instant filing reflect Texas Eastern's Interim PGA adjustment which was filed on January 31, 1991 with an effective date of February 1, 1991.

The sales rates set forth on Substitute Ninth Revised Sheet No. 26 reflect an increase of $.04¢ per Dth in the Commodity rate and a decrease of $0.003 per Dth in the Demand rate when compared with the rates contained in Columbia's December 31, 1990 PGA filing.

Columbia states that a copy of the filing is being served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6004 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-24-001]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

March 7, 1991.

Take notice that Equitrans, Inc. (Equitrans) on March 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Effective March 1, 1991:

Sub. Twenty-Fourth Revised Sheet No. 10
Sub. Fourteenth Revised Sheet No. 34

Effective April 1, 1991:

Substitute Fifteenth Revised Sheet No. 34

Equitrans states that the foregoing tariff sheets are being filed in compliance with the Commission's Letter Order issued February 25, 1991, in

Docket No. TQ91-5-24-000. The order directed Equitrans to refile its rates to reflect the producer demand costs in the commodity portion of Equitrans' rates.

Substitute Fifteenth Revised Sheet No. 34 reflects the seasonality of Equitrans rates by showing the summer demand component of Rate Schedule ISS effective April 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6011 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-5-4-000]

Granite State Gas Transmission, Inc. Changes in Rates

March 7, 1991.

Take notice that on March 5, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039, filed Fifth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on April 1, 1991.

According to Granite State, the filing comprises its regular quarterly purchased gas cost adjustment based on projected gas costs and sales for the second quarter of 1991.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures 18 CFR 385.214. All such motions or protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6015 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

March 7, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 1, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its annual PGA filing, which includes Twenty-Seventh Revised Sheet No. 41 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective May 1, 1991.

Kentucky West states that Twenty-Seventh Revised Sheet No. 41 reflects a deferred gas cost adjustment of ($0.0553) and a ($.7740) current adjustment decrease based on an average cost of purchased gas effective May 1, 1991, of $1.7060. This average cost of gas reflects Kentucky West's exercise of contractual provisions, pursuant to its obligations under various gas purchase agreements, so as to provide for a total price of $1.7028 per dth inclusive of all taxes and any other production-related cost add-ons that it would pay under these contracts.

Kentucky West states that, by its filing, or any request or statement made therein, it does not waive any rights to collect amounts, nor the right to collect carrying charges applicable thereto, to which it is entitled pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit issued on March 8, 1988, in *Kentucky West Virginia Gas Co.* v. *FERC*, 780 F.2d 1231 (5th Cir. 1988), or to which it becomes entitled pursuant to any other judicial and/or administrative decisions.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 27, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6005 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-12-000]

Louisiana Intrastate Gas Corp.; Petition for Rate Approval

March 7, 1991.

Take notice that on March 1, 1991, Louisiana Intrastate Gas Corporation (LIG) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 21 cents per MMBtu plus an allowance for pro rata compressor fuel and system losses for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

LIG's petition states that it is an intrastate pipeline in Louisiana within the meaning of section 2(16) of the NGPA. The petition also states that while LIG continues to believe that its system-wide rate should include costs and volumes for its Eloi Pipeline, it has adjusted these costs and volumes out of its cost-of-service. LIG's previous rate for section 311(a)(2) service was 21 cents per MMBtu which was approved by the Commission in Docket Nos. ST88-2555-000, *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not

in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 26, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6019 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-5-001]

Midwestern Gas Transmission Co. Rate Filing Pursuant to Tariff Rate Adjustment Provisions

March 7, 1991.

Take notice that on March 1, 1990, Midwestern Gas Transmission Company (Midwestern), pursuant to § 154.305(c)(4) of the Commission's regulations, filed the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective April 1, 1990:

Substitute Twenty-Third Revised Sheet No. 5
Substitute Eighteenth Revised Sheet No. 6
Fourth Revised Sheet No. 46
Third Revised Sheet No. 55

Midwestern states that the purpose of its revisions is to correct the rates in its annual Purchased Gas Adjustment (PGA), designate changes in fuel retention percentages to reflect current levels and reflect the latest gas costs of its principal supplier.

Midwestern states that the Current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 consist of a $.0001 per dekatherm adjustment to the gas rate, a $.0033 per dekatherm adjustment to Rate Schedule SR-1 and a $.04 per dekatherm adjustment applicable to the demand rate. The stated adjustments reflect changes from the rates filed in Docket No. TQ91-2-5.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6016 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-71-001]

Mississippi River Transmission Corp.; Rate Change Filing

March 7, 1991.

Take notice that on February 28, 1991, Mississippi River Transmission Corporation (MRT) tendered for filing Substitute Eleventh Revised Sheet No. 4A.2 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective February 14, 1991.

MRT states that the purpose of this filing is to comply with the Commission's Order in docket No. RP91-71-000 issued on February 13, 1991. The Order required MRT to reallocate, to its other customers paying a fixed take-or-pay charge, fifty percent of the costs that otherwise would be allocated to MRT's small customers under MRT's revised allocation method, in accordance with the Commission's Order No. 528-A. In compliance with that directive, MRT has reallocated fifty percent of the Rate Schedule SGS-1 customers' take-or-pay allocation under the D-1 method to MRT's other customers paying a fixed charge.

MRT is mailing a copy of the revised tariff sheet to each of the intervenors, MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6006 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-27-002]

North Penn Gas Co.; Compliance Filing

March 7, 1991.

Take notice that North Penn Gas Company (North Penn) on February 26, 1991 tendered for filing First Revised First Revised Sheet No. 3A to its FERC Gas Tariff, First Revised Volume No. 1.

The revised tariff sheet is being filed in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated February 14, 1991 in Docket Nos. TQ90-2-27-001 and TQ90-2-27-002, which reference an original Commission letter order dated January 18, 1991 in Docket No. RP91-60-000, to reflect standby charges as a separately identified component of the rates. The revised tariff sheet also sets forth the ACA Surcharge rate of $0.0019 per Mcf to recover the Commission's annual charges, and is proposed to be effective October 1, 1990.

While North Penn believes that no other waivers are necessary in order to permit this filing to become effective October 1, 1990, as proposed, North Penn respectfully requests waive of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective October 1, 1990, as proposed.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to

intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6009 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-161-003]

Northern Natural Gas Co.; Filing

March 7, 1991.

Take notice that on February 12, 1991, Northern Natural Gas Company (Northern) filed pursuant to § 154.67(a) (18 CFR 154.67(a) of the Federal Energy Regulatory Commission's (Commission) regulations, a motion to effectuate its proposal to require that nominations for service on the first calendar day of any month be submitted four work days prior to the first day of the month, except for nominations for service in the Gulf Coast which shall continue to be required two work days prior to the first day of the month. Northern states that its proposal was accepted and suspended by the Commission to be effective February 12, 1991, by order issued on September 13, 1990.

Northern proposes to effectuate the change to its nomination procedures as reflected in the staff sheets. Northern moves to allow the suspended tariff changes to go into effect in order to provide for the four-work-days-prior nomination procedure.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washintgton, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and procedure (18 CFR 385.214 and 211). All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to made protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this mater. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6018 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-113-000]

Panhandle Eastern Pipe Line Co. Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 5, 1991 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, tendered for filing Second Revised Sheet No. 32-BS to its FERC Gas Tariff, Original Volume No. 1 with the proposed effect date of April 4, 1991.

Panhandle states that Second Revised Sheet No. 32-BS reflects a modification to section 6.9(i) of Rate Schedule PT-Firm, to change the required payment of one (1) month's reservation charge which must accompany a request by a shipper for firm service to the lesser of one (1) month's reservation charge or $10,000.

Panhandle is proposing this change to establish a cap of $10,000 on the amount of the deposit required by any shipper seeking firm transportation service. The provision, when approved, will be applied prospectively for all shippers requesting firm transportation service.

Panhandle states that copies of this letter and enclosures are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such petitions or protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6002 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-262-012]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on March 1, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 3-F
Seventh Revised Sheet No. 3-G
Fifth Revised Sheet No. 3-H
Fifth Revised Sheet No. 3-I

The proposed effective date of these revised tariff sheets is April 1, 1991.

Panhandle states that these revised tariff sheets are being filed in compliance with a Trial Stipulation in Docket No. RP88-262-000, *et al.* stipulated by the parties and approved by the Presiding Administrative Law Judge in his Initial Decision, Panhandle Eastern Pipe Line Co., 53 FERC ¶ 63,003 at p. 65,008 (1990).

Panhandle further states that the revised tariff sheets filed herewith reflect a revision to the percentage of gas to be retained by Panhandle for fuel reimbursement for Firm and Interruptible transportation pursuant to Rate Schedule PT. The fuel reimbursement percentages set forth on the revised tariff sheets are as stipulated in Appendix C of the Trial Stipulation (Exhibit No. 381).

Panhandle states that copies of its filing have been served on all affected customers, parties to the referenced proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6012 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-11-000]

Red River Pipeline Petition for Rate Approval

March 7, 1991.

Take notice that on March 1, 1991, Red River Pipeline (Red River) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 22.28 cents per Mcf plus an allowance for actual compressor fuel and system losses for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Red River's petition states that it is an intrastate pipeline in Texas within the meaning of section 2(16) of the NGPA. Red River's previous rate for section 311(a)(16) of the NGPA. Red River's previous rate for section 311(a)(2) service was 25.03 cents per Mcf which was approved by the Commission June 2, 1989 in Docket Nos. ST82-95-000 *et al.*

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with 18 CFR 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before March 26, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6013 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-139-007]

Southern Natural Gas Co. Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 1, 1991, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective April 1, 1989, October 1, 1988 and January 1, 1977, respectively.

Substitute Original Sheet No. 30Z.02
Substitute Original Sheet No. 30Z.14
Substitute Fourth Revised Sheet No. 45

Southern states that it submits the substitute sheets listed above the correct typographical errors discovered on the sheets when Sixth Revised Volume No. 1 of Southern's FERC Gas Tariff was submitted in electronic medium in the captioned docket.

Southern has requested a waiver of the Commission's Regulations to make these substitute sheets effective as of their last-approved effective dates indicated above.

Southern states that copies of the filing were mailed to Southern's customers and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6003 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-17-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 7, 1991.

Take notice that on March 4, 1991, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, the tariff sheets identified on appendices A and B attached to the filing, for inclusion in its FERC Gas Tariff, First Revised Volume No. 1 to be effective February 1, 1991.

Texas Eastern states that the purpose of its filing is to comply with the Commission's "Order Accepting and Suspending Tariff sheets Subject to Refund and Conditions, and Establishing Technical Conference" issued on January 31, 1991, in the above-referenced proceeding. Texas Eastern further states that the purpose of the filing is to revise tariff sheets filed November 30, 1990 in its annual Purchased Gas Adjustment (PGA).

Texas Eastern states that appendix A includes tariff sheets reflecting adjustments to its rates as required by the Commission's January 31, 1991 order in Docket No. TA91-17-1-000 and that Appendix A includes tariff sheets for other dockets identified thereon which were filed subsequent to its PGA filing of November 30, 1990.

Texas Eastern states that appendix B proposes alternative tariff sheets reflecting the specific data and revisions required by the January 31, 1991 Commission order in Docket No. TA91-17-1-000 and include the $8.2 million in overrun charges paid to United Gas Pipe Line Company which Texas Eastern again requests that the Commission approve in this filing. Texas Eastern states further that appendix B includes refiling of tariff sheets for the other dockets (noted above) filed subsequent to the November 30, 1990 PGA filing which are affected by the revision in Texas Eastern's surcharge.

Texas Eastern states that this filing makes various revisions and explanations to support its PGA filing as required by the Commission's eight ordering paragraphs and in the body of the January 31, 1991 order. However, Texas Eastern states that it requests privileged treatment under § 388.112 of the Commission's Regulations (18 CFR 388.112) for certain privileged and confidential documents submitted for Commission review and is omitting such information for public review and service on all parties.

Texas Eastern states that it is filing a request for rehearing of the Commission's January 31, 1991 order and submits these tariff sheets without prejudice to Texas Eastern's rights on rehearing or its position in Docket No. TA91-1-17-000.

To the extent required, if any, Texas Eastern requests waiver of any regulations that the Commission may deem necessary to accept the tariff sheets in Appendices A and B.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission

and are available for public inspection, subject to the limitations 18 CFR 388.112.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6068 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-132-003]

United Gas Pipe Line Company; Refund Report

March 7, 1991.

Take notice that on March 1, 1991, United Gas Pipe Line Company (United) tendered for filing a refund report of amounts due customers under United's Docket No. RP90-132.

United states that this filing responds to Order No. 528 without prejudice to United refiling in conformity with the principles of Order No. 528. In accordance with the Commission's directive, United has refunded with interest amounts previously collected under Docket No. RP90-132 in accordance with Order No. 528.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214. All such protests should be filed on or before March 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6070 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-196-000 and EL91-17-000]

Washington Water Power Company; Initiation of Proceeding and Refund Effective Date

March 8, 1991.

Take notice that on March 1, 1991, the Commission issued an order initiating a proceeding in Docket No. EL91-17-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date: May 13, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-6014 Filed 3-13-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 91-09; Certification Notice-77]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (FUA section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of proposed new electric base load powerplant has a filed self-certification in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following company has a filed self-certification:

Name	Date received	Type of facility	Megawatt capacity	Location
March Point Cogeneration Co., Anacortes, WA	02-28-91	Combine Cycle	140	Anacortes, WA

Amendments to the FUA on May 21, 1987 (Public Law 100-42), altered the general prohibitions to include only new electric base load powerplants and to provide for the self-certification procedure.

Copies of this self-certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, or for further information call Myra Couch at (202) 586-6769.

Issued in Washington, DC on March 8, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 91-6126 Filed 3-13-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $9,000,000.00, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with Good Hope Refineries (Good Hope), Case No. LFX-0002. The OHA has tentatively determined that the funds will be distributed to customers which purchased refined petroleum products from Good Hope during the period August 19, 1973 through July 31, 1976.

DATE AND ADDRESS: Comments must be filed in duplicate on or before April 15, 1991, and they should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a prominent reference to case number LFX-0002.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $9,000,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with Good Hope Refineries (Good Hope), on October 13, 1983. The funds were paid by Good Hope towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has tentatively determined to distribute the Good Hope settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Good Hope who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered refined petroleum products which they purchased from Good Hope during the August 19, 1973 through July 31, 1976 refund period.

Any settlement funds remaining after valid claims are paid in the first stage may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: March 7, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Supplemental Order

Name of firm: Good Hope Refineries.
Date of filing: March 13, 1990.
Case number: LFX-0002.

On October 13, 1983, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which Good Hope Refineries (Good Hope) remitted to the DOE pursuant to a consent order between the DOE and Good Hope. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requested that the OHA establish special refund procedures to remedy the effects of the alleged regulatory violations resolved by the Good Hope consent order. Good Hope remitted $1,550,000 in funds, and OHA subsequently issued a Decision and Order implementing special refund procedures. *See Good Hope Refineries,* 13 DOE ¶ 85,105 (1985). Good Hope recently remitted an additional $9,000,000 pursuant to the terms of the consent order, to which $654,002 in interest has accrued as of January 31, 1990. Pursuant to the terms of subpart V, the OHA must now take action to distribute these additional funds.

I. Background

From August 19, 1973 through July 31, 1976, Good Hope Industries, Inc. owned Good Hope Refineries, a crude oil refiner located in Metairie, Louisiana, and Gasland, Inc., a chain of motor gasoline stations operating in New England and the State of New York. Good Hope operated a refinery, and it sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et seq.* Good Hope was a "refiner" subject to the price regulations set forth at 10 CFR part 212, subpart E. During the period of petroleum price controls, the ERA conducted several audits of Good Hope's operations to determine its compliance with the DOE regulations. As a result of these audits, the ERA issued Notices of Probable Violation (NOPVs) alleging that Good Hope had not complied with price regulations in its refined product sales.

In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's compliance with the DOE regulations during the period August 19, 1973 through July 31, 1976, Good Hope and the DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution through: (i) Price roll backs, (ii) reductions in banks of unrecouped costs, (iii) direct cash payments to the DOE. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. At the time that it entered into the consent order, Good Hope was involved in bankruptcy proceedings. Good Hope provided the DOE with $1,550,000 in restitutionary funds and subsequently fell into arrears on its payments to the DOE.

Uncertain as to whether it would receive additional funds from Good Hope, the DOE instituted special refund procedures for the $1,550,000 that it had received pursuant to the consent order. *See Good Hope Refineries,* 13 DOE ¶ 85,105 (1985). The DOE received 23 applications for refund from purchasers of Good Hope's petroleum products. Of those applciations, five were granted refunds, 12 were denied, and six were dismissed due to lack of adequate supporting information.

Meanwhile, enforcement of the Good Hope consent order was referred to the Department of Justice. As part of the reorganization plan that permitted Good Hope to emerge from bankruptcy, the firm made an additional $9,000,000 in payments to DOE. The firm now does business as Transamerican Natural Gas Corporation. The Good Hope funds are available for disbursement pursuant to the consent order between the DOE and Good Hope. The funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

BEST COPY AVAILABLE

II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA may use in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of subpart V and the authority of the OHA to design refund procedures may be found in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). This Proposed Decision and Order establishes the OHA's tentative plans to distribute the funds remitted by Good Hope.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for the Good Hope consent order fund. Purchasers of refined petroleum products from Good Hope during the consent order period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be disbursed to the state governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of (1) End-users; (2) regulated entities, such as public utilities and cooperatives; (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

A. Claims Based on Alleged Overcharges

Insofar as possible, the consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. The 1979 ERA audit file pertaining to the consent order lists the names of customers who purchased refined products from Good Hope, along with the pro rata amounts the ERA calculated these customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Decision and Order. The OHA used the audit file information to calculate refunds to eligible applicants in the first Good Hope refund proceeding, and we intend to use it in granting refunds to successful claimants in the present proceeding. However, we recognize that there may be purchasers of petroleum products from Good Hope who are not listed in the ERA audit file and who may have been injured by the pricing practices of Good Hope during the relevant time period. Good Hope customers not referred to in the audit file may file applications for refund, and their refunds will be calculated using the volumetric method outlined below.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Good Hope during the August 19, 1973 to July 31, 1976 consent order period. If the petroleum products were not purchased directly from Good Hope, the claimant must establish that they originated with Good Hope. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Good Hope's alleged overcharges. The two distinct elements generally required in such an injury showing are (1) The existence of "bank" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges.[1] *See Vickers Energy Corporation/Hutchens Oil Co. Inc.*, 11 DOE ¶ 85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Good Hope. *See National Helium Corporation/Atlantic Richfield Company (11 DOE ¶ 85,257 (1984), affirmed sub nom. Atlantic Richfield Company v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring burdensome expenses, and aids in the efficient evaluation of refund claims. *See, e.g., Texaco Inc.*, 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent subpart V regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions described below.

a. *Calculation of refunds.* We must determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a subpart V proceeding, we believe that this information can be useful in determining a refund which closely corresponds to the injuries experienced. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). The ERA attempted to ascertain the identities of the injured parties and the precise amount of injury incurred after the completion of all of the audits covered by the consent order. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. In light of the record estabished by the ERA, refunds for the firms listed in the Appendix will equal the refund amounts calculated by the ERA. These percentages, which are listed in the Appendix, represent a prorated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the funds were deposited in the escrow account.

A refund applicant which is not listed in the appendix to this Decision may receive a refund based upon a per gallon, or volumetric, basis.[2] In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices. Under this volumetric method, a claimant's "allocable share" of the refined product portion of the consent order fund is equal to the number of gallons of covered petroleum products which it purchased from Good Hope during the consent order (refund) period multiplied by the per gallon (volumetric) refund amount.[3] In the present refund proceeding, we have computed the per gallon refund amount to be $0.0052.[4] Using this volumetric amount, a claimant would be eligible for a refund of $5,200 per one million gallons purchased.[5] In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Good Hope refined product pool since its deposit in the appropriate escrow account.[6]

We also propose to adopt various presumptions concerning a claimant's injury, which are listed below.[7]

b. *End-Users.* In accordance with prior subpart V refund proceedings, we propose to adopt the presumption that end-users of Good Hope petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Good Hope's alleged overcharges. *See, e.g., Texas Oil and Gas Corporation*, 12 DOE ¶85,069 at 88,209 (1984) (TOGCO). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. *See TOGCO* at 88,209. Accordingly, we propose that end-users will only be required to establish their purchase volumes of covered Good Hope petroleum products during the refund period to make a sufficient showing that they were injured by the alleged overcharges.

c. *Regulated bodies and cooperatives.* We propose that a claimant whose prices for goods and services are regulated by a governmental body (e.g., public utilities), or an agricultural cooperative, need only submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will (1) Pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. *See Exxon* at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make a detailed demonstration of injury to receive a refund.[8]

d. *Retailers, Resellers, and refiners—*

i. *Small claims presumption.* We propose the adoption of a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Good Hope petroleum products and possesses an allocable share of the refined product pool of $10,000 or less, exclusive of interest, was injured by the alleged overcharges. *See Texaco* at 88,320. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Good Hope petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the number of routine refund claims expected.[9]

ii. *Mid-level claims presumption.* Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Good Hope refined product pool exceeds $10,000, exclusive of interest, may elect to receive either $10,000 or 40 percent of its allocable share, whichever is greater, up to $50,000, also exclusive of interest.[10] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Good Hope's alleged overcharges. *See Total Petroleum, Inc.*, 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we have determined product-specific levels of injury through detailed evaluations. *See, e.g., Getty Oil Company*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corporation*, 16 DOE ¶ 85,381 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we propose to adopt, in the present refund proceeding, a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Good Hope petroleum products to be eligible for a refund of $10,000 or 40 percent of its

---

[1] Claimants which have previously relied upon their banked costs to obtain refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 19 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. *See Standard Oil Co. (Indiana)/Suburban Propane Gas Corporation*, 13 DOE ¶ 85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. *See Gulf Oil Corporation/Sturdy Oil Co.*, DOE ¶ 85,187 (1988).

[2] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Good Hope's alleged overcharges. *See, e.g., Mobil Oil Corporation/Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. *See Panhandle Eastern Pipeline Company/Western Petroleum Company*, 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[3] The petroleum products sold by Good Hope which were subject to the petroleum price regulations and their respective decontrol dates are as follows:

Residual Fuel Oil	June 1, 1976
Diesel Fuel, No. 2 Fuel Oil, Kerosene	July 1, 1976

[4] We obtained the per gallon refund figure by dividing the Good Hope consent order fund ($9,000,000) by the approximate volume of refined petroleum products sold by Good Hope between the beginning of the refund period (August 19, 1973) and the dates of decontrol for the relevant products (1,699,975,090 gallons).

[5] Any applicant which establishes that it would receive a greater refund under the volumetric method than it would using the percentages in the Appendix shall be entitled to the larger refund. *See Marion Corp.*, 12 DOE ¶ 85,014 (1984).

[6] A purchaser of Good Hope products who did not submit a refund application prior to October 1, 1985, the initial filing deadline in the Good Hope refund proceeding, may, based on the total funds remaining in the Good Hoppe escrow account, nevertheless be eligible to receive a full volumetric or allocable share of the consent order fund from the funds now available.

[7] As in prior cases, we propose to establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 2,885 gallons of petroleum products from Good Hope would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. *See Exxon Corporation*, 17 DOE ¶85,590 at 88,156 (1988) (*Exxon*).

[8] A cooperative's purchases of Good Hope petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶85,215 (1989).

[9] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 1,923,077 gallons of Good Hope petroleum products during the refund period or claim a refund of .1111% or less based on information from the ERA audit file.

[10] Under the mid-level injury presumption, a claimant which purchased between 1,923,077 gallons and 4,807,692 gallons of Good Hope petroleum products would be eligible to receive a principal (exclusive of interest) refund of $10,000. Similarly, a claimant who, according to the audit file, is eligible to receive between .1111% and .2777% of the alleged overcharges will be eligible to receive a principal refund of $10,000. A claimant purchasing between 4,807,692 gallons and 24,038,462 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share, and an applicant with a purchase volume in excess of 24,038,462 gallons would be eligible for a principal refund of $50,000. Moreover, a claimant entitled to receive between .2777% and 1.3888% of the alleged overcharges would be eligible to receive a principal refund equal to 40 percent of its allocable share, and an applicant whose share according to the audit file exceeds 1.3888% would be eligible for a principal refund of $50,000.

allocable share, whichever is greater, up to $50,000.[11]

iii. *Spot purchasers.* We propose to adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Good Hope did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396–7. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Good Hope.[12]

B. Allocation Claims

We may also receive claims based upon Good Hope's alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in subpart V implementation cases such z as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as *Mobil Oil Corporation/Aromalene Oil Company,* 20 DOE ¶ 85,155 (1990); *Mobil Oil Corporation/Reynolds Industries, Inc.,* 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) The existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 CFR part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustanined as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Good Hope. *See Marathon Petroleum Company/Research Fuels, Inc.,* 19 DOE ¶ 85,575 (1989), *action for review pending,* No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Good Hope. In determining the amount of any allocation refund, we will use any available information regarding the portion of the Good Hope consent order fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the Good Hope consent order is the result of a negotiated settlement of the issues identified in the enforcement proceedings against Good Hope and the amount of the consent order is less than Good Hope's potential liability in those proceedings, we will prorate allocation refunds which would otherwise be disproportionately large in relation to the consent order fund.

C. Distribution of Funds Remaining After the First Stage

We propose that any funds remaining in the refined product pool of the Good Hope consent order fund after the payment of all valid first-stage claims be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to pay the claims of injured parties in subpart V refund proceedings and make those funds available to state governments for use in four energy conservation programs specified in the statute.[13] The Secretary has delegated these duties to the OHA, and any funds in the Good Hope refined product pool that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It is therefore ordered that

The refund amounts remitted to the Department of Energy by Good Hope Refineries, pursuant to Consent Order No. 150S001542, shall be distributed in accordance with the foregoing Decision.

[11] If a claimant attempts to make a detailed injury showing for the purpose of obtaining 100 percent of its allocable share but, instead, submits evidence leading us to conclude that it passed through all of the alleged overcharges, or would be eligible for a refund of less than the appropriate presumptive injury level, it may not then be eligible for a refund under an injury presumption. Such a claimant would be granted a refund reflecting the level of injury exhibited in its injury showing. No refund will be granted if its submission shows that it was not injured in its purchases from Good Hope. *See Exxon* at 89,150 n. 10.

[12] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss. *See, e.g., Fletcher Oil & Refining,* 20 DOE ¶ 85,513 (1990), *Texaco, Inc.,* 20 DOE ¶ 85,147 (1990).

[13] Due to the small number of refunds which were granted in the first Good Hope special refund proceeding, the OHA has already taken action to allocate $2,361,124 ($2,250,000 in principal plus $111,124 in interest) to the state governments pursuant to the provisions of PODRA.

APPENDIX

Customer listed in audit file	Share of alleged overcharges (in percents)
Standard Oil Company (Ohio), 20600 Chagrin Blvd., Cleveland, OH 44122	4.6370
Coastal States Marketing, Inc., 9 Greenway Plaza, Houston, TX 77046	0.1555
Stillings Petroleum Corporation, P.O. Box 700328, Tulsa, OK 74170	0.2923
Conoco, P.O. Box 3407, Houston, TX 77252	5.2449
Allied Oil, P.O. Box 6479, Cleveland, OH 44101	3.2721
Texaco, Incorporated, 2000 Westchester Avenue, White Plains, NY 10650	4.0074
Wanda Petroleum, 2 Houston Center, Houston, TX 77052	0.0560
Charter International Oil Co., P.O. Box 5008, Houston, TX 77012	1.3055
Consolidated Edison, 4 Irving Place, New York, NY 10003	6.9966
Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102	1.3287

APPENDIX—Continued

Customer listed in audit file	Share of alleged overcharges (in percents)
Union Oil of California, 461 S. Boylston Street, Los Angeles, CA 90017	0.8182
Texas Olefins, 2 Park West Plaza, Baytown, TX 77520	1.0336
Coral Petroleum, 908 Town & Country Road, Houston, TX 77224	3.0205
Exxon Corporation, P.O. Box 4385, Houston, TX 77001	2.0864
Saber Petroleum, 1400 Smith Street, Suite 1700, Houston, TX 77002	3.8686
Apex Oil Company, 7930 Clayton Road, St. Louis, MO 63117	8.0581
Thomas Reidy, 1100 Milam Street, Suite 2170, Houston, TX 77002	2.0221
Systems Fuels, P.O. Box 6000, New Orleans, LA 70161	4.1186
Tauber Oil Company, P.O. Box 4645, Houston, TX 77210	3.8785
Amoco, 200 E. Randolph Drive, Chicago, IL 60601	17.8650
L&L Oil Company, Rt. 1, Box 367, Crown Point, LA 70072	0.0182
Ashland Petroleum, P.O. Box 391, Ashland, KY 41114	2.6550
Amerada Hess, 1185 Avenue of the Americas, New York, NY 10036	0.2985
Union Texas Petroleum, 2502 Chimney Rock, Houston, TX 77252	0.0839
Sun Oil, 100 Matonsford Road, Radnor, PA 19087	0.4533
Don Love, P.O. Box 262507, Houston, TX 77207	0.0108
Marathon Oil, 539 South Main Street, Findlay, OH 45840	2.0872
Gulf Oil, P.O. Box 1524, Houston, TX 77001	3.2329
Allied Chemical, P.O. Box 1139R, Morristown, NJ	0.0778
Bulk Oil, USA, Inc., 425 Park Avenue, New York, NY 10025	1.5209
Agway, 333 Butternut Drive, DeWitt, NY 03214	0.3891
Triangle Refining Company, P.O. Box 3367, Houston, TX 77253	0.0862
Northwell Industries Corporation, 35 Pine Lawn Road, Melville, NY 11747	0.4221
Kerr-McGee, Kerr-McGee Center, Oklahoma City, OK 73125	0.0417
Tenneco Oil, P.O. Box 2511, Houston, TX 77002	0.0823
Bray Terminals, P.O. Box 174, Marcy, NY 13403	0.1592
Toro Petroleum Corporation, Houston, TX	0.1965
Howard Oil, Maspeth, NY	1.9837
Texas City Refineries, Box 1271, Texas City, Texas	1.0336
Frank's Fuel	0.5584
Petroleum Heat and Power	2.0776
International Trading Limited, 312 St. Charles Avenue, New Orleans, LA	0.3409
Patchogue Oil, 1185 Avenue of the Americas, New York, NY	0.5416
Bayselt Transportation, Birmingham, AL	0.0089
Hol Petroleum, New York, NY	0.0018
Point Landing Fuel, Hershen, LA	0.2034
Val-Cap, Incorporated, P.O. Box 58069, Houston, TX	0.1456
HiOctane Terminal Company, Panama City, FL	0.1543
Gulf Coast Service Station, Westwego, LA	0.0566
Texas Star Oil Company, P.O. Box 151, Corpus Christi, TX	0.0398
Pel-State Oil	0.0080
Koziol, Ware, MA	0.0013
Stafford	0.0032
Autotronic Systems, Houston, TX	0.0030
Timbros Service Stations, Middletown, CT	0.0127
Gasland, Inc. retail sales	6.6009
Total	100.0000

[FR Doc. 91–6106 Filed 3–13–91; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–180843; FRL 3883–6]

Receipt of Application for Emergency Exemption to use Benomyl; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the North Dakota Department of Agriculture (hereafter referred to as the "Applicant") for use of the pesticide benomyl (CAS 17804–35 2) to control Sclerotinia stem rot on up to 10,000 acres of canola in North Dakota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 29, 1991.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180843," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921

Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, benomyl, available as Benlate DF (EPA Reg. No. 352–447) from E. I. du Pont de Nemours Co., to control Sclerotinia stem rot, caused by *Sclerotinia sclerotiorum*, on up to 10,000 acres of canola in North Dakota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, Sclerotinia has a broad host range, including crops such as sunflower and dry edible beans, which are commonly grown in rotation with canola. The fungus produces hard resting structures, sclerotia, that live from four to six years in the soil. Short rotations of susceptible crops have resulted in a buildup of Sclerotinia in the soil, which can result in a severe stem rot outbreak if weather during the two weeks prior to flowering (usually the last two weeks of June) is cool and wet. Under these conditions, the sclerotia germinate, producing small mushroom-like fruiting bodies, known as apothecia, that release millions of airborne spores, which infect the canola blossoms. According to the Applicant, there are no pesticides currently registered for the control of Sclerotinia stem rot on canola in the United States, and without an effective control, yield losses of fifteen to twenty percent could result if stem rot outbreaks occur this season. The potential dollar loss without benomyl during the 1990 season is estimated to be between $112,000 and $300,000.

A single aerial application of benomyl will be applied at a maximum rate of 0.75 pounds of active ingredient per acre in at least 5 gallons of water per acre. A maximum of 7,500 pounds of active ingredient may be needed to treat a maximum of 10,000 acres. Applications will be completed by July 15, 1991.

Benomyl was referred to Special Review in December of 1977 because of its mutagenic, teratogenic, spermatogenic, and acute aquatic effects. The Special Review process was completed on October 20, 1982, and the decision was made to require use of either cloth or commercially available disposable dust masks by mixer/loaders of benomyl intended for aerial application and to require that registrants of benomyl products conduct field monitoring studies to identify residues that may enter aquatic sites after use on rice. Registrants completed the field monitoring study and submitted it to the Agency in November of 1984. The study was determined to be inadequate and a new study was required by the Registration Standard issued in June of 1987.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a pesticide which contains an active ingredient which has been the subject of a Special Review and is intended for a use that could pose a risk similar to the risk posed by any use of a pesticide which is or has been the subject of a Special Review [40 CFR 166.24 (a)(5)].

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the North Dakota Department of Agriculture.

Dated: March 5, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–6099 Filed 3–13–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–36180; FRL 3879–8]

Endangered Species Protection Program May Affect Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that EPA has completed its "may affect" determination on 31 pesticides for all registered uses, on all U.S. listed threatened or endangered species. EPA will forward a request to the U.S. Fish and Wildlife Service (FWS) of the Department of the Interior, for a formal consultation under section 7 of the Endangered Species Act (ESA), 30 days from the date of this Notice.

ADDRESS: The supporting material for EPA's "may affect" determination will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2805.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Turner, Ecological Effects Branch, Environmental Fate and Effects Division (H7507–C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. (703–557–1007).

SUPPLEMENTARY INFORMATION: EPA is responsible for regulating the registration and use of pesticides. Under the ESA, EPA is required to consult with FWS on actions that it determines may affect a federally listed threatened or endangered species. A Biological Opinion from FWS is the result of this consultation process and will indicate if the registered uses of these pesticides may require limitations on use to avoid jeopardy and reduce the likelihood of incidental take of listed species. Pesticides and uses included in this consultation were selected in accordance with the species-based approach to consultation as stated in the **Federal Register** Notice, published on July 3, 1989, (54 FR 27984), on the proposed Endangered Species Protection Program. "May affect" determinations for groups of species apply only to those species that are actually exposed to the particular pesticide. Following is the list of pesticides and a brief summary of the assessment for which a consultation is requested:

Acephate. May affect many exposed listed aquatic invertebrates and some birds for most uses and label rates.

Aldicarb. May affect all exposed listed terrestrial and aquatic animals at all label rates.

Aluminum phosphide. Use to control rodents may affect many exposed listed terrestrial animals using burrows.

Azinphos methyl. May affect many exposed listed terrestrial animals and all exposed listed aquatic species for most uses and label rates.

Bendiocarb. May affect all exposed listed aquatic species and some exposed birds and mammals for many uses.

Brodifacoum. Use to control rodents may affect some exposed listed mammals and one exposed listed bird.

Bromadiolone. May affect some exposed listed mammals from use to control rodents.

Bromethalin. May affect some exposed listed mammals from use to control rodents.

Carbofuran. May affect all exposed listed terrestrial vertebrates and insects and many exposed listed aquatic species for all uses.

Chlorophacinone. Use to control rodents may affect a few exposed listed aquatic species from one use and many listed mammals.

Chlorpyrifos. May affect many exposed listed birds and some exposed listed mammals from most uses at certain label rates and all exposed listed aquatic species for all uses.

Diphacinone. Use to control rodents may affect some exposed listed mammals.

Endosulfan. May affect many exposed listed birds, and some exposed listed mammals, and some exposed listed aquatic invertebrates for some label rates and all uses, and May affect all exposed listed fish for all uses and label rates.

Fenthion. May affect most exposed listed birds and aquatic species and some exposed listed mammals for many uses.

Fenvalerate and s-fenvalerate. May affect all exposed listed aquatic species from all uses and nearly all label rates.

Magnesium phosphide. Use to control rodents may affect many exposed listed terrestrial animals using burrows.

Methyl bromide. Not expected to affect exposed listed species.

Naled. May affect some exposed listed birds from certain uses and label rates and all exposed listed aquatic species from all uses.

Parathion. May affect nearly all exposed listed aquatic and terrestrial animals from most uses and label rates.

Permethrin. May affect all exposed listed fish and aquatic arthropods from all uses and freshwater mollusks at certain label rates.

Phorate. May affect all exposed listed aquatic species from all uses, and many exposed listed birds and mammals from certain uses.

Pival. Use to control rodents may affect some exposed listed mammals.

Potassium nitrate. Use to control rodents may affect listed terrestrial vertebrates that use burrows from use to control rodents.

Sodium cyanide. Use to control predators may affect some exposed listed mammals.

Sodium fluroacetate. Not expected to affect exposed listed species from use as toxic collar on sheep.

Sodium nitrate. Use to control rodents may affect exposed listed terrestrial vertebrates that use burrows. use to control rodents.

Terbufos. May affect all exposed listed aquatic species and most exposed listed birds and mammals for all uses.

Trifluralin. May affect all exposed listed aquatic species when aerially applied, or fish at certain label rates for ground applications or exposed listed plant species from all uses and rates.

Vitamin D-3. Use to control rodents may affect some exposed listed mammals.

Warfarin. Use to control rodents may affect some exposed listed mammals.

Zinc phosphide. Use to control rodents may affect some exposed listed terrestrial vertebrates.

The supporting material for the "may affect" determinations will be available for public inspection in Rm. 246 at the Virginia address previously listed in this document.

Dated: February 27, 1991.

Anne L. Barton,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 91–6098 Filed 3–13–91; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Publication of Systems of Records, Proposed New Systems and Proposed New Routine Uses

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice; publication of revised systems of records, proposed new routine uses and elimination of four systems of records.

SUMMARY: This notice provides an accurate and complete text, with administrative changes, of the Equal Employment Opportunity Commission's notices for its internal and Governmentwide systems of records. This notice also proposes four new systems of records, eliminates three systems of records that are no longer used by EEOC, consolidates two systems into one and proposes new routine uses for identified systems of records. This action effects the administrative changes and makes readily available in one issue of the **Federal Register** an accurate and complete text of the notices for use by individuals and by agency Privacy Act officers.

DATES: The notices with the administrative (non-substantive) changes are effective on March 14, 1991. The proposed routine uses and systems will become effective, without further notice, on May 13, 1991 unless comments dictate otherwise.

ADDRESSES: Written comments may be sent to the Office of Executive Secretariat, Equal Employment Opportunity Commission, Room 10402, 1801 L Street, NW., Washington, DC 20507.

Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) (202) 663–4395 (voice) or 663–4399 (TDD).

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Acting Associate Legal Counsel, Thomas J. Schlageter, Acting Assistant Legal Counsel or Kathleen Oram, Senior Attorney (202) 663–4670 (voice) or (202) 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission last completely published systems of records in 1982. Since that publication, the Commission has made both substantive and non-substantive changes to its systems and added an EEOC system (EEOC–10, Commission Claims Collection Records) in 1985. In addition, the Commission's headquarters has moved to a new building. To have a complete and accurate copy of the Commission's systems of records, a user has been required to refer to several **Federal Register** notices. The Commission is publishing the complete text of all of its systems notices to provide a current, easily accessible copy.

The proposed changes in this notice result from: (1) Editorial changes to the existing systems notices to simplify and clarify; (2) the deletion of three systems of records (EEOC–9 Labor-Management Negotiated Agreements, EEOC–11 Correspondence File, and EEOC–13 Employee Performance Effectiveness and Evaluation System); (3) the consolidation of two systems into one system (EEOC–4 Commissioners' Biographical File and EEOC–12 Official Biographical File are consolidated into EEOC–4 Biographical Files); (4) the addition of four new systems of records (EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the

Excepted Service, EEOC–12 Telephone Call Detail Records, EEOC–13 Employee Identification Cards and EEOC–14 Employee Parking Records); (5) the renumbering of two other systems; and (6) the addition of a limited number of routine uses.

A brief description of the major changes follows:

EEOC–1, Age and Equal Pay Act Discrimination Case Files. The system location, system manager, storage and safeguards were amended to reflect current offices and the Commission's computerized Charge Data System. Routine use "e" regarding disclosing to appropriate authorities if EEOC becomes aware of a violation of law is proposed. Routine use "f" regarding disclosure when the government is in litigation or in response to a subpoena is also proposed. These routine uses are also being added to: (1) EEOC–3, Title VII and Americans With Disabilities Act Discrimination Case Files, as routine uses "e" and "f" respectively; (2) EEOC–7, Employee Pay and Leave Records, as routine uses "e" and "j" respectively; and (3) EEOC–8, Employee Travel and Reimbursement Records as routine uses "a" and "f" respectively. The proposed litigation and subpoena routine use is also being added to EEOC–5, Correspondence and Congressional Inquiries, as routine use "b," and EEOC–9, Claims Collection Records, as routine use "k." The new proposed routine uses meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosures will not result in any unwarranted adverse effects on personal privacy. Two routine uses, "c" and "e", were eliminated as unnecessary.

EEOC–2, Attorney Referral List. The authority for maintenance of the system and the retention and disposal section was amended.

EEOC–3, Title VII and Americans With Disabilities Act Discrimination Case Files. The title, categories of individuals covered by the section and authority for maintenance of the system were amended to include charges filed under the Americans With Disabilities Act of 1990, signed into law on July 26, 1990, Public Law 101–336. The law provides that EEOC shall begin accepting charges of employment discrimination from individuals with disabilities on July 26, 1992. In addition to the two new proposed routine uses noted above, the system location, system manager, storage and safeguards sections were changed to reflect current offices and the Commission's computerized Charge Data System.

EEOC–4, Biographical Files. This system was created from two previous systems, EEOC–4, Biographical Files, and EEOC–12, Officials' Biographical File–EEOC. The two systems were consolidated into one. The system location and system manager were changed to reflect the current office and title. The authority for maintenance of the system was amended and a routine use was eliminated.

EEOC–5, Correspondence and Congressional Inquiries. In addition to the new proposed routine use noted above, the system location and system manager were changed to reflect the current office and title. The categories of records was amended to include a computer tracking system and the authority for maintenance of the system was amended. The storage, retrievability, safeguards and retention and disposal sections have been changed to reflect current practice.

EEOC–6, Employee Assistance Program Records. This system (currently in effect and entitled Employee Alcoholism and Drug Abuse Records) was revised to contain information regarding EEOC employees who participate in EEOC's Employee Assistance Program, which provides for identification and referral of employees for treatment of and counseling regarding alcohol, drug, emotional or other personal problems. The system location and system manager were changed to reflect the current offices and titles. The authority for maintenance of the system was amended. New routine use "a" is proposed to permit disclosure to authorized personnel of a contractor that administers the program. The new proposed routine use meets the compatibility criteria since the information is collected for the purpose of the routine use. A routine use was eliminated. The safeguards and retention and disposal sections were amended to reflect current practice.

EEOC–7, Employee Pay and Leave Records. The authority for maintenance of the system was amended. In addition to the two new proposed routine uses noted above, routine use "f" regarding disclosure to the federal or District of Columbia government in connection with administrative purposes noted is proposed. Routine use "g" regarding disclosure to hearing examiners and arbitrators, among others, is also proposed. Routine uses "h" and "i" are proposed to allow disclosure to the Office of Personnel Management and the General Services Administration in connection with their responsibilities. The four new proposed routine uses mentioned directly above are also proposed for EEOC–8, Employee Travel and Reimbursement Records, as routine uses "b," "c," "d," and "e," respectively. The new proposed routine use allowing disclosure to hearing examiners and others is also proposed for EEOC–9, Claims Collection Records, as routine use "l". These new proposed routine uses meet the compatibility criteria since the information in the systems is collected for the purposes of the proposed routine uses. We do not anticipate that any disclosures will result in any unwarranted adverse effects on personal privacy. The storage, retrievability, safeguards and retention and disposal sections have been revised to reflect current practice.

EEOC–8, Employee Travel and Reimbursement Records. The system location has been changed, and the authority for maintenance of the system has been amended. In addition to the six new routine uses noted above, routine use "g" regarding disclosure to a congressional office in response to the individual's own inquiry is proposed. This routine use meets the compatibility criteria and we do not believe that disclosures under it will result in any unwarranted adverse effects on personal privacy. The storage and retention and disposal sections have been changed to reflect current practice; the system manager has been changed to reflect the current title.

EEOC–9, Labor-Management Negotiated Agreements—EEOC. This system has been deleted because the records no longer exist and the system is no longer required.

EEOC–10, Claims Collection Records. This system has been renumbered EEOC–9. In addition to two proposed new routine uses noted above, current routine uses "i" and "j" have been consolidated into proposed new routine use "i" regarding disclosure to the federal or District of Columbia government in connection with administrative purposes noted. Current routine use "b" has been deleted. The system location and system manager have been changed to reflect current information.

EEOC–11, Correspondence File. This system has been deleted because the records no longer exist and the system is no longer required.

EEOC–12, Officials' Biographical File—EEOC. This system has been deleted because the records are collected and maintained under EEOC–4, Biographical Files. This system is no longer required.

EEOC–13, Employee Performance, Effectiveness and Evaluation System. This system has been deleted because the records no longer exist and the system is no longer required.

EEOC–14, Grievance Records. This system has been renumbered EEOC–10. The system location and system manager have been changed to reflect current information. The authority for maintenance of the system has been amended. Two routine uses have been amended. Routine use "d" is amended to include disclosure in order to comply with the issuance of a subpoena. Routine use "f" is amended to allow disclosure to hearing examiners, arbitrators and others; the current routine use (routine use "h") provides for disclosure to officials of the MSPB, the FLRA and the Office of Personnel Management. These amendments to the routine uses are not major changes that effect the compatibility criteria. Two routine uses were deleted.

EEOC–11, Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service. EEOC provides adverse action rights to nonpreference eligibles in the excepted service that are not provided in the Civil Service Reform Act. This proposed new system of records contains those records on the processing of adverse actions against nonpreference eligibles in the excepted service that are not covered by OPM's system of adverse action records, OPM/GOVT–3. Eight routine uses are proposed for the system; the proposed routine uses track those in the Office of Personnel Management's governmentwide system for adverse action and performance-based action records of all other employees.

EEOC–12, Telephone Call Detail Records. This proposed new system of records contains records relating to the use of EEOC telephones to place long distance calls, records indicating the assignment of telephone numbers to employees and records relating to the location of telephones in the Commission. The system was created when the EEOC acquired a new computerized telephone system at its new headquarters office building. Seven routine uses are proposed for the new system.

EEOC–13, Employee Identification Cards. This proposed new systems of records contains identification cards that include an employee's name, signature, social security number, date of issue and photograph and a list of all employees who have current identification cards. In addition, for employees at headquarters, the system contains numbered proximity cards and a list of all employees who have such cards, their assigned numbers, the doors controlled by the proximity cards and the employees permitted access through each door. The proximity cards permit employees to enter the headquarters building and their offices during evenings and weekends. Five routine uses are proposed for the new system.

EEOC–14, Employee Parking Records. This proposed new system of records contains application for parking space forms and addendum forms for individuals in car pools that include employees' names, offices, home addresses and telephone numbers, office telephone numbers, descriptions of vehicles, signatures and dates and list of employees with assigned space. The records are maintained as a result of the EEOC's move to a new building in which the parking garage has spots for EEOC employees. Four routine uses are proposed for the new system.

The proposed routine uses for the four proposed new systems of records noted above meet the compatibility criteria since the information involved is collected for the purpose of the applicable routine uses. We anticipate that any disclosure pursuant to these routine uses will not result in any unwarranted adverse effects on personal privacy.

EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records. It is proposed to exempt this system of records from certain provisions of the Privacy Act in accordance with section (k)(2) of the Act. 5 U.S.C. 552a(k)(2). This is a major change and is also being proposed in EEOC's notice of proposed rulemaking containing amendments to its Privacy Act regulations found at 29 CFR part 1611. That notice of proposed rulemaking is published in the Proposed Rules section of this **Federal Register**. Routine use "d" regarding disclosing information to administrative judges, arbitrators or others engaged in investigation or settlement of a matter is proposed. Eight routine uses have been deleted. The authority for maintenance of the system and the storage section have been amended.

A complete list of all EEOC systems of records is published below. The complete text of the notices follows.

For the Commission.

Evan J. Kemp, Jr.,

Chairman.

EEOC Systems of Records

EEOC–1 Age and Equal Pay Act Discrimination Case Files.
EEOC–2 Attorney Referral List.
EEOC–3 Title VII and Americans With Disabilities Act Discrimination Case Files.
EEOC–4 Biographical Files.
EEOC–5 Correspondence and Congressional Inquiries.
EEOC–6 Employee Assistance Program Records.
EEOC–7 Employee Pay and Leave Records.
EEOC–8 Employee Travel and Reimbursement Records.
EEOC–9 Claims Collection Records.
EEOC–10 Grievance Records.
EEOC–11 Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.
EEOC–12 Telephone Call Detail Records.
EEOC–13 Employee Identification Cards.
EEOC–14 Employee Parking Records.
EEOC–GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

EEOC–1

SYSTEM NAME:

Age and Equal Pay Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge or complaint of discrimination was filed (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than federal employees and applicants who file charges or complaints with EEOC alleging that an employer, employment agency or labor organization has violated the Age Discrimination in Employment Act of 1967 or the Equal Pay Act of 1963.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the records compiled during the investigation of age and equal pay discrimination cases. These records include:

a. Documents submitted by charging party or complainant such as charge of discrimination, personal interview statement, and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters of referral to state fair employment practices agencies, correspondence with state fair employment practices agencies, witness statements, investigator's notes, investigative plan, report of initial and exit interview, investigator's analyses of evidence and charge, subpoenas, decisions and letters of determination, conciliation agreements, correspondence

and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 29 U.S.C. 209, 211, 216, 217, 625; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under the Age Discrimination in Employment Act of Equal Pay Act.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential and non-privileged information from closed ADEA/EPA case files (a file is closed when the Commission has terminated its investigation and has decided not to sue) to the employer where a lawsuit has been filed against the employer involving that information, to other employees of the same employer who have been notified by the Commission of their right under 29 U.S.C. 216 to file a lawsuit on their own behalf, and their represenatives.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of a party to the charge.

e. To disclose pertinent information to the appropriate federal, state or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, and Title VII cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGERS AND ADDRESS:

Director of the field office where the charge was filed (see Appendix A).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

EEOC–2

SYSTEM NAME:

Attorney Referral List.

SYSTEM LOCATION:

All District Offices (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys who represent plaintiffs in employment discrimination litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains attorneys' names, business addresses and telephone numbers, the nature and amount of civil rights litigation experience, state and federal bar admission, whether the attorneys have the capacity and desire to handle class actions; whether the attorneys charge consultation fees (and how much); whether the attorneys will waive the consultation fee; the types of fee arrangements the attorneys will accept, and whether the attorneys speak a foreign language fluently.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2000e–4(g); 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To refer charging parties to attorneys who handle litigation of employment discrimination lawsuits.

b. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms and index cards.

RETRIEVABILITY:

Indexed alphabetically by names of the attorneys.

SAFEGUARDS:

Access to this system of records is restricted to EEOC personnel who have a legitimate use for the information. This system is stored in filing cabinets.

RETENTION AND DISPOSAL:

Files are reviewed and updated annually.

SYSTEM MANAGERS AND ADDRESS:

Regional Attorney at each District Office (see Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the appropriate system manager. It is necessary to furnish the following information: (1) Full name of the individual whose records are requested; (2) mailing address to which reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

EEOC–3

SYSTEM NAME:

Title VII and Americans With Disabilities Act Discrimination Case Files.

SYSTEM LOCATION:

Field Office where the charge of discrimination was filed (see appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons, other than federal employees and applicants, who file charges alleging that an employer, employment agency, labor organization or joint labor-management apprenticeship committee has violated Title VII of the Civil Rights Act of 1964 or the Americans With Disabilities Act of 1990, or both.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records compiled during the investigation of race, color, religion, sex, and national origin discrimination cases and cases of discrimination against individuals with disabilities. These records include:

a. Documents submitted by charging party, such as charge of discrimination, personal interview statement, medical records and correspondence.

b. Documents submitted by employer such as statement of position, correspondence, statements of witnesses, documentary evidence such as personnel files, records of earnings, EEO data, employee benefit plans, seniority list, job titles and descriptions, applicant data, organizational charts, collective bargaining agreements, petition to revoke or modify subpoena.

c. Records gathered and generated by EEOC in the course of its investigation such as letters to state or local fair employment practice agencies, correspondence with state fair employment practice agencies, witness statements, investigator's notes, investigative plan, investigator's analyses of the evidence and charge, report of initial and exit interviews, copy of deferral to state, subpoenas, decisions and letters of determination, analysis of deferral agency action, conciliation agreements, correspondence and any additional evidence gathered during the course of the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 42 U.S.C. 2000e–5, –8 and –9; 42 U.S.C. 12117; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to a federal, state, or local agency or third party as may be appropriate or necessary to perform the Commission's functions under Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990.

b. To disclose information contained in these records to state and local agencies administering state or local fair employment practices laws.

c. To disclose non-confidential or non-privileged information contained in these records to the following persons after a notice of right to sue has been issued:

1. Aggrieved persons and their attorneys in case files involving Commissioner Charges provided that such persons have been notified of their status as aggrieved persons;

2. Persons or organizations filing on behalf of an aggrieved person provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose, and their attorneys;

3. Employers and their attorneys, provided that the charging party or aggrieved person has filed suite under Title VII or the Americans With Disabilities Act, or both.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

e. To disclose pertinent information to the appropriate federal, state or local agencies responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose pertinent information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are cross-indexed by charging party name, employer name and charge number. The records may be retrieved by any of the above three indexes.

SAFEGUARDS:

Paper records are maintained in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access. The premises are locked when authorized personnel are not on duty. Access to computerized records is limited, through use of access codes and entry logs, to those whose official duties require access.

RETENTION AND DISPOSAL:

Cases that are dismissed or closed for other than no cause are destroyed six months following the date of dismissal or closure. No cause files that are of value in the development of future class action or pattern and practice cases are retired to the Federal Records Center one year after the date of the last action and destroyed after three additional years. All other no cause files are destroyed one year after the date of the last action. Negotiated settlement files are destroyed one year after the calendar year in which the settlement agreement is signed or after all obligations under the agreement are satisfied, whichever occurs later. Where monetary benefits are realized in concurrent Age, Equal Pay, Title VII and Americans With Disabilities Act cases, the file is destroyed three years after the date of the last action. Other files are retired to the Federal Records Center one year after the date of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance) and destroyed after three additional years, except landmark cases. Landmark cases are transferred to the nearest Federal Records Center two years after final court action and offered to the National Archives ten years after final court action.

SYSTEM MANAGER(S) AND ADDRESS:

Director of the field office where the charge was filed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt under 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

EEOC–4

SYSTEM NAME:

Biographical Files.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Commissioners, General Counsels and Commission officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes for each the name, date and place of birth, education, employment history, and other biographical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 42 U.S.C. 2000e–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used.

a. To answer public and congressional inquiries regarding EEOC Commissioners, General Counsels and Commission officials.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in licking metal file cabinets available to office employees.

RETRIEVABILITY:

Indexed by last name of the Commissioner, General Counsel or Commission official.

SAFEGUARDS:

Files are kept in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays.

RETENTION AND DISPOSAL:

Maintained permanently.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the individual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

EEOC–5

SYSTEM NAME:

Correspondence and Congressional Inquiries.

SYSTEM LOCATION:

Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Charging parties, members of the general public, members of Congress and current and former EEOC employees who write letters to EEOC seeking information or assistance whose inquiries are referred to the Office of Communications and Legislative Affairs for response.

CATEGORIES OF RECORDS IN THE SYSTEM:

a. Inquiries from Members of Congress, the White House and members of the general public, including current and former EEOC employees.

b. EEOC responses to the above inquiries.

c. Computer tracking system indicating the dates inquiries are received, to whom and when they are assigned for response and the dates they are answered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 2000e–4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of the individual.

b. To disclose information to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file cabinets and on computer tape.

RETRIEVABILITY:

Correspondence from members of Congress is indexed alphabetically by the last name of the member. General correspondence are indexed alphabetically by the last name of the individual making the inquiry or on whose behalf the inquiry is made. Computer entries are retrievable by name of author of a letter, by name of person or office referring letter to the Office of Communications and Legislative Affairs, by subject, by key word, by reference number, by name of person to whom assigned, and by dates assigned, due and answered.

SAFEGUARDS:

Files are kept in locking metal cabinets in the Office of Communications and Legislative Affairs, which is locked evenings, weekends and holidays. Computer information is coded with access limited to employees of the Office of Communications and Legislative Affairs and the Office of Information Systems Services.

RETENTION AND DISPOSAL:

Correspondence is maintained for three years from the date of the last correspondence and then destroyed. Correspondence control information is maintained in the computer for four years.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Communications and Legislative Affairs, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. All inquiries should furnish the full name of the inividual and the mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORDS PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Members of Congress, their staffs, the White House, charging parties, members of the general public, current and former EEOC employees.

EEOC–6

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Employee Assistance Program contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees who have been referred to or contacted the Employee Assistance Program because of personal problems, emotional problems, or alcohol or drug abuse.

CATEGORIES OF RECORDS IN THE SYSTEM:

May contain information relating to individuals counseled by the Employee Assistance Program including supervisor's referral, (if the employee was referred by the supervisor), documentation of visits to employee counselors (federal, state, local government, or private), and notes or records made by the counselor of discussions held with the employee or with the physician, therapist or health care professional of the employee. In addition, records in this system may include documentation of treatment by a therapist at a federal, state, local government, or private institution, summary information produced at case closure, and other documents deemed pertinent to the provision of program services to the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1 and 3; 290ee–1 and 3; 5 U.S.C. 7901; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to authorized personnel of the contractor that administers the EEOC Employee Assistance Program.

b. To disclose information to medical personnel to meet a bona fide medical emergency.

c. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by the Commission, all patient identifying information shall be removed).

Note: Disclosure of these records beyond officials of the Commission having a bona fide need for them or to the person to whom they pertain is rarely made because disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited to comply with the restrictions of the regulations regarding the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR part 2, as authorized by 42 U.S.C. 290dd–3 and 290ee–3. Records pertaining to the physical and mental fitness of employees are, as a matter of Commission policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Indexed by name of employee.

SAFEGUARDS:

Files are maintained in locked cabinets accessible only to Employee Assistance Program personnel.

RETENTION AND DISPOSAL:

Records are retained until three years after the employee has ceased contact with the counselor or until the employee's separation or transfer, whichever comes first.

SYSTEMS MANAGERS AND ADDRESSES:

Administrator, Employee Assistance Program, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507; Field Office Directors (see Appendix A).

NOTIFICATION PROCEDURES:

Any person wanting to know whether this system of records contains information about him or her should contact the appropriate system manager. Such person should provide his or her full name, date of birth, and social security number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The sources of these records are:

a. The employee or members of the employee's family;

b. Persons to whom the employee has been referred for assistance;

c. Commission officers and employees;

d. Program counselors.

EEOC–7

SYSTEM NAME:

Employee Pay and Leave Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employee of EEOC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time and attendance cards and forms; leave records (includes employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for an authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); thrift savings plan participation, deductions for medicare, FICA, taxes, life and health insurance, union contributions, charitable contributions, savings allotments and bond issuance and bond balance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

b. To provide a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the state, city or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the state, city or other jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517 or 5520, or in response to a written request from an appropriate official of the taxing jurisdiction. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction

to tax the employee is based on place of residence, place of employment, or both.

c. To disclose copies of executed city tax withholding certificates to a city pursuant to a withholding agreement between the city and the Department of the Treasury (5 U.S.C. 5520) in response to a written request from an appropriate city official.

d. To disclose the social security number only, in the absence of a withholding agreement, to a taxing jurisdiction that has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with section 7 of the Privacy Act, 5 U.S.C. 552a note.

e. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

g. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

h. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

i. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

j. To disclose information to another Federal agency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on magnetic tape and in file folders.

RETRIEVABILITY:

Indexed by an assigned employee code.

SAFEGUARDS:

Access to these records is limited to employees whose official duties require such access.

RETENTION AND DISPOSAL:

The records are destroyed after three years.

SYSTEM MANAGER AND ADDRESS:

Director of each Commission Office (See Appendix A).

NOTIFICATION PROCEDURE:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information: (1) Name; (2) social security number; (3) mailing address to which the response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Official personnel folder, data submitted by employees and data submitted by the offices where the individuals are or were employed.

EEOC-8

SYSTEM NAME:

Employee Travel and Reimbursement Records.

SYSTEM LOCATION:

All locations listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Includes travel orders, travel vouchers, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's Government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

d. To disclose to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

e. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

f. To disclose information to another Federal agency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on prepared forms.

RETRIEVABILITY:

Indexed alphabetically by name, social security number, and/or chronologically by event and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms.

RETENTION AND DISPOSAL:

These records are destroyed in accordance with GSA General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Financial Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURE:

Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office where employed (see Appendix A). The individual should provide his or her full name, date of birth, social security number and mailing address.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Bills, receipts and claims presented by employees and original data generated by the Commission.

EEOC-9

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

These records are located in the Finance Management Division, Financial and Resource Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is indebted to the United States as a result of his or her interaction or financial activities with the Commission or another federal agency including, but not limited to, any current or former Commission employee.

CATEGORIES OF RECORD IN THE SYSTEM:

This system contains:

a. *Case Files.* These files contain information and evidence on the identity and location of the individual who is subject to a claim, the origin and amount of the indebtedness, decisions and determinations regarding a claim, actions taken to collect a claim, and the results of those actions. Depending on the status of a claim, a case file may include such records as documents evidencing indebtedness, written demands for payment, required notices, financial statements, medical disability statements, agency investigative reports, credit reports, written agreements for payment, intra-agency and inter-agency memoranda of consultation and opinion on the collection action, documentation resulting from a hearing, requests for waiver, requests for reconsideration, written determinations and decisions, certifications of indebtedness by this or another agency, counterclaims, judgments and documents evidencing payment or compromise of the debt.

b. *Internal Revenue Service (IRS) Mailing Address Index.* Consists of cards containing the name or other identifying information on the individual for whom mailing address information has been requested and received from the IRS, the date on which this information was received from the IRS, and the purpose to which the information has been put.

c. *Index on Disclosures to Consumer Reporting Agencies.* Records containing the name and other identifying information on the individual whose delinquent debt has been reported to consumer reporting agencies, i.e., credit bureaus, and the kind and type of information reported.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5514, 5522, 5584, 5705, 5724(f); 15 U.S.C. 1692; 26 U.S.C. 6331; 31 U.S.C. 3701, 3702, 3711, 3716, 3717, 3718, 3719; 44 U.S.C. 3101; 4 CFR parts 91–93, 101–105.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to appropriate officials and employees of the Department of Justice for the purposes of litigation and forced collection on administratively uncollected debts.

b. To disclose information to appropriate officials of the Department of the Treasury and the Office of Management and Budget to provide reports on debt collection activities.

c. To disclose information to another federal agency for the purpose of collecting a debt owed to the Commission by an individual through salary offset or administrative offset undertaken by the other agency upon proper certification or evidence of the debt owed from the Commission.

d. To disclose information to another federal agency for the purpose of collecting a debt owed to that agency by an individual through salary offset or administrative offset undertaken by the Commission upon proper certification or evidence of the debt owed from the other agency.

e. To disclose a debtor's name and social security number to the Secretary of the Treasury or his or her designee for the purpose of obtaining the debtor's mailing address from the IRS.

f. To disclose mailing addresses obtained from the IRS to consumer reporting agencies only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

h. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the agency maintaining the records, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation

of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

j. To disclose to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

k. To disclose information to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

l. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on microfiche and index cards.

RETRIEVABILITY:

These records are indexed by the name of the individual and social security number. The records may be retrieved by either of these indexes.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of these records is limited to those persons whose official duties require such access and to those persons indicated in the listing of routine uses above.

RETENTION AND DISPOSAL:

Individual case files are usually retained for two years after the claim is collected. Case records on individuals whose delinquent debts are reported to consumer reporting agencies are retained indefinitely. Other case files may be maintained for a period up to ten years. IRS Mailing Address Index on any individual is not maintained beyond six years.

SYSTEM MANAGER AND ADDRESS:

Director, Financial Management and Resource Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

Under the Debt Collection Act, individuals are notified if claims collection records are maintained on them in accordance with statutory procedures for salary offset, administrative offset, and disclosing information to a consumer reporting agency. Individuals may also contact the System Manager in order to obtain notification of claims collection records on themselves.

Individuals must provide their full names under which records may be maintained, their social security number, and a mailing address to which a reply should be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by or from:

a. The individual on whom the record is maintained;

b. Other Federal agencies;

c. Personnel, payroll, travel records, contract records or other records;

d. Administrative hearings;

e. Court records;

f. Consumer reporting agencies.

EEOC–10

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

These records are located in Personnel Management Services, Office of Management, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 and in other headquarter offices and field offices where the grievances were filed (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former EEOC employees who have submitted grievances to the EEOC in accordance with part 771 of the regulations of the Office of Personnel Management (OPM) (5 CFR part 771) and EEOC Order No. 570.003, or a negotiated procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that EEOC has or may establish through negotiations with recognized labor organizations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 5 U.S.C. 7121..

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request and identify the type of information requested.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an indivíual, the classifying of jobs, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

d. To disclose to another federal agency, to a court or in an administrative proceeding being conducted by a federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose to an authorized appeal grievance examines, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

g. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

h. To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters effecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records are shredded or burned 3 years after closing the case.

SYSTEM MANAGER AND ADDRESS:

If the grievance is pending at or was never raised beyond the office level, the system manager is the head of the office. (See Appendix A.) In all other situations, the system manager is the Director, Labor Management Relations Division, Office of Management, EEOC, 1801 L Street, NW., Washington, DC 20507.

NOTIFICATION PROCEDURES:

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. They may, however, contact the agency personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (a) Name; (b) approximate date of closing of the case and kind of action taken; (c) organizational component involved.

RECORDS ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By testimony of witnesses;

c. By agency officials;

d. From related correspondence from organizations or persons.

EEOC–11

SYSTEM NAME:

Records of Adverse Actions Against Nonpreference Eligibles in the Excepted Service.

SYSTEM LOCATION:

These records are located in Personnel Management Services, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507 or in the headquarters and field offices in which the actions have been taken.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former nonpreference eligible, excepted service Equal Employment Opportunity Commission (EEOC) employees against whom an adverse action has been proposed or taken and who have not completed two years of current and continuous service in the same or similar positions. (This system covers only those adverse action files not covered by OPM/GOVT–3.)

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records and documents on the processing of adverse actions for employees who are nonpreference eligibles in the excepted service and who do not have two years of continuous service in their positions. The records include copies of the notice of proposed action, materials relied on by the agency to support the reasons in the notice, replies by the employee, statements of witnesses, reports, and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

b. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the EEOC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested for processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

d. To disclose information to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a federal Agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

g. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involving in a pending judicial or administrative proceeding.

h. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING AND RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the names or social security number of the individuals on whom they are maintained.

SAFEGUARDS:

These records are maintained in locked metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records documenting an adverse action are disposed of 4 years after the closing of the case.

SYSTEM MANAGER AND ADDRESS:

Director, Employee Relations Division, Office of Management and Directors of Field Offices (see Appendix A).

NOTIFICATION PROCEDURES:

Individuals receiving notice of a proposed action are provided access to all documents supporting the notice. They may also contact the personnel office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name;

b. Approximate date of closing of case and kind of action taken;

c. Organizational component involved.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided:

a. By the individual on whom the record is maintained;

b. By witnesses;

c. By agency officials.

EEOC–12

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Resource Management Division of Financial and Resource Management Services, Office of Management, EEOC 1801 L Street, NW., Washington DC 20507, and each field office listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally EEOC employees) who make long distance telephone calls from EEOC telephones and individuals who received telephone calls placed from or charged to EEOC telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of EEOC telephones to place long distance calls; records indicating the assignment of telephone numbers to employees; records relating to the location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

c. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

e. To disclose to an agency in the executive, legislative or judicial branch or the District of Columbia's government in response to its request, or at the initiation of the EEOC, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, the issuance of a license, grant or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

f. To disclose to a telecommunications company providing telecommunications support to permit servicing the account.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, by telephone number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those person whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the National Archives and Records Administration's General Records Schedule 12.

SYSTEM MANAGER AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC, 20507 and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) telephone number (office number if Commission employee); (4) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibilities for placement of specific long distance calls.

EEOC–13

SYSTEM NAME:

Employee Identification Cards.

SYSTEM LOCATION:

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW, Washington DC

20507 and each of the field offices in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current EEOC employees

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification cards that include name, signature, social security number, date of issue and photograph, and list of all persons who possess current identification cards. In addition, for Headquarters staff, numbered proximity cards and list of all persons with their assigned proximity card numbers, all doors controlled by the proximity cards and all persons permitted access to each door.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

44 U.S.C. 3101; 41 CFR 101–20.3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose to other government agencies and to the public whether an individual is a current employee of the EEOC.

c. To disclose information to another federal agency, to a court or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose pertinent information to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts at EEOC headquarters and on the premises of the contractor responsible for monitoring the system.

RETRIEVABILITY:

Records are retrieved by employee name, by identification number, and, for Headquarters staff, by proximity card number.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are destroyed upon termination of employment relationship.

SYSTEM MANAGER AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC., 20507 and the Directors of the field offices listed in Appendix A.

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) social security number; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee and, for Headquarters staff, from his or her use of the assigned proximity card.

EEOC–14

SYSTEM NAME:

Employee Parking Records.

SYSTEM LOCATION:

Resource Management Division, Financial and Resource Management Services, Office of Management, EEOC, 1801 L Street, NW., Washington DC 20507.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EEOC employees who apply for or have been assigned parking spaces in the Headquarters building and members of their car pools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for parking space form and addendum form for members of car pools containing employee name, office, home address and telephone number, office telephone number, description of vehicle, signature and date, and list of employees with their assigned spaces.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 41 CFR 101–20.1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information from these records may be used:

a. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

b. To disclose information in response to a request for discovery or for the appearance of a witness, to the extent that the information disclosed is relevant to the subject matter involved in the pending judicial or administrative proceeding.

c. To disclose information in a proceeding before a court or adjudicative body to the extent the information is relevant and necessary to the proceeding.

d. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and on computer tape and printouts.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

Records are maintained and stored in file cabinets in a secured area to which only authorized personnel have access. Access to and use of the records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are disposed of upon termination of employment relationship or earlier release of assigned parking space.

SYSTEM MANAGER AND ADDRESS:

Director, Resource Management Division, Financial and Resource Management Services, EEOC, 1801 L Street, NW., Washington DC 20507

NOTIFICATION PROCEDURES:

Inquiries concerning this system of records should be addressed to the system manager. It is necessary to provide the following information: (1) Name; (2) assigned parking space number of approximate date of application; (3) mailing address to which response is to be sent.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the employee.

SYSTEMS EXEMPTED FORM CERTAIN PROVISIONS OF THE ACT:

None.

EEOC/GOVT-1

SYSTEM NAME:

Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

SYSTEM LOCATION:

Equal employment opportunity complaint files are maintained in an Office of Equal Employment Opportunity or other designated office of the agency or department where the complaint was filed. EEO Appeal files (including appeals from final negotiated grievance decisions involving allegations of discrimination) and petitions for review of decisions of the Merit Systems Protection Board are maintained in the Office of Review and Appeals, Equal Employment Opportunity Commission, Washington, DC. 20507 and in EEOC field offices (see Appendix A).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Federal employment and current and former Federal employees who contact an EEO counselor or who file complaints of discrimination or reprisal with their agency, or who file appeals on EEO complaints, petitions for review of decisions of the Merit Systems Protection Board, or appeals of final decisions in negotiated grievance actions involving allegations of discrimination.

CATEGORIES OR RECORDS IN THE SYSTEM:

This system of records contains information or documents compiled during the pre-complaint counseling and the investigation of complaints filed under section 717 of Title VII, section 15 of the Age Discrimination in Employment Act, section 501 of the Rehabilitation Act, and the Equal Pay Act and all appeals.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

42 U.S.C. 2000e–16(b) and (c); 29 U.S.C. 204(f) and 206(d); 29 U.S.C. 633(a); 29 U.S.C. 791; Reorg. Plan No. 1 of 1978, 43 FR 19607 (May 9, 1978); Exec. Order No. 12106, 44 FR 1053 (Jan. 3, 1979).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal gency, to a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose to an authorized appeal grievance examiner, formal complaints examiner, adminsitrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in computer processable storage media.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

These records are maintained for one year after resolution of the case and then transferred to the Federal Records Center where they are destroyed after three years.

SYSTEM MANAGER AND ADDRESS:

Within the agency or department where the complaint of discrimination or reprisal was filed, the system manager is the Director of the Office of Equal Employment Opportunity or other official designated as responsible for the administration and enforcement of equal employment opportunity laws and regulations within the agency or department.

Where an individual has appealed an EEO complaint or final negotiated grievance decision to the EEOC or petitioned the EEOC to review a decision of the Merit System Protection Board, the system manager of the appeal or petition file is the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, Washington, DC. 20507.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of the Act.

Appendix A

Albuquerque Area Office (Phoenix District), Western Bank Building, Suite 1105, 505 Marquette, NW., Albuquerque, New Mexico 87102–2189.
Atlanta District Office, Citizens Trust Bank Building, Suite 1100, 75 Piedmont Avenue, NW., Atlanta, Georgia 30335.
Baltimore District Office, 111 Market Place, Suite 4000, Baltimore, Maryland 21202.
Birmingham District Office, 1900 3rd Avenue, North, Suite 101, Birmingham, Alabama 35203–2397.
Boston Area Office (New York District), 1 Congress Street, Suite 100, Boston, Massachusetts 02114.
Buffalo Local Office (New York District), 28 Church Street, Room 301, Buffalo, New York 14202.
Charlotte District Office, 5500 Central Avenue, Charlotte, North Carolina 28212.
Chicago District Office, Federal Building, Room 930A, 536 South Clark Street, Chicago, Illinois 60605.
Cincinnati Area Office (Cleveland District), 550 Main Street, Room 7015, Cincinnati, Ohio 45202.
Cleveland District Office, 1375 Euclid Avenue, Room 600, Cleveland, Ohio 44115.
Dallas District Office, 8303 Elmbrook Drive, Dallas, Texas 75247.
Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, Colorado 80203.
Detroit District Office, 477 Michigan Avenue, Room 1540, Detroit, Michigan 48226.
El Paso Area Office (San Antonio District), The Commons, Building C, Suite 100, 4171 North Mesa Street, El Paso, Texas 77902.
Fresno Local Office (San Francisco District), 1313 P Street, Suite 103, Fresno, California 93721.
Greensboro Local Office (Charlotte District), 324 West Market, Room B–27, P.O. Box 3363, Greensboro, North Carolina 27402.
Greenville Local Office (Charlotte District), 300 East Washington Street, Suite B41, Greenville, South Carolina 29601.
Honolulu Local Office (San Francisco District), 677 Ala Moana Boulevard, Suite 404, P.O. Box 50082, Honolulu, Hawaii 96813.
Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002.
Indianapolis District Office, 46 East Ohio Street, Room 456, Indianapolis, Indiana 46204.
Jackson Area Office (Birmingham District), 207 West Amite Street, Jackson, Mississippi 39201.
Kansas City Area Office (St. Louis District), 911 Walnut Street, 10th Floor, Kansas City, Missouri 64106.
Little Rock Area Office (Memphis District), 320 West Capitol Avenue, Suite 621, Little Rock, Arkansas 72201.
Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, California 90010.
Louisville Area Office (Indianapolis District), 601 West Broadway, Room 613, Louisville, Kentucky 40202.
Memphis District Office, 1407 Union Avenue, Suite 621, Memphis, Tennessee 38104.
Miami District Office, 1 Northeast First Street, 6th Floor, Miami, Florida 33132.
Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, Wisconsin 53203.
Minneapolis Local Office (Milwaukee District), 220 Second Street South, Room 108, Minneapolis, Minnesota 55401–2141.
Nashville Area Office (Memphis District), 50 Vantage Way, Suite 202, Nashville, Tennessee 37228.
Newark Area Office (Philadelphia District), 60 Park Place, Room 301, Newark, New Jersey 07102.
New Orleans District Office, 701 Loyola Avenue, Suite 600, New Orleans, Louisiana 70113.
New York District Office, 90 Church Street, Room 1501, New York, New York 10007.
Norfolk Area Office (Baltimore District), Systems Management of America (SMA) Building, 252 Monticello Avenue, 1st Floor, Norfolk, Virginia 23510.
Oakland Local Office (San Francisco District), 1333 Broadway, Room 430, Oakland, California 94612.
Oklahoma Area Office (Dallas District), 531 Couch Drive, Oklahoma City, Oklahoma 73102.
Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
Phoenix District Office, 4520 North Central Avenue, Suite 300, Phoenix, Arizona 85012–1848.
Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, Room 2038–A, Pittsburgh, Pennsylvania 15222.
Raleigh Area Office (Charlotte District), 1309 Annapolis Drive, Raleigh, North Carolina 27608–2129.
Richmond Area Office (Baltimore District), 400 North 8th Street, Room 7038, Richmond, Virginia 23240.
San Antonio District Office, 5410 Fredericksburg Road, Suite 200, San Antonio, Texas 78229.
San Diego Local Office (Los Angeles District), 880 Front Street, Room 4S–21, San Diego, California 92188.
San Francisco District Office, 901 Market Street, Suite 500, San Francisco, California 94103.
San Jose Local Office (San Francisco District), 280 South First Street, Room 4150, San Jose, California 95113.
Savannah Local Office, 10 Whitaker Street, Suite B, Savannah, Georgia 31401.
Seattle District Office, 2815 Second Avenue, Suite 500, Seattle, Washington 98121.
St. Louis District Office, 625 North Euclid Street, 5th Floor, St. Louis, Missouri 63016.
Tampa Area Office (Miami District), 501 East Polk Street, 10th Floor, Tampa, Florida 33602.
Washington Field Office, 1400 L Street, NW., Suite 200, Washington, DC. 20005.

[FR Doc. 91–5913 Filed 3–13–91; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

[Agreement No. 224–200482 and 224–002401–012]

Georgia Ports Authority, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200482.

Title: Georgia Ports Authority/Companhia Maritima Nacional Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Companhia Maritima Nacional (CMN).

Synopsis: The Agreement provides for: CMN's use of GPA's terminal facility at Savannah, Georgia; and CMN to pay a consolidated rate of $75.00 per container, a loading/unloading of rail cars rate of $33.17 per container, a stack utilization fee (storage) of $4.85 per container, and an import box computer fee of $0.58 per container. All crane rental used for breakbulk cargo will be at GPA's Tariff rates.

Agreement No.: 224–002401–012.

Title: City of Long Beach/Sea-Land Service, Inc. Terminal Agreement.

Parties: City of Long Beach, Sea-Land Service, Inc.

Synopsis: The Agreement amends the basic agreement to: (1) Modify the descriptions of several parcels of the premises; (2) grant an option to have a parcel preferentially assigned; and (3) adjust the rent for the use of the assigned premises.

By order of the Federal Maritime Commission.

Dated: March 11, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6028 Filed 3–13–91; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–200410–001]

Puerto Rico Ports Authority, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 stat. 733, 75 stat. 763, 46 U.S.C. section 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200410–001.

Title: Puerto Rico Ports Authority/Sea-Land Service, Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority, Sea-Land Service, Inc.

Filing Party: Ms. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, PR 00936.

BEST COPY AVAILABLE

Synopsis: The Agreement amends the parties' basic agreement to: add 3,400 sq. ft. of property to be used on an exclusive basis; and increase rent accordingly.

By Order of the Federal Maritime Commission.

Dated: March 11, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-6029 Filed 3-13-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

C&S/Sovran Financial Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. C&S/Sovran Financial Corporation, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Norfolk, Virginia, in (1) providing to both its retail and institutional brokerage customers, investment advice in connection with the purchase and sale for the customer's account of a broad range of securities in the secondary market, as well as shares of mutual funds and interests in unit investment trusts; (2) providing brokerage services, but not investment advice, to customers regarding the purchase and sale of shares of investment companies advised by an affiliated bank; (3) providing discretionary investment management services to its institutional customers. These activities have been approved by Board order. *J.P. Morgan & Co.*, 73 Federal Reserve Bulletin 810 (1987); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *PNC Financial Corp*, 75 Federal Reserve Bulletin 396 (1989). These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, March 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6030 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

First Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bancorp, Inc., Huron, South Dakota; to acquire the assets of Stapp Insurance Agency, Newell, South Dakota, and Brunner Insurance Agency, Nisland, South Dakota, pursuant to section 4(c)(8)(D) of the Bank Holding Company Act. Applicant currently operates insurance agency pursuant to § 4(a)(2) of the Bank Holding Company Act and has requested that the Board review its right to acquire insurance agencies pursuant to § 4(c)(8)(D).

Board of Governors of the Federal Reserve System, March 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6031 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

George D. Francklow, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Comments must be received not later than April 2, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. George D. Francklow, Jr., Houston, Texas; to acquire an additional 4.0 percent of the voting shares of Guardian Bancshares, Inc., Houston, Texas, for a total of 12.25 percent and thereby indirectly acquire Guardian Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, March 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6032 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

TAG Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 2, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. TAG Bancshares, Inc., Trenton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank & Trust, Inc., Trenton, Georgia.

2. Tennessee Bancorp, Inc., Columbia, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First Federal Savings & Loan Association, Columbia, Tennessee, which is to be converted to a national bank to be known as Tennessee National Bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to merge with Northwestern Bank Corporation, East Jordan, Michigan, and thereby indirectly acquire Northwestern State Bank, East Jordan, Michigan.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. M & F Bancorp, Inc., Holly Springs, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of Merchants & Farmers Bank, Holly Springs, Mississippi.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma; to become a bank holding company by acquiring 99.9 percent of the voting shares of Bank of Oklahoma, N.A., Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, March 8, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6033 Filed 3-13-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of the Antiviral Drugs Advisory Committee by the Secretary of Heath and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. app. 2)).

DATES: Authority for this committee will expire on February 15, 1993, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: March 7, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 91-6037 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0059]

Huls America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Huls America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a synthetic triglyceride mixture as a cocoa butter substitute.

FOR FURTHER INFORMATION CONTACT: Laureen V. Peters, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (Section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Huls America, Inc., 80 Centennial Ave., P.O. Box 456, Piscataway, NJ 08855-0456, has filed a petition (FAP 7A4625) proposing that the food additive regulations be amended to provide for the safe use of a synthetic triglyceride mixture (CAS Reg. No. 85665-33-4), obtained by reacting fatty acids derived from coconut or palm kernel oil with glycerol, as a cocoa butter substitute.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 7, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-6038 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0010]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Borden, Inc., to market test a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: The permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Borden, Inc., 180 East Broad St., Columbus, OH 43215.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standards of identity for cottage cheese (21 CFR 133.128) and lowfat cottage cheese (21 CFR 133.131) in that the milkfat content of the test product is less than 0.5 percent compared to not less than 4.0 percent milkfat in cottage cheese and 0.5 to 2.0 percent milkfat in lowfat cottage cheese. The test product also deviates from the U.S. standard of identity for dry curd cottage cheese (21 CFR 133.129) because of the added dressing. The product meets all requirements of the standards with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to cottage cheese products with dressing but contains less fat.

For the purpose of this permit, the name of the product is "nonfat cottage cheese." This permit provides for the temporary marketing of a total of 1,500,000 pounds (680,400 kilograms) of the test product. The product will be manufactured at Meadow Gold plants in Greeley, CO 80631; Honolulu, HI 96805; Boise, ID 83707; Champaign, IL 61824; Jackson, MS 39704; Kalispell, MT 55901; Albuquerque, NM 87103; Lincoln, NE 68501; Youngstown, OH 44512; Tulsa, OK 74101; Sulphur Springs, TX 75482; Charleston, WV 25302; and Milwaukee, WI 53214, and distributed in Alabama, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah, Virginia, West Virginia, and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than June 12, 1991.

Dated: March 6, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-6039 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0065]

Wyeth-Ayerst Laboratories, Inc.; Withdrawal of Approval of Portions of Two New Drug Applications for Phenergan

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those portions of two new drug applications (NDA's) that provide for the over-the-counter (OTC) marketing of two Phenergan Syrup products. This action is based on the written request of Wyeth-Ayerst Laboratories, Inc., P.O. Box 8299, Philadelphia, PA 19101.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Wyeth-Ayerst Laboratories, Inc. (Wyeth), holds approved NDA's that provide for prescription marketing of the following promethazine-containing combination drug products:

NDA 8-604 for Phenergan VC Syrup containing phenylephrine hydrochloride and promethazine hydrochloride.

NDA 11-265 for Phenergan with Dextromethorphan Syrup containing dextromethorphan hydrobromide and promethazine hydrochloride.

On August 11, 1988, FDA approved supplemental NDA's to NDA's 8-604 and 11-265 that provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan DM Syrup (the same as Phenergan with Dextromethorphan Syrup).

Promethazine-containing combination drug products are also under review in the agency's OTC Drug Review (Docket No. 76N-052G). Under the OTC Drug Review, a citizen petition and comments have been filed expressing concerns about the safety of the OTC marketing of promethazine-containing products. This issue is currently under review by the agency.

Because of these concerns, Wyeth has requested that FDA withdraw approval of those portions of NDA's 8-604 and 11-265 that provide for the OTC labeling and marketing of Phenergan VC Syrup and Phenergan DM Syrup. Wyeth notes that the issues concerning the OTC marketing of promethazine-containing products are best resolved solely in the public forum provided by the agency's OTC Drug Review monograph process.

Accordingly, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of those portions of NDA's 8-604 and 11-265 that provide for the OTC marketing of Phenergan VC Syrup and Phenergan DM Syrup, and all amendments and supplements thereto, is hereby withdrawn, effective April 15, 1991. This withdrawal of approval does not affect the prescription promethazine-containing products covered by NDA's 8-604 and 11-265.

Dated: March 6, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-6041 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Veterinary Medicine Advisory Committee

Date, time, and place. April 10 and 11, 1991, 8:30 a.m., Versailles Ballroom III, Holiday Inn-Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, April 10, 1991, 8:30 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 2 p.m.; open public hearing, 2 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 4:30 p.m.; open committee discussion, April 11, 1991, 8 a.m. to 9 a.m.; open public hearing, 9 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0830.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss animal drug screening methods, the role of the veterinary medicine advisory committee, and limiting *Salmonella* exposure of food animals.

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time and place. April 29, 1991, 9 a.m., rm. 503A-525A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1380 Piccard Dr., Rockville, MD 20850, 301-427-1160.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 12, 1991, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a chorionic villus sampling catheter and make a recommendation on the PMA. The committee will also review previous committee recommendations made on the use of electrosurgery during laparoscopy for tubal sterilization and other procedures.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Commitee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 7, 1991.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-6042 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

Public Workshop; Plasma Volume Expanders

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the National Heart, Lung, and Blood Institute of the National Institutes of Health (NIH) are announcing a forthcoming 2-day public workshop to discuss issues concerning plasma volume expanders.

DATES: The workshop will be held on Monday, March 25, and Tuesday, March 26, 1991, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The workshop will be held in the Lister Hill Auditorium, Bldg. 38A, Lister Hill National Center, National Library of Medicine, NIH, 9000 Rockville Pike, Bethesda, MD. Requests for a copy of the tentative workshop agenda may be submitted to the Food and Drug Administration, Center for Biologics Evaluation and Research, Congressional, International, and Consumer Affairs Staff (HFB-142), 5600 Fishers Lane, MPN-3, Rockville, MD 20857, 301-295-8228. Copies of the final agenda will be available at the workshop.

FOR FURTHER INFORMATION CONTACT: Andrew Shrake, Center for Biologics Evaluation and Research (HFB-430), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, Facsimile 301-480-3254.

SUPPLEMENTARY INFORMATION: On March 25 and 26, 1991, FDA and the Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute of NIH are sponsoring a workshop to assess plasma volume expanders. The purpose of the workshop is to develop, through presentations and discussions, information that the agencies can use to address the following issues: (1) The clinical and physiologic endpoints for the use of plasma volume expanders; (2) appropriate controls for assessing plasma volume expanders during clinical studies; (3) the indications and contraindications for clinical use of plasma volume expanders; and (4) the areas of research for future clinical investigations. The agencies may use the information provided during the workshop to develop plans for further scientific and regulatory activities related to plasma volume expanders.

The workshop will consist of numerous presentations by invited speakers during the morning and afternoon sessions on March 25, 1991, and the morning session on March 26, 1991. A period of open discussion will take place at the end of each morning and afternoon session. A general discussion will take place on the afternoon of March 26, 1991.

Since seating for the workshop is limited, persons interested in attending should contact Andrew Shrake (address above).

Dated: March 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-6043 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0038]

Petitions Permitted by the Nutrition Labeling and Education Act of 1990

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is developing procedural regulations to govern the content, submission, and agency review of the four types of petitions described within the Nutrition Labeling and Education Act of 1990 (the 1990 amendments). FDA is requesting information and comments from any interested person as to the structure and content of these procedural regulations to assist the agency in their development. The agency is also advising that it will deny, or defer action on, any petition requesting action under the 1990 amendments that is submitted before promulgation of final regulations for petitions.

DATES: Comments to this notice should be submitted by May 13, 1991.

ADDRESSES: Written comments on this notice to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). The 1990 amendments make the most significant changes in food labeling law since the passage of the Federal Food, Drug, and Cosmetic Act of 1938 (the act). The 1990 amendments add section 403(q) to the act which specifies in part: (1) That, with certain exceptions, a food is to be considered misbranded unless its label or labeling bears nutrition labeling; and (2) that certain nutrients and food components are to be included in nutrition labeling, allowing the Secretary to add or delete nutrients by regulation.

The 1990 amendments also add section 403(r) to the act which specifies in part: (1) That label or labeling claims characterizing the level of any nutrient (hereinafter referred to as "descriptors") shall be in accordance with regulations promulgated by FDA; (2) that label or labeling claims characterizing the relationship of nutrients to a disease or a health-related condition (hereinafter referred to as health claims) shall be in accordance with regulations promulgated by FDA; (3) that any person may petition FDA to amend the regulations for descriptors or health claims; and (4) that any person may petition FDA for permission to use an implied claim concerning the level of a nutrient in a food in a brand name.

In addition, the 1990 amendments include, in new section 403A, provisions on the preemptive effect of the misbranding sections of the act. Section 403A of the act provides for: (1) The preemption of State requirements that pertain to standards of identity, nutrition labeling, health claims, and certain other matters; and (2) the submission of petitions from a State or a political subdivision of a State (hereinafter collectively referred to as State) for exemption of State requirements from preemption.

The 1990 amendments prescribe varying effective dates for its provisions on preemption of State requirements:

(1) A State standard of identity for a food that is the subject of a standard of identity established under section 401 of the act that is not identical to the Federal standard of identity, and State requirements on the effect of such a standard that are not identical to the requirements of section 403(g) of the act, were preempted on the date of enactment of the 1990 amendments;

(2) State requirements for the labeling of food that relate to the use of the term "imitation," the placement of information on the manufacturer, packer, or distributor and on the quantity of contents, and ingredient lists that are not identical to sections 403(c), 403(e), or 403(i)(2) of the act are preempted effective November 8, 1991;

(3) The preemption of State requirements for labeling of the type described in section 403(b) (offered for sale under name of another food), 403(d) (container misleading), 403(f) (prominence of required information on label), 403(h) (standards of quality and fill), 403(i)(1) (common or usual name of food), or 403(k) (labeling of artificial flavoring, artificial coloring, or chemical preservative) of the act will take effect on a date that is to be determined based on the results of a study to assess the adequacy of Federal implementation of these sections and subsequent agency action; and

(4) State requirements for nutrition labeling or health claims are preempted on the date that regulations to implement sections 403 (q) and (r) of the act take effect, in any case no later than May 8, 1993.

The State requirements listed in items (3) and (4) may be excepted from the specified effective dates for a State if that State submits by May 8, 1992, a petition requesting exemption from preemption until either November 8, 1992, or FDA action on the petition, whichever occurs later.

II. Petitions

The 1990 amendments provide for four categories of petitions. FDA will refer to the three categories of petitions that involve food label or labeling health claims or descriptors collectively as "health claim or descriptor petitions." The fourth category of petition can only be submitted by a State and thus will be referred to as "State petitions."

The various petitions described in the 1990 amendments may be summarized as follows:

(1) Section 403(r)(4)(A)(i) of the act permits petitions requesting a regulation to define a term to describe a level of a nutrient in a food (e.g., "low fat" or "high fiber") or a regulation to authorize a health or disease-related claim on food labels or labeling.

(2) Section 403(r)(4)(A)(ii) of the act permits petitions requesting permission to use terms consistent with defined terms (e.g., "rich in calcium" instead of "excellent source of calcium") in a claim concerning the level of a nutrient in a food.

(3) Section 403(r)(4)(A)(iii) of the act permits petitions requesting permission to use an implied claim concerning the level of a nutrient in a food in the food's brand name (e.g., "Hy-Cal").

(4) Section 403A(b) of the act permits petitions from States requesting exemption from Federal preemption of State requirements that differ from Federal requirements as they pertain to standards of identity and certain aspects of misbranding.

One of the purposes of this document is to provide notice that the agency is developing procedural regulations that will prescribe the types of information necessary to support each of these types of petitions, the format in which they should be submitted to the agency, and the procedures that the agency will follow in its review of the petitions. The agency believes that the issuance of these procedural regulations is a necessary first step in providing a framework within which industry, States, and other interested persons can develop the petitions authorized by the 1990 amendments and within which the agency can evaluate and act on such petitions. The absence of such a framework could lead to inadequate petitions, inconsistent agency action, and the improper use of resources on the part of industry, the States, other interested persons, and FDA. Recognizing the significance of these various types of petitions, the agency is giving priority to the development of procedural regulations for these petitions.

The agency recognizes that interested persons may want to propose changes in nutrition labeling regulations other than those covered by the above petitions, e.g., to add nutrients or change the format in which nutrients are declared. The 1990 amendments did not provide specific provisions for petitions for such changes. Thus, the agency is not addressing these possibilities in this notice. The agency believes that its current regulations for the submission of citizen petitions under § 10.30 (21 CFR 10.30) provide adequate procedures for interested persons to propose changes in the regulations not covered by the petitions in this notice.

A. Health Claim or Descriptor Petitions

The 1990 amendments prescribe the extent to which a health claim or descriptor petition may request an amendment to the regulations relating to these matters, the type of information necessary to support such a petition, and timeframes for agency action on such a petition. The 1990 amendments require that a heath claim or descriptor petition include an explanation of the reasons why the claim that is the subject of the petition meets the requirements of section 403(r) and a summary of the scientific data that support those reasons. The agency is seeking comments or information as to the extent to which the procedural regulations should specify the types and extent of supporting data and information necessary for a petition on descriptors or health claims.

The 1990 amendments prescribe differing timeframes for agency action on the various types of health claim or descriptor petitions. FDA must either deny or file within 100 days of receipt a petition for a regulation concerning descriptors or health claims. If the agency denies the petition, it is not made available to the public. If the agency files the petition, FDA must either deny it or publish a proposed regulation responsive to the petition within 90 days of filing. The 1990 amendments require that the agency issue a final decision within 90 days denying or granting a petition to use alternative terms that are consistent with the descriptor terms defined by FDA regulation.

The 1990 amendments require that FDA publish a notice of opportunity for public comment for any petition to the agency for permission to use an implied descriptor claim in a brand name. FDA is to grant such a petition if the implied claim in the brand name is not misleading, and if it is consistent with the terms established by FDA regulations concerning descriptors. FDA must act on the petition within 100 days of receipt, and it is to be considered granted if the agency does not act on it within that period.

The agency is seeking comments or information on a variety of topics concerning its handling of these types of health claim or descriptor petitions, including: (1) What criteria should it use in evaluating the various health claim or descriptor petitions; (2) how, when, and to what extent should the agency give public notice of petitions; and (3) what should be the form for agency response to the alternative term and implied descriptor claim petitions, e.g., regulation, advisory opinion, or letter. The provisions of section 403(r) of the act apply to dietary supplements as well as to conventional foods. Section 403(r)(5)(D) of the act provides that a health claim with respect to a dietary supplement of vitamins, minerals, herbs, or other similar nutritional supplements shall be subject to a procedure and standard, respecting the validity of such claims, established by regulation by FDA. In this notice, the agency is seeking comments on the appropriate procedure for establishing regulations on permissible health claims for dietary supplements.

The agency requests comments on whether it should make these types of claims subject to the same petition process that it establishes for other health claims, or whether a separate process is appropriate. Comments that support the latter view should state what type of procedure would be appropriate.

B. State Petitions

The 1990 amendments provide that FDA may, upon consideration of a State petition, exempt from preemption any

State requirement that: (1) Would not cause any food to be in violation of any applicable requirement under Federal law; (2) would not unduly burden interstate commerce; and (3) is designed to address a particular need for information, which need is not met by the requirements of the Federal law.

The agency is seeking comments or information concerning the content and its handling of State petitions for exemption from preemption. The agency would like to receive any comments that interested persons may have as to what types of information or data a State petition should contain to show that State requirements do not unduly burden interstate commerce or are designed to address a particular need for information that is not met by the requirements of the Federal law. Thus, the agency is requesting any suggestions that interested persons may have on the approach that FDA should take in making these determinations. The agency would appreciate comments on the extent to which, in deciding whether State requirements "unduly burden" interstate commerce, it should consider the health benefits of the State requirement.

C. Action on Petitions

As noted above, the agency is preparing documents to establish procedural regulations to cover health claim or descriptor and State petitions. Until the agency has promulgated these and other implementing regulations under the 1990 amendments in final form, the agency believes that it would be inappropriate for it to act on such petitions. In most cases such petitions would not be warranted, and the agency would not be in a position to act on them until it has issued basic regulations implementing the provisions of the 1990 amendments, e.g., regulations defining appropriate descriptor terms such as "free," "light," or "high." The agency also believes that the most efficient use of its resources would be for it to first establish regulations that define the types of information that will be necessary to include in petitions. For these reasons, the agency is advising that it is likely to deny, without prejudice, any health claim or descriptor petition submitted under the provisions of the 1990 amendments until FDA has promulgated final procedural regulations concerning the submission and content of such petitions.

The 1990 amendments provide that certain provisions for preemption should not apply to a State that submits a petition within the 18 months following the enactment date. Because this provision gives special standing to States that submit petitions, the agency is likely to defer action on, rather than to deny, State petitions for exemption from preemption until after the promulgation of final procedural regulations. Similarly, the agency also is likely to defer action on State petitions for which filing does not engender such special standing, e.g., a petition for exemption from preemption relative to food standards.

III. Comments

Interested persons may, on or before May 13, 1991, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 8, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-6040 Filed 3-13-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Pediatric Acquired Immune Deficiency Syndrome (AIDS); Health Care Demonstration Projects

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), Health Resources and Services Administration (HRSA) announces that fiscal year (FY) 1991 funds are available for grants for Pediatric AIDS Health Care Demonstration Projects and National Issues of High Priority. Projects will be funded to demonstrate strategies and innovative models for medical intervention in pediatric AIDS and coordinated medical and social services for children, youth, and women of childbearing age with Human Immunodeficiency Virus (HIV) infection, AIDS or other related conditions, or those at risk for developing infection and its consequences. Funds were appropriated for this purpose by Public Law 101-517. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of HIV infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock Number 017-001-0474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

DATES: The deadline for receipt of applications is May 13, 1991. Applications shall be considered as meeting the deadline if they are either: (1) Received by the Grants Management Branch at the address below on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review group

Applicants must obtain a legibly dated U.S. Postal Services postmark or a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Grant applications received after the deadline will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from: Beth Roy, Division of Services for Children with Special Health Needs, MCHB, Parklawn Building, room 9-48, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-9051.

Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from: Grants Management Officer, suite 100A, 12300 Twinbrook Parkway, Rockville, Maryland 20852, 301-443-1440. The original and two (2) copies of the application must be submitted to the Grants Management Officer.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Through October 1990, 154,917 cases of AIDS have been reported to the Centers for Disease Control (CDC). Of these, 2,686 have been infants and children 0-12 years of age and 604 have been adolescents 13-19 years of age and the number of new cases of AIDS among children is growing at an alarming rate—up 17 percent since 1988. Approximately one-half of the known cases in this pediatric population have died. Minority children comprise the vast majority of pediatric AIDS cases; 51 percent of cases are black and 26 percent are Hispanic. In addition, more than half of the hemophilia population has been exposed to HIV because of their reliance on blood products which were not tested for HIV antibody until May 1985, with the result that children with hemophilia ages 16-19 comprise over 30 percent of all AIDS cases in that age group.

The cost of providing a full range of services in the pediatric population with AIDS is high, largely reflecting the long periods of high-cost hospitalization these children may experience. It has been MCHB's experience with other populations of children with complex health care needs that comprehensive, coordinated approaches to care in ambulatory community-based settings result in shorter hospital stays, thus tending to reduce medical costs. The pediatric AIDS projects will address the incidence and cost of HIV/AIDS infection in women, infants, children, youth, and families within the context of community-based, family-centered, coordinated systems of care that include outreach and support services.

The escalation in the number of women of childbearing age who have HIV infection has, through perinatal transmission, increased pediatric AIDS to epidemic proportions. The CDC has reported that from an estimated 18 cases in 1980, the number of AIDS cases in women between the ages 20-40 has increased to 10,956 cases as of October 1990. Acquired Immunodeficiency Syndrome is now one of the five leading causes of death among this age group. Faced with their own illness, many women must also be caregivers to HIV/AIDS-infected infants and mates. As more women become incapacitated or die, more infants are orphaned, compounding the devastation of families. The pediatric AIDS projects should develop community-based, family-centered, coordinated systems of care which will address problems confronting women with HIV/AIDS infection, such as substance abuse, access to needed health care and supportive services, and limited access to clinical research trials that show therapeutic promise.

The number of persons with HIV infection involved in clinical trials versus the number of people eligible for clinical trials is small. Women and children, especially minorities, are under-represented in federally financed trials, although efforts are being made to involve them in such research. This limits access to experimental therapies as well as the basic health care services that many receive only through participation in trials. The projects should collaborate with federally financed clinical trials located in their geographical areas in order to make such research accessible to more women and children.

The pediatric AIDS projects are designed to further the coordination of services for women, children, youth, and families of childbearing age with HIV infection, AIDS or related conditions, or those at risk for developing infection and its consequences. This coordination includes those activities supported by Title V of the Social Security Act, the existing Pediatric AIDS Health Care Demonstration Projects previously funded by MCHB, the established network of hemophilia treatment centers, and other departmental AIDS Activities, particularly those funded under title I and title II of the Ryan White C.A.R.E. Act. The comprehensive system of services for women, children, youth, and families infected with HIV should be interwoven with the existing service programs, including Medicaid, that generally serve children and families with special health care needs.

While 66 percent of pediatric AIDS cases are found in the 16 metropolitan areas with the highest prevalence of AIDS, at the other end of the geographical spectrum are rural communities in which the total number of new Aids cases has increased 37 percent in just a 1-year period, compared to a 5 percent increase in metropolitan areas. The growth of AIDS among women in rural areas—attributed to a combination of substance abuse and sexual activity—highlights the need for a special emphasis on developing systems which assure access to primary health care services in rural areas as well as AIDS education and treatment. Since the number of women with AIDS is still small in these areas, the opportunities for advance planning ae still possible.

Purpose

It is generally recognized that there is a need for the development of strategies and innovative models for managing pediatric patients with HIV/AIDS, which emphasize service delivery in outpatient and community settings and reduce the amount of time spent in hospital settings.

Two categories of projects, which are intended to accomplish these purposes and to provide solutions to critical problems resulting from the AIDS crisis, will be funded in FY 1991. The first category, the Pediatric AIDS Health Care Demonstration Projects, initiated in 1988, should: (1) Demonstrate effective ways to prevent infection, especially through the reduction of perinatal transmission; (2) develop community-based, family-centered, coordinated services for infected women, infants, children, youth, and families; and (3) develop programs to reduce the spread of HIV infection to vulnerable populations, especially minorities and young people. The Pediatric AIDS Health Care Demonstration Projects should serve as models for other communities and should identify and coordinate the range of resources needed to provide appropriate and effective care to the affected population. These projects will focus on local capacity-building, making maximum use of all available public and private resources for reaching and providing health care and supportive services to women and children most at risk. These include other appropriate Federal, State, and local programs serving children with special health care needs (e.g., Medicaid, developmental disabilities, special education) and providers, payers, organizations, and support groups in the private sector with a similar focus.

Priorities for funding under the Pediatric AIDS Health Care Demonstration Projects will be given to the following geographic areas: (1) Metropolitan areas with a high prevalence of HIV/AIDS or emerging areas of HIV infection; and (2) rural areas where there is evidence of a rapid growth in HIV infection and where access to appropriate care and AIDS/HIV education are inadequate. Within the above geographic areas, priority will be given to projects which demonstrate the ability to integrate services at the community level and develop linkages with appropriate providers and financing mechanisms including: other AIDS services and clinical research programs; hemophilia treatment; drug treatment; women's health services; family planning centers; community health centers; and maternal and child health programs supported by title V. Specific attention must be paid to demonstrated coordination of programs and coalitions funded under auspices of title XXVI programs of the Pubic Health Service Act, known as the Ryan White C.A.R.E. Act.

A second category of projects is intended to focus on National Issues of High Priority in pediatric AIDS, and should address those issues which are of critical importance to women, infants, children, youth, and families with HIV/AIDS. These projects should deal with issues that can interfere with or prevent HIV-infected children and their families from receiving services they require. Projects funded in this category have included curriculum development for

training family service providers; and development of proposed guidelines on confidentiality for newborns and their mothers. The issues for FY 1991 will include but not be limited to (1) financing of services to persons with HIV/AIDS; (2) the role of substance abuse in the spread of HIV infection; and (3) HIV infected women's issues.

Availability of Funds

Approximately $10.5 million is available for competitive grant applications for the categories of projects described above, i.e., (1) Pediatric AIDS Health Care Demonstration Projects; and (2) National Issues of High Priority in Pediatric AIDS. It is anticipated that up to 17 grants will be made in Category (1) for impacted metropolitan areas, and up to two grants for rural areas; and four to five grants in Category (2). Project periods for Category (1) will be 3 years and up to 3 years for Category (2).

Pediatric AIDS grantees supported by HRSA will be expected to coordinate their projects with other Federal, State, and local programs concerned with AIDS including, but not limited to: (1) Title V programs: Maternal and Child Health Services Block Grants, including Hemophilia Services Projects, and other relevant Special Projects of Regional and National Significance grants under title V; (2) HRSA activities and programs funded under authority of the Ryan White C.A.R.E. Act; (3) HRSA Adult Service Demonstration Projects; (4) Community Health Centers and Migrant Health Centers; (5) CDC HIV/AIDS prevention activities; (6) Medicaid; (7) the education and outreach programs of the Alcohol, Drug Abuse, and Mental Health Administration, including the Office of Treatment Improvement, Office of Substance Abuse Prevention, and the National Institute of Drug Abuse, especially those concerned with injecting drug users, their sexual partners and prostitutes; (8) HRSA Education and Training Centers Grants; (9) grants concerned with mothers and children funded by the National Institute of Child Health and Human Development, National Institutes of Health (NIH); (10) the clinical drug trials or other relevant research conducted by other institutes of the NIH, such as the NIH Clinical Trials Groups, NIH Community Programs for Clinical Research on AIDS, and the General Clinical Research Centers; and (11) discretionary grants by the Office of Human Development Services to demonstrate innovative approaches to providing child welfare services for infants with AIDS.

To the maximum extent possible, HRSA's Pediatric AIDS Health Care Demonstration Program grantees also will be expected to work closely with community-based AIDS service organizations, local AIDS service activities supported by the Robert Wood Johnson Foundation, or other foundations and organizations with AIDS activities. All grantees located in the 16 high priority metropolitan areas that presently meet the eligibility standard of 2601(a) of the PHS Act, as identified in the Ryan White C.A.R.E. Act are expected to seek representation on the C.A.R.E. Planning Councils, either as individual grantees or through agency representation.

The NIH supports a number of studies involving women and children with HIV infection. It is especially important that the Pediatric AIDS Health Care Demonstration Projects located in the same geographic areas as the research studies facilitate appropriate access to the studies for the women and children they serve.

Eligible Applicants

Public and nonprofit and for-profit private entities are eligible to apply for these grant awards. Eligible entities include public or private hospitals, university medical centers, State or local health departments, health care and community organizations. Consistent with the statutory purpose of improving the system of services for women with HIV infection, children, youth, and families and with particular attention to the needs of minority and disadvantaged populations, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best address applicable Healthy People 2000 objectives and otherwise promote improvements in health.

Review and Evaluation Criteria

Grant applications will be reviewed and rated by objective review panels according to each applicant's ability to demonstrate the most effective ways of organizing services and providing treatment and support to children and women of childbearing age with HIV infection, AIDS or AIDS-related conditions, or those at risk for developing infection and its consequences. Applicants will be expected to demonstrate how proposed programs will be integrated with other AIDS service programs and indicate how the proposed services will augment existing activities.

The second category, National Issues of High Priority in Pediatric AIDS, will be reviewed to assess the importance of the issue selected, the applicant's understanding of the state of the knowledge about the issue, and the applicant's capacity to perform the activities proposed.

More detailed information on the review and evaluation criteria may be found in the Program Guidance.

Allowable Costs—Both Categories

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR 92 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB circular A–87 for State and local governments; OMB circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; OMB circular A–122 for nonprofit organizations; and 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations. All sources of funding to support the organizations that will work with the grantee must be accurately reflected in the applicant's budget.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Peformance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements will apply.

Executive Order 12372

The Pediatric AIDS Health Care Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937–0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the Pediatric AIDS Health Care Demonstration Program is 93.153.)

Dated: January 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–6035 Filed 3–12–91; 8:45 am]

BILLING CODE 4160–15–M

National Institute on Aging

Notice of Meeting of the National Commission on Sleep Disorders Research

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Commission on Sleep Disorders Research, National Institute on Aging. On March 21, 1991 there will be a working meeting of the Commission which will include review of the public testimony and the development of the National Plan. The meeting will take place in room 905, from 4 p.m. to 7 p.m. at the Houston Plaza Hilton, 6633 Travis St., Houston, Texas, 713–524–6633. Attendance by the public will be limited to space available. On March 22, 1991, from 8:30 a.m. to 4:30 p.m., there will be a public hearing in the Charles P. Rhinehart Auditorium, corner of Cleburne & Ennis at the Texas Southern University, 3100 Cleburne, Houston, Texas. The meeting on March 22 will be open to the public from 8:30 a.m. to 4:30 p.m. The Commission will meet to receive testimony and comments from expert and lay witnesses in sleep disorders, with particular emphasis on sleep disorders in the workplace and in the transportation industries. Attendance by the public will be limited to space available. For additional information, please call William C. Dement, M.D., Ph.D., Chairman, National Commission on Sleep Disorders Research, at the Standford University Sleep Disorders Center, 701 Welch Road, suite 2226, Palo Alto, CA, 415–725–6484. Interested persons should contact Andrew Monjan, Ph.D., M.P.H., Executive Secretary, National Commission on Sleep Disorders Research, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland, 301–496–9350, for further details and substantive information on the meetings.

Dated: March 11, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–6193 Filed 3–13–91; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

President's Council on Physical Fitness and Sports

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

This notice sets forth the schedule for the forthcoming subcommittee meeting of the President's Council on Physical Fitness and Sports to be held April 8, 1991—9 a.m.–4 p.m. The meeting is open to the public.

The purpose of this meeting is to review further the mission, goals and objectives of the Council.

ADDRESS: Securities and Exchange Commission 450 5th Street, NW., room 1C30, Washington, DC 20001.

Date: March 8, 1991.

Wilmer D. Mizell,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 91–5976 Filed 3–13–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environment and Energy

[Docket No. I–91–160]

Environmental Impact Statement Marina Development Project; Village of Port Chester, NY

The Department of Housing and Urban Development gives notice that the Village of Port Chester, New York has prepared an Environmental Impact Statement (EIS) for the Marina Development Project as described in the appendix of this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, governmental agencies, and private organizations are invited to obtain a copy of the EIS or review it at the address indicated in the appropriate of the appendix.

This notice shall be effective until thirty (30) days after this date of publication.

Dated: March 8, 1991.

Richard H. Broun,

Director, Office of Environment and Energy.

Appendix

The Village of Port Chester, New York has prepared an environmental Impact Statement (EIS) on a project described below and invite interested parties to view and/or obtain a copy thereof.

Description

The Project is located on a 23-acre site in the downtown area of the Village of Port Chester. The project consists of the construction and rehabilitation of commercial and residential structures comprising the following uses: 165,000 square feet of retail; 40,000 square feet of cinema; 80,000 square feet of office; 30,000 square feet of executive park; 660 apartments and parking for 1887 cars. The project also includes development of a waterfront esplanade and park, expansion of public boating facilities, and changes to the street system.

The project site is generally bounded by North Main Street to the west, the Byram River to the east, Westchester and Purdy Avenues to the south and Willett Avenue of the north.

The project is divided into two phases. Generally, Phase I would be comprised of the commercial development while the residential development would occur in Phase II. It is projected that Phase I construction would be completed no earlier than 1991, while Phase II would be completed no earlier than 1995.

Potential Environmental Impacts and Mitigation

The following items have been identified in the EIS as being principal potential environmental impacts:

1. Change in the character of the Area. The project site, which currently supports vacant and predominantly underutilized property, will be altered to support new commerical, high-rise residential buildings and public waterfront amenities.

2. Traffic. The proposed project will result in the generation of significant additional traffic volumes with the most cars added during the midday Saturday. Changes to the existing system will also impact circulation patterns.

3. Traverse/Townsend/Purdy Neighborhood. This neighborhood will be impacted by the proposed construction of new buildings along the southern side of Westchester Avenue and the elimination of through vehicular (and pedestrian) traffic circulation between this neighborhood and the new development.

4. Discrete Soil Contamination. Measurable levels of soil contamination have been observed within discrete areas of the project site. Further testing and a mitigation plan is being developed in consultation with NYS DEC.

5. Displacement. The proposed project would result in the displacement of six (6) households and fourteen (14) businesses.

6. Construction Impacts. Typical construction related impacts including, but not limited to temporary road closings and reroutings, inconvenience to local businesses, soil erosion, construction noise, reduced air quality, etc. will occur as a result of the project.

In addition to the principal potential environemntal impacts described above, the following categories of potential impacts were also analyzed in the EIS, flooding, groundwater, wildlife habitats, vegetation, runoff, density, land use, circulation, open space, recreation parking, adjacent areas, utilities, shoreline interface, historical, archaeological, noise quality, air quality, visual, and socio-economic.

The follwing mitigating measures have been identified in the EIS;

1. Widening of street pavement on Traverse Avenue and Townsend Street to facilitate two-way traffic flow on both streets.

2. Provision of emergency access linkage between Traverse and Townsend.

3. Prohibition of on-street day time parking on Townsend Street.

4. Limitation of cement truck traffic to and from Byram Concrete to Townsend Street.

5. Provision of 12 affordable units of housing on Traverse Avenue to reinforce the residential nature of this street.

6. Provision of off-street parking to serve residents and businesses on Townsend Street.

7. Provision of a play area to serve residential uses in the Townsend-Traverse area.

8. Relocation of the Carver Center to provide an improved neighborhood focus.

9. Provision of pedestrian access from Traverse Avenue to Brick Oven Road and Westchester Avenue.

Copies of this EIS may be obtained from: Thomas J. Farrell, Director, Village of Port Chester, Office of Planning and Development, 125 North Main Street, Port Chester, NY 10573; (914) 937-6452.

(A fee for reproduction and mailing expenses will be collected.)

[FR Doc. 91-6050 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development in Las Vegas Valley, Clark County, NA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Clark County and the Cities of Las Vegas, North Las Vegas, Henderson, and Boulder City (applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10 (a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 3 years, the incidental take of a threatened species, the Mojave desert tortoise (*Gopherus agassizii*), in the Las Vegas Valley, Clark County, Nevada. The Service also announces the availability of a draft environmental assessment (EA) for the incidental take permit application. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before April 15, 1991.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Office of Management Authority. Persons wishing to review the draft EA may obtain a copy by writing the Office of Management Authority or the Reno Field Station. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Office of Management Authority or the Reno Field Station. Documents will also be available for review at the reference desks of all public libraries in Clark County. Written data or comments concerning the application and EA should be submitted to the Office of Management Authority. Please reference permit number PRT-756260 in your comments.

Office of Management Authority, U.S. Fish and Wildlife Service, Room 430, 4401 N. Fairfax Dr., Arlington VA 22033 (703/358-2104 or FTS 921-2104).

Reno Field Station, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C-125, Reno, NV 89502-5093 (702/784-5227 or FTS 470-5227).

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl L. Barrett at the above Reno Field Station.

SUPPLEMENTARY INFORMATION: Clark County and the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City (applicants) propose to develop up to 22,352 acres of land in Las Vegas Valley over a 3-year period. The permit area covers approximately 299,700 acres, of which about 200,000 acres are privately owned lands. Over 90,000 acres of these private lands contain existing urban developent. In general, the permit area includes lands within the cities of Las Vegas, North Las Vegas, Henderson, and Boulder City; the unincorporated towns of Sunrise Manor, East Las Vegas, Winchester, Paradise, and Spring Valley; and portions of the unincorporated areas of Lone Mountain and Enterprise. The application includes a short-term habitat conservation plan (HCP) and a draft implementation agreement.

To minimize and monitor this incidental take, the applicants propose to survey project sites and remove tortoises prior to grading; place these tortoises in research, relocation, education, zoo, museum, adoption programs, and if necessary euthanize them; audit and report compliance to the Service; and conduct a public information program. To mitigate the impacts of incidential take, the applicants propose to conserve at least 400,000 acres of tortoise habitat on 14 potential tortoise management areas (PTMAs). The PTMAs are all located outside of the permit area, primarily on federally owned lands administered by the Bureau of Land Management or the National Park Service. The proposal also provides for ongoing maintenance, patrol, and a biological program; and a $550 per acre mitigation fee on projects covered by the permit.

The EA considers the environmental consequences of three alternatives, including the proposed action and the no action alternative. The proposed action would result in the extirpation of remnant populations of desert tortoises on up to 22,352 acres of habitat in the permit area. Although the no action alternative would not permit the take of desert tortoises in the permit area, it would promote development outside of the existing urban core and eliminate the opportunity to implement conservation measures on a scale not possible through individual projects or by individual federal agencies. Existing human activities within Las Vegas Valley already preclude the long-term maintenance of desert tortoise populations within the Valley. The third alternative would preserve all of the components of the proposed action, but designates a specific Tortoise Management Area. This alternative would allow a management plan to be designed which considers the impacts on the tortoise population and management and research needs particular to that area. However, this alternative limits the area from which grazing permits could be purchased, which may prevent the applicants from meeting the conservation threshold requirements and establishment of 400,000 acres of conserved habitat. Three other alternatives were rejected due to their inability to meet the growth needs of Las Vegas Valley or provide for conservation measures for the desert tortoise; administrative difficulties; and inability of land managers to guarantee land use controls.

Karen Rosa,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 91-5973 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[WO-680-1-4130-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act (44 U.S.C. Chapter 35)

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0114), Washington, DC 20503, telephone 202-395-7340.

Title: Recording Location Notices and Annual Filings for Mining Claims, Mill Sites, and Tunnel Sites.

OMB approval number: 1004-0114.

Abstract: The information collected is used to determined whether or not mining claimants have met the statutory requirements of section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744). Mining claimants must record location notices of mining claims, mill sites, and tunnel sites with the Bureau of Land Management within 90 days of their location. Each calendar year after the claims and sites are located, the claimants must make an annual filing by December 30. Failure to record the mining claim or site or to submit an annual filing makes the mining claim or site abandoned and void by operation of law.

Bureau Form Number: None.

Frequency: Once for notices and certificates of location. Once each year for annual filings.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 0.0833 hours for each mining claim.

Annual responses: 1,063,780.

Annual burden hours: 88,613.

Bureau Clearance Officer (Alternate): Gerri Jenkins, (202) 653-8853.

Dated: February 4, 1991.

Hilary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 91-6091 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management; Montana

[MT-070-00-4320-12-ADVB]

District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Grazing Advisory Board will be held Tuesday, April 9 in the conference room of the Butte District Office, 106 North Parkmont, Butte, Montana. The meeting will begin at 9 a.m. On the agenda will be (1) a rundown of currently funded range improvement projects; (2) proposed range improvement projects for FY 1992; (3) an overview of the Dillon Resource Management Plan; (4) a status report of Allotment Management Plans and evaluations being prepared and in planning; (5) a discussion of district efforts to increase meaningful involvement of interested parties in significant rangeland decisions; (6) a report on the Sleeping Giant horse roundup and plans for bighorn sheep reintroduction; (7) a discussion of this year's moisture conditions; and (8) and overview of Range Program Summaries prepared for the three resource areas.

The meeting is open to the public. Interested persons may make oral statements to the board or file written statements for the board's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: March 5, 1991

Orval L. Hadley,

Acting District Manager.

[FR Doc. 91-6092 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-DN-M

[NM-030-01-4320-14]

Las Cruces District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The meeting will be held at the Las Cruces District Office located at 1800 Marquess, Las Cruces, New Mexico. The agenda for the meeting follows:

1. 9 a.m.—Meeting Called to Order.
2. 9:05 a.m.—Election of Officers.
3. 9:30 a.m.—Approval of Minutes.
4. 10 a.m.—New Policy Initiative.
5. 10:30 a.m.—Discussion of the Inspector General Audit.
6. 11 a.m.—Discussion of Fencing Standards.
7. 11:30 a.m.—Presentation of New Projects.
8. 12 noon—Lunch.
9. 1 p.m.—Resume Presentation of Projects.
10. 2 p.m.—Public Comment Period.
11. 2:15 p.m.—Finish Presentation of Projects.
12. 4:30 p.m.—Adjourn Meeting.

MEETING DATE: April 10, 1991, beginning at 9 a.m.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Las Cruces District, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico or at (505) 525-8228.

Dated: March 7, 1991.

H. James Fox,

District Manager.

[FR Doc. 91-6093 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces that availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Santa Fe International Corporation, Pipeline Activity, SEA No. OCS-G 12590.	High Island Area, East Addition, South Extension, Blocks A-384, A-385, A-398, A-397, and A-402; Garden Banks Area, Blocks 224, 180, and 136; Lease OCS-G 12590, 114 miles southeast of the nearest coastline in Texas.	12/17/90
Marathon Oil Company, four exploratory wells, SEA No. N-3936	High Island Area, East Addition, South Extension, Block A-386, Lease OCS-G 9159, 118 miles south of Jefferson County, Texas.	1/10/91
GFS Company, Geophysical Exploration for Mineral Resources, SEA No. L90-052.	Vermilion Area, Blocks 28 and 33, located approximately 9 miles offshore Louisiana.	10/23/90
Oryx Energy Company, two exploratory wells, SEA No. R-2600	High Island Area, East Addition, South Extension, Blocks A-378 and A-379, Leases OCS-G 8573 and 8574, 108 miles southeast of the nearest coastline on Galveston Island, Texas.	12/6/90
Conoco Inc., structure removal operations, SEA No. ES/SR 89-013	West Cameron Area, Block 177, Lease OCS-G 1471, 34 miles southeast of Cameron, Louisiana.	11/5/90
Conoco Inc., structure removal operations, SEA No. ES/SR 89-038A	Vermilion Area, Block 22, Lease OCS-G 2865, 8 miles south of Vermilion Parish, Louisiana.	10/5/90
Texaco USA, structure removal operations, SEA No. ES/SR 90-010/S	Eugene Island, South Addition, Block 338, Lease OCS-G 2118, approximately 90 miles south of St. Mary Parish, Louisiana.	10/17/90
Texaco USA, structure removal operations, SEA Nos. ES/SR 90-11/S and 90-12/S.	West Cameron Area, Block 663, Lease OCS-G 6613, approximately 132 miles south of Cameron Parish, Louisiana.	10/16/90
Texaco USA, structure removal operations, SEA No. ES/SR 90-13/S	Matagorda Island Area, Block 554, Lease OCS-G 6033, approximately 15 miles south of Matagorda County, Texas.	10/15/90
CNG Producing Company, structure removal operations, SEA No. ES/SR 90-14/S.	South Marsh Island Area, Block 65, Lease OCS-G 7702, 52 miles south of Shell Keys National Wildlife Refuge in Iberia Parish, Louisiana.	10/30/90
Seagull Energy E&P Inc., structure removal operations, SEA No. ES/SR 90-019A.	Galveston Area, Block 213, Lease OCS-G 4142, approximately 13 miles southeast of Galveston, Texas.	8/21/90
Mesa Operating Limited Partnership, structure removal operations, SEA No. ES/SR 90-057.	Vermilion Area, South Addition, Block 381, Lease OCS-G 4216, approximately 5 miles south of Rockefeller Refuge in Cameron Parish, Louisiana.	11/9/90
OXY USA, structure removal operations, SEA No. ES/SR 90-060 and 90-065.	High Island Area, South Addition, Block A-520, Lease OCS-G 2378, approximately 106 miles south of Cameron Parish, Louisiana.	8/29/90 9/26/90
Exxon Company, U.S.A., structure removal operations, SEA No. ES/SR 90-071.	Grand Isle Area, Block 22, Lease OCS 031, approximately 9 miles south of Lafourche Parish, Louisiana.	9/26/90
Chevron U.S.A., structure removal oeprations, SEA No. ES/SR 90-072	West Delta Area, Block 24, Lease OCS 0691, 12 miles southwest of Venice, Louisiana.	10/11/90
Unocal Exploration Corporation, structure removal operations, SEA No. ES/SR 90-085.	South Timbalier Area, Block 53, Lease OCS-G 4000, 12 miles south of the barrier island chain in Terrebonne Parish, Louisiana.	10/5/90
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA Nos. ES/SR 90-087, 90-088, and 90-089.	Vermilion Area, Block 23, Lease OCS-G 2866, 5 miles south of Vermilion Parish, Louisiana.	10/12/90
Diamond Shamrock Offshore Partners Limited Partnership, structure removal operations, SEA No. ES/SR 90-094.	Main Pass Area, Block 39, Lease OCS-G 4904, 16 miles southeast of Breton Islands and the Breton National Wildlife Refuge, offshore Louisiana.	10/3/90
Union Pacific Resources, structure removal operations, SEA No. ES/SR 90-099.	Ship Shoal Area, Block 184, Lease OCS-G 5553, 34 miles south of Terrebonne Parish, Louisiana.	9/7/90
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 90-100.	West Cameron Area, South Addition, Block 480, Lease OCS-G 2219, 66 miles south of Cameron Parish, Louisiana.	10/10/90
Unocal Exploration Corporation, structure removal operations, SEA No. ES/SR 90-102.	East Cameron Area, Block 69, Lease OCS-G 0935, 24 miles south of the Rockefeller Refuge in Cameron Parish, Louisiana.	11/9/90
Unocal Exploration Corporation, structure removal operations, SEA Nos. ES/SR 90-103, 90-104, and 90-105.	Vermilion Area, Blocks 35, 36, and 26; Leases OCS 0549, OCS-G 1357, and OCS 0297; approximately 4 to 6 miles south of Vermilion Parish, Louisiana.	10/10/90
BP Exploration, structure removal operations, SEA Nos. ES/SR 90-106 and 90-107.	Main Pass Area, Blocks 99 and 100, Leases OCS-G 6807 and OCS-G 4910, approximately 46 miles east of St. Bernard Parish, Louisiana.	12/12/90
Norcen Explorer, Inc., structure removal operations, SEA No. ES/SR 90-108.	Eugene Island Area, Block 29, Lease OCS-G 5036, 5 miles southwest of the Atchafalaya Bay Wildlife Management Area in St. Mary Parish, Louisiana.	11/5/90
Phillips Petroleum Company, structure removal operations, SEA No. ES/SR 91-001.	Ship Shoal Area, Block 26, Lease OCS-G 5530, approximately 10 miles south of Terrebonne Parish, Louisiana.	10/19/90
Placid Oil Company, structure removal operations, SEA Nos. ES/SR 91-029 and 91-039.	Ship Shoal Area, South Addition, Blocks 290 and 291, Leases OCS-G 3170 and 2923, approximately 62 miles south of Terrebonne Parish, Louisiana.	12/7/90
Koch Exploration Company, structure removal operations, SEA Nos. ES/SR 91-002 and 91-003.	East Cameron Area, Blocks 219 and 233, Leases OCS-G 7652 and OCS-G 9460, 65 miles south of Cameron Parish, Louisiana.	11/30/90

Activity/Operator	Location	Date
Union Pacific Resources, structure removal operations, SEA No. ES/SR 91-04/S.	Galveston Area, Block 226, Lease OCS-G 10241, 17 miles southeast of Galveston Island in Galveston County, Texas.	12/21/90
Marathon Oil Company, structure removal operations, SEA No. ES/SR 91-05/S.	West Delta Area, Block 89(G), Lease OCS-G 7791, 12 miles west of Plaquemines Parish, Louisiana.	12/21/90
Odeco Oil and Gas Company, structure removal operations, SEA Nos. ES/SR 91-004 and 91-005.	Ship Shoal Area, Blocks 93 and 94, Leases OCS 063 and OCS 042, 16 miles south of Terrebonne Parish, Louisiana.	11/2/90
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA No. ES/SR 91-006.	Ship Shoal Area, Block 72, Lease OCS 060, 9 miles south of Terrebonne Parish, Louisiana.	11/21/91
Chevron U.S.A., structure removal operations, SEA No. ES/SR 91-06/S	East Cameron Area, Block 235 Lease OCS-G 5366, 69 miles south of Cameron Parish, Louisiana.	1/11/91
Pennzoil Exploration and Production Company, structure removal operations, SEA No. ES/SR 91-007.	Eugene Island Area, Block 53, Lease OCS 0479, 18 miles south of St. Mary Parish, Louisiana.	1/11/91
Mobil Exploration & Producing U.S. Inc., structure removal operations, SEA ES/SR 91-012.	West Cameron Area, Block 101, Lease OCS 0246, 12 miles south of Cameron Parish, Louisiana.	1/23/91

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, Telephone (504) 736-2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources and structure removals on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in signficant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: March 6, 1991.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 91-6094 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0004), Washington, DC 20503, telephone 202-395-7340.

Title: Nonferrous Metals Surveys.

OMB approval number: 1032-0004.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

Bureau form number: 6-1151-MA et al. (33 forms).

Frequency: Monthly, Quarterly, and Annual.

Description of respondents: Producers and Consumers of Nonferrous Metals.

Annual responses: 12,181.

Annual burden hours: 14,371.

Bureau clearance officer: Alice J. Wissman, 202-634-1125.

Dated: February 26, 1991.

T.S. Ary,

Director, Bureau of Mines.

[FR Doc. 91-6095 Filed 3-3-91; 8:45 am]

BILLING CODE 4310-63-M

Bureau of Reclamation

Operation of Glen Canyon Dam, Colorado River Storage Project, Arizona

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of public meetings and notice of correction.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior previously announced it is preparing a draft environmental impact statement (DEIS) on the downstream impacts of water releases from the Glen Canyon Dam. Public meetings will be held to present the alternatives developed through the scoping process.

The cooperating agencies will conduct three public meetings to be held in Flagstaff and Phoenix, Arizona, and Salt Lake City, Utah. On February 23, 1990, the Bureau of Reclamation (Reclamation), the lead agency in the development of the EIS, published a **Federal Register** notice (55 FR 6488) that listed the cooperating agencies in the process. The list of cooperating agencies is changed to read: "Cooperating agencies are the U.S. Fish and Wildlife Service, National Park Service, and the Bureau of Indian Affairs, of the Department of the Interior, Western Area Power Administration of the Department of Energy, Arizona Game and Fish Department, the Navajo Nation, the Hopi Tribe, the Havasupai Tribe, and the Hualapai Tribe."

DATES AND LOCATIONS: Three public meetings will be held:

April 1, 1991, 7 p.m., Hilton Hotel, 150 W. 500 South, Salt Lake City, Utah.

April 2, 1991, 7 p.m., Little America Hotel, 2515 East Butler Avenue, Flagstaff, Arizona.

April 4, 1991, 7 p.m., YWCA Leadership Development Center, 9440 North 25th Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mary Ann Facer, Colorado River Studies Office, UC-1512, U.S. Bureau of Reclamation, 125 South State Street, P.O. Box 11568, Salt Lake City UT 84147, telephone: (801) 524-4099.

SUPPLEMENTARY INFORMATION: In addition to this notice, interested government agencies, public groups, and private citizens will be informed of the alternative measures through the Colorado River Studies Office (CRSO) newsletter and news releases. Basic information on the alternatives and the public involvement process will be contained in the newsletter which will be published prior to the meetings. A document listing preliminary alternatives will be provided at the meetings and will also be available on request. The public meetings will be held in a workshop style. In addition, written comments will be accepted at the meetings. Written comments can also be submitted by mail or in person through May 1, 1991. Persons may be added to the current DEIS mailing list to receive the newsletter or additional information by contacting the person noted above. Commetns should be sent to the same address.

On October 27, 1989, Reclamation published a Notice of Intent in the **Federal Register** (54 FR 43870) to prepare a DEIS which would be used to evaluate the impacts of Glen Canyon Dam operations on the downstream environmental and ecological resources of the Glen Canyon National Recreation Area and Grand Canyon National Park. The notice was amended in the **Federal Register** notice (55 FR 6468) dated February 23, 1990, to state "The final environmental impact statement (FEIS) will be filed in December 1991." The previous notice is again amended to read "The final environmental impact statement (FEIS) will be filed in September of 1993."

The draft environmental impact statement will be available in July of 1992. This schedule change is necessary to better incorporate information from research studies currently underway.

Dated: February 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-6027 Filed 3-13-91; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-319]

Certain Automotive Fuel Caps and Radiator Caps and Related Packaging and Promotional Materials; Change of Commission Investigative Attorneys

Notice is hereby given that, as of this date, Linda C. Odom, Esq. and John R. Kroeger, Esq., of the Office of Unfair Import Investigations are designated as the Commission investigative attorneys in the above-cited investigation instead of Gary M. Hnath, Esq. and Linda C. Odom, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Respectfully submitted,

Dated: March 4, 1991.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 91-6071 Filed 3-13-91; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 90-00904 DAE Stipulation]

Proposed Final Judgment, Stipulation and Competitive Impact Statement, First Hawaiian, Inc., and First Interstate of Hawaii, Inc.

Notice is hereby given that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Hawaii in *United States* v. *First Hawaiian, Inc., and First Interstate of Hawaii, Inc.*, Civil Action No. 90-00904 DAR. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

The Complaint in this case alleged that the proposed acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, in the markets for business banking services in Honolulu County; East Hawaii; West Hawaii; Kauai; and Maui.

The proposed Final Judgment directs the defendants to relinquish the "First Interstate System" franchise held by First Interstate and to sell designated bank branches in each geographic market.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, Room 6104, 555 Fourth Street, NW., Washington, DC 20001, (202-514-5621).

John W. Clark,

Acting Director of Operations, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation will be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: Honolulu, Hawaii.

For the Plaintiff:

Daniel Bent,

United States Attorney, District of Hawaii.

Marshall Silverberg,

Assistant U.S. Attorney.

Of Counsel for the Plaintiff:

James F. Rill,

Assistant Attorney General.

Alison L. Smith,

Deputy Assistant Attorney General.

John W. Clark,

Deputy Director of Operations.

Constance K. Robinson,

Chief, Communications & Finance Section.

U.S. Department of Justice, Antitrust Division, Washington, DC 20001.

Patricia A. Shapico,

Laury E. Bobbish,

Jennifer L. Otto,

Attorneys,

U.S. Department of Justice, Antitrust Division, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001, (202) 514-5796.

Counsel for the Defendants: First Hawaiian, Inc.

Garret G. Rasmussen.

Daniel H. Margolis,

Patton, Boggs & Blow, 2550 M Street, NW., Washington, DC 20037.

Wallace S. Fujiyama,

James E. Duffy, Jr.,

Fujiyama, Duffy & Fujiyama, suite 2700, 1001 Bishop Street, Honolulu, HI 96813.

First Interstate of Hawaii, Inc.

John A. Herfort,

Gibson, Dunn & Crutcher, 200 Park Avenue, 47th Floor, New York, NY 10166.

Neal K. Okabayashi,

First Interstate Bank of Hawaii, Legal Department, 1314 South King Street, Honolulu, HI 96814.

Final Judgment

Whereas, Plaintiff, United States of America, having filed its Complaint herein on December 28, 1990, defendants having filed their respective answers to the Complaint on January 17, 1991, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain termination of the First Interstate System franchise and divestiture of bank branches are of the essence of this agreement, and defendants have represented to plaintiff that the franchise termination and divestitures required herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the franchise termination or divestiture provisions contained herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment: (A) *American Savings Bank* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

B. *Bank of Hawaii* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, any other persons under its direct or indirect control, and any other person acting for or on behalf of it.

C. *Business banking services* means banking services offered to business customers which include at a minimum:

1. Transaction account deposits, *i.e.*, money deposited with a depository institution either at an agreed upon interest rate or at no interest, withdrawable in practice upon demand, and upon which third-party drafts may be drawn by the depositor, including checking accounts and NOW accounts; and

D. *Commercial loans, i.e.*, secured or unsecured loans to businesses, excluding commercial mortgages.

Business banking services may also include additional services such as cash and coin, lockbox, cash management, and business expertise and advice offered to business customers. Business banking services excludes services offered only to individual consumers.

D. *Branch assets* means personal property; cash on hand; the branch loan portfolio; all safe deposit boxes at the branches, exclusive of contents; all prepaid expenses, including security deposits, of the branches, determined in accordance with generally accepted accounting principles, as of the closing date; all rights of defendants to all contracts relating to the branch; all records and original documents in defendants possession pertaining to the leasehold, the personal property, the branch loans, the morgage loans and the nondeposit liabilities; any leasehold; any real estate, buildings, structures, drive-in teller facilities, ATMs, fixtures and improvements thereon which are owned and used by defendants as premises for the branches; and any other assets required for the branch to compete effectively in offering business banking services.

E. *Branch deposits* means liabilities allocated to a branch that constitute the unpaid balance of money or its equivalent received or held by the branch in the usual course of business and for which the branch has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, or a check or draft drawn against a deposit account and certified by the branch.

F. *Central Pacific Bank* means its successors and assigns, its parents, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

G. *Commercial mortgages* means loans secured by real estate as evidenced by mortgages or other liens on business and industrial properties.

H. *Defendants* means FH and FIHI, either individually or collectively.

I. *FH* means the defendant First Hawaiian, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it. FH shall include FIHI and any of its assets after such time, if any, as FH acquires FIHI.

J. FI means First Interstate Bancorp or its successors and assigns who own the First Interstate System franchise.

K. *FIHI* means the defendant First Interstate of Hawaii, Inc., its successors and assigns, its subsidiaries, affiliates, directors, officers, managers, agents, and employees, and other persons under its direct or indirect control, and any other person acting for or on behalf of it.

L. *First Interstate System franchise* means a license from FI which includes, among other things (as described more specifically in the franchise agreement), certain identified service marks, trademarks, tradenames and styles including distinctive logos, and certain copyrighted material embodying the use of such marks.

M. *Franchise* or *franchise agreement* means the Agreement dated as of September 20, 1982, with subsequent amendments, by and between FI and American Security Bank (now operating under the name First Interstate Bank of Hawaii) which grants the control and

use of the First Interstate System franchise in the state of Hawaii to FIHI.

N. *Hawaii Kai* means the FIHI office located at 377 Keahole Street, Honolulu, Hawaii 96825 on the island of Oahu.

O. *Hilo* means the First Hawaiian Creditcorp, Inc. office located at 250 Keawe Street, Hilo, Hawaii 96720 on the eastern portion of the island of Hawaii.

P. *Kailua* means the FIHI office located at 30 Aulike Street, Honolulu, Hawaii 96863 on the island of Oahu.

Q. *Kona* means the FIHI office located at 75–5722 Kuakini Highway, Kailua-Kona, Hawaii 96740 on the western portion of the island of Hawaii.

R. *Lahaina* means the FIHI office located at 135 Papalaua Street, Lahaina, Hawaii 96761 on the island of Maui.

S. *Lihue* means the FIHI office located at 4444 Rice Street, Lihue, Hawaii 96766 on the island of Kauai.

T. *Merger* means the Agreement and Plan of Merger Among First Interstate of Hawaii, Inc., First Hawaiian, Inc. and FHI Acquisition Corp. dated as May 11, 1990, with subsequent amendments.

U. *Person* means any natural person, corporation, association, firm, partnership, or other business or legal entity.

V. *Wailuku* means the FIHI office located at 2005 Main Street, Wailuku, Hawaii 96793 on the island of Maui.

III. Applicability

A. The provisions of this Final Judgment shall apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

C. Nothing herein shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

IV. Termination of Franchise

A. Defendants are ordered and directed, two (2) business days from the entry date of this Final Judgment, to deliver written termination notice of the franchise to FI. Defendants further agree to deliver a copy of the franchise termination notice on the same date to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, Department of Justice. Defendants are further ordered and directed to relinquish all control of and use of the franchise no later than one (1) year from the delivery date of termination notice to FI.

B. Defendants are further directed and ordered for the duration of their control of the franchise to abide by all contractual obligations under the franchise agreement to maintain the First Interstate System franchise in a manner that will continue to perpetuate the marketability of the franchise to a new franchisee in the state of Hawaii.

C. Defendants are enjoined and restrained from purchasing, attempting to purchase, or engaging in any negotiations to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

V. Divestiture of Branches

A. Defendants are hereby ordered and directed to divest to a qualified purchaser(s), within sex (6) months of the date of filing of this Final Judgment, all of their direct and indirect ownership and control in the branch assets and deposits identified below. The purchaser(s) shall be independent of FH or FIHI; shall be federally insured financial institution(s) that offer business customers, at a minimum, transaction account deposits and commercial loans; shall deliver promptly to plaintiff following the execution of a binding contract(s), an affidavit from an authorized officer stating a present intention that the branch(s) purchased will offer business banking services in the geographic area currently served by the branch(s); and shall be subject to approval by plaintiff. The obligation to divest shall be satisfied if, within six (6) months of the date of filing of this Final Judgment, defendants enter into a binding contract(s) with qualified purchasers for the sale of the branch assets and deposits at each location listed below to a purchaser(s) according to terms approved by plaintiff that are contingent upon compliance with the terms of this Final Judgment and that specify a prompt and reasonable closing date no later than ten (10) business days after compliance with all federal or state bank regulatory requirements and if the sale is completed pursuant to the contract(s). In the event that any proposed divestiture is denied approval by the Board of Governors of the Federal Reserve System or any other federal or state bank regulatory agency, the time period specified herein in which defendants must complete the sale of the section V.B. branch locations will expire on the six (6) month anniversary date of the filing of this Final Judgment, unless plaintiff under Section V.C. grants additional time.

B. Defendants are hereby ordered and directed to divest:

1. The Hawaii Kai branch assets and deposits on the island of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

2. The Kailua branch assets and deposits on the island of Oahu. The purchaser cannot be Bank of Hawaii or Central Pacific Bank.

3. The Lahaina branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank, provided, however, that if the defendants do not succeed in selling the Lahaina branch assets and deposits within six (6) months of the date of filing of this Final Judgment, and the sale of the branch assets and deposits is assigned to a trustee under the terms of section VI. of this Final Judgment, Central Pacific Bank is permitted to bid on the Lahaina branch assets and deposits. If the trustee proposes selling the Lahaina branch assets and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

4. The Wailuku branch assets and deposits on the island of Maui. The purchaser cannot be Bank of Hawaii, Central Pacific Bank or American Savings Bank.

5. The Kona branch assets and deposits on the island of Hawaii. The purchaser cannot be Bank of Hawaii or American Savings Bank. Plaintiff will not object, provided that the terms of section V. are complied with, to the purchase of the Kona branch assets and deposits by Central Pacific Bank, provided, however, that defendants shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

6. The Lihue branch assets and deposits on the island of Kauai. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank, provided, however, that if the defendants do not succeed in selling the Lihue branch assets and deposits within six (6) months of the filing date of this Final Judgment and the sale of the branch assets and deposits is assigned to a trustee under the terms of section VI. of this Final Judgment, Central Pacific Bank is permitted to bid on the Lihue branch assets and deposits. If the trustee proposes selling the Lihue branch assest and deposits to Central Pacific Bank, the trustee shall require as a condition of sale that Central Pacific Bank agree not to purchase the First Interstate System franchise for use in the state of Hawaii until after the expiration of this Final Judgment.

7. Defendant FH, prior to the filing of this Final Judgment, has entered into a binding contract for the sale of the assets and deposits of the Hilo branch of First Hawaiian Creditcorp on the island of Hawaii, subject only to regulatory approval and the entry of this Final Judgment, to Hawaii National Bank which intends to consolidate the Hilo branch with one of its preexisting branches located in Hilo, Hawaii.

In the event that regulatory approval is denied, the defendants must sell the Hilo branch assets and deposits to a purchaser that will operate the Hilo branch as a branch (or as a branch consolidated with a preexisting branch) that offers business banking services. The purchaser cannot be Bank of Hawaii, American Savings Bank or Central Pacific Bank.

C. If defendants have not accomplished the required divestiture(s), within six (6) months of the filing date of this Final Judgment, plaintiff may, in its sole discretion, extend this time period, separately for each Section V.B branch location, for an additional period of time, if defendants request such an extension and demonstrate to plaintiff's satisfaction for each such branch location that they are then engaged in negotiations with a prospective purchaser(s) that are likely to result in the required divestiture(s) but that the divestiture(s) cannot be completed by the six (6) month anniversary date of the filing of this Final Judgment.

D. Defendants agree to take all reasonable steps to accomplish quickly said divestitures. In carrying out their obligation to divest the branch assets and deposits at each location identified in Section V.B. of this Final Judgment, defendants may divest these branch assets alone, or may divest along with these branch assets any other assets of FH or FIHI.

E. In accomplishing the divestitures (other than the divestiture of the Kona branch assets and deposits to Central Pacific Bank) ordered by this Final Judgment, the defendants promptly after filing of this Final Judgment shall make known in the Wall Street Journal, the American Banker, and in the State of Hawaii, by usual and customary means, the availability of the Section V.B. branch locations, for sale as ongoing branches that offer business banking services. The defendants shall notify any person making an inquiry regarding the possible purchase of any or all of the Section V.B. branch locations that the sale is being made pursuant to this Final Judgment and that this Final Judgment requires approval of this Court. The defendants shall provide any such person with a copy of this Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers of any or all of the Section V.B. branch locations, subject to customary confidentiality assurances, all pertinent information regarding each Section V.B. branch location. Defendants shall provide such information to the plaintiff as soon as possible, but no later than two (2) business days after they furnish such information to any other person. Defendants shall permit prospective purchasers of any or all of the Section V.B. branch locations to have access to personnel at each Section V.B. branch location and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the sale of each Section V.B. branch location. Defendants shall not be required to permit prospective purchasers to have access to any documents or information relevant to defendant's banking business, except to the extent it relates to the Section V.B. branch locations' operations and business. Defendants shall not object to any applications for new bank charters sought to facilitate any divestiture(s).

F. Divestiture required by Section V.B. of this Final Judgment shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion that the purchaser is qualified in the following two respects: (1) The purchaser intends to use the Section V.B. branch location to compete in the provision of business banking services in the geographic area currently served by the branch, and (2) the purchaser has the managerial, operational, and financial capability to compete effectively in the provision of such business banking services.

G. Defendants FH and FIHI shall not acquire or attempt to acquire any branch assets divested pursuant to Section V.B. of this Final Judgment without first receiving prior approval from the plaintiff during the duration of this Final Judgment.

H. Except to the extent otherwise approved by plaintiff, any branch assets divested pursuant to this Final Judgment shall be divested free and clear of (1) All mortgages, encumbrances and liens to FH or FIHI, and (2) any contractual commitments or obligations to FH or FIHI existing as of the date of divestiture, unless plaintiff is satisfied that the purchaser of a divested branch location wishes to voluntarily assume the future performance of any such existing contracts, and plaintiff consents thereto.

VI. Appointment of Trustee

A. If defendants have not accomplished the divestiture(s) required by Section V.B. of this Final Judgment by the five (5) month anniversary date of the filing of this Final Judgment, defendants shall notify plaintiff in writing of that fact. Within ten (10) days of that date, or twenty (20) days prior to the expiration of any extension granted pursuant to Section V.C., whichever is later, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. Defendants shall notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to defendants, they shall furnish to plaintiff, within ten (10) days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestitures. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither of such nominees is acceptable to plaintiff, it shall furnish the Court with the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by defendants. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished all of the divestiture(s) required by Section V.B. of this Final Judgment at the expiration of the time period specified in sections V.A. or V.C. of this Final Judgment, as applicable, the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture of the not yet divested Section V.B. branch locations according to the terms of this Final Judgment; provided, however, that the appointment of the trustee shall not become effective if, prior to expiration

of the applicable time period, defendants have notified plaintiff pursuant to Section VII. of this Final Judgment of a proposed divestiture(s) of Section V.B. branch locations and plaintiff has not filed a written notice that it objects to said proposed divestiture(s).

C. After the trustee's appointment has become effective, only the trustee shall have the right to sell any section V.B. branch location as to which it has been designated to effect divestiture. The trustee shall have the power and authority to accomplish divestitures to a purchaser(s) acceptable to the plaintiff at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VII. of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale of the Section V.B. branch locations by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified defendants of the proposed sale in accordance with section VII. of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based upon a fee arrangement which includes an incentive based upon the price of the divestitures and the speed with which they are acccomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided, however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all costs and expenses incurred in connection with its assignment in this matter. After approval by the Court of the trustee's accounting, including fees and reasonable expenses for his or her services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s) and shall, if requested by the trustee, use their best efforts to assist the trustee in accomplishing the required divestiture(s). The trustee shall have full and complete access to the personnel, books, records, and facilities of the Section V.B. branch locations which the trustee is designated to divest, and defendants shall develop such financial or other information relevant to the section V.B branch locations being divested as the trustee may request.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture(s) as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems condfidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted, or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest the Section V.B. branch locations and shall provide additional information to plaintiff upon its request.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture(s) required by Section V.B of this Final Judgment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why any required divestitures have not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent the report contains information that the trustee deems confidential, the report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish the report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust and the term of the trustee's appointment.

VII. Notification

Immediately following execution of a binding contract(s), contingent upon compliance with the terms of this Final Judgment, to effect any proposed divestitures pursuant to Section V. of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transactions and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the Section V.B. branch locations, together with full details of same. Within fifteen (15) days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture(s) and the proposed purchaser(s). Defendants and/or the trustee shall furnish any additional information requested within twenty (20) days of receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and to the trustee, if there is one, stating whether or not it objects to the proposed divestiture(s). If plaintiff provides written notice to defendants and/or the trustee that it does not object, then the divestiture(s) may be consummated, subject only to defendants' limited right to object to the sale under the proviso in Section VI.C. Upon objection by plaintiff, a divestiture proposed under Section V. shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in section VI.C., a divestiture proposed under section VI. shall not be consummated unless approved by the Court.

VIII. Affidavits

Within five (5) business days of filing of this Final Judgment and every thirty (30) days thereafter until the divestitures have been completed or authority to effect divestitures passes to the trustee pursuant to Section VI. of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Section V. of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any ownership interest in the Section V.B. branch locations, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest the Section V.B. branch locations.

IX. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV., V. or VI. of this Final Judgment without plaintiff's prior consent.

X. Preservation of Assets

Until the relinquishment of control of the franchise and divestiture of the Section V.B. branch locations required by this Final Judgment have been accomplished:

A. The defendants shall take all steps necessary to assure that the Section V.B. branch locations will be maintained as economically viable, ongoing branches that offer business banking services. The defendants shall use all reasonable efforts to maintain the increase sales of business banking services at the Section V.B. branch locations, and continue with any current plans for development of business banking services at those locations.

B. The defendants shall not sell, lease, assign, trasfer or otherwise dispose of, or pledge as collateral for loans, any branch assets required to be divested pursuant to Section V.B., except that any component of such branch assets as is replaced in the ordinary course of business with a newly purchased component may be sold or otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. The defendants shall provide capital and provide and maintain sufficient working capital to maintain the Section V.B. branch locations, including funds for commercial lending, as viable, ongoing branches that offer business banking services consistent with the requirements of Section X.A.

D. The defendants shall preserve the First Interstate System franchise required to be relinquished pursuant to Section IV. Defendants shall also preserve the branch assets and deposits required to be divested pursuant to Sections V. and VI., except those replaced with newly acquired branch assets and deposits in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records relating to the franchise until the date of relinquishment of control over the First Interstate System franchise. Defendants shall preserve the documents, books and records of the Section V.B. branch locations until the date of divestiture.

E. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Section XI., the defendants shall refrain from terminating or altering one or more current employment, salary, or benefit agreements for one or more managerial or commercial loan personnel of the Section V.B. branch locations, and shall refrain from transferring any employee so employed without the prior written approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Section V.B. branch locations or the subsequent licensing of the First Interstate System franchise after defendants have relinquished control to FI.

XI. Employment Offers

A. Defendants are hereby enjoined and restrained until two (2) years following the date of divestiture, from employment of, or making offers of employment to, any person who currently is a commercial loan manager, officer or representative, the preponderance of whose duties relate to the successful operation of the Section V.B. branch locations. This provision, however, does not apply to any employee who is terminated by the purchaser of a divested branch. Defendants shall encourage and facilitate employment by the purchaser of such employees, and shall remove any impediments that exist which may deter such employees from accepting employment with the purchaser of any Section V.B. branch location, including, but not limited to, the payment of all bonuses accrued up to the closing date of sale of each Section V.B. branch location to which such employees would otherwise have been entitled had they remained in the employment of defendants until December 31, 1991.

XII. Visitorial Clause

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

1. Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

C. If at the time information or documents are furnished by any defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim or protection may be asserted under rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, "Subject to claim of protection under rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

XIII. Expiration of Judgment

This Final Judgment will expire on the tenth anniversary of its date of entry or, with respect to any particular provision, on any earlier date specified.

XIV. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith,

BEST COPY AVAILABLE

and for the punishment of any violations hereof.

XV. Termination of Automatic Stay

Upon entry of this final judgment, the statutory stay, imposed under 12 U.S.C. 1849(b)(1), that currently enjoins the merger of defendants, shall terminate.

XVI. Statement of Public Interest

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On December 28, 1990, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, alleging that the proposed acquisition of First Interstate of Hawaii, Inc. ("FIHI") by First Hawaiian, Inc. and FHI Acquisition Corporation (referred to collectively as "FH") would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the provision of business banking services in the Honolulu, East Hawaii, West Hawaii, Maui, and Kauai geographic markets. Business banking services are services, such as checking accounts and loans, offered to commercial customers. Both FH and FIHI compete directly in offering a variety of business banking services to commercial customers in each of the geographic markets. The proposed acquisition would result in substantial increases in concentration in markets that are already highly concentrated and have substantial entry barriers. The complaint alleges that the proposed acquisition would, in particular, hurt the many small to medium-sized commercial customers purchasing business banking services in Hawaii. The complaint seeks, among other relief, to enjoin the proposed transaction and thereby to prevent its anticompetitive effects.

On March 7, 1991, the United States and FH and FIHI filed a Stipulation by which they consented to the entry of a proposed Final Judgment. Under the proposed Final Judgment, as explained more fully below, defendants would be required to sell designated commercial banking branches [1] in each geographic market and to terminate their license for use of the "First Interstate System" franchise in the state of Hawaii. The United States and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

On May 11, 1990, FH and FIHI entered into an Agreement and Plan of Merger by which FH, through its subsidiary FHI Acquisition Corporation, would purchase 100 percent of the voting shares of FIHI for approximately $140 million. FH is the second largest banking organization in the state of Hawaii, as measured by total deposits and assets. FH has assets totalling $5.2 billion and controls deposits of approximately $4.7 billion which represent approximately 32 percent of total deposits in commercial banking organizations in Hawaii. FH operates one commercial bank subsidiary, First Hawaiian Bank, and one FDIC-insured financial services loan company, First Hawaiian Creditcorp. FH operates 58 offices located throughout the state.

FIHI is the fourth largest commercial banking organization in the state of Hawaii. FIHI has assets totalling $858.2 million and controls deposits totalling approximately $770.9 million which represent approximately 6 percent of the total deposits in commercial banking organizations in Hawaii. FIHI operates 20 First Interstate Bank of Hawaii offices located throughout the state.

On November 30, 1990, the Federal Reserve Board approved the proposed acquisition of FIHI by FH.[2] The Federal Reserve Board's order required the defendants to divest the Lihue (Kauai market), Kona (West Hawaii market), Wailuku and Lahaina (Maui market) branches of FIHI and the Hilo (East Hawaii market) branch of First Hawaiian Creditcorp, a financial services loan company. The Federal Reserve divestiture permitted the sale of the branches to anyone other than the Bank of Hawaii, the largest commercial bank in the state of Hawaii. Under section 11 of the Bank Holding Company Act, as amended, 12 U.S.C. 1849,[3] the United States had 30 days from the date of the Federal Reserve Board's decision to prevent the proposed acquisition by filing a complaint with the Court.

The United States filed its complaint because the proposed acquisition would likely reduce competition in the provision of business banking services in the relevant markets in Hawaii. The likelihood of competitive harm appears greatest for small to medium-sized commercial customers because the proposed acquisition would eliminate one of only a few financial institutions serving these customers and would likely result in higher prices for business banking services.

Investigation and discovery by the United States shows that FH and FIHI compete in the provision of a wide range of banking services, including services to individual consumers and services to businesses in Hawaii. Many other financial institutions compete with FH and FIHI in the provision of consumer banking services. Only a few institutions, however, are competitors for commercial customers. These competitors are limited to those firms that, at a minimum, provide transaction accounts and commercial loans.[4] FH and FIHI are two of the largest of these few firms. FH and FIHI each offer a variety of business banking services, and compete directly with one another in the relevant geographic markets of: Honolulu, East Hawaii, West Hawaii, Maui, and Kauai. Nine other firms offer business banking services in the state of Hawaii, but not every one of these firms compete in each of the five relevant geographic markets. In the Honolulu market, eight other financial institutions (American Savings Bank, Bank of Hawaii, Bank of Honolulu, Central Pacific Bank, City Bank, EastWest Bank, Hawaii National Bank and Liberty Bank) offer business banking services. In the East Hawaii market, five other financial institutions (American Savings Bank, Bank of Hawaii, Central Pacific Bank, City Bank and Hawaii National Bank) offer business banking services; and in the West Hawaii market, only two other financial institutions (American Savings Bank and Bank of Hawaii) offer business banking services. In the Maui market, six other financial institutions (Aloha National Bank of Maui, American Savings Bank, Bank of Hawaii, Central Pacific Bank, City Bank and EastWest Bank) offer business banking services. In the Kauai market, three other financial institutions (American Savings Bank, Bank of Hawaii, and Central Pacific Bank) offer business banking services.

Few other financial institutions currently offer or appear likely to start offering within a reasonably short period of time these business banking services in the state of Hawaii. Savings and loan associations are limited by law in the extent to which they make commercial loans; moreover, their ability to begin offering these services to businesses is substantially affected by capital requirements and their own capital positions. Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989,[5] new, more significant capital requirements and other restrictions were placed upon the lending activities of savings and loan associations. Moreover, savings and loan associations in Hawaii, with one exception, do not currently provide business banking services to any significant degree.[6] The United States' investigation revealed that the above factors coupled with other economic factors concerning the cost, scale and expertise involved in offering business banking services, make it unlikely that savings and loan associations in Hawaii will be likely entrants into the provision of such services.

The investigation also revealed that credit unions in Hawaii are generally not current or potential competitors in business banking services due to a combination of legal and economic restraints. Financial services loan companies are not permitted to offer transaction accounts,[7] and the characteristics of their loans are generally different from those made by commercial banks. Finally, under current statutes,[8] out-of-state bank organizations and bank holding companies are legally prohibited from entry into the state.

The United States concluded that, for business banking services in Hawaii, the relevant geographic markets were the major islands or parts of those islands in the state of Hawaii. Based on a variety of measures, the United States' investigation and discovery indicates that of the firms providing business banking services, only a few firms have very significant market shares; the other firms are significantly smaller. FH and FIHI are in the category of the largest firms. This market structure is significant, because it means that a combination of the two firms will significantly increase concentration. Concentration is important because it indicates the likelihood that a group of firms could exercise market power (*i.e.*, raise prices or reduce output). In addition, the United States concluded that it was unlikely that entry of new competitors into these markets, or rapid expansion of the smallest firms currently in the markets would occur so as to prevent any anticompetitive effects. Under the Justice Department's *Merger Guidelines*,[9] when the Herfindahl-Hirschman Index ("HHI"),[10] a measure of market concentration, is over 1800, additional concentration resulting from a merger is a matter of significant concern. Where the HHI would increase by more than 50 points, the Department is likely to challenge the merger unless the Department concludes, on the basis of other relevant factors, that the merger is not likely substantially to lessen competition.

In Honolulu County, the HHI, calculated based on total deposits [11] of the firms that offer business banking services, would increase (as a result of ten firms going to nine) by 298 to 3033 if the proposed acquisition occurred. In the East Hawaii market, the HHI would increase (as a result of seven firms going to six) by approximately 301 to 3266. In the West Hawaii market, the HHI would increase (as a result of four firms going to three) by approximately 711 to 4063. In the Maui market, the HHI would increase (as a result of eight firms going to seven) by approximately 383 to 3284. In the Kauai market, the HHI would increase (as a result of five firms going to four) by approximately 413 to 3501. These measures indicate highly concentrated markets that would be further concentrated as a result of the proposed acquisition.

Furthermore, the United States found that the form and nature of branch divestitures offered by the defendants and approved by the Federal Reserve Board would not prevent substantial increases in concentration. The United States' determination in this regard was based on the fact, that under the Federal Reserve Board order, the divested branches could have been sold to all but the largest in-market bank. Further, FH had plans to divest to the second-largest (or in some cases the third-largest) competitor, and the United States determined that those divestitures, in light of the high concentration in these markets, would not adequately protect competition.[12] Moreover, the United States found that the number of branch divestitures in some markets was insufficient to resolve competitive concerns.

For all the above reasons, the United States found that each of these geographic markets is highly concentrated; that each would become substantially more concentrated as a result of the proposed acquisition, even with the divestitures directed by the Federal Reserve Board; and that entry

---

[1] The proposed Final Judgment requires divestiture of six commercial bank branches. In addition, one financial services loan company is being divested to a commercial bank that will use the purchased assets and deposits to facilitate the growth of its business banking services business.

[2] *First Hawaiian, Inc.*, 77 Fed. Res. Bull. 52 (1990).

[3] Section 1849(b)(1) provides in pertinent part that: The Board shall immediately notify the Attorney General of any approval by it pursuant to section 1842 of this title of a proposed acquisition, merger, or consolidation transaction * * *. [T]he transaction may not be consummated before the thirtieth calendar day after the date of approval by the Board. Any action brought under the antitrust laws arising out of an acquisition, merger, or consolidation transaction approved under section 1842 of this title shall be commenced prior to the earliest time under this subsection at which the transaction approval under section 1842 of this title might be consummated. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court shall otherwise specifically order. 12 U.S.C. 1849(b)(1).

[4] Commercial loans include all loans to commercial customers not fully secured by real estate. Additional business banking services offered to commercial customers include but are not limited to cash and coin, lockbox, cash management, and business expertise and advice.

[5] 12 U.S.C. 1467(t).

[6] The United States found that some of the savings and loan associations had provided some business banking services in small amounts, but do not provide them now nor are likely to do so within a reasonable period of time in an amount sufficient to affect the prices of those firms currently offering such services.

[7] Hawaii Revised Statutes, chapter 408 at section 14. Financial services loan companies did not consider themselves in competition with the firms offering business banking services because they do not offer transaction accounts and could not extend loans at interest rates competitive with those charged by those firms offering business banking services.

[8] *See* Bank Holding Company Act, 12 U.S.C. 1842(d); McFadden Act, 12 U.S.C. 36.

[9] Department of Justice Merger Guidelines, 2 Trade Reg. Rep. (CCH) ¶ 13,102 at 20,529–30.

[10] The HHI is a measure of market concentration calculated by squaring the market share of each firm in the market and then summing the resulting numbers. For example, for a market supplied by four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2+30^2+20^2+20^2=900+900+400+400=2600$). The HHI takes into account the relative sizes and distribution of firms in a market. It approaches zero when a market is supplied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is supplied by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparities in size among these firms increases.

[11] There is a relationship between the ability to accept deposits and the granting of credit and the provision of other business banking services. The deposits accepted by a financial institution are the primary source of the loans made by it and a principal source of funds to support other services.

[12] In addition, divestiture of the Hilo First Hawaiian Creditcorp's, a financial services loan company, assets and deposits was not restricted to purchase only by a firm offering business banking services. Thus, if it were sold to a firm that does not provide business banking services, it would not ameliorate the harm to competition caused by the increase in concentration in the East Hawaii market.

and expansion were unlikely to offset the anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The risk to competition posed by this acquisition would be substantially reduced by the relief provided in the proposed Final Judgment. The proposed Final Judgment provides structural relief in each of the relevant geographic markets through divestiture of branches, and also provides additional relief by requiring the defendants to relinquish use of the First Interstate System franchise.

The ownership of the First Interstate System franchise appears to have been a significant factor in FIHI's growth and position as a provider of business banking services, as well as other banking services. Use of the First Interstate name, a banking name recognized in numerous mainland bank markets and well established in Hawaiian markets, assists the franchisee's growth and fee income in drawing banking business from tourists and from customers relocating from the mainland to Hawaii. The franchisee also receives "custom-tailored" assistance from the franchisor in offering a variety of consumer and business banking services that reduces its costs of providing those services. Termination of the defendants' ownership of the First Interstate System franchise (*i.e.*, freeing it up for a smaller competitor) will facilitate the growth of a new First Interstate System franchisee over time into a strengthened and more aggressive provider of business banking services.

Specifically, Section IV. of the proposed Final Judgment requires that FH or FIHI provide notice within two business days after entry of the proposed Final Judgment to First Interstate Bancorp (the franchisor) of their intent to terminate use of the First Interstate System franchise. Defendants are required to relinguish all control and use of the franchise license no later than one year [13] from the date of termination notice and are prohibited from purchasing or attempting to purchase the franchise license until after the expiration of the proposed Final Judgment. In addition, FH is required to maintain the First Interstate System franchise in such a manner as to facilitate its marketability to a new franchisee after FH has surrendered control and use of the franchise.

In addition to the franchise termination, FH is required, by Section V. of the proposed Final Judgment, within six months (with the exception of the Hilo First Hawaiian Creditcorp office, in the East Hawaii market, which has been sold, contingent upon entry of this proposed Final Judgment) of the filing date of the proposed Final Judgment to divest the following banking branches.

1. In the Honolulu County market, the FIHI Hawaii Kai and Kailua branch assets and deposits;

2. In the Maui market, the FIHI Lahaina and Wailuku branch assets and deposits;

3. In the West Hawaii market, the FIHI Kailua-Kona branch assets and deposits; and

4. In the Kauai market, the FIHI Lihue branch assets and deposits.

The proposed Final Judgment prohibits the sale of any of the above branches to Bank of Hawaii. In addition, FH cannot sell the Lahaina, Wailuku, Kona, Lihue or Hilo branches to American Savings Bank. FH cannot sell the Hawaii Kai, Kailua, Lahaina, Wailuku, Lihue or Hilo branches to Central Pacific Bank. In the event that no sale of the Lahaina and Lihue branches is made by FH, and those branches are assigned to a trustee for sale, then Central Pacific Bank may be considered as a purchaser.[14] In the West Hawaii market, the United States, subject to the review procedures provided for in the proposed Final Judgment, has agreed that Central Pacific Bank, which operates in Hawaii, but currently does not have a branch in that market, is an acceptable purchaser for the Kailua-Kona branch assets and deposits.

All purchasers must demonstrate to the satisfaction of the United States that they have a good faith intention to operate the divested branches as banking branches that offer business banking services. The proposed Final Judgment also requires that FH preserve the assets of the divested banking branches until purchased by a buyer. If FH fails to sell the branches within six months of the filing date of the proposed Final Judgment, FH shall file with the court and notify plaintiff within thirty days of the date the purchase contracts were required to be entered into by FH. The United States can then proceed under the terms of Section VI. of the proposed Final Judgment to appoint a trustee to accomplish the branch divestitures.

The divestitures required by Section V. of the proposed Final Judgment require structural relief, along with the release of the franchise, designed to ensure that the markets remain competitive despite the proposed acquisition. The proposed Final Judgment requires the divestiture of branches to financial institutions that do not currently have significant competitive presences in each of the relevant markets. The divestitures will bring about the entry of a new provider or make larger an existing, small provider of business banking services in each of these markets, thereby, ensuring that competition is not substantially lessened by the acquisition.

The United States and FH and FIHI have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys fees.[15] Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust actions under the Clayton Act. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect on any private lawsuit that may be brought against the defendants.

[13] This is the minimum time for termination provided by the franchise agreement. Based on representations by the defendants and franchisor that it would take at least a year to set up a new franchisee, the United States concluded that requiring immediate relinquishment of the franchise might negatively affect the value of the franchise to a new franchisee in the state of Hawaii.

[14] The United States agreed to Central Pacific Bank, subject to the review procedures provided for in this Final Judgment, as a purchaser of the Lahaina and Lihue branch assets and deposits because it would result in a lower level of concentration than would otherwise occur should FH keep the branches or a larger competitor be permitted to purchase them.

[15] Section II of the Bank Holding Company Act, 12 U.S.C. 1849, however, prevents the filing of an antitrust suit (other than a suit under section 2 of the Sherman Act) later than 30 days after the Federal Reserve Board's decision on November 30, 1990. The United States is not aware of any private suit filed during the 30 day period.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to Constance K. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, NW., Washington, DC 20001.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and any party may apply to the Court for any order necessary or appropriate for its modification, interpretation or enforcement.

VI. Alternatives to the Proposed Final Judgment

The United States considered the following alternatives regarding divestiture of bank branches. In the East Hawaii market, the United States considered requiring the defendants to divest either a FH or FIHI commercial banking branch in Hilo, rather than the Hilo First Hawaiian Creditcorp office. That alternative was considered because the First Hawaiian Creditcorp office does not currently provide the types of business banking services at issue in this case. Therefore, it was not clear that divestiture of that office would provide an effective remedy for anticompetitive effects in the provision of business banking services in the East Hawaii market. In order to resolve those concerns, defendants agreed to find a buyer for that office before the filing of the proposed Final Judgment, so that the government could conduct sufficient inquiries to determine that the purchaser could and would use the divested assets and deposits to increase its offering of business banking services in the East Hawaii market. The government has made that determination. It has approved Hawaii National Bank as the purchaser and is satisfied as to that bank's intention to offer business banking services in the East Hawaii market.

Second, the United States also considered requiring more branch bank divestitures on the island of Oahu. The United States rejected this alternative in light of the franchise termination which the United States believes will supplement the proposed divestitures (which were not in the Federal Reserve Board's order) and will primarily resolve its competitive concerns on the island of Oahu where all but one of the institutions offering business banking services currently have some branches.

As a final alternative to the proposed Final Judgment, the United States considered continued litigation for seeking an injunction to block FH's acquisition of FIHI. The United States rejected that alternative because the termination of the franchise and the sale of the commercial bank branches will establish viable independent competitors to FH in all the relevant markets and likely will prevent the proposed acquisition from having significant anticompetitive effects in those markets.

VII. Standard of Review Under the Tunney Act for Proposed Final Judgment

The Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (1974), requires that proposed consent judgments in antitrust cases brought by the United States are subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed judgment "is in the public interest". In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). (emphasis added). The courts have recognized that the term, "public interest", "take(s) meaning from the purposes of the regulatory legislation."[16] Since the purpose of the antitrust laws is to "preserv(e) free and unfettered competition as the rule of trade,"[17] the focus of the "public interest" inquiry under the Tunney Act is whether the proposed final judgment would serve the public interest in free and unfettered competition.[18] In conducting this inquiry, "(t)he Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[19] Rather,

> (a)bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making the public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[20]

It is also unnecessary for the district court to "engage in an unrestricted evaluation of what relief would best serve the public."[21] Precedent requires that

> The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" (citation omitted) More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. (emphasis added).[22]

[16] *NAACP* v. *FPC*, 425 U.S. 662, 669 (1976).

[17] *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958). *See also National Society of Professional Engineers* v. *United States*, 435 U.S. 679, 692 (1978).

[18] *Accord United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. (CCH) ¶66,651 at 63,046 (D.D.C. 1985).

[19] 119 Cong. Rec. 24598 (1973). *See United States*, v. *Gillette Co., supra*, 406 F.Supp. at 715. A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Responses to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. CODE CONG. & AD. NEWS 6535, 6538.

[20] *United States* v. *Mid-America Dairyman, Inc., supra*, 1977 Trade Cas. at 71,980.

[21] *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981).

[22] *United States* v. *Bechtel, supra*; *United States* v. *BNS, Inc., supra*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F.Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F.Supp. 713, 716 (D. Mass. 1975). *See also United States* v. *American Cyanamid Co., supra.*

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> Waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.[33]

The proposed consent decree, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a merger or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[34]

VIII. Determinative Materials and Documents

The United States considers FH's contract with Hawaii National Bank for the sale of the Hilo First Hawaiian Creditcorp office, an affidavit from Hawaii National Bank stating its intent to use the divested assets and deposits in offering business banking services, and a letter from HonFed Bank stating that it will not attempt to purchase the First Interstate System franchise during the duration of this Final Judgment to be determinative documents. These documents relate to terms of the proposed divestitures and franchise termination provisions and were determinative to the United States in formulating this proposed Final Judgment. Accordingly, these documents are being filed with this Competitive Impact Statement.

Respectfully submitted,

Patricia A. Shapiro,

Laury E. Bobbish,

Jennifer L. Otto.

[FR Doc. 91-6096 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-01-M

[33] *United States* v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

[34] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C.), *aff'd*, 460 U.S. 1001 (1982) *quoting United States* v. *Gillette Co.*, 406 F.Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F.Supp. 619, 623 (W.D. Ky 1985).

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated January 15, 1991, and published in the **Federal Register** on January 24, 1991, (56 FR 2775), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08877, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 5, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-5980 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By Notice dated December 27, 1990, and published in the **Federal Register** on January 10, 1991, (56 FR 1027), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substance Import and Export Act and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: February 26, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-5979 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 18, 1990, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-dimethoxyamphetamine (DMA)(7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20357, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 15, 1991.

Dated: March 6, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-5982 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated January 8, 1991, and published in the **Federal Register** on January 17, 1991, (56 FR 1824), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 5, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-5981 Filed 3-13-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

ERISA Technical Release 91-01

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of Expedited Information Clearance under the Paperwork Reduction Act.

SUMMARY: The Pension and Welfare Benefits Administration, in carrying out its responsibilities under the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35, 5 CFR part 1320 (53 FR 16618, May 10, 1988)), is submitting ERISA Technical Release 91-01. This technical release alerts the public to recent amendments of title I of the Employee Retirement Income Security Act (ERISA) which, among other things, requires that advance notification be provided to the Secretaries of Labor and the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code, which is a part of such plan.

DATES: The Pension and Welfare Benefits Administration (PWBA) has requested an expedited review of this submission under the PRA. This OMB review has been requested to be completed by April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding ERISA Technical Release 91-01 should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210 (202-523-6331).

Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for PWBA, Office of Management and Budget, room 3001, Washington, DC 20503 (202-395-6880).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes per Response: 1 hour.

Frequency of Response: On Occasion.

Number of Respondents: 40.

Annual Burden Hours: 40.

Annual Responses: 40.

Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations.

Respondents Obligation to Reply: Required to obtain or retain a benefit.

Signed at Washington, DC this 7th day of March, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Appendix

Pursuant to 5 CFR 1320.18(g), the Pension and Welfare Benefits Administration (PWBA) is requesting that the Office of Management and Budget (OMB) review ERISA Technical Release 91-01 on an expedited schedule. ERISA Technical Release 91-01 alerts the public to recent amendments of title I of ERISA, which, among other things, require that advance notification be provided to the Secretaries of Labor and of the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code, which is a part of such plan.

The requirements relating to advance notification of transfers to retiree health benefit accounts are contained in section 101(e), added to ERISA as part of the Omnibus Budget Reconciliation Act of 1990. This provision is effective for transfers made after December 31, 1990. Because the requirements of ERISA section 101(e) are already applicable, it is extremely important to provide guidance to those plan sponsors who wish to make such transfers. Consequently, PWBA is requesting that the OMB review ERISA Technical Release 91-01 within 21 days after the date of publication in the **Federal Register** of a notice that ERISA Technical Release 91-01 has been submitted to OMB for review under the Paperwork Reduction Act.

The PWBA has taken all practicable steps to consult with interested agencies in order to minimize the burden of this reporting requirement. In the process of finalizing this technical release, the Departments of Labor of the Treasury worked to simplify the notice requirements of ERISA section 101(e)(2). As a result of these efforts, the Department of Labor and the Treasury agreed to permit the filing of *one* notice with DOL to satisfy the requirement that *both* the Secretary of Labor and the Secretary of the Treasury receive a notice 60 days before a plan sponsor makes a qualified transfer.

SF-83 Request for OMB Review Pension and Welfare Benefits Administration U.S. Department of Labor

Subject: ERISA Technical Release No. 91-01.

Supporting Statement:

1. Statutory Authority for Information Collection

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) added new section 420 to the Internal Revenue Code of 1986, as amended (Code). Code section 420 sets forth the conditions under which transfers (referred to as "qualified transfers") can be made from a defined benefit plan to a retiree health benefit account. Before a qualified transfer may be made, however, under section 101(e), which was also added by OBRA '90, an employer must provide advance written notification to the Secretaries of Labor and Treasury, as well as to the plan administrator, and each employee organization representing participants in the plan of the qualified transfer.

Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and the Treasury. In light of *Dole* v. *United Steelworkers of America*, 110 S. Ct. 929 (1990), this PRA submission only concerns the reporting to the Secretaries of Labor and the Treasury.

Pursuant to new ERISA section 101(e)(2), advance notifications must be provided to the Secretaries of Labor and the Treasury not later than 60 days before the date of a qualified transfer. In addition, under ERISA sections 502(c)(1) and 502(c)(3), as amended by OBRA '90, plan administrators and employers who fail to satisfy the advance notification requirements of ERISA section 101(e) may, in the discretion of a court, be liable in an amount of up to $100 a day from the date of such failure.

2. Purposes of the Information Collection

The reporting requirements are intended to protect the rights of participants and beneficiaries by giving the Secretaries of Labor and the Treasury advance notice of a transfer of plan assets from a defined benefit plan to a retiree health benefit account. This notice is statutorily mandated by ERISA section 101(e)(2).

3. Obstacles to Reducing the Burden

This is not applicable to the requirements of this technical release.

4. Identification of Duplication

No duplication of efforts exists with this technical release. In fact, this

technical release helps reduce duplication of effort because, instead of requiring plan sponsors to provide separate notices to the Secretaries of Labor and the Treasury as provided for in the statute, this technical release permits one filing with the Secretary of Labor to satisfy the statutory requirements.

5. Availability of Similar Information

No similar information is collected or available.

6. Minimizing the Impact on Small Businesses

Section 101(e)(2) applies to all plans that wish to transfer assets from a defined benefit plan to a retiree health benefit account. There is no exception for small businesses.

7. Consequences of Less Frequent Collection

The notice requirements are only mandatory if a defined benefit plan sponsor wishes to transfer assets from a defined benefit plan to a retiree health benefit account. The frequency is dependent on the occurrence of a transaction, not on a predetermined time period.

8. Special Circumstances

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. Consultations with Outside Agencies

In the process of finalizing this technical release, the Departments of Labor and Treasury worked to simplify the notice requirements of ERISA section 101(e)(2). As a result of these efforts, the Department of Labor (DOL) and the Department of the Treasury agreed to permit the filing of one notice with DOL to satisfy the requirement that both the Secretary of Labor and the Secretary of the Treasury receive a notice 60 days before a plan sponsor makes a qualified transfer.

10. Confidentiality

There is no promise of confidentiality of the information.

11. Questions of a Sensitive Nature

There are no questions of a sensitive nature related to this technical release.

12. Annualized Cost to the Federal Government and Respondents

We estimate that the cost to the federal government is minimal.

13. Estimate of Information Collection Burden

The PWBA estimates that no more than 40 plan sponsors will decide to transfer plan assets from their defined benefit plans to Code section 401(h) retiree health benefit accounts per year. The PWBA also notes that this provision is scheduled to expire for taxable years beginning on or after January 1, 1996. Assuming that it takes one hour to prepare and file the notice with the Secretary of Labor, the Department estimates that the total information collection burden would be 40 hours annually (40 x 1 hour).

14. Reason for Change in Burden

There has been no change in the information collection burden of this technical release. The technical release is being submitted for a control number for the first time because of the requirements of 5 CFR Part 1320.

15. Statistical Use

The information will not be used for statistical purposes. The collection of information for this technical release does not employ statistical methods.

Contact: Katherine D. Lewis.
Office: (202) 523–7901.

Notice Requirements Regarding Transfers of Excess Pension Assets to Retiree Health Benefit Accounts

The purpose of this release is to alert the public to recent amendments of title I of the Employee Retirement Income Security Act (ERISA) which, among other things, require that advance notification be provided to the Secretary of Labor and the Secretary of the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code (the Code), which is part of such plan.

General

The requirements relating to advance notification of transfers to retiree health benefit accounts are contained in section 101(e), added to ERISA as part of Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Pub. L. 101–508).

Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and Treasury, as well as to the administrator, and each employee organization representing participants in the plan and section 101(e)(2)(B) describes the information required to be contained in the notification. OBRA '90 also added a new section 420 to the Code which sets forth the conditions under which transfers (referred to as "qualified transfers") can be made after December 31, 1990 from a defined benefit plan to a retiree health benefit account.

Section 101(e) requires that advance notifications must be provided not later than 60 days before the date of a qualified transfer. Administrators and employers who fail to satisfy the advance notification requirements of section 101(e) may, in the discretion of the court, be liable in an amount of up to $100 a day from the date of such failure. (*See:* Sections 502(c)(1) and 502(c)(3), as amended by OBRA '90.)

The Department of Labor is considering whether there are any issues regarding the notice requirements of section 101(e) which should be clarified by means of regulatory guidance.

Notifications Furnished to Participants and Beneficiaries

Section 101(e) requires that advance notifications provided to participants and beneficiaries contain the following: (1) The amount of excess pension assets; (2) the portion to be transferred; (3) the amount of health benefits liabilities expected to be provided with the assets transferred; and (4) the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer.

Note: 29 CFR 2520.104b–1 describes the manner in which disclosures required under part 1 of title I of ERISA must be furnished to participants and beneficiaries. These requirements would apply to notifications under section 101(e) in the absence of regulations providing otherwise.

Notifications Filed With the Secretaries

In accordance with the provisions of section 3004 of ERISA, relating to the coordinating of functions between the Secretary of Labor and the Secretary of the Treasury, the filing of the advance notification described in section 101(e)(2) of ERISA with the Secretary of Labor shall also constitute a filing of that notice with the Secretary of the Treasury. The Department of Labor will forward to the Internal Revenue Service copies of the required notifications or the information contained therein.

Pursuant to section 101(e)(2)(B) advance notifications are required to contain the following: (1) Identification of the plan from which the transfer is made [Note: for identification and processing purposes, notifications should contain the name, address and EIN of the employer and the name, EIN and PN of plan]; (2) the amount of the transfer; (3) a detailed accounting of assets projected to be held by the plan immediately before and after the transfer; and (4) the current liabilities under the plan at the time of transfer. Notifications should include the filing date and the date on which the transfer is intended to take place.

Notifications required to be filed with the Secretaries pursuant to section 101(e)(2) must be sent to: Section 101(e)(2) Notice, Room N5644, Division of Reports, PWBA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

All notices under section 101(e)(2) filed with the Department of Labor will be available for public inspection in the Public Documents Room, N5507, 200 Constitution Avenue NW., Washington, DC 20210.

[FR Doc. 91–6100 Filed 3–13–91; 8:45 am]
BILLING CODE 4510–29–M

Employment and Training Administration

Federal-State Unemployment Compensation Program: Extended Benefits; New Extended Benefit Period in the State of Maine

This notice announces the beginning of a new Extended Benefit Period in the State of Maine, effective on February 17, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on February 2, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 17, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on March 8, 1991.

Roberts T. Jones,
Assistant Secretary of Labor.

[FR Doc. 91–6101 Filed 3–13–91; 8:45 am]
BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Docket No. 50–352

Philadelphia Electric Co. Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Philadelphia Electric Company (the licensee) to withdraw its February 25, 1987 application for proposed amendment to Facility Operating License NPF–39 for the Limerick Generating Station, Unit 1, located in Montgomery and Chester Counties, Pennsylvania.

The proposed amendment would have revised the facility Technical Specifications Section 6.9.1.8 to provide an extension of 30 days to the existing 60 day requirement for submitting the Semiannual Radioactive Effluent Release Report to the NRC. This submittal also requested a related exemption from the requirements of 10 CFR 50.36a(a)(2) to provide the same 30 day extension for submitting the Semiannual Radioactive Effluent Release Report to the NRC.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 8, 1987 (52 FR 11371). However, by letter dated February 6, 1991, the licensee withdrew the proposed change. Licensee efforts, subsequent to the filing of the 1987 submittal, resulted in streamlined processes for collecting data, obtaining sample analyses results, and preparing the semi-annual effluent report. The licensee concluded that a 30 day extension to the reporting requirement was no longer necessary.

For further details with respect to this action, see the application for amendment dated February 25, 1987, and the licensee's letter dated February 6, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 7th day of March 1991.

For the Nuclear Regulatory Commission.

Richard J. Clark,
Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 91–6061 Filed 3–13–91; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50-224]

University of California, Berkeley, L[illegible]keley Research Reactor; Order Terminating Facility License

By application dated January 6, 1988, as supplemented on January 31, 1989 and April 14, 1989, the University of California, Berkeley (the licensee) requested from the Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of its TRIGA Nuclear Reactor located in Berkeley, California. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," was published in the **Federal Register** on March 10, 1988 (53 FR 7823). The City of Berkeley filed a "Petition to Intervene In License Amendment Proceeding, Request for Hearings and Further Relief." The city and the licensee held discussions, arrived at a settlement agreement and filed a "Joint Motion For Dismissal Of Hearing Procedure" with the Atomic Safety and Licensing Board. The Board issued an Order on January 5, 1989 to dismiss the proceeding. By Order dated September 12, 1989 (54 FR 38579), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the licensee's decomissioning plan. By application dated April 16, 1990, as supplemented on July 6, 1990, the licensee submitted their "Decomissioning Final Report and Termination Radiation Survey Results," and requested termination of Facility License No. R-101.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated September 12, 1989. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, based on the application filed by the University of California, Berkeley, and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R-101 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The Environmental Assessment was published in the **Federal Register** on March 5, 1991 (56 FR 9238).

For further details with respect to this action see (1) the application for termination of Facility License No. R-101, dated April 16, 1990 as supplemented, (2) the Commission's Safety Evaluation related to the termination of the license, (3) the Environmental Assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on March 10, 1988 (53 FR 7823). Each of these items is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, 20555.

Copies of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland this 6th day of March 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-6062 Filed 3-13-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Procurement Regulatory Activity Report; Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the *Procurement Regulatory Activity Report, Number 4.*

SUMMARY: Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100-679, codified at 41 U.S.C. 421(g), required the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared for the fourth *Procurement Regulatory Activity Report.* This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street, NW., Washington, DC 20503, or phone (202) 395-7332.

Allan V. Burman,

Administrator.

[FR Doc. 91-5998 Filed 3-13-91; 8:45 am]

BILLING CODE 3110-01-M

OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Oversight Board.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. (A), announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public.

DATES: The meeting is scheduled for Wednesday, March 27, 1991, from 10 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the Office of Thrift Supervision, Ampitheater, second floor, 1700 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Office, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the Act), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The purpose of the national advisory board is to provide information and advice to the Oversight Board and the RTC.

Agenda: A detailed agenda will be available at the meeting. There will be briefings from the chairman of each of the six regional advisory board meetings held throughout the country between January 29, and February 28, 1991. Discussion will focus on the key topics from the meetings: real estate market conditions, seller financing, SAMDA, delinquent real estate mortgages, affordable housing, and environmental issues.

Statements: Interested persons may submit, in writing, data, information, or views on the issues pending before the national advisory board prior to or at the meeting. The meeting is open to the public. Seating is available on a first come first served basis.

Dated: March 11, 1991.

Jill Nevius,

Committee Management Officer, Oversight Board, Advisory Board Affairs.

[FR Doc. 91-6110 Filed 3-13-91; 8:45 am]

BILLING CODE 2222-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18030; 811-5864]

Mortgage Liquidity Fund, Inc.; Notice of Application

March 6, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mortgage Liquidity Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on January 30, 1991 and an amendment was filed on March 1, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 2, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 10221 Wincopin Circle, Columbia, Maryland 21044.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS:

1. Applicant is an open-end non-diversified management company organized as a corporation under the laws of the State of Maryland. On August 18, 1989, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered an indefinite number of shares of common stock. The registration statement became effective on March 27, 1990.

2. At a meeting held on July 16, 1990, applicant's board of directors suspended the sale of shares of applicant and approved the redemption of any outstanding shares of applicant. On January 29, 1991, applicant's board of directors approved the deregistration of applicant.

3. Prior to the deregistration, applicant invested in short-term interest-bearing securities which were redeemed for cash by their issuers as they matured according to their terms. As of July 23, 1990, the redemption of all of these short-term securities was complete. No brokerage commissions were paid in connection with these redemptions.

4. As of July 31, 1990, pursuant to applicant's plan to deregister, applicant distributed a total of $11,099,000 to the four shareholders of applicant in redemption of their shares. Each shareholder received $1.00 per share, representing the net asset value per share. The seed capital shareholder, Maryland National Bank, retained shares valued at $1,000. Upon payment of this amount, the shares were transferred to Ryland Acceptance Corporation on January 29, 1991.

5. The organizational expenses of applicant, totaling $776,579, were borne by applicant's investment adviser, Ryland Acceptance Advisers, Inc.

6. At the time of filing this form, applicant retained $1,000 from the capital investment in applicant for any small unanticipated expenses. The expenses applicable to the deregistration will be borne by Ryland Acceptance Corporation, applicant's sole shareholder.

7. Applicant does not intend to dissolve as a corporation. After the deregistration, a shell company will remain that will not be used as an investment company. At the date of this application, the organizers of applicant have no definite plans for the shell company.

8. As of the date of the application, applicant had no debts or liabilities, and was not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5985 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29945; File No. SR-NASD-90-58]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Written Notification of Employer Members and Executing Members by Associated Person Regarding Relations with Each Member

The National Association of Securities Dealers, Inc. ("NASD") submitted on October 25, 1990 a proposed rule change pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 [2] thereunder to amend Article III, Section 28(c) of the NASD Rules of Fair practice to require an associated person to provide notice in writing (1) to his or her employer prior to opening or placing an initial order in a securities account with another member, and (2) to the executing member of his or her association with the employer member. Notice of the filing and the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

terms of substance of the proposed rule change was given by the issuance of a Commission release, Securities Exchange Act Release No. 28816, (January 24, 1991) and by publication in the **Federal Register** (56 FR 3500 January 30, 1991). No comment letters were received.

Presently, Article III, section 28(c) requires a registered representative, prior to opening an account or executing trades at a firm other than his or her employer, to inform the executing member firm of his or her status as an associated person. This provision does not, however, require the notice to be in writing. Moreover, there is no specific provision in the Association's Rules of Fair Practice that requires the registered representative to inform his or her employer member that he or she is executing trades through another firm.[3]

The NASD has proposed this amendment because they believe it would provide additional assurances that the registered representative, the employer member firm, and the executing member firm have satisfied their respective obligations under the federal securities laws and the Rules of Fair Practice. As it stands now, when a registered representative opens an account or executes trades through a firm other than his or her employer, the burden is placed on the executing member to notify the employer member and to provide duplicate confirmations or such other information as the employer member may require. The NASD believes that placing the burden of notification on the employee will prevent the likelihood that the notification will be inadvertently overlooked by the executing member in light of other existing regulatory obligations.

The NASD is of the opinion that the amendment would prevent instances in which trades may be made on inside information because the employer member was not aware of the existence of the account with another member. The NASD acknowledges the fact that there may be circumstances which dictate that an associated person hold an account with someone other than their employer member, and this amendment would not serve to prevent that. On the contrary, it would only require notification of the existence of such an account.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6), which requires in pertinent part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest in that the proposed rule change will provide information to employers of associated persons who have accounts or execute trades through another member and consequently will assist the employer-member in detecting possible securities law violations.

Based on the foregoing, the Commission concludes that requiring the proposed notification would assist employer members in creating and enforcing internal compliance procedures and facilitate more direct and early detection of the existence of potential rule violations. The Commission believes the amendment may assist in lessening the occurrence of insider trading by associated persons in that the employer member will have more complete knowledge of associated persons' trading activities and consequently an enhanced ability to protect material non-public information. Alternatively, the proposed rule change will also serve to protect member firms as well as associated persons with only good intentions in mind.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Comission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5983 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[3] The transactions subject to section 28 are not considered to be private securities transactions that need to be approved by the employing member pursuant to Article III, section 40 of the Rules of Fair Practice.

[Release No. 34-28946; File No. SR-NASD-91-12]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the OTC Bulletin Board Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 1991, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 1, 1990, the Securities and Exchange Commission issued an order approving operation of the NASD's OTC Bulletin Board service ("Service") for a pilot term of one year.[1] The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ securities in which they register as market makers. With respect to every foreign security or ADR quoted in the Service, individual market makers are permitted to update their displayed quotations only twice daily, once between 8:30 and 9:30 a.m. E.T. and once between noon and 12:30 p.m. E.T. Domestic securities quoted in the Service are not subject to this update restriction.

The NASD hereby submits, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and rule 19b-4 thereunder, a proposed rule change to require that all priced bids/offers entered by registered market markers be firm for one unit of trading. The new requirement would apply exclusively to priced quotations for domestic, non-NASDAQ securities quoted in the Service. Market makers in these securities would retain the options of entering (i) Bid wanted/offer wanted indications, (ii) quotations consisting solely of the firm's name and telephone number, and (iii) indications of unsolicited customer interest.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The essential purpose of this proposal is to establish a firmness requirement for priced bids/offers entered into the Service by market markers respecting domestic, non-NASDAQ securities. Currently, market makers in these securities can elect to enter firm or non-firm priced bids/offers. Since the Service's inception, the NASD has found that firm prices—in the form of one and two-sided quotations—have been predominant among Service market makers in domestic issues.[2] Because these issues are not subject to any update limitation, many market makers actively compete for order flow by entering and updating firm quotations in domestic securities during the Service's business hours. Nontheless, some market makers have attempted to attract business by entering a non/firm bid slightly better than the highest firm bid. When contracted about a trading interest at the "superior" price, the market maker expressed a willingness to transact at the highest firm bid rather than the indicative price. Because the superior price was non-firm, the affected market maker cannot be held to it. This practice, however, may result in some diversion of order flow away from other market makers entering competitive, firm prices in the same security. More importantly, it detracts from the overall reliability of priced quotations being displayed in the Service for domestic issues. To ensure fair dealing among Service market markers and the execution of customer orders at the best available price, the NASD has determined to eliminate a market marker's option of displaying non-firm priced bids/offers in the Service for any domestic non-NASDAQ security.

Assuming Commission approval, this proposed rule change would be implemented within 21 business days of issuance of the approval order, and become a permanent requirement of the Service.

The NASD relies on subsections (6) and (11) of section 15A(b) of the Act as providing the statutory basis for this rule change. Subsection (6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and that they be structured to protect investors and the public interest generally. Subsection (11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter. Such rules should produce fair and informative quotations, prevent misleading quotations, and promote orderly procedures for collecting and disseminating quotations. Additionally, the NASD believes that section 17B of the Act provides a statutory basis for the instant rule change. Among other things, section 17(B) defines the basic characteristics of automated quotation systems for "penny stocks," subsection (b)(2)(C) thereunder provides that such a system have the capability of displaying reliable pricing information for covered securities, including firm bids/offers originated by participating brokers or dealers.

The NASD submits that this proposed modification of the Service is fully consistent with the above-mentioned provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes the proposed rule change will not create any competitive burden. To the contrary, the proposed modification of the Service is intended to promote fair competition among broker-dealers utilizing the Service to make markets in domestic, non-NASDAQ securities. Requiring firmness for priced bids/offers entered by Service market makers in domestic securities will facilitate price discovery among competing dealers in a particular security and the execution of customer orders at the best available price.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NASD did not solicit or receive written comments on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] For example, the months ending December 31, 1990 and January 31, 1991 revealed that firm prices (consisting of both one and two-sided entries) were associated with 71.4% and 71% of total market marker positions, respectively.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6102 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28947; File No. SR-NASD-91-4]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Data Services and Related Subscriber Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) of the Act, NASD has filed a proposed rule change that would expand service offerings and establish

subscriber fees for receipt of broadcast feeds of NASDAQ/National Market System ("NASDAQ/NMS") last sale data or National Quotation Data Service ("NQDS") quotation information into their internal processing systems for development of analytic information based upon the transaction or quotation data received. The text of the new fees, which will appear in section C under part IX of Schedule D to the NASD By-Laws, is set forth below. (New language is italicized and deleted language is bracketed.)

¶1852

C. Special Options

* * * * *

6. Last Sale Data Stream.....$500/month
Permits subscriber to process NASDAQ/NMS last data directly into its own computer system for analytic purposes. Subscriber is responsible for line and modem charges, and separate charges for any terminal display.
7. NQDS Data Stream.....$500/month
Permits subscriber to process NQDS quotation data directly into its own computer system for analytic purposes. Subscriber is responsible for line and modem charges, and separate charges for any terminal display.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the purposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This proposed rule change would expand service offerings and establish a monthly charge of $500 for the receipt of a data stream (*i.e.*, a broadcast stream of information from the NASD's central processor) consisting of either NASDAQ/NMS last sale information or NQDS quotation information. The uses made of data stream information and the manner of their communication are distinguishable from vendor feeds provided by the NASD to support terminal devices capable of displaying real-time market data on demand or in a dynamic update mode. More specifically, data streams covered by this filing would be used to perform a variety of computerized analyses and computations that may be integral to a subscriber's business functions. These analyses/computations may be disseminated in some graphic or other derivative form via a screen display or in a hard copy format, depending upon the subscriber's business needs. As such, the NASD believes that pricing of data streams based upon a flat fee is more appropriate than the device-based charges levied on subscribers receiving real-time access to NASDAQ/NMS last sale and NQDS quotation information solely via screen displays. Approximately 30 subscribers are interested in receiving data streams of NASDAQ/NMS last sale information or NQDS quotation information to perform proprietary analytics. The NASD intends to furnish the request data streams subject to a subscriber's payment of the fees set forth in this filing.

The NASD submits that this proposed rule change is consistent with section 15A(b)(5) of the Act. That provision requires that the NASD rules "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the [NASD] controls." The proposed monthly charge of $500 for each data stream parallels the existing charge levied on subscribers to NASDAQ Level I data stream and is believed sufficient to cover the costs associated with the expanded data stream offerings. Further, the proposed subscriber charges compare favorably to those now in effect for data streams of Network A and B last sale and consolidated quotation information, respectively. Finally, the NASD expects that the universe of potential data stream subscribers to be relatively small, perhaps no more than 50 firms. Hence, implementation of the proposed services and fees should not raise any significant policy or regulatory issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted in the preceding section, data stream information is used for internal analytics and computations that support a subscriber's business activities. This information will not be used to provide an on-line service, accessible through a terminal device, that would disseminate NASDAQ/NMS last sale data or NQDS information on a query basis or in the form of a dynamically updated display. (If data stream information were to be used to support such screen-based displays, the subscriber would also be required to pay the established NQDS charge of $50 per terminal per month.) The NASD's provision of data stream information does not constitute a service in competition with vendor services that deliver NASDAQ/NMS last sale and/or NASDAQ quotation information, on a real-time basis, to subscribers using prescribed terminal devices. Accordingly, the NASD reiterates that no impermissible burden on competition will result from the implementation of this proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on The Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making writting submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respects to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the number in the caption above and should be submitted by April 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 6, 1991.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6103 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28944; File No. SR-NYSE-91-05]

Self-Regulatory Organizations; Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Listing Criteria for Securities Other than Common Stocks and Bonds

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 24, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend §§ 703.12 *Warrant Listing Process*, 703.15 *Foreign Currency Warrants*, 703.17 *Index Warrants Listing Standards*, 703.18 *Contingent Value Rights*, and 703.19 *Other Securities*, of the Exchange's *Listed Company Manual* to standardize certain listing requirements for securities other than common stocks and bonds.[1] The minimum proposed standardized requirements for each of the Sections referenced above are: (1) 1 million securities outstanding; (2) 400 holders; (3) a one year life; and (4) $4 million in market value. The listing standards for the underlying securities however remain unchanged.

II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange has developed listing standards for a number of securities which are not traditional common stocks or bonds. These securities include common stock warrants, foreign currency warrants, index warrants, and special purpose securities not readily categorized as equity or debt.

The NYSE's security-related listing standards were developed in anticipation of the unique characteristics of each of these different securities. However, as new issues have been brought to market and experience has been gained with respect to the acceptance of the securities, it is apparent that these distinct requirements are unnecessary and confusing to issuers and underwriters. Under these circumstances, the NYSE deems it appropriate to standardize a number of these listing standards.

The Exchange believes that the proposed rule changes are consistent with section 6(b)(5) of the Act, which provides, in part, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule changes will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the propsoed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 4, 1991.

Dated: March 5, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-6104 Filed 3-13-91; 8:45 am]

BILLING CODE 8010-01-M

[1] In its filing, the Exchange also proposed to modify proposed § 703.20 governing the listing standards applicable to Units, Component Securities and Similar Securities which is contained in pending filing SR-NYSE-90-32. In order to consolidate all proposed rule changes dealing with proposed § 703.20, the Exchange has determined to consider the proposed changes to § 703.20 contained in file SR-NYSE-91-05 as an amendment to file SR-NYSE-90-32. *See* letter from Linda Simplicio, Vice-President, Division Counsel, Listed Company Compliance, NYSE, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated February 4, 1991.

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension, Rule 17a–8, File No. 270–53.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. section 3501 *et. seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17a–8 [17 CFR 240.17a–8] under the Securities Exchange Act of 1934 (15 U.S.C. section 78 *et. seq.*), which clarifies the authority of self-regulatory organizations to assure compliance by brokers and dealers with the requirements of the Currency and Foreign Transactions Reporting Act of 1970 [31 U.S.C. sections 1051–1143] (the "Currency Act") and the Department of the Treasury regulations promulgated thereunder. Approximately 6,000 broker-dealers are subject to the rule, which does not impose any burden in addition to that imposed under the Currency Act. (See File No. 1505–0063).

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0092), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 7, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–5984 Filed 3–13–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503–8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503–4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91–5974 Filed 3–13–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1362]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Funds Transactions; Meeting

The Advisory Committee study group on International Electronic Funds Transactions will hold a meeting on Tuesday, March 27th from 2:00 p.m. until 5:30 p.m. at the Federal Reserve Bank of New York, Legal Department, 33rd Floor conference room 59 Maiden Lane, New York, New York 10045.

The purpose of the meeting is to review progress by the United Nations Commission on International Trade Law (UNCITRAL) on the preparation of a draft Model Law on International Credit Transfers. The meeting will focus in particular on changes to the preceding draft of the Model Law made at the last session of the UNCITRAL Working Group on International Payments in December, 1990. The results of that meeting are available in a report by the UNCITRAL Secretariat in U.N., Doc. A/CN.9/344, January 10, 1991, which contains a revised draft of the Model Law. There also is available from the office indicated below a Report of the U.S. Delegation on the December UNCITRAL Working Group meeting.

The draft Model Law will be the principal topic at UNCITRAL's 24th Plenary Session scheduled in June 1991, and it is anticipated that this Session may conclude UNCITRAL's work on this topic. The study group meeting will therefore also focus on issues to be considered by the U.S. delegation to the 24th Plenary Session with regard to the possibility of the United States joining or opposing a consensus on the draft Model Law as it may be further at the 24th Plenary Session. It should be noted that a final text, should one be adopted at the Plenary Session, will be a non-binding model law and it's use as a model by particular countries will be entirely voluntary.

Additional information on the meeting, including copies of the draft Model Law and U.N. documents referenced therein and the Report of the U.S. Delegation referred to above, may be obtained from the Department of State by contacting Harold S. Burman, Office of the Legal Adviser (L/PIL), 2100 "K" Street, suite 402, Washington, DC 20037–7180, or by calling (202) 653–9852.

Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the chair. Since access to the meeting room will be controlled, persons wishing to attend should notify the Legal Adviser's Office at the number indicated above not later than March 22 of their name, affiliation, address and telephone number. Persons interested but unable to attend the meeting may submit written comments or proposals to the Office of the Legal Adviser at the address indicated above.

Publication of this notice less than fifteen days prior to the meeting was necessitated by the recent decision to hold a final study group meeting and the necessity to prepare preliminary U.S. views following the meeting prior to March 29 for transmission to UNCITRAL.

Dated: March 11, 1991.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 91–6217 Filed 3–13–91; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on March 7, 1991

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on March 7, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on March 7, 1991.

DOT No: 3461.
OMB No: 2137–0047.
Administration: Research and Special Programs Administration.
Title: Transportation of Hazardous Liquids by Pipeline: Recordkeeping and Accident Reporting.
Need for Information: The recordkeeping is necessary to assure compliance with the regulations. The accident reporting is necessary to monitor the frequency and causes of accidents.
Proposed Use of Information: The information is used to evaluate the compliance of operators of hazardous liquid pipelines with the pipeline safety requirements of CFR part 195—Transportation of Hazardous Liquids by Pipeline.
Frequency: Recordkeeping and accident reporting functions are performed on the occasions that require those records or accident reports.
Burden Estimate: 49,219 hours.
Respondents: 210 pipeline operators.
Form(s): DOT 7000–1.
Average Burden Hours Per Response: 12 minutes.

DOT No: 3462.
OMB No: 2115–0039.
Administration: U.S. Coast Guard.
Title: Port Security Card.
Need For Information: This information collection requirement is needed to ensure that individuals who require access to waterfront facilities or vessels do not pose a threat to national security. This requirement is particularly applicable to those posts that are vital to the military defense or that support military operations or where explosive cargo is loaded.
Proposed Use of Information: The Coast Guard uses this information to conduct a national agency check for criminal history of civilians requiring access to certain areas by virtue of their employment as longshoremen, dock workers, construction workers, etc. It is an integral part of the Security Program which provides protection and security of vessels, harbors, etc., from sabotage and subversive activities.
Frequency: On occasion.
Burden Estimate: 1,000 hours.
Respondents: Civilian workers requiring access to vessels/ports.
Form(s): CG–2685.
Average Burden Hours Per Response: 15 minutes.

DOT No: 3463.
OMB No: 2115–0110.
Administration: U.S. Coast Guard.
Title: Vessel Documentation.
Need for Information: This information collection requirement is needed to establish a vessel's eligibility to (1) be documented as a U.S. vessel; (2) engage in particular trade; and (3) become the object for a preferred ship's mortgage.
Proposed Use of Information: The Coast Guard uses this information to determine if a vessel is eligible for benefits as a U.S. vessel. The Internal Revenue Service (IRS) also uses this information to determine eligibility for investment tax credits.
Frequency: On occasion.
Burden Estimate: 54,390 hours.
Respondents: 136,253.
Form(s): CG–1258, 1261, 1270, 1322, 1340, 1356, 4593, 1280.
Average Burden Hours Per Response: Burden is expressed in minutes per form as follows:

CG–1258	30
CG–1261	30
CG–1280	5
CG–1322	5
CG–1340	20
CG–1356	20
CG–4593	10
CG–1270	Negligible.

DOT No: 3464.
OMB No: 2127–0019.
Administration: National Highway Traffic Safety Administration.
Title: 49 CFR part 537, Automotive Fuel Economy Reports.
Need for Information: To see how the manufacturers are complying with average fuel economy standards.
Proposed Use of Information: Major domestic and foreign automobile manufacturers provide NHTSA with technical and fuel economy performance information which is examined to see how the manufacturer will comply with applicable average fuel economy standards. The information is reported to Congress and used to respond to inquiries, and evaluation of future standards.
Frequency: Semi-annually.
Burden Estimate: 4,500 hours.
Respondents: Manufacturers.
Form(s): None.
Average Burden Hours Per Response: 5 minutes.

DOT No: 3465.
OMB No: New.
Administration: Federal Railroad Administration.
Title: Class II and Class III Railroads Federal Load Guarantee Study.
Need for Information: To determine the need and demand for Federal loan guarantees by Class II and Class III railroads for the enhancement and rehabilitation of railroad facilities.
Proposed Use of Information: To prepare a report to Congress as requested in the Amtrak Reauthorization and Improvement Act of 1990.
Frequency: One time.
Burden Estimate: 1,000 hours.
Respondents: 500 Railroads.
Form(s): None.
Average Burden Hours Per Response: 2 hours.

DOT No: 3466.
OMB No: New.
Administration: National Highway Traffic Safety Administration.
Title: Influence of BAC Limits on Drinking and Driving Decisions.
Need for Information: NHTSA needs the results of this survey to evaluate BAC limits.
Proposed Use of Information: NHTSA is assessing how drivers make drinking and driving decisions and the role

current BAC limits have in these decisions by surveying 4,000 persons from the general public.

Frequency: One-Time only.

Burden Estimate: 958 hours.

Respondents: Individuals or households.

Form(s): None.

Average Burden hours per Response: 10½ minutes.

DOT No: 3467.

OMB No: 2127-0611.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR part 571.213, Child Restraint Systems.

Need for Information: To inform the consumer of the different models of child safety seats and how they are to be installed in passenger cars. Also to be able to reach the owner in the event of a recall.

Proposed Use of Information: Manufacturers are required to provide each child restraint with a permanently attached label and an instruction brochure which gives the model, manufacturer's name, date of manufacture, certification that the seat conforms with FMVSS 213, and owner's name and address in the event of a recall.

Frequency: On ocassion.

Burden Estimate: 60,300 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 3 seconds.

DOT No: 3468.

OMB No: New.

Administration: Federal Railroad Administration.

Title: Locomotive Engineers' Activities Diary.

Need for Information: To assess the significance of various fatigue factors in human-error railroad accidents.

Proposed Use of Information: To understand how scheduling practices affect sleep, circadian rhythms, and fatigue levels of locomotive crews and to recommend improvements in crew management procedures.

Frequency: One Time.

Burden Estimate: 1,177 hours.

Respondents: 500 Locomotive Engineers.

Form(s): None.

Average Burden Hours Per Response: 2 hours and 21 minutes.

DOT No: 3469.

OMB No: 2133-0029.

Administration: Maritime Administration.

Title: Capital Construction Fund and Exhibits.

Need for Information: Required to obtain or retain a benefit.

Proposed Use of Information: To assure applicant qualifies for requested benefit under the statute.

Frequency: Annually.

Burden Estimate: 1,722 hours.

Respondents: 110.

Form(s): None.

Average Burden Hours Per Response: 13 hours and 29 minutes.

DOT No: 3470.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Suspected Unapproved Parts Notification.

Need for Information: Submission of the Suspected Unapproved Parts Notification is necessary to ensure that only FAA-approved parts are installed, ensuring that continued airworthiness is maintained.

Proposed Use of Information: The information reported will be used by the FAA to determine if an unapproved part investigation is warranted.

Frequency: On occasion.

Burden Estimate: 450 hours.

Respondents: Anyone who suspects the use of an unapproved part.

Form(s): FAA Form 8120-11.

Average Burden Hours Per Response: 18 minutes.

DOT No: 3471.

OMB No: New.

Administration: Federal Aviation Administration.

Title: Phaseout of Stage 2 Airplanes Operating in the 48 Contiguous United States and the District of Columbia. (NPRM)

Need for Information: The information is needed to ensure complince with the law to phase out Stage 2 Airplanes.

Proposed Use of Information: The FAA will use the data to monitor and enforce compliance to phase out Stage 2 aircraft, and to keep the Congress and the public informed on the progress being made to achieve full and continued compliance.

Frequency: Annually.

Burden Estimate: 108 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Response: 1 hour for small airlines, and 2 hours for large airlines.

Issued in Washington, DC on March 7, 1991.

Richard B. Chapman,

Acting Director of Information Resource Management.

[FR Doc. 91-5993 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91-3-17]

Application of Tropical Airways, Inc., for a Fitness Redetermination and Proposed Revocation of Certificate

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause dockets 46773 and 43201.

SUMMARY: The Department of Transportation is directing all interested parties to show cause why it should not issue an order finding that Tropical Airways, Inc., has failed to demonstrate its continuing fitness, denying it application for a fitness redetermination, and revoking its certificate of public convenience and necessity authorizing it to engage in foreign scheduled air transportation between New York, New York, and Georgetown, Guyana.

DATES: Persons wishing to file objections should do so no later than March 25, 1991.

ADDRESSES: Objections and answers to objections should be filed in Docket 46773 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 (202-366-9721).

Dated: March 8, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-5992 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-62-M

[Order 91-3-16 Docket No. 43232]

Clarifying Order

In re: Security of aircraft and safety of passengers transiting Lebanon.

Issued by the Department of Transportation on the 8th day of March, 1991.

On July 1, 1985, President Reagan issued Presidential Determination 85-14, pursuant to authority granted by Section 1114(a) of the Federal Aviation Act of 1958, as amended (Act) (49 U.S.C. 1514(a)). Among other things, Presidential Determination 85-14 "suspend[s] the rights of all air carriers within the meaning of Section 101(3) of the Act to engage in foreign air transportation, whether direct or indirect (including through interline agreements), to and from Lebanon * * *." Presidential Determination 85-14 was published in the Federal Register on August 7, 1985 (50 FR 31,835).

In light of Presidential Determination 85-14, on July 2, 1985, the Department ordered all interested persons to show cause why it should not take action which specifically "would prohibit the sale in the United States of any airline ticket or the issuance in the United States of any airwaybill with Lebanon in the itinerary, regardless of whether the flight in question serves the United States * * *." (Order 85-7-15 at 1). After considering the comments, the Department finalized its proposed action by issuing Order 85-7-45 on July 9, 1985. Order 85-7-45 amends all U.S. air carrier certificates issued under section 401 (49 U.S.C. 1371), all foreign air carrier permits issued under section 402 (49 U.S.C. 1372), and all exemptions held by U.S. and foreign direct and indirect air carriers to preclude the "[sale] in the United States [of] any transportation by air which includes any type of stop in Lebanon * * *." (Order 85-7-45, Ordering Paragraph 1).

It has come to the attention of the Department that several domestic and international air freight forwarders in the United States continue to operate small package or document delivery services involving transportation by air to or from Lebanon. U.S. and foreign air freight forwarders are air carriers within the meaning of sections 101(3) and 101(22) of the Act (49 U.S.C. 1301(3), (22)), respectively, and generally hold exemptions from section 401 and 418 as well as section 402 of the Act, respectively, pursuant to parts 298 and 297 of the Department's regulations (14 CFR parts 298 and 297), respectively. Consequently, air freight forwarders are subject to the restricted operating authority set forth in Presidential Determination 85-14 and Order 85-7-45.

The Department is issuing this Order to make it clear to all concerned that Presidential Determination 85-14 and Order 85-7-45 apply to air freight forwarders in the U.S. and to the direct air carriers that provide them with air transportation services. By publishing this Order in the Federal Register, the Department places all such entities on clear notice that they are prohibited from selling in the United States any air transportation, including interline transportation, which includes any type of stop in Lebanon, and that they are subject to civil and criminal penalties for any violations of that prohibition. (See 49 U.S.C. 1471 and 1472).[1]

Accordingly,

1. The first sentence of Ordering Paragraph 1 of Order 85-7-45 is amended to read as follows:

We amend all certificates issued under section 401 of the Federal Aviation Act, all permits issued under section 402, and all exemptions from sections 401 and 402, including those authorizing air freight forwarder activities, to add the following condition:

* * * * *

2. This Order shall be published in the Federal Register.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-5991 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-62-M

[1] Presidential Determination 85-14 and Order 85-7-45 apply to all air transportation to and from Lebanon, whether transportation of freight or of passengers. Therefore, the sales prohibition also applies to travel agents, since they act as sales agents for air carriers.

Federal Aviation Administration

Approval of Noise Compatibility Program Lawton Municipal Airport Lawton, OK

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Lawton Metropolitan Area Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 1, 1990, the FAA determined that the noise exposure maps submitted by the Lawton Metropolitan Area Airport Authority under part 150 were in compliance with applicable requirements. On January 25, 1991, the administrator approved the noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lawton Municipal Airport noise compatibility program is January 25, 1991.

FOR FURTHER INFORMATION CONTACT: Dean A. McMath, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, 76193-0612, (817) 624-5594. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Lawton Municipal Airport, effective January 25, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and

responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Lawton Metropolitan Area Airport Authority submitted to the FAA on April 25, 1990, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from June 8, 1987 through June 4, 1990. The Lawton Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 1, 1990. Notice of this determination was published in the **Federal Register** on August 9, 1990.

The FAR part 150 Noise Exposure and Land Use Compatibility Program study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1995. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 1, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained three proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the administrator effective January 25, 1991. Outright approval was granted for all of the three program elements. The three elements include institution of a noise complaint system, a five-year update and review of the program, and the transition of noncompatible land uses to compatible land uses within the airport environs through zoning.

These determinations are set forth in detail in a record of approval endorsed by the Administrator on January 25, 1991. The record of approval as well as other evaluation materials, and the documents comprising the submittal are available at the FAA office listed above and at the administrative offices of the Lawton Metropolitan Area Airport Authority.

Issued in Forth Worth, Texas, February 6, 1991.

Hugh W. Lyon,

Assistant Manager, Airports Division.

[FR Doc. 91-6064 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the meeting of the Executive Committee to be held March 27, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks; (2) Approval of the January 25, 1991, Executive Committee Meeting Minutes, RTCA Paper No. 52-91/EC-1062 (previously distributed); (3) Executive Director's report; (4) Special Committee activities report for January-February 1991, RTCA Paper No. 77-91/RE-765 (enclosed); (5) Fiscal and Management Subcommittee report; (6) Facilities Working Group report; (7) Award recommendations; (8) Consideration of proposals to establish new special committees; (a) Continental Airlines request to update DO-173, "Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radars" (RTCA Paper No. 78-91/RE-766, enclosed); (9) Other business; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 1991.

Steven Zaidman,

Designated Officer.

[FR Doc. 91-6060 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Ad Hoc Group 5, Airborne Loran-C Area Navigation Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., appendix I), notice is hereby given for the first meeting of the Ad Hoc Group 5 to be held April 10-12, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Introductory remarks; (2) Review and approve Terms of Reference, RTCA Paper No. 42-91/AG5-1 (enclosed); (3) Technical briefings; (4) Committee discussion on extent of the problem. Review of material provided; (5) Develop initial work program and schedule; (6) Assignment of tasks; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 8, 1991.

Steven Zaidman,

Designated Officer.

[FR Doc. 91-6061 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

Aviation System Capacity Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration Aviation System Capacity Advisory Committee to be held on Wednesday and Thursday, April 10 & 11, 1991. The meeting will take place at 9 a.m. in the MacCracken Room, 10th Floor, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows:

- Ad hoc Procurement Working Group Report
- Aircraft Situation Display Working Group Report
- Briefing on Status of Real-Time Airspace Scheduling Program
- System Capacity Technology and Procedures Development Working Group Report
- FAA Response to August 25, 1990 Recommendations of the Advisory Committee

Attendance is open to the interested public, but limited to space available. With the approval of the Committee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. James McMahon, Office of System Capacity and Requirements, ASC-1, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7425.

Any member of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC on March 7, 1991.

E.T. Harris,

Director, Office of System Capacity and Requirements.

[FR Doc. 91-6054 Filed 3-13-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affiars.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 8, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Polices and Oversight.

Revision

1. Board of Veterans Appeals.

2. Titles of the Information Collections.

a. Appeal to Board of Veterans Appeals.

b. Withdrawal of Services by a Representative.

c. Fee Agreements.

d. Motion for Review of Expenses.

e. Requests for Changes in Hearing Dates.

3. Department Form Numbers.

a. VA Form 1-9, Appeal to Board of Veterans Appeals.

b. Not applicable.

c. Not applicable.

d. Not applicable.

e. Not applicable.

4. The information collection is judicial in nature and is required in processing appeals from denial of claims for VA benefits and in regulation of representatives' fees.

a. VA Form 1-9 is used by individuals to file an appeal.

b. The information is used to identify a representative who wishes to withdraw from the appeal process.

c. The information is used to insure that fee agreements between VA claimants and either attorneys-at-law or agents are in fulfillment with statutory requirements.

d. The information is used to insure that unreasonable attorney-at-law or agent fees are not charged against VA claimants.

e. The information is used to maintain adequate control over hearing calendars.

5. On occasion.

6. Individuals or households; Businesses or other for-profit; Shall businesses or organizations.

7. 53,825 responses.

8. Estimate of Total Hours.

a. Appeal to Board of Veterans Appeals—1 hour.

b. Withdrawal of Services by a Representative—30 minutes.

c. Fee Agreements—6 minutes (basic filing); 4 hours (motion filing).

d. Motion for Review of Expenses—4 hours.

e. Requests for Changes in Hearing Dates—10 minutes (basic request); 1 hour (requests requiring preparation of a motion).

9. Not applicable.

[FR Doc. 91-6047 Filed 3-13-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 8, 1991.

BEST COPY AVAILABLE

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veterans Benefits Administration.
2. Claim for Repurchase of Loan.
3. VA Form 26–8064.
4. The form is used and completed by the holder of a delinquent vendee account which has been guaranteed by VA. The holder may request VA to repurchase a loan.
5. On occasion.
6. Businesses or other for-profit.
7. 9,696 responses.
8. 30 minutes.
9. Not applicable.

[FR Doc. 91–6048 Filed 3–13–91; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 8, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veterans Benefits Administration.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26–8778.
4. This form is used by VA to obtain pertinent data from the servicer of guaranteed or insured loans and vendee loans sold with VA repurchase agreement on the status of loans in default. The information is used to assure that necessary action is taken to cure the default.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 10 minutes.
9. Not applicable.

[FR Doc. 91–6049 Filed 3–13–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice if hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 14, 1991, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are: .

Open Session

New Business

1. *Consent Calendar*
   —CoBank—Third Party Financially Related Services
2. *Regulations*
   —Personnel Administration (Proposed)

Closed Session*

New Business

3. Buckeye PCA and Fostoria FLBA applications for Charter Amendment to Expand Territory

Dated: March 11, 1991.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(9) and (10).

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–6169 Filed 3–11–91; 4:31 pm]

BILLING CODE 6705–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–5582.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, March 12, 1991, 10:00 a.m., Meeting Closed to the Public.

This Meeting Has Been Cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 14, 1991, 10:00 a.m., Meeting Open to the Public.

The Following Item Has Been Added to the Agenda:

Legislation Recommendations—1991

DATE AND TIME: Tuesday, March 19, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 21, 1991, 2:00 p.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Guidelines for Presentation in Good Order
Advisory Opinion 1991–02—Marc Scheineson on behalf of MCI Telecommunications Corporation
Convention Regulations—Final Rules and Draft Explanation and Justification
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–6279 Filed 3–12–91; 3:07 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 20, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–6270 Filed 3–12–91; 2:55 pm]

BILLING CODE 6210–01–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 25, 1991, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 25, from 10:00 a.m. to 5:45 p.m., on Friday, April 26, from 8:30 a.m. to 5:30 p.m., and on Saturday, April 27, from 9:00 a.m. to 1:00 p.m.

PLACE: The Red Lion Hotel, 300 112th Avenue S.E., Bellevue, Washington, 98004.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: national and international response plans for marine mammal die-offs; high seas driftnet fisheries; the status of marine mammals in Alaska; the status (preparation, review, approval, and implementation of

research and management programs) of recovery and conservation plans; and ongoing negotiations and activities pursuant to international agreements.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's April 1991 meeting and does not constitute any change in the scheduling, location, or agenda. The matters to be considered are those which were originally published in the December 12, 1990 (55 FR 51200) notice.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue, N.W., Room 512, Washington, D.C. 20009, 202/653-6237.

Dated: March 11, 1990.

John R. Twiss, Jr.

Executive Director.

[FR Doc. 91-6183 Filed 3-12-91; 11:28 am]

BILLING CODE 6820-31-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 8, 1991.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 91-6231 Filed 3-12-91; 1:31 pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 9, 1991.

PLACE: On board MV MISSISSIPPI at City Front, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 91-6232 Filed 3-12-91; 1:31 pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., April 10, 1991.

PLACE: On board MV MISSISSIPPI at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 91-6233 Filed 3-12-91; 1:31 pm]

BILLING CODE 3710-GX-M

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 8:30 a.m., April 12, 1991.

PLACE: On board MV MISSISSIPPI at Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 91-6234 Filed 3-12-91; 1:31 pm]

BILLING CODE 3710-GX-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 11, 1991.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in—

Wyman-Gordon Company
OSHRC Docket No. 84-0785

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: March 11, 1991.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 91-6287 Filed 3-12-91; 3:27 am]

BILLING CODE 7600-01-M

Corrections

Federal Register
Vol. 56, No. 50
Thursday, March 14, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43

Borrower Eligibility for Different Types of Loans

Correction

In proposed rule document 91-3833 beginning on page 6912, in the issue of Wednesday, February 20, 1991, make the following corrections:

§ 1710.102 [Corrected]

1. On page 6931, in the first column, in § 1710.102(e)(2)(iv), in the first line, "measures" should read "measured".

2. On the same page, in the second column, in § 1710.102(f)(1)(i), in the second line, after "(v)," insert "(vi),".

3. In the third column, in § 1710.102(g)(5), in the next to last line, after "increase" insert "a".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 811

RIN 0701-AA28

Release, Dissemination, and Sale of Visual Information Materials

Correction

In rule document 91-565 beginning on page 953 in the issue of Thursday, January 10, 1991, make the following corrections:

§ 811.8 [Corrected]

1. On page 955, in § 811.8(a), in the table, make the following corrections:

a. The headings for the last four columns are corrected to read as follows:

	Price per print (quantity)			
	1-9	10-20	21-50	50+

b. In the entries for "Print mounted on 16" × 20" cardboard" and "Print mounted on 20" × 24" cardboard", the entries in the first column are correctly revised to read "$6.00" and "$12.00" respectively.

c. In the last six entries, the footnote references in the last three columns should be removed.

d. In footnote 1, "limit price per unit" is correctly revised to read "limit price of print".

e. In footnote 2, "16." is correctly revised to read "16.00".

BILLING CODE 1505-01-D

federal register

Thursday
March 14, 1991

Part II

Department of Health and Human Services

Office of Human Development Services

Fiscal Year 1991 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS-91-1]

Fiscal Year 1991 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications

AGENCY: Office of Human Development Services, HHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Human Development Services' Coordinated Discretionary Funds Program.

SUMMARY: The Office of Human Development Services (HDS) announces its Coordinated Discretionary Funds Program (CDP) for Fiscal Year 1991. Funding for HDS grants and cooperative agreements under this announcement is authorized by legislation governing discretionary programs of the following HDS components: Administration for Children, Youth and Families; Administration for Native Americans; and the Office of Policy, Planning and Legislation. This announcement contains forms and instructions for submitting an application.

DATES: The closing date for submittal of applications under this announcement is May 20, 1991.

ADDRESSES: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001, Attn: HDS–91–1.

FOR FURTHER INFORMATION CONTACT: Department of Health and Human Services, HDS/Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001. Telephone (202) 755–4560. To provide 24-hour coverage, calls to this number may be answered by an answering machine.

SUPPLEMENTARY INFORMATION: This program announcement consists of three parts. Part I provides information on Departmental and HDS initiatives, programs and statutory funding authorities applicable to this announcement, additional HDS discretionary program announcements anticipated this fiscal year, planned technical assistance workshops and materials for prospective applicants, resource centers and clearinghouses, and innovation conferences. Part II describes applicant eligibility, the review process, the evaluation criteria, other relevant priority area information, and the programmatic priorities under which applications are being solicited. Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow part III. Please copy and use these forms in submitting an application under this announcement. *No additional application materials are available or needed to submit an application.* All of the information and forms required to submit an application are contained in this announcement.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Table of Contents

Part I Introduction
A. Goals of the Office of Human Development Services
B. Office of Human Development Services Initiatives
C. The Office of Human Development Services' Program and Staff Offices
D. Statutory Authorities Covering This Announcement
E. Other Office of Human Development Services Announcements
F. Principles of the Coordinated Discretionary Funds Program
G. Technical Assistance Workshops for Prospective Applicants
H. Technical Assistance Materials
I. Resource Centers and Clearinghouses
J. Conferences on Human Service Innovations
Part II The Review Process and CDP Priority Areas
A. Eligible Applicants
B. Review Process and Funding Decisions
C. Evaluation Criteria
(1) Objectives and Need for Assistance
(2) Results or Benefits Expected
(3) Approach
(4) Staff Background and Organization's Experience
D. Priority Area Description
E. Available Funds
F. Grantee Share of Project Costs
G. Cooperation in Evaluation Efforts
H. Closed Captioning for Audiovisual Efforts
I. Public Comments
J. Indexes of Priority Areas
• FY 1991 Priority Area Subject Index
• List of the FY 1991 Priority Areas
(1) Administration for Children, Youth and Families
(2) Administration for Native Americans
(3) Office of Policy, Planning and Legislation
K. CDP Priority Areas
(1) Administration for Children, Youth and Families
• Head Start Bureau
• Family and Youth Services Bureau
• Children's Bureau
• National Center on Child Abuse and Neglect
(2) Administration for Native Americans
(3) Office of Policy, Planning and Legislation
Part III Instructions for the Development and Submission of Applications
A. Required Notification of the State Single Point of Contact
B. Deadline for Submittal of Applications
C. Instructions for Preparing the Application and Completing Application Forms
(1) SF 424
(2) SF 424A
(3) Project Summary Description
(4) Program Narrative Statement
(5) Organizational Capability Statement
(6) Part V—Assurances/Certifications
D. Components of a Complete Application
E. The Application Package
F. Checklist for a Complete Application
Attachments
• State Single Points of Contact
• List of Key Words
• Sample SF 424 and SF 424A
• SF 424 (REV 4/88)
• SF 424A (REV 4/88)
• Assurances—Non-Construction Programs
• Certification Regarding Lobbying
• Certification Regarding Drug-Free Workplace Requirements
• Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Part I—Introduction

A. Goals of the Office of Human Development Services

The program and staff offices within the Office of Human Development Services differ in the populations they serve and in the programs they administer, but share the following common goals:

- To increase family and individual self-sufficiency and independence through social and economic development strategies;
- To target Federal assistance to those most in need;
- To improve the accountability of HDS administered programs, and the effectiveness and efficiency of both internal management and State and locally administered social services; and
- To improve the quality of HDS programs and services while encouraging innovation and choice through the marketplace.

Increased specialization, categorical programs, and the diversity of services and providers at the local level have increased the need for effective communication, networking, and cooperation among all concerned, particularly those at the level where services are delivered, to increase program effectiveness, maximize the use of existing resources, and avoid duplication or fragmentation of services.

Program accountability and innovation are essential to more adequately address complex social issues and to help more individuals and families to reduce their dependency.

The importance of new ways to address the needs of vulnerable individuals and families is increasing as fiscal constraints strain the capacity of existing programs. HDS realizes that agencies serving our target populations must have access to innovations in a usable form. HDS supports and encourages the dissemination and replication of project findings and models for successful innovations. HDS' Coordinated Discretionary Funds Program attempts to take a coordinated approach at the Federal level to promote the achievement of these goals.

B. Office of Human Development Services Initiatives

Within the context of these broad goals, the Assistant Secretary for HDS has identified four initiatives for special emphasis:

- *Permanency Planning*—to promote a sustained commitment to family life; to 'he care and nurturing of our Nation's young; and to the sound social, emotional, physical and cognitive development of our most vulnerable children.
- *Coordinated Services*—to encourage integration of services among specialized service providers to eliminate fragmentation, reduce duplication, and produce more effective responses in serving individuals and families.
- *Self-sufficiency*—to promote or structure programs to help individuals and families overcome crises by developing and/or providing services which will enable them to gain independence and sustain themselves and their families without need for further intervention.
- *Innovative Services*—to develop innovative approaches to service delivery systems, based on current challenges and circumstances affecting families.

C. The Office of Human Development Services' Program and Staff Offices

Below is a brief description of the HDS organizational components and the programs from which funding is available.

Administration for Children, Youth and Families

The Administration for Children, Youth and Families (ACYF) serves as the focal point within the Federal Government for programs, activities, and initiatives designed to improve the quality of life for children, youth and families. ACYF administers the following major programs which relate to discretionary grants made under this announcement:

- *Head Start* provides comprehensive educational, health, nutritional, social and other services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. An essential feature of every Head Start program is the involvement of parents.
- *Runaway and Homeless Youth* addresses the crisis needs of runaway and homeless youth and their families through the establishment or strengthening of community-based programs providing outreach, temporary shelter, counseling, and aftercare services. It also provides support to coordinated networks designed to share information, expertise, and resources among service providers; and to a toll-free, 24-hour National Runaway Switchboard which serves as a neutral channel of communication between young people and their families as well as a source of referral to needed services.
- *Transitional Living Program for Homeless Youth* provides shelter (for up to 18 months) and related services to homeless youth in order to promote a successful transition to self-sufficient living and to prevent long-term dependency on public assistance. Services, which include training in the areas of life skills, interpersonal skills, educational advancement, job attainment skills, and mental and physical health care, are provided to youth ages 16 through 21 who are truly homeless (that is, youth who have no safe place of residence and who are not currently under the jurisdiction of the juvenile justice or child welfare systems).
- *Child Welfare Research and Demonstration* provides financial support to State and local governments or other nonprofit institutions, agencies, and organizations engaged in research or demonstrations in the field of child welfare. Research and demonstrations supported under this program address preventive intervention, the development of alternative placements for children such as foster care or adoption, and reunification services so that children can return home if at all possible.
- *Child Welfare Training* provides discretionary grants to accredited public or other nonprofit institutions of higher learning to develop and improve educational and training programs and to assist child welfare agencies to upgrade skills and qualifications of staff.
- *Adoption Opportunities* provides financial support for demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs.
- *Temporary Child Care for Children With Disabilities and Crisis Nurseries* provides demonstration grants to States to assist private and public agencies in developing: (a) Temporary child care (respite care) for children with disabilities; and (b) crisis nurseries for children at risk of child abuse and neglect.
- *Child Abuse and Neglect* discretionary activities are designed to assist and enhance national, State, and community efforts to prevent, identify, and treat child abuse and neglect. These activities include conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; and coordinating Federal activities related to child abuse and neglect.

Administration for Native Americans

The Administration for Native Americans (ANA) promotes the goal of social and economic self-sufficiency for American Indians, Native Hawaiians, Native Alaskans and Native American Pacific Islanders. ANA defines self-sufficiency as the level of development at which a Native American community can control and internally generate resources to provide for the needs of its members and meet its own short and long range social and economic goals.

Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the principal agency in the Federal government to help ensure that all persons with developmental disabilities can receive the services and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community. Under the Projects of National Significance grant program, support is provided to public and private nonprofit organizations and agencies for research and demonstration, technical assistance and data collection.

Office of Policy, Planning and Legislation

The Office of Policy, Planning and Legislation (OPPL) is a staff office in HDS which administers the following

discretionary grant programs under this announcement:

• *Social Services Research and Demonstration* grants and cooperative agreements are awarded for innovative research and demonstration projects that are responsive to the HDS program priorities. This program promotes the demonstration of effective and innovative social services for dependent and vulnerable populations such as the poor, the aged, children and youth, Native Americans and persons with disabilities.

• *Family Violence Prevention and Services Act* provides grants to States and Indian Tribes to prevent family violence and provide immediate shelter and related assistance to victims of family violence and their dependents. Demonstration grants also support efforts to prevent family violence and provide training and technical assistance to States and Indian Tribes.

D. Statutory Authorities Covering This Announcement

The following is a list of each HDS program included in this announcement with the specific statutory authority, the Catalog of Federal Domestic Assistance (CFDA) number, and related priority areas:

Program and statutory authority	CFDA No.	Related priority areas
Abandoned Infants Assistance Program: Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note)	93.551	1.28
Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended (42 U.S.C. 5113 et seq.).	93.652	1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.25
Child Abuse and Neglect: Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 et seq.)	93.670	1.32, 1.33, 1.34, 1.35, 1.36
Child Welfare Research and Demonstration: Section 426 of the Social Security Act, as amended (42 U.S.C. 626)	93.608	1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.29, 1.30, 1.31
Child Welfare Training Grants: Section 426 of the Social Security Act, as amended (42 U.S.C. 626)	93.648	1.10
Family Violence Prevention and Services: Family Violence Prevention and Services Act, as amended (42 U.S.C. 10401 et seq.).	93.671	3.04
Head Start: Head Start Act, as amended (42 U.S.C. 9801 et seq.)	93.600	1.01, 1.02, 1.03, 1.04, 1.05, 1.06
Native Americans Programs: Native American Programs Act of 1974, as amended (42 U.S.C 2291 et seq.)	93.612	2.01, 2.02, 2.03, 2.04
Runaway and Homeless Youth: Runaway and Homeless Youth Act, as amended (42 U.S.C. 5701 et seq.)	93.623	1.07, 1.08, 1.09
Social Services Research and Demonstration: Section 1110 of the Social Security Act, as amended (42 U.S.C. 1310)	93.647	3.01, 3.02, 3.03
Temporary Child Care for Children with Disabilities and Crisis Nurseries: Temporary Child Care for Children with Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117).	93.656	1.24A, 1.26B, 1.27
Transitional Living Program for Homeless Youth: Part B of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5714–1 et seq.).	93.550	1.09

E. Other Office of Human Development Services Announcements

Additional FY 1991 HDS discretionary grant program announcements which have been published or will be published at a later date are listed below with the telephone number to contact for further information:

Aging:	
Special Programs for the Aging—Title IV—Training, Research and Discretionary Projects and Programs	(202) 619–0441
Children, Youth and Families:	
Head Start—Transition Projects	(202) 245–0569
Head Start—Parent and Child Centers	(202) 245–0405
Runaway and Homeless Youth—Basic Centers	(202) 245–0102
Transitional Living Program for Homeless Youth	(202) 245–0102
Emergency Child Protection Grant Program	(202) 245–0586
Developmental Disabilities:	
Projects of National Significance	(202) 245–1961
University Affiliated Programs	(202) 245–1961
Native Americans:	
Financial Assistance for Alaskan Native Social and Economic Development Projects	(202) 245–7730
Financial Assistance for American Indian, Native Hawaiian, Alaskan Native and Native American Pacific Islanders Social and Economic Development Projects	(202) 245–7730

F. Principles of the Coordinated Discretionary Funds Program

For the past nine years, HDS has issued a coordinated discretionary funds program announcement combining the research, demonstration and training initiatives for several HDS programs. The priority areas identified in this announcement derive from HDS' legislative mandates, as well as agency and Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to HDS' attention by several means, including public comment, and consultation with advocates, policymakers, and practitioners in the field. The priorities seek to focus attention on and to encourage research and demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular social problems and to promote the utilization of the knowledge and model practices.

The principles which underlie the HDS research and demonstration program include the following:

• *Human service needs are best defined and addressed through institutions and organizations at the local community level.* Public agencies, private and voluntary organizations, the business sector, community institutions, families and clients must all share in finding solutions to protect the vulnerable and to reduce dependence on public programs.

• *Social problems are complex.* Better use should be made of existing knowledge, resources and services. Differing perspectives of specialists and practitioners offer the promise of better and more timely solutions and service delivery. Interagency coordination can help to avoid duplication and fragmentation of services to maximize utilization of existing resources and to promote joint solutions to benefit clients.

• *Administrators and service providers at all levels must be accountable for investment of resources, programs and services under their direction.* Knowledge of one's own and others' prior efforts and experience needs to be applied to maximize the benefits of new and ongoing resource investments. Objectives and measures of progress must be clear. Monitoring, evaluation and information feedback are necessary to modify practice, improve program performance, assure greater accountability and achieve better outcomes.

• *Both applied research and demonstration efforts are needed to solve emerging social issues.* Research is needed to help in understanding social phenomena and emerging issues, and to measure the results of past and ongoing efforts. Demonstrations are needed to put existing knowledge into practice, and to develop and test new models in practice. Translation of research into practice is essential to progress; experience in practice is essential to guide research. More rigorously structured research and demonstration studies promise more definitive answers to policy and programmatic questions.

• *Dissemination and utilization of the results and findings of research and demonstration projects are essential to progress.* The benefits of investments made in research and demonstration efforts depend on the application of findings, experience, and products in both policy and practice. Well-reasoned and thoughtful reports of experiences, both positive and negative, help to inform policymakers, researchers, professionals, and practitioners. Well-articulated negative experience can help others to avoid similar pitfalls; positive accounts help to avoid unnecessary repetition, allow for implementation of tested approaches or replication for further validation, and permit others to build on successes.

• *Projects typically have multiple audiences which can benefit from their results.* The type of information needed by various audiences can best be utilized if it is tailored to their needs or expressed in language familiar to them. Audiences which can benefit from project results need to be identified at the outset of the project. When feasible, it is useful to engage such audiences in dialogue early in the project. Their perspectives can be useful in shaping the project to yield the information which will be most helpful to them, and to encourage their interest and support in the effort.

G. Technical Assistance Workshops for Prospective Applicants

Workshops to provide guidance and technical assistance to prospective applicants will be held in Washington, DC and in various other cities. These workshops may be specifically beneficial to organizations which have not previously participated in the CDP. *If you plan to attend, please call the contact for the workshop location of your choice listed below.* Information on the workshops is as follows:

Atlanta, GA	May 1, 1991, 9:30 a.m.–12:30 p.m., 19th Floor Conference Room, 101 Marietta Tower, Contact Danny Osburn at (404) 331–2287.
Dallas, TX	April 24, 1991, 10 a.m.–1 p.m., Rm. 1010, 1200 Main Tower Building, Contact Betty Simmons at (214) 767–4540.
Denver, CO	April 19, 1991, 8:30 a.m.–12 noon, Rm. 239, Federal Office Building, 20th and Stout Streets, Contact Harry Frommer at (303) 844–2822.
Kansas City, MO	April 24, 1991, 8:30 a.m.–12 noon, Westin Crown Center Hotel, One Pershing Road, Contact Dan Sakata at (816) 426–3981.
New York, NY	April 29, 1991, 10 a.m.–1 p.m., Room 305 (Third Floor), 26 Federal Plaza, Contact Junius Scott at (212) 264–3473.
Portland, OR	Contact Judith Wood in the HDS, Regional Office at (206) 553–2430.
San Francisco, CA	April 17, 1991, 9 a.m.–12 noon, 50 United Nations Plaza, Room 406, Contact George Buford at (415) 556–7800.
Seattle, WA	Contact Judith Wood in the HDS, Regional Office at (206) 553–2430.
Washington, DC	April 17, 1991, 1 p.m.–4 p.m., Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Contact (202) 755–4560.

Lincoln University of Pennsylvania and Grambling State University of Louisiana are providing technical assistance and training in grant proposal development for Historically Black Colleges and Universities (HBCUs) and minority organizations. Several workshops have been held so far, either individually by Lincoln and Grambling or in collaboration at locations throughout the country. Additional technical assistance sessions will be scheduled following the publication of this announcement. For further information regarding the upcoming workshops, interested HBCUs and minority organizations may contact:

Dr. Mapule F. Ramashala, Project Director, Grantsmanship and Development Institute, Lincoln University, 4601 Market Street, Philadelphia, Pennsylvania 19139, Telephone (215) 476–6668

or:

Dr. V.T. Samuel, Department of Sociology, Grambling State University, P.O. Box AF, Grambling, Louisiana 71245, Telephone (318) 274–3306

H. Technical Assistance Materials

A *Sample Application* containing the narrative section of a funded application and related evaluative comments has been adapted by HDS to assist prospective applicants in developing better applications through an understanding of what HDS considers to be the essential attributes of a strong project narrative. A copy of this publication will be sent to you upon request by calling (202) 755–4560 or writing to: Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001. Also, copies of the *Sample Application* will be available for distribution at the scheduled workshops listed under section G.

Additionally, a copy of the videotape "How to be a Winner" is available to interested individuals and organizations. The videotape is 30 minutes long and outlines the basic concepts for preparing a successful application for HDS—one that is funded. Anyone who wishes to receive a copy of the videotape should send a blank VHS tape to: Office of Policy, Planning and Legislation, Division of Research and Demonstration, 200 Independence Avenue, SW., Room 724–F, Washington, DC 20201–0001.

I. Resource Centers and Clearinghouses

HDS funds one clearinghouse and ten resource centers located throughout the country. These resources may be of

assistance when applying for grants related to child welfare and domestic abuse. The following is a list of the resource centers and clearinghouse:

Clearinghouse on Child Abuse and Neglect and Family Violence Information, P.O.Box 1182, Washington, DC 20013, (703) 821–2086

National Center for the Prevention and Treatment of Child Abuse and Neglect C. Henry Kempe Center, University of Colorado, Health Sciences Center, 1205 Oneida Street, Denver, CO 80220, (303) 321–3963

Center for Children and the Law, American Bar Association, 1800 M Street, NW., Third Floor South Lobby, Washington, DC 20036, (202) 331–2250

National Resource Center for Family Based Services, University of Iowa, School of Social Work, N240 Oakdale Hall, Oakdale, IA 52319, (319) 335–4123

National Resource Center for Special Needs Adoption, A Division of Spaulding for Children, 3660 Waltrous Road, P.O. Box 337, Chelsea, MI 48118, (313) 475–9693

National Resource Center on Child Sexual Abuse, 11141 Georgia Avenue, Suite 310, Wheaton, MD 20902, (301) 949–5000

National Resource Center, Institute for Children and Families, Eastern Michigan University, Ypsilanti, MI 48197, (313) 487–0372

National Resource Center on Child Abuse and Neglect, American Association for Protecting Children, American Humane Association, 63 Inverness Drive East, Englewood, CO 80112, (303) 792–9900, 1–800–227–5242

National Child Welfare Resource Center for Management and Administration, University of Southern Maine, 246 Deering Avenue, Portland, ME 04102, (207) 780–4430

National Resource Center for Youth Services, University of Oklahoma, 202 West Eighth Street, Tulsa, OK 74119, (918) 585–2986

National Resource Institute on Children and Youth with Handicaps, CDMRC, Room 417, University of Washington, Mailstop WJ–10 Seattle, WA 98195, (206) 685–1280

In addition, the University of Texas is an excellent resource for information on family violence. To obtain information, contact:

Family Violence Research and Treatment Program, The University of Texas, Tyler, Department of Psychology, 3900 University Blvd., Tyler, TX 75701, (214) 566–7060

J. Conferences on Human Service Innovations

The Office of Human Development Services periodically sponsors conferences in various locations around the country to showcase findings and products of funded projects in specific topical areas. The proposed list of meetings to be held this year is as follows:

Location	Topic	Contact
Atlanta, GA	Literacy	Sherriff Ritter, (404) 331–2139.
Chicago, IL	Runaway and Homeless Youth—A Time for Change . . . Identifying and Addressing the Needs of Today's Runaways.	William Sullivan, (312) 353–4241.
Dallas, TX	Innovative Projects	Paul Milan, (214) 767–4540.
Kansas City, MO	Institute on Innovations in Human Services	Dan Sakata, (816) 426–3981.
New York, NY (Sheraton Centre Hotel, 811 Seventh Avenue, 52nd Street).	Meeting the Challenges in Child Welfare Services	Junius Scott, (212) 264–3473.
Philadelphia, PA (Holiday Inn)	Head Start Families in Crisis: Tackling Substance Abuse.	William Wilson, (215) 596–0369.
Spokane, WA	Economic and Social Development of Native Americans.	Judith Wood, (206) 442–2430.
Central Massachusetts (Worcester)	Adoption	Laurentina Janey-Burrell, (617) 565–1142.
	Impact of Substance Abuse on Children and Families	Laurentina Janey-Burrell, (617) 565–1142.
Colorado	Child Abuse and Neglect Issues	Charles Graham, (303) 844–3106.

Part II—The Review Process and CDP Priority Areas

A. Eligible Applicants

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition and the applicant will be so informed.

Each priority area description contains information about the types of organizations which are eligible to apply under that priority area. Only that type of organization is eligible to apply under that particular priority area. Since eligibility varies among priority areas depending on statutory provisions, it is critical that you read carefully the "Eligible Applicants" section under each specific priority area. Applications from organizations which do not meet the eligibility requirements for the specific priority area will not be accepted or included in the review process.

Only organizations, *not individuals*, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one organization, the applicant must identify only one organization as the lead organization and official applicant. The other participating organizations can be included as co-participants, subgrantees, or subcontractors.

For-profit organizations may be eligible to apply for certain grants under the authority of the Native American Programs Act, the Runaway and Homeless Youth Act, and the Head Start Act. For-profit organizations are also eligible to participate as subgrantees or subcontractors with eligible nonprofit organizations under all of the priority areas.

Any nonprofit agency which has not previously received HDS support must submit proof of nonprofit status with its grant application. The nonprofit agency can accomplish this by either making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). HDS cannot fund a nonprofit applicant without acceptable proof of its status.

B. Review Process and Funding Decisions

Applications that are submitted by the deadline date and are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal Government, will use the evaluation criteria listed later in this part to review and score the applications. The results of this review are a primary factor in making funding decisions.

HDS reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government or the applicant. HDS may also solicit comments from other Federal agencies, Central and Regional Office staff, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, are considered by the Assistant Secretary for Human Development Services and the HDS Senior Staff in making funding decisions.

In making decisions on awards, the Assistant Secretary and the HDS Senior Staff may give preference to applications which focus on or feature: Minority populations; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for utilization by organizations involved in the administration or delivery of human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, the Assistant Secretary and HDS Senior Staff may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Applications will be reviewed by a panel of at least three reviewers, primarily experts from outside the Federal Government, using the criteria below. Applicants should assure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each proposal in terms of the four evaluation criteria listed below, provide comments and assign numerical scores accordingly. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. Objectives and Need for Assistance (20 Points)

The application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. It identifies the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 Points)

The application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal and indicates the anticipated contributions to policy, practice, theory and/or research. The proposed project costs are reasonable in view of the expected results.

3. Approach (35 Points)

The application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 Points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background, and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application describes the relationship between this project and other work planned, anticipated or underway by the applicant with Federal assistance.

D. Priority Area Description

Each priority area description is composed of the following sections:

- *Eligible Applicants:* This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.
- *Purpose:* This section presents the basic focus and/or broad goal(s) of the priority area.
- *Background Information:* This section briefly discusses the legislative background, as well as the current state-of-the-art and/or current state-of-the-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by HDS and/or other State models are noted, where applicable. Some priority areas specify individuals to contact for more information.
- *Minimum Requirements for Project Design:* This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since it will be used by the reviewers in evaluating the applications. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.
- *Project Duration:* This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

• *Federal Share of Project Costs:* This section specifies the maximum amount of Federal support for the project.

• *Matching Requirement:* This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required in proportion to the maximum Federal funds which can be requested for the project.

• *Anticipated Number of Projects To Be Funded:* This section specifies the number of projects that HDS anticipates it will fund in the priority area.

Please note that applicants that do not comply with the specific priority area requirements in the section on "*Eligible Applicants*" will not be included in the review process. Applicants should also note that non-responsiveness to the section "*Minimum Requirements for Project Design*" will result in a lower evaluation score by the panel of expert reviewers.

Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description is less likely to score as well as one which is more clearly focused on and directly responsive to the concerns of that specific priority area.

E. Available Funds

HDS intends to award new grants and cooperative agreements resulting from this announcement during the third and fourth quarters of fiscal year 1991 and the first and second quarters of fiscal year 1992, subject to the availability of funding. The size of the actual awards will vary. Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term "budget period" refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term "project period" refers to the total time a project is approved for support, including any extensions.

HDS encourages applications seeking grant awards smaller than the allowable Federal maximum, or shorter in duration than the maximum project period, consistent with achieving the goals of the project.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon proof of satisfactory performance and the availability of funds from future appropriations.

F. Grantee Share of Project Costs

Other than the exceptions described below, HDS does not make grant awards covering the entire project cost. Federal funds will be provided to cover up to 75% of the total allowable project costs. Therefore, the non-Federal share must amount to at least 25% of the total (Federal plus non-Federal) project cost. This means that for every $3 in Federal funds received, up to the maximum amount allowable under each priority area, applicants must contribute at least $1.

For example, the cost breakout for a project costing $100,000 to implement would be:

Federal request	Non-federal share	Total cost
$75,000	$25,000	$100,000
75%	25%	100%

Exceptions: The first exception to the grantee cost sharing requirement relates to projects funded under the Native American Programs Act. Successful applicants funded under this Act must contribute $1 for every $4 in Federal grant funds received up to the maximum specified in the priority area description. This non-Federal grantee share amounts to at least 20% of the entire project cost. For example, the project cost breakout for a $100,000 project would be:

NATIVE AMERICAN PROGRAMS ACT

Federal request	Non-federal share	Total cost
$80,000	$20,000	$100,000
80%	20%	100%

Applicants requesting funds under the Native American Programs Act (priority areas 2.01, 2.02, 2.03 and 2.04) should note that, if necessary, they may also include in their applications a request to the Administration for Native Americans for a waiver of the non-Federal cost-sharing requirement for the project based on the criteria specified in 45 CFR 1336.50(b). Each request will be reviewed on a case-by-case basis under the applicable laws and regulations. However, Native American organizations and Tribes applying under other priority areas must meet the cost-sharing requirement for the priority area.

The second exception pertains to projects to be funded under priority area 1.07, Enhancing the Proficiency of Youth Service Workers and Runaway and Homeless Youth Service Providers, which requires a 10% non-Federal match or cost sharing.

The third exception relates to applications originating from American Samoa, Guam, the Virgin Islands, Palau, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under Section 501(d) of Public Law 95–134, which requires that the Department waive "any requirement for local matching funds under $200,000."

The final exception pertains to projects to be funded under the following priority areas, which also require no non-Federal match or cost sharing:

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.12 Cooperative Agreement to Provide an Active Focus on Permanency Planning
1.22 Assistance to States to Improve Adoption Data
1.27 National Resource Center for Crisis Nurseries and Respite Care Programs
1.30 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees
1.31 Field Initiated Research in Child Welfare
1.34 Research on Juvenile Sexual Offenders
1.35 Graduate Research Fellowships in Child Abuse and Neglect
1.36 Field Initiated Research for Child Abuse and Neglect

The applicant contribution must always be secured from non-Federal sources, except for American Indian Tribes and Native American organizations. The non-Federal share of total project costs may be in the form of grantee-incurred costs and/or third party in-kind contributions. HDS strongly encourages applicants to propose a grantee share that is more than 25% of total project costs. HDS also encourages applicants to meet their match requirement through a cash contribution, as opposed to an in-kind contribution. For further information on in-kind contributions, refer to the instructions for completing the SF 424A—Budget Information, in part III.

The required amount of non-Federal share to be met by the applicant is the amount indicated in the approved application. Grant recipients will be required to provide the agreed upon non-Federal share, even if this exceeds 25% (or other required portion) of the project costs. Therefore, an applicant should ensure any amount proposed as match prior to inclusion in its budget.

The non-Federal share must be met by a grantee during the life of the project. Otherwise, HDS will disallow any unmatched Federal funds.

G. Cooperation in Evaluation Efforts

Grantees funded under particular priority areas may be requested to cooperate in evaluative efforts funded by HDS. A statement is included in the priority area description of those priority areas involving common HDS-funded evaluators. The purpose of these evaluation activities is to learn from the combined experience of multiple projects funded under a particular priority area. To the degree possible, grantees under these priority areas will be expected to coordinate their data gathering efforts with one another, as appropriate, under the direction of the HDS-supported evaluator.

H. Closed Captioning for Audiovisual Efforts

Applicants are encouraged to include "closed captioning" in the development of any audiovisual products.

I. Public Comments

The Child Abuse and Neglect and Runaway and Homeless Youth Programs published their proposed priority areas for comment in the Federal Register on October 3, 1990 (55 FR 192, Page 40439). The final priorities selected for both programs included 'in this announcement reflect consideration of the comments and recommendations received from the public on the proposed priorities published in October. For additional information on the public comments relative to the Child Abuse and Neglect Program, see the discussion immediately preceding the priority area descriptions under the Administration for Children, Youth and Families. The discussion of the comments received relative to the proposed priority areas for the Runaway and Homeless Youth Program was published separately in the Federal Register on January 3, 1991.

J. Indexes of Priority Areas

To assist potential applicants in the use of this announcement, HDS has included two indexes. For easy reference, the first index lists the priority areas as they relate to specific subject/program areas. The second index lists all of the priority areas in numerical order.

FY 1991 Priority Area Subject Index

Abandoned Infants/Children, 1.28
Abuse, 1.15, 1.26A, 1.26B, 1.27, 1.28, 1.32, 1.33, 1.34, 1.35, 1.36, 3.01
Adoption, 1.18, 1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.25, 1.30
At-Risk Youth, 1.07, 1.08, 1.09, 1.35
Children, 1.01, 1.02, 1.03, 1.05, 1.11, 1.12, 1.18, 1.17, 1.18, 1.19, 1.20, 1.24, 1.25, 1.26A, 1.26B, 1.27, 1.28, 1.30, 1.32, 1.33, 1.35, 1.36, 3.01
Child Development, 1.01, 1.02, 1.03, 1.04, 1.05, 1.29
Child Health, 1.26A, 1.26B, 1.27
Child Protective Services, 1.26A, 1.26B, 1.32, 1.36
Child Welfare, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.23, 1.25, 1.26A, 1.26B, 1.27, 1.28, 1.30, 1.31, 1.32, 3.02
Clearinghouses/Resource Centers, 1.27, 1.28, 1.29, 1.33, 2.02
Coalitions, 3.01
Collaboration, 1.06, 1.07, 1.09, 1.13, 1.16, 1.19, 1.24, 1.25, 1.32, 3.04
Community, 1.11, 1.28, 2.02, 2.04, 3.01, 3.04
Correctional Facilities, 3.02
Crisis Intervention, 1.28
Crisis Nurseries, 1.26B, 1.27
Disabilities, 1.05, 1.16, 1.26A, 1.27
Dissemination, 1.30, 1.31, 1.34, 1.35, 1.36, 2.02, 2.04
Environmental Protection, 2.02
Evaluation, 1.04, 1.05, 1.06, 1.09, 1.11, 1.14, 1.15, 1.16, 1.17, 1.18, 1.20, 1.25, 1.27, 1.32, 1.33, 1.34, 2.04, 3.02
Family, 1.01, 1.02, 1.03, 1.04, 1.06, 1.11, 1.12, 1.15, 1.16, 1.17, 1.19, 1.20, 1.23, 1.24, 1.25, 1.27, 1.28, 1.29, 1.30, 1.32, 1.33, 3.01
Family Violence, 3.04
Foster Care, 1.15, 1.17, 1.18, 1.20, 1.28, 1.30
Head Start, 1.01, 1.02, 1.03, 1.04, 1.05
Home-Based Services, 1.08, 3.02
Homelessness, 1.07, 1.08, 1.09
Independent Living, 1.09, 1.30
Infants, 1.16, 1.25, 1.28, 1.29, 3.01, 3.02
International, 3.03
Intervention, 3.02
Males, 1.04
Marketing, 2.01
Mediating Structures, 3.01
Minorities, 1.17, 1.23, 1.25, 3.04
Native Americans, 1.13, 1.23, 2.01, 2.02, 2.03, 2.04, 3.04
Parent Involvement, 1.04
Pediatric AIDS, 1.26A, 1.26B, 1.27, 1.28
Permanency Planning, 1.12, 1.15, 1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.25, 1.30
Prenatal Substance Abuse, 1.15, 1.27, 3.02
Research, 1.01, 1.02, 1.03, 1.27, 1.30, 1.31, 1.34, 1.35, 1.36
Residential Care, 1.15, 1.28
Respite Care, 1.15, 1.16, 1.26A, 1.26B, 1.27, 1.28
Runaway and Homeless Youth, 1.07, 1.08, 1.09
Sexual Abuse, 1.33, 1.34, 1.36, 3.04
Special Needs Adoption, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.22, 1.23, 1.24, 1.25, 1.30
Substance Abuse, 1.13, 1.15, 1.25, 1.26A, 1.26B, 1.27, 1.28, 1.29, 1.36, 2.04, 3.01, 3.02
Technical Assistance, 1.27, 1.28, 1.33
Technology, 1.05, 1.06, 1.36
Temporary Child Care, 1.26A
Training, 1.07, 1.10, 1.19, 1.23, 1.24, 1.26A, 1.26B, 1.27, 1.28, 1.29, 1.32, 1.33, 3.04
Veterans, 2.03
Volunteers, 1.29, 3.01, 3.03, 3.04
Women, 3.02, 3.04
Youth, 1.07, 1.08, 1.09, 1.34

List of the FY 1991 Priority Areas

(1) Administation for Children, Youth and Families

Head Start Bureau

1.01 Head Start and University Partnerships
1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families
1.03 Support for Graduate Students: The Head Start Research Fellows Program
1.04 Increasing the Involvement of Males in Head Start
1.05 Demonstrating the Use of Technology for the Benefit of Children with Disabilities in Head Start
1.06 Head Start Satellite Training Technology

Family and Youth Services Bureau

1.07 Enhancing the Proficiency of Youth Service Workers and Runaway and Homeless Youth Service Providers
1.08 Home-Based Services—An Alternative to Out-of-Home Shelter
1.09 Transitional Living/Independent Living Collaboration

Children's Bureau

1.10 Interdisciplinary Training Programs for Child Welfare
1.11 Day Treatment Services
1.12 Cooperative Agreement to Provide an Active Focus on Permanency Planning
1.13 Improvement of Indian Child Welfare Programs through the Development of Agreements between Tribes and States
1.14 Reducing Staff Turnover Through Agency Redesign and Improved Personnel Practices
1.15 Specialized Family Foster Care for Drug and Alcohol Affected Infants
1.16 Respite Care Services for Families who Adopt Children With Special Needs
1.17 Increase Adoptive Placements of Minority Children
1.18 Adoptive Placement of Foster Care Children
1.19 Post-Legal Adoption Services
1.20 Permanency Planning—Efforts to Free Children for Adoption
1.21 [Reserved]
1.22 Assistance to States to Improve Adoption Data
1.23 Adoption Training and Minority Sensitivity
1.24 Post-Legal Adoption Consortia
1.25 Field Initiated Proposals to Improve Adoption Services to Children with Special Needs
1.26A Temporary Child Care for Children with Disabilities and Chronically Ill Children
1.26B Crisis Nurseries
1.27 National Resource Center for Crisis Nurseries and Respite Care Programs
1.28 National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families
1.29 National Resource Center for Family Support Programs
1.30 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees

1.31 Field Initiated Research in Child Welfare

National Center on Child Abuse and Neglect

1.32 Collaborative Arrangements Between State Child Welfare Agencies and State Title IV-A Agencies to Train Job Opportunity and Basic Skills (JOBS) Participants to Work as Child Protective Services Paraprofessionals

1.33 National Resource Centers on Child Abuse and Neglect

1.34 Research on Juvenile Sexual Offenders

1.35 Graduate Research Fellowships in Child Abuse and Neglect

1.36 Field Initiated Research for Child Abuse and Neglect

(2) Administration for Native Americans

2.01 Stabilizing Markets for Indian Manufacturing Companies

2.02 Environmental Protection

2.03 Developing a Model for Native American Veterans to Access Services

2.04 Developing an Holistic Native American Community Model to Combat Substance Abuse

(3) Office of Policy, Planning and Legislation

3.01 Community Coalitions to Plan for Change

3.02 Correctional Facilities as an Intervention Point with Drug-Addicted Pregnant Women

3.03 Transfer of International Innovations

3.04 Public Information/Community Awareness Activities for the Prevention of Family Violence

K. CDP Priority Areas

1. Administration for Children, Youth and Families

Head Start Bureau

1.01 Head Start and University Partnerships

Eligible Applicants: Universities and four-year colleges.

Purpose: To develop new knowledge that will enhance the effectiveness of Head Start and other early childhood programs in serving children and families.

Background Information: As this Nation's foremost child and family development program, one of Head Start's mandates is the support of new research which will enhance Head Start's effectiveness and then informing other early childhood development programs of the findings of the research. One of Head Start's most significant features is its enormous variability. Across programs it varies in the methods by which services are delivered and the populations that are served. Within programs the children and families vary in their levels of functioning, ethnicity, and other variables which interact with program interventions. With the increase in substance abuse and AIDS, Head Start programs are now faced with increasing variability in the types of problems and disabilities with which children enter the program. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences in this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

HDS is interested in funding projects which actively engage universities in research and/or demonstration efforts directed to the issues described below which will be conducted with Head Start populations and which use Head Start programs as study sites.

Research is needed on the particular learning styles, social development, and developmental trajectories of children and on indicators of family functioning as they are manifested in specific' cultural and/or linguistic groups, among children with specific' disabilities, and among families at different levels of functioning. Research is also needed on appropriate intervention strategies for these particular groups.

One of the major obstacles to conducting effective research in Head Start is the lack of suitable instruments for measuring child and family functioning for different subpopulations. There is a need to identify and adapt promising instruments that have been used in small studies on non-Head Start populations and/or on older children, or to develop new ones where no such instruments exist.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Propose one or more research questions which will contribute to the knowledge base targeted under this priority area.
- Place the proposed project in the context of previous research or existing knowledge. A strong and convincing rationale for the need for the proposed project should be supported by specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the applicant.
- Describe the research design and any proposed statistical analyses with a discussion of the proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures.
- Provide evidence of the applicant's ability to conduct the research or evaluation component of the project.
- Identify the Head Start programs with which the applicant institution would collaborate in the conduct of he research.
- Describe the population served by these programs including size, ethnicity, income levels, percent of single parent families, welfare status and other relevant information.
- Provide assurances of the local Head Start programs' willingness to participate in and to comply with all aspects of the research design (e.g., random assignment of children, if appropriate).
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day meetings in Washington, DC each year.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded.

1.02 Correlates of Positive Outcomes for Different Types of Head Start Children and Families

Eligible Applicants: Universities and four-year colleges.

Purpose: To develop new knowledge concerning the relationship of program, family and community variables which predict positive outcomes for different types of Head Start children and families during Head Start and in future years.

Background Information: Although the short-term effects of Head Start on the children served have been well documented, the literature suggests that there is a decline in these effects by the end of the third grade. Although the number of longitudinal studies of Head Start effects is small and these studies contain methodological weaknesses, the findings are compatible with those of a larger body of literature on the "fourth grade slump" for low-income children. These studies shared a common methodology of comparing children who attended Head Start with low-income children who did not and treated Head Start as a monolithic program and Head Start children and families as a homogeneous population. One of Head Start's significant features, however, is its enormous variability. It varies across programs in the methods by which services are delivered, the populations that are served and the conditions existing within the community. Within programs, children and families vary in their level of functioning, ethnicity and other variables which interact with program interventions. None of these factors were given consideration in earlier Head Start studies as variables which might foster or attenuate positive effects.

Head Start is embarking on a new generation of research which examines such questions as "What works best for children and families with different characteristics under what conditions?" and "What program, family and community variables foster positive effects in Head Start and in future years?" In continuing this trend, we know that many Head Start families and children continue to thrive long after the Head Start experience. What are the relationships between program experiences, family characteristics, and community variables that set them apart from those who do not?

HDS is interested in funding longitudinal, ecological studies in which investigators will examine these issues with specific Head Start subpopulations.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- State the hypotheses which would be investigated in the study.
- Present the major study variables, along with a strong rationale for the selection of the variables, for the specific population under consideration.
- Present the previous research or existing knowledge on which the selection of the variables is based.
- Describe the study design including research methods; sample selection; proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures; and proposed analyses.
- Provide evidence of the applicant's ability to conduct the proposed research.
- Identify the Head Start programs in which the applicant would conduct the research and provide assurance of the programs' willingness to participate and to comply with all aspects of the research design.
- Describe the characteristics of the Head Start sample that would be involved in the study including size, ethnicity, income levels, family composition, welfare status and other relevant information.
- Provide assurances that the principal investigator would be willing to participate in a consortium with the investigators of other projects funded under this priority area for the purposes of coordinating and integrating the studies.
- Provide assurances that the principal investigator or another appropriate staff member would attend two 2–3 day meetings in Washington, DC each year to meet with investigators of other projects funded under this priority area.

Project Duration: The length of this project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $500,000 for a 5-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded.

1.03 Support for Graduate Students: The Head Start Research Fellows Program

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer the grant on behalf of the student, the institution must be fully accredited by one of the regional accrediting commissions recognized by the Department of Education and the Council on Post-Secondary Accreditation.

Purpose: To provide support for graduate students to conduct research with Head Start populations which will contribute to the knowledge base for improving services for Head Start children and families.

Background Information: A large body of literature exists on the early years of the Head Start program. A significant number of these studies consist of dissertations and other research conducted by graduate students. Most of this literature consists of studies on the effectiveness of the Head Start program comparing children who were enrolled in Head Start with low-income children who did not receive Head Start services. These studies generally considered Head Start to be a monolithic program and Head Start children and families were treated as a homogeneous population.

A new generation of Head Start research is needed that recognizes the great diversity among Head Start programs and the populations which it serves. Although Head Start delivers a core set of services which are defined by the Head Start Program Performance Standards, there is wide variability across programs in the methods by which these services are delivered. Within programs children and families vary in their levels of functioning, ethnicity and other variables which interact with program interventions. The Head Start population offers a unique opportunity for research which will contribute to understanding the differences of this diverse population and how to effectively tailor services and interventions for children and families with different characteristics.

Research is needed on the particular learning styles, the cognitive and social development, and the developmental trajectories of children and on indicators of family functioning as they are manifested in specific cultural and/or linguistic groups, children with specific disabilities, and families at different levels of functioning. In addition, suitable measures of child, adult and family functioning must be identified and adapted for specific subgroups of this diverse population.

HDS is interested in supporting doctoral-level students, through their sponsoring institutions, who are now conducting or wish to conduct research on the Head Start population, and which will contribute to the literature.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Provide evidence of the candidate's ability to conduct the research including education, employment experiences, publications, and information on current academic status. A letter of support from a sponsoring faculty member must also be provided.
- Propose one or more research questions which will contribute to the body of knowledge about Head Start children, families and programs.
- Place the proposed project in the context of previous research or existing knowledge, with a strong and convincing rationale for the need for the proposed project.
- Present specific results from any relevant planning studies, pilot studies, or other preparatory work conducted by the candidate.
- Describe the research design that would be employed and any proposed statistical analyses as well as the proposed measurement instruments, surveys, interviews, observation procedures or other data collection procedures that would be used.
- Identify the Head Start program(s) in which the research would be conducted and describe the characteristics of the Head Start sample including size, ethnicity, income levels, family composition, welfare status and other relevant variables.
- Provide assurances of the local Head Start program's participation in

the plan for the study and its agreement to participate in the study.

• Provide assurances that the grant would be used to pay a stipend to the candidate; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research including any necessary travel.

• Consider, because of the small amount of these awards, waiving any overhead or indirect costs.

• Provide assurances that the candidate would attend one 2–3 day meeting of the Head Start Research Fellows in Washington, DC each project year.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $10,000 for the first 12-month budget period or a maximum of $20,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded. No individual university will be funded for more than one candidate.

1.04 Increasing the Involvement of Males in Head Start

Eligible Applicants: Head Start grantees.

Purpose: To demonstrate approaches for meaningfully involving male family members in the Head Start program and for increasing their participation in the program. The males to be targeted are those who have a significant nurturing role for the child in Head Start, including fathers, grandfathers, uncles or other men in the household.

Background Information: Head Start programs consistently report a lack of male parent involvement in their programs. Very little is known about successful approaches for increasing the involvement of males in Head Start, and what effects their involvement has on their children. A basic premise in Head Start is that parental involvement in the educational process benefits young children. However, since the inception of Head Start in 1965, family members participating in the programs' activities have predominantly been mothers or other female relatives of the children. More information is needed about:

• The incidence of male participation in Head Start programs;

• The successful strategies used to involve males in the program;

• The approaches for maintaining males' interest in the program; and

• What impact male involvement has on children, on other family members, and on the Head Start program.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide evidence of the need for meaningful male involvement in its Head Start program.

• Describe how the proposed demonstration project would provide information to address the questions regarding the participation of males in Head Start that are raised in the preceding section under this priority area.

• Describe the new roles that would be created, or expanded, for males in the Head Start program, the specific components in which these activities or responsibilities would be located, and the targeted number of males to be involved and how they would be recruited, trained and supervised.

• Describe how the demonstration project would be evaluated and by whom, the measures that would be employed to determine its effectiveness and the results of increased male participation.

• Provide assurances that the demonstration project would participate with other projects funded under this priority area in an external evaluation supported and managed by the Head Start Bureau in Washington, DC.

• Provide assurances that the director of the project or another appropriate staff member would attend an annual 2–3 day meeting in Washington, DC to meet with staff from other projects funded under this priority area.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $225,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $225,000 is $75,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that up to five projects will be funded.

1.05 Demonstrating the Use of Technology for the Benefit of Children With Disabilities in Head Start

Eligible Applicants: Head Start grantees in collaboration with other public and private agencies and organizations which have expertise and experience in using current technologies and techniques to help young children with disabilities.

Purpose: To demonstrate the use of technology to (1) meet the needs of children with disabilities in Head Start, Parent Child Centers and Head Start programs serving migrants and Indians; and (2) meet the needs of Head Start staff for training in "mainstreaming" children with disabilities.

Background Information: The development of technology has expanded the possibilities for more effectively addressing the needs of children with disabilities and for "mainstreaming" them in a Head Start setting. For example, the use of computers with developmentally appropriate software has proven effective in fostering the social integration and the development of communication and friendships among very small children. To date, however, Head Start has not used computers and other advanced technology with children with disabilities except in a few instances, and usually in special cooperative projects with other organizations.

Head Start currently serves more than 68,000 children with disabilities and their families each year. Many of these children have severe disabling conditions which require training for teachers and other program staff. It is believed that training on the state-of-the-art of computers and other technologies for Head Start staff can enhance their ability to integrate children with disabilities into the Head Start program and to provide services to meet their special needs. The health, business and military sectors have already used modern technology, including interactive videos, for the provision of training, finding it capable of being both individualized and cost-effective after initial developmental costs. This priority area seeks to support "cutting edge" demonstrations of relevant new technologies in serving children with disabilities and in providing training to early childhood staff to more effectively serve these children.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Indicate familiarity with current best practices in the field of early childhood/special education and in the use of technologies in "mainstreaming" disabled children in these settings and in staff training.

• Provide evidence that the application has been jointly developed with one or more partners from the private and/or public sector which has appropriate experience in using assistive technology to provide staff training and to work with children with disabilities and their parents. The commitment of resources from one or more of these partners to the project must also be demonstrated.

• Describe, as applicable, the training that would be provided to the Head Start staff who would implement the use of assistive technology with children whose Individual Education Plans (IEPs) call for the use of such technology. Additionally, describe, as applicable, the training that would be provided staff on meeting the special needs of children with disabilities, especially speech and language impairments, in "mainstreamed" community-based settings.

• Describe the uses to be made of these technologies in working with children with disabilities within the Head Start program.

• Describe the evaluation that would be conducted of the demonstration effort in order to assess the effectiveness of the training provided to staff and the services provided to children, including the specific techniques and measures that would be used.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of the Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that up to three projects will be funded.

1.06 Head Start Satellite Training Technology

Eligible Applicants: Public television stations in partnership with the early childhood education community.

Purpose: To demonstrate the effectiveness of training clusters of Head Start classroom teaching teams through interactive education via satellite technology in selected remote geographical areas (remote rural areas, instream migrants, Indian reservations, and Alaskan villages) where Head Start centers are sufficiently scattered or small in size to make conventional training strategies inappropriate and costly.

Background Information: As the largest comprehensive child development program funded by the Federal government, Head Start provides ongoing training and technical assistance to staff to improve their skills and their understanding of their roles and responsibilities within the Head Start program.

Each Head Start classroom has a trained teacher, a classroom aide, and to the extent possible, a volunteer. They work together as a team in meeting the needs of each child. These classroom teams are located in over 26,000 classrooms nationwide in over 1,900 community-based Head Start programs.

Since some of these programs are on Indian reservations, in the Territories, in the migrant stream, and in isolated rural areas, the need for training strategies which will assist in providing comprehensive classroom training support is crucial. The use of interactive education via satellite technology is one such strategy which Head Start is interested in exploring.

Applicants may wish to consider the educational content in the Child Development Associate Competency Goals and Functional Areas and the Head Start "Guide for the Head Start Classroom Team" in developing their applications.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the application should:

• Present a strong and convincing rationale for the need for the proposed project and its relevance to the training needs of Head Start classroom teaching teams in specific geographically remote areas.

• Include information on relevant experiences with training projects in geographically remote areas using interactive education via satellite technology. The discussion should cover the purposes and outcomes of these projects and how they are similar to or different from what is proposed for Head Start. Of particular interest is information on the developmental and operating costs of similar projects and how those costs compare with this proposed effort.

• Identify geographically remote sites where clusters of Head Start grantees would participate in this demonstration. Describe the specific clusters of programs which would be trained together, including the number of clusters and numbers of classroom teams which would be trained, and specify over what period of time they would be trained during the project.

• Describe the partnerships which would be established with the early childhood community and the activities in which they would participate.

• Identify by name the proposed members of an advisory board for the project which would include experts from the fields of early childhood education, early childhood special education, health education, multicultural education, parent involvement, adult literacy, and substance abuse education specialists, including representation from the proposed sites. Describe the role of the advisory board in developing the training program and curriculum and in assisting in monitoring the project. Include a schedule of meetings for the advisory board.

• Describe the relevant and appropriate interactive educational technologies via satellite that would be used in this project.

• Describe how the teaching curriculum would be developed, including the proposed content, how the demonstration sites would be involved and how the project would assure that the curriculum would fully meet the Head Start educational standards. The content of the training that would be provided should focus on helping Head Start staff provide high quality, developmentally appropriate educational services while also assisting them to develop their skills in working with parents to support their roles as the primary educators of their children. The training curriculum should cover the principles and practices of child growth and development from birth to age 5 so that it meets the training needs of Head Start programs which serve infants and toddlers as well as those which serve preschoolers.

• Describe arrangements to provide college credit for participants.

• Describe the teaching strategies which would be used to implement the curriculum and how they would be reflective of the populations to be trained. For example, if the use of model classrooms is proposed, provide a description of how the model classrooms would be developed, located, and staffed so that they are relevant to the culture and geographic location of the clusters to be trained. Describe the follow-up activities/strategies which would be undertaken to assure that the training results are sustained.

• Provide a timetable with milestones for developing and implementing the project.

• Provide for the third party independent evaluation of the project that would begin simultaneously with the award of the project. Describe the proposed evaluation design, including any statistical analyses that would be

employed to measure the effectiveness of the technologies used with specific groups to be trained.

• Describe how costs for the development and implementation of the project would be met. Describe hardware and other resources which are already available, contributions which can be expected from local public TV stations and any other resources which can be tapped. Describe how the use of equipment and facilities previously paid for with Federal funds could reduce costs.

• Provide letters which specify the participation or collaboration with or contribution to the project, as appropriate, from other public television stations, proposed Head Start grantees in remote geographical areas which are interested in cluster training, any other partners proposed for participation in the project and contributors of resources or funds to the project.

• Provide assurances that the principal investigator, third party evaluator, and other appropriate staff would attend quarterly meetings in Washington, DC each year of the project.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $813,300 for the first 12-month budget period or a maximum of $2,439,900 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $2,439,900 is $813,300 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

Family and Youth Services Bureau

1.07 Enhancing the Proficiency of Youth Survival Workers and Runaway and Homeless Youth Service Providers

Eligible Applicants: Statewide and regional nonprofit organizations, and combinations of such organizations, with demonstrated experience in providing services to runaway and homeless youth service providers.

Purpose: To improve the capacity of public and private agencies to provide services to runaway and homeless youth by assisting such agencies establish and operate runaway and homeless youth centers and by enhancing the proficiency of professional youth workers. Applications to provide such assistance may cover one or more Federal Regions or may be restricted to a smaller geographic area (e.g., one or more States).

Background Information: It is estimated that approximately one million young Americans under the age of 18 run away or leave home each year and stay away at least one night. A recent study by the General Accounting Office estimates that approximately 20 percent of these youth may be truly homeless; that is, they have no safe shelter or parent or guardian to return to even if they wished.

The dangers associated with living in an unprotected manner, away from home and parents or guardians, are considerable. While on the streets, many of these youth become involved in, or are at risk of becoming involved in, drug and alcohol abuse as users or as distributors or both. In other cases, drug or alcohol abuse precipitates runaway behavior. Evidence suggests a steady increase in drug use among this population and increases in accompanying health and related problems.

While there has been a decrease in the use of marijuana among youth aged 18–25 over the past five years, there has been a simultaneous and marked increase in the use of more dangerous and addictive drugs such as cocaine and crack. San Francisco, Washington, DC, New York City and many other cities report a crack cocaine epidemic. In San Francisco, admissions to Community Substance Abuse Services tripled from 1985 to 1987 and increased 79 percent in 1988. An increase in the abuse of alcohol among younger adolescents has also occurred. This is of particular concern because alcohol is often a "gateway" drug to more serious substance abuse.

While on the streets, these youth are also at risk of sexual exploitation and other violence (e.g., assault and robbery) that has become increasingly common in both urban and rural settings. Additionally, almost half of these youth have severe emotional and self-image problems, including depression, with the accompanying risk of suicide. Approximately one-third have had serious problems with the school system or have dropped out of school completely. Approximately one-fifth are in trouble with the justice system.

Finally, these youth, as well as other older homeless youth through the age of 21, often lack the knowledge, skills, and values required to support themselves as independent, mature adults outside the welfare system.

Over the years, many State and local agencies and programs have been established to provide needed short- and long-term services to these youth. These agencies are both public and private, profit-making and nonprofit. Some focus on a single concern, such as drug abuse or dropout prevention, while others are multi- or even all-purpose agencies, with specific components that deal with the physical health, mental health, family reunification and functioning, youth employment, education, and transitional living of these young people.

The professional staff working in these programs have been drawn from many educational and experiential backgrounds, and have gained additional competencies through their experience working with at-risk youth. Across communities, States, and Regions, many staff are currently working in various programs with superlative skills in the different areas that, taken together, would constitute a comprehensive, effective youth service program.

In addition, the Federal government, universities, local programs, and others have conducted extensive research and development efforts, including curriculum and model development, in areas of direct concern to youth service staff and to youth service programs across the country.

Notwithstanding the significant numbers of effective agencies and competent professional staff dedicated to assisting runaway and homeless youth across the country, services in some areas are inadequate or non-existent. In other cases, existing programs lack staff members with the full range of skills required to carry out the responsibilities with which the individual programs are charged. Also, many of the already-developed and tested curricula and models are little known or understood, even among the programs and staff where they would be of greatest use. Further, as new issues and problems emerge (for example, the glamorization of the youth drug culture by the news and entertainment media, and the placement of troublesome youth in private mental institutions to remove them from the streets), even experienced staff need to enhance their existing skills and to develop new ones.

To address these issues, section 314 of the Runaway and Homeless Youth Act authorizes grants to assist public and private entities in establishing and operating runaway and homeless youth centers. In addition, section 3511 of the Anti-Drug Abuse Act of 1988 authorizes grants to provide information and training to individuals providing services to runaway and homeless youth regarding issues related to the illicit use of drugs by such youth.

To effectively provide such assistance, a systematic integration and sharing of the research findings, curricula, and models that now exist in isolated components is needed. A system which provides for the transmittal of knowledge and skills from the most highly skilled youth service professionals to less experienced staff in their own and other programs also needs to be established and maintained. Finally, a system for recognizing new and emerging youth issues, and for providing intensive, skill-based training in these areas to experienced workers, needs to be developed.

Projects in this priority area are intended to stimulate the following types of activities:

(1) Determining and describing the knowledge, skills, and experience required by a youth development professional in the geographic area(s) to be served by the grantee;

(2) Analyzing, integrating, and sharing the research findings, curricula, and models of greatest use to the youth service staff and programs in the grantee area(s); and

(3) Promoting a network for the collaborative exchange of professional knowledge, skills, and experience among the youth service staff and programs in the grantee area(s).

Minimum Requirements for Project Design: To successfully compete under this priority area, the application should:

• Identify the exact geographic area(s) to be served, and the projected number of agencies and individuals that would receive services.

• Justify the need for the project in the geographic area(s) to be served.

• Indicate an understanding of the incidence and conditions of runaway and homeless youth in the geographic area(s) to be served, including the special problems of drug abuse and the lack of skills required for independent adult living.

• Indicate an understanding of the capacities necessary to establish and operate runaway and homeless youth agencies and of the knowledge, skills, and experience required by individual youth service professionals at both the administrative and direct service levels, and describe the mechanisms that would be used to determine the most pressing needs in the area(s) to be served.

• Indicate an understanding of relevant research and development findings and products and a knowledge of available curricula, models, and experts.

• Describe the approaches that would be employed to provide for the dissemination of appropriate information to agencies establishing and operating runaway and homeless youth centers and to promote the transmittal of knowledge and skills from highly skilled youth service providers to less experienced staff in their own and in other programs in the area(s) to be served. (The approaches should include timelines, levels of effort, and a plan for evaluating the effectiveness of the project.)

• Describe how the additional resources necessary to carry out this project would be obtained and integrated into the work of the project.

• Describe the staff, facilities, equipment, and other supports that are necessary for and would be available to the project.

• Provide assurances that one key person from the project would attend an annual 2–3 day meeting in Washington, DC.

• Describe the administrative and organizational structures of the project and the linkages that have been or would be established with other relevant projects. (Charts summarizing these structures and linkages, and written agreements defining them, should be included in the appendices.)

• Outline a plan of interaction with HDS for implementation under a Cooperative Agreement. (A Cooperative Agreement refers to Federal financial assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are identified and agreed upon prior to the award.)

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 per Federal Region for the first 12-month budget period or a maximum of $375,000 per Federal Region for a 3-year project period. (For example, a project covering two Regions may receive up to $250,000 for the first 12-month budget period. Conversely, a project serving less than a Federal Region (e.g., a Statewide system) would receive less than $125,000 for the first 12-month budget period.)

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $41,667 for a 3-year project period. This constitutes 10 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that ten projects will be funded.

1.08 Home-Based Services—An Alternative to Out-of-Home Shelter

Eligible Applicants: State and local, public and private runaway youth service providers.

Purpose: To develop, test and document models that address and prevent runaway behavior among adolescents through the provision of home-based support services.

Background Information: HDS supported two projects in FY 1989 to address the needs of dysfunctional families with adolescents who have received shelter and other runaway youth program services. The purpose of these projects is to develop model programs that would enable the family to remain as the primary caregiver and still protect the interests and well-being of the at-risk youth. Preliminary results from these projects, as well as concerns expressed by other runaway and homeless youth service providers, underscore the need for intensive and sustained family-based support services to meet the needs of many runaway youth and their families.

In cases when it is safe to return the runaway youth directly back home, the provision of immediate and intensive in-home counseling and casework services may be required to effectively intervene and to address the problems which caused the runaway episode. Home-based services, as an alternative to use of limited shelter spaces, can provide a number of advantages.

• For dysfunctional families, the services are brought directly to the family. Dysfunctional families often are not able to take advantage of out-of-home services. They are unable, because of the dysfunction, to arrange for transportation, to make and keep appointments or to engage in other activities that would be beneficial to them.

• Home-based services have the advantage of keeping the family together, preserving the parental role as the primary caregiver responsible for the well-being and development of the child. Home-based services make it possible for the parent to avoid experiencing a sudden or gradual loss of involvement with and control over the child to institutions such as shelters and the child welfare system.

• Immediate home-based family intervention and/or mediation approaches attempt to provide families with the skills needed to maintain positive communication and to build constructive relationships over the long-run.

BEST COPY AVAILABLE

Evidence also suggests that home-based services can be effective in preventing runaway behavior.

There is a need, however, to further develop, demonstrate and document innovative home-based intervention models to prevent initial runaway behavior as well as to address runaway episodes once they occur. Model projects are needed which explore methods for identifying which youth and families would benefit more from home-based services than from traditional shelter services. Similarly, information is needed on the effectiveness of providing home-based services and whether or not crisis intervention, mediation, parenting education, counseling and family support activities are useful in preventing runaway behavior and in addressing the needs of youth and families in which a runaway episode has occurred.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe the innovative model to be implemented, including the goals and objectives of the project.
- Describe how youth and families would be identified and determined appropriate to receive home-based services, with particular attention to those variables which would distinguish between youth and families who should receive home-based services and those youth who should receive out-of-home shelter or placement.
- Describe the services that are needed and would be provided to the youth and families, both directly and through referrals to other service providers in the community. Indicate how the services would reduce family conflict and the out-of-home sheltering or placement of youth.
- Describe any gaps in terms of services available in the community and how these service gaps would be addressed.
- Describe the products that would result from this effort, including curricula, handbooks, or protocols used to identify at-risk families and to plan for and to deliver services.
- Describe how the implementation of the project would be documented so as to be useful to other organizations interested in utilizing the products and methodologies developed. Such documentation should include information both on the effectiveness of the project and on the issues, problems and barriers to implementation that were encountered as well as the methods for resolving or dealing with these problems and barriers.
- Describe how the innovative methods that are developed would be integrated and continued by ongoing youth and family service agencies once Federal funding for the project has ended.
- Provide assurances that one key person from the project would attend an annual meeting in Washington, DC, if determined necessary and appropriate by the Federal project officer.
- It is anticipated that a third-party evaluation will be funded by HDS to evaluate the projects funded under this priority area. Provide assurances of cooperation with such an evaluation effort, including the maintenance of records required by the evaluator that would allow for a comparison of outcomes between youth and families served through home-based services and those served through shelter-based programs.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that up to four projects will be funded.

1.09 Transitional Living/Independent Living Collaboration

Eligible Applicants: State and local, public, and private nonprofit agencies with demonstrated experience in serving homeless youth and/or in providing transitional or independent living services to youth.

Purpose: To develop, test and evaluate models of collaboration between transitional living and independent living programs at the State and local levels.

Background Information: The Transitional Living Program for Homeless Youth is designed to prepare older homeless youth (ages 16–21) to lead self-sufficient lives and to prevent long-term dependency on social services. The services provided by these projects include outreach, shelter, counseling, life skills and interpersonal skills training, and appropriate referrals to social and educational services and vocational training. Such shelter and services can be provided for a period not to exceed 540 days. A major objective of the Transitional Living projects is to integrate and coordinate services for homeless youth at the local level.

The Independent Living Initiatives program, which is authorized under title IV–E of the Social Security Act, is designed to assist youth ages 16 and older, currently or formerly in foster care, to make the transition into independent living. Funds are provided to States for independent living services, including life skills building, attainment of a high school diploma or its equivalent, vocational training, career planning, location of housing, and counseling. Payment for room and board, however, is not allowable under the Independent Living Initiatives program.

Many homeless youth who are eligible to receive services under the Transitional Living Program are also eligible for services under the Independent Living Initiatives program since States may use Federal funds to provide Independent Living services to former foster children up to the age of 21. Given the potential crossover of eligible populations and the complementary services available under the respective programs, model collaborative efforts are needed for dissemination and potential replication.

Coordination of the outreach, housing and other services available under these programs could produce a cost-effective and comprehensive program model for homeless youth service providers nationwide.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Provide evidence of a partnership between an agency(ies) providing transitional living services to homeless youth and an agency(ies) providing independent living services to youth currently or formerly in foster care. Letters of commitment to participate in the collaboration must be provided in the application and must clearly specify the role of each agency in the proposed project.
- Clearly identify the types of services that would be integrated and the methods that would be employed to accomplish such collaboration. In particular, discuss how basic skills training, education, employment services, housing and other services would be provided.
- Identify anticipated changes in policies or practices which would be accomplished as a result of this collaboration.
- Describe how the collaboration would be continued once Federal support has ended.
- Describe the effect the project would have on independent living efforts locally or statewide.
- Provide for a third party evaluation of the impact and effectiveness of the project.
- Describe how project findings would be disseminated in a manner which would be useful to others in the field.
- Discuss the use of resources, including anticipated cost savings resulting from collaboration, and the service areas to which these savings would be directed.
- Provide assurances that at least one key person from the project would attend a 2–3 day grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months, with an initial budget period of 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the entire 24-month project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to Be Funded: It is anticipated that up to four projects will be funded.

Children's Bureau

1.10 Interdisciplinary Training Programs for Child Welfare

Eligible Applicants: Accredited institutions of higher education.

Purpose: To develop and/or strengthen the training of public child welfare workers, their supervisors and administrators through both the provision of critical information and the development of skills from a range of other disciplines which currently impact on public child welfare agencies and through the provision of specific competency based child welfare training. Trainees will be enrolled as bachelor or graduate level students at accredited institutions of higher education.

Background Information: Because of the increasingly complex nature of the problems affecting vulnerable children and their families, the public child welfare services delivery system is hard-pressed to provide the comprehensive social, medical, legal, psychological, educational and/or training services that are required to address the diverse needs of its service populations. The field of child welfare increasingly requires the coordination of services and the development and implementation of multi-disciplinary service approaches from a variety of academic and professional disciplines. In addition to social work, these include public administration and management; law, criminal justice and law enforcement; public health, medicine, pediatrics and nursing; psychology, sociology, child development and mental health; and education.

While the need for specialized training for child welfare workers in the public sector has been recognized, few universities have developed programs with a sufficient emphasis in the related disciplines or with the professional training expertise required to improve services to vulnerable children and their families. Social work education has tended to emphasize coursework for those students who wish to enter the mental health field or private practice. In contrast, this priority area will specifically focus on providing child welfare training for bachelor or graduate students who intend to become public child welfare workers or who wish to qualify themselves for advancement in public child welfare agencies.

Federal matching funds for university-based training of public child welfare personnel have been available for some time under sections 474(a)(3) (A) and (B) of the Social Security Act; 45 CFR 1356.60 (b) and (c); and 45 CFR 235.63–235.66(a). States with plans approved under title IV–E are entitled to Federal matching funds at the level of 75 percent reimbursement for the training of personnel employed or preparing for employment by the State agency or by the local agency administering the State plan. This includes both short- and long-term training at educational institutions, through State grants to the institutions or by direct financial assistance to students enrolled in such institutions. However, the use of such training opportunities has been limited by the day-to-day demands placed on the State child welfare systems, and also because universities and State child welfare agencies have not collaborated sufficiently with one another to develop training curricula which is practical and competency based and which provides the skills needed to work at all levels of the public child welfare system.

Competency based child welfare training is training to learn or obtain the specific knowledge and skills necessary to provide child welfare services in a public social services agency. The focus of competency based training is on the practical realities which public child welfare workers confront in their day-to-day work, rather than on theoretical social work education models.

Funding from this priority area is expected to be used to develop competency based child welfare curricula, to deliver training and to evaluate the results of the training. It is expected that title IV–E funds will be the primary source of funding for traineeships. However, funds from this grant can be used to provide traineeships in unusual situations to a limited number of students for whom title IV–E training funds have not been made available. Those who receive traineeships pursuant to this announcement will be expected to accept employment in public child welfare.

Minimum Requirements For Project Design: In order to compete successfully under this priority area, the application should:

- Describe the relationship between the university and the public child welfare agency and how this relationship will be strengthened throughout the project, including the establishment of an ongoing project advisory committee composed of both university and public agency personnel.
- Identify and describe the proposed administrative and organizational aspects of the interdisciplinary training program, the specific academic departments, institutions and/or community agencies that would be involved, and the formal agreements and commitments that would be required from each participant regarding level of participation and support for the establishment of a child welfare, interdisciplinary training program.
- Describe the preliminary planning and coordination activities to be completed before implementation of the program and provide specific timelines for their completion. Grantees may take up to one year to plan and develop curricula; but in all cases, training will begin no later than twelve months following award notification.
- Describe the commitment of the public agency to support participation in the program, to hire students trained under the program, and to provide field placements for trainees.
- Describe the proposed curriculum which will include, at a minimum, child welfare courses, which are competency based and non-theoretical, in social work and related disciplines such as law, psychology, sociology, health, education, child development, etc. The selection of courses will be made after consultation with the public child welfare agency and/or project advisory committee.
- Describe who the students will be (bachelor and/or graduate level); how

many are expected to be trained over the life of the project; the criteria for selection of students; how the students will be recruited; and specific strategies which will be used to recruit minority students.

• Include a plan for evaluation which, at a minimum, includes a follow-up of students to determine their subsequent employment in public child welfare agencies and the relevancy of the various aspects of the program to meet the needs of the job assignments.

• Describe any plans for offering traineeships with these funds and the criteria to be used in awarding traineeships.

• Include in the project budget funds for at least one key project person from the university and one key person from the public child welfare agency to jointly attend a one to two day orientation meeting in Washington, DC shortly after the award of the grant and a subsequent two to three day grantee meeting in Washington, DC.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 12 month budget period or a maximum of $750,000 for a five year project period. In addition, because the proposed projects are training grants, indirect cost rates for these grants shall not exceed 8 percent.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for a 5-year project period. This constitutes 25 percent of the total budget. Funds from this grant cannot be used to match title IV–E training funds.

Anticipated Number of Projects: It is anticipated that four or five projects will be funded.

1.11 Day Treatment Services

Eligible Applicants: Public or private child welfare agencies.

Purpose: To develop model programs for the provision of day treatment for children who would otherwise be removed from their homes and placed in residential care; or to facilitate the reunification of children who can be returned from residential care earlier with the support of day treatment services.

Background Information: The number of children entering foster care is increasing rapidly and the problems of foster children are dramatically more complex than in the past. Many of these children need highly specialized services that are generally found in residential care treatment programs. These programs provide services for children who are emotionally disturbed, developmentally disabled or delinquent. However, many such children would not need to leave their homes if these services were available in the community. Day treatment programs may be an effective means of providing these services. Such programs are appropriate when the child's home is sufficiently intact and safe for the child to spend limited hours and nights and the child can be transported daily.

Children enter these programs without the shock or stigma of removal from their homes. Frequent staff contacts allow parents to be actively involved and costs are significantly lower than for residential care. Day treatment agencies provide the advantages of residential care, social services and child care. Other program components, such as regular and special education, vocational and mental health services and some aspects of recreation, may be obtained from existing services in the community. Comprehensive models of day treatment programs that address these needs and issues are solicited.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Describe the model and program that would be developed, including the number, age and types of children to be served, the staffing pattern, the number of hours of operation per day, and the plan for involving the child's family.

• Describe the child-specific recruitment and admission procedures and assessment tools that would be utilized for the child and family.

• Indicate the type of training that would be provided for staff.

• Indicate which aspects of the program would be provided by agency staff and which would be obtained from other organizations, describe how those services would be coordinated, and furnish letters of commitment from the other organizations to be involved.

• Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design, including a control group, that would be implemented. The design must include indicators related to family stability, developmental outcomes for the children, family outcomes, and the cost-effectiveness of the program. The evaluation must begin no later than the 18th month of the project and follow-up must continue at least six months beyond delivery of services funded through the project.

• Describe how information about the findings of the project would be packaged and disseminated to the field.

• Provide assurances that at least one key person from the project would attend a 2–3 day annual grantee meeting in Washington, DC.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $1,000,000 for a 5-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,000,000 is $333,333 for a 5-year project. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

1.12 Cooperative Agreement to Provide an Active Focus on Permanency Planning

Eligible Applicants: All currently funded National Child Welfare Resource Centers.

Purpose: To compile and focus available resource materials to better address barriers in the child welfare, legal and judicial systems which inhibit and delay the processes by which children are reunited with their families or placed in adoptive homes or other permanent placements.

Background Information: A July 1990 report on "Termination of Parental Rights: Barriers to Permanent Placement" by the Department of Health and Human Services' Office of Inspector General concludes that, in spite of the implementation of child welfare reforms as mandated by Public Law 96–272, children are still spending long periods of time in out-of-home care. The report notes that, where special studies have been conducted, children with adoption plans generally remain in foster care between 2.5 and 3.5 years.

It appears that while most States have legislation in place to guide the termination of parental rights process, a number of administrative barriers continue to exist. States do not meet the "reasonable efforts to reunite families" requirements in a timely manner, the consideration of long-term placement options for children is delayed, and there is limited management commitment and a lack of staff and services. There are also many barriers and delays in the legal and judicial systems. Case documentation is frequently inadequate, legal resources for child welfare cases are limited, and problems and delays are encountered in scheduling court hearings.

Over the past 15 years, the Children's Bureau has worked to address these issues in a variety of ways. Most, if not all, of the National Child Welfare Resource Centers have developed and cataloged materials related to technical assistance, training, case management, case review, case planning, reunification services, termination of parental rights, adoptive placement and other related issues. However, it is not known whether or not these efforts have resulted in any significant decrease in the amount of time children spend in out-of-home care.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide an overview of existing resource materials, both those compiled by the Resource Center and those that are available from other sources, focusing on permanency planning issues, including an indication of the gaps in these materials as well as the extent to which older materials would need to be updated.

• Describe how, either individually or in concert with other Resource Centers, materials related to permanency planning issues would be compiled, refocused to address existing barriers which inhibit or delay permanent placement of children, and would fill identified gaps in the available literature.

• Describe how these materials would be disseminated, including how maximum use would be made of the Resource Center's existing dissemination mechanisms as well as the new strategies for dissemination that would be employed.

• Provide assurances that at least one key person would attend the annual 2–3 day grantee meeting in Washington, DC.

• Outline a plan of interaction with HDS for implementation under a cooperative agreement, including as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Financial Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $150,000 for a 2-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.13 Improvement of Indian Child Welfare Programs Through the Development of Agreements Between Tribes and States

Eligible Applicants: Tribal social services agencies in cooperation with a State agency(ies), or a State social services agency in cooperation with one or more Tribal social services agencies within its borders, or an Intertribal Council in cooperation with the appropriate State social services agency(ies).

Purpose: To improve working relationships between States and Tribal child welfare services, to provide assistance in improving the stability and quality of Tribal child welfare services, and to encourage increased regular funding for services to protect and support Indian children.

Background Information: In 1986, the most recent year for which data are available, there were over 9,000 Indian children in out-of-home placements, an increase of 25 percent over the number in care in 1980. This constitutes 3.1 percent of the total number of children in placement but, since Indian children constitute only 0.9 percent of the total children in the United States, they are being placed at a rate that is 3.6 times greater than the rate for non-Indian children. Since 1986, there has been a general increase in the number of children placed, particularly as a result of parental substance abuse, and it is assumed there have been similar increases among Indian children. Many of the children are also quite young, with an average age of just under 10 years.

A survey funded by ACYF in 1983 reported that State child welfare and child protection agencies provide a reasonable standard of services to Indian children and that there is reasonable adherence to the Indian Child Welfare Act (the Act). Factors which promote implementation of the Act, according to results of the survey, include:

• The passage of a State Indian child welfare law that makes the Federal law more explicit and reinforces compliance by State courts and public agencies.

• The hiring of Indian staff members in State and local public agencies to help make informed policy decisions and strengthen casework practices related to Indian families.

• State-Tribal agreements that provide support for substitute care placements and for child welfare services.

• Education of judges about the Act.

• Cooperative relationships between public agencies and Indian Tribes and organizations.

• The provision of training and technical assistance in the development of tribal child welfare services.

Factors that deter or undermine implementation of the Act, according to survey results, include:

• The unfamiliarity with or resistance to implementation of the Act in some State social service agencies.

• The lack of experience in working with Tribes found in many State social service agencies.

• The turnover of public agency staff.

• Concerns about Tribal accountability for providing services and caring for children.

• Insufficient funding for Tribal child welfare services and proceedings.

• Absence of Tribal courts with the authority to assume jurisdiction over proceedings involving Tribal members.

Other studies have reported similar findings. Since substantial funding for State child welfare services is awarded through titles IV–B and IV–E of the Social Security Act, and the States are responsible for providing child welfare services to all children within the State, one approach to increasing the stability and reliability of Tribal social services may be the encouragement of better working relationships between States and Tribes.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Propose a plan for a State-Tribal agreement that would improve direct services to Indian children and their families designed to facilitate the implementation of programs such as family preservation services, foster parent recruitment and training, and reunification services with an emphasis on substance abuse treatment.

• Specify the activities that would be carried out by the State or county and by the Tribe, respectively.

• Specify how resources would be allocated for the development of the State-Tribal agreement and for the improvement of existing Tribal social services. Such efforts might include the joint training of State and Tribal workers and the conduct of efforts to establish a Tribal child placement agency, the development of licensed foster family homes, and the coordination of other needed services such as substance abuse treatment and transportation.

• Provide assurances that the project would be implemented cooperatively by the Tribe and the State agency.

• Describe how the Tribal social services agency would regularly provide child welfare services under contract with the State.

• Provide assurance that at least one key person would attend an annual 2–3 day meeting of grantees funded under this priority area in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.14 Reducing Staff Turnover Through Agency Redesign and Improved Personnel Practices

Eligible Applicants: State or county level public child welfare agencies or private nonprofit child welfare agencies in coordination with a public agency.

Purpose: To demonstrate ways to reduce staff turnover, improve employee morale, and improve child welfare service delivery, including child protection.

Background Information: Social service and child welfare agencies often have staffing problems, employing many new workers with minimum training and experiencing a very high turnover of staff. Work in these agencies is perceived as highly stressful and very structured, with staff at all levels reporting feelings of frustration. *A 1987 National Study of Public Child Welfare Job Requirements* by Marilyn Russell published by the National Resource Center for Child Welfare Program Management and Administration found that low job turnover was correlated with a positive organizational climate and increased opportunities for staff such as educational leave, conference attendance, redesigned workspace, job rotation and similar activities. In order to make child welfare agencies better places to work, and to implement service reforms, it is essential that agencies find ways to improve the quality of worklife for their employees. It is also desirable for child welfare agencies to take advantage of the use of new technologies, particularly in relation to record keeping and case management.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide a critical review of the literature on "quality of workplace" research, and propose questions that would be addressed in the assessment of the demonstration agency's structure and functional relationships.

• Describe specific plans for agency assessment involving administrators, supervisors and workers, proposed innovations and redesign of the workplace, implementation plans and/or evaluation of the effort. Detailed work plans and proposed timeframes for their completion should also be provided.

• Provide assurance that the public agency would be fully involved in all phases of the project.

• Agree that at least one key person would attend a 2–3 day annual meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the first 12-month budget period or a maximum of $150,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $150,000 is $50,000. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.15 Specialized Family Foster Care for Drug and Alcohol Affected Infants

Eligible Applicants: Public or private nonprofit child placing agencies.

Purpose: To develop model programs to provide specialized family foster homes for drug and alcohol affected infants who need a specialized level of care that their families are unable to provide.

Background Information: Increasing numbers of alcohol and drug affected children are entering foster care because of their special needs and their families, inability to provide the care they need. Many of these infants are entering group care programs to avoid remaining in costly hospital care, and because regular foster families are unable to meet their intense, highly specialized needs. However, long-term group care is less than adequate to meet the needs of young children who need the full-time care of a primary caregiver. In addition, there is a shortage of programs which provide assessment and direct services to the parents of the children.

Specialized family foster care has been shown to provide adequate care to infants with serious medical and emotional needs while also providing a warm family atmosphere, a supportive relationship, and access to the child's family. While the cost of specialized family foster care is greater than regular family foster care, it is far less costly than hospital or residential group care. Four projects funded in 1988 showed success with a wide variety of children, from medically fragile infants to older emotionally disturbed youth. Each project resulted in reductions both in institutionalization and costs.

Minimum Requirements for Project Decision: In order to successfully compete under this priority area, the application should:

• Propose a program which would include the utilization of current foster families or the recruitment of new families; pre-service and in-service training for foster parents and staff; support services; cooperative arrangements with hospitals that typically care for the type of infants to be served; respite care; and the utilization of a range of community-related resources.

• Provide documentation for the need for the service model proposed.

• Address issues such as the appropriateness of family foster care, the rehabilitation of parents and reunification of families, adoption and other permanency planning services, support groups, respite care and therapeutic or medical intervention.

• Describe the cooperation needed from other organizations, and provide letters of commitment from these organizations.

• Describe aspects of the project that are specific to specialized family foster care including proposed staff education, caseload size, staff and foster parent interactions with birth parents, and licensing.

• Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design, including a control group, that would be implemented. The evaluation must address permanency and stability outcomes for children and for the family, employment, and decreased drug use (where relevant).

• Describe how information about and the findings from the project would be disseminated to the field.

• Provide assurances that at least one key person would attend the 2–3 day annual grantee meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of the Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $125,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

1.16 Respite Care Services for Families Who Adopt Children With Special Needs

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, licensed child care or respite care providers, incorporated adoptive parent groups with experience in working with adoptive populations, and University Affiliated Programs with respite care components or with the capability of developing respite care programs.

Purpose: To develop or replicate a variety of affordable respite care models for the adoptive parents of children with special needs, especially for parents of medically fragile or severely physically or emotionally disabled children.

Background Information: HDS recognizes the importance of post-placement support services for adoptive families who often encounter a multitude of special issues and problems, some arising immediately upon placement and others manifested in later phases of the child's development. It has become increasingly clear that the adoption process does not end with the placement of the child, and that continuing support may be required to assist the adoptive family. Despite the increasing availability of post-placement/post-legal services for adoptive families, problems persist. There are few specialized respite care programs for adoptive families that provide a period of temporary relief or rest from parental responsibilities. Such programs can be especially helpful to families who adopt children with special needs by providing support during emergencies or respite from the daily demands of a special needs child. Generally, such respite care is provided by specially trained caregivers or companions; however, with proper preparation, it can also be provided by friends, relatives, skilled care providers, and professionals either in the family's home or in another location.

During FY 1990, the University of Kansas, Bureau of Child Research, was awarded a grant under a similar priority area to expand an existing respite care program. University and community college students are being used to recruit and train 45 respite care providers. In addition to in-home services, out-of-home settings will be offered to meet the needs of 45 families by extending training to personnel in programs such as day care centers, summer camps and home health care agencies.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Describe plans to develop or replicate respite care models for the adoptive parents of special needs children that include, but are not limited to:

—Facility-based models such as those located in churches, day care centers, community-based group homes, and rehabilitation centers, and "mother's day out" programs, weekend respite, evening respite, and overnight respite programs;

—In-home respite care services offered in the family's home; and,

—Respite host family services offered in the provider's home.

• Describe the respite care that would be provided by the project for parents of children who are medically fragile or who have severe physical or emotional problems.

• Describe the preparation, referral, follow-up, and counselling services that would be provided to respite service users.

• Describe the collaboration that would be established with groups such as community recreational services, churches, day care centers, group homes, residential treatment centers, adoptive parent groups, and University Affiliated Programs in the provision of the respite services.

• Describe the training that would be provided to service providers and how specific models of respite care would be developed or replicated.

• Estimate the number of special needs children and families who would be served and document that a sufficient volume of special needs adoptive families exists to support a program of the size proposed.

• Provide for a third party, independent evaluation of the project and include a discussion of the proposed evaluation design.

• Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $250,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $250,000 is $83,333 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

1.17 Increase Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, and incorporated adoptive family groups and community-based organizations with experience in working with minority populations. Organizations funded by HDS in FY 1990 under a similar priority area are not eligible to apply for a second grant under this priority area.

Purpose: To develop programs designed to increase the adoptive placement of minority children in foster care who have the goal of adoption, with a special emphasis on the recruitment of minority families.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 100–294, places an emphasis upon the recruitment of minority families and authorizes funds for demonstration projects for the recruitment of families to adopt waiting minority children. It is estimated that half of the approximately 30,000 children currently free for adoption and awaiting placement are minority children. Some of these children are older, have disabilities and may wait long periods of time before placement with adoptive families.

A Child Welfare League of America study entitled "The State of Adoption in America" reports four major issues cited by public agencies as critical impediments to timely adoptive placement: lack of minority parents for waiting minority children; lack of agency staff and funds; lack of parents willing to take children with special needs; and delays in the termination of parental rights. HDS is aware that there must be a continuous focus on the

adoption of minority children and has funded a number of programs designed to specifically recruit minority families and to place minority children. Unfortunately, however, only a few of these programs continue beyond Federal funding.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Identify and describe existing barriers to minority adoption in the locale where the project is to be implemented; the number of families that would be recruited; and the number of children who would be placed.
- Describe the innovative methods that would be employed to recruit and prepare minority families (including single applicants) in a timely manner in order to retain recruited families.
- Provide assurances that the program would not involve payment of fees by families for the adoption process.
- Describe how cultural sensitivity training would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Provide for an evaluation component which would assess the project's effectiveness in achieving the desired objectives and would test its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide evidence of licensure.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.
- Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the 17-month project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $33,333 for the 17-month project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 15 projects will be funded.

1.18 Adoptive Placement of Foster Care Children

Eligible Applicants: Eligibility is limited to State social service agencies.

Purpose: To assist States in their efforts to increase the adoption of foster children legally free for adoption, according to State goals and pre-established plans for improving adoptive placements.

Background Information: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, authorizes the funding of grants to States to improve adoption services for the placement of special needs children legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs and to increase the placement of children residing in those States. More than half of the States have received grants to improve adoption services; however, only a small number have been able to sustain these efforts.

Increasingly, children entering foster care have more complex problems which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved upon so that the children in foster care who are legally free for adoption can move into adoptive placement in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are made when permanent plans are developed and carried out very early in the placement; if there are sufficiently trained and experienced staff; and when there are available resources and administrative commitment to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placement.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application (the rate of placement is the number of children placed divided by the number of children waiting for adoption).
- Describe the methods that would be employed to increase the rate of placement of foster care children into adoption and the goals for improvement that would be achieved during the period of the grant.
- Describe how the proposed improvements, if successful, would be continued in the absence of Federal funds.
- Describe an evaluation component which focuses on the innovations that would be used to improve the placement of children who are legally free for adoption and which addresses the successes and failures of the initiative. The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures for implementing the program. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the 12-month project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $100,000 is $33,333 for the 12-month project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.19 Post-Legal Adoption Services

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies, and incorporated adoptive parent groups. Organizations funded by HDS in FY 1990 under a similar priority area are not eligible to apply for a second grant under this priority area.

Purpose: To develop or replicate projects which will strengthen the provision of post-legal adoption services for families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available for the same general services.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 100-294, authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. There is now acknowledgement that adoption is a life-long process and that service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post-legal adoption services (those provided after the legalization of the adoption) to families who seek assistance.

During the past three years, HDS has funded 23 projects to provide post-legal adoption services for families who have adopted children with special needs. These projects are located in Alaska, the District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Michigan, Minnesota, Montana, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Utah, and Washington. Information on these projects can be obtained from the National Adoption Information Clearinghouse.

Funds under this priority area for fiscal year 1991 will support both the institutionalization and expansion of post-legal adoption services in communities where such services already exist, and the development of such services in communities where they do not yet exist. Support will also be provided for the development of additional models of service delivery.

Services funded under this priority area shall be for families who have adopted children with special needs. Other variants of post-legal adoption services, while perhaps important, are not the purpose or focus of this priority area.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Propose to provide services such as individual, group and/or family counseling; case management; training of staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services, and support personnel including mental health professionals; and assistance to adoptive parent organizations and support groups for adoptive parents, adopted children and siblings of adopted children.
- Describe the models that would be developed or replicated and the services that would be provided.
- Describe the existing post-legal adoption services, if any; the need for expanded or new services; and plans for the development, implementation, and institutionalization of enhanced and new services.
- Describe how the proposed project builds upon the existing literature and knowledge base related to post-legal adoption services.
- Provide specific written commitments from collaborating or cooperating agencies, if any.
- Document and describe how the project would be an ongoing part of the agency or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that 15 projects will be funded.

1.20 Permanency Planning—Efforts to Free Children for Adoption

Eligible Applicants: Public child welfare agencies.

Purpose: To reduce the time that children remain in foster care.

Background Information: The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) emphasizes the provision of reunification services as quickly as possible when children are removed from their homes. Should the family situation not improve within a reasonable period of time and the child cannot be returned to his own family, permanent plans must be made in the best interest of the child.

Child welfare workers and adoption experts report numerous legal and judicial problems which impede the process of terminating parental rights so that children can move out of foster care into permanent adoptive placements. Among the critical issues identified are:

- Professionals are inexperienced in the court process;
- Workers are not certain when "reasonable efforts" have been made and when to pursue termination early in a case;
- The reluctance of judges to terminate parental rights unless an adoptive family is available;
- State legislation which impedes the termination process; and,
- The lack of timely processing of cases on court calendars.

To address these problems, some experts suggest the need for early assessments and more "foster/adopt" placements of children with their prospective adoptive parents; timely interventions to support the child's need for permanency; and increased funding for staff positions such as attorneys and caseworkers to enhance service delivery.

The focus of this priority area is to enable child welfare workers to identify children who are candidates for adoption early in each case and, through a collaborative effort with the courts, move these children through the process so that they can become legally free for adoption.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe the number and types of families and children that would be served.
- Describe the early intervention and prevention strategies (resources/training) that would be used with the family and the legal and judicial

systems to reduce the length of time the child remains in foster care.

• Provide for the establishment of a unit of experienced workers to focus on permanency, following cases from intake to adoption to provide continuity and prevent other problems which could be barriers to the adoption. The application should provide a discussion of how this unit, by virtue of its members' backgrounds, knowledge, and/or experience, would address the racial and ethnic diversity of its client population.

• Provide a detailed description of the methodologies and procedures that would be used in conducting the project, including a description of the evaluation plan which would be implemented to measure the degree to which the project's objectives have been accomplished.

• Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

• Provide letters of commitment from legal/judicial systems that would be directly involved in the project.

• Provide assurance that at least one key person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $300,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that six projects will be funded.

1.22 Assistance to States to Improve Adoption Data

Eligible Applicants: Units of State government which have access to information on adoption. Generally, these include departments of social services, offices of vital statistics and offices of court administrators. No county or city agency may apply. Only one grant will be awarded per State.

Purpose: The purpose of this priority area is to provide funds to meet the one-time or short-term expenses associated with State activities designed to improve the collection and reporting of data on *all* adoptions within the State, not simply on the adoption of children under the care and responsibility of the State department of social services.

Background Information: HDS has been encouraging the States to develop coordinated efforts to improve the collection and reporting of data on all types of adoptions for a number of years. Many States have also expressed interest in participating in the *voluntary* adoption data collection system described in the "Notice of Proposed Rulemaking on Data Collection for Foster Care and Adoption" that was published in the Federal Register on September 27, 1990.

The National Center for State Courts (NCSC), through a grant from HDS, has offered technical assistance to various State governmental units and is currently providing both telephone and on-site technical assistance to help States improve their adoption data collection and reporting systems. Examples of the types of technical assistance being provided by the NCSC are: facilitating coordination among the various agencies within each State; identifying the problems with matching adoption data elements from different sources within States; assessing the capability of existing hardware and software; and providing information to legislative bodies or courts to change laws, regulations or court rules to permit the exchange of adoption data among agencies.

However, in addition to this assistance, States which want to improve their data collection and reporting on all adoptions and to participate in the voluntary portion of the adoption and foster care reporting system may have other needs which cannot be met by NCSC or through current State budgets. These would include the purchase of computer hardware and software, the development of software, the hiring of short-term employees or the engaging of consultants to help in the resolution of highly technical computer issues.

Grants awarded under this priority area should be used for these and related purposes. Potential applicants are encouraged to seek consultation on their needs for assistance from Victor E. Flango, Ph.D., Project Director, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, telephone (804) 220–0449.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Describe how the unit of State government applying for assistance would coordinate its efforts with other relevant units of the State government.

• Describe how the funds would be used to facilitate the collection and reporting of data on all adoptions within the State. The application should specifically describe the hardware or software which would be purchased, the type of consultation which would be obtained, or the other specific uses which would be made of the funds and provide justification of the need for and appropriateness of such assistance.

• Discuss why State funds are not being used for these purposes.

• Describe the difference the receipt of this assistance would make in terms of the speed in which data on all adoptions would be collected and reported.

Project Duration: The length of the project must not exceed 6 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $10,000 for a 6-month project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that 10 projects will be funded.

1.23 Adoption Training and Minority Sensitivity

Eligible Applicants: Accredited schools of social work, national resource centers and national child welfare training programs.

Purpose: To develop a model curriculum for the in-service training of adoption workers, supervisors and administrators in "minority-sensitive" issues. Applicants must conduct all of the steps necessary for the provision of this training such as curriculum development and the identification of trainers and the recruitment of trainees.

Background Information: Minority children continue to be overrepresented in the child welfare system's out-of-home care services, including children awaiting adoption. However, there have been relatively few training programs that specifically address the issue of sensitivity to minority groups. Adoption staff often do not reflect the racial and ethnic makeup of their client population so it is especially important that they receive training to facilitate an understanding and appreciation of the values of and the differences in minority clients. In addition, schools of social work have not specifically addressed this issue in their BSW and MSW programs nor in the in-service training they provide to the adoption community. Similarly, most adoption agencies have not included such training in their staff orientation or staff development programs.

The successful recruitment of prospective adoptive families, both minority and non-minority, for minority children, the preparation and utilization of recruited families, and the provision of effective post-adoption/post-legal services for these families depend upon the knowledge, sensitivity and appreciation of minority issues at all levels of the adoption agency. Therefore, the development, utilization and institutionalization of a "minority-sensitive" curriculum for adoption agency personnel, including administrative, supervisory and staff directly providing services, is important.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide for the establishment of an advisory board that includes individuals from public and private adoption agencies, adoptive parents and community organizations representing the following minority groups: African American, Hispanic, Asian and Native American.

• Describe the methodology that would be employed in developing the curriculum, in the provision of training, in training the trainers, in establishing the advisory board and in field testing the curriculum in areas representative of the minority populations to be served.

• Describe a proposed plan for the dissemination of the curriculum which includes schools of social work and public and private social service agencies.

• Provide for a contract with a third party to conduct an evaluation of the project. The proposed evaluation plan must be described including, at a minimum, plans for curriculum pre- and post-tests and for a six month follow-up of individuals receiving the training.

• Provide assurances that at least one person from the project would attend the annual three day Adoption Opportunities grantees meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $250,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

1.24 Post-Legal Adoption Consortia

Eligible Applicants: Public social services agencies and public mental health programs or private nonprofit social services agencies which have collaborative relationships with a public social services agency. Only agencies in States that have placed over 200 children per year during the past three years are eligible. Only one agency per State will be awarded a grant.

Purpose: To assist States to develop and institutionalize post-legal adoption services which will result in sustained adoptive placements of children with special needs.

Background Information: Adoption is a life-long process and families need to be empowered in seeking post-legal adoption services. These services must be viewed by public child welfare agencies as core adoption services which are accessible to families, as needed. Since 1984, the Adoption Opportunities Program has provided funding to agencies and organizations to develop post-legal adoption resources and to train mental health professionals to provide relevant services to adoptive families and their children. Although some successful post-adoption and post-legal models have been developed, many States do not have the fiscal resources necessary to implement the models that have been developed or other post-legal adoption services. Therefore, few resources are available to address many of the issues which develop following placement and legal consummation of an adoption. Continuous programs must be in place to help families deal with adoption issues and with the special needs of their children. Further, implementation of post-legal adoption services should include staff training in the dynamics of the unique and sometimes complicated circumstances presented by adoptive families.

Agencies receiving grants must participate in a consortium which will meet semi-annually in Washington, DC to share information, define basic post-legal adoption services, review successful post-legal adoption practices, projects and laws and disseminate their findings. The meetings will be convened and facilitated by an agency selected under this announcement to serve as consortium leader. That agency will receive an additional award of $30,000 per year to convene meetings, locate meeting sites, confer with members in developing meeting agendas, and develop reports (semi-annually and final). Applicants who wish to be considered for the position of consortium leader should indicate so in their application by including a separate section in the application with a budget and details on how this work is to be accomplished.

Ten agencies will receive grant awards. Five grants will be awarded to agencies in States that have placed over 400 children per year during the past three years, and five grants will be awarded in States that have placed between 200 and 400 children per year during the past three years.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide documentation of the number of children placed in the State each year during the past three years.

• Describe plans for establishing a post-legal adoption program and how these post-legal services would be an integral part of the delivery of adoption services in the State.

• Identify and describe the number and types of families in the area that would be served.

• Describe the services that would be developed or provided such as individual/group counseling, therapy and other intervention models to be used with families.

• Describe any collaborative efforts with other agencies or adoptive parent groups currently providing support services to families which would be undertaken.

• Describe how the project would be supported, if successful, beyond the period of Federal support.

• Provide assurances that one representative who can speak for the project would attend each semi-annual consortium meeting in Washington, DC.

• Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.

• Certify that the project would be staffed and implemented within 90 days of the notification of the grant award.

If the applicant is not a public agency, the application must provide evidence that a collaborative arrangement has been established for the purpose of carrying out the proposed project.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $175,000 for the first 12-month budget period or a maximum of $525,000 for a 3-year project period.

The maximum Federal share for the project selected as the consortium leader is not to exceed $205,000 for the first 12-month budget period or a

maximum of $615,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $525,000 is $175,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

For the consortium leader, the minimum non-Federal matching requirement in proportion to the maximum Federal share of $615,000 is $205,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that ten grants will be funded.

1.25 Field Initiated Proposals to Improve Adoption Services to Children With Special Needs

Eligible Applicants: State, regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations. Voluntary agencies which apply should coordinate their applications with relevant public agencies.

Purpose: To improve adoption services for children with special needs in areas which are not addressed under other priority areas in this announcement. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems.

Background Information: Public child welfare workers who provide adoption services are overburdened because of staff shortages and increasing child welfare caseloads. In many public agencies, adoption staff are expected to provide services not only to children with special needs and their potential adoptive families, but also to families requesting independent, intercountry and other types of adoption services. This places substantial burdens on the limited agency adoption resources which are needed to serve the special needs population.

At any given time, approximately 30,000 children are legally free for adoption. Minority children continue to be over-represented among this group. Older children and sibling groups also continue to present unique challenges. Other subpopulations, such as drug-exposed infants, will be, or are currently, testing the capacity of adoption programs. Innovative efforts, embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes for all waiting children.

In recognition of the many different issues that face the public and voluntary sectors, field initiated proposals are being solicited for demonstration projects that address areas which agencies consider most problematic in serving children with special needs for whom adoption is the plan. These proposals must be innovative; they cannot be a replication of a previous project or respond to other priorities in this announcement.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe the current adoption program and the specific problem(s) that would be addressed.
- Describe the approach that would be used to alleviate the problem(s).
- Document that this is a new approach that has not been used before based on a review of the literature and any other relevant sources.
- Provide specific written commitments from cooperating or collaborating agencies, if any.
- Describe the arrangements that would be made to contract with a third party to conduct an independent evaluation of the project, and describe in detail the design that would be implemented. The evaluation should determine both the benefits to the agency as well as related child and family outcome measures (e.g., placement rates, number of children placed, disruption rates).
- Describe how the agency would incorporate successful results of the project into its ongoing program.
- Provide assurances that at least one key person from the project would attend the annual three day Adoption Opportunities Grantees Meeting in Washington, DC.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $250,000 for a 2-year project period.

Matching Requirements: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $250,000 is $83,333 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that six projects will be funded.

1.26A Temporary Child Care for Children with Disabilities and Chronically Ill Children, and 1.26B Crisis Nurseries

Eligible Applicants: State agencies designated by the Governor of the State to carry out programs funded under sections 5117a and 5117b of the Temporary Child Care for Children with Disabilities and Crisis Nurseries. Other State agencies carrying out similar programs are ineligible.

States, including those currently receiving financial assistance under these programs, may apply under one or both priority areas described below. A separate application, however, must be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 1.26A, Temporary Child Care for Children with Disabilities and Chronically Ill Children, or 1.26B, Crisis Nurseries.

Purpose: To support States in their efforts to assist private and public agencies in developing two types of services:

- In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 1.26A); and
- Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 1.26B).

Special attention should be paid in both priority areas to the needs of drug-affected infants.

Background Information: The Temporary Child Care for Children with Disabilities and Crisis Nurseries Act of 1986 (the Act) authorizes grants to States to assist public and private agencies in developing temporary child care or respite care services for children with disabilities and crisis nurseries for children who are abused or neglected, at risk of abuse and neglect, or in families receiving protective services. These programs are intended to maintain and support the family unit and strengthen the parent-child bond. Programs were funded under this Act in FYs 1988, 1989 and 1990. Additional funding was appropriated in FY 1990 for the support of temporary child care and crisis nurseries programs which place special emphasis on serving drug affected children and families. Also in FY 1990, HDS funded, through a limited competition, final continuation grants for projects originally funded in FY 1988.

Grantees funded in FY 1989 will be eligible for limited competition continuation grants in FY 1991. These competitive continuation grants will be awarded outside of this program announcement.

Section 5117a of the Act: Temporary Child Care for Children with Disabilities and Chronically Ill Children (Priority Area 1.26A)

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary caregivers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to define disabilities using the definition in the Education of the Handicapped Act, "* * * as mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or children with specific learning disabilities who, by reason thereof, require special education or related services." (20 U.S.C. 1401 (a)(1))

The following components may be included in temporary child care or respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

Section 5117b of the Act: Crisis Nurseries (Priority Area 1.26B)

A "crisis nursery" is defined in section 5117c(d) of the Act to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of "time out" as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver nonpunitive, nonthreatening services as a resource to caregivers of at-risk children; and, (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under section 5117b of the Act must be provided without fee and may be provided for a maximum of 30 days in any year. Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery programs:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

Minimum Requirements for Project Design: In order to successfully compete under one or both of these priority areas, the application should:

- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under section 5117a. (Section 5117a(a)(v))
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, nonmedical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.
- Describe how funds previously awarded to the State under this statute have been used and how the new funds being requested would be used to enhance or expand the program.
- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (Section 5117c(a)(1)(A))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to provide this information would be collected.
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (Section 5117c(a)(1)(A)(iii))
- Provide assurances and adequate budget funds to support at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual 2–3 day conference in Washington, DC.
- Provide assurances that travel to these conferences will not be subject to any limitations on travel which may be imposed on State employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the "Temporary Child Care" program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the "Crisis Nurseries" program, the State would give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of handicapped children found in 20 U.S.C. 1401(a)(1) of the Education of the Handicapped Act in implementing programs under the "Temporary Child Care" program.

(7) That all agencies and organizations funded under the "Temporary Child Care" program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the "Crisis Nurseries" program would be provided without fee and for a maximum of 30 days in any year.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $200,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that approximately 26 projects, 13 under each priority area, will be funded.

1.27 National Resource Center for Crisis Nurseries and Respite Care Programs

Eligible Applicants: State agencies designated by the Governor of the State to carry out programs funded under sections 5117a and 5117b, Temporary Child Care for Children With Disabilities and Crisis Nurseries Act (the Act), including current grantees under the Act, are eligible to apply. Other State agencies carrying out similar programs are ineligible to apply.

Purpose: The purpose of this Resource Center is to assist in the coordination, exchange of information, continuing development and improvement of the types of services described in section 5117a and section 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act whether or not the service providers receive Federal funds from the programs authorized under the Act. These services are:

(1) In-home or out-of-home temporary nonmedical child care (respite care) for children with disabilities and children with chronic or terminal illnesses (Section 5117a); including children with AIDS or AIDS-related conditions, and

(2) Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (Section 5117b).

Both types of service also address the needs of drug-affected infants.

Background Information: Since 1988, HDS has awarded 90 grants to States to support respite care services and crisis nurseries through the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program. Through these State agency grantees, over 200 local service providers have been recipients of the $20 million awarded thus far. In addition, other projects, not utilizing Federal funds under this program, have been developed and implemented in local communities designed to address the needs of similar target populations.

Respite care programs are designed to alleviate social, economic, and financial stress among families of children with disabilities or children who are chronically or terminally ill through the provision of short-term, nonmedical child care. Such respite care provides families or primary care givers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress. Respite care programs generally provide 24-hour services, access to medical services; referral to counseling/therapy; staff training, including child abuse/neglect reporting responsibilities; and public awareness efforts.

Crisis nurseries are child care facilities designed to protect children by providing a safe environment at a time when the chances of neglect or physical abuse in the home are increased. These programs offer parents the option of "time out" as a preventive measure to reduce the incidence of child maltreatment. In general, crisis nursery programs provide many of the same services as respite care programs but also place greater emphasis on intervention, remediation and prevention services including referrals for out-of-home placement, when appropriate.

Although a significant number of respite care and crisis nursery projects have been developed, knowledge about effective services is relatively limited. Existing programs vary considerably in terms of quality, experience, and methodology. However, the demand for services is increasing as fewer disabled children are institutionalized and as substance abuse impacts greater numbers of children and families. Additional resources are needed to assist in identifying, developing and utilizing effective program practices, information and materials in order to meet this service demand.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems and issues involved in providing services for children with disabilities and children at risk of abuse and neglect.
- Provide documentation of the commitment to improving the quality of respite care and crisis nurseries programs and services.
- Describe a plan for identifying emerging issues from the fields of child welfare, developmental disabilities, and child health, particularly as they relate to prenatal drug exposure and pediatric HIV infection.
- Describe a plan for preparing and disseminating information and policy papers to the field which address these emerging issues.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS and by other related resource centers to assure effective utilization of resources.
- Describe a plan for holding at least one national conference a year for relevant service providers.
- Describe a strategy for identifying innovative and/or exemplary programs, including the conduct of research and/or evaluation efforts, and for disseminating information about innovative and/or exemplary programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to service providers and to State agencies to improve professional competency, to insure service coordination and integration, and to promote the utilization of resources and best practices related to the management and administration of respite care programs and crisis nurseries.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these individuals with individuals and agencies requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting in Washington, DC, of Children's Bureau grantees.
- Provide assurances that not more than 5 percent of the funds awarded would be used for State administrative costs.
- Outline a plan for interaction with HDS for implementation under a cooperative agreement, including as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $500,000 for the first 12-month budget period or a maximum of $1,500,000 for a 3-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded as a cooperative agreement.

Length of Proposal: The 60 page limitation for proposals including appendices stated in part III of this announcement does not apply to this priority area.

1.28 National Resource Center for Programs Serving Abandoned Infants and Infants at Risk of Abandonment and Their Families

Eligible Applicants: State or local, public or private nonprofit agencies or organizations.

Purpose: The purpose of this Resource Center is to assist in the coordination, exchange of information, continuing development and improvement of the types of services described in Public Law 100–505, the Abandoned Infants Assistance Act of 1988 (the Act) whether or not the service providers receive Federal funds from the program authorized under the Act. The Act establishes demonstration projects to prevent abandonment in hospitals of infants and young children, particularly those who have been exposed to drugs and those with AIDS; to identify and address the needs of those who are, or might be, abandoned; to develop a program of comprehensive services for these children and their families including family foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential care services; and to recruit and train health and social services personnel, foster care families and residential care providers to meet the needs of abandoned children.

Background Information: In 1990, HDS awarded 24 grants to agencies under a variety of auspices including public and private social services, developmental disabilities and health agencies, hospitals and universities. These programs, as well as others funded through other resources, are in the early stages of implementation. The programs are designed to meet the immediate needs of the children and their families, to address problems of community coordination and better utilization of scarce resources and to develop systems which will meet the longer-term needs of the children.

Although a significant number of abandoned infants projects have been developed, knowledge about effective services is relatively limited. Existing programs vary considerably in terms of quality, experience and methodology. However, the demand for such services is increasing as substance abuse and pediatric AIDS impact greater numbers of children and families. HDS intends to support the establishment of a National Resource Center to assist in identifying, developing and utilizing effective program practices, information and materials in order to meet this service demand.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems and issues involved in planning and providing services for abandoned infants and young children.
- Provide documentation of the commitment to improve the quality of programs and services for infants and young children who are abandoned or in danger of abandonment and their families.
- Describe a plan for identifying emerging issues from the fields of child welfare, developmental disabilities, and maternal and child health, particularly as they relate to prenatal drug exposure and pediatric HIV infection.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS and by other sources.
- Describe a plan for holding at least one national conference a year for relevant service providers.
- Describe a strategy for identifying innovative and/or exemplary programs and for disseminating information about these programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to service providers and to State agencies to improve professional competency, to insure service coordination and integration, and to promote the utilization of resources and best practices related to the management and administration of abandoned infants assistance programs.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these individuals with persons and agencies requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting of Children's Bureau grantees in Washington, DC.
- Outline a plan for interaction with HDS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $500,000 for the first 12-month budget period or a maximum of $1,500,000 for a 3-year project period.

Matching Retirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,500,000 is $500,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded as a cooperative agreement.

Length of Proposal: The 60 page limitation for proposals including appendices stated in part III of this announcement does not apply to this priority area.

1.29 National Resource Center for Family Support Programs

Eligible Applicants: Public or private nonprofit organizations with experience in providing support services to programs which directly impact family functioning and stability and which have the ability to provide technical assistance, to facilitate the exchange of information, to develop materials, and to provide other appropriate resources.

Purpose: To assist in the coordination, exchange of information, continuing development and improvement of services provided by community-level family support and family resource programs and to encourage the growth of additional programs.

Background Information: Over the past decade, there has been a significant growth in community-level family support and resource programs. The Head Start program, for example, has grown almost threefold since 1980. These programs seek to serve families in order to prevent a range of problems (e.g., lack of access to needed child development and medical services because of low income, substance abuse, child abuse, child neglect, teenage pregnancy, and related family problems) and to enhance the ability of families to function through the provision of parenting education and other supportive services and information and referral to community

resources. Community level family support and resource programs are designed to increase parents' confidence and competence in their parenting abilities and to help them fulfill their roles as educators of their children. Children, in turn, benefit from the improved child-rearing practices and a more secure and nurturing home environment.

Today's families are subject to increased stress because of the increasing number of mothers in the work force; the changes in family structure brought about by divorce, remarriage, and single parenthood, especially among teenagers; the increasing geographic mobility of families; and the growing rate of poverty among children, particularly in single-parent households.

The result of these changes is a growing isolation and frustration among families, which is compounded by the breakdown of or limited access to traditional sources of support or relief. This places young children at risk of a range of social problems, including a lack of preparation for school, inadequate health care, poor nutrition, and child abuse and neglect. These problems, if not addressed, increase the risk later of school failure, teenage pregnancy, substance abuse, and delinquent or criminal behavior.

Family support programs, such as Head Start and other family-oriented programs, are designed to help a family build on its existing strengths. Emphasis is placed on prevention, on building and/or maintaining self-sufficiency, and on building the capacity to nurture and rear capable children. The programs respect the integrity of the family unit, promote the development of life-management skills, encourage peer support, and link families with needed resources through collaboration with community agencies and services. They maintain a grassroots, local community base which is sensitive to the cultural, ethnic, and religious character of the community.

Many family support programs started locally as the result of grassroots initiatives, and nearly all maintain local control. Many services are initiated by volunteers and volunteer help continues to be an important component in most family support programs. They operate under a wide range of auspices, with a wide variety of funding sources, many of which are time limited. They are in frequent need of technical assistance on various aspects of administration, funding and maintenance of program operations, staff training and enhancing community linkages.

Family support programs tend to vary considerably in terms of quality, experience, and capacity. Additional resources are needed to strengthen prevention-oriented family programs, to foster their expansion nationwide, to create and strengthen linkages between prevention-based and treatment-based services, and to strengthen this movement.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Demonstrate knowledge about the problems of family support, about family-oriented programs such as Head Start and others, and about the services required to meet the needs of families.
- Provide evidence of commitment to improving the quality of family resource programs and to expanding their ability to help families.
- Describe a plan for building public awareness of the resources required to improve programs and to enhance funding.
- Describe a plan for coordinating activities with other National Resource and Research Centers funded by HDS, such as the Head Start Regional Resource Centers, as well as with other related resource centers to assure effective utilization of resources.
- Describe a strategy for identifying, documenting and disseminating information about innovative and/or exemplary family support programs.
- Describe a strategy for identifying, documenting and developing innovative and/or exemplary resources such as training curricula and manuals and for assisting the field in adapting such resources to meet specific needs.
- Describe a plan for providing technical assistance, training and consultation to family support centers to improve competency, to ensure coordination and collaboration with other community and professional services and to promote the utilization of resources and best practices related to the management and administration of the programs.
- Describe a plan for developing a national network of professionals in the field to serve as consultants and for linking these resources with individuals and programs requesting assistance.
- Provide assurances that at least one key staff member would attend an annual 2–3 day meeting in Washington, DC of projects funded by the Children's Bureau under this announcement.
- Outline a plan for interaction with HDS for implementation under a Cooperative Agreement, including, as appropriate, activities involving Headquarters and Regional Office staff. (A Cooperative Agreement is Federal assistance in which substantial Federal involvement is anticipated. The respective responsibilities of the Federal staff and the awardee will be negotiated prior to the award.)

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $400,000 for the first 12-month budget period or a maximum of $1,200,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $1,200,000 is $400,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded as a Cooperative Agreement.

Length of Application: The 60-page limitation stated in Part III of this announcement does not apply to this priority area.

1.30 Field Initiated Research in Child Welfare by Recent Recipients of Doctoral Degrees

Eligible Applicants: Only universities and four year colleges may apply. Individuals may not apply directly for these grants.

Purpose: To support pilot projects initiated by new researchers in the child welfare field. The principal investigator must have a terminal research degree (e.g., PhD, DSW, DPH, DPA, MD, etc.), but not be more than five years beyond it at the time of award. The pilot research projects should be designed to lay the groundwork for continuing research in the field of child welfare by the investigator. The research topic area should be such that subsequent research activities in the area will inform State and local (public and private) agencies on ways to improve policy, practice, management and evaluation of child welfare programs.

Background Information: There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and needs of the clients, service delivery strategies, and effective policies and practices. Consequently, it is critical to provide opportunities for new researchers to enter the child welfare field.

Pilot projects could include the range of services which are delivered by public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption (particularly special needs), and post-adoption services. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service system delivery effectiveness and efficiency. Economic issues could also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which primarily address issues in child abuse and neglect, day care, child development, and runaway and homeless youth, which are primarily secondary data analyses, research synthe ses, or literature reviews, and which are included under other research priority areas in this announcement will not be supported under this priority area. Research projects involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Briefly describe, based on a review of the literature, how the pilot project would assist in carrying out a major effort which would fill a critical gap in the information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed for the pilot project, including sampling procedures, types of data to be collected, procedures for data collection, measures to be used and plans for data analysis.
- Describe how the information from the pilot project would be used to design a larger, more comprehensive project.
- Describe the strategies for conducting the larger project after the pilot project is completed.
- Describe the strategy(ies) that would be employed in gaining access to necessary information, data and clients.
- Describe the strategies that would be employed in the dissemination of findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that the principal investigator would attend a 2–3 day grantees' meeting in Washington, DC.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $40,000 for the 17-month project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.31 Field Initiated Research in Child Welfare

Eligible Applicants: State or local, public or nonprofit, agencies, universities, organizations or institutions.

Purpose: To support innovative projects initiated by researchers in the child welfare field. The research should be designed to inform State and local (public and private) agencies of ways to improve policy, practice, management and evaluation of child welfare programs.

Background Information: There is a continuing need in the child welfare field to generate new knowledge to guide the delivery of services to children and their families. Issues need to be raised and research projects developed which challenge assumptions about the nature and needs of the clients, service delivery strategies, and effective policies and practices.

Research topics can include the range of services which are delivered by public and private child welfare agencies including, but not limited to, services to prevent foster care, foster care, reunification services, independent living, adoption, and post-adoption services. Projects may also address the development of valid, reliable and appropriate outcome measures for children and their families or measures of service delivery effectiveness and efficiency. Economic issues could also be addressed. Applicants are encouraged to develop projects which take an original viewpoint and/or propose an innovative methodology.

Projects which primarily address issues in child abuse and neglect, day care, child development, and runaway and homeless youth, which are primarily secondary data analyses, research syntheses, or literature reviews, and which are included under other priority areas in this announcement will not be supported under this priority area. Research projects involving demonstration projects or clusters of such projects will be supported only if the research to be conducted is distinct from the evaluation of these demonstration projects.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe, based upon a review of the literature, how the project would fill a critical gap in information needed to improve policy, practice, management and/or evaluation in child welfare programs.
- Describe the overall research design that would be employed including sampling procedures; types of data to be collected; procedures for data collection, instruments and measurements to be utilized, adapted or developed, including assessments of their reliability and validity; and plans for data analysis.
- Discuss the scientific merit of the design selected including a discussion of the design's strengths and weaknesses, the identification of alternative designs which were considered but rejected and the reasons for rejecting them.
- Indicate ability to gain access to necessary information, data and clients.
- Describe the strategies that would be employed in the dissemination of findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that the principal investigator would attend a 2–3 day annual meeting of grantees in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a 3-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

Length of Proposal: The 60 page limitation for proposals stated in part III of this announcement does not apply to this priority area.

National Center on Child Abuse and Neglect

On October 3, 1990, a notice soliciting comments on the National Center on Child Abuse and Neglect's (NCCAN) proposed priority areas for FY 1991 was published in the Federal Register. A 60-day period was required to allow the public to comment on the proposed areas. After review and analysis of these comments, NCCAN is publishing its final priorities.

NCCAN received 156 written responses. Four comments addressed the low level of funding reflected for the proposed priority areas and recommended either an increase in funds or a decrease in the number of proposed priority areas. Eight responses expressed concern that the issue of

substance abuse and its relationship to child maltreatment was not fully addressed. This topic will be addressed by a new discretionary grants program entitled the "Emergency Child Abuse Prevention Services Grant Program." A program announcement dealing with priorities for funding under the program is expected to be published by April 1991. Comments were also submitted for each of the five research and demonstration priority areas, along with recommendations on symposia topics, the 1994 National Conference on Child Abuse and Neglect, and on additional topics.

The responses came from a variety of sources, including a Congressman; representatives of State and local public social welfare and law enforcement agencies and the judiciary; national, State and local nonprofit organizations; universities and students; hospitals, medical centers and mental health services; service providers and practitioners; the U.S. Advisory Board on Child Abuse and Neglect; and private citizens. The largest number of responses came from universities followed by nonprofit organizations.

The responses were generally in support of the five research and demonstration priority areas and the symposia topics included in the announcement. The largest group of respondents (61) wrote in support of interdisciplinary graduate training programs. This concern has been addressed by expanding the first two NCCAN research priority areas to encourage collaborative efforts and interdisciplinary approaches and programs. In addition, the issue of interdisciplinary training is also addressed in the current Children's Bureau priority area entitled "Interdisciplinary Training Programs for Child Welfare." Fourteen respondents supported a greater focus on prevention activities.

To the extent feasible, NCCAN addressed these comments in preparing its final FY 1991 priority areas. Comments intended to further clarify and focus the priorities were incorporated into the revised descriptions. For example, based on comments indicating the need to include females as well as males in research on juvenile sexual offenders, this priority area has been expanded to include female juvenile sexual offenders. Changes were also made in terminology based upon the comments received. The comments that were not used in developing the final priority areas were those which either included topics encompassed by the priorities as they were originally proposed or could not be addressed due to funding constraints.

1.32 Collaborative Arrangements Between State Child Welfare Agencies and State Title IV–A Agencies to Train Job Opportunity and Basic Skills (JOBS) Participants to Work as Child Protective Services Paraprofessionals

Eligible Applicants: State child welfare/child protective services agencies and State title IV–A agencies. Applications developed jointly by these State agencies are encouraged.

Purpose: To provide support for the preparation and training of paraprofessionals in the child protection field.

Background Information: A major area of concern to HDS and to the child abuse field in general is the overwork and heavy caseloads experienced by many child protective services (CPS) workers. This situation has led in many localities to burnout and high turnover which has restricted the ability of public agencies to deliver needed services.

HDS is interested in the potential offered by the Job Opportunity and Basic Skills (JOBS) program to provide innovative ways to support the work of child protective services workers and, in some cases, to enable public agencies to augment current services.

The August 1990 report of the U.S. Advisory Board on Child Abuse and Neglect states that "reported cases of child maltreatment have more than doubled in the past decade * * * The child protection system has not expanded to meet the challenges posed by these changes. The huge increase in cases has not only affected the CPS agencies charged with investigating cases. It also has had significant effects on law enforcement agencies, juvenile and criminal courts, prosecutor offices, public defender offices, and mental health agencies involved with investigating, adjudicating, or treating maltreated children and their families." These same stressors, it should be noted, are also adversely impacting the ability of child welfare agencies to develop and support innovative efforts to prevent child maltreatment.

The Family Support Act of 1988 (the Act) authorized the JOBS program, which shifts the primary purpose of the Aid to Families with Dependent Children program from providing cash assistance to helping welfare recipients become employed and self-sufficient. The Act required that all States implement the JOBS program, which provides education, job training, and work activities for participants, by October 1, 1990.

Participants in the JOBS program can constitute a valuable resource to State CPS agencies. Participants, through the education and training supported by the JOBS program, could be trained as paraprofessionals to work in support roles with child protection and child welfare professionals or to augment the services provided by these professions in capacities such as "home visitors."

HDS is interested in soliciting joint applications from State child welfare/child protection agencies and State title IV–A agencies to address the preparation, training and employment of paraprofessionals in the child protection field.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Provide evidence of collaborative arrangements between State child welfare agencies and State title IV–A agencies to provide training to JOBS participants.
- Describe the specific paraprofessional role(s) for which JOBS participants would be trained and the training plans for these positions and planned employment opportunities.
- Describe the criteria which would be used for the selection of trainees to participate in the program, and the number of trainees anticipated.
- Describe the characteristics of the persons that would be trained including family size and composition, ethnicity, income level, and other relevant variables.
- Detail the types of training that would be provided, how these would be determined, and the methods of training that would be employed.
- Describe how the demonstration training project would be evaluated and by whom and the measures that would be employed to determine its effectiveness in preparing paraprofessionals and in enhancing the capacity of the CPS workforce.
- Describe how training materials would be developed which could be used in the replication of the project.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a 2-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.33 National Resource Centers on Child Abuse and Neglect

Eligible Applicants: State, local, public or nonprofit organizations or agencies including accredited colleges and universities. Applications developed jointly by State, local, and community-based social services agencies, foundations, colleges or universities are encouraged.

Purpose: To provide information and technical assistance to State and local, public and private child welfare agencies, law enforcement agencies, medical and mental health agencies, community groups and other appropriate entities and individuals on the development, expansion, strengthening, and improvement of the quality and effectiveness of services to children and families regarding child maltreatment.

Background: Section 106(b) of the Child Abuse Prevention and Treatment Act, as amended, requires that Resource Centers be established that serve defined geographic areas; that are staffed by multi-disciplinary teams of personnel trained in the prevention, identification and treatment of child abuse and neglect; and that provide advice and consultation to individuals, agencies and organizations which request such services. To comply with that mandate, HDS seeks to support a Child Abuse and Neglect Resource Center and a Child Sexual Abuse Resource Center through Cooperative Agreements. Both Centers are expected to have qualified personnel, adequate resources and the organizational, professional and educational capacities to carry out the intent of the legislation.

On a nationwide basis, the National Resource Center on Child Abuse and Neglect will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child abuse and neglect; the training of professionals in the field of child abuse and neglect; and the identification, verification and dissemination of best practices and treatment models.

On a nationwide basis, the National Resource Center on Child Sexual Abuse will provide leadership, resource information and materials, technical assistance and professional consultation in the prevention, identification, diagnosis and treatment of child sexual abuse; the investigation, management and prosecution of child sexual abuse cases from the initial report through disposition; the training of professionals in the field of child sexual abuse; and the identification, verification and dissemination of best practices and treatment models.

The two proposed Resource Centers will provide assistance to State and local agencies, organizations and individuals involved in child abuse and neglect prevention, identification and treatment and in related fields. To that end, questions related to the type and extent of the assistance needed by the field must be addressed, as well as questions related to how to ensure that the latest knowledge on the prevention, identification and treatment of child abuse and neglect, or child sexual abuse, will be provided. In addition, the provision of assistance and consultation must be conducted in a manner that takes into account varying circumstances and conditions in the field and the client population, requiring that questions of flexibility, options for delivery and appropriateness of content be addressed.

It is expected that each Center would have a knowledge building and dissemination capacity and exhibit a systematic approach to developing issues for the field. To that end, each Center would analyze and synthesize the results of research, including that funded by Federal, State and local agencies, foundations, advocacy organizations, professional associations, and universities; convene work groups and conferences and publish and disseminate proceedings on the state of the art in selected areas of research and on research methodologies; identify areas where new research is needed to inform policy and practice and suggest next steps for completed research. In addition, each Center would compile information on evaluation approaches utilized by Federal, State and local agencies, foundations, advocacy organizations, professional associations, and universities; convene work groups and conferences and publish and disseminate proceedings on the state of the art of program evaluation; facilitate sharing information across public and private agencies at the local, State and national levels; provide technical assistance on the design and procedures for conducting evaluations to determine successful approaches to the identification, investigation, prevention and treatment of child maltreatment and for training personnel to carry out these programs. Centers would also identify, develop and disseminate findings and implementation packages for replication of effective identification, prevention, treatment and training programs; and identify new areas of demonstration and service improvement needed to combat child maltreatment.

Specific objectives related to the Centers' efforts to provide assistance will include:

- Identifying emerging child abuse and neglect/child sexual abuse issues and preparing information and policy papers addressing such issues;
- Identifying, documenting and developing innovative or exemplary resources, such as training curricula as well as manuals and studies, and assisting the field in adapting such resources to meet specific needs;
- Providing technical assistance, training and consultation to improve professional competency and to promote the utilization of resources and best practices related to child abuse and neglect and child sexual abuse, including methods and techniques for program implementation and evaluation; and
- Developing a network of professionals in child abuse and neglect and child sexual abuse and coordinating the linkages of these individuals and agencies with persons or agencies requesting information.

HDS intends to support the two Resource Centers through Cooperative Agreements. (A Cooperative Agreement is Federal financial aid in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and project staff will be identified and agreed upon prior to award.)

Minimum Requirements for Project Design: Applicants may apply to provide resource services in either of the program areas of child abuse and neglect, or child sexual abuse. The application must clearly indicate whether funding is being sought to support a Child Abuse and Neglect Resource Center, or a Child Sexual Abuse Resource Center. In order to successfully compete under this priority area, the application should:

- Describe the immediacy of the need to be addressed and provide information on the specific services the Resource Center proposes to provide to the field.
- Present specific workplans for the provision of assistance to the field that is nationwide in scope and that include the use of an advisory board; a plan for continued contact with the field, including, if appropriate, an 800 telephone number and direct mailings; and a plan for the development and use of a network of experts and for the provision of direct training and consultation, including fees for service, if necessary.

• Describe efforts that would be undertaken to coordinate activities with the Clearinghouse on Child Abuse and Neglect and Family Violence Information, other Resource Centers, the National Alliance for Cultural Competency and Minority Leadership Development, the National Archive on Child Abuse and Neglect, the Consortium for Longitudinal Studies of Maltreatment, and other NCCAN grantees.

• Provide a plan to determine the need for and to implement special projects related to policy issues, training curricula, service delivery models or other aspects of services related to child abuse and neglect or child sexual abuse.

• Provide a plan to evaluate the efficiency and effectiveness of proposed project activities, with specific reference to the purpose and role of the project.

• Describe the staff with appropriate expertise who would provide assistance.

• Describe the administrative and organizational structure and the management plan within which the project would operate. Charts depicting these structures must be included.

• Outline a plan of interaction with HDS for implementation under a cooperative agreement including, as appropriate, activities involving Headquarters and Regional Office staff. (A cooperative agreement is Federal Financial Assistance in which substantial Federal involvement is anticipated. The respective responsibilities of Federal staff and the awardee are negotiated prior to the award.)

Project Duration: The length of the project must not exceed 60 months.

Federal Share of the Project Costs: The maximum Federal share is not to exceed $400,000 for the first 12-month budget period or a maximum of $2,000,000 for a 5-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $2,000,000 is $666,667 for a 5-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded, a Child Abuse and Neglect Resource Center and a Child Sexual Abuse Resource Center.

1.34 Research on Juvenile Sexual Offenders

Eligible Applicants: State or local, public or nonprofit agencies, organizations and institutions of higher learning.

Purpose: To identify effective treatment approaches for the pre-adolescent sexual offender to prevent repeat offenses.

Background Information: In 1980, HDS funded 14 three-year demonstration projects for the management and treatment of intrafamily child sexual abuse cases. Almost every project found substantial increases in the number of reports of male juvenile sexual offenders in comparison to previous years. In the treatment of adult sexual offenders, these programs also found patterns of perpetration that began during the adolescent years with the victimization of younger children. This finding, along with other research, suggests that the untreated adolescent sexual abuser may become an adult sexual offender. Other studies citing the problem of sex offenses by adolescents have further found that a large number of these offenders have a history of being sexually abused. A study in Washington State also added documentation to the growing concern over the number of pre-adolescent children who are victimizing other children (28 percent were 6 to 12 years old at the time of the sexually aggressive behavior).

The Preliminary Report of the Task Force of the National Adolescent Perpetrators Network, completed in 1988, pointed out that specialized treatment programs had grown significantly from the 20 programs identified in 1982. Most recently, the Nationwide Survey of Juvenile and Adult Sex-Offender Treatment Programs, completed in May 1990 by The Safer Society Program, identified 626 programs that specialized in treatment for the juvenile sexual offender. Over half of these programs provide services to 6 to 12 year old victims who act out sexually. Little, however, is known about the effectiveness of these various treatment approaches or for which juvenile offenders a particular type of treatment is most effective.

HDS is interested in supporting studies that build on current methodologies and research to measure the effectiveness of treatment approaches for this population of 6 to 12 year olds in order to prevent repeat victimization of others. Information is needed on the outcomes of different types of treatment for different lengths of time and for different types of maltreatment and other maladaptive behaviors, and child and family characteristics. Research questions to be addressed also include the relationship between early childhood victimization and perpetration and the identification of the at-risk pre-adolescent population most prone to becoming offenders. HDS recognizes the complexities in assessing the effectiveness of various treatment approaches for the range of typologies represented in this population.

The treatment modalities to be studied are to be defined and the lengths of different types of treatment specified. Methods used for the identification and assessment of the study population along with how the treatment to be offered was determined should be detailed.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Demonstrate an indepth understanding of the issues and methodological problems associated with the study of male and female pre-adolescent offenders.

• Include an up-to-date review of the relevant literature and provide for an evaluation of a particular treatment approach for pre-adolescent sexual offenders.

• Provide, at a minimum, for a two-year follow-up after treatment for all children in the study design. This means that treatment should be completed by the end of the third year of the project.

• Describe how multiple outcome measures that are culturally relevant and developmentally appropriate as well as psychometrically sound instruments and multiple sources of information would be used.

• Describe the methodology that would be used in conducting the study, including the overall research design to be employed and, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Indicate the ability to gain access to necessary information, data, and clients.

• Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.

• Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in a format ensuring its ease for dissemination and utilization.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum for $1,000,000 for a 5-year project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

1.35 Graduate Research Fellowships in Child Abuse and Neglect

Eligible Applicants: Institutions of higher education on behalf of qualified doctoral candidates enrolled in the sponsoring institution. To be eligible to administer such a grant on behalf of a student, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secondary Accreditation.

Purpose: To provide support for graduate students to conduct research on critical issues in child abuse and neglect.

Background Information: The research community has highlighted the need to draw new researchers into the field of child abuse and neglect. Researchers participating in NCCAN-sponsored research symposia and grantees' meetings as well as in the Hearings on Issues in Research on Child Maltreatment conducted by the Research Committee of the U.S. Advisory Board on Child Abuse and Neglect recommended the granting of stipends at the doctoral level as one of several vehicles to address this need. In response to these recommendations, HDS seeks to expand the research capacity of the field by encouraging more students to seek careers in child abuse and neglect research through the granting of individual graduate fellowships for doctoral candidates to complete their dissertations. The questions to be addressed and issues to be studied for graduate fellowships are those related, but not limited, to the Priority Area on Field Initiated Research for Child Abuse and Neglect.

HDS is interested in supporting doctoral-level candidates, through their sponsoring institutions, who are now conducting or wish to conduct research on child abuse and neglect for their dissertations. Doctoral-level candidates in interdisciplinary programs are encouraged to apply for support through their institutions.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

• Provide evidence of the candidate's ability to conduct research including education, employment experiences, publications, and information on current academic status. A letter of support from a sponsoring faculty member must also be provided.

• Propose one or more research questions to be addressed by the candidate which would contribute to the body of knowledge about child maltreatment.

• Demonstrate the candidate's indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.

• Present specific results from any relevant planning studies, pilot studies or other preparatory work conducted by the candidate.

• Describe the overall research design which would be employed including, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.

• Demonstrate the candidate's ability to gain access to necessary information, data, and clients.

• Provide assurances that the grant would be used to pay a stipend to the candidate; some dependent allowances; any appropriate university fees; and major project costs for conducting the proposed research, including any necessary travel.

• Consider, because of the small amount of these awards, waiving any overhead or indirect costs.

• Provide assurances that the candidate would attend a three-day annual spring meeting in Washington, DC, and would prepare quarterly progress reports and a final project report in a format ensuring its ease for dissemination and utilization.

Project Duration: The length of the project must not exceed 12-months.

Federal Share of the Project Costs: The maximum Federal share is not to exceed $10,000 for a 12 month project period.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that ten projects will be funded. No more than two awards per institution will be made.

1.36 Field Initiated Research for Child Abuse and Neglect

Eligible Applicants: State or local, public or nonprofit agencies, organizations, and institutions of higher learning.

Purpose: To support new research designed to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect by the Child Abuse Prevention and Treatment Act of 1988, as amended. These responsibilities include the conduct of research on the causes, prevention, identification and treatment of child abuse and neglect; and on appropriate and effective investigative, administrative and judicial procedures with respect to cases of child abuse, particularly child sexual abuse.

Background Information: There is an ongoing need to generate new knowledge and an understanding of critical issues in the field in order to improve its capacity to prevent, identify and treat child abuse and neglect. Research issues to be addressed are those that will expand the current knowledge base, build on prior research, contribute to practice and provide insights into new approaches to the prevention and treatment of child maltreatment.

Such issues include, but are not limited to, alternative methods for measuring prevalence; recurrence rates and causes of recidivism; child fatalities; the impact of feedback on reporter and Child Protective Services (CPS) system behavior; and parent and child experiences with the CPS system. Additional issues to be addressed include cultural factors in maltreatment and the CPS systems response; identification of neighborhood-level factors related to the etiology, prevention and treatment of child abuse and neglect; factors that promote resilience in maltreated children; collaborative approaches to assessment and treatment for parallel traumas experienced by the child such as parental substance abuse plus maltreatment; prevention of revictimization; effective administrative procedures for the identification, handling and treatment of child abuse cases; transfer of appropriate technology from other fields; and methods for translating and disseminating critical bodies of research for use in practice. The proposed research studies should be designed to address current and emerging issues that have direct application to the field of child abuse and neglect.

Consideration will be given to longitudinal studies that provide for coordination with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment which seeks to aggregate compatible projects into a longitudinal study database. It is also expected that longitudinal studies will obtain information on the ability of maltreated children to deal with normative developmental transitions.

The use of common data collection instruments across studies is

BEST COPY AVAILABLE

encouraged where applicable. It is also expected that initial planning for data sets will take into consideration sound documentation practices and that final reports will be prepared in an NCCAN-suggested format. Information on all projects supported by NCCAN as well as other studies on child maltreatment is available through the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

Applications which involve interdisciplinary approaches are encouraged.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe how the proposed research addresses current and emerging issues that have direct application to the field of child abuse and neglect within the context of the National Center's legislative responsibilities.
- Indicate, if longitudinal studies are to be addressed, willingness to cooperate with the NCCAN-sponsored Consortium for Longitudinal Studies of Child Maltreatment.
- Indicate an indepth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date review of the relevant literature.
- Develop an approach that is comprehensive and culturally responsive to the populations included in the study.
- Describe the overall research design that would be employed including, as applicable, sampling procedures, experimental design, kinds of data to be collected, procedures for data collection, the instruments and measurements to be utilized, adapted or developed and the plans for data analysis.
- Indicate an ability to gain access to necessary information, data, and clients.
- Describe strategies for the dissemination of the findings in a manner that would be of use to other researchers and practitioners in the field.
- Provide assurances that at least one key staff person would attend a three-day annual spring meeting in Washington, DC; that the data set would be prepared according to sound documentation practices; and that the final report would be prepared in a format ensuring its ease for dissemination and utilization.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $150,000 for the first 12-month budget period or a maximum of $450,000 for a 3-year project period. Applications for lesser amounts, including those for small grants of $75,000 or less for a 3-year project period, will also be considered under this priority area.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded at the maximum funding level; more than three projects may be funded depending on the number of applications for lesser amounts.

2. Administration for Native Americans

2.01 Stabilizing Markets for Indian Manufacturing Companies

Eligible Applicants: American Indian Tribes, for-profit Native American organizations and nonprofit Native American organizations or tribal consortia.

Purpose: To develop and implement a multi-tribal manufactured products marketing service to assist American Indian manufacturing companies in marketing their products to all sectors of the U.S. or international economy.

Background Information: In recent years, Indian Tribes have identified unemployment as their number one problem. To address this problem, several large Indian manufacturing businesses (employing or having the potential to employ 50 or more employees) have been established at considerable Federal and tribal government expense.

Federal agencies are concerned about the growth and stability of these businesses because of their potential for impacting Indian unemployment rates. On most reservations unemployment ranges from 40 to 90 percent of the population. It has been projected that on larger reservations as many as 125 manufacturing businesses, employing large numbers of people, would be needed to create enough jobs to substantially reduce unemployment.

When these tribal manufacturing companies were formed, they were intended to be profitable on a long-term basis at a 1evel at least equal to their direct competition. Their problem, however, is that in the beginning they were undercapitalized or debt financed and were placed in a non-competitive subsidized "8(a)" status. Now these businesses are approaching their "graduation" from the section 8(a) process and are expected to be able to compete on the open market. Because of their tight financial structuring, the existing businesses will not be able to compete in this new market without assistance.

The long-term success of the Indian manufacturers requires the movement from marketing to government agencies such as the Defense Department to other Federal, State and/or local government agencies, and to the commercial or private sector markets. Defense Department advisors commonly tell businesses not to rely too heavily on Defense markets because they rise and fall with Congressional appropriations. Although expectations that Defense appropriations will be drastically reduced during the next few years may have been moderated by the current crisis in the Middle East, presumptively in the long-run the relative expenditures on Defense will decline.

To broaden the scope of the market for American Indian manufacturers' products, the proposed marketing effort should emphasize transitional strategies to reduce dependency on Defense expenditures and encourage steady markets in the non-defense related public sector. Concurrently, emphasis should also be placed on strategies to develop private sector markets.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Indicate how the project will utilize the services of manufacturing market representatives and existing marketing/advertising agencies to promote sales of the participating tribally owned manufacturing companies.
- Indicate how sales, advertising, and marketing techniques will be adopted to meet the needs and circumstances of specific tribal manufacturing companies represented in relation to the Federal, State and local government contracting processes and the private sector market.
- Indicate how the project will ensure that sales will be achieved for the various tribal companies represented by the applicant.
- Demonstrate a knowledge of Indian economic development and the various preferential opportunities available to Indian businesses.

Projects under this priority area are designed to provide direct sales support for tribally owned manufacturing 9companies and Indian-owned manufacturing companies located on reservations, to advertise products, locate buyers, arrange and consummate sales, facilitate delivery of products and provide follow-up services for participating companies. They are not intended to finance trade shows or technical assistance efforts.

Applicants may want to consider a working arrangement with an existing marketing/advertising agency with a proven record in government and/or commercial marketing.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2.02 Environmental Protection

Eligible Applicants: Tribal Consortia, Alaskan Native Consortia and Native American nonprofit organizations.

Purpose: To develop action-oriented approaches addressing the broad range of environmental issues facing the Native American community, resulting in effective solutions to environmental problems.

Background: Indian Tribes and communities are increasingly facing the problem of environmental degradation. As communities develop more economic ventures, the problems associated with growth, and particularly industrialization, will worsen. All the environmental stresses confronting more developed nations have already had a serious impact on Native American communities. The problems these communities face are multiple: toxic wastes, destruction of natural habitat, reductions in air and water quality, diminution of watersheds, lack of safe, long term waste disposal and sewer treatment facilities, and the adverse impact on tourism resulting from an increasingly blighted landscape.

These environmental problems carry an enormous economic and social cost. Measurable increases in health problems, particularly for at-risk populations such as children and pregnant women are already occurring. The increased cost and complexity of community infrastructures to cope with environmental problems is a growing component of the budgets of these communities. In an economy in which tourism will play an increasing role as a source of jobs and revenue, the attractiveness of a community's environment will directly translate into economic health.

Tribal governments face particular problems in identifying, correcting and preventing environmental problems because of their very limited financial resources, small tax base, and physical and social isolation from other communities. Reservations are extremely vulnerable to problems created outside of tribal control, such as pollution of tribal fishing streams and dumping or burning of garbage by closeby towns.

It would be prohibitively expensive for each Tribe to address its environmental problems without building on understandings gained nationally. Therefore, it is particularly crucial that Native American communities have access to expert knowledge and demonstrated techniques for solving their problems. At the same time, the local communities possess the practical understanding of the issues and constraints on action, and offer intellectual and political resources that are indispensable for solving these problems on a comprehensive scale.

This priority area focuses on funding projects that will incorporate effective, practical resolutions to environmental problems in Native American communities. The successful approaches will be characterized by a philosophy of "think globally, act locally," and must reflect the unique realities of the government-to-government relationship. This approach should stress local involvement and decisionmaking, and strive for maximum support from the private sector. Because reservations are victimized by outside environmental practices, stress should be placed on expanding tribal influence in the decisions of other local governments. It will combine a "think tank" to do the strategic planning and analyses necessary for a fundamental attack on the problem, with near-term implementation of at least two specific model projects which can be made available to Indian country.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant organization should:

- Create a solution-oriented expert advisory group to identify and address the environmental issues in a Native American context. The group will function as a National "think tank," engaging in strategic planning, technical analysis and policy setting. The group should include appropriate technical experts and tribal policy makers. The group, or a component of it, will also provide guidance to the specific projects.
- Provide for the implementation of at least two model projects on two separate sites, addressing current environmental problems in local communities.
- Establish a clearinghouse mechanism to exchange and disseminate understandings of common problems, successful solutions and model programs, and elimination of barriers to successful local solutions to environmental problems. The clearinghouse should focus on areas that differentially effect Tribes, and which are not adequately addressed by existing sources of information such as the Environmental Protection Agency; Department of Energy; Department of Housing and Urban Development; Indian Health Service; and Department of Interior.
- Create model linkages with non-Indian units of government to provide greater Native American input in local practices impacting on reservations.
- Develop mechanisms to provide for funding support from local governments or private industries which have contributed to the environmental problems in reservation areas or may benefit from environmental improvements.
- Consider mechanisms for continued funding of the expert advisory group, including creation of a for-profit subsidiary to advise Tribes, the Federal Government and the private sector on problems and opportunities in the environmental area.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $250,000 for the first 12-month budget period or a maximum of $750,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $750,000 is $187,500 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2.03 Developing A Model For Native American Veterans to Access Services

Eligible Applicants: Nonprofit Native American organizations including urban Indian centers, American Indian Tribal Coalitions, Alaska Native Coalitions and Native Hawaiian organizations. Eligible applicants also include public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served in this latter group may be located on these islands or in the United States.)

Purpose: To develop and test an effective comprehensive service delivery model for Native Americans which provides access to services and benefits to which they are entitled.

Background Information: Veterans make up about 12% of the Native American population. Although the exact number varies depending on definition, a fairly consistent profile of this group can be established. Every study points to two major conclusions: (1) Native American veterans disproportionately confront a constellation of social and economic problems; and, (2) traditional programs designed to help veterans are not adequately meeting the needs of the Native American population.

The 1985 Veterans Administration Statistical Brief identifies a population of 159,900 American Indian, Aleut and Eskimo veterans. Hearings held in November 1989 by the Select Committee on Indian Affairs indicate that there are 170,000 Native American veterans.

The Native American population, as a whole, experiences more poverty and social ills, including the highest unemployment rates, poorer health and lower educational levels than any other group in American. Native Hawaiian and Native American Pacific Islander veterans also suffer from these problems and are under-represented in the receipt of services.

Two major problems related to the Department of Veterans Affairs (VA) services to Native American veterans were identified in the final report of the Advisory Committee on Native American Veterans (required by Pub. L. 99-272). These are a lack of statistical data and the underutilization of veterans benefits and health care.

Because of the gross level of unmet needs among Native American veterans, there is a need to develop and establish an effective mechanism/model for identifying and accessing the full range of services and benefits for which they are eligible. The identification and implementation of such a model should help social self-sufficiency and sustained improvement in the conditions of Native American veterans.

This priority area directly supports several HDS initiatives, such as strengthening the family's capability to care for its members and the integration of services to improve the effectiveness and efficiency of social service delivery. In addition, this area emphasizes the Departmental initiatives to improve access to health care and enhancing health promotion.

The model developed under this priority area should, when implemented, increase the availability and accessibility of existing Government services, including VA benefits, to which Native American veterans are entitled. Additionally, benefits and services should be targeted to those with physical disabilities and service-related mental and emotional impairments. It is aimed at eliminating the problem of inaccessible, fragmented and uncoordinated services experienced by veterans at all levels of tribal, State and Federal governments.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the proposed project should include the following:

- Present a service delivery model which is comprehensive; including, at a minimum, health, job training and social services, and describe related issues such as outreach and referral, rural transportation to access services and culturally appropriate support systems such as traditional healing practices. Use of media also should be included in the project.
- Include a plan for pilot testing the model at two sites, and present an appropriate and realistic assessment for determining its effectiveness and suitability for replication elsewhere in the Native American community.
- Describe the communities in which the program will be tested. Describe their populations, including ages, income and other relevant demographic information;
- Include provisions for effective coordination of all appropriate services and efforts on behalf of Native American veterans, including strong interface with tribal government agencies, social service offices of VA medical centers and other tribal, local and/or State service agencies. Assurances to this effect should be provided by these organizations.
- Provide for consultation with the Native American veterans community to solicit input concerning the model, how it should be implemented and possible site locations.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $400,000 for a 2-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $400,000 is $100,000 for a 2-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2.04 Developing An Holistic Native American Community Model to Combat Substance Abuse

Eligible Applicants: American Indian Tribes, Alaskan Native Villages and consortia thereof; for-profit and nonprofit Native American organizations and Native American institutions for higher education.

Purpose: To expand the current range of culturally sensitive models through which substance abuse within Native American communities is addressed. The proposed model must incorporate holistic approaches to preventing and abating substance abuse through the integration of the ethos of the specific Native American group with demonstrably effective techniques for preventing and abating substance abuse. The model must incorporate traditional family structure and specify participation of Elders, youth and relevant organizations in assisting the evolution of community efforts to eliminate substance abuse.

Background Information: Widespread problems arising from chemical dependency are evident within Native American life; in fact, disruption of Native American family life is often associated with alcohol-related or other drug abuse. General human services agencies frequently do not provide either adequate or culturally-sensitive support to such families in need. Available evidence indicates that normative approaches to these problems which do not take into account the special sensitivities associated with Native American experiences often fail to reach families with problems.

The impact of substance abuse within Native American communities is exacerbated by the private nature of the Native American culture, the isolation of many of the communities, and the constrained economic conditions and accompanying poor housing and transportation structures within these communities.

Indicators of well-being among Native Americans show that within these communities the incidence of mortality arising from causes such as liver disease and automobile accidents, which are frequently associated with chemical abusers, is two to three times more frequent than within the U.S. population as a whole.

Preventing chemical abuse has been a concern for ANA for many years. The following are titles and grantees of drug and alcohol abuse projects that ANA funded in fiscal years 1987 through 1989. Abstracts of these projects are available by calling (202) 755-4633.

- "Project S.T.A.R. (Support, Training, Awareness, Resources)" by Oglala Lakota College;
- "Traditional Healing Project for Alcohol and Substance Abuse for Native Americans" by the Kodiak Area Native Association;
- "Circle of Victories" by the Native Images Foundation, Inc.;
- "Indian Children's Alcohol/Drug Abuse Prevention Project" by the Seattle Indian Health Board;
- "Ft. McDowell Indian Community Alcohol and Drug Abuse Prevention Project" by the Ft. McDowell Moh-Apa Indian Commission;
- "C-SACAI: Communities Using Science-Based Alcohol Curriculum for American Indians" by the American Indian Science and Engineering Society;
- "Grand Traverse Band Substance Abuse Prevention Project Big Brother/Big Sister Program" by the Grand Traverse Band of Ottawa-Chippewa Indians;
- "Alcohol and Substance Abuse Prevention for Youths" by the Red Cliff Band Chippewa Indians;
- "Resolving Substance Abuse Among Native American Adolescents" by Rhode Island Indian Council;
- "A Project for Resolving Chemical Dependency Problems of Native Americans Within an Urban Environment" by the Denver Indian Health Board;
- "Resolving Chemical Dependency Through Development of a Community Code Containing Principles of Proper Living Metaphoric Teaching/Learning Experience in an Indian Community" by the Sokaogan Chippewa Community;
- "Community Development Process Training" by the Native Village of Fort Yukon;
- "Prevention of Chemical Abuse Among Native American Youth and Families" by the Native American Manpower Program; and
- "The Benefits of Intervention and Treatment: Towards a Typology of Recovery Among Native American Alcoholics and Drug Abusers in the Urban Indian Community of Spokane, Washington" by the Spokane Urban Indian Health Service.

The Administration for Native Americans is interested in substantiating the value of a model which shows how to adapt known techniques for resolving family conflicts related to chemical dependency using the indigenous values and structure of the Native American community to promote substantial movement towards chemical-free family and community environments.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Propose a project which builds upon the prior state-of-the-art in this field and includes the specific traditional Native American values;
- Describe the community in which the program will operate. Describe the population, including ages, income and other relevant demographic information;
- Demonstrate community-based support for the proposed project; include letters of commitment from the participating organizations detailing their support;
- Describe the specific roles to be played by Elders, youth and relevant organizations in developing and implementing the project;
- Include a description of how the project's achievements will be assessed both during and subsequent to the project's completion; and
- Propose techniques through which the results of the project will be disseminated to other Native American communities.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $600,000 is $150,000 for a 3-year project period. This constitutes 20 percent of the total project budget. (This non-Federal share match of 20% applies only to ANA priority areas.)

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

3. Office of Policy, Planning and Legislation

3.01 Community Coalitions to Plan for Change

Eligible Applicants: Local public or private nonprofit agencies or organizations or local government entities acting on behalf of a new or existing community coalition. The coalition must consist of at least five community agencies or organizations, including a minimum of one local governmental entity having jurisdiction over the target community such as a city, county, or regional government. The coalition may, and is encouraged to, include the participation of churches, community foundations, universities, businesses and other for-profit organizations, and ethnic and neighborhood associations.

Purpose: To develop a plan of action that addresses a pressing need in the community related to HDS programs and initiatives, and, based on the process of developing this plan of action, to establish a permanent community infrastructure and consensus-building process through which the community will implement that plan and will build capacity for addressing future problems.

The plan developed by the coalition should be comprehensive, coordinated, and community-based—focusing on one or more problems facing families in that particular community. The coalition should function as a planning and coordinating entity, energizing and mobilizing community organizations, individuals and institutions to seek creative solutions to perceived local needs and problems. HDS is particularly interested in funding communities in which a process of planning and coalition building has not been used extensively, or is in need of strengthening and expansion.

Background Information: The complex problems facing communities today call for approaches that recognize that there are no easy or simple solutions. These problems are interrelated, cut across agency and institutional boundaries, defy categorical funding streams, and impact all sectors of society. For example, problem areas include infant mortality, child abuse/neglect, pregnancy among teenagers, school dropout rates and chronic truancy, unemployment, drug and alcohol abuse, and violent crime. In addition to the human misery resulting from these problems, the social and economic costs to communities and the Nation are enormous.

It is increasingly apparent that it is primarily at the local community level that solutions are best formulated and implemented. At this level, with the involvement of active and value generating community institutions and organizations, religious and community leaders, and elected officials, we can generate the commitment, skills, and opportunities to make changes in our communities.

At the heart of our communities are the shared values and standards which are generated and sustained by families and other indigenous institutions, and which establish an identity for the community. Those programs that have been most successful in addressing community problems have been built with the participation of such

community groups, often called "mediating structures." (Mediating structures are families, neighborhood organizations, ethnic and religious associations, and voluntary associations such as the YMCA/YWCA and Boy Scouts/Girl Scouts.) Because the failure of values is such an important component of many of our pressing social problems, the restoration and strengthening of values will be a critical part of the solution.

With the gradual disintegration of the two parent family, the multigenerational family, and other "traditional" social structures in this country, government programs have attempted to cope with social problems that previously had been the responsibility of other social institutions. However, government programs alone cannot begin to provide the resources and expertise necessary to resolve these problems. Families and communities still remain the best problem-solvers, in part because they not only provide resources but also communicate the basic values that our children and youth need to survive and prosper.

Such positive values need to be reinforced again and again in our children and youth by families, neighbors, religious organizations and schools. In order for families to be self-sufficient and for children to flourish, the family must be supported by the social institutions of the community, including churches, schools, community agencies, businesses, and the government. Above all, families and individuals need to be involved in identifying the problem and developing solutions satisfactory to the local community.

Rebuilding the spirit and influence of the family and community is thus central to resolving our country's most pressing problems. Coalitions that come together to mobilize public participation, to identify problems (single or multiple issues, broadly defined or narrowly focused), to address and develop plans utilizing existing talents and resources, and to successfully implement such plans not only bring about change, but they also strengthen the capacity of the community to work together for further change.

HDS, in collaboration with the Kettering Foundation, may make special technical assistance available to projects receiving grant awards under this priority area. In addition, grantees are expected to cooperate in any data collection and evaluation efforts that may be initiated by HDS.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Describe the composition of the coalition and identify the lead organization; describe whether this is an ongoing coalition or is just being formed. The coalition must consist of at least five community organizations or agencies, including a minimum of one local government entity having jurisdiction over the target community, such as a city, county or regional government.
- Describe the community where the coalition is located. Describe the population (demographic information, including ages, income, ethnic and racial composition) and the municipal entity or entities having jurisdiction.
- Specify the problem that the community coalition intends to address through this comprehensive planning effort. Provide evidence of community need, community involvement in identifying the issue, including a review of the literature, community studies, survey data, and other related information, and community activities.
- Specify the project goals and desired objectives/outcomes, as well as appropriate indicators intended to verify and measure the achievement of the outcomes at each level—the coalition, the planning process, the plan, and its future implementation.
- Describe the methods to be used to ensure effective involvement by interested individuals and relevant organizations in the identification of fundamental beliefs and values of the community, definition of the problem to be addressed, issues and alternative solutions, and the development of the plan of action.
- Describe plans for the continuation of the community coalition as an effective permanent consensus-building process and its role in the implementation of the plan beyond the project period.
- Describe the lead organization's experience, as well as that of the other coalition organizations, in community leadership and problem resolution. Describe the participating organizations' innovative program components, and any prior involvement in community decisionmaking that would provide evidence of the coalition's ability to follow through on this major planning effort. Provide assurance that the coalition will produce a viable and realistic plan of action at the end of the project which enjoys broad community support.
- Include letters of commitment from the participating organizations, detailing their support for the applicant to act on behalf of the coalition and their potential role in the planning effort. The letters should detail the types of commitment that each coalition participant is making.
- Describe how the project funds will be expended. Provide budget detail on each line item and major expense in relation to the proposed goals, objectives and primary functions of the project. Include a line item for participation in cluster group meetings held in Washington, DC. All grantees will be expected to meet twice a year to exchange information about their coalition effort. In addition, the coalition may want to budget for a facilitator to assist in the coalition's development.
- Provide an assurance that these grant funds, including both Federal share and matching funds, will not be used for service provision.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $200,000 for a two-year project period. The grant funds, including both Federal share and matching funds, may not be used for service provision.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $200,000 is $66,667 for a two-year period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three to four projects will be funded. Grant awards will be made which reflect the diverse nature and needs of today's local communities to a variety of coalitions focusing on a range of issues.

3.02 Correctional Facilities as an Intervention Point with Drug-Addicted Pregnant Women

Eligible Applicants: State, city and county correctional facilities that serve women.

Purpose: To utilize incarceration as an intervention point in providing substance abuse education, public health nursing and child welfare case planning for drug-addicted pregnant women to improve the outcomes for these high-risk women and their babies. This would involve the replication of the ADAPT program (described below) or the demonstration of a similar comprehensive program which begins in the correctional facility and continues when the individual returns to the community.

Background Information: Many female drug addicts rely on prostitution or theft for their income. In addition, drug use itself is illegal and carries a mandatory minimum sentence. For these reasons, more drug-using women are served by the criminal justice system than any other government system. This point of intervention can be extremely useful in locating a population of drug-abusing pregnant women who might not be identified in any other setting.

There has been a marked increase in the number of women serving time in correctional facilities. In 1980 there were about 13,000 women in Federal and State prisons. By the end of 1989, that number had increased to almost 41,000. In 1989 alone the female prison population grew by 25 percent, compared to a 13 percent growth in the male population. According to the Federal Bureau of Prisons, about 60 percent of the women in Federal custody are serving sentences for drug offenses. Further, current estimates by the General Accounting Office state that between 70 and 80 percent of the women in prisons have alcohol and drug dependency problems. Most of these women are young, between the ages of 20 and 34 years old, in their child-bearing years.

Many women in the criminal justice system have up to ten year histories of substance abuse. Often the only health care they receive is in jail. An informal evaluation of women receiving health care in the Multnomah County, Oregon jail showed that about 50% of the women received no health care in the community outside of the corrections health facility. While most of the pregnant women were eligible for Title XIX medical benefits, many do not follow through with application procedures.

The time in a corrections facility can provide pregnant addicts with time away from drugs, alcohol, and the self-destructive drug-seeking lifestyle. It is critical that the corrections facility have a drug testing and drug free policy to insure that the time spent there does not further encourage the mothers' addiction. However, the most important point of the program is services for the mother after leaving prison. The average stay in a corrections facility is much shorter than the duration of a pregnancy, and in 1988, almost 75 percent of the convicted women serving under correctional supervision were on probation or parole. The demonstration should include continued drug testing, pregnancy testing, health care, child welfare case management and drug treatment for these pregnant women as they return to the community.

This priority area is modeled after the successful ADAPT Program in Multnomah County, Oregon. In this program, women entering jail are screened for pregnancy and drug use. Prenatal care is provided by nurse practitioners and physicians in the jail. While women are in the jail, they participate in a weekly one and one half hour educational substance abuse group. Women are also visited by a Community Health Nurse and a case manager to begin developing release plans.

When women leave the correctional facility, the Community Health Nurse and case manager provide home visits and link women with services they require in the community. Women receive prenatal care at one of the Multnomah County Health Clinics located around the county or at one of the local hospital outpatient clinics. Women are enrolled in substance abuse treatment programs at which child care is provided.

For more information on this priority area, contact Margaret Baker, Office of Policy, Planning and Legislation, Office of Human Development Services, 200 Independence Avenue, Room 312 F, Washington, DC 20201 (telephone 202/245-7027).

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Provide a demographic profile of the service area, the scope of the problem to be addressed, including the numbers of women to be served while incarcerated and while in the community;
- Define the goals and objectives of the proposed program, giving specific numbers of expected participants;
- Describe the health services, social services, drug treatment services and drug testing components of the program, both while the women are in prison and while in the community, as well as other components of a comprehensive program;
- Provide letters of commitment from the participating service providers in the community which indicate the extent of involvement in the proposed project;
- Provide for continuation of the program once Federal funding has ended; and
- Provide for an evaluation component that will track the women through their pregnancy.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $125,000 for the first 12-month budget period or a maximum of $375,000 for a three-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $375,000 is $125,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

3.03 Transfer of International Innovations

Eligible applicants: There are no eligibility restrictions for applications in this priority area. Any public or private organization capable of carrying out the purposes of this priority area may apply. Applicants in other countries are eligible to apply.

Purpose: To improve the quality, accessibility and accountability of social service programs in the United States by transferring to this country innovations in other countries involving community-based solutions to meet the social service needs of persons at risk.

Background Information: While the United States is a natural field for research and demonstration in the area of social services, we can gain considerable insight from other countries through a knowledge of their social service programs, authorizations, governance, and delivery systems. Transferring these innovations can lead to an enhancement of, or adaptations to, our domestic social service activities.

In furtherance of the HHS Secretary's Eastern European Initiative, applications that propose cooperation with social service organizations in the "emerging democracies" of Eastern Europe are encouraged. This is not meant to exclude applications that propose cooperation with social service organizations in other parts of the world, but aims to focus the attention of some of the applications to this geographic area of interest.

The "Transfer of International Innovations" priority area description included in the FY 1990 CDP announcement listed the titles of and the grantees for the 13 projects that had been funded under this priority area in previous years. The subjects of these projects are:

- Income generating projects for the elderly;
- Increasing self-sufficiency and self-esteem in old age through employment;
- Home care for the elderly;
- Innovative social service techniques for working with the Latino family;
- Application of innovative techniques to study and improve the quality of care in domiciliary care facilities;
- An international exchange of services and training to improve the learning and living environment of

children in underprivileged communities;

- Reducing violence toward children;
- Job placement for low-income unemployed youth;
- Community-based and in-home services for frail and economically disadvantaged elderly;
- Home-based intervention for low-income minority preschool children and mothers;
- Community self-help associations: mediating structures for volunteers/professionals;
- Opening technology to the developmentally disabled; and
- Exchange of technology regarding spina bifida.

As a result of the FY 1990 HDS CDP competitive process, an additional four projects were funded. The titles of and grantees for these projects are:

- "Comparative Analysis of Decentralization of Services in Three Scandinavian Countries" by the Human Services Research Institute, Cambridge, Massachusetts;
- "Working Capital" by the Institute for Cooperative Community Development, Manchester, New Hampshire;
- "Enhancing Family Preservation Through International Innovations Transfer" by the National Association of Social Workers, Silver Spring, Maryland; and
- "Developmental Disabilities and Concomitant Severe Behavioral and Psychiatric Disorders: An International Demonstration, Technology Transfer, and Research Project Between Israel and the United States" by the University of Rochester, Rochester, New York.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the application should:

- Have the promise of contributing significantly to the achievement of one or more of the major HDS goals and be of benefit to one or more of the HDS target groups—Native Americans, the socially and economically needy, the elderly, the developmentally disabled, and at-risk children, youth, and families.
- Describe community-based solution(s) to the social service needs of populations in other nations which will be tried and tested in a U.S. setting.
- Identify the target U.S. communities and settings in which the new service approaches would be tested.
- Specify the proposed methods to be used to promote systems changes in the target U.S. communities and how the individual organizations will be involved.
- Be relevant to domestic research with the possibility of complementing ongoing or new projects in the United States.
- Relate to the U.S. commitment to participation in international organizations, both governmental and nongovernmental, and to United Nations (UN)-sponsored events, such as the UN World Summit for Children, International Youth Year, International Year of the Family—1994, and follow-up to the World Assembly on Aging, and the UN Decade of Disabled Persons.
- Include an adequate mechanism to allow for wide dissemination and replication of project findings.
- Indicate a focus either in the United States or shared with the transferring country. The focus cannot be exclusively in another country. The application must include a U.S. component and a U.S. co-project director.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $100,000 for the first 12-month budget period or a maximum of $300,000 for a 3-year project period.

Neither Federal funds nor the non-Federal match (cost-sharing) can be used for expenditures related to international travel. However, applicants may use other sources of funds available to them for this purpose.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $300,000 is $100,000 for a 3-year project period. This constitutes 25 percent of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

3.04 Public Information/Community Awareness Activities for the Prevention of Family Violence

Eligible Applicants: State agencies which are the recipients of HDS family violence prevention grants in collaboration with other State and local public and private nonprofit agencies, institutions, and community organizations, that have designed and implemented information activities and community awareness strategies.

Purpose: To assist in the development of public information and educational strategies and activities that will serve as a model for the prevention of family violence and provide information on resources, facilities, and alternatives to family violence victims and their dependents, community organizations, local school districts, and individuals seeking assistance.

Background: Current surveys and research studies have indicated that, all too often within families, the response to stressful situations tends to be physically or emotionally violent. There are data which substantiate the inference that the violent response to conflicts or stressful situations may be a "learned" response, an adaptive and modeled behavior used to control or extricate a person from a particularly stressful situation.

It also has been shown, particularly in anecdotal reports, that there are victims of family violence still unaware of sources of assistance that may be available in their communities. Victims and batterers alike have indicated that they remained in their situations or felt powerless to change because they were uninformed of their options or of the community resources that may have assisted them. We also may assume that the so-called "new minorities" (e.g., Southeast Asians, Central Americans) may have both language and cultural barriers to surmount in sorting out the matrix of services and community mores in dealing with family violence. Moreover, the African American and Hispanic communities often have complained that, in general, they do not receive the most current or accurate information on available services or facilities.

The goal of this priority area is to address the reality of the "learned" response in a limited manner by adding the element of credible and persuasive information to the arsenal of weapons to break the so-called "cycle of family violence." By providing for and assuring that individuals, particularly within the minority communities, are aware of and have information about available resources and alternative responses to the prevention of violence, we also may demonstrate an intervention model that provides for a more informed individual and a prevention strategy responsive to aggressive and stressful situations.

The dual focus of this priority area requires the development of an innovative informational model that may be used by public and private agencies, schools, churches, boys and girls clubs, community organizations, and individuals. Increasing the amount of information on services and other alternatives to prevent family violence provides the victims, their dependents, and perpetrators, with the knowledge that assistance is available.

Accurate information is critical to any community awareness strategy and activity. How it is communicated must be modified where there may be communication barriers because of perceived or real language differences and cultural insensitivities. Several organizations recently have developed information strategies and activities to inform and involve various minority communities. Prospective applicants may want to contact the following organizations through their staff liaison persons to discuss the issues they faced, the methods proposed to actively engage their communities, and what they would identify as the most critical elements in their informational strategies:

Three Feathers Associates, P.O. Box 5506, Norman, Oklahoma 73070, (405) 360–2929, Antonio Dobrec, Project Director

Lao Family Community of Fresno, 3121 E. Olive, Fresno, California 93702, (209) 264–4080, Tony Vang, Executive Director

Washington State Migrant Council, 1115 South 9th, Sunnyside, Washington 98944, (509) 837–8908, Cristobal Gonzalez, Special Services Coordinator

Department of Social Work-Sociology, 3500 John Merritt Boulevard, P.O. Box 730, Nashville, Tennessee 37209–1561, (615) 320–3645, Peggy Enochs, Project Director

Northwest Indian Child Welfare Institute, Northwest Indian Child Welfare Association, c/o RRI, P.O. Box 751, Portland, Oregon 97027, (503) 464–3038, Terry L. Cross, Director

Minimum Requirements for Project Design: In order to successfully compete under the priority area, the applicant should:

- Present a plan which clearly reflects the participation of the State agency receiving funds under the Family Violence Prevention and Services Act in collaboration with other eligible organizations in the development of this model demonstration.
- Describe, as an element of the plan, an approach to the prevention of family violence, presented, for example, as alternate ways in which children in primary schools learn to handle conflict and disagreements.
- Include, as a critical element in the model, the development and use of non-traditional sources as information providers or vendors. Applicants should present specific plans for the use of local organizations, businesses and individuals, in the distribution of informational materials.
- Include a description of how the results of this model will be measured, provide a set of obtainable objectives, and provide descriptions of long-range family violence prevention plans that would place emphasis on "breaking the cycle" of family violence. Show how the use of a long-term informational strategy, with its emphasis on children and youth, would assist in breaking the "cycle of violence."

Project Duration: The length of the project should not exceed 12 months.

Federal Share of the Project: The maximum Federal share is not to exceed $50,000 for the 1-year project period.

Matching Requirement: The minimum non-Federal matching requirement in proportion to the maximum Federal share of $50,000 is $16,667 for a 1-year project period. This constitutes 25% of the total project budget.

Anticipated Number of Projects to be Funded: It is anticipated that two projects will be funded.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part II.

A. Required Notification of the State Single Point of Contact

All applications to the following CFDA numbers/programs are required to follow the E.O. 12372 process (refer to part I.D. of this announcement, "Statutory Authorities", for the priority areas corresponding to the CFDA number):

93.550 Transitional Living Program for Homeless Youth
93.551 Abandoned Infants Assistance Program
93.600 Head Start
93.623 Runaway and Homeless Youth
93.656 Temporary Child Care for Children with Disabilities and Crisis Nurseries
93.670 Child Abuse and Neglect
93.671 Family Violence Prevention and Services

All States and territories, except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau, have elected to participate in the Executive Order process and have established SPOCs. Applicants from these areas need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 22372.

It is imperative that the applicant submit all required materials to the Single Point of Contact (SPOC) and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a. *SPOCs will be notified of any applicant not indicating SPOC contact on the application, when SPOC contact is required.* SPOCs have sixty (60) days starting from the application deadline to comment on applications for financial assistance under this program. Comments are, therefore, due from the SPOC no later than July 17, 1991.

These comments are reviewed as part of the award process. Failure to notify the SPOC can result in a delay in grant award. This process of notifying the State Single Point of Contact is required when a program is covered under Executive Order (E.O.) 12372 "Intergovernmental Review of Federal Programs" and 45 CFR Part 100 "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. Therefore, the applicant should contact his or her SPOC directly to determine what materials, if any, the SPOC requires. Contact information for each State's SPOC is found at the end of this Part.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. It is helpful in tracking SPOC comments if the SPOC will clearly indicate the applicant organization as it appears on the application SF 424. When comments are submitted directly to HDS, they should be addressed to the application mailing address located in part I of this announcement.

B. Deadline for Submittal of Applications

The closing date for submittal of applications under this program announcement is May 20, 1991. Applications must be either postmarked or hand-delivered no later than May 20, 1991 to the address indicated in Part I of this announcement.

Hand-delivered applications will be accepted Monday through Friday prior to and on May 20, 1991 during the working hours of 9 a.m. to 5:30 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When

hand-delivering an application prior to the May 20, 1991 deadline, call (202) 755-4560 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either:

1. Received at, or hand-delivered to, the mailing address on or before May 20, 1991 or,

2. Postmarked before midnight of the deadline date, May 20, 1991, and received in time to be considered during the competitive review process (within four weeks of the deadline date).

When mailing proposal packages, *applicants are strongly advised to obtain a legibly dated receipt* from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the May 20, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. HDS will send a letter to this effect to each late applicant.

HDS reserves the right to extend the deadline for all applicants due to acts of God, such as floods, hurricanes or earthquakes; if there is widespread disruption of the mail; or if HDS determines a deadline extension to be in the best interest of the Government. However, HDS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424B and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

In order to assist applicants in correctly completing the SF 424, and SF 424A, a sample of completed forms has been included at the end of part III of this announcement. This sample is to be used only as a guide for submitting your application.

Where specific information is not required under this program, N/A (not applicable) has been preprinted on the form.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1. Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. "Type of Submission"—Preprinted on the form.

Item 2. "Date Submitted" and "Applicant Identifier"—Date application is submitted to HDS and applicant's own internal control number, if applicable.

Item 3. "Date Received By State"—State use only (if applicable).

Item 4. "Date Received by Federal Agency"—Leave blank.

Item 5. "Applicant Information" "Legal Name"—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application. Use abbreviations to limit the organization name to 50 characters, including spaces and punctuation.

"Organizational Unit"—Enter the name of the primary organizational unit which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank. Use abbreviations to limit this line to 30 characters, including spaces and punctuation.

"Address"—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. Box number unless both must be used in mailing.

"Name and telephone number of the person to be contacted on matters involving this application (give area code)"—Enter the name and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here.

Item 6. "Employer Identification Number (EIN)"—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including if known the Central Registry System suffix.

Item 7. "Type of Applicant"—Self-explanatory.

Item 8. "Type of Application"—Preprinted on the form.

Item 9. "Name of Federal Agency"—Preprinted on the form.

Item 10. "Catalog of Federal Domestic Assistance Number"—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. If more than one program could be involved in funding the project, enter "multiple." A list of the relevant CFDA numbers is included in section D, part I, of this announcement.

Item 11. "Descriptive Title of Applicant's Project" Enter the project title. The title is generally short. It should be no more than 200 characters long, including spaces and punctuation, and should be typed in not more than four lines of 50 characters each. Use a short title which is descriptive of the project, not the priority area title.

Item 12. "Areas Affected by Project"—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. "Proposed Project"—Enter the desirable starting date for the project, beginning during or after June 1991, and the proposed completion date for the project. Applicants are advised to allow themselves an additional 2–3 months start-up time beyond June 1991 in order to avoid the need for requesting an extension at a later date. Most awards made in response to this program announcement will have starting dates between June 1991 and March 1992. Projects may not exceed the maximum duration specified in the priority area description, generally between 12 to 36 months.

Item 14. "Congressional District of Applicant/Project"—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter "00."

Items 15a–g. "Estimated Funding"—Enter the amounts requested or to be contributed by Federal and non-Federal sources for the total project period, if the project period is 17 months or less. If the proposed project period exceeds 17 months, enter the budget for the first 12 months only.

Item 15a. "Estimated Funding—Federal"—Enter the amount of Federal funds requested. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. "Estimated Funding—Applicant, State, Local, Other"—Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. These items (b–e) are considered cost-sharing or "matching funds." The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see part II, sections E and F and the specific priority area description.

Item 15f. "Estimated Funding—Program Income"—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. "Estimated Funding—Total"—Enter the sum of items 15a–15e.

Item 16a. "Is Application Subject to Review By State Executive Order 12372 Process? Yes."—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of part III. Review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until the full review time of 60 days is afforded.

Item 16b. "Is Application Subject to Review By State Executive Order 12372 Process? No."—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. "Is the Applicant Delinquent on any Federal Debt?"—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. "To the best of my knowledge and belief, all data in this application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded."—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office. It may be requested.

Item 18a–c. "Typed Name of Authorized Representative, Title, Telephone Number"—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. "Signature of Authorized Representative"—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. "Date Signed"—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, and E are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 17 months or less or (2) the first-year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the table of contents.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, "Other."

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, "Other."

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, "equipment" is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of

technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, "Other."

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Leave blank. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, include wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as "miscellaneous" and "honoraria" are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter "none." Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments shall enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information under the column entitled "Totals" on line 12, Totals. In-kind contributions are defined in title 45 of the Code of Federal Regulations, part 74.51, as "property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant."

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable. Leave blank.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column "[b] First." If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under "[c] Second." Columns (d) and (e) are not applicable in most instances, since HDS funding is usually limited to a three-year maximum project period.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 1,200 characters, including words, spaces and punctuation. These 1,200 characters become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. The key words are to be selected from the list provided at the end of part III of this announcement. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part II. The narrative should also provide information concerning how the application meets the evaluation criteria (see section C, part II), using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results or Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

It should be noted that there is no page limitation on proposals submitted under Priority Areas 1.27, 1.28, 1.29 and 1.31.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must provide certifications regarding: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. These two certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4–88);
3. Table of Contents;
4. Budget justification for Section B—Budget Categories;
5. Letter from the Internal Revenue Service to prove nonprofit status, if necessary;
6. Copy of the applicant's approved indirect cost rate agreement, if appropriate;
7. Project summary description and listing of key words;
8. Program Narrative Statement, organized in four sections addressing the following areas: (a) Objectives and need for assistance, (b) results or benefits expected, (c) approach, and (d) staff background and organization's experience;
9. Organizational capability statement, including an organization chart;
10. Any appendices/attachments;
11. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
12. Certification Regarding Lobbying; and
13. Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as, agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application and of the four digit identification number assigned to their application. This number and the priority area must be referred to in *ALL* subsequent communication with HDS concerning the application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify HDS by telephone at (202) 755–4560.

F. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

_____ One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;

_____ Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

_____ Application length does not exceed 60 pages, unless otherwise specified in the priority area description. Application includes:

_____ Application for Federal Assistance (Standard Form 424, REV 4–88);

_____ A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;
_____ Budget information—Non-construction Programs (Standard Form 424A, REV 4–88);
_____ Table of Contents;
_____ Budget justification;
_____ Letter from Internal Revenue Service to prove nonprofit status, if necessary;
_____ Indirect cost rate agreement, if necessary;
_____ Project summary description and key words;
_____ Program Narrative Statement;
_____ Organizational Capability Statement;
_____ Appendices/attachments, if necessary;
_____ Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
_____ Certification Regarding Lobbying; and
_____ Certification of Protection of Human Subjects, if necessary.

Dated: February 7, 1991.

Mary Sheila Gall,
Assistant Secretary for Human Development Services.
Wade F. Horn,
Commissioner, Administration for Children, Youth and Families.
S. Timothy Wapato,
Commissioner, Administration for Native Americans.
William A. Schambra,
Director, Office of Policy, Planning and Legislation.

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Arizona

Mrs. Janice Dunn, Attn: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Lorean McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–6311.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, The Capitol, Office of Planning and Budgeting, Tallahassee, Florida 32399–0001, Telephone (904) 488–7810.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7111. Please direct correspondence to: Manager, Federal Project Review, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909. Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4420. Attention: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental ReviewProcess/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155. Please direct correspondence and questions to: Attention: Jim Bieber, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613. Please direct correspondence and questions to: Nelson B. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6625.

New Mexico

Dorothy E. (Duffy) Rodriguez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Caroline 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact,State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770.

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373–1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Departmentof Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656. Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer,State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Thomas Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538–1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Telephone (206) 753–4978.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305. Telephone (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741. Please direct correspondence and question to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–6750.

List of Key Words

Abandoned infants/children
Abuse
Accreditation
Adoption
Advocacy and guardianship
Adult day care (use home care with aging and elderly)
Adults
African Americans
Aging and elderly
Aging-out
Agriculture
Alcoholism
Allied professional education
Alternative financing
Asians
At-risk youth
Audio-visual
Barrier-free design
Blacks
Budgeting and finance
Business development training
Cable television
Career and vocational education
Caregiving
Case management
Challenge grants
Child abuse and neglect
Child care
Child care centers
Child development
Child health
Child Protective Services
Child welfare
Children
Clearinghouse
Client outcome measures
Coalitions
Collaboration
Colleges
Community
Community care
Community-based
Community college
Community integration
Community foundation
Competitive employment
Comprehensive care
Computer networks
Computers
Conferences
Congregate housing
Consumer education
Continuing education
Contracting
Cooperative agreement
Cooperatives
Coordination
Coordinated services
Correctional facilities
Corrections
Counseling
Courts
Crisis intervention
Crisis nurseries

Cross-cultural
Cross-cutting
Cultural activities
Curriculum
Curriculum development
Data collection
Day care
Day care centers
Deinstitutionalization
Design
Developmental child care
Disabled
Developmental disabilities
Disabilities
Dissemination
Dropouts
Dysfunctional families
Drug-exposed infants
Economic development
Education and training
Effectiveness measures
Efficiency
Elderly persons
Emergency services
Emergency shelters
Employer-supported human services
Employment
Entrepreneurship
Environment
Environmental design
Environmental protection
Evaluation
Exploited youth
Families
Family counseling
Family day care
Family preservation
Family violence
Films
Finance
Fire safety
Fiscal management
Food and nutrition
Food banks
Forecasting
Foster care
Foster grandparents
Foundations
Frail elderly
Friendly visitors
Gerontology training
Group homes
Guardianship
Handbooks
Head Start
Head Start children with disabilities
Health
Hispanics
Historically Black Colleges and Universities (use HBCU)
Home-based services
Home care
Home equity conversions
Homeless
Hospitals
Hospices and nursing homes
Housing
Human services
Immigrants and refugees
Income generation
Independent living
Indians
Infants and toddlers
Informal caregivers
Information centers
Information and referral
Information transfer
In-home care
Institutionalization
Information transfer
Interagency cooperation
Interdisciplinary
Intergenerational
International
Interstate agreements
Intervention
Investigations
Isolated elderly
Job bank
Job clubs
Job placement
Judicial system
Juvenile justice
Latchkey and school-age children
Law enforcement
Legal
Legal counseling
Legislation and model codes
Liability and legal issues
Linkages
Literacy
Living skills
Local government
Low-cost alternatives
Low-income
Males
Mainstreaming
Management
Management information systems
Management training
Manuals
Marketing
Materials
Meals
Mediating structures
Media
Medical
Mental health
Mentally disabled
Mentors
Microcomputers
Minorities
Native Alaskans
Native Americans
Native Hawaiians
Needs assessment
Neglect
Networking
Newsletters
Newspapers
Nursing homes
Nutrition counseling
Older persons
On-the-job training
Outreach
Parent
Parent involvement
Parent education
Pediatric AIDS
Peer counseling
Performance-based contracting
Permanency planning
Placement prevention
Physically disabled
Planning
Prenatal substance abuse
Preschools
Prevention
Preventive care
Primary schools
Private sector
Prostitution
Protective services
Public education
Public/private partnership
Public-private cooperation
Radio
Rate-setting
Readiness skills
Recreation
Recruitment
Recycling
Referral
Refugees
Religious institution(s)
Research
Research center
Residential care
Resource allocation
Resource center
Respite care
Retirement
Runaway and homeless youth
Rural
Samoans
School-age children
Secondary schools
Self-care
Self-help
Self-sufficiency
Seminars
Service integration
Sexual abuse
Sheltered workshops
Single parents
Small business
Social services
Software
Special education
Special needs adoption
Speech impairment
Standards
Stipends
Substance abuse
Support groups
Synthesis
Target populations
Taxes
Technical assistance
Technology
Technology transfer
Teenage parents
Teenage pregnancy
Telecommunications
Television
Temporary child care
Therapeutic day care
Toddlers
Training
Training of trainers
Transitional Living
Transitioning
Transportation
Treatment
Tribally Controlled Community Colleges
Unemployed
University
Urban
Urban Indian Centers
User fees

Veterans
Video
Visual impairment
Vocational training
Volunteers
Vouchers
Women
Workplace
Workshops
Youth

BILLING CODE 4130-01-M

Priority Area Number 1.16

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: 05/08/91	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application — ☐ Construction ☒ Non-Construction; Preapplication — ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: Childrens Center

Organizational Unit:

Address (give city, county, state, and zip code): 3242 Montgomery Street, Trenton, NJ 08650

Name and telephone number of the person to be contacted on matters involving this application (give area code): Harriet Thomas (609) 555-8237

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 0 8 – 7 6 5 4 3 2 1

7. TYPE OF APPLICANT: (enter appropriate letter in box) N
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) Nonprofit Org.

8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY: DHHS, Office of Human Development Svcs.

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 9 3 . 6 0 8
TITLE: Child Welfare R&D

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Specialized Family Foster Care

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): Mercer County, N.J.

13. PROPOSED PROJECT: Start Date 10/01/91; Ending Date 09/30/94

14. CONGRESSIONAL DISTRICTS OF: a. Applicant 5; b. Project 5

15. ESTIMATED FUNDING:

a. Federal	$ 75,000 .00
b. Applicant	$ 25,000 .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 100,000 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE 05/01/91
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Alice Farber	b. Title: Executive Director	c. Telephone number: 609/555-8235
d. Signature of Authorized Representative: Alice Farber		e. Date Signed: 05/08/91

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SAMPLE

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Child Welfare	93.608	$	$	$ 75,000	$ 25,000	$ 100,000
2.						
3.						
4.						
5. TOTALS		$	$	$ 75,000	$ 25,000	$ 100,000

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ NA	$ NA	$ NA	$ NA	$ 60,000
b. Fringe Benefits	NA	NA	NA	NA	9,000
c. Travel	NA	NA	NA	NA	2,000
d. Equipment	NA	NA	NA	NA	5,000
e. Supplies	NA	NA	NA	NA	3,500
f. Contractual	NA	NA	NA	NA	15,500
g. Construction	NA	NA	NA	NA	0
h. Other	NA	NA	NA	NA	5,000
i. Total Direct Charges (sum of 6a - 6h)	NA	NA	NA	NA	100,000
j. Indirect Charges	NA	NA	NA	NA	0
k. TOTALS (sum of 6i and 6j)	$ NA	$ NA	$ NA	$ NA	$ 100,000
7. Program Income	$ NA	$ NA	$ NA	$ NA	$ 0

SAMPLE

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$ NA	$ NA	$ NA	$ NA
9.	NA	NA	NA	NA
10.	NA	NA	NA	NA
11.	NA	NA	NA	NA
12. TOTALS (sum of lines 8 and 11)	$ 25,000	$ 0	$ 0	$ 25,000

SECTION D - FORECASTED CASH NEEDS

	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ NA	$ NA	$ NA	$ NA
14. Non-Federal	NA	NA	NA	NA
15. TOTAL (sum of lines 13 and 14)	$ NA	$ NA	$ NA	$ NA

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$ NA	$ NA	$ NA	$ NA
17.	NA	NA	NA	NA
18.	NA	NA	NA	NA
19.	NA	NA	NA	NA
20. TOTALS (sum of lines 16 -19)	$ 70,000	$ 60,000	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
NA	NA

23. Remarks: Non-Federal Share of Project Cost: $23,333 (2nd year); $20,000 (3rd year)

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

SAMPLE

Priority Area Number ☐ OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐
TITLE

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BEST COPY AVAILABLE

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$ NA	$ NA	$ NA	$ NA	$
b. Fringe Benefits	NA	NA	NA	NA	
c. Travel	NA	NA	NA	NA	
d. Equipment	NA	NA	NA	NA	
e. Supplies	NA	NA	NA	NA	
f. Contractual	NA	NA	NA	NA	
g. Construction	NA	NA	NA	NA	NA
h. Other	NA	NA	NA	NA	
i. Total Direct Charges (sum of 6a - 6h)	NA	NA	NA	NA	
j. Indirect Charges	NA	NA	NA	NA	
k. TOTALS (sum of 6i and 6j)	$ NA	$ NA	$ NA	$ NA	$
7. Program Income	$ NA	$ NA	$ NA	$ NA	$

Authorized for Local Reproduction

Standard Form 424A (9-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$ NA	$ NA	$ NA	$ NA
9.	NA	NA	NA	NA
10.	NA	NA	NA	NA
11.	NA	NA	NA	NA
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ NA	$ NA	$ NA	$ NA	$ NA
14. NonFederal	NA	NA	NA	NA	NA
15. TOTAL (sum of lines 13 and 14)	$ NA	$ NA	$ NA	$ NA	$ NA

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$ NA	$ NA	$ NA	$ NA
17.	NA	NA	NA	NA
18.	NA	NA	NA	NA
19.	NA	NA	NA	NA
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges: NA	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Organization

_____

Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

[FR Doc. 91-5828 Filed 3-13-91; 8:45 am]
BILLING CODE 4130-01-M

OL
56
SS
50
MR
14
991
MI

federal register

Thursday
March 14, 1991

Part III

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416
Disability Insurance and Supplemental Security Income; Determination of Disability and Administrative Requirements and Procedures; Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[20 CFR Parts 404 and 416]

RIN 0960-AB36

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Determinations of Disability—Compliance and Other Changes Involving Administrative Requirements and Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These regulations for administering the disability determination function make changes to improve the disability determination process by modifying our monitoring and technical and management assistance procedures, and clarifying and updating certain administrative requirements.

When these regulaticns were published as a Notice of Proposed Rulemaking (NPRM) on April 25, 1986 (51 FR 35638), they contained procedures for implementing section 17 (Measures to Improve Compliance With Federal Law) of Public Law 98-460. However, section 17 was a temporary provision and expired on December 31, 1987. Consequently, it was necessary to remove from these regulations those parts specifically implementing section 17. We have prepared a new NPRM covering compliance procedures which are in accordance with the law in effect after the expiration of section 17. This NPRM is also being published at this time in another section of this **Federal Register** issue in order to give interested parties an opportunity to read the procedures contained in these regulations and the related proposed procedures contained in the NPRM as a whole. Until these new procedures are published as final regulations, we will use the authority granted to us by sections 221 and 1633 of the Social Security Act (the Act) to handle compliance issues not covered by the current regulation.

EFFECTIVE DATE: These rules are effective March 14, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965-1755.

SUPPLEMENTARY INFORMATION: Before enactment of the Social Security Disability Amendments of 1980 (Pub. L. 96-265), the disability programs under title II and title XVI of the Act were administered under a Federal-State contractual mechanism established under the 1954 Amendments to the Act. The statute specified that determinations of disability should be made by State agencies under agreement with the Secretary.

Under these agreements the State agencies, on behalf of the Secretary of Health and Human Services, made determinations of disability on the basis of standards and guidelines issued by us. We paid 100 percent of the costs incurred by the States in performing this function. The State agency function included obtaining medical and vocational evidence from the applicant and his or her medical treatment sources, and where necessary, arranging for one or more examinations of the applicant by specialists.

The 1980 Amendments to the Social Security Act—Public Law 96-265

In 1980, out of concern for uniform administration of the disability programs, Congress enacted section 304 of the 1980 Amendments. This section increased our statutory authority to improve State performance by requiring the promulgation of regulations establishing standards of performance and administrative requirements and procedures for the States to follow to ensure effective and uniform administration of the disability programs. Section 304 also provided that beginning June 1981, disability determinations were to be made by the State in compliance with the newly prescribed standards unless it notified us, in writing, that it no longer wished to make the determinations. We were authorized to take over the disability determination function if we found that the State had failed to make determinations consistent with our prescribed standards. Certain timeframes, notice requirements, and State agency employee protections were included in these provisions.

Congress was also concerned about the rapid growth of the disability programs that had occurred in the 1970's and the effectiveness of the continuing disability review process. We promulgated performance standards in regulations, effective June 1, 1981, requiring the State agencies which make disability determinations to meet standards in accuracy and processing time and other administrative and procedural areas.

Regulatory Provisions

Definitions

In these final rules, we have amended the definition of "other written guidelines" in §§ 404.1602 and 416.1002 to include issuances such as rulings and memoranda by the Commissioner, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability to assure uniform national application of program standards and service delivery to the public. This expanded definition is intended to cover special situations when time limitations do not permit the promulgation of guidelines through the regular process. Such special issuances are of major importance to the disability programs, for example, in carrying out court orders.

Performance Standards

Under Public Law 96-265, we were required to promulgate regulations establishing whatever standards of performance were considered necessary for a State agency to follow to ensure effective and uniform administration of the disability programs. Effective and uniform administration must be measured in relationship to the processing of benefit determinations of those people who apply for disability benefits. Accordingly, in 1981 we first established accuracy of decision and processing time standards in regulations as the indicators of State agency performance. The objective of a processing time standard is to ensure good public service. The objective of a performance standard for accuracy is to ensure that decisions are rendered in accordance with the Act, our regulations and other written guidelines. Also, as in processing time, the purpose of the performance standard for accuracy is to assure good public service.

Other areas of State agency activity and performance that are not reflected in the processing time or accuracy indicators also affect directly the quality of the agency's service to the public. For example, the cost effectiveness of a State agency's operations, the timeliness of a State agency's medical evidence development requests, and the appropriate use of qualified psychiatrists and psychologists to review mental impairment cases are crucial to providing high-quality service to the public. We are exploring the use of additional indicators to measure State agency performance more comprehensively and appropriately. Other indicators of State agency performance may be published in future regulations. In the meantime, these final regulations retain performance standards for processing time and accuracy.

We are, however, updating §§ 404.1642(a), 404.1644(a), 416.1042(a), and 416.1044(a) to show that a presumptive disability decision made under title XVI of the Act stops the processing time from running.

Technical and Management Assistance

Technical and management assistance is a structured SSA program designed to offer or provide support, assistance, guidance, or resources to improve State agency performance. This may include but is not limited to: onsite reviews, administrative measures, training, or funding. Under our existing regulations, a State agency will receive technical and management assistance when performance reaches unacceptable levels or when performance has significantly declined. We believe that emphasis should be placed on good performance and preventive maintenance which may be far less costly than corrective action taken when the State agency has developed more serious performance problems. We also believe that the need for additional support or assistance should not be viewed solely as a punitive measure brought about by poor performance. We are, therefore, making a number of modifications in the monitoring and technical and management assistance sections of the regulations. We have made the following changes:

- *Technical and Management Assistance*—Change the term "technical and management assistance" to "performance support."
- *Reviews*—Within budgeted resources, conduct fiscal and administrative management reviews and special onsite reviews as a part of the regular performance monitoring process. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we also review the quality assurance functions. The fiscal and administrative management review previously was conducted as a part of technical and management assistance and, as a result, was associated with poor performance.
- *Quality Assurance*—Review the State agency quality assurance function to ensure that the State is monitoring the quality of State disability determinations in accordance with generally accepted quality assurance principles, such as random sampling and independent reviews.
- *Assistance Request*—Amend §§ 404.1661 and 416.1061 to show that a State may request assistance at any time that the regular monitoring and review process reveals that assistance could enhance performance. The current regulations do not provide that a State may request assistance.
- *Performance Support*—Further amend §§ 404.1661 and 416.1061 to explain that we will consider offering, or providing upon request, assistance when ongoing reviews and quality assurance activities reveal that performance could be improved by such support. The current regulations only allow optional technical and management assistance when performance significantly declines or when intermediate goals have not been met. These regulations will allow performance support, including State requested support, in a much broader range of circumstances. This support will continue to be provided from State and Social Security Administration staff and budgets.

Administrative Requirements and Procedures

General Administrative Requirements

The current regulations provide, under the heading "*Organization*" (§§ 404.1620 and 416.1020), that the State is responsible for providing the organizational structure, sufficient qualified personnel, medical consultant services, and a quality assurance function to ensure that disability determinations are made accurately and promptly. Our objective was to regulate only where necessary and to allow the States maximum flexibility to manage the State agencies so long as their performance was acceptable. We, therefore, imposed specific requirements only in the course of a mandatory technical and management assistance program.

It is still our goal to regulate administrative areas only to the extent necessary to ensure effective stewardship of the disability programs and to continue to give the States maximum flexibility to manage the State agencies. However, experience has shown over the past several years that, in some circumstances, a need exists for specific requirements even though mandatory performance support is not needed. A State may have serious deficiencies in one or more functions currently listed under "*Organization*" or in any of the functions included under "*Administrative Responsibilities and Requirements.*" These deficiencies may not necessarily cause the State agency to fall below the thresholds that require mandatory performance support. For example, a State may take action to discontinue its quality assurance program, or may fail to submit timely and accurate reports of its administrative functions. Another example is when a State attempts to contract out functions which our instructions require the State to retain. Even when a clear and serious deficiency may eventually lead to a State agency's requiring mandatory performance support, for example, where a State adopts a medical review procedure for a class of cases that clearly delays processing the cases and imposes evaluation standards which are inconsistent with our regulations or written guidelines, it is unreasonable to expect that we would always wait until the State agency's performance falls below the necessary performance thresholds before initiating corrective measures. We have an obligation to exercise stewardship immediately and to undertake to correct any deficiencies which may cause the State to be found not in substantial compliance with the Act, our regulations, or other written guidelines.

For the above reasons, we have changed the title of §§ 404.1620 and 416.1020 from "*Organization*" to "*General Administrative Requirements.*" We have retained the four administrative functions covered in this section but have deleted the statement that we will impose specific organizational requirements on a State only in the course of a mandatory technical and management assistance program. Instead, we have stated that we will act immediately to remedy any deficiencies in the four administrative functions involved under this section or in the other administrative functions covered individually under "*Administrative Responsibilities and Requirements,*" which are sufficiently serious that, if not corrected, may cause the State to be found not in substantial compliance with the Act, our regulations, or other written guidelines. Nevertheless, in response to concerns raised by several States, we have added language to §§ 404.1639 and 416.1020, to reflect that we will permit States a reasonable opportunity to meet the administrative requirements we may impose under those sections or to correct identified deficiencies after proper notice to the States.

Facilities

We amended §§ 404.1623(c) and 416.1023(c) to clarify that access to the premises where the disability determination function is performed includes telecommunications access to State agency management as well as visits. The current regulations provide that we will have "access to the

premises where the disability determination function is performed for purposes of inspecting the work and activities required by regulation and assuring compliance with pertinent Federal statutes and regulations." We believe that the change we are making to these sections will make them clearer and less likely to cause confusion in explaining our access rights.

Fiscal

We are revising §§ 404.1626 and 416.1026 to substitute "Office of Management and Budget (OMB) Circular A–87" for "Federal Management Circular 74–4" to reflect a change in this circular. OMB Circular A–87 superseded Federal Management Circular 74–4. We are also making reference to 48 CFR 31.6 of the Federal Acquisition Regulations System and OMB Circular A–87 which define necessary costs for the period after March 31, 1984. We are also revising these sections and §§ 404.1627 and 416.1027 to provide that the States are to arrange for their own audits in accordance with the Single Audit Act of 1984, Public Law 98–502.

The Single Audit Act of 1984 provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulations. The requirements are established to ensure that audits are made on an organization-wide basis. Since the States are required by the Single Audit Act of 1984 to arrange for audits of their own agencies using Federal guidelines, we will audit State records only if (1) They do not perform their own audits of the State agency under the Single Audit Act of 1984 or (2) they perform a State agency audit but the audit does not meet our program requirements. In either case, we will conduct an audit or review activity as prescribed by the Single Audit Act of 1984.

Audits

We are revising §§ 404.1627 and 416.1027 to reflect that the Department of Health and Human Services' Office of Inspector General will not be the principal agency conducting audits of State agencies. The State agencies will be audited by the States under the Single Audit Act of 1984.

In addition, we are revising these sections to provide that the Commissioner of Social Security will have 90 days from the date of receipt of a State's appeal (and all supporting documents) of an audit determination to issue a decision on that appeal. Experience has shown that the 45-day time period previously allowed for the Commissioner's decision did not allow sufficient time for careful investigation and review of all the issues.

Disputes on Other Matters

We are revising §§ 404.1681 and 416.1081 to clarify that the "fiscal issues" to be resolved by the Departmental Appeals Board are "monetary disallowances." In accordance with the regulations governing the Departmental Appeals Board (45 CFR part 16), monetary disallowances are the only type of fiscal recommendation, decision, or dispute which is appealable to the Departmental Appeals Board.

Public Comments

We published proposed rules to ensure the compliance of State agencies with the Act, SSA regulations, and other written guidelines. We also proposed other changes to improve the disability determination process by revising State agency performance requirements, modifying our technical and management assistance procedures, and clarifying and updating certain administrative requirements. These rules were published as an NPRM in the **Federal Register** on April 25, 1986 (51 FR 15633). Interested persons, organizations, Government agencies, and other groups were given 60 days to comment. The comment period closed on June 24, 1986.

We received comments from 12 individual State Administrators, the Council of State Administrators of Vocational Rehabilitation, the National Association of Disability Examiners, one Governor, and one State Interagency Task Force on Disability. These commenters are affected by the regulations. We also received comments from three individuals.

A number of comments were received on the procedures implementing section 17 (Measures to Improve Compliance With Federal Law) of Pub. L. 98–460. As these procedures were removed from the regulations because section 17 expired on December 31, 1987, we have not prepared responses to these comments.

In drafting these final regulations, we had certain objectives in mind:

- To maintain uniform, national administration of the disability programs by ensuring that all State agencies make disability determinations in a manner consistent with regulations and other written guidelines;
- To improve our service to the public;
- To improve the disability determination process by modifying our technical and management assistance procedures, and by clarifying and updating certain administrative requirements;
- To avoid, where possible, increasing administrative complexity and costs.

These objectives also guided us as we evaluated the comments received from State employees and the public. Some of the comments were not germane to these particular regulations. These comments are not addressed in the preamble. Other comments are condensed, summarized, or paraphrased. We have responded to the issues raised in comments that are germane to these regulations.

For ease of comprehension and for perspective, we have grouped comments according to the issues raised. The issues and our responses are presented in the order in which the regulations are organized.

Definitions

Issue: Four commenters expressed concern that the expanded definition of "other written guidelines" (§§ 404.1602 and 416.1002) gives SSA the authority to bypass the formal rulemaking process and the intent of Congress as expressed in section 10 of the Social Security Disability Benefits Reform Act of 1984.

Response: Section 10 of the Social Security Disability Benefits Reform Act of 1984 requires the issuance of uniform standards governing disability determinations as regulations under the rulemaking procedures of the Administrative Procedure Act. Such standards are the policies and procedures that could reasonably be expected to have an impact on findings of eligibility. In enacting section 10, Congress did not intend to subject other issuances, i.e., issuances which do not affect the outcome of disability determinations, to the Administrative Procedure Act. As noted in the legislative history (the Senate Finance Committee Report 98–466, May 18, 1984, p. 19) of this provision, "The Committee is particularly concerned that SSA retain the flexibility to respond quickly to changes in conditions through the issuance of other less formal vehicles including Rulings and POMS" [Program Operations Manual System]. Also, the Congress, in amending the Social Security Act in 1984, did not change section 221(a)(2) of the Act that requires States to make disability determinations in accordance with "* * * standards and criteria contained in regulations or other written guidelines of the Secretary * * *."

We have clarified the definition of "other written guidelines" to show that they will be instructive, interpretive, clarifying, and/or administrative in nature and will not represent new substantive rules that can reasonably be expected to impact on findings of eligibility.

General Administrative Requirements

Issues: One commenter said the phrase "* * * to correct the areas of deficiencies which may later cause the State to be not in compliance * * *" (§§ 404.1620 and 416.1020) conveys overly broad authority to SSA and should be deleted. The commenter further stated that "[w]hen such authority is coupled with less than hands-on experience in directing the operation of a State agency, it holds the promise of poor program administration."

This commenter also said that the last sentence of §§ 404.1640 and 416.1040 speaks of judging State agency compliance by adherence to other program requirements such as availability of specialized medical resources and consultative examination oversight activities but no details are given on how such judgments would be made.

Responses: We intend to regulate administrative areas only to the extent necessary to ensure effective stewardship of the disability programs. Effective and appropriate stewardship requires that we undertake immediately to correct any deficiencies which may cause a State agency to be found in substantial noncompliance with the Act, our regulations or other written guidelines. In this regard, experienced disability program personnel will work closely with DDS administrators and staff to evaluate and correct any deficiencies which may be impediments to efficient, cost effective disability program administration.

We have retained the final sentence in §§ 404.1640 and 416.1040 to emphasize the point made in the opening sentence of these sections, which is that the State agency must substantially comply with the Act, our regulations, and other written guidelines pertaining to program matters besides the timely and accurate processing of disability claims. We cannot provide definitive guides as to how judgments of substantial noncompliance will be made. Questions of substantial noncompliance will be resolved on the basis of multiple factors including the nature and degree of such noncompliance, the significance of such noncompliance in terms of the integrity and effectiveness of the disability program, etc. However, because of the variations in the factors that must be considered in judging questions of noncompliance, we have deleted the references to specific program requirements identified in the Notice of Proposed Rulemaking.

Facilities

Issue: A commenter said that the inclusion of "telephone access (§§ 404.1623(c) and 416.1023(c)) to the managers of a disability determination services (DDS)" is unnecessary as it is difficult to believe that SSA was ever refused such access.

Response: We believe that it is necessary to explain in the regulations that access to the premises where disability functions are performed and managed is not limited to physical access but includes other means of contacting State agencies and obtaining information about their functions. The current regulations in discussing access refer to notifying the State of "visits" and this may give the impression that access is limited to visits only. Therefore, we changed §§ 404.1623(c) and 416.1023(c) to clarify the meaning of the term "access" and to show that we may use means other than visits to obtain information about State agency disability determination functions.

Fiscal

Issues: One commenter said the requirement (in §§ 404.1626(e) and 416.1026(e)) that States must submit a report of expenditures after the close of a period for which funds have been made available constitutes additional reporting, since reports are currently submitted on both a monthly and quarterly basis, and this additional reporting should not be required.

Another commenter requested that Federal allocations of funds permit for year-long planning by the States. Another commenter stated that the current method of providing funds on a quarterly basis, with frequent rescissions, is an ineffective budget procedure. In this commenter's opinion, such a procedure leaves the State agency unable to prepare and execute a realistic plan and the resultant reactive position often negatively affects processing time.

Responses: Current regulations require that a State submit a report of its actual expenditures after the close of the period for which funds have been made available to the State. The passage being questioned by the commenter merely reiterates language in the current regulations and does not constitute a requirement for additional reports.

We are committed to providing the States with annual planning information in advance of the fiscal year on the resources that will be available for the disability program. This annual planning information enables the States to prepare and execute more realistic management plans and the quarterly allocation of fiscal resources enables us to manage the resources available for the disability program in a cost effective manner.

Audits

Issues: One commenter expressed a concern that SSA-mandated audits by the States should be reviewed in light of existing audit processes to minimize duplication. That same commenter suggested that the current 30-day period permitted by the regulations for a State to submit a written appeal of a disputed audit finding should be extended to 60 days. This additional time is believed to be needed since most State organizational structure and reporting requirements necessitate more time for a review and careful evaluation of critical fiscal reports and information. The commenter is of the opinion that providing the States with additional time is equitable since we are proposing that the Commissioner be given 90 days instead of the current 45 days to respond to audit appeals.

Responses: The proposed regulation was written to conform with the requirements of Public Law 98–502, the Single Audit Act of 1984. This law requires the States to conduct annual audits, unless less frequent audits are mandated by State law. These audits are to be conducted by an independent auditor in accordance with generally-accepted government auditing standards. Additional audits will not be required unless the audit performed by the State lacks sufficient information to verify that program funds were used in accordance with Federal regulations, in which case, the Federal Government retains the authority to make or contract for additional audits. These are the only audits that SSA plans to use to verify State expenditures for the disability program and no duplicative audits are planned.

We concur with the commenter who requested that the period for preparing an audit appeal should be extended to 60 days in order to allow the States sufficient time for a careful review and investigation of all issues. Sections 404.1627 and 416.1027 have been changed to reflect the 60-day period.

Target Levels of Performance

Issue: Two commenters said that the target levels for processing time should be increased to coincide with the increase in the processing time threshold levels. The commenters cited new documentation requirements,

improved rationale requirements, court orders, and revised mental criteria as some of the changes that affect the States' ability to attain the target levels. The commenters believe that since we acknowledge through increased processing time threshold levels the impact such changes have had on processing times, we should also increase the processing time target levels.

Responses: Because the target levels are intended as the optimum level of performance a State agency should strive to attain, we believe target levels, as goals, should be kept at a high level. Consequently, it is appropriate that State agencies may find it difficult to attain the processing time target levels even though several State agencies are currently close to meeting these targets. It is also imperative that we not compromise our goals on timeliness by reducing the target levels.

Intermediate Goals

Issue: Several commenters recommended that mandatory intermediate goals for title II and title XVI cases be eliminated. They believe that the establishment of minimum intermediate goals for the State agencies to reach in effect, creates a new, lower threshold level.

Responses: We have eliminated mandatory minimum intermediate goals for title II and title XVI processing times. However, as is the current practice, intermediate goals will continue to be established and monitored by SSA's Regional Commissioners after negotiation with each State agency.

Processing Time Thresholds

Issues: Several commenters believe the threshold levels in the NPRM for processing time are unrealistic in view of recent changes in the disability program. The commenters believe the processing time standards need to be substantially increased to account for the cumulative effects of such changes as documentation requirements imposed by the new listings, the new consultative examination guidelines, improved rationale requirements and the effects of court orders.

Several commenters wanted the processing time thresholds to be representative of current mean processing time data, i.e., not based on fiscal year 1984 data as was the case with the proposed thresholds. The commenters wanted the thresholds to be based on up-to-date statistics and reassessed yearly.

One commenter recommended that perhaps a cost-effectiveness or efficiency standard could be developed that encompasses processing time and more realistically measures performance.

One commenter stated that if it is important to include all types of cases in the proposed performance accuracy standard, the same should be true for processing time. This commenter believed that the inclusion of all cases adjudicated by the State agency would more accurately reflect a State's performance.

Responses: We agree with the commenters who believe the proposed processing times are unrealistic in view of recent disability program changes and will defer revising the processing time thresholds until an up-to-date indepth analysis of the impact of recent changes on processing time can be assessed over time.

Our current processing time standards are based on past State agency performance. There were several major events in the recent past which have had a significant impact on the time it takes to process cases. For example, there was a national moratorium during which continuing disability review cases were not processed; there are new requirements for obtaining medical evidence of record from treating sources; there are new standards for documenting and evaluating continuing disability review cases; and there are new rules for documenting and evaluating mental impairment cases. The impact of these and other changes must be carefully assessed over time to arrive at fair and workable processing time standards. Also, we could not include continuing disability review or reconsideration cases in the processing time standards because our current system does not measure processing time in these types of cases. We are improving our system, however, so that we will be obtaining this information in the near future. Therefore, we will delay making any changes in the processing time standards until we can make a complete and up-to-date analysis of the entire range of processing time issues on all types of cases evaluated by the State agencies.

Performance Accuracy Threshold

Issues: Several commenters do not believe the performance accuracy threshold in the NPRM should be increased from 90.8 percent to 93.0 percent for all cases, i.e., initial, reconsideration, and continuing disability review cases. The commenters do not believe the performance accuracy threshold should be changed for the following reasons: there is not adequate data to determine what effect the inclusion of continuing disability review cases will have on the threshold; current State agency staff do not have experience in processing continuing disability review cases; continuing disability review claims evaluation has undergone radical changes; and, there have been budget cuts and staff reductions that will affect State agency performance. A few commenters did not believe that continuing disability review or reconsideration cases should be included in the performance accuracy rate regardless of the level of the threshold.

However, several commenters agreed that raising the performance accuracy threshold for all cases combined is realistic considering current performance.

Responses: We agree that the performance accuracy threshold should not be raised until the full impact of recent disability program changes can be more thoroughly analyzed. In addition, we do not believe the performance accuracy threshold should be expanded, at this time, to include continuing disability review and reconsideration cases.

There have been major changes in requirements for documenting and evaluating disability claims. These changes have required extensive training of staff who make disability determinations and who review these determinations. The changes include requirements for obtaining medical evidence of record from treating sources in all cases, for documenting and evaluating evidence of mental impairment in all cases and for documenting and evaluating medical improvement in continuing disability review cases. Until the impact of these changes can be determined, revising the performance accuracy standard, either through expanding the categories of cases covered by this standard or through increasing thresholds, would be premature.

In the NPRM, we also proposed to change the term "performance accuracy standard" to "documentation/decision standard" because the appropriateness and thoroughness of the documentation as well as the accuracy of the decision are measured by the performance accuracy standard. Because the term documentation/decision standard is more descriptive of the standard, it is a name change only. Since we are not revising the performance accuracy standard at this time, we also wish to defer changing the title of this standard. Consequently, we will postpone changing the name of this standard until we are able to make the other necessary revisions in the performance accuracy standard.

Performance Accuracy Rate Data

Issues: One commenter expressed concern that because we determine the performance accuracy rates through a quality review program that is decentralized in 10 regional offices, there will be differences in the reviews conducted, and thus the standards would be inequitable as a measurement of State agency performance. The commenter suggested that the reviews for this standard be accomplished through a central office review or that each of the 10 disability quality branches review claims from all States.

Another commenter cautioned against the disability quality branches being given additional leeway to impose their judgment in case documentation. The commenter believes that citing a deficiency or error when the decision is correct and requiring inclusion of information which will not change a case decision is time-consuming. They believe an agency should be judged by decisional accuracy only.

One commenter recommended that performance accuracy standards be based on a consistently more accurate sample than is currently required.

Responses: A recent organizational change in SSA has already centralized the management and supervision of the regional reviewing components under the office of the Chief Financial Officer in SSA headquarters. The Chief Financial Officer will also be responsible for the ongoing consistency review of a representative sample of the cases reviewed in the 10 regional reviewing components to assure uniform application of the law and regulations in the review process. Further centralization of the review process will continue to be an option available to SSA as experience is gained with the centralized management of this function.

Deficiencies noted as a result of our regular quality reviews are charged only when the Federal quality review finds that a disability determination does not conform to the requirements in the Social Security Regulations, Rulings, and other written guidelines such as the Program Operations Manual System. Nonconformance is indicated by insufficient documented evidence to support the disability decision or a decision that is contradicted by the documented evidence or the guidelines for making decisions. We believe it is imperative that the decision be accurate and based on properly developed medical and nonmedical evidence.

Quality assurance samples are designed to produce quarterly performance accuracy rates that have plus or minus 5 percent sampling variability at the 95 percent confidence level, provided that the State agency accuracy rate is greater than 90 percent. The techniques used to sample and evaluate State agency performance are consistent with those found in the current literature on statistics, sampling, and quality control.

Performance Support

Issues: One commenter believes the promise to provide support "at any time" it is considered necessary is too broad and should be clarified. The same commenter wanted more specifics as to when optional support would be granted because of a decline in performance, (e.g., after a decline of 1 month, or one quarter) and how great a decline in performance is needed to request support. The same commenter also wanted a provision for a State to appeal a denial of its request for optional support.

One commenter believes the individuals performing the onsite reviews and recommending the specific types of performance support must have a great deal of program knowledge in order to be of any worthwhile assistance.

Responses: We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. Furthermore, this provision is intended to allow State agencies maximum flexibility in requesting performance support at any time that they deem it necessary to help improve their performance. It is impossible to be specific as to when optional performance support will be granted because of the numerous factors that are considered in such approvals, e.g., budget constraints, the type of support requested or the benefits the requested support may produce. We will weigh these factors and others in the approval or disapproval of a request for performance support. Optional performance support is not intended to be forced on a State agency and will only be offered after consultation with the State agency and regional office as to the type and appropriateness of the support.

We do not believe that it is necessary to establish appeal rights for a State that has been denied a request for optional performance support. We will consider any legitimate request for support if it is determined that such support may prove beneficial to the timely and accurate processing of disability cases in the State agency. However, it must be realized that valid requests for optional performance support may have to be denied because of a lack of funds.

We agree that personnel who conduct performance support services must have a great deal of knowledge about the disability program and the functions of a State agency and thus we attempt to send staff with particular expertise, e.g., performance management, monitoring consultative examinations, budgeting, etc. All onsite reviews of a State agency's disability functions are conducted by a combination of knowledgeable personnel from SSA's central and regional offices with assistance from the State. Also, these reviews are conducted in accordance with detailed guidelines that have been developed with the assistance of State agency personnel and these guidelines have been distributed to all State agencies.

Good Cause

Issues: Two commenters believe that we should expand the list of factors that we consider in determining good cause for not following regulations and other written procedures. Two others feel that we should cite specific examples in the regulations of when we would find good cause.

Responses: There are many factors we will consider in determining good cause. The regulations list only a few examples. We do not believe that it is practical or necessary to provide a comprehensive list since all pertinent factors, whether listed in regulations or not, will be considered when arriving at a determination of good cause.

The factors we consider in determining good cause carry varying degrees of weight and good cause cannot be established without considering all the factors and the degree of weight each carries. The factors and degree of weight each carries will depend upon the circumstances of the particular case and, therefore, cannot be determined beforehand. Thus, we are opposed to citing specific examples of good cause in the regulations.

Additional Changes

Policy and Operating Instructions

We have revised §§ 404.1615 and 416.1015 to show that State agency disability hearing officers also make disability determinations.

We have revised §§ 404.1633(b) and 416.1033(b) to conform to the modified definition of "other written guidelines" contained in §§ 404.1602 and 416.1002.

We have changed the term "technical and management assistance" to "performance support" in §§ 404.1641, 416.1041, 404.1670, 416.1070, 404.1680, and 416.1080. These are name changes only. No substantive changes were made in these sections. Also, where applicable, we have changed the term (or its derivatives) "not in substantial compliance" to "substantial failure" to reflect the current terminology in the statute.

Conclusion

We believe these regulations will improve the management of the disability programs. Our objective is to place the right person in benefit status in a timely manner wherever in the country he or she may be living, and to pay the proper amount of benefits so long as that person is entitled to benefits. These regulations should promote uniform application of disability policy and procedures nationwide. We have the obligation under the law for seeing that the title II and title XVI disability programs are uniformly, efficiently, and equitably administered and intend to make every effort to meet this obligation within the structure of the existing Federal/State relationship.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 and does not meet any of the criteria for a major regulation. These regulations only make some modifications to the regulations which implemented section 304 of Public Law 96-265 (the "Social Security Amendments of 1980"). Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not, when promulgated, have a significant economic impact on a substantial number of small entities because they only affect State agencies making disability determinations under title II and title XVI of the Act. Prior to June 1981, these same State agencies made these disability determinations under agreements with the Secretary.

Paperwork Reduction Act

Sections 404.1628(e), 404.1627 (a)(3) and (b)(3), 416.1028(e), and 416.1027 (a)(3) and (b)(3), of these final rules contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these rules to the Office of Management and Budget for its review and approval of these information collection requirements. Other organizations and individuals desiring to submit comments should submit them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, ATTN: Desk Officer for HHS. The sections cited above are not effective until approved by the Office of Management and Budget. We will publish a notice in the **Federal Register** informing the public of the Office of Management and Budget's action.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 13, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 28, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Chapter III, parts 404 and 416 of title 20 of the Code of Federal Regulations is amended as shown.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. In § 404.1602, the definition of "other written guidelines" is revised to read as follows:

§ 404.1602 Definitions.

* * * * *

Other written guidelines means written issuances such as Social Security Rulings and memoranda by the Commissioner of Social Security, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability and the procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System, that are instructive, interpretive, clarifying, and/or administrative and not designated as advisory or discretionary. The purpose of including the foregoing material in the definition is to assure uniform national application of program standards and service delivery to the public.

* * * * *

3. Section 404.1615 is amended by revising paragraph (c) to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(c) Disability determinations will be made by either:

(1) A State agency medical or psychological consultant and a State agency disability examiner or

(2) A State agency disability hearing officer.

See § 404.1616 for the definition of medical or psychological consultant and § 404.915 for the definition of disability hearing officer. The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. See § 404.1572 for what we mean by substantial gainful activity.

* * * * *

4. Section 404.1620 is amended by revising the section heading and paragraph (a) to read as follows:

§ 404.1620 General administrative requirements.

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly. We may impose specific administrative requirements in these areas and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be substantially failing to comply with our regulations or other written guidelines. We will notify the State, in writing, of the administrative requirements being imposed and of any administrative deficiencies it is required to correct. We will allow the State 90 days from the date of this notice to make appropriate corrections. Once corrected, we will monitor the State's administrative practices for 180 days. If the State does not meet the requirements or correct all of the deficiencies, or, if some of the deficiencies recur, we may initiate procedures to determine if the State is substantially failing to follow our regulations or other written guidelines.

* * * * *

5. Section 404.1623 is amended by revising paragraph (c) to read as follows:

§ 404.1623 Facilities.

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and also where it is managed for the purposes of inspecting and obtaining information about the work and activities required by our regulations and assuring compliance with pertinent Federal statutes and regulations. Access includes personal onsite visits and other means, such as telecommunications, of contacting the State agency to obtain information about its functions. We will contact the State agency and give reasonable prior notice of the times and purposes of any visits.

6. Section 404.1626 is amended by revising paragraphs (a) and (e) to read as follows:

§ 404.1626 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR part 1-15, subpart 1-15.7 of the Federal Procurement Regulations System for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 of the Federal Acquisition Regulations System and Federal Management Circular A-74-4 [1] as amended or superseded for costs incurred after March 31, 1984.

* * * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditures. Based on an audit arranged by the State under Public Law 98-502, the Single Audit Act of 1984, or by the Inspector General of the Department of Health and Human Services or based on an audit or review by the Social Security Administration (see § 404.1627), we will determine whether the expenditures were consistent with cost principles described in 41 CFR part 1-15, subpart 1-15.7 for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 and Federal Management Circular A-74-4 for costs incurred after March 31, 1984; and in other applicable written guidelines in effect at the time the expenditures were made or incurred.

* * * * *

7. Section 404.1627 is revised to read as follows:

§ 404.1627 Audits.

(a) *Audits performed by the State.* (1) *Generally.* Audits of accounts and records pertaining to the administration of the disability program under the Act, will be performed by the States in accordance with the Single Audit Act of 1984 (Public. Law. 98-502) which establishes audit requirements for States receiving Federal assistance. If the audit performed by the State meets our program requirements, we will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Grant and Contract Financial Management. A cross-cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting only the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* The Office of Grant and Contract Financial Management will notify the State of its determination on questioned cross-cutting items. If the State disagrees with that determination, it may appeal in writing within 60 days of receiving the determination. State appeals of a cross-cutting issue as a result of an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services' Departmental Appeals Board. The rules for hearings and appeals are provided in 45 CFR part 16.

(b) *Audits performed by the Secretary.* (1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administrations of the disability programs under the Act will be audited by the Department of Health and Human Services' Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability programs. Audits or reviews will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on the audit or review report.

(3) *State appeal of audit determinations.* The appropriate Social Security Administration Regional Commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 60 days of the date of the Regional Commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 days from the date the Social Security Administration receives the State's appeal and all supporting documents. The decision by the Commissioner on other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services, Departmental Appeals Board within 30 days after receiving the Commissioner's decision. See § 404.1683.

[1] The circular is available from the Office of Administration, Publications Unit, Rm. G-236, New Executive Office Bldg., Washington, DC 20503.

8. Section 404.1633 is amended by revising paragraph (b) to read as follows:

§ 404.1633 Policies and operating instructions.

* * * * *

(b) The State agency making determinations of disability will comply with our written guidelines that are not designated as advisory or discretionary (See § 404.1602 for what we mean by written guidelines.)

* * * * *

9. Section 404.1640 is revised to read as follows:

§ 404.1640 General.

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with our regulations and other written guidelines, including meeting established national performance standards. We use performance standards to help assure effective and uniform administration of our disability programs and to measure whether the performance of the disability determination function by each State agency is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and to ensure that benefits are made available to all eligible persons in an accurate and efficient manner. We measure the performance of a State agency in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by State agency adherence to other program requirements.

10. Section 404.1641 is amended by revising paragraph (d) to read as follows:

§ 404.1641 Standards of performance.

* * * * *

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by our appropriate Regional Commissioner after negotiation with each State agency. The intermediate goals are designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional performance support depending on the availability of our resources.

11. Section 404.1642 is amended by revising paragraph (a) to read as follows:

§ 404.1642 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days, including Saturdays, Sundays, and holidays, it takes a State agency to process an initial disability claim from the day the case folder is received in the State agency until the day it is released to us by the State agency. Title XVI processing time refers to the average number of days, including Saturdays, Sundays, and holidays, from the day of receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

12. Section 404.1644 is amended by revising paragraph (a) to read as follows:

§ 404.1644 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days, including Saturdays, Sundays and holidays, from the day the case folder is received in the State agency until the day it is released to us by the State agency. For initial title XVI cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day there is a systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

13. Section 404.1650 is revised to read as follows:

§ 404.1650 Action we will take if a State agency does not meet the standards.

If a State agency does not meet two of the three established threshold levels (one of which must be performance accuracy) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 404.1660, 404.1661 and 404.1662 for a period of up to 12 months.

14. The undesignated center heading preceding § 404.1660 is revised to read *Performance Monitoring and Support.*

15. Section 404.1660 is revised to read as follows:

§ 404.1660 How we will monitor.

We will regularly analyze State agency combined title II and title XVI initial performance accuracy rate, title II initial processing time, and title XVI initial processing time. Within budgeted resources, we will also routinely conduct fiscal and administrative management reviews and special onsite reviews. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance function. This regular monitoring and review program will allow us to determine the progress each State is making and the type and extent of performance support we will provide to help the State progress toward threshold, intermediate, and/or target levels.

16. Section 404.1661 is revised to read as follows:

§ 404.1661 When we will provide performance support.

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State does not have to be below the initial performance accuracy rate of 90.6 percent to receive performance support. Support will be offered, or granted upon request, based on available resources.

(b) *Mandatory support.* (1) We will provide a State agency with mandatory performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be performance accuracy) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI initial performance accuracy rate—90.6 percent,

(ii) Title II initial processing time—49.5 days, and

(iii) Title XVI initial processing time—57.9 days.

17. New § 404.1662 is added to read as follows:

§ 404.1662 What support we will provide.

Performance support may include, but is not limited to, any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

18. Section 404.1670 is revised to read as follows:

§ 404.1670 General.

After a State agency falls below two of three established threshold levels, one being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of three threshold levels, one being performance accuracy, in two consecutive quarters during the next 12 months, we will notify the State that we propose to find that the State agency has substantially failed to comply with our standards and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make disability determinations consistent with the Act, our regulations or other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with §§ 404.1690 and 404.1692.

19. Section 404.1671 is revised to read as follows:

§ 404.1671 Good cause for not following the Act, our regulations, or other written guidelines.

If a State has good cause for not following the Act, our regulations, or other written guidelines, we will not find that the State agency has substantially failed to meet our standards. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

20. Section 404.1680 is revised to read as follows:

§ 404.1680 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory performance support period and the 3-month adjustment period, a State agency again falls below two of three threshold levels (one being performance accuracy) in two consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find that the State agency has substantially failed to meet our standards unless the State submits a written request for a hearing with the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found to have substantially failed to meet our standards, and we will implement our plans to assume the disability determination function.

21. Section 404.1681 is revised to read as follows:

§ 404.1681 Disputes on matters other than substantial failure.

Disputes concerning monetary disallowances will be resolved in proceedings before the Department of Health and Human Services' Departmental Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 404.1627)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act, 42 U.S.C. 1302, 1382c, 1383 and 1383b.

2. In § 416.1002, the definition of "other written guidelines" is revised to read as follows:

§ 416.1002 Definitions.

* * * * *

Other written guidelines means written issuances such as Social Security Rulings and memoranda by the Commissioner of Social Security, the Deputy Commissioner for Programs, or the Associate Commissioner for Disability and the procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System that are instructive, interpretive, clarifying, and/or administrative and not designated as advisory or discretionary. The purpose of including the foregoing material in the definition is to assure uniform national application of program standards and service delivery to the public.

* * * * *

3. Section 416.1015 is amended by revising paragraph (c) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(c) Disability determinations will be made by either:

(1) A State agency medical or psychological consultant and a State agency disability examiner or

(2) A State agency disability hearing officer.

See § 416.1016 for the definition of medical or psychological consultant and § 416.1415 for the definition of disability hearing officer. The State agency disability examiner and disability hearing officer must be qualified to interpret and evaluate medical reports and other evidence relating to the claimant's physical or mental impairments and as necessary to determine the capacities of the claimant to perform substantial gainful activity. See § 416.972 for what we mean by substantial gainful activity.

* * * * *

4. Section 416.1020 is amended by revising the section heading and paragraph (a) to read as follows:

§ 416.1020 General administrative requirements.

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly. We may impose specific administrative requirements in these

ares and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be substantially failing to comply with our regulations or other written guidelines. We will notify the State, in writing, of the administrative requirements being imposed and of any administrative deficiencies it is required to correct. We will allow the State 90 days from the date of this notice to make appropriate corrections. Once corrected, we will monitor the State's administrative practices for 180 days. If the State does not meet the requirements or correct all of the deficiencies, or, if some of the deficiencies recur, we may initiate procedures to determine if the State is substantially failing to follow our regulations or other written guidelines.

* * * * *

5. Section 416.1023 is amended by revising paragraph (c) to read as follows:

§ 416.1023 Facilities.

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and also where it is managed for the purposes of inspecting and obtaining information about the work and activities required by our regulations and assuring compliance with pertinent Federal statutes and regulations. Access includes personal onsite visits and other means, such as telecommunications, of contacting the State agency to obtain information about its functions. We will contact the State agency and give reasonable prior notice of the times and purposes of any visits.

6. Section 416.1026 is amended by revising paragraphs (a) and (e) to read as follows:

§ 416.1026 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR part 1–15, subpart 1–15.7 of the Federal Procurement Regulations System for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 of the Federal Acquisition Regulations System and Federal Management Circular A–74–4 [1] as amended or superseded for costs incurred after March 31, 1984.

* * * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditures. Based on an audit arranged by the State under Public Law 98–502, the Single Audit Act of 1984, or by the Inspector General of the Department of Health and Human Services or based on an audit or review by the Social Security Administration (see § 416.1027), we will determine whether the expenditures were consistent with cost principles described in 41 CFR part 1–15, subpart 1–15.7 for costs incurred before April 1, 1984; and 48 CFR part 31, subpart 31.6 and Federal Management Circular A–74–4 for costs incurred after March 31, 1984; and in other applicable written guidelines in effect at the time the expenditures were made or incurred.

* * * * *

7. Section 416.1027 is revised to read as follows:

§ 416.1027 Audits.

(a) *Audits performed by the State.* (1) *Generally.* Audits of account and records pertaining to the administration of the disability program under the Act, will be performed by the States in accordance with the Single Audit Act of 1984 (Pub. L. 98–502) which establishes audit requirements for States receiving Federal assistance. If the audit performed by the State meets our program requirements, we will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Grant and Contract Financial Management. A cross-cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting only the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* The Office of Grant and Contract Financial Management will notify the State of its determination on questioned cross-cutting items. If the State disagrees with that determination, it may appeal in writing within 60 days of receiving the determination. State appeals of a cross-cutting issue as a result of an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services' Departmental Appeals Board. The rules for hearings and appeals are provided in 45 CFR part 16.

(b) *Audits performed by the Secretary.* (1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administration of the disability programs under the Act will be audited by the Department of Health and Human Services' Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability programs. Audits or reviews will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on the audit or review report.

(3) *State appeal of audit determinations.* The appropriate Social Security Administration Regional Commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 60 days of the date of the Regional Commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 days from the date the Social Security Administration receives the State's appeal and all supporting documents. The decision by the Commissioner on other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the Commissioner's decision. See § 416.1083.

[1] The circular is available from the Office of Administration, Publications Unit, Rm. G–236, New Executive Office Bldg., Washington, DC 20503.

8. Section 416.1033 is amended by revising paragraph (b) to read as follows:

§ 416.1033 Policies and operating instructions.

* * * * *

(b) The State agency making determinations of disability will comply with our written guidelines that are not designated as advisory or discretionary. (See § 416.1002 for what we mean by written guidelines.)

* * * * *

9. Section 416.1040 is revised to read as follows:

§ 416.1040 General.

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with our regulations and other written guidelines, including meeting established national performance standards. We use performance standards to help assure effective and uniform administration of our disability program and to measure whether the performance of the disability determination function by each State agency is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and to ensure that benefits are made available to all eligible persons in an accurate and efficient manner. We measure the performance of a State agency in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by State agency adherence to other program requirements.

10. Section 416.1041 is amended by revising paragraph (d) to read as follows:

§ 416.1041 Standards of performance.

* * * * *

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established by our appropriate Regional Commissioner after negotiation with each State agency. The intermediate goals are designed to help the State agencies reach the target levels. Failure to meet these goals is not a cause for considering the State agency to be substantially failing to comply with the performance standards. However, failure to meet the intermediate goals may result in consultation and an offer of optional performance support depending on the availability of our resources.

11. Section 416.1042 is amended by revising paragraph (a) to read as follows:

§ 416.1042 Processing time standards.

(a) *General.* Title II processing time refers to the average number of days (including Saturdays, Sundays, and holidays) it takes a State agency to process an initial disability claim from the day the case folder is received in the State agency until the day it is released to us by the State agency. Title XVI processing time refers to the average number of days, including Saturdays, Sundays, and holidays, from the day of receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

12. Section 416.1044 is amended by revising paragraph (a) to read as follows:

§ 416.1044 How and when we determine whether the processing time standards are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day it is released to us by the State agency. For initial title XVI cases, we calculate the mean number of days, including Saturdays, Sundays, and holidays, from the day the case folder is received in the State agency until the day there is systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

* * * * *

13. Section 416.1050 is revised to read as follows:

§ 416.1050 Action we will take if a State agency does not meet the standards.

If a State agency does not meet two of the three established threshold levels (one of which must be performance accuracy) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 416.1060, 416.1061 and 416.1062 for a period of up to 12 months.

14. The undesignated center heading preceding § 416.1060 is revised to read *Performance Monitoring and Support.*

15. Section 416.1060 is revised to read as follows:

§ 416.1060 How we will monitor.

We will regularly analyze State agency combined title II and title XVI initial performance accuracy rate, title II initial processing time, and title XVI initial processing time. Within budgeted resources, we will also routinely conduct fiscal and administrative management reviews and special onsite reviews. A fiscal and administrative management review is a fact-finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance function. This regular monitoring and review program will allow us to determine the progress each State is making and the type and extent of performance support we will provide to help the State progress toward threshold, intermediate, and/or target levels.

16. Section 416.1061 is revised to read as follows:

§ 416.1061 When we will provide performance support.

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance. The State does not have to be below the initial performance accuracy rate of 90.6 percent to receive performance support. Support will be offered, or granted upon request, based on available resources.

(b) *Mandatory support.* (1) We will provide a State agency with performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be performance accuracy) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI initial performance accuracy rate—90.6 percent.

(ii) Title II initial processing time—40.5 days, and

(iii) Title XVI initial processing time—37.9 days.

17. New § 416.1082 is added to read as follows:

§ 416.1082 What support we will provide.

Performance support may include, but is not limited to, any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

18. Section 416.1070 is revised to read as follows:

§ 416.1070 General.

After a State agency falls below two of three established threshold levels, one being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again fails below two of three threshold levels, one being performance accuracy, in two consecutive quarters during the next 12 months, we will notify the State that we propose to find that the State agency has substantially failed to comply with our standards and advise it that it may request a hearing on that issue. After giving the State notice and an opportunity for a hearing, if it is found that a State agency has substantially failed to make disability determinations consistent with the Act, our regulations, or other written guidelines, we will assume partial or complete responsibility for performing the disability determination function after we have complied with §§ 416.1080 and 416.1092.

19. Section 416.1071 is revised to read as follows:

§ 416.1071 Good cause for not following the Act, our regulations, or other written guidelines.

If a State has good cause for not following the Act, our regulations, or other written guidelines, we will not find that the State agency has substantially failed to meet our standards. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

20. Section 416.1080 is revised to read as follows:

§ 416.1080 Notice of right to hearing on proposed finding of substantial failure.

If, following the mandatory performance support period and the 3-month adjustment period, a State agency again falls below two of three threshold levels (one being performance accuracy) in two consecutive quarters in the succeeding 12 months, we will notify the State in writing that we will find that the State agency has substantially failed to meet our standards unless the State submits a written request for a hearing with the Department of Health and Human Services' Departmental Appeals Board within 30 days after receiving the notice. The notice will identify the threshold levels that were not met by the State agency, the period during which the thresholds were not met, and the accuracy and processing time levels attained by the State agency during this period. If a hearing is not requested, the State agency will be found to have substantially failed to meet our standards, and we will implement our plans to assume the disability determination function.

21. Section 416.1081 is revised to read as follows:

§ 416.1081 Disputes on matters other than substantial failure.

Disputes concerning monetary disallowances will be resolved in proceedings before the Department of Health and Human Services, Departmental Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 416.1027)

[FR Doc. 91-5706 Filed 3-13-91; 8:45 am]

BILLING CODE 4190-11-M

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AC60

Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determinations of Disability—Determining State Agency Substantial Failure to Comply with Federal Rules

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: The proposed rules contain new procedures for determining when a State agency has substantially failed to make disability determinations in accordance with the applicable provisions of title II and title XVI of the Social Security Act (the Act) or the rules that have been issued thereunder. Under the Act, if it is determined that a State agency has substantially failed to make disability determinations in a manner consistent with statutory and regulatory provisions or with other written guidelines of the Secretary of Health and Human Services, the Social Security Administration (SSA), in accordance with sections 221 and 1633 of the Act, must assume the responsibility for making the disability determinations.

DATES: To be sure that your comments are considered, we must receive them no later than May 13, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966–0512.

SUPPLEMENTARY INFORMATION: Pursuant to sections 221(a) and 1633 of the Act, State agencies are to make disability determinations not only in accordance with applicable statutory provisions, but also in accordance with regulations and other written guidelines prescribed by the Secretary. These regulations and other written guidelines specify among other things standards of performance and administrative requirements and procedures to be followed by State agencies in making disability determinations. These rules and procedures are required by sections 221 and 1633 of the Act to ensure the effective and uniform administration of the disability programs throughout the United States. Further, if SSA determines, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Act, our regulations or other written guidelines, SSA must assume responsibility for making the disability determinations. Under the statute and current regulations, SSA may not begin making disability determinations earlier than 180 days after its final determination that the State agency is not in compliance with the Federal statute, our regulations, or other written guidelines, and not until it has developed and initiated all appropriate procedures to implement a plan with respect to any partial or complete assumption of the disability determination function from the State agency. These procedures must include giving a hiring preference to certain State agency employees and receiving a finding from the Secretary of Labor that the State has made fair and equitable arrangements to protect the interests of displaced employees under applicable Federal, State, and local law.

Under our current regulations, we will find that a State agency has substantially failed to make disability determinations in a manner that is consistent with the Act, our regulations or other written guidelines if it has failed to meet national performance standards. Generally, in these situations, the State agency is trying to follow the rules in making disability determinations but does not meet our performance standards. We are proposing to amend our regulations to provide that we will also find that a State agency has substantially failed to make disability determinations in a manner that is consistent with the Act, our rules and guidelines if it has failed to follow the Act, regulations or other written guidelines in carrying out the disability determination functions. For example, a State agency may fail to follow SSA's disbility development and evaluation criteria, or, a State agency may refuse to process a certain class or classes of disability cases which it is required to process.

The Social Security Administration must ensure the effective and uniform administration of the Social Security disability and Supplemental Security Income disability and blindness programs throughout the United States. In order to accomplish this responsibility, SSA must have sufficient regulatory authority to deal with any situation involving State agency failure to follow the Act, our regulations or other written guidelines. This regulatory authority, in turn, should include procedures which are fair and equitable and enable SSA to respond quickly to any issue of State agency failure to follow the Act, our regulations or other written guidelines.

On October 9, 1984, the President signed Public Law 98–460, the Social Security Disability Benefits Reform Act of 1984. One of its provisions was section 17, Measures to Improve Compliance with Federal Law. The purpose of section 17 was to provide a means by which SSA could take prompt and effective action to maintain uniform national administration of the disability programs in the event that SSA determined that a State agency was not in substantial compliance with the Act, our regulations or other written guidelines. Section 17 contained procedures with timeframes for us to follow to determine State compliance and the actions to take if a State was not in compliance. Section 17 was a temporary provision that expired on December 31, 1987. Since this provision has expired, the current regulations need to be amended to provide the standards that SSA will apply to determine if a State agency has substantially failed to make disability determinations in a manner consistent with the Act, our rules and guidelines and the procedures that SSA will follow in making substantial failure determinations. Until these new rules are published as final regulations, we will use the authority granted us by sections 221 and 1633 of the Act to handle compliance issues not covered in the current regulations.

Current regulations specify our responsibilities and those of the States in administering the disability programs. They prescribe standards for accuracy and processing times that State agencies must meet in making disability determinations. They provide the administrative requirements and procedures we and the States must follow in carrying out the disability determination functions.

The current regulations address the issue of State agency "substantial failure" in terms of not meeting national

performance standards for accuracy and processing times. The procedures for finding that a State has substantially failed to comply with the Act, our rules or written guidelines are not invoked until the State agency has failed to meet the performance standards for a specified period, received performance support from SSA, and thereafter remained unable to meet the performance standards. There are no other provisions in the regulations for determining issues involving substantial failure.

The proposed regulations will provide new procedures, including hearing procedures, in matters of substantial failure. They are authorized under sections 221 and 1633 of the Act and the general regulatory authority of the Secretary provided in sections 205, 1102, and 1631 of the Act. The new procedures would be similar to those in the now-expired section 17 of Public Law 98-460 to the extent practicable, given the framework of existing law. They would enable us to reach final determinations on the matter of substantial failure more quickly than we can under the current regulations and yet preserve procedural safeguards for the States. They also provide, as did section 17 of Public Law 98-460, that the final decision of the Secretary will not be subject to judicial review. A summary of these proposed procedural changes follows.

Procedures for Determining Substantial Failure

We propose to revise §§ 404.1670 and 416.1070 to make the procedures for determining substantial failure because of failure to meet the performance standards consistent with the proposed hearing procedures in §§ 404.1680 and 416.1080.

In addition, we are proposing to revise §§ 404.1670 and 416.1070 to provide procedures for handling other types of substantial failure. Under the proposed procedures, when we receive information that a State may not be following the Act, our regulations or other written guidelines, we will investigate the matter immediately and, within 21 days, make a preliminary finding as to whether the State substantially failed to meet our standards. If a State is notified of a preliminary finding that it has substantially failed to meet our standards, it will have 21 days from the date of the finding to provide written assurance that the situation will be corrected or to request a hearing. We will monitor the State's performance for 30 days. Regardless of whether a State provides such assurance or requests a hearing, we will make a final determination as to whether the State is or is not substantially failing to comply with the Act, our regulations or other written guidelines within 60 days of our preliminary finding, or within 110 days if the State requests a hearing.

Hearing on Matters of Substantial Failure

We propose to revise the hearing procedures in §§ 404.1680 and 416.1080. The current procedures provide that all hearing requests are to be filed with the Department of Health and Human Services' Departmental Appeals Board and that the Departmental Appeals Board will conduct the hearing using their procedures. However, because of the unique nature of determining whether a State agency has substantially failed to make disability determination in accordance with Federal rules, special hearing procedures are needed. Therefore, we are proposing new hearing procedures, to be used by the Departmental Appeals Board, when this issue arises. Under the proposed procedures, within 21 days of the preliminary finding we have made that the State has substantially failed to comply with our rules, the State may request that the Departmental Appeals Board provide a hearing. If the State requests a hearing, the Departmental Appeals Board will, within 50 days of the preliminary finding, notify the State of the time and place of the hearing. The hearing will begin no later than 70 days after the date of the preliminary finding. At the hearing, the State will have a maximum of 3 working days to present evidence and arguments unless in the judgment of the hearing official, more time is necessary. The Departmental Appeals Board will not consider evidence and arguments presented after the hearing. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary of Health and Human Services no later than 90 days after the date of the preliminary finding. The recommendation of the Departmental Appeals Board will not be binding on the Secretary; however, it will be considered by the Secretary in reaching the final determination. The Secretary's final determination will not be subject to judicial review.

Hearings and Appeals Process

We propose that the Departmental Appeals Board will follow the procedures in §§ 404.1680 and 416.1080 in conducting hearings on matters of State agency substantial failure.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 and does not meet any of the criteria for a major regulation. These regulations only make some modifications to the regulations which implement section 221 of the Act. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities, because they only affect State agencies making disability determinations under title II and title XVI of the Act. Prior to June 1981, these same State agencies made these disability determinations under agreements with the Secretary.

Paperwork Reduction Act of 1980

Sections 404.1670(c)(3), 404.1680(a), 416.1070(C)(3), and 416.1080(a) of these proposed rules contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of these proposed rules to the Office of Management and Budget (OMB) for its review and approval of these information collection requirements. Other organizations and individuals desiring to submit comments should submit them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC, ATTN: Desk Officer for HHS. The sections cited above will not be effective until approved by OMB. We will publish a notice in the Federal Register informing the public of OMB's action.

The public reporting burden for this collection of information is expected to average 120 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Social Security Administration ATTN: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20504.

(Catalog of Federal Domestic Program Nos. 93.802, Social Security Disability Insurance; 93.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 13, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: January 28, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Chapter III, parts 404 and 416 of title 20 of the Code of Federal Regulations is amended as shown.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. Section 404.1670 is revised to read as follows:

§ 404.1670 Determining substantial failure.

(a) *General.* We must assure the substantial compliance of States with the Act, our regulations, and other written guidelines or assume their disability determination functions. The Act, our regulations, and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is substantially failing to comply with our rules if it does not meet performance standards as specified in paragraph (b) of this section or does not follow other provisions of the Act, our regulations or other written guidelines as specified in paragraph (c) of this section, without good cause. (See § 404.1671.)

(b) *Failure to meet performance standards.* After a State agency falls below two of the three established threshold levels, one of the two being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of the three threshold levels, one of the two being performance accuracy, in two consecutive quarters during the next 12 months, we will make a preliminary finding that the State has substantially failed to make disability determinations consistent with the Act, our regulations or other written guidelines and advise it that it may request a hearing on this issue within 21 days. We will follow § 404.1680 if the State requests a hearing. If the State does not request a hearing, we will make a final determination on this issue within 60 days of the preliminary finding. If we make a final determination that the State has substantially failed to comply with the Act, our regulations, or other written guidelines, we will assume the disability determination functions of the State after completing the procedures specified in § § 404.1690 through 404.1694.

(c) *Failure to make disability determinations in accordance with the Act, our regulations or written guidelines.* We will take specific steps within definite timeframes before determining that a State is substantially failing to follow the Act, our regulations, or other written guidelines in matters other than meeting performance standards. These steps are:

(1) *Information that a State agency may be substantially failing to comply with our rules.* When we receive information that a State agency may not be making disability determinations in accordance with the Act, our regulations, or other written guidelines, the matter will be investigated, as soon as possible, by our regional office in whose geographical area the State is located to determine if the State is substantially failing to comply with our rules.

(2) *Preliminary finding.* Our regional office will complete its investigation, and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that we make such a finding, we will notify the State in writing of the preliminary finding. If we make a preliminary finding that the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the notice will include an explanation of the basis for the finding, i.e., it will explain which statute, regulation, or guideline is not being complied with and how we determined the failure of the State agency to comply. We will request assurance from the Governor of the State, or equivalent, or his or her designee, that the situation will be corrected and give the State an opportunity to request a hearing.

(3) *Assurance or hearing request by the State.* Any State notified of a preliminary finding that the State agency is substantially failing to comply with the Act, our rules or other written guidelines will have 21 days, from the date the preliminary finding was made, to:

(i) Provide assurance to us in writing that the situation will be corrected or

(ii) Request a hearing on the issue of substantial failure.

We will follow § 404.1680 if the State requests a hearing.

(4) *Monitoring and final determination.* We will monitor the performance of the State agency for 30 days beginning with the 22nd day after the date of the preliminary finding regardless of whether or not the State provides assurance to us in writing that the situation will be corrected or requests a hearing on the matter of substantial failure. Within 60 days after the date on which the preliminary finding was made, or 110 days after such date if the State requests a hearing, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines. If the State agency is found to be making disability determinations in a manner that is not consistent with the Act, our regulations, or other written guidelines, we will follow §§ 404.1680 through 404.1694 in assuming the disability determination functions of the State.

3. Section 404.1680 is revised to read as follows:

§ 404.1680 Hearing procedures for substantial failure.

(a) *Request for hearing.* Within 21 days of receipt of our preliminary finding that a State agency is substantially failing to comply with the Act, our regulations or other written guidelines, the State may request a hearing on this issue. The request must be directed to the Secretary of Health and Human Services. Written requests must be sent to the Secretary of Health and Human Services, Hubert H. Humphrey Building, Washington, DC 20201.

(b) *Action on hearing request.* Within 50 days of the preliminary finding, we will notify the State in writing of the time and the place of the hearing. Such hearing will begin no later than the 70th day after the date of our preliminary finding. The notice will also specify the

statutes, regulations, or other written guidelines which the State may have substantially failed to follow.

(c) *Conduct of hearing.* The hearing will be conducted by the Departmental Appeals Board. The hearing will allow the State to present information and evidence for consideration by the Secretary in reaching the final determination. The State will have a maximum of 3 working days to present evidence and argument unless in the judgment of the Departmental Appeals Board more time is necessary. The Departmental Appeals Board's ruling with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary no later than 90 days after the date of the preliminary finding. The finding and recommendation of the Departmental Appeals Board will not be binding on the Secretary, but will be considered by the Secretary along with all the evidence of record in reaching a final determination. Unless the State presents evidence or arguments before or at the hearing, it will not be part of the record, and it will not be considered by the Departmental Appeals Board in making a recommended determination or by the Secretary in making a final determination.

(d) *Final determination.* Within 110 days of the date of the preliminary finding, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations or other written guidelines. The decision by the Secretary is not subject to judicial review and will be final and binding upon the State. If the State agency is found to be in substantial failure, we will follow §§ 404.1690 through 404.1694 in assuming the disability determination functions of the State.

4. Section 404.1682 is revised to read as follows:

§ 404.1682 Who conducts the hearing of fiscal issues.

If a hearing is required on a fiscal issue, it will be conducted by the Department of Health and Human Services' Departmental Appeals Board.

5. Section 404.1683 is revised to read as follows:

§ 404.1683 Hearings and appeals process.

The rules for hearings and appeals before the Departmental Appeals Board on matters other than substantial failure are provided in 45 CFR part 16. The rules for hearings before the Departmental Appeals Board on matters of substantial failure are provided in § 404.1680.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633, of the Social Security Act, 42 U.S.C. 1302, 1382c, 1383 and 1383b.

2. Section 416.1070 is revised to read as follows:

§ 416.1070 Determining substantial failure.

(a) *General.* We must assure the substantial compliance of States with the Act, our regulations, and other written guidelines or assume their disability determination functions. The Act, our regulations, and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is substantially failing to comply with our rules if it does not meet performance standards as specified in paragraph (b) of this section or does not follow other provisions of the Act, our regulations or other written guidelines as specified in paragraph (c) of this section without good cause. (See § 416.1071.)

(b) *Failure to meet performance standards.* After a State agency falls below two of the three established threshold levels, one of the two being performance accuracy, for two consecutive quarters, and after the mandatory performance support period, we will give the State agency a 3-month adjustment period. During this 3-month period we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of the three threshold levels, one of the two being performance accuracy, in two consecutive quarters during the next 12 months, we will make a preliminary finding that the State has substantially failed to make disability determinations consistent with the Act, our regulations, or other written guidelines and advise it that it may request a hearing on this issue within 21 days. We will follow § 416.1080 if the State requests a hearing. If the State does not request a hearing, we will make a final determination on this issue within 60 days of the preliminary finding. If we make a final determination that the State has substantially failed to comply with the Act, our regulations, or other written guidelines, we will assume the disability determination functions of the State after completing the procedures specified in §§ 416.1090 through 416.1094.

(c) *Failure to make disability determinations in accordance with the Act, our regulations, or written guidelines.* We will take specific steps within definite timeframes before determining that a State is substantially failing to follow the Act, our regulations, or other written guidelines in matters other than meeting performance standards. These steps are:

(1) *Information that a State agency may be substantially failing to comply with our rules.* When we receive information that a State agency may not be making disability determinations in accordance with the Act, our regulations, or other written guidelines, the matter will be investigated, as soon as possible, by our regional office in whose geographical area the State is located to determine if the State is substantially failing to comply with our rules.

(2) *Preliminary finding.* Our regional office will complete its investigation, and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that we make such finding, we will notify the State in writing of the preliminary finding. If we make a preliminary finding that the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the notice will include an explanation of the basis for the finding, i.e., it will explain which statute, regulation, or guideline is not being complied with and how we determined the failure of the State agency to comply. We will request assurance from the Governor of the State, or equivalent, or his or her designee, that the situation will be corrected and give the State an opportunity to request a hearing.

(3) *Assurance or hearing request by the State.* Any State notified of a preliminary finding that the State agency is substantially failing to comply with the Act, our rules or other written guidelines will have 21 days, from the date the preliminary finding was made, to:

(i) Provide assurance to us in writing that the situation will be corrected or

(ii) Request a hearing on the issue of substantial failure.

We will follow § 416.1080 if the State requests a hearing.

(4) *Monitoring and final determination.* We will monitor the performance of the State agency for 30 days beginning with the 22nd day after the date of the preliminary finding regardless of whether or not the State provides assurance to us in writing that the situation will be corrected or requests a hearing on the matter of substantial failure. Within 60 days after the date on which the preliminary finding was made or 110 days after such date if the State requests a hearing, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations, or other written guidelines. If the State agency is found to be making disability determinations in a manner that is not consistent with the Act, our regulations, or other written guidelines, we will follow §§ 416.1090 through 416.1094 in assuming the disability determination functions of the State.

3. Section 416.1080 is revised to read as follows:

§ 416.1080 Hearing procedures for substantial failure.

(a) *Request for hearing.* Within 21 days of receipt of our preliminary finding that a State agency is substantially failing to comply with the Act, our regulations, or other written guidelines, the State may request a hearing on this issue. The request must be directed to the Secretary of Health and Human Services. Written requests must be sent to the Secretary of Health and Human Services, Hubert H. Humphrey Building, Washington, DC 21201.

(b) *Action on hearing request.* Within 50 days of the preliminary finding, we will notify the State in writing of the time and the place of the hearing. Such hearing will begin no later than the 70th day after the date of our preliminary finding. The notice will also specify the statutes, regulations, or other written guidelines which the State may have substantially failed to follow.

(c) *Conduct of hearing.* The hearing will be conducted by the Departmental Appeals Board. The hearing will allow the State to present information and evidence for consideration by the Secretary in reaching the final determination. The State will have a maximum of 3 working days to present evidence and argument unless in the judgment of the Departmental Appeals Board, more time is necessary. The Departmental Appeals Board's rulings with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The Departmental Appeals Board will submit written findings and a written recommended determination to the Secretary no later than 90 days after the date of the preliminary finding. The findings and recommendation of the Departmental Appeals Board will not be binding on the Secretary, but will be considered by the Secretary along with all the evidence of record in reaching a final determination. Unless the State presents evidence or arguments before or at the hearing, it will not be part of the record, and it will not be considered by the Departmental Appeals Board in making a recommended determination or by the Secretary in making a final determination.

(d) *Final determination.* Within 110 days of the date of the preliminary finding, the Secretary, or his or her designee, will make a written final determination as to whether the State agency is substantially failing to comply with the Act, our regulations or other written guidelines. The decision by the Secretary is not subject to judicial review and will be final and binding upon the State. If the State agency is found to be in substantial failure, we will follow §§ 416.1090 through 416.1094 in assuming the disability determination functions of the State.

4. Section 416.1082 is revised to read as follows:

§ 416.1082 Who conducts the hearing on fiscal issues.

If a hearing is required on a fiscal issue, it will be conducted by the Department of Health and Human Services' Departmental Appeals Board.

5. Section 416.1083 is revised to read as follows:

§ 416.1083 Hearings and appeals process.

The rules for hearings and appeals before the Departmental Appeals Board on matters other than substantial failure are provided in 45 CFR part 16. The rules for hearings before the Departmental Appeals Board on matters of substantial failure are provided in § 416.1080.

[FR Doc. 91-5707 Filed 3-13-91; 8:45 am]
BILLING CODE 4190-29-M

OL
56
SS
50
R
14
991
MI

federal register

Thursday
March 14, 1991

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 12, 207, et al.
Accountability in the Provision of HUD Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 12, 207, 220, 221, 231, 232, 242, and 282

[Docket No. R-91-1479; FR-2731-F-02]

RIN 2501-AA94

Accountability in the Provision of HUD Assistance

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

DATES:

Effective: April 15, 1991.

Implementation: Sections 12.12 and 12.14(a) apply to all applications for assistance subject to subpart B of part 12 that the Department solicits on or after April 15, 1991.

Section 12.14(b) applies to all decisions to provide or deny assistance subject to subpart B of part 12 that are reached on or after April 15, 1991.

Section 12.16(a) applies to all decisions to provide assistance subject to subpart B of part 12 that are reached on or after April 15, 1991.

Suspensions: Sections 12.14(c) and 12.16(b), subpart C and subpart D of part 12, and the amendments made to 24 CFR parts 207, 220, 221, 231, 232, 241, and 882 are suspended and will become effective only as provided by subsequent Notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For general questions regarding provisions of this rule requiring notice and documentation of assistance, and notice of funding decisions: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, telephone (202) 708-0294, TDD (202) 708-1112.

For general questions regarding provisions of this rule requiring disclosures by applicants: Arnold J. Haiman, Acting Director, Office of Ethics, room 2158, telephone (202) 708-3815, TDD (202) 708-1112.

For specific questions regarding programs administered by the Assistant Secretary for Community Planning and Development: Don L. Patch, Director, Office of Block Grant Assistance, room 7286, telephone (202) 708-2090, TDD (202) 708-3587.

For specific questions regarding programs administered by the Assistant Secretary for Public and Indian Housing: Casimir Bonkowski, Director, Office of Management and Policy, room 4226, telephone (202) 708-0444, TDD (202) 708-0850.

For specific questions regarding programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner: Michael Hernandez, Special Assistant to the Deputy Assistant Secretary for Multifamily Housing, telephone (202) 708-2495, TDD (202) 708-4594.

For specific questions regarding programs administered by the Assistant Secretary for Fair Housing and Equal Opportunity: Laurence Pearl, Director, Office of Program Standards and Evaluation, room 5226, telephone (202) 708-0288, TDD (202) 708-4594.

All addresses are at the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. None of the telephone numbers listed above is toll-free.

SUPPLEMENTARY INFORMATION:

Background

This rule implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) (the "Reform Act"). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Specific features of the rule include:

—For assistance distributed through a competitive process:

—HUD publication of a Notice in the **Federal Register** announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

—Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and assistance recipients provided or denied the assistance to their applicants.

—Publication in the **Federal Register** of decisions to provide assistance made by the Department,[1] and public notification of such decisions made by States and units of general local government.

—For assistance for specific projects or activities, disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of assistance from other government sources to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put.

—For HUD assistance for housing projects, a certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible, after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures by applicants.

Note: Section 102(a)(4)(D), which requires **Federal Register** publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, is being implemented by regulatory change to 24 CFR part 791.)

Public Comments

The Department published a proposed rule to implement section 102 of the Reform Act on June 13, 1990 (55 FR 25036). Comments on the proposed rule were received from two commenters. A discussion of the comments follows:

Subpart B—Notice and Documentation of Assistance

1. *Comment:* The commenter questions the basis for the Department's interpretation in the proposed rule that because section 102 is concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance, it should not cover formula-driven HUD assistance, "demand" programs, or other non-competitive assistance. The commenter states that the purpose of section 102 is to protect the public and to ensure that HUD informs the public of the rules of the game, so that the public can appropriately apply for HUD assistance and comply with program direction. The commenter suggests the following:

—Section 12.10 (Definitions) should be broadened to encompass the programs described by the direct wording of the statute and should not be limited to competitive programs.

—Section 12.12 (Notice regarding assistance) also should be broadened.

—Section 12.14 (Documentation of applications and decisions) should not exclude particular programs. All HUD assistance, except that which is legislatively or contractually mandated, should be determined based on written applications. The only exceptions should be some formula driven programs.

Response: As the commenter points out, the proposed rule would have limited the following features of section 102(a) to assistance distributed through a competitive process:

—HUD publication of a **Federal Register** Notice announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

—Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.

—Publication in the **Federal Register** of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government.

The preamble to the proposed rule stated the Department's position as follows:

* * * * *

The first two elements of subpart B (sections 102 (a)(1) through (4)(B) and (E) and (5)) of the Reform Act apply to "assistance under any program or discretionary fund administered by the Secretary." The term is undefined, and requires an interpretation to establish its coverage. Based on an analysis of the relevant provisions of section 102, the Department believes that this term should be limited to discretionary authorities administered by the Department that provide assistance on a competitive basis.

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: Programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria.

This process is very different from that used in the Department's formula-driven programs, such as the Community Development Block Grant program, the Rental Rehabilitation program, the Emergency Shelter Grants program, and Public Housing Operating Subsidies. These programs provide some or all of their funding on a formula entitlement basis. Although they may use a "statement" or other document in connection with the receipt of the assistance, the document does not serve the primary purpose of an application—to determine eligibility and amount of assistance. In addition, formula programs do not use selection criteria: Recipients' funding is determined by formula, not by competition.

Similar anomalies attend application of section 102 to "demand" programs and to certain other funding actions that are taken without a competition. "Demand" programs, such as FHA mortgage insurance, section 108 loan guarantees, and GNMA's guarantee of Mortgage-Backed Securities, traditionally make "assistance" available to all who meet their eligibility criteria. They do not involve a competition, and, therefore, do not use selection criteria to choose among competing applications.

Other authorities make assistance available with respect to specific projects or activities, but do not use a competition in the provision of the assistance. These include actions that necessarily follow competitive or "demand" program funding decisions almost as a matter of course (*e.g.*, renewals of contracts entered into under section 8 of the United States Housing Act of 1937, and amendments under section 202 of the Housing Act of 1959); the Section 8 Property Disposition program; and the provision of assistance as an incentive in connection with a HUD-approved Plan of Action under title II of the Housing and Community Development Act of 1987. (55 FR 25038)

* * * * *

The Department has reviewed the coverage of section 102(a), and believes that the approach adopted in the proposed rule is the best reading of the statute and accurately reflects congressional intent. Accordingly, the final rule continues to limit section 102(a) to programs that distribute assistance on a competitive basis, with one exception.

The preamble to the proposed rule sought public comment on whether, as a matter of agency discretion, the scope of subpart B should be expanded to include programs that distribute assistance on a discretionary (non-formula, non-"demand") basis, but that do not use a competitive selection process. (See 55 FR 25039.) Although no comments were received on this point, the Department believes that the reform nature of section 102 argues strongly that the Department's decisions to award assistance of this nature be published in the **Federal Register**.

Accordingly, the final rule provides that when HUD awards such assistance, it will publish a notice of the "winners" in the **Federal Register** in accordance with § 12.16(a). The types of programs involved include HUD's research and technology authority, the Fair Housing Assistance program, technical assistance under the Community Development Block Grant (CDBG) program, and assistance for Historically Black Colleges under the CDBG program.

The Department does not propose to extend the reach of section 102(a) farther. We appreciate the commenter's concern that the public be protected and advised of the "rules of the game" so that they can appropriately apply for HUD assistance and comply with program requirements. The public should, however, be well aware of the "rules of the game" for the Department's programs, since all relevant HUD documents and requirements for these programs can be found in the Department's rules, Handbooks, or other written material that is generally available to the public.

In addition, the need for timely information and protection against abuse is most compelling in the case of programs that distribute assistance on a competitive basis. In these programs, applicants are competing for limited resources under strict deadlines, and since there are "losers," a high degree of protection for the competitors is required.

By contrast, formula and "demand" programs contain none of these special circumstances. In formula programs, assistance is provided according to an objective formula. In "demand" programs, applicants need only meet stated eligibility criteria to receive assistance. The Department does not believe that these programs require the kinds of protection afforded by section 102(a).

Finally, the Department believes that non-formula non-"demand" programs fall somewhere between competitive and formula/"demand" programs. Assistance is provided on a discretionary basis to a limited number of applicants, but without a competition. The Department believes that requiring that "winners" of assistance in these programs be published in the **Federal Register** is in the spirit of the "sunshine" of the Reform Act, and provides adequate protection from abuse.

2. *Comment:* A commenter suggested that references in the proposed rule at §§ 12.14(c) and 12.32(a)(5) to the issuance of "administrative instructions" involved matters "too

[1] This last feature also applies to assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provide on the basis of a competition.

important" to be issued in the form of administrative instructions, and that notice and comment rule making ought to be provided for these procedures.

Response: The Department disagrees. The administrative instructions referenced in proposed § 12.14(c)(1) are subordinate to the substantive requirement, set out in that paragraph, that each recipient of assistance must ensure the sufficiency of information it maintains regarding the award or reallocation of funds provided by HUD. Documentation and information maintained by these primary recipients of assistance funds must be "sufficient to indicate the basis upon which the recipient provided or denied the assistance [to subrecipients]."

Similarly, § 12.14(c)(2) requires that recipients of assistance make applications and related documents available for public inspection; that these materials be made available for at least five years; and that their availability must commence not less than 30 days after the assistance is provided [by the recipient to a subrecipient].

In each of the cited instances, the rule states in clear terms the duty of the primary recipient to make a record of its grant award activities and to maintain it for public inspection. The language referencing HUD administrative instructions merely conveys the Department's intention to provide further administrative details to these recipients concerning the means they will be asked to employ in meeting the regulatory requirements—means that will assist the Department in monitoring compliance with statutorily imposed duties.

Even without the references to administrative instructions, the level of detail in § 12.14(c) is equal to, and parallel to, the comparable regulatory obligations that the rule places on HUD's own grant-administration processes (see § 12.14(b) of the proposed rule).

In the same manner, § 12.32 sets out detailed regulatory requirements for disclosures by applicants—to HUD or to a State or local government, as appropriate—of (1) other governmental assistance received or expected by the applicant; (2) the pecuniary interest of parties in the project; and (3) the intended sources and uses of the funds. A commenter objected to a paragraph pertaining to "administrative instructions" of HUD. The questioned paragraph is a housekeeping provision—directed not at applicants for assistance, but at State and local governments—indicating that HUD will instruct them on administrative details concerning their receipt of the required disclosures from applicants, and concerning the sharing of this required information with HUD.

In each instance, the regulation stands alone without the informational reference to HUD's intention to provide ancillary instructions. Administrative instructions, when issued, will not have the force and effect of law and will merely provide a consensus framework under which HUD and the States and localities can work effectively together to carry out the statutory purpose.

3. *Comment:* The commenter suggests that the requirements of § 12.14(c) apply only to recipients of assistance that are governmental bodies and not to private sector recipients of HUD assistance which, for example, may bid out construction work to several contractors or subcontractors. The commenter doubts that the legislative intent encompassed altering the nature of private business by giving potential liability to private owners that do not employ public contracting procedures. In the commenter's view, § 12.16 (Notice of funding decisions) is limited to the publication of awards of financial assistance arising from "competitive distribution," and, therefore, § 12.14 should be limited also.

Response: The statutory basis for § 12.14(c)—section 102(a)(4)(B)(ii)—covers a "State, unit of general local government, or other recipient of assistance." (emphasis supplied) The Department believes that this formulation is clear and unequivocal: it covers all recipients of assistance—both governmental and non-governmental—that receive covered assistance from the initial recipient of assistance on the basis of a competition.

The Department does not agree with the commenter's assertion that § 12.14(c) requires private "recipients" to use public contracting procedures. The statute requires that the documentation and other information regarding each application for assistance be sufficient to indicate the basis on which any award of assistance was made or denied. It is result-driven: It has no effect on the procedures under which recipients distribute the assistance.

It should be noted, however, that there are other requirements that do provide for the use of certain contracting procedures by recipients procuring supplies or services with funds provided by Federal assistance. Attachment O of OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, contains procurement standards for use by nonprofit recipients in establishing their procurement procedures. While an OMB Circular does not have the force and effect of a regulation, many of the Department's regulations incorporate the provisions of Circular A–110 by reference. Procurement requirements for State and local government grantees are codified at 24 CFR part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. These directives and regulations—not section 102—establish requirements for contracting procedures.

Finally, §§ 12.14 and 12.16 have the same coverage. Each covers assistance distributed on a competitive basis.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart B. This rule contains language incorporating into subpart B five of the law's new programs that have been published in the Federal Register (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.
—Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.
—Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.
—Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.
—HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

Subpart C—Disclosure by Applicants

4. *Comment:* The commenter states that this subpart requires a disclosure of information that would normally be prohibited under the Privacy Act of 1974. The commenter questions whether the disclosure requirements are outside the scope of the legislation, or do they preempt it, or should they be proscribed by what is in effect competing law? Also, the commenter extends its question to the effect of the

requirements of the HUD Reform Act, which appears to contain no Federal law preemption language on State or local privacy acts with respect to the record keeping and to the public disclosure and availability requirements of section 102.

Response: The Department disagrees with the suggestion that the Privacy Act of 1974 prohibits the disclosure of information submitted to the Department by applicants. The Privacy Act permits an agency to maintain information about individuals that is necessary and relevant to accomplish an agency purpose required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(1). Clearly, section 102(b) requires the disclosure of this information to assist the Department in determining the appropriate amount of Departmental assistance and to ensure that funding decisions are based upon strict eligibility criteria and not the identity of those who have a financial interest in the project.[2]

Similarly, the Department disagrees that public disclosure of information required to be submitted by applicants under subpart C is prohibited under the Privacy Act. The Act, at 5 U.S.C. 552a(b)(3), does not bar disclosure of information which is required to be released under the Freedom of Information Act. In general, the type of information required to be submitted under subpart C (i.e., other governmental assistance, certain information regarding interested parties, and the expected sources and uses of funds) would normally be available to members of the public under the Freedom of Information Act. The Department intends to limit required submissions by applicants to information that can be released to the public under the Freedom of Information Act.

To the extent that section 102 may conflict with State or local privacy act requirements regarding record collection and maintenance, section 102 preempts such laws under the doctrine of Federal preemption. This doctrine was summarized by the United States Supreme Court, as follows:

* * * * *

> It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to" federal law. *Gibbons* v. *Ogden*, 9 Wheat I, 211 (1824) (Marshall, C.J.). Under the Supremacy Clause, Federal law may supersede state law in several different ways. First, when acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express preemptive language, Congress' intent to preempt all state laws in a particular area may be inferred where the scheme of Federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice* v. *Sante Fe Elevator Corp.*, 331 U.S. 213, 230 (1947). Preemption of a whole field also will be inferred where the field is one in which "the Federal interest is so dominant that the Federal system will be assumed to preclude enforcement of state laws on the same subject." Ibid; see Hines v. *Davidowitz*, 312 U.S. 52 (1941).
>
> Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with Federal law. Such a conflict arises when "compliance with both Federal and state regulations is a physical impossibility." *Federal Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, *supra at 67*. (*Hillsborough County, Florida* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712–13 (1985)].

* * * * *

Under section 4 of Executive Order 12612, Federalism, HUD will construe a Federal statute to preempt State law only when (1) the Federal statute in question contains an express preemption provision; (2) there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law; or (3) the exercise of State authority directly conflicts with the exercise of Federal authority under the statute. (See Implementation of Executive Order 12612, Federalism, 53 FR 31928 (August 22, 1988).)

Section 102 provides clear and specific authority regarding the collection and maintenance of information concerning other project assistance and persons who have a pecuniary interest in the project. Although section 102 does not contain an express preemption provision, it clearly preempts inconsistent State or local privacy laws under the second two tests noted above.

However, the Department agrees with the suggestion that it cannot mandate disclosure to the public, by States and units of local government, of information collected pursuant to subpart C if disclosure would be inconsistent with State or local law. Accordingly, § 12.32(d)(2) has been revised to require States and units of local government to make information collected pursuant to subpart C available for public inspection, if not inconsistent with State or local law.

5. *Comment:* The commenter asserts that § 12.32(a) states that disclosure must be made concerning applications for specific projects or activities, but that section 102(b) speaks only to "project applications." Therefore, the commenter believes that the scope of the rule is too broad and should be limited to project applications. In the commenter's view, the list of programs covered under § 12.30 should be narrowed to those programs that are project-related, eliminating, for example, Community Development Block Grant Programs, certain forms of section 8 assistance, fair housing programs, and counseling programs.

Response: It is true, as the commenter suggests, that the first sentence of section 102(b) provides for the disclosure of information with respect to any application for assistance for a "project application." Standing alone, this iteration is not dispositive. The term, "project," in HUD programs is not necessarily limited to physical structures: it also can include activities. Other provisions of section 102(b), however, make clear that "project" is not to be given the narrow reading suggested by the commenter.

Thus, sections 102(b)(1) and 102(b)(2) call for disclosure of other governmental assistance and pecuniary interests in the "project or activities for which the applicant is seeking assistance." Section 102(b)(2) defines covered persons to mean those with certain involvement in the "project or activity." Section 102(b)(3) requires disclosure of the sources and uses of funds for the "project or activity." (All emphases supplied)

The Department believes that all the provisions of section 102 should be read together. Use of the "project or activities" standard elsewhere in section 102(b) makes clear, in the Department's view, that this standard is what the statute intends.

6. *Comment:* The commenter believes that applications for mortgage insurance under 24 CFR, subtitle B, chapter II should be determined not to be "applications for project assistance." The nature of the mortgage insurance application is substantially different. Furthermore, applications for mortgage insurance are made by approved lenders, not by project owners, and HUD's relationship is with the lender. A mortgagor is not an "applicant," and a mortgagee would not be privy to, nor should a mortgagee be held responsible

[2] The Department intends not only to keep the required information in project and case files, but also to maintain this information in a nationwide electronic data base.

for the accuracy of, information which pertains to its customer (the mortgagor).

Response: The Department disagrees with the commenter's assertion that the FHA mortgage insurance programs should be excluded from coverage under section 102(b). Section 102(b) applies to any application for "assistance with the jurisdiction of the Department." Section 102(m)(4) defines "assistance within the jurisdiction of the Department" to include "the insurance or guarantee of a loan, mortgage, or pool of mortgages." The insurance of a loan is, in the Department's view, squarely within the statutory coverage of section 102(b).

The Department believes that FHA mortgage insurance should be handled in the following way for purposes of section 102(b). Since the contractual relationship in the case of FHA insurance is between HUD and the mortgagee, the mortgagee—not the mortgagor—is responsible for submitting the required disclosures to the Department. Nonetheless, the mortgagor is responsible for submitting complete and accurate information to the mortgagee, and will be liable for the civil money penalties and other sanctions provided by section 102 and other applicable law, as appropriate. The mortgagee is not responsible for the contents of the mortgagor's submission, nor is it the guarantor of its accuracy and completeness. It will, however, have the same responsibilities and liability with respect to section 102(b)'s submissions as it does for other information that it supplies to the Department. The final rule contains language clarifying this point.

7. *Comment:* The commenter questions the need for § 12.32(a)(6), which prohibits HUD, or States or units of general local government, from entering into covered contracts, or committing to provide the assistance, until the appropriate disclosures have been made. This is more in the nature of an internal HUD instruction, and would bring into question the validity of contracts entered into by the Department, or other covered entities. Third parties should not be subject to the disclosure requirements of this legislation.

Response: The Department believes that the commenter's concern has merit, and has deleted the provision in question from the final rule. Its inclusion in the proposed rule was intended to make clear the Department's firm intent in no case to commit, or to allow States or unit of general local governments to commit, covered assistance, unless all section 102(b)'s disclosures have been provided. This policy will be effectuated through internal HUD staff guidance and administrative instructions to States and units of general local government.

8. *Comment:* The statute requires disclosure of other governmental assistance "expected to be made available" with respect to a project, but the rule would require disclosure of assistance if "there are reasonable grounds to anticipate that the assistance will be forthcoming." The commenter believes these to be two very different standards. The statutory provision relies on a subjective test—expectation of the applicants. The proposed rule provision relies on a test that would permit unnecessary second-guessing by other parties. The commenter believes that the statutory provision is the appropriate one, particularly in a statute that provides for potential penalties.

Response: The Department disagrees that the "expected to be made available" standard relies on the expectation of the applicant. Indeed, the standard is expressed in the passive voice, with no indication of whose expectation is determinative. The commenter's approach would essentially make the applicant the sole arbiter of the other government assistance it may receive. This would place enforcement of the statute in the hands of applicants—a result that the Department does not believe Congress intended. The approach adopted in the proposed rule represents the better reading. It attempts to provide objective guidance to help both the Department and the applicant make a fair and honest determination of the other government assistance that should be disclosed under the statute.

9. *Comment:* The statute defines governmental assistance to include, among other things, "tax benefits." The rule merely repeats the statutory definition. The commenter believes that the phrase "tax benefits" requires some explanation. Any real estate transaction contains some form of tax benefits. It should be clarified that only those tax benefits unique to the particular project or type of project need to be disclosed. The commenter stresses that many tax benefits cannot be objectively quantified.

Response: The statute simply defines "other government assistance" to include "tax benefits." The Department sees no statutory basis for distinguishing between "tax benefits" that are unique to the project and those that are generally available, such as deductions for depreciation or mortgage interest payments. Accordingly, all forms of "tax benefits" must be disclosed for purposes of subpart C, and will be taken into account in making the certification under subpart D.

The guidelines to be published in the Federal Register for use in making the case-by-case decisions referred to in the response to comment 13, below, will address the treatment to be accorded tax benefits under subpart D. It is expected that the assistance adjustments mandated by subpart D will be principally affected by tax credits—not other tax benefits.

Finally, the Department disagrees with the commenter's assertion that tax benefits cannot be objectively quantified. Where tax benefits are involved, the Department intends to solicit information on the nature of both the benefits and the taxpayer. Based on this information, the Department will estimate the value of the benefits for use in adjusting the assistance amount under subpart D. Applicants will be given an opportunity to dispute the estimated amount. The Department believes that this system provides an adequate quantification of the tax benefits involved.

10. *Comment:* The provisions in § 12.32 with respect to disclosure of the pecuniary interest of persons are confusing, and further clarity is needed because of the penal nature of the statute.

With respect to developers, contractors, and consultants (which terms should be defined), the rule seems to refer to "fees being paid." What does this mean? For example, if there is a general contractor who is to build a project pursuant to a $10,000 construction contract, what is to be put down as the pecuniary interest of the general contractor? The full contract amount? The anticipated profit of the contractor? Who is the contractor—the construction company, or its principals? If the answer is the principals, do you disclose the financial data with respect only to the construction company, and, in addition, list the principals, or is there expected to be some further determination of individual "pecuniary interest?" (The answer to this last question cannot be "yes," as it would be impossible to make this determination.)

Response: Section 102(b)(2) requires the following disclosures with respect to pecuniary interests:

> The name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, or consultants involved in the application for assistance or the planning, development, or implementation of the project or activity.

The Department believes that pecuniary interest means any form of financial involvement with the project or activities. The term clearly includes situations in which an individual or entity has an equity interest in the project, or will share in any profit or resale or any distribution of surplus cash or other project assets. It also includes financial arrangements that do not amount to a financial interest in the project, such as fees for services rendered. This interpretation is reinforced by the statute's reference to activities, such as involvement in the application for assistance or the planning, development, or implementation of the project or activity, as constituting a pecuniary interest under the statute.

In the commenter's example, all of the contractor's fees would be subject to disclosure. The final rule contains language clarifying this point.

The Department does not agree with the commenter's suggestion that the terms, "developer," "contractor," and "consultant," should be defined. The wide range of programs reached by section 102(b) makes their definition under section 102 impracticable. The terms should have the meanings associated with them under each program subject to section 102(b).

Finally, where the "person" making the disclosure is an entity, such as a corporation or partnership, only the entity must disclose the required information. The entity will, however, have to identify certain of its officials, including each officer, director, principal stockholder (as defined in HUD administrative instructions), and other officials (specified in HUD administrative instructions).

This requirement extends only to the identification of the entity's principal officers. It does not require them to disclose any information about themselves, unless, of course, they have a personal interest in the project. This identification requirement is designed to ensure that the Department is aware of those who set the entity's policy and are the most likely to have personal financial interests in the project. The final rule includes language to accomplish this change.

11. *Comment:* With respect to participants, other than developers, consultants and contractors, where does the de minimis standard come into play? Does $50,000 refer only to front-end fees? If not, how is it defined? Does a 10 percent interest relate to a stock or capital interest, to tax benefit allocations, or what?

Response: The de minimis standard applies to the sum of all the persons's pecuniary interests in the project or activities at the time of the disclosure. The rule provides for updates during the pendency of the application and throughout the period of assistance. The 10 percent threshold is assessed against the previously disclosed pecuniary interests, not the HUD assistance in the project.

12. *Comment:* With respect to § 12.34 (Sanctions and Remedies), the commenter alleges that disparate procedural due process treatment is accorded applicants, depending on the remedy selected by the Department. For example, the rule provides that sanctions against the violator, or the voiding or rescinding of a decision, can only take place after certain procedural steps are taken, including the opportunity for a hearing on the record. Certain other steps, such as "recapturing any funds which have been disbursed" do not contain such safeguards. The commenter suggests that the rule should make clear that no adverse administrative actions can be taken by HUD because of an alleged violation of this section without the alleged violator's having had an opportunity for a hearing following a determination by HUD on the record.

Response: In response to the comment, the final rule makes clear that where § 12.34 accords recipients of assistance an opportunity for review and determination on the record after opportunity for hearing, the hearing must be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. With this exception, the rule simply repeats the remedies standards specified in the statute. It does not purport to prescribe the due process safeguards in specific cases. Before imposing any of these remedies in a given case, the Department will ensure that the due process protections afforded are commensurate with the property right involved.

The final rule makes several other changes to subpart C. First, it makes clear that the amount of assistance that is considered for purposes of determining whether the $200,000 reporting threshold has been met is the total amount provided or to be provided under the program involved. In the case of programs providing long-term budget authority, such as the section 8 program, the amount counted is the total provided in the contract, irrespective of when the assistance is received.

Second, the final rule clarifies the relationship between subparts C and D. The preamble to the proposed rule made clear that HUD would make the certification under subpart D, even if the applicant does not meet the $200,000 threshold for making disclosures under subpart C, and that HUD would request the information concerning other government assistance that is necessary to permit HUD to make the certification. (See 55 FR 25042)

To make this point clear in the regulation, the final rule adds several provisions to ensure that all applicants—whether or not they meet the $200,000 disclosure threshold—must submit such information as HUD deems necessary to make the certification and any subsequent adjustments under subpart D.

Third, the final rule does not contain the definition of the term, "materially," that appeared in subpart C of the proposed rule. The term is not defined in section 102, and was included in the proposed rule only to provide a definition for one of the requirements for the imposition of civil money penalties under 24 CFR part 30. A final rule to implement part 30 rule is currently under development within the Department, and the meaning of the term will be addressed in that rule. Its inclusion in this rule is, accordingly, unnecessary.

Fourth, § 12.32(c) of the proposed rule required applicants to provide HUD updates of any change in other government assistance that exceeds the amount of the assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower). The final rule eliminates this threshold for all HUD programs, except those administered by the Assistant Secretary for Community Planning and Development.

The proposed rule also required applicants to update any change in the sources or uses of funds that exceeds the amount of all previously disclosed sources or uses by $250,000 or by 10 percent of the source or use. The final rule retains this reporting threshold for programs administered by the Assistant Secretary for Community Planning and Development, but eliminates it for other HUD programs, where the assistance involved is a tax credit under Federal, State, and local law.

The thresholds contained in the proposed rule are not required by statute, and the Department believes that for all programs, other than those administered by the Assistant Secretary for Community Planning and Development, it needs all information on changes in other government assistance and, in the case of tax credit projects, all information on changes in the sources and uses of funds to discharge its responsibilities under subpart D. The

threshold referred to in the proposed rule continues in effect for sources and use of funds not involving tax credit projects, except that the final rule contains a dual threshold. Any change in a source or use of funds is subject to disclosure if it exceeds either the amount previously disclosed for that source or use of funds by $250,000 or 10 percent of the amount previously disclosed for that source or use of funds, or the amount previously disclosed for all such sources or uses by $250,000 or 10 percent of all such previously disclosed sources or uses, as appropriate. The differing treatment for programs administered by the Assistant Secretary for Community Planning and Development reflects the Department's view that the thresholds contained in the proposed rule are adequate to ensure that the reform spirit of the Reform Act is carried out for those programs.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart C. This rule contains language incorporating into subpart C four of the law's new programs that have been published in the **Federal Register** (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

—Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

—Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

—HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

A fifth program that was recently published in the **Federal Register**, along with the four program mentioned above—the HOPE for Homeownership of Single Family Homes program—is not included in subpart C, since it does not provide assistance for specific projects or activities. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

Subpart D—Limitation on Housing Assistance

13. *Comment:* The commenter is surprised that the Department has determined to implement this section without the benefit of any rule making. The rule proposed by the Department is simply an authorization for the Department to enter into improper rule making under the guise of administrative guidelines. It is inappropriate and violative of both the letter and spirit of the Administrative Procedure Act.

Response: The Department shares the commenter's concern about proceeding to implement section 102(d) through administrative instructions. Section 102(d), however, presents special implementation problems. As stated in the preamble to the proposed rule—

* * * * *

> The Department believes that the question of the amount of assistance necessary to ensure a project's feasibility must be answered in the context of each covered program, and may well vary from project to project. Given this reality, the Department believes that the best approach is to use this rule as an "enabling authority," and as notice to the public of the existence of the certification requirement and of its possible effect on amounts made available under its subsidy programs. Under this approach, the rule would set forth the overall standards—both substantive and procedural—governing section 102(d)'s requirements. Administrative instructions would be issued as necessary for covered programs, specifying the details for implementing the statutory provision for specific housing projects.
>
> Specifically, the rule would require the Department to issue instructions specifying the standards to be followed in making the required statutory determination. The instructions may be on a program-by-program or other basis, and may, in the Department's discretion, establish limits on the amount of assistance within the jurisdiction of the Department that may be used for the housing project, or may provide for the full or partial negotiation of the amount of assistance for individual housing projects. *The Department believes that without this flexibility, the resulting rigidity would jeopardize attainment of the twin objectives of complying with the law and assisting deserving housing projects. Because of the near-limitless number of combinations of subsidies—in the form of grants from other governmental entities, tax credits, or other covered forms of other government assistance—that potentially could be juxtaposed as a result of information received by the Secretary concerning "related assistance," it is impracticable to set out in a rule the manner in which individual determinations regarding limitation of assistance will be made.* (Emphasis supplied) (55 FR 25042–43)

* * * * *

The Department continues to believe that it would be very difficult to propose substantive standards—intended to have the force and effect of law—to establish the circumstances under which HUD will make section 102(d) certifications. These standards would be desirable from the point of view of providing uniformity in decision making and giving program applicants clear guidance, so that they might adjust their applications to increase their likelihood of obtaining the assistance for which they apply. While these are commendable objectives, substantive rules can further these objectives only if the standards are appropriate to the decisions being made. Because the Department has had limited experience with taking account of other governmental assistance in determining the feasibility of a project and the amount of HUD assistance that should be provided, and because these types of decisions are very dependent on the facts relating to the individual project, the Department believe that it is more appropriate, at this time, to develop its standards through case-by-case decision making than through rule making.[3]

Accordingly, the Department intends to proceed by decision making on a case-by-case basis with regard to all aspects of section 102(d) that are not covered by existing regulations. The three departmental organizations that administer programs subject to the provision are the Offices of Housing, Community Planning and Development, and Public and Indian Housing. Each Office will publish in the **Federal Register** guidelines to assist the Department in making the required certification. Since they are guidelines, they would not have the force and effect of law; HUD's decisions could vary from the guidelines based on a consideration of the facts. The guidelines also would not be legally binding on a court reviewing HUD's decision in a given case. The decision making will be made by HUD program officials, and is not subject to 24 CFR part 26, which covers proceedings before a hearing officer. The rationale for each decision would be reduced to writing and made available for public inspection.

After the Department obtains some experience under the case-by-case decision making procedure, the Department may find it useful to promulgate these standards as regulations.

Finally, the preamble to the proposed rule specifically sought comment on the following point:

* * * * *

> Although there is not much legislative history on section 102(d), the two references to the provision in congressional

[3] The proposition that Federal agencies have the discretion to articulate their standards through case-by-case decision making rather than through rule making was set forth in *SEC* v. *Chenery Corp.*, 332 U.S. 194, 203 (1947) and *NLRB* v. *Bell Aerospace Co.*, 267, 290–295 (1974).

> consideration of the Reform Act [4] indicate that the provision was primarily intended to address the situation in which developers reaped windfall profits by coupling low-income tax credits with HUD assistance.
>
> Section 102(d) covers tax credits and other tax benefits, but also reaches State and local grant and loan programs. When these latter programs are coupled with HUD assistance, they typically benefit only the residents of the housing; no one outside the project is unjustifiably enriched. An example of this situation would be the desire of a State or unit of general local government to make a grant for certain amenities in a public housing project. In such a case, the opportunity for unjust enrichment or program abuse is non-existent.
>
> In light of the clear intent of section 102(d), the Department requests comments on whether section 102(d) permits different treatment for the government grant/loan situation, and how that different treatment should be expressed in the final rule. (55 FR 25043) (Footnote in original)

* * * * *

The Department concludes that the language of section 102(d) covers all State and local assistance. However, the amount and uses for state and local assistance will be addressed in the context of the case-by-case decision making under section 102(d) and the guidelines referred to above. The treatment of state and local assistance may be different under each set of guidelines to reflect differences in program structures, authorities, and existing requirements.

14. *Comment:* The commenter questions why the Department is insisting on using a "nuclear bomb to swat a now extinct animal." To the extent that windfall profits may have been generated by the combination of tax credits and housing assistance, it appears to have been limited to projects under the Section 8 Moderate Rehabilitation Program. At any rate, Congress has responded to this situation by legislating that the low-income tax credits may not be used in combination with the Section 8 Moderate Rehabilitation Programs.

Response: Section 102(d) covers "assistance within the jurisdiction of the Department to any housing project." Section 102(m)(4) defines "assistance within the jurisdiction of the Department" to include any contract, grant, loan, or cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or a pool of mortgages. The Department lacks authority to provide for lesser coverage in the rule.

15. *Comment:* The commenter believes that it is an impossible task for the contractor who has been engaged by HUD to develop a sophisticated methodology for determining precisely when "necessary assistance" crosses the line into "too much" assistance. The commenter asserts that no system can be developed that can gauge appropriate levels of assistance on other than generalized levels, that any such system would necessarily have to consider the very subjective elements of entrepreneurship and risk involved in real estate development and management.

The commenter suggests that HUD rescind the proposed rule and issue proposed rules with substantially more specificity. HUD should not attempt to administer this program through informal administrative notices.

Response: The Department believes that this comment underscores the appropriateness of establishing standards for making these certifications through case-by-case decision making, rather than establishing these standards as substantive regulations. The Department, however, disagrees with the suggestion that it is engaged in measuring entrepreneurial risk. The Department is not attempting, under section 102(d), to step into the shoes of an applicant and determine the subjective issues of whether the project is a good, bad, or indifferent risk to the investor. Rather, the Department looks at the project from the government's point of view and, by taking into account the presence of other governmental risk, determines whether HUD should provide assistance and, if so, how much.

16. *Comment:* At 55 FR 25044, the preamble states—

> If an assistance recipient approaches HUD for an increase in the assistance, the request would trigger the certification aspects of section 102(d). In this case, this would be a "new" request for assistance within the meaning of section 102(d). Again, no retroactivity issue would be raised, since the request would be a "new" one.

The term "increase in assistance" is open to misinterpretation, and the rule should clarify that it would not be triggered by the application of the normal section 8 rent increase process, or by another rent increase process requiring HUD approval.

Response: The Department agrees that the term, "increases in assistance," needs more elaboration, and has revised the final rule to be more specific on this point. With the single exception noted below, the final rule makes clear that all increases in previously provided HUD assistance that occur on or after the effective date of this rule are subject to analysis under subpart D. Covered assistance increases include items such as development cost amendments under section 202 of the Housing Act of 1959, budget-based rent increases under the section 8 project-based assistance programs, and contract renewals and extensions under these section 8 authorities. An increase in assistance is covered, irrespective of whether the underlying assistance was initially made available before or after the rule's effectiveness.

The only exception to this coverage is for annual adjustments in section 8 rents under section 8(c)(2)(A)—adjustments pursuant to annual adjustment formula factors.

—*Increases in assistance other than under section 8(c)(2)(A) of the United States Housing Act of 1937.* For increases in HUD assistance (except those under section 8(c)(2)(A)), this coverage reflects the fact that the increases typically involve some "discretion" on HUD's part as to the award or the amount of the assistance, or both. This requirement for HUD action, in the Department's view, makes the assistance "new" assistance that should be subject to review under section 102(d).

This characterization invokes two analyses under section 102(d). First, the assistance is subject to section 102(d)'s certification requirements. Thus, in determining whether to provide the assistance, the Department will consider whether the assistance is the minimum necessary to make the project feasible, taking into account other government assistance. (See § 12.52(a)). In this case, the section 102(d) analysis is triggered by the request for the assistance.

Second, when updates are provided to HUD under § 12.32(c), the changed assistance will be included in the corpus of assistance that is subject to adjustment under $12.52(b). In this case, the section 102(d) review is triggered by the presence of the other government assistance.

With regard to the first (certification) analysis, the Department will (as pointed out in the preamble to the proposed rule) consider all other government assistance involved with the requested assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

[4] 135 Cong. Rec. S16562 (daily ed. Nov. 21, 1989) (Statements of Sens. Cranston and Sasser).

With respect to the second (adjustment) analysis, some examples may help the reader understand how section 102(d) relates to these "discretionary" increase in assistance:

—A section 202 project is approved after the effective date of the rule in the amount of $2 million. The following year, the project receives a development cost amendment of $100,000, and in the year after that, receives "other government assistance" in the form of a $200,000 State grant.

Receipt of the other government assistance triggers a section 102(d) adjustment review under § 12.52(b)(1). The HUD assistance that is subject to adjustment is $2.1 million—the sum of the initial assistance and the contract amendment. If appropriate, HUD's adjustment could consume the amount of the contract amendment and reach into the original loan amount.

—A section 202 project is approved before the effective date of the rule in the amount of $2 million. In the year following the rule's effective date, the project receives a development cost amendment of $100,000, and in the year after that, receives "other government assistance" in the form of a $200,000 State grant.

As with the first example, the existance of the other government assistance triggers section 102(d). In the section 102(d) analysis, the Department will look at the entire $2.1 million HUD assistance, but may only adjust the $100,000—the amount of the contract amendment. The $2 million is not reachable, since it was made available before the effective date of the rule and, therefore, is protected by section 102(n) against retroactive effect.

—Rent adjustments under section 8(c)(2)(A) of the United States Housing Act of 1937. As noted above, annual rent adjustments under section 8(c)(2)(A) are not subject to section 102(d). These adjustments represent automatic formula increases in assistance to which owners are entitled. This means that the annual adjustment does not trigger the certification analysis under § 12.52(a)—the assistance will be provided without invoking section 102(d).

Examples will help illustrate the effect of the exclusion where the adjustment authority is triggered by the presence of other government assistance:

—A section 8 project is approved after the effectiveness of the rule in the amount of $2 million. For the next two years, the project receives annual adjustments under section 8(c)(2)(A) totalling an aggregate of $100,000. In the following year, the project receives "other government assistance" of $200,000.

The existence of other government assistance triggers section 102(d). In determining whether to make the section 102(d) adjustment, the Department will consider the entire $2.1 million—the original assistance amount plus the rental adjustments—and may, if appropriate, adjust the entire amount.

In the adjustment context, the trigger is not the receipt of the annual adjustment, but the required update. While the annual adjustment is protected from reduction when it is initially made available, once it has been made available, it loses its character, and merges with the other HUD assistance in the project. Therefore, when other government assistance is reported under the update authority of § 12.32(c), all previous assistance amounts—including those from annual adjustments—are subject to review under § 12.52(b).

—A section 8 project is approved before the effectiveness of the rule in the amount of $2 million. In the next two years after the rule's effectiveness, the project receives annual adjustments under section 8(c)(2)(A) totalling $100,000. In the following year, the project receives "other government assistance" of $200,000.

The other government assistance triggers section 102(d), but there is no assistance to adjust under § 12.52(b). As above, the initial assistance is protected from adjustment, as are the annual adjustments.

Finally, it should be noted that the adjustment authority under § 12.52(b) is triggered by "any changes that are, or should have been, reported under § 12.32(c) * * *." These may be changes in other government assistance, as well as in the sources and uses of funds used, or to be used, for the project.

For purposes of subpart D, the proposed rule limited a "housing project" to residential properties containing five or more dwelling units. This limitation was based on the premise that properties with fewer units do not constitute a "project." Based on further review, the Department has amended the rule to remove the unit limitation on rental properties that receive tax credits under Federal, State, or local law. This change is consistent with the fact that the Internal Revenue Code of 1986 permits a tax credit for a "Qualified Low-Income Housing Project." The Department believes that use of the term, "project," in section 102(d) and the Code argues for comparable treatment under subpart D, but without limitation on the number of units in a "Qualified Low-Income Housing Project." The rule limits the new coverage to rental "projects," since owner-occupied "projects" are not likely to involve the abuses toward which subpart D is primarily directed. Thus, for purposes of subpart D under the final rule, a "housing project" includes (1) any residential property with five or more units and (2) any residential rental property receiving a tax credit under applicable law. All other one-to four-unit dwellings remain outside subpart D's coverage.

Statutory Interpretation—General

17. *Comment:* The commenter asserts that there are clear indications that Congress intended that section 102 be interpreted narrowly. The commenter submitted comments on the Department's proposed rule regarding lobbying of HUD personnel (published on June 1, 1990, at 55 FR 22722) and now incorporates by reference those comments submitted previously as they relate to the subject proposed rule. (Below is a summary of those pertinent comments submitted previously.)

The commenter states that it is appropriate that the Department has limited the requirement for HUD publication of a notice of availability of assistance and of the allocation and award of assistance by HUD to competitive programs and authorities. However, the commenter asserts that when the Department turns from the burdens imposed on HUD under section 102(a), to the requirements to be imposed under section 102(b) and section 102(c) on applicants for, and recipients of, assistance within the jurisdiction of the Department with respect to a project, the Department shifts from the narrow construction to a broad construction.

A close reading of section 102 suggests that subsection (b) (Disclosures by Applicants) and subsection (c) (Updating of Disclosure) should be construed as applying to the same persons and types of transactions as subsection (a) (Notice Regarding Assistance).

The Secretary is provided two types of remedies to address violations of subsections (b) and (c)—administrative remedies under subsection (e), and civil money penalties under subsection (f). The administrative remedies in subsection (e) are aimed at the same universe of program activities under subsections (b) and (c) as those program activities which are covered by selection processes which involve the award of assistance—the subject of subsection (a). Subsection (e)'s remedies make no sense at all outside that universe. Note that the preamble is silent on the point, and does not even attempt to reconcile the inconsistencies under the Department's strained, expansive readings of subsections (b) and (c) and the obvious limits of subsection (e).

Indeed, section 102 makes sense as a totality only if strictly construed according to the plain meaning of its words and their context. The section carries forward from subsection (a), through all the succeeding subsections of the section, the same or similar concepts distinguishing assistance provided through a selection process—which is what is covered by the words—from "demand" programs like FHA

mortgage insurance and other assistance not awarded or allocated.

Response: The Department disagrees with the commenter. The coverage set forth in the proposed rule for each of the authorities of section 102 is clearly supported and reflects congressional intent.

Section 102 (a) applies to "assistance under any program or discretionary fund administered by the Secretary." Section 102 does not define this term. In deciding to limit the reach of section 102(a) to programs that distribute assistance on a competitive basis, the Department stated:

* * * * *

It is true that use of the phrase, "any program or discretionary fund," is very broad, potentially covering any HUD program that provides "assistance." In its widest interpretation, the phrase could apply to discretionary, competitive programs, as well as those authorizing formula grants, FHA mortgage insurance, and GNMA guarantees. In the Department's view, however, the context of section 102 compels a more restrictive reading.

Section 102 appears to be primarily, if not exclusively, concerned with forms of assistance that involve applications, selection criteria, and decisions to grant or deny assistance. These attributes are the traditional hallmarks of discretionary programs that provide assistance on a competitive basis: Programs that announce the availability of assistance, invite applications to request assistance, and make decisions competitively, based on the application and specific selection criteria. (55 FR 25038)

* * * * *

Sections 102(b) and (c) present a different situation. These sections cover "assistance within the jurisdiction of the Department." This term is both different from that used in section 102(a), and it is defined. Section 102(m)(4) defines it to include any contract, grant, loan, or cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or a pool of mortgages.

Unlike the contextual considerations that compelled limiting section 102(a) to competitive programs, there is nothing in sections 102(b) and (c) to support limiting their reach to competitive assistance. Indeed, section 102(m)(4)'s explicit inclusion of insurance and guaranty programs—demand programs—makes clear that the coverage of those provisions cannot be limited to competitive assistance.

The commenter argues that the remedy provisions of section 102(e) compel a different result. The Department believes that the commenter's reliance on this provision is misplaced.

It is true that section 102(e) provides remedies in connection with competitive selection processes. The Department sees no reason to infer, particularly because of the above discussion, that section 102(e) was intended to limit the substantive coverage of sections 102(b) and (c).

In the Department's view, section 102(e) provides a set of remedies to be used where a competitive selection is involved. In all other cases, section 102(e) does not apply: otherwise applicable remedies in existing law do. Section 102(e) itself supports this interpretation, since by its own terms, it applies "in the case of a selection."

Thus, the final rule continues the same coverage for sections 102(b) and (c) that was set forth in the proposed rule.

The preamble to the final rule contains the following effective dates:

—Sections 12.12 and 12.14(a) apply to all applications for assistance subject to subpart B that the Department solicits on or after April 15, 1991.

—Section 12.14(b) applies to all decisions to provide or deny assistance subject to subpart B that are reached on or after April 15, 1991.

—Section 12.16(a) applies to all decisions to provide assistance subject to subpart B that are reached on or after April 15, 1991.

—For housing programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner, subpart D and the amendments made to 24 CFR parts 207, 220, 221, 231, 232, 241, and 882 will become effective on the later of April 15, 1991, or the publication of implementing guidelines in the Federal Register.

—Sections 12.14(c) and 12.16(b), subpart C, and subpart D (as it applies to other HUD Offices) will become effective only as provided by subsequent Notice published in the Federal Register.

The effective dates for §§ 12.12, 12.14 (a) and (b), and 12.16(a) reflect the facts that they are within the Department's control and require little or no additional guidance before they can take effect. The remaining provisions require additional guidance—especially with respect to the responsibilities of State and local governments and other assistance recipients—and, accordingly, their effective dates will be announced separately.

These effective dates replace—without substantive change—the effective date provisions that appeared in the text of the proposed rule. It should be noted that § 12.52 provided that assistance adjustments under § 12.52(b) applied only to assistance that was originally subject to the certification requirements under § 12.5s2(a). The final rule retains this "prospective" application of the adjustment authority in the rule text.

Finally, the preamble to the proposed rule stated that the Department would make conforming changes to the regulations of all the existing programs subject to subparts B, C, and D, either in this final rulemaking or in a subsequent rulemaking. In the interest of speedy implementation of this important reform initiative, the Department will make these conforming changes at a later time. As noted above, however, the final rule does contain conforming amendments to 24 CFR parts 207, 220, 221, 231, 232, 242, and 882. These changes are necessary to implementation of part 12, and could not await further rule making.

Since publication of the proposed rule, the Cranston-Gonzalez National Affordable Housing Act has been enacted. The new law contains a number of provisions that are subject to subpart D. This rule contains language incorporating into subpart D three of the law's new programs that have been published in the Federal Register (56 FR 4412 *et seq.*) They are:

—Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

—Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

—Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Subpart D does not reach Planning Grants for the above two HOPE programs, the HOPE for Homeownership for Single Family Homes program, and the HOPE for Elderly Independence program, since assistance under these programs is not made to specific housing projects. The applicability of other Cranston-Gonzalez programs, as well as any other new authorities, will be addressed in later rule makings.

Finally, the final rule includes in the definition of "Assistance" that is subject to subpart D incentives to extend low-income use under the Emergency Low Income Housing Preservation Act of 1987, as amended.

Other Matters

Environmental review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24

BEST COPY AVAILABLE

CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Executive Order 12291. This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will impose additional reporting and disclosure burdens on governmental entities and program applicants, including small entities and applicants. The Department does not believe that these requirements will impose a significant burden. Indeed, virtually all the burdens that they will impose flow directly from the statute—a situation that the Department cannot correct in this rule making.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism,' has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. The rule provides additional reporting and disclosure requirements on States and units of general local government. The Department does not believe these requirements will have the requisite Federalism implications. In any event, they are almost entirely mandated by statute—a situation that the Department cannot correct in this rule making.

In the response to comment 4, above, the Department indicated that the rule could have the effect of preempting certain State or local laws. As noted there, any such preemption accords with the requirements of Executive Order 12612.

Executive Order 12606, The Family. The general Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. The reporting and disclosure requirements of the rule should have little or no positive or negative effect on the family.

Information collection. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB control numbers 2535–0101 and 2–02–0377.

Semiannual agenda. This rule was listed as item number 1154 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance program numbers are 14.120, 14.122, 14.129, 14.133, 14.139, 14.151, 14.157, 14.164, 14.169, 14.170, 14.177, 14.178, 14.179, 14.180, 14.219, 14.220, 14.225, 14.230, 14.231, 14.401, 14.408, 14.410, 14.506, 14.850, 14.852, and 14.853.

List of Subjects in 24 CFR

Part 12

Administrative practice and procedure, Loan programs: Housing and community development, Grant programs: Housing and community development, Reporting and record keeping requirements.

Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Part 882

Grant programs—housing and community development, Lead poisoning, Manufactured homes, Homeless, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

1. A new part 12 is added to read as follows:

PART 12—ACCOUNTABILITY IN THE PROVISION OF HUD ASSISTANCE

Subpart A—General

Sec.
12.1 Purpose.
12.3 Definitions.
12.5 Waivers.

Subpart B—Notice and Documentation of Assistance

12.10 Definitions.
12.12 Notice regarding assistance.
12.14 Documentation of applications and decisions.
12.16 Notice of funding decisions.

Subpart C—Disclosure by Applicants

12.30 Definitions.
12.32 Disclosure by applicants.
12.34 Sanctions and remedies.

Subpart D—Limitation on Housing Assistance

12.50 Definitions.
12.52 Limitation on housing assistance.

Authority: Sec. 102, Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Subpart A—General

§ 12.1 Purpose.

This part implements section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989). Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the way in which the Department makes assistance available under certain of its programs. Specific features of this part include the following:

(a) *For assistance distributed through a competitive process:*

(1) HUD publication of a Notice in the Federal Register announcing the availability of the assistance, as well as the application requirements and procedures and the selection criteria that HUD will use in making the assistance available.

(2) Public inspection of documentation and other information adequate to indicate the basis upon which both HUD and the recipients of the assistance provided or denied the assistance to their applicants.

(3) Publication in the Federal Register of decisions to provide assistance made by the Department, and public notification of such decisions made by States and units of general local government. (The HUD publication feature also applies to assistance that HUD provides through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.) (subpart B)

(b) *For assistance for specific projects or activities:* Disclosure by certain applicants seeking assistance from HUD, and from States and units of general local government, of other government assistance to be used with respect to the activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be put. (subpart C)

(c) *For HUD assistance for housing projects:* Certification by HUD that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources, as well as subsequent adjustments to the assistance based on updated disclosures from applicants. (subpart D) (Section 102(a)(4)(D), which requires Federal Register publication of the housing assistance allocations under the "fair share" formula of section 213(d)(1)(A) of the Housing and Community Development Act of 1974, is implemented in 24 CFR part 791.)

§ 12.3 Definitions.

As used in this part:

Indian means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal government, or any State.

Indian Housing Authority means any entity that—

(1) Is authorized to engage or assist in the development or operation of lower income housing for Indians; and

(2) Is established—

(i) By exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) By operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

HUD or *Department* means the United States Department of Housing and Urban Development.

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other governmental entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Public housing agency means any State, county, municipality, or other governmental entity or public body, or agency or instrumentality thereof, that is authorized to engage or assist in the development or operation of lower income housing. The term includes an Indian Housing Authority.

State means the several States, including a State Housing Finance Agency, and the Commonwealth of Puerto Rico.

Unit of general local government means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by HUD; the District of Columbia; and the Trust Territory of the Pacific Islands.

§ 12.5 Waivers.

(a) *Waiver of non-statutory provisions.* Upon determination of good cause, the Secretary of HUD may waive any provision of this part that is not required by law.

(b) *Waiver of statutory provisions for emergencies.* The Secretary of HUD may waive the requirements of §§ 12.12 (a) and (b), if the Secretary determines that the waiver is required for appropriate response to an emergency. Not less than 30 calendar days after granting a waiver under this paragraph (b), the Secretary will publish a Notice in the Federal Register stating the reasons for the waiver.

Subpart B—Notice and Documentation of Assistance

§ 12.10 Definitions.

As used in this subpart:

Assistance subject to this subpart or *assistance* means any contract, grant, loan, or cooperative agreement, or other form of assistance, under any program administered by the Department that provides by statute, regulation, or otherwise, for the competitive distribution of the assistance. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the following programs that provide for the competitive distribution of assistance (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510 (except loan amounts less than $200,000 and loans for single family properties).

(2) Rental Rehabilitation Grants under 24 CFR parts 511 (only HUD-administered grants under subpart F and technical assistance under Subpart A).

(3) The following programs under title I of the Housing and Community Development Act of 1974:

(i) Community Development Block Grants under 24 CFR part 570 (only the HUD-administered Small Cities program under subpart F),

(ii) Special Purpose Grants (only technical assistance and assistance for Historically Black Colleges) under section 105 of the Department of Housing and Urban Development Reform Act of 1989,

(iii) The Work Study program under section 107(c) of the Housing and Community Development Act of 1974, and

(iv) Community Development Block Grants to Indian Tribes under title I of the Housing and Community Development Act of 1974.

(4) Emergency Shelter Grants under 24 CFR part 576 (only HUD reallocations under §§ 576.63 through 576.67).

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments—Existing Housing and Moderate Rehabilitation under 24 CFR part 882 (including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Loans for Housing for the Elderly or Handicapped under section 202 of the

Housing Act of 1959 (including operating assistance for Housing for the Handicapped, as authorized by section 162 of the Housing and Community Development Act of 1987, and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(9) Section 8 Housing Assistance Payments—Loan Management Set-Aside under 24 CFR part 886, subpart A (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended.)

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C (except when used as an incentive in connection with an approved Plan of Action under the Emergency Low Income Housing Preservation Act of 1987, as amended).

(11) Housing Vouchers under 24 CFR part 887.

(12) Low-Rent Housing Opportunities under 24 CFR 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(27) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(28) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Implementation Grants for HOPE for Homeownership of Single Family Homes under title IV, subtitle C, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act. For purposes of § 12.16(a), the term also includes assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition. Assistance referred to in the preceding sentence includes discretionary, noncompetitive assistance provided under the following programs: Research and Technology Grants under title V of the Housing and Urban Development Act of 1970, Fair Housing Assistance under 24 CFR part 111, technical assistance under section 105 of the Department of Housing and Urban Development Reform Act of 1989, and assistance for Historically Black Colleges under section 105 of the Department of Housing and Urban Development Reform Act of 1989. (HUD will add other programs, as appropriate.)

Recipient or *recipient of assistance* means a person that receives assistance subject to this subpart.

§ 12.12 Notice regarding assistance.

(a) *Notice of availability of assistance and application requirements and procedures.* (1) *In general.* Before the Department solicits an application for assistance subject to this subpart, it will publish a Notice in the **Federal Register** containing:

(i) Notification of the availability of the assistance;

(ii) A description of the application requirements and procedures for applying for the assistance; and

(iii) Any deadlines relating to the award or allocation of the assistance.

(2) *Help in applying.* The description referred to in paragraph (a)(1)(ii) will be designed to help applicants apply for the assistance involved.

(b) *Selection criteria.* (1) *In general.* Not less than 30 calendar days before any deadline by which applications must be submitted to the Department for assistance subject to this subpart, the Department will publish a Notice in the **Federal Register** specifying the criteria by which selection for the assistance will be made. The Notice will include the weight or relative importance of each selection criterion, as well as any other factors that may affect the selection of recipients.

(2) *Nature of selection criteria.* HUD will include in the selection criteria referred to in paragraph (b)(1) any objective measures of housing and other need, project merit, or efficient use of resources that HUD determines are appropriate and consistent with the statute under which the assistance is made available.

(c) *Content of notice.* HUD may, consistent with the requirements of this section, include the material required by paragraphs (a) and (b) of this section in the same **Federal Register** document.

§ 12.14 Documentation of applications and decisions.

(a) *Written applications.* HUD will award or allocate assistance subject to this subpart only in response to a written application in a form or format approved in advance, except where other award or allocation procedures are specified by statute.

(b) *Documentation of decisions on applications to HUD.* (1) *Basis for provision or denial of assistance.* HUD will ensure that documentation and other information regarding each application submitted to HUD for assistance subject to this subpart are sufficient to indicate the basis on which HUD provided or denied the assistance.

(2) *Public inspection.* HUD will make available for public inspection each application, and all related documentation and other information referred to in paragraph (b)(1) of this section, including any written indication of support that HUD received for an applicant's submission. Public inspection will be made available for a period of at least five years, beginning not less than 30 calendar days after the date on which the assistance is provided. HUD will announce in the **Federal Register** where and how the public may inspect this information.

(c) *Documentation of decisions on applications to HUD recipients.* (1) *Basis for provision or denial of assistance.* Each recipient of assistance must ensure, in accordance with administrative instructions issued by HUD, that documentation and other information regarding any application submitted by a subrecipient to the recipient for a subsequent award or allocation of the assistance by a competition are sufficient to indicate the basis upon which the recipient provided or denied the assistance.

(2) *Public inspection.* Each recipient of assistance must, in accordance with administrative instructions issued by HUD, make available for public inspection each application, and all related documentation and other information referred to in paragraph (c)(1) of this section, including any written indication of support that the recipient received for an applicant's submission. Public inspection must be made available for a period of at least five years, beginning not less than 30 calendar days after the date on which the assistance involved is provided.

§ 12.16 Notice of funding decisions.

(a) *Notice by HUD.* HUD will publish a Notice in the **Federal Register** at least quarterly to notify the public, in accordance with paragraph (c) of this section of all decisions made by the Department to provide assistance subject to this subpart since the last notification.

(b) *Notice by States and units of general local government.* Each State and unit of general local government must, in accordance with paragraph (c) of this section and administrative instructions issued by HUD, notify the public of any decision by the State or unit of general local government to award or allocate the proceeds of assistance subject to this subpart by a competition to a subsequent recipient.

(c) *Content of notice.* The notification referred to in paragraphs (a) and (b) of this section will include:

(1) The name and address of each recipient of assistance;

(2) The name or other means of identifying the project, activity, or undertaking for each such recipient;

(3) The dollar amount of the assistance for each project, activity, or undertaking;

(4) The citation to the statutory, regulatory, or other criteria under which the decision to provide assistance was made; and

(5) Such additional information as HUD (or in accordance with administrative instructions issued by HUD, the State or unit of general local government) deems appropriate for a clear and full understanding of the funding decision.

Subpart C—Disclosure By Applicants

§ 12.30 Definitions.

As used in this subpart:

Assistance subject to this subpart or *assistance* means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. For purposes of § 12.32, if the assistance is provided to a State or to a unit of general local government, the term also includes the subsequent award or allocation of the assistance by the State or by the unit of general local government to a subrecipient. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1). The term includes those elements of the following programs that make assistance available for specific projects or activities (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(2) Applications for grant amounts for a specific project or activity under the Rental Rehabilitation Grant program under 24 CFR part 511 made to:

(i) A State grantee under subpart F;

(ii) A unit of general local government or a consortium of units of general local government receiving funds from a State or directly from HUD whether or not by formula) under subparts D, F, and G; and

(iii) HUD, for technical assistance under § 511.3.

(Excludes formula distributions to States, units of general local government, or consortia of units of general local government under subparts D and G, within-year reallocations under subpart D, and the HUD-administered Small Cities program under subpart F.)

(3) Applications for grant amounts for a specific project or activity under title I of the Housing and Community Development Act of 1974 made to:

(i) HUD, for a Special Purpose Grant under section 105 of the Department of Housing and Urban Development Reform Act of 1989 for technical assistance, the Work Study program, or Historically Black colleges,

(ii) HUD, for a loan guarantee under 24 CFR part 570, subpart M;

(iii) HUD, for a grant to an Indian tribe under title I of the Housing and Community Development Act of 1974; and

(iv) HUD, for a grant under the HUD-administered Small Cities program under 24 CFR part 570, subpart F; and

(v) A State or unit of general local government under 24 CFR part 570. (Excludes formula distributions by HUD to States and units of general local government under 24 CFR part 570, and Special Purpose Grants by HUD to Insular Areas or for the correction of formula errors under section 106 of the Department of Housing and Urban Development Reform Act of 1989.)

(4) Applications for grant amounts for a specific project or activity under the Emergency Shelter Grants program under 24 CFR part 576 made to a State or to a unit of general local government, including a Territory.

(Excludes formula distributions to States and units of general local government (including Territories); reallocations to States, units of general local government (including Territories), and non-profit organizations; and applications to an entity other than HUD or a State or unit of general local government.)

(5) Transitional Housing under 24 CFR part 577.

(6) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(7) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987 and Seed Money Loans under section 106(b) of the Housing and Urban Development Act of 1968).

(10) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(11) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(12) Low-Rent Housing Opportunities under 24 CFR part 904.

(13) Indian Housing under 24 CFR part 905.

(14) Public Housing Development under 24 CFR part 941.

(15) Comprehensive Improvement Assistance under 24 CFR part 968.

(16) Resident Management under 24 CFR part 964, subpart C.

(17) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(18) Nehemiah Grants under 24 CFR part 280.

(19) Research and Technology Grants under title V of the Housing and Urban Development Act of 1970.

(20) Congregate Services under the Congregate Housing Services Act of 1978.

(21) Counseling under section 106 of the Housing and Urban Development Act of 1968.

(22) Fair Housing Initiatives under 24 CFR part 125.

(23) Public Housing Drug Elimination Grants under section 5129 of the Anti-Drug Abuse Act of 1988.

(24) Fair Housing Assistance under 24 CFR part 111.

(25) Public Housing Early Childhood Development Grants under section 222 of the Housing and Urban-Rural Recovery Act of 1983.

(26) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily and non-residential).

(27) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(28) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(29) Planning and Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(30) Planning and Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

(31) HOPE for Elderly Independence Demonstration under section 803 of the Cranston-Gonzalez National Affordable Housing Act.

Knowingly means having actual knowledge of, or acting with deliberate ignorance of or reckless disregard for, the requirements of § 12.32 (a), (b), or (c).

Other government assistance includes any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof.

§ 12.32 Disclosure by applicants.

(a) *Required disclosures.* (1) *In general.* Each applicant that submits an application for assistance subject to this subpart to HUD, or to a State or to a unit of general local government, for a specific project or activity must make the disclosures referred to in paragraph (b)(1) of this section, if the applicant has received, or can reasonably be expected to receive, an aggregate amount of all forms of such assistance in excess of $200,000 during the Federal fiscal year in which the application is submitted.

(2) *Receipt and reasonable expectation of receipt.* For purposes of determining the threshold of applicability under paragraph (a)(1) of this section, an applicant will be deemed to have received, or to have a reasonable expectation of receiving, the following amounts of assistance subject to this subpart:

(i) To the extent known at the time of the current application, the total amount of such assistance received during the Federal fiscal year pursuant to an application submitted within that year;

(ii) The total amount requested in any application for such assistance, including the current application, that was submitted during the Federal fiscal year and that is pending before the Department or before any other entity, whether or not the assistance is expected to be received during the fiscal year; and

(iii) The total amount of any such assistance that is likely during the Federal fiscal year—

(A) To be made available on a formula basis to the applicant by the Department or by any other entity; or

(B) To be generated in the form of program income, as defined in 24 CFR part 85.

(3) *Amount received or expected to be received.* For purposes of paragraph (a)(2) of this section, in the case of assistance that will be provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the term "total amount" includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

(4) *Certain applicants.* (i) Each applicant that submits an application under paragraph (a)(1) of this section to an entity other than HUD, a State, or a unit of general local government, must make the required disclosures to HUD, if the application is required by statute or regulation to be submitted to HUD for approval, environmental review, rent determinations, or for any other purpose.

(ii) In the case of Mortgage Insurance under 24 CFR subtitle B, chapter II, the mortgagor is responsible for making the disclosures required under this section, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department.

(5) *Instructions to States and units of general local government.* HUD will issue administrative instructions to States and units of general local government with respect to their responsibilities under this paragraph (a), including the timing of the required disclosures for applicants, and the timing and content of reporting those disclosures to HUD.

(6) *Additional disclosures under subpart D.* If an applicant does not meet the assistance threshold under paragraph (a)(1) of this section, it must make the additional disclosures under § 12.52(d).

(b)(1) *Content of disclosure.* Applicants that meet the assistance threshold under paragraph (a)(1) of this section must disclose the following information:

(i) *Other government assistance.* Any other government assistance that is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

(ii) *Interested parties.* The name and pecuniary interest of—

(A) Any developer, contractor, or consultant involved in the application for the assistance, or in the planning, development, or implementation of the project or activity involved; and

(B) Any other person who has a pecuniary interest in the project or activities for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

If the person under this paragraph (b)(1)(ii) is an entity, the disclosure must include an identification of each officer, director, principal stockholder (as specified in HUD Administrative instructions), or other official of the entity (as specified in HUD, administrative instructions). For purposes of this paragraph (b)(1)(ii)(B), a pecuniary interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activities, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activities, or receives compensation for any goods or services provided in connection with the project or activities.

(iii) *Sources and uses of funds.* A report, as provided in administrative instructions issued by HUD, specifying the expected sources of funds that are to be made available for the project or activity, and the expected uses to which those funds are to be put. The report must identify the gross amount of funds from all sources, including (but not limited to):

(A) Both governmental and non-governmental sources of funds; and

(B) Private capital resulting from tax benefits.

(iv) *Additional disclosures for purposes of subpart D.* If an applicant discloses other government assistance under paragraph (b)(1)(i) of this section, it must submit such other information as HUD deems necessary to make the certification under subpart D. If the applicant meets the assistance threshold under paragraph (a)(1) of this section, but does not disclose other government assistance, it must certify, in such form and manner as the Department may prescribe, that no other government assistance is, or is expected to be, made available with respect to the project or activities for which the assistance is sought.

(2) *Definitions.* (i) For purposes of paragraph (b)(1)(i) of this section, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

(ii) For purposes of paragraph (b)(1)(ii) of this section, residency of an individual in housing for which assistance subject to this subpart is being sought is not, by itself, considered a pecuniary interest.

(iii) For purposes of paragraph (b)(1)(iii) of this section, a source of funds is expected to be made available, and a use of funds is expected to be put to a particular purpose, if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the source or use will be forthcoming.

(c) *Updating disclosures.* (1) *In general.* During the period in which an application for assistance subject to this subpart is pending, or in which the assistance is being provided, the applicant must report to HUD, or to the State or unit of general local government, as appropriate:

(i) Any information referred to in paragraph (b)(1) of this section that the applicant should have disclosed under paragraph (a) of this section with respect to the application, but failed to do so.

(ii) Any information referred to in paragraph (b)(1) of this section that would have been subject to disclosure under paragraph (a) of this section, but that initially arose after the time for making disclosures under that paragraph, including the name and pecuniary interest of any person referred to in paragraph (b)(1)(ii)(B) of this section who did not have a pecuniary interest in the project or activity that exceeded the threshold in that paragraph at the time of application, but that now exceeds the threshold.

(iii) With regard to changes in information that was disclosed under paragraph (b)(1), (c)(1)(i), or (c)(1)(ii) of this section:

(A)(1) For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance under paragraph (b)(1)(i) of this section that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

(2) For all other programs, any change in other government assistance under paragraph (b)(1)(i) of this section that exceeds the amount of such assistance that was previously disclosed.

(B) Any change in the amount of the pecuniary interest of a person under paragraph (b)(1)(ii) of this section that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

(C) For programs administered by the Assistant Secretary for Community Planning and Development—

(1) Any change in a source of funds under paragraph (b)(1)(iii) of this section that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

(2) Any change in a use of funds under paragraph (b)(1)(iii) of this section that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

(D) For all programs, other than those administered by the Assistant Secretary for Community Planning and Development—

(1) For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds under paragraph (b)(1)(iii) of this section that was previously disclosed.

(2) For all other projects, any change in a source of funds under paragraph (b)(1)(iii) that exceeds the lower of—

(i) The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

(ii) The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

(E) For all programs, other than those administered by the Assistant Secretary for Community Planning and Development—

(1) For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds under paragraph (b)(1)(iii) of this section that was previously disclosed.

(2) For all other projects, any change in a use of funds under paragraph (b)(1)(iii) of this section that exceeds the lower of—

(i) The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

(ii) The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

(2) *Period of coverage.* For purposes of paragraph (c)(1) of this section:

(i) An application for assistance subject to this subpart will be considered to be pending from the time the application is submitted until the Department communicates its decision with respect to the application to the applicant.

(ii) Assistance subject to this subpart will be considered to be provided from the time that the Department communicates its decision with respect to the application to the applicant until the applicant has discharged all its obligations under the terms of the assistance, including the submission of any required reports.

(3) *Instructions.* HUD will issue administrative instructions establishing the time for reporting under paragraph (c)(1) of this section both to HUD and to States and units of general local government.

(3) *Availability of disclosed material.* (1) *Disclosures to HUD.* HUD will make all information disclosed to it under this subpart available for public inspection. HUD will publish a Notice in the **Federal Register** indicating where and how the public may inspect this information, and for how long it will be available for inspection.

(2) *Disclosures to States and units of general local government.* Consistent with State and local law governing the disclosure of information to the public, each State and unit of general local government will make all information disclosed to it under this subpart available for public inspection. HUD will issue administrative instructions governing the retention and availability to the public of such information.

(Approved by the Office of Management and Budget under the control numbers 2535-0101 and 2502-0377)

§ 12.34 Sanctions and remedies.

(a) *Administrative remedies.* If HUD receives or obtains information providing a reasonable basis to believe that a violation of paragraph (a), (b), or (c) of § 12.32 has occurred, HUD will:

(1) If a recipient of the assistance has not been selected, determine whether to terminate the selection process or take other appropriate action; and

(2) If a recipient of the assistance has been selected, determine whether to:

(i) Void or rescind the selection, subject to review and determination on the record after opportunity for hearing;

(ii) Impose sanctions upon the violator, including debarment, subject to review of the determination on the record and after opportunity for hearing;

(iii) Recapture any funds that have been disbursed;

(iv) Permit the violating applicant that has been selected to continue to participate in the program; or

(v) Take any other actions that HUD considers appropriate. HUD will publish in the Federal Register a descriptive statement of each determination made, and action taken, under this paragraph (a).

(3) Hearings held pursuant to paragraph (a)(2)(i) or (a)(2)(ii) of this section shall be presided over by an administrative law judge appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. Hearings shall be governed by the procedures set forth at 24 CFR part 30, subpart D.

(b) *Civil money penalties.* If any person knowingly and materially violates any provision of § 12.32 (a), (b), or (c), HUD may impose a civil money penalty not to exceed $10,000 for each violation. Civil money penalties shall be in accordance with 24 CFR part 30.

Subpart D—Limitation on Housing Assistance

§ 12.50 Definitions.

As used in this subpart:

Assistance subject to this subpart means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided under a program administered by the Department for use in, or in connection with, a specific housing project. The term includes assistance for the acquisition, construction, rehabilitation, conversion, modernization, renovation, or demolition of a housing project; the operation of a housing project; and incentives to extend low-income use under the Emergency Low Income Housing Preservation Act of 1987, as amended. The term also includes any change requested by the recipient in the amount of assistance previously provided, except changes resulting from annual adjustments in Section 8 rents under section 8(c)(2)(A) of the United States Housing Act of 1937. The term does not include contracts, such as procurement contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR chapter 1), and assistance for the provision of services in a housing project, such as child care. The term includes those elements of the following programs that make assistance available for a specific housing project (HUD will add other programs, as appropriate):

(1) Section 312 Rehabilitation Loans under 24 CFR part 510, except loans for single family properties.

(2) Community Development Block Grants under 24 CFR part 570 (only loan guarantees under subpart M, grants to Indian tribes under title I of the Housing and Community Development Act of 1974, and grants under the HUD-administered Small Cities program under subpart F).

(3) Transitional Housing under 24 CFR part 577.

(4) Permanent Housing for Handicapped Homeless Persons under 24 CFR part 578.

(5) Supplemental Assistance for Facilities to Assist the Homeless under 24 CFR part 579.

(6) Section 8 Housing Assistance Payments (only project-based housing under the Existing Housing and Moderate Rehabilitation programs under 24 CFR part 882, including the Moderate Rehabilitation program for Single Room Occupancy Dwellings for the Homeless under subpart H).

(7) Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (including operating assistance for Housing for the Handicapped under section 162 of the Housing and Community Development Act of 1987).

(8) Section 8 Housing Assistance Payments for Housing for the Elderly or Handicapped under 24 CFR part 885.

(9) Section 8 Housing Assistance Payments—Special Allocations—under 24 CFR part 886.

(10) Flexible Subsidy under 24 CFR part 219—both Operating Assistance under subpart B and Capital Improvement Loans under subpart C.

(11) Low-Rent Housing Opportunities under 24 CFR 904.

(12) Indian Housing under 24 CFR part 905.

(13) Public Housing Development under 24 CFR part 941.

(14) Comprehensive Improvement Assistance under 24 CFR part 968.

(15) Neighborhood Development Demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983.

(16) Nehemiah Grants under 24 CFR part 280.

(17) Mortgage Insurance under 24 CFR subtitle B, chapter II (only multifamily projects).

(18) Shelter Plus Care Assistance under section 837 of the Cranston-Gonzalez National Affordable Housing Act.

(19) Implementation Grants for HOPE for Public and Indian Housing Homeownership under title IV, subtitle A, of the Cranston-Gonzalez National Affordable Housing Act.

(20) Implementation Grants for HOPE for Homeownership of Multifamily Units under title IV, subtitle B, of the Cranston-Gonzalez National Affordable Housing Act.

Housing project means—

(a) Property containing five or more dwelling units that is to be used for primarily residential purposes, including (but not limited to) living arrangements such as independent group residences, board and care facilities, group homes, and transitional housing, but excluding facilities that provide primarily non-residential services, such as intermediate care facilities, nursing homes, and hospitals.

(b) Residential rental property receiving a tax credit under Federal, State, or local law.

§ 12.52 Limitation on housing assistance.

(a) *Determination of amount of assistance; certification.* (1) *In general.* Before HUD makes any assistance subject to this subpart available with respect to a housing project for which other government assistance is, or is expected to be, made available, HUD will determine, and execute a certification, that the amount of the assistance is not more than is necessary to make the assisted activity feasible after taking account of the other government assistance.

(2) *Determination of amount of assistance.* (i) The Department may issue regulations, after providing notice and public comment, specifying the standards to be followed in making the determination under paragraph (a)(1) of this section, or may proceed by decision making to make the determination on a case-by-case basis. This case-by-case decision making is not subject the 24 CFR part 28.

(ii) In making the determination under paragraph (a)(1) of this section, the Department will consider the aggregate amount of assistance, from the Department and from other sources, that is necessary to ensure the feasibility of the assisted activity. The Department will take into account all the factors relevant to feasibility, which may include (but not be limited to) past rates of returns for owners, sponsors, and investors; the long-term needs of the project and its tenants; and the usual and customary fees charged in carrying out the assisted activity.

(iii) In no event may the Department permit the aggregate amount of assistance to exceed the amount that the Department determines is necessary to make the assisted activity feasible. The use of other government assistance in a housing project is not prohibited, provided that the aggregate of the assistance subject to this subpart and the other government assistance does not exceed the amount necessary to make the assisted activity feasible.

(3) *Taking other government assistance into account.* If the Department determines that the aggregate assistance from the Department and from other government assistance for a housing project under paragraph (a)(2)(ii) exceeds the amount that the Department determines is necessary to make the assisted activity feasible, HUD will consider all options available to enable it to make the required certification. Among other things, HUD may impose a dollar-for-dollar, or equivalent, reduction in the amount of the HUD assistance to reflect the amount of the other government assistance. In grant programs, this could result in a reduction of any grant amounts not yet drawn-down. In loan programs or mortgage insurance programs, this could result in a reduction in the outstanding loan amount. In the Section 8 program, this could result in a reduction in the amount of the Section 8 subsidy.

(b) *Subsequent adjustments.* (1) *In general.* HUD will adjust the amount of assistance subject to this Subpart awarded or allocated to an applicant to compensate in whole or in part, as HUD determines appropriate, for any changes that are, or should have been, reported under § 12.32(c) or under paragraph (d) of this section. HUD may make these adjustments immediately, or in conjunction with servicing actions anticipated to occur in the near future (e.g., in conjunction with the next annual adjustment of Section 8 contract rents).

(2) *Amount of adjustment.* In determining the amount of any adjustment, HUD will consider all relevant factors, which may include (but not be limited to) the extent to which the changes affect the certification under paragraph (a)(1) of this section, the effect of the adjustment on the financial viability of the housing project and on any tenants, and the extent to which the need for an adjustment may be attributable to the failure of the applicant to make the disclosures required under § 12.32 (a), (b), or (c).

(3) *Applicability.* This paragraph (b) only applies to assistance subject to this subpart that was initially subject to paragraph (a)(1).

(4) *Definition.* For purposes of this paragraph (b), *assistance subject to the Subpart* includes assistance resulting from annual adjustments in Section 8 rents under section 8(c)(2)(A) of the United States Housing Act of 1937, unless the initial assistance to the project was made available before April 15, 1991, and no other assistance subject to this subpart was made available on or after that date.

(c) *Location of certification.* The certification referred to in paragraph (a)(1) will be retained in the project file for the housing project.

(d) *Required information.* If an applicant does not meet the disclosure threshold under § 12.32(a)(1), it must certify whether there is any other government assistance that is, or is expected to be made, available with respect to the housing project. HUD may also require any project subject to this subpart to submit such a certification in conjunction with the Department's processing of any subsequent servicing action on that project. If there is other government assistance for purposes of the two preceding sentences, the applicant must submit such information as HUD deems necessary to make the certification under paragraph (a)(1) of this section and the subsequent adjustments under paragraph (b), as appropriate.

(Approved by the Office of Management and Budget under control numbers 2535–0101 and 2503–0377)

Appendix

To help the reader understand the requirements of this part, the Department is providing the following chart. It contains an overview of the types of assistance covered by each subpart and of the requirements imposed, both in terms of the substantive requirements and the entity that must carry them out:

Subpart	Assistance covered	Requirements; who must comply
Subpart B—Notice and Documentation of Assistance.	Assistance made available by HUD through competition.....	HUD: 1. Publish Federal Register Notice regarding the availability of assistance, and the application requirements and selection criteria to be used in providing the assistance. 2. Ensure that documentation is sufficient to indicate the basis on which the assistance was provided or denied. Five-year period for public inspection of documentation.
	Assistance made available by HUD through competition or on a discretionary (non-formula, non-"demand") basis. Assistance made available on a competitive basis by a recipient that received the assistance through a HUD competition.	HUD: Publish Notice in Federal Register regarding decisions to provide assistance Recipient: Ensure that documentation is sufficient to indicate the basis on which assistance was provided or denied. Five-year period for public inspection of documentation. State or unit of general local government recipient: Notify public regarding decisions to provide assistance.
Subpart C—Disclosure of Information.	Assistance made available for a specific project or activity by: —HUD; —A State or unit of general local government; —Or an entity other than a State or unit of general local government, where the application must be submitted to HUD for any purpose	Applicant: 1. Disclose other government assistance, interested parties, and sources and uses of funds, if the applicant has received, or can reasonably be expected to receive, assistance in excess of $200,000 in the fiscal year. 2. Make updates to reflect substantial changes in information.
Subpart D—Limitation on Housing Assistance.	Assistance made available by HUD for a specific housing project.	HUD: Certify that the amount of assistance is not more than is necessary to provide affordable housing. Make post-assistance adjustments based on updates, above.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

2. The authority citation for part 207 is revised to read as follows:

Authority: Secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Sections 207.258 and 207.258b are also issued under sec. 203, Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

3. In § 207.17, a new paragraph (d) is added to read as follows:

§ 207.17 Classification; disclosure.

* * * * *

(d) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

4. In § 217.19, a new paragraph (b)(4) is added to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(b) * * *

(4) For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in §§ 207.19(c)(1) (i) and (ii).

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for part 220 continues to read as follows:

Authority: Secs. 207, 211, 220, National Housing Act (12 U.S.C. 1713, 1715b, 1715k); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 220.505, a new paragraph (c) is added to read as follows:

§ 220.505 Eligible mortgagors.

* * * * *

(c) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

PART 221—LOW COST AND MODERATE INCOME HOUSING MORTGAGE INSURANCE

7. The authority citation for part 221 is amended to read as follows:

Authority: Secs. 211, 221, National Housing Act (12 U.S.C. 1715b, 1715*l*); sec. 221.544(a)(3) is also issued under sec. 201(a), National Housing Act (12 U.S.C. 1707(a)).

8. Section 221.510 is amended by adding a new paragraph (g) to read as follows:

§ 221.510 Eligible mortgagors.

* * * * *

(g) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

9. In § 221.532, the section heading is revised, and a new paragraph (d) is added, to read as follows:

§ 221.532 Supervision applicable to limited distribution mortgagors and mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.

* * * * *

(d) For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter request it. The Commissioner may also restrict the use of the working capital deposit described in § 221.540(a).

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

10. The authority citation for part 231 continues to read as follows:

Authority: Secs. 211, 231, National Housing Act (12 U.S.C. 1715b, 1715v); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. In § 231.8, new paragraphs (c) and (d) are added to read as follows:

§ 231.8 Supervision of mortgagors.

* * * * *

(c) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

(d) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in §§ 207.19(c)(1) (i) and (ii).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

12. The authority citation for part 232 is revised to read as follows:

Authority: Secs. 211, 232, 244, National Housing Act (12 U.S.C. 1715b, 1715w, 1715z(9)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. Section 232.20 is revised to read as follows:

§ 232.20 Eligible mortgagors.

(a) *In general.* All mortgagors must be approved by the Commissioner and must possess the legal powers necessary and incidental to operating the project, unless a mortgagor leases the property or project to a qualified operator, in which case the lessee must be approved by the Commissioner and must possess the legal powers necessary and incidental to operating the project.

(b) *Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with board and care projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

14. Section 232.45 is revised to read as follows:

§ 232.45 Supervision by Commissioner.

(a) *In general.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder, or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter, or such other means as the Commissioner may approve.

(b) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For board and care projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of the working capital deposit described in § 232.61(b)(1).

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

15. The authority citation for part 241 continues to read as follows:

Authority: Secs. 211, 241, National Housing Act (12 U.S.C. 1715b, 1715z–6); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

16. Section 241.130 is revised to read as follows:

§ 241.130 Supervision by Commissioner.

(a) *In general.* The Commissioner may regulate and restrict the mortgagor as long as the Commissioner is the insurer, holder, or re-insurer of the mortgage. Such regulation or restriction may be in the form of a regulatory agreement, corporate charter, or such other means as the Commissioner may approve.

(b) *Morgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* Mortgagors with projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30) may be regulated by the Commissioner as limited distribution mortgagors.

(c) *Projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance.* For projects assisted through the Low-Income Housing Tax Credit program or receiving other government assistance (as defined in 24 CFR 12.30), the Commissioner may determine the amount of any allowable distribution or disbursement from surplus cash. After the amount of allowable distributions is deducted from surplus cash, any cash remaining at the end of the semiannual or annual Fiscal period will be placed in a residual receipts account maintained by the mortgagee. Residual receipts shall be under the control of the Commissioner, and shall be disbursed only on the direction of the Commissioner, who shall have the power and authority to direct that the residual receipts, or any part thereof, be used for such purposes as the Commissioner may determine. The mortgagee will be required to deliver the funds in this account to the Commissioner, if the latter requests it. The Commissioner may also restrict the use of any required working capital deposit described in § 232.61(b)(1).

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

17. The authority citation for part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 882.714 is amended by adding a new paragraph (c)(4), to read as follows:

§ 882.714 Initial contract rents.

* * * * *

(c) *Rent reasonableness limitation.*

* * * *

(4) The initial Contract rent may not be more than HUD determines necessary to make the project feasible after taking account of other government assistance, in accordance with 24 CFR 12.52.

* * * * *

19. Section 882.715 is amended by adding a new paragraph (c), to read as follows:

§ 882.715 Contract rent adjustments.

* * * * *

(c) During the period when assistance is being provided under the Contract, the PHA must, in accordance with HUD requirements, adjust the amount of the assistance, as provided by 24 CFR 12.52.

20. Section 882.720 is amended by striking "and" at the end of paragraph (b)(3)(ix), by redesignating paragraph (b)(3)(x) as paragraph (b)(3)(xi), and by adding a new paragraph (b)(3)(x), to read as follows:

§ 882.720 PHA unit selection policy.

* * * * *

(b) *Specific selection policy requirements.* * * *

(3) * * *

(x) Disclosure of information in accordance with 24 CFR 12.52; and

21. Section 882.730(b) is revised to read as follows:

§ 882.730 Agreement to enter into Housing Assistance Payments Contract, and Contract Rents in agreement.

* * * * *

(b) *Contract Rents in Agreement.* The Agreement must list the Contract Rents (as determined by the PHA in accordance with § 882.714, *Initial Contract Rents*) that will apply to the units after they are constructed or rehabilitated. The amounts of the Contract Rents that are listed in the Agreement or, if applicable, as adjusted under § 882.732(c) or § 882.714(c)(4), shall be the initial Contract Rents upon execution of the Contract. These initial Contract Rents may not be increased for any reason. (After Contract execution, the Contract Rents may be adjusted during the term of the Contract in accordance with § 882.715).

22. Section 882.732(c) is revised to read as follows:

§ 882.732 New construction or rehabilitation period.

* * * * *

(c) *Changes.* The Owner must obtain prior PHA approval for any changes from work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The PHA may disapprove any changes requested by the Owner. PHA approval of changes may be conditioned on establishing lower initial Contract Rents in the amount determined by HUD. If the Owner makes any changes without prior PHA approval, the PHA approval, the PHA may request HUD to lower the initial Contract Rents in the amount determined by HUD, and may require the Owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial Contract Rents, however, shall not be increased because of any change from the work specified in the Agreement as originally executed or for any other reason. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this subpart G, HUD may adjust the initial Contract Rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage. HUD may adjust the initial Contract Rents after taking account of other government assistance under 24 CFR 12.52.

23. Section 882.733 is amended by striking "and" at the end of paragraph (b)(2)(iv), by redesignating paragraph (b)(2)(v) as paragraph (b)(2)(vi), and by adding a new paragraph (b)(2)(v), to read as follows:

§ 882.733 New construction or rehabilitation completion.

* * * * *

(b) *Evidence of completion.* * * *

(2) * * *

(v) The Owner has disclosed information as provided in 24 CFR 12.52: and

* * * * *

24. Section 882.751 is revised to read as follows:

§ 882.751 Responsibilities of the Owner.

Section 882.117, *Responsibilities of the Owner*, applies. The Owner is also responsible for performing all of the Owner responsibilities under the Agreement, and during the term of the Housing Assistance Payments Contract, the Owner must disclose information as provided in 24 CFR 12.52.

Dated: March 6, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-5787 Filed 3-13-91; 8:45 am]

BILLING CODE 4210-33-M

Reader Aids

Federal Register

Vol. 56, No. 50

Thursday, March 14, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904	1
8905-9120	4
9121-9268	5
9269-9580	6
9581-9834	7
9835-10140	8
10141-10358	11
10357-10502	12
10503-10770	13
10771-11052	14

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305 ... 9656

3 CFR

Proclamations:
6254 ... 9121
6255 ... 9269
6256 ... 9579
6257 ... 10353
6258 ... 10357

Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991) ... 8681
12193 (See EO 12753) ... 10501
12295 (See EO 12753) ... 10501
12351 (See EO 12753) ... 10501
12409 (See EO 12753) ... 10501
12463 (See EO 12753) ... 10501
12506 (See EO 12753) ... 10501
12554 (See EO 12753) ... 10501
12587 (See EO 12753) ... 10501
12629 (See EO 12753) ... 10501
12670 (See EO 12753) ... 10501
12706 (Superseded by EO 12753) ... 10501
12753 ... 10501

Administrative Orders:

Memorandums:
February 21, 1991 ... 9271

Presidential Determinations:
No. 91-20 of January 25, 1991 ... 8681
No. 91-21 of February 25, 1991 ... 10771
No. 91-22 of March 1, 1991 ... 10774

5 CFR

213 ... 10141
316 ... 10141
317 ... 10141
351 ... 10141
831 ... 10141
842 ... 10141
870 ... 10141
890 ... 10141

Proposed Rules:
581 ... 9181

7 CFR

1 ... 9581
17 ... 9273
46 ... 8683
51 ... 10302
301 ... 9273
319 ... 10789
905 ... 8684, 10790
911 ... 10143
915 ... 10143
916 ... 10359
917 ... 10359
918 ... 8905
944 ... 10503, 10792
958 ... 10359
981 ... 10505, 10793
985 ... 10794
1048 ... 9274
1434 ... 9582
1864 ... 10145
1903 ... 10145
1910 ... 10145
1940 ... 10508
1944 ... 10145
1945 ... 10145
1951 ... 10145
1955 ... 10145
1956 ... 10145
1965 ... 10145
1980 ... 10145

Proposed Rules:
12 ... 9258
58 ... 10382
704 ... 9293
723 ... 10820
777 ... 10680
917 ... 10819
920 ... 9302
929 ... 10189
946 ... 10826
1005 ... 9306
1410 ... 9293
1413 ... 9251
1421 ... 10189, 10192
1710 ... 10945
1755 ... 10827, 10835

8 CFR

241 ... 8906
242 ... 8906
274 ... 8685

9 CFR

82 ... 9752
331 ... 8907, 8908
381 ... 8907, 8908

10 CFR

2 ... 10359
710 ... 10056
1048 ... 9611
Ch. XVII ... 9805

Proposed Rules:
710 10075
1703 9902

11 CFR
110 9275

12 CFR
265 8687
325 10154
600 8910
601 8910
602 8910
603 8910
604 9611
606 8910
611 ..... 8910, 10169
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
960 8688
1410 10302
Proposed Rules:
327 9308

13 CFR
21 8699–8701
25 8699–8701
39 ..... 9612–9618, 9835–9838
71 9618–9620
121 10360
122 10360
1209 8910
Proposed Rules:
39 ..... 8732, 8733, 8935, 9659, 9661, 9907–9913
71 ..... 9660, 9663, 9914
75 10302
91 8938

14 CFR
21 8699–8701
39 ..... 10361, 10796, 1805
71 ..... 10362–10364, 10660
Proposed Rules:
Ch. I 10383
39 ..... 10837, 10841
71 ..... 10384, 10660
75 ..... 10302, 10843
158 10462

15 CFR
303 9621
770 10760
776 ..... 10756, 10760
778 10760
799 ..... 10756, 10760
Proposed Rules:
771 10760
776 10760
778 10760

16 CFR
305 9123
1500 9276
1502 9276
Proposed Rules:
1700 9181

17 CFR
240 9124

18 CFR
1301 9288
Proposed Rules:
35 8936

19 CFR
Proposed Rules:
141 9311

20 CFR
302 10302
404 11012
416 11012
Proposed Rules:
216 10385
404 11025
416 11025

21 CFR
5 8709
361 10806
510 ..... 9622, 9840
520 ..... 8709, 8710, 9840
522 9622
524 9622
556 8710
558 ..... 9622, 9841
1308 9132
1316 8685
Proposed Rules:
182 10843
184 10843
201 9312
356 9915
806 8940
1308 10845

22 CFR
514 8711

23 CFR
1235 10328

24 CFR
Ch. I 9472
12 11032
91 9169
207 11032
220 11032
221 11032
231 11032
232 11032
241 11032
282 11032
791 9822
Proposed Rules:
203 8941

25 CFR
61 10806

26 CFR
1 ..... 8911, 10365
31 8911
301 9169
602 ..... 8912, 10365
Proposed Rules:
1 ..... 8943–8967, 10211, 10395–10397
301 9182

27 CFR
5 8922
Proposed Rules:
16 10066

29 CFR
0 ..... 8923, 10509
8 8685
Proposed Rules:
11 8734
51 10348

29 CFR
541 9252
579 9252
580 9252
801 9046
1601 9623
1910 10377
Proposed Rules:
516 9183
778 9183
1602 9185
1610 10847
1611 10850
2550 10724

30 CFR
56 9626
57 9626
228 10510
243 9251
723 10060
845 10060
Proposed Rules:
7 10464
18 10464
870 10404
901 8967
913 8969
935 9312

31 CFR
100 10169
570 10356

32 CFR
191 10170
291 9841
627 9424
811 10945
Proposed Rules:
155 10215
162 10219
299a 9314

33 CFR
3 9288
100 ..... 9850, 9851
110 9852
117 ..... 8712, 10512
151 8878
165 ..... 9289, 10513
Proposed Rules:
117 9916
165 10853

34 CFR
Proposed Rules:
674 10742
675 10742
676 10742

36 CFR
Proposed Rules:
9 9917

37 CFR
201 10660
211 10660

38 CFR
6 9626
8 9626
21 9627
36 9653
Proposed Rules:
3 10303
4 10303

39 CFR
Proposed Rules:
111 9664

40 CFR
52 ..... 9172–9175, 10171
60 9177
61 10514
82 ..... 9518, 10660
147 9408
228 9178
Proposed Rules:
Ch. I 8972, 9315, 10522
61 ..... 10523, 10524
86 ..... 8856, 9754
123 8973
300 9187
435 10664
600 8856
799 ..... 9092, 9105

41 CFR
105–8 9862
301–1 9878
301–10 10378
302–11 ..... 9289, 10378
Ch. 304 9878

42 CFR
400 8832
405 8832
406 8832
412 9633
434 10515
435 10806
436 10806
440 ..... 10806, 10807

43 CFR
5400 10173
5420 10173
5450 10173
5460 10173
9230 10173
Public Land Orders:
6838 10380

44 CFR
64 ..... 10515, 10517
353 9452

45 CFR
74 8712
205 8924
232 8926
234 8926
235 8926
801 9180
1180 10176
1611 9634

46 CFR
25 8878
Proposed Rules:
56 10526
58 10526

107 10526
108 10526
109 10526
111 10526
174 10526

47 CFR
0 9752
2 9881
21 9897
69 9897
73 ..... 8933, 8934, 9898, 9899, 10178, 10381, 10518, 10519
80 9881
94 ..... 9897, 9900
Proposed Rules:
1 10222
2 10222
43 10526
73 ..... 8974–8976, 9189–9191, 9924, 10227, 10527
76 9924
95 10222

48 CFR
Proposed Rules:
Ch. 2, App. N 9082
22 9832
42 9832
52 9832
202 9082
203 9082
204 9082
217 9082
223 10405
225 ..... 9082, 10854
226 9082
231 10854
232 9082
242 10854
245 9082
252 ..... 9082, 10405
1403 10227
1405 10227
1415 10227
1453 10227
1803 8718
1804 8718
1805 8718
1806 8718
1814 8718
1815 8718
1819 8718
1836 8718
1849 8718
1852 8718
1853 8718

49 CFR
1 9635
386 10179
571 10185
1010 9635
1011 8721
1177 10519
1180 10808
1330 8722
Proposed Rules:
383 9925
571 9928
575 10661
Ch. X 9191
1053 9339

50 CFR
17 10809
23 10809
611 ..... 8722, 38723
620 8722
646 9251
672 ..... 9635, 9636
675 ..... 9636, 10521
Proposed Rules:
20 9462
285 10227
641 9930
658 8736
672 9251
675 ..... 9251, 10527

LIST OF PUBLIC LAWS

Last List March 11, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S.J. Res. 58/Pub. L. 102-9

To designate March 4, 1991, as "Vermont Bicentennial Day". (Mar. 11, 1991; 105 Stat. 28; 1 page) Price: $1.00

Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*6216

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me ____ subscriptions to **PUBLIC LAWS** for the 102d Congress, 1st Session, 1991 for $119 per subscription.

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

1/91

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 196 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.

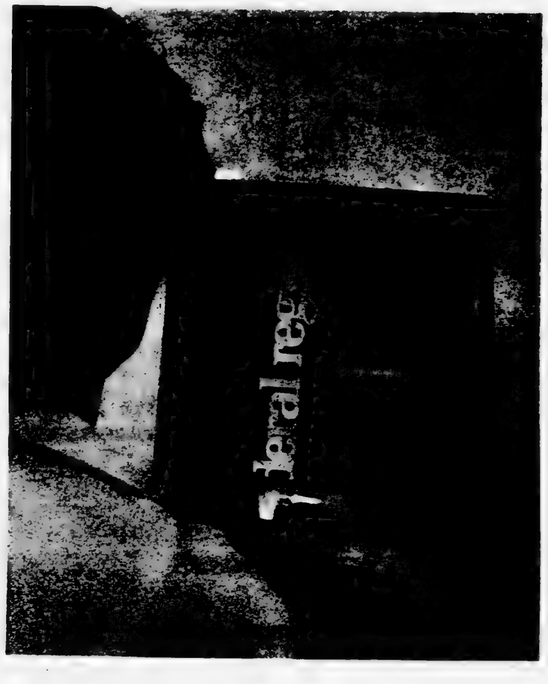
Microfiche Subscription Prices:

Federal Register:

One year: $195
Six months: $97.50

Code of Federal Regulations:

Current year (as issued): $188



Superintendent of Documents Subscriptions Order Form

Order Processing Code
* 6462

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday–Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

24x MICROFICHE FORMAT:

____ Federal Register: ____ One year: $195 ____ Six months: $97.50

____ Code of Federal Regulations: ____ Current year: $188

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

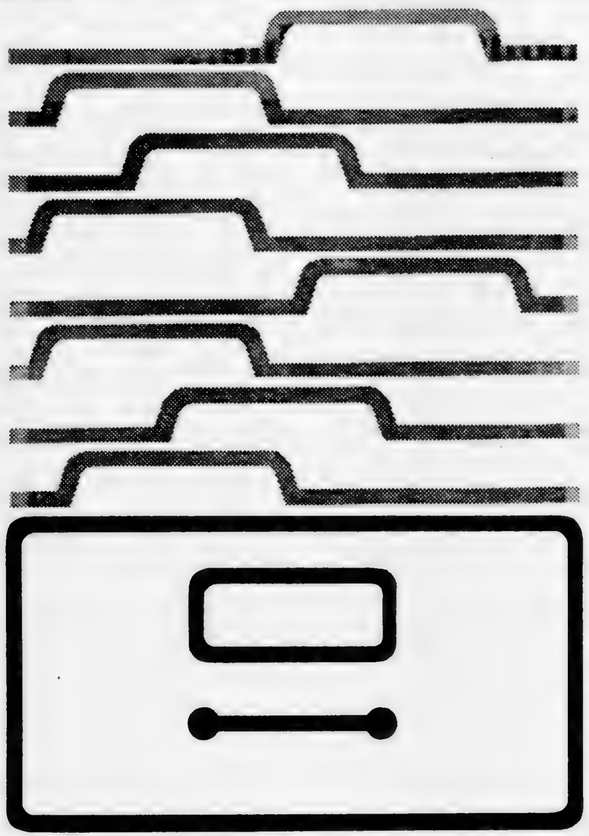
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371 (Rev. 2/90)



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 9/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) 1/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

VOL
56

ISS
50

MR
14

991

UMI

OL
56

SS
51

R
15

991

MI

3-15-91
Vol. 56 No. 51

federal register

Friday
March 15, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

**********5-DIGIT 48106

A FR SERIA300S NOV 91 R
SERIALS PROCESSING
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

OL
56

SS
51

R
15

991

MI

3-15-91
Vol. 56 No. 51
Pages 0[illegible]-11346

federal register

Friday
March 15, 1991

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Miami, FL, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

MIAMI, FL

WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue, Room 914, Miami, FL
RESERVATIONS: 1–800–347–1997

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street, Conference Room 1220, Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

Contents

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

Agency for International Development
NOTICES
Agency information collection activities under OMB review, 11271

Agency for Toxic Substances and Disease Registry
NOTICES
Health assessment; interim guidelines availability, 11221

Agricultural Marketing Service
PROPOSED RULES
Processed fruits and vegetables, and processed products; fee increase, 11113

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Forest Service

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Poultry affected by salmonella enteritidis Correction, 11061
NOTICES
Genetically engineered organisms for release into environment; permit applications, 11171

Antitrust Division
NOTICES
National cooperative research notifications:
Great Lakes Composites Consortium, Inc., 11274
Portland Cement Association, 11274
Semiconductor Research Corp., 11275
Smart House, L.P., 11273
Unix International, Inc., 11273

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Meetings:
Surgery using real-time monitoring; identification of high-risk procedures, 11223

Coast Guard
RULES
Regattas and marine parades:
International Bay City River Roar, 11100
PROPOSED RULES
Regattas and marine parades:
Bay City Fireworks Display, 11134
Nautica Powerboat Classic, 11135
NOTICES
Ballast water discharges from ships in great lakes; joint U.S. and Canadian voluntary guidelines, 11330

Commerce Department
See also Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; Travel and Tourism Administration
NOTICES
Agency information collection activities under OMB review, 11176
(2 documents)

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 11205, 11206
(3 documents)

Commodity Credit Corporation
NOTICES
Organization, functions, and authority delegations: Corporation bylaws, 11172

Customs Service
PROPOSED RULES
Recordkeeping, inspection, search, and seizure:
Common carriers; liability for failure to exercise highest degree of care and diligence to prevent unmanifested controlled substances carriage, 11122

Defense Department
See also Defense Logistics Agency; Navy Department
NOTICES
Meetings:
Strategic Defense Initiative Advisory Committee, 11206

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 11207

Defense Nuclear Facilities Safety Board
PROPOSED RULES
Freedom of Information Act; implementation
Fee schedule, 11114

Employment and Training Administration
NOTICES
Adjustment assistance:
AT&T Communications Products et al., 11279
International Shoe Machine Corp., 11280
Lewistown Specialty Yarns, Inc., 11280
NEC (New Energy Corp.), 11281
Serac, Inc., et al., 11281
Teledyne Monarch Rubber, 11281

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 11278

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

NOTICES
Grant and cooperative agreement awards:
Stanford University, 11211

Environmental Protection Agency
RULES
Air programs:
Initial PM–10 nonattainment areas; designations and classifications, 11101
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 11219
Weekly receipts, 11219
Meetings:
Clean Air Act Advisory Committee, 11220

Executive Office of the President
See Management and Budget Office; Presidential Documents

Federal Aviation Administration
RULES
Airmen certification:
Pilot, flight instructor and pilot school certification; standards, 11308

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 11106
Florida, 11106
Indiana, 11106
Texas, 11107
Washington, 11107
PROPOSED RULES
Common carrier services:
Operator service access and pay telephone compensation, 11136
Radio stations; table of assignments:
Florida, 11139
Illinois, 11139
Kansas, 11140
Kentucky, 11140
Michigan, 11140
Montana, 11141
Texas, 11141
NOTICES
Meetings:
Advanced Television Service Advisory Committee, 11220

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 11303

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 11212
Mid Louisiana Gas Co., 11213

Federal Maritime Commission
NOTICES
United States/China trade; laws, rules, regulations, policies, and practices affecting shipping; report by ocean carriers, 11220

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Buena Vista Bancorp, Inc., 11221
First Staunton Bancshares, Inc., et al., 11221

Fish and Wildlife Service
PROPOSED RULES
Migratory bird hunting:
Federal Indian reservations and ceded lands, 11336

Food and Drug Administration
PROPOSED RULES
Animal drugs, feeds, and related products:
Generic Animal Drug and Patent Term Restoration Act; implementation
Correction, 11304
NOTICES
Food additive petitions:
ALCOA Separations Technology, Inc., 11223

Foreign Assets Control Office
RULES
Iranian transactions regulations:
Iranian-origin oil; case-by-case licensing, 11100

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida, 11177
Utah—
Hercules, Inc.; carbon fiber plant, 11177

Forest Service
NOTICES
Appeal exemptions; timber sales:
Sequoia National Forest, CA, 11174
Environmental statements; availability, etc.:
Shasta-Trinity National Forests, CA, 11175

General Services Administration
RULES
Federal travel:
Travel, subsistence, and related expenses; acceptance from non-Federal sources
Correction, 11105–11304
(2 documents)
NOTICES
Agency information collection activities under OMB review, 11221

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Health Resources and Services Administration; Public Health Service; Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Colorado, 11223

Health Resources and Services Administration
See also Public Health Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Advanced General Dentistry Review Committee, 11225

Grants and cooperative agreements; availability, etc.:
Acquired Immune Deficiency Syndrome (AIDS)—
Project grants for renovation or construction of non-acute care intermediate and long-term care facilities, 11225
Health professions and nursing programs—
Low income levels, 11229

Hearings and Appeals Office, Energy Department
NOTICES
Decisions and orders, 12213

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 11234

Immigration and Naturalization Service
RULES
Nationality:
Philippines natives with active-duty military service during World War II, 11060

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Foreign oil and gas taxes; foreign tax credit limitation, 11062
Foreign sales corporations; adjusted current earnings, alternative minimum tax, 11080
Gain or loss on deemed sale of affected target stock, treatment, 11093
PROPOSED RULES
Income taxes:
Adjusted current earnings, 11122
Gain or loss on deemed sale of affected target stock, treatment; cross reference, 11129
Salvage and reinsurance treatment, 11127

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Antifriction bearings (other than tapered roller bearings) and parts from—
France, 11178
Italy, 11181
Japan, 11186
Romania, 11190
Singapore, 11191
Sweden, 11193
Thailand, 11195
United Kingdom, 11197
West Germany, 11200
Antidumping and countervailing duties:
Administrative review requests, 11177

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 11272

Justice Assistance Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Criminal history record information and identification of convicted felons; improvement, 11275

Justice Department
See also Antitrust Division; Immigration and Naturalization Service; Justice Assistance Bureau; Justice Statistics Bureau
NOTICES
Immigration Reform and Control Act; implementation:
Employment discrimination; filing requirements, 11272
Pollution control; consent judgments:
Interstate Brands, Inc., et al., 11272

Justice Statistics Bureau
NOTICES
Grants and cooperative agreements; availability, etc.:
Criminal history record information and identification of convicted felons; improvement, 11275

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 11278

Land Management Bureau
NOTICES
Meetings:
Lewistown District Multiple Use Advisory Council, 11267
Oil and gas leases:
Wyoming, 11267
Realty actions; sales, leases, etc.:
Arizona, 11267
New Mexico, 11268
(2 documents)

Management and Budget Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 11340

Mine Safety and Health Administration
PROPOSED RULES
Federal Mine Safety and Health Act of 1977:
Civil penalties; criteria and procedures for proposed assessment, 11130

National Aeronautics and Space Administration
NOTICES
Meetings:
Space Systems and Technology Advisory Committee, 11292

National Commission on Severely Distressed Public Housing
NOTICES
Meetings, 11295

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Challenge/Advancement Advisory Panel, 11294
Expansion Arts Advisory Panel, 11295
Inter-Arts Advisory Panel, 11293
Museum Advisory Panel, 11294
Theater Advisory Panel, 11293, 11294
(2 documents)

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Brake fluids; color coding requirements, 11107
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems—
Pneumatic timing requirements, 11150
School bus body joint strength, 11142
School bus emergency exits, 11153
School bus seating and crash protection; safety of school children, 11164
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Cooper Tire & Rubber Co., 11300

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Western Pacific bottomfish and seamount groundfish, 11166
Western Pacific pelagic, 11169
NOTICES
Endangered and threatened species:
Recovery plans—
Stellar (northern) sea lion, 11204
Environmental statements; availability, etc.:
Ashepoo-Combahee-Edisto (ACE) Basin National Research Reserve, SC, 11204
Permits:
Marine mammals, 11205

National Park Service
NOTICES
Concession contract negotiations:
Hidden Valley Ski area, 11269
Environmental statements; availability, etc.:
Great Smoky Mountains National Park, TN, 11269
Meetings:
Delta Region Preservation Commission, 11270
National Park System Advisory Board, 11269
Upper Delaware Citizens Advisory Council, 11270
National Register of Historic Places:
National Historic Landmarks; boundaries establishment, 11270
Pending nominations, 11271

National Science Foundation
NOTICES
Meetings:
Biological Instrumentation Facilities Advisory Panel, 11296
Biotechnology Opportunities at NSF Advisory Panel, 11295
Computer and Computation Research Special Emphasis Panel, 11295
Instrumentation and Instrument Development for Biological and Behavioral Sciences Advisory Panel, 11295
Mathematical Sciences Special Emphasis Panel, 11296
Physical Anthropology Advisory Panel, 11296
Physiological Processes Advisory Panel, 11296

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 11211

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Barnett Industrial X-Ray, 11297
Zimmerman, G.A., 11297

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Manufacturers Hanover Co. et al., 11282

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal—
Interest rates, 11097

Personnel Management Office
RULES
Pay administration:
Premium pay for emergency work, 11059

Presidential Documents
PROCLAMATIONS
Special observances:
Irish-American Heritage Month (Proc. 6259), 11053
EXECUTIVE ORDERS
Armed Forces; Southwest Asia Service Medal, establishment (EO 12754), 11055
Export controls, administration (EO 12755), 11057

Public Health Service
See also Agency for Toxic Substances and Disease Registry; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Minority community health coalition demonstration projects, 11230

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 11303

Severely Distressed Public Housing, National Commission
See National Commission on Severely Distressed Public Housing

Small Business Administration
NOTICES
Disaster loan areas:
Indiana et al., 11299
Tennessee, 11299

Social Security Administration
RULES
Social security benefits and supplemental security income:
Children; mental disorders evaluation; correction, 11304
NOTICES
Agency information collection activities under OMB review, 11234

State Department
RULES
Passports:
Execution fees for applications, 11062

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 11098
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Civil penalties, 11130
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; administrative amendments, 11133

Tennessee Valley Authority
NOTICES
Agency information collection activities under OMB review, 11300
Privacy Act:
Systems of records, 11299

Thrift Supervision Office
PROPOSED RULES
Savings associations:
Capital—
Interest rate risk component, 11115

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard; Federal Aviation Administration; National Highway Traffic Safety Administration

Travel and Tourism Administration
PROPOSED RULES
Facilitation fee, 11116

Treasury Department
See also Customs Service; Foreign Assets Control Office; Internal Revenue Service; Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 11301

Veterans Affairs Department
NOTICES
Agency information collection activities under OMB review, 11301, 11302
(2 documents)
Meetings:
Special Medical Advisory Group, 11302

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 11308

Part III
Department of Transportation, Coast Guard, 11330

Part IV
Department of the Interior, Fish and Wildlife Service, 11336

Part V
Office of Management Budget, 11340

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6259 11053
Executive Orders:
12002 (Amended by EO 12755) 11057
12754 11055
12755 11057

5 CFR
550 11059
551 11059

7 CFR
Proposed Rules:
52 11113

8 CFR
329 11060

9 CFR
82 11061

10 CFR
Proposed Rules:
1703 11114

12 CFR
Proposed Rules:
567 11115

14 CFR
61 11308
141 11308

15 CFR
Proposed Rules:
1201 11116

19 CFR
Proposed Rules:
162 11122

20 CFR
404 11304
416 11304

21 CFR
Proposed Rules:
60 11304

22 CFR
51 11062

26 CFR
1 (3 documents) 11062–11093
602 11093
Proposed Rules:
1 (3 documents) 11122–11129
602 11129

29 CFR
2676 11097

30 CFR
914 11098
Proposed Rules:
100 11130
845 11130
914 11133

31 CFR
560 11100

33 CFR
100 11100
Proposed Rules:
100 (2 documents) 11134, 11135

40 CFR
81 11101

41 CFR
301–1 (2 documents) 11105–11304
Ch. 304
(2 documents) 11105–11304

47 CFR
73 (5 documents) 11106, 11107
Proposed Rules:
64 11136
68 11136
73 (7 documents) 11139–11143

49 CFR
571 11107
Proposed Rules:
571 (4 documents) 11142–11164

50 CFR
Proposed Rules:
20 11336
683 11166
685 11169

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

Presidential Documents

Title 3—

The President

Proclamation 6259 of March 12, 1991

Irish-American Heritage Month, 1991

By the President of the United States of America

A Proclamation

Each ethnic group in America has made unique contributions to the ever-unfolding story of the United States. This month, as we celebrate the life of Saint Patrick, the beloved Apostle of Ireland, we also celebrate the hardy character, the rich cultural heritage, and the many valuable contributions of Irish-Americans.

By 1776, the year that opened the first chapter in the dramatic history of our Republic, some 300,000 Irish citizens had emigrated to the United States. Many of these courageous individuals played crucial roles in America's War for Independence. Indeed, nine of the men who signed the Declaration of Independence were of Irish origin, as was Commodore John Barry, the first naval commander commissioned by the Continental Congress. Irish-Americans serving in a division of George Washington's forces known as the Pennsylvania Line were so impressive, they moved General Henry Lee to note that it "might with more propriety had been called the Line of Ireland."

Since Irish-Americans not only helped to win America's Independence but also helped to fashion a system of government for our young Nation, it seems fitting that an Irish-born architect, James Hoban, designed the White House and assisted in the building of the United States Capitol. These magnificent structures have symbolized freedom and democracy to generations of men and women around the world.

Today the distinct "Line of Ireland" can still be traced throughout American culture. American literature, for example, has been greatly enriched by the contributions of gifted Irish-American writers such as Eugene O'Neill and Edwin O'Connor. Throughout the arts—and throughout education, government, business, science, and agriculture—talented men and women of Irish descent continue to merit the honor we give to them and to their ancestors. Indeed, in recent years, renewed immigration from Ireland and the revival of interest by all Americans in their roots have led to an increasingly vibrant Irish-American culture. The dramatic expansion of university courses in Irish studies and the countless annual Saint Patrick's Day parades held throughout the United States all attest to the continued vigor of the Irish-American heritage.

In tribute to all Irish-Americans, the Congress, by Public Law 101–418, has designated March 1991 as "Irish-American Heritage Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 1991 as Irish-American Heritage Month. I encourage all Americans to learn more about the contributions Irish-Americans have made to our country and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-6309
Filed 3-13-91; 2:24 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12754 of March 12, 1991

Establishing the Southwest Asia Service Medal

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. There is established, with suitable appurtenances, the Southwest Asia Service Medal. It may be awarded to members of the Armed Forces of the United States who participated in military operations in Southwest Asia or in the surrounding contiguous waters or air space on or after August 2, 1990, and before a terminal date to be prescribed by the Secretary of Defense.

Sec. 2. The Southwest Asia Service Medal may be awarded posthumously to any person covered by, and under the circumstances described in, section 1 of this order.

Sec. 3. The Secretaries of the Military Departments, with the approval of the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are directed to prescribe uniform regulations governing the award and wearing of the Southwest Asia Service Medal.

George Bush

THE WHITE HOUSE,
March 12, 1991.

[FR Doc. 91-6349
Filed 3-13-91; 11:00 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12755 of March 12, 1991

Administration of Export Controls

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), and in order to amend Executive Order No. 12002, it is hereby ordered as follows:

Section 1. Section 3 of Executive Order No. 12002 is amended to read as follows: "The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as its members, the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, and the Secretary of Defense. The Secretary of Energy and the Director of the United States Arms Control and Disarmament Agency shall be members of the Board, and shall participate in meetings that consider issues involving nonproliferation of armaments and other issues within their respective statutory and policy-making authorities. The Chairman of the Joint Chiefs of Staff and the Director of Central Intelligence shall be non-voting members of the Board. No alternate Board members shall be designated, but the acting head or deputy head of any department or agency may serve in lieu of the head of the concerned department or agency. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by the Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration."

Sec. 2. Section 4 of Executive Order No. 12002 is amended by adding in the third sentence between "national security," and "and the domestic economy," the words "concerns about the nonproliferation of armaments,".

Sec. 3. This order shall take effect immediately.

George Bush

THE WHITE HOUSE,
March 12, 1991.

[FR Doc. 91-6350
Filed 3-13-91; 11:01 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550 and 551

RIN 3206-AE29

Pay Administration (General); Premium Pay for Emergency Work

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations on the exception from the biweekly limitation on premium pay authorized by section 204 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) and the special biweekly limitation on premium pay for certain law enforcement officers authorized by section 410 of FEPCA. Section 410 of FEPCA became effective on November 5, 1990.

DATES: Section 204 of FEPCA and the interim regulations set forth below are effective on the first day of the first pay period beginning on or after March 15, 1991. Comments must be submitted on or before May 14, 1991.

ADDRESSES: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: John P. Cahill, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 204 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509, November 1990) provides that employees not covered by the special limitation in section 410 (discussed below) who perform certain types of emergency work will no longer be subject to the GS-15 step 10, biweekly maximum earnings limitation under 5 U.S.C. 5547(a), but will instead be subject to a GS-15, step 10, annual limitation during the period of time they perform the specified types of work. The interim rule provides that heads of agencies or their designees may apply the exception from the biweekly limitation to employees performing emergency work in connection with natural disasters posing a direct threat to human life or property without obtaining OPM approval. In addition, with OPM approval, heads of agencies may apply the exception from the biweekly limitation to employees performing work in connection with other conditions posing a direct threat to human life or property. In both cases, this exception applies only if the work performed by the employee is directly related to resolving or coping with the emergency or its immediate aftermath.

Under the interim rule, employees covered by 5 U.S.C. 5547(b) remain subject to the annual limitation on premium pay throughout the calendar year. This means that an employee may reach the annual limitation even though he or she has not reached the biweekly limitation for a particular pay period. For example, an employee might reach the annual limitation (and therefore be ineligible to receive additional premium pay) if he or she earned large amounts of premium pay while performing emergency work earlier in a calendar year (and therefore was not subject to the biweekly limitation for that time period) and subsequently continues to perform work normally compensable at premium rates.

Section 410 of Public Law 101-509 and the interim rule provide a special biweekly maximum earnings limitation for certain law enforcement officers equal to the lesser of (1) 150 percent of the minimum rate for GS-15, including any locality-based comparability payment or interim geographic adjustment and any special salary rate, rounded to the nearest whole cent, or (2) the rate payable for level V of the Executive Schedule. By statute, this special biweekly limitation became effective on the date of enactment—i.e., November 5, 1990.

Finally, the interim regulations contain a conforming amendment in part 551 of title 5, Code of Federal Regulations.

Pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The 30-day delay in the effective date is being waived to give affected employees the benefit of these new premium pay provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Government employees, wages.
U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending parts 550 and 551 of title 5 of the Code of Federal Regulations as follows:

PART 550—PREMIUM PAY

1. The authority citation for subpart A continues to read as follows:

Authority: 5 U.S.C. 5548 and 6101(c).

§ 550.103 [Amended].

2. In § 550.103, a new paragraph (r) is added to read as follows:

* * * * *

(r) *Emergency* means a natural disaster or other temporary condition posing a direct threat to human life or property, including a forest wildfire emergency.

* * * * *

3. Section 550.105 is revised and §§ 550.106 and 550.107 are added following the undesignated center heading to read as follows:

Maximum Earnings Limitations

§ 550.105 Biweekly maximum earnings limitation.

(a) Except as provided in paragraph (b) of this section, an employee may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period

to exceed the maximum rate for GS–15, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(b) This section does not apply to—

(1) Any pay period for which an exception has been authorized under § 550.106 (a) or (b) of this part;

(2) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(3) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

§ 550.106 Annual maximum earnings limitation for work in connection with an emergency.

(a) For any pay period in which an employee performs work in connection with an emergency involving a natural disaster, including a forest wildfire emergency, the head of an agency or his or her designee may authorize payment of premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) of this part.

(b) For any pay period in which an employee performs work in connection with an emergency other than a natural disaster, the Office of Personnel Management, on its own motion or at the request of the head of an agency, may authorize payment of premium pay under the annual limitation described in paragraph (c) of this section, instead of under the biweekly limitation described in § 550.105(a) of this part. A request made under this paragraph shall be submitted within 30 days after the first day of the first pay period beginning on or after March 15, 1991 or the beginning of the emergency, whichever is later.

(c) In any calendar year for which an exception has been authorized under paragraphs (a) or (b) of this section for any period of time, an employee may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for the calendar year to exceed the maximum rate for GS–15 in effect on the last day of the calendar year, including—

(1) A locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509); and

(2) A special salary rate established under 5 U.S.C. 5305.

(d) For the purpose of applying paragraphs (a) and (b) of this section, an employee shall be considered to be performing work in connection with an emergency only if the work is directly related to resolving or coping with the emergency or its immediate aftermath.

(e) This section does not apply to—

(1) An employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under 5 U.S.C. 5546a; or

(2) A law enforcement officer within the meaning of 5 U.S.C. 8331(20) or 8401(17).

§ 550.107 Special maximum earnings limitation for law enforcement officers.

A law enforcement officer within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code, may be paid premium pay under this subpart only to the extent that the payment does not cause the total of his or her basic pay and premium pay for any pay period to exceed the lesser of—

(a) 150 percent of the minimum rate for GS–15, including a locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) and any special salary rate established under 5 U.S.C. 5305, rounded to the nearest whole cent, counting one-half cent and over as a whole cent; or

(b) The rate payable for level V of the Executive Schedule.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

4. The authority citation for part 551 continues to read as follows:

Authority: Sec. 4(f) of the Fair Labor Standards Act as amended by Pub. L. 93–259 enacted April 8, 1974, 88 Stat. 55; 29 U.S.C. 204f.

§ 551.501 [Amended]

5. In § 551.501, paragraph (c) is revised to read as follows:

* * * * *

(c) The maximum earnings limitations described in §§ 550.105, 550.106, and 550.107 of this chapter do not apply to overtime pay due the employee under this subpart.

[FR Doc. 91–6197 Filed 3–14–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 329

[INS Number: 1404–91]

Special Classes of Persons Who May Be Naturalized; Veterans of the United States Armed Forces Who Served During World War I or World War II or Enlisted Under Act of June 30, 1950 as Amended.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule is necessary to implement section 405 of the Immigration Act of 1990 (Pub. L. 101–649) to allow for the naturalization of natives of the Philippines, based upon certain active-duty military service during World War II, who would not otherwise be eligible for naturalization. Approximately 50,000 persons will be eligible for naturalization as a result of the implementation of this regulation.

DATES: Effective March 15, 1991. Comments must be submitted on or before April 15, 1991.

ADDRESSES: Written comments should be submitted in triplicate to Director, Policy Directives, and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street NW., Washington, DC 20536. Include INS number 1404–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Stella Jarina, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW, Room 7223, Washington, DC 20536, Telephone: (202) 514–3946.

SUPPLEMENTARY INFORMATION: Section 405 of the Immigration Act of 1990 (Pub. L. 101–649) provided for the naturalization of certain natives of the Philippines based upon certain active duty military service during World War II. Public Law 101–649 provides that those persons with qualifying service may naturalize as citizens of the United States without having been lawfully admitted to the United States for permanent residence or having enlisted within the United States or other qualifying area as required by section 329 of the Immigration and Nationality Act of 1952 ("the Act"). Section 405 also waives the requirement that the applicant must intend to reside in the United States after naturalization, allowing the newly naturalized citizens

to return to the Philippines to reside after naturalization. Other than these exemptions, the applicants are required to comply with all other requirements of naturalization under section 329 of the Act.

The majority of the potential applicants under this section reside outside the United States and many do not have residences established in the United States. Therefore, it will be necessary to provide a mechanism whereby the applicants will have sufficient time to make travel arrangements to the United States for the examination on the application and for the Service to ensure that an applicant who wishes to return abroad after naturalization may do so without undue delay. For this purpose, a centralized processing center for those applications submitted by persons residing outside the United States has been established at the Northern Service Center, Lincoln, Nebraska for submission and initial processing of applications submitted by persons outside the United States. The location of the interview site will be determined at a future date.

Section 405 requires that an alien seeking naturalization under that provision must file an application "during the 2 year period beginning on the date of the enactment of" the Immigration Act of 1990. November 29, 1990, is the date of enactment. Applications for naturalization will, therefore, be accepted between November 29, 1990, and November 30, 1992 (since November 29, 1992 will be a Saturday). Under section 406 of the Immigration Act of 1990, however, the authority to naturalize these aliens does not become effective until May 1, 1991. Accordingly, the Service will accept applications before May 1, 1991, but will make no decision to grant or deny an application before May 1, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule defined in Section 1(b) of E.O. 12992, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

In accordance with 5 U.S.C. 553(d) the Commissioner finds that good cause exists for dispensing with the period of notice and public comment ordinarily required before the promulgation of regulations. The application period for benefits under section 405 began on November 29, 1990. Regulations are needed immediately, to permit aliens affected by section 405 to have ample time to seek its benefits. For the same reason, the Commissioner finds that good cause exists for having this regulation take effect immediately upon publication in the Federal Register, rather than observing the usual 30 day delay.

Lists of Subjects in 8 CFR Part 329

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements, Veterans.

Accordingly, part 329 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

1. The heading of part 329 is revised to read as set forth above.

2. The authority citation for part 329 is revised to read as follows:

Authority: 66 Stat. 173, 250, 276; 8 U.S.C. 1103, 1440 and note, 1443.

3. §§ 329.3–329.4 [Reserved].

4. A new § 329.5 is added to read as follows:

§ 329.5 Natives of the Philippines with active duty service during World War II.

(a) A person desiring to naturalize in accordance with section 405 of the Immigration Act of 1990 shall establish that he/she:

(1) Was born in the Philippines;

(2) Served honorably at any time during the period beginning September 1, 1939, and ending December 31, 1946—

(i) In an active-duty status under the command of the United States Armed Forces in the Far East, or

(ii) Within the Commonwealth Army of the Philippines, the Philippine Scouts, or recognized guerrilla units; and

(3) Resided in the Philippines prior to the service described in paragraph (a)(2) of this section.

(b) An application under this section shall be submitted in compliance with § 329.2. In addition to the forms and documentation required in § 329.2 and the appropriate fee as required in § 103.7 of this chapter, an applicant shall submit:

(1) Proof of birth in the Philippines;

(2) Police clearance for any place of residence for more than six months in the previous 5 years if such residence was not in the United States; and

(3) Proof of identity.

(c) If the applicant is residing in the United States, the application shall be submitted to the district or sub-office of the Service having jurisdiction over the place of residence in accordance with §§ 100.4 (b) and (c) of this chapter. A person residing outside the United States shall submit the application to the Northern Service Center, 100 Centennial Mall North, room B26, Lincoln, Nebraska 68508.

(d) A person residing outside the United States shall be examined on his application at a location in the United States designated by the Service. Any person residing outside the United States who wishes to be examined on his application at a location in the United States other than that designated by the Service shall submit with the application a statement as to the desired location and the reasons therefor. The Service may interview the applicant at other than the designated site for good cause. The Service Center Director will determine whether good cause exists and there shall be no appeal from the determination.

(e) To be considered an application for naturalization under section 405, the application must be received by the Service no earlier than November 29, 1990 and no later than November 30, 1992.

(f) No decision to approve or deny an application for naturalization under section 405 of the Immigration Act of 1990 may be made prior to May 1, 1991.

Dated: January 28, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91–5998 Filed 3–14–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 91–029]

Chickens Affected by Salmonella Enteritidis; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: In a final rule published in

the Federal Register and effective on January 30, 1991 (56 FR 3730–3743, Docket No. 90–134), we amended our regulations in 9 CFR part 82 concerning avian and poultry diseases by adding regulatory requirements to help control the spread of *Salmonella enteritidis* serotype *enteritidis* (SE) in egg-type chicken breeding flocks, and to help control the spread of SE in egg production flocks. Due to an accidental omission, the phrase "egg transport machinery" was not added to two paragraphs in 9 CFR 82.32 describing sites for sample collection. We are correcting this error in the regulatory text of the final rule.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5777.

In FR Doc. 91–2071, amendment number 5, page 3741, first column, lines 16, 43 and 48 are corrected as follows:

§ 82.32 [Corrected]

1. In § 82.32, in paragraph (c)(1) once in the first sentence and in paragraph (c)(2) twice in the third sentence, the phrase "or egg transport machinery" is added immediately following the word "manure" each time it appears, and in paragraph (c)(2) the reference to "paragraph (b)(1)(i)" is changed to read "paragraph (b)(1)".

Done in Washington, DC, this 11th day of March 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–6286 Filed 3–14–91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1360']

Passports

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations at 22 CFR part 51 to authorize United States Department of State Officials to transfer to the United States Postal Service the execution fee for each passport application accepted by that Service as provided for in 22 U.S.C. 214 as amended by Public Law 93–417, Fees for execution and issuance of passports; persons excused from payment.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, Washington, DC 20522–1705, telephone: (202) 326–6172.

SUPPLEMENTARY INFORMATION: Subsection 51.61(b) is being amended to include authorization to reimburse the United States Postal Service an amount equal to the product of the number of fee passport applications accepted and the execution fee as established and set forth by the Secretary of State, in accordance with 22 U.S.C. 214 as amended by Public Law 93-417 governing fees for execution and issuance of passports.

List of Subjects in 22 CFR Part 51

Passports.

For the reasons set forth in the summary, 22 CFR part 51 is amended as follows:

1. The authority citation for part 51, § 51.61 continues to read as follows:

Authority: Sec. 1, 44 Stat. 887; sec. 1, 41 Stat. 750; sec. 2, 44 Stat. 887; sec. 4, 63 Stat. 111, as amended (22 U.S.C. 211a, 214, 217a, 2658); E.O. 11295, 36 FR 10603; 3 CFR 1966–70 Comp. p. 507.

§ 51.61 [Amended]

2. Section 51.61(b) is revised as follows:

(b) *Execution fee.* Except as provided in § 51.63(b), the fee for execution of an application for a U.S. passport is $7.00, which shall be remitted to the U.S. Treasury when an application is executed before a Federal official, but which may be collected and retained by any State official before whom an application is executed, or which may be transferred to the United States Postal Service for each application accepted by that Service. The execution fee shall be paid only when an application must be executed under oath or affirmation as prescribed by § 51.21(a).

Dated: February 20, 1991.

For the Secretary of State.

Elizabeth M. Tamposi,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 91–6149 Filed 3–14–91; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8338]

RIN 1545–AE34

Limitation of Foreign Tax Credit for Foreign Oil and Gas Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the amendments made to section 907 of the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). The amendments made by TEFRA require that foreign oil and gas extraction income (FOGEI) and losses from all foreign countries be aggregated before computing the limit on creditability of foreign taxes. The amendments also repeal the separate application of the foreign tax credit limitation to taxes on foreign oil related income (FORI). The amendments made by TAMRA remove dividends paid by a domestic corporation from inclusion within foreign oil related income.

EFFECTIVE DATES: The amendments are effective for taxable years beginning after December 31, 1982, except as follows. The special rule at § 1.907(c)–2(d)(4) for determination on a facts and circumstances basis of the part of the section 907(c)(3)(C) amount that is attributable to FOGEI, FORI, and other income is effective for taxable years ending after January 23, 1989. The special rule provided at § 1.907 (c)–2 (d) (7) with respect to allocation of earnings and profits or deficits that arise in taxable years beginning after December 31, 1986, is effective after December 31, 1986. The special rules provided for determination of FORI and FOGEI tax with respect to dividends received and amounts includable in gross income under section 951(a) in taxable years beginning after December 31, 1986, at § 1.907 (c)–3 (b) (1) and (c), respectively, are effective after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:CORP:T:R(INTL–152–86) (202–566–6285, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1989, the Federal Register published amendments (54 FR 3004) to the Income Tax Regulations (26 CFR part 1) under section 907 of the Internal Revenue Code. These amendments conformed the regulations to changes made to section 907 by section 211 (96 Stat. 448) of TEFRA. Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. This Treasury Decision also conforms the regulations to a change made to section 907(c)(3) by section 1012 of TAMRA (102 Stat. 3501).

Explanation of Provisions

These final regulations include only one principal change from the temporary regulations. The temporary regulations at § 1.907 (b)–1T (b) set forth an objective safe harbor formula method for the determination of whether the foreign law imposing a FORI tax will be considered to be either structured in a manner, or to operate in a manner, so that the amount of tax imposed on FORI is generally materially greater than the tax imposed by the foreign law on income that is neither FORI nor FOGEI.

Commenters criticized the temporary regulations on several grounds. First, in their view, the safe harbor method improperly reduces creditable FORI taxes even though there has not been a shifting of taxes away from taxes on FOGEI. They assert that this result is contrary to the intent of Congress. Second, in their view, the method disallows FORI tax credits regardless of whether the difference in tax burdens is materially greater over a reasonable period of time. In addition, they contend that the method is at odds with various treaty commitments which allow for the crediting of various taxes on FORI even though those taxes are imposed in addition to the general corporate tax.

In light of the views expressed by the commenters, the safe harbor method has been replaced in the final regulations with a facts and circumstances test as suggested by the commenters. Under this test, the creditability of otherwise creditable FORI taxes will be limited only if there has been a shifting of tax from a tax on FOGEI to a tax on FORI. This determination will be made on a facts and circumstances basis.

A commenter criticized § 1.907(c)–1T (c), which provides for the carry forward of a foreign oil and gas extraction loss to recharacterize FOGEI in future years as foreign-source income that is not FOGEI, because the rule in the regulations operates irrespective of whether the loss resulted in a tax benefit. The final regulations do not include a tax benefit rule because the Senate Finance Committee (S. Rep. No. 494, 97th Cong., 2d Sess. 151 (1982)), in explaining the rule, stated that recharacterization is to occur even though the taxpayer obtained no tax benefit from the loss.

Section 1.907 (c)–1 (f)(4) has been revised to provide that for taxable years beginning after 1986, exchange gain or loss from a section 988 transaction may be FORI or FOGEI only if directly related to the business needs (under the principles of section 954(c)(1)(D)) attributable to the conduct of the section 907(c) activity.

Section 1.907(c)–2(d)(3) has been revised in the final regulations to reflect that section 1012 of TAMRA amended section 907(c)(3) so that dividends paid after December 31, 1986, by a domestic corporation will no longer be FORI.

In light of the Supreme Court decision in *Arkansas Best Corp.* v. *Commissioner*, 485 U.S. 212 (1988), the temporary regulations at § 1.907(c)–1T[e](3) (and as cross-referenced at 1.907(c)–1A(d)(3)] provided that for all years, stock of any corporation will not be treated as an asset used by a person in section 907(c) activities. Therefore, income (or loss) from the sale of stock will never be FOGEI or FORI. One commenter suggested that the decision in *Arkansas Best* does not justify the position taken in the regulations. In addition, the commenter objected to applying the regulations on a retroactive basis. After further review, we think the position taken in the temporary regulations, on both a retroactive and prospective basis, was consistent with the Supreme Court's decision. Accordingly, the regulations provision has not been changed.

Section 1.907 (c)–2 (f) has been revised to provide that for taxable years beginning after 1986, the principles of § 1.904–5 (h) and (i) shall be applied to determine whether (and to what extent) a person's distributive share of the income of any partnership is FORI and FOGEI. Thus, for example, a less-than-10 percent corporate partner's share of income of the partnership would generally be treated as passive income to the partner, and not as FORI or FOGEI, unless an exception under § 1.904–5 (h) and (i) applies.

In response to commenters' suggestions, paragraphs (a) and (d)[7] of § 1.907(c)–2 and paragraph (b)(1) and (2)(iii) of § 1.907(c)–3 have been clarified.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration (SBA) for comment on their impact on small business. The SBA did not comment on these regulations.

Drafting Information

The principal author of these regulations is Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR §§ 1.861 through 1.997–1

Aliens, Corporate deductions, DISC, Exports, Foreign investments in United States, Foreign tax credit, FSC, Income taxes, Petroleum, Reporting and recordkeeping requirements, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by removing the citation for § 1.907(b)–1 and by adding a new citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.907b–1 is also issued under 26 U.S.C. 907(b). * * *

Par. 2. Section 1.907–0 is revised to read as follows:

§ 1.907–0 Outline of regulation provisions for section 907.

This section lists the paragraphs contained in §§ 1.907(a)–0 through 1.907(f)–1A.

BEST COPY AVAILABLE

Regulations Applicable to Taxable Years Beginning After December 31, 1982

§ 1.907(a)–0 Introduction (for taxable years beginning after December 31, 1982).
(a) Effective dates.
(b) Key terms.
(c) FOGEI tax limitation.
(d) Reduction of creditable FORI taxes.
(e) FOGEI and FORI.
(f) Posted prices.
(g) Transitional rules.
(h) Section 907(f) carrybacks and carryovers.
(i) Statutes covered.

§ 1.907(a)–1 Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982).
(a) Amount of reduction.
(b) Foreign taxes paid or accrued.
(1) Foreign taxes.
(2) Foreign taxes paid or accrued.
(c) Limitation level.
(1) In general.
(2) Limitation percentage of corporations.
(3) Limitation percentage of individuals.
(4) Losses.
(5) Priority.
(d) Illustrations.
(e) Effect on other provisions.
(1) Deduction denied.
(2) Reduction inapplicable.
(3) Section 78 dividend.
(f) Section 904 limitation.

§ 1.907(b)–1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).
(a) In general.
(b) Amount of income, war profits, or excess profits tax.
(1) Dual capacity taxpayer.
(2) Non-dual capacity taxpayer.
(c) Amount that is not income, war profits, or excess profits tax.
(d) Examples.

§ 1.907(c)–1 Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982).
(a) Scope.
(b) FOGEI.
(1) General rule.
(2) Amount.
(3) Other circumstances.
(4) Income directly related to extraction.
(5) Income not included.
(6) Fair market value.
(7) Economic interest.
(c) Carryover of foreign oil extraction losses.
(1) In general.
(2) Reduction.
(3) Foreign oil extraction loss defined.
(4) Affiliated groups.
(5) FOGEI taxes.
(6) Examples.
(d) FORI.
(1) In general.
(2) Transportation.
(3) Distribution or sale.
(4) Processing.
(5) Primary product from oil.
(6) Primary product from gas.
(7) Directly related income.
(e) Assets used in a trade or business.
(1) In general.
(2) Section 907(c) activities.
(3) Stock.
(4) Losses on sale of stock.
(5) Character of gain or loss.
(6) Allocation of amount realized.
(7) Interest.
(f) Terms and items common to FORI and FOGEI.
(1) Minerals
(2) Taxable income.
(3) Interest on working capital.
(4) Exchange gain or loss.
(5) Allocation.
(6) Facts and circumstances.
(g) Directly related income.
(1) In general.
(2) Directly related services.
(3) Leases and licenses.
(4) Related person.
(5) Gross income.
(h) Coordination with other provisions.
(1) Certain adjustments.
(2) Section 901(f).

§ 1.907(c)–2 Section 907(c)(3) items (for taxable years beginning after December 31, 1982).
(a) Scope.
(b) Dividend.
(1) Section 1248.
(2) Section 78 dividend.
(c) Taxes deemed paid.
(1) Voting stock test.
(2) Dividends and interest.
(3) Amounts included under section 951(a).
(d) Amount attributable to certain items.
(1) Certain dividends.
(2) Interest received from certain foreign corporations.
(3) Dividends from domestic corporation.
(4) Amounts with respect to which taxes are deemed paid under section 960(a).
(5) Section 78 dividend.
(6) Special rule.
(7) Deficits.
(8) Illustrations.
(e) Dividends, interest, and other amounts from sources within a possession.
(f) Income from partnerships, trusts, etc.

§ 1.907(c)–3 FOGEI and FORI taxes (for taxable years beginning after December 31, 1982).
(a) Tax characterization, allocation and apportionment.
(1) Scope.
(2) Three classes of income.
(3) More than one class in a foreign tax base.
(4) Allocation of tax within a base.
(5) Modified gross income.
(6) Allocation of tax credits.
(7) Withholding taxes.
(b) Dividends.
(1) In general.
(2) Section 78 dividend.
(c) Includable amounts under section 951(a).
(d) Partnerships.
(e) Illustrations.

§ 1.907(d)–1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).
(a) In general.
(1) Scope.
(2) Initial computation requirement.
(3) Burden of proof.
(4) Related parties.
(b) Adjustments.
(c) Definitions.
(1) Foreign government.
(2) Minerals.
(3) Posted price.
(4) Other pricing arrangement.
(5) Fair market value.

§ 1.907(e)–1 Transitional rules (for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982).
(a) General rule.
(b) Rules for carryover for FORI and pre-TEFRA non-FORI taxes.
(c) Examples.

§ 1.907(f)–1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).
(a) In general.
(b) Unused FOGEI.
(1) In general.
(2) Year of origin.
(c) Tax deemed paid or accrued.
(d) Excess extraction limitation.
(e) Excess general section 904 limitation.
(f) Section 907(f) priority.
(g) Cross-reference.
(h) Example.

Regulations Applicable to Taxable Years Beginning Before January 1, 1983

§ 1.907(a)–0A Introduction (for taxable years beginning before January 1, 1983).
(a) Key terms.
(b) FOGEI tax limitation.
(c) Section 904 limitation.
(d) FOGEI and FORI.
(e) Posted prices.
(f) Transitional rules.
(g) Section 907(f) carrybacks and carryovers.
(h) Cross-references.
(i) Statutes covered.
(j) Pre-TEFRA Code references.

§ 1.907(a)–1A Reduction in taxes paid on FOGEI (for taxable years beginning before January 1, 1983).
(a) Amount of reduction.
(b) Foreign taxes paid or accrued.
(1) Foreign taxes.
(2) Foreign taxes paid or accrued.
(c) Limitation level.
(1) In general.
(2) Limitation percentage for corporations.
(3) Limitation percentage for individuals.
(4) Losses.
(5) Priority.
(d) Illustrations.
(e) Effect on other provisions.
(1) Deduction denied.
(2) Reduction inapplicable.
(3) Section 78 dividend.

§ 1.907(b)–1A Application of section 904 limitation with respect to FORI (for taxable years beginning before January 1, 1983).
(a) In general.
(b) Overall limitation.
(c) FORI taxes.

§ 1.907(b)–2A FORI tax carryovers and carrybacks (for taxable years beginning before January 1, 1983).
(a) Modification in use of § 1.904–2.
(b) Unused foreign tax.
(1) General rule.
(2) Per-country limitation year.
(c) Tax deemed paid or accrued with respect to FORI.
(d) Excess FORI limitation.
(1) When overall limitation applies.
(2) Per-country limitation year.
(e) Cross-reference.
(f) Separation of limitation.
(1) General rule.
(2) Special rules.
(g) Illustrations.

§ 1.907(c)–1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).
(a) Scope.
(b) Extraction income.
(1) General rule.
(2) Amount.
(3) Other circumstances.
(4) Income directly related to extraction.
(5) Income not included.
(6) Fair market value.
(7) Economic interest.
(c) Other FORI.
(1) In general.
(2) Transportation.
(3) Distribution or sale.
(4) Processing.
(5) Primary product from oil.
(6) Primary product from gas.
(7) Directly related income.
(d) Assets used in a trade or business.
(1) In general.
(2) Section 907(c) activities.
(3) Stock.
(4) Losses on sale of stock.
(5) Character of gain or loss.
(6) Allocation of amount realized.
(7) Interest.
(e) Terms and items common to other FORI and FOGEI.
(1) Minerals.
(2) Taxable income.
(3) Interest on working capital.
(4) Exchange gain or loss.
(5) Allocation.
(6) Facts and circumstances.
(f) Directly related income.
(1) In general.
(2) Directly related services.
(3) Leases and licenses.
(4) Related person.
(5) Gross income.
(g) Certain net operating losses.
(1) In general.
(2) Passive income.
(3) Source rule.
(h) Coordination with other provisions.
(1) Certain adjustments.
(2) Section 901(f).

§ 1.907(c)–2A Section 907(c)(3) items (for taxable years beginning before January 1, 1983).
(a) Scope.
(b) Dividend.
(1) Section 1248 dividend.
(2) Section 78 dividend.
(c) Taxes deemed paid.
(1) Voting stock test
(2) Dividends and interest.
(3) Amounts included under section 951(a).
(d) Amount attributable to certain items.
(1) Certain dividends.
(2) Interests received from certain foreign corporations.
(3) Dividends from domestic corporation.
(4) Amounts with respect to which taxes are deemed paid under section 960(a).
(5) Section 78 dividend.
(6) Special rule.
(7) Deficits.
(8) Illustrations.
(e) Dividends, interest, and other amounts from sources within a possession.
(f) Income from partnerships, trust, etc.

§ 1.907(c)–3A FOGEI and FORI taxes (for taxable years beginning before January 1, 1983).
(a) Tax allocation.
(1) Scope.
(2) Three classes of income.
(3) More than one class in a foreign tax base.
(4) Allocation of tax within a base.
(5) Modified gross income.
(6) Allocation of tax credits.
(7) Coordination with regulations under section 901.
(8) Withholding taxes.
(b) Dividends.
(1) In general.
(2) Section 78 dividend.
(c) Includable amounts under section 951(a).
(d) Partnerships.
(e) Illustrations.

§ 1.907(d)–1A Disregard of posted prices for purposes of Chapter 1 of the Code (for taxable years beginning before January 1, 1983).
(a) In general.
(1) Scope.
(2) Initial computation requirement.
(3) Burden of proof.
(4) Related parties.
(b) Adjustments.
(c) Definitions.
(1) Foreign government.
(2) Minerals.
(3) Posted price.
(4) Other pricing arrangement.
(5) Fair market value.

§ 1.907(e)–1A Transitional rules for section 904 carrybacks and carryovers (for taxable years beginning before January 1, 1983).
(a) Carryovers from taxable years ending before January 1, 1975.
(1) In general.
(2) Section 901(e) and 907(a).
(3) General rule for division of unused foreign tax.
(4) Computation.
(5) Illustrations.
(b) Transitional rules for carryovers from per-country limitation years ending before January 1, 1976.
(1) In general.
(2) Pro rata reduction of carryovers.
(3) Illustrations.
(c) Transitional rules for carryback from taxable years ending after December 31, 1974.
(1) In general.
(2) Applicable principles.

§ 1.907(f)–1A Carryback and carryover of credits disallowed by section 907(a) (for taxable years beginning before January 1, 1983).
(a) In general.
(b) Unused foreign extraction tax.
(1) In general.
(2) Limit.
(3) Year of origin.
(c) Tax deemed paid or accrued.
(d) Excess extraction limitation.
(e) Excess oil related limitation.
(f) Limitation percentage in certain excess limitation years.
(g) Section 907(f) priority.
(h) Per-country limitation.
(i) Cross-reference.
(j) Illustration.

Par. 3. Sections 1.907(a)–0T through 1.907(f)–1T are removed.

Par. 4. Sections 1.907(a)–0 through 1.907(f)–1 are added after the undesignated centerheading "REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982" to read as follows:

§ 1.907(a)–0 Introduction (for taxable years beginning after December 31, 1982).

(a) *Effective dates.* The provisions of §§ 1.907(a)–0 through § 1.907(f)–1 apply to taxable years beginning after December 31, 1982. For provisions that apply to taxable years beginning before January 1, 1983, see §§ 1.907(a)–0A through 1.907(f)–1A.

(b) *Key terms.* For purposes of the regulations under section 907—

(1) *FOGEI* means foreign oil and gas extraction income.

(2) *FORI* means foreign oil related income.

(3) *FOGEI taxes* mean foreign oil and gas extraction taxes as defined in section 907(c)(5).

(4) *FORI taxes* means foreign taxes on foreign oil related income. See § 1.907(c)–3.

(c) *FOGEI tax limitation.* Section 907(a) limits the foreign tax credit for taxes paid or accrued on FOGEI. See § 1.907(a)–1.

(d) *Reduction of creditable FORI taxes.* Section 907(b) recharacterizes FORI taxes as non-creditable deductible expenses to the extent that the foreign law imposing the FORI taxes is structured, or in fact operates, so that the amount of tax imposed with respect to FORI will be materially greater, over a reasonable period of time, than the amount generally imposed on income that is neither FOGEI nor FORI. See § 1.907(b)–1.

(e) *FOGEI and FORI.* FOGEI includes the taxable income from the extraction of minerals from oil or gas wells by a taxpayer (or another person) and from the sale or exchange of assets used in

the extraction business. FORI includes taxable income from the activities of processing oil and gas into their primary products, transporting or distributing oil and gas and their primary products, and from the disposition of assets used in these activities. For this purpose, a disposition includes only a sale or exchange. FOGEI and FORI may also include taxable income from the performance of related services or from the lease of related property and certain dividends, interest, or amounts described in section 951(a). See §§ 1.907(c)–1 through 1.907(c)–3.

(f) *Posted prices.* Certain sales prices are disregarded when computing FOGEI for purposes of chapter 1 of the Code. See § 1.907(d)–1.

(g) *Transitional rules.* Section 907(e) provides rules for the carryover of unused FOGEI taxes from taxable years beginning before January 1, 1983, and carryback of FOGEI taxes arising in taxable years beginning after December 31, 1982. See § 1.907(e)–1.

(h) *Section 907(f) carrybacks and carryovers.* FOGEI taxes disallowed under section 907(a) may be carried back or forward to other taxable years. These FOGEI taxes may be absorbed in another taxable year to the extent of the lesser of the separate excess extraction limitation or the excess limitation in the general limitation category (section 904(d)(1)(I)) for the carryback or carryover year. See § 1.907(f)–1.

(i) *Statutes covered.* The regulations under section 907 are issued as a result of the enactment of section 601 of the Tax Reduction Act of 1975, of section 1035 of the Tax Reform Act of 1976, of section 301(b)(14) of the Revenue Act of 1978, of section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 and of section 1012(g)(6) (A)–(B) of the Technical and Miscellaneous Revenue Act of 1988.

§ 1.907(a)–1 Reduction in taxes paid on FOGEI (for taxable years beginning after December 31, 1982).

(a) *Amount of reduction.* FOGEI taxes are reduced by the amount by which they exceed a limitation level (as defined in paragraph (c) of this section).

(b) *Foreign taxes paid or accrued.* For purposes of the regulations under section 907—

(1) *Foreign taxes.* The term "foreign taxes" means income, war profits, or excess profits taxes of foreign countries or possessions of the United States otherwise creditable under section 901 (including those creditable by reason of section 903).

(2) *Foreign taxes paid or accrued.* The terms "foreign taxes paid or accrued," "FOGEI taxes paid or accrued," and "FORI taxes paid or accrued" include foreign taxes deemed paid under sections 902 and 960. Unless otherwise expressly provided, these terms do not include foreign taxes deemed paid by reason of sections 904(c) and 907(f).

(c) *Limitation level*—(1) *In general.* The limitation level is FOGEI for the taxable year multiplied by the limitation percentage for that year.

(2) *Limitation percentage for corporations.* A corporation's limitation percentage is the highest rate of tax specified in section 11(b) for the particular year.

(3) *Limitation percentage for individuals.* Section 907(a)(2)(B) provides that the limitation percentage for individual taxpayers is the effective rate of tax for those taxpayers. The effective rate of tax is computed by dividing the entire tax, before the credit under section 901(a) is taken, by the taxpayer's entire taxable income.

(4) *Losses.* (i) For purposes of determining whether income is FOGEI, a taxpayer's FOGEI will be recharacterized as foreign source non-FOGEI to the extent that FOGEI losses for preceding taxable years beginning after December 31, 1982, exceed the amount of FOGEI already recharacterized. See § 1.907(c)–1(c). However, taxes that were paid or accrued on the recharacterized FOGEI will remain FOGEI taxes.

(ii) Taxes paid or accrued by a person to a foreign country may be FOGEI taxes even though that person has under U.S. law a net operating loss from sources within that country.

(iii) For purposes of determining whether income is FOGEI, a taxpayer's income will be treated as income from sources outside the United States even though all or a portion of that income may be resourced as income from sources within the United States under section 904(f) (1) and (4).

(5) *Priority.* (i) Section 907(a) applies before section 906, relating to reduction of credit for participation in or cooperation with an international boycott.

(ii) Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907.

(d) *Illustrations.* Paragraphs (a) through (c) of this section are illustrated by the following examples.

Example 1. M, a U.S. corporation, uses the accrual method of accounting and the calendar year as its taxable year. For 1984, M has $20,000 of FOGEI, derived from operations in foreign countries X and Y, and has accrued $11,560 of foreign taxes with respect to FOGEI. The highest tax rate specified in section 11(b) for M's 1984 taxable year is 46 percent. Pursuant to section 907(a), M's FOGEI taxes limitation level for 1984 is $9,200 (46% × $20,000). The foreign taxes in excess of this limitation level ($2,360) may be carried back or forward. See section 907(f) and § 1.907(f)–1 and section 907(e) and § 1.907(e)–1.

Example 2. The facts are the same as in *Example 1* except that M is a partnership owned equally by U.S. citizens A and B who each file as unmarried individuals and do not itemize deductions. Pursuant to section 905(a), A and B have elected to credit foreign taxes in the year accrued. The total amount of foreign taxes accrued by A and B with respect to their distributive shares of M's FOGEI is $11,500 ($5,750 accrued by A and $5,750 accrued by B). A and B have no other FOGEI. A's only taxable income for 1984 is his 50% distributive share ($10,000) of M's FOGEI and A has a preliminary U.S. tax liability of $1,079. B has $112,130 of taxable income for 1984 (including his 50% distributive share ($10,000) of M's FOGEI) and has a preliminary U.S. tax liability of $44,000. Pursuant to section 907(a), A's FOGEI taxes limitation level for 1984 is $1,079 (($1,079/$10,000) × $10,000) and B's FOGEI taxes limitation level for 1984 is $3,924 (($44,000/$112,130) × $10,000).

(e) *Effect on other provisions*—(1) *Deduction denied.* If a credit is claimed under section 901, no deduction under section 164(a)(3) is allowed for the amount of the FOGEI taxes that exceed a taxpayer's limitation level for the taxable year. See section 275(a)(4)(A). Thus, FOGEI taxes disallowed under section 907(a) are not added to the cost or inventory amount of oil or gas.

(2) *Reduction inapplicable.* The reduction under section 907(a) does not apply to a taxpayer that deducts foreign taxes and does not claim the benefits of section 901 for a taxable year.

(3) *Section 78 dividend.* The reduction under section 907(a) has no effect on the amount of foreign taxes that are treated as dividends under section 78.

(f) *Section 904 limitation.* FOGEI taxes as reduced under section 907(a) are creditable only to the extent permitted by the general limitation of section 904(d)(1)(I).

§ 1.907(b)–1 Reduction of creditable FORI taxes (for taxable years beginning after December 31, 1982).

If the foreign law imposing a FORI tax (as defined in § 1.907(c)–3) is either structured in a manner, or operates in a manner, so that the amount of tax imposed on FORI is generally materially greater than the tax imposed by the foreign law on income that is neither FORI nor FOGEI ("described manner"), section 907(b) provides a special rule which limits the amount of FORI taxes paid or accrued by a person to a foreign country which will be considered income, war profits, or excess profits taxes. Section 907(b) will apply to a person regardless of whether that person is a dual capacity taxpayer as defined in § 1.901–2(a)(2)(ii)(A). (In general, a dual capacity taxpayer is a person who pays an amount to a foreign country part of which is attributable to an income tax and the remainder of which is a payment for a specific economic benefit derived from that country.) Foreign law imposing a tax on FORI will be considered either to be structured in or to operate in the described manner only if, under the facts and circumstances, there has been a shifting of tax by the foreign country from a tax on FOGEI to a tax on FORI.

§ 1.907(c)–1 Definitions relating to FOGEI and FORI (for taxable years beginning after December 31, 1982).

(a) *Scope.* This section explains the meaning to be given certain terms and items in section 907(c) (1), (2), and (4). See also §§ 1.907(a)–0(b) and 1.907(c)–2 for further definitions.

(b) *FOGEI*—(1) *General rule.* Under section 907(c)(1), FOGEI means taxable income (or loss) derived from sources outside the United States and its possessions from the extraction (by the taxpayer or any other person) of minerals from oil or gas wells located outside the United States and its possessions or from the sale or exchange of assets used by the taxpayer in the trade or business of extracting those minerals. Extraction of minerals from oil or gas wells will result in gross income from extraction in every case in which that person has an economic interest in the minerals in place. For other circumstances in which gross income from extraction may arise, see paragraph (b)(3) of this section. For determination of the amount of gross income from extraction, see paragraph (b)(2) of this section. For definition of the phrase "assets used by the taxpayer in the trade or business" and for rules relating to that type of FOGEI, see paragraph (e)(1) of this section. The term "minerals" is defined in paragraph (f)(1) of this section. For determination of taxable income, see paragraph (f)(2) of this section. FOGEI includes, in addition, items listed in section 907(c)(3) (relating to dividends, interest, partnership distributions, etc.) and explained in § 1.907(c)–2. For the reduction of what would otherwise be FOGEI by losses incurred in a prior year, see section 907(c)(4) and paragraph (c) of this section.

(2) *Amount.* The gross income from extraction is determined by reference to the fair market value of the minerals in the immediate vicinity of the well. Fair market value is determined under paragraph (b)(6) of this section.

(3) *Other circumstances.* Gross income from extraction or the sale or exchange of assets described in section 907(c)(1)(B) includes income from any arrangement, or a combination of arrangements or transactions, to the extent the income is in substance attributable to the extraction of minerals or such a sale or exchange. For instance, a person may have gross income from such a sale or exchange if the person purchased minerals from a foreign government at a discount and the discount reflects an arm's-length amount in consideration for the government's nationalization of assets that person owned and used in the extraction of minerals.

(4) *Income directly related to extraction.* Gross income from extraction includes directly related income under paragraph (g) of this section.

(5) *Income not included.* FOGEI as otherwise determined under this paragraph (b), nevertheless, does not include income to the extent attributable to marketing, distributing, processing or transporting minerals or primary products. Income from the purchase and sale of minerals is not ordinarily FOGEI. If the foreign taxes paid or accrued in connection with income from a purchase and sale are not creditable by reason of section 901(f), that income is not FOGEI. A taxpayer to whom section 901(f) applies is not a producer.

(6) *Fair market value.* For purposes of this paragraph (b), the fair market value of oil or gas in the immediate vicinity of the well depends on all of the facts and circumstances as they exist relative to a party in any particular case. The facts and circumstances that may be taken into account include, but are not limited to, the following—

(i) The facts and circumstances pertaining to an independent market value (if any) in the immediate vicinity of the well,

(ii) The facts and circumstances pertaining to the relationships between the taxpayer and the foreign government. If an independent fair market value in the immediate vicinity of the well cannot be determined but fair market value at the port, or a similar point, in the foreign country can be determined (port price), an analysis of the arrangement between the taxpayer and the foreign government that retains a share of production could be evidence of the appropriate, arm's-length difference between the port price and the field price, and

(iii) The other facts and circumstances pertaining to any difference in the producing country between the field and port prices.

(7) *Economic interest.* For purposes of this paragraph (b), the term "economic interest" means an economic interest as defined in § 1.611–1(b)(1), whether or not a deduction for depletion is allowable under section 611.

(c) *Carryover of foreign oil extraction losses*—(1) *In general.* Pursuant to section 907(c)(4), the determination of FOGEI for a particular taxable year takes into account a foreign oil extraction loss incurred in prior taxable years beginning after December 31, 1982. There is no time limitation on this carryover of foreign oil extraction losses. Section 907(c)(4) does not provide for any carryback of these losses. Section 907(c)(4) operates solely for purposes of determining FOGEI and thus operates independently of section 904(f).

(2) *Reduction.* That portion of the income of the taxpayer for the taxable year which but for this paragraph (c) would be treated as FOGEI is reduced (but not below zero) by the excess of—

(i) The aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, over

(ii) The aggregate amount of reductions under this paragraph (c) for preceding taxable years beginning after December 31, 1982.

(3) *Foreign oil extraction loss defined*—(i) *In general.* For purposes of this paragraph (c), the term "foreign oil extraction loss" means the amount by which the gross income for the taxable year that is taken into account in determining FOGEI for that year is exceeded by the sum of the deductions properly allocated and apportioned to that gross income as determined under paragraph (f)(2) of this section). A person can have a foreign oil extraction loss for a taxable year even if the person has not chosen the benefits of section 901 for that year.

(ii) *Items not taken into account.* For purposes of paragraph (c)(3)(i) of this section, the following items are not taken into account—

(A) The net operating loss deduction allowable for the taxable year under section 172(a).

(B) Any foreign expropriation loss (as defined in section 172(h)) for the taxable year, and

(C) Any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft.

A loss mentioned in paragraph (c)(3)(ii)(B) or (C) of this section is taken into

account, however, to the extent compensation (for instance by insurance) for the loss is included in gross income.

(4) *Affiliated groups.* The foreign oil extraction loss of an affiliated group of corporations (within the meaning of section 1504(a)) that files a consolidated return is determined on a group basis. If the group does not have a foreign oil extraction loss, the foreign oil extraction loss of a member of that group will not reduce on a separate basis that member's FOGEI for a later taxable year. For special rules affecting the foreign oil extraction loss in the case of certain related domestic corporations that are not members of the same affiliated group, see section 904(i).

(5) *FOGEI taxes.* If FOGEI is reduced pursuant to this paragraph (c) (and thereby recharacterized as non-FOGEI income), any foreign taxes imposed on the FOGEI that is recharacterized as other income retain their character as FOGEI taxes. See section 907(c)(5).

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

Example 1—(i) *Facts.* X, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. X has only the following combined foreign tax items for the three countries (prior to the application of this paragraph (c)) for 1983, 1984, and 1985:

	1983	1984	1985
FOGEI	$(700)	$100	$450
FOGEI taxes	10	60	200
Net operating loss deduction	(200)	0	0
Foreign oil extraction loss allowable after adjustment for paragraph (c)(3)(ii) amounts	(500)	0	0
General limitation taxes other than FOGEI taxes	30	90	230

(ii) *1983.* Because X's FOGEI for 1983 is a loss of $(700), X's section 907(a) limitation for 1983 is $0 (.46×$0). Thus, none of the FOGEI taxes paid or accrued in 1983 ($10) can be credited in 1983. They can, however, be carried back to 1981 or 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1.

(iii) *1984.* X's FOGEI for 1984, prior to the application of this paragraph (c), is $100. X has a foreign oil extraction loss for 1983 of $(500). This loss must be applied against X's preliminary FOGEI of $100 for 1984. Thus, X's FOGEI for 1984 is $0 and X has $(400) ($500−$100) of foreign oil extraction loss from 1983 to be carried to 1985. Since X's FOGEI for 1984 is $0, its section 907(a) limitation is $0 (.46×$0). Therefore, none of the FOGEI taxes paid or accrued in 1984 ($60) can be credited in 1984. They can, however, be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1.

(iv) *1985.* X's FOGEI for 1985, prior to the application of this paragraph (c), is $450. X's remaining foreign oil extraction loss carryover from 1983 is $(400) and this must be applied against X's preliminary FOGEI of $450 for 1985. Thus, X's FOGEI for 1984 is $50 ($450−$400). X's section 907 (a) limitation is $23 (.46×$50). Therefore, $23 of the FOGEI taxes paid or accrued in 1985, together with the other $230 of general limitation taxes, can be credited in 1985, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). The excess of FOGEI taxes, $177 ($200−$23), can be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1.

Example 2—(i) *Facts.* The facts are the same as in *Example 1* except that X's paragraph (c)(3)(ii) items for 1983 allocable to FOGEI are $(800) instead of $(200). FOGEI remains a loss of $(700). Thus, X does not have a foreign oil extraction loss for 1983 because it has $100 of FOGEI when its paragraph (c)(3)(ii) items are not taken into account ($(700)+$800).

(ii) *1983.* The results are the same as in Example 1.

(iii) *1984.* Although X had FOGEI loss of $(700) in 1983, there is not a loss that can be carried forward after adjustment for paragraph (c)(3)(ii) items. Thus, X's FOGEI for 1984 is not reduced by the 1983 loss. X's section 907(a) limitation for 1984 is $46 (.46×$100). Therefore, $46 of the FOGEI taxes paid or accrued in 1984, together with the other $90 of general limitation taxes, can be credited in 1984, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). The excess of $14 ($60−$46) can be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1.

(iv) *1985.* Since there is no foreign oil extraction loss for either 1983 or 1984 to be applied in 1985, X's FOGEI for 1985 is $450. Thus, its section 907(a) limitation for 1985 is $207 (.46×$450) and all of its FOGEI taxes paid or accrued in 1985 ($200), together with the other $230 of general limitation taxes, can be credited in 1985, subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). FOGEI taxes in the amount of $10 from 1983 and $14 from 1984 may be carried forward to 1985 if they have not been used in carryback years. However, because the excess section 907(a) limitation for 1985 is only $7, that is the maximum potential FOGEI taxes from 1983 or 1984 that may be used in 1985.

Example 3—(i) *Facts.* Y, a U.S. corporation using the accrual method of accounting and the calendar year as its taxable year, is engaged in extraction activities in three foreign countries. Y's only foreign taxable income is income subject to the general limitation of section 904(d)(1)(E) (as in effect prior to 1987). Y has no paragraph (c)(3)(ii) items. Y has the following foreign tax items for 1983 and 1984:

	1983	1984
FOGEI	$(400)	$300
Other foreign taxable income	250	200
U.S. taxable income	1,000	1,100
Worldwide taxable income	850	1,600
FOGEI taxes	10	160
Other general limitation taxes	50	40
Foreign oil extraction loss	(400)	0

(ii) *1983.*—(A) *Section 907(a) limitation.* Because Y's FOGEI for 1983 is a loss of $(400), Y's section 907(a) limitation for 1983 is $0. Thus, none of the FOGEI taxes paid or accrued in 1983 ($10) can be credited in 1983. They can, however, be carried back to 1981 or 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1.

(B) *Section 904(d) fraction.* Y has a foreign loss of $(150) ($(400 + $250) for 1983. Thus, its fraction for purposes of determining its general limitation of section 904(d)(1)(E) is $0/$850.

(iii) *1984.*—(A) *Section 907(a) limitation.* Y's foreign oil extraction loss for 1983 is $(400). Applying this loss to its preliminary FOGEI for 1984 ($300) eliminates all of Y's FOGEI for 1984. Because Y's FOGEI for 1984 is $0, its section 907(a) limitation is also $0. Thus, none of the FOGEI taxes paid or accrued in 1984 ($160) can be credited in 1984. They can, however, be carried back to 1982 pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1. Y has a remaining foreign oil extraction loss of $(100) from 1983 to be carried to 1985.

(B) *Section 904(d) fraction.* Y's preliminary foreign taxable income for purposes of determining its general limitation of section 904(d)(1)(E) is $500 ($300 + $200). However, Y has an overall foreign loss from 1983 of $(150) ($(400) + $250) and thus, pursuant to section 904(f), Y must recharacterize $150 (lesser of $150 or 50% of $500) of its 1984 foreign taxable income as U.S. taxable income. Thus, Y's fraction for purposes of determining its general limitation of section 904(d)(1)(E) for 1984 is $350/$1,600.

Example 4—(i) *Facts.* Assume the same facts as in *Example 3* except that Y has the following foreign tax items:

	1983	1984	1985
FOGEI		$(100)	$225
Other foreign source taxable income subject to the general limitation of section 904(d)(1)(E)	$(50)		
U.S. source taxable income	50		
Worldwide taxable income		(100)	225
FOGEI taxes		10	125
Foreign oil extraction loss		(100)	

(ii) *1983.* For 1983, Y has a section 904(d)(1)(E) overall foreign loss account of $50; see section 904(f) and § 1.904(f)–1(b).

(iii) *1984.* Because Y's FOGEI for 1984 is a loss of $(100), Y's section 907(a) limitation for 1984 is $0. Thus, none of the FOGEI taxes paid or accrued in 1984 ($10) can be credited in 1984. They can, however, be carried back under the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward under the provisions of section 907(f) and § 1.907(f)–1.

(iv) *1985.* Y's FOGEI loss of $(100) for 1984 is carried forward to 1985 and offsets FOGEI income in that amount in 1985. The entire section 904(d)(1)(E) overall foreign loss account of $50 is recaptured in 1985; therefore, Y has $75 of foreign source income and $50 of U.S. source income. However, Y has $125 of FOGEI since, for purposes of section 907(a), the $50 resourced by section 904(f) will be treated as income from sources outside the United States; see § 1.907(a)–1(c)(4)(iii). Accordingly, Y's section 907(a) limitation is $57.50 (.46 x $125). Y's section 904(d)(1)(E) limitation is, however, only $34.50 (.46 x $75). Thus, Y may claim a foreign tax credit of $34.50 in 1985. Y may carry back or carry forward $23 ($57.50–$34.50) and that amount is not subject to the section 907(a) limitation in the carry to year. In addition, $67.50 ($125−$57.50) may be carried back pursuant to the provisions of section 907(e)(2) and § 1.907(e)–1 and carried forward pursuant to the provisions of section 907(f) and § 1.907(f)–1. This amount is subject to the section 907(a) limitation in the carry to year.

(d) *FORI*—(1) *In general.* Section 907(c)(2) defines FORI to include taxable income from the processing of oil and gas into their primary products, from the transportation or distribution and sale of oil and gas and their primary products, from the disposition of assets used in these activities and from the performance of any other related service. FORI may also include, under section 907(c)(3), certain dividends, interest, or amounts described in section 951(a). This paragraph (d) defines certain terms and items applicable to FORI.

(2) *Transportation.* Gross income from transportation of minerals or primary products ("gross transportation income") is gross income arising from carrying minerals or primary products between two places (including time or voyage charter hires) by any means of transportation, such as a vessel, pipeline, truck, railroad, or aircraft. Except for directly related income under paragraphs (d)(7) and (g) of this section, gross transportation income does not include gross income received by a lessor from a bareboat charter hire of a means of transportation, certain other rental income, or income from the performance of certain services.

(3) *Distribution or sale.* The term "distribution or sale" means the sale or exchange of minerals or primary products to processors, users who purchase, store, or use in bulk quantities, other persons for further distribution, retailers, or consumers. Gross income from distribution or sale includes interest income attributable to the distribution of minerals or primary products on credit.

(4) *Processing.* The term "processing" means the destructive distillation, or a process similar in effect to destructive distillation, of crude oil and the processing of natural gas into their primary products including processes used to remove pollutants from crude oil or natural gas.

(5) *Primary product from oil.* The term "primary product" (in the case of oil) means all products derived from the processing of crude oil, including volatile products, light oils (such as motor fuel and kerosene), distillates (such as naphtha), lubricating oils, greases and waxes, and residues (such as fuel oil).

(6) *Primary product from gas.* The term "primary product" (in the case of gas) means all gas and associated hydrocarbon components from gas wells or oil wells, whether recovered at the lease or upon further processing, including natural gas, condensates, liquefiable petroleum gases (such as ethane, propane, and butane), and liquid products (such as natural gasoline).

(7) *Directly related income.* FORI also includes directly related income under paragraph (g) of this section.

(e) *Assets used in a trade or business*—(1) *In general.* The term "assets used by the taxpayer in the trade or business" in section 907(c)(1)(B) and (2)(D) means property primarily used in one or more of the trades or businesses that are section 907(c) activities. For purposes of this paragraph (e), assets used in a trade or business are assets described in section 1231(b) (applied without regard to any holding period or the character of the asset as being subject to the allowance for depreciation under section 167).

(2) *Section 907(c) activities.* Section 907(c) activities are those described in section 907(c)(1)(A) (for FOGEI) or (c)(2)(A) through (C) (for FORI). If an asset is used primarily in one or more section 907(c) activities, then the entire gain (or loss) will be considered attributable to those activities. For example, if a person uses a service station primarily to distribute primary products from oil, then all of the gain (or loss) on the sale of the station is FORI even though the person uses the station to distribute products that are not primary products (such as tires or batteries). If an asset is not primarily used in one or more section 907(c) activities, then the entire gain or loss will not be FOGEI or FORI.

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities.

(4) *Losses on sale of stock.* If, under § 1.861–8(e)(7), a loss on the sale, exchange, or disposition of stock is considered a deduction which is definitely related and allocable to FOGEI or FORI, then notwithstanding § 1.861–8 (e)(7) and paragraph (f)(2) of this section, this loss shall be allocated and apportioned to the same class of income that would have been produced if there were capital gain from the sale, exchange or disposition.

(5) *Character of gain or loss.* Except in the case of stock, gain or loss from the sale, exchange or disposition of assets used in the trade or business may be FORI or FOGEI to the extent taken into account in computing taxable income for the taxable year, whether or not the gain or loss is ordinary income or ordinary loss.

(6) *Allocation of amount realized.* The amount realized from the sale, exchange or disposition of several assets in one transaction is allocated among them in proportion to their respective fair market values. This allocation is made under the principles set forth in § 1.1245–1(a)(5) (relating to allocation between section 1245 property and non-section 1245 property).

(7) *Interest.* Gross income from the sale, exchange or disposition of an asset used in a section 907(c) activity includes interest income from such a sale, exchange or disposition.

(f) *Terms and items common to FORI and FOGEI*—(1) *Minerals.* The term "minerals" means hydrocarbon minerals extracted from oil and gas wells, including crude oil or natural gas (as defined in section 613A(e)). The term includes incidental impurities from these wells, such as sulphur, nitrogen, or helium. The term does not include hydrocarbon minerals derived from shale oil or tar sands.

(2) *Taxable income.* Deductions to be taken into account in computing taxable income or net operating loss attributable to FOGEI or FORI are determined under the principles of § 1.861–8. For an exception with regard to losses, see paragraph (e)(4) of this section.

(3) *Interest on working capital.* FORI and FOGEI may include interest on bank deposits or on any other temporary investment which is not in excess of funds reasonably necessary to meet the working capital requirements and the specifically anticipated business needs of the person that is engaged in the conduct of the activities described in section 907(c) (1) or (2).

(4) *Exchange gain or loss.* Exchange gain (and loss) may be FORI and FOGEI. For taxable years beginning after 1986, exchange gain or loss from a section 988 transaction may be FORI or FOGEI only if directly related to the business needs (under the principles of section 954(c)(1)(D)) attributable to the conduct of the section 907(c) activity.

(5) *Allocation.* Interest income and exchange gain (or loss) described, respectively, in paragraph (f) (3) and (4) of this section are allocated among FORI, FOGEI, and any other class of income relevant for purposes of the foreign tax credit limitations under any reasonable method which is consistently applied from year-to-year.

(6) *Facts and circumstances.* Income not described elsewhere in this section may be FOGEI or FORI if, under the facts and circumstances in the particular case, the income is in substance directly attributable to the activities described in section 907(c) (1) or (2). For example, assume that a producer in the North Sea suffers a casualty caused by an explosion, fire, and resulting destruction of a drilling platform. Insurance proceeds received for the platform's destruction in excess of the producer's basis is extraction income if the excess constitutes income from sources outside the United States. In addition, income from an insurance policy for business interruption may be extraction income to the extent the payments under the policy are geared directly to the loss of income from production and are treated as income from sources outside the United States. Also, if an oil company's oil concession or assets used in extraction activities described in section 907(c)(1)(A) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income derived from that nationalization or expropriation (including interest on the income paid pursuant to the nationalization or expropriation) is FOGEI. Likewise, if a company's assets used in the activities described in section 907(c)(2) (A) through (C) and located outside the United States are nationalized or expropriated by a foreign government, or instrumentality thereof, income (including interest on the income paid pursuant to the nationalization or expropriation) derived from the nationalization or expropriation will be FORI. Nationalization or expropriation is deemed to be a sale or exchange for purposes of section 907(c)(1)(B) and a disposition for purposes of section 907(c)(2)(D). In further example, assume that an oil company has an exclusive right to buy all the oil in country X from Y, an instrumentality of the foreign sovereign which owns all of the oil in X. The oil company does not have an economic interest in any oil in country X. Y has a temporary cash-flow problem and demands that the oil company make advance deposits for the purchase of oil not yet delivered. In return, Y grants the oil company a discount on the price of the oil when delivered. Income represented by the discount on the later disposition of the oil is FORI described in section 907(c)(2)(C). The result would be the same if Y credited the oil company with interest on the advance deposits, which had to be used to purchase oil (the interest income would be FORI).

(g) *Directly related income*—(1) *In general.* Section 907(c)(2)(E) and this paragraph (g) include in FORI, and this paragraph (g) includes in FOGEI, income from the performance of directly related services (as defined in paragraph (g)(2) of this section). This paragraph (g) also includes in FORI and FOGEI income from the lease or license of related property (as defined in paragraph (g)(3) of this section). Section 907(c)(2)(E) with regard to FORI and this paragraph (g) with regard to both FORI and FOGEI do not apply to a person if—

(i) Neither that person nor a related person (as defined in paragraph (g)(4) of this section) has FOGEI described in paragraph (b) of this section (other than paragraph (b)(4) of this section relating to directly related income) or FORI described in paragraph (d) of this section (other than paragraph (d)(7) of this section relating to directly related income), of

(ii) Less than 50 percent of that person's gross income from sources outside the United States which is related exclusively to the performance of services and from the lease or license of property described in paragraph (g) (2) and (3) of this section, respectively, is attributable to services performed for (or on behalf of), leases to, or licenses with, related persons, but

(iii) Paragraph (g)(1)(ii) of this section will not apply to a person if 50 percent or more of that person's total gross income from sources outside the United States is FOGEI and FORI (as both are described in paragraph (g)(1)(i) of this section).

A person described in paragraph (g)(1) (i) or (ii) of this section will, however, have directly related services income which is FOGEI if the income is so classified by reason of the income based on output test set forth in paragraph (g)(2)(i)(B) of this section.

(2) *Directly related services*—(i) *FOGEI.* (A) Income from directly related services will be FOGEI, as that term is defined in paragraph (b) (1) and (3) of this section, if those services are directly related to the active conduct of extraction (including exploration) of minerals from oil and gas wells. Paragraph (b)(1) of this section provides that, in order to have extraction income, a person must have an economic interest in the minerals in place. However, paragraph (b)(3) of this section recognizes that income arising from "other circumstances" is extraction income if that income is in substance attributable to the extraction of minerals.

(B) An example of "other circumstances" under paragraph (b)(3) of this section is the "income based on output test." This income based on output test provides that, if the amount of compensation paid or credited to a person for services is dependent on the amount of minerals discovered or extracted, the income of the person from the performance of the services will be directly related services income which is FOGEI. This test will apply whether or not the person performing the services has, or had, an economic interest in the minerals discovered or extracted.

(ii) *FORI.* With regard to the determination of directly related services income which is FORI, directly related services are those services directly related to the active conduct of the operations described in section 907(c)(2) (A) through (C). Those services include, for example, services performed in relation to the distribution of minerals or primary products or in connection with the operation of a refinery, or the types of services described in § 1.954–6(d) (other than § 1.954–6(d)(4) which relate to foreign base company shipping income.

(iii) *Recipient of the services.* Directly related services described in paragraph (g)(2) (i) and (ii) of this section may be performed for any person without regard to whether that person is a related person.

(iv) *Excluded services*—(A) *FOGEI.* Directly related services which produce FOGEI do not include insurance, accounting or managerial services.

(B) *FORI.* Directly related services which produce FORI do not, generally, include insurance, accounting or managerial services. These services will, however, produce FORI if they are performed by the person performing the operations described in section 907(c)(2) (A) through (C). For these purposes, insurance income which is FORI means taxable income as defined in section 832(a).

(3) *Leases and licenses.* A lease or license of related property is the lease or license of assets used (or held for use) by the lessor, licensor, or another person (including the lessee or a sublessee) in the active conduct of the activities described in section 907 (c)(1)(A) or (c)(2) (A) through (C). The leases or licenses described in this paragraph (g)(3) include, for example, a lease of a means of transportation under a bareboat charger hire, of drilling equipment used in extraction operations, or the license of a patent, know-how, or similar intangible property used in extracting, transporting, distributing or processing minerals or primary products. This paragraph (g)(3) applies without regard to whether the parties are related persons.

(4) *Related person.* A person will be treated as a related person for purposes of this paragraph (g) if that person would be so treated within the meaning of section 954(d)(3) (as applied by substituting the word "corporation" for the word "controlled foreign corporation") or that person is a partnership or partner described in section 707(b)(1).

(5) *Gross income.* A foreign corporation shall be treated as a domestic corporation for the purpose of applying the gross-income rules in paragraph (g)(1) (ii) and (iii) of this section.

(h) *Coordination with other provisions*—(1) *Certain adjustments.* The character of income as FOGEI or FORI is determined before making any adjustment under section 482 or section 907(d). For example, assume that X and Y are related parties, Y's only income is from the sale of oil that Y purchased from X, and FOGEI from X is diverted to Y through an arrangement described in paragraph (b)(3) of this section. Accordingly, Y has FOGEI. If under section 482 the Commissioner reallocates the FOGEI from Y to X, then Y's remaining income represents only a profit from distributing the oil, and thus is FORI. If the foreign taxes paid by Y on this income are otherwise creditable under section 901, the foreign taxes that are not refunded to Y retain their characterization as FOGEI taxes.

(2) *Section 901(f).* Section 901(f) (relating to certain payments with respect to oil and gas not considered as taxes) applies before section 907. Taxes disallowed by section 901(f) are added to the cost or inventory amount of oil or gas.

§ 1.907(c)–2 Section 907(c)(3) items (for taxable years beginning after December 31, 1982).

(a) *Scope.* This section provides rules relating to certain items listed in section 907(c)(3). The rules of this section are expressed in terms of FORI but apply for determining FOGEI by substituting "FOGEI" for "FORI" whenever appropriate. FOGEI does not include interest described in section 907(c)(3)(A). Dividends paid prior to January 1, 1987, and described in section 907(c)(3)(B), as in effect prior to amendment by the Technical and Miscellaneous Revenue Act of 1988, are included in FORI and not FOGEI.

(b) *Dividend*—(1) *Section 1248 dividend.* A section 1248 dividend is a dividend described in section 907(c)(3)(A). Except as otherwise provided in this paragraph (b)(1), gain (or loss) from the disposition of stock in any corporation is not FOGEI or FORI. See § 1.907(c)–1(e) (3) and (4).

(2) *Section 78 dividend.* A section 78 dividend is FORI to the extent it arises from a dividend described in section 907(c)(3)(A), or an amount described in section 907(c)(3)(C).

(c) *Taxes deemed paid*—(1) *Voting stock test.* Items described in section 907(c)(3) (A) or (C) are FORI only if a deemed-paid-tax test is met under the criteria of section 902 or 960. The purpose of this test is to require minimum direct or indirect ownership by a domestic corporation in the voting stock of a foreign corporation as a prerequisite for the item to qualify as FORI in the hands of the domestic corporation. The test is whether a domestic corporation would be deemed to pay any taxes of a foreign corporation when a dividend or an amount described in section 907(c)(3) (A) or (C), respectively, is included in the domestic corporation's gross income. In the case of interest described in section 907(c)(3)(A), the test is whether any taxes would be deemed paid if there were a hypothetical dividend.

(2) *Dividends and interest.* For purposes of section 907(c)(3)(A), a domestic corporation is deemed under section 902 to pay taxes in respect of dividends and interest received from a foreign corporation whether or not the foreign corporation:

(i) Actually pays or is deemed to pay taxes, or

(ii) In the case of interest, actually pays dividends.

This paragraph (c)(2) also applies to dividends received by a foreign corporation from a second-tier or third-tier foreign corporation (as defined in § 1.902–1(a) (3)(i) and (4), respectively). In the case of interest received by a foreign corporation from another foreign corporation, this paragraph (c)(2) applies if the taxes of both foreign corporations would be deemed paid under section 902 (a) or (b) for purposes of applying section 902(a) to the same taxpayer which is a domestic corporation. In the case of interest received by any corporation (whether foreign or domestic), all members of an affiliated group filing a consolidated return will be treated as the same taxpayer under section 907(c)(3)(A) if the foreign taxes of the payor and (if the recipient is a foreign corporation) the foreign taxes of the recipient would be deemed paid under section 902 by at least one member. The term "member" is defined in § 1.1502-1(b). Thus, for example, assume that P owns all of the stock of D1 and D2 and P, D1, and D2 are members of an affiliated group filing a consolidated return. Assume further that D1 owns all of the stock of F1 and D2 owns all of the stock of F2, where F1 and F2 are foreign corporations. Interest paid by F1 to P, D2, or F2 may be FORI.

(3) *Amounts included under section 951(a).* For purposes of section 907(c)(3)(C), a domestic corporation is deemed under section 960 to pay taxes in respect of a foreign corporation, whether or not the foreign corporation actually pays taxes on the amounts included in gross income under section 951(a).

(d) *Amount attributable to certain items*—(1) *Certain dividends*—(i) *General rule.* The portion of a dividend described in section 907(c)(3)(A) that is FORI equals—

Amount of dividend x a/b

a = FORI accumulated profits in excess of FORI taxes paid or accrued, and

b = Total accumulated profits in excess of total foreign taxes paid or accrued.

This paragraph (d)(1)(i) applies even though the FORI accumulated profits arose in a taxable year of a foreign corporation beginning before January 1, 1983. Determination of the FORI amount of dividends under this paragraph (d)(1)(i) must be made separately for FORI accumulated profits and total accumulated profits that arose in taxable years beginning before January 1, 1987, and for FORI accumulated profits and total accumulated profits that arose in taxable years beginning after December 31, 1986. Dividends are deemed to be paid first out of FORI and total accumulated profits that arose in table years beginning after December 31, 1986. With regard to FORI accumulated profits and total accumulated profits that arose in taxable years beginning

after December 31, 1986, the portion of a dividend that is FORI equals—

Amount of dividend x a/b

a = Post-1986 undistributed FORI earnings determined under the principles of section 902(c)(1), and
b = Post-1986 undistributed earnings determined under the principles of section 902(c)(1).

(ii) *Cross-references.* See § 1.902–1(g) for the determination of a foreign corporation's earnings and profits and of those out of which a dividend is paid. See § 1.1248–2 or 1.1248–3 for the determination of the earnings and profits attributable to the sale or exchange of stock in certain foreign corporations.

(2) *Interest received from certain foreign corporations.* Interest described in section 907(c)(3)(A) is FORI to the extent the corresponding interest expense of the paying corporation is properly allocable and apportionable to the gross income of the paying corporation that would be FORI were that corporation a domestic corporation. This allocation and apportionment is made in a manner consistent with the rules of section 954(b)(5) and § 1.861–8(e)(2).

(3) *Dividends from domestic corporation.* The amount of a dividend from a corporation described in section 907(c)(3)(B), as in effect prior to amendment by the Technical and Miscellaneous Revenue Act of 1988, paid in a taxable year of that corporation beginning before December 31, 1986, that is FORI is determined under the principles of paragraph (d)(1)(i) of this section with respect to its current earnings and profits under section 316(a)(2) or its accumulated earnings and profits under section 316(a)(1), as the case may be.

(4) *Amounts with respect to which taxes are deemed paid under section 908(a)*—(i) *Portion attributable to FORI.* The portion of an amount described in section 907(c)(3)(C) that is FORI equals:

A×B/C

A = Amount described in section 907(c)(3)(C)
B = FORI earnings and profits
C = Total earnings and profits

For taxable years ending after January 23, 1989, the facts and circumstances will be used to determined what part of the amount of the section 907(c)(3)(C) amount is directly attributable to FOGEI, FORI and other income.

(ii) *Earnings and profits.* Total earnings and profits are those of the foreign corporation for a taxable year under section 964 and the regulations under that section.

(5) *Section 78 dividend.* The portion of a section 78 dividend that will be considered FORI will equal the amount of taxes deemed paid under either section 902(a) or section 960(a)(1) with respect to the dividend to the extent the taxes deemed paid are FORI taxes under § 1.907(c)–3 (b) or (c). See § 1.907(c)–3(a)(1).

(6) *Special rule.* (i) No item in the formula described in paragraph (d)(1)(i) of this section includes amounts excluded from the gross income of a United States shareholder under section 959(a)(1).

(ii) With respect to a foreign corporation, earnings and profits in the formula described in paragraph (d)(4)(i) of this section do not include amounts excluded under section 959(b) from its gross income.

(7) *Deficits*—(i) *Allocation of deficits within a separate category.* In a taxable year in which a foreign corporation described in section 907(c)(3)(A) pays a dividend or has income that is subject to inclusion under section 951, if the foreign corporation has positive post—1986 undistributed earnings in a separate category but within that separate category there is a deficit in post—1986 undistributed earnings attributable to earnings other than FOGEI and FORI, that deficit shall be allocated ratably between the FOGEI and FORI post-1986 undistributed earnings within that separate category. Any deficit in post—1986 undistributed earnings attributable to either FOGEI or FORI shall be allocated first to FOGEI or FORI post—1986 undistributed earnings (as the case may be) to the extent thereof. Post—1986 undistributed FORI earnings are the post—1986 undistributed earnings (as defined in section 902 and the regulations under that section) attributable to FORI as defined in section 907(c) (2) and (3). Post—1986 undistributed FOGEI earnings are the post—1986 undistributed earnings (as defined in section 902 and the regulations under that section) attributable to FOGEI as defined in section 907(c) (1) and (3).

Example. Foreign corporation X for years 1987 and 1988 had the following undistributed earnings (none of which is income that is subject to inclusion under section 951) and foreign taxes:

	Earnings	Taxes
FOGEI	$800	$400
FORI	(750)	
Other	700	250
Total	$750	$650

On December 31, 1988, X paid a dividend of all of its post-1986 undistributed earnings to its sole shareholder Y. Under paragraph (d)(5) and (7)(i) of this section and § 1.907 (c)–2 (d)(5), $450 of Y's dividend is attributable to FOGEI ($50 from undistributed earnings plus a $400 section 78 dividend) and $650 is attributable to other earnings ($700 from undistributed earnings plus a $250 section 78 dividend).

(ii) *Deficits allocated among separate categories.* If a deficit in a separate category ("first separate category") is allocated to another separate category ("second separate category") under sections 902 and 960 pursuant to notice 88–71, 1988–2 CB 374 and the regulations under those sections, the following rules shall apply. Any deficit in post-1986 undistributed earnings attributable to either FOGEI (or FORI) from the first separate category shall be allocated to post-1986 undistributed earnings in the second separate category to the extent thereof in the following order:

(A) FOGEI (or FORI),
(B) FORI (or FOGEI), and
(C) Other income.

Any deficit in post-1986 undistributed earnings attributable to other income from the first separate category shall be allocated first to other post-1986 undistributed earnings and then ratably to FOGEI and FORI post—1986 undistributed earnings in the second separate category.

(iii) *Pre-1987 deficits.* The amount of a dividend paid by a foreign corporation described in section 907(c)(3)(A) out of positive pre-1987 earnings that is attributable to FOGEI and FORI shall be determined in a manner similar to that used in paragraph (d)(7) (i) and (ii) of this section except that the determinations shall be made on an annual basis.

(8) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples.

Example 1. X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation also organized in country S. Each corporation uses the calendar year as its taxable year. In 1983, Z has $150 of FOGEI earnings and profits and $250 of earnings and profits other than FOGEI or FORI. Assume that Z paid no taxes to S and X must include $100 in its gross income under section 951(a) with respect to Z. Under paragraph (d)(4)(i) of this section, $37.50 of the amount described in section 951(a) is FOGEI ($100×$150/$400). the remaining $62.50 of the section 951(a) amount represents other income.

Example 2. Assume the same facts as in Example 1 except that the taxable year in question is 1988. In addition, under the facts and circumstances, it is determined that of the $100 section 951(a) amount included in X's gross income, $30 is directly attributable to Z's FOGEI activity, $60 is directly attributable to Z's FORI activity and $10 is directly attributable to Z's other activity. Accordingly, under paragraph (d)(4)(i), $30 will be FOGEI and $60 will be FORI to X.

Example 3. (i) Assume the same facts as in *Example 1.* Assume further that, in 1983, Z distributes its entire earnings and profits ($400) to Y which consists of a dividend of $300 and a section 959(a)(1) distribution of $100. Y has no other earnings and profits during 1983. Assume that the dividend and distribution are not foreign personal holding company income under section 954(c). Y pays no taxes to S. In 1983, Y distributes its entire earnings and profits to X.

(ii) Under paragraphs (c)(2) and (d)(1)(i) of this section, Y has FOGEI of $112.50, *i.e.*, the amount of the dividend received by Y ($300) multiplied by the fraction described in paragraph (d)(1)(i). The numerator of the fraction is Z's FOGEI accumulated profits in excess of the FOGEI taxes paid ($112.50) and the denominator is Z's total accumulated profits in excess of total foreign taxes paid ($400) minus the amount excluded from Y's gross income under section 959(a)(1) ($100). The rule of paragraph (d)(6)(ii) of this section does not apply since X does not include any amount in its gross income under section 951(a) with respect to Y. If Y paid taxes to S, this paragraph (d) would apply to characterize those taxes as FOGEI taxes or other taxes. See § 1.907(c)–3(a)(8) and Example 2 (iii) under § 1.907(c)–3(e).

(iii) The distribution from Y to X is a dividend to the extent of $300, *i.e.*, the amount of the distribution ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100). Under paragraphs (d) (1)(i) and (6)(i) of this section, $112.50 of the dividend is FOGEI, *i.e.*, the amount of the dividend ($300) multiplied by a fraction. The numerator of the fraction is $112.50, *i.e.*, the FOGEI accumulated profits of Y in excess of FOGEI taxes paid ($150) minus the FOGEI accumulated profits of Y in excess of FOGEI taxes paid excluded from X's gross income under section 959(a)(1) ($37.50). The denominator of the fraction is $300, *i.e.*, the total accumulated profits of Y in excess of taxes paid ($400) minus the amount excluded from X's gross income under section 959(a)(1) ($100).

Example 4. Assume the same facts as in Example 1 with the following modifications: In 1983, Z's only earnings and profits are FORI earnings and profits which are included in X's gross income under section 951(a). Z distributes its entire earnings and profits to Y. In 1983, Y has total earnings and profits of $100 without regard to the dividend from Z, $60 of which are FORI earnings and profits. Y also has $40 which is included in X's gross income under section 951(a). Under paragraph (d)(6)(ii) of this section, the dividend from Z is disregarded for purposes of applying paragraph (d)(4)(i) of this section to the $40 included in X's gross income under section 951(a) with respect to Y. Accordingly, $24 of the amount described in section 951(a) is FORI ($40×$60/$100). Had these circumstances existed in 1988, and if the $40 included in X's gross income under section 951(a) was directly attributable to FORI activity, all of that income would be FORI to X.

(e) *Dividends, interest, and other amounts from sources within a possession.* FORI includes the items listed in sections 907(c)(3) (A) and (C) to the extent attributable to FORI of a corporation that is created or organized in or under the laws of a possession of the United States.

(f) *Income from partnerships, trusts, etc.* FORI and FOGEI include a person's distributive share (determined under the principles of section 704) of the income of any partnership and amounts included in income under subchapter J of chapter 1 of the Code (relating to the taxation of trusts, estates, and beneficiaries) to the extent the income and amounts are attributable to FORI and FOGEI. For taxable years beginning after 1986, the principles of §§ 1.904–5 (h) and (i) shall be applied to determine whether (and to what extent) a person's distributive share is FORI and FOGEI. Thus, for example, a less-than-10 percent corporate partner's share of income of the partnership would generally be treated as passive income to the partner, and not as FORI or FOGEI, unless an exception under §§ 1.904–5 (h) and (i) applies.

§ 1.907(c)–3 FOGEI and FORI taxes (for taxable years beginning after December 31, 1982).

(a) *Tax characterization, allocation and apportionment*—(1) *Scope.* Paragraphs (a) (2) through (6) of this section provides rules for the characterization, allocation, and apportionment of the income taxes (other than withholding taxes) paid or accrued to a foreign country among FOGEI, FORI, and other income relevant for purposes of sections 907 and 904. Some of the rules in this section are expressed in terms of FOGEI taxes but they apply to FORI taxes by substituting "FORI taxes" for "FOGEI taxes" whenever appropriate. For the treatment of withholding taxes, see paragraph (a)(8) of this section. FOGEI taxes are determined without any reduction under section 907(a). In addition, determination of FOGEI taxes will not be affected by recharacterization of FOGEI by section 907(c)(4). See § 1.907(c)–1(c)(5). Foreign taxes will not be characterized as creditable FORI taxes if section 907(b) and § 1.907(b)–1 apply.

(2) *Three classes of income.* There are three classes of income: FOGEI, FORI, and other income.

(3) *More than one class in a foreign tax base.* If more than one class of income is taxed under one tax base under the law of a foreign country, the amount of pre-credit foreign tax for each base must be determined. This amount is the foreign taxes paid or accrued to that country for the base as increased by the tax credits (if any) which reduced those taxes and were allowed in the country for that tax. More than one class of income is taxed under the same base, if, under a foreign country's law, deductions from one class of income may reduce the income of any other class and the classes are subject to foreign tax at the same rates.

(4) *Allocation of tax within a base.* If more than one class of income is taxed under the same base under a foreign country's law, the pre-credit foreign tax for the base is apportioned to each class of income in proportion to the income of each class. Tax credits are than allocated (under paragraph (a)(6) of this section) to the apportioned pre-credit tax. Income of a class over the deductions allowed under foreign law for, and which are attributable to, that class.

(5) *Modified gross income.* Modified gross income is not necessarily the same as gross income as defined for purposes of chapter 1 of the Internal Revenue Code. Modified gross income is determined with reference to the foreign tax base for gross income (or its equivalent). However, the characterization of the base as a particular class of income is governed by general principles of U.S. tax law. Thus, for example—

(i) Gross income from extraction is the fair market value of oil or gas in the immediate vicinity of the well (as determined under § 1.907(c)–1(b)(6) (without any deductions)).

(ii) Whether cost of goods sold (or any other deduction) is a deduction from modified gross income and the amount of such a deduction is determined under foreign law.

(iii) Modified gross income includes items that are part of the foreign tax base even though they are not gross income under U.S. law so long as the foreign taxes paid on the base constitute creditable taxes under section 901 (including taxes described in section 903). For example, if a foreign country imposes a tax (creditable under section 901) on a tax base that includes in small part a percentage of the value of a company's oil reserves in place, modified gross income from extraction includes such a percentage of value solely for purposes of making the tax allocation in paragraph (a)(4) of this section.

(iv) Modified gross income from extraction is increased for purposes of this paragraph (a)(5) by the entire

excess of the posted price over fair market value if the foreign country uses a posted price system or other pricing arrangement described in section 907(d) in imposing its income tax.

(v) Modified gross income from FORI is that income attributable to the activities in sections 907(c)(2) (A) through (C) and (E).

(vi) Modified gross income for any class may not include gross income that is not subject to taxation by the foreign country.

(8) *Allocation of tax credits.* The foreign taxes paid or accrued on a particular class of income equals the precredit tax on the class reduced (but not below zero) by the credits allowed under foreign law against the foreign tax on the particular class. Any tax credit attributable to a class that is not allocated to that class is allocated to the other class in the base or, if there are three classes in the base, is apportioned ratably among the taxes paid or accrued on the other two classes (as reduced in accordance with the preceding sentence).

(7) *Withholding taxes.* Paragraph (a)(2) through (8) of this section does not apply to withholding taxes imposed by a foreign country. FOGEI taxes may include withholding taxes imposed with respect to a distribution from a corporation. The portion of the total withholding taxes on a distribution that constitutes FOGEI taxes is determined by the portion of the distribution that is FOGEI. In addition, FOGEI taxes may include taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b). The portion of the total withholding taxes imposed on a distribution described in section 959(a)(1) or on amounts described in section 959(b) is determined by reference to the portion of the amount included in gross income under section 951(a) that was FOGEI.

(b) *Dividends— In general*—(1) FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the dividend multiplied by the fraction:

$$\frac{\text{FOGEI taxes paid or accrued by the payor}}{\text{Total foreign taxes paid or accrued by the payor.}}$$

(ii) With regard to dividends received in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to a dividend equal the total taxes deemed paid with respect to the portion of the dividend within a separate category multiplied by the fraction:

$$\frac{\text{Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category}}{\text{Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.}}$$

(iii) This paragraph (b) applies to a dividend described in section 907(c)(3)(A) (including a section 1248 dividend) with reference to the particular taxable year or years of those accumulated profits out of which a dividend is paid. Determination of FOGEI taxes under this paragraph (b) must be made separately.

(A) For FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning before January 1, 1987, to which paragraph (b)(1)(i) of this section applies, and

(B) For FOGEI taxes paid on FOGEI accumulated profits and total taxes paid on accumulated profits that arose in taxable years beginning after December 31, 1986, to which paragraph (b)(1)(ii) of this section applies.

For purposes of these determinations, dividends are deemed to be paid first out of FOGEI and total accumulated profits that arose in taxable years beginning after December 31, 1986. See § 1.907(c)–2(d)(1)(i). See section 960(a)(3) and § 1.960–2 relating to distributions that are treated as dividends for purposes of section 902.

(2) *Section 78 dividend.* There are no FOGEI taxes with respect to section 78 dividends.

(c) *Includable amounts under section 951(a).* (1) FOGEI taxes deemed paid with respect to an amount includable in gross income under section 951(a) equal the total taxes deemed paid with respect to that amount multiplied by the fraction:

$$\frac{\text{FOGEI taxes paid or accrued by the foreign corporation}}{\text{Total foreign taxes paid or accrued by the foreign corporation.}}$$

(2) With regard to an amount includable in gross income under section 951(a) in taxable years beginning after December 31, 1986, FOGEI taxes deemed paid with respect to that amount equal the total taxes deemed paid with respect to that amount within a separate category multiplied by the fraction:

$$\frac{\text{Post-1986 FOGEI taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category}}{\text{Post-1986 foreign income taxes as determined under the principles of section 902(c)(2) that are allocable to that separate category.}}$$

Taxes in the fraction in this paragraph (c)(2) include only those foreign taxes that may be deemed paid under section 960(a) by reason of such inclusion. See §§ 1.960–1(c)(3) and 1.960–2(c).

(d) *Partnerships.* A partner's distributive share of the partnership's FOGEI taxes is determined under the principles of section 704.

(e) *Illustrations.* The application of this section may be illustrated by the following examples.

Example 1. X, a domestic corporation, owns all of the stock of Y, a foreign corporation organized in country S. Y owns all of the stock of Z, a foreign corporation organized in country T. Each corporation used the calendar year as its taxable year. In 1983, X includes in its gross income an amount described in section 951(a) with respect to Z. Assume that the taxes deemed paid under section 902(a) by X by reason of such an inclusion is $70. Assume further that Z paid total taxes of $120, $60 of which is FOGEI tax. Under paragraph (c) of this section, the FOGEI tax deemed paid is $46.67 (*i.e.*, $70 x $60/$120). This $46.67 is also FOGEI under § 1.907(c)–2(d)(5) because it must be included in X's gross income under section 78.

Example 2. (i) Assume the same facts as in Example 1. Assume further that in 1983, Z distributes its entire earnings and profits to Y. Y has no earnings and profits during 1983 other than this dividend. Y paid a tax of $50 to S. Assume that Y is deemed under section 902(b)(1) to pay $50 of the tax paid by Z which was not deemed paid by X under section 960(a)(1) in 1983. In 1983, Y distributes its entire earnings and profits to X. Assume that X is deemed under section 902(a) to pay $100 of the taxes actually paid, and deemed paid, by Y.

(ii) Paragraph (b)(1) of this section applies to characterize the $50 tax of Z that Y is deemed to pay under section 902(b)(1). Y is deemed to pay $33.33 of FOGEI tax, *i.e.*, the amount of the tax deemed paid by Y ($50) multiplied by a fraction. The numerator of the fraction is the amount of Z's FOGEI tax ($60) and the denominator is the total taxes paid by Z ($120).

(iii) Under paragraph (a)(8) of this section, a portion of the $50 tax actually paid by Y on the earnings and profits received from Z is FOGEI tax. The amount of tax actually paid by Y that is FOGEI tax depends on the amount of the distribution from Z that is FOGEI (see § 1.907(c)–2(d)(1) (i) and Example 2 (ii) under § 1.907(c)–2(d)(8)). This result does not depend upon whether a portion of the distribution from Z is described in section 959(b) and it follows even though a portion of Y's earnings and profits will be excluded from X's gross income under section 959(a)(1) when distributed by Y. Assume that $12.50 of the $50 tax actually paid by Y is FOGEI tax.

(iv) Under paragraph (b)(1) of this section, X is deemed to pay $45.83 of FOGEI tax by reason of the distribution from Y. This amount is determined by multiplying the total taxes deemed paid by X by reason of such distribution ($100) by a fraction. The numerator of the fraction is the FOGEI tax paid, and deemed paid, by Y ($45.83, *i.e.*, $33.33 under paragraph (ii) of this example plus $12.50 under paragraph (iii) of this example). The denominator of the fraction is the total taxes paid, and deemed paid, by Y ($100). This $45.83 is FOGEI under § 1.907(c)–2(d)(5) because it is included in X's gross income as a section 78 dividend.

Example 3. (i) X, a domestic corporation, has a concession with foreign country Y that gives it the exclusive right to extract and export the crude oil and natural gas owned by Y. The concession agreement and location of the oil and gas wells mandate that X construct a system of pipelines to transport the minerals that are extracted to a port where they are loaded onto tankers for export. X owns the transportation facilities. Y has an income tax system under which income from mineral operations is subject to a 50 percent tax rate. The taxation by Y of the mineral operations is a separate tax base under paragraph (a)(3) of this section. Under this system, Y imposes the tax at the port prior to export and it establishes a posted price of $12 per barrel. Y also collects royalties of $1.44 per barrel (*i.e.*, 12 percent of this posted price) which is deductible in computing the petroleum tax. Y also allows X deductible lifting costs of $.20 per barrel and deductible transporting costs of $.80 per barrel. Y does not allow any credits against the mineral tax. Assume that X does not have any income in Y other than the mineral income. (In 1983, X extracts, transports, and exports 10,000,000 barrels of crude oil, but for convenience, all computations are in terms of one barrel). X pays foreign taxes of $4.78 per barrel, computed as follows:

Sales		$12.00
Royalties	$1.44	
Lifting	.20	
Transporting	.80	
	2.44	(2.44)
Income base		9.56
Tax rate (percent)		.50
Tax		4.78

Assume that these taxes are creditable taxes under section 901, that the fair market value of the oil at the port is $10 per barrel, and that under § 1.907(c)–1(b)(6) fair market value in the immediate vicinity of the oil wells is $9 per barrel. Thus, at the port, the excess of posted price ($12) over fair market value ($10) is $2.

(ii) The $4.78 foreign tax paid to Y is allocated to FOGEI and FORI in accordance with the rules in paragraph (a) (2) through (5) of this section.

(iii) Under paragraph (a)(3) of this section, FOGEI and FORI are subject to foreign taxation under one tax base. This foreign tax is allocated between FOGEI tax and FORI tax in accordance with paragraph (a) (4) and (5) of this section.

(iv) The modified gross income for FOGEI is $11, *i.e.*, fair market value in the immediate vicinity of the well ($9) plus the excess at the port of posted price over fair market value ($2). The modified gross income for FORI is $1, *i.e.*, value added to the oil beyond the well-head which is part of Y's tax base ($10–$9).

(v) The royalty deductions are all directly attributable to FOGEI.

(vi) Under paragraph (a)(4) of this section, the income of each class is determined as follows:

	FOGEI	FORI
Modified gross income	$11.00	$1.00
Deductions:		
Royalties	1.44	0
Lifting	.20	0
Transporting	0	.80
Total	1.64	.80
Net income	9.36	.20

(vii) Under paragraph (a)(4) of this section, the total tax paid to Y is allocated to FOGEI and FORI in proportion to the income in each class. The calculation is as follows:

FOGEI tax = $4.78 × $9.36/$9.56 = $4.68
FORI tax = $4.78 × $0.20/$9.56 = $0.10

Thus, for the 10,000,000 barrels, the FOGEI tax is $46,800,000 and the FORI tax is $1,000,000.

(viii) The allocation under paragraph (a)(4) of this section, rather than the direct application of stated foreign tax rates to foreign-law taxable income in each class of income (which would produce the same results in the facts of this example), is necessary when a foreign country taxes more than one class of income under a progressive rate structure. See Example 4 in this paragraph (e).

Example 4. Assume the same facts as in Example 3 except that Y's tax is imposed at 40 percent for the first $20,000,000 of income and at 60 percent for all other income. The foreign taxes are allocated under paragraph (a)(4) of this section between FOGEI and FORI in the same manner as in paragraphs (vi) and (vii) of Example 3, as follows:

(1) Taxable income	$95,600,000
(2) Tax:	
(a) 40% of $20,000,000	8,000,000
(b) 60% of $75,600,000	45,360,000
(c) Total tax	53,360,000
(3) FOGEI tax (line 2(c) × $9.36/$9.56)	52,243,680
(4) FORI tax (line 2(c) × $0.20/$9.56)	1,116,320

Example 5. Assume the same facts as in Example 3. Assume further that X refines the crude oil into primary products prior to export and Y imposes its tax on the basis of crude oil equivalences of $12 per barrel, rather than the value of the primary products, to establish port prices. Assume that this arrangement is a pricing arrangement described in section 907(d). Thus, Y does not tax the refinery income. The results are the same as in Example 3 even if $12 per barrel is equal to, more than, or less than, the value of the primary products at the port. See paragraph (a)(5)(vi) of this section.

§ 1.907(d)–1 Disregard of posted prices for purposes of chapter 1 of the Code (for taxable years beginning after December 31, 1982).

(a) *In general*—(1) *Scope.* Section 907(d) applies if a person has FOGEI from the—

(i) Acquisition (other than from a foreign government) or

(ii) Disposition of minerals at a posted price that differs from the fair market value at the time of the transaction. Also, if a seller (other than a foreign government) derives FOGEI upon a disposition described in the preceding sentence, section 907(d) applies to the acquisition by the purchaser whether or not the purchaser has FOGEI. Thus, section 907(d) may apply in determining a person's FORI.

(2) *Initial computation requirement.* If section 907(d) applies to any person, income on the transaction as initially reflected on the person's return shall be computed as if the transaction were effected at fair market value. This requirement applies the first time a person has taxable income derived from either the transaction or an item (such as a dividend described in section 907(c)(3)(A)) determined with reference to that income.

(3) *Burden of proof.* The taxpayer must be able to demonstrate the transaction as it actually occurred and the basis for reporting the transaction under the principles of paragraph (a)(2) of this section.

(4) *Related parties.* Section 907(d) (as a rule of characterization) applies whether or not the parties to the transaction are related. Thus, the excess of the posted price over the fair market value may never be taken into account in determining a person's FOGEI under section 907(a) but may be taken into account in determining a person's FORI.

(b) *Adjustments.* If a taxpayer does not comply with the initial requirement of paragraph (a)(2) of this section, adjustments under section 907(d) may be made only by the Commissioner in the same manner that section 482 is administered. Correlative and similar adjustments consistent with the substantive and procedural principles of section 482 and § 1.482–1(d) apply. However, section 907(d) is not a limitation on section 482. If a taxpayer disposing of minerals at a posted price does comply with the initial computation requirement of this section, adjustments and correlative and similar

adjustments consistent with the substantive and procedural aspects of section 482 and § 1.482–1(d) shall apply, whether made on the return by the taxpayer or on a later audit. This paragraph (b) does not apply to an actual sale or exchange of minerals made between persons with respect to whom adjustments under section 482 would never apply (but see paragraph (a)(4) of this section).

(c) *Definitions.* For purposes of this section—

(1) *Foreign government.* The term *foreign government* means only the integral parts or controlled entities of a foreign sovereign and political subdivisions of a foreign country.

(2) *Minerals.* The term *minerals* has the same meaning as in § 1.907(c)–1(f)(1).

(3) *Posted price.* The term *posted price* means the price set by, or at the direction of, a foreign government to calculate income for purposes of its tax or at which minerals must be sold.

(4) *Other pricing arrangement.* The term *other pricing arrangement* in section 907(d) means a pricing arrangement having the effect of a posted price.

(5) *Fair market value.* The term *fair market value*, whether or not at the port prior to export, is determined in the same way that the wellhead price is determined under § 1.907(c)–1(b)(6).

§ 1.907(e)–1 Transitional rules (for amounts carried between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982).

(a) *General Rule.* Section 907(e)(1) provides rules for carryovers of FOGEI and FORI taxes from taxable years beginning before January 1, 1983 (the general effective date of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)), to taxable years beginning after December 31, 1982. Section 907(e)(2) provides for carrybacks of those taxes from taxable years beginning after December 31, 1982, to taxable years beginning before January 1, 1983. Both the carryover and carryback amounts shall not exceed the lesser of the amount deemed paid or accrued which would have been deemed paid or accrued under the carryback and carryover rules of section 907(f) and § 1.907(f)–1 (covering carryback and carryover of taxes that both begin after December 31, 1982) or the amount which would have been deemed paid or accrued if—

(1) Pre-TEFRA section 907(b) (which provided for a separate section 904 limitation for FORI taxes),

(2) Pre-TEFRA section 907(f) (which limited the carryback and carryover of FOGEI taxes to 2% of FOGEI for the year of origin), and

(3) Pre-TEFRA section 904(f)(4) (which dealt with the determination of foreign oil related loss if section 907 applied) had remained in effect for taxable years beginning after December 31, 1982.

(b) *Rules for carryover of FORI and pre-TEFRA non-FORI taxes*—(1) Under this section, in general—

(i) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any carryover year may not exceed the excess section 907(b) limitation, as in effect prior to the general effective date of TEFRA, for that carryover year;

(ii) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any carryover year may not exceed the excess section 904(d) general limitation, as in effect before the general effective date of TEFRA for that carryover year; and

(iii) The total of the amounts carried forward under paragraph (b)(1) (i) and (ii) of this section to any carryover year may not exceed the excess section 904(d) general limitation, as in effect after the general effective date of TEFRA, for that carryover year.

(2) The amount of unused pre-TEFRA FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(i) of this section (if applicable).

(3) The amount of unused pre-TEFRA, non-FORI taxes that may be carried forward to any succeeding carryover year is the total of those taxes, less the amount of those taxes deemed accrued in the carryover year after reduction in accordance with paragraph (b)(1)(ii) of this section (if applicable).

(c) *Examples.* The provisions of section 907(e)(1) may be illustrated by the following examples. For purposes of these examples, assume the following:

(1) The corporation's preliminary U.S. tax liability is computed at an effective rate of 46%;

(2) A term modified by "old" refers to the meaning the term had prior to the general effective date of TEFRA;

(3) The only foreign source income which the corporation had prior to 1983 is old FORI (which included FOGEI and other FORI) and old section 904(d)(1)(C) income (*i.e.*, income other than interest, DISC dividends and FORI); and

(4) The only foreign source income the corporation had during 1983 and 1984 was section 904(d)(1)(C) income (*i.e.*, income other than interest and DISC dividends) as applicable during those years.

Example 1—(i) *Facts.* (A) X, a calendar year U.S. corporation organized on January 1, 1982, uses the accrual method of accounting. For 1982, X had the following relevant tax items:

	1982
FOGEI	$500
FOGEI taxes	285
Section 907 (a) limitation (46% × $500)	230
Unused FOGEI tax	35
Old section 907(f)(1) limitation: (2% × $500)	10
Unused old section 907(b) limitation FORI taxes (not including unused FOGEI taxes)	63
Unused old section 904(d)(1)(C) taxes	20

(B) X's tax items for 1983 and 1984 under the Code provisions applicable to those years were as follows:

TABLE I

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) FORI	400	350
(c) Other foreign taxable income.	122	250
(d) Total taxable income (domestic and foreign).	2,000	2,500
(e) FOGEI taxes	750	500
(f) FORI taxes	140	62
(g) Other foreign taxes.	50	31
(h) Section 907(a) limitation (46% × (a)).	460	552
(i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers).	650 ((f) + (g) + (h))	593 ((e) + (f) + (g))
(j) Preliminary U.S. tax (46% × (d)).	920	1,150
(k) Section 904(d) overall limitation ((j) × (a) ÷ (b) + (c) ÷ (d)).	700	828
(l) Excess FOGEI taxes (or excess limitation) ((e) – (k)).	290	(52)
(m) Excess section 904(d) taxes (or excess limitation) ((h) – (k)).	(50)	(235)

(C) X's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE II

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) Old FORI (less FOGEI).	400	350
(c) Other foreign taxable income.	122	250
(d) Total taxable income (domestic and foreign).	2,000	2,500
(e) FOGEI taxes	750	500
(f) Old FORI taxes (less (e)).	140	62
(g) Other foreign taxes	50	31
(h) Section 907(a) limitation (46% × (a)).	460	552
(i) Old FORI taxes (after section 907(a) limitation excluding carryovers).	600 ((f) + (h))	562 ((e) + (f))
(j) Old section 904(d)(1)(C) taxes ((g)).	50	31
(k) Preliminary U.S. tax (46% × (d)).	920	1,150
(l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d)).	644	713
(m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d)).	56	115
(n) Excess FOGEI taxes (or excess limitation) ((e) – (h)).	290	(52)
(o) Excess old FORI taxes (or excess limitation) ((i) – (l)).	(44)	(151)
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j) – (m)).	(6)	(84)

(ii) *Carryover from 1982 to 1983*—(A) *Unused FOGEI taxes.* X has $35 of unused FOGEI taxes available for carryover from 1982. Pursuant to section 907(f)(3)(A), X must determine its section 907(f) FOGEI tax carryover (taking into account the section 907(e) transition rules) from 1982 to 1983 before it determines its section 904(c) general foreign tax carryover. In determining the carryover from 1982 to 1983, section 907(e)(1) requires that the old section 907(f)(1) limitation be applied. Under old section 907(f)(1), FOGEI taxes in excess of the section 907(a) limitation could only be carried over to succeeding years in an amount equal to 2% of the FOGEI ($10 in this example) in the year of origin. See § 1.907(f)–1A(b)(2). The $10 is not deemed accrued, however, in 1983 because FOGEI taxes paid or accrued in 1983 ($750) exceed the section 907(a) limitation ($460) for 1983 (Table I, 1983, line (i)).

(B) *Unused FORI taxes.* X has $63 of unused old section 907(b) limitation FORI taxes available for carryover from 1982. Pursuant to section 907(e)(1), the amount of unused FORI taxes that may be carried over from 1982 to 1983 may not exceed the excess old section 907(b) limitation for 1983. Since the excess 1983 old section 907(b) limitation is $44 (Table II, 1983, line (o)), only that amount of the $63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over and deemed accrued in 1983. Therefore, X has unused 1982 old section 907(b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of $19 ($63 less $44) available for carryover to 1984.

(C) *Unused other foreign taxes.* X has $20 of unused old section 904(d)(1)(C) taxes available for carryover from 1982. However, only $8 may be deemed accrued in 1983 since for 1983 the excess old section 904(d)(1)(C) limitation was only $8 (Table II, 1983, line (p)). Therefore, X has unused 1982 old section 904(d)(1)(C) taxes in the amount of $14 ($20 less $8) available for carryover to 1984.

(iii) *Carryover from 1982 to 1984*—(A) *Unused FOGEI taxes.* The unused FOGEI tax carryover from 1982 of $10 will be deemed accrued in 1984 since the limitations of both old and new section 907(f)(2) do not limit the deemed accrual. The $10 amount is not as great as the lesser of the excess extraction limitation under new section 907(f)(2)(A), $52 (Table I, 1984, line (1)) and the excess overall limitation under new section 907(f)(2)(B), $235 (Table I, 1984, line (m)). Likewise, the $10 amount is not as great as the lesser of the excess extraction limitation under old section 907(f)(2)(A), $52 (Table II, 1984, line (n)) and the excess oil related limitation under old section 907(f)(2)(B), $151 (Table II, 1984, line (o)).

(B) *Unused FORI taxes* The $29 of 1982 unused old section 907(b) limitation FORI taxes (including $10 of unused FOGEI taxes) are deemed accrued in 1984 since they do not exceed the excess old section 907(b) limitation for 1984, $151 (Table II, 1984, line (o)).

(C) *Unused other foreign taxes.* X's $14 of unused 1982 old section 904(d)(1)(C) taxes are deemed accrued in 1984 since they do not exceed the old section 904(d)(1)(C) limitation, $84 (Table II, 1984, line (p)).

Example 2—(i) *Facts.* Assume the same facts as in *Example 1* except that X's other foreign taxable income for 1983, line (c) in both tables in *Example 1*, is $48. It is assumed that total taxable income remains the same as in *Example 1.*

(ii) *Carryover from 1982 to 1983*—(A) *Unused FOGEI taxes.* Same result as in *Example* (1). None of the $10 of unused FOGEI taxes carried over from 1982 may be deemed accrued in 1983.

(B) *Unused FORI and other foreign taxes.* The old excess section 907(b) limitation for 1983 remains at $44 (Table II, 1983, line (o)). There is, however, no old excess section 904(d)(1)(C) limitation for 1983 (Table II, 1983, line (p)). The tentative carryovers are therefore $44 of FORI taxes and $0 of section 904(d)(1)(C) taxes. In addition, the excess section 904(d) overall limitation (Table I, 1983, line (m)) is now only $15. Accordingly, under paragraph (b)(1)(D) of this section, the maximum amount of FORI taxes and old section 904(d)(1)(C) taxes that may be carried forward to 1983 is $15. Therefore, $15 of the $63 of total unused 1982 FORI taxes (not including unused FOGEI taxes) may be carried over from 1982 and deemed accrued in 1983. X has unused 1982 section 907(b) limitation FORI taxes (not including unused FOGEI taxes) in the amount of $48 available for carryover to 1984. X need not reduce the unused 1982 FORI taxes by the amount ($44) which would have been deemed accrued had the old excess section 907(b) limitation applied.

Example 3—(i) *Facts.* (A) Y, a U.S. corporation organized on January 1, 1982, uses the accrual method of accounting and the calendar year as its taxable year. For 1982, Y had the following tax items:

Table I

(a) FOGEI	$ 900
(b) Old FORI (less FOGEI)	250
(c) Other foreign taxable income	200
(d) World wide taxable income	2,050
(e) FOGEI taxes	300
(f) Old FORI taxes (less (e))	130
(g) Other foreign taxes	170
(h) Section 907(a) limitation (46% × (a))	414
(i) Old FORI taxes (after section 907(a) limitation) (lesser of (e) or (h) plus (f))	430
(j) Old section 904(d)(1)(C) taxes ((g))	170
(k) Preliminary U.S. tax (46% × (d))	943
(l) Old FORI section 907 (b) limitation ((k) × (a) + (b) ÷ (d))	529
(m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))	92
(n) Excess FOGEI taxes (or excess limitation) ((e)–(h))	(114)
(o) Excess old FORI taxes (or excess limitation) ((i)–(1))	(99)
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j)–(m))	78

(B) Y's tax items for 1983 and 1984 under the Code provisions applies to those years were as follows:

TABLE II

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) FORI	300	450
(c) Other foreign taxable income (loss)	200	150
(d) Total taxable income (domestic and foreign)	2,200	2,500
(e) FOGEI taxes	400	750
(f) FORI taxes	180	290
(g) Other foreign taxes	60	90

TABLE II—Continued

	1983	1984
(h) Section 907(a) limitation (46% × (a))	460	552
(i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers)	640	932
	((e) + (f) + (g))	((f) + (g) + (h))
(j) Preliminary U.S. tax (46% × (d))	1,012	1,150
(k) Section 904(d) overall limitation ((j) × (a) + (b) + (c) ÷ (d))	690	828
(l) Excess FOGEI taxes (or excess limitation) ((e) − (h))	(50)	198
(m) Excess section 904 taxes (or excess limitation) ((i) − (k))	(50)	104

(C) Y's foreign tax items for 1983 and 1984, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE III

	1983	1984
(a) FOGEI	$1,000	$1,200
(b) Old FORI (less FOGEI)	300	450
(c) Other foreign taxable income	200	150
(d) Total taxable income (domestic and foreign)	2,200	2,500
(e) FOGEI taxes	400	750
(f) Old FORI taxes (less (e))	180	290
(g) Other foreign taxes	60	90
(h) Section 907(a) limitation (46% × (a))	460	552
(i) Old FORI taxes (after section 907(a) limitation excluding carryovers)	580	842
	((f) + (e))	((f) + (h))
(j) Old section 904(d)(1)(C) taxes ((g))	60	90
(k) Preliminary U.S. tax (46% × (d))	1,012	1,150
(l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d))	598	759
(m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))	92	69
(n) Excess FOGEI taxes (or excess limitation) ((e)–(h))	(60)	198
(o) Excess old FORI taxes (or excess limitation) ((i)–(1))	(18)	83
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation) ((j)–(m))	(32)	21

(ii) *Carryover from 1982 to 1983*—(A) *Unused FOGEI taxes.* For 1982, Y has no unused FOGEI taxes (Table I, 1982, line (n)) since FOGEI taxes paid, $300 (Table I, 1982, line (e)) is less than the section 907(a) limitation, $414 (Table I, 1982, line (h)).

(B) *Unused FORI taxes.* For 1982, Y has no unused old FORI taxes (Table I, 1982, line (o)) since the old FORI section 907(b) limitation, $529 (Table I, 1982, line (l)) exceeds old FORI taxes for 1982, $430 (Table I, 1982, line (i)).

(C) *Unused other foreign taxes.* For 1982, Y has $78 of unused old section 904(d)(1)(C) taxes (Table I, 1982, line (p)). The unused old section 904(d)(1)(C) taxes from 1982 are deemed accrued in 1983 only to the extent of the excess old section 904(d)(1)(C) limitation for 1983, $32 (Table III, 1983, line (p)). Thus, $32 of the unused old section 904(d)(1)(C) taxes for 1982 are deemed accrued in 1983 and $46 are available for carryover to 1984.

(iii) *Carryback of unused FOGEI taxes from 1984 to 1982.* Y has $198 of unused FOGEI taxes for 1984 (Table II, 1984, line (1)). These taxes are deemed accrued in 1982 only to the extent they would have been deemed accrued in 1982 had old section 907(f) remained in effect for 1984. Under old section 907(f), Y's carryback of unused FOGEI taxes would have been limited to $24, 2% of its FOGEI for 1984. All of the $24 is deemed accrued in 1982 because Y's excess section 907(a) limitation for 1982 is $114 (Table I, line (n)) and its excess old FORI section 907(b) limitation for 1982 is $99 (Table I, line (o)).

(iv) *Carryback of unused section 904(d)(1)(C) taxes from 1984 to 1982.* Y has $104 of unused section 904(d)(1)(C) taxes for 1984 (Table II, 1984, line (m)). Those taxes may be carried from 1984 to 1982 but only to the extent of the amount of unused old FORI taxes and unused old section 904(d)(1)(C) taxes from 1984 that would have been deemed accrued in 1982 had old sections 907 (b) and (f) and 904(f)(4) remained in effect for 1984. The amount of unused old FORI taxes from 1984, $83 (Table III, 1984, line (o)), that would have been deemed accrued in 1982 is $75 the excess old FORI section 907(b) limitation for 1982, $99 (Table I, line (o)) less $24 of carryback of unused FOGEI taxes from paragraph (iii) of this example. Unused FOGEI taxes carried back to an excess limitation year are applied before unused other old FORI taxes. See § 1.907(b)–2A(d)(1)(ii). Although Y has $21 of unused old section 904(d)(1)(C) taxes for 1984 (Table III, 1984, line (p)) none are deemed accrued in 1982 because there is no excess old section 904(d)(1)(C) limitation for 1982 (Table I, line (p)). Thus, only $75 of the $104 of unused section 904(d)(1)(C) taxes from 1984 are deemed accrued in 1982.

Example 4—(i) *Facts.* (A) X, a calendar year U.S. corporation, was organized on January 1, 1982. On that same day, X and Y, an unrelated foreign corporation, organized Z, a calendar year corporation, in country A. X and Y each received 50% of the stock of Z. During 1982, Z earned $1,000 of FOGEI and $800 of FORI. Z paid to A as taxes, $460 on its FOGEI and $400 on its FORI. During 1983, Z earned $1,000 of FOGEI and paid taxes of $460 on that income. Z did not earn any FORI in 1983. On December 31, 1983, X made a pro rata distribution of all of its accumulated earnings and profits ($1,480) to X and Y. X received a dividend from Z in the amount of $740 plus a section 78 dividend amount of $660.

(B) X's tax items for 1983 under the Code provisions applicable to those years were as follows:

TABLE I

(a) FOGEI (including section 78 dividend)	$1,000
(b) FORI (including section 78 dividend)	400
(c) Other foreign taxable income	200
(d) Total taxable income (domestic and foreign)	2,000
(e) FOGEI taxes	460
(f) FORI taxes	200
(g) Other foreign taxes	30
(h) Section 907(a) limitation (46% × (a))	460
(i) Total creditable foreign taxes (after section 907(a) limitation excluding carryovers) ((ff) + (g) + (h))	690
(j) Preliminary U.S. Tax (46% × (d))	920
(k) Section 904(d) overall limitation ((j) X (a) + (b) + (c) ÷ (d)	736

TABLE I—Continued

(l) Excess FOGEI taxes (or excess limitation) ((e) − (h))	0
(m) Excess section 904(d) taxes (or excess limitation) ((i) − (k))	(40)

(C) X's foreign tax items for 1983, had old sections 907 (b) and (f) and 904(f)(4) applied, would have been as follows:

TABLE II

(a) FOGEI (including section 78 dividend)	$1,000
(b) Old FORI (less FOGEI) (including section 78 dividend)	400
(c) Other foreign taxable income	200
(d) Total taxable income (domestic and foreign)	2,000
(e) FOGEI taxes	460
(f) Old FORI taxes (including (e))	260
(g) Other foreign taxes	30
(h) Section 907(a) limitation (46% × (a))	460
(i) Old FORI taxes (after section 907(a) limitation excluding carryovers) ((f) + (h))	660
(j) Old section 904(d)(1)(C) taxes ((g))	30
(k) Preliminary U.S. tax (46% × (d))	920
(l) Old FORI section 907(b) limitation ((k) × (a) + (b) ÷ (d))	644
(m) Old section 904(d)(1)(C) limitation ((k) × (c) ÷ (d))	92
(n) Excess FOGEI taxes (or excess limitation) ((e) − (h))	0
(o) Excess old FORI taxes (or excess limitation) ((i) − (l))	16
(p) Excess old section 904(d)(1)(C) taxes (or excess limitation ((j) − (m))	(62)

(ii) *Application of old section 907(b) limitation.* The section 902 deemed paid credit with regard to the dividend X received in 1983 from Z was $660 ($460 of FOGEI taxes and $200 of old other FORI taxes) (Table II, Line (f)). Of this amount, $430 were old section 907(b) limitation FORI taxes from 1982 ($230 of FOGEI taxes and $200 of old other FORI taxes). Pursuant to section 907(e)(1), the amount of deemed paid old FORI taxes from 1982 may not exceed the old section 907(b) limitation for 1983, $644 (Table II, Line (l)) after reduction for the old FORI taxes deemed paid from 1983, $230 on FOGEI earned by Z in 1983. The remainder of the limitation $414 ($644 less $230) is apportioned on a pro-rata basis between the deemed paid FOGEI taxes from 1982 ($230) and the deemed paid old other FORI taxes from 1982 ($200). Accordingly, $221.44 of FOGEI taxes ($414 × $230/$430) and $192.56 of old other FORI taxes ($414 × $200/$430) may be deemed accrued in 1983. The remainder of the deemed paid old FORI taxes from 1982, $8.56 of FOGEI taxes ($230 less $221.44) and $7.44 of old other FORI taxes, may be carried forward and deemed accrued in 1984.

§ 1.907(f)–1 Carryback and carryover of credits disallowed by section 907(a) (for amounts carried between taxable years that each begin after December 31, 1982).

(a) *In general.* If a taxpayer chooses the benefits of section 901, any unused FOGEI tax paid or accrued in a taxable year beginning after December 31, 1982, may be carried to the taxable years specified in section 907(f) under the carryback and carryover principles of this section § 1.904–2(b). See section 907(e) and § 1.907(e)–1 for transitional rules that apply to unused FOGEI taxes carried back or forward between a taxable year beginning before January 1, 1983, and a taxable year beginning after December 31, 1982.

(b) *Unused FOGEI tax*—(1) *In general.* The "unused FOGEI tax" for purposes of this section is the excess of the FOGEI taxes for a taxable year (year of origin) over that year's limitation level (as defined in § 1.907(a)–1(b)).

(2) *Year of origin.* The term "year of origin" in the regulations under section 904 corresponds to the term "unused credit year" under section 907(f).

(c) *Tax deemed paid or accrued.* The unused FOGEI tax from a year of origin that may be deemed paid or accrued under section 907(f) in any preceding or succeeding taxable year ("excess limitation year") may not exceed the lesser of—

(1) The excess extraction limitation for the excess limitation year, or

(2) The excess general section 904 limitation for the excess limitation year.

(d) *Excess extraction limitation.* Under section 907(f)(2)(A), the "excess extraction limitation" for an excess limitation year is the amount by which that year's section 907(a) extraction limitation exceeds the sum of—

(1) The FOGEI taxes paid or accrued, and

(2) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryback or carryover from preceding years of origin.

(e) *Excess general section 904 limitation.* Under section 907(f)(2)(B), the "excess general section 904 limitation" for an excess limitation year is the amount by which that year's section 904 general limitation exceeds the sum of—

(1) The general limitation taxes paid or accrued (or deemed to have been paid under section 902 or 960) to all foreign countries and possessions of the United States during the taxable year,

(2) The general limitation taxes deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(3) The FOGEI taxes deemed paid or accrued in that year by reason of a section 907(f) carryover (or carryback) from preceding years of origin.

(f) *Section 907(f) priority.* If a taxable year is a year of origin under both section 907(f) and section 904(c), section 907(f) applies first. See section 907(f)(3)(A).

(g) *Cross-reference.* In computing the carryback and carryover of disallowed credits under section 907(f), the principles of § 1.904–2 (d), (e), and (f) apply.

(h) *Example.* The following example illustrates the application of section 907(f).

Example. X, a U.S. corporation organized on January 1, 1983, uses the accrual method of accounting and the calendar year as its taxable year. X's only income is income which is not subject to a separate tax limitation under section 904(d). X's preliminary U.S. tax liability indicates an effective rate of 46% for taxable years 1983–1985. X has the following foreign tax items for 1983–1985:

	1983	1984	1985
1. FOGEI	$15,000	$20,000	$10,000
2. FOGEI taxes	7,500	9,200	4,200
3. Other foreign taxable income	8,000	5,000	10,000
4. Other foreign taxes	3,200	2,000	3,000
5. (a) Section 907(a) limitation (.46 x Line 1)	6,900	9,200	4,600
(b) General section 904 limitation (.46 x (line 1 plus line 3))	10,580	11,500	9,200
6. (a) Unused FOGEI taxes (excess of line 2 over line 5(a))	600	0	0
(b) Unused general limitation taxes (excess of line 4 plus lesser of line 2 or line 5(a) over line 5(b))	0	0	0
7. (a) FOGEI taxes from years preceding 1983 deemed accrued under section 907(f)	0	0	0
(b) Section 904 general limitation taxes from years preceding 1983 deemed accrued under section 904(c)	0	0	0
8. (a) Excess section 907(a) limitation (excess of line 5(a) over sum of line 2 and line 7(a))	0	0	400
(b) Excess section 904 general limitation (excess of line 5(b) over sum of line 4, lesser of line 2 and line 5(a) and line 7(b))	480	300	2,000
9. Limit on FOGEI taxes that will be deemed accrued under section 907(f) (lesser of line 8(a) and line 8(b))	0	0	400

X has unused 1983 FOGEI taxes of $600. Since the excess section 907(a) limitation for 1984 is zero, the unused FOGEI taxes are carried to 1985. Of the $600 carryover, $400 is deemed accrued in 1985 and the balance of $200 is carried to following years (but not to a year after 1988). After the carryover from 1983 to 1985, the excess section 904 general limitation for 1985 (line 8(b)) is reduced by $400 to $1,600 to reflect the amount of 1983 FOGEI taxes deemed accrued in 1985 under section 907(f).

Par. 5. In § 1.907(a)-0A, paragraph (a) is revised to read as follows:

§ 1.907(a)-0A Introduction (for taxable years beginning before January 1, 1983).

(a) *Effective dates.* The provisions of §§ 1.907(a)-0A through 1.907(f)-1A apply to taxable years beginning before January 1, 1983, and all references in these regulations to section 907 are to section 907 as it existed prior to the amendments made by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 448). For provisions that apply to taxable years beginning after December 31, 1982, see §§ 1.907 (a)-0 through 1.907(f)-1.

* * * * *

Par. 6. Section 1.907(a)-0AT is removed.

Par. 7. Section 1.907(c)-1A(d)(3) is revised to read as follows:

§ 1.907(c)-1A Definitions relating to FORI and FOGEI (for taxable years beginning before January 1, 1983).

* * * * *

(d) *Assets used in a trade or business.*

* * *

(3) *Stock.* Stock of any corporation (whether foreign or domestic) will not be treated as an asset used by a person in section 907(c) activities. This provision applies to taxable years beginning after December 31, 1974, and beginning before January 1, 1983.

* * * * *

Par. 8. Section 1.907(c)-1AT is removed.

Dated: February 14, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-5583 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8340]

RIN 1545-AN24

Adjusted Current Earnings, Foreign Sales Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the alternative minimum tax for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to determine their alternative minimum tax.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 566-4104 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986. This Treasury Decision would conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106), and section 11301 (b) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

On May 3, 1990, the **Federal Register** published a notice of proposed rulemaking (55 FR 18626). A number of public comments were received and a public hearing was held on October 16, 1990. After consideration of the written comments and those presented at the hearing, the proposed regulations are adopted as revised in this Treasury Decision.

Public Comments

I. Section 1.56 (g)-1(a)

Section 1.56(g)-1(a)(5) of the regulations provides that except as otherwise provided by regulations or other guidance issued by the Internal Revenue Service, all Internal Revenue Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining adjusted current earnings (ACE). The regulations finalize § 1.56(g)-1(a)(5) without change because the Internal Revenue Service believes Congress intended that ACE (and the alternative minimum tax (AMT) in general) be a separate tax system.

The Service specifically requested comments when it published the notice of proposed rulemaking on whether the statute and the legislative history required ACE to be a separate tax system, and if so, whether there were ways in which the Service could mitigate the resulting complexity without deviating from the substantive results Congress intended. The Service received no comments on these issues.

As stated above, § 1.56(g)-1(a)(5) provides that ACE is a separate tax system except to the extent the Service provides otherwise. The Service has not expanded § 1.56(g)-1(a)(5) to include any exceptions because the Service is currently studying this and related matters. The Service again requests comments and suggestions on ways in which the Service might simplify ACE and the AMT without deviating from the results Congress intended. See, e.g., proposed § 1.56(g)-1(r) in the notice of proposed rulemaking published this day in the **Federal Register**.

II. Section 1.56(g)-1(c)

A. Income From the Discharge of Indebtedness

Section 56(g)(4)(B) and § 1.56(g)-1(c) of the regulations provide that ACE includes amounts taken into account in determining earnings and profits but that are excluded from pre-adjustment alternative minimum taxable income (pre-adjustment AMTI). Section 56(g)(4)(B), as amended by section 7611(f)(2) of the Revenue Reconciliation Act of 1989, Public Law 101-239, provides that ACE does not include income from the discharge of indebtedness which is excluded from gross income under section 108 (or the corresponding provisions of prior law) Section 1.56(g)-1(c)(4) of the proposed regulations provided that "[a]mounts excluded from gross income under section 108 * * * or any corresponding provisions of law repealed by the Bankruptcy Tax Act of 1980 are not included in adjusted current earnings." Commenters pointed out that the proposed regulations did not address the treatment of income from the discharge of indebtedness which is excluded under a prior law that was not repealed by the Bankruptcy Tax Act of 1980.

The final regulations under § 1.56(g)-1(c)(4)(i) are clarified to also exclude from ACE income from the discharge of indebtedness that is excluded from gross income under law that was not repealed by the 1980 Act.

B. Federal Income Tax Refunds

In response to comments received, § 1.56(g)-1(c)(4)(ii) of the final regulations is added to provide that refunds of federal income taxes are not included in ACE.

C. Income Accrued on Behalf of States and Municipalities

Section 115 provides that gross income does not include the income derived from any public utility or the exercise of any essential governmental function and accruing to a state or one of its political subdivisions. Income earned by a state generally is not subject to Federal income tax. See Rev. Rul. 71-131, 1971-1 C.B. 28; Rev. Rul. 71-132, 1971-1 C.B. 29; Rev. Rul. 87-2, 1987-1 C.B. 18. Because income clearly would not be subject to Federal income tax (including the AMT and ACE) if earned directly by a state or its political subdivisions, the fact that it accrues to a state or local government through an intermediary corporation does not change the result. Thus, § 1.56(g)-1(c)(4)(iii) of the final regulations provides that income that accrues to a state or local government through a corporation and that is not included in the gross income of the corporation under section 115 is not included in ACE.

D. Distributions of Appreciated Property

Several commenters were concerned that a distribution of appreciated property could result in an increase in earnings and profits that is not included in pre-adjustment AMTI, thus causing an increase in ACE. In most cases, this does not occur because there is no increase in earnings and profits that is permanently excluded from pre-adjustment AMTI.

The final regulations clarify that if a distribution of property gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to the distribution of that item of property are combined for purposes of determining the net effect of the distribution on the corporation's ACE for the taxable year. No ACE adjustment is required unless the net increase in earnings and profits exceeds the amount included in pre-adjustment AMTI.

In the case of a corporation's distribution of appreciated property with respect to its stock, section 312 provides that the earnings and profits of the distributing corporation is increased by the excess of the fair market value over the adjusted basis of the property (section 312(b)(1)) and decreased by the fair market value of the property (sections 312 (a)(3) and (b)(2)). In addition, section 311(b)(1) provides that if a corporation distributes appreciated property to a shareholder in a distribution to which subpart A, part I of subchapter C applies, gain is recognized to the distributing corporation as if the property were sold to the shareholder at its fair market value. Thus, the excess of the distributed property's fair market value over its adjusted basis generally is included as gain under section 311(b)(1) in computing the distributing corporation's taxable income and pre-adjustment AMTI. Because the gain that is included in pre-adjustment AMTI will usually equal or exceed the net increase in earnings and profits, no ACE adjustment is needed in most cases.

E. Distribution of Encumbered Property or Shareholder's Assumption of Liabilities in Connection With a Distribution

Several commenters were concerned that a distribution of encumbered property or a shareholder's assumption of a liability in connection with a distribution of property could result in an increase in earnings and profits that is not included in pre-adjustment AMTI, thus causing an increase in ACE. In most cases, this does not occur because there is no increase in earnings and profits that is permanently excluded from pre-adjustment AMTI.

The final regulations clarify that if a distribution of encumbered property or the assumption by a shareholder of a liability to which the property is subject in connection with a distribution of property gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to the distribution of that item of property are combined for purposes of determining the net effect of the distribution on the corporation's ACE for the taxable year.

In the case of a distribution by a corporation with respect to its stock, section 312(a)(3) provides that the earnings and profits of the corporation is decreased by the adjusted basis of distributed property. Section 312(b) provides that in the case of a distribution with respect to stock of appreciated property, earnings and profits is increased by the excess of the fair market value over the adjusted basis of the property and decreased by the fair market value of the property. Section 312(c) provides that in making the adjustments to earnings and profits under section 312 (a) and (b) for distributions with respect to stock, proper adjustment shall be made for the amount of any liability to which the distributed property is subject, and the amount of any liability of the corporation assumed by the shareholder in connection with the distribution. Thus, the amount of any decrease in earnings and profits as a result of a distribution with respect to stock is adjusted by the amount of any liability described in section 312(c) (1) or (2).

Section 311(b)(2) provides that if property is distributed subject to a liability or the shareholder assumes a liability in connection with the distribution, the fair market value of the property distributed shall be treated as not less than the amount of the liability. The excess of the distributed property's fair market value (determined in accordance with section 311(b)(2)) over its adjusted basis is included as gain under section 311(b)(1) in computing taxable income and pre-adjustment AMTI.

In many cases, the amount included in pre-adjustment AMTI (after applying the provisions of section 311, 336, or 356) will equal or exceed the net earnings and profits effect of the distribution. In such cases, no additional adjustment will be made in computing the distributing corporation's ACE.

F. Other Earnings and Profits Items

Commenters were concerned that the regulations did not specify that two particular items that are excluded from pre-adjustment AMTI do not increase earnings and profits and thus do not increase ACE. These two items are lessee improvements to leasehold property that are excluded from the lessor's gross income under section 109, and non-shareholder contributions to the capital of a corporation that are excluded from the corporation's income under section 118. Because these items do not generate earnings and profits when they are received by a corporation, the final regulations specify that these items are excluded from both pre-adjustment AMTI and ACE.

G. Surrender of Life Insurance Contracts

Section 1.56(g)-1(c)(5)(i) of the final regulations clarifies that if the ACE basis in a life insurance contract exceeds the amount of death benefits received or the amount received when the contract is surrendered, then the

resulting loss is allowed as a deduction in computing ACE.

H. Partial Lists of Earnings and Profits Items

The proposed regulations contain two non-exclusive lists of items that increase ACE. See §§ 1.56(g)–1(c)(6) and 1.56(g)–1(d)(3). Several commenters requested that new items added to these lists have prospective effect only.

Guidance on the proper treatment of an earnings and profits item for purposes of ACE may be effective retroactively. The Service is aware, however, of the difficulties that may arise in computing ACE if the proper treatment of an item in computing earnings and profits is uncertain. Therefore, when specifying new items to be included in ACE, the Service will consider making the treatment of the new item effective prospectively if substantial uncertainty as to treatment of the item in computing earnings and profits justifies this prospective effect for purposes of ACE. For example, § 1.56(g)–1(c)(6)(x) is added to the final regulations to provide that amounts that are excluded from pre-adjustment AMTI as a result of an election under section 831(b) (allowing certain insurance companies to compute their taxable income using only their investment income) are included in ACE for all taxable years beginning after December 31, 1989. Retroactivity is warranted in this case because the ACE treatment of section 831(b) elections was mentioned in the Conference Report to the Tax Reform Act of 1986. The final regulations also provide that additional items that increase ACE may be identified by the Commissioner in published guidance other than regulations.

III. Section 1.56(g)–1(d)

A. Dividends Paid to an ESOP

Many commenters questioned the disallowance of the deduction for dividends paid to an employee stock ownership loan (ESOP) in computing ACE. The Conference Report to the Tax Reform Act of 1986 states that "[a]djusted current earnings measures pre-tax income without diminution by reason of any dividend paid * * *. [N]o deduction is allowed with respect to a dividend paid." H.R. Rep. No. 841, 99th Cong., 2d Sess. II–276 (1986). Thus, § 1.56(g)–1[d][3](iii)(E) provides that ACE is determined without any section 404(k) deduction for dividends paid to an ESOP.

B. Nonpatronage Dividends of Cooperatives

Several commenters questioned the disallowance of the deduction under section 1382(c)(2) for nonpatronage dividends that are not paid with respect to stock. Section 1.56(g)–1(d)(3)(iii)(F) of the final regulations clarifies that the deduction under section 1382(c)(1) is disallowed in computing ACE, while the deduction under section 1382(c)(2) is allowed.

IV. Section 1.56(g)–1(f)

Commenters noted that § 1.56(g)–1(f)(2) merely states that section 173 does not apply in computing ACE. Commenters were concerned that in the absence of section 173, taxpayers would be required to determine which circulation costs are related to increasing circulation, which costs are related to maintaining circulation, and whether any of their circulation costs have a determinable useful life. The final regulations note that section 59(e) allows taxpayers to elect to capitalize all circulation costs and amortize them over three years. This election applies for purposes of ACE, as well as regular taxable income and pre-adjustment AMTI. Thus, taxpayers have a means to avoid the complexities of pre-section 173 law.

V. Section 1.56(g)–1(k)

Section 56(g)(4)(G) and § 1.56(g)–1(k) require certain corporations that have ownership changes (as defined in section 382) to restate the adjusted basis of their assets. A corporation has an ownership change if first, the corporation is a loss corporation, and second, there is an increase of more than 50 percentage points in stock ownership by 5-percent shareholders during the testing period (usually the three-year period ending on the date on which a transaction is tested for an ownership change). See generally section 382(g). A corporation is a loss corporation under § 1.382–2T(f)(1) if it has certain net operating or capital losses, excess credits as defined in section 383, or a net unrealized built-in loss.

In order to simplify the determination of whether a corporation is a loss corporation, § 1.56(g)–1(k)(2) of the proposed regulations provided that in determining whether a corporation is a loss corporation, its net unrealized built-in loss is calculated using the regular tax basis of its assets. This relieves all corporations of the burden of making ACE, as well as regular tax, determinations of their status as loss corporations. Section 1.56(g)–1(k)(3) required that once a loss corporation has an ownership change, the determination of whether the corporation has a net unrealized built-in loss to be eliminated is made using the ACE basis of its assets.

Commenters suggested that the calculation of any net unrealized built-in loss under § 1.56(g)–1(k)(3), as well as the corporation's status as a loss corporation under § 1.56(g)–1(k)(2), be determined by reference to the regular tax basis of the assets. The recommended approach, however, would narrow the scope of section 56(g)(4)(G) by allowing taxpayers that have a net unrealized built-in loss for ACE purposes but not for regular tax purposes to avoid restating the basis of their assets for ACE. Thus, the final regulations under section § 1.56(g)–1(k) are unchanged from the proposed regulations. In response to comments received, § 1.56(g)–1(k)(1) clarifies that the rules of § 1.338(b)–2T(b), if otherwise applicable to the transaction, are applied in making the allocation of basis for purposes of ACE.

VI. Clarifying Changes

The final regulations contain a number of clarifying and technical changes. For example, the regulations clarify that in determining ACE, to the extent an amount is included (or deducted) in computing pre-adjustment AMTI for the taxable year (whether because an adjustment is made under section 56 or 58, because of a tax preference item under section 57, or because the item is reflected in taxable income), that amount is not again included (or deducted) in computing ACE.

Other Matters

When the proposed regulations were published, the Service invited public comments on the proposed regulations and any other issues arising under section 56(g). Although this preamble does not discuss all of the comments received, the Service did consider all comments in drafting these final regulations. The Service appreciates the submission of these comments. The final regulations do not expand the provisions of the proposed regulations dealing with the determination of ACE by corporations filing a consolidated return. The Service intends to address consolidated return issues in more detail in future regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Personnel from other offices of the Service and the Treasury, however, assisted in developing these regulations, on matters of both substance and style.

List of Subjects

26 CFR §§ 1.1–1 through 1.58–8

Credits, Income taxes, Tax liability, Tax rates.

26 CFR §§ 1.861–1 through 1.999–1

Aliens, DISC, Exports, Foreign investment in United States, Foreign tax credit, Income taxes, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)–1 is also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2373).

Par. 2. The following center heading is added before § 1.56A–1:

Regulations Applicable to Taxable Years Beginning in 1989 and Ending in 1970

Par. 3. The following center heading is added before § 1.57:

Tax Preference Regulations

Par. 4. New § 1.56(g)–0 is added to read as follows:

§ 1.56(g)–0 Table of Contents.

This section lists the paragraphs contained in § 1.56(g)–1.

§ 1.56(g)–1 Adjusted current earnings.

(a) Adjustment for adjusted current earnings.
(1) Positive adjustment.
(2) Negative adjustment.
(i) In general.
(ii) Limitation on negative adjustments.
(iii) Example.
(3) Negative amounts.
(4) Taxpayers subject to adjustment for adjusted current earnings.
(5) General rule for applying Internal Revenue Code provisions in determining adjusted current earnings.
(i) In general.
(ii) Example.
(6) Definitions.
(i) Pre-adjustment alternative minimum taxable income.
(ii) Adjusted current earnings.
(iii) Earnings and profits.
(b) Depreciation allowed.
(1) Property placed in service after 1989.
(2) Property subject to new ACRS.
(i) In general.
(ii) Rules for computing the depreciation deduction.
(iii) Example.
(3) Property subject to original ACRS.
(i) In general.
(ii) Rules for computing the depreciation deduction.
(iii) Example.
(4) Special rule for certain section 168(f) property.
(5) Certain property not subject to ACRS.
(c) Inclusion in adjusted current earnings of items included in earnings and profits.
(1) In general.
(2) Certain amounts not taken into account in determining whether an item is permanently excluded.
(3) Allowance of offsetting deductions.
(4) Special rules.
(i) Income from the discharge of indebtedness.
(ii) Federal income tax refunds.
(iii) Income earned on behalf of states and municipalities.
(5) Treatment of life insurance contracts.
(i) In general.
(ii) Inclusion of inside buildup.
(iii) Calculation of income on the contract.
(iv) Treatment of distributions under the life insurance contract.
(v) Treatment of death benefits.
(vi) Other rules.
(A) Term life insurance contracts without net surrender values.
(B) Life insurance contracts involving divided ownership.
(vii) Examples.
(6) Partial list of income items excluded from gross income but included in earnings and profits.
(7) Partial list of items excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings.
(d) Disallowance of items not deductible in computing earnings and profits.
(1) In general.
(2) Deductions for certain dividends received.
(i) Certain amounts deducted under sections 243 and 245.
(ii) Special rules.
(A) Dividends received from a foreign sales corporation.
(B) Dividends received from a section 936 corporation.
(iii) Special rule for certain dividends received by certain cooperatives.
(3) Partial list of items not deductible in computing earnings and profits.
(4) Partial list of items deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings.
(e) Treatment of income items included, and deduction items not allowed, in computing pre-adjustment alternative minimum taxable income.
(f) Certain other earnings and profits adjustments.
(1) Intangible drilling costs.
(2) Certain amortization provisions do not apply.
(3) LIFO inventory adjustments. [RESERVED]
(4) Installment sales.
(i) In general.
(ii) Exception for prior dispositions.
(iii) Special rules for obligations to which section 453A applies.
(A) In general.
(B) Limitation on application of installment method.
(C) Treatment of the ineligible portion.
(D) Treatment of the eligible portion.
(E) Coordination with the pledge rule.
(F) Example.
(g) Disallowance of loss on exchange of debt pools. [Reserved].
(h) Policy acquisition expenses of life insurance companies.
(1) In general.
(2) Reasonably estimated life.
(3) Reasonable allowance for amortization.
(4) Safe harbor for public financial statements.
(i) [Reserved].
(j) Depletion.
(k) Treatment of certain ownership changes.
(1) In general.
(2) Definition of ownership change.
(3) Determination of net unrealized built-in loss immediately before an ownership change.
(4) Example.
(l) [Reserved].
(m) Adjusted current earnings of foreign corporations. [Reserved].
(n) Adjustment for adjusted current earnings of consolidated groups.
(1) Positive adjustments.
(2) Negative adjustments.
(i) In general.
(ii) Limitation on negative adjustments.
(3) Definitions.
(i) Consolidated pre-adjustment alternative minimum taxable income.
(ii) Consolidated adjusted current earnings.
(4) Example.
(o) [Reserved].
(p) Effective dates for corporate partners in partnerships.

BEST COPY AVAILABLE

(1) In general.
(2) Application of effective dates.
(3) Example.
(q) Treatment of distributions of property to shareholders.
(1) In general.
(2) Examples.

Par. 5. New § 1.56(g)-1 is added in the appropriate place to read as follows:

§ 1.56(g)-1 Adjusted Current Earnings.

(a) *Adjustment for adjusted current earnings*—(1) *Positive adjustment.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of any taxpayer described in paragraph (a)(4) of this section is increased by the adjustment for adjusted current earnings. The adjustment for adjusted current earnings is 75 percent of the excess, if any, of—

(i) The adjusted current earnings (as defined in paragraph (a)(6)(ii) of this section) of the taxpayer for the taxable year over.

(ii) The pre-adjustment alternative minimum taxable income (as defined in paragraph (a)(6)(i) of this section) of the taxpayer for the taxable year.

(2) *Negative adjustment*—(i) *In general.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of any taxpayer is decreased, subject to the limitation of paragraph (a)(2)(ii) of this section, by 75 percent of the excess, if any, of pre-adjustment alternative minimum taxable income (as defined in paragraph (a)(6)(i) of this section), over adjusted current earnings (as defined in paragraph (a)(6)(ii) of this section).

(ii) *Limitation on negative adjustments.* The amount of the negative adjustment for any taxable year is limited to the excess, if any, of—

(A) The aggregate increases in alternative minimum taxable income in prior years under paragraph (a)(1) of this section over

(B) The aggregate decreases in alternative minimum taxable income in prior years under this paragraph (a)(2).

Any excess of pre-adjustment alternative minimum taxable income over adjusted current earnings that is not allowed as a negative adjustment for the taxable year because of the limitation in this paragraph (a)(2)(ii) is not applied to reduce any positive adjustment in any other taxable year.

(iii) *Example.* The following example illustrates the provisions of this paragraph (a)(2):

(A) Corporation P is a calendar-year taxpayer and has pre-adjustment alternative minimum taxable income and adjusted current earnings in the following amounts for 1990 through 1993:

Year	Pre-adjustment alternative minimum taxable income	Adjusted current earnings
1990	$800,000	$700,000
1991	600,000	900,000
1992	500,000	460,000
1993	500,000	100,000

(B) Under these facts, corporation P has the following positive and negative adjustments for adjusted current earnings:

Year	Negative adjustment	Positive adjustment
1990	0	0
1991	0	$225,000
1992	$75,000	0
1993	150,000	0

(C) In 1990, P has a potential negative adjustment (before the cumulative limitation) of $75,000 (75 percent of the $100,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings). Nonetheless, P is not permitted a negative adjustment because P had no prior increases in its alternative minimum taxable income due to an adjustment for adjusted current earnings.

(D) In 1991, P has a positive adjustment of $225,000 (75 percent of the $300,000 excess of adjusted current earnings over pre-adjustment alternative minimum taxable income). P is not allowed to use the prior year's excess of pre-adjustment alternative minimum taxable income over adjusted current earnings to reduce its 1991 positive adjustment.

(E) In 1992, P is permitted a negative adjustment of $75,000, the full amount of 75 percent of the $100,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings for the taxable year. This is because P's prior cumulative increases in alternative minimum taxable income due to the positive adjustments for adjusted current earnings exceed the negative adjustment for the year.

(F) In 1993, P has a potential negative adjustment (before the cumulative limitation) of $300,000 (75 percent of the $400,000 excess of pre-adjustment alternative minimum taxable income over adjusted current earnings). P's net cumulative increases in alternative minimum taxable income due to the adjustment for adjusted current earnings are $150,000 ($225,000 increase in 1991, less $75,000 decrease in 1992). Thus, P's negative adjustment in 1993 is limited to $150,000. P may not use the remaining portion ($150,000) of the negative adjustment for 1993 to reduce positive adjustments in other taxable years.

(3) *Negative amounts.* In determining whether an excess exists under paragraph (a)(1) or (a)(2) of this section, a positive amount exceeds a negative amount by the sum of the absolute numbers, and a smaller negative amount exceeds a larger negative amount by the difference between the absolute numbers. Thus, for example, a positive amount of adjusted current earnings of $30 exceeds a negative amount (or loss) of pre-adjustment AMTI of $10 by the sum of the absolute numbers, or $40 (30+10). Accordingly, the adjustment for adjusted current earnings would be 75 percent of $40, or $30. In contrast, a negative amount of adjusted current earnings of $10 exceeds a negative amount (or loss) of pre-adjustment alternative minimum taxable income of $30 by the difference between the absolute numbers, or $20 (30−10). Accordingly, the adjustment for adjusted current earnings would be 75 percent of $20, or $15.

(4) *Taxpayers subject to adjustment for adjusted current earnings.* The adjustment for adjusted current earnings applies to any corporation other than—

(i) An S corporation as defined in section 1361,

(ii) A regulated investment company as defined in section 851,

(iii) A real estate investment trust as defined in section 856, or

(iv) A real estate mortgage investment conduit as defined in section 860A.

(5) *General rule for applying Internal Revenue Code provisions in determining adjusted current earnings*—(i) *In general.* Except as otherwise provided by regulations or other guidance issued by the Internal Revenue Service, all Internal Revenue Code provisions that apply in determining the regular taxable income of a taxpayer also apply in determining adjusted current earnings. For example, the rules of part V of subchapter P (relating to original issue discount and similar matters) of the Code apply in determining the amount (and the timing) of any interest income included in adjusted current earnings under this section. In applying Code provisions, however, the adjustments of section 56(g) and this section are also taken into account. For example, in applying the capitalization provisions of section 263A, the amount of depreciation to be capitalized is based on the amount of depreciation allowed in computing adjusted current earnings.

(ii) *Example.* The following example illustrates the provisions of this paragraph (a)(5):

(A) Corporation N is a calendar year manufacturer of golf clubs. N places new manufacturing equipment in service in 1990. The regular tax depreciation allowable for this equipment is $80,000; the pre-adjustment alternative minimum taxable income depreciation is $60,000; and the adjusted current earnings depreciation is $40,000. All of the golf clubs N produces in 1990 are unsold and are in ending inventory.

(B) Pursuant to section 263A and § 1.263A-1T(b)(2)(iii)(J), N must capitalize the depreciation allowed for the year for the new manufacturing equipment in the ending inventory of golf clubs. Thus, when N sells the golf clubs (or is deemed to have sold them under its normal method of accounting), the cost of goods sold attributable to the capitalized depreciation will be $80,000 in computing regular taxable income; $60,000 in computing pre-adjustment alternative minimum taxable income; and $40,000 in computing adjusted current earnings.

(6) *Definitions.* The following terms have the following meanings for purpose of this section.

(i) *Pre-adjustment alternative minimum taxable income.* Pre-adjustment alternative minimum taxable income is the alternative minimum taxable income of the taxpayer for the taxable year, determined under section 55(b)(2), but without the adjustment for adjusted current earnings and without the alternative tax net operating loss deduction under section 56(a)(4).

(ii) *Adjusted current earnings.* Adjusted current earnings is the pre-adjustment alternative minimum taxable income of the taxpayer for the taxable year, adjusted as provided in section 56(g) and this section. To the extent an amount is included (or deducted) in computing pre-adjustment alternative minimum taxable income for the taxable year (whether because an adjustment is made under section 56 or 58, because of a tax preference item under section 57, or because the item is reflected in taxable income), that amount is not again included (or deducted) in computing adjusted current earnings for the taxable year.

(iii) *Earnings and profits.* Earnings and profits means current earnings and profits within the meaning of section 316(a)(2), that is, earnings and profits for the taxable year computed as of the close of the taxable year of the corporation without diminution by reason of any distributions made during the taxable year.

(b) *Depreciation allowed.* The depreciation deduction allowed in computing adjusted current earnings is determined under the rules of this paragraph (b). Generally, the rules for computing the adjusted current earnings depreciation deduction differ depending on the taxable year in which the property is placed in service and the method used in computing the depreciation deduction for taxable income purposes.

(1) *Property placed in service after 1989.* The depreciation deduction for property placed in service in a taxable year beginning after December 31, 1989, is the amount determined by using the alternative depreciation system of section 168(g). This paragraph (b)(1) does not apply to property to which paragraph (b)(4) of this section applies (relating to certain property described in sections 168 (f)(1) through (f)(4)).

(2) *Property subject to new ACRS*—(i) *In general.* This paragraph (b)(2) provides the rules for computing the depreciation deduction for property to which the amendments made by section 201 of the Tax Reform Act of 1986 (new ACRS) apply (generally property placed in service after December 31, 1986), and that is placed in service in a taxable year beginning before January 1, 1990. This paragraph (b)(2) does not apply to property described in paragraph (b)(4) of this section (relating to certain property described in sections 168 (f)(1) through (f)(4)) or to property described in paragraph (b)(5)(i) of this section (relating to certain churning transactions described in section 168(f)(5)).

(ii) *Rules for computing the depreciation deduction.* The depreciation deduction for property described in this paragraph (b)(2) is the amount determined by using—

(A) The adjusted basis of the property as determined in computing alternative minimum taxable income as of the close of the last taxable year beginning before January 1, 1990,

(B) The straight-line method, and

(C) The recovery period that consists of the remainder of the recovery period applicable to the property under the alternative depreciation system of section 168(g).

Thus, the recovery period begins on the first day of the first taxable year beginning after December 31, 1989, and ends on the last day of the recovery period that would have applied had the recovery period for the property originally been determined under section 168(g). In determining the recovery period that would have applied, the property is deemed placed in service on the date it was considered placed in service under the depreciation convention that would have applied to the property under section 168(d).

(iii) *Example.* The following example illustrates the provisions of this paragraph (b)(2).

Example. Corporation X, a calendar-year taxpayer, purchases and places in service on August 1, 1987, computer-based telephone central office switching equipment. This is the only item of depreciable property X places in service during 1987. Thus, the applicable convention under section 168(d) is the half-year convention. As of December 31, 1989, the adjusted basis of the property used in computing alternative minimum taxable income is $42,000. The recovery period that would have applied to the property under section 168(g)(2) is 9.5 years (from July 1, 1987 to December 31, 1996). Thus, the recovery period for computing adjusted current earnings under section 56(g)(4)(A)(ii) and this paragraph (b)(2) begins on January 1, 1990, and ends on December 31, 1996. X's 1990 depreciation deduction for computing adjusted current earnings is $6,000, determined under the straight-line method by dividing $42,000 (adjusted basis) by 7 (recovery period).

(3) *Property subject to original ACRS*—(i) *In general.* This paragraph (b)(3) provides the rules for computing the depreciation deduction for property to which section 168 as in effect on the day before the date of enactment of the Tax Reform Act of 1986 (original ACRS) applies and that is placed in service in a taxable year beginning before January 1, 1990 (generally property that was placed in service after December 31, 1980 and before January 1, 1987). In determining whether original ACRS applies to property, the fact that the unadjusted basis of the property is reduced or eliminated under section 168(d)(4)(A)(i) of original ACRS is not taken into account. This paragraph (b)(3) does not apply to property described in paragraph (b)(4) or (b)(5)(i) of this section (relating to certain section 168(f) property).

(ii) *Rules for computing the depreciation deduction.* The depreciation deduction for property described in this paragraph (b)(3) is the amount determined by using—

(A) The adjusted basis of the property as determined in computing taxable income as of the close of the last taxable year beginning before January 1, 1990,

(B) The straight-line method, and

(C) The recovery period that consists of the remainder of the recovery period applicable to the property under the alternative depreciation system of section 168(g). Thus, the recovery period begins on the first day of the first taxable year beginning after December 31, 1989, and ends on the last day of the recovery period that would have applied had the recovery period for the property originally been determined under section 168(g)(2). In determining the recovery period that would have applied, the property is deemed placed in service on the date it was considered placed in service under the depreciation convention that would have applied to the property under section 168(d) (without regard to section 168(d)(3)).

(iii) *Example.* The following example illustrates the provisions of this paragraph (b)(3).

Example. Corporation Y, a calendar-year taxpayer, purchases and places in service on December 1, 1986, computer-based telephone central office switching equipment. The depreciation convention that would have

applied to this property under section 168(d) (without regard to section 168(d)(3)) is the half-year convention. As of December 31, 1989, the adjusted basis of the property used in computing taxable income is $21,000. The recovery period for the property under section 168(g)(2) is 9.5 years (from July 1, 1986 to December 31, 1995). Thus, the recovery period for computing adjusted current earnings under section 56(g)(4)(A)(iii) and this paragraph (b)(3) begins on January 1, 1990, and ends on December 31, 1995. Y's 1990 depreciation deduction for computing adjusted current earnings is $3,500, determined under the straight-line method by dividing $21,000 (adjusted basis) by 6 (recovery period).

(4) *Special rule for certain section 168(f) property.* The depreciation or amortization deduction for property described in section 168(f) (1) through (4) is determined in the same manner as used in computing taxable income, without regard to when the property is placed in service.

(5) *Certain property not subject to ACRS.* The depreciation or amortization deduction for property not described in paragraphs (b) (1) through (4) of this section is determined in the same manner as used in computing taxable income. Thus, this paragraph (b)(5) applies to—

(i) Property placed in service after December 31, 1980, in a taxable year beginning before January 1, 1990, and that is excluded from the application of original ACRS or new ACRS by section 168(e)(4) of original ACRS or section 168(f)(5)(A)(i) of new ACRS, and

(ii) Property placed in service before January 1, 1981.

(c) *Inclusion in adjusted current earnings of items included in earnings and profits*—(1) *In general.* Except as otherwise provided in paragraph (c)(4) of this section, adjusted current earnings includes all income items that are permanently excluded from (*i.e.*, not taken into account in determining) pre-adjustment alternative minimum taxable income but that are taken into account in determining earnings and profits. An income item is considered taken into account in determining pre-adjustment alternative minimum taxable income without regard to the timing of its inclusion. Thus, this paragraph (c)(1) does not apply to any income item that is, has been, or will be included in pre-adjustment alternative minimum taxable income. For example, a taxpayer eligible to use the completed contract method of accounting for long-term construction contracts does not take income (or expenses) into account in determining pre-adjustment alternative minimum taxable income for taxable years before the taxable year the contract is completed. The taxpayer is required under section 312(n)(6) to include income (and expenses) in earnings and profits throughout the term of the contract under the percentage of completion method. This paragraph (c)(1) does not require the income on the contract to be included in adjusted current earnings, however, because the income will be taken into account in the taxable year the contract is completed and therefore is considered to be taken into account in determining pre-adjustment alternative minimum taxable income.

(2) *Certain amounts not taken into account in determining whether an item is permanently excluded.* The fact that proceeds from an income item may eventually be reflected in pre-adjustment alternative minimum taxable income of another taxpayer on the liquidation or disposal of a business, or similar circumstances, is not taken into account in determining whether the item is permanently excluded from pre-adjustment alternative minimum taxable income. Thus, for example, a corporation's adjusted current earnings include interest excluded from pre-adjustment alternative minimum taxable income under section 103 even though the interest might eventually be reflected in the pre-adjustment alternative minimum taxable income of a corporate shareholder as gain on the liquidation of the corporation.

(3) *Allowance of offsetting deductions.* In determining adjusted current earnings under this paragraph (c), a deduction is allowed for all items that relate to income required to be included in adjusted current earnings under this paragraph (c) and that would be deductible in computing pre-adjustment alternative minimum taxable income if the income items to which the items of deduction relate were included in pre-adjustment alternative minimum taxable income for any taxable year. For example, deductions disallowed under section 265(a)(2) for the costs of carrying tax-exempt obligations, the interest on which is excluded from pre-adjustment alternative minimum taxable income under section 103 but is included in adjusted current earnings under this paragraph (c), are generally allowed as deductions in computing adjusted current earnings. Amounts deductible under this paragraph (c)(3) are taken into account using the taxpayer's method of accounting and are subject to any provisions or limitations of the Code that would have applied if the amounts had been deductible in determining pre-adjustment alternative minimum taxable income. For example, section 267(a)(2) may affect the timing of a deduction otherwise disallowed under section 265(a)(2).

(4) *Special rules.* Adjusted current earnings does not include the following amounts.

(i) *Income from the discharge of indebtedness.* Amounts that are excluded from gross income under section 108 of the Internal Revenue Code of 1986 or any corresponding provision of prior law (including the Bankruptcy Tax Act of 1980, case law, income tax regulations and administrative pronouncements).

(ii) *Federal income tax refunds.* Refunds of federal income taxes.

(iii) *Income earned on behalf of states and municipalities.* Amounts that are excluded from gross income under section 115.

(5) *Treatment of life insurance contracts*—(i) *In general.* This paragraph (c)(5) addresses the treatment of life insurance contracts in determining adjusted current earnings. These rules apply to life insurance contracts as defined in section 7702. Generally, death benefits under a life insurance contract are included in adjusted current earnings, and all other distributions (including surrenders) are taxed in accordance with the principles of section 72(e), taking into account the taxpayer's basis in the contract for purposes of adjusted current earnings. If the adjusted basis in the contract for purposes of adjusted current earnings exceeds the amount of death benefits received or the amount received when the contract is surrendered (increased by the amount of any outstanding policy loan), the resulting loss is allowed as a deduction under paragraph (c)(3) of this section in computing adjusted current earnings for the taxable year. In addition, undistributed income on the contract is included in adjusted current earnings as provided in paragraph (c)(5)(ii) of this section. Paragraph (c)(5)(vi)(A) of this section provides special rules for term insurance that has no net surrender value.

(ii) *Inclusion of inside buildup.* Income on a life insurance contract with respect to a taxable year (or any shorter period either ending or beginning with the date of a distribution from the contract) is included in adjusted current earnings for the taxable year. Thus, income on the contract is calculated from the beginning of a taxable year to the date of any distribution, from immediately after any distribution to the date of the next distribution, and from the last distribution during the taxable year through the end of the taxable year. Income on a life insurance contract is not included in adjusted current earnings for any taxable year in which the insured dies or the contract is completely surrendered for its entire net surrender value. Solely for purposes of computing adjusted current earnings, the taxpayer's adjusted basis in the contract (as determined under section 72(e)(6)) is increased to reflect any positive income on the contract included in adjusted current earnings under this paragraph (c)(5)(ii). The manner in which the income on the contract is determined for adjusted current earnings purposes is prescribed in paragraph (c)(5)(iii) of this section. If the income on the contract determined under paragraph (e)(5)(iii) of this section is a negative amount, income on the contract is not included in adjusted current earnings and no deduction from adjusted current earnings is allowed for the negative amount.

(iii) *Calculation of income on the contract.* For purposes of determining adjusted current earnings, the income on a life insurance contract for any period, including a taxable year, is the excess, if any, of—

(A) The sum of the contract's net surrender value (as defined in section 7702(f)(2)(B)) at the end of the period, and any distributions under the contract during the period that, in accordance with the principles of section 72(e), are not taxed because they represent recoveries of the taxpayer's basis in the contract for adjusted current earnings, over

(B) The sum of the contract's net surrender value at the end of the preceding period, and any premiums paid under the contract during the period.

(iv) *Treatment of distributions under the life insurance contract.* Any distribution under a life insurance contract (whether a partial withdrawal or an amount received on complete surrender of the contract) is included in adjusted current earnings in accordance with the principles of section 72(e), taking into account the taxpayer's basis in the contract for purposes of computing adjusted current earnings. The taxpayer's basis in the contract is equal to the basis at the end of the immediately preceding period plus any premiums paid before the distribution. The taxpayer's basis in the contract for purposes of adjusted current earnings is reduced, in accordance with the principles of section 72(e), to the extent that the distribution is not included in adjusted current earnings because it represents a recovery of that basis.

(v) *Treatment of death benefits.* The excess of the contractual death benefit of a life insurance contract over the taxpayer's adjusted basis in the contract for purposes of computing adjusted current earnings at the time of the insured's death is included in adjusted current earnings as provided by paragraph (c)(6)(i) of this section. The amount of the death benefit that is taken into account for adjusted current earnings includes the amount of any outstanding policy loan treated as forgiven or discharged by the insurance company upon the death of the insured.

(vi) *Other rules*—(A) *Term life insurance contract without net surrender values.* Except as provided in this paragraph (c)(5)(vi), the requirements of paragraph (c)(5) of this section do not apply to term life insurance contracts that provide no net surrender value. Adjusted current earnings are reduced by any premiums paid under such a contract that are allocable to the taxable year. Any premiums paid that are not allocable to the taxable year must be included in the basis of the contract. The death benefit under such a term insurance contract is included in adjusted current earnings as provided by paragraph (c)(5)(v) of this section.

(B) *Life insurance contracts involving divided ownership.* If the ownership of a life insurance contract is divided between different persons (for example, a split-dollar arrangement), the requirements of paragraph (c)(5) of this section apply to the separate ownership interests as though each interest were a separate contract.

(vii) *Examples.* The following examples illustrate the provisions of this paragraph (c)(5).

Example 1. (i) On January 1, 1987, corporation X, a calendar year taxpayer, purchased a flexible premium life insurance contract with a death benefit of $100,000 and planned annual gross premiums of $2,200 payable on January 1 of each year. The net surrender value of the contract at the end of 1987 and subsequent years, together with the cumulative premiums for the contract at the end of each year, are set forth in the following table:

Year	Cumulative premiums paid	Year-end net surrender value
1987	$2,200	$2,420
1988	4,400	5,082
1989	6,600	8,010
1990	8,800	11,231
1991	11,000	14,774

(ii) Under paragraph (c)(5)(ii) of this section, X must include $1,021 in adjusted current earnings for 1990. The inclusion is computed by subtracting from the net surrender value of the contract at the end of the taxable year ($11,231) the sum of the net surrender value of the contract at the end of the preceding taxable year ($8,010) plus the premiums paid during the taxable year ($2,200). See paragraph (c)(5)(iii) of this section. For purposes of determining adjusted current earnings, X's adjusted basis in the contract would be increased at the end of 1990 from $8,800 to $9,821 to reflect the $1,021 inclusion. See paragraph (c)(5)(ii) of this section. The income under the contract attributable to taxable years prior to 1990 does not increase X's adjusted basis in the contract.

(iii) For 1991, the income on the contract included in adjusted current earnings is determined in the same manner as the preceding year, and there is a corresponding increase in X's adjusted basis in the contract. Thus, for 1991, the income on the contract is $1,343, which is determined by subtracting from the net surrender value of the contract at the end of the taxable year ($14,774) the sum of the net surrender value at the end of the preceding taxable year ($11,231) plus the premiums paid during the taxable year ($2,200). At the end of 1991, X's adjusted basis in the contract for adjusted current earnings is $13,364, which reflects the basis of the contract at the beginning of 1991, increased by the premium paid during the year ($2,200) and the income on the contract that has been included in adjusted current earnings for the taxable year ($1,343).

Example 2. The facts are the same as in example 1, except that, after the payment of the premium for 1991, the insured dies and X receives the $100,000 death benefit under the contract. Under paragraph (c)(5)(ii) of this section, no amount is included in adjusted current earnings for income on the contract for the taxable year in which the insured dies. Instead, under paragraph (c)(5)(v) of this section, X must include the adjusted current earnings for 1991 the excess of the death benefit ($100,000) over the adjusted basis in the contract for purposes of computing adjusted current earnings at the time of the insured's death ($12,021), which equals X's adjusted basis in the contract at the end of 1990 ($9,821), increased by X's premium payment for 1991 ($2,200).

Example 3. (i) The facts are the same as in example 1, except that in addition to making the $2,200 planned premium payment for 1992, X receives a $16,200 distribution under the contract on February 1, 1992, leaving a net surrender value of $915 immediately following the distribution. On March 1, 1992, X pays an additional premium of $5,000 under the contract. The net surrender value of the contract at the end of 1992 is $6,417.

(ii) Treatment of the distribution. Under paragraph (c)(5)(iv) of this section, the $16,200 distribution in 1992 is included in adjusted current earnings as an amount taxable in accordance with the principles of section 72(e) to the extent that the distribution ($16,200) exceeds X's adjusted basis for adjusted current earnings, as determined at the end of the immediately preceding period, and including premiums paid through the period ending on the date of the distribution ($15,564). Thus, X must include $636 in adjusted current earnings for 1992 as an amount taxable in accordance with the principles of section 72(e).

(iii) Determination of the income on the contract. Under paragraph (c)(5)(iii) of this section, for 1992, the income on the contract must be separately determined for the period beginning with the first day of the taxable year to the date of the distribution and for the period beginning immediately after the distribution to the end of the taxable year, using the contract's net surrender values at the beginning and end of each of these periods. The income on the contract for the period beginning on January 1, 1992 and ending on February 1, 1992 (the date of the distribution) is equal to the excess, if any, of (A) the sum of the net surrender value at the end of the period ($915) and the amount of the distribution that is allocable to X's basis in the contract for adjusted current earnings ($15,564), over (B) the sum of the net surrender value at the end of the preceding taxable year ($14,774) plus any premiums paid on the contract during the period ($2,200). Because the net result of this computation is a negative amount (($915 + $15,564) − ($14,774 + $2,200) = −495), no income on the contract for the period ending with the date of the distribution is included in adjusted current earnings for 1992.

(iv) Under paragraph (c)(5)(ii), X must also determine the income on the contract for the period beginning immediately after the distribution through the end of the taxable year. The income on the contract for this period is $502, which is equal to the excess of the net surrender value at the end of the taxable year ($6,417) over the sum of the net surrender value at the end of the preceding period ($915), plus any premiums paid during the period ($5,000). At the end of 1992, X's adjusted basis in the contract for adjusted current earnings is $5,502, determined by adding the income on the contract ($502) and the premiums paid during the period ($5,000) to the basis at the end of the preceding period ($0).

(v) Thus, X must include a total of $1,138 ($636 + 502) in adjusted current earnings for 1992. This inclusion reflects both the undistributed income on the contract for the taxable year plus the amount of income from distributions under the contract that is taxed in accordance with the principles of section 72(e) using X's adjusted basis in the contract for adjusted current earnings.

(6) *Partial list of income items excluded from gross income but included in earnings an profits.* The following is a partial list of items that are permanently excluded from pre-adjustment alternative minimum taxable income but that are included in earnings and profits, and are therefore included in adjusted current earnings under this paragraph (c).

(i) Proceeds of life insurance contracts that are excluded under section 101, to the extent provided in paragraph (c)(5)(v) or (c)(5)(vi) of this section.

(ii) Interest that is excluded under section 103.

(iii) Amounts received as compensation for injuries or sickness that are excluded under section 104.

(iv) Income taxes of a lessor of property that are paid by a lessee and are excluded under section 110.

(v) Income attributable to the recovery of an item deducted in computing earnings and profits in a prior year that is excluded under section 111.

(vi) Amounts received as proceeds from sports programs that are excluded under section 114.

(vii) Cost-sharing payments that are excluded under section 126, to the extent section 126(e) does not apply.

(viii) Interest on loans used to acquire employer securities that is excluded under section 133.

(ix) Financial assistance that is excluded under section 597.

(x) Amounts that are excluded from pre-adjustment alternative minimum taxable income as a result of an election under section 831(b) (allowing certain insurance companies to compute their pre-adjustment alternative minimum taxable income using only their investment income).

Items described in paragraph (c)(1) of this section must be included in earnings and profits (and therefore in adjusted current earnings) even if they are not identified in this paragraph (c)(6). The Commissioner may identify additional items described in paragraph (c)(1) in other published guidance.

(7) *Partial list of items excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings.* The following is a partial list of items that are excluded from both pre-adjustment alternative minimum taxable income and adjusted current earnings, and for which no adjustment is allowed under this section.

(i) The value of improvements made by a lessee to a lessor's property that is excluded from the lessor's income under section 109.

(ii) contributions to the capital of a corporation by a non-shareholder that are excluded from the corporation's income under section 118.

The Commissioner may identify additional items described in this paragraph (c)(7) in other published guidance.

(d) *Disallowance of items not deductible in computing earnings and profits*—(1) *In general.* Except as otherwise provided in this paragraph (d), no deduction is allowed in computing adjusted current earnings for any items that are not taken into account in determining earnings and profits for any taxable year, even if the items are taken into account in determining pre-adjustment alternative minimum taxable income. These items therefore increase adjusted current earnings to the extent they are deducted in computing pre-adjustment alternative minimum taxable income. An item of deduction is considered taken into account without regard to the timing of its deductibility in computing earnings and profits. Thus, to the extent an item is, has been, or will be deducted for purposes of determining earnings and profits, it does not increase adjusted current earnings in the taxable year in which it is deducted for purposes of determining pre-adjustment alternative minimum taxable income. For example, a deduction allowed (in determining pre-adjustement alternative minimum taxable income) under section 196 for unused research credits allowable under section 41 is taken into account in computing earnings and profits because the costs that gave rise to the credit were deductible in computing earnings and profits when incurred. Therefore, the deduction does not increase adjusted current earnings. As a further example, payments by a United States parent corporation with respect to employees of certain foreign subsidiaries, which are deductible under section 176, are considered contributions to the capital of the foreign subsidiary for purposes of computing earnings and profits. Although the payments are not deductible in computing the earnings and profits of the United States parent corporation in the year incurred, the payments do increase the parent's basis in its stock in the foreign subsidiary. This basis increase will reduce any gain the parent may later realize for purposes of computing earnings and profits on the disposition of the stock of the foreign subsidiary. Therefore, the amount of the payment by the parent is considered taken into account in computing the earnings and profits of the parent and does not increase adjusted current earnings. Thus, only deduction items that are never taken into account in computing earnings and profits are disallowed in computing adjusted current earnings under this paragraph (d).

(2) *Deductions for certain dividends received*—(i) *Certain amounts deducted under sections 243 and 245.* Paragraph (d)(1) of this section does not apply to, and adjusted current earnings therefore are not increased by, amounts deducted under sections 243 and 245 that qualify as 100-percent deductible dividends under sections 243(a), 245(b) or 245(c), or to any dividend received from a 20-percent owned corporation (as defined in section 243(c)(2)), to the extent that the dividend giving rise to the deductions is attributable to earnings of the paying corporation that are subject to federal income tax. Earnings are considered subject to federal income tax return (that is filed or, if not, that should be filed) of an entity subject to United States taxation, even if there is no resulting United States tax liability (*e.g.*, because of net operating losses or tax credits, other than the credit provided for in section 936).

(ii) *Special rules*—(A) *Dividends received from a foreign sales corporation.* The portion of a dividend received from a foreign sales corporation (FSC) that is classified as a 100-percent deductible dividend attributable to earnings of the FSC subject to federal income tax is that portion of the dividend distributed out of earnings and profits of the FSC attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a) (1) or (2), and to non-exempt foreign trade income determined under section 925(a)(3) that is effectively connected with the conduct of a trade or business in the United States (determined without regard to section 921). If the FSC is a 20-percent owned corporation (as defined in section 243(c)(2)), an additional portion of that dividend is classified as being attributable to earnings of the FSC subject to federal income tax to the extent that the dividend is distributed out of earnings and profits of the FSC attributable to effectively connected income (as defined in section 245(c)(4)(B)). A FSC is defined in section 922 and, for purposes of this paragraph, includes a small FSC and a former FSC. The ordering rules for distributions from a FSC set forth in § 1.926(a)–1T(b)(1) apply to determine the classification of earnings and profits out of which a distribution has been made.

(B) *Dividends received from a section 936 corporation.* In the case of a dividend received from a corporation eligible for the credit provided by section 936, only that part of the dividend that is attributable to income that is not eligible for the credit is attributable to earnings of the paying corporation that are subject to federal income tax. Dividends are deemed to be distributed first out of earnings and profits for the current taxable year of the section 936 corporation, to the extent thereof, and then out of the most recently accumulated earnings and profits, under the principles of section 316. With respect to a distribution of less than all of the earnings and profits for the current or any prior taxable year, the amount of the distribution attributable to income not eligible for the section 936 credit is determined on a pro rata basis. For example, assume that a section 936 corporation earns $100 of taxable income in its current taxable year, $10 of which is not eligible for the credit under section 936. If the section 936 corporation makes a distribution of $50 during that year, $5 of that distribution ($10 of income not eligible for the section 936 credit divided by $100 of taxable income, times $50 distributed) is deemed to be attributable to earnings of the paying corporation that are subject to federal income tax.

(iii) *Special rule for certain dividends received by certain cooperatives.* Paragraph (d)(1) of this section does not apply to, and adjusted current earnings do not include, any dividend received by any organization to which part I of subchapter T of the Code applies and that is engaged in the marketing of agricultural or horticultural products, if the dividend is paid by a FSC and is allowable as a deduction under section 245(c).

(3) *Partial list of items not deductible in computing earnings and profits.* The following is a partial list of items that are not taken into account in computing earnings and profits and thus are not deductible in computing adjusted current earnings.

(i) Unrecovered losses attributable to certain damages that are deductible under section 186, to the extent those damages were previously deducted in computing earnings and profits.

(ii) The deduction for small life insurance companies allowed under section 806.

(iii) Dividends deductible under the following sections of the Code:

(A) Dividends received by corporations that are deductible under section 243, to the extent paragraph (d)(2)(i) of this section does not apply.

(B) Dividends received on certain preferred stock that are deductible under section 244.

(C) Dividends received from certain foreign corporations that are deductible under section 245, to the extent neither paragraph (d)(2)(i) nor (d)(2)(iii) of this section applies.

(D) Dividends paid on certain preferred stock of public utilities that are deductible under section 247.

(E) Dividends paid to an employee stock ownership plan that are deductible under section 404(k).

(F) Non-patronage dividends that are paid and deductible under section 1382(c)(1).

Items described in paragraph (d)(1) of this section are not taken into account in computing earnings and profits (and thus are not deductible in computing adjusted current earnings) even if they are not identified in this paragraph (d)(3). The Commissioner may identify additional items described in paragraph (d)(1) of this section in other published guidance.

(4) *Partial list of items deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings.* The following is a partial list of items that are deductible for purposes of computing both pre-adjustment alternative minimum taxable income and adjusted current earnings, and for which no adjustment is allowed under this section.

(i) Payments by a United States corporation with respect to employees of certain foreign corporations that are deductible under section 176.

(ii) Dividends paid on deposits by thrift institutions that are deductible under section 591.

(iii) Life insurance policyholder dividends that are deductible under section 808.

(iv) Dividends paid by cooperatives that are deductible under sections 1382(b) or 1382(c)(2) and that are not paid with respect to stock.

The Commissioner may identify additional items described in this paragraph (d)(4) in other published guidance.

(e) *Treatment of income items included, and deduction items not allowed, in computing pre-adjustment alternative minimum taxable income.* Adjusted current earnings includes any income item that is included in pre-adjustment alternative minimum taxable income, even if that income item is not included in earnings and profits for the taxable year. Except as specifically provided in paragraph (c)(3) or (c)(5) of this section, no deduction is allowed for an item in computing adjusted current earnings if the item is not deductible in computing pre-adjustment alternative minimum taxable income for the taxable year, even if the item is deductible in computing earnings and profits for the year. Thus, for example, capital losses in excess of capital gains for the taxable year are not deductible in computing adjusted current earnings for the taxable year.

(f) *Certain other earnings and profits adjustments*—(1) *Intangible drilling costs.* For purposes of computing adjusted current earnings, the amount allowable as a deduction for intangible drilling costs (as defined in section 263(c)) for amounts paid or incurred in taxable years beginning after December 31, 1989, is determined as provided in

section 312(n)(2)(A). See section 56(h) for an additional adjustment to alternative minimum taxable income based on energy preferences for taxable years beginning after 1990.

(2) *Certain amortization provisions do not apply.* For purposes of computing adjusted current earnings, sections 173 (relating to circulation expenditures) and 248 (relating to organizational expenditures) do not apply to amounts paid or incurred in taxable years beginning after December 31, 1989. If an election is made under section 59(e) to amortize circulation expenditures described in section 173 over a three-year period, the expenditures to which the election applies are deducted ratably over the three-year period for purposes of computing taxable income, pre-adjustment alternative minimum taxable income, and adjusted current earnings.

(3) *LIFO inventory adjustments.* [Reserved]

(4) *Installment sales*—(i) *In general.* Adjusted current earnings are computed without regard to the installment method, except as provided in this paragraph (f)(4).

(ii) *Exception for prior dispositions.* Paragraph (f)(4)(i) of this section does not apply to any disposition in a taxable year beginning before January 1, 1990, that is taken into account under the installment method for purposes of computing pre-adjustment alternative minimum taxable income. Thus, for any disposition in a taxable year beginning before January 1, 1990, the installment method applies in computing adjusted current earnings for taxable years beginning after December 31, 1989, to the same extent it applies in determining pre-adjustment alternative minimum taxable income for the taxable year.

(iii) *Special rules for obligations to which section 453A applies*—(A) *In general.* The following special rules apply to any installment sale occurring in a taxable year beginning after December 31, 1989, that results in an installment obligation to which section 453A(a)(1) applies and with respect to which preadjustment alternative minimum taxable income is determined under the installment method. As explained in paragraph (f)(4)(iii)(B) of this section, for purposes of computing adjusted current earnings, a portion of the contract price is eligible for the installment method, and the remainder of the contract price is not eligible for the installment method. Payments under the obligation are allocated pro-rata between the two accounting methods.

(B) *Limitation on application of installment method.* Only a portion of the contract price of an installment sale described in paragraph (f)(4)(iii)(A) of this section is eligible to be accounted for under the installment method for purposes of computing adjusted current earnings. The portion eligible for the installment method is equal to the total contract price of the sale multiplied by the applicable percentage (as determined under section 453A(c)(4)) for the taxable year of the sale. The remainder of the contract price is not eligible to be accounted for under the installment method for purposes of computing adjusted current earnings. The gross profit ratio is determined without regard to this bifurcated treatment of the sale.

(C) *Treatment of the ineligible portion.* The gain on the sale that is taken into account in the taxable year of the sale for purposes of computing adjusted current earnings is equal to the gross profit ratio multiplied by the entire portion of the contract price that is ineligible for the installment method.

(D) *Treatment of the eligible portion.* For purposes of calculating adjusted current earnings, the amount of gain recognized in a taxable year on the portion of the contract price that is eligible for the installment method is equal to—

(*1*) The amount of payments received during the taxable year, multiplied by

(*2*) The applicable percentage for the taxable year of the sale, multiplied by

(*3*) The gross profit ratio.

(E) *Coordination with the pledge rule.* For purposes of determining the amount of payments received during the taxable year under paragraph (f)(4)(iii)(D), the rules of section 453A(d) (relating to the treatment of certain pledge proceeds as payments) apply. This includes the rules under section 453A(d)(3) that relate to treating later payments as receipts of amounts on which tax has already been paid.

(F) *Example.* The following example illustrates the provisions of this paragraph (f)(4)(iii):

(*1*) On January 1, 1990, corporation A, a calendar-year taxpayer, sells a building with an adjusted basis for purposes of computing adjusted current earnings of $10 million, for $5 million and an installment obligation bearing adequate stated interest with a principal amount of $20 million. The installment obligation calls for 4 annual payments of $5 million on January 1 of 1991, 1992, 1993, and 1994. A does not elect out of the installment method, and disposes of no other property under the installment method during 1990. No gain with respect to the sale is recaptured pursuant to section 1250.

(*2*) The gross profit percentage for purposes of computing adjusted current earnings on the sale is 60 percent, computed as follows: gross profit of $15 million ($25 million contract price less $10 million adjusted basis) divided by $25 million contract price. The applicable percentage on the sale is 75 percent, computed as follows: $15 million ($20 million of installment obligations arising during and outstanding at the end of 1990 less $5 million) divided by $20 million of installment obligations arising during and outstanding at the end of 1990. See section 453A(c)(4). The portion of the contract price eligible for accounting under the installment method for purposes of computing adjusted current earnings is $18.75 million, or $25 million total contract price times applicable percentage of 75 percent. The portion of the contract price ineligible for the installment method is $6.25 million, or $25 million less $18.75 million.

(*3*) In computing adjusted current earnings for 1990, A must include $3.75 million of the gain on the sale. This amount is equal to the portion of the contract price that is ineligible for the installment method times the gross profit ratio, or $6.25 million times 60 percent. A must also include $2.25 million of gain from the $5 million payment received in 1990. This amount is computed as follows: the eligible portion of the payment, $3.75 million ($5 million payment times the applicable percentage of 75 percent), times the gross profit ratio of 60 percent. Thus, the total amount of gain from the sale that A must include in adjusted current earnings for 1990 is $8 million ($3.75 million of gain from the portion of the contract price that is not eligible for the installment method, plus $2.25 million of gain from the 1990 payment).

(*4*) A does not pledge or otherwise accelerate payments on the note in any other taxable year. In computing adjusted current earnings for 1991, 1992, 1993, and 1994, A therefore includes $2.25 million of gain on the installment sale, computed as follows: $5 million payment times the applicable percentage of 75 percent, times the gross profit ratio of 60 percent.

(g) *disallowance of loss on exchange of debt pools. [Reserved]*

(h) *Policy acquisition expenses of life insurance companies*—(1) *In general.* This paragraph (h) addresses the treatment of policy acquisition expenses of life insurance companies in determining adjusted current earnings. Policy acquisition expenses are those expenses that, under generally accepted accounting principles in effect at the time the expenses are incurred, are considered to vary with and to be primarily related to the acquisition of new and renewal insurance policies. Generally, these acquisition expenses must be capitalized and amortized for purposes of adjusted current earnings over the reasonably estimated life of the acquired policy, using a method that provides a reasonable allowance for amortization. This method of amortization is treated as if it applied to all taxable years in determining the amount of policy acquisition expenses deducted for adjusted current earnings. The rules in this paragraph (h) apply to any life insurance company, as defined in section 816(a).

(2) *Reasonably estimated life.* The reasonably estimated life of an acquired policy is determined based on the facts with respect to each policy (such as the age, sex and health of the insured), and the company's experience (such as mortality, lapse rate and renewals) with similar policies. A company may treat as the reasonably estimated life of an acquired policy the period for amortizing expenses of the acquired policy that would be required by the Financial Accounting Standards Board (FASB) at the time the acquisition expenses are incurred. If the FASB has not established such a period, the period for amortizing acquisition expense of an acquired policy under guidelines issued by the American Institute of Certified Public Accountants in effect at the time the acquisition expenses are incurred may be treated as the reasonably estimated life of the acquired policy.

(3) *Reasonable allowance for amortization.* For purposes of determining a reasonable allowance for amortization, a company may use a method that amortizes acquisition expenses in the same proportion that gross premiums and gross investment income for the taxable year bear to total anticipated receipts of gross premiums (including anticipated renewal premiums) and gross investment income to be realized over the reasonably estimated life of the policy.

(4) *Safe harbor for public financial statements.* Any company that is required to file with the Securities and Exchange Commission (SEC) a financial statement with respect to the taxable year will be treated as having complied with paragraph (h)(1) of this section if it accounts for acquisition expenses for adjusted current earnings purposes in the same manner as it accounts for those expenses on its financial statements filed with the SEC.

(i) [Reserved]

(j) *Depletion.* For purposes of computing adjusted current earnings, the allowance for depletion with respect to any property placed in service in a taxable year beginning after December 31, 1989 is determined under the cost depletion method of section 611.

(k) *Treatment of certain ownership changes.— In general.* In the case of any corporation that has an ownership change as defined in paragraph (k)(2) of this section in a taxable year beginning after December 31, 1989, and that also has a net unrealized built-in loss (as defined in paragraph (k)(3) of this section) immediately before the ownership change, the adjusted basis of each asset of the corporation for purposes of computing adjusted current earnings following the ownership change shall be its proportionate share (determined on the basis of the respective fair market values of each asset) of the fair market value of the assets of the corporation immediately before the ownership change. The rules of § 1.338(b)–2T(b), if otherwise applicable to the transaction, are applied in making this allocation of basis. If such rules apply, the limitations of §§ 1.338(b)–2T(c) (1) and (2) also apply in allocating basis under this paragraph (k)(1).

(2) *Definition of ownership change.* A corporation has an ownership change for purposes of section 56(g)(4)(G) (i) and this paragraph (k) if there is an ownership change under section 382(g) for purposes of computing the corporation's amount of taxable income that may be offset by pre-change losses or the regular tax liability that may be offset by pre-change credits. See § 1.382–2T for rules to determine whether a corporation has an ownership change. Accordingly, in order for an ownership change to occur for purposes of this paragraph (k), a corporation must be a loss corporation as defined in § 1.382–2T(f)(1). In determining whether the corporation is a loss corporation, the determination of whether there is a net unrealized built-in loss is made by using the aggregate adjusted basis of the assets of the corporation used in computing taxable income. The aggregate adjusted basis of the corporation's assets for purposes of computing adjusted current earnings is not relevant in determining whether the corporation is a loss corporation. See part (iv) of the example in paragraph (k)(4) of this section.

(3) *Determination of net unrealized built-in loss immediately before an ownership change.* In order to determine whether it has a net unrealized built-in loss for purposes of section 56(g)(4)(G)(ii) and paragraph (k)(1) of this section, a corporation that has an ownership change as defined in paragraph (k)(2) of this section must use the aggregate adjusted basis of its assets that it uses in computing its adjusted current earnings. The rules of section 382 (including sections 382(h)(3)(B)(i) and 382(h)(8)) otherwise apply in determining whether the corporation has a net unrealized built-in loss.

(4) *Example.* The following example illustrates the provisions of this paragraph (k):

(i) Individual A has owned all the issued and outstanding stock of corporation L for the past 5 years. A sells all of his stock in L to unrelated individual B. On the date of the sale, L owns the following assets (all numbers are in millions):

Asset	Adjusted basis for computing taxable income	Adjusted basis for computing adjusted current earnings	Fair market value
x	$45	$50	$50
y	55	60	30
z	10	10	20
	$110	$120	$100

For purposes of computing taxable income, L has a $500 million net operating loss carryforward to the taxable year in which the sale occurs. Therefore, L is a loss corporation. As a result of the transfer of shares of L from A to B, L has had an ownership change.

(ii) L has no net unrealized built-in loss for purposes of computing taxable income because the amount by which the aggregate adjusted basis of its assets for that purpose exceeds their fair market value is $10 million, which is less than 15 percent of their fair market value and is not greater than $10 million. See section 381(h)(3)(B)(i). L, however, does have a net unrealized built-in loss for purposes of computing adjusted current earnings because the aggregate adjusted basis of its assets for the purpose exceeds their fair market value by $20 million, and that amount is greater than $10 million.

(iii) Under paragraph (k)(1) of this section, L must restate the adjusted basis of its assets for purposes of computing adjusted current earnings to their fair market values, as follows (all numbers are in millions):

Asset	New adjusted basis
x	$50
y	30
z	20

L must use these new adjusted bases for all purposes in determining adjusted current earnings, including computing depreciation and any gain or loss on disposition.

(iv) If L did not have the net operating loss carryforward, and had no other loss or credit carryovers or other attributes described in § 1.382–2T(f)(1) for purposes of computing the amount of its taxable income that may be offset by pre-change losses or its regular tax liability that may be offset by pre-change credits, it would not have been a loss corporation on the date of the sale and therefore would not be treated as having had an ownership change for purposes of computing adjusted current earnings. This would be true even though L had a net unrealized built-in loss for purposes of computing adjusted current earnings. Therefore, this paragraph (k) would not have applied.

(l) [Reserved]

(m) *Adjusted current earnings of foreign corporations.* [Reserved]

(n) *Adjustment for adjusted current earnings of consolidated groups*—(1) *Positive adjustments.* For taxable years beginning after December 31, 1989, the alternative minimum taxable income of a consolidated group (as defined in § 1.1502–1T) is increased by 75 percent of the excess, if any, of—

(i) The consolidated adjusted current earnings for the taxable year, over

(ii) The consolidated pre-adjustment alternative minimum taxable income for the taxable year.

(2) *Negative adjustments*—(i) *In general.* The alternative minimum taxable income of a consolidated group is decreased, subject to the limitation of paragraph (n)(2)(ii) of this section, by 75 percent of the excess, if any, of the consolidated pre-adjustment alternative minimum taxable income over consolidated adjusted current earnings.

(ii) *Limitation on negative adjustments.* The amount of the negative adjustment for any taxable year shall be limited to the excess, if any, of—

(A) The aggregate increases in the alternative minimum taxable income of the group in prior years under this section, over

(B) The aggregate decreases in the alternative minimum taxable income of the group in prior years under this section.

(3) *Definitions*—(i) *Consolidated pre-adjustment alternative minimum taxable income.* Consolidated pre-adjustment alternative minimum taxable income is the consolidated taxable income (as defined in § 1.1502–11) of a consolidated group for the taxable year, determined with the adjustments provided in sections 56 and 58 (except for the adjustment for adjusted current earnings and the alternative tax net operating loss determined under section 56(a)(4)) and increased by the preference items described in section 57.

(ii) *Consolidated adjusted current earnings.* The consolidated adjusted current earnings of a consolidated group is the consolidated pre-adjustment alternative minimum taxable income of the consolidated group for the taxable year, adjusted as provided in section 56(g) and this section.

(4) *Example.* The following example illustrates the provisions of this paragraph (n):

(i) P is the common parent of a consolidated group. In 1990, the group has consolidated pre-adjustment alternative minimum taxable income of $1,400,000 and consolidated adjusted current earnings of $1,600,000. Thus, the group has a consolidated adjustment for adjusted current earnings for 1990 of $150,000 (75 percent of the $200,000 excess of consolidated adjusted current earnings over consolidated pre-adjustment alternative minimum taxable income), and alternative minimum taxable income of $1,550,000 ($1,400,000 plus $150,000).

(ii) In 1991, the group has consolidated pre-adjustment alternative minimum taxable income of $1,800,000 and consolidated adjusted current earnings of $1,100,000. Thus, the group can reduce its alternative minimum taxable income by $150,000. The potential negative adjustment of $300,000 (75 percent of the $400,000 excess of consolidated pre-adjustment alternative minimum taxable income over consolidated adjusted current earnings) is limited to the $150,000 consolidated adjustment for adjusted current earnings taken into account in 1990.

(o) [Reserved]

(p) *Effective dates for corporate partners in partnerships*—(1) *In general.* The provisions of this section apply to a corporate partner's distributive share of items of income and expense from a partnership for any taxable year of the partnership ending within or with any taxable year of the corporate partner beginning after December 31, 1988.

(2) *Application of effective dates.* Solely for purposes of the effective date provisions of this section, a partnership event (such as placing property in service, paying or incurring a cost, or closing an installment sale) is deemed to occur on the last day of the partnership's taxable year.

(3) *Example.* The following example illustrates the provisions of this paragraph (p):

(i) X is a calendar-year corporation that is a partner in P, an accrual-basis partnership with a taxable year ending March 31. During P's taxable year ending March 31, 1990, P earned ratably throughout the year interest income on tax-exempt obligations. In addition, P incurred intangible drilling costs in November 1989 and in February 1990.

(ii) X's adjusted current earnings for 1990 includes X's distributive share of the interest on the tax-exempt obligations earned by P for its taxable year ending March 31, 1990. This is true even though P earned a portion of the interest prior to January 1, 1990.

(iii) For purposes of computing X's adjusted current earnings for 1990, the adjustment provided in paragraph (f)(1) of this section applies to X's distributive share of P's November 1989 and February 1990 intangible drilling costs.

(q) *Treatment of distributions of property to shareholders*—(1) *In general.* If a distribution of an item of property by a corporation with respect to its stock gives rise to more than one adjustment to earnings and profits under section 312, all of the adjustments with respect to that item of property (including the adjustment described in section 312(c) with respect to liabilities to which the item is subject or which are assumed in connection with the distribution) are combined for purposes of determining the corporation's adjusted current earnings for the taxable year. If the amount included in pre-adjustment alternative minimum taxable income with respect to a distribution of an item of property exceeds the net increase in earnings and profits caused by the distribution, pre-adjustment alternative minimum taxable income is not reduced in computing adjusted current earnings. If the net increase in earnings and profits caused by a distribution of an item of property exceeds the amount included in pre-adjustment alternative minimum taxable income with respect to the distribution, that excess is added to pre-adjustment alternative minimum taxable income in computing adjusted current earnings.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (q).

(i) *Example 1.* K corporation distributes property with a fair market value of $150 and an adjusted basis of $100. The adjusted basis is the same for purposes of computing taxable income, pre-adjustment alternative minimum taxable income, adjusted current earnings, and earnings and profits. Under section 312(a)(3), as modified by section 312(b)(2), K decreases its earnings and profits by the fair market value of the property, or $150. Under section 312(b)(1), K increases its earnings and profits by the excess of the fair market value of the property over its adjusted basis, or $50. As a result of the distribution, there is a net decrease in K's earnings and profits of $100. K recognizes $50 of gain under section 311(b) as a result of the distribution as if K sold the property for $150. K thus has no amount permanently excluded from pre-adjustment alternative minimum taxable income that is taken into account in determining current earnings and profits, and thus has no adjustment under paragraph (c)(1) of this section.

(ii) *Example 2.* The facts are the same as in example 1, except that the distribution shareholder assumes a $190 liability in connection with the diaribution. Under section 312(c)(1), K must adjust the adjustments to its earnings and profits under section 312 (a) and (b) to account for the liability the shareholder assumes. K adjusts the $100 net decrease in its earnings and profits to reflect the $190 liability, resulting in an increase in its earnings and profits of $90. Because section 311(b)(2) makes the rules of section 336(b) apply, the fair market value of the property is not less than the amount of the liability, or $190. K therefore is treated as if it sold the property for $190, recognizing $90 of gain. K thus has no amount permanently excluded from pre-adjustment alternative minimum taxable income that is taken into account in determining current earnings and profits, and thus has no adjustment under paragraph (c)(1) of this section.

Par. 6. Section 1.926 (a)–1T(b)(1) is revised to read as follows:

§ 1.926(a)–1T Temporary Regulations; Distributions to shareholders.

* * * * *

(b) *Order of distributions*—(1) *In general.* For guidance, see § 1.926(a)–1(b)(1).

* * * * *

Par. 7. Section 1.926(a)–1 is added to read as follows:

§ 1.926(a)–1 Distributions to shareholders.

(a) *Treatment of distributions.* [Reserved] For guidance, see § 1.926(a)–1T(a).

(b) *Order of distribution*—(1) *In general*—(i) *Distributions by a FSC received by a shareholder in a taxable year of the shareholder beginning before January 1, 1990.* Any actual distribution to a shareholder by a FSC (all references to a FSC in this section shall include a small FSC and a former FSC) that is received by the shareholder in a taxable year of the shareholder beginning before January 1, 1990, and made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

(A) Out of earnings and profits attributable to exempt foreign trade income determined solely because of operation of section 923(a)(4),

(B) Out of earnings and profits attributable to other exempt foreign trade income,

(C) Out of earnings and profits attributable to non-exempt foreign trade income determined under either of the administrative pricing methods of section 925(a) (1) or (2),

(D) Out of earnings and profits attributable to section 923(a)(2) non-exempt income, and

(E) Out of other earnings and profits.

(ii) *Distributions by a FSC received by a shareholder in a taxable year of the shareholder beginning after December 31, 1989.* Any actual distribution to a shareholder by a FSC that is received by the shareholder in a taxable year beginning after December 31, 1989, and that is made out of earnings and profits shall be treated as made in the following order, to the extent thereof—

(A) Out of earnings and profits attributable to exempt foreign trade income determined solely because of the operation of section 923(a)(4),

(B) Out of earnings and profits attributable to foreign trade income (other than exempt foreign trade income determined solely because of the operation of section 923(a)(4)) allocable to the marketing of agricultural or horticultural products (or the providing of related services) by a qualified cooperative which is a shareholder of the FSC,

(C) Out of earnings and profits attributable to non-exempt foreign trade income and other exempt foreign trade income determined under either of the administrative pricing methods of section 925(a) (1) and (2). Distributions out of this classification will be made on a pro rata basis so that 15/23 (16/23 with regard to distribution to a non-corporate shareholder of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income. To the extent the distributions are out of earnings and profits attributable to the disposition of, or services related to, military property, 7.5/23 (8/23 with regard to distributions to a non-corporate shareholder) of each distribution will be out of earnings and profits attributable to exempt foreign trade income and the remainder will be out of earnings and profits attributable to non-exempt foreign trade income,

(D) Out of earnings and profits attributable to other exempt foreign trade income determined under the transfer pricing method of section 925(a)(3),

(E) Out of earnings and profits attributable to section 923(a)(2) non-exempt income,

(F) Out of earnings and profits attributable to effectively connected income, as defined in section 245(c)(4)(B), and

(G) Out of other earnings and profits.

(2) *Determination of earnings and profits.* [Reserved] For guidance, see § 1.926(a)–1T(b)(1).

(c) *Definition of "former FSC".* [Reserved] For guidance, see § 1.926(a)–1T(c).

(d) *Personal holding company income.* [Reserved] For guidance, see § 1.926(a)–1T(d).

(e) *Sale of stock if section 1248 applies.* [Reserved] For guidance, see § 1.926(a)–1T(e).

* * * * *

Dated: February 21, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–6171 Filed 3–14–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[T.D. 8339]

RIN 1545–AH86

Treatment of Gain or Loss on Deemed Sale of Affected Target Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that add new § 1.338–6T. The temporary regulations supplement existing regulations by providing rules relating to the determination of the amount of gain or loss recognized by a target corporation on its deemed sale under section 336(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective March 14, 1991, and generally apply to transactions occurring on or after January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Keith Medleau of the Office of Assistant Chief Counsel (Corporate) on 202–566–3551 (not a toll-free number). For foreign aspects, contact Ken Allison of the Office of Associate Chief Counsel (International) on 202–566–6442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedures Act (5 U.S.C. 553). For this reason, the collections of information contained in § 1.338–6T have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number (1545–1115). The estimated annual burden per respondent varies from 1.9 hours to 2.9 hours, depending on individual circumstances, with an estimated average of 2.4 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

General Information. This document adds new temporary regulations § 1.338–6T to part 1 of title 26 of the Code of Federal Regulations. The temporary regulations added by this document will remain in effect until superseded by later final regulations relating to these matters or, if earlier, three years after March 15, 1991.

This document addresses the situation in which the application of section 338 of the Internal Revenue Code of 1986 results in multiple levels of gain or loss recognition with respect to the same economic gain or loss. This document does not conform to the regulations under section 338 to other changes made by the Tax Reform Act of 1986 (the "1986 Act"), such as the repeal of old section 337 and conforming amendments to section 338. See, *e.g.*, § 1.338–4T(k) (relating to the application of old section 337 to a deemed sale of assets).

The Operation of Section 338 and Multiple Taxation. Section 338 of the Code generally provides that, if a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect to have the target treated as if it (a) sold all of its assets (as "old target") at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (b) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by the purchasing corporation for target stock plus liabilities of target and other relevant items. Section 338 (a) and (b). A qualified stock purchase generally is any transaction or series of transactions in which stock of a corporation possessing at least 80 percent of the total voting power and value of the stock of such corporation is purchased by another corporation during a "12-month acquisition period." Sections 338 (d)(3) and (h)(1).

The section 338 election may be either an express or a deemed election. Under section 338(f)(1) of the Code, if a purchasing corporation makes an express section 338 election in connection with its qualified stock purchase of the target, a section 338 election generally will be deemed to have been made by the purchasing corporation with respect to any other qualified stock purchase of a "target affiliate" within the "consistency period" defined in section 338(h)(4). A corporation generally is treated as a target affiliate of the target if each of such corporations was a member of an affiliated group that had the same common parent at any time during so much of the consistency period as ends on the acquisition date of the target. Sections 338(h) (5) and (6) and § 1.338–5T(c)(1). A target affiliate with respect to which there is a deemed election is an "affected target." *See* §§ 1.338–4T(b) (3) and (9).

Prior to the 1986 Act, the deemed sale of assets of the target generally was governed by the statutory nonrecognition rule in old section 337, which was a codification of the General Utilities doctrine. Under old section 337, subject to certain exceptions (*e.g.*, section 1245), no gain or loss was recognized by the target on the deemed sale of its assets. § 1.338–4T(k)(1) Q and A 1. The 1986 Act repealed old section 337 as part of the repeal of the General Utilities doctrine, with the result that generally all gain or loss realized on the deemed sale of the assets of the target is recognized. As a consequence, if an election under section 338(g) is made without a corresponding joint election under section 338(h)(10), a target owning stock of an affected target will recognize gain or loss on the deemed sale of that stock and, thereafter, the affected target also will recognize gain or loss on the deemed sale of its assets. The operation of section 338 in such circumstances would result in multiple levels of gain or loss recognition with respect to the same economic gain or loss. There is no indication that, as a consequence of the repeal of General Utilities, Congress intended to tax economic gain (loss) at the corporate level in these circumstances more than once. See Conf. Rep. No. 841, 99th Cong., 2nd Sess. II–204 (1986).

For example, assume purchasing corporation, P, purchases in a single transaction all of the stock of domestic target, DT. DT is the common parent of a consolidated group and therefore DT and P cannot make a section 338(h)(10) election with respect to DT and its subsidiaries. DT's sole asset consists of all of the stock of a domestic target affiliate, DT1. The stock of DT1 has a basis of $50 and a fair market value of $150. DT1's assets have a basis of $50 and a fair market value of $150. P makes an express section 338 election with respect to its qualified stock purchase of DT, which triggers a deemed sale of old DT's assets (the DT1 stock) on which DT recognizes gain of $100 and a deemed purchase by new DT of all of the DT1 stock. New DT's deemed purchase constitutes a qualified stock purchase of DT1 stock. The express election for DT causes a deemed election for DT1 under section 338(f)(1) of the Code, since purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). Therefore, old DT1 is deemed to sell its assets and, as a result, also recognizes gain of $100. *See* § 1.338–4T(c)(3) Q and A 1. Thus, $200 of gain would be recognized with respect to the same $100 of economic gain.

Explanation of Provisions

The recognition of gain or loss by a target on the deemed sale of the stock of an affected target, in addition to the recognition of gain or loss by such affected target on the deemed sale of its assets, is an unintended effect of the repeal of General Utilities. Accordingly, temporary regulations § 1.338–6T is added to provide that no gain or loss is recognized by the target on the deemed sale of stock of an affected target with respect to which the target is a § 1.338–6T shareholder if an election under section 338(g) (but not an election under section 338(h)(10)) is made with respect to the affected target. Under new § 1.338–6T, a § 1.338–6T shareholder is a target that directly owns stock in an affected target that meets the requirements of section 1504(a)(2) (*i.e.*, 80-percent vote and value test). Where the common parent of a consolidated group is a target, the term § 1.338–6T shareholder also includes a target that directly owns stock in an affected target not meeting the requirements of section 1504(a)(2) if both the target and affected target are members of the common parent's consolidated group. *See* section 338(i). The determination and allocation of the aggregate deemed sale price and adjusted grossed-up basis under §§ 1.338–4T(h) and 1.338 (b)–2T, respectively, will be made by taking into account the stock in all affected targets, including stock with respect to which gain or loss is not recognized under new § 1.338–6T.

New §1.338–6T does not provide an exception from multiple taxation in the case of a deemed sale of stock of an affected target by a target that does not meet the definition of a § 1.338–6T shareholder. One case not covered by the new temporary regulations arises where a domestic target (DT) owns all of the stock of two domestic target affiliates (DT1 and DT2) and each of the two target affiliates directly owns 50 percent of the total voting power and value of the stock of another domestic target affiliate (DT3). If a section 338 election is made with respect to a qualified stock purchase of DT, then DT1, DT2 and DT3 would be affected targets. DT is a § 1.338–6T shareholder of DT1 and DT2, but, if DT is not the common parent of an affiliated group filing a consolidated return, neither DT1 nor DT2 would be a § 1.338–6T shareholder of DT3.

The treatment of some cases where the target is not a § 1.338–6T shareholder may be addressed in regulations under section 336(e) or section 338(h)(10), as revised by the 1986 Act. Section 336(e) grants the Secretary authority to prescribe regulations under which a sale, exchange or distribution of a corporation's stock is treated as a disposition of the corporation's assets and any gain (or loss) on the disposition of the stock is ignored. Section 338(h)(10) grants the Secretary authority to prescribe regulations extending the availability of section 338(h)(10) to affiliated groups that do not file consolidated returns. It is expected, however, that any regulations issued under either section 336(e) or 338(h)(10) will apply only to transactions occurring after the regulations are issued. Comments are requested concerning the scope of any relief from multiple taxation in cases not covered by this regulation and, more generally, the scope of any new rules under sections 336(e) and 338(h)(10).

Paragraph(d) of new § 1.338–6T sets forth situations in which gain or loss is recognized on the deemed sale of affected target stock.

Under paragraph (d)(2) of new § 1.338–6T, gain or loss is recognized with respect to stock of a foreign affected target deemed sold by a domestic target.

Under paragraph (d)(3) of new § 1.338–6T, effectively connected gain or loss is recognized on the deemed sale by a foreign target of the stock of a foreign affected target.

Under paragraph (d)(4) of new § 1.338–6T, gain attributable to earnings and profits described in section 953(d)(4)(B) is recognized on the deemed sale by a domestic corporation of the stock of an affected target that is a corporation electing under section 953(d). This treatment of the deemed sale of the stock of a corporation electing under section 953(d) is consistent with the treatment of an actual disposition of stock under that provision by way of sale or liquidation. Similarly, paragraph (d)(5) of new § 1.338–6T states that, upon the deemed sale of the stock of a DISC (or former DISC) affected target, gain (but not loss) is recognized in an amount equal to the lesser of the gain realized on the DISC stock or the amount of the accumulated DISC income. This rule is consistent with the current treatment of a DISC upon its sale or the termination of its separate corporate existence.

Paragraph (d)(6) of new § 1.338–6T provides that if an asset whose adjusted basis exceeds its fair market value is contributed or transferred to an affected target in a carryover basis transaction and a purpose of the transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of that affected target's stock, the gain (or loss) recognized will be determined as if the asset had not been contributed or transferred.

Paragraph (e) of new § 1.338–6T provides effective dates. Generally, the rules of new § 1.338–6T apply to any qualified stock purchase for which a section 338 election is made on or after March 14, 1991. Special rules are provided that extend the application of § 1.338–6T on an elective basis to certain qualified stock purchases for which an election was made before March 14, 1991.

Transitional rules are provided in paragraph (f) of new § 1.338–6T that allow an extension of time to make an election under section 338 if neither a section 338(g) election nor a protective carryover election has been made for a qualified stock purchase and the last date for making either election is on or after March 14, 1991. The transitional rules also permit, if the consent of the Commissioner is obtained, a section 338(g) election or revocation of a regular exclusion election for certain qualified stock purchases.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulation is Keith Medleau of the Office of Chief Counsel, Internal Revenue Service, except that the principal author of §1.338–6T(d) is Ken Allison of that office. However, other personnel from the Internal Revenue Service and the Department of the Treasury participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.301–1 through 1.385–6

Corporate adjustments, Corporate distributions, Corporations, Income taxes, Reorganizations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.338–6T also issued under 26 U.S.C. 338.

Par. 2. New § 1.338–6T is added to read as follows:

§ 1.338–6T Treatment of gain or loss on deemed sale of affected target stock (temporary).

(a) *Scope.* This section prescribes rules relating to the treatment of gain or loss realized by a target on the deemed sale of stock of an affected target where an election under section 338(g) (but not an election under section 338(h)(10)) is made with respect to the affected target.

(b) *Definitions and nomenclature*—(1) *In general.* The definitions and nonmenclature in §§ 1.338–1T, 1.338–4T (as modified by § 1.338–5T(b)) and 1.338–5T also apply to this section.

(2) *§ 1.338–6T shareholder.* A § 1.338–6T shareholder is a target that directly owns stock in an affected target that meets the requirements of section 1504(a)(2). A § 1.338–6T shareholder is also a target that directly owns stock in an affected target if both the target and affected target are members of a consolidated group filing a final consolidated return described in § 1.338–1T(f)(2)(ii).

(c) *General Rule*—(1) *Deemed sale of, affected target by a § 1.338–6T*

shareholder. Except as provided in paragraph (d) of this section, if an express or deemed election under section 338 is made with respect to the qualified stock purchase of a target, no gain or loss is recognized by the tranget on the deemed sale of stock of an affected target with respect to which the target is a § 1.338–6T shareholder.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. P purchases in a single transaction all of the outstanding stock of DT. DT's sole asset consists of all of the outstanding stock of DT1. The stock of DT1 has a basis of $50 and a fair market value of $150. DT1's assets have a basis of $50 and a fair market value of $150. P makes an express section 338 election with respect to DT. Under § 1.338–4T(c)(3) *Q and A1,* old DT is deemed to sell all of DT's assets (the DT1 stock), resulting in old DT's realizing gain of $100. New DT is deemed to purchase those assets, and its deemed purchase of all the DT1 stock constitutes a qualified stock purchase of DT1 stock. The express election for DT causes a deemed election for DT1 under section 338(f)(1) of the Code, because purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). Because DT is a § 1.338–6T shareholder of affected target DT1, DT's $100 of gain on the deemed sale of DT1 stock is not recognized. However, DT1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. DT owns all of the outstanding stock of DT1 and DT2. DT1 and DT2 each directly own 50 percent of the vote and value of DT3 stock. DT is the common parent of a consolidated group and the group's final return is a consolidated return. *See* § 1.338–1T(f)(2)(ii). DT is a § 1.338–6T shareholder of affected targets DT1 and DT2. Even though neither DT1 nor DT2 directly owns an amount of stock meeting the requirements of section 1504(a)(2), because DT1, DT2 and DT3 are members of DT's consolidated group, DT1 and DT2 are § 1.338–6T shareholders of DT3. Therefore, no gain or loss is recognized by DT, DT1 or DT2 on the respective deemed sales of affected target stock by each of the corporations.

(d) *Situations in which gain or loss is recognized*—(1) *In general.* Nothwithstanding paragraph (c) of this section, gain or loss is recognized to the extent provided in this paragraph (d).

(2) *Deemed sale of foreign affected target by a domestic target.* Gain or loss is recognized by a domestic target on the deemed sale of stock in a foreign affected target but for the filing of a regular exclusion election under § 1.338–5T(c)(2)). For the proper treatment of such gain or loss, *see e.g.,* sections 1246, 1248, 1291 *et seq.,* and 338(h)(16) and § 1.338–5T.

(3) *Deemed sale producing effectively connected income.* Gain or loss is recognized by a foreign target on the deemed sale of the stock of a foreign affected target to the extent that such gain or loss is effectivley connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(4) *Deemed sale of insurance company affected target electing under section 953(d).* Gain (but not loss) is recognized by a domestic target on the deemed sale of the stock of an affected target that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(5) *Deemed sale of DISC affected target.* Gain (but not loss) is recognized by a foreign or domestic target on the deemed sale of the stock of an affected target that is a DISC or a former DISC (as defined in section 992 (a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain will be included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(6) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to an affected target as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or incease the loss) recognized on the deemed sale of such affected target's stock, the gain or loss recognized under this paragraph (d) will be determined as if such asset had not been contributed or transferred.

(7) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

Example. (i) P purchases in a single transaction all of the outstanding stock of DT. DT's sole asset consists of all of the outstanding stock of FT1. FT1's sole asset consists of all of the outstanding stock of FT2. The stock of FT1 has a basis of $25 and a fair market value of $150. The stock of FT2 has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248 (c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the stock of FT2 or of FT2's assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes an express section 338 election with respect to DT, which triggers a deemed sale of old DT's assets (the FT1 stock). New DT's deemed purchase of all of the FT1 stock constitutes a qualified stock purchase of the FT1 stock. No regular exclusion election for FT1 and FT2 is filed under § 1.338–5T(c)(2). The express election for DT causes a deemed election for FT1 under section 338(f)(1), because purchases by members of the same affiliated group (here P and new DT) are treated as if made by one corporation under section 338(h)(8). *See* § 1.338–4T(c)(3) *Q and A 1.* The deemed election for FT1, in turn, triggers a deemed sale of FT1's asset (the stock of FT2) and a deemed election for FT2 (and deemed sale of FT2's assets), for the reasons described above with respect to FT1.

(iii) DT recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (d)(2) of this section. FT1's $75 of gain on the deemed sale of the FT2 stock is not recognized under paragraph (c) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain DT recognizes on the deemed sale of the FT1 stock is included in the income of DT as a dividend in its entirety under the rules of section 1248, because FT1 and FT2 have sufficient accumulated and deemed sale earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–5T(g). For purposes of sections 901 through 908 of the Code, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock will be determined under section 338(h)(16).

(e) *Effective date*—(1) *In general.* This section applies to any qualified stock purchase for which a section 338 election is made (or deemed to have been made) on or after March 14, 1991.

(2) *Elective application of this section to prior section 338 elections.* If an express or deemed election under section 338 was made before March 14, 1991, for a qualified stock purchase for which the acquisition date is after December 31, 1986, the purchasing corporation may elect, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase, to have this section apply to such qualified stock purchase by filing an irrevocable transitional § 1.338–6T election in accordance with the procedural rules in paragraph (g) of this section. Any election made pursuant to this paragraph will apply to the qualified stock purchase of the target and all affected targets for which the acquisition date is after December 31, 1986, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase.

(f) *Transitional rules with respect to other elections under section 338*—(1) *In general.* This paragraph (f) applies to any qualified stock purchase for which the acquisition date is after December 31, 1986, to the extent the amendments made by section 631 of the Tax Reform Act of 1986 apply to such qualified stock purchase.

(2) *Extension of time to make an election.* Notwithstanding § 1.338–1T(c)(1), if neither a section 338(g) election nor a protective carryover election under § 1.338–4T(f)(6) has been made for a qualified stock purchase and the last date for making either election (without regard to this sentence) is on or after March 14, 1991, the last day for making either election will not be earlier then July 12, 1991.

(3) *Revocation of certain regular exclusion elections.* Notwithstanding § 1.338–5T(c)(2)(v)(A), if a regular exclusion election under § 1.338–5T(c)(2) is made before May 13, 1991, in connection with a qualified stock purchase, the purchasing corporation may revoke the regular exclusion election if the purchasing corporation obtains the consent of the Commissioner.

(4) *Revocation of certain protective carryover elections.* Notwithstanding § 1.338–4T(f)(6)(i)(A), if a protective carryover election is made before May 13, 1991, for a qualified stock purchase, the purchasing corporation may revoke the protective carryover election and make a simultaneous section 338(g) election if the purchasing corporation obtains the consent of the Commissioner.

(5) *Other qualified stock purchases.* If a section 338(g) election was not made for qualified stock purchase and the last date for making the election was before March 14, 1991, the purchasing corporation may make a section 338(g) election for the qualified stock purchase if the purchasing corporation obtains the consent of the Commissioner.

(6) *Consent.* The consent required in paragraphs (f) (3), (4) and (5) of this section will be granted in the discretion of the Commissioner. Consent will be granted only if the purchasing corporation establishes to the satisfaction of the Commissioner—

(i) That a regular exclusion election was made or a section 338(g) election was not made, in either case, primarily because of a concern about miltiple taxation affecting the buyer or the seller, and

(ii) That application of this section would provide relief from such multiple taxation.

If consent is granted, this section, including procedural rules similar to those provided in paragraph (g) of this section, will apply. A section 338(h)(10) election will not be allowed in connection with any election under section 338(g) for which consent is granted. Consent should be applied for in the same manner as an advance ruling from the Internal Revenue Service, not later than July 12, 1991.

(g) *Procedural rules.* A transitional § 1.338–6T election must—

(1) Contain the name, address, and employer identification number of the purchasing corporation;

(1) Contain the name, address, and employer identification number of the original target;

(3) Be filed on or before July 12, 1991;

(4) Be filed where the section 338(g) election was originally filed;

(5) Have attached to it a copy of the previously filed section 338(g) election, but schedules of information, supplemental statements, and corrective statements described in § 1.338–1T(e)(1) need not be attached;

(6) State that "this transitional § 1.338–6T election is made pursuant to § 1.338–6T";

(7) Include a list that sets forth each affected target and its employer identification number, and indicates each original or affected target that is a § 1.338–6T shareholder. The list must indicate for each affected taxable year (as defined in § 1.338–1T(m)(12) whether each such corporation is required to file amended return(s) and the place of such filing or (if applicable) whether an amended consolidated return or combined deemed sale return (see section 338(h)(15) and § 1.338–4T(k)(6)) must be filed;

(8) Include a declaration that "taxpayer agrees to extend the statute of limitations on assessment for two years from the date of the filing of this transitional § 1.338–6T election, to the extent the period of limitations would otherwise expire earlier, for any taxable year affected (within the meaning of § 1.338–1T(m)(12)) by the filing of this election";

(9) Include a declaration that either "amended return(s) will be timely filed by or for each target (including any affected target) for all affected taxable years, as defined in § 1.338–1T(m)(12), unless such requirement is waived in writing by the District Director or his delegate" or "the original returns are consistent with the provisions of § 1.338–6T"; and

(10) Be signed by a person who states under penalties of perjury that he or she is authorized to make the transitional § 1.338–6T election on behalf of the purchasing corporation.

There is need for immediate guidance with respect to the provisions contained in the Treasury decision. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and procedure under section 553(b) of Title 5 of the United States Code or subject to the effective date limitation of section 553(d) of Title 5, United States Code.

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.
Approved: February 27, 1991.
Kenneth W. Gideon,
Assistant Secretary of the Treasury.

[FR Doc. 91–5822 Filed 3–14–91; 8:45 am]
BILLING CODE 4830–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1991.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the

interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*		*		*		*		*		*			*			
April 1991..	.075	.07375	.0725	.07125	.07	.0675	.0675	.0675	.0675	.0675	.0625	.0625	.0625	.0625	.0625	.05875

Issued at Washington, DC, on this 11th day of March 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91-6179 Filed 3-14-91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program; Intervention in Hearings

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval of a propose amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment clarifies that the Indiana Surface Mining Statute provisions concerning intervention in hearings allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background of the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated October 24, 1990, (Administration Record No. IND-0802), the Indiana Department of Natural Resources (IDNR) responded to an OSM inquiry for either and explanation from the State regulatory authority about how the State program satisfied the required amendment at 30 CFR 914.16(c) or a program amendment submittal to resolve the outstanding requirement placed on Indiana by the Director in his amendment approval on May 16, 1985 (50 FR 20414-20415). The State response referenced the Administrative Adjudication Act at Indiana Code (IC) 4-21.5-3 and the Indiana Surface Mining Act at IC 13-4.1-4-5, IC 13-4.1-11-8(a) and IC 13-4.1-11-12 and explained how the existing program provisions allow intervention in a hearing by a person who has an inerest which is or may be adversely affected by the outcome of the proceeding. OSM announced receipt of the proposed amendment in the January 18, 1991, **Federal Register** (56 FR 1960-1961), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 19, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15, and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

Indiana Code (IC) 4-21.5-3, IC 13-4.1-4-5, IC 13-4.1-8(a), and IC 13-4.1-11-12 and 310 IAC 0.5-1-14(a), Provisions for Intervention in Hearings.

On May 16, 1985, in the **Federal Register** (50 FR 20414-20415), the director found 310 IAC 0.5-1-14(a) less effective that the requirements of 43 CFR 4.1110 and required an amendment at 30 CFR 914.16(c) to allow intervention in a hearing by a person who has an interest which is or may be adversely affected by the outcome of the proceeding. The State had argued that the Indiana law and SMCRA confer "broad standing, such that persons who may be affected are allowed to intervene based on a statutory right of intervention." The Director found that although a provision in 310 IAC 0.5-1-14(a) granted intervention "where the right to intervene is otherwise conferred by law", that the regulation was not supported by the provisions of the Indiana surface mining law since no statutory provisions were cited by the State supporting its conclusion that its law confers broad standing and intervention rights (50 FR 20415). Then in 1987, Public Law 7-1987 amended the Indiana Surface Mining Act by adding Indiana Code (IC) 13-4.1-11-12 regarding provisions for intervention in hearing. This statute was approved by the Director in the April 1, 1987, **Federal Register** (52 FR 10371), where he found that the statutory changes were consistent with the amendment required by 30 CFR 914.16(c)(1), and provided statutory authority for Indiana to promulgate the required rule change. By letter dated October 24, 1990 (Administrative Record No. IND-0802), Indiana explained that this statute clarified existing provisions in IC 13-4.1-4-5 which provide opportunities for a formal hearing in permitting situations and in IC 13-4.1-11-8(a) which provides for a formal hearing in enforcement situations. Also included in the letter was a statement that "Thus, IC 13-4.1-11-12 clarifies already existing provisions and makes explicit the fact that the Indiana program allows for intervention in administrative and judicial hearings by persons who have interests which are or may be adversely affected by the outcome of a proceeding." After a review of the preamble discussions found in the May 16, 1985, **Federal Register** (50 FR 20414-20415) and the April 1, 1987, **Federal Register** (52 FR 10371), the significant portions of which are referenced in the discussion, the Director finds that the Indiana Surface Mining Act at IC 13-4.1-11-12 provides a right to intervention in hearings under state law, as contemplated under the provision of 310 IAC 0.5-1-14(a) which allows a person to intervene "where the right to intervene is otherwise conferred by law." Therefore, taking into consideration the October 24, 1990, written explanation and statement made by the Indiana regulatory authority, the Director further finds that 310 IAC 0.5-1-14(a) in conjuction with IC 13-4.1-11-12 provide for intervention in hearings in a manner no less effective that 43 CFR part 4.1110. In light of this finding, the required amendment at 30 CFR 914.16(c) can be removed.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The Fish and Wildlife Service responded that it had no objection to the proposed amendment.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the January 18, 1991, **Federal Register** (56 FR 1960-1991). The comment period closed on February 19, 1991. No comments were received, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings discussed above, the Director is approving the proposed amendment as submitted to OSM by Indiana and October 24, 1990. The Federal regulations at 30 CFR Part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal Standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect of any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM and exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C 3507.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1991.

Lewis M. McNay,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 914.15, is amended by adding a new paragraph (dd) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(dd) The following amendment to the Indiana program as submitted to OSM

on October 24, 1990, is approved effective March 15, 1991. Indiana regulatory authority's explanation and statement concerning how the existing State program provisions satisfy the required amendment to allow intervention in a hearing by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

§ 914.16 [Amended]

3. 30 CFR 914.16 is amended by removing and reserving paragraph (c).

[FR Doc. 91-6175 Filed 3-14-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Iranian Transactions Regulations, 31 CFR part 560 (the "Regulations"), to permit case-by-case licensing of the importation of Iranian-origin oil where the importation is related to the resolution or settlement of cases before the Iran-U.S. Claims Tribunal in The Hague (the "Tribunal"), or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel (202/535-6020), or Steven I. Pinter, Chief of Licensing (202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The regulations prohibit importation into the United States of goods and services of Iranian origin, and certain related transactions. The regulations are being amended to add § 560.513, authorizing the case-by-case licensing of Iranian-origin oil imports, provided the importer certifies that the oil to be imported is in resolution or settlement of an outstanding claim against Iran, or the proceeds of the sale of the oil are otherwise to be deposited in the Security Account at The Hague. This will permit licensing of oil imports in two specific circumstances neither of which involves any transfer of funds to Iran: (1) A settlement between Iran and a U.S. company with payment to the U.S. company entirely in oil instead of in funds from the security account; or (2) a purchase of oil from Iran with all the funds in payment deposited in the Security Account.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 560

Imports, Iran, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 560 is amended as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The "Authority" citation for part 560 continues to read as follows:

Authority: 22 U.S.C. 2349aa-9; E.O. No. 12613, 52 FR 41940, October 30, 1987.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. A new § 560.513 is added at the end of subpart E to read as follows:

§ 560.513 Importation of Iranian-origin oil.

(a) Specific licenses will be issued on a case-by-case basis to permit the importation of Iranian-origin oil in connection with the resolution or settlement of cases before the Iran-United States Claims Tribunal in The Hague, established pursuant to the Algiers Accords of January 19, 1981, or where the proceeds are otherwise to be deposited in the Tribunal's Security Account.

(b) License applications submitted pursuant to this section must contain the importer's certification that the oil is of Iranian origin with all relevant supporting documentation, including specification of the production site at which the oil was extracted, and that the sale or transfer of the oil is by or for the account of the Government of Iran. Licenses will not be issued for importations of Iranian-origin oil which is not sold or transferred by or for the account of the Government of Iran. In cases where the oil is being imported either in whole or in part in resolution or settlement of a case pending before the Tribunal, applicants are required to identify the case and submit a copy of the settlement agreement and the Award on Agreed Terms issued by the Tribunal. In cases where any proceeds are generated, for the account of the Government of Iran from the importation of Iranian-origin oil, the importer must demonstrate that irrevocable arrangements are in place that will ensure that the proceeds will be deposited in the Security Account at The Hague.

Dated: February 25, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 6, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-6139 Filed 3-11-91; 3:51 pm]
BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-18]

Special Local Regulations; International Bay City River Roar, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the International Bay City River Roar. This event will be held on the Saginaw River on the 12th, 13th, and 14th of July 1991, with an alternate date of 15 July 1991 if the weather is inclement on 14 July 1991.

EFFECTIVE DATE: These regulations become effective on 12 July 1991 and terminate on 15 July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 11 January 1991, the Coast Guard published a Notice of Proposed Rule Making in the Federal Register for these regulations (56 FR 1152). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River between the Liberty Bridge and the Veterans Memorial Bridge on the 12th, 13th, and 14th of July 1991. This event will have an estimated 70 hydroplanes which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI.).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary section 100.35-T0918 to read as follows:

§ 100.35-T0918 International Bay City River Roar, Saginaw River, Bay City, MI.

(a) *Regulated Area.* That portion of the Saginaw River from the Liberty Bridge on the north to the Veterans Memorial Bridge on the south.

(b) *Special Local Regulations.*

(1) The above area will be closed to navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9:30 a.m. (EDST) until 4 p.m. (EDST) on 12 July 1991, from 9:30 a.m. (EDST) until 4:30 p.m. (EDST) on 13 July 1991, and from 8:30 a.m. (EDST) until 5:30 p.m. (EDST) on 14 July 1991.

(2) If the weather on 14 July 1991 is inclement, the river closure will be postponed until 6:30 a.m. (EDST) until 5:30 p.m. (EDST) on 15 July 1991. If postponed, notice will be given on 14 July 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G.A. Pennington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-6221 Filed 3-14-91; 8:45 am]
BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD-FRL-3943-12]

Designations and Classifications for Initial PM-10 Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing designations and classifications for initial PM-10 nonattainment areas.

SUMMARY: Under section 107(d)(4)(B) of the Clean Air Act (Act) as amended by the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, November 15, 1990), certain areas were designated as nonattainment for the pollutant PM-10 by operation of law upon enactment of the Amendments. These areas include "Group" I areas identified at 52 FR 29383 (August 7, 1987) and as subsequently clarified at 55 FR 45799 (October 31, 1990). Other areas (i.e., Group II or III areas) containing sites for which air quality monitoring data showed a violation of the national ambient air quality standards (NAAQS) for PM-10 prior to January 1, 1989 were also designated nonattainment for PM-10 by operation of law upon enactment. All other areas were designated unclassified for PM-10 by operation of law. By this notice, EPA is announcing, as required by section 107(d)(2) of the amended Act, all of those areas that were designated nonattainment for PM-10 by operation of law on November 15, 1990.

By this notice, EPA is also announcing, as required by section 188(a) of the amended Act, that all of the areas designated nonattainment for PM-10 by operation of law upon enactment of the Amendments were classified as moderate nonattainment areas at that time. In accordance with section 189(a)(2), States must submit State implementation plans (SIP's) for these areas by November 15, 1991.

DATES: Written comments on this notice must be received by April 15, 1991 at the address below.

EFFECTIVE DATE: These actions will become effective on May 14, 1991.

ADDRESSES: Written comments on this action should be addressed to Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division (MD–15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

The air quality monitoring data supporting the nonattainment designation of the former Group II and III areas monitoring violations of the PM–10 NAAQS prior to January 1, 1989 are available from the respective EPA Regional Office which serves the State where the affected area is located. The addresses of the Regional Offices are as follows:

- State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203–2211
- Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278
- Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107
- Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365
- Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604
- Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733
- Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101
- Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—Suit 500, Denver, CO 80202–2405
- Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105
- Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101

FOR FURTHER INFORMATION CONTACT: Larry D. Wallace, Particulate Matter Programs Section, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (919) 541–0906 or FTS 629–0906 and at the address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

A. 1987 Revision of the NAAQS for Particulate Matter

On July 1, 1987, EPA revised the NAAQs for particulate matter, replacing total suspended particulates (TSP) as the indicator for particulate matter with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (called "PM–10") (52 FR 24634). At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's SIP development policy on PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). The EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based on their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the PM–10 NAAQS and requiring substantial SIP adjustment were placed in Group I, (2) areas where attainment of the PM–10 NAAQS was possible and existing SIP's needed less adjustment were placed in Group II, (3) areas with a strong likelihood of attaining the PM–10 NAAQS and therefore needing adjustment only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682).

B. Prior Listing of and Modification to PM–10 Groups I, II, and III Areas

In accordance with the standards, policies, and regulations published on July 1, 1987 for revising and implementing the new particulate matter standards, EPA identified and listed the Group I and Group II areas in each State in a notice published on August 7, 1987 (52 FR 29383). That notice also indicated that any area of the country not listed as Group I or II was placed in Group III (52 FR 29383).

The EPA subsequently modified the listing for three areas and announced these revisions in a notice published on March 28, 1989 (54 FR 12620). Specifically, the 1989 notice indicated that Porter County, Indiana, was changed from Group I to Group II; Mono Basin, California, was changed from Group III to Group II; and Sandpoint, Idaho, was changed from Group I to Group II.

On October 31, 1990, EPA published technical corrections clarifying the boundaries of concern for some of the areas previously identified as Groups I and II areas (55 FR 45799). When EPA listed the initial groupings for areas in the August 1987 notice, the Groups I and II areas of concern were generally described as cities, towns, counties, or planning areas. The EPA indicated at that time that these descriptions were only the initial definitions of the areas to be investigated in the SIP development process and would be better defined later. The clarifications to the Groups I and II areas announced in October 1990 specifically defined and delineated the boundaries of the Groups I and Group II areas in question based on information obtained in the SIP development process and EPA guidelines and procedures for determining particulate matter boundaries. With respect to Group II areas, the October 1990 notice also set forth those areas containing a site for which air quality monitoring data showed a violation of the NAAQS prior to January 1, 1989.[1]

II. Today's Action

In the 1990 Amendments to the Clean Air Act, Congress used the PM–10 grouping scheme as the starting point for designating areas on nonattainment and unclassifiable for PM–10 by operation of law upon enactment of the Amendments. Group I areas identified in 52 FR 29383 (August 7, 1987) and as subsequently clarified in 55 FR 45799 (October 31, 1990) were designated nonattainment for PM–10 by operation of law [2] [see section 107(d)(4)(B)(i) of the amended Act]. Any other area (i.e., Group II or III areas) containing a site for which air quality monitoring data showed a violation of the NAAQS for PM–10 prior to January 1, 1989 was also designated nonattainment for PM–10 by operation of law upon enactment [see 107(d)(4)(B)(ii) of the amendment Act]. All other areas were designated unclassifiable for PM–10 by operation of law [see 107(d)(4)(B)(iii) of the amended Act]. By this notice, EPA is announcing, as required by section 107(d)(2) of the amended Act, all of those areas that were designated nonattainment for PM–10 by operation of law on November 15, 1990.

Section 188(a) of the amended Act provides that those areas designated nonattainment for PM–10 upon enactment of the 1990 Clean Air Act Amendments were, by operation of law, classified as moderate PM–10 nonattainment areas at the time of their designation as nonattainment. By this notice, EPA is also announcing, as required by section 188(a) of the amended Act, that all of the areas designated as nonattainment for PM–10 by operation of law upon enactment of the Amendments were classified as moderate nonattainment areas at that time.

For administrative efficiency reasons, EPA will defer the ministerial act of formally codifying these PM–10 designations and classifications in 40 CFR part 81 until EPA codifies designations and classifications for other pollutants sometime within the next few months. This notice is provided now in order to make the announcements required by sections 107(d)(2) and 188(a) of the revised Act and to ensure that SIP development for

[1] Footnote 4 of the October 31, 1990 notice references Group II areas with violations of the PM–10 NAAQS.

[2] The notice published on October 31, 1990 (55 FR 45799) reflects the revisions announced in the notice published on March 28, 1989 (54 FR 12620).

the new PM–10 nonattainment areas proceeds in a timely fashion.

Neither of these actions is subject to the APA requirements for notice-and-comment rulemaking (5 U.S.C. 553–557) or section 307(d) of the amended Clean Air Act.[3] Regarding designations, section 107(d)(2) of the amended Act requires the Administrator to publish a notice announcing designations occurring pursuant to section 107(d)(4), but explicitly provides that such announcement is not subject to APA notice-and-comment rulemaking procedures. Thus, Congress has expressly exempted the announcement of those areas designated nonattainment for PM–10 by operation of law under section 107(d)(4)(B) from the notice-and-comment procedural requirements of the APA.

Regarding classifications, section 188(a) of the amended Act requires the Administrator to publish a notice announcing the classifications of these areas. Section 188(a) explicitly states that the provisions of section 172(a)(1)(B) pertaining to lack of notice and comment and judicial review shall apply when the Administrator announces these classifications. Section 172(a)(1)(B), in turn, expressly exempts the classification announcement from the notice-and-comment procedures set forth in 5 U.S.C. 553–557 of the APA.

Nevertheless, for the purpose of providing an opportunity for public participation and avoiding error, EPA will entertain any comments on these actions that are received by April 15, 1991. The EPA's announcement of these actions [for purposes of sections 107(d)(2) and 188(a)] will become effective on May 14, 1991. This will provide enough time for EPA to make any adjustments to the announcement that are appropriate in light of the comments.

III. Initial PM–10 Nonattainment Areas

The following list identifies all of those areas designated as nonattainment for PM–10 on November 15, 1990, upon enactment of the Clean Air Act Amendments of 1990. The EPA also announces, pursuant to section 188(a) of the amended Act, that all of these areas were classified as moderate by operation of law upon enactment of the Amendments.

PM–10 Initial Nonattainment Areas [1,2]

State and counties	Area of Concern
Alaska:	
Anchorage	Community of Eagle River.
Juneau	City of Juneau: Mendenhall Valley area.
Arizona:	
Cochise	Paul Spur/Douglas planning area: Township 23 south, Range 25 east (T23S, R25E); T23S, R26E; T24S, R25E; T24S, R26E; T23S, R27E; T24S, R27E; T23S, R28E; T24S, R28E.
Santa Cruz	Nogales planning area: The portions of the following Townships which are within the State of Arizona and lie east of 111° longitude: T23S, R13E; T23S, R14E; T24S, R13E; T24S, R14E;
Pima	Rillito planning area: Townships: T11S, R9E; T11S, R10E; T11S, R11E; T11S, R12E; T12S, R8E; T12S, R9E; T12S, R10E; T12S, R11E; T12S; R12E; Ajo planning area: Township T12S, R6W, and the following sections of Township T12S, R5W: a. Sections 5–8 b. Sections 17–20, and c. Sections 29–32
Maricopa and Pinal	Phoenix planning area: The rectangle determined by, and including, T6N, R3W; T6N, R7E; T2S, R3W; T2S, R7E; T1N; R8E
Yuma	Yuma planning area: Townships: T7S–R21W, R22W; T8S–R21W, R22W, R23W, R24W; T9S–R21W, R22W, R23W, R24W, R25W; T10S–R21W, R22W, R23W, R24W, R25W.
Pinal and Gila	Hayden/Miami planning area: Townships: T4S, R16E T5S, R16E T6S, R16E plus the portion of Township T3S, R16E that does not lie on the San Carlos Indian Reservation, and the rectangle formed by, and including, Townships: T1N, R13E; T1N, R15E T6S, R13E; T6S, R15E
California:	
Inyo	Owens Valley planning area: Hydrologic Unit #18090103.
San Bernardino, Inyo, and Kern	Searles Valley planning area: Hydrologic Unit #1809005.
Mono	Mammoth Lake planning area: Includes the following sections: a. Sections 1–12, 17, and 18 of Township T4S, R28E; b. Sections 25–36 of Township T3S, R28E; c. Sections 25–36 of Township T3S, R27E; d. Sections 1–18 of Township T4S, R27E; and e. Sections 25 and 36 of Township T3S, R26E
Fresno, Kern, Kings, Tulare, San Joaquin, Stanislaus, Madera.	San Joaquin Valley planning area.
Riverside, Los Angeles, Orange, and San Bernardino.	South Coast Air Basin.
Riverside	Coachella Valley planning area.
Imperial	Imperial Valley planning area.
Colorado:	
Archuleta	Pagosa Springs.

[3] Regarding section 307(d) requirements, today's actions are not among the actions listed in section 307(d)(1) of the amended Act as being subject to the procedural requirements of section 307(d), nor has the Administrator designated these actions as 307(d)(1)(U) of the amended Act.

BEST COPY AVAILABLE

PM-10 INITIAL NONATTAINMENT AREAS [1,2]—Continued

State and counties	Area of Concern
Adams, Denver, Arapahoe, Jefferson, Douglas, and Boulder.	Denver Metropolitan area: All of Denver, Jefferson, and Douglas Counties, Boulder County (excluding the Rocky Mountain National Park) and the Colorado automobile inspection and readjustment program portions of Adams and Arapahoe Counties.
San Miguel	Telluride.
Prowers	Lamar
Pitkin	Aspen.
Fremont	Canon City.
Connecticut:	
New Haven	City of New Haven.
Idaho:	
Ada	Boise: Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence, west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 36 minutes west until the said line intersects the north line of T5N (12 Ter. Sea. 67); thence, west to the northwest corner T5N, R1W; Western Boundary—Thence, south to the northwest corner of T3N, R1W; thence, east to the northwest corner of section 4 of T3N, R1W; thence, south to the southeast corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W; thence, west to the northwest corner of T1N, R1W; thence, south to the southwest corner of T1N, R1W; Southern Boundary—Thence, east to the southwest corner of section 33 of T1N, R4E; Eastern Boundary—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.
Shoshone	City of Pinehurst.
Bannock and Power	City of Pocatello.
Bonner	County.
Illinois:	
Cook	a. Lyons Township b. The area bounded on the north by 79th Street, on the west by Route 57, on the south by Sibley Boulevard and on the east by the Illinois/Indiana State line.
LaSalle	Ogleaby including the following Townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S31; and T33N, R1E, S36.
Madison	Granite City Township and Nameoki Township.
Indiana:	
Lake	Cities of East Chicago, Hammond, Whiting, and Gary.
Vermillion	Clinton Township.
Maine:	
Aroostook	City of Presque Isle.
Michigan:	
Wayne	The area bounded by Michigan Avenue from its intersection with I-75 west to I-94, I-94 southwest to Greenfield Road, Greenfield Road south to Schaefer Road, Schaefer Road south and east to Jefferson Avenue, Jefferson Avenue south (Biddle Avenue through the city of Wyandotte) to Sibley Avenue, Sibley Avenue west to Fort Street, Fort Street south to King Road, King Road east to Jefferson Avenue, Jefferson Avenue south to Helen Road, Helen Road east extended to Trenton Channel, Trenton Channel north to the Detroit River, the Detroit River north to the Ambassador Bridge, Ambassador Bridge to I-75, I-75 to Michigan Avenue.
Minnesota:	
Ramsey	The area bounded by the Mississippi River from Lafayette to Route 494, Route 494 east to Route 61, Route 61 north to I-94 I-94 west to Lafayette, and Lafayette south to the Mississippi River.
Olmsted	City of Rochester.
Missouri:	
Audrain	County.
Montana:	
Flathead	The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 700000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN. Columbia Falls: Township T30N, R20W, Sections 7, 8, 9, 16, and 17.
Lincoln	Libby.
Lake	Ronan, Polson.
Missoula	Township T13N, R19W, sections 2, 8, 11, 14, 15, 16, 17, East 19, 20, 21, 22, 23, 24, 27, 28, 29, East 1/2 30, East 1/2 31 32, 33, 34, and T12N, R19W, section 4, 5, 8, 7.
Rosebud	Lame Deer.
Silver Bow	Butte.
Nevada:	
Washoe	Reno planning area: Hydrographic area 87.
Clark	Las Vegas planning area: Hydrographic Area 212.
New Mexico:	
Dona Ana	The area bounded by Anthony Quadrangle, Anthony, New Mexico—Texas, SE/4 La Mesa 15' Quadrangle, N3200—W10630/ 7.5, Township 26S, Range 3E, Sections 35 and 36 as limited by the New Mexico—Texas State line on the south.
Ohio:	
Cuyahoga	County.
Jefferson	The portion of the City of Steubenville south of Market Street, plus the area bounded on the north by the southern boundary of the City of Steubenville, on the west by Ohio Route #7, on the south by the southern border of Steubenville Township, and on the east by the Ohio/West Virginia border.
Oregon:	
Jackson	Medford-Ashland air quality maintenance area (including White City).
Josephine	Grants Pass: The area within the urban growth boundary.
Lane	Eugene/Springfield: The area within the urban growth boundary.
Klamath	Klamath Falls: The area within the urban growth boundary.
Union	LaGrande: The area within the urban growth boundary.

PM-10 INITIAL NONATTAINMENT AREAS [1,2]—Continued

State and counties	Area of Concern
Pennsylvania:	
Allegheny	The area including Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton.
Puerto Rico:	
Guaynabo	Municipality of Guaynabo.
Texas:	
Lubbock	That portion of the City of Lubbock enclosed by Loop 289 highway.
El Paso	City of El Paso.
Utah:	
Salt Lake	County.
Utah	County.
Washington:	
King	The portion of the City of Seattle bounded on the east by I-5/East Duwamish Greenbelt, on the south by 104th Street, on the west by the West Duwamish Greenbelt north to Fairmont Avenue, S.W., north on Fairmont to Elliott Bay, and Dearborn Street from Elliott Bay to I-5; The City of Kent and a portion of the Green River valley bounded on east and west by the 100-foot contour, on the north by South 212th Street, and on the south by Highway 516.
Pierce	Tacoma metropolitan area bounded on the north by Marine View Drive from Commencement Bay east to the 100-foot contour, southeast along the 100-foot contour to 64th Avenue East, south along 64th Avenue East extended to I-5, I-5 west to the 100-foot contour near Pacific Avenue, and north along the 100-foot contour to Commencement Bay.
Spokane	The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 489000mE, 5271000mN, west to 458000mE, 5271000mN, thence north along a line to coordinate 458000mE, 5288000mN, thence east to 463000mE, 5288000mN, thence north to 463000mE, 5292000mN, thence east to 481000mE, 5292000mN, thence south to 481000mE, 5288000mN, thence east to 489000mE, 5288000, thence south to the beginning coordinate 489000mE, 5271000mN.
Yakima	The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN.
Thurston	Cities of Olympia, Turnwater, and Lacey.
Walla Walla	Wallula.
West Virginia:	
Brooke	Follansbee area bounded on the north by the Market Street Bridge, on the east by West Virginia Route #2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/ West Virginia border.
Wyoming:	
Sheridan	City of Sheridan.

[1] When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of the date of this notice.
[2] When a planning area is shown, the area of concern includes the entire planning area unless the area is further defined (e.g., by township, range, and/or section).

IV. Significance of Today's Action

By November 15, 1991, States must adopt and submit to EPA a SIP for all those areas that were classified as moderate PM-10 nonattainment areas by operation of law upon enactment of the 1990 Clean Air Act Amendments [see Subpart 4 of Part D of Title I of the Clean Air Act as amended (section 189)]. All of the areas listed above must submit a SIP meeting the general requirements for nonattainment areas identified in section 172 of the amended Act and the requirements specific to PM-10 in Subpart 4 of Part D. In particular, section 189(a) of the amended Act requires that all of the initial moderate PM-10 nonattainment areas submit a SIP by November 15, 1991 which includes the following:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable.
2. Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM-10 are implemented by December 10, 1993.

In addition, a new source permit program meeting the requirements of Part D of the Act is required for the construction and operation of new and modified major stationary sources of PM-10 (including, in some cases, PM-10 precursors). A SIP revision meeting this requirement is due by June 30, 1992 for all of the initial moderate PM-10 nonattainment areas. The EPA will provide additional guidance on SIP requirements for these areas in the near future.

Also note that EPA must take final action by the end of 1991 with respect to which of these initial PM-10 nonattainment areas should be reclassified from moderate to serious because they cannot practicably attain the PM-10 air quality standards by December 31, 1994 [see section 188(b)(1) of the amended Act]. If reclassified as serious, these areas will be subject to additional control requirements and a new attainment date. Since EPA must propose these reclassifications by June 30, 1991, EPA will work with the States before that date in order to develop a proposed list of moderate areas to be reclassified as serious.

V. Authority

Sections 107(d)(4), 110, 188(a), and 301 of the amended Clean Air Act provide authority for today's action.

Dated: March 7, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-5987 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-1 and Ch. 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule; correction.

SUMMARY: This action corrects an error in a document amending the Federal Travel Regulation which was published March 8, 1991 (56 FR 9878). In the

"DATES" section of the preamble, the applicability date reading "March 8, 1991" is corrected to read "March 6, 1991."

EFFECTIVE DATE: March 6, 1991.

ADDRESSES: Send comments to the General Services Administration, Travel Management Division (FBT), Washington, DC 20406, telefax (703) 557-3094.

FOR FURTHER INFORMATION CONTACT: Leonard Loewentritt or Janet Harney, Office of General Counsel (LP), Washington, DC 20405, telephone FTS 241-1156 or commercial (202) 501-1156.

Note: For additional corrections, see the corrections section of this issue.

Dated: March 12, 1991.

Donna D. Bennett,

Director, Travel Management Division.

[FR Doc. 91-6269 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-20; RM-7124]

Radio Broadcasting Services; Marina, Salinas & Seaside, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 224B1 for Channel 224A at Marina, California, and modifies the license of Station KBOQ(FM) to specify operation on the higher powered channel, as requested by Model Associates, Inc. Additionally, in order to accommodate the modification at Marina, Channel 278A is substituted for Channel 280A at Salinas, California, and the license issued to KCTY AM & KRAY FM, Inc. for Station KRAY-FM is modified accordingly. Also, Channel 280A is substituted for Channel 278A at Seaside, California, for which four applications are pending, to accommodate the modification of Station KBOQ(FM). Coordinates for Channel 224B1 at Marina are 36-33-09 and 121-47-17. Coordinates for Channel 278A at Salinas are 36-36-01 and 121-30-23. Coordinates for Channel 280A at Seaside are 36-36-48 and 121-50-12. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 90-20, adopted February 25, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by removing Channel 224A at Marina and adding Channel 224B1; by removing Channel 280A at Salinas and adding Channel 278A; and by removing Channel 278A at Seaside and adding Channel 280A.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6117 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-446; RM-7082]

Radio Broadcasting Services; Key Largo, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C2 for Channel 280A at Key Largo, Florida, and modifies the construction permit of Station WZMQ(FM) to specify operation on the higher class channel, at the request of Spanish Broadcasting Systems of Florida, Inc. See 55 FR 42738, October 23, 1990. Channel 280C2 can be allotted to Key Largo in compliance with the Commission's minimum distance separation requirements, with a site restriction of 20.3 kilometers (12.6 miles) southwest of the community. The coordinates are North Latitude 24-57-20 and West Longitude 80-34-50. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-446, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continue to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 280A and adding Channel 280C2 at Key Largo.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6244 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-614; RM-7136]

Radio Broadcasting Services; Brookston and Monticello, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 237A from Monticello to Brookston, Indiana, and modifies the license of WKJM, Inc. for Station WKJM(FM), as requested, pursuant to the provisions of section 1.420(i) of the Commission's rules. The allotment of Channel 237A to Brookston will provide the community with its first local broadcast service without depriving Monticello of its only local aural service. See 55 FR 1483, January 16, 1990. Coordinates used for Channel 237A at Brookston are 40-40-57 and 86-51-34. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-614, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 237A at Monticello and adding Channel 237A, Brookston.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6245 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-554; RM-7442]

Radio Broadcasting Services; Littlefield, TX.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stebbins Broadcasting Company, substitutes Channel 238C3 for Channel 238A at Littlefield, Texas, and modifies its construction permit for Station KXDM at Littlefield to specify operation on the higher powered channel. See 55 FR 49097, November 26, 1990. Channel 238C3 can be allotted to Littlefield in compliance with the Commission's minimum distance separation requirements at the site by the petitioner, at coordinates North Latitude 33-56-17 and West Longitude 102-20-38. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-554, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 238A and adding Channel 238C3 at Littlefield.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6246 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-386; RM-7276]

Radio Broadcasting Services; Pullman, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Palouse Empire Broadcasting Corp., substitutes Channel 258C1 for Channel 258C2 at Pullman, Washington, and modifies its construction permit for Station KZZL-FM at Pullman to specify operation on the higher powered channel. See 55 FR 35325, August 29, 1990. Channel 258C1 can be allotted to Pullman in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.8 kilometers (10.4 miles) east of Pullman to avoid a short-spacing to Station KKZX(FM), Channel 255C, Spokane, Washington, at coordinates North Latitude 46-40-32 and West Longitude 116-58-06. Since Pullman is located with 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-386, adopted February 28, 1991, and released March 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 258C2 and adding Channel 258C1 at Pullman.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6247 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-06; Notice 2]

RIN 2127-AD05

Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids—Color Coding

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In response to a petition from Bendix France, this notice amends Standard No. 116's color coding requirements to require that a newly developed type of brake fluid, which is of a non-silicone base that meets the characteristics of DOT 5 fluids, be colorless to amber. All brake fluids that have these characteristics and that are manufactured before the effective date of these amendments are required by the standard to be purple. NHTSA has determined that requiring the newly developed DOT 5 non-silicone base brake fluids (non-SBBFs) to be colorless to amber will help distinguish them from traditional silicone base brake fluids (SBBFs), which continue to be required to be purple in color. To further distinguish the new fluids, they will henceforth have to be labeled "DOT 5.1 non-silicone base." In addition, the amendments require DOT 5.1 non-SBBFs to comply with the test procedures for pH value, chemical stability, and compatibility. DOT 5 SBBFs continue to be excluded from these requirements, since silicone base fluids are inherently stable in terms of pH and chemical stability. This notice also amends certain test procedures to ensure the repeatability of test results and deletes extraneous language that is no longer in effect.

DATES: *Effective date:* The rule is effective on September 11, 1991.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 15, 1991.

ADDRESS: Petitions for reconsideration of this rule should refer to Docket 90-06, Notice 2 and be submitted to the following address: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Bloom, Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366-5277.

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 116, *Motor Vehicle Brake Fluids*, (49 CFR 571.116) sets forth requirements for the fluids used in hydraulic brake systems of motor vehicles, the containers for these fluids, and the labels for these containers. This standard is intended to reduce failures in the hydraulic braking systems of motor vehicles which may occur because of the manufacture or use of improper or contaminated fluid.

Section S5.1 specifies three grades of motor vehicle brake fluids (DOT 3, DOT 4, and DOT 5) and sets forth performance requirements for, among other things, the equilibrium reflux boiling point (ERBP), the wet ERBP, and the kinematic viscosities. DOT 5 brake fluids are required to have higher boiling points and superior low temperature kinematic viscosities than DOT 3 and DOT 4 brake fluids. As a result, DOT 5 brake fluids are associated with higher performance levels than the DOT 3 and DOT 4 brake fluids. DOT 5 brake fluids have traditionally been of a silicone base, while DOT 3 and DOT 4 brake fluids have been of a non-silicone base. A silicone base brake fluid (SBBF) is immiscible (i.e., incapable of mixing or attaining homogeneity) with a non-silicone base brake fluid (non-SBBF).

In recent years, manufacturers have developed DOT 5 non-SBBFs which are fully miscible with DOT 3 and DOT 4 fluids, but immiscible with traditional DOT 5 SBBFs. The DOT 5 non-SBBFs may provide a low cost alternative to the traditional high performance DOT 5 SBBFs.

Unlike the non-SBBFs, SBBFs (i.e., these traditional DOT 5 fluids) have corrosion inhibiting properties resulting from their "low moisture avidity," i.e., they do not absorb water. While some consumers purchase the DOT 5 SBBFs for this characteristic, Standard No. 116's performance requirements do not address the corrosion inhibiting characteristics directly related to a brake fluid's field performance.

Section S5.1.14 of Standard No. 116 has for some time required DOT 3 and DOT 4 brake fluid to be colorless to amber, DOT 5 to be purple, and hydraulic system mineral oil to be green. In establishing color code requirements, the agency explained their purpose "is to permit easy identification of fluids before they are placed in the vehicle, in order to prevent the mixing of an incompatible fluid in a braking system" and "to enable users to distinguish among various unused brake fluids, rather than to match fluid in a master cylinder with additional fluid." (41 FR 54942, December 16, 1976).

Petition for Rulemaking

On January 16, 1989, Bendix France, a division of Allied Signal (Bendix), petitioned the agency to amend Standard No. 116's color coding requirements, claiming that the DOT 5 non-SBBFs would provide a cost effective means of improving consumer safety. The petitioner stated that requiring DOT 5 non-SBBFs to be purple would mislead consumers, since they are immiscible with traditional DOT 5 SBBFs but miscible with traditional DOT 3 and DOT 4 fluids. Accordingly, Bendix requested the agency to require the new DOT 5 non-SBBFs to be colorless to amber to distinguish them from the traditional purple DOT 5 SBBFs. In addition, the petitioner requested the new DOT 5 non-SBBFs be required to comply with certain requirements from which DOT 5 SBBFs are currently excluded (i.e., the pH requirements in S5.1.4, the chemical stability requirements in S5.1.5.2, and the compatibility requirements for stratification in S5.1.10). The DOT 5 fluids have been excluded from pH and chemical stability requirements because DOT 5 SBBFs are inherently stable. Thus, such testing is unnecessary. The petitioner did not request that DOT 5 SBBFs be required to comply with any different performance requirements.

Notice of Proposed Rulemaking (NPRM)

On March 2, 1990, NHTSA proposed amending Standard No. 116 to require DOT 5 non-SBBFs to be colorless to amber, reasoning that such color coding would help consumers distinguish among brake fluids with differing characteristics. (55 FR 7510) In particular, the agency tentatively determined that the newly developed DOT 5 non-SBBFs, with their differing miscibility and corrosion inhibiting properties, should be distinguished from traditional DOT 5 SBBFs. To further distinguish the new fluids, the notice proposed that DOT 5 fluids be labeled either "DOT 5 non-silicone base" or "DOT 5 silicone base," as appropriate. The notice also proposed requiring DOT 5 non-SBBFs to comply with the performance requirements for pH value, chemical stability, and compatibility.

The Agency Response to the Comments

NHTSA received nine comments in response to the NPRM. The agency has considered the points raised in the comments in developing this final rule. The significant points raised by the commenters are addressed below, along with the agency's response to them. For the convenience of the reader, this notice follows the NPRM's order.

A. Color Coding Requirements

At the time that Bendix petitioned the agency, section S5.1.14 required that DOT 3 and DOT 4 fluids be colorless to amber, DOT 5 be purple, and hydraulic system mineral oil be green. These requirements, along with section S5.2.2.1's requirement that the label include the DOT grade, are intended to assist users in distinguishing among brake fluids. In the interest of promoting the proper use of its newly developed non-SBBF DOT 5 fluid, the petitioner requested the agency use color coding to distinguish further between those fluids and DOT 5 SBBFs. The petitioner recommended the distinction be based on whether the fluid showed stratification during compatibility tests.

The notice proposed that DOT 5 non-SBBFs be colorless to amber and traditional DOT 5 SBBFs remain purple. The agency based its original color coding proposal on existing requirements of independent standardization organizations including the Society of Automotive Engineers (SAE); FAKRA, the German equivalent to the SAE; and the International Standardization Organisation (ISO). The agency's goal was to develop a system for distinguishing among brake fluids that would not be overly complex or misleading.

Chrysler, GM, and Wagner agreed that the DOT 5 non-SBBFs should be colorless to amber, stating that color coding of fluids alerts consumers against mixing incompatible fluids. No commenters addressing this issue opposed the color coding proposal.

Based on the reasons set forth in the NPRM and the agreement of those manufacturers commenting on the issue, the agency has decided to adopt the color coding requirements in S5.1.14, as proposed.

B. DOT Grade Category

As mentioned above, section S5.2.2.1 requires brake fluid labels to include the DOT grade. In response to the petition, NHTSA proposed that labels on DOT 5 fluids would have to indicate whether the fluid is a "silicone base" or "non-silicone base." The agency tentatively concluded that this additional information was necessary to facilitate consumer comprehension about the immiscibility of the Bendix fluid with traditional DOT 5 SBBFs. The proposal discussed other designations, e.g., "high temperature DOT 4" and DOT 6, but rejected these because they had the potential to be confusing and were inconsistent with the actions of the standardization organizations.

Commenters offered differing views about the best way to designate the new non-silicone base DOT 5 brake fluid. Dow favored the labeling designation as proposed, claiming that the other designations would be misleading. Mico and Wagner, manufacturers of brake components, and GM believed that designating both silicone base and non-silicone base fluids as "DOT 5" was not sufficient to prevent misapplications because some consumers might rely solely on the marking "DOT 5" and would not know the difference between SBBFs and non-SBBFs. These commenters were concerned that manuals instructing consumers to "use DOT 5 fluids" in their vehicles would contribute to the damaging of the braking systems of aftermarket vehicles if those systems were exposed to DOT 5 non-SBBFs. FAKRA recommended that the non-SBBFs be designated DOT 5 "conventional" fluids because of their similarities to DOT 3 and 4 fluids. Stating that further differentiation could be attained without violating the concerns in the NPRM, Chrysler recommended that DOT 5 non-SBBFs be designated "DOT 5.1 non-silicone base brake fluid." Chrysler continued that such a designation would indicate that the new fluid had DOT 5 performance characteristics and yet implied something different.

After reviewing the proposal in light of the comments, the agency has decided to require non-SBBFs with DOT 5 performance characteristics to be labeled "DOT 5.1 non-silicone base" and traditional SBBFs with DOT 5 performance characteristics will be labeled "DOT 5 silicone base." The agency has decided that such labeling requirements are necessary to help further distinguish the newly developed fluid, thus reducing the risk of mixing incompatible fluids. The agency believes that this designation will avoid an overly complex labeling system, be consistent with labeling specifications in other countries (International Harmonization), and adequately alert consumers not to use the new non-SBBF fluid in systems marked "Use with DOT 5 only."

C. Chemical Composition

In proposing requirements distinguishing between SBBFs and non-SBBFS, the agency recognized that Standard No. 116 traditionally has focused broadly on performance rather than chemical composition and has never required the label to state the fluid's composition. However, the NPRM explained that the basis for the proposal is the immiscibility of SBBFs and non-SBBFs, a factor relevant to the standard's test procedure for compatibility.

As for differentiating DOT 5 fluids, the petitioner suggested that it be based on stratification (i.e., the separation into definite layers of different non-homogenous materials in a mixture) when tested according to the standard's compatibility test. The NPRM rejected this method of differentiation because stratification would be difficult to determine in practice and thus difficult to enforce. The agency tentatively concluded that the best way to differentiate DOT 5 fluids would be through using an existing definition specifying that a fluid is either a SBBF or a non-SBBF. The notice stated that this would enable SBBFs to be differentiated from other DOT 5 fluids, while avoiding potential ambiguities caused by incomplete stratification during testing. The notice thus proposed adopting the definition for silicone base brake fluid in the military specification, "Brake Fluid, Silicone, Automotive, All Weather, Operational and Preservative, Metric," MIL-B-46176A, (29 April 1986, amended 5 August 1988). That provision states that "The material covered by this specification shall contain not less than 70 percent by weight of a diorgano polysiloxane. . . . ." The agency did not anticipate that this proposal would pose a significant problem for current users because the principal users of silicone base brake fluid, the military and the Postal Service, currently use this definition.

Union Carbide opposed this distinction stating that it is difficult to justify distinguishing between one fluid containing 69 percent diorgano polysiloxane and one with 71 percent. Wagner was concerned that such a designation would delay future product development because then other rulemakings to amend the DOT 5 category might be required. Union Carbide was also concerned that differences in miscibility properties by fluid composition may limit the selection of other types of raw materials.

In response to Union Carbide's first concern, the agency notes that as with all Federal safety standards issued under the Vehicle Safety Act, Standard No. 116 must use definitions that are clear and objective. As such, there will always be situations at which a line must be drawn. As for delaying future development, the agency disagrees with the commenter's belief that distinguishing between silicone base and non-silicone base fluids will restrict the development of additional fluids, because the two categories—silicone base fluids and non-silicone base fluids (i.e., fluids with any composition other than of a silicone base)—are all inclusive.

D. Test Procedures

Bendix requested that any DOT 5 non-SBBF be required to comply with all performance requirements in Standard No. 116, even requirements from which DOT 5 fluids have previously been excluded. As initially promulgated,

Standard No. 116 excluded the DOT 5 fluids from the pH value requirements in S5.1.4 and the chemical stability requirements in S5.1.5.2. These requirements were deemed unnecessary for DOT 5 fluids which, at the time, were typically SBBFs. The agency agreed with the petitioner and proposed that, except for DOT 5 SBBFs, all fluids, including DOT 5 non-SBBFs, must comply with the requirements for pH value, chemical stability, and compatibility in relation to compatibility. In addition, the notice proposed that to test DOT 5 non-SBBFs more accurately, those fluids should be subject to the procedure evaluating water tolerance in S6.9. The notice also proposed requiring DOT 5 non-SBBFs to be mixed with 3.5 percent water rather than be humidified, and be tested for its pH value. As for the humidification test procedure, the notice proposed increasing the test's duration through the use of larger samples and requiring the test fluid and the TEGME sample to be placed in the same desiccator. The agency tentatively concluded that these modifications would better ensure test result repeatability and thus the standard's enforceability. The notice also proposed deleting outdated provisions, such as references to tests with RM–1 fluid, which were in effect until November 3, 1986.

GM agreed with the proposal that the non-SBBFs with DOT 5 performance characteristics should comply with the pH value, chemical stability, and stratification portion of the compatibility requirements. Wagner believed that both the non-SBBF and SBBF should be tested identically. No commenters opposed this proposal to require full compliance of non-SBBFs.

Based on the discussion in the proposal and the comments about it, the agency has decided to test the new DOT 5.1 non-SBBF, as proposed. However, it disagrees with Wagner's recommendation to subject SBBFs to the pH, chemical stability, and no-stratification requirements of the water tolerance test. Given the inherent stability of SBBFs, such testing would only add extra cost and time to the tests, without producing any corresponding safety benefits.

E. Miscellaneous issues

Several commenters raised other issues in their comments. Wagner was concerned about DOT 5 performance characteristics not currently addressed in Standard No. 116, including vapor lock, lubricity, the effect on rubber, mixed fluid corrosion, and air solubility. Wagner also recommended additional requirements to address fluid compressibility and related brake pedal travel. Union Carbide suggested that the agency establish two separate safety standards for brake fluids: one for low water tolerant, e.g. silicone base, brake fluids, and one for water tolerant brake fluids. Union Carbide also recommended using different referee materials for the different grade fluids.

The agency notes that the issues addressed in these comments are beyond the scope of the proposal. The agency may consider proposing such amendments in the future if it determines that there is a need for them.

F. Impacts

NHTSA has examined the effect of this rulemaking action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that requiring DOT 5.1 non-SBBFs to be colorless to amber, requiring these distinctions to be indicated on the brake fluid container label, and subjecting DOT 5.1 non-SBBFs to additional testing will not significantly increase the cost of brake fluid or the cost of packaging. In fact, consumer costs may be reduced because this rulemaking may facilitate the introduction into the market of less expensive non-SBBFs of DOT 5 grade.

NHTSA believes that the adoption of this rule will not significantly increase the burdens for any party, even though DOT 5.1 non-SBBFs will be subject to additional tests and labels on DOT 5 fluid will be required to designate the fluid as "DOT 5 silicone base brake fluid" or "DOT 5.1 non-silicone base brake fluid." The agency views these modifications as necessary and easily accomplished for the new type of DOT 5.1 fluids. Because the impacts of this rule are minimal, the agency has not prepared a full regulatory evaluation. The agency anticipates that additional costs due to producing and packaging the fluids will be minimal. The agency also anticipates that additional costs due to testing will be negligible since large batch quantities are produced but only very minute test samples are involved.

NHTSA has also considered the impacts of this rule on small entities, as required by the Regulatory Flexibility Act. Based on this consideration, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Any fluid manufacturer qualifying as a small business under the Regulatory Flexibility Act might benefit by the changes in this rule, since they accommodate the development of the new non-SBBFs. As noted above, the additional labeling and testing costs appear to be minimal. Therefore, NHTSA believes that the amendments will not result in significant cost impacts for any party.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and motor vehicle equipment. However, the agency believes that these entities will not significantly be affected by the amendments in this notice since the change will not significantly affect the price of motor vehicle brake fluids.

NHTSA has also analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Finally, NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR 571.116, *Motor Vehicle Brake Fluids*, is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.116 [Amended]

2. In § 571.116, S4 is amended by adding the following definition *silicone base brake fluid* (SBBF) in alphabetical order to read as follows:

* * * * *

A *silicone base brake fluid* (SBBF) is a brake fluid which consists of not less than 70 percent by weight of a diorgano polysiloxane.

* * * * *

§ 571.116 [Amended]

3. In § 571.116, S5 is revised to read as follows:

S5 *Requirements:* This section specifies performance requirements for DOT 3, DOT 4, and DOT 5 brake fluids; requirements for brake fluid certification; and requirements for container sealing, labeling, and color coding for brake fluids and hydraulic system mineral oils. Where a range of tolerances is specified, the brake fluid shall meet the requirements at all points within the range.

4. In § 571.116, S5.1.4 is revised to read as follows:

S5.1.4 *pH value.* When brake fluid, except DOT 5 SBBF, is tested according to S6.4, the pH value shall not be less than 7.0 nor more than 11 5.

5. In § 571.116, S5.1.5.2 is revised to read as follows:

S5.1.5.2 *Chemical stability.* When brake fluid, except DOT 5 SBBF, is tested according to S6.5.4, the change in temperature of the refluxing fluid mixture shall not exceed 3.0 °C. (5.4 °F.) plus 0.05° for each degree that the ERBP of the fluid exceeds 225 °C. (437 °F.).

6. In § 571.116. S5.1.6(f) is revised to read as follows:

(f) The pH value of water-wet brake fluid, except DOT 5 SBBF, at the end of the test shall not be less than 7.0 nor more than 11.5;

7. In § 571.116, S5.1.10 is revised to read as follows:

S.5.1.10 *Compatibility.*

(a) *At low temperature.* When brake fluid is tested according to S6.10.3(a), the test specimen shall show no sludging, sedimentation, or crystallization. In addition, fluids, except DOT 5 SBBF, shall show no stratification.

(b) *At 60° C. (140° F.).* When brake fluid is tested according to S6.10.3(b)—

(1) Sedimentation shall not exceed 0.05 percent by volume after centrifuging; and

(2) Fluids, except DOT 5 SBBF, shall show no stratification.

8. In § 571.116, S5.1.14 is revised to read as follows:

S5.1.14 *Fluid color.* Brake fluid and hydraulic system mineral oil shall be of the color indicated:

DOT 3, DOT 4, and DOT 5.1 non-SBBF—colorless to amber.

DOT 5 SBBF—purple.

Hydraulic system mineral oil—green.

9. In § 571.116, S5.2.2.1(b) is revised to read as follows:

(b) The grade (DOT 3, DOT 4, DOT 5) of the brake fluid. If DOT 5 grade brake fluid, it shall be further distinguished as "DOT 5 SILICONE BASE" or "DOT 5.1 NON-SILICONE BASE."

10. In § 571.116, S5.2.2.2(e) is revised to read as follows:

(e) Designation of the contents as "DOT—MOTOR VEHICLE BRAKE FLUID" (Fill in DOT 3, DOT 4, DOT 5 SILICONE BASE, or DOT 5.1 NON-SILICONE BASE, as applicable).

11. In § 571.116, S5.2.2.2(g)3 is revised to read as follows:

* * * * *

3. STORE BRAKE FLUID ONLY IN ITS ORIGINAL CONTAINER. KEEP CONTAINER CLEAN AND TIGHTLY CLOSED TO PREVENT ABSORPTION OF MOISTURE.

* * * * *

12. In § 571.116, the sentence following the heading of S6, *Test Procedures*, is deleted.

* * * * *

13. In § 571.116, S6.2.1 is revised to read as follows:

S6.2.1. *Summary of procedure.* A 350 ml. sample of the brake fluid is humidified under controlled conditions; 350 ml. of SAE triethylene glycol monomethyl ether, brake fluid grade, referee material (TEGME) as described in Appendix E of SAE Standard J1703 Nov. 83, "Motor Vehicle Brake Fluid," November 1983, is used to establish the end point for humidification. After humidification, the water content and ERBP of the brake fluid are determined.

14. In § 571.116, S6.2.2 is revised to read as follows:

S6.2.2 *Apparatus for humidification.* (See Figure 3).

Test apparatus shall consist of—

(a) *Glass jars.* Four SAE RM–49 corrosion test jars or equivalent screwtop, straight-sided, round glass jars each having a capacity of about 475 ml. and approximate inner dimensions of 100 mm. in height by 75 mm. in diameter, with matching lids having new, clean inserts providing water-vapor-proof seals;

(b) *Desiccator and cover.* Two bowl-form glass desiccators, 250-mm. inside diameter, having matching tubulated covers fitted with No. 8 rubber stoppers; and

(c) *Desiccator plate.* Two 230-mm. diameter, perforated porcelain desiccator plates, without feet, glazed on one side.

15. Paragraph S6.2.3 is revised to read as follows:

S6.2.3 *Reagents and materials.*

(a) Distilled water, see S7.1.

(b) SAE TEGME referee material.

16. In § 571.116, S6.2.4 is revised to read as follows:

§ 6.2.4 *Preparation of apparatus.*

Lubricate the ground-glass joint of the desiccator. Pour 450±10 ml. of distilled water into each desiccator and insert perforated porcelain desiccator plates. Place the desiccators in an oven with temperature controlled at 50±1 °C. (122±1.8 °F.) throughout the humidification procedure.

17. In § 571.116, S6.2.5 is revised to read as follows:

S6.2.5 *Procedure.*

Pour 350±5 ml. of brake fluid into an open corrosion test jar. Prepare in the same manner a duplicate test fluid sample and two duplicate specimens of the SAE TEGME referee material (350±5 ml. of TEGME in each jar). The water content of the SAE TEGME fluid is adjusted to 0.50±0.05 percent by weight at the start of the test in accordance with S7.2. Place one sample each of the test brake fluid and the prepared TEGME sample into the same desiccator. Repeat for the second sample of test brake fluid and TEGME in a second desiccator. Place the desiccators in the 50 °C. (122 °F.) controlled oven and replace desiccator covers. At intervals, during oven humidification, remove the rubber stoppers in the tops of desiccators. Using a long needled hypodermic syringe, take a sample of not more than 2 ml. from each TEGME sample and determine its water content. Remove no more than 10 ml. of fluid from each SAE TEGME sample during the humidification procedure. When the water content of the SAE fluid reaches 3.70±0.05 percent by weight (average of the duplicates), remove the two test fluid specimens from their desiccators and promptly cap each jar tightly. Allow the sealed jars to cool for 60 to 90 minutes at 23°±5 °C. (73.4°±9 °F.). Measure the water contents of the test fluid specimens in accordance with S7.2 and determine their ERBP's in accordance with S6.1. If the two ERBPs agree within 4 °C. (8 °F.), average them to determine the wet ERBP; otherwise repeat and average the four individual ERBPs as the wet ERBP of the brake fluid.

18. In § 571.116, Figure 3, "Humidification Apparatus" is revised by substituting the term "distilled water" in place of "salt slurry." In addition, it is revised by deleting "45±7 mm."

19. In § 571.116, S6.5.4.1 is revised to read as follows:

S6.5.4.1 *Materials.*

SAE RM–66–03 Compatibility Fluid as described in Appendix A of SAE Standard J1703 Nov83, "Motor Vehicle Brake Fluid," November 1983.

20. In § 571.116, S6.5.4.2 is revised to read as follows:

S6.5.4.2 *Procedure.*

(a) Mix 30±1 ml. of the brake fluid with 30±1 ml. of SAE RM–66–03 Compatibility Fluid in a boiling point flask (S6.1.2(a)). Determine the initial ERBP of the mixture by applying heat to the flask so that the fluid is refluxing in 10±2 minutes at a rate in excess of 1 drop per second, but not more than 5

drops per second. Note the maximum fluid temperature observed during the first minute after the fluid begins refluxing at a rate in excess of 1 drop per second. Over the next 15±1 minutes, adjust and maintain the reflux rate at 1 to 2 drops per second. Maintain this rate for an additional 2 minutes, recording the average value of four temperature readings taken at 30 second intervals as the final ERBP.

(b) Thermometer and barometric corrections are not required.

21. In § 571.116, S6.6.4 is revised by replacing the reference to "DOT 5 fluids" with "DOT 5 SBBF fluids."

22. In § 571.116, S6.6.5 is revised by replacing the first sentence with the following sentence:

S6.6.5 *Procedure.* Rinse the cups in ethanol (isopropanol when testing DOT 5 SBBF fluids) for not more than 30 seconds and wipe dry with a clean lint-free cloth.

23. In § 571.116, S6.6.5 is further revised by replacing the fifth sentence, which begins "When testing DOT 3 and DOT 4 brake fluids. . ." with the following sentence:

* * * * *

When testing brake fluids, except DOT 5 SBBF, mix 760 ml. of brake fluid with 40 ml. of distilled water. When testing DOT 5 SBBF's, humidify 800 ml. of brake fluid in accordance with S6.2, eliminating determination of the ERBP. Using this water-wet mixture, cover each strip assembly to a minimum depth of 10 mm. above the tops of the strips. *

*

24. In § 571.116, S6.6.5 is further revised to have the second to last and last sentences to read as follows:

* * * * *

Measure the pH value of the corrosion test fluid according to S6.4.6.

Measure the pH value of the test mixture according to S6.4.6.

25. In § 571.116, S6.9.1 is revised to read as follows:

S6.9.1 *Summary of the procedure.*

Brake fluid, except DOT 5 SBBF, is diluted with 3.5 percent water (DOT 5 SBBF is humidified), then stored at minus 40 °C. (minus 40 °F.) for 120 hours. The cold, water-wet fluid is first examined for clarity, stratification, and sedimentation, then placed in an oven at 60 °C. (140 °F.) for 24 hours. On removal, it is again examined for stratification, and the volume percent of sediment determined by centrifuging.

26. In § 571.116, 6.9.3(a) is revised by adding "SBBF" after "DOT 5" in the first sentence. In the second sentence, the words "DOT 3 and DOT 4" before the words "brake fluids" are deleted and "except DOT 5 SBBF" is added after the words "brake fluids."

27. In § 571.116, S6.10.1 is revised to read as follows:

S6.10.1 *Summary of the procedure.*

Brake fluid is mixed with an equal volume of SAE RM–66–03 Compatibility Fluid, then tested in the same way as for water tolerance (S6.9) except that the bubble flow time is not measured. This test is an indication of the compatibility of the test fluid with other motor vehicle brake fluids at both high and low temperatures.

28. In § 571.116, S6.10.2(e) is revised to read as follows:

SAE RM–66–03 Compatibility Fluid. As described in Appendix A of SAE Standard J1703 Nov83, "Motor Vehicle Brake Fluid," November 1983.

29. In § 571.116, S6.10.2(f) is deleted.

30. In § 571.116, S6.10.3 is revised to read as follows:

S6.10.3 *Procedure.*

(a) *At low temperature.*

Mix 50± ÷0.5 ml. of brake fluid with 50±0.5 ml of SAE RM–66–03 Compatibility Fluid. Pour this mixture into a centrifuge tube and stopper with a clean dry cork. Place tube in the cold chamber maintained at minus 40°±2 °C. (minus 40°±3.6 °F.) After 24±2 hours, remove tube, quickly wipe with a clean lint-free cloth saturated with ethanol (isopropanol when testing DOT 5 fluids) or acetone. Examine the test specimen for evidence of sludging, sedimentation, or crystallization. Test fluids, except DOT 5 SBBF, shall be examined for stratification.

(b) *At 60 °C. (140 °F.)*

Place tube and test fluid from S6.10.3(a) for 24±2 hours in an oven maintained at 60°±2 °C. (140°±3.6 °F.). Remove the tube and immediately examine the contents of the test mixtures, except DOT 5 SBBFs, for evidence of stratification. Determine percent sediment by centrifuging as described in S7.5.

31. In § 571.116, S6.11.1 is revised to read as follows:

S6.11.1 *Summary of procedure.*

Brake fluids, except DOT 5 SBBF, are activated with a mixture of approximately 0.2 percent benzoyl peroxide and 5 percent water. DOT 5 SBBF is humidified in accordance with S6.2 eliminating determination of the ERBP, and then approximately 0.2 percent benzoyl peroxide is added. A corrosion test strip assembly consisting of cast iron and an aluminum strip separated by tinfoil squares at each end is then rested on a piece of SBR WC cup positioned so that the test strip is half immersed in the fluid and oven aged at 70 °C. (158 °F.) for 168 hours. At the end of this period, the metal strips are examined for pitting, etching, and weight loss.

32. In § 571.116, S6.11.4(b) is revised to read as follows:

(b) *Test mixture.*

Place 30±1 ml. of the brake fluid under test in a 22 by 175 mm. test tube. For all fluids except DOT 5 SBBF, add 0.060±.002 grams of benzoyl peroxide, and 1.50±0.05 ml. of distilled water. For DOT 5 SBBF, use test fluid humidified in accordance with S6.2, and add only the benzoyl peroxide. Stopper the tube loosely with a clean dry cork, shake, and place in an oven for 2 hours at 70°±2 °C. (158°±3.6 °F.). Shake every 15 minutes to effect solution of the peroxide, but do not wet cork. Remove the tube from the oven and allow to cool to 23°±5 °C. (73.4°±9 °F.) Begin testing according to paragraph S6.11.5 not later than 24 hours after removal of tube from oven.

33. In § 571.116, S7.2 is revised to delete subparagraph S7.2(b), and S7.2(a) is redesignated S7.2.

Issued on: March 11, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–6164 Filed 3–14–91; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

FV–91–330

RIN 0581–AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification [1]

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Certain Other Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. The proposed fees would recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

DATES: Comments must be received on or before: April 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709 South Building, Washington, DC 20090–6456. Comments should note the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Branch Chief during regular business hours.

[1] May include the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups, except from grain; tea, cocoa, coffee, spices, condiments.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709 South Building, Washington, DC 20090–6456, Telephone (202) 447–5021.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601).

The proposed rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This proposal would amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change December 11, 1989, (54 FR 50731), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3.5-percent pay increase effective January 1, 1990, and a 4.1-percent pay increase effective January 1, 1991.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In addition the following increases occurred in program operating expenses: (1) A 13.3-percent increase in the cost of support services during FY–90; (2) a projected inflationary cost increase of 4.0 percent for fiscal year 1991. The Agency has determined that due to the aforementioned increases in program operting costs, these programs will incur over a $1,750.000 loss in fiscal year 1991.

Based on the Agency's analysis of increased costs since 1989, AMS proposes to increase the fees relating to such services. The following table compares current fees and charges with proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR 52.42–52.52. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current	Proposed
$31.00 inspector hour, plus $7.00/hr. overtime.	$34.50 inspector hour, plus one-half the hourly rate for overtime.

Charges for copies of inspection documents and/or inspection data in section 52.49:

Current	Proposed
$31.00/hr	$34.50/hr.

Charges for travel and other expenses as found in section 52.50:

Current	Proposed
$31.00/hr	$34.50/hr.

Charges for year-round in-plant inspection services on a contract basis as found in section 52.51(c):

Current	Proposed
(1) For inspector assigned on a year-round basis: $25.00/hr.	(1) For inspector assigned on a year-round basis: $29.00/hr.
(2) For inspector assigned on less than a year-round basis: Each inspector: $28.00/hr. In-plant sampler—$14.00/hr.	(2) For inspector assigned on less than a year-round basis: Each inspector: $34.50/hr. In-plant sampler—$14.00/hr.
(5) Overtime: All overtime hours charged at regular rate specified in (c) (1) and (2) plus $7.00 per hour.	(5) Overtime: All overtime charged at regular rate specified in (c) (1) and (2) plus ½ the hourly rate, per hour.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in section 52.51 (d):

Current	Proposed
(1) Each inspector: $26.00/hr.	(1) Each inspector: $34.50/hr.[3]
(2) In-plant sampler—$14.00/hr.	(2) In-plant sampler—$14.00/hr.
(5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus $7.00 per hour.	(5) Overtime: All overtime hours charged at regular rate specified in (d) (1) and (2) plus ½ the hourly rate, per hour.

[3] Except a minimum of 8 hours per day will be billed for intermittent type in-plant services in lieu of a minimum of 40 hours a week.

List of Subjects in 7 CFR Part 52

Processed Fruits and Vegetables, Food Grades, and Standards.

Accordingly, for the reasons set forth in the preamble, it is proposed that the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42,52.49, 52.50,52.51), would be amended to read as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. Section 52.42 would be revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $34.50 per hour plus one-half the hourly rate per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.49 would be revised to read as follows:

§ 52.49 Charges for copies of inspection documents and/or inspection data.

If the applicant for inspection service requests additional copies of inspection documents and/or inspection data referable to the processed product covered thereby, the applicant may obtain such copies from the supervisor in the office of inspection serving the area where the service was performed at a charge of ½ hour per copy in accordance with the rate in § 52.42: Provided, that no charge shall be made for one copy if requested at the time of the original request for inspection. Inspection certificates issued in accordance with § 52.21 may be supplied to any financially interested party at a charge of ½ hour per certificate for each seven [7], or fewer copies in accordance with the rate in § 52.42.

4. Section 52.50 would be revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $34.50 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

5. Section 52.51 would be amended by revising paragraphs (c)(1), (c)(2), (c)(5), (d)(1), and (d)(5) to read as follows:

§ 52.51 Charges for inspection service on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis:

Each inspector—$29.00 per hour.

(2) For personnel assigned on less than a year-round basis:

Each inspector—$34.50 per hour.

In-plant sampler—$14.00 per hour.

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in paragraphs (c) (1) and (2) of this section, plus one-half the hourly rate, per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule.[3]

(1) Each inspector—$34.50 per hour.[3]

* * * * *

(5) Overtime. All overtime hours will be charged at the regular rates specified in (d) (1) and (2) of this section, plus one-half the hourly rate, per hour.

* * * * *

Dated: March 11, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-6163 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-02-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Proposed FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Proposed FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board recently published for comment its proposed regulations implementing the Freedom of Information Act (FOIA) (56 FR 9902, March 8, 1991). Under the proposed regulations the Board would promulgate a schedule of fees for the processing of FOIA requests. This notice sets forth the Board's proposed FOIA fee schedule and solicits comments from interested organizations and individual members of the public.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5:00 p.m. on April 15, 1991.

ADDRESSES: Comments on the proposed fee schedule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address.

[3] Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: In its proposed FOIA regulations (10 CFR 1703.107(b)(6)) the Board provided that its General Manager would promulgate a schedule of fees for processing FOIA requests and would update the schedule once every 12 months. The FOIA, as amended by the Freedom of Information Reform Act of 1986, Public Law 99-570, title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, provided that the Office of Management and Budget (OMB) would issue guidance to all federal agencies on the establishment of FOIA fees. 5 U.S.C. 552(a)(4)(A)(i). Pursuant to notice and comment, OMB issued in 1987 its Uniform Freedom of Information Act Fee Schedules and Guidelines. 52 FR 10012. Since the FOIA requires that each agency's fees be based upon its direct, reasonable costs of providing FOIA services, OMB did not provide a unitary, government-wide schedule of fees. See 5 U.S.C. 552(a)(4)(A)(ii), 552(a)(4)(A)(iv), and OMB's discussion at 52 FR 10015. However, OMB provided guidance on the types of costs that may properly be considered in establishing fees under the FOIA.

The Board's proposed fee schedule is consistent with the OMB guidance. The components of the proposed fees (hourly charges for search or review and charges for copies of requested documents) are based upon the Board's specific costs.

The Proposed Action

Accordingly, the Board proposes to establish the following schedule of fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or review charge	$38.00 per hour [1]
Copy charge (paper) (8.5"×11")	$.05 per page or generally available commercial rate [2].
Copy charge (3.5" diskette)	$5.00 per diskette.
Copy charge (audio cassette)	$3.00 per cassette.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES—Continued

[Implementing 10 CFR 1703.107(b)(6)]

Search or review charge	$38.00 per hour [1]
Copying large documents (*e.g.*, maps, diagrams).	Actual commercial rates.

[1] Represents average hourly pay rate for Board employees, plus 22% for employee benefits.

[2] The Board will have records commercially copied when other Board business does not permit timely copying by Board personnel. The Board does not expect the generally available commercial rate to be higher than $.05 per page. However, that rate is not within the Board's control and may change during the course of coverage of this fee schedule.

Dated: March 12, 1991.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 91-6264 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 91-153]

RIN 1550-AA01

Regulatory Capital; Interest Rate Risk Component

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule, reopening of comment period.

SUMMARY: The Office of Thrift Supervision ("OTS") is hereby reopening the comment period on its proposed rule on interest rate risk until June 1, 1991. See 55 FR 53529 (December 31, 1990). The OTS has determined that additional time should be afforded for the submission of public comment.

DATES: Comments must be received on or before June 1, 1991.

ADDRESSES: Send comments to: Director, Information Services Division, Office of Communications, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: Gerald Hinkle, Capital Markets Analyst, (202) 906-5774; or Mary H. Gottlieb, Paralegal Specialist, (202) 906-7135, Regulations & Legislation Division, Office of Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On December 31, 1990, the OTS published a notice of proposed rulemaking requesting comment on the interest rate risk component of its regulatory capital requirement. The comment period on the proposal closed on March 1, 1991.

As a result of the hearings that the Office conducted on this proposal, it has become apparent that it would be helpful to institutions in making their comments on the proposed rule to have access to the results of the methodology for measuring interest rate risk exposure for their institutions. The OTS has decided to release to each institution the results that are currently available to help institutions understand both the methodology and the likely effects on the individual institution.

For this reason, and because the proposal itself is lengthy and complex, the OTS has determined that additional time is needed in order to obtain the maximum benefit from the notice and comment process. Therefore, the comment period is reopened until June 1, 1991.

Issues for Further Consideration

In addition to the issues that commenters were asked to address in the original notice, the OTS solicits specific comment on the following questions:

1. A number of commenters have focused on the apparent complexity of the approach for measuring interest rate risk. Are there other approaches available that are simpler and that would adequately address the issue of prepayment risk that is inherent in most mortgage assets?

2. Would commenters be willing to provide detailed data, at the individual account level, that would permit a better analysis of the behavior of retail deposits as interest rate change?

3. Several commenters have expressed concern that the proposed methodology will result in unacceptable volatility in an institution's capital requirement. What alternatives are available that would appropriately measure interest rate risk exposure, but would not exhibit similar volatility?

4. Some commenters have also asserted that the proposal would make capital planning difficult, if not impossible, because an institution's actual capital requirement would not be calculable with certainty until after the end of the reporting period in which it is being measured. What means are available to inject more predictability into the measure without substantially degrading the "accuracy" that results

from basing it on the most recently available interest rates?

Dated: March 11, 1991.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 91-6170 Filed 3-14-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1201

[Docket No. 910236-1036]

RIN 0644-AA01

United States Travel and Tourism Administration Facilitation Fee

AGENCY: Department of Commerce, United States Travel and Tourism Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes detailed regulations governing assessment and collection of the quarterly United States Travel and Tourism Administration (USTTA) Facilitation Fee from commercial airlines and passenger cruise ship lines (hereinafter, carriers). These include:

(1) The method of determining the amount of fee owed by each carrier for each calendar quarter;

(2) Acceptable methods and places of payment;

(3) Procedures for determining whether assessment of a fee with respect to a particular carrier is inconsistent with a specific treaty or international agreement entered into by the United States;

(4) Procedures for collecting the fee from carriers that fail to pay in a timely manner; and

(5) Procedures for determining and imposing interest, administrative charges, and civil penalties.

Charging and collecting a USTTA Facilitation Fee is required by section 308 of the International Travel Act of 1961 (the Act), as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508.

The purpose of this notice is to notify the public of, and to solicit comments on, the procedures proposed to implement this requirement.

DATES: Comments must be submitted on or before April 15, 1991.

ADDRESSES: Send comments on the proposal in triplicate to Lee J. Wells, Director, Office of Strategic Planning and Administration, United States Travel and Tourism Administration, HCHB Room 1524, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lee J. Wells, Director, Office of Strategic Planning and Administration, United States Travel and Tourism Administration ((202) 377-3811).

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate. All communications received on or before the closing date for comments specified above will be considered by the Under Secretary for Travel and Tourism (Under Secretary) before taking action on the proposed regulations. The proposals contained in this notice may be changed in light of the comments. After review of all comments submitted, the Under Secretary will publish in the **Federal Register** the Department of Commerce's final action on the proposed regulations.

Authority to Issue Regulations

Legal authority to issue the regulations is provided by sections 306 and 307 of the International Travel Act of 1961, as added by section 10301 of the Omnibus Budget Reconciliation Act of 1990, Public Law No. 101-508.

Background

Section 10301 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508), amended the International Travel Act of 1961 (22 U.S.C. § 2121 *et seq.*) (hereinafter, the Act) by requiring the Secretary of Commerce (hereinafter, the Secretary) to charge and collect, on a calendar quarterly basis, a USTTA Facilitation Fee (hereinafter, fee) from each commercial airline and passenger cruise ship line transporting passengers to the United States. Pursuant to section 301(a) of the International Travel Act, authority to impose, collect, and enforce payment of the fee has been delegated to the Under Secretary for Travel and Tourism (hereinafter, the Under Secretary). A final rule imposing the fee was filed by the Under Secretary with the Office of the Federal Register on December 28, 1990, and was published in the **Federal Register** on January 3, 1991. 58 FR 176. The Final Rule, which was effective January 1, 1991, imposed the fee against all carriers transporting passengers to the United States. The fee charged each carrier is directly proportional to the number of aliens as defined under section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(B)) (hereinafter, aliens) transported into the United States by that carrier. The fee is structured so as to recover each year an amount equal to the appropriate for that year for the activities of the USTTA.

Description of Proposed Regulations

Section 1201.1 provides detailed definitions for terms repeatedly used in the proposed regulations.

Section 1201.2 imposes the quarterly fee effective January 1, 1991. This provision redesignates and amends existing § 1201.1 by simplifying the language and making use of the definitions provided in proposed § 1201.1. It also expands upon the existing language by describing how the fee assessed against each carrier will be determined. As proposed, the quarterly fee for each carrier would be:

(1) The number of aliens as described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(B)) (for business or pleasure) transported to the United States by a carrier in a calendar quarter, multiplied by

(2) The "per alien multiplier" for that year as calculated in accordance with proposed § 1201.3.

Section 1201.3, subsection (a) reiterates the calendar quarterly "per alien multiplier" for calendar year 1991, established for calendar year 1991 by section 308 of the International Travel Act. For 1991, the "per alien multiplier" is one United States dollar.

Subsection (b) describes how the multiplier will be calculated for future calendar quarters. At least annually, the "per alien multiplier" will be revised to ensure that the fees collected at least equal, but do not exceed by more than five percent, the amount of the annual appropriation for the activities of the USTTA for that calendar year. In each calendar year, the initial multiplier for the next calendar year will be calculated after October 1, but before December 31. Section 308(b)(2)(B) requires that the Under Secretary divide the amount appropriated to USTTA "for the fiscal year during which such determination (of what the per alien multiplier for the succeeding calendar year will be) is made" by the amount of aliens expected to arrive in the United States in the next calendar year. If the number of aliens that actually enters the United States is equal to the number expected to enter the United States in a particular calendar year, the aggregate amount of fees collected in a calendar year from all carriers for all aliens will equal the appropriation used to calculate the multiplier. Thus, the per alien multiplier calculated during the first quarter of fiscal year 1992 is designed to recover an amount of revenue equal to that appropriated for fiscal year 1992 in calendar year 1992.

Subsection (c) describes how the number of aliens expected to arrive in the United States in a calendar year will be estimated. Since the number of aliens who will actually arrive in the United States in the next year cannot be known with precision in advance, calculation of the fee must be based on best predictions. Section 308(b)(2)(A) of the Act specifies that this prediction be based on the number of aliens who entered the United States during the "previous calendar year (as reported or estimated by the Attorney General) and such other information the Secretary deems reliable." This section of the Act does not specify whether the term "previous calendar year" refers to the year previous to the one during which the calculation of the per alien multiplier is made, or to the year previous to the year for which the calculation is made. Either interpretation could fairly be implied. These regulations interpret that the "previous calendar year" means the calendar year before the year during which the calculation is made. This interpretation was chosen because figures from the current year ("previous" to the year for which the calculation is made) will not be available at the time of the calculation (between October 1 and December 31). Although the Act permits the Secretary to use estimated figures from the Attorney General, the preference expressed in these proposed regulations for estimating the next year's arrivals is in favor of using known statistics which are more distant in time over estimated statistics which are more recent in time. The Under Secretary may need to use estimated figures for other purposes, for example, in cases where the Immigration and Naturalization Service (INS) does not conduct INS Form I-94 surveys of incoming passengers. However, where it can be avoided, the Under Secretary chooses not to make one estimate based on another estimate. In addition, section 308(b)(2)(A), which permits use of "such other information as [he] deems reliable" to estimate the next year's arrivals, is interpreted to permit the Under Secretary to take into account any current changes in world circumstances which affect the travel and tourism industry.

Section 308(e) of the Act requires that, after October 1, 1992, the aggregate amount of fees collected from all carriers in a calendar year be at least equal to, but not in excess of five percent more than, the amount appropriated to the USTTA for that fiscal year. For this reason, the proposed regulations allow the "per alien multiplier" to be adjusted on a quarterly basis (see § 1201.3), so that annual total fees collected will meet the limits set forth in section 308(e). In January of each year, and at the beginning of any quarter in which the multiplier may be amended, the Under Secretary will publish the amount of the multiplier along with all estimates used to calculate the multiplier. Section 308(b)(3) of the Act specifies that neither the estimates used to figure the number of aliens transported to the United States in a calendar year, nor the amount of the "per alien multiplier" as calculated in subsection (b) of this proposed regulation, are subject to judicial review.

Section 1201.4 describes how the quarterly bill will be calculated. Because immigration figures will not be normally available until three to four months after the close of the calendar quarter for which they are collected, the quarterly bill will be an estimate based on the number of aliens transported by the carrier during the same calendar quarter from the previous year. The same quarter is used because of the seasonal nature of travel.

Subsections (b) and (c). The INS does not currently maintain statistics in a readily available format for aliens entering the United States on passenger cruise ship lines, and does not collect such statistics from individuals entering the United States from Canada. Such statistics may have to be collected and maintained in a readily available format in the future, or as in the case of Canada, collected from private sources.

Section 1201.5, consistent with the requirements of section 306 of the Act, imposes a due date for all payments of not later than thirty-one days after the close of the calendar quarter for which the bill is submitted. The days on which calendar quarters close are identified. In addition, the section provides procedures for payment of the bills submitted to carriers. The carrier must forward payment together with a remittance copy of the bill to the address specified on the bill. The Secretary of the Treasury, upon receipt of the remittance copy, will forward it to the Under Secretary to enable the Under Secretary to monitor compliance with the Act and these regulations. At the present time, the location of where to make payment is not known. A lockbox arrangement is anticipated.

Section 1201.6 describes how the estimated fee charged will be adjusted after receipt of actual figures regarding the number of aliens transported, in a subsequent calendar quarter. A carrier is required to remit any underpayment at the end of the calendar quarter in which the underpayment is identified. If the carrier has overpaid, the overpayment will be credited against payments due for future quarters. No refunds will be made. If a credit owed to a carrier exceeds the amount of the next quarterly fee, the amount of the credit will be carried over for as many calendar quarters as are needed to exhaust the credit. All such calculations will appear on the quarterly bill furnished to the carrier.

For example:

For calendar quarter 1, USTTA obtains figures from INS showing that Carrier A transported 10,000 aliens to the United States during calendar quarter 1 of the previous year. Based on this, USTTA submits a bill for $10,000 (at the $1 per alien multiplier rate) to Carrier A. Carrier A pays the estimated bill in full not later than 31 days after the end of calendar quarter 1.

For calendar quarter 2, USTTA obtains figures from INS showing that Carrier A transported 5,000 aliens to the United States during calendar quarter 2 of the previous year. USTTA submits an estimated bill of $5,000 to the carrier, which is to be paid as described above.

For calendar quarter 3, USTTA obtains figures from INS showing that Carrier A transported 7,000 aliens to the United States in calendar quarter 3 of the previous year. At the same time, USTTA obtains actual figures from the INS for aliens transported by Carrier A into the United States during calendar quarter 1 of the current year. Such actual figures show that Carrier A actually transported 12,000 aliens into the United States in calendar quarter 1 of the current year, 2,000 more than the previous year upon which the estimate was based. Carrier A thus owes an additional $2,000 for calendar quarter 1, for which it will be billed. At the end of calendar quarter 3, Carrier A must pay the estimated charge of $7,000 for calendar quarter 3 and the difference of $2,000 from calendar quarter 1 of the current year.

For calendar quarter 4, USTTA obtains figures from INS showing that Carrier A transported 15,000 aliens into the United States during calendar quarter 4 of the previous year. At the same time, USTTA obtains actual figures from INS showing that Carrier A transported only 3,000 aliens into the United States during calendar quarter 2

of the current year, 2,000 fewer than the previous year upon which the estimate was based. In calendar quarter 2, Carrier A's bill was overestimated by $2,000. Thus, Carrier A owes the $15,000 estimated fee for calendar quarter 4. The bill for calendar quarter 4 will show a credit adjustment of $2,000 for the overpayment during calendar quarter 2 of the current year, assuming that the carrier has fully and timely remitted the payment described in the paragraph above.

No interest will be charged a carrier whose estimated bill results in an underpayment of the actual amount owed, if such payment is remitted in a timely manner. If a carrier pays an estimated amount based on the bill submitted by the Under Secretary, within the thirty-one day time frame, and the estimated amount billed and paid results in an underpayment of the actual amount owed, fairness requires that the carrier not be penalized for the Under Secretary's underassessment of the actual amount owed.

Similarly, no interest can be owed or paid to a carrier that has overpaid, as the Under Secretary has no authority to pay interest. Under principles of sovereign immunity, the Government is not liable for interest unless it has consented to be liable for interest either by statute or by contract. The Government has not consented to be liable for interest to carriers under Public Law No. 101–508, section 10301.

Section 1201.7 allows the Under Secretary to adjust the estimated fee on an individual carrier's bill when significant changes in circumstances exist in which use of statistics from the same calendar quarter in previous years likely would result in a substantial overpayment or underpayment of the actual fee. The Secretary may initiate such adjustment upon his or her own initiative, or may do so upon request of a carrier, any trade association, or other organization representing carriers.

Subsection (b). If a carrier, any trade association, or other organization representing carriers requests an adjustment, it must notify the Under Secretary in writing, and provide proof of changes in circumstances, a good faith estimate of what the actual fee is likely to be, and the basis therefor. Such notice must be provided to the Under Secretary not later than the date the payment is due.

Subsection (c). In cases where a carrier believes that payment of the fee based on estimated figures will result in a substantial overpayment of the actual amount, the carrier may withhold that portion of the fee which the carrier believes it would overpay, provided that it notify the Under Secretary as required in subsection (b). However, the carrier's obligation to make previous payments is not affected by this notice. The Under Secretary, based on such notice, may make adjustments on his or her own initiative in subsequent quarters, and in such case, will notify the carrier. However, in the absence of such notice from the Secretary, a request for adjustment from a carrier for any calendar quarter would not affect the carrier's obligation either to make payments or provide notice under subsection (b) of this proposed regulation in subsequent calendar quarters.

Section 1201.8 restates language in section 306 of the Act to emphasize that the fee is assessed against carriers and not against aliens. Although a carrier may recoup the cost of the fee from higher ticket prices, a carrier may not represent, or take any action likely to result in the appearance, that the fee is imposed on aliens, and is being collected by the carrier from aliens on behalf of the United States Government.

Section 1201.9 provides procedures for collection actions and imposition of civil penalties, administrative charges, and interest from carriers that do not pay all amounts owed, including the estimated fee owed, and any additional amounts owed results from the carrier's underpayment of the actual fee in a previous quarter, in a timely manner. Procedure for administrative offset as a means of collecting amounts owed are found at 4 CFR 102.3 and 15 CFR part 21. Procedures for revoking and suspending licenses, certifications and privileges of carriers that repeatedly or inexcusably fail to pay are found at 4 CFR 102.9

Section 1201.10 provides procedures for determining civil penalties to be assessed against carriers that fail to pay the fee and all other amounts owed in a timely manner. The Act places a ceiling of $5,000 per day on the civil penalty. Under section 307(a) of the Act, the Secretary or Under Secretary has statutory authority to mitigate the penalty in whole or in part. Under the Act, each day a payment is not made, or is made late is a separate violation of the statutory obligation to pay. The proposed regulations also interpret that each quarterly payment not made or made late, is a separate violation of the statute.

Section 1201.11. The rate of interest charged for any amounts due is that required for outstanding debts owed to the United States under 31 U.S.C 3717, and published in the **Federal Register** by the Department of the Treasury. The rate may be revised during the calendar year. If so, the revised rate will be applied to the outstanding amount due in periods during which the revised rate applies. Once a carrier is delinquent in paying a bill, interest accrues as of the date that notice of the amount due (a bill) is mailed to the carrier. (The bill is expected to be mailed to each carrier as near as possible to the first day after the end of a calendar quarter upon which the bill is based.) However, subsection (d) of section 3717 provides that interest may not be charged if the outstanding amount due is paid within thirty days after the date on which notice of the amount due was mailed. In addition, the head of he agency may extend the thirty-day period. For the purpose of these regulations, the Secretary will extend the thirty day period to thirty two days, to accommodate the thirty-one day payment period in section 306 of the Act. Thus, interest will effectvely acrrue as of the first day after a payment is due. See 31 U.S.C. 3717(d). Interest will not be assesed against panalties. See 31 U.S.C. 3717(f).

Section 1201.12 provides procedures for maintenance of civil actions against carriers that fail or refuse to pay the principal amount due, plus civil penalties and interest. The statute also confers discretion upon the Under Secretary to modify or compromise the assessed civil penalty which is either subject to imposition or has been imposed. This modification is distinguished from the Under Secretary's ability to mitigate the amount of the assessed penalty under proposed 1201.10(b) of these regulations.

Section 1201.13 provides procedures for determining whether assessment and collection of the fee is inconsistent with a treaty or international agreement entered into by the United States. Under the proposed regulation, the Under Secretary would continue to collect the fee until collection has been determined to be inconsistent.

Subsection (a) allows any affected carrier, any trade association or other organization representing such carriers, and any official representing a party to treaty or international agreement entered into by the United States which believes that the collection of the fee would be inconsistent with that treaty or international agreement to bring such treaty or international agreement to the Under Secretary's attention.

Subsection (b) sets forth procedures by which a carrier may withhold payment of a fee based on an alleged inconsistency with a treaty or international agreement.

Subsection (c) provides for the Under Secretary's determination whether collection of the fee from a particular carrier or carriers would be inconsistent with a treaty or international agreement entered into by the United States. The Under Secretary's determination constitutes final agency action.

Miscellaneous Rulemaking Requirements

Executive Order 12291

Under Executive Order 12291, the Department of Commerce must judge whether the regulations proposed in this notice are "major" within the meaning of section 1 of the Oder, and therefore subject to the requirement that a Regulatory Impact Analysis be prepared.

The Under Secretary for Travel and Tourism has determined that the regulations proposed in this notice are not major because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed regulations, if adopted as proposed, will not have a substantial economic impact on a substantial number of small entities because most of the carriers upon which the fee is imposed are not small entities within the meaning of the Regulatory Flexibility Act. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

Paperwork Reduction Act

These proposed regulations do not contain any collection of information requirements subjects to the requirements of the Paperwork Reduction Act (Pub. L. No. 96–511).

Executive Order 12612

These proposed regulations do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Executive Order 12630

These proposed regulations do not have takings implications within the meaning of Executive Order 12630 because they would not appear to have an effect on private property sufficiently severe as effectively to deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result, in, a permanent or temporary physical occupation, invasion, or deprivation.

List of Subjects in 15 CFR Part 1201

Administrative practice and procedure, Air carriers, Passenger vessels, Travel.

Dated: February 19, 1991.

Wylie H. Whisonant, Jr.,

Acting Under Secretary for Travel and Tourism.

For the reasons set out in the preamble, 15 CFR part 1201 is proposed to be revised to read as follows:

PART 1201—UNITED STATES TRAVEL AND TOURISM ADMINISTRATION FACILITATION FEE

Sec.

1201.1 Definitions.
1201.2 United States Travel and Tourism Administration Facilitation Fee.
1201.3 Calculation of the "per alien multiplier."
1201.4 Quarterly billing based on estimated fees.
1201.5 Payment of the quarterly bill.
1201.6 Adjustment of the quarterly bill to reflect actual rather than estimated fees.
1201.7 Adjustment of estimated fees for significantly changed circumstances.
1201.8 Prohibition on collecting the fee from aliens on behalf of the United States Government.
1201.9 Collection actions and imposition on civil penalties, administrative charges, and interest.
1201.10 Civil penalties for non-payment or later payment.
1201.11 Interest on principal amount not paid.
1201.12 Civil actions.
1201.13 Determination of whether collection of a fee is inconsistent with a treaty or international agreement signed by the United States.

Authority: 22 U.S.C. 2128 and 2129.

§ 1201.1 Definitions.

For the purpose of this part.

(a) *Aliens* means individuals described in section 101(a)(15)(B) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(15)(B)).

(b) *Calendar year* means the period January 1 through December 31 of a particular year.

(c) *Carriers* means commercial airlines or passenger cruise ship lines transporting passengers to the United States.

(d) *Department* means the United States Department of Commerce.

(e) *Fee* means the United States Travel and Tourism Administration Facilitation Fee.

(f) *Fiscal year* means the period October 1 of a particular year through the following September 30.

(g) *Secretary* means the Secretary of Commerce, or designee.

(h) Under Secretary means the Secretary for Travel and Tourism.

(i) *United States* means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(j) *USTTA* means the United States Travel and Tourism Administration.

§ 1201.2 United States Travel and Tourism Administration facilitation fee.

As of January 1, 1991, each carrier transporting passengers to the United States from a place outside thereof is hereby assessed a quarterly USTTA Facilitation Fee. This fee is the amount equal to the number of aliens arriving at any port within the United States aboard a commercial aircraft or cruise ship of such carrier during that calendar quarter, multiplied by the "per alien multiplier," as determined by the Under Secretary for that quarter in accordance with § 1201.3.

§ 1201.3 Calculation of the "per alien multiplier."

(a) *Calendar year 1991.* In calendar year 1991 the "per alien multiplier" for each calendar quarter is one United States dollar.

(b) *Subsequent calendar years.* For calendar year 1992 and in subsequent years, the Under Secretary will calculate per alien multipliers by dividing the amount appropriated by Congress for the activities of the USTTA for the fiscal year commencing the previous October 1, by the number of aliens expected to enter the United States aboard carriers (from which collection of this fee has not been determined to be inconsistent with a treaty or international agreement signed by the United States) during the next calendar year, and by rounding the resulting quotient up to the nearest quarter dollar. The Under Secretary will calculate this multiplier after October 1 but before December 31, of the year preceding the calendar year for which the multiplier is being calculated, and will publish the multiplier in the **Federal**

Register. The Under Secretary may adjust the "per alien multiplier" on a quarterly basis so that, after October 1, 1992, the aggregate amount of fees collected from all carriers in a calendar year will be at least equal to, but not in excess of five percent more than, the amount appropriated to the USTTA for that fiscal year. In January of each year, and at the beginning on any quarter in which a multiplier is adjusted, the Under Secretary will publish the amount of the multiplier along with all estimates used to calculate the multiplier.

(c) *Estimation of the number of aliens expected to arrive in the United States in a calendar year.* The Under Secretary, in consultation with the Attorney General and the Secretary of State, will estimate the number of aliens expected to enter the United States aboard carriers during the next calendar year based upon the number of aliens that entered the United States aboard carriers during the previous calendar year, as reported or estimated by the Attorney General, and such other available information as the Under Secretary deems reliable including data for the current calendar year.

§ 1201.4 Quarterly billing based on estimated fees.

(a) *In general.* Before the end of each quarter, the Under Secretary will estimate the fee for each carrier for that quarter, and will send each carrier a bill for the estimated fee for that quarter. The estimated fee will be calculated by multiplying the appropriate "per alien multiplier" for that quarter by the number of aliens arriving in the United States aboard individual aircrafts or passenger cruise ships of that carrier during the same quarter in the preceding calendar year, based on INS reported alien arrivals for that carrier for that quarter from INS Form I–94 surveys.

(b) *Passenger cruise ship lines.* The Under Secretary will use the best available statistics and extrapolations to determine the number of aliens entering the United States aboard passenger cruise ships.

(c) *Aliens from Canada.* The Under Secretary will use the best available statistics and extrapolations to determine the number of aliens entering the United States from Canada during that quarter.

(d) *Where no statistics are available.* If the Under Secretary should fail to send a bill to a carrier because of a lack of statistics on which to base a bill, such failure to send a bill does not imply waiver of the right to collect the fee for that quarter, when statistics become available.

§ 1201.5 Payment of the quarterly bill.

(a) *Payment due date.* Payment of the quarterly bill must be made no later than thirty-one days after the close of that calendar quarter. Calendar quarters end on the last day of March, June, September, and December. A payment is considered made on the date on which the payment is received at the place of payment set forth in paragraph (b) of this section.

(b) *Fee remittance and information submission procedures.* All fee remittances required to be remitted pursuant to this section shall be paid in full, by check, money order or electronic funds transfer, in United States dollars, drawn on a United States Bank, payable to the United States Treasury. All fee remittances shall be mailed to the address indicated on the bill sent to the carrier. Each payment shall be accompanied by the completed remittance copy of the bill submitted to the carrier by the Under Secretary.

§ 1201.6 Adjustment of the quarterly bill to reflect actual rather than estimated fees.

(a) *Adjustment.* When actual arrival figures become available for a previously billed and paid quarter which was based on an estimated fee, the Under Secretary will calculate the actual fee for that quarter. When the estimated fee paid for any calendar quarter is greater than the autual fee imposed, the carrier will be credited for the overpayment. When the estimated fee paid for the calendar quarter is less than the actual fee imposed, the carrier will be charged for the underpayment. The actual fee imposed and any credits or charges will appear on the next scheduled quarterly bill. Credits to carriers in excess of the quarterly bill will carry over to the subsequent quarter.

(b) *Interest for difference between estimated and actual fees.* Carriers will not be charged interest for the difference between the estimated and the actual fee, if the actual fee is greater than the estimated fee, and is timely paid. Carriers will not be paid interest if the actual fee charged is less than the estimated fee charged and timely paid. In such cases, carriers will be credited for overpayment.

§ 1201.7 Adjustment of estimated fees for significantly changed circumstances.

(a) *Adjustment of an estimated fee.* The Under Secretary, upon his or her own initiative or upon the request of a carrier, any trade association, or other organization representing carriers, may adjust an estimated quarterly fee if changes in circumstances exist whereby use of INS statistics from the same calendar quarter of the previous year in calculating an estimated fee for the same quarter of the current year likely would result in a substantial overpayment or underpayment of the actual fee.

(b) *Submission of evidence.* If a carrier, any trade association, or other organization representing carriers requests an adjustment, it must notify the Under Secretary in writing of the significant change in circumstances and submit specific evidence thereof as well its best estimation, and the basis therefor, of the number of aliens that arrived in the United States aboard individual aircarfts or passenger cruise ships of the affected carrier during the quarter for which the adjustment is sought.

(c) *Withholding payment pending determination.* A carrier may withhold payment of the portion of the fee estimated by the Under Secretary for a particular calendar quarter believed by the carrier to be in excess of what will be the actual fee if it notifies the Under Secretary in accordance with paragraph (b) of that calendar quarter. Such notification, and any subsequent determination by the Under Secretary, shall not affect payments previously made nor relieve the carrier of its obligation to make other payments due in calendar quarters not subject to the notification.

(d) *Notification of adjustment.* The Under Secretary shall give note of any fee adjustment, or refusal to adjust a fee, in writing to a requestor and any affected carrier. The notice shall include the basis for the Under Secretary's decision.

§ 1201.8 Prohibition on collecting the fee from aliens on behalf of the United States Government.

Nothing in this part shall be construed as placing any limitation on the amount a carrier may charge passengers it transports to the United States or as prohibiting payment of the fee from ticket revenues. However, since the fee is imposed by statute against carriers based on the number of aliens they carry, and not against aliens themselves, carriers are prohibited from representing on a ticket of passage or elsewhere that they are collecting the fee from an alien on behalf of the United States Government.

§ 1201.9 Collection actions and imposition of civil penalties, administrative charges, and interest.

(a) *Failure to pay fee, notice and opportunity for hearing.* If a carrier fails to pay any fee amount by the date due, the Under Secretary will provide the carrier notice and an opportunity for a hearing.

(b) *Subpoena powers for hearing.* For the purpose of conducting any such hearing, the Under Secretary may issue subpoenas for the attendance and testimony of witnesses, and the production of relevant papers, books and documents, and may administer oaths.

(1) Witnesses summoned to a hearing will be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

(2) When an individual is in contempt of or refuses to obey a subpoena served under this section, the United States District Court for any jurisdiction where that individual is found, resides, or transacts business, shall have jurisdiction to issue an order requiring that individual to appear and give testimony before the Under Secretary, or to produce papers, books, or documents before the Under Secretary, or both. If such individual fails to obey the order of the court, he or she may be punished as contempt thereof.

(c) *Order to pay, civil penalties, administrative charges, and interest.* If, after such notice and opportunity for hearing, the Under Secretary finds that a carrier has failed to pay the fee amount outstanding, he or she may order payment of the amount outstanding plus interest on any late payment, in addition to a civil penalty and administrative charges incurred in processing and handling all unpaid amounts.

(d) *Separate violations.* Each payment that is not made, or is made late, and each day that a payment is not made, or is made late, constitutes a separate violation of these regulations.

(e) *Allocation of partial payments to penalties, administrative charges, interest, and the principal amount due.* In the case of partial late payment, the payment received will first be applied to penalties, then to administrative charges incurred, then to the interest charged on the delinquent principal amount, then to the principal amount due.

(f) *Administrative offset.* The Under Secretary may use administrative offset as a means of collecting amounts owed.

(g) *Suspension or revocation of licenses, certifications, or other privileges.* If any carrier repeatedly or inexcusably fails to pay the fee owed, including any civil penalties, administrative charges and interest, then the Under Secretary may request the Department of Transportation and/or the Department of Justice to suspend or revoke licenses, certification, or other privileges granted by the Government to the carrier.

§ 1201.10 Civil penalties for non-payment or late payment.

(a) *Assessment of amount of penalty.* The Under Secretary shall assess the amount of civil penalty, not to exceed $5,000 per day, per payment, for each day a payment is not made or is made late.

(b) *Factors.* The Under Secretary, in determining the amount of the civil penalty assessed, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and such other matters as justice may require.

§ 1201.11 Interest on principal amount not paid.

(a) *Rate of interest.* The rate of interest charged on late payments will be the Current Value of Funds Rate established by the Department of the Treasury under 31 U.S.C. 3717, and published in the **Federal Register.** Interest applied to an overdue payment will be adjusted as necessary to reflect any change in the annual rate of interest.

(b) *Date of charge.* Interest on an unpaid amount will accrue from the date on which notification of the amount due (a bill) is first mailed to the carrier. However, interest will not be assessed until thrity-two days after such date.

(c) *Period for assessment of interest.* Interest on overdue bills will be assessed on the delinquent principal by thirty-day periods.

§ 1201.12 Civil actions.

(a) *Civil action.* If any carrier fails or refuses to pay the principal amount due, plus civil penalties, administrative charges and interest, as ordered, the Under Secretary may request the Attorney General to bring civil action in an appropriate United States District Court to recover the amount the Under Secretary ordered to be paid.

(b) *Mitigation.* Before requesting the Attorney General to bring a civil action, the Under Secretary may compromise, modify, or remit, with or without conditions, any civil penalty (but not the overdue principal amount or any interest) which is subject to imposition or has been imposed under regulations.

§ 1201.13 Determination of whether collection of a fee is inconsistent with a treaty or international agreement signed by the United States.

The Under Secretary will not charge or collect any fee where such charge or collection is inconsistent with treaties or international agreements entered into by the United States. In determining whether collection of the fee from a particular carrier is inconsistent with such a treaty or international agreement, the Under Secretary will consult with the Department of State, the Department of Transportation, and other Federal agencies as appropriate.

(a) *Notification to the Under Secretary.* Any affected carrier, any trade association or other organization representing such carriers, any official representing a party to a treaty or international agreement entered into the United States which believes that the collection of the fee would be inconsistent with that treaty or international agreement should notify the Under Secretary. The notification must include a copy of the applicable treaty or international agreement, specify the relevant provision, and explain why it would be inconsistent for the Under Secretary to charge or collect the fee.

(b) *Withholding payments pending determination by the Under Secretary.* A carrier may withhold payment of the fee for any calendar quarter, pending a determination by the Under Secretary as to whether assessment and collection of the fee is inconsistent with a treaty or international agreement entered into by the United States provided it notifies the Under Secretary in accordance with paragraph (a) of this section no later than thirty-one days after the close of that calendar quarter.

(c) *Determination by the Under Secretary.* After receiving notification in accordance with paragraph (a) of this section, the Under Secretary will determine whether collection of the fee would be inconsistent with the treaty or international agreement in question. The Under Secretary will notify the party giving notice in accordance with paragraph (a) of this section and give an explanation of the reasons for the determination in writing. The Under Secretary will decide the scope of the determination. The Under Secretary's determination constitutes final agency action.

[FR Doc. 91–5954 Filed 3–14–91; 8 45 am]

BILLING CODE 3510–11–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

RIN 1515-AA67

Liability of Common Carriers for Failure to Exercise the Highest Degree of Care and Diligence to Prevent the Carriage of Unmanifested Controlled Substances

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period of time within which interested members of the public may submit comments concerning the regulations Customs proposed relating to the highest degree of care and diligence standard for carriers. Customs has received several requests to extend the comment period to allow time to prepare responsive comments. The comment period is extended 30 days.

DATES: Comments are requested on or before April 15, 1991.

ADDRESSES: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Harriett D. Blank, Penalties Branch (202) 566-8317.

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** (56 FR 5665) on February 12, 1991, proposing to amend the Customs Regulations by setting forth criteria that common carriers, if they wish to avoid liability when controlled substances are found aboard a conveyance, may use in determining whether they are taking all possible steps to comply with the statutory highest degree of care and diligence standard. Carriers are required by statute to exercise the highest degree of care and diligence to prevent the carriage of unmanifested controlled substances. The proposal solicited comments that were to be received on or before March 14, 1991. Customs has received several requests to extend the period of time for comments. The requesters state additional time is required to prepare responsive comments. Customs believes the requests have merit. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: March 8, 1991.

John B. O'Loughlin,

Acting Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 91-6137 Filed 3-14-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[IA-14-91]

RIN 1545-AP56

Adjusted Current Earnings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the alternative minimum tax for corporations. The Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Revenue Reconciliation Act of 1989 and the Revenue Reconciliation Act of 1990 all made changes to the applicable law. These regulations affect corporate taxpayers and provide them with guidance necessary to detemine their alternative minimum tax.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991. These regulations are proposed to be effective for taxable years beginning after December 31, 1989.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, Attention CC:CORP:T:R (IA-14-91), Room 4429.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 566-4104 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to Internal Revenue Service, Attention IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in these regulations is in § 1.56(g)-1(r). This information is required by the Internal Revenue Service to ensure the proper application of § 1.56(g)-1(r). The information will be used to verify that taxpayers have properly elected the benefits of § 1.56(g)-1(r). The likely recordkeepers are businesses and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending upon their particular circumstances.

Estimated total annual reporting burden: 1000 hours.
Estimated average annual burden per respondent: 1 hour.
Estimated number of respondents: 1000.
Estimated annual frequency of responses: once only.

Background

This document contains proposed regulations amending the Income Tax Regulations (26 CFR part 1) under section 56 of the Internal Revenue Code of 1986. The proposed amendments would conform the regulations to section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320), sections 1007 and 6079 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647, 102 Stat. 3342), sections 7205 and 7611 of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239, 103 Stat. 2106), and section 11301 and 11531 of the Revenue Reconciliation Act of 1990 (Pub. L. 101-508).

On May 3, 1990, the **Federal Register** published a Notice of Proposed Rulemaking (55 FR 18628) regarding the computation of adjusted current earning (ACE). A number of public comments were received and a public hearing was held on October 16, 1990. The amendments to the regulations contained in this document are proposed after consideration of the written comments and those presented at the hearing regarding the LIFO adjustment and the computation of adjusted current earnings of foreign corporations. This document also contains proposed regulations regarding the alternative tax energy preference deduction (section 56 (h)) that was added to the Code by the Revenue Reconciliation Act of 1990.

I. LIFO adjustment

Section 56 (g) (4) (D) (iii) and § 1.56(g)-1(f)(3) of the proposed regulations published on May 3, 1990,

state that the adjustment of section 312(n)(4) apply in computing ACE. Commenters were concerned that this did not provide taxpayers with the guidance necessary to make these adjustments in computing their ACE. Therefore, these proposed regulations provide detailed guidance on the application of the section 312(n)(4) adjustment to ACE. Congress enacted section 312(n)(4) as part of the Deficit Reduction Act of 1984, Pub. L. 98-369, to ensure that earnings and profits more closely reflect economic income. Section 312(n)(4)(A) generally requires taxpayers to increase or decrease their earnings and profits by the amount of the increase or decrease in their LIFO reserve during the taxable year.

In accordance with section 312(n)(4), § 1.56(g)-1(f)(3) of the proposed regulations requires taxpayers to adjust ACE based upon the changes in their LIFO reserve. Taxpayers must use the same method of valuing their inventories for ACE as they use in computing their taxable income and pre-adjustment alternative minimum taxable income (pre-adjustment AMTI). Taxpayers who use LIFO in computing taxable income therefore must use LIFO in computing their ACE. As rquired by § 1.56(g)-1(a)(5), taxpayer must also compute their inventories for ACE purposes by taking into account ACE adjustments. For example, taxpayers must capitalize their ACE depreciation under section 263A in computing inventories for ACE purposes. Thus, the increase or decrease in the LIFO reserve for purposes of the adjustment described in § 1.56(g)-1(f)(3), and the resulting increase or decrease in ACE, is based on inventory amounts that are computed using ACE adjustments (the ACE LIFO reserve).

The proposed regulations generally provided under § 1.56 (g)-1 (f) (3) (i) that ACE is increased or decreased by the increase or decrease in the ACE LIFO reserve during the taxable year. However, there is no decrease in ACE to the extent the ACE LIFO reserve decreases below the ACE LIFO reserve amount on the last day of the last taxable year beginning before January 1, 1990 (e.g., December 31, 1989 for calendar year taxpayers). The proposed regulations also provide that ACE is increased by increases in the ACE LIFO reserve only to the extent of increases above the ACE LIFO reserve amount on the last day of the last taxable year beginning before January 1, 1990.

Section § 1.56(g)-1(f)(3)(iii) of the proposed regulations provides that the taxpayer's ACE LIFO reserves is the excess of (1) FIFO inventory, computed in accordance with the methods used in computing taxable income and pre-adjustment AMTI, and with the adjustments described in sections 56 and 58 and the preferences described in section 57, over (2) LIFO inventory, computed in accordance with the methods used in computing taxable income and pre-adjustment AMTI, and with the adjustments described in sections 56 and 58 and the preferences described in section 57. Thus, taxpayers must determine an "ACE FIFO" and "ACE LIFO" inventory amount for purposes of measuring increases and decreases in the ACE LIFO reserve.

The Internal Revenue Service requests comments on this and related issues.

II. Special Election for LIFO Taxpayers

In order to provide taxpayers with a simpler alternative in the computation of pre-adjustment AMTI and ACE, the Service proposes an elective, simplified method of computing LIFO inventories for all tax purposes. Section 1.56(g)-1(r) of the proposed regulations provides that taxpayers may elect to use their regular tax inventory amounts in computing pre-adjustment AMTI and ACE, including the LIFO inventory adjustment of §1.56(g)-1(f)(3). This election eliminates the need to compute a separate inventory amount for purposes of calculating pre-adjustment AMTI (including an additional application of section 263A with the adjustments and preferences required in computing pre-adjustment AMTI). This election also eliminates the need to compute a separate inventory amount for purposes of calculating ACE (including an additional application of section 263A with the adjustments required in computing ACE). Thus, in computing pre-adjustment AMTI and ACE, taxpayers making the election will use the cost of goods sold that was used in computing taxable income.

Taxpayers making the election must, however, compute each item of adjustment under sections 56 and 58 and each item of tax preference under section 57 without reduction for the portion of the adjustment and preference that, but for the election described in this paragraph, would have been capitalized in ending inventory. This frees taxpayers from calculating the amount of adjustments or preferences that would be capitalized in ending inventory, but it can result in higher total preferences or adjustments in some circumstances. For example, in any year in which LIFO inventory increases and regular tax depreciation exceeds pre-adjustment AMTI and ACE depreciation, this election will further increase pre-adjustment AMTI and ACE to the extent adjustments or preferences would have been capitalized in ending inventory.

Taxpayers making the election must also compute the LIFO inventory adjustment described in §1.56(g)-1(g)(3) on the basis of regular tax amounts.

The Service requests comments on the practicality of this election and suggestions of other similar elections that might simplify the alternative minimum tax (AMT) or ACE.

III. ACE of Foreign Corporations

The proposed regulations published on May 3, 1990, did not address the effect of ACE on foreign corporations and United States branches of foreign corporations. Several commenters made suggestions on this issue, and these regulations now propose rules for this area.

Pursuant to section 882(a)(1), foreign corporations are subject to AMT only on income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States. Accordingly, §1.56(g)-1(m) of the proposed regulations provides that foreign corporations are subject to ACE only with respect to items that are effectively connected (or treated as effectively connected) with the conduct of a United States trade or business. Income that is exempt from United States income tax under section 883 or an applicable income tax treaty, however, is also exempt from AMT, including ACE.

IV. Alternative Tax Energy Preference Deduction

Section 56(h)(8) provides that the Secretary may by regulation provide for appropriate adjustments in computing AMTI or ACE for any taxable year following a year for which a deduction was allowed under section 56(h) (alternative tax energy preference deduction) to ensure that no double benefit is allowed by reason of that deduction. In order to prevent such a double benefit, the proposed regulations provide that when a taxpayer claims an alternative tax energy preference deduction, the taxpayer must reduce basis for ACE purposes by the portion of the alternative tax energy preference deduction that is attributable to adjustments under section 56(g)(4). Thus, for example, where a portion of a taxpayer's alternative tax energy preference deduction is attributable to the depletion adjustment under section 56(g)(4)(F), the taxpayer must reduce basis for purposes of computing depletion under section 56(g)(4)(F) in subsequent taxable years. The proposed

BEST COPY AVAILABLE

regulations do not provide guidance on the portion of an alternative tax energy preference deduction that is attributable to the adjustments under section 56(g)(4). The Service requests comments on the proper method for determining the portion of an alternative tax energy preference deduction that is attributable to the adjustments under section 56(g)(4)(D)(i) and 56(g)(4)(F).

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and 8 copies) to the Internal Revenue Service. A public hearing will be held on written request to the Internal Revenue Service by any person who submits written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Nicholas G. Bogos of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Personnel from other offices of the Service and the Treasury, however, assisted in developing these proposed regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.01–1–1.58–8

Credits, Income taxes, Tax liability, Tax rates.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.56(g)–1 is also issued under section 7611(g)(3) of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239, 103 Stat. 2373).

Par. 2. In § 1.56(g)–0, the entries for paragraphs (a)(7), (r) and (s) are added, and the entries for paragraphs (f)(3) and (m) are revised to read as follows:

§ 1.56(g)–0 Table of Contents.

(a) Adjustment for adjusted current earnings.

* * * * *

(7) Application to foreign corporations.

* * * * *

(f) Certain other earnings and profits adjustments.

* * * * *

(3) LIFO inventory adjustment.
(i) In general.
(ii) Beginning LIFO and FIFO inventory.
(iii) Definitions.
(A) LIFO recapture amount.
(B) FIFO method.
(C) LIFO method.
(D) Inventory amounts.
(E) Baseline LIFO recapture amount.
(iv) Example.

* * * * *

(m) Adjusted current earnings of a foreign corporation.
(1) In general.
(2) Definitions.
(i) Effectively connected pre-adjustment alternative minimum taxable income.
(ii) Effectively connected adjusted current earnings.
(3) Rules for determining effectively connected pre-adjustment alternative minimum taxable income and effectively connected adjusted current earnings.
(4) Certain exempt amounts.

* * * * *

(r) Election to use regular tax inventories for alternative minimum tax purposes.
(1) In general.
(2) Effect of election.
(i) Inventories.
(ii) Modifications required.
(A) In general.
(B) Negative modifications allowed.
(iii) LIFO recapture adjustment.
(3) Time and manner of making election.
(i) Prospective election.
(ii) Retroactive election.
(iii) Election as method of accounting.
(s) Adjustment for alternative tax energy preference deduction.
(1) In general.
(2) Example.

Par. 3. Section 1.56(g)–1 is amended as follows: Paragraph (a) (7) of the text of paragraph (f) (3), the text of paragraph (m), and paragraphs (r) and (s) are added to read as follows:

§ 1.56(g)–1 Adjusted current earnings.

(a) *Adjustment for adjusted current earnings.* * * *

(7) *Application to foreign corporations.* See paragraph (m) of this section for rules relating to the application of this section to foreign corporations.

* * * * *

(f) *Certain other earnings and profits adjustments* * * *

(3) *LIFO inventory adjustment*—(i) *In general.* Adjusted current earnings are generally increased or decreased by the increase or decrease in the LIFO recapture amount (as defined in paragraph (f)(3)(iii) (A) of this section) as of the close of each taxable year. Adjusted current earnings are not decreased, however, to the extent of any decrease in the LIFO recapture amount below the baseline LIFO recapture amount, as defined in paragraph (f)(3)(iii) (E) of this section. Increases in the LIFO recapture amount increase adjusted current earnings only to the extent of any increase above the baseline LIFO recapture amount.

(ii) *Beginning LIFO and FIFO inventory.* For purposes of computing the increase or decrease in the LIFO recapture amount, the beginning LIFO and FIFO inventory amounts for the first taxable year beginning after December 31, 1989, are—

(A) The ending LIFO inventory amount used in computing pre-adjustment alternative minimum taxable income for the last year beginning before January 1, 1990, and

(B) The ending FIFO inventory amount for the last year beginning before January 1, 1990 computed with the adjustments described in section 56 (other than the adjustment described in section 56(g)) and section 58, the items of tax preference described in section 57 and using the methods used in computing pre-adjustment alternative minimum taxable income.

(iii) *Definitions*—(A) *LIFO recapture amount.* The LIFO recapture amount is the excess, if any, of—

(*1*) The inventory amount of the assets under the FIFO method, computed using the rules of this section, over

(*2*) The inventory amount of the assets under the LIFO method, computed using the rules of this section.

(B) *FIFO Method.* For purposes of this paragraph, the FIFO method is the first in, first out method described in section 471, determined by using—

(*1*) The retail method if that is the method the taxpayer uses in computing pre-adjustment alternative minimum taxable income, or

(*2*) The lower of cost or market method for all other taxpayers.

(C) *LIFO method.* The LIFO method is the last in, first out method authorized by section 472.

(D *Inventory amounts.* Except as otherwise provided, inventory amounts are computed using the methods used in computing pre-adjustment alternative minimum taxable income. To the extent inventory is treated as produced or acquired during taxable years beginning after December 31, 1989, the inventory amount is determined with the adjustments described in sections 56 and 58 and the items of tax preference described in section 57. Thus, for example, the amount of depreciation to be capitalized under section 263A with respect to inventory produced in taxable years beginning after December 31, 1989 is based on the depreciation allowed under the rules of paragraph (b) of this section. See paragraph (a)(5) of this section.

(E) *Baseline LIFO recapture amount.* The baseline LIFO recapture amount is the excess, if any, of the beginning FIFO inventory amount (as defined in paragraph (f)(3)(ii)(2) of this section) for the first taxable year beginning after December 31, 1989 over the beginning LIFO inventory amount (as defined in paragraph (f)(3)(ii)(1) of this section) for the first taxable year beginning after December 31, 1989.

(iv) *Example.* The following example illustrates this paragraph (f)(3).

(A) M Corporation, a calendar-year taxpayer, uses the LIFO method of accounting for its inventory for purposes of computing pre-adjustment alternative minimum taxable income. M's ending LIFO inventory for purposes of computing pre-adjustment alternative minimum taxable income on December 31, 1989, is $300. M computes a $500 FIFO inventory amount on that date, after applying the provisions of section 263A along with the adjustments and preferences required in computing pre-adjustment alternative minimum taxable income. M's FIFO and LIFO ending inventory amounts at the close of its taxable years, its LIFO reserves, and its adjustment under this paragraph (f)(3) are as follows:

	1989	1990	1991	1992
Ending inventory:				
A. FIFO	[a] $500	$360	$560	$600
B. LIFO	[b] 300	180	320	440
LIFO recapture amount A.–B.	[c] $200	$180	$240	$160
Change in LIFO recapture amount		(20)	60	(80)
Adjustment under paragraph (f)(3)			40	(40)

a. Beginning FIFO inventory amount under paragraph (f)(3)(ii) of this section.
b. Beginning LIFO inventory amount under paragraph (f)(3)(ii) of this section.
c. Baseline LIFO recapture amount under paragraph (f)(3)(iii)(E) of this section.

(B) M has no adjustment under this paragraph (f)(3) in 1990 because its LIFO recapture amount decreased below the baseline LIFO recapture amount. M increases its adjusted current earnings by $40 in 1991 because the $60 increase in its LIFO recapture amount results in only a $40 increase above the baseline LIFO recapture amount. M decreases its adjusted current earnings by $40 in 1992 because $40 of the decrease in its LIFO recapture amount is below the baseline LIFO recapture amount.

* * * * *

(m) *Adjusted current earnings of a foreign corporation.*—(1) *In general.* The alternative minimum taxable income of a foreign corporation is increased by 75 percent of the excess of—

(i) The effectively connected adjusted current earnings of the foreign corporation for the taxable year over

(ii) The effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year.

(2) *Definitions.*—(i) *Effectively connected pre-adjustment alternative minimum taxable income.* Effectively connected pre-adjustment alternative minimum taxable income is the taxable income of the foreign corporation for the taxable year, determined with the adjustments in sections 56 and 58 (except for the adjustment for adjusted current earnings and the alternative tax net operating loss) and increased by the tax preference items of section 57, but determined taking into account only items of income, expense, loss and deduction of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(ii) *Effectively connected adjusted current earnings.* Effectively connected adjusted current earnings is the effectively connected pre-adjustment alternative minimum taxable income of the foreign corporation for the taxable year, adjusted as provided in section 56 (g) and this section, but determined taking into account only items of income, expense, loss and deduction of the foreign corporation that are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) *Rules for determining effectively connected preadjustment alternative minimum taxable income and effectively connected adjusted current earnings.* The principles of section 864(c) and the regulations thereunder, and any other applicable provision of the Code, apply in determining whether items of income, expense, loss and deduction of the foreign corporation are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(4) *Certain exempt amounts.* Effectively connected adjusted current earnings and effectively connected pre-adjustment alternative minimum taxable income do not include any item of income, or any item of expense, loss or deduction that is attributable to income that is exempt from United States taxation under section 883 or pursuant to an applicable income tax treaty. See section 894.

* * * * *

(r) *Election to use regular tax inventories for alternative minimum tax purposes*—(1) *In general.* If a taxpayer makes an election under this paragraph (r), the rules of paragraph (r)(2) of this section shall apply for purposes of computing the taxpayer's pre-adjustment alternative minimum taxable income and adjusted current earnings.

(2) *Effect of election*—(i) *Inventories.* The taxpayer's inventory amounts as determined for purposes of computing taxable income are used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings. Subject to the further modification described in paragraph (r)(2)(ii) of this section, the taxpayer's cost of sales as determined for purposes of computing taxable income are also used for purposes of computing pre-adjustment alternative minimum taxable income and adjusted current earnings.

(ii) *Modifications required*—(A) *In general.* If a taxpayer makes an election under this paragraph (r), pre-adjustment alternative minimum taxable income and adjusted current earnings are computed with the modifications described in this paragraph. The items of adjustment under sections 56 and 58 and the items of tax preference under section 57 are computed without regard to the portion of those adjustments and preferences which, but for the election described in this paragraph, would have been capitalized in ending inventory. For example, pre-adjustment alternative minimum taxable income is increased by the excess of the depreciation allowable for the taxable year under section 168 for purposes of computing taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-adjustment alternative minimum taxable income (determined without regard to section 263A). Adjusted current earnings is further increased by the excess of the depreciation allowable for the taxable year under section 56(a)(1) and section 57 for purposes of computing pre-

adjustment alternative minimum taxable income (determined without regard to section 263A) over the depreciation allowable for the taxable year under section 56(g)(4)(A) for purposes of computing adjusted current earnings (determined without regard to section 263A). Thus, the modification described in the preceding sentence does not duplicate modifications taken into account in computing pre-adjustment alternative minimum taxable income. See paragraph (a)(6)(ii) of this section.

(B) *Negative modifications allowed.* If an election is made under this paragraph (r) and the amount of any adjustment under sections 56 and 58, determined after modification under paragraph (r)(2)(ii)(A) of this section, is a negative amount, then this amount reduces pre-adjustment alternative minimum taxable income or adjusted current earnings. No negative adjustment under this paragraph (r)(2)(ii)(B) is allowed for the items of tax preference under section 57.

(iii) *LIFO recapture adjustment.* If a taxpayer makes an election under this paragraph (r), for purposes of computing the LIFO inventory adjustment under paragraph (f)(3) of this section for taxable years beginning after December 31, 1989—

(A) The LIFO inventory amount as determined for purposes of computing taxable income is used in lieu of the LIFO inventory amount as determined under paragraph (f)(3)(iii) of this section,

(B) The FIFO inventory amount is computed without regard to the adjustments under sections 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57, and

(C) The beginning LIFO and FIFO inventory amounts under paragraph (f)(3)(ii) of this section are the ending LIFO inventory amount as determined for purposes of computing taxable income and the ending FIFO inventory amount computed without regard to the adjustments under section 56 (including the adjustments of section 56(g)(4)) and 58 and the items of tax preference of section 57 for the last taxable year beginning before January 1, 1990.

(3) *Time and manner of making election*—(i) *Prospective election.* If the taxpayer has never filed a federal income tax return on which the election described in paragraph (r) could apply, or if the taxpayer has computed pre-adjustment alternative minimum taxable income and adjusted current earnings for all prior tax years in accordance with the method described in this paragraph (r), the election under this paragraph (r) may be made by attaching a statement to the taxpayer's timely filed (including extensions) original federal income tax return for its first taxable year for which the election could apply, or its first taxable year ending after [Insert date that this regulation is published as a final regulation in the **Federal Register**.] The statement must:

(A) Give the name, address and employer identification number of the taxpayer, and

(B) Identify the election as made under this paragraph (r). A change in method of accounting made in accordance with this paragraph (r)(3)(i) is treated as made with the advance consent of the Commissioner.

(ii) *Retroactive election.* If the taxpayer has computed pre-adjustment alternative minimum taxable income or adjusted current earnings for any prior tax year in a manner other than the manner described in this paragraph (r), the election under this paragraph (r) must be made by attaching a statement to the taxpayer's amended federal income tax return for the earliest taxable year for which the period of limitations under section 6501(a) has not expired and which begins after December 31, 1986. The election under this paragraph (r)(3)(ii) must be filed on or before [*Insert date that is 180 days after this regulation is published as a final regulation in the* **Federal Register**]. The amended return must contain the statement described in paragraph (r)(3)(i) of this section. In addition, the statement must contain a representation that the taxpayer agrees to modify its pre-adjustment alternative minimum taxable income and adjusted current earnings in accordance with paragraph (r)(2) of this section. The change in method of accounting is treated as made with the advance consent of the Commissioner and the taxpayer must include the entire adjustment required under section 481(a), if any, in pre-adjustment alternative minimum taxable income and adjusted current earnings on the amended return for the year of the election. The taxpayer must also reflect the method of accounting described in paragraph (r)(2) of this section on amended returns filed for all tax years subsequent to the year of the election for which returns were originally filed before making the election.

(iii) *Election as method of accounting.* Any election or revocation of election under this paragraph (r) is a change in method of accounting subject to section 446(e) and § 1.446-1(e).

(4) *Example.* The following example illustrates the provisions of this paragraph (r).

(i) Corporation L is a calendar year manufacturer of baseball bats and uses the LIFO method of accounting for inventories. During 1987, 1988 and 1989, L's cost of goods sold in computing taxable income was as follows:

	1987	1988	1989
Beginning LIFO inventory	3,000	4,000	5,000
Purchases and other costs	9,000	9,000	9,000
Ending LIFO inventory	4,000	5,000	6,000
Cost of goods sold	8,000	8,000	8,000

L has no preferences under section 57 during 1987, 1988 and 1989. L's sole adjustment in computing alternative minimum tax during 1987, 1988 and 1989 was the depreciation adjustment under section 56(a)(1). Depreciation determined for both production and nonproduction assets under section 168 and under section 56(a)(1) during 1987, 1988 and 1989 was as follows:

	1987	1988	1989
Section 168 depreciation	1,800	1,800	1,800
Section 56(a)(1) depreciation	900	900	900
Depreciation difference	900	900	900
Portion of difference capitalized in the increase in inventory	(100)	(100)	(100)
Adjustment required under section 56(a)(1)	800	800	800

In computing taxable income a portion of each year's section 168 depreciation attributable to production assets is deducted currently and a portion is capitalized into the increase in ending inventory. For 1987, 1988 and 1989, L computed alternative minimum tax by deducting the cost of goods sold which was reflected in taxable income ($8,000) in accordance with paragraph (r)(2)(i) of this section. For 1987, 1988 and 1989, L also modified its adjustments under sections 56 and 58 and its preferences under section 57 to disregard the portion of any adjustment or preference that was capitalized in inventory. Thus, under section 56(a)(1) L increased alternative minimum taxable income during each year by $900.

L is eligible to make the election under paragraph (r)(1) of this section in accordance with paragraph (r)(3)(i) of this section (a prospective election).

(ii) L determines that the inventory amount at December 31, 1989, computed on a FIFO basis after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57, is $10,000.

In computing the LIFO recapture amount described in paragraph (f)(3)(iii)(A) of this section, the baseline LIFO recapture amount described in paragraph (f)(3)(iii)(E) of this section is determined as follows:

Beginning FIFO inventory amount	10,000
Beginning LIFO inventory amount	6,000
Baseline LIFO recapture amount	4,000

(iii) L must compute future LIFO recapture amounts by reference to (A) the FIFO inventory amount after applying the provisions of section 263A but before applying the adjustments of sections 56 and 58 and the items of preference in section 57 and (B) the LIFO inventory amount used in computing taxable income.

(s) *Adjustment for alternative tax energy preference deduction*—(1) *In general.* For purposes of computing adjusted current earnings, any taxpayer claiming a deduction under section 56(h) must properly adjust basis by the portion of the deduction allowed under section 56(h) which is attributable to adjustments under section 56(g)(4). In taxable years following the taxable year in which the section 56(h) deduction is claimed, basis recovery (including amortization, depletion and gain on sale) must properly take into account this basis reduction.

(2) *Example.* The following example illustrates the provisions of this paragraph:

Corporation A, a calendar year taxpayer, incurs $100 of intangible drilling costs on January 1, 1994 and as a result of these intangible drilling costs A claims a deduction under section 56(h) of $40. Assume that $20 is attributable to the adjustment under paragraph (f)(1) of this section. A must reduce by $20 the amount of intangible drilling costs to be amortized under paragraph (f)(1) of this section in 1995 through 1998 (the balance of the 60 month amortization period).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-6172 Filed 3-14-91; 8:45 am]

BILLING CODE 4830-01-M

---

26 CFR Part 1

[FI-104-90]

RIN 1545-AP37

Tax Treatment of Salvage and Reinsurance

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the treatment of salvage and reinsurance in computing the deduction of property and casualty insurance companies for losses incurred. Changes to the applicable law were made by the Revenue Reconciliation Act of 1990. The regulations are necessary to provide property and casualty insurance companies with guidance needed to comply with these changes.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991.

ADDRESSES: Send comments and requests for a public hearing to Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (FI-104-90), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Katherine A. Hossofsky (202) 566-4336 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection(s) of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Internal Revenue Service, Office of Management and Budget, Washington, DC 20503, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in the regulation is in § 1.832-4. This information is required for use by the Internal Revenue Service in monitoring compliance with the transition rules relating to salvage contained in the Revenue Reconciliation Act of 1990. The likely respondents are insurance companies.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. *Estimated total reporting burden:* 5000 hours.

The estimated burden per respondent/recordkeeper varies from one hour to three hours, depending on individual circumstances, with an estimated average of two hours.

Estimated number of respondents: 2500.

Estimated frequency of responses: one time only.

Background

This document sets forth proposed income tax regulations relating to the treatment of salvage and reinsurance under section 832(b)(5)(A) of the Internal Revenue Code. Section 832(b)(5)(A) was amended by section 11305 of the Revenue Reconciliation Act of 1990, 104 Stat. 1388 ("the 1990 Act").

Explanation of Provisions

In general

Section 832(b)(3) of the Code defines the "underwriting income" of a nonlife insurance company as premiums earned less losses incurred and expenses incurred. Under section 832(b)(5)(A), "losses incurred" are computed by taking into account paid losses, unpaid losses, and salvage and reinsurance. For tax years beginning before January 1, 1990, the statute required salvage and reinsurance recoverable to be taken into account as a reduction to paid losses. For those tax years, the regulations required salvage recoverable to be taken into account only to the extent that the salvage could be treated as an asset for state statutory accounting purposes.

For tax years beginning after December 31, 1989, the 1990 Act amended section 832(b)(5)(A) to provide the following rules for computing losses incurred. First, paid losses are reduced by salvage and reinsurance recovered during the tax year. This amount is adjusted to reflect changes in discounted unpaid losses on nonlife insurance contracts and in unpaid losses on life insurance contracts. Finally, this sum is adjusted to reflect any changes in discounted estimated salvage recoverable and in estimated reinsurance recoverable.

These proposed regulations would amend the current regulations to conform with the new treatment of salvage required by the 1990 Act. The regulations clarify that estimated salvage recoverable includes estimates of salvage recoveries that may not be treated as assets for state statutory accounting purposes ("non-admitted salvage recoverable"). See H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1071 (1990).

For tax years beginning before 1992, the proposed regulations require estimated salvage recoverable to be discounted either: (1) By using the applicable discount factors published by the Commissioner for salvage recoverable, or (2) by using the loss payment pattern for a line of business as the salvage recovery pattern for the line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). (The Commissioner will publish a revenue procedure containing salvage recovery patterns and discount factors for tax

years beginning before 1992. In 1992, the Secretary is required to redetermine loss payment patterns for purposes of section 846 and will redetermine salvage recovery patterns for purposes of section 832(b)(5)(A)). The Internal Revenue Service invites comments identifying circumstances in which it would be appropriate, for tax years beginning after December 31, 1991, to allow taxpayers to use discount factors computed on the basis of their own experience with salvage recoveries.

Transitional rules

The 1990 Act changed the federal tax treatment of salvage by requiring taxpayers to take into account non-admitted salvage recoverable in the computation of losses incurred. Section 11305(c)(2)(A) of the Act treats as a change in method of accounting any change required by the Act in computing losses incurred. However, section 11305(c)(2)(B) of the 1990 Act provides that a taxpayer must take into account only 13% of the section 481 adjustment that would otherwise have been required as a result of the change in method of accounting.

Section 11305(c)(4) of the 1990 Act provides a rule that applies to an overestimate of the section 481 adjustment. Under this rule, a taxpayer is required to include in gross income 87% of any amount by which the section 481 adjustment is overestimated. The rule is applied on a look-back basis by comparing the amount of the section 481 adjustment that would have been required (but for section 11305(c)(2)(B) of the Act and any discounting) to the actual amounts of salvage recoveries (together with any undiscounted estimated salvage recoverable) that are attributable to losses incurred in accident years beginning before 1990. For any tax year beginning after December 31, 1989, any excess of the section 481 adjustment over this amount is an overestimate for purposes of section 11305(c)(4).

A taxpayer should be prepared to establish to the satisfaction of the district director that the taxpayer's estimate of salvage recoverable for pre-1990 accident years does not exceed actual salvage recoveries related to such years. The district director may require any insurance company to submit such detailed information with respect to its actual experience with salvage related to pre-1990 accident years as is deemed necessary to establish that the estimate does not exceed actual salvage recoveries.

Section 11305(c)(3) of the 1990 Act allows a taxpayer to deduct 87% of the discounted amount of estimated non-admitted salvage recoverable that the taxpayer took into account for the last tax year beginning before January 1, 1990 (the last tax year before the 1990 Act required salvage of that type to be taken into account in computing losses incurred).

A taxpayer claiming this deduction must be able to establish to the satisfaction of the district director that it took non-admitted salvage recoverable into account for the last tax year before January 1, 1990. A taxpayer may not satisfy this requirement merely by stating that non-admitted salvage recoverable is reflected in the taxpayer's loss reserves. A taxpayer may satisfy this requirement by disclosing to the relevant state regulatory authority the extent to which the taxpayer took into account non-admitted salvage recoverable in computing underwriting income on the 1989 annual statement.

Special analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an intitial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submitts written comments on the proposed rule. If a public hearing is held, notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.801–1 through 1.832–7T

Income taxes; Insurance companies.

Proposed Amendments to the Regulations

For the reasons set out in the preamble, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 1.832–4 also issued under 26 U.S.C. 832(b)(5)(A).

Par. 2. Section 1.832–4T is redesignated as 1.832–4 and as so redesignated is amended by removing the last sentence of paragraph (a)(5), by revising the section heading and paragraphs (b), (c), (d), and (e). The revised provisions read as follows:

§ 1.832–4 Gross income.

* * * * *

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses. These losses must be stated in amounts which, based upon the facts in each case and the company's experience with similar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of a fair and reasonable estimate will be disallowed as a deduction. The district director may require any insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) For purposes of section 832(b)(5)(A)(iii) estimated salvage and reinsurance recoverable must include estimates of all anticipated recoveries on account of salvage, whether or not the salvage is treated, or may be treated, as an asset for state statutory accounting purposes. Recoveries on account of salvage must be estimated based on the facts of each case and the company's experience with similar cases. Except as otherwise provided in guidance published by the Commissioner in the Internal Revenue Bulletin, estimated recoveries on account of salvage must be discounted either: (1) By using the applicable discount factors published by the Commissioner for salvage recoverable, or (2) by using the loss payment pattern for a line of business as the salvage recovery pattern for the line of business and by using the applicable interest rate for calculating unpaid losses under section 846(c). For purposes of section 832(b)(5)(A) and the regulations thereunder, the term "salvage' includes subrogation claims.

(d) Section 11305(a) of the Revenue Reconciliation Act of 1990 ("the 1990 Act") requires a taxpayer to take into account, in computing the deduction for losses incurred, salvage recoverable that cannot be treated as an asset for state statutory accounting purposes ("non-admitted salvage recoverable"). Section 11305(c)(2)(A) of the 1990 Act treats as a change in method of accounting any change required by the Act in computing losses incurred. Under section 11305(c)(2)(B) of the 1990 Act, a taxpayer must take into account 13% of the adjustment that would otherwise be required under section 481 as a result of the change in accounting method.

(e) Section 11305(c)(3) of the 1990 Act allows a taxpayer to deduct 87% of the discounted amount of non-admitted salvage recoverable that the taxpayer took into account in the last tax year beginning before January 1, 1990. A taxpayer that claims this deduction must establish to the satisfaction of the district director that the deduction represents only the discounted amount of non-admitted salvage recoverable that was actually taken into account by the taxpayer in computing losses incurred for that tax year. This requirement will not be met if the taxpayer merely states that salvage recoverable with respect to non-admitted assets is reflected in the taxpayer's loss reserves. This requirement is deemed to be met if the taxpayer either—

(1) Disclosed on its 1989 annual statement the extent to which non-admitted salvage recoverable was taken into account in computing losses paid or unpaid losses (whichever is applicable) in the underwriting and investment exhibit of that annual statement; or

(2) Files with the appropriate state regulatory authority, on or before July 15, 1991, a statement disclosing the extent to which non-admitted salvage recoverable was so taken into account.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–5972 Filed 3–14–91; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[CO–51–89]

RIN 1545–AP02

Treatment of Gain or Loss on Deemed Sale of Affected Target Stock

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations to provide rules concerning the determination of the amount of gain or loss recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by May 14, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (CO–51–89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Keith G. Medleau of the Office of Assistant Chief Counsel (Corporate) on 202–566–3551 (not a toll-free number). For foreign aspects, contact Ken Allison of the Office of Associate Chief Counsel (International) on 202–566–6442 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545–1115), Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in section 26 CFR 1.338–6T. This information is required and will be used by the Internal Revenue Service to determine whether the proper amount of gain or loss is recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 310 hours.

Estimated average annual burden hours per respondent: 2.4 hours.

Estimated number of respondents: 130.

Estimated annual frequency of responses: Two times generally.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add § 1.338–6T to part 1 of title 26 of the Code of Federal Regulations (CFR). The temporary regulations provide rules on the determination of the amount of gain or loss recognized by a target corporation upon its deemed sale under section 338(a) of the Internal Revenue Code of 1986 of the stock of certain affiliates of the target corporation. This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. For the text of the new temporary regulations, see T.D. 8339, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f)

of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Keith Medleau of the Office of Chief Counsel, Internal Revenue Service, except that the principal author of § 1.338–6T(d) is Ken Allison of that office. However, other personnel from the Internal Revenue Service and the Department of Treasury participated in developing the regulations on matters of both substance and style.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–5823 Filed 3–14–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule concerning criteria and procedures for its proposed assessment of civil penalties from March 18, 1991, to April 2, 1991, in response to requests from the mining community.

DATES: Written comments must be received on or before April 2, 1991.

ADDRESSES: Send written comments to the Office of Standards, Regulations, and Variances, MSHA, room 631 Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On December 28, 1990, MSHA published a proposed rule (55 FR 53482) to revise the MSHA regulations governing the criteria and procedures used for assessing civil penalties. The proposal, which would update part 100, is responsive to the Omnibus Budget Reconciliation Bill that became effective on November 5, 1990. It also reflects inflation by including across-the-board increases for all categories of penalties. In addition, it includes penalty increases for a mine with an excessive history of violations. The comment period for the proposed rule was scheduled to close on March 1, 1991, but subsequently was extended to March 18, 1991 (56 FR 8171). Due to requests from the mining community for more time in which to prepare their comments, MSHA is extending the comment period to April 2, 1991. All interested parties are encouraged to submit comments prior to this date.

Dated: March 11, 1991.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 91–6196 Filed 3–14–91; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 845

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of petition to initiate rulemaking and request for comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) seeks comments regarding a petition submitted by the State of Maryland, Department of Natural Resources, pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to amend OSM's regulations governing assessment conferences so as to clarify the appeal process for mandatory civil penalty assessments. The petitioner maintains that the existing regulations at 30 CFR 845.18 do not provide adequate guidance to a conference officer for review and compromise of such assessments. Mandatory civil penalty assessments are defined by the petition as those required to be made under 30 CFR 845.12 (a), (b), and 845.15(b) for cessation orders, notice of violations assigned 31 points or more under the point system for penalties found at 30 CFR 845.13, and for failure to abate cessation orders.

OSM is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSM in making a decision to grant or deny the petition. Publication of this notice seeking comments on the petition reflect OSM's view that the public interest will be served by the receipt of comments on the petition. It does not reflect a determination that the petition itself presents a reasonable basis for the requested changes.

DATES: OSM will accept written comments on the petition until 5 p.m. Eastern standard time on April 15, 1991.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Administrative Record, room 5131A, 1951 Constitution Avenue, NW., Washington, DC 20240, or hand deliver to the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, Administrative Record, room 5131, 1100 "L" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone (202) 208–2550 (Commercial) or 268–2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the proposed revisions, and should explain the reasons for the comment. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "DATES") or delivered to an address other than those listed (see "ADDRESSES") may not necessarily be considered or included in the Administrative Record on the petition.

Availability of Copies

Additional copies of the petition and copies of 30 CFR part 845 are available for inspection and may be obtained at the location listed under "ADDRESSES."

Public Hearings

OSM will not hold a public hearing on the proposed revision, but OSM personnel will be available to meet with the public during business hours, 9 a.m. to 5 p.m. Eastern standard time, during the comment period. In order to arrange such a meeting, call or write to the person identified under "FOR FURTHER INFORMATION CONTACT."

II. Background and Substance of Petition

OSM received a letter dated January 24, 1991, from the State of Maryland, Department of Natural Resources petitioning OSM to initiate a rulemaking to amend its regulations found at 30 CFR 845.18 to provide guidance in the review and compromise of mandatory civil penalty assessments.

Under section 201(g) of SMCRA, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any of the regulations implementing SMCRA. Under the applicable reuglations for rulemaking petitions, 30 CFR 700.12, this notice seeks public comment on the merits of the petition and on the rule changes suggested in the petition.

At the close of the comment period, a decision will be made whether to grant or deny the petition. Under 30 CFR 700.12, the Director shall issue a written decision either granting or denying the petition within 90 days of the date of its receipt. Soon thereafter, notice of that decision will be published in the Federal Register. If the petition is granted, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the petition is denied, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage, nor is a regulatory impact analysis necessary under Executive Order No. 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(C), is needed.

List of Subjects in 30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: February 26, 1991.

Harry M. Snyder,

Director.

Appendix

The text of the petition dated January 24, 1991, from the State of Maryland, Department of Natural Resources is as follows:

Maryland Department of Natural Resources

Water Resources Administration, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532.

Januray 24, 1991.

Mr. Harry M. Snyder, Director, Office of Surface Mining, Reclamation and Enforcement, Department of the Interior, Washington, DC 20240.

Dear Mr. Snyder: In accordance with 30 CFR 700.12, I have enclosed a Petition for Rulemaking concerning 30 CFR part 845—Civil penalties, specifically relating to the appeal process for mandatory civil penalties. Your attention to this matter would be greatly appreciated.

Sincerely yours,

Anthony F. Abar,

Director.

AFA:sas

Enclosure

Before the Office of Surface Mining Reclamation and Enforcement United State Department of Interior; Petition for Rulemaking Under the Surface Mining Control and Reclamation Act of 1977; State of Maryland Department of Natural Resources Water Resources Administration Bureau of Mines

I. Introduction

Pursuant to the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1211(g), its implementing regulations, 30 CFR 700.12 and the Administrative Procedures Act, 5 U.S.C. 553(e), the Maryland Bureau of Mines ("the Petitioner") petitions the Director of the Office of Surface Mining Reclamation and Enforcement (OSMRE) for certain amendments and modifications to regulations contained in 30 CFR part 845 relating to the appeal process for mandatory civil penalties. For the purpose of this petition, "mandatory" is defined as every violation for which the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and/or 30 CFR part 845 requires that a civil penalty shall be assessed as indicated below.

SMCRA	30 CFR part 845	Type of violation
Section 518(b)	845.12(a)	Cessation Order.
	845.12(a)	Notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.
Section 518(h)	845.15(b)	Failure to Abate Cessation Order, a civil penalty of not less than $750 per day for each day the violation continues to exist.

The proposed amendments will clarify the process for appeal of civil penalties.

II. Petitioner

The Bureau of Mines is an agency of the State of Maryland, Department of Natural Resources, Water Resources Administration responsible for the regulation of surface coal mining and reclamation within the State of Maryland. Maryland submitted its permanent State program on March 3, 1980. The Maryland Program was approved by OSMRE on February 18, 1982.

III. Proposed Amendments and Modifications

The Procedures for requesting and conducting assessment conferences to review proposed assessments for notices of violation and cessation orders are set forth in 30 CFR 845.18. The procedures set forth in this regulation are utilized for review of all civil penalty assessments. However, the only direction given to the conference officer is that all relevant information on the violation should be considered and that the conference officer should either: (1) Settle the issues and execute a settlement agreement; or (2) affirm, lower or vacate the civil penalty. There is no distinction in the regulations for reviewing discretionary civil penalty assessments and mandatory civil penalty assessments. The existing regulations are vague and do not provide adequate guidance to a conference officer for review of assessments, especially mandatory civil penalty assessments.

Petitioner requests that OSMRE review 30 CFR 845.18 and propose amendments which specify procedures to be followed for review of various civil penalties authorized and mandated in section 518 of SMCRA and 30 CFR 845.12 and 845.15(b) including what information is relevant, what criteria are to be considered for compromising civil penalties, and which party, if any, to an appeal, may compromise the amount of the civil penalty for each mandatory civil penalty. Petitioner has not provided proposed language for the procedures to be utilized in reviewing assessments. If proposed language is required in order for OSMRE to consider the petition complete, petitioner will submit proposed amendments to 30 CFR 845.18

However, the petitioner, with this petition, is simply requesting OSMRE to provide regulatory guidance. The petitioner is not advocating particular procedures/criteria.

IV. Statement of Facts and Law in Support of Amendment of Existing Federal Assessment Conference Regulations

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides procedures for the assessment and appeal of civil penalties. Section 518(a) provides authority for the assessment of civil penalties for notices of violation and mandates that violates which lead to the issuance of a cessation order shall be assessed a civil penalty.

The permanent program regulations at 30 CFR 845.12(a) require that a civil penalty shall be assessed for each cessation order. Section 30 CFR 845.12(b) requires that a civil penalty shall be assessed for each notice of violation in the violation is assigned 31 points or more under the point system described in § 845.13. Section 30 CFR 845.15(b) requires that if an operator fails to correct a violation within the period permitted for its correction the operator shall be assessed a civil penalty of not less than $750 per day for each day the violation continues.

Section 518 (b) and (c) of SMCRA set forth the procedures for appeal of civil penalties. However, SMCRA does not: (1) Distinguish between procedures to appeal civil penalties for violations (NOV), cessation orders (CO), and for failure to abate cessation orders (FTACO); or (2) set forth criteria for compromising NOV, CO or FTACO civil penalties.

The permanent program regulations for appeal of civil penalty assessments do not clarify the ambiguity of SMCRA. Section 30 CFR 845.18 sets forth procedures for assessment conferences. Presumably these procedures apply to civil penalties assessed for CO's, NOV's which are assigned 31 points or more, and FTACO's. Section 30 CFR 845.18(b)(3) also allows the conference officer, after considering all relevant information, to either settle the issues and execute a settlement agreement or affirm, raise, lower, or vacate the penalty. Thus, following the procedures set forth in 30 CFR 845.18, the conference officer may lower or vacate the penalty assessed for CO's, NOV's which are assigned 31 points or more, FTACO's, as well as NOV's. The only guidance given to conference officers in 30 CFR 845.18(b)(3) is that all relevant information on the violation shall be considered. No other guidance is provided that indicates the relevant information/criteria to be considered during the conference for the different types of civil penalty assessments, the amount of civil penalty compromise or whether these mandatory penalties can, in fact, be compromised or vacated.

Referring to the FTACO civil penalty required under 30 CFR 845.15(b), OSMRE has stated:

In reviewing the rulemaking history of the Federal civil penalty regulations, Federal case law decisions, and administrative law decisions, . . . it is clear that civil penalties for failure-to-abate cessation orders carry a mandatory minimum daily penalty amount of $750 per day . . . Under SMCRA and the Federal regulations, a conference officer or hearing examiner cannot waive or reduce mandatory failure-to-abate civil penalties. The only variable that enters into the . . . computation of the penalty amount owed is the determination of the actual number of days for which the penalty is to be assessed. (See attached letter from Hord Tipton, Deputy Director, OSMRE to Anthony Abar, Director, Maryland Bureau of Mines).

However, the rulemaking history of the Federal civil penalty regulations, indicates that OSMRE's interpretation of the FTACO civil penalty provision of SMCRA allowed for compromise of the civil penalty. The regulatory analysis of the final Permanent Regulatory Program regulation published in the March 13, 1979 **Federal Register**, Vol 44, No 50, Book 2, on page 15308, includes the following discussion:

"A new subsection (c) was added to clarify the manner in which both the mandatory $750/day penalty for failure to abate and the discretionary penalty for continuing violations will be assessed, and to provide for reassessment to take account of good faith compliance or other facts not available at the time initial assessment was made. As in the case of good faith points, the mandatory $750/day penalty and the discretionary penalty for continuing violations cannot properly be finally assessed until after the violation is abated. The new subsection (c) provides for authority for reassessment."

Moreover, the permanent program regulations (30 CFR part 845) do not identify the variables that enter into the appeal process for civil penalties assessed for FTACOs, NOVs, or COs. The OSMRE should amend its regulations to reflect Federal case law decisions and administrative law decisions, and to insure that State programs contain procedures for appeal, including criteria for compromise, of civil penalties that are the same or similar.

V. Conclusion

The requested amendments will provide specific criteria to be used by conference and hearing officers during review of mandatory civil penalties.

Accordingly, for the reasons states herein, the Petitioner requests that the Director, OSMRE immediately grant the petition pursuant to section 201(g) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1211(g) and 30 CFR 700.12 and promptly commence to review this issue and promulgate amendments which clarify the procedures to be used to review mandatory civil penalties.

Respectfully submitted.

State of Maryland, Department of Natural Resources, Water Resources Administration, Bureau of Mines, 69 Hill Street, Frostburg, MD 21532.

Anthony F. Abar,

Director.

June 27, 1990.

Mr. Anthony F. Abar, Director, Maryland Department of Natural Resources, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532.

Dear Mr. Abar: This is in response to your letter of May 14, 1990, to the Charleston Field Office Director and telephone conversation with David G. Hartos of our Eastern Field Operations Office concerning civil penalty assessment, reduction, and compromise matters. I understand that you have suggested that the Office of Surface Mining Reclamation and Enforcement (OSM) consider either amending or clarifying its civil penalty regulations to address several concerns relating to failure-to-abate cessation orders which your office has been discussing with our field personnel.

In reviewing the rulemaking history of the Federal civil penalty regulations, Federal case law decisions, and administrative law decisions, I believe that it is clear that civil penalties for failure-to-abate cessation orders carry a mandatory minimum daily penalty amount of $750.00 per day as required by section 518(h) of the Surface Mining Control and Reclamation Act (SMCRA). Under SMCRA and the Federal regulations, a conference officer or hearing examiner cannot waive or reduce mandatory failure-to-abate civil penalties. The only variable that enters into the conference officer's or hearing examiner's computation of the penalty amount owed is the determination of the actual number of days for which the penalty is to be assessed.

Given the above, OSM has no plans to initiate rulemaking on this subject. If you believe that the Maryland program is unclear in this area, you may wish to consider appropriate rulemaking at the State level.

Under the Federal regulations at 30 CFR 700.12, any person may petition the Director of OSM to initiate a proceeding for the issuance, amendment, or repeal of any regulation under SMCRA. Should you wish to submit a petition for OSM to initiate rulemaking, please forward a petition that addresses the criteria of 30 CFR 700.12. That rule specifies that a petition shall be a concise statement of the facts, technical justification, and law which the petitioner believes require issuance, amendment, or repeal of a regulation under SMCRA.

In you have questions or need further information on the rulemaking petition process, please contact Brent Wahlquist, Assistant Director for Program Policy at (202) 208-4264.

Sincerely,

W. Hord Tipton.

Deputy Director, Operations and Technical Services.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 91-6282 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 914

Indiana Regulatory Program Amendment; Administrative Changes to the State Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of proposed Amendment #91-2 submitted by Indiana as a modification to the State's regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consists of proposed changes to the Indiana Surface Mining Statute provisions concerning the administration of the Indiana program. The amendment is intended to make specific changes to the administrative responsibilities and procedures as they affect the approved program.

This notice sets forth the times and locations that the Indiana program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 15, 1991; if requested, a public hearing on the proposed amendment is scheduled for 1 p.m. on April 9, 1991; and, requests to present oral testimony at the hearing must be received on or before 4 p.m. on April 1, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendment, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226-6166.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone: (317) 232-1547.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 28, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated February 15, 1991, (Administrative Record No. IND-0836), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment (Amendment #91-2) to the Indiana program at Indiana Code (IC) 4-26-3-27.8; IC 13-4.1; and IC 14-3-3. The proposed amendment is part of Indiana's 1990 Senate Enrolled Act No. 362 (Public Law 38-1990). The amendment would provide for the following changes to the Indiana program:

(a) Provides for the continuation of the Natural Resources Commission (NRC), the Department of Natural Resources (DNR), and other agencies or elements of DNR.

(b) Requires the development of a policy and procedures manual.

(c) Expands the list of persons to be notified by a permit applicant at the time of filing a permit application.

(d) Allows for a public hearing to be held prior to a decision on a surface coal mining and reclamation operation permit.

(e) Transfers authority for making decisions on permit applications from the NRC to the Director, DNR.

(f) Specifies when a permit is to be issued.

(g) Clarifies the effective date of permits issued.

(h) Expands the list of persons to be notified upon issuance of a permit.

(i) Transfers permit application and revision decisions from the NRC to the Director, DNR.

(j) Requires rules to define nonsignificant revisions of permits.

(k) Clarifies that hearing officers are to be appointed by the NRC.

(l) Clarifies the makeup and backgroup requirements for persons appointed to the NRC.

(m) Clarifies that administrative law judges are to be appointed by the NRC.

(n) Establishes over the Division of Reclamation the Bureau of Mine Reclamation, the Director of which will report directly to the Director of the Department of Natural Resources. The amendment also would not establish an advisory board or council between the Bureau and the Department.

(o) Establishes the NRC as the ultimate authority for all administrative appeals and requires the NRC to adopt rules to carry out its duties.

(p) Adds the requirements that all permit decisions are to be made by the Director, DNR or his/her designee.

(q) Adds the requirement that all hearings before the DNR are to be heard by the NRC.

(r) Requires the preparation of a new classification and pay plan for professional, administrative, and technical positions in the Bureau of Mine Reclamation.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on April 1, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM

officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed above under **"ADDRESSES."** A summary of the meeting will be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 7, 1991.

Lewis M. McNay,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91-6176 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-02]

Special Local Regulations; Bay City Fireworks Display, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish special local regulations on the 6th of July 1991 for the Bay City Fireworks Display.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Search and Rescue Branch, room 2007A, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7 a.m. and 4:30 p.m. (EDT), Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-91-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this proposed rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Bay City Fireworks Display will be conducted at the south end of the Veterans Memorial Park with the fireworks being fired over the Saginaw River on the 4th, 5th, and 6th of July 1991. This event has been held in the past without special local regulations, but due to the growth of this event and the unusually large number of spectator craft in the area on the last evening of the fireworks display, which could pose hazards to navigation in the area, the Coast Guard is considering a proposal to establish special local regulations for the 6th of July 1991. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI.).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water.)

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35-T0902 to read as follows:

§ 100.35-T0902 Bay City Fireworks Display, Saginaw River, Bay City, MI.

(a) *Regulated area.* That portion of the Saginaw River from the Veterans Memorial Bridge to 1000 yards south of the same bridge.

(b) *Special local regulations.* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 p.m. (EDST), 6 July 1991 until 12 a.m. (EDST) on 7 July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a higher degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-6222 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 100

[CGD 09-91-01]

Special Local Regulations; Nautica Powerboard Classic, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Nautica Powerboat Classic (formerly Miller Nautica Powerboat Classic). This event will be held on the Cuyahoga River, Cleveland, OH, on the 17th and 18th of August 1991, from 10 a.m. (EDST) until 6 p.m. (EDST), each day. The regulations are needed to provide for the safety of life and property on navigable waters from one hour prior to until one hour after the completion of the event.

DATES: Comments must be received on or before April 29, 1991.

ADDRESSES: Comments should be mailed to Commander (osr), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at the Search and Rescue Branch, room 2007A, 1240 East 9th Street, Cleveland, Ohio. Normal office hours are between 7:30 a.m. and 4:30 p.m. (EDT), Monday thorugh Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-91-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this proposal are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Nautica Powerboat Classic will be conducted on the Cuyahoga River, Cleveland, OH, from the mouth of the Old River to the Bascule Bridge, Cuyahoga River, on the 17th and 18th of August 1991. This event will have an estimated 40 outboard tunnel boats for the race, and 13 jet skis and wetbikes conducting safety seminars and performing operating demonstrations, when time permits and between heats, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel traffic one hour prior to until one hour after the completion of the event within this section of the Cuyahoga River. Areas designated in the application shall be fenced for spectator safety. Spectators shall be prohibited from areas where retaining walls or bulkheads do not exist. Spectators shall be prohibited from the waterfront of the Settlers' Landing Park. Local authorities have been consulted and have agreed that the above steps will be appropriate to insure spectators safety. Racing shall be suspended and race course buoys shall be removed to provide for the passage of commmercial vessels on the days of racing. Commercial vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station; Cleveland Harbor, OH).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of the proposed regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposed regulation is expected to be minimal, the Coast Guard certifies, that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add to temporary §100.35-T0901 to read as follows:

§ 100.35-T0901 Nautica Powerboat Classic, Cuyahoga River, Cleveland, OH.

(a) *Regulated Area:* That portion of the Cuyahoga River, Cleveland, OH, from the mouth of the Old River, southeastward to the Bascule Bridge (north of the Detroit Superior Bridge) Cuyahoga River, Cleveland, OH.

(b) *Special local regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 a.m. (EDST) until 7 p.m. (EDST), each day, on the 17th and 18th of August 1991. However, racing shall be suspended and race course buoys shall be removed to provide for the passage of commmercial vessels.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Commercial vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated aread to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: March 5, 1991.

G. A. Renington,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 91-6223 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64, 68

[CC Docket No. 91-35; FCC 91-53]

Operator Service Access and Pay Telephone Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted this Notice of Proposed Rule Making (NPRM) to propose rules concerning operator service access and to seek comment on options regarding compensation for owners of competitive public payphones for access code calls. The NPRM proposes rules that would require call aggregators to ensure that consumers at aggregator phones can use equal access (10XXX) codes to obtain access to their desired operator service providers (OSPs). The proposed rules would also require aggregator equipment to have the ability to process 10XXX calls selectively, so that only 10XXX dialing sequences that would result in billing to the originating phone could be blocked. These access rules specify different compliance deadlines for different equipment types, with the latest deadline being thirty-six months from the effective date of the new rules. In addition, the NPRM seeks comment on a proposed rule that would require all OSPs to establish either an 800 or a 950 access code number within six months of the new rules' effective date. Regarding compensation for payphone owners, the NPRM seeks comment on three options: first, that compensation from OSPs to whom access code calls are routed will not be prescribed by the Commision; second, that compensation will be prescribed by the Commission and collected and disbursed through a pooling mechanism; and, third, that compensation will be prescribed by the Commission and collected by payphone owners through individual, direct billing arrangements with OSPs.

DATES: Comments must be filed on or before April 5, 1991, and replies must be filed on or before April 19, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kurt A. Schroeder, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (NPRM) in CC Docket No. 91-35 (FCC 91-53), adopted February 13, 1991, and released March 11, 1991.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

1. On February 13, 1991, the Commission adopted a Notice of Proposed Rule Making in CC Docket No. 91-35 (released March 11, 1991; FCC 91-53) in order to propose rules concerning operator service access and to seek comment on options regarding compensation for owners of competitive public payphones for access code calls.

2. First, the NPRM addresses the issue of operator service access. Section 226(e)(1) of the Telephone Operator Consumer Services Improvement Act of 1990, Public Law No. 101-435, 104 Stat. 986 (1990) (Operator Services Act), directs the Commission to require within 9 months after enactment (a) that aggregators ensure within a reasonable time that consumers have access to the carrier of their choice through the use of an equal access code, or (b) that all operator service providers (OSPs) make available a "950" or "800" access code number, or (c) both (a) and (b). As a matter of long-term policy, the Commission sees two main reasons for considering 10XXX access to be an important method for achieving the goal of free choice for consumers. First, in the Operator Services Act, Congress directed that all aggregator equipment manufactured or imported after April 17, 1992, "be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes." Hence, by virtue of this requirement alone, 10XXX access will eventually be available from most aggregator locations as equipment is replaced. Second, 10XXX access appears to provide both consumers and carriers with more technical flexibility and choice than do other access methods.

3. Considering these factors, the NPRM proposes to amend §§ 64.704 and 68.318 of the Commission's Rules so as to require, within 3 years, 10XXX access from all aggregator locations. Under the proposed § 64.704(c)(1), aggregators who use existing equipment that can now identify and selectively block 10XXX dialing sequences that would result in billing to the originating telephone would have to unblock all other 10XXX access immediately. Proposed paragraph (c)(2) requires aggregators to provide 10XXX access through any new equipment that is covered by section 226(f) of the Act. Paragraphs (c)(3) and (c)(4) concern other existing aggregator equipment. These paragraphs would require aggregators to ensure 10XXX access within 12 months of the effective date of these rules for payphones and within 36 months of the effective date of these rules or at the time of equipment replacement, whichever is sooner, for other existing equipment. The NPRM seeks comment on what types of equipment, in addition to private branch exchanges ("PBXs"), would come within the scope of the 36-month rule.

4. In § 68.318(e), the NPRM proposes, *inter alia*, modification requirements for existing equipment consistent with paragraphs (c)(3) and (c)(4) of § 64.704. Under proposed paragraphs (e)(1)(B) and (e)(2)(B) of § 68.318, existing aggregator equipment would be required to have the capability of identifying and selectively blocking 10XXX dialing sequences that would result in billing to the originating phone, without, at the same time, blocking 10XXX calls that would be billed to the caller or an authorized third party. Given such capabilities, the Commission has also proposed, in § 64.704(c)(5), that aggregators be allowed to block 10XXX calls that would result in billing to the originating telephone. These proposals are intended to eliminate, in the long run, any unauthorized, fraudulent, or otherwise uncollectible 10XXX calls being charged to payphone owners and other aggregators, such as hotels, hospitals, airports, and universities, while at the same time allowing consumers to use the 10XXX access method if they wish. Parties should comment on what sort of cost/benefit analysis should be employed in considering requests for waivers of an equipment retrofitting requirement. Comment is also sought on the magnitude of fraudulent 10XXX calling and on specific methods that would be available now or in the near future to control this problem, such as the use of toll restrictors, and CPE or network solutions that are or may become available, including a tariffed screening service to be offered by local exchange carriers that would identify and selectively block 10XXX calls that would result in billing to the originating telephone. Parties are asked to comment on the feasibility such fraud control methods and on how each would bear on the timing of 10XXX unblocking. As an alternative, the NPRM seeks comment on whether the conversion of existing aggregator equipment to 10XXX capability should be required, as proposed, by definite dates, thus requiring the modification of equipment, or whether conversion to 10XXX capability should occur by attrition as nonconforming equipment is replaced.

5. Although universal establishment of 10XXX access is tentatively proposed as a long-term goal, the Commission seeks comment on whether establishment of 800 or 950 access by all OSPs is also in the public interest, either on a short term or long-term basis. While one option is to require 10XXX unblocking alone, the option of requiring a combination of 10XXX unblocking and the establishment of 800 or 950 access might be necessary because of the short-term or long-term unavailability of the 10XXX access method. Short-term unavailability occurs when existing aggregator equipment has not yet been modified to provide 10XXX access. One way to ensure access to all OSPs until equipment is modified would be to require the temporary establishment of 800 or 950 access would compare to the costs of fraudulent 10XXX calling and of retrofitting equipment to selectively process 10XXX calls.

6. Access through 10XXX will also be unavailable, in the long term, in areas of the country that have not yet coverted to equal access or where certain equipment is permanently unable to process 10XXX dialing. In either situation, a caller will be unable to reach an OSP that employs only 10XXX access if the telephone is not presubscribed to that OSP. The Commission therefore seeks comment on whether these cases of long-term 10XXX unavailability would justify requiring the permanent establishment of 800 or 950 access by all OSPs, as proposed in § 64.704(d). The NPRM also seeks comment on whether any other special provision should be made for non-equal access areas and on whether consumers have sufficiently free access to their preferred carriers in these areas, despite the lack of 10XXX access. Comment is also sought on the possibility of requiring the LECs to provide, until conversion to equal access, a tariffed service in which the LECs would, upon receiving a "0-" call, transfer the call to the consumer's requested OSP. More generally, parties are asked to comment on whether such a tariffed service should be required nationwide and on the costs of implementation, the technical feasibility, and the effectiveness of a "O-" transfer service.

7. The Operator Services Act directs the Commission to determine "whether to prescribe * * * compensation" for owners of competitive public payphones for access code calls. Generally, call aggregators, including competitive public payphone owners, are compensated by the presubscribed OSP for all calls placed through that OSP. Aggregators receive no compensation, however, for access code calls, and this situation grows as access code calling in increasingly facilitated by unblocking.

8. At the outset, the Commission asks interested parties to comment on whether it should declare that it will not prescribe compensation, which is within the Commission's discretion under the Operator Services Act. If the Commission were to prescribe compensation, charges for access code calls could be assessed and disbursed through a compensation pool, and interested parties are asked to comment on this potential approach. The NPRM suggests two alternative mechanisms for such a pool. The first alternative would require each OSP to submit to the administrator of a compensation pool a report of the total number of calling minutes generated by access code calls from competitive public payphones. The administrator would then assess and bill each OSP a per minute charge for such calls. OSPs would pay these charges into the compensation pool, and the administrator would distribute compensation to payphone owners based on their reports of the number of access code calling minutes generated by their payphones. The second alternative would be to develop a payphone compensation pool to which each OSP would contribute a certain percentage of its estimated gross proceeds from all interstate payphone calls, whether or not an access code was used. Each payphone owner would then receive compensation from the pool equal to a percentage of all interstate revenue generated by its payphones. The NPRM also seeks comment on another compensation mechanism, whereby the Commission would prescribe compensation that is based on a per minute charge for access code calls but is collected by payphone owners through individual, direct billing arrangement with OSPs. Comment is sought on a number of issues regarding all of these options, including whether the public interest would be served by foregoing prescribed compensation mechanism; how charges would be calculated; whether a per call charge would be more appropriate than a per

minutes charge; how accounting problems might affect compensation mechanisms; how to verify accounting; how to settle any disputes over compensation by private means; how often charge would be collected and disbursed; what entity would administer a compensation pool; and how administrative costs would be recovered.

9. The Commission recognizes that the alternative compensation mechanisms discussed in the NPRM are potentially complex and expensive. Parties are invited to suggest any more efficient or less costly options. In addition, the Commission is particularly interested in comments on how the potential complexity and expense of any compensation mechanism, including the administrative costs and the costs to consumers, should affect the cost/benefit analysis of whether to prescribe compensation at all.

10. The rules proposed in the Notice are related to those proposed in Policies and Rules Concerning Operator Service Providers: Further Notice of Proposed Rule Making, CC Docket No. 90-313, 56 FR 402, 6 FCC Rcd 120 (1990). Accordingly, the rules set out in the Appendix to the Notice and this summary are numbered in sequence with the rules proposed in CC Docket No. 90-313, although the latter rules have not yet been adopted.

11. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission has determined that the proposals or options contained in the NPRM concerning the unblocking of 10XXX access, equipment modification, the establishment of the 800 or 950 access methods, and payphone compensation may have some impact on small entities. Public comment is requested on the initial regulatory flexibility analysis set out in the full NPRM.

12. This notice and comment rule making proceeding is non-restricted. Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), contains provisions governing permissible *ex parte* contacts.

Ordering Clauses

13. Accordingly, *It is Ordered*, pursuant to sections 1, 4(i), 4(j), 201-205, 215, 226, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, 226, 303(r), that a notice of proposed rule making is issued, proposing the amendment of 47 CFR parts 64 and 68 as set forth in the appendix.

14. *It is further ordered*, pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, that all interested parties may file comments on the matters discussed in the Notice and on the proposed rules contained in the appendix by April 5, 1991 and reply comments by April 19, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 230) of the Federal Communications Commisison, 1919 M Street, NW., Washington, DC 20554.

15. *It is Further ordered* That the Chief of the Common Carrier Bureau is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

16. *It is Further ordered* The the Secretary shall cause a copy of the Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1981). The Secretary shall also cause a summary of the Notice to appear in the **Federal Register**.

List of Subjects

47 CFR Part 64

Communications common carriers, Telephone.

47 CFR Part 68

Communications common carriers, Communications equipment, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

It is proposed that parts 64 and 68 of title 47 of the Code of Federal Regulations be amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 48 Stat. 1070, as amended, 1077, 47 U.S.C. 201, 218, 226, unless otherwise noted.

2. Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a)-(b) [Revised]

(c) Each aggregator shall ensure, by the earliest applicable date, that any of its equipment presubscribed to a provider of operator services allows the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services as set forth in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this section.

(1) All equipment that is technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and that is technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes, shall immediately allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(2) All equipment or software that is manufactured or imported on or after April 17, 1992, and installed by any aggregator shall, immediately upon installation by the aggregator, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(3) Each pay telephone shall, within twelve (12) months of the effective date of this paragraph, allow the consumer to use equal access codes to obtain access to the consumer's desired provider of operator services.

(4) All equipment not included in paragraphs (c)(1), (c)(2), or (c)(3) of this section shall, within thirty-six (36) months of the effective date of this paragrapgh or upon replacement, whichever is sooner, allow the consumer to use equal access to obtain access to the consumer's desired provider of operator services.

(5) This paragraph does not apply to the use of equal access code dialing sequences that result in billing to the originating telephone.

(d) All providers of operator services must establish an "800" or "950" access code number within six (6) months of the effective date of this paragraph.

PART 68—[AMENDED]

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 226, 313, 314, 403, 404, 410, 602, 48 Stat., as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102, 47 U.S.C. §§ 154, 201, 202, 203, 204, 205, 208, 218, 226, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is added to read as follows:

§ 68.318 Additional limitations.

(a)-(d) [Reserved]

(e) *Requirement that existing registered equipment allow access to common carriers.*

(1) Any pay telephones used by call aggregators shall, within twelve (12) months of the effective date of this paragraph:

(i) Be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes; and

(ii)(A) Be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and

(B) Be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes.

(2) Any equipment used by call aggregators that is not provided for in paragraph (e)(1) of this section shall, within thirty-six (36) months of the effective date of this paragraph:

(i) Be technologically capable of providing consumers with access to interstate providers of operator services through the use of equal access codes; and

(ii)(A) Be technologically capable of identifying the dialing of an equal access code followed by any sequence of numbers that will result in billing to the originating telephone and

(B) Be technologically capable of blocking access through such dialing sequences without blocking access through other dialing sequences involving equal access codes.

(3) Equipment described in paragraphs (e)(1) and (e)(2) of this section shall be modified as necessary and re-registered if required by § 68.214. Any software modifications required to achieve compliance with this paragraph shall be installed in a manner that cannot readily be altered by the user.

[FR Doc. 91-6118 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 91-52, RM-7373]

Radio Broadcasting Services; Macclenny and Williston, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by WJXR, Inc., licensee of Station WJXR(FM), Channel 221A, Macclenny, Florida, seeking the substitution of Channel 221C3 for Channel 221A at Macclenny, and modification of its license to specify the higher class channel. The proposal to upgrade at Macclenny requires the substitution of Channel 287A for Channel 221A at Williston, Florida, and modification of Station WFEZ(FM)'s license to specify Channel 287A. We are also issuing an Order to Show Cause to Gulf to Bay Broadcasting Corporation Inc., licensee of Station WFEZ(FM), Williston, Florida. The coordinates for Channel 221C3 at Macclenny are North Latitude 30-17-54 and West Longitude 82-00-55. The coordinates for Channel 287A at Williston are North Latitude 29-25-04 and West Longitude 82-32-58.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Frederick A. Polner, Richard K. Olson, Jr., Rothman, Gordon, Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, PA 15219 (Attorneys for WJXR, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-52, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-6119 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-51, RM-7625]

Radio Broadcasting Services; Steeleville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Steeleville Communications proposing the allotment of Channel 248A at Steeleville, Illionis, as the community's first local FM service. Channel 248A can be allotted to Steeleville in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.5 kilometers (4 miles) west of the community, in order to avoid a short-spacing to Station WFRX(FM), Channel 249A, Frankfort, Illinois. The coordinates for this proposed allotment are North Latitude 38-01-18 and West Longitude 89-43-47.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Philip M Baker, 4701 Willard Avenue, Washington, DC 20815 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-51, adopted February 28, 1991, and released March 11, 1991. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subjct to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–6120 Filed 3–14–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–54, RM–7623]

Radio Broadcasting Services; Herington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Marie and Donald D. Willis proposing the substitution of Channel 289C3 for Channel 289A at Herington, Kansas, and modification of the construction permit for Station KDMM to specify the higher class channel. The coordinates for Channel 289C3 are 38–38–30 and 97–02–30.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filling comments with FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Marie Willis, and Donald D. Willis, 115 North 8th Street, Herington, Kansas 67449, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–54, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commision.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–6121 Filed 3–14–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 90–535; RM–7520]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for filing comments in response to a Public Notice dated February 15, 1991, accepting a counterproposal filed by Hardin County Broadcasting Company, Inc., filed in this proceeding. The deadline for filing comments was established as March 6, 1991. This deadline is extended as requested by Daily News Broadcasting Company because the office of its engineering counsel, Silliman and Silliman, was devastated by a fire on February 23, 1991. Documents relevant to this case were destroyed and are in the process of being replaced. This action is taken to provide Daily with time to replace the documents that were destroyed in the fire.

DATES: Comments are now due on March 13, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutman, Attorney, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Counsel to Daily News Broadcasting Co.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–6248 Filed 3–14–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–53, RM–7561]

Radio Broadcasting Services; Bronson, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Spring Arbor College Communications proposing the allotment of FM Channel *234A to Bronson, Michigan, and its reservation for noncommercial educational use. The coordinates are 41–46–41 and 85–16–32. Since Bronson is located within 320 kilometers (200 miles) of the U.S.–Canadian border, concurrence of the Canadian government will be requested.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: E. Harold Munn, Jr. President, Spring Arbor College

Communications, 100 Airport Drive, Coldwater, Michigan 49036, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–53, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–6122 Filed 3–14–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–55, RM–7624]

Radio Broadcasting Services; Missoula, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Smith Broadcasting Inc., proposing the substitution of Channel 261C1 for Channel 261C3 at Missoula, Montana, and modification of the construction permit for Station KZOQ–FM to specify the new channel. Canadian concurrence will be requested for this allotment at coordinate 46–49–06 and 113–58–20.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jeff M. Smith, President, Smith Broadcasting, Inc., 2300 Regent St., P.O. Box 2277, Missoula Montana 59801, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–55, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–6123 Filed 3–14–91; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–56, RM–7360]

Radio Broadcasting Services; Karnes City, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Karnes Broadcasting Company requesting the allotment of Channel 276C2 to Karnes City, Texas, as that community's first local FM service. Proposed coordinates of Channel 276C2 at Karnes are 28–58–14, and 97–53–12, with a site restriction of 5.9 kilometers (3.7 miles) north to avoid a short-spacing to Channel 275C2, Alice, Texas. Since Karnes City, Texas, is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested.

DATES: Comments must be filed on or before May 2, 1991, and reply comments on or before May 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Robert S. Eckols, d/b/a/ Karnes Broadcasting Company, Route 1, Box 148, Kenedy, Texas 78119.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–56, adopted February 28, 1991, and released March 11, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Andrew J. Rhodes,
Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91-6124 Filed 3-14-91; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 73-34; Notice 10]

RIN 2127-AC19

Motor Vehicle Safety Standards; School Bus Body Joint Strength

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes revisions to Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*. The proposal seeks to enhance the objectivity and applicability of school bus joint strength requirements and test procedures. It would clarify and expand procedures for testing the strength of school bus body joints, revise the existing exemption from Standard No. 221 provided for maintenance access panels on school bus bodies, and extend the scope of Standard No. 221 to include all school buses, including those with a GVWR of 10,000 pounds or less. Today's proposal also requests comment on whether the existing joint strength requirement, which is based upon the relative strength of the joined panels, should be revised in favor of a specified minimum strength requirement for school bus body joints.

DATES: Comments in response to this notice must be received by May 14, 1991. The changes proposed in this notice would take effect 18 months after any final rule is published.

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Cooke, Crashworthiness Division, NRM-12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4928.

SUPPLEMENTARY INFORMATION: In 1974, Congress enacted amendments (Pub. L. 93-492) to the National Traffic and Motor Vehicle Safety Act of 1966, which, among other things, directed NHTSA to issue safety standards applicable to vehicles transporting school children to or from school or related events. As amended by the 1974 amendments, section 102 of the Vehicle Safety Act required the agency to establish standards for a number of aspects of performance, including interior protection for occupants, floor strength, and the crashworthiness of the school bus body and frame. One of the safety standards which the agency issued in response to that requirement was Standard No. 221, *School Bus Body Joint Strength*. Standard No. 221 was designed to strengthen school buses so that body panels would not separate at their joints and either become cutting edges that could seriously injure occupants during a crash or permit their ejection through openings created by the separation.

Although implementation of Standard No. 221 substantially reduced the previous safety problem of body panels becoming easily detached in crashes, the agency became concerned that manufacturers were circumventing the standard in some cases by excessive designation of panels as maintenance access panels. As noted in the summary above, maintenance access panels are exempted from the joint strength requirements of Standard No. 221. To address this concern, the agency published a notice of proposed rulemaking (NPRM) at 49 FR 57939 (November 27, 1981), which proposed to remove the exemption for all maintenance access panels except for a few that were considered critical for proper maintenance.

After considering available information, including comments from the public, school bus manufacturers, and school bus purchasers, the agency eventually terminated the rulemaking proceeding. 49 FR 27181 (July 2, 1984). The termination was based on the lack of evidence that maintenance access panel separations during school bus crashes were creating a safety problem, and the lack of evidence that manufacturers were abusing the maintenance panel exemption provision by unnecessarily designating panels as maintenance panels. It was also based on the possibility that requiring maintenance panels to comply with the Standard would make maintenance more difficult and, that once such panels were removed, they might be put back in place using a minimum number of fasteners, thus potentially creating a greater safety problem. At that time, the agency was not aware of adequate data which indicated that the failure of a maintenance access panel during a crash had actually caused a personal injury.

Since terminating that rulemaking action, the agency has been reassessing the issue in light of additional information and events. First, the agency obtained documentation of separated maintenance access panels in actual crashes with evidence of injuries caused by the separated panels. Second, NHTSA also obtained evidence that certain panels on some buses were initially manufactured to comply with the joint strength requirements, but were designated as maintenance access panels on subsequently manufactured buses and were not in compliance with those requirements. Third, at least four manufacturers are known to claim that all the panels comprising the interior rear wall of their buses are maintenance access panels. And fourth, in 1986, the National Transportation Safety Board (NTSB) issued recommendations (H-86-54 through 56) suggesting that the agency eliminate the maintenance access panel exemption, as well as take other actions to improve school bus safety. These recommendations were based on the NTSB's investigation of a number of serious school bus crashes.

In June 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM) on school bus body joint strength issues (52 FR 23315; June 19, 1987). That notice requested comments on issues concerning the exemption of maintenance access panels from Standard No. 221, revisions to test procedures under that Standard, and the need for a minimum integrity requirement for school bus floors. The agency received responses from 37 commenters, including school bus manufacturers, school bus operators, and various Federal, state and local governmental entities. All comments were carefully evaluated and considered in developing this proposal.

Today's proposal would revise the requirements of Standard No. 221 addressing maintenance access panels, school bus body joint strength requirements and procedures for testing body joint specimens. It would also clarify that the requirements of the Standard are applicable to floor joints. The agency has completed a series of dynamic tests of school bus floor joints, and has placed them in the docket.

I. Applicability

The existing Standard is limited in its application to school buses with a GVWR of more than 10,000 pounds. NHTSA tentatively concludes that it is appropriate to extend the Standard to cover all school buses. Investigations by the National Transportation Safety Board (NTSB) of crashes involving school buses with a GVWR of 10,000 pounds or less have indicated that joint separation has occurred in some of the investigated accidents. In addition, the other safety standards specifically directed at school buses, FMVSS No. 220; *School bus rollover proteciton*, and No. 222; *School bus passenger seating and crash protection* are applicable to all school buses. In view of the apparent safety need, today's proposal would revise S3 to extend Standard No. 221 to cover all school buses.

II. Maintenance Access Panel Exclusion

The existing Standard, at S5, sets out the joint strength requirements for school bus body panel joints. Existing S4 excludes maintenance access panels, spaces designed for ventilation or other functional purposes, doors and windows from the definition of "body panel joint," and therefore from the Standard's joint strength requirements. The existing rule does not contain a definition for "maintenance access panel." As noted above, at least four manufacturers claim that the rear interior walls of their buses are exempt from Standard No. 221 by virtue of their being constituted entirely of maintenance access panels.

NHTSA initially decided to exclude maintenance access panels from the requirements of Standard No. 221 because the agency recognized the need to have a limited exception to the Standard for body panels which needed to be removed on a regular basis in order to provide access to mechanical or electrical components which require periodic maintenance. However, NHTSA tentatively concludes that the existing provision, as implemented, compromises the safety and structural integrity of school buses. Investigations by the NTSB of crashes involving large school buses built following the promulgation of Standard No. 221 have shown that exempted access panel joints have separated during crashes and caused passenger injuries, and that this has occurred in instances where non-exempt joints did not separate.

The current blanket exclusion of maintenance access panels has resulted in extensive and excessive designations of panels as maintenance access panels in the bus interior rear and side wall areas above the window line, generally based on the ostensible need to provide access to wires or harnesses. It is these panels that are the primary subject of today's proposal to restrict the designation of panels as excluded maintenance access panels and thereby to reduce occupant exposure to separated joints and the associated risk of injury in school bus crashes.

The proposal would retain a limited exclusion from the joint strength requirement for necessary maintenance access panels. It would accomplish this by providing a specific definition for the term "maintenance access panel," and by specifying the circumstances in which maintenance access panels would be required to comply with the joint strength requirement of S5. In addition, the definition of "body panel joint" would be revised to clarify those portions of the vehicle that are subject to the Standard. The proposal would retain the exclusion from the joint strength requirement for those access panels which legitimately control access to components that must be serviced on a routine basis and which must meet a new size limit. However, it would terminate the exclusion of panels which simply cover expanses of wires, harnesses or tubing which do not need routine maintenance. In addition, the proposal would require that trim and decorative parts, and body frames into which doors and windows are mounted comply with S5. As discussed below, under the proposal, all panels subject to S5 would also be subject to the revised test procedures under S6.

At S4, the proposal would define "maintenance access panel" as a body panel whose moving or removing is necessary for routine maintenance of a serviceable component which is recommended by the chassis or body manufacturer to be performed at intervals of one year or less. The proposal would also add a definition of "serviceable component" to S4. This term would be defined as a part of the bus which is explicitly identified by the bus body or chassis manufacturer in the owner's or service manuals as requiring routine maintenance at least once each year. NHTSA intends for these definitions to provide for continued exclusion of those panels that are necessary to provide access to components that require maintenance annually or more frequently, and which must be removed on a regular basis. However, the definitions would exclude any body panel that provides access only to segments of tubing, wiring, or harnesses that do not include connections. The agency believes that such segments do not require service or maintenance frequently enough to have the panels that conceal them be considered maintenance panels. These definitions are intended to ensure that panels would be considered "maintenance panels," and thus potentially excluded from the joint strength requirement, only when they require legitimate access for routine maintenance.

The proposal would extensively revise S5. Proposed S5.1 and S5.2, which contain the basic joint strength requirement, are discussed in today's notice under Part III of this preamble. Proposed S5.3 would require that certain maintenance access panels must meet the attachment requirement of S5.1 and the joint strength requirement of S5.2. Proposed S5.4 specifies the maintenance access panels which must meet that requirement. Proposed S5.4(a) would require compliance with S5 for all maintenance access panels which, when opened or removed, expose the bus interior to areas below the floor, to the engine compartment, or to compartments adjoining the engine compartment. Because these panels serve to isolate the bus interior from areas where fire is most likely to occur and are an integral part of the vehicle's barrier against passenger compartment fires, NHTSA believes these panels should be required to comply with the joint strength requirement.

Proposed S5.4(b) would require that maintenance access panels in the passenger compartment seating area not covered by S5.4(a), but which provide access to serviceable components or connections to tubing, wiring or harnesses, meet either the S5 requirement, or comply with certain size restrictions for maintenance access panels. The effect of S5.4(b) would be to require that passenger compartment maintenance access panels either comply with the S5 joint strength standard, or be no larger than required to provide access to the serviceable components in question. If adopted, it would serve to reduce passenger exposure to separated joints while not unduly impeding needed maintenance and repair procedures.

Proposed S5.4(b) would set the criterion, based upon the size of the maintenance access panel in relation to the component or components for which it provides access, which must be met if the panel is not otherwise exempted from S5 and does not meet the joint strength requirement of S5. It would provide for a two-inch access margin around the periphery of serviceable components or clusters of components for handling and tool clearance during installation, replacement, inspection and adjustment procedures. The average spacing between components within a cluster of components covered by a

BEST COPY AVAILABLE

single panel could not exceed four inches. NHTSA believes these provisions would ensure adequate access to serviceable components while minimizing the incentive for manufacturers to scatter components so as to create large, unnecessary access panels.

The intended effect of these proposed changes would be to continue to exempt certain maintenance access panels such as exterior and forward interior panels which are out of the zone of likely passenger contact, from the joint strength requirement. Other maintenance access panels would be required to comply with the S5 joint strength requirement if they open the floor or the firewall, are likely to come in contact with passengers during a crash because they are within the passenger compartment, or exceed the proposed size limits. The proposal would not necessarily limit the number of maintenance access panels provided by a manufacturer or specifically ordered by a customer, although it could require that steps be taken to improve joint retention on additional or unnecessary panels.

Today's proposal would eliminate the existing exclusion provided in S4 for spaces designed for ventilation. NHTSA believes this exclusion is currently not utilized, and serves no useful purpose. The agency specifically invites comment on this deletion.

As noted above, the termination of the previous NPRM on maintenance access panels was based in part on the possibility that requiring the panels to comply with the standard would make maintenance more difficult. This current proposal, by its combination of inclusions and exclusions, addresses that possibility. For example, it continues to exempt maintenance access panels that meet certain size criteria, those on the exterior of the bus, and those in front of the forward-most point of the windshield mount. It includes in the definition of maintenance access panel removeable body panels covering components that only need maintenance infrequently, and excessively large access panels. This judicious revision to the maintenance access panel exemption is also intended to make it more likely that all panel fasteners will be replaced following maintenance than did the earlier NPRM.

III. Requirements and Test Procedures for Body Joints

The requirements and procedures for testing school bus body joint strength contained at existing S6 have been the subject of considerable criticism for their alleged restricted applicability, and their alleged lack of sufficient specificity, particularly with regard to specimen preparation. The existing procedures have been criticized as being vague when applied to the testing of certain types of joints, such as curved joints and door and window frame joints. It has been argued that many of these joints cannot be accurately or properly tested in accordance with the existing procedures.

The ANPRM solicited comments on these issues, and a number of responses were received. These comments have been carefully considered in developing today's proposal. The proposed revisions are intended to enhance the clarity, applicability and uniformity of joint strength testing requirements and testing procedures.

A. Discussion of Relative versus Minimum Strength Requirements

Among the comments received in response to the ANPRM were several relating to the appropriateness and efficacy of the existing requirement at S5 that school bus body joints be able to withstand a force equivalent to 60 percent of the tensile strength of the weaker of the joined components. These comments suggested that NHTSA consider replacing the existing relative strength requirement with an absolute minimum strength requirement.

NHTSA has tentatively determined that, if practicable, the standard should be amended to incorporate minimum absolute strength requirements. The agency recognizes that the safety need for students to be protected against body panel separation should not vary according to the strength of material with which a particular bus is constructed. These requirements would ensure that all new school buses would afford at least the same minimum protection against the risk of body panel separation. However, the agency seeks additional information to aid it in selecting the specific level or levels to assign to particular types of body joints. The agency is therefore specifically requesting comments from interested persons on the establishment of minimum absolute strength requirements.

Thomas Built Buses recommended in its comments in response to the ANPRM that the minimum required joint strength for interior body panels be fixed at 60 percent of the strength of 22 gauge steel, with a minimum tensile strength of 45,000 psi, as corrected for fastener metal removal requirements. Thomas recommended that for exterior panels, the requirement should be based on 20 gauge steel. The commenter suggested that this recommendation would eliminate the perceived shortcoming of Standard No. 221 with regard to allowing paper or wooden joints. It would also be in line with most state school bus body specifications, and with the recommendation calling for the use of "prime commercial quality steel" in body construction called for in the 1985 National Minimum Standards for School Buses.

The State of Connecticut proposed that a minimum force per unit length of joint could be specified based upon present materials used in school buses that performed favorably relative to poorly performing school buses in similar crashes studied by the NTSB.

The National Association of State Directors of Pupil Transportation Services suggested that Standard No. 221 would more adequately meet the need for safety and objectivity if the joint strength requirements were 60 percent of the tensile strength of 18 gauge steel for exterior panels and 20 gauge steel for interior panels regardless of what panel materials are used.

Ford Motor Company suggested that NHTSA consider including minimum strength requirements as an optional alternative to the existing requirement in the joint strength test. Ford also suggested that the minimum value should be determined so as to allow for incorporation of standard types of joints using current state-of-the-art technology The commenter felt that an optional minimum strength requirement should maintain safety performance and allow for expanded product offerings previously not provided because of the anomalous nature of the existing requirements.

The agency specifically solicits comments on the appropriate absolute minimum strength requirements, and on the above specific suggestions. Responses to the following questions are also sought and should be organized in the same manner as the questions are presented:

(1) Comparing a minimum strength requirement, including the above suggestions, to the relative joint strength criterion on Standard No. 221, which is most effective and appropriate? Why? What would be the effect upon manufacturers? Upon vehicle costs?

(2) To what extent should the minimum strength vary with bus size, bus type, and individual panel joints in various body regions?

B. Discussion of Proposed Revisions to Testing Procedures

The proposal would add a new provision at S5.1 which would specify

that no body panel shall have an unattached segment longer than 8 inches. In addition to setting a minimum interval between joint fasteners, this provision would complement the existing general requirement that joint specimens used for testing purposes be 8 inches long where possible.

Proposed S6.1.1 contains general procedures applicable to the testing of all types of joint specimens. It would clarify that joint specimens are to be tested for tensile force only in the major plane of the panel, along the centerline of the specimen. This would be illustrated in a revised Figure 1 in the Standard. This provision would also set out the requirements for making specimen side cuts. It would require that the side cuts be made so that the centerline of the specimen is perpendicular to the joint. It would also clarify that the specimen is to be cut so that its length includes portions of the body panels on opposite sides of the joint. The dimensions in Figure 1 would be revised to eliminate the "hourglass" shape specified by existing Figure 1. NHTSA tentatively concludes that this shape specification is not necessary. In addition, the cutting and resulting vibration which occurs when shaping the specimen to conform with the hourglass shape may weaken the joint in some cases, particularly in specimens where the joint includes adhesives.

The proposal, at S6.1.2, addresses cutting specimens from joints 8 inches or longer. The words "randomly selected," contained in existing S6.1.1, would be deleted to clarify that the joint strength requirement is intended to apply to each possible test segment along each regulated joint.

Proposed S6.1.3 clarifies the requirements at existing S6.1.2 for specimen preparation where the joint specimen is less than eight inches long and contains no discrete fasteners. These joints would be tested by using the entire joint length.

Joints containing discrete fasteners (e.g., bolts, screws, rivets or welds) are addressed in proposed S6.1.4, which sets out expanded requirements for specimen preparation. At S6.1.4(a), it would retain the existing requirement found at S6.1.1, that specimen side cuts may not pass through a discrete fastener. In order to ensure uniformity of specimens, proposed S6.1.4(b) would require that each specimen side cut be located equidistant between fasteners where the fasteners are uniformly spaced along the joint. Where fasteners are not uniformly spaced, the proposal would require that side cuts be made such that the distance between a cut and the nearest enclosed fastener is one-half of the average distance between successive fasteners located along the joint. The proposal would also require that in either case, the end cut must leave an edge between the cut and the nearest enclosed fastener of at least 1½ times the diameter of the fastener hole or spot weld. These provisions would help to ensure uniformity and objectivity during the preparation and testing of these joint specimens.

New S6.1.4(c) would allow the 8-inch joint segment length to be adjusted to between 4 and 8 inches in order to conform to the requirements of proposed S6.1.4 (a) and (b). The proposal would also add a new S6.1.5, designed to facilitate specimen preparation and testing where the joint is curved, as is often found in ceiling or roof joints. The procedures would allow testing of these joints where the radius of curvature is at least 20 inches. These joints are typically untestable under the existing procedures. The proposal would allow the specimen lengths provided in Figure 1 to be extended to the size of the joined parts or the testing machine capacity when testing these types of joints. This would serve to reduce the effect of the specimen's curvature on the test results. The agency requests comment on the appropriateness of the 20 inch minimum value for radius of curvature and whether it should be reduced to permit testing of more joint specimens.

The proposal at S6.1.6 clarifies that support members (e.g., rub rails) which contribute to the strength of a joint are to remain attached to a joint specimen during testing. This provision is intended to ensure that the joint is tested in a manner that accurately reflects its actual strength as installed in the vehicle. The proposal would, however, allow the removal of material from support members as necessary to clear the gripping areas of the joint members being tested.

Proposed S6.1.7 would address preparation of specimens taken from door and window frames, or from panels with body corner frames. As discussed above, the existing procedures have been criticized because such a large number of body joints are untestable. Among the most problematic have been door and window frame joints. The proposal intends to clarify specimen preparation procedures for these types of joints to ensure that they can be tested in accordance with the Standard. The proposal would allow specimens taken from these joints to be attached to fittings that would adapt the specimen to the testing machine so that tensile loads are properly applied and distributed.

Notwithstanding the agency's tentative determination that a minimum absolute strength requirement should be adopted, NHTSA is also soliciting comments on the alternative of revising the procedures for measuring the relative strength of body panel joints. The proposal would revise existing S6.2 to clarify that it refers to the determination of the tensile strength of joined body panels, and that this determination excludes support members, although support members are to remain attached to the joint during testing. As proposed at S6.1.6, NHTSA intends to include the effect of these support members in determining the tensile strength of the joint itself. Proposed S6.2(a) would update the existing provision to refer to the 1989 edition of the American Society for Testing and Materials (ASTM) Annual Book of ASTM Standards as a source for minimum tensile strength. The existing rule requires that the ASTM figures be used if specified in the Annual Book. The proposal would require the use of the ASTM value exists. If the ASTM value does not exist, the proposal requires the use of the material properties test set out at S6.2(b). The proposal would also delete existing S6.1.3, which requires that joint specimens be prepared in accordance with the ASTM Annual Book of Standards, because the ASTM procedures are not applicable to the preparation of joint strength test specimens.

Existing S6.2(b) would be revised for clarity by specifying that where the tensile strength of joined components is not being taken from the ASTM Annual Book, a material properties specimen should be cut in accordance with ASTM E8, Figure 1, and tested in accordance with the strength test procedures, which would remain at S6.3. In order to further ensure uniformity and objectivity in these test procedures, the existing provision would also be revised to include instructions on how to calculate the specimen's tensile strength.

The proposal would create a new S6.2(c) to provide specific instructions on how to calculate the tensile strength of each joined component based upon the data developed in accordance with S6.2 (a) or (b). It would also provide that in making this calculation, the total area of the material removed for installation of fasteners (e.g., holes drilled for rivets or screws) may not be subtracted from the figure for the component's area. This provision would clarify the agency's previous interpretation of S6.2 to eliminate any ambiguity in the requirement that removed material may

not be subtracted from the component area when determining its tensile strength.

New S6.2(d) would simply provide that 60 percent of the tensile strength of the weaker component of the joint is used as the minimum allowable test criterion.

The proposal would also make several minor revisions to the strength test procedures contained in S6.3. Specifically, the reference to ASTM standards in S6.3.1 would be deleted, and S6.3.2 would be revised to delete the reference to "approximately perpendicular." That term would be replaced by a requirement that the joint be in stress at 90 degrees plus or minus 3 degrees from the joint centerline, as shown in the revised Figure 1. Finally, S6.3.3 would be clarified to provide that, during the test, the separation of the joint is the relevant event, not the separation of a support member. These revisions to S6.3 are intended merely to clarify the existing procedures in order to reduce ambiguity and ensure uniformity in the strength test procedures, making them applicable to a wider variety of circumstances.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Impacts

NHTSA has analyzed the potential impacts of this proposed rule and tentatively determined that the proposal, if adopted, would not be "major" under Executive Order 12291. However, the agency has tentatively determined that, if adopted, this proposal would be "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This determination is based upon two considerations: The Congressional and public interest in school bus safety; and the potential economic impacts that could result if the agency decides to promulgate an absolute minimum body joint strength standard to replace the existing relative minimum strength standard.

As discussed in further detail in the Preliminary Regulatory Evaluation, NHTSA is unable to quantify the safety benefits that would accrue from this rulemaking. However, NHTSA shares the public's special concern for the safety of school children, and tentatively concludes that safety benefits would be obtained through the reduced potential for fatalities and injuries as a result of adoption of the proposed rule. The agency specifically invites comments on the costs and benefits of this proposal.

As shown in Table 1 below, the total consumer cost per year for this rulemaking is estimated to be in the range of $4.99 million to $8.14 million.

Assuming a five year tool life, the incremental cost to the consumer to eliminate/redesign MAP's on large and small school buses, and to upgrade small school buses to conform with FMVSS 221 would be in the range of $120–$345 per school bus. This is shown in Table 1. Compared to the cost of a new school bus ($25,000–$60,000), this incremental cost increase is negligible and will not affect school bus sales or the ability of small entities to purchase school buses. For example, compared to the retail price of 66 passenger school bus ($40,000), the proposed improvements to Standard No. 221 would be less than one percent of the purchase price.

TABLE 1.—FMVSS No. 221 NPRM CONSUMER COSTS

	Total annual consumer cost (million)	Consumer cost per school bus
Eliminate/redesign MAPs for Large School Buses	$3.78–6.93	$120–220
Eliminate/redesign MAPs and Improve Small School Bus Body Joint Strength	$1.21	$345
Est. Total Consumer Cost Range	$4.99–$8.14	

NHTSA has also analyzed the effects of this proposed rule on small entities, in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule, if adopted, would not significantly affect the manufacturing process of any school bus body manufacturers that are small entities or the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant effect on the environment.

After analyzing the rule in accordance with the principles and criteria set forth in Executive Order 12612, NHTSA has determined that the proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.221 Standard No. 221; School bus body joint strength [Amended].

2. S3 of Standard No. 221 would be revised to read as follows:

S3 *Application.* This standard applies to school buses.

3. The definitions of "Body panel joint" and "Bus body" in S4 of Standard No. 221 would be revised to read as follows:

S4. *Definitions.* * * *

Body panel joint means the area of contact or close proximity between the edges of a body panel, including floor body panels, and another body component, including but not limited to: Other body panels, maintenance access panels required to comply with S5, trim and decorative parts, body frames into which doors and windows are mounted, body panels made of composite material such as plywood where occupant space is enclosed only by such material, and excluding: Maintenance access panels which are excluded from S5 in accordance with S5.4, support members such as rub rails which are entirely outside of body panels, doors and windows, and body panels made of composite materials such as plywood which are supported by other panels that comply with S5.

Bus body means all body panels of a bus that enclose the bus occupant space, including the floor and firewall (that body panel separating the engine compartment from the occupant space) and excluding the bumpers and chassis frame.

4. Definitions of "Maintenance access panel" and "Serviceable component" would be added to S4 of Standard No. 221 as follows:

S4. *Definitions.* * * *

Maintenance access panel means a body panel which must be moved or removed to provide access to one or more serviceable components.

Serviceable component means any part of the bus, of either a mechanical or electrical nature, which is explicitly identified by the bus chassis and/or body manufacturer in the Owner's Manual or factory Service Manual as requiring routine maintenance actions at intervals of one year or less. Tubing, wires and harnesses are considered to be serviceable components only at their attachments.

5. S5 of Standard No. 221 would be revised by adding the following provisions S5.1 through S5.4 to read as follows:

S5. Requirements.

S5.1 No body panel joint shall have an unattached segment longer than 8 inches.

S5.2 When tested in accordance with the procedure of S6., each body panel joint shall be capable of holding the body panel to the member to which it is joined when subjected to a force of 60% of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

S5.3 When tested in the same manner as a body panel joint in accordance with the procedure of S6., each maintenance access panel joint specified in S5.4(a) or (b) shall meet the requirements of S5.1 and S5.2

S5.4 The requirement of S5.3 applies to:

(a) Each maintenance access panel which, when opened or removed, exposes the bus interior to areas located below the bus floor or within the engine compartment, or to compartments adjoining the engine compartment.

(b) Each interior maintenance access panel—

(1) Which lies rearward of a vertical transverse plane that is 30 inches in front of the foremost passenger seating reference point as defined by § 571.222 (Standard No. 222; *School bus passenger seating and crash protection),* and

(2)(i) Which, in the case of a maintenance access panel under which there is a single serviceable component, either the length or the width, or, where applicable, the diameter, of the opening covered by that maintenance access panel exceeds by more than four inches the corresponding dimension(s) of the serviceable component covered by the maintenance access panel when projected on the plane of the opening at an angle perpendicular to that plane.

(ii) Which, in the case of a maintenance access panel under which there are two or more serviceable components:

(A) The average spacing between each component and the nearest component to it exceeds four inches when projected upon the plane of the opening at an angle perpendicular to that plane; or

(B) Either the length or the width, or, where applicable, the diameter, of the opening covered by that maintenance access panel exceeds by more than four inches the corresponding overall outer dimension(s) of the cluster of components covered by the maintenance access panel when projected on the plane of the opening at an angle perpendicular to that plane.

6. S6 of Standard No. 221 would be revised to read as follows:

S6. *Procedure.*

S6.1 *Preparation of the test specimen.*

S6.1.1 The test specimen is prepared for the application of tensile forces which are centered along the specimen centerline as shown in Figure 1, in the major plane (the largest panel surface adjacent to the joint) of the joined floor or other body panel(s), with the joint and panel(s) configured as installed in the vehicle, except for modifications permitted by S6.1.4, S6.1.5 and S6.1.7. The specimen side cuts are made so that the specimen centerline is perpendicular to the joint at the midpoint of the joint segment. The specimen length is cut so as to include portions of the body panels on opposite sides of the joint consistent with the dimensions specified in Figure 1 to the extent permitted by the size of the joined parts.

S6.1.2 If a body panel joint is 8 inches long or longer, a test specimen is cut that consists of any 8 inch segment of the joint. If the specimen contains discrete fasteners, it is also prepared in accordance with S6.1.4.

S6.1.3 If a joint is less than 8 inches long with no discrete fasteners, a test specimen is cut so as to include the entire joint length.

S6.1.4 Where a joint is fastened by a type of discrete fastener (such as bolt, screw, rivet, spot weld or intermittent seam or bead weld shorter than 8 inches), the joint test segment is selected so that—

(a) The side cuts do not cut or contact a discrete fastener.

(b) Each side cut bisects the distance between successive fasteners where the fasteners are spaced uniformly along the joint, or provides a distance from the cut to the nearest enclosed fastener that is one-half of the average spacing between the fasteners located along the joint where the spacing of those fasteners is not uniform. In either case, the side cut is at a distance from the center of the nearest enclosed fastener hole or spotweld that is at least 1.5 times the diameter of the fastener hole or weld.

(c) The 8 inch specimen required by S6.1.2 is reduced in size if necessary to comply with S6.1.4 (a) and (b), except that a specimen so reduced is not less than 4 inches in width.

S6.1.5 Where a joint is curved, such as a transverse ceiling or roof joint, the specimen is prepared by selecting a joint segment where the radius of curvature is at least 20 inches, and cutting a minimum allowable joint segment length in accordance with S6.1.2 or S6.1.3. The specimen lengths provided in Figure 1 may be extended to the size of the joined parts, or to the capacity of the testing machine.

S6.1.6 Support members which contribute to the strength of a body panel joint, such as rub rails on the outside of body panels or underlying structure attached to joint members remain attached to a test specimen from

that joint, except that material may be removed from the support members as necessary to clear the gripping areas of the joint members being tested.

S6.1.7 Where a specimen is taken from joints of body panels with body frames into which doors or windows are mounted, or from joints between body panels and body corner frames, the specimen may be attached to fittings which adapt the frame part of such joint specimens to the head of the tensile testing machine. The fitting and its attachments are designed to apply the tensile force along the centerline of the specimen in the plane of the interface between the joined members and to distribute that force uniformly to the frame portion of the joint, without contributing to the strength of the joint being tested.

S6.2 The tensile strength of each joined body component is determined independently of any attached support members. The tensile strength of each joined body component, and the minimum allowable test strength of each joint is determined as follows:

(a) If the mechanical properties of a joint component material are specified by the American Society for Testing and Materials (ASTM) in the 1989 Annual Book of ASTM Standards, the minimum tensile strength per unit of area from that source may be used in the determination required by (c), below.

(b) In all other cases, the tensile strength of the component is determined by cutting a sheet specimen from that component outside of the joint region in accordance with Figure 1 of E 8–89 Standard Test Methods of Tension Testing of Metallic Materials, in Volume 03.01 of the 1989 Annual Book of ASTM Standards, and by testing it in accordance with S6.3. The specimen's tensile test strength is divided by its pre-test cross-sectional area at the middle of the reduced section specified in Figure 2 to determine its tensile strength per unit area.

(c) The tensile strength for each joined component is determined by multiplying its tensile strength per unit area, as determined from (a) or (b) above, by its cross-sectional area. This area is the component's thickness multiplied by the overall length of its joint segment (see Figure 1), and it includes the total area of material removed to facilitate the installation of fasteners.

(d) The weaker component of each joint, as determined from (c) above is identified, and its tensile strength is multiplied by 0.6 to determine the strength requirement applicable to the joint under S5.

S6.3 Strength test.

S6.3.1 The joint specimen is gripped on opposite sides of the joint in a tension testing machine.

S6.3.2 The testing machine grips are adjusted so that the joint, under load, will be in stress at 90 degrees plus or minus 3 degrees from the joint centerline, as shown in Figure 1.

S6.3.3 A tensile force is applied to the specimen by separating the heads of the testing machine at any uniform rate not less than ⅛ inch and not more than ⅜ inch per minute until the specimen separates at a point on the centerline of the joint.

7. Figure 1 at the end of the text in § 571.221 would be revised to appear as follows:

BILLING CODE 4910-59-M

VOL 56 ISS 51 MR 15 1991 UMI

BILLING CODE 4910-62-C

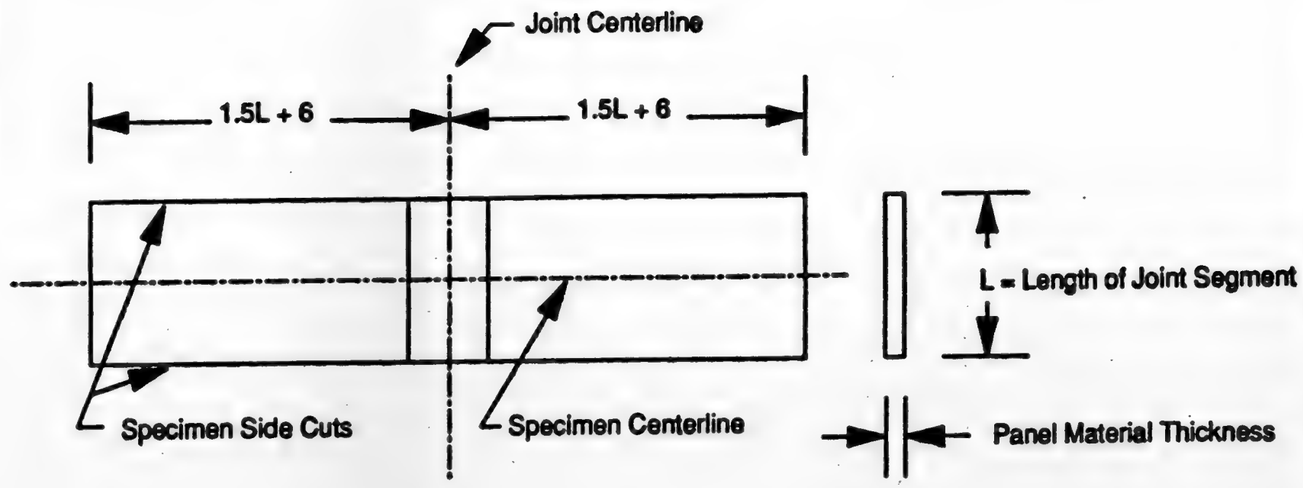


Figure 1

Size of Lap Joint Tensile Test Specimen

All Dimensions in Inches

Issued on March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6167 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 86-07; Notice 6]

RIN 2127-AD27

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: On May 3, 1989, NHTSA published a final rule to amend the pneumatic timing requirements of Standard No. 121, *Air Brake Systems*, to improve the brake timing balance of combination vehicles. At the same time, the agency published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing two further amendments concerning pneumatic timing. First, NHTSA proposed to require for towing vehicles that actuation at the interface (gladhand) between towing vehicles and trailers be at least as fast as actuation at the towing vehicle brake chambers. Second, the agency proposed control line pressure differential requirements for towing trailers to ensure that the relay booster valves used on these trailers do not upset the combination vehicle brake balance. After reviewing comments on that SNPRM, NHTSA is proposing different requirements concerning control line pressure differential. In addition, NHTSA is terminating the part of the rulemaking concerning gladhand timing.

DATES: Comments must be received on or before April 29, 1991. The amendments proposed in this notice would become effective one year after the publication of a final rule.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202-366-5274).

SUPPLEMENTARY INFORMATION: On May 3, 1989, NHTSA published a final rule making several amendments to Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to improve the timing balance of combination vehicles (54 FR 13890). On that same day, NHTSA also published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing further amendments concerning pneumatic timing (54 FR 18912).

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of brake torque, and therefore braking force, is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

For combination vehicles, pneumatic application timing can affect stability. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn, this force may reduce the stability of the combination and contribute to a jackknife accident.

"Pneumatic release timing" (i.e., the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control) also affects braking performance. If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. If the driver is to regain control of the vehicle in this situation, immediate release of the brakes is necessary.

For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems*, currently specifies certain requirements for pneumatic timing. Section S5.3.3 specifies time periods within which brake actuation (application) for trucks, buses, and trailers must occur. Similarly, section S5.3.4 specifies time periods within which brake release for these vehicles must occur.

The timing tests for trailers, including trailer converter dollies, are not conducted with the trailer connected to an actual tractor. Instead, the trailer's brake system is connected to a test rig. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the rear control line coupling. This reservoir represents the control line volume of the towed trailer.

NHTSA proposed in the May 3, 1989 SNPRM to require that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. The agency believed that the proposed requirements would improve combination stability by helping to ensure that the brakes of a tractor, or other towing vehicle, do not actuate well before the brakes of a trailer it is towing.

NHTSA also proposed requirements for towing trailers to ensure that the relay booster valves used on these trailers would not upset the combination vehicle brake balance. NHTSA was concerned about excessive control line pressure differentials in multiple trailer combinations. Also, pressure differentials, which could be caused by relay booster valves with overly high crack pressures (i.e., the pressure at which a booster relay valve opens), could create situations in which the brakes of only one of the trailers (the towing trailer) are actuated. For example, if the crack pressure is too high, the relay booster valve would not open during mild braking, and the brakes of the towed trailer would not be actuated.

NHTSA proposed to require that in all situations in which the pressure at the input coupling is steady, or increasing or decreasing at a rate of 10 psi per minute or less, the pressure differential between the control line gladhand at the front of a towing trailer and the control line gladhand at the rear of the trailer not exceed 1.0 psi at input pressures between 5.0 and 20.0 psi, and not exceed 2.0 psi at input pressures above 20.0 psi. The agency believed that the requirement would ensure that the brakes of both the towing trailer and the towed trailer receive the same signal.

NHTSA received ten comments on the proposed rule. Commenters generally disagreed with the proposed requirement that the actuation time at the gladhand be at least as fast as the timing at the brake chambers. Ford Motor Company (Ford) commented that it conducted tests to estimate the impact of the proposed requirement on a variety of truck configurations and options. The tests indicated that timing differentials between the gladhand and towing vehicle's chambers were 0.03 to 0.101 seconds, or an average of 0.066 seconds.

Ford stated that these timing differentials would not result in significant trailer surge.

A number of commenters stated that the proposed requirement would cause them to custom design and build brake systems for individual trucks, depending upon the options selected. Thus, according to commenters, manufacturers would not be able to produce common brake components for particular truck lines. Commenters also stated that the added costs required by such custom design would not be justified since they believed that the improvements would yield little safety benefit. Commenters further stated that manufacturers may choose to slow down the tractor brakes to improve simultaneity, which they asserted would adversely affect braking performance.

NHTSA agrees with commenters that the proposed requirement would lead to the loss of flexibility in product manufacturing by requiring more custom design of vehicles. NHTSA does not believe that the additional costs resulting from such a requirement would be justified in view of the relatively limited safety benefits associated with such a requirement. Therefore, NHTSA is terminating this portion of the rulemaking.

NHTSA also received comments concerning the proposed control line pressure differential requirements. Commenters generally agreed in theory that control line pressure differential should be controlled. However, commenters generally stated that the proposed requirements were inappropriate. For example, Bendix Heavy Vehicle Systems Group (Bendix) stated that the proposed 10 psi per minute rate of pressure change is extremely slow and difficult to maintain over a wide pressure range. Bendix also stated that it was not representative of normal pressure changes that occur during braking. In a supplemental comment, Bendix suggested an alternative test procedure. Bendix recommended two specific test orifice sizes with fixed diameters and thickness to control flow rates. Bendix recommended that the test orifice sizes be set at 0.01B0 inches diameter for application timing and 0.0292 inches diameter for release timing. Bendix also indicated that these diameters would produce brake pressure rates that are in line with lower limit applications, such as those required for maintaining vehicle speed on a five percent grade. Bendix recommended four psi per second for application and release testing. This is substantially faster than the rate proposed by NHTSA in the May 3, 1989 SNPRM, but closer to the rates seen in actual service applications. Bendix also suggested that the testing procedure for determining the control signal pressure differential on towing trailers and dollies utilize either of the current Standard No. 121 trailer test rigs and an orifice fixture, coupled between the control line gladhand of the trailer test rig and the control line input coupling of the vehicle to be tested.

NHTSA believes that the test procedure suggested by Bendix has certain merit. However, NHTSA believes that the suggested procedure may be overly complex and may require a more substantive test fixture than is otherwise necessary to evaluate pressure differentials.

Therefore, NHTSA is proposing a modified version of the pressure differential test suggested by Bendix. The NHTSA proposed test would have only a metering orifice, the smaller of the two orifices suggested by Bendix. The rationale for having two orifices as suggested by Bendix, instead of one, is that the use of two results in the same pressure change rate for both apply and release. However, NHTSA does not believe that the same pressure change rate is necessary. The actual pressure rate rise or decay is not that important as long as it is not very fast or very slow. If the pressure rate rise is very slow, commenters were concerned that test personnel would waste time waiting for the event to occur. If the pressure rate rise is very fast, persons would not be able to read the instrumentation quickly enough to ascertain the amount of differential. Further, if the pressure surge is too large from a very fast rate, the loss of normal hysteresis in the valves could allow a crack pressure reading that may be in error. NHTSA concludes that use of one orifice as described in this notice would avoid the very fast or very slow pressure rate rises that could be problematic. Thus, NHTSA believes that only one orifice is needed. With the smaller of the two orifices suggested by Bendix, NHTSA believes that the apply rate would approximate four psi per second, but the release rate would be somewhat slower. NHTSA believes that this would allow use of a much simpler test apparatus, a thin disc with a very small hole in it. NHTSA believes that this metering disc could be installed in a fitting with a gladhand at each end that could be quickly inserted between the minitractor and the vehicle after the timing test is completed.

The proposed pressure differential test slowly "sweeps" the pressure across the full range of operating pressures. This enables a person conducting the test to check differential level. The function of the orifice specified in the proposal is to restrict the flow from the trailer test rig and slow the pressure rise and decay rate. The ability to "sweep" the pressure slowly eliminates the need to stop and hold the pressure constant. If the pressure is changed too rapidly, the steady state case (i.e., when brake pressure is being held steady after application of the brakes) is not evaluated and pressure differentials caused by air flow through the control lines, instead of valve characteristics, are introduced.

NHTSA tentatively concludes that the proposed requirement concerning control line pressure differential is necessary to meet the need for motor vehicle safety. NHTSA believes that some trailer manufacturers may install relay valves at the rear of the trailers in the control lines upstream of the towing gladhands to "boost" the control signal. Manufacturers might do this to provide a significant margin of compliance with the new brake timing requirements for towing trailers established by NHTSA in the May 3, 1989 final rule.

While booster valves greatly improve timing (i.e., a transient condition where brake pressure is being increased or decreased), they can, if not properly designed, introduce pressure differentials in the brake system after the brakes are applied and pressure is being held steady (i.e., at steady state). Although such steady state pressure differentials may be only a few psi, they can produce significant brake unbalance among the axles in typical brake applications in which control line pressures are usually less than 20 psi. Brake unbalance results in uneven brake wear and can lead to premature brake fade and loss of effectiveness during grade descents. With lightly loaded trailers, it can also lead to premature wheel lockup and loss of stability. The total effect of these differentials with dollies and trailers can result in brakes on the rearmost axles not applying at all during typical low pressure applications. The problem is most acute when the dollies and trailers are both equipped with booster valves.

One commenter, the American Trucking Associations, suggested that NHTSA require permanent marking of pressure relay booster valves to indicate their crack pressure. NHTSA is not proposing such a requirement as part of this rulemaking. However, NHTSA is beginning work which could lead to a proposed rule to require the marking of air valves to indicate their crack pressure. NHTSA has been following the work of the Society of Automotive

Engineers (SAE) in this area. The SAE Task Force on Truck Brake Supply and Control Components Subcommittee has developed three Recommended Practices. A brief summary of each appears below.

• J 1589—Recommended Practice for Determining Air Brake Valve Input-Output Characteristics. This Recommended Practice is a test procedure which is used for determining the physical operating characteristics of the various valve types. It covers such areas as crack pressure, input-output differential, and hysteresis. This Recommended Practice has been approved by SAE and is in effect.

• J 1860—Recommended Practice for Labeling Air Brake Valves with their Performance (Input-Output) Characteristics. This Recommended Practice would explain how to label each basic valve type with a letter code and a three digit number code for crack pressure.

• J 1861—Recommended Practice for Air Brake Valve Input/Output Characteristic Requirements. This Recommended Practice would establish tolerances of plus or minus 25 percent for nominal values of crack pressure and pressure differential.

The agency has considered the costs and other impacts of this proposal and determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed above, the proposed requirements would necessitate only minor additional changes to vehicles beyond those required by the final rule published on May 3, 1989. Manufacturers may have to use higher quality (tighter tolerance) relay valves to meet the proposed requirements. However, these tighter tolerance valves are not significantly more expensive. In addition, the proposed requirements could add approximately five minutes to the timing test, which could increase the cost as much as four dollars per vehicle. NHTSA believes that most, if not all, manufacturers routinely test each vehicle for compliance with pneumatic requirements. NHTSA estimates additional costs associated with this proposed rule, if promulgated, would be less than the May 3, 1989 final rule, which was neither major nor significant. The final regulatory evaluation for that final rule is available in the docket for that rulemaking.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments would not have a significant economic impact on a substantial number of small entities. The effect of this proposal, if adopted, on any small manufacturers of vehicles or brake systems would be minor. Only minor additional changes to vehicles beyond those necessitated by the final rule published on May 3, 1989 would be needed. Other small businesses, small organizations, and small governmental units would be affected by the proposed amendments only to the extent that they purchase motor vehicles. The proposed amendments would not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this proposed rule for the purposes of the National Environmental Policy Act. NHTSA has determined that the proposed rule would not have any significant impact on the quality of the human environment.

Finally, NHTSA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S5.3.5 would be added to § 571.121 to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5.3.5 *Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.*

(a) For a trailer manufactured on or after [date to be inserted would be one year after publication of the final rule] and designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a) (1) and (2) under the conditions specified in S5.3.5(b) (1) through (4)—

(1) 1 p.s.i. at all input pressures between 5 p.s.i. and 20 p.s.i.; and

(2) 2 p.s.i. at all input pressures above 20 p.s.i.

(b) The requirements in S5.3.5(a) shall be met—

(1) When the pressure at the input coupling is steady, increasing or decreasing.

(2) When air is applied to or released from the control line input coupling using the trailer test rig shown in Figure 1.

(3) With a fixed orifice consisting of a 0.0180 inch diameter hole (no. 77 drill bit) in a 0.032 inch thick disc installed in the control line between the trailer test rig coupling and the vehicle's control line input coupling.

(4) The trailer test rig is operated in the same manner and under the same conditions as it is operated during testing to measure brake actuation and release times, as specified in S5.3.3 and S5.3.4, except for the installation of the orifice in the control line to restrict air flow rate.

* * * * *

Issued on March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6165 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 88-21: Notice No. 2]

RIN 2127-AC88

Bus Window Retention and Release: Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA). DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice. NHTSA is proposing to amend Federal Motor Vehicle Safety Standard No. 217, Bus Window Retention and Release, by revising the minimum requirements for emergency exits and improving access to emergency doors on school buses. Instead of requiring all school buses with a GVWR greater than 10,000 pounds to have the same number of exits, as the standard currently does, the proposal would set requirements for minimum emergency exit space based upon the seating capacity of the bus. Thus, larger school buses would be required to have an increased number of exits. The proposal would also require school buses to provide improved access to side emergency doors. In addition, it would propose requirements to improve the visibility of school bus emergency exits.

Today's proposal follows NHTSA's publication of an advance notice of proposed rulemaking (ANPRM) to amend Standard No. 217 at 53 FR 44623 (November 4, 1988). The ANPRM explored whether an increase in the number of emergency exits would improve the likelihood of occupant survival in a serious crash, and requested responses to a number of questions concerning the costs and operational aspects of additional exits, and on any negative effects of the amendments (such as reductions in structural integrity of the body or seating capacity). Today's proposal is based in large part upon the responses received by NHTSA from the ANPRM.

DATES: Comment closing date is April 29, 1991. The proposed effective date would be eighteen months after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers of this proposal, and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC, 20590. Docket Room hours are 9:30 a.m. to 4 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Gauthier, NRM-10, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C, 20590. Telephone: (202) 366-4799.

SUPPLEMENTARY INFORMATION: An important factor in minimizing post-crash injuries and deaths on buses is the speed and ease with which occupants can evacuate the vehicle in an emergency. When Standard No. 217, Bus Window Retention and Release originally became effective on September 1, 1973, it required that buses other than school buses have exits whose combined area, in square inches, equaled or exceeded 67 times the number of designated seating positions. The type of exit used to comply with this requirement was left to the choice of the manufacturer, although the agency assumed that most manufacturers would meet the standard primarily by installing push-out side windows.

School buses were excluded from this requirement for the reasons explained in the notice of proposed rulemaking:

> In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional. 35 FR 13025; August 15, 1970.

The Standard did require that when a school bus was voluntarily equipped with push out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the Motor Vehicle and Schoolbus Amendments of 1974 (Pub. L. 93-492), Standard 217 was amended to include emergency exit requirements for school buses. Instead of simply specifying that the total combined area in square inches' of all the exits had to equal or exceed 67 times the number of designated seating positions, and leaving the choice of exit type to the manufacturer, the agency required (and continues to require) that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard, in this instance specifying the fewest permissible number of emergency exits for a school bus.

In May 1988, 27 persons died, apparently of smoke inhalation, in the fire resulting from the high-speed crash of a pick-up truck (driven by a drunk driver) and a used school bus in Carrollton, Kentucky. Several factors were involved in this tragic event, which represented the first fire-related occupant deaths on a school bus-type vehicle since NHTSA began compiling statistics on traffic fatalities in 1975. Some observers suggested that more occupants might have survived the fire if the bus had been equipped with additional (or more accessible) emergency exits. That bus had been manufactured in March 1977, shortly before the new NHTSA school bus safety standards took effect, including upgraded requirements for Standard 217. This crash focused considerable public interest on several school bus safety issues, including emergency exits, as well as on the continuing problem of drunk driving. More recently, attention was again focused on school bus exits by the September 1989 crash in Alton, Texas, in which a truck struck a school bus, which then rolled into a gravel pit, and 21 students drowned.

Following the Carrollton crash, NHTSA undertook a comprehensive review of its vehicle standards and other programs for school bus safety, and published a summary report in November 1988. That report noted the excellent overall safety record of school buses, but also highlighted areas where further improvements might be made. The National Academy of Sciences (NAS) reached similar conclusions in its report on school bus safety, issued in May 1989.

In November 1988, NHTSA issued an ANPRM on whether to upgrade Standard No. 217 to specifically enhance school bus emergency egress. 53 FR 44627 (November 4, 1988). The notice

explored whether rulemaking to require additional emergency exits is warranted. It posed a series of 24 questions divided into six categories: Safety need, requirements for additional exits, the effect of additional exits on other aspects of safety, cost of additional exits, encouraging the correct use of emergency exits, and other factors incident to requiring more emergency exits. NHTSA received 40 comments in response to the ANPRM. The commenters included Federal, State and local government agencies, local school districts, pupil transportation services and associations, bus and equipment manufacturers and the general public. NHTSA has carefully considered all of the comments received in developing today's proposed rule addressing the need for additional emergency exits on new school buses to facilitate improved egress from a bus following a crash.

After considering the responses to the November 1988 ANPRM, NHTSA has tentatively concluded that there are reasonable improvements that can be made to school bus emergency exit requirements which would improve the speed and safety of school bus emergency evacuations and reduce the risk of another bus tragedy similar to the Kentucky crash. Further, the agency tentatively concludes that the proposal is practicable. Ten States currently have school bus emergency exit requirements which go beyond the minimum requirements of Standard No. 217. Several of these States require additional door and/or roof exits, while others require push-out window exits, either alone or in conjunction with additional door or roof exits. At least one other State is considering adopting similar requirements. Most, if not all, school bus manufacturers already offer additional door and roof exits as optional equipment, and NHTSA is aware that at least one manufacturer offers a flip-up seat as an option to improve exit access.

Although several States have requirements for school bus emergency exits which exceed the Federal requirements in Standard No. 217, additional Federal action to improve school bus exits appears warranted. Vehicle safety standards are an area in which States have traditionally looked to the Federal government for leadership. This is particularly true with respect to school bus safety. NHTSA has a long-established role in this area, issuing safety standards as well as other measures, such as the voluntary guidelines contained in Highway Safety Program Standard 17. In addition, the increasing profusion of differing additional State school bus standards has the potential to be costly and confusing for bus manufacturers. While States would, of course, remain free to impose additional requirements not inconsistent with Federal law for school bus emergency exits, today's proposal would bring the Federal requirements up to a level comparable to, or exceeding, the standards of many of those States that now impose additional requirements.

Additionally, the National Traffic and Motor Vehicle Safety Act enables States to set vehicle safety requirements more stringent than the Federal standards only for vehicles procured for the State's own use. Although States may thus impose school bus exit requirements which exceed Federal requirements upon public school buses, they may not impose the additional requirements upon private school buses. The proposed rule would reduce the disparate safety requirements of public and private school buses in those States that have exit requirements that exceed the current Federal standards. Finally, NHTSA notes that the useful life of school buses often extends beyond the time that the buses are used for pupil transportation, e.g., they are sometimes subsequently used by church groups and community service organizations. In contrast to State school bus regulatory authorities, which are generally focused on local considerations and pupil transportation issues, NHTSA has a much broader perspective on bus safety issues. Thus, the agency's increased involvement also appears justified for this reason.

Proposed Revisions

Emergency Exit Requirements

1. *Summary of existing requirements.* Standard No. 217, at S5.2.3.1, specifies minimum requirements for emergency exits on school buses. School buses must have either a rear emergency door, or one emergency door on the rear half of the left side of the vehicle and a push-out rear window which creates an opening not less than 18 inches high and 48 inches wide. Generally, manufacturers of front-engine buses have chosen the first option, and manufacturers of rear-engine buses have selected the second approach. The current requirements regarding the number and type of exits are applicable to all school buses, regardless of size or passenger capacity. This is in contrast to the emergency exit requirements for non-school buses found at S5.2 of the Standard.

Non-school buses are required to provide unobstructed emergency exit openings which collectively total, in square inches, at least 67 times the number of designated seating positions on the bus. Thus, as the number of seating positions increases, so must the number of exits. At least 40 percent of the total area required must be provided on each side of the bus. Further, no single emergency exit may be credited with more than 536 square inches of the total area required. Non-school buses with a GVWR exceeding 10,000 pounds are required to provide a rear exit, unless the configuration of the bus (such as rear engine design) precludes such an exit. In that case, the bus must have a roof exit in the rear half of the passenger compartment. Non-school buses may also satisfy the unobstructed openings requirement by providing one side door for each 3 seating positions in the vehicle. Non-school buses generally utilize large push-out windows to provide a large portion of the required side exit area.

II. *Proposed changes.* As stated above, NHTSA has always recognized the differences in use and circumstances between school buses and other buses. It is because of concerns about tampering and discipline, along with the risk of children falling out of push out windows during operation of the bus, that the agency originally excluded school buses from the occupant capacity-based emergency exit requirements applicable to other buses. NHTSA's review of Standard 217 in light of the Carrollton, Kentucky, crash suggests that school bus safety might be enhanced and emergency egress improved by increasing the available exits and improving access to those exits.

This conclusion is supported by the NTSB's March, 1989 report on the Kentucky crash. The NTSB recommended that Standard No. 217 be revised to require that school bus egress be based upon vehicle capacity, and that the requirements be no lower than those currently required for non-school buses. The NAS, in its May, 1989 report on improving school bus safety, made a similar recommendation. Further, numerous comments were received in response to the ANPRM supporting an approach which would base the number of required exits upon the seating capacity of the bus.

This notice proposes to extend to school buses a requirement similar to the existing requirement for non-school buses regarding the amount of emergency exit space. The proposal would require that school buses provide

emergency exit spaces equal in square inches to 67 times the number of seating positions. However, the results of the formula discussed below, which would be used to determine the number of additional emergency exits needed, would be rounded up or down as appropriate. Thus, although emergency exit space would be tied to seating capacity under the proposal, the minimum exit requirements for a particular type and size of bus might be slightly more or less than 67 times, in square inches, the number of designated seating positions.

This "capacity-based" method of determining the minimum amount of emergency exit space would be the same for both school buses and non-school buses, thereby providing both types of buses with the same amount of emergency exit area. In this regard, the emergency egress requirements for school and non-school buses are deemed to be equivalent.

The proposal would not require school buses to comply with certain related requirements applicable to non-school buses, i.e., the requirements that 40 percent of the required area be provided on each side of the bus, and that no single opening be credited with more than 536 square inches of space.

NHTSA tentatively concludes that these provisions are not appropriate for school buses for several reasons. As a general matter, NHTSA does not seek to require school bus manufacturers to rely on push-out windows to meet the revised standard. The agency believes that push-out windows are of limited usefulness in evacuating school buses since those windows are usually higher off the ground and smaller in size than exit doors, which makes them difficult for school age occupants to use. Moreover, as numerous commenters pointed out, push-out windows are almost never used as a means of escape during school bus evacuation drills, increasing the likelihood, particularly for smaller children, that the windows will not be used in an actual emergency. Since school buses are often built on a truck chassis, a push-out window in an upright school bus creates an opening that is typically as much as six to seven feet above the ground. School bus evacuation studies have shown that young children in particular are reluctant to use such a means of escape. This is in contrast to the usual circumstances on non-school buses, where there are likely to be a considerable number of adults on board who could assist children in safely exiting through window exits. Finally, as several commenters point out, push-out windows are likely targets for tampering, which would be more prevelant in school than non-school buses.

Since the agency does not seek to encourage the increased use of push-out windows, the effect of extending the 40 percent and 536 square inch maximum credit requirements to school buses would be to increase significantly the number of required side exit doors. As an example, a 90 passenger bus would require eight additional side door exits. In addition to imposing significant expenses, a large number of additional side door exits could compromise the structural integrity of the bus. Second, unlike non-school buses, the vast majority of school buses are required by S5.2.3.1 and S5.4.2.1 of Standard 217 to have a rear exit door opening that measures at least 24 inches by 45 inches, or 1080 square inches, or a side emergency door measuring at least 24 inches by 45 inches and a rear push-out window measuring 16 inches by 48 inches for a total area of 1848 square inches of emergency exit space. There does not appear to be any basis for not allowing at least the minimum space required to be provided by these doors and push-out window to be counted in the exit space calculation.

After considering these factors and the comments received, NHTSA believes additional emergency exit doors and roof exits are the most effective means to increase emergency egress for school children from school buses.

NHTSA recognizes the potential safety benefits of roof-mounted emergency exits, particularly in the case of rollovers where the bus comes to rest on its side. Data compiled by NHTSA show that rollovers constitute less than 0.5 percent of school bus crashes, but that during the period 1980–1988, an average of 22 percent of school bus occupant fatalities occurred in rollovers. In addition to providing an additional means of exit in a rollover if the bus does not come to rest on its roof, roof exits may also serve as a potential exit route in other circumstances where one or more exit routes have been rendered inoperative.

NHTSA tentatively concludes that if a bus is required to have only one additional exit under today's proposal, that exit should be a side exit emergency door. The agency also tentatively concludes that, in such a case, roof exits should not be permitted in lieu of a conventional exit door for purposes of calculating available exit space. The agency notes that the single additional door exit would, in most cases, be located on the left-hand side of the bus. That additional door would be available in crashes such as rear impacts and rollovers, which can render inoperative one or more of the exits currently required.

However, NHTSA is exploring the use of roof exits by school bus manufacturers, especially those that manufacture large school buses, i.e., those with a passenger capacity of 67 or more. Accordingly, the agency is today proposing two alternative options for school buses which would be required under this rulemaking to have two or more additional exits. NHTSA requests comment on whether the final rule should adopt one of the proposed options to the exclusion of the other, or whether it should include both options, thus enabling a manufacturer to elect the option with which a particular bus will comply.

The proposed options would revise S5.2.3 through S5.2.3.3. Under either option, the total number of exits required for a bus would be determined by the following equations.

For school buses with rear exit doors, NHTSA is proposing that the following formula be used to determine the required number of additional emergency exits (AEE):

AEE = [(TA–FSDA)/MRDEA]–1

Where:

TA (total area) = 67 × number of designated seating positions

FSDA (front service door area) = 26 in. × 77 in. = 2,002 in.^{2}

MRDEA (minimum rear door exit area) = 24 in. × 45 in. = 1,080 in.^{2}

For school buses with a left side exit door and push-out rear window, the proposal would use the following formula to determine the AEE:

AEE = [(TA–FSDA–POWA)/MSDEA]–1

Where:

TA (total area) = 67 × number of designated seating positions

FSDA (front service door area) = 26 in. × 77 in. = 2,002 in.^{2}

POWA (push-out window area) = 16 in. × 48 in. = 768 in.^{2}

MSDEA (minimum side door exit area) = 24 in. × 45 in. = 1,080 in.^{2}

In the above equations, the FSDA is based upon an average service door area, and the MRDEA, MSDEA and POWA are based upon current minimum requirements contained in Standard No. 217. Table 1 shows the number of exits that would be required under proposed options A and B, based upon the number of designated seating positions and the configuration of existing exits.

TABLE 1.—ADDITIONAL EMERGENCY EXITS

[AEE]

Designated seating position	Required area	Option A		Option B			
		Additional side doors		Additional side doors/roof exits			
		If rear	If side	If rear	Roof exit(s)	If side	Roof exit(s)
24	1508	0.0	0.0	0.0	0.0	0.0	0.0
30	2010	0.0	0.0	0.0	0.0	0.0	0.0
36	2412	0.0	0.0	0.0	0.0	0.0	0.0
42	2814	0.0	0.0	0.0	0.0	0.0	0.0
48	3216	0.0	0.0	0.0	0.0	0.0	0.0
54	3618	0.0	0.0	0.0	0.0	0.0	0.0
55	3685	1.0	0.0	1.0	0.0	0.0	0.0
56	3752	1.0	0.0	1.0	0.0	0.0	0.0
58	3886	1.0	0.0	1.0	0.0	0.0	0.0
60	4020	1.0	0.0	1.0	0.0	0.0	0.0
65	4355	1.0	0.0	1.0	0.0	0.0	0.0
66	4422	1.0	1.0	1.0	0.0	1.0	0.0
67	4489	1.0	1.0	1.0	1.0	1.0	0.0
68	4556	1.0	1.0	1.0	1.0	1.0	0.0
69	4623	1.0	1.0	1.0	1.0	1.0	0.0
70	4690	1.0	1.0	1.0	1.0	1.0	0.0
71	4757	2.0	1.0	1.0	2.0	1.0	0.0
72	4824	2.0	1.0	1.0	2.0	1.0	0.0
73	4891	2.0	1.0	1.0	2.0	1.0	0.0
74	4958	2.0	1.0	1.0	2.0	1.0	0.0
75	5025	2.0	1.0	1.0	2.0	1.0	0.0
76	5092	2.0	1.0	1.0	2.0	1.0	0.0
77	5159	2.0	1.0	1.0	2.0	1.0	0.0
78	5226	2.0	1.0	1.0	2.0	1.0	1.0
79	5293	2.0	1.0	1.0	2.0	1.0	1.0
80	5360	2.0	1.0	1.0	2.0	1.0	1.0
81	5427	2.0	1.0	1.0	2.0	1.0	1.0
82	5494	2.0	2.0	1.0	2.0	1.0	2.0
83	5561	2.0	2.0	1.0	2.0	1.0	2.0
84	5628	2.0	2.0	1.0	2.0	1.0	2.0
85	5695	2.0	2.0	1.0	2.0	1.0	2.0
86	5762	2.0	2.0	1.0	2.0	1.0	2.0
87	5829	3.0	2.0	2.0	2.0	1.0	2.0
88	5896	3.0	2.0	2.0	2.0	1.0	2.0
89	5963	3.0	2.0	2.0	2.0	1.0	2.0
90	6030	3.0	2.0	2.0	2.0	1.0	2.0

Option A would provide that all additional exits required under the proposal be side exit doors. For example, an 84 passenger bus with an existing side door exit and a rear window exit would require two additional side door exits for a total of three emergency side door exits. An 84 passenger bus with an existing rear emergency door would also be required to have two additional side door exits. A 90 passenger bus equipped with a rear emergency door would be required to have three side emergency exit doors. A 90 passenger bus equipped with a push-out rear window and one side emergency exit door would need two additional side exit doors in order to comply with the proposal.

Option B would require likewise, that where one additional exit is required, it must be a side exit emergency door, but that where the additional exit space required exceeds the area created by that door (1080 square inches), the next 540 square inches of exit space must be provided by roof a exit, and the next 540 square inches provided by a second roof exit. The maximum credit for one roof exit would be 540 square inches, regardless of its actual size. If additional exit space beyond that provided by the side exit door and two roof exits is required (i.e., more than 2160 square inches of additional exit space is required), the proposal would require a second additional side exit emergency door. Under option B, an 84 passenger bus would be required to have one additional side door exit and two roof exits, regardless of whether it currently is equipped with a rear emergency door, or with a rear push-out window and a side emergency door. A 90 passenger bus equipped with a rear emergency exit would be required under option B to have two side exit doors and two roof exits. A 90 passenger bus equipped with a push-out rear window and side door exit would need one additional side exit and two roof exits to comply with option B.

In translating the emergency exit area into additional exit requirements, the figure arrived at may not be a whole number. As an example, the equation may require 2.5 exits. Under option A, fractional figures greater than 0.500 are rounded up to the next whole number. Fractions of 0.500 or less are rounded down to the next whole number. Under option B, such fractions are rounded down if they are less than 0.300, rounded to 0.500 if they are between 0.300 and 0.500, and rounded up the next whole number if they are greater than 0.500. Under option B, the requirement for 0.500 of a door exit may be met by a single roof exit with an area of 540 square inches.

The question of whether to require roof exits in lieu of a second additional exit door would not affect a significant number of school buses. School buses with a rear emergency door and 67 or more designated seating positions, and those buses with a push-out rear window, a side exit door and 78 or more designated seating positions would be the buses required to have more than one additional exit. School buses of these sizes represented less than 6 percent of all school buses sold in 1988, although that figure can be expected to increase in the future. The majority of the larger buses are of rear-engine design.

The distinction between the minimum exit requirements under the proposal for front and rear-engine buses is based upon their design. Rear-engine buses are already equipped with a side exit door and a push-out rear window since their design precludes the installation of a full-size rear emergency door. Thus, they already have greater emergency exit area than a bus equipped with only a rear exit door, and do not reach the threshold under the proposal for a second additional emergency exit until the seating capacity is 78 or greater.

NHTSA requests comments about both options. With regard to Option A, NHTSA specifically requests comment on whether requiring a second or third additional exit door on these large buses would be likely to compromise the structural integrity of the vehicle. The agency has also considered whether requiring additional side exits could increase the likelihood of passenger ejections during a crash. NHTSA is aware of one case of an ejection through the glass of a side door. The agency requests comment on the likelihood of side door ejections from increased side emergency exits, and on whether additional or improved door exit mechanisms (e.g., a three-point latching mechanism with latch points at the top, bottom and side of the door), would serve to reduce the risk of ejection.

With regard to option B, the agency is concerned about the ability of roof exits to remain operational following a rollover. According to data gathered by the agency, 47 percent of school bus rollovers involve a rotation in excess of 90 degrees. In particular, NHTSA requests comment on whether, if a bus rolls over in excess of 180 degrees, the roof exits are likely to remain operable. If not, would recessing the roof exits avoid this problem? What would be the cost to do so?

NHTSA also considered the alternative of creating additional emergency exit space by requiring buses to have a pop-out or otherwise easily removable windshield. This alternative was not proposed because of problems that could arise. The benefit from having an additional exit at the windshield could be greatly outweighed by the danger of increased passenger ejections through such a windshield. Although large buses are not required to comply with Standard No. 212; *Windshield mounting*, NHTSA does not wish to propose an alternative that could lead to a reduction in school bus windshield retention, and the potential for increased passenger ejections. Finally, many of the circumstances (such as fires) which require evacuation are likely to originate at the front of the vehicle, particularly if the vehicle has its engine in the front.

In summary, adoption of the AEE equation discussed in this portion of today's proposal would revise S5.2.3 to require that school buses have an emergency exit area total, in square inches, of 67 times the number of seating positions on the bus. Option A would also specify that for purposes of this calculation, only entrance and emergency door exits or push-out rear windows required under the option may be counted as exits. Option B would require that buses with a rear emergency door and a capacity of 67 or greater and buses with a push-out rear window and side emergency door with a capacity of 78 or greater to meet the requirement by adding one additional side emergency door and one or two roof exits, and in some cases, a second additional side exit door. For either option, the front service door would be counted in this calculation. For the purposes of the calculation, a rear or side exit emergency door would be credited with 1080 square inches, and a rear push-out window would be credited with 768 square inches, and each required roof exit would be credited with its actual area or 540 square inches, whichever is less. The area figures for emergency doors and push-out rear windows are the minimum permitted for these exits by the existing standard.

Existing S5.2.3.2, governing minimum emergency exit locations, would also be revised to specify the locations for the additional exits. The proposal includes locations for the additional exits, although NHTSA recognizes that there are a number of options regarding exit location. The following figure shows the various options for exit locations.

BILLING CODE 4910-59-M

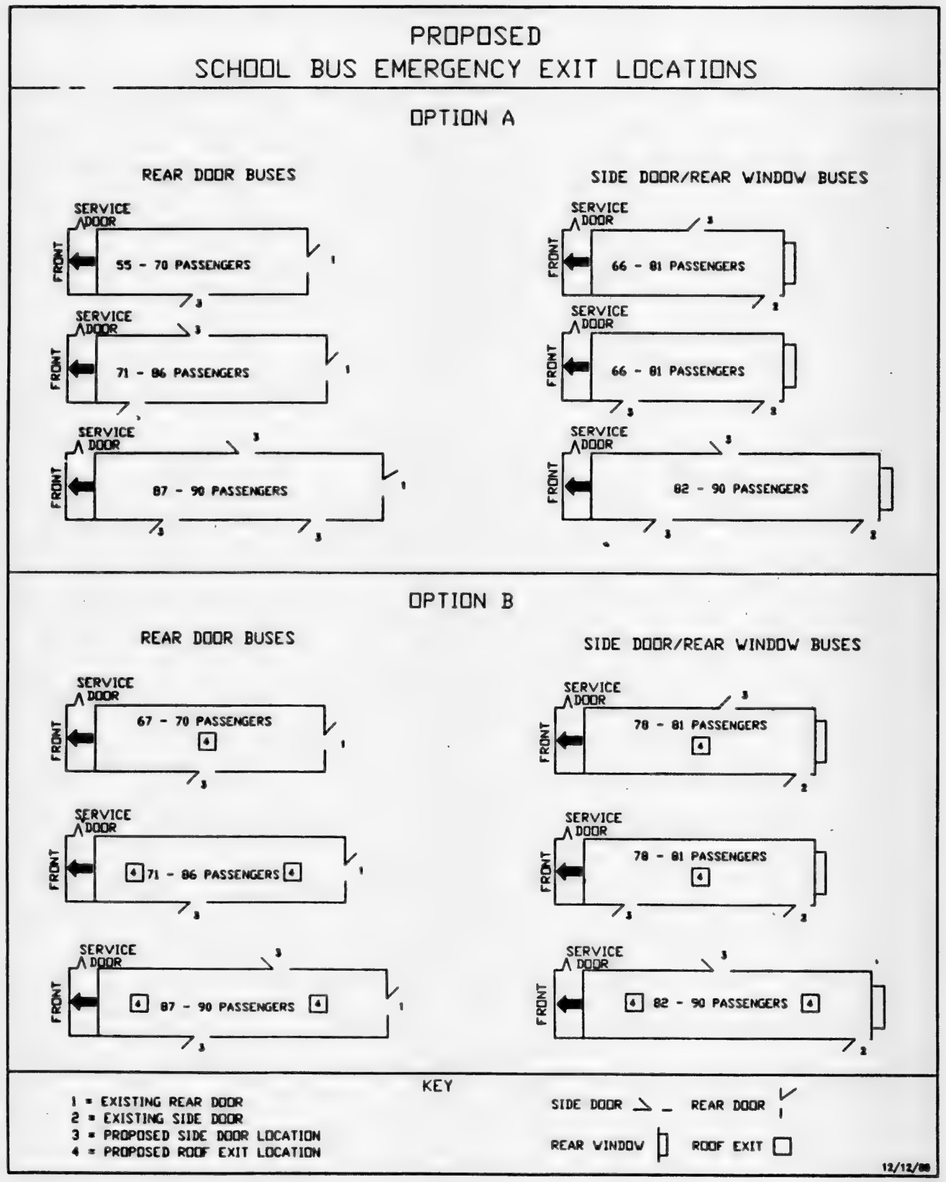


FIGURE A

BILLING CODE 4910-59-C

NHTSA specifically requests comments on where such exits should be located. The agency is concerned that the required exits maximize emergency egress while not compromising the structural integrity of the vehicle. NHTSA's examination of NTSB school bus crash files reveals that the buses rarely remain in their lane of traffic following a crash, and that therefore, the discharge of students from the left side of the bus should not be a major consideration in determining exit location. NHTSA believes the feasible choices are as follows:

Under option A, buses with a rear door and requiring one additional exit would have a side exit door located on the left side of the bus, within the post and roof bow panel space nearest to the mid-point of the passenger compartment. A post and roof bow is one of the structural members to which the exterior sheet metal is attached. They are usually placed a few feet apart over the length of the bus. The side doors and windows are usually placed between adjacent post and roof bows. Buses with a rear door requiring two additional exits under option A would have one door on the left side, in the front third of the passenger compartment, and one door on the right side, within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

For buses required by option A to have three additional exits, the exits would be located as follows: two doors on the left side, spaced approximately equidistant from each other and the ends of the passenger compartment, and a third door on the right side within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

Under option B, a bus equipped with a rear emergency door and requiring more than one additional exit would have an additional side door exit located on the left side of the bus within the post and roof bow panel space nearest to the mid-point of the passenger compartment. If one roof exit is required, it would be located within the post and roof bow panel space nearest to mid-point of the passenger compartment. If two roof exits are needed, they would be located approximately equidistant from each other and the ends of the roof (within a tolerance of one post and roof bow panel space). If a second door is also required, it would be located in the rear third of the bus, on the right side.

The alternatives under options A and B for buses with a left rear side exit door and push-out rear window, and requiring one additional exit door are:

1. A side exit door at the mid-point on the right side of the bus (this alternative is contained in the proposal).

2. A side exit door on the left side, toward the front of the passenger compartment.

Under option A, for buses equipped with a left side exit and rear push-out window, and requiring two additional exits, the bus will have a door on the left side, in the front third of the passenger compartment, and a door on the right side within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

Under option B, there are two alternatives for these buses where two additional exits are required:

3. One exit would be a side door located on the right side of the bus within the post and roof bow panel space nearest to the midpoint of the passenger compartment. If one roof exit is installed, it would be located within the post and roof bow panel space nearest to the center of the roof. If two roof exits are installed, they would be equidistant from each other and the ends of the roof (within one post and roof bow panel space). This alternative is contained in the proposal.

4. One exit would be a side door located on the left side of the bus in the front third of the passenger compartment. If one roof exit is installed, it would be located within one post and roof bow panel space of the center of the roof. If two roof exits are installed, they would be equidistant from each other and the ends of the roof, within one post and roof bow panel space.

Emergency Exit Retention and Release

I. *Existing standard.* Existing Standard No. 217 does not address the latching mechanism for school bus emergency exit doors or roof exits.

II. *Proposed revisions.* Today's proposal would revise S5.3.3 (under option B only) by adding a new subsection (d) which would address release mechanism requirements for school bus roof exits. Roof exits would be required to have a forward hinge and comply with the emergency release requirements in S5.3. The agency requests comment on whether this requirement would facilitate the evacuation of school bus occupants during certain emergencies and whether current roof exit designs meet the proposed requirement. If not, what are the costs of modifying the roof exits to comply with the proposed requirements? The agency is also requesting comment on whether to require all side emergency doors to be latched by a three-point mechanism that would latch the door at the top and bottom as well as on the side.

Emergency Exit Access

I. *Existing requirements.* Access to emergency exits is indirectly addressed by S5.4.2.1 of Standard No 217, which regulates the relationship between seat backs and side exits, and by Standard No. 222; *School bus passenger seating and crash protection*, which sets forth requirements for distances between seating positions, as well as specifying mounting strength for school bus seats.

II. *Proposed revisions.* The Carrollton and Alton crashes showed the importance of access to emergency exits. NHTSA tentatively concludes that, to be accessible, an exit should not only be reachable from the interior, it should also not shut once opened, regardless of the orientation of the bus after a crash. More specifically, each door should be equipped with a device capable of bearing the weight of the door and of keeping the door from closing past the point that it is perpendicular to the side or rear of the bus once the door is opened to that point. Once the door is so opened, such device could be released or overriden by a means provided for that purpose. NHTSA requests comment on whether the final rule should contain such requirements.

In addition, NHTSA proposes to amend Standard No. 217 to require that it be easier for occupants to reach side emergency doors on school buses with a GVWR in excess of 10,000 pounds. Currently, a seat is permitted to be adjacent to a side door exit location. Today's proposal would improve access to the side emergency door(s) by requiring that the seat bottom of a seat adjacent to a side emergency door be designed to automatically assume and remain in a vertical position when not occupied.

NHTSA requests comment on the cost of implementing this proposal. The flip-up seat would, of course, be required to meet Standard No. 222. While the agency has not developed detailed cost data for this requirement, NHTSA believes it would improve egress and be much less costly than alternatives such as adding more exits, creating a dedicated (seatless) aisle adjacent to the side emergency doors, or improving access by increasing the center aisle width. At least one major school bus manufacturer provides a flip-up seat as an option on its buses.

Manufacturers would not be prohibited from creating a dedicated emergency exit aisle by removing the seat adjacent to a side emergency exit.

This dedicated aisle would enhance the speed with which buses can be evacuated while also minimizing the potential for passenger ejection from a side emergency door. It would result in the elimination of 2–3 seating positions adjacent to each side emergency door. In addition, it would be necessary to install a barrier as required by S5.2 of FMVSS No. 222 in front of the seat located behind the dedicated aisle.

NHTSA also requests comment on a variation to this approach, which would adopt an approach similar to that contained in existing S5.4 2.1(a) for rear emergency exits. It would create a partially dedicated aisle by requiring the unobstructed passage of a parallelepiped of the same dimensions as the exit opening 12 inches into the passenger compartment. This alternative would improve access, but it would do so by eliminating two seating positions, one next to the side door and the one immediately behind that position. Further, under FMVSS No. 222, it would be necessary to provide a barrier in front of the first seating position located next to the side of the bus and to the rear of the side door. The agency has explored the costs of these two alternatives, and believes that the costs of implementation would be considerable. The agency's analysis is contained in the preliminary regulatory evaluation.

NHTSA also requests comment on whether manufacturers should be given flexibility in setting the seat back location in relation to the emergency door opening on seats that are adjacent to the side emergency doors. A bus manufacturer has petitioned NHTSA to permit a tolerance in setting the seat back location relative to the side door front opening, and the proposal would revise S5.4.2.1 to provide this tolerance.

In considering the issue of access to emergency exit doors, NHTSA examined the question of whether center aisle width should be increased. Center aisle width, although not subject to a safety standard, is essentially governed by bus width. Unless bus bodies are increased in width, any increase in aisle width will result in a substantial reduction in passenger capacity. The maximum width allowed for a bus is 102 inches and most school buses are less than this width. An increase in aisle width without a concomitant increase in body width would translate into considerable increased costs, and perhaps a net reduction in safety as more buses would be needed to transport the same number of passengers.

Expanding aisle width from the current 12 inches to 15 inches, for example, would result in fewer, but slightly wider seating positions, and could reduce the capacity of a 65/66 passenger bus to 55 passengers. A wider aisle would improve egress, particularly if it were necessary for passengers to crawl through the aisle, for example, to escape a fire. The agency notes that some school buses are presently manufactured with such a wider aisle and wider seats, in a configuration known as "secondary school seating." NHTSA has calculated that, assuming buses are frequently operated at or near capacity, an increase in aisle width from the current industry standard 12 inches to a 15 inch aisle width, and the accompanying reduction in seating capacity would translate into a need for 5,000 additional buses annually nationwide, at a cost of between $175 million and $200 million.

For these reasons, NHTSA proposes to improve access to side emergency exits by requiring a flip-up seat instead of a wider center aisle.

Emergency Exit Marking

I. *Existing standard.* Existing S5.5.3 sets requirements for the identification of emergency doors and their operating instructions. It does not specify any other requirements for emergency exit marking.

II. *Proposed changes.* Today's proposal would revise S5.5.3 to include a requirement that within two inches of each edge, the edges of each emergency exit opening be outlined with a one-inch wide band of retroreflective tape with a minimum reflective performance of 230 candelas/footcandle/sq. ft. Retroreflective tape reflects light back to its source. The agency is proposing to require tape on the interior and exterior of all required emergency door openings and roof exit openings. This requirement would aid rescuers in locating emergency exits on the outside. It is intended to help passengers, as well as rescuers, locate the exits in low-light situations. NHTSA specifically requests comment on whether interior bus lighting and/or background interior light (e.g., from streetlights or passing cars) would sufficiently illuminate the proposed interior reflectorized portions of the door and roof opening at night. NHTSA notes that some school bus interiors are not equipped with passenger compartment lights. Should school buses be required to have an interior light source that would illuminate these exits? If so, what would the costs of such a light source be? Is there a less expensive alternative that could be used to make exits more easily identifiable? Since bus riders are more likely to be familiar with exit locations than are rescuers, should only the exterior surfaces of the exits be marked?

Retitling Standard No. 217

I. *Existing standard.* Standard No. 217 is currently titled *Bus window retention and release.* This title is inaccurate, as the Standard also extensively addresses requirements for emergency exits, including doors and roof exits as well as windows.

II. *Proposed change.* Today's proposal would rename Standard No. 217 to more accurately reflect the scope and purpose of the Standard. The new title would be *Bus emergency exits and window retention and release.*

Leadtime

The agency tentatively concludes that the proposed revisions to Standard No. 217 are practicable, as is illustrated by the current compliance of school bus manufacturers with the requirements of some States for additional emergency exits, and by the availability of flip-up seats by at least one manufacturer. NHTSA recognizes that adoption of the proposal could require some significant design changes by manufacturers to accommodate the additional exit requirements, and is therefore proposing an effective date 18 months from the publication of the final rule to provide adequate leadtime for manufacturers to implement the required changes. The agency requests comments on the question of adequate leadtime and the proposed effective date of the rule.

Impacts

Costs and Benefits

NHTSA has examined the effect of this rulemaking and determined that it is not major within the meaning of Executive Order 12291. The agency believes, however, that it is significant within the meaning of the Department of Transportation's regulatory policies and procedures because of the substantial public interest in school bus safety and emergency exits, resulting in large part from the Carrollton, KY, and Alton, TX school bus crashes. The economic effects of this rulemaking are discussed in detail in the Preliminary Regulatory Evaluation which addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. The evaluation is available in the docket.

NHTSA estimates that the cost to the consumer of an emergency side door would be about $216 per door including ignition interlock hardware, "door open" warning device, and installation labor. Including the installation labor, it is estimated that a roof exit would cost the consumer $234, a flip-up seat cushion $180, and conspicuity enhancement $12 per door and $4 per roof exit. These are average costs. Option A would cost the consumer in the range of $374–$624 per bus and Option B would cost the consumer $448–$748 per bus. This represents a consumer cost range of $374–748 per bus for the subject proposal or a total consumer cost of between $13 million and $26 million ($374 × 35,000 sales and $748 × 35,000 sales). This range represents the low end of Option A and the high end of Option B.

The incremental cost of implementing today's proposal would be somewhat less than these estimates indicate, because, as noted above, some States already require additional exits beyond those currently required by Standard 217. To the extent that these State requirements are consistent with the proposed revisions, there will be reduced costs in these States since manufacturers are already installing at least some of the proposed additional exits. However, the agency has only anecdotal data on the number of States that have additional requirements and the nature of those requirements. NHTSA specifically requests comments in response to the following questions from those States which have school bus emergency exit requirements that exceed the requirements of existing Standard No. 217:

1. What are the additional emergency exits required? Are the requirements applicable to all school buses in the State? If not, to what approximate percentage of buses do they apply?

2. On a per-vehicle basis, what would the approximate additional costs be for the State to comply with those requirements of the proposal which exceed the existing State requirements?

The agency cannot quantify the number of fatalities or injuries that would be reduced or avoided by the adoption of these proposed revisions to Standard No. 217. The only research on the subject that NHTSA is aware of is a study at the University of Oklahoma in 1970 which demonstrated that school bus evacuation times are directly proportional to increased exit access. In view of the Carrollton, KY and Alton, TX accidents, it is logical to believe that the proposed amendments would provide significant benefits, particularly in severe or potentially catastrophic accidents. In the agency's opinion, increased emergency exit areas would have contributed significantly to a reduction in the fatalities resulting from these accidents. Based on an analysis of worst case accident scenarios (e.g., right- or left-hand rollover, with inoperable or blocked exit doors), the agency believes that more serious accident situations are being addressed by the subject proposal. The Preliminary Regulatory Evaluation contains further discussion on this issue.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Under that Act, the agency must evaluate the potential impact of a proposed rule on small entities, including small businesses, small organizations and small governmental jurisdictions. I hereby certify that this rulemaking action would not have a significant economic impact on a substantial number of small entities. The small entities likely to be affected by this proposed rule, if adopted, include school bus manufacturers, dealers and distributors of school buses, and school bus purchasers, including school systems. NHTSA believes that school bus purchasers would be the group most affected by the proposed emergency exit requirements because of the likelihood of increased school bus purchase prices and the possibility of slightly increased maintenance costs. NHTSA believes the increase in school bus purchase price would not decrease school bus sales. The projected average consumer price increase of between $374–$748 for those buses which would be required to have additional exits is minimal (a 1% increase) compared to the approximate $40,000 purchase price of a new school bus. Some small businesses that supply parts or components used in the manufacture and installation of emergency exits might experience a greater demand for their products, but the agency does not believe the impacts would be significant.

NHTSA believes that the majority of the 14 school bus manufacturers qualify as small businesses (less than 500 employees), as that term is defined by the Small Business Administration. However, the impact upon them from the proposed emergency exit requirements should be minor since the design changes are not complicated and the price increase is relatively small.

Environmental Effects

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant effect on the quality of the human environment.

Executive Order 12612

NHTSA has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The agency recognizes that several States have emergency exit requirements for school buses which exceed the current Federal standards. The agency believes, however, that the proposal would not be inconsistent with those requirements. It would also not impede the ability of states under section 103(d) of the Vehicle Safety Act to impose requirements more stringent than those required by Federal law

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended

that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The title of Standard No. 217; *Bus window retention and release, (49 CFR 571.217)* would be revised to read as follows:

§ 571.217 Standard No. 217; Bus emergency exits and window retention and release.

* * * * *

3. Paragraph S4 of Standard No. 217 would be revised by adding the following definitions in alphabetical order:

Mid-point of the passenger compartment means any point on a vertical transverse plane bisecting a line that is parallel to the vehicle centerline and extends between the two planes which define the foremost and rearmost limits of the passenger compartment.

Passenger compartment means space within the school bus interior that is between a vertical transverse plane located 30 inches in front of the forwardmost seating reference point and a vertical transverse plane tangent to the rear interior wall of the bus at the vehicle centerline.

Post and roof bow panel space means the area between two adjacent post and roof bows.

4. Paragraphs S5.2.3. and S5.2.3.1(a) of Standard No. 217 would be revised to read as follows:

S5.2.3 *School buses.* School buses shall comply with S5.2.3.1 through S5.2.3.3.

S5.2.3.1

(a) In addition to providing unobstructed openings for emergency exit in accordance with the minimum requirements in S5.2.3.2(a)(1) or (b)(1), each school bus shall provide the number of additional emergency exits (AEE) calculated in accordance with the formula in paragraph (1) or (2), as appropriate:

(1) For a school bus with a rear exit door:

AEE = [(TA - FSDA)/MRDEA] - 1

Where:

TA (total area) = 67 × number of designated seating positions;

FSDA (front door service area) = 2.002 $in.^2$, or the actual area, whichever is less; and

MRDEA (minimum rear door exit area) = 24 in. × 45 in. = 1.080$in.^2$.

(2) For a school bus with a left side exit door and a push-out rear window:

AEE = [(TA - FSDA - POWA)/MSDEA] - 1

Where:

TA (total area) = 67 × number of designated seating positions;

FSDA (front service door area) = 2.002 $in.^2$, or the actual area, whichever is less;

POWA (push-out window area) = 16 in. × 48 in. = 768 $in.^2$; and

MSDEA (minimum side door exit area) = 24 in. × 45 in. = 1.080 $in.^2$.

5. Paragraphs S5.2.3.1(b) through S5.2.3.3 of Standard No. 217 would be revised to specify one or both of the options set forth below.

Option A. Paragraphs S5.2.3.1(b) through S5.2.3.3 would be revised to read as follows:

(b) If application of the formula specified in paragraph (a) results in a number that includes a fraction, the result shall be rounded up to the next whole number if the fraction is greater than 0.500, and rounded down to the next whole number if the fraction is equal to or less than 0.500.

S5.2.3.2 Each school bus shall be equipped with as many of the emergency exits specified in paragraph (a) or, at the option of the manufacturer, paragraph (b), as are necessary to comply with S5.2.3.1.

(a)(1) One rear emergency door that opens outward and, in the case of a bus with a GVWR of more than 10,000 pounds, is hinged on the right side.

(2)(i) If one side emergency door in addition to the emergency exit specified by S5.2.3.2(a) is necessary to comply with S5.2.3.1, it shall be located on the vehicle's left side, and the forward edge of the door opening shall be within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side.

(ii) If two side emergency doors in addition to the emergency exit specified by S5.2.3.2(a) are necessary to comply with S5.2.3.1, one shall be located on the left side of the bus, in the front third of the passenger compartment, and the other shall be located on the right side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. Both doors shall be hinged on their forward side.

(iii) If three side emergency doors in addition to the emergency exit specified by S5.2.3.2(a) are required to comply with S5.2.3.1:

(A) Two doors shall be located on the left side of the bus, with the forward edge of each door opening located within the post and roof bow panel space that is nearest to the point equidistant between the nearest longitudinal end of the passenger compartment and the forward edge of the other door opening, and shall be hinged on their forward sides; and

(B) The third door shall be located on the right side of the bus, with the forward edge of the door opening within the one post and roof bow panel space nearest to the mid-point of the passenger compartment, and shall be hinged on its forward side.

(b)(1) One emergency door that is located on the vehicle's left side and whose forward edge is located to the rear of the mid-point of the passenger compartment and that is hinged on its forward side, and a push-out rear window that provides a minimum opening clearance 16 inches high and 48 inches wide. The window shall be releasable by operation of not more than two mechanisms which are located in the high force access region as shown in Figure 3C, and which do not have to be operated simultaneously. Release and opening of the window shall require force applications, none of which shall exceed 40 pounds, in the directions specified in S5.3.2.

(2)(i) If one side emergency door in addition to the emergency exits specified by S5.2.3.2(a) is necessary to comply with S5.2.3.1, it shall be located either on the vehicle's right side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment and be hinged on its forward side, or on the left side, in the front third of the passenger compartment, and hinged on its forward side.

(ii) If two side emergency doors in addition to the emergency exits specified by S5.2.3.2(a) are required to comply with S5.2.3.1, one shall be located on the left side of the bus in the front third of the passenger compartment, and the other shall be located on the right side of the bus, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. Both doors shall be hinged on their forward side.

S5.2.3.3 The engine starting system of a school bus shall not operate if any emergency door exit is locked from either inside or outside the bus. For the purposes of this section, "locked" means that the release mechanism cannot be activated by a person at the door without a special device such as a key or special information such as a combination.

Option B. Paragraphs S5.2.3.1(b) through S5.2.3.3 would be revised to read as follows:

(b) For buses required by S5.2.3.2 to have roof exits, where application of the formula specified in paragraph (a) results in a number that includes a fraction, the result shall be rounded down to the next whole number if it is greater than or equal to 1.100, but less than 1.300. If the fraction is greater than or equal to 1.300, but less than or equal to 1.500, one roof exit shall be added, and if it is greater than 1.500 but less than 2.000, two roof exits shall be added. If the number is greater than 2.000, a second additional side door exit shall also be added.

S5.2.3.2 Each school bus shall be equipped with as many of the emergency exits specified in paragraph (a) or, at the option of the manufacturer, paragraph (b), as are necessary to comply with S5.2.3.1.

(a)(1) One rear emergency door that opens outward and, in the case of a bus with a GVWR of more than 10,000 pounds, is hinged on the right side.

(2) If one emergency exit in addition to the one specified by S5.2.3.2(a)(1) is necessary to comply with S5.2 3.1, it shall be a side door located on the vehicle's left side, with the forward edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side.

(3)(A) If one emergency exit in addition to the ones specified by S5.2.3.2(a) (1) and (2) are needed to comply with S5.2.3.1, it shall be a roof exit that meets the requirements of S5.3 through S5.5 when the bus is overturned on either side with the occupant standing and facing the exit. The roof exit shall be centered over the vehicle's longitudinal center line. with the geometric center of the exit opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment. The roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

(B) If two emergency exits in addition to the ones specified by S5.2.3.2(a) (1) and (2) are needed to comply with S5.2.3.1, they shall be roof exits that meet the requirements of S5.3 through S5.5 when the bus is overturned on either side with the occupant standing and facing the exit. Each of the two roof exits shall be located over the vehicle's longitudinal center line, with the geometric center of each exit within the post and roof bow panel space nearest to the point that is equidistant from the nearest longitudinal end of the passenger compartment and the geometric center of the other roof exit. Each roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

(4) If one emergency exit in addition to the ones specified by S5.2.3.2(a)(1), (2)(B), and (3) are needed to comply with S5.2.3.1, it shall be a side exit door. hinged on its forward side and located in the rear third of the occupant space on the right side of the bus.

(b) One emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its rearward side, and a push-out rear window that provides a minimum opening clearance 16 inches high and 48 inches wide and, if necessary, a sufficient number of additional side emergency doors for the bus to comply with the total area required by S5.2.3 1. The window shall be releasable by operation of not more than two mechanisms which are located in the high force access region as shown in Figure 3C, and which do not have to be operated simultaneously. Release and opening of the window shall require force applications, not to exceed 40 pounds, in the directions specified in S5.3.2.

(1) If one additional emergency exit is necessary to comply with S5.2.3.1, it shall be an additional side door located on the vehicle's right side, with the front edge of the door opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment, and hinged on its forward side, or it shall be located on the left side, in the front third of the passenger compartment.

(2) If more than one additional exit is needed to comply with S5.2.3.1, the requirements shall be met first by adding up to two roof exits that meet the requirements of S5.3 through S5.5 when the bus is overturned on either side with the occupant standing and facing the exit.

(A) If one roof exit is required, it shall be located over the vehicle's longitudinal center line, with the geometric center of the exit opening within the post and roof bow panel space nearest to the mid-point of the passenger compartment.

(B) If two roof exits are required, each shall be located over the center aisle, with the geometric center of each exit equidistant (within a tolerance of one post and roof bow panel) from the longitudinal endpoints of the passenger compartment and each other. Each roof exit shall provide an opening with a minimum clearance of 16 inches and an area of at least 540 square inches.

S5.2.3.3 The engine starting system of a school bus shall not operate if any emergency door exit is locked from either inside or outside the bus. For the purposes of this section, "locked" means that the release mechanism cannot be activated by a person at the door without a special device such as a key or special information such as a combination.

* * * * *

6. Paragraph S5.3 would be revised to read as follows:

Note: This paragraph would be revised only if option B for amending S5.2.3 were adopted:

S5.3 *Emergency exit release.*

* * * * *

S5.3.3 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency door or roof exit shall allow manual release of the door by a single person, from both inside and outside of the passenger compartment, using a force application that conforms to paragraphs (a) through (c), except a school bus with a GVWR of 10,000 pounds or less does not have to conform to paragraph (a). Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the position that causes an exit door to be closed and the vehicle ignition is in the "on" position, a continuous warning shall be audible at the driver's seating position and in the vicinity of that emergency exit. Roof exits shall be hinged at the forward edge and have a single locking

BEST COPY AVAILABLE

mechanism which locks and unlocks the roof exit with a single force application not greater than 40 pounds.

* * * * *

7. Paragraph S5.4.2.1 would be revised to read as follows:

S5.4.2.1 *School bus with a GVWR of more than 10,000 pounds.*

(a) After the release mechanism has been operated, each emergency door of a school bus with a GVWR of more than 10,000 pounds shall, under the conditions of S6, before and after the window retention test required by S5.1, using the force levels specified in S5.3.3, be manually extendable by a single person to a position that permits—

(1) In the case of a rear emergency door, an opening large enough to permit unobstructed passage of a rectangular parallelepiped 45 inches high, 24 inches wide, and 12 inches deep, keeping the 45-inch dimension vertical, the 24-inch dimension parallel to the opening, and the lower surface in contact with the floor of the bus at all times; and

(2) In the case of a side emergency door, an opening at least 45 inches high and 24 inches wide. A vertical transverse plane tangent to the rearmost point of a seat back shall pass either 0.5 inches forward of the forward edge of the door or through a point not more than 0.5 inches rearward of the edge.

(b)(1) Any seat that is located so that any portion of the seat cushion

(A) Is within the transverse, horizontal projection of a side emergency door and

(B) Is between the door, and the longitudinal vertical plane bisecting the bus, shall comply with paragraph (2) of this section

(2) Any seat meeting the criteria of paragraph (A) of this section shall have a pivoting seat bottom that automatically assumes and retains a vertical position when not in use.

(c) No barrier installed pursuant to S5.2 of 571.222 shall be located so that it is

(1) Within the transverse horizontal projection of any side emergency door, and

(2) Between the door, and the longitudinal vertical plane bisecting the bus.

8. Paragraph S5.5.3 would be revised to read as follows:

S5.5.3 *School bus.* Each school bus emergency exit provided in accordance with S5.2.3 or S5.2.3.1 shall have the designation "Emergency Door" or "Emergency Exit," as appropriate, in letters at least 2 inches high, of a color that contrasts with its background, located at the top of or directly above the emergency exit on both the inside and the outside surfaces of the bus. Roof exit letters shall be located on the right or left side of the exit at a maximum distance of 12 inches from the roof exit opening. Each opening for a required emergency exit shall be outlined around its inside and outside perimeters with one inch wide retroreflective tape. The reflectivity of the tape shall be not less than 230 candelas/footcandle/ft^2, as tested in accordance with S6.2 of Standard No. 125 (§ 571.125) Concise operating instructions describing the motions necessary to unlatch and open the emergency exit, in letters at least three-eighths of an inch high, of a color that contrasts with its background, shall be located within 6 inches of the release mechanism on the inside surface of the bus.

Example

(1) Lift to Unlatch, Push to Open
(2) Lift Handle, Push Out to Open

* * * * *

Issued on: March 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-6186 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

School Bus Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision not to initiate rulemaking.

SUMMARY: The National Academy of Sciences published a report in May 1989 entitled "Improving School Bus Safety." While the report confirmed the high level of safety provided by the nation's school bus fleet, it suggested measures to further improve the safety of school buses. Among the recommendations was a suggestion to raise the minimum height of large (GVWR of over 10,000 pounds) school bus seat backs from the current 20 inches, to 24 inches above the seating reference point.

In response to the NAS report, NHTSA published on July 13, 1988 (54 FR 29629) its review of the report. NHTSA identified those NAS recommendations which the agency believed would be "most effective" in improving the safety of school children while boarding, exiting and riding in school buses. NHTSA concluded that all of the "most effective" measures dealt with the safety of children in loading zones, since studies have shown that the greatest risk to children occurs while they are boarding and exiting the bus, not while riding in the bus. Other NAS recommendations, primarily those which were designed to improve school bus occupant safety, were categorized as being "effective" because the safety risk to school bus occupants is already low, resulting in a lower potential for safety benefits.

After fully considering the NAS recommendations and analyzing the available data, NHTSA has decided that it will not initiate rulemaking to raise the minimum height requirements for seat backs on large school buses.

FOR FURTHER INFORMATION CONTACT: Charles L. Gauthier, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 7th St., SW., Washington, DC 20590 (202) 366-4799.

SUPPLEMENTARY INFORMATION: In a May 1989 report entitled "Improving School Bus Safety" prepared in response to a Congressional mandate, the National Academy of Sciences (NAS) recommended that the minimum school bus seat back height required by Federal Motor Vehicle Safety Standard (FMVSS) No. 222, School bus passenger seating and crash protection for large school buses (those with a GVWR over 10,000 pounds) be raised from the current 20 inches to 24 inches above the seating reference point in order to provide added crash protection. The NAS made this recommendation despite its recognition that there was an absence of any real-world data to measure the potential effectiveness of higher seat backs.

NHTSA published a review of the NAS report on July 13, 1988 (54 FR 29629). In that review, the agency identified those NAS recommendations which the agency believed would be "most effective" in improving the safety of school children while boarding, exiting and riding in school buses. NHTSA concluded that all of the "most effective" measures dealt with the safety of children in loading zones, since studies have shown that the greatest risk to children occurs while they are boarding and exiting the bus, not while riding in the bus. Other NAS recommendations, primarily those which were designed to improve school bus occupant safety, were categorized as being "effective" because the safety risk to school bus occupants is already low, resulting in a lower potential for safety benefits.

In its review, NHTSA agreed that higher seat backs on large school buses would provide a larger padded surface for occupant protection, but noted that they might impede access to emergency exits in some situations, and that this could reduce the seating capacity of some buses. In addition, the agency noted that higher seat backs could impede driver visibility and reduce the ability of the driver to monitor student behavior. Because of these concerns, the agency stated that additional information regarding the benefits and operational aspects of higher seat backs would be sought and reviewed before the agency decided to initiate rulemaking on this subject.

In reaching its decision not to initiate rulemaking to increase the height of seat backs in large school buses, NHTSA has examined the available data and relevant studies. This information, which is available in Docket 73-03-GR, is summarized below.

A. A 1987 evaluation of large school bus safety performance conducted by the National Transportation Safety Board, which concluded that the school bus safety standards which became effective in 1977, and particularly the "compartmentalization" requirements of FMVSS No. 222, provide high levels of safety to school bus occupants.

B. A series of three crash tests using anthropomorphic dummies conducted by UCLA in 1967 using a 60-passenger bus equipped with several types of restraints and seat types, including seats of various heights. The study concluded that the backs of school bus seats should be at least 28 inches high as measured from the seat cushion. (This 28 inch seat back, and those mentioned below are equivalent to a seat back 24 inches high as measured form the seating reference point, the measure which is used in determining compliance with Standard No. 222.) In addition, the study concluded that high backed seats (28 inches or more) greatly contribute to the compartmentalization of passengers, thereby reducing the chances of injuries sustained by passengers being hurled against one another, regardless of size.

C. Two crash tests conducted by UCLA in 1972 in which a bus was again equipped with different types of seats and restraints. This study concluded that in a head-on collision, the average size school child would sustain less head impact forces (44 g's versus 67 g's) if left unbelted, provided he was protected by the 28 inch high energy-absorbing seatback designed by UCLA.

D. A series of sled tests conducted by NHTSA in 1975 to consider the safety implications of different seat back heights. The tests involved seat backs of 20, 22 and 24 inches above the seating reference point. During these tests, 50th percentile dummies tended to "stand up" as their knees struck the seat back in front of them and their head and torso rotated forward and upward. Lower seat backs exaggerated this tendency for dummies to "stand up." The study concluded that seat back height is not particularly significant in frontal impacts, except in aggravating the problem of dummies "standing up," which is caused in turn by improper phasing. The study also noted that the major consideration in determining proper seat back height may be one not addressed in the study, i.e., the whipping of the head over the top of the seat back in rear impacts.

In promulgating FMVSS No. 222 in 1976, the agency noted that: "While the NHTSA does not dispute that a properly constructed, higher seat back provides more protection than a lower seat back, the data support the agency's determination that the 20-inch seat back provides a reasonable level of protection. School bus accident data do not provide substantial evidence of a whiplash injury experience that could justify a 4-inch increase in seat back height." (41 FR 4017, January 28, 1976).

In a July 1976 response to a petition for reconsideration of this rule from the Physicians for Automotive Safety, seeking to have seat back height raised from 20 to 24 inches, NHTSA stated:

> In support of this position, the organization set forth a "common sense" argument that whiplash must be occurring to school bus passengers in rear impact. However, the agency has not been able to locate any quantified evidence that there is a significant whiplash problem in school buses. The crash forces imparted to a school bus occupant in rear impact are typically far lower than those imparted in a car-to-car impact because of the greater weight of the school bus. The new and higher seating required by the standard specifies energy absorption characteristics for the seat back under rear-impact conditions, and the agency considers that these improvements over earlier seating designs will reduce the number of injuries that occur in rear impact. (41 FR 28507, July 12, 1976).

As noted by the NAS report, "any attempt to characterize the safety of school bus seats by a single factor is overly simplistic." The NAS report concluded that:

> The relative safety of a school bus seat is a function of several variables acting in concert. Among the variables of consequence are seat back height, spacing, padding, deformation characteristics, and the use or nonuse of a lap belt, in addition to the size and physical attributes of the dummy used in testing and the index (e.g., HIC, maximum chest acceleration, etc.) by which performance of the seat is assessed.

In the NAS report, estimates of effectiveness were made for nine different safety measures. The NAS committee characterized most of these estimates, including the seat back height effectiveness estimate, as "conjectural." It does not appear reasonable for the agency to initiate rulemaking in an area that not only offers a limited potential safety benefit (an estimated 0-20% effectiveness as suggested by the NAS), but also has estimated benefits which have no foundation. Neither the NAS nor any other party has provided any real-world crash data to support the claimed benefits of higher seat backs.

The claimed benefits of higher seat backs are primarily based upon the UCLA crash tests. In an effort to maximize the amount of data from each test, the school buses were equipped with many different seats, restraint systems and dummy sizes. For example, the bus used in the 1967 tests was equipped with 11 types of seats, 5 different restraint configurations and 5 dummy sizes. The test bus contained 36 seated dummy passengers. As a result, there was only a single test conducted for each combination of dummy, restraint and seat type in the bus. The agency believes it is inappropriate to draw conclusions based on the results of a single test.

While the 1972 tests used only three seat types, there were still four dummy sizes and two restraint conditions. In addition, some of the seats were in a rear-facing orientation. This resulted in very little duplication of test conditions among the 42 passenger dummies on that bus. As with the 1967 test, the agency is reluctant to rely on such limited testing of the several configurations.

NHTSA is aware that two States, New York and Illinois, require seat backs on public school buses that are higher than those required by FMVSS No. 222. The agency requested these States to provide information on the motivation, costs, and benefits of requiring the higher seat backs. The responses from New York and Illinois have been placed in Docket 73-03-GR.

Illinois authorities responded that their requirement resulted from a political compromise in discussions over mandatory seat belts on school buses. Since the Illinois requirement became effective in 1987, the State has purchased approximately 4,000 buses. The requirement added $330 per bus, resulting in a total extra cost of $1.3 million. Aside from the assumed benefit of greater protection, no actual benefits have been determined. There have been no reported increases in driver operational problems such as reduced visibility, or in the driver's ability to monitor passengers and avert behavioral incidents. NHTSA notes that

the costs reported by Illinois are more than twice that estimated by the NAS report ($330 per bus versus $150 per bus). This discrepancy would significantly change the benefits estimated by the NAS for higher seat backs, which are expressed in terms of lives saved and injuries reduced per $1 million spent per year. The higher costs cut the NAS's estimated benefits per $1 million invested by half. Conversely, to obtain the NAS's estimated benefits would double the costs. These costs also affect the relative cost effectiveness of higher seat backs when compared with other safety measures discussed in the NAS report.

New York responded that their higher seat back requirements predate FMVSS No. 222, but were based upon information contained in an NPRM for Standard No. 222 issued in 1975. New York instituted the requirement, along with several others that exceed Federal minimum standards after a tragic 1972 school bus crash in Congers, NY. While the State believes that more padded surface area is safer, it has reported no actual benefits from its higher seat backs. New York did not have any information on increased costs, and did not report any operational or behavioral incidents.

NHTSA has also considered a recent study by the Canadian government on school bus occupant protection that found high back (28 inch) seats, in use on an experimental basis, caused a visibility problem for drivers on the right-hand side because the drivers had difficulty seeing traffic approaching from an angle on the right. The seats were also thought to be the source of complaints that aisle width was too narrow and that the seats were too close together. A copy of this study has been placed in Docket 73–03–GR.

Finally, in interviews conducted by the National Transportation Safety Board with the survivors of the tragic May 1988 Carrollton, KY, crash of a former school bus, several persons mentioned that they were able to escape from the bus by crawling across the tops of the seat backs (the seat backs on this bus were 18 inches above the seating reference point, as the bus was built prior to the effective date of Standard No. 222). Higher seat backs could have hampered this means of escape, and possibly exposed these survivors to denser concentrations of the toxic fumes and smoke.

As discussed above, the NAS report neither provided any real-world data to support its recommendation, nor did it provide any information indicating that current school bus seat backs are ineffective. As the report aptly points out, attempting to characterize the crashworthiness of school bus seats by a single attribute, such as seat back height, is unrealistic

While a limited and dated amount of crash test data indicate that higher seat backs may provide a greater measure of occupant protection, especially for older and larger students, there is no compelling evidence in real-world school bus operations to indicate that current seat back heights are inadequate. Additionally, the agency has concerns about the potential effects of higher seat backs, particularly with regard to their potential to impede access to emergency exits and driver visibility.

NHTSA is also concerned about the added costs of increasing seat back height. These costs must be viewed in the context of the various school bus safety rulemaking actions currently under consideration by the agency. These include revisions to FMVSS Nos. 111; Rearview mirrors, 217; Bus window retention and release, 221; School bus body joint strength, 302; Flammability of interior materials, and a new standard on stop signal arms. In all school bus rulemaking activities, it is important to consider the costs and potential benefits of each proposal. In addition, it must be recognized that a large increase in the cost of a new school bus due to added safety requirements could delay the purchase of new school buses in school districts with budgetary concerns. Such delays would run counter to the central recommendation in both the NAS and NTSB studies, both of which strongly encourage the rapid replacement of school buses built before the 1977 effective date of most of the current school bus safety standards.

In light of the overall recommendation by the NAS that "a larger share of the school bus safety effort should be directed to bus stops and loading zones" and the undefined benefits coupled with the relatively high costs of increasing seat back heights for large school buses which are discussed above, the agency has concluded that it will not pursue rulemaking to increase the minimum seat back height requirement for large school buses.

Issued: March 11, 1991.

Barry Felrice,

Associate Administrator, for Rulemaking.

[FR Doc. 91–6168 Filed 3–14–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

[Docket No. 910354–1054]

RIN 0648–AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes a rule to implement Amendment 4 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This proposed rule would ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the Northwestern Hawaiian Islands (NWHI). Current emergency regulations have begun to provide a sound basis for assessing the effects of the fishery on protected species of marine animals, but these regulations will expire under time limits set by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This proposed rule would continue the requirement imposed by that emergency rule, add additional protected species study zones and allow for standardization of the permit application process.

DATES: Comments on the proposed rule must be received on or before April 26, 1991.

ADDRESSES: Comments should be sent to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. Copies of Amendment 4 and the incorporated environmental assessment may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813. Send comments on the proposed collection-of-information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California (213) 514–6606, or Alvin Katekaru, Pacific Area Office, Southwest Region, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: Prior to implementation of the FMP, NMFS issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish fishery. The opinion stated that the proposed FMP would not likely jeopardize any threatened or endangered species nor adversely affect any critical habitat for such species, and the opinion made conservation recommendations to ensure that NMFS and the Western Pacific Fishery Management Council (Council) would obtain documentation of marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA.

The main concern with regard to the bottomfish fishery has been entanglement of monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of bottom set gill nets and bottom trawl nets in the NWHI.

Reports were received in April 1990 that monk seals were being hooked by pelagic longline fishermen in the NWHI. Monk seals have been known to take bait from fishing hooks, although specific information does not exist. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the pelagic fishery. The number of dead monk seals found, nine, was well within the range of the number of animals normally reported each year. Nonetheless, injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack or to male monk seal harassment.

NMFS Special Agents interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action; however, there was consistency in the reports that raised enough concern to initiate an effort to obtain definitive information on possible impacts from longline fishing in the pelagic as well as the bottomfish fishery.

At a meeting on June 20, 1990, the Council heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the Hawaiian longline fishery and the possible effects this increase might have on the harvest of pelagic resources. The Council also heard reports on the investigations into interactions between the pelagic longline, and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to take the following emergency actions: (1) Implement a permit and logbook reporting system for the pelagic fishery, and (2) implement an observer program to place observers on selected pelagic and bottomfish vessels operating within a 50 nautical mile (nm) study zone around certain islands in the NWHI. Permit requirements were already in effect for the bottomfish fishery.

Emergency regulations for the NWHI bottomfish fishery were promulgated effective November 27, 1990 (55 FR 49050, November 26, 1990). The regulations stipulate that no bottomfish vessel can fish within 50 nm of certain islands in the NWHI (French Frigate Shoals, Gardner, Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Islands), unless the operator of the vessel has provided the Regional Director with an opportunity to place an observer aboard the vessel for that trip to document whether there are any interactions with protected species and if so, the particulars of the interactions. The estimated cost to NMFS for placing observers on selected bottomfish vessels is $60,000 per year (15 observer trips).

The primary reason the Council proposed this observer requirement on an emergency basis was the precarious condition of the Hawaiian monk seal population, which made it imperative that accurate and site specific data on interactions be collected immediately. If interactions were in fact occurring, the effects of such interactions could be evaluated and solutions to any problems could be identified quickly. Therefore, in the Council's view, it was crucial that this rule go into effect on an emergency basis, and this was approved by the Secretary.

Amendment 4 proposes that regulations that would institute these emergency measures on a permanent basis go into effect upon the expiration of the emergency regulations, if not sooner. In the Council's view, the conditions that generated the need for emergency action continue to exist, and implementation of Amendment 4 will provide for continuation of data collection necessary to arrive at long-term solutions to conservation problems facing the bottomfish fishery.

With the Council's concurrence the proposed rule varies from the emergency rule in the following ways. In addition to continuing the emergency rule requirement of notifying the Regional Director before fishing within 50 nm of certain NWHI, the proposed regulations would extend this requirement to include the waters within 50 nm of Nihoa Island, Necker Island and Maro Reef. These areas are referred to as protected species study zones. These regulations would also authorize the Regional Director, Southwest Region, NMFS, to adjust the size of the protected species study zones after consultation with the Council, if it is determined that the fishery is not adversely affecting any threatened or endangered species.

The proposed rule would also revise requirements pertaining to permit applications to allow for consolidation in the permit application process for fisheries in the western Pacific region.

In addition, a technical revision is being made to § 683.21 (a)(4). In this paragraph the word groundfish would be revised to read bottomfish so that the meaning of the paragraph is consistent with the original intent and language of the bottomfish fishery limited access program, which was established by Amendment 2 to the FMP. This revision would not affect the status quo of the fishery.

The Secretary requests comments on the Council's proposal.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, would take into account the data, views, and comments received during the comment period.

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act require the Secretary to publish this proposed rule 15 days after its receipt. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow the regular procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft regulatory impact review (RIR), which is incorporated into the draft amendment. The RIR demonstrates long-term benefits to the fishery under the proposed management measures. The

proposed rule, if adopted, is not expected to have an annual impact of $100 million or more, nor lead to an increase in costs or prices to consumers, individual industries, Federal, state, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

The Council prepared an environmental assessment (EA) for the amendment that is incorporated into the amendment document. A copy of the EA is available from the Council (see **ADDRESSES**).

This rule would maintain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This requirement was established by the emergency rule as a result of the observer program. Placing observers aboard bottomfish vessels in the NWHI ensures the collection, processing and analysis of data needed for sound management decisions. Vessel owners or operators who intend to fish within protected species study zones around certain northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island) must notify the Regional Director so that NMFS has the opportunity to place an observer aboard their vessels.

Observers will ensure the collection of data and document whether there are adverse interactions with protected species and the particulars of the interactions. The public reporting burden for this collection-of-information is 2 minutes for the pre-trip notification. This includes the time to review and compile the information. This collection-of-information has been approved by OMB, OMB Control Number 0648–0214.

With the Council's concurrence a revised reporting requirement is proposed under this rule. Information requested from bottomfish permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fisheries permits in the western Pacific region. An applicant for a NWHI bottomfishing permit would use the same application form and provide the same information on vessel owner, vessel operator, and vessel as a person who applies for a precious corals, crustaceans, and/or pelagic longline fishing permit(s). The public reporting burden for this collection-of-information is estimated to average 15 minutes per application. A request for approval of this information collection has been submitted to the OMB as part of a request for extension of authority to continue collections under the title, Southwest Region Federal Fisheries Permits. Send comments on the reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to OMB (see **ADDRESSES**).

The Council determined that this rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the State of Hawaii and the Territories of American Samoa and Guam. This determination has been submitted for review by the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act.

Implementation of this rule is not an action that will adversely affect any species listed as endangered or threatened under the Endangered Species Act of 1973 or any species protected by the Marine Mammal Protection Act of 1972.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 11, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is proposed to be amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. . The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 683.2, the following definitions are added in alphabetical order to read as follows:

§ 683.2 Definitions.

* * * * *

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 683.6, new paragraphs (i), (j), and (k) are added to read as follows:

§ 683.6 Prohibitions.

* * * * *

(i) Fishing within the protected species study zones in the Northwestern Hawaiian Islands without notifying the Regional Director of the intent to fish in these zones as required under § 683.29.

(j) Fishing without an observer after having been requested to do so by the Regional Director as required under § 683.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

4. In § 683.21 paragraphs (a)(4), (b), (d), (e)(2), and (g) are revised to read as follows:

§ 683.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(4) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner or a designee of the owner at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contain at least the following information:

(i) Whether the application is for a new permit or a renewal;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Whether the vessel is used primarily for fishing or transshipment activities;

(viii) Official number of the vessel;

(ix) Radio call sign of the vessel;

(x) Principal port of the vessel;

(xi) Length of the vessel;

(xii) Engine horsepower;

(xiii) Approximate fish hold capacity;

(xiv) Number of crew;

(xv) Construction date;

(xvi) Date vessel purchased;

(xvii) Purchase price;

(xviii) Type and amount of fishing gear carried on board the vessel;

(xix) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xx) Signature of the applicant; and

(xxi) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) * * *

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

* * * * *

(g) *Renewal.* An application for renewal must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

* * * * *

5. A new § 683.29 is added to read as follows:

§ 683.29 Observers.

(a) The owner or operator of a fishing vessel subject to this part shall inform the Pacific Area Office by telephone, (808) 955–8831, at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones located within 50 nm of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island of the NWHI. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is required, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director.

(d) The Regional Director may change the size of any of the protected species study zones described in paragraph (a) of this section:

(1) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the Endangered Speices Act;

(2) After consulting with the Council; and

(3) Through a notice of the **Federal Register** published at least thirty (30) days prior to the effective date or through actual notice to the permit holders.

(e) All observers must be provided with sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

[FR Doc. 91–6240 Filed 3–12–91; 2:59 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 685

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 2 to its Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) for Secretarial review and is requesting comments from the public. Copies of Amendment 2 may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the amendment should be submitted on or before May 6, 1991.

ADDRESSES: All comments should be sent to E. C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, Hawaii 96813, (808) 541–1974.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, Californa (213) 514–6660 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 855–8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment.

Amendment 2 proposes to establish on a permanent basis the permit,

logbook, and observer requirements applicable to longline fishing and transshiping vessels in the exclusive economic zone (EEZ) of the western Pacific under emergency rules promulgated by the Secretary of Commerce, at the Council's request, effective November 27, 1990 (55 FR 49285). These emergency regulations will remain in effect until May 25, 1991. Amendment 2 differs from the emergency rule in the following ways: (1) Permit and reporting requirements apply throughout the entire range of tuna, billfish, oceanic sharks, mahimahi, and wahoo in the tropical and subtropicala central and western Pacific; (2) Maro Reef, Nihoa and Necker Islands have been included in the protected species study area; (3) the Regional Director, NMFS, Southwest Region, is authorized to change the size of the study area upon consultation with the Council if the Regional Director finds that the fishery is not having an adverse impact on protected species; (4) vessel operators are required to attend an orientation meeting with the Pacific Area Office regarding procedures for protecting endangered and threatened species, maring mammals and seabirds; (5) a transshipment logbook form is required for reporting transshipments of longline-caught fish; (6) longline vessel operators are required to mark their longline floats so that the gear can be identified; and (7) permits will not be renewed for vessels which fail to comply with reporting requirements.

The Council proposes that the effective date of the amendment coincide with expiration of the emergency regulations.

An environmental assessment and a regulatory impact review/initial regulatory flexibility analysis are incorporated into the amendment which can be obtained from the Council (see **ADDRESSES**).

Proposed regulations to implement Amendment 2 are scheduled to be filed at the Office of the **Federal Register** within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 12, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-6200 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-032]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 14 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulate articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-039-01, renewal of Permit 89-257-04, issued on 02-21-90.	U.S. Department of Agriculture, Agricultural Research Service.	02-08-91	Potato plants genetically engineered to contain a marker gene.	Idaho.
91-042-01	Agrigenetics Company	02-11-91	Rapeseed plants genetically engineered to express a deltaendotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Wisconsin.
91-042-02, renewal of Permit 89-290-01, issued on 02-16-90.	Auburn University	02-11-91	*Xanthomonas campestris* pv. *campestris* genetically engineered to contain a gene to confer bioluminescence as a marker.	Alabama.
91-043-01	Louisiana State University	02-12-91	Rice plants genetically engineered to contain a hygromycin marker along with one of the following structural genes: a rice storage protein gene, bean storage protein gene, pea storage protein gene, and a deltaendotoxin protein from *Bacillus thuringiensis* subsp. *sotto*.	Louisiana.
91-044-01	Campbell Institute for Research and Technology.	02-13-91	Tomato plants genetically engineered to express an antisense polygalacturonase (PG) gene.	California.
91-050-01	Calgene, Incorporated	02-19-91	Tomato plants genetically engineered to contain an antisense polygalacturonase (PG) gene or the *tmr* developmental gene.	California.
91-050-02	Monsanto Agricultural Company	02-19-91	Potato plants genetically engineered to express the *Bacillus thuringiensis* subsp. *tenebrionis* delta-endotoxin protein.	Maine.
91-051-01	Monsanto Agricultural Company	02-20-91	Soybean plants genetically engineered to confer tolerance to the herbicide glyphosate.	Georgia, Illinois, Indiana, Iowa, Kentucky, Nebraska, Ohio, & Tennessee.
91-051-03	Upjohn Company	02-20-91	Soybean plants genetically engineered to confer tolerance to bialophos herbicides.	Arkansas, Illinois, & Maryland.
91-052-02	Montana State University	02-21-91	Potato plants genetically engineered to express a cecropin B analog gene intended to confer resistance to potato ring rot bacteria.	Montana.

Application No.	Applicant	Date received	Organism	Field test location
91-052-06	Pioneer Hi-Bred International, Incorporated	02-21-91	Corn plants genetically engineered to confer tolerance to the herbicide chlorsulfuron.	Iowa.
91-052-07	Pioneer Hi-Bred International, Incorporated.	02-21-91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Washington.
91-052-08	Pioneer Hi-Bred International, Incorporated.	02-21-91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Iowa.
91-053-01	Upjohn Company	02-22-91	Tomato plants genetically engineered to express tobacco mosaic virus (TMV), or tomato mosaic virus (ToMV) coat protein; or expressing the TMV-U1 54 kD protein.	Michigan.

Done in Washington, DC, this 11th day of March 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-6267 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corp.

Bylaws of Corporation

The Bylaws of the Commodity Credit Corporation, amended February 13, 1991, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.



MEETINGS OF THE BOARD

Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, on Wednesday at 9:30 a.m. in the Board meeting room in the U.S. Department of Agriculture in the City of Washington, DC. Notice of such meetings shall be provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice President at the written request of any five Members. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any Member may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unless otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Coporation shall, as General Counsel and Associate General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Agricultural Stabilization and Conservation Service, and the Secretary shall attend meetings of the Board. Each of the Vice Presidents and Deputy Vice Presidents, and the Controller shall attend meetings of the Board during such time as the meetings are devoted to consideration of matters as to which they have responsibility.

9. Other persons may attend meetings of the Board upon specific authorization by the Chairman, Vice Chairman, or President.

Compensation of Board Members

10. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Member, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

11. The officers of the Corporation shall be a President, Vice Presidents, and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

12. The Under Secretary of Agriculture for International Affairs and Commodity Programs shall be ex officio President of the Corporation.

13. The following officials of the Agricultural Stabilization and Conservation Service (hereinafter referred to as ASCS), Foreign Agricultural Service (hereinafter referred to as FAS), Food and Nutrition Service (hereinafter referred to as FNS), and the Agricultural Marketing Service (hereinafter referred to as AMS) shall be ex officio officers of the Corporation:

Administrator, ASCS; Executive Vice President.
Administrator, AMS; Vice President.
Administrator, FAS; Vice President.
Administrator, FNS; Vice President.
General Sales Manager and Associate Administrator, FAS; Vice President.
Associate Administrator, ASCS; Vice President.
Deputy Administrator, State and County Operations, ASCS; Deputy Vice President.
Deputy Administrator, Commodity Operations ASCS; Deputy Vice President.
Deputy Administrator, Management, ASCS; Deputy Vice President.
Deputy Administrator, Program Planning and Development, ASCS; Deputy Vice President.
Executive Assistant to the Administrator, ASCS; Secretary.
Director, Executive Analysis and Appraisal Staff, Office of the Administrator, ASCS; Deputy Secretary.
Director, Financial Management Division, ASCS; Controller.
Deputy Director, Financial Management Division, ASCS; Treasurer.
Chief, Financial Accounting, Reports and Analysis Branch, Financial Management Division, ASCS; Chief Account.

The person occupying, in an acting capacity, the office of any person designated ex officio by this paragraph 13 as an officer of the Corporation shall, during his occupancy of such office, act as such officer.

14. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

15. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining or developing, or as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

16. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), and (e) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS. He shall also perform such special duties and exercise such powers as may be prescribed, from time time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager and Associate Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FNS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FNS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

17. The Vice President who is the Associate Administrator, ASCS, and the Deputy Vice President shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all papers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Controller

19. The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Treasurer

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the Corporation; and shall issue instructions incidental thereto; shall be responsible for documents relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall coordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for the account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

The Chief Accountant

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

Other Officials

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of ASCS, FAS, FNS, and AMS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of ASCS, FAS, FNS, AMS, or the General Sales Manager and Associate Administrator, FAS.

23. The Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS shall be Contracting Officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

24. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

25. The Executive Vice President who is the Administrator of ASCS and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

26. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each instrument shall be filed with the Secretary.

27. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

28. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

29. These Bylaws may be altered or amended or repealed by the Secretary of Agriculture, or subject to his approval by action of the Board at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alternation, amendment, or repeal be contained in the notice of such special meeting.

Approval of Board Action

30. The action of the Board shall be subject to the approval of the Secretary of Agriculture.

I, James V. Hansen, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended February 13, 1991.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this eighth day of March, 1991.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 91-6162 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Sequoia National Forest, CA; Appeal Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Tule River Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision resulting from the Dennison Insect Salvage, Rogers Camp Insect Salvage, Needles Insect Salvage, Divide Insect Salvage, Wishon Insect Salvage, and Lloyd Meadows Insect Salvage analyses. These environmental analyses (which will be combined in one environmental document) are being prepared in response to the severe timber mortality in the Tule River and Kern River watersheds. The unusual mortality is being caused by drought and related insect infestation.

The Dennison Insect Salvage analysis area is within the North Fork of the Tule River watershed adjacent to the Mountain Home State Forest and one mile south of Sequoia National Park. The Rogers Camp Insect Salvage analysis is within the South Fork of the Middle Fork of the Tule River watershed and is one mile north of the Tule River Indian Reservation. The Needles Insect Salvage analysis area is within the Peppermint and Needlerock Creek watersheds and is within one mile of the Kern River which is designated a Wild and Scenic River. The Divide Insect Salvage analysis area is within both the Tule River and Kern River watersheds, adjacent to the Golden Trout Wilderness to the north and adjacent to the Freeman Creek Redwood Grove to the east. The Wishon Insect Salvage analysis area is within the Hossack Creek watershed and is adjacent to the Mountain Home State Forest and the Doyle Springs community. The Lloyd Meadows Insect Salvage analysis is within the Lloyd Meadows and Freeman Creek watersheds and is within one mile of the Kern River which is designated as a Wild and Scenic River.

There are currently much higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of four consecutive years of below normal precipitation. The Tule River District is proposing tractor harvest of 200 thousand (MBF) on 1,570 acres in the Dennison Insect Salvage analysis area, 200 MBF on 1,700 acres in the Rogers Camp Insect Salvage analysis area, 150 MBF on 2,700 acres in the Lloyd Meadows Insect Salvage analysis area, 800 MBF on 9,000 acres in the Divide Insect Salvage analysis area, and proposing harvest of 250 MBF on 1,400 acres, and 400 MBF on 4,100 acres employing both helicopter and tractor yarding in the Wishon and Needles Insect Salvage analysis area, respectively. No new road construction or road reconstruction is planned for any of the analysis areas. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles. Trees killed by insect attack deteriorate very rapidly. (Species affected within all analysis areas are comprised of 50% pine and 50% fir).

Prompt removal of the dead and dying timber minimizes value and volume loss. It is likely that helicopter logging will be in progress on the Tule River District during the spring and early summer of 1991. If the proposed insect salvage projects are not delayed due to appeals, it is possible that the helicopter contractors will still be in the area and available to bid on contracts for the helicopter salvage portions of the proposed project. If the proposed helicopter projects are delayed by appeals, it is likely that the helicopter contractors will have completed their current contracts and will not be available to bid on the proposed helicopter salvage. If this happens, it is likely that there will be no bids on the helicopter portions of the proposed project. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1992 logging season, which could decrease the value by as much as $100,000. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decision for the proposed projects is scheduled to be issued in April 1991. If projects are delayed because of appeals (delays can be up to 100 days, with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is likely that the projects would not be implemented this field season. This would result in substantial monetry loss.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands affected by drought-induced timber mortality in the North Fork of the Tule River, South Fork of the Middle Fork of the Tule River, Peppermint, Needlerock, and Hossack Creek watersheds. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648; or to James A. Crates, Forest Supervisor, Sequoia National Forest, 900 West Grand Avenue, Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: The environmental analyses for this proposal will be documented in the Tule River District Drought Related Insect Salvage Areas environmental document. Pursuant to 40 CFR 1501.7, scoping was conducted by the Tule River District Ranger to determine the issues to be addressed in the environmental analyses. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners and others known to be interested. Copies of the scoping letters and responses are on file at the District office. The environmental document and related maps will be available for public review at the Tule River Ranger District Office, 32588 Highway 190, Springville, California 93265.

The catastrophic damage presently occurring in the six salvage areas involves approximately 20,470 acres. Within this area, approximately 4,000 acres, with an associated 2.0 million board feet, it presently being analyzed for salvage in six sales. The value to the Forest Service of the salvage volume is estimated at $300,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Tular County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

The proposals are not expected to adversely affect snag-dependent wildlife species. Initial review indicates that post-harvest snag numbers will approximate the Forest Plan Standard and Guidelines of 1.5 snags per acre. No wild and scenic rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project areas.

Dated: March 8, 1991.

Joyce T. Mursoka,

Deputy Regional Forester.

[FR Doc. 91-6180 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-11-M

Buck-Allen Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to harvest timber in the Underwood Mountain Area. A portion of the project is within the released Underwood Roadless Area. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by June 1, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the anlaysis to Charley Fitch, District Ranger, Shasta-Trinity National Forests, Star Route 1, Box 10, Big Bar, California 96010.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Dick Stiliha, Timber Management Officer, Shasta-Trinity National Forests, Star Route 1, Box 10, Big Bar, California 96010, phone (916) 623–6106.

SUPPLEMENTARY INFORMATION: In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives inlcuding that of no action for the analysis area. Other alternatives will consider harvesting from 5.0 to 8.0 million board feet of timber using a variety of silvicultural (i.e., partial, shelterwood, and clear cutting) and logging (i.e., helicopter, tractor, and cable) systems.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, California 96001, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in the preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1992. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or merits of the alternatives discussed (see The Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by September 1992. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: March 8, 1991.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 91-6138 Filed 3-14-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: Advance Monthly Retail Sales Survey
Form number(s): B–104(87)
Agency approval number: 0607–0104
Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
Burden: 3,267 hours
Number of respondents: 3,267
Avg hours per response: 5 minutes
Needs and uses: The Bureau of the Census uses the Advance Monthly Retail Sales Survey to collect monthly sales data from a national panel of retail establishments. The survey provides an early indication of current retail trade activity at the United States level. The Council of Economic Advisors, Bureau of Economic Analysis, Federal Reserve Board, and other government agencies and businesses use the monthly sales estimates in formulating economic decisions.
Affected public: Businesses or other for-profit organizations; Small businesses or organizations
Frequency: Monthly
Respondent's obligation: Voluntary
OMB desk officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6250 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Census
Title: Monthly Wholesale Trade Survey
Form number(s): B–310

Agency approval number: 0607–0190
Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
Burden: 5,332 hours
Number of respondents: 5,559
Avg hours per response: 10 minutes
Needs and uses: The Bureau of the Census conducts this survey to obtain sales and inventory data from merchant wholesalers in order to produce statistics on wholesale sales, end-of-month inventories, methods of inventory valuation, and stock/sales ratios. The Bureau of Economic Analysis (BEA) uses wholesale data in its calculations of the Gross National Product (GNP). The BEA also uses data on methods of inventory valuation and changes in valuation methods to improve the reliability of inventory adjustments applied in the quarterly GNP estimates. Other government agencies and businesses use the published estimates to gauge the current trends of the economy.
Affected public: Businesses or other for-profit organizations, Small businesses or organizations
Frequency: Monthly
Respondent's obligation: Voluntary
OMB desk officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-6251 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 13–91]

Foreign-Trade Zone 25—Broward County, FL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Everglades Authority, grantee of FTZ 25, requesting authority to expand its zone to include the Westport Business Park in the Town of Davie, Broward County, Florida, within the Port Everglades Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 1, 1991.

FTZ 25 was approved on December 27, 1976 (Board Order 113, 42 FR 61, 1/3/77), and expanded on August 11, 1978 (Board Order 132, 43 FR 36989, 8/21/78). The zone project currently consists of an 82-acre industrial park site within the 300-acre Port Everglades port complex and a privately owned public warehousing facility (47,000 sq. ft.) located adjacent to the port at 1100 NE., 7th Avenue, Dania, Florida.

The grantee is now requesting authority to expand the zone to include, as an additional zone site, the Westport Business Park (91 acres) located at 3001 SW. 64th Avenue in Davie, some 3 miles east of the port. The park is owned by Westport Business Park Limited Partnership and operated by the Trammel Crow Company. No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Regional Director, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, FL 33131–2592; and, Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232–0019.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 1, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, P.O. Box 13123, State Road 84, Fort Lauderdale, FL 33316.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 12, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-6252 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 28–85]

Foreign-Trade Zone 30—Salt Lake City, UT, Application for Subzone, Hercules Carbon Fiber Plant, Magna, UT; New Information/Reopening of Comment Period

The comment period for the above case involving a proposed special-purpose subzone for the carbon fiber materials plant of Hercules, Inc., in Magna, Utah (50 FR 33808, 8/21/85), is reopened until April 30, 1991, to provide interested parties with an opportunity to comment on new information submitted by the applicant. The applicant has submitted the information pursuant to 15 CFR 400.1310, based on changed circumstances. The new information discusses changed market conditions with respect to carbon fiber materials and polyacrylonitrile (PAN) fiber used in its production.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 4213, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 11, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-6253 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: March 15, 1991.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 29, 1992.

Antidumping duty proceedings	Periods to be reviewed
Canada:	
Racing Plates	
A-122-050	
Equine Forgings	2/1/90–1/31/91
Japan:	
Mechnical Transfer Presses	
A-588-810	
Fukui, Aida Engineering Ltd., Hitachi Zosen Corp., Ishikawajima-Harima, Heavy Industries.	8/18/89–1/31/91
Korea:	
Small Business Telephones	
A-580-803	
Samsung Electronics Co. Ltd.	8/3/89–1/31/91

Countervailing duty proceedings	Periods to be reviewed
Saudi Arabia:	
Carbon Steel Wire Rod	
C-517-501	1/1/90–12/31/90
Thailand:	
Malleable Iron Pipe Fittings	
C-549-803	1/1/90–12/31/90

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1988).

Dated: March 8, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-6254 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-25-M

INTERNATIONAL TRADE ADMINISTRATION

[A-427-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and notice of partial termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof, cylindrical roller bearings (CRBs) and parts thereof, and spherical plain bearings (SPBs) and parts thereof. The reviews cover 10 manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Although we initiated reviews for 3 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn.

As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 66.42 percent for BBs, from 0.29 to 22.73 percent for CRBs, and from 22.84 to 39.00 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF France, SARMA, and ADR), Thomas McGinty (SNECMA, Dowty Rotol, Turbomeca, Aerospatiale, and Fiat), Maureen McPhillips (SNR and INA Roulements), Laurel Lynn (Pratt & Whitney), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20902) the antidumping duty orders on ball bearings, cylindrical roller bearings, spherical plain bearings, and parts thereof from France.

On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Subsequent to the publication of our notice of initiation of these reviews, we received timely requests for withdrawal of review for certain firms. Because there were no requests for review from any other interested parties, we are terminating these reviews with respect to the following firms, in accordance with 19 CFR 353.22(a)(5):

Name of firm	Class or kind
Application Aeronautique	All
Valeo, Societe Anonyme	All

Although we initiated separate reviews of SARMA and ADR Les Applications, these firms are affiliated with SKF France. Accordingly, we are treating SKF France, SARMA, and ADR as one entity for these reviews, and sales by SARMA and ADR will receive the SKF France rate.

Subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation, to review all of its imports of BBS and CRBs from the United Kingdom. The request covered Dowty Rotol Ltd., a British-based reseller of BBs and CRBs produced not only in the United Kingdom, but in France as well. Dowty Aerospace informed us that its review request was intended to include all imports from Dowty Rotol of BBs and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed French-made BBs and CRBs sold by Dowty Rotol Corporation from the United Kingdom to the United States.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and

aggregate cost and adjustment data. SNECMA and Pratt & Whitney chose this option.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

SNFA provided an inadequate response to the Department's questionnaire. INA Roulemates S.A. did not respond at all. For these firms, we used the highest margin calculated in the final determination of sales at less than fair value (LTFV) or this review as the best information otherwise available (BIA).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof.* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof.* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. HTS item numbers are provided for convenience and Customs purposes. In each case, the written description remains dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that the load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews", published concurrently with this notice.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988; January 22–28, 1989, March 5–11, 1989; June 4–10, 1989; August 20–26, 1989; October 1–7, 1989; November 5–11, 1989; January 14–20, 1990; and March 4–10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from both PP and ESP for ocean freight, marine insurance, U.S. and French inland freight and insurance, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates.

We made additional deductions from ESP, where applicable, for commissions to unrelated parties, credit expenses, inventory carrying costs, warranty expenses, advertising and sales promotion expenses, repacking in the United States, technical service expenses, export selling expenses, product liability expenses, and indirect selling expenses. Billing adjustments, which are corrections to the unit price, were added to gross unit price for SKF-France, SARMA, and ADR.

We disallowed SNR's direct advertising claim since it was not tied directly to sales of the subject merchandise. Instead, we characterized the expense as an indirect expense, and allowed the deduction on ESP sales.

In the case of SNECMA, we did not make adjustments to the U.S. price for research and development, material procurement and handling, bank charges, and independent research and development. We have determined that the above are not selling expenses and therefore should not be considered in the calculation of U.S. price.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. costomers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

Torrington, the petitioner, has alleged that bearings produced in France by SKF France have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

We consider those bearings otherwise subject to the order which are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaire, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

If subject bearings imported by firms under review constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise than bearings when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Foreign Market Value

The home market was viable for all companies. The Department used home market or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney, which sells French-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that Canada is the appropriate home market for sales of French-origin AFBs by Pratt & Whitney Canada.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex-factory, ex-godown, or delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, handling charges, rebates, commissions, discounts, warranty expenses, technical service expenses, advertising and sales promotion expenses, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing.

We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses.

We disallowed SNR's direct advertising claim because the expense could not be tied directly to sales of the subject merchandise. Instead, we characterized the expense as an indirect advertising expense, and allowed it as a home market deduction.

Where appropriate, for SKF France, SARMA, and ADR, we added to the home market gross unit price billing adjustments, freight revenue, and packing revenue. Billing adjustments are adjustments to unit price.

In the case of SNECMA, we have not allowed adjustments to the home market sales price for research and development, material procurement and handling, general administrative costs, bank charges, and independent research and development. We have determined that these are not selling expenses and therefore should not be considered in the calculation of FMV.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigation for SKF France and SARMA (which submitted a consolidated response to the Department's questionnaire). As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were determined to be below cost, we did not disregard any sales and made normal price-to-price comparisons. When 10 percent or more, but less than 90 percent, of the sales of a particular model were determined to be below the cost of production, we excluded the below-cost sales of that model from our calculation of FMV. When 90 percent or more of the sales of a particular home market model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV.

CV was used for calculating FMV of a particular models if a firm made sales below cost of a particular model or if a firm did not have contemporaneous sales of such or similar merchandise in the home market. CV includes materials, fabrication, general expenses, prof t, and packing. We used: (1) Actual general expense, or the statutory minimum of ten percent of materials and fabrication, whichever was greater, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine the following margins for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
Ball Bearings:	
SKF-France, SARMA, ADR	6.97
Fiat Aviazione S.p.A.	0.00
SNECMA	0.06
Aerospatiale	8.09
Turbomeca	10.43
Pratt & Whitney Canada, Inc.	4.89
SNR Roulements	0.36
INA Roulements	66.42
SNFA	66.42
Dowty Rotol	66.42
Cylindrical Roller Bearings:	
SKF-France, SARMA, ADR	No Sales
Fiat Aviazione, S.p.A.	No Sales
SNECMA	0.29
Aerospatiale	22.73
Turbomeca	1.86
Pratt & Whitney Canada, Inc.	4.89
SNR Roulemenmts	0.31
SNFA	22.73
INA Roulements	22.73
Dowty Rotol	No Sales
Spherical Plain Bearings:	
SKF-France, ADR, SARMA	29.55
Aerospatiale	22.84
Pratt & Whitney Canada, Inc.	No Sales
SNR Roulements	No Sales
Turbomeca	No Sales
INA Roulements	39.00

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 am. Hearings for firms involved in the French review, if requested, will be held on April 23, 1991, in room 3407, at 10 am. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate, for each class or kind of merchandise of antifriction bearings, based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class of kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period.

We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of our final results of these reviews for all shipments of the subject merchandise from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) If the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the final results of these reviews; (3) The cash deposit rate for all other manufacturers/exporters shall be 10.43 percent for shipments of ball bearings, 22.73 percent for shipment of cylindrical roller bearings, and 29.55 percent for shipments of spherical plain bearings. These are the highest non-BIA rates for any firms included in these reviews.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6255 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Italy. The classes or kinds of merchandise covered by these orders are ball and cylindrical roller bearings. The reviews cover nine manufacturers/exporters and the period November 9, 1988 through April 30, 1990. Although we initiated a review for one other manufacturer/exporter, we are terminating the review because the review request was withdrawn. As a result of the reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 155.99 percent for ball bearings (BBs), and from 1.47 to 18.90 percent for cylindrical roller bearings (CRBs).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Edmond O'Neill (FAG Cuscinetti), Thomas McGinty (SNECMA, FiatAvie S.p.A., Dowty Rotol), Michael Diminich (RIV-SKF), Laurel Lynn (Meter S.p.A., Rolls Royce), Michael Rill (Japanese Aero Engines Corporation), or Richard Rimlinger, Office of Antidumping

Compliance, International Trade Administration, U.S. Department of Commerce, DC 20230; telephone: (202 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20903) the antidumping duty orders on ball bearings and cylindrical roller bearings, and parts thereof, from Italy. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reivews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

Name of Firm	Class or Kind
FAG Cuscinetti	BBs & CRBs.
FiatAvio S.p.A. (Formerly FIAT Aviazione).	BBs & CRBs.
Meter S.p.A.	BBs & CRBs.
RIV-SKF	BBs & CRBs.
Rolls Royce	BBs & CRBs.
SNECMA	BBs & CRBs.
Somecat	BBs.
Danieli & Co. S.p.A.	BBs & CRBs.
Japanese Aero Engines Corporation.	BBs & CRBs.

Subsequent to the publication date of our notice of initiation, we received a timely withdrawal request for Danieli & Co. S.p.A. (Danieli). Because there were no other requests for review of Danieli from any other interested parties, we are terminating the review with respect to this company, in accordance with 19 CFR 353.22(a)(5).

Japanese Aero Engines Corporation had no sales of bearings subject to the antidumping orders during the review period. The firm will receive the rate for all other manufacturers/exporters indicated in this notice. Also, Rolls Royce had no sales of BBs and FAG Cuscinetti, Dowty Rotol and Meter S.p.A. had no sales of CRBs during the review period. These firms will also receive the rate for all other manufacturers/exporters with respect to these classes or kinds of merchandise.

Also, subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation to review all of its imports of BBs and CRBs produced not only in the United Kingdom, but in Italy as well. Dowty Aerospace informed us that its review request was intended to include all imports from Dowty Rotol of BBs and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed Italian-made BBs and CRBs sold by Dowty Rotol Corporation from the UK to the United Staes.

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. In the Italian reviews, SNECMA and Rolls Royce opted for this method.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulation provide that we may take into account whether a party refuses to provide requested information 19 CFR 353.37(b). For purposes of these reviews, we have used the most adverse BIA, generally the highest rate for any company from the less than fair value (LTFV) investigation, whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA, generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

Somecat provided an inadequate response to the Department's questionnaire. We used the highest margin for any company from the final determination of the LTFV investigation as BIA.

Rolls Royce did not respond adequately to the questionnaire regarding sales of AFBs by its subsidiary, Northern Engineering, Inc. (NEI). For these sales, we applied the highest rate calculated for Italy in the LTFV investigation. Also Rolls Royce did not submit complete data on its spare parts sales, some of which included bearings. For these sales, we also applied the highest rate from the LTFV investigation.

Finally, Meter S.P.A. did not provide specific packing costs for its U.S. sale, because it could not separate its packing and freight expense. We have applied FAG Cuscinetti's ranged, publicly available data for packing expenses as BIA.

Scope of Reviews

The products covered by these reviews are antifriction bearings (AFBs) (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thers of:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade does not influence whether the bearing is covered by the order. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, has alleged that Meter S.p.A. did not report all sales of products subject to this review. These products are described as load rollers, thrust rollers, chain sheaves, conveyor system trolley wheels, and chain wheels. Meter argues that these products are properly considered outside the scope of the order. What follows is our preliminary scope determination regarding these products. For purposes of these preliminary results, we have calculated Meter's margin based only on the sales reported.

Meter states that it reported all U.S. sales whose liquidation had been suspended under the antidumping duty orders issued on May 3, 1989, or under subsequent scope modifications to those orders. In support of its position that the products in question are not covered by the orders, Meter argues:

(1) Load rollers and thrust rollers are guide wheels specifically designed to guide the elevation of the mast uprights and the forklift carriage on forklift trucks and are, therefore, properly considered forklift truck mast components outside the scope of the orders. Meter states that Customs rulings provide that load rollers are not bearings but are parts suitable for use solely or principally with forklift trucks, classifiable under HTS item 8431.20.00. In support of its position, Meter provided New York Ruling 841216 (June 8, 1989) and Customs Headquarters Ruling 087775 (January 17, 1991). Meter states that the one Customs ruling which was provided by Federal-Mogul, in which these products are classified as bearings, was revoked by the Headquarters Ruling. Meter states that Customs Headquarters found that "[t]he load rollers function as wheels which have an outer section that rotates around a fixed inner section, and a reinforced tire designed to roll on certain surfaces and withstand impact." Meter, again referring to the Customs Headquarters Ruling, argues that "load rollers are wheels, not bearings, because 'load rollers perform the antifriction and support functions of complete wheels and similar rollers, not the functions of mere bearings.' "

(2) Chain sheaves are pulley wheels and idler pulleys specifically designed to facilitate the movement of chains and hydraulic hoses used to elevate and lower the carriage assembly of a forklift truck and are, therefore, properly considered forklift truck mast components outside the scope of the orders. Meter states that chain sheaves are classified by Customs as pulleys under HTS item 8483.50, and argues that even Federal-Mogul concedes that chain sheaves may be classified as pulleys and not bearings.

(3) Trolley wheels and chain wheels are guide wheels that roll along the tracks of a conveyor system, and are, therefore, properly considered conveyor system components outside the scope of the orders. Meter states that trolley wheels and chain wheels for conveyor systems are classified under HTS 8431.20, the subheading for parts suitable for use solely or principally in conveyors and that Federal-Mogul does not dispute this.

Federal-Mogul argues that these products, all of which include ball bearings, are commonly referred to as mast guide bearings and chain guide bearings for forklift trucks, as well as trolley wheel bearings and chain wheel bearings for conveyor systems, and that all are properly considered within the scope of the order. In support of its position, Federal-Mogul argues:

(1) Both "load rollers" and "thrust rollers" for forklift applications are also known as mast guide bearings. Federal-Mogul states that these products are ball bearings in which (a) the outer race has been specially thickened and shaped to function as though it were a "tire" rolling up and down the mast channel or (b) a separately fabricated "tire" is placed around a bearing insert having a normal outer race. Federal-Mogul provided copies of various documents (April 1986 Federal-Mogul product brochure; Industrial Information Headquarters, Inc., "Bearing Manual Cyclopedia" (1981); and several Federal-Mogul drawings required by various companies) in which these articles are referred to by a variety of names. Federal-Mogul argues that regardless of whether these products are labelled as bearings or rollers or something else and regardless of whether they are associated with the word "load" or the word "thrust" they are mast guide bearings. Finally, Federal-Mogul argues that Customs classifications are not determinative for purposes of the antidumping law.

(2) Chain sheaves are also known as chain guide bearings. Federal-Mogul states that these are ball bearings with an integral outer race tire or with a separate tire for assembly around the outer ring. Federal-Mogul states that the aspect of a chain guide bearing which distinguishes it from a mast guide bearing is the contour of the outer race/tire. Further, Federal-Mogul states that the "Bearing Manual Cyclopedia" treats chain guide bearings merely as particular types of mast guide bearings. Finally, Federal-Mogul argues that although a bearing which functions as a pulley may be properly classifiable as a pulley for tariff purposes, no reasonable person should conclude that a mere change in contour of the outer race/tire would cause a mast guide bearing to cease being a bearing.

(3) These wheel items for conveyor systems embody no salient differences from the mast guide and chain guide bearings. Federal-Mogul states that these items may be constructed by employing a specially designed outer race to serve as the tire or by assembling a separate tire around a bearing insert having its own outer race.

In conclusion, Federal-Mogul argues that the products at issue frequently consist of nothing more than a ball bearing in which the outer race ahs been thickened and specially contoured to serve as the tire. Further, Federal-Mogul states that where these products consist of a bearing insert within a separate tire, they are still subject to the Department's review since housed bearings and mounted bearings are indisputably covered by the antidumping duty orders.

Analysis

Pursuant to 19 CFR 353.29(1), in considering whether a particular product is within the scope of an order, the Secretary will take into account the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary and the Commission. With regard to the issue of whether the products in question are within the scope of the orders, we find the descriptions in the final determination of the LTFV investigation to be dispositive (see 54 FR 18992–19019, May 3, 1989).

In the LTFV investigation, we noted that "It should also be clear that tariff classification numbers are *not* determinative of the products under investigation. The written description of the scope of the investigation defines the products under investigation." (54 FR 18992, 19011, 19017, May 3, 1989, citation omitted). Therefore, we agree with Federal-Mogul that Customs classifications are not determinative for purposes of the antidumping law. Additionally, we disagree with Meter's position that because Customs did not suspend liquidation on its imports of these products that they are not within the scope of the order.

We preliminarily determine that both load rollers and thrust rollers, which Meter refers to as forklift truck mast components, are within the scope of the orders. These products contain the four basic components that most antifriction bearings contain: outer ring or outer race, inner ring or inner race, a series of balls or roller elements which fit into openings in the separator or cage, and a separator or cage which keeps the balls or rollers equally distributed around the races. (54 FR 19013, May 3, 1989). The fact that these products have either an

BEST COPY AVAILABLE

outer race thickened or shaped to function as a tire or a separately fabricated tire placed around a bearing insert does not remove these products from the scope of the orders. As noted in the final determination of the LTFV investigation (in discussing textile-machinery components) "bearings (including mounted or house units, and flanged or enhanced bearings) . . . are clearly covered by these investigations." (54 FR 18992, 19017, May 3, 1989). Further, in excluding split pillow block housings from the scope of the investigations, the Department noted that only those split pillow block housings which do not contain a subject bearing are outside the scope of the investigations, but the mounted bearings, such as pillow block units, are within the scope of the investigations.

Finally, the Department noted in its final determination that "any of the subject (antifriction) bearings, regardless of whether they may ultimately be utilized on textile machinery, aircraft, automobiles, or other equipment, are in fact within the scope of these investigations." (54 FR 18992, 19011, 19017, May 3, 1989, citation omitted). Therefore, we do not agree with Meter's argument that because these products are used in forklift truck applications that they are outside the scope of the orders.

We preliminarily determine that the products Meter refers to as chain sheaves are outside the scope of the orders. We disagree with Federal-Mogul's argument that these products are distinguished from mast guide bearings only by the contour of the outer race/tire. As noted in the Department's final determination, the primary AFB function is to reduce friction and wear between moving and fixed parts. (54 FR 18992, 18999, May 3, 1989). According to Meter and Customs, these products function as pulleys. Federal-Mogul does not dispute this. Therefore, we preliminarily determine that, because these products do not function as AFBs, as described in the Department's final determination, they are appropriately considered pulleys outside the scope of the orders.

We preliminarily determine that the products Meter refers to as trolley wheels and chain wheels for use in conveyor systems are outside the scope of the orders. Similar to the above discussion of chain sheaves, these products do not function as AFBs, as described in the Department's final determination. Rather, they function as wheels. Therefore, they are outside the scope of the orders.

We invite parties to comment on these preliminary scope determinations, which we will address along with all other comments received regarding these preliminary results.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772, of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burdens involved in calculating individual margins for all these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988 January 22–28, 1989, March 5–11, 1989, June 4–10, 1989, August 20–26, 1989, October 1–7, 1989, November 5–11, 1989, January 14–20, 1990, and March 4–10, 1990. We reviewed all PP sales transactions during the period to review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions from both PP and ESP, where appropriate, for ocean freight, marine insurance, U.S. and foreign inland freight, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP, where appropriate, for commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses. We also added an amount for an import duty that was rebated or not collected by reason of the exportation of the merchandise, as specified in section 772(d)(1)(B) of the Tariff Act.

FiatAvio consigned merchandise to unrelated U.S. firms, which set the price and sold the merchandise after importation into the United States. The company claims that these are PP sales. However, because the sales occurred after importation, we consider them to be ESP transactions.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class of kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class of kind. We have also excluded from our calculations (but not from the orders) replacement bearings for defective parts, and bearings used as promotional samples.

We have excluded from the orders sales by FAG Cuscinetti and Rolls Royce to the U.S. government for military/defense procurement. These sales are excluded because they were made pursuant to a Memorandum of Understanding between Italy and the United States regarding military purchases, in accordance with section 1335 of the Omnibus Trade and Competitiveness Act of 1988.

Torrington, the petitioner, has alleged that bearings produced in Italy by RIV-SKF have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegation is inadequate, we have no reason to believe that SKF submitted an incomplete response.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV), as defined in seciton 773 of the Tarriff Act, as appropriate, to calculate foreign market value (FMV). In the cases of Rolls Royce and SNECMA, which sell Italian-origin bearings from the U.K. and France, respectively to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that the U.K. and France, respectively, are the appropriate home markets for sales of Italian-origin AFBs by Rolls Royce and SNECMA.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire are verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculated FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex factory, ex godown, or delivered prices to the first unrelated purchases in the home market. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in the physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs for RIV-SKF and FAG Cuscinetti. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular home market model were determined to be below the cost of production, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, if these expenses exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, if it exceeded the statutory minimum requirement of 8 percent of the sum of materials, fabrication, and general expenses, and (3) packing costs for merchandise exported to the United States. We made circumstance of sale adjustments for all direct selling expenses in accordance with 19 CFR 353.56. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
Ball bearings:	
FAG Cuscinetti	33.82
FiatAvio S.p.A	0.00
Meter S.p.A	0.00
SNECMA	0.93
Somecat	155.99
RIV-SKF	0.14
Rolls Royce	No Sales
Japanese Aero Engines Corporation	No Sales
Dowty Rotol	10.12
Cylindrical Roller Bearings:	
FAG Cuscinetti	No Sales
FiatAvio S.p.A	18.90
Meter S.p.A	No Sales
RIV-SKF	4.86
SNECMA	1.47
Rolls Royce	8.78
Japanese Aero Engines Corporation	No Sales
Dowty Rotol	No Sales

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to Italy, if requested, will be held on April 24, 1991 in room 3407, at 2 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise of antifriction bearings based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all subject units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 33.82 percent for shipments of ball bearings and 18.90 percent for shipments of cylindrical roller bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposit

requirements shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6526 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and notice of partial termination of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof, cylindrical roller bearings (CRBs) and parts thereof, and spherical plain bearings (SPBs) and parts thereof. The reviews cover 23 manufacturers/exporters and the period November 9, 1988 through April 30, 1990. Although we initiated reviews for 7 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 106.61 percent for BBs, from zero to 54.77 percent for CRBs, and from zero to 92.00 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Peer, Osaka Pump), Dionne C. Calloway (NTN, Isuzu), Wendy J. Frankel (Minebea, NPB), Robert Hamilton (Fujino, Izumoto Seiko, Kuroe, Nankai Seiko, Tottori Yamakai (KYK)), Breck J. Richardson (Takeshita), Michael R. Rill (Honda, IJK, JAEC, Koyo, NSK, Yamaha), Lynette Stoltzfus (Asahi Seiko, Nachi, Nakai, Showa Pillow Block, Wada Seiko), Ileana Crowley, or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 20904) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), spherical plain bearings (SPBs), and parts thereof from Japan. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

The initiation notice included reviews with respect to the following firms and classes or kinds of merchandise:

Name of Firm	Class or Kind
Fuji Heavy Industries	All.
HIC	All.
Kawasaki Heavy Industries	All.
Matsuo Bearing Co.	All.
R. Fukuda	All.
Sapporo Precision, Inc.	All.
Uchiyama Mfg. Corp.	All.

Subsequent to the publication date of our notice of initiation of these reviews, we received timely requests for withdrawal of review for the above firms. Because there were no other requests from any other interested parties for these companies, we are terminating these reviews, in accordance with 19 CFR 353.22(a)(5).

We also incorrectly initiated a review with respect to cylindrical roller bearings sold by Minebea. Since no request was received for this class or kind of merchandise sold by Minebea, we are terminating this review.

Nakai Bearing, Nankai Seiko, and Takeshita Seiko had no sales of CRBs subject to the antidumping order during the review period. Koyo, Nachi, NSK, and Nakai Bearing had no sales of SPBs subject to the antidumping order during the review period. We will use the rate for all other manufacturers/exporters indicated in this notice with respect to these classes or kinds of merchandise.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were Honda Motor Co. (for its aftermarket sales) and Yamaha Motor Co.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

Asahi Seiko and Japanese Aero Engines Corp. provided inadequate responses to the Department's questionnaire. Minebea did not respond at all. For these firms, we used the highest margin calculated for BBs and SPBs in the final determination of sales at LTFV as BIA. For Asahi Seiko and Japanese Aero Engines Corp., we used the highest margin calculated for CRBs during this review, since that rate exceeds the highest rate calculated for this same class or kind of merchandise from the LTFV investigation.

Nippon Pillow Block could not substantiate its labor, overhead, selling, general, and administrative expenses at verification. However, because of the level of cooperation exhibited by company officials at verification and because the company's response and verification were otherwise adequate, we are not using the most adverse BIA. Rather, we are using the highest rate found for any company in these reviews.

For Kuroe, we also used BIA. Kuroe's primary supplier, Maehara, knew that sales it made to Kuroe were for exportation to the United States. We understand that two minor suppliers had similar knowledge. Accordingly, we requested information from these suppliers concerning their sales to Kuroe destined for the United States. The two minor suppliers refused to respond. Although Maehara provided information which ultimately proved to be inadequate, the company attempted on numerous occasions to comply with our requests. Therefore, we used as BIA for Kuroe's sales of Maehara bearings the highest margin calculated for any company in these reviews. As BIA for Kuroe's sales of bearings supplied by the two minor suppliers, we used the highest margin calculated in the final determination of the LTFV investigation.

Scope of Review

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof.* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof.* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.00, 8708.99.50. Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaire, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that 1) load and thrust rollers, 2) chain sheaves and 3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review," published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988; January 22–26, 1989; March 5–11, 1989; June 4–10, 1989; August 20–26, 1989; October 1–7, 1989; November 5–11, 1989; January 14–20, 1990; and March 4–10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for ocean freight, marine insurance, U.S. and Japan inland freight, U.S. brokerage and handling charges, U.S. customs duties, export inspection fees, and discounts and rebates. We made additional deductions from ESP for commissions to unrelated parties, credit expenses, warranty expenses, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

Izumoto Seiko identified the following indirect selling expenses: travel, salaries, entertainment, office supplies, provision for doubtful accounts, postage, utilities, rent, telephone, commissions for foreign exchange, and advertising. We reclassified these as indirect expenses because they are not tied to specific sales.

We did not make any adjustments for Nankai Seiko's claimed warehousing expenses because, although reported in the company's narrative response, these expenses were not provided on the computer tapes.

Since certain suppliers of Peer International (Peer) knew that the merchandise they sold to Peer was destined for the United States, we based USP on sales from the suppliers to Peer. Several other of Peer's suppliers did not know the ultimate destination of their sales to Peer. For these sales, we have based USP on Peer's sales to the first unrelated party in the United States.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. "In Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished

motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

In these reviews, we believe that two firms, Honda and Koyo, exported to their U.S. affiliates the classes or kinds of merchandise covered by these orders that they further manufactured into merchandise of a different class or kind prior to sale to unrelated U.S. customers. If merchandise imported by these firms constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Sales by Koyo's U.S. affiliate to purchasers outside the United States are not subject to the orders. Although the merchandise entered the United States, there was no basis for USP since these sales were not made to unrelated customers in, or for exportation to, the United States.

Foreign Market Value

Except for Showa Pillow Block, the home market was viable for all companies. The Department used home market price, third country price, or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). We compared U.S. sales with sales of such or similar merchandise in the home market or a third country. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained sales information for the months of October 1988 and May 1990.

Home market prices were based on the packed ex-factory, ex-godown, or delivered prices to the first unrelated purchasers in the home market. We disregarded sales to related parties unless the respondent provided satisfactory evidence that these sales were made at arm's length. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, differences in export inspection fees, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses.

Third country prices to Germany were used as FMV for Showa Pillow Block because the company sold insufficient quantities of the merchandise in the home market during the period of review. Third country prices were based on the packed, c.i.f. delivered price to unrelated purchasers in the third country. We made deductions, where appropriate, for Japanese inland freight, ocean freight, and marine insurance. Where applicable, we made adjustments for differences in credit expenses and differences in cost attributable to physical characteristics of the merchandise.

Izumoto Seiko identified the following indirect selling expenses as direct selling expenses: travel, salaries, entertainment, office supplies, provision for doubtful accounts, postage, utilities, rent, telephone, commissions for foreign exchange, and advertising. We reclassified these as indirect expenses because they are not tied to specific sales.

In our original questionnaire, we requested CV data from Osaka Pump for its sales of nonidentical merchandise. However, in our deficiency letter, we neglected to alert the company that it had failed to provide this information. For purposes of the preliminary results, we have based this company's margins only on sales of identical merchandise. We will request this information again for purposes of the final results of these reviews.

Takeshita's home market is viable, but the company reported sales of such or similar merchandise to Mexico without providing an adequate explanation for not reporting home market matching sales. Because the home market is viable, but it appears that there are few or no model matches in the home market, we are using CV as the basis for calculating FMV.

NSK calculated certain expenses related to sales by each of its consolidated subsidiaries on the basis of the ratio of total expenses to total cost of goods sold. These expenses include inland freight, packing, credit, advertising, and indirect selling expenses. Since the expenses should have been calculated by applying the ratio of the expenses to the sales price rather than the cost of goods sold, we recalculated these expenses to reflect the ratio of each subsidiary's expenses to its total sales. We had adequate information to recalculate these expenses only for the fiscal year April 1989 through March 1990. Therefore, for sales outside that fiscal year, we used as BIA the lowest adjustment for the various expense amounts, i.e., the lowest ratio of expenses to sales, among the subisidiaries during that fiscal year.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs and CRBs for Koyo, Nachi, NPB, NSK, and NTN. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When 10 percent or more, but less than 90 percent, of the sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV. When 90 percent or more of the sales of a particular home market model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV.

CV was used for calculating FMV if a firm made more than 90 percent of its sales of a particular model below cost or if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater, (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs and general expenses, whichever was greater, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

For Takeshita Seiko, we disallowed any adjustment to CV for differences in direct selling expenses because the company did not provide an adequate explanation of the nature of these expenses.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988 through April 30, 1990 to be:

Company	Margin (percent)		
	Ball bearings	Cylindrical roller bearings	Spherical plain bearings
Asahi Seiko	106.61	54.77	92.00
Fujino Iron Works	3.18	—	—
Honda Motor Co	0.00	0.00	0.00
Inoue Jikuuke Kogyo (IJK)	2.10	5.44	(1)
Isuzu Motors	1.44	0.004	3.90
Izumoto Seiko	23.62	—	—
Japanese Aero Engines Corp	106.61	54.77	92.00
Koyo Seiko	0.49	0.02	(1)
Maehara/Kuroe	—	—	39.91
Minebea Co	106.61	—	92.00
Nachi-Fujikoshi Corp	40.10	43.40	(1)
Nakai Bearing Co	8.57	(1)	(1)
Nankai Seiko	37.11	(1)	(1)
Nippon Pillow Block (NPB)	54.54	—	—
NSK	10.02	54.77	(1)
NTN	7.23	0.00	4.11
Osaka Pump	0.00	—	—
Peer International	0.06	—	—
Showa Pillow Block Mfg	2.79	—	—
Taiki Seisakusho/Kuroe	—	—	92.00
Takeshita Seiko	0.86	(1)	(1)
Tottori Yamakai Bearing Seisakusho (KYK)	0.16	—	—
Wada Seiko	54.54	—	—
Yamaha Motor Co	30.17	11.32	39.91
Yamoto Seisakusho/Kuroe	—	—	92.00

[1] No U.S. sales during the period.
—Not subject to review.

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues, if requested, will be held on April 22, 1991 in room 4830 at 9 a.m. Any hearing on issues related solely to Japan, if requested, will be held on April 22, 1991 in room 4830 at 1 p.m. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise of antifriction bearings based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this

merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 54.54 percent for shipments of ball bearings, 54.77 percent for shipments of cylindrical roller bearings, and 39.91 percent for shipments of spherical plain bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposits requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6257 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-485-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Socialist Republic of Romania; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from the Socialist Republic of Romania. The class or kind of merchandise covered by the order is ball bearings (BBs). The review covers the sole exporter, Tehnoimportexport (TIE), and the period November 9, 1988 through April 30, 1990. As a result of the review, the Department has preliminarily determined the dumping margin for this firm to be 24.07 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Breck Richardson or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1131.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 19109) the antidumping duty order on ball bearings and parts thereof from Romania. On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firm and class or kind of merchandise:

Name of Firm	Class or Kind
Tehnoimportexport (TIE)	BBs.

Scope of Review

The products covered by this review are antifriction ball bearings, mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers above are provided for convenience and Customs purposes. The written description remains dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders.

For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews," published concurrently with this notice.

United States Price

In calculating United States price, the Department used purchase price (PP), as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b. price to unrelated purchasers in the United States. We made deductions for foreign inland freight and handling based on Yugoslavian surrogate information (see discussion under Foreign Market Value). No other adjustments were claimed or allowed.

Foreign Market Value

We have concluded that Romania is a nonmarket economy country for purposes of this administrative review. Given that this review was initiated subsequent to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988, which amended section 773(c) of the Tariff Act, we are required to use the constructed value based on the valuation of factors of production or prices of such or similar merchandise in a market economy country as the basis for determining foreign market value. The Tariff Act further provides that the Secretary will value the factors of production in a market economy country which is comparable in terms of economic development to the nonmarket country.

Of countries known to produce bearings, we determined that Yugoslavia, Algeria, Brazil, Malaysia, Mexico, and South Africa were comparable to Romania in stages of economic development. Questionnaires were sent to the U.S. embassies in each of these countries, but all responses received were inadequate. In the absence of usable information from the embassies, the Department resorted to use of information from publicly available sources for valuing factors of production. Of the identified surrogates, the only usable information available pertained to Yugoslavia. Therefore, we used publicly available Yugoslavian information whenever possible. Only when Yugoslavian data was unavailable or unusable, and after exhausting publicly available information from all of the possible surrogate countries listed above, did the Department turn to publicly available information from other countries, specifically Thailand and Taiwan. These countries were chosen because they were reasonably comparable to Romania in economic development, and the information needed was publicly available and deemed to be reliable, having been verified.

We used the following information to value the factors of production:

- We based the values for steel used to manufacture the inner and outer rings (AISI 52100), balls (AISI 52100), armatures (SAE 1008), rivets (AISI A 284 gr. B), locking collars (AISI 1045), shields (SAE 1008), and cages (SAE 1008) on official Eurostat data for Yugoslavian imports of these types of steel from the European Community;
- In the absence of reliable data from the surrogate countries, we based scrap value on the Eurostat data for imports of alloy scrap steel from the European Community to Yugoslavia;
- We based labor rates on data published by the International Labour Office ("ILO") for Yugoslavia;
- We based freight costs on public rates obtained from a freight company in Yugoslavia;
- We based overhead (including depreciation, indirect material, electricity, methane gas, grease, oil, and water) and indirect labor costs on the ratio of these costs to total cost of manufacturing for a bearings company in Thailand;
- We based general expenses on the ratio of general expenses to cost of manufacturing for a bearings company in Thailand;
- We used the statutory minimum of eight percent of the sum of material costs, fabrication costs, and general expenses for profit;
- As surrogate information for U.S. packing expense, we added to constructed value packing expenses based on cost data from an antifriction bearings manufacturer in Thailand.
- Costs associated with rubber seals were based on: material and labor cost data of a company in Taiwan; overhead and general selling and administrative expenses, which were derived by using the ratios calculated for completed bearings produced by the Thailand company; and the statutory eight percent profit rate.

Currency Conversion

We made currency conversions in accordance with § 353.60(a) of the Department's regulations (19 C.F.R. 353.60(a)). Normally, we use certified exchange rates furnished by the Federal Reserve Bank of New York, but no certified rates were available for the currencies we needed to convert (ECUs and Yugoslavian dinars). Therefore, all currency conversions were made using monthly average exchange rates published by the IMF, as best information available.

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Review period	Margin (percent)
Tehnoimportexport	11/9/88-4/30/90	24.07

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues, if requested, will be on April 26, 1991 in room 3407 at 9 am. Any hearing on issues related solely to Romania, if requested, will be on April 26, 1991 in room 3407 at 1 pm. Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review and the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Romania entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by the reviewed company will be that established in the final results of this review; (2) The cash deposit rate for all other manufacturers/exporters shall be 24.07 percent for shipments of ball bearings. This is Tehnoimportexport's rate. The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6256 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. The class or kind of merchandise covered by this order is ball bearings. The review covers two related manufacturers/exporters for the period November 9, 1988 through April 30, 1990. As a result of this review, the

Department has preliminarily determined the dumping margin for the related firms to be 6.96 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20907) the antidumping duty order on ball bearings (BBs) and parts thereof from Singapore. On June 11, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firms and class or kind of merchandise:

Name of firm	Class or kind
NMB Singapore Ltd. (NMB)/Pelmec Industries (Pte.) Ltd. (Pelmec).	BBs

Since NMB and Pelmec are related companies, we are treating them as one entity for purposes of this review.

Scope of Review

The products covered by this review are antifriction ball bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of ESP transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. Because NMB/Pelmec made more than 2000 ESP sales transactions to the United States, we selected sales from only the following weeks: November 9–12, 1988, January 22–28, 1989, March 5–11, 1989, June 4–10, 1989, August 20–26, 1989, October 1–7, 1989, November 5–11, 1989, January 14–20, 1990, and March 4–10, 1990. We reviewed all PP sales transactions during the period of review because there are few PP sales.

United States price was based on the packed ex-warehouse price (for ESP sales) or f.o.b. Singapore price (for PP sales). We made deductions from both PP and ESP for foreign inland freight and discounts and rebates. We made additional deductions from ESP for ocean freight, marine insurance, U.S. freight, U.S. brokerage and handling charges, U.S. customs duties, commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

NMB/Pelmec claimed adjustments for differences in inventory carrying costs and export selling expenses on their PP sales. We consider inventory carrying costs and export selling expenses to be indirect expenses because they cannot be tied to specific sales. Since we do not adjust PP sales prices for indirect selling expenses, we have disallowed these items.

We have excluded from our calculation of USP any bearings used as promotional samples that were provided free of charge to NMB/Pelmec's customers. We will apply the weighted-average rate from all other sales of the same class or kind of merchandise to these sales.

NMB/Pelmec made sales of BBs to an unrelated customer in a foreign trade zone, and that customer subsequently exported the BBs to a third country. Because such transactions are not U.S. sales, they are not covered by the order.

Foreign Market Value

Because the home market is viable, we used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and Janaury and March of 1990.

Home market prices were based on the delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, warranty, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing expenses. We also made adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not to exceed the amount of those U.S. expenses.

Where NMB/Pelmec did not have contemporaneous sales of such or similar merchandise, we used CV for calculating FMV. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, where actual profit was greater than the statutory eight percent minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. This adjustment was made for differences in direct selling expenses. For comparison involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the amount of indirect selling expenses incurred for ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
NMB/Pelmec	6.96

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830 at 9 a.m. Any hearing regarding issues which relate solely to Singapore, if requested, will be held on April 25, 1991, in room 3708 at 3 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals of written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for antifriction bearings, based on the ratio of the total value of dumping duties calculated for the sales examined in the review period to the total entered customs value of those sales. This rate will be assessed uniformly on all entries by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the U.S. Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Singapore, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 6.96 percent for shipment of ball bearings, the rate calculated for NMB/Pelmec. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)) (1989).

Dated: March 6, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6259 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Sweden; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce had conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Sweden. The classes or kinds of merchandise covered by these orders are ball bearings (BBs) and cylindrical roller bearings (CRBs). The reviews cover one manufacturer/exporter and the period November 9, 1988 through April 30, 1990. As a result of these reviews, the Department has preliminay determined the dumping margins for the reviewed firm to be 6.93 percent for ball bearings (BBs) and 0.18 for cylindrical roller bearings (CRBs).

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20907) the antidumping duty orders on ball bearings, cylindrical roller bearings, and parts thereof from Sweden. On June 11, 1990, in accordance with section 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the

Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
SKF Sverige AB	BBs
	CRBs
SKF Mekanprodukter	BBS
	CRBs

Subsequent to the publication date of our notice of initiation, we found that SKF Mekanprodukter is an affiliate of SKF Sverige AB and did not manufacture or sell products to the United States that were covered by the scope of these reviews. Accordingly, we are treating SKF Sverige AB and SKF Mekanprodukter as one entity for this review, and sales by SKF Mekanproduckter will receive the rate applicable to SKF Sverage AB.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

United States Price

In calculating United States price (USP), the Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988, January 22–28, 1989, March 5–11, 1989, June 4–10, 1989, August 20–26, 1989, October 1–7, 1989, November 5–11, 1989, January 14–20, 1990, and March 4–10, 1990.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States. We made deductions from ESP, where appropriate, for ocean freight, which included foreign brokerage and handling and foreign inland freight expenses, marine insurance, U.S. freight expenses for both port to warehouse and warehouse to customer, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP for U.S. repacking material and labor, commissions to unrelated parties, credit expense attributable to payment terms, inventory carrying costs, technical service expenses, direct warranty expenses, product liability expenses, export selling expenses, and indirect selling expenses. Foreign inland freight, packing labor and materials were also deducted from gross unit price. Billing adjustments, which are corrections to the unit price, were added to gross unit price.

Torrington has alleged that bearings produced in Sweden by SKF Sverige AB have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

Foreign Market Value

The home market was viable for SKF Sverige AB. The Department used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990.

Home market prices were based on the packed ex factory, ex godown, or delivered prices to the first unrelated purchasers in the home market. Billing adjustments, which are adjustments to unit price, were made to the gross unit price. Also, freight revenue, packing revenue and interest revenue from sales were added to the gross unit price. Where applicable, we made adjustments for inland freight, cash discounts, rebates, credit expenses, differences in packing and differences in physical characteristics of the merchandise. We also made adjustments for indirect selling expenses in the home market to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Because we found that SKF sold ball bearings below the cost of production in the less than fair value (LTFV) investigation, and because we received an adequate allegation that SKF Sverige was selling cylindrical bearings in the home market at prices below the cost of production, we initiated cost investigations. As a result of our investigation, we found below-cost sales. When less than 10 percent of the sales of a particular home market model were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular home market model were determined to be below the cost of production, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in direct selling expenses. We made a further deduction for indirect selling expenses, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
Ball Bearings, SKF Sverige AB	6.93
Cylindrical Roller Bearings, SKF Sverige AB	0.18

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to Sweden, if requested, will be held on April 24, 1991, in room 3407, at 10 a.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise based on the ratio of the total amount of dumping duties calculated for the sales examined during the review period to the total entered customs value of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all subject units included in each entry made by the particular importer during the period of review. The Department will issue appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise from Sweden entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for SKF Sverige AB will be that established in the final results of this review; (2) the cash deposit rate for all other exporters/producers shall be 6.93 percent for shipments of ball bearings and 0.18 percent for CRBs. These are SKF Sverige AB's rates. These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Department's Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6280 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-549-801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted an administrative review of the antidumping duty order on antifriction bearings other than tapered roller bearings) and parts thereof from Thailand. The class or kind of merchandise covered by this order is ball bearings. The review covers two related manufacturers/exporters for the period November 9, 1988 through April 30, 1990. As a result of this review, the Department has preliminarily determined the dumping margin for the two firms to be 0.65 percent.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Wendy J. Frankel or Ileana M. Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20909) the antidumping duty order on ball bearings (BBs) and parts thereof from Thailand. On June 11, 1990, in accordance with section 353.22(c) of the Department's regulations, we initiated an administrative review of that order for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is not conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

This review was initiated for the following firms and class or kind of merchandise:

Name of firm	Class or kind
NMB Thai Ltd. (NMB)/Pelmec Thai Ltd. (Pelmec).	BBs

Since NMB and Pelmec are related companies, we are treating them as one entity for purposes of this review.

Scope of Review

The products covered by this review are antifriction ball bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Review," published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of ESP transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. Because NMB/Pelmec made more than 2000 ESP sales transactions to the United States, we selected sales from only the following weeks: November 9–12, 1988, January 22–26, 1989, March 5–11, 1989, June 4–10, 1989, August 20–26, 1989, October 1–7, 1989, November 5–11, 1989, January 14–20, 1990, and March 4–10, 1990. We reviewed all PP sales transactions during the period of review because there wer few PP sales.

United States price was based on the packed ex-warehouse price (for ESP sales) or f.o.b. Singapore price (for PP sales). We made deductions from both PP and ESP for foreign inland freight and discounts and rebates. We made additional deductions from ESP for ocean freight, marine insurance, U.S. freight, U.S. brokerage and handling charges, U.S. customs duties, commissions to unrelated parties, credit expense attributable to payment terms, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

NMB/Pelmec claimed adjustments for differences in inventory carrying costs and export selling expenses on their PP sales. We consider inventory carrying costs and export selling expenses to be indirect expenses because they cannot be tied to specific sales. Since we do not adjust PP sales prices for indirect selling expenses, we have disallowed these items.

We have excluded from our calculation of USP any bearings used as promotional samples that were provided free of charge to NMB/Pelmec's customers. We will apply the weighted-average rate from all other sales of the same class or kind of merchandise to these sales.

NMB/Pelmec made sales of BBs to an unrelated customer in a foreign trade zone, and that customer subsequently exported the BBs to a third country. Because such transactions are not U.S. sales, they are not covered by the order.

Foreign Market Value

Because the home market is viable, we used home market price or constructed value (CV), as defined in section 773 of the Tariff Act, to calculate foreign market value (FMV).

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990.

Because we found below-cost sales of BBs in the investigation of sales at less than fair value (LTFV) for NMB/Pelmec, we initiated a cost investigation. Home market prices used for the cost test were based on the f.o.b. Singapore price. Where applicable, we made adjustments for inland freight. As a result of our investigation, we found no sales below the cost of production. Where NMB/Pelmec did not have contemporaneous sales of such of similar merchandise, we used CV for FMV.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) actual profit, because actual profit was greater than the statutory eight percent minimum, and (3) packing costs for merchandise exported to the United States. We made an adjustment to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. This adjustment was made for differences in direct selling expenses. For comparisons involving ESP transactions, we made further deduction for indirect selling expenses incurred in the home market, capped by the amount of indirect selling expenses incurred for ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin for the period November 9, 1988, through April 30, 1990 to be:

	Margin (Percent)
NMB/Pelmec	0.65

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 a.m. Any hearing regarding issues which relate solely to Thailand, if requested, will be held on April 25, 1991 in room 3708 at 12:30 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling precents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for antifriction bearings, based on the ratio of the total value of antidumping duties calculated for the sales examined in the review to the total entered customs value of those sales. This rate will be assessed uniformly on all entries by that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the U.S. Customs Service to assess this average amount on all units included in each entry made by the particular importer during the period of review. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from Thailand, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 0.65 percent for shipments of ball bearings, the rate calculated for NMB/Pelmec. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(c)(5)) (1989).

Dated: March 6, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6261 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

A-412-801

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administration Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings (BBs) and parts thereof and cylindrical roller bearings, (CRBs) and parts thereof. The reviews cover ten manufacturers/exporters and the period November 9, 1988 through April 30, 1990.

Although we initiated reviews for 2 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 54.27 percent for ball bearings, and from zero to 22.52 for cylindrical roller bearings.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diminich (SKF), Laurel M. Lynn (Barden, Cooper, Pratt & Whitney, Rolls Royce), Thomas A. McGinty (Dowty Rotol, Fiat Aviazione, S.p.A.), Edmond A. O'Neill (FAG UK), or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130 or 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the Federal Register (54 FR 20910) the antidumping duty orders on ball bearings (BBs), cylindrical roller bearings (CRBs), and parts thereof from the United Kingdom. On June 13, 1990, in accordance with § 353.22(c) of the Department's regulations, we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

We initiated reviews with respect to the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
AMPEC, Plc	ALL
Dowty Boulton Paul, Ltd.	BBs, CRBs
The Torrington Company (U.K.), Ltd.	BBs, CRBs

Subsequent to the publication date of our notice of initiation of these reviews, we received timely withdrawals of review requests for the above firms. Because there were no other requests from any other interested parties for these companies, we are terminating these reviews with respect to the above companies, in accordance with 19 CFR 353.22(a)(5).

In addition, SNFA Bearings, Ltd. had no sales of bearings subject to the antidumping order during the review

period. This firm will receive the rate for all other manufacturers/exporters indicated in this notice.

The Department allowed certain respondents to submit abbreviated questionnaire responses if they sold exclusively from published price lists and provided certification that they adhered to all price list prices with rare exceptions. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were Pratt & Whitney Canada, Inc., and Rolls Royce.

Best Information Available

In accordance with section 776(6) of the Tariff Act, we have preliminarily determined that the use of best information available (BIA) is appropriate for certain firms. The Department's regulations provide that we may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing adjustment data, we applied BIA on a case-by-case basis, generally using ranged, publicly available data from another producer.

For certain companies, we used BIA for shipping expenses because certain sales occurred within the period of review, but shipments took place after the date of the questionnaire response. The average shipping expenses from other sales made during the period of review were used as BIA.

Rolls Royce did not submit data for United Kingdom inland freight for home market, PP, and ESP transactions. It also did not respond fully to the questionnaire regarding sales of AFBs by its subsidiary, Northern Engineering, Inc., nor did it submit complete data on its sales of AFBs as spare parts. We used the highest margin from the original fair value investigation for these particular sales.

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof.* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.80.50, 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that (1) load and thrust rollers, (2) chain sheaves and (3) conveyor system trolley wheels and chain wheels, are within the scope of the AFB orders. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988; January 22–28, 1989; November 5–11, 1989; January 14–20, 1990; and March 4–10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate from both PP and ESP for foreign inland presale freight, ocean freight, marine insurance, U.S. and foreign inland freight, U.S. and foreign inland insurance, U.S. and foreign brokerage and handling charges, U.S. customs duties, and discounts and rebates. We made additional deductions from ESP for commissions to unrelated parties, credit expense attributable to payment terms, warranty & technical service expenses, advertising and sales promotion expenses, repacking in the United States, inventory carrying costs, and indirect selling expenses. For companies that engaged in currency hedging during the period of review, we adjusted USP to reflect the actual value of currency received.

Fiat Aviazione, S.p.A. cosigned merchandise to unrelated U.S. firms, which set the price and sold the merchandise after importation into the United States. The company claims that these are PP sales. However, because the sales occurred after importation, we consider them to be ESP transactions.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of the antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (48 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not comprise a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

If subject bearings imported by any firm constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise than bearings when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

We have excluded from our price comparisons parts of bearings that weree imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

We also excluded from our calculation of United States price (but not from these orders) replacement bearings for defective products, and bearings used as promotional samples which were given to customers free of charge.

We have excluded from our calculations of United States price sales of bearings by FAG and Rolls Royce to the U.S. government for military/defense procurement. These sales are excluded because they were made pursuant to a Memorandum of Understanding between the United Kingdom and the United States regarding military purchases, in accordance with section 1335 of the Omnibus Trade and Competitiveness Act of 1988.

Torrington, the petitioner, has alleged that bearings produced in the U.K. by SKF UK have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF has submitted an incomplete response.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney Canada, Inc., which sells U.K.-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchandise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing FMV. Using these criteria, we find that Canada is the appropriate home market for sales of U.K.-origin bearings sold by Pratt & Whitney Canada, Inc.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also requested sales information for October of 1988 and May of 1990.

Home market prices were based on the packed ex-factory, or delivered prices to the first unrelated purchasers in the home market. We disregarded sales to related parties unless the respondent provided satisfactory evidence that these sales were made at arm's length. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, were applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but exceeding the amount of those U.S. commissions or indirect selling expenses.

The Department initiated cost investigations for ball bearings sold by both SKF-UK and RHP (UK), Ltd., because these firms were found to have made home market sales below cost in the fair value investigation. As a result of our investigations, we found below-cost sales. When less than 10 percent of the sales of a particular model were below cost, we did not disregard any sales of that model and made normal price-to-price comparisons. When 90 percent or more of the sales of a particular model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV. When more than 10 percent, but less than 90 percent of the sales of a particular model were determined to be below the cost of production, we excluded all sales which were determined to be below the cost of production.

CV was used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, or the statutory minimum of 10 percent of materials and fabrication, whichever was greater, (2) actual profit or the statutory minimum of 8 percent when the profit exceeded the statutory of materials, fabrication costs, and general

expenses, whichever was greater, and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. Adjustments involving PP and ESP transactions were made for differences in direct selling expenses. For comparisons involving ESP transactions, we made further deductions to CV for indirect selling expenses and inventory carrying costs in the home market, capped by the indirect selling expesnes incurred on ESP sales in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

We preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
Ball Bearings:	
Barden	8.82
Cooper Bearings, Ltd	0.00
Dowty Rotol, Ltd	11.81
FAG UK	23.09
Fiat Aviazione, S.p.A	54.27
Pratt & Whitney Canada, Inc	4.01
RHP Bearings, Ltd	39.37
Rolls Royce	3.78
SKF–UK	4.97
SNFA Bearings, Ltd	54.27
Cylindrical Roller Bearings:	
Cooper Bearings, Ltd	0.00
Dowty Rotol, Ltd	2.41
FAG UK	0.00
Fiat Aviazione, S.p.A	22.52
Pratt & Whitney Canada, Inc	2.40
RHP Bearings, Ltd	18.99
Rolls Royce	1.77
SKF–UK	No Sales

Parties to these proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing on general issues if requested, will be on April 22, 1991, in room 4830, at 9 a.m. Any hearing on issues related solely to the United Kingdom will be held on April 23, 1991, in room 3407, at 2 p.m.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of merchandise of antifriction bearings, based on the ratio of the total amount of antidumping duties calculated for the sales examined in the review and the total entered customs value of those sales. This rate will be assessed uniformly on all entries of the class or kind of merchandise by that particular importer during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of all sales compared and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs values to calculate an *ad valorem* rate, we will calculate a per-unit dollar amount of antidumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these reviews, as provided by section 751(a)(1) of the Act: (1) The case deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of these reviews; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews; (3) the cash deposit rate for all other manufacturers/exporters shall be 39.37 percent for shipments of ball bearings and 22.52 percent for shipments of cyclindrical roller bearings. These are the highest non-BIA rates for any firms included in these reviews. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Commerce Regulations (19 CFR 353.22(c)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–6262 Filed 3–14–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–428–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce has conducted administrative reviews of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the Federal Republic of Germany. The Classes or kinds of merchandise covered by these orders are ball bearings (BBs), cylindrical roller bearings (CRBs), and spherical plain bearings (SPBs). The reviews cover 13 manufacturers/exporters and the period November 9, 1988 through Arpil 30, 1990. Although we initiated reviews for 5 other manufacturers/exporters, we are terminating the reviews because the review requests were withdrawn. As a result of these reviews, the Department has preliminarily determined the dumping margins for reviewed firms to range from zero to 48.79 percent for BBs, from zero to 14.22 percent for CRBs, and from zero to 118.98 percent for SPBs.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 15, 1991.

FOR FURTHER INFORMATION CONTACT: David M. Birdsey (Messerschmitt-Boelkow-Blohm GmbH, Heidelberg Druckmaschinen, AG), Dionne C. Calloway (NTN Kugellagerfabrik (Deutschland) GmbH), J. David Dirstine (SKF GmbH, SKF Gleitlager GmbH, SKF Textilmaschinen-Komponenten GmbH, Georg Mueller Nurnberg AG), Laurel M. Lynn (Pratt & Whitney Canada, Inc.), Edmond A. O'Neill (FAG Kugelfischer Georg Schaefer KGaA), Thomas A. McGinty (Fiat Aviazione S.P.A.), Maureen C. McPhillips (INA Walzlager Schaeffler KG), Breck J. Richardson (Gebruder Reinfurt GmbH & Co. Kg., Neuweg Fertigung GmbH, Zahnradfabrik Friedrichshafen AG), or Ileana Crowley, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20900) the antidumpting duty orders on ball bearings, cylindrical roller bearings and spherical plain bearings and parts thereof from the Federal Republic of Germany. On June 11, 1990, in accordance with 19 CFR 353.22(c), we initiated administrative reviews of those orders for the period November 9, 1988 through April 30, 1990 (55 FR 23575). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

These reviews were initiated for the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
FAG Kugelfischer Georg Schaefer KGaA (FAG)	All.
Feinmechanische Werk GmbH	All.
Fiat Aviazione S.p.A. (FiatAvio)	BBs & CRBs.
Frankenjura Industrie GmbH	All.
Gebruder Reinfurt GmbH & Co. Kg. (GRW)	BBs.
Georg Mueller Nurnberg, AG (GMN)	All.
Heidelberg Druckmaschinen, AG (HD)	All.
Henschel Flugzeug-Werke GmbH	All.
INA Walzlager Schaeffler KG (INA)	ALL.
MAN GHH Corporation	BBs & CRBs.
Messerschmitt-Boelkow-Blohm GmbH (MBB)	All.
Neuweg Fertigung GmbH (NWG)	BBs.
NMB Bearings GmbH	All.
Normenstelle Luftfahrt	All.
NTN Kugellagerfabrik (Deutschland) GmbH (NTN	All.
Pratt & Whitney Canada, Inc.	All.
SKF GmbH, SKF Gleitlager GmbH, SKF Textilmaschinen-Komponenten GmbH (SKF)	All.
Zahnradfabrik Friedrichshafen AG (ZF)	All.

Subsequent to the publication date of our notice of initiation of these reviews, we received timely withdrawal requests for Feinmechanische Werke GmbH, Frankenjura Industrie GmbH, MAN GHH Corporation, NMB Bearings GmbH, and Normenstelle Luftfahrt. Because there were no other requests from any other interested parties, we are terminating the reviews with respect to these companies, in accordance with 19 CFR 353.22(a)(5).

Subsequent to initiation, we found that Henschel Flugzeug-Werke GmbH is wholly owned by MBB and did not have sales to the United States. We are treating Henschel and MBB as one entity for this review, and sales by Henschel to the United States will receive the rate applicable to MBB.

Subsequent to the publication of our initiation notice, we received a clarification of a review request made by a U.S. importer, Dowty Aerospace Corporation, to review all of its imports of BBs and CRBs from the United Kingdom. The clarification request covered Dowty Rotol Ltd., a British-based reseller of BBs and CRBs produced not only in the United Kingdom, but in Germany as well. Dowty Aerospace informed us that its review request was intended to include all imports from Dowty Rotol of BBs, and CRBs, not just imports of British-made BBs and CRBs. Based on this clarification, we have reviewed German made BBs and CRBs sold by Dowty Rotol Corp., from the United Kingdom to the United States.

The Department allowed certain companies to submit abbreviated questionnaire responses if they sold exclusively from published price lists and were able to demonstrate that all price list prices, with rare exceptions, were adhered to. In lieu of a detailed sales listing, firms which qualified for the price list option were permitted to provide all applicable price lists and aggregate cost and adjustment data. The companies opting for this method were HD, Pratt & Whitney, and MBB. We are allowing ZF to use the price list option for its purchase price (PP) sales.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have preliminarily determined that the use of best information otherwise available (BIA) is appropriate for several firms. The Department's regulations provide that we may take into account whether a party refuses to provide information (19 CFR 353.37(b)). For purposes of these reviews, we have used the most adverse BIA—generally the highest rate for any company from the less than fair value (LTFV) investigation—whenever a company refused to cooperate with the Department or otherwise significantly impeded the proceeding. For companies that attempted to cooperate, we used less adverse BIA—generally the highest rate found for any company in these reviews. For missing data, we applied BIA on a case-by-case basis, generally using ranged, publically available data from another company.

ZF did not fully respond to the Department's questionnaire regarding exporter's sales price (ESP) transactions. For this firm we used the highest calculated margin in the final determination of the LTFV investigation as BIA for those ESP sales.

FiatAvio reported its sales to the United States as PP transactions. Because most of the sales in question occurred after importation of the product into the United States, we consider the majority of this company's sales to be ESP transactions. Therefore, FiatAvio's margins were calculated, largely, on an ESP basis.

Scope of Reviews

The products covered by these reviews are antifriction bearings (AFBs) (other than tapered roller bearings), mounted or unmounted, and parts thereof, and constitute the following "classes or kinds" of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 84.82.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. *Cylindrical Roller Bearings and Parts Thereof.* These products include all antifriction bearings that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. *Spherical Plain Bearings and Parts Thereof.* These products include all

spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.60, 8483.90.30, 8483.90.30, 8485.90.00 8708.99.50.

Size or precision grade of a bearing does not influence whether the bearing is covered by the order. The HTS item numbers are provided for convenience and Customs purposes. The written descriptions remain dispositive.

It is our intent to subject all entries for consumption of subject bearings to antidumping duties. In our questionnaires, we requested information on all sales made through foreign trade zones (FTZs), and all reported U.S. sales through FTZs have been included in our calculations.

Federal-Mogul Corporation, a domestic interested party, claims that the following products are within the scope of the orders: (1) Load and thrust rollers; (2) chain sheaves; and (3) conveyor system trolley wheels and chain wheels. We have preliminarily determined that load and thrust rollers are within the scope of the orders and that chain sheaves and trolley and chain wheels are outside the scope of the orders. For a complete discussion of these issues, see "Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof, from Italy; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews" published concurrently with this notice.

United States Price

In calculating United States price (USP), the Department used PP or ESP, both as defined in section 772 of the Tariff Act, as appropriate.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled sales to calculate USP, in accordance with section 777A of the Tariff Act. When a firm made more than 2000 ESP sales transactions to the United States for a particular class or kind of merchandise, we selected sales from only the following weeks: November 9–12, 1988, January 22–28, 1989, March 5–11, 1989, June 4–10, 1989, August 20–26, 1989, October 1–7, 1989, November 5–11, 1989, January 14–20, 1990, and March 4–10, 1990. We reviewed all PP sales transactions during the period of review (POR) because generally there were few PP sales.

United States price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, from PP and ESP for ocean freight, marine insurance, U.S. and foreign inland freight, U.S. brokerage and handling charges, U.S. customs duties, and discounts and rebates.

We made additional deductions from ESP for commissions to unrelated parties, credit expenses, warranty, advertising and sales promotion expenses, repacking in the United States, and indirect selling expenses.

We have excluded from our price comparisons parts of bearings that were imported and further processed into finished bearings by U.S. affiliates of foreign exporters (prior to sale to unrelated U.S. customers). Both the bearing parts and the finished bearings are of the class or kind of merchandise subject to this review. We chose the alternative of applying any dumping margins found on imports of completed bearings to imported parts of the same class or kind.

One company, NTN, reported less than 2,000 ESP sales in its section A response. Therefore, our section B questionnaire did not instruct the company to sample. However, the company's section B response indicated that there were more than 2,000 ESP sales during the period of review. Because the company reported all sales, and because its total sales transactions were not significantly higher than 2,000, we have based our analysis on this company's total sales.

Torrington, the petitioner, has alleged that bearings produced in Germany by SKF Sverige AB have been exported to the United States through SKF's Austrian affiliates, SKF Steyr GmbH and Steyr Walzlager GmbH, and that these sales have not been reported to the Department by SKF. SKF claims that there have been no U.S. sales of merchandise subject to these orders that were made by its Austrian affiliates during the period of review. Because the evidence submitted by Torrington in support of its allegations is inadequate, we have no reason to believe that SKF submitted an incomplete response.

We consider those bearings otherwise subject to the order that are incorporated into nonbearing products, which collectively comprise less than one percent of the value of the finished products sold to unrelated customers in the United States, to be outside the scope of antidumping orders on bearings and not subject to dumping duty assessments. In "Roller Chain, Other Than Bicycle, From Japan" (46 FR 51,801, November 14, 1983), roller chain, which was subject to an antidumping duty order, was imported by a related party and incorporated into finished motorcycles. The finished motorcycles were the first articles of commerce sold by the subject producer to unrelated purchasers in the United States. Since the roller chain did not constitute a significant percentage of the value of the completed product, the Department found that a USP could not reasonably be determined for the roller chain, and the product was therefore excluded from the scope of the order. We have applied this principle to these reviews as well.

In our questionnaires, we instructed parties not to provide sales data where bearings were incorporated into nonbearing products and the bearing constituted less than five percent of the value of the finished product. We are now requiring parties to report all such sales whose collective value of the bearings subject to the order constitutes more than one percent of the value of the finished product. We have issued new instructions to all parties.

In these reviews, we believe that two firms, MBB and Heidelberg, exported to their U.S. affiliates the classes or kinds of merchandise covered by these orders that they incorporated into merchandise of a different class or kind prior to sale to unrelated U.S. customers. If subject bearings imported by these firms constituted more than one percent of the value of the finished product, and if that finished product was of a different class or kind of merchandise when sold to unrelated U.S. customers, we will defer analysis of such sales until we receive additional information.

Foreign Market Value

The home market was viable for all companies. The Department used home market price or constructed value (CV) as defined in section 773 of the Tariff Act, as appropriate, to calculate foreign market value (FMV). In the case of Pratt & Whitney, which sells German-origin bearings from Canada to the United States, we applied the four criteria set forth in 19 CFR 353.47 regarding exportation from an intermediate country. This section provides that, if a reseller in an intermediate country purchases the merchandise from a producer in a covered country, the producer does not know where the reseller will export the merchandise, the merchadise enters the commerce of the intermediate country, and the merchandise is subsequently exported to the United States, the intermediate country will be considered the home market for purposes of establishing

FMV. Using these criteria, we find that Canada is the appropriate home market for sales of German-origin AFBs by Pratt & Whitney.

We compared U.S. sales with sales of such or similar merchandise in the home market. We consider all sales within a bearing family to constitute the universe of such or similar merchandise. As defined in the questionnaire and verified by the Department, a bearing family consists of all bearings within a class or kind of merchandise that share load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, and physical dimensions.

Home market prices were based on the packed ex factory or delivered prices to the first unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight, handling charges, rebates, commissions, discounts, warranty, technical services, advertising and sales promotion, royalties, freight revenue, packing revenue, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions (in PP and ESP calculations) and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. expenses.

Due to the extremely large number of transactions that occurred during the review period and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate FMV, in accordance with section 777A of the Tariff Act. We selected sales from the months that correspond to the sample weeks of U.S. sales: November of 1988, January, March, June, August, October, and November of 1989, and January and March of 1990. We also obtained information for the months of October 1988 and May 1990.

Where we found sales below cost in the LTFV investigation, or where we received adequate allegations of sales below cost, we initiated a cost investigation. We initiated cost investigations with respect to BBs, SPBs, and CRBs, from SKF, GMN, FAG, and INA. As a result of our investigation, we found below-cost sales. When less than 10 percent of the home market sales were below cost, we did not disregard any sales and made normal price-to-price comparisons. When more than 10 percent, but less than 90 percent, of the home market sales of a particular model were determined to be below cost, we excluded the below-cost home market sales from our calculation of FMV. When more than 90 percent of the sales of a particular home market model were determined to be below cost, we used CV, as defined in section 773 of the Tariff Act.

CV was also used for calculating FMV if a firm did not have contemporaneous sales of such or similar merchandise or if more than 90 percent of its sales were below cost. CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, when these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, when actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States. We made circumstance of sale adjustments for all direct selling expenses in accordance with 19 CFR 353.56. For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses in the home market, capped by the indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the margins for the period November 9, 1988, through April 30, 1990 to be:

	Margin (percent)
Ball bearings:	
Dowty Rotol	0.00
FAG Kugelfischer Georg Schaefer KGaA (FAG)	48.79
Fiat Aviazione S.p.A. (FiatAvio)	12.86
Gebruder Reinfurt GmbH & Co. Kg. (GRW)	3.82
Georg Mueller Nurnberg, AG (GMN)	2.44
Heidelberg Druckmaschinen, AG (HD)	0.00
INA Walzlager Schaeffler KG (INA)	7.08
Messerschmitt-Boelkow-Blohm GmbH (MBB)	0.00
Neuweg Fertigung GmbH (NWG)	0.42
NTN Kugellagerfabrik (Deutschland) GmbH (NTN)	43.51
Pratt & Whitney Canada, Inc.	5.68
SKF GmbH, SKF Gleitlager GmbH, SKF Textil-maschinen-Komponenten GmbH (SKF)	3.93
Zahnradfabrik Friedrichshafen AG (ZF)	20.53
Cylindrical roller bearings:	
FAG	10.51
FiatAvio	10.65
HD	0.00
INA	7.54
MBB	0.00
Pratt & Whitney Canada, Inc.	4.00
SKF	13.61
ZF	14.22
Spherical plain bearings:	
FAG	5.13
HD	0.00
MBB	0.00
SKF	0.59
ZF	118.98

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any general issues hearing, if requested, will be held on April 22, 1991, in room 4830, at 9 am. Any hearing regarding issues related solely to Germany, if requested, will be held on April 26, 1991, in room 4830, at 1 pm.

Case briefs and/or written comments from interested parties may be submitted not later than April 11, 1991. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than April 18, 1991. The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling prevents us from doing entry-by-entry assessments, we will calculate an importer-specific *ad valorem* appraisement rate for each class or kind of antifriction bearings based on the ratio of the total value of dumping duties calculated for the examined sales made during the review period to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the review period. (This is equivalent to dividing the total value of dumping duties, which are calculated by taking the difference between statutory FMV and statutory USP, by the total statutory USP value of the sales compared, and adjusting the result by the average difference between USP and customs value for all merchandise examined during the review period.) Where we do not have entered customs value to calculate an *ad valorem* rate, we will calculate an average per-unit dollar amount of dumping duty based on all sales examined during the review period. We will instruct the Customs Service to assess this average amount on all units included in each entry made by the particular importer during the POR. The Department will issue appropriate appraisement instructions

BEST COPY AVAILABLE

directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of these reviews; for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination of sales at less than fair value (the original investigation), the case deposit rate will continue to be the rate published in that final determination; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) the cash deposit rate for all other exporters/producers shall be 48.79 percent for shipments of ball bearings, and 5.13 percent for shipments of spherical plain bearings and 13.61 for CRBs. These are the highest non-BIA rates for any firms included in these reviews. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22(v)(5)).

Dated: March 8, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6233 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Draft Recovery Plan for the Steller (Northern) Sea Lion

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The draft Recovery Plan for the Steller (northern) sea lion (*Eumetopias jubatus*) is available for review and comment by interested parties prior to preparing the final plan for approval and adoption by the National Marine Fisheries Service (NMFS). The plan was developed by the Steller Sea Lion Recovery Team which was appointed in 1990 by NMFS. The Recovery team consists of pinniped scientists and fisheries scientists and individuals knowledgable in fisheries matters in the North Pacific Ocean.

DATES: Comments on the draft recovery plan must be received on or before April 29, 1991.

ADDRESSES: Comments should be addressed to Steller Sea Lion Recovery Programs, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the Draft Steller Sea Lion Recovery Plan are available upon request from Charles Karnella, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 8256, Silver Spring, MD 20910, or Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Charles Karnella (301) 427-2322 or Steven Zimmerman (907) 586-7235.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS appointed a Steller Sea Lion Recovery Team to assist in the development of the Draft Recovery Plan. The Draft Recovery Plan discusses the natural history, current status of the species, and the known and potential human impacts on the species. Actions that would promote the recovery of the Steller sea lion are identified and discussed in the draft plan. The Recovery Plan will be used to direct U.S. activities to promote the recovery of this threatened species.

Dated: March 11, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-6133 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-22-M

Public Hearing on the Draft Environmental Impact Statement and Draft Management Plan for the Proposed Ashepoo-Combahee-Edisto (ACE) Basin National Research Reserve in South Carolina

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Public hearing notice.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement and Draft Management Plan (DEIS/DMP) prepared on the proposed designation of the Ashepoo-Combahee-Edisto (ACE) Basin National Estuarine Research Reserve in South Carolina. The DEIS and Draft Management Plan addresses research, monitoring, education and resource protection needs for the proposed reserve.

The Office of Ocean and Coastal Resource Management will hold a public hearing at 7 pm on Wednesday, April 3, 1991 in the Colleton County Council Chambers, Old Jail Building, at Jefferies Boulevard, in Walterboro, South Carolina 29488.

The views of interested persons and organizations on the adequacy of the DEIS/DMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the hearing when the number of speakers can be determined. All comments received at the hearing will be considered in the preparation of the Final Environmental Impact Statement (FEIS) and Draft Management Plan.

The comment period for the DEIS/DMP will end on Monday, April 15, 1991. All written comments received by this deadline will be included in the FEIS.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Graham, (202) 673-5122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., room 714, Washington, DC 20235. Copies of the Draft Environmental Impact Statement/ Draft Management Plan are available upon request to the Sanctuaries and Reserves Division.

[Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries]

Dated: March 4, 1991.

Virginia K. Tippie,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-6045 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Issuance of Permit; John G. Shedd Aquarium (P396C)

On December 26, 1990, notice was published in the **Federal Register** (55 FR 53033) that an application had been filed by the John G. Shedd Aquarium, 1200 South Lake Shore Drive, Chicago, Illinois 60605, for a permit to obtain six (6) captive born or beached/stranded harbor seals (*Phoca vitulina*) for public display.

Notice is hereby given that on March 8, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that the Shedd Aquarium offers an acceptable program for education or conservation purposes. The Shedd facilities are open to the public on a regular scheduled basis and access to the facilities is not limited or restricted other than by the changing of an admission fee.

The permit is available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/427-2289);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893-3141);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115 (206/526-6150) and;

Director, Southwest Region, National Marine Fisheries, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196).

Dated: March 8, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-6134 Filed 3-14-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On December 28, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 53329) of proposed additions to the Procurement List.

Comments were received during the development phase of this proposed addition to the Procurement List from one of the current contractors for these items, both directly and through two Congressmen. The contractor claimed that the proposed addition to the Procurement List would have a highly negative impact on its sales. The contractor noted that these items have previously been set aside for small business and claimed the proposed addition would harm small business generally by reducing its share of Government contracting. The contractor claimed that the work is not suitable for nonprofit agencies employing persons with severe disabilities because it is not labor intensive, would be difficult for persons who are blind or have other severe disabilities to perform, and requires a great deal of capital to acquire the necessary production machinery. He questioned the wisdom of such expenditures when he already has the equipment and systems to produce the items.

The Committee has considered the contractor's various comments in reaching its decision on the proposed addition. With respect to the potential impact on the contractor, the Committee noted the relatively small percentage of the contractor's sales represented by that portion of the labels for which the contractor has a current contract. Lacking other data to demonstrate the contractor's dependence upon these items, the Committee does not regard the loss of the ability to bid upon them as a serious threat to the firm's survival.

In considering the contractor's comments about the loss of opportunity for small businesses, the Committee took into account the fact that most nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program essentially differ from small businesses only in their profit status. Both are considered "small entities" in the Regulatory Flexibility Act, for example, and both are similar in size, productive capacity, and the types of commodities and services they can furnish to the Government. Yet nonprofit agencies participating in the JWOD Program receive less than 2 percent of the Federal contract dollars awarded to small businesses. Given these similarities and the much greater percentage of Federal dollars going to small businesses, the Committee does not view the loss of opportunity for small business to bid on the labels in question as justification for rejecting the proposed addition and preventing the generation of employment for blind persons.

With respect to the other points raised by the contractor, the Committee considered the findings from on-site inspections by the contracting agency and the central nonprofit agency in determining that the nonprofit agency proposing to provide the labels to the Federal Government is capable of doing so. The Committee also considered information on the number of jobs for blind persons expected to be created as a result of the proposed addition and has determined that the number is sufficient to justify adding the labels to the Procurement List. The nature of the JWOD Program is such that, to be capable of furnishing commodities and services to the Government, nonprofit agencies often have to buy equipment which private contractors already possess. The Committee does not regard this circumstance, which is inherent in the Program, as a reason not to add an item to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified workshop to produce the commodities at a fair market price and impact of the additions on the current or

most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6. I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Label, Pressure-Sensitive Adhesive

7530–00–054–1575
7530–00–577–4368
7530–00–577–4369
7530–00–577–4370
7530–00–577–4371
7530–00–577–4372
7530–00–577–4373
7530–00–577–4374
7530–00–577–4375
7530–00–577–4376
7530–00–082–2663
7530–00–007–2165
7530–00–982–0062
7530–00–982–0064
7530–00–982–0065
7530–00–982–0066

This action does not affect contracts awarded prior the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–6225 Filed 3–14–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On October 26, November 16 and 30, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 43157, 47905 and 49677) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of a qualified workshop to produce the commodities at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Rod, Straight, Headless, 5340–01–102–4539
Patient Utility Kit, 6530–01–166–3499
Wrapper, Sterilization, 6530–01–036–0398

This action does not affect contracts awarded prior the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–6228 Filed 3–14–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 15, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to the Procurement List:

Line, Multi-Loop, 1670–01–063–7760
Flat Trays and Lids, P.S. Item No. 1257T, P.S. Item No. 1257L

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–6227 Filed 3–14–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Defense Initiative Advisory Committee

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session in Washington, DC, on March 26, 1991.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on March 26, 1991 the committee will discuss the status of the Architecture Integration Study.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C., app II (1982)), it has been determined that this SDI Advisory Committee meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: March 12, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–6194 Filed 3–14–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; System of Records.

AGENCY: Defense Logistics Agency, DOD.

ACTION: Amend five and delete two record system notices.

SUMMARY: The Defense Logistics Agency proposes to amend five existing record systems and delete two from the DLA inventory. The specific changes to the notices are administrative in nature and stem from a consolidation of organizational functions and resultant name changes. The deletions are a result of changes in information requirements.

DATES: The deletions and amendments will be effective without further notice on April 15, 1991.

ADDRESSES: Ms. Susan Salus, Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100. Telephone (703) 274–6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the Federal Register as follows:

50 FR 22807, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 26, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37405, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May 30, 1990 (DLA Address Directory)
55 FR 32284, Aug. 8, 1990
55 FR 32947, Aug. 13, 1990
55 FR 34050, Aug. 21, 1990
55 FR 42755, Oct. 23, 1990

The deletions and amendments are not within the purview of subsection (r) of the Privacy Act, as amended (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the records systems being amended are set forth below, followed by the record system notices, as amended, published in their entirety.

Dated: March 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

SYSTEM IDENTIFICATION AND NAME:

S336.10DCRS–F, Personnel Cost Forecast System (50 FR 22925, May 29, 1985).

REASON:

System is no longer required.

SYSTEM IDENTIFICATION AND NAME:

S850.10DLA–Q 1, Quality Assurance Activity Certification Report (50 FR 22940, May 29, 1985).

Reason: System is no longer required.

S431.15DLA–C

System name:

Travel Record (50 FR 22934, May 29, 1985).

Changes:

* * * * *

System location:

Delete "Defense Contract Administration Service Regions (DCASRs)" in lines three and four and replace with "Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S431.15DLA–C

SYSTEM NAME:

Travel Record.

SYSTEM LOCATION:

Records are maintained at all Defense Logistics Agency (DLA) Centers, Depots, and Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees, civilian and military, who perform travel, Temporary Duty (TDY) or Permanent Change of Station (PCS) for DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Consists of copies of request and authorization for TDY travel of DoD personnel, request and authorization for DoD civilian permanent duty travel, travel voucher, travel voucher or subvoucher, claim for reimbursement for expenditures on official business and records of travel payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, Title 5 United States Code and Executive Order 9397.

PURPOSE(S):

The file is used by the Accounting and Finance Officer to administer his disbursing and accounting duties for government travel performed by both military and civilian employees under his administrative control. Data is also used by Counsel to determine that expenses of the sale or purchase of the residence for a PCS are reasonable and customary to the locality of the transaction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Records are maintained in an area that is accessible to office personnel only.

RETENTION AND DISPOSAL:

Records of military personnel are maintained until separation or transfer of the military members. Records of civilian personnel are destroyed one year after termination of their employment.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to the Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary

Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Accounting and Finance Officer, Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

Written requests for information must contain the full name and social security number of the employee. Employees making a personal request must present identification; i.e., employee badge, drivers license, etc.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Request for travel forms, travel vouchers, claims for reimbursement.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S434.15DLA–C

SYSTEM NAME:

Automated Payroll Cost and Personnel System (APCAPS) (50 FR 22934, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete "Defense Contract Management Regions (DCMRs)" in lines three and four and replace with "Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S434.15DLA–C

SYSTEM NAME:

Automated Payroll Cost and Personnel System (APCAPS).

SYSTEM LOCATION:

Records maintained at Defense Logistics Agency (DLA) Centers, Depots, and Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian and military personnel who have been paid or costed by APCAPS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained in manual and mechanical files and contain all data which affect an employee's pay, deductions, employer contributions, leave, retirement, position status, or cost accumulation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; DoD Directive 5105.22; and Executive Order 9397.

PURPOSE(S):

Information is used in preparing payrolls, cost and manpower reports. Information is used by:

Agency supervisors and managers to determine leave usage, manpower allocations and labor distribution.

Supervisors and managers of agencies and activities other than DLA who receive payroll/cost accounting support from APCAPS to determine leave usage, manpower allocations, labor distributions and costs.

Payroll offices to compute and control payroll and allocate labor costs.

Pesonnel offices to determine leave usage and changes that affect an employee's pay.

Security offices to determine location of employees.

Disbursing offices to determine the distribution of checks and bonds.

Law Enforcement/Security Personnel, officials designated by the Head, Primary Level Field Activity (PLFA) or by regulation to perform law enforcement, safety, and vehicle registration/parking duties. Only the shift number (if an individual works shift work) will be accessed and used from APCAPS. The information will be used as a control to ensure the integrity of information in systems S161.30DLA–I and S161.50DLA–I and to facilitate the auditing of such file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Financial Institutions to determine disposition of net pay or allotments pay.

Treasury Department to determine registration of bonds and federal tax allocation.

Unions, charities, and insurance organizations to determine participation in those organizations.

Office of Personnel Management to determine status of employee and for disposition of retirement records.

State and local taxing authorities to determine tax liability.

Nongovernment organizations to verify employment and credit data furnished to financial institutions by the employee.

Bureau of Employment Compensation to process employee disability claims.

State employment offices to submit data for unemployment compensation.

Local courts to determine the withholding of pay for garnishment of wages.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm, magnetic tape, disc pack, computer paper printouts, vertical file cards, paper records in file folders.

RETRIEVABILITY:

Hard copy documents are filed by payroll block or alphabetically by last name. Data stored on mechanized storage devices are retrieved by Social Security Number.

SAFEGUARDS:

Access to mechanical records is limited to authorized DLA data systems personnel. All other records are maintained in areas accessible only to agency personnel. Security/Law Enforcement personnel who access APCAPS information through computer terminals (used as control for the integrity of information in S161.30DLA–I and S161.50DLA–I) have been cleared with an official need. The information accessed from APCAPS is limited to the items and uses under Routine Uses and is password protected in the automated system.

RETENTION AND DISPOSAL:

Retention of data varies from 1 to 3 days for mechanical working files up to an employee's total length of service with an activity for permanent payroll information.

SYSTEM MANAGER(S) AND ADDRESSES:

Comptroller, Defense Logistics Agency. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to or make a personal visit to Chief, Payroll Branch, Accounting and Finance Division, Office of Comptroller at each DLA Center and Depot. Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S434.15DLA–KP

SYSTEM NAME:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem.

SYSTEM LOCATION:

Offices of Civilian Personnel at Defense Construction Supply Center (DCSC); Defense Electronics Supply Center (DESC); Defense General Supply Center (DGSC); Defense Personnel Support Center (DPSC); Defense Reutilization and Marketing Service (DRMS); Defense Depot Memphis (DDMT); Defense Depot Ogden (DDOU); Defense Distribution Region West (DDRW); Defense Depot Mechanicsburg (DDMP); Defense Logistics Agency Administrative Support Center (DASC); Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees serviced by the Office of Civilian Personnel at the activities listed under System Location and other Department of Defense civilian employees who are both serviced by the Offices of Civilian Personnel and paid by the activities listed under System Location above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee data segment of APCAPS data bank, including data being manually collected prior to implementation of the automated record sytem. For the civilian personnel segment of APCAPS, the employee data segment of the APCAPS data bank contains, for civilian employees, current personnel data on employment status and selected personal data, such as Social Security Number (SSN), name, sex, race and national origin identification, date of birth, age, physical handicap, Government insurance, military reserve status, retired military status, education, status preceding employment with DLA, U.S. citizenship, and veterans preference.

Position data segment of APCAPS data bank. For the civilian personnel segment of APCAPS, the position data segments of the APCAPS data bank contains position data pertinent to established positions, both those positions occupied by a civilian employee as well as those not so occupied.

Personnel History File. The personnel history file contains a profile of selected civilian employee personnel data as of the most recent transaction processed against it, as well as a chronological extract of all prior transactions processed on the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302; Executive Orders 9397 and 10561; and Federal Personnel Manual, Chapters 290 and 293.

PURPOSE(S):

Purposes of the system are to affect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration.

Officials designated by the Head, PLFA and by regulation to perform law enforcement, safety, and vehicle registration/parking duties. Only the following information will be accessed and used by these individuals. Individual's name, address, directorate and office which assigned, grade, and category (military or civilian). (The information will be used as a control to ensure the integrity of information in systems of record S161.30DLA–I and S161.50DLA–I and to facilitate an audit of such file.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to prospective employers for employment determination purposes.

To credit firms for verification of data for credit determination purposes.

To taxing authorities for tax administration purposes.

To officials of other Executive Branch agencies, such as the Office of Personnel Management for performance of official duties.

To officials of Legislative Branch agencies, such as Congressmen for performance of official duties.

S434.15DLA–KP

System name:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem (50 FR 22935, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Offices of Civilian Personnel at Defense Construction Supply Center (DCSC); Defense Electronics Supply Center (DESC); Defense General Supply Center (DGSC); Defense Personnel Support Center (DPSC); Defense Reutilization and Marketing Service (DRMS); Defense Depot Memphis (DDMT); Defense Depot Ogden (DDOU); Defense Distribution Region West (DDRW); Defense Depot Mechanicsburg (DDMP); Defense Logistics Agency Administrative Support Center (DASC); Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices."

* * * * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

* * * * *

S434.15DLA–KP

SYSTEM NAME:

Automated Payroll, Cost and Personnel System (APCAPS) Personnel Subsystem.

SYSTEM LOCATION:

Offices of Civilian Personnel at Defense Construction Supply Center (DCSC); Defense Electronics Supply Center (DESC); Defense General Supply Center (DGSC); Defense Personnel Support Center (DPSC); Defense Reutilization and Marketing Service (DRMS); Defense Depot Memphis (DDMT); Defense Depot Ogden (DDOU); Defense Distribution Region West (DDRW); Defense Depot Mechanicsburg (DDMP); Defense Logistics Agency Administrative Support Center (DASC); Defense Contract Management Districts (DCMDs). Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees serviced by the Office of Civilian Personnel at the activities listed under System Location and other Department of Defense civilian employees who are both serviced by the Offices of Civilian Personnel and paid by the activities listed under System Location above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee data segment of APCAPS data bank, including data being manually collected prior to implementation of the automated record sytem. For the civilian personnel segment of APCAPS, the employee data segment of the APCAPS data bank contains, for civilian employees, current personnel data on employment status and selected personal data, such as Social Security Number (SSN), name, sex, race and national origin identification, date of birth, age, physical handicap, Government insurance, military reserve status, retired military status, education, status preceding employment with DLA, U.S. citizenship, and veterans preference.

Position data segment of APCAPS data bank. For the civilian personnel segment of APCAPS, the position data segments of the APCAPS data bank contains position data pertinent to established positions, both those positions occupied by a civilian employee as well as those not so occupied.

Personnel History File. The personnel history file contains a profile of selected civilian employee personnel data as of the most recent transaction processed against it, as well as a chronological extract of all prior transactions processed on the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302; Executive Orders 9397 and 10561; and Federal Personnel Manual, Chapters 290 and 293.

PURPOSE(S):

Purposes of the system are to affect Federal personnel actions, maintain the Federal personnel service control system, fulfill Federal personnel reporting requirements, and provide information to officials of DLA for effective personnel management and personnel administration.

Officials designated by the Head, PLFA and by regulation to perform law enforcement, safety, and vehicle registration/parking duties. Only the following information will be accessed and used by these individuals. Individual's name, address, directorate and office which assigned, grade, and category (military or civilian). (The information will be used as a control to ensure the integrity of information in systems of record S161.30DLA–I and S161.50DLA–I and to facilitate an audit of such file.)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be released to prospective employers for employment determination purposes.

To credit firms for verification of data for credit determination purposes.

To taxing authorities for tax administration purposes.

To officials of other Executive Branch agencies, such as the Office of Personnel Management for performance of official duties.

To officials of Legislative Branch agencies, such as Congressmen for performance of official duties.

To officials of judicial Branch activities, such as courts for performance of official duties.

To hospitals, medical offices and institutions for medical/hospital administration purposes.

To executor or administrator of the estate of a deceased employee, former employee, or annuitant, or next-of-kin for estate settlement purposes.

The "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes or discs, computer paper printouts. Paper records in file folders.

RETRIEVABILITY:

Information identified to a specific civilian employee is accessed and retrieved by Social Security Number.

SAFEGUARDS:

Records are either secured in locked storage or file cabinets or kept under the constant observation of personnel office officials during duty hours. During nonduty hours, records are either secured in locked storage or file cabinets; the records file area is locked, and the building in which the records are stored is protected by building security guard. If the records area is not protected by security guards, all records must be kept in locked storage. Individually identifiable personnel documents will either be handcarried or will be transmitted in envelopes addressed to a specific office or individual and marked to be opened by addressee only. Magnetic tapes and discs are kept in the computer room which is itself a security container with locked door and access limited to persons appropriately cleared and identified. Tapes and disc packs are stored in a tape library when not used in processing, and are logged in and out only to cleared personnel with an official need. Reports with individual appropriately cleared and maintain continuous observation of reports during all processing phases. Individual requesting information must identify themselves and their relationship to the individual upon whom the record information is being requested. Individual other than the individual of record must specify what information is requested and the purpose for which it would be used if disclosed. Personnel office official determines if request is reasonable and consistent with provisions of the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act of 1974 (5 U.S.C. 552a). In order to prevent unauthorized modifications of records contents, original records documents may only be reviewed in the presence of a witness designated by the Personnel Office.

Physical access, that is the ability to obtain the record, is limited to Personnel office officials; Office of Personnel Management officials; data processing officials; supervisors for those records for which they are authorized to maintain; security/law enforcement personnel who access APCAPS information through computer terminals (used as control for the integrity of information in S161.30DLA–I and S161.50DLA–I) have been cleared and must have an official need-to-know. The information accessed from APCAPS is limited to the items and uses under Routine Uses and is password protected in the automated system.

Responsible officials are granted temporary custody of an original record in order to monitor the review of the record by the individual to who it pertains, when the individual is geographically remote from the personnel office.

RETENTION AND DISPOSAL:

Records which are filed in the Official Personnel Folder (OPF) are retained in the personnel office until the employee leaves the agency. At that time the permanent portion of the OPF is transferred to the gaining Federal agency and temporary OPF records are destroyed by shredding or burning. Copies of records authorized to be maintained by supervisors or other operating offices are destroyed by shredding or burning when the employee leaves the agency. Operating records maintained within the Civilian Personnel Office may be retained up to three years, as needed. When no longer needed, they may be destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Civilian Personnel, Headquarters, Defense Logistics Agency, and Directors of Civilian Personnel at DCSC, DRMS, DESC, DGSC, DPSC, DDMT, DDOU, DDRW, DDMP, DASC, DCMDs. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to or make a personal visit to the activity where the record is maintained. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

Individuals must provide name (last, first, middle initial) and SSN in order to determine whether or not the system contains a record about them. With a written request, individual must provide a return address.

For personal visits, the individual should be able to provide some acceptable identification, such as employing office identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system of records should address written inquiries to or make a personal visit to the activity where the record is maintained. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

The request is to contain the name of the individual (last, first, middle initial) SSN, return mailing address, telephone number where individual can be reached during the day, and a signed statement certifying that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to 5,000 dollars. Complete records are maintained only on magnetic tapes or discs and are not available for access by personal visits. Official mailing addresses are published as an appendix to DLA's record system notices.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employers, U.S. Office of Personnel Management and applications and forms completed by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S491.15DLA–M

System name:

Nonappropriated Fund (NAF) Membership Records (50 FR 22935, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "Military at Defense Construction Supply Center (DCSC), Defense Electronics Supply Center (DESC), Defense General Supply Center (DGSC), Defense Personnel Support Center (DPSC), Defense Depot Ogden (DDOU), and Defense Distribution Region West (DDRW), Community Club at Defense Depot Memphis (DDMT). See official mailing addresses contained in the Address Directory published as an appendix to DLA's systems notices."

* * * * *

S491.10DLA–M

SYSTEM NAME:

Nonappropriated Fund (NAF) Membership Records.

SYSTEM LOCATION:

Military at Defense Construction Supply Center (DCSC), Defense Electronics Supply Center (DESC), Defense General Supply Center (DGSC), Defense Personnel Support Center (DPSC), Defense Depot Ogden (DDOU), and Defense Distribution Region West (DDRW), Community Club at Defense Depot Memphis (DDMT). See official mailing addresses contained in the Address Directory published as an appendix to DLA's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the NAF active/retired military and civilians.

CATEGORIES OF RECORDS IN THE SYSTEM:

Daily Status Report on VOQ, Pool and Swimming Class Registrations, and Liability Agreement between activity and participants. Record contains the member's name, rank, social security number, spouse's name, birth date, and home/office telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302.

PURPOSE(S):

The records provide current listings of club memberships. They are used by the manager of the fund to determine eligibility for membership, mailing NAF activity notices, billing for dues and charges, indicating payment or nonpayment of dues, membership card number, to register applicants, maintain records for future classes and in cases of emergency. The record could be used by the Counsel to terminate membership for nonpayment of dues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "Blanket Routine Uses" set forth at the beginning of DLA's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files and filing cabinets. The records may also be automated.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed one year after member departs, after auditing or after purpose has been served.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The manager of the NAF at DCSC, DESC, DGSC, DPSC, DDMT, DDOU, DDRW. Official mailing addresses are published as an appendix to DLA's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the system manager of the particular activity involved. Official mailing addresses are published as an appendix to DLA's compilation of record system notices. The written request must be signed.

For personal visits, individuals must present proper identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system of records should address inquiries to the system manager of the particular activity involved. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Defense Logistics Agency rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Assignment orders, identification cards, and financial records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Department of the Navy

CNO Executive Panel, Long Range Planning Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Long Range Planning Task Force will meet March 22, 1991 from 9 a.m. to 5 p.m. at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding national security policy, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact:

Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, phone (703) 756–1205.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

Dated: March 8, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR Alternate Federal Register Liaison Officer.

[FR Doc. 91–6288 Filed 3–14–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Stanford University's Energy Modeling Forum

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent to make an unsolicited financial assistance award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.14(e)(1), it is making an unsolicited financial assistance award under Grant Number DE-FG01-91E122594 to Stanford University's Energy Modeling Forum (EMF) to assist in the use and construction of statistical models for the analysis of energy events and energy policy.

SCOPE: The objectives of this five (5) year grant are to aid in providing funding in the amount of $2,292,000 (DOE share subject to availability of funds: $1,375,000, Stanford University share: $917,000) for this project, which will make a significant contribution to U.S. energy research by satisfying the following:

(1) It will systematically bring together major model builders and model users in a forum which elicits dialog between the two groups;

(2) It will investigate methodological issues germane to the underlying design and construction of specific models;

(3) It will evaluate energy issues and energy policy responses, with particular emphasis on the applicability of models to specified energy events and policies; and

(4) It will identify areas where improvements in data and modeling techniques are needed.

Based on the direction and coordination of the eminently qualified Director of the EMF, Dr. John P. Weyant, and EMF providing a forum, otherwise unavailable, of systematically bringing together the major model builders and model users from a broad spectrum covering academic, industrial, and government communities, it is highly probable that the foregoing stated objectives will be achieved.

EMF objectives are meritorious as the project will improve the understanding on the part of all energy researchers, public and private, of the use of models for the analysis of energy issues and energy policy alternatives. EMF has demonstrated a unique capability of drawing together a diverse group of energy experts from various fields. The membership of the EMF brings to these issues a combination of talent and expertise embodied in both model builders and model users. EMF is judged to be a unique forum for the evaluation of much of the critical energy modeling activity currently being undertaken by government, business, and academic researchers. Furthermore, EMF utilizes innovative approaches when conducting this type of research which would not be eligible for financial assistance under a recent, current or planned solicitation. These capabilities are beyond the scope of any similar work performed and hence this grant will not duplicate any efforts currently underway.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Williams, U.S. Department of Energy, Office of Placement and Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1570.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-6325 Filed 3-14-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-1374-000 and CP91-1375-000]

Columbia Gas Transmission Corp; Requests Under Blanket Authorization

March 5, 1991.

Take notice that on February 27, 1991, Columbia Gas Transmission Company (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commision's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice of the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natrual Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natrual Gas Act.

Lois D. Cashell,

Secretary.

[1] These prior notice requests are not consolidated.

Docket No. [2] (date filed)	Shipper name	Peak day,[3] average day, annual	Receipt points	Delivery points	Start up date, rate schedule, service type	Related docket, contract date
CP91-1374-000 (2-27-91)	Stone Resource and Energy Corporation.	5,000 4,000 1,825,000	PA, OH, WV, KY	OH	1-01-91, ITS Interruptible.	ST91-8636-000, 12-11-90.
CP91-1375-000 (2-27-91)	Marathon Oil Company	879 783 357,335	WV	OH	1-17-91, FTS, Firm	ST91-8617-000 1-1-91.

[2] Quantities are shown in MMBtu.

[3] If an ST docket is shown, 120-day transportation service was reported in it.

[FR Doc. 91-6160 Filed 3-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-164-000 and RP90-165-000]

Mid Louisiana Gas Co.; Informal Settlement Conference

March 8, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, March 15, 1991, at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208-2215 or Joan Dreskin (202) 208-0738.

Lois D.Cashell,

Secretary.

[FR Doc. 91-6161 Filed 3-14-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 14 Through January 18, 1991

During the week of January 14 through January 18, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Greenpeace, 1/16/91, LFA-0092

Greenpeace filed an Appeal from a denial by the Deputy Assistant Secretary for Military Application Defense Programs of the DOE (Authority Official) of a Request for Information which the organization had filed under the Freedom of Information Act (FOIA). The Authorizing Official's response stated that a search had been conducted but no responsive documents were found. Greenpeace appealed the adequacy of the search, but did not provide any evidence that responsive documents were in the possession of the DOE. In considering the Appeal, the DOE found that the Authorizing Official had conducted a search that was reasonably calculated to uncover the requested documents. The search was therefore adequate and Greenpeace's Appeal was accordingly denied.

Lewis, King, Krieg & Waldrop, 1/16/19, LFA-0083

The law firm of Lewis, King, Krieg & Waldrop filed an Appeal from a denial issued to it by the Authorizing Official of the Department of Energy's (DOE) Oak Ridge Operations Office concerning a request for information which it submitted under the Freedom of Information Act. In considering the Appeal, the DOE followed the precedent established in a recent Decision and Order involving the same document at issue in this case. The DOE determined that Oak Ridge must release a copy of the document redacted in the manner prescribed in *The Oak Ridger*, 20 DOE ¶ 80,168 (1990). Accordingly, the Appeal was granted in part.

Remedial Order

Southwestern States Marketing Corporation/Kenneth Walker,1/14/91, HRO-0258, LRZ-0004, LRZ-0006

The Trustee for the Estate in Bankruptcy of Southwestern States Marketing Corporation (Southwestern) and Kenneth Walker, the firm's former President, Chairman of the Board and majority shareholder objected to a Proposed Remedial Order (PRO) issued jointly to them by the Economic Regulatory Administration (ERA) on October 16, 1984. In the PRO, the ERA alleged that at different times during the audit period, September 1977 through December 1980, Southwestern and Walker violated the layering regulation codified at 10 CFR 212.186, the anti-circumvention regulation set forth at 10 CFR 205.202 and the normal business practices rule contained in 10 CFR 210.62(c).

The Office of Hearings and Appeals rejected all the legal arguments presented by the Respondents, including attacks on the procedural and substantive validity of the three regulations at issue; on the ERA's authority to issue the PRO; and on OHA's authority to find Walker personally liable under a "central figure" rule of liability for the regulatory transgressions alleged in the PRO. OHA's disposition of the latter constitutional challenge is of particular importance. It was Walker's position that Article III of the United States Constitution barred OHA from entertaining causes of action predicated on the central figure or tortious conduct theory of liability. In rejecting Walker's claim, OHA first opined that Walker's entire constitutional argument proceeded from the erroneous premise that the case against him is grounded on a tort. OHA explained that central figure liability, unlike a traditional private action grounded in tort, does not arise from a violation of any common law duty of care, but from a violation of regulations specifically mandated by Congress. As for Walker specifically, OHA held that his presence in the case derived from his role in causing Southwestern's regulatory violations, not his violation of a common law duty of care. OHA also found that even assuming *arguendo* that central figure liability could be considered as derived from a common law tort, a non-Article III tribunal such as OHA could still adjudicate a case based on central figure liability because the ERA is attempting to vindicate "public rights" arising out of the price and allocation control statutes and the regulations promulgated thereunder. OHA noted that the United States Supreme Court has long recognized that non-Article III tribunals can entertain cases involving "public rights" created by regulatory programs.

OHA also reaffirmed its earlier holdings in the case that the ERA had established a *prima facie* case of regulatory violations and liability therefor, and noted that it was incumbent upon the Respondents to come forward with evidence to rebut the PRO allegations. Most of the voluminous documentation submitted by the Respondents addressed the crucial factual inquiry as to whether Southwestern had performed a service or function traditionally and historically associated with the resale of crude oil for purposes of the layering regulation. On this issue, OHA found that Mr. Walker had presented reliable, probative evidence which demonstrated that in four transactions listed in the PRO, Southwestern had performed a traditional and historical service for purposes of the layering regulation. Specifically, OHA held that Southwestern had provided credit services in one transaction, transportation services in two transactions, and storage in another transaction. OHA made appropriate adjustments to the alleged violation amount to reflect that these transactions did not violate the layering regulation. With respect to the balance of the transactions, however, OHA held that the Respondents had failed to demonstrate that Southwestern had performed any economically valuable

function. Instead, OHA determined that Southwestern used in-line transfers of crude oil to exploit the regulatory program by making unwarranted profits without contributing anything of tangible value to the crude oil market.

OHA therefore concluded that Southwestern had violated the layering regulation during the period January 1978 through 1980, and found the firm liable for overcharges in the amount of $30,425,297.66, plus interest.

OHA also determined that during the period when Kenneth Walker operated as a sole proprietor under the name, Southwestern States Marketing Company, i.e., September through December 1977, he engaged in the purchase and sale of crude oil through in-line transfers and charged a markup on the crude oil without contributing anything of tangible value to the crude oil distribution system. OHA held that Walker's practice of charging a markup for transferring paper title to crude oil constituted a means to obtain a price higher than permitted by the DOE regulations and violated 10 CFR 210.62(c). OHA also held that Walker's conduct during the latter part of 1977 circumvented the intent of the DOE regulations in violation of 10 CFR 205.202.

For the period January 1978 through May 1980, OHA determined that the evidence in the record was sufficient to establish a *prima facie* case that Kenneth Walker was a central figure in Southwestern's crude oil reselling activities during the operative period. Walker was Southwestern's President, Chairman of the firm's Board of Directors, an 84 percent owner of the firm's stock from January 1978 through November 1978 and 100 percent owner of that stock from December 1978 through May 1980. OHA also determined that the depositions of various individuals which had been introduced into the record of the proceeding demonstrated that Walker remained in control of various aspects of Southwestern's crude oil reselling operations during the applicable period. OHA also held that there was sufficient evidence in the record to support a finding that Walker personally benefited from the regulatory violations asserted in the PRO. Accordingly, OHA found Kenneth Walker personally liable for $25,895,827.55, plus appropriate interest for the regulatory violations which he committed or caused to be committed during the period September 1977 through May 1980.

Supplemental Order

Murphy Oil Corporation, 1/15/91, KFX-0063

The DOE issued a Decision and Order denying a "Motion for Order Directing Remission of Certain Refunds" filed by Murphy Oil Corporation (Murphy). In its Motion, Murphy requested that DOE remit to Murphy consent order funds earmarked for distribution to injured purchasers of Murphy products. As the basis for its motion, Murphy stated that it has obtained judgments against eight of its customers for amounts that they owe Murphy for purchases of refined petroleum products. Murphy has been unable to collect those judgments and requested that DOE remit any refunds granted to the purchasers to Murphy, rather than to the refund applicants, in satisfaction of Murphy's judgments against them. The DOE rejected Murphy's argument, noting that the Petroleum Overcharge and Distribution Act (PODRA) requires that DOE apply escrowed oil overcharge funds toward direct restitution of persons injured by actual or alleged violations of the regulations promulgated under the Economic Stabilization Act and the Emergency Petroleum Allocation Act. Since Murphy's proposal neither provided for direct restitution as required by PODRA, nor otherwise justified a departure from the typical Subpart V refund distribution, the DOE denied Murphy's Motion.

Implementation of Special Refund Procedures

Quintana Energy Corp., Quintana Refinery Co., Quintana Petrochemical Co., 1/18/91, KEF-0131

The DOE issued a Decision and Order implementing procedures for the distribution of $3,800,000, plus interest, in alleged refined product and crude oil overcharge funds obtained from Quintana Energy Corporation, Quintana Energy Co. and Quintana Petrochemical Company (hereinafter collectively referred to as Quintana) pursuant to a Consent Order executed between Quintana and the DOE on March 9, 1989. The Quintana-Howell Joint Venture (QHJV) was also covered by the Consent Order. The DOE determined thatr $1,900,000 of the funds will be distributed to purchasers of Quintana and/or QHJV refined petroleum products during the period from August 1973 until the date that the product claimed was decontrolled. The remaining $1,900,000 of the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases. The specific information to be included in an Application for Refund is specified in the Decision and Order.

Refund Applications

Border States Paving, Inc., 1/15/91, RF272-12826, RD272-17740

The DOE issued a Decision and Order concerning an Application for Refund filed by an asphalt manufacturing and road construction firm in the subpart V crude oil proceeding. A group of States and Territories (States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the consent order period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. the DOE also denied the States' Motion for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $48,237.

Buffalo Color Corp., 1/18/91, RF272-1581, RD272-1581

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Buffalo Color Corporation (Buffalo) based on the firm's purchases of refined petroleum products during the period of August 19, 1973 through January 27, 1981. The applicant was involved in the chemical industry and used the petroleum products in its business operations. Buffalo was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 States and two Territories filed a "Statement of Objections" and a "Motion for Discovery" with respect to the applicant's claim. The DOE found that the states' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Buffalo was $26,441.

City & County of San Francisco/Public Utilities Commission, 1/17/91, RF272-60568

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City & County of San Francisco/Public Utilities Commission (San Francisco) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a state-owned municipal railway that applied for a refund based on its purchases of diesel fuel. Philip P. Kalodner, an attorney representing utilities, transporters and manufacturers, argued that governmentally-owned transporters are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. The DOE found Mr. Kalodner's objections to San Francisco's eligibility unconvincing and granted the railray a refund of $32,549.

City of Clarksdale Water & Light Dept., 1/14/91, RF272-31702

The DOE issued a Decision and Order concerning an Application for Refund filed by a municipal utility in the subpart V crude oil proceeding. The applicant claimed that it purchased 47,167,837 gallons of petroleum products during the crude oil price control period and substantiated its claim by submitting a sample of the business records and invoices used in calculating its gallonage figures. Because the applicant adequately its claim and had certified that it would pass through any refund received to its customers, the DOE determined that the applicant was entitled to receive its full volumetric share. The refund granted to the applicant in this Decision was $37,734.

City of Phoenix, 1/17/91, RF272-3278

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the City of Phoenix based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a municipal entity that applied for a refund based upon its purchases of refined petroleum products which were used in municipally-owned cars. Philip P. Kalodner, Counsel for Utilities, Transporters and Manufacturers, filed conditional objections to this Application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut the City of Phoenix's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to the applicant's eligibility unconvincing and granted the City of Phoenix a refund of $27,504.

City of Virginia Beach, 1/14/91, RF272-58282

The DOE issued a Decision and Order concerning an Application for Refund that the City of Virginia Beach (Virginia Beach) filed in the subpart V crude oil special refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $12,578. Philip P. Kalodner (Kalodner), Counsel for Utilities, Transporters, and Manufacturers, filed comments and conditional objections to Virginia Beach's Application for Refund. The DOE determined that Kalodner's comments and objection were insufficient to rebut the presumption of end-user injury. Virginia Beach will be eligible for additional refunds as additional crude oil overcharge funds become available.

Climax Manufacturing Co., 1/16/91, RF272-2144, RD272-2144

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Climax Manufacturing Co. (Climax) based on the firm's purchases of refined petroleum products during the period of August 19, 1973 through January 27, 1981. The applicant was involved in the paper and pulp industry and used the petroleum products in its business operations. Climax was an end-user of the products claimed and was therefore presumed injured. A consortium of 30 States and two Territories filed a "Statement of Objections" and a "Motion for Discovery" with respect to the applicant's claim. The DOE found that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Climax was $16,248.

Coca-Cola USA, 1/14/91, RF272-17315, RD272-17315

The DOE issued a Decision and Order granting an Application for Refund filed by Coca-Cola USA, in the subpart V crude oil special refund proceeding. The Applicant is in the soft-drink manufacturing business. The DOE determined that the Applicant was an end-user of the petroleum products that formed the basis of its claim. A Statement of Objections and a Motion for Discovery was filed by a group of 28 States and two Territories in opposition to the application. The DOE determined that the States' filings were insufficient to rebut the presumption of injury for end-users in this case. Therefore, the Application for Refund was granted and the Motion for Discovery was denied. The refund granted to Coca-Cola was $47,971.

Ethyl Corp., 1/14/91, RF272-9658, RD272-9658

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Ethyl Corporation (Ethyl), based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Ethyl, a manufacturer of chemicals, plastic products and pharmaceuticals, demonstrated the volume of its claim by using contemporaneous records and reasonable estimates. Ethyl was an end-user of the products it claimed and was therefore presumed injured. A group of States and Territories filed Objections to the application, contending that the firm was not injured because it was able to pass through to customers any overcharges it suffered due to the elasticities of supply and demand that exist in any industry. The DOE found the States' Objections to be without merit. Accordingly, the DOE granted Ethyl a refund of $86,862, and denied a Motion for Discovery which the States had filed.

Farm Fresh, Inc., 1/17/91, RF272-59256, RD272-59256

The DOE issued a Decision and Order granting an Application for Refund filed by Farm Fresh, Inc., in the subpart V crude oil refund proceeding. The Applicant operates retail grocery and convenience stores. The DOE determined that the Applicant was an end-user regarding the portion of the petroleum products that the Applicant used in its business. The DOE, however, also determined that a refund would not be granted for the petroleum products that the Applicant resold from its convenience stores. A Statement of Objections and a related Motion for Discovery filed by a consortium of States were denied. The refund granted to Farm Fresh was $898.

Fletcher Oil & Refining Company, Inc./ Brennan Petroleum Co., 1/14/91, RF329-1

The DOE issued a Decision and Order granting an Application for Refund filed by Brennan Petroleum Co. in the Fletcher Oil & Refining Company, Inc. proceeding. The Applicant purchased directly from Fletcher and was a reseller of Fletcher products. The total volume approved in the Decision and Order was 761,952 gallons of refined products, and the volumetric refund granted to Brennan was $688.

Fort Worth, Transportation Authority, 1/18/91, RF272-5899

On January 18, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by the Fort Worth Transportation Authority in the DOE's subpart V crude oil refund proceeding. In that Decision

and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products as a common carrier. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. The DOE further determined that the applicant was not an affiliate of the Fort Worth Water Department, and that therefore the applicant's right to a refund in this proceeding had not been waived by virtue of the Fort Worth Water Department's having received a refund from one of the crude oil escrow funds. The applicant therefore was granted a refund of $5,363.

Glenwood Management Corp., 1/14/91, RF272-7002

On January 14, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by Glenwood Management Corporation in the DOE's subpart V crude oil refund proceeding. In that Decision and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products in the course of its normal business activities as an owner and operator of apartment buildings in New York City. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. A consortium of 30 States and Territories filed objections to this application, stating that the applicant was able to pass through the crude oil overcharges that it incurred, and therefore did not suffer injury as a result of the overcharges. The DOE determined that the end-user presumption of injury applied to the applicant, and that presumption had not been rebutted. The applicant therefore was granted a refund of $10,591.

Interstate Paper Corp., 1/14/91, RF272-14604

The DOE issued a Decision and Order granting an Application for Refund filed by Interstate Paper Corporation (Interstate) in the subpart V crude oil refund proceeding. Interstate used the petroleum products in the manufacture of paper and pulp products. A consortium of states and territories of the United States filed an objection to Interstate's Application, claiming that Interstate was able to pass through the crude oil overcharges to its customers. The DOE found that the Objections were insufficient to rebut the presumption of injury for end-users. The total refund amount granted is $24,939.

Lakeside Industries, 1/18/91, RF272-6120, RD272-6120

On January 18, 1991, the Department of Energy issued a Decision and Order granting an Application for Refund filed by Lakeside Industries in the DOE's subpart V crude oil proceeding. In that Decision and Order, the DOE found that the applicant was an end-user of the refined petroleum products for which it sought a refund, since the applicant used the petroleum products in the course of its normal business activities as a road construction company. Since this activity is not related to the petroleum industry, the applicant was presumed to have been injured by the crude oil overcharges. A consortium of 30 States and two Territories (the States) filed objections and a Motion for Discovery with respect to this application. In their submission, the States attempted to rebut the end-user presumption of injury. The DOE found that 5 percent of the petroleum products purchased by Lakeside were used pursuant to contracts that permitted the applicant to recover its increased petroleum product costs. Accordingly, Lakeside's gallonage claim was reduced by 5 percent. With respect to the remainder of Lakeside's gallonage claim, the DOE determined that the end-user presumption was applicable. The DOE further determined that the Motion for Discovery should be denied, and that a refund of $100,175 should be granted to Lakeside.

Mississippi Chemical Co., 1/15/91, RF272-71308, RD272-71308

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Mississippi Chemical Company (Mississippi) based upon its purchases of refined petroleum products between August 19, 1973 and January 27, 1981. The applicant used the petroleum products to produce and transport chemical fertilizers. The applicant was presumed injured. A consortium of 32 States and two Territories (the States) filed a Statement of Objection and a Motion for Discovery with respect to Mississippi's Application. The DOE found that the States' filing was insufficient to rebut the presumption of injury. Therefore, Mississippi's Application for Refund was granted and the States' Motion for Discovery was denied. The refund granted to Mississippi was $28,816.

Osceola Farms Co., Bogle Farms, Harris Farms, Inc., 1/18/91, RF272-13027, RD272-13027, RF272-16079, RF272-38152, RD272-38152

The DOE issued a Decision and Order granting the Applications for Refund filed by Osceola Farms Company, Bogle Farms, and Harris Farms, Inc., in the subpart V crude oil refund proceeding. The applications were end-users of the petroleum products that formed the basis of their applications. A Statement of Objections and a related Motion for Discovery filed by a consortium of States in two of the cases were denied.

Shell Oil Co./Houma Oil Co., Inc., 1/16/91, RF315-1600

The DOE issued a Decision and Order granting a refund from Shell Oil Company overcharge funds to Houma Oil Company, Inc. (Houma Oil), based on it purchases of Shell refined petroleum products between March 6, 1973 and January 27, 1981. As there are presently enforcement proceedings against Houma Oil, however, it would be inappropriate to give the refund directly to the firm. The DOE therefore directed the firm's refund to be deposited in a separate, interest-bearing escrow account, where it will be held until the Houma enforcement proceedings are resolved. The total refund approved in this Decision is $7,086 ($5,809 in principal and $1,777 in interest).

Shell Oil Co./Ray's Shell, Svendsen Shell, 1/18/91, RF315-2105, RF315-3383

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company special refund proceeding. The applicants purchased indirectly from Shell and were retailers who purchased less than 22,126,106 gallons of product. Since neither of the applicants' suppliers had filed a claim demonstrating that it absorbed the Shell overcharges, the applicants were granted refunds equal to their full allocable shares plus a proportionate share of interest that has accrued on the Shell escrow account. The total amount of the refunds granted in the Decision was $833 ($624 principal plus $209 interest).

State of Georgia Office of Energy Resources, 1/14/91, RF272-60290

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of Georgia Office of Energy Resources (Georgia) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant is a state entity that applied for a refund based solely on the state's purchases of refined petroleum products for its end-use. Georgia's Application included the refined petroleum product purchases of all state agencies in Georgia. These state entities include hospitals and state universities, not local school districts. Philip P. Kalodner, Counsel for Utilities, Transporters and Manufacturers, filed conditional objections to this Application. Mr. Kalodner argued that governmental entities are ineligible to receive subpart V crude oil refunds and that non-governmental claimants should have priority in receiving refunds. Moreover, Mr. Kalodner attempted to rebut Georgia's reliance on the end-user presumption. The DOE found Mr. Kalodner's objections to Georgia's eligibility unconvincing and granted the state a refund of $122,053.

Stone Container Corp., 1/18/91, RF272-9294, RD272-9294

The DOE issued a Decision and Order granting the crude oil refund application of Stone Container Corporation. A group of state governments and territories of the United States (the States) had objected to the application, questioning Stone's gallonage total and arguing that Stone was able to pass on the overcharges because of its profitability during the price control period. The DOE determined that the States had failed to produce any convincing evidence to show that the applicant had been able to pass on the crude oil overcharges to its customers. The DOE, however, disallowed that part of the gallonage based on the purchases of Southwest Forest Industries, Inc., a firm which Stone has acquired, because Southwest's subsidiary, Atlanta and St. Andrews Bay Railway, had filed a Waiver in the Rail and Water Transporters refund proceeding. The DOE rejected Stone's argument that the individual who signed the Waiver lacked the authority to do so. The DOE determined that this Waiver did not affect Stone itself, because Stone was not an affiliate of the Atlanta and St. Andrews Bay Railway, as defined in the Stripper Well Settlement Agreement. Accordingly, the DOE granted Stone a refund of $522,776, based on its approved purchases of 653,469,478 gallons of petroleum products. The DOE also denied the Motion for Discovery filed by the States for reasons discussed in earlier subpart V crude oil Decisions. *See, e.g., Christian Haaland A/S*, 17 DOE ¶ 85,439 (1988).

Sugar Cane Growers Coop. of Florida, Minn-Dak Farmers Cooperative, 1/14/91, RF272-20246, RD272-20246, RF272-55847, RD272-55847

The DOE issued a Decision and Order granting Applications for Refund filed by the Sugar Cane Growers Coop. of Florida and Minn-Dak Farmers Cooperative, in the subpart V crude oil refund proceeding. The Applicants are in the sugar processing business. The DOE determined that the Applicants were end-users of the petroleum products that formed the basis of their Applications. A Statement of Objections and a related Motion for Discovery filed by a consortium of States in each case were denied.

Texaco Inc./Crowl Oil Co., Inc. et al., 1/15/91, RF321-2821, RF321-2822, RF321-4980, RF321-5865, RF321-6640

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Texaco Inc. special refund proceeding on behalf of Crowl Oil Co., Inc., a Muskogee, Oklahoma based distributor and consignee of Texas petroleum products (the Muskogee plant). The five applications were filed by four different parties: three previous and one current owner of the Muskogee plant. Each of the three previous owners, Vance McSpadden, James L. Crowl, Sr. and Robert C. Sholar, (Case Nos. RF321-4980, RF321-5865 and RF321-6640), was claiming a refund only for purchases that were made during the portion of the consent order period that he owned the Muskogee plant. The current owners (Case Nos. (RF321-2821 and RF321-2822), who acquired the Muskogee plant in 1985, claimed a refund for all the purchases made by the Muskogee plant during the entire refund period. After examining the documents submitted by the applicants, the DOE found no evidence that any one of the three owners of the Muskogee plant during the refund period transferred his right to a possible refund when he sold the plant. Accordingly, the refund applications filed by the current owners were denied. Messrs. McSpadden, Crowl, Sr. and Sholar were all direct purchasers of Texaco products. Each was granted a refund for the purchases he made for the Muskogee plant during the refund period. In addition, Mr. Crowl, Sr. was granted a refund on behalf of purchases he made during the refund period from a consigneeship and jobbership in McAlester, Oklahoma. Mr. Sholar was granted a refund on behalf of purchases he made during the refund period from a distributorship in Chouteau, Oklahoma.

Texaco Inc./Holiday Texaco, 1/18/91, RF321-5390

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Holiday Texaco, a retail outlet that was a direct purchaser of Texaco refined products. The retail outlet was owned by Lowell Rottrup. Rottrup also owned 50 percent of R.F. Snyder Company, a Texaco consignee/jobber which previously had been granted a refund under the medium-range presumption of injury. The DOE found that because of this common ownership, the two firms should be considered together in determining the appropriate presumption level. Accordingly, Holiday was granted a refund under the medium-range presumption of injury of $115 ($95 principal plus $20 interest).

Tri County Asphalt Corp., 1/16/91, RF272-10915

Tri County Asphalt Corporation is involved in the road construction industry. It filed an Application for Refund as an end user of refined petroleum products in the subpart V crude oil refund proceeding. A group of State governments and two territories of the United States (the States) objected to the application and provided evidence concerning the construction industry as whole. The DOE determined that the States had failed to produce any convincing evidence to show that Tri County Asphalt Corporation had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Tri County Asphalt Corporation are injured by crude oil overcharges. Tri County Asphalt Corporation indicated that 40 percent of its contracts were affected by price escalator clauses and that 40 percent of its liquid asphalt purchases were covered by a price escalator clause. Tri County Asphalt Corporation's liquid asphalt purchase volume claim was reduced accordingly. The DOE granted Tri County Asphalt Corporation a refund of $3,942 based on its approved purchases of 4,364,438 gallons of petroleum products.

West Lake Quarry & Material Co., 1/15/91, RF272-23187, RD272-23187

West Lake Quarry & Material Company (West Lake) is involved in the road construction industry. It filed an Application for Refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, provided evidence concerning the construction industry as a whole, and filed a Motion for Discovery. The DOE

determined that the States had failed to produce any convincing evidence to show that West Lake had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as West Lake were injured by crude oil overcharges. Since West Lake indicated that exactly 20 percent of its contracts were affected by price escalator clauses, its liquid asphalt purchase volume claim was reduced accordingly. The DOE granted West Lake a refund of $28,240 based on its approved purchases of 35,300,182 gallons of petroleum products. The DOE accordingly denied the Motions for Discovery filed by the States.

Wildish Sand and Gravel Co., 1/16/91, RF272-32271, RD272-32275

The DOE issued a Decision and Order concerning an Application for Refund filed by an asphalt manufacturing and road construction firm in the subpart V crude oil proceeding. A group of States and Territories (the States) objected to the application on the grounds that the applicant was able to pass through increased petroleum costs to consumers during the price control period. The only evidence submitted by the States was an affidavit by an economist stating that, in general, construction firms were able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motions for Discovery, determining that it was not appropriate where the States had not presented relevant evidence to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $19,102.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Akron Oil Co	RF304-10410	01/16/91
Family Oil Co	RF304-10411	
Rose's Area	RF304-10412	
C & M Management Corp	RF304-10413	
Atlantic Richfield Co./D.L. Barlone Oil Co., Inc. *et al*	RF304-4109	01/16/91
Atlantic Richfield Co./Mattis Service *et al*	RF304-11019	01/15/91
Atlantic Richfield Co./Roy's Atlantic Service	RF304-12134	01/14/91
Atlantic Richfield Co./Sherwood Hall Acco *et al*	RF304-3914	01/16/91
Atlantic Richfield Co./Vernon L. Casrow *et al*	RF304-9233	01/17/91
Aurelious L. Byrd *et al*	RF272-65554	01/17/91
Beacon Oil Company/Peter T. Hopper, Inc	RF238-30	01/14/91
Charles B. Wise	RC272-108	01/14/91
Dabney R. Hinton	RF272-63719	01/14/91
Cable Airport, Inc	RF272-64062	
Exxon Corporation/Jacksonville Electric Authority	RF307-5495	01/14/91
Exxon Corporation/K&M Fuel Sales	RF307-888	01/15/91
J.A. Cormier Exxon	RF307-6736	
Marshall F. Scott	RF307-6798	
Engles Exxon Service Center	RF307-7191	
Farmers Union Oil Co. *et al*	RF272-69559	01/15/91
Gulf Oil Corp./Keey A. Stroud *et al*	RF300-6159	01/17/91
Gulf Oil Corp./Joe's Gulf *et al*	RF309-11243	01/15/91
Markus Corporation	RF272-69449	01/14/91
P, M & O Lines	RA272-33	01/16/91
Shell Oil Company/American Airlines, Inc	RF315-5503	01/17/91
Shell Oil Company/Jeff Anderson *et al*	RF315-112	01/16/91
Shell Oil Company/Kanaga Shell *et al*	RF315-1422	01/17/91
Shell Oil Company/McPherson Oil Company, Inc	RF315-569	01/16/91
Sublette Cooperative, Inc. *et al*	RF272-77176	01/15/91
Texaco Inc./Augie & Jonny Auto Inc. *et al*	RF321-2445	01/15/91
Texaco Inc./Hopkins County Fiscal Court *et al*	RF321-5200	01/15/91
Texaco Inc./Max A. Eggertsen	RF321-5429	01/17/91
Max A. Eggertsen	RF321-5430	
Max A. Eggertsen	RF321-5431	
Max A. Eggertsen	RF321-5432	
Texaco Inc./Vince Lepiccolo Texaco Service, Inc	RF321-12651	01/16/91

Dismissals

The following submissions were dismissed:

Name	Case no.
Alba-Waldensian, Inc. *et al*	RF272-54915
Angles Exxon	RF307-7518
Bardstown Texaco	RF321-4701
Bennett M. Ezell	RF321-12214
Bi-State Development Agency	RF272-59611
Bronx Community College	RF272-59991
Capital Shell Service	RF315-1313
Cedartown, GA	RF272-63067
Charles Mills Farms, Inc	RF272-66254
City of Davison	RF272-62382
City of Goldsboro	RF272-62720
City of International Falls, MN	RF272-63050
City of Johnson City	RF272-75297
City of Marquette	RF272-78009
Columbus School District	RF272-63131
Continental Car Wash	RF304-702
Davideen Louisiana, Inc	RF272-62724
Dewey Texaco	RF321-4702
Dighton U.S.D. #482	RF272-64023
F&M Co-op Gas & Oil Company	RF272-70366
Gilmer County School District	RF272-60984
Greenwood Motor Lines	RF272-61501
Grow Chemical Company	RF315-7225
Hayes Center Public Schools	RF272-61561
James Francis Hamblin Exxon	RF307-6729
Joe T. Davidson	RF321-5864
Leake County Board of Education	RF272-63952
Lionel Distributing, Inc	RF321-4705
Lionel Distributing, Inc	RF321-4704
Lionel Distributing, Inc	RF321-4703
Marion City School District	RF272-60126
Mark L. Hasselink	RF272-61649
Martin G. Bricker	RF272-64880
Monroe County Schools	RF272-62651
Monterey County Dept. of Public Works	RF272-78660
North Branford Board of Education	RF272-64006
Pet Dairy Inc	RF272-64024
Pioneer Texaco	RF321-4699
Radnor Township	RF272-74610

Name	Case no.
Ratliff's Exxon	RF307-9140
Robert H. Jones Texaco	RF321-1264
Robert H. Jones Texaco	RF321-1265
Roy's Markette	RF307-2012
Salem Suede, Inc	RF272-78641
Tracy's Phillips 66	RF307-1762
Union County Highway Dept	RF272-63958
Westside Texaco	RF321-4700

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 8, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-6236 Filed 3-14-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3913-8]

Environmental Impact Statements and Regulations: Availability of EPA Comments

Availability of EPA comments prepared February 25,1991 through March 1, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-L65143-WA Rating EC2, Chenuis Creek/Cayada Mountain Timber Sale, Timber Harvest/ Improvement, Implementation, Mt. Baker-Snoqualmie National Forest, Clearwater Roadless Area, White River Ranger District, Pierce County, WA.

Summary: EPA expressed environmental concerns based on the potential for adverse air quality impacts on adjacent mandatory Class I airsheds. Additional information was requested to describe monitoring, describe the effects of the project on biodiversity, clarify compliance with the Endangered Species Act, and clarify the potential effects of the proposed action on the threatened northern spotted owl.

ERP No. D-BLM-K67011-NV, Rating EC2, Betze Open Pit Gold Mine Expansion, Implementation, Elko and Eureka Counties, NV.

Summary: EPA expressed environmental concerns regarding potential adverse impacts to groundwater, reservoir water quality, and to wetlands, riparian areas and wildlife. EPA requested that BLM ensure monitoring and mitigation to protect these resources and to closely coordinate its project activities with the Nevada Division of Environmental Protection to ensure compliance with water quality standards.

ERP No. D-FHW-F40314-WI, Rating EC2, WI-TH 67/Oconomowoc Bypass Corridor Improvement and Relocation, Summit Avenue to existing WI-TH-67 near Lang Road, Funding and section 404 Permit, City of Oconomowoc, Waukesha County, WI.

Summary: EPA expressed concerns on wetland and woodland habitate impacts. EPA requested that the final include a mitigation plan to compensate for those impacts.

ERP No. D-IBK-K39030-CA, Rating LO, Shasta Lake Outflow Temperature Control, Upper Sacramento River, Keswick Dam to Red Bluff Diversion Dam, Funding, Shasta County, CA.

Summary: EPA commended the Bureau of Reclamation for its efforts to support propagation and survival. The final EIS should fully discuss the assumed operating conditions of the Central Valley Project, which underlie the impacts projected in the EIS.

ERP No. D-VAD-F99008-IL, Rating EC2, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Site Selection, Fort Sheridan, Grant Park, Cissna Park. Possible section 404 Permit, Lake, Kankakee and Iroquois Counties, IL.

Summary: EPA expressed concern about potential impacts to water quality and soils, and the amount of land required.

ERP No. DR-SCS-F36153-IN, rating EO2, Muddy Fork of Silver Creek Watershed Protection Plan, Flood Damage Installation Alternatives, section 404 Permit, Clark, Floyd and Washington Counties, IN.

Summary: EPA has objections to the project based on the lack of adequate wetlands delineations and assessments on the impact to wetlands. This information should be made available in the Final EIS.

Final EISs

ERP No. F-FHW-E50085-00, US 62/ 68/Ohio River Bridge Construction, Mason County, KY to Brown County, OH, Funding, US Coast Guard Bridge Permit and COE section 404 Permit, Mason Co., KY and Brown County, OH.

Summary: EPA's review concluded that the preferred alternative with the proposed roadway design changes will have minimal effect on environmental resources.

ERP No. F-GSA-F81016-MI, Internal Revenue Service Detroit Computing Center Expansion, Construction, Wayne County, MI.

Summary: EPA has no objection to the proposed project.

ERP No. F-USA-L11007-WA, Yakima Firing Center Expansion of Military Training Center Land Acquisition, 9th Infantry Division, Fort Lewis Military Installation, Yakima and Kittitas Counties, WA.

Summary: EPA has not identified any potential environmental impacts requiring substantive changes to the proposal. This document adequately addresses the proposed project and describes reasonable and appropriate mitigation measures.

Dated: March 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-6243 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3913-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed March 4, 1991 Through March 8, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910067, FINAL EIS, EPA, CA, City of San Diego Clean Water Program, Siting for Secondary Treatment System and Associated Sludge Management Facilities, Funding, San Diego County, CA, Due: April 15, 1991, Contact: Susan Johnson (415) 744-1934.

EIS No. 910068, DRAFT EIS, AFS, UT, Chepeta Lake, Whiterocks River and Lakeshore Basin Allotment Management Plans, Updated and Issuance of Grazing Permits, Ashley National Forest, Vernal Ranger District, Duchesne and Uintah Counties, UT, Due: April 30, 1991, Contact: Mary Wagner (801) 789-1181.

EIS No. 910069, DRAFT EIS, AFS, MT, Gravelly Sagebrush Burning Project, Implementation, Beaverhead National Forest, Madison County, MT, Due: April 30, 1991, Contact: Ron Schott (406) 682-4253.

EIS No. 910070, DRAFT EIS, BLM, CO, Gunnison Resource Area, Resource Management Plan, Implementation, Montrose District, Hinsdale, Ouray, Gunnison, Saguache, and Montrose Counties, CO, Due: June 15, 1991, Contact: Bill Bottomly (303) 249-6047.

EIS No. 910071, DRAFT EIS, FHW, MT, I-15/North Helena Valley Interchange Improvements, I-15 to Montana Avenue, Construction, Funding, Lewis and Clark County, MT, Due: May 7, 1991, Contact: Dale Paulson (406) 449-5310.

EIS No. 910072, FINAL EIS, MMS, AK, 1991 Norton Sound Outer Continental Shelf (OCS) Lease Sale, Placer Mining Program, Implementation and Lease Offerings, AK, Due: April 15, 1991, Contact: George Valiulis (703) 787-1662.

EIS No. 910073, FINAL EIS, NOA, VA, Chesapeake Bay National Estuarine Research Reserve System and Management Plan, Site Designation, Goodwin Islands, Catlett Islands, Taskimas Creek and Sweet Hall Marsh, Funding, VA, Due: April 15, 1991, Contact: Joseph Uravitch (202) 673-5122.

Dated: March 12, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-6242 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3913-9]

Clean Air Act Advisory Committee; Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR, No. 217, 46693). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990. In the November 8, 1990 notice, EPA also sought nominations for candidates for membership on the CAAAC.

OPEN MEETING DATES: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on April 12, 1991 from 9 to 5 p.m., at the Madison Hotel, 15th and M Streets, NW., Washington, DC. Due to the size of the meeting room, seating is limited to approximately 150 individuals and will be made available on a first come, first served basis.

The meeting will include a discussion of the implementation strategy for the Clean Air Act Amendments of 1990, the role of the advisory committee and its relationship to the EPA implementation process a discussion of issues of specific interest to committee members, and a discussion of other program efforts to implement the act.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A-90-39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington, DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

COMMITTEE MEMBERSHIP: At this time EPA is in the process of contacting selected Advisory Committee nominees. The Committee will consist of approximately 44 individuals.

FOR FURTHER INFORMATION: Concerning the CAAAC or its activities please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 382-7430, Fax (202) 245-8185, or by mail at U.S. EPA, Office of Program Management Operations (ANR-443), Office of Air and Radiation, Washington, DC 20460.

Dated: March 12, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91-6216 Filed 3-14-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service; Meeting

A meeting of the Advisory Committee on Advanced Television Service will be held on April 1, 1991 at 2 p.m. in the Sixth floor Conference Room of the Public Broadcasting Service, 1320 Braddock Place, Alexandria, Virginia.

The purpose of this meeting is to receive progress reports from the Subcommittees and the testing Laboratories and consider a Fourth Interim Report.

The agenda for the meeting is as follows:

1. Call to order and introductory remarks by Advisory Committee Chairman Richard E. Wiley
2. Adoption of the minutes of the last meeting
3. Remarks by FCC Chairman Alfred Sikes
4. Treasurer's Report
5. Report of the Test Laboratories
6. Subcommittee Reports
7. Consideration of the Fourth Interim Report
8. Other Business
9. Adjournment

This meeting is open to the public. Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or William H. Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-6249 Filed 3-14-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: The Federal Maritime Commission by notice published February 4, 1991 (56 FR 4293) solicited comments from interested persons who may be able to provide information relevant to whether and how laws and practices of the People's Republic of China result in the existence of unfavorable or adverse conditions affecting the operations of U.S.-flag carriers. The Commission now has determined to extend the deadline for such comments from April 1, 1991, to May 1, 1991.

DATE: Comments due May 1, 1991.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Boargoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: None.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-6125 Filed 3-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Buena Vista Bancorp, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Buena Vista Bancorp, Inc., Chester, Illinois; to receive a percentage of all credit life insurance premiums generated by its subsidiary bank, Buena Vista National Bank of Chester, Chester, Illinois, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in Randolph County, Illinois, as well as contiguous portions of Jackson County, Illinois; Perry County, Missouri, and other such areas in which depositors are located.

Board of Governors of the Federal Reserve System, March 11, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-6173 Filed 3-14-91; 8:45 am]

BILLING CODE 6210-01-F

First Staunton Bancshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 3, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Staunton Bancshares, Inc., Staunton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Staunton, Staunton, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancshares of Jackson Hole, Inc., Jackson, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of Jackson Hole Bancshares Corporation, Jackson, Wyoming, and thereby indirectly acquire 63.9 percent of the voting shares of Bank of Jackson Hole, Jackson, Wyoming.

Board of Governors of the Federal Reserve System, March 11, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-6174 Filed 3-14-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0200, GSAR part 514: Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 26; annual responses: 1.0; average hours per response: 0.1667; burden hours: 4.33.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501-1224. Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: March 5, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-6140 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-28]

Interim Guidelines for Public Comment on Health Assessments

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public

Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the intent of ATSDR to make health assessments available for public comment. The document to be made available is the Health Assessment-Public Comment Release. It contains a summary of the interim procedures that will be used to obtain comments from the public concerning these health assessments. These procedures will be used on an interim basis, subject to change based on experiences gained during the implementation period.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 639-0610, FTS 236-0610.

SUPPLEMENTARY INFORMATION: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), section 104(i) (42 U.S.C. 9604(i)), as amended, requires that ATSDR perform a health assessment for all sites that are proposed for or are on the CERCLA National Priorities List (NPL). In addition, CERCLA authorizes ATSDR, at its discretion, to conduct health assessments for sites in response to requests from the public (petitioned health assessments). The statutory criteria for a health assessment are set out in CERCLA 104(i)(6) (F), (G), and (H). A health assessment is an evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The results of health assessments are to be provided to EPA and the affected state (CERCLA 104(i)(6)(H)).

At this time, ATSDR intends to release health assessments in three iterations; Health Assessment-Initial Release, which is provided to EPA and the affected state(s), Health Assessment-Public Comment Release, which reflects EPA and state comments, as appropriate, and the Health Assessment, which contains responses to public comments.

The Health Assessment-Initial Release represents the agency's best effort, based on currently available information, to fulfill the statutory criteria set out in CERCLA 104(i)(6). To the extent possible, the Health Assessment-Initial Release presents an assessment of the potential risks to human health posed by the site or facility at issue. When appropriate, based on the results of this document, actions authorized by CERCLA 104(i)(11) or otherwise authorized by CERCLA may be undertaken to prevent or mitigate human exposure or risks to health. In addition, ATSDR utilizes the Health Assessment-Initial Release to determine if follow-up health actions are appropriate at the time. Therefore, since this document fulfills those statutory criteria, and serves the purposes and intentions of CERCLA, it is completed for purposes of CERCLA 104(i)(6)(A).

However, it is the further scientific judgment of ATSDR that additional input from EPA, state and local health entities, and the general public, regarding the health assessment document serves valuable public health objectives. As mentioned in the preamble to the final rule for Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, 42 CFR part 90), ATSDR is not required to provide a public comment period for health assessments. However, based on the results of a pilot study of the impact and effectiveness of providing a public comment period for health assessments, it has been determined that it is beneficial and feasible to do so. A public comment period provides certain benefits to the health assessment process that could not be otherwise obtained. Public confidence is increased and the quality of individual health assessments is enhanced. Although community involvement is actively solicited throughout the development of the health assessment, certain information that would not be available through other means can be acquired through the public comment process. Every effort is made to collect the most current information regarding a site when the health assessment is initiated; however, the public comment period helps to ensure that no critical information has been overlooked.

The Health Assessment-Public Comment Release will include relevant changes in response to comments from EPA and the State. After the close of the public comment period, ATSDR will prepare a response to all written comments received during the public comment period. After all public comments are addressed, the Health Assessment will be issued. This will conclude the health assessment process unless additional information is obtained by ATSDR which, in the agency's sole discretion, indicates a need to revise or append the conclusions previously issued.

Interim procedures for the conduct of a public comment period for health assessment have been developed and are summarized below.

Public Comment on Health Assessments Summary of Interim Procedures

1. A public notice announcing that a Health Assessment-Public Comment Release is available for public comment will appear in at least one newspaper serving the community near the site. A press release may also be used to announce that a Health Assessment-Public Comment Release is available for public comment. Individual notice of the public comment period for a health assessment may be provided, where deemed appropriate, to Federal and state authorities; potentially responsible parties; owner or operator (if known); individual or group petitioning for a health assessment; and citizen groups.

2. The Health Assessment-Public Comment Release will be distributed to certain repositories (e.g., local libraries) so that any interested person may review the Health Assessment-Public Comment Release. The repositories and an address where comments must be sent will be announced in the public notice. The Health Assessment-Public Comment Release will not be available through the mail.

3. The public comment period will extend for 30 calendar days from the date of the public notice. To be considered, public comments must be in writing and be received at the ATSDR office listed in the public notice by the close of business on the 30th day (or close of business the first business day after the 30th day).

4. After the close of the public comment period, ATSDR will prepare a response to all written comments received during the pubic comment period. These comments from the public and ATSDR's responses will become part of the Agency's record for individual sites.

5. After all public comments are addressed, the health assessment will be finalized; the responses to the comments will be contained as an appendix.

6. ATSDR may use public meetings to present health assessments contingent upon community interest and the extent and complexity of comments received during the public comment period.

Availability

The interim procedures for public comment on health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 31, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays.

Dated: March 8, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-6181 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring

Name:

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces the following meeting: Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring

Time and Date: 9 a.m.–12 noon, March 25, 1992.

Place: Alice Hamilton Laboratory, Conference Room B, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for peer review of a project titled "Identification of High-Risk Procedures During Surgery Using Real-Time Monitoring." This project will employ a combination of real-time monitoring and videotaping of surgical procedures to identify surgical tasks and tools that produce emissions during surgical procedures. This combination can be used by surgical personnel to identify tasks that produce emissions and to demonstrate devices and work practices that can be used to reduce emissions.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Jerome P. Smith, Ph.D., Project Officer, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-8, Cincinnati, Ohio 45226, telephone 513/841-4293 or FTS 684-4293.

Dated: March 21, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-6357 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91F-0066]

Alcoa Separations Technology, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ALCOA Separations Technology, Inc., Aluminum Co. of America has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that ALCOA Separations Technology, Inc., Aluminum Co. of America, 181 Thorn Hill Rd., Warrendale, PA 15086-7527, has filed a petition (FAP 1B4254) proposing that the food additive regulations in § 177.2910 *Ultra-filtration membranes* be amended to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 11, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-6177 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Reconsideration of Disapproval of Colorado State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on April 16, 1991, in room 431 Federal Office Building, 1961 Stout Street, Denver, Colorado to reconsider our decision to disapprove Colorado State Plan Amendment 89-12.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Colorado State Plan amendment (SPA) number 89-12.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirement contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of Colorado sought protection for several income and resource eligibility policies under the authority of the moratorium enacted by section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA) as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987. The DEFRA moratorium provided protection from adverse actions by the

BEST COPY AVAILABLE

Secretary against States because he determined their plan violated section 1902(a)(10)(a)(ii) (IV), (V), or section 1902(a)(10)(C)(i)(III) of the Social Security Act because the plan includes a standard or methodology which is less restrictive than that required by those sections.

The DEFRA moratorium did not alter the substantive authority governing the approval of State plans or plan amendments. Thus, material submitted for moratorium protection would be disapproved unless it qualified for approval under the Medicaid statute independent of the provisions of the moratorium. However, HCFA would confer protected status upon submissions which qualified for protection under the moratorium. Furthermore, plan amendments which increase services or eligibility cannot have a retroactive effective date any earlier than the beginning of the calendar quarter in which they were submitted. This limitation has been, and continues to be, part of the Department's appropriations statutes and is reflected in 42 CFR 430.20.

The moratorium protected qualifying plan policies for the period from October 1, 1981 through February 17, 1989. The moratorium was replaced by section 1902(r)(2) of the Social Security Act, which amended the substantive provisions of the Medicaid statute. Colorado does not seek approval of its amendment under the authority of section 1902(r)(2). The Health Care Financing Administration has treated State requests for protection under the DEFRA moratorium through the State plan amendment process.

The eligibility groups to which Colorado applied these policies were (1) institutionalized individuals who met the resource requirements of the Supplemental Security Income (SSI) program and who satisfied a special income standard established by the State (section 1902(a)(10)(A)(II)(V)), and (2) individuals who received a State supplementary payment (section 1902(a)(10)(A)(ii)(IV)).

Colorado's amendment included two resource policies. One would exempt from countable resources the home of an institutionalized individual as long as the individual intends to return to it (even if just to die there).

This policy is consistent with the SSI rules. Thus, since the Secretary did not find it to be more liberal than the SSI policy, it does not qualify for protection under the DEFRA moratorium. For the same reason, the State should not be penalized for employing this policy.

The second resource policy was to reduce the cash surrender value of a life insurance policy by $1500 for funeral and burial funds, if the individual has no other burial funds. These exempt funeral and burial funds could be clearly designated funds which are part of a larger insurance policy. This policy is more liberal than SSI. However, HCFA disapproved it because Colorado could not demonstrate that it was a policy which qualified under the definition of a State plan for purposes of the DEFRA moratorium. Section 2373(c)(5) of the amended DEFRA moratorium defines a State plan to include any amendment or other change which is submitted by the State (whether approved, disapproved, or not acted upon) or any policy or guideline delineated in the State's Medicaid operations or program manual which are submitted to the Secretary. HCFA believes that the State must submit documentation which establishes that the policy was in place as of the time in which the State purports it was in effect. Since Colorado could not document that the policy was not in the plan or its manuals, or had been submitted in a timely manner for the period in question (even if ultimately disapproved), HCFA concluded that the provision did not qualify for protection.

Colorado also seeks moratorium protection for three income deductions. They are deductions from the income of non-recipients before the remainder of their income is deemed to a Medicaid applicant or recipient. The specific deductions are: (1) An allowance for self (standard of assistance); (2) an allowance for dependent children (AFDC); (3) an allowance for work related expenses; and (4) an allowance for medical expenses for which the (non-recipient) individual is responsible that are not covered by Medicaid and/or Medicare. These deductions are in certain respects more liberal than those of the SSI program.

While the DEFRA moratorium could protect more liberal income counting methods than those of the SSI program, its legislative history demonstrates that Congress did not intend for States to use the moratorium to override the income based limits on Federal financial participation established in section 1903(f) of the Social Security Act. Also, the moratorium does not refer to protection against the limits specified in section 1903(f). Because a State plan amendment which could produce a violation of these limits would necessarily cause avoidable administrative burdens, HCFA concluded that providing protection for potential violations of these limits is contrary to sections 1902(a)(4) and (a)(19) of the Social Security Act. These provisions dictate that the State's plan must contain such methods of administration which the Secretary finds to be necessary for the proper and efficient operation of the plan. It must also provide such safeguards as may be necessary to ensure that eligibility will be determined in a manner consistent with simplicity of administration and the best interests of recipients. The DEFRA moratorium does not protect States against the violation of either section 1902(a)(4) or section 1902(a)(19).

The issues to be considered in the hearing are specified in the notice to Colorado announcing the administrative hearing to reconsider the disapproval of State plan amendment 89–12 which is reproduced below:

Ms. Irene M. Ibarra,
Executive Director, Colorado Department of Social Services, 1575 Sherman Street, 8th Floor, Denver, Colorado 80203–1714

Dear Ms. Ibarra: I am responding to your request for reconsideration of the decision to disapprove Colorado State Plan Amendment (SPA) 89–12. This amendment, seeks to implement various resource and income policies that apply to individuals eligible for Medicaid under a special income level and individuals eligible for Medicaid because of receipt of a State supplementary payment (SSP). You have requested that these policies be protected under the moratorium provisions of the Deficit Reduction Act 1984 (DEFRA) beginning October 1, 1981. You also note that you do not want protection under section 1902(r)(2) of the Social Security Act (the Act) for these policies.

The basic issue to be considered in the hearing is whether the plan amendment qualifies for protection under the DEFRA moratorium. This includes two subsidiary issues: (1) Whether the submittal violates section 1902(a)(4) and section 1902(a)(19) of the Act and (2) whether the burial fund resource exclusion contained in a State plan or operating manual meets the requirements of section 2373(c)(5). Also, in the context of considering the disapproval of the submittal as a plan amendment, we note there is an issue whether the amendment would retroactively amend the State's plan in a manner which increases eligibility for services, beyond the time frames authorized under 42 CFR 430.20 and the Department's appropriations statutes.

I am scheduling a hearing on your request for reconsideration to be held on April 16, 1991, in room 431 Federal Office Building, 1916 Stout Street, Denver, Colorado. If the date is not acceptable, we would be glad to set another date taht is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk may be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.,
Administrator

(Section 1116 of the Social Security Act) (42 U.S.C. section 1316; 42 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: March 8, 1991.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 91–6185 Filed 3–14–91; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; Committee Renewal

Pursuant to the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. appendix II), the Health Resources and Service Administration announces the renewal of the following advisory committee.

Council	Termination date
Advanced General Dentistry Review Committee.	June 8, 1993.

Dated: March 11, 1991.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 91–6115 Filed 3–14–91; 8.45 am]
BILLING CODE 4160–15–M

Public Health Service

Project Grants for Renovation or Construction of Non-Acute Care Intermediate and Long-Term Care Facilities for Patients with Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Health Resources Development (BHRD), Health Resources and Services Administration (HRSA) announces that fiscal year (FY) 1991 funds are available for project grants for the renovation or construction of non-acute care, intermediate and long-term care facilities for patients with AIDS or other Human Immunodeficiency Virus (HIV) related conditions. Funds were appropriated for this purpose by Public Law 101–517 under the authority of section 1610(b) of the Public Health Service (PHS) Act.

DATES: To receive consideration, applications for the renovation or construction of facilities for patients with AIDS or other HIV-related conditions must be received by the close of business June 13, 1991 by the Grants Management Officer, Ms. Glenna B. Wilcom, at the address below. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered applications must be received by 5 pm, June 13, 1991. Grant applications that are received after the deadline date will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical and program issues may be obtained from Ms. Katharine Buckner, Division of Facilities Assistance and Recovery, Bureau of Health Resources Development, Parklawn Building, room 11A–10, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0271. Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer, Ms. Glenna B. Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2280. Applicants for grants will use form PHS 5161–1, approved under OMB Control Number 0937–0189.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Public Law 101–517 provides funds for grants under the authority of section 1610(b) of the PHS Act, for the renovation or construction of non-acute care, intermediate and long-term care facilities for patients with AIDS or other HIV-related conditions. Section 1610(b) requires that grantees provide services for patients with AIDS or other HIV-related conditions and that the amount of any grant may not exceed 80 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, which case the grant may cover up to 100 percent of such costs. (Urban or rural poverty area is defined as a medically underserved area designated by the Secretary (42 CFR 51c.102).) For information regarding the current medically underserved areas, contact the Director, Office of Shortage Designation, room 4–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or telephone (301) 443–6932.

The purpose of these funds is to support the construction and/or renovation of facilities that provide a comprehensive and cost-effective approach to non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions. Examples of such a project may include:

(1) Projects for the renovation of existing traditional health care facilities such as hospitals, nursing homes, or hospices. For example, funds might be used to convert a small number of existing beds (i.e., 5–10) or to expand a facility to include several new beds for AIDS patients;

(2) Projects for the construction of new health care facilities to provide comprehensive intermediate and/or long-term care for some or all of the various stages of illness of an HIV-infected individual. Services may include, among others, outpatient care, skilled nursing care and hospice care; and

(3) Projects for the renovation of existing facilities other than traditional health care facilities, such as residential housing.

Availability of Funds

A total of $3,989,000 is available in FY 1991 to be awarded for the renovation or construction of non-acute care, intermediate and long-term care facilities for AIDS patients. It is anticipated that: (1) Approximately 13 grants averaging approximately $300,000 each will be awarded and (2) the minimum amount of a grant will be $100,000.

Eligible Applicants

To be eligible, applicants must: (1) Be a public or private nonprofit entity; (2) have a source of funding to meet the non-Federal portion of the eligible construction cost; (3) have title to a building site or have a 25 year lease, or have a written commitment to acquire such title or lease within 6 months from the date of the grant award; (4) provide non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions as a part of whatever coordinated group of HIV-related outpatient and ambulatory health and support services exists is in the community; (5) demonstrate that health care services, under the general direction of a physician, are an essential part of the programmatic scope of the

project and will be routinely provided in space at the facility; (6) participate in local planning and document linkages with other U.S. Department of Health and Human Services funded programs and specialized state-local funded HIV services in the community; and (7) be located in a Metropolitan Statistical Area with a population over 500,000 that has more than 500 cumulative cases of AIDS, as reported by the Centers for Disease Control as of November 30, 1990 (see appendix A).

Further, applicants must agree in writing to provide: (1) An assurance that, after such application is approved, the facility or portion thereof to be constructed or renovated will be made available to persons residing or employed in the area served by the facility who need the services offered by the facility, in accordance with 42 CFR part 124, subpart G; and

(2) An assurance that a reasonable volume of services will be available to persons unable to pay for care in the facility or the portion thereof which is to be constructed or renovated, in accordance with 42 CFR part 124, subpart F (OMB Clearance Number 0915–0077).

A condition of the grant award will be, in part, that before grant funds can be released, the grantee must: (1) Record the notice of the Federal interest and grant recovery rights at its local land records office and provide a copy of the official recording to the PHS Grants Management Office in the grantee's respective region.

(2) Provide a statement from the lessor to the Regional Grants Management Office (if the property is to be leased) that it is understood that there will be a notice of the Federal interest and grant recovery rights at the local land records office.

Evaluation Criteria

To receive an award, applicants must demonstrate their ability to provide health care services which meet the need for non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions. Projects will be selected on a competitive basis by an objective review committee based on the following evaluation criteria:

(1) Applicant's qualifications and experience in providing health care and treatment to AIDS/HIV patients;

(2) Clearly defined goals and objectives with the specific activities required to accomplish the goals of the proposed project;

(3) A clearly documented needs assessment which justifies the scope of services proposed by the project;

(4) A plan for case management to assure the coordination of health services for patients with AIDS or other HIV-related conditions. At a minimum, case management should: (a) Provide a confidential identification system that establishes which medical and support services the client is utilizing; and (b) provide consultation to clients on the availability of medical services, community-based treatment alternatives and other support services;

(5) A description of the quality and scope of medical care as well as qualifications of the staff who will ensure appropriate medical care of patients with AIDS or other HIV-related conditions;

(6) A plan demonstrating that needs of racial and ethnic minorities have been considered, and that efforts will be made to meet such needs;

(7) Letters of support or other documents, at a minimum, from (a) planning councils of title I eligible metropolitan areas under the Ryan White C.A.R.E. Act if there is a council in the project's area; and, (b) consortia funded under title II of the Ryan White C.A.R.E. Act. In addition, documentation of support should be provided from local community organizations and health care providers who provide services to patients with AIDS or other HIV-related conditions, validating the need for the proposed services and for the project as a whole. Projects which will be located in the service area of a HRSA funded adult or pediatric AIDS Service Demonstration Project must also submit a letter of endorsement from that project (see appendix B);

(8) The appropriateness of the project design, facility construction/renovation plans and time frames for initiation through completion of the project. Schematic drawings must be provided with the application;

(9) The reasonableness and justification for the itemized costs in the construction budget. All requests for movable equipment must include itemization and unit price;

(10) The ability of the applicant to provide more than the minimally required matching amount of the cost for the construction project;

(11) Documentation of reimbursement sources and other funding sources sufficient to support program operations and to maintain the ongoing financial viability of the project after the construction has been completed;

(12) Demonstration of the applicant's intent to maintain the portion of the facility receiving this Federal assistance for AIDS-related care for a period of twenty years.

Technical Assistance Workshops

The Bureau will conduct two programs technical assistance workshops to answer questions from potential applicants. The workshops will be held soon after publication of this Federal Register Notice at the following locations:

Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Federal Office Building, 50 United Nations Plaza (Seventh and Market Street), San Francisco, CA 94102

Applicants who wish to attend a workshop should contact Ms. Katharine Buckner, at (301) 443–0271, for the schedule of dates and times. Applicants must confirm their participation as to which workshop they will attend and the number of individuals that will attend. Expenses incurred by the workshop attendees will not be reimbursed by the Federal Government. Participation in the technical assistance workshops does not assure approval and funding of prospective applications.

Allowable Costs

A successful applicant under this Notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and PHS applicable to grants; the applicable Office of Management and Budget (OMB) circular for public and private non-profit grantees; and Appendix II of the PHS Grants Policy Statement applicable to construction.

Other Awards Information

The grant may be terminated for cause if the grantee materially fails to comply with the terms and conditions of the grant. Unless an approved construction contract is entered into within one year of the grant award date the grant shall be subject to termination. Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective

applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The SPOC has 60 days after the application deadline date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date.

The OMB Catalog of Federal Domestic Assistance number for Section 1610(b) is 93.857.

Dated: January 9, 1991.

John H. Kelso,

Acting Administrator.

APPENDIX A

Metropolitan Statistical Areas with a Population Over 500,000 with more than 500 Cumulative Cases of AIDS as Reported to the Centers for Disease Control as of November 30, 1990

1. New York, NY
   - Bronx
   - Kings
   - New York
   - Putnam
   - Queens
   - Richmond
   - Rockland
   - Westchester
2. Los Angeles-Long Beach, CA
   - Los Angeles
3. San Francisco, CA
   - Marlin
   - San Francisco
   - San Mateo
4. Houston, TX
   - Fort Bend
   - Harris
   - Liberty
   - Montgomery
   - Waller
5. Washington, DC–MD–VA
   - District of Columbia
   - Calvert, MD
   - Charles, MD
   - Frederick, MD
   - Montgomery, MD
   - Prince George's, MD
   - Arlington, VA
   - Stafford, VA
   - Alexandria, VA
   - Fairfax, Fairfax City and Falls Church, VA
   - Prince William, Manassas and Manassas Park, VA
6. Newark, NJ
   - Essex
   - Morris
   - Sussex
   - Union
7. Miami-Hialeah, FL
   - Dade
8. Chicago, IL
   - Cook
   - Du Page
   - McHenry
9. Philadelphia, PA–NJ
   - Burlington, NJ
   - Camden, NJ
   - Gloucester, NJ
   - Bucks, PA
   - Chester, PA
   - Delaware, PA
   - Montgomery, PA
   - Philadelphia, PA
10. Atlanta, GA
    - Barrow
    - Butts
    - Cherokee
    - Clayton
    - Cobb
    - Coweta
    - De Kalb
    - Douglas
    - Fayette
    - Forsyth
    - Fulton
    - Gwinnett
    - Henry
    - Newton
    - Paulding
    - Rockdale
    - Spalding
    - Walton
11. San Juan, PR
    - San Juan
    - Bayamon
    - Canovanas
    - Carolina
    - Catano
    - Guaynabo
    - Loiza
    - Toa Baja
    - Trujillo Alto
12. Dallas, TX
    - Collin
    - Denton
    - Ellis
    - Kaufman
    - Rockwall
13. Boston-Lawrence-Salem-Lowell-Brockton, MA
    - Essex
    - Middlesex
    - Norfolk
    - Plymouth
    - Suffolk
14. Ft. Lauderdale-Hollywook—Pompano Beach, Fl
    - Broward
15. San Diego, CA
    - San Diego
16. Oakland, CA
    - Alameda
    - Contra Costa
17. Baltimore, MD
    - Anne Arundel
    - Baltimore
    - Carroll
    - Harford
    - Howard
    - Queen Anne's
    - Baltimore City
18. Jersey City, NJ
    - Hudson
19. Nassau-Suffolk, NY
    - Nassau
    - Suffolk
20. Seattle, WA
    - King
    - Snohomish
21. Tampa-St Petersburg-Clearwater, FL
    - Hernando
    - Hillsborough
    - Pasco
    - Pinellas
22. New Orleans, LA
    - Jefferson
    - Orleans
    - St. Bernard
    - St. Charles
    - St. John the Baptist
    - St. Tammany
23. West Palm Beach-Boca Raton-Delray Beach, FL
    - Palm Beach
24. Detroit, MI
    - Lapeer
    - Livingston
    - Macomb
    - Monroe
    - Oakland
    - St. Clair
    - Wayne
25. Bergen-Passaic, NJ
    - Bergen
    - Passaic
26. Anaheim-Santa Ana, CA
    - Orange
27. Denver, CO
    - Adams
    - Arapahoe
    - Denver
    - Douglas
    - Jefferson
28. Riverside-San Bernardino, CA
    - Riverside
    - San Bernardino
29. Kansas City, MO
    - Johnson
    - Leavenworth
    - Miami
    - Wyandotte
    - Cass
    - Clay
    - Jackson
    - Lafayette
    - Platte
    - Ray
30. Phoenix, AZ
    - Maricopa
31. St. Louis, MO–IL
    - Clinton, IL
    - Jersey, IL
    - Madison, IL
    - Monroe, IL
    - St. Clair, IL
    - Franklin, MO
    - Jefferson, MO
    - St. Charles, MO
    - St. Louis, MO
    - St. Louis City, MO
32. Middlesex-Somerset-Hunterdon, NJ
    - Hunterdon
    - Middlesex
    - Somerset
33. San Antonio, TX
    - Bexar
    - Comal
    - Guadalupe
34. Jacksonville, FL
    - Clay
    - Duval
    - Nassau
    - St. Johns
35. Portland, OR
    - Clackamas
    - Multnomah
    - Washington
    - Yamhill
36. Orlando, FL

Orange
Osceola
Seminole
37. Minneapolis-St. Paul, MN-WI
Anoka, MN
Carver, MN
Chisago, MN
Dakota, MN
Hennepin, MN
Isanti, MN
Ramsey, MN
Scott, MN
Washington, MN
Wright, MN
St. Croix, WI
38. San Jose, CA
Santa Clara
39. Austin, TX
Hays
Travis
Williamson
40 Monmouth-Ocean, NJ
Monmouth
Ocean
41. Sacramento, CA
El Dorado
Placer
Sacramento
Yolo
42. Ft. Worth-Arlington, TX
Johnson
Parker
Tarrant
43. New Haven-Waterbury-Meriden, CT
New Haven
44. Cleveland, OH
Cuyahoga
Geauga
Lake
Medina
45. Bridgeport-Stamford-Norwalk-Danbury, CT
Fairfield
46. Hartford-New Britain-Middletown-Bristol, CT
Hartford
Middlesex
Tolland
47. Pittsburgh, PA
Allegheny
Fayette
Washington
Westmoreland

APPENDIX B

Adult AIDS Service Demonstration Projects Directory

Serving Phoenix, Arizona

Maricopa County Department of Health Services, 1825 East Roosevelt, Phoenix, AZ 85006, Judith Hartner, MD, Acting Assistant Director for Community Health Services (602) 258–6381

Serving Los Angeles-Long Beach, California

Los Angeles County Department of Health Services, AIDS Program Office, 600 South Commonwealth, 6th Floor, Los Angeles, CA 90005 Robert Frangenberg (213) 351–8691

Serving San Diego, California

Department of Health Service, P.O. Box 85524, San Diego, CA 92138 Binnie Calender, Chief, Office of AIDS Coordination, (619) 236–2254

Serving San Francisco—Oakland, California

San Francisco Department of Public Health, 25 Van Ness Avenue, Suite 500, San Francisco, CA 94102, Sophia W. Chang, M.D., Director, AIDS Office (415) 554–9017

Serving Santa Ana-Anaheim-Garden Grove, California

County of Orange, Health Care Agency, 1719 W. 17th Street, P.O. Box 355, Santa Ana, CA 92702, Penny C. Weismuller, Dr. P.H., AIDS Coordinator (714) 834–2015

Serving Denver-Boulder, Colorado

City and County of Denver, 777 Bannock Street, Denver, CO 80204 Adam Meyes, M.D. (303) 893–7270

Serving Miami, Florida

Jackson Memorial Hospital, 1611 NW. 12th Avenue, Miami, FL 33316 Barbara Loyd, Administrator, AIDS Program (305) 549–7744

Serving Ft. Lauderdale-Hollywood, Florida

Northwest Health Center, 624 Northwest 15th Way, Fort Lauderdale, FL 33311, Jasmin Shirley Moore (305) 467–4532

Serving Atlanta, Georgia

AIDS Atlanta, 1132 W. Peachtree Street, Atlanta, GA 30309 Sandra L. Thurman (404) 872–0600

Serving Chicago, Illinois

AIDS Foundation of Chicago, 1332 N. Halsted Street, Chicago, IL 60622, Kathleen Ahler, M.S.W. (312) 642–5454

Serving New Orleans, Louisiana

New Orleans/AIDS Task Force, Inc., 1405 Decatur Street, New Orleans, LA 70116, Jeff Campbell, Executive Director (504) 945–4000

Serving Boston, Massachusetts

Fenway Community Health Center, 93 Massachusetts Avenue, Boston, MA 02115, Judith Heiman (617) 267–0900

Serving Baltimore, Maryland

Maryland Department of Health and Mental Hygiene, 201 West Reston Street, Baltimore, MD 21201; Eric Fine, MD, MPH (301) 225–6804

Serving Detroit, Michigan

United Community Services of Metropolitan Detroit, 1212 Griswold, Detroit, MI 48226, Judy Lipshutz (313) 226–9487

Serving Jersey City, New Jersey

County of Hudson, 595 Newark Avenue, Jersey City, NJ 07306 Carol Ann Wilson (201) 795–6833

Serving Newark, New Jersey

New Jersey State Department of Health, Division of AIDS Prevention & Control, CN 363, 383 West State Street, Trenton, NJ 08625 Steve Young, Director, Hospital/Post Hosptial Support Services Unit (609) 984–6000

Serving Nassau-Suffolk, New York

Nassau-Suffolk Health Systems Agency, 1537 Old Country Road, Plainview, NY 11803, Linda Wenze (516) 293–5740

Serving New York, New York

The AIDS Service Delivery Consortium of New York City, 5 Penn Plaza, room 429, New York, NY 10001, Andrew Kreznich, Director, Program Development (212) 613–2411

Serving Philadelphia, Pennsylvania, and Camden, New Jersey

Philadelphia Health Management Corporation, 260 S. Broad Street, 20th floor, Philadelphia, PA 19102, John Loeb (215) 985–2530

Serving San Juan, Puerto Rico

Puerto Rico Department of Health, Box 70184, San Juan, Puerto Rico 00936, Johnny Rullan, M.D. (809) 721–0985 or 721–2284

Serving Dallas-Fort Worth, Texas

AIDS ARMS Network, Community Council of Greater Dallas, 2727 Oak Lawn, suite 222, Dallas, TX 75219; Warren W. Buckingham (214) 521–5191

Serving Houston, Texas

Harris County Hospital district, 726 Gillette, Houston, TX 77019 R. King Hilier (713) 652–1200

Serving Seattle-Everett, Washington

AIDS Health Service Program, 1116 Summit Avenue, suite 200, Seattle, WA 98101, Rosemary Ryan, Project Coordinator (206) 296–4568

Serving Washington, DC

DC Department of Human Services, Commission of Public Health, 1660 L Street, NW., suite 700, Washington, DC 20036; Iris Lee, Acting Chief, Office of AIDS Activities, (202) 673–6666

Pediatric AIDS Service Demonstration Projects Directory

Boston Pediatric AIDS Project; Jackie Jenkins-Scott, Project Director, Dimock Community Health Center, 53 Dimock Street, Roxbury, MA 02119, 617/442–6800

Connecticut Pediatric AIDS Health Demonstration Project; Rick Jacobsen, Ph.D./Joanne Allport, M.D., M.P.H., Project Directors, Connecticut Primary Care Association, 47 Vine Street, Hartford, CT 06112, 203/522–2199

Northern Manhattan Women and Children HIV Demonstration Project; Zena A. Stein, M.D., Project Director, Associate Dean of Research, Columbia University School of Public Health, 600 West 168th Street, New York, New York 10032, 212/928–5103, FAX 212/305–6832

Family AIDS Case Management Program; Steve Fisher, Project Director, Assistant Deputy Commissioner, Division of AIDS Services, Human Resources Administration, 300 West 34th Street, room 311, New York 10001, 212/790–3163–3164

Brooklyn Pediatric AIDS Demonstration Project; Herman Mendez, M.D., Project Director, Health Science Center, Box 49, 450 Clarkson Street, Brooklyn, New York 11203, 718/363–7323, FAX 718/270–3828

Bronx Pediatric AIDS Consortium (B-PAC); William Caspe, M.D., Project Director, Albert Einstein College of Medicine, 1300 Morris Park Avenue, Bronx, New York 10461; 212/294–2492

Model Comprehension Health Care Program for Adolescents; Karen Hein, M.D., Project Director, Adolescent AIDS Program, Montefiore Medical Center, NW. 674, Department of Pediatrics, 111 E. 210th Street, Bronx, New York 10467, 212/920–5612

Development of a Statewide Health Services Network for Children with HIV Infection and Their Families; Ms. Barbara Kern, Project Director, NJ Department of Health, Special Child Health Services, CN 346, Trenton, New Jersey 08625; 209/292–5676

Pediatric AIDS Health Care Demonstration Project; Patricia A. Tompkins, Project Director, Chief, OMCH, DC DHS, Office of Maternal and Child Health, 1660 L Street, NW., Suite 907, Washington, DC 20036; 202/673–4551

Maryland Pediatric AIDS Health Care Demonstration Projects; Eric M. Fine, M.D., M.P.H., Project Director, AIDS Administration, Maryland Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201; 301/225–6804

Puerto Rico Pediatric AIDS Demonstration Project; Johnny Rullan, M.D., Project Director, Puerto Rico Department of Health, Box 5058, GPO, Hato Rey, Puerto Rico 00919–5808; 809/721–2284 or 0965, 754–5344 or 5422, FAX 809/723–3565 or 764–6769

Pediatric AIDS Demonstration Project; Virginia D. Floyd, M.D., Project Director, GA Department of Public Resources, Division of Public Health, 878 Peachtree Street, NE., room 217, Atlanta, GA 30309, 404/894–5622

Youth and AIDS Prevention Program; Gary Remafedi, M.D., M.P.H., Project Director, University of Minnesota, Box 721 UMHC, Harvard Street & E. River Road, Minneapolis, MN 55455; 612/626–2820

Pediatric AIDS Health Care Demonstration Project; Barbara Lloyd, Project Director, Public Health Trust—Dade County Florida, 1611 NW. 12th Avenue, Miami, FL 33136, 305/549–7744

A Model Program for Pediatric AIDS Prevention and Control in Michigan; Karen Schrock, Project Director, Office of Maternal and Child Health, Michigan Department of Public Health, 3423 North Logan Street, P.O. Box 30195, Lansing, MI 48909, 517/335–8900

Pediatric AIDS Program in New Orleans; Michael Kaiser, M.D., Project Director, Children's Hospital of New Orleans, 200 Henry Clay Avenue, New Orleans, LA 70118, 504/896–2983

Pediatric AIDS Health Care Demonstration Project; John A. Mangos, M.D., Project Director, University of Texas Health Science Center, 7703 Floyd Curl Drive, San Antonio, TX 78284–7802, 512/567–5215

Dallas-Ft. Worth Pediatric AIDS Health Care Program; Janet Squires, M.D., Project Director, Ambulatory Pediatric Division, CMC Dallas, 1935 Motor Street, Dallas, TX 75235, 214/590–2329

Case Management Demonstration Program for Pediatric Patients & Families in LA County; Dale Carell, M.D., Project Director, 19720 Arrow Highway, Covina, CA 91724, 818/858–2110

[FR Doc. 91–6116 Filed 3–14–91; 8:45 am]
BILLING CODE 4160–15–M

Health Resources and Services Administration

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used by the Public Health Service for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program (section 787), the Program of Financial Aid for Disadvantaged Health Professions Students (section 787(b)), the Scholarships for Undergraduate Education of Professional Nurses Grant program (section 843), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds (section 827). Loans to Disadvantaged Students (section 740(c)), Scholarships for Health Professions Students from Disadvantaged Backgrounds (section 760), Disadvantaged Health Profesaions Faculty Loan Repayment Program (section 761) were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and will also be using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 787

Awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, allied health, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities that assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Aid for Disadvantaged Health Professions Students (FADHPS), Section 787(b)

Awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance, without a service or financial obligation, to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education.

Scholarships for Undergraduate Education of Professional Nurses (SUEPN), Section 843

Awards grants to accredited schools of nursing to provide financial assistance, with a service obligation, for tuition and fees to individuals who are enrolled as undergraduate nursing students in diploma, associate, or baccalaureate degree programs, or in programs of nursing education leading to a first degree in professional nursing and who are in financial need with respect to attending these schools. Schools must give preference in awarding scholarships to individuals from disadvantaged backgrounds.

Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, Section 827

Awards grants to accredited schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 740(c)

Awards are made to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 780

Awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical

psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment Program, Section 761

Awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least two years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology.

The following income figures were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions and nursing grant programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1990.

Size of Parents Family [1]	Income Level [2]
1	$8,800
2	11,400
3	13,500
4	17,300
5	20,400
6 or more	23,000

[1] Includes only dependents listed on Federal income tax forms.
[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1990.

Dated: March 11, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-6178 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service; Office of the Assistant Secretary for Health

Availability of Grants for Minority Community Health Coalition Demonstration Projects

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, PHS, DHHS.

ACTION: Notice of availability of funds and request for application for Minority Community Health Coalition Demonstration Project Grants.

AUTHORITY: This program is authorized under section 1707(d) of the Public Health Service Act, as amended in Public Law 101-527.

SUMMARY: The Office of Minority Health announces the availability of grants to provide support, for a period which will not exceed three years, for projects which demonstrate methods of developing community health coalitions which can effectively promote health and effect disease risk factor reduction within minority populations.

ADDRESSES/CONTACTS: Applications must be prepared on form PHS 5161. Application kits may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852, 301/443-9870. Completed applications are to be submitted to the same address.

Technical assistance on the programmatic content of the application may be obtained from Ms. Joan S. Jacobs, Office of Minority Health, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852, 301/443-4761. Technical assistance on the business and budget aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Office of Minority Health, 301/443-9870. Data and referral for additional information which might be useful in preparation of grant applications can be obtained from the Office of Minority Health Resource Center, 1/800/444-6472. Information on a possible series of regional grants writing technical assistance workshops also can be obtained through the OMH Resource Center.

DEADLINE: To receive consideration, grant applications must be received by the Grants Management Officer by May 24, 1991. Applications will be considered as meeting the deadline if they are either: (1) Received at the above address on or before the deadline date, or (2) sent to the above address on or before the deadline date and received in time for submission to the review panel. A legibly dated receipt from the commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

AVAILABILITY OF FUNDS: It is anticipated that the Office of Minority Health will have approximately $3 million available in Fiscal Year 1991 to support, under this announcement, approximately 15 new awards in the average amount of $600,000 each. However, the final number of awards will depend upon funds available.

PERIOD OF SUPPORT: Support may be requested for a total project period up to three years. Non-competing continuation awards for years two and three can be made subject to availability of funds and progress achieved. Annual budgets can be requested up to a total of $200,000 (direct and indirect costs).

SUPPLEMENTAL INFORMATION: Relation to Goals for the Year 2000.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement, the Minority Community Health Coalition Demonstration Grant Program, is potentially related to a minimum of fifteen of the twenty-two priority areas: (1) Physical activity/fitness, (2) nutrition, (3) tobacco, (4) alcohol and other drugs, (5) violent and abusive disorders, (6) educational and community-based programs, (7) unintentional injuries, (8) occupational safety and health, (9) environmental health, (10) material and infant health, (11) heart disease and stroke, (12) cancer, (13) diabetes and chronic disabling diseases, (14) HIV infection, and (15) sexually transmitted diseases. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone: 202/783-3238).

Background

In a comprehensive review of the health status of U.S. racial minorities, the Secretary's Task Force on Black and Minority Health found a serious health disparity between minorities and the nonminority population. Six health problems were identified as bearing the greatest impact on minority health in terms of causes of death. Every minority group does not suffer from disproportionate impact in each categorical health problem. However, because of their accumulated impact, these six health problems became priority issues areas for Task Force study. Listed in alphabetical order they are: (1) Cancer, (2) cardiovascular disease and stroke, (3) chemical dependency, (4) diabetes, (5) homicide, suicide, and accidents (unintentional injuries), and (6) infant mortality. In Fiscal Year 1988, the problem of HIV infection and Acquired Immunodeficiency Syndrome (AIDS) was added to these initial six areas, due to the devastating impact of AIDS on minority populations.

Because health promotion/risk reduction programs require influencing behavior which frequently is resistant to change, it is critical that the methods used be sound and acceptable to the target population. Successful programs recognize that the health information/media approach alone is insufficient to motivate, effect, and sustain the desired change in either individual or group behavior. Moreover, even when additional educational interventions (e.g., counseling, workshops) are conducted, conventional health promotion activities are often ineffective in reaching minority populations: too often they disregard ethnic/cultural health beliefs and practices, or community norms which could contribute to or otherwise affect risk factors leading to illness.

The OMH bases this program on the hypothesis that the community coalition approach to risk reduction can be effective in reaching minority target populations—especially those most at risk or especially hard to reach. Among the merits of using coalitions is the higher likelihood that (1) the intervention will be culturally sensitive and credible to the target group, (2) the project will address the health problem(s) within the context of related socio-economic issues, and (3) the effort will contribute to overall community empowerment by strengthening indigenous leadership and organizations. Therefore, the OMH is continuing, through this announcement, to promote the development and implementation of health promotion/disease risk reduction projects which utilize community coalitions.

Although this announcement is the fifth notice for this grant program, it represents a significant expansion/shift in program emphasis. In prior years (FY 1986, 1987, 1988, 1989) only those grant applications that addressed one (or a combination) of the seven specified health areas were judged responsive to program guidelines. Under this annoucement, the OMH is encouraging more flexibility for communities in defining their own health problem priorities and providing more time and resources for carrying out projects. The coalition approach to risk reduction intervention is retained, but applications now will be considered in any documented health problem or combination of health problems impacting a minority population in a defined community.

Moreover, budget levels and the allowable period of support have been increased in recognition of the additional resources and time needed to mount an effective community coalition demonstration project. In addition, in order to facilitate continued financial support beyond the three year project period, annual minimum grantee cost participation levels now are specified.

Definitions

For the purpose of this grant program, the following definitions are provided:

(1) Health problem areas

(a) one of the seven areas identified in the Secretary's Task Force report or by the OMH. They are: (i) Cancer; (ii) cardiovascular disease and stroke; (iii) chemical dependency; (iv) diabetes; (v) homicide, suicide and unintentional injuries; (vi) infant mortality; (vii) HIV infection; or

(b) a disease or health condition which has a demonstrated impact on morbidity rates among the minority population, for example, asthma, hepatitis, sexually transmitted diseases (STDs), tuberculosis.

(2) Risk factor

The environmental and behavioral influences capable of causing ill health with or without previous predisposition. The term "risk factor" is also used to denote an aspect of personal lifestyle and behavior known, on the basis of epidemiological evidence, to be associated with one or more diseases or health conditions considered important to prevent.

These include for example, tobacco use, dietary habits, obesity, sedentary lifestyle, severe emotional stress, depression, conflict resolution behaviors, abuse of alcohol and drugs, intravenous drug use, late or no prenatal care, teen pregnancy, high risk sexual practices, (e.g., unprotected intercourse with HIV infected persons), no or inadequate access to health care, environmental and occupational hazards.

(3) Intervention

The process of carrying out an action(s) so as to alter or modify the condition or outcome; risk reduction interventions typically are a set of planned activities designed to change behavior so as to lower the likelihood that a preventable health problem will occur or progress further; for health promotion/risk reduction, an intervention is often a combination of clinical preventive services (e.g., blood pressure screening), information dissemination, environmental modifications, educational activities, and coordinated networking activities among health- and human service-related programs (e.g., referral for child care services, job placement, literacy programs).

(4) Community

A defined geographical area in which persons live, work, and recreate and characterized by: (a) Formal and informal leadership structures for the purpose of maintaining order and improving conditions; and (b) its capacity to serve as a focal point for addressing societal needs including health needs.

(5) Community coalition

The coming together of organizations and institutions in a community for the purpose of collaborating on specific community concerns, and seeking resolution of those concerns. For purposes of this grant program, community coalitions are characterized by the six elements listed below.

A community coalition

- Assumes a variety of interests and expertise converging on an agreed upon mission. Members must be able and willing to work with one another. Relationships must be formalized through written memoranda of understanding/agreement among each member organization and the coalition, and between members.
- Requires each coalition member organization to bring certain resources (e.g., money, space, staff) to the coalition to enable it to accomplish its mission.
- Requires that at least sixty percent of coalition membership be comprised of minority organizations or minority individuals representative of the target group in the community.
- Requires that each member organization has a specific role within the coalition. The role is to be distinctive among the other members, and each member organization must establish both a relationship with the coalition as an entity (vertical relationship) and with other members of the coalition (horizontal relationship).
- Requires a sustained commitment on the part of each member organization to participate, at a minimum, over the life of the project.
- Must document its activities to ensure a written history of and thus, a continuity to its work that is not dependent upon the active participation of any single person.

(6) *Minority populations.* As defined by the "Report of the Secretary's Task Force on Black and Minority Health", they include: Asian/Pacific Islanders; Blacks, Hispanics; and Native Americans/Alaska Natives (which include Native Hawaiians).

Applicant Eligibility

Eligible applicants are public and private nonprofit organizations. The applicant organization will be the lead agency for the coalition, will be responsible for management of the project, and will serve as the fiscal agent for the Federal grant awarded.

OMH Program Objectives

The overall goal of the OMH's Minority Community Health Coalition Demonstration grant program is to fund projects which demonstrate the effectiveness of community-based coalitions to have a potential impact on improving the health status of a targeted minority population by conducting or coordinating health promotion and disease risk reduction intervention activities. The target risk factor(s) must be justified on the basis of documented health problem patterns in the locally targeted population. In justifying the health problem/risk factor, applicants are strongly urged to supplement national data with local area and community health or health-related data. In order to maximize both resources and effectiveness, it is suggested that applicants focus on a limited number of risk factor(s) as opposed to attempting an all-inclusive approach.

OMH encourages community coalitions to think imaginatively about the approaches that may be needed to address health issues that affect minority populations. The solutions a community coalition intends to pursue may be innovative ones. Proposed interventions may include educational, social, employment or environmental measures requiring participation, and in-kind or other financial contributions, from organizations other than traditional health or public health providers. Such participants may include: churches, schools, Head Start programs, social service or human service agencies, civic and business organizations, labor unions, voluntary groups, recreation departments, athletic leagues or clubs, youth groups, homeless or runaway shelters, law enforcement agencies, depending on the problems the coalition intends to address, the interventions it sees as necessary, and the presence or interest of community agencies.

Specifically, the OHM anticipates funding projects which:

(1) Provide documentation of the health problem(s) and risk factor(s) among the locally targeted minority population(s);

(2) Provide detailed and specific methods for identifying and reaching the target population;

(3) Provide detailed and specific methods for conducting the health promotion/disease risk reduction intervention and measuring its results;

(4) Demonstrate a sound composition of, and organization scheme for the coalition, assuring substantive involvement of coalition members, community leaders, and representatives of the target population;

(5) Evaluate the process of establishing and operating the coalition and how its activities will impact on the intervention;

(6) Demonstrate experience of the applicant and some coalition members with community-based projects, either focused on health or other community concerns; and

(7) Provide evidence of cost participation during the project, and potential sources of financial support for the project at the end of the grant period.

Application Process

Applicants wishing to improve their chances for approval should pay particular attention to the general and supplemental instructions provided in the application kit to ensure that their applications are responsive to each of the following concerns under the following headings:

Project Objectives

1. Clearly describe the goals and objectives of the proposed project, using quantifiable terms;

2. Identify, describe, and document with epidemiologic data the health problem areas and related risk factors in the community and among the local target population;

3. Include realistic timetables for accomplishing the objectives;

Target Population

4. Define the target population(s) and identify which intervention(s) are proposed for which minority group(s); identify the pertinent geographic areas/subareas, providing a map of the county, ward, or census tract, as appropriate;

Coalition

5. Provide evidence that a coalition exists, or that such organizations which have worked together in the past now have a formal commitment to establish one; describe any collaborative efforts with other organizations serving the target population;

6. Describe in detail the composition (at least 60% minority organizations or minority representatives of the target group), and the organization of the coalition, as well as the respective roles of coalition members and other participants;

Intervention

7. Provide a detailed description of intervention strategies that address the principal objectives of the application and which will result in measurable change/impact on risk factors. (An analysis of medical records of minority individuals, as in a limited clinical trial, is not responsive to this announcement);

8. Describe plans for implementing the intervention(s) presenting, in step-by-step fashion, the specific efforts to be undertaken by each key component of the coalition and how these various efforts will address the problems identified; describe the educational materials to be used and/or developed as well as assurances that their content and delivery will be culturally and, as necessary, linguistically sensitive; describe arrangements, if any, for networking with related human service agencies/programs;

Project Management and Staffing

9. Provide detailed management plans that clearly delineate each coalition member's area of responsibility and how key staff of member organizations will be accountable for carrying out their responsibilities; describe the management experience of the lead agency or organization; describe the experience of coalition member organizations in working together in similar projects; describe plans for continuation of the project beyond the period requested in the application;

10. Describe the duties and requisite qualifications of current staff, and of any staff and any consultant positions to be filled after the grant award;

11. Identify and provide supporting documentation (e.g., resumes, *curriculum vitae*) for each individual proposed for key staff positions to demonstrate appropriate experience and qualifications. Representatives of the target population with experience in community-based and/or health promotion programs are particularly well suited;

Evaluation

12. Applications must provide a plan for evaluating whether the proposed project achieved its objectives. Describe the process and outcome indicators which will be used to determine whether the project's objectives have been met. Also, provide an approach for obtaining information on the following questions: (a) What interventions are being provided and to whom?, (b) what are the factors that facilitate or inhibit the implementation of the coalition?, (c) what are the factors that facilitate or inhibit the implementation of the intervention?, (d) in what ways can implementation of the coalition's interventions be improved?, (e) what factors facilitate or inhibit the sustainability of the coalition?, and (f) what is the evidence that the intervention will continue beyond the period of grant support?

Project Budgets

Funds up to $200,000 total direct and indirect costs per year may be requested to cover: the cost of personnel to coordinate the coalition's activities; consultants; support services; materials; and justified travel. Funds may not be used for building alterations and renovations. Also, funds may not be used to purchase equipment except as may be acceptably justified in relation to conducting the project.

Cost Participation

A portion of the project's costs must be borne by coalition members or by other nonfederal sources such as business, labor, local government, or community funds. Cost participation may be in the form of direct costs or in-kind contributions. The required levels of nonfederal cost participation are as follows: At least 25 percent (up to $50,000) of the requested amount for year one; at least 40 percent (up to $80,000) of the requested amount for year two; and 50 percent (up to $100,000) of the requested amount for year three.

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete or non-responsive to the announcement will be returned. Applications judged to be complete and responsive will be reviewed for technical merit in accord with PHS policies.

Applications will be evaluated by non-federal reviewers chosen for their expertise in minority health, experience with similar projects, and their understanding and special knowledge of the health problems and risk factors confronting racial and ethnic minorities in the United States.

Review Criteria

Applications will be reviewed and evaluated in terms of whether the evidence presented in the application meets OMH program objectives. Of specific importance will be the following criteria under the listed headings. (An indication of the quantitative weight appears in parentheses after each heading):

Project Objectives (50%)

- The technical merit of the described proposed project, and the consistency of the project's goals and objectives with those of OMH in general, and this announcement in particular.
- The justification for the choice of health problem(s) and risk factor(s) to be targeted, and their direct relationship to the epidemiologic characterization(s) of the target minority population in the specified geographic area.
- Evidence that a viable coalition exists *or* that one will be established as indicated by the degree of commitment of each member organization, including the amount or extent of support to cover a portion of project needs.
- The degree to which the composition of coalition membership is representative of the target population (60%) as well as a logical choice based on the target risk factor(s) and intervention(s) to be demonstrated.
- Coherence, feasibility, and realistic approach of the intervention strategy and of the implementation methods described. The degree of specificity in the description of the intervention and of networking approaches will be given significant weight in the review of the application.

Project Management and Staffing (25%)

- Adequacy of qualifications, time allocations, and representativeness of proposed project staff, both paid and voluntary.
- Adequacy of the proposed program and technical management plans for the project.
- Appropriateness of relevant experience and qualifications of managers of the applicant organization to provide administrative and fiscal management of the grant.
- Likelihood that the project will continue beyond the three year funded project period.

Evaluation (25%)

- Adequacy of the evaluation plan in describing the project's objectives in quantifiable terms.
- Adequacy of the evaluation plan in describing the process and outcome indicators which will be used to determine whether the project's objectives are met.
- Adequacy of the evaluation plan in providing an approach for obtaining information on the questions stated in this program announcement.
- Likelihood that the project will demonstrate whether or not community health coalitions can effectively promote risk factor reduction among minority populations.

Award Criteria

Grants awarded under this announcement are not expected to result in more than one award in any Standard Metropolitan Statistical Area (SMSA) unless an additional project in an SMSA is to be targeted to another of the four major minority groups—Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans/Alaska Natives. Efforts will be made to achieve geographic and ethnic distribution as well as cover the various health problems identified affecting minorities.

Funding decisions will be determined by the Office of Minority Health and will be based on: the recommendations/ratings of review panels and program balance, including geographic and race/ethnicity factors. Also, the availability of funds will be a factor and will govern how many projects will be funded.

State Reviews

Executive Order 12372 sets up a system for State and local review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Points of Contact (SPOCS) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. A current list of SPOCs is included in the application kit. SPOCs will have 60 days to provide comments. SPOC comments must be received by July 23, 1991. The Office of Minority Health does not guarantee to accommodate or explain for State process recommendations it receives after that date. SPOC comments are to be sent to: Office of Minority Health, Grants Management Officer, Rockwall II Building, suite 1102, 5515 Security Lane, Rockville, MD 20852.

The Catalog of Federal Domestic Assistance Number for the program is 93.137.

Dated: March 8, 1991.

William A. Robinson,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 91-6184 Filed 3-14-91; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, the Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on March 1, 1991. (Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Statement of Claimant or Other Person—0960-0045—The information collected on the form SSA-795 is used by the Social Security Administration (SSA) to document special circumstances in connection with a claim for benefits. The affected public consists of claimants or other persons who need to provide information to SSA is not asked for on other forms.

Number of Respondents: 305,500.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 76,375 hours.

2. Representative Payee Questionnaire(s)-Individual-Institution—0960-NEW—The information on forms SSA-622 and SSA-6220 will be used by the Social Security Administration to initially load its "Master Representative Payee File" which is now required by law. The respondents will consists of individuals or institutions/agencies who serve as representative payees for persons receiving Social Security benefits.

Number of Respondents: 5,000,000.
Frequency of Response: one time only.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 416,667 hours.

3. We published a revision to 20 CFR 404, subpart M in the Federal Register on August 29, 1968 (53 FR 32976). Several Sections in the subpart contained reporting and recordkeeping requirements requiring Office of Management and Budget (OMB) approval. Through oversight, the OMB control number and the period of approval were not provided for the CFR. OMB approved these reporting and recordkeeping requirements under control number 0960-0425 on 12/02/88. The approval is effective through 11/30/91.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 8, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-6114 Filed 3-14-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-17]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 15, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

All properties in today's Notice were published during 1990. These properties have been reviewed for suitability for use as facilities to assist the homeless and are being republished as part of HUD's complete resurvey of Federal landholding agencies. The properties identified as suitable in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this Notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This Notice also includes a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191. (These are not toll-free numbers.)

Dated: March 8, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

SUITABLE/AVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Air Force

Bldg. 604
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010237
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 605
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010238
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 612
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010239
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 611
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010240
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 613
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010241
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 614
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010242
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 615
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010243
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 616
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010244
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 617
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010245
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Bldg. 618
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468-5000
Federal Register Notice Date: 03/15/91
Property Number: 189010246
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft.; stucco-wood frame; most recent use—housing.

Navy

Bldg. 102
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010260
Status: Unutilized
Base Closure: No
Comment: 560 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—office

Bldg. 103
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010261
Status: Unutilized
Base Closure: No
3675 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—dining hall.

Bldg. 109
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010262
Status: Unutilized
Base Closure: No
Comment: 1045 sq. ft.; 2 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—barracks.

Bldg. 110
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010263
Status: Unutilized
Base Closure: No
Comment: 4439 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—shop.

Bldg. 113
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010264
Status: Unutilized
Base Closure: No
Comment: 100. sq. ft.; 1 story permanent bldg; secured facilities with alternate access; most recent use—storage.

Bldg. 138
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010265
Status: Unutilized
Base Closure: No
Comment: 110 sq. ft.; 1 story permanent bldg; possible asbestos; secure facility with alternate access; most recent use—filling station.

Bldg. 144
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 03/15/91
Property Number: 779010266
Status: Unutilized

Base Closure: No
Comment: 4320 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—bowling alley.
Bldg. 145
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940–
Federal Register Notice Date: 03/15/91
Property Number: 779010267
Status: Unutilized
Base Closure: No
Comment: 4000 sq. ft.; 1 story semi-permanent bldg; possible asbestos secure facility with alternate access; most recent use—recreation building.

Suitable Land (by Agency)

Air Force

Camp Kohler Annex
McC[illegible]n AFB
Sacramento, CA, Co: Sacramento 95652–5600
Federal Register Notice Date: 03/15/91
Property Number: 189010045
Status: Excess
Base Closure: No
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Suitable Buildings (by Agency)

Hawes Site (KHGM)
March AFB
Hinckley, CA, Co: San Bernardino
Federal Register Notice Date: 03/15/91
Property Number: 189010084
Status: Unutilized
Base Closure: No
Comment: 9290 sq ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Suitable Land (by Agency)

Navy

Naval Ocean Systems Center
271 Catalina Blvd.
San Diego, CA, Co: San Diego 92106–
Federal Register Notice Date: 03/15/91
Property Number: 779010094
Status: Excess
Base Closure: No
Comment: 16 acres, possible antenna radiation, secured facility with alternative access.

Air Force

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB, CA, Co: Solano 94535–5406
Location: State Highway 113
Federal Register Notice Date: 03/15/91
Property Number: 189010189
Status: Excess
Base Closure: No
Comment: .13 acres; most recent use—location for instrument landing systems equipment.
Universe of Properties:

Total	22
Suitable	22
Suitable Buildings	19
Suitable Land	3
Unsuitable	0
Unsuitable Buildings	0
Unsuitable Land	0
Number of Resubmission	0

Colorado

Suitable Land (by Agency)

Air Force

NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Co: Denver 80230–5000
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary.
Federal Register Notice Date: 03/15/91
Property Number: 189010254
Status: Excess
Base Closure: No
Comment: Approximately 20 acres; sloping parts in area.

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base
Grid R–2 to R–3 to V–4 to V–1
Kings Bay, GA, Co: Camden 31547–
Federal Register Notice Date: 03/15/91
Property Number: 779010229
Status: Underutilized
Base Closure: No
Comment: 111.57 acres; areas may be environmentally protected; secured area with alternate access.

Guam

Suitable Land (by Agency)

Air Force

Annex 1
Andersen Communication
Dededo, GU, Co: Guam 96912–
Location: In the municipality of Dededo.
Federal Register Notice Date: 03/15/91
Property Number: 189010427
Status: Underutilized
Base Closure: No
Comment: 862 acres; subject to utilities easements.
Annex 2, (Partial)
Andersen Petroleum Storage
Dededo, GU, Co: Guam 96912–
Location: In the municipality of Dededo.
Federal Register Notice Date: 03/15/91
Property Number: 189010428
Status: Underutilized
Base Closure: No
Comment: 35 acres; subject to utilities easements.

Suitable Buildings (by Agency)

Anderson VOR
In the municipality of Dededo
Dededo, GU, Co: Guam 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Federal Register Notice Date: 03/15/91
Property Number: 189010267
Status: Unutilized
Base Closure: No
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.
Anderson Radio Beacon Annex
In the municipality Dededo
Dededo, GU, Co: Guam 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Federal Register Notice Date: 03/15/91
Property Number: 189010266
Status: Unutilized
Base Closure: No
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.
Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo, GU, Co: Guam 96912–
Location: Access is through Route 1, Marine Drive.
Federal Register Notice Date: 03/15/91
Property Number: 189010545
Status: Underutilized
Base Closure: No
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.
Universe of Properties:

Total	5
Suitable	5
Suitable Buildings	3
Suitable Land	2
Unsuitable	0
Unsuitable Buildings	0
Unsuitable Land	0
Number of Resubmission	0

Idaho

Suitable Buildings (by Agency)

Air Force

Bldg. 121
Mountain Home Air Force Base
Main Avenue
(See County), ID, Co: Elmore 83648–
Federal Register Notice Date: 03/15/91
Property Number: 189030007
Status: Excess
Base Closure: No
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Illinois

Suitable Buildings (by Agency)

Air Force

Bldgs. 9, 11–14, 21–24, 32, 33, 35, 37, 39, 41, 49, 51, 53, 55–71, 73–75, 77–84, 87, 89, 92, 93, 95–97, 99, 103, 107, 111–113, 119, 122–124, 126, 130, 132–136, 138, 140, 141, 145, 146, 150, 152, 154
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Numbers: 189030224–189030301
Status: Unutilized
Base Closure: No
Comment: 2-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.
Bldgs. 2, 4, 6–8, 125, 127–129, 131, 153
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Numbers: 189030302–189030312
Status: Unutilized
Base Closure: No
Comment: 4-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.
Bldgs. 15, 17–20, 26, 27, 29–31, 36, 40, 42–45, 47, 52, 54, 72, 85, 86, 90, 91, 102, 106, 114, 115, 120, 144
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Number: 189030313–189030342
Status: Unutilized
Base Closure: No
Comment: 1-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.
Bldg. 5
Chanute Air Force Base Annex
Chapman Courts
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Number: 189030343
Status: Unutilized
Base Closure: No
Comment: 2707 sq. ft.; 1 story wood frame; termite damage; possible asbestos; needs major rehab; possible easement restriction; most recent use—administrative office.
Bldg. 732
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Number: 189030344
Status: Unutilized
Base Closure: No
Comment: 13336 sq. ft.; 2 story wood frame; needs structural repairs; most recent use—warehouse.
Bldg. 118
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Number: 189030345
Status: Unutilized
Base Closure: No
Comment: 3996 sq. ft.; 1 story wood frame; needs structural repairs; most recent use—band facility.
Bldg. 107
Chanute Air Force Base
Falcon Street
Rantoul, IL, Co: Champaign 61866–
Federal Register Notice Date: 03/15/91
Property Number: 189030346
Status: Unutilized
Base Closure: No
Comment: 17118 sq. ft.; 1 story wood frame; needs rehab; potential utilities; most recent use—cold storage.

Navy

Bldg. 800B
Naval Training Center
Tool Storage Shed
Great Lakes, IL, Co: Lake 60088–5000
Federal Register Notice Date: 03/15/91
Property Number: 779010274
Status: Excess
Base Closure: No
Comment: 444 sq. ft.; 1 story; needs major rehab; most recent use—storage.

Suitable Land (by Agency)

Libertyville Training Site
Libertyville, IL, Co: Lake 60048–
Federal Register Notice Date: 03/15/91
Property Number: 779010073
Status: Excess
Base Closure: No
Comment: 114 acres; possible radiation hazard; existing FAA use license.
Universe of Properties:

Total	125
Suitable	125
Suitable Buildings	124
Suitable Land	1
Unsuitable	0
Unsuitable Buildings	0
Unsuitable Land	0
Number of Resubmission	0

Louisiana

Suitable Buildings (by Agency)

Air Force

Barksdale Radio Beacon Annex
Curtis, LA, Co: Bossier
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Federal Register Notice Date: 03/15/91
Property Number: 189010269
Status: Unutilized
Base Closure: No
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maryland

Suitable Land (by Agency)

Navy

White Oak Lab
Navy Surface Warfare Center
10901 New Hampshire Avenue
Silver Spring, MD, Co: Prince Georges 20903–
Federal Register Notice Date: 03/15/91
Property Number: 779010066
Status: Excess
Base Closure: No
Comment: 16.5 acres; most recent use—buffer; secure area—access can be provided by relocation of fences.

Suitable Buildings (by Agency)

Bldgs. 738–797
Naval Air Test Center
Patuxent River, MD, Co: St. Mary's 20807–
Federal Register Notice Date: 03/15/91
Property Numbers: 779010080–779010090, 779010092, 779010093, 779010095, 779010096, 779010098, 779010100, 779010102–779010106, 779010108, 779010113, 779010115, 779010116, 779010118, 779010119, 779010121, 779010122, 779010124, 779010125, 779010127, 779010129–779010155
Status: Unutilized
Base Closure: No
Comment: One story residential building; utilities disconnected; needs rehab; requires alternate access off state highway. Friable asbestos present.
Universe of Properties:

Total	61
Suitable	61
Suitable Buildings	60
Suitable Land	1
Unsuitable	0
Unsuitable Buildings	0
Unsuitable Land	0
Number of Resubmission	0

Maine

Suitable Buildings (by Agency)

Air Force

Bldgs. 1–16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook 04750–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010590–189010605
Status: Excess
Base Closure: No
Comment: 1116 sq. ft. each; 1 story frame residences; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Suitable Land (by Agency)

Navy

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland 04053–
Federal Register Notice Date: 03/15/91
Property Number: 779010111
Status: Underutilized
Base Closure: No
Comment: 66.13 acres, most recent use—transmitter station.

Suitable Buildings (by Agency)

Naval Air Station
Transmitter Site
Old Bath Road
Brunswick, ME, Co: Cumberland 04053–
Federal Register Notice Date: 03/15/91
Property Number: 779010110
Status: Underutilized
Base Closure: No
Comment: 7,270 sq ft., 1 story bldg, most recent use—storage, structural deficiencies.
Universe of Properties:

Total	18
Suitable	18
Suitable Buildings	17
Suitable Land	1
Unsuitable	0
Unsuitable Buildings	0
Unsuitable Land	0
Number of Resubmission	0

Michigan

Suitable Land (by Agency)

Air Force

Facility 93359
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010058
Status: Excess
Base Closure: No
Comment: 2.52 acres; utilities & sanitary facilities.
Facility 93361
Bayshore RBS
Det 6, 1st Combat Evaluation Group

Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010061
Status: Excess
Base Closure: No
Comment: 0.14 acres, access gained through Air Force controlled property.

Suitable Buildings (by Agency)

Bldg. 7346
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010044
Status: Excess
Base Closure: No
Comment: 225 sq ft., 1 story wood frame, needs rehab, most recent use—storage.

Bldg. 7352
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010046
Status: Excess
Base Closure: No
Comment: 25 sq ft., 1 story wood, most recent use—storage.

Bldg. 7354
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010049
Status: Excess
Base Closure: No
Comment: 25 sq ft., 1 story wood, most recent use—storage.

Bldg. 7357
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010051
Status: Excess
Base Closure: No
Comment: 1,080 sq ft., 1 story wood/frame/block, most recent use—hobby shop/recreaton center.

Bldg. 7358
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmet 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010055
Status: Excess
Base Closure: No
Comment: 96 sq ft., 1 story wood/concrete, most recent use—hazard storage.

Bldg. 5043
Bayshore RBS
Det 6, 1st Combat Evaluation Group
Bay Shore, MI, Co: Emmett 49711–
Federal Register Notice Date: 03/15/91
Property Number: 189010065
Status: Excess
Base Closure: No
Comment: 864 sq. ft., 1 story concrete/block. 134 sq. ft.; latrine with separate entrance.

Suitable Land (by Agency)

Tract A–100E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010109
Status: Excess
Base Closure: No
Comment: .5 acres; used as entrance road for Port Austin AFS; easement and right of way rights need to be negotiated.

Tract A–100
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010111
Status: Excess
Base Closure: No
Comment: 30.80 acres; existing easements for utilities, etc.

Tract A–101
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010112
Status: Excess
Base Closure: No
Comment: 10.0 acres; existing easements for utilities, etc.

Tract A–101E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010114
Status: Excess
Base Closure: No
Comment: 1.0 acres; 1320 ft long and 33.5 wide; easement and right of way rights need to be negotiated.

Tract A–102E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010116
Status: Excess
Base Closure: No
Comment: 1.21 acres; 50 ft wide and 1050 ft in length; portion used as drainage easement.

Tract A–106–1E
Port Austin AFS
Port Austin Township, MI, Co: Huron
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010117
Status: Excess
Base Closure: No
Comment: 4.0 acres; portion used as drainage easement.

Tract A–106–2E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010119
Status: Excess
Base Closure: No
Comment: 4.55 acres; portion used as drainage ditch.

Tract A–103
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010121
Status: Excess
Base Closure: No
Comment: 5.30 acres

Suitable Buildings (by Agency)

Bldg. 1
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010006
Status: Excess
Base Closure: No
Comment: 6642 sq. ft.; 1 story concrete block; possible asbestos; most recent use—library/arts/crafts & storage.

Bldg. 2
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010007
Status: Excess
Base Closure: No
Comment: 1546 sq. ft.; 1 story concrete bldg; possible asbestos; most recent use—sales store.

Bldg. 3
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010008
Status: Excess
Base Closure: No
Comment: 7650 sq. ft.; 1 story concrete block; possible asbestos; most recent use—maintenance shop and commissary.

Bldg. 4
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010009
Status: Excess
Base Closure: No
Comment: 120 sq. ft.; 1 story concrete block; most recent use—storage.

Bldg. 5
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010010
Status: Excess
Base Closure: No
Comment: 3139 sq. ft.; 1 story concrete & wood; possible asbestos; most recent use—NCO Club.

Bldg. 6
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010021
Status: Excess
Base Closure: No
Comment: 2,855 sq. ft.; 2 story concrete/block/wood, possible asbestos, most recent use—dorm.

Bldg. 7
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010023
Status: Excess
Base Closure: No
Comment: 144 sq. ft.; 1 story story block-3 sections, most recent use—storage.

Bldg. 10
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010024
Status: Excess
Base Closure: No
Comment: 1000 sq. ft.; 1 story concrete, would need furnace, most recent use—automotive/hobby shop.

Bldg. 11
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010025
Status: Excess
Base Closure: No
Comment: 1547 sq. ft.; 1 story concrete, no windows, tunnel type entrance, most recent use—troop shelter.

Bldg. 12
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010026
Status: Excess
Base Closure: No
Comment: 3630 sq. ft., 5 story tower with freight elevator.

Bldg. 13
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010027
Status: Excess
Base Closure: No
Comment: 1364 sq. ft., 1 story concrete, most recent use—storage.

Bldg. 15
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010028
Status: Excess
Base Closure: No
Comment: 2855 sq. ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 16
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010029
Status: Excess
Base Closure: No
Comment: 2855 sq ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 17
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010030
Status: Excess
Base Closure: No
Comment: 2855 sq ft., 2 story wood/concrete, most recent use—dorm.

Bldg. 18
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010031
Status: Excess
Base Closure: No
Comment: 2802 sq ft., 1 story concrete, most recent use—vehicle maintenance shop.

Bldg. 19
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010032
Status: Excess
Base Closure: No
Comment: 2304 sq ft., 1 story concrete, most recent use—heat plant.

Bldg. 20
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010033
Status: Excess
Base Closure: No
Comment: 3547 sq ft., 1 story concrete, most recent use—dining hall
Bldg. 23
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010034
Status: Excess
Base Closure: No
Comment: 576 sq ft., 1 story concrete, most recent use—water supply building.

Bldg. 24
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010035
Status: Excess
Base Closure: No
Comment: 87 sq ft., 1 story concrete, most recent use—water pump station.

Bldg. 25
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010036
Status: Excess
Base Closure: No
Comment: 114 sq ft., 1 story concrete, most recent use—water pump station.

Bldg. 26
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south on Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010037
Status: Excess
Base Closure: No
Comment: 3221 sq ft., 2 story wood/concrete, most recent use—combination officers quarters and medical/dental clinic.

Bldg. 28
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010038
Status: Excess
Base Closure: No
Comment: 2084 sq ft., 1 story concrete, most recent use—bowling alley.

Bldg. 29
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010039
Status: Excess
Base Closure: No
Comment: 3907 sq ft., 1 story concrete/metal/steel, designed to be a power plant.

Bldg. 30
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010040
Status: Excess
Base Closure: No
Comment: 2178 sq ft., 2 story concrete, open at bottom, top floor no roof, radar tower.

Bldg. 31
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010041
Status: Excess
Base Closure: No
Comment: 114 sq ft., 1 story concrete, most recent use—water pump station.

Bldg. 32
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010042
Status: Excess
Base Closure: No
Comment: 2,466 sq ft., 1 story concrete block, most recent use—office.

Bldg. 33
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010043
Status: Excess
Base Closure: No
Comment: 1,621 sq ft., 1 story concrete, most recent use—supply warehouse.

Bldg. 34
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010086
Status: Excess
Base Closure: No
Comment: 1972 sq ft., 1 story concrete.

Bldg. 35
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010088
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 36
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010091
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 37
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010092
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 38
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010093
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 39
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010094
Status: Excess
Base Closure: No
Comment: 845 sq ft., 1 story frame/concrete.

Bldg. 40
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010095
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 41
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010096
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 139
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010097
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story preframe wood; potential use for storage; no utilities.

Bldg. 42
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010098
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 140
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010099
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 43
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010100
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldg. 141
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010101
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 142
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010102
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 143
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010103
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 144
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010104
Status: Excess
Base Closure: No
Comment: 45 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Bldg. 145
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010105
Status: Excess
Base Closure: No
Comment: 45 sq ft., 1 story prefab wood; potential use for storage; no utilities.

Telephone Co. Facility
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010106
Status: Excess
Base Closure: No
Comment: 440 sq. ft., 1 story possible asbestos.

Recreation/Gym Bldg.
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010107
Status: Excess
Base Closure: No
Comment: 5899 sq ft., 1 story plus mezzanine.

Bldg. 44
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010108
Status: Excess
Base Closure: No
Comment: 108 sq ft., 1 story concrete, most recent use—sewage pump station, potential for storage, no utilities.

Bldg. 46
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010110
Status: Excess
Base Closure: No
Comment: 2924 sq ft., 1 story circular structure, limited utilities.

Bldg. 48
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010113
Status: Excess
Base Closure: No
Comment: 120 sq ft., 1 story wood/concrete, potential utilities.

Bldg. 50
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010115
Status: Excess
Base Closure: No
Comment: 1922 sq ft., 1 story concrete block/most recent use—communications transmitter/receiver building.

Bldg. 51
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010116
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, most recent use—garage, limited utilities.

Bldg. 52
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010120
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 53
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010122
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 54
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010123
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.

Bldg. 55
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010124
Status: Excess
Base Closure: No
Comment: 336 sq ft., 1 story frame/cement, limited utilities.

Bldg. 75
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010125
Status: Excess
Base Closure: No
Comment: 384 sq ft., 1 story frame, most recent use—fire hose storage potential use for storage.

Bldg. 103
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010126
Status: Excess
Base Closure: No
Comment: 192 sq ft., 1 story wood, most recent use—waste oil.

Bldg. 135
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010127
Status: Excess
Base Closure: No
Comment: 56 sq ft., 1 story prefab wood, no utilities, potential use for storage.

Bldg. 136
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.

Federal Register Notice Date: 03/15/91
Property Number: 189010128
Status: Excess
Base Closure: No
Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 137
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–5195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010129
Status: Excess
Base Closure: No
Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 138
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–5195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 03/15/91
Property Number: 189010130
Status: Excess
Base Closure: No
Comment: 56 sq. ft., 1 story prefab wood, potential use for storage, no utilities.

Bldg. 22
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010777
Status: Excess
Base Closure: No
Comment: 1548 sq. ft., 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010778
Status: Excess
Base Closure: No
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010780
Status: Excess
Base Closure: No
Comment: 2089 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010781
Status: Excess
Base Closure: No
Comment: 2089 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010782
Status: Excess
Base Closure: No
Comment: 4017 sq. ft., 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010784
Status: Excess
Base Closure: No
Comment: 3674 sq. ft., 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010784
Status: Excess
Base Closure: No
Comment: 7218 sq. ft., 2 story; concrete block possible asbestos; ; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010785
Status: Excess
Base Closure: No
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 97
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010629
Status: Excess
Base Closure: No
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Suitable Land (by Agency)

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010662
Status: Excess
Base Closure: No
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T56N, R30W
Houghton Township
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010663
Status: Excess
Base Closure: No
Comment: 3.78 acres; potential utilities.

Suitable Buildings (by Agency)

Bldg. 21
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010776
Status: Excess
Base Closure: No
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 46
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010786
Status: Excess
Base Closure: No
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010787
Status: Excess
Base Closure: No
Comment: 63 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010788
Status: Excess
Base Closure: No
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010789
Status: Excess
Base Closure: No
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 16
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010834
Status: Excess
Base Closure: No
Comment: 3000 sq. ft.; 1 floor; concrete block, most recent use—commissary facility.

Bldgs. 9–13
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010835–189010839
Status: Excess
Base Closure: No
Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5–8
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010840–189010843
Status: Excess
Base Closure: No
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
Calumet Air Force Station

Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010844
Status: Excess
Base Closure: No
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010845
Status: Excess
Base Closure: No
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010846
Status: Excess
Base Closure: No
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.

Bldgs. 216–224, 211–214
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010847–189010855, 189010858–189010861
Status: Excess
Base Closure: No
Comment: 780 sq. ft. each; 1 story wood frame housing garage.

Bldg. 215
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010856
Status: Excess
Base Closure: No
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldg. 158
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010857
Status: Excess
Base Closure: No
Comment: 3603 sq. ft.; 1 story; concrete/steel; possible asbestos; most recent use—electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010864
Status: Excess
Base Closure: No
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Bldgs. 23–24
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010865–189010866
Status: Excess
Base Closure: No
Comment: 44 sq. ft. each; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 31–35
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010867–189010871
Status: Excess
Base Closure: No
Comment: 36 sq. ft. each; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 36–37, 39, 201–207
Calumet Air Force Station
Calumet MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Numbers: 189010872–189010885
Status: Excess
Base Closure: No
Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 3/15/91
Property Number: 189010886
Status: Excess
Base Closure: No
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 3/15/91
Property Number: 189010887
Status: Excess
Base Closure: No
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 3/15/91
Property Number: 189010888
Status: Excess
Base Closure: No
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.) potential use—storage.

Universe of Properties:

Total....182
Suitable....182
Suitable Buildings....170
Suitable Land....12
Unsuitable....0
Unsuitable Buildings....0
Unsuitable Land....0
Number of Resubmission....0

New Mexico

Suitable Buildings (by Agency)

Navy

Bldg. 1 and 4
U.S. Navy Reserve Center
512 N 12th Street
Carlsbad, NM, Co: Eddy 88220–3046
Federal Register Notice Date: 3/15/91
Property Number: 779040001
Status: Excess
Base Closure: No
Comment: 2480 sq. ft.; one story; frame/concrete block bldg; most recent use—office; presence of asbestos; and 152 sq. ft. metal storage shed on 1.03 acres.

Texas

Suitable Land (by Agency)

Navy

Peary Place #2
Naval Air Station
Corpus Christi, TX, Co: Nueces 78419–5000
Federal Register Notice Date: 3/15/91
Property Number: 779030001
Status: Excess
Base Closure: No
Comment: 43.48 acres; 60% of land under lease until 8/93.

Suitable Buildings (by Agency)

Peary Place #1
Naval Air Station
Corpus Christi, TX, Co: Nueces 78419–5000
Federal Register Notice Date: 3/15/91
Property Number: 779030002
Status: Excess
Base Closure: No
Comment: 9160 sq. ft.; 1 story; possible asbestos; most recent use—remote transmitter site.

Universe of Properties:

Total....2
Suitable....2
Suitable Buildings....1
Suitable Land....1
Unsuitable....0
Unsuitable Buildings....0
Unsuitable Land....0
Number of Resubmission....0

Virginia

Suitable Buildings (by Agency)

Navy

Naval Medical Clinic
650 Hampton Blvd.
Norfolk, VA, Co: Norfolk 23508–
Federal Register Notice Date: 3/15/91
Property Number: 779010109
Status: Unutilized
Base Closure: No
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use-laundry.

Universe of Properties:

Total....1
Suitable....1
Suitable Buildings....1
Suitable Land....0
Unsuitable....0
Unsuitable Buildings....0
Unsuitable Land....0
Number of Resubmission....0

SUITABLE/UNAVAILABLE PROPERTIES

California

Suitable Buildings (by Agency)

Navy

Bldg. 100
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940–
Federal Register Notice Date: 03/15/91
Property Number: 779010259
Status: Unutilized
Base Closure: No
Comment: 2628 sq. ft. 1 story permanent bldg; possible asbestos; secure facility with alternate access; use—office space.

BEST COPY AVAILABLE

Suitable Land (by Agency)

Air Force

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010194
Status: Excess
Base Closure: No
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Suitable Buildings (by Agency)

Bldg. 540
Vandenberg Air Force Base
Off Coast Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010561
Status: Unutilized
Base Closure: No
Comment: 384 sq. ft.; 1 story concrete/sheet metal; needs rehab; most recent use—locomotive maintenance/supply building; potential use—storage.

Universe of Properties:

Total....3
Suitable....3
Suitable Buildings....2
Suitable Land....1
Unsuitable....0
Unsuitable Buildings....0
Unsuitable Land....0
Number of Resubmission....0

Florida

Suitable Land (by Agency)

Navy

Naval Public Works Center
Naval Air Station
Pensacola, FL, Co: Escambia 32508–
Location: Southeast corner of Corey station—next to family housing.
Federal Register Notice Date: 03/15/91
Property Number: 779010157
Status: Unutilized
Base Closure: No
Comment: 22 acres.

Air Force

Eglin AFB
S½, SW¼, Sect. 18, T2S R25W
Mary Esther, FL, Co: Okaloosa 32569–
Location: North side of US Highway 98
Federal Register Notice Date: 03/15/91
Property Number: 189010133
Status: Excess
Base Closure: No
Comment: 49 acres, Parcel 3; Flat, cleared land; previous use—buffer safety zone; county has license to construct sewage treatment facility on land.

Eglin AFB
Mossy Head, FL, Co: Walton 32533–
Location: NW quadrant of Florida Highway 285 and I–10. Bounded on the North by Louisville RR near Mossy Head, Florida.
Federal Register Notice Date: 03/15/91
Property Number: 189010134
Status: Excess
Base Closure: No
Comment: 50 acres; Parcel 8; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head, FL, Co: Walton 32533–
Location: NE quadrant of Florida Highway 285, I–10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Federal Register Notice Date: 03/15/91
Property Number: 189010135
Status: Excess
Base Closure: No
Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head, FL Co: Walton 32533–
Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Federal Register Notice Date: 03/15/91
Property Number: 189010136
Status: Excess
Base Closure: No
Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.

Universe of Properties:

Total....5
Suitable....5
Suitable Buildings....0
Suitable Land....5
Unsuitable....0
Unsuitable Buildings....0
Unsuitable Land....0
Number of Resubmission....0

Georgia

Suitable Land (by Agency)

Navy

Naval Submarine Base
Grid AA–1 to AA–4 to EE–7 to FF–2
Kings Bay, GA, Co: Camden 31547–
Federal Register Notice Date: 03/15/91
Property Number: 779010255
Status: Underutilized
Base Closure: No
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

Air Force

Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 03/15/91
Property Number: 189010214
Status: Excess
Base Closure: No
Comment: Approximately 70 acres; potential utilities; paved roads and parking areas.

Suitable Buildings (by Agency)

Bldgs. 1675–1679, 1682, 1685–87
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 03/15/91
Property Number: 189010215–189010219
Status: Excess
Base Closure: No
Comment: 20110 sq. ft. each; 1 story concrete frame; possible asbestos; utilities disconnected; two right-of-way easements.

Bldg. 1680
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 03/15/91
Property Number: 189010220
Status: Excess
Base Closure: No
Comment: 15675 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements.

Bldg. 1683
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 03/15/91
Property Number: 189010222
Status: Excess
Base Closure: No
Comment: 20238 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements

Bldg. 1684
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 03/15/91
Property Number: 189010223
Status: Excess
Base Closure: No
Comment: 5905 sq. ft.; 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements.

Illinois

Suitable Buildings (by Agency)

Air Force

Bldg. 1380
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010232
Status: Unutilized
Base Closure: No
Comment: 350 sq. ft.; one story wood frame; no utilities; structural deficiencies; used for training exercise (chemicals and explosives).

Bldg. 106
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010255
Status: Unutilized
Base Closure: No
Comment: 2360 sq. ft.; 1 story wood; possible asbestos; most recent use—jail.

Bldg. 123
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010256
Status: Unutilized
Base Closure: No
Comment: 1500 sq. ft.; 1 story wood; potential utilities.

Bldg. 125
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010257
Status: Unutilized
Base Closure: No
Comment: 10846 sq. ft.; 1 story wood frame; possible asbestos; no utilities.

Bldg. 353
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010258
Status: Unutilized
Base Closure: No
Comment: 1945 sq. ft.; 1 story masonry/glass frame; most recent use-bank; friable asbestos on ceiling tiles in two rooms.

Bldg. 1220
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010259
Status: Unutilized
Base Closure: No
Comment: 589 sq. ft.; 1 story concrete block; water pump house for swimming pool; potential utilities.

Bldg. 1221
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010260
Status: Unutilized
Base Closure: No
Comment: 2893 sq. ft.; 1 story concrete; bath house for swimming pool limited utilities; possible asbestos.

Massachusetts

Suitable Buildings (by Agency)

Air Force

Bldgs. 5610, 5621, and 5629
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010611–189010613
Status: Unutilized
Base Closure: No
Comment: 10423 sq. ft. each; wood/concrete frame; 6-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5606, 5608, 5612, 5620, 5622, 5624, 5627, 5633, 5635, 5637, 5638, 5639
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010614–189010625
Status: Unutilized
Base Closure: No
Comment: 6949 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5605, 5609, 5625, 5636, 5640, 5642
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010626–189010631
Status: Unutilized
Base Closure: No
Comment: 5904 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5611, 5613, 5614, 5619, 5623, 5660, 5662, 5663
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010632–189010639
Status: Unutilized
Base Closure: No
Comment: 3474 sq. ft. each; wood/concrete frame; 2-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5607, 5626, 5628, 5630–5632, 5661
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010640–189010648
Status: Unutilized
Base Closure: No
Comment: 2952 sq. ft. each; wood/concrete frame; 2-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5601
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010647
Status: Unutilized
Base Closure: No
Comment: 8856 sq. ft. each; wood/concrete frame; 8-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5634
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010648
Status: Unutilized
Base Closure: No
Comment: 3836 sq. ft. each; wood/concrete frame; 6-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5568, 5570, 5572
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010649–189010651
Status: Unutilized
Base Closure: No
Comment: 7367 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5532, 5533, 5544, 5545, 5552, 5555, 5576, 5577, 5579, 5585, 5588
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010652–189010662
Status: Unutilized
Base Closure: No
Comment: 9284 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5538, 5558, 5567, 5569, 5586, 5563, 5565
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register (Notice Date: 03/15/91
Property Number: 189010663–189010669
Status: Unutilized
Base Closure: No
Comment: 7839 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5580
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010670
Status: Unutilized
Base Closure: No
Comment: 9216 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldg. 5527
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010671
Status: Unutilized
Base Closure: No
Comment: 7377 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldg. 5556
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010672
Status: Unutilized
Base Closure: No
Comment: 7368 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldg. 5574
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property-Number: 189010673
Status: Unutilized
Base Closure: No
Comment: 7368 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Bldgs. 5468, 5525, 5528–5531, 5534, 5537, 5539–5543, 5548–5548, 5550, 5551, 5553, 5554, 5559–5565, 5567, 5569, 5571, 5573, 5575, 5578,

5581 5582, 5584, 5585, 5587, 5589–5592, 5594–5599
Otis Air National Guard—Family Housing
Cape Cod
Barnstable, MA, Co: Barnstable 02542–5001
Federal Register Notice Date: 03/15/91
Property Number: 189010674–189010721
Status: Unutilized
Base Closure: No
Comment: 7324 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Michigan

Suitable Buildings (by Agency)

Air Force

Bldg. 5097
Wurtsmith AFB
Oscoda, MI, Co: Iosco 48753–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010342
Status: Excess
Base Closure: No
Comment: 186 sq. ft.; 1 story frame; most recent use—generator building; limited facilities.

Bldg. 20
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010775
Status: Excess
Base Closure: No
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 28
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010778
Status: Excess
Base Closure: No
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Missouri

Suitable Buildings (by Agency)

Air Force

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis, MO, Co: St. Louis 63125–4118
Federal Register Notice Date: 03/15/91
Property Number: 189010081
Status: Underutilized
Base Closure: No
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Montana

Suitable Buildings (by Agency)

Air Force

Housing Area Facility #130
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030033
Status: Unutilized
Base Closure: No
Comment: 960 sq. ft.; 1 story concrete bldg; possible asbestos; easement restrictions; most recent use—automotive shop.

Housing Area Facility #5
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030034
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacant 10/31/90.

Housing Area Facility #6
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030035
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #7
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030036
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #8
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030037
Status: Excess
Base Closure: No
Comment: 1768 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #9
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030038
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #10
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030039
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #11
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030040
Status: Excess
Base Closure: No
Comment: 1358 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

Housing Area Facility #12
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 03/15/91
Property Number: 189030041
Status: Excess
Base Closure: No
Comment: 1266 sq. ft.; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

New Mexico

Suitable Buildings (by Agency)

Air Force

Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland, NM, Co: Bernalillo 87117–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010072
Status: Unutilized
Base Closure: No
Comment: 520 sq ft., 1 story portable building. off-site use only.

New York

Suitable Buildings (by Agency)

Navy

Naval Reserve Center
112 Hanse Avenue
Freeport, NY, Co: Nassau 11550–
Federal Register Notice Date: 03/15/91
Property Number: 779010041
Status: Excess
Base Closure: No
Comment: 40000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

Ohio

Suitable Buildings (by Agency)

Navy

Naval & Marine Corps Res. Ctr.
170 Ashland Road
Mansfield, OH, Co: Richland 44902–
Federal Register Notice Date: 03/15/91
Property Number: 779010075
Status: Excess
Base Closure: No
Comment: 2900 sq. ft.; 1 floor; most recent use—offices; needs rehab.; Navy owns bldg.—land leased from city; expires September 1990.

Pennsylvania

Suitable Buildings (by Agency)

Navy

Marine Corp. Reserve Center
RR 2, Box 569B
Newcastle, PA, Co: Lawrence 16101–
Federal Register Notice Date: 03/15/91
Property Number: 779010084
Status: Unutilized
Base Closure: No
Comment: 17000 sq. ft.; 1 floor; most recent use—offices; needs rehab.

South Dakota

Suitable Buildings (by Agency)

Air Force

Bldgs. 8810B, 8814C, 8732D, 8816C, 8727C, 8548D, 8540B, 8546B, 8528D
Renel Heights
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010343, 189010344, 189010346–348, 189010350, 189010351, 189010354, 189010355
Status: Unutilized
Base Closure: No
Comment: 652 sq. ft. each; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8728D
Renel Heights
264 Lee
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010345
Status: Unutilized
Base Closure: No
Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8513A
Renel Heights
119 Brett
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010349
Status: Unutilized
Base Closure: No
Comment: 1041 sq. ft.; 1 story concrete masonry block housing units; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8719
Renel Heights
235 Lee
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010352
Status: Unutilized
Base Closure: No
Comment: 1077 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8726B
Renel Heights
252 Lee
Ellsworth AFB, SC, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010353
Status: Unutilized
Base Closure: No
Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8425C
Skyway
438 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010336
Status: Unutilized
Base Closure: No
Comment: 461 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8421D
Skyway
484 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010357
Status: Unutilized
Base Closure: No
Comment: 482 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; possible asbestos.

Bldg. 8406D
Skyway
556 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010358
Status: Unutilized
Base Closure: No
Comment: 921 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8438C
Skyway
246 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010359
Status: Unutilized
Base Closure: No
Comments: 480 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8421A
Skyway
490 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010360
Status: Unutilized
Base Closure: No
Comment: 481 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8433D
Skyway
300 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010361
Status: Unutilized
Base Closure: No
Comment: 481 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8412F
Skyway
525 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010362
Status: Unutilized
Base Closure: No
Comment: 462 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8440E
Skyway
228 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010363
Status: Unutilized
Base Closure: No
Comment: 557 sq. ft; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 8401C
Skyway
98 Front St.
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010364
Status: Unutilized
Base Closure: No
Comment: 918 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldgs. 8477B, 8452B, 8457E, 8446E, 8435E, 8438E, 8473B, 8475B, 8448E, 8457B, 8447A, 8468B, 8468C, 8418A
Skyway
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010365, 189010367, 189010370, 189010376, 189010378, 189010380, 189010385, 189010772, 189040012, 189040005, 189040018, 189040020, 189040025, 189040028
Status: Unutilized
Base Closure: No

Comment: 1114 sq. ft. each; 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 8488E
Skyway
11 Front St.
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010366
Status: Unutilized
Base Closure: No
Comment: 968 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 8425B
Skyway
440 Bill Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010368
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 8412C
Skyway
619 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010369
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 8414B
Skyway
618 Arnold Lane
Ellsworth, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010371
Status: Unutilized
Base Closure: No
Comment: 837 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 8423B
Skyway
464 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010372
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8486A
Skyway
32 Front St.
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010373
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldgs. 8448D, 8436D, 8479E, 8475D, 8475F, 8448C, 8454C, 8477D, 8437D, 8459D, 8447C, 8473C, 8415D, 8475C, 8475E
Skyway
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010374, 189010384, 189010760, 189010762, 189010765, 189010766, 189010771, 189010774, 189030011, 189030014, 189030015, 189040009, 189040013, 189040021, 189040022
Status: Unutilized
Base Closure: No
Comment: 960 sq. ft. each; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8448A
Skyway
219 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010375
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8474C
Skyway
83 Front St.
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010377
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8412H
Skyway
629 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010378
Status: Unutilized
Base Closure: No
Comment: 897 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8413A
Skyway
632 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010381
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8486B
Skyway
30 Front St.
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010382
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8471A
Skyway
579 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 03/15/91
Property Number: 189010383
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; secured area with alternate access.
Bldg. 8809A
Renel Heights
217 Barrentine Way
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010386
Status: Unutilized
Base Closure: No
Comment: 1277 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8814C
Renel Heights
244 Barrentine Way
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010387
Status: Unutilized
Base Closure: No
Comment: 1199 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8808A
Renel Heights
220 Barrentine Way
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010388
Status: Unutilized
Base Closure: No

Comment: 1277 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 9122B
Renel Heights
234 Franklin Avenue
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010389
Status: Unutilized
Base Closure: No
Comment: 1042 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldgs. 8614A, 8815A, 8532D, 8723A, 8623D, 8816A, 8534B, 8729A, 8724B
Renel Heights
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010390, 189010391, 189010395, 189010399, 189010403, 189010409, 189010411, 189010412, 189010413
Status: Unutilized
Base Closure: No
Comment: 1052 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8724A
Renel Heights
242 Lee Drive
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010392
Status: Unutilized
Base Closure: No
Comment: 1199 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8590B
Renel Heights
424 Brett Road
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010393
Status: Unutilized
Base Closure: No
Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8501A
Renel Heights
101 Brett Road
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010394
Status: Unutilized
Base Closure: No
Comment: 1466 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8816D
Renel Heights
254 Barrentine Way
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010396
Status: Unutilized
Base Closure: No
Comment: 1099 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8580A
Renel Heights
422 Brett Road
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010397
Status: Unutilized
Base Closure: No
Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8932
Renel Heights
232 Polifka
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010398
Status: Unutilized
Base Closure: No
Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8546C
Renel Heights
260 Brett Road
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010400
Status: Unutilized
Base Closure: No
Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 9111B
Renel Heights
211 Frank
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010401
Status: Unutilized
Base Closure: No
Comment: 1259 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 9119
Renel Heights
225 Frank
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010402
Status: Unutilized
Base Closure: No
Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8601B
Renel Heights
201 Clark Street
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010404
Status: Unutilized
Base Closure: No
Comment: 1404 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8507
Renel Heights
111 Brett Road
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010405
Status: Unutilized
Base Closure: No
Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldgs. 8566C, 8556B, 8617B, 8568B, 8531C, 8725A, 8537B, 8535C, 8534A, 8726A
Renel Heights
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010406, 189010414, 189010417, 189010418, 189010419, 189010421, 189010422, 189010424, 189010426
Status: Unutilized
Base Closure: No
Comment: 852 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8930
Renel Heights
230 Polifka Drive
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010407
Status: Unutilized
Base Closure: No
Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation. utilities disconnected; possible asbestos.
Bldg. 8618
Renel Heights
240 Clark Street
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010408
Status: Unutilized
Base Closure: No
Comment: 1652 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
Bldg. 8921A
Renel Heights
243 Polifka Avenue
Ellsworth AFB, SD Co: Pennington 57706—
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010410
Status: Unutilized

Base Closure: No
Comment: 1250 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 9105
Renel Heights
205 Frank Street
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010415
Status: Unutilized
Base Closure: No
Comment: 1439 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8556D
Renel Heights
338 Brett Road
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010416
Status: Unutilized
Base Closure: No
Comment: 1000 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8577A
Renel Heights
327 Brett Road
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Number: 189010420
Status: Unutilized
Base Closure: No
Comment: 999 sq. ft.; 1 story concrete masonry block residence; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

Bldg. 8433C, Skyway Housing
Ellsworth Air Force Base
302 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010763
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8440F, Skyway Housing
Ellsworth Air Force Base
226 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010764
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8454A, Skyway Housing
Ellsworth Air Force Base
299 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010767
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8474D, Skyway Housing
Ellsworth Air Force Base
82 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010768
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8461A, Skyway Housing
Ellsworth Air Force Base
52 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010769
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8451C, Skyway Housing
Ellsworth Air Force Base
275 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010770
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8478D, Skyway Housing
Ellsworth Air Force Base
61 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189010773
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8475A
Skyway Housing, Ellsworth Air Force Base
81 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189030008
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8452A
Skyway Housing, Ellsworth Air Force Base
279 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189030009
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472B
Skyway Housing, Ellsworth Air Force Base
96 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189030010
Status: Unutilized
Base Closure: No
Comment: 916 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8446B
Skyway Housing, Ellsworth Air Force Base
221 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189030012
Status: Unutilized
Base Closure: No
Comment: 1114 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8472C
Skyway Housing, Ellsworth Air Force Base
94 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189030013
Status: Unutilized
Base Closure: No
Comment: 916 sq. ft.; 1 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8471B; Skyway Housing
Ellsworth Air Force Base
581 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040003
Status: Unutilized
Base Closure: No
Comment: 837 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8457A; Skyway Housing
Ellsworth Air Force Base
401 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040004
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8474B; Skyway Housing
Ellsworth Air Force Base
84 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040005
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8482B; Skyway Housing
Ellsworth Air Force Base
43 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040007
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8425D; Skyway Housing
Ellsworth Air Force Base
436 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040008
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8438F; Skyway Housing
Ellsworth Air Force Base
240 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040010
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8416B; Skyway Housing
Ellsworth Air Force Base
600 Arnold Lane
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040011
Status: Unutilized
Base Closure: No
Comment: 921 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8486A; Skyway Housing
Ellsworth Air Force Base
16 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040012
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8450F; Skyway Housing
Ellsworth Air Force Base
249 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040014
Status: Unutilized
Base Closure: No
Comment: 1213 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8488B; Skyway Housing
Ellsworth Air Force Base
14 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040015
Status: Unutilized
Base Closure: No
Comment: 1256 sq. ft.; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8487C; Skyway Housing
Ellsworth Air Force Base
18 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040016
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8427E; Skyway Housing
Ellsworth Air Force Base
418 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040017
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8489A; Skyway Housing
Ellsworth Air Force Base
4 Front Street
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040019
Status: Unutilized
Base Closure: No
Comment: 963 sq. ft.; 2 story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8466D; Skyway Housing
Ellsworth Air Force Base
509 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040023
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8442C; Skyway Housing
Ellsworth Air Force Base
220 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040024
Status: Unutilized
Base Closure: No
Comment: 1120 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8468C; Skyway Housing
Ellsworth Air Force Base
533 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 03/15/91
Property Number: 189040025
Status: Unutilized
Base Closure: No
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Bldg. 8418A; Skyway Housing
Ellsworth Air Force Base
522 Billy Mitchell
Ellsworth AFB, SD, Co: Pennington 57706—
Federal Register Notice Date: 03/15/91
Property-Number: 189040026
Sttus: Unutilized
Base Closure: No
Comment: 1114 sq. ft.; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access.

Texas

Suitable Buildings (by Agency)

Navy

Bldg. 2435
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010161
Status: Underutilized
Base Closure: No
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2436
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010162
Status: Underutilized
Base Closure: No
Comment: 3352 sq. ft.; 1 story residence.

Bldgs. 2460, 2462, 2464, 2466, 2472, 2476, 2451, 2458, 2461, 2473, 2478, 2480, 2484, 2486–2488, 2494, 2500, 2502, 2506, 2508, 2525
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010163–779010085, 779010168–779010170, 779010193–779010208
Status: Underutilized
Base Closure: No
Comment: 1758 sq. ft.; 1 story residence.

Bldg. 2466
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010166
Status: Underutilized
Base Closure: No
Comment: 1576 sq. ft.; 1 story residence.

Bldg. 2467
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010167
Status: Underutilized
Base Closure: No
Comment: 3532 sq. ft.; 1 story residence.

Bldg. 2482
Laguna Housing Area
NAS Corpus Christi

Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010171
Status: Underutilized
Base Closure: No
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2495
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010172
Status: Underutilized
Base Closure: No
Comment: 1760 sq. ft.; 1 story residence.

Bldg. 2514
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010173
Status: Underutilized
Base Closure: No
Comment: 1730 sq. ft.; 1 story residence.

Bldg. 2518
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010174
Status: Underutilized
Base Closure: No
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2520
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010175
Status: Underutilized
Base Closure: No
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2522
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010176
Status: Underutilized
Base Closure: No
Comment: 1676 sq. ft.; 1 story residence.

Bldg. 2526
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010177
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Bldg. 2423
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010178
Status: Underutilized
Base Closure: No
Comment: 3532 sq ft.; 1 story residence.

Bldg. 2427
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010179
Status: Underutilized
Base Closure: No
Comment: 3532 sq ft.; 1 story residence.

Bldg. 2431
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010180
Status: Underutilized
Base Closure: No
Comment: 3532 sq ft.; 1 story residence.

Bldg. 2424
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010181
Status: Underutilized
Base Closure: No
Comment: 3352 sq ft.; 1 story residence.

Bldg. 2433
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010182
Status: Underutilized
Base Closure: No
Comment: 3352 sq ft.; 1 story residence.

Bldg. 2428
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010183
Status: Underutilized
Base Closure: No
Comment: 3352 sq ft.; 1 story residence.

Bldg. 2429, 2454, 2477, 2485, 2499, 2503, 2507, 2513, 2521
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010184—779010192
Status: Underutilized
Base Closure: No
Comment: 3152 sq ft.; 1 story residences.

Bldg. 2452, 2475, 2479, 2497, 2501, 2505, 2515, 2517, 2519, 2523
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010208—779010218
Status: Underutilized
Base Closure: No
Comment: 3350 sq ft.; 1 story residences.

Bldg. 2465
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010219
Status: Underutilized
Base Closure: No
Comment: 1576 sq ft.; 1 story residence.

Bldg. 2493
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010220
Status: Underutilized
Base Closure: No
Comment: 1576 sq ft.; 1 story residence.

Bldg. 2510
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010221
Status: Underutilized
Base Closure: No
Comment: 1576 sq ft.; 1 story residence.

Bldg. 2474
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010222
Status: Underutilized
Base Closure: No
Comment: 3528 sq ft.; 1 story residence.

Bldg. 2481
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010223
Status: Underutilized
Base Closure: No
Comment: 3528 sq ft.; 1 story residence.

Bldg. 2509
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010224
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Bldg. 2511
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property Number: 779010225
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Bldg. 2512
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010226
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Bldg. 2527
Laguna Housing Area
NAS Corpus Christi
Corpus Christi, TX, Co: Nueces 78419—
Federal Register Notice Date: 03/15/91
Property-Number: 779010227
Status: Underutilized
Base Closure: No
Comment: 1676 sq ft.; 1 story residence.

Air Force

Bldg. 720
Carswell Air Force Base
301 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91

Property-Number: 189030043
Status: Unutilized
Base Closure: No
Comment: 1612 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 723
Carswell Air Force Base
308 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030044
Status: Unutilized
Base Closure: No
Comment: 1612 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 716 A & B, 718 A & B, 770, 83, 861, 882
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030045—189030050
Status: Unutilized
Base Closure: No
Comment: 1684 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 804
Carswell Air Force Base
209 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030051
Status: Unutilized
Base Closure: No
Comment: 1435 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 887
Carswell Air Force Base
109 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030052
Status: Unutilized
Base Closure: No
Comment: 1435 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 884
Carswell Air Force Base
100 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030053
Status: Unutilized
Base Closure: No
Comment: 1622 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 888
Carswell Air Force Base
105 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030054
Status: Unutilized
Base Closure: No
Comment: 1407 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 735
Carswell Air Force Base
216 Seymour
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030055
Status: Unutilized
Base Closure: No
Comment: 1717 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 742 A & B, 752 A & B, 764, 766, 782, 784, 839, 846, 856 859, 870, 709 A & B
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030056, 189030057, 189030065—189030074
Status: Unutilized
Base Closure: No
Comment: 1670 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 741, A & B, 746 A & B, 811, 812, 843, 757, 762
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030058, 189030059, 189030060—189030064
Status: Unutilized
Base Closure: No
Comment: 1640 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 705, 713, 714, 739, 749, 750, 754, 758, 774, 775, 809, 810, 830, 842, 845, 851, 860, 869, 871, 872, 875, 876
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030075—189030086
Status: Unutilized
Base Closure: No
Comment: 2000 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 700—703, 719, 722, 725, 728, 728, 729, 733, 736, 800, 802, 803, 805, 806, 833, 863, 867, 873, 878, 886, 889
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030087—189030128
Status: Unutilized
Base Closure: No
Comment: 1367 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 704
Carswell Air Force Base
6105 Coleman
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Number: 189030121
Status: Unutilized
Base Closure: No
Comment: 1434 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 715, 717, 768, 772, 806, 814, 828, 823, 825, 827, 859, 865, 881
Carswell Air Force Base
Forth Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property-Numbers: 189030122—189030134
Status: Unutilized
Base Closure: No
Comment: 1688 sq ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldgs. 721, 724, 730, 737, 807, 835, 837
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property Numbers: 189030135—189030141
Status: Unutilized
Base Closure: No
Comment: 1622 sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 727A
Carswell Air Force Base
316 Seymour
Fort Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property Number: 189030142
Status: Unutilized
Base Closure: No
Comment: 2999 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 727B
Carswell Air Force Base
318 Seymour
Fort Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property Number: 189030143
Status: Unutilized
Base Closure: No
Comment: 2999 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 731
Carswell Air Force Base
224 Seymour
Fort Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property Number: 189030144
Status: Unutilized
Base Closure: No
Comment: 1434 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 734
Carswell Air Force Base
6099 Lyles
Fort Worth, TX, Co: Tarrant 76114—
Federal Register Notice Date: 03/15/91
Property Number: 189030145
Status: Unutilized
Base Closure: No
Comment: 1842 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 732

Carswell Air Force Base
221 Seymour
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030146
Status: Unutilized
Base Closure: No
Comment: 1612 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 745
Carswell Air Force Base
6132–6134 Pollard
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030147
Status: Unutilized
Base Closure: No
Comment: 2138 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldgs. 768, 765, 763, 760, 751, 711, 710, 708, 707, 743, 744, 749, 838, 840, 813, 848, 849, 819, 850, 852, 853, 854, 855, 825, 857, 858, 851, 879, 780, 779, 773, 778, 777, 776, 783, 781
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Numbers: 189030148–189030183
Status: Unutilized
Base Closure: No
Comment: 1624 sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 801
Carswell Air Force Base
6099 Straley
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030184
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 834
Carswell Air Force Base
117 Seymour
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030185
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 836
Carswell Air Force Base
120 Seymour
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030186
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 828
Carswell Air Force Base
6165–6167 Straley
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Number: 189030187
Status: Unutilized
Base Closure: No
Comment: 2099 sq. ft.; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldgs. 832, 862, 868, 883
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Numbers: 189030188–189030191
Status: Unutilized
Base Closure: No
Comment: 1434 sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldgs. 706, 712, 738, 747, 748, 752, 753, 755, 756, 759, 767, 771, 814, 815, 817, 818, 821, 822, 841, 844, 847, 864, 866, 874, 877, 880
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 03/15/91
Property Numbers: 189030192–189030218
Status: Unutilized
Base Closure: No
Comment: 2148 sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.
Bldg. 439
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 03/15/91
Property Number: 189030177
Status: Unutilized
Base Closure: No
Comment: 10500 sq. ft.; wood frame; 2 floors; possible asbestos; needs rehab.
Bldg. 442
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 03/15/91
Property Number: 189010178
Status: Unutilized
Base Closure: No
Comment: 15557 sq. ft.; wood frame; needs rehab; possible asbestos.
Bldg. 467
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 03/15/91
Property Number: 189010179
Status: Underutilized
Base Closure: No
Comment: 10500 sq. ft.; wood frame; needs rehab; seasonal use by scouts and CAP.
Bldg. 89
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 03/15/91
Property Number: 189010180
Status: Underutilized
Base Closure: No
Comment: 4122 sq. ft.; 1 floor; wood frame; needs rehab; portion temporarily used for storage.
Bldg. 660
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 03/15/91
Property Number: 189010172
Status: Unutilized
Base Closure: No
Comment: 957 sq. ft.; 1 floor; concrete block frame; needs rehab.

Universe of Properties:

Total.....248
Suitable.....248
Suitable buildings.....248
Suitable land.....0
Unsuitable.....0
Unsuitable buildings.....0
Unsuitable land.....0
Number of resubmission.....0

Virginia

Suitable Land (by Agency)

Navy
Naval Base
Norfolk, VA, Co: Norfolk 23508–
Location: Northeast corner of base, near Willoughby housing area.
Federal Register Notice Date: 03/15/91
Property Number: 779010156
Status: Unutilized
Base Closure: No
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

West Virginia

Suitable Buildings (by Agency)

Navy
Naval & Marine Corps Res. Ctr.
N. 13th St & Ohio River
Wheeling, WV, Co: Ohio 26003–
Federal Register Notice Date: 03/15/91
Property Number: 779010077
Status: Excess
Base Closure: No
Comment: 32000 sq. ft.; 1 floor; most recent use—offices; 15% of total space occupied; needs rehab; land leased from city—expires September 1990.

Universe of Properties:

Total.....1
Suitable.....1
Suitable buildings.....1
Suitable land.....0
Unsuitable.....0
Unsuitable buildings.....0
Unsuitable land.....0
Number of resubmissions.....0

REPORT SUMMARY FOR ALL STATES

Universe of Properties:

Total.....542
Suitable.....542
Suitable buildings.....533
Suitable land.....9
Unsuitable.....0
Unsuitable buildings.....0
Unsuitable land.....0
Number of resubmission.....0

UNSUITABLE PROPERTIES

Alaska

Unsuitable Buildings (by Agency)

Air Force
Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFT, AK, Co: Ahcnorage 99506–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010318
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.

Unsuitable Land (by Agency)

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010430
Status: Unutilized
Base Closure: No
Reason: Other; isolated area; not accessible by road.
Comment: Isolated and remote area; Arctic environment.
Lake Louise Recreation
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010431
Status: Unutilized
Base Closure: No
Reason: Other; isolated area; not accessible by road.
Comment: Isolated and remote area; Arctic coast.
Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010432
Status: Unutilized
Base Closure: No
Reason: Other; isolated area; not accessible by road.
Comment: Isolated and remote area; Arctic coast.

Unsuitable Buildings (by Agency)

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010296
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 113
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010297
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 165
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010298
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 150
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010299
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010300
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010301
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010302
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldgs. 11–230, 21–130, 34–616, 43–616, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010303–189010308
Status: Unutilized
Base Closure: No
Reason: Secured area; contamination.
Bldgs. 103, 110, 112–115, 118, 1001, 1013, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property Numbers: 189010309–189010319
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldgs. 107,115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property Numbers: 189010320–189010329
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldgs. 103–105, 110, 114, 202, 204, 205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property Numbers: 189010330–189010339
Status: Unutilized
Base Closure: No
Reason: Secured area; isolated area; not accessible by road; contamination.
Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010453
Status: Unutilized
Base Closure: No
Reason: Other; isolated area; not accessible by road.
Comment: Isolated and remote; Arctic environment.

Universe of Properties:

Total.....48
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....48
Unsuitable buildings.....45
Unsuitable land.....3
Number of resubmission.....0

Alabama

Unsuitable buildings (by Agency)

Air Force
Bldg. 913
Maxwell AFB
Avenue "C"
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property Number: 189010002
Status: Unutilized
Base Closure: No
Reason: Secured area.
Bldg. 927
Maxwell AFB
Montgomery, AL, Co: Montgomery 36112–
Location: Off Avenue "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010003
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 935
Maxwell AFB
Montgomery, AL, Co: Montgomery 36112–
Location: Off Selfridge Street
Federal Register Notice Date: 03/15/91
Property Number: 189010004
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 936
Maxwell AFB
Selfridge Street
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property Number: 189010005
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 809
Gunter AFB
Montgomery, AL, Co: Montgomery 36114–
Location: Off Renfroe Street
Federal Register Notice Date: 03/15/91
Property Number: 189010011
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 861
Gunter AFB
South Drive
Montgomery, AL, Co: Montgomery 36114–
Federal Register Notice Date: 03/15/91
Property Number: 189010012
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1011
Gunter AFB
Avenue "A"
Montgomery, AL, Co: Montgomery 36114–
Federal Register Notice Date: 03/15/91
Property Number: 189010013
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1022
Gunter AFB
Montgomery, AL, Co: Montgomery 36114–
Location: Adjacent to Avenue "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010015
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1042
Gunter AFB
Montgomery, AL, Co: Montgomery 36114–
Location: Between "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010016
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1052
Gunter AFB
Montgomery, AL, Co: Montgomery 36114–
Location: Between Avenues "A" and "C"
Federal Register Notice Date: 03/15/91
Property Number: 189010019
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 1060
Gunter AFB
4th Street at Avenue C
Montgomery, AL, Co: Montgomery 36114–
Federal Register Notice Date: 03/15/91
Property Number: 189010020
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1061
Gunter AFB
Avenue C
Montgomery, AL, Co: Montgomery 36114–
Federal Register Notice Date: 03/15/91
Property Number: 189010022
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1435
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property-Number: 189030220
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1436
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property-Number: 189030221
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1440
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property-Number: 189030222
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 1441
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 03/15/91
Property-Number: 189030223
Status: Unutilized
Base Closure: No
Reason: Floodway; secured area.

Bldg. 830
Gunter Air Force Base
Ramp Road
Montgomery, AL, Co: Montgomery 36114–5000
Federal Register Notice Date: 03/15/91
Property-Number 189040853
Status: Underutilized
Base Closure: No
Reason: secured area.

Bldg. 421
Gunter Air Force Base
Avenue D
Montgmery, AL, Co: Montgomery 36114–5000
Federal Register Notice Date: 03/15/91
Property-Number 189040854
Status: Underutilized
Base Closure: No
Reason: secured area.

Bldg. 426
Gunter Air Force Base
Montgomery, AL, Co: Montgomery 36114–5000
Federal Register Notice Date: 03/15/91
Property-Number 189040855
Status: Underutilized
Base Closure: No
Reason: secured area.

Universe of Properties:

Total.....19
Suitable.....0
Suitable buildings.....0
Suitable land.....0
Unsuitable.....67
Unsuitable buildings.....64
Unsuitable land.....3
Number of resubmission.....0

Arizona

Unsuitable Buildings (by Agency)

Air Force

Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB, AZ, Co: Maricopa 85240–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189040856
Status: Unutilized
Base Closure: No
Reason: Secured area.

California

Unsuitable Land (by Agency)

Navy

Salton Sea Test Range
ElCentro, CA, Co: Imperial 93555–
Federal Register Notice Date: 03/15/91
Property-Number: 779010068
Status: Excess
Base Closure: No
Reason: Secured area.

Unsuitable Buildings (by Agency)

Air Force

Bldg. 100
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010233
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 101
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010234
Status: Underutilized
Base Closure: No
Reason: Secured area.

Bldg. 116
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189010235
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 202
Point Arena Air Force Station
(See County), CA, Co: Mendocino 95468–
Federal Register Notice Date: 03/15/91
Property Number: 189010236
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Navy

Bldg. 105
Naval FPS, CVB Detachment
Monterey, CA, Co: Monterey 93940–
Federal Register Notice Date: 03/15/91
Property Number: 779010159
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 165
Naval FPS, CVB Detachment
Monterey, CA, Co: Monterey 93940–
Federal Register Notice Date: 03/15/91
Property Number: 779010160
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 146
Naval Facilities Point Sur
CVB Detachment
Monterey, CA, Co: Monterey 93940–
Federal Register Notice Date: 03/15/91
Property Number: 779010268
Status: Unutilized
Base Closure: No
Reason: Other.
Comment: sewer treatment facility.

Air Force

Bldg. 4052
March AFB
Ice House in West March
Riverside, CA, Co: Riverside 92518–
Federal Register Notice Date: 03/15/91
Property Number: 189010062
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone.

Unsuitable Land (by Agency)

Mather Air Force Base
SE corner of Mather
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 03/15/91
Property Number: 189010609
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Unsuitable Buildings (by Agency)

Bldg. 3686
Mather Air Force Base
Francis and E Streets
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 03/15/91
Property Number: 189010606
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Bldg. 3494
Mather Air Force Base
Driscoll and F. Streets
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 03/15/91
Property Number: 189010607
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Bldg. 2566
Mather Air Force Base
5th and B Streets
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 03/15/91
Property Number: 189010608
Status: Unutilized
Base Closure: Yes
Reason: Secured area.

Bldg. 1766
Mather Air Force Base
Gilbert St. & A Avenue
(See County), CA, Co: Sacramento 95655–
Federal Register Notice Date: 03/15/91
Property Number: 189030001
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 707 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010193
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010195
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 502 63 ABG/DE
Norton Air Force Base
Lorton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010196
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010197
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 201
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010546
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 202
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010547
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 203
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010548
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010549
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldgs. 1001–1010, 1015, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010550–189010563
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 8006
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010564
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 8009
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010565
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 8010
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010566
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 1100
Vandenberg Air Force Base
Off Terra Road

Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010567
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1101
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010568
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1103
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010569
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1104
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010570
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1104
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010571
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1105
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010572
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1106
Vanderberg Air Force Base
Off Terra Road
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010573
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1107
Vanderberg Air Force Base
Off Terra Road
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010574
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 13423
Vanderberg Air Force Base
K Street off Kansas
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010575
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 13424
Vanderberg Air Force Base
K Street off Kansas
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010576
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 13511
Vanderberg Air Force Base
K Street off Kansas
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010577
Status: Unutilized
Base Closure: No
Reason: Secured area.

Bldg. 13512
Vanderberg Air Force Base
K Street off Kansas
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010578
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1110
Vanderberg Air Force Base
Off Terra Road
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010579
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 1108
Vanderberg Air Force Base
Off Terra Road
Vanderberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 03/15/91
Property Number: 189010580
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 392 1182 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010187
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010188
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone; secured area.

Bldg. 152 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010189
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 159 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010191
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; secured area.

Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 03/15/91
Property Number: 189010192
Status: Unutilized
Base Closure: No

Reason: Within 2000 ft. of flammable or explosive material; secured area.
Universe of Properties:
Total....58
Suitable....0
Suitable buildings....0
Suitable land....0
Unsuitable....126
Unsuitable buildings....121
Unsuitable land....5
Number of resubmission....0

Colorado

Unsuitable Buildings (by Agency)

Air Force

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora, CO, Co: Arapahoe 80011–9599
Location: Demolished 7 Dec. 90.
Federal Register Notice Date: 03/15/91
Property Number: 189010249
Status: Unutilized
Base Closure: No
Reason: Secured area

Bldg. 291
Lowry Air Force Base
Denver, CO, Co: Denver 80230–5000
Location: South of 6th Avenue and east of Rosemary Court.
Federal Register Notice Date: 03/15/91
Property Number: 189010250
Status: Excess
Base Closure: No
Reason: Secured area.

Universe of Properties:
Total....2
Suitable....0
Suitable buildings....0
Suitable land....0
Unsuitable....128
Unsuitable buildings....123
Unsuitable land....5
Number of resubmission....0

Delaware

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1310
Dover Air Force Base
436 ABG/DE
Dover AFB, DE, Co: Kent 19902–
Federal Register Notice Date: 03/15/91
Property Number: 189010727
Status: Unutilized
Base Closure: No
Reason: Secured area.

Florida

Unsuitable Land (by Agency)

Air Force

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa, FL, Co: Hillsborough 33608–
Federal Register Notice Date: 03/15/91
Property Number: 189030003
Status: Excess
Base Closure: No
Reason: Floodway.

Navy

Boca Chica Field
Naval Air Station
Key West, FL, Co: Monroe 23040–
Federal Register Notice Date: 03/15/91
Property Number: 779010097
Status: Unutilized
Base Closure: No
Reason: Floodway.

East Martello Battery #2
Naval Air Station
Key West, FL, Co: Monroe 33040–
Federal Register Notice Date: 03/15/91
Property Number: 7790100099
Status: Excess
Base Closure: No
Reason: Within airport runway clear zone.

East Martello Battery #2
Naval Air Station
Key West, FL, Co: Monroe 23040–
Federal Register Notice Date: 03/15/91
Property Number: 779010275
Status: Excess
Base Closure: No
Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

East Martello Bunker #1
Naval Air Station
Key West, FL, Co: Monroe 33040–
Federal Register Notice Date: 03/15/91
Property Number: 779010101
Status: Excess
Base Closure: No
Reason: Within airport runway clear zone.

Unsuitable Land (by Agency)

Air Force

Eglin AFB
W ½ of SW ¼, Sect. 31, T1S, R27W
Holly, FL, Co: Santa Rosa 32566–
Location: 3½ miles NW of Holley, Florida on No. shore of East.
Federal Register Notice Date: 03/15/91
Property Number: 189010131
Status: Excess
Base Closure: No
Reason: Floodway.

Eglin AFB
W ½,of NW of Sect. 36, T1S, R27W
Holley, FL, Co: Santa Rosa 32566–
Federal Register Notice Date: 03/15/91
Property Number: 189010132
Status: Excess
Base Closure: No
Reason: Within airport runway clear zone.

Universe of Properties
Total....7
Suitable....0
Suitable buildings....0
Suitable land....0
Unsuitable....136
Unsuitable buildings....125
Unsuitable land....11
Number of resubmission....0

Georgia

Unsuitable Land (by Agency)

Navy

Naval Submarine Base
Grid G–5 to G–10 to Q–6 to P–2
Kings Bay, GA, Co: Camden 31547–
Federal Register Notice Date: 03/15/91
Property Number: 779010228
Status: Underutilized
Base Closure: No
Reason: Secured area.

Unsuitable Buildings (by Agency)

Naval Submarine Base-Kings Bay
1011 USS Daniel Boone Avenue
Kings Bay, GA, Co: Camden 31547–
Federal Register Notice Date: 03/15/91
Property Number: 779010107
Status: Unutilized
Base Closure: No
Reason: Secured area.
Universe of Properties:
Total....2
Suitable....0
Suitable buildings....0
Suitable land....0
Unsuitable....138
Unsuitable buildings....126
Unsuitable land....12
Number of resubmission....0

Idaho

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1012
Mountain Home Air Force Base
7th Avenue
(See County), ID, Co: Elmore 83648–
Federal Register Notice Date: 03/15/91
Property Number: 189030004
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 923
Mountain Home Air Force Base
7th Avenue
(See County), ID, Co: Elmore 83648–
Federal Register Notice Date: 03/15/91
Property Number: 189030005
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County), ID, Co: Elmore 83648–
Federal Register Notice Date: 03/15/91
Property Number: 189030006
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB, ID, Co: Elmore 83648–
Federal Register Notice Date: 03/15/91
Property Number: 189040857
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, within airport runway clear zone.

Universe of Properties:
Total....4
Suitable....0
Suitable buildings....0
Suitable land....0
Unsuitable....142
Unsuitable buildings....130
Unsuitable land....12
Number of resubmission....0

Illinois

Unsuitable Buildings (by Agency)

Air Force

Bldg. 550
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010227
Status: Unutilized
Base Closure: No
Reason: Other environmental.
Comment: Water treatment sewage building.

Bldg. 551
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010228
Status: Unutilized
Base Closure: No
Reason: Other environmental.
Comment: Waste treatment plant.

Bldg. 552
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010229
Status: Unutilized
Base Closure: No
Reason: Other environmental.
Comment: Waste treatment plant.

Bldg. 556
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010230
Status: Unutilized
Base Closure: No
Reason: Other environmental.
Comment: Sewage treatment building with pumps.

Bldg. 964
Chanute Air Force Base
Rantoul, IL, CO: Champaign 61868–
Federal Register Notice Date: 03/15/91
Property Number: 189010231
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Waste treatment pump station.

Navy

Bldg. 928
Naval Training Center
Great Lakes
Great Lakes, IL, Co: Lake 60088–
Federal Register Notice Date: 03/15/91
Property Number: 779010126
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 28
Naval Training Center
Great Lakes
Great Lakes, IL, Co: Lake 60088–
Federal Register Notice Date: 03/15/91
Property Number: 779010123
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 25
Naval Training Center
Great Lakes
Great Lakes, IL, Co: Lake 60088–
Federal Register Notice Date: 03/15/91
Property Number: 779010125
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 2
Naval Training Center
Great Lakes
Great Lakes, IL, Co: Lake 60088–
Federal Register Notice Date: 03/15/91
Property Number: 779010128
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Air Force

Bldg. 3191
Scott Air Force Base
East Drive 375 ABG/DE–5001
Scott AFB, IL, Co: St. Clair 62225–
Federal Register Notice Date: 03/15/91
Property Number: 189010247
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone Secured Area.

Bldg. 3760
Scott Air Force Base
East Drive 375 ABG/DE
Scott AFB, IL, Co: St. Clair 62225–5001
Federal Register Notice Date: 03/15/91
Property Number: 189010248
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 503
Scott Air Force Base
Scott AFB, IL, Co: St. Clair 62225–
Federal Register Notice Date: 03/15/91
Property Number: 189010725
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total	12
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	154
Unsuitable Buildings	142
Unsuitable Land	12
Number of Resubmission	0

Indiana

Unsuitable Buildings (by Agency)

Air Force

Bldg. 748
Grisson Air Force Base
East Loop Road
Grisson, IN, Co: Miami 46961–
Federal Register Notice Date: 03/15/91
Property Number: 189010182
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. 520
Grisson Air Force Base
Lancer Road and Matador Street
Grisson, IN, Co: Miami 46971–
Federal Register Notice Date: 03/15/91
Property Number: 189010183
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 369
Grisson Air Force Base
Mustang and Constellation Streets
Grisson, IN, Co: Miami 46971–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010184
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 301
Grisson Air Force Base
Lightning and Constellation Streets
Grisson, IN, Co: Miami 46971–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010186
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total	4
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	1580
Unsuitable Buildings	148
Unsuitable Land	12
Number of Resubmission	0

Massachusetts

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1900
Westover Air Force Base
Chicopee, MA, Co: Hampden 01022–
Federal Register Notice Date: 03/15/91
Property-Number: 189010430
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1604
Westover Air Force Base
Chicopee, MA, Co: Hampden 01022–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189040001
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1633
Westover Air Force Base
Chicopee, MA, Co: Hampden 01022–5000
Federal Register Notice Date: 03/15/91
Property-Number: 189040002
Status: Unutilized
Base Closure: No
Reason: Secured Area

Universe of Properties:

Total	4
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	161
Unsuitable Buildings	149
Unsuitable Land	12
Number of Resubmission	0

Maryland

Unsuitable Land (by Agency)

Air Force

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges 20613–
Federal Register Notice Date: 03/15/91
Property-Number: 189010283
Status: Unutilized
Base Closure: No
Reason: Secured Area

Unsuitable Buildings (by Agency

Bldg. 4
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges 20613–
Federal Register Notice Date: 03/15/91
Property-Number: 189010261
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges 20613–
Federal Register Notice Date: 03/15/91
Property-Number: 189010264
Status: Unutilized
Base Closure: No
Reason: Secured Area

Universe of Properties

Total	3
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	164
Unsuitable Buildings	151
Unsuitable Land	13
Number of Resubmission	0

Maine

Unsuitable Buildings (by Agency)

Air Force

Bldg. 5200
Loring Air Force Base
New York Place
Limestone, ME, Co: Aroostook 04750–
Federal Register Notice Date: 03/15/91
Property-Number: 189010541
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 6200
Loring Air Force Base
Georgia Road
Limestone, ME, Co: Aroostook 04750–
Federal Register Notice Date: 03/15/91
Property-Number: 189010542
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 6100
Loring Air Force Base
Limestone, ME Co: Aroostook 04750–
Location: Base industrial area
Federal Register Notice Date: 03/15/91
Property-Number: 189010543
Status: Unutilized
Base Closure: No
Reason: Secured Area

Universe of Properties

Total	3
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	167
Unsuitable Buildings	154
Unsuitable Land	13
Number of Resubmission	0

Michigan

Unsuitable Buildings (by Agency)

Air Force

Bldg. 71
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010610
Status: Excess
Base Closure: No
Reason: Other
Comment: Sewage treatment and disposal facility.

Bldg. 99 (WATER WELL)
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010831
Status: Excess
Base Closure: No
Reason: Other
Comment: Water well

Bldg. 100 (WATER WELL)
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010832
Status: Excess
Base Closure: No
Reason: Other
Comment: Water well

Bldg. 118
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property-Number: 189010875
Status: Excess
Base Closure: No
Reason: Other
Comment: Gasoline Station.

Bldg. 120
Calumet Air Force Station 125Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010876
Status: Excess
Base Closure: No
Reason: Other
Comment: Gas Station.

Bldg. 166
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010877
Status: Excess
Base Closure: No
Reason: Other
Comment: Pump lift station.

Bldg. 168
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010878
Status: Excess
Base Closure: No
Reason: Other
Comment: Gasoline station.

Bldg. 69
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010889
Status: Excess
Base Closure: No
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet, MI Co: Keweenaw 49913–
Federal Register Notice Date: 03/15/91
Property Number: 189010890
Status: Excess
Base Closure: No
Reason: Other
Comment: Water pump station.

Bldgs. 560, 5656, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge, MI Co: Macomb 48045–
Location: North end of airfield.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010522–189010533
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total	21
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	169
Unsuitable Buildings	175
Unsuitable Land	13
Number of Resubmission	0

Minnesota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 616
Minnesota Air Nat'l Guard
HQ 133rd Tactical Airlift Wing (MAC)
Minneapolis, MN Co: Hennepin 55111–
Federal Register Notice Date: 03/15/91
Property Number: 189010087
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 622
Minnesota Air Nat'l Guard
HQ 133rd Tactical Airlift Wing (MAC)
Minneapolis, MN Co: Hennepin 55111–
Federal Register Notice Date: 03/15/91
Property Number: 189010089
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 46
NAVAIRESCEN
6201 32nd Avenue South
Minneapolis, MN Co: Hennepin 55450–
Federal Register Notice Date: 03/15/91
Property Number: 189010085
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

Universe of Properties:

Total	3
Suitable	0
Suitable Buildings	0
Suitable Land	0

Unsuitable 191
Unsuitable Buildings 178
Unsuitable Land 13
Number of Resubmission 0

Missouri

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 42, 45–47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis, MO, Co: St. Louis 63125–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010726, 189010728–189010731
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total.....5
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....196
Unsuitable Buildings.....183
Unsuitable Land.....13
Number of Resubmission.....0

Montana

Unsuitable Buildings (by Agency)

Air Force

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom, MT, Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010076
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Other environmental.

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom, MT, Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010077
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Within airport runway clear zone; Secured Area; Other environmental.

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom, MT, Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property-Number: 189010078
Status: Unutilized
Base Closure: No
Reason: Other environmental; Secured Area
Comment: Friable asbestos.

Bldg. 1500
Malmstrom AFB
Perimeter Road
Malmstrom, MT, Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010079
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Other environmental.

Bldg. 1502
Malmstrom AFB
Perimeter Road
Malmstrom, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property-Number: 189010080
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Other environmental.

Bldg. 627
Malmstrom Air Force Base
2nd St. and I Avenue
Great Falls, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010722
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 677
Malmstrom Air Force Base
Avenue F between Goddard and 1st Avenue
Great Falls, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010723
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom, MT Co: Cascade 59405–
Federal Register Notice Date: 03/15/91
Property Number: 189040057
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total.....8
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....204
Unsuitable Buildings.....191
Unsuitable Land.....13
Number of Resubmission.....0

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB, NC Co: Cumberland 28308–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010262
Status: Unutilized
Base Closure: No
Reason: Secured Area.

North Dakota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 422
Minot Air Force Base
Minot, ND Co: Ward 58705–
Federal Register Notice Date: 03/15/91
Property Number: 189010724
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 1502
Malmstrom AFB
Perimeter Road
Malmstrom, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property-Number: 189010080
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Other environmental.

Bldg. 627
Malmstrom Air Force Base
2nd St. and I Avenue
Great Falls, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010722
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 677
Malmstrom Air Force Base
Avenue F between Goddard and 1st Avenue
Great Falls, MT Co: Cascade 59402–
Federal Register Notice Date: 03/15/91
Property Number: 189010723
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom, MT Co: Cascade 59405–
Federal Register Notice Date: 03/15/91
Property Number: 189040057
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total.....8
Suitable.....0
Suitable Buildings.....0
Suitable Land.....0
Unsuitable.....204
Unsuitable Buildings.....191
Unsuitable Land.....13
Number of Resubmission.....0

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB, NC Co: Cumberland 28308–5045
Federal Register Notice Date: 03/15/91
Property Number: 189010262
Status: Unutilized
Base Closure: No
Reason: Secured Area.

North Dakota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 422
Minot Air Force Base
Minot, ND Co: Ward 58705–
Federal Register Notice Date: 03/15/91
Property Number: 189010724
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 8
Pease Air Force Base
Newington Road
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010534
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 94
Pease Air Force Base, Temp. Lodging Facility
Rockingham Drive
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010535
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 132
Pease Air Force Base, Vehicle Fuel Station
Exeter Street
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010536
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 317, 343
Pease Air Force Base, Jet Fuel Pumphouse
On the flightline
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010537, 189010538
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 439
Pease Air Force Base
Weapons Storage Area.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010539
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 369–371, 373–375, 377–380, 382
Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040336–189040346
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone.

Bldg. 33
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Reason: Secured Area.

New Hampshire

Unsuitable Land (by Agency)

Air Force

Golf Course
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040360
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone.

Unsuitable Buildings (by Agency)

Bldg. 8
Pease Air Force Base
Newington Road
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010534
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 94
Pease Air Force Base, Temp. Lodging Facility
Rockingham Drive
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010535
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 132
Pease Air Force Base, Vehicle Fuel Station
Exeter Street
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010536
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 317, 343
Pease Air Force Base, Jet Fuel Pumphouse
On the flightline
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010537, 189010538
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 439
Pease Air Force Base
Weapons Storage Area.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189010539
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 369–371, 373–375, 377–380, 382
Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040336–189040346
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone.

Bldg. 33
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91

Property Number: 189040348
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Service Station.

Bldgs. 398–401, 403, 405, 407
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040353–189040359
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone.

Bldgs. 105, 113, 117, 119–122, 136, 180, 224, 226, 235, 1009
Industrial Facilities
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040361–189040373
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 112, 205–207, 211, 217, 220, 237, 238
Aircraft Operations
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040374–189040382
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 68, 123, 124, 361
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040716–189040719
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Utility plants.

Bldgs. 232, 233, 230, 416
Communications Facilities
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040722–189040725
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material.

Bldgs. 212–215, 222, 227, 229
Aircraft Operations
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040727–189040733
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 3
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040772
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Bus shelter.

Bldg. 355
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040789
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Utility station.

Bldg. 11372
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040794
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Bus shelter.

Bldg. 106
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040806
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Sewage pump station.

Bldg. 161
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040807
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 203
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040808
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Sewage pump station.

Bldg. 225
Pease Air Force Base
Pease AFB, NH, Co.: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Number: 189040809
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 312
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040810
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 317
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040811
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 321
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040612
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 325
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040613
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 327
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040614
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 330
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040615
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 334
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040616
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 339
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040617
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 343
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040618
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 360
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040619
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 395
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040620
Status: Excess

BEST COPY AVAILABLE

Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 414
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040821
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Bldg. 422
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040822
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 428
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040823
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 429
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040824
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump station.

Bldg. 1000
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803—
Federal Register Notice Date: 03/15/91
Property Number: 189040825
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Sewage pump station.

Bldgs. 35010, 35022, 35068, 35090, 35092, 35153, 35155, 35202, 35211, 35227, 35238, 35241, 35321, 35327, 35330, 35334, 35351, 35355, 35359, 35408, 35418, 35432
Pease Air Force Base Pease AFB, NH Co: Rockingham 03803–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040830–189040851
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Power station.

Universe of Properties:

Total	112
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	318
Unsuitable Buildings	304
Unsuitable Land	14
Number of Resubmission	0

New York

Unsuitable Buildings (by Agency)

Navy

Bldg. R–95
Naval Station
207 Flushing Avenue
Brooklyn, NY Co: Kings 11251–
Federal Register Notice Date: 03/15/91
Property Number: 779010256
Status: Unutilized
Base Closure: Yes
Reason: Secured Area.

Bldg. RD
Naval Station
207 Flushing Avenue
Brooklyn, NY, Co: Kings 11251–
Federal Register Notice Date: 03/15/91
Property Number: 779010257
Status: Underutilized
Base Closure: Yes
Reason: Secured Area.

Bldg. 305
Naval Station
207 Flushing Avenue
Brooklyn, NY, Co: Kings 11251–
Federal Register Notice Date: 03/15/91
Property Number: 779010258
Status: Underutilized
Base Closure: Yes
Reason: Secured Area.

Air Force

Bldg. 518 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14304–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010073
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 524 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14303–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010074
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 628 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14303–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010075
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Navy

Bldg. 204
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390–
Federal Register Notice Date: 03/15/91
Property Number: 779010270
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 255
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390–
Federal Register Notice Date: 03/15/91
Property Number: 779010271
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. T–370
Naval Underwater Systems Center
Fisher's Island Annex Detachment
Fisher's Island, NY, Co: Suffolk 06390–
Federal Register Notice Date: 03/15/91
Property Number: 779010272
Status: Excess
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total	9
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	327
Unsuitable Buildings	313
Unsuitable Land	14
Number of Resubmission	0

Ohio

Unsuitable Buildings (by Agency)

Air Force

Facility 30092
Wright-Patterson Air Force Base
(See County), OH, Co: Greene 45433–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010266
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Facility 30205
Wright-Patterson Air Force Base
Greene, OH, Co: Green 45433–
Federal Register Notice Date: 03/15/91
Property Number: 189010434
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:

Total	2
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	329
Unsuitable Buildings	315
Unsuitable Land	14
Number of Resubmission	0

Oklahoma

Unsuitable Buildings (by Agency)

Air Force

Bldg. 604
Vance Air Force Base
Enid, OK, Co: Garfield 73705–5000
Federal Register Notice Date: 03/15/91
Property Number: 189010204
Status: Unutilized
Base Closure: No
Reason: Secured Area; Within 2000 Ft. of flammable or explosive material.

Pennsylvania

Unsuitable Buildings (by Agency)

Navy

Bldg. 62
Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112–
Federal Register Notice Date: 03/15/91
Property Number: 779010112
Status: Unutilized

Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 614
Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112–
Federal Register Notice Date: 03/15/91
Property Number: 779010114
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 650
Philadelphia Naval Shipyard
Philadelphia, PA, Co: Philadelphia 19112–
Federal Register Notice Date: 03/15/91
Property Number: 779010117
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Universe of Properties:

Total	3
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	333
Unsuitable Buildings	319
Unsuitable Land	14
Number of Resubmission	0

Puerto Rico

Unsuitable Buildings (by Agency)

Air Force

Bldg. 10
Punta Salinas Radar Site
Toa Baja, PR, Co: Toa Baja
Federal Register Notice Date: 03/15/91
Property Number: 189010544
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Rhode Island

Unsuitable Buildings (by Agency)

Navy

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown, RI, Co: Newport 02840–
Federal Register Notice Date: 03/15/91
Property Number: 779010273
Status: Excess
Base Closure: No
Reason: Secured Area
95 Buildings
Naval Construction Battalion Center
Davisville, RI, Co: Washington 02854–
Federal Register Notice Date: 03/15/91
Property Numbers: 779010001–779010023, 779010025, 779010027–779010040, 79010042–779010061, 779010063–7799010065, 7799010067, 7799010069–7799010072, 779010074, 779010076, 779010078, 779010079, 779010232–779010253, 779010276–779010278
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Universe of Properties:

Total	96
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	430
Unsuitable Buildings	416
Unsuitable Land	14
Number of Resubmission	0

South Dakota

Unsuitable Buildings (by Agency)

Air Force

154 Bldgs. at Renel Heights
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 03/15/91
Property Numbers: 189010443–189010521, 189010732–189010759, 189030016–189030032, 189040027–189040055, 189040058
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Earth movement/shifting, cracked exterior and interior walls with separations several inches wide; earth shift severed sewer lines.

Universe of Properties:

Total	154
Suitable	0
Suitable Buildings	0
Suitable Land	0
Unsuitable	584
Unsuitable Buildings	570
Unsuitable Land	14
Number of Resubmission	0

Texas

Unsuitable Buildings (by Agency)

Air Force

Bldg. 2005
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010162
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 124
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010163
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 146
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010164
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 42
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010165
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 23
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010166
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 16
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010167
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 73
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010205
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 61
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010206
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 100
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010207
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 246
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489 -
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010208
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 503
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010209
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 645
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock
Federal Register Notice Date: 03/15/91
Property Number: 189010210
Status: Excess

Base Closure: No
Reason: Secured Area.

Navy

Bldgs. 2426, 2432, 2470, 2488, 2504, 1730, 2422, 2425, 2430, 2434, 2468, 2480, 2452, 2485, 2498, 2453, 2483, 2515, 2524, 2526
Laguna Shores Housing Area
Corpus Christi, TX, Co: Nueces 78419–
Federal Register Notice Date: 03/15/91
Property Number: 779010279–779010296
Status: Underutilized
Base Closure: No
Reason: Floodway.

Air Force

Bldg. 400
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–50000
Location: Six miles on Highway 90 east of Del Rio, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010173
Status: Underutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material; Within airport runway clear zone.

Bldg. 314
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010174
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 315
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010175
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 63
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas
Federal Register Notice Date: 03/15/91
Property Number: 189010176
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material.

Universe of Properties:
Total....36
Suitable....0
Suitable Buildings....0
Suitable Land....0
Unsuitable....620
Unsuitable Buildings....606
Unsuitable Land....14
Number of Resubmission....0

Utah

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 2007, 2008, 2122, 2126, 2144, 2216, 2224–2226, 2243, 2248, 2249, 2310, 2313, 2315–2317, 2331, 2334, 2336–2338
Hill Air Force Base
(See County), UT, Co: Davis 84056–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010274–189010295
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 788–790
Hill Air Force Base
(See County), UT, Co: Davis 84056–
Federal Register Notice Date: 03/15/91
Property Numbers: 189040858–189040860
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone; Secured Area.

Universe of Properties:
Total....25
Suitable....0
Suitable Buildings....0
Suitable Land....0
Unsuitable....645
Unsuitable Buildings....631
Unsuitable Land....14
Number of Resubmission....0

Virginia

Unsuitable Land (by Agency)

Air Force

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach, VA, Co: (See County) 23451–
Federal Register Notice Date: 03/15/91
Property Number: 189010580
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–
Federal Register Notice Date: 03/15/91
Property Number: 189010435
Status: Unutilized
Base Closure: No
Reason: Floodway.

Parcel 3 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–
Federal Register Notice Date: 03/15/91
Property Number: 189010436
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–
Federal Register Notice Date: 03/15/91
Property Number: 189010437
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Universe of Properties:
Total....4
Suitable....0
Suitable Buildings....0
Suitable Land....0
Unsuitable....849
Unsuitable Buildings....831
Unsuitable Land....18
Number of Resubmission....n

Washington

Unsuitable Land (by Agency)

Navy

Land (Report 2), 234 acres
Naval Supply Center, Puget Sound
Manchester, WA, Co: Kitsap 98353–
Federal Register Notice Date: 03/15/91
Property Number: 779010231
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 57
Naval Supply Center, Puget Sound
Manchester, WA, Co: Kitsap 98353–
Federal Register Notice Date: 03/15/91
Property Number: 779010091
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 47 (Report 1)
Naval Supply Center, Puget Sound
Manchester, WA, Co: Kitsap 98353–
Federal Register Notice Date: 03/15/91
Property Number: 779010230
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Land (by Agency)

Air Force

Fairchild AFB
SE corner of base
Fairchild AFB, WA, Co: Spokane 99011–
Federal Register Notice Date: 03/15/91
Property Number: 189010137
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Fairchild AFB
Fairchild AFB, WA, Co: Spokane 99011–
Location: NW corner of base
Federal Register Notice Date: 03/15, 91
Property Number: 189010138
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldgs. 640–643, 645–647
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010139–189010145
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 1415, 1429, 1464, 1465, 1466
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 03/15/91

Property Numbers: 189010146–189010150
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 3503–3507, 3510, 3514, 3518, 3521
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 03/15/91
Property Number: 189010151–189010159
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:
Total....26
Suitable....0
Suitable Buildings....0
Suitable Land....0
Unsuitable....675
Unsuitable Buildings....654
Unsuitable Land....21
Number of Resubmission....0

Wyoming

Unsuitable Buildings (by Agency)

Air Force

Bldgs. 31, 34, 37, 284, 385, 803
F. E. Warren Air Force Base
Cheyenne, WY, Co: Laramie 82005–
Federal Register Notice Date: 03/15/91
Property Numbers: 189010198–189010203
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Universe of Properties:
Total....6
Suitable....0
Suitable Buildings....0
Suitable Land....0
Unsuitable....681
Unsuitable Buildings....660
Unsuitable Land....21
Number of Resubmissions....0

[FR Doc. 91–6051 Filed 3–14–91; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–4410–08]

Montana; District Multiple-Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District multiple-use advisory council meeting.

SUMMARY: The Lewistown District Multiple Use Advisory Council will meet on April 15, 1991, at 10 a.m. at the Lewistown District BLM Office on Airport Road in Lewistown, Montana. The agenda topics will include:

1. Welcoming new council members; and
2. Discussing portions of the Judith, Valley and Phillips RMP.

The meeting will be open to the public and interested persons may make oral statements to the council at the conclusion of the meeting or may file written comments for the council's consideration. Anyone wishing to make oral statements must notify the Lewistown District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457.

Dated: March 8, 1991.

B. Gene Miller,
Acting District Manager.

[FR Doc. 91–6142 Filed 3–14–91; 8:45 am]
BILLING CODE 4310-DN-M

[WY–920–41–5700; WYW116374]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW116374 for lands in Big Horn County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW116374 effective November 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,
Supervisory Land Law Examiner.

[FR Doc. 91–6143 Filed 3–14–91; 8:45 am]
BILLING CODE 4310-22-M

[AZ–020–01–5410–AZFA; AZA–23560]

Arizona; Realty Actions

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1976, 90 Stat. 2757, ANAM, Inc., has applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 12 E.,
Sec. 33, S½S½;
Sec. 34, S½.
T. 7 S., R. 11 E.,
Sec. 25, all.
T. 7 S., R. 12 E.,
Sec. 3, lots 1, 2, S½NE¼.
T. 7 S., R. 13 E.,
Sec. 12, S½;
Sec. 13, E½;
Sec. 27, SW¼SW¼.
T. 7 S., R. 14 E.,
Sec. 17, E½, S½NW¼, SW¼;
Sec. 21, N½NW¼;
Sec. 26, S½NW¼, S½;
Sec. 27, W½;
Sec. 28, E½, SW¼;
Sec. 29, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 30, NE¼NE¼;
Sec. 31, lots 1 to 4, incl., SE¼SW¼, S½SE¼;
Sec. 32, W½;
Sec. 33, W½, SE¼;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼.
T. 8 S., R. 13 E.,
Sec. 8, E½;
Sec. 9, S½;
Sec. 11, E½;
Sec. 12, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 13, N½N½;
Sec. 14, SW¼, S½SE¼;
Sec. 15, E½SW¼, W½SE¼;
Sec. 22, all;
Sec. 23, E½NE¼, SW¼NE¼, N½NW¼, SW¼NW¼, S½;
Sec. 25, all;
Sec. 26, N½;
Sec. 27, all.
T. 8 S., R. 14 E.,
Sec. 2, S½;
Sec. 5, all;
Sec. 6, lot 6, NE¼SW¼;
Sec. 7, E½;
Sec. 8, all;
Sec. 11, N½;
Sec. 14, all;
Sec. 18, lot 1, NE¼, NE¼NW¼;
Sec. 20, W½;
Sec. 22, SE¼;
Sec. 23, S½S½;
Sec. 24, E½, SW¼;
Sec. 26, N½N½;
Sec. 27, NE¼;
Sec. 29, N½NW¼;
Sec. 30, NE¼, N½SE¼.

Containing 15,207.25 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final

rejection of the application or two years from October 5, 1990.

Dated: March 5, 1991.

Charles R. Frost,

Associate District Manager.

[FR Doc. 91-6144 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-32-M

[G-010-4212-13/G1-0106; NMNM 83264]

Realty Action on Proposed Land Exchange in San Miguel County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NMNM 83264.

SUMMARY: This notice is to advise that the following described public lands have been determined to be suitable for disposal through exchange or sale under section 203 and section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 15 N., R. 22 E.
Sec. 14, SE¼NE¼
Sec. 22, NW¼NE¼
Sec. 23, SW¼NW¼
Sec. 27, NW¼SE¼, N½.
Comprising of 480 acres.

In exchange for 400 acres identified above, the United States will acquire the following described lands from the Church of Spiritual Technology (CST) of Las Vegas, New Mexico:

New Mexico Principal Meridian

T. 17 N., R. 23 E.
Sec. 14, SE¼SW¼
Sec. 23, SW¼NW¼, E½NW¼
Sec. 27, S½
Sec. 34, E½NW¼, NE¼SW¼, NW¼SE¼.
Comprising of 400 acres.

The public land identified for disposal is located about 40 miles east of Las Vegas, New Mexico, and receives little public use. The land is currently leased for grazing and the permittee will be notified that the grazing permit could be reduced or canceled. There are no range improvements on the public land. The private lands are located about 20 miles north of the public land and have high resource value in terms of wildlife habitat and recreation, including hiking and hunting.

This exchange proposal is consistent with the Resource Management Plan (RMP) for the Taos Resource Area in that the public land has been identified for disposal and the private land is in an area for retention. Specifically, the private land is within the Sabinoso Wilderness Study Area included in the RMP. The exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money, or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations:

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publications of this notice segregates the public land from the operation of all public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land report is available for review at the Taos Resource Area, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758-8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: March 8, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-6145 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-FB-M

[G-010-4212-13/G1-0106; NMNM 83254]

Realty Action on Proposed Land Exchange in Taos County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action on proposed land exchange NMNM-83254.

SUMMARY: This notice is to advise that the following described public lands have been determined to be suitable for disposal through exchange under section 206 of the Federal and Land Policy Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian

T. 28 N., R. 10 E.
Sec. 30, Lots 4, 9, 10
comprising 53.21 acres.

In exchange for these lands, the United States will acquire the following described lands from Mr. Louis Menyhert of Albuquerque, New Mexico:

New Mexico Principal Meridian

T. 29 N., R. 9 E.
Sec. 13, S½SE¼SW¼
Sec. 24, N½NE¼NW¼, W½SE¼NE¼ NE¼, E½SW¼NE¼NW¼
comprising 50 acres.

The public land identified for disposal is located about 4 miles east of the small community of Tres Piedras, New Mexico and receives little public use. The land is currently leased for grazing and the permittee will be notified that the grazing permit could be reduced. There are no range improvements on the public land. The private lands are located about 10 miles northeast of Tres Piedras, New Mexico and have high resource value in terms of wildlife habitat and recreation including hiking and hunting.

This exchange proposal is consistent with the Resource Management Plan (RMP) for the Taos Resource Area in that the public land has been identified for disposal and the private land is in an area for retention. Exchange will not impact any local or Federal planning.

The value of the lands to be exchanged are approximately equal. Upon completion of the final appraisal, differences in value will be compensated for by acreage adjustments, the payment of money or by other arrangements that would be in the public interest. Lands to be transferred from the United States will be subject to the following reservations.

1. All mineral deposits shall be reserved to the United States along with the rights to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

Publication of this notice segregates the public land from the operation of all the public laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including environmental assessment and land report, is available for review at the Taos Resource Area Office, 224 Montevideo Plaza, Cruz Alta Road, Taos, New Mexico 87571, phone (505) 758-8851.

For a period of 45 days from the date of this publication, interested parties may submit comments to the Albuquerque District Manager, 435 Montano NE., Albuquerque, New Mexico 87107.

Dated: March 8, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91-6146 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Upcoming Concession Opportunity Within the Rocky Mountain National Park

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public Notice is hereby given that the National Park Service proposes to issue a Statement of Requirements soliciting bids from private individuals and corporations to operate commercial visitor facilities and services at the Hidden Valley Ski Area within Rocky Mountain National Park, Colorado. The concession is currently operated by the Estes Valley Recreation and Park District. The National Park Service is providing advance notice of this offering to afford interested parties the opportunity to inspect the facilities and services during the months of winter operation while the ski area is open. The National Park Service expects to publish the Statement of Requirements in the near future.

ADDRESSES: Interested parties should contact the Regional Director, Rocky Mountain Region, 12795 W. Alameda Pkwy., Box 25287, Denver, Colorado 80225 for additional information.

SUPPLEMENTARY INFORMATION: This action complies with the provisions of the National Environmental Policy Act and copies of these environmental documents may be obtained from the Superintendent, Rocky Mountain National Park, Estes Park, Colorado, 80517-8397.

The Estes Valley Recreation and Park District has performed its obligations to the satisfaction of the Secretary of the Interior under an existing contract which expires by limitation of time on May 31, 1991, and, therefore, pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 stat. 969; 16 USC 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.1. The Estes Valley Recreation and Park District has notified the National Park Service that it does not intend to renew its contract to operate the ski area.

Dated: February 26, 1991.

Homer L. Rouse,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 91-6191 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

Great Smoky Mountains National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: The National Park Service is preparing an Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act of 1969. The EIS will evaluate the construction of approximately 10 miles of the Foothills Parkway between Wear Valley Road and the Gatlingburg Spur (section 8D). Alternatives will be based on different design solutions for the construction of the road. They will include mitigation measures in order to protect the environment from actual construction activities and subsequent use of the road. The National Park Service is holding open houses as part of the scoping process. These meetings will be held at the following times and locations. Members of the public are invited to attend and identify any issues and possible environmental impact topics that should be addressed in the EIS. A draft EIS should be available for public review during the summer of 1992. Written comments and suggestions should be submitted to the National Park Service by April 22, 1991. Comments and requests for further information should be directed to Mr. Randall S. Pope, Superintendent, Great Smoky Mountains National Park, Gatlinburg, Tennessee 37738, telephone (615) 436-1201.

DATES AND ADDRESSES:

Thursday, March 21, 1991, 6:30 p.m. to 9:30 p.m.
American Legion, Post 202, Highway 321, North, Gatlinburg, Tennessee 37738.

Saturday, March 23, 1991, 9 a.m. to 2 p.m.
Townsend Elementary School Library, Needham Road, Townsend, Tennessee 37882.

Dated: February 27, 1991.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 91-6188 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-70-M

Advisory Board, History Areas Committee; Meeting

AGENCY: National Park Service.

ACTION: Notice of Meeting of History Areas Committee of Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board will be held at 9 a.m. at the following location and date.

DATES: March 25, 1991.

LOCATION: National Park Service Director's Conference Room 3119, Main Interior Building, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Benjamin Levy, Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Telephone (202) 343-8164, or FTS 343-8164.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the History Areas Committee of the Secretary of the Interior's National Park System Advisory Board is to evaluate studies of historic properties in order to advise the full National Park System Advisory Board meeting on April 24, 1991 of the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks Program. The members of the History Areas Committee are:

Dr. Holly Anglin Robinson, Chairperson
Mr. Robert Burley
Dr. Alfonz Lengyel
Mrs. Anne Walker
Judge Robert Flynn Orr

The meeting will include presentations and discussions on the national historic significance and the integrity of a number of properties being nominated for National Historic Landmark designation. These nominations include 7 architectural properties located in California, Indiana, Michigan, New York, and Virginia; 2 maritime resources in Michigan and South Carolina; 2 properties being considered for art and painting located in Connecticut; 23 sites relating to a women's history theme study in Connecticut, Florida, Indiana, Kentucky, Maine, Missouri, New Mexico, New York, Pennsylvania, Washington, DC, and West Virginia; a Civil War site in Mississippi; 2 sites in South Dakota dealing with exploration and the westward movement; a recreation site in

Pennsylvania; an Ohio site relating to the Wright Brothers; and a boundary expansion to an existing mining theme National Historic Landmark in Colorado.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Committee a written statement concerning matters to be discussed. Written statements may be submitted to the Senior Historian, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

Dated: March 4, 1991.

Rowland T. Bowers,

Deputy Associate Director, Cultural Resources, National Park Service, WASO.

[FR Doc. 91–6190 Filed 3–14–91; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, March 27, 1991, at the Visitor Center, Barataria Preserve Unit of Jean Lafitte National Historical Park and Preserve, 7400 Hwy. 45, Marrero, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

–Old Business.
–New Business.
–General Management Plan Update.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Hickman, Acting Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: February 19, 1991.

Ernest Ortega,

Acting Regional Director, Southwest Region.

[FR Doc. 91–6186 Filed 3–14–91; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the dates of the meetings of the Upper Delaware Citizens Advisory Council for calendar year 1991. Notice of these meetings is required under the Federal Advisory Committee Act.

Dates	Type of meeting	Inclement weather reschedule date
March 22, 1991	Business	April 12, 1991.
April 19, 1991	Educational	None.
May 17, 1991	Business	None.
June 15, 1991	Educational	None.
August 23, 1991	Business	None.
September 29, 1991.	Educational	None.
October 25, 1991	Business	None.
November 22, 1991.	Educational	December 13, 1991.

Press Releases containing specific information regarding the subject of each monthly meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Wayne Independent
The Hawley News Eagle

Announcement of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

ADDRESSES: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, PO Box C, Narrowsburg, New York 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The advisory council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Public Law 95–625, 16 U.S.C. s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Cizitizen Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes or the meeting will be available for inspection four weeks after the meetings, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91–6196 Filed 3–14–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127,

Attention: Chief of Registration (Phone: 202–343–9536), Hokukano-Ualapue National Historic Landmark, Ualapue, Molokai Island, Hawaii.

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

[FR Doc. 91–6192 Filed 3–14–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 27, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 15, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Great Captain Island Lighthouse, Great Captain Island, SW of Greenwich Pt., Greenwich, 91000351.

Stamford Harbor Lighthouse, South of breakwater, Stamford Harbor, Stamford, 91000348.

Hartford County

St. Mary's Parochial School, Beaver St. S of Broad St., New Britain, 91000364.

Litchfield County

Villa Friuli, 58 High St., Torrington, 91000349.

Middlesex County

Lee, Daniel and Mary, House, Pepperidge Rd. E of Jobs Pond Rd., Portland, 91000365.

Windham County

Plainfield Street Historic District, Roughly, Norwich Rd. from Railroad Ave. to Academy Hill Rd., Plainfield, 91000350.

KENTUCKY

Kenton County

Covington Downtown Commercial Historic District (Boundary Increase), Roughly bounded by Ninth, Washington and Seventh Sts. and Madison Ave., Convington, 91000347.

Marion County

Spalding, Leonard A., House, 307 E. Main St., Lebanon, 91000367.

MASSACHUSETTS

Hampshire County

Southampton Center Historic District, Roughly, High St. from Fomer Rd. to Maple St., College Hwy. from Clark St. to East St. and East from College to Clark, Southampton, 91000363.

Middlesex County

Hildreth, Jonathan, House, 8 Barrett's Mill Rd., Concord, 91000362.

MICHIGAN

Leelanau County

Bingham District No. 5 Schoolhouse, Jct. of Co. Rds. 618 and 633, Bingham Township, Bingham, 91000353.

Wayne County

Harvey, John, House, 97 Winder, Detroit, 91000354.

MONTANA

Cascade County

Great Falls Northside Residential Historic District, 200–900 blocks 4th Ave. N., 100–900 blocks 3rd Ave. N. and 500–900 blocks 2nd Ave. N., Great Falls, 91000355.

NEW MEXICO

Dona Ana County

Hadley—Ludwick House, 2640 El Paseo, Las Cruces, 91000352.

NORTH CAROLINA

Buncombe County

Intheoaks, 510 Vance Ave., Black Mountain, 91000361.

Wake County

Oak View, Jct. of Poole Rd. and Raleigh Beltline, Raleigh, 91000359.

OKLAHOMA

Sequoyah County

Kirby—Steely Archeological Site, Address Restricted, Short vicinity, 91000356.

UTAH

Washington County

St. George Social Hall, 212 N. Main St., St. George, 91000360.

WISCONSIN

Dane County

Elmside Park Mounds, (Late Woodland Stage in Archeological Region 8 (AD 650–1300) MPS), Address Restricted, Madison, 91000358.

Viles Park Mound Group, (Late Woodland Stage in Archeological Region 8 (AD 650–1300) MPS), Address Restricted, Madison, 91000357.

[FR Doc. 91–6187 Filed 3–14–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, AS/ISS, room 1209B, SA–14, Washington, DC 20523–1413.

Date Submitted: February 8, 1991.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0536.

Form Numbers: AID 1420–62.

Type of Submission: Renewal.

Title: Report of Medical Examination.

Purpose: When A.I.D. hires contractor personnel for overseas assignments, the contractors are required to obtain a physician's certification that they are physically qualified to engage in the type of activity for which they will be employed. Physicians who do not regularly deal with patients going to lesser developed countries do not appreciate the difficulties of providing even the most basic medical services in many such areas. The form allows A.I.D. contractors to be screened by the State Department's Office of Medical Services (M/MED) prior to departure to insure the Mission or Embassy medical facility can meet special medical needs of the contractor. Thus the need for future medical evacuations would be reduced, since M/MED would find most existing medical problems that could not be dealt with locally and the individual would then most likely be denied approval to post.

Annual Reporting Burden: Respondents: 1650; annual responses: 1; average hours per response: 4; burden hours: 6600.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: February 7, 1991.
Elizabeth Baltimore,
Information Support Services Division.
[FR Doc. 91-6141 Filed 3-14-91; 8:45 am]
BILLING CODE 9110-01-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This it to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cargill, Incorporated, P.O. Box 9300, Minneapolis, Minnesota 55440.

2. Wholly-owned subsidiaries which will participate in the operations and addresses of their respective principal offices and place of incorporation:

(i) ACCO Feeds, Inc., P.O. Box 521, Abilene, Texas 79604—Delaware.

(ii) Caprock Industries, Inc., P.O. Box 948, Gruver, Texas 79040—Delaware.

(iii) Cargill Marine and Terminal, Inc. P.O. Box 9300 Minneapolis, Minnesota 55440—Delaware.

(iv) Cargill Transportation Services, Inc., P.O. Box 5621, Minneapolis, Minnesota 55440—Delaware.

(v) Excell Corporation, P.O. Box 2519, Wichita, Kansas 67201—Delaware.

Subsidiary of Excel Corporation:

(a) Excel Transporation, Inc., P.O. Box 2519, Wichita, Kansas 67201—Kansas.

(vi) Hohenberg Bros. Company, 226 South Front Street, Memphis, Tennessee 38101—Tennessee.

Subsidiary of Hohenberg Bros. Company:

(a) R.T. Hoover & Co., Inc., 900 Hawkins, El Paso, Texas 79915—Texas.

(vii) Leslie Salt Co., 7200 Central Avenue, Newark, California 94560—Delaware.

(viii) North Star Steel Company, 15407 McGinty Road West, Wayzata, Minnesota 55391-2399—Minnesota.

Subsidiary of North Star Steel Company:

(a) North Star Recycling Company, P.O. Box 868, Monroe, Michigan 48161—Michigan (formerly Magnimet Corporation. See attached documents certifying the change.)

(ix) North Star Steel Texas, Inc., Old Highway 90, Beaumont, Texas 77662—Delaware.

(x) Young's Inc., Rural Route 1, Roaring Spring, Pennsylvania 16673—Pennsylvania

(xi) Sunny Fresh Foods, Inc., P.O. Box 5613, Minneapolis, Minnesota 55440—Delaware.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 91-6230 Filed 3-14-91; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Elimination of Requirements That Aliens File a Declaration of Intending Citizen in Order To File a Discrimination Complaint

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given that Immigration and Naturalization Service (INS) forms I-772 and N-315 no longer need to be filed in order to file a charge of discrimination under section 102 of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b.

DATES: This notice is effective March 15, 1991 and will be applied retroactively.

FOR FURTHER INFORMATION CONTACT: Andrew M. Strojny, Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (800) 255-7688 (toll free) or (202) 653-8121 (Voice) or (202) 296-0168 (local TDD number for the hearing impaired) or (800) 237-2515 (toll free TDD number for the hearing impaired), or Daniel Echavarren, Acting Deputy Special Counsel (202) 653-8260.

SUPPLEMENTARY INFORMATION: The declaration of intention filing requirement eliminated by section 533 of the Immigration Act of 1990, Public Law No. 101-649, 104 stat. 4978 (1990) (8 U.S.C. 1324b(a)) is being given immediate and retroactive effect by the Office of Special Counsel pending more extensive changes to the applicable regulations. The declaration of intention (e.g. forms I-772 and N-315) will no longer be required in order to file a charge of citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986. All citizenship status discrimination charges pending with the Office of Special Counsel on the date the Immigration Act of 1990 was signed (November 29, 1990), and that were deemed incomplete solely because no declaration of intention had been filed, are deemed complete as November 29, 1990, so long as the time for completing the charge, as defined in 28 CFR 44.301(d)(2), had not run out before that date.

Andrew M. Strojny,
Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.
[FR Doc. 91-6152 Filed 3-14-91; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Partial Consent Decrees for Violations of the Clean Air Act Asbestos NESHAP

In accordance with Department policy and 28 CFR 50.7, notice is hereby given that on February 27, 1991 two proposed Partial Consent Decrees in *United States* v. *Interstate Brands, Inc. and Harding Erectors, Inc.*, Civil Action No. CV-90-104-GF-PGH, were lodged with the United States District Court for the District of Montana, Great Falls Division. The Complaint in this case was brought for violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The asbestos NESHAP is codified at 40 CFR part 61, subpart M. The Complaint sought civil penalties for violations of the notice and work practice provisions of the asbestos NESHAP and for injunctive relief.

The proposed Partial Consent Decrees require Interstate Brands, Inc. and Harding Erectors, Inc. to pay civil penalties of, respectively, $6,500 and $40,000. Additionally, each defendant has agreed to test for asbestos using EPA-approved methods prior to any future renovation or demolition project, to permit EPA access to conduct inspections at future renovation or demolition projects and to comply with all provisions of the asbestos NESHAP, 40 CFR part 61, subpart M. Stipulated penalties apply for failure to comply with these provisions of the Decrees.

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Interstate Brands, Inc. and Harding Erectors, Inc.*, DOJ Ref. No. 90-5-2-1-1488.

The proposed Partial Consent Decrees may be examined at the Offices of the United States Attorney, room 212, Federal Building, 215 First Avenue North, Great Falls, Montana 59401, at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202, and at the Enviromental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, (202) 347-7829. Copies of the proposed Partial Consent Decrees may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.75 per decree, $5.50 for both, ($.25 per page reproduction costs) payable to, "Consent Decree Library."

Richard B. Stewart,
Assistant Attorney General, Environment and Natural Resources Division.
[FR Doc. 91-6153 Filed 3-14-91; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Notification, Smart House, L.P.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Smart House, L.P. has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 4, 1991 disclosing the identities of the additional parties to the Smart House Project ("the Project"), and changes in the status of certain participants in the Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the additional parties to the Project, those which have ceased to be involved in the Project, and those whose relationship to the Project have changed, are given below.

The following additional party is participating in the venture under a research and licensing agreement:

Micro Cogen Inc.

The following parties previously were participating in the venture under intital negotiation and confidentiality agreements or joint confidentiality agreement and now have executed, and are participating under, research and licensing agreements:

Custom Command Systems, Inc.
Heat-N-Glo Fireplace Products, Inc.
Molex Incorporated
Siemens Energy & Automation, Inc.
Westinghouse Electric Corporation

The following additional parties are participating in the venture under initial negotiation and confidentiality agreements or joint confidentiality agreements and are in the process of negotiating research and licensing agreements:

W.H. Brady Company
Cherokee International, Inc.
Figaro USA, Inc.
Macurco Inc.
Regal Technologies Ltd.
Sonance—A Division of Dana Innovations
Teletrol Systems Inc.

The following entities, which formerly were participating under initial negotiation and confidentiality agreements, no longer are involved in the venture:

Aleph International Corporation
Bose Corporation
Camcar Division of Textron, Inc.
Challenger Electrical Equipment Corp.
Double Energy Systems
Electromatic Controls Corporation
EPE Technologies, Inc.
Exide Electronics
Goodman Manufacturing Company
Halitec Industries Corporation
Innovative Technology, Inc.
Integrated Communication Systems, Inc.
JAE Electronics, Inc.
Landis & Gyr Metering, Inc.
M&S Systems, Inc.
Nexus Engineering Corporation
Olson Technology Inc.
Southwire Company
Triangle PWC, Inc.
Tri-Star Electronics, Inc.
X-10 (USA) Inc.

The following additional parties are participating in the venture under affiliate agreements or similar arrangements:

Apple Computer, Inc.
D2B Systems Company, Ltd.
Master Builders' Construction & Housing Association Australia, Inc.

The following party previously was participating in the venture under an initial negotiation and confidentiality agreement and now has executed, and is participating under, an affiliate agreement:

Chung-Hsin Electric & Machinery Mfg. Corp.

The following additional parties are participating as advisors to the venture:

Bloodgood Plan Service, Inc.
Canadian Home Builders Association

The following entities, which formerly were participating as advisors, no longer are involved in the venture:

AgipPetroli
Lone Star Gas Company

No other changes have been made in either the membership or the planned activities of the Smart House Project.

On June 14, 1985, the predecessor in interest to Smart House, L.P., the NAHB Research Foundation, Inc., filed the original notification pursuant to section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 28, 1986, July 30, 1986, December 16, 1986, April 8, 1987, June 30, 1987, August 25, 1987, December 4, 1987, February 22, 1988, April 5, 1988, October 27, 1988, June 27, 1989, February 28, 1990, and August 1, 1990, Smart House, L.P. or its predecessor in interest, filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494), on September 22, 1987 (52 FR 35596), on January 5, 1988 (53 FR 186), on March 21, 1988 (53 FR 9154), on May 3, 1988 (53 FR 15750), on December 8, 1988 (53 FR 49614), on August 23, 1989 (54 FR 35091), on April 9, 1990 (55 FR 13199), and on September 6, 1990 (55 FR 36711), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772-8731.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 91-6157 Filed 3-14-91; 8:45 am]
BILLING CODE 4410-01-M

The National Cooperative Research Notification; Unix International, Inc

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), UNIX International, Inc. ("UNIX") on February 6, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On January 30, 1989, UNIX filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 1, 1989 (54 FR 8608). On May 4, 1989, August 1, 1989, October 31, 1989, February 1, 1990, May 1, 1990, July 30, 1990, and November 13, 1990, UNIX filed

additional written notifications. The Department published notices in the Federal Register in response to the additional notifications on June 22, 1989 (54 FR 26286), August 17, 1989 (54 FR 33986), November 29, 1989 (54 FR 49124), March 14, 1990 (55 FR 9617), May 21, 1990 (55 FR 20682), September 17, 1990 (55 FR 38173), and December 28, 1990 (55 FR 53368), respectively.

As of February 1, 1991, the following have become members of UNIX International, Inc.:

Aggregate Computing, Inc.
AIS
Alenia
Boeing
Computation Center, Osaka University
Computer & Comm. Lab/Indust. Tech. Res. Inst
Computer Associates International, Inc
Exxon Production Research Company
HaL Computer Systems
ICL
Integrated Computer Solutions, Inc
IO Power
Justsystem
Lawrence Livermore National Laboratory
McKeown Integra
Michigan State University Computer Laboratory
NEC–NET Group
Petroleos de Venezuela, S.A.
Polnet Technologies
Project Manager Base ADP
Retix
Scientific Software, Inc.
Sector 7 Software
Software Japan International
SPEKTR
State Institute of Applied Chemistry (GIP)
STATSKONTORET
Supercomputer Systems, Inc.
Tokyo University, Department of Information Science

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–6158 Filed 3–14–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Great Lakes Composites Consortium, Inc.

Notice is hereby given that, on February 25, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composites Consortium, Inc. ("GLCC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the members of GLCC and (2) the nature and objectives of GLCC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the members of GLCC and its general areas of planned activity are given below.

The GLCC is a nonstock, nonprofit corporation organized under the laws of the State of Wisconsin. Its principal place of business is 8400 Lakeview Parkway, suite 800, Kenosha, Wisconsin 53142. The following parties have joined GLCC as members:

Amalga Corporation
Cade Industries
Centerline Equipment Corporation
Cooper Composites
Eaton Corporation
Foster-Miller, Inc.
Grumman Corporation
Johnson Controls
Lovdahl Div/Versa Tech., Inc.
McDonnell Douglas Corporation
Pittsburgh Plate Glass
Production Products
Snap-On Tools Corporation
Sullivan Corporation

The objectives of GLCC include conducting a collaborative effort among industry, academia and government to develop, evaluate, demonstrate and test advanced composites manufacturing technologies. The technical work of GLCC in furtherance of its objectives will reflect current and future needs of the composites industrial community and will include the following general areas of activity relating to composites: (1) Design for manufacturing and advance composite materials components; (2) automated and low cost manufacturing techniques; (3) manufacturing process development; (4) nondestructive tests and evaluations; and (5) repair and maintenance techniques.

Membership in GLCC remains open. GLCC intends to file additional written notifications disclosing changes in membership in GLCC and providing additional information regarding projects undertaken by GLCC and its members. GLCC will continue in existence for an indefinite period of time.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–6154 Filed 3–14–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on February 4, 1991, disclosing that there have been changes in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies should be added to the list of PCA members: Coastal Cement Corporation; Dixon-Marquette Cement Company; Heartland Cement Co.; and Illinois Cement Company. Also, Lone Star Industries, Inc. should be deleted from membership in PCA. In addition, Tarmac Virginia Holdings Inc. should now be listed as Roanoke Cement Company.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, January 31, 1990, May 29, 1990, July 15, 1990, and December 18, 1990, PCA filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37504), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3358), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29307), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37683), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43148), February 1, 1990 (55 FR 3407), March 7, 1990 (55 FR 8204), July 3, 1990 (55 FR 27518), July 19, 1990 (55 FR 29432), and January 25, 1991 (56 FR 2950), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–6155 Filed 3–14–91; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Notification; Semiconductor Research Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("Act"), the Semiconductor Research Corporation ("SRC"), on February 19, 1991, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC: Etec Systems, Inc. as a member of Hestia Corporation, Integrated Silicon Systems, Inc., Sienna Technologies Inc., Tyecin Systems Inc., and WYKO Corporation as affiliate members. General Electric Company/RCA withdrew as a member of SRC. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281. The most recent notification of SRC membership changes published in the Federal Register with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989, 54 FR 49123–24. Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389–390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91–6156 Filed 3–14–91; 8:45 am]

BILLING CODE 4410–01–M

Office of Justice Programs

Bureau of Justice Assistance

Bureau of Justice Statistics

Improvement of Criminal History Record Information and Identification of Convicted Felons

AGENCY: Bureau of Justice Assistance and Bureau of Justice Statistics, DOJ.

ACTION: Notice of program announcement.

SUMMARY: The Bureau of Justice Assistance (BJA) and the Bureau of Justice Statistics (BJS) are publishing this notice to announce the Fiscal Year 1991 continuation of an annual $9,000,000 program planned for each of three fiscal years (Fiscal Years 1990, 1991, and 1992) to assist the States in improving the accuracy, completeness, and timeliness of criminal history record information residing at centralized State repositories and providing such information to the Federal Bureau of Investigation (FBI) according to newly-developed voluntary reporting standards. These improvements are designed to serve the entire criminal justice system by ensuring more accurate and comprehensive criminal history record information and by making it possible to identify convicted felons accurately for such purposes as determining noneligibility for firearms purchases. This program is being administered by BJS, in collaboration with the funding agency, BJA.

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting to the State's central repository. Funding will be provided to the maximum number of States. It is anticipated that most States will participate in the program.

This program is for the development and implementation of systems and procedures designed to: (1) Enhance State criminal history records in order to identify convicted felons accurately; (2) meet the new FBI voluntary reporting standards for identifying such individuals; and (3) improve the quality and timeliness of criminal history record information. A primary focus of this program is to idenfity impediments to the reporting of dispositions of criminal cases, to develop plans and procedures to improve such reporting, and to allocate resources to overcome obstacles to complete disposition reporting.

SUPPLEMENTARY INFORMATION:

Background

Section 6213 of the Anti-Drug Abuse Act of 1988 required the Attorney General to report to Congress by November of 1989 on a system for the immediate and accurate identification of felons who attempt to purchase firearms. A Task Force on Felon Identification of Firearms Sales was established to develop a range of options that would comply with the statute. In October 1989, the Task Force completed its final report and forwarded it to the Attorney General for consideration. The Task Force identified several possible options for systems to identify felons who attempt to purchase firearms, but made no specific recommendations. The report also identified major problems in the quality and completeness of criminal history records and the ability to identify individuals convicted of felony offenses.

In his report to Congress of November 20, 1989, the Attorney General recommended a four-part program to enhance efforts to stop firearms sales to felons. One recommendation was to use $9 million of Anti-Drug Abuse Act Discretionary Funds in each of the next three years to fund States for the purpose of achieving compliance with the new FBI voluntary reporting standards and to improve the data quality of State criminal history record information. This program announcement is for the continued implementation of the Attorney General's report.

Objectives

The major purpose of this program is to make systemic improvements in the quality and timeliness of State criminal history record information throughout the country. Particular emphasis will be placed on improving disposition reporting and encouraging States with nonautomated systems to consider automation. Each State must determine the activities which will contribute the most toward meeting program objectives and State goals. Funding will be provided to the maximum number of possible States. It is anticipated that most States will participate in the program. Fiscal and technical assistance will be provided to improve the accuracy, completeness, and timeliness of criminal history record information in centralized State repositories; to identify accurately criminal history records which contain a conviction for an offense classified as a felony (or equivalent) within the State; and to meet the FBI's newly-developed voluntary reporting standards.

Type of Assistance

Assistance is in the form of cooperative agreements.

Statutory Authority

The funds for this program will come from the Bureau of Justice Assistance under the provisions of 42 U.S.C. 3760 and will be administered by the Bureau of Justice Statistics under the provisions of 42 U.S.C. 3788(c).

Eligibility Requirements

Applicants should be the State agency responsible for directing or overseeing the repository of statewide criminal history files on persons arrested for fingerprintable offenses within the State. Agencies responsible for reporting dispositions to the criminal history repository are also eligible to receive funds. In developing an application, repositories will coordinate with all agencies that provide disposition data. A single application with funding for one or more agencies is preferred. However, if that is not possible, coordinated applications from more than one agency will be considered. If a single application requests funding for more than one agency, separate budget items and the assignment of tasks for each agency must be identified and justified. Fiscal transfer mechanisms consistent with State law and/or administrative procedures must be followed.

Scope of Work

The focus of this program is to identify accurately those individuals convicted of an offense classified as a felony (or equivalent) within the State; to improve reporting of criminal justice actions and dispositions to State criminal history record systems (particularly those arrests and dispositions occurring in the last 5 years); to increase automation of criminal history records at the State level; to meet the voluntary reporting standards of the FBI; and to make felon conviction information readily available to appropriate Federal and State requesting agencies.

Funds will be provided for the following activities:

1. Development of systems and procedures to identify convicted felons through an examination of the subject's automated or manual criminal history record and to include a felony "flag" in criminal history records. Such information will be made available for interstate criminal justice purposes. Emphasis should be placed on arrests and convictions made within the last 5 years. Convicted felons should be identified on an ongoing basis.

2. Development of programs and procedures to meet the new FBI voluntary reporting standards for identifying convicted felons, inlcuding making such records available to authorized State, local, and Federal criminal justice agencies.

3. Development of systems and procedures designed to improve reporting to the central repository of all arrests, dispositions, and other related criminal justice information.

4. Increase of the degree of criminal history automation by implementing a State master name index (MNI) or enhancing existing automated MNI's by increasing the number of individuals contained in the index. Funds may also be used to place a felony conviction indicator in the MNI.

5. Increase of the degree of criminal history automation by establishing a computerized criminal history (CCH) record system, increasing the number of individuals recorded in exisitng systems, and improving the quality and timeliness of criminal history records.

Funds normally will not be available for extensive conversion of manual criminal history records. However, if required to meet program objectives, limited funding may be considered in the following order:

A. Conversion of offender identification information into the master name index. Complete conversion of offenders' manual records will be funded only if an offender becomes active, e.g., a new arrest or disposition information is received.

B. If arrest data for offenders have been entered into the computerized criminal history (CCH) system and disposition information for offenders is already at the centeral repository, funds may be utilized for data entry of dispositions. If the disposition data have not been forwarded to the repository, funds may be used to collect the data from the source of the information and to enter the collected data into the criminal history record.

In either instance, the State must submit a detailed, cost-effective strategy for conversion activities before funding will be considered. This strategy must also describe plans and procedures which have been or will be implemented to prevent future backlogs. Because of the extraordinary costs involved in data conversion, the strategy must also include a description of the priorities to be followed in converting the data. In any event, funds for data conversion and data entry tasks are limited to 1 year.

States must develop a cost effective strategy designed to meet the needs of criminal justice practitioners and to identify felons before costs for conversion activities will be considered.

Limited funds will be available to States for technical assistance to design a CCH system or to develop a strategy for data conversion. Additional funding may be available for system or data conversion once the necessary system design has been completed.

Funds for computer software are limited to new programming and to systems modifications necessary to meet program requirements such as identifying felons or interfacing with court data processing systems to capture disposition data electronically. Program funds may not be used to rewrite completely or to make extensive upgrades to existing criminal history or court systems software unless it can be positively shown that the new program requirements cannot otherwise be met. In these rare instances, requests will be considered for funding up to 50% of a major upgrade or rewrite to meet specific program requirements and State needs.

6. Development of procedures to participate in Interstate Identification Index (III) or other FBI "pointer" system programs where it will facilitate the goals of this program. In any case, participation will not be funded unless efforts have been or will be undertaken to identify individuals convicted of a felony for purposes of sharing this information with appropriate Federal and State agencies.

7. Conduct a baseline audit of criminal history record systems to assess existing data quality levels, identify problems in the present system, and establish a basis for evaluating the success of a data quality improvement program.

If a data quality audit has been conducted in the past 3 years, program funds may be used to implement the findings. The results of the recently-completed audit and its recommendations must be contained in the application. Activities currently being undertaken by the State as a result of the audit should also be identified.

8. Upgrade existing data systems to meet improved data quality requirements by obtaining auxiliary equipment such as disks, printers, and communication lines. With the exception of those few States automating their systems for the first time, funding for computer hardward is limited to that auxiliary equipment necessary to upgrade existing systems to meet the requirements of this program. Program funds may not be used to obtain or replace primary CCH equipment, regardless of its age or condition, unless criminal history record information is being automated for the first time and currently available equipment in the States repository is at its maximum capability. All requests for equipment must be documented and justified.

9. Interface and coordinate activities under this program with agencies participating in the Bureau of Justice Assistance formula grant program for the improvement of criminal justice records.

Award Procedures

Awards under this program will be made to further those activities outlined in the Scope of Work. Awards for activities 1 and 2 will be made to support the development of an automated system within the State to identify convicted felons and meet FBI voluntary reporting standards. Substantial funds for activities 3 through 9 will not be made available until a detailed implementation plan has been developed. The plan shall include a needs analysis assessing the current state of data quality (ideally including a baseline audit), detailed specifications for data quality improvements, and a demonstration of support from the relevant criminal justice agencies within the State. Funds of up to $150,000 will be available for technical assistance in the development of the plan.

Pilot projects are encouraged, whether they are for first-time systems or for enhancements to existing procedures. However, such projects are limited in scope and should set the stage for subsequent statewide implementation using State funds. Up to $150,000 will be available for pilot projects. A discussion of the project and how the State plans to implement the results must be provided.

There is no requirement for either hard (cash) or soft (in-kind services) matching funding from the State. However, applicants are encouraged to offer either or both types of matching resources. States which are able to provide hard or soft match and meet other programmatic guidelines will be given preference over those States with no match. The absence of matching resources will not disqualify States from receiving funding.

Whether or not States seek funding for activities 1 and 2 above, it is a condition of the grant program that States receiving implementation funds must have in place or must have initiated procedures to identify convicted felons on an ongoing basis and, to the extent feasible, to identify previously convicted felons in existing criminal history records. In order to receive continued implementation funding, States should be making significant progress toward meeting the new FBI standards for the interstate exchange of information on convicted felons.

All applications must identify each of the activities for which funds will be expended and describe in detail how such activities will be carried out. Measures of timeliness, accuracy, and completeness that will be achieved with Federal funds must be specified.

Each application must include a plan of procedures, including milestones, developed to identify the number of arrests showing final dispositions and the number of conviction records that can be identified as felony convictions. Each application will include a current count of the number of arrests showing final dispositions and, where there are conviction records, the number of felony convictions. At the end of each grant year, the recipient must update this information and report the results to BJS.

To ensure that this national program realizes its objectives in the most productive manner, each applicant must agree to participate in a comprehensive evaluation effort if an award is made. The evaluation will take place during the course of the program and involve each participating State. It is expected that the evaluation will have minimal impact on State program personnel and resources. Details of the timing of the evaluation and the information to be collected will be forwarded in a separate document.

If a State is receiving Bureau of Justice Assistance (BJA) formula grant funds for the Improvement of Criminal Justice Records, the application must identify and discuss those activities which are undertaken in conjuction with this program. A separate section of the application must address the interface considerations between this program and formula funding.

Applications will be judged on the basis of: (1) The technical feasibility; (2) the soundness of the proposed approach in meeting program objectives; (3) the type and qualifications of personnel assigned to the project; (4) the reasonableness of the budget; (5) the past record of the State's performance in the development of automated criminal history records systems; (6) the completion of previous analyses and audits of the existing criminal history system; and (7) the degree of commitment to the project as evidenced by letters of endorsement from participating criminal justice agencies, including the agency or agencies responsible for disposition reporting. The plan for improving criminal history records systems must indicate the active participation of the agency or agencies responsible for disposition reporting in the development of the application.

Application and Awards Process

Potential grantees should contact the BJS program manager for their State at (202) 307-0770 prior to submitting an application. An original and two (2) applications must be submitted on SF 424 (Revision 1988), including the Certified Assurances. Applications must be accompanied by OJP Form 4061/3, Certification Regarding Drug Free Workplace and OJP Form 4061/2, Certification Regarding Debarment, Suspension, and Other Responsibility Matters. Applicants must complete the certificate regarding lobbying and, if appropriate, complete and submit Standard Form LLL, "Disclosure of Lobbying Activities". Applications should be sent to: Applications Coordinator, Bureau of Justice Statistics, 633 Indiana Avenue, NW., room 1144-G, Washington, DC 20531.

All applications must include a proposed budget containing detailed costs for personnel, fringe benefits, travel, equipment, supplies, and other expenses such as telephone and postage. Contractual services or equipment must be procured competitively or the application must contain a sole-source justification. A program narrative must be included detailing all project objectives, major events, activities, products, and a timetable for completion. Applications should contain an evaluation plan designed to measure project objectives. Attachments to the program narrative should include letters of agreement from participating criminal justice agencies.

For funding in fiscal year 1991 (October 1, 1990-September 30, 1991), applications must be received by June 30, 1991. First year awards will be made within 90 days and normally will be for 12 months. Applications for continuation funding, where appropriate, should be submitted 90 days prior to the end of the current grant period. New awards will be given preference if resources become limited. Awards for up to 24 months may be considered if adequate systems implementation planning has been completed and realistic milestone dates are provided. The amount of funds per State will depend upon the number of applicants requesting new and continuation funding. It is anticipated that few, if any, awards for a single grant period will be in excess of $500,000 The effective date of the award for those applications that are accepted will be

within 90 days from the date of the BJS letter of acknowledgement.

Dated March 11, 1991.

Steven D. Dillingham,

Director, Bureau of Justice Statistics.

Dated: March 11, 1991.

Gerald P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 91-6228 Filed 3-14-91; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/reporting requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing the recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW. room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Veterans' Employment and Training Service.

One time, non-recurring.

Individuals or households.

2,805 respondents; 934 total hours; .333 hours per response. This survey will collect data on the post-separation employment patterns of new military veterans in order to evaluate the impact of the Transition Assistance Program. Specifically measured will be length of unemployment after separation and salary history.

Extension

Employment and Training Administration.

1205-0016; ETA 563 and 9027.

Quarterly.

State or local governments.

Form No.	Affected public	Respondents	Average Responses	Average time per response (minutes)
ETA 563	State or local governments	45	53	12
ETA 9027	State or local governments	52	4	15
Total hours				2,320

Quarterly data on Trade Adjustment Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the Trade Adjustment Assistance Program. Quarterly number of waivers of training issued and revoked by reason are needed for proper administration and to provide statutorily required report to the Congress.

Signed at Washington, DC this 12th day of March, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-6214 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-76-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These, decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I:

Connecticut, CT91-1 (Feb. 22, 1991).	p. 63, pp. 64, 66
Delaware, DE91-2 (Feb. 22, 1991).	p. 95, pp. 96-97
Massachusetts:	
MA91-2 (Feb. 22, 1991).	p. 439, pp. 440-443
MA91-3 (Feb. 22, 1991).	p. 453, pp. 454-456
New Jersey, NJ91-2 (Feb. 22, 1991).	p. 701, pp. 703, 705, 707
Pennsylvania, PA91-1 (Feb. 22, 1991).	p. 953, p. 954

Volume II:

Arkansas, AR91-1 (Feb. 22, 1991).	p. 3, p. 4
Iowa, IA91-5 (Feb. 22, 1991).	p. 41, pp. 42-46

Volume III:

Alaska, AK91-1 (Feb. 22, 1991).	p. 1, pp. 2-3
Arizona:	
AZ91-1 (Feb. 22, 1991).	p. 9, p. 10
Arizona, AZ91-3 (Feb. 22, 1991).	p. 27, p. 28
Idaho, ID91-1 (Feb. 22, 1991).	p. 207, p. 208
Oregon, OR91-1 (Feb. 22, 1991).	p. 371, pp. 372-380.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of March 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-6024 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations prusuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 25, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 25, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Communications Products (IBEW)	Shreveport, LA	03/04/91	02/22/91	25,487	Communication Systems
Berry of San Angelo (Wkrs)	San Angelo, TX	03/04/91	02/19/91	25,488	Footware.
Cooper Indust. Inc./Buseman Div. (IUE)	Bristol, CT	03/04/91	02/21/91	25,489	Fuses.
Cor-Mac Vanguard Machinery (Wkrs)	Edison, NJ	03/04/91	01/04/91	25,490	Machinery.
Crane Creek Cedar Corp. (Wkrs)	Amanda Park, WA	03/04/91	02/20/91	25,491	Lumber.
Dotta Enterprises Coal Sales (Wkrs)	Coalport, PA	03/04/91	02/22/91	25,492	Coal.
Durham Knitting Mills (Wkrs)	Soddy Daisy, TN	03/04/91	02/22/91	25,493	Sportswear.
EPI International (UPWI)	Port Newark, NJ	03/04/91	02/20/91	25,494	Toys & Supplies.
General Engines, Inc. (Boilermakers)	Thorofare, NJ	03/04/91	02/19/91	25,495	Trash Recycling Units.
General Motors-S.P.O. (Wkrs)	Pittsburgh, PA	03/04/91	02/21/91	25,496	Auto Parts.
Geoffry Beene (ILGWU)	New York, NY	03/04/91	02/12/91	25,497	Dresses.
International Marine System Industries (Wkrs)	Guilford, CT	03/04/91	02/20/91	25,498	Marine Radar.
Jack Cooper Auto Transports (Wkrs)	Kansas City, KS	03/04/91	02/22/91	25,499	Cars.
Kenbridge Sportswear (Wkrs)	Kenbridge, VA	03/04/91	01/31/91	25,500	Shirts.
Komatsu Dresser, Inc. (IAM)	Galion, OH	03/04/91	02/22/91	25,501	Construct. Equip.
LADD Petroleum, Gulf Reg. (Wkrs)	Houston, TX	03/04/91	02/25/91	25,502	Petroleum.
LADD Petroleum, Headq. (Wkrs)	Denver, CO	03/04/91	02/25/91	25,503	Petroleum.
LADD Petroleum, Mid-Continent/East (Wkrs)	Tulsa, OK	03/04/91	02/25/91	25,504	Petroleum.
LADD Petroleum, Mid-Continent/West (Wkrs)	Denver, CO	03/04/91	02/25/91	25,505	Petroleum.
LADD Petroleum, Natl Gas Dept. (Wkrs)	Denver, CO	03/04/91	02/25/91	25,506	Petroleum.
Lucky Lynn (Wkrs)	Salley, S.C.	03/04/91	02/01/91	25,507	Outerwear.
Megastar Apparel Group (Wkrs)	Chester, SC	03/04/91	01/31/91	25,508	Shirts.
Method Plastics (Wkrs)	Baltimore, MD	03/04/91	02/21/91	25,509	Automobiles.
Modine Heat Transfer, Inc. (UAW)	Dowagiac, MI	03/04/91	02/18/91	25,510	Heating Units.
P.P.G. Industries Inc. (ABGWU)	Crystal City, MO	03/04/91	12/14/91	25,511	Glass.
Phillips Industries, Inc. (Wkrs)	McKinney, TX	03/04/91	02/20/91	25,512	Auto Wheels.
Rowe International, Inc. (Wkrs)	Whippany, NJ	03/04/91	02/19/91	25,513	Wire Harnesses.
Salley Mfg Co. (Wkrs)	Salley, SC	03/04/91	02/01/91	25,514	Outerwear.
Sebewaing Industries, Inc. (Wkrs)	Sebewaing, MI	03/04/91	02/21/91	25,515	Metal Stamping.
Thomas & Betts Corp. Connectors (Wkrs)	Bridgewater, NJ	03/04/91	02/14/91	25,516	Electric.
Western Atlas Intl./Atlas Wireline (Wkrs)	St. Albans, WV	03/04/91	02/18/91	25,517	Oil & Gas.
Work Wear Corp. (Wkrs)	Asheville, NC	03/04/91	01/21/91	25,518	Disposable Prod.

[FR Doc. 91-6213 Filed 3-14-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,203]

International Shoe Machine Corp. Kingston, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at International Shoe Machine Corporation, Kingston, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,203; International Shoe Machine Corporation Kingston, Pennsylvania (March 7, 1990).

Signed at Washington, DC this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6210 Filed 3-14-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,041]

Lewistown Specialty Yarns, Inc. Lewistown, PA; Negative Determination Regarding Application for Reconsideration

By an application dated February 20, 1991, Local #6 of the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 23, 1991 and published in the **Federal Register** on February 26, 1991 (56 FR 7065).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union stated that imports of apparel and other articles made from polyester yarn adversely affected sales or production and employment at Lewistown Specialty Yarns.

The Department's denial was based on the fact that the increased import criterion of the Trade Act was not met. U.S. imports of yarn decreased absolutely and relative to U.S. shipments in 1989 compared to 1988 and decreased absolutely in the January to June period of 1990 compared to the same period in 1989.

Further, the "contributed importantly" test of the Group Eligibility Requirements of the Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of the major customers of Lewistown Specialty shows that they did not import yarn during 1988, 1989 or 1990.

The issue of components (yarn) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of apparel and other articles made from yarn cannot be considered in determining import injury to workers producing yarn. Therefore, in determining import injury to workers at Lewistown, the Department must consider imports of yarn not apparel.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of March 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-6211 Filed 3-14-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24,423]

NEC (New Energy Corp.); a/k/a Pedco; Cushing, OK; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 28, 1990 applicable to all workers of NEC (New Energy Corporation, Cushing, Oklahoma. The Certification Notice was published in the **Federal Register** on July 12, 1990 (55 FR 28699).

New information shows that PEDCO and NEC had the same ownership, employed the same workforce while drilling for crude oil for others in the period applicable to the petition. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-24,423 is hereby issued as follows:

All workers of NEC (New Energy Corporation) also known as (a/k/a) PEDCO, Cushing, Oklahoma who became totally or partially separated from employment on or after April 24, 1989, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6208 Filed 3-14-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,185 Serac Inc., Sandpoint, ID, TA-W-25,185A Panhandle Knits, Priest River, ID and TA-W-24,185B Riverbend Manufacturing, Priest River, ID]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 8, 1991 applicable to all workers of Serac Manufacturing, Inc., Priest River, Idaho. The notice will soon be published in the **Federal Register.**

Based on new information from the company, the Department is correcting the worker group to reflect the correct name of the parent company and include two affiliates of Serac, Inc., which produced skiwear and occupied the same building in Priest River, Idaho. Therefore, the certification is amended to properly reflect the correct worker group. The amended notice applicable to TA-W-25,185 is hereby issued as follows:

All workers of Serac, Inc., Sandpoint, Idaho Panhandle Knits, Priest River, Idaho and River-Bend Manufacturing, Priest River, Idaho who became totally or partially separated from employment on or after November 23, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6209 Filed 3-14-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,106]

Teledyne Monarch Rubber Division of Teledyne Industries-Hartville, OH; Negative Determination Regarding Application for Reconsideration

By an application dated March 1, 1991, Local #99 of the United Rubber Workers (URW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 31, 1991 and published in the **Federal Register** on February 26, 1991 (56 FR 7065).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Molded rubber automotive components accounted for the predominant portion of production and sales at Teledyne Monarch Rubber. The plant also produced industrial tires and ordnance. Workers are not separately identifiable by product.

The union claimed that increased imports of automobiles and automobile parts together with the growing number of foreign-owned auto plants in the U.S. has had an adverse impact on the Teledyne plant.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major customers purchasing molded rubber auto parts showed that the customers did not import components similar to those purchased from Teledyne or relied on imports for a very small proportion of their total needs. The surveyed customers indicated that they do not plan to replace Teledyne's products with foreign-made components.

The issue of components (molded rubber auto parts) was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d (DC Circ. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of automobiles cannot be considered in determining import injury to workers producing molded rubber auto parts, components of automobiles. Therefore, in determining import injury to workers at Teledyne Monarch Rubber, the Department must consider the article produced at Teledyne Monarch Rubber—molded rubber auto parts.

Investigation findings also show that the production and sales of industrial tires increased in 1989 and 1990 compared to the immediately preceding year. Further, foreign ownership of domestic plants would not form a basis for a certification.

Conclusion

After review of the application and investigative findings, I conclude that

there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of March 1991.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS Unemployment Insurance Service.

[FR Doc. 91-6212 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

[Application No. D-8536, et al.]

Proposed Exemptions; Manufacturers Hanover Co. (MHC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. the applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or § 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Manufacturers Hanover Company (MHC) Located in New York, New York

[Application No. D-8536]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certifiates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's) Moody's Investors Service Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the cases of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(b) above.

III. Definitions

For purspposes of this exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which MHC or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

BEST COPY AVAILABLE

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as definded in section III.T);

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3-101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means:

(1) MHC;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with MHC; or

(3) Any member of an underwriting syndicate or selling group of which MHC or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, as trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affilitate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

Summary of Facts and Representations

The facts and representations contained in the application are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. MHC is a bank holding company which was organized under the laws of the State of Delaware in 1968. On April 28, 1969, MHC acquired all the outstanding capital stock of Manufacturers Hanover Trust Company (MHT), a banking corporation organized under banking laws of the State of New York. The principal executive offices of MHC and MHT are located at 270 Park Avenue, New York, New York 10017.

MHT is engaged in a general commercial banking and trust business and provides a wide variety of fiduciary, investment management, investment banking, advisory, corporate agency, corporate trust and personal trust and estate services both domestically and abroad. Measured by total deposits at December 31, 1987, MHT was the third largest bank headquartered in New York and the fourth largest in the United States.

MHC is a legal entity separate and distinct from its bank and nonbank subsidiaries. MHC's principal asset and primary source of income is its investment in MHT.

Although MHT is its principal subsidiary, MHC has investments in other companies which make available a variety of banking and related financial services. MHC owns one other bank subsidiary, Manufacturers Hanover Bank (Delaware). MHC also has an ownership interest in The C.I.T. Group Holdings, Inc. (CIT), formerly C.I.T. Financial Corporation. CIT directly, or through its subsidiaries, engages principally in equipment financing, corporate financing, factoring, commercial financing and sales financing. Through its various other subsidiaries, MHC is engaged in trust services, investment banking, venture capital and investment advisory services.

MHC and its affiliates conduct a worldwide financial services business that includes commercial banking and merchant banking, in the course of which a wide range of securities underwriting and dealing activities are conducted. In particular, in the United States, MHC underwrites and trades mortgage loans and other loans and MHC underwrites and trades mortgage-backed and other asset-backed securities and provides related investment banking and financial advisory services.

MHC represents that it and its subsidiaries have received authority from the Board of Governors of the Federal Reserve System (the FRB) to underwrite and deal in single and multi-family (1–4 family) residential mortgage investment trusts, motor vehicle receivable investment trusts, consumer receivable investment trusts and governmental mortgage pool certificate investment trusts as per two separate approvals dated May, 1987 (73 Fed. Res. Bull. at 621) and July, 1987 (73 Fed. Res. Bull. at 734). The applicant further represents that on June 11, 1990, the FRB granted its approval for MHC to engage in the private placement of all types of securities, including residential investment trusts in excess of 4 families, commercial mortgage investment trusts and commercial receivable trusts (76 Fed. Res. Bull. at 674).

Trust Assets

2. MHC seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts; [4] (2) motor vehicle receivables investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[5]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. In all cases, the term of any ground lease to secure a mortgage will be at least ten years longer than the term of that mortgage.

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a

[4] The Department notes that PTE 83–1 (48 FR 895, January 7, 1983), a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. MHC requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure.

[5] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates, because the certificates in the trusts are plan assets.

trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, by an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.

Prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. MHC, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. Most sales will be either firm commitment underwritings or private placements. In connection with a private placement, MHC may act either as agent or principal. MHC may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders are entitled to receive monthly, quarterly or semi-annually installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

MHC represents that when payments are made on this basis, funds are not permitted to be commingled with the assets of the servicer for any period longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities that meet rating criteria consistent with the rating of the certificates. In some cases, the servicer may be permitted to make a single deposit in the account once a month. When the servicer makes such monthly deposits, the funds received by the servicer may be commingled with the servicer's assets during the month prior to deposit. In no event will the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account exceed one month. Furthermore, in those cases when distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time the report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to the rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates: "Strip" certificates and "fast-pay/ slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on mortgages is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[6]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. In certain transactions of this type, interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate which is eligible for the exemption be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to such certificateholders is less than the amount required to be so distributed, all such certificateholders will share in the amount distributed on a pro rata basis.[7]

[6] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[7] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis. The Department notes that the exemption does not provide relief for plan investment in such subordinated certificates.

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for substitution of assets by the sponsor only in the event of defects in loan or lease documentation discovered within a relatively short time after issuance of trust certificates (within 120 days, except in the case of 30-year obligations in which case the period may be as long as two years). MHC represents that the sponsor's "right of substitution" is in effect a remedy for certificateholders in the event of the sponsor's breach of its warranty or representations regarding the assets in a trust. Any obligation so substituted is required to have characteristics substantially similar to those of the original obligation.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to the lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be businesses experienced in the origination of receivables of the type included in a trust. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The duties of a trust *sponsor* are typically limited to depositing receivables in a trust in exchange for certificates issued by the trust that are then sold to investors. The sponsor of a trust typically selects the trustee.

9. The *trustee* of a trust is the legal owner of the receivables in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to MHC, the trust sponsor or the servicer. MHC represents that the trustee will be a substantial financial institution experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer, sponsor, or the trust as specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, it is common for the receivables to be "subserviced" by their respective originators and for a single entity to "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

In most cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (though they themselves may be related) will be unrelated to MHC. In some cases, however, affiliates of MHC may originate or service receivables included in a trust, or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a finance company pursuant to a purchase and sale agreement related to the specific offering of certificates. However, in some cases, the sponsor will purchase the receivables from other sources in the secondary market.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust. The sponsor sells these certificates for cash to investors or securities underwriters, or may retain a portion of the certificates for its own account. In addition, in some transactions the originator may sell receivables to a trust for cash. At the time of the sale, the trustee would sell certificates to the public or to underwriters and use the cash proceeds of the sale of the certificates to pay the originator for the receivables sold to the trust.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is generally equal to the interest rate on receivables included in the trust minus a specified servicing fee.[8] This rate is generally determined by the same market forces that determine the price of a certificate. There is a direct relationship between the price of certificates and the pass-through rate. For example, if certificates backed by comparable pools of mortgages are sold at different pass-through rates, the certificates having the higher pass-through rate would have a higher purchase price.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor, and receive fees for acting in that capacity) will typically retain most or all of the difference between payments received on the receivables and payments payable (at the pass-through rate) to certificateholders. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer will be required to pay the administrative expenses of servicing the trust, including, in some cases, the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the payments received on the receivables in excess of the pass-through payments made to certificateholders. In some transactions the "credit support fee" is paid in a lump sum at the time the trust is established.

14. The servicer(s) may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall three categories: (a) Prepayment fees; (b) late payment and payment extension fees and other fees related to the modification of the terms of an obligation as permitted by the provisions of the pooling and servicing agreement (including the partial release of collateral to the extent provided therein); and (c) fees and charges associated with foreclosure or repossession, the management of foreclosed or repossessed property, or any conversion of a secured obligation into cash proceeds, upon default of an obligation held by a trust.

Compensation payable to the servicer will be sent forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts in itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or commingled with the servicer's own funds, the servicer will be required to make deposits attributable to such payments by a date specified in the pooling and servicing agreement into an account from which payment are made to certificateholders.

16. MHC will receive a fee in exchange for its services in connection with the securities underwriting or private placement of certificates. In a securities underwriting, this fee would normally consist of the difference between what MHC receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor.

[8] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

For some public offerings, MHC may sell certificates on an agency basis in a best efforts underwriting. In these cases, MHC would receive an agency commission. In some private placements MHC may buy certificates as principal, in which case its fee would consist of the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payment or repurchase, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables then included in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 perecent) of the initial aggregate unpaid balance.

The purchase price of the receivables will be at least equal to the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, reserve funds, cash flow subordination or guarantees) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for obligations of the type included in the issuing trust.

Provisions of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e., act as an insurer). In these cases, the master servicer will first advance funds in a timely manner to cover any defaulted payments to the extent that it expects to recover those moneys out of future payments, or the master servicer, as the provider of the credit support, will be called upon (by itself on behalf of the trustee or directly by the trustee) to provide funds in such capacity to cover such payments to the full extent of its obligations under the credit support mechanism. However, in some cases the master servicer may not be obligated to advance funds, but instead will be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, the master servicer typically can recover advances either from the provider of credit support or from the future payment stream.

If the master servicer fails to advance funds or fails to call upon the credit support mechanism to provide funds to cover defaulted payments, the trustee may exercise its rights as beneficiary of the credit support to obtain funds under the credit support mechanism. Therefore, in all cases, the independent trustee will be ultimately responsible for deciding when to exercise its rights as beneficiary of that credit support.

When the master servicer advances funds, the amounts so advanced are recoverable by the servicer from the provider of credit support or out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the dollar limit on the credit support declines as payments on receivables included in the trust are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee;

(d) In cases where the master servicer and the insurer are affiliated or are the same entity, the credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount becomes a fixed dollar amount, subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information pertinent to a plan's decision to invest in the certificates, including:

(a) Information concerning the certificates, including payment terms, tax consequences of owning and selling certificates, the legal investment status and rating of the certificates, and any risk factors with respect to the certificates;

(b) Information about the underlying receivables, including the types of receivables, the diversification of the receivables, their payment terms, and legal aspects of the receivables;

(c) Information about the servicing of the receivables, including the identity of the master servicer and servicing compensation;

(d) Information about the sponsor of the trust;

(e) A full description of all material provisions of the pooling and servicing agreement; and

(f) Information about the scope and nature of the secondary market, if any, for such certificates.

21. Certificateholders will be provided with information concerning the amount of principal and interest to be paid on certificates at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the status of the trust.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the master servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report will also be delivered or made available to the rating agency or agencies that have rated the trust's certificates. Such report will be available to investors and its availability will be made known to potential investors. In addition, promptly after each distribution date, certificateholders will receive a statement summarizing information regarding the trust and its assets, including underlying obligations.

Secondary Market Transactions

24. MHC normally attempts to make a market for securities for which it is lead or co-managing underwriter. It is also MHC's policy to facilitate sales by investors who purchase certificates if MHC has acted as agent or principal in the original placement of the certificates and if such investors request MHC's assistance.

Summary

26. In summary, the applicant represents that the transactions for which exemptive relief is requested to satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute rceivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which MHC seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) MHC has made, and anticipates that it will continue to make, a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 (46 FR 7520, January 23, 1961), Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 (48 FR 895, January 7, 1983).

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bering obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 of the Act for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406 (b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406 (a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[9]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

MHC represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[10] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[11]

Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates whose trust funds will be used to benefit a party in interest.

Additionally, MHC represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. MHC represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, MHC represents that to the extent there is a plan asset "look through" to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons:

Since all potentially interested persons cannot practically be identified, it has been determined that publication of this notice of proposed exemption in the **Federal Register** shall serve as notification to interested persons. Comments and hearing requests on the proposed exemption are due 30 days after the date of publication in the **Federal Register**.

For Further Information Contact: Kay Madsen of the Department telephone (202) 523-8971. (This is not a toll-free number.)

Citicorp Real Estate Inc. (Citicorp) and Bankers Trust Company (BT); Located in New York, New York

[Application No. D-8372]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to Citicorp and BT, as representatives of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in Trammel Crow Equity Partners II, Ltd. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by Citicorp in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of Citicorp are made by a fiduciary which is not included among, and is independent of, the Lenders, BT and Citicorp.

Summary of Facts and Representations

1. The Partnership is a Texas limited partnership, the general partner of which is Trammel Crow Ventures #2, Ltd. (the General Partner), which is also a Texas limited partnership. The Partnership is organized under an agreement (the Agreement) dated September 15, 1988 for a term expiring December 31, 1998, subject to extension by the General Partner to a date not later than December 31, 2000. The Partnership's stated purpose is to invest in undervalued commercial real estate assets, including leveraged equity investments, in order to benefit from long-term capital appreciation by acquiring institutional quality properties on favorable terms, leveraging prudently to optimize returns, and intensively managing and leasing the portfolio of acquired properties. Proceeds from the sale or refinancing of properties generally will not be reinvested but will be distributed to the limited partners, so that the Partnership will be self-liquidating.

After execution of the Agreement, the General Partner sought capital commitments from a limited number of investors through private placement and has obtained, as a result, irrevocable, unconditional capital commitments totalling $539,527,366 from thirteen purchasers of limited partnership units in the Partnership (the Limited Partners). Five percent of the total capital commitments to the Partnership are provided by the General Partner. The Limited Partners made initial capital contributions on the closing date of the Partnership and the balances of their capital commitments are due and payable upon call of the General Partner. Each Limited Partner's commitment to contribute capital upon the General Partner's call is secured by a grant to the Partnership of a security interest in the Limited Partner's rights and interests in the Partnership.

2. In the ordinary course of its business operations the Partnership will incur substantial indebtedness in connection with many of its investments. This ongoing need for credit will be provided by the Facility, a three-year arrangement for $400 million in revolving credit which will enable the Partnership to consummate investments quickly without the delay of separate arrangements for interim or permanent financing for each investment. The Facility is funded by the Lenders, represented by Citicorp and BT, who are also participating Lenders, and Citicorp serves as administrative agent for the Facility. The Facility is a non-recourse obligation of the Partnership which matures December 22, 1992 and which is secured by a security interest in the Limited Partners' capital commitments, the General Partner's capital call rights and the Partnership's security interests in each Limited Partner's partnership interests. As additional security the Facility requires each Limited Partner to execute an agreement (the Security Agreement) granting to Citicorp, for the benefit of each Lender, a security interest and lien in the Limited Partner's partnership interests, and covenanting with Citicorp, for the benefit of the Lenders, as honor unconditionally any capital calls made by Citicorp in accordance with the Agreement in lieu of the General Partner to the full extent of the Limited Partner's unfunded capital commitment.

3. The trusts which hold assets of the Plans (the Trusts) own limited partnership interests as Limited Partners in the Partnership. Some of the Lenders are parties in interest with respect to some of the Plans in the Trusts by virtue of such Lenders' provisions of fiduciary services to such Plans with respect to Trust assets other than the Partnership interests. Citicorp and BT are requesting an exemption to permit the Trusts to enter into the Security Agreements under the terms and conditions described herein. The Plans and other Limited Partners and the extent of their respective investments in and commitments to the Partnership are described as follows:

(a) The General Motors Hourly-Rate Employees Pension Plan, a defined benefit plan with approximatley 644,607 participants, and the General Motors Retirement Program for Salaried Employees, a defined benefit plan with 212,139 participants (together, the GM Plans): The GM Plans maintain the First Plaza Group Trust (the FP Trust), the sole purpose of which is to hold all assets of the GM Plans. The trustee of the FP Trust is the Mellon Bank, N.A. The FP Trust has invested in 150 units of limited partnership interest in the Partnership (the Units), constituting approximately 29.2 percent of the Units, and has undertaken a total capital commitment of $150 million to the Partnership. The fiduciary responsible for authorizing and overseeing the GM Plans' investment in the Partnership is the finance committee of the board of directors of General Motors, the sponsor of the GM Plans.

(b) The Cummins Engine Company, Inc. and Affiliates Retirement Trust (the Cummins Trust), Northern Trust Company, trustee: This trust holds assets of five defined contribution and defined benefit plans sponsored by Cummins Engine Company and its affiliates on behalf of approximately 22,500 participants. The Plans in the Cummins Trust are the Cummins Retirement Trust, the Cummins Deferred Income Trust, the Onan Retirement Savings Plan, the Onan Profit Sharing Plan and the Onan Pension Plan. The fiduciary responsible for authorizing and overseeing the Cummins Trust's investment in the Partnership is Reams Asset Management Company. The Cummins Trust has invested in 20 Units, constituting approximatley 3.9 percent of the Units, and has undertaken a total capital commitment of $20 million.

(c) The DuPont Pension Fund (the Dupont Trust), Wilmington Trust Company, trustee: This trust holds assets of five defined benefit plans maintained by DuPont Corporation and its affiliates on behalf of approximatley 100,179 participants. The DuPont Trust consists of the DuPont Pension and Retirement Plan, the DuPont Agrichemicals Caribe, Inc. Pension and Retirement Plan, the Conoco, Inc. Pension and Retirement Plan. The fiduciary responsible for authorizing and overseeing the DuPont Trust's investment in the Partnership is an officer of the DuPont Corporation, the Vice-President for Pension Fund Investment. The DuPont Trust has invested in 30 Units, constituting approximatley 5.85 percent of the Units, and has undertaken a total capital commitment of $30 million.[12]

(d) Limited Partners which are not ERISA-covered plans:

1. Los Angeles County Employees Retirement Association has invested in 25 Units and has undertaken a total capital commitment of $25 million.

2. The Minnesota Mutual Life Insurance Company has invested in 10 Units and has undertaken a total capital commitment of $10 million.

3. NLI Properties, Inc. has invested in 50 Units and has undertaken a total capital commitment of $50 million.

4. The PB-SB 1988 Investment Partnership VIII has invested in 2.551 Units and has undertaken a total capital commitment of $2,551,000.

5. The Southern Farm Bureau Life Insurance Company has invested in 15 Units and has undertaken a total capital commitment of $15 million.

6. The State of Michigan Pension Plans have invested in 150 Units and have undertaken a total capital commitment of $150 million.

7. The Taisho Realty America Corporation has invested in 10 Units and has undertaken a total capital commitment of $10 million.

8. Tokio Marine Realty Co., Ltd. has invested in 20 Units and has undertaken a total capital commitment of $20 million.

9. The Western and Southern Life Insurance Company has invested in 5 Units and has undertaken a total capital commitment of $5 million.

4. Citicorp and BT represent that the Partnership has obtained an opinion of counsel that the Partnership will constitute an "operating company" under the Department's plan asset regulations (29 CFR 2510.3-101(c)) if the Partnership is operated in accordance with the Agreement and the offering memorandum (the Offering) distributed in connection with the private placement of the limited partnership interests.[13]

Citicorp and BT represent that the Security Agreement constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships, wherein the financing institutions do not obtain security interests in the real property assets of the partnership. They also

[9] In referring to different "types" of asset-backed securities, the Department means certificates representing interests in trusts containing different "types" of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been "seasoned" (e.g., originated at least one year prior to the plan's investment in the trust).

[10] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which MHC or any of its affiliates is either (a) the sole underwriter or manager or comanager of the underwriting syndicate, or (b) a selling or placement agent.

[11] The applicant represents that where a trust sponsor is an affiliate of MHC, sales to plans by the sponsor may be exempt under PTE 75-1, Part II (relating to the purchases and sales of securities by broker-dealers and their affiliates), if MHC is not a fiduciary with respect to plan assets to be invested in certificates.

[12] The Limited Partners also include the Ameritech Pension Plan and the Ameritech Management Pension Plan (the Ameritech Plans), which are defined benefit pension plans sponsored by the American Information Technologies Corporation (Ameritech). Ameritech has requested that the Ameritch Plans not be included in the exemption requested by the Citicorp and BT, proposed herein. Ameritech represents that the transactions which are the subject of the exemption proposed herein are covered, with respect to the Ameritech Plans, by an exemption application, No. D-8094, previously filed by Ameritech and currently under consideration by the Department.

[13] The Department expresses no opinion as to whether the Partnership will constitute an operating company under the regulations at 29 CFR 2510.3-101.

represent that the obligatory execution of the Security Agreement by the Limited Partners for the benefit of the Lenders was fully disclosed in the Offering as a requisite condition of investment in the Partnership during the private placement of the limited partnership interests. Citicorp and BT represent that all aspects of the operation of the Facility other than the proposed Security Agreements will be handled exclusively by Citicorp on behalf of the Lenders and by the General Partner on behalf of the Partnership and that the Security Agreements will constitute the sole direct relationship between the Limited Partners, as such, and the Lenders for the duration of the Facility. Citicorp and BT represent that the proposed executions of the Security Agreements will not affect the abilities of the Trusts to withdraw from investment and participation in the Partnership. The Only Plan assets to be affected by the proposed transaction are each Plan's limited partnership interests in the Partnership and the related Plan obligations as limited partners to respond to capital calls up to the total amount of each Plan's capital commitment to the Partnership.

5. Citicorp represents that neither it nor any Leader acts or has acted in any fiduciary capacity with respect to any Trust's investment in the Partnership and that Citicorp is independent of and unrelated to those fiduciaries (the Trust Fiduciaries) responsible for authorizing and overseeing the Trusts' investments in the Partnership. Each Trust Fiduciary represents independently that its authorization of Trust investment in the Partnership was free of any influence, authority or control by any of the Lenders. The Trust Fiduciaries represent that the Trusts' investments in and capital commitments to the Partnership were made with the knowledge that each Limited Partner would be required subsequently to grant a security interest in the Partnership to the Lenders and to honor capital calls made on behalf of the Lenders without recourse to any defenses against the General Partner. Each Trust Fiduciary individually represents that it is independent of and unrelated to Citicorp, BT and the Lenders and that the investment in the Partnership by the Trust for which that Trust Fiduciary is responsible continues to constitute a favorable investment for the Plans participating in that Trust and that the execution of the Security Agreement is in the best interests and protective of the participants and beneficiaries of such Plans.

6. In summary, the applicants represent that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans' investments in the Partnership were authorized and are overseen by the Trust Fiduciaries, which are independent of the Lenders; (2) None of the Lenders have any influence, authority or control with respect to the Plans' investments in the Partnership or the Plans' executions of the Security Agreements; and (3) The Trust Fiduciaries invested in the Partnership on behalf of the Plans with knowledge that the Security Agreements are required of all limited partners investing in the Partnership.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of March, 1991.

Ivan Strassfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 6268 Filed 3-14-91; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-26)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on The Use of Space Station Freedom For In-Space Technology Development and Engineering Research.

DATES: April 16, 1991, 9 a.m. to 5 p.m.; April 17, 1991, 9 a.m. to 5 p.m.; and April 18, 1991, 9 a.m. to 12:15 p.m.

ADDRESSES: Auburn University, Space Power Institute, 231 Leach Center, room 243, Auburn, AL 36849-5320.

FOR FURTHER INFORMATION CONTACT: Dr. Judith H. Ambrus, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2846.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on The Use of Space Station Freedom For In-Space Technology Development and Engineering Research, chaired by Dr. M. Frank Rose, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

April 16, 1991

9 a.m.—Opening Remarks.
9:15 a.m.—Review of Minutes of February Meeting.
9:30 a.m.—Space Station Freedom User Operations Planning—Overview.
11 a.m.—Power, Fluid Management, Fire Safety.
1 p.m.—Materials Technology.
1:45 p.m.—Manned Observation.
2:30 p.m.—Life Support.
3:15 p.m.—Space Station Freedom Utilization as an Experimental Spacecraft.
4 p.m.—Robotics.
5 p.m.—Adjourn.

April 17, 1991

9 a.m.—Discussion and Preparation of Draft Report.
5 p.m.—Adjourn.

April 18, 1991

9 a.m.—Discussion and Preparation of Draft Report.
12:15 p.m.—Adjourn.

Dated: March 11, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-6224 Filed 3-14-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting: Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists Projects: New Forms I Section) to the National Council on the Arts will be held on April 1-4, 1991 from 9 a.m.-7 p.m. and April 5 from 9:00 a.m.-3:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506.

Portions of this meeting will be open to the public on April 1 from 9 a.m.-10 a.m. and April 5 from 1:45 p.m.-3:30 p.m. The topics will be welcoming remarks, instructions to the panelists, and policy discussion.

The remaining portions of this meeting on April 1 from 10 a.m.-7 p.m., April 2-4 from 9 a.m.-7:00 p.m. and April 5 from 9 a.m.-1:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with the guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6205 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting: Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies "A" Section) to the National Council on the Arts will be held on April 1, 1991 from 9:30 a.m.-8:30 p.m. and April 2-3 from 9:30 a.m.-9:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 1 from 9:30 a.m.-11 a.m. The topics will be opening remarks, panelist review criteria, and a review of issues from the March 4, 1991 planing meeting.

The remaining portions of this meeting on April 1 from 11 a.m.-6:30 p.m. and April 2-3 from 9:30 a.m.-6:30 p.m. are for the purpose of Panel review, dicussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6206 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Amended Notice of Meeting; Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on April 4, 1991 from 9 a.m.—5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m.—10 a.m. The topics will be opening remarks/general discussion.

The remaining portion of this meeting from 10 a.m.—5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6203 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Professional Theater Companies "B" Section) to the National Council on the Arts will be held on April 4, 1991 from 9:30 a.m.—8:30 p.m. and April 5-6 from 9:30 a.m.—9:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 4 from 9:30 a.m.—11 a.m. The topics will be opening remarks, panelist review criteria, and a review of issues from the March 4, 1991 planning meeting.

The remaining portions of this meeting on April 4 from 11 a.m.—8:30 p.m. and April 5-6 from 9:30 a.m. to 9:30 p.m. are for the purpose of Panel review, discussions, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portion thereof, of advisory panels which are open to the public. Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6204 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Challenge/Advancement Advisory Board

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Challenge III Overview Section) to the National Council on the Arts will be held on April 3-4, 1991, from 9 a.m.-5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductory remarks, the future direction of the Challenge III program, and administrative issues.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6146 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Expansion Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on April 2, 1991, from 9:15 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will be introductions and program update, guideline review with special consideration of the arts education initiative, multi-year funding, reauthorization summary and the five percent set-aside, update on NEA Working Groups, trends and observations, and closing remarks.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 8, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-6147 Filed 3-14-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: The National Commission of Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act. Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATE: March 20, 1991, 8:30 a.m. to 3:30 p.m.

ADDRESS: Capitol Hill Hotel, Capitol Hill Room, 200 C Street, SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Jeff Lawrence. Assistant to the Co-Chairman. The National Commission on Severely Distressed Public Housing, 2301 Rayburn Building, Washington, DC 20515 (202) 225-2436.

Type of Meeting: Open.

Agenda: Further presentations from interest groups. Discussion of prior HUD reports on public housing. Hiring of Executive Director. Consideration of Site Visits.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by the Federal Advisory Committee Act.

Bill Green,

Co-Chair.

[FR Doc. 91-6199 Filed 3-14-91; 8:45 am]

BILLING CODE 6820-04-M

NATIONAL SCIENCE FOUNDATION

Biological and Behavorial Sciences; Panel for Biological Instrumentation Facilities; Meeting

Name: Advisory Panel Meeting for Biological Instrumentation Facilities.

Date, Time, and Place: Friday April 5, 1991 from 2-6 Saturday, April 6, 1991 from 8:30-12 noon, Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Type of meeting: Closed.

Contact person: Dr. Robley Light, Program Director of Biological Instrumentation Facilities, Room 312, National Science Foundation, Washington, DC 20550, Telephone: 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for instrumentation equipment.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 11, 1991.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6126 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel on Biotechnology Opportunities at NSF; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel on Biotechnology Opportunities at NSF.

Date and time: Tuesday, April 2, 1991, 8:30 a.m.-5:30 p.m.

Place: American Institute of Architects, (AIA) Building, 1735 New York Avenue, NW., Washington, DC.

Type of meeting: Open.

Contact person:

Bruce L. Umminger, Director, Division of Cellular Biosciences, room 321-B, National Science Foundation, (202) 357-7905.

Minutes: May be obtained from contract person listed above after approval by the Chairman.

Purpose of meeting: To review and discuss MRW report entitled *Biotechnology Opportunities: The NSF Role.*

Agenda:

- Critique the NSF report for its accuracy and Completeness.
- Assist NSF in clarifying its role in the support of biotechnology.
- Advise on the seven major areas of biotechnology application and the mechanisms for support identified in the report.
- Draft a Panel Report.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-6127 Filed 3-14-91; 8:45 am]

BILLING CODE 7555-01-M

Division of Computer and Computation Research; Special Emphasis Panel

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Computer and Computation Research.

Dates: April 2 and 3, 1991.

Time: 8:30 a.m.—5 p.m. each day.

Place: Room 304, National Science Foundation, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Research Initiation Awards proposals.

Contact: Dr. Bruce H. Barnes, Deputy Division Director, Computer and Computation Research, National Science Foundation, Rm. 304, Washington, DC 20550 (202–357–0747).

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–6128 Filed 3–14–91; 8:45 am]

BILLING CODE 7555–01–M

Panel for Instrumentation and Instrumentation Development; for the Biological and Behavioral Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel Meeting for Instrumentation and Instrument Development.

Date, Time, and Place: Thursday April 4, 1991 from 9–6 Friday, April 5, 1991 from 8:30–12 noon Wyndham Bristol Hotel, 2430 Pennsylvania Avenue NW., Washington, DC 20037.

Type of meeting: Closed.

Contact person: Dr. Robley Light, Program Director of Instrumentation and Instrument Development, room 312, National Science Foundation, Washington, DC 20550, Telephone: 202/357–7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for Instrumentation equipment.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: March 11, 1991.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–6129 Filed 3–14–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

NATIONAL SCIENCE FOUNDATION

Committee name	Agenda	Room*	Date(s)	Times
Special Emphasis Panel in Mathematical Sciences	Research Opportunities for Women in Mathematical Sciences.	523	04/04/91 04/05/91	8:30 a.m. to 5 p.m. 8:30 a.m. to 5 p.m.

* At 1800 G Street NW., Washington, DC.

[FR Doc. 91–6130 Filed 3–14–91; 8:45am]

BILLING CODE 7555–01–M

Advisory Panel for Physical Anthropology; Meeting Closed

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Physical Anthropology.

Date and Time: April 2, 1991, 9 a.m.–5 p.m.

Place: University of Wisconsin-Milwaukee, Department of Anthropology, Milwaukee, WI 53201.

Type of Meeting: Closed.

Contact Person: Dr. Mark L. Weiss, Program Director, Physical Anthropology, room 320, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7804.

Purpose of Meeting: To provide advice and recommendations concerning support for research in physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–6131 Filed 3–14–91; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiological Processes; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Physiological Processes.

Date, Time, and Place: April 1–4, 1991, 8:30 a.m. to 5 p.m., room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of Meeting:
Part Open—April 2, 12 p.m.–1 p.m. (open)
April 3, 4 p.m. (open)
All other times the meeting is closed.

Contact Person: Dr. Ronald Alvarado, Program Director, Physiological Processes, room 321, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7975.

Purpose of Advisory Panel: To provide advice and recommendations relative to research in Physiological Processes.

Agenda:

Open—General discussion of the current status and future plans of the Physiological Processes Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 11, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–6132 Filed 3–14–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

[Docket No. 30–30691–CivP E.A. 90–102, ASLBP No. 91–636–03–CivP]

Barnett Industrial X-Ray (Materials License No. 35–26953–01); Hearing and Prehearing Conference

March 8, 1991.

Notice is hereby given that, by Memorandum and Order dated March 8, 1991, the Atomic Safety and Licensing Board has granted the request of Barnett Industrial X-Ray (Licensee) for an enforcement hearing in the above-titled proceeding. The hearing concerns the Order Imposing a Civil Monetary Penalty, issued by the NRC Staff on December 31, 1990 (published as 56 F.R. 901, January 9, 1991).

The parties to the proceeding are the Licensee and the NRC Staff. The issues to be considered at the hearing are (a) Whether the Licensee was in violoation of the Commission's requirements as set forth in Violation 1.B of the Notice of Violation and Proposed Imposition of Civil Penalty, dated September 7, 1990, and specifically whether the radiographer referenced therein received a whole body dose in excess of three rems; and (b) whether, on the basis of this violation and the violations admitted by the Licensee, the Order Imposing a Civil Monetary Penalty should be sustained.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. Notice is hereby given that the initial prehearing conference is scheduled for Tuesday, April 9, 1991, beginning at 9:30 a.m., at the Payne County Courthouse, 606 South Husband, 3rd floor, Stillwater, Oklahoma 74074. Members of the public are invited to attend this conference, as well as other prehearing conference or evidentiary hearing sessions that may be held.

In accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either orally or in writing, setting forth his or her position on the issues. The Licensing Board will entertain oral statements at the outset of the prehearing conference on April 9, 1991. Limited appearance statements do not constitute testimony or evidence in this proceeding, and the persons making such statements may not participate in any other way. The number or persons making oral statements and the time allocated for each statement may be limited depending on the number of persons present at the designated time. Written statements may be presented at any time. Written statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, One White Flint North, 11155 Rockville Pike, Rockville, Maryland 20852. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Region IV Office, 611 Ryan Plaza Drive, suite 1000, Arlington, Texas 76011.

Bethesda, Maryland, March 8, 1991.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 91–6201 Filed 3–14–91; 8:45 am]

BILLING CODE 7555–01–M

[Docket No. 55–5066, License No. SOP–2899–7]

G. A. Zimmerman; Order Suspending License (Effective Immediately) and Order To Show Cause

I

Mr. G. A. Zimmerman (Licensee) is the holder of Senior Operator License No. SOP–2899–7 (License) issued by the Nuclear Regulatory Commission (NRC/Commission) on March 7, 1977, pursuant to 10 CFR part 55. He is employed by the American Electric Power Company (facility licensee) and is authorized to manipulate and direct the manipulation of the controls of the reactors at the D.C. Cook Plant, Units 1 and 2 (facility). The License was last renewed February 13, 1989 and is due to expire on March 7, 1995.

II

The NRC licenses individuals pursuant to 10 CFR part 55, Operators' Licenses, to manipulate reactor controls and to direct those who manipulate the reactor controls. The operator license requires the individual to observe the operating procedures and other conditions specified in the facility license.

In accordance with 10 CFR 55.53(h) the Licensee shall complete a requalification program as described by 10 CFR 55.59. This section requires that the Licensee successfully complete a requalification program developed by the facility licensee and pass a comprehensive requalification written examination and annual operating test. In addition, 10 CFR 55.57(b)(iv) requires that, prior to renewal of a license, a Licensee pass a comprehensive requalification written examination and operating test administered by the Commission. The objective of the Licensee's successful completion of the facility licensee's requalification program and successful completion of examinations administered by the NRC and the facility licensee is to assure continued proficiency of the Licensee in the performance of his licensed duties.

The Licensee failed to pass portions of the comprehensive requalification operating test administered to him by the NRC on three separate occasions since December, 1989, despite his attendance at NRC-required remediation training following each of his first two failures. NRC examinations are administered in accordance with 10 CFR 55.41, 55.43 and 55.45 to determine whether the Licensee continues to maintain the knowledge and ability to perform his licensed duties adequately.

Specifically, during the NRC-administered operating test on December 18, 1990, the following performance deficiencies were observed:

Pursuant to 10 CFR 55.45(a)(5), the Licensee must demonstrate the ability to observe and safely control the operating behavior characteristics of the facility. Acting as the Unit Supervisor, the Licensee was made aware of conditions leading to overpressurization of the reactor coolant system but did not direct the corrective actions to prevent lifting of the primary code safety valves. The Licensee incorrectly performed the actions required by the facility Emergency Operating Procedures (ES-1.1 and FR-S.1).

Pursuant to 10 CFR 55.45(a)(7), the Licensee must demonstrate the ability to safely operate the facility's heat removal systems, including primary coolant, emergency coolant, and decay heat removal systems, and identify the relation of the proper operation of these systems to the operation of the facility. As the Unit Supervisor, the Licensee incorrectly ordered the closure of all main steam isolation valves during events that did not require this action, thereby unnecessarily removing the reactor's normal means of heat removal. The Licensee incorrectly performed the actions required by the facility functional recovery procedure (FR.S.1).

The Licensee was notified by the NRC of this simulator operating test failure by letter dated January 5, 1990. The facility licensee administered remedial training to the Licensee in accordance with its requalification program for a period of 4 days subsequent to the first failure.

During the NRC-administered operating test on June 27, 1990, the following performance deficiencies were observed:

In accordance with 10 CFR 55.45(a)(5), the Licensee is required to demonstrate the ability to safely operate the facility's auxiliary and emergency systems, including operation of those controls associated with plant equipment that could affect reactivity. The Licensee, as Unit Supervisor, directed the reactor operator to use a normal boration flowpath even though reactor conditions and facility procedural guidance (02-01P 4022.006.002, Emergency Boration) required emergency boration via a more expedient boration flowpath that was available at the time. The Licensee incorrectly performed the actions required by the facility Emergency Boration Procedure (02-01P 4022.006.002).

In accordance with 10 CFR 55.45(a)(12), the Licensee is required to demonstrate the ability to function within the control room team as appropriate to the assigned position in such a way that the facility licensee's procedures are adhered to and that the limitations in its license and amendments are not violated. As the Unit Supervisor, the Licensee made errors in the application of facility emergency operating procedures. Specifically, the Licensee incorrectly used ES 0.0, "Rediagnosis Procedure," when entry conditions for this procedure did not exist. In addition, the Licensee failed to implement the procedure steps for establishing an alternate flowpath for letdown during the use of ES 0.1, "Reactor Trip Recovery Procedure." The Licensee performed inappropriate and ineffective transitions into and out of the facility's emergency operating procedures (ES 0.0 and 0.1) dealing with a loss of heat sink and faulted steam generator thereby delaying a recovery from existing accident conditions. During this simulator test, the Licensee also incorrectly applied the facility Technical Specifications (T.S.) associated with inoperable safeguards equipment such that the less conservative requirements were implemented. Specifically, the Licensee took the action required by the facility's T.S. for T.S.3.03 when the correct action to be taken was the action required by T.S.3.05. The Licensee incorrectly performed the actions required by the facility emergency operating procedures (ES 0.0 and ES 0.1) and the facility Technical Specifications.

The Licensee was notified by the NRC of this simulator operating test failure by letter dated January 24, 1991. The facility licensee administered remedial training to the Licensee in accordance with its requalification program for a period of 5 days subsequent to the second failure.

Following the last remediation training, the Licensee was administered a third comprehensive operating test by the NRC on February 5 and 6, 1991. The Licensee failed the individual walk-through portion of the operating test that requires completion of facility-developed job performance measures. The following deficiencies were noted:

Pursuant to 10 CFR 55.45(a)(7), the Licensee must demonstrate the ability to safely operate emergency coolant systems. During the performance of the procedure ES 1.3, "Transfer to Cold Leg Recirculation," the Licensee failed to complete a critical step. Specifically, the Licensee failed to close the safety injection pump suction from the refueling water storage tank to allow suction from the residual heat removal pump discharge. The Licensee incorrectly performed the actions required by the facility operating procedure ES 1.3.

Pursuant to 10 CFR 55.45(a)(5), the Licensee must demonstrate the ability to safely operate those controls associated with plant equipment that could affect reactivity. The Licensee was demonstrating the performance of the facility procedure FR-S.1, "Response to Nuclear Power Generation/ATWS," during which he failed to ensure that control rod insertion occurred at the maximum rate possible under the existing conditions, as required, and failed to align the boron injection tank valves in the procedurally prescribed sequence. The Licensee incorrectly performed the actions required by the facility operating procedure.

Pursuant to 10 CFR 55.45(a)(12), the Licensee must demonstrate knowledge and ability, as appropriate to the assigned position, to assume the responsibilities associated with the safe operation of the facility. During the performance of a facility surveillance test, a Technical Specification determination of shutdown margin was required. The Licensee used incorrect data, obtained by him through improper usage of a reference material, which resulted in the incorrect determination of reactor shutdown margin. The Licensee incorrectly determined the reactor shutdown margin as required by the facility Technical Specifications.

III

The responsibilities associated with a Senior Reactor Operator License issued pursuant to 10 CFR part 55 are significant with respect to the protection of public health and safety. Repeated errors made by the Licensee in the implementation of procedures related to accident mitigation resulting in plant degradation or recovery delays, as well as errors in system operation related to reactivity and heat removal, are significant deficiencies that indicate unacceptable performance due to the potential impact on public health and safety. Licensed operators must maintain a high degree of proficiency such that significant errors of the type described above will not be likely to occur under actual conditions. The Licensee failed to demonstrate an acceptable level of performance on three consecutive occasions. Remediation of the Licensee by the facility licensee has been unsuccessful and the Licensee can no longer be relied upon to conduct licensed activities safely. These repeated failures also demonstrate a failure by the Licensee to successfully complete the facility licensee's requalification program as required by 10 CFR 55.53(h). Consequently, I lack the requisite reasonable assurance that the Licensee can perform duties under License No. SOP 2899-7 in compliance with the Commission's requirements and that the health and safety of the public will be protected. Therefore, the public health, safety, and interest require that License No. SOP 2899-7 be suspended. Further, pursuant to 10 CFR 2.204(c), I find that the public health, safety, and interest require that this Order be immediately effective and that no prior notice is required.

IV

Accordingly, pursuant to sections 107, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 55, *it is hereby ordered, effective immediately,* that license no. SOP-2899-7 is suspended.

The Regional Administrator, Region III, may, in writing, relax or rescind this Order upon demonstration by the Licensee of good cause.

V

Further, pursuant to sections 107, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 55, *it is further ordered* that the Licensee shall show cause why License No. SOP-2899-7 should not be revoked and why it should not have been suspended.

Pursuant to 10 CFR 2.202(b), the Licensee shall show cause why his License should not be revoked by filing a written answer under oath or affirmation within 20 days after the date of issuance of this Order within 20 days of the date of this Order. The Licensee may answer this Order, setting forth the matters of fact and law on which the Licensee relies. Any other person adversely affected by this Order may submit an answer to this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an Order revoking his License. Any answer to this Order shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

VI

The Licensee or any other person adversely affected by this Order may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission ATTN: Chief, Docketing and Service Section, Washington, DC 20555, and shall include a copy of the answer to the Order. Copies of the hearing request also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137 and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing, shall be whether this Order should be sustained.

In the absence of any request for hearing the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or request for hearing shall not stay the immediate effectiveness of section IV of this order.

In addition, in the absence of any request for a hearing, the provisions specified in Section V shall be effective and final 20 days from the date of this Order without further order or proceedings.

Dated at Rockville, Maryland this 7th day of March 1991.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91-6207 Filed 3-14-91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2477, Amdt No. 3]

Indiana (With Contiguous Counties in Ohio, Kentucky, Michigan, & Illinois); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated February 22, 1991, to the President's major disaster declaration of January 5, to include Lake County in the State of Indiana as a disaster area as a result of damages caused by severe storms and flooding beginning December 28, 1990 and continuing through January 22, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Cook and Will in the State of Illinois may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The economic injury numbers are 722900 for the State of Indiana and 723200 for the State of Illinois.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 7, 1991, and for economic injury until the close of business on October 7, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 4, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-6135 Filed 3-14-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2481]

Tennessee; Declaration of Disaster Loan Area

Maury County and the contiguous counties of Giles, Hickman, Lawrence, Lewis, Marshall, and Williamson in the State of Tennessee constitute a disaster area as a result of damages caused by flooding which occurred on February 21, 1991. Applications for loans for physical damage may be filed until the close of business on May 6, 1991 and for economic injury until the close of business on December 6, 1991 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-profit Organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 6, 1991.

June M. Nichols,

Acting Administrator.

[FR Doc. 91-6136 Filed 3-14-91; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine uses for TVA–2, "Personnel Files-TVA" and TVA–11, "Payroll Records-TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish new routine uses for the systems of records entitled TVA–2 "Personnel Files-TVA" and TVA–11 "Payroll Records-TVA." Details of the proposed new routine uses are described below. The full text of TVA–2 appears at 55 FR 34817–18, August 24, 1990, and the full text of TVA–11 appears at 55 FR 34824–26, August 24, 1990. TVA's intention to establish another routine use for TVA–2 appears at 56 FR 4119, February 1, 1991.

DATE: Comments must be received by April 15, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402–2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615–751–2520.

TVA–2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit informaton; service dates, inlcuding other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C 831–831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub.L. 92–261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

TVA–11

SYSTEM NAME:

Payroll Records—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to multi-employer health and welfare and pension funds as reasonably necessary and appropriate for proper administration of the plan of benefits.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91–6151 Filed 3–14–91; 8:45 am]

BILLING CODE 8120–02–M

Information Collection Under Review Paperwork Reduction Act of 1980, as amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Commercial/Industrial Biomass Energy-Using Facilities in the Southeastern United States.

Frequency of Use: On Occasion.

Type of Affected Public: State or local governments, businesses or other for-profit, small business or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 1200.

Estimated Total Annual Burden Hours: 600.

Estimated Average Burden Hours Per Response: 0.5.

Need For and Use of Information: The Southeastern Regional Biomass Energy Program, managed under contract from the Department of Energy by TVA, will use the information to update the "Directory of Biomass Installations in 13 Southeast States" in order to assess trends in alternate energy usage, match fuel suppliers with fuel users, and to otherwise facilitate the growth of the industry by sharing information and expertise.

Louis S. Grande,

Vice President, Information Services Senior Agency Official.

[FR Doc. 91–6150 Filed 3–14–91; 8:45 am]

BILLING CODE 8120–02–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90–40–IP–No. 2]

Cooper Tire & Rubber Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Cooper Tire & Rubber Company (Cooper), of Findlay, Ohio to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 27, 1990, and an opportunity afforded for comment (55 FR 53228).

Paragraph S6.5(d) of Standard No. 119 requires that tires manufactured for use on vehicles other than passenger cars be labelled as follows:

"Max. load _____ lbs. at _____ psi cold" for those tires rated only for single load. Cooper manufactured and shipped 786 of its ST225/75R15 Cooper Travel Trac Load Range D tires that did not comply with Standard No. 119. These tires were incorrectly stamped as follows:

MAX. LOAD 2540 LBS AT 65 P.S.I. MAX. PRESS

The correct label for these tires is:

MAX. LOAD 2540 LBS. AT 65 P.S.I. COLD.

The noncompliance is that the tires were stamped MAX. PRESS instead of COLD.

Cooper stated that the tires complied with all other requirements specified in 15 U.S.C. 1421 and 49 CFR part 571. Cooper also stated that the noncompliance was caused by Cooper's erroneous use of the language in FMVSS No. 109, in the tire molds for the ST225/75R15 Cooper Travel Trac. In support of its petition, Cooper stated that the non-compliance is inconsequential to safety because the P.S.I. [pounds per square inch) stamped on the tire is correct for the maximum load indicated.

No comments were received on the petition.

The agency has considered the effect of the erroneous use of the words "Max. Press." instead of "Cold". It believes this to be a distinction without a difference. "Max. Press." is an abbreviation for "maximum permissible inflation pressure". This term is defined by Standard No. 109 as "the maximum cold inflation pressure to which a tire may be inflated." Although Cooper used the words "Max. Press." instead of "Cold", a reading of section S5.6(d) of Standard No. 119 demonstrates clearly that the information that that standard requires to be provided on the tire is "the maximum load rating and corresponding inflation pressure", expressed on the tire in "psi cold". Thus, each standard, though expressed in different terms, requires the same information to be placed on the tire—the maximum permissible inflation pressure when the tire is cold. Finally, as the petitioner notes, the psi stamped on the tire is correct for the maximum load indicated.

Accordingly, in consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: March 12, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–6186 Filed 3–14–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 8, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB number: 1535–0013.

Form number: PD F 1048, PD F 1048–1, PD F 2243.

Type of review: Extension.

Title: Application for Relief on Account of Loss, Theft or Destruction of United States Savings and Retirement Securities; Supplemental Statement in Support of an Application for Relief on Account of Loss, Theft, Nonreceipt or Destruction of United States Savings and Retirement Securities; Statement Concerning United States Securities.

Description: Application is used by owners of securities to request substitute securities or payment in lieu of lost, stolen or destroyed securities. Supplemental statements are used by owners, or others having knowledge concerning the securities.

Respondents: Individuals or households.

Estimated number of respondents: 80,000.

Estimated burden hours per response: 25 minutes.

Frequency of response: On occasion, Other (Supplemental Forms PD F 1048–1 and PD F 2243 only as needed).

Estimated total reporting burden: 32,000 hours.

OMB number: 1535–0064.

Form number: PD F 1980, PD F 2490.

Type of review: Extension.

Title: Description of United States Savings Bonds Series HH/H; Description of United States Savings Bonds/Notes.

Description: Used by an owner of United States Savings Bonds/Notes to describe their holdings when they apply to the Bureau of the Public Debt for some type of relief or service.

Respondents: Individuals or households.

Estimated number of respondents: 19,000.

Estimated burden hours per response: 6 minutes.

Frequency of response: On occasion.

Estimated total reporting burden: 1,900 hours.

Clearance officer: Rita DeNagy (202) 447–1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.

OMB reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91–6159 Filed 3–14–91; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 11, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Revision

1. Veterans Benefits Administration.
2. Application for Educational Benefits (Under chapters 30 and 32, title 38, U.S.C.; section 903, Public Law 96–342; and chapter 106, title 10, U.S.C).
3. VA Form 22–1990.
4. The form is used by individuals to apply for VA education benefits. This information is used to determine the applicant's eligibility.
5. One time.
6. Individuals or households.
7. 172,553 responses.
8. 45 minutes.
9. Not applicable.

[FR Doc. 91–6237 Filed 3–14–91; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate to the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 15, 1991.

Dated: March 11, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Veterans Benefits Administration.
2. Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders.
3. VA Form 26–8736.
4. This form is used by nonsupervised lenders to request approval to close loans on an automatic basis. The information is used to determine whether applicants meet standards of acceptability.
5. On occasion.
6. Businesses or other for-profit.
7. 100 responses.
8. 25 minutes.
9. Not applicable.

[FR Doc. 91–6238 Filed 3–14–91; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Special Medical Advisory Group will be held on April 2–3, 1991, at the Ramada Renaissance Hotel, 999 9th Street, NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on April 2 will convene at 6 p.m. and the session on April 3 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/535–7603) prior to March 27, 1991.

Dated: March 5, 1991.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–6239 Filed 3–14–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, March 12, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's assistance agreements with insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), concurred in by Vice Chairman Andrew C. Hove, Jr., Ms. Susan Krause, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 13, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–6406 Filed 3–13–91; 3:22 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:10 p.m. on Tuesday, March 12, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) The resolution of a failed thrift institution, and (2) recommendations regarding the sale of problem commercial loans in conservatorship.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Susan F. Krause, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: March 21, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–6318 Filed 3–13–91; 9:20 am]

BILLING CODE 6714–01–M

BEST COPY AVAILABLE

Corrections

Federal Register
Vol. 56, No. 51
Friday, March 15, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

Corrections

In rule document 91-5295 beginning on page 9878, in the issue of Friday, March 8, 1991, make the following corrections:

§ 301-1.2 [Corrected]

1. On page 9878, in the second column, the section heading should read

§ 301-1.2 Applicability.

§ 304-1.2 [Corrected]

2. On page 9879, in the second column, in paragraph (b)(8) "provisions of Volume 6 of the Foreign Affairs Manual (FAM) or Volume 1 of the Joint Federal Travel Regulations (JFTR)" should read "provisions of Chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100)[1] or Volume 1 of the Joint Federal Travel Regulations (JFTR)[2]".

3. On page 9879, in the second column, add footnotes 1 and 2 to paragraph (b)(8) as follows:

[1] Chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100) is available from the Department of State, Publishing Services, Washington, DC 20520-0854.

[2] Volume 1 of the Joint Federal Travel Regulations (JFTR) is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

§ 304-1.6 [Corrected]

4. On page 9880, in paragraphs (a) and (b) of § 304-1.6, "FAM" should read "6 FAM 100".

§ 304-1.7 [Corrected]

5. On page 9880, in the first column, in § 304.1-7(a), in the tenth line, "FAM" should read "6 FAM 100".

6. On the same page, in the second column, § 304.1-7(b), in the sixth line, "the FAM" should read "6 FAM 100" and in the eighth line, add "the" before "allowance".

7. On the same page, in the same column, in § 304.1-7(c), in the last line, "FAM" should read "6 FAM 100".

8. On the same page, in the same column, in § 304.1-7(d), in the last line, "the FAM or JFTR" should read "6 FAM or the JFTR".

§ 304-1.8 [Corrected]

9. On page 9880, in the 2d column in § 304-1.8(a) in the 13th line, remove "the", in the 14th line, remove "of" and add "incurred by", and in the 16th line, remove "incurred".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 60

[Docket No. 89N-0169]

RIN 0905-AD16

Patent Term Restoration Regulations

Correction

In proposed rule document 91-3429 beginning on page 5784 in the issue of Wednesday, February 13, 1991, make the following corrections:

1. On page 5785, in the third column, in the paragraph under *C. Eligibility Assistance*, in the sixth line, insert "patent term restoration. FDA will verify whether the permission for the" after "for"; and in the eighth line from the bottom of the page, insert "would" before "implement".

§ 60.3 [Corrected]

2. On page 5787, in the first column, in § 60.3(b)(16), in the seventh line "hybidoma" should read "hybridoma".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960-AB96

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

Correction

In rule document 90-28744 beginning on page 51208 in the issue of Wednesday, December 12, 1990, make the following corrections:

1. On page 51221, in the first column, in the second paragraph, in the fifth line, "course" should read "source".

2. On page 51224:

a. In the first column, in the eighth line from the bottom of the page, insert "of functional impairment and how we assess the manifestations" after "manifestations".

b. In the third column, in the third paragraph, in the fourth line "the" should read "are"; and in the second line from the bottom of the page, "not" should read "now".

3. On page 51229, in the third column, in the Authority citation, in the first line, "442 Appendix 1 to Subpart P [Amended]" should read "422".

4. On page 51230:

a. In the first column, in amendment number 8, in the fifth line, the comma should be a semi-colon; and in amendment number 9, in the sixth line, "2.1" should read "2".

b. In the second column, in amendment number 12, in the fourth line and in amendment number 13, in the fifth line, "least" should read "less".

c. In the third column, in the first paragraph, in the ninth line, "liability" should read "lability"; and in the second paragraph, in the fourth line, "Standardization" should read "Standardized".

5. On page 51231:

a. In the first column, in the third paragraph, in the fourth line from the bottom of the paragraph,"of" should read "for".

b. In the second column, in the seventh line from the top of the page remove the second "specific".

c. In the third column, in the sixth paragraph, in the fourth line, "preschool-children" should read "preschool-age children".

6. On page 51232, in the first column, in the third paragraph, in the eighth line, insert "or" after "results".

7. On the same page, in the third column, in the second paragraph, in the fifth line, insert a comma after "112.05A".

8. On page 51233, in the second column, in the fifth paragraph, in the first line, "those" should read "these"; and in the sixth paragraph, in the fifth line from the bottom of the page, "liability" should read "lability".

9. On page 51234, in the first column, in the sixth line from the top of the page, "infrequent" should read "in frequent"; and in the fifth paragraph, in sentence number 4, "effect" should read "affect".

10. On page 51235, in the second column, in the tenth line from the bottom of the page, "*Disorders*" should read "*Disorder*".

11. On the same page, in the third column, in paragraph E., in the first line, "developmental" should read "development".

12. On page 51236, in the first column, in the Authority citation, in the first line, "1169" should read "1619".

BILLING CODE 1505-01-D

OL
56
SS
51
MR
15
991
MI

federal register

Friday
March 15, 1991

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61 and 141
Pilot, Flight Instructor, and Pilot School Certification; Final Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 61 and 141

[Docket No. 25910; Amdts. 61-490, 141-4]

RIN 2120-AB12

Pilot, Flight Instructor, and Pilot School Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) governing pilot and flight instructor initial and recurrent training and the operations of Federal Aviation Administration (FAA) certificated pilot schools. The amendments address concerns identified by the National Transportation Safety Board (NTSB) and the public, and issues raised in petitions for exemption from the rules. This action is intended to update standards of pilot and flight instructor performance and to respond to technological advances in pilot training since the current rules were issued.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Edna French, Manager, or John Lynch, Regulations Branch, AFS-850, General Aviation and Commercial Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Background

In 1987 the FAA began a regulatory review of FAR parts 61, 141, and 143. The review was undertaken to update the rules in light of advances in aircraft technology and the increasing complexity of the National Airspace System since the last revisions to these parts in the early 1970's. A major goal of the review is to identify areas of disparity between the rules and the level of training demanded of pilots in today's aviation environment. The review was prompted, in part, by a history of 22 amendments and approximately 3,585 exemption actions to FAR parts 61 and 141 since their last major revisions in 1973 and 1974, respectively. Recommendations and comments from the NTSB, the public, and the FAA have also demonstrated the need for the regulatory review.

In support of this regulatory review, the FAA completed a historical review of parts 61, 141, and 143, in January 1988. The "Review of Historical FAA Actions in Support of Regulatory Review of FAR parts 61, 141, and 143" (U.S. Department of Transportation, Transportation Systems Center), which is on file in Docket No. 25627, examined items related to pilot training and certification, pilot schools, and ground instructors. The FAA also received communications and input from pilot schools and aviation departments at colleges and universities operating under parts 61 and 141 which aided in determining the focus of this regulatory review.

The FAA identified three needs within this review: first, issues of immediate concern recommended by the NTSB and public comments; second, the requirements for aircraft operations in today's environment; and finally, the requirements for pilots in the year 2010 and beyond. Accordingly, the regulatory review was broken down into three phases corresponding to the needs identified above.

This final rule completes Phase 1 of the regulatory review with amendments to the regulations regarding immediate issues. The amendments to this rule are based on recommendations from the NTSB and comments from training schools, aviation associations, aviation industries, and the public. Two public hearings for this Phase 1 rulemaking were held prior to the drafting and publishing of Notice of Proposed Rulemaking (NPRM) No. 89-14 (54 FR 22852; May 26, 1989). The two hearings were held in Washington, DC (July 26-27, 1988) and in Oshkosh, Wisconsin (August 3-4, 1988) (53 FR 24178; June 27, 1988).

Phase 2 of the regulatory review addresses parts 61 and 141 issues that require more extensive research. Any proposed changes to part 143 will also be addressed in this phase. Phase 2 began simultaneously with Phase 1 and will culminate in a second rulemaking action. Additional public hearings to discuss issues under study in Phase 2 were held in Washington, DC (September 12-13, 1989); Chicago, Illinois (September 19-20, 1989); Los Angeles, California (October 3-4, 1989); and Orlando, Florida (October 16-17, 1989). A Notice of Hearings (54 FR 22732; May 25, 1989) outlined the general topics for the public hearings; transcripts are available for review in Docket No. 25627. Phase 2 also includes a Pilot/Flight Instructor Job/Task Analysis (JTA), completed on March 31, 1989, which incorporated the results of a study on areas of pilot knowledge, skills, abilities, and attitudes required in today's aviation environment. The JTA will provide a foundation for the regulatory review in the development of testing requirements and training standards and materials. A Notice of Availability published in the Federal Register (54 FR 22735; May 25, 1989) announced that the JTA is available for examination in Docket No. 25627 or for purchase on a floppy diskette from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Phase 3 is currently in a preliminary stage of development. It will be a broader, long-term approach that will address pilot and flight instructor requirements for the year 2010 and beyond. Although there is no schedule for completion of Phase 3, an NPRM and Final Rule will be published in the Federal Register for public comment as that stage develops.

Discussion of Public Comments and the Amendments

This final rule is based on NPRM No. 89-14 (54 FR 22852; May 26, 1989). The rule amends parts 61 and 141, which address pilot and flight instructor training and certification.

Within part 61, the rule establishes the following: a requirement for a flight instructor endorsement for pilots operating tailwheel airplanes; a training requirement for high altitude airplanes; a training requirement for pilots obtaining airplane type ratings; the addition of aeronautical knowledge training on stall and spin awareness and recovery techniques to the basic subject areas of required training; a requirement for a flight instructor endorsement certifying that initial flight instructor candidates have received flight instruction and are proficient in spin and spin recovery techniques; and a requirement for a spin demonstration on a retest for flight instructor certification if the candidate fails either the oral or flight portion of the practical test due to deficiencies in stall/spin awareness and associated procedures and techniques. In response to public comments received on NPRM No. 89-14, the proposed modification of part 61 flight review requirements is not contained in this rulemaking. With regard to the flight review, this final rule instead contains a provision that allows satisfactory completion of a phase of an FAA-sponsored pilot proficiency award program (described in Advisory Circular No. 61-91F, which will be discussed in further detail under the flight review section of this preamble) to suffice for the flight review requirements.

Within part 141, this final rule modifies the requirement that chief instructors be on site while a school is conducting instruction by permitting chief instructors to be available by electronic means; permits pilot schools to establish satellite bases beyond the present 25-nautical mile limit; eliminates the 100-hour recency of instruction experience requirement for designation of chief flight instructors; and reduces the total experience time required of assistant chief flight instructors.

This final rule contains certain amendments to part 61 that were not discussed in the NPRM because of a separate rulemaking action concerning recreational and non-instrument-rated private pilots, that did not become effective until after NPRM No. 89-14 was published. These additional amendments, discussed in more detail later in this section, make this rule consistent with Amendment 61-82, "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" (54 FR 13028; March 29, 1989). These additional amendments (§§ 61.97 and 61.98) conform to changes already adopted and codified in the FAR.

In addition, this rule contains certain "cleanup items." For example, certain rules have been eliminated because those rules contain expiration dates that have passed. The FAA agrees with public comments that the use of gender classification in the regulations is not appropriate, and has made revisions in the terminology of sections where gender-specific pronouns were used. Other editorial and cleanup changes that are not addressed by this rulemaking will be addressed in Phase 2 of this regulatory review.

Two dockets, Nos. 25627 and 25910, were opened to receive comments on Phases 1 and 2 of this regulatory review. The first docket, Docket No. 25627, was established to receive comments throughout the entire regulatory review and will remain open until the FAA makes notification of its closing. Docket No. 25627 was established to facilitate the orderly flow of collecting comments, recommendations, and ideas from the public. The second docket, Docket No. 25910, was established to receive specific comments from the public on NPRM No. 89-14 upon which this final rule document is based. As a result of the two dockets, there was some confusion among the public as to which docket pertained to NPRM No. 89-14. Because some comments were addressed to the incorrect docket, the FAA has considered public comment on NPRM No. 89-14 from several official sources. These sources are as follows:

- Docket No. 25910. This docket was established under NPRM No. 89-14 (54 FR 22852; May 26, 1989) with publication of the proposed rule. The FAA requested that written public comments on this NPRM be submitted to Docket No. 25910 on or before August 24, 1989. Also, the FAA invited interested persons to participate in the making of the proposed rules by submitting written data, views, or arguments. Comments concerning the economic, environmental, federalism- or energy-related implications of the proposals contained in the notice were also invited.
- Docket No. 25627. As discussed above, this docket was established to receive comment on the entire regulatory review. The Notice of Hearings (54 FR 22732; May 25, 1989) and the Notice of Availability (54 FR 22735; May 25, 1989) for Phase 2 requested that written comments related to those hearings and the JTA be submitted to Docket No. 25627. A number of the written submissions received in that docket, however, referred to Phase 1 proposals. The FAA stated in NPRM No. 89-14 that Docket No. 25627 would remain open until the FAA gives notice that the docket is closed, as a means of receiving information from the public throughout the regulatory review.
- The Phase 2 public hearings. Although these hearings were not intended to discuss the Phase 1 NPRM, members of the public took the opportunity to address, through oral presentations as well as written submissions to Docket No. 25627, proposals contained in NPRM No. 89-14. The notice announcing those hearings invited the public to address specific questions related to Phase 2 of the regulatory review, but also to express any additional views and recommendations for changes to parts 61, 141, and 143. Thus, these recent hearings became a forum for discussing the Phase 1 NPRM.

Thus, the FAA sought to give every possible consideration to issues raised and data presented by the public at all stages of the rulemaking. Authority for consideration of comments received after the official closing date is found in § 11.47, which permits consideration of late filed comments so far as possible, without incurring expense or delay. The FAA believes that all interested persons have been given an opportunity to participate in the rulemaking and due consideration has been given to all views presented.

From the sources described above, the FAA recorded a total of 297 specific comments from 112 commenters responding to proposed amendments addressed in NPRM No. 89-14. Many comments focused on the expanded flight review proposal and on the proposed endorsement for tailwheel airplanes. Seventy-eight comments referred to the proposed changes to the flight review; 64 of these comments opposed the proposal. Forty-four comments referred to the proposal for changes to tailwheel airplane operations; 28 of these comments opposed the proposal.

All comments received on the following three proposals were in support: the requirement that flight instructor candidates receive flight instruction and demonstrate proficiency in spin and spin recovery techniques (18 comments); the clarification of the requirement for chief and assistant chief instructor availability to include availability through electronic means (17 comments); and the elimination of the 25-nautical mile limit between satellite bases and the main operations base (12 comments).

In addition to specific proposals, some commenters raised other related issues. One commenter recommended a change in the pass-rate requirement for part 141 school recertification. Although related, the pass-rate requirement was not an issue in NPRM No. 89-14 and has therefore not been addressed in this final rule. The Aircraft Owners and Pilots Association (AOPA) and several other commenters stated that they see no need for a regulatory review on parts 61, 141, and 143. However, as stated in the background section of this preamble, the FAA found sufficient amendments and exemption actions since the last major revisions to parts 61 and 141 in the mid-1970's to warrant this review.

Other comments that did not specifically apply to any particular proposal addressed in NPRM No. 89-14 included 12 comments opposing Amendment 61-82, "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer Than 400 Hours" (54 FR 13028; March 29, 1989). One of these commenters suggested that the annual flight review contained in that amendment be a function of how frequently a pilot flies, not cumulative flight hours. The commenter suggested that a pilot who has flown fewer than 12 hours in the previous year be required to complete an annual flight review regardless of the pilot's total flight time. A pilot who has flown more than 12 hours in the previous year would be required to complete a biennial review, under that suggested system. The annual flight review is not an issue within this regulatory proposal. However, the FAA has received a petition for rulemaking from AOPA to delete the annual flight

review rule. AOPA, in its petition, took issue with the data used by the FAA for implementing new § 61.56(d). The FAA is reviewing AOPA's petition. When completed, the FAA response will be published in the Federal Register.

The comments received on NPRM No. 89–14 reflect the views of a broad spectrum of the aviation public. These included individuals, organizations representing professional and general aviation pilots, major training organizations, industry representatives, and state aviation agencies. Twelve of the principal organizations to respond to NPRM No. 89–14 were the Air Line Pilots Association (ALPA), AOPA, AOPA Air Safety Foundation (AOPA ASF), Experimental Aircraft Association (EAA), Embry-Riddle Aeronautical University (ERAU), FlightSafety International, General Aviation Manufacturers Association (GAMA), Michigan Aeronautics Commission, National Air Transportation Association (NATA), Society of Experimental Test Pilots (SETP) in association with Safe Action in Flight Emergency (SAFE), Soaring Society of America (SSA), and the Wisconsin Bureau of Aeronautics.

The following is a discussion of issues addressed in the comments in accordance with the major areas covered by the proposed amendments in NPRM No. 89–14. These areas are tailwheel operations, high altitude training, airplane type rating curricula, flight reviews, spin awareness training, flight instructor spin training, spin demonstration on a retest for flight instructor certification, chief instructor availability, chief and assistant chief flight instructor qualifications, and satellite bases. The discussion includes an explanation of the FAA's views on each issue and a description of the final amendment.

Tailwheel Airplanes

NPRM No. 89–14 proposed a requirement for pilots to receive a one-time flight instructor endorsement in order to act as pilot in command of a tailwheel airplane. The endorsement would certify that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings, and go-around procedures. The proposal was aimed primarily at new tailwheel airplane pilots with experience only in tricycle gear airplanes.

Forty-four comments were received on this proposed amendment. Eighteen commenters favored the endorsement and 26 opposed it. Principal supporters of the amendment were ERAU, the Michigan Aeronautics Commission, SSA, SETP, and the Wisconsin Bureau of Aeronautics. These and other entities expressed their support of the proposed amendment by citing the unique characteristics of tailwheel airplanes, particularly in the take-off and landing phases of operations.

Several commenters suggested modifications to the proposed amendment. For example, SSA suggested that proposed § 61.31(g) and related advisory materials refer specifically to "normal full-stall landings" and to "situations which may call for wheel landings."

Note: A "normal full-stall landings" is a landing where the airplane is landed with the engine at idle power upon touchdown and just a few inches prior to touchdown the airplane is fully stalled. A "wheel landing" is where some engine power is used to assist the airplane to touchdown on its front main wheels. SSA pointed out that many poor landings in tailwheel airplanes are often attributed to a pilot's over-reliance on wheel landings.

The Wisconsin Bureau of Aeronautics recommended changing the wording of proposed § 61.31(g) to read: "Tailwheel Airplanes. No person may act as pilot in command * * *" to standardize the tailwheel endorsement requirement. This change would make the requirement mandatory for all pilots who are making a transition to tailwheel airplanes and who have had no tailwheel experience prior to the effective date of this amendment. The proposal, drafted before the Recreational Pilot final rule was issued, referred to holders of private, commercial, or airline transport pilot (ATP) certificates.

Several commenters, including ERAU and the Michigan Aeronautics Commission, expressed concern about flight instructors who issue the endorsement, recommending that those instructors should have some specified minimum experience in tailwheel equipped airplanes. None of the supporters favored requiring a flight review for tailwheel airplanes.

AOPA, AOPA ASF, EAA, and NATA were among the principal opponents of the tailwheel endorsement requirement. Several of the opponents noted that the FAA had previously rejected NTSB Safety Recommendations A–80–24 and A–80–25, which called for both increased currency requirements and an instructor endorsement for tailwheel airplane operations. The recommendations cited a fatal 1979 landing accident involving a Piper PA–18 Super Cub flown by a pilot with limited experience in tailwheel airplanes.

These organizations stated that an adequate flight check of tailwheel pilots should suffice because a flight check requires the same basic skills and knowledge as learning to fly any other airplane. NATA and other commenters noted that insurance companies and aircraft rental companies normally require a checkout as a prerequisite to rental, and that responsible individuals request proper training before operating a tailwheel airplane. NATA suggested that the FAA encourage student pilot awareness rather than enact what the organization described as an unnecessary additional regulatory requirement. AOPA said that on the basis of NTSB data for 1983–1988, it concluded that approximately 6 percent of all tricycle gear airplanes and 5 percent of all tailwheel airplanes were involved in landing accidents, and that 9 percent of all tricycle gear airplanes and 12 percent of all tailwheel airplanes were involved in takeoff accidents.

The FAA has examined accident data for tailwheel airplanes, as well as comparisons of data for tricycle gear and tailwheel airplanes. These comparisons are based on estimates, because the FAA does not maintain statistics on the composition of the general aviation fleet by type of landing gear; that is, the FAA lacks exact figures on the number of active tailwheel vs. tricycle gear airplanes. However, based on overall fleet information, the FAA has updated its estimates of fleet composition in order to have a basis for estimating relative accident rates. NTSB accident reports do indicate the airplane's landing gear configuration, and the FAA has examined these data in the context of the fleet composition estimates. This review reaffirms the FAA's belief that the data support its previous conclusions, as well as the NTSB's conclusion in the study *Single-Engine, Fixed-Wing General Aviation Accidents, 1972–1976* (NTSB–AAS–79–1), that tailwheel airplanes have proportionately more takeoff and landing accidents than tricycle gear airplanes.

As part of this review, a comparative study was done of tailwheel versus tricycle gear takeoff, landing, and taxi accidents using 1983–1988 data compiled from the NTSB Data Research Branch, the *1988 General Aviation Activity and Avionics Survey*, and the *1988 Census of U.S. Civil Aircraft*. This study focused on takeoff, landing, and taxi accidents, because they are more likely to reflect the different landing gear configurations than are accidents in cruise flight.

The FAA estimates that, in 1988, tailwheel airplanes comprised about 19 percent of the total active general aviation piston-powered airplane fleet—about 37,000 tailwheel compared with approximately 156,000 tricycle gear airplanes, including both retractable and fixed gears. Nevertheless, tailwheel airplanes accounted for 28 to 29 percent of accidents in landing, takeoff, and taxi phases of flight for that group of airplanes. For example, in 1988, tricycle gear airplanes had 1,008 accidents in these phases of operation, compared with 455 for tailwheel airplanes.

If the data are converted into accident rates (accidents per aircraft), the results show a much higher rate for tailwheel than for tricycle gear airplanes. In 1988, the rate of tailwheel accidents in the takeoff, landing, and taxi phases of flight on a per aircraft basis was 74 percent higher than for tricycle gear airplanes. For the period covered by the study, tailwheel accidents per aircraft averaged 60 percent higher than tricycle gear accidents per aircraft.

In addition, the FAA is persuaded that this amendment will not impose a significant burden on pilots. Many commenters, although opposed to the amendment, assert that most pilots already obtain an adequate "checkout" prior to renting or insuring a tailwheel airplane. However, if this is the case, the FAA believes that this amendment will mainly serve to ratify an already common practice and, additionally, will extend this worthwhile practice to that minority of pilots who would not otherwise obtain sufficient initial tailwheel training.

The higher accident rate and the fact that this type of initial or transition tailwheel training is already commonplace indicate that the proposed instructor endorsement is both warranted and reasonable. The FAA is therefore adopting the proposed amendment in this final rule.

This final rule adds § 61.31(g) to the FAR, requiring a one-time flight instructor endorsement for a person to act as pilot in command of a tailwheel airplane. Advisory Circular No. 61–98A, "Currency and Additional Qualification Requirements for Certificated Pilots," has been prepared to address this new training requirement and other requirements for maintaining currency as a certificated pilot, and will be available at Flight Standards District Offices (FSDO's). The requirement for this endorsement will apply to new tailwheel pilots only. Pilots who have logged pilot-in-command time in tailwheel airplanes prior to the effective date of this rule are excepted from this requirement. However, the FAA highly encourages all pilots who operate tailwheel airplanes to receive training in those airplanes.

The final wording has been modified in accordance with the Wisconsin Bureau of Aeronautics' suggestion noted previously. Thus, instead of referring to specific pilot certificates such as private, commercial, or ATP, the rule refers to any person who acts as pilot in command. This wording is simpler and more comprehensive than the version contained in the proposal.

A second modification made to the originally proposed amendment is in the description of maneuvers to be covered by the flight instructor prior to issuing the endorsement. The NPRM proposed normal, crosswind, and wheel landings. The following qualification has been added to the requirement for wheel landings: "unless the manufacturer has recommended against such landings." The intent of the rule, as observed by SSA in its comment on the proposal, is to ensure that pilots are trained in performing wheel landings in situations that may call for wheel landings, but not to have pilots conduct operations unsuitable for a particular aircraft.

A third and final change in the tailwheel endorsement requirement in this final rule entails eliminating the reference in the rule to "recovery from bounced landings." The rule instead refers to go-around procedures in a general sense. The phrase "recovery from bounced landings" was deleted to eliminate any implication of intentional bounced landings to meet this requirement. Reference to go-around procedures in the regulation is intended to cover go-arounds from unsatisfactory landings, including bounced landings. The intent of this rule is not to require tailwheel pilots to intentionally put the airplane in a situation that could result in an unsatisfactory or unsafe landing, but rather to train in recovery procedures.

This amendment does not contain a requirement for a flight review in a tailwheel airplane nor does it contain a minimum tailwheel hour requirement for instructors providing the endorsement. The FAA continues to believe that additional currency requirements are unnecessary. Likewise, the FAA has seen no justification thus far for a minimum hour requirement for tailwheel flight instructors. However, as a result of this amendment and other amendments included in this final rule, a clarification has been made to § 62.193 "Flight Instructor Authorizations," to authorize flight instructors to provide the training and endorsements required by the tailwheel amendment, the high altitude training and type rating amendments to be discussed in the next section, and the high performance endorsement requirement.

Special Requirement: High Altitude Training and Airplane Type Rating Training

NPRM No. 89–14 proposed two related requirements aimed at pilots who progress to sophisticated, high altitude airplanes. Most of these airplanes require type ratings. Other airplanes, however, are pressurized and capable of high altitude operations, but do not require type ratings. This final rule, as proposed in the NPRM, includes new training requirements for pilots making a transition to high performance, high altitude airplanes. Advisory Circular No. 61–107 ["Operations of Aircraft at Altitudes Above 25,000 feet MSL and/or MAC Numbers (Mmo) Greater Than .75"] will be available to guide both pilots and training organizations in the implementation of the new training requirements. The material is based on current practices, Advisory Circulars, manufacturers' information, and other sources.

(a) High Altitude Flight and Ground Training Requirements

NPRM No. 89–14 proposed a requirement for pilots to complete ground and flight training on high altitude flight prior to transitioning to a pressurized airplane with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet mean sea level (MSL).

Some of the pressurized airplanes that will be affected by this new high altitude training rule are:

1. Piper Aircraft Company: Piper Cheyenne Series 31T, 31T–1, 31T–2, 42–700, and 42–1000; Piper currently does not manufacture any single engine airplanes that will be affected;

2. Cessna Aircraft Company: Cessna 414, 421, 425, 340, and 441; Cessna 500 series; and Cessna 600 series; Cessna currently does not manufacture any single engine airplanes that will be affected;

3. Beech Aircraft Company: Beech King Air Series 90, 100, 200, 300, 350; Beech 2000 (Starship); and Beech 400 (Beech Jet); Beech currently does not manufacture any single engine airplanes that will be affected;

4. Mooney Aircraft: Mooney currently does not manufacture any single engine airplanes that will be affected; and

5. Others: EMB–120; MU–300; G–1159; SA–226/227; SF–340; and F–28.

Note: This is not an all-inclusive list, but merely a representative sample of pressurized airplanes that will be affected by this new high altitude training rule.

Thirty-three comments on high altitude training were received. Eighteen

respondents favored the requirement and 15 opposed it. Opponents of the proposal generally favored maintaining present regulations. Several commenters said that the industry has policed itself by including this training in its own programs.

AOPA ASF expressed limited support for such an amendment. In lieu of adding a new section, AOPA ASF suggested an addition to current § 61.31(e) (which requires an instructor endorsement for high performance airplanes) that would require an endorsement for a pilot to fly a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL."

GAMA and SSA, both supporters of the proposal, recommended deleting from the proposed rule the reference to including in the curriculum "the history and causes of some past accidents and incidents involving the pressurization of systems of the airplane." SSA questioned the availability of the historical information, and said other aspects of the proposal would cover the most likely accident causes related to pressurization systems. GAMA found the language inappropriate for a regulation, even though the concept of learning from past mishaps may be a useful learning tool.

ALPA, which also supported the proposal, stated that a pilot who flies at an altitude where hypoxia or other physiological problems may affect performance should understand those phenomena.

AOPA and EAA both said that the FAA had not presented significant evidence in support of the proposal. They said they believe that the selection of 25,000 feet MSL was arbitrary and without foundation. AOPA said it would support an Advisory Circular outlining recommended high altitude training. One other commenter recommended a generic high altitude rating for pilots who fly above 14,000 feet MSL.

As stated in the NPRM, there has been concern among the NTSB, the FAA, and the public about the ability of general aviation pilots to make a transition to pressurized high performance airplanes, including turbine-powered airplanes capable of high altitude flight, without sufficient appreciation of the capabilities and limitations of these airplanes. The proposed training requirements include ground training on high altitude aerodynamics and meteorology, hypoxia and other high altitude sickness problems, the effects of prolonged usage of supplemental oxygen, and other physiological aspects of high performance, high altitude flight. There also is a flight training requirement to perform a flight in an airplane or an approved simulator at an enroute altitude above 25,000 feet MSL at normal cruise. While current criteria may require a pilot to demonstrate ability to control the airplane under normal flying conditions, they do not ensure that the pilot is competent to cope with other demands consistent with the unique characteristics of the airplane in a high altitude environment.

The determination of 25,000 feet MSL as high altitude for the purpose of these amendments has been made on the basis of established requirements including § 91.32(b)(i), which requires supplemental oxygen for pressurized aircraft flying above flight level (FL) 250, and §§ 121.417(e) and 135.331(d), which require advanced instruction in hypoxia, respiration, and other factors and emergencies related to high altitude flight for crewmembers who serve in operations above 25,000 feet MSL. Certain supplemental oxygen requirements under §§ 121.331 and 121.333 also begin above FL 250.

The FAA has also taken note of comments in support of adding a requirement for pilots to attend a physiological training course including the use of a high altitude chamber. Although such additional training would be beneficial, this issue goes beyond the scope of the initial NPRM, and would therefore be inappropriate to add at this time. However, the FAA invites further public comment and may consider the issue in Phase 2 of the regulatory review.

As a matter of clarification, and in response to recommendations received at the public hearings, § 61.31(f)(1)(ii) has been modified from the wording published in NPRM No. 89–14. The FAA wants instructors to understand that the intent of this rule is to require rapid descents only to simulate emergency "rapid decompression" procedures, not to perform any act that would actually depressurize the airplane. In one specific accident that occurred a few years ago, evidence indicated that the instructor may have deliberately depressurized the airplane. The FAA wants it known that it does not condone any deliberate rapid depressurization of an airplane in a nonemergency situation. Rapid depressurization of an airplane is an extremely dangerous procedure and should never be done intentionally for training purposes. The FAA has determined that a transfer of knowledge and skills can be obtained by receiving training on emergency descent procedures. This training will require the trainee to don the oxygen mask, turn on the supplemental oxygen controls, configure the airplane for an emergency descent, and perform the emergency descent.

Based on public comment and NTSB Safety Recommendations A–82–127 and A–82–128, the FAA believes that aviation safety would be served by requiring high altitude training, as proposed. Simply requiring an instructor's endorsement for high altitude airplanes, without specifying the training in the rule, as AOPA ASF suggests, would fall short of the intent of this regulation. The rule establishes that training in high altitude operations is specifically required for the pilots of the affected airplanes. The flight training above 25,000 feet MSL required by this amendment is intended for normal cruise flight. Simulated depressurizations and rapid descents required by this rule can be practiced below 25,000 feet MSL. Additional guidance on high altitude training will be available in Advisory Circular No. 60–21, "Announcement of Availability: A Series of Aeronautical Decision Training Manuals."

Section 61.31(f)(1)(ii) permits the flight training to be accomplished in a simulator that meets the requirements of § 121.407. An additional rulemaking is in progress to expand the use of simulators under part 61 and eliminate the need for cross references.

The rule contains a "grandfather" provision, so that pilots already qualified in a pressurized airplane with a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL would not be required to undergo the training. In addition, prior accomplishment of a pilot proficiency check for a pilot certificate or rating, either in an appropriate airplane or in a simulator that meets the requirements of § 121.407, would meet the intent of the "grandfather" provision. The rule also contains a provision allowing a pilot-in-command check by the U.S. military or one completed under part 121, 125, or 135 to substitute for the requirement if that check is either in an appropriate airplane or in a simulator that meets the requirements of § 121.407.

The FAA invites further public comment during Phase 2 of this regulatory review, on the issue of special qualifications or requirements for flight instructors who provide this high altitude training. For example, the Michigan Aeronautics Commission expressed concern over the lack of experience requirements in the amendment for flight instructors giving training above 25,000 feet MSL. The Commission proposed that the

requirements for flight instructors who perform this training include training in a high altitude chamber, attending ground training on physiological effects of high altitude flight and aerodynamics, and establishing a base level of flight experience.

One modification to the NPRM proposal requires a high altitude logbook "endorsement" rather than a "written statement" as stated in NPRM No. 89–14. This change was made throughout the rule to make the terminology of the new amendments consistent with current regulations. Current regulations require either a logbook "endorsement" or simply that a flight instructor "certify" in the pilot's logbook or training records that training has been provided. A "sign-off" on a part 61 or 141 training record would be acceptable for purposes of high altitude training. The addition of the new term "written statement" would only create confusion.

A second modification to the proposal stated in the NPRM deletes the clause "the history and causes of some past accidents and incidents involving the pressurization of systems of the airplane" from proposed § 61.31(f)(1)(i). This clause was removed after consideration of comments received from GAMA and SSA.

(b) Airplane Type Rating Training

NTSB Recommendations A–82–127 and A–82–128 state that a structured training curriculum for pilots applying for a type rating in turbojet airplanes would ensure an acceptable level of knowledge of turbojet performance characteristics and operating environment. Public comments on this issue prior to formulation of the NPRM, including statements from AOPA, AOPA ASF, and NATA, generally supported the tenor of this recommendation.

NPRM No. 89–14, therefore, proposed to establish a training curriculum requirement appropriate to the airplane type rating being sought. The NPRM proposal extended the scope of the NTSB recommendations to include all airplanes requiring type ratings rather than limiting the training to pilots of turbojet airplanes.

Seventeen public comments were received on the issue of airplane type rating curricula. Eleven favored the amendment and 6 opposed it.

AOPA, AOPA ASF, and EAA expressed opposition based on the present flexibility of curricula available to ATP and airplane type rating applicants. They stated that inclusion of a curriculum in the FAR would unnecessarily require future amendments to follow the rulemaking process, thus slowing the process of meeting new demands, technologies, and innovations.

GAMA, SETP, FlightSafety, and other supporters of the amendment expressed views on the importance of improved training. ALPA expressed support of the proposal and stated that the proposal would provide for standardized and appropriate airplane type rating training. GAMA supported the proposal and said it believes the curriculum should include all items currently required by the ATP practical test. GAMA recommended revising the proposed curriculum to include standards for crew coordination, use of standard operating procedures, and judgment/pilot decision making. Resolving these issues is beyond the scope of this final rule, but further consideration will be given in Phase 2 of the review.

The FAA understands the concern regarding limited flexibility in adjusting curricula to meet changing technology. However, AOPA, AOPA AFS, and EAA appear to have misunderstood the NPRM proposal to read that the curriculum itself would be included in the rule. The amendment proposed in NPRM 89–14 would simply have established a requirement for a minimum airplane type rating curriculum. The FAA believes that an appropriately structured curriculum can permit sufficient flexibility, while at the same time respond to an identified need for more standardized training as the number and sophistication of turbine powered aircraft increase. A sample curriculum is outlined in Advisory Circular No. 61–89D; "Pilot Certificates: Aircraft Type Ratings" and is discussed in further detail later in this preamble.

This rule amends §§ 61.63, 62.157, and part 141 Appendix F and Appendix H to add completion of specific training to the list of requirements for obtaining an airplane type rating. The training will include the maneuvers and procedures of part 61 Appendix A "Practical Test Requirements for Airplane Airline Transport Pilot Certificates and Associated Class and Type Ratings," as appropriate to the airplane for which the type rating is sought. Pilots who obtain airplane type ratings through other approved programs, such as programs under parts 121, 135, and 141, or training centers operating under exemption, already receive training under approved curricula and therefore already meet the intent of this rule. They will face no additional training requirement.

The FAA has deleted the words "minimum curriculum" and "approved curriculum" from the proposed type-rating amendment in NPRM No. 89–14 to eliminate the requirement for FAA approval of training curricula. After review of the potential paperwork burden on the public and the additional workload on the FSDO's, the FAA has agreed to delete the FAA approval requirement. By providing a generic curriculum in Advisory Circular format and by specifically requiring that the training include the maneuvers and procedures of part 61, Appendix A, the FAA sees no need for required approval.

Advisory Circular No. 61–89D will be available at FSDO's, and contains a generic curriculum that will serve as a base upon which the school can elaborate in accordance with specific airplane data. The Advisory Circular emphasizes the building block method of learning.

Flight Reviews

Notice 89–14 proposed modification to the flight review requirements of § 61.57 (now covered in § 61.56). Under the proposal, pilots would have been required to complete a flight review in every category and class of aircraft in which they desired to exercise pilot-in-command privileges. The flight review would have consisted of ground and flight training appropriate to the level of certificate held for that category and class of aircraft. Multiengine airplane flight reviews would have sufficed for single-engine airplane reviews.

The proposal was formulated in part on the basis of input from the NTSB and the public. The NTSB, in its Recommendations A–79–96 and A–79–97, focused on multiengine airplanes. The Board cited a higher rate of fatal accidents related to engine failure in light twin-engine airplanes than in single-engine airplanes, and urged the FAA to adopt a requirement that the pilot in command of a multiengine airplane have successfully completed, within the previous 24 calendar months, a flight review in a multiengine airplane.

Some members of the public, prior to publication of NPRM No. 89–14, had advocated that flight reviews be taken in the most "complex" aircraft flown by a pilot. However, certain segments of the public, notably representatives of AOPA, advocated that changes affecting the scope and content of flight reviews be handled through advisory rather than regulatory methods.

The FAA's intent with the proposal was to respond to the increasing demands of aviation technology and the National Airspace System, and issues of pilot training and recurrent training requirements. General aviation pilots increasingly use sophisticated avionics and aircraft, and some representatives of helicopter, glider, and balloon pilot

groups and industry stated that category-specific flight reviews, at least, are necessary. The FAA, as well as the NTSB and segments of the aviation community, have noted with some concern that under current regulations, pilots may never need to seek additional training or evaluation by an instructor in a particular category or class of aircraft after receiving their initial certification. A flight review in a light single-engine airplane or a glider is legally sufficient under the existing rules for exercising pilot-in-command privileges in a sophisticated twin-engine airplane or helicopter.

Public reaction to the proposed revisions in NPRM No. 89–14 was largely negative. Seventy-eight comments were received on the flight review proposal in NPRM No. 89–14. Of those, 64 opposed the amendment. Opponents included AOPA, AOPA ASF, EAA, and NATA. The 13 commenters who favored the flight review proposal in NPRM No. 89–14 included ALPA, ERAU, FlightSafety, GAMA, the Michigan Aeronautics Commission, SSA, and the Wisconsin Bureau of Aeronautics.

The public, while expressing a widespread interest in continuing education for pilots, indicated significant disagreement with the approach set forth in the flight review proposal. Much of the general aviation community indicated that many or most pilots, due to prudence, insurance policy stipulations, or continued strong personal interest in maintaining and improving their piloting skills, already seek more than the legal minimum of recurrent training. However, many of those commenting stated that additional regulatory requirements would constitute a significant burden.

Opposition to the proposal centered on expected costs to individual pilots with multiple category and class certificates and ratings who currently fly different types of aircraft. In addition, a number of commenters expressed the view that pilots sufficiently regulate themselves in terms of recurrent training and do not need additional FAA-imposed requirements. One commenter stated that the FAA had substantially underestimated the number of pilots that would be affected. Based on airman registration data, the commenter said 66,755 pilots had multiple certificates and ratings. The FAA's projected costs were based on an estimate that 55,000 pilots would be affected by the multiple category and class flight review aspect of the proposal.

Although AOPA supported encouraging that a flight review be accomplished in the "most complex class of aircraft" to be flown, AOPA, AOPA ASF, and EAA commented that there were no safety data to justify the proposal. AOPA ASF said its review of NTSB data indicated that of pilots involved in accidents while flying a multiengine airplane, 80 percent had taken a flight review in a multiengine airplane and only 13 percent had taken a flight review in a single-engine airplane. EAA and AOPA expressed their opinion that the class of aircraft the biennial flight review (BFR) is conducted in should continue to be left to the discretion of the individual and their instructor by mutual agreement. They emphasized that the FAA had not substantiated a need for adopting the proposal.

On the other hand, supporters of the flight review proposal, such as GAMA, stated that differences between categories are too great to allow one to suffice for another. GAMA said that the same applied to aircraft classes. ALPA expressed concern that a pilot could take a single-engine airplane flight review and fly multiengine airplanes.

Several commenters, including some who generally supported most aspects of the proposal, objected to a provision that would have required the flight review training to be appropriate to the level of pilot certificate for that category and class. Other commenters suggested modifications to the proposal, such as rotating flight reviews in different categories and classes, or grouping aircraft in more general classifications for purposes of the flight review. For example, a multiengine airplane flight review would suffice for all other fixed-wing aircraft, including gliders, landplanes, and seaplanes.

The FAA has given extensive consideration to the comments submitted, and acknowledges that further analysis of the flight review issue is needed. As stated in the NPRM, it is difficult to derive actual cost figures for requiring flight reviews in each category and class of aircraft that a pilot exercises pilot-in-command privileges. This is because there are gaps in the registration statistics, and because it is difficult to verify how many pilots with more than one category and class on their certificate actively fly all those categories and classes of aircraft on their certificate.

AOPA ASF's research showing that 60 percent of pilots involved in multiengine accidents had taken flight reviews in multiengine aircraft appears significant. AOPA ASF's written comments did not specify the time period covered, total number of accidents, or other details. In response to EAA, AOPA, and AOPA ASF's comments, the FAA collected recent data on accidents, incidents, pilot deviations, and near mid air collisions. This data was analyzed in conjunction with NTSB data files on accidents following engine failures or malfunctions in light twin-engine aircraft that occurred from 1972 through 1976. The FAA found that the percentage of fatal light-twin accidents following engine failures is more than four times that for single-engine aircraft. However, recent accident, incident, pilot deviation, and near mid air collision data revealed a significant decrease in each category between 1987 and 1989. In analyzing these decreased numbers, the FAA examined NTSB accident and BFR data. A sampling tanken of 1985–1987 NTSB accident records showed that 96 percent of the pilots involved in accidents conducted their BFR's in the same category and class of aircraft that the accident occurred in. The FAA found that 56 percent of those pilots conducted their BFR in the same make and model of aircraft. Furthermore, only 2 percent of the accidents occurred in multiengine airplanes where the pilots had taken their BFR in a single-engine airplane.

Note: There were 3,301 accident records reviewed which represent 42 percent of total general aviation accidents for the years 1985 through 1987.

Therefore, the analysis of the accident data does not support the flight review proposal in NPRM No. 89–14. The FAA believes the decrease in accidents over the period reviewed may be attributed in part to increased voluntary proficiency training. This training can be seen, for example, in the increased number of instrument ratings issued between 1986 and 1988, and in increased participation in the Pilot Proficiency Award Program (also known as the "Wings" Program) over the same period.

Throughout this regulatory review, the FAA has sought to remain responsive to public input on the issues and proposals at hand. Full public participation has been sought and received throughout each step of the process, and the participation was particularly forceful in response to the flight review proposal of NPRM No. 89–14. Based on review of the public comments and data submitted, as well as further analysis of FAA data, the flight review amendment as proposed in NPRM No. 89–14 is not contained in this final rule. After reviewing the accident information, the FAA agrees that available data is insufficient to identify a direct link between safety problems and the expanded flight reviews proposed in NPRM No. 89–14.

The FAA believes in the value of recurrent training, and recognizes

support within the aviation community for regular training. The Pilot Proficiency Award Program (Wings Program), outlined in Advisory Circular No. 61–91F, is open to participation by all pilots holding a private pilot certificate or higher and a current medical certificate. The program provides for both recurrent ground and flight training. As stated earlier, this voluntary training program has gained increased recognition and support from the general aviation community over the past several years. Participation in the program increased by 32 percent from 1986 to 1987, and by 10 percent from 1987 to 1988.

Each phase of the Wings Program may entail some ground training and attendance in at least one safety meeting, and 2 or 3 hours of dual flight training. The safety meeting requirement can be met by attending an FAA or FAA-sanctioned aviation safety seminar, an industry-conducted recurrent training program, or a physiological training course conducted by the FAA, U.S. Air Force, or U.S. Navy. The training profile chosen for the program represents those phases of operation for each category of aircraft that have been identified from accident reports as most likely to produce accidents.

A number of commenters at the public hearings and in written comments received to the docket stated that successful completion of a phase of the Wings Program should satisfy the requirement for a BFR. The commenters believed that the Wings Program should have the same status as that afforded persons who satisfactorily complete a pilot proficiency check for a pilot certificate, rating, or operating privilege, as allowed by § 61.56(e). It is the FAA's desire to encourage further participation in the Wings Program and to accord it the proper significance for meeting recurrent training requirements. Thus the final rule provide successful completion of a phase of the Wings Program satisfies the flight review requirements of § 61.56. Advisory Circular No. 61–91F is being modified to provide for the review of part 91, "General Operating and Flight Rules." The endorsement described in that Advisory Circular must be present in the pilot's logbook or training record to meet the flight review requirements.

During the public hearings held in September and October 1989, the FAA also took note of public requests for increased standardization and guidelines for flight reviews. Several commenters noted that the approach, cost, and quality of flight reviews can vary widely from instructor to instructor. The FAA agrees that substantially greater uniformity in flight reviews is important, and therefore is including an outline for flight reviews, appropriate to each category and class, in Advisory Circular No. 61–98A, "Currency and Additional Qualification Requirements for Certificated Pilots."

The FAA appreciates the aviation community's participation in this rulemaking process. It is important to note that the FAA seeks and encourages public comment because the agency recognizes the need to obtain data and expertise from as many knowledgeable sources as possible. This input has received and will continue to receive serious consideration.

Stalls and Spins: Pilot Awareness, Training, and Testing

NPRM No. 89–14 included three proposals regarding stall/spin training for pilots and stall/spin training and testing for flight instructors of airplanes and gliders. The spin, a controlled or uncontrolled maneuver or performance in which the glider or airplane descends in a helical path while flying at an angle of attack greater than the angle of maximum lift, was a required training maneuver for pilot certification until 1949. It was deleted from the pilot certification requirements based on the high number of fatal stall and spin accidents, most of which occurred during training. The FAA has since placed greater emphasis on spin avoidance, particularly on training in the avoidance of unintentional stalls or unwanted unusual attitudes. This shift in training requirements resulted in a significant decrease in the number of stall/spin accidents since 1949. NTSB statistics indicate that stall/spin accidents fell from 48 percent of fatal general aviation accidents during the period 1945–48, to 22 percent during 1967–69, and to 12 or 13 percent in the 1970's. The stall/spin proposals in NPRM No. 89–14 constitute an effort to further reduce the already declining incidence of spin-related accidents in general aviation. The amendments contained in this rule will broaden stall and spin awareness training by emphasizing avoidance of unintentional stalls in addition to what is currently the more common procedure of practicing recovery from intentional stalls.

(a) Stall and Spin Awareness Training

The first of the three basic proposals would improve stall and spin awareness ground and flight training for airplane and glider pilots at the recreational, private, and commercial levels. As a result of the creation of the recreational pilot certificate, this final rule broadens the scope of the amendments to cover recreational pilots. This additional required training will incorporate the most effective types of training discussed in the FAA's 1976 report entitled *General Aviation Pilot Stall Awareness Training Study* (FAA–RD–77–26, September 1976). The study's emphasis is on training involving slow flight with realistic distractions and additional ground training in the subject of stalls and spins.

The new training will incorporate the essential elements of the *General Aviation Pilot Stall Awareness Training Study* in both ground and flight training for airplane and glider pilots, as recommended by the NTSB in its Recommendation A–78–43. As stated in the NPRM, the 1976 study concluded that additional ground training on stalls and spins tended to reduce the occurrence of unintentional stalls and spins. While the study concluded that "additional flight training on stall awareness and/or intentional spin training has a positive influence toward reducing inadvertent stalls and spins," it went on to state that "the most effective additional training was slow flight with realistic distractions, which exposed the subjects to situations where they are likely to experience inadvertent stalls." The study cited some examples of realistic distractions including asking the trainee to radio for weather information, getting something out of the glove compartment, picking up a dropped pencil, getting something from the rear seat, or computing true airspeed or density altitude with a flight planning computer. Indeed, the study found that spin training "might not be feasible."

General reaction to the proposal was favorable. Twenty-four commenters favored the requirement to enhance stall and spin awareness and recovery training, as proposed. All of the principal organizations commenting on the proposal, including ALPA, AOPA, and AOPA ASF favored, in varying degrees, were in favor of the expanded stall and spin awareness training. The Michigan Aeronautics Commission stated, "with additional stall awareness training, is the most germane and realistic method to teaching stalls/spins, without imposing unrealistic demands on general aviation. We believe that mandatory demonstration of spins for private and commercial pilot applicants is not in the best interest of pilots, [flight instructors], pilot examiners, and the general aviation community." SSA concurred with the revisions, but suggested a clarification in §§ 61.105 and 61.125, "aeronautical knowledge." In

which stall and spin awareness will be included.

Ten commenters opposed the stall and spin awareness training amendment. Much of this opposition was based on a preference for reinstating a requirement for actual spin training for all pilots.

SETP, in association with SAFE, was concerned that the NPRM proposal advocated ground training only. They suggested mandatory spin training in an approved utility class aerobatic trainer.

Note of Clarification: The required flight training for pilot applicants includes flight at slow airspeeds with realistic distractions and the recognition of and recovery from stalls entered from straight flight and from turns, but do not include a requirement for actual spin training for pilot applicants. However, actual spin entry, spins, and spin recovery training in flight is required for flight instructor-airplane and flight instructor-glider applicants.

Proponents of more extensive flight training that would include spin training maintained that stall and spin awareness and spin avoidance training make pilots afraid of spins and are ultimately unsafe. One commenter called spin awareness training a "failed concept." Other commenters said that many instructors are afraid of spins and pass that fear along to their students.

NATA, on the other hand, while supporting the NPRM proposal, said it was "disturbing that spins and stalls are always grouped together. In our view, a flight instructor should not demonstrate spins to student pilots, but rather, should concentrate on stall recognition and recovery. What should be stressed in training is the avoidance of conditions leading to a stall so that a spin is not entered into by the pilot."

That concept is the essence of what the NPRM proposed and of the amendment adopted in this final rule. While the FAA has no basis for discouraging qualified instructors from demonstrating spins or training pilots in spin entry and recovery under appropriate circumstances, the FAA is not requiring such demonstration or training. From a safety point of view, the critical element remains heightened awareness of recovery from stalls before a spin develops, as well as recognition of the conditions that can lead to inadvertent stalls. This was the conclusion of the *General Aviation Pilot Stall Awareness Training Study*.

Although the NTSB recommended in 1972 that the FAA evaluate the feasibility of requiring at least minimal spin training of all pilot applicants, the NTSB's statistics indicate that most spin accidents occur at altitudes too low for spin recovery to be effected. The 1972 NTSB *Special Study, General Aviation Stall/Spin Accidents 1967-69*, found that of 1,281 stall/spin accidents during that 3-year period, 60 percent occurred during takeoff or landing. Of the remaining 40 percent, most were related to acrobatics or low-level flight from which recovery from a fully developed spin would have been unlikely. Only about 7 percent were associated with cruise flight.

Thus, based on the 1976 FAA study and accident trends, this final rule does not require spin training at any certificate level other than flight instructor. The amendments incorporate into the regulation the types of training found to be most effective by the *General Aviation Pilot Stall Awareness Training Study*, namely, slow flight with realistic distractions and additional ground training in the subject of stalls and spins, in addition to current training in stall recognition and recovery. In conjunction with the issuance of this rule, the FAA is preparing Advisory Circular No. 61-67B: "Stall Awareness and Spin Training" to clarify the additional stall and spin awareness training and to ensure that the contents of the *General Aviation Pilot Stall Awareness Training Study*, including the complete list of realistic distractions cited in that study, are made available to all pilots and pilot training schools. Additional requirements for flight instructors are discussed in the following section.

As stated in the NPRM, the rule changes affect §§ 61.105 and 61.125, aeronautical knowledge requirements for private and commercial pilot applicants. Sections 61.107 and 61.127, "flight proficiency requirements" are also affected. The new requirements will also be incorporated into pilot certification under part 141, including appendix A, Private Pilot Certification Course (Airplanes), and appendix D, Commercial Pilot Certification Course (Airplanes). And, even though the proposed amendments in the NPRM referred to private and commercial pilot training, this final rule contains additional amendments to include recreational pilot training. Accordingly, additional amendments are contained here, affecting subpart C, Student and Recreational Pilots, §§ 61.97 and 61.98. This is in keeping with the spirit and intent of the proposed amendments to emphasize the importance of increased stall and spin awareness and training for all airplane and glider pilots.

One such amendment includes the deletion of the word "critically" in § 61.98(a)(5) as applied to slow airspeeds in recreational pilot flight proficiency requirements. This was done for purposes of consistency. Eliminating the word "critically" leaves the selection of airspeed, below cruise, to the examiner's discretion for safely testing proficiency of training in this area.

(b) Spin Training for Flight Instructors

The other 2 stall/spin proposals presented in the NPRM concerned satisfactory demonstration of spin entry, spins, and spin recovery by flight instructor-airplane and flight instructor-glider candidates. NPRM No. 89-14 proposed a requirement for a logbook endorsement for flight instructor-airplane and flight instructor-glider candidates that states the candidates received training in spin entry, spins, and spin recovery techniques and demonstrated satisfactory proficiency in those maneuvers. At the discretion of the FAA Inspector or Designated Pilot Examiner conducting the practical test, they may accept the logbook endorsement in lieu of an actual demonstration of spin entry, spins, and spin recovery maneuver on the practical test. The FAA also proposed in Notice No. 89-14 that flight instructor-airplane and flight instructor-glider candidates who fail the practical test due to unsatisfactory knowledge of stall awareness, spin entry, spins, or spin recovery techniques would be required to bring an aircraft to the retest that is certificated for spins. The candidate would then be required during the retest to demonstrate satisfactory knowledge and skills on stall awareness, spin entry, spins, or spin recovery techniques.

Eighteen comments were received on the issue of spin training for flight instructors. All favored the requirement for a logbook endorsement showing that flight instructor candidates have received spin entry and recovery training. AOPA also favored continued discretion for inspectors conducting examinations, an FAA policy that will be maintained.

The FAA agrees with SSA's comment that any applicant seeking flight instructor certification in any airplane or glider class should be required to receive spin training. However, SSA also noted that proposed § 61.183(e) did not require spin training to be performed in the aircraft category in which the applicant seeks flight instructor certification. This would have allowed a flight instructor-glider applicant to receive required spin training in airplanes without holding an airplane category rating, as long as the flight instructor providing the training was appropriately certificated and rated in gliders as well as in airplanes. SSA also commented on the reference in

§ 61.183(e) to "an applicant for a flight instructor-airplane single-engine land." SSA said it noted no provision in § 61.5(c)(2) for the inclusion of "land" or "sea" on the flight instructor certificate, and stated that any applicant seeking flight instructor certification in any airplane class or in gliders should be required to receive spin training.

Twenty-three comments were received on the issue of flight instructor candidates demonstrating spins on the retest if the candidate failed the practical test due to deficiencies of knowledge or skills relating to stall and spin awareness. Seventeen commenters favored this amendment and 6 opposed it. ERAU stated that additional instruction and practice in spins with properly logged documentation of the instruction would be more appropriate than requiring a spin demonstration on the retest for flight instructor certification. Other commenters opposed to the amendment cited the limited number of spinable aircraft available and the additional burden of requiring more than one aircraft on the practical test in some cases. The FAA believes that the additional burden of locating a spinable aircraft and requiring more than one aircraft on the practical test in some cases, will be justified by improved safety and assurance that all flight instructors are competent and knowledgeable in the subject of spin entry and recovery. Most commenters appeared to recognize the importance of flight instructor skill and knowledge in the area of stalls and spins.

This rule amends §§ 61.49, 61.183, and 61.187 to require that applicants for flight instructor certificates, airplane and glider, present a logbook endorsement of spin training, and to require a mandatory demonstration of spins on a retest for flight instructor certification if a candidate for the aforementioned certificates failed either the oral or flight portion of the practical test due to deficiencies in stall/spin awareness and associated procedures and techniques. The examiner has the option of requiring spins on the initial flight test and retains discretion to require a spinable aircraft for that test. Thus, while the FAA intends that spin demonstration still may be required on the initial flight instructor test, airplane or glider, a demonstration of spin entry and recovery will be required on the flight instructor retest if the candidate failed because of deficiencies in knowledge or skill related to stalls or spins.

It is the intent of the FAA to ensure that all glider and airplane flight instructors can safely recognize and recover from spins. This will require the applicant to initiate the entry into the spin maneuver, complete at least one full turn (360 degrees of rotation), and recover using acceptable FAA standards.

This final rule includes several minor changes to §§ 61.183(e) and 61.187 as proposed in the NPRM that clarify the intent of the rule. The rule specifically requires flight instructor applicants, airplane and glider, to have accomplished spin training in an aircraft of the appropriate category that is certificated for spins. Multiengine airplanes may be used for this required spin training by multiengine flight instructor-airplane applicants, only if the airplane is spin-certificated. Such airplanes exist, but are not common.

Therefore, the FAA has not included a class requirement for spin training, thus allowing multiengine flight instructor-airplane candidates to receive their spin training in single-engine, spin-certificated airplanes. The original proposal in NPRM No. 89-14 would have required only applicants for a flight instructor-airplane single-engine land or flight instructor-glider certificate to present the logbook endorsement from an appropriately certificated and rated flight instructor. Under that proposal, an applicant for a flight instructor certificate intending to take the practical test in a multiengine airplane, having never accomplished a previous flight instructor practical test in a single-engine airplane, conceivably might have by-passed this requirement. This final rule is, therefore, clarified to reflect the FAA's intention that the required logbook endorsement reflect spin training in the category in which the applicant seeks certification. These modifications respond to the comments and queries from SSA cited earlier. "Single-engine land" has been eliminated from §§ 61.49(b) and 61.183(e) and replaced with "in an aircraft of the appropriate category that is certificated for spins." This clause was also added to proposed § 61.187. The endorsement must certify that the flight instructor has given the applicant training in spin entry, spin, and spin recovery in an aircraft of the appropriate category that is certificated for spins and has found the applicant competent and proficient in those training areas.

In § 61.183(e) the word "those" was changed to "all" in describing the items in which instruction is required by § 61.187. This modification eliminates any ambiguity about which items are required for flight instructor training. For certification purposes, however, it is the FAA's intention to maintain the current policy of allowing examiner discretion on the practical test with regard to spin demonstration. Section 61.183 has been amended to make this policy clear in the regulation.

Pilot Schools—Chief Instructor Availability

NPRM No. 89-14 proposed modifications to §§ 141.35 and 141.65 to define more clearly the supervisory role of chief instructors and to clarify the requirement for chief instructor availability during the time that instruction is given for an approved course of training. The FAA has noted different interpretations of what availability means for chief instructors or their assistants at part 141 schools. The FAA believes that a person can be on duty and immediately "available" for the purpose of supervisory duties via various common electronic means, such as telephone, radio, and paging systems, without hampering safety. These changes were intended to reconcile potential conflicts in chief instructor duties while maintaining stringent standards for designating chief instructors under part 141.

A total of 17 comments were received on the proposal to clarify chief instructor availability requirements to include electronic means. All comments, including those from principal organizations, indicated overwhelming acceptance of this proposed amendment. Comments cite the elimination of an undue burden on industry and the use of modern communications to allow easy contact with the chief and assistant chief instructor if needed. AOPA and EAA agree that someone of authority should be available at all times when flight instruction is in progress, but physical on-site availability is unnecessary. ERAU stated that chief instructor availability through electronic means will adequately cover any situation in which direct involvement becomes necessary.

This final rule changes §§ 141.35 and 141.65(b) to clarify the availability of the chief and assistant chief instructor to include electronic means. Availability in the local flying area by telephone or radio while instruction is being given would satisfy the intent of the rule and provide a favorable training atmosphere. This change to § 141.65(b) serves to define more clearly the chief instructor's role as supervisory, rather than requiring the chief instructor's physical presence at all times during which instruction is being given. This change is designed to enhance efficiency and align

the FAR with FAA policy as expressed in FAA Order 8710.5 and Advisory Circular 141-1.

Satellite Bases

NPRM No. 89-14 proposed to amend § 141.91(a) to eliminate the 25-nautical mile maximum limit on the distance between satellite bases and the main operations base. The intent of § 141.91(a) has been to ensure that a chief instructor is readily available for consultation. The proposed amendment to § 141.91(c) requires the designation of an assistant chief instructor in charge at each satellite base.

The FAA has granted exemptions from § 141.91(a) when petitioners demonstrated that more distant satellite bases could be supervised in a manner that satisfied the intent of the rule without adversely affecting safety. As a result of experience in a number of exemption cases, the FAA believes that improvements in transportation and communications systems no longer require that pilot schools' operations be confined to satellite bases within very limited distances from the main base. It is feasible for pilot schools to establish satellite schools and ensure adequate home base control, including supervision by a chief or assistant chief instructor as well as FAA surveillance.

Twelve comments were received on this issue. All commenters expressed support of the proposed amendment. NATA noted that by allowing satellite bases to be established more than 25 nautical miles from the main operations base, flight schools will gain flexibility and the quality of training may be enhanced by exposing students to a wider variety of operating environments. NATA also expressed concern about the impact this amendment could have on economic activities at airports by allowing a flight school to operate a satellite base on a regular basis without an operating agreement with that airport and/or one of its tenants. ERAU stated that the FAA will have to provide additional guidance for the designation of responsible district offices and approval of training course outlines (TCO's) when a school establishes one or more satellite bases.

This final rule modifies § 141.91 by eliminating the 25-nautical mile maximum limit on the distance between satellite bases and the main operations base, and by requiring the designation of an assistant chief instructor in charge at each satellite base. Policy will be set by a central chief instructor and standards set forth in the school's master TCO will be maintained. The assistant chief instructors in charge at the satellite base will be responsible for remaining "available" for supervisory purposes at the satellite bases to which they were assigned, either in person or via the electronic or telephonic means discussed in the changes to § 141.85(b).

Chief and Assistant Chief Flight Instructor—Experience Criteria

The last rulemaking action presented in NPRM No. 89-14 proposed eliminating the need for a chief flight instructor candidate who meets all other criteria to have instructed 100 hours in the preceding year, and proposed reducing by one-half the prerequisite hours and years of experience required of assistant chief flight instructor applicants. The NPRM also proposed adding a new section to separately list experience criteria for assistant chief flight instructors.

These amendments recognize the need for chief flight instructors and assistants who can meet demands as senior management personnel as well as flight instructors. Requiring recent instruction experience impedes more senior personnel whose substantial experience includes supervisory experience from designation as chief flight instructors. Exemption activity has indicated the value of such personnel, and the FAA believes it is desirable to stress the supervisory aspect of the chief flight instructor's job.

Given the largely supervisory nature of the chief flight instructor job, it is important to facilitate designation of assistant chief flight instructors to whom responsibility can be delegated. The present total experience time requirements are the same for chief and assistant chief flight instructors. The FAA believes it is possible to halve the total required hours for assistant chief flight instructors, who will continue to face stringent FAA-administered oral and flight examining procedures.

Twenty-one comments on the chief and assistant chief flight instructor experience criteria proposal were received. Nineteen commenters, including the principal organizations, favored the proposal in the NPRM and two commenters opposed it. AOPA ASF, NATA, and ERAU said they believe that the 100-hour requirement for chief flight instructor candidates constitutes an obstacle to highly qualified candidates who have substantial and varied flight experience and who meet all other criteria. ERAU suggested that the FAA, in revising chief flight instructor qualifications, should have considered the requirements of § 141.79(c) and eliminated the requirement for annual refresher courses which are designed primarily for the least active flight instructors. AOPA and EAA said they believe that reducing experience criteria for chief and assistant chief flight instructor candidates will provide a stepping stone earlier in a pilot's career and will enhance the status of flight instructors. One commenter noted that the status of flight instructing as a profession, and not as an early stepping stone to the airlines, needs to be enhanced. The commenter supported the NPRM proposals as a means of providing an opportunity for greater responsibility earlier in a flight instructor's career. Commenters opposed to the amendment said they find present criteria adequate.

Requests to allow the assistant chief flight instructor to do phase checks have been received from the public. Under the current rule, an assistant chief flight instructor can be designated to do phase checks. The chief flight instructor can designate almost all duties to a qualified and designated assistant chief flight instructor. Assistant chief flight instructors are subject to the same stringent requirements as chief flight instructors and will continue to be required to take a flight test given by the FAA. The amendment reduces experience requirements, but maintains a high standard of proficiency for assistant chief flight instructors.

The comments received supported the NPRM, and after due consideration, no changes to the proposal have been made. The final rule amends § 141.35 by eliminating the 100-hour recency of experience requirement for chief flight instructors. The final rule establishes flight time and experience requirements for assistant chief flight instructors to one-half that of chief flight instructors. This rule also establishes the requirement that chief flight instructor candidates hold a valid flight instructor certificate and meet pilot-in-command recent flight experience requirements as set forth in § 61.57. Section 141.36 is added to separately list such criteria for assistant chief flight instructors. These criteria are different enough from those for chief flight instructors to warrant a separate listing. The FAA believes that safety standards can be maintained and that flight training operations can be facilitated by reducing the total hour requirements that assistant chief flight instructors must meet. The additional requirement for assistant chief instructors at satellite bases provides increased opportunity for professional development. The purpose of this rule is to emphasize the supervisory responsibility of the chief instructor over the activities of instructors, assistant chief instructors, and other aspects of school operations.

Additional Changes

SSA pointed out that the current wording of §§ 61.105(b)(4) and 61.125(c)(4) implies that glider pilots must be familiar with both ground and aero tow procedures. They went on to point out that ground launches are used at relatively few glider sites nationwide, and that private and commercial glider pilot privileges are limited to the launch method satisfactorily demonstrated on the flight test. The FAA agrees with the comment, and this final rule modifies those sections to include "ground and/or aero tow procedures as appropriate." This modification clarifies that the requirement applies only to the type of tow in which the pilot has been certificated on the practical test. Although this change was not contained in the NPRM, the FAA believes it is appropriate to make the change at this time, because it does not increase requirements and is in conformance with standard industry practice.

Editorial Changes to the NPRM

This final rule includes several non-substantive editorial changes made to NPRM No. 89-14, and to affected paragraphs of the current rule that have been modified as a result of this rulemaking action but that were not included in NPRM No. 89-14. These include the addition or deletion of articles such as "an," punctuation, and correction of typographical errors.

Obsolete Dates and Gender References

The parts 61 and 141 sections from which obsolete dates and gender references have been removed are:

Obsolete dates (§§)	Gender references (§§)
61.1(b)	61.49.
61.58(a)	61.57(a)(1),(a)(2),(b)(2).
61.71(b)	61.58(a).
61.113(a),(b),(d),(e)	61.71(a).
61.131(a),(b)	61.193.
61.195(b)	61.195(b).
61.201(a)	61.201(a).

141.29(a),(b)
141.33(a)(1),(a)(1)(f),(a)(2)
141.85(b)

Paperwork Reduction Act Approval

Information collection requirements for Parts 61 and 141 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Part 61, §§ 61.13 through 61.197, and part 141 have been assigned OMB control numbers 2120-0021 and 2120-0008, respectively.

Regulatory Evaluation Summary

The FAA's analysis indicates that the amendments in this revision to parts 61 and 141 would not have a significant economic impact on the public or any level of government on an annual basis. The amendments are intended to update certain requirements, and in some cases relax requirements when compensating factors can ensure that safety standards will be maintained. This section summarizes the conclusions of the regulatory evaluation of the comparative costs and benefits of the amendments. The complete Regulatory Evaluation, Regulatory Flexibility Determination, and International Trade Impact Assessment have been placed in the docket.

The FAA concludes that the amendments to parts 61 and 141 are economically justified. Benefits stemming from averted accidents due to the amended rules would compensate for the additional training expenditures resulting from the revised requirements. The FAA projects the ratio of benefits to costs to be approximately 1.8:1. Over a 10-year period, estimated discounted costs of implementing the amendments would total $51.8 million, compared with an estimated discounted potential savings of $85.2 million in averted accidents. Many of the amendments would have little impact on training costs or pilot school operational expenditures other than to help improve efficiency. The amendments to part 141 update the rules on pilot school operations and relax certain requirements which no longer serve their original purposes. The economic effects of the amendments, if any, would favor the schools. In no case are any adverse effects on safety foreseen.

Section 61.31(g) Tailwheel Airplanes

As the general aviation fleet has been modernized, fewer pilots receive training in tailwheel airplane operations. In response to this trend, the change in § 61.31(g) requires a one-time flight instructor endorsement indicating that a pilot is competent to operate tailwheel airplanes. The endorsement certifies that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings unless the manufacturer has recommended against such landings, and go-around procedures.

In NPRM No. 89-14, the FAA noted that recent statistics show that tailwheel airplanes continue to experience a disproportionate share of general aviation accidents. In its comments on the NPRM, the Aircraft Owners and Pilots Association (AOPA) provided accident data for the years 1983-1988. According to AOPA, 6 percent of tricycle gear airplanes and 5 percent of tailwheel airplanes were involved in accidents during the landing phase of flight. AOPA also stated that 9 percent of tricycle gear airplanes and 12 percent of tailwheel airplanes were involved in accidents during the takeoff phase of flight.

Another commenter to NPRM No. 89-14 stated that the analysis should focus on accidents that occur in the taxi, takeoff, and landing phases of flight. The commenter stated that the primary problems of tailwheel airplanes occur on the ground and during takeoff and landing.

These comments prompted the FAA to reexamine the accident statistics for tailwheel airplanes versus tricycle gear airplanes (piston powered only in both types) in the taxi, takeoff, and landing phases of flight.

This re-examination of accident data confirmed the previous conclusions that tailwheel airplanes have a disproportionately high accident rate. For example, between 1983 and 1988, tailwheel airplanes had an average rate of 14.46 accidents per 1,000 active tailwheel airplanes as opposed to tricycle gear airplanes which had an average accident rate of 9.05 accidents per 1,000 active tricycle gear airplanes. The average accident rate per 1,000 tailwheel airplanes from 1983 to 1988 is approximately 60 percent higher than for tricycle gear airplanes.

The FAA believes that the required endorsement would affect only pilots changing from tricycle gear to tailwheel airplanes. Pilots who initially train in tailwheel planes are already required to receive flight instructor endorsements for solo practice and cross-country operations, including an endorsement of pilot competency in airport and traffic pattern operations. The rule change is intended to preclude a certificated pilot from making a transition from tricycle gear airplanes to tailwheel airplanes without receiving sufficient training.

One commenter noted that in the initial regulatory evaluation, the FAA used a ratio based on the number of student pilots to estimate the number of pilots who transfer to tailwheel airplanes. The commenter felt that this was not an accurate ratio because very few pilots take primary training in tailwheel airplanes. In response to this comment, the FAA has researched additional data on the number of tailwheel airplanes and pilots who may be affected by the required endorsement by estimating the number of tailwheel airplanes used primarily for instruction.

The FAA estimates that of the total number of pilots who make a transition to tailwheel airplanes each year, 4,500 would incur additional costs as a result of the amendment. Not all transitioning pilots have been considered for purposes of this evaluation because public response, including from commenters opposed to the requirement, generally agreed that this training is already standard practice in general aviation. Therefore, relatively few pilots should actually be affected by the rule in practical terms. Using average operating costs of $40 per hour for a single-engine piston tailwheel airplane, $20 per hour for a flight instructor, and 5 hours training time, it would cost each pilot an estimated $300 to obtain this training and endorsement. This would not include recurrency training in operations and maneuvers not unique to tailwheel airplanes for a pilot who is out of practice, because such training is not discussed in this amendment. If 4,500 pilots per year received transition instruction as a result of the rule, the annual implementation cost of the amendment would be $1.35 million in 1989 dollars. This would be equivalent to the savings realized if 0.6 fatal accidents were prevented each year as a result of the amendments (single-engine piston airplane, 1.5 fatalities per accident). If the rule reduced tailwheel accidents by 2 percent per year, the benefits in 1989 dollars would be about $15 million, nondiscounted, and $11.25 million, discounted, over 10 years. This would average $1.23 million discounted per year. Over 10 years, the discounted benefits-to-cost ratio would be 1.1:1.

Section 61.31(f) High Altitude Operations

Amended § 61.31(f) requires completion of specified flight and ground training by pilots intending to act as pilot in command of pressurized airplanes with service ceilings or maximum operating altitudes, whichever is lower, above 25,000 feet MSL. Most airplanes that fit this description also require type ratings; thus the high altitude training would be incorporated into the type rating training requirement in § 61.63. Section 61.31(f) is designed to extend the high altitude training to pilots making a transition to reciprocating engine and turboprop airplanes that do not require type ratings but that are pressurized and operate at high altitudes. The requirements under § 61.31(f) are analyzed in relation to airplanes that do not require type ratings. This training was specifically omitted from the part 141 appendixes A, F, and H proposals in NPRM No. 89–14.

Based on the general aviation fleet and airman statistics, the FAA estimates that 1,250 pilots annually make a transition to airplanes that operate at high altitudes but do not require type ratings. A special 3-hour ground training session for high altitude flight plus 1 hour of flight training might typically cost a pilot $450. This cost estimate takes into account the possibility that a pilot might accomplish the required flight training in a simulator and also the development costs for the high altitude training. Commenters to NPRM No. 89–14 who opposed the amendment noted that this type of training is frequently a condition for pilots to obtain insurance. The FAA acknowledges that a growing number of pilots are taking advantage of transition programs offered by manufacturers and major training enterprises, thus reducing the number of pilots who would require the additional training as a result of the amendment. The FAA estimates that each year one-half (625) of these pilots may be affected by the additional training as a result of this amendment; thus, the cost increase in 1989 dollars would be approximately $281,250.

If the additional training requirement prevents 0.5 percent of the current number of fatal turboprop airplane accidents for which type ratings are not required, the savings in 1989 dollars would be about $300,000 per year. The FAA projects that over a 10-year period, the discounted benefits-to-cost ratio would be 1.2:1.

Section 61.63 Type Rating Training

Amendments to §§ 61.63(d) and 61.157(f) and part 141 appendix F require training for pilots seeking type ratings. These amendments require completion of training appropriate to the airplane for which the type rating is sought. Most airplanes for which type ratings are required are pressurized and have service ceilings or maximum operating altitudes, whichever is lower, above 25,000 feet MSL, and thus pilots who receive type rating training for these aircraft must have received the high altitude training required by § 61.31(f) prior to acting as pilot in command. Therefore, the cost of the type rating training required under §§ 61.63(d) and 61.157(f) and part 141 appendix F examined here includes costs associated with the high altitude requirement for airplanes requiring type ratings.

Implementing the amendments could increase training expenses for pilots or their employers, which in many cases are corporate flight departments and other operations under part 91. Advisory Circular No. 61–89D, which is being issued in conjunction with this amendment, contains a generic curriculum that will serve as a base upon which schools can elaborate in accordance with specific airplane data.

In *FAA Aviation Forecasts Fiscal Years 1989–2000*, the FAA forecasts that the turbine-powered segment of the fixed wing fleet will grow more quickly than the piston fleet during the next decade. From 1980 to 1988, the piston airplane fleet grew from 193,500 to 194,400 airplanes. However, the general aviation turbine-powered fleet grew from 6,200 in 1980 to 9,700 in 1988, an increase to 4.8 percent of the total fixed wing fleet. The FAA projects that by the year 2000 there will be 15,600 turbine-powered airplanes making up 7.8 percent of the total fixed wing fleet. Approximately 2,000 piston-powered airplanes requiring type ratings are currently estimated to be in the general aviation fleet. This number is less than 21 percent of the current number of general aviation turbine-powered airplanes and is 13 percent of the number of turbine-powered airplanes projected for the fixed wing fleet in the year 2000. Furthermore, a significant number of those piston-powered airplanes are expected to be out of service and more are expected to be retired gradually. Thus, the rule primarily pertains to turbine-powered airplanes.

The FAA expects the demand for pilots with type ratings to increase over the next decade. In addition, the FAA expects the size of air carrier and regional/commuter airlines fleets to increase. Airlines are expected to face rapid pilot attrition during the next 10 to 15 years. In 1988, 27 percent of ATP holders were age 50 or older, and 43 percent were at least 45 years old. The FAA believes that new airline pilots will increasingly be drawn from the general aviation community. The FAA amendments are intended to ensure that this surge in type-rated pilot hiring will take place within a context of proper training.

The FAA's estimates show that approximately 11,000 general aviation pilots hold type ratings. Due to a large turnover in general aviation, an estimated one-third (33 percent), or approximately 3,600 pilots, may receive new type ratings each year. Based on current costs of type ratings courses offered by some of the major training organizations, the average cost of the training is estimated to be $6,000 per pilot. The FAA estimates that approximately 800 type ratings are issued each year to pilots whose present training does not meet the standards of this proposal, and who would be required to receive the additional training. The FAA estimates that these 800 pilots could require some additional ground and flight training at $1,000 per type rating. The FAA estimates that the net total additional training cost of requiring pilots to receive training prior to issuance of an airplane type rating will be approximately $800,000 in 1989 dollars. A 1.5 percent reduction in the fatal accident rate of general aviation turboprop airplanes that require a type rating and of turbojet airplanes would lead to a savings/benefit of $600,000. The FAA projects a 10-year discounted benefits-to-cost ratio of 1.1:1.

Flight Review

NPRM No. 89–14 proposed modifications to the flight review requirements of § 61.57 (now covered in § 61.56). Under the proposal, pilots would have been required to complete a flight review in every category and class of aircraft in which they desired to exercise pilot-in-command privileges. As noted earlier, based on a review of the public comments and data submitted, the flight review amendment as proposed in the NPRM is not contained in the final rule. However, comments were received on the cost and safety data presented in NPRM No. 89–14.

One commenter noted that the number of pilots who hold more than one category and class rating estimated by the FAA in the notice was incorrect. Using information in the *U.S. Civil Airman Statistics* and ratios based on the fleet size, the FAA had estimated that 55,000 pilots would be affected by the proposed rule. The commenter, using airman statistics and other data, estimated that 66,755 pilots would be affected by the proposed rule. Although the commenter also noted that the FAA statistics lacked detailed information, the difference between the two estimates stemmed largely from different assumptions about how many pilots certificated in more than one category and class actively fly all the aircraft for which they are certificated.

Research done by AOPA ASF suggesting that 60 percent of pilots involved in multiengine accidents had taken flight reviews in multiengine aircraft appears significant; however, AOPA ASF's written comments did not specify the period covered, the total number of accidents, or other details. NTSB 1985–1987 accident statistics show that 96 percent of the pilots involved in the 3,301 accidents reviewed conducted their BFR's in the same category and class of aircraft that the accident occurred in. Fifty-six percent of those pilots conducted their BFR in the same make and model of aircraft, while only 2 percent of the accidents occurred in multiengine airplanes where the pilots had taken their BFR in a single-engine airplane.

AOPA estimated that the cost of each flight review would range from $75 to $250, with a total biennial cost of $650 to more than $1,200 for pilots with multiple category and class ratings. In its Initial Regulatory Evaluation, the FAA estimated that each flight review would cost between $110 and $520. However, the FAA has determined that the original proposal is not supported by available accident data. Therefore, that proposal is not contained in this final rule. Instead, and in response to public comment, the FAA is amending § 61.56 to permit pilots to substitute completion of a phase of a pilot proficiency award program for a flight review.

The FAA believes that the amendment to § 61.56 allowing satisfactory completion of a pilot proficiency award program (or any phase of such a program) to fulfill the requirement for a flight review would not impose any economic burden on pilots since no additional requirement is being imposed. The number of pilots who have satisfactorily completed a phase of the FAA's current Pilot Proficiency Award Program has risen from 9,217 pilots in 1983 to 12,109 pilots in 1989. By not requiring participating pilots to incur the cost of participation in both the Pilot Proficiency Award Program and a flight review, the FAA believes that this amendment could be an economic benefit for participating pilots. Although many pilots who participate in the Pilot Proficiency Award Program may combine some of the flight instruction phase requirements with the flight review requirement, those who do not would save the cost of the flight review. Assuming approximately 10,000 pilots participate annually in the Pilot Proficiency Award Program, of which 2,500 do not combine their flight review with that program, total savings estimated for those pilots would be $375,000, given that the average cost of a single-engine airplane flight review is $150. Furthermore, this amendment could encourage more pilots to participate in the Pilot Proficiency Award Program with a potential safety benefit for all general aviation.

Stall and Spins: Pilot Awareness, Training, and Testing

Stall training is currently an integral part of pilot training. Studies have shown, however, that there is a need to enhance pilot awareness of the relationship between stalls and spins, and to improve understanding of the spin hazard in general. A 1976 study done for the FAA also distinguished between the stall maneuvers routinely practiced in flight training, and scenarios involving pilot distraction that can lead to inadvertent stalls. These concerns are addressed in a series of amendments to §§ 61.97, 61.98, 61.105, 61.107, 61.125, 61.127, 61.183, 61.187, and part 141, Appendixes A and H. The changes would add airplane and glider stall and spin awareness and recovery techniques to the areas of aeronautical knowledge and basic operations covered in student, recreational, private, and commercial pilot training.

The intent of the amendments is to increase pilot awareness of the stall/spin hazard. The likely effect will be a modification of ground instruction programs to reflect the insights of the FAA's 1976 *General Aviation Pilot Stall Awareness Training Study* (FAA–RD–77–26, September 1976) and the addition of up to one hour of flight training to recreational, private, commercial, and flight instructor pilot programs. The cost increase resulting from the proposed expansion of stall/spin awareness training would be moderate because the FAA is not incorporating the element of spin training, which was included in the 1976 study.

The study suggested two flights of approximately 1 hour each, including spin training, and 2 hours of additional ground school. This ground training, or variations of it, could be incorporated into most existing ground training programs by modifying those programs rather than by lengthening them. Under the amendments, flight instructors might spend an additional hour discussing stalls and spins with students. The stall awareness study also proposed two additional 1-hour flights that would include situations leading to inadvertent stalls/spins, stall and spin practice and avoidance, and full spin training. The FAA amendment excludes the spin training component, which alone would take nearly 1 of the 2 hours. Therefore, additional training for a typical student might include approximately 1 hour of ground training and 1 hour of dual flight instruction. The cost of the additional training would be approximately $85 for airplane students and $65 for glider students.

Based on the average number of certificates issued to glider-only pilots from 1984 to 1988, the total expenditure for glider pilots is estimated to be $28,700 per year. Based on the average number of private, commercial, and initial flight instructor certificates issued from 1984 to 1988, the total expenditure for recreational, private, commercial, and flight instructors would be $4.45

million, assuming all other initial certificates were obtained in airplanes rather than in helicopters or other aircraft. (Because the recreational pilot certificate did not become effective until August 31, 1989, for the purposes of this regulatory evaluation, the number of recreational pilots that will be affected was included in the average past issuances of private pilot certificates.)

The results of the FAA's stall awareness study are available in Advisory Circular 61–67A. Further dissemination of this information can be in the form of other training materials or within routine work programs since no additional research is required. The stall awareness study's main contribution was that it emphasized the need for additional training in stall and spin avoidance and the need for additional flight training in slow flight with realistic distractions.

Stall awareness training is effective. After the United States dropped the spin training requirement in June 1949 in favor of increased stall training, stall/spin accidents dropped dramatically. Although other factors such as improved stall warning devices undoubtedly contributed to this decrease, several studies indicate that the revised training approach was a main factor in reducing stall/spin accidents. In the 4-year period from 1945 to 1948, stall/spin accidents accounted for 48 percent of all fatal accidents. This proportion dropped to 27 percent from 1965 to 1968. The NTSB conducted a study of the period from 1967 to 1969, and found that stall/spin accidents caused 22 percent of all "fatal occurrences." That study, the *Special Study General Aviation Stall/Spin Accidents, 1967–1969* (National Transportation Safety Board AAS–72–8, September 13, 1972), examined the 1,261 stall/spin accidents recorded for the period and noted that, while they accounted for only 8 percent of the total number of accidents, they caused 23 percent of the fatalities or serious injuries.

A total of 2 single-engine piston airplane accidents would have to be prevented per year to realize savings equal to the cost of implementing spin training, as measured in the statistical value of fatal and nonfatal accidents in which stall/spin was a main cause or factor. In the 5-year period from 1983 to 1987, an average of 33 fatal accidents and an average of 57 fatalities occurred per year. If the improved stall/spin training leads to a 10 percent improvement in the stall/spin accident rate, a total of 3.3 fatal accidents and 5.7 fatalities would be averted. Assuming that all of the airplanes were reciprocating single-engine airplanes rather than a mix of multiengine and turbine-powered airplanes, the potential savings could be at least $8.6 million in 1989 dollars. The FAA projects that over 10 years the discounted benefits-to-cost ratio would be 1.9:1.

Other amendments regarding stall and spin awareness training modify §§ 61.183 and 61.187, which govern areas in which flight instructor candidates must receive training and be tested. The amendments require flight instructor candidates, airplane or glider, to receive training and demonstrate proficiency in stall awareness, spin entry, spins, and spin recovery techniques. The amendments make the logbook endorsement of spin competency an eligibility requirement rather than an option for candidates seeking the flight instructor ratings affected by these amendments. Currently, this endorsement is optional for those flight instructor candidates, particularly airplane flight instructor candidates, who perform their flight tests in airplanes not approved for intentional spins. FAA guidelines now permit those candidates to present the endorsement in lieu of demonstrating a spin on their flight tests. The stall/spin training, while already required under FAA guidelines, is given greater emphasis in the amended rules, but the amended rules do not substantially alter the procedures and maneuvers that the flight instructor candidates are currently expected to cover. The FAA believes that these changes in §§ 61.49, 61.183, and 61.187 will significantly increase flight instructor awareness and understanding of the stall/spin issue. However, the FAA believes that only the mandatory spin demonstration required under § 61.49 carries with it a potential cost implication.

Amended § 61.49 will require flight instructor applicants in airplanes or gliders to demonstrate spin entries, spins, and spin recoveries on their flight tests if they have previously failed the oral or flight portion of a test due to deficiencies in the stall/spin area. The retesting requirement is unlikely to have an important economic impact. In 1988, 6,121 applicants took initial flight instructor examinations, the majority of which was probably in airplanes. Twenty-one percent of those applicants failed. If as many as 10 percent of the pilots who failed in 1988 failed because of deficiencies in stall/spin knowledge, they would collectively spend about $2,500, excluding additional examiner fees, to meet the retesting requirement. This figure is based on a $40 airplane cost and 30 minutes for the spin demonstration plus flight time to and from practice areas. The cost of the bulk of the flight test, which must be taken in a complex airplane and includes other tasks, is not included in the additional costs because those tasks are not subject to this amendment. If this additional requirement leads to even a 0.1 percent improvement in stall/spin accidents, the annual savings would be approximately $86,000. Based on these estimates, the ratio of benefits to costs would be approximately 34.3:1.

Flight Instructor Authorizations

Amendments have been made to § 61.193 that include authorizations for flight instructors to provide the endorsements required under amendments to §§ 61.187, 61.31, 61.157, and/or 61.183. No additional cost is associated with the amended § 61.193, however.

Chief Instructor Availability

Section 141.85 is amended to clarify that chief instructors on duty do not necessarily have to be present at their flight school while instruction is being given. The change is designed to enhance efficiency and align the FAR with FAA policy as expressed in FAA Order 8710.5 (June 20, 1979) and Advisory Circular 141–1A (August 29, 1974). The measure involves no implementation costs.

If any changes in school operations do occur as a result of this amendment, it would be to permit schools more efficient use of personnel. However, the amendment would have little if any impact since present industry practice appears to be based on FAA Order 8710.5 and Advisory Circular 141–1, which state that the chief flight instructor need only be available for consultation at the school's base of operations.

Satellite Bases

The amendment to § 141.91 eliminates the 25-nautical mile maximum distance limit for establishing satellite school operations bases as long as an assistant chief instructor is designated for each satellite base, and is available for consultation when instruction is given at the satellite base.

The FAA does not expect this change to compromise safety because the amendment ensures adequate supervision. If the schools choose to take advantage of the rule change, this presumably would be an informed decision made on the basis of expected costs, revenues, and potential profits.

Potential long-term benefits include promoting economies of scale in school operations, permitting development of regional and national chains of schools, utilization of master TCO's and avoiding the need for multiple Part 141 certificates.

Chief and Assistant Chief Flight Instructors—Experience Criteria

Criteria for designating both chief and assistant chief flight instructors have been substantially modified by amending § 141.35 and creating § 141.36. These amendments eliminate the 100-hour recent instruction requirement for designating chief flight instructors, and reduce by half the current total prerequisite times for assistant chief flight instructors.

The amendment's rationale is that requiring recent instruction experience may prevent senior personnel with substantial experience, including supervisory experience, from designation as chief flight instructors. Exemption activity has revealed the value of such personnel, and the FAA believes it is desireable to stress the supervisory aspect of the chief flight instructor's job.

Given the largely supervisory nature of the chief flight instructor's job, it is important to facilitate the designation process for assistant chief flight instructors to whom responsibility can be delegated. The present total experience time requirements are the same for chief and assistant chief flight instructors. Under these conditions, flight instructors often quit instructing after acquiring hours but before they meet these minimum experience requirements. The FAA believes that the total required times can be reduced by half for assistant chief flight instructors, who will continue to face stringent oral and practical examining procedures.

Given the safeguards of the proposed supervisory arrangement with the chief flight instructor and the current examining requirements, safety standards should not be endangered. In addition, concrete economic benefits may result in terms of reduced time in pursuing exemption alternatives, and reduced or eliminated program interruptions caused by the inability to fill vacancies. However, it does not seem feasible to attempt to quantify the amount of time and expense saved by avoiding exemption requests.

International Trade Impact Analysis

This final rule will not have any significant impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. The rules primarily affect the domestic activity and operations of individual pilots and pilot schools. The FAA believes that the rules will not affect part 141 schools in the training of foreign citizens who accomplish pilot training in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a large number of small business entities. The size threshold for pilot schools is 10 employees, as set forth in the Department of Transportation (DOT), FAA Order 2100.14A, September 16, 1986. The threshold for annualized cost levels for pilot schools is $1,115 in 1989 dollars.

FAA Advisory Circular 140–2S, July 10, 1987, identifies approximately 830 pilot schools certificated under FAR part 141 as of June 2, 1987. The FAA believes that a significant number of these schools employ fewer than 10 persons and are, therefore, small business entities, and that more than one-third of these schools would be affected.

However, these amendments would have minimal economic impact on the pilot schools. No comments received on NPRM No. 89–14 implied that there would be a significant economic impact on pilot schools. Modification of training course materials or internal operational procedures may incur minor costs; however, costs exceeding $1,115 are not anticipated. Moreover, the FAA believes that some schools may realize cost reductions as a result of some of the amendments to part 141. In the past, for example, flight schools may have had to expend a certain amount of additional time and expense advertising for and interviewing chief instructor candidates. Modifications to the requirements for chief and assistant chief instructors are expected to facilitate school operations. Some savings may accrue to the schools as a result of the measures. Small schools may even gain revenue as a result of the increased training requirement. However, because of inadequate data on market shares, it is not feasible to describe how much additional revenue these businesses would earn.

The FAA has sought to respond to the needs of these entities within the limits permitted by safety considerations. The FAA has reviewed the rules affected by these amendments to determine the extent to which requirements could be relaxed without compromising safety, and the FAA believes that these amendments are as relaxed as possible without compromising safety.

Other amendments are expected to have an impact on individual pilot training and recurrent training costs. The FAA believes that these amendments reflect common practice within the industry and will, therefore, not impose a significant burden on firms that may be characterized as small entities. Some small companies that employ pilots flying professionally under part 91 may face additional training costs as a result of the amendments. However, small companies rarely have corporate flight departments, and the cost of determining how many such companies would be affected by the amendment would probably be out of proportion to the actual number of companies involved.

The FAA certifies, that under the criteria of the Regulatory Flexibility Act of 1980, the amendments to the regulations will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

Federalism Implications

The amendments in this final rule would not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these amendments would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Determination and the International Trade Impact Analysis, the FAA has determined that these amendments do not qualify as a major rule under Executive Order 12291. In addition, the FAA certifies that these amendments will not have a significant economic effect, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. These amendments are considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of these amendments, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the

BEST COPY AVAILABLE

regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT".

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 141

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Business and industry, Education, Educational facilities, Helicopters, Pilots, Rotorcraft, Schools, Students, Teachers.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61 and 141 of the Federal Aviation Regulations (14 CFR parts 61 and 141) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983].

2. Section 61.1 is amended by revising paragraph (b) to read as follows:

§ 61.1 Applicability.

* * * * *

(b) Except as provided in § 61.71, an applicant for a certificate or rating must meet the requirements of this part.

3. Section 61.31 is amended by redesignating paragraph (f) as paragraph (h), and adding new paragraphs (f) and (g) to read as follows:

§ 61.31 General limitations.

* * * * *

(f) *High altitude airplanes.* (1) Except as provided in paragraph (f)(2) of this section, no person may act as pilot in command of a pressurized airplane that has a service ceiling or maximum operating altitude, whichever is lower, above 25,000 feet MSL unless that person has completed the ground and flight training specified in paragraphs (f)(1) (i) and (ii) of this section and has received a logbook or training record endorsement from an authorized instructor certifying satisfactory completion of the training. The training shall consist of:

(i) Ground training that includes instruction on high altitude aerodynamics and meteorology; respiration; effects, symptoms, and causes of hypoxia and any other high altitude sicknesses; duration of consciousness without supplemental oxygen; effects of prolonged usage of supplemental oxygen; causes and effects of gas expansion and gas bubble formations; preventive measures for eliminating gas expansion, gas bubble formations, and high altitude sicknesses; physical phenomena and incidents of decompression; and any other physiological aspects of high altitude flight; and

(ii) Flight training in an airplane, or in a simulator that meets the requirements of § 121.407 of this chapter, and which is representative of an airplane as described in paragraph (f)(1) of this section. This training shall include normal cruise flight operations while operating above 25,000 feet MSL; the proper emergency procedures for simulated rapid decompression without actually depressurizing the airplane; and emergency descent procedures;

(2) The training required in paragraph (f)(1) of this section is not required if a person can document accomplishment of any of the following in an airplane, or in a simulator that meets the requirements of § 121.407 of this section, and that is representative of an airplane described in paragraph (f)(1) of this section:

(i) Served as pilot in command prior to April 15, 1991;

(ii) Completed a pilot proficiency check for a pilot certificate or rating conducted by the FAA prior to April 15, 1991;

(iii) Completed an official pilot-in-command check by the military services of the United States; or

(iv) Completed a pilot-in-command proficiency check under parts 121, 125, or 135 conducted by the FAA or by an approved pilot check airman.

(g) *Tailwheel Airplanes.* No person may act as pilot in command of a tailwheel airplane unless that pilot has received flight instruction from an authorized flight instructor who has found the pilot competent to operate a tailwheel airplane and has made a one time endorsement so stating in the pilot's logbook. The endorsement must certify that the pilot is competent in normal and crosswind takeoffs and landings, wheel landings unless the manufacturer has recommended against such landings, and go-around procedures. This endorsement is not required if a pilot has logged flight time as pilot in command of tailwheel airplanes prior to April 15, 1991.

* * * * *

4. Section 61.49 is revised to read as follows:

§ 61.49 Retesting after failure.

(a) An applicant for a written or practical test who fails that test may not apply for retesting until 30 days after the date the test was failed. However, in the case of a first failure, the applicant may apply for retesting before the 30 days have expired provided the applicant presents a logbook or training record endorsement from an authorized instructor who has given the applicant remedial instruction and finds the applicant competent to pass the test.

(b) An applicant for a flight instructor certificate with an airplane category rating, or for a flight instructor certificate with a glider category rating, who has failed the practical test due to deficiencies of knowledge or skill relating to stall awareness, spin entry, spins, or spin recovery techniques must, during the retest, satisfactorily demonstrate both knowledge and skill in these areas in an aircraft of the appropriate category that is certificated for spins.

5. Section 61.56 is amended by redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f) to read as follows:

§ 61.56 Flight review.

* * * * *

(f) A person who has, within the period specified in paragraphs (c) and (d) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program, need not accomplish the flight review requirements of this section.

* * * * *

6. Section 61.58 is amended by revising paragraph (a) to read as follows:

§ 61.58 Pilot-in-command proficiency check: Operation of aircraft requiring more than one required pilot.

(a) Except as provided in paragraph (e) of this section, no person may act as pilot in command of an aircraft that is type certificated for more than one required pilot crewmember unless the proficiency checks or flight checks prescribed in paragraphs (b) and (c) of this section are satisfactorily completed.

* * * * *

7. Section 61.63 is amended by revising paragraph (d)(3)(i) and adding a new paragraph (d)(6) to read as follows:

§ 61.63 Additional aircraft ratings (other than airline transport pilot).

* * * * *

(d) * * *

(3) * * *

(i) The applicant must have met the requirements of this paragraph in a multiengine airplane for which a type rating is required.

* * * * *

(6) On and after April 15, 1991, an applicant for a type rating to be added to a pilot certificate must—

(i) Have completed ground and flight training on the maneuvers and procedures of Appendix A of this part that is appropriate to the airplane for which a type rating is sought, and received an endorsement from an authorized instructor in the person's logbook or training records certifying satisfactory completion of the training; or

(ii) For a pilot employee of a part 121 or part 135 certificate holder, have completed the certificate holder's approved ground and flight training that is appropriate to the airplane for which a type rating is sought.

8. Section 61.71 is amended by removing the concluding flush text and by revising paragraph (b) to read as follows:

§ 61.71 Graduates of certificated pilot schools: Special rules.

* * * * *

(b) An applicant for a certificate or rating under this part is considered to meet the aeronautical knowledge and skill requirements, or both, applicable to that certificate or rating if the applicant applies within 90 days after graduation from an appropriate course given by a pilot school that is certificated under part 141 of this chapter and is authorized to test applicants on aeronautical knowledge or skill, or both.

9. Section 61.97 is amended by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 61.97 Aeronautical knowledge.

* * * * *

(f) Weight and balance computations;

(g) Principles of aerodynamics, powerplants, and aircraft systems; and

(h) Stall awareness, spin entry, spins, and spin recovery techniques.

10. Section 61.98 is amended by revising paragraph (a)(5) to read as follows:

§ 61.98 Flight proficiency.

* * * * *

(a) * * *

(5) Flight at slow airspeeds with realistic distractions and the recognition of and recovery from stalls entered from straight flight and from turns;

* * * * *

11. Section 61.105 is amended by revising paragraphs (a)(4), (a)(5), (b)(3) and (b)(4), and adding paragraphs (a)(6) and (b)(5) to read as follows:

§ 61.105 Aeronautical knowledge.

* * * * *

(a) * * *

(4) The safe and efficient operation of airplanes or rotorcraft, as appropriate, including high-density airport operations, collision avoidance precautions, and radio communication procedures;

(5) Basic aerodynamics and the principles of flight which apply to airplanes or rotorcraft, as appropriate; and

(6) Stall awareness, spin entry, spins, and spin recovery techniques for airplanes.

(b) * * *

(3) Recognition of weather situations of concern to the glider pilot, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and/or aero tow procedures as appropriate, signals, and safety precautions; and

(5) Stall awareness, spin entry, spins, and spin recovery techniques for gliders.

* * * * *

12. Section 61.107 is amended by revising paragraphs (a)(4) and (d)(5) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(a) * * *

(4) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns;

* * * * *

(d) * * *

(5) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns; and

* * * * *

13. Section 61.113 is amended by revising paragraphs (a) introductory text, (b) introductory text, and (c), and removing paragraphs (d) and (e) to read as follows:

§ 61.113 Rotorcraft rating: Aeronautical experience.

* * * * *

(a) *Helicopter class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

* * * * *

(b) *Gyroplane class rating.* A total of 40 hours of flight instruction and solo flight time in aircraft, including at least—

* * * * *

(c) An applicant who does not meet the night flying requirement in paragraph (a)(1)(ii) or (b)(1)(ii) of this section is issued a private pilot certificate bearing the limitation "night flying prohibited." This limitation may be removed if the holder of the certificate demonstrates compliance with the requirements of paragraph (a)(1)(ii) or (b)(1)(ii) of this section, as appropriate.

14. Section 61.125 is amended by revising paragraphs (a)(2), (a)(3), (c)(3) and (c)(4), and adding paragraphs (a)(4) and (c)(5) to read as follows:

§ 61.125 Aeronautical knowledge.

* * * * *

(a) * * *

(2) Basic aerodynamics and the principles of flight which apply to airplanes;

(3) Airplane operations, including the use of flaps, retractable landing gears, controllable propellers, high altitude operation with and without pressurization, loading and balance computations, and the significance and use of airplane performance speeds; and

(4) Stall awareness, spin entry, spins, and spin recovery techniques for airplanes.

* * * * *

(c) * * *

(3) The recognition of weather situations of concern to the glider pilot from the ground and in flight, and the procurement and use of aeronautical weather reports and forecasts;

(4) The safe and efficient operation of gliders, including ground and/or aero tow procedures as appropriate, signals, critical glider performance speeds, and safety precautions; and

(5) Stall awareness, spin entry, spins, and spin recovery techniques for gliders.

* * * * *

15. Section 61.127 is amended by revising paragraphs (a)(2) and (d)(4) to read as follows:

§ 61.127 Flight proficiency.

* * * * *

(a) * * *

(2) Flight at slow airspeeds with realistic distractions, and the recognition of and recovery from stalls entered from straight flight and from turns;

* * * * *

(d) * * *

(4) The correct use of the glider's performance speeds, flight at slow airspeeds with realistic distractions, and the recognition of and recovery from

stalls entered from straight flight and from turns; and

* * * * *

16. Section 61.131 is amended by revising paragraphs (a) introductory text and (b) introductory text, and removing paragraphs (c) and (d) to read as follows:

§ 61.131 Rotorcraft ratings: Aeronautical experience.

* * * * *

(a) *Helicopter class rating.* A total of 150 hours of flight time, including at least 100 hours in powered aircraft, 50 hours of which must be in a helicopter, including at least—

* * * * *

(b) *Gyroplane class rating.* A total of 150 hours of flight time in aircraft, including at least 100 hours in powered aircraft, 25 hours of which must be in a gyroplane, including at least—

* * * * *

17. Section 61.157 is amended by adding a new paragraph (f) to read as follows:

§ 61.157 Airplane rating: Aeronautical skill.

* * * * *

(f) On and after April 15, 1991, an applicant for a type rating to be added to an airline transport pilot certificate, or for issuance of an airline transport pilot certificate in an airplane requiring a type rating, must—

(1) Have completed ground and flight training on the maneuvers and procedures of appendix A of this part that is appropriate to the airplane for which a type rating is sought and received an endorsement from an authorized instructor in the person's logbook or training records certifying satisfactory completion of the training; or

(2) For a pilot employee of a part 121 or part 135 certificate holder, have completed ground and flight training that is appropriate to the airplane for which a type rating is sought and is approved under parts 121 and 135.

18. Section 61.183 is amended by revising paragraph (e) to read as follows:

§ 61.183 Eligibility requirements: General.

* * * * *

(e) Pass a practical test on all items in which instruction is required by § 61.187 and, in the case of an applicant for a flight instructor-airplane or flight instructor-glider rating, present a logbook endorsement from an appropriately certificated and rated flight instructor who has provided the applicant with spin entry, spin, and spin recovery training in an aircraft of the appropriate category that is certificated for spins, and has found that applicant competent and proficient in those training areas. Except in the case of a retest after a failure for the deficiencies stated in § 61.49(b), the person conducting the practical test may either accept the spin training logbook endorsement or require demonstration of the spin entry, spin, and spin recovery maneuver on the flight portion of the practical test.

19. Section 61.187 is amended by revising paragraph (a)(6) to read as follows:

§ 61.187 Flight proficiency.

(a) * * *

(6) Performance and analysis of standard flight training procedures and maneuvers appropriate to the flight instructor rating sought. For flight instructor-airplane and flight instructor-glider applicants, this shall include the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins.

* * * * *

20. Section 61.193 is revised to read as follows:

§ 61.193 Flight instructor authorizations.

(a) The holder of a flight instructor certificate is authorized, within the limitations of that person's flight instructor certificate and ratings, to give the—

(1) Flight instruction required by this part for a pilot certificate or rating;

(2) Ground instruction or a home study course required by this part for a pilot certificate and rating;

(3) Ground and flight instruction required by this subpart for a flight instructor certificate and rating, if that person meets the requirements prescribed in § 61.187(b);

(4) Flight instruction required for an initial solo or cross-country flight;

(5) Flight review required in § 61.56 in a manner acceptable to the Administrator;

(6) Instrument competency check required in § 61.57(e)(2);

(7) Pilot-in-command flight instruction required under § 61.101(d); and

(8) Ground and flight instruction required by this part for the issuance of the endorsements specified in paragraph (b) of this section.

(b) The holder of a flight instructor certificate is authorized within the limitations of that person's flight instructor certificate and rating, to endorse—

(1) In accordance with §§ 61.87(m) and 61.93 (c) and (d), the pilot certificate of a student pilot the flight instructor has instructed authorizing the student to conduct solo or solo cross-country flights, or to act as pilot in command of an airship requiring more than one flight crew member;

(2) In accordance with §§ 61.87(m) and 61.93 (b) and (d), the logbook of a student pilot the flight instructor has instructed, authorizing single or repeated solo flights;

(3) In accordance with § 61.93(d), the logbook of a student pilot whose preparation and preflight planning for a solo cross-country flight the flight instructor has reviewed and found adequate for a safe flight under the conditions the flight instructor has listed in the logbook;

(4) In accordance with § 61.95, the logbook of a student pilot the flight instructor has instructed authorizing solo flights in a terminal control area or at an airport within a terminal control area;

(5) The logbook of a pilot or another flight instructor who has been trained by the person described in paragraph (b) of this section, certifying that the pilot or other flight instructor is prepared for an operating privilege, a written test, or practical test required by this part;

(6) In accordance with §§ 61.57(e)(2) and 61.101(d) the logbook of a pilot the flight instructor has instructed authorizing the pilot to act as pilot in command;

(7) [Reserved]; and

(8) In accordance with §§ 61.101 (g) and (h), the logbook of a recreational pilot the flight instructor has instructed authorizing solo flight.

21. Section 61.195 is amended by revising paragraph (b) to read as follows:

§ 61.195 Flight instructor limitations.

* * * * *

(b) *Ratings.* Flight instruction may not be conducted in any aircraft for which the flight instructor does not hold a category, class, and if appropriate, a type rating, on the flight instructor's pilot and flight instructor certificates.

* * * * *

22. Section 61.201 is amended by revising paragraph (a) to read as follows:

§ 61.201 Conversion to new system of flight instructor ratings.

(a) *General.* The holder of a flight instructor certificate that does not bear any of the new class or instrument ratings listed in § 61.5(c) (2), (3), or (4) for a flight instructor certificate, may not exercise the privileges of that certificate. The holder of a flight instructor certificate with a glider rating need not convert that rating to a new class rating to exercise the privileges of that certificate and rating.

* * * * *

PART 141—PILOT SCHOOLS

23. The authority citation for part 141 is revised to read as follows:

Authority: Sections 313(a), 314, 601, 602, and 607 of the Federal Aviation Act of 1958 (49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427), and section 6(c) of the Department of Transportation Act (49 U.S.C. app. 1655(c)).

24. Section 141.29 is removed and reserved.

§ 141.29 [Reserved]

25. Section 141.35 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(3)(ii), (c) introductory text, (c)(1), (c)(4)(ii), (d) introductory text, (d)(1), (d)(3)(ii), and (e), and by removing paragraphs (b)(4), (c)(5), and (d)(4) to read as follows:

§ 141.35 Chief instructor qualifications.

(a) To be eligible for a designation as a chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate,

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter,

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation,

(4) Pass a flight test demonstrating satisfactory performance of and the ability to instruct on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, a chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

* * * * *

(3) * * *

(ii) 1,000 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

* * * * *

(4) * * *

(ii) 400 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, a chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

* * * * *

(3) * * *

(ii) 1,500 flight hours.

(e) To be eligible for a designation as a chief instructor for a ground school course, a person must have 1 year of experience as a ground school instructor in a certificated pilot school.

26. Section 141.36 is added to read as follows:

§ 141.36 Assistant chief instructor qualifications.

(a) To be eligible for a designation as an assistant chief flight instructor for a course of training, a person must meet the following requirements:

(1) Possess a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate,

(2) Meet the pilot-in-command recent flight experience requirements of § 61.57 of this chapter,

(3) Pass an oral test on teaching methods, applicable provisions of the Airman's Information Manual, parts 61, 91, and 141 of this chapter, and the objectives and approved course completion standards of the course for which the person seeks to obtain designation,

(4) Pass a flight test on the flight procedures and maneuvers appropriate to that course, and

(5) Meet the applicable requirements of paragraphs (b), (c), and (d) of this section. However, an assistant chief flight instructor for a course of training for gliders, free balloons, or airships is only required to have 40 percent of the hours required in paragraphs (b) and (c) of this section.

(b) For a course of training leading to the issuance of a private pilot certificate or rating, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course;

(2) At least 500 hours as pilot in command;

(3) Primary flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 250 flight hours; or

(ii) 500 flight hours.

(c) For a course of training leading to the issuance of an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with an appropriate instrument rating;

(2) At least 50 hours of flight time under actual or simulated instrument conditions;

(3) At least 500 hours as pilot in command;

(4) Instrument flight instructor experience, acquired as either a certificated instrument flight instructor or an instructor in a military pilot basic or instrument flight training program, or a combination thereof, consisting of at least—

(i) One year and a total of 125 flight hours; or

(ii) 200 flight hours.

(d) For a course of training other than those that lead to the issuance of a private pilot certificate or rating, or an instrument rating or a rating with instrument privileges, an assistant chief flight instructor must have—

(1) At least a commercial pilot or airline transport pilot certificate and a valid flight instructor certificate, each with a rating for the category and class of aircraft used in the course of training and, for a course of training using airplanes or airships, an instrument rating on the instructor's commercial pilot certificate;

(2) At least 1,000 hours as pilot in command;

(3) Flight instruction experience, acquired as either a certificated flight instructor or an instructor in a military pilot primary or basic flight training program or a combination thereof, consisting of at least—

(i) One and one half years and a total of 500 flight hours; or

(ii) 750 flight hours.

(e) To be eligible for a designation as an assistant chief instructor for a ground school course, a person must have one year of experience as a ground school instructor in a certificated pilot school.

27. Section 141.85 is amended by revising paragraph (b) to read as follows:

§ 141.85 Chief instructor responsibilities.

* * * * *

(b) The chief instructor or designated assistant chief instructor shall be available at the pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training.

28. Section 141.91 is amended by revising paragraphs (a) and (c) to read as follows:

§ 141.91 Satellite bases.

* * * * *

(a) An assistant chief instructor is designated for each satellite base, and that assistant chief instructor shall be available at the satellite pilot school or, if away from the premises, by telephone, radio, or other electronic means during the time that instruction is given for an approved course of training;

* * * * *

(c) The instructors are under the direct supervision of the chief flight instructor or assistant chief flight instructor for the appropriate training course, who is readily available for consultation in accordance with § 141.85(b); and

* * * * *

29. Part 141, appendix A is amended by adding new paragraphs (2)(e) and by revising paragraph (3)(c)(4) to read as follows:

Appendix A—Private Pilot Certification Course (Airplanes)

* * * * *

2. * * *

(e) Stall awareness, spin entry, spins, and spin recovery techniques.

3. * * *

(c) * * *

(4) Flight at slow airspeeds with realistic distractions, recognition of and recovery from stalls entered from straight flight and from turns.

* * * * *

30. Part 141, appendix F is amended by redesignating and revising paragraph (F)(IV) as paragraph (F)(IV)(a) and adding a new paragraph (F)(IV)(b) to read as follows:

Appendix F—Rotorcraft, Gliders, Lighter-Than-Air Aircraft and Aircraft Rating Courses

* * * * *

F. * * *

IV. *Aircraft type rating.*

(a) An aircraft type rating course must include at least 10 hours of ground training on the aircraft systems, performance, operation, and loading. In addition, it must include at least 10 hours of flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(1) may be credited for not more than 5 of the 10 hours of required flight instruction. Instruction in a pilot ground trainer that meets the requirements of § 141.41(a)(2) may be credited for not more than 2.5 of the 10 hours of required flight instruction.

(b) For airplanes that require type ratings, the aircraft type rating course must include ground and flight training on the maneuvers and procedures of part 61, appendix A that is appropriate to the airplane for which a type rating is sought.

31. Part 141, appendix H is amended by revising paragraphs 3(a)(2)(i) and 4(a)(2)(i), and by adding a new paragraph 6(a)(3) to read as follows:

Appendix H—Test Preparation Courses

* * * * *

3. * * *

(a) * * *

(2) * * *

(i) 10 hours of flight instruction in the analysis and performance of flight training maneuvers, which for students enrolled in a flight instructor airplane certification course and a flight instructor glider certification course includes the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins; and

* * * * *

4. * * *

(a) * * *

(2) * * *

(i) 10 hours, or 10 flights in a glider in the case of a glider instructor rating course, performing analysis of flight training maneuvers, which in the case of an airplane instructor rating course and a glider instructor rating course includes the satisfactory demonstration of stall awareness, spin entry, spins, and spin recovery techniques in an aircraft of the appropriate category that is certificated for spins; and

* * * * *

6. * * *

(a) * * *

(3) In airplanes that require type ratings, the course must include ground and flight training on the maneuvers and procedures of Part 61, Appendix A that are appropriate to the airplane for which a type rating is sought.

Issued in Washington, DC, on March 7, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-6070 Filed 3-14-91; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
March 15, 1991

Part III

Department of Transportation

Coast Guard

Joint United States and Canadian Voluntary Guidelines for Control of Ballast-Water Discharges from Ships in the Great Lakes; Notice

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91-011]

Joint United States and Canadian Voluntary Guidelines for Control of Ballast-Water Discharges from Ships in the Great Lakes

AGENCY: Coast Guard, DOT.

ACTION: Notice of adoption of joint voluntary guidelines.

SUMMARY: The United States Coast Guard and Canadian Coast Guard are issuing joint voluntary guidelines for ships discharging ballast water into the Great Lakes. These guidelines are needed to protect the Great Lakes from non-native fish and other aquatic organisms that may be detrimental to the balance of nature that now exists. These guidelines should reduce the probability of introducing additional non-native species.

EFFECTIVE DATE: These guidelines are effective March 15, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406) (CGD 91-011), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LT James H. McDowell, Project Manager, Port Safety and Security Division (G-MPS), (202) 267-0491.

SUPPLEMENTARY INFORMATION:

The Problem

The Canadian Coast Guard and U.S. Coast Guard are issuing joint voluntary guidelines intended to protect the Great Lakes from the accidental introduction of non-native fish and other aquatic organisms through the discharge of ships' ballast water. Newly introduced organisms alter the balanace of an ecosystem, often to the detriment of the system.

Historical records suggest that over 100 non-native species have been introduced into the Great Lakes. The primary medium for the introduction of these non-native species is believed to be ships' ballast water. In the 1980s alone, ballast-water discharges are believed to have been responsible for the introduction of four nuisance species to the Great Lakes: the zebra mussel (Dreissena polymorpha); the European ruffe (Gymnocephalus cernus); the spiny water-flea (Bythotrophes cederstroemi); and the tube-nosed goby (Proterorhinus marmoratus).

Many ships take on water as ballast in foreign harbors or in the nearshore waters. These waters are often rich in living organisms. When these ships arrive in the Great Lakes to take on cargo, they discharge ballast water. Any organisms contained in the water then enter the Great Lakes. Many of these transplanted species do not survive in this new environment. However, those that do survive quickly adapt and in some instances thrive in their new environment, particularly where there are no natural predators to control their population growth. This uncontrolled population growth can be detrimental to a delicately balanced ecosystem.

The zebra mussel (D. polymorpha) provides a good example of the harmful effects of a newly introduced species. In June 1988 this small bivalve mollusk, native to the Black, Azov, and Caspian Seas in the southern U.S.S.R., was discovered on the Canadian side of Lake St. Clair in the Great Lakes. In July of that year it was discovered on the U.S. side in the western basin of Lake Erie. Scientists believe that it was introduced in 1986 in its pre-adult planktonic phase by the discharge of fresh-water ballast of ships from northern Europe, where it has spread over the last century.

The zebra mussel is a major fouling pest-species: hundreds of millions can be found on and in pipes, screens, conduits, boat bottoms, floats, buoys, rocks, submerged objects, and native animals and plants. As a filter-feeding organism, it removes vast quantities of microscopic organisms from the water, the same organisms that fish larvae and young fish rely upon for their food supply. It also completely covers rocks and other substrates normally used by Great Lakes fish for laying eggs.

Since its introduction into the Great Lakes, the zebra mussel has reproduced and spread to each of the Great Lakes, the Saint Lawrence River, and the Erie Canal. It now affects intakes to municipal water-filtration and electric-power plants in Michigan, Ohio, and New York. The economic impact on communities affected by its introduction into the Great Lakes may reach $5 billion by the year 2000. Presently there are no known predators in North America to control its spread. Natural range expansion and secondary transfer media will likely lead to its establishment in all connecting waters of the Great Lakes and eventually in many other North American rivers and lakes.

Solutions

Currently, the most practical method of protecting the Great Lakes from foreign organisms that may exist in ballast water appears to be an exchange of ballast water in the open ocean, beyond the continental shelf. Water in the open ocean contains fewer organisms than water collected in harbors or coastal waters. Those organisms that exist in the open ocean are adapted to relatively constant conditions, such as salinity and temperature, and are less likely to survive if accidentally introduced into a freshwater system.

Other possible methods of ballast control include: discharging ballast water to reception facilities ashore, heating or chemically treating ballast water, disinfecting ballast water with ultraviolet light, depriving ballast water of oxygen, coating tanks with biocides, installing filters, and modifying ship design. However, there is a lack of research and practical experience on the cost, safety, effectiveness, and environmental acceptability of these methods.

International Recognition

The introduction and spread of nonindigenous species by ships' ballast water has been brought to the attention of the International Maritime Organization (IMO). IMO, the United Nation's specialized agency for maritime affairs, has recognized this issue as an international problem, which requires an international solution. Most recently, in November 1990, the Marine Environment Protection Committee (MEPC) of IMO formed a working group to consider research information and solutions proposed by member states of IMO and by nongovernmental organizations in developing an international approach to resolving this problem. The working group concluded that the establishment of voluntary guidelines was an appropriate first step in addressing this problem. The group reviewed and modified a draft resolution and guidelines submitted by the Canadian delegation. The group recommended that the draft resolution and guidelines be considered by member states with a view toward adoption at the next session of MEPC, in July 1991.

The draft guidelines of MEPC recognize that the range of possible control options should be limited to: retention of ballast water, exchange of ballast water at sea, control of sediment uptake, and discharge of ballast water to reception facilities ashore. The draft guidelines acknowledge that other options exist but that further research is needed before they could be recommended.

The Canadian Voluntary Guidelines

In May 1989 the Canadian Coast Guard introduced the first voluntary guidelines for controlling ballast-water discharges into the Great Lakes. The Canadian Coast Guard developed these guidelines in full consultation with the U.S. Coast Guard, the Great Lakes Fishery Commission, and representatives of commercial shipping. These guidelines encouraged all ships transiting the Eastern Canadian Vessel Traffice Service (ECAREG VTS) Zone inbound for the Saint Lawrence Seaway and the Great Lakes to exchange fresh-water ballast collected in foreign harbors or near coastal waters for salt-water ballast collected from the open ocean. This exchange was to occur far enough from any coastline that there would be few organisms of any kind in the new ballast water, which would eventually be discharged into the Great Lakes.

U.S. Legislation

On November 29, 1990, the U.S. enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Public Law 101-646), (the Act). The Act requires the U.S. Coast Guard to issue voluntary guidelines, to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the exchange of ships' ballast water, not later than six months after enactment and to issue corresponding regulations within 24 months of enactment. The U.S. Coast Guard is to develop these guidelines and regulations in consultation with the government of Canada.

Joint U.S. and Canadian Voluntary Guidelines

In keeping with the Great Lakes Water Quality Agreement, the Canadian Coast Guard and the U.S. Coast Guard have agreed to issue joint voluntary guidelines for controlling the discharge of ships' ballast water, to reduce the probability of introducing additional non-native species into the Great Lakes. These guidelines, which are the subject of this document, are based on the original Canadian guidelines.

Regulatory Evalution

This Notice contains guidelines only, so the U.S. Coast Guard has not performed a Regulatory Evaluation. The Coast Guard does not anticipate that the rulemaking it will develop, discussed under U.S. Legislation, will be either major under Executive Order 12291 or significant under the U.S. Department of Transportation Regulatory Policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard does not have accurate information on the economic impact of these guidelines, but expects this impact to be minimal. The Coast Guard will accept comments on this impact, and will consider them when performing the Regulatory Evaluation in support of that rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Again, however, this Notice contains guidelines only, so the U.S. Coast Guard has not performed a Regulatory Flexibility Analysis. The Coast Guard does not have accurate information on how many ships qualify as small entities, but recognizes that even ships that do qualify should, if these guidelines apply to them, comply with these guidelines. The Coast Guard will accept comments on the economic impact on small entities, and will consider them when developing the rulemaking discussed under U.S. Legislation and when performing the Regulatory Evaluation discussed under Regulatory Evaluation.

Collection of Information

These voluntary guidelines do not impose any new or additional reporting or recordkeeping requirements on the public. The reporting procedures outlined in this document are a continuation of the existing procedures specified in the voluntary guidelines previously issued by the Canadian Coast Guard.

Under the existing procedures, each ship entering the ECAREG VTS Zone is requested to provide information regarding ballast water as part of the ECAREG interrogative. The ship's master is also requested to complete a Ballast Water Exchange Report Form (appendix A). The pilot boarding at Les Escoumins will provide a copy of the guidelines, unless one is already on board. The Lockmaster at Saint Lambert Lock will collect the completed report, and the Canadian Coast Guard will use it to verify the information previously reported to ECAREG and to monitor the compliance with the effectiveness of these guidelines.

Federalism

The U.S. Coast Guard has analyzed both these guidelines and the rulemaking it will develop, discussed under U.S. Legislation, in accordance with the principles and criteria contained in Executive Order 12612, and has determined that neither have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The U.S. Coast Guard does not have accurate information on the impact these guidelines will have on the environment. They should reduce the probability of introducing or spreading nonindigenous species in the Great Lakes. This should have a positive but no negative impact on the environment. The Coast Guard will prepare an Environmental Assessment in support of the proposed rulemaking as discussed under U.S. Legislation. The Coast Guard will accept comments on the environmental impact of these guidelines, and will consider them in developing the Environmental assessment.

In consideration of the foregoing, the Canadian Coast Guard and U.S. Coast Guard are issuing the following:

Voluntary Guidelines for Control of Ballast Water in the Great Lakes

1. Applicability

These Voluntary Guidelines for Control of Ballast Water in the Great Lakes apply to each ship that carries ballast water and that, after operating on the high seas, is inbound for the Saint Lawrence River, for any ports on the River upstream of Quebec City, for the Great Lakes, or for any ports on the Great Lakes.

2. Definitions

As used in these guidelines—

Aquatic nuisance species means a nonindigenous species that threatens the diversity or abundance of native species, the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters;

Ballast water means any water and associated sediments used to manipulate the draft, trim, or stability of a ship:

ECAREG means the Eastern Canada Vessel Traffic Service;

Environmentally sound methods, efforts, actions, or programs means

methods, efforts, actions, or programs, either to prevent introductions or to control infestations of aquatic nuisance species, that minimize adverse impacts to the structure and function of an ecosystem and minimize adverse effects on non-target organisms and ecosystems and that emphasize integrated pest-management techniques and nonchemical measures;

Great Lakes means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels; and

Nonindigenous species means any species or other viable biological material that enters an ecosystem beyond its historical range, including any such organisms transmitted from one country to another.

3. Ballast-Water Management

(a) The master of each ship to which these guidelines apply should take appropriate action to ensure to the maximum extent practicable that ballast water containing aquatic nuisance species is not discharged into the Great Lakes. This action may include, but is not limited to:

(i) The exchange of any ballast water not taken on in ocean depths greater than 2,000 meters. The exchange should occur at sea, as far from land as practicable, in an ocean depth of not less than 2,000 meters; and

(ii) The use of alternative environmentally sound methods of managing ballast water that are as effective as high-seas exchange in preventing and controlling infestations of aquatic nuisance species.

(b) In exceptional circumstances, where it may be impracticable to conduct the ballast-water exchange as recommended in paragraph (a), and for any ship that has not left the North American continental shelf on its inbound voyage, the exchange may occur in internal Canadian waters, within the Laurentian Channel and in water depths exceeding 300 meters. Any such exchange in internal waters should be restricted to the area between 61° and 63° west longitude.

(c) When a ship is pumping out ballast water, preparatory to an exchange in accordance with paragraph (a) or (b) of these guidelines, the pump should run until it loses suction, thus assuring that the tank is as empty as practicable before taking on new ballast water.

(d) Sediment from the ballast-water tanks of each ship arriving from a foreign port should be disposed of that a disposal site ashore in accordance with any applicable requirements.

(e) These guidelines do not relieve the master of her or his responsibility for ensuring the safety and stability of the ship or the safety of the crew and passengers, or of any other such responsibility.

(f) The discharge of oil, noxious liquid substances (NLSs), or polluting substances into the navigable waters of the United States or into any waters under Canadian jurisdiction is prohibited by U.S. and Canadian regulations. Ballast water carried in any tank containing a residue of oil, and NLS, or any other polluting substance must be discharged in accordance with the applicable regulations.

4. Compliance Monitoring

(a) Each ship subject to these guidelines is requested to provide ECAREG with the following information, as part of the ECAREG interrogative:

(i) Whether ballast water is being carried; and

(ii) The minimum ocean depth and the location where the ballast water was taken on or exchanged.

(b) The salinity of the ballast water to be discharged in the Great Lakes and the location, date, and time of the ballast-water exchange should be entered in the ship's log book, or in other suitable documentation.

(c) The ship's master is requested to carefully complete a Ballast-Water Exchange Report Form, and give it to the Lockmaster at the Saint Lambert Lock.

(d) Officials of Canada or the U.S. may also take samples of ballast water to assess the compliance with and the effectiveness of the guidelines.

Dated: March 11, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

BILLING CODE 4910-14-M

APPENDIX 'A'/ANNEXE 'A'

BALLAST WATER EXCHANGE REPORT/RAPPORT DE CHANGEMENT DE LEST LIQUIDE

(To be completed by the Ship's Master and given to the Lockmaster prior to ship clearing St. Lambert Lock)
(À remplir par le capitaine de navire et à remettre au maître éclusier avant que le navire ne quitte l'écluse de St-Lambert)

NAME OF SHIP: / NOM DU NAVIRE : _____

PORT OF REGISTRY: / PORT D'IMMATRICULATION : _____

OFFICIAL NO. OR CALL SIGN: / No OFFICIEL OU INDICATIF D'APPEL : _____

OWNERS: / ARMATEURS : _____

AGENTS: / AGENTS : _____

INFORMATION ON BALLAST WATER BEING CARRIED INTO THE GREAT LAKES/RENSEIGNEMENTS CONCERNANT LE LEST LIQUIDE TRANSPORTÉ DANS LES GRANDS LACS

LOCATION / EMPLACEMENT	QUANTITY (TONNES) / QUANTITÉ (TONNES)	WHERE TAKEN ON / LIEU DU CHARGEMENT		SALINITY (specify units) / SALINITÉ (précisez unités)	INTENDED DISCHARGE PORT / PORT PRÉVU POUR LE DÉCHARGEMENT		IF EXCHANGED, WHERE WAS ORIGINAL BALLAST TAKEN ON / SI CHANGÉ, LIEU DU PREMIER CHARGEMENT		SALINITY OF ORIGINAL BALLAST / SALINITÉ DU LEST ORIGINAL	CONTROLS USED WHERE BALLAST NOT EXCHANGED / CONTRÔLES MIS EN VIGUEUR LORSQUE LE LEST N'EST PAS ÉCHANGÉ
		LAT.	LONG.		PLACE/PORT	DATE	LAT.	LONG.		
DOUBLE BOTTOMS / DOUBLE FOND										
FORE PEAK / BALLAST AVANT										
AFT PEAK / BALLAST ARRIÈRE										
SIDE TANKS / BALLASTS LATÉRAUX										
DEEP TANKS / CALES À EAU										
CARGO HOLDS/CALES À MARCHANDISES										
OTHER (Specify) / AUTRE (Spécifiez)										

MASTER'S NAME (Please print) / NOM DU CAPITAINE (Lettres moulées) _____

MASTER'S SIGNATURE / SIGNATURE DU CAPITAINE _____

DATE _____

LOCATION / EMPLACEMENT _____

FOR COMPLETION BY ST. LAWRENCE SEAWAY INSPECTOR: / À REMPLIR PAR L'INSPECTEUR DE LA VOIE MARITIME DU ST-LAURENT :

WAS BALLAST WATER SAMPLE TAKEN? / A-T-ON PRÉLEVÉ UN ÉCHANTILLON DE LEST LIQUIDE ?

Yes / Oui ☐ No / Non ☐

One copy to be given to the Lockmaster, one copy to be retained on board during voyage in the Great Lakes/St. Lawrence Seaway.
Remettre une copie à l'éclusier, conserver une copie à bord du navire pendant le voyage sur les Grands Lacs et dans la Voie maritime du Saint-Laurent.

[FR Doc. 91-6220 Filed 3-14-91; 8:45 am]
BILLING CODE 4910-14-C

OL
56
SS
51
IR
15
991
MI

federal register

Friday
March 15, 1991

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting: Migratory Bird Hunting Regulations Proposals for Certain Federal Indian Reservations and Ceded Lands for the 1991-1992 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AB60

Migratory Bird Hunting: Migratory Bird Hunting Regulations Proposals for Certain Federal Indian Reservations and Ceded Lands for the 1991-92 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for 1991-92 hunting season.

SUMMARY: The principal purpose of this Notice of Intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1991-92 hunting season, under the interim guidelines implemented for this purpose in September 1985. An additional purpose is to provide notification that the rulemaking procedure will be modified to allow greater detail to be incorporated into the final regulations. Proposals must include the details described later in this document. The U.S. Fish and Wildlife Service (Service) also welcomes comments concerning this Notice of Intent.

DATES: Proposals and comments should be submitted as soon as possible and must be received by June 7, 1991.

ADDRESSES: All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240. A copy of the proposal should be sent to the appropriate Service Regional office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).

FOR FURTHER INFORMATION CONTACT: Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240, Telephone: 703/358-1773.

SUPPLEMENTARY INFORMATION:

Background

Beginning with the 1985-86 hunting season, the Service has employed interim guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Since the 1987-88 hunting season, the Service has reached annual agreement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their lands in Minnesota. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1991-92 hunting season must submit a proposal that includes: (1) The requested hunting season dates and other details regarding regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.); (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations.

In this coming season, for the first time, the final hunting regulations that will be established for Indian tribes will have separate rulemakings for early and late seasons. A primary purpose for publishing rulemakings in the **Federal Register** is to inform, as fully as possible, the affected entities and the general public of actions regulatory agencies propose and ultimately take. To fully meet regulatory agency legal responsibilities and inform, the rulemakings should contain an appropriate level of relevant detail. In the past, in these regulations, little detail has been included with only, in many instances, references to unfinalized State regulations and final Federal frameworks. Thus, the Service is modifying the tribal regulations procedure somewhat in an attempt to allow the final regulations to better stand-alone and, thus, provide greater clarity of requirement with regard to season dates, season lengths, and bag/possession limits. In those few instances where a waterfowl season begins in the early season, it may still be necessary to describe the regulations generally, as in past years, in relation to unpublished final frameworks.

However, as in previous years, only a single proposed rule will be published that will include both early and late seasons. For the purposes of these regulations, an early season is one that begins before October 1 and a late season is one that begins on October 1 or later. Although only a rough distinction, early seasons usually focus on nonwaterfowl species, i.e., doves, pigeons, etc., and late seasons usually focus on waterfowl. The Service is setting a target date for publishing the proposed rulemaking, containing tribal proposals, of July 19, 1991, with final rules for early and late seasons of about August 23 and September 20, 1991, respectively.

The Service notes that duck hunting regulations for recent hunting seasons have been more restrictive because of the serious decline in duck populations caused by a lengthy period of drought in the prairie region of Canada and the United States. The drought was especially severe in 1988 and 1989, and several years of favorable environmental conditions probably will be required before ducks will be able to reproduce successfully again in many prairie areas. In 1991, the Service will continue to monitor closely the status of duck populations and Indian tribes should consider the current situation when developing their hunting season proposals.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

The Service notes also that because of a long-term decline of mourning doves in the Western Management Unit, the recent hunting regulations for States in the unit were more restrictive than usual. Similar regulations likely will be established in the unit for this species for the 1991-92 hunting season, with the aim of increasing the size of the population.

Pertinent details in the proposal received from tribes will be published for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1991-92 hunting season should submit their proposals as soon as possible, but no later than June 7, 1991. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional Office.

Fish and Wildlife Service Regional Offices

ADDRESS REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

States	Address	Telephone No.
California, Hawaii, Idaho, Nevada, Oregon, Washington	911 NE 11th Ave., Portland, OR 97232-4181	503/231-6118
Arizona, New Mexico, Oklahoma, Texas	P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103	505/766-2321
Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin	Fed. Bldg., Ft. Snelling, Twin Cities, MN 55111	612/725-3563
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	Richard B. Russell Fed. Bldg. Room 1200, 75 Spring St. SW., Atlanta, GA 30303.	404/331-3588
Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.	One Gateway Center, Suite 700, Newton Corner, MA 02158	617/965-5100
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming.	P.O. Box 25486, Denver Federal Center, Denver, CO 80225	303/236-7920
Alaska	1011 E. Tudor Road, Anchorage, AK 99503	907/786-3542

Authorship

The primary author of this Notice of Intent is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually may be promulgated for the 1991-92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Date: February 19, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-6241 Filed 3-14-91; 8:45 am]

BILLING CODE 4310-55-M

OL
56

SS
51

R
15

991

MI

federal register

Friday
March 15, 1991

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of March 1, 1991, of 28 rescission proposals and ten deferrals contained in three special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991 and February 28, 1991.

Rescissions (Table A and Attachment A)

As of March 1, 1991, 28 rescission proposals totaling $4,309.9 million were pending before Congress.

Deferrals (Table B and Attachment B)

As of March 1, 1991, $7,129.4 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information from Special Messages

The special message containing information on deferrals covered by this cumulative report is printed in the Federal Register cited below:

56 FR 41436, Thursday, October 11, 1990
56 FR 1704, Wednesday, January 16, 1991

Richard Darman,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF FY 1991 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President	4,309.9
Accepted by the Congress	0
Funding made available	0
Funding never withheld	0
Pending before the Congress	4,309.9

****

TABLE B

STATUS OF FY 1991 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	9,342.6
Routine Executive releases through March 1, 1991	-2,213.2
Overturned by the Congress	0
Currently before the Congress	7,129.4

Attachments

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of March 1, 1991 Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF AGRICULTURE								
Soil Conservation Service								
Watershed and flood prevention operations	R91-1		10,000	02-28-91				
DEPARTMENT OF DEFENSE								
PROCUREMENT								
Procurement of weapons and tracked combat vehicles, Army	R91-2		86,000	02-28-91				
Procurement of ammunition, Army	R91-3		13,000	02-28-91				
Aircraft procurement, Navy	R91-4		1,093,500	02-28-91				
Weapons procurement, Navy	R91-5		2,600	02-28-91				
Shipbuilding and conversion, Navy	R91-6		405,000	02-28-91				
Other procurement, Navy	R91-7		10,000	02-28-91				
Procurement, Marine Corps	R91-8		2,000	02-28-91				
Aircraft procurement, Air Force	R91-9		14,200	02-28-91				
Missile procurement, Air Force	R91-10		74,700	02-28-91				
Other procurement, Air Force	R91-11		254,200	02-28-91				
Procurement, Defense Agencies	R91-12		65,303	02-28-91				
National guard and reserve equipment	R91-13		289,900	02-28-91				
RESEARCH, DEVELOPMENT, TEST, AND EVALUATION								
Research, development, test and evaluation, Army	R91-14		60,800	02-28-91				
Research, development, test and evaluation, Navy	R91-15		834,500	02-28-91				

SS
51
MR
15
991
UMI

BEST COPY AVAILABLE

ATTACHMENT A
Status of FY 1991 Rescissions
(Amounts in thousands of dollars)

As of March 1, 1991 Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Research, development, test and evaluation, Air Force	R91-16		134,100	02-28-91				
Research, development, test and evaluation, Defense Agencies	R91-17		29,300	02-28-91				
MILITARY CONSTRUCTION								
Military construction, Navy	R91-18		48,962	02-28-91				
Military construction, Air Force	R91-19		91,800	02-28-91				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
HOUSING PROGRAMS								
Annual contributions for assisted housing	R91-20		500,000	02-28-91				
Congregate services	R91-21		9,500	02-28-91				
Nehemiah housing opportunity fund	R91-22		39,112	02-28-91				
COMMUNITY PLANNING AND DEVELOPMENT								
Urban development action grants	R91-23		13,518	02-28-91				
Rental rehabilitation grants	R91-24		70,000	02-28-91				
Urban homesteading	R91-25		13,397	02-28-91				
Rehabilitation loan fund	R91-26		144,459	02-28-91				
TOTAL, RESCISSIONS PROPOSED			4,309,851					

ATTACHMENT B
Status of FY 1991 Deferrals - As of March 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 03-1-91
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D91-1	149,319		10-04-90					
	D91-1A		1,943,510	01-09-91					
	D91-1B		830	02-28-91	405,937				1,687,723
Foreign military financing	D91-8	4,820,649		01-09-91	1,795,195				3,025,454
Peacekeeping operations	D91-9	5,177		01-09-91					5,177
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					
	D91-3A		235,572	01-09-91					509,040
Timber salvage sales	D91-10	103,684		02-28-91					103,684
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D91-4	1,186		10-04-90					1,186

ATTACHMENT B
Status of FY 1991 Deferrals - As of March 1, 1991
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 03-1-91
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction).....	D91-5	7,127		10-04-90					7,127
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive....	D91-6	14,529		10-04-90					
	D91-6A		44,507	01-09-91	12,098				46,938
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D91-7	538,659		10-04-90					
	D91-7A		1,068,473	01-09-91					1,607,132
TOTAL, DEFERRALS.....		6,049,754	3,292,892		2,213,230	0		0	7,129,416

[FR Doc. 91-6285 Filed 3-14-91; 8:45 am]
BILLING CODE 3110-01-C

Reader Aids

Federal Register

Vol. 56, No. 51

Friday, March 15, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904.....1
8905-9120.....4
9121-9268.....5
9269-9580.....6
9581-9834.....7
9835-10140.....8
10141-10356.....11
10357-10502.....12
10503-10770.....13
10771-11052.....14
11053-11346.....15

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
305.....9656

3 CFR

Proclamations:
6254.....9121
6255.....9269
6256.....9579
6257.....10353
6258.....10357
6259.....11053

Executive Orders:
12002 (Amended by EO 12755).....11057
(See Presidential Determination 91-20 of January 25, 1991).....8681
12193 (See EO 12753).....10501
12295 (See EO 12753).....10501
12351 (See EO 12753).....10501
12409 (See EO 12753).....10501
12463 (See EO 12753).....10501
12506 (See EO 12753).....10501
12554 (See EO 12753).....10501
12587 (See EO 12753).....10501
12629 (See EO 12753).....10501
12670 (See EO 12753).....10501
12706 (Superseded by EO 12753).....10501
12753.....10501
12754.....11055
12755.....11057

Administrative Orders:

Memorandums:
February 21, 1991.....9271

Presidential Determinations:
No. 91-20 of January 25, 1991.....8681
No. 91-21 of February 25, 1991.....10771
No. 91-22 of March 1, 1991.....10774

5 CFR

213.....10141
316.....10141
317.....10141
351.....10141
550.....11059
551.....11059
831.....10141
842.....10141
870.....10141
890.....10141

Proposed Rules:
581.....9181

7 CFR

1.....9581
17.....9273
46.....8683
51.....10302
301.....9273
319.....10789
905.....8684, 10790
911.....10143
915.....10143
916.....10359
917.....10359
918.....8905
944.....10503, 10792
958.....10359
981.....10505, 10793
985.....10794
1046.....9274
1434.....9592
1864.....10145
1903.....10145
1910.....10145
1940.....10508
1944.....10145
1945.....10145
1951.....10145
1955.....10145
1956.....10145
1965.....10145
1980.....10145

Proposed Rules:
12.....9258
52.....11113
58.....10362
704.....9293
723.....10820
777.....10660
917.....10819
920.....9302
929.....10189
946.....10826
1005.....9306
1410.....9293
1413.....9251
1421.....10189, 10192
1710.....10945
1755.....10827, 10835

8 CFR

241.....8906
242.....8906
274.....8685
329.....11060

9 CFR

82.....9752, 11061

331 ..... 8907, 8908
381 ..... 8907, 8908

10 CFR

2 10359
710 10068
1048 9611
Ch. XVII 9805
Proposed Rules:
710 10075
1703 ..... 9902, 11114

11 CFR

110 9275

12 CFR

265 8687
325 10154
600 8910
601 8910
602 8910
603 8910
604 9611
606 8910
611 ..... 8910, 10169
612 8910
614 8910
615 8910
617 8910
618 8910
619 8910
621 8910
960 8668
1410 10302
Proposed Rules:
327 9308
567 11115

13 CFR

21 8699–8701
25 8699–8701
39 ..... 9612–9618, 9635–9638
71 9618–9620
121 10360
122 10360
1209 8910
Proposed Rules:
39 ..... 8732, 8733, 8935, 9659, 9661, 9907–9913
71 ..... 9660, 9663, 9914
75 10302
91 8936

14 CFR

21 8699–8701
39 ..... 10361, 10796, 1805
61 11308
71 ..... 10362–10364, 10660
141 11308
Proposed Rules:
Ch. I 10383
39 ..... 10837, 10841
71 ..... 10384, 10660
75 ..... 10302, 10843
156 10462

15 CFR

303 9621
770 10760
776 ..... 10756, 10760
778 10760
799 ..... 10756, 10760
Proposed Rules:
771 10760
776 10760
778 10760
1201 11116

16 CFR

305 9123
1500 9276
1502 9276
Proposed Rules:
1700 9181

17 CFR

240 9124

18 CFR

1301 9268
Proposed Rules:
35 8936

19 CFR

Proposed Rules:
141 9311
162 11122

20 CFR

302 10302
404 ..... 11012, 11304
416 ..... 11012, 11304
Proposed Rules:
216 10365
404 11025
416 11025

21 CFR

5 8709
361 10806
510 ..... 9622, 9640
520 ..... 8709, 8710, 9640
522 9622
524 9622
556 8710
558 ..... 9622, 9641
1308 9132
1316 8685
Proposed Rules:
60 11304
182 10843
184 10843
201 9312
356 9915
808 8940
1308 10845

22 CFR

51 11062
514 8711

23 CFR

1235 10328

24 CFR

Ch. I 9472
12 11032
91 9169
207 11032
220 11032
221 11032
231 11032
232 11032
241 11032
282 11032
791 9822
Proposed Rules:
203 8941

25 CFR

61 10806

26 CFR

1 ..... 8911, 10365, 11062–11093
31 8911
301 9169
602 ..... 8912, 10365, 11093
Proposed Rules:
1 ..... 8943–8967, 10211, 10395–10397, 11122–11129
301 9182
602 11129

27 CFR

5 8922
Proposed Rules:
16 10066

28 CFR

0 ..... 8923, 10509
8 8685
Proposed Rules:
11 8734
51 10348

29 CFR

541 9252
579 9252
580 9252
801 9046
1601 9823
1910 10377
2676 11097
Proposed Rules:
516 9183
778 9183
1602 9185
1610 10847
1611 10850
2550 10724

30 CFR

56 9626
57 9626
228 10510
243 9251
723 10060
845 10060
914 11098
Proposed Rules:
7 10464
18 10464
100 11130
845 11130
870 10404
901 8967
913 8969
914 11133
935 9312

31 CFR

100 10169
560 11100
570 10356

32 CFR

191 10170
291 9841
627 9424
811 10945
Proposed Rules:
155 10215
162 10219
299a 9314

33 CFR

3 9288
100 ..... 9850, 9851, 11100
110 9852
117 ..... 8712, 10512
151 8878
165 ..... 9289, 10513
Proposed Rules:
100 ..... 11134, 11135
117 9916
165 10853

34 CFR

Proposed Rules:
674 10742
675 10742
676 10742

36 CFR

Proposed Rules:
9 9917

37 CFR

201 10660
211 10660

38 CFR

6 9626
8 9626
21 9627
36 9653
Proposed Rules:
3 10303
4 10303

39 CFR

Proposed Rules:
111 9664

40 CFR

52 ..... 9172–9175, 10171
60 9177
61 10514
81 11101
82 ..... 9518, 10660
147 9408
228 9178
Proposed Rules:
Ch. I 8972, 9315, 10522
61 ..... 10523, 10524
86 ..... 8856, 9754
123 8973
300 9187
435 10664
600 8856
799 ..... 9092, 9105

41 CFR

105–8 9662
301–1 ..... 9878, 11105–11304
301–10 10378
302–11 ..... 9289, 10378
Ch. 304 ..... 9878, 11105–11304

42 CFR

400 8832
405 8832
406 8832
412 9633
434 10515
435 10806
436 10806
440 ..... 10806, 10807

43 CFR

5400 10173
5420 10173
5450 10173
5460 10173
9230 10173
Public Land Orders:
6838 10380

44 CFR

64 ..... 10515, 10517
353 9452

45 CFR

74 8712
205 8924
232 8926
234 8926
235 8926
801 9180
1180 10176
1611 9634

46 CFR

25 8878
Proposed Rules:
56 10526
58 10526
107 10526
108 10526
109 10526
111 10526
174 10526

47 CFR

0 9752
2 9881
21 9897
69 9897
73 ..... 8933, 8934, 9686, 9688, 10178, 10381, 10516, 10519, 11106, 11107
80 9881
94 ..... 9897, 9900
Proposed Rules:
1 10222
2 10222
43 10526
64 11136
68 11136
73 ..... 8974–8976, 9189–9191, 9924, 10227, 10527, 11139–11143
76 9924
95 10222

48 CFR

Proposed Rules:
Ch. 2, App. H 9082
22 9632
42 9632
52 9632
202 9082
203 9082
204 9082
217 9082
223 10485
225 ..... 9082, 10854
228 9082
231 10854
232 9082
242 10854
245 9082
252 ..... 9082, 10485
1403 10227
1405 10227
1415 10227
1453 10227
1803 8718
1804 8718
1805 8718
1806 8718
1814 8718
1815 8718
1819 8718
1836 8718
1843 8718
1852 8718
1853 8718

49 CFR

1 9635
386 10179
571 ..... 10185, 11107
1010 9635
1011 8721
1177 10519
1180 10808
1330 8722
Proposed Rules:
383 9925
571 ..... 9928, 11142–11164
575 10861
Ch. X 9191
1053 9339

50 CFR

17 10809
23 10809
611 ..... 8722, 38723
620 8722
646 9251
672 ..... 9635, 9636
675 ..... 9636, 10521
Proposed Rules:
20 ..... 9462, 11336
285 10227
641 9930
658 8736
672 9251
675 ..... 9251, 10527
683 11166
685 11169

LIST OF PUBLIC LAWS

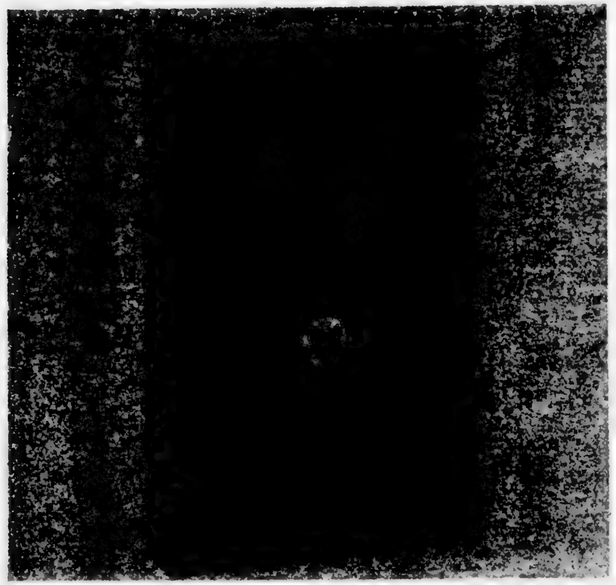
Last List March 14, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

S. 375/Pub. L. 102–10
National and Community Service Technical Amendments Act of 1991. (Mar. 12, 1991; 105 Stat. 29; 4 pages) Price: $1.00

S.J. Res. 64/Pub. L. 102–11
Disapproving the action of the District of Columbia Council in approving the Schedule of Heights Amendment Act of 1990. (Mar. 12, 1991; 105 Stat. 33; 1page) Price: $1.00

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents **Publications** Order Form

Order Processing Code: *6661

P3

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS. S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

7-90

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

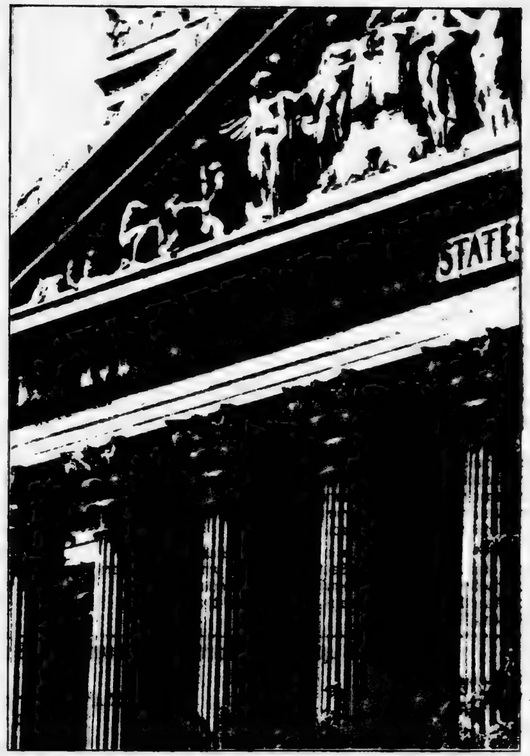
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6483

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected–one year as issued–$21.00 (LCS)

☐ Federal Register Index–one year as issued–$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(REV. 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
*6463

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

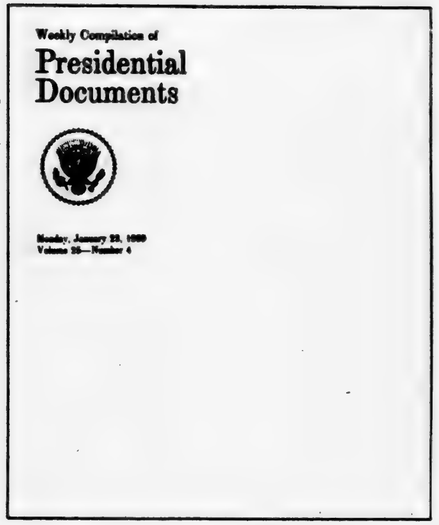
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ *Thank you for your order!*
(Credit card expiration date)
_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Order Now!

The United States Government Manual 1990/91

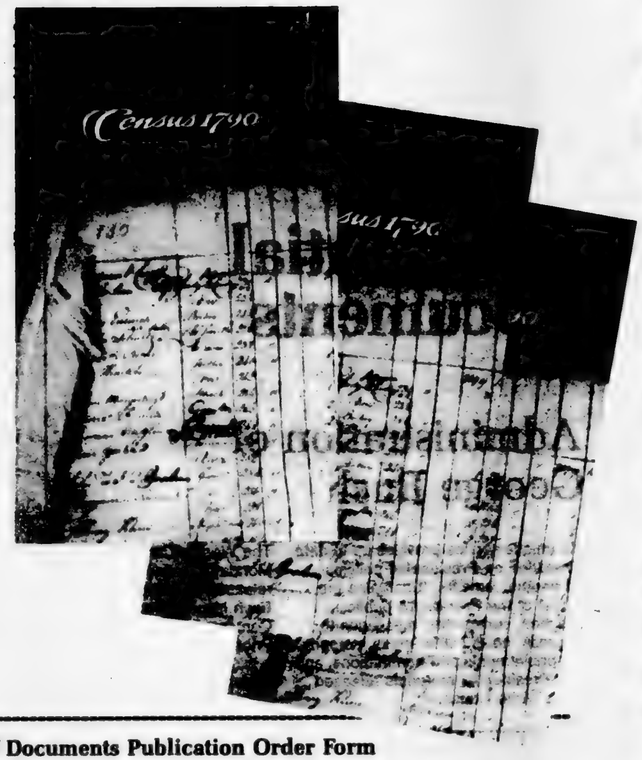
As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy



Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____ (Company or personal name)
_____ (Additional address/attention line)
_____ (Street address)
_____ (City, State, ZIP Code)
(_____) _____ (Daytime phone including area code)

3. Please choose method of payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA, or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ (Credit card expiration date)
_____ (Signature)

Thank you for your order!

(Rev. 10-90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325



New Publication
List of CFR Sections Affected
1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16) $27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27) $25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41) $28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50) $25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code: *6962

Charge your order. It's easy! MasterCard VISA

Please Type or Print (Form is aligned for typewriter use.)

To fax your orders and inquiries–(202) 275-2529

Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE
			Total for Publications	

_____ (Company or personal name) (Please type or print)
_____ (Additional address/attention line)
_____ (Street address)
_____ (City, State, ZIP Code)
(_____) _____ (Daytime phone including area code)

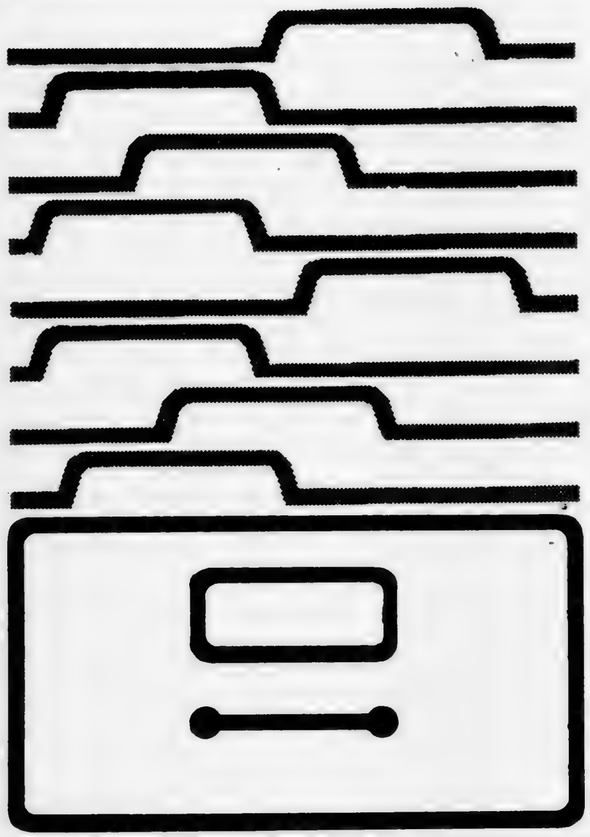
Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ (Credit card expiration date)

Thank you for your order!

_____ (Signature)

Rev 1-91



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1990
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy!

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 9/91. After this date, please call Order and Information

71 ..... 9660, 9663, 9914
75 10302
91 8938

14 CFR

21 8699-8701
39 ..... 10361, 10798, 1805
61 11308
71 ..... 10362-10364, 10660
141 11308

Proposed Rules:

Ch. I 10383
39 ..... 10837, 10841
71 ..... 10384, 10660
75 ..... 10302, 10843
158 10462

15 CFR

303 9621
770 10760
776 ..... 10756, 10760
778 10760
799 ..... 10756, 10760

Proposed Rules:

771 10760

207 9312
356 9915
808 8940
1308 10845

22 CFR

51 11062
514 8711

23 CFR

1235 10328

24 CFR

Ch. I 9472
12 11032
91 9169
207 11032
220 11032
221 11032
231 11032
232 11032
241 11032
282 11032
791 9822

Proposed Rules:

203 8941

914 11098

Proposed Rules:

7 10464
18 10464
100 11130
845 11130
870 10404
901 8967
913 8969
914 11133
935 9312

31 CFR

100 10169
560 11100
570 10356

32 CFR

191 10170
291 9841
627 9424
811 10945

Proposed Rules:

155 10215
162 10219
299a 9314

86 ..... 8856, 9754
123 8973
300 9187
435 10664
600 8856
799 ..... 9092, 9105

41 CFR

105-8 9662
301-1 ..... 9878, 11105-11304
301-10 10378
302-11 ..... 9289, 10378
Ch. 304 ..... 9878, 11105-11304

42 CFR

400 8832
405 8832
406 8832
412 9633
434 10515
435 10806
436 10806
440 ..... 10806, 10807

43 CFR

5400 10173

76 9924
95 10222

48 CFR

Proposed Rules:

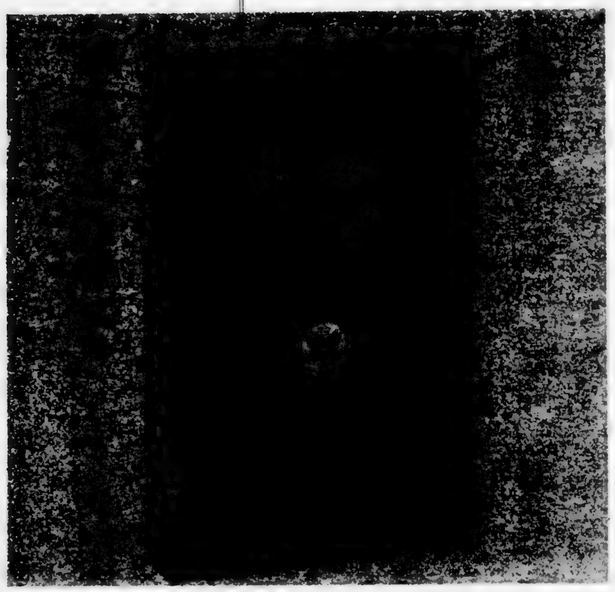
Ch. 2, App. M 9662
22 9632
42 9632
52 9632
202 9082
203 9082
204 9082
217 9082
223 10405
225 ..... 9092, 10854
228 9662
231 10854
232 9662
242 10854
245 9082
252 ..... 9092, 10405
1403 10227
1405 10227
1415 10227
1453 10227

public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S. 379/Pub. L. 102-10
National and Community Service Technical Amendments Act of 1991. (Mar. 12, 1991; 105 Stat. 29; 4 pages) Price: $1.00

S.J. Res. 84/Pub. L. 102-11
Disapproving the action of the District of Columbia Council in

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code: *6661

Superintendent of Documents **Publications** Order Form

Charge your order. It's easy! VISA

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

7/88

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

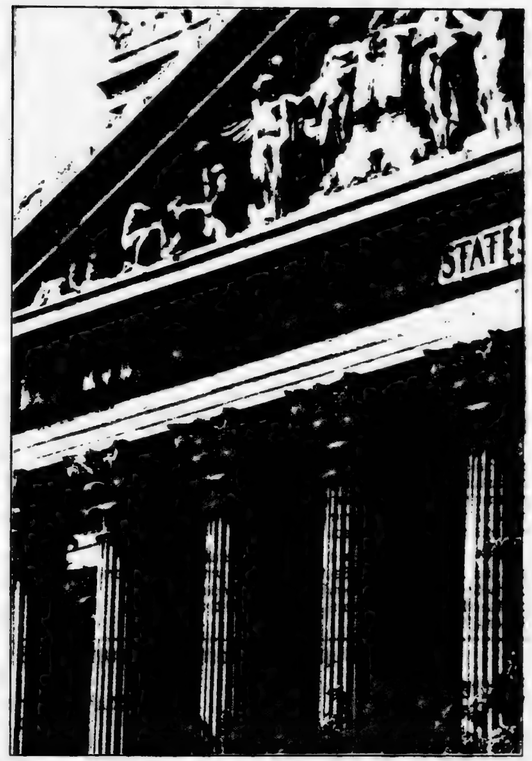
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The Index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Superintendent of Documents Subscriptions Order Form

Order Processing Code: *6483

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected–one year as issued–$21.00 (LCS)

☐ Federal Register Index–one year as issued–$19.00 (FRSU)

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. (Company or personal name)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date)

Thank you for your order!

(Signature)

(REV 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register.** Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of CFR Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
***6463**

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ___$340 for one year
    ___$170 for six-months
  - **24 x Microfiche Format:**
    ___$195 for one year
    ___$97.50 for six-months
  - **Magnetic tape:**
    ___$37,500 for one year
    ___$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ___$620 for one year
  - **24 x Microfiche Format:**
    ___$188 for one year
  - **Magnetic tape:**
    ___$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

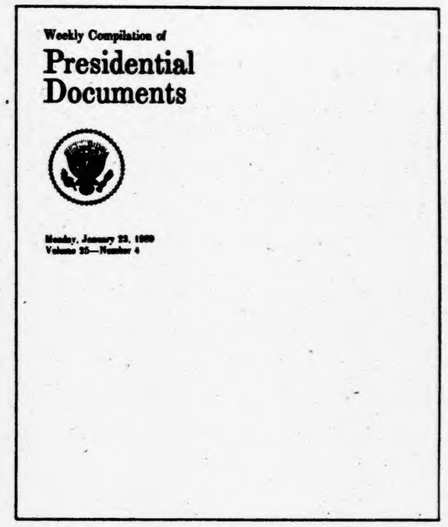
3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
***6466**

Charge your order. It's easy! VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)
_____
(Additional address/attention line)
_____
(Street address)
_____
(City, State, ZIP Code)
(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
_____ ***Thank you for your order!***
(Credit card expiration date)
_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

Order Now!

The United States Government Manual 1990/91

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix G, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$21.00 per copy



Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1990/91 at $21.00 per copy. S/N 069-000-00033-9.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 5/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ *Thank you for your order!*
(Credit card expiration date)

_____
(Signature) (Rev. 10-90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325



New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents **Publications** Order Form

Order Processing Code: *6962

Charge your order. It's easy! MasterCard VISA

Please Type or Print (Form is aligned for typewriter use.)

To fax your orders and inquiries–(202) 275-2529

Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE

Total for Publications

_____ (Please type or print)
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

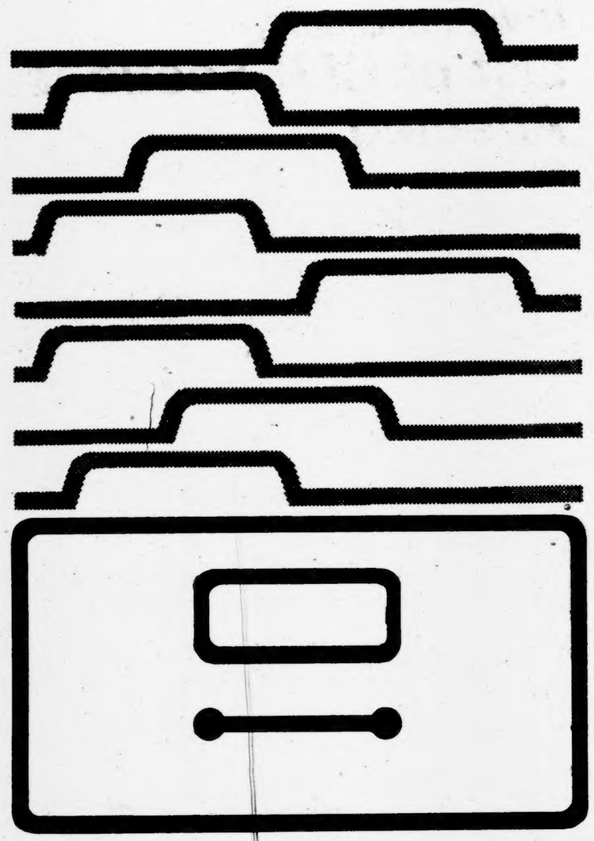
☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ *Thank you for your order!*
(Credit card expiration date)

_____
(Signature) Rev 1-91



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325.

Superintendent of Documents Publication Order Form

Order Processing Code: *6788

Charge your order. It's easy! VISA

To fax your orders and inquiries. 202-275-2529

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00020-7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069-000-00038-0 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 9/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

( )
_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

VOL
56

ISS
51

MR
15

19 91

UMI